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15 UNITED STATES DISTRICT COURT  
 16 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
 17 SOUTHERN DIVISION

18	UNITED STATES OF AMERICA,	)	SA CR 09-00077-JVS
		)	
19	Plaintiff,	)	<u>GOVERNMENT'S OPPOSITION TO</u>
		)	<u>DEFENDANTS' MOTION FOR A BILL</u>
20	v.	)	<u>OF PARTICULARS; MEMORANDUM OF</u>
		)	<u>POINTS AND AUTHORITIES</u>
21	STUART CARSON et al.,	)	
		)	
22	Defendants.	)	
		)	
23		)	

24  
 25 Plaintiff United States of America, by and through its  
 26 attorneys of record, the United States Department of Justice,  
 27 Criminal Division, Fraud Section, and the United States Attorney  
 28 for the Central District of California (collectively, "the

1 government"), hereby files its opposition to defendants' joint  
2 motion for bill of particulars filed on April 22, 2009. The  
3 government's opposition is based upon the attached memorandum of  
4 points and authorities, the files and records in this matter, as  
5 well as any evidence or argument presented at any hearing on this  
6 matter.

7 DATED: May 1, 2009

Respectfully submitted,

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **INTRODUCTION**

4 The 36-page indictment against defendants describes 59 overt  
5 acts committed in furtherance of a conspiracy to pay bribes to  
6 officials of foreign state-owned companies and employees of  
7 foreign and domestic privately-owned companies. The indictment  
8 also describes, in the manner and means section, the various ways  
9 in which defendants paid these bribes. A bill of particulars is  
10 warranted only when an indictment fails to disclose the theory of  
11 the government's case. Because the indictment in this case  
12 describes the theory of the government's case in great detail,  
13 defendants' motion should be denied. To the extent defendants  
14 are seeking discovery through their pending motion, this is not  
15 an appropriate basis for a bill of particulars. Such discovery  
16 has and will be provided through the government's Brady, Giglio,  
17 Jencks Act, and Rule 16 disclosures.

18 **II.**

19 **FACTS**

20 A. The Indictment

21 A federal grand jury returned a 36-page, sixteen-count  
22 indictment on April 9, 2009, charging defendants Stuart Carson  
23 ("S. Carson"), Hong "Rose" Carson ("R. Carson"), Paul Cosgrove,  
24 David Edmonds, Flavio Ricotti, and Han Yong Kim (collectively,  
25 "the defendants") with conspiring to pay bribes to officials of  
26 foreign state-owned companies and officers and employees of  
27 foreign and domestic private companies for the purpose of  
28 assisting their employer, Company A, obtain and retain business.

1 Count one of the indictment charges the defendants with  
2 conspiring to violate the Foreign Corrupt Practices Act ("FCPA"),  
3 15 U.S.C. § 78dd-2, and the Travel Act, 18 U.S.C. § 1952, from  
4 1998 through 2007. Counts two through ten of the indictment  
5 allege substantive FCPA violations involving corrupt payments to  
6 foreign officials in Korea, China, United Arab Emirates, and  
7 Malaysia. Counts eleven through fifteen allege substantive  
8 violations of the Travel Act involving corrupt payments to  
9 private companies. The final count of the indictment alleges  
10 that defendant R. Carson obstructed an investigation within the  
11 jurisdiction of a federal agency when she destroyed documents  
12 relevant to Company A's internal investigation of the corrupt  
13 payments by flushing them down the toilet of Company A's ladies'  
14 room.

15 The indictment alleges that Company A adopted a business  
16 model through which its employees and agents cultivated special  
17 relationships with employees of its state-owned and private  
18 customers. (Indictment, ¶ 4). These employees of Company A's  
19 customers were known as friends-in-camp or FICs. (Id.).  
20 Typically, these FICs had the authority to award contracts to  
21 Company A or to influence a project's technical specifications in  
22 such a way that would favor Company A. (Id., ¶ 18(a)). In many  
23 instances, Company A's employees and agents made corrupt payments  
24 to the FICs for the purpose of obtaining and retaining business  
25 for Company A. (Id., ¶¶ 4, 18(b)). Company A's personnel  
26 sometimes referred to these corrupt payments as "flowers." (Id.,  
27 ¶ 4).

