that's where the jury is coming by, when I looked I saw the man with the beard " whom he later referred to as the foreman. TR, pp. 78, 81. Asked if he saw any other juror through that glass, he answered: "at that moment the other ones were passing by, but the one that stood by, that we looked at each other as such was the man with the white beard." He described this exchange of looks with the foreman as "some two to three seconds" (TR., pp. 79, 81) and that at that moment he was inside the elevator facing out. TR., p. 84. Shown Exhibit II, he marked as a V1 where he first saw Villanueva, referring to the door with the star logo, and that "when he heard us talk about the jury, he walked towards the door" marked as V2. Answering questions by the Court as to how long it took deputy Villanueva to move from the door with the star logo to the door with the glass window, he answered: "as soon as he heard us, it took him one to two seconds at most." Asked if deputy Villanueva remained there at the door with the glass window when he moved, defendant Alexis Rivera answered: "yes, covering the window." When Deputy Villanueva moved from the star logo door to the door with the glass, defendant Alexis Rivera was still inside the elevator, facing out, TR, p. 89, between the moment te elevator opened to the moment that Villanueva moved to the solid wooden star logo door, Mr. Alexis Rivera stated it took "about some two seconds" (TR., pp. 90-91), and it took Villanueva, according to him, to move from the star logo door to the door with the glass "perhaps another two seconds." TR., p. 90. By this account, Villanueva was at the door with the window blocking it within four seconds after the elevator opened. Although he initially said that when Rivera-George mentioned "look at the jury, they're coming by . . . when I turned, the jury was already standing there at the door, looking to where we were coming by." When asked if the jurors stopped to look at him,

he answered: "like they stopped by, yes." TR., p. 85. Asked by a defense attorney if he saw any other members of the jury looked into the area where he was other than the person he identified who sits in the first seat of the jury box, he answered: "the other members of the jury were passing by." Upon further inquiry by the Court, he testified that he "didn't focus on the other ones, I focused on the one that was looking in." Asked how many jurors he saw passing by, he answered: "they were all passing by . . . after the man, the other guy was passing by, number 11, which is another one that I could see . . . and the other ones I didn't see, because after Lopez noticed he covered the door."

The last witness, defendant Joel Rivera-Alejandro, testified that when the elevator door opened and he turned around he "saw Villanueva as he's going directly toward the door with the star." TR., p. 97. Regarding CSO Lopez he stated that: "As we're coming out of the elevator and we become aware that the jury is walking down the hallway, because the door next to it has a glass where you can see through and look and see outside, at least I was able to see Lopez, he was with his back to the door, you could see part of his arm, his left arm, I believe it was, through the glass." TR., p. 98 bottom, p. 99, lines 1-3. When asked where is it that you see this part of Mr. Lopez' arm, he answered:

> Right on the glass, I saw someone with his back to us, but the only thing that you could see was just part of the left arm, so it wasn't covering all of the glass. TR., p. 99.

Asked how he knew that it was Lopez, he answered: "because he later on moves completely, when he seems to realize that the jurors are looking at us, where we are, and that's when I see that he moves to the left and completely covers the glass." (Interpreters translation was corrected).

Defendant Joel Rivera-Alejandro said that he saw several jurors but was not able at the time to say which ones they were. He stated that there were

several that were walking by slowly and looking inside. TR., p. 101. He explained that he couldn't say which jurors he saw that day "because everything happened so fast . . . seconds, but I don't know." TR., p. 102. He explained that he didn't get to leave the elevator, that all defendants were inside the elevator except for the deputy Marshals who stepped out, one of them was holding the doors to the elevator and Villanueva was trying to open the door that has the star on it." TR., p. 104.

The Court has carefully considered the transcript of the testimonies of defendants Rivera-George, Rivera-Rivera, Alexis Rivera-Alejandro and Joel Rivera-Alejandro during the mistrial evidentiary hearing as well as the photographs and two CDs admitted as Joint Exhibits of the government and the defendants. The Court finds that defendants' perceptions from inside the elevator which they never left until after the jurors had all passed by are mistaken. To place the incident in perspective, it is noted that the situation in this case is not that of defendants in cases cited by them. The defendants were not seen shackled or gagged by the jurors. It is akin, but even less so, to the "inadvertent quick glimpse, once or twice of the defendants in handcuff out of court" which the First Circuit found in United States v. Ayres, 725 F.2d 806, 813 (1st Cir. 1984), to be "an evanescent image of the defendants [which] would hardly dilute their presumption of innocence." The video images of the defendants inside the elevator with doors open in the cellblock area, of the 4 deputy marshals who accompanied them inside the elevator, of Deputy Villanueva blocking the 5' by 5" window pane of the wooden door separating the cell block from the corridor, the movement of the jurors, escorted by Court Security Officer ("CSO") Rafael López who has been in charge of the jury since the beginning of the trial on July 28, 2014, as seen in

the videos, and the relevant timelines of seconds leads the Court to determine that none of the jurors observed any of the defendants shackled. Only one juror, the foreman (juror #1), glanced towards the cell block area where the inmates elevator opened.

What follows are specific observations reflected in the different images of the videos in the Joint Exhibits:

I. JURORS' MOVEMENTS:

The jury escorted by CSO Lopez left the jury room and walked through a secured corridor towards the door with the glass pane of the cellblock where they all make a sharp right turn to continue their exit to the lobby of the courthouse. They filed out in three groups:

- First group of five jurors led by CSO López, composed of the foreman (juror #1), close behind Mr. Lopez, juror #8 right behind foreman to her left, with juror #9 following right behind them. The last two of the five jurors of this first group are jurors #3 and #4. At 4 minutes 10 seconds, the group of 5 jurors starts moving towards the glass pane; at 4 minutes 20 seconds the first group arrives at the curve in front of the glass pane right behind CSO Lopez, at 4 minutes 26 seconds ALL jurors have cleared the curve.

