

RECEIVED  
BY MAIL

AUG - 4 2010

United States District Court

U. S. DISTRICT COURT EASTERN DISTRICT OF MISSOURI  
EASTERN DISTRICT OF MO  
ST. LOUIS

GREGORY MCKENNA,

Plaintiff

Vs.

THE COUNTY OF ST. LOUIS, OFFICERS CHARLES

Case No. 4:09cv1113CDP

BOSCHERT, KENNETH WILLIAMS,

8 UNKNOWN AGENTS OF THE FEDERAL

BUREAU OF INVESTIGATION, MARK

**JURY DEMANDED**

KAPPELHOFF, APPLE INC., A-1 PRIVATE

INVESTIGATIONS, TIMOTHY BONINE,

D'ANGELO AUTOMOTIVE

Defendants

---

**PLAINTIFF'S MOTION FOR RELIEF FROM JUDGMENT**

**I. INTRODUCTION**

Comes now, *pro se* Plaintiff Gregory McKenna, with his Motion for Relief From Judgment, and for his cause of action respectfully requests that this Court grant his Motion pursuant to Federal Rule of Civil Procedure Rules 60(b)(2), (5) and (6). Plaintiff is compelled to seek reconsideration of this Court's January 4, 2010 decision to dismiss this action, *sua sponte*, without granting Plaintiff trial before a jury. In addition to violating criminal statutes<sup>1</sup> by

---

<sup>1</sup> The criminal statute violations include but are not limited to: 18 USC §2, 18 USC §3, 18 USC §4, 18 USC §241, 18 USC §1505, 18 USC §2381, 18 USC §2382, 18 USC §3041, RSMo 562.016 and others.

sanctioning the Mafia crimes, the Judgment failed to adhere to Constitutional norms, disregarded other well-recognized principles, and is in conflict with the Supreme Court's construing of arbitrary decision making by Government officials as strictly forbidden. (*emphasis added*). Despite the Court relying on case law that supports the belief that Government officials have no Constitutional duty to protect citizens from private acts of violence, the cases in their historical application do not justify Government officials who intentionally violate criminal statutes and deliberately neglect enforcement of the laws to cause injury and impede a citizen's Due Process rights. (See *Daniels, Davidson, Collins, Nishiyama*). Accordingly, since the Court wrongfully misapplied case law to justify criminal acts and allow arbitrary enforcement of the laws, the Judgment is not equitable and has no prospective application pursuant to Rule 60(b)(5).

The Court has never addressed the merits of Plaintiff's Motion to Disqualify and Motion For An Amended Judgment despite knowledge of statutory and common law authority that states Government officials cannot arbitrarily enforce the laws and criminally neglect *continuing* crimes. Although Plaintiff sought relief in his arguments under the deliberate deprivation norm, discovery rule, and continuing wrongs doctrine (see Plaintiff's Motion to Disqualify and Motion for an Amended Judgment), the Court maliciously neglected Plaintiff's request for relief despite its mandatory duty to act pursuant to 28 USC §1361 and allowed the crimes to continue. Effectively, the Court sanctioned the Defendants to commit criminal statute violations and indeed violated them in its Judgment in an act of treason against the United States. As a direct result of the Court's wrongful decision to allow the crimes to continue, Plaintiff discovered *new* evidence

of *new* violations of the Communications Act and his Constitutional rights that entitle him to reconsideration pursuant to Rule 60(b)(2). Therefore, pursuant to Rule 60(b)(2), (5) and (6), Plaintiff seeks reconsideration for the Court's inequitable application of case law and newly discovered evidence that entitles him to relief as warranted by law.

## **II. STANDARD OF REVIEW**

Rule 60(b) provides that the court may relieve a party . . . from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. Fed. R. Civ. Pro. 60(b).

After an appeal has been filed, the district court may still consider a motion for relief from judgment under FED. R. CIV. P. 60(b). See *Graefenhain v. Pabst Brewing Co.*, 870 F.2d 1198, 1211 (7th Cir. 1989). In general, if the court finds some merit, it should issue a short memorandum so that the court of appeals can be informed of its views and take appropriate action. See 7TH CIR. RULE 57; *Boyko v. Anderson*, 185 F.3d 672, 675 (7th Cir. 1999). "A motion for reconsideration is not to be used as a means to reargue matters already argued and

disposed of” or as an attempt to relitigate “a point of disagreement between the Court and the litigant.” *Waye v. First Citizen's Nat'l Bank*, 846 F.Supp. 310, 314n.3(M.D.Pa.), aff'd. 31F.3d 1175 (3rd Cir.1994). The motion may only be granted if “(1) there has been an intervening change in controlling law; (2) new evidence, which was not available, has become available, or (3) it is necessary to correct a clear error of law or prevent a manifest injustice.” *Burger v. Mays*, No. CIV.A. 96-4365, 1997 WL 611582, \*2 (E.D.Pa. Sept.23, 1997).

### **III. BACKGROUND**

#### **A. The Mafia Conspiracy to Stalk, Extort and Torture Plaintiff Involving Defendants the County of St. Louis, Unknown FBI Agents, Kappelhoff, Boschert, Williams, AI Investigations, Bonine, and Apple Inc.**

Plaintiff brought this lawsuit against the Defendants seeking monetary, equitable, declaratory and other relief under titles 42 USC 1983, 1985, 1986, 1988, and others for their wrongful actions done in connection with an Italian Mafia stalking, extortion and torture conspiracy. The crux of Plaintiff's allegations is that the Defendants willfully and knowingly perpetuated the stalking, extortion and torture through unlawful acts or omissions in their professions to abet the Mafia's criminal campaign against him. The conspiracy began in August of 2001 in St. Louis when Mafia members approached McKenna and threatened to murder and rape him for refusing to model in New York City. (See Complaint, ¶44). When Plaintiff attempted to file emergency law complaints with Defendants the County of St. Louis (i.e., the St. Louis County Police Department), Unknown FBI Agents, Charles Boschert, Kenneth Williams,

and Assistant US Attorney General Mark Kappelhoff, the Defendants maliciously neglected to protect Plaintiff from Constitutional rights violations and injuries despite knowledge of the continuing crimes and Plaintiff's reliance on them for assistance. (*Id.*, ¶¶ 3, 4, 5, 6, 7, 22, 69, 85, 99, 102, 123, 177, 188.). The conspiracy continued and notably worsened in 2006 when Plaintiff was instructed by Defendants Boschert and the STLPD to hire a private investigation company to perform a bug sweep of his property. (*Id.* at ¶103.). When Defendants A-1 and Timothy Bonine performed a bug sweep of Plaintiff's St. Louis residence and Toyota Camry that verified the existence of illegal communication devices, they proceeded to lie to the Police and other third parties by stating Plaintiff's residence and vehicle were not bugged to intentionally further the Mafia crimes. (*Id.* at ¶¶ 111, 121, 122.). Plaintiff proffered A-1 and Bonine's positive bug sweep report and a recorded transcript of the bug sweep to prove they lied to the Police to obstruct justice and perpetuate the Mafia crimes. Nonetheless, the STLPD, FBI and other Defendants maliciously neglected the crimes and intentionally perpetuated them despite knowledge of their commission to cause injuries to Plaintiff. (*Id.* at ¶¶ 131, 135, 170, 186).

