

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
FT. WORTH DIVISION**

<b>UNITED STATES OF AMERICA,</b>	)	<b>CRIMINAL ACTION NO.</b>
	)	
<b>Plaintiff,</b>	)	<b>4:02-CR-114-A</b>
	)	
<b>v.</b>	)	
	)	
<b>XXXXX, ET AL.</b>	)	
	)	
<b>Defendant.</b>	)	
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**DEFENDANT XXXX XXXXX'S AND XXX XXXX XXXXX-XXX'S MOTION TO  
DISMISS INDICTMENT BASED UPON  
GOVERNMENT'S DEPORTATION OF MATERIAL WITNESSES; OR  
ALTERNATIVELY, TO COMPEL DISCLOSURE OF BRADY AND GIGLIO EVIDENCE<sup>1</sup>**

Defendants, XXXX XXXXX and XXX XXXX XXXXX-XXX, hereby move this Court to dismiss the indictment in this case, with prejudice, based upon the government's extradition of numerous material defense witnesses in this case. As an initial remedy, however, they request the Court to compel the government to make certain disclosures.

**I. INTRODUCTION**

This case presents the Court with an unprecedented degree of government action in denying the defense access to evidence. On May 17, 2002, after conducting an investigation that lasted several months, the Dallas/Ft. Worth Joint Terrorism Task Force, raided several latino bars and residences in Ft. Worth's north side.<sup>2</sup> The joint terrorism task force was investigating allegations that a group of Hondurans, from the Hurricane Mitch devastated region of southern

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<sup>1</sup> The defense incorporates a request to file this motion after the Court's initial pretrial motion deadline. The facts which give rise to this motion were only discovered as of August 18, 19, and 20<sup>th</sup>. Since that time counsel has tried to resolve the matter with the government. See August 22<sup>nd</sup> letter from counsel to AUSA Roper, attached. On August 27, 2002, Mr. Roper and AUSA Romero met with counsel Mick Mickelsen and Francisco Hernandez to discuss the issues raised by the motion. No resolution was reached and court intervention appears required.

Honduras, were smuggling young Honduran girls into Ft. Worth to work as prostitutes in various bars. Pursuant to the raids the government arrested at least 88 individuals. Seven of the individuals the government considered principles in the criminal activity were detained on criminal charges. Two individuals, later indicted, were erroneously released by the government. Most of the remainder were undocumented aliens and detained by the INS pursuant to immigration proceedings. A handful of undocumented aliens were designated by the government as “victim/witnesses” and kept in protective custody. Despite repeated requests by defense counsel, the government has to date refused to disclose who it arrested pursuant to this investigation, who has been deported, and who has been detained in the United States as “victim/”witness” entitled to protective status.

On June 26, 2002, nine defendants were indicted. Two of those nine, who had been mistakenly released shortly after the initial arrests in May, remain at large. Surprisingly, the indictment merely alleges that the defendants conspired to smuggle and harbor undocumented aliens from Honduras. The government has not alleged in the indictment that the defendants arranged to smuggle the undocumented aliens into the United States to engage in acts of prostitution. Despite this fact, in numerous sealed affidavits filed in support of the application for search warrants sought before the raids in May, the government made allegations that 0

undocumented girls were being smuggled into the country to provided “sexual services.”<sup>3</sup>

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<sup>2</sup> It is unclear why this matter, which appears to be an ordinary case of smuggling and harboring illegal immigrants, is being investigated by the joint terrorism task force.

<sup>3</sup> The following are some of the statements making such allegations in each of the affidavits attached to the search warrant application.

1. alien smugglers involved in the coercion of smuggled aliens to provide work and/or to commit sex acts for money ...

Affidavit p.5

2. CI-1 advised that the smuggled female Hondurans work at bars in Fort Worth, Texas area and are expected to dance at the bars as well as provide sex-related services to the bars’ patrons.

Affidavit p. 7

3. CI-3 also identified XXX Odonez Arriola and Ana Lidia Arriola as half sisters of XXXXX and having the same mother and different fathers.

Affidavit p. 9

Richard Roper, one of the Assistant United States Attorney's assigned to this case, now disavows these earlier allegations. According to Mr. Roper, although prostitution may have occurred, the government cannot prove that any of the defendants directed any acts of prostitution. Although the sealed affidavits relied on information provided by three confidential informants, Mr. Roper has not acknowledged that government has since received information that cast doubt on the credibility of these informants.

