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SENT VIA EMAIL AND U.S. MAIL

November 17, 2010

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1400 New York Avenue NW
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Re: *United States v. Enrique Faustino Aguilar Noriega, et al.*
Case No: 10-1031(A)-AHM

Dear Mr. Miller and Ms. Mrazek:

The government has provided its initial production of discovery, represented to be over one million pages. I can see from your cover letter that these are documents obtained directly from ABB or in connection with the ABB investigation, in the search of Lindsey Manufacturing, and from financial institutions. This production does not include some material that is explicitly required by Rule 16, such as a memorandum of Mr. Lee's interview by the FBI. In addition, so far as I can see, there is not a single witness statement or immunity letter, plea agreement or other piece of *Brady* or *Giglio* material included in this production.

In light of this, and in anticipation of our meet-and-confer on November 22, I wanted to note my initial set of discovery requests. These requests are for materials in the possession, custody, or control of the United States, or any agency or entity working with or on behalf of the United States (hereinafter, collectively, "the government"), the existence of which is known, or through the exercise of due diligence could become known, to the government or agencies working with or on behalf of the government.

1. All written or recorded statements and/or utterances, including, but not limited to admissions made by Mr. Lee; those portions of any writing or written record containing the substance of any oral statement made by Mr. Lee in response to questioning or interrogation by any person then known to Mr. Lee to be a government officer, agent or employee (collectively referred to as "agent"); and any recorded testimony of Mr. Lee before the grand jury. Fed.R.Crim.P. 16(a)(1)(A)-(B). If any such statements were electronically recorded, a transcript

Douglas Miller
Nicola Mrazek
November 17, 2010
Page 2

and audible copy of each recording is requested. This paragraph specifically includes a request for the notes, handwritten or otherwise, of any law enforcement agent who was present during any interview of Mr. Lee, regardless of whether the law enforcement agent memorialized the interview in a report. This paragraph also includes a request for all drafts of each item produced, even if that item was never put in final form or memorialized in a memorandum, including all drafts of interview memoranda, affidavits and other writings.

2. Mr. Lee's prior criminal record, if any. *See* Fed.R.Crim.P. 16(a)(1)(D).
3. All videotapes, audiotapes, books, papers, documents, photographs, tangible objects, buildings, and places which are within the possession, custody, or control of the government, and which are material to the preparation of the defense, or are intended for use by the government as evidence in chief at trial, or were obtained from or belong to Mr. Lee or any of the alleged co-conspirators, including any business entities. *See* Fed.R.Crim.P. 16(a)(1)(E).
4. All results or reports of physical or mental examinations, and scientific tests or experiments, and accounting or financial analyses, that are material to the preparation of the defense or are intended for use by the government as evidence in its case-in-chief at trial. *See* Fed.R.Crim.P. 16(a)(1)(F). This includes, but is not limited to, the results and reports of any examinations of any computers or any other electronic media.
5. A written summary of all of the expert testimony that the government intends to use during its case-in-chief at trial and a description of each of the expert witnesses' qualifications. *See* Fed.R.Crim.P. 16(a)(1)(G).
6. All evidence of other crimes, wrongs, or acts by Mr. Lee that the government intends to introduce at trial. *See* Fed.R.Evid. 404(b). This notice must be specific and must include the government's theory of admissibility, in order to enable Mr. Lee to present motions *in limine*, prior to trial and to defend at trial, if necessary.
7. All evidence favorable to Mr. Lee that is material to guilt or to punishment. *See Brady v. Maryland*, 373 U.S. 83, 87 (1963).
8. The name, address, date of birth, and Social Security number of any confidential source whom the government intends to call at trial.
9. All evidence that tends, in any way, to impeach the testimony of any government witness, including any confidential source or cooperating witness (hereinafter "witness"). *See Giglio v. United States*, 405 U.S. 150, 154 (1972). This includes, but is not limited to, the following:
 - a. The witness' prior criminal record. *See* Fed.R.Evid. 609;

Douglas Miller
Nicola Mrazek
November 17, 2010
Page 3

- b. All documents, reports, memoranda, letters, notes, electronic data, and other materials that reflect benefits received, or to be received (including any potential/contingent benefit), by any witness from any local, state or federal government agency or department or any third party in exchange for, or because of, his/her cooperation in this case and any other case, matter or investigation. If no such documents or materials exist, with respect to a specific witness or witnesses, provide a written summary describing the substance of all potential benefits received, and benefits to be received, by the witness or witnesses, from any local, state, or federal government agency or department or any third party in exchange for, or because of, his/her cooperation in this and any other case, matter or investigation. *See Giglio*, 405 U.S. at 154;
- c. All documents, reports, memoranda, letters, notes, electronic data, and other materials that tend to indicate that any person is of the opinion that a government witness has a character for untruthfulness and/or dishonesty, and/or that a government witness has a reputation for untruthfulness and/or dishonesty. *See Fed.R.Evid. 608(a)*;
- d. All documents, reports, memoranda, letters, notes, electronic data, and other materials that tend to indicate that a government witness (including a non-testifying government agent) has committed a prior act of untruthfulness. *See Fed.R.Evid. 608(b)*;
- e. All documents, reports, memoranda, letters, notes, electronic data, and other materials that record any prior statement by any witness that is inconsistent with the witness' expected testimony at trial, and, if no such documents, reports, memoranda, letters, notes, data and/or other materials exist, a written summary describing the substance of any oral statement by any witness that is inconsistent with the witness' expected testimony at trial. *See Fed.R.Evid. 613*;
- f. All notes, reports, and electronic data reflecting any meeting, including conversations in whole or in part by telephonic communications, with representatives of the government at which the facts relating to this investigation and/or prosecution were discussed (referred to herein as a "proffer session"), that was attended by the witness, with or without counsel, or any communications by the witness; or any meetings and/or communications in which counsel for the witness, even in the absence of the witness, provided statements and/or information in any way inconsistent with any other statement made by the witness or any third party; and