28

1 From 2003 through 2007, Company A made approximately \$4.9  
2 million in corrupt payments to foreign officials in violation of  
3 the FCPA, and approximately \$1.95 million in corrupt payments to  
4 officers and employees at private companies in violation of the  
5 Travel Act. (Id., ¶ 14). In total, Company A made approximately  
6 236 corrupt payments totaling approximately \$6.85 million, which  
7 resulted in net profits of approximately \$46.5 million. (Id.).

8 The indictment also alleges that each of the defendants  
9 except Kim: (1) participated in and arranged for overseas  
10 holidays to such places as Disneyland and Las Vegas for officers  
11 and employees of state-owned and private customers under the  
12 guise of training and inspection trips; and (2) hosted and  
13 attended lavish sales events to entertain current and potential  
14 state-owned and private customers, each for the purpose of  
15 securing business for Company A. (Id., ¶¶ 19, 22). The  
16 indictment alleges that the Carsons, Cosgrove, and Edmonds gave  
17 expensive gifts to officers and employees of state-owned and  
18 private customers for the same purpose. (Id., ¶ 23). Finally,  
19 the indictment alleges that for the purpose of securing and  
20 retaining business for Company A, the Carsons arranged for and  
21 took numerous extravagant vacations with executives of state-  
22 owned and private customers and charged those vacations to  
23 Company A. (Id., ¶ 20).

24 Count one of the indictment alleges 59 overt acts, which are  
25 grouped under seventeen different sub-headings. (Id., ¶ 31 at  
26 pp. 15-29). As detailed in the following chart, fifteen of the  
27 seventeen sub-headings and their related overt acts correspond to  
28 the substantive allegations of counts two through sixteen:



OVERT ACT(S)	COUNT	VIOLATION
6 through 12	TWO	FCPA
13 through 16	THREE	FCPA
17 through 19	FOUR	FCPA
20 through 26	FIVE	FCPA
27 through 32	SIX	FCPA
33 through 36	SEVEN	FCPA
37 through 40	EIGHT	FCPA
41 through 43	NINE	FCPA
44 through 45	TEN	FCPA
46 through 47	ELEVEN	Travel Act
48 through 49	TWELVE	Travel Act
50 through 52	THIRTEEN	Travel Act
53 through 55	FOURTEEN	Travel Act
56 through 57	FIFTEEN	Travel Act
59	SIXTEEN	Destruction of Records

B. Procedural History

The Carsons, Cosgrove, and Edmonds each made their initial appearance in this district on April 10, 2009, and were released on bond on that same date.<sup>1</sup> On April 22, 2009, defendants filed the instant motion for a bill of particulars. On April 30, 2009, the government made an initial discovery disclosure consisting of a compact disc (CD) containing approximately 33,000 pages of documents. Trial is currently scheduled for June 2, 2009.

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<sup>1</sup> Defendants Ricotti and Kim reside overseas and have not surrendered to United States law enforcement.

## 1 III.

2 ARGUMENT

3 Defendants are entitled to a bill of particulars only if an  
4 indictment does not adequately describe the theory of the  
5 government's case. A bill of particulars may not be used to  
6 obtain discovery or evidence that the government will introduce  
7 at trial. Because the 36-page indictment returned by the grand  
8 jury adequately informs the defendants of the nature and scope of  
9 the allegations against them, defendants' motion for a bill of  
10 particulars should be denied. To the extent defendants are  
11 seeking discovery of the government's case through this motion,  
12 such discovery has and will be provided in the form of documents  
13 and other disclosures.

14 A. Legal Standard

15 Rule 7(f) of the Federal Rules of Criminal Procedure  
16 provides for a bill of particulars as follows:

17 The court may direct the filing of a bill of  
18 particulars. A motion for a bill of particulars may  
19 be made before arraignment or within ten days after  
20 arraignment or at such later times as the court may  
permit. A bill of particulars may be amended at any  
time subject to such conditions as justice requires.

21 Granting or denying a motion for a bill of particulars is within  
22 the sound discretion of the trial court and will not be disturbed  
23 absent an abuse of discretion. See United States v. Ayers, 924  
24 F.2d 1468, 1483 (9th Cir. 1991).