Despite the government's retreat from the initial allegations involving prostitution, the government has announced its intent to supercede the current indictment with additional charges containing allegations of forced labor in violation of 18 U.S.C. §§ 1359-60. Mr. Roper related to defense counsel this week his intention to seek a grand jury return on an indictment containing allegations of forced labor on September 4, 2002.

Recently, on August 18, 19 and 20, defense counsel for XXX XXXXX-XXX and defense counsel for XXXX XXXXX, traveled to Honduras in order to investigate this case. Despite the fact that the government refused to provide defense counsel a list of individuals arrested pursuant to this investigation and then deported to Honduras, counsel for the two defendants succeeded in speaking with sixteen witnesses. Most of these witnesses were young women who would presumably be considered "victims" by the government. Counsel videotaped seven of the interviews of these women and they all essentially told the same story. After the government detained them they were pressured to give testimony that they were involved in prostitution and worked in the bars against their will. They were told that if they provided such testimony they would be permitted to become residents in the United States but if they refused they would sit in jail. All refused, in their words, to lie. Eventually, they were all deported to Honduras, a few within days of being interviewed by counsel. A computer disk containing the videotaped interviews has been provided to the Court and the government along with this motion.

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4. CI-1 also specifically identified another victim female who was a "taxi dancer" for XXXXX [a "taxi dancer" is a girl who provides sex acts for pay in an automobile"].  
Affidavit p. 15

Perhaps more distressing than the consistent descriptions of the government's conduct concerning these witnesses' testimony, was the information provided to counsel by an official of the Honduran state department. XXXX XXXXX is the mother of two twin fifteen-year-old girls. When Ms. XXXXX was arrested, these two twins were taken into government custody. Richard Roper informed counsel that the two girls had been placed in "foster" care. Mr. Roper refused to inform counsel where the daughters of his client were or any way to reach them by telephone. Mr. Roper refused even to tell counsel in which state the girls were being kept. Although Ms. XXXXX was permitted to forward two letters to her children through the U.S. Attorney's Office, she has had no contact whatsoever with her children since her arrest in May. Ms. XXXXX's family in Honduras told counsel that that the girls had been permitted to make a call home to family members in Honduras, but that the girls' telephone conversations were being monitored and they were not being told what their address or telephone number was, or even in what state they resided. The Honduran state department official told counsel that the Honduran government, pursuant to concerns expressed by XXXX XXXXX's family in Honduras, had intended to take formal steps in order to seek the return of the girls to their family in Honduras. However, the Honduran officials had been informed by someone in the U.S. Government that Ms. XXX XXXXX preferred that her children remain in the custody of strangers in the United States rather than be returned to Honduras. In response, Ms. XXXXX has executed an affidavit denying ever making such a wish, and expressly states her wish therein that the children be returned to Honduras and placed in the care of family members. A copy of that affidavit is attached.<sup>4</sup>

#### **A. Legal Background**

The Supreme Court has characterized various constitutional standards as combining to create "what might be called the area of constitutionally guaranteed access to evidence." *Arizona v. Youngblood*, 488 U.S. 51 (1988). This right to access to evidence is grounded in the Fourth

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<sup>4</sup> The affidavit mistakenly states that Ms. XXXXX is eighteen years old rather than thirty-eight. A corrected affidavit has been executed but counsel does not yet have a copy.

and Fifth Amendment guarantee of due process and the Sixth Amendment command that the accused “shall have compulsory process for obtaining witnesses in his favor.”

In this case the government completely controls access to all non-party witnesses that can be brought into court to testify. It appears to have embarked upon a practice of shipping unfavorable witnesses out of the country, making them unavailable for trial, and sequestering from the defense witnesses, that it deems favorable to its cause. It has gone so far as to have effectively terminated XXXX XXXXX’s parental rights; designated her own children as “victims,” because their mother made arrangements to have the girls brought from Honduras to live with her in Ft. Worth; and to have unilaterally made a decision that it is in the girls’ best interest to remain residents of the United States. Moreover, it appears that the government has intentions of compelling the girls to testify against their own mother in the upcoming criminal trial.<sup>5</sup>

These actions contravene any reasonable person’s ideas of fundamental fairness. In an adversarial system fundamental fairness requires that the defense be given the tools with which it can obtain existing evidence that challenges the prosecution’s case, either by tending to establish affirmatively the defendant’s innocence or by simply casting doubt on the persuasiveness of the prosecution’s evidence.

