

1 ELIZABETH A. STRANGE
First Assistant United States Attorney
2 District of Arizona

3 ANDREA A. KAFKA
Trial Attorney
4 United States Department of Justice
Florida Bar No. 0030418
5 Email: Andrea.Kafka@usdoj.gov
Telephone: 202-305-7932
6 Attorney for United States of America

7
8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE DISTRICT OF ARIZONA

10 MICHAEL QUIEL,

11 Plaintiff,

12 v.

13 UNITED STATES OF AMERICA,

14 Defendant.

CV 16-1535- JAT
CR 11-2385-PHX-JAT

GOVERNMENT’S RESPONSE TO COURT
ORDER REQUIRING EVIDENCE THAT
ATTORNEYS IN CRIMINAL MATTER WERE
PROPER REPRESENTATIVES OF THE UNITED
STATES

15
16 **INTRODUCTION**

17 On June 26, 2018, the Court ordered the government to provide evidence that at least one
18 attorney participating in the underlying criminal matter – *United States v. Kerr, et al.*, Case no. 2:11-cr-
19 02385-JAT, in the United States District Court for the District of Arizona (hereinafter “Criminal Case”) –
20 – “was a proper representative of the United States,” establishing “that the attorney was duly appointed
21 under the Appointments Clause and that the attorney swore the statutorily-required oath to faithfully
22 execute his or her duties.” Civ. Doc. 34.¹ Here, the government provides the authority and evidence that
23 both of the attorneys designated to represent the United States in the Criminal Case were proper
24 representatives and duly appointed.
25
26
27

28 ¹ “Civ. Doc.” refers to the docket created for the purpose of Quiel’s Section 2255 motion and related filings, CV 16-1535-JAT.

PROCEDURAL HISTORY²

1
2 On November 7, 2017, Michael Quiel (“Quiel”) filed a Motion to Reconsider the Court’s Order
3 denying and dismissing his Motion to Vacate his sentence pursuant to 28 U.S.C. § 2255. Civ. Doc. 23.

4 On December 19, 2017, Quiel filed an Amended Motion for Reconsideration of the Court’s Order. Civ.
5 Doc. 24.
6

7 On December 21, 2017, Quiel filed a Notice of Appeal in the Ninth Circuit. Civ. Doc. 25. On
8 January 16, 2018, the Court entered an order holding the civil case proceedings in abeyance,
9 specifically, Quiel’s Motion and Amended Motion for Reconsideration pursuant to 28 U.S.C. § 2255.
10 Civ. Doc. 27.

11 On May 25, 2018, the Court ordered the United States to file a response to Petitioner’s Amended
12 Motion to Reconsider no later than June 15, 2018. Civ. Doc. 28. On June 8, 2018, the United States filed
13 its Answer in Opposition to Michael Quiel’s Motion to Reconsider Order. Civ. Doc. 31. On June 15,
14 2018, Quiel filed a Reply in Support of his Motion to Reconsider Order. Civ. Doc. 32.
15

16 On June 26, 2018, this Court issued an order stating that “[i]n light of the Supreme Court’s
17 recent reminder in *Lucia v. SEC*, No. 17-130, 2018 WL 3057893 (2018) that officers of the United
18 States must be duly appointed pursuant to the Appointments Clause, ... the Government must provide
19 evidence that at least one attorney participating in the underlying criminal matter was a proper
20 representative of the United States.”³ Civ. Doc. 34. This Court further stated that “[t]his evidence should
21
22

23 ² As this was described at length in the Government’s Opposition to Quiel’s Motion to Reconsider (Civ. Doc.
24 31), it is substantially abbreviated here for the limited purposes of responding to the Court’s Order of June
25 26, 2018.