The Mafia crimes worsened when Defendants D'Angelo Automotive and Apple Inc. allegedly conspired with the Mafia to perpetuate the use of illegal communication devices. Particularly, when the Mafia discovered Plaintiff's plans to repair a loud noise originating from illegal communication devices in his Audi A4 Quattro, they proceeded to allegedly bribe Defendant D'Angelo to misdiagnose Plaintiff's vehicle to conceal their existence. (*Id.* at ¶146). Although D'Angelo fabricated a loose wheel bearing diagnosis and feigned repairs to conceal the

devices, the Mafia continued to use the same devices to harass Plaintiff out of sheer malice and uncontrollable hatred for the Plaintiff. (*Id.* at ¶¶ 141, 142). The conspiracy intensified when the Mafia allegedly conspired to bug Plaintiff's Apple equipment. On or around February of 2009, Plaintiff discovered clear and convincing evidence of the Mafia conspiring with Apple to install illegal communication devices in his Apple iPod Nano when he recorded death threats that repeatedly stated, "I'm about to kill him." (*Id.* at ¶181.). Plaintiff filed a complaint with the STLPD and FBI for Apple Inc. conspiring with the Mafia but was again maliciously neglected in furtherance of the crimes. (*Id.* at ¶¶ 183, 186). Accordingly, D'Angelo and Apple allegedly conspired with the Mafia and the Defendants to perpetuate the crimes against Plaintiff.

**B. The Court's January 4, 2010 Dismissal of Plaintiff's Complaint and Denial of His Motions for Injunction, Disqualification, An Amended Judgment and Others**

When Plaintiff initiated this lawsuit on July 15, 2009, the Mafia continued to stalk, extort and torture him in utter disregard for the Court's authority to end the conspiracy and punish conspirators. Plaintiff proceeded to file an Emergency Motion for Temporary Restraining Order on or around October 8, 2009. Notwithstanding the Court's mandatory duty to grant an injunction pursuant to 28 USC §1361 and others, the Court refused to order an evidentiary hearing and grant Plaintiff an injunction despite knowledge of the continuing Mafia crimes. (See Plaintiff's Motion for Temporary Restraining Order; see also Judge Perry's Order filed on October 20, 2009). On or around October 24th, Plaintiff filed an Emergency Motion for Preliminary Injunction for the continuing statutory and Constitutional rights violations. Plaintiff substantiated

his Motion with evidence by proffering his testimony, recordings of death threats, video recordings of positive confirmations of telephone tap tests, a private investigator's bug sweep report that confirmed the existence of illegal communication devices, complaint letters maliciously neglected by the Police, and other evidence of the continuing Mafia crimes and criminal neglect. (See Plaintiff's Motion to Proffer Evidence In Support of His Motion For Preliminary Injunction, Exhibits 1 to 12). The Court's denial of Plaintiff's Motion was done in patent dereliction to its mandatory duty to act pursuant to 28 USC §1361, 18 USC §4, 18 USC §2382, 18 USC §1512(b) and others. Despite Plaintiff's prima facie case of Constitutional and statutory rights violations being maliciously neglected by law enforcement officials, on January 4, 2010, Judge Perry proceeded to *sua sponte* dismiss Plaintiff's Complaint and deny him injunctive relief in furtherance of the Mafia crimes. Effectively, the Court violated criminal statutes, disregarded fundamental principles of law and sanctioned the Mafia crimes.

In lieu of the Court's violations of law, on March 17, 2010, Plaintiff filed a Motion to Disqualify Judge Perry for deliberately misapplying case law in her Judgment in furtherance of the Mafia crimes, violating criminal statutes by remaining silent about the Mafia crimes, intentionally refusing to perform her legally mandated duty to grant an injunction in furtherance of the Mafia crimes, and for conspiring with the Mafia to dismiss his Complaint. Plaintiff's Motion requested that the Court amend its Judgment by requesting injunctive relief and grant all other equitable relief deemed appropriate for the Court's wrongful misapplications of law. In response, Judge Perry persisted in her malicious neglect of Plaintiff's dire need for help and

intentionally neglected the Mafia crimes and rights violations. (See the Court's April 7, 2010 Order). In lieu of Judge Perry's malicious neglect and obstruction of justice, Plaintiff responded with a Motion for an Amended Judgment on April 16th. Plaintiff again requested that the Court amend its Judgment and grant relief since adverse judicial rulings can constitute a valid basis for recusal, "...when they display deep-seated favoritism or antagonism that would make a fair judgment impossible." (See "Plaintiff's Motion For an Amended Judgment," p. 2, ¶1).

Notwithstanding Plaintiff's requests for relief, the Court ruled on April 20, 2010 that Plaintiff was outside the 28-day deadline to file for an Amended Judgment and denied his Motion despite knowledge of the continuing Mafia crimes and the Court's criminal violations of 18 USC §2-§4, 18 USC §1510, 18 USC §1512(b), 18 USC §2381, 18 USC §2382, and others.

Plaintiff subsequently filed a Motion for Extension of Time to Appeal on May 10, 2010 for "excusable neglect" caused by the continuing Mafia conspiracy and obstruction of justice but was denied on May 12, 2010. Effectively, the Mafia crimes and rights violations were allowed to continue to the present day.

#### **IV. LEGAL ARGUMENT**

**A. Pursuant to Rule 60(b)(5) and (6), this Court's January 4, 2010 Judgment is not equitable and has no prospective application since it misapplied fundamental principles of case law and violated Constitutional norms by allowing Government officials to act with deliberate indifference and arbitrary enforcement of the laws.**



On January 4, 2010, this Court dismissed Plaintiff's Complaint *sua sponte* pursuant to Rule 12(b)(1) and 12(b)(6) on the basis that the it failed to state a cause of action. Albeit Plaintiff appealed the Court's Judgment, the Judgment's case law was wrongfully misapplied in contravention to basic Constitutional norms, criminal statutes, and common law authority. Therefore, pursuant to Rule 60(b)(5) and (6), the Judgment cannot be considered equitable or have any prospective application. Accordingly, the following sections address the Court's misapplication of case law to Plaintiff's claims.

