

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CRIMINAL DIVISION – FELONY BRANCH**

UNITED STATES,

vs.

SANTOS F. BONILLA.

No. F 2332-98

Hon. Mary E. Abrecht

(Closed Case)

**MOTION TO VACATE CONVICTION AND SET ASIDE
SENTENCE PURSUANT TO D.C. CODE § 23-110**

Movant Santos F. Bonilla, through undersigned counsel, respectfully moves the Court, pursuant to D.C. Code § 23-110, to vacate his conviction and order a new trial.

Despite a pretrial request from defense counsel for information concerning government witnesses who provided exculpatory evidence, whose ability to observe was impaired, or who had lied to police, the prosecutor withheld information concerning Rosa Garcia, a key government witness. *Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2^d 215 (1963). Several witnesses had told the prosecutor that Garcia drank heavily during the hours preceding the crimes charged and that she left the area before they occurred. Recently the government disclosed for the first time that in the early days of the investigation police determined that Garcia lied about her immigration status.

Garcia was a key government witness against Mr. Bonilla, and overall the case against him was weak. The *Brady* violations caused significant prejudice to Mr. Bonilla's defense.

STATEMENT OF THE CASE

Mr. Bonilla was arrested March 27, 1998 on a warrant charging him with second-degree murder while armed in violation of D.C. Code §§ 22-2403 and 22-3202. The government filed a superceding indictment July 14, 1998 charging assault in violation of D.C. Code § 22-504 (Count D), first-degree premeditated murder while armed in violation of D.C. Code §§ 22-2401 and 22-3202 (Count F), and conspiracy to assault and to murder Warren Helm in violation of D.C. Code §§ 22-105a, 22-2401 and 22-3202 (Count E). Among the overt acts Mr. Bonilla was

charged with committing was assaulting an unidentified homeless man outside the Diversite Club on 14th Street, N.W. and, when Helm intervened to help the homeless man, redirecting his attack on Helm and three companions. It accused Mr. Bonilla, Carlos Robles-Benevides, Douglas Ventura and Walter Velasquez of getting into a car and chasing Helm, discussing how they would attack him as they traveled up 14th Street.¹ Once they reached Helm, the indictment states, Mr. Bonilla participated in the assault that resulted in the victim's death. Finally, the indictment states that Mr. Bonilla transported Velasquez away from the crime scene.

Jury selection for the trial of Mr. Bonilla and four co-defendants, Robles, José Salamanca, Luis Perez and Oscar Villatoro, began October 26, 1998. At the conclusion of the government's case the Court dismissed Count D charging Mr. Bonilla with assaulting the homeless person because the government had presented no evidence to support the charge. The jury returned a verdict of guilty on the conspiracy and first-degree murder charges November 6, 1998. The Court sentenced Mr. Bonilla January 26, 1999 to 30 years to life in prison for first-degree murder while armed and 20 to 60 months in prison for conspiracy. The two sentences were concurrent.

Bonilla filed a Motion for New Trial pursuant to D.C. Crim. R. 33, and the government filed an opposition to it. The motion included a claim that the government violated its disclosure obligations under *Brady, supra*, by withholding statements of several witnesses who told the prosecutor that Garcia drank heavily at Diversite and left the club with them in a taxi before the homicide. At the sentencing hearing the Court denied the Rule 33 motion verbally, without making any findings.

Mr. Bonilla filed a timely Notice of Appeal February 19, 1999.

Mr. Bonilla filed a second motion pursuant to Rule 33 November 5, 2001, citing newly-discovered evidence and arguing that the trial prosecutor abused the Grand jury's subpoena power to compel witnesses to appear repeatedly for interviews in the weeks after the homicide,

¹ The government introduced no evidence admissible against Mr. Bonilla that he participated in or was present during such a discussion.

that he coerced one witnesses, Hugo Aleman, to testify falsely about Mr. Bonilla's involvement in the crime, and that he withheld exculpatory evidence concerning Aleman's intoxication and prior contradictory statements about the crime. The government opposed Mr. Bonilla's new trial motion. Attached to its Opposition was an affidavit from the trial prosecutor, Anthony Asuncion, denying that he coerced Aleman, but not addressing his use of grand jury subpoenas or the asserted *Brady* violations.

This Court concluded that the prosecutor used grand jury subpoenas to compel witnesses to appear at his office repeatedly to be interviewed. It recast the main claim raised in the motion as an inquiry into the validity of Aleman's post-trial recantation of his grand jury testimony and ordered a hearing to assess the credibility of Aleman and Asuncion, but refused to consider the *Brady* violations. It invited Co-Appellants' counsel to participate in the hearing. All five defendants filed a joint supplemental reply to the government's opposition to the new trial motion.

At the beginning of the June 18, 2002 hearing on the new trial motion, counsel objected to limitations the Court placed on the scope of the hearing beyond the validity of Aleman's recantation. The Trial Court directed the government to determine whether investigators' notes included any *Brady* information. In the second day of the hearing, July 3, 2002, Aleman completed his testimony and the government called Asuncion as its witness. Asst. U.S. Attorney James Sweeney, who represented the government in post-trial proceedings, informed the Court that he had reviewed case files and determined that they contained no *Brady* material which had not been disclosed to trial counsel. After the hearing Appellant submitted a supplemental final argument. In an order filed October 10, 2002 the Court denied Mr. Bonilla's new trial motion.

Mr. Bonilla filed a timely Notice of Appeal from denial of the motion on November 8, 2002. R.

In early February 2005 the government disclosed to Mr. Bonilla, his four codefendants and the D.C Court of Appeals that it had withheld from the defense information obtained long before trial that Garcia lied to police about her immigration status. *See Addendum A*. The Court

of Appeals heard oral argument in this case less than a week later, and at the request of Mr. Bonilla and three of his co-appellants, ordered a limited remand for this Court to consider *Brady* violations related to Garcia.

STATEMENT OF FACTS

OVERVIEW

According to testimony at the trial, early in the morning March 15, 1998, after an altercation in the Diversite Club, 1526 14th Street, N.W., the club closed. As the club's Latino patrons left, some of them attacked an elderly, homeless, black man outside. Four young black men driving north on 14th Street saw the attack and stopped to help the homeless man. As they approached on foot the assailants turned on them and they fled. Three of the young black men returned to the car, but the fourth, Warren Helm, ran north on 14th Street with several Latino men in pursuit. Some of the people who had attacked the homeless man pelted the car with rocks and bottles and one of them used a screwdriver-like object to stab a passenger in the car in the hand. The car, with its three occupants drove off and did not return to the area for several minutes.