25 The purposes served by a bill of particulars are to inform  
26 defendants of the nature of charges against them so that they  
27 may: (1) prepare for trial; (2) avoid or minimize prejudicial  
28 surprise at trial; and (3) plead acquittal or conviction as a bar

1 to another prosecution for the same offense when the indictment  
2 is too vague and indefinite for such purposes. Ayers, 924 F.2d  
3 at 1483; United States v. Geise, 597 F.2d 1170, 1180 (9th Cir.  
4 1979). "To the extent that the indictment . . . itself provides  
5 details of the alleged offense, a bill of particulars is, of  
6 course, unnecessary." Geise, 597 F.2d at 1180 (quoting 8  
7 Moore's Federal Practice, ¶ 7.06[1] at 7-31 n.1 (2d ed. 1978));  
8 see also United States v. Federbush, 625 F.2d 246, 252 (9th Cir.  
9 1980).

10 Moreover, "in determining if a bill of particulars  
11 should be ordered in a specific case, a court should consider  
12 whether the defendant has been advised adequately of the  
13 charges through the indictment and all other disclosures made  
14 by the government." United States v. Long, 706 F.2d 1044, 1054  
15 (9th Cir. 1983). "These purposes are served if the indictment  
16 itself provides sufficient details of the charges and if the  
17 Government provides full discovery to the defense." United  
18 States v. Mitchell, 744 F.2d 701, 705 (9th Cir. 1984).

19 Most importantly, "[a] defendant is not entitled to know all  
20 the evidence the government intends to produce but only the  
21 theory of the government's case." United States v. Ryland, 806  
22 F.2d 941, 942 (9th Cir. 1986) (emphasis in original). A bill of  
23 particulars is not intended to give a preview of the case, unduly  
24 restrict the government's presentation of its case, or unduly  
25 restrict the government in presenting its proof at trial. United  
26 States v. Young & Rubicam, Inc., 741 F. Supp. 334, 349 (D. Conn.  
27 1990) (collecting cases). "The ultimate test must be whether  
28 the information sought is necessary, not whether it is helpful."

1 Id. (quoting United States v. Matos-Peralta, 691 F. Supp. 780,  
2 791 (S.D.N.Y. 1988)).<sup>2</sup> Accordingly, the government "may not be  
3 compelled to provide a bill of particulars disclosing the manner  
4 in which it will attempt to prove the charges, the precise manner  
5 in which the defendant committed the crimes charged, or a preview  
6 of the government's evidence or legal theories." United States  
7 v. Ojeikere, 299 F. Supp. 2d 254, 261 (S.D.N.Y. 2004). As one  
8 district court recently noted, "a bill of particulars is not a  
9 discovery tool or a device for allowing the defense to preview  
10 the government's evidence." United States v. Brodie, 326 F.  
11 Supp. 2d 83, 91 (D.D.C. 2004).

12 B. The 36-Page Indictment and the Government's Discovery  
13 Dislosures Provide Defendants with Sufficient Particularity  
14 to Permit Them to Prepare for Trial, Avoid Surprise, and  
15 Plead Double Jeopardy

16 Defendants complain that the indictment insufficiently  
17 details the criminal misconduct with which they have been  
18 charged. Defendants argue that its "vague allegations" leave  
19 what defendants describe as an "extraordinary[] . . . if not  
20 impossible" challenge. (Motion at 10).

21 The government's indictment is neither vague nor  
22 insufficient. Although Federal Rule of Criminal Procedure 7(c)  
23 requires nothing more than a "plain, concise, and definite  
24 written statement of the essential facts constituting the offense  
25 charged," the government's indictment goes much farther. The 36-

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26 <sup>2</sup> See also United States v. Trippe, 171 F. Supp. 2d 230, 240  
27 (S.D.N.Y. 2001) ("[T]he proper test in deciding whether a bill of  
28 particulars should be required of the Government is whether the  
bill of particulars is necessary for the defense, not whether it  
would aid the defendant in his preparation.").