## **II. ARGUMENT**

The United States Supreme Court recognized in *United States v. Valenzuela-Bernal*, 102 S.Ct. 3440 (1982), that when the government deports a witness who can give testimony material and favorable to a defendant’s case, that defendant has been denied his right to due process of law under the Fifth Amendment to the United States Constitution as well as his right to compulsory process under the Sixth Amendment to the United States Constitution. While it is true that the defendant must show that the witness’ testimony is both material and favorable to the defense,

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<sup>5</sup> If the U.S. will support the return of the girls to their family in Honduras, the girls may be deposed prior to departure. XXXX would willingly waive any confrontation right that such a deposition might implicate.

not just simply that the witness was deported, it is also true that the materiality standard may well be “relaxed” somewhat in these circumstances. *Id.* at 3448. In short, “[s]anctions may be imposed on the Government for deporting witnesses...if the criminal defendant makes a plausible showing that the testimony of the deported witnesses would have been material and favorable to his defense, in ways not merely cumulative to the testimony of available witnesses.” *Id.* at 3449.

In the instant case, it is undisputed that the Immigration and Naturalization Service (the “INS”), an agency of the Department of Justice, deported numerous witnesses to the facts relating to this investigation. The following are summaries of the witnesses’ statements provided to counsel while investigating in Honduras. Seven of the interviews are recorded on videotape. This videotape, although in Spanish, maybe reviewed on the “c.d.” provided to the court with this motion. The government has also been provided with a copy of the “c.d.” The undersigned counsel verify that the following summaries of the testimony of the interviewed witnesses are truthful and accurate:<sup>6</sup>

**Iris Flores (video-taped interview):**

Iris Flores is the cousin of defendant XXXXX. She is 18 years old. Iris stated that her mother asked XXX to help get her to the U.S. so she could earn some money to help her family and disabled father. In Honduras, they live in a hut with packed dirt floors and a hammock for a bed.

Iris’s mother stated that she asked XXX to keep a close guard on Iris and not to allow her to see boys and to keep a strict curfew. XXXXXXXXX helped Iris go to the

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<sup>6</sup> Although seven of the following witness interviews were video-taped, none of the witness statements were made under oath. Undersigned counsel are in the process of ascertaining whether Honduran law permits witnesses to provide affidavits in relation to foreign legal proceedings, and what the costs and other requirements are in acquiring such affidavits. Undersigned counsel are also attempting to have the same questions ascertained with respect to having the witnesses deposed and subjected to cross-examination, so that in the interest of justice the court may permit the jury to consider such deposition testimony. From past experience, counsel has learned that gaining permission to take depositions in a foreign country for a United States legal proceeding may be an expensive and time consuming process. In any event, the Supreme Court made clear in *Valenzuela-Bernal* that a sworn statement, due to practical difficulties, is not required to give rise to Fourth, Fifth and Sixth Amendment concerns when the government deports witnesses with testimony favorable to the defense.

U.S. and she traveled with other female companions with the help of a “Coyote” named Hilda. The group rode in a car through Mexico.

Once in Texas, Iris lived with XXXXXXXX at 2115 Sixth Avenue with approximately nine other young women from Honduras. XXXXXXXX loaned Iris \$4700.00 for the expenses. She was able to repay about \$3,000.00. She was not charged interest or a profit for the loan. While in Texas, Iris worked at El Establo bar and earned tips by dancing with patrons and received a share of drinks that patrons purchased. When she was in custody, she was questioned by FBI agents who promised her protection, work and study opportunities if she agreed to testify against the Defendants. In response, Iris stated that she refused to lie and that none of the Defendants forced her to do anything. She was also accused by agents of trying to protect the Defendants. Iris stated that the FBI prepared a statement but she refused to sign it because she didn't write it.

After spending three months in jail, she was deported on August 16, 2002, and she returned with Nelsa Alvares on the airplane.

**Amada de Jesus Gurdado Corrales (videotaped interview):**

Ms. Guardado is 34 years old and cooks tacos and enchiladas outside her home where neighbors come and watch the television set she places in front of her adobe shack to attract customers.

