APPENDIX

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 19-40697

Consolidated with: 19-40763

UNITED STATES OF AMERICA,

Plaintiff - Appellee

v.

JAMES MORRIS BALAGIA, also known as DWI Dude,

Defendant - Appellant

Appeal from the United States District Court
for the Eastern District of Texas

Before DENNIS, ELROD, and DUNCAN, Circuit Judges.

PER CURIAM:

IT IS ORDERED that appellee's opposed motion to dismiss the appeal is GRANTED. We lack jurisdiction under *Flanagan v. United States*, which holds that "a District Court's pretrial disqualification of defense counsel in a criminal prosecution is not immediately appealable under 28 U.S.C. § 1291." 465 U.S. 259, 260 (1984).

IT IS FURTHER ORDERED that appeal no. 19-40763 is DISMISSED as moot.

IT IS FURTHER ORDERED that appellant's opposed motion for stay pending appeal is DENIED as moot.

United States District Court

EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

UNITED STATES OF AMERICA	§	
	§	
VS.	§	CASE NUMBER 4:16CR176
	§	
JAMES MORRIS BALAGIA	§	

ORDER DENYING OPPOSED MOTION TO CONTINUE

Before the Court is Defendant's Opposed Motion to Continue (Dkt. #343) wherein Defendant requests the Court to continue the trial date at least thirty (30) days. Having considered the Motion, the Court is of the opinion that said motion should be **DENIED**. Counsel for Defendant has indicated that she is unable to try to the case alone. The Court has appointed CJA co-counsel, Gaylon Riddels to assist the Defendant and counsel with the case well in advance of the October 15th trial setting.

It is therefore ORDERED that the Defendant's Opposed Motion to Continue (Dkt. #343) is **DENIED**.

IT IS SO ORDERED.
SIGNED this 21st day of August, 2019.

AMOS L. MAZZANT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

UNITED STATES OF AMERICA,	§	
	§	
	§	CASE NUMBER 4:16-CR-00176
v.	§	
	§	
	§	
JAMES MORRIS BALAGIA (3)	§	
	§	

ORDER APPOINTING CJA CO-COUNSEL

The Court has determined that the above-named Defendant qualifies for co-counsel to be appointed for adequate representation in the above-styled case. Accordingly, pursuant to the Criminal Justice Act (18 U.S.C. Section 3006A), this Court appoints Gaylon Riddels, a member of the Criminal Justice Act Panel of this District to assist in the representation of this Defendant with current counsel, Daphne L. Silverman.

The Court notes the appearance of Gaylon Riddels as co-counsel to represent Defendant.

SIGNED this 1st day of August, 2019.

AMOS L. MAZZANT
UNITED STATES DISTRICT JUDGE

United States District Court

EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

UNITED STATES OF AMERICA	§	
	§	
VS.	§	CASE NUMBER 4:16CR176
	§	
JAMES MORRIS BALAGIA	§	

ORDER DENYING APPROVAL OF ENTRY OF APPEARANCE

On this day, came on to be considered the Motion for Approval of Entry of Appearance as Co-Counsel (Dkt. #344). After having reviewed the pleadings, and hearing argument of counsel at telephonic hearing, the Court is of the opinion that the Motion should be and is hereby **DENIED**. Counsel, Norman Silverman has been permanently disqualified by the Honorable Judge Marcia Crone from appearing in this case. (Dkt. #26, p. 9, 4:19-MC-4).

It is therefore **ORDERED** that the Motion for Approval of Entry of Appearance as Co-Counsel (Dkt. #344) is **DENIED**.

IT IS SO ORDERED.

SIGNED this 29th day of July, 2019.

Amos Mazzant

AMOS L. MAZZANT
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

UNITED STATES OF AMERICA	§	
	§	
	§	
	§	
v.	§	CRIMINAL NO. 4:16CR176
	§	
JAMES MORRIS BALAGIA (3)	§	

ORDER

The Court has directed the Parties to file any response to: (1) Defendant's Amended Renewed Motion to Compel Discovery [Dkt, 243] and (2) Government's Motion for Protective Order [Dt. 246] on or before Friday, February 22, 2019. Subsequent to the Court's Orders setting these deadlines, additional filings have been made. The Court desires to take up the totality of the discovery issues that remain pending between the Parties at one hearing. In effort to do so and enable the Parties to make all necessary filings in advance of scheduling such hearing, the Court again extends the response deadline.

IT IS ORDERED THAT Defendant and the Government shall file any response, as is necessary, to any pending discovery motion [including specifically Dkts. 200, 243, 246, 252] on or before ***Friday, March 8, 2019***. To the extent any other discovery issues exist that have not yet been briefed or filed, they shall also be filed by this deadline. It is further ordered that any replies shall be due on or before ***Friday, March 15, 2019***.

IT IS SO ORDERED.
SIGNED this 15th day of February, 2019.

Christine A. Nowak
UNITED STATES MAGISTRATE JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

UNITED STATES OF AMERICA	§	
	§	
v.	§	CASE NO. 4:16-CR-0176-MAC-CAN
	§	
JAMES MORRIS BALAGIA (3)	§	

ORDER RESETTING HEARING

On November 6, 2018, the Defendant, James Morris Balagia, filed a Motion to Compel Discovery ("Motion") [Dkt. 198]. Defendant's Motion is currently set for hearing on Tuesday, November 27, 2018, at 10:30 a.m. On November 16, 2018, the Government filed a Motion for Continuance, seeking to continue this hearing until December 12, 2018 because of pre-arranged travel plans [Dkt. 202]. Defendant is unopposed to the Government's request. The Court finds that the Government's Motion for Continuance should be granted. Accordingly,

It is **ORDERED** that the Government's Motion for Continuance [Dkt. 202] is **GRANTED.**

It is further **ORDERED** that a hearing on Defendant's Motion is reset before United States Magistrate Judge Christine A. Nowak, United States Courthouse Annex, 200 North Travis Street, Mezzanine Level, Sherman, Texas on ***Wednesday, December 12, 2018, at 10:30 a.m.*** The Court directs counsel for the Parties to meet and confer in person thirty (30) minutes prior to hearing regarding each of the discovery items the subject of the pending motion to determine if the issues for hearing can be narrowed and/or resolved without the necessity of Court intervention.

IT IS SO ORDERED.

SIGNED this 19th day of November, 2018.

Christine A. Nowak
UNITED STATES MAGISTRATE JUDGE

UNITED STATES DISTRICT COURT **EASTERN DISTRICT OF TEXAS**

In Re: NORMAN SILVERMAN TEXAS STATE BAR #00792207	§ § § § §	CASE NO. 4:19-MC-4

MEMORANDUM AND ORDER SUSPENDING ATTORNEY NORMAN SILVERMAN

Before the court is the matter of Attorney Norman Silverman's ("Silverman") privilege to practice law in the Eastern District of Texas. On January 14, 2019, it was brought to the court's attention that, on May 18, 2016, Silverman's right to practice law before the Western District of Pennsylvania was revoked.[1] This revocation followed Silverman's failure to pay monetary sanctions in the amount of $4,300.00 which were imposed by the Pennsylvania judge after Silverman repeatedly displayed "a lack of respect for the authority of the Court, a lack of respect for the jury's time and a seeming lack of understanding of the judicial process."[2] On January 15, 2019, it was brought to the court's attention that, on January 31, 2018, Silverman was suspended from practicing law in the Western District of Texas for 120 days after admitting to the court that he was unprepared to proceed to trial in a criminal case and that he was providing ineffective assistance of counsel to his client. *See United States v. Nguyen*, Case Number 5:13-580-5. On January 16, 2019, this court issued an order directing Silverman to show cause as to why the identical discipline should not be imposed in this district pursuant to Local Rule AT-2(b)(2). On

[1] Silverman was admitted to the Western District of Pennsylvania *pro hac vice* to represent Defendant Mayank Mishra ("Mishra") in Case Number 2:12-cr-00092-C, *United States v. Richard Bush and Mayank Mishra.*

[2] Silverman failed to appeal the contempt order and monetary sanction. *See United States v. Mishra*, No. 2:12-cr-00092-C, 2016 WL 2895118, at *1 (W.D. Pa. May 18, 2016).

February 11, 2019, Silverman, through counsel Edwin Gerald Morris, filed a written response. On February 15, 2019, the court held a hearing, asked questions, received information, and heard arguments presented by counsel for Silverman.[3] Silverman submitted additional briefing on February 22 and 25, 2019. Having considered the written record of the proceedings in the Western District of Pennsylvania and the Western District of Texas, Silverman's written responses, the information gathered at the hearing, the argument presented by counsel, and the applicable law, the court is of the opinion that reciprocal discipline is warranted and that Silverman should be: (1) suspended from practicing law in the Eastern District of Texas for 120 days; (2) removed from the representation of James Morris Balagia ("Balagia") in Case Number 4:16-cr-176 and Arturo Elizondo ("Elizondo") in Case Number 1:17-cr-153; and (3) removed from the roll of attorneys admitted to practice in the Eastern District of Texas and not permitted to seek re-admission until the latter of the expiration of 120 days from the date of this order or the resolution of any additional disciplinary procedures which may be taken pursuant to this court's report to the Chief Judge for the Eastern District of Texas in accordance with Local Rule AT-2(d)(2)(A).

I. Background

A. Western District of Pennsylvania

On December 6, 2013, Silverman filed a motion for leave to appear *pro hac vice* in Case Number 2:12-cr-00092-C, *United States v. Mishra*, in the Western District of Pennsylvania. On March 12, 2014, the court granted Silverman's motion. On December 2, 2015, a jury trial began

[3] Silverman invoked his Fifth Amendment privilege against self-incrimination at the hearing, and no testimony was taken under oath from any participant.

before the Honorable Judge Cathy Bissoon ("Judge Bissoon"). From the outset of the trial, Silverman repeatedly violated the court's pre-trial evidentiary orders. According to Judge Bissoon's February 9, 2016, order, and as confirmed by selected excerpts from the trial transcript, Silverman also failed to label his exhibits in advance of trial, failed to have a working copy of the government's exhibits at hand, did not limit his cross-examination of witnesses to the scope of their direct examination, and frequently continued the same line or character of questions after the court sustained a non-form objection. On December 7, 2015, Silverman's conduct reached a breaking point. From the trial transcript it appears that had Silverman's co-counsel been prepared to try the case, Judge Bissoon would have revoked Silverman's *pro hac vice* status mid-trial and possibly placed him in jail. As it happened, co-counsel, Daphne Silverman ("Daphne"), represented to Judge Bissoon that she was unprepared to try the case in Silverman's absence, so Silverman's representation of Mishra continued. Over the entirety of the trial, which ended on December 18, 2015, Silverman accumulated $4,300.00 in sanctions as a result of his unprofessional conduct.

On February 9, 2016, Judge Bissoon issued a written order summarizing her oral orders, finding Silverman in contempt of court, and sanctioning him $4,300.00. In addition to summarizing Silverman's misconduct, the written order provides legal authority to support Judge Bissoon's decision to find Silverman in contempt of court as a result of his conduct during the trial. On March 15, 2016, after it became apparent that Silverman would not pay the sanction, the Government filed a motion requesting that the court issue an Order to Show Cause why Silverman's *pro hac vice* status should not be revoked for his failure to comply with the court's contempt order. On March 16, 2016, Judge Bissoon ordered Silverman to respond to the

Government's motion on or before March 25, 2016. On March 16, 2016, Silverman filed a motion seeking additional time to file a response to the Government's motion. The court granted Silverman's request and extended the deadline for responding to April 25, 2016. On April 21, 2016, attorney Alexander Lindsay Jr. ("Lindsay") filed a notice of appearance stating that he would be representing Silverman. The same day, Lindsay requested a second extension of the deadline to file a response to the Government's Motion. The court extended the deadline by one week. On May 2, 2016, Lindsay filed Silverman's responses. The gravamen of the responses is that the court's summary disposition finding Silverman in criminal contempt failed to comply with Federal Rule of Criminal Procedure 42(b) and should be vacated. Silverman's responses took the position that Rule 42(b) requires the court to issue a written contempt order contemporaneously with the contemptuous conduct.[4] Silverman did not brief the merits of the issue of whether his *pro hac vice* status should be revoked.[5]

On May 18, 2016, Judge Bissoon issued an order revoking Silverman's *pro hac vice* admission pursuant to the court's inherent authority. The court rejected Silverman's request to vacate its contempt order on the grounds that Silverman failed to appeal the order in a timely manner and, therefore, the court lacked jurisdiction to vacate the order. The court noted that Silverman "continue[s] to view this Court's Orders as recommendations or guidelines, as opposed

---

[4] Nothing in the text of Rule 42(b) requires a *contemporaneous* written order. *See* FED. R. CRIM. P. 42(b) ("Notwithstanding any other provision of these rules, the court (other than a magistrate judge) may summarily punish a person who commits criminal contempt in its presence if the judge saw or heard the contemptuous conduct and so certifies . . . The contempt order must recite the facts, be signed by the judge, and be filed with the clerk.").

[5] Silverman filed two responses. The first response sought to vacate the contempt order. The second response argued that because the contempt order was invalid the revocation of his *pro hac vice* status was moot.

to what they are, mandates from the Court." On May 25, 2016, Silverman paid the $4,300.00 contempt sanction. Silverman has not appealed any of the Western District of Pennsylvania orders. At no point did Silverman advise the Clerk of the Court for the Eastern District of Texas of this discipline as required by Local Rule AT-2(b)(3).

B. Western District of Texas

On July 5, 2013, Silverman filed a notice of appearance on behalf of Dung Nguyen ("Nguyen") in *United States v. Nguyen*, Case Number 5:13-cr-580-RCL-5, in the Western District of Texas. After an extensive pre-trial period during which little was accomplished,[6] the case was finally set for trial to begin on January 9, 2017. On December 21, 2016, Silverman filed a motion requesting that the court continue the trial date, wherein he stated that for various reasons, he was unprepared to proceed to trial. On December 22, 2016, the court denied the motion. On January 2, 2017, Silverman filed a motion requesting the court to reconsider his request for a continuance or alternatively to permit him to withdraw. At the January 4 and 5, 2017, hearings on the motion to reconsider, Silverman acknowledged that his continued representation of Nguyen likely bordered on ineffective assistance of counsel in light of his wife, Daphne's, health problems, which had caused him to neglect his client's case. The transcripts of these hearings reflect that the court had serious doubts about the veracity of Silverman's explanation in light of the fact that he had represented Nguyen for three years but was still contending that he was unprepared for trial as a result of Daphne's relatively recent health problems. In fact, the court suggested that the

[6] In the approximately three years between the time Silverman first appeared in the case and the time he withdrew, Silverman filed only two substantive motions, a motion for a bill of particulars and a motion to dismiss, in September and November 2015. (Doc. Nos. 695 & 697). In the five days between the time when the court granted Silverman's motion to withdraw and actually removed him from the docket, Silverman filed motions to suppress, to dismiss, and three different motions for discovery. (Doc. Nos. 946, 949, 950, 951, & 952).

motion to continue was merely a "tactical ploy" and part of Silverman's "maneuvering." (Doc. No. 959 at 7). Nevertheless, the court permitted Silverman to withdraw and continued the case, after which Nguyen was represented by another attorney.

On January 9, 2017, Judge Royce Lamberth, sitting by designation in the Western District of Texas, sent a memorandum to the Chief Judge of the Western District of Texas, Orlando Garcia, outlining his concerns about Silverman's conduct and recommending the initiation of disciplinary proceedings. On January 23, 2017, Silverman received notice that disciplinary proceedings were pending against him in the Western District of Texas. On February 9, 2017, Silverman filed a written response to the Western District of Texas disciplinary committee. The committee scheduled a hearing for May 22, 2017. Silverman did not appear or provide the committee notice that he would not be present. After waiting 30 minutes, the committee called Silverman who provided several excuses, including an infection, not receiving the email notice of the hearing, and not receiving the paper mail notice of the hearing. The committee agreed to reschedule the hearing. On June 27, 2017, Silverman appeared in person before the disciplinary committee. Following the hearing, the committee issued its report and recommendation to Chief Judge Garcia on September 6, 2017. Silverman filed a response and objection to the committee's proposed findings and discipline. On January 31, 2018, Judge Garcia issued an order suspending Silverman from practicing law in the Western District of Texas for 120 days. At no point did Silverman advise the Clerk of the Court for the Eastern District of Texas of this discipline as required by Local Rule AT-2(b)(3), although at the time, he was actively representing clients in the Eastern District of Texas and even appeared in a new case a mere 23 days after the Western

District of Texas issued the order suspending him. *See United States v. James Morris Balagia*, Case Number 4:16-cr-176-3; *United States v. Arturo Elizondo*, Case Number 1:17-cr-153-2.

C. Other Failures to Disclose

It has also come to the court's attention that after Silverman was disciplined by the Western District of Pennsylvania and Western District of Texas, Silverman failed to disclose fully his past disciplinary proceedings when applying for admission *pro hac vice* to another court. Particularly, on November 27, 2017, Silverman applied, and was admitted *pro hac vice*, in the Western District of Louisiana in Case Number 5:17-cr-163, *United States v. Rodolfo Baires*. Based on the publicly available record, it appears that Silverman did not disclose any of the above-referenced discipline. On December 14, 2017, Silverman applied, and was admitted *pro hac vice*, in the Western District of Louisiana in Case Number 5:16-cr-132, *United States v. Erasmo Aviles*. In his application, Silverman disclosed the pending discipline in the Western District of Texas, but failed to disclose the discipline in the Western District of Pennsylvania.[7]

At the show cause hearing, Silverman represented to the court that he fully disclosed the pending discipline in the Western District of Louisiana when he sought admission in *United States v. Baires*, but the attachment was filed under seal by local counsel. The court contacted the Western District of Louisiana and was informed that there were no sealed attachments included with the motion. Further, on the face of the motion, Silverman states: "There have been no disciplinary proceedings or criminal charges instituted against me." The Appendix filed by Silverman in this proceeding (#5) contains a disclosure, but it is not file stamped with any case

[7] Nevertheless, on July 26, 2018, Silverman applied, and was admitted *pro hac vice*, in the Western District of North Carolina in Case Number 3:18-cr-239, *United States v. Juan Jose Benton*. In his application, Silverman disclosed both of the above disciplinary proceedings.

number. In Silverman's Second Supplemental Response (#16), counsel withdrew the representation that the disclosure was filed in *United States v. Baires*.

