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9 **IN THE UNITED STATES DISTRICT COURT**
10 **DISTRICT OF ARIZONA**

11
12 **UNITED STATES OF AMERICA,**
13 Plaintiff,

14 v.

15 **JAMES PARKER, et al.,**
16 Defendants.

No. 10-CR-757-PHX-ROS

**RESPONSE TO THE GOVERNMENT'S
MOTION IN LIMINE**

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18 NOW COMES Defendant James Parker, by and through his counsel of record, and in
19 response to the Government's April 25, 2012 Motion in Limine Regarding Defendant's Advice
20 of Counsel Defense, states as follows.
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I.

RESPONSE TO OVERVIEW

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3 The Government states, “The defense has suggested ... Parker will assert an advice of
4 counsel defense [and] counsel has further hinted that this ... defense would be presented only
5 through the testimony of ... Parker.” (Mot. in Limine of 04/25/12, 1.)

6 Actually, the first time that defense counsel realized that advice-of-counsel was a defense
7 in this particular case, was after reading the Government’s Special Agent’s Report (SAR). The
8 SAR predicted accurately from an assessment of the facts, long before Parker hired any of his
9 current lawyers, that Parker should rely on this defense.

10 Another “suggestion” of this defense, in the Government’s custody? The letters from
11 attorney Greg Robinson, which the Government gave to the defense in discovery. Robinson
12 articulated that he was the source of advice.

13 The use of the words “hint” and “suggested” infer some type of ambiguity. This
14 surprises the defense because there has been no ambiguity at all. The Parkers relied on experts at
15 all times. Many experts. And the Government has always known this. .

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17 The Government has now provided a nearly exhaustive list of the experts in its motion.
18 Yet, they claim to be unaware of these experts, and need the assistance of the Defendant’s
19 attorney-client privileged information and work product, pre-trial, to avoid requiring this Court
20 to stop the proceedings during the trial and do more investigation and find evidence that has not
21 been unearthed since its combined civil and criminal investigations of a decade-and-a-half. The
22 Government’s witness list has *included* experts who have cooperated fully with the Government,
23 including in particular the CPA, Timothy Liggett, who thus far has *refused to cooperate* with the
24 defense, and who is *Number 54 on the Government’s Witness List* as one of its witnesses. If it is
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1 in fact, a legal remedy, as the Government proposes, that this Court can order witnesses to talk
2 with the parties, then the defense requests that Liggett be compelled to talk with counsel for Mr.
3 Parker. Courts, acknowledging the advantages the Government has in questioning witnesses,
4 have ordered defense access to witnesses. In this case, the Government wants it – and wants it
5 contrary to constitutional privileges. Two filings of the Government have the sinister motive of
6 dividing the Defendant from his Fifth and Sixth Amendment rights.

7 II.

8 RESPONSE TO FACTUAL BACKGROUND

9 The Government's factual background is equally unfair. Boiling the "facts" down to the
10 lowest common denominator, the Government infers that it will prove beyond a reasonable doubt
11 that all of the entities that have wealth in the Parker family are fronts for Mr. Parker and Mrs.
12 Parker, and that they are the true owners. Therefore, the Government suggests, the Parkers had
13 the ability to use these funds for taxes without anyone else's approval, and they had ownership of
14 the assets. Their offers in compromise were false because these assets were not reported on the
15 offers in compromise.
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17 The defense respectfully disagrees. The Government wishes the court to exercise some
18 type of summary judgment power—find these "facts" in the Government's favor and then rule
19 on the Government's law. There are no theories of law in United States jurisprudence to allow
20 this type of exercise. It would in effect override the jury's responsibility of fact-finding. The
21 Government cites no cases justifying its hoped for intrusion into the constitutional rights of Mr.
22 Parker.
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III.

RESPONSE TO RELEVANT LAW

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3 The Government's requested remedies were not granted in a single one of the cases that it
4 cites to this Court. In fact, it is unlikely the Government will come up with case law that allows
5 the Government to force Defendant to testify prior to trial personally or through counsel.
6 Counsel is unaware of any cases requiring the defense to make that election until the
7 Government has rested its entire case.

8 The Government cites cases that the undersigned is intimately familiar with. In *United*
9 *States v. Moran*, 482 F.3d 1101 (9th Cir. 2007), the Ninth Circuit reversed because limitations of the
10 sort the Government now suggests were granted. The Morans received a new trial, and they were
11 acquitted on all counts. The undersigned was lead trial counsel by appointment of the trial court.

