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SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
CRIMINAL DIVISION - FELONY BRANCH  
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SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
CRIMINAL DIVISION - FELONY BRANCH

UNITED STATES OF AMERICA	:	Crim. No. F-2940-98;
	:	F-4375-98,
v.	:	F-2332-98
	:	
	:	
OSCAR VILLATORO,	:	
JOSE SALAMANCA,	:	
SANTOS FELIPE BONILLA,	:	
Defendants	:	Judge Abrecht
	:	(Closed Case)
	:	Hearing: December 19, 2005

**GOVERNMENT'S RESPONSE TO COURT'S REQUEST FOR  
ADDITIONAL BRIEFING**

The United States, by and through its attorney, the United States Attorney for the District of Columbia, makes the following response to the Court's request for additional briefing:

**1. Re: Admissibility of Bad Acts for Impeachment of Credibility and Bias  
Cross-Examination**

A case from another jurisdiction directly addresses some of the Court's questions regarding the admissibility of a witness's illegal immigration status for impeachment/cross-examination purposes. While this case is not controlling, we urge the Court to adopt the persuasive reasoning used by the Court of Appeals of Georgia in Lemons v. State, 608 S.E. 2d 15 (Ga. App. 2004).

In Lemons, the trial court precluded the defense from cross-examining 2 of 4 kidnaping/robbery victims about their illegal immigration status and any possible hope of benefit they might

have thought they could gain by testifying on behalf of the state. The record showed that the state made no promises or offers to assist the victims with their immigration status and the victims had not asked for any assistance in exchange for their testimony. In addition, the record indicated that no immigration proceedings were pending against the witnesses at the time they testified. The Georgia Court of Appeals concluded that

even if we assume that the trial court should have allowed defense counsel to cross-examine the victims about their immigration status and any subjective belief they might have had that testifying for the state might have somehow have benefitted them...We find it highly probable that the outcome of [defendant's] trial would not have been different....The evidence against [defendant] was overwhelming, there had been no discussions between the state and the victims about assistance with their immigration status, and there were no pending immigration proceedings against the victims. As no harm could have resulted from the trial court's limitation of Lemons' cross-examination, we find no merit in this enumeration.

Lemons v. State, supra, 608 S.E. 2d at 21.

In addition, the trial court in Lemons did not allow the defense to cross-examine a witness about that witness's lie under oath about his immigration status. The witness first he said he was a citizen and then he retracted that statement. The Georgia Court of Appeals reasoned that there was no error in limiting cross-examination into this issue "since the witness's **immigration** status was **not relevant** to whether he was robbed by [defendant]." Lemons v. State, supra, 608 S.E. 2d at 21 (emphasis added).<sup>1</sup>

## 2. Likelihood of Prosecution for Fraud

There is no possibility that Ms. Garcia will be prosecuted for any possible false

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<sup>1</sup> We submit that Lemons is consistent with the rationale of United States v. Wong, 78 F.3d 73, 79-80 (2<sup>nd</sup> Cir. 1996), which we have cited previously.

statements regarding her immigration status and for producing false documents in 1998 because such a prosecution would be barred by the applicable statute of limitations. See D.C. Code §23-113(a)(4). The United States will provide further information at the December 19 hearing concerning the likelihood that someone in Ms. Garcia's position would have been prosecuted for these crimes if the statute of limitations had not expired.

### **3. Chronology and Potential Bias in Rosa Garcia's Subjective Beliefs Regarding Her Status**

The government expects to show that, as we have previously represented, there is no evidence that the government ever promised or discussed with Ms. Garcia any benefits regarding her immigration status prior to her testimony at the defendants' trial in 1998. However, in its request for additional briefing, the Court reasoned that "it could be argued that Ms. Garcia may have subjectively believed that she needed to help the government in order to avoid deportation or prosecution. In the Court's view, the most important aspect of the Brady question is Garcia's personal view of her situation." (Court's Request at p.3).

