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| First Judicial District<br>Division 2 CourtRoom 5-A<br>Hall of Justice<br>100 Jefferson County Parkway<br>Golden, Colorado 80401 | ▲Court Use Only▲ |
| PEOPLE OF THE STATE OF COLORADO - Plaintiff<br>v.<br>STEVE D. GARTIN - Defendant | Case Number: **04CR2541**<br><br>Division 8 |
| Defendant Pro se:<br>Steve D. Gartin<br>P.O. Box 70185<br>Albuquerque, NM 87197<br>Email: sheriffsteve@justice.com | CourtRoom: 520 |

# First Amendment Petition for Redress of Grievance *in the Nature of a* Motion to Dismiss for Selective Prosecution

## Standing:

Steve Douglas Gartin, is *First Secured Party for the above captioned* "Defendant" deliberately and consistently spelled in all capital letters to denote a Transmitting Utility pursuant to U.C.C. Security Agreement #SDG0911200-SA or a strawman "corporate person," in Admiralty/Maritime Prize and Booty courts and is *designated in this secret and undisclosed lawform as* STEVEN DOUGLAS GARTIN.

Secured Party's priority interest is legally established as first-in-line and first-in-time and remains unrefuted by official record: U.C.C. # SDG9112000-SA on file with the Colorado Secretary of STATE.

First Secured Party appears, Non-voluntarily, by Special Visit in propria persona by the Doctrine of Necessity; under credible threat of assault and incarceration by heavily armed Police, under duress induced by numerous forcible imprisonments based upon an unbroken chain of groundless and frivolous charges, *including this instant matter*, and coercion compelled by threat of economic damages and forcible imprisonment or death by Police due to the slanderous entry in the NCIC/CCIC database recorded by the Colorado State Attorney General's Office Investigator Gary Clyman.

## Jurisdiction:

First Secured Party is C*hild of* יהוה (YHVH-the EverLiving God), a sovereign Inhabitant of the California Republic, currently sojourning in New Mexico and claims all Rights secured by the 1849 California Constitution, the New Mexico Constitution, the Treaty of Hildago, the Colorado Constitution, as well as the Original Jurisdiction Constitution for the united States of America, the Supreme Law of the Hebrew People, the Torah of יהוה ,and the Common Law and hereby provides Notice of Foreign Law in good faith accordance with your colorable codes.

> 🕮 [C.R.S. 24-12-101. Form of oath. Whenever any person is required to take an oath before he enters upon the discharge of any office, position, or business or on any other lawful

> occasion, it is lawful for any person employed to administer the oath to administer it in the following form: The person swearing, with his hand uplifted, shall swear "by the everliving God".]

First Secured Party has denied and squarely Challenged Jurisdiction at each and every Special Appearance under threat, duress and coercion and continues to protest the court's unjustified seizure of jurisdiction sans appellate record and without due process of law or adherence to constitutional or statutory mandates.

> Where jurisdiction is denied and squarely challenged, jurisdiction cannot be assumed to exist "sub silentio" but must be proven. Hagans v. Laving, 415 U.S. 528, 533, n. 5; Monell v. N.Y., 436 U.S. 633. Mere "good faith" assertions of power and authority (jurisdiction) have been abolished. Owen v. Indiana, 445 U.S. 622; Butz v. Economou, 438 U.S. 478; Bivens v. 6 unknown agents, 403 U.S. 388.

## Special Appearance

First Secured Party has never knowingly, deliberately nor intentionally joindered with this Court of Un-Disclosed Jurisdiction. Any and all interaction with the First Colorado STATE Judicial District, Inc. has been under threat, duress and coercion. At no time has either the "Defendant" nor its First Secured Party volunteered into or in any manner contracted with the First Judical District, Inc. to adjudicate any aspect of the matter known in un-disclosed legal fiction as 04CR2541.

However, there would be grave consequences should one chose to ignore the great monopoly of military force that the court wields. Bench warrants are served with up to, and including, lethal force, arrest, confinement and extorted joinder in the form of a bail contract.

