

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

**UNITED STATES OF AMERICA**

**v.**

**JORGE VELASCO MELLA (4),**

**DEFENDANT.**

**CRIM. NO. 08-036(PJB)**

**DEFENDANT JORGE VELASCO MELLA'S (4)  
MOTION REQUESTING THAT THE DISTRICT COURT AND  
THE FIRST CIRCUIT DISCLOSE FURTHER INFORMATION UNDERLYING THE  
APPOINTMENT OF VISITING JUDGE PAUL J. BARBADORO**

**TO THE HONORABLE COURT:**

**COMES NOW**, the defendant, JORGE VELASCO MELLA, through his undersigned counsel and respectfully alleges and prays:

1. On March 24, 2008, Jorge Velasco Mella was indicted in the above-mentioned matter. At his arraignment, Mr. Velasco Mella was informed that this case would be handled by visiting Judge Paul J. Barbadoro of New Hampshire. Mr. Velasco Mella was also informed that this matter would also be attended to by United States Magistrate Judge Margaret Kravchuk, a visiting magistrate.

2. After receiving this information at his arraignment, Mr. Velasco Mella posed various questions to the Honorable Magistrate Kravchuk regarding her appointment. She was kind enough to advise Mr. Velasco Mella that she had been asked by the Court of Appeals to attend to this matter as a visiting magistrate. United States Magistrate Judge Kravchuk also indicated that she agreed

with counsel's expressed concern that transparency was important in this matter.

3. Subsequent to the arraignment, counsel received copies of various orders, one issued by the U.S. Court of Appeals for the First Circuit and others issued by the District Court, relating to the designation of visiting Judge Paul J. Barbadoro. (See Exhibits A and B annexed hereto.) The orders were cryptic, not informative nor instructive as to how the Honorable Paul J. Barbadoro came to preside over this matter. Subsequent to the issuance of these orders, Chief Judge Jose A. Fuste granted a public interview to a local newspaper, *Primera Hora*. *Primera Hora* published said interview on April 4, 2008. (A certified translation of the published interview is annexed hereto as Exhibit C.)

4. The interview of Chief Judge Fuste raised additional questions regarding the designation of Judge Barbadoro. According to Judge Fuste's comments to *Primera Hora*, judges of the District Court decided to appoint a visiting judge "as a result of the press conference that Governor Anibal Acevedo Vila held last year to talk extensively about the federal investigation against him." Why a press conference would have motivated federal judges in Puerto Rico to seek the appointment of a visiting judge, remains unclear.

5. Federal judges routinely seek appointments for two general reasons: (1) disqualifications, incapacities and illnesses of judges, and (2) heavy caseloads. (See excerpt from "*The Use of Visiting Judges in the Federal District Courts: A Guide For Judges and Court Personnel*" by Jennifer Evans Marsh published by the Federal Judicial Center (2001) annexed hereto as Exhibit D. See also, "*The Use Of Visiting Judges In The Federal District Courts: A Guide For Judges And Court Personnel*" by Nicholle Stahl Reisdorff published by The Federal Judicial Center (2001 and updated in 2006.) Since the District of Puerto Rico is not plagued by unmanageably

heavy case loads, Mr. Velasco Mella is moved to ask what motivated judges in this case to request a visiting judge, and, possibly to specifically request, Judge Barbadoro.

6. One must also question which of the comments made by Governor Anibal Acevedo Vila were relied on by the District Court to seek the designation of Judge Barbadoro. Judges do not usually rely on press conferences to seek the appointment of a visiting judge. If they did in this instance, Mr. Velasco Mella requests to know specific which statements provoked the request.

