

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA

Case No. 5:20-CR-28-MW/MJF

UNITED STATES OF AMERICA

v.

JAMES D. FINCH,

Defendant.

_____ /

**DEFENDANT FINCH'S POST-HEARING SUPPLEMENT
IDENTIFYING SPECIFIC RELIEF SOUGHT**

The United States Supreme Court has made clear that “the Government should turn square corners in dealing with the people.” *Heckler v. Cmty. Health Servs. of Crawford County, Inc.*, 467 U.S. 51, 61 n.13 (1984) (citation and internal quotation marks omitted). The government has not done so here. Instead, it has cut corners. Indeed, it has cut them so aggressively and irresponsibly that the resulting damage to the defendants’ Constitutional rights cannot be undone.

Based on the extraordinary history of this case, including Defendant Finch’s motions and replies and the Court’s Orders, we respectfully maintain our position that dismissal of the Third Superseding Indictment against Defendant Finch with prejudice is the only appropriate remedy. As instructed by the Court, the following submission will identify the “bad acts, [] the bad actor[s], and . . . the alternative

sanctions we propose in lieu of dismissal if [the Court does not] find dismissal is appropriate.” ECF No. 407, Hr’g Tr. 434:7-9, Dec. 13, 2022.

I. Bad Actors.

The record evidence in this case demonstrates that the following individuals have exhibited a pattern and practice of misconduct throughout this case.

- Assistant United States Attorney (“AUSA”) Stephen M. Kunz (“Kunz”).¹
- Former FBI Special Agent Lawrence Borghini (“Borghini”).²
- Bay County Sheriff’s Office Major Jimmy Stanford (“Stanford”).³

¹ On Saturday, December 17, 2022, the defense received confirmation from the government that AUSA Kunz will be retiring from the office effective December 31, 2022. The defense learned of AUSA Kunz’ departure shortly after the Court both ordered a hearing on the allegations of the Barnes’ threats/coercion during plea discussions and directing the defense to submit a list of “bad actors.” We have cited a documented history of prior instances of serious misconduct that in and of itself is shocking. *See United States v. Aisenberg*, 247 F. Supp. 2d 1272, 1324 (describing [Mr. Kunz’s] conduct before the grand jury as “misdirected” and “overzealous” then admonishing and ultimately sanctioning the government for recklessly pursuing prosecution based on fabricated statements and speculative grounds), *rev’d on other grounds*, 358 F.3d 1327 (11th Cir. 2004); *see also Clayton v. Willis*, 489 So. 2d 813, 815 (Fla. 5th DCA 1986) (admonishing “[Kunz’s] use of the indictment process” as grossly irresponsible, and comparing his use of the Grand Jury to “giving a small boy a loaded pistol without instruction as to when and how it is to be used.”).

² Mid-case, shortly after the government filed its 80-page response admitting that Borghini’s sworn testimony to a Grand Jury was false, Borghini disclosed his retirement. ECF No. 242 at 14 n.11.

³ Sheriff Tommy Ford, AUSA Kunz, and Borghini knew from the beginning that Stanford had a close personal and financial relationship with Derwin White, an apparent target of the investigation. Finch Ex. 5 (Mar. 31, 2022), Tr. 4:14-21 (AUSA Kunz to Grand Jury: “Our ultimate goal is . . . Derwin White [and] . . . James Finch

- Lynn Haven Police Chief Ricky Ramie.
- Former Lynn Haven City Manager Michael White.
- Current Lynn Haven City Manager Vickie Gainer.

II. **Bad Acts.**⁴

A. **Multiple Flawed Indictments.**

In the last two years, the government has returned multiple legally invalid Indictments knowing that they violate Court orders and various rules of law. The government has disregarded Court Orders requiring errors to be corrected and strict adherence to Due Process and fairness.⁵

. . . that’s where we’re going here.”). Despite this knowledge, Major Stanford participated in at least 38 interviews between April 4, 2019, and November 12, 2021. Finch Ex. 79 (Dec. 12, 2022). Stanford’s participation in the investigation suddenly stopped only *after* the Court ordered the government to produce unredacted 302s revealing the extent of Stanford’s corruption to the defense team. ECF No. 211 (ordering the production of unredacted reports by November 12, 2022). *See also* Finch Ex. 13 (Dec. 12, 2022) (Michael White’s Mar. 10, 2022, 302 indicating it was “common knowledge” Stanford is corrupt); Finch Ex. 38 (Dec. 12, 2022) (Allen Byrd’s Oct. 17, 2022, 302 describing Stanford as “once a crook, always a crook”).

