



4. Marcello was subsequently transferred back to the Chicago, MCC for purposes of securing his presence at a violation of supervised release hearing.

5. Marcello thereafter made a motion before this Court for permission to stay at the MCC during his direct appeal, or at least until his opening brief was filed. Document 1197. This Court granted that motion, and again recommended that Marcello be designated to an institution closer to his family, *e.g.*, Oxford, Wisconsin. *Id.*

6. On January 30, 2012, Marcello was removed from the MCC. He apparently is en route to Atwater, California.

7. *After* the removal of Marcello from the MCC, the government filed a motion seeking authorization to send Marcello to the designated institution.

8. The timing of all this is peculiar. Marcello has been actively involved in participating in the appellate process. Removing him from the MCC two weeks before oral argument significantly impedes his contribution to oral argument preparation.

9. In *United States v. Ambrose*, Seventh Circuit No. 09-3832, the BOP designated the defendant to the same prison where the defendant's father had served time and died. In oral arguments in that case, two panel members expressed dismay over the designation. [www.ca7.uscourts.gov/tmp/F80MS36T.mp3](http://www.ca7.uscourts.gov/tmp/F80MS36T.mp3) (accessed February 1, 2012). One panel member compared the designation decision to "torture."

10. In this case, the BOP's designation decision is likewise callous - Marcello has been designated to an institution that makes regular visits with his family and counsel impossible as a practical matter.

11. Based on the foregoing, we respectfully move this Honorable Court to order Marcello back to the MCC *instanter*, and that any transfer occur after February 14, 2012. We further move the Court to reiterate the recommendation that Marcello be designated to an institution reasonably close to his family.

Respectfully submitted,

/s/ Marc W. Martin

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**CERTIFICATE OF SERVICE**

I, MARC W. MARTIN, an attorney for Defendant James Marcello, hereby certify that on this, the 1st day of February, 2012, I filed the above-described document on the CM/ECF system of the United States District Court for the Northern District of Illinois, which constitutes service of the same.

/s/ Marc W. Martin

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