II. Analysis

A. Motions to Disqualify

On February 15, 2019, the morning of the show cause hearing, Silverman filed a Motion to Disqualify the undersigned (#8), pursuant to 28 U.S.C. § 455(a). On February 22, 2019, Silverman filed a Second Motion to Disqualify the undersigned (#13), pursuant to 28 U.S.C. § 455(a) and (b). In support of this motion, Silverman relies on the Government's filing in *United States v. James Morris Balagia*, Case Number 4:16-cr-176-3. (Dkt. No. 255). At the time Silverman filed the motions, the undersigned was the presiding judge in the Balagia case. The case has since been transferred to the docket of Judge Amos Mazzant. Silverman and Daphne represent Defendant Balagia. Silverman maintains that the Government's filing is nothing more than a brief arguing that Silverman and Daphne should be suspended and removed from the case. At the hearing, the court made it clear that although it was aware of the filing, the court had not read it and would not consider it in these proceedings. Nevertheless, Silverman avers that the Government has put the court in such a position that its impartiality may be questioned and, therefore, the undersigned should recuse herself from these proceedings. Having considered the motion, the record, and the applicable law the court is of the opinion that the motion should be denied.

The test for recusal under § 455(a) is whether a reasonable person knowing all the circumstances would harbor doubts about the judge's ability to be impartial. 28 U.S.C. § 455(a); *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 865 (1988); *Chitimacha Tribe of La.*

v. Harry L. Laws Co., 690 F.2d 1157, 1165 (5th Cir. 1982), *cert. denied*, 464 U.S. 814 (1983). Applying this standard in the context of attorney discipline proceedings is difficult given the fact that the court must serve both an investigatory and adjudicative role. *See Manez v. Bridgestone Firestone N. Am. Tire, LLC*, 533 F.3d 578, 585 (7th Cir. 2008) ("[T]he court has the inherent power to conduct proceedings to investigate."); *Crowe v. Smith*, 151 F.3d 217, 234 n.23 (5th Cir. 1998) ("If we . . . allow the district court a workable way to investigate [attorney discipline] matters, we must accept the admittedly unusual fact of attorney testimony as part of the bargain."). When applying the recusal standard in an attorney discipline or sanction proceeding the question is whether there is "such a likelihood of bias or an appearance of bias that the judge was unable to hold the balance between vindicating the interests of the court and the interests of the accused [attorney]." *Spruell v. Jarvis*, 654 F.2d 1090, 1095 (5th Cir. 1981) (quoting *Taylor v. Hayes*, 418 U.S. 488, 501 (1974)); *see Mayberry v. Pennsylvania*, 400 U.S. 455, 466 (1971); *Ungar v. Sarafite*, 376 U.S. 575, 588 (1964). Nevertheless, "[a]ctions taken, and knowledge acquired, by a judge in the performance of his judicial functions ordinarily cannot form the basis for recusal." *In re Mitchell*, No. 4:03-MC-004-A, 2003 WL 21746254, at *2 (N.D. Tex. July 3, 2003); *see Liteky v. United States*, 510 U.S. 540, 554-56 (1994) ("[O]pinions formed by the judge on the basis of facts introduced or events occurring in the course of the current proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible."); *United States v. Grinnell Corp.*, 384 U.S. 563, 583 (1966); *Curl v. Int'l Bus. Machs. Corp.*, 517 F.2d 212, 214 (5th Cir.1975).

Here, the discipline imposed on Silverman by other federal courts was brought to this court's attention by the Government.[8] In response, this court conducted an independent investigation by accessing publicly available records as well as requesting documents and information from the Western District of Texas and the Western District of Louisiana. After determining that Silverman had, in fact, been disciplined in other federal courts, this court issued a show cause order directing Silverman to respond. Silverman was provided ample opportunity to submit evidence and argument as to why reciprocal discipline should not be imposed by the Eastern District of Texas. This court has limited its consideration in this matter to the information discovered through its independent investigation, this court's legal research, and the information, authorities, and arguments presented by Silverman.[9] Even if the court had considered the Government's filings, that would not form a basis to question the impartiality of this court. *See Liteky*, 510 U.S. at 554-56. In sum, a reasonable person knowing *all the circumstances* would not question the court's impartiality. Therefore, Silverman's Motion to Disqualify the undersigned (#8) and Silverman's Second Motion to Disqualify the undersigned (#13) are DENIED.

B. Reciprocal Discipline

Local Rule AT-2(b)(1) provides:

> Except as otherwise provided in this subsection, a member of the bar of this court shall automatically lose his or her membership if he or she loses, either temporarily or permanently, the right to practice law before any state or federal court for any reason other than nonpayment of dues, failure to meet continuing legal education

---

[8] These advisories to the court are at the center of Silverman's motions to disqualify. Silverman, however, ignores the fact that this *ex parte* communication would not have been necessary had he fulfilled his obligation to self-report his prior discipline.

[9] The court has had no prior dealings with the Silvermans. They did not make any appearances before the undersigned in the Balagia case, as the magistrate judge handled all pre-trial motions that were filed.

> requirements, or voluntary resignation unrelated to a disciplinary proceeding or problem.

The procedures for instituting reciprocal discipline are set forth in Local Rule AT-2(b)(2). Rule AT-2(b)(2) mandates that once a court is informed of discipline in another court, it must issue an order directing the attorney to show cause within 30 days why the imposition of identical discipline should not be imposed in this district. Rule AT-2(b)(2) also sets forth the following five defenses an attorney may raise in response to a show cause order:

> that the procedure followed in the other jurisdiction deprived the attorney of due process; that the proof was so clearly lacking that the court determines it cannot accept the final conclusion of the other jurisdiction; that the imposition of the identical discipline would result in a grave injustice; that the misconduct established by the other jurisdiction warrants substantially different discipline in this court; that the misconduct for which the attorney was disciplined in the other jurisdiction does not constitute professional misconduct in this State or in this court.[10]

Local Rule AT-2(b)(2). "If the attorney fails to establish one or more of the [five defenses,] the court *shall* enter the identical discipline to the extent practicable." Local Rule AT-2(b)(2).

In response to the discipline he received in the Western District of Pennsylvania, Silverman has asserted the following defenses: (1) the procedure followed in the Western District of Pennsylvania deprived Silverman of due process and (2) Local Rule AT-2 does not contemplate reciprocal discipline for the revocation of *pro hac vice* status in another federal court. In response to the discipline he received in the Western District of Texas, Silverman has asserted the following defenses: (1) the procedure followed in the Western District of Texas deprived Silverman of due process and (2) the misconduct established by the Western District of Texas warrants substantially

---

[10] Although Silverman did not raise it as a defense, the proof in both cases was more than sufficient to accept the court's final conclusion. Further, in both cases, the misconduct for which Silverman was disciplined constitutes professional misconduct in the Eastern District of Texas as well as the State of Texas.

different discipline in this court. In response to both disciplinary actions, Silverman maintains that the imposition of any discipline in this district would deprive his client, Balagia, of his counsel of choice and would result in grave injustice.

1. Western District of Pennsylvania Due Process

In support of his argument that he did not receive due process in the Western District of Pennsylvania, Silverman avers that he did not receive adequate notice of the conduct at issue, that he was not given an opportunity to be heard, and that the court did not follow its own rules when issuing its contempt order and ultimately revoking Silverman's *pro hac vice* status.

"Membership in the bar is a privilege burdened with conditions." *Theard v. United States*, 354 U.S. 278, 281 (1957) (quoting *In re Rouss*, 116 N.E. 782, 783 (N.Y. 1917)). Moreover, "wrongful personal and professional conduct, wherever committed, operates everywhere." *Selling v. Radford*, 243 U.S. 46, 49 (1917). Thus, "[a] federal court . . . should recognize, and give effect to, the 'condition created by the judgment of the [another] court unless, from an intrinsic consideration of the [] record,' it appears that . . . the [other court's] proceeding was wanting in due process . . ." *In re Stamps*, 173 F. App'x 316, 317 (5th Cir. 2006) (quoting *Selling*, 243 U.S. at 46); *see In re Ruffalo*, 390 U.S. 544, 551 (1968) (noting that disbarment proceedings are quasi-criminal in nature and therefore, an attorney is entitled to due process).

"Procedural due process requires that an attorney be given fair notice of the charges against him and an opportunity to be heard in an attorney disciplinary proceeding." *In re Sealed Appellant*, 77 F.3d 479 at *4 (5th Cir. 1996) (unpublished table decision). Here, Silverman contends that he did not receive adequate notice of the conduct at issue. The court has reviewed excerpts of the trial transcript in *United States v. Mishra*. It is apparent from those excerpts that

Silverman was repeatedly given oral warnings about his conduct and that Judge Bissoon was more than forgiving of numerous instances of misconduct early on in the trial. The majority of Silverman's misconduct involved his failure to follow the court's pre-trial evidentiary order. At one point, Judge Bissoon asked Silverman to explain the court's order. Silverman was unable to do so. Further, Judge Bissoon entered a written order outlining the charged conduct and ordering Silverman to pay a sanction. Silverman had the opportunity but failed to appeal this order. Additionally, before revoking Silverman's *pro hac vice* status, the court granted Silverman five additional weeks to prepare a response. At no point over those five weeks or in his response did Silverman ever argue that the court was unclear about what misconduct was at issue.

Silverman also maintains that he never received notice that the court was contemplating revoking his *pro hac vice* status. This argument has no merit. The court considered revoking Silverman's *pro hac vice* status mid-trial, and even stated it would have done so if it had been convinced that competent counsel was prepared to continue in his absence. In addition, on March 15, 2016, upon learning that Silverman had not complied with the court's contempt order of February 9, 2016, the Government reinstated a prior request that the court revoke Silverman's *pro hac vice* admission and subsequently renewed its request that the court revoke his *pro hac vice* status in another filing. (Doc. Nos. 364 & 469). Thus, it is clear from the record that Silverman was given adequate notice of the conduct at issue and the discipline the court was considering.

Next, Silverman asserts that he was not given an opportunity to be heard because the court never held an oral hearing on the Government's motion. Silverman fails to cite any authority supporting the proposition that he was entitled to an oral hearing as opposed to an opportunity to be heard, and the publicly available docket entries make it apparent that Silverman was afforded

a constitutionally adequate opportunity to be heard. Moreover, "[s]ince the misconduct alleged occurred in the court, there was no need for elaborate proof of the facts." *NASCO, Inc. v. Calcasieu Television & Radio, Inc.*, 894 F.2d 696, 707 (5th Cir. 1990), *aff'd sub nom. Chambers v. NASCO, Inc.*, 501 U.S. 32 (1991). Additionally, "the very nature of due process negates any concept of inflexible procedures universally applicable to every imaginable situation." *Crowe*, 151 F.3d at 231 (quoting *Cafeteria & Rest. Workers Union v. McElroy*, 367 U.S. 886, 895 (1961)); *see Patterson v. New York*, 432 U.S. 197, 210 (1977) ("Traditionally, due process has required only the most basic procedural safeguards be observed."); *Link v. Wabash R.R. Co.*, 370 U.S. 626, 632 (1962) ("[A]dequacy of notice and hearing respecting proceedings that may affect a party's rights turns, to a considerable extent, on the knowledge which the circumstances show such party may be taken to have of the consequences of his own conduct."). Finally, "[a]ttorneys facing disciplinary proceedings are not entitled to receive all the guarantees afforded the accused in a criminal case." *In re Stamps*, 173 F. App'x at 317 (citing *Sealed Appellant 1 v. Sealed Appellee 1*, 211 F.3d 252, 254 (5th Cir.2000)); *see In re Smith*,[11] 123 F. Supp. 2d 351, 354 (N.D. Tex. 2000), *aff'd*, 275 F.3d 42 (5th Cir. 2001) (rejecting an attorney's argument that he was

[11] The facts in *Smith* are complicated and set forth over several published opinions. The *en banc per curiam* opinion, which referred the case to the three-judge panel that issued the above cited opinion detailed much of the procedural background. Of significance to this case is the fact that Smith was given an oral hearing prior to his suspension by the United States Court of Appeals for the Tenth Circuit on November 29, 1993. *In re Smith*, 100 F. Supp. 2d 412, 414 (N.D. Tex. 2000). He was not, however, granted an evidentiary hearing when the court disbarred him for violating the suspension order three years later. *Id.* When *Smith* was reviewed by the Fifth Circuit, the court stated: "Having reviewed the record of Smith's disciplinary proceedings in the district court and in the Tenth Circuit, we find no constitutional violation and no abuse of discretion in the district court's decision to disbar Smith." 275 F.3d at 42. While *Smith* does not stand for the proposition that the failure to give an attorney the opportunity to present evidence at an oral hearing, alone, is never inconsistent with the due process, it supports the conclusion that the procedures followed by the Western District of Pennsylvania, in this case, comport with the due process requirements of the Constitution.

entitled to a jury trial or full evidentiary hearing before he could be disbarred). Indeed, "due process does include notice and an opportunity to be heard in these cases, only rarely will more be required." *Sealed Appellant 1*, 211 F.3d at 254.

The court has reviewed the records of the proceedings in the Western District of Pennsylvania. It is clear from these records that Silverman was repeatedly given oral notice of his misconduct and the punishment the court was considering over the course of the two-week trial. In each instance, Silverman was given an opportunity to respond orally on the spot. At one point, the court requested briefing from the Government on whether it was appropriate to revoke Silverman's *pro hac vice* status mid-trial. Silverman filed a written objection to revocation of his *pro hac vice* status. Silverman was also allowed to give sworn testimony regarding his good faith during the trial, and Daphne was permitted to argue on his behalf. The court found Silverman's testimony not to be credible. On February 9, 2016, Silverman was given additional notice in the form of a written sanction order. Silverman had the opportunity to appeal this order but chose not to do so. He was then given five weeks to prepare a written response as to why his *pro hac vice* status should not be revoked or comply with the court's sanction order.[12] Silverman filed two written responses. In light of these facts, this court finds no constitutional violation in the Western District of Pennsylvania's decision to revoke Silverman's *pro hac vice* status. *See In re Jones*, 275 F. App'x 330, 331 (5th Cir. 2008) (rejecting an attorney's argument that he was denied due process in a Louisiana proceeding because he was not afforded oral argument prior to his disbarment).

---

[12] The evidence offered in this proceeding indicates that Daphne, who was also sanctioned by the Western District of Pennsylvania, attempted to pay her sanction in an effort to show good faith. There is no indication that Silverman attempted to do the same.

Silverman's final argument is that the Western District of Pennsylvania denied Silverman due process by failing to follow its own local rules. As an initial matter, it appears that this statement is misleading. Regarding the summary contempt order, the record reflects that the court followed the proper procedure as set forth in Federal Rule of Criminal Procedure 42(b). Regarding the revocation of Silverman's *pro hac vice* status, it appears that the court elected to exercise its inherent authority in lieu of relying on the local rules. While this may not be the preferred method for disciplining attorneys, the court was certainly within its discretion to utilize its inherent power. *See NASCO, Inc.*, 501 U.S. at 46 ("We discern no basis for holding that the sanctioning scheme of the statute and the rules displaces the inherent power to impose sanctions for the bad-faith conduct described above."). Further, "[w]hether the procedures were adequate under [the Western District of Pennsylvania's local rules] is not a proper question for this court." *In re Stamps*, 173 F. App'x at 317-18. Accordingly, the court concludes that the process afforded to Silverman by the Western District of Pennsylvania comports with the Due Process Clause of the United States Constitution.

2. Local Rule AT-2 and Revocation of *Pro Hac Vice* Status

Silverman contends in a two-fold argument that Local Rule AT-2 does not contemplate discipline for the revocation of *pro hac vice* status by another federal court. First, Silverman avers that because *pro hac vice* status applies only to a particular case, there can be no "identical discipline." Second, Silverman asserts that Local Rule AT-2 did not require him to report the revocation to the Eastern District of Texas. This proceeding is limited to a determination of whether reciprocal discipline should be imposed. The same issue would have been before the court even if Silverman had self-reported the prior disciplinary actions, albeit at a different

juncture. *See* Local Rule AT-2(b)(2). The question of whether Silverman was required to report this discipline, and whether his failure to do so should subject him to additional sanctions, will be referred to the Chief Judge in accordance with Local Rule AT-2(d)(2)(A). Therefore, the court will not address Silverman's second point.

With regard to Silverman's first argument, "local rules have the same force and effect as law, and are binding upon the parties and the court until changed in the appropriate manner." *In re Adams*, 734 F.2d 1094, 1098 (5th Cir. 1984). Nevertheless, "[c]ourts have broad discretion in interpreting and applying their own local rules adopted to promote efficiency in the court." *Id.* at 1102. This discretion, however, is limited by statute (28 U.S.C. § 2071), the Constitution, and the supervisory authority of the United States Supreme Court. *See Frazier v. Heebe*, 482 U.S. 641, 646 (1987).

Here, Local Rule AT-2(b)(1) provides that reciprocal discipline shall issue for any attorney who "loses, either temporarily or permanently, the right to practice law before any state or federal court for any reason" other than for specific reasons inapplicable here. The use of the language *right to practice law* and *for any reason* suggests that the rule was designed to apply to all situations where the discipline of an attorney results in that attorney being unable to practice law before that court. By its plain language, this would include the revocation of admission *pro hac vice*. Further, Local Rule AT-2(B)(2) provides that "the court shall enter the identical discipline to the extent practicable." The phrase, "to the extent practicable" provides the court with the discretion to craft discipline that serves as the functional equivalent when, as here, "identical discipline" is not technically feasible. Therefore, the court rejects Silverman's invitation to

interpret Local Rule AT-2 so narrowly that it does not encompass the revocation of admission *pro hac vice*.

