

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

UNITED STATES OF AMERICA,)

Plaintiff,)

v.)

Case No. 1:07-CR-107-TCB

GERARD MARCHELLETTA,)

a/k/a Jerry Marchelletta,)

GERARD MARCHELLETTA, SR.,)

a/k/a Jerry Marchelletta, Sr.,)

and THERESA L. KOTTWITZ,)

Defendants.)

_____)

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. This declaration is filed in support of the Marchellettas' Motion to Dismiss the Indictment for Outrageous Government Misconduct.

2. On behalf of the Marchellettas, I engaged a handwriting expert to look at the two letters, and he confirmed that it is highly unlikely that the same person signed the letters. To confirm his initial evaluation, however, he needs

handwriting exemplars from several people to compare to the two suspect letters that both claim to be Exhibit one to Patricia Bergstrom's Form 9131.

3. 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 now been disclosed by SA Bergstrom, and it differs from the "Exhibit 1" disclosed by the U.S. Attorney's Office.

4. In response to my request for discovery related to the 109 seized boxes of material and computer hard drive images, former AUSA Anand advised that he didn't know if there was any Marchelletta or Circle discovery in these voluminous materials, because the government had destroyed everything after Gorman showed no interest in having them returned.

5. Attached hereto as Exhibit 1 is a true and correct copy of a written discovery request made to Assistant U.S. Attorney Justin Anand on August 18, 2012.

6. Attached hereto as Exhibit 2 is a true and correct copy of a written discovery request made to Assistant U.S. Attorney Justin Anand on August 19, 2012.

7. Attached hereto as Exhibit 3 is a true and correct copy of a written discovery request made to Assistant U.S. Attorney Justin Anand on September 4, 2011.

8. Attached hereto as Exhibit 4 is a true and correct copy of a written discovery request made to Assistant U.S. Attorney Justin Anand on September 4, 2011.

9. Attached hereto as Exhibit 5 is a true and correct copy of a written discovery request made to Assistant U.S. Attorney Justin Anand on October 6, 2011.

10. Attached hereto as Exhibit 6 is a true and correct copy of a written discovery response from Assistant U.S. Attorney Christopher Bly on December 12, 2011.

11. Attached hereto as Exhibit 7 is a true and correct copy of a written discovery request with attachments made to Assistant U.S. Attorney Christopher Bly on February 27, 2012. The letter requested fulfillment of prior outstanding discovery requests.

12. Attached hereto as Exhibit 8 is a true and correct copy of a written discovery response from Assistant U.S. Attorney Christopher Bly on March 26, 2012.

13. Attached hereto as Exhibit 9 is a true and correct copy of a written discovery request with attachments made to Assistant U.S. Attorney Christopher Bly on March 31, 2012. The letter requested disclosure of discovery that was omitted in a response to a prior discovery request.

14. Attached hereto as Exhibit 10 is a true and correct copy of a written discovery response from Assistant U.S. Attorney Christopher Bly on April 20, 2012.

15. Attached hereto as Exhibit 11 is a true and correct copy of a written discovery response from Assistant U.S. Attorney Christopher Bly on May 4, 2012.

16. Attached hereto as Exhibit 12 is a true and correct copy of a written discovery request with attachments made to Assistant U.S. Attorney Christopher Bly on May 31, 2012.

17. Attached hereto as Exhibit 13 is a true and correct copy of a written discovery request with attachments made to Assistant U.S. Attorney Christopher Bly on May 31, 2012. The letter requested an update on the status of prior outstanding discovery request.

18. Attached hereto as Exhibit 14 is a true and correct copy of a written discovery request with attachments made to Assistant U.S. Attorney Christopher Bly on June 13, 2012. The letter repeated a prior discovery request still outstanding.

19. Attached hereto as Exhibit 15 is a true and correct copy of a written discovery response from Assistant U.S. Attorney Christopher Bly on June 22, 2012.

20. Attached hereto as Exhibit 16 is a true and correct copy of an email from Assistant U.S. Attorney Neeli Ben-David on October 24, 2011.

