

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA**

CASE NO: 1:09-cr-21010-JEM

THE UNITED STATES OF AMERICA,

Plaintiff,

v.

CARLOS RODRIGUEZ,

Defendant.

**DEFENDANT CARLOS RODRIGUEZ's JUDGMENT OF
ACQUITTAL OR NEW TRIAL**

The Defendant, CARLOS RODRIGUEZ, through undersigned counsel, moves this Court pursuant to Rules 29 and 33 of the Federal Rules of Criminal Procedure to grant a judgment of acquittal, or alternatively, a new trial, and as grounds therefore states:

I. JUDGMENT OF ACQUITTAL:

The evidence failed to prove that Carlos Rodriguez knew of the existence of the conspiracy charged in Count 1 of the Indictment, that Rodriguez committed a violation of The Foreign Corrupt Practices Act as charged in Counts 2 through 8 of the Indictment, or that Carlos Rodriguez knowingly laundered funds derived from the offenses charged in the Indictment as charged in Counts 9 through 21 of the

Indictment. Specifically, of the 18 witnesses the Government called to testify, only one witness, Tony Perez, briefly claimed during his testimony that Carlos Rodriguez knew of the existence of an agreement to pay Robert Antoine to receive side payments in exchange for reductions of the invoices owed to Teleco. Perez's testimony, however, was heavily impeached. Perez, a CPA who was serving time and was hopeful that his testimony would result in a reduction of his 24 month sentence, acknowledged that he was not aware of what duties Carlos Rodriguez performed and admitted that he had very little interaction with Carlos Rodriguez when he (Perez) worked at Terra. Tr-7-25-2011 a.m. at pp. 39-40. Perez further acknowledged that Carlos Rodriguez never travelled to Haiti or negotiated any of the contracts on Terra's behalf. *Id.* at 43. In addition, when Tony Perez, in his capacity as Terra's comptroller, had lunch meeting with Antoine in November 2001 at the Novillo restaurant to negotiate payment arrangements for Terra, Carlos was not present. *Id.* at 47-48. In fact, during the first six months after he was first contacted by the agents in this matter, Perez never mentioned that Carlos Rodriguez had any knowledge or involvement in the side payment deal that Perez made with Antoine. *Id.* at 52-53. Further, the alleged "bribes" that Perez testified were paid for "reductions" in billings often exceeded the purported reductions. *Id.* at 57-66; See also Govt. Exhibits 148, 141.

Moreover, Tony Perez's testimony was impeached through the testimony of Robert Antoine and Jean Fourcand. For instance, with regard to the lunch meeting Perez had with Robert Antoine, Antoine testified that he could not recall that meeting with Perez very well, and at the time he met with Perez, that co-defendant Joel Esquenazi had already negotiated the deal with Antoine telephonically, and that no such negotiations occurred between him (Antoine) and Perez. Robert Antoine also refuted any claims that Carlos Rodriguez was ever present during any of the bi-monthly meetings he had at Terra, and that he was simply introduced to Carlos Rodriguez on one occasion. No witness testified that Carlos knew of or negotiated for any bribe payments or deals with the Haitians.

The simple fact that Carlos Rodriguez was a twenty percent owner in Terra and signed hundreds of Terra checks every week to pay its vendors is insufficient to uphold the verdict. Such evidence, even when viewed in the light most favorable to the Government, does not show beyond a reasonable doubt that Carlos Rodriguez had knowledge of an agreement to bribe Haitian government officials or knowingly participated in any of the offenses charged. *See United States v. Awan*, 966 F.2d 1415, 1434-35 (11th Cir. 1992) (insufficient evidence supported defendant's conviction where the evidence did not show that the defendant knew that the funds involved were the proceeds of unlawful activity). Thus, the

evidence was insufficient to sustain the verdicts against Rodriguez and a judgment of acquittal should be entered as to all counts.

II. NEW TRIAL:

Alternatively, a new trial is warranted because the Court erred in denying requested jury instructions essential to Carlos Rodriguez's theory of defense,¹ and improperly denied the defense requested instructions regarding the running of the statute of limitations and whether the state owned enterprise the Government witnesses claimed existed in this case qualified based upon the charges in the Indictment. See, ECF No. 403; *United States v. Aguilar*, Case No. 10-1031-AHM (C.D. Cal. 2011); *Stichting v. Schrebier*, 327 F.3d 173 (2d Cir. 2003)(approving similar instruction) and *United States v. Jefferson*, 594 F.Supp.2d 655, 667 (E.D. Va. 2009)(same). Further, the Court erred in instructing the jury on deliberate ignorance. As a result, the Court's instructions were incorrect on the law and deprived the Defendant of a critical instruction necessary for his defense.

In addition, a new trial is required based upon the improper denial of the Carlos Rodriguez' motion for severance (ECF. No. 181), denial of Rodriguez's motion to dismiss based upon spoliation of the evidence (ECF Nos. 171, 183, 193,

¹ The law is clear that "a defendant is entitled to have presented instructions relating to a theory of defense for which there is any foundation in the evidence, even though the evidence may be weak, insufficient, inconsistent or of doubtful credibility." *United States v. Opdahl*, 930 F.2d 1530, 1535 (11th Cir. 1991).

202); failure to state criminal offense (ECF Nos. 273, 268, 278, 315); expiration of the statute of limitations and restriction of argument to the jury regarding same; and admission of foreign records that failed to satisfy Rule 44, Fed. R. Civ. Pro., and 18 U.S.C. § 3505(a)(1)(A)-(D). See, *United States v. Jawara*, 474 F.3d 565 (9th Cir. 2006); *United States v. Hagege*, 437 F.3d 943, 956 (9th Cir. 2006), *United States v. Chu Kong Yin*, 935 F.2d 990, 996-1000 (9th Cir. 1991); *United States v. Yousef*, 175 F.R.D. 192, 48 Fed. R. Serv 654 (S.D. NY 1997), and *United States v. Mole*, 315 F.2d 156 (5th Cir. 1963), *cert. denied* 379 U.S. 858 (1964).

Additionally, Carlos Rodriguez renews all prior motions, arguments and objections raised at trial, his motion to suppress, motion to dismiss based upon the unconstitutionality and vagueness of the FCPA, and motions in limine.

WHEREFORE, based upon the foregoing, the defendant prays that this Court grant a judgment of acquittal, or alternatively, a new trial.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of August, 2011, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to all parties, including the following:

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and I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participants: None.

/s/ Rhonda A. Anderson
RHONDA A. ANDERSON, ESQ.