Ms. Guardado came to Texas using her \$3000.00 Mexican pesos she had saved and looked for Susana in Fort Worth. She literally begged Susana to let her live with her until she got on her feet. Although her home was full with family members, Susana finally agreed to let Ms. Guardado stay with her for a while at 1800 Sixth Avenue. While in Texas, she made food and sold it at construction sites.

During weekends, Ms. Guardado worked at the bars for tips and share of the beers that patrons purchased for her.

Ms. Guardado was arrested by authorities and held for one month and five days before she was deported. While she was in custody, she was questioned by FBI agents and gave a statement that exculpated the Defendants. She was asked to and did sign her statement.

She is very fond of Dona Angela XXXXX-XXX and has nothing but good things to say about her.

**Nelsa Yolanda Alvares (videotaped interview):**

Nelsa was deported and arrived in Honduras on Friday, August 16, 2002. She was arrested and detained at the INS facility in Denton, Texas. She is 21 years old but told the Government that she was 24 years old. To travel to Texas, Nelsa asked for help from Vertillia Hernandez who also helped her get a job at El Establo bar. After her arrest, the government interviewed Nelsa. She did not sign a statement. During her interview, Nelsa told the government agents that none of the Defendants sent for her. She also told them she was not forced to work at the bars or to prostitute herself. She worked for tips when she danced with patrons and received a portion of the beer sales that patrons bought for her.

Nelsa stated that the government accused her of lying and covering for the Defendants. She felt like the government was trying to force her to make a statement against the Defendants.

**Ana Maribel Ariola (videotaped interview):**

Ana is 26 years old and is the common law wife of Miguel Angel Aguilar, XXXX's son. She is XXXXXXXXX's sister. She lived with XXXX and Miguel about 3 to 4 years at 1823 6th Avenue. Ana also worked part time at Juarez bar. She came to Texas on a bus with several people. When she was arrested, she was also questioned by agents who asked her about forced prostitution and labor. She emphatically denied any forced labor or prostitution. The agents took her statement but she refused to sign anything. She was deported on July 12th.



She said that Dona Angela was like a mother to her and loves her very much.

**Jose Louis Rubi Leiva (videotaped interview):**

Mr. Rubi was arrested and accused of picking up undocumented immigrants at the border with XXXXXXXXX. In Texas, he worked at a construction job in Burleson, Texas. He lived at 2115 6th Avenue. After 34 days in custody, he waived his rights and was voluntarily deported on June 20th.

While in custody, Mr. Rubi was questioned three times by government agents and was threatened with 10 years in prison if he did not make a statement against the Defendants. Agents told him that they had a video of him transporting undocumented women. In response, he requested to view such a video. Mr. Rubi also told the agents that all the women in the bars worked for tips, played pool with patrons and cleaned homes.

**Vertilia Hernandez (video-taped interview):**

Vertilia stated that she left, on her own and without any help, to Texas in 1998. At the time of her arrest, she lived at 2115 6th Avenue in Fort Worth. She stated that she met Dilcia at a laundry mat in Fort Worth and asked her for a place to live and work. During her time in Texas, Vertilia worked at the bars and cleaned residences.

During her stay at 2115 6th Avenue, Vertilia remembers residing with the following persons:

1. Iris Flores
2. Yolanda Alvares Hernandez
3. Edith Yolanda Ramirez
4. Nora Maradiaga

On the day of the sweep, Vertilia was questioned by the authorities who accused her of being a prostitute and urged her to make a statement against XXXXXXXXX and Dilcia XXXXX. Specifically, the agents wanted her to state that she was forced to work at the bars and prostitute herself.

A representative from Catholic Charities, Elizabeth Cedillo, advised Vertillia. That representative informed her that, if she testified as they wanted her, she would be set free in the U.S. However, she refused to make a statement and told the agents and Ms. Cedillo that the allegations against XXX and Dilcia were not true.

Vertillia stated that she signed a statement prepared by an agent where she denied the allegations against XXX and Dilcia.

**Katy Aguilar (videotaped interview):**

Katy is a cousin of the Defendants. She is Moncho's (Ramon's) sister. She is 26 years old. Currently, she lives next door to XXXX's home.

Katy traveled to the U.S. with \$2,000.00 savings she had. She traveled with Vertillia Hernandez to the U.S. on a bus. When she arrived, she lived with Vertillia and XXXX at 1823 6th Avenue in Fort Worth.

Katy worked on weekends for tips and a share of the beers that patrons bought for her. During her time here, Katy became pregnant and stopped working at Juarez Bar. She then began cleaning homes with XXXX.

