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January 26, 2019

**FILED VIA ECF**

Hon. Brian M. Cogan  
United States District Judge  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, New York 11217

**Re: United States v. Guzman Loera, S4 09 CR 466 (BMC)**

Dear Judge Cogan:

I am writing on behalf of defendant Joaquin Guzman Loera in response to the government's January 23, 2019 letter requesting that the Court preclude the defendant from calling law enforcement agents to testify concerning proffer sessions involving government witnesses (Dkt. No. 559).<sup>1</sup> In short, the government asserted that the topics in the proposed stipulation were all collateral issues raised on cross-examination and were therefore inappropriate topics for impeachment by contradiction. See, generally, id.

The defendant hereby withdraws the proposed stipulation previously provided to the government in an effort to avoid unnecessary litigation on less crucial issues. However, there are additional issues which the defense submits are not collateral, about which law enforcement agents may be appropriately called to testify. Specifically, should the government refuse to stipulate, the defense will seek to call agents to testify concerning: i) Jorge Cifuentes-Villa's statements regarding the USB drive which contained information about his case and the individual who provided the drive; ii) information relating to the prison to prison telephone call

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<sup>1</sup> Although the government's letter applied only to Jorge Cifuentes-Villa, this response contemplates similar objections concerning other cooperating witnesses as well.

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between Jorge and Alex Cifuentes-Villa which took place in January 2015;<sup>2</sup> iii) how Alex Cifuentes-Villa came into contact with his attorney, Andres Granados, while incarcerated; iv) Alex Cifuentes-Villa's statements that he personally observed the defendant's stash houses in various locations throughout Mexico; and v) Alex Cifuentes-Villa's statements that the defendant had incurred approximately \$20 million in debt from 2007 until 2013.

At the outset, it is important to note that the government bears a responsibility to ensure that the testimony of own witnesses is true and accurate. United States v. Cromitie, 727 F.3d 194, 222 (2d Cir. 2013); Napue v. People of the state of Ill., 360 U.S. 264, 269 (1959) ("The principle that [the government] may not knowingly use false evidence, including false testimony, to obtain a tainted conviction ... does not cease to apply merely because the false testimony goes only to the credibility of the witness"). **The government, in seeking to preclude the defendant from calling law enforcement witnesses to testify and set the record straight, attempts to eviscerate this widely accepted body of law and shield the jury from hearing information that demonstrates that their witnesses both misled the triers of fact about material information in the case, and have their own biases and motives governing their testimony.**

I. Jorge Cifuentes-Villa's Testimony Regarding the Information He Viewed Relating to his Own Case

On direct examination, the government elicited certain information concerning how Jorge Cifuentes-Villa obtained access to information regarding the case that the United States government was building against him. See, generally, Tr. 2969, Line 12 - Tr. 2971, Line 12. Jorge indicated that he was approached by a Navy intelligence officer (Tr. 2969, Lines 18-19), who "gave [him] a USB with a lot of information where you could see evidence, recordings regarding [his] drug trafficking activities" (Tr. 2969, Lines 21-23), and also indicated that he understood the information was collected by both the Colombian Government and the United States Drug Enforcement Administration. Tr. 2969, Lines 23-25. Jorge further claimed that he "tracked a few of the data." Tr. 2970, Line 2.

Jorge's testimony changed dramatically on cross-examination, and also contradicted the information which he had previously provided to law enforcement agents. Initially, Jorge denied on cross-examination that he told the government, during a February 2017 proffer session, that the individual who he had met with was from United States Naval Intelligence. Tr. 3235, Lines 11-17; cf 3500-JMCV-88, at p. 5 ("Cifuentes received a visit from a representative of US Naval Intelligence"). Jorge's testimony also differed from information contained in the 3500 materials by testifying that this meeting did not concern an extradition request (Tr. 3236, Lines 14-16; cf

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<sup>2</sup> Though the Court has ordered the government, on January 16, 2019, to produce the information or records concerning when the government was first made aware of this call (Tr. 5369, Lines 2-4). This order followed our request on December 20, 2018 (Dkt. No. \_\_) requesting this information. We have still not received anything which would help us draft a stipulation.