21. Attached hereto as Exhibit 17 is a true and correct copy of a letter purportedly from former Assistant U.S. Attorney Daniel P. Griffin to IRS Special Agent in Charge C. Andre Martin on July 11, 2002. This letter was purportedly from Patricia Bergstrom's files and was represented to be Exhibit one to the Form 9131.

22. Attached hereto as Exhibit 18 is a true and correct copy of a letter purportedly from former Assistant U.S. Attorney Daniel P. Griffin to IRS Special Agent in Charge C. Andre Martin on August 14, 2002. This letter was from The U.S. Attorneys' Office's files and was represented to be Exhibit one to the same Form 9131 referred to in ¶ 21.

23. Attached hereto as Exhibit 19 is a true and correct copy of the Atlanta Custom's closing report undisclosed to the defense at the first trial.

24. Attached hereto as Exhibit 20 is a true and correct copy of a Federal Bureau of Investigation report identifying the Marchellettas and Circle Industries as being involved with "Organized Crime-LCN".

25. Attached hereto as Exhibit 21 is a true and correct copy of a Federal Bureau of Investigation ("FBI") report identifying the IRS/CID as involved in the investigation.

26. Attached hereto as Exhibit 22 is a true and correct copy of what appears to be a heavily redacted 302 report memorializing a witness interview, received from the FBI.

27. Attached hereto as Exhibit 23 is a true and correct copy of a heavily redacted 302 interview report from the FBI.

28. Attached hereto as Exhibit 24 is a true and correct copy of the unredacted 302 interview report from the FBI referred to in ¶ 27 received from Assistant U.S. Attorney Christopher Bly.

29. Attached hereto as Exhibit 25 is a true and correct copy of the immunity agreement George Gorman had with the government dated January 28, 2003, provided by George Gorman's attorney Bruce Morris.

30. Attached hereto as Exhibit 26 is a true and correct copy of the Department of Labor's closing report regarding the investigation into Eagle Managed Subcontractors, George Gorman's company.

31. Attached hereto as Exhibit 27 is a true and correct copy of the Department of Labor's Report of Interview prepared on February 23, 2004 between a Special Agent with IRS-CID (most likely Patricia Bergstrom) where Jerry Marchelletta, Jr. was identified as having a business relationship with Eagle Managed Subcontractors, Inc. and being a subject of an organized crime investigation.

32. Attached hereto as Exhibit 28 is a true and correct copy of a Memo to File drafted by Special Agent Jupin from the Department of Labor.

33. Attached hereto as Exhibit 29 is a true and correct copy of a partially redacted Memo to File drafted by Special Agent Jupin from the Department of Labor on September 30, 2004.

34. Attached hereto as Exhibit 30 is a true and correct copy of a heavily redacted Memo to File drafted by someone from the Department of Labor's Office of Inspector General on September 15, 2005.

35. Attached hereto as Exhibit 31 is a true and correct copy of a partially redacted Memo to File drafted by someone from the Department of Labor on March 15, 2006.

36. Attached hereto as Exhibit 32 is a true and correct copy of a partially redacted closing report regarding another investigation into Eagle Managed Subcontractors, Inc. dated November 1, 2001.

37. Attached hereto as Exhibit 33 is a true and correct copy of a “FSLA Narrative” recounting an interview a Department of Labor investigator had with George Gorman’s attorney in the first Eagle Managed Subcontractors, Inc. investigation.

38. Attached hereto as Exhibit 34 is a true and correct copy of a transcription from the Union of a telephone call between a member of the union and Eagle Managed Subcontractors, Inc. from April 3, 2000.

39. Attached hereto as Exhibit 35 is a true and correct copy of a deposition Union officer Steven Shelton gave in Circle Group’s secondary boycott litigation filed in this court as Case No. 1:09-cv-3039-WSD. Only pages where Steven Shelton discussed Special Agent Patricia Bergstrom are included.

40. Attached hereto as Exhibit 36 is a true and correct copy of an IRS Memorandum of Interview drafted by Special Agent Patricia Bergstrom on

October 5, 2005 involving Attorney Bruce Morris, who represented George Gorman.

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 August 6, 2012

/s/ Robert G. Bernhoft
Robert G. Bernhoft