7. The next question precipitated by the Primeras Hora article is Judge Fuste's comments that the designation of Judge Barbadoro was characterized as business as usual or as part of a "tradition." Specifically, Judge Fuste stated that "...throughout the years of [sic] visiting judges have come here to work. I have worked in Maine, in Massachusetts and in the Circuit." An examination of the data made publicly available by the Administrative Office of the federal courts indicates that the assignment of visiting judges here has been very limited in Puerto Rico and is done in accordance with the specific statute and plan. The dispersal of judicial resources must be allocated in an efficient way that purposely deals with identifiable backlogs of cases or with situations involving a judge's disability, illness or disqualification. According to the data regarding the District Court of Puerto Rico, the District Court had no backlogs of cases which would have justified a request for a visiting judge in 2007. (See Exhibits E, F, G, H and I.)

8. It is correct, that the Honorable Judge Steven McCauliffe was designated to handle a civil matter within the District of Puerto Rico last year. Judge McCauliffe, however, was designated by the Court of Appeals to serve here because the civil matter he presided over was a lawsuit filed by an Assistant U.S. Attorney from the District of Puerto Rico who sued the U.S. Attorney and the other members of the U.S. Attorney's Office for unjustified dismissal. Since the

U.S. Attorney's Office appears continuously before all federal judges, including Senior Judges in the District of Puerto Rico, the District Court, correctly, and in accordance with the statute and plan that governs the appointment of visiting judges requested that a visiting judge preside over this matter. (Data as to why and when Judge Nancy Gertner presided in Puerto Rico is not available to this attorney. Whatever the reason, Mr. Velasco Mella doubts it had to do with a backlog.)

9. According to the Primera Hora interview, Judge Fuste stated that Judge Barbadoro "was appointed to take care of any case assigned to him." Thus far, the docket indicates that Judge Barbadoro has only been assigned this criminal matter and the parallel matter involving a defendant common to both indictments, Mr. Edwin Colon, who is also charged in Crim. No. 07-414 (PJB). These facts would lead any reasonable person to conclude that the designation of the Honorable Judge Barbadoro in this case was aiken or similar to the need to appoint Judge McCauliffe in the above-mentioned civil matter, that is, that judges here perceived a need to recuse themselves from this criminal case. If that is in fact what occurred, then Judge Fuste's statement, "If at any time no one can take care of (the case), one of us will do it..." is disturbing since if the judges have recused themselves, they are barred from becoming involved in this case.

10. The issue though remains, why judges in the District of Puerto Rico appear to have *de facto* recused themselves without stating the obvious in a public order. According to Judge Fuste, the decision to seek a visiting judge to preside over this criminal matter was "unanimous" but a search of the record indicates that no order of any kind exists reflecting that all judges, including Senior Judges were consulted, and, that they "unanimously" agreed to allow a visiting judge to preside over this case.

11. Mr. Velasco Mella is entitled to this information pursuant to his constitutionally

guaranteed rights to procedural due process. This is not an ordinary case. It involves the highest elected official, the Chief Executive of the Commonwealth of Puerto Rico. The publicity attendant to the unsealing of the indictment and the subsequent arrests provoked a media firestorm of unprecedented proportions. It caused economists to publicly claim that the indictment would plummet Puerto Rico's standing in financial markets here, and in the United States. There is no question that this is one of the most significant cases filed in the history of Puerto Rico as heralded by numerous political and legal commentators. For the Chief Judge to suggest that a case of this dimension and magnitude was assigned to a visiting judge in the course of business as usual or as part of a "tradition," begs credulity and diminishes Mr. Velasco Mella's confidence in the court.

12. Other comments made by Chief Judge Fuste clearly suggest that the court was concerned about its image, and, that it thought it might be attacked for being biased. At one point, Chief Judge Fuste stated, "Don't you think that a person who is not in Puerto Rico, who doesn't vote here is an alternative?" This was the closest that Chief Judge Fuste came to admitting that the court might be accused of partiality in this case, as it was in other high profile political cases, such as in the case popularly known as the "Pivazos case," where the election results corresponding to the 2004 gubernatorial election were challenged in the District Court. The court was also accused of partiality in cases involving the arrest of numerous protestors who objected to the U.S. Navy's presence in Vieques, and, which resulted in the incarceration of hundreds of protestors for trespassing, a move which sparked further protests directed at the court.

