

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

RICHARD PHAY TU, M.D.,  
THAO PHUONG DANG, M.D.,  
LAN CHAU TU, M.D.,  
NU THI DANG, D.D.S.,  
and  
TRAM BUI, RPh

*Plaintiffs,*

v.

Case No. 2009-18307

VIETNAMESE MEDICAL SOCIETY  
OF NORTHEAST AMERICA,

VINH DUC NGUYEN, M.D.,  
SANG VAN TRAN, M.D.,  
LOC BICH NGUYEN, D.D.S.,  
ANH HUU PHAM, D.D.S.,  
and

TRUONG SON VAN, M.D.,  
*Defendants.*

SUPPLEMENTAL BRIEF TO DEFENDANT’S MOTION FOR SANCTIONS AGAINST  
PLAINTIFFS AND DUE H. TRAN, ESQ.

COMES NOW the Defendant, Vietnamese Medical Society of Northeast America, Inc. (the “VMSNA”), by counsel, and for its Supplemental Brief to Defendant’s Motion for Sanctions and respectfully states as follows:

1. On September 9, 2010, Defendant’s demurrer was heard and sustained. Mr. Due H. Tran, Esq. (“Mr. Tran”) did not appear despite being duly notified by the Court.
2. On September 13, 2010, a hearing was held for entry of an order reflecting the Court’s ruling in which Mr. Tran appeared.
3. At the September 13, 2010 hearing the Court inquired of Mr. Tran about his failure to appear at the prior hearing.

4. Mr. Tran admitted that the judge's law clerk had duly notified him of the September 9, 2010 hearing date.

5. Mr. Tran claimed that his failure to appear at the hearing was a result of a mistake in calendaring and that it was put down for Friday, September 10, 2010 instead of the 9<sup>th</sup>.

6. The Court then directed the parties to endorse the submitted order after which Mr. Tran endorsed the order as "*Seen and objected to:*" and then requested that the phrase "*declined to be present*" be changed to "*was not present*" which Court obliged based on his representations.

7. Mr. Tran then requested an appeal bond be set which the Court declined to do as it was not the appropriate procedure.

8. During the course of researching the merits of Plaintiffs' Motion for Extension/Continuance filed on September 27, 2010, Defense counsel became aware of several documents relating to Mr. Tran's whereabouts on the morning of September 10, 2010, the date on which he claims he had incorrectly scheduled the demurrer hearing.

9. Defense counsel believes that these documents call into question the truth of Mr. Tran's statements before the Court on September 13, 2010. Specifically, 1) whether he truly mistakenly mis-calendared the date and 2) whether he "*declined to be present*" or if he merely "*was not present*".

10. Exhibit 1 is a "Criminal Minutes" document from the United States District Court in Alexandria, Virginia. This indicates that on July 29, 2010, a hearing was scheduled in a case being handled by Mr. Tran for argument of motions on September 10, 2010 at 9:00AM.

11. Exhibit 2 is entitled "Document 181" and is dated September 10, 2010 and shows that between 9:57AM to 10:12AM that Mr. Tran was present before the U.S. District Court for

argument of motions which were subsequently denied. A copy of the Memorandum Opinion dated September 13, 2010 is attached as Exhibit 3.

12. Exhibit 4 is an “Application to Qualify as a Foreign Attorney” filed on September 10, 2010 that indicates that Mr. Tran was before the Court on that day and is reflected as the “Payer name:” on the accompanying receipt.

13. These documents are an indication that Mr. Tran’s representations about his whereabouts on September 9, 2010 and September 10, 2010 and his intentions with regard to those dates may not be supported by the facts.

14. That he simply mis-calendared the date seems highly implausible given the amount of preparation apparently required for the September 10, 2010 motion hearing in the U.S. District Court. A conflict surely would have been readily apparent prior to that date.

15. To state that he did not “*decline to be present*” given his whereabouts and the fact that he made no effort to contact Defense counsel to alert him to the scheduling mistake at any time prior to appearing on September 13, 2010 in which he proceeded to modify and object to the order.

16. Defendant believes that the reliable facts and documents tend to indicate that Mr. Tran may have made a number of misrepresentations to the Court that Defense counsel has a duty to report pursuant to Rule 8.3 as they may constitute further ethical misconduct under Rule 8.4(c) of the Rules of Professional Conduct in addition to those previously stated in both the Motion for Sanctions and the Motion to Disqualify.

WHEREFORE the Defendant, by counsel, having supplemented its Motion for Sanctions respectfully prays that this Court enter an order granting the relief previously requested therein.

