UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO:07-20999-CR-LENARD/TORRES

UNITED STATES OF AMERICA,

Plaintiff,

v.

FRANKLIN DURAN,

Defendant.
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MOTION TO DISMISS WITH INCORPORATED MEMORANDUM OF LAW

Defendant, Franklin Duran ("Duran"), by and through his undersigned counsel, hereby moves to dismiss the Indictment against him on the ground that the underlying statute under which he is charged, 18 U.S.C. § 951, is unconstitutional on its face and as applied under the facts of this case. In support of this motion, defendant would show the following:

I. INTRODUCTION AND BACKGROUND

Duran is charged in a two count Indictment with one count of Conspiracy in violation of 18 U.S.C. § 371, based upon the allegation that he conspired with a number of other individuals to knowingly act in the United States as an agent of the government of Venezuela without prior notification to the Attorney General of the United States, in violation of Title 18, U.S.C. § 951 and one count of knowingly, without prior notification to the Attorney General, acting in the United States as an agent of the government of Venezuela.

For the purpose of resolving this motion to dismiss, the court must accept all factual allegations set forth in the indictment as true. *United States v. Frankfort Distilleries*, 324 U.S. 293, 296 (1945); *United States v. Korn,* 557 F.2d 1089 (5th Cir. 1977)(District courts may make preliminary findings of fact necessary to decide questions of law presented by pretrial motions so long as the court's findings on the motions do not invade the province of the jury). It is precisely those allegations which demonstrate the unconstitutional vagueness of this statute, both on its face and as applied.

As can be seen from ¶ 5 of Count 1, the genesis of this prosecution was an event which took place in the country of Argentina. This was the discovery and confiscation of approximately $800,000 in currency in a piece of luggage being carried by Guido Alejandro Antonini Wilson (hereinafter "Antonini"). Antonini was one of eight passengers on a privately chartered aircraft which departed from Caracas Maiquetia International Airport in Venezuela and arrived on August 4, 2007 at Aeropargue Jorge Newbery in Buenos Aires. There is no allegation that anything that occurred in relation to this event was in violation of any laws of the United States or, for that matter, had any connection whatsoever to the United States. Nor is there any allegation that there was any sort of official investigation being conducted by any law enforcement agency in this country or even a suggestion that any agency of the United States government would even have jurisdiction to conduct an investigation into these events.

As alleged in ¶ 12 of Count 1, Antonini is a United States citizen born in Venezuela, who travels under both United States and Venezuelan passports. Several days after the confiscation of the money he was carrying at the airport in Argentina, Antonini entered the

United States. His mere presence in the United States is the only thing that ties any of the events in Argentina to the United States. Essentially, the Indictment alleges a series of meetings and conversations between Antonini and various individuals who are alleged to be members of the conspiracy. Antonini was urged, allegedly on behalf of Venezuelan Government officials, not to disclose the identity of the intended recipient of the seized cash or its source. The Indictment does not identify to whom or to what entity Antonini was being asked not to provide this information.

Conspicuously absent from the Indictment is any allegation that Duran was engaged in any form of espionage or partaking in what even remotely could be considered to be subversive activities against the United States or its interests. The Indictment does not allege that Duran engaged in actions that would in any manner affect the foreign relations of the United States. Duran is not alleged to have collected and transmitted intelligence information abroad. Nor is it alleged that Duran engaged in the dissemination of any propaganda or public information in the United States or to have engaged in any conduct which could have any impact whatsoever on the sovereignty of the United States. At worst, the allegations are that Duran counseled Antonini regarding his responses to inquiries he might receive in or from Argentina or Venezuela, or from the media, concerning the money confiscated from Antonini in Argentina, money with absolutely no connection to anything in the United States.

Nor is Duran charged with being a professional spy or even a professional member of law enforcement. On the contrary, the Indictment makes it clear that this case involves, not ongoing espionage, foreign intelligence gathering or spying but the reaction to a

discreet event and its aftermath taking place over a limited period of time. Furthermore, there is no allegation that Duran ever engaged in similar activity in the past or planned to do so in the future. The entire case is about the seizure of $800,000 from Antonini on August 4, 2007 in Argentina and how that single event would be handled.

