

**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
)	
LARRY P. MEANS,)	
)	
Defendants.)	

**MOTION TO SEVER OF DEFENDANT LARRY P. MEANS
AND BRIEF IN SUPPORT THEREOF**

Comes now the Defendant, Larry P. Means, in the above styled cause, and moves the Court to sever the charges against him, from the charges of the other Defendants, and that he be tried separately on the charges against him on the following grounds, separately and severally under Rule 8(b) and Rule 14 of the Federal Rules of Criminal Procedure:

1. There are eleven Defendants named in this indictment. In Count 1, the conspiracy count, there are one hundred fifty-one overt acts alleged. Only nine of those alleged acts involve this Defendant. There are thirty-nine counts charged in the indictment. Defendant is charged in Counts 1, 6, 7, 19, 20 and 23 through 33. Count 1 is a conspiracy charge; Counts 6 and 7, federal program fraud; 19 and 20, extortion; and 23-33 honest services fraud. If this Defendant is tried with the other Defendants it will be highly prejudicial to him in that evidence of other alleged misconduct and alleged criminal acts unrelated to him are expected to be presented, and despite instructions from the Court it will be difficult for a jury to keep straight and to recall which alleged conduct applied to which

defendant.

2. Because of the extensive allegations against certain of the other Defendants, this trial has been projected to last six weeks or more. The trial of this Defendant individually could likely be completed in a week and not more than two weeks. To force a defendant to commit the time and resources including loss of wages, and the expenses and fees of a long trial is unnecessary and unreasonable under these circumstances and denies the Defendant the right to due process and a fair trial in violation of the Fifth and Sixth Amendments to the Constitution of the United States of America. The Government's justification for joining the Defendants in a single indictment and trial is for the alleged purpose of judicial economy. However, the Government knows that the right of a defendant to due process and a fair trial should not be sacrificed for the purposes of economy. Defendant's liberty is at stake.

3. The indictment alleges separate conspiracies involving other defendants which do not involve this Defendant and separate and distinct alleged criminal acts of other defendants. If this Defendant is forced to be tried at the same time as the other Defendants on these charges, separate conspiracies, and other charges which are unrelated to this Defendant, despite the Court's instructions, the Defendant will be severely prejudiced by the introduction of evidence unrelated to him placing a tremendous burden on the jury to attempt to recall and segregate what was alleged and proven as to each Defendant.

4. Rule 14 of the Federal Rules of Criminal Procedure provides that if a joinder of

defendants in an indictment for trial “appears to prejudice a defendant or the government, the court may order separate trials of counts, sever the defendants’ trials, or provide any other relief that justice requires.” The denial of a motion to sever is within the discretion of the trial judge and will not be reversed “absent a clear abuse of discretion resulting in compelling prejudice against which the district court could offer no protection.” United States v. Bennett, 368 F.3d 1343, 1351 (11th Cir. 2004); See also Barton v. United States, 263 F.2d 894 (5th Cir. 1959) (reversal of district court’s denial of motion for severance); Schaffer v. United States, 221 F.2d 17 (5th Cir. 1955) (reversal of district court’s denial of motion for severance). “A district court should grant a severance under Rule 14 only if 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.*” Zafiro v. United States, 506 U.S. 534, 539 (1993) (emphasis added). Defendant Means submits that this is just such a case. A joint trial here would result in “compelling prejudice” to this Defendant, i.e., the jury will be unable to fairly and “separately appraise the evidence as to each Defendant and enter a fair and independent verdict.” United States v. Liss, 265 F.3d 1220, 1228 (11th Cir. 2001).

Dated this 4th day of February, 2011.

s/ William N. Clark
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon the following and all counsel of record electronically on this the 4th day of February, 2011.

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