

Part of a Deal with The Sinaloa Cartel?

by William F. Wertz

Sept. 14—According to a Memorandum of Law submitted by attorneys for Vicente Jesus Zambada-Nielba, the son of the second-in-command of the Sinaloa cartel, in an ongoing case in Chicago, Operation Fast and Furious¹ was an integral part of a larger deal between U.S. agencies, approved by the Department of Justice, to grant the leadership of the Sinaloa cartel immunity in exchange for information on rival Mexican drug cartels.

Zambada-Niebla, who was head of logistics for the cartel, is basing his defense on the claim that he was acting as a U.S. agent (public authority) in carrying out the crimes he is now charged with, on behalf of the U.S. Department of Justice, Drug Enforcement Administration, the Department of Homeland Security, Immigration and Customs Enforcement (ICE), and the FBI.

The U.S. does not claim that he was not a U.S. government asset, but denies that any agent of the U.S. government bestowed upon the defendant public authority to conduct any illegal activity. It argues that such an agreement, if it existed, could not be communicated through a third party such as lawyer Humberto Loya-Castro; and that a meeting the defendant had with DEA officials in March 2009 occurred after the defendant's crimes were committed. It argues that Operation Fast and Furious also occurred after his crimes were committed. Therefore, the U.S. government has moved *in limine* to bar any such defenses at trial.

The government has additionally initiated CIPA (Classified Information Procedures Act) proceedings to protect classified information requested by the defendant to prove his case.

In the memorandum, Zambada-Niebla charges that Mexican lawyer Humberto Loya-Castro, the advisor to

1. Operation Fast and Furious was a sting run by the U.S. Bureau of Alcohol, Tobacco, and Firearms (ATF) between 2009 and 2010, ostensibly to investigate gun trafficking. At least 2,000 gun sales were facilitated by the ATF, and some of these guns have been linked to at least 200 crime scenes in Mexico.

the leaders of the Sinaloa cartel, Joaquin Guzman Loera (Chapo) and Ismael Zambada-Garcia (Mayo), the defendant's father, was indicted in San Diego in 1995, and the case was then dismissed by the prosecution in 2008, because Loya-Castro had become an informant for the U.S., and provided information for a period of over 10 years. (The U.S. government has produced records of Loya-Castro's cooperation agreement, which it admits led to a decision to dismiss Loya-Castro's pre-existing indictment.)

One of Loya Castro's jobs for the Sinaloa organization, according to the San Diego indictment against him, was to secure the release of incarcerated Sinaloa narco-leaders, which undoubtedly also included the later escape of Chapo in 2001.



Vicente Jesus Zambada-Nielba, son of the second-in-command of the Sinaloa drug cartel, was part of a deal, approved by the U.S. DOJ, to grant immunity to the leadership of the Mexican cartel, in exchange for information on its rivals.

The Agreement

Prior to 2004, and continuing through the period covered in Zambada-Niebla's indictment, Zambada-Niebla claims there was an agreement between the U.S. and the Sinaloa cartel that the cartel would provide information on rivals, in exchange for the U.S. dismissing the case against Loya, not interfering with his drug-trafficking activities and those of the cartel, and not actively prosecuting and apprehending them.

Loya told U.S. agents when he was going to meet Chapo and Mayo, and was assured he would not be followed. He was permitted to sit in on discussions that the DEA was having regarding the Sinaloa cartel. The DEA also informed the cartel through Loya when the U.S. and/or Mexican authorities were conducting investigations near their home territories, so that they could evade investigators.

In a meeting in Mexico City with agents of the DEA in March 2009, Zambada-Niebla was told that the arrangement with him had been approved at the highest levels of the U.S. government.

Zambada-Niebla maintains that the strategy of the U.S. in Mexico is the same as that it employed in Colombia by supporting the Cali cartel against the Medellín cartel. Under the agreement, the Sinaloa cartel was given carte blanche to continue to smuggle tons of il-

licit drugs into Chicago and other locations in the United States, and was also protected by the government from arrest and prosecution, in return for providing information against rival cartels. According to the memorandum, "United States government agents aided the leaders of the Sinaloa cartel."

Zambada-Niebla claims that in the March 17, 2009 meeting at the Sheraton Hotel in Mexico City, he was told that with the approval and authorization of the U.S. Justice Department, a Washington, D.C. indictment against him would be dismissed, and he would have immunity from arrest, prosecution, and any further charges.

Citing the Joint Staff Report prepared for Rep. Darrell R. Issa (R-Calif.) and Sen. Charles E. Grassley (R-Iowa) on *Fast and Furious*, the memorandum argues that the "guns were placed in the hands of violent criminals whom the Department of Justice not only was aware of, but sponsored and supported. Several of the requests in Mr. Zambada-Niebla's request for discovery re public authority defense are focused on obtaining government information to determine whether leaders and/or members of the Sinaloa cartel were among the individuals who received the weapons and to determine whether their receiving of the weapons was pursuant to the agreement that was originally entered into between

the United States government and Mr. Loya-Castro and the leaders of the Sinaloa cartel, which is still in effect.”