The statute under which Duran is charged fails to give an average person in Duran's position notice of a duty to register as a foreign agent with the Attorney General of the United States prior to speaking with Antonini. Since the Statute does not require a defendant to have actual knowledge of the duty to register and the probability that Duran could have knowledge of a duty to register cannot be established under these facts, the statute is unconstitutional both on its face and as applied.

II. 18 U.S.C. § 951, is void for vagueness and as such violates the Due Process Clause of the United States Constitution.

Duran is charged with violation of 18 U.S.C. § 951, which makes it unlawful to "act" in the United States as an agent of a foreign government without prior notification to the Attorney General and with conspiring with others to violate this statute. For the reasons set forth below, this Statute is void for vagueness and, as such, violates the Due Process Clause of the United States Constitution.

The basic law concerning the vagueness and over-breadth of legislative authority has been established by the Supreme Court. A statute is void for vagueness when its prohibition is so vague as to leave an individual without knowledge of the nature of the activity that is prohibited. *NAACP v. Button,* 371 U.S. 415 (1963); *Smith v. Avino,* 91 F.3d 105, 108 (11th Cir. 1996). To pass constitutional muster, a statute must give a person of

ordinary intelligence a reasonable opportunity to know what is prohibited and provide explicit standards for those who apply it, so as to avoid arbitrary and discriminatory enforcement. *Grayned v. City of Rockford,* 408 U.S. 104, 108-09 (1972). As observed by the Court in *Papachristou v. City of Jacksonville,* 405 U.S. 156,162 (1972), "living under a rule of law entails various suppositions, one of which is that '[all persons] are entitled to be informed as to what the State commands or forbids.'" *Quoting Lanzetta v. New Jersey,* 306 U.S. 451, 453 (1939). This Statute fails this test.

18 U.S.C. § 951 provides, in relevant part, that:

> "Whoever, other than a diplomatic or consular officer or attache acts in the United States as an agent of a foreign government without prior notification of the attorney general . . . shall be fined under this title or imprisoned . . . the term 'agent of a foreign government' means an individual who agrees to operate in the United States subject to the direction or control of a foreign government or official. . . "

Where the Statute falters is in its failure to adequately define the phrase "acts as an agent of a foreign government or official," because it does not give a potential defendant notice of what it is he must do in order to trigger the duty to provide notification to the Attorney General.

It is not sufficient that the Statute defines "agent of a foreign government" to mean "an individual who agrees to operate within the United States subject to the direction and control of a foreign government or official...."[1] The Statute requires that a person "act" as an agent without providing any definition for this term.

The Statute does not provide a definition for the word "acts" or forbid any specific

[1]Subject to four (4) exceptions set forth in the statute.

or definite act. In *U.S. v. Cohen*, 255 U.S. 81, 89 (1921), the Supreme Court addressed a void for vagueness argument dealing with a statute regulating the sale of goods in time of war. The statute in *Cohen* made it unlawful, "to make any unjust or unreasonable rate or charge in handling or dealing in or with any necessaries" and "to exact excessive prices for any necessaries." In declaring the statute unconstitutionally vague, the Court held, "The section forbids no specific or definite act . . . It leaves open, therefore, the widest conceivable inquiry, the scope of which no one can foresee and the result of which no one can foreshadow or adequately guard against." *Id.* at 89. This Statute, as it is written, leaves Duran in a similar predicament.

This Statute does nothing to limit the use of the word "acts" such as state, "acts in any way adverse to U.S. interests, or acts in any way not exempted." Instead, the Statute leaves contains only vague usage of the word "acts." This allows a person of ordinary intelligence no reasonable opportunity to know what is prohibited. For example, if an official in Israel were building a new library and asked his friend to travel to Miami and photograph a law library as a model for his new library, would this friend have to notify the Attorney General that he was "acting" as an agent of Israel?

