

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
ASHEVILLE DIVISION  
FILE NUMBER: 1:07 CR 122

UNITED STATES OF AMERICA

vs.

MOTION TO CONTINUE

BOBBY LEE MEDFORD,  
DEFENDANT.

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NOW COMES the Defendant, Bobby Lee Medford, by and through undersigned counsel, and, pursuant to *United States v. Robinson*, 390 F.3d 833 (4<sup>th</sup> Cir. 2004), the authorities cited therein, and *Strickland v. Washington*, 466 U.S. 668 (1984), as well as the constitutional mandates providing for a fair and just trial to an accused, hereby moves this Court to continue the trial of this matter for thirty days. The reason for this motion is to enable undersigned counsel to properly prepare to defend the serious allegations against Mr. Medford. Without the additional time to prepare for trial, the trial of Mr. Medford by the Federal Government will not be a "fair trial" as required by law. In support of this motion undersigned counsel does offer and say:

THE STATUS QUO BETWEEN THE GOVERNMENT AND MR. MEDFORD

WHEN UNDERSIGNED COUNSEL WAS APPOINTED

1. Undersigned counsel was appointed to represent Mr. Medford on or about January 7, 2008. The Government's indictment against Mr. Medford contains allegations extending back more than six years. See Government's Motion Regarding Speedy Trial Act (hereinafter "Government's Motion") at 3 ("The acts charged in the indictment span more than six years.");

2. When undersigned was appointed to represent Mr. Medford, the Government had already been preparing its case for over two years. In getting to where it was on the date undersigned counsel was appointed, the Government utilized at least five different law enforcement agencies, dozens of agents, at least two prosecuting attorneys and a bevy of support staff. See Government's Motion at 3 ("This case is the result of more than two years of investigation by the Federal Bureau of Investigation, the Internal Revenue Service, the State Bureau of Investigation, North Carolina Alcohol Law Enforcement, local law enforcement authorities, the United States Attorney's Office, and the federal grand jury.");
3. The Government's investigation into the Buncombe County Sheriff's Department had grown out of various other investigations which were and are relevant to the trial of Mr. Medford. See Government's Motion at 3 ("...[The investigation into Mr. Medford] grows out of a series of investigations and prosecutions of various companies and individuals involved in the video poker machine business, many of whom have pled guilty and will be testifying ...[at Mr. Medford's trial].");
4. The evidence gathered by the Government, excluding additional evidence the Government has developed and/or obtained since undersigned counsel was appointed, included volumes of documentary evidence, various recordings, hundreds of witness statements, grand jury transcripts and virtually uncountable items of physical evidence. See Government's Motion at 3 ("Those cases, plus the instant case, involve the execution of more than 30 search warrants in North Carolina and South Carolina, the seizure of more than 65 bankers boxes of documents, *ex parte* orders authorizing the obtaining of tax returns for more than ten persons, transcripts of more than 100 grand jury witnesses, video and audio recordings of bribe payments made to one sheriff and discussions of payments made to multiple other

sheriffs in the Western District of North Carolina, and audio recordings of the defendant Davis.”);

5. At the time of his appointment, the amount of evidence gathered by the Government and made available to him via discovery rules and procedures was immense. *See* Government’s Motion at 3 (“... [The discovery] is of such volume that an entire room within the courthouse has been converted into the discovery room, and even that room does not contain the bulkier items of evidence (such as video poker machines and computers), which are catalogued in lists within the discovery room...”);
6. The bill of indictment against Mr. Medford contained ten eleven counts involving several different federal criminal statutes including, but not limited to, mail fraud, money laundering and extortion. Due to the number and variety of charges against this defendant, together with the complexity of the evidence that existed at the time undersigned counsel was appointed, this case was and is, by its very nature, complex. *See* Government’s Motion at 3-4 (advising the court that requiring the defense to go to trial approximately two weeks earlier than presently set would be “unreasonable” ... [g]iven the number of charges as well as the voluminous and complex nature of the evidence...” The Government also urged the court to conclude that this case is “so complex” that trial within the time limits mandated by the Speedy Trial Act was not required.);
7. Thus, when counsel accepted appointment the Government’s team had numerous officers and agents, at least two attorneys, a grand jury, numerous office staff and an unlimited

budget. Mr. Medford had undersigned counsel, no support staff, and no budget.<sup>1</sup>

