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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)	2:05-cr-240-GEB
)	
Plaintiff,)	
)	ORDER
v.)	
)	
UMER HAYAT, HAMID HAYAT,)	
)	
Defendants.)	

A Status Hearing was conducted on January 6, 2006, at which Robert Tice-Raskin, Laura Ferris, and Steve Tyrell appeared on behalf of the government, Johnny Griffin appeared on behalf of Defendant Umer Hayat, and Wazhma Mojaddidi appeared on behalf of Defendant Hamid Hayat.¹ At the hearing, defense counsel requested trial be set for January 24, 2006, or January 26, 2006. The government opposed setting trial on either date, moved to exclude time under the Speedy Trial Act, requested a hearing date on its Motion for Protective Order, requested a status conference be held on January 27, 2006, and proposed a briefing schedule for motions

¹ Counsel for both Defendants are referred to as "defense counsel" unless otherwise indicated.

1 filed pursuant to Federal Rule of Criminal Procedure 12 ("Rule 12
2 Motions"). After hearing argument on all matters, the Court
3 scheduled trial to commence at 9:00 a.m. on February 14, 2006. This
4 Order summarizes some of the matters discussed at the Status Hearing
5 and provides additional information regarding pre-trial and trial
6 procedures.

7 Motion to Exclude Time

8 The government argued time should be excluded under the
9 Speedy Trial Act because (1) it had requested a January 27, 2006,
10 hearing on its previously filed Motion for Protective Order, (2) it
11 would file an additional motion following the Status Hearing on
12 January 6, 2006, ("January 6 Motion"), and (3) the case was complex.
13 Defense counsel argued time should not be excluded because the
14 Motion for Protective Order and the January 6 Motion could be
15 resolved quickly. Since the government indicated that calendaring
16 its Motion for Protective Order automatically excluded time from the
17 Speedy Trial Act from the day the hearing was calendared until the
18 motion was decided, this argument obviated a ruling under the Speedy
19 Trial Act.

20 Motion for Protective Order

21 At the Status Hearing, the Motion for Protective Order was
22 scheduled for hearing at 3:00 p.m. on January 27, 2006. Opposition
23 to the Motion for Protective Order shall be filed no later than 4:30
24 p.m. on January 16, 2006, and reply to the opposition shall be filed
25 no later than 4:30 p.m. on January 23, 2006.

26 January 6 Motion

27 On January 6, 2006, following the Status Hearing, the
28 government filed a motion under the Classified Information

1 Protection Act ("CIPA"), in which it requests that the Court compel
2 defense counsel to obtain security clearance, appoint separate
3 defense counsel with security clearance, or conduct a hearing to
4 determine whether Defendants can knowingly, voluntarily, and
5 intelligently enter into an evidentiary stipulation regarding
6 evidence such as what is referenced in Exhibit A to the January 6
7 Motion. At the Status Conference, defense counsel asserted that the
8 January 6 Motion and the Motion for Protective Order are
9 interrelated. In order to allow both motions to be heard
10 simultaneously, the January 6 Motion is scheduled for hearing at
11 3:00 p.m. on January 27, 2006. Opposition to the motion shall be
12 filed no later than 4:30 p.m. on January 16, 2006, and reply to the
13 opposition shall be filed no later than 4:30 p.m. on January 23,
14 2006.

15 CIPA Hearing

16 _____At the Status Hearing, a CIPA hearing was scheduled for
17 11:00 a.m. on January 27, 2006.

18 Rule 12 Motions

19 Any Rule 12 motion shall be briefed and filed on or before
20 4:30 p.m. on January 13, 2006. Opposition to Rule 12 motions shall
21 be filed on or before 4:30 p.m. on January 23, 2006, and reply to
22 opposition shall be filed on or before 4:30 p.m. on January 30,
23 2006. Hearing on the motions will commence at 11:00 a.m. on
24 February 3, 2006.

25 Evidentiary Disputes

26 Any unresolved evidentiary disputes a party opines is
27 capable of being resolved in limine shall be briefed and filed on or
28 before 4:30 p.m. on January 13, 2006. Oppositions to in limine

1 motions shall be filed on or before 4:30 p.m. on January 23, 2006;
2 reply to opposition shall be filed on or before 4:30 p.m. on January
3 30, 2006. Hearing on the motions will commence at 11:00 a.m. on
4 February 3, 2006.

5 If the parties anticipate other evidentiary disputes that
6 cannot be resolved in limine, these disputes should be addressed in
7 their trial briefs. L.R. 16-285(a)(3).

