UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

UNITED STATES OF AMERICA :
v. : Cr No. 09-041 S
ANTHONY M. ST. LAURENT, Sr. :
aka "The Saint"

GOVERNMENT'S RESPONSE TO DEFENDANT'S MOTION TO DISMISS

The United States, by and through its counsel, Luis M. Matos, Acting United States Attorney and Scott Lawson, Trial Attorney, U.S. Department of Justice, hereby responds to defendant's motion to dismiss the indictment in the instant matter. Defendant alleges that the current indictment is barred by the plea agreement Defendant reached with the government in a previous prosecution, U.S. v. St. Laurent, 06 Cr 048 S. As explained more fully below, Defendant's motion is premised on inaccurate facts and his broad interpretation of the prior plea agreement is contravened by First Circuit case law. For these reasons, the motion to dismiss should be denied.

Procedural Background

On April 12, 2006, Anthony St. Laurent, Sr., (the Defendant) was indicted in the District of Rhode Island for a single violation of 18 U.S.C. § 894, alleging that he conspired, from March 2006 to the date of the indictment, to use extortionate means to collect and attempt to collect extensions of credit from two individuals identified in the indictment as James Furtado and David (Last Name Unknown (LNU)). Exhibit A, Indictment, Cr 06-48 S.

On June 21, 2006, St. Laurent signed a plea agreement in which he agreed to plead guilty

to the indictment. The plea agreement was filed on June 23, 2006. Exhibit B, Plea Agreement, Cr. No. 06-048 S. A Change of Plea and Violation Hearing in 06-048 S took place on July 12, 2006. Exhibit C, Transcript of Hearing Before Hon. William E. Smith, Cr. 06-48 S, July 12, 2006. According to the Court docket, former AUSA James Leavey was the lead prosecutor for the government, however, a different AUSA represented the government at the change of plea hearing. Attorney John F. Cicilline represented the defendant.

On January 23, 2009, the government charged the Defendant in a criminal complaint with solicitation of murder-for-hire, in violation of 18 U.S.C. § 373. Exhibit D, Criminal Complaint and Affidavit of Special Agent Joseph R. Degnan, Case No. 09 MJ 11A. The criminal complaint identified the intended victim as Robert "Bobby" DeLuca, a rival of St. Laurent's in the Patriarca Organized Crime family, also known as the New England branch of *La Cosa Nostra* (LCN). Both the complaint and the current indictment in 09 Cr. 041 S allege that the defendant solicited the murder on or about April 12, 2006.

ARGUMENT

A. THE PLEA AGREEMENT IN 06-48 S DOES NOT PRECLUDE ANY CHARGES FOR SOLICITATION OF MURDER AND MURDER-FOR-HIRE.

Defendant alleges that the plea agreement in 06 Cr.048 S bars the instant indictment in 09 Cr. 041 S. In paragraphs 6 - 8 of his Motion To Dismiss, defendant St. Laurent alleges that prior to June, 2006, Cicilline and counsel for the government discussed that there would be no federal prosecution for an alleged solicitation of murder that had been captured in a recording made by a government informant on April 8, 2006. While the exact contours of the discussions between defense counsel and the government are unclear (and Defendant offers no evidence of

them), ultimately, those details are of no consequence, for whatever the substance of the preliminary discussions held between counsel, no such agreement concerning future prosecutions appears in the binding plea agreement the attorneys and defendant ultimately signed to memorialize their agreement.[1]

As First Circuit case law makes clear, the two most important sources for interpreting the scope of a plea agreement are first, the document itself, and secondly, the hearing in which the Court reviews the agreement with the Defendant and his counsel to ensure that they understand the terms of the agreement before accepting the Defendant's guilty plea. Examination of both sources here confirms that the alleged promise not to prosecute the solicitation of murder was not part of the Defendant's final agreement with the government.