⁴ Finch’s list of “bad acts” is by no means exhaustive; it does give a fair account of the extraordinary, repeat misconduct and law enforcement corruption that has caused the Court to describe the government’s conduct as “less than laudable,” ECF No. 294 at 12 “reckless, careless, and unprofessional,” *id.* at 38,” and “reckless [and] haphazard.” *Id.* at 45.

⁵ *Compare* the conspiracy allegations within Count 1 of the Third Superseding Indictment, ECF No. 355 ¶ 12(b) (alleging that “Barnes performed actions . . . for the benefit of Finch, *including* . . . ” (emphasis added)); ¶ 12(d) (alleging that “Anderson performed actions . . . for the benefit of Finch, *including* voting . . . and pressuring and advising City officials to take action favorable to Finch on certain

- On August 8, 2020, the government returned a 64-Count Indictment, ECF No. 1, signed by AUSA Kunz containing:
 - An “ambiguous and, at best, . . . misstatement of law.” ECF No. 60 at 4.
 - Several “multiplicitous and insufficient counts.” ECF No. 60 at 21.
- On March 16, 2021, the government returned a 43-count Superseding Indictment, ECF No. 64, against Margo Anderson, James Finch, and others, signed by AUSA Kunz and others, containing:
 - A wire fraud count that clearly fell outside the statute of limitations. ECF No. 121.
 - A duplicitous conspiracy count. ECF No. 185 at 6-7.
 - Legally insufficient counts. ECF No. 185 at 16-17.
 - Ambiguities requiring a Bill of Particulars. ECF No. 185 at 21.
- On November 17, 2021, the government returned a 26-count Second Superseding Indictment, signed by AUSA Kunz and others, ECF No. 214, against Margo Anderson and James Finch, containing the same duplicitous conspiracy count in spite of the Court’s prior orders. ECF Nos. 293, 323.
- On October 18, 2022, the government returned a 5-count Third Superseding Indictment, ECF No. 355, against Margo Anderson and James Finch, containing the same duplicitous conspiracy count.

B. Grand Jury Misconduct.

At this juncture, the Court is intimately familiar with Defendants’ motions, arguments, and evidence presented. Accordingly, we will not go into detail about

matters, *including . . .*” (emphasis added)), *with* the duplicitous conspiracy count within the Second Superseding Indictment, ECF No. 214 ¶ 125 (charging a conspiracy to commit honest services wire fraud related to “Finch’s business interest, [] *including . . .*” (emphasis added)).

every instance that Borghini and AUSA Kunz provided misleading and false information to multiple Grand Juries.⁶

- Borghini’s false testimony regarding the March 20, 2017, promissory note related to the 17th Street Project.⁷
- Borghini’s false testimony regarding the post-Hurricane Michael city rebuild projects. ECF No. 294 at 20-22.

⁶ AUSA Kunz orchestrated the presentations, and Borghini was the government’s sole witness to testify before the Grand Juries that returned the first three indictments. The prosecutors’ questions were extraordinarily leading and suggestive. They would have never been allowed before a trial jury. And worse, the prosecutor and agent took the “worst possible spin on the facts” *See* ECF No. 175, Hr’g Tr. 9:14, June 30, 2021 (suggesting that the Court cannot understand how the government is taking “the worst possible spin on the facts that could be made”). In most instances, no legal instructions were given. Nor were curative instructions given admonishing the Grand Jury on how to consider or not consider certain reckless, inflammatory information.

