

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

UNITED STATES OF AMERICA,
Plaintiff,

v.

[5] ROBERT M. FELDMAN,
[6] MARVIN I. BLOCK,

Defendants.

Criminal No. 08-036 (PJB)

**UNITED STATES' OMNIBUS RESPONSE TO DEFENDANTS'
MOTIONS TO DISMISS SUPERSEDING INDICTMENT FOR LACK OF VENUE**

TO THE HONORABLE COURT:

COMES NOW the United States of America, by and through its undersigned attorneys Rosa Emilia Rodríguez-Vélez, United States Attorney, María A. Domínguez, First Assistant United States Attorney, Ernesto López Soltero, Assistant United States Attorney, and Daniel Schwager, Trial Attorney, Public Integrity Section, U.S. Department of Justice, and files this response to the pre-trial motions filed by defendants Robert M. Feldman and Marvin I. Block (D.E. 177 and 188). In response thereto the government respectfully states as follows:

INTRODUCTION

1. On March 24, 2008, a Grand Jury in the District of Puerto Rico returned a Superseding Indictment against Robert M. Feldman and Marvin I. Block (hereinafter “the defendants”), among other co-conspirators.

2. Count One of the Superseding Indictment charges the defendants with conspiracy to knowingly and willfully violate the Federal Election Campaign Act (FECA), and specifically, to

make and receive contributions to the Comité Acevedo Vilá Comisionado 2000, Inc., in excess of the quantitative limits specified in Title 2, *United States Code*, § 441a(a)(1); to make and receive contributions from funds belonging to corporations in violation of Title 2, *United States Code*, § 441b(a); to make and receive conduit contributions, in violation of Title 2, *United States Code*, § 441f; to make and receive contributions by foreign nationals, in violation of Title 2, *United States Code*, § 441e; to cause the aforesaid contributions to be inaccurately reported to the Federal Elections Commission (FEC), in violation of Title 2, *United States Code*, § 434(b); to knowingly and willfully make and cause to be made materially false, fictitious and fraudulent statements and representations in a matter within the jurisdiction of the FEC, in violation of Title 18, *United States Code*, § 1001(a)(2); and to knowingly and willfully falsify, conceal, and cover up by trick, scheme, and device a material fact in a matter within the jurisdiction of the FEC, in violation of Title 18, *United States Code*, § 1001(a)(1).

3. The defendants have each filed a Motion to Dismiss the Superseding Indictment for Lack of Venue (hereinafter “the motions”), Docket Entries 177 and 188. In order to respond to the defendants’ motions in an efficient and structured manner, the United States will consolidate and address the issues raised in both motions in a single response.

4. The crux of Feldman’s Motion to Dismiss the Superseding Indictment for Lack of Venue (D.E. 177) is that Count One of the Superseding Indictment fails to allege that any action taken by him in connection with the Philadelphia conduit scheme occurred in Puerto Rico, and fails to allege that any co-conspirator agreed to join the conspiracy in Puerto Rico. Block joined Feldman’s Motion to Dismiss the Superseding Indictment for Lack of Venue and filed his own

Memorandum of Law (D.E. 188), in which he reiterates Feldman's arguments.

ARGUMENT

1. "A defendant in a criminal case has a constitutional right to be tried in a proper venue. *See United States v. Johnson*, 323 U.S. 273, 275, 65 S.Ct. 249, 250, 89 L.Ed. 236 (1944)(noting that two constitutional provisions, Article III, § 2, cl. 3 and the Sixth Amendment both provide a right to trial in the state where the crime is committed); *United States v. Uribe*, 890 F.2d 554, 558 (1st Cir.1989); *see also* Fed.R.Crim.P. 18 (codifying the constitutional guarantee by requiring prosecution in the district where the offense was committed). The government bears the burden of proof on the issue of venue. Venue is not an element of the offense, and it must be proven by a preponderance of the evidence standard. *United States v. Georgacarakos*, 988 F.2d 1289, 1293 (1st Cir.1993)." *See, United States v. Lanoue*, 137 F.3d 656, 661 (1st Cir. 1998).

2. A court "must look to the statute defining the crime to determine the location of the crime for the purpose of venue. If the statute 'does not indicate a method for determining the location of the crime, ... the location must be determined from the nature of the crimes alleged and the location of the act or acts constituting it.' *Georgacarakos, supra*, 988 F.2d at 1293 (internal quotation marks and citations omitted). Where the crime is of a continuing nature and is 'committed in more than one district, [it] may be ... prosecuted in any district in which such offense was begun, continued, or completed.' 18 U.S.C. § 3237(a)." *Lanoue, supra*, 137 F.3d at 661.