### **Plaintiff's Section 1983 Claim**

#### **1. The Court's Wrongful Neglect of the Deliberate Deprivation Constitutional Norm.**

The gravamen of this Court's dismissal of Plaintiff's Section 1983 claim was that the St. Louis County Police, FBI, and other Government officials could intentionally neglect acts of stalking, extortion, torture and terrorism committed by the Mafia since Government officials have no duty to protect citizens from private acts of violence. (See Judge Perry's Judgment citing, *DeShaney v. Winnebago County Dep't of Social Servs.*, 489 U.S. 189, 195 (1989); *Dorothy J. v. Little Rock School District*, 7 F.3d 729, 731-32 (8<sup>th</sup> Cir. 1993)). Notwithstanding the Judgment, the issue of intentional neglect by Government officials was already decided by the Supreme Court in *Daniels*. According to *Daniels*, due process protection has "historically... been applied to *deliberate* decisions of government officials that deprive a person of life, liberty, or property." *Daniels v. Williams*, 474 U.S. 327, 331, 106 S. Ct. 662, 88 L. Ed. 2d 662 (1986). The *Daniels* court made clear that there are certain types of government acts that violate the Due

Process Clause regardless of the procedures used to implement them. *Id.* The Due Process Clause forbids these actions in order to prevent “Governmental power from being ‘used for purposes of oppression.’” *Id.* at 665 (quoting *Murray's Lessee v. Hoboken Land & Improvement Co.*, 18 How. (59 U.S.) 272, 277, 15 L.Ed. 372 (1856)). Whether dealing with procedural or substantive Due Process, “[t]he touchstone ... is protection of the individual against arbitrary action of government.” *Id.* (quoting *Dent v. West Virginia*, 129 U.S. 114, 123, 9 S.Ct. 231, 233, 32 L.Ed. 623 (1889)). To injure is to deprive of life or liberty without due process. When holding in *Daniels* that the Due Process Clause does not forbid negligent deprivations, the Court recognized that the Constitution forbids deliberate, unauthorized deprivations. *Id.*; see also *Wilson v. Beebe*, 770 F.2d 578 (6th Cir. 1985)(A violation of substantive due process by reason of alleged reckless and/or negligent conduct of a law enforcement officer requires intentional action for a valid Section 1983 claim.). Accordingly, because Plaintiff alleged the Defendants intentionally neglected to investigate and end the crimes despite the foreseeable prospect of injury (See Complaint, ¶¶ 3, 4, 5, 6, 7, 22, 69, 85, 99, 102, 123, 177, 188), the Court wrongfully neglected wrongful acts of deliberate indifference by the Defendants to dismiss his Section 1983 claim.

The Eighth Circuit has repeatedly emphasized that “only the most egregious official conduct can be said to be ‘arbitrary in the constitutional sense.’” *Putnam v. Keller*, 332 F.3d 541 (8<sup>th</sup> Cir. 2003) (quoting *Collins v. City of Harker Heights*, 503 U.S. 115, 128, 117 L. Ed. 2d 261, 112 S. Ct. 1061 (1992)). To establish a substantive due process claim, a Plaintiff must show that the officials’ arbitrary action “shocks the conscience.” *Id.* “Conduct intended to injure in some

way unjustifiable by any government interest is the sort of official action most likely to rise to the conscience-shocking level.” *Collins*, 523 U.S. at 849. We may also consider conduct that evinces a “deliberate indifference” to protected rights if the Government officials had an opportunity to consider other alternatives before choosing a course of action. *Neal v. St. Louis County Bd. of Police Comm’rs*, 217 F.3d 955, 958 (8th Cir. 2000) (providing that “where a state actor is afforded a reasonable opportunity to deliberate various alternatives prior to electing a course of action, the chosen action will be deemed ‘conscience shocking’ if the action was taken with ‘deliberate indifference’”) (citing *Lewis*, 523 U.S. at 850-51). Accordingly, since Plaintiff alleged the Defendant STLPD officers, FBI agents, Assistant Attorney General Kapplehoff and others had time to deliberate various alternatives prior to deciding whether to protect Plaintiff from the Mafia stalking, extortion and torture that would knowingly continue as a result of their decision to refuse enforcement of the laws (see Complaint ¶¶ 6, 50, 51, 54, 57, 63, 64, 65, 66, 69, 70, 76, 81, 84, 85, 88, 99, 100-105, 112, 114-116, 119, 121, 122, 132-138, 162-163, 170, 177, 186, 188-189), the Defendants’ actions were “arbitrary,” “conscience shocking” and done with “deliberate indifference” so as to constitute abusive Governmental power “used for purposes of oppression” to thereby entitle Plaintiff a right to remedy under Section 1983. *Id.*

The deliberate deprivation rule is a well established Constitutional norm that opposes arbitrary enforcement and imputes liability to Government officials when violated. *Archie v. City of Racine*, 847 F.2d 1211 at 1233 (7th Cir. 1988) (“...whoever wields official power may not deliberately injure anyone.”); see also *Steven Kern v. City of Gerald*, 2008 U.S. Dist. LEXIS

89447, p.10 (8th Cir. 2008)(“Plaintiffs have set forth very broad allegations stating that the defendants acted recklessly and willfully in failing to properly train, hire and supervise the police officers... these facts would likely overcome the protections afforded by official immunity or the public duty doctrine, even assuming that these defenses were applicable...dismissal at this stage is not warranted.”)(quoting Judge Perry). Albeit acts done to deliberately cause injury are sufficient to trigger a Section 1983 violation, liability in civil rights cases may be incurred even though an official does not possess “any actual malice or intent to harm (but) is so derelict in his duties that he must be treated as if he in fact desired the harmful results of his inactions.” See *Bogard v. Cook*, supra, 586 F.2d 399, 412 (5th Cir. 1978). This is so because deliberate intent may be predicated on factual circumstances which are so egregious and reckless that the natural consequences of the actor’s conduct implies the requisite malicious intent to do wrong. See *Estelle v. Gamble*, 429 U.S. 97, 105-06, 97 S. Ct. 285, 291-92, 50 L. Ed. 2d 251 (1976). Concurrently, since the Defendants deliberately neglected their duty to act against the Mafia crimes despite the foreseeable prospect of injury to Plaintiff (See Complaint, ¶¶ 3, 4, 5, 6, 7, 22, 69, 85, 99, 102, 123, 177, 188), their actions were patently egregious and reckless so as to indicate they intentionally caused injury to Plaintiff. Therefore, the Court wrongfully neglected a Constitutional *norm* to wrongfully dismiss his Section 1983 claim.

Albeit the Court relied on *DeShaney, Dorothy and Sellers* to rule that the Defendants don't have a duty to protect, on close inspection of the cases, the cases clearly do not apply to circumstances when Government officials deliberately cause injuries to citizens. In *DeShaney*,

the primary issue at hand was whether the County of Winnebago was liable for *unintentionally* providing incompetent social worker services despite efforts to help a child who was later beaten by his father into a vegetative state (*Id.*); in *Dorothy*, the Court found that a local school district did not possess a duty to protect students from *incidental* acts of sexual assault by fellow students (*See Dorothy v. Little Rock School District*, 7 F3d 729 (8th Cir. 1993)); and in *Sellers*, the Court ruled that park rangers employed by the State were not liable for the *accidental* death of a drunk citizen after he was driven to a safe area where he later walked onto an interstate freeway and was killed. (*See Sellers ex rel. Sellers v. Baer*, 28 F.3d 1026, 1037 (8th Cir. 1997). Each of the cases cited by the Court in its Judgment refer to unintentional acts of mere negligence committed by Government officials. In contrast, the Supreme Court has consistently ruled that Government officials are liable under Section 1983 when they are patently reckless in their duties and demonstrate a malicious intent, including: stomach pumping, *Rochin*, 342 U.S. 165 (1952); paddling a student, *Ingraham v. Wright*, 430 U.S. 651, 97 S. Ct. 1401, 51 L. Ed. 2d 711 (1977); and the intentional destruction of an inmate's property, *Hudson v. Palmer*, 468 U.S. 517, 104 S. Ct. 3194, 82 L. Ed. 2d 393 (1984).) Plaintiff alleged recklessness on behalf of the Defendants when they willfully and knowingly neglected enforcement of the laws and refused to investigate for 9 years despite knowledge of injuries (See Complaint, ¶¶ 3, 4, 5, 6, 7, 22, 69, 85, 99, 102, 123, 177, 188). Accordingly, since the case law the Court relied on in its Judgment only applies to incidental acts of negligence, the Court wrongfully overlooked the Defendants' wrongful acts of malicious conduct to dismiss Plaintiff's Section 1983 claim.