3. Western District of Texas Due Process

Silverman contends that he was denied due process in the Western District of Texas because, even after he was afforded (1) notice of the allegations against him, (2) an opportunity to respond in writing to a disciplinary committee, (3) an opportunity to appear in person before the committee, (4) written notice of the committee's findings, and (5) an opportunity to submit written objections to the committee's findings, Chief Judge Garcia failed to assign the matter to a district judge for final determination as contemplated by Western District of Texas Local Rule AT-7(g). Judge Garcia, however, issued the final written order suspending Silverman. Silverman elected not to appeal that order. Further, nothing in Western District of Texas Local Rule AT-7(g) prevents Chief Judge Garcia from assigning himself, a district judge, to issue the final determination.[13] More importantly, however, "[w]hether the procedures were adequate under [the Western District of Texas's local rules] is not a proper question for this court." *In re Stamps*, 173 F. App'x at 317-18. Accordingly, the court concludes that the process afforded to Silverman by the Western District of Texas comports with the Due Process Clause of the United States Constitution.

[13] In Silverman's first written response (#4), he avers that Judge Garcia's failure to assign the matter to another district judge deprived him of an important opportunity to be heard, and, had he been given such an opportunity, he would have fully developed his mitigating evidence in a formal hearing. At the hearing in this proceeding, the court pointed out that Western District of Texas Local Rules AT-7(g) gives the district judge the discretion to hold an additional hearing, but nothing in the rule requires the judge to hold such a hearing. In his post-hearing briefing, Silverman does not address this issue.

4. Substantially Different Discipline in this Court is Unwarranted

Silverman argues that the circumstances surrounding his Western District of Texas suspension warrants substantially different discipline in this court. Particularly, Silverman contends that his failure to meet his professional obligations in that case resulted from Daphne's breast cancer diagnosis. He further avers that since then, Daphne's condition has greatly improved and he is, once again, able to devote the time and attention necessary to meet his professional obligations. The court has empathy for the Silvermans and the effect Daphne's diagnosis had on Silverman and their practice. Further, the court was pleased to learn that Daphne's health has improved and that she has resumed the full-time practice of law.

The court, however, cannot conclude that the Eastern District of Texas would have imposed substantially different discipline on Silverman in light of his admission that he provided inadequate assistance of counsel to Nguyen, which Judge Lamberth characterized as "a shocking display of attorney misconduct." Moreover, the court is aware of Silverman and Daphne's joint representation of Balagia and, after reviewing the docket and recent filings, the court is not convinced that Silverman's method of practice has improved to such a degree that different discipline by this court would be warranted. Particularly, United States Magistrate Judge Christine Nowak warned the Silvermans that the special trial setting for February 4, 2019, would not be moved. Despite this admonishment, the Silvermans failed to make arrangements for a conflicting civil trial date and instead asked the court to continue the criminal case on December 30, 2018. Further, the Silvermans failed to retain a financial expert in a timely manner and instead attempted to use that to justify a continuance. Additionally, the Silvermans waited until

shortly before trial to interview, or attempt to interview, foreign witnesses.[14] In light of these considerations, Silverman has failed to persuade the court that the misconduct established in the Western District of Texas warrants substantially different discipline in this court.[15]

5. Grave Injustice

Silverman's final argument is that the imposition of any reciprocal discipline would serve as a grave injustice to his client, Balagia. Silverman avers that, if the court were to allow Daphne to continue to represent Balagia without him, it would be impossible for her to get new co-counsel adequately prepared to serve as second chair by April 8, 2019. Although, the court questions the

---

[14] The Silvermans' motion for continuance was initially denied; however, the case was continued after it became apparent that additional time would be needed to undertake the necessary disciplinary inquiry.

[15] At the hearing, Silverman's counsel maintained that "there's nothing in Mr. Silverman's past that indicates that he had ever been dilatory or not prepared." This statement is simply inaccurate. *See, e.g., United States v. Fisch*, No. CRIM. H-11-722, 2014 WL 3735571, at *4 (S.D. Tex. July 25, 2014) (Silverman filed a notice of appearance 17 days before the trial of a case that had been on the court's docket for more than three years was scheduled to begin and requested a continuance, which was denied. He failed to comply with the court's order to respond to a motion to quash by a given deadline. Ultimately, Silverman was disqualified from the case 10 days after his initial appearance due to a conflict of interest); *In re Silverman*, 135 S.W.3d 730, 731 (Tex. App.—Houston [1st Dist.] 2003, no pet.) (Silverman was found to be in contempt of court when, after repeated warnings, he failed to file a brief on behalf of a client who had been convicted of murder and sentenced to life in prison and failed to respond to a show cause order.). The court's research has also revealed that Silverman was found in contempt of Court by the Harris County Criminal Court at Law Number 2 for failing to appear in October 1999. *Texas v. Silverman*, No. 9944798 (Co. Ct. at Law No. 2, Harris County, Tex. Nov. 22, 1999). A Show Cause order was also issued against Silverman by the 180th Judicial District Court of Harris County in February 2006 as a result of Silverman's failure to abide by court orders. *Texas v. Silverman*, No. 1058630 (180th Dist. Ct., Harris County, Tex. Feb. 21, 2006). In July 2006, the 180th Judicial District Court of Harris County issued a second show cause order as a result of Silverman's intentionally and knowingly failing to appear for a hearing. *Texas v. Silverman*, No. 1074974 (180th Dist. Ct., Harris County, Tex. July 18, 2006). It also appears that Silverman may be delinquent on certain property taxes. *See Harris County v. Norman J. Silverman*, Case No. 2016-80750 (269th Dist. Ct., Harris County, Tex.). Additionally, the Western District of Texas had previously issued a show cause order after Silverman failed to appear for docket call in October 2004. *In re: Silverman*, Case Number 2:4-cv-90. It also appears that Silverman failed to file an appellate brief for his client, Christopher Gutierrez, in January 2017. *See Gutierrez v. State*, Case No. 01-16-00570-CR (Tex. App.—Houston [1st Dist.] Jan. 19, 2017) (Radack J. acting individually).

accuracy of such a claim;[16] the issue is now moot. On February 25, 2019, the undersigned transferred the Balagia case to Judge Mazzant. In light of the fact that Judge Mazzant is new to this case, he will undoubtably undertake a review of the filings and set a new trial date that is appropriate in this situation. In the interim, Daphne and new co-counsel, if Balagia chooses to retain another attorney, will have adequate time to prepare for trial. Therefore, the only remaining consideration is whether Balagia's Sixth Amendment rights outweigh this court's interest in ensuring that the attorneys who come before it do so in an ethical manner that does not impede the orderly administration of justice.

"[T]he Sixth Amendment requires the courts to respect a defendant's own particular choice of counsel." *United States v. Dinitz*, 538 F.2d 1214, 1219 (5th Cir. 1976), *cert. denied*, 429 U.S. 1104 (1977). This right, however, is not absolute. *See United States v. Nolen*, 472 F.3d 362, 375 (5th Cir. 2006); *United States v. Salinas*, 618 F.2d 1092, 1093 (5th Cir.), *cert. denied*, 449 U.S. 961 (1980); *United States v. Kitchin*, 592 F.2d 900, 903 (5th Cir.), *cert. denied*, 444 U.S. 843 (1979); *Dinitz*, 538 F.2d at 1219. Indeed, this "right is specifically limited by the trial court's power and responsibility to regulate the conduct of attorneys who practice before it." *Kitchin*, 592 F.2d at 903. To this end, the court's duty to ensure the orderly administration of justice by

---

[16] Attached as Exhibit 1 to Silverman's Supplemental Response (#14) is the statement of Daphne Silverman. The statement details her qualifications and the efforts she has undertaken to prepare for trial, noting that she has "devoted time virtually every day for over a year to investigating the facts and researching the law on Balagia's case." The statement also discusses how she and Silverman are a team and that their skill sets complement each other. The statement, however, is devoid of any facts which indicate that replacing Silverman would result in duplicative efforts or that Silverman is uniquely qualified to try the case. Daphne merely opines that Silverman has an exceptional ability to process volumes of data about a witness, to identify contradictions in the different pieces of evidence, and to develop questions that can expose the truth. She adds that she has personally never seen any attorney better able to cross-examine dishonest witnesses and that she expects many dishonest witnesses in the case. Yet, many able attorneys who practice in the Eastern District of Texas have similar skills. Under the circumstances, her argument that Silverman is irreplaceable is unpersuasive.

regulating the conduct of attorneys must be balanced against a defendant's Sixth Amendment right to his choice of counsel as "a prerequisite to disqualifying counsel of the defendant's choice." *Nolen*, 472 F.3d at 375. Nevertheless, "the Sixth Amendment's right to choice of counsel merely informs judicial discretion[,] it does not displace it." *Dinitz*, 538 F.2d at 1219.

Here, the court has reviewed the transcript of the proceedings in the Western District of Pennsylvania as well as the proceedings in the Western District of Texas. The court has also reviewed the written submissions in both cases. Further, the court has considered the following: Silverman's written responses to the show cause order; the attached letters of support; the arguments of counsel; the statements made by Balagia concerning the quality of the Silvermans' representation; Daphne's statement regarding the Silvermans' practice; and Silverman's demeanor at the show cause hearing.[17] Silverman, it appears, fails to appreciate the extent of his ethical duties and lacks a genuine understanding of the scope of his unprofessional conduct, including the negative effects it has had on his clients, opposing counsel, the court, and the orderly administration of justice. Silverman has consistently relied on a myriad of excuses or explanations in an attempt to shift blame or otherwise justify his own misconduct in a variety of situations.

All things considered, it appears that Silverman will likely engage in similar conduct if he is permitted to continue representing his current clients in the Eastern District of Texas. Such conduct, if repeated, would undoubtedly have an adverse effect on the ability of the courts of the

[17] At the show cause hearing, Silverman seemed to be unable to sit still. He continually squirmed in his chair, often half-rising, and, on occasion, standing up and whispering loudly in his lawyer's ear. He frequently rolled his eyes in response to statements and questions from the court directed at his attorney. He repeatedly cleared his throat in an audible and disruptive manner. At one point, Silverman almost entirely lost the ability to control himself, stood up, and attempted to interject himself into a discussion between counsel and the court.

Eastern District of Texas to ensure the administration of justice in an effective and fair manner. Further, it is likely that such conduct, if repeated in this district, could harm Silverman's clients.[18]

The court, however, is extremely hesitant to disqualify a defendant's counsel of choice. Nevertheless, such disqualification is necessary in this case in order to ensure the orderly administration of justice. In this situation, Daphne has already taken on the role of lead counsel. All of the pre-trial motions filed on behalf of Balagia were filed by Daphne. Daphne has repeatedly appeared on Balagia's behalf to argue these motions before Judge Nowak. Daphne's Statement (Doc. No. 14-1) indicates that she has reviewed all the discovery in this case; researched and interviewed expert witnesses; filed FOIA requests and subpoenas; hired investigators in Colombia, Florida, Louisiana, and Texas; interviewed witnesses in person; drafted discovery, *James*, and other defense motions; and communicated with the Government regarding discovery. It is unclear what, if any, contribution Silverman has made to Balagia's case to date. At the show cause hearing, Daphne represented to the court that her health would not be a hindrance to her continued practice of law or her representation of Balagia. She further indicated that she recently tried a civil case with the assistance of an attorney other than Silverman. In this matter, Daphne was also facing the possibility of identical discipline with regard to the revocation of her *pro hac vice* status by the Western District of Pennsylvania. The court has determined, however, that reciprocal discipline in her case would result in a grave injustice and, therefore, has declined to

[18] The court has considered Silverman's arguments regarding the propriety of the Government's advisories to the court and its motivation for filing them. Silverman maintains that the "oppressive timing" of the Government's actions and its potential interference with the attorney-client relationship is a factor which should tip the scale in favor of permitting Silverman to continue his representation of Balagia. Even assuming the motivation Silverman attributes to the Government is correct, the outcome of this proceeding would, nevertheless, remain the same. Silverman, once again, ignores the fact that he had an obligation under the Local Rules to self-report. Had Silverman fulfilled this obligation, there would have been nothing for the Government to report. Thus, fault here lies solely with Silverman.

impose it. In light of the fact that Daphne may continue representing Balagia and that a new second chair will be afforded adequate time to prepare by Judge Mazzant, Balagia's Sixth Amendment right to counsel of his choosing is adequately protected when it is balanced against this court's obligation to ensure the orderly and effective administration of justice in the Eastern District of Texas.

6. Reciprocal Discipline

Local Rule AT-2(b)(2) mandates that this court enter "identical discipline to the extent practicable." In the case of the 120-day suspension issued by the Western District of Texas, reciprocal discipline requires a 120-day suspension. In the case of the revocation of Silverman's *pro hac vice* status by the Western District of Pennsylvania, identical discipline to the extent practicable is as follows: (1) Silverman is removed from representing any client for whom he is currently counsel of record in the Eastern District of Texas;[19] and (2) the Clerk of the Court shall remove Silverman from the roll of attorneys admitted to practice in this district. Additionally, Silverman may not seek re-admission to the Eastern District of Texas until the expiration of 120 days from the date of this order and the conclusion of any additional disciplinary proceedings instituted as a result of this court's report to the Chief Judge regarding this matter.[20]

---

[19] Silverman currently represents James Morris Balagia in Case Number 4:16-cr-176 and Arturo Elizondo in Case Number 1:17-cr-153. The court has already addressed the Sixth Amendment concerns regarding Silverman's representation of Balagia. Silverman has failed to raise the issue regarding his representation of Elizondo. Should Silverman's disqualification implicate the Sixth Amendment in that case, Judge Heartfield can consider the effect of this order on Elizondo.

[20] The court will forward a copy of this order, the transcript of the show cause hearing, and the documentary evidence discovered in the course of the court's investigation to the Chief Judge of the Eastern District of Texas to implement the procedures outlined in Local Rule AT-2(d)(2)(A).

III. Conclusion

Consistent with the foregoing analysis, it is ORDERED that Norman Silverman, Texas Bar Number 00792207, be suspended from the practice of law in the Eastern District of Texas beginning February 28, 2019, and lasting for a period of 120 days. It is also ORDERED that Silverman is removed from the representation of James Morris Balagia in Case Number 4:16-cr-176 and Arturo Elizondo in Case Number 1:17-cr-153 in the Eastern District of Texas. It is further ORDERED that the Clerk of the Court remove Norman Silverman from the roll of attorneys admitted to practice in this district and unseal the style of this proceeding and this order. Should the Eastern District of Texas determine that additional disciplinary proceedings are necessary upon considering this court's order, Silverman shall not seek re-admission to practice in this district until those proceedings are concluded.

Furthermore, Silverman is ORDERED to review the local rules for all federal and state courts in which he is admitted to practice law. If the local rules of any court in which Silverman is admitted to practice law impose a duty on an attorney to report discipline from other courts, Silverman is ORDERED to make the appropriate disclosures to those courts on or before March 8, 2019. Should Silverman seek readmission to the Eastern District of Texas, his application must contain satisfactory proof that he has fulfilled his self-reporting obligations in every court in which he is admitted to practice law.

Additionally, Silverman's Motion to Disqualify the Honorable Judge Marcia Crone (#8) and Second Motion to Disqualify the Honorable Judge Marcia Crone (#13) are DENIED. Silverman's Motion to Disclose Source of Information (#6) and Motion to Continue (#7) are DENIED as moot.

SIGNED at Beaumont, Texas, this 28th day of February, 2019.

Marcia A. Crone

MARCIA A. CRONE
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 19-40697

Consolidated With 19-40763

UNITED STATES OF AMERICA,

Plaintiff - Appellee

v.

JAMES MORRIS BALAGIA, also known as DWI Dude,

Defendant - Appellant

Appeals from the United States District Court
for the Eastern District of Texas

Before DENNIS, ELROD, and DUNCAN, Circuit Judges.

PER CURIAM:

This panel previously granted Appellee's opposed motion to dismiss appeal no. 19-40697, dismissed appeal no. 19-40763 as moot, and denied appellant's opposed motion for stay pending appeal as moot. The panel has considered Appellant's opposed motion for reconsideration. IT IS ORDERED that the motion is DENIED. We lack Jurisdiction over the interlocutory appeal of the denial of continuance as it is not a final order for purposes of the collateral order of doctrine.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

UNITED STATES OF AMERICA	§	
	§	
v.	§	No. 4:16CR176
	§	Judge Crone
	§	
JAMES MORRIS BALAGIA (3)	§	
a.k.a. "DWI Dude"	§	

FOURTH SUPERSEDING INDICTMENT

THE UNITED STATES GRAND JURY CHARGES:

At all times material to this Fourth Superseding Indictment:

Introduction and General Allegations

1. **James Morris Balagia aka "DWI Dude,"** was an attorney licensed in the State of Texas in 1992 and representing clients in criminal cases in state court and in the United States District Courts for the Eastern, Western, and Southern Districts of Texas as well as the Northern District of Alabama. **Balagia** has represented defendants in approximately 84 federal criminal cases. Among these cases, **Balagia** has represented defendants in approximately 40 serious federal drug cases;

2. Bibiana Correa Perea aka "Bibi" was a Colombian attorney;

3. Charles Norman Morgan aka "Chuck" was a private investigator from Stuart, Florida;

4. *Drug Enforcement Administration Seizure of $50,000 in United States Currency,* DEA Case Number MB-12-0012, Asset ID Number 12-DEA-556315 was an

asset forfeiture matter related to seizure of suspected proceeds from narcotics trafficking on United States Interstate 40 on or about November 17, 2011;

5. *United States v. Hermes Casanova Ordonez, a.k.a. "Megatron,"* Criminal Number 4:13cr38 was a drug trafficking case pending in the United States District Court for the Eastern District of Texas;

6. *United States v. Segundo Villota-Segura,* Criminal Number 4:13cr38 was a drug trafficking case pending in the United States District Court for the Eastern District of Texas;

7. *United States v. Aldemar Villota-Segura,* Criminal Number 4:13cr38 was a drug trafficking case pending in the United States District Court for the Eastern District of Texas;

8. A common and well-accepted law enforcement technique is for the government to offer a member of a drug conspiracy the opportunity to cooperate with, and provide information to, the government, and this information is then used to investigate and prosecute other members of the conspiracy. No defendant must pay the government for the opportunity to cooperate. Rather, in exchange for a defendant's cooperation and truthful information, the government may request that the cooperating defendant receive a reduced sentence. Whether to follow the government's recommendation and reduce the sentence is in the sole discretion of the federal sentencing judge.

