

**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)

**MOTION OF DEFENDANT ANÍBAL ACEVEDO VILÁ TO STRIKE SURPLUSAGE
AND INCORPORATED MEMORANDUM OF LAW**

Thomas C. Green*
Bradford A. Berenson*
SIDLEY AUSTIN LLP
1501 K Street, N.W.
Washington, D.C. 20005
Telephone: (202) 736-8000
Fax: (202) 736-8711
Email: tcgreen@sidley.com;
bberenson@sidley.com
* admitted pro hac vice

Harry Anduze Montaña
U.S.D.C. # 114910
HARRY ANDUZE MONTAÑO LAW OFFICE
1454 Fernandez Juncos Avenue
San Juan, PR 00909
Telephone: (787) 723-7171
Fax: (787) 723-7278
Email: handuze@microjuris.com

Attorneys for Defendant Aníbal Acevedo Vilá

Pursuant to Federal Rule of Criminal Procedure 7(d), Defendant Aníbal Acevedo Vilá hereby moves the Court to strike surplusage in paragraphs 3, 5(l), 5(m), 14, 16, 26, 34, 35, 40, 45, and 46 of Count 1 from the Superseding Indictment (the “Indictment”).¹ Specifically, paragraphs 5(l), 5(m), 26, 34, 35, 40, 45, and 46 in Count 1 should be stricken in their entirety. In paragraph 3, the concluding clause “including the access and influence that defendant ACEVEDO VILA afforded and exercised on their behalf in Puerto Rico” should be stricken. Finally, in paragraphs 14 and 16, the phrase “at least” should be stricken.

* * *

The United States has not charged that Mr. Acevedo Vilá betrayed the public trust, whether as Resident Commissioner or as Governor, by performing any official acts in return for campaign contributions or personal benefits of any sort. Lacking evidence of any corrupt conduct, the Indictment does not allege bribery, does not allege Hobbs Act violations, does not allege honest services fraud – and indeed does not allege any corruption-based crime *of any sort*. Although the government did everything possible to develop such charges, it could not. This motion seeks to strike language in Count 1 which nonetheless seeks to imply corruption without charging it. Such language has no bearing on the offenses actually charged, and it has been inserted only to prejudice and confuse the jury into believing that uncharged crimes of a more serious nature were committed by the Governor. Certain other phrases are also challenged as surplusage.

It is virtually impossible to summarize in this motion the history of the investigation of the Governor. Mr. Acevedo Vilá defeated former Governor Carlos Romero Barceló in the 2000 election in Puerto Rico for Resident Commissioner. Mr. Barceló is likely the most outspoken

¹ Defendant Acevedo Vilá respectfully requests that oral argument be held on this motion.

political adversary of Governor Acevedo Vilá. He has taken credit publicly for instigating the investigation of the Governor by informing the U.S. Attorney's Office in San Juan about questionable political contributions for Mr. Acevedo Vilá emanating from the Philadelphia area. Thereafter he appeared in print and broadcasts castigating Mr. Acevedo Vilá and publicly advocating for his prosecution and removal. Ultimately his efforts became so shrill that the federal government was obliged to disavow any connections to Barceló's campaign against the Governor and to publicly request him to stand down. *See* Frances Rosario, *Cuestiona al FBI el rol de Romero en sus pesquisas* [Romero's role in FBI probes being questioned], *El Nuevo Dia*, Apr. 18, 2007, at 37 (Ex. A).

There have been continuing reports in the press of other outside influences impacting this investigation, to include allegations linking the indictment of the Governor to the desire of the then-Acting U.S. Attorney for Puerto Rico to receive Senate confirmation as the United States Attorney. Although we are not in a position to substantiate such reports, it is indisputable that the Indictment filed against Governor Acevedo Vilá is the product of one of the most intensive criminal investigations of an elected official ever undertaken.

