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SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
CRIMINAL DIVISION - FELONY BRANCH

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| UNITED STATES OF AMERICA | : | Crim. No. F-2332-98 |
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|                          | : |                     |
| v.                       | : |                     |
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|                          | : |                     |
| SANTOS FELIPE BONILLA,   | : | Judge Abrecht       |
| a.k.a. "Manatos"         | : | (Closed Case)       |
| Defendant                | : |                     |
|                          | : |                     |

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**GOVERNMENT’S OPPOSITION TO DEFENDANT’S MOTION TO VACATE  
CONVICTION AND SET ASIDE SENTENCE PURSUANT TO D.C. CODE § 23-110**

The United States, by and through its attorney, the United States Attorney for the District of Columbia, opposes defendant’s motion for a new trial pursuant to D.C. Code § 23-110. In his motion, the defendant claims that the government violated the rule of Brady v Maryland, 373 U.S. 83 (1963), by not disclosing “evidence that (government witness) Garcia was committing an ongoing crime, residing in the United States illegally, and that she lied to police about her immigration status”, and the rule of Giglio v. United States, 405 U.S. 150 (1972), by not disclosing “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” (Motion at 18). Defendant contends that these alleged failures by the government prejudiced him by depriving him of his “right to attack Garcia’s credibility by cross-examining her and detectives about promises she may have

received in return for her testimony” (Motion at 18).

However, we submit that the government was not required to disclose Ms. Garcia’s immigration status under Brady. Moreover, a hearing on the defendant’s motion will show that the government did not bestow any benefits regarding her immigration status requiring disclosure. Although we concede that government agents were aware that Ms. Garcia had misrepresented certain information regarding her immigration status, and it would have been advisable to disclose this misrepresentation prior to trial, we do not agree that there is any reasonable probability that the disclosure of this information would have affected the verdict. We submit that Rosa Garcia’s misrepresentations about her immigration status were clearly collateral and irrelevant to her testimony about the murder she witnessed. Moreover, even if she had been impeached with her misrepresentation about her immigration status, such impeachment would not have significantly undermined the credibility of her compelling eyewitness testimony about the murder of Warren Helm and co-defendant Salamanca’s subsequent attempt to prevent her from reporting what she had witnessed. Ms. Garcia’s testimony was just part of a broad mosaic of mutually corroborative evidence from other eyewitnesses and participants in the crime which conclusively proved that the defendant participated in the murder of Warren Helm. Therefore, impeachment of Ms. Garcia about her unrelated immigration status would not have undermined confidence in the verdict. Consequently, the government submits that the Court should deny the defendant’s motion after holding an evidentiary hearing on the defendant’s allegations.

In further support of its opposition, the United States relies on the following points and authorities:

## **I. RELEVANT PROCEDURAL HISTORY**<sup>1</sup>

1. In the early morning hours of March 15, 1998, an unidentified homeless man was beaten by a group of men outside of the Diversite nightclub on 14<sup>th</sup> Street in Northwest, Washington, D.C. Shortly thereafter, Mr. Warren Helm was punched, kicked, and stabbed to death by a group of men after he came to the assistance of the homeless man. On March 27, 1998, the defendant was arrested on a warrant charging him with second degree murder while armed in connection with these incidents. On July 14, 1998, the government filed a superseding indictment charging the defendant (and seven co-defendants)<sup>2</sup> with assault, first degree murder while armed (premeditated), and conspiracy to assault and to commit murder.

2. After a jury trial commenced in this Court on October 27, 1998, the defendant was found guilty of First Degree Murder while Armed (Premeditated) and Conspiracy to Assault and Commit Murder on November 6, 1998.<sup>3</sup> Thereafter, on January 26, 1999, the Court sentenced

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<sup>1</sup> For a more complete procedural and factual history of the case, the government respectfully refers the Court to the government's prior post-conviction pleadings and the Court's prior post-conviction orders. The government has relied on the appellate brief prepared by A.U.S.A. David Goodhand in portions of this pleading. The government also acknowledges with appreciation the assistance of legal interns Amy Weiner and Dennis Carroll.

<sup>2</sup> In addition to the defendant, also charged in the superseding indictment were:

Oscar Villatoro (a.k.a. "Gato"),  
Carlos Robles-Benevides,  
Luis Perez (a.k.a. "Cholo"),  
Jose Salamanca (a.k.a. "Muella"),  
Jorge Navarette (a.k.a. "Mexico),  
Douglas Ventura (a.k.a. "Douglas"),  
and Walter Velasquez (a.k.a. "Catinga").

<sup>3</sup> On the same day, the jury found all the remaining defendants guilty of all the charges submitted to them. Along with the defendant Bonilla, Villatoro, Perez, and Benevides

the defendant to a term of imprisonment of thirty years to life for the offense of first degree murder while armed (premeditated) and a concurrent term of twenty to sixty months on the offense of conspiracy to assault and commit murder.

3. The defendant on November 20, 1998 filed his first motion for a new trial under the “interests of justice” standard of Superior Court Rule of Criminal Procedure 33. In an order dated March 8, 1999, this Court denied the defendant’s first motion for a new trial.<sup>4</sup>

4. On February 19, 1999, the defendant noted an appeal of his convictions and sentences. The defendant’s appeal was later stayed pending the resolution of the defendant’s

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were found guilty of first degree murder while armed (premeditated), and conspiracy to assault and commit murder. Perez and Benevides were also found guilty of assault on the homeless man. Moreover, Benevides was found guilty of assault with a dangerous weapon (shod foot). Finally, Jose Salamanca was found guilty of the separate counts of assault, threats to do bodily harm, and obstruction of justice in connection with the assault and threats he made against Ms. Garcia. Navarette (a.k.a. “Mexico”), Ventura (a.k.a. “Douglas”), and Velasquez (a.k.a. “Catinga”) were not part of the trial because they had not yet been apprehended. Subsequently, in mid-December, 2002, Navarette was apprehended as he attempted to re-enter the United States in Arizona using another name. He was arrested on the D.C. murder warrant and returned to this jurisdiction to face trial. In November 2003, Navarette pled guilty to Manslaughter and Conspiracy to Commit Manslaughter. The warrants for Ventura and Velasquez are still outstanding.

<sup>4</sup> In this first motion for new trial, the defendant argued, as he does in the instant motion, that the Court committed error in not granting defendant’s motion for mistrial because the government had allegedly violated the rule of Brady v Maryland, 373 U.S. 83 by not disclosing two allegedly exculpatory witnesses (Myra Rivera and Sandy Leonsis), one of whom eventually appeared under defense subpoena and the other (Ms. Rivera) eventually testified for the defendant. In denying the defendant’s motion, the Court found no merit to the alleged Brady violation and that the defendant had not demonstrated prejudice, pointing out that the defendants did exercise their opportunity for cross-examination of Rosa Garcia, and defendant Bonilla exercised his opportunity to contradict Ms. Garcia’s testimony by calling one of the alleged Brady witnesses (Myra Rivera) on his own behalf. Moreover, the Court pointed out that “the evidence revealed that these witnesses were acquainted with other defense witnesses and the defendants, so that their information was never peculiarly available to the Government.”(3-8-99 Order at pp. 4-5).

post-conviction motions.

5. The defendant filed another motion for a new trial pursuant to Superior Court Rule of Criminal Procedure 33 on or about November 5, 2001. The Court held an evidentiary hearing on that motion on June 18 and July 3, 2002. On October 10, 2002, this Court issued an order denying the defendant's motion. The defendant filed notice of appeal of the denial of his post-conviction motion.

6. On February 8, 2005, the D.C. Court of Appeals heard oral argument regarding the defendant's direct appeal and his appeal of this Court's denial of his post-conviction motions.

7. Prior to the oral argument (on February 1, 2005), the government disclosed to the defendant and the Court of Appeals that it had discovered in its victim-witness files the fact that government trial witness Rosa Garcia had misrepresented facts about her immigration status to government officials who were assessing her eligibility for placement in an emergency short-term witness protection program.<sup>5</sup> On February 16, 2005, the Court of Appeals issued an order of partial remand to this Court for resolution of any 23-110 motions the defendants might file in light of the information about Rosa Garcia disclosed by the government.

8. On June 2, 2005, the defendant filed the instant motion.

## **II. ARGUMENT**

### **A. Relevant Background Regarding Witness Rosa Garcia**

At a hearing on the defendant's motion, the government expects to show the following:

1. At about 3:00 a.m. on March 15, 1998, Rosa Garcia witnessed the co-

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<sup>5</sup> The government's letter of February 1, 2005 is attached as Exhibit 1.

defendants and several others murder Warren Helm on 14<sup>th</sup> St., N.W. At about 4:00 p.m. on that same date, Ms. Garcia was threatened by defendant Salamanca and warned not to report what she had seen to the police. However, Ms. Garcia instead went immediately to the Fourth District police station and reported what she had seen of the murder. Later that evening, Ms. Garcia was taken to M.P.D. Homicide headquarters and gave a written statement to Det. Pamela Reed.<sup>6</sup>

2. On or about March 16, 1998, A.U.S.A. Anthony Asuncion was assigned to prosecute the homicide of Warren Helm (Asuncion Affidavit at ¶ 2).<sup>7</sup> On March 17, 1998, A.U.S.A. Asuncion interviewed Rosa Garcia and presented her as a witness to the grand jury investigating the murder of Warren Helm (Asuncion Affidavit at ¶¶ 3,4).<sup>8</sup> Shortly thereafter, Ms. Garcia declined the offer of a witness security program.

3. However, about six weeks later (on May 1, 1998), as a result of repeated threats on her life because she had come forward as a witness against her friends, Ms. Garcia was interviewed by staff from the USAO's Victim Witness Assistance Unit ("VWAU") to assess her eligibility for the Short Term Protection Program.<sup>9</sup> Detective Cassandra Washington of the Metropolitan Police Department, who was assigned to work with the VWAU on witness security matters, also

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<sup>6</sup> Ms. Garcia's statement to the police on the day of the homicide is attached as Exhibit 2.

<sup>7</sup> The affidavit of A.U.S.A. Asuncion regarding his contacts with Ms. Garcia is attached as Exhibit 3.

<sup>8</sup> The transcript of Ms. Garcia's grand jury testimony, which was made public at the hearings regarding defendant's prior post-conviction pleadings, is attached as Exhibit 4.

<sup>9</sup> The United States Attorney's Office has a variety of witness security options for witnesses in need of relocation. After an initial assessment, Ms. Garcia was identified as a candidate for the Short Term Protection Program (STPP) which is administered by the Department of Justice's Office of Enforcement Operations (OEO) and operated by the United States Marshal's Service.

participated in this interview (Asuncion Affidavit at ¶ 5). Among other things, Ms. Garcia reported that three days earlier (April 28, 1998) her life had again been threatened because of her being a witness against members of the gang in this murder.<sup>10</sup> In the process of the interview, Ms. Garcia also informed the staff member that she had a “green card” but could not locate it.<sup>11</sup>

4. Thereafter, on May 4, 1998, Det. Washington contacted the Immigration and Naturalization Service (“INS”) office regarding Ms. Garcia’s status. Det. Washington was informed that INS had no record for Ms. Garcia. The next day (May 5, 1998), Det. Washington called Ms. Garcia at a “safe house” and inquired again about her green card. At that point, Ms. Garcia informed Det. Washington that she, in fact, did not have a green card but had been brought into this country illegally by her mother.<sup>12</sup>

5. That same day, Det. Washington informed A.U.S.A. Asuncion that Ms. Garcia’s immigration status was in question. A.U.S.A. Asuncion telephoned INS and spoke with an INS supervisor, who informed A.U.S.A. Asuncion that, since no detainer had been issued for Ms. Garcia, any investigation of her status would be a matter of low priority. A.U.S.A. Asuncion then sent a letter reporting this information to the Chief of the Special Operations Unit at the Office of Enforcement Operations, the unit within the Department of Justice responsible for authorizing Ms. Garcia’s application for the STPP.<sup>13</sup> On May 5, 1998, Ms. Garcia was admitted into the

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<sup>10</sup> The notes of the VWAU staff member are attached as Exhibit 5. A.U.S.A. Asuncion’s letter of May 1, 1998 detailing those threats is attached as Exhibit 6.

<sup>11</sup> A “green card” refers to the document issued by INS certifying that a person is a Legal Permanent Resident of the United States.

<sup>12</sup> The relevant journal entries of the VWAU staff member are attached as Exhibit 7.

<sup>13</sup> A.U.S.A. Asuncion’s letter of May 5, 1998 is attached as Exhibit 8.

STPP.

6. Before Ms. Garcia testified at trial, A.U.S.A. Asuncion disclosed to the defendants the fact that Ms. Garcia had been in the Short Term Protection Program and the extent of the financial benefits she had received in the program (Asuncion affidavit at ¶ 10).<sup>14</sup> In his affidavit, A.U.S.A. Asuncion also indicates that neither he nor anyone else from the United States Attorney's Office promised Ms. Garcia during the pendency of the 1998 trial that the government would help her with her immigration issues (Asuncion affidavit at ¶ 11).

7. In August 2003, A.U.S.A. Stephen Gripkey was assigned to United States v. Jorge Luis Navarette, (F-4371-98), the prosecution of defendant Navarette (a.k.a. "Mexico"), who had originally been indicted in 1998, but had fled the country and was later caught entering the United States. Ultimately, just prior to jury selection in early November 2003, defendant Navarette pled guilty to Manslaughter and Conspiracy to Commit Manslaughter.<sup>15</sup>

8. In preparing for the Navarette trial, A.U.S.A. Gripkey came into contact with witness Rosa Garcia.<sup>16</sup> During his first meeting with Ms. Garcia on August 26, 2003, she raised safety concerns that prompted a meeting with the VWAU at the U.S. Attorney's Office. In the course of interviewing Ms. Garcia her about her safety concerns and evaluating what program

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<sup>14</sup> The government's related document indicating that Ms. Garcia received financial benefits totaling \$1878.38, which was disclosed to the defendants before the trial, is attached as Exhibit 9.

<sup>15</sup> Navarette was subsequently sentenced by Judge Broderick to an aggregate term of 7 to 21 years incarceration.

