No. _____

IN THE

Supreme Court of the United States

JOSÉ FOLCH-COLÓN,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

APPENDIX

United States Court of Appeals
For the First Circuit

No. 19-2253

UNITED STATES OF AMERICA,

Appellee,

v.

JOSÉ R. ANDINO-MORALES,

Defendant, Appellant.

No. 19-2262

UNITED STATES OF AMERICA,

Appellee,

v.

JOSÉ D. FOLCH-COLÓN,

Defendant, Appellant.

No. 20-1274

UNITED STATES OF AMERICA,

Appellee,

v.

ANIBAL MIRANDA-MONTAÑEZ,

Defendant, Appellant.

APPEALS FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

[Hon. Timothy S. Hillman, U.S. District Judge]

Before

Barron, Chief Judge,
Thompson, Circuit Judge,
and Burroughs, District Judge.*

David Ramos-Pagan, for appellant José R. Andino-Morales.
Laura Maldonado-Rodríguez, for appellant José D. Folch-Colón.
Victor A. Ramos-Rodríguez, for appellant Anibal Miranda-Montañez.
Francisco A. Besosa-Martínez, Assistant United States Attorney, with whom W. Stephen Muldrow, United States Attorney, and Mariana E. Bauzá-Almonte, Assistant United States Attorney, Chief, Appellate Division, were on brief, for appellee.

July 11, 2023

* Of the District of Massachusetts, sitting by designation.

BARRON, Chief Judge. These consolidated appeals arise out of the federal investigation into the criminal activities of La Asociación ÑETA ("ÑETA"), an organization whose members allegedly trafficked contraband and carried out murders-for-hire throughout several prisons in Puerto Rico. The three appellants in this case -- José R. Andino-Morales ("Andino"), José J. Folch-Colón ("Folch"), and Anibal Miranda-Montañez ("Miranda") -- were convicted in the United States District Court for the District of Puerto Rico of conspiring to participate in ÑETA through a pattern of racketeering activity ("RICO") in violation of 18 U.S.C. § 1962(d). Folch and Miranda were also convicted of conspiracy to possess with intent to distribute controlled substances in violation of 21 U.S.C. § 846, and of committing a violent crime in aid of racketeering in violation of 18 U.S.C. § 1959(a)(1) and (2), otherwise known as a "VICAR" offense. Folch and Miranda were each sentenced to multiple, concurrent terms of life imprisonment, while Andino was sentenced to a term of imprisonment of fifteen years.

All three appellants argue that the evidence is insufficient to support one or more of their convictions. Folch and Miranda also bring challenges to the District Court's jury instructions. Folch additionally contends that an improper statement by the prosecution warranted a mistrial. Finally, Andino

challenges his sentence as procedurally unreasonable. We affirm across the board.

I.

Several decades ago, incarcerated persons in Puerto Rico founded ÑETA, also known as "La Asociación Pro Derechos y Rehabilitación del Confinado." The stated purpose of the organization at the time was to advocate for the rights of inmates in the Puerto Rico prison system. But, following a criminal investigation into ÑETA's activities, federal authorities in 2016 returned an indictment in the District of Puerto Rico alleging that ÑETA had evolved into "a criminal organization whose members and associates engaged in drug distribution and acts of violence, including murder."

The indictment charged fifty individuals, including the three appellants, whom the indictment alleged were ÑETA members, with various offenses. The government charged all three appellants with RICO conspiracy in violation of 18 U.S.C. § 1962(d) (Count One), and conspiracy to possess with the intent to distribute controlled substances in violation of 21 U.S.C. § 846 (Count Two). The government also charged Andino with committing a VICAR offense in violation of 18 U.S.C. § 1959(a)(1)-(2) (Count Three), and Folch and Miranda with committing a VICAR offense in violation of 18 U.S.C. § 1959(a)(1)-(2) (Count Four). The appellants were also

charged in the alternative with aiding and abetting the VICAR offense of which each was charged in Counts Three and Four.[1]

The government's case at trial as to the three appellants was as follows:

ÑETA members both sold drugs supplied by the organization (the proceeds of which would go back to the organization) and sold drugs from their own personal supply by paying a fee, or "incentive," to the organization. ÑETA smuggled cell phones into prisons to help ÑETA members coordinate the drug trafficking operation, and for which ÑETA members could pay an "incentive" for personal use. And, ÑETA members carried out murders-for-hire on behalf of the organization.

In conducting these activities, ÑETA employed a sophisticated hierarchical structure, with the "Maximum Leadership" sitting atop the organization's hierarchy and overseeing its operations across Puerto Rico. The Maximum Leadership appointed "chapter leaders" at each correctional

[1] The government states in its briefing that Miranda was also charged under Count Three, but the indictment does not charge him under that Count, and the District Court did not instruct the jury to determine his guilt or innocence under that Count. A fourth defendant -- Freddie Sánchez-Martínez -- was tried jointly with the three appellants and was charged under Counts One, Two, and Three. He is not a party to this appeal.

institution, and chapter leaders in turn appointed leadership teams within each facility.

Andino, Folch, and Miranda each participated as a ÑETA member in ÑETA's drug trafficking operations. The government's case in that regard was that: Andino paid the drug incentive to sell his personal supply of marijuana, and paid the cell phone incentive by selling drugs on behalf of ÑETA; Folch helped coordinate ÑETA's drug and cell phone trafficking activities in the "Green Monster" prison by serving as an "advisor" for the chapter leadership at that facility; and Miranda served as a chapter leader for ÑETA at the Ponce Main prison, selling drugs and cell phones and collecting incentives.

Andino, Folch, and Miranda also were each involved in a murder-for-hire carried out by ÑETA. More specifically, the government tried to prove that: Folch paid for ÑETA to kill an inmate named Alexis Rodríguez-Rodríguez ("Rodríguez") at the Ponce Main prison; Miranda "seconded" the order to carry out that murder in his capacity as chapter leader at that prison; and Andino participated in carrying out, on behalf of ÑETA, the contract killing of Mario Montañez-Gómez ("Montañez"), an inmate in the Bayamon 1072 facility.

After a thirteen-day trial in the District of Puerto Rico, the jury found Folch and Miranda guilty of Count One (RICO

conspiracy), Count Two (drug conspiracy), and Count Four (the VICAR offense, with the predicate "crime of violence" being the murder of Rodríguez), and made special findings regarding the quantities of drugs for which Folch and Miranda were each responsible. As for Andino, the jury found him guilty of Count One (RICO conspiracy), but not of either Count Two (drug conspiracy) or Count Three (the VICAR offense, with the "crime of violence" being the murder of Montañez). Moreover, the jury did not in any of its special findings hold Andino responsible for any quantities of drugs.

The District Court entered judgments of conviction against both Folch and Miranda for each of the offenses for which they had been found guilty and sentenced each of them to concurrent terms of life imprisonment on each of their three convictions. The District Court also entered a judgment of conviction against Andino for RICO conspiracy and sentenced him to 180 months (fifteen years) of imprisonment.

These consolidated appeals followed.

II.

We begin with the appellants' challenges to their convictions on sufficiency grounds. "We review such challenges de novo, when, as is the case here, the appellants preserved their claims below through motions for acquittal" under Federal Rule of

Criminal Procedure 29. United States v. Millán-Machuca, 991 F.3d 7, 17 (1st Cir. 2021) (citing United States v. Santos-Soto, 799 F.3d 49, 56 (1st Cir. 2015)). "We draw all reasonable inferences from the evidence in the light most favorable to the prosecution," id. (citing Santos-Soto, 799 F.3d at 56–57), and focus our inquiry on "whether 'any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt,'" id. (quoting United States v. Bailey, 405 F.3d 102, 111 (1st Cir. 2005)).

A.

Each of the appellants contends that his RICO conspiracy conviction must be reversed due to a lack of sufficient evidence. After laying out the elements of RICO conspiracy, we turn to the arguments that each appellant makes about why the evidence does not suffice to satisfy certain of the elements of that offense.

1.

Section 1962(c) of the RICO statute sets out the substantive RICO offense, which makes it "unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity." 18 U.S.C. § 1962(c). An "enterprise" is "any

individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity." 18 U.S.C. § 1961(4).

"[A]t least two acts of racketeering activity," 18 U.S.C. § 1961(5), that are related, occurred within ten years of each other, and pose a threat of continued criminal activity constitute a "pattern of racketeering activity." Millán-Machuca, 991 F.3d at 18 (citing United States v. Chin, 965 F.3d 41, 47 (1st Cir. 2020)). "Racketeering activity" is defined to include acts "involving murder . . . or dealing in a controlled substance" that are "chargeable under State law and punishable by imprisonment for more than one year." 18 U.S.C. § 1961(1).

Section 1962(d) makes it unlawful to conspire to violate § 1962(c). To prove the RICO conspiracy offense, "the government must prove that 'the defendant knew about and agreed to facilitate' a substantive RICO offense." Millán-Machuca, 991 F.3d at 18 (quoting United States v. Leoner-Aguirre, 939 F.3d 310, 316 (1st Cir. 2019)).

The appellants were charged in the indictment with conspiring "to conduct . . . the affairs of [the] enterprise" -- ÑETA -- "through a pattern of racketeering activity consisting of multiple offenses involving: (1) [d]rug trafficking . . . [and] (2) [m]urder." The District Court instructed the jury

as to the RICO conspiracy charges that the government needed to prove that each of the appellants "agreed to participate in the conduct of an enterprise with the knowledge that some members would engage in at least two acts of murder, or at least two acts of drug trafficking, or both . . . or any combination of them."

2.

The appellants first contend that "the government could not rely on the existence of [ÑETA] as an inmate group to prove the existence of a RICO enterprise" because "there were some members [of ÑETA] that did not sell nor used [sic] drugs." The appellants thus assert that the "evidence [did not] establish that [ÑETA] was an ongoing organization . . . with a common purpose that would distinguish the group of inmates performing illegal acts as a RICO enterprise."

Our decision in Millán-Machuca makes clear, however, that "nothing in the statutory definition of enterprise requires that the enterprise be defined solely by a criminal purpose." 991 F.3d at 20. Thus, RICO "extends to 'both legitimate and illegitimate enterprises.'" Id. (quoting United States v. Turkette, 452 U.S. 576, 580–81 (1981)).

Moreover, there is substantial evidence in the record of ÑETA's formalized membership practices, traditions, and hierarchical structure. That evidence more than suffices to

support the conclusion that ÑETA was at least a "union or group of individuals associated in fact although not a legal entity," 18 U.S.C. § 1961(4), and so constituted an "enterprise" for the purposes of RICO.

3.

The appellants next argue that, even if the evidence suffices to show that ÑETA qualified as an "enterprise," the evidence does not suffice to show that its "activities . . . affect[ed] interstate or foreign commerce," 18 U.S.C. § 1962(c). The appellants focus on the evidence that the government put forward regarding the enterprise's drug trafficking. They contend that because it shows at most that the kinds of drugs that ÑETA dealt (including heroin and cocaine) are not produced in Puerto Rico, it does not suffice to show that the specific contraband seized in this case originated outside of Puerto Rico. For that reason, they contend, the interstate commerce element is not supported by sufficient evidence.

This aspect of the appellants' sufficiency challenge also runs up against our ruling in Millán-Machuca. There we held that "testi[mony] that cocaine and heroin are not produced in Puerto Rico . . . was enough to establish the slight effect on interstate commerce that is required for a RICO conviction." 991 F.3d at 20 n.4. We see no reason to conclude differently here.

4.

The appellants next direct our attention to what the record shows regarding the "pattern of racketeering activity" element. But, we are not persuaded by the appellants' sufficiency challenge on this score either.

The appellants first contend that their RICO conspiracy convictions must be reversed on sufficiency grounds because the government put forth evidence of ÑETA carrying out murders-for-hire to support the "pattern of racketeering" element. The premise of this argument is that murder-for-hire is not specifically barred by the Puerto Rico Penal Code and so is not "chargeable under State law" as the RICO statute requires a "racketeering activity" to be. See 18 U.S.C. § 1961(1); see also Yates v. United States, 354 U.S. 298, 312 (1957) (holding that a conviction must be reversed if the evidence in the record supports a legally impermissible ground as well as a legally permissible one and "it is impossible to tell which ground the jury selected").

But, in Millán-Machuca, which concerned different defendants charged under the same indictment that is at issue here, we reasoned that "[t]he lack of a specific murder-for-hire statute does not mean that murder-for-hire is not prohibited by Puerto Rico law," and that Puerto Rico's "general murder statute . . . plainly applies to the murder" of Rodríguez. 991 F.3d at 21.

Because that same reasoning equally applies here as to both the murder-for-hire of Rodríguez and the murder-for-hire of Montañez, this aspect of the appellants' sufficiency challenge concerning the "pattern of racketeering" element fails.

The appellants next contend that the evidence does not suffice to prove the "pattern of racketeering activity" element because the record contains no evidence of bribery even though the indictment identified bribery as being (along with drug trafficking and murder) among the three types of alleged racketeering acts that satisfied that element. Once again, however, Millán-Machuca poses an obstacle for the appellants. There, we explained that a similar challenge had no merit, so long as -- evidence of bribery aside -- there was other evidence in the record that sufficed to satisfy the "pattern of racketeering" element. 991 F.3d at 22 n.5. The mere fact that no evidence of bribery was put forward at the trial here thus provides no basis in and of itself for concluding that the evidence does not suffice to support the "pattern of racketeering" element in the appellants' cases.

Each appellant does also argue that, evidence of bribery aside, the evidence does not suffice to support his RICO conspiracy conviction because the evidence would not permit a rational juror to find beyond a reasonable doubt that the appellant "agreed to

participate in the conduct of [the] enterprise with the knowledge that some members would engage in at least two acts of murder, or at least two acts of drug trafficking, or both." But, the record contains sufficient evidence to show that each appellant was not only aware of, but also personally participated in, at least two acts of drug trafficking (which is a "racketeering activity") as a ÑETA member.

As to Andino, the record shows that one witness testified that, although Andino did not occupy a position of leadership within ÑETA, he was a ÑETA member. Furthermore, the record supportably shows that he paid an "incentive" to ÑETA for personal cell phone usage by selling heroin on behalf of the organization, and that he also paid an "incentive" to ÑETA to be able to sell marijuana on his own. Moreover, the record contains evidence that suffices to show that Andino engaged in the conduct just described more than twice.

Andino emphasized at oral argument both that the jury acquitted him of the drug conspiracy offense charged in Count Two and that the jury did not hold him responsible for any specific quantity of drugs in its special findings regarding his conviction for RICO conspiracy on Count One. He then went on to argue that the claimed inconsistency between the verdicts requires that we reverse the conviction on the RICO conspiracy charge. Controlling

precedent, however, is to the contrary. See United States v. Powell, 469 U.S. 57, 58 (1984) (reaffirming rule from Dunn v. United States, 284 U.S. 390 (1932), that "a criminal defendant convicted by a jury on one count [can]not attack that conviction because it was inconsistent with the jury's verdict of acquittal on another count").

As for Folch, he argues that there was a "lack of cohesiveness as to the evidence presented" regarding his involvement in drug trafficking. He emphasizes that he was described by witnesses as being a drug supplier not only to ÑETA members but also to non-members. As a result, he contends, the evidence suffices to establish at most that he "sent drugs to be sold and tallied for his own profit . . . not to profit the enterprise."

This argument is without merit because the government presented evidence that suffices to link Folch's drug trafficking activities to the conduct of the enterprise. The government did so via witness testimony that Folch was an "advisor" or "counselor" to the chapter leader at the "Green Monster" facility, that he was involved in multiple drug transactions on behalf of the organization in that capacity, and that he advised the chapter leader on the group's finances stemming from its trafficking operations.

Miranda contends that the evidence does not suffice to support his RICO conspiracy conviction because the evidence "did not establish that [he] was plainly integral to carrying out the enterprise's activities" due to evidence that "there was a movement to remove [him] from his alleged position as a chapter leader" at the Ponce Main prison. But, as we have explained, evidence can suffice to show that an individual participated in the activities of a RICO enterprise if it shows that the individual either "participated in the enterprise's decisionmaking" or "[was] plainly integral to carrying out" the directives of those with decisionmaking authority. United States v. Oreto, 37 F.3d 739, 750 (1st Cir. 1994). And here, Miranda does not dispute that the evidence suffices to show that he was the chapter leader at the Ponce Main prison, and that he "participated in the enterprise's decisionmaking" in that capacity.

For example, one witness testified that, as chapter leader, Miranda "was responsible for everything that happened in the prison," and so was "in charge of, well, all the drug [sic]. Anything that came in, he had to know of." Meanwhile, testimony that some ÑETA members discussed replacing him as chapter leader hardly shows that he did not hold an important position within ÑETA's hierarchy.

B.

Having dispensed with the appellants' sufficiency challenges to their RICO conspiracy convictions, we now consider Miranda's sufficiency challenge to his conviction for violating 21 U.S.C. § 846. That offense makes it unlawful to conspire to violate 21 U.S.C. § 841(a)(1), which in turn makes it unlawful "to . . . possess with intent to . . . distribute . . . a controlled substance." To sustain the conviction, the government was required "to prove (1) the existence of a conspiracy to possess heroin, cocaine, and/or marijuana with the intent to distribute it, and (2) that [Miranda] knowingly and willfully joined in that conspiracy." Millán-Machuca, 991 F.3d at 19.

Miranda's sole argument in advancing this challenge is that the government failed to prove that "there was an agreement among [Miranda] and [ÑETA] members . . . to work together in the buying and selling of illegal drugs and that its purpose was allegedly to benefit the organization." We disagree. The same drug-related evidence that supports Miranda's RICO conspiracy conviction under Count One also supports his drug conspiracy conviction under Count Two, given that this collection of evidence supports the conclusion that Miranda personally participated in and helped to orchestrate ÑETA's drug trafficking operations at the Ponce Main prison in his capacity as chapter leader. See id.

at 19–20 (testimony that defendant helped "in overseeing the organization's drug trafficking operations" sufficed to support drug conspiracy conviction).

c.

We come, then, to Folch's and Miranda's sufficiency challenges to their respective convictions for violating 18 U.S.C. § 1959(a), the VICAR offense. That offense has four elements:

> (1) the existence of an enterprise engaged in interstate commerce; (2) that enterprise engaged in "racketeering activity," (3) the defendant committed a crime of violence . . . and (4) that crime of violence was committed as "consideration for the receipt of, or as consideration for a promise or agreement to pay, anything of pecuniary value from an enterprise engaged in racketeering activity, or for the purpose of gaining entrance to or maintaining or increasing position in an enterprise engaged in racketeering activity."

Id. at 19 (quoting 18 U.S.C. § 1959(a)). The alleged "crime of violence" as to both Folch and Miranda pertained to the murder of Rodríguez.

Folch and Miranda contend that the evidence in the record does not suffice to satisfy the elements set forth above. But, as the government notes, Folch and Miranda were each charged not only with committing the VICAR offense as a principal, but also with aiding and abetting the commission of that offense by someone else. The government argues that the record supports Folch's and

Miranda's convictions on that alternative basis. Without by any means suggesting that the convictions may be affirmed solely based on the aiding and abetting theory, we agree.

To convict Folch and Miranda based on the aiding and abetting theory, the government had to prove that "1) the substantive offense was actually committed [by someone]; 2) the defendant assisted in the commission of that crime or caused it to be committed; and 3) the defendant intended to assist in the commission of that crime or to cause it to be committed." United States v. Gaw, 817 F.3d 1, 7 (1st Cir. 2016) (alteration in original) (quoting United States v. Davis, 717 F.3d 28, 33 (1st Cir. 2013)). The evidence that bears on the relevant elements here is no different from the evidence in Millán-Machuca, which affirmed the conviction of a member of ÑETA's Maximum Leadership -- Rolando Millán-Machuca ("Millán") -- of a VICAR offense predicated on the murder of Rodríguez at issue here. There, as in this case, the evidence sufficed to show that Millán gave a "directriz" for the murder of Rodríguez, a special kind of order that could only be given by a member of the Maximum Leadership and that ÑETA members were required to carry out and risked being killed if they did not. And, in that case, we explained that such evidence was sufficient to allow a rational juror to conclude both that Millán committed a crime of violence

and that he did so "to strengthen and maintain his position in the leadership" and so in aid of racketeering. Millán-Machuca, 991 F.3d at 21–22. Thus, we see no reason not to conclude that the evidence in this case also suffices to support the conclusion that "someone" -- in particular, Millán -- did "actually commit[]" the VICAR offense grounding the convictions at issue.

The key question as to both Folch and Miranda, then, is whether the evidence also suffices to support the conclusion that each of them "assisted in the commission of that crime or caused it to be committed" and that each of them "intended" to do so. Gaw, 817 F.3d at 7. We conclude that the evidence does so suffice.

Beginning with Folch, the evidence establishes that Folch paid Millán for the murder of Rodríguez, and so it is evident that the evidence thereby suffices to show that Folch "caused" that crime to be committed. As to whether the evidence also suffices to show that Folch "intended" to cause the commission of the VICAR offense at issue, we conclude that it does.

"[F]or purposes of aiding and abetting law," the "intent requirement [is] satisfied when a person actively participates in a criminal venture with full knowledge of the circumstances constituting the charged offense." Rosemond v. United States, 572 U.S. 65, 77 (2014). In this case, that "full knowledge" must include knowledge that those who committed the murder of Rodríguez

did so "for the purpose of gaining entrance to or maintaining or increasing position in" ÑETA.[2] 18 U.S.C. § 1959(a).

Here, one witness testified that Folch "convinced the Maximum Leadership, namely [Millán], to have members of [ÑETA] murder Rodríguez," and that he paid Millán to do it. The evidence also suffices to show that Folch and Millán together called one of the ÑETA members who murdered Rodríguez -- Jose González-Gerena ("González") -- when there was a delay in carrying out the murder. González himself testified that, on that call, Millán "scold[ed] [him] for the delay" in "doing what [Millán] had told [him] to do" and commanded González to "do that as soon as possible." As a result, the evidence suffices to permit a rational juror to find beyond a reasonable doubt that Folch understood that Millán ordered González to carry out the murder in Millán's capacity as a member of the Maximum Leadership, and that, on the phone call, Millán leveraged that authority to demand that González carry out the order. The evidence therefore suffices to support the conclusion

[2] Folch argues that to satisfy the intent requirement, the government needed to show that Folch not only had "full knowledge" of the principal's intent, but that he himself shared in that intent, i.e. that his "intent was to promote his cohorts [sic] membership in the enterprise." But, the only case Folch cites in support of this proposition fails to support it, as it states only that "the defendant must have consciously shared some knowledge of the principal's criminal intent." United States v. Ortero-Mendez, 273 F.3d 46, 52 (1st Cir. 2001) (emphasis added) (citing United States v. Loder, 23 F.3d 586, 591 (1st Cir. 1994)).

that Folch not only "actively participate[d] in the criminal venture" to murder Rodríguez, but also had "full knowledge" that the murder of Rodríguez was committed in aid of racketeering. The evidence therefore suffices to show that Folch intended to cause the commission of the VICAR offense. Cf. Gaw, 817 F.3d at 7–8 (affirming defendant's conviction for aiding and abetting honest services fraud because evidence was sufficient for rational juror to find that defendant "understood both that [the perpetrator] was using his position . . . to further the . . . transaction and that [the perpetrator] was being paid to do so from the proceeds of the transaction").

As for Miranda, the record shows that several witnesses testified that Miranda, as chapter leader for ÑETA in the facility in which the murder occurred, "seconded an order given to him by [Millán]" to carry out the murder of Rodríguez. In addition, one witness testified that by seconding the order, Miranda "let [the order] come through" and thereby "allow[ed] the murder to be committed." This testimony is consistent with the evidence in the record that shows that a chapter leader "controlled what happened within that chapter in that prison."[3]

[3] Miranda argues that the evidence that he "seconded" the order is irrelevant because he "did not have the authority to stop or revoke [the] order given by [Millán]." Miranda cites no

Moreover, one witness testified that on the night before the murder, Miranda supplied the ÑETA members who killed Rodríguez with the drugs that would be used to kill him. Meanwhile, another witness testified that, as part of a prearranged "strategy" to make the murder seem like an accidental overdose, Miranda gave Rodríguez mouth-to-mouth resuscitation immediately after the murder had been committed and then took Rodríguez to the medical area to receive medical attention.

