

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
GERARD MARCHELLETTA, JR.,	)	Case No. 1:07-CR-107-TCB
a/k/a Jerry Marchelletta, Jr.,	)	
GERARD MARCHELLETTA, SR.,	)	
a/k/a Jerry Marchelletta, Sr.	)	
and THERESA L. KOTTWITZ	)	
	)	
Defendants.	)	
	)	

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**DECLARATION OF ROBERT G. BERNHOFT**

I, Robert G. Bernhoft, under penalty of perjury under 28 U.S.C. § 1746 do hereby certify and declare as follows:

1. I have personal knowledge of the facts asserted herein, and if called upon to testify to said facts, could do so competently.

2. I am the founding partner of the Bernhoft Law Firm, S.C., with a business address of 207 E. Buffalo Street, Suite 600, Milwaukee, Wisconsin 53202. I represent Gerard Marchelletta, Sr. and Gerard Marchelletta, Jr., two of the defendants in the above-captioned case.

3. During the course of the Marchellettas' IRS FOIA litigation pending before this court, *Marchelletta v. Internal Revenue Service*, Case No. 1:09-cv-03037-TCB, DOJ Trial attorney Carmen Banerjee represented that the 45 boxes of material disclosed to the Marchellettas came from SA Bergstrom's investigative files. These documents included a file labeled "Gary Schwartz CPA."

4. The file labeled "Gary Schwartz CPA" disclosed in the FOIA litigation totaled 1694 pages, and the document range is denominated by Bates stamp numbers FOIA-05-00375 through FOIA-06-01121.

5. The "Gary Schwartz CPA" file provided the defense in Rule 16 prior to the 2007 trial was 1343 pages, 351 pages less than the file disclosed in the FOIA litigation, and denominated by Bates stamps 000223 through 001565.

6. In the course of my investigation, I requested Attorney Marianne Boston's Circle file for my review in late 2009. Ms. Boston confirmed that she represented the Marchellettas during the Customs investigation, and produced several documents including her internal email correspondence with Attorney Richard Abbey as they worked together to attempt a resolution to the Customs seizure of \$1.5 million from The Circle Group.

7. In July 2009 during a telephone call discussing the subpoena served upon Shawn McBride on June 29, 2009, AUSA Justin Anand told me that SA

Bergstrom had interviewed Mr. McBride dozens of time before the September 2007 trial in preparation of his trial testimony.

8. On August 2, 2010, I discussed the Brooks Thomas MOI drafted by SA Bergstrom that was disclosed through the FOIA litigation with Attorney Richard Abbey. That MOI contained a statement allegedly made by Attorney Abbey about an IRS criminal investigation.

9. In September of 2010, I advised DOJ counsel Carmen Banerjee that a U.S. Attorney request letter is always Exhibit 1 to a 9131 government attorney-initiated request to expand a non-tax grand jury to include IRS' investigation of potential tax crimes. I provided a specimen 9131 for counsel's confirmation and insisted that the request letter had to be in the "9131 Binder" identified by SA Bergstrom as "Exhibit 1" to the actual Form 9131 in that "binder." "Exhibit 1" to this 9131 has neither yet been disclosed nor identified in the FOIA litigation.

10. Attached hereto as Exhibit 1 is a true and correct copy of the "Form 9131". This document was provided to me by AUSA Randy Chartash, Criminal Section Chief, N.D. Ga., Atlanta Division, on September 17, 2009.

11. Attached hereto as Exhibit 2 is a true and correct copy of the "U.S. Attorney's Request Letter", Exhibit 1 to the "Form 9131". This document was

provided to me by AUSA Randy Chartash, Criminal Section Chief, N.D. Ga., Atlanta Division, on October 7, 2009.

12. Attached hereto as Exhibit 3 is a true and correct copy of the transmittal letter AUSA Chartash provided with the "Form 9131" and Special Agent's Report ("SAR"). This document was provided to me by AUSA Randy Chartash, Criminal Section Chief, N.D. Ga., Atlanta Division, on September 17, 2009.

13. Attached hereto as Exhibit 4 is a true and correct copy of the SA Sellers' MOC with Attorney Marianne Boston dated July 2, 2002. This document was provided to trial defense counsel pursuant to Fed. R. Crim P. 16.

14. Attached hereto as Exhibit 5 is a true and correct copy of Shawn McBride's March 21, 2001 Customs debrief. This document was provided to trial defense counsel pursuant to the Jencks Act on September 10, 2007.

15. Attached hereto as Exhibit 6 is a true and correct copy of Memphis ROI 1. This document was provided to trial defense counsel pursuant to Fed. R. Crim P. 16.

16. Attached hereto as Exhibit 7 is a true and correct copy of Memphis ROI 2. This document was provided to me on March 23, 2010 by ICE FOIA Disclosure.

17. Attached hereto as Exhibit 8 is a true and correct copy of Memphis ROI 3. This document was provided to me on March 23, 2010 by ICE FOIA Disclosure.

