UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

UNITED STATES,	:	
	:	
v.	:	
	:	**Criminal No. 09-0466(BMC)**
JOAQUÍN GUZMÁN LOERA,	:	
	:	
Defendant.	:	

DEFENDANT'S MOTION IN LIMINE TO
PRECLUDE USE OF LEDGERS AT TRIAL

Defendant, Joaquín Guzmán Loera ("Guzmán") by and through undersigned counsel, hereby submits his Motion in Limine to Preclude Introduction of Ledgers. Mr. Guzmán states as follows:

FACTS

Government cooperator Juan Carlos Ramirez Abadia ("Chupeta") is currently testifying on direct examination. The defense understands that the government may seek to introduce Exhibits GX302-A through GX302-L during Chupeta's testimony. Chupeta was the leader of the notoriously murderous Cartel del Norte del Valle ("North Valley Cartel" or "NVC") in Colombia. Chupeta has already testified that he purportedly supplied thousands of tons of cocaine to Mexican buyers.

The exhibits the government may seek to introduce are alleged ledgers maintained by Chupeta's organization and pertain to the "Juanita" series of loads that were organized by Chupeta. (GX302-A through GX302-I). Juanita 2 through Juanita 10 involved an approximate total of 75,534 units, or kilos, of cocaine. The government has explained the ledgers as follows:

At [Chupeta]'s direction, two members of [Chupeta]'s DTO [Laureano Renteria[1] and Jose Alzate[2]] maintained accounting ledgers that detailed the expenditures and income of [Chupeta]'s DTO, including money received from investors in the drug shipments, such as the [Alfredo Beltrán Leyva]. All of the expenditures and income related to the DTO's drug trafficking activities were recorded in a master accounting ledger, referred to as the "Caja Mayor." [Chupeta] will explain that certain entries in the "Caja Mayor" are directly related to drug trafficking ventures that [Chupeta] entered into with the [Beltrán Leyva] DTO – *e.g.,* payments made by the [Beltrán Leyva] DTO for cocaine purchased from [Chupeta] during the dates of the charged conspiracy.

In addition to the "Caja Mayor," the DTO also maintained individual accounting ledgers for the cocaine shipments organized by [Chupeta]'s DTO. These ledgers contain details such as the quantity of cocaine, names of the investors and the person or organization responsible for receiving a particular cocaine shipment in Mexico, among other information. Any data that was entered into these ledgers for the particular shipment was also entered into the "Caja Mayor." [Chupeta] will explain some of these ledgers, such ledgers titled "Juanitas 1" through "Juanitas 10," contain information that details the [Beltrán Leyva] DTO's involvement in those cocaine shipments.

Information entered into the accounting ledgers – *e.g.,* the names of the investors – was often written in coded language. As the leader of the Colombian DTO who ordered the creation of the ledgers, and as someone who personally reviewed them line by line, [Chupeta] will be able to testify as to the meaning of the coded language. For example, [Chupeta] will testify that code names beginning with the letter "O," such as "Olfato" or "Oreste," represented the Beltran Leyva DTO, of which the [Alfredo Beltrán Leyva] was a member.

Prior to each shipment of cocaine that [Chupeta]'s DTO organized, [Chupeta] would meet with [Renteria] to discuss the logistics of the intended shipment, including the anticipated expenses required for the shipment to take place. Once the cocaine shipment left Colombia, [Renteria] or [Alzate] would enter the income and expenditure information into the "Caja Mayor" and shipment specific accounting ledgers. [Chupeta] would then meet with [Renteria] to review the ledger entries line by line for accuracy. ***These review meetings occurred for each cocaine shipment until June 2004*, when [Chupeta] fled Colombia to avoid capture by law enforcement.** ***After June 2004, [Chupeta] was apprised of the activities of the DTO through intermediaries, including [Renteria], who would send [Chupeta] written correspondence regarding the financial status of the organization.*** Copies of the written correspondence was stored electronically with the accounting ledgers. [Chupeta] will further establish that the accounting

[1] Renteria was murdered in a jail in Bogota, Colombia, allegedly at the orders of Chupeta, who wanted to prevent Renteria from divulging his financial data.