<sup>16</sup> The affidavit of A.U.S.A. Gripkey is attached as Exhibit 10.



options were available, the subject of her immigration status came up. During or after that meeting, A.U.S.A. Gripkey reviewed the victim-witness file on Ms. Garcia and made copies of various documents in the victim-witness file, including:

a. a photocopy of what appeared to be an El Salvadoran passport with Ms. Garcia's photo;

b. a journal entry indicating that on May 4, 1998, Detective Washington learned that the INS had no record of Ms. Garcia, and indicating that on May 5, 1998, Ms. Garcia told Detective Washington that in fact she did not have a green card, and had been brought to this country illegally by her mother, and indicating that on May 5, 1998, Detective Washington told AUSA Asuncion to contact the INS office (see Exhibit 7); and

c. a letter of May 5, 1998, from AUSA Asuncion to Catherine Breeden, Chief, Special Operations Unit, Office of Enforcement Operations, Criminal Division, indicating that AUSA Asuncion had been informed Ms. Garcia's immigration status was in question and that he had learned no notice of action or detainer had been issued for her, that any investigation of her status would be a low priority, and that in the meantime she was free to take whatever steps were necessary to clear up her immigration status (see Exhibit 8).

9. On August 27, 2003, A.U.S.A. Gripkey called the United States Citizenship and Immigration Service ("USCIS").<sup>17</sup> Gripkey provided the Social Security number that Ms. Garcia had provided when meeting with him on August 26, 2003, as well as the passport number that was contained in the victim-witness file. The USCIS agent checked his databases, and

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<sup>17</sup> On March 1, 2003, INS ceased to exist and its functions were transferred to the Department of Homeland Security ("DHS"). USCIS has assumed many of the INS's enforcement functions. Hernandez v. Ashcroft, 345 F.3d 824, 828, n.2 (9th Cir. 2003).

determined that the social security number did not belong to Ms. Garcia. Furthermore, he indicated that the El Salvadoran passport number Gripkey had provided did not appear to be valid. Based on this information, the agent surmised that Ms. Garcia was an illegal alien and never possessed a green card.

10. A.U.S.A. Gripkey later provided A.U.S.A. David Goodhand, the attorney for the government handling the defendant's appeal, with the information he had learned concerning Ms. Garcia's misrepresentation about her immigration status (See Gripkey affidavit at ¶ 9). A.U.S.A. Goodhand, as noted above, then disclosed the information to defense counsel and the Court of Appeals.

11. Prior to the Navarette trial, A.U.S.A. Gripkey discussed with Ms. Garcia the possibility of the government applying for an "S Visa" for her and providing her with letter immunity concerning her immigration issues.<sup>18</sup> Although the Navarette trial was resolved by plea, the government has continued the process of requesting an "S Visa" for Ms. Garcia (See Gripkey affidavit at ¶¶ 8, 9).

### **B. Applicable Legal Standards**

In Brady v. Maryland, 373 U.S. 83, 87 (1963), the Supreme Court held that "suppression by the prosecution of evidence favorable to an accused upon request violates due process where

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<sup>18</sup> The Court in Navarette appointed counsel for Ms. Garcia regarding the immunity issue.

Pursuant to 8 U.S.C. 1101 (a) (15)(S) and 8 C.F.R. 214.2(t), an "S Visa" may be requested by a federal or state law enforcement agency for an alien witness providing critical, reliable information on a criminal or terrorist organization. The "S Visa" provides the witness legal status in the United States, and after several years of successful monitoring, would make the witness eligible for permanent residency ("green card"), pursuant to 8 U.S.C. § 1255(j) and Immigration and Nationality Act (INA) § 245(j).

the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." In addition, "evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. A 'reasonable probability' is a probability sufficient to undermine confidence in the outcome." United States v. Bagley, 473 U.S. 667, 682 (1985). "[S]howing that the prosecution knew of an item of favorable evidence unknown to the defense does not amount to a Brady violation, without more." Kyles v. Whitley, 514 U.S. 419, 437 (1995). Rather, the government's constitutional obligation to disclose such evidence matures only when the Brady materiality standard is met. United States v. Agurs, 427 U.S. 97, 108 (1976).

Thus, "there are three components of a true Brady violation: The evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; that evidence must have been suppressed by the State, either willfully or inadvertently; and prejudice must have ensued." Strickler v. Greene, 527 U.S. 263, 281-82 (1999); accord Black v. United States, 755 A.2d 1005, 1010 (D.C. 2000). However, "there is never a real 'Brady violation' unless the nondisclosure was so serious that there is a reasonable probability that the suppressed evidence would have produced a different verdict." Strickler, 527 U.S. at 281.

Applying this standard, the defendant has not demonstrated that is entitled to relief under Brady.

**C. The Government Was Not Required to Disclose Ms. Garcia's Immigration Status Under Brady and the Government Did Not Bestow Any Benefit Upon Ms. Garcia Regarding Her Immigration Status**

The defendant suggests that the fact that Rosa Garcia was in this country illegally, and the

government's knowledge of this fact, created a duty upon the government to disclose her undocumented status under Brady so that it could have been used to impeach her testimony. We do not agree. The government submits that the mere fact a witness is an undocumented immigrant does not create a duty to disclose under Brady. In this case, the heart of Ms. Garcia's testimony concerned the murder she witnessed and the criminal threats made by co-defendant Salamanca in an attempt to silence her. Ms. Garcia's status as an undocumented immigrant from Central America was collateral and irrelevant to any of the issues at trial and had no relevance to the crime she had witnessed or the crime in which she was the victim. Indeed, the Court of Appeals has explicitly noted that it is improper to argue that "anyone who – for whatever reason – has crossed our borders in violation of the government's immigration procedures should not be believed." Portillo v. United States, 609 A.2d 687, 690-91 (D.C. 1992). Thus, Ms. Garcia's immigration status was not the type of information that the government was required to disclose pursuant to Brady.

Moreover, the record indicates that the government learned of Ms. Garcia's immigration status six weeks after she came forward as a witness in the case and testified in the grand jury, and then only in conjunction with the administrative processing for her admission into the witness protection program. There is nothing in the record to indicate that Ms. Garcia's testimony in the grand jury resulted from any discussions of her immigration status or from any promises of favorable treatment with the immigration authorities. In fact, A.U.S.A. Asuncion represents in his affidavit that neither he, nor to his knowledge, anyone from the U.S. Attorney's Office ever promised to help Ms. Garcia with her immigration issues during the pendency of the 1998 trial (Asuncion affidavit at ¶15). Because the government did not make any promises or

bargains regarding Ms. Garcia's immigration status in exchange for her testimony, we submit the witness received no benefit requiring disclosure under Brady or Giglio.

The defendant also argues that the "apparent inaction by the government" after discovering that Ms. Garcia was undocumented created a benefit requiring disclosure. Again, we disagree. The record indicates that, once aware that there were questions about Ms. Garcia's citizenship, a detective involved in processing Ms. Garcia's request for witness protection and A.U.S.A. Asuncion called I.N.S. about Rosa Garcia. A.U.S.A. Asuncion was informed that no notice of action or detainer had been issued for her, that any investigation of her status would be a low priority, and that in the meantime Ms. Garcia was free to take whatever steps were necessary to clear up her immigration status (See Asuncion affidavit at ¶ 11-13; Asuncion letter of May 5, 1998 to Catherine Breeden). Thus, the record indicates that the government was not "inactive" when it learned of Ms. Garcia's status but conferred with I.N.S. about her. There is nothing in the record to indicate that the prosecutor or others involved in the prosecution requested any favorable treatment for Ms. Garcia from the I.N.S. Therefore, the defendant's claim that the government conferred a "benefit" on Ms. Garcia by being "inactive" when it learned of her immigration status is belied by the record and without merit.

**D. The Undisclosed Information Regarding Rosa Garcia's Misrepresentation About Her Immigration Status Is Not Of Such A Nature To Create A Reasonable Probability of a Different Verdict**

The government acknowledges that Rosa Garcia's misrepresentation about her immigration status on May 1, 1998 is the type of information that we would normally disclose as

potential impeachment evidence and that the information was not disclosed in this case.<sup>19</sup>

However, we submit that the defendant cannot show sufficient prejudice under Brady from the government's non-disclosure because, as we have argued above, Ms. Garcia's misrepresentation was not relevant to the matters she testified about at trial, the misrepresentation came in the context of her admission into the witness protection program (an area of potential bias inquiry the defendants chose to avoid at trial), Ms. Garcia's credibility was substantially challenged in many other ways, and the potential impeachment value of the undisclosed evidence here was not of such a nature that it would have substantially discredited her testimony so as to undermine confidence in defendant Salamanca's conviction.

### **1. Rosa Garcia's Immigration Status and Her Misrepresentation About Her Immigration Status Would Not Have Significantly Impeached Her Eyewitness Testimony About The Murder**

Less than 24 hours after witnessing a group of her friends and acquaintances murder Warren Helm, Ms. Garcia gave a statement to the police identifying the men she saw hitting the decedent. Two days after the murder (March 17, 1998), Ms. Garcia testified about what she saw of the murder and the defendant's threats against her before the grand jury. Although the defendants argued at length at trial and in post-conviction litigation that Ms. Garcia was lying about what she had seen, there is no credible evidence that Ms. Garcia lied about the central issues in the case. The only issue about which Ms. Garcia lied was her immigration status, and that came six weeks after she had come forward and testified in the grand jury. We submit that

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<sup>19</sup> We acknowledge that Ms. Garcia's misrepresentation is attributable to the government, given that there are notes concerning this misrepresentation in the files of the VWAU.

Ms. Garcia's immigration status and her lie about her status was so remote in relevance from her eyewitness testimony about the murder that it would not have seriously undermined her credibility and caused the jury to discount her testimony as to the harm she witnessed the defendant's associates do to Warren Helms and the threats the defendant made in an attempt to silence her. Cf. Portillo, *supra*, 609 A.2d at 691 (defendant's "unlawful presence in this country did not bear directly upon his veracity in respect to the issue of his guilt on the charge of distributing drugs"); People v Walls 752 N.E. 2d 456, 465 (Ill. 2001) (in armed robbery and armed kidnaping trial, undisclosed evidence regarding victim's immigration status, "even if it were shown that he was indeed an illegal alien, does not satisfy the threshold requirement of materiality under a Brady analysis").

In fact, the issue of the citizenship of the people involved was raised by counsel for defendant Robles-Benevides before the voir dire of the jury panel. Attorney O'Connor requested that the Court refer to the defendants as "Hispanics" rather than "Hispanic-Americans" in its voir dire questions, because, according to defense counsel, there was "a question about whether some of them [the defendants] are yet Americans" (Tr. 10-26-98 at 13). Subsequently, the first witness the jury heard in the case was Rosa Garcia, who began her testimony by informing the jury that she was from El Salvador and had been in this country for 8 years (Tr. 340). Thus, the fact that Rosa Garcia (or indeed any of the witnesses or defendants) may have been in this country illegally and had made misrepresentations about her illegal status would likely not have been a surprise to defense counsel or to the jury. In any case, in this trial about the murder of a man who was trying to stop a mob from hurting a homeless man, we submit that, even if the government had disclosed Ms. Garcia's illegal immigration status and her lie about it, and the

defendant had impeached her with that information, it would not have created a reasonable probability of a different verdict, given the other impeachment of Ms. Garcia's testimony, and the strength of the corroborating evidence of the defendant's guilt.

Indeed, if the jury had been made aware Ms. Garcia's immigration status and her lie about it, the unremarkable nature of Ms. Garcia's undocumented status and her misrepresentation would not have significantly impeached her credibility. Ms. Garcia, after all, was testifying against people with whom she was very close. All of the significant players (defendants and witnesses) were either family or associates. Ms. Garcia also testified that she used to "hang out" with the defendants, and at the time of the homicide, she was still the girlfriend of co-conspirator Jose Benitez (a.k.a. "Chofer") (Tr. 355, 379).<sup>20</sup> Despite these close ties of community and association, Ms. Garcia came forward to testify against her boyfriend and her other friends. Ms. Garcia explained her motivation for coming forward in her own words:

MS. GARCIA: ...I asked Detective Torres to —to brought me here. That I wanted to tell the truth and nothing but the truth because I wanted the person that did everything to be guilty of it. The person that killed the black male to be in jail.

Because it's not fair that an innocent person die for nothing he didn't do. Just for trying to —trying to stop a fight between a homeless guy and a bunch of other people.

That concerned me because I have four kids and if one day my kids became homeless or I got a kid that goes out to a disco, drinks or have fun, I don't want nothing to happen to them. And I'm going to feel the same way as the lady, the mother of the poor man dead, feels. And I know I'm going to feel the same way

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<sup>20</sup> Ms. Garcia acknowledged that Benitez, who had been arrested in this case, and later pled guilty and testified as a government witness, had, at one point, tried to get her to lie about what she had seen but she had refused his request (Tr. 393). In his own trial testimony, Benitez confirmed that he had tried to influence Ms. Garcia's testimony but that she had resisted (Tr. 612).



because I'm a mother of four kids.

(Tr. 388-89). Thus, we submit that Ms. Garcia's misrepresentation about her immigration status would not have made her testimony significantly less credible in the eyes of the jury.

## **2. Rosa Garcia's Misrepresentation About Her Immigration Status Occurred During Her Interview for a Witness Protection Program After Repeated Threats on Her Life**

The record indicates that questions about Ms. Garcia's immigration status first arose only because continuing threats on her life in late April, 1998 forced the government to seek to place her into the Short Term Protection Program. During the witness security interview process on May 1, 1998, Ms. Garcia falsely told government staff that she had a "green card". Three days later (May 4, 1998), Ms. Garcia admitted that she did not have a green card but had been brought to this country illegally by her mother.

