

IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION

UNITED STATES OF AMERICA

V.

CRIMINAL NO. 3:21CR62DPJ-LGI

MIKE AUSTIN ANDERSON

REPLY TO GOVERNMENT'S SUPPLEMENTAL
RESPONSE TO MOTION TO ORDER RECUSAL OF
THE OFFICE OF THE UNITED STATES ATTORNEY
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
FROM THE PROSECUTION OF THIS CASE

COMES NOW Defendant Mike Austin Anderson and files this reply to the government's supplemental response to defendant's motion to move for an Order requiring recusal of the Office of the United States Attorney for the Southern District of Mississippi from the prosecution of this case. Mr. Anderson presents the following:

Argument

On June 24, 2021, at the arraignment of Mr. Anderson, this Court directed both the government and the defense to produce supporting *documentation* for the argument of recusal within 24 hours. At that moment, the defense informed the Court that it had no such documents. Mr. Anderson still does **not** possess any documentation. Even though documents were requested twice on Mr. Anderson's behalf¹, nothing of substance—including the documentation that the Government has received and cited in its Response and Supplemental Response—was provided

¹ See Attachment 1

to Mr. Anderson's counsel. Most importantly, the documentation that AUSA Payne possesses and mentions in the Supplemental Response shows the collaboration on a motion that Mr. Anderson described in his testimony, further corroborating his understanding of Mr. Payne's representation of him.

Since the filing of the Mr. Anderson's Motion to Order Recusal, AUSA Payne has been able to present more and more evidence that he has represented Mr. Anderson in some form in the past. Initially, the government claimed there was no previous representation. That later changed to "limited representation" during an arraignment. After that, we learned that AUSA Payne represented Mr. Anderson's father. We now have proof of a collaborative representation of Mr. Anderson. This illustrates that AUSA Payne is privy to confidential information and evidence that the defense is not and is using it against Mr. Anderson. This is exactly what the Mississippi Rules of Professional Conduct contemplates as a conflict of interest.

This entire ordeal has demonstrated that the past instances of AUSA Payne's representation of Mr. Anderson are "substantially related" to the current matter. AUSA Payne himself even questioned whether there was a conflict in prosecuting Mr. Anderson in 2013, and upon his own authority with a previous co-worker, deemed there was none. Both the past criminal matters and the current charge happened on the Mississippi Band of Choctaw Indians reservation lands. This potentially means the overlapping of witnesses and alleged victims. Moreover, AUSA Payne's contacts and previous information gathered about Mr. Anderson present a serious conflict of interest as this information could be used against him at trial and/or sentencing. The Government has previously shown no hesitation with gathering and using such information for pretrial hearings. On the contrary, the defense does not have the history, personal relationships, and connections to ascertain the information as AUSA Payne does. This is

confirmed by the lack of documentation presented by the defense and the multitude of changing information presented by the government.

Since these matters are indeed substantially related, AUSA Payne and the Office of the United States Attorney for the Southern District of Mississippi should be recused. “Once it is established that the prior matters are substantially related to the present case, ‘the court will irrebuttably presume that relevant confidential information was disclosed during the former period of representation.’” *In re Am. Airlines, Inc.*, 972 F.2d 605, 614 (5th Cir. 1992) (quoting *Duncan v. Merrill Lynch, Pierce, Fenner & Smith*, 646 F.2d 1020, 1028 (5th Cir.); *In re Corrugated Container Antitrust Litigation*, 659 F.2d 1341,1347(5th Cir. 1981)). The Mississippi Supreme Court “consistently has held that the subsequent prosecution by an attorney who has previously gained confidential information from the accused relative to the charges against him is inherently incompatible with the right of a criminal defendant to receive a fair trial.” *Ousley v. State*, 984 So.2d 985, 988 (Miss. 2008); *Eldridge v. State*, 51 F.3d 953, 956 (Miss. 2011). Therefore, for Mr. Anderson to receive a fair trial, it is required that AUSA Payne and the Office of the United States Attorney for the Southern District of Mississippi recuse themselves from prosecution of the charges.

Conclusion.

WHEREFORE, Defendant Mike Austin Anderson respectfully prays for this Court to render an Order requiring recusal of the Office of the United States Attorney for the Southern District of Mississippi from the prosecution of this case.

Respectfully submitted this 10th day of August, 2021.

MIKE AUSTIN ANDERSON, Defendant

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CERTIFICATE OF SERVICE

I, Jacinta A. Hall, do hereby certify that on the 10th day of August, 2021, I electronically filed the foregoing with the Clerk of the Court using the ECF system which sent notification of such filing to all parties of record.

s/ Jacinta A. Hall
Assistant Federal Public Defender