⁷ The August 2020 original indictment included a specific allegation that Defendant Anderson signed a promissory note for 30 years of payments to Defendant Finch’s company and that this was 10 years more than the City Commission had approved. ECF No. 1 ¶ 43. The public record, however, clearly indicated that the City Commission had approved the increase on February 28, 2017. Finch Ex. 14 (Mar. 31, 2022). The same public presentations were made during various Commission meetings relating to the ½ Cent Sales Tax, the 17th Street Ditch Project, and the so-called Design Build Project. Each presentation was recorded. *See* Anderson Ex. 161 (Mar. 31, 2022) (Michael White represented to the Commission on Sept. 12, 2018, that he asked Finch to include the Stormwater Master Plan into the 17th Street Ditch project); ECF No. 266, Hr’g Tr. 77-79, Apr. 4, 2022. Following Michael White’s proposal and recommendation to the Commission, Commissioner Rodney Friend states: “I would not like to see the city to take on addition debt. That being said, I recognize cheap money when I see it. This is an amazing rate and that’s why we did it a long time ago . . . I don’t think we can pass up this particular offer at 2.55%.” Lynn Haven Commission Meeting, YouTube, 1:14:45 (Sept. 12, 2018), <https://www.youtube.com/watch?v=DWJtFWNiezS>. To our knowledge, the prosecutors *never* presented a single Commission meeting recording to any of the multiple Grand Juries.

- Borghini and AUSA Kunz routine misstatements of fact regarding the transfer of the motorhome between Finch and Lee Anderson.⁸
- Presenting and soliciting testimony about false and misleading Grand Jury exhibits prepared by Borghini regarding Commissioner Barnes' votes⁹ and Anderson's travel and expenses.¹⁰
- AUSA Kunz asked the same prejudicial question *multiple times* about Finch that was "based on a factual premise not supported by evidence." ECF No. 280 at 140; ECF No. 294 at 35, 37.
- At the conclusion of the government's presentation on November 16, 2021, in Pensacola, the government presented the Grand Jury with the Second Superseding Indictment, a 58-page, 26-count indictment covering six and a half years, alleging multiple complex transactions, involving dozens of people, approximately 60 exhibits, permitting the Grand Jury to deliberate a mere 120 seconds before asking the Grand Jury to vote to return the government's flawed charging document.¹¹

⁸ Specifically, the prosecutor's questions and agent's testimony suggested that Margo Anderson was part of the financial agreement and title transfer for the motor home, and that her name appeared on title documents. *See* ECF No. 290, Hr'g Tr. 40-46, Apr. 6, 2022. The questions and testimony were false and misleading and served as the basis for multiple counts. The Court ultimately concluded that it "could not say the government's misstatements [regarding the motorhome transaction] were material." ECF No. 294 at 24. The Court found that the "key" was not "who the motorhome was legally titled to, but *that Finch transferred the motorhome to Anderson's husband.*" *Id.* (emphasis added). But, these same "misstatements" were the basis for the government's tortured false statement counts against Finch. *See* ECF No. 63-65 (claiming the objective truth includes the "transfer of the motorhome *to Anderson* and her husband" (emphasis added)); ECF No. 214 at 55-57 (same). In short, as argued in open court, precision and detail matter. Here, the government has failed miserably.

⁹ ECF No. 274 at 45-48; ECF No. 294 at 34-35.

¹⁰ *See generally* ECF No. 407, Hr'g Tr. 315-21, Dec. 13, 2022.

¹¹ ECF No. 291, Hr'g Tr. 139:3-4, Mar. 31, 2022 (confirming that the Second Superseding Indictment was returned within 120 seconds).

C. The Government's Other Reckless, Careless, and Unprofessional Conduct.

Outside the Grand Jury room, the government has committed additional “bad acts” that warrant a finding of recklessness and vindictiveness, which in turn warrant sanctions.

First, when it was apparent that AUSA Kunz was seeking the return of an indictment against the 71-year-old Finch, we attempted to discuss voluntary surrender and conditions of release. During an in-person meeting on January 12, 2021, AUSA Kunz represented to counsel that “the FBI determines surrender,”¹² rejecting our request for an agreed upon self-surrender. Following the return of the Superseding Indictment, Borghini called Defendant Finch directly despite Finch being represented by counsel. Finch was in the Vezina law office (where he had been for several days) waiting to surrender to the Court. Bypassing counsel, speaking directly to Finch, Borghini expressed extreme anger due to the

¹² The government cannot seriously dispute that this statement is blatantly false and misleading. Clearly, the United States Attorney's Office has the authority to direct the voluntary surrender and recommend bond conditions of an indicted individual despite AUSA Kunz's representation that voluntary surrender was somehow a decision made only by the FBI. In truth, it is routine and customary across the nation to allow represented nonviolent individuals to self-surrender, especially ones who have been voluntarily interviewed by the FBI without counsel, provided voluminous records pursuant to a Grand Jury subpoena, and maintained regular contact with the prosecutors through counsel.

government's not having the opportunity to publicly arrest Finch.¹³ Finch was in the presence of Mr. Vezina, who overheard Borghini's over-the-phone reaction.