Unlike his codefendants who had been drinking and dancing at Diversite for several hours before it closed, Mr. Bonilla had taken his girlfriend out for dinner. He took her home to Virginia and en route to his home in Silver Spring stopped at the club at about 2:30 a.m., had a soda, and bought drinks for some friends. When the club closed Mr. Bonilla offered José Salamanca, who had been drinking heavily, a ride to his home at 14th and W Streets, N.W., and Salamanca sat in the front passenger seat of his car. Before they drove away Robles, Velasquez (Catinga) and Ventura asked for rides and got in the back seat. Mr. Bonilla began driving north on 14th Street, and one of his back-seat passengers shouted to stop after about 2 ½ blocks. The three back-seat passengers exited the car leaving both rear doors open. Mr. Bonilla left the car to close the rear doors and when he returned to the driver's seat he was in a line of cars waiting for the traffic light at the next corner to turn green. Before he began moving again Velasquez, armed with a knife, returned to the car and ordered him to drive to La Triviada, a gambling hall.

The government called four witnesses who had been in the club and who claimed to have seen the assaults on the homeless man and Helm: Garcia (China), José Perez (Chino or Chinito), Aleman (Loco Hugo), and José Benitez (Chofer), who testified under a plea agreement. Three of the defendants testified, including Mr. Bonilla, and the defense called the club's security chief and a witness who had been in the club with Garcia and several other friends.

THE GOVERNMENT'S CASE

ROSA GARCIA'S TESTIMONY

Rosa Garcia testified that she arrived at the club at about 11 p.m. March 14 and was with friends, Mayra Rivera, Sendy Leonzo, Blanca Buruca, and José Guevera,² Blanca's boyfriend. Tr. 10/27/98, 341. She saw some of the men flashing signs of two gangs, MS and Mara R, but the only member of Mara R she saw flashing a sign was Oscar Villatoro (Gato). *Id.* at 342. A fight broke out in the club and it closed at about 3 a.m. *Id.* at 341, 382. Outside she saw Villatoro arguing with a homeless black man across 14th Street. *Id.* at 347. Garcia testified that she walked north on 14th Street with Rivera, Leonzo, Buruca and Guevera, and did not pay any further attention to the altercation involving the homeless man.

As they walked past a laundromat, she said, "I heard some noise, a black male saying no, no, no. And that's when I looked back and I saw 'Catinga' stabbing the black male." *Id.* at 348. Garcia said on direct examination that she was not sure what street she was at and indicated it might have been R Street. But on cross-examination she testified that she was at Swann Street before she heard the black male voice. *Id.* at 386. She said Ventura was "hitting, punching and kicking the black male."³ *Id.* at 350. Garcia identified Mr. Bonilla as "Manotas," and when asked what he was doing during the attack on the homicide victim the following discussion occurred:

A. I cannot really remember. But that I know of, I think he was doing the same thing (kicking and punching).

² His street name is Chino, but he should not be confused with José Perez, also called Chino.

³ Garcia testified in the grand jury that Aleman was standing near the attackers and later said, "I didn't have a conversation with him, but everybody else did — everybody else in the pictures. They did, and they said that he was punching and kicking him too." Garcia claimed she was present during these conversations. GJ Tr. 3/17/98, 18. She later testified that Aleman admitted involvement in the attack on Helm. *Id.* at 21.

Q. Okay. But I only want you to tell the ladies and gentlemen of the jury what you remember seeing with your own eyes, okay?

A. I remember seeing with my own eyes he was inside a car with four doors open waiting for the men that stabbed the black male.

Id. at 356 – 7. She then listed the people who were involved in the assault, including Benitez, Villatoro, Ventura, Chupa Cabra⁴ and others she could not provide names for, but not Mr. Bonilla. *Id.* at 357 – 8. Garcia admitted that she had trouble seeing what was going on because she was not wearing her glasses and she was squinting to try and see. *Id.* at 358 – 9.

On cross-examination Garcia denied that she drank any alcoholic beverages while at the Diversite Club. Tr. 10/27/98, 361. According to Garcia, she and her friends had walked past the 1800 block of 14th Street before she noticed anything happening, and then she noticed only because she heard “the black male voice saying no, no.” *Id.* at 385.

HUGO ALEMAN’S TESTIMONY

Aleman testified that in March 1998 he was a busboy at La Trumpeta, a restaurant. Tr. 10/28/98, 546. He went to the Diversite Club after work the night of the homicide, but he had been drinking before he got there. *Id.* at 547. When a fight broke out inside the club, he left and stood outside. *Id.* at 548. He eventually saw some people “running as if they were looking for something toward 14th and U.” *Id.*

Aleman did not recall seeing an assault on a homeless man, saying he had a lot to drink and did not recall where he was. The prosecutor then impeached him with his grand jury testimony, in which he said he saw Luis Perez hit the homeless man. *Id.* at 550.

A black car arrived and a black man got out of it, and when “some youngsters” threw bottles at the car it left the man behind, he testified. *Id.* at 550 – 1. Aleman said he then saw some “youngsters,” including Luis Perez, Wilmer and Oscar Villatoro, leave on foot and others, including Velasquez, Salamanca and Ventura, leave in a red car with Velasquez driving. *Id.* at 551. The prosecutor again impeached him with his grand jury testimony, in which he said Bonilla was in the car as well. *Id.* at 552. He testified at trial that when the two groups reached Helm, “I saw

⁴ Chupa Cabra is Wilmer Villatoro, Oscar’s brother.

they were fighting. But I was far back. I was about a couple of blocks back.” *Id.*

The prosecutor then asked what the witness saw each defendant do and when he asked about the first, Luis Perez, Aleman repeated “I don’t know. They hit the black man. I was far back. I couldn’t see. I had drunk. I don’t know. They were all like huddled up in a pile. I don’t know who hit and who injured.” *Id.* at 553. The prosecutor again turned to the grand jury transcript, reading:

“ ‘Chofer’, he was hitting him. ‘Cholo’, him too, ‘Chino’⁵ went with them but I don’t know if he hit him or not.”

...

Q. I asked you, “let me quickly move onto ‘Gato’. What do you remember seeing ‘Gato’ do to the man who was caught.”

And your response, “Well, he sort of ... pulled him like this.” And you indicated. “He pulled him. He hit him, too.”

...

Q. “ ‘Manotas’, what do you remember seeing him do?

“He only hit him in the face but then he went in the car because he was driving.”

Tr. 10/28/98, 554 – 6.