The institution of this controversy was commenced in just such a manner. First, another secret charge with a warrant issued, rather than the summons, preferred by your own C.R.S. Then, the set-up, in this instance it was Thomas Cecil "Doc" Miller's attorney, Kevin Massaro, Esquire in conspiracy with the "arresting agency" the Colorado State Attorney General's Office Special Prosecution Unit, Marleen M. Langfield and Investigator Gary Clyman. The place was the Boulder County CourtHouse and the Boulder County Sheriff's Office provided the arrest mechanism, although the computer warrant was issued NationWide and any police anywhere in the United States would have initiated arrest procedures, up to lethal force, based upon that computer entry.

First Secured Party hereby in the interests of justice and full disclosure moves the Honorable Court to Dismiss the above captioned matter for prosecutorial misconduct, to-wit, selective prosecution and as grounds therefore states for the record:

Petitioner believes and therefore asserts that the above titled case has been brought before the Honorable Court by FRAUD in a mis-construction of statutes, by an unlawful seizure of foreign jurisdiction, by deprivations of constitutionally secured due process and by the commencement of a vindictive prosecution by a prosecutor unauthorized to prosecute this case without express written authorization from Governor Bill Owens.

> C.R.S. §20-1-102 Note 8. Attorney general
>
> Absent command from governor or general assembly, Attorney General was not authorized to prosecute criminal actions. People ex rel. Tooley v. District Court In and For Second Judicial District, 1976, 549 P.2d 774, 190 Colo. 486.

Defense believes, and therefore asserts, that this instant matter is an ipso facto selective prosecution based upon the **invidious discriminatory animus** that the Accused is a "**Patriot**" and that all

such "Patriots" are worthy of prosecution based upon that arbitrary classification and by the re-defining of the meaning of the commonly accepted understanding of the word, patriot, as one who loves his country – to the heinous "domestic terrorist" model of Timothy McVeigh. (*Gartin Grand Jury Transcript – especially page 11*)

COLORADO STATE ATTORNEY GENERAL'S OFFICE Investigator Gary Clyman has proudly announced in sworn testimony to the Grand Jury and in sworn affidavit to Judge Jack Berryhill that he has been "heavily involved" in "patriot investigations for 17 years." Warrants and grand jury testimony allege that the Accused is "involved" with the "Patriot Movement." Mr. Clyman alleges that certain actions are characteristic of "patriot tactics" and that "patriots" engage in certain "schemes" or "scams."

First Secured Party believes that no other "persons" have ever been charged for his attorney's filing of a motion or for any other motives. Defense believes that the Accused is the only "person" within the last ten years who has been selected for prosecution based upon *C.R.S. 18-5-114: Offering a false instrument for recording*; when that "instrument" was allegedly a motion for forgiveness. In order to establish proof of that belief, the Defense will require that lawful subpoenas be issued for documentary records in the COLORADO STATE ATTORNEY GENERAL'S OFFICE and the Clerks and Recorders of Denver, Adams, Gilpin and Jefferson to be produced, Duces Tecum. Defense believes that those records will establish the fact that thousands of similarly situated persons, *exhibiting exactly the same actus reus*, who have filed motion by attorney and were **not** prosecuted by the State Attorney General.

Defense further believes that the *unauthorized* prosecution, to-wit: COLORADO STATE ATTORNEY GENERAL'S OFFICE Special Prosecutor Marleen M. Langfield, *without express written authorization from Governor Bill Owens*, is acting with special malice and hatred toward the Accused based upon the invidious discriminatory animus that the Accused is a "**Patriot**" and "Pro-Se" and has "stacked charges" amounting to over a decade of jeopardy in State Prison which also constitute both a mis-construction of offenses and a selective prosecution based upon the following statutes:

Attempt to Influence a public servant: C.R.S. § 18-8-306
Forgery: C.R.S. § 18-5-102
Offering a False Instrument for Recording in the First Degree (F5): C.R.S. § 18-5-114

