

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES : Cr. No. 10-018 (JDB)
V. :
RAMIRO ANTURI LARRAHONDO :
Defendant. :

DEFENDANT ANTURI’S MOTION FOR A BILL OF PARTICULARS

INTRODUCTION

Defendant Ramiro Anturi respectfully moves this Court pursuant to Federal Rule of Criminal Procedure 9(f) to Order the Government to file a Bill of Particulars concerning several critical pieces of information which are necessary to enable the defendant to understand the nature of the charges against him and to prepare a defense thereto. As set forth herein, neither the brief language of the indictment - nor the volumes of discovery disclosed in this case - offer sufficient detail as to what acts the defendant is alleged to have to done to become a member of an international narcotics trafficking conspiracy, when his participation in the charged conspiracy is alleged to have commenced, or what amount of drug are attributable to him in the event that he was a member of the charged conspiracy. Similarly, the defendant needs the identities of the alleged “unindicted” co-conspirators disclosed in order to file motions and prepare for trial. Indeed, based upon the defendant’s review of the discovery, it appears that defendant Anturi’s alleged participation began after the drug trafficking conspiracy had already ended and/or that he was involved in a separate conspiracy independent of the co-defendants’ alleged drug trafficking activities.

The defendant has communicated this position to the Government and has made repeated requests to obtain the information sought herein without judicial intervention. Those efforts,

however, have been unsuccessful and accordingly the filing of this Motion is necessary to protect the defendant's right to a fair trial. The defense respectfully requests oral argument on this motion.

BACKGROUND

A. The Alleged Drug Conspiracies

At the time of his arrest on February 9, 2010, defendant Ramiro Anturi was a senior Colombian federal prosecutor, assigned to the anti-terrorism division of the "Fiscalia General de la Nacion"¹ Anturi is charged in the first two counts of the pending Superseding Indictment with conspiracy beginning in October 2008 to: (1) distribute five or more kilograms of cocaine on board a vessel on the high seas; and (2) unlawfully distribute five kilograms or more of cocaine knowing that it would be unlawfully imported into the United States.²

According to the affidavit prepared in support of the extraditions in this case, the Government's evidentiary predicate for the charges in the Superseding Indictment is alleged to be the result of information provided by: (1) three cooperating witnesses; (2) hundreds of thousands of recorded phone conversations; and (3) seizures made by the United States Coast Guard, the Drug Enforcement Administration ("DEA") and foreign law enforcement agencies. See Affidavit of FBI SA Alberico Crespo in Support of Extradition, attached hereto as Defense Exhibit 1. The Government's evidence first focuses on a series of four seizures of cocaine allegedly being transported via so called "fast boats" departing from Colombia and destined for Central America. These seizures are summarized as follows:

¹ The Fiscalia General is the Colombian equivalent of the Attorney General of the United States.

² The original indictment in this case was returned on January 19, 2010, but defendant Anturi was not named as an indicted co-defendant. The Superseding Indictment was returned exactly one week later and charges a total of ten defendants, all of whom are charged in the in the first two conspiracy counts. The remaining counts charge the other defendants in various combinations with six different substantive offenses, whose dates are included in the time frame of the conspiracy counts.

DATE	LOCATION	SEIZURE	LAW ENF. AGENCY
DECEMBER 1, 2008	PUNTARENAS, COSTA RICO	2600 KILOGRAMS OF COCAINE	COSTA RICA
DECEMBER 2, 2008	INTERNATIONAL WATERS NEAR PANAMA	2100 KILOGRAMS OF COCAINE	U.S. COAST GUARD
DECEMBER 12, 2008	INTERNATIONAL WATERS NEAR COLOMBIA, S.A.	1500 KILOGRAMS OF COCAINE (APPX)	U.S. COAST GUARD
FEBRUARY 2, 2009	PANAMANIAN TERRITORIAL WATERS	3000 KILOGRAMS OF COCAINE (APPX)	PANAMA

The remaining evidence described by the Government in the extradition affidavit and materials previously submitted to the Court focuses on the seizure of money and drugs which were allegedly provided by the drug traffickers to an undercover DEA agent and a cooperating witness. These law enforcement activities resulted in the following:

DATE	LOCATION	SEIZURE	LAW ENF. AGENCY
APRIL 17, 2009	TEGUCIGALPA, HONDURAS	\$ 1,039,980.00	DEA
APRIL 19, 2009	BARRANQUILLA, COLOMBIA	2730 KILOGRAMS OF COCAINE	DEA/COLOMBIAN NATIONAL POLICE

