

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

v.

JOAO PEREIRA da FONSECA,
Defendant.

Crim. Case No.: 16-cr-089 (EGS)

DEFENDANT'S MOTION FOR BILL OF PARTICULARS

COMES NOW DEFENDANT, Joao Pereira da Fonseca, by and through undersigned counsel, and respectfully requests that this Court order the government to produce a bill of particulars informing the Court and the defendant as to his knowledge and participation in the alleged conspiracy.

Concise Argument

Mr. Pereira da Fonseca respectfully submits that the indictment fails to specify when and how he is alleged to have entered and participated in the alleged conspiracy. While the indictment details events between two other individuals, and companies, it does not reveal the knowledge component necessary to assign criminal responsibility to Mr. Pereira da Fonseca.

Background

On April 3, 2016, special agents from U.S. Homeland Security Investigations (HSI) at the Minneapolis/St. Paul International Airport detained Mr. Pereira da

Fonseca as he was preparing to return to his home in Lisbon, Portugal. While detained the HSI agents interrogated Mr. Pereira da Fonseca and another engineer working together with him. Mr. Pereira da Fonseca was not allowed to return to Portugal that day; he was arrested, held and transferred to Washington, D.C. where he made his initial appearance in this courthouse on May 17, 2016.

The indictment against Mr. Pereira da Fonseca alleged his participation in a conspiracy (18 U.S.C. §371) to unlawfully export goods of U.S. origin to the Islamic Republic of Iran in violation of U.S. Code and federal regulations restricting such conduct. 50 U.S.C. §1705 and 31 C.F.R. 560.¹ Absent from the indictment is any allegation as to how Mr. Pereira da Fonseca knew the goods in question were specifically destined for Iran, and if he did, when he acquired this knowledge.

Points & Authorities In Support

Federal Rule of Criminal Procedure 7 (f) provides that a court may direct the government to file a bill of particulars to elaborate on the indictment, thereby enabling a defendant to prepare for trial, prevent surprise, and plead double jeopardy. *See Wong Tai v. United States*, 273 U.S. 77, 80-81 (1927). A bill of particulars is appropriate when the indictment lacks sufficient specificity to enable a defendant to understand the charges and prepare a defense. *United States v. Mejia*, 448 F.3d 436, 445 (D.C. Cir. 2006) (citing *United States v. Butler*, 822 F.2d

¹ The indictment also charged Mr. Pereira da Fonseca with aiding and abetting the illegal conduct, and also alleged a criminal forfeiture count. 18 U.S.C §2, 18 U.S.C. §981 (a)(1)(C), 28 U.S.C. §2461, and 21 U.S.C. §853 (p).

1191, 1193 (D.C. Cir. 1987)); *see also United States v. Sunia*, 643 F. Supp.2d 51 (D.D.C. 2009).

The indictment in Mr. Pereira da Fonseca's case alleged that he performed a service for a Portuguese company called Firstfield Engineering, and that Firstfield did business with other individuals and companies. While alleging that Firstfield had contacts with individuals and companies with links to Iran, the indictment is silent as to Mr. Pereira da Fonseca's knowledge of where the machine(s) he examined were destined. Additionally, the government presented and the grand jury indicted "aiding and abetting" as an option for criminal responsibility, Mr. Pereira da Fonseca must know who stands in the role of conspirator, co-conspirator and/or aider or abettor.

At present, Mr. Pereira da Fonseca is left to wonder whom the government will tell his jury is a co-conspirator or aider and abettor, and more particularly, upon which theory the government will proceed. This lack of specificity tremendously hinders Mr. Pereira da Fonseca's ability to understand exactly what the government is alleging and prevents him from adequately preparing for trial. Furthermore, it permits the government to seek a conviction on entirely different proof than what was presented to the grand jury.

Courts in this district have found that when an indictment attributes a large number of acts to co-conspirators, trial will be unnecessarily complicated without the defendant's knowing which acts were alleged to be performed by which co-

conspirator. *See, e.g. United States v. Hsia*, 24 F. Supp. 2d 14 (D.D.C. 1998); *United States v. Trie*, 21 F.Supp. 7 (D.D.C. 1998).

Absent allegation of Mr. Pereira da Fonseca's knowledge as to the final destination of the goods, the indictment has merely alleged that an engineer was doing his job, but not conspiring to violate U.S. export laws. This Court has previously recognized that "[m]ere knowledge or acquiescence, without participation, in the unlawful plan is not sufficient. What is necessary is that the defendant must have participated with knowledge of the purposes or objectives of the conspiracy and with the intention of aiding in the accomplishment of those unlawful ends." *United States v. Benny-Dean*, 13-cr-109 (4) (EGS); and, *United States v. Crews*, 11-cr-372 (EGS).

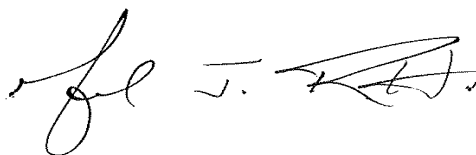
WHEREFORE, Mr. Pereira da Fonseca respectfully requests that the Court order the government to provide to the Court and defense counsel a bill of particulars addressing:

1. The basis of the defendant's knowledge of the conspiracy's purpose and objective to violate U.S. export laws;
2. when the defendant attained this knowledge and how it was attained;
3. if and when the defendant withdrew from the alleged conspiracy;
4. if the defendant acted in the alleged conspiracy as a co-conspirator or an aider or abettor; and,

5. whether the other actors, as identified by the government in charging documents or pleadings, acted as co-conspirators or aiders or abettors.

Respectfully submitted,

RETURETA & WASSEM, P.L.L.C.

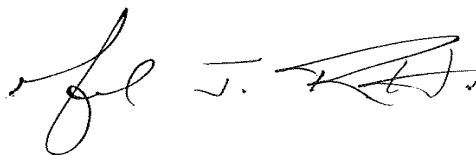


By: _____

Manuel J. Retureta, Esq.
Washington, D.C. Bar #430006
300 New Jersey Ave., NW, Suite 900
Washington, D.C. 20001
202.450.6119
MJR@RETURETAWASSEM.COM

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing filing was served upon counsel for all parties via ECF filing on this 24th day of March 2017.



By: _____

Manuel J. Retureta, Esq.