## Selective Prosecution

Allen Sharp, Chief Judge
Synopsis of the Law of Selective Prosecution

[1] In our criminal justice system, the government retains broad discretion of whom to prosecute. U.S. v. Goodwin, 457 U.S. 368, 380 n. 11, 102 S.Ct. 2485, 2492 n.11, 73 L.Ed.2d 74 (1982). So long as the prosecutor has probable cause to believe that the accused committed an offense defined by statute, the decision whether to prosecute, and what charge to file or bring before a grand jury, generally rests entirely in his discretion. Borden-kircher v. Hayes, 434 U.S. 357, 364, 98 S.Ct. 663, 668, 54 L.Ed.2d 604 (1978).

[2] Although prosecutorial discretion is broad, it is not unfettered. **Selectivity in the enforcement of criminal laws is subject to constitutional constraints**. U.S. v. Batchelder, 442 U.S. 114, 125, 99 S.Ct. 2198, 2205, 60 L.Ed.2d 755 (1979). In particular, the **decision to prosecute may not be deliberately based upon an unjustifiable standard** such as race, religion or other arbitrary classification, Bordenkircher, 434 U.S. at 364, 98 S.Ct. at 668, including the exercise of constitutional rights. Goodwin, 457 U.S. at 372, 102 S.Ct. at 2488.

[3] A claim of selective prosecution attacks not the merits of the prosecutor's case against the defendant, but the prosecutor's choice to proceed against the defendant while declining to bring similar

criminal charges against others who appear equally culpable. In effect, a defendant's selective prosecution challenges asks of the prosecutor, "*Why have you singled me out*?"

[4,5] It is appropriate to judge selective prosecution claims according to ordinary equal protection standards, Oyler v. Boles, 368 U.S. 448, 456, 82 S.Ct. 501, 506, 7 L.Ed.2d 446 (1962), which prohibit a state from taking action which would "deny to any person within its jurisdiction the equal protection of the laws." This guarantee, which applies with respect to the enactment of laws by the legislative branches, also extends to the conduct of the executive branches in the enforcement of these laws. In the oft-quoted language of Yick Wo v. Hopkins, 118 U.S. 356, 6 S.Ct. 1064, 30 L.Ed. 220 (1886): " *Though the law itself be fair on its face and impartial in appearance yet, if it is applied and administered by public authority with an* ***evil eye*** *and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution*."

[6] A claim of selective prosecution is not likely to succeed, for courts "have found only a handful of equal protection violations" arising out of the charging decisions of prosecutors. This is because claimants bear a heavy burden to overcome the presumption of legal regularity in the enforcement of the penal law by proving the **three essential elements of a discriminatory prosecution claim**: (1) that other violators similarly situated are generally not prosecuted; (2) that the selection of the defendant was intentional or purposeful; and (2) that the selection was pursuant to an arbitrary classification.

[11] B. **Intentional or Purposeful**. Both the federal and state cases dealing with selective prosecution commonly assert that the defendant must prove the **discrimination was intentional or purposeful**. In Oyler v. Boles, 368 U.S. 448, 82 S.Ct. 501, 7 L.Ed.2d 446, the Supreme Court declared there is no equal protection violation unless the selection was **deliberately based upon an unjustifiable standard**. There are effectively three impermissible bases for prosecutorial selectivity, that is, three factors that may not motivate a prosecutor to proceed against a particular defendant: (1) race, religion, or other suspect classification; (2) a desire to impede the exercise of constitutional, usually First Amendment, Rights; and (3) **personal animosity toward the defendant**.

