



THE BERNHOFT LAW FIRM, S.C.

February 27, 2012

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, GA 94105
Telephone: (404) 581-6000
Facsimile: (404) 581-6181

Via Email Attachment and U.S. Mail

**Re: *United States v. Marchelletta et al.*, Case No. 1:07-cr-107-TCB
Discovery Request Update Letter**

Dear Mr. Bly:

Please consider this letter a request for fulfillment of outstanding discovery requests. These five requests go back as early as August 18, 2011, and are enclosed herewith and identified as follows:

- Discovery Request No. 1 dated August 18, 2011
- Discovery Request No. 2 dated August 19, 2011
- Discovery Request No. 3 dated September 4, 2011
- Discovery Request No. 4 dated September 4, 2011
- Discovery Request No. 5 dated October 6, 2011.

On December 12, 2011, in response to our "Discovery Request No. 1", you provided documents Bates labeled as "Non-GJ 0001-1175" and "GJ 0001-2698". As you know, these documents were identified and labeled as such in the IRS FOIA litigation. Thank you for providing these documents.¹

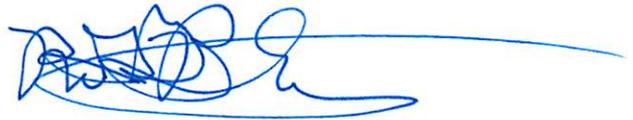
We have yet to receive, however, the documents identified in the CBP/ICE FOIA litigation, *Marchelletta, et al. v. ICE/CBP*, 1:10-cv-3280-TCB (N.D. Ga.), as set forth with specificity on page two of Discovery Request No. 1. Please advise when we can expect to receive these documents.

¹ These documents retained some of the redactions applied by IRS in the FOIA litigation, and although we take issue with these remaining redactions, to be sure, I will address those in separate correspondence.

Regarding discovery requests numbered 2, 3, and 4, we have yet to receive the requested discovery. Please advise when we can expect to receive the discovery identified in those three requests.

Respecting Discovery Request No. 5, your provision of December 12, 2011 did indeed provide copies of the IRS Form 9131 and SAR with less redactions than the previous copies provided by your office, but substantial redactions still remain. I think it prudent, however, to defer discussion and possible resolution of redaction issues until all discovery has been completed.

Sincerely yours,



Robert G. Bernhoft, Esquire
Attorney and Counselor at Law

Enclosures

cc: Criminal Section Chief Randy Chartash
Jerome J. Froelich, Jr., Esq.

THE BERNHOFT LAW FIRM, S.C.

Offices in Milwaukee ■ Malibu

October 6, 2011

Assistant U.S. Attorney Justin Anand
United States Attorney's Office
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Via Email Attachment Only

**Re: *United States v. Marchelletta et al.*, Case No. 1:07-cr-107-TCB
Discovery Request No. 5**

Dear Mr. Anand:

Please consider this letter our fifth discovery request in the above-referenced criminal case.

You will please recall that some time ago, Mr. Chartash provided to us an SAR and IRS Form 9131. The SAR, however, was heavily redacted, and the IRS Form 9131 was also redacted. Please provide unredacted copies of those two documents. Thank you, and

Best regards,



Robert G. Bernhoft, Esquire
Attorney and Counselor at Law

cc: Jerry Froelich, Esq.

September 4, 2011

Assistant U.S. Attorney Justin Anand
United States Attorney's Office
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Richard Russell Building
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Via Email Attachment and U.S. Mail

**Re: *United States v. Marchelletta et al.*, Case No. 1:07-cr-107-TCB
Discovery Request No. 3**

Dear Mr. Anand:

Please consider this letter our third discovery request in the above-referenced criminal case.

Please provide all memoranda of interview related to any and all federal agency criminal investigations of Circle or the Marchellettas, however denominated, named, or identified by the agency or respective agencies.

Sincerely yours,



Robert G. Bernhoft, Esquire
Attorney and Counselor at Law

cc: Jerry Froelich, Esq.

September 4, 2011

Assistant U.S. Attorney Justin Anand
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Via Email Attachment and U.S. Mail

**Re: *United States v. Marchelletta et al.*, Case No. 1:07-cr-107-TCB
Discovery Request No. 4**

Dear Mr. Anand:

Please consider this letter our fourth discovery request in the above-referenced criminal case.