The Supreme Court has already ruled that the Police are culpable when they display deliberate indifference to protecting citizens from harm despite knowledge of a foreseeable risk. *Nishiyama v. Dickson County Tennessee*, 814 F.2d 277 (6<sup>th</sup> Cir. 1987). In *Nishiyama*, the Court considered the defendants' behavior outrageous because they "consciously and voluntarily *failed to respond to the danger*" stating that "such reckless indifference to the risk posed by their actions is sufficient to establish a violation of substantive due process under section 1983." *Id.* at 283. Plaintiff presented an identical case to *Nishiyama* where the St. Louis County Police officers, Unknown FBI Agents, and other Defendants demonstrated a custom of consciously *failing to respond to the danger* by intentionally denying Plaintiff's complaints for several years and demonstrating reckless indifference to the risk of the foreseeable prospect of the continuing Mafia crimes, injuries and Constitutional rights violations (see Complaint ¶¶ 6, 50, 51, 54, 57, 63, 64, 65, 66, 69, 70, 76, 81, 84, 85, 88, 99, 100-105, 112, 114-116, 119, 121, 122, 132-138, 162-163, 170, 177, 186, 188-189). Accordingly, since the Supreme Court has already decided that the Defendant law enforcement officials cannot consciously fail to respond to dangers and recklessly cause injuries, the Judgment has no prospective application and Plaintiff is entitled to reconsideration.

2. The Court's Wrongful Reliance on the Danger-Creation Theory to Dismiss Plaintiff's Section 1983 Claims: the Defendants Are the Direct Cause of Damages.

In addition to wrongfully relying on *DeShaney*, *Dorothy Sellers*, and others to ignore the Defendants' malicious neglect of their duty, the Court wrongfully dismissed Plaintiff's Section

1983 count by claiming he did not allege any facts suggesting that the Defendants “affirmatively created” his peril or “acted to render [Plaintiff] more vulnerable to danger.” (See Judgment, p. 9, ¶2). In contravention, the danger-creation doctrine does **not** apply when the injury occurs due to the action of another state actor. *Moore v. Guthrie*, 438 F.3d 1036, 1042 (US App. 10th Cir. 2006). Plaintiff alleged that the Defendants were not merely negligent when enforcing the laws, but *aided and abetted* the continuing Mafia crimes by intentionally committing omissions and violating criminal statutes, such as: criminal negligence (RSMo 562.016), aiding and abetting (18 USC §2), accessory after the fact (18 USC §3), misprision of felony (18 USC §4), conspiracy to oppress rights (18 USC §241), obstruction of justice (18 USC 1510), treason (18 USC 2381), misprision of treason (18 USC §2382), witness tampering (18 USC §1512), the Communications Act (18 USC §2511) and others. (See Complaint, ¶23). Accordingly, because Plaintiff alleged his damages and injuries were caused by the Defendants who assisted in injuring him, the danger-creation theory does not apply. Therefore, the Court wrongfully relied on the danger-creation doctrine to dismiss Plaintiff’s Complaint.

Despite the Court’s belief that Plaintiff did not allege any facts suggesting the Defendants created or worsened his peril, Plaintiff’s Complaint reasonably inferred that the Defendant Government officials *created* and *worsened* his peril when he alleged the Police and FBI maliciously neglected their affirmative duty to enforce the laws and the Mafia began bugging private and public property to inflict harm on Plaintiff “at all times in his life.” (*Id.* at ¶¶8, especially 58, 190). Plaintiff eventually contacted the Federal Communications Commission

(FCC) and other political agencies for violations of the Communications Act, but was repeatedly referred to the FBI for law enforcement assistance. (*Id.* at ¶187). The FCC is an independent agency of the United States Government, created, directed and empowered by Congressional statute (see 47 USC §151 and 47 USC §154), and with the majority of its commissioners appointed by the current President. The FCC was established by the Communications Act of 1934 and is charged with regulating and licensing *all* non-federal government use of the radio spectrum (including radio and television broadcasting), and *all* interstate telecommunications (wire, satellite and cable) as well as *all* international communications that originate or terminate in the United States. Although the FCC's Enforcement Bureau is responsible for enforcement of FCC rules and orders, the Government's Department of Homeland Security, FBI and CIA are responsible for enforcing *all* FCC law violations. Accordingly, since the radio communications industry is monopolized by the Government, and since the Government enacted 47 USC § 151 and 47 USC § 154, it created Plaintiff's peril by consciously allowing the Mafia to use an amateur radio frequency channel to transmit illegal communications without providing Plaintiff an avenue for relief (See Complaint ¶¶8, 106, 187); *see also Archie v. Racine* at 1246 (7th Cir. 1988)(When the Government monopolizes the avenues of relief, or when it has not already afforded process sufficient to yield accurate decisions, it has an obligation to give aid.). Therefore, because Plaintiff's Complaint reasonably infers that his situation was caused by the Defendants and worsened as a result of their custom of maliciously neglecting the regulating and enforcing of the Communications Act, Plaintiff correctly plead a Section 1983 claim.



Lastly, the danger creation doctrine is not an instrument that allows Government officials to commit criminal acts of negligence, misprision of felony, aiding and abetting, conspiracy, treason, obstruction of justice and others. On one hand, the Courts cannot rely on common law authority in disregard of existing Constitutional and statutory provisions. *Dayton v. State*, 120 P.3d 1073, 1080 (2005) (“[When] the legislature enacts a statute to govern the same matter, the statute controls”). Effectively, the Court cannot justify the Defendants’ custom of criminally neglecting criminal acts using common law authority when criminal negligence and misprision of felony are forbidden by statutory decree. Moreover, the danger creation doctrine fails when applied to circumstances where Government officials are motivated by ill will, malice, personal bias, hatred or illegitimate government objectives. *See White v. Lemacks*, 183 F.3d 1253, 1259 (11th Cir. 1999) (“[T]he ‘special relationship’ and ‘special danger’ doctrines applied in our decision in *Cornelius* are no longer good law, having been superseded by the standard employed by the Supreme Court in *Collins*” [i.e., the shocks the conscience standard]). Thus, since the danger-creation theory has no application to circumstances where Government officials intentionally neglect enforcement of the laws and commit crimes to violate a Plaintiff’s Due Process rights, the Court’s reliance on the danger-creation theory has no application to Plaintiff’s Complaint.