The timeline for the foreman's movement in group 1 is:

- Between 4 minutes 22 seconds and 4 minutes 23 seconds; the foreman (juror #1) turns head towards the glass pane;
- 4 minutes 23 seconds Deputy Villanueva is seeing blocking the glass window;

- 4 minutes 23 seconds to 4 minutes 56 seconds total time that Deputy Villanueva blocks the glass pane from the inside of the cellblock.
- At 4 minutes 23 seconds CSO López moves back towards glass panel door and places hand near foreman's back and blocks glass panel door at 4 minutes 24 seconds until 4 minutes 43 seconds.
- Deputy Villanueva had already blocked the glass panel one second before at 4 minutes 23 seconds.
- Foreman (juror #1) had passed door with glass panel and is not seen on screen at 4 minutes 23 seconds.

Second group: only juror #2

- At 4 minutes 21 seconds juror #2 is seen looking at first group of jurors and holding door to corridor for others in his group.
- 4 minutes 21 seconds to 4 minutes 23 seconds, juror #2 still holding door.
- 4 minutes 24 seconds juror #2 walks alone towards glass panel door blocked by CSO Lopez.
- 4 minutes 24 seconds to 4 minutes 31 seconds, juror #2 walks towards door with glass panel.
- 4 minutes 31 seconds, juror #2 clears curve in front of glass panel.
- Deputy Villanueva and Lopez are seen blocking the glass panel te entire time that juror #2 is walking to and reaches curve from 4 minutes 24 seconds to 4 minutes 31 seconds.

Third group of six jurors:

- Juror #7 seen at 4 minutes 26 seconds; at 4 minutes 27 seconds he is seen followed by alternate juror #1, and by juror #5 at

4 minutes 29 seconds, by juror #6 at 4 minutes 30 seconds, by juror #10 at 4 minutes 31 seconds and by juror #11 at 4 minutes 32 seconds.

- Deputy Villanueva and CSO Lopez are blocking the door with the glass panel the entire time of movement of the third group of jurors.
- Juror #11 who is part of the third group never turned his head towards the door with the glass panel.
- All jurors cleared the corridor that leads to the wooden door with the glass pane at 4 minutes 43 seconds.

The total time of the jurors' corridor movement was from 4 minutes 10 seconds when the first group starts moving until 4 minutes 43 seconds when they have all cleared the corridor and the curve.

There is no image of any juror stopping to look at defendants. The only juror who turned his head and glanced towards the door with the glass window was juror #1. That was a fleeting glance which went from 4 minutes 22 seconds when he turns his head to 4 minutes 23 seconds at which time Deputy Villanueva was already blocking the view.

The images show that Deputy Villanueva, who is a tall person, blocked the view of anyone from the outside who looked towards the glass panel which measures 5" long by 5" wide.

II. TIMELINE OF MOVEMENT WITHIN CELL BLOCK AREA FROM THE MOMENT INMATES' ELEVATOR OPENS:[1]

- At 1 minute 29 seconds, elevator doors open.

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[1]The timelines reported in the different videos are the ones that correspond to each of the video recordings.

- At 1 minute 29 seconds Deputy Villanueva exits elevator and all defendants are inside elevator with three deputy marshals.
- At 1 minute 31 seconds Deputy Villanueva reaches door with glass panel, Villanueva **never** goes to the other door of the cellblock area that has the star logo of the U.S. Marshals Service to put in a combination, to stand next to it or to open it. That door was opened from the inside by a guard, not by Villanueva or by any of the three other deputies who rode in the elevator with the five defendants.
- At 1 minute 32 seconds to 1 minute 58 seconds two deputy marshals stand outside but next to the elevator doors with all defendants inside.
- 1 minute 58 seconds one of the two deputy marshals moves to cell block door with star logo that was opened from the inside by a guard at 1 minute 52 seconds.
- 1 minute 58 seconds Mr. Rivera-George is the first defendant to exit the elevator.
- 1 minute 59 seconds Mr. Joel Rivera-Alejandro is the second defendant to exit elevator.
- 2 minutes 0 seconds, Mr. Rivera-George enters cell block.
- 2 minutes 0 seconds Mr. Alexis Rivera-Alejandro is the third defendant to exit elevator, enters cellblock at 2 minutes 2 seconds.
- 2 minutes 1 second defendant Carlos Rivera-Alejandro is the fourth defendant to exit the elevator, enters cellblock at 2 minutes 3 seconds.

- 2 minutes 2 seconds Mr. Rivera-Rivera fifth and last defendant to exit elevator, enters cell block at 2 minutes 5 seconds.

The images of the videos showing the movements of the jurors demonstrate that none of the jurors exchanged looks with the defendants, not even for the number of seconds that they reported during the hearing. The only juror who looked towards the glass panel fleetingly from 4 minutes 22 seconds to 4 minutes 23 seconds was the foreman, whose view was blocked by Deputy Villanueva who stood in front of the glass panel from the inside starting at 4 minutes 23 seconds and by CSO Lopez who placed his hand near the foreman's back at 4 minutes 23 seconds. The foreman merely glanced towards the glass window and continued his way out within a fraction of a second, clearing the curve and not seen again on the screen at 4 minutes 23 seconds.

This is the statement of reasons in support of the Court's Order denying defendants' motion for mistrial that was entered on September 30, 2015 at docket entry 3972.

SO ORDERED.

At San Juan, Puerto Rico, on October 8th, 2015.

CARMEN CONSUELO CEREZO
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA Plaintiff vs 1) JOEL RIVERA-ALEJANDRO, a/k/a "J" (Counts One through Seven) 2) CARLOS RIVERA-ALEJANDRO, a/k/a "Homero" (Counts One through Seven) 3) ALEXIS RIVERA-ALEJANDRO, a/k/a "Alex," a/k/a "Villa" (Counts One through Seven) 7) CARLOS E. RIVERA-RIVERA, a/k/a "Carlitos," a/k/a "Carlitos Nariz" (Counts One through Seven) 14) JUAN RIVERA-GEORGE, a/k/a "Tio" (Counts One through Seven) 19) SUANETTE RAMOS-GONZALEZ, a/k/a "Suei," a/k/a "Suanette González-Ramos" (Counts One through Five and Count Seven) 47) IDALIA MALDONADO-PEÑA (Counts One through Five and Count Seven) Defendants	CRIMINAL 09-0165CCC

STATEMENT OF REASONS IN SUPPORT OF IN-COURT VERBAL RULING ON SUPPLEMENTAL EX-PARTE MOTION FOR HEARING TO DETERMINE MISTRIAL (D.E. 4180)

The Court had before it a Supplemental Ex-Parte Motion for Hearing to Determine Mistrial (**D.E. 4180**) filed by defendants [1] Joel Rivera-Alejandro and [2] Carlos Rivera-Alejandro on December 15, 2015, joined by other defendants in open court, to which the government responded at docket entry 4190. This motion was verbally DENIED in open court on December 17, 2015 (see D.E. 4199). The following constitutes a statement of reasons in support of said denial.