On cross-examination Aleman stated that he had been drinking Long Island ice teas⁶ at the Diversite Club. *Id.* at 565. He stood outside the club smoking a cigarette for about five minutes as the club closed and everyone left, but he did not recall seeing the altercation with the homeless man. *Id.* When he left the club he walked south on 14th Street. *Id.* at 566. When he was standing near the Diversite Club he was two blocks away from where Helm was attacked, he said. *Id.* at 559 – 60.

He admitted that he first told the grand jury Velasquez was driving the red car, but when the prosecutor read the grand jury transcript he said maybe Mr. Bonilla was driving. *Id.* at 560. He further admitted that in the grand jury he testified that Velasquez, Ventura, Robles, Abuelo and Villatoro attacked Helm. *Id.* at 562-3. But, he said, Mr. Bonilla was not involved. He added that his memory of events was impaired because he had been drinking. *Id.* at 564.

⁵ José Perez.

⁶ A Long Island iced tea is made with 1 oz. vodka, 1.5 oz. gin, 1 oz. triple sec liqueur, 1 oz. rum and 12 oz. cola. Another recipe calls for 1 oz. vodka, 1 oz. tequila, 1 oz. rum, 1 oz. gin, 1 oz. triple sec, 1.5 oz. sour mix and a splash of cola.

JOSÉ BENITEZ'S TESTIMONY

Benitez arrived at the Diversite Club at 10:30 p.m. March 14, 1998. Tr. 10/28/98, 570. After the club closed he saw Villatoro with a street person outside. *Id.* at 571. Then Luis Perez went over to them and Villatoro attacked the street person. *Id.* at 573. Benitez said he and Salamanca then became involved in the fight, as did José Navarette and Abuelo. *Id.* at 574. Benitez then saw a car arrive, which he described as being a red chocolate color, with four black men in it. *Id.* He did not see Mr. Bonilla at that time. *Id.*

The black men said they had guns and ordered the Latino men to stop attacking the street person. But the Latino men turned on the four. *Id.* at 576.

Benitez then saw Mr. Bonilla drive by with Robles, Velasquez and Ventura. He said he saw Robles, Velasquez and Ventura, but not Mr. Bonilla, get out of the car and attack Helm. *Id.* at 577. The men on foot then arrived and joined in the assault. *Id.* at 579. When asked what Mr. Bonilla did he said “I saw the door of the car open and I saw him outside but I don’t know what he did.” *Id.* at 577 – 8.

On cross-examination Benitez clearly stated that he did not see Mr. Bonilla assault the homeless man, throw bottles or rocks at the car, or take part in the assault on Helm. Tr. 10/29/98, 624. Benitez admitted kicking Helm along with Ventura and Robles after Velasquez left the scene in Mr. Bonilla’s car. *Id.* at 642.

THE DEFENSE CASE

MAYRA RIVERA'S TESTIMONY

Rivera testified that she and Garcia arrived at the Diversite Club at about 1:20 a.m. March 15, 1998. Tr. 10/30/98, 776. They had been at another club earlier and Garcia had several alcoholic drinks there. *Id.* at 784. Garcia had several drinks at the Diversite Club. *Id.* at 785.

Rivera said she left the club with Garcia, Buruca, Leonzo and Guevera after the fight broke out inside and they took a taxi home from 14th and Q Streets, N.W. *Id.* at 777 – 8. She and Garcia left first and she prevented Garcia from following the men who were running. *Id.* at 788. Then Leonzo, Buruca and Guevera met them at the alley on the north side of the Diversite Club

“because that’s when I told Rosa to go back because she was insulting the men.” *Id.* Her group ran to find a taxi and she held Garcia’s hand so “she would hurry up.” *Id.* at 785. She saw people running outside the club, but did not see any fights. *Id.* at 779. The taxi dropped them off at Rivera’s apartment and Garcia stayed there until about 6 a.m. *Id.* at 786.

JOSÉ SALAMANCA’S TESTIMONY

Salamanca said he started the evening March 14, 1998 at a pool hall at 14th and W Streets, N.W., with two friends and then went to a bar and drank beer for about two hours. *Id.* at 72 – 73. They arrived at the Diversite Club shortly after 11 p.m., where they waited in line because “people were coming in, paying and they would check your I.D. and everything.” *Id.* at 74. Over the next several hours he drank eight Long Island iced teas and some beers. *Id.* at 75.

Mr. Bonilla arrived at the club at about 2:20 a.m. and had not been drinking, according to Salamanca, who asked for a ride home because “I was kind of drunk, pretty drunk about that time.” *Id.* at 76. When the club closed Salamanca left with a woman named Claudia and then waited for Mr. Bonilla, who was talking to two other women. Mr. Bonilla told Salamanca to wait in the car which was parked a short distance away. *Id.* at 77. Mr. Bonilla then went to the car and let Salamanca into it and went away for a few minutes. When Mr. Bonilla returned to the car Velasquez asked for a ride, as did Robles and Ventura after him. *Id.* at 78-79. Salamanca said he went to sleep at that point and the next thing he remember is that “Catinga came, like opened the door really hard and told Manotas, give me a ride. You know, take me to the Triviada.” *Id.* at 79. Mr. Bonilla took Salamanca home. *Id.* at 80. Salamanca said he did not learn about the attack on the homeless man or the homicide until the afternoon of March 15. *Id.* at 83.

On cross-examination Salamanca said he remembered seeing Mr. Bonilla get out of the car and close the doors, and then drive up 14th Street. *Id.* at 90.

Q. Isn’t it true that you never saw Filipe Bonilla involved in the attack on Warren Helm?

A. No. I never saw it.

Q. And is it your testimony that, while stopped at a light at 14th and P (sic), Catinga just got into the car?

A. Yes, he just got into the car.

Q. Did he have permission to get in the car?

A. No. He just opened the door, got in the car.

Q. Okay, did Catinga ask or tell Bonilla to take him to the gambling house?

A. The way he told, he just tell him, yes, take me to the Triviada.

...

A. Yea, he never asked, you know, could I have a ride? No. He was, take me to the Triviada.

Tr. 11/2/98, 91-92.