The pre-indictment investigation continued for almost three years. While the Governor has not moved to dismiss the Indictment on grounds of pretrial publicity, it is fair to say that Puerto Rico has been saturated with media coverage of the investigation. As counsel for the Governor, we have complained about leaks during the investigation. Leaks are hard to prove, but when TV reporters arrive at a location and set up their cameras to record the arrival of federal agents who are there to serve a search warrant, there is little room for doubt as to how that happened. News reports followed almost every facet of this investigation. The identities of many witnesses who appeared before the grand jury were routinely circulated in the press, and

those who saw or read these reports were treated to an almost daily description of the lengths to which the government was going in its effort to secure evidence against the Governor. These included stories about interviews of doctors and shop keepers who were questioned about the Governor's medical treatment, claimed hair transplants, and things of value supposedly given to the Governor. The prosecutors even subpoenaed the University of Puerto Rico requiring it to surrender information about the Governor's educational degrees. Unfortunately, it is impossible in the space of a few paragraphs to find words to describe and convey to the Court the intensity and far ranging nature of this intrusive investigation. Time will tell whether or not there are sufficient citizens who have not been unfairly tainted by all of this.

Much of what is described above was undertaken in an effort to find evidence of other crimes which are not charged in the Indictment. Throughout this long investigation, the prosecutors were committed to finding evidence that the "Philadelphia Contributions Conspiracy" alleged in Count 1 was not a mere violation of federal election law, but was instead a scheme chargeable as a bribery or gratuities violation, a Hobbs Act violation, or a form of "honest services" mail fraud. The prosecutors made this clear in discussions with the undersigned and in statements they made to other attorneys in the course of this investigation. These charges, however, are conspicuously missing from the Indictment, and for good and, we think, obvious reasons.

In the course of attempting to charge a corruption violation, the prosecutors either interviewed or subpoenaed to the grand jury representatives from the major departments and agencies of the Government of Puerto Rico as well as numerous individuals who secured appointments with these agencies to discuss their potential business propositions with the Puerto Rico Government. The prosecutors were most interested in those individuals who had made a

political contribution directed to retiring the Resident Commissioner's campaign debt. These contributions are unquestionably proper and are not challenged in the Indictment in any respect, notwithstanding the fact that many of these contributors may have had contact with codefendants Candido Negrón Mella and/or Robert Feldman.

These witnesses were all questioned in an effort to discover whether or not the Resident Commissioner, or members of his staff, had intervened with the agency heads to request that any contributor be given a contract by the Puerto Rican Government. Putting aside the inherent improbability of an official in the administration of the Governor of Puerto Rico taking orders or direction from the Resident Commissioner for whom he or she does not work, each and every witness emphatically rejected the notion of any improper request by Mr. Acevedo Vilá as Resident Commissioner or later during his tenure as Governor. In many instances, when administration officials told government agents that they were not asked to do anything improper, they were excused from appearing before the grand jury. *See infra* at 9 n.5. One agency head was even asked by the agents how she liked working for a corrupt governor.

Confronted with these exculpatory facts, the prosecutors were forced to abandon corruption type charges. But they were abandoned only as substantive offenses. Unwilling to forego the specter of corruption and the anticipated impact these notions will have on the jury, the prosecutors have inserted their corruption allegations back into Count 1 as Overt Acts undertaken in furtherance of the Philadelphia Contributions Conspiracy. This tactic is both unfair and motivated by improper purpose. These allegations have no place in this Indictment. They are not relevant to any element of the offense charged; they are indisputably prejudicial; the presentation and rebuttal of these charges will require a trial within this trial, all of which raises the substantial possibility that the jury will be confused and distracted and, most

importantly, irreparably prejudiced against the Governor in a manner which cannot be neutralized. Accordingly, these allegations should be stricken from the Indictment.

In addition, the Indictment repeatedly uses vague and indefinite terms such as “at least” to insinuate that the purported misconduct is broader than what the Indictment actually alleges. Courts repeatedly have recognized that such language can mislead the jury, and it too must be stricken.

