
From: Larson, Brian (USAAZ)
To: McCormick, Glenn (USAAZ)
CC: Cunningham, Patrick (USAAZ)
Sent: 8/1/2011 12:10:08 PM
Subject: Fw: Vicente Zambada Niebla's "Public Authority" Defense.

From: Cryne, Robert (CRM)
Sent: Monday, August 01, 2011 07:26 AM
Subject: Vicente Zambada Niebla's "Public Authority" Defense.

Colleagues:

As you may know, Vicente Zambada Niebla is on trial in NDIL (AUSA Tom Shakeshaft). He has asserted a "public authority" defense. His claims are discussed in the article below.

Bob

ROBERT FRANCIS CRYNE
Trial Attorney
Special Operations Division
U. S. Dept. of Justice
14560 Avion Parkway
Chantilly, Virginia 20151
Office: 703-488-4694
FAX: 703-488-4640
BB Cell: 202-257-5112

"THE UNITED STATES ALWAYS DOES THE RIGHT THING . . . AFTER ALL OTHER POSSIBILITIES HAVE BEEN EXHAUSTED." WINSTON CHURCHILL

US Court Documents Claim Sinaloa "Cartel" Is Protected by US Government

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Deal Allegedly Gave Sinaloa Bosses Immunity in Exchange for Providing Info on Rival Drug Organizations

By Bill Conroy
The Narcosphere

The son of a heavy hitter in a powerful Mexican drug trafficking organization has filed explosive legal pleadings in federal court in Chicago accusing the US government of cutting a deal with the the "Sinaloa Cartel" that gave its leadership "carte

blanche to continue to smuggle tons of illicit drugs into Chicago and the rest of the United States.”

The source of that allegation is Jesus Vicente Zambada Niebla, the son of Ismael “El Mayo” Zambada Garcia — one of the purported top leaders of the Sinaloa drug-trafficking organization — a major Mexican-based importer of weapons and exporter of drugs.

The top capo of the Sinaloa drug organization, named after the Pacific Coast Mexican state where it is based, is Joaquin Guzman Loera (El Chapo) — who escaped from a maximum security prison in Mexico in 2001, only days before he was slated to be extradited to the United States. Chapo has since gone on to build one of the most powerful drug “cartels” in Mexico. With the death of Osama Bin Laden in May, Chapo (a Spanish nickname meaning “shorty”) jumped to the top of the FBI’s “Most Wanted” persons list. He also made Forbes Magazine’s 2010 list of “The World’s Most Powerful People.”

Zambada Niebla, himself a key player in the Sinaloa organization, was arrested in Mexico City in March 2009 and last February extradited to the United States to stand trial on narco-trafficking-related charges.

The indictment pending against Zambada Niebla claims he served as the “logistical coordinator” for the “cartel,” helping to oversee an operation that imported into the US “multi-ton quantities of cocaine ... using various means, including but not limited to, Boeing 747 cargo aircraft, private aircraft ... buses, rail cars, tractor-trailers, and automobiles.”

Zambada Niebla also claims to be an asset of the US government. His allegation was laid out originally in a two-page court pleading filed in late March with the US District Court for the Northern District of Illinois in Chicago.

The latest allegations being advanced by Zambada Niebla, who is now being held in solitary confinement in a jail cell in Chicago, are advanced in motions filed late this week in federal court. Those pleadings spell out the supposed cooperative relationship between the US Department of Justice and its various agencies, including DEA and the FBI, and the leaders of the “Sinaloa Cartel” — including Zambada Niebla.

That alleged relationship was cultivated through a Mexican attorney, Humberto Loya Castro, whom Zambada Niebla claims is a Sinaloa Cartel member and “a close confidante of Joaquin Guzman Loera (Chapo).”

From Zambada Niebla’s court pleadings, filed on July 29:

[Humberto] Loya was indicted along with Chapo and Mayo [Zambada Niebla’s father] in 1995 in the Southern District of California and charged with participation in a massive narcotics trafficking conspiracy (Case No. 95CR0973). That case was dismissed on the prosecution’s own motion in 2008 after Loya became an informant for the United States government and had provided information for a period of over ten years.

Sometime prior to 2004 [when George W. Bush was president], and continuing through the time period covered in the indictment, the United States government entered into an agreement with Loya and the leadership of the Sinaloa Cartel, including Mayo and Chapo.

Under that agreement, the Sinaloa Cartel, through Loya, was to provide information accumulated by Mayo, Chapo, and others, against rival Mexican Drug Trafficking Organizations to the United States government. In return, the United States government agreed to dismiss the prosecution of the pending case against Loya, not to interfere with his drug trafficking activities and those of the Sinaloa Cartel, to not actively prosecute him, Chapo, Mayo, and the leadership of the Sinaloa Cartel, and to not apprehend them.