As indicated above, before Ms. Garcia testified at the defendant's trial in October, 1998, the prosecutor disclosed to defense counsel the fact that Ms. Garcia had been in a witness security program from May 5, 1998 until September, 1998 and had received certain financial benefits. However, although defense counsel at trial vigorously attacked Ms. Garcia's credibility in cross-examination, no counsel asked her any bias-related questions stemming from her placement in the witness security program, or the fact that she had received financial benefits from the government. In fact, Ms. Garcia herself volunteered the fact that she had entered a witness security program in response to a question on cross-examination by counsel for defendant Salamanca about her alleged delayed report of the threat by defendant Salamanca at the bus stop just after the murder:

MR. BARNEYS: ...how long after did this [i.e. the report of the threat by

Salamanca] occur?

MS. GARCIA: Like two or three days after that because I thought that my life was in danger so I told him about it.

MR. BARNEYS: Okay. But you didn't tell this to Investigator Torres?

MS. GARCIA: Oh no, I didn't. I didn't feel any need because I thought it wasn't going to - - nothing was going to happen to me but afterwards I did need, you know, some protection so they put me into a witness protection service and I ran away from it.

(Tr. 372-73). The only other reference to Ms. Garcia's entry into the Short Term Protection Program occurred when Ms. Garcia answered a question from defendant Perez's counsel about whether she had testified before the grand jury:

MS. GARCIA: I did appear before the Grand Jury and talk to him [A.U.S.A. Asuncion] so he would put me in a witness protection service. That's the time when he put me in the witness protection service.

MR. VIRGILIO: In the witness protection service. Do you mean the witness protection program?

MS. GARCIA: Yes.

(Tr. 375). Thus the record indicates that defense counsel chose not to pursue a bias-related cross-examination of Ms. Garcia about whether there was any link between her grand jury testimony and her desire to obtain witness protection, nor did they choose to quiz Ms. Garcia about her entry (or exit) into the program, or to highlight the financial benefits she had received from the government as a result. Likewise, although most of the defense counsel attacked Ms. Garcia's credibility in their closing arguments on other grounds, no counsel mentioned her status in the Short Term Protection Program or argued that she had been motivated to testify to curry favor with the government or receive financial benefits.

The obvious inference from defense counsels' avoidance of this potential line of bias-related cross-examination is that they attempted to avoid the inevitable line of inquiry from the government to Ms. Garcia on redirect about why she felt the need to be placed in a witness security program. We submit that such questions could have highlighted the fact that Ms. Garcia had been placed in a witness security program because of the threats on her life by the defendant and his associates and perhaps even have provided more specific and incriminating details about the nature of those threats.<sup>21</sup> We submit that such testimony would have been likely to reinforce the themes at the heart of the government's case: mob violence, mob retaliation, and witness intimidation by the defendant on behalf of the mob. Thus, the defense counsel, who had argued vociferously before trial that the government should not be able to mention gang references and the defendants' membership in "Mara R", made the reasonable tactical choice to avoid an area of potential bias impeachment with Rosa Garcia (i.e. the Short Term Protection Program and financial benefits) which contained a substantial risk of hurting their cause.

Thus, because Ms. Garcia's misrepresentations about her immigration status came in the context of processing her for a witness security program, disclosure of that misrepresentation would not have guaranteed that the defendant would have tried to exploit it as impeachment

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<sup>21</sup> As outlined by A.U.S.A. Asuncion in his initial request for witness protection for Ms. Garcia on May 1, 1998 (See Exhibit 6), the threats included:

- a) the threat at the bus stop by Salamanca on March 15, 1998;
- b) a statement later that week attributed to defendant Bonilla and relayed to her by a third party saying, "tell China [i.e. Ms. Garcia] we are going to cut her head off if she continues to talk";
- c) a statement directly to her by an unidentified Spanish male visiting the D.C. Jail, saying "we are looking for her [i.e., China] because we are going to kill her because she is talking about [a defendant]"; and
- d) a relative's statement to her on April 28, 1998, that members of "Mara R" were looking for her to kill her.

material. Such an attempt to exploit Ms. Garcia's misrepresentation would carry the same risk of opening the door to testimony about the context of her misrepresentation, namely, that it came about in an interview following repeated threats on her life. Although Ms. Garcia's credibility may have suffered some slight injury through such impeachment, there was a greater risk that such an attack could reinforce the impression that these defendants were part of a group that had conspired to murder Warren Helm and were still conspiring to silence the witnesses against them. In such a case, we submit that this information again falls far short of creating the reasonable probability of a different verdict necessary for relief under Brady.

### **3. Ms. Garcia's Testimony Was Impeached Through Thorough Cross-Examination and Defense Evidence**

The information that Ms. Garcia had misrepresented her immigration status would not have been the only impeachment of her credibility. Ms. Garcia was cross-examined on, among other things, the fact that she didn't report the crime to the police immediately (Tr. 363), that she had vision problems that necessitated her to "wink" in order to see (Tr. 385), and that she had discussed her testimony with her ex-boyfriend Benitez (Tr. 393).

Defense witness Myra Rivera (who was with Rosa Garcia and several other friends) claimed that Rosa Garcia was drunk on the night of the attack (Tr. 783-84). Rivera also claimed that Rosa Garcia was with her after they left the club and that she (Rivera) never saw any fights or a body on the ground (Tr. 778-79, 782-83). Rivera testified further that the group (including Rosa Garcia) had caught a cab at 14<sup>th</sup> and Q Streets, whereas Rosa Garcia had claimed that she had seen the attack from her vantage point near 14<sup>th</sup> and Swann Streets (Tr. 777-78, 785-89). Rivera thus essentially told the jury that Rosa Garcia was a liar because Rivera had seen no

criminal activity and Garcia had been with Rivera the entire time.

The jury also heard from defense witness Stanislao Fuentes who testified that he witnessed the encounter between defendant Salamanca and Ms. Garcia near the bus stop on the afternoon after the murder (Tr. I 48). Although Mr. Fuentes saw defendant Salamanca talking to Ms. Garcia, and was too far away to hear what they were saying, Mr. Fuentes neither saw defendant Salamanca choke Ms. Garcia nor touch her in any way, contrary to her testimony (Tr. I 49).

In their closing arguments, several defense counsel argued that Ms. Garcia's testimony was incredible. Defendant Salamanca's counsel provided a detailed argument about how "Ms. Garcia just cannot be believed" (Tr. 236-42). Defendant Villatoro's counsel argued that Myra Rivera's testimony demonstrated that Ms. Garcia "says that she's somewhere that someone else is saying that she is not. She could not have seen that (i.e. the murder)." (Tr. 264).

Thus, even without the information that Ms. Garcia had misrepresented her immigration status, questions about Ms. Garcia's credibility were clearly put before the jury. We submit that the additional attack on her credibility based on a misrepresentation on a matter that was not relevant to the events at issue would not have created a reasonable probability of a different verdict. See Brooks v. United States, 396 A.2d 200, 205 (D.C. 1978) (government's failure to disclose witness' false statement on her marriage certificate not material under Brady where defendant otherwise impeached witness, her testimony was corroborated by other witnesses, and witness' prior false statements would not have affected the jury verdict "given the plethora of factors that could have motivated her other than an irreverence for truth and veracity"); United States v. Wong 78 F.3d 73,79-80 (2<sup>nd</sup> Cir. 1996) (undisclosed information that witness may have

received favorable treatment from INS in exchange for cooperation not material because cumulative of other impeachment evidence and there was independent corroborative evidence of defendant's guilt); United States v. Rivera, 1999 WL 216646 (S.D.N.Y. 1999) (non-disclosure of alleged special consideration to witness concerning immigration status immaterial and cumulative).

#### **4. The Evidence of Defendant Bonilla's Guilt Was Otherwise Very Strong**

The defendant argues that he was prejudiced by the government's alleged Brady violations contending that Ms. Garcia's testimony was "critical" to the government's case against him and that "the government's case against Mr. Bonilla was weak." (Motion at 25). We disagree. The evidence in the case proved overwhelmingly that the defendant aided and abetted the murder of Warren Helm. "Neutral" witnesses (Greg Alexander, Barry Hallner) described in compelling detail a scene of a mob which first attacked a homeless man and then turned savagely on the decedent as he tried to intervene on the homeless man's behalf. Rosa Garcia was just one of several other witness who put faces on the members of that mob, which included the defendant.<sup>22</sup>

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<sup>22</sup> The following is a summary of Ms. Garcia's trial testimony:

Rosa Garcia used to "hang out" with the defendants and at the time of the homicide, she was still the girlfriend of Jose Benitez (a.k.a. "Chofer") (Tr. 355, 379). On March 15, 1998, Rosa Garcia was in the Diversite nightclub with several friends (Tr. 341). However, following a fight inside the club involving her friends from the gang "Mara R" and another gang called "MS", everyone was kicked out (Tr. 341, 347). Defendant Bonilla was in a group outside the club that included, among others, his co-defendants (Tr. 380-81). When Ms. Garcia left the club sometime between 3:00 and 4:00 a.m., she saw defendant Villatoro across the street from the club in an argument with a homeless man (Tr. 347, 362, 382-383). Thereafter, Ms. Garcia walked up 14<sup>th</sup> Street with her friends (Tr. 347, 361-362, 383-384). When Ms. Garcia and her friends reached the intersection of 14<sup>th</sup> and R Streets, Ms. Garcia heard an African-American male say "no, no, no," and saw Walter Velasquez (a.k.a. "Catinga") stabbing the decedent near

Ms. Garcia testified that she saw defendant Bonilla in a group outside the club that included, among others, his co-defendants (Tr. 380-81). Subsequently, while witnessing the attack on the decedent, Ms. Garcia saw defendant Bonilla “inside a car with four doors open waiting for the men that stabbed the black male” (Tr. 356-57). Apart from Ms. Garcia’s testimony there was substantial evidence from other witnesses establishing that the defendant, at the very least, drove the stabbers to the decedent.

Hugo Aleman testified that he saw the defendant in the car which pursued the decedent up 14 St. (Tr. 550-551). When the occupants of the car reached the decedent, Aleman witnessed them “hurt the black person...” (Tr. 551-53). Aleman acknowledged having testified in the grand jury that he saw defendant Bonilla “hit him [i.e., the decedent] in the face but then he went in the car because he was driving”(Tr. 554-556).<sup>23</sup>

A participant in the murder, Jose Benitez, testified that the defendant drove Catinga and the other stabbers in pursuit of Mr. Helm (Tr. 575-76). Benitez and Barry Hallner described how the car seemed to cut off Helm as he tried to escape his assailants (Tr. 455, 577-78). Jose Perez

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14<sup>th</sup> and Swann Streets (Tr. 347-348, 357, 359, 385-386). She also saw Villatoro, Douglas Ventura, her boyfriend Jose Benitez (a.k.a. “Chofer”), and others punching and kicking the decedent (Tr. 350, 356, 357). While seeing the attack on the decedent, Ms. Garcia saw defendant Bonilla “inside a car with four doors open waiting for the men that stabbed the black male” (Tr. 356-57).

Later on the day of the murder, Ms. Garcia was approached on the street by defendant Salamanca, who threatened to kill her if she reported what she had seen to the police (Tr. 359-60). This threat led Ms. Garcia to report immediately what she had witnessed to M.P.D. Investigator Torres that same day (Tr. 360). Ms. Garcia eventually entered a witness security program (Tr. 373-75).

<sup>23</sup> In its order of October 10, 2002 denying defendant’s New Trial Motion, this Court concluded that Aleman was telling the truth before the grand jury (10-10-02 Order at 6).

(who identified his own brother as a participant), and Benitez all described how the occupants of defendant's car got out and attacked Helm (Tr 356-57, 502-7, 624-25). While Catinga was stabbing Mr. Helm, Benitez described the defendant standing beside his car, "waiting" (Tr 356-57, 624-25). Benitez further described the defendant subsequently driving "Catinga" away from the scene after Mr. Helm had been mortally wounded (Tr 642). And, of course, the jury saw on videotape the defendant himself telling the police that he saw Catinga and Douglas with their knives when they entered his car, that he stopped the car a couple of blocks away, and that he later drove off with Catinga.(Tr 741). In other words, the jury had overwhelming evidence, other than Ms. Garcia's testimony, that the defendant aided and abetted the stabbing murder of Warren Helm.<sup>24</sup> See Jefferson v. United States, 463 A.2d 681, 683 (D.C. 1983) ("proof of presence at the scene of a crime plus conduct which designedly encourages or facilitates a crime will support an inference of guilty participation as an aider and abettor").

### **Conclusion**

We submit that the record indicates that, even though the government failed to disclose the information that Ms. Garcia had lied about her immigration status during her interview for admission into witness protection, the defendant has established a Brady violation because of the collateral nature of the information, the significant impeachment of this witness through other means, and the fact that the evidence against defendant Bonilla was otherwise very strong. Thus, there is no reasonable probability that the disclosure that Ms. Garcia had misrepresented her

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<sup>24</sup> The defense witnesses corroborated most if not all of the government's case against defendant Bonilla. Defendant Salamanca corroborated the fact that the defendant drove Catinga et al away from the club, stopped the car and got out with them, then later drove Catinga away from the scene (Tr.79-116). The defendant himself corroborated all but seeing the knives beforehand and sharing the others' intent (Tr. I. 126-153).




immigration status would have resulted in a different verdict.


However, we acknowledge that the defendant's claims regarding the government's failure to disclose alleged benefits bestowed on Ms. Garcia regarding her immigration status involve facts not part of the existing record. Therefore, we submit that the Court should conduct an evidentiary hearing on the claims brought by the defendant. After such a hearing, we submit that this Court, which was "on the scene" ... [and] in the best position 'to assess the atmospherics of the case', will find that there is no reasonable probability that the disclosure that Ms. Garcia had misrepresented her immigration status would have affected the verdict. Gaither v. United States 759 A.2d 655, 664 (D.C. 2000) (quoting Edelen v. United States, 627 A.2d 968, 972 (D.C. 1993)).

WHEREFORE, the government respectfully requests that the Court deny defendant's Motion after holding an evidentiary hearing.