The parties were given the opportunity to watch four (4) videos, one for each of the following relevant areas: (1) the area inside the courtroom, (2) the only public entrance to the lobby area that shows the front of the bust of the Hon. Clemente Ruiz-Nazario and runs the entire length of courtrooms 2, 3, 4 and 7, (3) the areas limited to the front space of an emergency exit door and to the front space of the door of Courtroom 4, and (4) the lobby area from the back part looking towards the public entrance to the lobby area. The videos reflect that on the morning of December 11, 2015 the five pretrial detainees who are defendants in this case were seated at the bench, first row to the right, upon entering the courtroom. None of the defendants were handcuffed at the time. People were engaged in conversation waiting for the trial session to start that day. Minutes of proceedings had been entered earlier that day (D.E. 4173) informing the parties that due to the filing of two recent motions, docket entries 4164 and 4165, rulings had to be made on them before commencement of the day's trial session. These motions had to do with in-limine requests by both the government and defendants to preclude references to multiple matters during their respective closing arguments. Closing arguments were scheduled to commence that same morning. Initially the hour had to be changed from 9:30 AM to 10:45 AM, and thereafter to 12:30 PM since there were a total of 44 topics raised by way of in-limines that the Court had to rule upon. The jury was instructed at approximately 11:10 AM to take their lunch hour and to return at 12:30 PM. It had remained in the jury room throughout the morning until it left for the lunch recess.

Three of the four videos depict the following: (1) one reflects images of defendants inside the courtroom seated without handcuffs with Deputy Marshals and DSOs standing behind them during the waiting period,

(2) another shows when the jury, escorted by a CSO who leads the way, is walking on the side of the court corridor/lobby area that is opposite to the Courtroom 4 where defendants are, and (3) a video limited to the space in front of an emergency door and to the space in front of the door of Courtroom 4. This third video depicts a woman at the lobby pacing and talking on the cellphone while the Courtroom 4 door is closed and again when a male exits the courtroom. The courtroom door is seen closing behind him and the CSO appears in the area of the emergency door when the courtroom door has already closed. None of the jurors are seen in the lobby corridor when the Courtroom 4 door closes behind the male and he walks away. After this, four jurors are seen walking in the lobby corridor on the opposite side of the Courtroom 4 door when a female visitor who had been inside the courtroom starts to open the door and is seen within the doorframe. This female visitor emerges at the Courtroom 4 door. She does not push the door wide open. The door is seen closing by itself behind her. This takes approximately three seconds.

The fourth video shows the Honorable Clemente Ruiz Nazario's bust from behind. The woman who was pacing while she talked on the cellphone is briefly seen as well as two men seated in a bench area. This fourth video does not show the door of Courtroom 4 at all. The CSO and the jurors are seen while they are walking on the side opposite to Courtroom 4 to exit the lobby area.

Upon being informed on December 15, 2015 of the lunch break until 12:30 PM, the defendants are seen in video 1 getting up while five law enforcement officers stand right behind them. One of the officers then walks to the well and four remain behind the 5 defendants. As the 5 defendants rise,

the female spectator, seated in the last row on the side of the courtroom opposite to where they are, also stands. She then walks away from the courtroom bench where she had been seated next to where Dolores Alejandro, mother of three of the defendants, was seated. While the female spectator is walking away, defendants are being handcuffed with their hands in back by the guards who were standing behind them. None were leg shackled.

Defendants state that because the Courtroom 4 door was open some of the jurors saw them handcuffed. There is only one person who opens that door, the female visitor seated in the last courtroom bench, who stood up when the defendants did and is seen leaving the courtroom during the relevant timeframe. The second video of the area outside Courtroom 4 depicts the precise moment when she exits through the Courtroom 4 door. As she exits her body blocks the view inside. As soon as she moves away from the door, it is only seconds before the door is seen closing behind her. That door was never opened again by anyone else.

The Courtroom 4 door, like those of all other courtrooms, has two panels. Both panels are made of solid wood. Only one of the panels was partially opened by the female spectator when she exited Courtroom 4. That panel has a flat metal plate on its inside. The door panel is pushed to open it. It closes automatically on its own mechanism as it has installed a parallel arm door closer. The female spectator does not hold the door open at any time while she walks out of Courtroom 4. She is seen exiting and continues walking until she gets to an area in the lobby corridor where there are benches for the public.

During the brief moment when the visitor exits Courtroom 4, jurors were walking in the lobby corridor on the opposite side of said courtroom. Escorted

by the CSO, ten of the fourteen jurors who compose the panel are seen in the videos walking in groups of twos and threes. The other four jurors are never seen in any of the videos leaving the building. Some are seen talking to each other. None stopped at any time to look inside the courtroom. While some of the jurors glanced towards the courtroom while they were exiting on the opposite side of the lobby, the door opened and shut in a matter of seconds as the visitor exited. Defendants were inside, standing at the first row, on the right side of the courtroom after they had been handcuffed to leave for the lunch recess. When the female visitor stands as defendants stand, five officers are behind the five detained defendants being handcuffed. She is seated at the last row next to the courtroom door, starts exiting the courtroom and, at that precise moment, there are four deputies standing behind the defendants.