12 Undersigned counsel cannot—and even if he could, would not—make a decision whether
13 or not Defendant will testify before the Government rests its case. The Government simply wants
14 a peek at the defendant's state of mind, independent from the indirect evidence. The Government
15 wants defense counsel to disclose what they learned from privileged meetings with Defendants.
16 There is no law to support such a request because the Fifth Amendment does not allow it, the sole
17 exception being a grant of immunity. Counsel is unaware of any court that has gone down this
18 trail.
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IV.

WAIVER OF ATTORNEY-CLIENT PRIVILEGE

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22 This Court knows that it is always a difficult decision, and it is coupled in many ways
23 with the Fifth Amendment, whether a defendant will waive attorney-client privilege in an
24 appropriate situation. Depending on the way this trial goes, the defense very well may be forced
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1 to waive some privileges. Undersigned counsel, after 35 years of practice, cannot contemplate
2 (absent a claim by the Government that one or more prior counsel was a co-conspirator), a
3 situation that would require a 100% waiver of the sort that this Court is being asked to
4 contemplate.

5 Even if the attorney-client privilege is waived during the course of this trial, it would be
6 limited to the scope of the waiver. It would certainly not allow the Government to intrude on all
7 confidences with every single lawyer the Parkers have met with.

8 **V.**

9 **INDICTING MRS. PARKER**

10 While the defense has great respect for the Government's counsel, in the Government's
11 concurrently filed motion to defeat the defense's request for Mrs. Parker's testimony, the
12 Government ignores the fact that its initial decision was that there was not adequate evidence to
13 justify indicting her. A conclusion with which the defense concurs. There is no evidence against
14 Mrs. Parker save her signature on a form.

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16 The Government knows that both Parkers relied on legal advice. By indicting Mrs.
17 Parker, who cannot be convicted, save through a great injustice, the Government seeks to prevent
18 Mr. Parker from utilizing Mrs. Parker to show his state of mind. The Government seeks to force
19 Mr. Parker to testify.

20 Indictment of Mrs. Parker constitutes overly aggressive behavior that might rise to the
21 level of misconduct. The Government may or may not be successful, and in fact, Defendant will
22 make that decision, when he is required to do so, in consultation with his counsel. This Court's
23 decision whether or not to grant Mrs. Parker immunity may play a role in that decision.

24 A careful review of the Government's implied remedies that it seeks to have this Court
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1 enforce, is essentially a revision of both the Fifth Amendment right to silence and the Sixth
2 Amendment right to counsel. The Government does not lack the audacity to seek to amend the
3 Constitution at the trial level, but the Court lacks the authority to do so. None of the case law
4 cited by the Government even hints at this authority. For the Government to cite authority that
5 specifically reversed their current position and then resulted in complete acquittals on all counts,
6 for the Government to imply that the defense has been anything but forthright is indefensible.
7 They invite this court to commit grievous error. The court should decline the invitation.

8 **VI.**

9 **CONCLUSION**

10 The Government's Motion is frivolous. It has no authority to ask the defense to unfold
11 its plan for their convenience, even before the defense has seen the Government's case. It has no
12 authority to extend its already onerous trial offerings and to blame the defense because it will be
13 forced to require this court to delay during the trial so it can continue its investigations. It has no
14 authority to impose this requirement on the court; and the court has no reason to consider it. The
15 investigation should have concluded before they asked for an indictment and asked this court to
16 schedule so much time for their case. Will the defense then be committed to the witnesses and
17 testimony of a defense that after the unfolding of the Government's case may be proven
18 irrelevant? The Court might as well require the defense to open and then let the Government
19 have a few days to decide how to redo the prosecution.
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22 Respectfully submitted on May 4, 2012.

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24 */s/ Michael Louis Minns*
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26 State Bar No. 14184300
Ashley Blair Arnett (pro hac vice)

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CERTIFICATE OF SERVICE

On May 4, 2012 I, Ashley Blair Arnett, attorney for the Defendant, James Parker, filed the Response to the Government’s Motions in Limine *via* ECF. Based on my training and experience with electronic filing in the federal courts, it is my understanding that a copy of this request will be electronically served upon opposing counsel, Peter Sexton and Walter Perkel, and co-counsel, Joy Bertrand, upon its submission to the Court.

Respectfully submitted this 5th day of May, 2012.

/s/ Ashley Blair Arnett
Ashley Blair Arnett
Attorney for Defendant