

1           THE COURT: Thank you. All right, Counsel, the  
2 Court is prepared to issue a ruling, and the Court knows that  
3 findings of fact and conclusions of law are required.  
4 Therefore, the Court is going to issue the ruling at this  
5 time. The issue before the Court is whether or not  
6 Mr. Richardson's right to a speedy trial under the Sixth  
7 Amendment or the Fifth Amendment due process have been  
8 violated.

9           The background and the findings are that  
10 Mr. Richardson was arrested on December 17th, 2011, in  
11 Hendricks County, Indiana, for domestic battery and  
12 intimidation with a deadly weapon under state law. Also, on  
13 December 17th, 2011, the Hendricks County Sheriff's Department  
14 and the Bureau of Alcohol, Tobacco, Firearms & Explosives  
15 executed a search warrant of Mr. Richardson's residence. 175  
16 firearms and firearm receivers, various firearm parts, and  
17 over 59,000 rounds of ammunition were seized.

18           As of December 17, 2011, Mr. Richardson was a  
19 convicted felon having previously been convicted of unlawful  
20 possession of a firearm by a convicted felon on March 18th,  
21 1999, here in the Southern District of Indiana. The case  
22 number was IP 98-cr-145.

23           On December 21, 2011, the United States Government  
24 filed a federal criminal complaint and affidavit of probable  
25 cause in the United States District Court here in the Southern

1 District of Indiana. An arrest warrant was issued on the same  
2 date and time, and a federal detainer was also filed for  
3 Mr. Richardson with the Hendricks County Jail.

4 Mr. Richardson was already under arrest in Hendricks  
5 County for the domestic battery and intimidation with a deadly  
6 weapon and held on state court charges. Eventually he was  
7 held under a \$500,000 bail bond.

8 Mr. Richardson's state court proceedings ran its  
9 course. The Court finds there were no obvious delays by the  
10 State of Indiana. And it appears that those proceedings, the  
11 delays that were procedural, were, for the most part, made by  
12 Mr. Richardson.

13 Between June 25, 2012, and March 2013, while  
14 Mr. Richardson was detained awaiting resolution of his state  
15 charges, Mr. Richardson's counsel and counsel for the  
16 government negotiated to reach a pre-indictment resolution to  
17 potential federal charges stemming from the seizure of  
18 firearms on December 17, 2011.

19 In February 2013, Mr. Richardson's counsel indicated  
20 that Mr. Richardson would accept a pre-indictment plea  
21 agreement. On March 21st, 2013, Mr. Richardson pleaded guilty  
22 in Hendricks County Superior Court to state charges of felony  
23 intimidation. He was sentenced to 922 days' imprisonment,  
24 which resulted in a sentence of time served.

25 On that same date -- oh, the next day, March 22nd,

1 2013, Mr. Richardson appeared before U.S. Magistrate Judge  
2 Dinsmore and the arrest warrant that was issued on  
3 December 11, 2011, was executed that same day, March 22nd,  
4 2013. Mr. Richardson waived his right to a preliminary  
5 hearing and was held to answer for the federal charges.

6 His detention hearing was held on March 25th, 2013,  
7 at which counsel for Mr. Richardson informed the government  
8 that Mr. Richardson would not plead guilty to an information.  
9 On April 16, 2013, a Federal Grand Jury returned a two-count  
10 indictment charging Mr. Richardson with felon in possession of  
11 a firearm and unlawful possession of a machine gun. A jury  
12 trial was scheduled for June 10th, 2013.

13 On May 12th, 2013, Mr. Richardson moved to continue  
14 the trial. On June 11th, 2013, he entered a plea agreement  
15 and petitioned to enter a plea of guilty, and the trial date  
16 was vacated. Through a series of continuances, all of which  
17 were either on Mr. Richardson's motion or joint motions,  
18 Mr. Richardson's change of plea hearing was ultimately  
19 rescheduled for January 30th, 2014. On January 28th, 2014,  
20 Mr. Richardson filed a motion to withdraw his plea of guilty  
21 to the instant -- and filed the instant motion asserting his  
22 right to a speedy trial and a motion to dismiss.

23 To begin the discussion, the defendant has conceded  
24 and agreed that nothing after the date of indictment is  
25 relevant towards his speedy trial, alleged speedy trial

1 violation. Mr. Richardson asserts his speedy trial rights  
2 under the Sixth Amendment. The Sixth Amendment guarantees a  
3 defendant's right to a speedy trial.