The failure to arrest Finch at his home in front of his family and the media did not diminish the government's desire to recklessly publicize the case, risking taint to a potential jury pool and causing extreme damage to Finch's company. Indeed, evidence demonstrates that the government illegally employed a third-party media group to orchestrate the announcement of the Indictment, the Superseding Indictment, and the arrests. The outside media company was further tasked with drafting tweets about the case and with drafting former United States Attorney Larry Keefe's op-ed on the Office's newly created Public Trust Unit.¹⁴ ECF No. 228 at n.23; *see also* Finch DX 78 (Dec. 12, 2022) (containing the \$429,000 contract between Sachs Media Group and the United States Attorney's Office for the Northern District of Florida, invoices for February 2020-February 2021, and

¹³ The government admitted that it planned and desired to publicly arrest Finch. *See* ECF No. 395 at 44.

¹⁴ The government has repeatedly made statements in press conferences violating both the letter and spirit of the Justice Manual. *Compare* Larry Keefe, *One year in: U.S. Attorney's Public Trust Unit is protecting our way of life*, Tallahassee Democrat (Sep. 19, 2020) (<https://www.tallahassee.com/story/opinion/2020/09/19/u-s-attorneys-public-trust-unit-protecting-our-way-life/3478643001>) (stating that his Public Trust Unit has succeeded in "prosecut[ing] ... Lynn Haven Mayor Margo Anderson" without indicating that the charges were pending and she is presumed innocent), *with* Justice Manual § 1-7.500 ("A news release issued before a finding of guilt should state that the charge is merely an accusation, and the defendant is presumed innocent until proven guilty.").

Detailed Time Reports during August 2022 referencing the “Panama City media list,” the “Panama City event,” and “facilitate[ing] media push for press conference” on August 18, 2020.).¹⁵ These actions were taken in spite of federal law making clear that “Appropriated funds may not be used to pay a publicity expert unless specifically appropriated for that purpose.” 5 U.S.C. § 3107.

Yet another example of reckless, improper behavior, the government has repeatedly attempted to manufacture a conflict of interest regarding Anderson’s voluntarily elected defense counsel of choice.¹⁶ See ECF Nos. 78, 97, 98, 106, 107. Months after the Court conducted a thorough colloquy with Mrs. Anderson, the government filed a Motion for Rule 17(c) attorney’s fees subpoenas, which this Court denied as an impermissible “fishing expedition.” ECF No. 173.

¹⁵ Finch acquired these records pursuant to a FOIA request to the Executive Office for United States Attorneys (“EOUSA”) that was submitted on July 21, 2021. On September 17, 2021, EOUSA’s FOIA division responded, indicating that they had located 30,693 pages of documents responsive to our requests. To date, EOUSA, the Department of Justice arm charged with managing all 93 United States Attorneys’ Offices around the country, <https://www.justice.gov/usao/eousa>, has produced a mere 546 pages.

¹⁶ AUSA Kunz implemented a similar tactic when recklessly pursuing prosecution based on speculative grounds against the Aisenbergs. See *Aisenberg*, 247 F. Supp. 2d at 1281-82 (denying AUSA Kunz’s request to disqualify defense counsel by alleging an irresolvable conflict of interest and claiming that the defendant’s should have inconsistent defenses and that counsel may become a witness at trial).

In short, the government's recklessness, carelessness, and illegal media campaign is evidence that the sovereign disregarded its legal and ethical obligations. Winning was the goal, all at the expense of justice.

D. Sixth Amendment Violations.

Borghini and AUSA Kunz employed former Assistant State Attorney Greg Wilson as a government informant to invade the defense camp. Contrary to Borghini's sworn testimony and the government's representations, the Court had "little trouble concluding that Wilson acted as a government agent." ECF No. 294 at 41.

At a July 2020 meeting with Borghini and AUSA Kunz, Wilson signed an immunity agreement, stating that he would provide information about public corruption. ECF No. 266, Hr'g Tr. 21-22, Apr. 4, 2022. To date, the government has *not* provided the defense with a copy of Wilson's immunity agreement, which is just one of many important examples of continued repeat discovery violations including *Brady* violations listed below.

