

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RECEIVED

APR - 3 2015

Clerk, U.S. District and
Bankruptcy Courts

IN RE THE REPORTERS COMMITTEE
FOR FREEDOM OF THE PRESS,
1156 15th Street NW, Suite 1250
Washington, D.C. 20005,

CBS BROADCASTING INC.,
51 W. 52nd Street
New York, NY 10019-6188,

SERGIO GOMEZ,
Avenida Calle 26 No. 68B-70
Bogotá, Colombia

DANIEL PACHECO
Calle 103 No. 69B-43
Bogotá, Colombia

and UNIVISION
605 Third Avenue
New York, NY 10158

Case: 1:15-mc-00411
Assigned To : Walton, Reggie B.
Assign. Date : 4/3/2015
Description: Miscellaneous

Related to:
Criminal No. 1:04-cr-114-RBW-1
Criminal No. 1:04-cr-114-RBW-9

Oral Argument Requested

APPLICATION OF THE REPORTERS COMMITTEE FOR FREEDOM OF THE
PRESS, CBS BROADCASTING INC., SERGIO GOMEZ, DANIEL PACHECO, AND
UNIVISION TO UNSEAL COURT RECORDS IN CRIMINAL MATTERS
NOS. 1:04-CR-114-RBW-1 AND 1:04-CR-114-RBW-9

1. Pursuant to Local Criminal Rule 57.6, the Reporters Committee for Freedom of the Press (“the Reporters Committee”), CBS Broadcasting Inc. (“CBS”), Sergio Gomez, Daniel Pacheco, and Univision (collectively, “the Applicants”), respectfully move this Court for an Order unsealing court records in the criminal matters against Defendants Hernan Giraldo Serna (“Giraldo Serna”), Crim. No. 1:04-cr-114-RBW-1, and Rodrigo Tovar Pupo (“Tovar Pupo”),

Crim. No. 1:04-cr-114-RBW-9, and directing the Clerk of Court to reinstate the public docket for the criminal cases and to enter all filings, orders, and other entries related to the underlying case on the public docket. In particular, Applicants seek unsealing of (a) any motions to seal and any sealing or closure orders entered by this Court; (b) any hearing transcripts, consistent with this Court's transcript filing procedure; (c) any plea agreements; (d) any orders of disposition, judgment and/or sentencing, and all related memoranda, and (e) any other orders of this Court.

INTEREST OF THE APPLICANTS

2. The Reporters Committee is an unincorporated nonprofit association of reporters and editors dedicated to safeguarding the First Amendment rights and freedom of information interests of the news media and the public. The Reporters Committee and its attorneys have provided assistance, guidance, and research in First Amendment and freedom of information litigation since 1970. The Reporters Committee frequently represents the interests of the press and the public in cases involving access to judicial proceedings and court records.

3. CBS Broadcasting Inc. produces and broadcasts news, public affairs, and entertainment programming. Its CBS News Division produces morning, evening, and weekend news programming, as well as news and public affairs newsmagazine shows, including "60 Minutes." CBS Broadcasting Inc. also directly owns and operates television stations across the country, including WCBS-TV in New York City.

4. Sergio Gomez is a U.S.-based reporter for *El Tiempo*, a multimedia news organization, television station, and Colombian daily newspaper with the largest circulation. He has been based in Washington, D.C., for over seventeen years and during that time has covered drug-related extraditions and prosecutions.

5. Daniel Pacheco is a U.S.-based columnist for *El Espectador*, one of two Colombian national newspapers. He is also a correspondent for Caracol Television, a Colombian television network, and BluRadio Colombia, a Colombian radio station owned by Caracol Television. He has covered several proceedings relating to Colombians extradited to the U.S. for these broadcast organizations, which reach more than 3 million people in Colombia.

6. Univision is an American Spanish-language television network. It produces daily national news programming in the United States, and has covered the news for Spanish-speaking audiences for over 25 years.

7. Applicants, as members and representatives of the press, and members of the public have a strong interest in observing and understanding the conduct and disposition of criminal cases prosecuted by the government. The press and the public have a heightened interest in access to the proceedings and court documents in the government's prosecutions of Giraldo Serna and Tovar Pupo, infamous Colombian paramilitaries and alleged drug traffickers extradited to the United States in 2008.