4 In determining whether a defendant's Sixth Amendment  
5 right has been violated, the Court applies a four-part  
6 balancing test. According to *United States v. Ellis*, 622 F.3d  
7 784, at page 791, Seventh Circuit, 2010, the factors are:  
8 One, the length of the delay; two, the reasons for the delay;  
9 three, the defendant's assertion of his speedy trial right;  
10 and, four, the prejudice to the defendant caused by the delay.

11 With respect to the length of delay, the parties  
12 dispute the length of delay that should be counted toward  
13 Mr. Richardson's speedy trial right. Mr. Richardson contends  
14 that the 16 months between his arrest on the state charges and  
15 the complaint being filed in federal court on the related  
16 charges stemming from this same incident should be counted as  
17 delay.

18 The government contends that the length of delay is  
19 measured from the time of arrest or indictment on the federal  
20 charges. The government relies on *United States v. Wallace*,  
21 326 F.3d 881, 885, which is Seventh Circuit, 2003, which held  
22 that arrests made by state authorities on state charges did  
23 not start the clock for purposes of a subsequent federal  
24 charge.

25 Richardson distinguishes *Wallace* on the fact that

1 here, the government filed a complaint on related charges at  
2 the same time as the state charges were filed. In *Wallace*,  
3 there was no comparable filing by federal authorities until  
4 after state charges were dropped. Thus, Mr. Richardson argues  
5 the charges in this case were not "subsequent" as the term was  
6 used in *Wallace*.

7           The Court finds that it is hard to imagine such a  
8 strict reading of *Wallace*, and Mr. Richardson has not cited  
9 any case law supporting that there only needs to be a  
10 triggering federal event. He cites *United States v.*  
11 *MacDonald*, 456 U.S. 1, which is a 1982 case, with no pinpoint  
12 or analysis. That case held that no Sixth Amendment right to  
13 a speedy trial arises until charges are filed. Therefore, I  
14 think Mr. Richardson fails to establish this factor in his  
15 favor.

16           The government has argued that in the Seventh  
17 Circuit, there's numerous cases which hold that the federal  
18 court may exercise prosecutorial discretion in prosecuting a  
19 federal claim as long as it's done within, in this case, the  
20 five-year statute of limitations.

21           As in *Pharm*, the Court finds that Mr. Richardson's  
22 Sixth Amendment rights were not triggered until he was  
23 actually arrested by federal authorities on March 22nd, 2013.  
24 The Sixth Amendment guarantee of a speedy trial only applies  
25 after arrest, indictment, or information. The complaint and

1 arrest warrant itself did not trigger the speedy trial clock.

2           In *Pharm*, the Seventh Circuit found that an arrest  
3 or indictment by one sovereign does not trigger the speedy  
4 trial guarantees as to possible subsequent indictment by  
5 another sovereign. Mr. Richardson was being held since  
6 December 2011 on the warrant in state court charges, not the  
7 federal charges. Again, a federal criminal complaint is not a  
8 formal accusation and Mr. Richardson was not actually arrested  
9 on the federal charges until March of 2013.

10           With respect to reasons for the delay,  
11 Mr. Richardson asserts that the government intentionally held  
12 back from filing charges and arresting him to gain a tactical  
13 sentencing advantage. The government states that it did not  
14 want to file charges until the state charges were resolved for  
15 several reasons, one being the seriousness of the domestic  
16 battery, and that the alleged victim -- ultimately she was  
17 found to be a victim of a domestic battery -- deserved her day  
18 in court. The government disputes that it otherwise  
19 intentionally waited to gain any tactical advantage.

20           The government notes that any sentencing guidelines  
21 increase is strictly advisory, and both parties are free to  
22 argue whether Mr. Richardson's criminal history is over or  
23 understated.

24           Further, waiting for state court charges to be  
25 resolved is a valid reason for pre-indictment delay, and

1 that's according to *United States versus Koller*, 956 F.2d 1408  
2 at 1416, which is a Seventh Circuit 1992 case. Although the  
3 government was not compelled to delay the trial until  
4 Mr. Koller was released from state custody, its decision to  
5 dismiss the indictment and reindict Koller upon his release  
6 was not an impermissible course of action.