Katy gave birth to a child named "Sissy America." The child was taken from her and the INS agent met her at the airport to return the child when Katy was deported.

She was arrested on May 17 at the home. When questioned by authorities, she informed the INS that she was never forced to work at anything or do anything. She also stated that the INS did not offer her any permit or residency in exchange for her testimony. Katy stated that she gave a statement in Spanish and signed it for the authorities. Katy also made statements that Dona Angela had no role in her going to the U.S. Furthermore, Dona Angela was not involved in helping people travel to the U.S.

**Miguel Angel Moreno Aguilar:**

XXXX's son is 20 years old and lived in Fort Worth with his common law wife, Ana Maribel Ariola. He worked near Fort Worth as an oil field worker. Miguel came to Fort Worth in 1999 with Oscar, XXX's brother. They traveled together and, upon

crossing the U.S. border, surrendered themselves to the INS and received a temporary permit due to their Honduran nationality.

Miguel was responsible for picking up XXXX's twin daughters at the bar when he got off work. The twins would remain at the bar until their stepfather or Miguel could pick them up.

The night of the arrests, Miguel was arrested at home for being here illegally. At the time, he lived in the house on Evans Street. Miguel stated that, at the time, about 11 girls lived in the house where he stayed.

Miguel stated that, in total, about 40 women stayed at the house from time to time. Some came and went as they found other jobs or opportunities. No one was forced to work or prostitution. Almost all of the women were relatives or close friends of relatives.

Miguel said his grandmother, Dona Angela, had no role in smuggling.

Miguel was deported to Honduras after being questioned by authorities and he expressly denied all the charges against the Defendants.

**Norma Hernandez:**

Norma is Vertillia Hernandez's sister. She stated that she traveled alone to Texas and did not receive assistance from anyone. She worked at El Establo bar and danced for tips and beer tickets. She lived at 2115 6th Avenue.

Norma was arrested and held by the government for two months. She returned to Honduras on June 20th 2002. During her detention, Norma was questioned by agents about the forced labor and prostitution and recruiting by the Defendants. She informed the agents that she went to Texas alone. However, she was accused by the agents of covering for the Defendants.

Norma stated that the agents took notes but she did not sign a statement.

**Edith Yolanda Ramirez:**

Edith stated that she traveled to Fort Worth in 2001 with her sister in law, Digna Merita Diaz. When she arrived, she went to live with defendant Dilcia XXXXX at 2115 6th Avenue. She stated that Roger XXX helped her travel to the U.S. While in Texas, Edith worked at El Rodriguez bar and earned about \$300 per week. She received \$120.00 per week plus tips for dancing with patrons and a share of the beer sales purchased for her by patrons. Edith was detained on May 24th and she told the agents that she traveled to the U.S. alone. Edith states that she gave a signed statement to the Agents. She was confident that she was not confusing a waiver of rights for deportation purposes and a statement of facts. She again confirmed that she gave a statement where she denied the forced labor and prostitution charges against the defendants. She also stated that Dona Angela did not help her in any way or anyone she knows.

**Isabel Lopez:**

Isabel stated that her whole family was in Fort Worth and all were released by INS in Fort Worth. She was arrested on May 16th. Isabel claims to have returned to Honduras on her own. She states that she had a work permit and her husband remained in Honduras. She stated that her daughter became ill and decided to return. She stated specifically that defendant Dilcia XXXXX did not help her travel to the U.S. She worked in Mexico until she had enough money to travel to Texas. Upon arriving, she asked Dilcia for help and a place to stay. She worked for tips and a share of the beer sales at El Juarez bar. She also said that Dona Angela did not help her or any one she knows to travel to the U.S.

**Delia Suyapa Urbina:**

Delia is 31 years old and attended school with one of the unapprehended Defendants, Marleni. She is married. She stated that she traveled to Texas alone and has a brother in Tennessee. Delia stated she traveled to Dallas and then to Fort Worth, where she met Dilcia in a laundromat.

Delia worked at Rodriguez Bar on Friday, Saturday and Sunday with Roger's wife. During the week, she sold tamales. She lived on Berry Street with Areli Castro and Reyna Aguilar.

When questioned by the FBI, she was pressured to "tell the truth." She felt that the FBI wanted her to make a statement against the Defendants. However, she gave a signed written statement to the contrary.