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3500-JMCV-84, at p. 2), and that he learned that his brother, Alex, and sister, Dolly, were trafficking heroin and methamphetamine through a newspaper article (Tr. 3240, Lines 5-7; cf 3500-JMCV-88, at p. 5 (recordings played for Jorge Cifuentes-Villa of conversations between Alex and Dolly Cifuentes-Villa discussing trafficking heroin and methamphetamines behind Jorge Cifuentes-Villa's back)).

But the most significant alteration in Jorge Cifuentes-Villa's testimony concerned the amount of information he viewed from this law enforcement representative. On direct, Jorge stated that the "officer gave [him] a USB with *a lot of information where you could see evidence, recordings* regarding [his] drug trafficking activities ..." (Tr. 2969, Lines 21-23) (emphasis added), and that as a result of seeing this wealth of information regarding his criminal enterprise, Jorge "did destroy all of the evidence that [he] had in [his] power. [He] also gave the order to all of the people who were working with [him] to destroy all of the account records on all of their computers," (Tr. 2971, Lines 3-6), and that information *which he viewed during this meeting* is "part of the information" which the government had in custody. Tr. 2971, Line 9. Clearly, for Jorge to be able to compare information that the government is in possession now with information they possessed in 2010, he *must* have viewed the information in both instances. However, while testifying on cross-examination, Jorge reversed this position and claimed that he only heard a singular phone call, between Dolly and himself (Tr. 3239, Lines 17-18), and that the only note that he took from this entire meeting, was the case number (Tr. 3248, Lines 3-10). This also is inconsistent with the information Jorge previously provided to law enforcement. See 3500-JMCV-96, at p. 15 (Jorge viewed OFAC info, diagrams of the case, and calls); 3500-JMCV-84, at p. 2 (Jorge was shown all of the evidence in 2010-2011: the authorization orders by prosecutor #10 intelligence works by one of the law agencies); 3500-JMCV-88, at pp. 5-6 (there were no recordings of Jorge, only of Dolly and Alex, speaking about dealing heroin and methamphetamine. Jorge also saw charts outlining his organization).

There are clear inconsistencies between the testimony Jorge Cifuentes-Villa gave on direct and cross, as well as the information he previously provided to law enforcement codified in the § 3500 materials. The defendant has a right to bring this information out as it clearly impacts the witness's bias and motive. The knowledge that Jorge had concerning the information the government had against him, and the specifics of what he needed to disclose, could easily have materially impacted his testimony and credibility. Already aware of the government's evidence against him, he had every reason to shape his testimony towards their version of events in an effort to mitigate his own circumstances. This is evident from the testimony which came out on both direct and cross examinations when compared to the witness's debriefings. The defendant must be permitted to expose the extent of the witness's biases and motives to the jury, who ultimately will determine Jorge's credibility.

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II. The Telephone Call Between Jorge and Alex Cifuentes-Villa While Both Were Incarcerated

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The trial testimony clearly demonstrates that there was a phone call, placed by Jorge Cifuentes-Villa, to his brother Alex Cifuentes-Villa, while the two individuals were both incarcerated. Tr. 3003, Lines 7-17. Bureau of Prisons records show that the call lasted for approximately 15 minutes. 3500-JMCV-104, at p. 10. The call took place after Jorge decided to cooperate, and, allegedly, before Alex had agreed to do the same. And despite the fact that both brothers agree that Jorge urged Alex to cooperate during this call, Alex and Jorge's testimony regarding the call are inconsistent with each other and the § 3500 notes concerning the incident.<sup>3</sup>

In speaking with prosecutors, Alex indicated that Jorge told him to cooperate and to try and identify the "Jewish target." See 3500-HACV-63, at p. 3. On cross-examination, Jorge flatly denied this claim. Tr. 3391, Lines 7-16.

