Filed 11/14/12 Page 1 of 24

1 Honorable Chief Judge

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UNITED STATES DISTRICT COURT

7 WESTERN DISTRICT OF WASHINGTON AT SEATTLE

8

UNITED STATES OF AMERICA,

Plaintiff,

v.

,

Defendant.

1. No. CR12
2. MOTION AND MEMORANDUM

OF LAW IN SUPPORT OF MOTION

1. FOR ORDER ISSUING RULE 17(C)

OUT-OF-DISTRICT SUBPOENAS

12

NOTE ON MOTION CALENDAR:

13 November 23, 2012

14

1. **MOTION**
2. Defendant , by and through undersigned counsel, hereby moves this
3. Court for issuance of subpoenas pursuant to Federal Rule of Criminal Procedure 17(c). This
4. motion is based on the memorandum of law below and declaration of counsel filed
5. separately.
6. **MEMORANDUM OF LAW**
7. **I. INTRODUCTION**
8. Mr. is one of 29 defendants who was charged in *United States v.*
9. . The case involves allegations of drug trafficking resulting from
10. the Government’s multi-year investigation of an alleged drug trade organization, the
11. DTO. DEA agents, law enforcement in California – the North State Initiative
12. California Multi-Jurisdictional Methamphetamine Eradication Team (“NSI Cal-MMET”) –

MOTION AND MEMORANDUM FOR ISSUANCE OF RULE 17(C) SUBPOENAS - 1

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1. and local law enforcement in Snohomish, King, and Pierce Counties in the Western District
2. of Washington and elsewhere were involved in this investigation.
3. Chris and Pat are deputies with the Shasta County Sheriff’s
4. Office (“SCSO”) and are also assigned to the NSI Cal-MMET Team. The SCSO receives
5. grants from the California Office of Emergency Services each year to fund the Cal-MMET
6. program, and the SCSO primarily uses that grant money to engage in Domestic Highway
7. Enforcement (“DHE”) designed to lead to drug arrests. Cal-MMET works in collaboration
8. with numerous agencies including Immigration and Customs Enforcement (“ICE”), the Drug
9. Enforcement Administration (“DEA”), the Bureau of Narcotics Enforcement (“BNE”), the
10. United States Treasury Department, and the Federal Bureau of Investigations (“FBI”).
11. In the case, the Government has provided discovery regarding traffic stops of
12. Mr. and Mr. by Deputies and M . On April 20,
13. 2011, Mr. was pulled over by Deputy for a minor traffic
14. infraction. A canine, “Darco,” was called to the scene and the car in which Mr.
15. was driving was searched; $107,100.00 was confiscated from a hidden area in the
16. car. Deputy report has previously been provided to the Court in Dkt. No. 577-1.
17. The Government sought to introduce evidence of this stop in its case in chief against Mr.
18. . However, on November 6, 2012, the Government informed defense
19. counsel for Mr. , Ms. Gordon, that they no longer intended to offer any
20. evidence of this stop after learning that Deputy recently resigned from the Cal-
21. MMET and the Shasta County Sheriff’s Office, and an internal investigation is currently
22. pending against Deputy .
23. On October 21, 2011, Mr. S was pulled over by Deputy r for a minor
24. traffic infraction. A canine, “Maximus,” was called to the scene and the car in which Mr.
25. Silva was driving was searched; $49,445.00 was confiscated as a result of the stop. The 26

MOTION AND MEMORANDUM FOR ISSUANCE OF RULE 17(C) SUBPOENAS - 2

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1. Government has provided a video of that stop to the defense. *See* attached DVD, Exhibit A.1
2. A copy of Deputy s report was previously provided to the Court in Dkt. No. 588.
3. Defense counsel for Mr. S and Mr. have moved to suppress the fruits
4. of the unlawful searches and seizures conducted on April 20, 2011 and October 21, 2011due
5. to selective enforcement of the California Vehicle Code.2 (Dkt. No. 576.) Defendant
6. challenges the enforcement of these minor traffic infractions on the grounds that they were
7. not enforced in a fair and non-arbitrary manner, in violation of their constitutional rights.
8. Defense counsel has sought records from the Shasta County Sheriff’s Office from the
9. Government by way of a discovery letter. *See* attached correspondence, Exhibit B. The
10. Government is refusing to produce the records. *See* attached correspondence, Exhibit C.

