

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

CASE NO. 03-cr-00232-RPM

UNITED STATES OF AMERICA,

Plaintiff,

v.

1. EDWARD P. MATTAR, III,
2. **THOMAS ALAN BOYD,**
3. JACK O. GRACE, JR.,
4. GLENN M. GALLANT,
5. DOUGLAS R. BAETZ,

Defendant(s).

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**DEFENDANT BOYD'S RESPONSE TO REQUEST FOR STAY**

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Alan Boyd opposes the government's request for a stay, and as grounds he states:

1. The government complains that the resumed trial schedule was set after a communication was made "without consultation among counsel" concerning a proposed trial schedule. The record should reflect that this statement is wrong. All counsel were copied in on the referenced communication, which constituted only a statement of availability, and not a "proposed trial schedule." The communication could not represent the government's intentions, as the government had not disclosed its intentions.

2. The circumstances presented here do not invite an ordinary appeal pursuant to 18 U.S.C. §3731, and the government still does not say that it *intends* to seek an extraordinary writ, pursuant to 28 U.S.C. §1651. Indeed, it seems that what

the government is asking for is more time to “think about it” while waiting for a transcript that it obviously did not order on an expedited basis. This option is wholly inconsistent with the remedies pursued through extraordinary writ.

3. The government forgets that it has already agreed to waiver of a jury trial as to the forfeiture counts, belying its claim that it merely seeks a jury to “foster fairness and public confidence.” The Court accepted the defendants’ waiver of the jury trial to preserve their constitutional rights. “Fairness and public confidence in the criminal justice system” is not advanced when the Constitution is supplanted by what the government seems to think is a veto power that it, alone, holds. Even the Supreme Court, in *Singer v. United States*, 380 U.S. 24, 37,85 S.Ct. 783, 13 L.Ed.2d 630 (1965), declined to rule out the possibility that “there might be some circumstances where a defendant’s reasons for wanting to be tried by a judge alone are so compelling that the Government’s insistence on a trial by jury would result in the denial to a defendant of an impartial trial” – a right guaranteed by the Constitution.

4. In addition to the complexities of this case and its extraordinary costs, the defendants have waived the jury to preserve the integrity of the evidence presented thus far, and to insure their ability to go forward with a flexible schedule that meets the demands of these unusual circumstances, while preserving the unity of the defense. To that end, the government has asked to suspend the proceedings during a week when all *are* available to take testimony, and to then resume the trial at a time when the government knows all are *not* available to take testimony. And, the government has not yet answered counsel’s requests for the names of its next witnesses or the exhibits it expects to offer.

The motion for stay should be denied.

Respectfully submitted,

RAYMOND P. MOORE  
Federal Public Defender

s/Virginia L. Grady

VIRGINIA L. GRADY

Assistant Federal Public Defender

633 17th Street, Suite 1000

Denver, Colorado 80202

Telephone: (303) 294-7002

Facsimile: (303) 294-1152

E-mail: [virginia\\_grady@fd.org](mailto:virginia_grady@fd.org)

Attorney for Defendant Thomas Alan Boyd

**CERTIFICATE OF SERVICE**

I hereby certify that on July 20, 2006, I presented the foregoing **DEFENDANT BOYD'S RESPONSE TO REQUEST FOR STAY** to the Clerk of the Court for filing and uploading to the CM/ECF system which will send notification of such filing to the following e-mail addresses:

John Haried, Assistant U.S. Attorney  
[john.haried@usdoj.gov](mailto:john.haried@usdoj.gov)

Michael Carey, Assistant U.S. Attorney  
[michael.carey@usdoj.gov](mailto:michael.carey@usdoj.gov)

Daniel J. Sears, Esq.  
[djsearspc@aol.com](mailto:djsearspc@aol.com)

Daniel T. Smith, Esq.  
[danieltsmith@qwest.net](mailto:danieltsmith@qwest.net)

Peter Bornstein, Esq.  
[bornstlaw@qwest.net](mailto:bornstlaw@qwest.net)

Lee D. Foreman, Esq.  
[foreman@hmflaw.com](mailto:foreman@hmflaw.com)

Patrick Murphy, Esq.  
[pmurphy@purvisgray.net](mailto:pmurphy@purvisgray.net)

S/Virginia L. Grady  
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VIRGINIA L. GRADY  
Assistant Federal Public Defender  
633 17th Street, Suite 1000  
Denver, Colorado 80202  
Telephone: (303) 294-7002  
Facsimile: (303) 294-1152  
E-mail: [virginia\\_grady@fd.org](mailto:virginia_grady@fd.org)  
Attorney for Defendant Thomas Alan Boyd