The contractual nature of the agreement between the parties is delineated in the first two paragraphs of the document, the first paragraph specifying what the Defendant must do: namely, plead guilty to the indictment; and the second paragraph specifying what the government must do in exchange for the guilty plea. Paragraph 2 of the written plea agreement signed by the parties in 06 Cr 048 S bears the heading "Government's Obligations" and then itemizes in seven separately lettered subparagraphs the government's promises, obligations and concessions exchanged for the defendant's guilty plea. (Exhibit B, para 2(a) - (g).) One of these seven

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[1] The AUSA who negotiated this agreement has retired. While there is no documentation in the government's case file memorializing the promise alleged in defendant's motion, the government's understanding is that the AUSA told defense counsel that he did not think the evidence obtained in the recording of April 8, 2006 met the elements of any federal offense and that therefore, there was no federal crime to prosecute. As will be discussed *infra* in part B of this response, it is important to note that the AUSA's assessment of the facts concerned only the April 8, 2006 recording and not the conduct currently charged.

subparagraphs contains the only mention of a limitation on future prosecutions:

> "e. The government agrees not to charge the defendant with any offenses known to the government related to the conspiracy charge to which defendant is pleading, so long as defendant does not attempt to withdraw his plea of guilty to this indictment."

Exhibit B, para. 2(e).

Thus, the plain and unambiguous terms of the plea agreement prohibit the U.S. Attorney's Office for the District of Rhode Island from charging the defendant with any offenses "known to the government related to the conspiracy charge to which defendant is pleading." The conspiracy charge to which the defendant pled guilty involved the extortion of two individuals from Massachusetts identified as James Furtado and David (LNU). It cannot be seriously argued that a solicitation to murder DeLuca is in any way "related to" a conspiracy to extort two completely different victims.

Eleven paragraphs and 4 pages removed from paragraph 2's listing of the Government's Obligations, paragraph 13 contains the plea agreement's sole reference to the defendant's attempt to recruit someone to kill DeLuca. In it's entirety:

> 13. This agreement is limited to the District of Rhode Island and does not bind any other federal, state, or local prosecutive authorities. Defendant is aware the (sic) he may be charged by the State of Rhode Island for an alleged solicitation for murder. This agreement does not affect this possible charge in any way.

Exhibit B, para. 13.

The very next section of the plea agreement, paragraph 14, contains an integration clause designed to protect both parties from allegations that unwritten side deals, hidden from the Court, are part of the bargain:

> 14. This agreement constitutes the entire agreement between the parties. No other promises or inducements have been made concerning the plea in this case. ... Any additions, deletions, or modifications to this agreement must be made in writing and

signed by all the parties in order to be effective.

Exhibit B, para. 14.

The defendant and his counsel signed the plea agreement on June 21, 2006 and the government signed it two days later. At the change of plea hearing on July 12, 2006, neither Cicilline, the Defendant, nor government counsel advised the Court of any additional understandings or agreements between the parties. During the hearing, the defendant was explicitly asked by the Court whether anyone has "made any promises to you, other than what is contained in the plea agreement, any other promises to you in order to get you to plead guilty in this case?" He answered "No." Exhibit C, page 8, lines 17-21.

The Court then directed the Defendant to "listen carefully to what he [the prosecutor] describes as the essential terms of the plea agreement." Exhibit C, page 9, lines 2-4. The government then summarized the "essential terms" of the plea agreement, first listing the Defendant's obligation to plead guilty to the indictment. The prosecutor then described what the Government agreed to do in exchange for that plea of guilty, reciting the government's obligation with respect to a sentencing recommendation and guidelines calculation, and noting that the government's obligation to recommend a sentence at the low end of the guidelines range was conditioned upon the Defendant not seeking a downward departure. Exhibit C, page 9, lines 7-21. The reference to the Defendant not seeking a downward departure apparently triggered a physical, if not verbal, reaction from defense counsel, as the transcript indicates the Court interrupted the government's summary by admonishing defense counsel: "Just let him [the AUSA] finish and then we'll come back to it." Exhibit C, page 9, lines 22-23.

The AUSA then completed his description of the essential terms of the plea agreement by

stating that "the Government further agrees not to charge the defendant with any offenses related to the conspiracy charge to which the defendant is pleading." The AUSA then noted the effect of a pending supervised release violation, the fact that the plea agreement was binding only on the District of Rhode Island, and finally, the impact of an appellate waiver contained in the agreement. Exhibit C, page 10, lines 4-25, page 11, lines 1-2.

Mr. Cicilline was then invited to comment on the government's summary of the plea agreement and he immediately brought to the Court's attention that the government was wrong to mention that the Defendant had agreed to not seek a downward departure in exchange for a low-end recommendation, as this provision was stricken from the final version of the plea agreement, a point which the government, after reviewing defense counsel's copy of the agreement, conceded. Exhibit C, page 11, lines 4-21.