Jorge also testified that he got the number to call to reach Alex from a Colombian lawyer named Luisa Fernanda. Tr. 3380, Lines 18-20. It is not disputed that the call was made, and that Jorge knew that he was not allowed to make the call. Tr. 3366, Lines 17-19. However, Jorge's claim that he confessed to making the call to the government a mere few days after the conversation is troubling because Jorge testified that he continued to see Ms. Fernanda at the MDC until the end of 2016, nearly two years after the call was made. Tr. 3381, Lines 14-16. Jorge also indicated that he maintained "indirect contact" with his brother through Ms. Fernanda after the phone call. Tr. 3393, Line 22 - Tr. 3394, Line 1. The implication is that Ms. Fernanda was allowed to continue to visit Jorge, and pass messages between Jorge and Alex, while Jorge was in the custody of the Bureau of Prisons, for *years*, after he disclosed to prosecutors that she had assisted him in making an illegal phone call to his brother.

Had Jorge made this disclosure a few days after the call itself, as he claimed, the government would have had plenty of time to obtain a copy of the conversation. Yet the government has stated on the record that the recording does not exist (Tr. 3391, Lines 19-20), and has previously indicated that the reason for that is that the government was not made aware of the call until after its deletion. See, October 5, 2018 Government Giglio Letter, at p. 8. For this reason, the defendant has been making repeated requests for more information about the call itself. See December 20, 2018 Letter requesting information concerning Jorge Cifuentes-Villa's phone call, attached as Exhibit A. When no information was provided to the defendant, counsel

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<sup>3</sup> Both Alex and Jorge Cifuentes-Villa's testimony here is also at odds with the § 3500 notes for Agent Stephen Marston, who noted that the United States-based attorney for Alex's brother (Jorge) and sister (Dolly) told the United States Attorney's Office in Miami, Florida, that Alex was willing to cooperate in 2014, a year prior to this call being made. See 3500-SM-83, at p. 2.

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raised the issue during the testimony of Alex Cifuentes-Villa and the Court instructed the government on January 16 to provide this information to the defense. Tr. 5369, Lines 2-4. Since that instruction, counsel followed up with a January 21, 2019 email to the government, to which they responded on that same day that they would comply with the Court's direction. See January 21, 2019 email correspondence, attached as Exhibit B. To date, no additional information regarding this phone call has been provided to the defendant, and the government is expected to rest on Monday.

The government accused counsel of pursuing this line of questioning in an attempt to foster the impression that the government was somehow creating a "subterfuge to cover for these individuals." Tr. 5365, Lines 2-7. But the government has simply missed the point. This reason for the continued interest in this topic is because representations made by the government and by their own cooperating witness are totally at odds with each other, and the end result is that evidence to which the defendant would have been entitled was destroyed; but likely would not have been if Jorge Cifuentes-Villa is telling the truth.

There is so much confusion as to material facts on this subject that calling a law enforcement agent to testify concerning the details as to when the government was informed about this call, and what exactly Jorge said is imperative. The government has indicated both orally and in writing that there is no recording of this conversation because Jorge did not disclose that the call was made until after the six-month period in which the Bureau of Prisons keeps copies of the calls had expired. See, October 5, 2018 Government Giglio Letter, at p. 8. Beyond impeaching Jorge's credibility by showing he testified falsely, this is clearly material to the case as Jorge and Alex discussed cooperation with the government, it goes directly to bias and motive for their testimony. The jury is entitled to hear exactly when this call was disclosed (as there is clear disagreement between Jorge and the government), and what Jorge said about the conversation during that initial disclosure, to fully expose the jury to any bias and motive impacting his, or his brother Alex's, testimony.

### III. The Method by Which Alex Cifuentes-Villa Encountered Andres Granados

During his cooperation, Alex Cifuentes-Villa discussed his period of incarceration at the Altiplano jail in Mexico. 3500-HACV-40, at p. 2. Alex stated to the agents during the debriefing that he was referred to an attorney named Andres Granados through an individual named Nariz (believed to be Mario Hidalgo Argueyo) and Manuel Lopez-Osorio. Id. On both direct and cross-examination, however, Alex claimed that it was the defendant himself who had sent Mr. Granados to him, and denied that he had reached out through associates in jail. Tr. 5397, Lines 1-11.

There can be no argument that Alex Cifuentes-Villa's relationship to the defendant is not merely a collateral matter in this trial. This is significant testimony because, when testifying for

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the jury, Alex's statements seek to establish a closer relationship to the defendant than his previous disclosures to law enforcement suggest, which bolsters his credibility. In addition, Alex's testimony suggested that the defendant sought to shape his testimony and to threaten him by sending his attorney to him; Alex's statements to the government during debriefings make clear that it was he who reached out to attorney Granados and not the other way around. The defendant must be afforded the opportunity to refute his assertions; and the only way to do that is to put forth evidence that this testimony is materially inconsistent with the statements that the witness previously made to law enforcement.

