



U.S. Department of Justice

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May 19, 2014

Molly Dwyer  
Clerk of Court  
U.S. Court of Appeals  
P.O. Box 193939  
San Francisco, CA 94119-3939  
(Via Ninth Circuit CM/ECF)

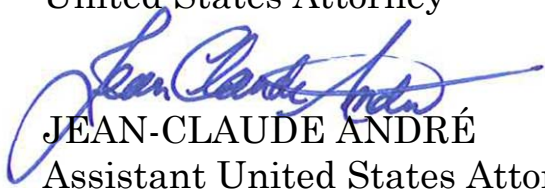
Re: *United States v. Rene Flores et al.*, CA No. 14-50227

Dear Ms. Dwyer:

Pending before the Court is the government's emergency motion to stay the district court's May 12, 2014, order dismissing the indictment and releasing defendants-appellees Rene Flores, Randy Garmon, and Arturo Cortez. In its May 12, 2014, order granting a temporary stay, this Court directed the government to submit the transcript of the district court's May 12, 2014, hearing today, May 19, 2014. A copy of the transcript is attached to this letter.

Very truly yours,

ANDRÉ BIROTTE JR.  
United States Attorney

  
JEAN-CLAUDE ANDRÉ  
Assistant United States Attorney

**REPORTER'S TRANSCRIPT OF  
MAY 12, 2014, HEARING**

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UNITED STATES OF AMERICA  
UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

- - -  
HONORABLE MANUEL L. REAL  
UNITED STATES DISTRICT JUDGE PRESIDING  
- - -

UNITED STATES OF AMERICA, )  
 )  
 ) PLAINTIFF, ) CERTIFIED COPY  
 )  
VS. ) CR 13-751 R  
 )  
RENE FLORES, et al., )  
 )  
DEFENDANTS. )  
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REPORTER'S TRANSCRIPT OF PROCEEDINGS  
MONDAY, MAY 12, 2014  
A.M. SESSION  
LOS ANGELES, CALIFORNIA

SHERI S. KLEEGER, CSR 10340  
FEDERAL OFFICIAL COURT REPORTER  
312 NORTH SPRING STREET, ROOM 402  
LOS ANGELES, CALIFORNIA 90012  
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APPEARANCES OF COUNSEL:

ON BEHALF OF PLAINTIFF:

UNITED STATES ATTORNEY  
BY: VICKI CHOU, AUSA  
CAROL CHEN, AUSA  
ASSISTANT UNITED STATES ATTORNEY  
1100 UNITED STATES COURTHOUSE  
312 NORTH SPRING STREET  
LOS ANGELES, CA 90012

ON BEHALF OF DEFENDANT:

JAMES BISNOW, ESQUIRE  
ANTHONY SOLIS, ESQUIRE  
MICHAEL MAYS, ESQUIRE

1 LOS ANGELES, CALIFORNIA; MONDAY, MAY 12, 2014

2 A.M. SESSION

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6 THE CLERK: Calling Item 2, C.R. 13-751-R.

7 Defendant No. 2, Defendant No. 3, Defendant No. 5.

8 United States of America versus Rene Flores, Randy

9 Garman and Arturo Cortez.

10 Counsel, please state your appearances.

11 MS. CHOU: Good morning, Your Honor. Vicki

12 Chou and Carol Chen for the United States.

13 And in the gallery is also the case agent,

14 ATF Special Agent Ionis Stiropis.

15 MR. BISNOW: Good morning, your Honor.

16 James Bisnow for Rene Flores, who's present in custody

17 before the Court.

18 MR. SOLIS: Good morning, Your Honor.

19 Anthony Solis on behalf of Mr. Cortez, who's present in

20 custody.

21 MR. MAYS: Good morning, Your Honor. Mike

22 Mays on behalf of Mr. Garman, who is present in custody.

23 THE COURT: All right. I'm still very

24 disappointed with the government who has not given me

25 exactly what I asked for in any sense.