An additional concern was voiced by attorney Maestre on behalf of all detained defendants regarding an incident that she described as "hostile" and which she said defendants are not sure if the jury saw it. It purportedly involves deputies rushing defendants to walk towards the interior door of the courtroom that leads out to the cellblock. Ms. Maestre proffers that after Mr. Rivera-George alerted the rest of the defendants regarding the jury, "all of them I guess tried to talk to their respective attorneys" but, as seen in the video, "they are not being allowed to talk to us calmly because they're being rushed out." Defendants then speculate in the narrative proposed by attorney Maestre that a person looking through the door would have seen the deputies rushing and giving orders while the attorneys were trying to talk to their clients. This, she avers, could have given the appearance of hostility to someone looking through the door. She adds that what is seen in the video is the "shifting of bodies while Deputy Marshal Villanueva is giving them orders." The

video of the inside of the courtroom neither reflects abuse or hostility towards defendants on the part of the officers. Defense attorneys are right in front of their clients at counsel table. Deputy U.S. Marshal Villanueva is seen while he walks to the back of the courtroom, immediately returns and gives the signal to the other deputies to have defendants exit.

This is done in the same manner that the undersigned has observed them leave throughout the trial. There is no interaction between counsel and the deputies that can be described as tense, nor between the defendants and the deputies.

At the time that Mr. Villanueva goes to the back of the courtroom and returns to signal defendants to exit, the only person who left the courtroom before he gestures and after defendants stand was the one female spectator described before. No one is seen in the videos looking through the small glass window or opening the Courtroom 4 door. No hostile actions or mistreatment of any of the defendants is seen at any time before and as they leave for lunch.

The circumstances described, reflected in the four videos viewed several times by the undersigned, lead us to conclude that (1) the 5 defendants were not seen handcuffed by any of the jurors who happened to pass by on the opposite side of the lobby corridor in that fleeting moment when the female visitor exited the courtroom, and (2) that no hostility was displayed against defendants by the Deputy Marshals or the DSOs. An affirmation to the contrary would be a distortion of the events recorded on video as they unfolded. No reasonable minded person who views the videos in an impartial manner could conclude otherwise. Defendants' attempt at reenacting those events in a self-serving video and photos taken by defense counsel, two days after the incident, in staged settings, constitute a distortion of the events of

December 15, 2015. The Order stating the reasons for not admitting said video and photos was issued as docket entry 4207 on December 17, 2015, which constitutes Attachment 1 to this Order.

SO ORDERED.

At San Juan, Puerto Rico, on December 22, 2015.

S/CARMEN CONSUELO CEREZO
United States District Judge

09-165 (CCC)

12/18/15

Honorable Carmen C. Cerezo,

We the jury, request to leave before the defendants when the courts adjourns in the afternoon, in order to avoid any encounters which is occurring on a daily basis.

12/18/15

Mr. Foreman + Members of the Jury: Foreperson: REDACTED

Please advise to which ... of my defendants you are referring to when you mention encounters that are occurring on a daily basis?

USDJ

Honorable Carmen C. Cerezo

The defendants mentioned above are Suanet Ramos & Idalia Maldonado and family

Foreman + Members

Mr. Foreman + Members of the Jury: REDACTED

Noted —

12/21/15

USDJ

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA Plaintiff vs 47) IDALIA MALDONADO-PEÑA (Counts One through Five and Count Seven) Defendant	CRIMINAL 09-0165-47CCC

SEALED ORDER ON MOTION FOR RECONSIDERATION AND REQUESTING INQUIRY INTO JURY NOTE

On Friday, December 18, 2015, after the jury had left, the undersigned was handed a note in which the jury requested to "leave before the defendants when the court adjourns in the afternoon, in order to avoid any encounter which is occurring on a daily basis." That same day, the Court wrote the response in the same note stating:"Please advise to which defendants you are referring to when you mention encounters that are occurring on a daily basis?" Upon the jury's return on Monday, December 21, 2015, the note was handed back to the jury to answer this question. The answer was: "The defendants mentioned above are Suanette Ramos y Idalia Maldonado and Family." The parties were read the entire contents of the jury note in open court. Attorney Mariángela Tirado, who represents defendant [47] Idalia Maldonado-Peña and Raymond Sánchez-Maceira, who represents defendant [19] Suanette Ramos-González, the two defendants mentioned by the jury, claimed that because the jury had not made any such request before and because this note could mean that they are biased against the two defendants, the Court should conduct a further inquiry as to the reasons for the request. This was denied. The Court answered the jury note with a "noted" after receiving the information requested.

Defendant Maldonado-Peña filed today, December 22, 2015 at 8:11 AM a Motion for Reconsideration (**D.E. 4219**) again asking that the Court further inquire as to the reason for the request and, depending on the answer, then

poll each juror individually to determine whether impartiality has been compromised. The initial inquiry requested of each juror comprises the following: (1) whether the jurors have had any incident with the two defendants or their families during those daily encounters, (2) if so, what and when was the incident and (3) whether daily encounters with the defendants, referring to Idalia Maldonado-Peña and Suanette Ramos have caused the jurors anxiety, apprehension or fear. Movant Maldonado-Peña goes on to state: "Depending on the result of the inquiry, it would be defendant's prerogative to move for a mistrial or request any other appropriate remedy."

The defendants are in the midst of closing arguments. The jurors made no reference as to any incident having occurred with these two defendants. They simply asked that the jury be allowed to leave before the defendants, specifically the two defendants on bond, upon adjourning for the day, to avoid any encounters that are occurring on a daily basis. There is no reason to read into this request the concerns of bias and lack of impartiality by the jurors that the two defendants are injecting into it. Nor have jurors voiced any concerns for their safety whatsoever.

The Motion for Reconsideration (**D.E. 4219**) is DENIED. The Clerk of Court is ORDERED to seal docket entry 4219. Closing arguments will continue today, as scheduled.

SO ORDERED.

At San Juan, Puerto Rico, on December 22, 2015.

S/CARMEN CONSUELO CEREZO
United States District Judge

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA Plaintiff vs 1) JOEL RIVERA-ALEJANDRO 2) CARLOS RIVERA-ALEJANDRO 3) ALEXIS RIVERA-ALEJANDRO 7) CARLOS E. RIVERA-RIVERA 14) JUAN RIVERA-GEORGE 19) SUANETTE RAMOS-GONZALEZ 47) IDALIA MALDONADO-PENA 49) DOLORES ALEJANDRO Defendants	CRIMINAL 09-0165CCC

ORDER

The Court has before it the Motion in Compliance Regarding Proffer on Impeachment Effort filed by defendant [3] Alexis Rivera-Alejandro on March 16, 2015 (**D.E. 3449**), joined by defendant [14] Juan Rivera-George on that same date (**D.E. 3451**). The proffer set forth in this Motion is NOTED. The announced proffer made by defendant Alexis Rivera-Alejandro that he will be inquiring as to whether Assistant U.S. Attorneys Dina Avila and Vanessa Bonhomme "met" with him during trial is DENIED.