The protection extended to the Sinaloa leadership, according to the court filings, included being “informed by agents of the DEA through Loya that United States government agents and/or Mexican authorities were conducting investigations

near the home territories of cartel leaders so that the cartel leaders could take appropriate actions to evade investigators.”

In addition, the pleadings allege, the US government agreed not to “share any of the information they had about the Sinaloa Cartel and/or the leadership of the Sinaloa Cartel with the Mexican government in order to better assure that they would not be apprehended and so that their operations would not be interfered with.”

More from the July 29 pleadings:

Zambada Niebla was a party to the agreement between the United States government and the Sinaloa Cartel and provided information to the United States government through Loya pursuant to the agreement.

... Loya arranged for Mr. Zambada Niebla to meet with United States government agents at the Sheraton Hotel in Mexico City in March [17th] of 2009 [after the Obama administration took power] for the purpose of introducing Mr. Zambada Niebla to the agents and for the purpose of his continuing to provide information to the DEA and the United States government personally, rather than through Loya.

Loya’s federal case had been dismissed in 2008 [while Bush was still in the White House] and the DEA representative told Mr. Loya-Castro that they wanted to establish a more personal relationship with Mr. Zambada Niebla so that they could deal with him directly under the agreement. Mr. Zambada Niebla believed that under the prior agreement, any activities of the Sinaloa Cartel, including the kind described in the indictment, were covered by the agreement, and that he was immune from arrest or prosecution.

Zambada Niebla claims, in the court pleadings, that he attended the meeting in March 2009 at the hotel in Mexico City as scheduled, with Loya present, and while there, even though he was then under indictment in the US, was told by US federal agents that he would not be arrested and that arrangements had been made “at the highest levels of the United States government” to assure his immunity from prosecution in exchange for his cooperation in providing information on rival narco-trafficking groups.

However, Zambada Niebla contends he was double-crossed, despite the assurance of the US agents.

He alleges in his pleadings that government agents “were satisfied with the information he had provided to them” at the meeting at the Sheraton Hotel on March 17, 2009, and that “arrangements would be made to meet with him again.” “Mr. Zambada Niebla then left the meeting,” the court pleadings assert.

“Approximately five hours after the [hotel] meeting, Mr. Zambada-Niebla was arrested by Mexican authorities.”

Fast, Furious and the House of Death

Zambada Niebla’s pleadings also reference the controversial U.S Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) weapons-trafficking interdiction program Fast and Furious — an operation, now the subject of Congressional hearings, that allegedly allowed some 2,000 guns to be smuggled across the US/Mexican border under ATF’s watch. Zambada Niebla contends that Fast and Furious is yet another example of the US government’s complicity in the carnage of the drug war.

From Zambada Niebla’s pleadings:

The United States government considered the arrangements with the Sinaloa Cartel an acceptable price to pay, because the principal objective was the destruction and dismantling of rival cartels by using the assistance of the

Sinaloa Cartel — without regard for the fact that tons of illicit drugs continued to be smuggled into Chicago and other parts of the United States and consumption continued virtually unabated.

Essentially, the theory of the United States government in waging its “war on drugs” has been and continues to be that the “end justifies the means” and that it is more important to receive information about rival drug cartels’ activities from the Sinaloa Cartel in return for being allowed to continue their criminal activities, including and not limited to their smuggling of tons of illegal narcotics into the United States. This is confirmed by recent disclosures by the Congressional Committee’s investigation of the latest Department of Justice, DEA, FBI, and ATF’s “war on drugs” operation known as “Fast & Furious.”

As a result of Operation Fast and Furious, the pleadings assert, about “three thousand people” in Mexico were killed, “including law enforcement officers in the state of Sinaloa, Mexico, headquarters of the Sinaloa Cartel.”

Among those receiving weapons through the ATF operation, the pleadings continue, were DEA and FBI informants working for drug organizations, including the leadership of those groups.

“The evidence seems to indicate that the Justice Department not only allowed criminals to smuggle weapons, but that tax payers’ dollars in the form of informant payments, may have financed those engaging in such activities,” the pleadings allege. “... It is clear that some of the weapons were deliberately allowed by the FBI and other government representatives to end up in the hands of the Sinaloa Cartel and that among the people killed by those weapons were law enforcement officers.

“... Mr. Zambada Niebla believes that the documentation that he requests [from the US government] will confirm that the weapons received by Sinaloa Cartel members and its leaders in Operation ‘Fast & Furious’ were provided under the agreement entered into between the United States government and [Chapo Guzman confidante] Mr. Loya Castro on behalf of the Sinaloa Cartel that is the subject of his [Zambada Niebla’s] defense [regarding] public authority.”