SANTOS BONILLA'S TESTIMONY

On his way home after dinner with his girlfriend, Mr. Bonilla decided as he drove up 14th Street at about 2:20 to 2:30 a.m. to stop at the Diversite Club. *Id.* at 126. He went to the bar and saw Salamanca, and ordered beers for friends at the bar and a soda for himself. *Id.* at 127. He left the club when it closed and talked to two friends outside for three to five minutes. Salamanca had asked for a ride while they were in the club. *Id.* While he was outside the club Velasquez, Ventura and Robles asked him to drive them home because they did not have money for a taxi and it was cold. *Id.* at 127-8. He had given all of them rides in the past and never had a problem. *Id.* Mr. Bonilla said he did not know any of the men were armed and he had not known Velasquez or Ventura to carry weapons. *Id.* at 128. Mr. Bonilla testified that there had been no conversation in the car as he drove up 14th Street until Velasquez shouted from the back seat for him to stop. *Id.* at 134.

Q. When did you pull over?

A. When Catinga told me. After he asked me, stop, stop, I asked him why.

And then he repeated, stop, stop. There was traffic on the street. So I moved to one side.

Q. What happened then?

A. They got out. Douglas got out first, and then Carlos, and then Catinga.

Q. Had you seen Warren Helm running up 14th Street

A. No.

Q. Did you see anyone running up 14th Street?

A. No.

Q. What happened after they got out of the car?

A. I closed the doors and left.

Q. Did you see what happened?

A. Yes. Catinga was knifing — supposedly knifing the black man.

Q. And what did you do?

A. I only got out to close the doors because they had left them open.

Id. at 129-30.

Mr. Bonilla said he then pulled up to the traffic light a little over half a block from where the three men left the car and waited behind four cars for it to turn green. *Id.* at 131. While he was waiting Velasquez returned to the car and ordered him to drive to the Triviada. Bonilla said he did not let Velasquez into the car, but the doors were unlocked. He was nervous because he had just seen Velasquez stab a person “and he told me to take him somewhere in sort of an aggressive way.” *Id.* at 132. Velasquez had a weapon in his hand, and “All I could think — I didn’t think of anything else but of taking him there.” *Id.* at 132-3.

During cross-examination he again denied knowing that the men in the back seat were armed and said he first saw a knife when they got out of his car. *Id.* at 142. When he left the Latino men who had been chasing Helm on foot had not reached him yet, but Velasquez and Ventura were fighting with him and Robles had been knocked to the ground. *Id.* at 144 – 5. Mr. Bonilla denied that he took part in the attack. *Id.*

THE POST-TRIAL HEARING

ANTHONY ASUNCION’S TESTIMONY

In the hearing Asuncion admitted a *Brady* violation regarding Aleman’s grand jury testimony. He conceded that he did not disclose the inconsistencies in Aleman’s statements and grand jury

testimony until Aleman testified at trial. *Id.* at 98 – 9, 108.

Asuncion said he had information from witnesses in the grand jury and statements from defendants who had been arrested that Aleman was “present watching this thing.” *Id.* at 42. Reviewing a transcript of Aleman’s grand jury testimony in which he stated that he was standing near 14th and Q streets, N.W., when he witnessed the assault on Helm, Asuncion said he had no reason to believe Aleman was lying. *Id.* at 71. He agreed that the Diversite Club was in the 1500 block of 14th Street and the homicide occurred in the 1800 block of 14th Street, between S and Swann streets. *Id.* at 74. Confronted with the fact that five blocks separated the club from the homicide scene and Aleman testified that he was near the club, Asuncion testified,

... [M]y recollection is that’s roughly where the attack of the homeless person happened. So it ... did not surprise me that he would have been in that area when he made certain observations.... [O]ur understanding was that he ... had basically a front-row seat to what was happening. So, ... whether he said in the grand jury he was at 14th and Q or not, I guess that would have been fader (sic) for someone’s cross-examination at trial. But I can tell you my understanding of the sequence of events where he was positioned based on everything I know about the case because he was outside to view the attack on the homeless person which happened at a bus stop right outside of Diversity (sic). The crime scene ... traveled up the street, as did Mr. Aleman and the defendants.

Id. at 77. He added, Aleman “saw the murder, and the murder was north of there. So ... either he saw it from 14th and Q or he traveled with the group, which is what we believed the case was.”

Id. at 78. Then the following colloquy occurred:

Q. ... [W]hen he said he was standing at 14th and Q, you didn’t ask him any questions ... about whether he ... went anywhere else after that; did you?

A. I don’t know if I asked that specific type of question, but I’m sure I asked him about what he saw with respect to the murder.

Q. ... And when he described to you facts that he saw, you accepted those at face value without questioning how he was able to see them; isn’t that correct?

[THE PROSECUTOR]: Objection, relevance.

THE COURT: Sustained.

...

Q. ... [W]hen you had questions about the answers Mr. Aleman had given to grand jurors, you asked other questions to clarify those points; didn’t you?

A. Yes.

Q. And when Mr. Aleman said that he was standing at 14th and Q when he saw all of these things, you didn't ask any questions to try and clarify that as to where he was standing; did you?

...

A. ... [I]f it's not in the transcript, then I didn't ask it.⁷

Id. at 79 – 80. But later in the cross-examination it became clear that Asuncion's only source regarding Aleman's proximity to the fatal assault was Garcia.

Q. ... You had said ... you thought that he had traveled up the street and that he had traveled with the group which was what we thought the case was. That Mr. Aleman had traveled up the street from the club to the scene of the homicide; do you recall that?

A. ... [W]hat was clear to us is he saw what happened.

Q. You said twice before lunch that you thought he had traveled up the street to the scene?

A. I would call that, sir, a reasonable inference. If at one point he was at Diversity Club and at another point he's witnessing a murder that happens several blocks north, I think it's reasonable to infer that he traveled in some fashion to be able to see this.

Q. ... Drawing your attention to the testimony of Rosa Garcia at the grand jury, that Loco Hugo was close to the person that got stabbed; answer: Like 5 inches away?

A. Like five inches, period. Yes.

...

THE WITNESS: Right. All I can say, ... what I took from that is he was in a position to see what occurred.

Id. at 114 – 8. He indicated that he relied heavily on Garcia's written statement and grand jury testimony in concluding that Aleman "had a front-row seat" to Helm's homicide. *Id.* at 121 – 2. Asuncion admitted that Garcia was the only person who gave a written or oral statement or testified in the grand jury and placed Aleman at the homicide scene. *Id.* at 126 – 7.

⁷ It appears that on March 20, 1998 another grand jury witness claimed to have seen the attack on Helm from the doorway of the Diversite Club, and identified several individuals as having punched and kicked him. *Id.* at 138 – 9. Asuncion read from a transcript of the witness's testimony but did not identify him because he was not called to testify at the trial. After the witness identified the attackers and described what they did, a juror asked, "For both attacks, he was [in] the doorway of the club? During both attacks he never went up the street?" The witness replied, "No, I stayed right there."