The reason for this ruling is that this Motion has one purpose: to bring before the jury again, as Ms. Mariángela Tirado-Vales did before, the unfounded charge of prosecutorial misconduct.[1] This matter was initially raised at a sidebar by Ms. Tirado-Vales and addressed by the Court after hearing both parties. Ms. Avila's representation during the sidebar discussion that she

[1] See p. 2, ¶ 4 of Motion where reference is made to Ms. Avila having spoken to the witness; missing is the reason for Ms. Avila having addressed the witness.

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briefly spoke with witness Miguel Angel Vega-Delgado during the lunch recess at the witness room to inform him on a matter related to his medical condition and treatment was accepted by the Court. Additionally, and more importantly, the transcript of Mr. Vega-Delgado's testimony on March 10, 2015, before and after the lunch recess, regarding his first and subsequent encounters with a female whom he identified as defendant [47] Idalia Maldonado-Peña, reflects no traces of tampering of this witness by anyone. The fact that the actual identification came after he testified in detail of the 15 more times in which he bought controlled substances from this defendant, having referred to her in the first night encounter as a "silhouette" behind a window does not lend support to the accusation of tampering raised by Ms. Tirado against Ms. Avila. Nothing has been raised before the undersigned that is suspicious or indicative of tampering or fabrication of evidence by the prosecutor regarding Vega-Delgado's in-court identification of [47] Idalia Maldonado-Peña and his testimony as to previous drug transactions with her.

Movant makes much of the witness having stated that he did not "meet" with the prosecutor after the commencement of his trial testimony. The impeachment effort has no factual foundation for there is no evidence that there was a "meeting" as such about his testimony. The only information, brought by Ms. Tirado-Vales during the sidebar when she raised prosecutorial misconduct, was that A.U.S.A. Avila was seen by a co-defendant briefly speaking to the witness. Ms. Avila stated on March 11, 2015 that she spoke the first time to the witness Miguel A. Vega-Delgado "because Mr. Miguel Angel Vega Delgado is supposed to undergo surgery for a bump, and Your Honor can see him physically, that he has on the side of his head. He was

supposed to have a medical appointment yesterday. We asked him to try to reschedule that medical appointment for tomorrow morning because we have the morning off." The second time was on March 10, 2015 because she was informed by agent Cases that Miguel Angel Vega-Delgado was "going to move him from the location where he's secure for witnesses, to general population . . ." "We dealt directly with the witness on issues that have to do directly with the security" as well as "making sure that he got lunch, because Mr. Miguel Angel Vega Delgado is diabetic and we want to make sure he's eaten before he comes back to testify." (Trial Transcript, March 11, 2015). The parties know that the witness' medical condition is a matter that Ms. Avila has handled and brought before the Court prior to any imputation of misconduct.

There is not an iota of proof that Ms. Avila met with witness Vega-Delgado to coach him as to his in-court identification of defendant Maldonado-Peña or as to his testimony regarding their relationship as seller/buyer of controlled substances. However, that is precisely what Ms. Tirado-Vales again brought up yesterday in her cross-examination of Mr. Vega-Delgado and what the testimony now proffered by Ms. Maestre and Mr. Olmo is aimed at, piggybacking on Tirado-Vales' tampering accusation.

Finally, the fact that a witness cannot discuss his testimony with anyone, an instruction that the undersigned has repeatedly given to Mr. Vega-Delgado, does not mean that the prosecutor cannot inform him of a matter having to do with the medical treatment/surgery that has had to be postponed precisely because of the witness' lengthy court appearance or, for that matter, related to his institutional security placement or lunch. Beyond this there is no basis

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whatsoever to point to a "meeting" between government counsel and government witness.

Accordingly, the proffer announced at ¶ 6 of the Motion is DISALLOWED. Defendants [3] Alexis Rivera-Alejandro and [14] Juan Rivera-George and his attorneys, as well as every other defendant and attorney in this case, are barred from bringing through the back door the matter proffered which has no impeachment value due to lack of foundation regarding the underlying imputation of witness tampering made by Mariángela Angélica Tirado-Vales, a matter which the Court has already twice addressed and rejected. The announced proffer of defendants Alexis Rivera-Alejandro and Juan Rivera-George is an attempt to bypass the ruling given in open court on March 16, 2015 when attorney Tirado-Vales insisted on this same matter by asking the witness on cross-examination if A.U.S.A. Avila visited him in the witness room.

SO ORDERED.

At San Juan, Puerto Rico, on March 17, 2015.

S/CARMEN CONSUELO CEREZO
United States District Judge

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA Plaintiff vs 1) JOEL RIVERA-ALEJANDRO, a/k/a "J" (Counts One through Seven) 2) CARLOS RIVERA-ALEJANDRO, a/k/a "Homero" (Counts One through Seven) 3) ALEXIS RIVERA-ALEJANDRO, a/k/a "Alex," a/k/a "Villa" (Counts One through Seven) 7) CARLOS E. RIVERA-RIVERA, a/k/a "Carlitos," a/k/a "Carlitos Nariz" (Counts One through Seven) 14) JUAN RIVERA-GEORGE, a/k/a "Tio" (Counts One through Seven) 19) SUANETTE RAMOS-GONZALEZ, a/k/a "Suei," a/k/a "Suanette González-Ramos" (Counts One through Five and Count Seven) 47) IDALIA MALDONADO-PEÑA (Counts One through Five and Count Seven) Defendants	CRIMINAL 09-0165CCC

ORDER

During the September 24, 2015 afternoon session defendant [14] Juan Rivera-George presented a witness, Moisés Avila-Sánchez, who was objected by the United States based on impeachment on a collateral matter. The United States cited in support of this evidentiary rule the case of United States v. Mulinelli-Navas, 11 F.3d 983 (1st Cir. 1997), which has an extensive discussion on the subject. Witness Avila-Sánchez' testimony was brought to show that cooperating fact witness Manuel Ferrer-Haddock was lying when he stated on cross-examination that he worked on two different occasions at a business

known as "Los Pioneros." Ferrer-Haddock gave details as to the tasks he performed, that at one of those times he worked from 2 to 6 months, and that he quit because he was paid with checks with insufficient funds. Mr. Ferrer-Haddock's cross-examination regarding his work was directed at showing that he did not have the economic means to maintain the lifestyle that he had. Mr. Olmo's cross-examination was substantially on this subject.