In a legal memorandum dated April 30, 1976 from the Department of State addressing concerns of vagueness with this Statute, the author, Gordon Baldwin, raised two interesting scenarios that demonstrated the vagueness of the Statute: 1) If professor X agrees to the Iranian Ambassador's request to inquire about the academic standing of an Iranian student who holds a scholarship from the Iranian government, the professor is

in violation of the Statute;[2] 2) If the Ruritanian Ambassador asks a professor at a University to write a research paper on how water laws in that State might be adopted to help Ruritania, this professor would violate the Statute. The memorandum called the statute "an uncommonly murky law," noting *inter alia* that "[t]he mental element necessary for conviction is uncertain." A copy of the memorandum is attached as Exhibit 1.[3]

In another letter dated February 9, 1976 from Monroe Leigh, a legal advisor at the State Department, to the Honorable Edward Levi, Attorney General, the author referred to a "Brown Commission study" which pointed out that "18 U.S.C. § 951 does not contain a definition of the activity which requires registration" and that "its scope is unclear." A copy of this letter is attached as Exhibit 2.[4] While the Statute was modified after the writing of this letter, it still fails to address the vagueness issues raised *sub judice*.

This is particularly true in light of the fact that the Statute is a general intent statute which does not require proof of specific intent. In *Screws v. United States,* 325 U.S. 91 (1944), the Court upheld the constitutionality of 18 U.S.C. § 52, which penalized willful deprivation under color of any law of any rights, privileges or immunities secured or

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[2]In 1976 the United States still had friendly relations with Iran.

[3]This memorandum was prepared on June 22, 1976 as the response by the Department of State to requests by the Department of Justice that Section 951 be enforced. The memorandum was utilized as an exhibit in support of a motion for judgment of acquittal in a criminal prosecution in the Eastern District of Pennsylvania, *United States vs. Neil Bryne, et. al.* The district court granted the motion for judgment of acquittal for the counts charging a violation of 18 U.S.C. § 951 at the close of the government's case.

[4]This letter also was submitted as an exhibit to the motion for judgment of acquittal filed in the Bryne case.

protected by the Constitution and laws of the United States. The Court noted that "[t]he requirement that the act must be willful or purposeful may not render certain, for all purposes, a statutory definition of the crime which is in some respects uncertain. But it does relieve the statute of the objection that it punishes without warning an offense of which the accused was unaware." *Id.* at *102.* The Court went on to hold "[t]hat a requirement of a specific intent to deprive a person of a federal right made definite by decision or other rule of law saves the Act from any charge of unconstitutionality on the ground of vagueness." *Id.* at 103. The Court explained,

> "The constitutional requirement that a criminal statute be definite serves a high function. It gives a person acting with reference to the statute fair warning that his conduct is within its prohibition. This requirement is met when a statute prohibits only 'willful' acts in the sense we have explained. One who does act with such specific intent is aware that what he does is precisely that which the statute forbids."

Id. at 103-04.

Both the Supreme Court and the Eleventh Circuit Court of Appeals have long recognized that the constitutionality of a vague statutory standard is closely related to whether the statute incorporates a requirement of *mens rea. Colautti v. Franklin,* 439 U.S. 379, 395 (1979); *Papachristou v. City of Jacksonville,* 405 U.S. at 162 ("Nor are they protected from being caught in the vagrancy net by the necessity of having a specific intent to commit an unlawful act"); *United States v. Castro,* 89 F.3d 1443 (11th Cir. 1996)(mail fraud statute constitutional due to requirement that the government prove that the defendant have the specific intent to defraud); *United States v. Waymer*, 55 F.3d 564 (11th Cir. 1995).

18 U.S.C. § 951, however, is not saved by the inclusion of the element of specific intent. To the contrary, in its recent decision in *United States v. Campa,* - F.3d - , Case No. 01-17176 (11th Cir. Op. f'd 6/4/08), the Eleventh Circuit joined the Seventh Circuit in holding that the crime defined by section 951 is one of general intent only and that the Government need not prove that a defendant knew that he had a duty to register. *Id.,* slip op. at pp.32-34), *citing United States v. Dumeisi,* 424 F.3d 566, 581 (7th Cir. 2005). It should be noted that neither *Campa* nor *Dumeisi* addressed the question of whether section 951 was unconstitutionally vague in the absence of a specific intent requirement.[5]

The Statute as written is vague and ambiguous and leaves individuals with no definite way to know under what circumstances they may be in violation of the Statute. For the aforementioned reasons Duran respectfully requests that this Court declare this Statute unconstitutionally vague and ambiguous and to dismiss the charges against Duran.