B. Defendant Anturi's Alleged Acts

The defendant's review of the discovery in this case strongly suggests that Anturi's alleged involvement in these matters does not begin until after the seizures outlined above. This conclusion is supported by several factors, including the Government's own description of the

facts of the case. Thus, for example, the Government's affidavit in support of the extradition in this case chronologically discusses the above matters and then alleges that:

as a result of the cocaine seizures, VALENCIA and his associates began paying bribes to a Colombian prosecutor, Ramiro Anturi Larrahondo (ANTURI), in order to obtain the details of the Colombian and U.S. criminal investigation. VALENCIA and MONTANO wanted ANTURI to thwart the on-going criminal investigation and to offer protection from criminal prosecution.

See Crespo Extradition Aff. at para. 49.

Moreover, the Government has identified as "important" approximately sixty-four phone calls allegedly involving defendant Anturi and provided transcripts for approximately ten calls which it deemed to be the most significant. Each and every one of these calls was recorded after the final April 19, 2009 seizure in Cartagena and there is not a single phone call between defendant Anturi and the other alleged members of the conspiracy discussing any alleged criminal activity. Rather, the phone calls are between Anturi and: (1) a male identified as "Jorge" – who is believed to be Jorge Baena, identified as CS-3 in the affidavit in support of extradition and who is now deceased; and (2) a female identified as "Fabiola" – who is believed to be Marlon Valencia's mother-in-law. None of these intercepted calls appear to have anything to do with narcotics trafficking or the seizures identified by the Government as the predicate for the conspiracies charged in this case.

The Government also alleges that defendant Anturi received cash payments in return for providing "information" to the criminal organization responsible for the drug shipments. The payments were allegedly made to Anturi through Jorge Baena, who is no longer available as a witness in the case due to his unfortunate murder. Moreover, although the Government also alleges that co-defendants Montano and Valencia "believed that their payments to ANTURI were securing protection for the organization from law enforcement interference," the Government also states that the document Anturi alleged provided them through Baena – referred to as the

DAS Report - was “fraudulent.”³ See Docket Entry 58.1 (Affidavit of FBI SA Crespo in Support of Criminal Complaint) at paras 24 – 25. Finally, the DAS Report itself is dated May 20, 2009 – after the last seizure in the case.

THE INFORMATION SOUGHT BY THE DEFENDANT

The defense has invested significant time reviewing the contents of the voluminous discovery provided by the Government, with particular attention to a review of the phone calls involving defendant Anturi and the documents that allegedly pertain to his conduct. After this review, however, significant questions still remain as to precisely what acts the Government alleges that defendant Anturi undertook to become a part of the conspiracies alleged in the Indictment and when those acts took place.

The defendant has also sent several letters with detailed requests to the prosecution seeking what it believes is information that is essential to understand the charges against this particular defendant and to prepare a defense. These efforts have been unavailing and the defense is therefore moving this Court to Order the Government to provide a Bill of Particulars as to the following:

Count One – Conspiracy to Distribute More Than Five Kilograms of Cocaine On Board A Vessel Subject To the Jurisdiction Of the United States

1. On what date does the Government allege that Ramiro Anturi joined this conspiracy;
2. What act does the Government allege that Anturi took on the day identified in #1 above to manifest the intent to join the conspiracy with the requisite intent to distribute cocaine;
3. From the date the Government alleges that Ramiro Anturi joined this conspiracy – until the last date of the conspiracy – what quantity of cocaine did the conspiracy distribute (or attempt to distribute);

³ “DAS” is the acronym for Colombia’s Departamento Administrativo de Seguridad and is a law enforcement and intelligence gathering agency which frequently works with the United States Drug Enforcement Administration.

4. With respect to the amount of cocaine identified in #3 above, what amount of cocaine does the Government allege is attributable to Ramiro Anturi;
5. Who are the unidentified conspirators alleged in Count One of the indictment?

Count Two – Conspiracy to Distribute Five Kilograms of Cocaine Knowing or Intending That It Would Be Unlawfully Imported into the United States.

1. On what date does the Government allege that Ramiro Anturi joined this conspiracy;
2. What act does the Government allege that Anturi took on the day identified in #1 above to manifest the intent to join the conspiracy with the requisite intent to distribute cocaine;
3. From the date the Government alleges that Ramiro Anturi joined this conspiracy – until the last date of the conspiracy – what quantity of cocaine did the conspiracy distribute (or attempt to distribute);
4. With respect to the amount of cocaine identified in #3 above, what amount of cocaine does the Government allege is attributable to Ramiro Anturi;
5. Who are the unidentified conspirators alleged in Count Two of the indictment?