IV. Alex Cifuentes-Villa's Conflicting Statements Regarding Whether He Has Ever Personally Visited the Defendant's Stash Houses

Alex Cifuentes-Villa's personal knowledge as to the locations or properties where the defendant was keeping controlled substances or money is a material point of issue in the trial. During his debriefings, Alex told the law enforcement agents interviewing him that he had personally seen many of the defendant's "stash houses" throughout Culiacan, Mazatlan, Guadalajara, Chihuahua, Sonora and Baja California. 3500-HACV-40, at p. 9. During this interview, Alex provided details about these various stash houses, for example, stating that the Baja California location was a commercial fishing company owned by the defendant, and that the Guadalajara location was a property next to railroad tracks with a deed recorded by Jorge Cifuentes-Villa Id., at pp. 5-6.

During his testimony, however, Alex flatly denied not only that he had ever been to any of these places, but also that he had ever claimed to law enforcement that he had visited them. Tr. 5417, Line 25 - Tr. 5418, Line 19. Alex clearly lied during his testimony as there is simply no way that the agent who authored the § 3500 notes would have been able to fabricate such detail regarding the locations themselves. The sole issue, then, is whether the defendant is permitted to call the interviewing agent to the stand to expose the falsehood.

There are several reasons why this is a material and appropriate topic for agent testimony. Alex knew that if he were to testify that he had personally been to several of the defendant's stash houses, it would have hurt the government's case with the jury because it would have allowed the defendant to make the argument that despite the government's apparent awareness of several stash house locations, there had been no testimony regarding any stash house seizures or even attempts, and, therefore Alex must have been lying either about the existence of the stash houses themselves or at the very least about his familiarity with their locations. Alex has every motivation to testify to what he believes will help the government's case as he is seeking a sentence reduction that only the government can authorize for him. This has clear bias implications, and the jury should be permitted to make their own determination as to whether Alex falsely changed his testimony due to a desire to please the government in order to obtain a benefit.

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Further, in a case where the defendant is charged with being the leader of a drug cartel, legitimate arguments concerning the fabrication of stash houses by cooperators have a direct bearing on the defendant's guilt or innocence and could certainly influence a jury's determination.

V. The Defendant's Financial Situation for the Time Period of 2007-2013

The government has gone to great lengths during this trial to try to demonstrate that the defendant is an individual of significant financial means. From precious-gem encrusted handguns to multiple cosmetic surgery bills, the government has devoted a significant amount of time trying to convince the jury that Mr. Guzman exhibited substantial wealth during the time period of the alleged conspiracy. This substantial income is a material element of the Continuing Criminal Enterprise charge. See Government's Proposed Jury Instructions, Dkt. No. 533, at p. 31. There can be no doubt that the defendant's financial situation during the period of 2007 until 2013 is extremely relevant to this case.

During his proffers with the government, Alex Cifuentes-Villa told the agents that during that six-year span, right in the middle of when the government is alleging that Mr. Guzman was running his criminal enterprise, the defendant not only failed to derive substantial income from his purported cartel, but, instead, he actually incurred \$20 million worth of debt. 3500-HACV-40, at p. 10. Realizing, again, that his previous honest statements would actually hurt the government's case, Alex changed his testimony to claim that the \$20 million debt actually only applied to the calendar year 2008 (Tr. 5420, Lines 3-12), which would then allow the government to argue that the defendant had a bad year in 2008 but received substantial income throughout the rest of the time period in question.

As the testimony at issue here relates to whether or not the government has proven a material element of a charged crime, there can be no argument that the defendant has a right to elicit testimony about Alex Cifuentes-Villa's previous statements on the subject.

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VI. Conclusion

For the foregoing reasons, the defendant should be entitled to call their desired law enforcement witnesses should the government refuse to stipulate to the facts requested.

Respectfully submitted,

/S/

Jeffrey Lichtman

cc: All counsel (by email and ECF)