Clearly, the purpose was to initiate contact with Finch and other represented parties to discuss case-related issues all in violation of the Sixth Amendment. *Id.* at 51:23-24 ("I was asked to find out the contents [of the box prominently labeled "Attorney-Client Privilege"] and then later the location"); *id.* at 27: 17-20 (Q: "Did you know at the time that Derwin White was represented by an attorney . . . ?

[Wilson]: I did.”); *id.* at 51:5-10 (Wilson: “I know there were occasions that I was directed by Mr. Borghini to specifically find out certain information that I did not know. Q: And did that include meeting with a represented party and questioning them? [Wilson]: On the two occasions I’m thinking of, one of them was, yes.”)

Even more egregious is the fact that Borghini testified under oath under questioning by AUSA Kunz that he *never* instructed Wilson to do anything with respect to obtaining any information or evidence whatsoever. ECF No. 290, Hr’g Tr. 71:3-6, Apr. 6, 2022 (Q: “And after each of these times you’d met with [Wilson] you never told him, Listen, go out and get more information and call me back, did you? [Borghini]: No.”); 74:22-25 (Q: “[D]id you tell Mr. Wilson to go out and get more information, or did you give any instructions about working for you or giving you information? [Borghini]: I did not.”); 78:7 (Borghini: “I’ve never directed Greg Wilson to do anything.”); 80:14-16 (Q: “[A]fter May 10th of 2021, did you hear from Mr. Wilson again before August 26th, 2021? [Borghini]: No.”); 82:11-13 (Q: “[P]rior to this date of August 26, were you aware of any box marked “attorney-client communications or privilege” . . . being in GAC? [Borghini]: No.”); 152:17-19 (Q: “And you never told Mr. Wilson to do anything with respect to obtaining any evidence whatsoever; is that correct? [Borghini]: That is correct.”). Like his

testimony before multiple Grand Juries, Borghini's sworn testimony to this Court was demonstrably false. *See* Finch Ex. 90, (Mar. 31, 2022).¹⁷

E. Repeat Violations of the Court's Discovery Orders.

The record is replete with the government's multiple discovery violations including but not limited to late productions, improper redactions, and withholding *Brady* material until the defense discovered the government's misconduct. After the violations were brought to light, the government regularly blamed others, including the defense, and denied responsibility. For example, the prosecutors' excuses ranged from claiming *all Brady* material had been provided as of March 31, 2021,¹⁸ to the defense had not requested *Brady* material and not been specific enough with their

¹⁷ Dismissal is appropriate for another, equally compelling reason: to punish the prosecution and thereby deter prosecutorial misconduct and protect the integrity of the judicial process. *United States v. DiBernardo*, 775 F.2d 1470, 1476-77 (11th Cir. 1985) ("Federal courts may exercise their supervisory powers to remedy violations of recognized rights, to protect the integrity of the federal courts, and to deter illegal conduct by government officials."); *United States v. Pabian*, 704 F.2d 1533, 1536 (11th Cir. 1983) (same). The need for deterrence is heightened here because the conduct in this case does not consist of a single isolated incident. In fact, in a recent decision in the Southern District of Florida, U.S. District Judge Gayles ordered a new trial, admonishing federal prosecutors for instructing a cooperating witness to spy on his co-defendants — and then lying to the court to cover up misconduct he said violated the defendants constitutional right to a fair trial. *See United States v. Pisoni*, Case No. 15-CR-20339, ECF No. 767 (S.D. Fla.).

¹⁸ ECF No. 274 at 8-9; Finch Ex. 16 (Mar. 31, 2021).

requests,¹⁹ to the *Brady* material was not in their possession,²⁰ to the *Brady* material was in Bay County Sheriff's Office's possession and not in the FBI files.²¹ In fact, Borghini testified that he maintained notes and other information that could be relevant to this case outside of the FBI file.²² Clearly, Borghini maintained his files, notes and reports in the most haphazard, reckless way possible.²³

The "bad acts" are not isolated to the federal agents and prosecutors. Several of the local and municipal officers participated in the misconduct.

¹⁹ ECF No. 238 at n.5 (attempting to draw a distinction between Finch's inquiry into the false Grand Jury testimony as "not specifically ask[ing]" for the transcript containing Borghini's false statement.")