13. Chief Judge Fuste's comment, "Don't you think that a person who is not in Puerto Rico, who doesn't vote here is an alternative?" suggests, in the most clear fashion, that the court thought it might be placed on the defensive in this highly visible case. If that was in fact the

sentiment of the unidentified “unanimous” judges of the District Court, Mr. Velasco Mella respectfully suggests that the court should say so, clearly, in accordance with their duties, the judicial canons of ethics and the statute. Secrecy in this instance is detrimental to Mr. Velasco Mella’s Fifth and Sixth Amendment rights and denigrating to the dignity of this court.

14. As to the suggestion that the Circuit was required to be as random as possible in selecting a visiting judge, Chief Judge Fuste responded in the following way. “The Chief Judge of the Circuit doesn’t have to draw ballots to appoint a judge. We asked him to appoint a judge from among the visiting judges and he chose Barbadoro. That’s it. That’s all there is to that.” Mr. Velasco Mella respectfully differs.

15. The random assignment of judges is one of the most precious safeguards that citizens enjoy before any court. If something has occurred to obviate or avoid the random assignment of a judge to any matter, in any court, then, it must be investigated and responded to. In the same way that Mr. Velasco Mella is prohibited from “judge shopping,” judges are also prohibited from “judge shopping.” If the District Court of Puerto Rico in this case utilized the federal statute relating to visiting judges to select a particular judge, they should be obligated to explain their decision, publicly. It is not enough that a decision, perhaps a well-intentioned one was taken behind close doors. Jorge Velasco Mella is entitled to know the contours and details underlying the appointment of the Honorable Paul J. Barbadoro, not because he questions Judge Barbadoro’s integrity, competency or his capacity to be fair and impartial, but for the following significant reasons.

15. This case unquestionably pits the full powers of the federal government against the Commonwealth of Puerto Rico. By indicting Governor Acevedo Vila, the fundamental principles

of federalism are being tested to their limits. Transparency is absolutely necessary in this case. If bias or politics played a role in any aspect of this case, in the investigation of defendants, in the presentation of this case before the grand jury, in the drafting of the indictment, and in the manner in which this case will be handled, Mr. Velasco Mella is entitled to know it, to explore it and to pursue legal remedies to protect himself against being volleyed by forces beyond his control. As to the appointment of the Honorable Judge Barbadoro, he must rely on the District Court to assist him in obtaining the necessary information he needs to fully confide that this court will give him a fair trial. His request, therefore, should be taken seriously. It should not be characterized as making “a federal case out of nothing” or as “looking for the cat’s fifth paw.”

WHEREFORE, Mr. Jorge Velasco Mella respectfully requests that he obtain the following information or documents for the reasons stated herein:

- a) The Certificate of Necessity or its equivalent, or the document presented to, then, Chief Judge Boudin and/or Circuit Executive Wentz articulating; (1) the need for a visiting judge; (2) the period for which the judge was to serve; and (3) the case(s) s/he was to be assigned;
- b) Any recusal order or minutes reflecting the reasons the District Court decided to seek a visiting judge in 2007;
- c) An order in clarification of the date the decision to seek a visiting judge was made and the specific press conference remarks that provoked it.

At San Juan, Puerto Rico this 8<sup>th</sup> day of July, 2008.

RESPECTFULLY SUBMITTED,  
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**CERTIFICATE OF SERVICE**

I, hereby certify that on this date I electronically filed the foregoing motion with the Clerk of the Court using the CM/ECF system system which will send notification of filing to Assistant U.S. Attorneys Maria Dominguez, Ernesto Lopez-Soltero and U.S. Department of Justice Trial Attorney Daniel Schwager and all attorneys of record.

At San Juan, Puerto Rico this 8<sup>th</sup> day of July, 2008.

**s/ MARIA H. SANDOVAL**