

**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)

**DEFENDANT LUISA INCLAN BIRD'S MOTION TO DISMISS
COUNT 25 (TAX CONSPIRACY) AND
INCORPORATED MEMORANDUM OF LAW**

Defendant, Luisa Inclan Bird, through undersigned counsel, hereby moves this Court to dismiss Count 25 of the Indictment herein on grounds that Count 25 fails to properly state a "Klein conspiracy" offense. In support, Defendant states as follows.

Count 25 of the Indictment alleges that Co-Defendant Anibal Acevedo Vila and Defendant Inclan Bird conspired, contrary to 18 U.S.C. §371, to impede and impair the Internal Revenue Service ("IRS") in the ascertainment, assessment and collection of Co-Defendant Acevedo Vila's personal income taxes. This use of 18 U.S.C. §371 to charge violation of tax laws is commonly called a "Klein conspiracy." See United States v. Klein, 247 F.2d 908 (2d Cir. 1957). To convict a defendant of a Klein conspiracy, the Government must show the existence of an agreement to defraud the Internal Revenue Service and an overt act by one of the defendants in furtherance of such agreement. United States v. Fletcher, 322 F.3d 508, 513 (8th Cir. 2003). While it is enough if the evidence shows that the effect of the defendants' actions would inevitably hinder tax collection, see e.g. United States v. Hurley, 957 F.2d 1 (1st Cir. 1992) (where lawyers were helping launder drug money), it is not enough if the evidence fails to establish a specific nexus between defendants' acts and the tax filings in issue. See e.g. United

States v. Pappathanasi, 383 F. Supp. 2d 289 (D. Mass. 2005) (where rebate program challenged had legitimate as well as pernicious uses). Moreover, the evidence must show that the alleged co-conspirator could reasonably foresee that taxes would be falsely reported. See United States v. Bruno, 383 F.3d 65 (2d Cir. 2004).

In this case, the Indictment describes the object of the conspiracy as concealment. The Defendants are accused of acting to conceal the alleged fact that Acevedo Vila's personal income was being supplemented with funds derived from political activity (Indictment at p. 50). According to the Indictment, this so-called conspiracy involved payment of Acevedo Vila's American Express charges; payment of cash to Acevedo Vila to assist him and to pay for family vacation expenses; and payments relating to clothing Acevedo Vila wore during his election campaign (Indictment at p. 51).

The Indictment does not, however, allege that Defendant Inclan Bird had anything whatsoever to do with the filing of the tax returns in issue. In fact, Ms. Luisa Inclan Bird had no connection to the preparation and/or filing of Acevedo Vila's taxes. Nor does the Indictment allege that Defendant Inclan Bird was aware that any of the payments described constituted taxable income of Acevedo Vila or that Acevedo Vila was not reporting same on his tax returns. In fact, the determinations as to what would or would not be reported on Acevedo Vila's tax returns were completely unknown and unforeseeable to Ms. Luisa Inclan Bird. Any nexus between payments in which Defendant Inclan Bird was involved and Acevedo Vila's tax obligations is totally lacking. Accordingly, Count 25 is defective as pleaded, and should be dismissed.

Respectfully submitted,

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Attorneys for Defendant Luisa Inclan-Bird

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document has been filed via electronic mail with the Clerk of the Court by using CM/ECF System which will send a notice of electronic filing to the following on this 8th day of July, 2008.

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