18. Attached hereto as Exhibit 9 is a true and correct copy of Memphis ROI 4. This document was provided to me on March 23, 2010 by ICE FOIA Disclosure.

19. Attached hereto as Exhibit 10 is a true and correct copy of Atlanta ROI 1. This document was provided to me on March 23, 2010 by ICE FOIA Disclosure.

20. Attached hereto as Exhibit 11 is a true and correct copy of Atlanta ROI 2. This document was provided to trial defense counsel pursuant to the Jencks Act on September 10, 2007.

21. Attached hereto as Exhibit 12 is a true and correct copy of Atlanta ROI 3. This document was provided to trial defense counsel pursuant to Fed. R. Crim P. 16.

22. Attached hereto as Exhibit 13 is a true and correct copy of Atlanta ROI 4. This document was provided to trial defense counsel pursuant to Fed. R. Crim P. 16

23. Attached hereto as Exhibit 14 is a true and correct copy of Atlanta ROI 5. This document was provided to trial defense counsel pursuant to Fed. R. Crim P. 16

24. Attached hereto as Exhibit 15 is a true and correct copy of Atlanta ROI 6. This document was provided to me on March 23, 2010 by ICE FOIA Disclosure.

25. Attached hereto as Exhibit 16 is a true and correct copy of Atlanta ROI 7. This document was provided to me on March 23, 2010 by ICE FOIA Disclosure.

26. Attached hereto as Exhibit 17 is a true and correct copy of Miami ROI 1. This document was provided to me on March 23, 2010 by ICE FOIA Disclosure.

27. Attached hereto as Exhibit 18 is a true and correct copy of Miami ROI 2. This document was provided to me on March 23, 2010 by ICE FOIA Disclosure.

28. Attached hereto as Exhibit 19 is a true and correct copy of Miami ROI 3. This document was provided to me on March 23, 2010 by ICE FOIA Disclosure.

29. Attached hereto as Exhibit 20 is a true and correct copy of Miami ROI  
4. This document was provided to me on March 23, 2010 by ICE FOIA  
Disclosure.

30. Attached hereto as Exhibit 21 is a true and correct copy of Miami ROI  
5. This document was provided to me on March 23, 2010 by ICE FOIA  
Disclosure.

31. Attached hereto as Exhibit 22 is a true and correct copy of Miami ROI  
6. This document was provided to me on March 23, 2010 by ICE FOIA  
Disclosure.

32. Attached hereto as Exhibit 23 is a true and correct copy of Miami ROI  
7. This document was provided to me on March 23, 2010 by ICE FOIA  
Disclosure.

33. Attached hereto as Exhibit 24 is a true and correct copy of Miami ROI  
6/7. This document was provided to trial defense counsel pursuant to Fed. R. Crim  
P. 16.

34. Attached hereto as Exhibit 25 is a true and correct copy of a TECS II  
database printout. This document was provided to me on March 23, 2010 by ICE  
FOIA Disclosure.

35. Attached hereto as Exhibits 26-29 and 45-49 are true and correct copies of “Forms 4930”. These documents were provided to me by IRS FOIA Disclosure in July 2010.

36. Attached hereto as Exhibit 30 is a true and correct copy of SA Bergstrom’s investigative progress report. This document was provided to me by IRS FOIA Disclosure in July 2010.

37. Attached hereto as Exhibit 31 is a true and correct copy of various internal SA Sellers and Customs officer emails. These emails were provided to me by CBP FOIA Appeals on August 24, 2010.

38. Attached hereto as Exhibits 32-35 are true and correct copies of FOIA determination letters filed as exhibits to the Complaint in the FOIA litigation before this court.

39. Attached hereto as Exhibit 36 is a true and correct copy of the IRS’ Quick Summary Report with respect to the Marchelletta investigation. This document was provided to me by IRS FOIA Disclosure in July 2010.

40. Attached hereto as Exhibit 37 is a true and correct copy of SA Bergstrom’s first declaration filed in the FOIA litigation before this court.

41. Attached hereto as Exhibit 38 is a true and correct copy of IRS FOIA Disclosure Analyst Val Young's declaration filed in the FOIA litigation before this court.

42. Attached hereto as Exhibit 39 is a true and correct copy of unindicted co-conspirator George Gorman's immunity letter provided to me by Mr. Gorman's counsel, Attorney Bruce Morris, in June of 2009.

43. Attached hereto as Exhibit 40 is a true and correct copy of the Crabapple job ledger provided to me by IRS FOIA Disclosure in late June 2009.

44. Attached hereto as Exhibit 41 is a true and correct copy of the Newport Bay job ledger provided to me by IRS FOIA Disclosure in late June 2009.

45. Attached hereto as Exhibit 42 is a true and correct copy of the Southeastern Carpenter Regional Council 1st Quarter 2005 area standards campaign report. The report was provided to me by Attorney Jim Wimberly as a result of unrelated litigation, in the summer of 2009.

