

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

UNITED STATES OF AMERICA,

Plaintiff,

v.

ANÍBAL ACEVEDO VILÁ, et al.,

Defendants.

CRIMINAL NO. 08-00036 (PJB)

**DEFENDANT LUISA INCLAN BIRD'S MOTION TO DISMISS
COUNT 1 (CONSPIRACY) ON GROUNDS OF VAGUENESS¹
AND INCORPORATED MEMORANDUM OF LAW**

Defendant, Luisa Inclan Bird, through undersigned counsel, hereby moves this Court to dismiss Count 1 of the Superseding Indictment (the "Indictment") on grounds of vagueness. We submit that it is impossible to tell whether Count One describes one or multiple conspiracies; what acts of different defendants and "co-conspirators", if any, relate to Defendant Inclan Bird; what agreement, if any, is attributed to Defendant Inclan Bird; and what Defendant Inclan Bird actually knowingly did to become a member of the charged conspiracy. Accordingly, we submit that Count One of the indictment is impermissibly vague. In support of this motion, the Defendant states as follows.

Count One charges conspiracy. It focuses on the time period between September 1999 and June 30, 2003 and relates to alleged activities occurring in connection with the candidacy of co-defendant Acevedo Vila as Resident Commissioner to the United States House of Representatives for the Commonwealth of Puerto Rico. Count One alleges a purported unitary conspiracy to make and receive contributions to the Resident Commissioner campaign in excess

¹ Defendant Candido Negrón Mella has joined in the instant motion.

of the limits of 2 U.S.C. Section 441a; to make and receive contributions from monies belonging to corporations contrary to 2 U.S.C. Section 441b; to make and receive conduit contributions contrary to 2 U.S.C. Section 441f; to make and receive contributions by foreign nationals in violation of 2 U.S.C. Section 441e; to make false reports to the Federal Election Commission (“FEC”) in violation of 2 U.S.C. Section 434(b); to make false statements to the FEC, contrary to 18 U.S.C. Section 1001(a)(2); and to falsify and conceal material facts from the FEC in violation of 18 U.S.C. Section 1001(a)(1). The Indictment describes “Puerto Rico Collaboration Contributions” (Indictment at p. 8); “family and staff contributions” (Indictment at p. 9) and “Philadelphia contributions” (Indictment at pp. 10-13).

Luisa Inclan Bird obtained a LLM from Cornell University Law School in 1987. For years thereafter, Defendant Inclan Bird had a successful and busy law practice in Puerto Rico. Around 1998 and after the birth of her daughter, Defendant Inclan Bird began to work with Anibal Acevedo Vila as an external legal consultant. Pursuant to the terms of the contract Ms. Luisa Inclan Bird had when Defendant Acevedo Vila was Resident Commissioner, Ms. Luisa Inclan Bird would at times work out of the Resident commissioner’s office in San Juan. Ms. Luisa Inclan Bird performed volunteer work fundraising on limited occasions on Defendant Acevedo Vila’s Resident Commissioner campaign. During the Resident Commissioner’s campaign, Ms. Luisa Inclan Bird was NOT an officer of the campaign and did not have any formal campaign or any management role.

In or around 2004, Ms. Luisa Inclan Bird decided to resign her existing Government contract in order to become a full time employee of the Popular Democratic Party (the “Party”) to help with Defendant Acevedo Vila’s campaign for Governor. Ms. Luisa Inclan Bird worked in the Finance Department of the Governor’s campaign and NOT in the Finance Department of

the Party. It must be noted that the Finance Department of the Party was directed by Co-Defendant Ricardo Colon and the campaign's Finance Chair was Co-Defendant Miguel Nazario. The idea that Luisa Inclan Bird had anything to do with the conspiracy alleged in Count One is belied by her true responsibilities and also by the facts. Nor does the language of Count One adequately explain how Defendant Inclan Bird could be charged with a crime.

Defendant Inclan Bird is mentioned twice in connection with the Count One conspiracy. The Indictment alleges as overt acts that in October 2001 Defendant Inclan Bird requested a staffer to provide two campaign contribution checks in favor of the Acevedo Vila candidacy for Resident Commissioner totaling \$1,000 and later reimbursed this person for the contributions (Indictment at p. 17, overt acts, paragraphs 19-20). Out of more than fifty overt acts, these are the only overt acts mentioning Defendant Inclan Bird. The Indictment is silent as to how a \$1,000 contribution in the Fall of 2001 is material to the offense charged. There is also a reference to Defendant Inclan Bird at page 24 in paragraph 45 that in the Fall of 2003 and after the period during which the alleged conspiracy operated, that Ms. Luisa Inclan Bird assisted in coordinating a meeting with the Puerto Rico Pension Fund. Ms. Luisa Inclan Bird and others routinely arranged meetings between Puerto Rico Government officials and third parties as part of the ordinary duties of the Office of the Governor. The Indictment is silent as to how the performance of a routine duty could be part of any alleged crime. Count One of the Indictment is unclear as to which, if any, illegal agreement Defendant Inclan Bird allegedly joined, or when, or how a \$1,000 contribution materially furthered the supposed conspiracy or how the disparate acts identified form a single, unified conspiracy as opposed to independent and multiple conspiracies.

A. Vagueness

When the legality of a person's conduct is challenged under the dictates of a criminal statute, the Supreme Court has declared that "[n]o one may be required at peril of life, liberty or property to speculate as to [the statute's] meaning...All are entitled to be informed as to what the State commands or forbids." Lanzetta v. New Jersey, 306 U.S. 451, 453 (1939). Because of the serious consequences of vagueness in criminal statutes, courts must construe them "rigorously in order to protect unsuspecting citizens from being ensnared by ambiguous statutory language." United States v. Insko, 496 F.2d 204, 206 (5th Cir. 1974). See also Kropp Forge Co. v. Secretary of Labor, 657 F.2d 119, 122 (7th Cir. 1981) (approving the "traditional rule that the applicability of penal sanctions in regulations is to be narrowly construed by the judiciary"). Due process requires that statutes give fair warning to persons of ordinary intelligence of the proscribed conduct and the persons covered. See Owens v. Wainwright, 698 F.2d 1111, 1115 (11th Cir. 1983). Moreover, Fed. R. Crim. P. 7(c) requires that an Indictment contain a "plain, concise and definite written statement of the essential facts constituting the offense charged." This rule is grounded in the Fifth Amendment guarantee of indictment by grand jury and the Sixth Amendment right to be informed of the nature of the charges. See United States v. Dorfman, 532 F. Supp. 1118, 1124 (N.D. Ill. 1981). The Indictment must adequately inform the defendant of the charge against her so that she can prepare her defense; and it must establish a record for the purpose of ruling on a defense of double jeopardy should defendant be prosecuted again. See Russell v. United States, 369 U.S. 749 (1962).

While Count One of the Indictment generally tracks the statutory language of 18 U.S.C. Section 371, it falls far short of describing in any coherent way how Defendant Inclan Bird's conduct violates the law.

CONCLUSION

Because Count One fails to adequately apprise Defendant Inclan Bird of the nature of the allegations against her, it should be dismissed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document has been filed via electronic mail with the Clerk of the Court by using CM/ECF System which will send a notice of electronic filing to the following on this 8th day of July, 2008.

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