Faced with the objection, Mr. Olmo made a proffer as to witness Avila-Sánchez and another witness, a certified public accountant, who he would present immediately thereafter. Avila-Sánchez would testify according to the restated proffer that he is an attorney for the owner of the business and visits the business about twice a week at which times he may also meet with his clients. The Court observed that such testimony had little, if no, impeachment value on whether Ferrer-Haddock had actually worked there. He then restated the proffer as to witness Avila-Sánchez to one of the witness testifying that "Los Pioneros" is a taco business where people order at a window and can sit at tables to eat but they are not served because the food is not brought to the tables. He argued that this would contradict Mr. Ferrer-Haddock's testimony as to the "operation" of the business because he had testified that food was brought to the tables. Regarding the second witness yet to be brought to court, he proffered that he was a certified public accountant, that he worked with the business payroll, and would testify that Ferrer-Haddock never worked at "Los Pioneros."

Mulinelli-Navas lays out the basic principles on the collateral issue rule: "A matter is considered collateral if 'the matter itself is not relevant in the litigation to establish a fact of consequence, *i.e.,* not relevant for a purpose other than mere contradiction of the in-court testimony of the witness.'" Id. at 4

(quoting 1 McCormack on Evidence § 45, at 169). In other words, "[a] matter is collateral if it could not have been introduced into evidence for any purpose other than contradiction . . . . [T]he evidence must have an independent purpose and an independent ground for admission." Payne, 102 F.3d at 294 (citation and internal quotation marks omitted); see also United States v. Roulette, 75 F.3d 418, 423 (8th Cir.), *cert. denied,* 519 U.S. 853, 117 S.Ct. 147, 136 L.Ed.2d 93 (1996). The inquiry into what is collateral is squarely within the trial court's discretion. United States v. Kozinski, 16 F.3d 795, 806 (7th Cir. 1994). Mulinelli-Navas, 111 F.3d at 988.

Having considered the proffer made by attorney José Olmo for defendant Rivera-George on the two witnesses, the Court finds that the testimony of Avila-Sánchez is barred for it is proper only as to an insignificant matter that falls squarely within the rule.

Given the time constraints, the Court has been unable to fully research this matter overnight. Therefore, and as to the second witness, the parties will file a brief memorandum with case law by **SEPTEMBER 28, 2015** at **3:00 PM**. Therefore, and as to the second witness, the parties will file a brief memorandum with case law by **SEPTEMBER 28, 2015** at **3:00 PM** addressing (1) whether the collateral issue rule as a complete bar could be an incentive to perjury and (2) how the factual testimony of the second witness is or is not related to the issues of the case.

SO ORDERED.

At San Juan, Puerto Rico, on September 25, 2015.

CARMEN CONSUELO CEREZO
United States District Judge

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA Plaintiff vs 1) JOEL RIVERA-ALEJANDRO, a/k/a "J" (Counts One through Seven) 2) CARLOS RIVERA-ALEJANDRO, a/k/a "Homero" (Counts One through Seven) 3) ALEXIS RIVERA-ALEJANDRO, a/k/a "Alex," a/k/a "Villa" (Counts One through Seven) 7) CARLOS E. RIVERA-RIVERA, a/k/a "Carlitos," a/k/a "Carlitos Nariz" (Counts One through Seven) 14) JUAN RIVERA-GEORGE, a/k/a "Tio" (Counts One through Seven) 19) SUANETTE RAMOS-GONZALEZ, a/k/a "Suei," a/k/a "Suanette González-Ramos" (Counts One through Five and Count Seven) 47) IDALIA MALDONADO-PEÑA (Counts One through Five and Count Seven) Defendants	CRIMINAL 09-0165CCC

ORDER

Before the Court is the issue of whether defendant [14] Juan Rivera-George should be allowed to bring two witnesses to testify that Manuel Ferrer-Haddock, a cooperating government witness, did not work during a brief period of time at a business known as "Los Pioneros" as he stated during cross-examination. Specifically, three (3) days the first time and for a couple of months a second time in the year 2008. During that same cross-examination on this matter, he was also asked: "so then what would you do for money?" to which he answered: "sold drugs; looked for another job."

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The other reference to Ferrer-Haddock working at a business known as Puerto Rico Gold Bond for two, four or six months during 2008 was also raised during the government's witness cross-examination by defense counsel and presents the same issue . See Transcript of August 21, 2014, p. 90. All of the cases cited by defendant Rivera-George in his Motion in Compliance filed on September 28, 2015 (**D.E. 3962**), at page 3, disallowed the testimonies offered to contradict testimony provided during cross-examination by collateral impeachment. The testimonies proffered as impeachment are of marginal probative value and do not go to any fact of consequence that could be considered relevant to the substantive issues of guilt or innocence. Witness Ferrer-Haddock did not make any claims during his direct examination of earning a living solely by pursuing legal economic activity. He stated outright that he sold drugs to do so. It was during cross-examination that he was asked and testified that he worked at these two particular businesses during brief periods of time. The only purpose of all the proffered witnesses mentioned in the Motion in Compliance is to contradict such statements. The Court finds that the impeachment effort proposed falls squarely within impeachment by collateral matter and has no other relevance or value. Placing the matter in its proper context, the Court is persuaded that disallowing defendant Rivera-George's impeachment effort by way of impeachment on this collateral matter of little or no consequence to this case is not an incentive to perjury. This is not the situation that the Court confronted in Walder v. United States, 347 U.S. 62, 74 S.Ct. 354 (1953), where a defendant on direct examination asserted that he had never possessed any narcotics. The Court commented: "Of his own accord, the defendant went beyond a mere denial of complicity in the crimes of which he was charged and made the sweeping claim that he had

never dealt with or possessed any narcotics." Defendant Waldert's self-interest in resorting to perjury during his own direct examination was evident. The challenge to his credibility was found to be justified for it hinged on a matter of strong relevance. Waldert had perjuriously repeatedly denied on direct that he had never possessed narcotics or given narcotics to anyone or ever acted as a conduit in handling narcotics, betting on the government's disability to challenge his credibility since the drugs had been unlawfully seized from his home. This was a fact of consequence that went to the substantive issue of innocence or guilt. As in United States v. Mulineli-Navas, 111 F.3d 983 (1st Cir. 1997), the evidence that defendant Rivera-George has proffered has no independent purpose for it goes only to attack the credibility of government witness Ferrer-Haddock on a minor matter. It is not material to defendant Rivera-George's or any other defendant's guilt or innocence and, therefore, DENIED as impeachment by way of a collateral matter.

