

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

UNITED STATES OF AMERICA)	
)	
)	
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)	

**UNITED STATES’ OMNIBUS RESPONSE TO DEFENDANTS’ MOTIONS FOR
ADDITIONAL PEREMPTORY STRIKES**

The United States of America, through undersigned counsel, provides the following response to defendants’ motions for additional peremptory strikes. The government does not object to this District’s standard practice to grant additional peremptory challenges in multi-defendant cases. However, the government submits that the defendants’ motions are premature in that the number of additional peremptory challenges cannot be set until a definite number of defendants answer “ready” for trial.¹ The government requests that the defense motions be held in abeyance until a week prior to trial when we know for certain the number of defendants going to trial. Only then can a fair and proportional number of additional peremptory challenges be

¹Currently, ten defendants are scheduled to stand trial on June 6, 2011. That number may be reduced due to the possibility of plea agreements reached between the government and defendants prior to trial.

determined.

ARGUMENT

Federal Rule of Criminal Procedure 24 provides the United States with six peremptory challenges and the defendants, jointly, have ten peremptory challenges for felony offenses. Fed. R. Crim. P. 24(b)(2). Rule 24(b) states that “[t]he court may allow additional peremptory challenges to multiple defendants.” In multi-defendant cases in this District, this Court customarily grants the defendants, as a group, additional peremptory challenges and then permits the defendants to decide how to use their total number of peremptory challenges, either jointly or separately. *See, United States v. Amer*, 824 F.2d 906, 907 (11th Cir.1987)(*per curiam*)(holding that a defendant does not have an entitlement to “ten peremptory challenges of his own” in a multi-defendant case), *cert. denied*, 484 U.S. 1068 (1988). Pursuant to its standard practice, this Court will also grant the United States additional peremptory challenges if it awards additional challenges to the defendants. *See* Fed. R.Crim.P.24, Advisory Committee Notes, 2002 Amendments (noting that if the trial court awards additional peremptory challenges to the defendants, then “the prosecution may request additional challenges . . . not to exceed the total number available to the defendants jointly”).

The government objects to the number of additional peremptory challenges that the defendants propose.² The government recommends that the defendants be afforded a more proportional amount of additional peremptory challenges similar to those given in other “high-

²Each defendant ends their motion with a cite to *United States v. Campa*, 459 F.3d 1121, 1135 (11th Cir. 2006), (*en banc*), *cert. denied*, 129 S.Ct.2790 (2009). In *Campa*, the district court allowed the defendants a total of eighteen and the government eleven peremptory challenges, with two challenges for the defendants and two challenges for the government as to alternates. The defendants in *Campa* did not use all of their peremptory challenges.

profile” cases in this District. See, the March 6, 2006 Order (Doc. 191) in *United States v. Don Eugene Siegelman and Richard Scrushy*, Cr. No. 2:05cr119-MEF. In *Siegelman*, the Court permitted two additional peremptory challenges for each side, resulting in a total of twelve peremptory challenges for the defendants and eight for the government. The *Siegelman* case is more akin to the facts and circumstances in the present case, in that *Siegelman* was a high-profile matter involving prominent public figures, intense media coverage, and it involved corruption within the Alabama State government that affected citizens across Alabama. *Siegelman* had four defendants go to trial. See *United States v. Siegelman*, 561 F.3d 1215 (11th Cir. 2009), *cert. granted*, (in consideration of *U.S. v. Skilling*) 130 S.Ct. 2896 (2010). The two additional challenges proved sufficient to select a fair and impartial jury for four defendants in *Siegelman*. In the present case, it is unclear how many defendants will require a trial.³

CONCLUSION

Understandably, this case has drawn media attention, but the government disagrees with defendant Geddie’s characterization as “enormous publicity.” Geddie Mot. at 2. This Court has already taken extra steps to ensure the defendants will have an ample selection of qualified jurors by (1) obtaining extensive juror questionnaires from the parties, and (2) ordering the parties to submit proposed *voir dire* questions by March 21, 2011. See, Scheduling Order (January 4, 2011). Moreover, it is totally within this Court’s discretion to allow additional peremptory strikes.

³*Campa* involved five defendants accused of spying for the Republic of Cuba. The case received media coverage and it was tried in Miami where there are few Castro sympathizers. Ultimately, the defendants were found to have chosen a fair and impartial jury and the decision touts the trial court’s *voir dire* as a model for high profile cases.

Should this Court grant the defendants' requests, the government maintains that the number of allotted challenges should be proportioned to the actual number of defendants that will participate in the jury selection. To assign a number of additional strikes, if any at this time, would be an arbitrary task. Until the number of trial defendants is certain, the government requests the Court to hold its decision in abeyance so that a set number of additional challenges can be determined based on fact not speculation.

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

/s/ Brenda K. Morris
BRENDA K. MORRIS
Senior Litigation Counsel
Public Integrity Section
U.S. Department of Justice
1400 New York Ave., NW, 12th Floor
Washington, DC 20005
(202) 514-1412

CERTIFICATE OF SERVICE

I hereby certify that on February 16, 2011, I electronically filed the foregoing with the Clerk of the court using the CM./ECF system, which will send notification of such filing to all attorneys of record.

/s/ Brenda K. Morris
BRENDA K. MORRIS
Senior Litigation Counsel
Public Integrity Section
U.S. Department of Justice
1400 New York Ave., NW, Suite 12100
Washington, DC 20005
(202) 514-1412