

U.S. Department of Justice



United States Attorney
Northern District of Georgia

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June 22, 2012

Robert G. Bernhoft
The Bernhoft Law Firm, S.C.
1220 Colorado Street, Suite 440
Austin, Texas 78701
VIA U.S. mail
VIA Electronic mail without enclosures

Re: United States v. Marchelletta,
1:07-CR-107-TCB

Dear Mr. Bernhoft:

I write in response to several of your discovery requests.

First, you have requested documents related to an ICE¹ Atlanta office investigation filed under a new, non-collateral case number, as identified in a summary judgment reply brief filed in the course of FOIA litigation. (No. 1:10-CV-3280-TCB, Doc. 27, p. 10-11, n.10). My understanding is that the Atlanta ICE office, and Special Agent Sellers in particular, did not open a new case number. Rather, the relevant agent reports were filed under the collateral case number, AT02FR01ME0012, all of which have been produced. As such, I am aware of no documents responsive to your request.

The misunderstanding regarding the existence of a second, non-collateral case number arises from the October 14, 2011 declaration of Deputy FOIA Officer Ryan Law, upon which Ms. Ben-David relied in footnote 10 of the FOIA reply brief. In that declaration, Mr. Law stated: "After SAC Atlanta completed its collateral investigation for RAC Memphis, it opened its own, separate investigation of the Circle Group; however, that investigation did not carry either of the case numbers referenced in the October 8, 2009 FOIA request." (Oct. 14, 2011 Law Declaration at ¶ 9). My understanding is that statement was made in error. I have been informed that Mr. Law made that statement based on his awareness of the general practice of an ICE office to assign a new case number if it investigates a

¹ I use "ICE" to include all predecessor agencies to the current United States Immigration and Customs Enforcement.

particular matter following a collateral request from another office, and his belief that Special Agent Sellers had conformed to that general practice and opened a new case number in this investigation. I have been further informed by Special Agent Sellers that, in this case, she continued to use the collateral case number, AT02FR01ME0012, and that she does not recall opening a new case number for her inquiry into the Circle Group and Gerard Marchelletta, Jr.

I have asked Special Agent Sellers to conduct a review of ICE databases to ensure that there are no reports under an Atlanta case number other than those that we have provided under the collateral case number, AT02FR01ME0012. Several independent searches by different people have failed to reveal any Atlanta case number other than the collateral number noted above. In short, I believe Mr. Law's declaration regarding a "new" case number to have been in error, and I am not aware of any Atlanta ICE office documents other than those filed under the collateral case number. As such, I am not aware of any additional documents responsive to this request.

Regarding Discovery Request Number 3, you ask for "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." As an initial matter, I believe this request significantly exceeds my discovery obligations under the Federal Rules of Criminal Procedure, Brady, Giglio, and Jencks. Nevertheless, in the continued spirit of cooperation, I have identified memoranda responsive to your request that have not previously been produced, and they are included on the attached CD at Bates Range TK000416 - TK000431. Some of these documents contain personal identifying information, and I produce them pursuant to the confidentiality agreements that you, as well as Mr. Froelich, have signed in the past. I include some reports that do not arise from an investigation of Circle or the Marchellettas, but which make reference to one of the Marchellettas. I am continuing to pursue one line of inquiry to ensure that there are no additional documents responsive to this request, and I will let you know when that inquiry is complete.

Regarding Discovery Request Number 4, you ask for "all written or recorded statements of any of the three co-defendants within the government's possession, custody, or control." I am not aware of any such statements that have not already been produced. However, I am aware of a handwriting report analyzing statements made by Defendant Kottwitz, which the agents received after the conclusion of the trial and which I do not believe was previously produced.

That report, as well as the relevant handwriting exemplars, is included on the attached CD at Bates Range HE000001 - HE000448.

I am in receipt of your Discovery Request Number 6, and I will respond in due course. If you have any questions, please feel free to contact me at (404) 581-6048. Otherwise, I look forward to seeing you in Atlanta on July 9.

Sincerely,

SALLY QUILLIAN YATES
UNITED STATES ATTORNEY

A handwritten signature in black ink, appearing to read 'C. Bly', with a stylized flourish at the end.

CHRISTOPHER C. BLY
ASSISTANT U.S. ATTORNEY

cc: Jerome J. Froelich, Jr. (with enclosures)