Respectfully submitted,

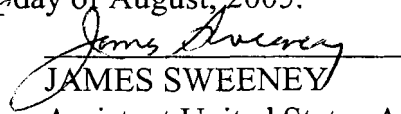
KENNETH WAINSTEIN.  
UNITED STATES ATTORNEY

  
\_\_\_\_\_  
ROBERT D. OKUN  
CHIEF, SPECIAL PROCEEDINGS SECTION  
ASSISTANT UNITED STATES ATTORNEY

  
\_\_\_\_\_  
JAMES SWEENEY  
ASSISTANT UNITED STATES ATTORNEY  
SPECIAL PROCEEDINGS SECTION

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing opposition has been served by mail on counsel for defendant Bonilla, Robert Becker, Esq. 5505 Connecticut ave., NW No. 155, Washington, D.C. 20015, this 14<sup>th</sup> day of August, 2005.

  
A handwritten signature in cursive script, reading "James Sweeney", is written over a horizontal line.

JAMES SWEENEY

Assistant United States Attorney

Room 10-449

Judiciary Center

555 4th Street, NW

Washington, D.C. 20530

202-514-7283

202-514-8784(fax)

# Exhibit 1

U.S. Department of Justice



Kenneth L. Wainstein  
United States Attorney

*District of Columbia*

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*Judiciary Center  
555 Fourth St., N.W.  
Washington, D.C. 20530*

February 1, 2005

Garland Pinkston, Jr.  
Clerk of the Court  
District of Columbia Court of Appeals  
500 Indiana Avenue, N.W.  
Washington, D.C. 2001

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)

Dear Mr. Pinkston,

Pursuant to D.C. App. R. 28(k), appellee, the United States of America, wishes to bring the following information to the Court's attention:

Although there has been no particular post-trial Brady request, 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. A review of certain victim-witness files maintained by this Office's Victim Witness Assistance Unit (the "Victim Unit") has revealed 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.

We are by no means certain that the above information meets the Brady materiality test, but if we were today preparing for trial in the above-captioned matters, we would likely disclose this information, preserving our option to argue that the information was not admissible at trial. Accordingly, in an abundance of caution, we are now disclosing this information to the Court and appellate counsel. Further, it appears to us that, if the above information raises any issues, these issues relate solely to matters best considered by the trial court in the first instance; however, as oral argument in the above-captioned appeals is fast approaching, in an abundance of caution we wanted to bring this information to this Court's attention now. Finally, at any rate, given Rosa Garcia's narrowly circumscribed trial testimony, we would note that the above information only even arguably relates to two of the five appellants now before this Court -- Jose Salamanca and Oscar Villatoro. Nonetheless, again in an abundance of caution, we thought it prudent to bring this information to the attention of counsel for all appellants.

Sincerely,

KENNETH L. WAINSTEIN,  
United States Attorney

By: \_\_\_\_\_  
DAVID B. GOODHAND,  
Assistant U.S. Attorney

cc:

# Exhibit 2

# Exhibit 2

METROPOLITAN POLICE DEPARTMENT  
Washington, D.C.

P.D. 119 REV. 10/89

COMPLAINANT/WITNESS STATEMENT

|   |                    |
|---|--------------------|
| 1. COMPLAINT NO.<br>98-129220                                 |                    |
| 2. NATURE OF INVESTIGATION<br>DEATH INVESTIGATION             |                    |
| 3. UNIT FILE NO.<br>HO98-294                                  |                    |
| 4. STATEMENT OF: (Last, First, Middle)<br>GARCIA, ROSA EMILIA | 5. DOB<br>08/07/74 |
|   | 6. SEX<br>FEMALE   |
| 7. HOME ADDRESS<br>[REDACTED]                                 | 8. HOME PHONE      |
| 9. EMPLOYMENT (Occupation and Location)                       | 10. BUSINESS PHONE |

|   |   |
|---|---|
| 11. LOCATION STATEMENT TAKEN<br>HOMICIDE BRANCH   |   |
| 12. NAME OF OFFICER TAKING STATEMENT (If other than block 18 include signature)<br>REED, PAMELA M. (D1-100) | 13. DATE/TIME STARTED<br>03/15/98 19:30 |

14. STATEMENT

Detective Torres has, you identified "Muella", "Colo", "Gato", "Chupa Cabra", and "Chofer" from the photos, is that correct?

A. Yes.

Q. You also identified "Trobi", "El Loco Hugo", and "Chino" from the photos?

A. El Loco was in the crowd but I didn't see him hit or kick the black man. Chino was with us, when he saw Catinga stabbing the man he was going to run over to them but we pulled him back to stay with us. Trobi was in the crowd around the black man, but I didn't see him do nothing.

Q. Rosa, I showed you some photos from another group just a little while ago and you identified three men that you know. El Ruko, who you said you knew and is another gang, Park Road. And photos of "Catinga" and "Colo" is that correct?

A. Yes.

Q. Your boyfriend is Chofer correct?

A. Yes.

Q. Do you know if any of the other men stabbed the black man besides Catinga?

A. I heard Douglas say he stabbed the man. It was when I saw them when I was coming out of my house around 5 or 6 in the morning. I was staying at 14th and W with my friend. I came out to see if Chofer was coming

15. I HAVE READ THIS STATEMENT GIVEN BY ME OR HAVE HAD IT READ TO ME. I FULLY UNDERSTAND IT AND CERTIFY THAT IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND RECOLLECTION. "I UNDERSTAND THAT MAKING OF A FALSE STATEMENT IS PUNISHABLE BY CRIMINAL PENALTIES (D.C. CODE SECTION 22-2514)".

|                                |
|--------------------------------|
| 16. DATE/TIME ENDED<br>3/15/98 |
| 17. Page 2 of 3 Pages          |

Rosa E. Garcia  
Signature of Person Giving Statement

|   |   |
|---|---|
| 18. OFFICER OBTAINING THE SIGNATURE IN BLOCK 15:<br><u>Pamela M. Reed</u><br>(Name and Signature) | 19. PERSON WITNESSING THE SIGNATURE IN BLOCK 15:<br><u>Det Arthur Leal D301</u><br>(Name and Signature) |
|---|---|



ABUNCION COPY

METROPOLITAN POLICE DEPARTMENT  
Washington, D.C.

P.D. 119 REV. 10/89

COMPLAINANT/WITNESS STATEMENT

|   |  |   |                  |
|---|--|---|------------------|
| 2. NATURE OF INVESTIGATION<br>DEATH INVESTIGATION   |  | 1. COMPLAINT NO.<br>98-129220           |                  |
| 4. STATEMENT OF: (Last, First, Middle)<br>GARCIA, ROSA EMILIA   |  | 3. UNIT FILE NO.<br>HO98-294            |                  |
| 7. HOME ADDRESS<br>[REDACTED]   |  | 5. DOB<br>08/07/74                      | 6. SEX<br>FEMALE |
| 9. EMPLOYMENT (Occupation and Location)   |  | 8. HOME PHONE                           |                  |
| 11. LOCATION STATEMENT TAKEN<br>HOMICIDE BRANCH   |  | 10. BUSINESS PHONE                      |                  |
| 12. NAME OF OFFICER TAKING STATEMENT (If other than block 18 include signature)<br>REED, PAMELA M. (D1-100) |  | 13. DATE/TIME STARTED<br>03/15/98 19:30 |                  |

Esquella Garcia  
→ P. 159

14. STATEMENT

Q. ROSA, we are investigating the stabbing of the black man on 14th Street, which occurred last night. Earlier tonight you met up with police to tell them you saw what happened. How did that come about?

A. I went to the Fourth District to look for Officer Torres.

Q. What happened last night?

A. We had gone to the night club Diversity, it is at 14th and Church Street, NW. There was a fight inside the club and they kicked everybody out. Everybody that was in the club were leaving. There were alot of people. My three friends; Blanca, Mira, and Sandy, were walking with me. We were walking up 14th Street on the same side of the street as the club. When we had gotten to up by R Street, I heard Hispanic male voice yelling "no, no". I looked accross the street and down. I saw Catinga stabbing the black man.

Q. Who else was in the crowd around the black man.

A. "Muella", "Colo", "Gato", "Chupa Cabra", "Chofer", "Abuelo", "Mexico", "Manota", and "Douglas" were all hitting the man, but I only saw "Catinga" stabbing the black man.

Q. Rosa, were these men hitting the black man before he was stabbed or after?

A. Yes, after he was stabbed. They were kicking him, too. That is when "Chofer" got the blood on his pants.

Q. Rosa, a little while ago I showed you two books of photos that

15. I HAVE READ THIS STATEMENT GIVEN BY ME OR HAVE HAD IT READ TO ME. I FULLY UNDERSTAND IT AND CERTIFY THAT IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND RECOLLECTION. "I UNDERSTAND THAT MAKING OF A FALSE STATEMENT IS PUNISHABLE BY CRIMINAL PENALTIES (D.C. CODE SECTION 22-2514)".

|                                |  |
|--------------------------------|--|
| 16. DATE/TIME ENDED<br>3/15/98 |  |
| 17. Page 1 of 3 Pages          |  |

*Rosa E Garcia*  
Signature of Person Giving Statement

8. OFFICER OBTAINING THE SIGNATURE IN BLOCK 15:

19. PERSON WITNESSING THE SIGNATURE IN BLOCK 15:

*Pamela M Reed*  
(Name and Signature)

Det Arthur Leach D301  
(Name and Signature)

METROPOLITAN POLICE DEPARTMENT  
Washington, D.C.

P.5 719 REV. 10/89

COMPLAINANT/WITNESS STATEMENT

2. NATURE OF INVESTIGATION  
DEATH INVESTIGATION

1. COMPLAINT NO.  
98-129220

3. UNIT FILE NO.  
HO98-294

4. STATEMENT OF: (Last, First, Middle)  
GARCIA, ROSA EMILIA

5. DOB  
08/07/74

6. SEX  
FEMALE

7. HOME ADDRESS  
[REDACTED]

8. HOME PHONE

9. EMPLOYMENT (Occupation and Location)

10. BUSINESS PHONE

11. LOCATION STATEMENT TAKEN  
HOMICIDE BRANCH

12. NAME OF OFFICER TAKING STATEMENT (If other than block 18 include signature)  
REED, PAMELA M. (D1-100)

13. DATE/TIME STARTED  
03/15/98 19:30

14. STATEMENT

home. Abuelo, Mexico, and Douglas. Douglas said "did you know that your boy got arrested today". I said "no, why". He said "because he got arrested for beating up the black man". I said "Catinga stabbed him" and he said "no, I did".

Q. Did you see Douglas with a knife?

A. No. He said he threw it away. I saw him with a big brick during the fight.

Q. Rosa, do you want to add anything to this statement?

A. No.

15. I HAVE READ THIS STATEMENT GIVEN BY ME OR HAVE HAD IT READ TO ME. I FULLY UNDERSTAND IT AND CERTIFY THAT IT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND RECOLLECTION. "I UNDERSTAND THAT MAKING OF A FALSE STATEMENT IS PUNISHABLE BY CRIMINAL PENALTIES (D.C. CODE SECTION 22-2514)".

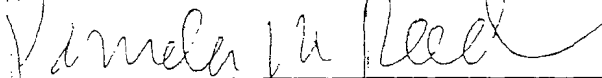
  
Signature of Person Giving Statement

16. DATE/TIME ENDED

3/15/98

17. Page 3 of 3 Pages

18. OFFICER OBTAINING THE SIGNATURE IN BLOCK 15:

  
(Name and Signature)

19. PERSON WITNESSING THE SIGNATURE IN BLOCK 15:

  
(Name and Signature)

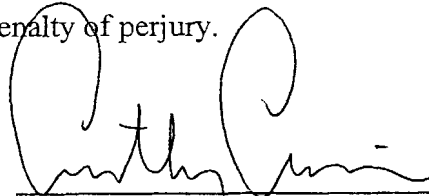
# Exhibit 3

## AFFIDAVIT OF ANTHONY ASUNCION

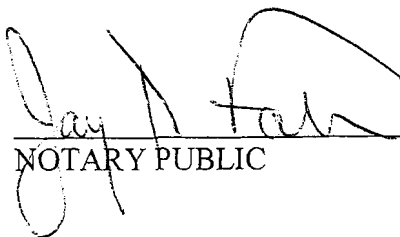
1. I, Anthony Asuncion, have been an Assistant United States Attorney with the U.S. Attorney's Office for the District of Columbia ("USAO") since April of 1992. I currently serve as Chief of the Felony Trial Section.
2. In March of 1998, I was a member of the Homicide Section. On or about March 16, 1998, I was assigned to prosecute the homicide of Warren Helm, which occurred on March 15, 1998.
3. In investigating this homicide, I came into contact with Rosa Garcia, an eyewitness to the crime.
4. On March 17, 1998, Ms. Garcia testified before the Grand Jury.
5. In early May of 1998, Ms. Garcia was interviewed by staff from the USAO's Victim Witness Assistance Unit ("VWAU") to assess witness security options. Detective Cassandra Washington of the Metropolitan Police Department was assigned to work with the VWAU on witness security matters and she participated in this interview.
6. I did not attend this interview. To my knowledge, I have never personally met Detective Washington. I did not receive any notes or written materials from Detective Washington or any VWAU staff regarding this meeting.
7. I currently do not have an independent recollection of any conversation I had with Detective Washington regarding Rosa Garcia. In my May 5, 1998 letter to Catherine K. Breeden, the Chief of the Special Operations Unit, Office of Enforcement Operations of the Department of Justice, however, I did indicate that Detective Washington asked me to contact Mr. Mario Cavallo, a Supervisor of the Division of Enforcement and Deportation of INS, regarding Rosa Garcia.
8. I currently do not have an independent recollection of any conversation I had with Mr. Cavallo. In that same May 5, 1998 letter, however, I wrote that I spoke to Mr. Cavallo and "[h]e indicated that since no "Notice of Action/Detainer" has been issued for Ms. Garcia, any investigation of her status would be a matter of low priority."
9. Apart from what is represented in the May 5, 1998 letter, I do not believe that I had any further contact with INS regarding Ms. Garcia.

10. Before Ms. Garcia testified at trial, I disclosed to each defense lawyer the fact that Ms. Garcia had been in the Witness Protection Program and provided them with a list of expenses – which included subsistence and housing expenses – incurred as a result.
11. I never, and to my knowledge, no one from the USAO, ever promised during the pendency of the 1998 trial that we would help Ms. Garcia with her immigration issues.