Count One

Violation: 18 U.S.C. § 1956(h)
(Conspiracy to Commit Money Laundering)

Beginning in or about 2011, the exact date unknown to the Grand Jury, and continuing thereafter up to and including the date of the filing of this Fourth Superseding Indictment, in the Eastern District of Texas and elsewhere, **James Morris Balagia** a.k.a. "DWI Dude," the defendant herein, did knowingly, willfully and unlawfully conspire and agree together and with Charles Norman Morgan a.k.a. "Chuck," Bibiana Correa Perea a.k.a. "Bibi," HJP, and with other persons known and unknown to the Grand Jury, to:

(a) conduct and attempt to conduct financial transactions affecting interstate and foreign commerce and to transport, transmit, or transfer, or attempt to transport, transmit, or transfer a monetary instrument or funds represented by a law enforcement officer to be the proceeds of a specified unlawful activity to wit: distribution or conspiracy to distribute or possess with the intent to distribute a controlled substance or substances from a place in the United States to or through a place outside the United States or to a place in the United States from or through a place outside the United States, believing that the transactions were designed in whole or in part to conceal and disguise the nature, location, source, ownership and control of the proceeds and that while conducting and attempting to conduct such financial transactions, the defendant believed that the property involved in the financial transactions, that is, United States currency, represented the proceeds of some form of unlawful activity, in violation of 18 U.S.C. §1956(a)(3);

(b) conduct and attempt to conduct financial transactions affecting interstate and foreign commerce and to transport, transmit, or transfer, or attempt to transport, transmit, or transfer a monetary instrument or funds from a place in the United States to or through a place outside the United States or to a place in the United States from or through a place outside the United States, which involved the proceeds of a specified unlawful activity, to wit: distribution or conspiracy to distribute or possess with the intent to distribute a controlled substance or substances knowing that the transactions were designed in whole or in part to conceal and disguise the nature, location, source, ownership and control of the proceeds and that while conducting and attempting to conduct such financial transactions, the defendant knew that the property involved in the financial transactions, that is, United States currency, represented the proceeds of some form of unlawful activity, in violation of 18 U.S.C. §§1956(a)(1)(B)(i), (a)(2)(B)(i); and,

(c) engage, or attempt to engage, in a monetary transaction in an amount greater than $10,000 by, though, or to a financial institution with proceeds of a specified unlawful activity, that is, conspiracy to distribute or possess with the intent to distribute a controlled substance or substances in violation of 18 U.S.C. § 1957.

All in violation of 18 U.S.C. § 1956(h).

Count Two

Violation: 18 U.S.C. § 1503 and 2 (Obstruction of Justice and Aiding and Abetting)

Beginning in or about 2011, the exact date unknown to the Grand Jury, and continuing thereafter up to and including the date of the filing of this Fourth Superseding Indictment, in the Eastern District of Texas and elsewhere, **James Morris Balagia** a.k.a. "DWI Dude," defendant herein, aided and abetted by Charles Norman Morgan a.k.a. "Chuck," Bibiana Correa Perea a.k.a. "Bibi," HJP, and others known and unknown to the Grand Jury, did knowingly and intentionally corruptly endeavor to influence, obstruct and impede the due administration of justice and did corruptly endeavor to influence, obstruct and impede the due administration of justice in *United States v. Hermes Casanova Ordonez, a.k.a. "Megatron," United States v. Segundo Villota-Segura* and *United States v. Aldemar Villota-Segura* all cases in the Eastern District of Texas by, among other acts, undermining the functioning of the federal justice system by informing Hermes Casanova Ordonez, a.k.a. "Megatron," Segundo Villota-Segura and Aldemar Villota-Segura and that the defendant and others could corruptly influence government officials in relation to criminal charges, which conduct hampered further cooperation by said Hermes Casanova Ordonez, a.k.a. "Megatron," Segundo Villota-Segura and Aldemar Villota-Segura and also affected ongoing criminal investigations in the Eastern District of Texas and elsewhere.

In violation of 18 U.S.C. §§ 1503, 1512(h) and (i) and 2.

Count Three

Violation: 21 U.S.C. § 1904(c)(2)
(Violation, Endeavor, and Attempt
to Violate the Kingpin Act)

All prior allegations are re-alleged and incorporated by reference as though fully set forth herein.

Beginning in or about 2014, and continuing through on or about March 9, 2017, the exact dates being unknown to the Grand Jury, in the Eastern District of Texas and elsewhere, the defendant **James Morris Balagia** a.k.a. "DWI Dude," a United States person, did engage in transactions and dealings, including dealings within the United States, which evaded, avoided, endeavored, and attempted to commit violations of the Kingpin Act, in violation of Title 21, United States Code, Sections 1906(a), 1904(b)(4), (c)(1) and (c)(2).

Allegations

The Kingpin Act (21 U.S.C. §§ 1901-1908), provides authority for the application of sanctions to significant foreign narcotics traffickers and their organizations operating worldwide.

The Office of Foreign Assets Control (OFAC) of the United Stated Department of Treasury administers and enforces economic sanctions programs against narcotics traffickers. As a part of the sanctions program, the names of persons and entities designated pursuant to the Kingpin Act, whose property and interests in property are blocked, are

published in the Federal Register and incorporated into a list of Specially Designated Nationals (SDN List) with the OFAC program tag "[SDNTK]" to designate Specially Designated Nationals who are narcotics traffickers. The SDN List is readily available through OFAC's web site: http://www.treasury.gov/sdn.

On February 19, 2014, OFAC designated the following foreign individuals as specially designated narcotics traffickers (using the program tag SDNTK) under the Kingpin Act: (1) Aldemar Villota Segura; (2) Segundo Villota Segura; and, (3) Hermes Casanova Ordonez, a.k.a. "Megatron." Aldemar Villota Segura, Segundo Villota Segura, and Hermes Casanova Ordonez have appeared on the publicly available list from February 19, 2014 until the date of this Fourth Superseding Indictment.

Unless otherwise authorized or exempt, transactions by U.S. persons, or in or involving the United States, are prohibited if they involve transferring, paying, exporting, withdrawing, or otherwise dealing in the property or interests in property of an entity or individual listed on the SDN List.

OFAC may authorize certain types of activities and transactions, which would otherwise be prohibited, by issuing a general license. General licenses may be published in the regulations, on OFAC's Web site, or both. For example, the provision of certain legal services to or on behalf of persons whose property and interests in property are blocked pursuant to the Kingpin Act is authorized, provided that all receipts of payment of professional fees and reimbursement of incurred expenses must be specifically licensed.

James Morris Balagia a.k.a. "DWI Dude," has never applied for or received an OFAC license necessary to receive property from any individual listed on the SDN List.

James Morris Balagia a.k.a. "DWI Dude," is a United States person and was an officer, director, and agent of the Law Offices of Jamie Balagia, which is an entity as defined in 21 U.S.C. § 1907(1).

In or about July 2014 Hermes Casanova Ordonez agreed to pay **James Morris Balagia** a.k.a. "DWI Dude," for legal representation relating to a pending federal indictment against Hermes Casanova Ordonez in the Eastern District of Texas. Hermes Casanova Ordonez working in concert with others, transferred United States currency to **James Morris Balagia** a.k.a. "DWI Dude," a United States person. Some part of the payments were made within the United States.. **James Morris Balagia** a.k.a. "DWI Dude," endeavored, attempted, and did engage in such transactions that evaded, avoided, and had the effect of evading and avoiding the prohibitions of the Kingpin Act.

In or about August 2014 Segundo Villota Segura agreed to pay **James Morris Balagia** a.k.a. "DWI Dude," for legal representation relating to a pending federal indictment against Segundo Villota Segura in the Eastern District of Texas. Segundo Villota Segura, working in concert with others, transferred United States currency to **James Morris Balagia** a.k.a. "DWI Dude," a United States Person. Some part of the payments were made within the United States. **James Morris Balagia** a.k.a. "DWI Dude," endeavored, attempted, and did engage in such transactions that evaded, avoided, and had the effect of evading and avoiding the prohibitions of the Kingpin Act.

In or about September 2016 **James Morris Balagia** a.k.a. "DWI Dude," agreed to accept payment from Aldemar Villota Segura for legal representation relating to a pending federal indictment against Aldemar Villota Segura in the Eastern District of Texas. James Morris Balagia a.k.a. "DWI Dude," endeavored, and attempted to engage in such transactions that evaded, avoided, and had the effect of evading and avoiding the prohibitions of the Kingpin Act.

All in violation of Title 21, United States Code, Section 1904(c)(2).

Count Four

Violation: 18 U.S.C. § 1349 (Conspiracy to Commit Wire Fraud in violation of 18 U.S.C. § 1343)

A. Introduction

The Grand Jury adopts, realleges and incorporates herein the Introduction section of the Fourth Superseding Indictment.

B. The Conspiracy

From in or about 2011, the exact date unknown to the Grand Jury, and continuing thereafter up to and including the date of the filing of this Fourth Superseding Indictment, in the Eastern District of Texas and elsewhere, **James Morris Balagia** a.k.a. "DWI Dude," the defendant herein, did knowingly combine, conspire and agree together and with Charles Norman Morgan a.k.a. "Chuck," Bibiana Correa Perea a.k.a. "Bibi," HJP, and with other persons known and unknown to the Grand Jury, to devise a scheme and artifice to defraud and to obtain money and funds from criminal defendants charged in the Eastern District of

Texas and elsewhere by means of materially false and fraudulent pretenses, representations, and promises, and for the purpose of executing the scheme and artifice, caused writings, signs, and signals to be transmitted by means of wire communication in interstate and foreign commerce, a violation of 18 U.S.C. § 1343.

C. The Manner and Means of the Conspiracy and the Scheme and Artifice

It was a part of the conspiracy and the scheme and artifice that:

It was part of the conspiracy that **Balagia** and others concocted a scheme to defraud individuals who were facing federal criminal charges.

It was part of the conspiracy that **Balagia** and others concocted a scheme to convince a prospective client that he had the ability to influence judges and prosecutors in her criminal case and, in the course of representing her, to fraudulently recover narcotics proceeds which had been seized by the Drug Enforcement Administration in her case.

Balagia and others would solicit federal criminal defendants (including Hermes Casanova Ordonez, Segundo Villota Segura, and Aldemar Villota Segura) as clients under false pretenses. **Balagia** and others claimed to the defendants that they had contacts who had the power to affect their criminal charges if the defendants would pay a large sum of money.

Balagia and others made misrepresentations to the defendants about their ability to affect the outcome of the defendants' cases and the nature and extent of their alleged government contacts.

Balagia and others did falsely state that government officials could be and were being bribed on behalf of the defendants with the funds the defendants would or did pay.

Balagia and others, in order to execute the scheme and artifice, caused writings, signs, and signals to be transmitted by means of wire communications in interstate and foreign commerce, to wit: phone calls, electronic mail transmissions and other wire communications in order to schedule meetings, discuss the scheme, transmit money, and file court documents.

D. Representative Acts of the Conspiracy

On or about the following dates, as acts representative of the conspiracy, the defendant and other co-conspirators caused the following acts to be committed:

In or about November 2011, **Balagia** and HJP spoke with **Balagia**'s client, JMM and convinced her that they had connections with judges and prosecutors which they could use to effect a favorable resolution of her case after she had been pulled over with approximately $50,000 which was being transported for the purpose of purchasing marijuana. On or about September 7, 2012, HJP, working in concert with **Balagia**, caused writings, signs, and signals to be transmitted by means of wire communications in interstate and foreign commerce, to wit: fax transmissions in order to discuss the scheme to fraudulently recover narcotics proceeds seized by the Drug Enforcement Administration.

On or about September 13, 2014, in advance of a September 18, 2014 meeting in Colombia which was scheduled in an effort to retain Hermes Casanova Alirio Ordonez ("Megatron") as a client for the Law Offices of Jamie Balagia and in furtherance of the

conspiracy, **Balagia** placed a telephone call to the Stuart, Florida landline telephone of Charles Norman Morgan, in and affecting interstate commerce.

On or about September 26, 2014, and in furtherance of the conspiracy, **Balagia** placed a telephone call to the Stuart, Florida landline telephone of Charles Norman Morgan, in and affecting interstate commerce.

On or about September 28, 2014, and in furtherance of the conspiracy, **Balagia** placed a telephone call to the Stuart, Florida landline telephone of Charles Norman Morgan, in and affecting interstate commerce.

On or about September 30, 2014, a deposit was made into Wells Fargo Bank account of **Balagia**. The deposit was made in New York City, New York and represented money received by **Balagia** as a result of the fraud conspiracy.

On or about December 12, 2014, and in furtherance of the conspiracy, **Balagia** placed a telephone call to the cellular telephone of Charles Norman Morgan, in and affecting interstate commerce.

On or about December 12, 2014, **Balagia** and June Gonzales traveled to Houston, Texas to pick up cash which was payment for Megatron's case. As a result of this cash pickup, **Balagia** deposited approximately $126,300 into the law office Wells Fargo Bank account and approximately $78,000 into the law office Independent Bank account.

On or about November 14, 2015, and in furtherance of the conspiracy, **Balagia** placed a telephone call to the cellular telephone of Charles Norman Morgan, in and affecting interstate commerce.

On or about December 21, 2015, **Balagia** attended a meeting with Charles Norman Morgan, Adriana Morgan, Bibiana Correa Perea and Segundo Villota-Segura which took place at La Picota Prison in Bogota, Colombia.

On or about January 25, 2016, and in furtherance of the conspiracy, **Balagia** placed a telephone call to the cellular telephone of Charles Norman Morgan, in and affecting interstate commerce.

On or about February 18, 2016, and in furtherance of the conspiracy, Charles Norman Morgan and Adriana Morgan, met with Segundo Villota-Segura at La Picota, Prison in Bogota, Colombia.

On or about April 25, 2016, and in furtherance of the conspiracy, **Balagia** placed a telephone call to the cellular telephone of Charles Norman Morgan, in and affecting interstate commerce.

In violation of 18 U.S.C. § 1349.

Count Five

Violation: 18 U.S.C. § 371
(Conspiracy to Obstruct Justice)

A. Introduction

The Grand Jury adopts, realleges and incorporates herein the Introduction section of the Fourth Superseding Indictment.

B. The Conspiracy

From in or about 2011, the exact date unknown to the Grand Jury, and continuing thereafter up to and including the date of the filing of this Fourth Superseding Indictment, in the Eastern District of Texas and elsewhere, **James Morris Balagia** a.k.a. "DWI Dude," the defendant herein, did knowingly combine, conspire and agree together and with Charles Norman Morgan a.k.a. "Chuck," Bibiana Correa Perea a.k.a. "Bibi," HJP, and with other persons known and unknown to the Grand Jury, to commit the following offense against the United States: to corruptly endeavor to influence, obstruct and impede the due administration of justice, in violation of Title 18, United States Code, Section 1503 (obstruction of justice).

C. Manner and Means of the Conspiracy

It was part of the conspiracy that **Balagia** and others concocted schemes to defraud individuals who were involved in the criminal justice system and/or facing federal criminal charges.

Balagia and others made representations to law enforcement, government officials and others that resulted in seized funds being released to **Balagia**.

Balagia and others solicited federal criminal defendants as clients under false pretenses. **Balagia** and others claimed to the defendants that they had contacts who had the power to affect their criminal charges if the defendants would pay a large sum of money.

Balagia and others made misrepresentations to the defendants about their ability to affect the outcome of the defendants' cases and the nature and extent of their alleged government contacts.

Balagia and others did falsely state that government officials could be and were being bribed on behalf of the defendants with the funds the defendants would or did pay.

Balagia and others would and did undermine the functioning of the United States system of justice by, among other things, interfering with the rightful ownership and return of seized currency; interfering with defendants' cooperation with the government; interfering with plea negotiations with the government by preventing the defendant from timely entering pleas because of the mistaken belief their case was going to be dismissed; interfering with defendants' relationships with former and subsequent counsel.

D. Overt Acts

As examples, the following overt acts, among others, were committed in furtherance of the conspiracy and to effect the objects of the conspiracy:

On or about November 17, 2011, on United States Interstate 40, law enforcement officers seized $50,000 in United States Currency from JMM. This became DEA Case Number MB-12-0012, Asset ID Number 12-DEA-556315. **Balagia** and others told JMM that **Balagia** had connections with judges and prosecutors which he could use to influence the outcome of her case. In the course of his representation of JMM, **Balagia** knowingly sponsored JMM's misrepresentations to the Drug Enforcement Administration concerning the source and nature of the money and received a portion of the seized funds;

On or about February 10, 2012, **Balagia** transmitted to the Drug Enforcement Administration a sworn statement of his client, JMM, known by **Balagia** to be false, in an effort to recover the funds held by the Drug Enforcement Administration.

On or about December 21, 2015, **Balagia** and others met with Segundo Villota-Segura who was charged in *United States v. Segundo Villota-Segura,* Criminal Number 4:13cr38 which was a drug trafficking case pending in the United States District Court for the Eastern District of Texas. At this meeting, it was represented to Segundo Villota-Segura that four people in Washington, D.C. were paid (bribed) with Segundo Villota-Segura's money to assist him with the federal charges he had pending in the Eastern District of Texas. Segundo Villota-Segura was told that the names of the people would not be exposed. **Balagia** told Segundo Villota-Segura to deal with "Bibi and Chuck" because it gave **Balagia** the "ability to close my ears sometimes if I need to- and it protects- all of us."

NOTICE OF INTENTION TO SEEK CRIMINAL FORFEITURE

Criminal Forfeiture Pursuant to 18 U.S.C. §§ 982(a)(1) and 981(a)(1)(c) by 28 U.S.C. § 2461

As a result of committing the offenses charged in this Fourth Superseding Indictment, the defendant shall forfeit to the United States any property, real or personal, involved in a violation of 18 U.S.C. § 1956(h), or any property traceable to such property, and any property, real or personal, which constitutes or is derived from

proceeds traceable to a violation of 18 U.S.C. § 1503, including, but not limited to, the following:

Cash Proceeds:

Approximately $1,500,000.00 in proceeds in that such sum in aggregate is property constituting, or derived from, proceeds obtained directly or indirectly, as the result of the offenses alleged in this Fourth Superseding Indictment.