1           And what has been given to me is a calendar  
2 of events that was prepared especially for this hearing.  
3 They're not the reports that were created during the  
4 matter that have been set forth, and as indicated, at  
5 least even in reference to those reports, we have to  
6 question the accuracy of those reports to begin with.  
7 And also that -- as a matter of fact, that the  
8 government agent participated in the so-called matter  
9 by -- that he would be present to allow them into the,  
10 quote, stash house; and that he would provide for them  
11 the escape from the stash house; that at least, as it  
12 would appear, is a part of the conspiracy that was  
13 charged in the indictment.

14           And there is also a big question as to the  
15 question of what the sentence was to be in this matter.  
16 Because the so-called 35 -- or 25 kilograms of drug in  
17 this false stash house, if it had been a real matter of  
18 a true robbery of a stash house, and as a result of the  
19 real stash house, there was only a meager amount, like  
20 one kilogram of drugs to which went to the possession of  
21 the defendants, if at all at that time, that the  
22 charging of 25 kilos in the indictment is just another  
23 part of the government's outrageous conduct in this  
24 matter.

25           And the government has never had any reason

1 to suspect any of these defendants in the drug business  
2 before targeting them to join its fictitious scheme  
3 which came out of a part of the government that had  
4 nothing to do with drugs but rather with matters of guns  
5 which they -- which the agents suggested as the only  
6 method upon which the robbery could take place.

7           And in evaluating whether the government's  
8 conduct is outrageous, the Ninth Circuit has identified  
9 the following factors to consider: One, the known  
10 criminal characteristics of the defendants; two, the  
11 individualized suspicion of the defendants; three, the  
12 government's role in creating the crime of conviction;  
13 and four, the government's encouragement of the  
14 defendants who commit the offense conduct; and five, the  
15 nature of the government's participation in the offense  
16 conduct; and the nature of the crime being pursued and  
17 necessity for actions taken in light of the nature of  
18 the criminal enterprise at issue, as set forth in United  
19 States versus Black, 733 Fed 3d 294, Ninth Circuit 2013.

20           And here the so-called false robbery of a  
21 false stash house was not to be of any help to any  
22 matters having to do with drugs or stash houses or the  
23 drug -- so-called drug war. The government used two  
24 paid confidential informants to convince citizens to  
25 join the government's scheme. And C-1 was paid \$2500

1 for his work in the case. C-2 was paid \$6100 for  
2 something, without getting any indication that there  
3 would be any true kind of criminal conduct by the  
4 individuals who were being convinced by these  
5 confidential informants to take that in those reasons.

6 And if the post arrest reports of these paid  
7 informants are to be believed, the only information the  
8 government had before attempting to lure any other  
9 defendants was that Roberts had spent time in prison,  
10 and not for drug matters, even if the paid informant's  
11 account is to be credited, the government had no  
12 knowledge of what Roberts was in prison for; moreover,  
13 the government knew nothing of Flores nor Garman before  
14 targeting them and still knew nothing of Cortez until  
15 after his arrest; thus the government cannot show that  
16 it knew of any of the defendants' criminal propensities  
17 for use of the kind of conduct that these -- the agents  
18 were used to do in this case, nor had any individualized  
19 suspicion of them in the crime of narcotics for which  
20 the ATF had no responsibility, at least in the matters  
21 having to do with drugs, but with rather alcohol, tax  
22 and guns.

23 More importantly, the government created the  
24 fictitious crime from whole cloth. The government  
25 provided the location to the plan of the fictitious



1 crime where undercover ATF Agent Carr insisted on  
2 running through a script to ensure a conspiracy had been  
3 hatched and that Carr also provided the getaway car with  
4 the fictitious conspiracy.

5 Further, there was no evidence that the  
6 defendants even knew of the location of the fictitious  
7 stash house or could have had any ability to check the  
8 stash house as to whether or not it was other than as  
9 represented by Agent Carr as being part of the stash  
10 house that he participated in, in fact. Which was a lie  
11 and a falsehood to start this whole conspiracy.

12 So the government's provided no evidence  
13 that there have been any stash house robberies in  
14 Southern California nor any evidence of the necessity of  
15 trolling poor neighborhoods to ensure and ensnare its  
16 poor citizens, that the government cannot bootstrap,  
17 quote, post hock knowledge to justify this scheme from  
18 the beginning.