7           Likewise, the Court is not persuaded by  
8 Mr. Richardson's argument. He's presented no evidence that  
9 the government reasonably -- I'm sorry, intentionally delayed  
10 filing charges to gain any tactical advantage. It's just his  
11 assumptions. It is perfectly reasonable, the government's  
12 course of action, due to the serious nature of the state case,  
13 that the government would allow that matter to work its course  
14 before pursuing the federal case. Mr. Richardson therefore  
15 fails to establish this factor in his favor.

16           The defendant's assertion of his right to speedy  
17 trial: Mr. Richardson ignores, even after the government  
18 raised it in its response, that he did not and cannot show  
19 that he asserted his right to a speedy trial at any point  
20 prior to being taken into federal custody, despite the fact  
21 that he was represented by the same lawyer in both his federal  
22 and state court cases since June of 2012. Even if the other  
23 factors were a close call, this factor could be determinative  
24 in the government's favor.

25           Mr. Richardson's counsel negotiated with the

1 government for approximately nine months pre-indictment and  
2 further indicated that Mr. Richardson would plead guilty  
3 pre-indictment. Then, after the indictment was actually  
4 filed, Mr. Richardson moved to continue his trial date, filed  
5 the petition to plead guilty, and waited until January 28,  
6 2014, two days before his guilty plea and sentencing hearing,  
7 to assert his speedy trial rights.

8           *Barker v. Wingo*, as well as *United States v.*  
9 *Oriedo* -- and *Barker* is at 407 U.S. 514, *Oriedo* is 498 F.3d  
10 593 -- failure to assert the right will make it difficult for  
11 a defendant to prove that he was denied a speedy trial. Given  
12 the defendant's participation with his current counsel in  
13 pre-indictment negotiations and post-indictment continuances,  
14 negotiation, and the petition to plead guilty, the Court finds  
15 it difficult to conclude that Mr. Richardson had previously  
16 asserted his speedy trial rights. Thus, this factor weighs  
17 in -- against his favor.

18           The defendant's assertion of prejudice caused by the  
19 delay, Mr. Richardson asserts presumptive prejudice and actual  
20 prejudice. His argument for presumptive prejudice fails for  
21 the same reason his arguments fail under the first factor, the  
22 length of delay. Having found that the pre-indictment period  
23 is not attributable to the government, Mr. Richardson would  
24 have to -- the Court has found that he has not suffered a long  
25 delay that is presumptively prejudicial.

1           Mr. Richardson's claim of actual prejudice the Court  
2 finds to be somewhat weak. The defendant argues delay has  
3 eroded witnesses' memories, and he uses the example of the  
4 Hendricks County sheriff deputy who was deposed in 2012. The  
5 deputy could not remember the details of the search warrant  
6 served on Mr. Richardson's residence and other details  
7 surrounding the incident. However, as the government notes,  
8 this deputy stated he could not have -- was told he couldn't  
9 have his notes during the deposition, but if he had them, he  
10 could refresh his memory if he looked at them.

11           Thus, the government makes a valid argument that  
12 multiple issues of this witness' memory could be corrected.  
13 The deputy is the only example the defendant cited. And while  
14 the Court does agree in general that a delay would erode a  
15 witness' testimony, this is but one witness. There are  
16 several other witnesses whose memories may not have eroded.

17           However, a general allegation that witness memories  
18 have faded during the delay does not rise to the level of  
19 specificity required to show actual prejudice. And that is a  
20 quote directly from *Koller*, 956 F.2d at 1414.

21           Mr. Richardson also asserts prejudice based on the  
22 sentencing guidelines increase that was mentioned above.  
23 However, this argument, again, would fail for the same reasons  
24 already discussed.

25           Finally, Mr. Richardson argues the federal detainer

1 prevented him from being able to be released on the state  
2 court charges. However, his counsel has conceded today he did  
3 have a bond. He had a \$500,000 bond, which he was not able to  
4 make, regardless of the federal detainer. So he's shown no  
5 actual or substantial prejudice.

6           Based on all of these factors, the Court finds that  
7 the defendant has failed to establish a violation of either  
8 his Sixth Amendment speedy trial rights or his Fifth Amendment  
9 due process rights, and so the motion to dismiss is denied.

10           The Court will be able to docket a written  
11 transcript of this decision in seven to ten days. My court  
12 reporter is in that eight-week trial with Judge Lawrence,  
13 because they're getting dailies. But, within a week to ten  
14 days, we'll have a transcript.

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