I swear to the truth of the foregoing under penalty of perjury.

  
\_\_\_\_\_  
Anthony Asuncion  
Assistant United States Attorney

Subscribed and sworn before me this 4<sup>th</sup> day of Aug, 2005

  
\_\_\_\_\_  
NOTARY PUBLIC

JAY D. FARRIS  
Notary Public of District of Columbia  
My Commission Expires July 31, 2008

My commission expires: \_\_\_\_\_

# Exhibit 4

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

|                          |   |                   |
|--------------------------|---|-------------------|
| ----- X                  | : |                   |
| UNITED STATES OF AMERICA | : |                   |
|                          | : |                   |
| v.                       | : | Criminal Case No. |
|                          | : | F-2002-98         |
| JOSE BENITEZ             | : | F-2001-98         |
| CARLOS ROBLES            | : |                   |
|                          | : |                   |
| ----- X                  | : |                   |

Grand Jury Room No. 2  
Superior Court of the District  
of Columbia  
555 Fourth Street, N.W.  
Washington, D.C. 20001

Tuesday, March 17, 1998

The testimony of ROSA GARCIA was  
taken in the presence of a full quorum of the Grand Jury,  
commencing at 2:33 p.m., before:

ANTHONY ASUNCION  
Assistant United States Attorney

**Diversified Reporting Services, Inc.**  
1025 VERMONT AVENUE, N.W. SUITE 1250  
WASHINGTON, D.C. 20005  
(202) 296-2929

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C O N T E N T S

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2/98D



## P R O C E E D I N G S

1  
2 Whereupon,

3 ROSA GARCIA

4  
5 was called as a witness and, having been first duly sworn by  
6 the Foreperson of the Grand Jury, was examined and testified  
7 as follows:

## 8 EXAMINATION

9 BY MR. ASUNCION:

10 Q Good afternoon, ma'am.

11 A Hi.

12 Q Could you please state your name and spell your  
13 name for the record?

14 A My name is Rosa Garcia, R-o-s G-a-r-c-i-a.

15 Q Ms. Garcia, do you understand that this grand jury  
16 is investigating a murder which took place on March 15, 1998?

17 A Yes, I do.

18 Q And do you understand that it's essentially their  
19 responsibility to find out the truth about what happened that  
20 particular day?

21 A Okay.

22 Q Do you understand that?

23 A Yes, I do.

24 Q Do you also understand that you, yourself, are not  
25 a target of this investigation, meaning that this grand jury

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1 is not seeking to gather evidence that you personally are  
2 somehow culpable of any crime in this case. Do you  
3 understand that?

4 A Yes, I understand.

5 Q But at the same time everyone, everyone who comes  
6 into this room to testify has certain constitutional rights,  
7 okay?

8 A Okay.

9 Q And before we start, I want to run through with you  
10 your constitutional rights as they relate to your testimony  
11 here this afternoon.

12 A Okay.

13 Q Do you understand that you may refuse to answer any  
14 question if a truthful answer to the question would tend to  
15 incriminate you, that is make you criminally liable?

16 A Okay.

17 Q Do you understand that right?

18 A Yes, I do.

19 Q Do you understand that everything in this room is  
20 being recorded and that your words may be used against you by  
21 this grand jury or in a subsequent legal proceeding?

22 A Yes, I do. I understand.

23 Q Do you understand that if you have a lawyer the  
24 grand jury will permit you a reasonable opportunity  
25 throughout your testimony here this afternoon to step outside

1 of the grand jury room and speak with that person if you so  
2 desire?

3 A Yes.

4 Q And ma'am, do you understand that if you do not  
5 have a lawyer and you want a lawyer one will be appointed for  
6 you free of charge?

7 A Yes, I do.

8 Q Ms. Garcia, understanding all of these rights are  
9 you willing to waive -- that is tell -- that is give those  
10 rights up and tell the grand jurors what, if anything, you  
11 know about this particular case.

12 A Yes. I want to tell them the whole truth.

13 Q Okay. Ma'am, has anyone forced you to be here this  
14 afternoon?

15 A No, nobody did. I came here by myself, because  
16 this is a crime that somebody that didn't do anything bad is  
17 in jail for no reason, for not doing anything he didn't do.

18 Q Are you under the influence of any drug, alcohol,  
19 or medication?

20 A No.

21 Q Has anyone told you what you must say before this  
22 grand jury?

23 A No. Myself did.

24 Q Let me ask you about March 15, 1998. Did you, on  
25 that day, provide a statement of what you had observed

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1 regarding the murder?

2 A Yes, I did.

3 Q And you provided that statement to Detective Reed  
4 of the Homicide Unit?

5 A Yes, I did.

6 Q And when you made that statement did anyone force  
7 you to make that statement?

8 A No, I went there by myself. I decided before I  
9 went that lady, I decided to call Detective Torres to tell  
10 him the truth.

11 Q And do you remember signing a written statement?

12 A Yes.

13 Q Did someone -- did you read that statement or did  
14 someone read it to you before you signed it?

15 A I don't know the name of the person that read it to  
16 me, but somebody ready it to me and then I wrote my name  
17 down.

18 Q When they read it to you, did it sound like the  
19 words that you used for the interview?

20 A The words I was saying. Yes.

21 Q I want to show you what I'd like to have marked, if  
22 I could at this time, as Government's Exhibit No. 1.

23 (Grand Jury Exhibit 1 was  
24 marked for identification.)

25 BY MR. ASUNCION:

1 Q Now I'm showing you that exhibit. Do you recognize  
2 it?

3 A Yes, and that's my handwriting too.

4 Q Okay. And we're talking about a three page  
5 document?

6 A Uh-huh.

7 Q And your signature appears on all three of those  
8 pages?

9 A Yeah, on all three of them. Yeah.

10 Q Mr. Garcia, what I'm going to do at this point, I'm  
11 going to read into the record your statement.

12 A Okay.

13 Q And I want you to listen very carefully, because  
14 I'm going to ask you questions after I do that. Okay?

15 A Okay.

16 (Statement was read into the record.)

17 BY MR. ASUNCION:

18 Q Ma'am, do you recognize that statement?

19 A Yes, I do.

20 Q Was it the truth when you gave it?

21 A Yes, it was.

22 Q Is it the truth here, as you sit here today?

23 A Yes, it is.

24 Q So you're willing to adopt this statement before  
25 the grand jury under oath?

1 A Yes, I am.

2 Q I'm going to show you what I'm going to mark as  
3 Government's Exhibit No. 2.

4 (Grand Jury Exhibit 2 was  
5 marked for identification.)

6 BY MR. ASUNCION:

7 Q Before I do that, let me ask you this. Do you  
8 remember Detective Reed showing you a photo array?

9 A Yes, I do.

10 Q By that I mean presenting to you a group of  
11 pictures, rather than the book you talked about in your  
12 statement?

13 A Yes. Yes, she took out of this -- I don't know if  
14 it was something like that -- but I know she took out some  
15 pictures and she showed it to me. Then, she said, "Do you  
16 know these guys?" And I said, "Yeah," and so --

17 Q Okay. Let me stop you right there. Ma'am, do you  
18 remember in that group of pictures picking out the person you  
19 believe was Catinga?

20 A Yes.

21 Q I'm going to show you now Government's Exhibit No.  
22 2. Do you recognize that picture?

23 A Yes. That's Catinga.

24 Q And does --

25 A That's --

1 Q I'm sorry.

2 A That's the guy that stabbed the black man.

3 Q Does this picture -- does it look like the picture  
4 you actually picked out from Detective Reed's set?

5 A Yes, it does.

6 Q Now, why don't tell us about how it was that you  
7 observed Catinga doing the stabbing?

8 A When I heard the noise about saying "No. No," I  
9 looked back and then, suddenly I saw Catinga with something  
10 in his hand. I didn't know what it was. And so I saw him  
11 stabbing the black man. And when I was about to run there,  
12 my friend took me, because I said "No" -- because I don't  
13 want Jose to get in trouble, so I was going to run back  
14 there. And then, my friend pulled me and that's when I  
15 ruined my knee. And I couldn't go there, so I went home with  
16 my friends.

17 Q Who's your boyfriend?

18 A Chofer.

19 Q And what's his real name?

20 A His real name is Jose Benitez.

21 Q Now, let me take you back before the actual  
22 stabbing, okay?

23 A Uh-huh.

24 Q Were you at a nightclub?

25 A Yes. We were in a nightclub.

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1 Q Who were you there with?

2 A I was there with my three friends, and Chino. And  
3 my boyfriend was there too, with me.

4 Q Who are your three friends? What are their names?

5 A Mira, Blanca, and Sandy.

6 Q Who are the other people you mentioned? Besides  
7 those three who were you at the nightclub with?

8 A With Chino.

9 Q Now, when you left the club, who did you leave  
10 with?

11 A I left with my three friends.

12 Q What about your boyfriend?

13 A He did too came with me, but then, after we got  
14 into an argument he stayed in the side of the disco when  
15 everything was going on. Suddenly, when I didn't listen to  
16 him, so we would leave together, he decided to enjoy the  
17 group.

18 Q Meaning his group of friends?

19 A Yeah.

20 Q Okay. And those group of friends are who again,  
21 just so we're clear?

22 A Muella, Culo, Catinga, Gato, Chupa Cabra, Manota,  
23 Douglas, Mexico, and Manuelo.

24 Q When you left the club who were you with?

25 A I was with Mira, Blanca, and Sandy, and Chino.

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1 Q You said you turned around. When is it that you  
2 actually -- after you had exited the club you turned around  
3 because you heard someone screaming?

4 A Yeah.

5 Q And where were you when you heard those screams?

6 A We were, like, a block away from there, from where  
7 everything started at.

8 Q When you turned around did you turn in the  
9 direction of the screams?

10 A Yes, I did.

11 Q What did you see? What's the first thing you  
12 remember seeing?

13 A The first thing I remember seeing when I turned  
14 around, I saw Catinga with something in his hand and stabbing  
15 the black man. That's the first thing I remember seeing.

16 Q Okay. Now, what I want you to do -- I know it may  
17 be difficult for you -- but I want you to step out of the  
18 stand for a moment and I want you to use me as the person you  
19 seen stabbed.

20 A I could use my -- I could use him.

21 Q Well, why don't we do it this way, it's just a  
22 little bit easier, okay?

23 A Okay.

24 Q I know you like your teddy bear. Okay. You can  
25 come to me and you will play Catinga and I will play the

1 person who was stabbed. Okay? And I want you to place  
2 yourself in the same position that you remember seeing  
3 Catinga. And because everything is being recorded you have  
4 to describe what you're saying and as you're doing it. Do  
5 you understand?

6 A Okay.

7 Q Okay, let's go.

8 A I saw -- when I looked back and I saw him going  
9 like that, really fast.

10 Q Okay. And are you talking about -- did it appear  
11 to be on the left side of that person's body?

12 A Yes, with this hand.

13 Q And you're talking about your right hand?

14 A Uh-huh. Yes.

15 Q And the motion you're talking about is what?

16 A Going like this.

17 Q And the distance you and I are at this point?

18 A No, he was a little bit closer, you know.

19 Q So we're talking certainly within arm's reach

20 A Yes.

21 Q We're talking between one and two feet?

22 A Uh-huh.

23 Q Okay. Thank you.

24 A Yes.

25 Q Do you remember whether there were street lights on

1 at the time?

2 A Yes, there were street lights on.

3 Q When you saw Catinga doing the stabbing -- first of  
4 all how many times did you see him making that stabbing  
5 motion?

6 A I don't know, but it was so fast that I didn't  
7 count how many times.

8 Q More than one?

9 A Yeah.

10 Q More than two?

11 A Uh-huh. Yes.

12 Q Do you think it would be -- how about more than  
13 three? Could you tell?

14 A Yeah, you could tell it was more than three.

15 Q When that was happening were there other friends of  
16 Catinga around?

17 A Yeah, everybody was around him.

18 Q Okay. They were surrounding him?

19 A Uh-huh.

20 Q You have to say yes or no.

21 A Yes.

22 Q Okay. At the time that Catinga was doing the  
23 stabbing, who did you see surrounding the victim?

24 A I saw Muello, Chofer, Carlos, Catinga -- you know  
25 it's the same guy -- and Manota, Gato, Chupa Cabra, Mexico,

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1 Manuelo, Douglas, Loco Hugo and Trebi.

2 Q So the same people who were inside of the club --

3 A Yeah.

4 Q -- were also around the victim when Catinga was  
5 doing the stabbing?

6 A Yes.

7 Q Now, when you turned around, the first thing you  
8 saw was actually the stabbing motions; is that right?

9 A Yes.

10 Q So you can't tell us what might have happened  
11 before the stabbing; is that correct?

12 A Yes, I can not tell you what could have happened  
13 before.

14 Q So you can't tell, based on your personal  
15 observations, what everyone else did before the stabbing  
16 which you saw. Is that fair to say?

17 A Uh-huh

18 Q You have to say yes or no.

19 A Yes.

20 Q After the last stabbing motion, what did you see  
21 all of the other men doing?

22 A Hitting the black man. He -- the black man was  
23 standing up still, and then everybody started hitting him.

24 MR. ASUNCION: I like to have a series of exhibits  
25 marked, if I could, starting with number three.

1 (Grand Jury Exhibits 3 through 12  
2 were marked for identification.)

3 BY MR. ASUNCION:

4 Q Okay. Let me -- what I'm going to do -- I'm going  
5 to hand you, separately, different photographs. Okay? And  
6 I'm going to refer to them by exhibit number.

7 What I want you to do is tell me whether you  
8 recognize the person shown in the picture,, and, if so, how  
9 that person is involved in the incident which you just talked  
10 about. Okay?

11 A Okay.

12 Q Beginning with Government's Exhibit No. 3.

13 A That's the guy who pulled out Chino.

14 Q When you say "pulled out," what do you mean by  
15 that?

16 A When everything started, he was going to run back  
17 to the crew of people that was with the black man. And then  
18 his girlfriend, Blanca, pulled him back so he wouldn't go and  
19 he would go with us.