19 That's United States versus Hudson, 13-126,  
20 Central District of California, March 10th, 2014.

21 And there certainly cannot be any serious  
22 concern that these defendants would embark on a career  
23 of robbing stash houses. And see for that United States  
24 versus Kindle, 698 Fed 3d 401, Seventh Circuit 2012.

25 These cases are dismissed for the

1 government's outrageous conduct and the orders to be  
2 made pursuant to that. And I'm going to write an  
3 opinion having to deal with all the factors which were  
4 used by the government to convince these defendants to  
5 participate in a false stash house robbery. That's it.

6 MS. CHOU: Your Honor, if we might move the  
7 Court to stay its order pending appeal.

8 THE COURT: Beg your pardon?

9 MS. CHOU: The government would like to move  
10 for the Court to stay its order of release pending  
11 appeal.

12 THE COURT: I don't know any reason for it.

13 MS. CHOU: Your Honor, under 3143 there is  
14 no change in the presumption of detention. And until  
15 the Ninth Circuit has actually upheld the dismissal --

16 THE COURT: I'm sorry. What?

17 MS. CHOU: Until the Ninth Circuit has  
18 actually upheld the dismissal, there still a basis for  
19 these defendants to be detained under the law. And if  
20 the Court doesn't want to order the stay until the Ninth  
21 Circuit has resolved this, we would ask for at least a  
22 week so that we can petition the Ninth Circuit for an  
23 emergency stay.

24 THE COURT: There is no reason. Is there?

25 MR. SOLIS: On behalf of Mr. Cortez, I'd ask

1 that the defendants be released forthwith because the  
2 Court just dismissed the case.

3 As far as my client's concerned, there's no  
4 hold; there's no other case; there's no reason he  
5 shouldn't be released immediately.

6 MR. BISNOW: We would join on behalf of  
7 Mr. Flores, Your Honor.

8 MR. MAYS: Join, Your Honor, on behalf of  
9 Mr. Garman.

10 THE COURT: Any hold on these people?

11 MS. CHOU: What?

12 THE COURT: Is there any hold anywhere on  
13 these people?

14 MS. CHOU: There is no separate hold on  
15 these people.

16 THE COURT: Well, then -- I don't see that.  
17 Because I don't think they committed a crime under the  
18 circumstances of this case and the outrageous part of  
19 the government in the matter.

20 MS. CHEN: Your Honor, just for --

21 THE COURT: If at all, they should also have  
22 been indicted based on what they did in connection with  
23 this so-called false stash house robbery.

24 MS. CHEN: Your Honor, just for  
25 clarification, I believe the Court indicated you will be

1 issuing a written order.

2 THE COURT: Yes.

3 MS. CHEN: And pending that -- will the  
4 defendants be detained pending the issuance of  
5 that order?

6 THE COURT: No. They are now released.

7 MS. CHEN: Your Honor, will the Court also  
8 hear some brief arguments addressing some of the issues  
9 you raised today?

10 THE COURT: What?

11 MS. CHEN: Will you also hear some argument  
12 now regarding some of the issues you raised?

13 THE COURT: I'm open to anything from the  
14 government.

15 MS. CHEN: Your Honor, just for the record,  
16 just for a few of the issues you raised this morning,  
17 the government does apologize if the Court is  
18 disappointed with the government's responses to what the  
19 Court had ordered.

20 As the Court knows, the government did file  
21 two briefs in response to the Court's questions.

22 THE COURT: Both were not in answer to what  
23 I asked for. Both of them.

24 MS. CHEN: And, Your Honor, I believe you  
25 stated that you had asked for the reports. And just for

1 a clarification for the record, with one 1 of the  
2 government's briefs I believe it is --

3 THE COURT: Then the government prepared a  
4 report.

5 MS. CHEN: Your Honor, a document --

6 THE COURT: Not the reports that were made  
7 at the time that this was going on.

8 MS. CHEN: Your Honor, we actually did  
9 produce every single report that the ATF had produced,  
10 and it was as exhibits to document No. 139 with one of  
11 the two government briefs.