AFFIDAVITS OF WITNESSES NOT ALLOWED TO TESTIFY

Mr. Bonilla's second new trial motion argued that the government coerced potential witnesses to testify falsely and induced at least one witness, Aleman, to do so. It argued as well that the prosecutor's *Brady* violations deprived him of due process. Before and during the post-trial hearing Mr. Bonilla and his codefendants moved to expand its scope to include testimony by the Diversite Club's security chief and other witnesses Asuncion repeatedly subpoenaed to his office, paid witness fees, and never took before the grand jury. The Court refused to hear their testimony, but counsel augmented the hearing record with affidavits provided by these witnesses.

MAYRA RIVERA'S AFFIDAVITS

Mayra Rivera stated that she is not a citizen, but is in the United States legally. *Id.* at 288. Over the course of a month Asuncion subpoenaed her to his office repeatedly and sometimes paid her witness fees, but never called her to testify in the grand jury. "Mr. Asuncion threatened and pressured me when I met with him, stating that he would have my child taken away from me.... Mr. Asuncion tried to get me to lie," she stated. *Id.* Rivera said from the outset she told Asuncion she, Rosa Garcia and other friends left in a taxi and did not see what happened on 14th Street, N.W.; and that Garcia was not wearing her prescription glasses that night. *Id.*

SENDY LEONZO'S AFFIDAVITS

Sendy Leonzo's first affidavit initially was attached to Villatoro's supplemental new trial motion. In it she stated that she, Garcia, Rivera, Buruca and Guevera got into a taxi at 14th and R Streets, N.W., after they left the club and went to 1444 W Street, N.W. *Id.* at 464. She did not see any fights outside as they traveled. In a subsequent affidavit she stated that Asuncion subpoenaed her several times and paid her witness fees, but never called her to testify in the grand jury. *Id.* at 329. She said Asuncion "pressured me including, insisting that I was lying in what I told him." *Id.*

BLANCA BURUCA'S AFFIDAVITS

Like Leonzo, Buruca provided an affidavit in support of Villatoro's first new trial motion stating that she and several friends, including Garcia, took a taxi from 14th and R streets to 1444

W Street, N.W. *Id.* at 466. In her second affidavit Buruca said she received several subpoenas, including one Asuncion personally served on her at her mother's house. *Id.* at 332. She too received witness fees, but never appeared before the grand jury. She said Asuncion "threatened me and pressured me including by making statements about taking my son from me." *Id.*

JOSÉ GUEVERA'S AFFIDAVIT

José Guevera's affidavit initially was attached to Villatoro's supplemental new trial motion. It stated that he was with Rivera, Leonzo, Buruca and Garcia when they took a taxi from 14th and R. Streets, N.W., and he did not see any fighting as they departed. *Id.* at 468.

ARGUMENT

THE GOVERNMENT DEPRIVED MR. BONILLA OF HIS RIGHT TO PRESENT A DEFENSE BY WITHHOLDING EXCULPATORY EVIDENCE

"The right of an accused in a criminal trial to due process is ... the right to a fair opportunity to defend against the State's accusations." *Chambers v. Mississippi*, 410 U.S. 284, 93 S. Ct. 1038, 1045, 35 L. Ed. 2^d 297 (1973).

The right to offer the testimony of witnesses ... is in plain terms the right to present a defense, the right to present the defendant's version of the facts as well as the prosecution's to the jury so it may decide where the truth lies. Just as an accused has the right to confront the prosecution's witnesses for the purpose of challenging their testimony, he has the right to present his own witnesses to establish a defense.

Washington v. Texas, 388 U.S. 14, 19, 87 S. Ct. 1920, 18 L. Ed. 2^d 1019 (1967). This right is grounded in both the Fifth and Sixth Amendments.

The Supreme Court's directive in *Brady* is clear and simple:

the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.

...

A prosecution that withholds evidence on demand of an accused which, if made available, would tend to exculpate him or reduce the penalty helps shape a trial that bears heavily on the defendant. That casts the prosecutor in the role of an architect of a proceeding that does not comport with standards of justice....

373 U.S. at 87 – 88. "When the 'reliability of a given witness may well be determinative of guilt

or innocence,' nondisclosure of evidence affecting credibility falls within this general rule." *Giglio v. United States*, 405 U.S. 150, 154, 92 S. Ct. 763, 31 L. Ed. 2^d 104 (1972)(quoting *Napue v. Illinois*, 360 U.S. 264, 79 S. Ct. 1173, 3 L. Ed. 2^d 1217 (1959)). "[T]he duty encompasses impeachment evidence as well as exculpatory evidence." *United States v. Bagley*, 473 U.S. 667, 676, 105 S. Ct. 3375, 87 L. Ed. 2d 481 (1985).

In *United States v. Agurs*, 427 U.S. 97, 106, 96 S. Ct. 2392, 49 L. Ed. 2^d 342 (1976), the Supreme Court stated:

Although there is ... no duty to provide defense counsel with unlimited discovery of everything known by the prosecutor, if the subject matter of such a request is material, or indeed if a substantial basis for claiming materiality exists, it is reasonable to require the prosecutor to respond either by furnishing the information or by submitting the problem to the trial judge. When the prosecutor receives a specific and relevant request, the failure to make any response is seldom, if ever, excusable.

In Mr. Bonilla's case, the prosecutor received a specific request in a letter from trial counsel dated May 20, 1998. It requested,

3. Any prior inconsistent, non-corroborative, or other witness statements which will not reflect the witness' trial testimony. See *United States v. Enright*, 579 F.2^d 960, 989 (5th Cir. 1978).

...

5. All information that any government witness and/or informant was under the influence of alcohol, narcotics, or any other drug at the time of the observations about which the witness will testify, and/or the informant informed or that the witness/informant's faculties of observation were impaired in any way.

In a discovery letter dated June 17, 1998, which did not acknowledge defense counsel's letter a month earlier, the prosecutor wrote, "[t]he United States will assume that you have made a general *Brady* request." The prosecutor's only *Brady* disclosure was a letter dated October 3, 1998 to Salamanca's counsel, which made no reference to Garcia, Rivera, Leonzo, Buruca or Guevara.

In opposition to the first round of new trial motions, the government argued that neither Rivera nor Leonzo provided information that would exculpate any of the defendants or impeach government witnesses. The record developed at trial, in post-conviction proceedings and on

appeal demonstrates that this is an outright misrepresentation. Both had told Asuncion that Garcia was drunk and had left the area before the assault, and Rivera told him Garcia was not wearing her glasses. *Bagley, supra*, mandates disclosure of this information.