#### **Plaintiff’s Section 1985 Claim**

The Court also wrongfully dismissed Plaintiff’s Section 1985 claim by alleging he failed to state he was discriminated against as a member of a protected class. In contrast, to establish a

violation of equal protection, a Plaintiff must show that: (1) he was selectively treated compared with others similarly situated, and (2) the selective treatment was based upon impermissible considerations, such as membership in a suspect class, intent to inhibit or punish the exercise of a constitutional right, or *malicious or bad faith intent to injure*. *Giordano v. City of New York*, 274 F.3d 740, 750-51 (2001); *Lisa's Party City, Inc. v. Town of Henrietta*, 185 F.3d 12, 16 (1999); *LaTrieste Rest. & Cabaret v. Vill. of Port Chester*, 40 F.3d 587, 590 (1994). Concurrently, the Court wrongfully overlooked Plaintiff's allegations of discrimination since the following elements were reasonably inferred in Plaintiff's Complaint:

1. Selective Treatment Compared With Others Similarly Situated

To establish selective treatment, a plaintiff must prove that he or she was similarly situated to other people but was nevertheless treated differently. *Penlyn Dev. Corp. v. Incorporated Vill. of Lloyd Harbor*, 51 F. Supp. 2d 255, 264 (E.D.N.Y. 1999). "To be similarly situated, the persons at issue need not be identical, but must be similar in all material respects." *Holmes v. Gaynor*, 313 F. Supp. 2d 345, 355 (S.D.N.Y. 2004) (internal quotations and citations omitted). "The test is whether a prudent person, looking objectively at the incidents, would think them roughly equivalent. Exact correlation is neither likely nor necessary, but the cases must be fair congeners." *Penlyn Dev. Corp.*, 51 F. Supp.2d at 264.

From the record, it is clear that the Defendants discriminated against the Plaintiff by maliciously neglecting enforcement of the laws. When Plaintiff asked the STLPD's Sergeant Hampton if the Police followed a policy or procedure when investigating crimes, Hampton

replied, “Yeah, it’s called a crime. If it is true a crime, officers are bound by law to investigate. That’s what their oath is. The investigation that we’d have to look into is if there is probable cause and if there was an actual crime committed.” (See Complaint ¶114). Concurrent with Hampton’s statements and criminal statutes, since the STLPD Defendants are “bound by law to investigate” when probable cause is established, it is reasonably inferred from Plaintiff’s Complaint that Plaintiff was discriminated against compared to similarly situated complainants. Plaintiff proffered positive confirmations of bug sweeps, recordings of death threats, transcripts of A-1 and Bonine intentionally obstructing justice, complaint letters that were maliciously neglected by Police officers, and other compelling evidence that established knowledge of a crime. (*Id.* at ¶¶ 117, 135). Despite the STLPD’s custom of investigating crimes against citizens, the Defendant police officers maliciously refused to enforce the laws and intentionally allowed the Mafia crimes to persist. (*Id.* ¶122.). Thus, an issue of material fact exists as to whether similarly situated complainants would receive Police assistance for Mafia stalking, extortion and torture.

## 2. Malicious Discrimination of Plaintiff As a Member of Personal Animus

“The branch of equal protection law that protects individuals from unequal treatment motivated by ‘malicious or bad faith intent to injure’ provides protection from adverse governmental action that is not motivated by ‘legitimate governmental objectives.’” *Bizzarro v. Miranda*, 394 F.3d 82, 87 (2005) (quoting *Esmail v. Macrane*, 53 F.3d 176, 180 (1995)). Police officers are under a “statutorily imposed duty to enforce the laws equally and fairly,” *Thurman*,

595 F. Supp. at 1527 (*quoting Smith v. Ross*, 482 F.2d 33, 36 (6th Cir. 1973) (per curiam).

Although victims lack a Constitutional right under the equal protection clause to compel criminal prosecution (*Doe v. Mayor and City Council of Pocomoke City*, 745 F. Supp. 1137, 1139 (D. Md. 1990) (“The Court is not aware of a constitutional, statutory, or common law right that a private citizen has to require a public official to investigate or prosecute a crime.”), the district court in *Thurman* determined that “[p]olice action is subject to the equal protection clause... whether in the form of commission of violative acts or omission to perform required acts pursuant to the police officer’s duty to protect.” 595 F. Supp. at 1527. Applying *Bizzaro*, *Doe* and *Thurman*, a Police officer’s failure to investigate is considered a Constitutional wrong in circumstances when malice is used. A leading legal commentator on Constitutional issues agrees. *See* Laurence H. Tribe, *American Constitutional Law* 124 (2d ed. 1988) (“The interest in the just administration of the laws, including the interest in nondiscriminatory criminal enforcement, is presumptively deemed nonjusticiable... only if the litigant is immediately affected as a target of enforcement then can that presumption be overcome”). Therefore, since the Mafia crimes are continuing as a direct cause of the Defendant law enforcement officials’ malicious non-enforcement of the laws (See Complaint, ¶¶ 51, 65, 85, 103, 119, 136, 138, 186, 188), Plaintiff correctly pled a valid Section 1985 claim.

Where Plaintiff’s Complaint did not claim that the unequal treatment was due to his membership in any protected class or racial or gender group, it can be reasonably inferred that he is a “class-of-one” since he suffered malicious discrimination. (See Complaint, ¶¶ 5, 6, 7, 22, 51,

85, 102, 138, 149, 177, 200). In *Village of Willowbrook v. Olech*, 528 U.S. 562, 145 L. Ed. 2d 1060, 120 S. Ct. 1073 (2000) (per curiam), the Supreme Court held that plaintiffs need not allege that they are part of a suspect class to state an Equal Protection claim. See also *Bartell v. Aurora Pub. Schs.*, 263 F.3d 1143, 1148-49 (10th Cir. 2001) (“Equal Protection affords protection to an individual injured by intentional or purposeful discrimination without identification of a class.”). In their per curiam opinion, the Supreme Court affirmed the class-of-one theory finding that the purpose of equal protection “is to secure every person within the State's jurisdiction against intentional and arbitrary discrimination.” *Id.* at 564, quoting *Sioux City Bridge Co. v. Dakota County*, 260 U.S. 441, 445, 67 L. Ed. 340, 43 S. Ct. 190 (1923) (internal quotation marks omitted). The Court stated that “these allegations [of irrational and wholly arbitrary treatment],... are sufficient to state a claim for relief under traditional equal protection analysis.” *Olech*, 528 U.S. at 565. Clearly, Plaintiff’s allegations of malice and ill-will by the Defendants reasonably infer he was discriminated against as a “class-of-one.”

Some courts have attempted to cabin the reach of class-of-one equal protection cases by demanding that plaintiffs present evidence not merely of arbitrariness but of malice or ill-will against the plaintiff. *Discovery House, Inc. v. Consol. City of Indianapolis*, 319 F.3d 277, 283 (7th Cir. 2003) (adopting Justice Breyer’s concurrence as the holding of *Olech*; noting that the malice requirement “is a very significant burden” put in place to ensure that federal courts do not become “zoning boards of appeal”); *Harlen Assocs. v. Inc. Vill. of Mineola*, 273 F.3d 494, 499-500 (2d. Cir. 2001) (personal animus is an element of a class-of-one case); *Williams v.*

*Pryor*, 240 F.3d 944, 951 (11th Cir. 2001) (explaining *Olech* as “holding that plaintiff stated a constitutional Equal Protection Clause cause of action by alleging that the village acted irrationally, wholly arbitrarily, and out of malice toward plaintiff”). Other courts have adopted a similar approach. *Bartell* dismissed the class-of-one claim because plaintiff provided “no concrete evidence of a ‘campaign of official harassment directed against him out of sheer malice.’” 263 F.3d at 1149, quoting *Esmail v. Macrane*, 53 F.3d 176, 179 (7th Cir. 1995). Despite the significant burden of stating an Equal Protection claim by alleging malice, Plaintiff alleged ad nauseam that he suffered several adverse actions that were not prompted by legitimate Government objectives and was singled out in violation of his Equal Protection rights. (See Complaint, ¶¶ 5-7, 23, 85, 132, 177, 188, 202(A)). The outright use of malice by Government officials is demonstrative to the exceptional circumstances of this case where the Mafia is conspiring with public officials to further their malevolent campaign against the Plaintiff. Concurrently, based on the foregoing, Plaintiff’s Complaint reasonably infers that he was singled out in violation of his Equal Protection rights. Moreover, this Court’s belief that Plaintiff failed to allege he was a member of a discriminated class has no application since intentional acts of negligence imputes liability under Section 1985.

