

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

UNITED STATES OF AMERICA,)	CRIMINAL ACTION NO.
)	
Plaintiff,)	3:00-CR-3009-G
)	
v.)	
)	
XXXX XXXX XXXX,)	
)	
Defendant.)	
_____)	

EX PARTE APPLICATION FOR ISSUANCE OF SUBPOENA DUCES TECUM

Defendant XXXX XXXX XXXX applies to this Court ex parte,¹ in accordance with Fed. R. Crim. P. 17(b) and (c) and 28 U.S.C./1825, and respectfully requests this Court to order

¹ The express language of Rule 17(b) of the Federal Rules of Criminal Procedure states that requests for issuance of subpoena shall be filed ex parte. *See also United States v. Brown*, 535 F.2d 424, 428-29 (8th Cir. 1976) (Rule 17(b) violated by local rule requiring defendant to send copies of subpoena applications to government); *United States v. Meriwether*, 486 F.2d 498, 505-06 (5th Cir. 1973), *cert. denied*, 411 U.S. 948

the issuance of a subpoena for documentary evidence and payment of expenses related thereto requiring:

Jeffrey Green
c/o Drug Enforcement Administration
1880 Regal Row
Dallas, Texas 75235

to produce all notes, reports and memorandum regarding conversations with any persons, including, but not limited to, Wendy XXXX which relate or pertain to allegations that XXXX XXXX obstructed justice in connection with the above referenced case or that she did not accept responsibility for her actions in the above referenced case.

I.

XXXX XXXX XXXX entered a guilty plea to the charge of conspiring to possess cocaine base with the intent to distribute it, in violation of 21 U.S.C./841.

II.

At the time the guilty plea was entered, an exhibit was admitted into evidence in which the government represented that it would not oppose XXXX XXXX being given a three point reduction in her offense level under the United States Sentencing Guidelines for acceptance of responsibility. Based upon conversations undersigned counsel has had with USPO Sandy Opeka and AUSA Aaron Wiley, it appears that, at the time XXXX XXXX entered her plea, the government had in its possession information that was arguably contrary to the representations it made to defense counsel and the Court. If misrepresentations were, in fact, made that induced XXXX XXXX guilty plea, Ms. XXXX would be entitled to specific performance of the government's representations or would be permitted to withdraw her guilty plea.

The testimony of Mr. Green as well as his notes and memorandum will allow the Court to determine if the government made misrepresentations in order to induce XXXX XXXX plea in this matter. Significantly, the Court issued an order on January 22, 2001 granting XXXX XXXX leave to call Mr. Green as a witness at the sentencing in this matter.

III.

XXXX XXXX XXXX financial condition is the same as it was when she was found eligible for court-appointed counsel.

WHEREFORE, Ms. XXXX requests that this Court order:

Jeffrey Green
c/o Drug Enforcement Administration
1880 Regal Row
Dallas, Texas 75235

to appear and to produce the documentary evidence set forth above on January 30, 2001 at 1:45 p.m. and continuing every day thereafter until his testimony is complete. XXXX XXXX XXXX further requests that this Court grant this motion for the issuance of the subpoena duces tecum and payment of the witnesses' expenses in the same manner as a subpoena duces tecum issued by the United States of America.

Respectfully submitted,

F. Clinton Broden
Tx. Bar 24001495
Broden & Mickelsen
2715 Guillot
Dallas, Texas 75204
214-720-9552
214-720-9594 (facsimile)

Attorney for Defendant
XXXX XXXX XXXX

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

UNITED STATES OF AMERICA,)	CRIMINAL ACTION NO.
)	
Plaintiff,)	3:00-CR-309-G
)	
v.)	
)	
XXXX XXXX XXXX,)	
)	
Defendant.)	
_____)	

EX PARTE ORDER [NOT TO BE SERVED ON PLAINTIFF]

Defendant's Application for Issuance of Subpoena Duces Tecum, pursuant to Fed. R. Crim. P. 17(b) and (c) and 28 U.S.C./1825, requiring the attendance of witnesses at trial, is this ____ day of January, 2001 GRANTED. The Court has considered the application and determined:

- (1) that XXXX XXXX XXXX has made a satisfactory showing that he is financially unable to pay the fees associated with the subpoena duces tecum; and
- (2) that the documents are necessary to an adequate defense of this case.

Therefore, it is hereby ORDERED:

That a subpoena for:

Jeffrey Green
c/o Drug Enforcement Administration
1880 Regal Row
Dallas, Texas 75235

to produce all notes, reports and memorandum regarding conversations with any persons, including, but not limited to, Wendy XXXX which relate or pertain to allegations that XXXX

XXXX obstructed justice in connection with the above referenced case or that she did not accept responsibility for her actions in the above referenced case.

FURTHER ORDERED the subpoena duces tecum shall direct the witness to appear and to produce the documentary evidence on January 30, 2001 at 1:45 p.m. and continuing every day thereafter until his testimony is complete.

FURTHER ORDERED the costs incurred in connection with the subpoenas duces tecum shall be paid in the same manner in which similar costs and fees are paid in the case of a subpoena duces tecum issued by the United States of America.

FURTHER ORDERED the subpoena duces tecum shall be served expeditiously and in accordance with the law by the United States Marshall for the Northern District of Texas, or his designee.

A. JOE FISH
UNITED STATES DISTRICT JUDGE