This evidence more than suffices to support the "assisted in the commission" element insofar as the evidence also suffices to show that the VICAR offense occurred. In addition, this evidence supports the conclusion that Miranda understood that Millán gave the order to kill Rodríguez in his capacity as a member of the Maximum Leadership, given that Miranda then "seconded" that order in his capacity as chapter leader. The evidence therefore suffices to support the conclusion that Miranda had "full knowledge" that the predicate "crime of violence" was committed in aid of racketeering, and so that Miranda "intended" to aid in the commission of the VICAR offense. Accordingly, Miranda's

---

support, however, for the notion that someone who assists in the commission of a murder because they are required to by the rules of an organization has for that reason not aided and abetted the murder. Thus, we cannot agree that this fact alone precludes the evidence of Miranda "second[ing]" the order from supporting the conclusion that he thereby aided and abetted the murder.

sufficiency challenge to his VICAR conviction, like Folch's challenge to his, fails.

III.

We now shift our focus to the alleged trial errors that Folch and Miranda each contends occurred. Here, too, we conclude that the challenges are without merit.

A.

Folch and Miranda both take aim at their convictions for RICO conspiracy and the VICAR offense based on the District Court's supposed error in instructing the jury regarding the elements of murder under Puerto Rico law (an alleged "racketeering activity" for both the RICO conspiracy and VICAR offense counts). More specifically, Folch and Miranda argue that the District Court's jury instructions wrongly "included definitions [of murder] not found in the 2012 Puerto Rico Penal Code," which "resulted in a constructive amendment of [C]ounts [O]ne and [F]our of the indictment in violation of [the defendants'] right to be charged by a grand jury and of [their] right to be aware of the charges against [them]."

"A constructive amendment occurs when the charging terms of the indictment are altered, either literally or in effect, by [the] prosecution or court after the grand jury has last passed upon them." United States v. de Leon-De la Rosa, 17 F.4th 175,

195 (1st Cir. 2021) (alteration in original) (quoting United States v. DeCicco, 439 F.3d 36, 43 (1st Cir. 2006)). When the challenge is preserved, "[a] constructive amendment is considered prejudicial per se and grounds for reversal of a conviction." United States v. Portela, 167 F.3d 687, 701 (1st Cir. 1999) (quoting United States v. Fisher, 3 F.3d 456, 463 (1st Cir. 1993)).

Folch and Miranda are right that "[a]n indictment may be constructively amended by jury instructions which have the effect of broadening the charges in the indictment." Id. at 701–02 (citing Stirone v. United States, 361 U.S. 212, 214–16 (1960)). Folch and Miranda have failed to show, however, that any of the portions of the jury instructions to which they point had such an effect. See id. at 702 ("Neither jury instruction at issue broadened the conspiracy charge; neither constructively amended the indictment.").

For the most part, Folch and Miranda do little more than identify instances in which the jury instructions departed from the precise wording of the Puerto Rico Penal Code with respect to the offense of murder. They even concede that some of those differences "are subtle." That the District Court's instructions did not parrot the statutory definition for murder fails on its own to show that the instructions were legally inconsistent with that definition. And that is significant because it is well

established that although a "trial court is obliged to inform the jury about the applicable law . . . within wide limits, the method and manner in which the judge carries out this obligation is left to his or her discretion." Elliot v. S.D. Warren Co., 134 F.3d 1, 6 (1st Cir. 1998).

Folch and Miranda do argue that the jury instructions "define[d] intent in much broader terms than the 2012 Puerto Rico Penal Code," and thereby "expanded [its] definition." But, the claimed inconsistency is illusory, because the definition of "intent" in the 2012 Puerto Rico Penal Code divides it into three categories that substantively align with the three types of intent that the District Court identified in the relevant portion of the jury instructions.[4]

Folch and Miranda separately argue that the jury instructions "expanded the premeditation instruction by adding 'motive,'" the proof of which they contend is required for some crimes in the 2012 Puerto Rico Penal Code, but not for murder. In

[4] Folch and Miranda also contend that the District Court, in providing its definition of "intent," erred by stating that "[i]n legal terms, we refer to the intention to kill as acting with 'malice,'" because the term "malice" is not found in the statute. However, Folch himself notes that immediately after introducing the term "malice," the District Court stated: "A person acted with 'malice' if he . . .", at which point the District Court then provided the three-part definition of "intent" that tracks the statutory definition.

the challenged instruction, however, the District Court stated that "[a]lthough the Government need not establish the motive for the murder of the victim, you may consider motive as evidence of premeditation." This explicit instruction that motive need not be established contradicts the contention that the challenged instruction somehow added a motive requirement.

B.

Folch argues on his own that his RICO conspiracy and VICAR offense convictions must be vacated for the separate reason that the District Court erred when it used "ÑETA" and "the enterprise" interchangeably in the jury instructions. Folch argues that the District Court in doing so effectively instructed the jury that "ÑETA" was an "enterprise" even though the question of "whether [ÑETA] was an enterprise under RICO was for the jury to decide."

Folch points to no specific portion of the jury instructions in which the District Court's use of "ÑETA" amounted to an instruction that ÑETA was a RICO enterprise. Moreover, a review of the jury instructions shows that the District Court specifically instructed the jury on the definition of "enterprise" for the purposes of RICO, stating that "[a]n enterprise . . . must have an ongoing organization," that it "must have personnel who function as a continuing unit," and that it "includes legitimate

and illegitimate enterprises," and then clarified that "the Indictment in this case alleges that the enterprise was an organization known as [ÑETA]."

Folch also argues that his VICAR offense conviction must be vacated because the printed verdict form failed to include a question as to whether he committed the murder of Rodríguez "as consideration for" payment from ÑETA or in hopes of "gaining entrance to or maintaining or increasing position in" ÑETA. 18 U.S.C. § 1959(a). This omission, he argues, would have allowed the jury to convict him of the VICAR offense even if the jury had concluded that he did not have the required motive.

Folch has failed to point to any authority, however, for the notion that there is a requirement that the jury make a specific finding in a special verdict form regarding that element. Indeed, the chief case Folch relies upon for support -- United States v. Ferguson, 246 F.3d 129 (2d Cir. 2001) -- itself declared that "the use of a special verdict form" is "a matter for the trial court's discretion." Id. at 137. Thus, Folch has failed to establish that, even in a case such as this one where the District Court explicitly instructed the jury as to all the elements of a crime, the District Court must nonetheless employ a special verdict form. Cf. United States v. Edelkind, 467 F.3d 791, 795 (1st Cir. 2006) (holding that omission from verdict form of requirement that

defrauded institution be one that was federally insured was not prejudicial error because jury was instructed as to that element and all other elements of the charged crime).

c.

The last claimed trial error again is raised only by Folch, who argues that his RICO conspiracy conviction must be vacated due to an allegedly improper statement by the prosecuting attorney at trial. The facts bearing on this challenge are as follows.

At closing argument, Folch's counsel argued to the jury that, while the indictment alleged that Folch was among those defendants who "acted as Chapter Leaders for [ÑETA]," and while the District Court instructed the jury that Folch was "alleged to have been [a] Chapter Leader[]," the evidence presented at trial did not support that conclusion. On rebuttal, the prosecuting attorney responded:

> [Folch's counsel] argues, oh, the Indictment says that my client is a chapter leader. Well, he was an advisor for the chapter leader. That is part of the chapter leadership. . . . So he was part of the chapter leadership even though we don't have to prove that he was a chapter leader. We only have to prove that he agreed that he or other persons would engage in a pattern of racketeering activity.
>
> And that's pretty simple. All we have to show is that [Folch], just like we have to show for all the defendants, were members

> [sic] of [ÑETA] and that they agreed that either they or someone else in the organization was going to engage in drug trafficking or murder.

(Emphasis added).

Folch objected and moved for a mistrial on the ground that the government committed prosecutorial misconduct by contending through the prosecutor's statements that it did not need to prove that Folch was a chapter leader as alleged in the indictment. The District Court denied that motion. We "review th[e] claim de novo to see whether the contested comment was improper -- and if yes, whether it was harmful, knowing that the harmfulness question turns on whether the comment 'so poisoned the well that the trial's outcome was likely affected, thus warranting a new trial.'" United States v. Freitas, 904 F.3d 11, 24 (1st Cir. 2018) (quoting United States v. Rodríguez, 675 F.3d 48, 62 (1st Cir. 2012)).

Folch styles this challenge as one of prosecutorial misconduct that deprived him of his right to a fair trial. He relies on precedent involving prosecutorial arguments that are "undignified and intemperate, containing improper insinuations and assertions calculated to mislead the jury." United States v. Figueroa, 900 F.2d 1211, 1215 (8th Cir. 1990) (quoting Berger v. United States, 295 U.S. 78, 85 (1935)). Folch's argument appears

to be that the prosecutor's comments were improper because the government "obtained an unfair advantage by allowing the court's instructions to contain references to Folch's alleged position in the enterprise, that could not be proven, and then arguing to the jury that they did not have to prove it."

The "position" that Andino allegedly held in the enterprise to which the jury instructions referred was that of chapter leader. But, even if we were to assume that the challenged statements by the prosecutor amounted to a legal argument that the jury did not need to find that Folch was a chapter leader to find him guilty of the charged offenses, Andino fails to explain why the statements by the prosecutor would provide a basis for deeming the challenge to have merit.

Folch relies in support of this challenge on Figueroa. But, that case is readily distinguishable. In vacating a conviction based on a prosecutor's statements, we noted that the district court there had issued a curative instruction that the prosecutor's challenged argument at trial was legally baseless. 900 F.2d at 1215–16. By contrast, in this case, the District Court reached no such conclusion regarding the prosecutor's statements. Nor has Folch explained how the statements at issue here are legally baseless or how, insofar as they are not, the convictions

must be vacated in consequence of them. See United States v. Zannino, 895 F.3d 1, 17 (1st Cir. 1990).

Folch develops no argument, for example, that the evidence fails to suffice to permit the government to prove him guilty of the charged offenses unless the government can prove that he was a chapter leader. And, we do not see how Andino could develop any such argument, given the evidence in the record that we have recounted above and that suffices to show that he is guilty of the RICO conspiracy and drug trafficking convictions based on his conduct as merely a member of ÑETA.

Moreover, Folch fails to develop an argument that, insofar as the evidence suffices to permit the jury to convict him of the underlying offenses without finding that he was a chapter leader, the convictions could not stand because they then would be the result of a prejudicial variance from the indictment occasioned by the prosecutor's statements. See United States v. Alicea-Cardoza, 132 F.3d 1, 6 (1st Cir. 1997) (affirming conviction because variance was non-prejudicial when indictment alleged defendant was a "triggerman" but evidence proved that he was a "runner"). And, he does not explain how, in the absence of the statements giving rise to a prejudicial variance, there is any basis for deeming the statements by the prosecutor to be of a sort that would warrant vacating the convictions under our precedent.

D.

There remains only Andino's challenge to his sentence, which takes aim solely at its procedural reasonableness. See United States v. Politano, 522 F.3d 69, 72 (1st Cir. 2008) (citing Gall v. United States, 552 U.S. 38, 51 (2007)). The first aspect of the challenge concerns the District Court's consideration of conduct of which Andino had been acquitted and takes aim at the District Court's supposed reliance on findings relating both to the murder of Montañez and to his alleged involvement in drug trafficking on behalf of ÑETA. The second aspect of the challenge concerns the District Court's explanation -- or lack thereof -- for the chosen sentence. The challenge is without merit.

1.

The government recommended below that Andino receive a prison sentence of 20 years after determining that Andino's base offense level was 43 under the United States Sentencing Guidelines ("USSG").[5] The government does not dispute that to adopt that base offense level and follow the recommendation, the District Court needed to conclude that Andino "participated in the murder of Montañez" and apply § 2A1.1 of the Guidelines, even though the

[5] As the government explained in its sentencing memorandum, the recommended Guidelines range for a base offense level of 43 is a life sentence, but the statutory maximum for Andino's conviction was 20 years of imprisonment.

jury had acquitted Andino of the VICAR offense that was premised on the murder of Montañez (Count III). Section 2A1.1 of the Guidelines "applies in cases of premeditated killing," as well as "when death results from the commission of certain felonies . . . e.g., murder in aid of racketeering." USSG § 2A1.1(a).

Andino argues that, accordingly, the record shows that the District Court premised the sentence on acquitted conduct in applying that guideline to his case. He then contends -- as he did below -- that it was error for the District Court to do so because the record does not suffice to show by a preponderance of the evidence that he engaged in that conduct. See United States v. Watts, 519 U.S. 148, 157 (1997).

As the government explains, "the relevant federal sentencing statute requires a reviewing court not only to 'accept' a district court's 'findings of fact' (unless 'clearly erroneous'), but also to 'give due deference to the district court's application of the guidelines to the facts." Buford v. United States, 532 U.S. 59, 63 (2001) (quoting 18 U.S.C. § 3742(e)). And, "the argument for deference peaks when," as here, "the sentencing judge has presided over a lengthy trial and is steeped in the facts of the case." United States v. Sepulveda, 15 F.3d 1161, 1200 (1st Cir. 1993).

Andino argues that the record shows that text messages and a call log from another inmate's cell phone that allegedly link Andino to the murder refer to him only as "Indio," a purported reference to his nickname "Indio Gladiola." Yet, he argues, the evidence also shows that there was another ÑETA member whose nickname was "Indio Muriel," and that no evidence was presented to show that the "Indio" referred to in those communications was in fact Andino. He then goes on to argue that the only other evidence regarding his participation in the murder amounts to testimony of "witnesses who heard from others that 'Indio' had participated in the murder," such that "the only other evidence corroborating these statements" would be the disputed communications. That being so, he contends, the District Court erred in finding by a preponderance that he participated in the murder and so erred in applying the guideline in question.

Andino is wrong, however, that "the only other evidence" linking him to the murder was the testimony of "witnesses who heard from others that 'Indio' had participated in the murder." Indeed, one witness testified that he had heard that "Indio Gladiola" had participated in the murder. Another witness testified, after confirming that the "Indio Gladiola that [he was] referring to" was "Jose Andino Morales," that Andino was among the group of inmates whom the witness personally confronted as the group was on

its way to commit the murder, and that Andino later expressed regret to him for Andino's role in the murder.

Andino makes no other argument for how the cell phone-related evidence is necessary to support the District Court's conclusion. Nor does he explain how the testimony that refers to him as more than just "Indio" does not independently suffice to support that conclusion. Thus, given the deference due to the District Court in assessing the record, we cannot conclude that the District Court erred in finding by a preponderance of the evidence that Andino participated in the murder of Montañez.

Andino also argued below, and he argues again on appeal, that the District Court erred by considering drug-related conduct in its sentencing determination even though the jury acquitted Andino of the drug conspiracy under Count Two and, in its special findings for his RICO conspiracy conviction under Count One, did not hold him responsible for any quantities of drugs. In so contending, Andino argues that the evidence regarding his involvement in drug trafficking does not suffice to meet the preponderance standard necessary to permit the District Court to consider this acquitted conduct.

It is not entirely clear how, according to Andino, the District Court's sentencing determination may be understood to have rested on a finding that he engaged in the drug-related

conduct. But, even assuming that the District Court considered Andino's drug-related conduct at sentencing, the challenge fails, given the presence in the record of the same drug-related evidence that we recounted in affirming Andino's RICO conspiracy conviction.

Andino also argues that the District Court could not consider his acquitted drug-related conduct at all in this circumstance because the jury made "special findings" that Andino was not responsible for any quantities of drugs, as opposed to simply a "general verdict" of acquittal. But, Andino cites no support for the contention that a district court may consider acquitted conduct only when dealing with a "general verdict" and not "special findings." We therefore reject this aspect of Andino's sentencing challenge as well.

2.

Andino separately challenges his sentence on the ground that the District Court erred by failing to "state in open court the reasons for its imposition of the particular sentence." Because Andino did not raise this objection below, our review is only for plain error, which means that Andino must show: "(1) that an error occurred (2) which was clear or obvious and which not only (3) affected [his] substantial rights, but also (4) seriously impaired the fairness, integrity, or public reputation of judicial

proceedings." United States v. Romero, 896 F.3d 90, 92 (1st Cir. 2018) (quoting United States v. Duarte, 246 F.3d 56, 60 (1st Cir. 2001)). Yet, Andino has failed on appeal "to even attempt to explain how the plain error standard has been satisfied." United States v. Severino-Pacheo, 911 F.3d 14, 20 (1st Cir. 2018). He has therefore "waived any appellate argument concerning the procedural reasonableness of his sentence" on this basis. Id. (citing United States v. Pabon, 819 F.3d 26, 33-34 (1st Cir. 2016)).

IV.

The judgment of the District Court is **affirmed**.

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

NOS. 19-2262

UNITED STATES OF AMERICA,

Appellee,

versus

JOSE J. FOLCH-COLON, a/k/a Folch, a/k/a Gordo Folch

Defendant-Appellant.

A DIRECT APPEAL OF A CRIMINAL CASE
FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

INITIAL BRIEF OF THE APPELLANT

LAURA MALDONADO
P. O. Box 11533
San Juan, PR 00922-1533
787 413-7771
lmr7771@aol.com

Attorney for Defendant-Appellant
José Folch-Colón

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

Cases

SUPREME COURT OF THE UNITED STATES

UNITED STATES COURTS OF APPEAL

Statutory Provisions

Other Authorities

JURISDICTIONAL STATEMENT

Appellant José Folch Colón (hereinafter referred to as the "Defendant" or "Folch") was convicted of three federal felonies charged in the same indictment. (Doc. 2603, Appendix [hereinafter App.] 39; Addendum [hereinafter Add.] 36-37) He was sentenced on April 12, 2019 and final judgment by the District Court entered on November 21, 2019. (Doc. 3074, App. 49; Add. 38-44) A timely notice of appeal was filed on November 26, 2019. (Doc. 3075, App. 49; Add. 45-46) Accordingly, this Court has jurisdiction to hear this appeal under 28 U.S.C. § 1291.

STATEMENT OF THE ISSUES

I. THE EVIDENCE PRESENTED AT TRIAL WAS INSUFFICIENT TO PROVE THE RICO CONSPIRACY AS CHARGED IN COUNT ONE.

II. THE GOVERNMENT FAILED TO PROVE THE COMMERCE ELEMENT AS TO THE RICO AND VICAR COUNTS.

III. THE EVIDENCE PRESENTED AT TRIAL WAS INSUFFICIENT TO PROVE COUNT FOUR AGAINST FOLCH.

IV. THE JURY INSTRUCTIONS WERE ERRONEOUS.

V. THE COURT SHOULD HAVE DECLARED A MISTRIAL PRODUCED BY THE GOVERNMENT'S CLOSING.

STATEMENT OF THE CASE

(i) Course of Proceedings:

The Defendant was tried on an Indictment returned on May 9, 2016 (Doc. 3, App. 1; Add. 1-35), charging him in three counts with (1) a racketeering conspiracy in violation of 18 U.S.C. §1962(d) in count one, (2) conspiracy to possess with intent to distribute controlled substances in violation of 21 U.S.C. §§ 841 and 846 in count two, and with (3) aiding and abetting a violent crime in aid of racketeering activity in violation of 18 U.S.C. §1959(a)(1) and 2 in count three. On May 24, 2016 the Defendant was arraigned and pled not guilty as to all counts. (Doc. 8, App. 5) The Attorney General instructed the local U.S. Attorney's Office not to seek the death penalty on August 2, 2016. (Doc. 488, App. 6) Trial began with jury selection on March 26, 2019 ending on April 12, 2019 with guilty verdicts as to all counts. (Doc. 2497, 2508, 2511, 2538, 2543, 2547, 2560, 2565, 2574, 2575, 2597, 2600, 2617; App. 29-39; Add. 36-37) Sentencing was held on November 21, 2019. (Doc. 3073; App. 49)

The Defendant was sentenced to life imprisonment on all counts to be served concurrently with each other and with any state imprisonment terms. The court imposed concurrent five year terms of supervised release as to each count along with three hundred dollars ($300.00) of the special monetary assessment. (Doc. 3074; App. 49; Add. 38-44)

(ii) Facts Relevant to the Appeal

The "Asociación Pro Derechos y Reahbilitación del Confinado" or Association for the Rights and Rehabilitation of Inmates, known commonly as the "Ñetas", was created by inmate Carlos Torres Irriarte to organize inmates to live in harmony and to fight for prisoner's rights inside the Puerto Rico prison system. (*Transcript of the Jury Trial – Day Two dated March 28, 2019, Doc. 2506* [hereinafter referred to as *Day2JT*], p. 53-55, App. 79-81) In time, members of the organization engaged in drug trafficking activities, such as, selling, tasting and supervising the sale of drug. The business also expanded to selling cellphones and charging incentives for the sale and use of cellphones in prison, as well as charging incentives for the sale of drugs. (*Day2JT* p. 55-56, App. pp. 81-82) Nevertheless, Ñeta membership was not conditioned to dealing in drugs or cellphones. There were Ñeta members that did not use drugs or deal in drugs, neither owned, sold or used cellphones. In sum, there were Ñetas that were not involved in criminal activity. (*Transcript of the Jury Trial – Day Four dated April 1, 2019, Doc. 2528* [hereinafter referred to as *Day4JT*], pp. 141-142, App. 106-107; *Transcript of the Jury Trial – Day Five dated April 2, 2019, Doc. 2537* [hereinafter referred to as *Day5JT*], pp. 127-128, App. 111-112; *Transcript of the Jury Trial – Day Eight dated April 5, 2019, Doc. 2557* [hereinafter referred to as *Day8JT*], pp. 123-124, App. 154-155)

Appellant José Folch Colón was described as a Ñeta member (*Day2JT* p. 93; App. p. 90; *Transcript of the Jury Trial – Day Three dated March 29, 2019, Doc. 2512* [hereinafter referred to as *Day3JT*], p. 43, App. 93), and, at some point in time, an advisor to the leadership of the maximum security prison, the Green Monster[1], where he was housed. (*Transcript of the Jury Trial – Day Seven dated April 4, 2019, Doc. 2550* [hereinafter referred to as *Day7JT*], p. 22-24, App. 124-126) According to the testimony of the cooperating witnesses, Folch had a private drug business outside the prison, and a sworn enemy connected to those dealings in Alexis Rodriguez Rodriguez, also known as "Alexis El Loco". (*Day2JT* p. 45, 49, App. 77, 78; *Day7JT* p. 38, 44-45, App. 131, 134-135) During his incarceration, Alexis had threatened to kill Folch's mother, father, wife, child and nephews, his whole family. (*Day8JT* p. 126-127; App. 156-157) Confessed assassin turned government witness José Gonzalez Gerena, also known as "Perpetua"[2], due to the life sentence he was serving for murder, testified Folch paid Rolando Millan Machuca, also known as Rolo, to kill Alexis before the latter's impending release from prison. (*Day7JT* p. 44-45, App. 134-135) Rolo was a member of the Maximum Leadership of the Ñetas and a heroin addict. (*Day2JT* p. 63, 66. App. 85-86) The evidence points to Folch paying Rolo, not the Ñetas, in excess of 62 grams of heroin for Rolo's own consumption for Alexis' murder. (*Day7JT* p. 27,

[1] El Monstruo Verde
[2] Spanish for life imprisonment.