1 page indictment is a comprehensive description of the conduct  
2 with which defendants are charged. Count one alleges a violation  
3 of the conspiracy statute, 18 U.S.C. § 371.<sup>3</sup>

4 The indictment alleges an agreement between defendants by  
5 stating that "defendants S. CARSON, R. CARSON, COSGROVE, EDMONDS,  
6 RICOTTI, and KIM, as well as Morlok, Covino, Company A and others  
7 known and unknown to the Grand Jury, did unlawfully, willfully  
8 and knowingly combine, conspire, confederate and agree to commit  
9 offenses against the United States." (Indictment, ¶ 16). The  
10 indictment specifies two unlawful objects toward which the  
11 agreement was directed: (1) violations of the FCPA, 15 U.S.C. §  
12 78dd-2(a); and (2) violations of the Travel Act, 18 U.S.C. §  
13 1952. (Id., ¶ 18(A), (B)). The indictment then alleges 59 overt  
14 acts in furtherance of the conspiracy by alleging that "[i]n  
15 furtherance of the conspiracy, and to accomplish its objects,"  
16 defendants "committed various overt acts in the Central District  
17 of California," then describes the 59 overt acts individually.  
18 (Id., ¶ 31). As noted above, each of these 59 overt acts appears  
19 under one of seventeen different sub-headings. Fourteen of those  
20 seventeen sub-headings then correspond to one of the substantive  
21 FCPA or Travel Act counts alleged in Counts Two through Fifteen  
22 of the indictment, as delineated above. A fifteenth sub-heading  
23 relates to Count Sixteen, the destruction of records count  
24 against defendant R. Carson. The indictment also contains twelve

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26 <sup>3</sup> The elements of conspiracy are familiar ones: "(1) an  
27 agreement to engage in criminal activity, (2) one or more overt  
28 acts taken to implement the agreement, and (3) the requisite  
intent to commit the substantive crime." United States v.  
Sullivan, 522 F.3d 967, 976 (9th Cir. 2008).

1 paragraphs alleging factually the manner and means by which the  
2 objects of the conspiracy were carried out, (id., ¶¶ 19-30), and  
3 fourteen paragraphs of factual overview describing the defendants  
4 and the conspiracy (id., ¶¶ 1-14). Equally important, the manner  
5 and means paragraphs describe the various ways defendants engaged  
6 in a conspiracy to bribe officials at state-owned and private  
7 companies. For instance, one paragraph describes how payments to  
8 FICs were sometimes made through "consultants" retained for the  
9 purpose of acting as pass-through entities for the improper  
10 payments; another paragraph describes the payment of college  
11 tuition for the children of at least two FICs for the purpose of  
12 securing business. (Id., ¶¶ 18(c), 21).

13 The allegations of the indictment provide ample information  
14 from which defendants can understand the theory of the charges  
15 against them. The detailed overt acts, together with the twenty-  
16 six paragraphs of additional factual detail, inform defendants of  
17 the government's case in sufficient detail to enable them to  
18 prepare a defense, avoid surprise, and plead double jeopardy.

19 To the extent that defendants are using their motion for a  
20 bill of particulars as a discovery tool, the actual discovery in  
21 the case will provide the details they are looking to have spoon-  
22 fed to them by the government. The government intends to provide  
23 full and complete discovery to the defendants, which will, in the  
24 words of the Ninth Circuit, "obviate the need for a bill of  
25 particulars." Long, 706 F.2d at 1054. The government has  
26 already produced a CD containing over 33,000 pages of documents  
27 related to the charges in the indictment. Included in those  
28 documents are emails and other documents related to the

1 approximately 236 payments referenced in paragraph 14 of the  
2 indictment.<sup>4</sup> Also included on the CD are documents related to  
3 the "overseas holidays," "extravagant vacations," "lavish sales  
4 events," and "expensive gifts" alleged in paragraphs 19-23 of the  
5 indictment.<sup>5</sup> Additional installments of discovery will be  
6 produced in the coming weeks.

7 Taken together, the indictment and discovery provide  
8 defendants a sufficient amount of information concerning the  
9 conduct with which defendants are charged to enable them to  
10 prepare the case for trial, avoid prejudicial surprise, and plead  
11 any claim of double jeopardy.