## II. BACKGROUND

1. Deputies and are both members of the North State Initiative of
2. the California Multijurisdictional Methamphetamine Eradication Team, also known as NSI
3. Cal-MMET. Defense counsel, through investigation and discovery, have obtained
4. information that suggests that Deputies and have demonstrated a
5. pattern of enforcing traffic laws only to further their DHE activities and that they enforce
6. those laws disproportionately against male Hispanic drivers because they are using a racial
7. and gendered profile to identify suspected drug transporters. Moreover, they are motivated
8. to bring in asset forfeiture revenue for SCSO, whose asset forfeiture income represents a
9. percentage of its total operating budget. 21

22

1 A copy of the DVD is being supplied directly to Judge Chambers for the Court’s review.

23

2 Mr. was pulled over on April 20, 2011 for a violation of California Vehicle

1. Code § 24400 (driving without his headlights illuminated in inclement weather). was pulled over on October 21, 2011 for a violation of California Vehicle Code §22349(a) (driving 78
2. mph in a 65 mph zone). The Government has indicated that they no longer seek to introduce evidence of the stop of Mr.

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MOTION AND MEMORANDUM FOR ISSUANCE OF RULE 17(C) SUBPOENAS - 3

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1. Deputies and have been the subject of litigation in Federal
2. Court in the Eastern District of California as well as California State Court for engaging in a
3. pattern of selective enforcement of the California Vehicle Code against male Hispanic
4. Drivers. In *United States v. Jose Sanchez-Palomino and Francisco Velasco*, United States
5. District Court Eastern District of California Case No. CR-S-09-0094 MCE and in *United*
6. *States v. Ruben Acosta-Lugo,* United States District Court Eastern District of California Case
7. No. CR-S-09-356-LKK the Federal Defender sought the same materials we are seeking in
8. this case. In *United States v. Jose Sanchez-Palomino and Francisco Velasco* the Defendant
9. moved to have the case dismissed against her client or in the alternative the evidence seized
10. during a traffic stop of the defendant suppressed as a result of selective enforcement.
11. Similarly, the Shasta County Public Defender, in the case of *The People of the State of*
12. *California v. Saul Arias Guzman,* Shasta County Superior Court Case No. 09F5812, sought
13. state relief for similar selective enforcement issues involving Deputies r and
14. and their canine “Maximus.”
15. Pursuant to information and documents obtained through subpoena, the defense in the
16. above-named cases was able to show that Deputies and almost
17. exclusively stopped male Hispanic drivers for alleged violations of the California Vehicle
18. Code. Not only did these deputies search the cars of the Hispanic men they detained, but
19. they frequently dismantled parts of those cars while on the side of the road, often forcing the
20. men to wait for hours on the side of the freeway. The deputies uniformly claimed that the
21. traffic infractions were for violations such as: following too close, speeding, unsafe lane
22. change, or another violation that could only be substantiated by the deputies’ observations.
23. The reports shared many similarities. Once the car was pulled over, two or three more
24. deputies would arrive within minutes of the stop. A canine, often Deputy drug-
25. sniffing canine “Maximus” (the same dog involved in Mr. Silva’s stop), would arrive at the 26

