

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA : CRIMINAL DOCKET NO.:  
 : 3:10CR93 (AWT)  
 :  
v. :  
 :  
MORRIS OLMER : NOVEMBER 18, 2010

**MOTION TO SUPPRESS STATEMENTS**

The defendant, Morris Olmer, moves to suppress any statements made to law enforcement on May 13, 2010. As articulated in the Defendant's Memorandum of Law in Support of Motion to Suppress Statements, law enforcement agents engaged in a custodial interrogation of the defendant and failed to comply with the requirements of Miranda v. Arizona, 383 U.S. 903, 86 S.Ct. 885 (1986), before questioning the defendant.

Wherefore, the defendant respectfully moves that any statements made to law enforcement be suppressed.

RESPECTFULLY SUBMITTED,

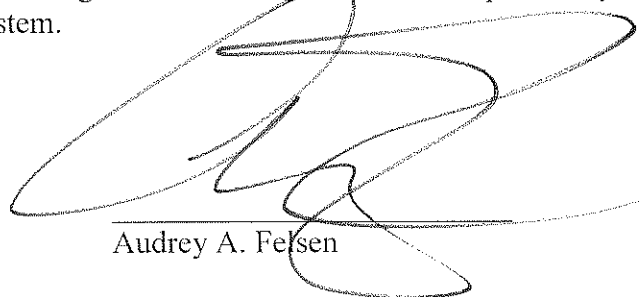
THE DEFENDANT,  
MORRIS OLMER

By: 

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**CERTIFICATION OF SERVICE**

I hereby certify that on November 18, 2010, a copy of the foregoing was filed electronically to all counsel. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system.

  
Audrey A. Felsen

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MEMORANDUM OF LAW IN SUPPORT OF  
MOTION TO SUPPRESS STATEMENTS

Facts

During the course of a federal criminal investigation into Mr. Olmer and several other individuals, law enforcement officers obtained a warrant to search 419 Whalley Avenue, Suite 200, New Haven, Connecticut and seize any and all documents found therein related to real estate transactions. Such search was executed on May 13, 2010. On that date, as the defendant entered the premises, he was approached by Special Agents John Keaney and Stephen Tufts. SA Keaney told Mr. Olmer that federal agents were searching his office<sup>1</sup> pursuant to a warrant. SA Keaney further told Mr. Olmer that he would like to

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<sup>1</sup> At the time of this investigation, Mr. Olmer shared the above-referenced office space with codefendant David Avigdor.

speak with him and that law enforcement had made arrangements for a vacant third floor office to be used for this interview. Thereafter, Mr. Olmer was led to this office by Agents Keaney and Tufts. Another agent, David Connell, then arrived to the location and SA Tufts left. The agents advised Mr. Olmer of the nature of their investigation and asked the defendant several questions related to the investigation. The Memorandum of Interview disclosed by the government regarding Mr. Olmer's statement indicates that SA Keaney, after Mr. Olmer was led to the third floor office by two federal agents, told Mr. Olmer that he was not in custody and was free to leave at any time.

#### **Applicable Law**

It is well settled that *Miranda* warnings are necessary to protect a defendant against coercion inherent in custodial interrogation. See Dickerson v. United States, 530 U.S. 428, 435 (2000). The government's obligation to administer *Miranda* warnings arises when a person's freedom is restricted to a degree that renders him "in custody." Oregon v. Mathiason, 429 U.S. 492, 495 (1977). Statements obtained through unwarned custodial interrogation generally may not be used as evidence by the prosecution. Oregon v. Elstad, 470 U.S. 298, 317 (1985).

A suspect is "in custody" for *Miranda* purposes when there is "a formal arrest or restraint on freedom of movement of a degree associated with a formal arrest." California

v. Beheler, 463 U.S. 1121, 1125 (1983). “[C]ustody involves the deprivation of ‘freedom of action in any significant way.’” United States v. Gallo, 2000 WL 852453, at \*4 (D. Conn. 2000) (Thompson, J.) (quoting Miranda, 384 U.S. at 444). “An accused is in custody when, even in the absence of actual arrest, law enforcement officials act or speak in a manner that conveys the message that they would not permit the accused to leave.” United v. Kirsh, 54 F.3d 1062, 1067 (2d Cir. 1995).

Determinations of whether a suspect is in custody are fact intensive, requiring consideration of “the circumstances surrounding the interrogation.” Thompson v. Keohane, 516 U.S. 99, 112 (1995):

The test used in determining whether a defendant was in custody is an objective one that (a) asks whether a reasonable person would have understood [himself] to be subjected to restraints comparable to those associated with a formal arrest, and (b) focuses upon the presence or absence of affirmative indications that the defendant was not free to leave.

Kirsh, 54 F.3d at 1067. Factors bearing on the question of whether a defendant is “in custody” include: (1) the absence of any advisement to the defendant that he is not under arrest; (2) the absence of any advisement to the defendant that he is free to leave; (3) the location and atmosphere of the interrogation; and (4) the length of the interrogation. See Tankleff v. Senkowsi, 135 F.3d 235, 243 (2d Cir. 1998) (noting above-referenced factors and

concluding that defendant was “in custody” for purposes of *Miranda*); United States v. Lifshitz, 2004 WL 2072468, at \*6 (S.D.N.Y. 2004) (Court applied above-referenced factors in determining whether defendant was “in custody”).

### **Discussion**

A reasonable person faced with the circumstances under which Mr. Olmer found himself would perceive himself to be in custody. The defendant was led to a vacant third-floor room by two law enforcement agents during the execution of a federal search warrant of his office. The officers told the defendant that he was the subject of a federal investigation and they wanted to ask him questions related to their investigation. Two agents questioned the defendant in this environment. Under the circumstances a reasonable person would not have felt that he could simply terminate the interview, or ask the agents to leave. The defendant was thus “in custody” for purposes of *Miranda* and should have been advised of his rights.

For the above-stated reasons and on the basis of the testimony to be given during an evidentiary hearing, the defendant respectfully requests that the Court grant his Motion to Suppress Statements.

RESPECTFULLY SUBMITTED,

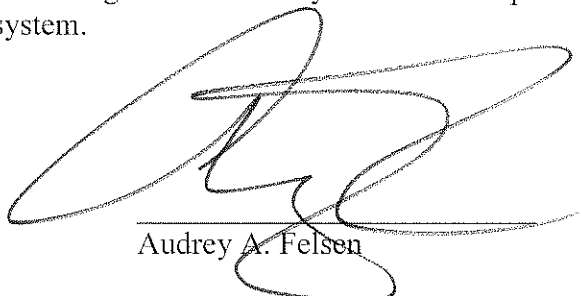
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