38, 66-67, App. 129, 131, 145-146; *Day8JT* p. 135 App. 159) Before Rolo and Cachorro, a sidekick that would assist with the murder, could fulfill the contract they both tested positive to heroin and were transferred to a maximum-security section. (*Day7JT* p. 37-38, App. 130-131) As he's being transferred out, Rolo hugs Perpetua and tells him he is in charge of fulfilling the contract. (*Day7JT* p. 39, App. 132)

Upon getting the news that Rolo was out and Perpetua in, Folch calls Perpetua and begs him to kill Alexis to save his family. (*Day7JT*, p. 44-45; App. 134-135) In exchange for fulfilling the contract Folch paid Perpetua, also a heroin addict, 31 grams of heroin, five hundred dollars ($500.00) and the settlement of a debt he had with someone named Marota. (*Day7JT*, p. 26, 43-45, 61-62, 77. App. 128, 133-135, 143-144,148)

Osvaldo Torres Santiago, know as "Valdito", said he had been approached by Batata, Rolando, Perpetua and Folch to participate in the murder, mainly because his brother and cousin had been recently killed by order of Alexis el Loco. (*Transcript of the Jury Trial – Day Nine dated April 8, 2019, Doc. 2566* [hereinafter referred to as *Day9JT*], p. 59-60, 66, 83, 93, App. 169-170, 171, 174, 178) Valdito was also remunerated for his participation with a shift at Folch's street drug point and a gun, although he wanted more money and Folch refused. (*Day9JT*, p. 70-71, App. 172-173)

Perpetua, Valdito and another inmate named Kino murdered Alexis El Loco. (*Day7JT*, p. 45, 49-55, App. 135, 136-142) Testimony of the aftermath revealed the Maximum Leadership had not authorized the murder. (*Day3JT*, p. 4-5, App. 92-93) To start, every witness testified murder-for-hire was not allowed by Ñeta rules. (*Day2JT* p. 61, App. 84; *Day3JT* p. 5, App. 93; *Day5JT* p. 13, App. 109; *Transcript of the Jury Trial – Day Six dated April 3, 2019, Doc. 2544* [hereinafter referred to as *Day6JT*], p. 146, App. 119; *Day9JT* p. 89, App. 177) Kino, one of the participants in the murder, was concerned that the murder had not been authorized and feared retaliation. (*Day3JT* p. 5, 6; *Day9JT* p. 84-85; App. 93-94; 175-176) In fact, participants invented a story to justify Alexis' murder, saying the kill order had been issued because Alexis had sodomized juvenile inmates. (*Day9JT* p. 104; App. 179)

Telephone calls between purported members of the conspiracy discussed how the deaths of Mario Montañez (count three) and Alexis Rodriguez (count four) could not be attributable to Ñeta organization. A telephone recording between co-conspirators Fernando García Márquez aka Sandwich/San, Augustus Christopher-Lind aka Benji Loíza and Iván Ayala-Hernández aka Bambani/Bambo, reveals as follows:

ACL I'm telling you what they are up to, so you can see the malice and wickedness of these people. Because the man told me, **"The only thing we want is for you to tell us who gave the order."** And the

only two the man mentioned were you and San. **And the man even asked why we didn't call... the one who is [UI] Fuerte** [UI].

IAH Uh-huh.

FGM Uh-huh, yes, yes.

ACL **And why didn't we call that man to be sure of what we were going to do.** That's how the man was talking to me.

FGM Son of a bitch.

ACL **He knows that Fuerte[3] didn't know anything about that. You know, that was something here; ours**. And the guy was saying that it was a fucking dirty trick, and that it was this and that, and then the guy asked me; "Do you know Danny Power?" And he was not mentioning names; he was mentioning nicknames at all times.

(Exhibit 22-2, p. 17-18; App. 277-279)

Similarly, during a conversation between Fernando García Márquez aka Sandwich/San, Victor Vargas Cruz aka Omy and others, Sandwich says: "Then, what happens is that they did an investigation, then, if they do—they are, they are focused on the two deaths, the one in Bayamon and the one here. **And they want any way possible for people to say they were ordered by Bambani and me.**" (Exhibit 20-03 pp. 6-7; App. 308-309) Another witness explained that the situation with the murders had to be fixed because they had not been authorized. (Exhibit 20-04 pp. 3-4,App. 346-347; *Day3JT* p. 81, App. 99; *Day4JT* p. 30, App. 102)

[3] El Fuerte is identified as the maximum leader of the Ñeta organization, Papito Machuca. (*Day2JT* p. 63, App. 85; *Day3JT* p. 87, App. 100; *Day4JT* p. 32, App. 104)

SUMMARY OF THE ARGUMENT

I. THE EVIDENCE PRESENTED AT TRIAL WAS INSUFFICIENT TO PROVE THE RICO CONSPIRACY AS CHARGED IN COUNT ONE.

The government failed to prove the existence of the enterprise or Folch's membership in the RICO enterprise. Evidence at trial did not prove that "La Asociación Ñeta" committed joint criminal acts as defined under RICO, in fact, the government presented evidence that the acts of the enterprise were contrary to "La Asociación Ñeta's" rules for members. Furthermore, the government failed to prove the required pattern through the predicate acts named in the indictment. Folch's leadership role within the enterprise was not proven, nor his participation in the racketeering activity charged. As to the predicate acts, the government presented evidence of murder for hire, which was not included as a predicate act in the indictment.

II. THE GOVERNMENT FAILED TO PROVE THE COMMERCE ELEMENT AS TO THE RICO AND VICAR COUNTS.

The government was required to present evidence of the racketeering activities' impact in interstate or foreign commerce. The expert witness offered general testimony, never having examined the evidence or witnesses in the case, he failed to link his testimony to the case against the defendant.

III. THE EVIDENCE PRESENTED AT TRIAL WAS INSUFFICIENT TO PROVE COUNT FOUR AGAINST FOLCH.

The government failed to prove the motive element of the VICAR count against Folch, either as a principal or as an aider and abettor. As a principal Folch did not seek to commit the murder charged in furtherance of his or anybody else's membership in the enterprise nor because it was expected of him or others by reason of their membership.

IV. THE JURY INSTRUCTIONS WERE ERRONEOUS.

Despite Folch's objections to the jury instructions, the district court deprived him of his Fifth and Sixth Amendment rights to be charged by the grand jury and advised of the charges against him by amending the indictment with jury instructions on elements of crimes not charged in the indictment. The district court compounded the error by providing a verdict form that omitted the motive element of the VICAR count and asked the wrong question for the jury to determine Folch's guilty as to count four.

V. THE COURT SHOULD HAVE DECLARED A MISTRIAL PRODUCED BY THE GOVERNMENT'S CLOSING.

The government's rebuttal closing, contrary to the conduct charged in the indictment and the court's jury instructions, told the jury they did not have to find Folch was a chapter leader. The government did not object to the reading of the indictment or to the court's proposed jury instruction that included that

description as part of the "first element" section of the jury instructions that went to the jury.

ARGUMENT AND CITATIONS OF AUTHORITY

I. THE EVIDENCE PRESENTED AT TRIAL WAS INSUFFICIENT TO PROVE THE RICO CONSPIRACY AS CHARGED IN COUNT ONE.

The appellant preserved his motion for judgment of acquittal pursuant to Federal Rule of Criminal Procedure 29 after the government rested their case (*Transcript of the Jury Trial – Excerpt Two of Day Nine dated April 8, 2019, Doc. 2706* [hereinafter referred to as *Day9E2JT*], pp. 3-7, 12-13, App. 181-185, 186-187), after the close of all evidence (*Transcript of the Jury Trial – Day Ten dated April 9, 2019, Doc. 3189* [hereinafter referred to as *Day10JT*], p. 39, App. 195) and by post trial motion filed on June 14, 2019 and a reply to the government's response on July 22, 2019. (Doc. 2739 and 2905; App. 42, 47, 436-473, 491-495) The motions were denied on September 10, 2019. (Doc. 2982; App. pp 48)

A. STANDARD OF REVIEW

The First Circuit Court of Appeals reviews de novo a preserved challenge to a denial of judgment of acquittal. The court will make all reasonable inferences and credibility choices in the government's favor and then determine whether a rational jury could have convicted the defendant. *United States v. Valentini*, 944 F.3d 343, 348 (1st Cir. 2019) citing *United States v. George*, 761 F.3d 42, 48 (1st Cir. 2014), see also *United States v. Czubinski*, 106 F.3d 1069, 1073 (1st Cir. 1997) and *United*

States v. Ortiz, 966 F.2d 707, 711 (1st Cir. 1992). Review spans the totality of the evidence, both direct and circumstantial, and those evidentiary interpretations and illations that are unreasonable, unsupportable, or overly speculative must be rejected. *United States v. Spinney*, 65 F.3d 231, 234 (1st Cir. 1995).

B. ARGUMENT

Count One of the indictment charges Folch with a racketeering conspiracy, beginning on a date unknown, but not later than in or about the year 2005, and continuing up to and until the return of the indictment. Folch was charged with being employed or associated with La Asociación Ñeta enterprise, which engaged in, and the activities of which affected interstate and foreign commerce, knowingly and intentionally conspired to conduct and participate, directly and indirectly, in the conduct of the affairs of the enterprise through a pattern of racketeering activity consisting of multiple offenses involving: drug trafficking as defined by 21 U.S.C. §§ 841 and 846; murder, chargeable under articles 35 (attempt), 105 (general murder statute), 106 (first degree and second degree murder), and 249 (conspiracy) of the 2004 Puerto Rico Penal Code and articles 35 (attempt), 92 (general murder statute), 93 (first degree and second degree murder), and 244 (conspiracy) of the 2012 Puerto Rico Penal Code; and Bribery, chargeable under articles 35 (attempt), 262 (bribery), 263 (offer of bribery), and 244 (conspiracy) of the 2012 Puerto Rico Penal Code, in which each defendant agreed that a conspirator would commit at

least two acts of racketeering activity in the conduct of the affairs of the enterprise, all this in violation of Title 18 U.S.C. § 1962(d) [Hereinafter referred to as "RICO" or "RICO Conspitacy".] (*Indictment*, Doc. 3, Add. p. 1-35)

1. Failure to prove the existence of the enterprise, the existence of the pattern or that Folch Colón participated in the affairs of the enterprise.

In order to secure a conviction for a RICO conspiracy, the Government must prove both the existence of an enterprise and the connected pattern of racketeering activity. *United States v. Turkette*, 452 U.S. 576, 583 (1981) "For a defendant to be found guilty of conspiring to violate RICO, the government must prove (1) the existence of an enterprise affecting interstate [or foreign] commerce, (2) that the defendant knowingly joined the conspiracy to participate in the conduct of the affairs of the enterprise, (3) that the defendant participated in the conduct of the affairs of the enterprise, and (4) that the defendant did so through a pattern of racketeering activity by agreeing to commit, or in fact committing, two or more predicate offenses." *United States v. Ramírez-Rivera*, 800 F.3d 1, 18 (1st Cir. 2015)

a. Failure to prove the existence of the Enterprise

Count one proposed La Asociación Ñeta as the enterprise, an entity comprised by a group of persons associated together for a common purpose of engaging in a course of conduct described by the indictment. *Id.* The pattern of

racketeering activity is a series of criminal acts as defined by the statute. 18 U.S.C. § 1961 (1) (1976 ed., Supp. III). *Id.* The latter is proved by evidence of the requisite number of acts of racketeering committed by the participants in the enterprise, in this case as described in count one of the indictment: drug trafficking, murder and bribery. While the proof used to establish these separate elements may in particular cases coalesce, proof of one does not necessarily establish the other. *Id.* The "enterprise" is not the "pattern of racketeering activity"; it is an entity separate and apart from the pattern of activity in which it engages. The existence of an enterprise at all times remains a separate element, which must be proved by the Government. *Id.*

Furthermore, "criminal actors who jointly engage in criminal conduct that amounts to a pattern of racketeering activity do not automatically thereby constitute an association-in-fact RICO enterprise simply by virtue of having engaged in the joint conduct. Something more must be found — something that distinguishes RICO enterprises from ad hoc one-time criminal ventures." *United States v. Cianci*, 378 F.3d 71, 82 (1st Cir. 2004) citing *Bachman v. Bear Stearns Co., Inc.*, 178 F.3d 930, 932 (7th Cir. 1999) "It is necessary to show that all members of the alleged enterprise shared a common purpose," *United States v. Cianci*, 378 F.3d at 84, "a shared purpose between the defendants." *Id.*

The government introduced evidence proving La Asociación Ñeta was created to fight for the rights of individuals incarcerated in the local corrections system and that it had chapters all over the local Corrections Department detention and correctional facilities.

Witnesses testified only as to some, not all, of the chapters of La Asociación Ñeta to be engaged in narcotics trafficking because, as those witnesses confirmed, not all members would sell drugs, not all members used drugs, there were some members that did not sell nor used drugs. In fact, a person can be a member of La Asociación Ñeta and not sell or use drugs, nor engage in criminal activity at all. (*Day4JT* pp. 141-142, App. 106-107; *Day5JT* pp. 127-128, App. 111-112; *Day8JT* pp. 123-124, App. 154-155) Therefore, the government could not rely on the existence of La Asociación Ñeta as an inmate group to prove the existence of a RICO enterprise, nor could the government's evidence establish that La Asociación Ñeta named in the indictment was an ongoing organization, a continuing unit with a common purpose that would distinguish the group of inmates performing illegal acts as a RICO enterprise rather than an ad hoc criminal confederation conspiring to commit certain criminal acts. *United States v. London*, 66 F.3d 1227, 1243-1245 (1st Cir. 1995)

Quite the contrary, more than one witness testified that the murders charged in the indictment in counts three and four had been performed against the rules of

La Asociación Ñeta, which prohibited its members from engaging in murder for hire. (*Day2JT* p. 61, App. 84; *Day3JT* p. 5, App. 93; *Day5JT* p. 13, App. 109; *Day6JT* p. 146, App. 119; *Day9JT* p. 89, App. 177) Thus, La Asociación Ñeta could not engage in predicate acts contrary to the organization's rules. Proving the enterprise required differentiation between La Asociación Ñeta and the enterprise charged in the indictment.

b. The existence of a pattern

The government failed to prove a pattern of racketeering activity as charged in the indictment. For starters, the government failed to present evidence as to one of the racketeering predicate acts cited in the indictment. Proof of the commission of bribery, chargeable under articles 35 (attempt), 262 (bribery), 263 (offer of bribery), and 244 (conspiracy) of the 2012 Puerto Rico Penal Code, was never presented to the jury.

The evidence presented by the government did not prove the predicate charged in the indictment described in count one as "murder, chargeable under articles 35 (attempt), 105 (general murder statute), 106 (first degree and second degree murder), and 249 (conspiracy) of the 2004 Puerto Rico Penal Code and articles 35 (attempt), 92 (general murder statute), 93 (first degree and second degree murder), and 244 (conspiracy) of the 2012 Puerto Rico Penal Code."

The government introduced evidence that the murders charged in counts three and four, which served as the only evidence presented regarding the murder racketeering predicate offense, were murder for hire of individuals by individuals. The government did not present evidence that would support the theory that Folch or other individuals hired the enterprise or their members to carry-out the murders. In fact, José Gonzalez Gerena (Perpetua) was asked:

> Q. And the money generated through drug trafficking and murder for hire, where does it go?
>
> A. The hands of the leader, the leadership.
>
> Q. And what do the use that money for?
>
> A. They continue to buy drugs. They continue to generate, sending to different prisons. They continue to generate. They continue to save. They take part of it for the pot and part of it for them personal.

(*Day6JT*, p. 145, App. 118)

Contrary to the preceding answers, José Gonzalez Gerena clarified that payments received related to the murder of Alexis Rodriguez were for personal use of those that participated in the murder and not to enrich the leadership, to continue to buy drugs, to send to other prisons or to contribute to the pot to generate more money for the enterprise. (Day7JT p. 25-26; 38-39; 66-67; 70; 77, App. 127-128, 131-132, 145-146, 147, 148; Day8JT p. 134, App. 158)

Nothing in the government's evidence proved the murders of Mario Montañez and Alexis Rodriguez were authorized, promoted or carried out by the

enterprise. A group of individuals that happened to be members of La Asociación Ñeta received personal payments in the form of drugs they consumed, money that was deposited in their commissary accounts, pardon of personal debts and even jobs at drug points in the free community for their involvement in the murder of Alexis El Loco. The evidence in possession of the government proved the murder of Mario Montañez produced unrest, requests for removal of the maximum leadership and the resignation of one of the heads of the maximum leadership. (Exhibit 20-04 p. 3-4; App. 346-347)

RICO liability "depends on a showing that the defendants conducted or participated in the conduct of the enterprise's affairs, not just their own affairs. *United States v. Brandao*, 539 F.3d 44, 54 (1st Cir. 2008) The *Brandao* court held that "[i]t is not the number of predicates but the relationship that they bear to each other or to some external organizing principle that renders them a pattern." *United States v. Brandao*, 539 F.3d 44, 54-55 (1st Cir. 2008) citing *H.J. Inc. v. Nw. Bell Tel. Co.,* 492 U.S. 229, 238, 109 S.Ct. 2893, 106 L.Ed.2d 195 (1989). The murders here satisfy none of these requirements. The evidence against Brandao proved he wanted to benefit the gang's interest and became part of the gang on occasion of the murder charged.

The evidence presented as to the murders proves the participants participated in the murders outside of the enterprise's affairs.

c. Participation

As we have stated before "criminal actors who jointly engage in criminal conduct that amounts to a pattern of racketeering activity do not automatically thereby constitute an association-in-fact RICO enterprise simply by virtue of having engaged in the joint conduct." *United States v. Cianci*, 378 F.3d at 82 The First Circuit requires proof of the defendant's participation in the conduct of the enterprise's affairs and adopts the Supreme Court's definition to be "participation in the operation or management of the criminal enterprise." *United States v. Ramírez-Rivera,* 800 F.3d 1, 20 (1st Cir. 20155) citing *Reeves v. Ernst & Young*, 507 U.S. 170, 184-185 (1993) and *United States v. Shifman*, 124 F.3d 31, 35-36 (1st Cir. 1997). The court explains the defendant must be "plainly integral to carrying out the enterprise's activities." *United States v. Shifman*, 124 F.3d at 36.

There was a definite lack of cohesiveness as to the evidence presented as to Folch's participation in the purported RICO enterprise. Alex Miguel Cruz Santos testified Folch was a "member" of La Asociación Ñeta, emphasizing when asked if Folch had a role, "No. He was only a member of the organization." (*Day2JT* p. 93 App. 90; *Day3JT* p. 43 App. 96) Cruz Santos described Folch as a drug supplier to members of the organization. Further pushed by the government, Cruz Santos qualified his answer explaining Folch would "send [drugs] on credit to people of his trust and who had the--who could--tally for him [meaning Folch] the product of

the heroin." (*Day3JT* p. 45, App. 97) Orlando Ruiz Acevedo testified Folch would send drugs to different people in jail. (*Day6JT* p. 121, App 116) When asked whether it was for members of the organization, Ruiz Acevedo answered "Yes. Most of them were Ñetas" but not all. (*Day6JT* p. 122, App. 117) The record was clear that the drugs were not sent to the enterprise but to persons, some of them Ñeta members, to personally handle Folch's heroin and tally it for him at Folch's personal gain.

Neither was it clear from the evidence whether these Ñeta members were also members of the purported RICO enterprise. The evidence presented would clearly establish that Folch sent drugs to be sold and tallied for his own profit by those trusted by him, not to profit the enterprise or those trusted by the enterprise. Nothing on the record contradicts the cited testimony to suggest that Folch paid an incentive to the enterprise for the distribution of his drugs or allowed the jury to reach that conclusion.

2. "Murder for hire" not a state offense.

There is an additional problem with the evidence presented as to murder predicate acts charged. Murder for hire was not an offense under state law under the 2004 or the 2012 Puerto Rico Penal Code. For a crime to be chargeable under state law, it must at least exist under state law. *United States v. Marino,* 277 F.3d 11, 30 (1st Cir. 2002), citing *United States v. Bagaric*, 706 F.2d 42, 62-63 (2d Cir.

1983), *United States v. Carrillo*, 229 F.3d 177, 184-86 (2d Cir. 2000). If the racketeering act is not prohibited at all under state law, it may not serve as a predicate act for RICO purposes. *Id.* Therefore, evidence of Folch's hiring of Millan Machuca and Gonzalez Gerena for the murder of Alexis Rodriguez falls outside of the description of the indictment.[4]

II. THE GOVERNMENT FAILED TO PROVE THE COMMERCE ELEMENT AS TO THE RICO AND VICAR COUNTS.[5]

A. Standard of Review

As before, see section I(A), *supra*, preserved challenges are reviewed de novo, drawing all reasonable inferences and credibility choices in the government's favor and then determine whether a rational jury could have convicted the defendant. *United States v. Valentini*, 944 F.3d at 348.

B. Argument

In *United States v. Gaudin*, 515 U.S. 506, 513 115 S.Ct. 2310, 132 L.Ed.2d 444 (1995) the Supreme Court held that all elements of a crime, including those involving mixed questions of law and fact, must be decided by a jury. After *Gaudin,* it is understood that the commerce element in a RICO conspiracy, 18 U.S.C. 1962(d), or a VICAR, 18 U.S.C. 1959(a)(1), is a mixed question of law and

[4] The government could have included 'murder for hire' in violation of Title 18 U.S.C. § 1958 as a predicate act in the indictment but neglected to do so.

[5] This error was preserved during trial and in post-trial motions as explained in Section I, *supra.*

fact to be found by the jury. *United States v. Parker*, 73 F.3d 48, 51 (5th Cir. 1996), *United States of America v. DeFries*, 129 F.3d 1293 (D.C. Cir. 1997)

VICAR also has a jurisdictional element. *United States v. Torres*, 129 F.3d 710, 717 (2d Cir. 1997). The government was required to prove the enterprise associated with count four to be "engaged in, or its activities . . . affect, interstate or foreign commerce." Title 18 U.S.C. § 1959(b)(2). As a result the section 1959's requirements are met "if the government establishes a connection between the § 1959 act of violence and a RICO enterprise which has a de minimis interstate commerce connection." *United States v. Marino*, 277 F.3d at 35 citing *United States v. Riddle*, 249 F.3d 529, 538 (6th Cir. 2001)

In *United States v. Lopez*, 514 U.S. 549 (1995) the Supreme Court identified three broad categories of activity that Congress may regulate under its commerce power as follows:

> First, Congress may regulate the use of the channels of interstate commerce. Second, Congress is empowered to regulate and protect the instrumentalities of interstate commerce, or persons or things in interstate commerce, even though the threat may come only from intrastate activities. Finally, Congress' commerce authority includes the power to regulate those activities having a substantial relation to interstate commerce.

United States v. Lopez, 514 U.S. at 558-59.

A RICO enterprise is understood to fall in the second category, as the statute defines it to be 'engaged in' interstate commerce. *United States v. Marino*, 277 F.3d at 35, *United States v. Garcia*, 143 F. Supp. 2d 791 (E.D. Mich. 2000)

The Supreme Court has held that an entity "is generally engaged in commerce when it is itself directly engaged in the production, distribution, or acquisition of goods or services in interstate commerce." *United States v. Robertson*, 514 U.S. 669, 672 (1995) citing *United States v. American Building Maintenance Industries*, 422 U.S. 271, 283 (1975) and *Gulf Oil Corp. v. Copp Paving Co.*, 419 U.S. 186, 195 (1974).

The government's evidence failed to prove the enterprise engaged in the production, distribution, or acquisition of goods or services in interstate commerce.

