

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

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**UNITED STATES OF AMERICA**

v.

**ANIBAL ACEVEDO VILA, et al.**

Defendants

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CRIMINAL NO. 08-00036 (PJB)

**JOINT CASE MANAGEMENT STATEMENT**

At the initial status conference on April 11, 2008, this Court directed the parties to file a joint case management statement addressing various discovery, motions practice and trial scheduling issues. *See* Minutes of Proceeding, April 11, 2008 (Dkt. 122). Pursuant to that order, the United States of America (“the Government”) and Defendants Anibal Acevedo Vila, Candido Negron Mella, Jorge Velasco Mella, Robert M. Feldman, Marvin I. Block, Ramon Velasco Escardille, Edwin Colon Rodriguez, Luisa Inclan Bird, Miguel Nazario Franco, Ricardo Colon Padilla, and Jose Gonzalez Freyre<sup>1</sup> conferred regarding twenty separate issues and reached agreement upon seventeen of them. The parties were unable to reach agreement on two issues and hereby submit their respective proposals on those issues for the Court’s consideration. One issue remains under discussion and requires no action from the Court at this time. A

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<sup>1</sup> Defendants Eneidy Coreano Salgado and Salvatore Avanzato did not participate in the discussion of these issues or in the preparation of this statement.

proposed order reflecting the terms of the seventeen agreed-upon proposals and alternative terms for the two contested proposals is being filed herewith for the Court's consideration.<sup>2</sup>

**I. AGREED PROPOSALS**

The parties have reached agreement upon the following seventeen issues:

**1. Trial Date.**

The Government and the Defendants propose that trial begin February 9, 2009.<sup>3</sup>

**2. Trial Time.**

The Government and the Defendants propose that twelve (12) weeks' trial time (excluding jury selection) is an appropriate target to work towards, with the twelve (12) weeks evenly divided between the Government's case-in-chief and the Defendants' case-in-chief. The Government notes that it will attempt in good faith to present its case-in-chief within six (6) weeks but that its case-in-chief could take as long as two (2) to three (3) months, depending on the extent of stipulations and possible cross-examination by multiple defendants.

**3. Government's Production of Fed. R. Crim. P. 16 Materials.**

The Government and the Defendants propose that the Government produce all Fed. R. Crim. P. 16(a)(1) evidence to each Defendant within fourteen (14) days after his or her arraignment. Later-discovered evidence may be produced on good cause shown, but such evidence must be produced as soon as is reasonably practicable (i.e., generally within seven (7) days of discovery) and in no event later than forty-five (45) days before trial. The Government and the Defendants also propose that, subject to entry of a protective order, Rule 16 material

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<sup>2</sup> The proposals set forth in this joint case management statement and the attached proposed order do not address any issues that may arise if the government supersedes the current indictment.

<sup>3</sup> The Defendants intend to file waivers under the Speedy Trial Act, 18 U.S.C. § 3161, within five (5) court days of this Court's case management order.

pertaining to an individual defendant will not be produced to co-defendants absent consent of the individual defendant or other legal requirement to make such production (such as obligations under *Brady v. Maryland*, 373 U.S. 83 (1963), *Giglio v. United States*, 405 U.S. 150 (1972), *Jencks v. United States*, 353 U.S. 657 (1957), Fed. R. Crim. P. 26.2(f), or 18 U.S.C. § 3500).

**4. Defendants' Production of Fed. R. Crim. P. 16 Materials.**

The Government and the Defendants propose that the Defendants produce information described in Fed. R. Crim. P. 16(b)(1)(A-C) as soon as reasonably practicable after identifying such evidence as subject to production under Rule 16.

**5. Electronic Communications (18 U.S.C. § 2510).**

The Government and the Defendants propose that the Government, to the extent it has not done so already, disclose any evidence suggesting that the Government has intercepted a Defendant's wire or electronic communications, as defined in 18 U.S.C. § 2510, to that Defendant within fourteen (14) days of this Order. Evidence produced to such Defendants shall be produced to other co-defendants if those Defendants consent to such production.