ARGUMENT

I. THIS COURT HAS BROAD AUTHORITY TO STRIKE SURPLUSAGE FROM THE INDICTMENT.

Federal Rule of Criminal Procedure 7(d) authorizes courts, “[u]pon the defendant’s motion, [to] strike surplusage from the indictment.” The common-sense purpose of this basic protection has been explicit since the time of the rule’s enactment: to “protect[] the defendant against immaterial or irrelevant allegations in an indictment or information, which may, however, be prejudicial.” Fed. R. Crim. P. 7 (1946 advisory committee note to subdivision (d)); *see United States v. Fahey*, 769 F.2d 829, 841-42 (1st Cir. 1985). Such protection is necessary because “[p]rosecutors have been known to insert unnecessary allegations for ‘color’ or ‘background’ hoping that these will stimulate the interest of the jurors.” *United States v. Brighton Bldg. & Maint. Co.*, 435 F. Supp. 222, 230 (N.D. Ill. 1977). Accordingly, district courts are vested with “wide discretion” to strike surplusage in order to protect defendants from prejudicial and immaterial allegations in an indictment. *United States v. Poindexter*, 725 F. Supp. 13, 35 (D.D.C. 1989); *see United States v. Torres-Gonzalez*, 526 F. Supp. 2d 210, 211-12 (D.P.R. 2007).

II. THE INDICTMENT’S INSINUATIONS OF CORRUPTION ARE LEGALLY IRRELEVANT AND FACTUALLY INSUPPORTABLE.

Utterly lacking in factual support or legal relevance, the Indictment’s allegations which seemingly allege “*quid pro quo*” or “pay-to-play” arrangements are classic surplusage that should be stricken from the Indictment.

For all its length and heft, the Indictment – which charges 13 defendants in 27 counts spread over 55 pages – does not charge bribery or any form of dishonest services in the discharge of official duties. Relevant to Mr. Acevedo Vilá, it alleges violations of election law (Counts 1-3), violations of wire fraud pertaining to campaign fundraising (Counts 10-21), one program fraud count (Count 22), and three related tax violations (Counts 25-27). These charges are not the stuff of a public corruption prosecution. Nonetheless, the Indictment attempts to inject unsupported corruption-flavored insinuations into Count 1, which charges certain defendants with conspiracy to violate Federal Election Commission reporting requirements. For instance, paragraph 5(l) and 5(m) on pages 11 and 12 assert that:

Defendants **FELDMAN, NEGRON MELLA**, and **AVANZATO** used the “Philadelphia” campaign contributions and unreported lavish dinners for defendant **ACEVEDO VILA** and **COREANO SALGADO** to gain access to and influence with defendant **ACEVEDO VILA** and his office and staff in Washington, DC and in San Juan, Puerto Rico. Defendants **FELDMAN, NEGRON MELLA**, and **AVANZATO** did so to further their business interests and the interests of their clients.

Defendant **ACEVEDO VILA** in turn contacted, and caused members of his staff, including defendants **COREANO SALGADO** and **INCLAN BIRD**, to contact local government agency representatives and otherwise provide assistance to defendants **FELDMAN, NEGRON MELLA**, and **AVANZATO** and their business clients during the time that defendant **ACEVEDO VILA** accepted conduit and other contributions from them. Defendant **ACEVEDO VILA** did so to encourage and promote the future solicitation and receipt of “Philadelphia” campaign contributions in order to reduce the sizeable campaign debt and fund future campaigns.

Other paragraphs make vague assertions of defendants having “coordinat[ed] meeting[s],” or “follow[ed] up on ... requests for assistance relating to ... business interests.” *E.g.*, Indictment at 24-25 ¶¶ 45-46. These allegations, however, are flatly irrelevant to the FEC conspiracy charge. The charged crime has no element that in any way relates to bribery or corruption. The elements of conspiracy are familiar,² and none of the offenses that allegedly underlie the conspiracy includes corruption or bribery as an element.³ The crux of Count 1 is that various contributors made campaign contributions in excess of the legal limits and that certain defendants failed to report them to the FEC. Whether any of these contributors subsequently competed for, and/or obtained, any contracts with the Puerto Rican government has no bearing on whether the contributions violated FECA. *See United States v. Hankin*, 607 F.2d 611, 615 (3d Cir. 1979) (FECA violation by person soliciting conduit contributions complete at the time the contribution is made); *see also United States v. Ferris*, 807 F.2d 269, 272 (1st Cir. 1986) (“[w]e do not question the holding” of *Hankin*).