These claims by Zambada-Niebla cohere with several aspects of the Joint Staff Report on Operation Fast and Furious, launched after Zambada-Niebla’s arrest, which states that the weapons allowed to walk into Mexico, went primarily to the Sinaloa cartel, and helped to tip the balance among the cartels in its favor.

For example, the report states that weapons seized on Jan. 13, 2010 connected Fast and Furious suspects with a specific high-level “plaza boss” in the Sinaloa drug-trafficking organization (DTO). “Additionally, this seizure may have represented a shift in the movement of Operation Fast and Furious weapons in order to provide the necessary firearms to Sinaloa cartel’s battle for control of the Juarez drug smuggling corridor. This possible shift of Operation Fast and Furious weapons may have been a result of the death of Arturo Beltran-Leyva in December 2009. Mexican authorities killed Beltran-Leyva, the leader of the Beltran-Leyva DTO, effectively crippling his family’s DTO. The resulting decreased competition in Sonora between the Sinaloa DTO and the Beltran-Leyva DTO may have contrib-

uted to the shift in Operation Fast and Furious weapons transported to Juarez.”

These weapons included Barrett .50 caliber weapons. One ATF agent testified: “My opinion was that these many (34) .50 caliber rifles in the hands of one of these cartels is going to change the outcome of a battle.”

The Case of Wachovia Bank

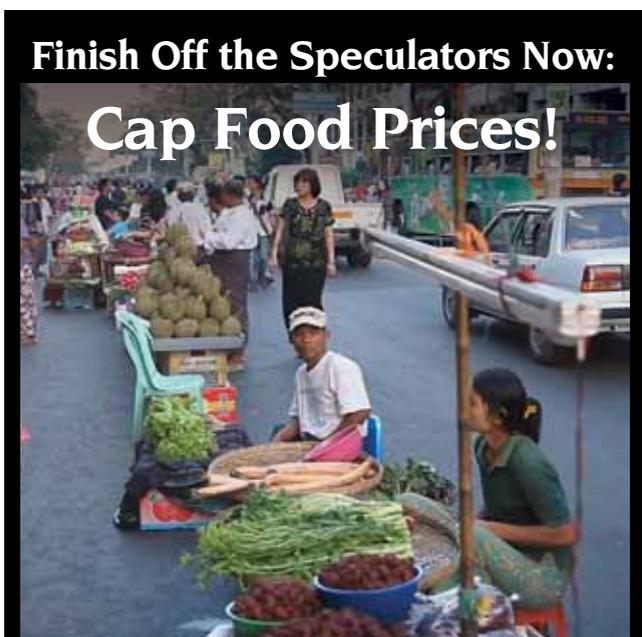
Although not mentioned explicitly in the memorandum, the other aspect of this case which needs to be investigated is the earlier case of Wachovia Bank. The bank was charged with money-laundering on behalf of the Sinaloa cartel through a chain of Mexican currency-exchange houses overseen by Sinaloa operative Pedro Alfonso Alatorre Dany. On Sept. 24, 2007, a Gulfstream II corporate jet purchased with these laundered funds crashed in Mexico’s Yucatan region. Onboard was an estimated four tons of cocaine loaded onto the jet in Colombia. The tail number, N987SA, of the Gulfstream II has been linked by European investigators to past CIA rendition operations. The plane was sold only weeks before its crash landing. An individual named Greg Smith is listed on the bill of sale. He also shows up in public documents that indicate that he worked as a pilot in the past for an operation involving the FBI, DEA, and CIA that targeted narco-traffickers in Colombia.

In March 2010, the Justice Department let Wachovia Bank off with a fine of \$160 million for failing to monitor over \$400 billion in such transactions.

Lanny Breuer, the Assistant Attorney General, DOJ Criminal Division, who announced the deal with Wachovia, is also known, according to the Joint Staff Report, to have been involved in Operation Fast and Furious. Between 2004 and 2007, nearly \$13 million went through correspondent bank accounts of Wachovia for the purchase of aircraft to be used in the illegal narcotics trade. From these aircraft, more than 20,000 kilograms of cocaine were seized, according to the Mexican government.

If Zambada-Niebla’s charges are correct, the arrangement with the Sinaloa cartel would have been initiated under the Bush Administration and continues to this day under the Obama Administration.

At the very least, Zambada-Niebla’s charges, in the context of what has already emerged in the investigation being carried out by Issa and Grassley into Operation Fast and Furious, demand a thorough investigation.



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