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1. scene. Suspects would be asked within minutes of the stop to exit their vehicle and stand on
2. the side of I-5. Suspects would be questioned about their travel plans; suspects would be
3. asked for consent to search their vehicle, even if the suspects spoke little English.
4. “Maximus” would conduct a “sniff” and the car would be searched. The officers would also
5. include in their reports other indicators of drug involvement such as: excess nervousness,
6. messy cars with fast food wrappers, religious icons or “Narco Saints” displayed in the cars,
7. air fresheners hanging from the rear view mirror, the number of keys on a key chain, and the
8. presence of luggage. Many of these “indicators” were listed in the police reports from the
9. stops of the defendants in this case.
10. The Federal Defenders from the Eastern District of California and the Shasta County
11. Public Defender’s Office were able to subpoena records from the SCSO to support their
12. claims. *See* attached Subpoena, Exhibit D.
13. The defense in this case is seeking the following discovery covering the 12-month
14. period (November 2010 to November 2011) prior to the stop of Mr. Silva on October 21, 15 2011:
15.  All traffic citations and warning citations issued by law enforcement from the Cal-
16. MMET Unit from November 1, 2010 to November 1, 2011;
17.  All arrest reports issued by the Cal-MMET Unit from November 1, 2010 to November 1, 2011;
18.  Any and all information in the possession of the SCSO regarding persons who have
19. been stopped or contacted by the Cal-MMET Unit on Interstate 5 during the time period November 1, 2010 to November 1, 2011, including statistics on the race of the
20. persons pulled over for traffic infractions;
21.  Complete records of all Interstate 5 traffic stops involving Deputies and n, including all CLETS information requested by the same officers, whether
22. or not these stops involved citations from November 1, 2010 to November 1, 2011;
23.  DVDs of all traffic stops initiated by SCSO Deputies r and n on Interstate 5 during the calendar year of 2010-2011;
24.  All NSI Cal-MMET/DHE investigative reports of Deputies and 26 from 2010-2011;

MOTION AND MEMORANDUM FOR ISSUANCE OF RULE 17(C) SUBPOENAS - 5

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1.  SCSO daily logs for each day on which Deputies and issued
2. citations or made arrests;
3.  Complete electronic transmissions involving Deputy on October 21, 2011, including electronic recordings of radio transmission on primary and secondary car-
4. to-car frequencies, digital data and message transmissions, administrative messages, PF or KPF results, CAD reports, mobile data transmissions, SHASCOM
5. transmissions, and all in-camera recordings;
6.  Canine Maximus’ entire field records and training records in the 12 months preceding the stop of Mr. Silva (November 2010 to November 2011), including all police
7. reports, DVDs of stops, and search warrants in which Maximus was brought to the scene and conducted a search; and
8.  Any materials from Deputy s personnel files or any other information in
9. the possession of the Shasta County Sheriff’s Office that is material to the defense. Material information includes but is not limited to: any disciplinary actions taken
10. against Deputy r; demotions; delayed promotions; terminations or firings from any law enforcement job; department-mandated training or retraining due to
11. performance issues; instances of deception, inaccuracy, or untruthfulness; instances of improper conduct toward suspects, including racial bias; complaints lodged against
12. the deputy; civilian complaints against the deputy; and any criminal record.
13. A jury trial in this case is scheduled to begin on March 11, 2013. Motions to suppress
14. will be scheduled prior to the trial date. Defense seeks these records prior to the suppression
15. hearing on the selective enforcement issue. We are requesting the Court to issue the
16. subpoenas with a return date of December 5, 2012. The Federal Defender and the Shasta
17. County Public Defender, in similar litigation, were able to obtain the requested documents
18. pursuant to subpoena.

## III. ARGUMENT

1. Federal Rule of Criminal Procedure 17(c)(1) provides: 21

A subpoena may order the witness to produce any books, papers, documents,

1. data, or other objects the subpoena designates. The court may direct the witness to produce the designated items in court before trial or before they are
2. to be offered in evidence. When the items arrive, the court may permit the parties and their attorneys to inspect all or part of them.
3. “Rule 17(c) reflects the command of the Sixth Amendment that the full power and
4. processes of the courts are available to defendants in criminal cases to help them defend 26

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1. against the charges brought by the Government.” *United States v. Beckford*, 964 F. Supp.
2. 1010, 1016 (E.D. Va. 1997) (Payne, J.). “Its chief innovation was to expedite the trial by
3. providing a time and place *before* trial for the inspection of the subpoenaed materials.”
4. *Bowman Dairy Co. v. United States*, 341 U.S. 214, 220 (1951) (emphasis original). Thus,
5. “Rule 17(c) is more far reaching than testimonial subpoenas.” *Beckford*, 964 F. Supp. at
6. 1016 (citing *Bowman Dairy*, 341 U.S. at 220)). The district court has full discretion to order
7. the production of documents before trial. *United States v. King*, 194 F.R.D. 569, 573 (E.D. 8 Va. 2000) (Payne, J.).