Respectfully submitted,  
VIETNAMESE MEDICAL SOCIETY  
OF NORTHEAST AMERICA

By Counsel



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Richard H. Nguyen VSB # 66677  
Nguyen & Nguyen, P.C.  
6402 Arlington Blvd. Suite 317  
Falls Church, VA 22042  
(703)534-0805 tel  
(703)534-3047 fax  
Counsel for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on this the 7<sup>th</sup> day of October, 2010, a true and accurate copy of the foregoing Supplemental Brief to Defendant's Motion for Sanctions Against Plaintiffs and Due H. Tran, Esq. was sent via facsimile and email to:

Due H. Tran, Esq.  
6521 Arlington Blvd. Ste 401  
Falls Church, VA 22042  
Facsimile (703)459-9643

Jason F. Zellman, Esq.  
4010 University Drive, 2nd Floor  
Fairfax, VA 22030  
Facsimile 703.591.9285



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Richard H. Nguyen

**UNITED STATES DISTRICT COURT**  
**CRIMINAL MINUTES - GENERAL**

Case No. 1:10-CR-191  
 Court Time: 9:10 - 9:25  
10:00 - 10:15

Date: 7/29/2010

DOCKET ENTRY: **Arraignment**

U.S.A. vs. Jorge Gutierrez - 001 -  
U.S.A. vs. Jamin D. Oliva-Madrid - 006 - Due Hau Tran  
U.S.A. vs. Augustin Ortiz - 007 -  
U.S.A. vs. Esteban Salguero-Ortiz - 009 - Denise Tassi  
U.S.A. vs. FNU LNU 1 - 010 - Chester L. Banks  
U.S.A. vs. Ernesto Mora-Orozco - 011 - Michael Hendrickson  
U.S.A. vs. Darwin Oliva - 014 - John Machado

PRESENT: Honorable James C. Cacheris, U. S. District Judge  
Janice L. Allen, Deputy Clerk  
Julie Goodwin, Court Reporter  
Dennis Fitzpatrick, Asst. U. S. Attorney  
Karen Dunn, Asst. U. S. Attorney  
Theodore Herrera, Spanish Interpreter  
Carlos Wesley, Spanish Interpreter

**PROCEEDINGS:**

       Defendants are arraigned and specifically advised of rights.

  X   Defendants waive reading of indictment - WFA

       Indictment/Information read.

**\*Gov't. informed the Court that deft. Jorge Gutierrez (#1) and Augustin Ortiz (#7) are not present. They are in custody in another jurisdiction on unrelated matters.**

**\*Counsel for deft. Ernesto Mora-Orozco (#11) requests matter be cont'd to 7/30/2010 at 9:00 am for arraignment - GRANTED.**

PLEA:

MOTIONS: 30 DAYS TO FILE MOTIONS w/ ARGUMENT ON 9/10/2010 at 9:00 am

CASE CONTINUED TO 10/04/2010 at 10:00 a.m. FOR JURY Trial

\*\* Anything to be used in Case in Chief to be filed w/ the Clerk 5 days prior to trial \*\*

[ X ] Discovery Order entered in open Court

Defendants are:           [ X ] Remanded           [ ] Continued on Bond

Date: 9/10/2010

Judge: Cacheris

Reporter: J. Goodwin

Start: 9:57

Finish: 10:12

Case Number: 1:10-CR-00191-006

UNITED STATES OF AMERICA

vs.

JAMIN DODAMIN OLIVA-MADRID      X Present      \_\_\_ Not Present

<u>Counsel for Government</u> <b>Dennis Fitzpatrick</b> <b>Karen Dunn</b>	<u>Counsel for Defendant</u> <b>Due Hau Tran</b>  <u>Spanish Interpreter</u> <b>Angeles Estrada</b>
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Spanish Interpreter, Angeles Estrada, sworn  
Appearances of Counsel for ( X ) Govt ( X ) Deft  
( ) Matter is uncontested

Matter re:  
Motion to Dismiss or Alternatively Sever Co-Defts  
Motion to Exclude Co-Conspirators' Declarations, Alternatively in Limine

Argued &  
( ) Granted ( X ) Denied ( ) Granted in part/Denied in part  
( ) Taken Under Advisement ( ) Continued to

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

( ) Report and Recommendation to Follow  
( X ) Order to Follow

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

United States of America,	)	
	)	
v.	)	
	)	1:10cr191 (JCC)
Jamin Olivia-Madrid, et al.,	)	
	)	
Defendant.	)	

M E M O R A N D U M    O P I N I O N

This matter is before the Court on Defendant Jamin Olivia-Madrid’s Motions (1) to Dismiss for Failure to Allege Facts with Particularity or Alternatively to Sever Defendant, and (2) to Exclude Co-Conspirator’s Hearsay Declaration. [Dkts. 174, 175.] For the following reasons, the Court will deny Defendant’s Motions.