12 So in addition to our briefs we actually did  
13 produce to the Court for its review all of the reports.

14 THE COURT: There was not a signed or dated  
15 question that a report which was so dated.

16 MS. CHEN: Your Honor, I believe all the  
17 reports were dated and approved by the ATF supervisors.

18 Very quickly, Your Honor, I understand --

19 THE COURT: That report was prepared for me.

20 MS. CHEN: Your Honor, those reports were  
21 actually prepared at --

22 THE COURT: Post all other reports that were  
23 made.

24 MS. CHEN: Actually, Your Honor, those  
25 reports -- we did produce all reports which were made in

1 the process of the investigation. They were not made  
2 for the purpose of this hearing or for the Court's  
3 purpose.

4 It was actually produced by the ATF as the  
5 investigation progressed.

6 Your Honor, also just very briefly, I know  
7 you also pointed out. You described it as a false stash  
8 house. Obviously the stash house did not -- was not in  
9 existence, Your Honor.

10 However, the crime to which the defendants  
11 did plead in this case was a conspiracy to commit a  
12 robbery of a stash house.

13 And I believe the Court also stated that  
14 each defendant would have been in possession of one  
15 kilogram. As the reports note, each of the defendants  
16 agreed to rob a 25 to 30 kilogram stash house. And that  
17 each of them would split four kilograms each which they  
18 would then sell.

19 THE COURT: If that were a true robbery,  
20 Counsel, and they had said that we were going after 25  
21 kilograms of drugs and they only got one kilogram of  
22 drugs, they could not be prosecuted for 25 kilograms of  
23 drugs.

24 MS. CHEN: With all due respect, Your Honor,  
25 if the crime is conspiracy to rob a stash house

1 containing 25 to 30 kilograms, they would be able to be  
2 prosecuted for that.

3 Your Honor, we do intend to file a  
4 protective notice of appeal as soon as possible by no  
5 later than the end of today. We would ask for a stay of  
6 at least until the end of today if not tomorrow morning,  
7 Your Honor, of your order --

8 THE COURT: There is no reason for it,  
9 Counsel.

10 MS. CHEN: Your Honor, for the record, the  
11 government -- Your Honor, just based on the criminal  
12 history as well as -- nothing has changed since the  
13 original detention hearings other than, obviously, this  
14 Court's order dismissing the indictments.

15 However, we do believe that they continue to  
16 be a risk to the community as well as major flight  
17 risks. And again, Your Honor, we do reiterate just a  
18 short stay of either by the end of today --

19 THE COURT: I see no reason for it, Counsel.  
20 I've already told you that. I see no reason for it. I  
21 don't think that we should foster illegal conduct by the  
22 government.

23 MS. CHEN: Just for the record, we do  
24 reiterate our request for a stay.

25 THE COURT: All right. It is denied. All

1 right. We'll be in recess.

2 THE CLERK: All rise.

3 (PROCEEDINGS CONCLUDED.)

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CERTIFICATE OF REPORTER

COUNTY OF LOS ANGELES )  
 ) SS.  
STATE OF CALIFORNIA )

I, SHERI S. KLEEGER, OFFICIAL COURT REPORTER, IN AND FOR  
THE UNITED STATES DISTRICT COURT FOR THE CENTRAL  
DISTRICT OF CALIFORNIA, DO HEREBY CERTIFY THAT PURSUANT  
TO SECTION 753, TITLE 28, UNITED STATES CODE, THE  
FOREGOING IS A TRUE AND CORRECT TRANSCRIPT OF THE  
STENOGRAPHICALLY REPORTED PROCEEDINGS HELD IN THE  
ABOVE-ENTITLED MATTER AND THAT THE TRANSCRIPT PAGE  
FORMAT IS IN CONFORMANCE WITH THE REGULATIONS OF THE  
JUDICIAL CONFERENCE OF THE UNITED STATES.

DATE: MAY 13, 2014

/s/ \_\_\_\_\_

SHERI S. KLEEGER, CSR  
FEDERAL OFFICIAL COURT REPORTER

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