²⁰ On September 3, 2021, Finch requested the government provide additional details on a series of documents, pictures, and videos contained within a folder purportedly containing "medical interview and social media of Finch and Anderson." Specifically, Finch requested the source, dates, and locations associated with the "undercover" surveillance. Finch Ex. 84 (Dec. 12, 2022). On September 10, 2021, the government responded that the material "came from publicly available media, who reported they were taken by a private investigator. I do not believe we have further information to provide." *Id.*

²¹ On April 12, 2022, the government claimed that it "made a diligent effort to provide all witness interview reports," blaming its defiance of the Court's Order on the fact that the material was not "in the FBI case file." *See* ECF No. 287 at 16.

²² ECF No. 290, Hr'g Tr. 64:13-16, Apr. 6, 2022 (testifying that Borghini separated his notes containing information provided by government informant Wilson on this case and others).

²³ *See* Finch Ex. 85 (Mar. 31, 2022) (detailing the days between the date of interviews and Borghini drafting and submitting them to his supervisor for entry in the FBI database.). Several reports were not submitted for review and entry for *over a year* after the interview was conducted. *Id.*

- BCSO Major Stanford “destroyed” all of his written notes,²⁴ despite the government’s representation that it instructed all officers and agents to preserve their rough notes.²⁵
- Lynn Haven Police Chief Ricky Ramie sat on critical evidence that was gathered at Margo Anderson’s instruction for several days before turning it over to Stanford.²⁶
- Chief Ramie’s close relationship with former Lynn Haven City Manager Michael White was also buried within 31,000 pages of Michael White’s phone records demonstrating shocking misconduct and bias.²⁷ Until very recently, virtually no one (witness, officer, agent, or anyone) has been questioned about the rampant case-related misconduct and general corruption in BCSO or LHPD. To the extent limited inquiry is being made, the disparity and contradiction is overwhelming, and clearly designed to cover up, rather than reveal bad conduct.

²⁴ ECF No. 291, Hr’g Tr. 204:9-13, Mar. 31, 2022.

²⁵ March 31, 2021, letter from AUSA Kunz. (“The United States has advised all agents and officers directly involved in the case to preserve all rough notes.”).

²⁶ ECF No. 380 at 22-23; Finch Ex. 67 at 4-5 (Dec. 12, 2022) (BCSO Investigator Aubrey Chance documents the receipt of documents from Chief Ramie to Stanford on April 10, 2019).

²⁷ Following Chief Ramie’s testimony on December 12, 2022, Defendant Finch’s wife was arrested by Lynn Haven Police Department on Friday afternoon, December 16, 2022, and held overnight before being released the next day on a recognizance bond. The affiant on the probable cause statement was Lynn Haven Police Department’s Lieutenant Gary Schell. The Court will recall that Lt. Schell was referenced in Ramie’s text messages to Michael White as someone who could help “set up” an arrest. *See* ECF No. 406, Hr’g Tr. 116-17, Dec. 12, 2022; *see also* Finch’s Ex. 73 (Mar. 31, 2022). Ramie’s officer apparently claims that Finch’s wife was in joint possession of an empty vial containing trace amounts of white powder residue. The empty vial was allegedly seized four months earlier from Finch’s wife’s ex-husband’s home. Finch’s wife has been divorced from her previous husband for over 12 years.

- BCSO Sheriff Tommy Ford aggressively questioned Commissioner Judy Tinder about the easement on her property.²⁸ When Commissioner Tinder did not agree with the Sheriff's insinuations that would support the government's bogus theory against Margo Anderson, he got visibly angry and terminated the interview.²⁹
- At the December 12, 2022, hearing, Vickie Gainer began using notes she described as being taken in her official capacity as an employee of Lynn Haven. ECF No. 406, Hr'g Tr. 295, Dec. 12, 2022. Ms. Gainer testified that she provided the notes to the federal government. *Id.* at 296. The government conceded that Borghini used "some notes" from Gainer as the basis for his testimony at the March 2021 Grand Jury. ECF No. 407, Hr'g Tr. 368-69, Dec. 13, 2022.³⁰

F. AUSA Kunz Actions Leading to Antonius Barnes Executing a False Statement.

Perhaps the most troubling conduct occurred when Defendant Antonius Barnes testified on December 12, 2022 that he felt AUSA Kunz coerced and threatened him into entering into a plea agreement with a twisted factual statement that was immaterial to his charges.³¹ ECF No. 406, Hr'g Tr. 203:7-10, Dec. 12, 2022

²⁸ ECF No. 406, Hr'g Tr. 146-48, Dec. 12, 2022.