**B. Pursuant to Federal Rules of Civil Procedure Rule 60(b)(2), Plaintiff is entitled to Reconsideration based on Newly Discovered Evidence of New Violations of the Communications Act, Criminal Statutes and Plaintiff’s Constitutional Rights.**

In its January 4th Judgment, the Court proceeded to allege Plaintiff was time barred by the 2-year statute of limitations since he allegedly “discovered” violations of the Communications Act in 2001. (See Judgment, p. 7 footnote). Despite the fact that Plaintiff was entitled to an injunction for demonstrating probable cause of the Mafia’s continued use of illegal communication devices (See Plaintiff’s Motion to Proffer Evidence, Exhibits 1-12); see also *U.S. v. Richlyn Laboratories, Inc.*, 827 F.Supp. 1145, (E.D.Pa. 1992)(In actions for statutory injunctions, moving party need only show that probable cause exists to believe that statute in question is being violated and that there is some reasonable likelihood of future violation; no specific or immediate showing of precise way in which violations of law will result in public harm is required.), the *continuing violation doctrine* and *discovery rule* currently entitle Plaintiff to relief to end the continuing Mafia crimes against him pursuant to Rule 60(b)(2).

According to the “discovery rule,” there is no actual or constructive knowledge of a wrong until the plaintiff has sufficient information to file a complaint that would survive a motion to dismiss. *Burd v. New Jersey Tel. Comp.*, 76 N.J. 284, 291-92 (1978). “The discovery rule is essentially a rule of equity” developed “as a means of mitigating the often harsh and unjust results which flow from a rigid and automatic adherence to a strict rule of law.” See *Lopez v. Swyer*, 62 N.J. 267, 273-274 (1973). The Supreme Court has held that “the discovery rule centers upon an injured party’s knowledge *concerning the origin and existence of his injuries* as related to the conduct of another person.” *Lynch v. Rubacky*, 85 N.J. 65, 70 (1981) (*emphasis added*). “When a party is either unaware that he has sustained an injury or, although aware that

an injury has occurred, he does not know that it is, or may be, attributable to the fault of another, the cause of action does not accrue until the discovery of the injury or facts suggesting the fault of another person.” *Tevis v. Tevis*, 79 N.J. 422, 432 (1979). Consequently, “[t]he discovery principle modifies the conventional limitations rule ... to the extent of postponing the commencement of accrual of the cause of action until plaintiff learns, or reasonably should learn, the existence of that state of facts which may equate in law with a cause of action.” *Burd v. New Jersey Tel. Comp.*, 76 N.J. 284, 291-92 (1978). Therefore, since Plaintiff was maliciously obstructed by the Defendants from discovering the origin of illegal communication devices and did not possess knowledge sufficient for a cause of action until the obstruction ended in May of 2009<sup>2</sup> (See Complaint, ¶ 188), Plaintiff was within the limitations period and relief from Judgement is currently warranted.

In addition to the discovery rule, the “continuing violation” doctrine states that activity occurring beyond a statute of limitations period can be challenged if it is part of a pattern of discrimination that extends into the limitations period. *Chambers v. American Trans Air, Inc.*, 17

---

<sup>2</sup> Defendants A-1 and Bonine denied the presence of illegal communication devices in January 2007 to prevent knowledge of the devices from being obtained. (See Complaint ¶¶106, 122). Although Plaintiff discovered the presence of an illegal phone tap in March 2007 to disprove A-1 and Bonine’s malicious statements (*Id.* at ¶127), the STLPD proceeded to obstruct justice and wrongfully deny him an investigation for the Mafia crimes in September 2007. (*Id.* at ¶138). In lieu of the STLPD’s refusal to investigate and discover the crimes, Plaintiff discovered sufficient evidence for a cause of action for the use of the devices in January of 2008 when threats were recorded from his Apple iPod equipment. (*Id.* at ¶155). Plaintiff proceeded to file a complaint against Bonine, Apple, the STLPD, and LAPD with the FBI in March of 2008. (*Id.* at ¶168). After the FBI directed Plaintiff to file a complaint with the state Police (*Id.* at ¶170), Plaintiff refiled his complaint with the STLPD and again the FBI in March of 2009. (*Id.* at ¶183, 186). Plaintiff finally received actual knowledge of the USDOJ’s refusal to correct the official misconduct in May 2009. (*Id.* at 188). Thus, Plaintiff was obstructed until May 2009 from seeking injunctive relief, and he promptly filed this lawsuit on or around July 15, 2009.



F.3d 998 (1994), certiorari denied 115 S.Ct. 512, 513 U.S. 1001, 130 L.Ed.2d 419. For continuing violations, the Courts link time barred acts with acts in the limitations period as one continuous act that ends within the limitations period. *Shanoff v. Illinois Dept. of Human Services*, 258 F.3d 696 (2001). Furthermore, under the “continuing wrong doctrine,” when a tort involves continuing or repeated injury, a cause of action accrues at, and limitations begin to run from, the date of last injury; in other words, the statute of limitations does not begin to run until the wrong is over and done with. *Tiberi v. CIGNA Corp.*, 89 F.3d 1423 (1996); *see also Kahn v. Kohlberg, Dravis, Roberts & Co.*, 970 F.2d 1030 (1992) (Claim accrues each time plaintiff sustains damages). Applied to Plaintiff’s current calamity, the Mafia’s current use of illegal communication devices extends Plaintiff’s right to injunctive relief for an additional 2 years or until the continuing violations end. *Capital Telephone Co., Inc. v. F.C.C.*, 777 F.2d 868 (1985). (Two-year statute of limitations did not preclude the Federal Communications Commission from finding unlawful discrimination on part of wire line company against radio common carrier, where wire line company’s actions constituted continuing violation such that FCC could predicate prospective relief on long-standing conduct); *see also Communications Act of 1934* §415(b), 47 U.S.C.A. §415(b). Therefore, pursuant to Rule 60(b)(2), Plaintiff is entitled to relief for reoccurring violations of the Communications Act and his Constitutional rights.