This is classic surplusage. The veiled suggestions of a *quid pro quo* are irrelevant to Count 1. They are also extraordinarily prejudicial, implying uncharged criminal misconduct of a much more serious sort than any the grand jury saw fit to charge. As such, they must be stricken. *See United States v. Brooks*, 438 F.3d 1231, 1237 (10th Cir. 2006) (court “may strike from an indictment allegations which are both independent of and unnecessary to the offense”); *Torres-Gonzalez*, 526 F. Supp. 2d at 212 (although defendant’s prior convictions might be admissible at

² *See United States v. Munoz-Franco*, 487 F.3d 25, 45 (1st Cir.) (“To establish a conspiracy, the government must prove beyond a reasonable doubt that (1) a conspiracy existed; (2) the defendant knew of and voluntarily participated in the conspiracy; and (3) there was an overt act in furtherance of the conspiracy. The government must prove both intent to agree and intent to commit the substantive offense.”) (citation omitted), *cert. denied*, 128 S. Ct. 678 (2007).

³ *See* 2 U.S.C. §§ 441a, 441b(a), 441e(a), 441f; 18 U.S.C. § 1001(a).

trial, there was no “relevant purpose” for including such allegations in the indictment: such allegations “are inflammatory and prejudicial to Defendants and if presented to the jury could color the jury’s perception of Defendants’ character”); *United States v. Bateman*, 805 F. Supp. 1045, 1050 (D.N.H. 1992) (Fuste, J., sitting by designation) (“Those sections which will not be part of the proof at trial are treated as useless averment that can be ignored or simply redacted.”).⁴ Permitting these extraneous allegations to remain in the Indictment would threaten to confuse the jury into believing, based on mere allegation, that the charged election-law violations are actually standing in for acts of public corruption, which did not occur and have not been charged. This is fundamentally unfair: not only was the Governor not indicted on any public corruption charges, but forcing him to respond to suggestions of other, unindicted crimes will promote a serious misunderstanding on the part of the jury as to the actual offense charged in Count 1.

The insertion of this extraneous language in the Indictment is all the more remarkable because there is no factual basis for the suggestion that Puerto Rican officials were asked by Mr. Acevedo Vilá when he served as Resident Commissioner, or later as Governor, to award contracts to any campaign contributor or to do anything else unlawful. Every Puerto Rican official interviewed by the government or called before the grand jury to testify told the

⁴ See also *United States v. Schofield*, No. 06-CR-427(JCC), 2006 WL 3408101, at *3 (E.D. Va. Nov. 22, 2006) (striking allegations regarding defendant’s sexual activity when defendant was charged with immigration fraud, not child pornography or sex crimes); *United States v. Marlinga*, No. 04-80372, 2006 WL 2086030, at *15 (E.D. Mich. June 9, 2006) (striking allegations unnecessary to honest services mail fraud charges); *United States v. Quinn*, 401 F. Supp. 2d 80, 98-100 (D.D.C. 2005) (striking allegations regarding Iran’s support for terrorism in prosecution for trade embargo violations: “the policies underlying the trade embargo against Iran are irrelevant to the charges defendants face” and public concerns about terrorism might cause the jury to “decline to give defendants the benefit of reasonable doubt”); *United States v. Manginen*, 565 F. Supp. 1024, 1025 (E.D. Va. 1983) (“‘Surplusage’ is any fact or circumstance set forth in the indictment which is not a necessary ingredient of the offense.”).

government that Mr. Acevedo Vilá did not ask or instruct them to award contracts to campaign contributors. In fact, a number of these officials, after confirming to agents the absence of any pressure or improper intervention, were excused from appearing before the grand jury.⁵ Furthermore, defendant Cándido Negrón Mella (the alleged intermediary in these purported arrangements) has told the government that Mr. Acevedo Vilá did not knowingly participate in any *quid pro quo* arrangement with campaign contributors.⁶ Members of Mr. Acevedo Vilá's Resident Commissioner and gubernatorial staff and campaign organization have also told the government that there were no *quid pro quo* arrangements with campaign contributors.⁷ Similarly, witnesses representing each of the four companies referenced in the Indictment confirmed that their campaign contributions were not part of any *quid pro quo* arrangement.⁸

⁵ For example, see Declaration of Fernando J. Bonilla (Ex. B), and Declaration of Lilly Ana Oronoz Rodríguez (Ex. C).