STATEMENT OF FACTS

HERNAN GIRALDO SERNA

8. Hernan Giraldo Serna, also known as "El Patron," "El Viejo," and "Don Hernán," was a leader of a paramilitary organization known as United Self-Defense Forces of Colombia ("AUC"), which controls drug trafficking on the northern coast of Colombia. *See* Gov't's Mem. of Relevant Cases, *United States v. Mancuso*, No. 1:02-cr-388-2 (D.D.C. Mar. 23, 2015), ECF No. 123. The AUC's military forces were divided into "blocs," or brigades. *Id.* In 2001, the U.S. Department of State designated the AUC as a Foreign Terrorist Organization.

9. Paramilitary groups in Colombia, of which the AUC was the largest, had an estimated membership of 15,000 to 20,000 fighters when they declared a cease fire in 2002. Paramilitaries were responsible for tens of thousands of deaths during the 1990s and early 2000s.¹

10. Giraldo Serna was reportedly the commander of an AUC bloc known as the “Resistencia Tayrona,” which has been said to be “responsible for the extermination of the Kankuama indigenous group in the Sierra Nevada.”²

11. Giraldo Serna reportedly supervised the manufacture and exportation of multi-ton quantities of cocaine bound for the United States, and is also alleged to have committed numerous rapes and “fathered at least 20 children” with young girls.³

12. Giraldo Serna was reportedly responsible for the 2007 murder of Julio Eustacio Henríquez Santamaría, a farmer in Colombia,⁴ and was sentenced in Colombia for crimes related to Mr. Henríquez’s disappearance in 2009.

13. On March 2, 2005, in a superseding indictment, Giraldo Serna was charged in this Court with conspiracy to manufacture and distribute five kilograms or more of cocaine, intending and knowing that the cocaine would be unlawfully imported into the United States, in violation

¹ See *The Peace Process in Colombia with the Autodefensas Unidas de Colombia—AUC 2* (Cynthia J. Arnson, ed., 2005) (“[P]aramilitaries were responsible for the majority of 1,969 massacres, resulting in 10,174 deaths, recorded in the country between January 1994 and December 2003.”).

² Diana Carolina Durán Núñez, *Extradited Colombian death-squad leaders leave valuable information behind*, *El Espectador de Bogotá* (Dec. 18, 2009), <http://wapo.st/1DARJrt>.

³ Juan Forero, *Rape in Colombia’s war unearthed*, *Wash. Post* (June 9, 2013), <http://wapo.st/1I8b8m1>.

⁴ Jennifer Janisch & Oriana Zill de Granados, *Colombian Victims of Paramilitary Violence Plead for Access to U.S. Justice System*, *Women, War & Peace* (Sept. 10, 2010), <http://to.pbs.org/1Hnsjwk>.

of 21 U.S.C. §§ 959, 960(a), 960(b)(1)(B)(ii), and 963, and aiding and abetting in violation of 18 U.S.C. § 2. *See* Exhibit A, hereto.

14. On or around May 13, 2008, Giraldo Serna was extradited to the United States to face charges. His criminal prosecution was brought in this Court, under Criminal No. 1:04-cr-114-RBW-1.

15. At present, no public docket exists for the criminal matter against Giraldo Serna. Although the master docket for the criminal cases against Giraldo Serna's alleged co-conspirators still bears his name ("USA v. GIRALDO-SERNA"), Giraldo Serna is no longer listed publicly as a defendant. Queries on this Court's electronic case filing and case management system for Giraldo Serna's last name, or parts thereof, do not return any relevant results.

16. Applicants cannot ascertain from the Court's electronic filing system or public docket whether Giraldo Serna's case is still pending, or whether a disposition and/or sentence has been entered.

RODRIGO TOVAR PUPO

17. Rodrigo Tovar Pupo, also known as "Jorge 40" and "Para Tovar Colombia," was named as a co-conspirator with Giraldo Serna in the March 2, 2005 superseding indictment. *See* Exhibit A, hereto. Tovar Pupo was charged with conspiracy to manufacture and distribute five kilograms or more of cocaine, intending and knowing that the cocaine would be unlawfully imported into the United States, in violation of 21 U.S.C. §§ 959, 960(a), 960(b)(1)(B)(ii), and 963, and aiding and abetting in violation of 18 U.S.C. § 2.