SO ORDERED.

At San Juan, Puerto Rico, on October 1, 2015.

CARMEN CONSUELO CEREZO
United States ~~District~~ Judge

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA Plaintiff vs 1) JOEL RIVERA-ALEJANDRO, a/k/a "J" (Counts One through Seven) 2) CARLOS RIVERA-ALEJANDRO, a/k/a "Homero" (Counts One through Seven) 3) ALEXIS RIVERA-ALEJANDRO, a/k/a "Alex," a/k/a "Villa" (Counts One through Seven) 7) CARLOS E. RIVERA-RIVERA, a/k/a "Carlitos," a/k/a "Carlitos Nariz" (Counts One through Seven) 14) JUAN RIVERA-GEORGE, a/k/a "Tio" (Counts One through Seven) 19) SUANETTE RAMOS-GONZALEZ, a/k/a "Suei," a/k/a "Suanette González-Ramos" (Counts One through Five and Count Seven) 47) IDALIA MALDONADO-PEÑA (Counts One through Five and Count Seven) 49) DOLORES ALEJANDRO-RODRIGUEZ, a/k/a "Doña Lolita," a/k/a "Lola" (Counts One through Seven) Defendants	CRIMINAL 09-0165CCC

AMENDED EVIDENTIARY RULING ON DEFENDANTS' OBJECTIONS REGARDING PAGES 33-34, 61, 69, 94-95, 99 AND 101 OF THE NORTH SIGHT COMMUNICATIONS, INC. BUSINESS FILE ADMITTED AS EXHIBIT 177 ON APRIL 28, 2015

Government witness Angel Francisco Miranda-Pagán, Vice-President of North Sight Communications, Inc., testified extensively in direct examination and on voir dire by defendants as a foundation witness regarding business records kept in the regularly conducted activity of this company which offers radio communication services. The file was admitted as Exhibit 177 after a

full-day testimony which established that the documents included in the file of customer 1866 complied with the Federal Rule of Evidence 803(6) requirements. After Mr. Miranda-Pagán's direct examination concluded, which was followed by attorney Juan Milanés' cross-examination, Mr. Milanés raised objections to specific documents of that file, to wit: pages 33-34, 61, 69, 94-95, 99 and 101. He then raised that the person who provided the information to the preparer was an outsider who was not required by the company to provide information to it. Mr. Milanés raised that this outsider/third-party who is identified in the records as the person in whose name the account was opened and kept is not "someone with knowledge," as required by Fed. R. Evid. 803(6)(A). Attacking the source of information as unreliable, since he is a third-party with no duty or obligation to provide the information gathered in the creation of records, he then raised an issue under Federal Rule of Evidence 805 of double hearsay as to the particular pages contained in Exhibit 177.

The Court has examined each of the pages of the North Sight Communications, Inc. business file admitted as Exhibit 177 which have been challenged as failing to comply with requirement (A) of Fed. R. Evid. 803(6) and the arguments made based on the double hearsay problem. Without exception, the only probative value of all the documents challenged is to establish association between different members of the conspiracy charged.[1] This non-hearsay use of the evidence eliminates the double hearsay problem

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[1]Although there is a distinction between the forms filled out by the employee in the regular course of business, at pages 61, 99 and 101, which contain information as to SIM card numbers, as opposed to the handwritten notes at pages 33-34 and 94-95 that were provided to the preparer employee by the one holding the account who is a third-party/outsider to the company's record keeping procedures, this difference does not affect the Court's ruling.

raised by the defendants. The documents objected are not admitted for the truth of the matters asserted therein but, rather, as evidence of the association between individuals that are charged as members of the conspiracy in the Indictment which include the defendants and others named in the documents.

Professor Stephen A. Saltzburg analyzes the business duty requirement and the double hearsay problem in his Federal Rules of Evidence Manual:

> In light of the strong statement by the Advisory Committee, we believe that the only correct approach is to continue to follow the business duty concept – that all those who report information included in a business record must be under a business duty to do so, or else the hearsay problem created from the report by an outsider must be satisfied in some other way.
>
> The concern addressed by the business duty requirement is that the person with personal knowledge of an event may not be reporting accurately to the person who eventually records the information.
>
> However, the existence of a business duty is not the only way to solve the double hearsay problem created when a business record is prepared by one who is relying on the personal knowledge of one outside the "business." There are three ways in which a business record can qualify for admissibility even though the reporter has no duty to report accurately to the recorder.
>
> First, if the recorder actually verified the information for accuracy, the record would be held by most Courts to be admissible.
>
> Second, if the underlying statement satisfies an independent hearsay exception, the double hearsay problem is satisfied.
>
> Third, if the underlying statement is offered for a non-hearsay purpose, there is no double hearsay problem at all.

S. Saltzburg, Federal Rules of Evidence Manual, pp. 803-44 to 803-46 (9th ed. 2006).

Having concluded that pages 33-34, 61, 69, 94-95, 99 and 101 of the business file of North Sight Communications, Inc., Exhibit 177, are admitted simply for the purpose of showing association between members of the conspiracy charged, not for the truth of the data or matters reflected in those

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documents, the Court OVERRULES the double hearsay objection under Fed. R. Evid. 805 and the lack of compliance with the source of information requirement of Fed. R. Evid. 803(6)(A) and will give an instruction to the jury that the specific documents objected, numbered as pages 33-34, 61, 69, 94-95, 99 and 101, will be considered by them for the limited purpose of determining whether the records demonstrate an association between members of the conspiracy charged in the Indictment.