The Defendant then confirmed that he had listened carefully to the Government's description of the essential terms of his plea agreement and informed the Court that he agreed that the government's summary, as clarified by the discussion of the downward departure issue, accurately detailed the terms of his plea agreement with the Government. Exhibit C, page 12, lines 3-12. The change of plea colloquy on July 12, 2006 contains no discussion whatsoever of the plea agreement's mention of the "alleged solicitation for murder" and no mention of an alleged promise by the government to forgo any future prosecutions other than those related to the charged extortion conspiracy.

In Santobellow v. New York, the Supreme Court declared that when a defendant's

guilty plea "rest[s] in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be a part of the inducement or consideration, such promise must be fulfilled." 404 U.S. 257, 262 (1971). In U.S. v. Connolly, 51 F.3d 1 (1st Cir. 1995), the government moved for an upward departure at sentencing. Connolly's counsel argued that the prosecutor had promised during plea negotiations that the government would not seek an upward departure. The First Circuit assumed that the government did make the promise not to seek an upward departure, but gave that promise no effect in light of an integration clause very similar to the one here, finding that the departure assurance could not be considered part of the plea agreement, both because of the integration clause and because "neither Connolly nor his counsel referred to an oral promise by the government not to move to depart when, at the Rule 11 hearing, the district court inquired whether any other promises had been made." Id. at 3.

Similarly, herein, neither Defendant nor his counsel, after listening to the government describe for the Court the "essential" terms of the plea agreement, elected to inform the Court of an unstated promise not to prosecute the murder solicitation. Given that defense counsel was quick to inform the Court of a relatively minor discrepancy concerning downward departures, the failure to mention a much more significant inducement, one essentially amounting to federal immunity for recruiting the murder of an LCN rival, suggests that whatever the nature of their preliminary discussions, the parties ultimately did not agree that such a provision was part of their bargain, and its omission from the final agreement was intentional. Whatever the nature of the pre-plea negotiations, they should be viewed similarly to how the First Circuit examined the

departure promise in Connolly:

> What we have, therefore, is a prosecutor's oral comment that might or might not be taken as a promise. But, if taken as a promise, it was not included in a later filed agreement that purported to be a complete integration of all promises made by the government. Reading the document in full, it is hard to know what more a prosecutor could do to write an agreement that negated promises other than those set forth in the document. Further, the defense thereafter confirmed in open court that no unwritten promises were part of the plea bargain. Absent special circumstances, a defendant - quite as much as the government - is bound by a plea agreement that recites that it is a complete statement of the parties' commitments.

Connolly, 51 F.3d at 3.

A similar sentencing related promise - allegedly made by *the United States Attorney* himself during plea negotiations - was at issue in U.S. v. Alegria, 192 F.3d 179 (1st Cir. 1999). The Court in Alegria again relied on the plea agreement's integration clause and refused to enforce the U.S. Attorney's alleged promise that the government would file a motion pursuant to USSG §5K1.1 if the defendant agreed to plead guilty: "Where, as here, an unambiguous plea agreement contains an unqualified integration clause, it normally should be enforced according to its tenor. That means, of course, that an inquiring court should construe the written document within its four corners, 'unfestooned with covenants the parties did not see fit to mention'." Id. at 185, *citing* U.S. v. Anderson, 921 F.2d 335, 338 (1st Cir. 1990). The four corners of the plea agreement here are similarly unfestooned with the promise Defendant urges the Court to now add to the document.

St. Laurent appears to claim that the brief mention in paragraph 13 that he is "aware [that] he may be charged by the State of Rhode Island for an alleged solicitation for murder" necessarily, if inartfully, refers to and incorporates the unwritten assurance that he would not be prosecuted federally for the same conduct. See In re Arnett, 804 F.2d 1200 (11th Cir. 1986)

(holding in a drug prosecution that a plea agreement's specific provision for forfeiture of $3000 in currency found on the defendant's person incorporated the prosecutor's oral, pre-plea representation that the government would not seek forfeiture of other property.)