3. With respect to venue in a conspiracy case, Congress enacted Title 18, *United States Code*, Section 3237, which provides:

(a) Except as otherwise expressly provided by enactment of Congress, any offense against the United States begun in one district

and completed in another, or committed in more than one district, may be inquired of and prosecuted in any district in which such offense was begun, continued, or completed.

4. Count One of the Superseding Indictment alleges a single overarching conspiracy to violate the Federal Election Campaign Act. Title 2 *United States Code*, §441 *et seq.* During the years 1999 through 2003, three schemes were employed by the conspirators to solicit and receive illegal campaign contributions to pay-off debts of Aníbal Acevedo Vilá's Resident Commissioner Campaign. The debt was primarily owed to the campaign's public relations firm, Lopito Ileana & Howie (LIH), with offices in Puerto Rico. The three schemes were devised to achieve a common goal, and were actively concealed from the Federal Election Commission (FEC) through the filing of false reports and sworn statements submitted by co-defendants Edwin Colón Rodríguez and Ramón Velasco Escardille.

5. A core group of conspirators, mainly Acevedo Vilá, Luisa Inclán Bird, Ramón Velasco Escardille and Edwin Colón Rodríguez, were involved in the three schemes designed to pay-off the campaign's debts with the illegal contributions, paving the way for Acevedo Vilá's 2004 gubernatorial campaign. The campaign's submissions to the FEC concealed the illegal contributions and the true nature of the relationship between the campaign and LIH, and avoided further scrutiny into the campaign's corrupt finances, thereby ensuring the success of the conspiracy.

6. One of the mechanisms employed to raise funds and liquidate the campaign's existing debt involved illegal conduit contributions from Philadelphia and New Jersey residents to Acevedo Vilá's Resident Commissioner's campaign, between the years 2002 and 2003. The conduit contribution scheme involved Philadelphia businessmen, Cándido Negrón Mella (a Philadelphia

dentist), Salvatore Avanzato (a Philadelphia businessman in the dental administration business), and Robert M. Feldman (a businessman and recognized political fund-raiser). Avanzato and Negrón were business partners. Negrón looked for business opportunities, and considered that the Puerto Rico medicare market was attractive for a potential dental carve out due to its inordinately high constituency. Negrón and Feldman, who eventually became business associates, were consultants for the largest multi-state administrator of medicaid dental programs in the United States.

7. Between the years 2002 and 2003, the Resident Commissioner campaign received approximately \$133,000, in conduit campaign contributions from individuals residing in Pennsylvania and New Jersey, most of whom were employees of Negrón's and Avanzato's dental companies. Other conduit contributors were relatives and/or friends of Negrón and Avanzato. Negrón and Feldman were favored by Acevedo Vilá, who personally made, or directed staff members, to make business referrals on their behalf to government of Puerto Rico agencies. The use of conduit contributions was suggested by Feldman as a mechanism to maximize the amount of money Negrón, Feldman, and Avanzato could provide Acevedo Vilá's Resident Commissioner campaign, free of the contribution restrictions imposed by FECA. In fact, Feldman himself made a conduit contribution, for which he was reimbursed by Negrón.

8. As part of their involvement in the conduit contribution scheme, Feldman, Negrón and Avanzato hosted a campaign fund-raiser in Philadelphia for Acevedo Vilá on February 7, 2002. The fund raiser was attended by employees and family members of Negrón and Avanzato, and business people connected with Feldman. The week prior to the February 2002 Philadelphia fund-raiser, Negrón and Avanzato had solicited and received contribution checks in excess of \$41,000

from their employees, which they fully reimbursed. At the conclusion of the event, Negrón and Feldman hand-delivered the conduit contribution checks to Acevedo Vilá and Eneidy Coreano, his administrative assistant.

9. Most of the conduit donors made contributions to the Acevedo Vilá campaign on at least two or three occasions. These individuals were primarily residents of Philadelphia and New Jersey, and therefore, not constituents of Acevedo Vilá. They were also predominantly of non-Hispanic descent, held clerical or managerial office positions, and many contributed amounts which exceeded their financial ability.¹ None of the conduit contributors had a genuine desire to contribute to the campaign of a non-voting member of Congress from Puerto Rico. Most of the conduits were unfamiliar with Puerto Rico politics, had no interest in the Island, and had no understanding of Acevedo Vilá's political platform. In essence, none of the conduit donors would have made any financial contribution to Acevedo Vilá's campaign absent the request by Negrón or Avanzato, and the full reimbursement paid to them.