[2] Alzate was released from BOP custody on January 14, 2016, and his whereabouts are unknown.

> practices and the maintenance of the ledgers remained the same, even after June 2004. Furthermore, due to the hierarchy in [Chupeta]'s DTO, any changes to the accounting practices or maintenance of the accounting ledgers could not occur without [Chupeta]'s authorization.

Government Motion in Limine to Admit or Allow Evidence at 2-3 (Doc. 68) filed in *United States v. Alfredo Beltrán Leyva*, 12-CR-0184 (D.D.C., Leon. J.) (emphasis added). Furthermore:

> [Chupeta] will testify that after June 2004, [he] left Colombia and went into hiding to evade law enforcement. He will further testify that from mid-2004 on, he did not personally meet with [Renteria] or other members of the conspiracy to discuss the information that was entered in the ledgers, nor did he review the ledgers line by line with [Renteria] (as he did before fleeing Colombia).

Id. At 8-9. Furthermore, Chupeta "cannot specifically identify which entries in the ledgers were made by [Alzate] and which were made by [Renteria]." *Id.* at 8.

In *Beltran Leyva*, Judge Leon ruled that the government could not introduce ledgers made after Chupeta left Colombia in mid-2004:

> THE COURT: While he was in the country of Colombia and was interacting with the people who were making the notations in the ledger and checking them as to their accuracy and verification, I said those would be useable to explain what the ledger entries are.
>
> We have a witness who was involved in the inputting of those items in the ledger and was knowledgeable of what the particular symbols and names meant, what the significance of them were, and, of course, he'd be subject to cross-examination.
>
> MR. BALAREZO: Right.
>
> ***THE COURT: But once the person left the country, any entries made thereafter where there wasn't that kind of interaction to verify the accuracy of what was being inputted and what the meaning of it was, that, to me, struck me as way too risky. And I was not going to permit the government to use those entries in the ledger after he fled from Colombia to Panama.***[3]

[3] Judge Leon misspoke and said Panama instead of Brazil.

Pretrial Conference in *United States v. Alfredo Beltrán Leyva*, Tr. 69:12 - 70:4 (Feb. 8, 2016) (emphasis added) (Exh. 1).

The defense has reason to believe that Chupeta will testify specifically that cocaine seizures in September 2004 from the F/V Lina Maria and F/V San Jose were destined for Mr. Guzmán. However, in *United States v. Alfredo Beltrán Leyva*, the government made clear that those loads were destined for others:

> The Government identified ledgers that the Government believes relate to the [Beltrán Leyva] and his co-conspirators. The Government further identified ledgers titled "Juanitas" that relate to two seizures in September 2004. Lastly, the Government stated that the ledgers identify that ***one of these seized loads was to be received by the Beltran Leyvas and the other load was to be received by co-conspirator Ignacio "Nacho" Coronel Villarreal***.

Government Opposition to Defendant's Motion to Compel Brady Disclosure at 2 (Doc. 94), filed in *United States v. Alfredo Beltrán Leyva*, 12-CR-0184 (D.D.C., Leon. J.) (emphasis added). The government further stated:

> The Government has been completely transparent with [Beltrán Leyva] since the outset that ***of the two loads seized in September 2004, one was going to be received by the [Beltrán Leyva] DTO and the other was going to be received by Ignacio "Nacho" Coronel Villareal.***

Id. At 5-6 (emphasis added).

ARGUMENT

The Court should preclude Chupeta from testifying about post-June 2004 ledgers because he has no personal knowledge about who kept the records, who input the data, or any other information about the creation of the ledgers. Additionally, should the government seek to elicit testimony that the loads of cocaine seized from the F/V Lina Maria and F/V San Jose were being shipped to Mr. Guzmán, the government's prior admissions that the loads were destined

for the Beltán Leyvas and Nacho Coronel should be admitted as admissions of a party-opponent.