#### COUNSEL'S DUTY TO HIS CLIENT AND THE JUDICIAL SYSTEM

8. Counsel has a duty to provide representation to his client that, at a minimum, complies with the mandates of *Strickland v. Washington*, 466 U.S. 668 (1984). As the *Strickland* Court noted, "The Sixth Amendment recognizes the right to the assistance of counsel because it envisions counsel's playing a role that is critical to the ability of the adversarial system to produce just results. An accused is entitled to be assisted by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair." *Id.* at 686. In determining what "effective assistance" means as guaranteed by the Sixth Amendment, "we must take its purpose – to ensure a fair trial – as the guide." *Id.*
9. In determining whether trial counsel's representation was reasonable, the *Strickland* Court noted that "prevailing professional norms" are the guidepost. ABA Standards for Criminal Justice are one of the sources that can be consulted for determining reasonableness. *Id.* at 688-89;
10. Among the many areas of responsibility that defense counsel must manage are case investigation. Investigation includes, but is not limited to, obtaining and reviewing the discovery, following up on issues raised by said discovery, locating defense witnesses, and gathering physical evidence that either supports the defense theory of innocence, negates the government's theory of guilt or supports some form of reduced defendant culpability. In this vein, defense counsel must make certain strategic choices about the manner in which the

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<sup>1</sup>Counsel is mindful of the assistance available to him under the Criminal Justice Act. That assistance, which defense counsel did in fact utilize, will be discussed further. However, at the time of initial appointment, said funding was not in place.

defense of the case and trial of the accusations should be conducted. However, "strategic choices" can only be made once a thorough investigation of the law and the facts related to the plausible defenses are conducted.

11. Thus, in preparing to defend against the government's allegations, defense counsel must make a reasonably thorough review of the evidence gathered by the Government, must review the various statements made by witnesses to government agents/representatives, must investigate those persons who are going to testify in support of the government's case, and must research the law relevant to the allegations made in the bill of indictment.
12. Apart from his responsibility to defend against the government's allegations, the defense must also prepare its own case. This involves, among other things, locating and interviewing witnesses favorable to the defense, locating any physical evidence that might support a defense verdict, determining whether any expert witnesses are appropriate, preparing defense witnesses to testify at trial and preparing exhibits for use at trial.
13. Trial preparation is a necessary part of proper representation. This includes preparing an opening statement, preparing cross examinations of government witnesses, issuing subpoenas for witnesses and documents, preparing defense witnesses to testify, preparing to argue any motions, preparing closing arguments, and considering/preparing special jury instructions.
14. Defense counsel's efforts to properly prepare for trial do not occur in a vacuum. While defense counsel is performing the foregoing functions, the government is not simply sitting idle by waiting for the defense to catch up. Rather, the government continues its investigation and trial preparation. In the case at bar, the government continued its use of the grand jury, continued locating and interviewing witnesses, used its extensive power to obtain guilty pleas and cooperation from several defendants and eventually filed a

superseding bill of indictment alleging an additional charge against the remaining defendants;

#### THE FIRST THIRTY DAYS

15. In an effort to tackle the many tasks ahead, defense counsel promptly sought and obtained support staff and other assistance under the provisions of the Criminal Justice Act and these individuals have been instrumental in assisting undersigned counsel in trying to get this case ready for trial;
16. Early on, undersigned counsel and the government reached an agreement regarding discovery that allowed the defense to bring a photocopy machine into the discovery room and, with the exception of grand jury transcripts, for counsel and/or his representatives to photocopy discovery.<sup>2</sup> Regarding grand jury transcripts, the defense has been required to dictate grand jury testimony because the government will not allow the transcripts to be copied (even under a protective order);
17. During the first thirty days of his representation of Mr. Medford, undersigned counsel worked continuously and diligently to perform the necessary and required functions cited above. Regardless of these efforts, due to the inability to complete the discovery portion of his responsibilities within 30 days, defense counsel sought from the court a sixty day continuance beyond March 25, 2008 in order to properly prepare for trial. This court date had been established by this court shortly after the defendants had been arrested and prior to

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<sup>2</sup>It should be noted that in past cases, defense counsel has been provided with a copy of discovery on computer disc thereby eliminating the need for the defense to actually make copies. Defense counsel is unclear as to why that procedure has not been utilized in this case. Regardless, the defense has made extensive use of the photocopy privileges, having at this point made in excess of twelve thousand copies.

