

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-against-

STEVEN DONZIGER,

Defendant.

19-CR-561 (LAP)

11-CV-691 (LAK)

LORETTA A. PRESKA, Senior United States District Judge:

By letter dated August 21, 2020 (dkt. no. 131), Mr.

Donziger requested that the Court:

- 1) require the Special Prosecutor to disclose any communications with Judge Kaplan regarding Mr. Donziger;
- 2) require the Special Prosecutors to produce documents reflecting or referring to any such communications; and
- 3) disclose whether any of the Special Prosecutors' invoices reflect communications between them and Judge Kaplan or his chambers.

For the reasons set out below, the request is denied.

First, this is a criminal case, not a civil case.

Discovery in criminal cases is governed by Fed. R. Crim. P. 16, Brady v. Maryland, 373 U.S. 83 (1963), and Giglio v. United States, 405 U.S. 150 (1972). There is no provision permitting the disclosure requested by Mr. Donziger, and he cites to none.

Second, the Court has already denied this request (dkt. no. 52, transcript of January 6, 2020 hearing, at 18), and Mr.

Donziger cites no fact or law overlooked by the Court sufficient to merit reconsideration.

Third, on the merits, the Special Prosecutors stated at the January 6 hearing (dkt. no. 52 at 4, 16-17), and re-iterated in their letter in opposition to Mr. Donziger's requests (dkt. no. 141): "the prosecution does not seek Judge Kaplan's input with respect to [their] prosecution decisions or [their] strategy, and Judge Kaplan does not weigh in on [their] prosecution decisions or strategy."

Finally, the request for the details of the Special Prosecutors' invoices is unwarranted, at least before resolution of the case. See United States v. Gonzalez, 150 F.3d 1246, 1262 (10th Cir. 1998) (upholding order for the release of CJA vouchers at the end of trial and rejecting arguments for immediate release). In any event, the Court re-iterates that it is not aware of any "rule of law that entitles a defendant to serve discovery demands on the presiding judge." (Dkt. no. 68 at 12 n.3).

For the reasons set out above, Mr. Donziger's request for certain discovery relating to any communications between the Special Prosecutors and Judge Kaplan (dkt. no. 131) is denied.

SO ORDERED.

Dated: August 28, 2020
New York, New York



LORETTA A. PRESKA, U.S.D.J.