



THE BERNHOFT LAW FIRM, S.C.

Assistant U.S. Attorney Christopher Bly  
United States Attorney's Office  
Northern District of Georgia  
Richard Russell Building  
75 Spring Street, SW, Suite 600  
Atlanta, Georgia 94105  
Telephone: (404) 581-6000  
Facsimile: (404) 581-6181

June 13, 2012

**Via Email Attachment and U.S. Mail**

**Re: *United States v. Marchelletta et al.*, Case No. 1:07-cr-107-TCB;  
Final Request for "Second" Customs' Investigation Documents**

Dear Mr. Bly:

In a letter dated May 31, 2012 we again requested from your office the Customs' files that your colleague AUSA Neeli Ben-David identified in the summary judgment filings in the CBP/ICE FOIA litigation. (Case No. 10-cv-03280-TCB, Doc. 27, attached hereto as Exhibit A.) As AUSA Ben-David related in that filing: "[A]fter SAC Atlanta completed its collateral investigation for RAC Memphis, it [SAC Atlanta] opened its own separate investigation of the Circle Group, under a new case number." *Id.*, p. 10, fn.10. AUSA Ben-David further indicated that she had requested these files from archives. *Id.*

In response to your office's revelation in October of last year that additional Customs' documents existed relating to a criminal investigation of Circle, I corresponded with AUSA Ben-David to work out a protocol for review and disclosure of these documents in the context of the then-ongoing FOIA litigation. Subsequent to those exchanges, Judge Batten allowed Ms. Ben-David and I to set forth our positions on the new documents to the Court via email, and ultimately Judge Batten granted me the opportunity to file a surreply to address them. Significantly here, Ms. Ben-David told the Court in that email exchange: "The reason why I asked the agency to request the additional documents from archives was because of the upcoming criminal trial. I am told that it can take up to 2 months to receive the documents from the National Archives and Records Administration; therefore, the sooner they are requested the better." (Email thread attached as Exhibit B.)

AUSA Ben-David unambiguously told the Court on October 24, 2011, that she had asked the agency to request the additional documents from archives ***because of the upcoming criminal trial*** (the retrial the government announced its intention to pursue), and that it could take up to two months to receive the documents from archives. More than five months have now elapsed since the expiry of the two-month retrieval period – during which period we've made multiple requests for production – and yet your office still has not produced these essential documents.

During our many discussions of this discovery production issue, you've made reference to having difficulty obtaining the documents, and also referenced agency FOIA Disclosure personnel being involved. At the outset, I have no idea why agency FOIA personnel would be involved in a request by a USAO for documents to be produced in criminal discovery, over which the USAO has obvious superintending authority and responsibility. Putting that to one side, at all events, if your office still hasn't received the documents, then the agency is obstructing criminal case discovery and we're going to the Court to obtain relief.

As a professional courtesy to you, however, we will afford your office until close of business on Friday, June 22, 2012 to produce these documents. If we have not received them by then, we'll file our motion to compel on Monday, June 25<sup>th</sup>.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Robert G. Bernhoft". The signature is fluid and cursive, with the first name "Robert" and last name "Bernhoft" clearly distinguishable.

Robert G. Bernhoft, Esquire  
Attorney and Counselor at Law

cc: Jerry Froelich, Esq. (w/ encl., via email attachment only)