

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE  
At Chattanooga**

UNITED STATES OF AMERICA,

Plaintiff,

v.

No. 1:08-cr-95  
Judge Collier/Carter

LUIS HIRAM RIVAS,

Defendant.

**MOTION TO VACATE SCHEDULING ORDER  
AND TO CONTINUE DEADLINES**

Defendant Luis Rivas respectfully requests this Honorable Court to vacate the scheduling order to allow an additional one-hundred and twenty days to review the discovery, confer with her client and research and investigate the issues and options. This motion is made based on the following grounds:

1. On August 26, 2008, the grand jury sitting in the Eastern District of Tennessee returned a nineteen-count Indictment which consisted of four counts of wire fraud, in violation of 18 U.S.C. § 1343, five counts of promoting money laundering, in violation of 18 U.S.C. § 1956(a)(1)(A)(i), five counts of criminally derived monetary transactions, in violation of 18 U.S.C. § 1957(a), and five counts of bankruptcy fraud, in violation of 18 U.S.C. § 152(7).

2. The multi-count Indictment under which Mr. Rivas is charged alleges a scheme to defraud hundreds of individuals of almost thirty-one million dollars. The government timely provided initial discovery to the Defendant which included over three thousand pages of documents and witness interviews. An initial review of this discovery revealed close to five hundred potential witnesses in over twenty states.

3. On December 15, 2008, at the request of Mr. Rivas, this case was designated complex pursuant to 18 U.S. C. § 3161. At that time the Scheduling Order was vacated, setting a new motions and plea deadline for Monday, June 29, 2009, and a new trial date for Monday, July 20, 2009.

4. Since the designation of Mr. Rivas' case as complex, counsel and her staff have worked diligently to prepare Mr. Rivas' case for trial. At this time, at least seventy-seven (77) alleged investors have been interviewed regarding the case, with multiple other investor interviews attempted. An additional six employee witnesses have been interviewed by counsel, in Chattanooga, Tennessee, averaging no less than two hours per interview. Seven other employees and investors have been interviewed or attempted in Spartanburg, South Carolina.

5. As stated, counsel was initially provided with discovery which included over three thousand pages of documents and witness interviews. However, after discussions with the government and agents for the government, counsel traveled to Spartanburg, South Carolina, on March 20, 2009, to review additional evidence in the custody of the FBI. The additional evidence included one banker's box of Forex investor files and sixteen banker's boxes of miscellaneous documents related to the Forex Project. Because of the volume of documents needing review, and because the documents were originals, this evidence had to be transported back to Chattanooga, Tennessee, for copying and examination. Thus, in March, the amount of information needing review in Mr. Rivas' case effectively increased by eight times what was initially examined by counsel.

6. Counsel and staff are of the belief that they have now identified those witnesses which still necessitate interviewing and are diligently continuing to evaluate Mr. Rivas' case. However, due to the volume of information in this matter, counsel and staff still cannot physically accomplish the tasks necessary to represent Mr. Rivas effectively in this case without additional time to prepare.

7. Because of the volume of discovery, number and location of witnesses, and amount of potential financial loss, Mr. Rivas respectfully requests this Honorable Court to allow him an additional period of time in which to prepare his case. Mr. Rivas requests that this Court vacate the Discovery and Scheduling Order issued in this case and continue the case for at least one-hundred and twenty days.

Mr. Rivas is currently detained in the custody of the United States Marshal's Service. He understands that the granting of this motion will delay the trial in this case and he expressly consents to waive his right to a speedy trial in accordance with the Speedy Trial Act, 18 U.S.C. Section 3161 and the Sixth Amendment to the Constitution, for the duration of this continuance.

### **Conclusion**

Failure to grant a continuance would unreasonably deny Mr. Rivas and counsel the reasonable time necessary for effective preparation, taking into account the exercise of due diligence. Counsel needs time to review the discovery, confer with her client and research and investigate the issues and options. Sufficient time for investigation, and the analysis and organization of discovery in this case does not presently exist under the present Scheduling Order. Therefore, Mr. Rivas respectfully requests this Honorable Court to vacate the currently issued Discovery and Scheduling Order and continue this matter for at least four months.

Respectfully submitted,

FEDERAL DEFENDER SERVICES  
OF EASTERN TENNESSEE, INC.

By: /s/ Mary Ellen Coleman  
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### Certificate of Service

I HEREBY CERTIFY that on June 29, 2009, a copy of the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. Mail. Parties may access this filing through the Court's electronic filing system.

/s/ Mary Ellen Coleman  
Assistant Federal Defender