After exploring the issue of her subjective beliefs with Ms. Garcia, the government expects the evidence at the hearing to indicate that Ms. Garcia remembers having had one brief conversation about her immigration status with a government agent. After Ms. Garcia had testified at the trial, she was being driven from the area of the courthouse by a police detective (M.P.D. Detective Gainey) and Ms. Garcia believes she asked detective Gainey if the government could help her with immigration status. The detective told her that they would talk about it later but, Ms. Garcia indicates, there was no subsequent conversation about her

immigration status until she became involved in the Navarette prosecution in 2003.<sup>2</sup>

We expect that the hearing will show that Ms. Garcia testified at defendant's trial not out of her subjective expectation of help from the government but because of the concerns she expressed on cross-examination.<sup>3</sup> In response to the argument that Ms. Garcia may have subjectively felt at some point that she needed to help the government in order to help her own immigration situation, we submit that the Court should look to whether the existing record corroborates Ms. Garcia's testimony. Initially, we submit that whatever Ms. Garcia's subjective beliefs may have been at the time of trial, her trial testimony was consistent with her statements to the police on the day of the murder and before the grand jury two days later. Moreover, along with the corroborating evidence we have previously cited, the following statements corroborate Ms. Garcia:

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<sup>2</sup> Gainey, now retired, has no memory of any such conversation with Ms. Garcia, or of ever driving Ms. Garcia. He is available to testify if necessary.

<sup>3</sup> MS. GARCIA: ...I asked Detective Torres to —to brought me here. That I wanted to tell the truth and nothing but the truth because I wanted the person that did everything to be guilty of it. The person that killed the black male to be in jail.

Because it's not fair that an innocent person die for nothing he didn't do. Just for trying to —trying to stop a fight between a homeless guy and a bunch of other people.

That concerned me because I have four kids and if one day my kids became homeless or I got a kid that goes out to a disco, drinks or have fun, I don't want nothing to happen to them. And I'm going to feel the same way as the lady, the mother of the poor man dead, feels. And I know I'm going to feel the same way because I'm a mother of four kids.

(Tr. 388-89).

a) in the hours just after the homicide and prior to Ms. Garcia coming forward, the government videotaped a statement from Jose Perez, in which he described the murder of Warren Helm. Perez's testimony in the grand jury later that week, and subsequently at trial, implicated the defendants, including his own brother (defendant Luis Perez);

b) also in the hours just after the homicide and prior to Ms. Garcia coming forward, the government videotaped a statement from defendant Carlos Robles, who described the murder of Warren Helm and his own role in it;

c) when he was arrested on March 21, 1998, defendant Villatoro gave a videotaped statement in which he described the beating of the homeless man and the murder of Warren Helm, including the fact that Bonilla drove the stabbers and that he himself kicked the decedent after he had been stabbed; and

4) after his arrest on March 27, 1998, defendant Bonilla gave a videotaped statement, portions of which were played at trial, in which he admitted driving the stabbers to and from the scene of the murder and that he saw the stabbers' knives when they entered his car.<sup>4</sup>

Thus, we submit that, even if the Court were to find that Ms. Garcia had a subjective belief that, by the time of trial, she needed to help the government to help herself, the record does not indicate that this subjective belief influenced her testimony in favor of the government. Therefore, even assuming arguendo that Ms. Garcia had such a subjective belief, the defendants cannot show that they were prejudiced and their motions should be denied after the evidentiary hearing.

Respectfully submitted,

KENNETH WAINSTEIN.  
UNITED STATES ATTORNEY

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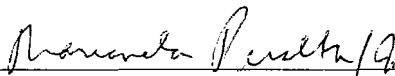
<sup>4</sup> The government will make these previously disclosed statements available again to the Court upon request.



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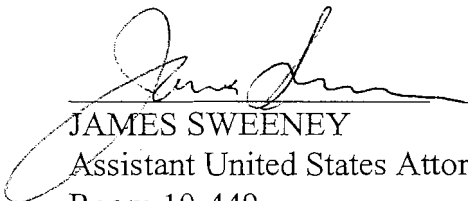
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing notice of filing has been served by mail on this 12<sup>h</sup> day of December, 2005 on:

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