⁶ This is confirmed by FBI 302 reports, IRS Memoranda of Interviews, and various witnesses' grand jury testimony, excerpts of which were provided to the defendants as part of the government's production of *Brady* and *Giglio* materials. (We note here that we believe that the government's disclosure of *Brady* and *Giglio* materials, and the tactic of furnishing only excerpts, are demonstrably inadequate. We will address this issue in future motions). See FBI 302 Excerpt of Interview with Cándido Negrón Mella at 105 (Ex. D) ("Negron stated that he did not remember having ever told people that they needed to make campaign contributions to anyone in order to be considered for government contracts. He also did not recall ever telling anyone that while he could not guarantee that a contribution would ensure that the person received a contract, he could say that a failure to make a contribution would ensure that the person was not considered."); *id.* at 107 ("Acevedo Vila never asked Negron any questions about the campaign contributors. For instance, he never asked why all these people from the Philadelphia area with non-Hispanic names were interested in contributing to the campaign of a Puerto Rico politician.").

⁷ See, e.g., FBI 302 Excerpt of Interview with Ramón Velasco Escardille at 46 (Ex. D) ("When the investigating agents asked VELASCO if knew of any contracts in Puerto Rico being awarded in exchange for campaign donations to ACEVEDO VILA, VELASCO stated that he was not. He stated that based on his knowledge of ACEVEDO VILA, this would not have happened.").

⁸ The Indictment insinuates that "pay-to-play" arrangements existed with four companies: "Company B" (known to be Mondre Energy, Inc.), "Company C" (known to be The Goldenberg

(Footnote continued)

Group), “Company D” (known to be Chitwood, Harley, Harnes, L.L.C.), and Doral Dental, a dental company operated by Cándido Negrón Mella and Salvatore Avanzato.

For statements pertaining to Mondre Energy, see Nov. 8, 2006 Letter from T. Pawelski re: Corrections to FBI-302 Reports of Interviews of Judith Mondre (Ex. E) at 1 (Mondre “had already executed a contract and started work in Puerto Rico before meeting with Mr. Vila in Washington, D.C.”); *id.* at 2 (“[A]lthough she could not recall the date of the contribution, [Mondre] did remember that she made the contribution to Acevedo Vila when her company’s work on the consulting contract was either completed or nearly complete.”); *id.* at 3 (Mondre “told the Agents she ‘does not give to get.’”). It should be noted that this Correction Letter was not included (either in full or in excerpted form) in the *Brady* and *Giglio* materials produced by the government and is thus reflective of the inadequacies in the government’s production.

For statements pertaining to The Goldenberg Group, see Excerpt of Grand Jury Testimony of James Beste at 23 (Ex. F) (“Q Now, did you think then that Candido Negrón came through, at least in opening these doors. A Yes, I thought we had the appropriate form in which to explore and go forward. Q Did you feel that you had some advantage in potentially getting this project? A No. It was a long way from, it was months away from submission. I had no idea how competitive this could be....”); Excerpt of Grand Jury Testimony of Norman Steven Palmer at 46 (Ex. F) (“I know the terminology that people talk about ‘pay for play,’ ‘quid pro quo.’ And never has there been anything, that I’m aware of, within the organization, or its stakeholders, that that is why we have participated in it. Q As far as the company is concerned, but you can’t speak for people outside of the company, such as Bob Feldman, Candido Negrón? A I don’t know what they do in their personal life, I’m certainly not aware of anything.”)

For statements pertaining to Chitwood, Harley, Harnes, see Excerpt of Grand Jury Testimony of Jerry Grey at 42 (Ex. F) (“Q Okay, in this particular case, let me ask you, Mr. Grey, if the contributions that you were raising to give to Candido Negrón, if that were done with the idea of, with the purpose of gaining access for Chitwood & Harley for meetings here in Puerto Rico, in order to get business opportunities? A Well, I didn’t raise the money for business opportunities.”); FBI 302 Excerpt of Interview with Nicole Davenport at 242 (Ex. D) (“Davenport thought Negrón was from Puerto Rico, but CHH was already looking at Puerto Rico before she met him. Candido helped Davenport by telling her to contact a woman named Marisol Marshand (Marchand), with PR Retirement Administration. Marchand was the administrator of the PR Retirement Administration, an attorney and a CPA. Davenport wrote to Marchand and ‘harassed her,’ contacting her by telephone until Marchand agreed to meet with Davenport. Davenport sent Marchand some proposals and met with her one time in 2004. Davenport then met with the next administrator, followed by one of his subordinates, Felipe Piovanetti. Approximately 18 months after her first meeting with the PR Retirement Administration, Davenport received notice that PR Retirement Administration had signed on as a CHH client.”); Excerpt of Grand Jury Testimony of Nicole Davenport at 27-28 (Ex. F) (“GRAND JURY MEMBER: ... Would you say that Mr. Negrón’s intervention was critical in you obtaining the contract from the pension fund? THE WITNESS: I don’t think so. I mean, I think it was helpful, because he knew somebody and getting your foot in the door, doing what I’m doing, is obviously the first step. But our firm represents public pension funds from the New York Common Retirement Fund, Virginia, Alabama, Mississippi. We’ve been selected through

