

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

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| _____ |) | |
| UNITED STATES OF AMERICA |) | |
| |) | |
| V. |) | Doc. No 13-CR-10238-DPW |
| |) | |
| ROBEL KIDANE PHILLIPOS |) | |
| _____ |) | |

MOTION TO CONTINUE SENTENCING HEARING

Now comes Robel Phillipos, the Defendant in the above-referenced case, and moves this honorable Court to continue his sentencing hearing currently scheduled for April 6, 2015, to a date after the sentencing hearing of his co-defendants. In support of this Motion, Mr. Phillipos states as follows:

1. The Court has scheduled a sentencing hearing in this matter for April 6, 2015. Mr. Phillipos has filed a Motion for Acquittal and Motion for New Trial that remain pending before the Court.
2. On February 25, 2015 the Supreme Court issued its opinion in *Yates v. United States*, 135 S. Ct. 1074 (February 25, 2015). In that decision, the Court stated that “tangible object” under 18 U.S.C. § 1519 means something “used to record or preserve information.” *Id.* at 1088-89. The decision will likely affect Mr. Phillipos’ co-defendants’ cases. Indeed, it may result in the acquittal of his co-defendant Tazhayakov, on some or all of the charges, and may provide grounds for the withdrawal of the guilty plea of co-defendant Kadyrbayev. Mr. Tazhayakov has already, on March 18, 2015, supplemented his Rule 33 Motion in light of the *Yates* decision.
3. The principles of fairness and parity embedded in 18 U.S.C. § 3553 require the Court to

take into consideration the disposition in the co-defendants' cases. To address the related issues that will undoubtedly arise at Mr. Phillipos' sentencing hearing, it will be necessary to resolve the co-defendants' motions prior to the sentencing hearing. The resolution of the *Yates* issue, and the subsequent sentence the Court may impose, if any, against the co-defendants would provide a benchmark for evaluating the appropriate sentence in Mr. Phillipos' case.

4. The resolution of the co-defendant's cases prior to Mr. Phillipos' sentencing would also allow the Court to resolve the applicability of the disputed sentencing enhancements related to obstruction of justice. Finally, the continuance would afford Mr. Phillipos the opportunity properly to present his case without having to speculate as to the outcome of the related issue in the co-defendants' cases.

Wherefore, Mr. Phillipos requests the Court to continue his sentencing hearing currently scheduled for April 6, 2015.

Respectfully submitted,
Robel Phillipos
by his attorney

/s/ Derege B. Demissie

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Dated: March 27, 2015

CERTIFICATE OF SERVICE

I hereby certify that this Motion to Continue, which has been filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF), and paper copies will be sent to those indicated as non registered participants.

/s/ Derege B. Demissie
Derege Demissie