

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO**

Criminal Case No. 05-cr-00545-EWN

UNITED STATES OF AMERICA,

Plaintiff,

v.

1. JOSEPH P. NACCHIO,

Defendant.

**MOTION BY THE UNITED STATES FOR ISSUANCE OF
SUBPOENA *DUCES TECUM* PURSUANT TO
RULE 17(c) OF THE FEDERAL RULES OF CRIMINAL PROCEDURE**

The United States of America, by Troy A. Eid, United States Attorney, and through James O. Hearty, Assistant United States Attorney, respectfully requests that a subpoena *duces tecum* be issued to Harvey H. Hammer, M.D., P.A., for the complete medical file of David Nacchio. The United States further requests that the records be ordered to be produced to this Honorable Court by 9:00 a.m. MDT on Wednesday, July 25, 2007, as sentencing in this matter is scheduled to start on Friday, July 27, 2007. As grounds for this request, the Government states as follows:

1. These records are evidentiary and relevant to Defendant Nacchio's sentencing. Defendant Nacchio has asked this Court for a downward departure from the low end of the Sentencing Guidelines based, in part, on the "extraordinary circumstances concerning the effect that a lengthy incarceration will have on the health and life expectancy" of David Nacchio. *See* Docket No. 441 (Defendant's "Motion for a Downward Departure Pursuant to 18 U.S.C. §

3553(b)(1) and U.S.S.G § 5K2.0 Based Upon Extraordinary Family Circumstances and U.S.S.G. § 5H1.11 Based Upon Extensive Civil, Charitable and Other Prior Good Works”) at 1 .

2. Defendant Nacchio has submitted two letters from David Nacchio’s psychiatrist, Harvey M. Hammer, M.D., P.A., that make allegations regarding David Nacchio’s condition. Defendant Nacchio has put his son’s medical condition in issue. The United States should be able to review David Nacchio’s entire medical file maintained by Dr. Hammer in order to be fully informed, and respond accordingly, to this position.

3. Counsel for Defendant Nacchio has denied the United States’ request that he voluntarily provide these records that are not otherwise procurable by exercise of due diligence.

4. It is the understanding of the United States that counsel for Defendant Nacchio does not currently anticipate that Dr. Hammer will be present at the sentencing. However, if this is incorrect (*i.e.*, if Dr. Hammer will testify), and to the extent that the requested materials include some statements of Dr. Hammer, the United States requests production of any such materials pursuant to Rule 26.2 in the alternative.

WHEREFORE, for the reasons stated above, the United States respectfully requests that a subpoena *duces tecum* be issued for the complete medical file of David Nacchio maintained by Dr. Hammer. A proposed order and subpoena are attached.

Respectfully submitted this 20th day of July, 2007.

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CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of July, 2007, I e-mailed this document to the following e-mail addresses:

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