
IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

JESSE TRENTADUE,

Plaintiff,

v.

UNITED STATES CENTRAL
INTELLIGENCE AGENCY, et al.

Defendants.

**ORDER GRANTING MOTION TO
VACATE EVIDENTIARY HEARING**

Case No. 2:08-cv-0788

Judge Clark Waddoups

Following oral argument on August 25, 2014 on Plaintiff's Motion to Strike August 25, 2014 Hearing (Dkt. No. 191) and Defendant's Motion to Strike Dkt. Nos. 200 & 201 (Dkt. No. 203), the court entered a Memorandum Decision and Order Setting Evidentiary Hearing on Witness Tampering Allegations (Dkt. No. 213) on August 26, 2014, granting Plaintiff's motion and denying Defendant's motions.

In that Order, the court specifically required Defendant to "conduct an investigation of any communications between the FBI and Mr. Matthews, or others acting at the behest of the FBI, including ascertaining what documents have been created relating to such communication and make a report to the court sufficiently in advance of the hearing so that Plaintiff can prepare subpoenas, if necessary, and prepare document requests." (Order dated Aug. 26, 2014, 5 [Dkt. No. 213].) The court also set the evidentiary hearing for Thursday, November 13, 2014 in order to give Defendant ample time to conduct this investigation and prepare the required report. (*Id.*)

On November 6, 2014, one week before the scheduled evidentiary hearing, Plaintiff moved the court to vacate the evidentiary hearing on the grounds that despite numerous attempts to communicate with Defendant and prompt the production of the report, Defendant had not yet provided the required report. (Pl.'s Mot. Vacate Ev. Hrg. 2-3 [Dkt. No. 229].) Plaintiff contends that the time is now too short to analyze whatever report Defendant provides and prepare subpoenas and/or document requests, "especially if I am required to do a Touhy Declaration." (*Id.* at 3 & Ex.2 email dated 10/28/2014.)

The court finds Defendant's response to Plaintiff wholly inadequate in light of these concerns: "We anticipate having the report done this coming Monday [November 3, 2014]. I do not believe the Court's order contemplated formal document requests under Rule 34, so I think your stated concerns about timing are premature." (*Id.* at Ex. 2, email dated 10/28/2014.) The report was not filed on Monday, November 3, 2014. Moreover, especially in light of the federal Veteran's Day holiday on Tuesday, November 11, it would be unreasonable to argue that any report now tendered would adequately allow Plaintiff to act accordingly in issuing subpoenas, requesting documents, and preparing for the evidentiary hearing.

The court is perplexed as to Defendant's failure to comply with the order to conduct this investigation and provide the required report. Accordingly, for good cause shown, the court GRANTS Plaintiff's Motion to Vacate Evidentiary Hearing (Dkt. No. 229). The evidentiary hearing will be postponed; however, the hearing itself will go forward on Thursday, November 13, 2014 at 10:00 a.m., at which time Defendant will have occasion to argue to the court why it should not be found in contempt for failure to comply with the court's Order to conduct this investigation and provide the required report. The court also requests the parties to be prepared to discuss why the court should not appoint a special master to oversee the Defendant's compliance

with court orders, particularly relating to the allegations of witness tampering, and with Plaintiff's FOIA request. The parties should come prepared to brief the court on the use and implications of appointing a special master under these circumstances.

SO ORDERED this 6th day of November, 2014.

BY THE COURT:



Clark Waddoups
United States District Judge