9 The Supreme Court has held that pretrial production by third parties pursuant to Rule

10 17(c) is appropriate where the moving party has shown:

11

1. that the documents are evidentiary and relevant; (2) that they are not
2. otherwise procurable reasonably in advance of trial by exercise of due diligence; (3) that the party cannot properly prepare for trial without such
3. production and inspection in advance of trial and that the failure to obtain such inspection may tend unreasonably to delay the trial; and (4) that the
4. application is made in good faith and is not intended as a general fishing expedition.

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1. *United States v. Nixon*, 418 U.S. 683, 699-700 (1974) (internal quotations omitted).

## A. The Documents Are Relevant to Mr. s Defense.

1. The above-named defendants are charged with conspiracy to distribute controlled
2. substances. The Government intends to introduce the evidence seized pursuant to the stop of
3. the defendant in Shasta County in its case in chief as part of the conspiracy.
4. The defense has raised the issue of selective enforcement. The defendant cannot
5. develop this issue without access to the requested records. In *United States v. Nixon*, the
6. Supreme Court found that the relevancy burden had been met when “there was a sufficient
7. likelihood” that tapes contained “conversations relevant to the offenses charged in the
8. indictment.” 418 U.S. at 700. Here, there is also “a sufficient likelihood” that the documents 26

MOTION AND MEMORANDUM FOR ISSUANCE OF RULE 17(C) SUBPOENAS - 7

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1. sought contain information relevant to the issues raised. Indeed, the information is not only
2. relevant but likely crucial to Mr. S defense.

## B. The Defendants Cannot Otherwise Obtain the Documents.

1. The defendants seek documents in the possession of the Shasta County Sheriff’s
2. Office. Counsel for Mr. has requested the Government to produce the records in
3. question. The Government has not agreed to do so. These documents are not available from
4. any other source. *See, e.g., Nixon*, 418 U.S. at 702 (finding that the moving party had made a
5. sufficient showing to justify a subpoena for production before trial when “[t]he subpoenaed
6. materials are not available from any other source, and their examination and processing
7. should not await trial in the circumstances shown.”). Thus, no further exercise of reasonable
8. due diligence on the defendants’ part would otherwise succeed in procuring these documents. 12

## C. Pursuant to Subpoena, the Documents Can Be Produced Without Undue

1. **Delay**
2. In similar federal litigation in *United States v. Jose Sanchez-Palomino and Francisco*
3. *Velasco*, once the Court issued the requested subpoenas, the Shasta County Sheriff’s Office
4. produced the requested records in an expedient manner. Given that they have responded
5. quickly and efficiently to a similar request, we anticipate that they can comply quickly with
6. this request.
7. If Shasta County Sheriff’s Office seeks to file motions to quash the subpoenas,
8. motions would need to be fully litigated before any production occurs, and therefore before
9. the above-named defendants could begin reviewing the records to assess their evidentiary
10. value. Thus we are requesting a date for production prior to the motions date in order to
11. avoid any unreasonable delay. 24

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MOTION AND MEMORANDUM FOR ISSUANCE OF RULE 17(C) SUBPOENAS - 8

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## D. The Defendants’ Good Faith Request Specifies the Documents Necessary to Their Defense and Is Not Intended as a Fishing Expedition.

1. The defendants’ requests are narrowly tailored to capture only those documents
2. necessary to develop fully their defense. The documents are necessary to gather statistical
3. evidence of discrimination. The records we are seeking are necessary to show that traffic
4. citations were disproportionately issued to Hispanic males. The subpoenas do not cast a
5. wide net and our requests are framed as narrowly as possible. 7