#### **Newly Discovered Evidence**

For the court to grant relief based upon newly discovered evidence under Rule 60(b)(2), a movant must meet a five-part test: (1) the evidence must be newly discovered since the trial; (2)

due diligence on the part of the movant to discover the new evidence must be shown; (3) the evidence must not be merely cumulative or impeaching; (4) the evidence must be material; and (5) the evidence must be such that a new trial would probably produce a new result. *Toole v. Baxter Healthcare Corp.*, 235 F.3d 1307, 1316 (11th Cir. 2000). “A motion for a new trial under Rule 60(b)(2) is an extraordinary motion and the requirements of the rule must be strictly met.” *Id.* After the Court dismissed Plaintiff’s Complaint and denied his Motions for Injunction, the statutory and Constitutional rights violations continued as the Mafia continued using illegal communication devices to stalk, extort and torture him. Concurrent with Rule 60(b)(2), Plaintiff obtained new evidence of new violations of the Communications act, Constitutional rights violations and other violations that entitle him to relief.

A. New Evidence of New Violations of the Communications Act, Criminal Statutes and Plaintiff’s Constitutional Rights.

As a direct result of the Court’s January 4th Judgment that sanctioned the Police and FBI’s criminal neglect of the Mafia crimes and Constitutional rights violations, Plaintiff obtained *new* evidence of *new* violations of the Communications Act that extends the statute of limitations and entitles him to relief against the Defendants<sup>3</sup>. On Wednesday, January 13, 2010, Plaintiff proceeded to purchase a new Blackberry Pearl 8130 cellular phone from the Sprint Store. (See Exhibit 1, Plaintiff’s BlackBerry Pearl Receipt). Immediately after activating the phone on

---

<sup>3</sup> Pursuant to 18 USC §2511(1)(b), any person who intentionally uses, endeavors to use, or *procures any other person to use* or endeavor to use any electronic, mechanical, or other device to intercept any oral communication may in a civil action recover from the person or entity which engaged in that violation such relief as may be appropriate.

January 14, 2010, Plaintiff discovered the Mafia bugged the phone when he received harassment from Mafia members eavesdropping on his conversations and making statements such as, “Yeah, you thought we we’re going to stop, didn’t you?” Plaintiff immediately deactivated the phone on January 15th and sent payment for a Blackberry Curve 8330 that he won on Ebay on January 10th. (See Exhibits 2A and 2B, Plaintiff’s Paypal Payment and Email Confirmation Sent By Ebay Seller Oelectronics.com).

On Saturday, February 13, 2010, the Mafia stalking, extortion and torture conspiracy continued when Plaintiff purchased a song on the website, www.Facebook.com, from the Gift Shop to send as a gift to a Facebook friend. After Plaintiff downloaded the popular song, “Best I ever Had,” by the artist Drake, the Mafia proceeded to harass Plaintiff through an illegal receiver in his Apple PowerBook G4. In the same incessant fashion as the harassment in his Audi A4 Quattro and from his iPods (See Complaint ¶¶139, 141-143, 151-153, 155, 179, 181), the Mafia began playing the Apple volume button increase/decrease sound throughout the song. The harassment was transmitted to intimidate Plaintiff, prevent him from establishing relationships and demonstrate control over his life. (See Complaint, ¶¶155, 179). After hearing the harassment for his first time, Plaintiff proceeded to record the incident to proffer as evidence for new violations of the Communications Act and his Constitutional rights. (See Exhibit 3, Plaintiff’s Video of Mafia Stalking, Harassment and Exaction During the Song, “Best I Ever Had,” especially at 1:15, 1:27, 1:51, and 2:03 when the illegal transmissions are heard). Plaintiff later

spoke with several witnesses who alleged the Apple volume button noise was not part of the song so as to confirm that the new contents were indeed caused by the Mafia harassment.

On Monday, June 14, 2010 at 11:51 pm, Plaintiff proceeded to purchase and download the song, "Best I Ever Had," from the iTunes Music Store to his iPod Touch to avoid the harassment and obtain proof of the Mafia sending illegal communications. (See Exhibit 4, Plaintiff's iTunes Purchase of, "Best I Ever Had"). Seconds after downloading the song, the Mafia proceeded to transmit the Apple volume button *computer* noise to his iPod Touch<sup>4</sup>. (*Id.* at 3:09 in the recording (26-27<sup>th</sup> second of the song), 3:53 (38-39s), 4:32 (1:15s), 4:44 (1:27s), 4:56 (1:29s), 5:17 (1:49-1:50s), 5:41 (2:13s), 5:52 (2:25s), 6:17 (2:37s), 6:19 (2:39s), 6:33 (2:50s), 6:46 (3:00s), 6:58 (3:12), 7:12 (3:24s), 7:27 (3:37s), 7:40 (3:47s), 7:55 (4:00s)). The harassment on Plaintiff's iPod Touch demonstrates that Plaintiff cannot escape the Mafia's use of illegal communication devices - a key aspect of the torture (See Complaint, ¶190). Moreover, the evidence demonstrates *new* violations of the Communications Act and Plaintiff's Constitutional rights that were caused by the Court's January 4th Judgment.

On Tuesday, June 15, 2010 at 1:23 am, Plaintiff proceeded to download the iTunes song, "Best I Ever Had," to his Blackberry Curve 8330 to prove that the Mafia bugged his phone in violation of the Communications Act, criminal statutes, and his Constitutional rights. Concurrent with the harassment from illegal communication devices heard originating from his PowerBook G4 and iPod Touch (See Exhibits 3 and 4), the Mafia's stalking, extortion and torture campaign

---

<sup>4</sup> The Apple volume button noise is heard only on Mac computers, not iPods.

continued when Plaintiff played the song on his BlackBerry Curve. (See Exhibit 5, Plaintiff's Video of Mafia Use of Illegal Communication Device in BlackBerry Curve)(especially at 3:10 in the recording (**16th second of the song**)<sup>5</sup>, 3:21 (28s), 3:33 (39s), 4:09 (1:15s), 4:21 (1:27s), 4:45 (1:50s), 5:04 (**1:54s**), 5:22 (**2:03**), 5:38 (2:14s), 5:55 (2:27), 6:09 (2:38s), 6:11 (2:39s), 6:27 (2:50s), 6:43 (3:02s), 6:57 (3:13s), 7:13 (3:25s), 7:28 (3:37s), 7:41 (3:48s), 7:54 (4:01s)). During the song, the Apple volume button harassment is heard originating from the speaker of the BlackBerry Pearl. The sequence of the volume button harassment differs from the former recording on 4 occasions and demonstrates an attempt by the Mafia to conceal the presence of a man maliciously harassing, stalking and preying on Plaintiff. Accordingly, the video proves the Mafia bugged Plaintiff's BlackBerry Curve to commit *new* violations of the Communications Act, criminal statutes and his Constitutional rights.

Plaintiff discovered more *new* evidence of the Mafia bugging his new BlackBerry phones on Tuesday, June 22, 2010 at 10:38 pm when he proceeded to record the downloading and playing of the songs, "Best I Ever Had," and, "Café Style," on his BlackBerry Pearl 8130. Concurrent with the harassment Plaintiff received on his Curve, the Mafia proceeded to transmit the Apple volume button harassment in reckless disregard of Plaintiff's rights and the Court's authority. (See Exhibit 6, Plaintiff's Video of Mafia Harassment on BlackBerry Pearl). In addition to demonstrating violations of the Communications Act and that a conspiracy exists to

---

<sup>5</sup> The bold font indicates parts of the song when the Apple volume button harassment was heard in the BlackBerry Curve 8330 recording but not the former iPod Touch recording. Additionally, the Apple volume button harassment from the iPod Touch recording was heard at 4:56 (1:29s) but not in the BlackBerry Curve 8830 recording.

perpetuate the crimes, the newly discovered evidence proves that Plaintiff is reliant on the Government and that a special relationship exists due to the Government's monopolization of the communications industry. The new evidence also demonstrates that Plaintiff's peril worsened because the Defendants were allowed to intentionally neglect enforcement of the laws in furtherance of the Mafia crimes.