defense counsel being appointed to represent Mr. Medford. At the time undersigned counsel sought the continuance (or alternatively the appointment of second counsel due to the complexity of this litigation), the defense had neither sought nor been granted any continuance of the trial date;

18. This court orally denied undersigned counsel's motion for a continuance and his alternative motion for appointment of second counsel. This ruling was reduced to writing and made a part of the record on or about February 29, 2008;

#### TRIAL PREPARATION EFFORTS UP TO PRESENT

19. In the weeks following this court's denial of Mr. Medford's motion to continue, defense counsel has continued to be immersed in preparing for trial. Together with the staff provided by court funding, as well as an additional volunteer from the local university, in excess of 12,000 copies of discovery have been made. Defense counsel has reviewed the vast majority of these documents but has yet to complete that task. Remaining in the discovery room are at least 20 or more banker boxes of discovery that defense counsel has not had a chance to review.
20. While counsel has continued to review discovery and otherwise try and prepare a defense of his own, the government has increased its prosecutorial efforts through additional manpower and preparations for trial. The government is now making use of three agents on what appears to be a full-time basis, is making use of two assistant United States attorneys on what appears to be a full-time basis, and is utilizing several support staff members. Undersigned continues to receive new discovery on virtually a daily basis which include reports of witness interviews conducted within the last several weeks.

21. Undersigned is not suggesting that the government has been anything but accommodating regarding defense access to discovery. Rather, undersigned is not capable physically of obtaining and reviewing the extensive discovery in this case by the time trial is set to commence. It is well known that the average person reads between 250 and 300 words per minute. Given the extensive nature of the written discovery in this case, merely reading the discovery a single time, doing so eight hours a day, would require over a month of time. As noted earlier, reading the discovery is not the only task defense counsel is required to perform in preparing to go to trial.
22. Due to his not being able to complete the discovery process, defense counsel cannot say with any degree of certainty whether there are key or critical witnesses that need to be located, interviewed and subpoenaed in order to support the defense, and/or whether there are additional investigatory steps that need to be taken to either bolster Mr. Medford's claims of innocence or undermine the government's witnesses, evidence or arguments that Mr. Medford is guilty.

#### THE LEGAL STANDARD

23. As this court has pointed out in its denial of Mr. Medford's Motion to Continue/Alternative Motion for Appointment of Second Counsel (Order dated February 29, 2008), it is well-settled that federal trial courts have broad discretion in resolving motions to continue. *See, e.g., United States v. Robinson*, 390 F.3d 833 (4<sup>th</sup> Cir. 2004), *citing, Morris v. Slappy*, 461 U.S. 1 (1983).
24. "Depending on the circumstances of the case, many factors may be relevant to resolution of a motion to continue, including, *inter alia*,



(i) the length of delay, (ii) whether there have been any previous continuances, (iii) whether the motion was timely filed, (iv) inconvenience to the litigants, witnesses, counsel and court, (v) the reasons for the delay, (vi) the likelihood that a delay would accomplish the movant's objectives, (vii) whether the delay is requested for a legitimate reason or the legitimacy of the motives in requesting the delay, (viii) whether the delay is purposeful or caused by the defendant, (ix) the fault of the movant in causing a need for the delay, (x) the availability of competent counsel if at issue, (xi) the complexity of the case, and (xii) whether denying the continuance would lead to identifiable prejudice.

*Id.* at page 1, citing 17 Am. Jur. 2d Continuances § 53 (2008).

25. A number of these factors are relevant in considering this motion to continue. The first factor, length of delay, is important. Undersigned counsel is seeking 30 more days within which to properly prepare. Given said additional time, undersigned counsel verily believes that he can complete his review of the discovery, properly develop a theory of defense, identify and subpoena necessary witnesses to both support the defense theory of innocence and to contest the government's theory of guilt, to allow undersigned counsel a meaningful opportunity to prepare his witnesses and evidence, and to properly accomplish the other tasks identified herein as being essential to a fair trial.
26. Factor (ii) takes into consideration whether there have been any previous continuances. This case, to the best of undersigned counsel's knowledge, was originally set for trial on March 25, 2008 by this court and said date has never been changed. Although the government raised an issue about the Speedy Trial Act and whether said trial date could be utilized given the provisions of said Act, there was no change in trial date as a result of that issue. Mr. Medford has never been granted a continuance in this case;

