IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	CR. NO. 2:10cr186-MHT
	)	
MILTON E. McGREGOR,	)	
RONALD E. GILLEY,	)	
THOMAS E. COKER,	)	
ROBERT B. GEDDIE, JR.,	)	
LARRY P. MEANS,	)	
JAMES E. PREUITT,	)	
QUINTON T. ROSS JR.,	)	
HARRI ANNE H. SMITH,	)	
JARRELL W. WALKER JR., and	)	
JOSEPH R. CROSBY	)	
	)	
Defendants.	)	

UNITED STATES' OPPOSITION TO DEFENDANTS GILLEY, COKER, MEANS, PREUITT, ROSS, AND WALKER'S MOTIONS TO CONTINUE TRIAL

The United States of America, through undersigned counsel, hereby opposes defendants Gilley, Coker, Preuitt, Ross, Means, and Walker's motions to continue the trial.

In accordance with the requirements of this Court and relevant law (e.g., the Court's Standing Order on Criminal Discovery, dated February 4, 1999; Brady v. Maryland, 373 U.S. 83 (1963), and United States v. Giglio, 405 U.S. 150 (1972)) the United States provided the Defendants with the near-totality of the discovery to which they were entitled by October 22, 2010, more than five months before the current trial date. Since that date, the United States has continuously helped the defendants to review the discovery.

On January 7, 2011, the United States supplied each defendant with a spreadsheet outlining the documents included in the discovery which the government believed it would rely upon at trial in its case in chief. The United States did this in response to this Court's order dated December 14, 2010. The United States believes the Court entered this order for the express purpose of enhancing the ability of the Defendants to prepare for trial. While the United States reserved the right to supplement the list as the trial date approached, and has done so with additional disclosures, this has amounted to only a small amount of material. Indeed, four of the Defendants have announced they are ready for trial on April 4, 2011.

This case is primarily a tape case based on intercepted telephone calls and consensually monitored conversations. The defendants have had all of the relevant recordings for approximately four months. The disclosures by the United States and the fact four of the Defendants have announced they will be ready for trial, all clearly indicate that the remaining Defendants should likewise be ready to proceed to trial in two months.

Despite the above, some of the defendants ask for a continuance claiming that a miscarriage of justice will result absent additional time to prepare for trial. The matters complained of in the motions for continuance–voluminous discovery, piecemeal discovery production, and technological problems with discovery provided in electronic form–ring hollow in light of the above. The Defendants fail to identify a single well-founded reason why the Court's current trial date should not stand.[1] Their motions should therefore be denied.

---

[1] See United States v. Warshak, — F.3d —, 2010 WL 5071766, at *20-24 (6th Cir. 2010), a case factually very similar to this case, in which the defendants made claims strikingly like those at issue in the instant motions, but which involved 17,000,000 pages of discovery and 360,000 trial exhibits. The Sixth Circuit held that a defendant must show actual prejudice that a continuance would have made relevant witnesses available or added something to the defense. In

I. PROCEDURAL BACKGROUND

On October 1, 2010, a grand jury sitting in the Middle District of Alabama indicted the defendants for numerous bribery offenses, and the Indictment was unsealed on October 4, 2010. (Dkt. Nos. 3, 17.) Also on October 4, 2010, the defendants had their initial appearances before the Court, which subsequently released them on bond. (Dkt. No. 33.) The defendants were arraigned on October 15, 2010, (Dkt. Nos. 120-30), and the Court held a scheduling conference following arraignment, (Dkt. No. 119). On October 18, 2010, the Court filed a scheduling order requiring that the United States finish producing its discovery to the defense by October 22, 2010, and scheduling trial to commence on April 4, 2011. (Dkt. No. 132.) On December 14, 2010, the Court ordered the United States to produce a list identifying which evidence applied to which defendant. (Dkt. No. 288) On January 7, 2011, the United States complied with the Court's order dated December 14, 2010.

II. ARGUMENT

Among the factors considered by the Eleventh Circuit when assessing motions to continue trial are (1) time available for trial preparation, (2) likelihood of prejudice from the

---

denying relief the Court noted that the United States provided something of a guide to the defendants, the defendants had more lawyers working on the case than the United States, and that the content of other motions indicated the defendants were experiencing little difficulty accessing the electronic discovery. Here, (1) the United States has also provided a guide per the Court's order; (2) there are decidedly more lawyers representing defendants than there are lawyers prosecuting defendants; (3) motions reflect the defendants' familiarity with the evidence; and (4) four of the ten defendants have announced that they are ready for trial, which evidences a true lack of difficulty in being prepared for trial on April 4, 2011.

denial of the continuance, (3) defendants' roles in shortening the effective trial preparation time, (4) complexity of the case, and (5) the availability of discovery from the prosecution. United States v. Garmany, 762 F.2d 929, 936 (11th Cir. 1985) (citation omitted) (cited with approval by United States v. Edouard, 485 F.3d 1324, 1350 (11th Cir. 2007)). None of these factors support granting a continuance here nor amending the Court's scheduling order to provide the defendants with additional time to prepare for trial.