General Requests

1. What act(s) did defendant Anturi commit to “protect” the drug trafficking organization from an investigation from either the United States or Colombian law enforcement?

LEGAL ANALYSIS

A. A Bill of Particulars Is Warranted Under The Facts of This Case

There is a relatively well defined body of caselaw in this jurisdiction which supports the defendant Anturi’s request for a Bill of Particulars.

As an initial matter, Federal Rule of Criminal Procedure 7(f) expressly authorizes this Court to Order the Government to file a Bill of Particulars when it is necessary to allow the defendant to “understand the charges” and to prepare a defense” thereto. See, e.g., United States v. Palfrey, 499 F.Supp.2d 34, 51 (D.D.C. 2007). The purpose of the bill is to “inform the defendant of the substantive facts of the charges against him. . . .” United States v. Bazezew, 2011 WL 1790103 (D.D.C.) at p.8.

Thus, it is within the Court's discretion to order the Government to "clarify" the contents of the indictment. United States v. Hsia, 24 F.Supp.2d 14, 30 (D.D.C. 1998). Such clarification is particularly important in this case, where the opaque indictment simply tracks the language of the conspiracy statute and does not identify a single overt act committed by any of the alleged co-conspirators. In United States v. Ramirez, 54 F.Supp.2d 25, 30 (D.D.C. 1999), the court expressly noted that "a bill of particulars is all the more important in a narcotics conspiracy case because the indictment itself provides so little detail."

It is also clear that the Government cannot simply rely on the fact that it has provided extensive discovery in order to avoid the requirement of a bill of particulars. In United States v. Anderson, 441 F.Supp.2d 15, 19 (D.D.C. 2006) the Court specifically held that it was not a "sufficient response to a motion for a bill of particulars [for the Government] to point to the voluminous discovery already provided. . . ." Accord United States v. Bazezew, 2011 WL 1790103 (D.D.C.). Indeed, in order to satisfy its Rule 16 discovery obligations, the Government provided each defendant with a portable hard drive containing scores of video and hundreds of thousands of phone calls; it has also turned over numerous other data discs. The undersigned co-counsel have reviewed the seemingly infinite contents of discovery – but they have done nothing to clarify what act(s) defendant Anturi is alleged to have done to join the conspiracies alleged in the Superseding Indictment with the intent to further their goals.

In that regard, the defense is not seeking this Bill of Particulars in order to obtain the Government's "theory" of the case. The defense is fully capable of ascertaining the Government's theory of prosecution – it is the apparent lack of a factual predicate for the theory that has forced the defense to file this motion. The federal district court judges in this jurisdiction

have ordered the Government to file a Bill of Particulars for the type of information sought by defendant Anturi under similar circumstances.

Thus, many courts have ordered the Government to produce the names of all alleged co-conspirators, whether indicted or not. See, e.g., United States v. Palfrey, 499 F.Supp.2d 34, 51 (D.D.C. 2007); United States v. Trie, 21 F.Supp.2d 7, 22 (D.D.C. 1998). But the courts have gone much further in requiring the Government to provide information in a bill of particulars. In United States v. Ramirez, 54 F.Supp.2d 25, 30 (D.D.C. 1999), for example, five defendants were charged in a narcotics conspiracy alleged to have lasted for approximately eight to nine months. Moreover, three of the defendants were alleged to have joined the conspiracy a scant three days before it allegedly ended. The defendants contended that they needed additional information in order to prepare for trial. The Court agreed and ordered the Government to provide the defendants with certain information, which was to include:

the names of all persons the government would claim at trial were co-conspirators (whether or not they will be called as trial witnesses), the approximate date and location of any meetings or conversations not already identified in the indictment in which each defendant allegedly participated, and the approximate date on which each defendant allegedly joined the conspiracy.

54 F.Supp.2d at 30.

Similarly, in United States v. Bazezew, 2011 WL 1790103 (D.D.C.), twenty-one defendants were charged with a conspiracy to commit bribery the Chairman of the District of Columbia Taxicab Commission in connection with the issuance of taxicab operator licenses. The defendants claimed that they could not have been members of a conspiracy because they did not know each other or the alleged architect of the bribery scheme. They filed a motion for a bill of particulars in order to obtain information to demonstrate, *inter alia*, that the alleged co-

conspirator statements should not be admitted at trial because no conspiracy existed or because each defendant was not a member of the alleged conspiracy.