In refusing to expand the scope of the hearing on Mr. Bonilla's second Rule 33 motion this Court stated that he and his codefendants litigated the *Brady* violation related to information provided by Rivera, Leonzo and Guevera during trial and in the first round of new trial motions. Order filed Oct. 10, 2002, 17. The Court said Rivera testified at trial, but "Rosa Garcia's testimony was ... credible, she was not an accomplice and was not shown to have any motive to lie."⁸ *Id.*

But denial of a Rule 33 motion without a hearing is not a ruling on the merits of allegations made in the motion. *Sanders v. United States*, 373 U.S. 1, 16, 83 S. Ct. 1068, 10 L. Ed. 2d 148 (1963) ("prior denial must have rested on an adjudication of the merits of the ground presented ... , [t]his means that factual issues were raised in the prior application, and it was not denied on the basis that the files and records conclusively resolved these issues, an evidentiary hearing was held.").

Shortly before oral argument in the D.C. Court of Appeals the government disclosed that

In May of 1998, as this Office's victim unit was assessing Ms. Garcia's eligibility for emergency short-term protection, Ms. Garcia apparently represented to Victim Unit representatives that she had a so-called "green card," but could not then locate it. However, when the INS was thereafter contacted by an MPD detective regarding Ms. Garcia's status, the detective was informed that the INS had no record of Ms. Garcia. When Ms Garcia was then again asked about her "green card," she informed the MPD detective that she did not in fact have a "green card" and that she had been brought into this country illegally by her mother.

Letter dated February 2, 2005. *See Addendum*. The government stated further that

There has been no post-trial *Brady*, request, and we do not concede that the above information meets the *Brady* materiality test. We do, however, believe it appropriate to disclose this information to appellants' counsel.... [G]iven Rosa Garcia's narrowly circumscribed trial testimony, we would note that this information only even arguably

⁸ In the grand jury and at trial Garcia admitted that her purpose in providing information to police March 15, 1998 was to convey that they had wrongly arrested her boyfriend Benitez for crimes he did not commit. Her goal was to implicate others so Benitez would not be prosecuted. *See, e.g.*, GJ Tr. 3/17/98, 5, 28, 34.

relates to two of the five appellants now before the appellate court, José Salamanca and Oscar Villatoro.

Id.

The government's analysis is wrong on several grounds.

Mr. Bonilla filed a Renewed Motion for Discovery on June 11, 2002 citing *Brady* and seeking “[c]opies of all notes, PD 118s, PD 119s, videotapes and audiotapes of interviews conducted in connection with this homicide case by Mr. Asuncion, other employees of the Office of the U.S. Attorney, or the Metropolitan Police Department.” Motion, 3, 8. In response to the discovery motion the Court ordered the government to review its files for police officers’ notes containing *Brady* material, and at the end of the second day of the post-trial hearing Asst. U.S. Attorney James Sweeney told the Court, “I have available for the Court for in-camera review those notes that I could find. I would say that I have found no *Brady* information in there that is not or was not disclosed to the defense counsel pretrial.” Tr. 7/3/02, 187. In response to a question from Robles’s counsel the Court said, “he’s going to give me unredacted police notes for review of whether there’s any *Brady* there. He has made the representation that the only part in that that he thought was *Brady* he also thought was previously disclosed.” *Id.* at 189.

There can be no question that the government had an obligation under *Brady* to disclose to trial counsel evidence that Garcia was committing an ongoing crime, residing in the United States illegally, and that she lied to police about her immigration status. In addition, the government had a duty under *Giglio v. United States*, 405 U.S. 150, 155, 92 S. Ct. 763, 31 L. Ed. 2^d 104 (1972), to disclose that it had provided a benefit to Garcia in return for her testimony, in that investigators did not notify the Immigration and Naturalization Service that Garcia was an illegal alien, which would have triggered deportation proceedings. Defense counsel had a right to attack Garcia’s credibility by cross-examining her and detectives about promises she may have received in return for her testimony.

In the case against Mr. Bonilla the information provided by Rivera, Leonzo, Buruca and Guevera, Garcia’s immigration status, and her lies to police about it were material under *Brady*.

“[F]avorable evidence is material, and constitutional error results from its suppression by the government, ‘if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.’ ” *Kyles v. Whitley*, 514 U.S. 419, 433, 115 S. Ct. 1555, 131 L. Ed. 2d 490 (1995)(quoting *United States v. Bagley*, 473 U.S. 667, 682, 105 S. Ct. 3375, 87 L. Ed. 2d 481 (1985)). “*Kyles* instructed that the materiality standard of *Brady* claims is met when ‘the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict.’ ” *Banks v. Dretke*, 540 U.S. 668, 698, 124 S. Ct. 1256, 157 L. Ed. 2d 1166 (2004).

Garcia’s testimony was not “narrowly circumscribed,” as the government claims. Rather, she testified longer than any civilian witness other than José Benitez, who did not implicate Mr. Bonilla. Only two witnesses testified at trial that Mr. Bonilla participated in the assault, Garcia and Aleman. In the grand jury and the hearing on Mr. Bonilla’s second Rule 33 motion Aleman testified that he was over one-quarter mile away and very intoxicated when Helm was killed.

In the post-trial hearing Asuncion admitted that Garcia was the only person who placed Aleman close enough to the attack to know who participated. Ultimately, this Court found that Aleman was not a credible witness. If that is the case, Garcia was the only “credible” witness who testified that Bonilla participated in the assault, and she bolstered Aleman’s “incredible” testimony by saying he was close enough to see who attacked Helm. By any measure, Garcia’s testimony was critical to the government’s case against Mr. Bonilla.

In his final argument Asuncion told jurors that:

First of all, you’ve heard evidence that all of these men were involved in chasing Helm, that all of these men, when they caught up to him, were around him when he was being beaten, and that all of these men who are on trial for murder actually physically participated in that assault.

Tr. 11/3/98, 208. He went on to say: “[a]nd that’s what this case [] boils down to. It’s about mob violence. Maybe you look at someone like Oscar Villatoro or Santos Bonilla the other day and you think to yourself, goodness gracious, murderers?” *Id.* at 211. Then he said Mr. Bonilla

drives them there to the crime scene, he chases after Helm, delivers the stabbers, he waits

around. And he does more than wait. We've heard testimony that he actually physically participated. And that makes sense, right?