The instant situation is quite different from Arnett, in that the plea agreement contains in paragraph 2(e) a clear, unambiguous statement of exactly the sort of future prosecution the government has agreed to forego; namely, anything related to the charged conspiracy. To read the passing reference to the murder solicitation in paragraph 13 as a supplement (and significant expansion) to the explicit promises made in paragraph 2 belies any common-sense reading of the document. Such a reading contradicts paragraph 14's declaration to the Court that there are "no other promises or inducements concerning the plea," rewards the defendant's lack of full candor at the change of plea hearing, and defies the common-sense meaning of the language itself, which merely puts the defendant on notice that he may be prosecuted by the State for this conduct.

In U.S. v. Burns, 160 F.3d 82 (1st Cir. 1998), the First Circuit admonished that "significant plea-agreement terms should be stated explicitly and unambiguously so as to preclude their subsequent circumvention by either party." Id. at 83. Responsibility for clarity in important terms is not limited to the government: "defense counsel too must be alert to the need for clear and explicit articulation of all pertinent terms in any plea agreement negotiated with government counsel." Id.

The Alegria court applied this obligation to the change of plea hearing itself, declaring that to find a new promise not explicitly stated in the plea agreement, after both the defendant and his attorney denied the existence of such, "would turn the change-of-plea colloquy into a

farce." Alegria, 192 F.3d at 186. Enforcing the alleged "promise" herein would similarly cheapen St. Laurent's explicit denials of other inducements at the guilty plea. "We believe, therefore, that a defendant who asserts a fact in answer to a judge's question during a change-of-plea proceeding ought to be bound by that answer, absent exceptional circumstances." Id.

On July 12, 2006, St. Laurent and his counsel listened to the government describe the "essential" terms of the plea agreement. That description noted only that the government would not further prosecute the defendant for offenses related to the extortion conspiracy and did not mention any protection from prosecution for solicitation of murder. The defendant agreed with the government's description of these "essential" terms and affirmatively stated that there were no other promises or inducements other than those stated. Neither he nor his counsel noted what would seem to be a significant omission in the government's recitation of it's obligations, the alleged promise not to prosecute a solicitation of murder.[2]

The plea agreement at issue here was negotiated by an extremely experienced prosecutor, shortly before he retired as the head of the U.S. Attorney's Organized Crime Strike Force. Across the bargaining table from him was a sharp practitioner, arguably the most well-known criminal defense attorney in the state, with particular experience representing this defendant. Their negotiations resulted in an agreement which lists seven separate concessions the government promised the defendant in order to obtain his guilty plea, none of which contain the promise Defendant now seeks to graft onto the document.

The parties to this agreement clearly knew how and where to document the agreement's

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[2] Cicilline's silence as to this issue is particularly compelling given that he was the only attorney before the Court who had signed the plea agreement and negotiated its terms.

essential terms. Had they intended within the agreement to obligate the U.S. Attorney's Office to forgo prosecution of the solicitation as part of the bargain to obtain St. Laurent's plea to the extortion, there would have been no reason not to explicitly add this provision in the list of "Government's Obligations" at paragraph 2, in the same manner as they did list the government's agreement not to charge St. Laurent with other crimes related to the extortion conspiracy. See U.S. v. Anderson, 921 F.2d 335, 338 (1st Cir. 1990)("If the defendant had wanted to condition his plea on the conferral of an incremental benefit ... he could have insisted that such a term be made part of the Agreement. He did not do so. Under the circumstances, we find no reason to grant him after the fact the benefit of a condition he failed to negotiate before the fact.")

Further, had St. Laurent and his attorney believed that either the plea agreement or the government's summary of its essential terms omitted a promise as significant as the one they now allege was part of their contract with the government, they would have so advised the Court during the guilty plea hearing. They did not, and both agreed, in the course of a hearing in which solicitation of murder was never mentioned, that there were no other promises or inducements involved in the guilty plea. They should now be held bound by those answers.

B. THE OFFENSES CHARGED IN THE CURRENT INDICTMENT WERE NOT KNOWN TO THE GOVERNMENT AT THE TIME OF THE GUILTY PLEA IN 06 Cr. 048 S AND THEREFORE ARE NOT PRECLUDED UNDER DEFENDANT'S INTERPRETATION OF THE PLEA AGREEMENT

As discussed *supra*, Defendant's interpretation of the plea agreement is premised on embellishing paragraph 2(e)'s protection from future prosecutions related to the extortion conspiracy to include an alleged unwritten promise not to prosecute the defendant for the

solicitation of murder referenced in paragraph 13. Assuming, *arguendo*, that Defendant's motion posits a correct interpretation of the plea agreement, his motion to dismiss the current indictment must still fail.