Finally, on Wednesday, June 30, 2010 at 12:34 pm, Plaintiff obtained new evidence of new violations of the Communications Act, criminal statutes and his Constitutional rights when he proceeded to record the song "Best I Ever Had" from the MTV website, <http://www.mtv.com/videos/drake/405950/best-i-ever-had.jhtml>. (See Exhibit 7, Mafia Illegal Communications On MTV Website to "Best I Ever Had"). In the recording, the Mafia transmitted the Apple volume button harassment that was formerly heard on Plaintiff's BlackBerry phones and iPod Touch to an illegal receiver planted in his Apple PowerBook G4. The website demonstrates that the Mafia harassment is not part of the songs purchased from the Facebook Gift Shop and the iTunes Music Store. Furthermore, the video demonstrates the Mafia is transmitting *new* harassment to an illegal communication device to harass Plaintiff every time he listens to music to escape the incessant stalking, extortion and torture from illegal communication devices. (See Complaint, ¶¶ 95, 96, 135, 153, 155, 157, 174, 179, 181, 190).

The new violations of law were allowed by the Defendants who proceeded to continue in their pattern of criminal neglect of the Communications Act and Plaintiff's Constitutional rights. According to the online encyclopedia Wikipedia.com, an "audio file format" is a particular way

that information is encoded for storage in a computer file. It's primary function is for evidentiary purposes. Because the data is encoded and then stored, an audio file cannot change in the middle of playback. Concurrently, the new recordings prove that Plaintiff's new BlackBerry phones were bugged and that the Mafia committed *new* violations of the Communications Act and his Constitutional rights. Therefore, Plaintiff is is entitled to Relief From Judgment pursuant to Rule 60(b)(2).

### **V. CONCLUSION**

On January 4, 2010, this Court dismissed Plaintiff's Complaint and denied his Emergency Motions for Injunction based on the grounds that Government officials are immune from liability since they have no duty to protect US citizens from private acts of violence. On close inspection of *DeShaney*, *Dorothy*, *Sellers* and others, however, the Courts clearly do not support Government officials when they deliberately neglect their duty and arbitrarily enforce the laws to cause injuries to citizens. It is well established precedent that when Government officials have time to deliberate their decision whether to provide protective services and possess knowledge of injuries and Constitutional rights violations, they are liable for arbitrary enforcement of the laws pursuant to Section 1983. This type of arbitrary enforcement is what was deemed "conscience shocking" and was expressly forbidden by the Supreme Court in *Daniels*, *Collins*, *Nishiyama* and others. Indeed, the belief that Government officials can arbitrarily enforce the laws undermines fundamental Constitutional norms and renders the Constitution a sham.

The Court's failure to grant an injunction and refusal to report the crimes renders assistance to enemies of the United States and violates criminal statutes in an act of treason. Pursuant to 28 USC §1361, this Court had a mandatory duty to grant Plaintiff's emergency motions for injunctive relief when probable cause of a statute violation was made known. Although the Court had a duty to accept as true Plaintiff's factual allegations (*Bell Atl. Corp. v. Twombly*, 550 U.S. at 556 (2007) ("[F]acial plausibility" exists "when the plaintiff pleads factual contents that allow the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.")), the Court failed to award Plaintiff an injunction in furtherance of the Mafia crimes. As a direct result of this Court's January 4th dismissal, the Defendants were allowed to criminally neglect the Mafia crimes against Plaintiff, his family and members of society. Notwithstanding, common law does not override criminal law, and the case law this Court relied on in its Judgment cannot allow Government officials to intentionally commit crimes and violate Plaintiff's Due Process rights. Albeit the continuing wrongs doctrine and discovery rule are sufficient to grant Plaintiff injunctive relief, the new evidence of the Mafia bugging his phones and torturing him are sufficient to impute liability on the Defendants for maliciously neglecting his rights in violation of the Communications Act, his Constitutional rights and Sections 1983, 1985, 1986 and 1988.

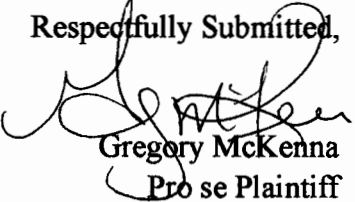
WHEREFORE, pursuant to Rule 60(b)(2), (5) and (6), Plaintiff respectfully requests that this Court grant his Motion For Relief From Judgment. Plaintiff also requests that this Court perform its statutorily imposed duty pursuant to 28 USC §1361, 18 USC §4 and 18 USC §2381



and grant an injunction to end the Defendants' deliberate neglect of violations of the Communications Act and his Constitutional rights. Plaintiff also requests all other relief that this Court deems just and equitable.

Date: July 31, 2010.

Respectfully Submitted,



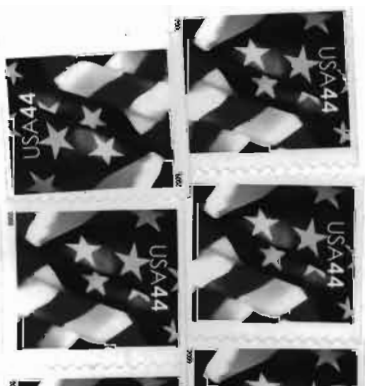
Gregory McKenna  
Pro se Plaintiff  
9937 Young Drive, H  
Beverly Hills, CA 90212  
(310) 493-4990

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 31 day of July, 2010 a true and accurate copy of Plaintiff's Motion For Relief From Judgment will be forwarded to the Defendants, via first-class mail, postage prepaid, to:

- 1) Defendants the St. Louis County Police Department, Officers Charles Boschert, & Kenneth Williams, 41 North Central, Clayton, Missouri 63105;
- 2) Defendant Unknown FBI Agents and Mark Kappelhoff, US Attorney's Office, 111 South 10<sup>th</sup> Street, #20.333, St. Louis, MO 63102;
- 3) Defendant Apple Inc. represented by Thompson Coburn LLP, Kathy A. Wisniewski & John W. Rogers, One Bank Plaza, St. Louis, MO 63101;
- 4) Defendant D'Angelo Automotive represented by Childress Ahlheim Cary, Thomas Lewis, 1010 Market Street, Suite 500, St. Louis, MO 63101.

Gregory McKenna  
9937 Youngs Drive, H  
Beverly Hills, CA 90212



U.S. District Court

Attn: Clerk's Office

111 South 10th Street, Suite 3.300

St. Louis, MO 63102

RECEIVED  
BY MAIL

AUG - 4 2010

U.S. DISTRICT COURT  
EASTERN DISTRICT OF MO  
ST. LOUIS

Do Not Bend

