

IN THE UNITED STATES COURT OF APPEALS  
FOR THE SIXTH CIRCUIT

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CASE NO. 14-3348/3624

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UNITED STATES OF AMERICA,  
Plaintiff-Appellee,

v.

ANTHONY L. VIOLA,  
Defendant-Appellant.

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On Appeal from the United States District Court  
for the Northern District of Ohio  
Eastern Division, Case No. 1:08CR506

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GOVERNMENT'S OPPOSITION TO, AND MOTION TO STRIKE, VIOLA'S  
REQUEST(S) THAT THE COURT TAKE JUDICIAL NOTICE OF  
AFFIDAVITS

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Viola initially filed his Request That The Merits Panel Take Judicial Notice of Affidavits Filed In The District Court and Unopposed By The Government (Doc. #31) with the affidavits attached in this Case on February 2, 2015. Viola filed the same Request and affidavits (Doc. # 35) on March 2, 2015<sup>1</sup>. The Government respectfully requests that this Court deny Viola's Requests and Strike these filings (Doc. #31 and #35) from the record for the following reasons:

One, these affidavits are not in the record. Second, the averments within the affidavit do not comport with Federal Rule of Evidence 201(b)(1) and (2). The facts alleged are not generally known in the community, and the facts claimed in the affidavit certainly are not ones that "can accurately and readily be determined from sources whose accuracy cannot reasonably be questioned." Accordingly, since the affidavits do not satisfy the Rule, this Court should not take judicial notice of the affidavits or any of the information asserted.

Furthermore, the United States hotly dispute Viola's allegation that Dawn Pasela was ever threatened by the Undersigned or any federal agents, or that the Undersigned or any federal agent had anything to do with Mr. Pasela untimely

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<sup>1</sup> The Undersigned respectfully requests that the Court not consider the delay in opposing Viola's initial Request as a reduction to the extent with which the Undersigned disputes Viola's allegations. The Undersigned has been preparing for a particularly contested trial since January, 2015, and in trial since February 20, 2015 in United States v. Atway, et al. in the Northern District of Ohio. (Case #1:14CR070).

death. Viola's allegations are baseless and asserted simply in an attempt to inflame the matter. Accordingly, both Requests should be stricken from the Record.

Finally, Viola incorrectly states to this Court that the United States did not oppose the Motion to which he attached the affidavits. (R. 470, Motion to Compel, PageID 10355). In fact, the United States filed a Response in Opposition (R. 471, PageID 10369) in the District Court, and the District Court denied Viola's Motion to Compel. (R. 473, Memorandum and Order, PageID 10379). Because the affidavits had no bearing on Viola's Motion to Compel, and Viola's allegations were so frivolous, neither the United States, nor the District Court needed to address Viola's allegations or the affidavits.

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 6th day of March 2015, a copy of the foregoing Government's Response in Opposition to Viola's Requests That The Merits Panel Take Judicial Notice of Affidavits, was filed electronically. Notice of this filing will be sent to Mr. Viola at the address listed above.

/s/ Mark S. Bennett

Mark S. Bennett

Assistant United States Attorney