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9 UNITED STATES DISTRICT COURT
 10 FOR THE CENTRAL DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,)	CR No. 02-350(A) -AHM
)	
12 Plaintiff,)	<u>STATUS FILING RE: SPEEDY TRIAL</u>
)	<u>CALCULATIONS AND EXCLUSIONS</u>
13 v.)	
)	
14 STEVEN WILLIAM SUTCLIFFE,)	Date: August 27, 2003
)	Time: 9:00 a.m.
15 Defendant.)	Honorable A. Howard Matz
16)	

17 Plaintiff United States of America, through its attorney of
 18 record, Assistant United States Attorney Elena J. Duarte, hereby
 19 respectfully submits this status filing regarding Speedy Trial (18
 20 U.S.C. § 3161 et seq.) calculations and exclusions made in the
 21 instant criminal case thus far. From the government's calculation,
 22 based on the criminal docket, or Clerk's Record ("CR"), as outlined
 23 below, 39 days of the 70 days permitted under the Speedy Trial Act
 24 have passed. 31 days remain. As time is currently excluded from
 25 calculation under the Speedy Trial Act through and including
 26 September 9, 2003 (C.R. 145, 157), this means that the trial could
 27 properly begin as late as October 10, 2003, even assuming there are
 28 no additional exclusions of time under the Act.

- 5-23-02-11
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1 On September 23, 2002, the Office of the Federal Defender moved
2 ex parte to be relieved; the district court granted the motion,
3 continued the trial date to December 3, 2002, and appointed counsel
4 William Harris. (CR 44, 45).² Harris filed pretrial motions on
5 October 23, 2002 (application for bail review); November 12, 2002
6 (motion to dismiss); and November 13, 2002 (motion for
7 discovery/dismissal on selective prosecution grounds). (CR 47, 55,
8 57, 59). The government filed a motion in limine on October 30,
9 2002. (CR 50). The bail review motion was heard and denied by the
10 district court on November 21, 2002; the motions to dismiss were
11 heard and decided on December 4, 2002. (CR 65, 73). Thus from
12 October 23 through December 4, 2002 was excluded from calculation as
13 pretrial motions were pending (18 U.S.C. § 3161(h)(1)(F)). Even
14 assuming no written or oral findings regarding excludable time
15 through December 3, 2002 were made on September 23, 2002, only one
16 additional day of the 70 days permitted by 18 U.S.C. § 3161(c)(1)
17 had passed, for a total of 39 days.

18 On November 26, 2002, the parties agreed by stipulation to
19 continue the trial date to January 14, 2003, and exclude time from
20 calculation from November 26, 2002 through and including January 14,
21 2003, and the district court so ordered, based on the complexity and

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23 ²It appears that the issue of excludable time was not
24 addressed in writing by the parties or the district court at the
25 time of this continuance to December 3, 2002. The time may have
26 been excluded orally; the government does not currently have a
27 copy of the transcript. In any event, as explained above, as
28 time had previously been excluded through October 22, 2002, and a
pretrial motion was filed by defense on October 23, 2002, only
one day was not excluded from calculation, even assuming that no
specific finding re: excludable time was made on September 23,
2002.

1 volume of the electronic evidence seized in the case (18 U.S.C. §
2 3161(h) (8) (B) (ii)); Harris' need to prepare further given the ^{his}
3 complexity of the case and the fact of his recent appointment (18
4 U.S.C. § 3161(h) (8) (B) (iv)); and the pendency of pretrial motions
5 (18 U.S.C. § 3161(h) (1) (F)). (CR 68). On November 27, 2002,
6 defendant (through Harris) took an interlocutory appeal of the
7 district court's denial of bail; the Ninth Circuit affirmed the
8 district court on January 14, 2003. (CR 69, 112). Thus from
9 November 27, 2002 through January 14, 2003 was excluded from
10 calculation as delay resulting from an interlocutory appeal (18
11 U.S.C. § 3161(h) (1) (E)) as well as by stipulation of the parties.
12 In the interim, the parties filed additional pretrial motions (CR
13 74, 76, 82-84, 90, 91, 100-103); all were decided on January 10,
14 2003. (CR 104). Thus the time through January 10, 2003, was also
15 excluded from calculation as pretrial motions were pending (18
16 U.S.C. § 3161(h) (1) (F)).

17 On January 14, 2003, what was to have been the first day of
18 jury trial, defendant moved pro per to "dismiss" Harris and the
19 district court granted defendant's motion, appointed new counsel,
20 continued the trial to March 25, 2003, ordered defendant to undergo
21 a 30 day competency evaluation pursuant to 18 U.S.C. §§ 4241(b) &
22 4247(b), as described in detail above, and excluded time from
23 computation under the Speedy Trial Act pursuant to 18 U.S.C.
24 § 3161(h) (1) (A). (CR 113-115, 118). On March 14, 2003, the parties
25 appeared for a hearing on defendant's competency as described above;
26 at the conclusion of the hearing the district court ordered
27 defendant to undergo a four month evaluation pursuant to 18 U.S.C.
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1 | § 4241(d), continued the trial date to September 9, 2003, and
2 | excluded time from computation under the Speedy Trial Act pursuant
3 | to 18 U.S.C. § 3161(h)(1)(A) and (h)(8)(A). (CR 139, 144, 145, 154,
4 | 157, 158). On March 20, 2003, defendant (pro per) petitioned for an
5 | emergency stay of/ mandamus relief from several of the district
6 | court's orders (CR 135, 144, 145); the Ninth Circuit granted a
7 | temporary stay of the orders through March 28, 2003, but then denied
8 | defendant's requests in their entirety on March 28, 2003. (CR 148,
9 | 159). Therefore March 24 through March 28, 2003 was also excluded
10 | from calculation as delay resulting from an interlocutory appeal (18
11 | U.S.C. § 3161(h)(1)(E)).³

12 | Additional motions have also been filed during this most recent
13 | exclusion of time; the time of the motions' pendency is also
14 | excluded from calculation (18 U.S.C. § 3161(h)(1)(F)) above and
15 | beyond the order already in place excluding time through September
16 | 9, 2003 (CR 145). On August 1, 2003, the district court referred
17 | defendant's Motion to Recuse, pending since February 4, 2003 (CR
18 | 132), to Judge Phillips for determination; the motion was denied on
19 | August 6, 2003 (CR 171). On August 4, 2003, defense filed a motion
20 | seeking relief from appointment which is still pending. (CR 170).

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27 | ³On April 3, 2003, defendant submitted a motion for
28 | rehearing in that case that is still pending.

1 Thus it appears that no additional time, beyond those 39 days
2 already referenced above, have counted toward Speedy Trial Act
3 calculation. All other time has been excluded under at least one,
4 and usually two or more, statutory bases. 31 days remain in the 70
5 days allowed under the Act, 18 U.S.C. § 3161(c)(1).

6 DATED: August 27, 2003 Respectfully submitted,

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