

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

UNITED STATES OF AMERICA,)	
)	
v.)	Criminal No.
)	
ELDO KIM)	
Defendant.)	

**JOINT MOTION FOR CONTINUANCE OF PROCEEDING
AND EXCLUSION OF PERIOD OF DELAY UNDER THE
SPEEDY TRIAL ACT TO PERMIT DEFENDANT TO
COMPLETE PRETRIAL DIVERSION PROGRAM**

Pursuant to Title 18, United States Code, Sections 3161(h)(2) and 3161(h)(7)(A), the United States and the defendant jointly move this Court (1) to approve the deferral of this prosecution for the period of delay associated with the defendant’s entrance into pretrial diversion and completion of the term of pretrial diversion; and (2) to enter an order continuing this criminal case for the term of pretrial diversion outlined below, and excluding the resulting delay from the time within which the trial of the offenses charged in the information must commence. In support of this motion, the parties state as follows:

1. The defendant, ELDO KIM, is a candidate for the pretrial diversion (“PTD”) program administered by the Probation and Pretrial Services Office. Pursuant to a written agreement (entitled “Statement of Acceptance of the Benefits of the Pretrial Diversion Program,”), the Probation and Pretrial Services Office will supervise KIM for a period of 18 months, during which time he will be subject to various pretrial services conditions, including home confinement for a period of four months, payment of restitution, and 750 hours of community service.

2. The United States does not intend to go forward with prosecution of this case provided that: (1) KIM abides by the terms of the Statement of Acceptance of the Benefits of the Pretrial Diversion Program and any other aspect of the PTD program offered to him by the Pretrial

Services Office; and, (2) once accepted, KIM successfully completes the program. However, if KIM fails to abide by the conditions of the PTD program or fails to complete it successfully, the United States will request that this case be returned to the Court's calendar.

3. Should the Pretrial Services Office advise the United States Attorney that KIM successfully completed the PTD program, the United States will move to dismiss the pending charges in this case.

4. Section 3161(h)(2) of Title 18 permits a court to exclude “[a]ny period of delay during which prosecution is deferred by the attorney for the Government pursuant to written agreement with the defendant, with the approval of the court, for the purpose of allowing the defendant to demonstrate his good conduct.” Section § 3161(h)(7)(A) permits the exclusion of any delay resulting from a continuance granted by any judge if the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial. In this case, a delay of the proceedings will both allow the defendant to obtain the benefits of pretrial diversion and efficiently resolve the prosecution.

5. Accordingly, the parties respectfully request the Court to: (a) approve the deferral of this prosecution and the period of delay associated with pretrial diversion, pursuant to 18 U.S.C. § 3161(h)(2); and (b) enter an order directing that any period of delay associated with the defendant's pretrial diversion be excluded in computing the time within which the trial of the charged offense(s) must commence, pursuant to 18 U.S.C. §§ 3161(h)(2) and § 3161(h)(7)(A).

Respectfully submitted,

ELDO KIM
By her attorney,

CARMEN M. ORTIZ
United States Attorney

/s/ Allison D. Burroughs
Allison D. Burroughs
Nutter McClennen & Fish, LLP
(617) 439-2684

By: /s/ John A. Capin
John A. Capin
Assistant U. S. Attorney
(617)748-3264

Certificate of Service

I hereby certify that this document was served upon counsel for the defendant, Eldo Kim, by first-class mail.

By: /s/ John A. Capin
John A. Capin
Assistant U.S. Attorney