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 UNITED STATES OF AMERICA
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10 UNITED STATES DISTRICT COURT
 11 FOR THE CENTRAL DISTRICT OF CALIFORNIA

12 UNITED STATES OF AMERICA,)	No. ED CR 07-127-SGL
)	
13 Plaintiff,)	<u>EX PARTE APPLICATION TO CONTINUE</u>
14 v.)	<u>TRIAL DATE; [PROPOSED] ORDER</u>
)	
15 JOSE LUIS NAZARIO, JR.,)	Current Date: July 8, 2008
)	Proposed Date: August 12, 2008
16 Defendant.)	
17 _____)	

18 The United States of America, by and through its counsel of
 19 record, the United States Attorney's Office for the Central
 20 District of California, hereby applies to this Honorable Court
 21 for an order continuing the trial date to August 12, 2008 with a
 22 pretrial hearing on July 28, 2008.

23 This application is based on the attached points and
 24 authorities, the attached declaration of Jerry A. Behnke, the

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1 declaration of Jerry A. Behnke filed under seal and in camera,
2 and the files and records in this case.

3 DATED: June 20, 2008

Respectfully submitted,

4 THOMAS P. O'BRIEN
United States Attorney

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6 SHERI PYM
Assistant United States Attorney
Chief, Riverside Office

7 /s/

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9 JERRY A. BEHNKE
Assistant United States Attorney

10 Attorneys for Plaintiff
United States of America

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 The Indictment in this case was filed on September 4, 2007.
3 Defendant first appeared before a judicial officer in this Court
4 on August 16, 2007. The Speedy Trial Act of 1974, 18 U.S.C. §
5 3161 et seq., originally required that defendant's trial commence
6 on or before November 13, 2007.

7 On September 12, 2007, defendant was arraigned on the
8 Indictment and the court set a trial setting conference for
9 September 24, 2007. On September 24, 2007, based on a request by
10 the parties, the Court continued the trial setting conference and
11 scheduled a hearing on any discovery motions for November 19,
12 2007. The Court found that the period from September 24, 2007 to
13 November 19, 2007 was excludable time within the meaning of the
14 Speedy Trial Act of 1974, 18 U.S.C. § 3161 et seq.

15 Based on a stipulation by the parties, the Court continued
16 the trial setting conference and hearing on any discovery motions
17 to December 17, 2007. The Court found that the period from
18 November 19, 2007 to December 17, 2007 was excludable time within
19 the meaning of the Speedy Trial Act of 1974, 18 U.S.C. § 3161 et
20 seq.

21 At the motion hearing and trial setting conference on
22 December 17, 2007, defendant requested that this matter be set
23 for a hearing on a motion to dismiss the indictment on March 3,
24 2008. The Court continued the trial setting conference and
25 hearing on any motion to dismiss to March 3, 2008. The Court
26 found that the period from December 17, 2007 to March 3, 2008 was
27

1 excludable time within the meaning of the Speedy Trial Act of
2 1974, 18 U.S.C. § 3161 et seq.

3 At the hearing on March 3, 2008, the Court set a trial date
4 of July 8, 2008. The Court found that the period from March 3,
5 2008 to July 8, 2008 was excludable time within the meaning of
6 the Speedy Trial Act of 1974, 18 U.S.C. § 3161 et seq.

7 Based on the above, the Speedy Trial Act of 1974, 18 U.S.C.
8 § 3161 et seq., now requires that defendant's trial commence on
9 or before August 27, 2008.

10 Based on the facts set forth in the declarations of Jerry A.
11 Behnke, the government hereby requests that the Court continue
12 the trial date to August 12, 2008. While the government believes
13 it has set forth good cause for a finding of excludable time
14 under 18 U.S.C. § 3161(h)(3) and (h)(8)(A), even if the Court
15 disagrees and does not find that the requested period is
16 excludable, the requested continuance would still result in a
17 trial within the time required by the Speedy Trial Act.

1 August 5, 2008. According to Pritchard's command, while they can
2 make him available for a July 8 trial date, doing so would result
3 in substantial hardship to the unit as they would be unable to
4 replace him during the period that he is away from the unit and
5 he is needed by the unit during July to help train his
6 replacement.

7 5. Another anticipated government witness is Captain Jon
8 Vaughn. Capt. Vaughn is a Marine attorney who is expected to
9 testify that he provided training to defendant's unit on several
10 occasions prior to the Fallujah operation, including a briefing
11 just days before November 9, 2004. He will testify that the
12 training included training regarding the proper handling and
13 treatment of detainees. He will testify that Marines are taught
14 that, among other things, they had a duty to do no harm to
15 detainees, including persons who had surrendered.

16 6. Capt. Vaughn has informed me that is scheduled to attend
17 a training course that he needs for his next assignment and that
18 the training is only offered once per year. The training is
19 scheduled for the week of July 7-11, 2008.

20 7. The government requests that the trial be continued to
21 August 12, 2008 in order to accommodate the above witnesses.

22 I swear under penalty of perjury the foregoing is true and
23 correct to the best of my knowledge.

24 /s/

25 Dated: June 20, 2008

26 _____
JERRY A. BEHNKE