A. The Defendants Have Ample Time To Prepare For Trial.

As an initial matter, the defendants received the overwhelming majority of discovery from the United States on or by October 22, 2010, the discovery deadline set by the Court for the United States. There was no "rolling," "piecemeal," or "continued" production, as the defendants claim. By October 22, 2010, the United States had provided the defendants with nearly all of the discovery to which they were entitled. In particular, by that date the defendants had received the discovery central to the Indictment, including all consensual and wiretap recordings (excluding those deemed non-pertinent or tentatively privileged pending the Court's decision as to their production), as well as financial documents.

To be sure, the United States has supplemented that discovery, but such discovery pales in volume and significance relative to the previous disclosures.[2] The "supplemental" discovery was, in fact, almost entirely redundant. In nearly every instance, it merely comprised previously disclosed material in new formats following defense complaints regarding the alleged inaccessibility of the original discovery. For example, on several occasions the United States

[2] A large portion of supplemental discovery provided by the United States after October 22, 2010 is in the form of VoiceBox reports, which are relevant for preparing pretrial motions but not for trial preparation.

provided the defense with hard-copy printouts of material previously provided to the defense in a readily accessible electronic form (i.e., computer disks). The United States provided the hard-copy printouts to help facilitate defendants' ability to review discovery following complaints regarding the accessibility of a small number of electronic copies of the material. The fact that four of the Defendants have announced they are ready for trial clearly reflects these efforts and the ability of the remaining defendants to be ready for trial in two months.

A continuance is wholly unnecessary under these circumstances. The defense has not been prejudiced: The defendants have had four months to review the discovery produced by the United States, and they still have approximately two additional months to continue to review the discovery. This is surely sufficient time in which to prepare for trial, even in an arguably complex case. Furthermore, as explained below, mindful of its discovery obligations, the United States has gone to great lengths to facilitate the defendants' trial preparation, and continues to do so.

B. The United States Has Taken Extraordinary Steps To Ensure That The Defendants Have Time To Adequately Prepare For Trial.

The United States has taken extraordinary measures to ensure (1) that discovery is complete and (2) to facilitate the defendants' ability to review the discovery.

First, in determining whether material is discoverable and ought to be produced, the United States has erred on the side of disclosure. Mindful of the complaints from the Defendants of voluminous discovery, and this Court's order, the United States substantially narrowed the field of view for the defendants with it January 7, 2011, disclosure discussed above.

Second, the United States has set up a standalone computer at the offices of the Federal

Bureau of Investigation ("FBI") in Montgomery, Alabama; uploaded the electronic discovery produced by the United States onto the computer, and has made the computer available to the defense by appointment. The United States took these actions in response to defendants' complaints that they could not access data on certain computer-disk copies produced in discovery, despite the fact that the United States was able to access nearly all of the allegedly problematic data from the master disks as well as its own working copies.

Third, consistent with its efforts to facilitate discovery through the standalone computer, the United States has patiently endeavored to guide the defendants through their technological grievances, even when it has been clear that electronic discovery provided to the defendants was readily accessible.

The Defendants claim that failure to grant a continuance would result in a miscarriage of justice is not supported by the record. Ample time remains for the defendants to prepare for trial. Their motions should be denied.

C. The Defendants Should Be Tried Together.

Only six of the ten defendants charged in the Indictment seek a continuance. Yet all of the defendants are charged with participating in a single conspiracy, which will be proven with a single set of recorded conversations, documents, and witness testimony. The defendants should be tried together, in a single trial that will ensure effective use of judicial resources. A continuance as to a limited number of defendants would necessitate an unwarranted severance, and should, therefore, be denied.

A severance should not be granted based on unsupported statements regarding alleged

trial-preparation concerns.[3] "It is well settled that defendants who are indicted together are usually tried together," and this is "particularly true in conspiracy cases," such as this case. United States v. Browne, 505 F.3d 1229, 1268 (11th Cir. 2007). Indeed, severing the trials of the non-moving defendants purely on the basis of a continuance ignores binding precedent. See Zafiro v. United States, 506 U.S. 534, 539 (1993) (Ruling that "[t]here are only two circumstances in which severance is the only permissible remedy": where there is a serious risk that a joint trial "would compromise a specific trial right of one of the defendants," or "prevent the jury from making a reliable judgment about guilt or innocence.") (cited with approval by Browne, 505 F.3d 1269). In this case, severance of defendants McGregor, Smith, Geddie, and Crosby, who have not joined in the motion for a continuance, would waste judicial resources by forcing the Court to adjudicate two highly similar, overlapping, and lengthy trials. Such duplicative efforts are unwarranted here, and should be avoided entirely by denying the defendants' motions.

III. CONCLUSION

For the foregoing reasons, the Court should deny defendants Gilley, Coker, Preuitt, Ross, Means, and Walker's motions to continue trial and amend the Court's scheduling order.

[3] The United States will be filing separately its response to various defendants' motions to sever. The response of the United States to defendants' motions to sever is due to be filed with the Court on February 16, 2011.

Respectfully submitted,

LANNY A. BREUER
Assistant Attorney General, Criminal Division
Attorney for the United States
Acting Under Authority of 28 U.S.C. § 515

JACK SMITH, Chief
Public Integrity Section

By: /s/ Stephen P. Feaga
STEPHEN P. FEAGA
Assistant United States Attorney
131 Clayton Street
Montgomery, Alabama 36104
334-324-5043

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served on counsel of record through the Court's electronic filing system this 9th day of February, 2011.

/s/ Stephen P. Feaga
STEPHEN P. FEAGA