

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. SACR 05-00293(B)-CJC

Date: July 14, 2008

Title: UNITED STATES OF AMERICA v. CHI MAK et al.

PRESENT:

HONORABLE CORMAC J. CARNEY, UNITED STATES DISTRICT JUDGE

Nancy Boehme
Deputy Clerk

N/A
Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFF: ATTORNEYS PRESENT FOR DEFENDANT:

None Present

None Present

PROCEEDINGS: (IN CHAMBERS) ORDER DENYING GOVERNMENT'S EX PARTE APPLICATION FOR ORDER CONTINUING HEARING [filed 7/10/08]

The Government's motion to continue the hearing date and briefing schedule is DENIED. The Government seeks a continuance of the hearing and briefing schedule based on internal deliberations within the Department of Justice regarding its decision to participate in the proceedings to determine the source of the leaks of grand jury information. The Court finds that there is no good cause for a further continuance. The subpoena for Mr. Gertz was issued by the Court, not the Government, and the Court has an obligation independent of the Government to complete its investigation of the Rule 6(e) violation that took place in connection with this case. Accordingly, the hearing on the motion to quash will take place on July 24, 2008, as scheduled. The Court hopes that the Government will be able to participate and welcomes the Government to submit its opposition brief, if any, prior to that date. If the Government is unable to participate, however, the hearing will nonetheless go forward.

In connection with its *ex parte* application for a continuance, the Government submitted the declaration of Jay Bratt, who was appointed as a Special Attorney to the Attorney General to investigate the possible leaks of grand jury information in certain publications written by Mr. Gertz. Mr. Gertz objects to the fact that Mr. Bratt's declaration was submitted *in camera* and *ex parte*. Mr. Gertz argues that the motion to

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Page 2

continue provides no facts justifying the filing of the declaration under seal, and that Local Civil Rule 79-5.1 provides very limited circumstances under which a document may be filed under seal, none of which are met in this instance. Specifically, the Local Rule states that “[e]xcept when authorized by statute or federal rule, or the Judicial Conference of the United States, no case or document shall be filed under seal without prior approval by the Court.” L.R. 79-5.1. Mr. Gertz’s objections are well-taken. The Government has not provided any statute, federal rule or other good legal cause for filing Mr. Bratt’s declaration under seal. Moreover, Mr. Bratt’s declaration does not reveal any classified information or matter occurring before the grand jury. Accordingly, the Court intends to unseal the declaration and make it publicly available by the end of the day on Wednesday, July 16, 2008, unless the Government can show good legal cause for maintaining the declaration under seal before that time.

Finally, the Court gathers from Mr. Gertz’s brief in support of his motion to quash that he may be unwilling to disclose the identity of the source(s) that provided him with the Rule 6(e) information that is the subject of this investigation. Mr. Gertz relies on his First Amendment interests and the need to protect the confidentiality of his sources. Regardless of whether Mr. Gertz discloses his sources, the Court expects that Mr. Gertz will be prepared to testify regarding the newsworthiness of this case and, more particularly, the reasons why maintaining the confidentiality of his sources is critical to his ability to engage in investigative reporting. If the Court is to properly evaluate Mr. Gertz’s First Amendment arguments, Mr. Gertz must particularize them to this case.

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