²⁹ *Id.* at 148-49 ("Sheriff Ford got angry. He was not a happy camper. He turned red, and he didn't even want to argue with me anymore.").

³⁰ On December 13, 2022, the Court ordered the government to produce the notes Gainer used on the stand, as well as the notes Borghini used as the basis for his testimony, within 10 days. ECF No. 407, Hr'g Tr. 369, Dec. 13, 2022. On December 22, 2023, the government produced two sets of Gainer's notes. Upon our cursory review, we have noted several differences.

³¹ The Supreme Court has concluded that coercive or threatening behavior towards a potential witness may justify reversal of a defendant's conviction. *See Webb v. Texas*, 409 U.S. 95, 97-98, (1972). By threatening Mr. Barnes, AUSA Kunz effectively interfered with a potential defense witness. *See United States v. Lord*,

("[AUSA Kunz] said, you know, we can give you a lot of years in prison. And, basically, I mean, to the point of coercion and threats. So that's why I pled guilty."); *id.* 203:23 – 204:4 (The Court: "Mr. Barnes, when you said you felt like AUSA Kunz was being coercive and threatening you, was it about generally or was it targeted to your plea as it relates to the plea or the false statement? [Barnes]: Basically to the point that if I did not plead to *the statement*, then they would have added to the charges." (emphasis added)).³²

The government's conduct toward Barnes displayed a lack of regard for the truth and the constitutional rights of Barnes, Finch, and Anderson. Barnes' initial statements contradicted the government's theory of the case. His recorded interview with Borghini made clear that Barnes never sold his vote, and that the loan was "completely unrelated" to his work as a Commissioner. Clearly, Barnes was a

711 F.2d 887, 891 (9th Cir. 1983) (remanding for evidentiary hearing where "the prosecutor told him that whether he would be prosecuted depended on his testimony"); *see also Williams v. Woodford*, 384 F.3d 567, 601-02 (9th Cir. 2004) ("Undue prosecutorial interference in a defense witness's decision to testify arises when the prosecution intimidates or harasses the witness to discourage the witness from testifying."); *United States v. Hammond*, 598 F.2d 1008, 1013 (5th Cir. 1979) (FBI agent threatened two defense witnesses with "trouble" in pending state prosecution).

³² Barnes' Statement of Facts, prepared by the government, was signed 9 days *after* executing his plea agreement for the false statement to a financial institution. Finch Ex. 53 (Dec. 12, 2022). The Statement of Facts includes tortured language unrelated and immaterial to the charges in the Information, wholly contorting Barnes' sworn testimony, encouraging Barnes to speculate improperly as to what Defendant Finch's intentions *may have been* when Finch agreed to loan money to him. *Id.*

potential defense witness. To twist the truth into something more consistent with the government's theory, AUSA Kunz undertook improper measures to change the narrative of Barnes' testimony to secure future indictments. The government's strong-arm efforts to obtain a statement of facts that comported with its theory of the case was wholly improper. Led by AUSA Kunz, its cavalier attitude toward the truth in dealings with Barnes has directly prejudiced Finch. The government improperly included incriminating speculation in Barnes' Statement of Facts after essentially telling him that he could keep his pension, avoid additional charges, and a lengthy incarceration if he stuck to a script written by AUSA Kunz. That false narrative was presented to the Court and to multiple Grand Juries. The charges against Finch and Anderson are thus based on statements and Grand Jury testimony that has been rendered wholly unreliable by the government's misconduct.³³

This is not the only time serious issues have arisen surrounding pleas and plea agreement language in this matter. In *United States v. Michael White, et al.*, Case No. 5:19-CR-78-RH (N.D. Fla.), Defendant David Horton expressed statements of innocence at his change of plea hearing on May 28, 2020, stating that he could not

³³ The Court carefully and cautiously questioned Barnes in a hearing on Thursday, December 22, 2022. The Court's inquiry was appropriately limited to the charges within the Information. Barnes indicated that he was in fact guilty of submitting a false statement to a financial institution. He has maintained his innocence staunchly as it relates to "selling his vote" and alleged bribery as a result of borrowing start-up money for his insurance business.

swear under oath that he knew something that he did not know. Appearing for the government, AUSA Kunz pushed for the entry of the plea, arguing that it could just be an issue of semantics. The Court did not accept the plea agreement and statement of facts that was presented, instead setting the matter for trial in August 2020. Ultimately, the “semantics” were ironed out by AUSA Kunz, and the Court accepted the defendant’s plea. *Id.* at ECF Nos. 105, 106.

