

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA, \*  
Plaintiff, \*

vs.

CASE NO. 00-089 (PG)

JOSE MARTE PICHARDO \*  
Defendant. \*

\* \* \* \* \*

**MOTION TO DISMISS THE INDICTMENT**  
**(Re: Statutory Right to a Speedy Trial)**

TO THE HONORABLE  
JUAN M. PEREZ GIMENEZ  
UNITED STATES DISTRICT JUDGE  
FOR THE DISTRICT OF PUERTO RICO

COMES NOW Defendant José Marte Pichardo, represented by the Federal Public Defender, seeking to dismiss the Indictment for violation of his statutory right to a speedy trial.

**I. Introduction**

1. On April 19, 2000, the Grand Jury returned a one count Indictment charging Mr. Marte Pichardo with allegedly, “being an alien previously deported from the United States was found in the United States, without obtaining, prior to his re-embarkation at a place outside of the United States, the express consent from the Attorney General of the United States to such alien’s reapplying for admission and did not establish that he was not required to obtain such advanced consent”, in violation of Title 8 U.S.C. § 1326 (b)(2).

2. Title 18, U.S.C. 3161, better know as the Speedy Trial Act, provides for specific time limits in which federal criminal cases are to be prosecuted and brought to Trial. In general terms, the

Trial must begin within 70 days of the initial appearance of the defendant. In its pertinent part, the Act excludes from speedy trial calculation any delay resulting from very specific reasons.

3. After reviewing the docket in this case, it appears that a violation of the Speedy Trial Act has occurred.

## **II. Factual Basis for the Dismissal.**

4. Defendant Marte Pichardo was arrested on April 8, 2000, by the Immigration and Naturalization Service (hereafter referred to as the INS), and thereafter was held in Service custody. An indictment against Mr. Marte Pichardo was returned on April 19, 2000. He was formally arrested in relation with this indictment on May 1, 2000, and his initial appearance being held on the same day.

5. After his initial appearance, defendant was temporarily detained pending a hearing pursuant to the Bail Reform Act, 18 U.S.C. § 3141. After due hearing on May 15, 2000, an Order of Temporary Detention to permit revocation of Conditional Release, deportation or exclusion was entered against the defendant. On that same date Mr. Marte Pichardo was arraigned as to on a one count Indictment alleging violation of Title 8 U.S.C. §1326 (b)(2).

6. A status conference was held on May 19, 2000. During the same, the defendant was given 20 days by the Court to enter a plea of guilty or to proceed with the Trial.

7. On May 24, 2000, the government filed a *Motion to Seal Documents* and on July 11, 2000, the court denied the government's *Motion to Seal Documents*. Defendant Marte Pichardo has remained in custody since the above date of July 11, 2000 until the present.

**Mr. Marte Pichardo' Statutory Right to a Speedy Trial.**

8. "The Speedy Trial Act ("STA")..., is designed 'to protect a defendant's constitutional right to a speedy...trial, and to serve the public interest in bringing prompt criminal proceedings'." *United States v. Domingo Santiago-Becerril*, 130 F.3d 11 (1<sup>st</sup> Cir. 1997) (citing *United States v. Saltzman*, 984 F.2d 1087, 1090 (10<sup>th</sup> Cir. 1993)). "The STA provides that the government must bring a criminal defendant to trial no more than seventy days after the later of the filing date of the information or indictment or the date on which the criminal defendant first appears before a judicial officer of the court in which the charge is pending." *Santiago-Becerril* at 15. In calculating the seventy days the STA excludes certain time periods." *Id.*; *see*, 18 U.S.C. § 3161(h)(1)-(9). "If a criminal defendant is not brought to trial within the seventy day time limit required by § 3161(c)(1), as extended by operation of § 3161(h)(1)-(9), the penalty provisions of the STA mandate that 'the information or indictment shall be dismissed on motion of the defendant'." *Id.*

**Application of Law to Facts.**

9. The Act's seventy day period commenced on May 1, 2000, with his initial appearance, and for purposes of this calculation, includes until November 17, 2000, for a total of two hundred and one (201) days. The following is an analysis of the excludable dates upon application of the Act. The analysis has been done in the light most favorable to the Government. From the two hundred and one (201) days term the following days are to be excluded:

- one (1) day for the initial appearance, held on May 1, 2000;
- fifteen (15) days elapsed between the Government's request that defendant be held without bail to the Detention hearing, in which this request was ruled upon. See dockets entry #3 and #9;
- one (1) day for entering of the Order of Detention. See docket entry #11;

- one (1) day for the Arraignment and Detention hearing, held on May 15, 2000;
- one (1) day for the entering of the Order setting of the Status conference. See docket entry #10;
- one (1) day for the status conference. See docket entry #12;
- twenty (20) days, as the term provided by the Court for defendant to notify if he was going to plea guilty or proceed with Trial. See docket entry #12;
- one day for Motion by the United States requesting trial date. See docket entry #15.

10. From the date of the Arraignment to October 30, 2000, a total of forty (40) excludable and one hundred and sixty one (161) non-excludable days have passed. Enclosed is a copy of the Court's Docket of the present case, downloaded from PACER on November 17, 2000.

### **Conclusion**

11. For these reasons, defendant José Marte Pichardo prays this Honorable Court to dismiss the indictment with prejudice.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this November 17, 2000.

Joseph C. Laws, Jr.  
Federal Public Defender

---

Juan F. Matos de Juan  
Assistant Federal Public Defender  
USDC-PR 207605  
259 F. D. Roosevelt  
Hato Rey, P.R. 00918  
TEL. (787) 281-4922  
FAX. (787) 281-4899

**CERTIFICATE OF SERVICE**

On March 30, 2000, I served a copy of the foregoing Motion to Dismiss the Indictment (Re: Statutory Right to Speedy Trial) on counsel for the government, U.S. Attorney Guillermo Gil (Assistant U.S. Attorney Maritza González) by delivering it to his office at Federico Degetau Federal Building, Room 452, Carlos Chardón Avenue, Hato Rey, Puerto Rico 00918.

---

Juan F. Matos de Juan