(Footnote continued)

The prosecutors know all of this, but they have still sought through surplusage in the Indictment to paint a picture of misconduct the evidence does not support. These tactics are legally impermissible and should not be tolerated.

Even if the prosecutors represent to the Court that they are prepared to prove that Mr. Acevedo Vilá or his staff called Puerto Rico agencies to facilitate appointments for contributors or to request consideration of their business proposals, such a showing would still be far outside the contours of the offense charged in Count 1. There is nothing legally impermissible about a Member of Congress providing to local officials referrals, introductions, or recommendations for parties interested in doing business with local government agencies, even if such parties are campaign contributors. All of this is routine constituent service, and a necessary and appropriate part of the job for Members of Congress and other elected officials. Such everyday conduct is very much in the public interest and is not illegal, as long as the ultimate decisions about how to accomplish public business and spend funds are made on the merits by government officials exercising uninfluenced judgment. Nothing to the contrary is alleged in this Indictment.

Indeed, the House Ethics Manual, which governed Mr. Acevedo Vilá when he served as Resident Commissioner, confirms that there is nothing wrong with making introductions or assisting individuals with pursuing business opportunities with the government. *See* U.S. House of Representatives Ethics Manual ch. 7, at 252, 102d Congr. (1992) (“House Ethics Manual”) (“Constituents frequently request congressional assistance with Government contracts or

a request for a proposal process all over the country. So I would hope that it was our qualifications that did it.”).

For statements pertaining to Doral Dental, see Excerpt of Grand Jury Testimony of Salvatore Avanzato at 15 (Ex. F) (“GRAND JURY MEMBER: -- would you say that Dental One got any good deals out of all these contributions? THE WITNESS: Sir, I’m unhappy to tell you that the answer is no. And this has not been a happy time in my life. But, no, we did not.”).

grants.... Members may generally forward introductory information to an agency from a constituent firm or request information for a constituent on available opportunities.”).⁹

Further confirmation that the public corruption language has no place in this Indictment comes from the fact that every Puerto Rican official interviewed by the government has unambiguously confirmed that any decision regarding contracts or proposals submitted by any individual referred to in this indictment was based only on a fair and unbiased assessment of the merits of the proposed transaction. Again, the prosecutors know this, and it is for these reasons that this Indictment principally charges offenses associated with campaign fundraising in contrast to the dishonest discharge of official duties. The allegations of corruption that are peppered throughout the Indictment are irrelevant and prejudicial, and so should be stricken. *See Ford v. United States*, 273 U.S. 593, 602 (1927) (when no criminal offense exists under the law, portions of indictment alleging conspiracy to violate the law are “merely surplusage and may be rejected”).

III. OTHER SURPLUSAGE IN THE INDICTMENT MUST ALSO BE STRICKEN.

The Indictment also improperly and repeatedly uses phrases such as “at least” to insinuate that greater misconduct occurred than the Indictment charges.¹⁰ Courts routinely strike such terms from the indictment because they are highly prejudicial to defendants and muddy the

⁹ Citations are to the 1992 version, which is available at <http://www.house.gov/Ethics/Ethicforward.html>. *See also* House Ethics Manual ch. 9, at 320 (“Obtaining information for constituents regarding government contracts and services ... is an important aspect of a Member’s representational duties.”).