The district court noted that although the indictment alleged that each defendant committed a single overt act in furtherance of the conspiracy – the payment of the alleged bribe – it provided no detail as to whether each defendant did anything else to “join the conspiracy or further its goals.” 2011 WL 1790103 at p.6. Accordingly, the trial court concluded that there was insufficient facts provided for the defense to prepare for trial and ordered the Government to submit a bill of particulars providing the identities of all persons alleged to be a member of the conspiracy regardless of whether indicted or not, a description of the overt acts taken in furtherance of the alleged conspiracy, and any conversations which took place among the alleged co-conspirators prior to the payment of the alleged bribe. *Id.* at p. 6.

B. Defendant Anturi’s Requests

Against the backdrop of these general principles, the defendant’s request for a bill of particulars should be granted.

1. Alleged Membership In The Conspiracy

As a general matter, in order to establish membership in a criminal conspiracy, the Government must prove that the conspiracy existed and that the defendant undertook some act to join the conspiracy with knowledge of its objectives. *See, e.g., United States v. Childress*, 746 F.Supp. 1122, 1127-30 (D.D.C. 1990). Thus, with respect to Count One, the Government must show that the defendant knowingly or intentionally possessed the cocaine on a vessel subject to United States’ jurisdiction, with the intent to distribute them. *See, e.g., United States v. Angulo-Hernandez*, 565 F.3d 2, 7-8 (1st Cir. 2009). With respect to the international drug trafficking conspiracy charged in Count Two, the Government must prove that defendant Anturi had the

“specific intent” to import cocaine into the United States. See United States v. Borda, 2011 WL 1597682 (D.D.C.).

In order for the defense to prepare for the trial in this case, there must be further clarification as to when the Government alleges that defendant Anturi joined each of the charged conspiracies and what act he undertook to manifest that intention. This information is particularly critical because just as in the Ramirez case, defendant Anturi’s alleged involvement does not appear to have commenced until after the drug trafficking conspiracy was over. Depending upon when the Government alleges that Anturi joined the conspiracy, the defense would potentially not have to focus additional efforts reviewing the voluminous documents concerning the seizures between December 2008 and April 2009.

Moreover, the defense needs additional detail as to what act the defendant is alleged to have taken to join these conspiracies in order to have a principled basis to file other substantive motions – including a motion to sever - and prepare for trial. Thus, while it seems unlikely that the Government would assert that the transmission of the “fraudulent” DAS Report could make Anturi a part of the drug trafficking conspiracy, the defense needs some certainty so that it can focus its efforts on investigating matters that are relevant to the defense of his case.⁴

2. The Identity of Unindicted Co-Defendants

In much the same way, it is also critical in this case for the defense to learn the identity of all persons the Government alleges were co-conspirators – whether indicted or not. This applies with particular force to the persons identified as “Jorge Baena” and “Fabiola” because if they are

⁴ If the Government chooses to rely upon this act to prove Anturi’s membership in the conspiracies, the Government would appear to have significant evidentiary problems because Baena is no longer available as a witness. Similarly, the Government would seem to lack a witness to establish that monies were paid to Anturi in exchange for providing any information. Similarly, the defense would thereafter need to file a series of motions requesting information about Baena, who was prosecuted for weapons violation(s) in Colombia and upon information and belief, has some history of mental illness.

not alleged to be co-conspirators, then the alleged conversations between each of them and defendant Anturi cannot be admitted into evidence pursuant to the co-conspirator exception to the hearsay rule contained in Fed. R. Evid. 801(d)(2)(E). The disclosure of the identity of unindicted co-defendants was ordered in the Palfrey, Ramirez, and Trie decisions discussed above, and the same principle justifies ordering the Government to produce the names in this case.

3. The Amount Of Cocaine Attributable to Defendant Anturi

Information concerning the amount of cocaine which the Government claims is attributable to defendant Anturi is also necessary to an understanding of the charges against him and the preparation of a defense. The standard for attributing drug quantities to a defendant is well settled. It requires more than “mere foreseeability.” United States v. Edmonds, 52 F.3d 1080, 1104 (D.C. Cir. 1995). Rather, as the Edmonds court explained, a co-defendant is not “automatically accountable” for every drug shipment that may be undertaken by a co-conspirator. Rather, the amount of drugs attributable to a co-defendant turns on the scope of his conspiratorial agreement. Id. See also Federal Sentencing Guideline 1B1.3 and Commentary 2 ii (for offenses involving controlled substances, defendant is responsible only for drugs in which he was directly involved or were reasonable foreseeable within the “scope of the criminal activity that he jointly undertook”).