20 Q Did you see him involved in any way in the attack  
21 of that person?

22 A No.

23 Q How long have you known him?

24 A I've known him, like, for three months, or four  
25 months.

1 Q Now I want to show you Government's Exhibit No. 4.  
2 Do you recognize that person?

3 A Yes. I know Muella. He was in the part of the  
4 group hitting the black man.

5 Q How long have you known Muella?

6 A I've known Muella since we were 14 years old.

7 Q Have you ever talked to him face-to-face before?

8 A Not until a few years ago.

9 Q But you've known him pretty well since then?

10 A Yes.

11 Q And just so I'm clear; in terms of what you  
12 actually saw him doing to the victim, what do you remember  
13 him doing?

14 A Punching and Kicking.

15 Q Let me show you Government's Exhibit No. 5.

16 A That is Culos, Muella's brother. He was doing the  
17 same thing as Muella.

18 Q Government's Exhibit No. 6.

19 A That's Gato. He was hitting the man, too. And  
20 because of him the fight started.

21 Q How long have you known him?

22 A Him? I've known him one year.

23 Q And what do you mean about the fight starting with  
24 him?

25 A Before Catinga stabbed the black man, he was

1 arguing with the black man.

2 Q And how do you know that?

3 A Because right after I came to give my testimony  
4 away, I heard that the fight had started because of him.

5 Q Okay. But you didn't actually see that?

6 A No.

7 Q Have you talked to him about the fight?

8 A No.

9 Q So you're just saying what you heard?

10 A Yes.

11 Q Okay. And let me ask you this; Government's  
12 Exhibit 5, the one you've looked at prior to this?

13 A This one?

14 Q Yes. How long have you known him?

15 A The same thing as Muella, because he's part of my  
16 family. His cousin is married with a cousin of mine.

17 Q Okay.

18 A So we've known each other.

19 Q Now I'm going to show you Government's Exhibit No.  
20 7.

21 A That's Gato's brother. He was doing the same  
22 thing, beating up the black man.

23 Q When you say beating up, you need to be precise.  
24 What do you remember him doing?

25 A Punching and kicking.

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1 A JUROR: I'm sorry what was his name, the brother?

2 WITNESS: Chupa Cabra.

3 A JUROR: Okay.

4 BY MR. ASUNCION:

5 Q Now, let me show you Government's Exhibit No.

6 8. Do you recognize him?

7 A Yes. This is Loco Hugo. I just saw him standing  
8 by the crew.

9 Q Okay. At the time the beating was happening, was  
10 he around the victim?

11 A Yes, he was around --

12 Q But you're saying -- I'm sorry.

13 A Yes, he was around the victim.

14 Q But you're telling us that you remember whether he  
15 was kicking --

16 A Uh-huh.

17 Q -- or punching, or anything like that?

18 A Yes, I don't remember.

19 Q Did you have a conversation with him after the  
20 incident?

21 A I didn't have a conversation with him, but  
22 everybody else did -- everybody in the pictures. They did,  
23 and they said that he was punching and kicking him too.

24 Q Okay. Were you present when this conversation took  
25 place?



1 A Yes, I was present.

2 Q And where did this conversation take place?

3 A Fourteenth and Florida.

4 Q What's there?

5 A That was the gang La R always at.

6 Q The gang La R, why don't you just, very quickly,  
7 tell us what you mean by that.

8 A La R, that's it -- the gang. Everybody from the  
9 gang is always there; playing pool, or just like smoking  
10 weed, using drugs right there.

11 Q Has everyone that you've talked about so far been a  
12 member of R?

13 A Yes.

14 Q And the people you've picked out so far, to your  
15 knowledge, are they a member of R?

16 A Yes.

17 Q And how do you know that?

18 A Because since I was 14 years old, I known Muella  
19 and Culo, and they be from La R since then. And so since I  
20 know -- I always used to hang around with Mira, so I know the  
21 La R from a long time, too.

22 Q So you socialized with them?

23 A Yes.

24 Q You go out with them?

25 A No, I don't go out to fight with them or anything,

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1 I just like hang around where they hang around at.

2 Q Okay.

3 A Because I play pool, too.

4 Q Now I'm going to show you Government's Exhibit No.  
5 9. Who is that?

6 A That's my boy friend, Chofer. He was around the  
7 crew. He was hitting and kicking the man, too.

8 Q How long have you known him?

9 A I've known him a long time ago. He always used to  
10 -- wanted to go out with me, but I always used to tell him  
11 no, no, because I didn't like him. But then like two months  
12 ago he asked me out again and I said, "Okay." So we've been  
13 going out for two months.

14 Q Government's Exhibit No. 10. Who's that?

15 A That's Trebi. He was around the crew, but I didn't  
16 see him do anything. But I heard people talking that he was  
17 hitting the black man.

18 Q Okay. Now, for him, would that -- did that take  
19 place during the same conversation you talked about earlier?

20 A Yeah, with Hugo -- yeah, at the same time and on  
21 the same day.

22 Q Did either of them say anything -- not necessarily  
23 to you, but say something you heard about this incident?

24 A Yes,. I heard them saying that they were there too  
25 and they were hitting the black man.

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1 Q Well, let's start first with Loco Hugo. What do  
2 you remember him saying?

3 A When I just went up to him and I said, "Hi." He  
4 said, "Hi, China." And then everybody went up there and they  
5 said, "Oh, yeah. You know about the black man that died?  
6 They blaming Chofer and Carlos and we going to say that we  
7 didn't saw anything and if we were there in the fight that we  
8 didn't know who killed him. Because we hate him and we" --

9 Q Who said that?

10 A Him and everybody else.

11 Q Okay. Who's him? You've got to be clear because  
12 it's being recorded.

13 A Loco Hugo and everybody else.

14 Q What about the last person you've identified?

15 A Him?

16 Q Yes.

17 A No. He didn't -- he didn't really talk that much.

18 Q Okay. So this is Government's Exhibit

19 A Trebi.

20 Q -- No. 10, Trebi.

21 A Yeah.

22 Q And just tell us exactly what you remember him  
23 doing -- when you saw him what was he doing?

24 A He was just standing by Loco Hugo.

25 Q Where were they standing in relation to where the

1 stabbing was taking place?

2 A Around at the -- they were like -- see everybody  
3 was kicking him and everything, everybody was around the  
4 black man and they were like standing by.

5 Q What's standing by? How many feet are we talking  
6 about?

7 A It's not feet -- it's just, you know, close.

8 Q Okay. So are you saying that Trebi and Loco Hugo  
9 were -- how close to the person who got stabbed?

10 A Like, five inches.

11 Q But you're saying that even though they were around  
12 the victim you don't personally remember seeing them actually  
13 throwing a punch or anything like that?

14 A No, I don't remember looking at them like that.

15 Q Now all of those pictures, had you seen them  
16 before, from Detective Reed?

17 A Yes and Detective Torres.

18 Q And do you remember Government's Exhibit No. 11?

19 A Yes. He showed it to me yesterday in court.

20 Q So in the original set of pictures you saw that  
21 person was not included?

22 A No, it wasn't included, because he didn't have a  
23 picture until yesterday. He showed it to me in court.

24 Q Before you saw that picture, did you identify this  
25 person by nickname?

1 A Yes, I did identify Manota by his nickname.

2 Q And who is in that picture?

3 A That's Manota.

4 Q How long have you known him?

5 A I've just known him last year.

6 Q Did he participate in this attack in any way?

7 A Yes. I saw him hitting the black man and kicking  
8 the black man. And before everything finished, he ran into  
9 his car to leave with the other people that wanted to leave.

10 Q You mean he ran to his car?

11 A Yeah.

12 Q And did you see what he did with his car?

13 A He started the engine, because four doors were open  
14 -- the four doors of his car were open. And so he --  
15 everybody else jumped in his car and the only one that stayed  
16 out was Chofer and Carlos -- and I don't know who was the  
17 other person that stayed out.

18 Q You mentioned Carlos. Carlos wasn't in one of the  
19 pictures you talked about?

20 A No. They don't have a picture of Carlos.

21 Q Okay. What's Carlos' last name if you know?

22 A Robles.

23 Q Okay. How long have you known Carlos?

24 A I don't -- I've been knowing Carlos, like, a year,  
25 but I know Javier like two years. Javier is Carlos' brother,

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1 but he don't hang around there.

2 Q What do you remember Carlos doing that night?

3 A Hitting and kicking.

4 Q Now all of the people you talked about were there  
5 there at the night club before this happened?

6 A Yeah, everybody was there.

7 Q Let me show you now Government's Exhibit No. 12.  
8 Do you recognize him?

9 A Yes. This is Simba. He wasn't at the club and he  
10 wasn't present when the fight took place.

11 Q Has he ever talked to you about this case?

12 A Yes. He threatened me. Him and Muella threatened  
13 me that if I ever came to Torres, or somebody else, and tried  
14 to take my boyfriend out that something was going to happen  
15 to me or my family.

16 Q And when you say Muella, we're talking about the  
17 person in Governments Exhibit No. 4?

18 A Yes, we're talking about this person.

19 Q When did this conversation place?

20 A On Sunday, right after I finished giving my --

21 Q The written statement?

22 A The written statement?

23 Q Let me ask you this before we go any further. You  
24 speak both English and Spanish, right?

25 A Yes.

1 Q And do you feel more comfortable speaking English  
2 or Spanish?

3 A To me, it's too difficult to speak Spanish, because  
4 I didn't really speak that well. It's better for me to speak  
5 English.

6 Q And remember, you and I talked about this before we  
7 came in here?

8 A Yes.

9 Q And you told me actually that you feel much more  
10 comfortable and fluent in English than you do in Spanish?

11 A Yes.

12 Q And that, in fact, people including your boyfriend  
13 laugh at you when you speak Spanish.

14 A Yes.

15 Q Because your English is so much better.

16 A Yes.

17 Q Has there been anything that I've said here today  
18 that you haven't understood?

19 A No, there isn't. Everything been understood.

20 Q Now, when you had this conversation you say it was  
21 Sunday with these two men. Where did that take place?

22 A At 14th and W.

23 Q Where exactly?

24 A By the bus stop at 14th Street.

25 Q And I want you to be precise about what each person

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1 said to you about this case, okay?

2 A He came up to me, grabbed me by --

3 Q Who's he?

4 A Muella. He came up to me and grabbed me with one  
5 hand on my -- right here on my neck or whatever. Then he  
6 cussed at me -- I won't say that bad word, but -- he cussed  
7 at me, he said, "If you ever say something or you talk to  
8 anybody, I kill you."

9 Q How about the other person?

10 A And he got in back of me, hitting me on the back,  
11 and he told me the same thing. But he was more mad than him.

12 Q Okay. Were they doing this together?

13 A Yes.

14 Q When you say "more mad," what do you mean by that  
15 exactly?

16 A That he seems like he -- he was serious more than  
17 him.

18 Q Why do you say that?

19 A Because he grabbed me from the front and -- at the  
20 first, he grabbed me by himself. Then suddenly he came in  
21 back of me hitting me for no reason. I didn't know what it  
22 was, so right after he told me that he was going to do  
23 something to me if I ever said anything about me listening to  
24 the conversation they had said, that they wanted Chofer and  
25 Carlos to be in jail, that they were going to do something to



1 me.

2 Q Just so --

3 A That's when he got on my back and started hitting  
4 me, too, and said the same thing.

5 Q Okay. Just so I'm clear; when you left the club  
6 and you turned around to see where the fighting was coming  
7 from, you saw the group of people that you recognized as your  
8 friends?

9 A Yes. Yes.

10 Q People you knew?

11 A Yes. Yes.

12 Q All the people that you've talked about here this  
13 afternoon?

14 A Yes.

15 Q And when you turned around the first thing you saw  
16 was --

17 A Catinga --

18 Q -- Catinga stabbing --

19 A -- stabbing the black man.

20 Q And as this is going on, all the people you've  
21 talked about, from the club who were with you, were around  
22 the man as it was happening?

23 A Uh-huh. The man. Yes.

24 Q Remember you talked about -- well, let me ask you  
25 this. How close did each one of these men get to the victim?

1 Were they all about the same distance away from him?

2 A Yes.

3 Q And apart from Loco Hugo --

4 A And Trebi.

5 Q -- and Trebi, you remember -- are you telling us  
6 you remember seeing with your own eyes, these men do what you  
7 said they did; either kicking, or punching, or witnessing --

8 A Yes, I remember.

9 Q -- Catinga stabbing?

10 A Uh-huh. And every night when I go to sleep, I can  
11 not go to sleep, because I seen my boyfriend in jail and I  
12 see Catinga stabbing the man. And so, when I try to go to  
13 sleep I can't go to sleep because of that.

14 Q Let me ask you this very quickly about Douglas.  
15 Tell me where the conversation between -- that you overheard  
16 about Douglas saying what happened, where did that happen?

17 A That happened on W Street, by the -- at W and 14th  
18 there's the little store that is right there, the 24-hour  
19 store. I was going to go there to buy food and see if Chofer  
20 was around there.

21 When I was on my way there I saw him coming out of  
22 this building where is achiviada at. Then, that's when he  
23 stopped me -- him, Muello, Mexico, stopped me and said, "Oh,  
24 China, did you know your boy's locked up?" And so I said,  
25 "No." Then --

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1 Q Who said that, exactly?

2 A Douglas. And I said, "No, why?" Then, he told me,  
3 because we were beating up the black man and you know, he  
4 told me everything about it. And I said, "But he didn't kill  
5 it, Catinga did." And he said, "No. Catinga didn't do it, I  
6 did." That's when I know Douglas and Catinga both stabbed  
7 the man, but I didn't see Douglas stabbing the man.

8 Q Okay. Have you see either Douglas or Catinga with  
9 a knife before?

10 A No, I didn't see either -- I didn't see Douglas  
11 with a knife, but I saw Catinga with something in the hand.  
12 I didn't know what it was, because it was shiny.

