

UNITED STATES DISTRICT COURT

for the Northern District of California

United States of America )
v. )
GREGORY LEE GIUSTI )
Defendant )

Case No. 3 10 70260

ORIGINAL FILED

APR 8 2010

RICHARD W. WIEKING CLERK, U.S. DISTRICT COURT NORTHERN DISTRICT OF CALIFORNIA

AMENDED CRIMINAL COMPLAINT

I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

On or about the date of 2/6 to 3/25/10 in the county of San Francisco in the Northern District of California, the defendant violated 47 U. S. C. § 223, an offense described as follows:

making obscene, harassing and threatening telephone calls made in interstate or foreign commerce.

This criminal complaint is based on these facts: See attached Affidavit of Bryan S. Smith

Approved as to Form: [Signature] AUSA Cynthia M. Frey

[X] Continued on the attached sheet.

[Signature] Complainant's signature Bryan S. Smith, Supervisory Special Agent, FBI Printed name and title

Sworn to before me and signed in my presence.

Date: 04/08/2010

[Signature] Judge's signature Hon. Bernard Zimmerman, U.S. Magistrate Judge Printed name and title

City and state: San Francisco, California

1 **AFFIDAVIT OF BRYAN S. SMITH**  
2 **IN SUPPORT OF AMENDED CRIMINAL COMPLAINT**

3 I, Bryan S. Smith, being duly sworn, depose and state as follows:

4 1. I am a Special Agent of the Federal Bureau of Investigation (FBI) and have been  
5 employed in that capacity for over nineteen years. My primary responsibility is as a supervisor of  
6 a criminal squad which investigates violent gangs and violent crimes, including threats against  
7 United States officials.

8 2. This affidavit is made in support of an amended criminal complaint against  
9 Gregory Lee Giusti for violation of 47 U.S.C. § 223(a)(1)(C), which prohibits in interstate or  
10 foreign commerce, making a telephone call or utilizing a telecommunication device, whether or  
11 not conversation or communication ensues, without disclosing his identity and with intent to  
12 annoy, abuse, threaten, or harass any person at the called number or who receives the  
13 communication. There is probable cause to believe that between February 6, 2010, and March  
14 25, 2010, Congresswoman N.P. (N.P.) received numerous (at least forty-eight) telephone calls to  
15 her Washington, D.C. residence, one of her residences in Northern California, her district office  
16 in San Francisco, and her husband's office in San Francisco, all from the same phone number,  
17 (757) 509-5528. At least thirty of those calls were made to N.P.'s Washington, D.C. residence  
18 during the period February 6, 2010, and March 25, 2010, and the unidentified caller left nine  
19 voice messages. In two of the recorded messages, the caller made threats to one of N.P.'s  
20 residences in Northern California. Additionally, Supervisory Special Agent (SSA) Bryan S.  
21 Smith and Special Agent (SA) Andrew Pecher interviewed N.P. regarding the abusive, harassing,  
22 threatening, and obscene telephone calls she had received from the caller. N.P. told the  
23 interviewing Agents that on one occasion, she answered the Washington D.C. residence  
24 telephone and the caller used extremely vulgar and crude language and threatened her, stating  
25 "when you go back to California you won't have a home to go back to." Many of the other  
26 messages that were recorded included abusive, harassing, and obscene language. The caller was  
27 later identified on March 30, 2010, as Gregory Lee Giusti (Giusti).

28 //

1           3.       The purpose of this affidavit is to set forth facts establishing probable cause to  
2 believe that Giusti, did knowingly use a telecommunications device from his residence in San  
3 Francisco, California, in interstate commerce, to make calls to N.P. in Washington, D.C., without  
4 disclosing his identity and with intent to annoy, abuse, threaten, and harass N.P. The information  
5 contained in this affidavit is based either on my own personal knowledge or on information  
6 provided to me by other law enforcement officers. Not all facts known to me are necessarily  
7 contained in this affidavit. The affidavit is limited to the facts relevant and necessary to establish  
8 probable cause. for the requested arrest warrant.

