

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

FILED
Jeffrey A. Apperson, Clerk
OCT 27 2006

U.S. DISTRICT COURT
WESTN. DIST. KENTUCKY

CRIMINAL ACTION NO. 3:06MJ-230
UNITED STATES OF AMERICA,

PLAINTIFF,

UNDER SEAL
[GRAND JURY MATTER]

vs.

STEVEN D. GREEN,

DEFENDANT.

**DEFENDANT'S REPLY TO UNITED STATES RESPONSE TO MOTION TO QUASH
GRAND JURY SUBPOENAS AND REQUEST FOR A HEARING**

Comes the defendant, Steven Green, by counsel and replies to the United States' response ("Response") to the defendant's motion to quash grand jury subpoenas of the defendant's family. In support, the defense states the following:

INTRODUCTION

On October 24, 2006, the defense filed a motion to quash the grand jury subpoenas issued for the defendant's father, step-mother and brother. The United States responded on October 27. Along with this pleading, the defense is filing a motion to join defendant's sister with the original motion to quash as she too has recently been served with a grand jury subpoena.

ARGUMENT

The grand jury extension was given to seek evidence from Iraq, not from the Mr. Green's family.

Part of the defendant's *Motion to Quash* was that the defense was unopposed to the

government's motion to extend the grand jury investigation 90 days before returning an indictment. In short, the United States had requested this extension in order to obtain evidence from Iraq and the Iraqi government ("Iraq-evidence"). This unopposed motion was filed by the United States on August 17, 2006, and the Court granted it.¹

However, as the end of the extension period approached, the United States began issuing subpoenas for Mr. Green's immediate family members. As noted in the defendant's original motion, such is obviously not "Iraq-evidence."

Along with the family subpoenas, the United States also subpoenaed all of Mr. Green's phone calls from jail (except attorney-client calls). The subpoenaed calls thus include all calls between Mr. Green and his family and friends. These phone calls would almost assuredly be used as part of the examination of the family members before the grand jury.

Also of note is that the grand jury subpoenas for Mr. Green's calls from jail were apparently issued after Mr. Green's original 30 day grand jury date passed. Further, many of the subpoenaed phone calls also apparently occurred outside of the original 30 day window.

As noted, the defense agreed not oppose the government's motion to continue the grand jury based upon the government's assertion that the grounds for the extension was to allow the United States to seek evidence from Iraq and the Iraqi government. The defense was not advised that family members would be subpoenaed after the original 30 day grand jury date and before the expiration of the 90 day extended date. Similarly, the defense was not advised that subpoenas for Mr. Green's phone calls between family and friends would be issued after the original 30 day date and before the

¹ But for the unopposed motion and subsequent Court order, the United States would have had to return an indictment within 30 days from Mr. Green's initial appearance. Mr. Green first appeared before a Kentucky court on July 7, 2006. He had his initial appearance in North Carolina on July 3, 2006.

extended date. Again, obviously, such information is not evidence from Iraq or from the Iraqi government. Also, the defense would not have agreed to the "Iraq evidence extension" had it known that said extension would be utilized to subpoena to the grand jury Mr. Green's immediate family as well as all of his personal phone calls.

Relevance of the family's testimony.

As part of its Response, the United States cites United States v. R. Enterprises, 498 U.S. 292, 300 (1991), for the proposition that the grand jury is entitled to investigate whether family members have direct knowledge of Green's participation in the alleged crime as questioning on that topic is directly "relevant to the general subject matter of the grand jury's investigation." (Response, pg. 3).

Similarly, the United States argues that post-Ring,² death-penalty eligibility factors are essentially elements of a greater offense, and therefore must be alleged in the indictment. The United States goes on to argue that, at a minimum, such factors include evidence related to a defendant's intent and mental state, and that Mr. Green's relatives may be in the "best position to provide such evidence." (Response, pg. 4).

The defense of course notes that Mr. Green was stationed in the "Triangle of Death" in Iraq at the time of the allegations. His family was in United States. Further, the alleged crimes occurred in March of 2006. Mr. Green did not return home to the United States until June of 2006.

For these reasons, the defense questions family members half-a-world away could have "direct knowledge" of Mr. Green's participation in the alleged crime, much less be in the best position to provide such evidence. To the contrary, two of Mr. Green's co-defendants being charged in the

² Ring v. Arizona, 536 U.S. 584 (2002)

military have already entered into agreements to testify against Mr. Green. Certainly, if these persons committed the alleged crimes with Mr. Green, they would have “direct knowledge” of Mr. Green’s alleged intent and mental state and would be in “the best position to provide such evidence,” not his family living in a different country. The United States can certainly call these co-defendants to testify before the grand jury.

If the Court is inclined, however, to allow the United States to call Mr. Green’s family members before the grand jury, the defense would ask for an order limiting the scope of the questioning. Said scope should include any alleged “direct knowledge” that the family would have regarding the allegations, and “direct knowledge” they have regarding any identified aggravating factors sought by the United States. Again, R. Enterprises, cited by the government, notes that information sought and presented to the grand jury must be “relevant to the general subject of the grand jury’s investigation.” 498 U.S. at 301. By way of example, a grand jury subpoena *duces tecum* to a family member of Mr. Green to produce all of his financial records would not be “relevant to the general subject of the grand jury’ investigation” in this case, and thus could be quashed by this Court. Similarly, if the Court does permit the questioning of Mr. Green’s family before the grand jury, such questioning should be limited to those areas identified by the Court to be relevant to the general subject of the grand jury’s investigation. To state it another way, if the Court rules that the family must testify, such a ruling should not subject them to any and all areas of questioning by the United States.

Request for a hearing.

Finally, the defense requests a hearing on its motion. Particularly as to the issues discussed in this pleading, the defense believes a hearing will be of great assistance in resolving these matters.

Respectfully Submitted,

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CERTIFICATE

I certify that a copy of the foregoing motion was served on the United States by mailing and telefaxing same to its counsel of record, Marisa J. Ford, Esq., and Brian Butler, Esq., Assistant United States Attorneys, Tenth Floor, BB&T Bank Building, 510 West Broadway, Louisville, Kentucky 40202; Brian D. Skaret, Esq., Attorney, Domestic Security Section, Criminal Division, United States Department of Justice, 950 Pennsylvania Avenue N.W., Washington, D.C. 20530; and John A. Drennan, Esq., and Jeffrey P. Singdahlsen, Esq., Attorneys, Appellate Section, Criminal Division, United States Department of Justice, 950 Pennsylvania Avenue N.W., Washington, D.C. 20530, all this 30th day of October, 2006.

/s/ Scott T. Wendelsdorf
Patrick Bouldin

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ORDER

Defendant Steven D. Green having moved the Court for, the United States having responded,
and the Court being sufficiently advised,

IT IS ORDERED AND ADJUDGED that the defendant's motion to quash the subpoenas
is **GRANTED**.

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