SO ORDERED.

At San Juan, Puerto Rico, on April 30, 2015.

S/CARMEN CONSUELO CEREZO
United States District Judge

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THE COURT: Anything else that you want to say?

MR. OLMO: No, Your Honor.

THE COURT: Mr. Rivera George, this is the sentence of the Court: On January 5, 2016, the defendant, whose full name is Juan David Rivera George, also known as Tio, was found guilty by a jury on Counts 1, 2, 3, 4, 5 and 6 of the Indictment in Criminal No. 09-165, charging him with violations to 21 U.S. Code Sections 841(b)(1)(A), (b)(1)(B), (b)(1)(D), 846 and 860, class "A", "B" and "D" felonies, respectively, and with a violation of 18 U.S. Code --

MS. BONHOMME: I apologize, Your Honor, there was one other point I forgot, just so that the record is clear.

THE COURT: Let me finish this sentence.

MS. BONHOMME: Thank you, Your Honor.

THE COURT: And with a violation of 18 U.S.C., Section 924(o), a class "C" felony.

MS. BONHOMME: Thank you, Your Honor, I apologize.

THE COURT: What is it that you want to add?

MS. BONHOMME: It's just one extra point that I needed to address to make sure that we have made appropriate comments towards defense counsel's sentencing memorandum.

Defendant makes reference to a sentencing disparity in relation to other similarly situated codefendants in his motion at page 3, towards the bottom, and page 4. The only thing that we would like to add, Your Honor, is that this defendant --

first of all, when it looks at sentencing disparity, the courts have said and the First Circuit has said that we have to look at the sentencing disparity nationwide, not just in a particular case. But even if we were just looking at a particular case, this defendant is not situated in the same manner in which his co-conspirators were of the same role. Why? Because those co-conspirators took the benefit of a plea agreement, and in that plea agreement the parties agreed to stipulate to a reduced amount of controlled substances and to specific issues.

THE COURT: I'm aware of that.

MS. BONHOMME: I understand, Your Honor, I just need to have it on the record, that that is why there is no sentencing disparity that should be considered by this Court in relation to this sentence.

Thank you.

THE COURT: The Court continues with its sentence.

The November 1, 2016, Edition of the Sentencing Guidelines has been used to determine the applicable advisory guideline adjustments under Guideline Section 1B1.11(a).

For guideline calculation purposes, Counts 1 through 6 were grouped together pursuant to Guideline Section 3D1.2(d), as the offense level is determined largely on the basis of the total amount of the quantity of the offenses involved -- of the substances, the quantity of the substances involved.

The guideline for a 21 U.S. Code 860 offenses is Guideline Section 2D1.2, applicable to offenses involving a conspiracy to possess with the intent to distribute heroin, cocaine, cocaine base and marijuana, within a protected location.

The total amount of drugs attributable to the defendant upon conversion to its marijuana equivalent is 25,446.49 kilograms of marijuana, thereby establishing a base offense level of 34 pursuant to Guideline Section 2D1.1(c)(3), plus two levels that are applicable to the quantity of controlled substances directly involving a protected location pursuant to Guideline Section 2D1.2(a). Therefore, this establishes an adjusted base offense level of 36.

The defendant conspired to possess firearms in furtherance of the drug trafficking conspiracy, therefore, a two-level increase is applicable under Guideline Section 2D1.1(b)(1).

There are no other applicable guideline adjustments.

Based on a total offense level of 38 and a Criminal History Category of 1, the guideline imprisonment range in this case is from 235 to 293 months as to each count of conviction, with a fine range of 25,000 to 71,000,000, plus a supervised release term of at least ten years.

The Court has reviewed the applicable advisory guideline calculations and finds that the computations

satisfactorily reflect the components of the offense and has considered all Section 3553(a) factors in Title 18.

Defendant is 37 years old. He is divorced. He has a 15-year-old son and 9-year-old twins. Mr. Rivera George completed his GED and was gainfully employed as a carpentry assistant when he was arrested. He is physically and mentally healthy; however, he did report at one point to the probation officer that he was experiencing suicidal ideation since the verdict. He reported a history of marijuana use since age 16. This is his first conviction.

Defendant was in charge of the drug trafficking at Los Claveles, a two-tower apartment building that is in close proximity to the other site where the drug trafficking involved in the conspiracy occurred at Villa Margarita, Amapola Street. The two drug points were the hub of the conspiracy that is charged in Count 1 of the Indictment.

The trial evidence established that Mr. Rivera George acted closely with three other conspirators, the Rivera-Alejandro brothers, during the entire life of this conspiracy while he was overseeing the Los Claveles operation of the organization in its totality. The individualized determination as to drug quantities for which a defendant may be held responsible is based on quantities that are foreseeable to the particular defendant. As explained in *U.S. v. Santos*, a First Circuit court case, 357 F.3rd 136 and 140, this case is cited

in *U.S. v. Ramirez*, another First Circuit case of the year 2014, 751 F.3rd 42, at 53, and I quote, "Foreseeability encompasses not only the drugs the defendant actually handled but also the full amount of drugs that he could reasonably have anticipated would be within the ambit of the conspiracy."

Given the defendant's involvement at high levels of this large scale drug conspiracy through its entire span, the Court understands that the foreseeability standard is met in his case and the amount of drugs, after conversion, of 25,446.49 kilograms of marijuana was reasonably foreseeable to him.

Accordingly, given the serious nature of the offenses, the defendant's role in the conspiracy, his personal characteristics and status as a first offender, the Court finds that a sentence at the lower end of the applicable guideline imprisonment range is sufficient but not greater than necessary to meet objectives of punishment and of deterrence.

Accordingly, it is the judgment of the Court that the defendant is hereby committed to the custody of the Bureau of Prisons to be imprisoned for a term of 235 months as to Counts 1, 2, 3, 4 and 6, and for a term of 120 months as to Count 5, to be served concurrently with each other.

Upon release from confinement, defendant shall be placed on supervised release for a term of ten years as to Counts 1, 2 and 4, eight years as to Count 3, four years as to