¹⁰ *See* Indictment at 16 ¶ 14 (“On or about September 24, 2001, defendant **ACEVEDO VILA** caused cash in the approximate amount of \$1,500 to be provided to *at least* two family members of his, in order to fund conduit contributions to his Committee.”) (emphasis added); *id.* at 17 ¶ 16 (“On or about March 15, 2002, defendant **ACEVEDO VILA** caused cash in the approximate amount of \$2,000 to be provided to *at least* two family members of his, in order to fund conduit contributions to his Committee.”) (emphasis added).

charges.¹¹ For instance, in *United States v. Espy*, the United States District Court for the District of Columbia struck similar terms – “included, but not limited to,” “and others,” and “in substance and among other things” – and in so doing it recognized precisely the dangers that we have identified here:

To expect the jury to assume that the inclusion of language indicative of additional misconduct has no real meaning and does not charge the defendant with additional crime merely because it is contained in the indictment is to ascribe to a jury of laymen an ability to draw distinction that even lawyers have difficulty making. This court has found that these terms may encourage the jury to draw inferences that the defendant is believed to be involved in activities not charged in the indictment. The exclusion of these terms does not alter the substance of the indictment against the defendant. Furthermore, the government, on the other hand, fails to demonstrate any meaningful purpose for the inclusion of these terms. In fact, striking these terms from the indictment would crystallize the charges and would better inform the jury of the essential substance of the indictment.

989 F. Supp. 17, 35 (D.D.C. 1997) (punctuation and citations omitted), *affirmed in part and reversed in part on other grounds*, 145 F.3d 1369 (D.C. Cir. 1998); *see also Brighton Bldg. & Maint. Co.*, 435 F. Supp. at 230-31 (“[T]he use of terms such as ‘at least’ in the indictment in this case serves no useful purpose and allows the jury to draw the inference that the defendant is accused of crimes not charged in the indictment. While the Government is not foreclosed from offering any proof relevant to the charges, as stated previously, it may not use the indictment as a vehicle to persuade the jury that the crime alleged has great and hidden implications.” (citations and footnote omitted)); *United States v. Hubbard*, 474 F. Supp. 64, 82 (D.D.C. 1979) (striking the terms “various,” “including but not limited to the following,” “among other things,” “and related matters,” “on a number of occasions,” “at least,” other illegal and improper activities,”

¹¹ What is more, the prosecution has represented to counsel for Mr. Acevedo Vila that two, and only two, individuals are referenced in paragraphs 14 and 16 of Count 1.

“and elsewhere,” and “besides the defendants”: such terms “may encourage the jury to draw inferences that the defendants are believed to be involved in activities not charged in the indictment,” and “serve no useful purpose”). Because these vague allegations serve only to mislead the jury and make the Indictment less (rather than more) clear, they should be stricken from the Indictment.

CONCLUSION

For the foregoing reasons, Mr. Acevedo Vilá’s motion to strike surplusage should be granted.

Dated: July 8, 2008

Respectfully submitted,

/s/ Thomas C. Green

Thomas C. Green*

Bradford A. Berenson*

SIDLEY AUSTIN LLP

1501 K Street, N.W.

Washington, D.C. 20005

Telephone: (202) 736-8000

Fax: (202) 736-8711

Email: tcgreen@sidley.com;

bberenson@sidley.com

* admitted pro hac vice

Harry Anduze Montano

U.S.D.C. # 114910

HARRY ANDUZE MONTANO LAW OFFICE

1454 Fernandez Juncos Avenue

San Juan, PR 00909

Telephone: (787) 723-7171

Fax: (787) 723-7278

Email: handuze@microjuris.com

Attorneys for Defendant Aníbal Acevedo Vilá

CERTIFICATE OF SERVICE

I, Bradford A. Berenson, hereby certify that on this 8th day of July, 2008, I caused the foregoing Motion of Defendant Aníbal Acevedo Vilá to Strike Surplusage and Incorporated Memorandum of Law to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all attorneys of record.

/s/Bradford A. Berenson _____

Bradford A. Berenson*

SIDLEY AUSTIN LLP

1501 K Street, N.W.

Washington, D.C. 20005

Telephone: (202) 736-8000

Fax: (202) 736-8711

Email: bberenson@sidley.com

* admitted pro hac vice