## E. Request that the Cost of Out-of-District Subpoenas be Covered at

1. **Government Expense.**
2. Federal Rule of Criminal Procedure 17(b) provides the Court the authority to issue a
3. subpoena for the attendance of witnesses for defendants financially unable to do so:
4. Defendants Unable to Pay. Upon a defendant’s ex parte application, the court must order that a subpoena be issued for a named witness if the defendant
5. shows an inability to pay the witness’s fees and the necessity of the witnesses’ presence for an adequate defense. If the court orders the subpoena to be
6. issued, the process costs and witness fees will be paid in the same manner as those paid for witnesses the government subpoenas.
7. A defendant’s request for an out-of-district subpoena should be granted if the
8. defendant alleges facts which, if true, would be relevant to any issue in the case and the
9. allegations are not inherently incredible or the request is otherwise frivolous. *See United*
10. *States v. Sims*, 637 F.2d 625 (9th Cir. 1980) (conviction reversed because trial court refused
11. to issue out-of-district subpoenas pursuant to Rule 17(b)).
12. Rule 17(b) provides that if the Court orders the subpoena to be issued, the cost
13. incurred by the process and the fees of the witness so subpoenaed shall be paid in the same
14. manner in which similar costs and fees are paid in the case of a witness subpoenaed on behalf
15. of the government. When the Federal Rules of Criminal Procedure were adopted, this
16. provision was intended to expand a previous limitation on an indigent defendant’s right to
17. procure the attendance of distant witnesses at government expense: 25

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MOTION AND MEMORANDUM FOR ISSUANCE OF RULE 17(C) SUBPOENAS - 9

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1. This limitation [the 100 mile from the place of trial limit] is abrogated by the rule so that an indigent defendant will be able to secure the attendance of
2. witnesses at the expense of the government no matter where they are located.

## IV. CONCLUSION

1. For the foregoing reasons, Mr. respectfully requests the Court grant his Motion
2. for Issuance of Rule 17(c) Out-of-District Subpoenas and that the expense of such subpoenas
3. be covered at government expense. The witness and/or documents requested by the defense
4. are necessary for an adequate defense. Furthermore, the defense will indicate on the face of
5. the subpoena that in lieu of the Custodian of Records from the Shasta County Sheriff’s
6. Office travelling to Washington State to hand deliver the requested documents, the Custodian

10 may send the requested documents to defense counsel’s office or, if the Court prefers, to the

1. Court’s chambers, prior to the date requested.
2. DATED this 14th day of November, 2012.
3. Respectfully submitted,
4. SCHROETER, GOLDMARK & BENDER
5. *s/ Colette Tvedt*

COLETTE TVEDT

1. 810 Third Avenue, Suite 500

Seattle, WA 98104

17 Phone: (206) 622-8000

Fax: (206) 682-2305

18 Email: tvedt@sgb-law.com

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MOTION AND MEMORANDUM FOR ISSUANCE OF RULE 17(C) SUBPOENAS - 10

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## CERTIFICATE OF SERVICE

1. I hereby certify that on November 14, 2012, I electronically filed the foregoing with
2. the Clerk of the Court using the CM/ECF system, which will send notification of such filing
3. to Assistant United States Attorneys and , attorneys of
4. record for co-defendants, and all others requesting electronic notice.
5. *s/ Andrea Crabtree*

ANDREA CRABTREE

1. Paralegal

SCHROETER GOLDMARK & BENDER

1. 810 Third Avenue, Suite 500

Seattle, WA 98104

9 Phone: (206) 622-8000

Fax: (206) 682-2305

10 Email: crabtree@sgb-law.com

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MOTION AND MEMORANDUM FOR ISSUANCE OF RULE 17(C) SUBPOENAS - 11

SCHROETER, GOLDMARK & BENDER

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Case No. CR12--

SCHROETER GOLDMARK

& BENDER

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Colette Tvedt, Defense Attorney 810 Third Avenue, Suite 500

Seattle, WA 98104

(206) 622-8000

- -/- . '

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10/21/11 Traffic Stop Audio/Video

Exhibit A

EXHIBIT A

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# EXHIBITB

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**SCHROETER GOLDMARK** & **BENDER**