12 C. There Is No Cause for Particularity Beyond the Indictment  
13 and Discovery

14 Defendants seek a bill of particulars that identifies the  
15 following: (1) for the 236 payments referenced in paragraph 14  
16 of the indictment, and any other payments that are alleged to  
17 fall within the scope of the conspiracy alleged in the  
18 indictment, the following information: (a) the date of the  
19 payment, (b) the amount of the payment, (c) the name, job title,  
20 and employer of the recipient of the payment, (d) the method of  
21 authorization and delivery of the payment, and (e) whether the  
22 government intends to produce evidence of such payment at trial;  
23 and (2) for the "overseas holidays," "extravagant vacations,"  
24 "lavish sales events," and "expensive gifts" alleged in

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25 <sup>4</sup> Those materials are sequentially organized at Bates range  
26 CHART0001 - CHART4650.

27 <sup>5</sup> Many of these documents are contained in the following  
28 Bates ranges: SCER0001-SCER2206; PCER0001-PCER0426;  
DEER0001-DEER0198; RCER0001-RCER1209; DGER0001-DGER0533; and  
GOLF001-GOLF316.

1 paragraphs 19, 20, 22, and 23 of the indictment, the following  
2 information: (a) the date that the holiday, vacation, event, or  
3 gift was provided; (b) the specific identity or nature of the  
4 holiday, vacation, event or gift provided; (c) the name, job  
5 title, and employer of the recipient of the holiday, vacation,  
6 event, or gift; and (d) whether the government intends to  
7 introduce evidence of such holiday, vacation, event, or gift at  
8 trial. (Motion at 2). Defendants argue that this information is  
9 necessary so that they may (1) be adequately apprised of the  
10 nature and the scope of the allegations against them; (2) have an  
11 adequate opportunity to prepare their defense for trial; and (3)  
12 avoid prejudicial surprise at trial. (Id.).

13 Defendants have a right to know the offenses they are  
14 charged with but not "the details of how it will be proved."  
15 United States v. Feola, 651 F. Supp. 1068, 1132 (S.D.N.Y. 1987);  
16 see also Ryland, 806 F.2d at 942. Defendants' particularity  
17 requests, if granted, would require the government to provide  
18 what amounts to an advance copy of the government's case-in-  
19 chief, requiring it to identify each of the 236 corrupt payments  
20 it would present at trial as well as each sales event, holiday,  
21 vacation, and gift. These requests would require the government  
22 to identify each and every relevant overt act in furtherance of  
23 the conspiracy.

24 The Ninth Circuit and numerous other courts have made clear  
25 that this level of particularity is not required. In United  
26 States v. Giese, the defendant sought a bill of particulars on  
27 how each of the overt acts contributed to the scheme, how certain  
28 alleged co-schemer's statements were made in furtherance of the



1 scheme, and requested a list of acts performed by each schemer.  
2 The Ninth Circuit noted that "there is no requirement in  
3 conspiracy cases that the government disclose even all the overt  
4 acts in furtherance of the conspiracy." Giese, 597 F.2d at 1180.  
5 Similarly, in United States v. Dicesare, 765 F.2d 890, 897-98  
6 (9th Cir. 1985), the Ninth Circuit upheld the denial of a motion  
7 for a bill of particulars that sought, among other things, the  
8 delineation of "all other overt acts that comprised the charged  
9 activity," holding that such particularity was not warranted.<sup>6</sup>  
10 Additionally, courts outside the Ninth Circuit have repeatedly  
11 held that detailed information about the "wheres, whens and with  
12 whoms" is beyond the scope of a bill of particulars. See, e.g.,  
13 Trippe, 171 F. Supp. 2d at 240 (noting that demands for  
14 "particular information with respect to where, when, and with  
15 whom the government will charge the defendant with conspiring are  
16 routinely denied"); United States v. Mitlof, 165 F. Supp. 2d 558,  
17 568 (S.D.N.Y. 2001) (same); United States v. Jimenez, 824 F.  
18 Supp. 351, 363 (S.D.N.Y. 1993) (same); United States v. Leonelli,  
19 428 F. Supp. 880, 882 (S.D.N.Y. 1977) ("[D]efendant's request for  
20 the names, dates and places for the entire case strikes us as an  
21 attempt to discover the minutia of the Government's case. This  
22 is plainly unfair and will not be countenanced.").<sup>7</sup>

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23  
24 <sup>6</sup> See also United States v. Rosenthal, 793 F.2d 1214, 1227  
25 (11th Cir. 1986) ("Nor is the government required to provide  
26 defendant with all overt acts that might be proven at trial");  
United States v. Kilrain, 566 F.2d 979, 985 (5th Cir. 1978)  
27 ("[D]efendants are not entitled to discover all the overt acts  
28 that might be proved at trial.").

