

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA**

UNITED STATES OF AMERICA,

v.

SHOLOM RUBASHKIN,

Defendant.

Civil Action No. 2:08-CR-1324 LLR

**DEFENDANT'S
MOTION UNDER RULE 33(b)(1)
FOR A NEW TRIAL**

[ORAL ARGUMENT REQUESTED]

COMES NOW the defendant, Sholom Rubashkin, by and through his undersigned counsel, and hereby moves this Court, pursuant to Federal Rule of Criminal Procedure 33(b)(1), to grant a new trial on the basis of newly discovered evidence that the presiding judge was statutorily obligated to recuse herself from this case pursuant to 28 U.S.C. § 455(a).

In the alternative, defendant moves this Court to authorize appropriate discovery and to conduct an evidentiary hearing in order to determine the facts regarding a pattern of *ex parte* communications, which has just come to light, between the presiding trial judge on the one hand and the U.S. Attorney's Office and the Immigration and Customs Enforcement agency ("ICE") on the other. This pattern was concealed from Mr. Rubashkin's counsel until the disclosure of ICE's memoranda and e-mails, which were made available in highly redacted form following the trial and jury verdict in this case.

In order to preserve public confidence in the impartiality of the judicial system, defendant also moves this Court to transfer this motion to another judge for determination.

The grounds for these motions are fully set forth in the accompanying Declarations and Memorandum of Law. Oral argument is requested.

Respectfully submitted,

Dated: August 5, 2010

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PROOF OF SERVICE

The undersigned certifies that the foregoing motion and accompanying memorandum of law and exhibits were served upon each of the attorneys listed below on **August 5, 2010**, by CM/ECF.

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