10. The remaining conduit contributions were hand delivered by Negrón to Acevedo Vilá during their dinner meetings in Washington D.C. The conduit contributions were subsequently mailed or hand-delivered to Puerto Rico, on occasions personally by Acevedo Vilá, and Acevedo Vilá imparted instructions on the manner in which these checks should be handled within the campaign. All of the conduit contributions were ultimately deposited into the campaign's bank accounts in Puerto Rico.

11. Between February 8, 2002 through April 29, 2003, Negrón and Avanzato obtained

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The minimum amount of any conduit contribution to Acevedo Vilá's Resident Commissioner campaign was \$1,000.

additional conduit contributions for Acevedo Vilá in excess of \$92,000, from the same employees, family members and friends who had been original conduit contributors and who continued to be fully reimbursed. On December 2002, Block enlisted an additional conduit contributor in Philadelphia on behalf of Negrón and delivered a reimbursement check to the conduit from Negrón. Block also wrote a check in the amount of \$3,000 payable to Acevedo Vilá, for which Negrón later reimbursed him.

12. Additional contributions from prominent businessmen who had expectations of developing business interests in Puerto Rico, and who were connected with Feldman and Negrón, were also received. In an effort to conceal these illegal contributions from the FEC, and as part of a scheme to pay-off unreported campaign debts, numerous false statements were made by campaign officials to the FEC.

13. Pursuant to Title 2, *United States Code*, § 441f, it is unlawful for any person to make a contribution in the name of another, or for any person to permit his or her name to be used to make such a contribution. The statute also prohibits any person from knowingly accepting a contribution made by one person in the name of another.

14. The defendants argue that, in this case, the alleged violation to Section 441f was complete when the illegal contribution was made. In support of their theory, the defendants cite *United States v. Hankin*, 607 F.2d 611 (3d Cir. 1979); *United States v. Ferris*, 807 F.2d 269 (1st Cir. 1986), and *United States v. Passodelis*, 615 F.2d 975 (3d Cir. 1980). They reason that since all of the conduit contributions checks were delivered in Philadelphia, venue in the District of Puerto Rico is lacking. The defendant's analysis is superficial, since all that occurred in Philadelphia was the

delivery of the conduit contribution checks for the Philadelphia fund-raiser. Those checks were not negotiated, deposited or cashed in Philadelphia. They were sent to Puerto Rico where they were ultimately deposited in the campaign's bank account.²

15. It is important to note that none of the cases cited by the defendants involve a conspiracy. A “conspiracy is a distinct offense from the completed object of the conspiracy” *United States v. Yearwood*, 518 F.3d 220, 227 (4th Cir. 2008) (quoting *Garrett v. United States*, 471 U.S. 773, 778 (1985)), since “the agreement to do the act is distinct from the act itself.” *Id.* (citation omitted). Furthermore, “the crime of conspiracy ... is complete upon the agreement to do an unlawful act as implemented by one or more overt acts.” *United States v. Medina-García*, 918 F.2d 4,8 (1st Cir.1990). However, even when the crime of conspiracy has been completed, “under the doctrine of *Pinkerton v. United States*, 328 U.S. 640, 645-46, 66 S.Ct. 1180, 1183-84, 90 L.Ed. 1489 (1946), a defendant co-conspirator may be held responsible for a *substantive crime* committed by another conspirator in furtherance of the conspiracy if that crime is committed while the defendant co-conspirator is a member of the conspiracy.” *United States v. O'Campo*, 973 F.2d 1015, 1021 (1st Cir.1992) (emphasis supplied); *Salinas v. United States*, 522 U.S. 52, 64 (1997) (One can be a