18. Like Giraldo Serna, Tovar Pupo was a bloc commander for the AUC. According to the U.S. government, he ultimately took over Giraldo Serna's territory, as well as its "drug

riches.” Gov’t’s Mem. of Relevant Cases, *United States v. Mancuso*, No. 1:02-cr-388-2 (D.D.C. Mar. 23, 2015), ECF No. 123.

19. In 2006, Colombian authorities reportedly seized a computer belonging to Tovar Pupo that contained a catalog of over 500 murders ordered by him or his associates.⁵

20. In testimony given in connection with Colombia’s Justice and Peace process, Tovar Pupo reportedly admitted to participating in at least six massacres involving the deaths of more than 100 people.⁶

21. At present, no public docket exists for the criminal matter against Tovar Pupo. He is no longer listed as a defendant under the master docket for “USA v. GIRALDO-SERNA,” Crim. No. 1:04-cr-114. However, one entry on that docket indicates that this Court held a “bench trial” in Tovar Pupo’s case on September 4, 2014. *See United States v. Giraldo-Serna*, No. 1:04-cr-114 (D.D.C. Dec. 30, 2014), ECF No. 440. A query on this Court’s electronic case filing and case management system for “Pupo” does not return any relevant results.

22. Applicants cannot ascertain from the Court’s electronic filing system or public docket whether Tovar Pupo’s case is still pending, or whether a disposition and/or sentence has been entered.

23. As explained more fully in the accompanying Memorandum of Points and Authorities, the press and the public have a right of access to court proceedings, court documents, and dockets in these criminal cases under the First Amendment and common law. To the extent that sealing of any portion of the docket or court documents in the prosecutions of Giraldo Serna and Tovar Pupo is necessary to protect a compelling interest, such sealing must be

⁵ Frank Bajak, *Petro: Colombia Paramilitaries Reviving*, Associated Press (Oct. 19, 2006, 11:25 P.M.), <http://wapo.st/1BV2qAk>.

⁶ *See Durán Núñez, supra* note 2.

no broader than necessary to serve that interest, and the Court must make specific findings in support of its sealing order.

REQUEST FOR RELIEF

24. Applicants seek an order directing the Clerk of Court to make the docket sheets for the criminal prosecutions of Giraldo Serna and Tovar Pupo publicly available, and to enter all filings, orders, and other entries related to those cases on the public docket

25. Applicants seek an Order unsealing court documents filed in connection with the prosecutions of Giraldo Serna and Tovar Pupo, Criminal Nos. 1:04-cr-114-RBW-1 and 1:04-cr-114-RBW-9. In particular, Applicants seek an order unsealing documents, including: (a) any motions to seal and any sealing or closure orders; (b) any hearing transcripts consistent with this Court's transcript filing procedure; (c) any plea agreements; (d) any orders of disposition, judgment or sentencing, and all related memoranda, and (e) any other orders of this Court.

26. Applicants seek any further relief that the Court deems just and proper.

ORAL ARGUMENT REQUESTED

27. The Applicants respectfully request oral argument on this application.

Dated: April 3, 2015

Respectfully submitted,

/s/ Bruce D. Brown

Bruce D. Brown, Esq.

THE REPORTERS COMMITTEE FOR

FREEDOM OF THE PRESS

1156 15th St NW, Ste. 1250

Washington, D.C. 20005

(202) 795-9300

bbrown@rcfp.org

EXHIBIT A

SEALED

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Holding a Criminal Term

Grand Jury Sworn in on March 3, 2003

UNITED STATES OF AMERICA,

v.

HERNÁN GIRALDO-SERNA

a.k.a. "El Viejo,"

a.k.a. "El Patron"

a.k.a. "Don Hernán,"

JESÚS ANTONIO GIRALDO-SERNA

a.k.a. "El Mono Giraldo"

JAIRO ANTONIO MUSSO-TORRES

a.k.a. "Pacho Musso"

MARTÍN PENERANDA-OSARIO

a.k.a. "El Burro"

ALVARO PADILLA-REDONDO

OMAR MARTÍN

OCHOA-BALLESTEROS

a.k.a. "El Viejo,"

NODIER GIRALDO-GIRALDO

a.k.a. "El Cabezón,"

HUGHES MANUEL

RODRIGUEZ-FUENTES

a.k.a. "Commandante Barbie,"

RODRIGO TOVAR PUPO,

a.k.a. "Jorge 40,"

a.k.a. "Papa Tovar,"

CRIMINAL NO. 04-114 (RBW)