8 Trial Documents

9 No later than 4:30 p.m. on February 10, 2006, the parties
10 shall file the following documents:

- 11 (1) proposed voir dire questions to be asked by the
12 Court;
- 13 (2) proposed preliminary and final jury
14 instructions;²
- 15 (3) proposed verdict form;
- 16 (4) trial briefs; and
- 17 (5) a joint statement or joint proposed jury
18 instruction that can be read to the jury in
19 advance of voir dire that explains the nature of
20 the case.

21 At the time of filing these documents, counsel shall also email a
22 copy of the proposed voir dire questions, proposed jury
23 instructions, proposed verdict form, and joint statement to be read
24 to the jury to the Court at geborders@caed.uscourts.gov. See L.R.
25 51-163(b)(1).

26
27 ² The proposed final jury instructions shall include both
28 the general and substantive instructions and are to be ordered in
the precise manner that a party desires them read to the jury.

1 The government's exhibits shall be numbered on stickers
2 provided by the Court. Should Defendants elect to introduce
3 exhibits at trial, such exhibits shall be designated by alphabetical
4 letter on stickers provided by the Court. The parties may obtain
5 exhibit stickers by contacting the Clerk's Office at (916) 930-4000.

6 Length of Trial

7 The parties estimate they will need twenty (20) court days
8 to present their cases-in-chief.

9 Voir Dire

10 After the Judge completes judicial voir dire, the parties
11 may conduct voir dire for up to forty five (45) minutes per side.

12 Jurors

13 Sixteen jurors will be impaneled.³ The "struck jury"
14 system will be used to select the jury.⁴ At the beginning of the
15 voir dire process, approximately thirty-six prospective jurors,
16 randomly selected by the Jury Administrator, will be seated for voir
17 dire. The order of the jurors' random selection is reflected by the
18 order in which they will be seated. The first twelve jurors on the
19 list will constitute the petit jury unless one or more of those
20 twelve is excused for some reason. The first randomly selected

21
22 ³ This includes four alternate jurors.

23 ⁴ As explained in United States v. Blouin, 666 F.2d 796, 798
24 (2d Cir. 1981), "the goal of the 'struck jury' system is to whittle
25 down an initially selected group . . . [to the amount of jurors] who
26 will serve as the petit jury." The selected group consists of the
27 jurors who will hear the case, plus the number of jurors required to
28 enable the parties to use the combined number of peremptory
challenges allotted to both sides for striking jurors from the
group. Typically extra jurors are included in the select group in
the event the minimum amount of jurors required for the "struck
system" is reduced "for cause" or some other reason.

1 juror will be in jury seat number one, which is at the extreme
2 right-hand side of the jury box in the top row as the jury box is
3 viewed from the well of the courtroom. The ninth selected juror
4 will occupy the seat located at the extreme right-hand side of the
5 jury box in the bottom row. The remaining jurors will be similarly
6 seated. Assuming that the juror seated in the first seat is
7 excused, the juror in the second seat becomes the first, and the
8 other jurors' numbers are changed accordingly; however, the jurors
9 continue to occupy their original assigned seats.⁵

10 Peremptory strikes will be exercised silently, by passing
11 the strike sheet between the parties, with the government going
12 first in each round. To use a challenge, the attorney will write
13 the seat number of the juror above the line next to the numbered
14 challenge. A party who does not use a challenge in any round waives
15 any further right to exercise that challenge and is required to
16 reflect this waiver by writing the word "pass" on the strike sheet.

17 If any party has a Batson or other objection to opposing
18 counsel's use of a peremptory strike, it must be made immediately
19 upon recognition of the same, and before moving to another round.
20 However, this ruling does not prevent a party from making such an
21 objection later based on information gained that justifies making
22 the objection at a later time. But any objection must be made
23 before the Court excuses that juror from further participation in
24 the voir dire process. Failure to do this constitutes waiver of a
25 Batson and any other objection.

26 ////

27
28 ⁵ Attached is a copy of the form entitled Query re Excuse
Potential Juror.

1 Opening Statements

2 The parties are granted sixty (60) minutes per side for
3 opening statements.

4 IT IS SO ORDERED.

5 Dated: January 9, 2006

6 /s/ Garland E. Burrell, Jr.
7 GARLAND E. BURRELL, JR.
8 United States District Judge
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Query re Excuse Potential Juror

Do you agree that Juror No. _____ should be excused for the reason stated by the juror or for any other reason? (Check applicable box below.)

Government's Attorney

Defendant's Attorney

RESPONSE:

Yes

No

Yes

No