

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

| | | |
|---------------------------|---|-------------------------|
| UNITED STATES OF AMERICA, | : | |
| | : | |
| Plaintiff-Respondent, | : | |
| v. | : | No. 15-cv-1994 |
| | : | No. 5:13-cr-00420-PAG-1 |
| BENJAMIN SUAREZ, | : | |
| | : | |
| Defendant-Movant. | : | |

DECLARATION OF JAMES H. FELDMAN, JR.

Pursuant to 28 U.S.C. § 1746, James H. Feldman, Jr., declares, under penalty of perjury, that:

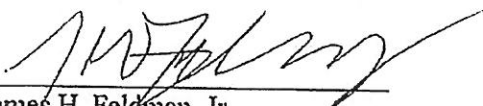
1. I am an attorney licensed to practice law in Pennsylvania. I am licensed to practice law in Ohio as well, but elected inactive status in that state when I moved to Pennsylvania in 1982. I have been admitted to the bars of the United States District Courts the Eastern District of Pennsylvania, and the Southern District of Ohio; and the United States Courts of Appeals for the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, and Eleventh Circuits.

2. On September 23, 2015, this Court granted my petition to be admitted *pro hac vice* to represent the defendant in this case.

3. On July 30, 2015, I spoke with Michael Puterbaugh on the telephone. Following that conversation I made notes concerning what Mr. Puterbaugh told me and sent him an email which contained those notes. The next day, I received a responsive email from Mr. Puterbaugh. I have attached to this declaration an accurate and complete copy of the email I received from Mr. Puterbaugh. The printout also contains an accurate and complete copy of the email I sent him and to which he was responding.

4. In addition to the notes I took and emailed to Mr. Puterbaugh, I recall that when I reminded Mr. Puterbaugh of a meeting or conference call which involved Mr. Suarez and a number of attorneys, including attorneys Mr. Puterbaugh, Sullivan, Crites, Kerger, and McCaffrey, and asked him whether he recalled Mr. Santarelli criticizing the advice attorney Donald Scherzer had given Barbara Housos and other of his SCI clients concerning immunity, Mr. Puterbaugh not only immediately recalled the comments by Mr. Santarelli, but was surprised that he had not recalled them at trial.

5. I declare under penalty of perjury that the foregoing is true and correct.


James H. Feldman, Jr.

Dated: December 21, 2015

At: Ardmore, PA

Jim Feldman

From: Michael Puterbaugh <michael@puterbaughlaw.com>
Sent: Friday, July 31, 2015 6:21 AM
To: Jim Feldman
Cc: Alan Ellis
Subject: Re: Suarez -- follow-up to our conversation

Jim,

Just a couple of things. We met with Ben, at his home, during the day and Ben called me later that day (I believe around 6:30 pm). Barb told me about the note the very next morning in her office. Mike Crites and Don Santarelli commented on the Immunity as not being adequate and that the others could still be subject to prosecution.

Thanks Jim and please feel free to contact me. Have a nice day.

Mike

Sent from my iPhone

On Jul 30, 2015, at 8:29 PM, Jim Feldman <jfeldman@jamesfeldman.com> wrote:

Mike:

Here are notes I took on our conversation. Please take a look at them and email me any corrections or additions.

I spoke with Mike Puterbaugh today (7/30/15). He recalls the conversation that Ben has told us about. He remembers it as an in-person meeting at Ben's house – not as a phone call. He recalls all the attorneys that Ben mentioned being there: Santarelli, Crites, McCaffrey, Kerger, and himself. They met in Ben's home office. He recalls Santarelli and Crites being critical of Scherzer – but not the other attorneys, who knew Scherzer and liked him. He recalls that at one point in the evening, Don Santarelli putting his hand on Ben's knee and telling him not to contact anybody about the case, that he was in good hands now, and to let the lawyers handle it. Ben said he would. Later that day or the next day, Ben spoke with Mike Puterbaugh and told him that he was going to follow Santarelli's advice. Mike was relieved. But then later that day, Barb Housos came in to his (Mike's) office to tell him about the letter she had received from Ben the night before. Apparently, right after Don had told Ben not to contact anyone, Ben sent the letter to Barb. I asked Mike whether he recalled Don Santarelli saying that Scherzer's clients had not, in fact, been granted immunity, and could be prosecuted. He did. He (Mike) also could see how Ben might have interpreted this comment as evidence that Scherzer was giving Barb bad advice and that Ben felt the need to protect Barb from it.

Thanks.

Jim Feldman
50 Rittenhouse Place
Ardmore, PA 19003
610-649-8200 (office)
610-529-2934 (cell)
610-649-8362 (fax)
www.jamesfeldman.com
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