

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

UNITED STATES OF AMERICA            )  
  )  
  v.        )  
  )  
THOMAS E. COKER                        )  
  )

CR. NO. 2:10cr186-MHT

UNITED STATES' RESPONSE TO DEFENDANT COKER'S  
MOTION TO COMPEL ACCESS TO WIRETAP BINDERS

Comes now the United States of America, through undersigned counsel, and hereby responds to defendant Coker's Motion to Compel Access to Wiretap Binders. The government does not oppose defendant Coker's request, subject to certain safeguards, as discussed below.

During the wiretap phase of the government's investigation, the United States submitted to Judge Hobbs, the authorizing and monitoring judge, multiple periodic reports regarding the wiretap interceptions. In connection with these periodic reports, the United States provided for Judge Hobbs's review binders containing computer-generated "detailed linesheets" for interceptions marked "pertinent" in the VoiceBox monitoring system. The detailed linesheets contained, among other interception data, synopses (i.e., summaries) of the content of the interceptions. Subsequently, in an abundance of caution, various interceptions designated as "pertinent" at the time they were provided in the binders to Judge Hobbs were reclassified as "privileged" in the VoiceBox system based in large part on the identity of the party to the call. Nevertheless, the original binders submitted to Judge Hobbs, which were retained by the government following his review, still contain the detailed linesheets for these now-reclassified calls. The government has not reviewed the binders following submission to Judge Hobbs, and they are segregated from case-related materials.

Defendants McGregor and Gilley, along with former co-defendant Massey, previously have asserted in their respective privilege logs that the content of some of these reclassified calls is protected by certain evidentiary privileges. Dkt Nos. 218 (McGregor log), 221 (Gilley log), 232 (McGregor supplemental log), 234 (Massey log). As a result, in recognition of these privilege assertions, the government has made the binders available for review only by defendant McGregor, defendant Gilley, and Massey. Each party has been permitted access to the binders for his respective telephone line(s).

The United States does not object to providing all defendants access to all binders.<sup>1</sup> However, to protect potentially privileged content the detailed linesheets for interceptions identified in defendant McGregor's, defendant Gilley's, and Massey's privilege logs should be removed from any copies of the binders provided to the other defendants. If the Court concludes that all defendants are entitled to access the binders—except as to the linesheets containing potentially privileged content—the United States recommends two solutions. First, in light of defendant McGregor and defendant Gilley's prior opposition to the use of a government filter agent, the Court could appoint a special master to remove from the original binders (and seal) linesheets pertaining to interceptions for which defendant McGregor, defendant Gilley, or Massey have asserted a privilege in their respective privilege logs. Alternatively, the Court could order counsel for defendant McGregor, defendant Gilley, and Massey to copy the original binders, remove the linesheets of interceptions for which they previously have asserted a privilege, and make the redacted binder copies available to the other defendants. Indeed, counsel for defendant McGregor and defendant Gilley have already

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<sup>1</sup> There are a total of nine binders: three binders for defendant McGregor's first telephone line, three binders for Massey's telephone line, two binders for defendant Gilley's line, and one binder for defendant McGregor's second line.

made duplicates of the original binders corresponding to their respective telephone lines. To maximize efficiency and afford proper respect for defendant McGregor's, defendant Gilley's, and Massey's privilege assertions, the United States believes the second option would be the most prudent course of action.

Respectfully submitted,

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Acting Under Authority of 28 U.S.C. § 515

JACK SMITH, Chief  
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CERTIFICATE OF SERVICE

I hereby certify that on December 30, 2010, 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.

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