13 Q When he was --

14 A Stabbing the man.

15 Q --stabbing that man. Okay.

16 MR. ASUNCION: That's all I have. Any questions  
17 ladies and gentlemen? Yes, ma'am.

18 A JUROR: Who was saying -- you said that you were  
19 a block away and you heard someone saying, "No. No." Did  
20 you know --

21 WITNESS: No, I don't know, because --

22 A JUROR: Was someone still screaming when you were  
23 watching this?

24 WITNESS: No they didn't still screaming when I  
25 went back.

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1           A JUROR: When you first heard it you were a block  
2 away and you got closer? You got closer to actually see? I  
3 trying to picture, and if the man is surrounded by people,  
4 I'm not sure being a block away -- I'm just trying to get an  
5 idea of how you could see that clearly.

6           WITNESS: But see, everybody was around him, but  
7 you know, they weren't like -- somebody could walk by.

8           A JUROR: So more like a horseshoe than circle?

9           WITNESS: Yeah.

10          A JUROR: Okay. So you were a block north or a  
11 block south? Were you closer to the club or on the other  
12 side?

13          WITNESS: On the other side.

14          A JUROR: Okay. So you had looked back?

15          WITNESS: Yeah.

16          A JUROR: So they were later leaving from the club  
17 then you were?

18          WITNESS: Yes.

19          MR. ASUNCION: Yes ma'am, in the back.

20          A JUROR: Were you -- was you drinking at the club?

21          WITNESS: No. I don't drink.

22          MR. ASUNCION: Yes ma'am.

23          A JUROR: What was the reason for them killing the  
24 guy?

25          WITNESS: I don't know.

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1 A JUROR: How old are you Rosa?

2 WITNESS: I'm 24 years old.

3 A JUROR: How did you know Officer Torres? Why did  
4 you want to go and tell him?

5 WITNESS: Because I know Officer Torres from  
6 everywhere. I always seen him everywhere. When I used to  
7 work in this restaurant called Chapparistique, I used to be a  
8 waiter, he used to go there. And when I would see him I call  
9 him Daddy, you know, because he's like a daddy to me.

10 A JUROR: Okay. He's a policeman who's around that  
11 neighborhood a lot and you knew him?

12 WITNESS: Yeah. That's how I decided to tell him.

13 A JUROR: What was the name of the gang? I never  
14 quite really understood the name?

15 WITNESS: La R.

16 A JUROR: Can you spell that for me?

17 WITNESS: La R.

18 A JUROR: Oh, okay. Does this gang -- the guys  
19 that are in this gang do they go out and rumble with other  
20 gangs or do they kind of -- do they jump people and kind of  
21 steal them for money, or is it just a social gang?

22 WITNESS: Sometimes -- some of them they just jump  
23 people and steal their money or sometimes they just, like,  
24 two or four of them go somewhere and steal car stereos and  
25 everything else.

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1           A JUROR: Okay. That's their -- they don't really  
2 fight other gangs and stuff? It's just primarily they  
3 work --

4           WITNESS: They do fight other gangs if they come  
5 looking for them, but if they don't come looking for them,  
6 they don't fight.

7           A JUROR: Okay. Thank you.

8           WITNESS: You're welcome.

9           A JUROR: Was another gang that we heard Park Row?  
10 Did somebody mention a Park Row gang?

11           (No Response.)

12           A JUROR: I had that written down, but -- all  
13 right.

14           A JUROR: I'm getting mixed up with the names, but  
15 Carlos was hitting and kicking. And is he the one who's the  
16 brother of somebody -- Gato?

17           WITNESS: No. Carlos is not Gato's brother.

18           A JUROR: Carlos -- which exhibit number -- I mean,  
19 was he in that list of photos?

20           MR. ASUNCION: Are you referring to Carlos?

21           A JUROR: Carlos is the one who kill --

22           MR. ASUNCION: Okay. Let me do it this way.

23           A JUROR: Okay.

24           BY MR. ASUNCION:

25           Q     Remember we were talking about the pictures?

1 A Yes.

2 Q Remember I asked you about Carlos?

3 A Uh-huh.

4 Q Remember I asked you whether you had yet been shown  
5 a photo of Carlos?

6 A Uh-huh.

7 Q You have to say yes or no.

8 A Yes.

9 Q What was your response?

10 A I said, "No," because he wasn't in any folders.

11 Q That you were shown?

12 A Uh-huh.

13 Q About this person Carlos, how well do you know that  
14 person Carlos?

15 A I known him like -- last year I start knowing him.  
16 It's been almost a year.

17 Q Do you know him well enough to know his last name?

18 A Yes.

19 Q What's his last name?

20 A His real name is Roberto Salamanca (sic).

21 Q Okay. Well, we're talking about Carlos Robles. Do  
22 you know that Carlos Robles?

23 A Yes.

24 Q Okay. So when you say "real name" what do you  
25 mean?

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1           A     The person Carlos -- let me ask you this.  Were you  
2 in court yesterday?

3           A     Yes, I was in court yesterday.

4           Q     Did you see a person -- did you see your boyfriend  
5 there?

6           A     Yes, and I saw Carlos.

7           Q     Carlos.  Do you know -- how do you know that  
8 person, just Carlos?  Is that how you know that person?

9           A     Yeah.  We know him by Carlos or sometimes, you  
10 know, there is a friend of mine -- he's not in any of those  
11 pictures, because he wasn't there -- Chinito, him -- he  
12 always like to call people, "What's up Black?"  You know?  
13 That's the way he talks.  So even me, he goes "What's up  
14 Black", you know.  So that's why Carlos nickname is Black,  
15 because everybody calling him black too.

16          Q     Let me ask you this.  You were in court yesterday.

17          A     Uh-huh.

18          Q     We didn't -- the government didn't ask you to be  
19 there, did we?

20          A     No.

21          Q     Why did you show up?

22          A     Because I wanted to be there.

23          Q     When you -- did you -- when they called your  
24 boyfriend's case did you see him?

25          A     Yes, I did.

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1 Q And was he standing with the person you know as  
2 Carlos?

3 A Yes.

4 Q The person that was standing next to him, the  
5 person you know as Carlos, what exactly did he do in this  
6 attack that you remember?

7 A Kicking and hitting.

8 Q Thank you. Yes, ma'am?

9 A JUROR: You said that after -- at some point they  
10 jumped into the car, but Chofer and Carlos didn't jump in the  
11 car?

12 WITNESS: Uh-huh.

13 A JUROR: Is that because there wasn't any more  
14 room in the car, or they just didn't?

15 WITNESS: They just didn't want to get into the  
16 car. They just wanted to walk and that's when the police --  
17 when I was in 14th and W I saw a lot of police cars around  
18 both of them, you know. You could see the police lights and  
19 stuff. You couldn't see what they were doing and stuff, but  
20 you could see the police cars.

21 Like, there's -- one was coming this way, the other  
22 one was coming this one, and then one is this way like that.

23 A JUROR: So did the car drive away or did the  
24 police come that quickly that the car didn't drive away?

25 WITNESS: The car drove away.

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1 A JUROR: But the police stopped the car?

2 WITNESS: Uh-huh. But the police just stopped the  
3 other two guys, because they were walking. They didn't had a  
4 ride.

5 A JUROR: I'd like you to help me put this together  
6 in my head. You said that you and Chofer and your three  
7 girlfriends, Mira, Blanca and Sandy were all at Club  
8 Diversite?

9 WITNESS: Uh-huh.

10 A JUROR: And you got ready to leave and you had an  
11 argument with Chofer and you and your three girlfriends left?

12 WITNESS: Uh-huh.

13 A JUROR: And you started walking up 14th Street?

14 WITNESS: Yes.

15 A JUROR: Then, you saw this thing going on?

16 WITNESS: Yes.

17 A JUROR: How did Chofer get ahead of you and your  
18 girl friends? Am I missing something?

19 A JUROR: I already asked that. They were back  
20 toward the club. Is that what you said?

21 WITNESS: Yes.

22 A JUROR: He left after her. They were -- she and  
23 her group, I think, were more northward than --

24 A JUROR: Well, I'm trying to understand. You  
25 know, forgive me, maybe this has been covered, and if it has

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1 please tell me and move on. But what I heard you say was you  
2 and your girl friends left the club, okay, because you had an  
3 argument with Chofer so he stayed at the club. So you all  
4 left the club and your walking toward 14th --

5 WITNESS: No. See, everybody -- because of the  
6 fight had started inside the club, so they kicked everybody  
7 out. Chofer was calling me, but I didn't listen to him,  
8 because my friend wouldn't let me listen to him, because we  
9 got into an argument and he pushed me. So my friend was  
10 like, "Oh, you're stupid, China. Why you listening to him?  
11 Let's go." So I left with my friends. When we were walking  
12 everything else had started outside.

13 A JUROR: So you had this altercation with Chofer  
14 and you're walking up 14th Street, just you and your  
15 girlfriends?

16 WITNESS: Uh-huh.

17 A JUROR: And you walk up maybe about four or five  
18 blocks and then you see --

19 WITNESS: No, we didn't walk four or five blocks.  
20 We just walked a block.

21 A JUROR: Okay. Was this confrontation in front of  
22 you as you were walking, or did you hear confrontation behind  
23 you and you had to turn around to see it?

24 WITNESS: Behind. I had to turn around and see it.

25 A JUROR: Okay. Okay. Thank you.

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1 BY MR. ASUNCION:

2 Q Ma'am, let me ask you this. You say that at one  
3 point everyone was kicked out of the club?

4 A Uh-huh.

5 Q Yes or no?

6 A Yes.

7 Q Okay. When you say everyone, who are you talking  
8 about?

9 A Everybody inside the club.

10 Q Was what?

11 A The whole gang and the other rest of the people. I  
12 didn't know who it was.

13 Q Everyone inside of the club was asked to leave, is  
14 that what you're telling us?

15 A Yes.

16 Q Why did that happen?

17 A Because there was a fight inside the club.

18 Q Did you see that fight?

19 A Yes, I see that fight.

20 Q Who was involved in that fight?

21 A Everybody on those pictures.

22 Q Everyone from R?

23 A Uh-huh.

24 Q Yes or no?

25 A Yes.

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1 Q Okay. Were they fighting with each other or with  
2 someone else?

3 A With some -- another gang named MS. MS

4 Q MS?

5 A Yes.

6 Q And about how many other people did you see from  
7 MS?

8 A I only saw like four MS guys.

9 Q What was the nature of the confrontation or  
10 dispute, whatever happened in there? What did you see  
11 happen?

12 A I saw Gato dancing with his girlfriend in front of  
13 all four -- four of them. And then, suddenly they started  
14 saying bad words and stuff about La R and stuff. Then, so  
15 that's when Gato went and called everybody saying that MS was  
16 there and that they were going to look for fights.

17 So I was holding my boyfriend and that's when he  
18 pushed me, because I wouldn't wanted him to get in trouble  
19 and he pushed me. But anyways he got in that fight inside  
20 the disco.

21 Q Now, when you say that fight, are you talking about  
22 a fight that took place between MS and R?

23 A Yeah.

24 Q Yes?

25 A Yes.

1 Q Okay. And what kind of fight was that? Who  
2 participated and how did it happen?

3 A Everybody participated and it happened so fast.

4 Q What did you see?

5 A I saw Chino -- the one we pulled out of from the  
6 other fight in the streets? Him, grabbing a bottle and he  
7 hit this man on his forehead.

8 Q And did the other people, members or friends -- the  
9 other R people you talked about, did they participate inside  
10 the club?

11 A Yes. Yes. That's why they kick everybody out.

12 Q Thank you.

13 A You're welcomed.

14 MR. ASUNCION: Anything else?

15 (No Response.)

16 MR. ASUNCION: Okay. Very good. Thank you.

17 WITNESS: You're welcomed.

18 (The witness was excused.)

19 (Whereupon, at 3:16 p.m., the taking of the  
20 testimony in the presence of a full quorum of the Grand Jury  
21 was concluded.)

22  
23  
24  
25 \* \* \* \* \*

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CERTIFICATE OF REPORTER

I, BJ Brown Niccoli, the reporter for the United States Attorney's Office, do hereby certify that the witness whose testimony appears in the foregoing pages was first duly sworn by the foreperson or the deputy foreperson of the grand jury when there was a full quorum of the grand jury present; that the testimony of said witness was taken by me by stenomask and thereafter reduced to typewritten form; and that the transcript is a true record of the testimony given by said witness.

  
BJ Brown Niccoli, Court Reporter

# Exhibit 5



Laura,

Below is the information you requested.

1. Why is Rosa Garcia a critical witness?

**Ms. Garcia is an eyewitness to the murder of Warren Helm. She was present during when the murder occurred. She was with her boyfriend, Jose Benitez, who s one of the defendants.**

2. Has Rosa testified before the grand jury? If so, when.

**Yes, she testified before the grand jury of March 17, 1988.**

3. Has a trial date been scheduled? If so, when.

**Yes. The trial is scheduled to begin on June 18, 1998.**

4. The NCIC report states that Ms. Garcia is an alien. Is her record up to date?

**Ms. Garcia states that she has a green card but cannot locate it. MPD Det. Cassandra Washington will contact the INS regarding Rosa's status. Information will be provided as soon as it is available.**

5. The NCIC report states "Emiua" as the middle name of Rosa. What is Rosa's true name?

**See the attached passport. A copy of the birth certificate will be provided upon receipt.**

*D. Valle*  
5/4/98

# Exhibit 6



U.S. Department of Justice

United States Attorney


*District of Columbia*

Judiciary Center  
555 Fourth St. N.W.  
Washington, D.C. 20001

May 1, 1998

**MEMORANDUM**

TO: Catherine K. Breeden, Chief  
Special Operations Unit  
Office of Enforcement Operations  
Criminal Division

FROM:  Anthony Asuncion  
Assistant United States Attorney  
United States Attorney's Office  
District of Columbia

SUBJECT: **Emergency Short Term Protection Program Request:**  
Rosa Emilia Garcia (DOB: 8/7/74) - Witness

This pertains to United States v. Jose Benitez, et al. (Case No. F-2002-98). Mr. Benitez was the boyfriend of Ms. Rosa Emilia Garcia. This is to request that Ms. Rosa Emilia Garcia be placed into the Short Term Protection Program (STPP) due to a threat which exists against her as a result of her cooperation in a local homicide investigation. Attached is a threat assessment prepared by Metropolitan Police Department's (MPD), Detective Norberto Torres, a member of the Criminal Investigations Division.