III. 18 U.S.C. § 951 is unconstitutional as applied.

As established in the prior section, void for vagueness simply means that criminal responsibility should not attach where one could not reasonably understand that his contemplated conduct is proscribed. In determining the sufficiency of the notice, a statute must of necessity be examined in the light of the conduct with which a defendant is charged. *United States v. National Dairy Products Corp.,* 372 U.S. 29, 33 (1963); *United*

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[5]Prior to the holding in *Campa*, it might have been possible to save the Statute by requiring a showing of specific *mens rea*. However, since this Court is bound by the *Campa* decision, it must now address the constitutionality of a statute which does not contain a specific *mens rea* requirement.

States v. Mazurie, 419 U.S. 544, 550 (1975). 18 U.S.C. § 951 is unconstitutional as applied because the Statute does not contain a willfulness element and it did not sufficiently warn Duran that engaging in the conversations and meetings with Antonini, described in the Indictment, without first registering as a foreign agent with the Attorney General is prohibited by the Statute.

The gravamen of the charge against Duran is not that he acted in the United States as an agent of a foreign government, but that he did so without first registering with the Attorney General. None of Duran's meetings or conversations with Antonini were in violation of any federal or state law. It is solely Duran's failure to register which defines the crime. This is because the general purpose of the Foreign Agents Registration Act was to identify agents of foreign principals who might engage in subversive acts or in spreading foreign propaganda and to require them to make public record of the nature of their employment. *Viereck v. United States,* 318 U.S. 236, 241 (1943); *Cf. United States v. Peace Information Center,* 97 F.Supp. 255, 262 (DC. 1951)("The statute under consideration neither limits nor interferes with freedom of speech. It does not regulate expression of ideas. Nor does it preclude the making of any utterances. It merely requires persons carrying on certain activities to identify themselves by filing a registration statement.").

Accordingly, this case is controlled by *Lambert v. People of the State of California,* 355 U.S. 225, 227 (1957), in which the Supreme Court held that a Los Angeles felon registration ordinance carrying criminal penalties was unconstitutional as applied to a

defendant who had no actual knowledge of her duty to register and where no showing was made of the probability of such knowledge. The rational for this holding was cogently expressed by the Court:

> "Where a person did not know of the duty to register and where there was no proof of the probability of such knowledge, he may not be convicted consistently with due process. Were it otherwise, the evil would be as great as it is when the law is written in print too fine to read or in a language foreign to the community."

Id. at 229-230.

Similar to the *Lambert* case, Duran is charged with violating a registration statute. Like in *Lambert,* Duran's presence in the United States and his conversations and meetings with Antonini are not blameworthy. It is **only** his failure to register that is a violation of the law. *Viereck,* 318 U.S. at 241; *Peace Information Center,* 97 F.Supp. at 262. Furthermore, just like in *Lambert*, there is no willfulness element in the Statute and there exists no "probability of knowledge" of the Statute. Thus, under the *Lambert* analysis, the Court should find that the Statute as applied is unconstitutional.

As discussed previously, it is well settled law that the constitutionality of a vague statute is closely related to the presence or lack of a *mens rea* requirement in the statute. *Screws v. U.S.*, 325 U.S. 91, 102 (1945). Thus, when a registration statute is attacked for vagueness and lacks a willfulness element the courts have held that the appropriate action is to apply an analysis similar to the one used in *Lambert*. See *U.S. v. Conner*, 752 F.2d. 566, 574 (11th Cir. 1985); *U.S. v. Waymer*, 55 F.3d 564, 568 (11th Cir. 1995); *U.S. v. Weiler*, 458 F.2nd 474, 478 (2nd Cir. 1972); *U.S. v. Mancuso*, 420 F.2d 556, 558 (2nd Cir.

1970); *U.S. v. Juzwiak, 258 F.2nd 844, 845 (2nd Cir. 1958); Bartlett v. Alameida*, 366 F3d 1020, 1024 (9th Cir. 2004).

For the Statute to be found constitutional as applied it must be satisfied that there existed "actual knowledge of the duty to register or proof of the probability of such knowledge." *Lambert*, 355 U.S. at 230. The Statute that Duran is charged with, 18 U.S.C. § 951 is a Statute that is not well known. Equally important, the 80 years of case law and legislative history of this Statute establishes that the intent and use of this Statute is exclusively to prosecute espionage related crimes and subversive activities against the United States.