Douglas Miller
Nicola Mrazek
November 17, 2010
Page 4

- g. All documents, reports, memoranda, letters, notes, electronic data and other materials that indicate in any way that a witness is a habitual user of controlled substances (as that term is defined in federal law) prescription medication and/or alcohol, and/or was under the influence of controlled substances, prescription medication and/or alcohol during any event about which the witness is expected to testify. *See Giglio*, 405 U.S. at 154.

10. Any written or recorded statements, including those in electronic data, made by any person other than Mr. Lee, for which the government seeks or will seek to attribute to Mr. Lee or for which the government seeks or will seek to hold Mr. Lee responsible. If any such statements are recorded, a transcript and audible copy of each recording. This paragraph specifically includes a request for the notes of any law enforcement agent who was present for the statement, regardless of whether the law enforcement agent memorialized the interview in a memorandum or report. It also includes a request for all drafts of each item, including all drafts of interview memoranda, affidavits, and other writings.

11. For examination by the government, any and all personnel files of all federal law enforcement witnesses who the prosecution may call at trial. If after examination by the government, it is determined that these files, or any one of them, contain information that is or may be material to Mr. Lee's case, it is requested that the government submit those files to the Court for review *in camera*. *United States v. Henthorn*, 931 F.2d 29 (9th Cir. 1991).

12. A list of each law enforcement witness who the government intends to call at trial, who is not a United States federal law enforcement witness, to enable Mr. Lee to subpoena the appropriate personnel files for inspection *in camera* by the Court.

13. All witness statements to which Mr. Lee is entitled pursuant to the Jencks Act, 18 U.S.C. § 3500, and Fed.R.Crim.P. 26.2.

14. A list of all documents that the government intends to introduce at trial, without a custodian of records, as self-authenticating under Fed.R.Evid. 902.

15. All information and materials reflecting the date, time, and place of every occasion on which any search or surveillance, whether electronic, photographic, mechanical, visual, aural, or any other type, was made of any defendant and/or their alleged co-conspirators, their residences and/or employment or business locations and/or property (including any computer or item that contains E.S.I.), together with all related documents and reports.

Douglas Miller
Nicola Mrazek
November 17, 2010
Page 5

16. All search warrants, administrative requests, and related documents, including, but not limited to, supporting affidavits, transcripts, receipts, transactions, and reports, that pertain to Mr. Lee, to any alleged co-conspirator, or to any witness, and which are related to the charges against Mr. Lee, including the affidavit (and all drafts) in support of the search warrants for the Lindsey Manufacturing Company premises and, subsequently, the property of Lindsey Manufacturing seized during the initial search that was the subject of a later search warrant.

17. Any and all requests for evidence directed to any foreign individual and/or entity, either through a Mutual Legal Assistance Treaty ("MLAT"), a Memorandum of Understanding, letters rogatory, informally or otherwise, and all materials and information received in response to such requests, including evidence (documents, electronic data and other materials, etc.) received pursuant to that request.

18. The existence or non-existence of evidence obtained by electronic surveillance.

19. The existence or non-existence of testimony by any government witness, including any confidential source, cooperating witness, accomplice, or government informer.

20. All communications, including emails and text messages, to or from any law enforcement agent relating in any way to any drafts or final versions of all witness interview memoranda, investigative reports, declarations, affidavits, MLATs, Memoranda of Understanding, or other document or report.

21. Any document, material, electronic data and information provided to or received from the Comisión Federal de Electricidad ("CFE"), including, but not limited to, from any attorneys for, or representatives, of CFE.

22. Any documents and information, including information contained in electronic data, provided to or received by the government from the United Mexican States (commonly referred to as Mexico), or any subdivision, entity, utility and quasi-public entity thereof.

23. Any documents, material and information, including information contained in electronic data, provided to or received from or on behalf of ABB, including, but not limited to, the attorneys or other representatives of ABB.

Each of these 23 requests includes all drafts and metadata.

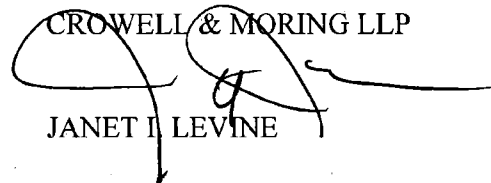
I also request that the government advise me immediately if it disputes that it has the obligation to provide any of the requested items so that I can prepare for our meet-and-confer session, and any appropriate motions can be timely prepared and filed.

Douglas Miller
Nicola Mrazek
November 17, 2010
Page 6

As you know, the government's obligation of disclosure is a continuing one. If the government discovers additional instances of, or relating to, the items and materials requested in this letter or ordered to be produced for discovery and/or inspection, please notify me of this promptly. This continuing obligation continues beyond the end of any trial.

Thank you in advance for your prompt response to these requests.

Yours very truly,

CROWELL & MORING LLP

JANET I. LEVINE

JIL/ksg

cc: Jan Handzlik (handzlikj@gtlaw.com)
Stephen Larson (slarson@girardikeese.com)