On March 15, 1998, Mr. Warren Helm noticed a crowd of Latino men attacking a homeless man. Mr. Helm then stopped the car and implored the crowd to stop attacking the homeless man. The crowd then ceased their attack on the homeless man and began to attack Mr. Helm. Mr. Helm was repeatedly punched, kicked, stomped, and stabbed to death.

The following individuals have been arrested and charged with Mr. Helm's murder: They are Jose Benitez, DOB: 6/14/79, PDID: 483-575; Oscar Villatoro, DOB: 5/29/78, PDID: 499-601; Carlos Robles, DOB: 2/28/78, PDID: 501-818; and Santos Bonilla, DOB: 9/1/72, PDID: 498-263. All are currently incarcerated at DC Jail.

Arrest warrants have been issued for two other suspects. They are: Walter Valasquez, DOB: 2/16/79, PDID: 469-597 and Douglas Ventura, DOB: 2/22/78, PDID: 496-354.

Ms. Garcia is the key witness in the homicide of Mr. Warren Helm. She is in imminent danger as a result of her cooperation. Ms. Garcia has received several threats. Initially, Ms. Garcia was interviewed by MPD and the USMS at which time she declined the STPP. Since her most recent threat of April 28, 1998, Ms. Garcia decided to return to this Office seeking assistance due to safety concerns.

Ms. Garcia stated that she does not use drugs. She does drink liquor but is not an alcoholic. She has asthma. Currently, she is not under the care of a physician. However, she does use Primatene Mist (over-the-counter medicine) for her asthma.

On August 13, 1995, Ms. Garcia was arrested and charged with simple assault. Ms. Garcia states that she and her former boyfriend got into a fight. Subsequently, both of them were arrested. It is believed that Ms. Garcia will not pose a risk to a relocation community. Since she does not have a history of violence. She is eager to find employment and to get her GED.

If you have any questions, I can be reached at (202) 514-7466 or LaVerne Forrest at (202) 616-2584.

Thanks for you consideration in this matter.

SENSITIVE INVESTIGATIVE MATTER

METROPOLITAN POLICE DEPARTMENT  
300 Indiana Avenue, N.W.  
Washington, D.C. 20001

MEMORANDUM

TO: Catherine K. Breeden  
Chief, Special Operations Unit  
Office of Enforcement Operations  
Criminal Division

FROM: Detective Norberto Torres *Norberto Torres 8/1/98*  
Intelligence/CID  
Metropolitan Police Department

RE: Name of Witness -- Rosa Emilia Garcia

The Metropolitan Police Department is requesting that Rosa Emilia Garcia be placed in the Short Term Protection Program due to threats which exist to her as a result of her cooperation in a first-degree murder investigation.

Personal Information

Rosa Emilia Garcia  
DOB: 8/7/74  
PDID: 480 087

The NCIC report and the WALES report are attached. Ms. Garcia was arrested in Washington, D.C. on August 15, 1995, for domestic assault against the father of her youngest child, Elmer Isaac Guevara. That case was no-papered in 1995.

Risk Assessment

It is believed that Ms. Garcia will not pose a risk to a relocation community. She has no history of violent behavior. She is eager to find employment and educational opportunities.

Facts

Case No. F-2002-98

This is a high profile case involving the murder of a Good Samaritan. On March 15, 1998, over eight men attacked a homeless person. All of these men were members of a gang identified as "Mara R." The decedent, Mr. Warren Helm, got out of a car and approached the attacking crowd. The gang then directed their attention at the decedent. Decedent attempted to run away. The gang chased after the decedent. Decedent was tackled and the group physically beat the decedent. They punched, kicked, stomped, and stabbed the decedent. All told, the decedent sustained up to six wounds. A subsequent autopsy determined the cause of death to be multiple stab wounds to the body and the manner of death to be a homicide.

#### Targets of the Investigation

1. Walter Velasquez, DOB 2/16/79, PDID 469 597
2. Douglas Ventura, DOB 2/22/78, PDID 496 354
3. Oscar Villatoro, DOB 5/29/78, PDID 499 601
4. Jose Benitez, DOB 6/14/79, PDID 483 575
5. Carlos Robles, DOB 2/28/78, PDID 501 818
6. Santos Bonilla, DOB 9/1/72, PDID 498 263

#### Threat Assessment

Ms. Garcia is the key eyewitness in this case. She is in imminent danger as a result of her cooperation. "Mara R" is the most violent Latino gang in Washington, D.C. It has over 75 members whose activities include drug distribution and armed robbery. All members are known to carry weapons. Members of "Mara R" are aware of Ms. Garcia's cooperation. Indeed, Ms. Garcia is the girlfriend of one of the defendants in this case. There have been four specific threats against Ms. Garcia of which we are currently aware.

First, on the afternoon of March 15, 1998 at approximately 2:00 p.m. in front of Lopez Billiard, in the 2200 block of 14th St., N.W., Ms Garcia was approached by Jose Salamanca ("Muella") and Jose Luis Ventura ("Zimba") in which they both threatened her by choking her and stating in Spanish, "you are going around talking shit, you bitch." At this time, other members of the gang said stop, she won't talk, at which time they released her and she left.

Second, on the Saturday following the homicide, one of the gang members and current defendant, Santos Felipe Bonilla had told a person who was staying with Ms. Garcia, "tell China we are going to cut her head off if she continues to talk."

Third, while Ms. Garcia was visiting her boyfriend at D.C. Jail, she was approached by an unidentified Spanish male who was visiting a prisoner and asked her whether she was "China" (Ms. Garcia's nickname). She said no. He responded that "we are looking for her because we are going to kill her because she is talking about [a defendant]."

Fourth, on April 28, 1998, Ms. Garcia spoke to a relative of hers who told her that members of "Mara R" were looking for her to kill her.

Administrative Data

Det. Eric Gainey (MPD Homicide)  
202-669-0413 (cell)

Det. Norberto Torres (MPD Intelligence)  
202-996-2027 (p)

AUSA Anthony Asuncion (USAO Homicide Section)  
202-514-7466

- Terminated

\* Ms. Garcia was emergency authorized to receive Short Term Protection Program services on 5/5/98. She <sup>was</sup> subsequently ~~terminated~~ terminated on May of 1999, she received Emergency Witness Assistance Program services. She was placed in emergency lodging and was provided funds for 1st month's rent and security deposit.

# Exhibit 7



5/4/98 - MPD Det. Washington contacted the INS Office, Special Agent Addaway at 703-578-4946 regarding the status of Rosa Emilia Garcia. SA Addaway found no record of Ms. Garcia.

5/5/98 - MPD Det. Washington spoke informed MPD Det. Torres that Ms. Garcia does not have a green card. Shortly thereafter, MPD Det. Washington telephoned Ms. Garcia at the safehouse location inquiring about her green card again. Ms. Garcia informed her that, in fact, she did not have a green card. Ms. Garcia stated that she was brought to this country illegally by her mother.

5/5/98 - AUSA Ascunio was informed by MPD Det. Washington to contact the INS Office. He should contact Supervisory Special Agent Mario Cavallo at (703) 578-4981.

# Exhibit 8



U.S. Department of Justice

United States Attorney

*District of Columbia*

Judiciary Center  
555 Fourth St. N.W.  
Washington, D. C. 20001

May 5, 1998

Catherine K. Breeden  
Chief, Special Operations Unit  
Office of Enforcement Operations  
Criminal Division

Re: Witness -- Rosa Emilia Garcia

Dear Ms. Breeden:

As you may know, Rosa Emilia Garcia has been placed in the Short Term Protection Program due to threats which exist to her as a result of her cooperation with law enforcement. Ms. Garcia is the key eyewitness in a high-profile first-degree murder investigation. Recently, I have been informed that Ms. Garcia's immigration status is in question. Upon request of Detective Cassandra Washington of the Victim Witness Unit of the United States Attorney's Office, I spoke with Supervisor of the Division of Enforcement and Deportation of INS, Mario Cavallo. He indicated that since no "Notice of Action/Detainer" has been issued for Ms. Garcia, any investigation of her status would be a matter of low priority. In the meantime, she is free to take whatever steps are necessary to clear up her immigration status. Please let me know if you have any questions, or need additional information.

Sincerely,

Anthony Asurcion  
Assistant United States Attorney  
Homicide Section

# Exhibit 9

## Witness Background Information

For: **GARCIA, ROSA EMILIA**

Date Entered Program: 5/6/98

Number in Household 1

### Expenses

| FY  | Subsistence | Housing    | Medical | Travel | Documents | Relocation | Trial  | Moving | Misc.  | Cmd. Post | FY Totals  |
|---|-------------|------------|---------|--------|-----------|------------|--------|--------|--------|-----------|------------|
| 98  | \$560.00    | \$1,141.38 | \$0.00  | \$0.00 | \$0.00    | \$177.00   | \$0.00 | \$0.00 | \$0.00 | \$0.00    | \$1,878.38 |
| Current Fiscal Year ~ Unliquidated Obligations        |             |            |         |        |           |            |        |        |        |           |            |
|   | \$0.00      | \$0.00     | \$0.00  | \$0.00 | \$0.00    | \$0.00     | \$0.00 | \$0.00 | \$0.00 | \$0.00    | \$0.00     |
| Summary of Household - All Years: (Paid Expenditures) |             |            |         |        |           |            |        |        |        |           |            |
|   | \$560.00    | \$1,141.38 | \$0.00  | \$0.00 | \$0.00    | \$177.00   | \$0.00 | \$0.00 | \$0.00 | \$0.00    | \$1,878.38 |
| Summary of Entire Case - All Years: (Paid Expenses)   |             |            |         |        |           |            |        |        |        |           |            |
|   | \$560.00    | \$1,141.38 | \$0.00  | \$0.00 | \$0.00    | \$177.00   | \$0.00 | \$0.00 | \$0.00 | \$0.00    | \$1,878.38 |

I hereby certify that the above represents all funds disbursed to subject witness under the provisions of the Witness Protection Program by the U. S. Marshals Service.

  
 Chief, Witness Security Division

10/6/98  
 Date

U. S. Marshals Service


# Exhibit 10

## AFFIDAVIT

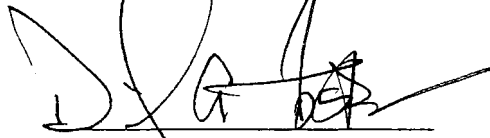
1. I, Stephen J. Gripkey, have been an Assistant United States Attorney in the District of Columbia since September 1998.
2. In 2003, I was transferred to what was then known as the “Homicide/Major Crimes Section” of the United States Attorney’s Office.
3. Upon my transfer, I was assigned a case involving the homicide of Warren Helm, who was killed in March 1998. The case involved the prosecution of a defendant who had originally been indicted in 1998, but had fled the country; he was later caught crossing the border. The case was entitled United States v. Jorge Luis Navarette, F-4371-98. Ultimately, just prior to jury selection in early November 2003, the defendant in United States v. Jorge Luis Navarette pled guilty to Manslaughter and to Conspiracy to Commit Manslaughter.
4. In preparing for trial, I reviewed the file, which included police paperwork and transcripts from the trial in 1998, as well as the grand jury transcripts and transcripts from the post-trial litigation involving Navarette’s co-defendants. I also interviewed various civilian and police witnesses.
5. During the course of my trial preparation, I came into contact with a witness named Rosa Garcia. I believe that my first meeting with her was on August 26, 2003. At that time, she raised safety concerns that prompted a meeting with the victim-witness unit at the U.S. Attorney’s Office. In the course of interviewing Ms. Garcia about her safety concerns and evaluating what program options were available, the subject of her immigration status came up.
6. On or shortly after August 26, 2003, I made copies of various documents in the victim-witness file. These documents included a photocopy of what appeared to be a Salvadoran passport with Ms. Garcia’s photo; a journal entry indicating that on May 4, 1998, Detective Washington learned that the INS had no record of Ms. Garcia, and indicating that on May 5, 1998, Ms. Garcia told Detective Washington that in fact she did not have a green card, and had been brought to this country illegally by her mother, and indicating that on May 5, 1998, Detective Washington told AUSA Asuncion to contact the INS office; and a letter of May 5, 1998, from AUSA Asuncion to Catherine Breeden, Chief, Special Operations Unit, Criminal Division, indicating that AUSA Asuncion had been informed Ms. Garcia’s immigration status was in question and that he had learned no notice of action or detainer had been issued for her, that any investigation of her status would be a low priority, and that in the meantime she was free to take whatever steps were necessary to clear up her immigration status.

7. On August 27, 2003, I called an agent/contact at the INS. I provided the Social Security number that Ms. Garcia had provided when meeting with me on August 26, 2003, as well as the passport number that was contained in the victim-witness file. The INS agent checked his databases, and determined that the Social Security number did not belong to Ms. Garcia. Furthermore, he indicated that the passport number I was providing was three digits short, and sounded fake to him. Based on this information, the agent surmised that Ms. Garcia was an illegal alien and never possessed a green card.
8. Based on the information that I learned from the INS agent, prior to my trial, Ms. Garcia consulted with legal counsel, and the government considered applying for an "S Visa" for her and providing her with letter immunity concerning her immigration issues. The immunity issue became moot when my trial was resolved by plea. Since the plea, I have continued the process of requesting an S Visa for Ms. Garcia.
9. I provided A.U.S.A. David Goodhand, the attorney for the government handling the defendant's appeal, with the information I had learned concerning Ms. Garcia's misrepresentation about her immigration status.

I swear to the truth of the foregoing under pain and penalty of perjury.

  
Stephen J. Gripkey  
Assistant United States Attorney

Subscribed and sworn before me this 5<sup>th</sup> day of August 2005

  
NOTARY PUBLIC

DAVID A. FOSTER  
NOTARY PUBLIC DISTRICT OF COLUMBIA  
My Commission Expires May 14 2005 → 2010

My commission expires: \_\_\_\_\_