Real Property:

PROPERTY 1
Property Address: 15612 Littig Road, Manor, Texas 78653
Legal Description: Abstract 154, Survey 52, Caldwell A.C. Acres 1.59
County: Travis
Parcel Number: 442432

PROPERTY 2

Property Address: 310 Murray Avenue, Manor, Texas 78653
Legal Description: Lot 6 and 7, Block 2 A.E. Lane Addition to the City of Manor, Travis County, Texas

Financial Instruments:

$18,486.09 in funds from bank account number xxxxx7167, in the name of Law Office of Jamie Balagia, P.C. at Wells Fargo Bank, Frisco, Texas;

$999.93 in funds from bank account number xxxxx6904, in the name of Warhorse Marketing Corp. at Wells Fargo Bank, Frisco, Texas;

$2,700.00 in funds from bank account number xxxxx3409, in the name of James M. Balagia at Wells Fargo Bank, Frisco, Texas;

$14,885.57 in funds from bank account number xxxxx1145 and $297.47 in funds from bank account number xxxxx6255, in the name of Law Office of Jamie Balagia, P.C at Independent Bank, McKinney, Texas; and

$1,602.87 in funds from bank account number xxxxx9093, in the name of Jamie Balagia Law Office, P.C. at Independent Bank, McKinney, Texas.

All such proceeds and/or instrumentalities are subject to forfeiture by the government.

Substitute Assets

Moreover, if, as a result of any act or omission of any defendant, any property subject to forfeiture:

(a) cannot be located upon the exercise of due diligence;

(b) has been transferred or sold to, or deposited with a third person;

(c) has been placed beyond the jurisdiction of the court;

(d) has been substantially diminished in value; or

(e) has been commingled with other property which cannot be subdivided without difficulty;

The United States intends to seek forfeiture of any other property of the defendant up to the value of the forfeitable property, including but not limited to all property, both real and personal owned by the defendant. As a result of the commission of the offenses alleged in this Fourth Superseding Indictment, any and all interest that the defendant has in any such property is vested in and forfeited to the United States.

A TRUE BILL

GRAND JURY FOREPERSON

JOSEPH D. BROWN
UNITED STATES ATTORNEY

HEATHER HARRIS RATTAN
Assistant United States Attorney

1-9-19
Date

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

UNITED STATES OF AMERICA	§	
	§	
v.	§	No. 4:16CR176
	§	Judge Crone
	§	
JAMES MORRIS BALAGIA (3)	§	
a.k.a. "DWI Dude"	§	

NOTICE OF PENALTY

Count One

Violation: 18 U.S.C. § 1956(h)

Penalty: Imprisonment for not more than twenty (20) years, a fine not to exceed $500,000.00 or twice the value of the property involved in the transaction, whichever is greater, or both. A term of supervised release of at least three (3) years.

Special Assessment: $100.00

Count Two

Violation: 18 U.S.C. §§ 1503 and 2

Penalty: Imprisonment for not more than ten (10) years, a fine not to exceed $250,000.00 or twice the value of the property involved in the transaction, whichever is greater, or both. A term of supervised release of not more than three (3) years.

Special Assessment: $100.00

Count Three

Violation: 21 U.S.C. § 1904(c)(2)

Penalty: Imprisonment for up to ten (10) years, a fine up to $250,000.00. If the defendant is a corporate officer, up to 30

	years of imprisonment, a fine up to $5,000,000.00. A term of supervised release of not more than three (3) years.
Special Assessment:	$100.00

Count Four

Violation:	18 U.S.C. § 1349
Penalty:	Imprisonment for not more than twenty (20) years, a fine not to exceed $250,000.00. A term of supervised release of not more than three (3) years.
Special Assessment:	$100.00

Count Five

Violation:	18 U.S.C. § 371
Penalty:	Imprisonment for a term of not more than five years; a fine not to exceed $250,000.00; and supervised release of not more than three years.
Special Assessment:	$100.00

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

UNITED STATES OF AMERICA, **Plaintiff,** **v.** **JAMES MORRIS BALAGIA,** **Defendant.**	§ § § § § § § § § § §	**CRIMINAL ACTION NO.** **4:16-CR-176**

MOTION FOR APPROVAL OF ENTRY OF APPEARANCE OF CO-COUNSEL

To the Honorable United States District Judge Mazzant:

Defendant James Morris Balagia, by and through his undersigned counsel files this Motion for Approval of Entry of Appearance of Counsel Norm Silverman.

1.

Norm Silverman and Daphne Silverman as a team are counsel of choice of James Balagia. When Balagia hired Norm and Daphne Silverman, Balagia knew that Daphne Silverman suffers from stage IV breast cancer and knew exactly what that meant because his wife suffered from the same precise condition. Balagia knew that Daphne Silverman could be a part of and even lead the team but could not endure the litigation stress alone. Daphne Silverman's condition is a permanently disabling

condition pursuant to the Americans with Disabilities Act. The condition does not prevent her from working but does require reasonable accommodations.

2.

In October 2014, Daphne Silverman's gynecologist discovered tumors in her breasts. He referred her to a surgeon for removal of the tumors. The surgeon evaluated the tumors and rendered the opinion with great confidence that they were benign and did not need to be removed. To make sure he was correct, he recommended that Daphne Silverman return in 6 months for him to determine if the tumors had grown. Instead of returning as recommended, Daphne Silverman spent the year of 2016 in trials. The last trial being *United States v. Mishra* in Pittsburgh, Pennsylvania. For about the last 6 months prior to the *Mishra* trial, Daphne Silverman had experienced periodic minor pain in her chest. She attributed the pain to trial stress and ignored it.

3.

Towards the end of the *Mishra* trial, Daphne Silverman felt extreme and overwhelming chest pain. The courthouse nurse was called. She checked Daphne Silverman's vital signs and turned to the U.S. Marshall's to demand that an ambulance be called. The EMTs from the ambulance ran an EKG and saw an irregular pattern, believing Daphne Silverman might be suffering a heart attack, the ambulance took her to Mercy Hospital. The irregular pattern duplicated on the hospital EKG. The ER doctor watched Daphne Silverman for the evening. The ER doctor wanted to keep

Daphne Silverman and run a battery of tests; however, Daphne Silverman requested that she be able to finish the trial and have the tests performed in Austin. The ER doctor determined that Austin had a top heart hospital and provided the information to Daphne Silverman and released her.

4.

As soon as trial was completed, Daphne Silverman returned to Austin and went to the Heart Hospital. The cardiologist determined that Daphne Silverman suffered from mitro valve prolapse (mvp) and believed that the stress of the trial on a person with mvp likely produced the symptoms experienced. He asked Daphne Silverman to rest and return if the pain did not subside.

5.

The pain would come and go but never disappeared. In July 2016, Daphne Silverman went back to the cardiologist and advised him that the pain had not been eliminated and in fact was increasing. She returned for the check up because she was scheduled for vacation to Panama and did not want to suffer a heart attack in Panama. This time the radiologist dropped Daphne Silverman's blood pressure and he and the cardiologist saw the deformations in bones they believed to be bone cancer. Rather than ruin what the doctor expected to be Daphne Silverman's last vacation, the cardiologist cleared her for the vacation asking that she come in to his office as soon as she returned.

6.

Upon return from vacation, the doctor told Daphne Silverman what he saw and scheduled the appointments that led to the August 2016 diagnosis of breast cancer metastasized to her bones. The cancer is in all of her bones from her skull to her toes.

7.

Bone metastases manifest as growths on and in the bones. Cancer also generates fluid that drains through the lymph nodes and delivers the cancer through the body while also impairing the functioning of body organs. The bone tumors themselves cause pain inside the bones. They limit activities and require caution to ensure that bones do not break. And of course, the big risk is that the bone cancer will infiltrate the organs with tumors and that is when death results. Daphne Silverman was given 3-5 years to live, with the official life expectancy to be 4 years. The bones with the greatest disease activity and therefore generating the greatest pain at that time were in her rib cage which combined with the newly diagnosed mvp is what caused the misdiagnosis of possible heart attack.

8.

There is, at this time, no cure for bone metastases in the approved standard of care. Because of the lack of a "standard of care" cure and the expectation of death, no surgery is performed on the original tumor. The condition is treated with suppression of estrogen and a medication that most breast cancer patients take after

surgery to finish destroying their cancer. There are however some trials of studies searching for cures. Daphne Silverman attempted to qualify for one of the studies in the fall of 2016 when she was diagnosed. At that time, Daphne Silverman did not qualify.

9.

During the four month period in 2016 after Daphne Silverman received her initial diagnosis, the Silvermans successfully lobbied to be admitted to MD Anderson, received the initial series of tests, repeated the tests at MD Anderson, met with the initial series of practitioners and attempted to qualify for an experimental trial of radium. Towards the end of the four months, a treatment plan was selected, and Daphne Silverman began treatment.

10.

In addition to treatment, Daphne Silverman triaged and down-sized her law practice to accommodate her new disabling condition. Daphne Silverman closed the large Austin office, released all staff, and reduced her caseload. Daphne Silverman withdrew from all unfiled civil cases, secured Norm Silverman's agreement to try the remaining civil cases with her should they require trial, stopped accepting state court cases, and planned to limit her practice to a handful of federal criminal cases at any one time. Daphne Silverman began her practice in federal court in the U.S. Navy and is most comfortable there, making federal cases the best ones to leave on her docket

to support the high costs of cancer treatment above insurance and to support her family.

11.

During that same four month period of medical analysis, Norm Silverman had a federal trial looming in the WDTX, *United States v. Nguyen.* It was a complex multi-defendant trial of a controlled substance analogue charge. The charges had been filed before *Mcfadden* was decided by the Supreme Court. The trial was expected to last 4 months starting in January 2017. Pre-diagnosis, Norm Silverman had taken the lead in litigating some of the legal issues in the case and had completed much of his preparations for trial. During this time, Daphne and Norm Silverman continued to handle as much work as possible including trying a motion to suppress in the WDTX and Daphne Silverman tried a civil rights case with Broadus Spivey also in the WDTX. However, Daphne Silverman did not have the strength to try a four-month trial with Norm Silverman, and Norm Silverman lost the critical last four months of trial prep time. During that time, the remaining co-defendant lawyers with whom Norm Silverman thought he would be trying the case, all pled guilty. The lawyers were also expected to contribute to the cost of the defense experts and now they were gone.

12.

No one knows until it happens to them what one will do when their young wife all of sudden receives a death sentence. What Norm Silverman did is what he does

best -research. Norm spent hours searching for the cancer trials with most hopeful outcomes. And Norm sat by Daphne Silverman's side every step of the way. It was during those four months that diagnoses occurred, treatments were evaluated, a study was sought but denied, and finally treatment began. In January of 2017, both Norm and Daphne Silverman were a little frazzled from the trauma. The case Norm Silverman was to try had already been continued for a number of years for various reasons (largely because of the pending litigation in *McFadden*. McFadden was remanded, litigated, appealed and was again pending cert. when Nguyen's trial was set.) Since the case had been delayed by agreement pending its first trip to the Supreme Court, it was reasonable to presume that it would continue to be continued without objection. But it was not to be. When Norm announced not ready, the visiting judge sitting in the case referred Norm Silverman for discipline.

13.

The WDTX discipline committee that evaluated the Judge's complaint was perplexed. The Committee showed great concern for Daphne Silverman's condition and could not understand why the Court did not do so as well. Ultimately, the committee decided that it would be good for Norm Silverman to take 4 months off to recover from the trauma and get re-oriented to the practice of law. The committee did not see the kind of egregious misconduct that merits any further action than the recommended four month suspension. The committee initially attempted to fashion a four month probation. The committee would likely be appalled that its

recommendation that was intended to give us a brief break has actually been used to impose more work on Daphne Silverman and has been used to prevent Norm Silverman from assisting her.

14.

Back on the medical front, Daphne Silverman's, treatment began to destroy the cells in the original tumor and quieted the cancer in her bones. A treatment that generally works about 8 months worked for Daphne Silverman for almost three years. In December of last year, Daphne Silverman informed the doctor that she was going to prove him wrong and cure the bone metastases. The doctor advises firmly that she will always have the bone metastases and they must be watched closely to ensure that they remain under control.

15.

On July 23, 2019, Daphne Silverman received news from MD Anderson regarding significant new activity in her cancer. Two places in her spine – one in the neck and one in the lower back were active. This was devastating news, but not actually surprising to Daphne Silverman because she had felt a return of symptoms experienced prior to her diagnosis. This new activity is a sign that the present treatment is no longer working. The scans must be repeated in three months to evaluate the level progression and progression speed. Between now and the next scan, Daphne Silverman will meet with additional medical practitioners and receive additional tests. In October, a decision regarding the next treatment will be made and

initiated. It is hoped that Daphne Silverman will be accepted into one of the one of the studies using radiation and immunotherapy to seek a cure rather than merely abating the suffering until the end of life. The radiation is an in inpatient procedure administered over a period of days. It is reported, hypothesized, hoped, and prayed that radiation used in conjunction with immunotherapy will eliminate the radiated tumor and shrink or eliminate distant metastases by virtue of immune response.

16.

Daphne Silverman remains cleared by her doctor to work but requires reasonable accommodations to do so. In fact, the doctor believes Daphne Silverman's remarkable success in controlling her condition for three years on the first line of medications is attributable to the fact that she has continued to work.

17.

Daphne Silverman has stated in all relevant pleadings and hearings that co-counsel is necessary as a reasonable accommodation to support her in order to provide effective assistance of counsel to Mr. Balagia. After the Court denied the release of an asset to secure funds to hire another co-counsel, Daphne Silverman attempted to defend this case without co-counsel, but has found doing so not viable. The change in her medical condition supports the need for co-counsel and best documents what counsel has been trying to inform the Court and all parties.

18.

The impact of the present medical condition was made clear in the hearing on motions in this case before Judge Johnson. Daphne Silverman was alone as counsel and found that it was difficult for her to gather enough breath to speak with enough force to be heard and understood clearly. Daphne Silverman felt an added pressure in her throat. Two microphones were used to amplify Daphne Silverman's voice. The court reporter expressed to the Court that he remained unable to understand her and moved to sit directly in front of her where it appeared he supplemented hearing by reading lips. The cause of this incident will be the combination of the new cancer activity in the neck bone that placed pressure on the neck as well as the stress generated by the Government's conduct in attacking defense counsel rather than case issues. This difficulty speaking had occurred in the Mishra trial and should be reflected in the record as the Judge in that case repeatedly asks Daphne Silverman to speak up. At the time, neither Daphne Silverman nor the Judge new the cause. When it happened at the last hearing in this case, Daphne Silverman feared it was yet another symptom of active cancer, but hoped she was wrong.

19.

In particular, the hearing started with the Motion filed by private counsel for a co-defendant (a former Assistant United States attorney) during which the lawyer turned to Daphne Silverman and raised his voice at her with such anger that his speech produced spitum. His allegations were all false, but the Court refused to allow

Daphne Silverman to respond to them. The doctor advises that the suppression of estrogen suppresses the ability to deal with high levels of stress. The stress imposed by the Government's attack on counsel, removal of co-counsel, and then continued attack on the defense is out of the ordinary in a normal trial circumstance. The latest attack on the defense team is a Government allegation of misconduct against the Columbian law expert hired by the defense. Daphne Silverman has been well able to manage the ordinary stress of trials when assisted by co-counsel. The extraordinary stress of the Government's conduct combined with the loss of co-counsel imposed too much stress on Daphne Silverman to be able to function effectively in the hearing.

20.

Norm Silverman has served the four month suspension imposed by the EDTX in reciprocal discipline for the four month suspension imposed by the WDTX as a result of Norm Silverman's failure to be ready for trial four months after Daphne Silverman's diagnosis.

21.

There has been no allegation of misconduct before this Court. The only issue was the appropriateness of reciprocal discipline for misconduct found to have been committed outside the jurisdiction.

22.

Permanently revoking Norm Silverman's appearance in this case is neither reasonable nor appropriate and imposes a grave injustice to Balagia.

23.

Norm Silverman's application for readmission to the EDTX has been mailed to the EDTX and should arrive prior to the emergency status conference.

24.

The removal of admission to the bar of a court and permanent removal from a case in the district is not comparable to the revocation of pro hac vice admission after the completion of trial in the Mishra case in Pittsburgh. Such action is not comparable either in law or in fact. With regards to law, according to the Third circuit where Norm Silverman's pro hac status was revoked, revocation of pro hac admission is not comparable to disbarment and can be revoked for misconduct that falls short of that which would warrant disbarment. *Mruz v. Caring, Inc.*, 107 F. Supp.2d 596, 604 (DNJ 2000), *overturned on facts.* As a result, it is never a comparable reciprocal sanction to disbar a person as a result of revocation of pro hac status. With regards to the facts, the *Mishra* trial was over. Only sentencing remained. Other Counsel was ready and available to handle sentencing in Pittsburgh. By contrast, this case is in the middle of trial preparations, and counsel Daphne Silverman is not able to handle this trial by herself. Nor should she have to. At least two lawyers and a full compliment of support staff and federal agents have at all times, represented the government.

25.

James Balagia requests that Norm Silverman be returned to the case pro hac vice pending approval of his readmission to the EDTX.

26.

Norm Silverman is familiar with Daphne Silverman's medical condition and what Daphne needs to function optimally.

27.

Norm Silverman is familiar with the facts of the case having reviewed the discovery, participated in the defense investigation, and generally assisted with the litigation until the date of the suspension.

28.

Norm Silverman is in the best position to attend to the medical needs of counsel and assist with the presentation of the defense.

29.

It would be a grave injustice not to return Norm Silverman to the case by approving his entry of appearance.

30.

Returning Norm Silverman to the case will have the least impact on the trial dates. Norm Silverman will be with undersigned counsel at MD Anderson and therefore unavailable on the present trial date as well. There is insufficient time for any new counsel to review the materials and prepare for the present trial date or any

other trial date this year. Therefore, the quickest way to get this case to trial is to approve Norm Silverman's entry of appearance in the case. [1]

31.

Counsel has sought to act promptly to inform the Court of the new information about her medical condition, to seek a continuance due to the medical appointments and procedures conflicting with the trial date, and to seek the reasonable accommodation of her disabling condition of having Norm Silverman authorized to appear in the case.