**I. Background**

On July 27, 2010, a grand jury sitting in the Eastern District of Virginia returned a three-count superseding indictment against Jorge Gutierrez, Jamin Dodamin Olivia-Madrid, Augustin Ortiz, Esteban Salguero-Ortiz, Fnu Lnu, Darwin Oliva, and Ernesto Mora-Orozco. [Dkt. 147.] Count 1 charges all the defendants with conspiracy to distribute cocaine in violation of 21 U.S.C. §§ 841(a)(1) and 846. Count 2 charges Defendant Orozco with possession of cocaine with intent to distribute in

violation of 21 U.S.C. § 841(a)(1). Counts 3 and 4 charge Defendant Oliva with distribution cocaine in violation of 21 U.S.C. § 841(a)(1). Joint trial is set for October 4, 2010.

Defendant Madrid filed two motions on August 30, 2010, moving to dismiss or to sever ("MTD")[Dkt. 174], and to exclude co-conspirator's declarations on August ("Mot. Exclude")[Dkt. 175]. Defendant's motions are before the Court.

## **II. Analysis**

### **A. Motion to Dismiss**

Federal Rule of Criminal Procedure 7(c)(1) requires that an indictment be a "plain, concise, and definite written statement of the essential facts constituting the offense charged." "[T]he facts alleged in an indictment should be sufficiently detailed to apprise the defendant of the charge against him so that he may prepare his defense." *United States v. Duncan*, 598 F.2d 839, 848 (4th Cir. 1979). Defendant argues that the Superseding Indictment falls short of this requirement because it "fails to state a time, place, or manner" of Mr. Madrid's alleged criminal acts. (MTD at 3.)

A plain reading of the Indictment shows otherwise. It charges Defendant with participation in a conspiracy to distribute cocaine. (Indict. at 2.) It states that the alleged conspiracy took place between approximately August 2009 and June 4, 2010. *Id.* It alleges Defendant's knowing participation in



that conspiracy. *Id.* It alleges that Defendant owned and operated the company at whose location cocaine was stored and sold. (Indict. ¶¶ 12-13.) It alleges that, on June 4, 2010, Defendant possessed 460 grams of cocaine and other items consistent with cocaine distribution at that location. (Indict. ¶ 90.) It alleges that, on February 22, 2010, Defendant delivered approximately \$7,000.00 in drug proceeds to Defendant Gutierrez. (Indict. ¶ 18.) And it alleges that Defendant purchased a Toyota 4-Runner with drug-trafficking proceeds, providing the date and amount involved in the transaction. (Indict. ¶ 48.)

In short, the Indictment's allegations state times, places, and amounts involved for many of its alleged overt acts relating to Defendant. This is more than enough to provide the notice required. This Court will therefore deny Defendant's Motion to Dismiss.

B. Motion to Sever

Defendant argues for severance from his Co-Defendants under Federal Rules of Criminal Procedure 8(b) and 14. Rule 8(b) permits an indictment to charge two or more defendants "if they are alleged to have participated in the same act or transaction, or in the same series of acts or transactions, constituting an offense or offense." Rule 8(a) is satisfied in

this case, as Mr. Madrid is charged with participating in a conspiracy with the other defendants.

Rule 14 provides that where a defendant is prejudiced by joinder, a court may order separate trials. But "there is a preference in the federal system for joint trials of defendants who are indicted together," *Zafiro v. United States*, 506 U.S. 534, 537 (1993), and "[j]oinder is highly favored in conspiracy cases, over and above the general disposition towards joinder for reasons of efficiency and judicial economy," *United States v. Tedder*, 801 F.2d 1437, 1450 (4th Cir.1986).

Defendant argues that severance is warranted here because his alleged crimes pale in comparison with those of alleged co-conspirators, raising the spectre of conviction-by-association. (MTD at 4.) The problem with this argument is that Defendant is charged with *conspiracy*, and that

[a] defendant may become a member of the conspiracy without full knowledge of all of its details, but if he joins the conspiracy with an understanding of the unlawful nature thereof and willfully joins in the plan *on one occasion*, it is sufficient to convict him of conspiracy, even though he had not participated before and *even though he played only a minor part*.

*United States v. Smith*, 261 F. App'x 477, 479 (4th Cir. 2008) (emphasis added). In other words, level of participation in a conspiracy has no bearing on guilt or innocence.

This Court will therefore deny the motion to sever.