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The Court should be aware that the Third Circuit has considered the venue issue in the context of a conduit contribution, although not in the context of a conspiracy. In the case of *United States v. Passodelis*, 615 F.2d 975, 977 (3rd Cir. 1980), cited by the defendants, the court concluded that the fact that campaign contributions were deposited in the Middle District of Pennsylvania by campaign committee was insufficient to establish venue in that district, with respect to prosecution of a contributor for **making** an excessive and a conduit contribution. *See also, United States v. Hankin*, 607 F.2d 611 (3d Cir. 1979). However, these decisions involved the “making” of an illegal contribution, not the crime of “receiving” an illegal contribution. Although no cases addressing the latter issue were found, it would be reasonable to conclude that where the crime is “receiving” an illegal contribution, the contribution would not actually be “received” until deposited. Furthermore, where a conspiracy is charged, both the payment and the receipt of the illegal contributions may be overt acts of the conspiracy, and venue would be proper in any jurisdiction in which the conspiracy was begun, continued, or completed, pursuant to Title 18, *United States Code*, Section 3237. Specifically, the Superseding Indictment in this case alleges the conspirators knowingly and willfully **solicited and received** illegal contributions for the candidacy of defendant Acevedo Vila. (Superseding Indictment, p. 7)(emphasis supplied).

conspirator by agreeing to facilitate only some of the acts leading to the substantive offense.).

16. In this case, the facts pertaining to the conspiracy charged in Count One clearly involve acts which occurred in Puerto Rico or otherwise are substantially connected with Puerto Rico. Contrary to the defendants' assertions, there is no such "Philadelphia conspiracy." The Philadelphia scheme was a part of a larger over-reaching conspiracy.³

17. The three mechanisms, including the Philadelphia contribution scheme, detailed in the Superseding Indictment, were the means used to achieve a common unlawful end. Although different co-conspirators solicited and received the illegal campaign contributions, all the monies collected served the same purpose, paying debts of the Resident Commissioner campaign. The purpose of the conspiracy was further promoted by the filing of false FEC reports concealing the schemes.

18. The Federal Election Campaign Act (FECA) provides that it is unlawful to knowingly and willfully make and cause to be made materially false, fictitious and fraudulent statements and representations in a matter within the jurisdiction of the Federal Election Commission (FEC), Title 18, *United States Code*, § 1001(a)(2); and to knowingly and willfully falsify, conceal, and cover up by trick, scheme, and device a material fact in a matter within the jurisdiction of the FEC, Title 18, *United States Code*, § 1001(a)(1).

19. The defendants suggest that venue for FECA violations lies in the district in which the false statement was prepared, where it was mailed or sent to a federal agency, or where the

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This issue is more fully developed in connection with the government's response to a duplicity challenge leveled by defendants Acevedo Vilá, and joined by various co-defendants. The government's response is identified as Docket Entry 210.

federal agency received the false statement and acted upon it. The defendants allege that venue is not proper in the District of Puerto Rico, in spite of the fact that the conduit contributions were all deposited into accounts held by banks in Puerto Rico, and that the FEC reports were filed from Puerto Rico.

20. In this case, the false statements were prepared in Puerto Rico by Velasco Escardille and Colón Rodríguez, co-conspirators in Count One of the Superseding Indictment. Even though the defendants resided in Pennsylvania, the preparation of the false statements to the FEC in Puerto Rico were foreseeable effects of the defendants' overt acts in Philadelphia, and the submission of the false statements to the FEC was necessary to the success of the overall conspiracy. It is academic that to the extent conduit contributors are successfully used to funnel campaign contributions, the conduits, and not the true source of the money, will be reflected as the contributors in the corresponding reports to be filed with the FEC.

21. Furthermore, the object of the conspiracy was accomplished in Puerto Rico, that is, the payment of the campaign debt to LIH. LIH was based in Puerto Rico, and the publicity campaign they implemented was in Puerto Rico. The campaign held no bank accounts outside of Puerto Rico, and the deposits and disbursements from the campaign accounts were handled in Puerto Rico.

22. In conclusion, both Feldman and Block may be held responsible for a substantive crime committed by another conspirator in furtherance of the conspiracy, even if it occurred in another district, if that crime is committed while the defendant is a member of the conspiracy. Many of the overt acts alleged in Count One of the Superseding Indictment occurred in Puerto Rico or in connection to Puerto Rico. Moreover, the defendants' actions in Philadelphia had an effect in Puerto

Rico. For the foregoing reasons, the government submits that venue is proper in the District of Puerto Rico and the defendants' motions for dismissal should be denied.

WHEREFORE, the United States of America respectfully moves this Court to deny the defendants' Motions to Dismiss the Superseding Indictment for Lack of Venue.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 28th of July, 2008.

RESPECTFULLY SUBMITTED.

ROSA EMILIA RODRÍGUEZ-VÉLEZ
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this date I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the attorneys of record. At San Juan, Puerto Rico, this 28th day of July 2008.

/s/ María A. Domínguez
María A. Domínguez
First Assistant United States Attorney