

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
No. 08-CR-364 (RHK/AJB)

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UNITED STATES OF AMERICA,

Plaintiff,

vs.

THOMAS JOSEPH PETTERS,

Defendant.

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**MOTION TO DISMISS  
FOR VIOLATION OF  
AKE v. OKLAHOMA**

Defendant Thomas Joseph Petters, by and through his undersigned attorneys, and consistent with Ake v. Oklahoma, 470 U.S. 68 (1985), moves the Court for an order of dismissal. Our grounds:

1. The Government's proposed restrictions of defense funding, filed March 13, 2009, have now deprived Mr. Petters of his ability to pay for expert and professional witnesses in support of his defense. We note, and incorporate by reference, Mr. Fisher's declaration. He details what he has done and what he has yet to complete. His services are not free. As Isaiah Berlin would observe, Mr. Fisher has a choice to work elsewhere, and will if he is not paid. We have also hired a computer expert, and raise like arguments for his compensation.

2. Ake holds that where, as here, the Government has witnesses (in the form of FBI accountants and financial analysts) the defense must be permitted funding to hire like experts. If such money is unavailable, Mr. Petters is denied a "meaningful access to justice," and thereby deprived of his right to due process. Id. at 77. The withholding of

funds is reversible error. Id.; see generally United States v. Ross, 210 F.3d 916, 921 (8th Cir. 2000) (noting the Court has the power to authorize funding, not the Government); United States v. Stein, 495 F. Supp. 2d 390, 420 (S.D.N.Y. 2007) (“[I]t is difficult to imagine an attorney whose expertise is trial practice properly defending this action without the active participation of a tax specialist steeped in the kinds of transactions at issue . . .”). The error exists right now.

3. We incorporate by reference the additional argument that, without funds, Mr. Petters will be deprived of his choice of counsel. The same claim is made for effectiveness, though that issue need not be reached when a structural error occurs. Without accounting expertise, we can’t represent Mr. Petters and won’t.

Dated: March 16, 2009

**s/ Jon M. Hopeman**

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