The government presented evidence of the interstate nexus through the testimony of Task Force Agent Eddie Vidal,[6] who testified about his years of experience investigating narcotics trafficking. Agent Vidal testified before the jury that heroin and cocaine were not manufactured in Puerto Rico. He testified that Marihuana could be a local product. (*Day7JT* p. 96-98; App. 149-151) Specifically as to the enterprise, Agent Vidal answered as follows: "Did you examine the evidence in this case? No, ma'am. Did you interview any of the witnesses? No, ma'am." (Day7JT p. 99; App. 152)

[6] The defense moved in limine to exclude Vidal's testimony. (Motion in Limine and Request for Daubert Hearing, Doc. 2377, App. 21, 53-60) The government's response to the motion in limine described Vidal's testimony as necessary to prove "the members of the ÑETA enterprise to which Folch and his codefendants belonged engaged in racketeering activity (i.e., drug trafficking) that had an effect on interstate or foreign commerce." (Omnibus Response in Opposition to Defendant's Pretrial Motions, Doc. 2405, App. 23, 64-68)

The drug evidence presented during the trial demonstrated the enterprise received drugs in small packages thrown over the fence or smuggled by visitors or employees. (*Day2JT* p. 57, App. 83; *Day3JT* p. 11, 15, 63, App. 94, 95, 98; *Day4JT* p. 60, App. 105; *Day5JT* p. 15, App. 110; *Day6JT* p. 99, 104, 149, 154-155, App. 114, 115, 120, 121-122; *Day9JT* p. 34, App. 161) The little drug evidence received into evidence came from an unknown source, since most of them were found on the grounds of the correction complexes. (Drug Evidence, Trial Exhibits 24; 25; 324-A)

Counts one and four require that a nexus be provided, albeit not a strong one, but some nexus nonetheless between the activities of the enterprise and interstate or foreign commerce. For example, in *United States v. Delgado*, 401 F.3d 290, 297 (5th Cir. 2005) the court found evidence sufficient to establish the nexus after "witnesses testified that TMM was directly involved in distributing and acquiring drugs that were produced in Colombia and had arrived in the U.S. via Mexico." In *United States v. Ramírez-Rivera* the First Circuit found that the RICO's foreign commerce requirement had been sufficiently satisfied when "Gutierrez-Santana testified that during his time as a La ONU member from about 2009 until his arrest in 2011, he imported kilos of heroin from the Dominican Republic to provide La ONU drug points (and in particular Ramírez-Rivera)." *United States v. Ramírez-Rivera*, 800 F.3d at 19-20. The government provided no

such connection here, Agent Vidal gave generalized testimony about narcotics trafficking according to his experience but no connection was made between what he experienced and the government's case because Agent Vidal never spoke to the government's witnesses or examined any of the evidence in the case.

Different from count two, where the indictment charges a conspiracy to distribute controlled substances, counts one and four require the government to prove the enterprise itself was directly engaged in the production, distribution, or acquisition of goods or services in interstate commerce. There is no such connection to the purported enterprise here.

The government may argue there was testimony about payments in the form of money orders and bank deposits. (Day2JT, p. 83; App. 87) Significantly, the evidence presented at trial contradicts this argument. Not one piece of evidence was introduced to prove the existence of money orders, bank deposits or bank account information. Furthermore, when directly asked, "how is it that the organization gets people that supply them the drugs?" Alex Cruz Santos answered:

> Well, there are people in the organization itself who still have control on the streets and still have life connections in the free community. So they share these routes. What they do is they say, look, I have some good stuff for so much price. And you tell them, well, I want to buy an eighth, half an eighth, whatever you're going to buy, and this money is handed over in person. What we do is we make the arrangement for the two people to meet up in the free community. And they have to give each other an appointment to meet up on the streets, and they have to hand each other **cash, money**. One person

> hands over the **cash**. The other hands over the amount of drug purchased.

(Day2JT, p. 84; App. 88)

Definitely, the government need not rely on agent Vidal's testimony if evidence of such transactions could be presented to the jury.

III. THE EVIDENCE PRESENTED AT TRIAL WAS INSUFFICIENT TO PROVE COUNT FOUR AGAINST FOLCH

A. Standard of Review

The First Circuit Court of Appeals reviews de novo a preserved challenge to a denial of judgment of acquittal. The court will make all reasonable inferences and credibility choices in the government's favor and then determine whether a rational jury could have convicted the defendant. *United States v. Valentini*, 944 F.3d at 348. Review spans the totality of the evidence, both direct and circumstantial, and those evidentiary interpretations and illations that are unreasonable, unsupportable, or overly speculative must be rejected. *United States v. Spinney*, 65 F.3d at 234.

B. Argument

Count four of the indictment charges that on or about November 6, 2014, in the District of Puerto Rico, as a consideration for the receipt of, and as consideration for a promise and an agreement to pay, a thing of pecuniary value from the enterprise, and for the purpose of gaining entrance to and maintaining and increasing position in the enterprise, an enterprise engaged in racketeering activity,

Jose Folch Colon and others, aiding and abetting each other and others known and unknown did intentionally, as that term is defined in Article 22 of the 2012 Penal Code, murder Alexis Rodriguez-Rodriguez, a/k/a "Alexis El Loco", in violation of Articles 92 and 93 of the 2012 Puerto Rico Penal Code. (*Indictment*, doc. 3; Add. 1-35)

a. Maintaining or Increasing Position element

"VICAR applies only to those defendants whose violent acts are as consideration for payment from, or in hopes of gaining entrance to or maintaining or increasing position in an enterprise engaged in racketeering activity. 18 U.S.C. § 1959(a)." *United States v. Marino*, 277 F.3d 11, 35 (1st Cir. 2002) The First Circuit has "defined the motive requirement in VICAR as a general one, satisfied by proof either that the crime was committed in furtherance of Folch's membership in the enterprise or because it was expected of Folch by reason of his membership." *United States v. Brandao*, 539 F.3d at 56. The evidence presented does not prove the murder of Alexis Rodriguez was committed "to improve Folch's standing or because it was expected of him as part of the enterprise or both." *United States v. Brandao*, 539 F.3d at 56. The First Circuit recognized in *Brandao* that the issue is purely factual making reference to *United States v. Thai*, 29 F.3d 785 (2d Cir. 1994). *Id.*

The testimony during trial points to Folch's concern for his family's safety upon Rodriguez' imminent release from prison. Jose Gonzalez Gerena testified Folch told him Rodriguez had threatened to kill Folch's father, mother and family over a dispute between drug points on the street. (Day7JT p. 44, Add. 134) Folch paid him and Rolando Millán Machuca directly, not the enterprise, and not for Rolando's authorization but because Rolando was going to carry-out the murder, a plan thwarted by Rolando's administrative transfer to another prison. (*Day7JT* p. 25-26, 38-39; App. 127-128, 131-132) The payment was personal for Rolando, who consumed his eight lines of heroin as payment for his participation. (*Day7JT* p. 66-67; App. 145-146) Gonzalez Gerena requested his own payment: heroin, money and a clean the slate on a debt he had with an individual named Marota, as his own telephone recording confirms. (*D7JT* p. 70, 77; App. 147, 148; Exhibit 321-3 pp. 1-2; App. 364-365) Gonzalez Gerena testified on cross-examination the reason for the murder had nothing to do with La Asociación Ñeta. (*Day8JT* p. 127; App. 157)

These facts mirror *United States v. Thai*, 29 F.3d 785 (2d Cir. 1994). *Thai* involved the bombing of a restaurant motivated, as here, by purely mercenary reasons. *United States v. Thai*, 29 F.3d at 817-818, see also *United States v. Bruno*, 383 F.3d 65, 83 (2d Cir. 2004). The *Thai* court explained:

> "We do not see in this testimony any implication of a motive of the sort envisioned by § 1959. There was no evidence, for example, that the bombing

> was to be a response to any threat to the BTK organization or to Thai's position as BTK's leader, nor any evidence that he thought that as a leader he would be expected to bomb the restaurant. And though Thai paid the expenses of gang members, any suggestion that he undertook to bomb the Pho Bang to obtain money in order to carry out that responsibility would be entirely speculative, since the government concedes that there was no evidence as to Thai's intended use of the money."
>
> *United States v. Thai*, 29 F.3d 818.

Different than in *Thai,* where the court had no evidence of the intended use for the payment made to procure the bombing, we know the intended use of the payment received by those involved in the murder was for purely personal reasons, to consume the drugs given as payment and to have a drug debt expunged.

The government introduced testimony of how the enterprise handled payments. José Gonzalez Gerena (Perpetua) testified:

> Q. And the money generated through drug trafficking and murder for hire, where does it go?
>
> A. The hands of the leader, the leadership.
>
> Q. And what do the use that money for?
>
> A. They continue to buy drugs. They continue to generate, sending to different prisons. They continue to generate. They continue to save. They take part of it for the pot and part of it for them personal.
>
> (*Day6JT*, p. 145, App. 118)

There is no evidence here that any money made it to the pot of enterprise. Gonzalez Gerena testified he used all of his drugs and kept asking for more. He testified Rolo went through his heroin and asked for more. Valdito testified he got

a job and a gun as payment while in the free community and Kino received money in his commissary account for his personal use.

The government proposed an alternative argument, that Folch's conviction could stand because he aided and abetted his co-defendants to commit the murder in furtherance of their membership in the enterprise or because it was expected of them by reason of their membership. (*Response in Opposition by USA*, Doc. 2816, p. 11-13; App. 464-466)

The government explains:

> Millan-Machuca issued this order because Folch-Colon agreed to pay him and convince him to order the murder. By paying and convincing Millan-Machuca to order this murder, Folch-Colon aided and abetted, that is he helped commit this murder. Namely, Folch-Colon made sure members of the ÑETA murdered Rodriguez-Rodriguez because it was expected of their membership in the enterprise.

(*Response in Opposition by USA*, Doc. 2816, p. 13 ¶ 26; App. 466)

In this case, Folch was not charged with aiding and abetting murder, he was charged with aiding and abetting the violent crime in furtherance of promoting membership in the enterprise or because it was expected of them by reason of their membership. To aid and abet the commission of a crime "a defendant must not just in some sort associate himself with the venture, but also participate in it as in something that he wishes to bring about and seek by his action to make it succeed." *Nye & Nissen v. United States*, 336 U.S. 613, 619, 69 S. Ct. 766, 93 L. Ed. 919 (1949) For Folch to be treated as an aider and abettor, his conduct has to be treated

as one of assistance to the principals efforts, that is, that Folch's intent was to promote his cohorts membership in the enterprise or their efforts to perform duties that were expected of them because "for a specific intent crime, like aiding and abetting, the defendant must have consciously shared some knowledge of the principal's criminal intent." *United States v. Otero-Mendez*, 273 F.3d 46, 52 (1st Cir. 2001) citing *United States v. Loder*, 23 F.3d 586, 591 (1st Cir. 1994) Nothing in the government's evidence points to Folch wanting for his cohorts to raise in power or follow the directives of the enterprise. This required criminal intent as to the VICAR was negated by the government's witnesses and evidence regarding the VICAR offense. Jose Gonzalez Gerena testified Folch told him Rodriguez had threatened to kill Folch's father, mother and family over a dispute between drug points on the street. (*Day7JT*, p. 44; App. 134) When asked directly, he denied the murder had something to do with the Ñeta association. (Day8JT p. 127; App. 157) The Supreme Court has held that "an aiding and abetting conviction requires not just an act facilitating one or another element, but also a state of mind extending to the entire crime." *Rosemond v. United States*, 134 S. Ct. 1240, 1248 (2014) The government's evidence against Folch not only fell short but totally negated Folch's state of mind to extend to committing the murder in furtherance of anybody's membership in the enterprise or because it was expected of anyone by reason of

their membership. Recruitment of other gang members is not sufficient to establish this element of the offense charged.

IV. THE JURY INSTRUCTIONS WERE ERRONEOUS

Folch voiced his objection prior to the delivery of the jury instructions to the court's definition of murder with elements outside of the 2012 Puerto Rico Penal Code as charged in counts one and four of the indictment by joining and expanding on the objection of his co-defendant Anibal Miranda Montañez. (*Day10JT,* p. 6-9; App. 189-192) The objection was renewed after the reading of the instructions and before jury deliberations began, (*Day10JT,* p. 194-195; App. 254-255), pursuant to Federal Rule of Criminal Procedure 30(d), see also, *United States v. Melo*, No. 18-2147, at *26 (1st Cir. Mar. 27, 2020) and *United States v. Roberson*, 459 F.3d 39, 45 (1st Cir. 2006).

A. *Standard of Review*

A preserved a claim of jury instruction error is reviewed de novo when the claim of error involves a question as to the legal sufficiency of a trial court's charge to the jury, such as a claim that the court omitted a legally required instruction or gave an instruction that materially misstated the law. *United States v. De La Cruz*, 835 F.3d 1, 12 (1st Cir. 2016); *United States v. Marino*, 277 F.3d at 28; *United States v. Nascimento*, 491 F.3d 25, 33 (1st Cir. 2007); and *United States v. Woodward*, 149 F.3d 46, 68-69 (1st Cir. 1998).

B. *Argument*

1. *Constructive Amendment of Counts One And Four of the Indictment*

The indictment charged in count one that the pattern of racketeering activity consisted of multiple offenses among which was murder, chargeable under Articles 35 (attempt), 92 (general murder statute), 93 (first degree and second degree murder), and 244 (conspiracy) of the 2012 Puerto Rico Penal Code.[7] (*Indictment*, p. 14, doc. 3; Add. 14). Particularly relevant to count four of the indictment, the 2014 murder of Alexis Rodriguez Rodriguez fell under the 2012 Puerto Rico Penal Code.

The jury instructions included definitions not found in the 2012 Puerto Rico Penal Code for murder. The court's jury instructions constructively amended the indictment by using language to describe the elements of the offense in terms that were not consistent with the 2012 Puerto Rico Penal Code.

The district court described murder as "the unlawful killing of a human being," Jury Instructions,[8] Doc. 2573, p. 41 (App. 406), adding "Murder may be committed in the first degree or the second degree. Pursuant to the Puerto Rico Penal Code, to commit murder someone must intentionally cause the death of a person." Id.

[7] The indictment also included the 2004 Puerto Rico Penal Code but none of the murders charged fell under that code since the murders charged in counts three and four of the indictment took place in 2014. (*Indictment*, pp. 24-30, doc. 3; Add. 24-30)

[8] The jury instructions were read at *Day10JT* p. 138-190; App. 201-253.

Murder in Article 92 of the 2012 Puerto Rico Penal Code is defined as: "Murder is to kill another human being with intent." P.R. Laws tit. 33, § 4733

The court then described what constituted First and Second Degree Murder as follows:

"First-degree murder may be committed by means of premeditation, which is defined as the deliberation occurring prior to the resolve to perpetrate the act after having considered it for some time, poison, stalking, or torture.

Therefore, for First Degree Murder, the Government must prove:

(1) that a person caused the death of another human being;

(2) with the intention to cause the death; and

(3) by means of premeditation, poison, stalking, or torture. Any other intentional killing of a human being is second degree murder. Thus, to commit Second Degree Murder someone must intentionally cause the death of a person. For Second Degree Murder, the Government must prove:

(1) that a person caused the death of another human being; and

(2) with the intention to cause the death.

As I have just stated, with respect to both First and Second Degree

Murder, a person must both have caused the death of a person and intended to cause that death."

Jury Instructions, Doc. 2573, p. 41-42 (App. 406-407)

Article 93 of the 2012 Puerto Rico Penal Code, which reads as follows:

"First degree murder is constituted by:

(a) Any murder committed by means of poison, stalking or torture, or with premeditation.

(b) Any murder committed as a natural consequence of the attempt or consummation of aggravated arson, sexual assault, robbery, aggravated burglary, kidnapping, child abduction, serious damage or destruction, poisoning of bodies of water for public use, mayhem, escape, and intentional abuse or abandonment of a minor.

(c) The murder of a law enforcement officer, school police, municipal guard or police officer, marshal, prosecutor, solicitor for minors' affairs, special family solicitors for child abuse, judge or custody officer in the performance of his duty, committed while carrying out, attempting or concealing a felony.

Any other intentional killing of a human being constitutes second degree murder."

P.R. Laws tit. 33, § 4734

Although the variations from the court's instructions to the actual statute to this point are subtle, the district court engaged in discussions of elements of the offense that are not included in the Puerto Rico code. For example, the court instructed the jury, "[a] person's act 'caused' a victim's death if the act, in a natural and continuous sequence, results in death, and if the death would not have occurred without the act." Jury Instructions, Doc. 2573, p. 42 (App. 407) This language is not included in the 2012 statute.

Similarly, the court instructed the jury on the intention to kill as "malice".

> "The Government must also establish that a person intended to kill the victim. In legal terms, we refer to the intention to kill as acting with "malice." A person acted with "malice" if he (1) intended to kill the victim, (2) intended to cause grievous bodily harm to the victim, or (3) intended to do an act which, in the circumstances known to the person, a reasonable person would have known created a plain and strong likelihood that death would result. Malice can be proved in any one of those three ways, and the Government satisfies its burden of proof if it proves any one of the three."

Jury Instructions, Doc. 2573, p. 42 (App. 407)

The 2012 Puerto Rico Penal Code does not use "malice" in reference to the act of murder. The code uses the **intent element** found in Article 22 of the 2012 Puerto Rico Penal Code, which reads as follows:

"The crime is committed with intent:

(a) When the corresponding act has been performed with a conduct voluntarily geared toward accomplishing it;

(b) the corresponding act is a natural consequence of the voluntary conduct of the author, or

(c) when the subject has wanted his/her conduct conscious of the fact that it implied a considerable and illegal risk of producing the criminal act produced."

P.R. Laws tit. 33, § 4651

The court went on to define intent in much broader terms than the 2012 Puerto Rico Penal Code allows.

> The first alternative is that a person intended to kill the victim. Intent refers to the person's objectives or purposes. A person must have had it in his mind to kill the victim. It involves concentrating or focusing the mind for some perceptible period. It is a conscious act, with the determination of the mind to do the act. It is contemplation rather than reflection, and it must precede the act. A person must have possessed an actual, subjective intent to kill.

> The second is that the person intended to cause grievous bodily harm to the victim. Grievous bodily harm means severe injury to the body.
>
> The third is that the person intended to do an act which, in the circumstances known to the person, a reasonable person would have known created a plain and strong likelihood that death would result.
>
> You must first determine whether a person intended to perform the act that caused the victim's death. You must then determine what the person himself actually knew about the relevant circumstances at the time he acted. You must then determine whether, under the circumstances known to that person, a reasonable person would have known that the act intended by the person created a plain and strong likelihood that death would result.
>
> If you find that a person caused the death of the victim and intended to do so, you must then determine whether the killing of the victim was First Degree Murder or Second Degree Murder. To constitute First Degree Murder, the person must have committed the killing with premeditation, poison, stalking or torture.
>
> Jury Instructions, Doc. 2573, p. 43-44 (App. 408-409)

The district court expanded the definition of intent of Article 22 of the Puerto Rico Penal Code.

Thereafter, the district court instructed the jury on premeditation as follows:

> A murder is "premeditated" when the person considered killing the victim beforehand such that the intent to kill was formed upon pre- existing reflection and not under a sudden heat of passion or other condition precluding the idea of deliberation. However, the amount of time between the formation of the intent to kill and the act of killing does not necessarily determine whether the crime is premeditated, because a cold and calculated judgment may be formed rapidly. A person need not have contemplated committing a murder from the outset. The requirement that the murder be "deliberate" means that the Defendant must have developed the specific intent to kill after he reflected whether to kill, weighed the reasons for and against the killing, and considered the consequences. In other words, the

> person must have killed as the result of careful thought and weighing of considerations, as part of a deliberate judgment or plan, carried on coolly and steadily, according to a preconceived design. The extent of reflection is the true test of whether the intention to kill was premeditated and deliberate

Jury Instructions, Doc. 2573, p. 44-45 (App. 409-410)

The 2012 Puerto Rico Penal Code defines premeditation simply as: "(bb) Premeditation.— The deliberation occurring prior to the resolve to perpetrate the act after having considered it for some time." P.R. Laws tit. 33, § 4642

The court then expanded the premeditation instruction by adding "motive", which is not included in the 2012 Puerto Rico Penal Code definitions applicable for murder. The court instructed as follows:

> Although the Government need not establish the motive for the murder of the victim, you may consider motive as evidence of premeditation. The motive need not be rational. It may be a product of irrational anger or even delusion. You may also consider (but are not required to do so) the manner of killing as evidence of premeditation if the manner indicates that the Defendant killed the victim according to a preconceived plan. Factors you should consider include the type of weapon used, i.e., was a dangerous weapon used, the brutality of the murder, the length of time of the attack, and the number, type, and severity of the victim's wounds.

Jury Instructions, Doc. 2573, p. 45-46 (App. 410-411)

The 2012 Puerto Rico Penal Code requires motive in the description of aggravating circumstances under P.R. Laws tit. 33, § 4700; for crimes against humanity under P.R. Laws tit. 33, § 4934; for voluntary intoxication under P.R. Laws tit. 33, § 4669, but not for murder. The error of including this particular instruction to the jury is aggravates the error in the verdict form discussed at

Section IV(B)(3) below, because this motive instruction could have caused confusion to the jury about the motive element found in the VICAR statute, 18 U.S.C. § 1959. If the jury, applied this separate motive without further clarification via the verdict form, the jury could have found Folch guilty of count four without considering or going over the element motive of section 1959.

The court's jury instructions defined murder differently than the 2012 Puerto Rico Penal Code. The government did not use the federal murder statute, which contains different definitions. The use of the Puerto Rico Penal Code in the indictment required the district court to instruct the jury on the elements of the offense found in the 2012 Puerto Rico Penal Code, not in a different murder statute.

The court then defined torture as follows:

> Murder which is perpetrated by torture is murder of the first degree. The essential elements of murder by torture are:
>
> (1) One person murdered another person;
>
> (2) The perpetrator committed the murder with a willful, deliberate, and premeditated intent to inflict extreme and prolonged pain upon a living human being for the purpose of revenge, extortion, persuasion or for any sadistic purpose; and (3) The acts or actions taken by the perpetrator to inflict extreme and prolonged pain were a cause of the victim's death.
>
> The crime of murder by torture does not require any proof that the perpetrator intended to kill his victim, or any proof that the victim was aware of pain or suffering.
>
> Jury Instructions, Doc. 2573, p. 46-47 (App. 411-412)

The 2012 Puerto Rico Penal Code defines torture as

> "Means to intentionally inflict pain or serious suffering, whether physical or mental, upon a person the accused has in custody or control; however, the suffering derived solely from unlawful sanctions or those which are the normal or random consequence of such sanctions shall not be deemed to be torture."

P.R. Laws tit. 33, § 4934

The district court included other definitions that cannot be found in the Puerto Rico Penal Code by including the following language in the instructions:

> The word "willful" as used in this instruction means intentional.
>
> The word "deliberate" means formed or arrived at or determined upon as a result of careful thought and weighing of considerations for and against the proposed course of action.
>
> The word "premeditated" means considered beforehand in accordance with the instruction that I have previously given you.
>
> You are permitted (but not required) to infer that a person who intentionally uses a dangerous weapon on another person intends to kill that person.
>
> You may consider a person's mental condition at the time of the killing, including any credible evidence of the effect on him of his consumption of alcohol or drugs, in determining whether he had the necessary intent.

Jury Instructions, Doc. 2573, p. 47 (App. 412)

The terms "willful" and "deliberate" are not included in the murder statute of the Puerto Rico Penal Code, only intent as defined by Article 22 as we have stated above.

The same happened with the court's instruction on knowing participation, which deviated from article 244 of the 2012 Puerto Rico Penal Code defining conspiracy. Article 244 reads:

> When two (2) or more persons conspire or agree to commit a crime and have made specific plans regarding their participation, the time, the location, or the acts to be carried out, they shall be guilty of a misdemeanor. When any of the persons involved is a law enforcement officer who is taking advantage of his/her office to commit the crime instituted herein, he/she shall be punished for a fourth-degree felony.
>
> If the agreement is to commit a first- or second-degree felony, they shall be guilty of a fourth-degree felony, or if any of the persons involved is a law enforcement officer who is taking advantage of his/her office to commit the crime instituted herein, he/she shall be punished for a third-degree felony.
>
> P.R. Laws tit. 33, § 4877

Nothing in the court's instruction followed article 244.

The district court instructed the jury for the VICAR count to find that "Four: the Defendant committed the crimes of violence, that is, murder in violation of Puerto Rico law." (Jury Instructions, Doc. 2573, p. 60; App. 425) Given the error in the murder instruction, any finding of the jury regarding the murder in count four, as being committed in violation of Puerto Rico law is invalid because the jury received erroneous instructions that did not include murder and conspiracy elements as defined in the 2012 Puerto Rico Penal Code.

The court's instructions amounted to a constructive amendment of the indictment in violation to the defendant's Fifth and Sixth Amendment rights.

