

A JUST CAUSE

August 23, 2013

U.S. Attorney John Walsh
1225 Seventeenth Street
Suite 700, Seventeenth Street Plaza
Denver, CO 80202

Re: Lawsuit Against Court Reporter Darlene Martinez and Inquiry of Misconduct in federal criminal Case Number 09-cr-00266-CMA

Dear U.S. Attorney Walsh:

In April of this year I sent you an email/letter requesting an inquiry into missing (presumed destroyed) transcripts in federal case number 09-cr-00266-CMA. I received the following email reply on your behalf from Mr. Jeff Dorschner which stated,

"Thank you for your email. Because this is an issue that is part of the pending appeal before the U.S. Court of Appeals, the U.S. Attorney has asked that I decline comment, as we decline comment on all pending litigation." (26 April 2013, Jeff Dorschner, U.S. Attorney's Office, Denver, CO)

In addition to me receiving this reply from Mr. Dorschner, several other volunteers of A Just Cause received the same, or similar, email reply (attached). At least a couple of volunteers actually spoke to Mr. Dorschner, and it is my understanding that Mr. Dorschner made the suggestion that we file a lawsuit against the court reporter for the missing transcript.

Mr. Walsh, following Mr. Dorschner's lead, on 31 July 2013 A Just Cause filed a breach of contract lawsuit against Court Reporter Darlene Martinez (filed by Mr. Cornell Johnson, Atty). This was filed as a civil matter in the district court, Denver County, for the State of Colorado. I was informed that as of 22 August 2013, Assistant U.S. Attorney Michael C. Johnson from the Civil Division of your office filed a motion moving the case from the state court to the federal courts, and is now defending Ms. Martinez.

I'm not an attorney and I'm sure it will be sorted out through legal proceedings, but there seems to be a major conflict of interest. First, A Just Cause requested assistance from your office in this matter but was told that the matter of the missing transcript was "part of the pending appeal" and that the U.S. Attorney's office does not get involved in "pending litigation". A Just Cause then filed a lawsuit against Ms. Martinez, not as a federal employee but as an independent contractor, for breach of contract, and now the U.S. Attorney's office is defending her (monies paid for the transcript were not dispersed to the federal courts but to Ms. Martinez directly as a contractor).

I still believe, as I stated in my correspondence from April of this year, that Ms. Martinez violated rules governing the actions of a Court Reporter as outlined in the Court Reporter Statute, 28 USC § 753. Mr. Walsh, it is very concerning that the U.S. Attorney's office in Denver is now defending Ms. Martinez under the auspice that she was executing the duties of her job, but that is exactly what she did not do. So if she is being defended for not executing her job, she and the executives of the court are being empowered to circumvent the process. This action not only is protecting her for her actions, but it would appear that if she was acting at the direction of Judge Arguello, it is supporting the courts actions of not producing the missing transcripts. This in turn of course, drastically impacts the ability for the appellate panel to properly review the case.

Finally, my conflict of interest argument stems from Mr. Dorschner's comment that your office does not get involved in pending litigation. Basically, the production of the missing transcript could impact the "win/loss" column, so by your office prosecuting the case, and now defending the person who was party to a key error in the case is a critical conflict of interest. Mr. Walsh, when Ms. Martinez received the \$9000 check for fees to provide the court transcript to A Just Cause, she received that money and was acting as an independent contractor outside the scope of her employment as a transcriber. Those fees were not paid to the federal courts, but to Ms Martinez directly. Now that there is litigation related on this matter, she is seeking cover and assistance from the U.S. Attorney's office. It is my understanding that the charter of the Civil Division of the offices of U.S. Attorneys may include defending federal employees sued for actions taken within the scope of their employment. On the contrary, the charter of the Civil Division of the offices of U.S. Attorneys does not authorize the offices to provide legal assistance to private citizens or to represent them. So if the U.S. Attorney's office does not get involved in pending litigation for which it may be party to, and U.S. Attorney offices are not authorized to represent private citizens, why is the U.S. Attorney's office intervening in a civil matter between A Just Cause and Ms. Darlene Martinez (who breached a contract while acting in a private capacity, in a private matter)?

Regards,

signed – 8/23/13

Samuel Thurman
President

CC:

The White House
Attorney General Eric Holder
Director H. Marshall Jarrett, EOUSA
Aaron Lewis, Counsel to U.S. Attorney General
Margaret Richardson, Chief of Staff for U.S. Attorney General
Annie Bradley, Assistant to U.S. Attorney General
U.S. Senate Judiciary Committee
U.S. House Judiciary Committee
Congressman Doug Lamborn
Senator Mark Udall
Senator Michael Bennet
Inspector General-DOJ, Michael Horowitz
Congressional Black Caucus Chair Congresswoman
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