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IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA,

Plaintiff,

v.

ISRAEL KEYES,

Defendant.

NO. 3:12-CR-00041-TMB-JDR

DEFENSE STATUS REPORT

I. STATUS REPORT

A. Relevant Procedural History

On March 22, 2012, the Indictment charging Mr. Keyes with one count of Fraud with Access Device was filed. Doc.6. Thereafter, on April 18, 2012, the First Superseding Indictment was filed, which included Special Findings. Doc. 14. On April 19, 2012, Mr. Keyes was arraigned on the First Superseding Indictment. Doc.16. “Learned” counsel was appointed pursuant to 18 U.S.C. § 3005 on April 26, 2012. Doc.24. Given the complexity of the case, the Court appointed additional capital counsel, Mark Larrañaga, on May 15, 2012. Doc.57. On May 25, 2012, pursuant to 18

U.S.C. § 3161 (h)(7)(B)(ii), the Court declared the case unusual and complex. Doc.77. The scheduling order that followed (Doc.84) is an order that reflects a non-capital prosecution. The non-capital trial date was set for March of 2013, because the case was “so unusual or so complex, ...the nature of the prosecution, or the existence of novel questions of fact or law, that [made it] unreasonable to expect adequate preparation for pretrial proceedings or for the trial itself within the time limits established by this section.” See 18 U.S.C. § 3161 (h)(7)(B)(ii) and Doc.77.¹

B. Notice of Intent

The Court’s First Pretrial Scheduling Order directed the government to make its recommendation concerning the death penalty to the Attorney General by September 21, 2012. Doc.84 at 2. The Court expects the Attorney General to have a decision as to whether it will authorize a death notice to be filed no later than the end of the calendar year. *Id.* at 2-3.

Unfortunately, near the beginning of this case, Mr. Curtner tried a five-week trial and shortly thereafter Mr. Larrañaga and Ms. Walsh tried a nearly two-month murder trial. Consequently, Mr. Keyes’ counsel have not had sufficient time to review the discovery, or conduct a minimally necessary investigation. Further impeding counsels’ ability to prepare this case and work as a team to consult with and advise Mr. Keyes are apparent budgetary and administrative delays prohibiting approvals for “learned” counsel from Seattle to travel and confer with Mr. Keyes. Also interfering with counsels’ ability

¹ Federal death penalty resource counsel report that nation-wide the time between indictment and trial, on average, for capital prosecutions is 20.5 months. The current non-capital trial date is less than one year from the First Superseding Indictment that includes Special Findings. Doc.14.

to prepare and advise Mr. Keyes is the government's repeated contact with Mr. Keyes over the objection of undersigned counsel.

Counsels' unavailability due to trial schedules, lack of travel authorizations to meet and confer with Mr. Keyes², and the government's repeated contacts with Mr. Keyes have interfered with counsels' ability to move this case forward. As such, defense counsel are not prepared to present a meaningful presentation to the Capital Crimes Unit (CCU), which includes discussion of a possible global resolution of this case.³

C. Outstanding Discovery

Discovery is not complete. The defense intends to serve discovery demands on the government regarding missing and incomplete discovery.

The defense understands from the government that Mr. Keyes is being investigated on other matters. Because of this, the defense must be made fully aware of other criminal investigations and allegations in order to properly advise Mr. Keyes; however, the government has yet to provide defense counsel with discovery related to these matters.⁴ These new allegations necessarily change the complexity of the case.⁵

² The travel authorization issue looms as a potential serious problem for counsels' relationship with Mr. Keyes, and either resolution or litigation of this case.

³ The government has scheduled a meeting before the CCU for October 15, 2012.

⁴ This failure to disclose information necessarily impacts counsels' ability to make a meaningful presentation to CCU.

⁵ The current schedule does not allow reasonable time for counsel for the parties to discharge their respective duties with respect to the question of whether the death penalty should be sought particularly given the factual complexity of the case, the new allegations, the continuing investigation of the crimes and related criminal conduct, the anticipated or actual progress of discovery, and the potential for successful plea negotiations. See generally, paragraph 6.04 of The Guidelines For The Administration Of The Criminal Justice Act, section 3. As noted by the

D. Suppression of Statements

On October 1, 2012, the defense filed an unopposed motion to extend the due date regarding suppression of statements. Doc.129. The parties jointly requested that the date be extended to October 31, 2012, but the Court granted the extension to October 16, 2012. Doc.130. As noted, the government has repeatedly contacted and interviewed Mr. Keyes. The defense has not been provided any recording, transcripts or summary of any of these interviews. As such, the defense is unable to determine which statements are subject to a suppression motion until the government has disclosed all statements to the defense. Fed.R.Crim.P. 16(a)(1)(B).

E. Status Conference

There is no immediate need for a status conference. On October 2, 2012, the government communicated to defense that they also do not believe there is a need for a status conference. Defense counsel intend to file a separate motion to continue the trial date before the Honorable Timothy M. Burgess. Defense counsel will also seek to extend the time-frame to present its case to the CCU.⁶

II. CONCLUSION

Based on the forgoing, undersigned respectfully request this Court to strike the status conference currently scheduled for October 9, 2012, so that counsel may travel to

Honorable Helen G. Berrigan: “investigating, gathering, and organizing the life history of a defendant take a considerable amount of time.” “The Indispensable Role of the Mitigation Specialist in a Capital Case: A View from the Federal Bench”, Hofstra Law Review Vol.36 at 825. Allowing the defense time now to do its work may save considerable time and expense for the entire court system. Id. at 828.

⁶ Should the Attorney General authorize the filing of a death notice before the end of the year, it will necessarily cause a delay in this case going to trial in March of 2013.

Alaska to meet and confer with Mr. Keyes and bring the appropriate motions on this case necessary to effective representation.

Respectfully submitted this 3rd day of October, 2012.

/s/ Richard Curtner
Richard Curtner

/s/ Mark A. Larrañaga
Mark A. Larrañaga

/s/ Jacqueline K. Walsh
Jacqueline K. Walsh

Attorneys for Mr. Keyes

CERTIFICATION OF SERVICE

I hereby certify that on October 3, 2012, I electronically filed the foregoing with the Clerk of the Court using the ECF system which will send electronic notification of such filing to counsel for the government: Frank Russo and Kevin Feldis.

/s/ Jacqueline K. Walsh
Jacqueline K. Walsh