UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

DEFENDANT RAMIRO ANTURI'S
MOTION TO SUPPRESS WIRETAP EVIDENCE

INTRODUCTION

Defendant Ramiro Anturi respectfully moves this Court to suppress any and all evidence seized as the result of a wiretap conducted against him, as having been obtained in violation of the Fourth Amendment's guarantee against unreasonable searches and seizures. As set forth more fully herein, the wiretap was a "joint venture" between the United States Drug Enforcement Administration (DEA) and the Colombian National Police (CNP). Indeed, the very purpose of this wiretap was to obtain information that would be used to support a United States federal narcotics prosecution.

As the result of this joint venture, the United States Government was able to obtain a wiretap without satisfying the "especially high" showing required under U.S. law to conduct such an intrusive search. Berger v. New York, 388 U.S. 41 (1967). The Colombian wiretap intercepted more than two hundred thousand telephone conversations, in complete violation of the Fourth Amendment's requirement that law enforcement agents specify the particular conversations which will be seized. See, e.g., United States v. Donovan, 429 U.S. 413 (1976).

The defense previously requested very specific discovery from the Government in

order to obtain further support for its claims, but the request was rejected.[1] See United States v. Karake, 281 F.Supp.2d 302 (D.D.C. 2003)("defendants are entitled to evidence that may demonstrate cooperation between the United States and [foreign] governments, sufficient to reveal an agency relationship").

Accordingly, the defense requests that this Court Order the Government to produce the materials previously requested in discovery and moreover, to conduct an evidentiary hearing with respect to this Motion To Suppress.

FACTUAL BACKGROUND

As a consequence of the Government's refusal to provide discovery concerning the scope of the joint venture between the DEA and the CNP, the defense must proceed in part based upon information and belief.

1. The Sensitive Investigations Unit of the Colombian National Police

Over the course of at least the last ten years, the DEA has caused the creation of what are referred to as "SIUs" or "Sensitive Investigations Units" of the Colombian National Police. These units are composed of CNP officers, who are specifically assigned to work with DEA agents in Colombia. The CNP officers undergo a "vetting" process before they are assigned to the SIU, which includes a criminal, personal and financial background check, polygraph examination, as well covert surveillance. The SIU officers are sent for additional training at the DEA's training facility in Quantico, Virginia and are assigned to work directly with DEA agents operating in Bogota and Cartagena, Colombia. More importantly, individual SIU officers receive an additional salary payment from the United States and are provided with extra equipment, such as cellular phones, computers,

[1] A copy of the defendant's July 15, 2011 letter requesting this information is attached hereto as Exhibit A.

and the like.

The SUI units themselves also receive direct benefits from the United States, including access to high technology interception devices for purposes of conducting wiretaps. The United States also assists the SIU officers in obtaining office space from which to conduct the wiretaps, vehicles for surveillance, video and audio equipment, and other similar devices.

2. The SIU Officers In This Case Conducted The Wiretap As Agents of the DEA

The genesis of the wiretap in this case was information provided on or about February 15, 2008 by the DEA to the Colombian Government. The United States gave the CNP a very brief summary of information concerning a Colombian narco-trafficking organization that was allegedly sending cocaine to the United States. The DEA also provided the CNP with a Colombian cell phone number allegedly used by a member of the group. Attached hereto as Exhibit B is a copy of a two page February 15, 2008 report prepared by a Colombian SIU detective initiating the CNP investigation and an English translation of the relevant portions.

With just this brief summary of information, the SIU agents commenced a wiretap under Colombian law and begin the investigation that ultimately led to the arrest of defendant Anturi. During the course of the wiretap, the CNP intercepted hundreds of telephone lines and recorded more than 200,000 phone calls, including phone calls made by defendant Ramiro Anturi. See Gov. Motion to Exclude Time Under Speedy Trial Act, D.E. 18 at p. 11.

In this case, it is clear that the SIU agents routinely met with DEA agents to discuss the progress of the case and provided the U.S. Government with detailed, virtually

contemporaneous information concerning both the results of the wiretap and copies of the intercepted phone calls. Thus, for example, a DEA Report dated April 20, 2009 states that on April 17, 2009, the wiretap intercepted phone calls relating to the identification of co-defendants Heiner Arboleda and Carlos Gomez. A copy of the DEA Report is attached hereto as Exhibit C. Similarly, a DEA Report dated August 14, 2009 memorializes that a DAS SIU agent turned over to a DEA agent in Colombia, one computer disc and three DVDs relating to the CNP investigation. A copy of this DEA Report is attached hereto as Exhibit D.