"A constructive amendment occurs when the charging terms of an indictment are altered, either literally or in effect, by prosecution or court after the grand jury has last passed upon them." *United States v. Pierre*, 484 F.3d 75, 81 (1st Cir. 2007), *United States v. Fisher*, 3 F.3d 456, 462 (1st Cir. 1993) "A court cannot permit a defendant to be tried on charges that are not made in the indictment against him." *Stirone v. United States*, 361 U.S. 212, 217, 80 S.Ct. 270, 4 L.Ed.2d 252 (1960)

"The prohibition on constructive amendment exists to preserve the defendant's Fifth Amendment right to indictment by grand jury, to prevent re-prosecution for the same offense in violation of the Sixth Amendment, and to protect the defendant's Sixth Amendment right to be informed of the charges against him." *United States v. Pierre*, 484 F.3d at 81, *United States v. Vavlitis*, 9 F.3d 206, 210 (1st Cir. 1993)

The court's instructions as to the offenses described as part of the 2012 Puerto Rico Penal Code ignored the language of the code and used language in the instructions from unknown sources. Counsel alerted the court of this fact during the charging conference:

> If the government relied on the 2012 Puerto Rico Penal Code, then the instructions must tailor themselves to those definitions. I don't know, because there are no citations in the instructions that the Court gave us, where these instructions, these definitions are coming from, but from checking last night the Puerto Rico Penal Code, they do not come from the Puerto Rico Penal Code. And I don't believe that they

> can be used, because that would amount to a constructive amendment of the Indictment by the Court's instructions.

(*Day10JT,* p. 9: App. 192)

Despite counsel's warning, the district court instructed the jury with language that resulted in a constructive amendment of counts one and four of the indictment in violation of Folch's right to be charged by a grand jury and of his right to be aware of the charges against him.

2. *Invasion of Jury's Province to Find the Existence of the Enterprise*

Mr. Folch preserved his objection to the use of "La Asociación Ñeta" interchangeable with "the enterprise" throughout the jury instructions. (*Day10JT*, p. 11-12; App. 193-194).

In the First Circuit, "the necessary elements for a RICO conspiracy are (1) the existence of an 'enterprise,' (2) that the defendant knowingly joined the enterprise and (3) that the defendant agreed to commit, or in fact committed, two or more specified predicate crimes as part of his participation in the affairs of the enterprise." *United States v. Torres Lopez*, 851 F.2d 520, 528 (1st Cir. 1988) citing *United States v. Anguilo*, 847 F.2d 956, 964 (1st Cir. 1988); *United States v. Winter*, 663 F.2d 1120, 1136 (1st Cir. 1981)

Because the jury had to find that an enterprise existed, Folch objected to the use of "La Asociación Ñeta" instead of using the generic term 'enterprise' throughout the jury instructions. (*Day10JT*, p. 11-12; App. 193-194). The

Constitution "require[s] criminal convictions to rest upon a jury determination that the defendant is guilty of every element of the crime with which he is charged, beyond a reasonable doubt." *United States v. Gaudin*, 515 U.S. at 509-10. Whether "La Asociación Ñeta" was an enterprise under RICO was for the jury to decide, not for the district court to generally instruct. It is the jury's province who to believe and what to believe. *United States v. Spinney*, 65 F.3d 231 (1st Cir. 1995) Upon the repetitive and insistent naming by the district court of La Asociación Ñeta as the RICO enterprise, it was impossible for the jurors to find otherwise. The use of La Asociación Ñeta to name the enterprise in the jury instructions took that element of the RICO conspiracy charge away from the jury.

3. *Error in the Verdict Form as to Count Four*

The error in the instructions as to count four, discussed *ante* at section IV(B)(1), is compounded with a defect in the verdict form pertaining to this count. Folch objected to the verdict form, (*Day10JT*, p. 116-119; App. 196-198), that reads as follows:

> COUNT FOUR: As to Count Four, commission of a Violent Crime in aid of RICO Activity, we, the jury, unanimously find that the Defendant Jose Folch-Colon as part of the racketeering conspiracy, committed or knowingly participated in committing the murder of Alexis Rodriguez-Rodriguez a/k/a "Alexis El Loco" on or about November 6, 2014: ___NO ___YES
>
> (Verdict Form, Doc. 2603, p. 2; Add. 37)

"A verdict form must be reasonably capable of an interpretation that would allow the jury to address all factual issues essential to the judgment," *Sanchez-Lopez v. Fuentes-Pujols*, 375 F.3d 121, 134 (1st Cir. 2004), or in this case, essential to a finding of guilty.

VICAR applies only to those defendants whose violent acts are 'as consideration for' payment from, or in hopes of 'gaining entrance to or maintaining or increasing position in an enterprise engaged in racketeering activity.' 18 U.S.C. § 1959(a). *United States v. Marin*o, 277 F.3d 11, 35 (1st Cir. 2002) The verdict form for the VICAR count should have included the motive elements of section 1959. The verdict form only asked if Folch Colon had 'committed or knowingly participated in committing the murder of Alexis Rodriguez as part of the racketeering conspiracy.' But these are not the elements of the offense charged, and the question confuses the elements as read to the jury in the instructions. Furthermore, the evidence could have been sufficient to prove Folch committed or participated in the commission of the murder but insufficient to prove he committed or participated in the commission of the murder "in consideration for payment from, or in hopes of gaining entrance to or maintaining or increasing position in an enterprise engaged in racketeering activity," as required by section 1959.

In *United States v. Ferguson*, 246 F.3d 129, (2d Cir. 2001), the government appealed the district court's decision to grant a new trial. The district court granted the new trial because "it most likely should have used a special verdict form identifying which Section 1959 motive the jury found and the fact that one was not used here supports the need for a new trial." *United States v. Ferguson*, 246 F.3d at 137. In *United States v. Johnson*, No. 12-4338 (6th Cir. 2014) the district court used the motive elements in the verdict form for the VICAR counts.

The First Circuit has held that "[t]he question of motive under VICAR [is] for the jury to resolve," *United States v. Brandao*, 539 F.3d at 56, and the court's failure to submit a verdict form with the motives under section 1959 took that element from the jury, either by omission or by confusion. The evidence presented allowed a "yes" answer to the question posed in the verdict form. Folch, a member of the RICO conspiracy, paid for (and therefore participate in) the murder of Alexis Rodriguez. The problem with the question asked in the verdict form is that being a member of the RICO conspiracy and participating in the murder is insufficient for a finding of guilt under section 1959. Not one witness testified that Folch had paid for the murder as a representative or with money from the enterprise. Quite to the contrary, as discussed in section III, *ante,* the witnesses testified Folch paid with his money for a murder to be committed for personal reasons. The district court erred in not asking whether the murder had been

committed "as consideration for the receipt of, or as consideration for a promise or agreement to pay, anything of pecuniary value from the charged enterprise, or for the purpose of gaining entrance to, or maintaining, or increasing position in the enterprise."

V. THE COURT SHOULD HAVE DECLARED A MISTRIAL PRODUCED AFTER THE GOVERNMENT'S REBUTTAL

Folch argued during closing that the government had failed to prove he was a chapter leader as described in the indictment and instructed by the court. Although the government never objected to the court's use of that language in the jury instructions in rebuttal the government argued to the jury that the government did not have to prove that Folch Colon was a chapter leader. (*Day10JT* p. 133, App. 200) This argument was highly prejudicial to Folch, he objected and moved for a mistrial during the trial (*Day10JT* p. 198-200, App. 256-258) and moved for a new trial by written motion. (Doc. 2739, App. 42) The motion was denied. (Doc. 2982; App. 48)

A. *Standard of Review*

A motion for mistrial is directed primarily to the sound discretion of the trial court and its ruling thereon will not be disturbed unless that discretion has been misused. *Real v. Hogan*, 828 F.2d 58, 61 (1st Cir. 1987) citing *United States v. Chamorro*, 687 F.2d 1, 6 (1st Cir.), cert. denied, 459 U.S. 1043, 103 S.Ct. 462, 74 L.Ed.2d 613 (1982); *United States v. Pappa*s, 611 F.2d 399, 406 (1st Cir. 1979).

B. *Argument*

The court instructed the jury as to count one of the indictment, first element, "the agreement charged in the indictment" as follows:

> "If you find beyond a reasonable doubt that a conspiracy of some kind existed between the Defendant and some other person, that by itself is not sufficient to find the Defendant guilty. Again, **the Government is required to prove, beyond a reasonable doubt, the existence of the conspiracy specified in the Indictment."**

The court went on to instruct the following:

> "The Indictment also alleges that members of La Asociación ÑETA would have contacts outside the prison who would supply the enterprise with drugs that could be sold by the members for profit. Defendants Miranda-Montanez, Sanchez-Martinez and **Folch-Colon are alleged to have been Chapter Leaders…**"

Jury Instructions, (Doc. 2573), p. 30: App. 395.

The language of the instruction given by the district court included the specific reference to Folch being a chapter leader. The government never objected the instruction or the reference, knowing the evidence had been contrary to that description.

An attorney representing the United States is obligated to try a case fairly and, "while he may strike hard blows, he is not at liberty to strike foul ones." *Berger v. United States*, 295 U.S. 78, 88, 55 S.Ct. 629, 633, 79 L.Ed. 1314 (1935); see *United States v. O'Connell*, 841 F.2d 1408, 1428 (8th Cir. 1988) ("the prosecutor's special duty as a government agent is not to convict, but to secure

justice"), cert. denied, ___ U.S. ___, 109 S.Ct. 799, 102 L.Ed.2d 790 (1989). The Supreme Court has cautioned the government to abstain from arguments "containing improper insinuations and assertions calculated to mislead the jury." Berger, 295 U.S. at 85, 55 S.Ct. at 633.

The government obtained an unfair advantage by allowing the court's instructions to contain references to Folch's alleged position in the enterprise, that could not be proven, and then arguing to the jury that they did not have to prove it. In RICO prosecutions the government is required to prove that the defendant "participated in the operation or management of the criminal enterprise, or that the defendant was plainly integral to carrying out the enterprise's activities." *United States v. Ramirez Rivera*, 800 F.3d at 20, citing *United States v. Shifman*, 124 F.3d at 35-36 and *Reves v. Ernst & Young,* 500 U.S. at 184-185. The government made a choice in the indictment as to the level of participation attributable to Folch, to remain silent and allow the court to instruct the jury accordingly. Folch tailored his closing argument in line with the government's failure to prove the participation attributable in the indictment and the court's instructions. The government had an opportunity to raise quarrels with the jury instructions and the allegations of the indictment that they considered to be surplusage during the jury charging conference held pursuant to FRCrP 30(d). The government's rebuttal unfairly

prejudiced Folch and deprived him of a fair trial. *United States v. Figueroa*, 900 F.2d 1211, 1215 (8th Cir. 1990)

CONCLUSION

Folch must be acquitted of counts one and four of the indictment because there was insufficient evidence to prove every element of the offense charged. In the alternative, a new trial must be ordered because the district court infringed Folch's constitutional right to be charged by a grand jury and to be advised of the charges against him. The verdict form for count four omitted the motive element rendering it misleading to the jury, therefore, invalidating the verdict. Finally, the jury charge improperly instructed the jury as to the elements of the offense in counts one and two, therefore, the verdict on both counts cannot be valid. The government deprived Folch of a fair trial in the rebuttal closing, for which a mistrial should have been granted and a new trial ordered.

Furthermore, if the verdict in count four is reversed, the case must be returned for resentencing on all other counts.

In San Juan, Puerto Rico, this 26th day of August, 2020.

s/*Laura Maldonado Rodriguez*
LAURA MALDONADO RODRÍGUEZ
P.O. Box 11533
San Juan, P.R. 00922-1533
(787) 413-7771

Attorney for Defendant-Appellant
José Folch-Colón

CERTIFICATE OF COMPLIANCE AND SERVICE

I, Laura Maldonado Rodriguez, an attorney admitted to practice before this Honorable Court hereby certify that:

(a) In compliance with Federal Rule of Appellate Procedure 32(a)(5) this brief is produced using Times New Roman 14 point typeface.

(b) In compliance with Federal Rule of Appellate Procedure 32(a)(7) the length of this brief is sixty-three (63) pages, comprised of approximately 12074 words.

(c) On August 26, 2020, I served electronic copies of this Brief for Appellant José J. Folch Colón by filing the brief through the CM/ECM service of the United States Court of Appeals for the First Circuit. Counsel for Appellee, Assistant U.S. Attorney Mariana Bauzá was served at usapr.appeals@usdoj.gov.

(d) On August 26, 2020, I served one (unbound) paper copy through the United States Postal Service Regular Mail to José J. Folch Colón at Centro de Ingresos del Sur Ponce 676, Modulo 6-A-6, Celda 5, Ponce 3699 By Pass, P.R. 00728-1500.

In San Juan, Puerto Rico, this 26th day of August, 2020.

s/*Laura Maldonado Rodriguez*
LAURA MALDONADO RODRÍGUEZ
P.O. Box 11533
San Juan, P.R. 00922-1533
lmr7771@aol.com
(787) 413-7771

Attorney for Defendant-Appellant
José Folch-Colón

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

NO. 19-2262

UNITED STATES OF AMERICA,

Appellee,

versus

JOSE J. FOLCH-COLON, a/k/a Folch, a/k/a Gordo Folch

Defendant-Appellant.

A DIRECT APPEAL OF A CRIMINAL CASE
FROM THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF PUERTO RICO

ADDENDUM

CONTENT

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

UNITED STATES OF AMERICA,
Plaintiff,

v.

[1] AVELINO MILLAN-MACHUCA, a/k/a "Papito Machuca/El Fuerte/Viejo/Gordo",
(Counts 1-2)
[2] FERNANDO GARCIA-MARQUEZ, a/k/a "Fernan Sandwich/Emparedado/Fernan/Carlos Vega",
(Counts 1-2)
[3] CYNTHIA GONZALEZ-LANDRAU, a/k/a "La Cana/La Princesa/La Presidenta",
(Counts1-2)
[4] ROLANDO MILLAN-MACHUCA, a/k/a "Rolo",
(Counts1-2 and 4)
[5] ALEX PIÑERO-SOTOMAYOR, a/k/a "Cigüeña/Pajaro",
(Counts1-2)
[6] MIGUEL RIVERA-CALCAÑO, a/k/a "Guelo/ Kikirimiau",
(Counts1-2)
[7] ROBERTO CASADO-BERRIOS, a/k/a "Bobe/Bobel",
(Counts1-2)
[8] IVAN AYALA-HERNANDEZ, a/k/a "Bambani/Bambo",
(Counts1-2 and 3)
[9] GIORDANO SANTANA-MELENDEZ, a/k/a "Viejo Ten",
(Counts1-2)
[10] CARLOS BAEZ-FIGUEROA, a/k/a "Carlitos Guaynabo",
(Counts1-2)
[11] JOSE TRINIDAD-JORGE, a/k/a "Trini",
(Counts1-2)
[12] ANGEL BERMUDEZ-CARTAGENA, a/k/a "Apache/El Doctor",
(Counts1-2)
[13] JOSE CINTRON-MOJICA, a/k/a "Jowito",

INDICTMENT

CRIMINAL NO. 16-282 (PG)

VIOLATIONS:

COUNT ONE
Racketeer Influenced and Corrupt Organizations Act,
18 U.S.C. § 1962(d)

COUNT TWO
Conspiracy to Possess with Intent to Distribute a Controlled Substance,
21 U.S.C. § 846

COUNTS THREE AND FOUR
Murder in Aid of Racketeering,
18 U.S.C. § 1959(a)(1)

RICO Forfeiture
18 U.S.C. § 1963

Narcotics Forfeiture Allegation
21 U.S.C. § 853

(Counts1-2)
[14] VICTOR SOLANO-MORETA, a/k/a "Caballo",
(Counts1-2)
[15] JOSE CASTOIRE-SANCHEZ,
(Counts1-2)
[16] LUIS AYUSO-WALKER, a/k/a "Buringo,
(Counts1-2)
[17] JUAN LOZADA-DELGADO, a/k/a "Chino San Lorenzo",
(Counts1-2)
[18] ANIBAL MIRANDA-MONTAÑEZ, a/k/a "Jowy",
(Counts1-2 and 4)
[19] FREDDIE SANCHEZ-MARTINEZ, a/k/a "Casco",
(Counts1-2 and 3)
[20] ANGEL CRUZ-BARRIENTOS, a/k/a "Diego/Cloche",
(Counts1-2)
[21] ALEX MIGUEL CRUZ-SANTOS, a/k/a "Alex Cuquito",
(Counts1-2)
[22] JOSE J. FOLCH-COLON, a/k/a "Joel Folch/Gordo Folch",
(Counts1-2 and 4)
[23] BILLY ANDINO-DE-JESUS, a/k/a "Billy Cupey/Billy El Calvo",
(Counts1-2)
[24] LUIS ROJAS-LLANOS, a/k/a "Cachorro/Kchorro",
(Counts1-2)
[25] JUAN J. CLAUDIO-MORALES, a/k/a "Claudio Canales/Claudio El Gordo",
(Counts1-2)
[26] EDUARDO ROSARIO-ORANGEL, a/k/a "Barba/Cholon",
(Counts1-2)
[27] GEORGE TORRES-RODRIGUEZ, a/k/a "Gordo Comerio",
(Counts1-2)
[28] LUIS H. QUIÑONEZ-SANTIAGO, a/k/a "Hiram",
(Counts1-2)
[29] AUGUSTO CHRISTOPHER-LIND, a/k/a "Bengie Loiza",

(Counts1-2 and 3)
[30] JOSE L. NIEVES-TORRES,
(Counts1-2)
[31] LUIS D. RAMOS-BAEZ, a/k/a "Danny Power",
(Counts1-2)
[32] ORLANDO RUIZ-ACEVEDO, a/k/a "Gordo Ponce",
(Counts1-2)
[33] RAUL D. ROSARIO-MALDONADO, a/k/a "Davi/Davo",
(Counts1-2)
[34] JUAN R. CRUZ-SANTANA, a/k/a "Roldan",
(Counts1-2)
[35] JOSE MARRERO-FIGUEROA, a/k/a "Tito San Jose",
(Counts1-2)
[36] RAMON MORALES-SAEZ, a/k/a "Moncho/Monchi",
(Counts1-2)
[37] CARLOS SANTIAGO-RIVERA, a/k/a "Black/Blacky/El Negro",
(Counts1-2)
[38] DAVID GONZALEZ-DE-LEON, a/k/a "Bebe Cupey",
(Counts1-2 and 3)
[39] JOSE DIAZ-LOPEZ, a/k/a "Culo De Pollo",
(Counts1-2)
[40] OSVALDO TORRES-SANTIAGO, a/k/a "Bombilla/Baldo/Baldito",
(Counts1-2 and 4)
[41] JOSE VELAZQUEZ-MALDONADO, a/k/a "Batata",
(Counts1-2 and 4)
[42] ROBERTO MARTINEZ-RIVERA, a/k/a "Matatan",
(Counts1-2 and 3)
[43] JOSE SANCHEZ-LAUREANO, a/k/a "Veterano",
(Counts1-2)
[44] JOSE GONZALEZ-GERENA, a/k/a "Perpetua",
(Counts1-2 and 4)
[45] FRANCISCO TORRES-RODRIGUEZ,

a/k/a "Kino",
(Counts1-2 and 4)
[46] ANDRES DEL VALLE-ORTEGA, a/k/a "Randy/Andy Caimito",
(Counts1-2 and 3)
[47] JOSE R. ANDINO-MORALES, a/k/a "Gladiola",
(Counts1-2 and 3)
[48] JESUS P. O'NEILL-GOMEZ, a/k/a "Pastor",
(Counts1-2)
[49] ANGEL I. DIAZ-SANTIAGO,
(Counts1-2)
[50] PEDRO FONTANEZ-PEREZ,
(Counts1-2)

THE GRAND JURY CHARGES:

COUNT ONE
(Racketeer Influenced and Corrupt Organizations Act)

The Enterprise

At various times relevant to this Indictment, [1] AVELINO MILLAN-MACHUCA, a/k/a "Papito Machuca/El Fuerte/Viejo/Gordo", [2] FERNANDO GARCIA-MARQUEZ, a/k/a "Fernan Sandwich/Emparedado/Fernan/Carlos Vega", [3] CYNTHIA GONZALEZ-LANDRAU, a/k/a "La Cana/La Princesa/La Presidenta", [4] ROLANDO MILLAN-MACHUCA, a/k/a "Rolo", [5] ALEX PIÑERO-SOTOMAYOR, a/k/a "Cigüeña/Pajaro", [6] MIGUEL RIVERA-CALCAÑO, a/k/a "Guelo/ Kikirimiau", [7] ROBERTO CASADO-BERRIOS, a/k/a "Bobe/Bobel", [8] IVAN AYALA-HERNANDEZ, a/k/a "Bambani/Bambo", [9] GIORDANO SANTANA-MELENDEZ, a/k/a "Viejo Ten", [10] CARLOS BAEZ-FIGUEROA, a/k/a "Carlitos Guaynabo", [11] JOSE TRINIDAD-JORGE, a/k/a "Trini", [12] ANGEL BERMUDEZ-CARTAGENA, a/k/a "Apache/El Doctor", [13] JOSE CINTRON-MOJICA, a/k/a "Jowito", [14] VICTOR SOLANO-MORETA, a/k/a "Caballo", [15] JOSE CASTOIRE-SANCHEZ, [16] LUIS AYUSO-WALKER, a/k/a "Buringo, [17] JUAN LOZADA-DELGADO,

a/k/a "Chino San Lorenzo", [18] ANIBAL MIRANDA-MONTAÑEZ, a/k/a "Jowy", [19] FREDDIE SANCHEZ-MARTINEZ, a/k/a "Casco", [20] ANGEL CRUZ-BARRIENTOS, a/k/a "Diego/Cloche", [21] ALEX MIGUEL CRUZ-SANTOS, a/k/a "Alex Cuquito", [22] JOSE J. FOLCH-COLON, a/k/a "Joel Folch/Gordo Folch", [23] BILLY ANDINO-DE-JESUS, a/k/a "Billy Cupey/Billy El Calvo", [24] LUIS ROJAS-LLANOS, a/k/a "Cachorro/Kchorro", [25] JUAN J. CLAUDIO-MORALES, a/k/a "Claudio Canales/Claudio El Gordo", [26] EDUARDO ROSARIO-ORANGEL, a/k/a "Barba/Cholon", [27] GEORGE TORRES-RODRIGUEZ, a/k/a "Gordo Comerio", [28] LUIS H. QUIÑONEZ-SANTIAGO, a/k/a "Hiram", [29] AUGUSTO CHRISTOPHER-LIND, a/k/a "Bengie Loiza", [30] JOSE L. NIEVES-TORRES, [31] LUIS D. RAMOS-BAEZ, a/k/a "Danny Power", [32] ORLANDO RUIZ-ACEVEDO, a/k/a "Gordo Ponce", [33] RAUL D. ROSARIO-MALDONADO, a/k/a "Davi/Davo", [34] JUAN R. CRUZ-SANTANA, a/k/a "Roldan", [35] JOSE MARRERO-FIGUEROA, a/k/a "Tito San Jose", [36] RAMON MORALES-SAEZ, a/k/a "Moncho/Monchi", [37] CARLOS SANTIAGO-RIVERA, a/k/a "Black/Blacky/El Negro", [38] DAVID GONZALEZ-DE-LEON, a/k/a "Bebe Cupey", [39] JOSE DIAZ-LOPEZ, a/k/a "Culo De Pollo", [40] OSVALDO TORRES-SANTIAGO, a/k/a "Bombilla/Baldo/Baldito", [41] JOSE VELAZQUEZ-MALDONADO, a/k/a "Batata", [42] ROBERTO MARTINEZ-RIVERA, a/k/a "Matatan", [43] JOSE SANCHEZ-LAUREANO, a/k/a "Veterano", [44] JOSE GONZALEZ-GERENA, a/k/a "Perpetua", [45] FRANCISCO TORRES-RODRIGUEZ, a/k/a "Kino", [46] ANDRES DEL VALLE-ORTEGA, a/k/a "Randy/Andy Caimito", [47] JOSE R. ANDINO-MORALES, a/k/a "Gladiola", [48] JESUS P. O'NEILL-GOMEZ, a/k/a "Pastor", [49] ANGEL I. DIAZ-SANTIAGO, and [50] PEDRO FONTANEZ-PEREZ, the defendants herein, and others known and unknown, were members and associates of a criminal organization whose members and associates engaged in drug distribution and acts of

violence, including murder. The criminal organization, referred to as La Asociación Pro Derechos y Rehabilitación del Confinado, also known as La Asociación Pro Derechos de los Confinados, and La Asociación ÑETA (hereinafter referred to as La Asociación ÑETA or the "enterprise"), including its leadership, membership, and associates, constituted an "enterprise," as defined by 18 U.S.C. § 1961(4), that is, a group of individuals associated in fact. The enterprise constituted an ongoing organization whose members functioned as a continuing unit for a common purpose of achieving the objectives of the enterprise. The enterprise was engaged in, and its activities affected, interstate, and foreign commerce.