A. Chupeta Has No Personal Knowledge About Post-June 2004 Ledgers

Rule of Evidence 602 states:

> Rule 602. Need for Personal Knowledge
>
> A witness may testify to a matter only if evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may consist of the witness's own testimony. This rule does not apply to a witness's expert testimony under Rule 703.

Fed. R. Evid. 602. In this case, the government concedes that Chupeta does not have personal knowledge concerning the ledger entries made after June 2004, when he fled Colombia for Brazil. Post-June 2004, Chupeta was kept abreast of his organization's activities through "intermediaries, who would send him written correspondence regarding the financial status of the organization." Although Chupeta may have received information about his organization's transactions through these unknown "intermediaries," Chupeta does not have personal knowledge about the creation of the post-June 2004 ledgers so as to be competent to testify about them. The government may argue that the "intermediaries" are co-conspirators whose statements to Chupeta should be admissible under R. 801(d)(2)(e); however, written correspondence from unknown intermediaries is far too attenuated hearsay within hearsay to be admissible.

B. The Government's Prior Filings Are Statements of a Party Opponent

Pursuant to Federal Rule of Evidence 801(d)(2)(A), a statement is not hearsay if the statement is offered against a party and is the party's own statement, in either an individual or a representative capacity. Fed. R. Evid. 801(d)(2)(A). Although a government attorney's statements may be admitted against the government as a litigant, such statements must meet

three criteria: First, "the district court must be satisfied that the prior argument involves an assertion of fact inconsistent with similar assertions in a subsequent trial." Second, the court must determine "that the statements of counsel were such as to be the equivalent of testimonial statements" made by the client. Last, the district court must determine by a preponderance of the evidence that the inference that the proponent of the statements wishes to draw "is a fair one and that an innocent explanation for the inconsistency does not exist." *United States v. Ford*, 435 F.3d 204, 215 (2d Cir. 2006) (citation omitted).

With respect to the first factor, in *United States v. Alfredo Beltrán Leyva*, the government conceded that of the September 2004 seizures of the F/V Lina Maria and F/V San Jose, one was destined for the Beltrán Leyva organization and one was destined for Ignacio "Nacho" Coronel. This assertion is entirely inconsistent with the expected testimony by Chupeta that the seized cocaine was destined for Mr. Guzmán. With respect to the second factor, the government, by NDDS, one of the offices prosecuting this case, represented in a filing to a Judge Leon that the drugs were going to someone besides Mr. Guzmán. Thus, the admission amounts to a testimonial statement by government counsel. With respect to the third factor, it is evident that there can be no dispute that the government's representation is clear that the drugs were not going to Mr. Guzmán.

As such:

> The jury is at least entitled to know that the government at one time believed, and stated, that its proof established something different from what it currently claims. Confidence in the justice system cannot be affirmed if any party is free, wholly without explanation, to make a fundamental change in its version of the facts between trials, and then conceal this change from the final trier of the facts.

United States v. Salerno, 937 F.2d 797, 812 (2d Cir.), *opinion modified on reh'g*, 952 F.2d 623 (2d Cir. 1991), *and amended*, 952 F.2d 624 (2d Cir. 1991), *and rev'd on other grounds*, 505 U.S. 317 (1992) (quotations omitted). Thus, the government's filings to that effect in the *Beltrán Leyva* case are considered statement of a party opponent under Fed. R. Evid. 801(d)(2)(A) and should be presented to the jury.

WHEREFORE, for the foregoing reasons and any other that may become apparent to the Court, Mr. Guzmán respectfully requests that this Motion be **GRANTED**.

Dated: Washington, DC
December 2, 2018

Respectfully submitted,

BALAREZO LAW

/s/

By: _____

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2nd day of December 2018, I caused a true and correct copy of the foregoing Defendant's Motion in Limine to Preclude Use of Ledgers at Trial to be delivered via Electronic Case Filing to the parties in this case.

/s/

A. Eduardo Balarezo