26 ³ In *Lucia v. SEC*, the Supreme Court reviewed whether administrative law judges of the
27 Securities and Exchange Commission are employees or “Officers of the United States” within the
28 meaning of the Constitution’s Appointments Clause. Analogizing to precedent holding that Special
Trial Judges of the Tax Court possessed the discretion and authority necessary to be an Officer of the
United States, see *Freytag v. Commissioner*, 501 U.S. 868 (1991), the Court determined that the SEC
ALJs were Officers of the United States, so they must be appointed in conformity with the
Constitution’s Appointments Clause. As inferior officers, the SEC ALJs could be appointed by the
Commission, but they were appointed by SEC staff, making such appointments unconstitutional.

1 establish that the attorney was duly appointed under the Appointments Clause and that the attorney
2 swore the statutorily-required oath to faithfully execute his or her duties.” Civ. Doc. 34.

3 LEGAL PRINCIPLES

4 Article 2, Section 2, Clause 2 of the Constitution (the “Appointments Clause”) requires that all
5 “officers” of the United States be appointed by the president, by the “courts of law,” or by the “heads of
6 departments.” U.S. Const. art. II, §§ 1, 2 cl. 2. In addition to the Appointments Clause, the authority of
7 attorneys employed by the Department of Justice to appear on behalf of the United States in both
8 criminal and civil proceedings has long been recognized by both statute and by the courts in relevant
9 case law. This authority stems primarily from 28 U.S.C. § 515(a) and 28 C.F.R. § 0.13(a). First, as
10 outlined in 28 U.S.C. § 515(a):

11
12 [t]he Attorney General or any other officer of the Department of Justice, or any
13 attorney specially appointed by the Attorney General under law, may, when specifically
14 directed by the Attorney General, conduct any kind of legal proceeding, civil or criminal,
15 including grand jury proceedings and proceedings before committing magistrate judges,
16 which United States attorneys are authorized by law to conduct, whether or not he [or
17 she] is a resident of the district in which the proceeding is brought.

18 *See also* 28 U.S.C. §§ 541-543, 547 (discussing the appointment and setting forth the duties and
19 authority of United States Attorneys). The authority granted to the Attorney General by 28 U.S.C.
20 § 515(a) has, pursuant to 28 C.F.R. § 0.13(a), been extended to each Assistant Attorney General and
21 Deputy Assistant Attorney General of the United States Department of Justice. According to 28 C.F.R.
22 § 0.13(a), “[e]ach Assistant Attorney General and Deputy Assistant Attorney General is authorized to
23 exercise the authority of the Attorney General under 28 U.S.C. § 515(a) . . . to designate Department
24 attorneys to conduct any legal proceedings, civil or criminal. . . .” Additionally, the prosecution of
25 criminal proceedings arising under the internal revenue laws has been delegated to the Assistant
26 Attorney General, Tax Division. 28 C.F.R. § 0.70(b). Further delegations of authority from the President
27 of the United States through intermediate officials to the Department’s trial attorneys may be found by
28 referencing the following sources: 28 U.S.C. §§ 510, 516, 517, 518(b); Fed. R. Crim. P. 1(b).

1 Courts in this Circuit have likewise recognized the authority of attorneys employed by the
2 Department of Justice to appear on behalf of the United States in criminal and civil proceedings. For
3 example, in *Huff v. United States*, a civil case, the Ninth Circuit, citing several of the statutes and
4 regulations outlined herein, rejected the defendants' argument that only a United States Attorney could
5 represent the United States. 10 F.3d 1440, 1443-44 (9th Cir. 1993). In rejecting the defendants'
6 argument, the Ninth Circuit upheld the authority of a trial attorney from the Department of Justice's Tax
7 Division to handle the case. *Id.* In addition, the Ninth Circuit addressed arguments concerning a
8 defective appointment of a Special Assistant United States Attorney in *United States v. Plesinski*, 912
9 F.2d 1033 (9th Cir. 1990), *cert. denied*, 499 U.S. 919, 111 S. Ct. 1306, 113 L. Ed. 2d 241 (1991). In that
10 case, the court recognized the authority of both the Department of Justice and United States Attorneys in
11 the prosecution of federal cases and also discussed the power of the Attorney General to delegate
12 the prosecution of federal cases and also discussed the power of the Attorney General to delegate
13 authority to appoint special assistants to the Attorney General. *Id.* at 1036-39.

