

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

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UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 03-20219-DV
	)	
KOAMI KPOMASSI,	)	
	)	
Defendant.	)	

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ORDER DENYING PLAINTIFF'S MOTION TO QUASH OR MODIFY SUBPOENA  
AS MOOT

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Before the court is the December 17, 2003 motion of the government seeking to quash or modify a subpoena duces tecum served on Detention Officer Adrian McNeal of the Department of Homeland Security ("DHS"). Defendant Koami Kpomassi served a subpoena on McNeal directing him to appear in court on December 18, 2003 and to bring the "'A' file for Koami Kpomassi, A75\_829\_580," which contains information currently in the possession of the DHS. The motion was referred to the United States Magistrate Judge for determination.

In response to the government's motion to quash or modify the subpoena, Kpomassi has offered to withdraw the subpoena without prejudice due to the "unintentional[]" filing of a "[m]otion pursuant to Rule 17(c)" that occurred prior to issuing the subpoena. (Def.'s Resp. to Government's Mot. to Quash and

Withdrawal of Subpoena at 1.) Furthermore, Kpomassi has stated that he intends to "engage in a defense of Necessity at trial due to [his] contention that [he] reasonable [sic] feared he would be killed if he returned to Togo." (*Id.* at 2.) He asserts that he has communicated his intentions to the government and that the government has agreed to review the "A" file and submit a copy of it or portions thereof that support a necessity defense theory. (*Id.*)

In light of the parties' agreement and the defendant's voluntary withdrawal of the subpoena, it appears that the government's motion to quash or modify the subpoena is moot.

Accordingly, the government's motion to quash is denied without prejudice as moot.

It is so ORDERED this 11th day of February, 2004.

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DIANE K. VESCOVO  
UNITED STATES MAGISTRATE JUDGE