

EDWARD H. KUBO, JR. #2499
United States Attorney
District of Hawaii

KENNETH M. SORENSON
Assistant U.S. Attorney
Room 6-100, PJKK Federal Building
300 Ala Moana Boulevard
Honolulu, Hawaii 96850
Telephone: (808) 541-2850
Facsimile: (808) 541-2958
E-Mail: Ken.Sorenson@usdoj.gov

Attorneys for Plaintiff
UNITED STATES OF AMERICA

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

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|---------------------------|---|-----------------------------|
| UNITED STATES OF AMERICA, |) | CR. NO. 05-00486 HG-KSC |
| |) | |
| Plaintiff, |) | |
| |) | ORDER GRANTING MOTION FOR |
| vs. |) | CONTINUANCE AND EXCLUDING |
| |) | TIME UNDER THE SPEEDY TRIAL |
| NOSHIR S. GOWADIA, |) | ACT |
| |) | |
| Defendant. |) | |
| _____ |) | |

ORDER GRANTING MOTION FOR CONTINUANCE AND
EXCLUDING TIME UNDER THE SPEEDY TRIAL ACT

ON THE 2nd day of May, 2007, came the parties, by and through counsel, for a status conference concerning the trial date currently scheduled for July 8, 2007 in this case. Upon the oral motion of the parties for a continuance of the current trial date for the reasons set forth in the government's oral motion before the Court, and upon the joint motion and agreement of the Defendant, it is hereby ORDERED that the trial of this case be

continued from July 10, 2007 to February 12, 2008. The Court orders a continuance of the trial date in this case and finds that the ends of justice mandates a continuance of the trial date. The Court finds that this case presents unusual and complex issues in that it involves the anticipated introduction into evidence of substantial amounts of classified and special access program information. The trial of the case will require implementation of procedures set forth in the Classified Information Procedures Act, Pub.L. 96-456, October 15, 1980, and the Court finds based upon its knowledge of the case and representations of counsel that substantial time will be required for the parties and the Court to determine the proper means of introduction into evidence of classified information at the trial of this cause. The Court also finds that the Defendant's discharge of his previously retained counsel has required the conduct of a security background investigation into newly appointed counsel. The Court finds that this background investigation has not yet been completed, and that based upon representations of counsel that current defense counsel submitted his paperwork to the Department of Justice approximately one month ago, and that it appears that the background examination will take from 6 weeks to 2 months to complete from the date of this Order. The Court finds that once new counsel is cleared to

the "top secret" security level it will be necessary for counsel to be additionally cleared into the B-2 bomber special access program. The Court further finds that there is voluminous discovery in the case and that new defense counsel will require substantial time for preparation given the unusual and complex nature of the case, the volume of materials necessary for review, which the Court finds to be substantial, and the need for substantial defense investigation. The Court also is aware that there will likely be substantial pretrial litigation in this case centering upon application of the Classified Information Procedures Act (CIPA) and other issues related to suppression, and the Court finds that it must afford the Defendant ample time to review this complex area of the law and present appropriate arguments to the Court regarding issues arising from application of CIPA to this case. Accordingly, the Court finds the case to be unusual and complex and finds that the ends of justice warrant a continuance of the trial date to February 12, 2008.

The Court further finds by a preponderance of the evidence that the United States has made an official request for evidence from the countries of Australia, Switzerland and Liechtenstein through Mutual Legal Assistance Treaty requests. It appears by a preponderance of the evidence that the information sought by the United States is located in those


countries, and that the United States has not yet received the sought after evidence or information from those countries.

The Court further finds that the Defendant is in agreement with the granting of this continuance and the Defendant has requested a trial date of February 12, 2008, in order to properly prepare for trial given the nature of the prosecution, the complexity of the subject matter and the volume of both classified and unclassified discovery in the case. Accordingly, with the agreement of counsel and in accordance with the findings set forth above, this Court finds that this case is unusual, complex and presents novel questions of fact and law to the degree that it is unreasonable to expect adequate preparation for pretrial proceedings or for the trial itself within the time limits established by 18 U.S.C. § 3161, *et. seq.* Due to the need for additional necessary time for new defense counsel to gain a top secret security clearance and properly investigate and prepare for the trial of this case, and for all of the reasons set forth above, the Court finds that the ends of justice served by the granting of this continuance outweigh the best interests of the public and of the defendant in a speedy trial. Accordingly, trial is hereby ORDERED continued to February 12, 2008. The Final Pretrial Conference is set for January 14, 2008 at 10:00 a.m. before Magistrate Judge Kevin S.C. Chang.

The Court further Orders that the period of time from July 10, 2007 to February 12, 2008 constitutes a period of excusable delay and is therefore excludable pursuant to the Speedy Trial Act, 18 U.S.C. §§ 3161(h)(8)(A), (h)(8)(B)(ii) and (h)(9).

ENTERED this 14TH day of June, 2007.





Kevin S.C. Chang
United States Magistrate Judge

Seen and Agreed To:

 /s/ Kenneth M. Sorenson
KENNETH M. SORENSON
Assistant U.S. Attorney

 /s/ David Klein
DAVID KLEIN, ESQ.
Counsel for Defendant

USA v. NOSHIR S. GOWADIA
Cr. No. 05-00586 HG-KSC
"Order Setting Trial Date and Excluding Time Under the Speedy
Trial Act"