**Gloria Suaso:**

Ms. Suaso is 27 years old, and went to Texas in April. She lived at 2115 6th Avenue with her sister in law, Milagro. She worked with Susana in El Juarez bar for dance tips and a share of the beer sales purchased for her by patrons.

Ms. Suaso claimed to have made statements to exculpate the Defendants, but was not specific.

**Fredis Ernestina Zenteno:**

Fredis' interview was quite brief. She claimed, however, that she did not make any statements against the defendants.

Fredis was picked up while walking on North Main Street. She usually worked in El Stable on weekends for dance tips and share of the beer sales bought for her by patrons.

Fredis was voluntarily deported after spending two months in jail. An attorney with Esquivel and Associates represented her. He charged several persons \$600.00 per person to represent them.

She also stated to the Agents that "no one helped her" go to the U.S. She also specifically said that Dona Angela did not help her in any way.

The foregoing summaries of the interviews in Honduras give rise to the following observations. First, they contain both incriminating and exculpatory information. They incriminate apprehended defendants XXXX Aguilar, XXX and Delicia XXXXX, with the

currently charged offense of conspiring to smuggle and harbor undocumented aliens. XXXX Aguilar, for one, does not contest this charge.

On the other hand, the interviews disclosed a substantial amount of exculpatory information. The information exculpates the defendants with respect to any prostitution related allegations that might arise in a sentencing proceeding, and more importantly they exculpate the defendants of the government's yet unindicted allegation that the undocumented Hondurans working in the bars were subjected to forced labor. Many of the statements also tend to cast doubt on the credibility of the government's confidential informants, who based on the government's assertions in their affidavits in support of the search warrants, were providing information to the investigating agents that led the agents to believe that women from Honduras were being smuggled to Ft. Worth to work as prostitutes against their will. Finally, the interviews of the witnesses in Honduras exculpate Marie Galido-XXX.<sup>7</sup>

### **III. THE INITIAL REMEDY REQUESTED-DISCLOSURE**

In light of the evidence adduced by the defense investigation the defense requests that the Court fashion the following remedy. In order to determine whether the sanction of outright dismissal of the indictment is warranted pursuant to *Valenzuela-Bernal*, it would be appropriate for the Court first to require the government to disclose all of the statements or memoranda of

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<sup>7</sup> Two instructive examples of the lower courts following *Valenzuela-Bernal*, are *United States v. Filippi*, 918 F.2d 244 (1st Cir. 1990) and *United States v. McLernon*, 746 F.2d 1098 (1984). In *Filippi* the defendant sought the testimony of a material witness in Ecuador. When the witness sought a visa to travel to the United States in order to testify at trial, the visa application was denied. Although the court of appeals concluded that the government's actions did not "pass muster under the Sixth and Fifth Amendments," in that particular case the constitutional violation was waived by the defendant.

In this case the government possibly could attempt to remedy the situation presented by this case by offering visas for the witnesses to appear. However, problems would remain. The defendants do not have the funds to pay the expenses. Nor would they have subpoena power and the witnesses will be afraid to come voluntarily. The government apparently gave a visa to defendant XXX XXXXX-XXX to take custody of the infant grandchildren, and she was arrested and eventually indicted. This fact will certainly have a chilling effect on the willingness of Honduran witnesses to travel here in relation to this case in the future.

In *United States v. McLernon*, the government detained a material and favorable witness and permitted that witness to voluntarily depart. The court reversed for hearings to determine whether the defendant's attorney was "unable to interview the [witness] because of language and logistical problems that the government did not correct before his prompt departure." *McLernon* contravenes any government assertion that *Valenzuela-Bernal* does not apply because the Honduran witnesses at issue chose to voluntarily depart rather than languish in detention awaiting deportation proceedings.

interviews that the government has in relation to the witnesses interviewed by the defendants' attorneys. In addition, the Court, exercising its supervisory power, and in light of the evidence produced by the defense investigation, should direct the government to disclose all other of its witness statements and memoranda of witness interviews accumulated in this investigation.<sup>8</sup> Obviously, the government may seek to keep some of the identities of these witnesses concealed as confidential informants. This concern gives rise to an analysis under *Roviaro v. United States*, 353 U.S. 53 (1957).