This Statute, at best is an obscure registration statute. The Statute is known to very few and is difficult to discover even if one were inclined to search it out. The Department of Justice's ("DOJ") own criminal resource manual, in a section entitled "Foreign Agents Registration Act Enforcement" ("FARA"), agrees with the Defense in this matter:

> "If the Department receives credible information establishing a *prima facie* registration obligation, where evidence of intent is lacking, the Department usually sends a letter advising the person of the existence of FARA and the possible obligations thereunder. FARA, after all, is a *malum prohibitum* enactment **not well known** outside the legal/lobbying community."

U.S. DOJ Crim. Resource Manual, available at: http://www.usdoj.gov/usao/eousa/foia_reading_room/usam/title9/crm02062.htm. (emphasis added). Although the "FARA" statute is a different variation of the Statute that Duran is charged with violating, the difference is not pertinent to the analysis. FARA applies to those engaged in political activities, while 18 U.S.C. § 951 applies to non-political activities. If anything, FARA is a more well known

and less obscure statute then the Statute at issue in the present case.

If a Foreign Visitor to the United States searched online for information about rules and regulations governing foreign travelers they would likely search sites such as: Department of Homeland Security ("DHS") and its sub-sites "Visit-US," "Immigration and Customs Enforcement," or "Customs and Border Protection." In those sites they would find no information about 18 U.S.C. § 951. Furthermore, the DHS produces a guide for international visitors that can be found on their website at http://cbp.gov/xp/cgov/travel/id_visa. That 38 page guide contains information about various requirements and laws that visitors are subject to. In it though, there is no mention of this Statute. This begs the question, how would Duran have any knowledge of the existence of this Statute?

In addressing the notice requirement of the vagrancy law struck down in *Papachristou* The Supreme Court stated:

> "The poor among us, the minorities, the average householder are not in the business and not alerted to the regulatory schemes of vagrancy laws; and we assume they would have no understanding of their meaning and impact if they read them. Nor are they protected . . . by the necessity of having a specific intent to commit an unlawful act."

Papachristou v. City of Jacksonville, 405 U.S. at 163. This is exactly the situation this Court is presented with in the case at bar. Duran is "not in the business" of espionage or diplomacy, there is no allegation that Duran is a professional law enforcement agent or spy and, therefore, he would not be alerted to the regulatory schemes and laws, especially a Statute that even the Government concedes is obscure. Moreover, the allegations in this

case do not involve any sort of continuing espionage or intelligence gathering, rather the case involves a single event in Argentina on August 4, 2007 and discreet conduct over several months time related to that singular event. If the Supreme Court in *Papachristou* was concerned about the poor, minorities and average householder not being able to understand the meaning and impact of vagrancy laws, then how could we expect a citizen of a foreign nation such as Duran, who barely speaks English, to understand the intent and application of a vague registration Statute? This is particularly true without even the barest allegation that Duran had ever engaged in similar conduct in the past or contemplated an ongoing pattern of such conduct.

A similar issue was raised by the Second Circuit in a case dealing with a narcotics violator's failure to register with customs officials upon leaving and entering the United States. *U.S. v. Mancuso*, 420 F.2d 556, 559 (2nd Cir. 1970). In addressing the issue of probability of knowledge of the statute, the court pointed to the Government's failure to notify travelers of the existence of the rule. The court noted that simple notice could be provided to travelers and that the few signs that were posted at odd locations were, "ill-designed to bring them to public notice of travelers generally." *Id.* The case at bar presents a strikingly similar situation for foreign travelers.

The history of enforcement of 18 U.S.C. § 951 does not provide any notice that the conduct in which Duran is alleged to have engaged required that he first register with the Attorney General. A search on "Westlaw" did not reveal one reported case in either district court or appellate court since the Statute's enactment in 1917 that did not involve

espionage or subversive activities by a foreign intelligence service while gathering or attempting to gather information about the United States. An examination of all reported cases that cite either the current or previous version of the Statute reveals 35 cases.[67] Of those 35 cases, 32 deal with a defendant either being charged with espionage, committing a subversive act or gathering information in the United States about activities taking place in the United States on behalf of a foreign intelligence agency.[8] The remaining three cases include two hearings in which the original facts of the case are not available and a case involving the clandestine exportation of weapons to Northern Ireland from the United States. However, in the Northern Ireland case, following the Government's case in chief the defendants, after challenging the vagueness of the Statute, were acquitted of the charges under this Statute. *U.S. v. Byrne*, 422 F.Supp. 147 (E.D.P.A. 1976).