27. Factor (iii) looks to the timeliness of the motion. Undersigned counsel has previously put this court on notice that he did not think he could properly prepare to go to trial on March 25, 2008. When this court denied his motion to continue in open court, this court noted that it would reconsider the matter at a later date. Undersigned counsel has been and is continuing to do everything in his power to comply with this Court's desire to try this case beginning March 25, 2008. Despite these efforts, undersigned cannot possibly be ready to try this case on that date;
28. Factor (iv) involves any inconvenience to the litigants, witnesses, counsel and court. There is always some inconvenience to the various parties to litigation when a continuance is granted. In the case at bar, the trial preparations conducted by the defense and the government will be of benefit at a trial on a later date. There will clearly be some inconvenience to the court in that even though the presiding judge is not from Asheville, he has unquestionably set aside time to travel to Asheville to preside over this case. Undersigned counsel is not privy to the presiding judge's future schedule and cannot address to what extent there are times other than March 25, 2008 when he could preside over the trial of this matter;
29. Factor (v) looks to the reasons for the requested delay. Here the delay is requested in order to allow undersigned counsel to properly prepare Mr. Medford's defense and thereby comply with the constitutional mandate that the defendant be afforded a fair trial, afforded through the effective assistance of counsel contemplated by *Strickland v. Washington*, 466 U.S. 668 (1984) and its progeny;
30. Factor (vi) considers the likelihood of the requested delay accomplishing the movant's objectives. Undersigned respectfully contends that the only thing that can accomplish his

objectives (being able to provide Mr. Medford with a fair trial) is for this court to provide him with additional time to prepare;

31. Factor (vii) looks to the legitimacy of the reason cited and/or the legitimacy of the motives in requesting the delay. Undersigned counsel, as an officer of the court, hereby acknowledges to the court that he is not seeking this delay for any reason other than his desire to both comply with his obligations to the court to see that this case is tried in a timely manner and to provide Mr. Medford with the representation to which he is constitutionally entitled;
32. Factor (viii) looks to whether the delay is purposeful or is caused by the defendant. Mr. Medford has done nothing to cause this delay. The extensiveness of the government's investigation and the inability of counsel to be able to complete discovery and trial preparations by the date this court has set the trial is not something that was attributable to Mr. Medford or his lawyer;
33. Factor (ix) similarly looks to whether the need for "further delay" was caused by the fault of the movant. Undersigned respectfully contends that there has not been any delay at this point and without such there can be no "further delay." Regardless, the delay requested is not due to any fault on either the part of Mr. Medford or his counsel;
34. Factor (x), the availability of competent counsel if at issue, is very much at issue in this case. For the reasons set forth herein, undersigned contends that to force Mr. Medford to go to trial on March 25<sup>th</sup> would ensure that he did not have competent counsel as mandated by *Strickland v. Washington* and its progeny;
35. Factor (xi) looks to the complexity of the case. Set forth earlier are the factors which undersigned counsel contends justify this court finding that this case is in fact complex. The

government has agreed that this case is complex;

36. Factor (xii) focuses on whether denying the continuance would lead to identifiable prejudice. Due to the defendant's advanced age and poor health, if the government is successful in obtaining a conviction in this case, Mr. Medford will very likely die in prison. Undersigned counsel respectfully contends that being represented in a trial by counsel who has not been able to review all of the discovery, who has not been able to complete follow-up investigation, and who has not been able to perform the other necessary trial preparations as set forth herein establishes identifiable prejudice to Mr. Medford;
37. Mr. Medford, by and through undersigned counsel, respectfully requests that this court grant him one continuance for a period of thirty days within which to properly prepare for trial. All he seeks is the opportunity to have a fair trial against an extremely powerful opponent, the federal government, which has had and continues to have substantial advantages in its efforts to put him in prison for what, in all likelihood, will be the remainder of his life.

Respectfully submitted this the 17<sup>th</sup> day of March, 2008.

s/Stephen P. Lindsay  
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#### CERTIFICATE OF SERVICE

This is to certify that I have served those persons listed as counsel for the Government and for the various Defendants herein by the means and in the manner required by the local CM/ECF rules and regulations, to wit by either serving same electronically or by traditional service should a party or counsel requires same due to not having a registered email address. In that event, traditional

service was accomplished via United States Mail, properly addressed to said party and/or counsel, with first class postage being affixed thereto and same being deposited with the United States Post Office. Service was made to the following individuals:

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This the 17th day of March, 2008.

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