

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA**

**UNITED STATES OF AMERICA** \* **CRIMINAL NO. 07-103**  
v. \* **SECTION: "L"**  
**JAMES PERDIGAO** \*  
\* \* \*

**GOVERNMENT'S MOTION  
IN LIMINE TO EXCLUDE THE EXPECTED TESTIMONY  
OF CHARLES GRIFFIN AS INADMISSIBLE HEARSAY**

**NOW INTO COURT**, through the undersigned Assistant United States Attorneys, comes the United States of America who respectfully moves this Honorable Court to exclude the expected testimony of Charles Griffin as inadmissible hearsay.

On October 2, 2008, in the status conference held in chambers, counsel for Perdigao, William Wessel, indicated that his co-counsel, Charles Griffin, was going to testify on behalf of the defendant, James Perdigao, thereby refuting Perdigao's admissions to FBI agents. Because of this revelation, Mr. Wessel indicated to the Court that the defendant was going to replace Mr. Griffin with another counsel and possibly terminate himself from the case necessitating a

continuance of the trial. For reasons outlined in the attached memorandum, the government submits that the expected testimony of Charles Griffin is inadmissible hearsay, as it violates Federal Rules of Evidence 801(d)(2).

Respectfully submitted,  
JIM LETTEN  
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**CERTIFICATE OF SERVICE**

I hereby certify that on October 3, 2008, I electronically filed the foregoing with the Clerk of Court by using the CM/ECF system which will send a notice of electronic filing to William F. Wessel, Attorney at Law. I further certify that I mailed the foregoing document and the Notice of Electronic filing by First Class Mail, postage prepaid and properly addressed to Charles F. Griffin, Attorney at Law, 802 S. Carrollton, New Orleans, Louisiana, 70118.

/s/ James R. Mann  
JAMES R. MANN

**UNITED STATES DISTRICT COURT  
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**UNITED STATES OF AMERICA** \* **CRIMINAL NO. 07-103**  
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**MEMORANDUM IN SUPPORT OF GOVERNMENT'S MOTION  
IN LIMINE TO EXCLUDE THE EXPECTED TESTIMONY  
OF CHARLES GRIFFIN AS INADMISSIBLE HEARSAY**

**MAY IT PLEASE THE COURT:**

In response to defendant's request seeking all statements by the defendant, James Perdigao, the government tendered 21 statements, which it had in its possession, pursuant to the Rule 16. Subsequently, at the status conference held in chambers on October 2, 2008, defendant's counsel, William Wessel, advised the Court that, after reviewing these statements, he feels compelled to call co-counsel Charles Griffin as a defense witness, to refute Perdigao's admissions to FBI agents. The government submits that based upon the expected testimony by Charles Griffin as indicated by Mr. Wessel, it would be inadmissible hearsay in violation of Fed. R. Evid. 801(d)(2).

## LAW AND ARGUMENT

Hearsay evidence is defined in Fed. R. Evid. 801(d)(2) as follows:

### ***HEARSAY***

*Hearsay is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.*

While this rule defines what hearsay is, another section thereof specifically defines what type of out of Court statements are deemed not to be hearsay. Indeed 802(d)(2) states, in pertinent part:

### ***ADMISSION BY PARTY OPPONENT***

*The statement if offered **against** a party and is (A) the parties own statement and either an individual or representative capacity . . . (emphasis added)*

The primary reason the expected testimony of Charles Griffin would be inadmissible hearsay is Griffin would be testifying for a party and not against a party, that is as to Perdigao's non-self inculpatory statements Perdigao made during his interviews with FBI agents. Simply put, non-self inculpatory statements or, more specifically, trying to elicit through Charles Griffin any exculpatory statements of Perdigao is inadmissible hearsay. Williamson v. United States, 512 U.S. 594, 599 , 114 S. Ct. 2431 129 L.Ed. 2nd 476 (1994). United States v. Ortega , 203 F.3d. 675, 682 (9th Cir. 2000), United States v. Mitchell, 502 F.3d 931, 964-965 (9th Cir. 2007).

The government submits that Charles Griffin can not testify on behalf of James Perdigao and render any non-self inculpatory testimony because he is not the party opponent. The government submits that Mr. Wessel's representation is a blatantly obvious attempt to get a trial continuance and to keep the defendant James Perdigao off the stand avoiding cross examination

while at the same time, having his attorney substitute his testimony for Perdigao's.

**WHEREFORE**, for the foregoing reasons, any testimony of Charles Griffin should be excluded if the testimony is designed to refute Perdigao's admissions to FBI agents as inadmissible hearsay, and moreover, any continuance of the trial date based upon substituting counsel for Charles Griffin should not be entertained by the Court.

Respectfully submitted,  
JIM LETTEN  
UNITED STATES ATTORNEY

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