

**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)

**NOTICE OF SUPPLEMENT TO DEFENDANTS ROBERT M. FELDMAN'S AND
ANÍBAL ACEVEDO-VILÁ'S MOTIONS FOR SEVERANCE AND THE ADDITIONAL
FILING OF AN EXHIBIT SUPPORTING THEIR MOTIONS TO SEVER**

Defendant Robert M. Feldman, through his attorneys, and Defendant Aníbal Acevedo Vilá, through his attorneys, hereby supplement their respective motions for severance pursuant to Federal Rule of Criminal Procedure 14 (Dkt. Nos. 178 and 180) with the following averments and exhibit:

1. On July 8, 2008, Mr. Feldman moved for severance of Count One from the other counts of the Superseding Indictment and/or severance of his trial from that of his co-defendants due to the fact that joinder of all counts and all defendants violates Mr. Feldman's right to present exculpatory material, severely inconveniences Mr. Feldman and hinders his ability to put on a defense, prejudices Mr. Feldman due to evidentiary spillover, and is improper. (Dkt. No. 178).

2. On July 8, 2008, Governor Acevedo Vilá moved for severance of his trial on Counts 1-3 of the Superseding Indictment due to the fact that joinder of all counts and all defendants would impinge upon Governor Acevedo Vilá's ability to present exculpatory material. (Dkt. No. 180).

Crim. No. 08-036

3. In their respective motions for severance, Mr. Feldman and Governor Acevedo Vilá argued that joinder of the trials of all co-defendants would prevent them from providing in their defense the exculpatory testimony of co-defendant Cándido Negrón Mella (“Defendant Negrón”). (Dkt. No. 178 at 7-11; Dkt No. 180 at 4-7).

4. After the filing of these motions to sever, Defendant Negrón executed an affidavit dated July 17, 2008, attached hereto as Exhibit 1. Counsel for Mr. Feldman and Governor Acevedo Vilá received this affidavit on the date of this submission (July 22, 2008).

5. In the affidavit, Defendant Negrón states that if Mr. Feldman’s trial is severed from Defendant Negrón’s trial on Count One of the Superseding Indictment, he will testify on Mr. Feldman’s behalf. (*See* Exhibit 1 at ¶ 7).

6. In the affidavit, Defendant Negrón further states that if Governor Acevedo Vilá’s trial is severed from Defendant Negrón’s trial, he will testify on the Governor’s behalf. (*See* Exhibit 1 at ¶ 7).

7. In particular, Defendant Negrón states in his affidavit that if called to testify on Mr. Feldman’s behalf at a separate trial of Mr. Feldman on Count One of the Superseding Indictment, he would testify that Mr. Feldman was not involved in nor aware of any of the details or circumstances regarding how, when, where, or under what circumstances Negrón set out to solicit contributions from his friends and relatives from the Philadelphia area in connection with fundraising efforts for Anibal Acevedo Vila’s campaign. (*See* Exhibit 1 at ¶ 4).

8. Defendant Negrón also states in his affidavit that if called to testify on Governor Acevedo Vilá’s behalf at a separate trial of the Governor, he would testify that

Crim. No. 08-036

Governor Acevedo Vilá knew nothing regarding how, when, where, or under what circumstances Negrón requested the contributions to Acevedo Vilá's campaign from Negrón's friends and relatives in the Philadelphia area. Negrón would also testify that Governor Acevedo Vilá never asked any questions about the number or identities of the campaign contributors from the Philadelphia area, and that Negrón never observed the Governor give any indication that the Governor suspected or believed that there was anything improper about any contributions from the Philadelphia area. (See Exhibit 1 at ¶ 5).

9. Defendant Negrón's affidavit clearly demonstrates that he would testify on Mr. Feldman and Governor Acevedo Vilá's behalf if the respective motions for severance were granted. *See United States v. Drougas*, 748 F.2d 8, 19 (1st Cir. 1984) .

10. In light of the attached affidavit demonstrating the existence of critical exculpatory testimony, and for the reasons set forth by Mr. Feldman and Governor Acevedo Vilá (Dkt. No. 178 at 7-11; Dkt No. 180 at 4-7), this Court should grant the motions for severance.

WHEREFORE, Defendant Robert M. Feldman and Defendant Aníbal Acevedo Vilá supplement their respective motions for severance on the grounds that joinder of all defendants will render critical exculpatory evidence unavailable at trial.

Respectfully submitted,

/s/ Henry E. Hockeimer, Jr.

Henry E. Hockeimer*
Kurt K. Lunkenheimer*
Amy Shellhammer*
BALLARD SPAHR ANDREWS &
INGERSOLL, LLP
1735 Market Street
Philadelphia, PA 19103
Telephone: (215) 665-8500
Fax: (215) 864-9470
Email: hockeimerh@ballardspahr.com;
lunkenheimerk@ballardspahr.com;
shellhammera@ballardspahr.com

* admitted pro hac vice

Ramon Garcia Garcia
U.S.D.C. # 120511
P.O. Box 9047 Santurce Station
Santurce, P.R. 00908
Telephone: (787) 759-7440
Fax: (787) 763-5223
Email: rmgs@coqui.net

Attorneys for Defendant Robert M. Feldman

/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 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

Dated: July 22, 2008

CERTIFICATE OF SERVICE

I, Bradford A. Berenson, hereby certify that on this 22nd day of July, 2008, I caused the foregoing Notice of Supplement to Defendants Robert M. Feldman's and Aníbal Acevedo Vilá's Motions for Severance and the Additional Filing of an Exhibit Supporting Their Motions to Sever 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