III. Alternative Relief In Lieu of Dismissal.

In lieu of dismissing the Third Superseding Indictment, Finch respectfully requests that the Court fashion severe and meaningful sanctions for the government’s history of violating Court Orders, discovery abuse, due process violations, and Grand Jury misconduct including but not limited to the following or a combination thereof.³⁴

1. Dismissal of Count 1 (Conspiracy to Commit Bribery - 18 U.S.C. §§371 and 666).
2. Dismissal of Count 2 (Bribery – 18 U.S.C. §666(a)(2)).
3. Dismissal of Count 3 (Bribery – 18 U.S.C. §666(a)(2)).
4. Dismissal of Count 5 (Knowing and Willful False Statement to the Federal Bureau of Investigation – 18 U.S.C. §§ 1001(a)(2) & (3)).
5. Exclusion of Evidence/Testimony from the Government’s case-in-chief
 - A. Former FBI Special Agent Lawrence Borghini’s Testimony.
 - B. Michael White’s Testimony.

³⁴ Entry of one or more of these sanctions would likely substantially alter trial time estimates, the need for certain motions in limine, and other pretrial litigation.

C. Lynn Haven Police Chief Ricky Ramie's Testimony.

D. Lynn Haven City Manager Vickie Gainer's Testimony.

6. Exclusion of Antonius Barnes' Statement of Facts dated September 24, 2021, including for impeachment purposes.
7. Multiple instructions from the Court explaining in part the Court's findings of recklessness, unprofessionalism, haphazardness, and sanctions. For example, the jury should be made aware that we are on the Third Superseding Indictment, in part due to the government's reckless investigation and false and misleading information that was presented to secure the Indictment, Superseding Indictment, and Second Superseding Indictment.
8. An Order requiring the Government take all necessary steps to review and process all material seized from GAC, electronically produce the material in a searchable format to the defense no later than 6 weeks prior to trial. The government shall also specifically identify all *Brady* material within the GAC production.

IV. Conclusion.

Individually and isolated, one might review the misconduct in this case as Constitutionally correctable. Cumulatively, in context, a much different conclusion is warranted. The bad actors' wrongdoing is extreme. The bad acts are virtually unprecedented. They individually and collectively violate the very core of our Constitution and are shocking in breadth and scope. It is beyond dispute that prosecutorial misconduct may become "so outrageous that due process principles would absolutely bar the government from invoking judicial processes to obtain a conviction. . . ." *United States v. Russell*, 411 U.S. 423, 431-32, (1973); *see also United States v. Haimowitz*, 725 F.2d 1561, 1577 (11th Cir. 1984) (outrageous

government misconduct turns on the totality of the circumstances); *United States v. Simpson*, 813 F.2d 1462, 1464 (9th Cir. 1987); *see also United States v. Samango*, 607 F.2d 877, 884 (9th Cir. 1979) (court exercised supervisory power to dismiss indictment where cumulative effect of errors and prosecutorial misconduct was to produce a biased grand jury). Such is the case here.

One of the key factors in determining whether prosecutorial misconduct rises to the level of a due process violation is whether the case involved the government's mere "passive tolerance" of misconduct or the "conscious direction" of misconduct by government agents. *Simpson*, 813 F.2d at 1468. Viewed in its totality, the multiple and repeat instances of misconduct identified herein and throughout these proceedings are undoubtedly the result of conscious direction by the government, its agents, officers, informants, and witnesses. Deliberate and conscious decisions were made to violate rule after rule after rule in a single-minded pursuit of convictions—all in the most public way possible for benefit of former United States Attorney's newly-announced Public Trust Unit, which was headed by AUSA Kunz. In the process of this public crusade, the Constitution was put aside. The defendants due process rights were repeatedly violated by the government. Most respectfully, there is but one entity able to rectify this Constitutional wrong—this United States District Court.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 23, 2022, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF and that a true and correct copy of the foregoing has been served electronically via the CM/ECF System on all counsel of record.

/s/ Guy A. Lewis

GUY A. LEWIS