UNSEALED

FILED IN OPEN COURT

MAR - 2 2005

**CLERK, U.S. DISTRICT COURT
DISTRICT OF COLUMBIA**

VIOLATIONS:

21 U.S.C. §§ 959, 960 and 963
(Conspiracy to Manufacture and
Distribute Five Kilograms or More of
Cocaine Intending and Knowing that the
Cocaine Would Be Unlawfully Imported
into the United States)

21 U.S.C. § 959 and 960
(Distribution of Five Kilograms or More
of Cocaine Intending and Knowing that the
Cocaine Would Be Unlawfully Imported
into the United States)

18 U.S.C. § 2
(Aiding and Abetting)

21 U.S.C. § 853
21 U.S.C. § 970
(Forfeiture)

UNSEALED

WALTON, J. RBW
B

SUPERSEDED

HUBER ANIBAL GOMEZ LUNA :
a.k.a. "El Mello Rico"
a.k.a. "Hector"
a.k.a. "Repetido"

EDWING MAURICIO GOMEZ LUNA :
a.k.a. "El Mello Pobre"
a.k.a. "El Repetido"

LUISA ISABEL IGLESIAS GRANADO :
a.k.a. "Tesoro"

JUAN CARLOS GUASCA LEGARDA :

ANGEL ALBERTO RODRIGUEZ :
a.k.a. "Chaparro"

FREDY CASTILLO CARILLO :
a.k.a. "Pinocho"

EDUARDO ENRIQUE
VENGOECHEA MOLA :
a.k.a. "Diego"
a.k.a. "El Flaco"

Defendants. :

SECOND SUPERSEDING INDICTMENT

The Grand Jury Charges That:

COUNT ONE

From in or about sometime in 1994, the exact date being unknown to the Grand Jury, and continuing thereafter, up to and including the date of the filing of this Indictment, in Colombia, and elsewhere, the defendants, **HERNÁN GIRALDO-SERNA**, a.k.a. "El Viejo," "El Patron," "Don Hernán," **JESÚS ANTONIO GIRALDO-SERNA**, a.k.a. "El Mono Giraldo," **JAIRO ANTONIO MUSSO-TORRES**, a.k.a. "Pacho Musso," **MARTÍN PENERANDA-OSARIO**,

a.k.a. "El Burro," ALVARO PADILLA-REDONDO, OMAR MARTÍN OCHOA-BALLESTEROS, a.k.a. "El Viejo," NODIER GIRALDO-GIRALDO, a.k.a. "El Cabezón," HUGHES MANUEL RODRIGUEZ-FUENTES, a.k.a. "Commandante Barbie," RODRIGO TOVAR PUPO, a.k.a. "Jorge 40," a.k.a. "Papa Tovar," HUBER ANIBAL GOMEZ LUNA, a.k.a. "El Mello Rico," a.k.a. "Hector," a.k.a. "Repetido," EDWING MAURICIO GOMEZ LUNA, a.k.a. "El Mello Pobre," a.k.a. "El Repetido," LUISA ISABEL IGLESIAS GRANADOS, a.k.a. "Tesoro," JUAN CARLOS GUASCA LEGARDA, ANGEL ALBERTO RODRIGUEZ, a.k.a. "Chaparro," FREDY CASTILLO CARILLO, a.k.a. "Pinocho," and EDUARDO ENRIQUE VENGOECHEA MOLA, a.k.a. , "Diego," a.k.a. "El Flaco," did knowingly and intentionally combine, conspire, confederate and agree, with others known and unknown to the Grand Jury, including with co-conspirators not indicted herein, to commit the following offense against the United States: to knowingly and intentionally manufacture and distribute five kilograms or more of a mixture and substance containing a detectable amount of cocaine, a Schedule II controlled substance, intending and knowing that such substance would be unlawfully imported into the United States, in violation of Title 21, United States Code, Sections 959 and 960.

(Conspiracy to Manufacture and Distribute Five Kilograms or More of Cocaine Intending and Knowing that the Cocaine Would Be Unlawfully Imported Into the United States, in violation of Title 21, United States Code, Sections 959, 960(a)(3), 960(b)(1)(B)(ii) and 963, and Aiding and Abetting in violation of Title 18, United States Code, Section 2)

COUNT TWO

In or about August 1999, in Colombia and elsewhere, the defendant, MARTÍN PENERANDA-OSARIO, a.k.a. "El Burro," did knowingly, and intentionally distribute and

cause the distribution of five (5) kilograms or more of a mixture or substance containing a detectable amount of cocaine, a Schedule II controlled substance, intending and knowing that such cocaine would be unlawfully imported into the United States.