Although requests for a bill of particulars for information concerning drug quantities attributable to a defendant have met with disfavor, the defense believes that the special circumstances of this case warrant an order directing the Government to provide some detail as to what drug shipment defendant Anturi is responsible for. The Government has intimated that the following syllogism is appropriate in this case: because Anturi had knowledge that the

defendants were involved in international drug smuggling via “fast boats” and because Anturi knew that a fast boat must be laden with more than one hundred and fifty kilograms of cocaine, he is responsible for the maximum amount of drugs in the Federal Sentencing Guideline DRUG QUANTITY TABLE. See Federal Sentencing Guideline 2D1.1.

This reasoning seems particularly speculative as applied to defendant Anturi under the circumstances of this case. See United States v. Graham, 317 F.3d 262, 269-270 (D.C. Cir. 2003) (government must prove drug quantity by preponderance of the evidence). While the Government may elect to proceed under such a theory, at a minimum, the defendant would seem entitled to know whether there is some particular shipment that he is especially responsible for – again, so that he can file appropriate legal motions to challenge the theory and/or prepare a defense thereto.

2. Protecting the Drug Trafficking Conspiracy

The defendant’s final request concerns the particulars as to whether the Government has any independent evidence to establish that defendant Ramiro Anturi “protected” the drug trafficking conspiracy by providing them information. A review of the pleadings filed in this case reveals that the Government generally does not claim that it has direct evidence that Anturi protected the drug traffickers. This is not surprising, since Anturi was a prosecutor in the Anti-Terrorism unit and had no authority over Colombian drug trafficking investigations, let alone joint investigations conducted by the DEA and its Colombian counterparts. Moreover, the Government contends that the so-called DAS Report was itself a forged document.

To establish this claim of protection, the Government appears to be relying on statements allegedly made by Jorge Baena. Thus, in its Motion to Stay the Speedy Trial Act, the prosecution alleged that “according to the CS [Jorge Baena], the MONTANO and VALENCIA organizations

believed their payments to ANTURI were securing protection for the organization from law enforcement interference. See DE at p.7-8.⁵ Since Baena cannot be a witness – and because the Government’s theory of prosecution against Anturi appears to rely heavily upon the alleged “protection” rendered by Anturi – fundamental fairness demands that the defense should have some detail as to what factual predicate now exists to establish that Anturi protected the drug trafficking conspiracy.

CONCLUSION

Defendant Ramiro Anturi is charged with being a member of two significant drug trafficking conspiracies. Despite the seemingly endless series of intercepted and recorded phone calls and the quantity of drugs and money seized, the Government appears to have scant evidence to connect him to these crimes. Defendant Anturi intends to defend himself fully against these charges, but in order to do so, undersigned counsel need to know the “particulars” of what acts the Government alleges our client committed to join the conspiracy. The discovery in this case has not furthered that understanding and efforts to learn the identities of the unindicted co-conspirators and other details from the Government have been unavailing. The defendant’s only recourse has been to file this Motion for a Bill of Particulars, which we

⁵ According to the report of a post arrest interview, Anturi parroted the same general conclusion – that Valencia and Montano believed the investigation had ended.

respectfully ask be granted after the Court has an opportunity to hear from defense counsel at oral argument.

Respectfully submitted

Robert Feitel

Robert Feitel, Esquire
1614 20th Street, N.W.
Washington, D.C. 20009
D.C. Bar No. 366673
202-518-5123 (office)
202-255-6637 (cellular)
www.rfeitellaw.com

Sandi S. Rhee

Sandi S. Rhee, Esquire
1614 20th Street, N.W.
Washington, D.C. 20009
D.C. Bar. No. 502417
202-285-8366
SandiRheeLaw@gmail.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was sent, via the Electronic Filing System to Steven Sola, Mark Maldonado, Charles Griffin, Trial Attorneys, United States Department of Justice Narcotic and Dangerous Drug Section, 1400 New York Avenue, N.W. Washington, D.C., and all defense counsel, this 5th day of July, 2011.

Robert Feitel

Robert Feitel