Prayer

For the foregoing reasons, Defendant Balagia respectfully requests that the Court grant this Motion for Approval of Entry of Appearance of Norm Silverman pro hac vice.

Respectfully submitted,

/S/DAPHNE PATTISON SILVERMAN

[1] It is important to note that significant additional impediments exist with regards to the existing trial date which suggest that the situation is not as emergent as proposed by the Government. First, the defense has not received the court ordered discovery and therefore does not know if it satisfies the Government's discovery obligations or if further litigation will be needed. Judge Johnson asked counsel to wait until documents had been received to address their completeness, but counsel must have documents in order to perform this analysis. In addition, the court ordered discovery is necessary to complete the defense investigation. Every day of delay in production impacts the defense ability to get ready for trial and impacts the trial date. Second, the Government has filed a Motion for a Protective order seeking to remove another member of the defense team, Columbian lawyer Martha Fajardo by lodging allegations of misconduct against her. The defense is now forced to litigate this motion and may be forced to find and hire another Columbian law expert. Third but probably most importantly, the Government has not extradited Segundo Segura, the acusor of Defendant James Balagia. Judge Johnson informed the Government that the witness needed to be present for cross-examination.

Daphne Pattison Silverman (TBN 06739550)
Silverman Law Group
501 N. IH-35
Austin, TX 78702
512-485-3003
Fax: 512-597-1658
daphnesilverman@gmail.com

Certificate of Conference

I certify that I corresponded with AUSA Rattan regarding whether the government opposes this motion. AUSA Rattan has not responded with her position.

/S/DAPHNE PATTISON SILVERMAN
Daphne Pattison Silverman

Certificate of Service

I certify that on July 28, 2019, this document was filed with the Clerk of the Court using the electronic case filing system that automatically sends notice of electronic filing to the attorneys of record who have consented to accept such service.

/S/DAPHNE PATTISON SILVERMAN
Daphne Pattison Silverman

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

UNITED STATES OF AMERICA,	§	**CRIMINAL ACTION NO.**
Plaintiff,	§	**4:16-CR-176**
v.	§	
JAMES MORRIS BALAGIA,	§	
Defendant.	§	

OPPOSED MOTION TO CONTINUE

To the Honorable United States District Judge Mazzant:

Defendant James Morris Balagia, by and through his counsel files this Motion to Continue and respectfully requests the Court to continue the trial date in the above-captioned matter from October 15, 2019, to a date convenient to the Court but at least 30 days after the present trial date. In support of this motion, Defendant Balagia states as follows:

On July 23, 2019, counsel received news from MD Anderson regarding new activity in counsel's cancer. Tests performed on July 22, 2019, must be repeated in 3 months on October 21. Between now and then, counsel will see additional doctors about options and receive additional tests. It is expected that counsel will then require

a procedure once or multiple occasions through the week of October 21 or the following week depending upon the analysis of the medical practitioners involved.

The time period from the date of the Court's Order to the new trial date is excludable for purposes of computing the time limitations imposed by the Speedy Trial Act, 18 U.S.C. § 3161(h).

Prayer

For the foregoing reasons, Defendant Balagia respectfully requests that the Court grant this Opposed Motion to Continue the Trial set for October 15, 2019.

Respectfully submitted,

/S/DAPHNE PATTISON SILVERMAN
Daphne Pattison Silverman (TBN 06739550)
Silverman Law Group
501 N. IH-35
Austin, TX 78702
512-485-3003
Fax: 512-597-1658
daphnesilverman@gmail.com

Certificate of Conference

I certify that I corresponded with AUSA Rattan regarding whether the government opposes this motion. AUSA Rattan advised that she does oppose the relief request in this motion.

/S/DAPHNE PATTISON SILVERMAN
Daphne Pattison Silverman

Certificate of Service

I certify that on July 26, 2019, this document was filed with the Clerk of the Court using the electronic case filing system that automatically sends notice of electronic filing to the attorneys of record who have consented to accept such service.

/S/DAPHNE PATTISON SILVERMAN
Daphne Pattison Silverman

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

UNITED STATES OF AMERICA, **Plaintiff,**	§	**CRIMINAL ACTION NO.**
	§	**4:16-CR-176**
v.	§	
JAMES MORRIS BALAGIA, **Defendant.**	§	

DEFENDANT'S MOTION TO COMPEL DISCOVERY

James Morris Balagia, by and through the undersigned counsel, respectfully moves this court pursuant to Federal Rule of Criminal Procedure 16(a)(1)(E) for the discovery and production of exculpatory and material evidence. In support of the motion, Mr. Balagia states:

BACKGROUND

Defendant Balagia has been charged by the United States Attorney's Office for the Eastern District of Texas with conspiracy to commit money laundering; obstruction of justice and aiding and abetting; conspiring, endeavoring, and attempting to violate the Kingpin Act; conspiracy to commit wire fraud in violation of 18 U.S.C. §1343; and conspiracy to obstruct justice. The basis of each of these allegations stems from criminal matters on which Defendant Balagia was the attorney for the criminal defendants who are Colombian citizens; specifically, *United States v. Hermes Casanova Ordonez, a.k.a. "Megatron"*, criminal number 4:13-cr-38; *United States v. Segundo Villota-Segura*, criminal number 4:13-cr-38; and *United States v. Aldemar Villota-Segura*, criminal number 4:13-cr-38.

STATEMENT OF FACTS

Counsel for Defendant Balagia has received over 10,000 pages of discovery documents from the Government. Many of these documents are FBI reports and summaries that refer to exculpatory information, but do not actually provide the exculpatory information.

Specifically, the government has alleged that Defendant Balagia, in concert with Charles Morgan obstructed justice by bribing and/or attempting to bribe certain government officials. As a basis for such allegations, the government claims that alleged co-conspirator Charles Morgan made "[n]umerous phone calls" to David Ross Malone.[1] See document bates stamped Balagia 06569, attached hereto as **Exhibit B**. If such telephone calls occurred, the date upon which they occurred is relevant to Defendant Balagia's defense. If such telephone calls did not occur, the lack of such telephone calls would also be relevant. Defendant Balagia has requested that the government provide the records of the alleged calls, or if they government has already provided such records, to identify the file name to enable defense counsel to locate it. See **Exhibit C**.

Relevant to Defendant Balagia's defense is whether the alleged co-conspirator Charles Morgan had actual or apparent authority to operate as an agent for the United States government. Through its own investigation, defense counsel has learned that Mr. Morgan has in the past worked (and may still currently be working) for the CIA in various capacities starting with piloting aircraft for the CIA in Vietnam and then leading to bringing potential clients to lawyers with a goal of having the clients cooperate with the government. Charles Morgan's military records support his assertions that he flew for the CIA in Vietnam. Morgan was a Chief Warrant Officer 2, which as former Navy Judge Advocate General, counsel can

[1] The documents provided to Defendant also identify Mr. Malone as David Ross Morgan. Defendant is without information to determine which name is correct.

confirm is a person who attained the rank of an officer through extraordinary channels which do not require college education.[2] See documents bates stamped Balagia 024708-024711, attached hereto as **Exhibit F**. Morgan was decorated with the following awards which confirm his assertion that he was an aviator in Vietnam: National Defense Service Medal, Army Aviator Badge, Vietnam Service Medal, RVN Campaign Medal w/ 1960 device, RVN Gallantry Cross with Unit Palm Citation. See **Exhibit F**. The defense investigation is also supported by travel records provided by the government indicating that Mr. Morgan's CIA or FBI handler is likely in Ohio, either Cincinnati or Columbus.

Further, documentation received from the government supports the Defendant's contention that Charles Morgan previously (and perhaps currently) worked in either an undercover capacity or informant capacity. If Morgan did not operate as an agent for the government, he has been involved as a cooperating source or confidential informant in prior instances with the government where alleged narcotics traffickers were involved. Specifically, it is known that Charles Morgan was involved with Operation COINROLL. See document bates stamped Balagia 23483, attached hereto as **Exhibit A**. Defense investigation revealed that COINROLL was the FBI operation targeting Barry Seal. It is unclear if Mr. Morgan was involved in working undercover to capture Barry Seal or if Mr. Morgan was involved in working undercover to capture Mr. Seal's killers. Defense investigation revealed that Mr. Morgan did not work for the FBI in the COINROLL investigation and therefore it is likely his COINROLL involvement was through the CIA. As such, defense counsel has requested all

[2] Chief Warrant Officer 2 (CW2) is the second Warrant Officer rank in the Unites States Army. They are officially appointed by the Secretary of the Army. They are intermediate level experts of both the technical and tactical aspects of leading in their field. Responsibilities of a Chief Warrant Officer 2 are ones that would typically call for the authority of a commissioned officer but require also the intricate technical abilities and experience a commissioned officer would not have has the opportunity to achieve. They have responsibilities of leading at the battalion level. https://www.military-ranks.org/army/chief-warrant-officer-2

documents related to Mr. Morgan's connection to COINROLL, Mr. Morgan's Homeland Security Investigation file, specifically including any of Mr. Malone's notes relating to Mr. Morgan, and Mr. Morgan's CIA file. See **Exhibit C**. Mr. Malone's notes are specifically requested as it is relevant whether Mr. Morgan was speaking to Mr. Malone and in what capacity the conversations occurred.

Ruben Oliva is a Florida attorney. He is also the government witness who, upon information and belief, originally contacted the government concerning Segundo Villota-Segura and Aldemar Villota-Segura's allegations that form the basis of the government's charges against Defendant Balagia. Defense investigation has revealed that Attorney Oliva has made similar claims against other attorneys in an effort to reduce his client's sentence. Upon information and belief such actions by Attorney Oliva resulted in allegations being made against him in the Eastern District of New York. Such allegations against Oliva and the results of the investigation in to those allegations are relevant to Defendant Balagia's defense, both in proving that making such unfounded allegations against attorneys is a common practice by Mr. Oliva and in determining Attorney Oliva's veracity as a witness. Defendant Balagia has been unable to gain access to the records of the allegations against Attorney Oliva. As such, those records were requested from the government. See **Exhibit C**.

Like Ruben Oliva, attorney Nury Lopez is an attorney who often visited Segundo and Aldemar Villota-Segura. See documents bates stamped Balagia 24302-24366 attached hereto as **Exhibit D**, and documents bates stamped Balagia 24488-24560 attached hereto as **Exhibit E**. Upon information and belief, allegations have been made against Attorney Lopez in both Dallas and Colombia that she used false pretenses to label her clients as members of FARC to prevent their extradition. Defense counsel has been unable to procure records related to these

allegations, and requested them from the government's attorney. See **Exhibit C**. These documents are relevant as they go to the veracity of the witness and expected to include exculpatory evidence that the reason for the false allegations against Mr. Balagia are to support the witness's other false allegation of FARC membership.

Defendant is also requesting Henry Jack Pytel, Jr.'s informant file from whichever agencies he has worked with for the prior 20 years, whether such work was done as a confidential source, confidential informant, core collector or any other such role, and any of Mr. Malone's notes relating to Mr. Pytel. Mr. Pytel's information is necessary because he is involved with both Mr. Morgan and Mr. Malone. In fact, Mr. Malone has identified Mr. Pytel as participating in a meeting between Charles Morgan and Dave Malone. Defendant is unable to procure these records as they are controlled by the government. As such, defense counsel requested them from the government's attorney. See **Exhibit G**.

The government provided defense counsel with a list of records from La Pikota prison of those lawyers who visited Aldemar, Segundo and Hermes Casanova Ordonez. However, records of other persons including family, friend, legal assistant, investigator, etc. have not been provided. The people who visited these individuals may be defense witnesses, as they may be able to impeach statements made by Aldemar, Segundo and/or Hermes. As such, Defendant is entitled to their names. Defense counsel is unable to access any records from La Pikota prison. Therefore, official prison visit lists were requested from the government. See **Exhibit C**.

LEGAL ARGUMENT

This Court should compel discovery in this matter pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963), *Kyles v. Whitley*, 514 U.S. 419 (1995), their progeny, the Fifth and Sixth Amendments to the United States Constitution, and the Federal Rules of Criminal Procedure.

Defendant seeks only discovery that is relevant and material to his defense, and the Supreme Court has emphasized that broad disclosures "serve to justify that trust in the prosecutor as the representative . . . of a sovereignty . . . whose interest . . . in a criminal prosecution is not that it shall win a case but that justice shall be done." *Kyles*, 514 U.S. at 439 (ellipses in original; internal quotation marks omitted).

The Federal Rules of Criminal Procedure provide that

> [u]pon a defendant's request, the government must permit the defendant to inspect and to copy or photograph books, papers, documents, data, photographs, tangible objects, buildings or places, or copies or portions of any of these items, if the item is within the government's possession, custody, or control and: (i) the item is material to preparing the defense; (ii) the government intends to use the item in its case-in-chief at trial; or (iii) the item was obtained from or belongs to the defendant.

Fed. R. Crim. P. 16(a)(1)(E).

It is believed that all of the information requested is exculpatory and subject to the disclosure pursuant to Brady and its progeny.

In addition, the discovery requested may include evidence that is not exculpatory but is material to Mr. Balagia's defenses. Evidence need not be exculpatory to be "material." *See United States v. Armstrong*, 517 U.S. 456, 462 (1996); *United States v. Stevens*, 985 F.2d 1175 (2d Cir.1993) (The Rule 16(a)(1)(E)(I) standard for materiality require that evidence can "be used to counter the government's case or to bolster a defense."); *United States v. Gamez-Orduno*, 235 F3d 453, 461 (9th Cir. 2000) (government's Brady obligation extends to materials that would be helpful to the accused "at trial or on a motion to suppress * * *."); *United States v. Barton*, 995 F.2d 931, 935 (9th Cir. 1993); *Smith v. Black*, 904 F.2d 950, 965-66 (5th Cir. 1990), vacated on other grounds, 503 US 930 (1992); *United States v. Ross*, 511 F.2d 757, 763 (5th Cir. 1975); *United States v. Pesaturo*, 519 F. Supp. 2d 177, 189 (D. Mass. 2007) (internal quotation

marks omitted); *see also United States v. Poindexter*, 727 F. Supp. 1470, 1473 (D.C. Cir. 1989) ("The language and the spirit of the Rule are designed to provide to a criminal defendant, in the interests of fairness, the widest possible opportunity to inspect and receive such materials in the possession of the government as may aid him in presenting his side of the case.") *United States v. Karake*, 281 F. Supp. 2d 302, 309 (D. D.C. 2003) (Evidence is "material" under Rule 16, "whether inculpatory or exculpatory, as long as there is a strong indication that it will play an important role in uncovering admissible evidence, aiding witness preparation, corroborating testimony, or assisting impeachment or rebuttal.") (quoting *United States v. Marshall*, 132 F. 3d 63, 68 (D.C. Cir. 1998)) (internal quotation marks omitted).

The evidence being requested by Defendant is material to his defense. It is evidence that may impeach a government witness, it is also evidence that could prove entrapment or that all of the allegedly illegal actions were done with government authority.

The government must disclose any evidence that may be used to impeach a government witness. *Giglio v. United States*, 405 U.S. 150, 154-55 (1972). As such, evidence of allegations made against Nury Lopez and/or Ruben Oliva must be disclosed to Defendant. Likewise, evidence that may be found in alleged co-conspirator Charles Morgan's Homeland Security Investigation file, specifically including any of Mr. Malone's notes relating to Mr. Morgan, Mr. Morgan's CIA file must be disclosed to Defendant for purposes of impeachment. Importantly, Defendant must be able to talk to witnesses from the La Pikota prison to determine whether they are able to impeach the statements made by the inmates.

Defendant Balagia denies committing any criminal activities. If a crime was committed, it was done so without his knowledge and would have been done by alleged co-conspirator Charles Morgan. It is Defendant Balagia's belief that Mr. Morgan was working with the United

States government or intended to provide information to the United States government concerning Mr. Balagia's clients. All actions taken by Mr. Balagia were done at the urging of Mr. Morgan. As such, Mr. Balagia is entitled to Mr. Morgan's CIA file and his Homeland Security Investigation file, as these files would prove Mr. Morgan's connection with the government. *See Sherman v. United States*, 356 U.S. 369, 372 (1958); *United States v. Hammond*, 598 F.2d 1008 (5th Cir. 1979), *remanded on other grounds*, 605 F.2d 862 (5th Cir.1979). U.S. v. Grassi, 616 F.2d 1295 (5th Cir., 1980). Further, if Mr. Morgan had authority from a government agent, such as Mr. Malone, to undertake the actions he took no crime could have been committed. Records of telephone calls between Mr. Malone and Mr. Morgan are relevant in determining whether any authorization was provided.

Likewise, defense investigation reveals that Henry Jack Pytel, Jr. was involved with Mr. Malone and Mr. Morgan with regard to this matter. Just as with Mr. Morgan, defense investigation revealed that Mr. Pytel has been involved working with the government. As such, Mr. Pytel's informant files, or the like, are relevant to Defendant Balagia's defense in this matter.

CONCLUSION AND PRAYER

For the reasons set forth above, Mr. Balagia respectfully requests the Court to compel the government to provide the following material evidence:

1. Telephone records for Homeland Security Agent David Malone;
2. Charles Morgan's Homeland Security Investigation file, specifically including notes taken by David Malone;
3. Charles Morgan's CIA file;
4. Charles Morgan's FBI file, specifically including his activities related to COINROLL;

5. Records of allegations made against Ruben Oliva in the Eastern District of New York and the investigation of those allegations;
6. Records of allegations made against Nury Lopez in both Dallas, Texas and Colombia and the investigation of those allegations;
7. Henry Jack Pytel, Jr.'s informant file from whichever agencies he has worked with for the prior 20 years, whether such work was done as a confidential source, confidential informant, core collector or any other such role, and any of Mr. Malone's notes relating to Mr. Pytel;
8. Official La Pikota prison visit records for all visitors to Segundo Villota-Segura, Aldemar Villota-Segura and Hermes Casanova Ordonez. The government requested these records through both official and unofficial channels in approximately July 2018. An order compelling the production of the records is requested in order to assist the prosecutors in encouraging that the request receive priority.