[14] C. **Arbitrary Classification**. In Oyler v. Boles, 368 U.S. 448, 82 S.Ct. 501, 7 L.ed.2d 446, the Supreme Court emphasized that the conscious exercise of some selectivity in enforcement is not in itself a federal constitutional violation. To prevail on an equal protection claim, a defendant must show that he was selected pursuant to an arbitrary classification, such as race or religions. It is far from clear just what constitutes an "arbitrary classification" in this context. A rather limited number of such classifications have routinely been held or assumed to be arbitrary; those include: race, national origin, gender, **political activity** or membership in a political party, union activity or membership in a labor union, **or more generally the exercise of First Amendment Rights**.

- 🕮 "Prosecutors have wide discretion in deciding whether or not to prosecute and what charge to file or bring before a grand jury." United States v. Pitts, 908 F.2d 458, 460 (9th Cir. 1990). This court has held that a denial of motion to dismiss for selective prosecution is reviewed under a clearly erroneous standard. United States v. Gutierrez, 990 F.2d 472, 475 (9th Cir. 1993). See United States v. Benny, 786 F.2d 1410, 1418 (9th Cir.), cert. denied, 479 U.S. 1017 (1986); United States v. Christopher, 700 F.2d 1253, 1258 (9th Cir. 1983), cert. denied, 461 U.S. 960 (1983). This standard was chosen because **"selective prosecution, more than vindictive prosecution, lends itself to the fact-finding standard."** United States v. Wilson, 639 F.2d 500, 503 n.2 (9th Cir. 1981); see also United States v. Leidendeker, 779 F.2d 1417, 1418 (9th Cir. 1986) ("The facts upon which a district court bases its denial of a motion to dismiss for selective prosecution are reviewed under the clearly erroneous standard.").
- 🕮 The district court's denial of discovery relating to a selective prosecution claim is reviewed for an abuse of discretion. United States v. Bourgeois, 964 F.2d 935, 937 (9th Cir. 1992) (resolving prior conflict between abuse of discretion standard and clearly erroneous standard).

The Defense believes, and believes can prove by the court's own file, that Cases 97M811 & 97M812 and Cases #00CR3371, dismissed case # 00CR3372, & dismissed case # 00CR3373 and dismissed case #00CR2419, dismissed case #02CR3011, and this matter at hand, constitute a pattern of selective prosecutions motivated by the Accused's "*profile*" as a "Pro-Se" Christian Constitutionalist "Patriot" and a "*martial artist who does not believe in the government*." These allegations form an **invidious discriminatory animus** documented by Statewide Grand Jury Transcripts, Affidavits in Support of Search Warrants, Police Reports, CBI reports, ICON Reports, Jail booking reports and will be corroborated by eye-witness testimony during the jury trial phase. Defense believes that this label of the Accused is arbitrary, unfounded, capricious and illogical.

> 🕮 **C.A.4 (N.C.) 1988**: To establish selective prosecution, defendant must show that Government was motivated by discriminatory purpose with resulting discriminatory effect, establishing not only that he has been singled out while others similarly situated have not been prosecuted, but also that decision to prosecute was based on impermissible considerations. U.S. v. Richardson, 856, F.2d 644.

☑ **C.A.6 (Ohio) 1986.** Defendant asserting selective prosecution bears heavy burden of establishing, at least prima facie, that while others similarly situated have not generally been proceeded against because of conduct of type forming basis of charge against him, defendant has been singled out for prosecution, and that Government's discriminatory selection of defendant has been invidious or in bad faith, that is, based upon such impermissible considerations as race, religion, or desire to prevent exercise of his constitutional rights. U.S. v. Bustamante, 805 F.2d 201.

☑ **D.Mass. 1995.** Defendant may overcome threshold presumption in favor of regularity of prosecutor's decision to indict by making prima facie demonstration of intentional and purposeful discrimination; to show intentional and purposeful discrimination, defendant must establish that while others similarly situated have not generally been proceeded against because of conduct of type forming basis of charge against him, he has been singled out for prosecution and that government's discriminatory selection of him for prosecution has been invidious or in bad faith, that is, based upon such impermissible considerations as race, religion, or desire to prevent his exercise of constitutional rights. U.S. v. Goldberg, 906 F.Supp.58.