You're in this just like everyone else. You know all of these guys. You're pumped up just like everyone else. Not only are you the chauffeur, if you will — you're delivering these guys — but you jump out of that car and you smack him in the face. Premeditation and deliberation, ladies and gentlemen.

Id. at 214.

Under these circumstances the exculpatory evidence undermines Garcia's testimony and Asuncion's argument, and there is a strong probability that the outcome of the trial would have been different absent the *Brady* violations.

The prosecutor's *Brady* violations had a much greater impact. He deprived defense counsel of his ability to investigate and prepare for trial, to use the withheld information in his opening statement to defuse the government's evidence, and to call additional witnesses who would have contradicted Garcia's damaging testimony. Because the government's evidence against Mr. Bonilla was not strong, and because he was prejudiced significantly by the *Brady* violations, he is entitled to a new trial.

THE GOVERNMENT VIOLATED ITS OBLIGATION UNDER BRADY TO DISCLOSE IDENTITIES OF EXCULPATORY WITNESSES

In late March and early April 1998, Rivera and Leonzo, who were subpoenaed repeatedly to the U.S. Attorney's office for questioning, told Asuncion that Garcia drank heavily at two clubs that night and left with them before the fatal assault. Asuncion never disclosed that information to defense counsel. When Garcia testified, the prosecutor disclosed the transcript of her grand jury testimony as Jencks material. From it defense counsel learned that she left the area with four friends, and the next day counsel located Rivera and Leonzo, who contradicted her version of events on the night of the homicide and impeached her credibility.

The D.C. Court of Appeals "has rejected any notion that disclosure in accordance with the Jencks Act satisfies the prosecutor's duty of seasonable disclosure under *Brady*." *Edelen v. United States*, 627 A.2d 968, 978 (D.C. 1993)(citing *James v. United States*, 580 A.2d 636, 643 – 4 (D.C. 1990)). Despite the general rule that the government need not disclose the identities of

its witnesses pretrial, the Court of Appeals has said pretrial “discovery of witnesses or witness lists may result from a number of rules and case decisions.... A constitutional requirement that the prosecution disclose exculpatory witnesses and evidence to the accused has been articulated by the Supreme Court and subsequent circuit court cases.” *United States v. Holmes*, 343 A.2^d 272, 275 (D.C. 1975)(citing *Brady, supra, Meers v. Wilkins*, 326 F.2^d 135, 136-38 (2^d Cir. 1962)).

In *Holmes* the Court addressed whether the Trial Court had authority to order the government before trial to disclose to a defendant the identities of eyewitnesses. It noted that the primary justification for withholding such information is to protect witnesses’ safety and the integrity of their testimony. *Id.* at 277. Citing *Roviaro v. United States*, 353 U.S. 53, 62, 77 S. Ct. 623, 1 L. Ed. 2^d 639 (1957), the Court of Appeals stated that “the problem is one that calls for balancing the public interest in protecting and encouraging witnesses for the government against the individual’s need for the witness or witnesses for the preparation of his defense.” *Id.*

In this case it was clear to everyone involved that Garcia would probably be a government witness. Although she apparently entered witness protection for a brief period, she returned to the community voluntarily. Therefore, her safety would not have been jeopardized by disclosure that she was an illegal alien, that she had lied to police, and that other witnesses contradicted her account of the crime.

The government never intended to call Rivera, Leonzo, Buruca or Guevara as witnesses, so it had no interest in protecting them. As potential defense witnesses, disclosure of their identities would have posed no danger.

This Court concluded in the post-conviction proceedings that there was no *Brady* violation because defense counsel could have located Rivera, Leonzo, Buruca and Guevara if he had diligently investigated. But Eugene Wimbush, the club’s security chief, testified that Diversite’s capacity was 600 people. It would have been impossible, even with an unlimited amount of time and investigative resources, to track down everyone who might have witnessed the assaults on Helm and the homeless man. Furthermore, assuming the truth of Rivera’s

uncontradicted testimony that Garcia left in a taxi before the attack on Helm, even if counsel were able to identify everyone who witnessed the homicide, he would not have located her, Leonzo, Buruca or Guevera, because they left the area before the fatal assault.

In this case defense counsel had made specific *Brady* requests and the prosecutor acknowledged his obligations under *Brady* in a letter to all defense counsel in June 1998. Assuming for the sake of argument that Bonilla’s counsel learned of the October 3 letter to Salamanca’s lawyer, he reasonably could have interpreted it as evidence that Asuncion was fulfilling those obligations and that was all the *Brady* evidence. This Court expressed the view that whether a *Brady* violation occurred revolves around defense counsel’s lack of diligence in locating and interviewing witnesses. But, according to the Supreme Court, “We rejected a similar argument in *Strickler*. ... Our decisions lend no support to the notion that defendants must scavenge for hints of undisclosed *Brady* material when the prosecutor represents that all such material has been disclosed. ...” *Banks, supra*, at 22 – 3 (citations omitted). The Supreme Court chastised the lower court for holding

in effect, that the prosecution can lie and conceal and the prisoner still has the burden to ... discover the evidence, ... so long as the potential existence of a prosecutorial misconduct claim might have been detected.... A rule thus declaring “prosecutor may hide, defendant must seek,” is not tenable in a system constitutionally bound to accord defendants due process. Ordinarily, we presume that public officials have properly discharged their official duties.

Banks, supra, at 23 – 4 (internal quotes and citations omitted). Both the main and concurring opinions in *Woodall, supra, Slip op.* at 10 – 11, 22 – 3, firmly acknowledged the centrality of that presumption to the fairness of the criminal justice system.

LATE DISCLOSURE OF EXCULPATORY INFORMATION DID NOT CURE THE *BRADY* VIOLATION

In the post-conviction proceeding this Court initially found that Mr. Bonilla litigated his *Brady* claims regarding Garcia at trial and in the first round of post-trial motions. Then, in its order denying the second Rule 33 motion, the Court purported to resolve the issue again, concluding that, despite the government’s failure to disclose the identities of witnesses who

would have provided exculpatory evidence, there was no *Brady* violation because defense counsel called Rivera as a defense witness.

Cross-examination is “beyond any doubt the greatest legal engine ever invented for the discovery of truth.” *California v. Green*, 399 U.S. 149, 158, 90 S. Ct. 1930, 26 L. Ed. 2d 489 (1970)(quoting 3 J. Wigmore, *Evidence* § 1367 (3d Ed. 1940)). Because the government’s *Brady* violations deprived Mr. Bonilla’s lawyer of the ability to effectively cross-examine Garcia, jurors could not observe her reactions when confronted with her lies and could not accurately assess her credibility.