(Manufacturing and Distributing Five (5) Kilograms or More of Cocaine Intending and Knowing that the Cocaine Will Be Unlawfully Imported Into the United States, in violation of Title 21, United States Code, Section 959, and Aiding and Abetting, in violation of Title 18, United States Code, Section 2)

COUNT THREE

In or about November 1999, in Colombia and elsewhere, the defendants, **JESÚS ANTONIO GIRALDO-SERNA**, a.k.a. "El Mono Giraldo" and **MARTÍN PENERANDA-OSARIO**, a.k.a. "El Burro," did knowingly, and intentionally distribute and cause the distribution of five (5) kilograms or more of a mixture or substance containing a detectable amount of cocaine, a Schedule II controlled substance, intending and knowing that such cocaine would be unlawfully imported into the United States.

(Manufacturing and Distributing Five (5) Kilograms or More of Cocaine Intending and Knowing that the Cocaine Will Be Unlawfully Imported Into the United States, in violation of Title 21, United States Code, Section 959, and Aiding and Abetting, in violation of Title 18, United States Code, Section 2)

COUNT FOUR

In or about December 2000, in Colombia and elsewhere, the defendant, **JAIRO ANTONIO MUSSO-TORRES**, a.k.a. "Pacho Musso," did knowingly, and intentionally distribute and cause the distribution of five (5) kilograms or more of a mixture or substance containing a detectable amount of cocaine, a Schedule II controlled substance, intending and knowing that such cocaine would be unlawfully imported into the United States.

(Manufacturing and Distributing Five (5) Kilograms or More of Cocaine Intending and Knowing that the Cocaine Will Be Unlawfully Imported Into the United States, in violation of Title 21, United States Code, Section 959, and Aiding and Abetting, in violation of Title 18, United States Code, Section 2)

FORFEITURE ALLEGATION

A. The violations alleged in Counts One through Four are re-alleged and incorporated by reference herein.

B. As a result of the offenses alleged in Counts One through Four, the defendants named in Counts One through Four shall forfeit to the United States, pursuant to Title 21, United States Code, Sections 853 and 970, any respective right, title or interest which such defendants may have in (1) any and all money and/or property constituting, or derived from, any proceeds which such defendants obtained, directly or indirectly, as the result of the violation alleged in Counts One through Four of this Indictment; and (2) any and all property used, in any manner or part, to commit, or to facilitate the commission of, the violation alleged in Counts One through Four of this Indictment.

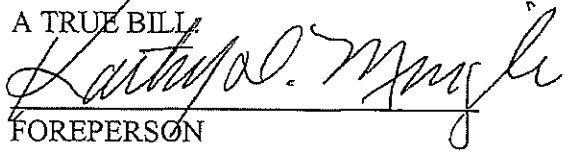
C. If any of the forfeit able property described in paragraph B above, as a result of any act or omission of the defendant –

- (a) cannot be located upon the exercise of due diligence;
- (b) has been transferred or sold to, or deposited with, a third party;
- (c) has been placed beyond the jurisdiction of the Court;
- (d) has been substantially diminished in value; or
- (e) has been commingled with other property which cannot be subdivided without difficulty;

it is the intention of the United States, pursuant to Title 21, United States Code, Section 853(p), to seek forfeiture of any other property of the defendants up to the value of the property described in paragraph B above.

(**Criminal Forfeiture**, in violation of Title 21, United States Code, Sections 853 and 970)

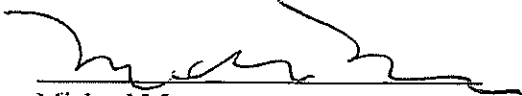
A TRUE BILL




FOREPERSON

MICHAEL WALTHER, Acting Chief
Narcotic and Dangerous Drug Section
Criminal Division
U.S. Department of Justice
Washington, D.C. 20530
Bond Building

By:



Michael Mota
Trial Attorney
Narcotic and Dangerous Drug Section
(202) 514-5540



Patrick Hearn
Trial Attorney
Narcotic and Dangerous Drug Section
(202) 305-7606