Email: tvedt@sgb-law.com

October 8, 2012

500 Central Bui l d i ng 810 Third Avenue Seattle,WA 98104

Phone (206) 622-8000

Toll fr ee (800) 809-2234

Fax (206) 682-2.305

Attorneys Adam J. Berger

Joseph A. Campagna

Martin S. Gar finke l Kathy Goater

 Assistant U.S. Attorney United States Attorney's Office

700 Stewart Street, Suite 5220

Seattle, Washington 98101-1271

**Re: *USAv. ***

Dear Mr **Ti'.**

**SENT VIA EMAIL AND U.S. MAIL**

M. Lor ena Gonz alez James D. Hailey Lindsay Halm **Kristin Houser** Anne Kysar

Angela Macey-Cushman Janet L. Rice

Jeffe r y P. Robinson

Rebecca J. Roe Colette Tvedt Sandra E. Widlan

Of Counsel Crail Anderson Bill Bowman Mark A. Burke **Britene y Mercer** William Rutzick

Since 1969

I am writing to request additional discovery related to my client Mr.-and Ms.

Gordon's client Mr. in the above-referenced case. This joint discovery request relates to the stop of Mr. ··•···•onApril 20, 2011, and the stop of Mr.

-on October 21, 2011, by members of the North State Initiative California

Methamphetamine Manufacturing Eradication Team ("NSI Cal MMET") from the Shasta County Sheriff's Office ("SCSO") on Interstate 5. The following list of items is requested and relates specifically to traffic stops initiated by the NSI Cal MMET of the SCSO:

1. Copies of all NSI Cal MMET warning citations issued by officers from the SCSO on Interstate 5 during the calendar years 2009 through the present.
2. Copies of all NSI Cal MMET traffic tickets issued by officers from the SCSO on Interstate 5 during the calendar years 2009 through the present.
3. Any and all existing DVDs of traffic stops initiated by the NSI Cal MMET SCSO Deputies on Interstate 5 from 2009 through the present.
4. Any and all training materials provided to the SCSO deputies who received special training to patrol Shasta County's major highways as part of the NSI CalMMET.

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October 8, 2012 Page2

Assistant U.S. Attorney



**SCHROETER GOLDMARK &BENDER**

1. NSI Cal MMET/DHE policies, rules, directives, documents, and operating procedures relating to the field use of drug detector dogs by the SCSO NSI MMET.
2. Whether there have been any complaints and/or litigation involving the SCSO NSI Cal MMET regarding traffic stops or other SCSO NSI Cal MMET contact with civilians on Interstate 5 during the years 2009 through the present, including, but not limited to, any allegations of racial profiling, selective enforcement, or harassment.
3. Any disciplinary actions taken against the program or its personnel as a result of any traffic stops and/or searches during the calendar years 2009 through the present.
4. Any and all information in the possession of the SCSO regarding persons who have been stopped or contacted by the NSI Cal MMET SCSO on Interstate 5 during the time period 2009 through the present. This includes statistics on the race of persons pulled over for traffic infractions.

Please let me know your willingness to provide these documents at your earliest opportunity, so that I can determine whether I need to take other steps in order to obtain the records. These records are necessary to determine if there is further briefing that will be filed as part of the Motion to Suppress Due to Selective Enforcement. We will be referencing this request tomorrow **in** our request to continue the motions and trial date.

Thank you in advance for your assistance in this matter.

 --hAA------

coLETTE TVEDT

cc: Kimberly N. Gordon, Attorney for Mr.

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# EXHIBITC

Case 2:12-cr-00047-MJP Document 675 Filed 11/14/12 Page 17 of 24

**U. S. Department of Justice**

United States Attorney Western District of Washington

*Please reply to:*

*Matthew R. Pittman*

*Special Assistant United States Attorney*

*Direct Line: (206) 553-2618*

*700 Stewart Street, Suite 5220*

*Seattle, WA 98101-1271* [*www.usdoj.gov/usaolwaw*](http://www.usdoj.gov/usaolwaw)

October 15, 2012

*Tel: (206) 553-7970*

*Fax: (206) 553-4440*

**RECEIVED**

OCT 17 2012

*Schroeter Goldmark*& 8 *ender*

Collette Tvedt 500 Central Bldg.