14 DISCUSSION

15
16 In the Criminal Case at issue here, one of the Tax Division's Deputy Assistant Attorneys General
17 designated counsel to represent the United States in any legal proceeding, civil or criminal, in the
18 District of Arizona or in any other judicial district. The two attorneys designated to represent the United
19 States were Department of Justice Tax Division, Criminal Enforcement Section, Trial Attorneys
20 Timothy Stockwell and Monica Edelstein, née Bellapralu (collectively, "Trial Attorneys Stockwell
21 and Edelstein"). Trial Attorneys Stockwell's and Edelstein's authority was exercised pursuant to 28
22 C.F.R. § 0.13(a) (delegating authority to Deputy Assistant Attorneys General to perform functions
23 assigned to Attorney General under 28 U.S.C. § 515(a)) and 28 C.F.R. § 0.13(a) (authority to appoint
24 attorneys to represent the United States). In designating Trial Attorneys Stockwell and Edelstein to
25 represent the United States, the Acting Deputy Assistant Attorney General for the Tax Division
26 conferred authority for counsel to conduct matters including those undertaken in this case, such as filing
27
28

1 an indictment and litigating the case through and during trial and in post-trial activities. Copies of the:
2 (1) Appointment Affidavits containing an Oath of Office, and (2) Appointment Letters from the Tax
3 Division's Acting Deputy Assistant Attorney General for each of Trial Attorneys Stockwell and
4 Edelstein appear at Exhibits A and B (Stockwell) and C and D (Edelstein), attached hereto.

5
6 **CONCLUSION**

7 Accordingly, Department of Justice Tax Division Trial Attorneys Stockwell and Edelstein who
8 handled the Criminal Case were duly appointed officers of the United States when they represented the
9 United States and in all legal proceedings therein. The government respectfully requests that the Court
10 accept this filing and its attached Exhibits A, B, C and D as the evidence required pursuant to the
11 Court's Order of June 26, 2018.

12
13
14 DATED: July 2, 2018.

Respectfully submitted,

ELIZABETH A. STRANGE
First Assistant United States Attorney
District of Arizona

16 */s/ Andrea A. Kafka*
17 ANDREA A. KAFKA
18 Trial Attorney
19 United States Department of Justice
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I certify that on July 2, 2018, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notice of electronic filing to counsel of record in this case.

/s/Andrea Kafka
ANDREA KAFKA
Trial Attorney
United States Department of Justice

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

APPOINTMENT AFFIDAVITS

Trial Attorney
(Position to which Appointed)

10/20/2006
(Date Appointed)

Department of Justice
(Department or Agency)

Tax Division
(Bureau or Division)

Washington, DC
(Place of Employment)

I, Timothy J. Stockwell, do solemnly swear (or affirm) that--

A. OATH OF OFFICE

I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.

B. AFFIDAVIT AS TO STRIKING AGAINST THE FEDERAL GOVERNMENT

I am not participating in any strike against the Government of the United States or any agency thereof, and I will not so participate while an employee of the Government of the United States or any agency thereof.

C. AFFIDAVIT AS TO THE PURCHASE AND SALE OF OFFICE

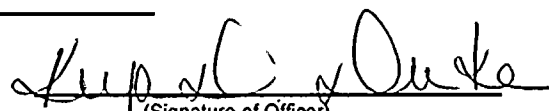
I have not, nor has anyone acting in my behalf, given, transferred, promised or paid any consideration for or in expectation or hope of receiving assistance in securing this appointment.


(Signature of Appointee)

Subscribed and sworn (or affirmed) before me this 20th day of October, 2006

at Washington (City) DC (State)

(SEAL)


(Signature of Officer)

Commission expires _____
(If by a Notary Public, the date of his/her Commission should be shown)

HP Specialist
(Title)

Note - If the appointee objects to the form of the oath on religious grounds, certain modifications may be permitted pursuant to the Religious Freedom Restoration Act. Please contact your agency's legal counsel for advice.