9   **APPLICABLE STATUTE**

10          4.       Title 47 U.S.C. §§ 223(a)(1)(C) and (a)(2) provide in relevant part that:  
11                   (a) Prohibited acts generally. Whoever -- (1) in interstate or foreign communications --  
12                   (C) makes a telephone call or utilizes a telecommunications device, whether or not  
13                   communication ensues, without disclosing his identity and with intent to annoy, abuse,  
14                   threaten, or harass any person at the called number or who receives the communications;  
15                   Whoever knowingly permits any telecommunication facility under his control to be used  
16                   for any activity prohibited by paragraph (1) with the intent that it be used for such  
17                   activity, shall be fined under Title 18 or imprisoned not more than two years, or both.

18   **FACTS SUPPORTING PROBABLE CAUSE**

19          5.       On Saturday, February 6, 2010, Giusti used a telecommunications device in his  
20 residence in San Francisco, California, to call N.P.'s Washington, D.C. residence three times. On  
21 Saturday, March 20, 2010, Giusti used a telecommunications device in his residence in San  
22 Francisco to call N.P.'s residence in Washington, D.C. nineteen times. On Sunday, March 21,  
23 2010, Giusti used a telecommunications device in his residence in San Francisco to call N.P.'s  
24 residence in Washington, D.C. six times. On Thursday, March 25, 2010, Giusti used a  
25 telecommunications device in his residence in San Francisco to call N.P.'s Washington, D.C.  
26 residence two times.

27          6.       Nine of the calls made by Giusti to N.P. at the Washington, D.C. residence were  
28 recorded. Specifically, on March 20, 2010, in four recorded telephone messages, Giusti used  
obscene, harassing and abusive language in his messages. On March 21, 2010, in two recorded  
messages, Giusti left threatening voice mail messages and, additionally, one obscene, harassing

1 and abusive voice mail. On March 25, 2010, in two recorded messages left on the  
2 voice mail at N.P.'s Washington, D.C. residence Giusti again used obscene, harassing and  
3 abusive language. The threatening calls were transcribed as follows:

- 4 a) "If you like your home in [Northern California], don't vote for the  
5 healthcare bill."  
6 b) "Like I said [N.P.] if you pass this freaking healthcare plan don't bother  
7 coming back to California cause you ain't gonna have a place to live."

8 7. In another call to N.P.'s San Francisco district office on March 25, 2010, Giusti  
9 identified himself as Robert W. and recited the address of one of N.P.'s residences in Northern  
10 California and again used obscene, harassing and abusive language in his conversation with a  
11 representative from N.P.'s San Francisco district office. Portions of the call were transcribed as  
12 follows:

- 13 a) "Yeah, tell her I'll call her at home, I got her home number in [Northern  
14 California]."

15 Giusti then recited the address of one of N.P.'s actual residences in Northern California.

16 8. Additionally, in the recorded conversation with N.P.'s San Francisco district  
17 office, Giusti stressed that his number could never be traced. This portion of the call was  
18 transcribed as follows:

- 19 a) "...this number is, and the number I'm calling from is untraceable so if  
20 you're trying to trace it have fun."

21 9. Based on the nature of the calls to N.P., the United States Capitol Police initiated  
22 an investigation in order to ascertain the identity of the caller. A Federal Grand Jury Subpoena  
23 revealed the telephone number (757) 509-5528 was assigned to a "Magic Jack"<sup>1</sup> account in the  
24 name of Bill H., who resides in San Francisco, California. A subpoena of records from Magic  
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26 <sup>1</sup> The "Magic Jack" is a Voice Over Internet Provider (VOIP) device which can be  
27 purchased commercially from Radio Shack, CVS and similar stores. The "Magic Jack" allows  
28 the users to make telephone calls throughout the United States over their internet service, similar  
to Vonage and Skype. Also, when registering the "Magic Jack" device the user can choose the  
area code of the telephone number assigned to the "Magic Jack" device.

1 Jack for telephone number (757) 509-5528 for the period between February 6, 2010 and March  
2 25, 2010, confirmed that numerous telephone calls were made to N.P. at the above identified  
3 locations.

