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Federal Prosecutors Defy Court Order In Cases Over Attorney-Client Recordings In Leavenworth

The U.S. Attorney's office in Kansas City, Kansas, says it will no longer cooperate with cases brought by inmates whose phone calls with their attorneys were recorded at the pretrial detention prison in Leavenworth, Kansas. In a notice filed in federal court on Thursday, the U.S. Attorney said that after consulting with the Justice Department, it "has determined that it cannot and will not comply with the Court's July 27, 2020 discovery order, which the Department has concluded is both unreasonable and contrary to law." The court's July 27 order denied a request from the U.S. Attorney's office asking to be relieved of its duty to provide further discovery in the cases. The U.S. Attorney's notice is the latest twist in a years-long saga over the audio- and video-recording of attorney-client phone calls and meetings at the prison, which houses men and women charged with federal crimes who are unable to make bail. The prison is run by CoreCivic Inc., the second largest private prison operator in the United States. The company was formerly known as Corrections Corporation of America. Four years ago, U.S. District Judge Julie Robinson appointed a special master, or an independent third party, to investigate and determine whether the U.S. Attorney's office unlawfully benefited from access to the recordings. In a blistering opinion last August, Robinson concluded there was evidence the U.S. Attorney's office had a "systematic practice of purposeful collection, retention and exploitation of calls" made between detainees and their attorneys. She then held the office in contempt for disobeying her orders to preserve documents and recordings as part of the investigation, which she launched after the Federal Public Defender's office in Kansas first brought the recordings to light. The Justice Department has appealed her ruling to the 10th U.S. Circuit Court of Appeals, where the case is pending. Since Robinson's ruling, more than 100 inmates have sought to have their convictions vacated or their sentences reduced, claiming their Sixth Amendment rights were violated. Robinson has ordered the U.S. Attorney's office to turn over emails, attachments and other documents to the inmates. The office says it has already devoted hundreds of staff and attorney hours to complying with the court's orders and has turned over voluminous amounts of data, including more than 20,000 documents. But by flatly refusing to cooperate further, it now risks being held in contempt again by Robinson, as it acknowledges in the notice it filed. "The Department understands that this decision may result in the Court imposing a sanction against the United States," it wrote, adding that it believed that would be unwarranted and the cases can proceed to resolution without further discovery. The Federal Public Defender's office in Kansas, which represents the inmates and spearheaded the investigation into the recordings, declined to comment on the filing. The 30-page document was signed by Stephen R. McAllister, the U.S. Attorney for the District of Kansas. Although the document says the office's decision was taken after "careful consideration and review by the Department of Justice," no attorneys from the Justice Department signed it. Jim Cross, a spokesman for McAllister, said the filing "speaks for itself." This latest twist in the recordings saga comes just weeks after CoreCivic and the operator of the prison's telephone system, Securus Technologies Inc., agreed to pay \$3.7 million to resolve a class action lawsuit brought by attorneys whose conversations with their clients were recorded at Leavenworth. That settlement, in turn, came a year after the two companies agreed to pay \$1.45 million to settle a separate class action brought by inmates. Michael Hodgson, an attorney who represented the attorneys in the first class action case, said he had read the U.S. Attorney's filing and had never seen anything like it in 17 years of practicing in the federal courts. "I read it and I thought, 'Wow,'" he said. In its filing, the U.S. Attorney's office said that Robinson and the special master have investigated its conduct for four years, "much as a financial auditor would minutely review a corporation's every file and document," irrespective of the narrow issues it says the cases present. The U.S. Attorney claims that "there is not a shred of evidence" in any of the cases that have been brought by inmates "that any prosecutor intruded on the attorney-client relationship of any of these petitioners in order to obtain a conviction or an advantage at sentencing."