

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO**

Criminal Case No. 14-CR-000398-WJM

UNITED STATES OF AMERICA,

Plaintiff,

v.

BURTON WAGNER,

Defendant.

**UNOPPOSED MOTION FOR ADDITIONAL ENDS OF JUSTICE CONTINUANCE OF
MOTIONS DEADLINES AND TRIAL DATE**

The United States of America, by United States Attorney John F. Walsh, and through the undersigned Assistant United States Attorney, hereby respectfully files this Unopposed Motion for Additional Ends of Justice Continuance, to include a continuance of currently set motion deadlines and trial dates. In support of this motion, the United States states as follows:

1. On November 4, 2014, the Court granted a motion by the parties for an ends of justice continuance on grounds of complexity. (Dkt. No. 16) The Court excluded from the Speedy Trial Clock all days from the Order until March 4, 2015, set a motions deadline date of April 6, 2015, and a trial date of May 4, 2015. (Dkt. No. 17)

2. As previously presented in the above mentioned complexity motion, (Dkt. No. 15), this case, involving new and emerging technology, is unique and complex. It involves novel questions of law and fact, and the parties believe that it may also be a case of first impression. Although the prosecution followed a lengthy investigation, much of the evidence is electronic in nature and only came into the government's possession

upon the defendant's arrest in October of 2014. Agents seized numerous electronic devices, including computers, smartphones, storage media, and a server, containing voluminous data, some of which is encrypted. The government also learned of the existence of potentially privileged material within the seized evidence, requiring the additional and timely review of such evidence by a filter team; this review is still to be completed. Moreover, the very nature of much of the digital evidence makes its review and analysis by the parties extremely time consuming and complicated.

3. On November 21, 2015, new defense counsel, Mr. Brian Klein of Baker Marquart LLP, appeared in the case on behalf of defendant Burton Wagner.

4. Since Mr. Klein's entry, the parties have been diligently progressing in the discovery phase of the case and have been in contact on a weekly, and sometimes daily, basis. The United States has returned some of the electronic devices and property seized from defendant upon determination that they did not contain necessary evidence and requested a reduction in defendant's bond conditions, which the Court granted.

5. Despite this progress and taking into account the exercise of due diligence, the currently set deadlines in this case would deny the parties the reasonable time necessary for effective and adequate preparation for pretrial proceedings and for the trial itself within the timelines set forth in Section 3161, even considering the ends of justice continuance previously granted by the Court. Pursuant to Title 18, United States Code, Section 3161(h)(7)(B)(ii) and (iv), the parties respectfully request an additional 60 days of excludable time from March 4, 2015, and a commensurate continuance of the motions deadline date and trial date, following the excludable time. In the alternative, the parties would respectfully request an additional 60 days of excludable time from March 4, 2015,

with a status hearing in March to set new motion deadlines, a motions hearing and a trial date.

6. In further support of this motion, the United States addresses the factors articulated in United States v. West, 828 F.2d 1468, 1449-70 (10th Cir. 1987):

a. The United States has exercised diligence in collecting, organizing, and producing the evidence in this case.

b. If this motion is granted, it is likely that the continuance will accomplish the purposes underlying the need for the continuance. Namely, the parties will have an opportunity to diligently review the voluminous and complex discovery, and the defense will have an opportunity to determine the defenses his client may have, conduct any necessary investigation, consult necessary experts, and file any necessary discovery and/or suppression motions once he has reviewed the discovery.

c. Defendant, through his counsel, concurs in the granting of this motion as noted below; the United States does not believe that such a continuance will inconvenience the parties or witnesses; and allowing the parties sufficient time to review and digest the evidence would save judicial resources by providing the parties the time necessary either to potentially resolve the case without further litigation or to narrow the facts and issues which will be litigated in motions and at trial.

d. Without the requested continuance, the United States believes that the parties would be prejudiced because proceeding under the normal time limits would deny counsel for the defendant and the United States the

reasonable time necessary for effective preparation, taking into account the exercise of due diligence.

7. The United States has conferred with Mr. Klein, counsel for defendant, and is authorized to inform the Court that the defendant concurs in the granting of this motion. The parties do not make this request in order to delay the case or for any improper purpose, but for the reasons articulated above. Therefore, the parties respectfully request that the Court grant this motion and set any status hearing, pretrial motion filing deadlines and/or trial dates in accordance with this request.

Dated this 12th day of February, 2015.

Respectfully submitted,

JOHN F. WALSH
United States Attorney

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 12, 2015, I electronically filed the foregoing Response with the Clerk of the Court using CM/ECF, which will send notification of such filing to all counsel of record:

All counsel of record

s/ Michele R. Korver
MICHELE R. KORVER
Assistant United States Attorney