46. Attached hereto as Exhibit 43 is a true and correct copy of the Southeastern Carpenter Regional Council 3rd Quarter 2005 area standards campaign report. The report was provided to me by Attorney Jim Wimberly as a result of unrelated litigation, in the summer of 2009.

47. Attached hereto as Exhibit 44 is a true and correct copy of the Special Agent's Report ("SAR"). This document was provided to me by AUSA Randy Chartash, Criminal Section Chief, N.D. Ga., Atlanta Division, on September 17, 2009.

48. Attached hereto as Exhibit 50 is a true and correct copy of a Gary Schwartz subpoena for documents dated December 3, 2002. The subpoena was provided to me by the Marchellettas' trial defense counsel.

49. Attached hereto as Exhibit 51 is a true and correct copy of the Tom Bostick MOI drafted by SA Bergstrom on January 19, 2006. This document was provided to me by IRS FOIA Disclosure in July 2010.

50. Attached hereto as Exhibit 52 is a true and correct copy of the Marvin Young MOI drafted by SA Bergstrom on March 17, 2006. This document was provided to me by IRS FOIA Disclosure in July 2010.

51. Attached hereto as Exhibit 53 is a true and correct copy of the Susan McCoy MOI drafted by SA Bergstrom on February 6, 2006. This document was provided to me by IRS FOIA Disclosure in July 2010.

52. Attached hereto as Exhibit 54 is a true and correct copy of an unknown MOI drafted by SA Bergstrom on December 3, 2002. This document was provided to me by IRS FOIA Disclosure in July 2010.

53. Attached hereto as Exhibit 55 is a true and correct copy of a closing attorney (name withheld) MOI drafted by SA Bergstrom on November 1, 2005. This document was provided to me by IRS FOIA Disclosure in July 2010.

54. Attached hereto as Exhibit 56 is a true and correct copy of a Brooks Thomas MOI drafted by SA Bergstrom on August 1, 2002. This document was provided to me by IRS FOIA Disclosure in July 2010.

55. Attached hereto as Exhibit 57 is a true and correct copy of a Gary Schwartz MOI drafted by SA Bergstrom on July 3, 2003. This document was provided to me by IRS FOIA Disclosure in July 2010.

56. Attached hereto as Exhibit 58 is a true and correct copy of a David Whitcomb MOI drafted by SA Bergstrom on January 31, 2006. This document was provided to me by IRS FOIA Disclosure in July 2010.

57. Attached hereto as Exhibit 59 is a true and correct copy of a Kenneth McDonough MOI drafted by SA Bergstrom on August 9, 2006. This document was provided to me by IRS FOIA Disclosure in July 2010.

58. Attached hereto as Exhibit 60 is a true and correct copy of an email exchange between Attorney Marianne Boston and Attorney Richard Abbey dated early July 2002 until August 2002. This document was provided to me by Attorney Boston in response to my request.

59. Attached hereto as Exhibit 61 is a true and correct copy of a Richard Orleski, Sr. MOI drafted by SA Lauren Jones on December 13, 2005. This document was provided to me by IRS FOIA Disclosure in July 2010.

60. Attached hereto as Exhibit 62 is a true and correct copy of a James Greene MOI drafted by SA Harry Chavis on April 17, 2003. This document was provided to me by IRS FOIA Disclosure in July 2010.

61. Attached hereto as Exhibit 63 is a true and correct copy of a Brooks Thomas MOI drafted by SA Bergstrom on August 1, 2002. This document was provided to me by IRS FOIA Disclosure in July 2010.

62. Attached hereto as Exhibit 64 is a true and correct copy of the SA Sellers' MOC with Attorney Richard Abbey dated July 3, 2002. This document was provided to trial defense counsel pursuant to Fed. R. Crim P. 16.

63. Attached hereto as Exhibit 65 is a true and correct copy of an email exchange between myself and Attorney Richard Abbey dated August 2, 2010.

64. Attached hereto as Exhibit 66 is a true and correct copy of SA Bergstrom's second declaration filed in the FOIA litigation before this court.

65. Attached hereto as Exhibit 67 is a true and correct copy of a letter sent from AUSA Randy Chartash dated September 16, 2010, detailing the public information file for specific grand juries empanelled from 2002 to 2007.

66. Attached hereto as Exhibit 68 is a true and correct copy of the “Scotia Bank” file provided to trial defense counsel pursuant to Fed. R. Crim. P. 16.

67. Attached hereto as Exhibit 69 is a true and correct copy of a call sheet for the Law Enforcement Coordinating Committee (“LECC”), U.S. Attorneys Office, Northern District of Georgia.

68. Attached hereto as Exhibit 70 is a true and correct copy of a signature card from Bank of America. This document was provided to trial defense counsel pursuant to Fed. R. Crim P. 16.

69. Attached hereto as Exhibit 71 is a true and correct copy of a single page provided to me through IRS FOIA disclosure in July 2010.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on October 4, 2010.

/s/ Robert G. Bernhoft  
Robert G. Bernhoft