

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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UNITED STATES OF AMERICA,

Plaintiff,

v.

UDARA A. WANIGASINGHE,

Defendant.

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ORDER

95-CR-0073-C-01

In an order entered in this case on August 3, 2007, I denied the government's motion to re-open the evidentiary hearing in this case and gave the parties additional time for briefing. Now the government has moved for reconsideration of the denial of its motion. The motion will be granted.

In the August 3 order, I determined that further development of the facts was not necessary because, in my view, the mere passage of time did not require dismissal of the indictment against defendant. As a non-citizen of the United States residing outside the jurisdiction of the United States, defendant had no speedy trial rights under the Constitution. This conclusion made the facts of defendant's crime and his reasons for leaving the country in 1995 irrelevant.

The government argues persuasively that allowing it to develop the facts would strengthen its position if appellate courts were to disagree with my conclusion. It believes that the facts would show that defendant fled the country to avoid prosecution for the bank frauds he allegedly perpetrated and not just because his student visa was expiring and that he took steps to avoid being found during the years after he had left.

Defendant has opposed re-opening the evidentiary hearing. He argues, first, that it is improper to move to re-open a magistrate judge's evidentiary hearing after the magistrate judge has filed a report and recommendation. However, it is clear that the district judge may take additional evidence when considering a magistrate judge's report and recommendation or remit the matter to the magistrate judge with instructions. 28 U.S.C. § 636(b)(1).

Second, defendant argues that the government's proposed new facts are inaccurate or irrelevant. This is a matter best left for oral argument at an evidentiary hearing or for briefing following the hearing.

Third, defendant argues that allowing parties to introduce additional evidence in response to adverse decisions of the magistrate judge, the court encourages parties to withhold evidence from the magistrate judge. In light of the infrequency with which parties even ask for such an opportunity, I do not see this as a serious problem.

ORDER

IT IS ORDERED that the government's motion to re-open the evidentiary hearing is GRANTED; an evidentiary hearing will be held at 1:00 p.m., Thursday, September 13, 2007. If this date or time presents problems for either or both counsel, they should call the clerk's office for rescheduling.

Entered this 29th day of August, 2007.

BY THE COURT:  
/s/  
BARBARA B. CRABB  
District Judge