Background of the Enterprise (La Asociación ÑETA)

Originally, inmates of the Puerto Rico Department of Corrections and Rehabilitation ("PRDCR") created La Asociación ÑETA in order to collectively advocate for the rights of inmates in the PRDCR. La Asociación ÑETA and its members had a presence in all of the prisons of the PRDCR. In time, the enterprise evolved from a group of inmates that strived to better conditions for fellow inmates in the PRDCR to a criminal organization whose members numbered in the thousands.

La Asociación ÑETA introduced and distributed multi-kilograms of cocaine, marijuana, and heroin into the prison system of the PRDCR for profit. Also, the enterprise introduced cellular telephones into the prisons and charged a fee to other inmates for using the same. Members of the enterprise would use cellular phones to engage in drug trafficking and murder inside of prison. The main purpose of La Asociación ÑETA became to make money for its members and the enterprise's top leaders, who are known as "El Liderato Máximo" (the Maximum Leadership). In accordance with the main goal of La Asociación ÑETA, to make money, the Maximum Leaders engaged in murders for hire. That is, persons would pay the

Maximum Leadership so that they would order members of the enterprise to kill persons that were inmates of the PRDCR.

Purposes of the Enterprise

The purposes of the enterprise included the following:

1. Enriching the members and associates of the enterprise through the distribution of narcotics, murder, and the trafficking of cellphones within the prisons of the PRDCR.
2. Preserving and protecting the power, territory, and profits of the enterprise through the use of intimidation, violence, threats of violence, and murder.
3. Concealing its activities by obstructing justice.
4. Promoting and enhancing the enterprise and its members' and associates' activities.
5. Keeping people in fear of the enterprise and in fear of its members and associates through threats of violence and murder.

Means and Methods of the Enterprise

Among the manner and means by which the defendants and co-conspirators conducted and participated in the conduct of the affairs of the enterprise were the following:

1. Members of the enterprise and their associates would act in different roles in order to further the goals of the enterprise.
2. Members of the enterprise and their associates would pool resources in order to accomplish criminal acts.
3. Members of the enterprise and their associates promoted a climate of fear through violence and threats of violence. They would commonly use and threaten to use physical violence against their rivals.

4. Members of the enterprise and their associates committed, attempted, and threatened to commit acts of violence to protect and expand the enterprise's criminal operations.
5. Members of the enterprise and their associates would use force, violence, and intimidation in order to discipline members of the enterprise.
6. Members of the enterprise were expected to follow the rules of the enterprise. Failure to follow certain rules could be punished by death. Namely, cooperation with law enforcement and stealing from the enterprise was punishable by death. Also, any command given by the Maximum Leadership had to be followed and the consequence of not following the same could result in death.
7. The Maximum Leadership would accept contracts to kill inmates on behalf of persons that were willing to pay for the murder. The Maximum Leadership would then order members to kill the inmate.
8. Members of the enterprise and their associates would purchase wholesale quantities of heroin, cocaine, and marijuana in order to distribute the same within the prisons of the PRDCR for profit. The Maximum Leadership would purchase wholesale quantities of drugs, introduced them into prison facilities in the PRDCR, and would order that the drugs be sold. Also, inmates would pay the enterprise a fee known as "el incentivo" (the incentive) for the privilege of being allowed to introduce drugs into the prison facility.
9. Members and associates of the enterprise would introduce cellular phones into the prison facilities of the PRPDCR and sell them for a profit. In addition, they would charge inmates a monthly fee, el "incentivo" (the incentive), for the use of the cellphone.
10. Members of the enterprise and their associates would introduce drugs into the prisons of the PRDCR with the help of corrupt PRDCR Correctional Officers, civilians that work

inside of the prison system, people who visited inmates, and persons that from outside the prisons, threw the drugs into the facilities which are referred to as "pitcheos" (pitch-ins), which were caught by members of the enterprise. Members of the enterprise and their associates would bribe, that is pay, corrupt PRDCR Correctional Officers, who would introduce drugs into the prisons of the PRDCR to supply the enterprise.

11. Some of the money accumulated through the illicit activities of the enterprise went to "El Fondo" (the Fund) of La Asociación ÑETA, which is a common pool of money administered by the enterprise's leadership.

12. Members would use the money generated by the enterprise through drug trafficking and the trafficking of cellphones to throw parties inside of the prison facilities of the PRDCR for the members and their families.

Roles of the Defendants

During the conspiracy, many of the leaders, members, and associates of La Asociación ÑETA held various roles in the enterprise. The defendants listed below held the following roles at some point in the conspiracy.

A. Maximum Leaders

The Maximum Leadership was the highest leadership position in La Asociación ÑETA and was composed of a group of high-ranking members. The Maximum Leaders oversaw the criminal activities of the members of the enterprise. The Maximum Leaders controlled the income generated by the activities of the enterprise through the members that were part of the Chapter Leadership, which directly supervised the activities of the enterprise within a particular prison facility in the PRDCR. The Maximum Leaders purchased multi-kilogram quantities of narcotics and oversaw their introduction and sale in the prisons of the PRDCR. Also, the

Maximum Leaders were charged with approving murders that took place in prison. At various times during the course of the conspiracy, members of the Maximum Leadership authorized the murder of inmates for profit. The following defendants acted as Maximum Leaders for La Asociación ÑETA:

[1] AVELINO MILLAN-MACHUCA, a/k/a "Papito Machuca/El Fuerte/Viejo/Gordo",
[2] FERNANDO GARCIA-MARQUEZ, a/k/a "Fernan Sandwich/Emparedado/Fernan/Carlos Vega",
[3] CYNTHIA GONZALEZ-LANDRAU, a/k/a "La Cana/La Princesa/La Presidenta",
[4] ROLANDO MILLAN-MACHUCA, a/k/a "Rolo",
[5] ALEX PIÑERO-SOTOMAYOR, a/k/a "Cigüeña/Pajaro",
[6] MIGUEL RIVERA-CALCAÑO, a/k/a "Guelo/ Kikirimiau",
[7] ROBERTO CASADO-BERRIOS, a/k/a "Bobe/Bobel",
[8] IVAN AYALA-HERNANDEZ, a/k/a "Bambani/Bambo",
[9] GIORDANO SANTANA-MELENDEZ, a/k/a "Viejo Ten",
[10] CARLOS BAEZ-FIGUEROA, a/k/a "Carlitos Guaynabo",
[11] JOSE TRINIDAD-JORGE, a/k/a "Trini",
[12] ANGEL BERMUDEZ-CARTAGENA, a/k/a "Apache/El Doctor",
[13] JOSE CINTRON-MOJICA, a/k/a "Jowito", and
[14] VICTOR SOLANO-MORETA, a/k/a "Caballo".

B. Chapter Leaders

The La Asociación ÑETA membership in a particular PRDCR prison was referred to as a Chapter. Each Chapter had its own leadership, which was known as the Chapter Leadership. In particular, the Chapter Leaders would administer the activities of the enterprise in the prisons where they were located. The Chapter Leaders would receive the drugs sent by the Maximum Leadership and ensured that the same was sold in their Chapter. They would supervise the drug and cellular phone trafficking activities of the enterprise in the prisons they supervised. The Chapter Leaders would report to the Maximum Leadership and provide them with profits generated by the enterprise in their Chapter. The following defendants acted as Chapter Leaders for La Asociación ÑETA:

[15] JOSE CASTOIRE-SANCHEZ,
[16] LUIS AYUSO-WALKER, a/k/a "Buringo,

[17] JUAN LOZADA-DELGADO, a/k/a "Chino San Lorenzo",
[18] ANIBAL MIRANDA-MONTAÑEZ, a/k/a "Jowy",
[19] FREDDIE SANCHEZ-MARTINEZ, a/k/a "Casco",
[20] ANGEL CRUZ-BARRIENTOS, a/k/a "Diego/Cloche",
[21] ALEX MIGUEL CRUZ-SANTOS, a/k/a "Alex Cuquito",
[22] JOSE J. FOLCH-COLON, a/k/a "Joel Folch/Gordo Folch",
[23] BILLY ANDINO-DE-JESUS, a/k/a "Billy Cupey/Billy El Calvo",
[24] LUIS ROJAS-LLANOS, a/k/a "Cachorro/Kchorro",
[25] JUAN J. CLAUDIO-MORALES, a/k/a "Claudio Canales/Claudio El Gordo",
[26] EDUARDO ROSARIO-ORANGEL, a/k/a "Barba/Cholon",
[27] GEORGE TORRES-RODRIGUEZ, a/k/a "Gordo Comerio",
[28] LUIS H. QUIÑONEZ-SANTIAGO, a/k/a "Hiram",
[29] AUGUSTO CHRISTOPHER-LIND, a/k/a "Bengie Loiza",
[30] JOSE L. NIEVES-TORRES,
[31] LUIS D. RAMOS-BAEZ, a/k/a "Danny Power",
[32] ORLANDO RUIZ-ACEVEDO, a/k/a "Gordo Ponce",
[33] RAUL D. ROSARIO-MALDONADO, a/k/a "Davi/Davo",
[34] JUAN R. CRUZ-SANTANA, a/k/a "Roldan",
[35] JOSE MARRERO-FIGUEROA, a/k/a "Tito San Jose", and
[36] RAMON MORALES-SAEZ, a/k/a "Moncho/Monchi".

C. Central Committee

There was a Central Committee in each of the Chapters of La Asociación ÑETA. The Central Committee was composed of members of the enterprise that were in charge of enforcing the rules of La Asociación ÑETA. The following defendants acted as the Central Committee for La Asociación ÑETA:

[37] CARLOS SANTIAGO-RIVERA, a/k/a "Black/Blacky/El Negro",
[38] DAVID GONZALEZ-DE-LEON, a/k/a "Bebe Cupey",
[39] JOSE DIAZ-LOPEZ, a/k/a "Culo De Pollo", and
[40] OSVALDO TORRES-SANTIAGO, a/k/a "Bombilla/Baldo/Baldito",

D. Floor Committee

The Floor Committee would help the Central Committee enforce the rules of the enterprise. In particular, the Floor Committee would enforce the rules of the enterprise in a particular floor of a prison where members of a Chapter were located. The following defendants acted as the Floor Committee for La Asociación ÑETA:

[41] JOSE VELAZQUEZ-MALDONADO, a/k/a "Batata" and
[42] ROBERTO MARTINEZ-RIVERA, a/k/a "Matatan".

E. Suppliers

Members of the enterprise would have contacts outside of prison who would supply the La Asociación ÑETA with drugs. These Suppliers would serve as intermediaries between those persons outside of prison, who could supply drugs to the enterprise, and La Asociación ÑETA. The Suppliers would make sure that the enterprise would obtain the drugs that would be sold for profit by the members of the La Asociación ÑETA. The following defendant acted as a Supplier for the La Asociación ÑETA:

[43] JOSE SANCHEZ-LAUREANO, a/k/a "Veterano".

F. Missionaries

The members of the enterprise that were given a mission by the Maximum Leadership to kill an inmate were referred to as Missionaries. The following defendants acted as Missionaries for La Asociación ÑETA:

[44] JOSE GONZALEZ-GERENA, a/k/a "Perpetua",
[45] FRANCISCO TORRES-RODRIGUEZ, a/k/a "Kino",
[46] ANDRES DEL VALLE-ORTEGA, a/k/a "Randy/Andy Caimito", and
[47] JOSE R. ANDINO-MORALES, a/k/a "Gladiola".

G. Facilitators

Members of the enterprise would stash drugs in prison to avoid detection by Correction Officers of the PRDCR. The following defendant acted as a Facilitator for La Asociación ÑETA:

[48] JESUS P. O'NEILL-GOMEZ, a/k/a "Pastor".

G. Correctional Officers

Correctional Officers from the PRDCR would aid La Asociación ÑETA in the introduction of drugs and cellphones that were meant for distribution into the prisons of the

PRDCR. The following defendants were Correctional Officers that aided La Asociación ÑETA in the introduction of drugs and cellphones:

[49] ANGEL I. DIAZ-SANTIAGO and
[50] PEDRO FONTANEZ-PEREZ.

Racketeering Conspiracy

Beginning on a date unknown, but no later than in or about the year 2005, and continuing up to and until the return of the instant Indictment, in the District of Puerto Rico and within the jurisdiction of this Court,

[1] AVELINO MILLAN-MACHUCA, a/k/a "Papito Machuca/El Fuerte/Viejo/Gordo",
[2] FERNANDO GARCIA-MARQUEZ, a/k/a "Fernan Sandwich/Emparedado/Fernan/Carlos Vega",
[3] CYNTHIA GONZALEZ-LANDRAU, a/k/a "La Cana/La Princesa/La Presidenta",
[4] ROLANDO MILLAN-MACHUCA, a/k/a "Rolo",
[5] ALEX PIÑERO-SOTOMAYOR, a/k/a "Cigüeña/Pajaro",
[6] MIGUEL RIVERA-CALCAÑO, a/k/a "Guelo/ Kikirimiau",
[7] ROBERTO CASADO-BERRIOS, a/k/a "Bobe/Bobel",
[8] IVAN AYALA-HERNANDEZ, a/k/a "Bambani/Bambo",
[9] GIORDANO SANTANA-MELENDEZ, a/k/a "Viejo Ten",
[10] CARLOS BAEZ-FIGUEROA, a/k/a "Carlitos Guaynabo",
[11] JOSE TRINIDAD-JORGE, a/k/a "Trini",
[12] ANGEL BERMUDEZ-CARTAGENA, a/k/a "Apache/El Doctor",
[13] JOSE CINTRON-MOJICA, a/k/a "Jowito",
[14] VICTOR SOLANO-MORETA, a/k/a "Caballo",
[15] JOSE CASTOIRE-SANCHEZ,
[16] LUIS AYUSO-WALKER, a/k/a "Buringo,
[17] JUAN LOZADA-DELGADO, a/k/a "Chino San Lorenzo",
[18] ANIBAL MIRANDA-MONTAÑEZ, a/k/a "Jowy",
[19] FREDDIE SANCHEZ-MARTINEZ, a/k/a "Casco",
[20] ANGEL CRUZ-BARRIENTOS, a/k/a "Diego/Cloche",
[21] ALEX MIGUEL CRUZ-SANTOS, a/k/a "Alex Cuquito",
[22] JOSE J. FOLCH-COLON, a/k/a "Joel Folch/Gordo Folch",
[23] BILLY ANDINO-DE-JESUS, a/k/a "Billy Cupey/Billy El Calvo",
[24] LUIS ROJAS-LLANOS, a/k/a "Cachorro/Kchorro",
[25] JUAN J. CLAUDIO-MORALES, a/k/a "Claudio Canales/Claudio El Gordo",
[26] EDUARDO ROSARIO-ORANGEL, a/k/a "Barba/Cholon",
[27] GEORGE TORRES-RODRIGUEZ, a/k/a "Gordo Comerio",
[28] LUIS H. QUIÑONEZ-SANTIAGO, a/k/a "Hiram",
[29] AUGUSTO CHRISTOPHER-LIND, a/k/a "Bengie Loiza",
[30] JOSE L. NIEVES-TORRES,

[31] LUIS D. RAMOS-BAEZ, a/k/a "Danny Power",
[32] ORLANDO RUIZ-ACEVEDO, a/k/a "Gordo Ponce",
[33] RAUL D. ROSARIO-MALDONADO, a/k/a "Davi/Davo",
[34] JUAN R. CRUZ-SANTANA, a/k/a "Roldan",
[35] JOSE MARRERO-FIGUEROA, a/k/a "Tito San Jose",
[36] RAMON MORALES-SAEZ, a/k/a "Moncho/Monchi",
[37] CARLOS SANTIAGO-RIVERA, a/k/a "Black/Blacky/El Negro",
[38] DAVID GONZALEZ-DE-LEON, a/k/a "Bebe Cupey",
[39] JOSE DIAZ-LOPEZ, a/k/a "Culo De Pollo",
[40] OSVALDO TORRES-SANTIAGO, a/k/a "Bombilla/Baldo/Baldito",
[41] JOSE VELAZQUEZ-MALDONADO, a/k/a "Batata",
[42] ROBERTO MARTINEZ-RIVERA, a/k/a "Matatan",
[43] JOSE SANCHEZ-LAUREANO, a/k/a "Veterano",
[44] JOSE GONZALEZ-GERENA, a/k/a "Perpetua",
[45] FRANCISCO TORRES-RODRIGUEZ, a/k/a "Kino",
[46] ANDRES DEL VALLE-ORTEGA, a/k/a "Randy/Andy Caimito",
[47] JOSE R. ANDINO-MORALES, a/k/a "Gladiola",
[48] JESUS P. O'NEILL-GOMEZ, a/k/a "Pastor",
[49] ANGEL I. DIAZ-SANTIAGO,
[50] PEDRO FONTANEZ-PEREZ,

the defendants and others known and unknown, being persons employed by and associated with the La Asociación ÑETA enterprise, which engaged in, and the activities of which affected, interstate, and foreign commerce, knowingly and intentionally conspired to violate 18 U.S.C. § 1962(c), that is, to conduct and participate, directly, and indirectly, in the conduct of the affairs of that enterprise through a pattern of racketeering activity consisting of multiple offenses involving:

1. Drug trafficking, including cocaine, heroin, and marijuana in violation of the laws of the United States, that being, 21 U.S.C. §§ 841 and 846; and multiple acts involving:
2. Murder, chargeable under Articles 35 (attempt), 105 (general murder statute), 106 (first degree and second degree murder), and 249 (conspiracy) of the 2004 Puerto Rico Penal Code and Articles 35 (attempt), 92 (general murder statute), 93 (first degree and second degree murder) and 244 (conspiracy) of the 2012 Puerto Rico Penal Code; and

3. Bribery, chargeable under Articles 35 (attempt), 262 (bribery), and 263 (offer of bribery) of the 2004 Puerto Rico Penal Code and Articles 35 (attempt), 259 (bribery), 260 (offer of bribery) and 244 (conspiracy) of the 2012 Puerto Rico Penal Code.

It was part of the conspiracy that each defendant agreed that a conspirator would commit at least two acts of racketeering activity in the conduct of the affairs of the enterprise.

Overt Acts

In furtherance of the racketeering conspiracy, and to effect the object thereof, the defendants and their co-conspirators committed and caused to be committed the following overt acts, among others, on or about the following dates, in the District of Puerto Rico and within the jurisdiction of this Court:

1. In August 2014, the Maximum Leadership was paid for the murder of Mario Montañez-Gomez, a/k/a "Emme".
2. On August 27, 2014, [8] IVAN AYALA-HERNANDEZ, a/k/a "Bambani/Bambo", on behalf of the Maximum Leadership, called [29] AUGUSTO CHRISTOPHER-LIND, a/k/a "Bengie Loiza" and ordered him to kill Mario Montañez-Gomez, a/k/a "Emme".
3. On August 27, 2014, [29] AUGUSTO CHRISTOPHER-LIND, a/k/a "Bengie Loiza" recruited fellow members of the enterprise to kill Mario Montañez-Gomez, a/k/a "Emme". [19] FREDDIE SANCHEZ-MARTINEZ, a/k/a "Casco", who was a Chapter Leader, told [38] DAVID GONZALEZ-DE-LEON, a/k/a "Bebe Cupey" and [46] ANDRES DEL VALLE-ORTEGA, a/k/a "Randy/Andy Caimito" to go do the murder.
4. On August 27, 2014, [29] AUGUSTO CHRISTOPHER-LIND, a/k/a "Bengie Loiza", [38] DAVID GONZALEZ-DE-LEON, a/k/a "Bebe Cupey, [42] ROBERTO MARTINEZ-RIVERA, a/k/a "Matatan", [46] ANDRES DEL VALLE-ORTEGA, a/k/a

"Randy/Andy Caimito", and [47] JOSE R. ANDINO-MORALES, a/k/a "Gladiola" murdered Mario Montañez-Gomez, a/k/a "Emme".

5. In November 2014, [22] JOSE J. FOLCH-COLON, a/k/a "Joel Folch/Gordo Folch" wanted Alexis Rodriguez-Rodriguez, a/k/a "Alexis El Loco" killed while he was in prison because he was [22] JOSE J. FOLCH-COLON, a/k/a "Joel Folch/Gordo Folch's" rival drug trafficker in Puerto Rico. [22] JOSE J. FOLCH-COLON, a/k/a "Joel Folch/Gordo Folch" convinced the Maximum Leadership, namely, [4] ROLANDO MILLAN-MACHUCA, a/k/a "Rolo", to have members of the enterprise murder Rodriguez-Rodriguez. It was agreed that [4] ROLANDO MILLAN-MACHUCA, a/k/a "Rolo" would receive payment from [22] JOSE J. FOLCH-COLON, a/k/a "Joel Folch/Gordo Folch" through drugs. [4] ROLANDO MILLAN-MACHUCA, a/k/a "Rolo" then ordered [44] JOSE GONZALEZ-GERENA, a/k/a "Perpetua" to carry out the murder and confirmed to [44] JOSE GONZALEZ-GERENA, a/k/a "Perpetua" that the enterprise approved the murder of Alexis Rodriguez-Rodriguez, a/k/a "Alexis El Loco".

6. In November 2014, during a telephonic conversation using illegal cellphones introduced into prison, [4] ROLANDO MILLAN-MACHUCA, a/k/a "Rolo" reiterated to [44] JOSE GONZALEZ-GERENA, a/k/a "Perpetua" that he had to kill Alexis Rodriguez-Rodriguez, a/k/a "Alexis El Loco". Several members of the enterprise joined the telephonic conversation, including [22] JOSE J. FOLCH-COLON, a/k/a "Joel Folch/Gordo Folch" and [18] ANIBAL MIRANDA-MONTAÑEZ, a/k/a "Jowy". During the same, [22] JOSE J. FOLCH-COLON, a/k/a "Joel Folch/Gordo Folch" told [44] JOSE GONZALEZ-GERENA, a/k/a "Perpetua" that a member of the enterprise had the drugs that would be used to kill Alexis Rodriguez-Rodriguez, a/k/a "Alexis El Loco". [44]

JOSE GONZALEZ-GERENA, a/k/a "Perpetua" then got heroin from a member of the enterprise that was to be used to kill Alexis Rodriguez-Rodriguez, a/k/a "Alexis El Loco". The plan was to make it look as if he overdosed.

7. On November 6, 2014, [40] OSVALDO TORRES-SANTIAGO, a/k/a "Bombilla/Baldo/Baldito", [41] JOSE VELAZQUEZ-MALDONADO, a/k/a "Batata", [44] JOSE GONZALEZ-GERENA, a/k/a "Perpetua", and [45] FRANCISCO TORRES-RODRIGUEZ, a/k/a "Kino" murdered Alexis Rodriguez-Rodriguez, a/k/a "Alexis El Loco" in a prison cell. [18] ANIBAL MIRANDA-MONTAÑEZ, a/k/a "Jowy" then entered the cell and took the body of Alexis Rodriguez-Rodriguez, a/k/a "Alexis El Loco".

8. In November 2014, after the murder of Alexis Rodriguez-Rodriguez, a/k/a "Alexis El Loco", [22] JOSE J. FOLCH-COLON, a/k/a "Joel Folch/Gordo Folch" paid [18] ANIBAL MIRANDA-MONTAÑEZ, a/k/a "Jowy", [40] OSVALDO TORRES-SANTIAGO, a/k/a "Bombilla/Baldo/Baldito", [44] JOSE GONZALEZ-GERENA, a/k/a "Perpetua", and [45] FRANCISCO TORRES-RODRIGUEZ, a/k/a "Kino" for the murder.

