

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
RAMIZ ZIJAD HODZIC,)
a/k/a Siki Ramiz Hodzic,)
)
SEDINA UNKIC HODZIC,)
)
NIHAD ROSIC,)
a/k/a Yahya AbuAyesha Mudzahid,)
)
MEDIHA MEDY SALKICEVIC,)
a/k/a Medy Ummuluna,)
a/k/a Bosna Mexico, and)
)
ARMIN HARCEVIC)
)
Defendants.)

No. 4:15 CR 00049 CDP/DDN

**GOVERNMENT’S MOTION FOR EXTENSION OF TIME TO FILE RESPONSE TO
DEFENDANT’S JOINT MOTION TO DISMISS**

Comes now the United States of America, by and through its attorneys, Carrie Costantin, Acting United States Attorney for the Eastern District of Missouri, and Matthew T. Drake, Howard Marcus, and Kenneth Tihen, Assistant United States Attorneys for said District, Mara Kohn and Joshua Champaign, Trial Attorneys for the United States Department of Justice, National Security Division, Counterterrorism Section, and submit the following request for an extension of time to file a response to defendants’ Motion to Dismiss and affirmative defense concerning combatant immunity.

On August 30, 2016, this Court ordered not later than October 14, 2016, the defendants should file a documentary proffer of the specific facts and supporting evidence for any affirmative defense. (Doc. #329). These affirmative defenses contemplated arguments concerning the lawful combatant status of certain individuals.

On May 24, 2017, this Court issued an amended scheduling order and granted the defendants' request for an extension of time to file affirmative defense motions. This Court ordered that the defendants had until June 30, 2017, to file their proffer of specific items of evidence and the specific facts to be proven by the evidence, to support the lawful combatant affirmative defense. (Doc. #381).

On June 29, 2017, this Court issued a second amended scheduling order concerning the filing of affirmative defense motions. This Court ordered that the defendants had until July 21, 2017, to file motions and proffer of specific items of evidence and specific facts to be proven by the evidence, to support the lawful combatant affirmative defense. This Court further ordered that the Government may have until August 11, 2017, to file a response to such motions. (Doc. #388).

On July 21, 2017, the defendants filed a joint Motion to Dismiss the indictment concerning Counts 1 and 3 (Doc. #390). On July 24, 2017, defendants Ramiz Hodzic and Nihad Rosic filed supplemental Motions to Dismiss the Indictment under the doctrine of combatant immunity (Doc. #393 and 395). These supplements also referred to Count 2 of the indictment.

The Government respectfully requests a 45 day extension of time to file a response to the defendants' initial Motion to Dismiss and supplemental Motions. The Government has retained the services of an expert in this matter. The Government needs to consult with that expert in preparing its response; however, he is presently travelling abroad. Additionally, given arguments

advanced by the defense, the Government requires additional time to adequately brief the matter and prepare a complete response. This is particularly the case given that the defendants' filed sworn affidavits from two witnesses who conducted research and interviews of individuals located overseas.

The Government consulted with members of the defense team concerning this request. Counsel for Ramiz Hodzic, Sedina, Hodzic, Nihad Rosic and Mediha Salkicevic advised the Government that they do not object to the Government's request. The Government also contacted counsel for defendant Armin Harcevic. However, as of the filing of this Motion counsel for Mr. Harcevic has not indicated whether they do, or do not, have any objection to the Government's request.

The Eighth Circuit has identified five factors for trial courts to balance in ruling on a motion for continuance:

- (1) the nature of the case and whether the parties have been allowed adequate timing for trial preparation;
- (2) the diligence of the party requesting the continuance;
- (3) the conduct of the opposing party and whether a lack of cooperation has contributed to the need for a continuance;
- (4) the effect of the continuance and whether a delay will seriously disadvantage either party; and
- (5) the asserted need for the continuance, with weight to be given to sudden exigencies and unforeseen circumstances.

See United States v. Robinson, 662 F.3d 1028, 1032 (8th Cir. 2011) (quoting *United States v. Issagghoolian*, 42 F.3d 1175, 1177-78 (8th Cir. 1994)). Here, the factors weigh in favor of granting a continuance. The Government is not requesting the continuance for the mere sake of delay. The Government has been working diligently on the case and specifically on a response to the Defendants' motions. This Court has previously recognized that this is a complex case involving matters of national security and allegations of international terrorism offenses. Failure

to grant a continuance would deny the Government the ability to fully and adequately respond to the Defendants' motion. The Government's request would not seriously disadvantage any party.

WHEREFORE, the Government respectfully requests that the Court grant the Government an additional 45 days to respond to the Defendant's Motion and Supplemental Motions.

Respectfully Submitted,

CARRIE COSTANTIN
Acting United States Attorney

/s/ Mara M. Kohn

MARA M. KOHN, 2281SD
Trial Attorney - NSD/Department of Justice
Counterterrorism Section
Mara.Kohn2@usdoj.gov

/s/ Joshua D. Champagne

JOSHUA D. CHAMPAGNE – 85743 VA, 1013246 DC
Trial Attorney - NSD/Department of Justice
Counterterrorism Section
Joshua.Champagne@usdoj.gov

/s/ Howard Marcus

HOWARD MARCUS -
Assistant United States Attorney

/s/ Kenneth R. Tihen

KENNETH R. R. TIHEN, 37325MO
Assistant United States Attorney

/s/ Matthew T. Drake

MATTHEW T. DRAKE – 46499MO
Assistant United States Attorney

CERTIFICATE OF SERVICE

I hereby certify that on August 9, 2017, the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system upon counsel of record.

s/Matthew T. Drake
MATTHEW T. DRAKE, 46499MO