In *Roviaro*, the Supreme Court held that the informer's identity must be disclosed when "the content's of his communication, is relevant and helpful to the defense of the accused, *or* is essential to a fair determination of a cause." In this case what the defense knows about the informants are that they provided the information that was the basis of the search warrant affidavits. In those search warrant affidavits the government alleged that Honduran women were being compelled to work as prostitutes in order to pay off their smuggling debts. Now the government disavows that allegation. If other witnesses have contradicted the informants then, in the very least, the witnesses who contradicted those informants have provided exculpatory information. If the informants have not been contradicted, but the agents exaggerated the information provided by the informants, then the agents' credibility is at issue. In any event, given the circumstances of this case and the results of the defense investigation in Honduras, the informant's identity and the memoranda of interviews of the informants should be disclosed. In the very least, the Court should require the government to disclose this information to it *in camera*, to better XXXble the Court to make a determination of whether the information should be disclosed.

Finally, there is the issue of the government's refusal to disclose the location of XXXX Aguilar's twin fifteen-year-old daughters. Because the girls are minors, and in the country without documentation, the government, without in anyway involving XXXX Aguilar in the

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<sup>8</sup> Counsel has been informed by other defense counsel in the Ft. Worth area that in Ft. Worth, the general practice of the U.S. Attorney's office has been to disclose all memoranda of interviews and witness statements. For reasons unclear to the undersigned, this case is being treated differently.

process, have effectively terminated her parental rights. By doing this they have achieved a unique advantage in the criminal case. Not only do they have the usual advantage they enjoy of having the witnesses' information and not having to disclose it, in this case they are able to preclude the defendant and her counsel from communicating with the witnesses in any way, a situation all the more aggravating because the witnesses are the defendant's daughters.

Although the government may be able to achieve a similar situation in some cases with certain adult witnesses who seek government protection, in that situation the witness is volunteering to be sequestered from the defense. In those cases the government also should be able to articulate a concern about the witness or the witnesses' family being the subject of retaliation. Counsel does not believe the government is taking the position in this case that the daughters of his client are in danger from their own mother. In the usual situation of a sequestered and protected witness, the witness designate itself as requiring protection, but in this case the government so far is unwilling to show proof that the girls consider themselves victims or seek protection. Counsel knows of no justification for the government's action of keeping the girl's location and telephone number a secret and refusing to disclose this information to the girls themselves, other than a government desire to isolate the girls and attempt to turn them into witnesses against their own mother. Counsel for XXXX Aguilar requests that the Court exercise its supervisory power and order the government to make the girls privately accessible to defense counsel.



Respectfully submitted,

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Attorney for XXX XXXX XXXXX-XXX

**CERTIFICATE OF CONFERENCE**

I, Mick Mickelsen, certify that a conference on the attached motion was held on August 29, 2002, regarding the subject matter of this motion, between myself Francisco Hernandez, Richard Roper and Rose Romero. During the conference it was determined that the government opposes between the Mick Mickelsen and L. Foster-Sterns, the Assistant United States Attorney assigned to the case. During the conference, it was determined that the government opposed disclosure beyond that required by Rule 16. The government stated that it possessed inconsistent statements and would disclose these when a witness that gave inconsistent statements testified. Inconsistent statements of non-testifying witnesses would not be disclosed. On August 30, Mr. roper called counsel and informed him that the government may allow him access to his client's daughters, but a final decision by the government had not been made.

\_\_\_\_\_  
Mick Mickelsen

**CERTIFICATE OF SERVICE**

I, Mick Mickelsen, certify that on August 30, 2002, I caused the foregoing document to be served by United States Mail to co-counsel of record and by hand-delivery on Richard Roper, Assistant United States Attorney.

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Mick Mickelsen

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
FT. WORTH DIVISION**

<b>UNITED STATES OF AMERICA,</b>	)	<b>CRIMINAL ACTION NO.</b>
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<b>Plaintiff,</b>	)	<b>4:02-CR-114-A</b>
	)	
<b>v.</b>	)	
	)	
<b>XXXXX, ET AL.</b>	)	
	)	
<b>Defendant.</b>	)	
_____	)	

**ORDER**

Upon consideration of Defendant's Motion to Dismiss Indictment Based Upon Government's Deportation of Material Witnesses, the Court at this time directs the government to disclose all witness statements and memoranda of interviews accumulated in the course of this case's investigation.

SO ORDERED.

DATED: \_\_\_\_\_

\_\_\_\_\_  
JOHN MCBRYDE  
UNITED STATES DISTRICT JUDGE