Colorado State Attorney General cannot institute a prosecution against "patriots" or "patriot activity" as CSAG Investigator Gary Clyman testifies describes his job.

☑ **N.D.Ind. 1991.** Although prosecutorial discretion is broad, it is not unfettered; selectivity in enforcement of criminal laws is subject to constitutional restraints; in particular, decision to prosecute may not be deliberately based upon unjustifiable standards such as race, religion, or other arbitrary classification, including exercise of constitutional rights.

Many attorneys file motions each day. None are prosecuted except this Accused.

☑ Claim of selective prosecution attacks not merits of prosecutors case against defendant, but prosecutor's choice to proceed against defendant while declining to bring similar criminal charges against others who appear equally culpable.

This "criminal action" is simply another predicate act in a decade of outrageous government action wherein there is no equal protection afforded the Accused in the on-going R.I.C.O. action #01-ES-1145 and others pending.

☑ Selective prosecution claims should be judged according to ordinary equal protection standards which prohibit state from taking action which would deny to any person within its jurisdiction equal protection of laws, as equal protection guarantee applies both to enactment of laws by legislative branch and conduct of executive branch in enforcement of laws. U.S.C.A. Const.Amends. 5, 14

☑ There are three impermissible bases for prosecutorial selectivity, that is, three factors that may not motivate prosecutor to proceed against particular defendant: race, religion or other suspect classification, desire to impeded exercise of constitutional, usually First Amendment, rights, and personal animosity towards defendant; to satisfy burden of proving that discriminatory prosecution was intentional or purposeful, defendant must prove that one of these factors was instrumental in prosecutor's decision to proceed against him.

Investigator Gary Clyman's testimony in affidavits and before the Grand Jury confirms that his "specialty" is "patriot investigation." Mr. Clyman actively seeks patriots to prosecute.

☑ When selective prosecution defense is interposed, defendant must show "intentional or purposeful discrimination" in sense that it is not enough that particular enforcement policy has effect of singling out those who happen to be in impermissible class; there must have been intent to single out that class.

Defense hereby maintains the issue of selective prosecution for appellate review.

☑ Defendant may not first raise issue of selective prosecution at outset of trial; failure to bring **pretrial motion alleging selective prosecution** results in waiver. Fed.Rules Cr.Proc.Rule 12, 18 U.S.C.A. U.S. v. Cyprian, 756 F.Supp. 388.

Defense believes that the records above requested will provide the necessary documentation to establish that the Accused has been selected for prosecution when thousands similarly situated were not. The above noted subpoenas are immediately needful and necessary to the hearing of a pre-trial motion to dismiss for selective prosecution and to preserve the issue of selective prosecution for appeal and asylum.

The Defense has established a prima facie case for a **dismissal based upon selective prosecution** by records contained within the Court's File in case #00CR3371, to-wit: witness testimony in the Grand Jury Transcript, Gary Clyman and Donald L. Estep's "Affidavits" supporting search and arrest warrants, and FEDERAL BUREAU OF INVESTIGATION files obtained by the Freedom of Information Act, which document two of the **three essential elements of a discriminatory prosecution claim**: (1) that other violators similarly situated are generally not prosecuted; (**2**) that the selection of the defendant was intentional or purposeful; and (**3**) that the selection was pursuant to an arbitrary classification.

The **records subpoenaed from the Clerk and recorder's Offices** will support the first element by establishing the fact that no other person has been prosecuted for filing a motion for forgiveness and ONLY people labeled "**patriots**" or "pro-se" are prosecuted for Petitioning the Government for Redress of Grievance, or offering to Forgive criminal government tortfeasors, which will be established by records subpoenaed from the COLORADO STATE ATTORNEY GENERAL'S OFFICE. The remaining bogus and frivolous charges, to-wit: forgery and offering a false instrument are simply "charges of opportunity" included as a **standard prosecution ploy** to increase the jeopardy attached for purposes of "plea-bargaining," the prosecution knows there is no grounds to support such charges – any reasonable person reading the charging statutes can easily see that the actions alleged do not fit the statutory language of the codes.