810 Third Ave.

Seattle, WA 98104

Kim Gordon

1111 Third Ave., Ste 2220

Seattle, WA 98101

Re: *United States v.*

No. **JP]]** j ] J , USDC, W.D. Washington

Dear Mss. Tvedt and Gordon:

I am in receipt of your letter dated October 8, 2012 wherein you request the United States Attorney's Office provide you discovery to assist you in filing a Motion to Suppress Due to Selective Enforcement, such discovery to include, in part, "[c]opies of all NSI Cal MMET [warning citations/all DVD of traffic stops/traffic citations] issued by officers from the Shasta county Sheriff's Office on Interstate *5* during the calendar years 2009 through present."

I am writing to inform you that I will not be providing the materials you request in that letter. Among my qualms is the fact that the claim of selective enforcement is not a defense to the government's case in chief. In *United States* v. *Armstrong,* 517 U.S. 456,462 (1996), the Supreme Court held the federal government was not obliged to provide discovery as to a claim of selective prosecution, holding "Rule 16 establishes beyond peradventure that "defense" in subdivision (a)(l)(C) [now Fed. R. Crim. P. 16(a)(l)(E)] can refer only to defenses in response to the Government's case in chief." Moreover, you have thus far offered no showing of any sort that selective enforcement is a significant enough possibility to warrant the considerable expense and effort necessary to comply with your discovery requests.

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Equally important is the fact that the criminal discovery requirements necessitate that the government actually be in possession of the materials requested. My recent response to your discovery demands for canine related materials expands on the law here. Suffice it to say, however, the fact that the materials you request are not in the possession of any federal agency and were not prepared as part of the instant federal investigation resulting in the charges against your clients would appear to preclude any obligation on the part of my office to retrieve, for you, the voluminous materials you request.

Sincerely,

JENNY A. DURK.AN

United States Attorney



Special Assistant United States Attorney

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# EXHIBITD

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Ac> 89 (Rev. 11/91) Subpoena In a Criminal Case

*j* '. **ni±eb tatts istri.ct Q1ourt**

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------=EAST.:..aE=R-=N-'--- .DISTRICT OF

----C=,A,\_=Ll"--=F\_RO,\_,\_,.N!!A-..I: \_

UNITED STATES OF AMERICA,

Plaintiff,

**V.**

, et al.

Defendants.

**SUBPOENA** IN A

**CRIMINAL CASE**

CASE NUMBER: Cr.

TO: Custodian of Records

Shasta County Sheriffs Office 1525 Court Street

Redding, CA 96001

**181** YOU ARE COMMANDED 1o appear in the United States District Court at the place, date and time specified below to testify in the above case.

PLACE

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**501 J Street,,** •.:' .. ..·... *\-\.J,...* ..... ; . , •... *,..,.1* "'"·' ..*::* ;, **\_t:::,**

SACRAMENTO, CA 958,!'4" :I i:: : ·.: \"

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**f C)-.:- .:.** /·<\_.}. / '' • **. \ · r2·:---1**

1

COURTROOM

Hon.

U.S, District Judge

DATE AND TIME

August5,2010

9 :15 a.m.

181 YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s):

\*In lieu of return of the documents to the Court, prior to above court date please provide records to:

Office of the Federal Defender

801 I St., 3d Floor Sacramento, CA 95816

1. All warning citations written during the period January 1, 2008 through February 12, 2009, or a statement that such warning citations were not given.
2. The Shascom manual (to permit the interpretation of previously-provided Shascom logs) or an attestation that it has already been provided.

(Continued on next page.)

DATE

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ADDITIONALINFORMATION

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* ;3)

Documentation produced by Officer . detailing the training and activity of drug-

, detection dog Maximus, including daily, weekly, or monthly reports detailing Maximus's activities, or any documentation held by Shasta County detailing such activities, including medical records relating to the canine officer.