9. On March 16, 2015, [44] JOSE GONZALEZ-GERENA, a/k/a "Perpetua" and [21] ALEX MIGUEL CRUZ-SANTOS, a/k/a "Alex Cuquito" discussed a drug deal with [8] IVAN AYALA-HERNANDEZ, a/k/a "Bambani/Bambo" inside the Ponce prison.

10. On March 19, 2015, [14] VICTOR SOLANO-MORETA, a/k/a "Caballo" talked about drugs that [5] ALEX PIÑERO-SOTOMAYOR, a/k/a "Cigüeña/Pajaro" provided to him.

11. On April 28, 2015, [3] CYNTHIA GONZALEZ-LANDRAU, a/k/a "La Cana/La Princesa/La Presidenta" explained that during the past La Asociación ÑETA Chapter

finance meeting, [17] JUAN LOZADA-DELGADO, a/k/a "Chino San Lorenzo" reported a profit of $45,000.

12. On May 4, 2015, [3] CYNTHIA GONZALEZ-LANDRAU, a/k/a "La Cana/La Princesa/La Presidenta" explained that [5] ALEX PIÑERO-SOTOMAYOR, a/k/a "Cigüeña/Pajaro" manages all of the money of La Asociación ÑETA and that [1] AVELINO MILLAN-MACHUCA, a/k/a "Papito Machuca/El Fuerte/Viejo/Gordo" calls him to tell him where to use the money.

13. On May 13, 2015, [3] CYNTHIA GONZALEZ-LANDRAU, a/k/a "La Cana/La Princesa/La Presidenta" indicated that she sent fifteen lines of heroin that belonged to [1] AVELINO MILLAN-MACHUCA, a/k/a "Papito Machuca/El Fuerte/Viejo/Gordo" and were destined for the La Asociación ÑETA's funds.

14. On July 16, 2015, [2] FERNANDO GARCIA-MARQUEZ, a/k/a "Fernan Sandwich/Emparedado/Fernan/Carlos Vega" told [33] RAUL D. ROSARIO-MALDONADO, a/k/a "Davi/Davo" that he has a friend that deals with big quantities that will supply him with heroin. They also discussed how the funds of La Asociación ÑETA had grown.

15. On July 20, 2015, [2] FERNANDO GARCIA-MARQUEZ, a/k/a "Fernan Sandwich/Emparedado/Fernan/Carlos Vega" told [8] IVAN AYALA-HERNANDEZ, a/k/a "Bambani/Bambo" that La Asociación ÑETA should order the burning of vehicles belonging to Correctional Officers of the PRDCR who the enterprise had problems with.

16. On July 22, 2015, [2] FERNANDO GARCIA-MARQUEZ, a/k/a "Fernan Sandwich/Emparedado/Fernan/Carlos Vega" instructed [39] JOSE DIAZ-LOPEZ, a/k/a

"Culo De Pollo" to intimidate members of the 27 prison gang and threaten them with breaking their faces.

17. On July 26, 2015, [1] AVELINO MILLAN-MACHUCA, a/k/a "Papito Machuca/El Fuerte/Viejo/Gordo" spoke to several leader of La Asociación ÑETA including [4] ROLANDO MILLAN-MACHUCA, a/k/a "Rolo", [22] JOSE J. FOLCH-COLON, a/k/a "Joel Folch/Gordo Folch", [5] ALEX PIÑERO-SOTOMAYOR, a/k/a "Cigüeña/Pajaro", [8] IVAN AYALA-HERNANDEZ, a/k/a "Bambani/Bambo", and [34] JUAN R. CRUZ-SANTANA, a/k/a "Roldan" and gave instructions on new rules that were to be established in La Asociación ÑETA.

18. On July 26, 2015, [2] FERNANDO GARCIA-MARQUEZ, a/k/a "Fernan Sandwich/Emparedado/Fernan/Carlos Vega", [6] MIGUEL RIVERA-CALCAÑO, a/k/a "Guelo/ Kikirimiau", and [11] JOSE TRINIDAD-JORGE, a/k/a "Trini" talked about La Asociación ÑETA's drug sales and incentives.

19. On August 6, 2015, [3] CYNTHIA GONZALEZ-LANDRAU, a/k/a "La Cana/La Princesa/La Presidenta" mentioned that [16] LUIS AYUSO-WALKER, a/k/a "Buringo" is the Chapter Leader in Zarzal.

20. On September 22, 2015, [3] CYNTHIA GONZALEZ-LANDRAU, a/k/a "La Cana/La Princesa/La Presidenta" and [6] MIGUEL RIVERA-CALCAÑO, a/k/a "Guelo/ Kikirimiau" talked about how the drugs were as good as some that she had supplied to [1] AVELINO MILLAN-MACHUCA, a/k/a "Papito Machuca/El Fuerte/Viejo/Gordo".

Notice of Special Findings for Count One
(Conspiracy to Possess with Intent to Distribute a Controlled Substance)

Beginning on a date unknown, but no later than in or about the year 2005, and continuing up to and until the return of the instant Indictment, in the District of Puerto Rico and within the jurisdiction of this Court,

[1] AVELINO MILLAN-MACHUCA, a/k/a "Papito Machuca/El Fuerte/Viejo/Gordo",
[2] FERNANDO GARCIA-MARQUEZ, a/k/a "Fernan Sandwich/Emparedado/Fernan/Carlos Vega",
[3] CYNTHIA GONZALEZ-LANDRAU, a/k/a "La Cana/La Princesa/La Presidenta",
[4] ROLANDO MILLAN-MACHUCA, a/k/a "Rolo",
[5] ALEX PIÑERO-SOTOMAYOR, a/k/a "Cigüeña/Pajaro",
[6] MIGUEL RIVERA-CALCAÑO, a/k/a "Guelo/ Kikirimiau",
[7] ROBERTO CASADO-BERRIOS, a/k/a "Bobe/Bobel",
[8] IVAN AYALA-HERNANDEZ, a/k/a "Bambani/Bambo",
[9] GIORDANO SANTANA-MELENDEZ, a/k/a "Viejo Ten",
[10] CARLOS BAEZ-FIGUEROA, a/k/a "Carlitos Guaynabo",
[11] JOSE TRINIDAD-JORGE, a/k/a "Trini",
[12] ANGEL BERMUDEZ-CARTAGENA, a/k/a "Apache/El Doctor",
[13] JOSE CINTRON-MOJICA, a/k/a "Jowito",
[14] VICTOR SOLANO-MORETA, a/k/a "Caballo",
[15] JOSE CASTOIRE-SANCHEZ,
[16] LUIS AYUSO-WALKER, a/k/a "Buringo,
[17] JUAN LOZADA-DELGADO, a/k/a "Chino San Lorenzo",
[18] ANIBAL MIRANDA-MONTAÑEZ, a/k/a "Jowy",
[19] FREDDIE SANCHEZ-MARTINEZ, a/k/a "Casco",
[20] ANGEL CRUZ-BARRIENTOS, a/k/a "Diego/Cloche",
[21] ALEX MIGUEL CRUZ-SANTOS, a/k/a "Alex Cuquito",
[22] JOSE J. FOLCH-COLON, a/k/a "Joel Folch/Gordo Folch",
[23] BILLY ANDINO-DE-JESUS, a/k/a "Billy Cupey/Billy El Calvo",
[24] LUIS ROJAS-LLANOS, a/k/a "Cachorro/Kchorro",
[25] JUAN J. CLAUDIO-MORALES, a/k/a "Claudio Canales/Claudio El Gordo",
[26] EDUARDO ROSARIO-ORANGEL, a/k/a "Barba/Cholon",
[27] GEORGE TORRES-RODRIGUEZ, a/k/a "Gordo Comerio",
[28] LUIS H. QUIÑONEZ-SANTIAGO, a/k/a "Hiram",
[29] AUGUSTO CHRISTOPHER-LIND, a/k/a "Bengie Loiza",
[30] JOSE L. NIEVES-TORRES,
[31] LUIS D. RAMOS-BAEZ, a/k/a "Danny Power",
[32] ORLANDO RUIZ-ACEVEDO, a/k/a "Gordo Ponce",
[33] RAUL D. ROSARIO-MALDONADO, a/k/a "Davi/Davo",
[34] JUAN R. CRUZ-SANTANA, a/k/a "Roldan",
[35] JOSE MARRERO-FIGUEROA, a/k/a "Tito San Jose",
[36] RAMON MORALES-SAEZ, a/k/a "Moncho/Monchi",

[37] CARLOS SANTIAGO-RIVERA, a/k/a "Black/Blacky/El Negro",
[38] DAVID GONZALEZ-DE-LEON, a/k/a "Bebe Cupey",
[39] JOSE DIAZ-LOPEZ, a/k/a "Culo De Pollo",
[40] OSVALDO TORRES-SANTIAGO, a/k/a "Bombilla/Baldo/Baldito",
[41] JOSE VELAZQUEZ-MALDONADO, a/k/a "Batata",
[42] ROBERTO MARTINEZ-RIVERA, a/k/a "Matatan",
[43] JOSE SANCHEZ-LAUREANO, a/k/a "Veterano",
[44] JOSE GONZALEZ-GERENA, a/k/a "Perpetua",
[45] FRANCISCO TORRES-RODRIGUEZ, a/k/a "Kino",
[46] ANDRES DEL VALLE-ORTEGA, a/k/a "Randy/Andy Caimito",
[47] JOSE R. ANDINO-MORALES, a/k/a "Gladiola",
[48] JESUS P. O'NEILL-GOMEZ, a/k/a "Pastor",
[49] ANGEL I. DIAZ-SANTIAGO,
[50] PEDRO FONTANEZ-PEREZ,

the defendants herein, did knowingly and intentionally, combine, conspire, and agree with each other and with diverse other persons known and unknown to the Grand Jury, to commit an offense against the United States, that is, to knowingly and intentionally possess with intent to distribute and to distribute controlled substances, to wit: in excess of one (1) kilogram of a mixture or substance containing a detectable amount of heroin, a Schedule I, Narcotic Drug Controlled Substance and in excess of five (5) kilograms of a mixture or substance containing a detectable amount of cocaine, a Schedule II, Narcotic Drug Controlled Substance; in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(A), all in violation of 21 U.S.C. § 846.

All in violation of 18 U.S.C. § 1962(d).

COUNT TWO
(Conspiracy to Possess with Intent to Distribute a Controlled Substance)

Beginning on a date unknown, but no later than in or about the year 2005, and continuing up to and until the return of the instant Indictment, in the District of Puerto Rico and within the jurisdiction of this Court,

[1] AVELINO MILLAN-MACHUCA, a/k/a "Papito Machuca/El Fuerte/Viejo/Gordo",
[2] FERNANDO GARCIA-MARQUEZ, a/k/a "Fernan Sandwich/Emparedado/Fernan/Carlos Vega",
[3] CYNTHIA GONZALEZ-LANDRAU, a/k/a "La Cana/La Princesa/La Presidenta",
[4] ROLANDO MILLAN-MACHUCA, a/k/a "Rolo",
[5] ALEX PIÑERO-SOTOMAYOR, a/k/a "Cigüeña/Pajaro",
[6] MIGUEL RIVERA-CALCAÑO, a/k/a "Guelo/ Kikirimiau",
[7] ROBERTO CASADO-BERRIOS, a/k/a "Bobe/Bobel",
[8] IVAN AYALA-HERNANDEZ, a/k/a "Bambani/Bambo",
[9] GIORDANO SANTANA-MELENDEZ, a/k/a "Viejo Ten",
[10] CARLOS BAEZ-FIGUEROA, a/k/a "Carlitos Guaynabo",
[11] JOSE TRINIDAD-JORGE, a/k/a "Trini",
[12] ANGEL BERMUDEZ-CARTAGENA, a/k/a "Apache/El Doctor",
[13] JOSE CINTRON-MOJICA, a/k/a "Jowito",
[14] VICTOR SOLANO-MORETA, a/k/a "Caballo",
[15] JOSE CASTOIRE-SANCHEZ,
[16] LUIS AYUSO-WALKER, a/k/a "Buringo,
[17] JUAN LOZADA-DELGADO, a/k/a "Chino San Lorenzo",
[18] ANIBAL MIRANDA-MONTAÑEZ, a/k/a "Jowy",
[19] FREDDIE SANCHEZ-MARTINEZ, a/k/a "Casco",
[20] ANGEL CRUZ-BARRIENTOS, a/k/a "Diego/Cloche",
[21] ALEX MIGUEL CRUZ-SANTOS, a/k/a "Alex Cuquito",
[22] JOSE J. FOLCH-COLON, a/k/a "Joel Folch/Gordo Folch",
[23] BILLY ANDINO-DE-JESUS, a/k/a "Billy Cupey/Billy El Calvo",
[24] LUIS ROJAS-LLANOS, a/k/a "Cachorro/Kchorro",
[25] JUAN J. CLAUDIO-MORALES, a/k/a "Claudio Canales/Claudio El Gordo",
[26] EDUARDO ROSARIO-ORANGEL, a/k/a "Barba/Cholon",
[27] GEORGE TORRES-RODRIGUEZ, a/k/a "Gordo Comerio",
[28] LUIS H. QUIÑONEZ-SANTIAGO, a/k/a "Hiram",
[29] AUGUSTO CHRISTOPHER-LIND, a/k/a "Bengie Loiza",
[30] JOSE L. NIEVES-TORRES,
[31] LUIS D. RAMOS-BAEZ, a/k/a "Danny Power",
[32] ORLANDO RUIZ-ACEVEDO, a/k/a "Gordo Ponce",
[33] RAUL D. ROSARIO-MALDONADO, a/k/a "Davi/Davo",
[34] JUAN R. CRUZ-SANTANA, a/k/a "Roldan",
[35] JOSE MARRERO-FIGUEROA, a/k/a "Tito San Jose",
[36] RAMON MORALES-SAEZ, a/k/a "Moncho/Monchi",

[37] CARLOS SANTIAGO-RIVERA, a/k/a "Black/Blacky/El Negro",
[38] DAVID GONZALEZ-DE-LEON, a/k/a "Bebe Cupey",
[39] JOSE DIAZ-LOPEZ, a/k/a "Culo De Pollo",
[40] OSVALDO TORRES-SANTIAGO, a/k/a "Bombilla/Baldo/Baldito",
[41] JOSE VELAZQUEZ-MALDONADO, a/k/a "Batata",
[42] ROBERTO MARTINEZ-RIVERA, a/k/a "Matatan",
[43] JOSE SANCHEZ-LAUREANO, a/k/a "Veterano",
[44] JOSE GONZALEZ-GERENA, a/k/a "Perpetua",
[45] FRANCISCO TORRES-RODRIGUEZ, a/k/a "Kino",
[46] ANDRES DEL VALLE-ORTEGA, a/k/a "Randy/Andy Caimito",
[47] JOSE R. ANDINO-MORALES, a/k/a "Gladiola",
[48] JESUS P. O'NEILL-GOMEZ, a/k/a "Pastor",
[49] ANGEL I. DIAZ-SANTIAGO,
[50] PEDRO FONTANEZ-PEREZ,

the defendants herein, did knowingly and intentionally, combine, conspire, and agree with each other and with diverse other persons known and unknown to the Grand Jury, to commit an offense against the United States, that is, to knowingly and intentionally possess with intent to distribute and to distribute controlled substances, to wit: in excess of one (1) kilogram of a mixture or substance containing a detectable amount of heroin, a Schedule I, Narcotic Drug Controlled Substance; in excess of five (5) kilograms of a mixture or substance containing a detectable amount of cocaine, a Schedule II, Narcotic Drug Controlled Substance; and in excess of one-hundred (100) kilograms of a mixture or substance containing a detectable amount of marijuana, a Schedule I, Controlled Substance; in violation of 21 U.S.C. § 841(a)(1).

All in violation of 21 U.S.C. § 846.

COUNT THREE
(Violent Crime in Aid of Racketeering Activity)

Murder of Mario Montañez-Gomez, a/k/a "Emme"

The Enterprise

1. At various times relevant to this Indictment, [1] AVELINO MILLAN-MACHUCA, a/k/a "Papito Machuca/El Fuerte/Viejo/Gordo", [2] FERNANDO GARCIA-MARQUEZ, a/k/a "Fernan Sandwich/Emparedado/Fernan/Carlos Vega", [3] CYNTHIA GONZALEZ-LANDRAU, a/k/a "La Cana/La Princesa/La Presidenta", [4] ROLANDO MILLAN-MACHUCA, a/k/a "Rolo", [5] ALEX PIÑERO-SOTOMAYOR, a/k/a "Cigüeña/Pajaro", [6] MIGUEL RIVERA-CALCAÑO, a/k/a "Guelo/ Kikirimiau", [7] ROBERTO CASADO-BERRIOS, a/k/a "Bobe/Bobel", [8] IVAN AYALA-HERNANDEZ, a/k/a "Bambani/Bambo", [9] GIORDANO SANTANA-MELENDEZ, a/k/a "Viejo Ten", [10] CARLOS BAEZ-FIGUEROA, a/k/a "Carlitos Guaynabo", [11] JOSE TRINIDAD-JORGE, a/k/a "Trini", [12] ANGEL BERMUDEZ-CARTAGENA, a/k/a "Apache/El Doctor", [13] JOSE CINTRON-MOJICA, a/k/a "Jowito", [14] VICTOR SOLANO-MORETA, a/k/a "Caballo", [15] JOSE CASTOIRE-SANCHEZ, [16] LUIS AYUSO-WALKER, a/k/a "Buringo, [17] JUAN LOZADA-DELGADO, a/k/a "Chino San Lorenzo", [18] ANIBAL MIRANDA-MONTAÑEZ, a/k/a "Jowy", [19] FREDDIE SANCHEZ-MARTINEZ, a/k/a "Casco", [20] ANGEL CRUZ-BARRIENTOS, a/k/a "Diego/Cloche", [21] ALEX MIGUEL CRUZ-SANTOS, a/k/a "Alex Cuquito", [22] JOSE J. FOLCH-COLON, a/k/a "Joel Folch/Gordo Folch", [23] BILLY ANDINO-DE-JESUS, a/k/a "Billy Cupey/Billy El Calvo", [24] LUIS ROJAS-LLANOS, a/k/a "Cachorro/Kchorro", [25] JUAN J. CLAUDIO-MORALES, a/k/a "Claudio Canales/Claudio El Gordo", [26] EDUARDO ROSARIO-ORANGEL, a/k/a "Barba/Cholon", [27] GEORGE TORRES-RODRIGUEZ, a/k/a "Gordo Comerio", [28] LUIS H. QUIÑONEZ-SANTIAGO, a/k/a "Hiram", [29] AUGUSTO

CHRISTOPHER-LIND, a/k/a "Bengie Loiza", [30] JOSE L. NIEVES-TORRES, [31] LUIS D. RAMOS-BAEZ, a/k/a "Danny Power", [32] ORLANDO RUIZ-ACEVEDO, a/k/a "Gordo Ponce", [33] RAUL D. ROSARIO-MALDONADO, a/k/a "Davi/Davo", [34] JUAN R. CRUZ-SANTANA, a/k/a "Roldan", [35] JOSE MARRERO-FIGUEROA, a/k/a "Tito San Jose", [36] RAMON MORALES-SAEZ, a/k/a "Moncho/Monchi", [37] CARLOS SANTIAGO-RIVERA, a/k/a "Black/Blacky/El Negro", [38] DAVID GONZALEZ-DE-LEON, a/k/a "Bebe Cupey", [39] JOSE DIAZ-LOPEZ, a/k/a "Culo De Pollo", [40] OSVALDO TORRES-SANTIAGO, a/k/a "Bombilla/Baldo/Baldito", [41] JOSE VELAZQUEZ-MALDONADO, a/k/a "Batata", [42] ROBERTO MARTINEZ-RIVERA, a/k/a "Matatan", [43] JOSE SANCHEZ-LAUREANO, a/k/a "Veterano", [44] JOSE GONZALEZ-GERENA, a/k/a "Perpetua", [45] FRANCISCO TORRES-RODRIGUEZ, a/k/a "Kino", [46] ANDRES DEL VALLE-ORTEGA, a/k/a "Randy/Andy Caimito", [47] JOSE R. ANDINO-MORALES, a/k/a "Gladiola", [48] JESUS P. O'NEILL-GOMEZ, a/k/a "Pastor", [49] ANGEL I. DIAZ-SANTIAGO, and [50] PEDRO FONTANEZ-PEREZ, the defendants herein, and others known and unknown, were members and associates of a criminal organization whose members and associates engaged in narcotics distribution and acts of violence, including murder.

2. At various times relevant to this Indictment, the criminal organization, referred to as La Asociación Pro Derechos y Rehabilitación del Confinado, also known as La Asociación Pro Derechos de los Confinados, and La Asociación ÑETA (hereinafter referred to as La Asociación ÑETA or the "enterprise"), including its leadership, membership, and associates, constituted an "enterprise," as defined by 18 U.S.C. § 1959(b)(2), that is, a group of individuals associated in fact that engaged in, and the activities of which affected, interstate, and foreign commerce. The

enterprise constituted an ongoing organization whose members functioned as a continuing unit for a common purpose of achieving the objectives of the enterprise.

3. The enterprise, through its leadership, membership, and associates, engaged in racketeering activity, as defined in 18 U.S.C. §§ 1959(b)(1) and 1961(1), namely, drug trafficking, including cocaine, heroin, and marijuana in violation of the laws of the United States, that being, 21 U.S.C. §§ 841 and 846

Purposes of the Enterprise

4. The purposes of the enterprise included the following:

a. Enriching the members and associates of the enterprise through the distribution of narcotics, murder, and the trafficking of cellphones within the prisons of the PRDCR.

b. Preserving and protecting the power, territory, and profits of the enterprise through the use of intimidation, violence, threats of violence, and murder.

c. Concealing its activities by obstructing justice.

d. Promoting and enhancing the enterprise and its members' and associates' activities.

e. Keeping people in fear of the enterprise and in fear of its members and associates through threats of violence and murder.

Means and Methods of the Enterprise

5. Among the manner and means by which the defendants and co-conspirators conducted and participated in the conduct of the affairs of the enterprise were the following:

a. Members of the enterprise and their associates would act in different roles in order to further the goals of the enterprise.

b. Members of the enterprise and their associates would pool resources in order to accomplish criminal acts.

c. Members of the enterprise and their associates promoted a climate of fear through violence and threats of violence. They would commonly use and threaten to use physical violence against their rivals.

d. Members of the enterprise and their associates committed, attempted, and threatened to commit acts of violence to protect and expand the enterprise's criminal operations.

e. Members of the enterprise and their associates would use force, violence, and intimidation in order to discipline members of the enterprise.

f. Members of the enterprise were expected to follow the rules of the enterprise. Failure to follow certain rules could be punished by death. Namely, cooperation with law enforcement and stealing from the enterprise was punishable by death. Also, any command given by the Maximum Leadership had to be followed and the consequence of not following the same could result in death.

g. The Maximum Leadership would accept contracts to kill inmates on behalf of persons that were willing to pay for the murder. The Maximum Leadership would then order members to kill the inmate.

h. Members of the enterprise and their associates would purchase wholesale quantities of heroin, cocaine, and marijuana in order to distribute the same within the prisons of the PRDCR for profit. The Maximum Leadership would purchase wholesale quantities of drugs, introduced them into prison facilities in the PRDCR, and would order that the drugs be sold. Also, inmates would pay the enterprise a fee known as "el incentivo" (the incentive) for the privilege of being allowed to introduce drugs into the prison facility.

i. Members and associates of the enterprise would introduce cellular phones into the prison facilities of the PRPDCR and sell them for a profit. In addition, they would charge inmates a monthly fee, el "incentivo" (the incentive), for the use of the cellphone.

j. Members of the enterprise and their associates would introduce drugs into the prisons of the PRDCR with the help of corrupt PRDCR Correctional Officers, civilians that work inside of the prison system, people who visited inmates, and persons that from outside the prisons, threw the drugs into the facilities which are referred to as "pitcheos" (pitch-ins), which were caught by members of the enterprise. Members of the enterprise and their associates would bribe, that is pay, corrupt PRDCR Correctional Officers, who would introduce drugs into the prisons of the PRDCR to supply the enterprise.

k. Some of the money accumulated through the illicit activities of the enterprise went to "El Fondo" (the Fund) of La Asociación ÑETA, which is a common pool of money administered by the enterprise's leadership.

l. Members would use the money generated by the enterprise through drug trafficking and the trafficking of cellphones to throw parties inside of the prison facilities of the PRDCR for the members and their families.