**6. Exculpatory Material.**

The Government and the Defendants propose that the Government produce all evidence material to issues of guilt or punishment within the meaning of *Brady v. Maryland*, 373 U.S. 83 (1963), and related cases, within thirty (30) days after entry of this Court's case management order. Any later-discovered evidence must be produced as soon as is reasonably practicable, but in no event later than seven (7) days following the Government's discovery of such evidence.

**7. Witness Statements.**

The Government has expressed its intention to provide witness statements, as defined in Fed. R. Crim. P. 26.2(f) and 18 U.S.C. § 3500, to the Defendants by December 1, 2008 but does not consent to be formally bound by agreement or Court order.

**8. Motions Attacking the Legal Sufficiency of the Allegations or the Indictment.**

The Government and the Defendants propose that motions attacking the sufficiency of the allegations or the indictment on purely legal grounds be filed within sixty (60) days after entry of this Court's case management order. Additional such motions may be filed at a later date on good cause shown.

**9. Dispositive Motions Suggested by Evidence Produced During Discovery.**

The Government and the Defendants propose that any additional dispositive motions suggested by information learned in discovery be filed within ninety (90) days after entry of this Court's case management order. Additional such motions may be filed at a later date on good cause shown.

**10. Discovery Motions.**

The Government and the Defendants propose that discovery motions be filed within one hundred twenty (120) days after the Government has certified to the Defendants that discovery is complete. The parties may request that the Court revisit this deadline if the Defendants are unable to complete their review of the Government's discovery within this time frame.

**11. Motions to Suppress and Motions in Limine.**

The Government and the Defendants propose that motions to suppress and motions in limine be filed at least thirty (30) days before trial. Any motions to suppress or motions in limine pertaining to evidence produced by the Government thirty (30) days or less before trial must be filed before trial begins.

**12. All Other Motions.**

The Government and the Defendants propose that any other motions not described above be filed at least thirty (30) days before trial.

**13. Motion Briefing Cycle.**

The Government and the Defendants propose that the Government's opposition to a Defendant's motion to dismiss the indictment be due twenty (20) days after the Defendant's motion is served and that the Defendant's reply brief be due fifteen (15) days after the Government's opposition is served. With respect to other motions, the Government and the Defendants propose that opposition briefs be due ten (10) days after a motion is served, and reply briefs be due ten (10) days after the opposition is served. The parties also propose that these deadlines may be extended by consent of the parties or by order of the Court.

**14. Motion Page Limits.**

With respect to motions to dismiss the indictment, the Government and the Defendants propose the following page limits: fifty (50) pages for the opening brief in support of the motion, fifty (50) pages for the brief in opposition to the motion, and twenty-five (25) pages for the reply brief.

With respect to dispositive motions other than motions to dismiss the indictment, the Government and the Defendants propose the following page limits: twenty-five (25) pages for opening briefs in support of the motion, twenty-five (25) pages for briefs in opposition to the motion, and fifteen (15) pages for reply briefs.

With respect to non-dispositive motions, the Government and the Defendants propose the following pages limits: fifteen (15) pages for opening briefs in support of the motion, fifteen (15) pages for briefs in opposition to the motion, and ten (10) pages for reply briefs.

The parties agree that the page limits described above may be extended by consent of the parties or by order of the Court.

#### **15. Jury Selection.**

The Government and the Defendants propose that forty-five (45) days before trial, the parties will submit an agreed form of jury questionnaire, or, if agreement cannot be reached, the parties will submit proposed questionnaires or disputed questions to the Court for its consideration. Written questionnaires as approved by the Court will be distributed to prospective jurors before trial, and counsel interviews of prospective jurors will begin on February 9, 2009. After a sufficient number of eligible jurors are identified, individual voir dire will be conducted.