Please provide all written or recorded statements of any of the three co-defendants within the government's possession, custody, or control.

Sincerely yours,



Robert G. Bernhoft, Esquire
Attorney and Counselor at Law

cc: Jerry Froelich, Esq.

August 19, 2011

Assistant U.S. Attorney Justin Anand
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Via Federal Express

**Re: *United States v. Marchelletta et al.*, Case No. 1:07-cr-107-TCB
Discovery Request No. 2**

Dear Mr. Anand:

Please consider this letter our second discovery request in the above-referenced criminal case.

Please provide all grand jury subpoenas issued by the government relating to the criminal investigation of Circle and the Marchellettas, including, but not limited to, the grand jury subpoenas issued by Customs SA Sellers and IRS SA Bergstrom.

Best regards,



Robert G. Bernhoft, Esquire
Attorney and Counselor at Law

cc: Buddy Parker, Esq.
Jerry Froelich, Esq.

August 18, 2011

Assistant U.S. Attorney Justin Anand
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Via Federal Express

**Re: *United States v. Marchelletta et al.*, Case No. 1:07-cr-107-TCB
Discovery Request No. 1**

Dear Mr. Anand:

Please consider this letter our first discovery request in the above-referenced criminal case.

I. Documents in the IRS FOIA Litigation, 1:09-CV-3037-TCB (N.D. GA)

As you and your office are aware, the Marchellettas sued the IRS under the Freedom of Information Act ("FOIA") to compel the IRS to disclose all documents related to the IRS criminal investigation. The IRS was, and continues to be, represented by DOJ Special Litigation Trial Attorney Carmen Banerjee.

Prior to summary judgment filings in the case, the disputed documents were narrowed into two main categories, grand jury and non-grand jury IRS documents. The non-grand jury documents totaled 1,170 pages, and were sequentially Bates stamped by IRS with the prefix "Non-GJ". Of these 1,170 non-grand jury IRS documents, Attorney Banerjee disclosed less than 1,000 pages, but as you will see from a cursory review of this document set on the enclosed DVD, many of the disclosed documents are redacted, in some cases heavily redacted. Please disclose forthwith un-redacted copies of all documents in this "Non-GJ" document set.

Furthermore regarding the "Non-GJ" document set, Attorney Banerjee refused to disclose several hundred pages in full. These undisclosed documents are numbered Non-GJ 23-24, 48-56, 521-777, and 1020-2021, and are identified on the enclosed DVD with a text document placeholder that sets forth the Bates range of the undisclosed documents. Please disclose forthwith all of these enumerated but heretofore undisclosed documents.

The second category of documents were denominated by Attorney Banerjee as grand jury documents, totaling 2,692 pages, and were numbered sequentially and Bates stamped with the prefix "GJ". Of this total, only five pages were disclosed, e.g., those documents numbered GJ 005-009 (included on the enclosed DVD).

Please disclose the remaining 2,687 pages forthwith. It should be a simple matter to contact Attorney Banerjee and make the disclosure arrangements. She can be reached at: (202) 353-3850. Attorney Banerjee's email address is: Carmen.M.Banerjee@usdoj.gov

II. Documents in the CBP FOIA Litigation, 1:10-CV-3280-TCB (N.D. GA)

As you and your office are also aware, the Marchellettas sued CBP under the FOIA to compel disclosure of all documents related to CBP's criminal investigation. CBP was, and continues to be, represented by AUSA Neeli Ben-David of your office. Attorney Ben-David disclosed two documents attached as exhibits to her recent summary judgment filings, in addition to the documents disclosed by CBP through the administrative FOIA process.

In total, 20 multi-page CBP reports have been disclosed, and 94 pages of additional materials related to the criminal investigation. (All are included on the enclosed DVD for your reference). As with the disclosed IRS documents, many are redacted, and some heavily redacted.

Please provide un-redacted copies of all of these documents forthwith. It should be a simple matter to obtain these un-redacted documents from your office's AUSA Ben-David.

Best regards,



Robert G. Bernhoft, Esquire
Attorney and Counselor at Law

Enclosure (electronic media, DVD)

cc: Buddy Parker, Esq. (w/ enc.)
Jerry Froelich, Esq. (w/ enc.)