The DEA remained actively involved in this case through the arrest of the defendants. A DEA Cable dated February 11, 2010, noted that on February 9, 2010:

> THE BOGOTA COUNTRY OFFICE GROUPS FIVE MONEY LAUNDERING GROUP IN CONJUNCTION WITH THE DAS/DEA SIU BOGOTA CULMINATED OPERATIONS [REDACTED] WITH THE ARREST OF NINE COLOMBIAN NATIONALS.
>
> …………………
>
> THESE ARRESTS AND SUCCESS OF THE INVESTIGATION WERE THE CULMINATION OF A **JOINT EFFORT BETWEEN THE [DEA] BOGOTA COUNTRY OFFICE . . THE DAS/SIU MONEY LAUNDERING UNIT**."

(emphasis added). Thus, the DEA itself described the operation as a "joint" effort. A copy of the DEA Cable is attached hereto as Exhibit E.

3. <u>The Defense Discovery Request</u>

The defense in this case specifically requested discovery from the Government in an attempt to determine the precise manner in which the wiretap(s) in this case was commenced, including whether the information which began the process was provided by U.S. law enforcement agents, the nature of the information, and other relevant details. In

addition, the defense requested information concerning the status of the CNP officers who conducted the eavesdropping, as well as details concerning the equipment and other materials utilized to conduct the wiretap. This detailed request was narrowly drafted to focus on matters which would support the defense belief that the CNP officers who conducted this wiretap were acting as "agents" for the DEA. The prosecution declined to produce these materials.

LEGAL ANALYSIS

By its express terms, the Fourth Amendment provides that

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized

The warrant requirement clearly applies to the interception of telephone conversations, Katz v. United States, 389 U.S. 347, 353 (1967). Prior to the passage of the federal wiretap statute, the Supreme Court held that the burden imposed by the Fourth Amendment for obtaining a warrant to intercept telephone conversations was especially high. In Berger v. New York, 388 U.S. 41 (1967), Justice Clark noted that:

> The need for particularity and evidence of reliability in the showing required when judicial authorization of a search is sought is especially great in the case of eavesdropping. By its very nature eavesdropping involves an intrusion on privacy that is broad in scope.

388 U.S. at 56.

Moreover, the Fourth Amendment requires that an application for the interception of a telephone line state with specificity which lines will be intercepted and which particular conversations will be seized. United States v. Donovan, 429 U.S. 413, 427 n.15 (1976).

1. The Joint Venture Doctrine

In United States v. Verdugo Urquidez, 494 U.S. 259 (1990), the Supreme Court concluded that the Fourth Amendment did not apply to searches conducted against foreign nationals by foreign law enforcement agents. Since the decision in Verdugo, however, an extensive body of caselaw has developed which holds that notwithstanding this limitation on the Fourth Amendment's reach, the federal courts still have the power to suppress evidence seized in a foreign country when: (1) the conduct of foreign officials in acquiring the evidence is so extreme as to shock the conscience; and (2) the conduct of foreign law enforcement agents renders them agents, or virtual agents of United States law enforcement agents, or (3) the U.S. law enforcement agents utilize their foreign counterparts to circumvent the requirements of American law. See, e.g., United States v. Maturo, 982 F.2d 57, 61 (2d Cir. 1992); This "joint venture" rule has been adopted without question by courts in judicial districts all across the United States. See United States v. Restrepo, 2002 WL 10455 (S.D.N.Y.); United States v Castro, 175 F.Supp. 2d 129, 131 (D. Puerto Rico 2001); United States v. Adler, 605 F.Supp.2d 829, 834 (W.D. Tex. 2009); United States v. Angulo Hurtado, 165 F.Supp.2d 1363, 1370 (N.D. Ga. 2001); United States v. Staino, 690 F.Supp. 406, 408 (E.D. Pa. 1988); United States v. Roueche, 2009 WL 1011634 (W.D. Wash).

In this jurisdiction several courts have affirmed the principle that a "joint venture" between United States and foreign law enforcement agents can result in suppression of wiretap evidence. Thus, in United States v. Ferguson, 508 F.Supp.2d 1, 3 (D.C. 2007), for example, the court recognized that although the Fourth Amendment does not apply to the acts of foreign law enforcement agents, there was an exception if "American law

enforcement agents substantially participated in the search or if the foreign law enforcement officials conducting the search were actually acting as agents for their American counterparts." 508 F.Supp.2d at 4. The Ferguson court conducted an evidentiary hearing on this issue and heard testimony from both United States and foreign law enforcement agents.

Similarly, in United States v. Al Deleama, 583 F.Supp.2d 104 (D.D.C. 2008), the court held the defendant was entitled to pursue his "joint venture" challenge to a wiretap conducted by Dutch authorities allegedly in conjunction with U.S. law enforcement agents. The Al Deleama court noted that a joint venture would take place when:

> U.S. agents actively participate in the questioning [at issue]; (2) the foreign officials are acting as agents or virtual agents of the U.S. government[;] or (3) the cooperation [among American and foreign officials] was designed to evade constitutional restrictions on U.S. agents.