Tax Division

Deputy Assistant Attorney General

Washington, D.C. 20530

JAN - 4 2009

Timothy J. Stockwell
U.S. Department of Justice
Tax Division
Western Criminal Enforcement Section
Washington, D.C. 20530

Dear Mr. Stockwell:

As an attorney for the United States who is employed full time by the Department of Justice and assigned to the Tax Division, you are authorized to represent the United States in any kind of legal proceeding, civil or criminal, including grand jury proceedings and proceedings before United States Magistrate Judges in the District of Arizona or in any other judicial district. You are authorized by the Tax Division to conduct such business on behalf of the United States that United States Attorneys are authorized to conduct, including such matters as filing an information, presenting an indictment, and entering into a plea agreement. This authority is granted pursuant to 28 U.S.C. § 515(a) and 28 C.F.R. § 0.13(a).

You may file a copy of this letter with the Clerk of the District Court as evidence of your authorization to represent the United States.

Sincerely yours,

A handwritten signature in cursive script, reading "Ronald A. Cimino".

Ronald A. Cimino
Acting Deputy Assistant Attorney General

cc: John A. DiCicco
Acting Assistant Attorney General

APPOINTMENT AFFIDAVITS

Honors Attorney
(Position to which Appointed)

10/02/2006
(Date Appointed)

Department of Justice
(Department or Agency)

Tax Division
(Bureau or Division)

Washington, DC
(Place of Employment)

I, Monica N. Bellapralu, do solemnly swear (or affirm) that--

A. OATH OF OFFICE

I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.

B. AFFIDAVIT AS TO STRIKING AGAINST THE FEDERAL GOVERNMENT

I am not participating in any strike against the Government of the United States or any agency thereof, and I will not so participate while an employee of the Government of the United States or any agency thereof.

C. AFFIDAVIT AS TO THE PURCHASE AND SALE OF OFFICE

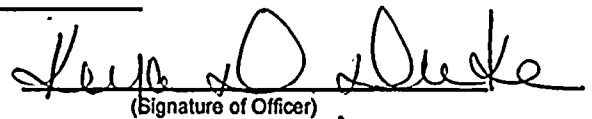
I have not, nor has anyone acting in my behalf, given, transferred, promised or paid any consideration for or in expectation or hope of receiving assistance in securing this appointment.


(Signature of Appointee)

Subscribed and sworn (or affirmed) before me this 2nd day of October, 2006

at Washington (City) DC (State)

(SEAL)


(Signature of Officer)

Commission expires _____
(If by a Notary Public, the date of his/her Commission should be shown)

AP Specialist
(Title)

Note - If the appointee objects to the form of the oath on religious grounds, certain modifications may be permitted pursuant to the Religious Freedom Restoration Act. Please contact your agency's legal counsel for advice.



Tax Division

Deputy Assistant Attorney General

Washington, D.C. 20530

DEC - 1 2009

Monica B. Edelstein, Esquire
U.S. Department of Justice
Tax Division
Western Criminal Enforcement Section
Washington, D.C. 20530

Dear Ms. Edelstein:

As an attorney for the United States who is employed full time by the Department of Justice and assigned to the Tax Division, you are authorized to represent the United States in any kind of legal proceeding, civil or criminal, including grand jury proceedings and proceedings before United States Magistrate Judges in the District of Arizona or in any other judicial district. You are authorized by the Tax Division to conduct such business on behalf of the United States that United States Attorneys are authorized to conduct, including such matters as filing an information, presenting an indictment, and entering into a plea agreement. This authority is granted pursuant to 28 U.S.C. § 515(a) and 28 C.F.R. § 0.13(a).

You may file a copy of this letter with the Clerk of the District Court as evidence of your authorization to represent the United States.

Sincerely yours,

A handwritten signature in blue ink that reads "Ronald A. Cimino".

Ronald A. Cimino
Acting Deputy Assistant Attorney General

cc: John A. DiCicco
Acting Assistant Attorney General