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FILED
APR 27 2007
CLERK, U.S. DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
BY DEPUTY

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APR 18 2007

9 UNITED STATES DISTRICT COURT
10 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

11 UNITED STATES OF AMERICA,

12 Plaintiff,

13 vs.

14 KYLE DUSTIN FOGGO (1),
15 aka "Dusty" Foggo, and

16 BRENT ROGER WILKES (2),

17 Defendants.

Criminal No. 07cr0329-LAB

**DEFENDANT KYLE DUSTIN FOGGO'S
MOTION FOR SEVERANCE AND
TRANSFER OF VENUE TO THE
EASTERN DISTRICT OF VIRGINIA**

Date: May 14, 2007
Time: 2:00pm
Courtroom: 9 (Second Floor)
Judge: Hon. Larry Alan Burns

18 PLEASE TAKE NOTICE that on May 14, 2007 at 2:00pm, or as soon thereafter as
19 counsel may be heard, in Courtroom 9 before the Honorable Larry A. Burns of this Court,
20 located at 940 Front Street, San Diego, CA 92101, Defendant Kyle Dustin Foggo will bring for
21 hearing his motion for severance pursuant to Fed. R. Crim. P. 14(a) and transfer of venue to the
22 United States District Court for the Eastern District of Virginia pursuant to Fed. R. Crim. P.
23 21(b).

24 The substantial hardship that will be suffered by Mr. Foggo and his family if his case is
25 tried in the Southern District of California warrants a transfer of venue. Transfer to the Eastern
26 District of Virginia is appropriate and in the interests of justice. Mr. Foggo, his family, his
27 attorneys, and many of the witnesses who are expected to testify in his defense reside in or near
28

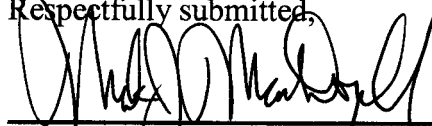
1 the Eastern District of Virginia. Furthermore, the Eastern District of Virginia has the strongest
2 connection to the events and acts alleged in the indictment. Most of the relevant documents and
3 records are located in the Eastern District of Virginia, and those documents and records are
4 subject to the requirements of the Classified Information Procedures Act. Finally, a transfer of
5 venue would likely not result in any delay of the prosecution of the case against Mr. Foggo.

6 Moreover, the prejudice that will result to Mr. Foggo if this case is not severed from that
7 of Brent Roger Wilkes merits the severance of the cases against each defendant for separate trial.
8 The San Diego press continues to link the allegations against Mr. Foggo to the bribery charges
9 and related allegations against his co-defendant, Mr. Wilkes, relating to former Congressman
10 Randall "Duke" Cunningham. Mr. Foggo is not charged with bribery or with any conduct
11 relating to Mr. Cunningham and is not implicated in anyway in the often-reported "debauchery"
12 or "prostitution" acts described in the second indictment filed against Mr. Wilkes. Further, the
13 allegations against Mr. Foggo do not pertain to Mr. Cunningham or Mitchell Wade, both of
14 whom have pled guilty to multiple felonies. For all of these reasons, a severance of the cases
15 against the defendants and transfer of venue of the case against Mr. Foggo is in the interests of
16 justice.

17 This motion is based on the attached Memorandum of Points and Authorities,
18 declarations/affidavits, oral argument of counsel at hearing, and all other matters of which the
19 Court may properly take judicial notice.

20
21 Dated: April 17, 2007

22 Respectfully submitted,



23
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