The Zambada Niebla pleadings even reference the infamous House of Death case, so named by Narco News, which has published an exhaustive series of investigative stories on the mass-murder case dating back to 2004.

From the pleadings:

Mr. Zambada Niebla also requests ... that the United States government produce material relating to the ... “House of Death” murders, which took place in Juarez, Mexico, and were committed by United States government informants. As confirmed in the Joint Assessment Report [JAT] prepared by government authorities investigating those murders, agents of the United States government had prior knowledge that murders were going to be committed by their informants but did not take any measures to either inform the Mexican government or the intended victims, because government representatives determined it was more important to protect the identity of their informants.

The informants were assisting the United States government in the investigations of major drug traffickers and the government determined that the killings of over a hundred Mexican citizens was an acceptable price to pay for enabling them to continue their narcotics investigations.

The Great Pretense Unmasked

In its response to Zambada Niebla’s claim that he was working under “public authority” as an informant or confidential source, US federal prosecutors don’t claim outright that he was not a US government asset. They argue, instead, only that “the government denies that defendant [Zambada Niebla] exercised public authority when he committed the serious

crimes charged in the indictment.” In other words, even if Zambada Niebla was offered some type of deal in exchange for his cooperation, that deal did not extend to the specific acts he is accused of in the indictment against him.

Federal prosecutors also ask that the court order Zambada Niebla to produce, prior to trial, “evidence that a specific American official or officials with actual or apparent authority expressly authorized [him] to import multi-kilogram quantities of cocaine and heroin into the United States, as charged in the indictment, or expressly assured [him] that these acts were not criminal, and that [he] reasonably relied on these communications.”

Narco News spoke with several former DEA and FBI agents about Zambada Niebla’s contention that he worked, in essence, as an informant for the US government. Not one of those former agents, who asked that their names not be revealed, considered it out of the realm of possibility that Zambada Niebla might have cut a deal with the US government.

In fact, one former DEA agent said that by making such a claim, Zambada Niebla was essentially putting his life in jeopardy by outing himself as an informant, an extreme move that would seem to indicate that at least he believes he had a deal in place.

But, in the end, all of the former federal agents agree that unless Zambada Niebla has proof of his allegations that passes legal muster, he has little chance of prevailing — and at least one of those former agents said prosecutors would not likely have challenged him to produce such proof if they did not have a high degree of confidence that it does not exist.

A former FBI agent explained it this way:

The U. S. Attorney General Guidelines for Informants requires that there be a written document called an “otherwise criminal activities memo” signed by both parties. This document spells out exactly what the informant is authorized to do and tells him that he may be prosecuted for any other illegal activities. This should be provided to the defense in discovery; however, it does not always happen. Some attorneys are not aware of this and do not ask for it in discovery and the government does not willingly give it up.

I suspect that the government did not provide this document to the defense and that is why they are demanding that he provide proof of his status. ... It would be very easy to prove what he was authorized to do by having the memo. [So] this may be a case of where the memo was never done....

The former DEA agent, who has extensive overseas experience, added:

My instincts say he was an informant. It’s [Zambada Niebla’s pleadings are] an effort to “scare” or “frighten” the government to dismiss or reduce charges. Posturing, as it were. But there is a substantial risk for him. It’s pretty much a last ditch effort. Were it otherwise, the defendant would not want to be exposed as having cooperated with the government agents. However, he will have an enormous challenge proving his allegations.

... An agent [or US government agency would approve such a cooperative relationship with a narco-trafficker] ... so the agent can snag a higher-level trafficker and garner the resulting awards, commendations and promotions. Sometimes, there is outright bribery or gifts of value. It’s a win for the criminal informant because he may earn more money from trafficking and at the same time receive cash payments from the government for arrests he orchestrates. And that isn’t all: the informant’s own fear of arrest is reduced and he has a unique opportunity to effectively destroy his unwanted competition or archenemies.

And yet another DEA agent points out that “there is such an animal called an Attorney General-exempt operation, where the Attorney General of the United States [in the Zambada Niebla case, which allegedly dates back to at least 2004, it would have been the Bush administration’s Attorney General] could authorize that laws be violated [by an informant to

advance a case].”

“This is usually done in money laundering investigations, however,” the DEA source said.

The other possibility, the former DEA agent adds, is that Zambada Niebla was tricked on an even deeper level, and was, in fact, not dealing with US law enforcement agencies, but rather a CIA intelligence operation.

“This would not be the first time CIA has used an informant and led them to believe it was an FBI, ICE or DEA operation,” the DEA source said.

If that is the case, the former DEA agent adds, Zambada Niebla’s case is sunk, since even if documents and other evidence exist to prove his allegations of US government complicity, that evidence would almost certainly be deep-sixed under claims of national security that would be invoked by that very same US government.