

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ALFRED W. TRENKLER,)
Petitioner)
)
v.)
UNITED STATES OF AMERICA,)
Respondent)

CIVIL NO. 06-12072-RWZ

and

UNITED STATES OF AMERICA)
)
v.)
ALFRED W. TRENKLER,)
Defendant)

CRIMINAL NO. 92-10369-RWZ

**GOVERNMENT’S MOTION FOR A STAY OF RESENTENCING IN THE EVENT
THE COURT GRANTS THE PETITION FOR A WRIT OF *CORAM NOBIS*,
OR, IN THE ALTERNATIVE, GOVERNMENT’S MOTION FOR
A TWO-WEEK CONTINUANCE OF RESENTENCING**

In the event that the Court grants the *coram nobis* petition in Alfred W. Trenkler v. United States, Civil No. 06-12072-RWZ, the United States respectfully moves this Court to stay any resentencing hearing in United States v. Alfred W. Trenkler, Criminal No. 92-10369-RWZ, pending the resolution of any appeal by the government (or, in the alternative, for 45 days). If the Court denies said motion to stay any resentencing, the government requests that the Court continue the resentencing hearing until a date two weeks after the date upon which it rules upon the *coram nobis* petition. In support of this motion, the government states

the following:

1. At a status conference held on March 28, 2007, the Court indicated that it is likely that it will not rule on Trenkler's *coram nobis* petition until April 4, 2007 and that, if it adheres to its previous ruling allowing the petition, the parties should expect to proceed immediately that date to a resentencing in the criminal case.

2. The issues raised by Trenkler's *coram nobis* petition and by the government's opposition¹ are weighty and of great concern to everyone involved. An adverse decision will have to be reported by the government to and reviewed by the Department of Justice's Criminal Appellate Section and the Office of the Solicitor General. *See, for example*, 28 C.F.R. §0.20(b). The government urges the Court to give the government time after the Court rules to consult with these offices concerning its options for further review.

3. In addition, regardless of these considerations, additional time is needed to prepare for resentencing. Although the Court set the current date for the resentencing when it issued its original order, the government has been busy considering and responding to the habeas-related arguments raised by Trenkler's *coram nobis* petition. Some additional time is needed to adequately prepare for all the legal issues raised by any grant of that

¹At the hearing, the Court inquired why the government had filed a motion to reconsider its order. The government's pleading was both an initial opposition to Trenkler's petition and a request that the Court reconsider the rulings that it made in its February 20, 2007 order.

petition. We think, for example, that the Court is bound by the law-of-the-case doctrine² to the Guideline calculations the Court previously made; defense counsel seems to suggest otherwise. And some additional time is needed to prepare for any factual presentation. As the Court knows, the two lawyers who represented the government in the criminal case are no longer with the United States Attorney's Office.

4. There are significant victim considerations that militate against immediate resentencing as well. The Crime Victims' Rights Act ("CVRA"), 18 U.S.C. §3771, ensures that the victims of crime have the right to be reasonably heard and to be treated with fairness and with respect for their dignity. See 18 U.S.C. §3771(a)(4) and (8). As the Court was informed at the status conference, if there is to be a resentencing in the criminal case, Francis Foley, as a crime victim who was directly and proximately harmed as a result of Trenkler's criminal conduct, intends to address the Court on the issue of the appropriate sentence. See 18 U.S.C. §3771(e). So too does at least one family member of Jeremiah Hurley, who was killed as a direct and proximate result of that same criminal conduct. *Id.* (If a crime victim is deceased, "family embers may assume the crime victim's rights."). The prospect of the vacatur of Trenkler's life sentence, and a resentencing proceeding at which some lesser sentence might be

²See, e.g., United States v. Ticchiarelli, 171 F.3d 24, 28 (1st Cir. 1999), and United States v. Bell, 988 F.2d 247, 250 (1st Cir.1993).

imposed, has been an emotionally wrenching experience for Officer Foley and for Officer Hurley's wife and four children. Preparing for a resentencing will necessarily force them to relive the most horrific moments of their lives, most especially for those who will prepare and deliver victim impact statements.

The victims should not have to endure such anguish unless and until the Court determines that it is going to allow the *coram nobis* petition, for if it rules in the government's favor, there will be no resentencing. Moreover, the victims should not be put in the position of coming to court on April 4, 2007, or any other day, not knowing whether they will have to deliver emotionally demanding statements to this Court and then, if this Court adheres to its prior ruling, having to deliver them moments after a ruling that will turn their worlds upside down. The current posture of this proceeding, with a decision on the petition likely to be announced only at the currently scheduled resentencing, disadvantages the victims and undermines the CVRA.

5. The government's request that the Court stay any resentencing hearing to permit it to explore its opportunity to seek appellate review of an adverse ruling on the *coram nobis* petition, or, alternatively, to continue the resentencing for two weeks after the Court finally rules on the petition, should not be considered an undue delay. While Trenkler may be disappointed, he will not be prejudiced. The government assumes that given the facts of the case, the Court will at any resentencing impose a term

of incarceration that will keep Trenkler in prison for a significant period of time yet to come. Conversely, the Court's plan to rule on the *coram nobis* proceeding and immediately proceed to resentencing will disadvantage both the government (which, after all, represents the public) and the victims.

For these reasons, the government respectfully requests that the Court allow the instant motion and stay any resentencing pending the resolution of any appeal (or, in the alternative, for 45 days),³ and, if it declines to do so, to schedule resentencing for two weeks after the Court rules on the *coram nobis* petition.

Respectfully submitted,

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By: /s/ James F. Lang
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³Forty-five days will, *inter alia*, allow the government time to make the appropriate reports to the Department of Justice and allow for review within the department.

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent to the registered participants as identified in the Notice of Electronic Filing (NEF) and copies will be sent to those indicated as non-registered participants.

/s/ James F. Lang
James F. Lang
Assistant U.S. Attorney

Date: March 30, 2007