

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

UNITED STATES OF AMERICA)	
)	
v.)	No. 3:05-00185
)	Judge Trauger
TIMOTHY RYAN RICHARDS)	

**RESPONSE IN OPPOSITION TO GOVERNMENT’S MOTION FOR EXTENSION OF
TIME TO RESPOND AND MOTION TO CONTINUANCE OF SENTENCING**

COMES NOW the Defendant, **Timothy Ryan Richards**, by and through his undersigned counsel, and submits this Response in Opposition to the government’s Motion for Extension of Time to Respond and for Continuance of Sentencing. Defendant Richards requests that this Honorable Court enter an Order denying the government’s Motion and compelling the government to immediately file its Response to Defendant Richards’ dispositive Motion. In support hereof, Defendant Richards states as follows:

1. The Sentencing Hearing in the above-captioned matter is presently scheduled for December 21, 2007.
2. On October 23, 2007, the Sixth Circuit rendered a published opinion in *Connection Distribution Co., et al. v. Keisler*, ___ F.3rd ___, 2007 WL 3070970 (6th Cir. Oct 23, 2007), declaring 18 U.S.C. §2257 facially unconstitutional. On October 26, 2007, Defendant Richards promptly filed a Motion to Vacate Convictions Pursuant to Facially Unconstitutional Statute supported by a separate Memorandum of Law. (Docket Entries 313 & 314). The government’s Response was due within 10 days. When consulted by the government on November 8, 2007,

undersigned counsel did not oppose the *short* enlargement of time sought by the government (to and including November 21, 2007). On November 8, 2007, the government filed a Motion for Extension to Respond and requested a proposed response date of November 21, 2007. (Docket Entry 316). The Motion was granted. (Docket Entry 317).

3. On November 16, 2007, the government contacted undersigned counsel and requested Defendant Richards' position on a second proposed enlargement and a continuance of the sentencing. On November 19, 2007, undersigned counsel reported to Ms. Bakshi that Defendant Richards opposed the government's Motion. On November 19, 2007, the government filed a Motion for Extension of Time to Respond to Defendant Richards' Motion to Vacate Convictions and Continuance of Sentencing Hearing. (Docket Entry 319). Defendant Richards opposes the government's Motion in both regards (extension and continuance).

4. The government cites two (2) reasons for the requested extension and continuance. First, without committing to actually filing a Petition for Rehearing *En Banc* in *Connection Distribution Co.*, the government would like to delay these proceedings so that DOJ can consider the "possibility of further review" and then, so that the Sixth Circuit will have the opportunity to consider giving additional guidance through *En Banc* review in the event that a Petition for Rehearing *En Banc* is actually filed. Secondly, the government has added a new DOJ Trial Attorney to the prosecution team and the new addition (Ms. Yusi) needs time to get up to speed in the case.

5. Defendant Richards opposes the government's requests for many reasons. First, Defendant Richards has been housed in a local jail for over a year post-trial. The conditions in these local facilities are notoriously harsh as compared to the conditions at BOP facilities. Secondly, Defendant Richards is ready for Sentencing and is ready to move to the next stage of the case. Third,

Defendant Richards filed such a swift Motion to Vacate Convictions with supporting Memorandum of Law in hope of keeping the case on track for the present sentencing date (December 21, 2007). Fourth, presently, the law in this Circuit is settled on the unconstitutionality of 18 U.S.C §2257. The government has not even committed to filing a Petition for Rehearing *En Banc*, and even if one is filed, there is no guarantee that the Sixth Circuit would hear the case *En Banc*. Furthermore, in the unlikely event that the Sixth Circuit engages in *En Banc* review, a resulting Opinion could take months, causing an enormous delay of the Sentencing - if this Court subscribes to the government's whimsical request. Fifth, the government has had almost 30 days to formulate its Response to Defendant Richards' Motion. It should be filed immediately. Sixth and finally, a continuance to allow a new member of the prosecution team to gain familiarity is simply unnecessary given the continued presence of the two (2) prosecutors who tried the case and have participated in mountains of substantive litigation in this matter. This is not a sound reason for delay.

6. For all of these reasons, Defendant Richards opposes any further enlargement of time for the government to file its Response to Defendant Richards' Motion to Vacate Unconstitutional Convictions. The Response is long overdue, and Defendant Richards' desire to resolve this issue according to settled Sixth Circuit precedent and keep the case on track for the December 21, 2007 Sentencing is entirely reasonable.

WHEREFORE, based on the foregoing, Defendant Richards respectfully requests that this Honorable Court deny the government's Motion and order the immediately filing of its Response. Furthermore, Defendant Richards respectfully requests that the Court deny the government's Motion to Continue the Sentencing Hearing.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been sent via the Court's electronic filing system, *or*, if not registered, sent via U.S. Mail, postage prepaid, to:

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this 21st day of November, 2007.

s/ Kimberly S. Hodde
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