

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK**

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UNITED STATES OF AMERICA,

-vs-

RICHARD PETIX,

*Defendant.*

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**CASE NO. 15-CR-227-A**

**ATTORNEY AFFIRMATION IN  
SUPPORT OF MOTION  
FOR EXTENSION OF TIME TO  
FILE RESPONSE TO  
MAGISTRATE'S REPORT AND  
RECOMMENDATION**

I, Matthew R. Lembke, having been duly admitted to practice law in the Western District of New York, do hereby affirm, under penalty of perjury, as follows:

1. I am an attorney duly licensed to practice in the United States District Court for the Western District of New York.

2. I am co-counsel with Stephen M. Leonardo represent, the defendant, Richard Petix [Petix].

3. I make this motion in support of Petix's request for a four day extension of time – until Tuesday, January 17, 2017 – to file his response to the government's objections to the magistrates report and recommendation to dismiss Count Two of the indictment currently pending against Petix.

4. The Court has graciously granted our previous requests for extensions – most recently based on my personal family circumstances.

5. Under the Court current order, our response is due tomorrow (January 13, 2017). I am currently scheduled to select a jury in a civil case in New York State Supreme Court tomorrow. We begin proof in that case on Tuesday, January 17, 2017.

6. For most of this week, I have been involved in preparation for this upcoming civil trial, including, in addition to reviewing the evidence and preparing for examination and cross-examination of witnesses, preparation of proposed jury instructions, witness lists, a proposed verdict sheet, and responding to a motion *in limine* brought by our opposing party, which was filed on Monday, January 9, 2017 and is returnable tomorrow morning, January 13, 2017, before jury selection.

7. As a result, I have had essentially no time to finish Petix's response to the government's objections to the Magistrate's Report and Recommendation relating to the dismissal of Court Two of the pending indictment.

8. I just need the long weekend to be able to finish this and file it.

9. Petix agrees to an exclusion of time from under the Speedy Trial Act to the extent the Speedy Trial clock is impacted by this request for an extension.

WHEREFORE, it is respectfully requested that the Court grant an order modifying the current scheduling order by extending Petix's time to file a response to the government's objections to the Magistrate Judge's Report and Recommendation until Tuesday, January 17, 2017; and that the Court grant such other, further and different relief, as to the Court may seem just and proper.

Dated: January 12, 2017

/S/ Matthew R. Lembke  
Matthew R. Lembke  
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