* 1. Any materials from Officer - or Officer personnel files, or any other information in the possession of Shasta County that is"'ni"a"ferio the defense. Material information includes, but is not limited to: any disciplinary actions taken against the agent(s); demotions; delayed promotions; terminations or firings from any law enforcement job; department-mandated training or retraining related to problems with performance; transfer from one office or assignment to another based on problems with performance; instances of deception, inaccuracy, or untruthfulness; instances of improper conduct toward suspects, including racial bias; complaints lodged against the agent{s); any information related to the agent's ability to perceive, including hearing, eyesight, or memory; information about any mental health condition that could affect memory or perception; and any criminal record.
	2. All reports, data, recommendations, analysis, flow charts, or other documents produced by Hayslett Analytical Services or consulant Mike Baker pursuant to NSI CalMMET contract with the County of Shasta since 2002.
	3. All data or records provided by the County of Shasta to Hayslett Analytical Services and/or Mike n connection with contracted work for NSI CalMMET.
	4. Internal memoranda or policies generated by Shasta County Sheriff's Office or'CalMMET related to the. reatlon \_Qf.''..warn.ing . (t.1;3tions" by officers.
	5. Internal memoranda, policies, or training documents of Shasta County Sheriff's Office or CalMMET resulting from the recommendations or reports discussed in #5 above.
	6. Internal memoranda, policies, or training documents regarding Domestic Highway Enforcement (DHE) by CalMMET since January 1, 2008.



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P.-,O 89 (B v. 11/91) Subpoena in a Criminal Case

**nite(-)**

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UNITED STATES OF AMERICA,

Plaintiff, V.

Defendant.

TO: Custodian of Records

Shasta County Sheriff's Office 1525 Court Street

Redding, CA 96001

*r ·.;* ·-*:*.*"* "t,

**SUBPOENA IN A CRIMINAL CASE**

CASE NUMBER:

o; • • .• .. • . ·

**181** YOU ARl§'COMM/i.l'J°D. E0 tci ap j:iea. 'r iif the United States District Court t the place, date and time specified below to testify ih tti 'above case.: .:, · . .

PLACE

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*:* · . ,..

COURTROOM

I ' . , , •" l \ ..

UNITED STATES Di'STRICT CODRTHOUSE

501 "I" Street

SACRAMENTO, CA 95814

U.S. District Judge

DATE AND TIME

May 25, 2010

9:15 a.m.

181 YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s):

\*In lieu of return of the documents to the Court, prior to above court date please provide record do: · ·.·. ·

Office of the Federal Defender 801· I·St., 3d Floor Sacramento, CA 95816

1. Complete records of all 1-5 traffic stops involving Officers • •• • ... and/or including ALL CLETS information requested by the same officers, whether or not these stops involved citations from, August 1, 2008 to August 31, 2009.
2. Complete electronic transmissions involving Officers -· • • • ■ and -on

August 5, 2009, including electronic recordings of radioons oprimary and secondary or

car-to-car frequ encies, digital data and message transmissions, administrative messages, "PF" or "KPF" results, CAD re,po\t s, mobile data transmissions, SHASCOM transmissions, and all in-car camera recordings. . ·

(Continued on next page.)

DATE

APR 2 9 2010..,·-,

... . .

··· . ..i, .

ATTORNEY 'S NAME, ADDRESS AND PHONE NUMBER

- -f c t Federal Defender, BOLi ,st., 39 Flo0 r; S ac·ramento, CA 95816

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1. Complete cell phone records and billing information for any departmental issued and personal cell phones used by if ; ;; •**fpQ; p;p** 01 **Q** ·' · for August 5, 2009.
2. Shasta County Sheriff's Department daily logs for each day on.which the above l\_isted officers issued citations or made arrests. :
3. All warning citations·issued byOfficers- • • **g""** ·· c.ir - f from AugusH·, 2008 to August 31, 2009.
4. Any materials from Officerillll•••- or ; personnel files, or any other

information in the possession of Shasta County that is material to the defense. Material information includes, but is not limited to: any disciplinary actions taken against the agent(s); demotions; delayed promotions; terminations or firings from any law enforcement job; department-mandated training or retraining related to problems with performance; transfer from one office or assignment to another based on problems with performance; instances of deception, inaccuracy, or untruthfulness; instances of improper conduct toward suspects, including racial bias; complaints lodged against the agent(s); any information related to the agent's ability to perceive, including hearing, eyesight, or memory; information about any mental health condition that could affect memory or perception; and any criminal record.

1. Any manual or training guide to enable interpretation of SHASCOM logs.

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1. Complete r

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-ords indicating the use..of an in-car license plate reader on August 5, 2009 by