#### **16. Trial Exhibits.**

The Government and the Defendants propose that they exchange anticipated trial exhibits and file exhibit lists ten (10) days before trial. The Defendants reserve the right to introduce additional exhibits as may be necessary to address evidence that emerges during the Government's case-in-chief. Any such additional exhibits will be shared with the Government as soon as practicable after they are identified and before their introduction is sought. The

Government and the Defendants will attempt in good faith to stipulate to the authenticity of routine business records.

**17. Witness Lists.**

The Government and the Defendants propose that the case management order not obligate the parties to exchange formal witness lists prior to trial. The parties agree that their obligations regarding disclosure of the identities of potential witnesses will be subject to customary District of Puerto Rico practice and the further orders of this Court with respect to voir dire and general trial management.

**II. CONTESTED PROPOSALS.**

The parties were unable to agree on the two following proposals and hereby submit their respective positions for consideration and resolution by the Court:

**1. Impeachment Material.**

*Government's Position.* The Government proposes that all impeachment material as defined in *Giglio v. United States*, 405 U.S. 150 (1972), and related cases, be produced to the Defendants by January 2, 2009 (assuming a February 9, 2009 trial date). Any later-discovered evidence must be produced as soon as is reasonably practicable, but in no event later than seven (7) days following the Government's discovery of such evidence.

The Government wishes to produce impeachment materials following the winter holidays to minimize the risk of adverse impacts on witnesses during the holiday season. The Government does not believe that a protective order would prevent the Defendants, their attorneys or their investigators from approaching the witnesses themselves to interview them about the impeachment material just prior to or during the holidays.

*Defendants' Position.* The Defendants propose that all impeachment materials be produced to the Defendants by December 1, 2008. Any later-discovered evidence must be produced as soon as is reasonably practicable, but in no event later than seven (7) days following the Government's discovery of such evidence.

The Defendants' oppose the Government's proposal because the burden of preparing possible cross-examination for the likely number of prosecution trial witnesses will be considerable, and the Defendants wish to have time to prepare and undertake any further investigation necessitated by this evidence before the holidays and the five weeks prior to trial. As these materials will be subject to a protective order, Defendants do not agree that there is any significant risk of adverse impact to witnesses.

**2. Fed. R. Evid. 404(b) Material.**

*Government's Position.* The Government proposes that it provide the Defendants with notice of Fed. R. Evid. 404(b) materials by December 1, 2008 (assuming a February 9, 2009 trial date). Notice of any later-discovered evidence must be provided as soon as is reasonably practicable, but in no event later than seven (7) days following the Government's discovery of such evidence.

*Defendants' Position.* The Defendants propose that the Government provide the Defendants with notice of Fed. R. Evid. 404(b) materials within thirty (30) days after issuance of any superseding indictment or by December 1, 2008, whichever is earlier. Notice of any later-discovered evidence must be provided as soon as is reasonably practicable, but in no event later than seven (7) days following the Government's discovery of such evidence.

The Government has indicated the possibility of a superseding indictment. After that indictment is returned, the Government should be aware of what additional acts, if any, it intends



to introduce at trial pursuant to Rule 404(b). As such additional acts may be unknown to Defendants, considerable additional investigation may be required to prepare to meet this evidence at trial. In addition, motions directed toward the Rule 404(b) notice may be required. Defendants thus seek notice of Rule 404(b) materials at this earlier date.

### **III. ONGOING NEGOTIATIONS.**

#### **1. Protective Order.**

The Government and the Defendants have agreed in principle to entry of a protective order and are continuing to negotiate a mutually agreeable form of such an order.

Dated: April 25, 2008

Respectfully submitted,

/s/ Daniel A. Schwager

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**CERTIFICATION OF SERVICE**

I, Harry Anduze Montaña, hereby certify that on this 25th day of April, 2008, I electronically filed the foregoing motion with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all attorneys of record.

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