4 10. On March 29, 2010, SA Pecher, from the United States Capitol Police, and SSA  
5 Smith, FBI, interviewed Bill H. and determined, based on a voice comparison of between Bill H.  
6 and the caller, that Bill H. was not making these calls. During the interview, SA Pecher played  
7 one of the voice mail recordings left by the caller. Bill H. identified the individual who had left  
8 the message as Gregory Giusti. Bill H. explained that he knew Giusti through church and at one  
9 time Bill H. was Giusti's mentor. However, Bill H. stated Giusti was expelled from church about  
10 one or two years ago after Giusti made harassing telephone calls to other members. During the  
11 interview, Bill H. provided the spelling of Giusti's name, his date of birth, and an address on  
12 Jones Street in San Francisco.

13 11. On or about March 29, 2010, SA Pecher queried law enforcement and California  
14 Department of Motor Vehicles databases for information regarding Giusti and found that, among  
15 other convictions, Giusti had previously been convicted of making telephone calls or contact by  
16 electronic communication device with intent to annoy, in violation of California Penal Code  
17 Section 653m, a misdemeanor, in 1991. SA Pecher also obtained an address for Giusti in San  
18 Francisco, California.

19 12. On March 30, 2010, SA Pecher and three San Francisco Police Department  
20 Officers conducted an interview of Giusti at his residence in San Francisco. During the  
21 interview, Giusti initially denied making telephone calls to N.P. and also stated that he did not  
22 care for N.P. or for N.P.'s political views.

23 13. During the course of the interview, SA Pecher used his cellular telephone to dial  
24 the number that had been calling N.P., (757) 509-5528. After SA Pecher had done this, the  
25 telephone attached to the "Magic Jack," attached to Giusti's computer started to ring. Giusti  
26 answered the telephone and said, "Hello." SA Pecher heard Giusti on the other end of his  
27 cellular telephone say "Hello." Then, SA Pecher again asked Giusti if he ever called N.P., to  
28 which Giusti replied "yes."

1           14.     Giusti told SA Pecher that he had received the "Magic Jack" as a gift from a  
2 friend approximately four to five months ago. Giusti believed his friend purchased the "Magic  
3 Jack" from Radio Shack. Giusti stated he registered the "Magic Jack" in the name of Robert W.  
4 Giusti explained Robert W. was a friend of his that died when he (Giusti) was a child. Giusti  
5 also admitted to SA Pecher that he used the name Robert W. when he called N.P.'s San Francisco  
6 office. During the interview, Giusti voluntarily provided the "Magic Jack" to SA Pecher.

7           15.     When asked how many times he called N.P., Giusti initially replied approximately  
8 five or six times. Giusti then admitted he called N.P. a few dozen times. Giusti explained he  
9 found N.P.'s telephone number either in the phone book or over the internet.

10          16.     SA Pecher asked Giusti what Giusti meant when he made reference to N.P. not  
11 having a house to come back to when she returned to California. Giusti explained, "I was upset  
12 and I did not mean anything by it."

13          17.     At the conclusion of the interview, SA Pecher asked Giusti to write out a  
14 statement regarding his telephone contact with N.P. In the statement Giusti admitted the  
15 following, "I called Mrs. N.P. about ½ dozen times, called her a witch and said I did not like her  
16 pushing the healthcare bill down the peoples [sic] throat."


17          18.     On March 31, 2010, SSA Smith and SA Pecher spoke with N.P. regarding  
18 obscene, harassing, abusive, and threatening telephone calls she had received from the caller.  
19 N.P. said the caller used extremely crude language that N.P. did not want to repeat to the  
20 interviewing Agents. Additionally, in the conversation, the caller told N.P. "when you go back to  
21 California you won't have a home to go back to." Based on this statement, N.P. told the  
22 interviewing Agents that N.P.'s family may be in danger.