Respectfully submitted,

/S/DAPHNE PATTISON SILVERMAN
Daphne Pattison Silverman (TBN 06739550)
Norman Silverman (TBN 00792207)
Silverman Law Group
501 N. IH-35
Austin, TX 78702
512-485-3003
Fax: 512-597-1658
daphnesilverman@gmail.com

CERTIFICATION BY DAPHNE SILVERMAN

I am an attorney licensed to practice in the State of Texas. I have been retained by Defendant James Balagia to represent him in this matter, and have been personally involved in the defense investigation. I have personal knowledge of the facts set forth above regarding the defense investigation. I hereby certify that those facts set forth herein are accurate and complete to the best of my knowledge.

/s/ Daphne Pattison Silverman
Daphne Pattison Silverman

Certificate of Service

I certify that on November 6, 2018 this document was filed with the Clerk of the Court using the electronic case filing system that automatically sends notice of electronic filing to the attorneys of record who have consented to accept such service.

/S/DAPHNE PATTISON SILVERMAN
Daphne Pattison Silverman

Certificate of Conference

I, Daphne Silverman, hereby certify that I conferred with counsel for the government regarding the discovery issues set forth in this motion, prior to filing this motion. Counsel for the government requested that this motion be filed.

/S/DAPHNE PATTISON SILVERMAN
Daphne Pattison Silverman

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

UNITED STATES OF AMERICA	§	
	§	
v.	§	No. 4:16CR176
	§	Judge Crone
JAMES MORRIS BALAGIA (3)	§	
a.k.a. "DWI Dude"	§	

GOVERNMENT'S MOTION FOR CONTINUANCE

The United States, by and through the United States Attorney for the Eastern District of Texas, files its Motion to Continue the hearing on Motion to Compel Discovery which is presently scheduled for November 27, 2018, and in support thereof would respectfully show as follows:

Counsel for the government is out of town the week of November 26, 2018. Defense counsel is unopposed to our continuance as long as the hearing is not re-set December 3-11, 2018.

This motion is not made for delay but so that justice may be done.

The government hereby respectfully requests that this Court enter an Order continuing this hearing until after December 12, 2018.

Respectfully submitted,

JOSEPH D. BROWN
United States Attorney

/s/
HEATHER RATTAN
Assistant United States Attorney
Texas Bar No. 16581050
101 E. Park Blvd., Suite 500
Plano, Texas 75074
972/509-1201
972/209-1209 fax
heather.rattan@usdoj.gov

CERTIFICATE OF CONFERENCE

Defense counsel is unopposed if the hearing is not rescheduled between December 3-11, 2018.

/s/
HEATHER RATTAN

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was sent via electronic filing on November 16, 2018.

/s/
HEATHER RATTAN

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

UNITED STATES OF AMERICA	§	
	§	
v.	§	No. 4:16CR176
	§	Judge Crone
JAMES MORRIS BALAGIA (3)	§	
a.k.a. "DWI Dude"	§	

GOVERNMENT'S MOTION FOR CONTINUANCE

The United States, by and through the United States Attorney for the Eastern District of Texas, files its Motion to Continue the hearing on Motion to Compel Discovery which is presently scheduled for December 12, 2018, and in support thereof would respectfully show as follows:

Counsel for the government is out of town on December 12, 2018. Defense counsel is unopposed to our continuance.

This motion is not made for delay but so that justice may be done.

The government hereby respectfully requests that this Court enter an Order continuing this hearing until after December 12, 2018.

Respectfully submitted,

JOSEPH D. BROWN
United States Attorney

/s/
HEATHER RATTAN
Assistant United States Attorney
Texas Bar No. 16581050
101 E. Park Blvd., Suite 500
Plano, Texas 75074
972/509-1201
972/209-1209 fax
heather.rattan@usdoj.gov

CERTIFICATE OF CONFERENCE

Defense counsel is unopposed.

/s/
HEATHER RATTAN

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was sent via electronic filing on November 26, 2018.

/s/
HEATHER RATTAN

THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

SHERMAN DIVISION

DATE: 12/18/2018

MAGISTRATE JUDGE **COURT REPORTER:** **Digital**

Christine A. Nowak **COURTROOM DEPUTY:** Karen Lee

UNITED STATES OF AMERICA VS JAMES BALAGIA	CAUSE NO: **4:16-CR-176- MAC/CAN**

ATTORNEY FOR PLAINTIFF	**ATTORNEY FOR DEFENDANTS**
Heather Rattan, AUSA	Daphne Silverman for Defendant
Jay Combs, AUSA	Rafael De La Garza

On this day, came the parties by their attorneys and the following proceedings were held in Sherman, TX:

TIME:	**MINUTES: Dkt. 200 – Defendant's Motion to Compel Discovery; and Dkt. 208**
11:03 a.m.	Case called. Appearances of counsel: Heather Rattan for United States of America. Daphne and Norm Silverman for Defendant. Rafael De La Garza also present.
	Court inquires as to whether parties have satisfied directive in order to meet and confer prior to hearing. Parties advise they have not. Court in recess to allow parties to meet and confer.
1:30 p.m.	Case recalled.
	Parties have reached agreements on the issues set forth in Dkts 200 and 208. Parties offer Defense and Government's Exhibit #1 (SEALED). A further hearing on Dkts. 200 and 208 is set for January 4, 2019, at 10:00 a.m. Defendant requests Dkt. 211 and the exhibits attached thereto be placed under seal. Court grants request to seal Dkt. 211. Clerk is directed to seal. Mr. De La Garza requests copies of recordings or notes from conversations between Mr. Morgan and Ms. Silverman. Court directs Ms. Silverman to notify Mr. De La Garza within 10 days of any notes or recordings of those conversations, as well as Ms. Silverman's willingness to provide such documentation.
1:33 p.m.	Court adjourned.

DAVID O'TOOLE, CLERK

BY: Karen Lee
Courtroom Deputy Clerk

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

UNITED STATES OF AMERICA, **Plaintiff,**	§	**CRIMINAL ACTION NO.**
	§	**4:16-CR-176**
v.	§	
JAMES MORRIS BALAGIA, **Defendant.**	§	

DEFENDANT BALAGIA'S RENEWED MOTION TO COMPEL DISCOVERY

James Morris Balagia, by and through the undersigned counsel, respectfully moves this court pursuant to Federal Rule of Criminal Procedure 16(a)(1)(E) for the discovery and production of exculpatory and material evidence. In support of the motion, Mr. Balagia states:

The parties have engaged in efforts to resolve discovery disputes by email, telephone and informal conferences before, during and after the Defendant filed his first Motion to Compel Discovery. The Defendant now seeks a hearing to formally address all remaining discovery disputes. This motion includes both disputes previously documented by motion as well as additional disputes in an effort to provide a full and final comprehensive list. Defendant greatly appreciates the significant efforts of Magistrate Nowak in attempting to assist the parties.

As requested by Magistrate Nowak during informal telephone conference, below is a bulleted list of remaining disputed items:

1. **Prosecutor interview of Segundo Segura**
   Identify the date and time that prosecutors AUSA Heather Rattan, AUSA Jay Combs or any other prosecutor from any jurisdiction including the United States, a state or other subdivision or territory of the United States or the country of Columbia intends to or has previously interviewed Segundo Segura at La Picota prison in Columbia with regards to his allegations against James Morris Balagia that are the subject of this indictment or any other allegations that Segundo Segura has made against James Morris Balagia. Defense counsel Norm and Daphne Silverman as well as a Columbian lawyer hired for the defense

team seek a Court order permitting them to be present at the prosecution interview and cross-examine Segundo Segura.

Drug trafficker Segundo Segura[1] initiated the investigation of James Balagia, Charles Morgan and Bibiana Correa. Segundo Segura advised his Columbian lawyer, Nury Lopez, that bribes of United States officials that he paid Balagia, Morgan and Correa and the bribes had not been accomplished. Nury Lopez recorded Balagia, Morgan and Correa's next visit with Segundo Segura in La Picota Prison.

Defendant Balagia requested that Segundo Segura be made available for trial. When it became clear that Segundo Segura would not be made available by the government, Defendant Balagia sought to take his deposition. The government objected to the deposition. Therefore, Defendant Balagia sought to interview Segundo Segura in order to secure the information necessary to return to the Court for a court ordered deposition. Segundo Segura has agreed to meet with the defense team; however, foreign lawyers are presently banned from La Picota prison due to the alleged misconduct of attorneys Rafael De La Garza and Joaquin Perez. Columbian counsel advises pursuant to Columbian law that if any prosecutors interview Segundo Segura that the defense has the right to be present and ask questions when the prosecutors interview the witness. If the prosecutor has already interviewed Segundo Segura, this information will be provided to La Picota officials in a special request for defense team interview due to the fact that if a prosecutor interviewed Segundo Segura without notifying Defendant Balagia, Balagia will also be permitted to interview the witness.

2. **Rafael De La Garza**
   Disclose to the defense any information including but not limited to documents, notes of telephone conversations, emails or recordings in the possession of any United States government agency specifically including but not limited to information in Columbia held

[1] Segundo Segurra is a defendant in the underlying drug trafficking case, *United States v. Segundo Villota-Segura*, criminal number 4:13-cr-38, which is identified in the indictment in this cause.

by United States government employees at the United State embassy including but not limited to the DEA judicial attaches and FBI judicial attachés regarding Rafael De La Garza's misconduct at La Picota prison that resulted in the present ban of foreign attorneys. The defense seeks to know why De La Garza was at La Picota and what specifically he is accused of doing and the reports of any investigation into his misconduct in all locations that have reports including Columbia and the United States. The defense requests that the Court order on this request order that the government specifically first run Rafael De La Garza's name including any names by which he is known as well as any numbers by which he is known in all agency electronic database systems by whatever name they are known. Then, after running this information in all agency electronic database systems, direct the government to produce all documents that result from the search. The defense requests that the Court compel the government to identify what electronic database systems were searched and produce the computer screen from the search.

As stated above, drug trafficker Segundo Segura initiated the investigation against Balagia, Morgan and Correa. Rafael de la Garza presently represents Charles Morgan and represented Charles Morgan at the time of De la Garza's misconduct in the prison. From the time of De La Garza's misconduct allegation through the present, Segundo Segura has been incarcerated at La Picota. Segundo Segura successfully fought his extradition to the United States for prosecution in extradition proceedings by alleging that he is a member of the FARC and therefore at risk of harm if he is held in a United States prison. Segundo Segura's conduct in claiming membership in the FARC which follows De La Garza's visit has rendered Segundo Segura unavailable to the defense as a trial witness. Approximately one year prior to De La Garza's misconduct, visitation by foreign lawyers was limited, because a foreign lawyer was accused of bribing prison officials to add his client's name to the FARC list in order to avoid deportation. Someone in the prison reported to the media that the prison's allegations against De La Garza also sound in bribery. The Balagia case is based upon bribery allegations. De La Garza's conduct is relevant to the determination of the cause of Segundo Segura's unavailability and to the defense investigation into Segundo Segura's allegations of bribery against Balagia. In particular, Balagia has proclaimed his innocence since

the date of his arrest and the defense investigation has focused on who might have committed the offense that Balagia is accused of committing.

3. **Nury Lopez**
   Disclose to the defense any information including but not limited to documents, notes of telephone conversation, emails or recordings in the possession of any United States government agency specifically including but not limited to information in any United States attorneys' office, any information held by HIS, DEA, FBI, CIA, and any information in Columbia held by United States government employees at the United States embassy including but not limited to the DEA judicial attachés and FBI judicial attachés as well as any information in files of Columbian law enforcement or Columbian prosecutors about allegations against Nury Lopez regarding falsely identifying her clients as members of the FARC in order to assist them in avoiding extradition. The defense requests that the Court order on this request order that the government specifically first run Nury Lopez's name including any names by which she is known as well as any numbers by which she is known in all agency electronic database systems by whatever name they are known. Then, after running this information in all agency electronic database systems, direct the government to produce all documents that result from the search. The defense requests that the Court compel the government to identify what electronic database systems were searched and produce the computer screen from the search.

Nury Lopez is the Columbian lawyer representing Segundo Segura who recorded a meeting between Balagia, Morgan, Correa and Segundo Segura. Lopez then forwarded the recording to United States lawyer Ruben Oliva who forwarded the recording to FBI Agent Jason Rennie. Lopez appears to have had the greatest contact with Segundo Segura and has motivation for manufacturing charges against Balagia and therefore charges against Lopez are relevant to Balagia's defenses.

4. **Ruben Oliva**
   Disclose to the defense any information including but not limited to documents, notes of telephone conversation, emails or recordings in the possession of any United States government agency specifically including but not limited to information in any United States attorneys' office, any information held by HSI, DEA, FBI, CIA, and any information in Columbia held by United States government employees at the United States embassy including but not limited to the DEA judicial attachés and FBI judicial attachés as well as any information in files of Columbian law enforcement or Columbian prosecutors about allegations against Ruben Oliva regarding bribery of prison officials, falsely identifying his clients as members of the FARC in order to assist them in avoiding extradition and obstruction of justice by bribing co-defendants with payments to their prison financial

books. The defense requests that the Court order on this request order that the government specifically first run Ruben Oliva's name including any names by which he is known as well as any numbers by which he is known in all agency electronic database systems by whatever name they are known. Then, after running this information in all agency electronic database systems, direct the government to produce all documents that result from the search. The defense requests that the Court compel the government to identify what electronic database systems were searched and produce the computer screen from the search.

5. **Charles Morgan**
All files of United States government agencies and Columbian government agencies of any sort that include any work of any sort performed by Charles Morgan (by all names that he is known by any government agency and by all source numbers that he is known by any government agency) for or on behalf of the United States government specifically including but not limited to the following agencies: Homeland Security Investigation/Customs/ Legacy Customs by whatever name the agency has ever been known; Federal Bureau of Investigations; Drug Enforcement Agency; and Central Intelligence Agency. This requests includes files titled in Charles Morgan's name, any name he is known, and any source number by which he is known as well as the entire case file on cases in which Charles Morgan's name, any name by which he has been known or any source number by which he is known appears. The defense requests that the Court order on this request order that the government specifically first run Charles Morgan's name including any names by which he is known as well as any numbers by which he is known in all agency electronic database systems by whatever name they are known. Then, after running this information in all agency electronic database systems, direct the government to produce all documents that result from the search. The defense requests that the Court compel the government to identify what electronic database systems were searched and produce the computer screen from the search.

6. **Henry Jack Pytel**
All government files of any sort that include any work of any sort performed by Henry Jack Pytel aka Jack Pytel aka HJP (by all names that he is known by any government agency and by all source numbers that he is known by any government agency) for or on behalf of the United States government specifically including but not limited to the following agencies: Homeland Security Investigation/Customs/ Legacy Customs by whatever name the agency has ever been known; Federal Bureau of Investigations; Drug Enforcement Agency; and Central Intelligence Agency. This request includes files titled in Henry Jack Pytel's name, any name he is known, and any source number by which he is known as well as the entire case file on cases in which Henry Jack Pytel's name, any name by which he has been known or any source number by which he is known appears. The defense requests that the Court order on this request order that the government specifically first run Henry Jack Pytel's name including any names by which he is known as well as any numbers by which he is known in all agency electronic database systems by whatever name they are known. Then, after running this information in all agency electronic database systems, direct the government to produce all documents that result from the search. The

defense requests that the Court compel the government to identify what electronic database systems were searched and produce the computer screen from the search.

The Fourth Superseding Indictment identifies Henry Jack Pytel as a co-conspirator. HJP is Henry Jack Pytel. The defense had requested discovery regarding Mr. Pytel prior to this indictment but did not have sufficient grounds to present the request in a hearing. But now that Pytel is listed as a co-conspirator in the indictment, his work for the government is relevant to Balagia' defenses. It was Pytel who connected Defendant Balagia to co-defendant Charles Morgan and therefore to the underlying drug trafficking cases in the indictment in this cause. Pytel served on active duty in Vietnam as an intelligence analyst. Pytel has a business in Panama.

7. **La Picota Prison visitation records**
Official records from La Picota prison including all visitation for Hermes Cassanova Ordonez, Segundo Segura and Aldemar Segura through the Mutual Legal Assistance Treaty (MLAT)

In discovery, the government provided to the defense records of visitation by Balagia, Morgan and Correa that the government obtained through the official channels provided by the MLAT. Upon review of these documents, the defense requested all visitation records for each of the drug traffickers that are the subject of this case. The government advised that it would request the records two ways: (1) through the MLAT and (2) through informal methods because the government feared the records could not be obtained in sufficient time for the previous trial date of August 2018. The government received records via the unofficial process and disclosed the unofficial records to the defense. The records provided by the government are clearly false in that the records list people visiting prisoners in La Picota on dates when the prisoners were actually housed in Bureau of Prison's facilities in the United States. The government has been unable to determine why those records are false or to secure correct records. Therefore, the defense seeks an order requiring the government to proceed pursuant to the MLAT treaty to secure all visitation

records for all visitors Ordonez and the two Seguras, specifically including photocopies of the big green book in the visitation space and all other La Picota records that document visitation in any manner. The government promised last summer that it would submit an official MLAT request for all records. The government has failed to produce proof that it complied with this promise. In fact, the government mislead the Magistrate Judge by advising that it had requested the records the defense sought by MLAT and produced those records to the defense. The defense corrected the government advising the court that government produced only visitation records pertaining to visits by Bibiana Correa, Charles Morgan, and Jamie Balagia. The defense requested all visitation records for the defendants in order for the defense to be able to determine who was orchestrating these false charges. The defense advised the government of the falsity as soon as it knew they were false, renewed the defense request for the MLAT produced documents, and asked for a status report on the MLAT documents as well as an investigation into the false records. It is imperative that the government be ordered to pursue official records through MLAT because it is clear now that someone in La Picota prison is a party to the conspiracy to falsely accused Jamie Balagia.

The defense incorporates all previously made arguments in its Motion to Compel presently pending before the Court. This bulleted list supplements the existing motion with additional disputed issues and a focused list of the disputes.

