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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

In Re Grand Jury Subpoena  
09-1-1629

2:10-CV-1306 JCM (PAL)

**ORDER**

Presently before the court is Howard Awand’s objection and response to the court’s August 10, 2011, contempt order. (Doc. #18). The government filed a reply. (Doc. #22).

On August 10, 2011, the court held a hearing on the government’s third petition for contempt citation. (Doc. #15). At the hearing, the court held that there was no just or legal cause for Awand’s refusal to testify. (See Doc. #24). Further, even assuming that the court needed to find that further confinement would induce Awand to testify, Awand had not “shown a reasonable probability that he won’t testify” if the court ordered continued confinement. (Doc. #24 at p.28). Thus, continued custody pursuant to the recalcitrant witness statute, 28 U.S.C. § 1826(a), was justified to induce Awand’s testimony. (See Doc. #24).

From the bench, the court found Awand to be in civil contempt and remanded Awand to custody for a total period of 18 months, running from the December 27, 2010, contempt order. (Doc. #15). The court’s August 10, 2011, written order memorializes the court’s holdings from the bench. (Doc. #16).

Awand subsequently filed the instant objection and response to the court’s contempt order. (Doc. #18). The objection states that the court “rubber-stamped” a contempt order prepared by the

1 United States Attorney. (Doc. #18). Awand further argues that the contempt order is “void on its  
2 face” because it lacks two findings: (1) that there is a substantial likelihood that continued  
3 confinement will induce Awand to testify and (2) that the grand jury is engaged in a legitimate  
4 inquiry which might result in criminal charges within the applicable statute of limitations. (Doc.  
5 #18).

6 Pursuant to the recalcitrant witness statute, 28 U.S.C. § 1826(a), the court may summarily  
7 order confinement of a witness if the witness “refuses without just cause . . . to comply with an order  
8 of the court to testify . . . .” The period of confinement under this statute cannot exceed 18 months.  
9 *Id.*

10 **I. Substantial likelihood that continued confinement will induce testimony**

11 Here, the parties do not dispute that there is no just or legal cause for Awand’s refusal to  
12 testify. (*See* Doc. #18). Instead, Awand argues that in addition to the no just cause requirement, the  
13 court is also required to find that there is a substantial likelihood that continued confinement will  
14 induce Awand to testify. (Doc. #18). Awand asserts that this finding is necessary because it avoids  
15 “convert[ing] a civil remedy into a criminal penalty in violation of due process of law.” (Doc. #18).

16 There is no express element within § 1826(a) requiring the court to find that continued  
17 confinement is likely to induce compliance. *See* 28 U.S.C. § 1826(a). Further, Awand has not  
18 identified any controlling case law holding that this is an implied element in § 1826(a). The court  
19 declines to inject additional elements into an otherwise clear statute.

20 To the extent Awand argues that the court’s application of the statute to the facts of this case  
21 is a violation of his due process rights, Awand’s argument fails. Awand has a “heavy burden” to  
22 show a violation of due process. *In re Grand Jury Investigation*, 600 F.2d 420, 428 (3d Cir. 1979).  
23 “[I]n the absence of unusual circumstances, a . . . court should be reluctant to conclude, as a matter  
24 of due process, that a civil contempt sanction has lost its coercive impact at some point prior to the  
25 eighteen-month period prescribed as a maximum by Congress.” *Simkin v. United States*, 715 F.2d  
26 34, 37 (2d Cir. 1983).

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