

First Judicial District Division 2 CourtRoom 5-A Hall of Justice 100 Jefferson County Parkway Golden, Colorado 80401	▲ Court Use Only ▲
PEOPLE OF THE STATE OF COLORADO - Plaintiff v. STEVE D. GARTIN - Defendant	Case Number: <b>00CR3371</b>  Division 2 - L.P.A.
Defendant Pro se: Steve D. Gartin c/o 200 Jefferson County Parkway Golden, Colorado 80401	CourtRoom: 5A
<b>MOTION TO DISMISS FOR SELECTIVE PROSECUTION</b>	

**Steve D. Gartin**, pro-se moves the Honorable Court to Dismiss the above captioned matter due to prosecutorial misconduct in the nature of selective prosecution and as grounds therefore hereby states:

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**”<sup>1</sup> 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 to the Grand Jury and 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.”

Defense believes that no other “persons” have been indicted by the Statewide Grand Jury for filing Mechanic’s Liens on Private Property as the result of Breach of Contract in Civil Disputes; or for any other motives. Defense believes that the Accused, and Co-Defendants, are the only “persons” within the last three years who have been selected for prosecution based upon *C.R.S. 18-5-114: Offering a false instrument for recording*; when that “instrument” was allegedly a mechanic’s lien. 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 mechanics liens 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*

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<sup>1</sup> C.A.7 1996. To be act of “persecution” for asylum eligibility, behavior in question must threaten death, imprisonment, or infliction of substantial harm or suffering. Immigration and Nationality Act §208 (a), as amended, 8 U.S.C.A. §1158 (a). – Sharif v. I.N.S., 87 F.3d 932 – Aliens 53.10(3).

authorization from Governor Bill Owens, is acting with special malice and hatred toward the Accused based upon the invidious discriminatory animus<sup>2</sup> that the Accused is a “Patriot” and has “stacked charges” amounting to several decades 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 - Carrying Concealed Weapons: C.R.S. § 18-12-105  
Criminal Extortion: C.R.S. § 18-3-201 - Computer Crime: C.R.S. § 18-5.5-102**

## **SELECTIVE PROSECUTION**

### **Allen Sharp, Chief Judge**

#### I. Synopsis of the Law of Selective Prosecution<sup>3</sup>

[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. *Bordenkircher 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,<sup>4</sup> *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”<sup>5</sup> 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)

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<sup>2</sup> C.A.7 1996 For purposes of asylum application “persecution” includes punishment or infliction of harm for political, religious or other reasons that this country does not recognize as legitimate. Immigration and Nationality Act, §§ 101 (a)(42)(A), 208 as amended, 8 U.S.C.A. §§ 1101 (a)(42)(A), 1158. – *Gonzalez v. I.N.S.*, 77 F.3d 1015. – Aliens 53.10(3).

<sup>3</sup> See generally *Wayte v. United States*, 470 U.S. 598, 105 S.Ct. 1524, 84 L.Ed.2d 547 (1985).

<sup>4</sup> Although the Fifth Amendment, unlike the fourteenth, does not contain an equal protection clause, it does contain an equal protection component. *Bolling v. Sharpe*, 347 U.S. 497, 499, 74 S.Ct. 693, 694, 98 L.Ed. 884 (1954).

<sup>5</sup> Gifford, Equal Protection and the Prosecutor’s Charging Decision: Enforcing an Ideal, 49 *Geo.Wash.L.Rev.* 659, 662 (1981)

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).

Therefore, the Defense has requested that the Honorable Court immediately issue the attached subpoena’s *Duces Tecum* for:

1. Alan J. Gilbert: COLORADO STATE ATTORNEY GENERAL'S OFFICE
2. Faye Griffith: Jefferson County Clerk & Recorder
3. Rosemary Rodriguez: Denver City & County Clerk & Recorder
4. Judith A. Dornbrock: Gilpin County Clerk & Recorder
5. Carol Snyder: Adams County Clerk & Recorder

The Defense believes, and believes can prove beyond any doubt what-so-ever, that Case #00CR3371 and dismissed case #00CR2419 are selective prosecutions motivated by the Accused’s “*profile*” as a Christian Constitutionalist “Patriot” and a “*martial artist who does not believe in the government.*” Regardless of whether or not these allegations are true, they 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<sup>6</sup> testimony during the jury trial phase *and during the Competency hearing if witnesses can be protected by Court Order*. 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.

**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.

- 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.
- 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.
- 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

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<sup>6</sup> Defense **again** requests the Honorable Court to issue injunction or restraining order to protect defense witnesses from harassment, threats, retaliation, and molestation by agents of the Prosecution, to-wit: Clyman, Estep, Holstlaw, Maleri and associates in the Multi-Jurisdictional Domestic Terrorism Task Force.

effect of singling out those who happen to be in impermissible class; there must have been intent to single out that class.

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<sup>7</sup> 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<sup>8</sup> 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 mechanic's liens and ONLY people labeled "**patriots**" are prosecuted for Petitioning the Government for Redress of Grievance, which will be established by records subpoenaed from the COLORADO STATE ATTORNEY GENERAL'S OFFICE. The remaining bogus and frivolous charges, to-wit: criminal extortion, computer crime and unlawfully carrying concealed weapon 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.

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 five 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.

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<sup>7</sup> C.A.8 (Mo.1998): In order to make out prima facie case of selective prosecution, defendants must show (1) that they were singled out for prosecution while others similarly situated were not prosecuted for similar conduct, and (2) that decision to prosecute was based on impermissible motive, such as race, religion, or attempt by defendant to secure other constitutional rights. U.S. v. Kelly, 152 F.3d 881.

<sup>8</sup> C.A.7 1996 For purposes of asylum applicant's well-founded fear of persecution, "persecution" includes punishment or infliction of harm which is administered on account of race, religion, nationality, group membership or political opinion and must rise above the level of mere "harassment," although it need not necessarily threaten the applicant's life or freedom. Immigration and Nationality Act, §§ 101 (a)(42)(A), 208 as amended, 8 U.S.C.A. §§ 1101 (a)(42)(A), 1158. – Borca v. I.N.S., 77 F.3d 210. – Aliens 53.10(3).

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 liberty<sup>9</sup> interests.

Humbly submitted in good faith,

**Friday, March 15, 2002**

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Steve D. Gartin – Sui Juris – In propria persona

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**CERTIFICATE OF SERVICE BY UNITED STATES POSTAL SERVICE  
VIA DEPOSIT IN JAIL MAIL SYSTEM**

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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 Jefferson County Detention Facility "Jail Mail" System on the Fifteenth day of the Third month in the Year of our Lord Two Thousand and Two, addressed to the following parties:

The Honorable Leland P. Anderson  
Division 2 First Judicial District  
100 Jefferson County Parkway  
Golden, Colorado 80401

Marleen M. Langfield, Esquire  
"Special" Deputy Colorado State Attorney General  
*doing business as* "Special" Deputy District Attorney  
c/o David J. Thomas, Esquire Jefferson County District Attorney  
500 Jefferson County Parkway  
Golden, Colorado 80401

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<sup>9</sup> **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 law 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).