<sup>7</sup> This Court has similarly recognized that criminal  
indictments need not plead the level of particularity that may be  
required in civil cases. When denying a bill of particulars

1 Defendants cite United States v. Bortnovsky, 820 F.2d 572,  
2 574-75 (2d Cir. 1987), for the proposition the government's  
3 discovery will be insufficient to provide any particularity  
4 defendants claim is missing from the indictment.<sup>8</sup> The  
5 government's efforts in this case are easily distinguished from  
6 "providing mountains of documents to defense counsel who were  
7 left unguided as to which documents would be proven falsified."  
8 Id. at 574-75. In Bortnovsky, the government never identified  
9 the allegedly false documents or fake robberies for the  
10 defendants, then provided more than 4,000 documents to them in  
11 discovery and, finally, at trial, claimed only 3 documents out of  
12 the total production were false. Id. The danger of deception  
13 was complicated even further by the fact that trial counsel for  
14 one of the defendants had only four days in which to prepare.  
15 Id. at 575.

16 Here, in contrast, the government's initial production is  
17 not the entire universe of emails and other documents housed by  
18 Company A during the relevant time period, but rather the  
19 documents produced to the government by Company A's that relate  
20 to this case. The government has, moreover, identified precisely  
21 the documents within the subset of documents produced that  
22 related to the 236 corrupt payments identified in the indictment.

23 \_\_\_\_\_  
24 motion in a securities fraud case, this Court concluded that  
25 "[s]uch requests would more appropriately have their place in  
26 civil discovery, but not in a criminal case." United States v.  
Mikus et al., Case No. SA CR 06-00139-JVS (Nov. 29, 2007).

27 <sup>8</sup> Of course, due to the 10-day limitation of Rule 7(f) of  
28 the Federal Rules of Criminal Procedure, defendants filed their  
discovery disclosures.

1 See supra n.4. Contrary to defendants' analogy, the government  
2 has not produced a haystack; it has produced a pile of needles.

3 D. The Particularity Sought Would Unnecessarily Limit the  
4 Government's Case

5 Finally, the particularity defendants seek would prejudice  
6 the government. As many courts have noted, the effect of a bill  
7 of particulars is to "confine[] the Government's proof to the  
8 particulars supplied." Leonelli, 428 F. Supp. at 883 (citing  
9 United States v. Glaze, 313 F.2d 757, 759 (2d Cir. 1963)); see  
10 also United States v. Kaplan, 490 F.3d 110, 129 (2d Cir. 2007)  
11 (noting that a variance occurs when facts proven at trial differ  
12 from those alleged in the indictment or bill of particulars).  
13 This would afford the defendants a significant advantage. The  
14 sweeping particulars sought by the defendants would effectively  
15 "freeze" the government's proof long before trial and prevent it  
16 from continuing its investigation and pretrial preparations.<sup>9</sup>  
17 Requests for additional overt acts and the who, what, and when of  
18 virtually all of the indictment's allegations indicate that the  
19 true nature of their requests is to obtain and freeze details  
20 about the government's evidence. This is not the purpose of a  
21 bill of particulars and, accordingly, their requests should be  
22 denied.  
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25 <sup>9</sup> Although this case is currently set for trial on June 2,  
26 2009, the government anticipates that the parties will discuss a  
27 new trial date. Defendants appear to contemplate a lengthy  
28 continuance. See, e.g., Defendant Hong Carson's Opposition to  
Government's Motion for Amendment of Conditions of Release at 2  
(describing a "long pretrial period"); Opposition of David  
Edmonds to Government's Motion for Amendment of Conditions of  
Release at 7 ("[T]his case will not be tried anytime soon.").

1 IV.

2 CONCLUSION

3 The 36-page indictment and extensive pre-trial disclosures  
4 provide defendants with more than sufficient notice of the theory  
5 of the government's case and would permit them to prepare the  
6 case for trial, avoid prejudicial surprise at trial, and plead  
7 any claim of double jeopardy. Accordingly, defendants' motion  
8 should be denied.

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