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Sonia Torres
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Room 452
150 Chardón Avenue
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re: U.S. v. Defendant
Crim. No. 00-000

Mrs. Torres:

There appears to be a Petite policy issue with regards to at least one of the charges in the case of reference. I have been informed that Mr. Defendant was charged and unsuccessfully prosecuted in the Court of First Instance for the Commonwealth of Puerto Rico for the same offence conduct as charged in Count VII of the Indictment. Indeed, I was told that during the Trial in the state court the postal inspectors were blasted by the Court for their inefficiency in the investigation of the case. Upon exiting the Courtroom the inspectors threatened the defendant with bringing the case to Federal Court.

As you know the U.S. Department of Justice's Petite Policy, as defined in the *U.S. Attorney's Manual*, section 9-2.031, 1998 edition, establishes specific guidelines for the exercise of discretion by appropriate officers of the Department of Justice in determining whether to initiate or continue a federal prosecution based on substantially the same acts or transactions involved in a prior state or federal proceeding. *See Rinaldi v. United States*, 434 U.S. 22, 27, (1977); *Petite v. United States*, 361 U.S. 529 (1960).

This policy generally applies unconcerned if the other prosecution has resulted in an acquittal, conviction, including one resulting from a plea agreement, a dismissal, or other termination of the case after jeopardy has attached. Once a prior prosecution reaches one of

the above-listed stages approval is required before a federal prosecution can be initiated or continued, even if an indictment or information already has been filed in the federal prosecution.

The policy precludes the initiation or continuation of the federal prosecution unless three substantive prerequisites are satisfied: first, the matter must involve a substantial federal interest; second, the prior prosecution must have left that interest demonstrably unindicted; and third, applying the same test that is applicable to all federal prosecutions, the government must believe that the defendant's conduct constitutes a federal offense, and that the admissible evidence probably will be sufficient to obtain and sustain a conviction by an unbiased trier of fact.

In addition to the above there is a procedural prerequisite to be satisfied. The prosecution must be approved by the appropriate Assistant Attorney General before bringing a prosecution governed by this policy. The United States will move to dismiss any prosecution governed by this policy in which prior approval was not obtained, unless the Assistant Attorney General retroactively approves it.

In order to insure the most efficient use of law enforcement resources, whenever a matter involves overlapping federal and state jurisdiction, federal prosecutors should, as soon as possible, consult with their state counterparts to determine the most appropriate single forum in which to proceed to satisfy the substantial federal and state interests involved, and, if possible, to resolve all criminal liability for the acts in question. This policy applies only to charging decisions; it does not apply to pre-charge investigations. Yet, where a prior prosecution has been brought based on substantially the same act(s) or transaction(s), a subsequent federal investigation should, generally speaking, initially focus on evidence relevant to determining whether a subsequent federal prosecution would be warranted in light of the three substantive prerequisites previously listed.

Mr. Defendant submits that the Petite Policy applies as a result of the dismissal of charges brought before the Commonwealth's Court of First Instance for the same offence conduct charged in Count VII of the Indictment. Whenever a substantial question arises as to whether this policy applies to a prosecution, the matter should be submitted to the appropriate Assistant Attorney General for resolution. Prior approval from the appropriate

Assistant Attorney General must be obtained before bringing a prosecution governed by this policy. Based on all the above I request that the pertinent Petite Policy evaluation be made in this case, as detailed in the *U.S. Attorney's Manual*. Please inform me in writing of the result of such evaluation.

With nothing further at the moment,

Joseph C. Laws, Jr.
Federal Public Defender

Assistant Federal Public Defender