As a defense witness Rivera contradicted Garcia’s testimony, but by withholding exculpatory information provided by Garcia’s four companions the trial prosecutor deprived the defense of a means to effectively confront Garcia. Defense counsel could not impeach her with the fact that she had been drinking heavily that night and was on her way north in a taxi when she claimed she was watching the fatal attack on Helm because they did not locate Rivera until after Garcia left the witness stand. They could not impeach her with the fact that she was in this country illegally and that she lied to police about her immigration status because they never learned that.

They could not effectively use Garcia’s statements about where Aleman was standing because they did not receive Aleman’s grand jury transcript until after Garcia testified and they had no time to compare the two and identify the inconsistencies. Nor could counsel have recognized that he needed to ask for more time to review Aleman’s grand jury testimony before beginning cross-examination. *James, supra*. 580 A.2d at 643 (“it was not apparent from the nature of the evidence disclosed that a continuance would be required to make full use of it or that more time and reflection would reveal its relevance”).

Asuncion testified in the post-trial hearing that he believed that as long as he complied with the timing provisions of the Jencks Act he satisfied his *Brady* disclosure obligations. That position runs contrary to the holding in *James, supra*.

The D.C. Circuit has said, “Disclosure by the government must be made at such a time as

to allow the defense to use the favorable material effectively in the preparation and presentation of its case, even if satisfaction of this criterion requires pre-trial disclosure.” *United States v. Pollack*, 534 F.2^d 964, 973 (D.C. Cir. 1976)(citations omitted). The D.C. Court of Appeals adopted this view in *Edelin*, supra, 627 A.2d at 970.

The government argued and this Court agreed in the post-conviction proceedings that no true *Brady* violation occurred because defense counsel were able to use the exculpatory information regarding Garcia by calling Rivera as a witness and in final argument. The government made the same argument in its appellate brief, but conceded at oral argument that it never disclosed impeachment information regarding Garcia, which would be a true violation if that information met *Brady* materiality requirements.

If the government’s interpretation of its *Brady* obligation were correct, the phrase “in the preparation ... of its case” would be superfluous.

It has been stated that *Brady* is a rule of due process, not a discovery rule, but it is appropriate to look at the discovery rule, Rule 16, in determining what the phrase “in the preparation ... of its case” means. Rule 16(a)(1)(C) requires disclosure of “Documents and tangible objects. Upon request of the defendant ... which are material to the preparation of the defendant's defense.” “Evidence is material under Rule 16 ‘as long as there is a strong indication that it will play an important role in uncovering admissible evidence, aiding witness preparation, corroborating testimony, or assisting impeachment or rebuttal.’ ” *United States v. Marshall*, 132 F.3d 63 (D.C. Cir., 1998).

The same can be said for *Brady* material, and the phrase "use [by the defense] of favorable material effectively in preparation ... of its case" encompasses investigation to obtain evidence corroborating the exculpatory information, witness preparation and counsel's preparation to impeach government witnesses. Under Rule 16 information is material and, therefore, must be disclosed if it “enables the defendant significantly to alter the quantum of proof in his favor.” Although *Brady* is narrower in scope than Rule 16, applying exclusively to exculpatory information, the *Brady* materiality standard imposes a lesser burden on the

defendant than the Rule 16 materiality standard.

In concluding that the cumulative effect of the *Brady* violations in Mr. Bonilla's case did not warrant a new trial, this Court relied on *Strickler, supra*. In *Banks, supra*, at 28, the Supreme Court distinguished *Strickler*, noting that the witness whose impeachment was at issue gave testimony that was in the main cumulative, and was not significant to one of the predicates for capital murder. In addition, there was considerable physical and forensic evidence linking the defendant to the homicide.

In this case, Garcia and Aleman provided the only testimony directly implicating Mr. Bonilla in the fatal assault. No other admissible evidence linked Mr. Bonilla to the crime beyond merely being present. Thus, Garcia's testimony was critical to the government's case, and the *Brady* violations had a significant impact on Mr. Bonilla's defense.

The government's case against Mr. Bonilla was weak. "Because the net effect of the evidence withheld by the State in this case raises a reasonable probability that its disclosure would have produced a different result," Mr. Bonilla is entitled to a new trial. *Kyles, supra*, 514 U.S. at 421-2.

CONCLUSION

For the reasons stated above and any others that may appear to the Court after a hearing, Mr. Bonilla respectfully requests that the Court vacate his conviction and order a new trial.

Respectfully submitted,

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ADDENDUM



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February 2, 2005

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Re: Luis Adonay Perez, et al. v. United States,
Consol. Appeal Nos. 99-CF-107, et seq.
(Oral argument scheduled for Tuesday, February 8, 2005)

VIA EMAIL: medialawyer@mindspring.com

Dear Mr. Becker,

In preparing for the upcoming oral argument in the above-captioned appeals, the undersigned has discovered information relating to one of the government's trial witnesses -- Rosa Garcia.

Certain victim-witness files maintained by this Office's Victim Witness Assistance Unit (the "Victim Unit") contain the following: In May of 1998, as this Office's Victim Unit was assessing Ms. Garcia's eligibility for emergency short-term protection, Ms. Garcia apparently represented to Victim Unit representatives that she had a so-called "green card," but could not then locate it. However, when the INS was thereafter contacted by an MPD detective regarding Ms. Garcia's status, the detective was informed that the INS had no record of Ms. Garcia. When Ms. Garcia was then again asked about her "green card," she informed the MPD detective that she did not in fact have a "green card" and that she had been brought into this country illegally by her mother.

There has been no post-trial Brady request, and we do not concede that the above information meets the Brady materiality test. We do, however, believe it appropriate to disclose this information to appellants' counsel. In our view, any issues raised by the above information would best be considered by the trial court in the first instance. Finally, given Rosa Garcia's narrowly

circumscribed trial testimony, we would note that this information only even arguably relates to two of the five appellants now before the appellate court -- Jose Salamanca and Oscar Villatoro.

Sincerely,

KENNETH L. WAINSTEIN,
United States Attorney

By: _____
DAVID B. GOODHAND,
Assistant U.S. Attorney

CERTIFICATE OF SERVICE

I, Robert S. Becker, counsel for Santos F. Bonilla, certify that on June 1, 2005 I served a true copy of the attached Motion To Vacate Conviction and Set Aside Sentence Pursuant to D.C. Code § 23-110 by first-class mail on the person(s) listed below.

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