The case law demonstrates that for over 80 years, the only intent and application of this statute is to prosecute defendants in cases dealing with espionage and subversive activities against the U.S. Here, there are no allegations that Duran engaged in any such activities.

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[6]A search of the current version and previous versions of the Statute reveal 73 cases. However once the duplicates and mistaken cites, which usually intended to cite section 1951 are removed, the number is reduced to 51. There are 16 cases that mention the Statute in dicta or in a non-related manner thus bringing the number to 35.

[7]A list of those 73 cases is attached as Exhibit 3.

[8]Of these 32 cases the bulk of them relate to the U.S.S.R. (12); and Germany (8); the rest are: Iraq (5); Vietnam (2); Cuba (4); and Unknown (1). (note some of the cases stem from the same litigation and are appeals or involve other defendants).

The legislative history of the Statute further serves to establish that the intent of this Statute is to protect the United States from espionage and subversive activities On April 9, 1917, just three days after the United States declared war and became involved in World War I, the U.S. House of Representatives Committee on the Judiciary held hearings discussing, "Espionage and Interference with Neutrality." *Hearing on H.R. 291 Before the H. Comm. On the Judiciary,* 65th Cong. 53-2 (1917). During those hearings, the Chairman of the Committee, Congressman Edwin Webb, concluded by stating, "we will draft a bill to present to Congress which we think will do justice to our Government in **time of war** and at the same time protect and preserve the rights of the American people. . ." *Id.* (emphasis added) When the bill was discussed and debated on the floors of the House and the Senate, the sections in the Congressional Record were entitled "Espionage," in the House and "Punishment of Espionage" in the Senate. 55 Cong. Rec. 1590 (1917); 55 Cong. Rec. 776 (1917). What came from these hearings and debates was H.R. 291, later to be codified in pertinent part as 18 U.S.C. § 951. It is clear that this was a war time act that was enacted to protect the United States from subversive elements that could threaten America's war effort.

The statute was last modified in 1984 to resemble its present form. Prior to the modification, the Senate Subcommittee on Security and Terrorism, concerned about Soviet spies gathering public information from Capitol Hill, held a hearing to discuss those changes. *Hearing on* S. *1959 and 1963 Before the S. Sub. Comm. On Security and Terrorism* 97th Cong. J-97-116 (1982). In his opening remarks of the hearing, Sen.

Jeremiah Denton stated, "I believe Section 951 of Title 18, United States Code is an important statute. Its usefulness has been demonstrated repeatedly in espionage prosecutions, where its violation is often used as a secondary offense and as an investigative predicate for the FBI." *Id. at 4*.

Duran is not alleged to be a spy and there is no allegation that he was involved in espionage or conducting subversive actions against the United States. The meetings and conversations that Duran is alleged to have had with Antonini involved a possible inquiry in Argentina or Venezuela into the source and destination of the funds Antonini was carrying. There was no ongoing investigation into the underlying events by United States law enforcement authorities, no jurisdiction for such an investigation and no reason for Duran to suspect that the United States had any interest whatsoever in the matter. Certainly, the acts of discussing the inquiry into the source and destination of the suitcase did not violate any United States law, state or federal. The subject matter of the conversations which Duran is alleged to have had with Antonini had no connection whatsoever to any domestic or foreign interest of the United States.

The bottom line is that from both an objective and subjective point of view, Duran had no more reason to believe that he had a duty to register as a foreign agent with the Attorney general than would the hypothetical individuals mentioned in Gordon Baldwin's Department of State Memo. Under *Lambert,* since there is no allegation that Duran knew that he had a duty to register and there is no suggestion even of the probability of such knowledge, the use of 18 U.S.C. § 951 to prosecute him for failing to register as a foreign

agent and for conspiracy to do so is unconstitutional.

CONCLUSION

For the foregoing reasons and citations of authority, the Defendant Franklin Duran, respectfully moves this Honorable Court to find 18 U.S.C. § 951 unconstitutionally vague on its face and as applied to the facts of this case and to Dismiss the Indictment against him.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY on June 20, 2008, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify the foregoing document is being served this day on all counsel of record identified on the attached service list in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in another authorized manner for those counsel or parties not authorized to receive electronically Notices of Electronic Filing.

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