A brief review of the facts taken from Special Agent Degnan's sworn affidavit of January 23, 2009, attached as Exhibit D, demonstrates that even the flawed interpretation of the plea agreement urged by the defendant would not preclude federal prosecution of the charged offenses. Agent Degnan's affidavit explains that in the course of the investigation leading to St. Laurent's indictment in 06 Cr. 048 S, the government learned on April 7, 2006 that St. Laurent had solicited an individual, described in the affidavit as Source 1, to kill Robert DeLuca. St. Laurent further pressed Source 1 and another individual to kill DeLuca in a meeting at St. Laurent's home on April 8, 2006 that was recorded by Source 1. The government referred to this recorded solicitation at St. Laurent's initial appearance following his arrest in the extortion case on April 13, 2006. U.S. Magistrate Judge Martin referenced this recording in his April 24, 2006 Order of Detention in 06 Cr 048 S, as does the defendant in the instant motion to dismiss.[3]

Defendant's motion erroneously assumes, however, that Source 1, the individual solicited by St. Laurent to kill DeLuca on April 7-8, 2006, is the same person St. Laurent is now charged with soliciting on April 12, 2006. As Agent Degnan's original affidavit in the solicitation of murder for hire complaint makes clear, and as he restates in his affidavit attached as Exhibit E,

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[3] Defendant's Memorandum In Support of his Motion To Dismiss erroneously states that the "cooperator," i.e., Source 1, and another individual met at St. Laurent's home on April 6, 2006, where the cooperator recorded a conversation in which St. Laurent solicited DeLuca's murder. The referenced conversation took place on April 8, 2006, following an unrecorded conversation between Source 1 and St. Laurent on April 7, 2006. See Exhibit D, paragraphs 5 - 7.

they are not the same person. The individual who St. Laurent solicited to kill DeLuca on April 12, 2006, referred to in the affidavit as Source 2, was not present at the recorded solicitation on April 8, 2006 and was solicited separately and apart from the individuals recorded on April 8, 2006. See Exhibit E.

Most importantly, the government did not learn that St. Laurent had solicited Source 2 to kill DeLuca until Source 2 was interviewed on January 4, 2007, nearly 6 months after St. Laurent's plea. Exhibit E, paragraph 5. Regardless of the dispute as to the substantive scope of any protections from future prosecutions agreed to by the government, the temporal scope of that protection is limited to "offenses known to the government." Exhibit B, para 2(e). This provision obviously refers to offenses known to the government as of the date the plea agreement was signed, or at the latest, the date of St. Laurent's guilty plea on July 12, 2006.

The offenses charged in the current indictment were not known to the government on July 12, 2006. Thus, since the government did not know of the indicted offenses until January of 2007, an agreement precluding prosecution of offenses known to the government as of July 2006 is of no consequence to the current prosecution, regardless of whether or not the prior plea agreement precludes prosecution of then known solicitous conduct.

CONCLUSION

Whatever the nature of the parties' discussions prior to signing the plea agreement, Connolly, Alegria, and the other First Circuit cases cited herein, make clear that if prior promises are not included in a plea agreement purporting to constitute the entire agreement between the parties, then those prior unwritten promises are of no import in interpreting the written agreement. The plea agreement at issue here precludes only prosecutions related to the charged

extortion conspiracy, not the offenses outlined in the current indictment. Moreover, the plea agreement provides protection only for offenses known to the government at the time of the plea. The offenses charged herein were not known until nearly 6 months after the prior guilty plea.

For the foregoing reasons, the government requests that this Court deny the Motion To Dismiss the Indictment.

Respectfully submitted,

UNITED STATES OF AMERICA

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CERTIFICATION OF SERVICE

I, Scott Lawson, hereby certify that service of the foregoing Government Response To Defendant's Motion To Dismiss The Indictment, with referenced attachments, was made through the ECF system upon all counsel of record.

/S/ Scott Lawson

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