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Via email: Rhonda_Moore-Konieczny@txs.uscourts.gov

Honorable Gray H. Miller
United States Courthouse
515 Rusk Avenue, Room 9136
Houston, Texas 77002

      Re: Cause No. 4:20-CR-00305; *United States v. De Jongh*

Dear Judge Miller,

     Following an unsuccessful meet and confer, the defense requests a telephonic conference to address the following issue as the parties prepare for a January 25, 2021 bench trial.

     This Indictment alleges that Defendant Jose De Jongh was a "foreign official" under the FCPA because (1) he was employed by Citgo Petroleum Corporation ("Citgo"), *see* Doc. 1 at ¶ 3, and (2) Citgo was an "instrumentality" of the Venezuelan government, *see id.* at ¶ 2.[1] At trial, the defense does not intend to dispute the *conduct* alleged in this Indictment: De Jongh worked for Citgo; he received payments from vendors; and he conducted financial transactions. In fact, De Jongh voluntarily met with the government on multiple occasions in 2018 and freely admitted these facts. *See* Exh. A (August 22, 2018 proffer), Exh. B (September 18, 2018 proffer).

     The disputed issue is whether Citgo (a Delaware corporation headquartered in Texas and indirectly owned by PDVSA) was an "instrumentality" of Venezuela, thereby making De Jongh a Venezuelan "foreign official." In its 22 pages, the Indictment cabins its allegation that Citgo was an instrumentality to one sentence: "Citgo was indirectly owned and controlled by, and performed functions of, the Venezuelan government, and was an 'instrumentality' of a foreign government as that term is used in the FCPA . . . ." *See* Doc. 1 at ¶ 2.

     The prosecution has produced nearly 5 million pages of discovery and 88 witness interview reports. The defense has reviewed it to try to understand the allegation that Citgo was an instrumentality of Venezuela. With one exception—that Citgo is indirectly owned by PDVSA—the defense has not located materials that shed light on this allegation. Thus, we asked the

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[1] Paragraph 2 alleges that De Jongh also was employed by PDVSA. In fact, he was employed by Citgo, and the prosecution has stated that it does not intend to prove that De Jongh was employed by PDVSA.

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prosecution to provide more detailed allegations on instrumentality through a proffer, and the prosecution declined.

A bill of particulars is appropriate here. As this Court has said, "[t]he purpose of a bill of particulars is to cure omissions of details that might enable the defendant to prepare his defense. Thus, a bill of particulars may prevent prejudicial surprise at trial." *United States v. Davis*, 2014 WL 6679199, *3 (S.D. Tex. Nov. 25, 2014) (Miller, D.J.) (granting bill of particulars in part; quoting and citing *United States v. Haas*, 583 F.2d 216, 221 (5th Cir.1978) and *Norris v. United States*, 152 F.2d 808, 811 (5th Cir.1946)).

In *Davis*, this Court clarified that a bill of particulars is not meant to provide the defense with a detailed disclosure of evidence the government intends to use at trial, *see id.*, and we do not seek such a disclosure. To the contrary, we seek only to understand how Citgo was allegedly an instrumentality of the Venezuelan government.

Davis also explained that while discovery can sometimes adequately inform the defense of the details behind a broad allegation, *when the discovery is voluminous*, it is not an adequate substitute for a bill of particulars. *See id.* at *4.

Here, in light of (1) nearly 5 million pages of discovery, (2) the Indictment's single sentence alleging instrumentality, and (3) the prosecution's refusal to provide additional detail informally, a bill of particulars is necessary to enable us to prepare a defense and to avoid surprise at trial on the instrumentality issue.

Sincerely,

Dane Ball

EXHIBITS A & B

(*Sent to Court and Parties via Email*)