583 F.Supp.2d at 107. Accord Abu Ali v. Ashcroft, 350 F.Supp.2d 28, 50 n.21 (D.D.C. 2004).

Finally, in United States v. Karake, 281 F.Supp.2d 302 (D.D.C. 2003), the court ordered the production of discovery in order to permit the defendants to "demonstrate cooperation between the United States and Rwandan governments sufficient to reveal an agency relationship so that they can, if appropriate, raise constitutional challenges." 281 F.Supp.2d at 309.

2. The Joint Venture Doctrine Applies To This Case

The application of the joint venture doctrine to the facts of this case warrants suppression of the evidence seized during the wiretap.[2] The facts demonstrate that the

[2] If the defense is granted discovery and an evidentiary hearing, proof that the DEA controlled the joint venture with the Colombian police will likely be strengthened.

DEA used the CNP as its surrogate to conduct a wiretap investigation for the express purpose of bringing a criminal prosecution in the United States. The DEA created, trained, and financed the SIU groups, who became its "agents" in Colombia – and undertook a wiretap investigation at the DEA's behest. The DEA provided the information that led to the wiretap, had access to the ongoing results of the CNP investigation, and even obtained copies of the intercepted phone calls while the CNP investigation was ongoing. It is clear beyond peradventure that the CNP was not acting as an autonomous law enforcement entity in this case, but rather was an instrument of a U.S. law enforcement agency.

Moreover, the use of this instrumentality permitted the DEA to obtain an extraordinary number of intercepts from a wiretap that would never have been authorized in the United States. By the Government's own estimate, more than two hundred thousand calls were recorded during the life of the investigation. The wiretap conducted in this case could not survive a Fourth Amendment challenge, as there would be no particularized showing of probable cause and/or specificity as to which conversations were seized. See Berger v. New York, infra; United States v. Donovan, infra.

Some recent cases have attempted to limit the scope of the joint venture doctrine, finding that it is potentially limited to a class of persons already protected by the Fourth Amendment. See, e.g., See United States v. Emmanuel, 565 F.3d 1324 (11th Cir. 2009). See also United States v. Bourdet, 477 F.Supp.2d 164, 176 (D.D.C. 2007). In the defendant's view, this minority interpretation is inconsistent with the very rationale for having an exception to the Verdugo holding. The federal courts created the exclusionary rule as a remedy for constitutional violations including searches undertaken in violation of the Fourth Amendment. See Mapp v. Ohio, 367 U.S. 643, 651 (1961)(exclusionary rule is a

corollary of Fourth Amendment). See also United States v. Giordano, 416 U.S. 505, 529, n.17 (1974)(suppression of wiretap evidence). The joint venture doctrine gives life to that remedy in the context of searches conducted by foreign law enforcement agents at the behest of the United States. The joint venture exception is not a product of the relationship between the target of the unconstitutional activity and the United States; its goal is to regulate the behavior of U.S. law enforcement agents, who are subject to the dictates of the Fourth Amendment.

Indeed, to hold otherwise would create a fundamentally unfair – indeed almost shocking situation. In the absence of the joint venture doctrine, defendant Anturi could be subjected to a wiretap in Colombia at the behest of the DEA and then as a result of information derived therefrom be: (1) arrested in Colombia for extradition to the United States; (2) confined without the opportunity for bond at the Combita prison (built with the assistance of the U.S. Bureau of Prisons); (3) brought to the United States and again detained without bond pending trial because of the existence of an Immigration Detainer against him; and then told that (4) he has no right to challenge the legality of the search which caused him to be arrested in the first instance. Such a ruling would permit the DEA to utilize the Colombian National Police as its agents, without any judicial review in a United States court.

Even those designated as enemy combatants by the United States have the right to challenge their designation in the federal courts and seek redress. See Boumediene v. Bush, 533 U.S. 723 (2008). It would be at odds with this nation's long standing history of constitutional protections for this Court to conclude that the defendant in this case cannot even challenge the wiretap used to obtain evidence against him.

CONCLUSION

For all these reasons, the defendants respectfully request that this Court order the Government to produce the discovery previously requested by the defense, to conduct an evidentiary hearing on the motion to suppress, and to rule that the wiretap evidence in this case was obtained in contravention of the requirements of the Fourth Amendment.

Respectfully submitted

Robert Feitel

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was sent via the electronic court filing system, to Mark Maldonado and 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 29th day of February, 2012.

Robert Feitel

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