C. Motion to Exclude Co-Conspirator Hearsay  
Declarations

Defendant moves here first to "suppress all government materials illegitimately begotten in violation of the Fourth, Fifth, and Sixth amendments," claiming that, although the Government has allowed the Defendant to review discoverable materials, it has yet to provide those materials to Defendant. (Mot. Exclude ¶¶ 2, 4.) This Court notes first that the Government is maintaining an open-file policy in this case that Defense Counsel has availed itself of. Without further information as to what, if any, materials within the Government's files may be "illegitimately begotten," (*i.e.*, what materials to suppress), this Court must deny this motion.

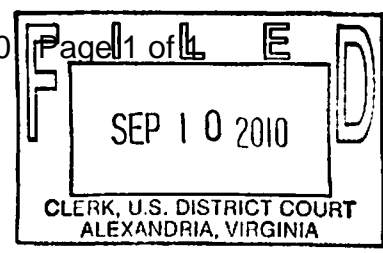
Defendant also seeks to exclude statements by J. Maldonado, arguing that such statements would violate the rule against hearsay. (Mot. Exclude ¶ 6.) The Government responds that any such statements will be admissible as statements of co-conspirators, under Federal Rule of Evidence 801(d)(2)(E). Absent evidence to the contrary, this Court must deny this motion as well.

**IV. Conclusion**

For these reasons, the Court will deny Defendant's motions.

September 13, 2010  
Alexandria, Virginia

\_\_\_\_\_  
/s/  
James C. Cacheris  
UNITED STATES DISTRICT COURT JUDGE



IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA

APPLICATION TO QUALIFY AS A FOREIGN ATTORNEY UNDER LOCAL CIVIL RULE 83.1(D) AND LOCAL  
CRIMINAL RULE 57.4

In Case Number 10CR191 . Case Name USA v. Jamin D. Oliva-Madrid  
Party Represented by Applicant: Oliva-Madrid

To: The Honorable Judges of the United States District Court for the Eastern District of Virginia

PERSONAL STATEMENT

FULL NAME (no initials, please) VINH STEVE VO  
Bar Identification Number \_\_\_\_\_ State MARYLAND  
Firm Name DHTLAW, P.L.L.C.  
Firm Phone # (571) 499-4335 Direct Dial # (703) 629-7374 FAX # (703) 459-9643  
E-Mail Address vsvo@dhtlaw.com  
Office Mailing Address 712 W. Broad St., Suite 4, Falls Church, VA 22046

Name(s) of federal court(s) in which I have been admitted \_\_\_\_\_

I certify that the rules of the federal court in the district in which I maintain my office extend a similar *pro hac vice* admission privilege to members of the bar of the Eastern District of Virginia.

I have not been reprimanded in any court nor has there been any action in any court pertaining to my conduct or fitness as a member of the bar.

I hereby certify that, within ninety (90) days before the submission of this application, I have read the Local Rules of this Court and that my knowledge of the Federal Rules of Civil Procedure, the Federal Rules of Criminal Procedure, and the Federal Rules of Evidence is current.

I am \_\_\_ am not X a full-time employee of the United States of America, and if so, request exemption from the admission fee.  
[Signature]  
(Applicant's Signature)

I, the undersigned, do certify that I am a member of the bar of this Court, not related to the applicant; that I know the applicant personally, that the said applicant possesses all of the qualifications required for admission to the bar of this Court; that I have examined the applicant's personal statement. I affirm that his/her personal and professional character and standing are good, and petition the court to admit the applicant *pro hac vice*.

[Signature] \_\_\_\_\_  
(Signature) 09/09/2010  
Due H. Tran (Date)  
(Typed or Printed Name) 45037  
(VA Bar Number)

Court Use Only:

Clerk's Fee Paid \_\_\_\_\_ or Exemption Granted \_\_\_\_\_

The motion for admission is GRANTED \_\_\_\_\_ or DENIED \_\_\_\_\_

/s/  
James C. Cacheris  
United States District Judge  
(Judge's Signature)

9/10/10  
(Date)

Court Name: United States District Court  
Division: 1  
Receipt Number: 14683816158  
Cashier ID: sbrown  
Transaction Date: 09/10/2010  
Payer Name: DUE H TRAN

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**PRO HOC VICE**

For: DUE H TRAN

Case/Party: D-VAE-1-10-CR-PROHAC-001

Amount: \$50.00

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**CHECK**

Reissuer: DUE H TRAN

Check/Money Order Num: 212

Am't Tendered: \$50.00

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Total Due: \$50.00

Total Tendered: \$50.00

Change Am't: \$0.00

**PROHOC**

110CR191

VINH STEVE VO