Further, the Accused was selected by virtue of the government's arbitrary classification of "Patriot" when others who file motions were not so prosecuted and the reason the prosecution was instigated was due to the fact that many members of the Colorado State Attorney General's Office are named Defendants in Federal R.I.C.O. action # 01-ES-1145 and many of their clients are named Defendants in Four Federal Civil Rights actions wherein the Accused is the named Plaintiff, every delay in the Federal Cases is good for the Colorado State Attorney General's Office and their government actor clients.

The Defendant will accept Dismissal with Prejudice, although the Accused prefers full acquittal before a jury, in order to establish a transcript for civil and criminal prosecution of government agents involved in bringing this FRAUD before the Honorable Court and who have succeeded in completely destroying the Accused's business, family and life. The ultimate fact that the "witch-hunt" the Accused has been complaining of for over fifteen years continues unabated and unmitigated even after filing official complaints, civil suits, criminal complaints and bringing this on-going criminal conduct of government officials to the attention of the Honorable Court, has left no option open to the Accused except to proceed with Federal litigation. The record established in a criminal trial would establish a factual basis for such litigation and is therefore highly desirable, but will be sacrificed in the interest of immediate liberty and freedom.

Therefore, the Defendant requests the Honorable Court to impose Dismissal with Prejudice as the only reasonable and proper sanction for outrageous prosecutorial misconduct that is so egregious and bizarre as to shock the conscious of any reasonable person.

The Honorable Court has jurisdiction to protect Accused's Federal liberty interests.

- 🕮 **Trial courts have jurisdiction to determine Federal Constitutional questions**, and it is their duty to do so by virtue of paragraph 2 of article VI of the United States Constitution, which provides that the constitution of the United States and all laws made in pursuance thereof shall be the **supreme low of the land and the judges of every state shall be bound thereby** and by §8 of Article XII of the Colorado Constitution requiring officers to take an oath to support the constitution of the united States and of the state of Colorado, notwithstanding the provisions of the 1913 amendment to this section which provided that the supreme court should have exclusive jurisdiction to determine such matters. People v. Western Union Tel. Co. 70 Colo. 90, 198 P.146 (1921).
- 🕮 And **any attempt to take away this jurisdiction is null and void**. When a federal constitutional question is raised in any of the trial courts of Colorado the **right is given and the duty is imposed** upon those courts, by that instrument itself, to adjudicate and determine it. **That right so given can neither be taken away nor that duty abrogated by the state of Colorado**, by constitutional provision or otherwise, and any attempt to do so is null and void. Such pretended constitutional inhibition is no part of the constitution of the state of Colorado, and the judge's oath binding him to the support and enforcement of that instrument has no relation to such void provisions. People v. Western Union Tel. Co. 70 Colo. 90, 198 P.146 (1921).
- 🕮 A state constitutional provision prohibiting trial courts from passing on constitutional questions takes from a defendant the right of interposing the defense that the act under which he is prosecuted is unconstitutional, and is invalid as violating the "due process of law" clause. People v. Max, 70 Colo. 100, 198 P.150 (1921).

In good faith,

Tuesday, November 22, 2005



Steve Douglas, Gartin – *First Secured Party in Interest* - In Propria Persona
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# Certificate of Service by United States Postal Service

I, Steve D. Gartin, oversigned, do hereby certify that a true and correct copy of the foregoing, **Motion to Dismiss based upon Selective Prosecution** was personally deposited in the U.S. Mail on the Twenty Second day of the Eleventh month in the Year of our Lord Two Thousand and Five, addressed to the following parties:

Clerk of Court
Division 8 First Judicial District
100 Jefferson County Parkway
Golden, Colorado 80401

Scott Story, Esquire
Jefferson County District Attorney
500 Jefferson County Parkway
Golden, Colorado 80401