23          19.     On April 1, 2010, SSA Smith and SA Pecher interviewed Giusti again at his  
24 residence in San Francisco. During the initial stage of the interview, SA Pecher played recorded  
25 messages which were left on the voice mail at N.P.'s Washington, D.C. residence on March 20,  
26 2010. After approximately two calls had played, Giusti said, "Okay, I've heard enough." After  
27 the four recorded messages had completed playing, Giusti admitted that the caller on each of the  
28 recordings was him, it was his voice, and he made numerous calls to N.P. and left numerous

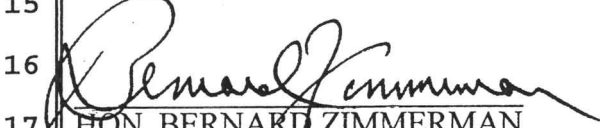
1 messages for N.P. Giusti also admitted that he made all the calls to N.P. from his apartment in  
2 San Francisco using his "Magic Jack" and he was the only one to use the "Magic Jack."

3 **CONCLUSION**

4 20. Based on the foregoing facts, there is probable cause to believe that Gregory Lee  
5 Giusti, did knowingly use a telecommunications device from his residence in San Francisco,  
6 California, in interstate and foreign commerce, to make calls to N.P. at N.P.'s residence in  
7 Washington, D.C., without disclosing his identity and with intent to annoy, abuse, threaten, and  
8 harass N.P.

9   
10 \_\_\_\_\_  
11 BRYAN S. SMITH  
12 Supervisory Special Agent  
13 Federal Bureau of Investigation

14 Subscribed and sworn to before me  
15 this 8 day of April, 2010.

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18 HON. BERNARD ZIMMERMAN  
19 United States Magistrate Judge

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**DEFENDANT INFORMATION RELATIVE TO A CRIMINAL ACTION - IN U.S. DISTRICT COURT**

BY:  COMPLAINT  INFORMATION  INDICTMENT  
Amended  SUPERSEDING

**OFFENSE CHARGED**

Title 47 U.S.C., Section 223 - Obscene or Harassing Telephone Calls in the District of Columbia or in Interstate or Foreign Communications (Class E Felony)  Petty  Minor  Misdemeanor  Felony

PENALTY: Maximum Prison Term of 2 Years; Maximum Fine of \$250,000; Maximum Term of Supervised Release of 1 year; Mandatory Special Assessment of \$100.

Name of District Court, and/or Judge/Magistrate Location

NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

**DEFENDANT - U.S.**

**GREGORY LEE GIUSTI**

DISTRICT COURT NUMBER

**PROCEEDING**

Name of Complainant Agency, or Person (& Title, if any)

Federal Bureau of Investigation

person is awaiting trial in another Federal or State Court, give name of court

this person/proceeding is transferred from another district per (circle one) FRCrp 20, 21, or 40. Show District

this is a reprosecution of charges previously dismissed which were dismissed on motion of:  U.S. ATTORNEY  DEFENSE } SHOW DOCKET NO.

this prosecution relates to a pending case involving this same defendant } MAGISTRATE CASE NO.

prior proceedings or appearance(s) before U.S. Magistrate regarding this defendant were recorded under }

Name and Office of Person Furnishing Information on this form JOSEPH P. RUSSONIELLO  
 U.S. Attorney  Other U.S. Agency

Name of Assistant U.S. Attorney (if assigned) Cynthia M. Frey

**DEFENDANT**

**IS NOT IN CUSTODY**

- Has not been arrested, pending outcome this proceeding.
- 1)  If not detained give date any prior summons was served on above charges
- 2)  Is a Fugitive
- 3)  Is on Bail or Release from (show District)

**IS IN CUSTODY**

- 4)  On this charge
- 5)  On another conviction }  Federal  State
- 6)  Awaiting trial on other charges  
If answer to (6) is "Yes", show name of institution

Has detainer been filed?  Yes  No } If "Yes" give date filed

DATE OF ARREST **Month/Day/Year**

Or... if Arresting Agency & Warrant were not

DATE TRANSFERRED TO U.S. CUSTODY **Month/Day/Year**

This report amends AO 257 previously submitted

**ADDITIONAL INFORMATION OR COMMENTS**

**PROCESS:**

SUMMONS  NO PROCESS\*  WARRANT

If Summons, complete following:

Arraignment  Initial Appearance

Defendant Address:

Bail Amount: NONE

\* Where defendant previously apprehended on complaint, no new summons or warrant needed, since Magistrate has scheduled arraignment

Date/Time: Before Judge:

Comments: