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8
9 UNITED STATES DISTRICT COURT
10 CENTRAL DISTRICT OF CALIFORNIA
11 WESTERN DIVISION
12

13 UNITED STATES OF AMERICA,)
14 Plaintiff,)
15 v.)
16 SERGIO SANTIAGO SYJUCO,)
17 Defendant.)
18
19

NO. CR 12-37-RGK
REPLY TO GOVERNMENT'S
OPPOSITION TO MOTION TO
DISMISS INDICTMENT BECAUSE
OF OUTRAGEOUS
GOVERNMENT MISCONDUCT

20
21 Defendant Sergio Santiago Syjuco, by and through his attorney of record, Deputy
22 Federal Public Defender John Littrell, hereby replies to the government's opposition to
23 his motion to dismiss the indictment based on outrageous governmental misconduct.

24 Respectfully submitted,
25 SEAN KENNEDY
Federal Public Defender

26 DATED: November 20, 2012

27 By: /s/ John Littrell
JOHN LITTRELL
Deputy Federal Public Defender
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REPLY

I.

Introduction

The government does not dispute that the undercover agent spent \$14,500.00 of taxpayer dollars in strip clubs and brothels in Manila. It does not deny this taxpayer money went toward alcohol consumed by the agents, as well as the fees of “hostesses” that accompanied the undercover agent and his cover team. Since the motion to dismiss was filed in September 2012, the government has acknowledged that several thousand dollars more was spent in strip clubs and brothels in Manila. And defense investigation has revealed that the undercover agent spent thousands of additional dollars *beyond that* at various strip clubs and brothels in the United States and the Philippines that the government has not disclosed to the defense. Taking into account the additional expenses that government disclosures and independent investigation has revealed, the total that the government appears to have spent on strip clubs and prostitutes in this investigation rises to more than **\$25,000.00**.

The government offers no apology for its expenditures, despite clear evidence that the money went to brothels such as Area 51 in Manila that are known to be trafficking in under-aged prostitutes. The government contends that the undercover agent did not solicit prostitutes for himself, but defense witnesses who will testify at the hearing dispute that claim. Although the government argues that the undercover agent did not *see* prostitution engaged in first hand, and he was not explicitly *told* that the exorbitant bills that he was paying included the cost of that prostitution, it does not deny that the agent, based on his experience, training, and common sense, *knew* that he was paying for prostitutes, and did so intentionally.

Finally, the government argues, even assuming its agent did solicit prostitutes, his conduct was not so outrageous as to justify dismissal of the indictment because the prostitutes didn’t form “intimate” relationships with the defendants. This argument completely ignores the harm that the agent’s conduct had on the victims.

1 The government’s outrageous misconduct in this case has prompted an
2 investigation by the Senate Judiciary Committee. See Exhibit G. Nonetheless, the
3 government persists in covering up the conduct of its agent and denying wrongdoing.
4 The government’s failure to recognize the harm of its agent’s conduct and hold him
5 accountable for his actions makes it even more important that the Court intervene.

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II.

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Argument

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A. Additional Evidence of The Undercover Agent’s Use of Tax Dollars In Strip Clubs and Brothels In Manila And In the United States

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1. Tax Dollars Spent By “Cover Teams” in Philippine Brothels

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¹ The defense has also requested that the FBI produce detailed records of the undercover agent’s transaction through the Federal Freedom of Information Act. Senator Charles Grassley also requested that the government provide that information in his September 27, 2012 Letter to FBI Director Robert Mueller. See Exhibit G.

1 ¶ 9. The government subsequently disclosed that the cover teams were also paying
2 taxpayer money for both alcohol and “entertainment.” Id. According to the
3 government, the cover teams were “required” by managers at the clubs to do so:

4 Managers at Area 51 and Air Force One required all members of the
5 cover team who were stationed inside the club to buy food and drinks for
6 hostess girls, who were employees of the KTV bar. There was also a
7 cover charge at Area 51 to get inside the club. It was expected that, as a
8 customer, you would allow one or several hostesses to sit at your table or
9 near you at the bar. The management at Area 51 required each customer,
10 including the undercover members of the cover team, to have a least one
11 hostess sit near them.

12 Id. At the request of these floor managers, the government spent **\$5,907** in addition to
13 the money that it previously disclosed that its agents spent in those establishments.

14 See Exhibit H (October 20, 2012 Letter from AUSA Margaret Vierbuchen).

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16 2. Tax Dollars Spent in American Strip Clubs

17 On January 4, 2012, the undercover agent and the informant, “Andy,” picked
18 up the defendants at the airport in Los Angeles. Rather than arrest them immediately,
19 as the agent could have done, he instead recommended that the defendants go “drink
20 at little” and then “go to places” to see strippers. See Dkt. No. 138 at 5; Exhibit C.

21 The strip clubs that the undercover agent chose were Spearmint Rhino and Deja Vu.
22 On September 21, 2012, defense counsel requested that the government reveal the
23 names of the strip clubs the undercover agent took the defendants to, and how much
24 money was spent. The government did not agree that it was required to produce that
25 information, but nonetheless agreed to reveal an “excerpt” of a request for
26 reimbursement submitted by the undercover agent. It showed as follows:

27 Entertainment & Cocktail (tips included) on 1/4-5/12 w/5 People:
28 (De Javu Night Club) \$600.00

1 (Spearmint Rhino Night Club) \$1,000

2 (No Receipt):

3 Exhibit I (October 5, 2012 e-mail from AUSA Margaret Vierbuchen). The
4 government has separately acknowledged that an additional \$725.00 was spent in the
5 two clubs that night to pay for the expenses of the “cover teams.” Exhibit G.
6 Therefore, the total expenditures for strip clubs on January 4, 2012, was **\$2,325.00**.
7 The defense has requested that the government produce the actual request for
8 reimbursement submitted to the undercover agent’s supervisor, but the government
9 has refused to disclose original documents related to that reimbursement request.

10
11 3. Money Spent In Other Strip Clubs and Brothels

12 The government suggests in its opposition that it was not the undercover agent
13 who suggested meeting at strip clubs and brothels, but rather, the defendants or
14 others. See Gov. Opp. at 4 (arguing that visiting Area 51 was suggested by “the
15 “arms broker who introduced Ubaldo to the UC”); Gov. Opp. at 9 (“It was Ubaldo
16 (not any FBI agent) who first suggested to the UC that they meet at Air Force One,
17 explaining that his friend was a manager there.”). This argument implies that, but for
18 the suggestion of this arms broker and/or Ubaldo, the meetings would have taken
19 place elsewhere. But the government has acknowledged in discovery that the
20 undercover agent visited strip clubs and brothels in Manila many times before he was
21 introduced to any of the defendants in this case. See Dkt. No. 70 at 11. Moreover,
22 defense investigation reveals that the undercover agent visited strip clubs and brothels
23 multiple times, on dates that precede this investigation, and that he spent sums of
24 money at the clubs that are consistent with him visiting them alone.

25 Bank records show that the undercover agent has a credit account in the name
26 of his false identity, Richard M. Han, and that bank account carries a credit limit of
27 \$75,000. See Exhibit J (“Richard M. Han” Bank of America Subpoena Return). A
28 review of the undercover agent’s expenditures using his credit card reveals thousands

1 of additional dollars spent on strip clubs and brothels, both in the United States and
2 abroad. For example, on the night of March 19, 2010, the undercover agent used the
3 credit card issued in its undercover name “Richard Han” and spent \$1,050.23 in the
4 Rosen Club and “Treasures,” both adult entertainment businesses in Las Vegas. See
5 id. The Rosen Club is a “Karaoke and Girls Club.”² “Treasures” is a strip club
6 owned by the “D Westwood” corporation in Las Vegas, Nevada.³

7 On August 26, 2010, the undercover agent charged \$145.89 to his government
8 credit card at “East Asia.” Id. “East Asia” is a strip club and brothel in Manila.⁴

9 On October 4, 2010, the undercover agent charged \$641.67 to his government
10 credit card at “Asian Entertainment,” another strip club and brothel in Manila.⁵ Id.

11 On October 8, 2010, the agent returned and spent an additional \$186.40 there. Id.

12 On November 11, 2010, the undercover agent returned to “Treasures,” a strip
13 club in Las Vegas, and charged \$1,065.58 on his government credit card. Id.

14 On November 17, 2010, the undercover agent charged \$392.28 on his
15 government credit card at Area 51. Id. The government had previously disclosed that
16 the evening before (November 15-16, 2010), the undercover agent also visited Area
17 51, with Cesar Ubaldo present, and spent \$1600 for “dinner and entertainment” that
18 night. Exhibit E. Area 51 was raided and ultimately shut down by law enforcement
19 in the Philippines because it employed under-aged girls as prostitutes. See Exhibit F.

20 On November 20, 2010, the undercover agent returned to Asian Entertainment
21 for a third time and spent \$988.05. Exhibit J. On February 21, 2011, the undercover
22 agent returned to Asian Entertainment a fourth time, and spent \$188.71. Id.

23 At minimum, the frequency of the undercover agent’s visits to strip clubs, both
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25 ² See http://www.youtube.com/watch?v=ge_Rpwv0i7c. (visited November
26 15, 2012)

27 ³ See <http://www.treasureslasvegas.com>

28 ⁴ See Declaration of Richard Goff at ¶ 3.

⁵ See Declaration of Richard Goff at ¶ 4.

1 in the United States and in Manila, and the fact that the sums of some of his bills are
2 so low as to suggest that he went to these establishments alone, suggests that the
3 notion of meeting at a strip club was not suggested *to* the agent, but was rather
4 suggested *by* the agent. The government has not disclosed any of the above
5 expenditures to the defense, and it has not indicated whether the undercover sought
6 reimbursement of taxpayer dollars for those expenses, which add up to **\$4,658.81**.

7
8 **B. Neither the Government Nor the Undercover Agent Denies That The**
9 **Agent Knowingly and Intentionally Paid For Prostitutes**

10 The undercover agent's extensive experience with strip clubs and brothels
11 makes it impossible that he could have spent the amounts he did without *knowing* that
12 he was paying for the cost of prostitutes. Indeed, the undercover agent, in his
13 declaration, does not actually deny that he knew he was paying for prostitutes, or that
14 he intended to do so. Regarding his own conduct in the brothels, the agent says this:

15 At no time did *I* pay to have sex with any employee of either Area 51 or
16 Air Force One. At no time was *I* alone with any female employee of
17 Area 51 or Air Force One. At no time did *I* leave the club in the
18 company of a woman, nor was alone with a woman in a private room.”

19 Declaration of UCE-3175 at ¶ 28 (emphasis added). The undercover agent's
20 statement that he was “not alone” with any female employee of Area 51 or Air Force
21 One will be contradicted by defense witnesses, specifically, an Area 51 employee who
22 was alone with him in a private room. For example, Diane Malonso confirms in her
23 notarized declaration that she was a Guest Relations Officer (“GRO”) at Area 51. Ms.
24 Malonso states that a man named “Richard Han” came into Area 51 frequently when
25 she was working and chose to be with her, and that she and “Richard” had “personal
26 relations in the Area 51 private room alone.” Exhibit K (Declaration of Diane
27 Malonso); see also Exhibit L, (Supplemental Declaration of Richard Goff).

28 Regarding whether he knew that he was paying for prostitutes for the

1 defendants, In his carefully worded declaration, the undercover agent says only this:

2 I never *saw* any defendant engage in any sexual act. I was never *told* by
3 any manager that the bill included prostitution, nor did I ever *see*
4 prostitution, in any term, listed on any bill.

5 Id. (emphasis added). The agent’s statement that he never *saw* a defendant engage in
6 a sex act, and that he was never presented with a formal bill *itemizing* prostitution,
7 doesn’t answer the obvious question: whether, based on the circumstances before
8 him, he *knew* the money he spent went to pay for prostitutes. Clearly he did.

9

10 **C. The Cover Teams Were Not In A Position To Confirm Or Deny**
11 **Allegations That The Undercover Agent Paid For Prostitutes**

12 The government points out that cover teams watched the door of the VIP rooms
13 in which the undercover agent entertained the defendants and the various “hostesses”
14 that joined them. Gov. Opp. at 10. But none of the cover team agents claim that they
15 saw what happened inside those rooms. For example, Special Agent Lao states in his
16 declaration that he positioned himself “near the door” of the rooms in which the
17 defendants and the undercover agents met. Declaration of Dennis Lao at ¶ 13. He
18 states that when he watched the group at Area 51, he saw the undercover agent and
19 the defendants enter a “karaoke” room, id. at 19, but he does not indicate that he saw
20 any of the conduct that occurred inside that room. Id. Thus, Special Agent Lao’s
21 statement that he never saw the undercover agent “force any female employee of the
22 nightclub to drink shots of alcohol,” and that he “never heard or saw the undercover
23 agent berate or belittle any female employee of the nightclub” are of little value,
24 because that conduct happened in a room he could not see. Special Agent Lao also
25 states that he saw the undercover agent leave the room periodically, but never “in the
26 company of a woman.” Id. at ¶ 20. But he does not indicate that the agent was under
27 constant surveillance, either while he was in the bar or when he left, and he does not
28 purport to know whether or not the agent engaged in prostitution.

1 The government acknowledges that the defendants “were of course free to
2 leave the private room of their own accord.” Gov. Opp. at 11. And its witnesses
3 confirm that the defendants did leave the room on several occasions. See Declaration
4 of Special Agent Cesar C. Olegario, Jr. at ¶ 8 (“I saw one or more of the defendants
5 leave and enter the room on several occasions during the meeting of the undercover
6 operation.”). Whereas the government’s witnesses are careful to note that the
7 undercover agent never left the room “in the company of a woman,” they make no
8 such representation with respect to their observation of the defendants. In fact, the
9 government has admitted that its own investigation suggests that Ubaldo and
10 Revereza engage in prostitution while they were with the undercover agent at various
11 brothels. See Exhibit M (June 28, 2012 Letter from AUSA Margaret Vierbuchen).
12 The government’s concession that it has “reason to believe” that the defendants
13 engaged in prostitution, and its conspicuous failure to deny the allegation that the
14 undercover agent *knew* he was paying for those prostitutes, makes the conclusion that
15 the agent knowingly paid tax dollars for prostitutes virtually inescapable.

16
17 **D. None of the Cases Cited By The Government Concern A Federal**
18 **Agent’s Knowing Use of Tax Dollars To Pay For Prostitutes**

19 In the alternative, the government argues that even if the undercover agent
20 solicited prostitutes for himself and the defendants, using taxpayer dollars, and even if
21 some of those prostitutes were minors, as appears to be the case here, the agent’s
22 conduct would “not rise to a level of outrageous government misconduct warranting
23 dismissal of the indictment” because “[n]o prostitute is alleged to have had a
24 relationship of any substance with any defendant.” Gov. Opp. at 22.

25 The government draws this awkward argument from United States v. Simpson,
26 813 F.2d 1462 (9th Cir. 1987), but that case does not support it. It is true that in
27 Simpson the government’s informant was an prostitute, and equally true that she
28 formed an “intimate relationship” with the suspect. But as the Court pointed out, the

1 government's agents did no more than *passively tolerate* the relationship, and they
2 specifically tried to discourage it. *Id.* at 1468. The Ninth Circuit held that these facts,
3 standing alone, were both "questionable" and "egregious," but that they did not rise to
4 the level of "outrageous government misconduct" sufficient to warrant dismissal.

5 What distinguishes Simpson from the facts of this case is not the level of
6 "intimacy" involved in the relationships between the defendants and the prostitutes,
7 but rather the government's active role in soliciting the prostitution.⁶ Whereas in
8 Simpson, the agents *discouraged* the prostitutes' relationship with the defendants, in
9 this case, the undercover agent actively arranged for and paid for prostitutes to have
10 sex with the defendants. In Simpson, the Ninth Circuit explicitly left open the
11 question of whether the government's active support of prostitution to induce criminal
12 activity by a defendant would warrant dismissal of the indictment. Because that is
13 precisely what happened in this case, the question is squarely presented here.

14 To accept the government's argument would be to validate the agent's conduct
15 in spending taxpayer dollars on prostitutes to have sex with a suspect, so long as the
16 prostitute does not develop a lasting "intimate" relationship with that suspect. But
17 this type of line-drawing misses the point. The question is not merely whether the
18 relationship with the prostitutes induced the defendants' participation in the crime, but
19 whether the government's conduct is fundamentally unfair and shocking to the
20 universal sense of justice." United States v. Russell, 411 U.S. 423, 432 (1973)
21 (quoting Kinsella v. United States, 361 U.S. 234, 246 (1960)). In other words, the
22 question is whether the government's conduct is so morally wrong, standing alone,
23 that it constituted "action *malum in se*." See United States v. Ramirez, 710 F.2d 535,
24 539 (9th Cir. 1983). The evidence in this case establishes that an undercover FBI
25 agent used U.S. tax dollars to pay for prostitutes for the defendants. In doing so, the
26 agent very likely supported the sexual exploitation of minors, which is both contrary

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28 ⁶ Another critical distinction is that the prostitute in Simpson was an adult,
whereas the government may have paid for prostitution of minor girls in this case.

1 to the values of the United States and a serious federal crime. See 18 U.S.C. §
2 2421(c). To defend the undercover agent’s solicitation of minor girls as prostitutes on
3 the ground that the defendants’ relationships with the prostitutes lacked “intimacy”
4 shows a callous disregard for the rights of the girls who were victimized.

5
6 **III.**

7 **Conclusion**

8 For the reasons expressed herein, the indictment should be dismissed.

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10 Respectfully submitted,

11 SEAN KENNEDY
12 Federal Public Defender

13 DATED: November 20, 2012

14 By: /s/ John Littrell
15 JOHN LITTRELL
16 Deputy Federal Public Defender
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