On or about August 27, 2014, in the District of Puerto Rico, as consideration for the receipt of, and as consideration for a promise and an agreement to pay, a thing of pecuniary value from the enterprise, and for the purpose of gaining entrance to and maintaining and increasing position in the enterprise, an enterprise engaged in racketeering activity,

[8] IVAN AYALA-HERNANDEZ, a/k/a "Bambani/Bambo",
[19] FREDDIE SANCHEZ-MARTINEZ, a/k/a "Casco",
[29] AUGUSTO CHRISTOPHER-LIND, a/k/a "Bengie Loiza",
[38] DAVID GONZALEZ-DE-LEON, a/k/a "Bebe Cupey",
[42] ROBERTO MARTINEZ-RIVERA, a/k/a "Matatan",
[46] ANDRES DEL VALLE-ORTEGA, a/k/a "Randy/Andy Caimito",
[47] JOSE R. ANDINO-MORALES, a/k/a "Gladiola",

the defendants herein, aiding and abetting each other and others known and unknown, did intentionally, as that term is defined in Article 22 of the 2012 Puerto Rico Penal Code, murder Mario Montañez-Gomez, a/k/a "Emme", in violation of Articles 92 and 93 of the 2012 Puerto Rico Penal Code.

All in violation of 18 U.S.C. §§ 1959(a)(1) and 2.

COUNT FOUR
(Violent Crime in Aid of Racketeering Activity)

Murder of Alexis Rodriguez-Rodriguez, a/k/a "Alexis El Loco"

Paragraphs One through Five of Count Three of this Indictment are realleged and incorporated by reference as though set forth fully herein.

On or about November 6, 2014, in the District of Puerto Rico, as consideration for the receipt of, and as consideration for a promise and an agreement to pay, a thing of pecuniary value from the enterprise, and for the purpose of gaining entrance to and maintaining and increasing position in the enterprise, an enterprise engaged in racketeering activity,

[4] ROLANDO MILLAN-MACHUCA, a/k/a "Rolo",
[18] ANIBAL MIRANDA-MONTAÑEZ, a/k/a "Jowy",
[22] JOSE J. FOLCH-COLON, a/k/a "Joel Folch/Gordo Folch",
[40] OSVALDO TORRES-SANTIAGO, a/k/a "Bombilla/Baldo/Baldito",
[41] JOSE VELAZQUEZ-MALDONADO, a/k/a "Batata",
[44] JOSE GONZALEZ-GERENA, a/k/a "Perpetua",
[45] FRANCISCO TORRES-RODRIGUEZ, a/k/a "Kino",

the defendants herein, aiding and abetting each other and others known and unknown, did intentionally, as that term is defined in Article 22 of the 2012 Puerto Rico Penal Code, murder Alexis Rodriguez-Rodriguez, a/k/a "Alexis El Loco", in violation of Articles 92 and 93 of the 2012 Puerto Rico Penal Code.

All in violation of 18 U.S.C. §§ 1959(a)(1) and 2.

RICO FORFEITURE

The allegations contained in Count One of this Indictment are hereby repeated, realleged, and incorporated by reference herein as though fully set forth at length for the purpose of alleging forfeiture pursuant to the provisions of 18 U.S.C. § 1963 and 28 U.S.C. § 2461(c). Pursuant to Rule 32.2 of the Federal Rules of Criminal Procedure, notice is hereby given to the defendants that the United States will seek forfeiture as part of any sentence in accordance with 18 U.S.C. § 1963 in the event of any defendant's conviction under Count One of this Indictment.

The defendants,

[1] AVELINO MILLAN-MACHUCA, a/k/a "Papito Machuca/El Fuerte/Viejo/Gordo",
[2] FERNANDO GARCIA-MARQUEZ, a/k/a "Fernan Sandwich/Emparedado/Fernan/Carlos Vega",
[3] CYNTHIA GONZALEZ-LANDRAU, a/k/a "La Cana/La Princesa/La Presidenta",
[4] ROLANDO MILLAN-MACHUCA, a/k/a "Rolo",
[5] ALEX PIÑERO-SOTOMAYOR, a/k/a "Cigüeña/Pajaro",
[6] MIGUEL RIVERA-CALCAÑO, a/k/a "Guelo/ Kikirimiau",
[7] ROBERTO CASADO-BERRIOS, a/k/a "Bobe/Bobel",
[8] IVAN AYALA-HERNANDEZ, a/k/a "Bambani/Bambo",
[9] GIORDANO SANTANA-MELENDEZ, a/k/a "Viejo Ten",
[10] CARLOS BAEZ-FIGUEROA, a/k/a "Carlitos Guaynabo",
[11] JOSE TRINIDAD-JORGE, a/k/a "Trini",
[12] ANGEL BERMUDEZ-CARTAGENA, a/k/a "Apache/El Doctor",
[13] JOSE CINTRON-MOJICA, a/k/a "Jowito",
[14] VICTOR SOLANO-MORETA, a/k/a "Caballo",
[15] JOSE CASTOIRE-SANCHEZ,
[16] LUIS AYUSO-WALKER, a/k/a "Buringo,
[17] JUAN LOZADA-DELGADO, a/k/a "Chino San Lorenzo",
[18] ANIBAL MIRANDA-MONTAÑEZ, a/k/a "Jowy",
[19] FREDDIE SANCHEZ-MARTINEZ, a/k/a "Casco",
[20] ANGEL CRUZ-BARRIENTOS, a/k/a "Diego/Cloche",
[21] ALEX MIGUEL CRUZ-SANTOS, a/k/a "Alex Cuquito",
[22] JOSE J. FOLCH-COLON, a/k/a "Joel Folch/Gordo Folch",
[23] BILLY ANDINO-DE-JESUS, a/k/a "Billy Cupey/Billy El Calvo",
[24] LUIS ROJAS-LLANOS, a/k/a "Cachorro/Kchorro",
[25] JUAN J. CLAUDIO-MORALES, a/k/a "Claudio Canales/Claudio El Gordo",
[26] EDUARDO ROSARIO-ORANGEL, a/k/a "Barba/Cholon",
[27] GEORGE TORRES-RODRIGUEZ, a/k/a "Gordo Comerio",
[28] LUIS H. QUIÑONEZ-SANTIAGO, a/k/a "Hiram",
[29] AUGUSTO CHRISTOPHER-LIND, a/k/a "Bengie Loiza",

[30] JOSE L. NIEVES-TORRES,
[31] LUIS D. RAMOS-BAEZ, a/k/a "Danny Power",
[32] ORLANDO RUIZ-ACEVEDO, a/k/a "Gordo Ponce",
[33] RAUL D. ROSARIO-MALDONADO, a/k/a "Davi/Davo",
[34] JUAN R. CRUZ-SANTANA, a/k/a "Roldan",
[35] JOSE MARRERO-FIGUEROA, a/k/a "Tito San Jose",
[36] RAMON MORALES-SAEZ, a/k/a "Moncho/Monchi",
[37] CARLOS SANTIAGO-RIVERA, a/k/a "Black/Blacky/El Negro",
[38] DAVID GONZALEZ-DE-LEON, a/k/a "Bebe Cupey",
[39] JOSE DIAZ-LOPEZ, a/k/a "Culo De Pollo",
[40] OSVALDO TORRES-SANTIAGO, a/k/a "Bombilla/Baldo/Baldito",
[41] JOSE VELAZQUEZ-MALDONADO, a/k/a "Batata",
[42] ROBERTO MARTINEZ-RIVERA, a/k/a "Matatan",
[43] JOSE SANCHEZ-LAUREANO, a/k/a "Veterano",
[44] JOSE GONZALEZ-GERENA, a/k/a "Perpetua",
[45] FRANCISCO TORRES-RODRIGUEZ, a/k/a "Kino",
[46] ANDRES DEL VALLE-ORTEGA, a/k/a "Randy/Andy Caimito",
[47] JOSE R. ANDINO-MORALES, a/k/a "Gladiola",
[48] JESUS P. O'NEILL-GOMEZ, a/k/a "Pastor",
[49] ANGEL I. DIAZ-SANTIAGO,
[50] PEDRO FONTANEZ-PEREZ,

1. have acquired and maintained interests in violation of 18 U.S.C. § 1962, which interests are subject to forfeiture to the United States pursuant to 18 U.S.C. § 1963(a)(1);

2. have an interest in, security of, claims against, and property and contractual rights which afford a source of influence over, the enterprise named and described herein which the defendants established, operated, controlled, conducted, and participated in the conduct of, in violation of 18 U.S.C. § 1962, which interests, securities, claims, and rights are subject to forfeiture to the United States pursuant to 18 U.S.C. § 1963(a)(2);

3. have property constituting and derived from proceeds obtained, directly and indirectly, from racketeering activity, in violation of 18 U.S.C. § 1962, which property is subject to forfeiture to the United States pursuant to 18 U.S.C. § 1963(a)(3).

The interests of the defendants subject to forfeiture to the United States pursuant to 18 U.S.C. § 1963(a)(1), (a)(2), and (3), include but are not limited to at least $120,000,000.

If any of the property described above, as a result of any act or omission of a defendant,

1. cannot be located upon the exercise of due diligence;
2. has been transferred or sold to, or deposited with, a third party;
3. has been placed beyond the jurisdiction of the court;
4. has been substantially diminished in value; or
5. has been commingled with other property which cannot be divided without difficulty;

the court shall order the forfeiture of any other property of the defendants up to the value of any property set forth above.

The above-named defendants, and each of them, are jointly and severally liable for the forfeiture obligations as alleged above.

All pursuant to 18 U.S.C. § 1963.

NARCOTICS FORFEITURE ALLEGATION

The allegations contained in Count Two of this Indictment are hereby re-alleged and incorporated by reference for the purpose of alleging forfeitures pursuant to 21 U.S.C. § 853. Upon conviction of the offense in violation of 21 U.S.C. § 846, set forth in Count Two of this Indictment, the defendants,

[1] AVELINO MILLAN-MACHUCA, a/k/a "Papito Machuca/El Fuerte/Viejo/Gordo",
[2] FERNANDO GARCIA-MARQUEZ, a/k/a "Fernan Sandwich/Emparedado/Fernan/Carlos Vega",
[3] CYNTHIA GONZALEZ-LANDRAU, a/k/a "La Cana/La Princesa/La Presidenta",
[4] ROLANDO MILLAN-MACHUCA, a/k/a "Rolo",
[5] ALEX PIÑERO-SOTOMAYOR, a/k/a "Cigüeña/Pajaro",
[6] MIGUEL RIVERA-CALCAÑO, a/k/a "Guelo/ Kikirimiau",
[7] ROBERTO CASADO-BERRIOS, a/k/a "Bobe/Bobel",
[8] IVAN AYALA-HERNANDEZ, a/k/a "Bambani/Bambo",
[9] GIORDANO SANTANA-MELENDEZ, a/k/a "Viejo Ten",
[10] CARLOS BAEZ-FIGUEROA, a/k/a "Carlitos Guaynabo",
[11] JOSE TRINIDAD-JORGE, a/k/a "Trini",

[12] ANGEL BERMUDEZ-CARTAGENA, a/k/a "Apache/El Doctor",
[13] JOSE CINTRON-MOJICA, a/k/a "Jowito",
[14] VICTOR SOLANO-MORETA, a/k/a "Caballo",
[15] JOSE CASTOIRE-SANCHEZ,
[16] LUIS AYUSO-WALKER, a/k/a "Buringo,
[17] JUAN LOZADA-DELGADO, a/k/a "Chino San Lorenzo",
[18] ANIBAL MIRANDA-MONTAÑEZ, a/k/a "Jowy",
[19] FREDDIE SANCHEZ-MARTINEZ, a/k/a "Casco",
[20] ANGEL CRUZ-BARRIENTOS, a/k/a "Diego/Cloche",
[21] ALEX MIGUEL CRUZ-SANTOS, a/k/a "Alex Cuquito",
[22] JOSE J. FOLCH-COLON, a/k/a "Joel Folch/Gordo Folch",
[23] BILLY ANDINO-DE-JESUS, a/k/a "Billy Cupey/Billy El Calvo",
[24] LUIS ROJAS-LLANOS, a/k/a "Cachorro/Kchorro",
[25] JUAN J. CLAUDIO-MORALES, a/k/a "Claudio Canales/Claudio El Gordo",
[26] EDUARDO ROSARIO-ORANGEL, a/k/a "Barba/Cholon",
[27] GEORGE TORRES-RODRIGUEZ, a/k/a "Gordo Comerio",
[28] LUIS H. QUIÑONEZ-SANTIAGO, a/k/a "Hiram",
[29] AUGUSTO CHRISTOPHER-LIND, a/k/a "Bengie Loiza",
[30] JOSE L. NIEVES-TORRES,
[31] LUIS D. RAMOS-BAEZ, a/k/a "Danny Power",
[32] ORLANDO RUIZ-ACEVEDO, a/k/a "Gordo Ponce",
[33] RAUL D. ROSARIO-MALDONADO, a/k/a "Davi/Davo",
[34] JUAN R. CRUZ-SANTANA, a/k/a "Roldan",
[35] JOSE MARRERO-FIGUEROA, a/k/a "Tito San Jose",
[36] RAMON MORALES-SAEZ, a/k/a "Moncho/Monchi",
[37] CARLOS SANTIAGO-RIVERA, a/k/a "Black/Blacky/El Negro",
[38] DAVID GONZALEZ-DE-LEON, a/k/a "Bebe Cupey",
[39] JOSE DIAZ-LOPEZ, a/k/a "Culo De Pollo",
[40] OSVALDO TORRES-SANTIAGO, a/k/a "Bombilla/Baldo/Baldito",
[41] JOSE VELAZQUEZ-MALDONADO, a/k/a "Batata",
[42] ROBERTO MARTINEZ-RIVERA, a/k/a "Matatan",
[43] JOSE SANCHEZ-LAUREANO, a/k/a "Veterano",
[44] JOSE GONZALEZ-GERENA, a/k/a "Perpetua",
[45] FRANCISCO TORRES-RODRIGUEZ, a/k/a "Kino",
[46] ANDRES DEL VALLE-ORTEGA, a/k/a "Randy/Andy Caimito",
[47] JOSE R. ANDINO-MORALES, a/k/a "Gladiola",
[48] JESUS P. O'NEILL-GOMEZ, a/k/a "Pastor",
[49] ANGEL I. DIAZ-SANTIAGO,
[50] PEDRO FONTANEZ-PEREZ,

shall forfeit to the United States pursuant to 21 U.S.C. § 853, any property constituting, or derived from, proceeds obtained, directly or indirectly, as a result of said violation and any

property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of said violation, including but not limited to the following: $120,000,000.

If any of the property described above, as a result of any act or omission of a defendant,

1. cannot be located upon the exercise of due diligence;
2. has been transferred or sold to, or deposited with, a third party;
3. has been placed beyond the jurisdiction of the court;
4. has been substantially diminished in value; or
5. has been commingled with other property which cannot be divided without difficulty;

the United States of America shall be entitled to forfeiture of substitute property pursuant to 21 U.S.C. § 853(p).

All pursuant to 21 U.S.C. § 853.

TRUE BILL,
FOREPERSON

Date: 9/May/2016

ROSA EMILIA RODRIGUEZ-VELEZ
United States Attorney

Timothy Henwood
First Assistant United States Attorney

Victor O. Acevedo-Hernandez
Assistant United States Attorney

Jenifer Y. Hernandez-Vega
Assistant United States Attorney
Chief, Violent Crimes and RICO Unit

UNITED STATES DISTRICT COURT
DISTRICT PUERTO RICO

UNITED STATES of AMERICA	**Criminal No. 16-00282-TSH**
v.	
JOSE J. FOLCH-COLON, a/k/a "Joel Folch/Gordo Folch," [22], Defendant.	

Received & filed
April 12, 2019 5:35 PM
AF

VERDICT FORM

COUNT ONE: As to Count One charging violation of the Racketeer Influenced and Corrupt Organization Act ("RICO"), we the jury unanimously find the Defendant Jose Folch-Colon:

_____ Not Guilty _X_ Guilty

COUNT TWO: As to Count Two charging Conspiracy to Possess with Intent to Distribute a Controlled Substance, we the jury unanimously find the Defendant Jose Folch-Colon:

_____ Not Guilty _X_ Guilty

Only make the following findings if you have found the Defendant Jose Folch-Colon Guilty as to COUNT ONE (RICO Violation) and/or Count TWO (Conspiracy to Possess with Intent to Distribute and to Distribute a Controlled Substance), otherwise proceed to Count Four.

We, the jury, unanimously make the following findings as to Defendant Jose Folch-Colon:

How much heroin did the conspiracy involve? (Select One)

__X__ One (1) kilogram or more
_____ Less than one (1) kilogram
_____ Less than on hundred (100) grams
_____ None

How much cocaine did the conspiracy involve? (Select One)

_____ Five (5) kilograms or more
__X__ Less than five (5) kilograms
_____ Less than five hundred (500) grams
_____ None

How much marijuana did the conspiracy involve? (Select One)

_____ One-Hundred (100) kilograms or more
_____ Less than One-Hundred (100) kilograms
__X__ Less than fifty (50) kilograms
_____ None

COUNT FOUR: As to Count Four, commission of a Violent Crime in aid of RICO Activity, we, the jury, unanimously find that the Defendant Jose Folch-Colon as part of the racketeering conspiracy, committed or knowingly participated in committing the murder of Alexis Rodriguez-Rodriguez a/k/a "Alexis El Loco" on or about November 6, 2014:

_____ No __X__ Yes

Your deliberations are complete. Please notify the court security officer in writing that you have reached a verdict.

FOREPERSON: [redacted] DATE: April 12, 2019

AO 245B (Rev. 02/18) Judgment in a Criminal Case
Sheet 1

UNITED STATES DISTRICT COURT

District of Puerto Rico

UNITED STATES OF AMERICA
v.
Jose Juan FOLCH-COLON

JUDGMENT IN A CRIMINAL CASE

Case Number: 3:16-CR-0282-022 (TSH)

USM Number: 46627-069

Laura Maldonado-Rodriguez, Esq.
Defendant's Attorney

THE DEFENDANT:

☐ pleaded guilty to count(s) _____

☐ pleaded nolo contendere to count(s) _____ which was accepted by the court.

☑ was found guilty on count(s) One (1), Two (2) and Four (4) on April 12, 2019 after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 USC § 1962(d) and 1963(a)	Racketeer Influenced and Corrupt Organizations Act.	5/9/2016	One (1)
21 USC § 841(a)(1) and 846	Conspiracy to possess with intent to distribute a controlled substance.	5/9/2019	Two (2)
18 U.S.C. § 1959(a)(1)	Murder in Aid of RICO Activity.	5/9/2019	Four (4)

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

11/21/2019
Date of Imposition of Judgment

S/ TIMOTHY S. HILLMAN
Signature of Judge

Timothy S. Hillman, U.S. District Judge
Name and Title of Judge

11/21/2019
Date

AO 245B (Rev. 02/18) Judgment in Criminal Case
Sheet 2 — Imprisonment

DEFENDANT: Jose Juan FOLCH-COLON
CASE NUMBER: 3:16-CR-0282-022 (TSH)

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:

Life as to all counts 1, 2, and 4 to be served concurrently with each other, and concurrently with the terms imposed at state level with credit for time served while in federal jurisdiction in connection with the instant case.

☑ The court makes the following orders and recommendations to the Bureau of Prisons:

It was recommended that this defendant be allowed to remain under the custody of the Puerto Rico Department of Corrections.

☑ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____ .

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____ .

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____ , with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

AO 245B (Rev. 02/18) Judgment in a Criminal Case
Sheet 3 — Supervised Release

DEFENDANT: Jose Juan FOLCH-COLON
CASE NUMBER: 3:16-CR-0282-022 (TSH)

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of :

Five (5) years as to each count 1, 2, and 4 to be served concurrently with each other, and under the following terms and conditions:

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
   - ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☐ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☑ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq*.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

DEFENDANT: Jose Juan FOLCH-COLON
CASE NUMBER: 3:16-CR-0282-022 (TSH)

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____ Date _____

DEFENDANT: Jose Juan FOLCH-COLON
CASE NUMBER: 3:16-CR-0282-022 (TSH)

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall participate in transitional and reentry support services, including cognitive behavioral treatment services, under the guidance and supervision of the Probation Officer. The defendant shall remain in the services until satisfactorily discharged by the service provider with the approval of the Probation Officer.

2. The defendant shall provide the U.S. Probation Officer access to any financial information upon request.

3. The defendant shall cooperate in the collection of a DNA sample as directed by the Probation Officer, pursuant to the Revised DNA Collection Requirements, and Title 18, U.S. Code Section 3563 (a)(9).

4. The defendant shall submit his person, property, house, vehicle, papers, computers (as defined in 18 U.S.C. Section 1030(e)(1)), other electronic communication or data storage devices, and media, to a search conducted by a United States Probation Officer at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of release. Failure to submit to a search may be grounds for revocation of release. The defendant shall warn any other occupants that the premises may be subject to searches pursuant to this condition.

5. The defendant shall participate in a program or course of study aimed at improving educational level and/or complete a vocational training program. In the alternative, he shall participate in a job placement program recommended by the Probation Officer.

6. The defendant shall cooperate with child support enforcement authorities and/or pay child support as required by Law.

DEFENDANT: Jose Juan FOLCH-COLON
CASE NUMBER: 3:16-CR-0282-022 (TSH)

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	JVTA Assessment*	Fine	Restitution
TOTALS	$ 300.00	$ 0.00	$ 0.00	$ 0.00

☐ The determination of restitution is deferred until _____ . An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss**	Restitution Ordered	Priority or Percentage

TOTALS $ 0.00 $ 0.00

☐ Restitution amount ordered pursuant to plea agreement $ _____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.
** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Jose Juan FOLCH-COLON
CASE NUMBER: 3:16-CR-0282-022 (TSH)

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

A ☑ Lump sum payment of $ 300.00 due immediately, balance due

☐ not later than _____, or
☐ in accordance with ☐ C, ☐ D, ☐ E, or ☐ F below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $ _____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after the date of this judgment; or

D ☐ Payment in equal _____ *(e.g., weekly, monthly, quarterly)* installments of $ _____ over a period of _____ *(e.g., months or years)*, to commence _____ *(e.g., 30 or 60 days)* after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ *(e.g., 30 or 60 days)* after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers *(including defendant number)*, Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) JVTA assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.

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

UNITED STATES OF AMERICA, Plaintiff,	*	
v.	*	CRIMINAL NO. 16-282 (TSH)
JOSE JUAN FOLCH COLON, Defendant.	*	

NOTICE OF APPEAL

TO THE HONORABLE TIMOTHY S. HILLMAN,
JUDGE OF THE UNITED STATES DISTRICT COURT
VISITING THE DISTRICT OF PUERTO RICO.

COMES NOW the defendant, JOSE JUAN FOLCH COLON, through his undersigned attorney and respectfully informs that the he has requested that an appeal be taken to the United States Court of Appeals for the First Circuit, to challenge all aspects of his conviction and the sentence imposed by the United States District Court for the District of Puerto Rico, Hon. Timothy S. Hillman, presiding.

RESPECTFULLY REQUESTED.

In San Juan, Puerto Rico this 26th day of November, 2019.

S/Laura Maldonado Rodriguez
Laura Maldonado Rodríguez
USDC-PR 205701
P.O. BOX 11533
SAN JUAN, P.R. 00922-1533
TEL. (787) 413-7771

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that this MOTION was filed through the CM/ECF system. The U.S. Attorney's Office for the District of Puerto Rico is designated as the party to be notified through the system.

In San Juan, Puerto Rico this 26th day of November, 2019.

S/ Laura Maldonado Rodriguez
LAURA MALDONADO RODRIGUEZ
USDC-PR 205701
lmr7771@aol.com
P. O. BOX 11533
SAN JUAN, P. R. 00922-1533
T. 787-413-7771