

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

v.

DANUEL DEAN QUAINANCE,

Defendant.

§
§
§
§
§
§
§
§
§

Cause No. CR 06-538 JH

MOTION FOR CONTINUANCE OF TRIAL

DANUEL DEAN QUAINANCE, Defendant, by and through the undersigned appointed counsel, Marc H. Robert, Assistant Federal Public Defender, moves the Court for an order continuing the trial of this case from its present setting, and in support of this motion would respectfully show the Court as follows:

1. Mr. Quaintance is charged by superseding indictment filed on May 17, 2006 [Doc. 65] with possession of more than 50 kilograms of marijuana with intent to distribute it and conspiracy to possess more than 100 kilograms of marijuana with intent to distribute. Mr. Quaintance was arraigned on June 2, 2006 and entered a not guilty plea to all charges. Trial is presently scheduled for January 16, 2007. There is a pending motion to dismiss the indictment in this case on religious freedom and RFRA grounds [Doc.34]. The first part of the evidentiary hearing on that motion has already been held. Mr. Quaintance is presently free on conditions of release.

2. Due to the likely impact of the Court's ruling on the motion to dismiss indictment, and the preparations which will be required in the event that the case proceeds to

trial, counsel believes that a continuance of the trial is needed. Counsel is concerned that, given the status of the case, trial as presently scheduled could jeopardize Mr. Quaintance's constitutional right to effective assistance of counsel. Counsel requests that trial be rescheduled for a date not less than thirty (30) days after the filing of the Court's ruling on the motion to dismiss in its entirety. Additional time will be required to determine the necessary trial preparations following the filing of the Court's decision on the motion to dismiss. The evidence which will be presented at trial will be influenced not simply by the ruling, but the various possible findings by the Court in connection with the issues raised in the motion hearing. The nature and extent of the evidence anticipated at trial, which could include witnesses from around the country, will be shaped by the contents of the Court's ruling.

3. If the Court finds that Mr. Quaintance is engaged in a sincere religious practice, additional evidence will need to be presented to address the remaining RFRA issues, which include the question of whether there is a compelling government interest justifying the substantial burden on the religious practice, and whether the government is employing the least intrusive means of advancing such a compelling interest. Further evidentiary hearing would be necessary, and would presumably be held before trial.

4. The undersigned counsel has conferred with Assistant United States Attorney Luis A. Martinez, with attorney Bernadette Sedillo (for Joseph Butts) and with attorney Mario Esparza (for Mary Helen Quaintance) concerning this matter. The government does not oppose this motion. Ms. Quaintance does not oppose this motion. However, Ms. Sedillo indicates that Mr. Butts, who remains in custody, opposes this motion. A proposed form of order is submitted herewith.

5. In compliance with the provisions of 18 U.S.C. § 3161(h)(8)(A), the undersigned affirmatively states that the ends of justice will be served by granting this continuance. Further, the undersigned represents that the necessity for complete and adequate preparation of the facts and circumstances relating to pretrial matters in this case outweighs the interest of the public and the defendant in speedy trial. Mr. Quaintance waives his speedy trial rights to the extent such waiver is necessary to grant the continuance requested herein.

WHEREFORE, for the foregoing reasons, DANUEL DEAN QUAINANCE, Defendant, by and through the undersigned counsel, respectfully prays that the Court enter an order granting a continuance of the trial in this cause from its present setting on the January 16, 2007 trial calendar to a date appropriate to the circumstances, but not less than thirty (30) days following the filing of the Court's ruling on Mr. Quaintance's motion to dismiss in its entirety; and providing for such other and further relief to which the Court may find Mr. Quaintance to be justly entitled.

Respectfully Submitted,

FEDERAL PUBLIC DEFENDER
500 S. Main St., Suite 600
Las Cruces, NM 88001
(505) 527-6930
Fax (505) 527-6933

filed electronically on December 20, 2006

MARC H. ROBERT
Assistant Federal Public Defender
Las Cruces Office

Counsel for Mr. Quaintance

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Motion for Continuance of Trial Setting was served on Assistant United States Attorney Luis A. Martinez and Amanda Gould, 555 Telshor, Suite 300, Las Cruces, New Mexico, 88011, by placing it in the box designated for the United States Attorney's Office at the United States District Court Clerk's office; Mr. Mario A. Esparza, P.O. Box 2468, Las Cruces, New Mexico 88004; Ms. Bernadette Sedillo, 201 N. Church St., Suite 330, Las Cruces, New Mexico 88001 on December 20, 2006.

filed electronically on December 20, 2006
MARC H. ROBERT

L:\Robert\quaintance\continue trl mot.wpd