Respectfully submitted,

/S/DAPHNE PATTISON SILVERMAN
Daphne Pattison Silverman (TBN 06739550)
Norman Silverman (TBN 00792207)
Silverman Law Group
501 N. IH-35
Austin, TX 78702
512-485-3003
Fax: 512-597-1658
daphnesilverman@gmail.com

CERTIFICATION BY DAPHNE SILVERMAN

I am an attorney licensed to practice in the State of Texas. I have been retained by Defendant James Balagia to represent him in this matter, and have been personally involved in the defense investigation. I have personal knowledge of the facts set forth above regarding the defense investigation. I hereby certify that those facts set forth herein are accurate and complete to the best of my knowledge.

/s/ Daphne Pattison Silverman
Daphne Pattison Silverman

CERTIFICATE OF SERVICE

I certify that on January 15, 2019, this document was filed with the Clerk of the Court using the electronic case filing system that automatically sends notice of electronic filing to the attorneys of record who have consented to accept such service.

/S/DAPHNE PATTISON SILVERMAN
Daphne Pattison Silverman

CERTIFICATE OF CONFERENCE

I certify that prior to the filing of Defendant's Motion to Compel, the issues set forth therein were discussed with counsel for the government, AUSA Heather Rattan. AUSA Rattan advised that the government was opposed to such motion. During an informal telephone conference with Magistrate Judge Nowak, counsel was advised to provide a bulleted list of the remaining issues. Therefore, defense counsel drafted this current Motion and provided a copy of same to AUSA Rattan, seeking to know whether AUSA Rattan opposed this Motion. As of the date and time of filing, no response has been received from AUSA Rattan.

/S/DAPHNE PATTISON SILVERMAN
Daphne Pattison Silverman

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

UNITED STATES OF AMERICA, **Plaintiff,**	§	**CRIMINAL ACTION NO.**
	§	**4:16-CR-176**
v.	§	
JAMES MORRIS BALAGIA, **Defendant.**	§	

DEFENDANT BALAGIA'S AMENDED RENEWED MOTION TO COMPEL DISCOVERY

James Morris Balagia, by and through the undersigned counsel, respectfully moves this court pursuant to Federal Rule of Criminal Procedure 16(a)(1)(E) for the discovery and production of exculpatory and material evidence. In support of the motion, Mr. Balagia states:

The parties have engaged in efforts to resolve discovery disputes by email, telephone and informal conferences before, during and after the Defendant filed his first Motion to Compel Discovery. The Defendant now seeks a hearing to formally address all remaining discovery disputes. This motion includes both disputes previously documented by motion as well as additional disputes in an effort to provide a full and final comprehensive list. Defendant greatly appreciates the significant efforts of Magistrate Nowak in attempting to assist the parties.

As requested by Magistrate Nowak during informal telephone conference, below is a bulleted list of remaining disputed items:

1. **Prosecutor interview of Segundo Segura**
   Identify the date and time that prosecutors AUSA Heather Rattan, AUSA Jay Combs or any other prosecutor from any jurisdiction including the United States, a state or other subdivision or territory of the United States or the country of Columbia intends to or has previously interviewed Segundo Segura at La Picota prison in Columbia with regards to his allegations against James Morris Balagia that are the subject of this indictment or any other allegations that Segundo Segura has made against James Morris Balagia. Defense

counsel Norm and Daphne Silverman as well as a Columbian lawyer hired for the defense team seek a Court order permitting them to be present at the prosecution interview and cross-examine Segundo Segura.

Drug trafficker Segundo Segura[1] initiated the investigation of James Balagia, Charles Morgan and Bibiana Correa. Segundo Segura advised his Columbian lawyer, Nury Lopez, that bribes of United States officials that he paid Balagia, Morgan and Correa and the bribes had not been accomplished. Nury Lopez recorded Balagia, Morgan and Correa's next visit with Segundo Segura in La Picota Prison.

Defendant Balagia requested that Segundo Segura be made available for trial. When it became clear that Segundo Segura would not be made available by the government, Defendant Balagia sought to take his deposition. The government objected to the deposition. Therefore, Defendant Balagia sought to interview Segundo Segura in order to secure the information necessary to return to the Court for a court ordered deposition. Segundo Segura has agreed to meet with the defense team; however, foreign lawyers are presently banned from La Picota prison due to the alleged misconduct of attorneys Rafael De La Garza and Joaquin Perez. Columbian counsel advises pursuant to Columbian law that if any prosecutors interview Segundo Segura that the defense has the right to be present and ask questions when the prosecutors interview the witness. If the prosecutor has already interviewed Segundo Segura, this information will be provided to La Picota officials in a special request for defense team interview due to the fact that if a prosecutor interviewed Segundo Segura without notifying Defendant Balagia, Balagia will also be permitted to interview the witness.

2. **Rafael De La Garza**
   Disclose to the defense any information including but not limited to documents, notes of telephone conversations, emails or recordings in the possession of any United States

[1] Segundo Segurra is a defendant in the underlying drug trafficking case, *United States v. Segundo Villota-Segura*, criminal number 4:13-cr-38, which is identified in the indictment in this cause.

> government agency specifically including but not limited to information in Columbia held by United States government employees at the United State embassy including but not limited to the DEA judicial attaches and FBI judicial attachés regarding Rafael De La Garza's misconduct at La Picota prison that resulted in the present ban of foreign attorneys. The defense seeks to know why De La Garza was at La Picota and what specifically he is accused of doing and the reports of any investigation into his misconduct in all locations that have reports including Columbia and the United States. The defense requests that the Court order on this request order that the government specifically first run Rafael De La Garza's name including any names by which he is known as well as any numbers by which he is known in all agency electronic database systems by whatever name they are known. Then, after running this information in all agency electronic database systems, direct the government to produce all documents that result from the search. The defense requests that the Court compel the government to identify what electronic database systems were searched and produce the computer screen from the search.

As stated above, drug trafficker Segundo Segura initiated the investigation against Balagia, Morgan and Correa. Rafael de la Garza presently represents Charles Morgan and represented Charles Morgan at the time of De la Garza's misconduct in the prison. From the time of De La Garza's misconduct allegation through the present, Segundo Segura has been incarcerated at La Picota. Segundo Segura successfully fought his extradition to the United States for prosecution in extradition proceedings by alleging that he is a member of the FARC and therefore at risk of harm if he is held in a United States prison. Segundo Segura's conduct in claiming membership in the FARC which follows De La Garza's visit has rendered Segundo Segura unavailable to the defense as a trial witness. Approximately one year prior to De La Garza's misconduct, visitation by foreign lawyers was limited, because a foreign lawyer was accused of bribing prison officials to add his client's name to the FARC list in order to avoid deportation. Someone in the prison reported to the media that the prison's allegations against De La Garza also sound in bribery. The Balagia case is based upon bribery allegations. De La Garza's conduct is relevant to the determination of the cause of Segundo Segura's unavailability and to the defense investigation into Segundo Segura's allegations of bribery against Balagia. In particular, Balagia has proclaimed his innocence since

the date of his arrest and the defense investigation has focused on who might have committed the offense that Balagia is accused of committing.

3. **Nury Lopez**
   Disclose to the defense any information including but not limited to documents, notes of telephone conversation, emails or recordings in the possession of any United States government agency specifically including but not limited to information in any United States attorneys' office, any information held by HIS, DEA, FBI, CIA, and any information in Columbia held by United States government employees at the United States embassy including but not limited to the DEA judicial attachés and FBI judicial attachés as well as any information in files of Columbian law enforcement or Columbian prosecutors about allegations against Nury Lopez regarding falsely identifying her clients as members of the FARC in order to assist them in avoiding extradition. The defense requests that the Court order on this request order that the government specifically first run Nury Lopez's name including any names by which she is known as well as any numbers by which she is known in all agency electronic database systems by whatever name they are known. Then, after running this information in all agency electronic database systems, direct the government to produce all documents that result from the search. The defense requests that the Court compel the government to identify what electronic database systems were searched and produce the computer screen from the search.

Nury Lopez is the Columbian lawyer representing Segundo Segura who recorded a meeting between Balagia, Morgan, Correa and Segundo Segura. Lopez then forwarded the recording to United States lawyer Ruben Oliva who forwarded the recording to FBI Agent Jason Rennie. Lopez appears to have had the greatest contact with Segundo Segura and has motivation for manufacturing charges against Balagia and therefore charges against Lopez are relevant to Balagia's defenses.

4. **Ruben Oliva**
   Disclose to the defense any information including but not limited to documents, notes of telephone conversation, emails or recordings in the possession of any United States government agency specifically including but not limited to information in any United States attorneys' office, any information held by HSI, DEA, FBI, CIA, and any information in Columbia held by United States government employees at the United States embassy including but not limited to the DEA judicial attachés and FBI judicial attachés as well as any information in files of Columbian law enforcement or Columbian prosecutors about allegations against Ruben Oliva regarding bribery of prison officials, falsely identifying his clients as members of the FARC in order to assist them in avoiding extradition and obstruction of justice by bribing co-defendants with payments to their prison financial

books. The defense requests that the Court order on this request order that the government specifically first run Ruben Oliva's name including any names by which he is known as well as any numbers by which he is known in all agency electronic database systems by whatever name they are known. Then, after running this information in all agency electronic database systems, direct the government to produce all documents that result from the search. The defense requests that the Court compel the government to identify what electronic database systems were searched and produce the computer screen from the search.

5. **Charles Morgan**
All files of United States government agencies and Columbian government agencies of any sort that include any work of any sort performed by Charles Morgan (by all names that he is known by any government agency and by all source numbers that he is known by any government agency) for or on behalf of the United States government specifically including but not limited to the following agencies: Homeland Security Investigation/Customs/ Legacy Customs by whatever name the agency has ever been known; Federal Bureau of Investigations; Drug Enforcement Agency; and Central Intelligence Agency. This requests includes files titled in Charles Morgan's name, any name he is known, and any source number by which he is known as well as the entire case file on cases in which Charles Morgan's name, any name by which he has been known or any source number by which he is known appears. The defense requests that the Court order on this request order that the government specifically first run Charles Morgan's name including any names by which he is known as well as any numbers by which he is known in all agency electronic database systems by whatever name they are known. Then, after running this information in all agency electronic database systems, direct the government to produce all documents that result from the search. The defense requests that the Court compel the government to identify what electronic database systems were searched and produce the computer screen from the search.

6. **Henry Jack Pytel**
All government files of any sort that include any work of any sort performed by Henry Jack Pytel aka Jack Pytel aka HJP (by all names that he is known by any government agency and by all source numbers that he is known by any government agency) for or on behalf of the United States government specifically including but not limited to the following agencies: Homeland Security Investigation/Customs/ Legacy Customs by whatever name the agency has ever been known; Federal Bureau of Investigations; Drug Enforcement Agency; and Central Intelligence Agency. This request includes files titled in Henry Jack Pytel's name, any name he is known, and any source number by which he is known as well as the entire case file on cases in which Henry Jack Pytel's name, any name by which he has been known or any source number by which he is known appears. The defense requests that the Court order on this request order that the government specifically first run Henry Jack Pytel's name including any names by which he is known as well as any numbers by which he is known in all agency electronic database systems by whatever name they are known. Then, after running this information in all agency electronic database systems, direct the government to produce all documents that result from the search. The

defense requests that the Court compel the government to identify what electronic database systems were searched and produce the computer screen from the search.

The Fourth Superseding Indictment identifies Henry Jack Pytel as a co-conspirator. HJP is Henry Jack Pytel. The defense had requested discovery regarding Mr. Pytel prior to this indictment but did not have sufficient grounds to present the request in a hearing. But now that Pytel is listed as a co-conspirator in the indictment, his work for the government is relevant to Balagia' defenses. It was Pytel who connected Defendant Balagia to co-defendant Charles Morgan and therefore to the underlying drug trafficking cases in the indictment in this cause. Pytel served on active duty in Vietnam as an intelligence analyst. Pytel has a business in Panama.

7. **La Picota Prison visitation records**
Official records from La Picota prison including all visitation for Hermes Cassanova Ordonez, Segundo Segura and Aldemar Segura through the Mutual Legal Assistance Treaty (MLAT)

In discovery, the government provided to the defense records of visitation by Balagia, Morgan and Correa that the government obtained through the official channels provided by the MLAT. Upon review of these documents, the defense requested all visitation records for each of the drug traffickers that are the subject of this case. The government advised that it would request the records two ways: (1) through the MLAT and (2) through informal methods because the government feared the records could not be obtained in sufficient time for the previous trial date of August 2018. The government received records via the unofficial process and disclosed the unofficial records to the defense. The records provided by the government are clearly false in that the records list people visiting prisoners in La Picota on dates when the prisoners were actually housed in Bureau of Prison's facilities in the United States. The government has been unable to determine why those records are false or to secure correct records. Therefore, the defense seeks an order requiring the government to proceed pursuant to the MLAT treaty to secure all visitation

records for all visitors Ordonez and the two Seguras, specifically including photocopies of the big green book in the visitation space and all other La Picota records that document visitation in any manner. The government promised last summer that it would submit an official MLAT request for all records. The government has failed to produce proof that it complied with this promise. In fact, the government mislead the Magistrate Judge by advising that it had requested the records the defense sought by MLAT and produced those records to the defense. The defense corrected the government advising the court that government produced only visitation records pertaining to visits by Bibiana Correa, Charles Morgan, and Jamie Balagia. The defense requested all visitation records for the defendants in order for the defense to be able to determine who was orchestrating these false charges. The defense advised the government of the falsity as soon as it knew they were false, renewed the defense request for the MLAT produced documents, and asked for a status report on the MLAT documents as well as an investigation into the false records. It is imperative that the government be ordered to pursue official records through MLAT because it is clear now that someone in La Picota prison is a party to the conspiracy to falsely accused Jamie Balagia.

8. **Files of the Eastern District of Texas U.S. Attorneys' office regarding prosecutions of Columbian drug traffickers being prosecuted by the OCDETF in the EDTX**
All documents that address the prosecution of Columbian drug traffickers, such as, but not limited to, notes of members of the staff of the U.S. Attorneys' office, correspondence among members of the U.S. Attorneys' office, reports regarding the prosecution of Columbian drug traffickers to and from the Department of Justice, and reports regarding the prosecution of Columbian drug traffickers between the U.S. Attorneys' office and agencies investigating the Columbian drug trafficking and crimes of others (such as lawyers and investigators) related to Columbian drug trafficking prosecutions as well as email and letter correspondence related to drug trafficking prosecutions.

On Tuesday, January 8, 2019, AUSA Rattan provided to the defense an FBI 302 revealing that co-defendant Charles Morgan has been an operative for the United States government with such a strong connection to the government that United States government

gave Morgan control of $218,148 in United States owned cash for use in a government operation. Prior to this production, defense counsel had received push-back from the government whenever it requested information regarding Morgan's involvement with the government. Counsel for the government had gone so far as to claim the defense attorneys were on a fishing expedition and no such information existed. In light of the recent revelation that the information does in fact exist, and the media report that an EDTX case has led to the prosecution of an operative and DEA officer under similar circumstances as in the current matter (U.S. v. Gustavo Adolfo Yabrudi, Case No. 0:18-mj-06127), the defense seeks disclosure of all documents in the files of the Eastern District of Texas U.S. Attorneys' office regarding prosecutions of Columbian drug traffickers being prosecuted by the OCDETF in the EDTX including but not limited to the underlying drug trafficking cases that are subject of this indictment as well as all investigations that derive from the prosecutions including investigation of Nury Lopez for obstruction and Segundo Segura for obstruction and all of other files connected to the Columbian project. The evidence will include all documents that address the prosecution of Columbian drug traffickers, such as, but not limited to, notes of members of the staff of the U.S. Attorneys' office, correspondence among members of the U.S. Attorneys' office, reports regarding the prosecution of Columbian drug traffickers to and from the Department of Justice, and reports regarding the prosecution of Columbian drug traffickers between the U.S. Attorneys' office and agencies investigating the Columbian drug trafficking and crimes of others (such as lawyers and investigators) related to Columbian drug trafficking prosecutions as well as email and letter correspondence related to drug trafficking prosecutions. The evidence will likewise include but not be limited to notes of members of the U.S. Attorneys' office, reports regarding the

prosecutions between the U.S .Attorneys' office and agencies investigating the cases, as well as email and letter correspondence.

The defense incorporates all previously made arguments in its Motion to Compel presently pending before the Court. This bulleted list supplements the existing motion with additional disputed issues and a focused list of the disputes.

Respectfully submitted,

/S/DAPHNE PATTISON SILVERMAN
Daphne Pattison Silverman (TBN 06739550)
Norman Silverman (TBN 00792207)
Silverman Law Group
501 N. IH-35
Austin, TX 78702
512-485-3003
Fax: 512-597-1658
daphnesilverman@gmail.com

CERTIFICATION BY DAPHNE SILVERMAN

I am an attorney licensed to practice in the State of Texas. I have been retained by Defendant James Balagia to represent him in this matter, and have been personally involved in the defense investigation. I have personal knowledge of the facts set forth above regarding the defense investigation. I hereby certify that those facts set forth herein are accurate and complete to the best of my knowledge.

/s/ Daphne Pattison Silverman
Daphne Pattison Silverman

CERTIFICATE OF SERVICE

I certify that on January 17, 2019, this document was filed with the Clerk of the Court using the electronic case filing system that automatically sends notice of electronic filing to the attorneys of record who have consented to accept such service.

/S/DAPHNE PATTISON SILVERMAN
Daphne Pattison Silverman

CERTIFICATE OF CONFERENCE

I certify that prior to the filing of Defendant's Motion to Compel, the issues set forth therein were discussed with counsel for the government, AUSA Heather Rattan. AUSA Rattan advised that the government was opposed to such motion. During an informal telephone conference with Magistrate Judge Nowak, counsel was advised to provide a bulleted list of the remaining issues. Therefore, defense counsel drafted its Renewed Motion to Compel Discovery. Thereafter, defense counsel learned of the U.S. v. Custavo Adolfo Yabrudi, Case 0:18-mj-06127. Defense counsel reached out to the defense attorney in that matter and learned of the similarity between the instant matter and that case. Defense counsel immediately reached out to AUSA Rattan regarding the Defendant's need for additional information concerning the prosecution of drug traffickers in the Eastern District of Texas. AUSA Rattan advised that the United States opposes this Motion.

/S/DAPHNE PATTISON SILVERMAN
Daphne Pattison Silverman