IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA, Plaintiff, v. **JULIA BEATRICE KELEHER [1]**, Defendant.	CRIMINAL CASE NO.: 19-431 (PAD)

DEFENDANT JULIA BEATRICE KELEHER'S
MOTION TO SEVER COUNTS OF THE INDICTMENT

TO THE HONORABLE COURT:

COMES NOW Defendant Julia Beatrice Keleher ("Ms. Keleher"), through the undersigned counsel, and respectfully moves to sever counts in the Indictment. The Indictment alleges four distinct conspiracies and substantive counts related to each of the four conspiracies. The first three conspiracies are factually unrelated. The fourth conspiracy and its related substantive charges allege money laundering of proceeds from the second and third conspiracies. Pursuant to Federal Rules of Criminal Procedure 8 and 14, the factually distinct and unrelated schemes charged in the Indictment must be tried separately. Specifically, Ms. Keleher requests that the charges be severed for trial as follows: 1) Counts 1–11 of the Indictment (the alleged "Colon Scheme" or the "First Alleged Scheme"); 2) Counts 12–18 (the alleged "BDO Scheme") and the portion of Counts 26–32 related to BDO (the alleged "BDO Money Laundering") (collectively, the "Second Alleged Scheme"); and 3) Counts 19–25 (the alleged "ASES Scheme") and the portion of Counts 26–32 related to ASES (the alleged "ASES Money Laundering") (collectively, the "Third Alleged Scheme"), in which Ms. Keleher is not charged.

In support thereof, Ms. Keleher respectfully states as follows:

PRELIMINARY STATEMENT

Federal Rule of Criminal Procedure 8(a) permits joinder of counts only "if the offenses charged--whether felonies or misdemeanors or both--are of the same or similar character, or are based on the same act or transaction, or are connected with or constitute parts of a common scheme or plan." Rule 8(b) permits joinder of defendants in the same indictment only "if they are alleged to have participated in the same act or transaction, or in the same series of acts or transactions, constituting an offense or offenses." The allegations of the three schemes in the Indictment, and their respective participants, can be summarized as follows:

As part of the First Alleged Scheme, Ms. Keleher is alleged to have conspired with Glenda and Mayra Ponce-Mendoza in connection with the COLON scheme, unbeknownst to all other named defendants in the case.

As part of the Second Alleged Scheme, Ms. Keleher is alleged to have conspired with Fernando Scherer-Caillet and Alberto Velazquez-Piñol in connection with the BDO Scheme, unbeknownst to all other named defendants in the case. Mr. Velazquez-Piñol and Mr. Scherrer-Caillet, in turn, are alleged to have conspired to commit money laundering related to the BDO scheme, unbeknownst to all other named defendants in the case, including Ms. Keleher.

As part of the Third Alleged Scheme, Mr. Scherer-Caillet and Mr. Velazquez-Piñol are alleged to have conspired with Angela Avila-Moreno in connection with the ASES Scheme, unbeknownst to all other named defendants in the case. Mr. Velazquez-Piñol and Mr. Scherrer-Caillet are then also alleged to have conspired to commit money laundering related to the ASES scheme, again unbeknownst to all other named defendants in the case, including Ms. Avila-Moreno.

Across the Three Alleged Schemes in the Indictment, then, there is no allegation that Ms. Keleher (or either of her alleged co-conspirators from the COLON Scheme, Ms. Glenda Ponce-Mendoza and Ms. Mayra Ponce-Mendoza) were aware of, much less participated in, the ASES Scheme. Likewise, there is no allegation that Ms. Avila-Moreno was aware of, much less participated in, either the COLON Scheme or the BDO Scheme. And the only purported connection between the COLON and BDO Schemes is Ms. Keleher herself, as there is no allegation in the Indictment that Mr. Scherer-Caillet and Mr. Velazquez-Piñol were aware of, much less participated in the COLON Scheme, or, conversely, that Ms. Glenda Ponce-Mendoza and Ms. Mayra Ponce-Mendoza were aware of, much less participated in the BDO Scheme.

When considered in such a stripped down manner, it is clear that joinder of these three schemes (the COLON Scheme; the BDO Scheme and BDO Money Laundering; and the ASES Scheme and ASES Money Laundering) does not comply with Rule 8, because there is not a "common activity binding [Ms. Keleher] with all the other indictees" that "encompasses all the charged offenses" *United States v. Natanel*, 938 F.2d 302, 307 (1st Cir. 1991). Further, even if joinder were permissible under Rule 8, severance would be warranted under Rule 14, as Ms. Keleher would be unduly prejudiced by a joint trial of the three distinct schemes. If the separate schemes were tried together, it would lead to unacceptable jury confusion and substantial prejudice to Ms. Keleher. Separate trials for each scheme, on the other hand, would avoid these issues while sacrificing little in the way of judicial economy. The three sets of distinct charges must be severed.

FACTUAL AND PROCEDURAL BACKGROUND

On July 9, 2019, a federal grand jury returned a thirty-two-count indictment against six defendants. (Docket No. 3) Ms. Keleher is charged in only seven of those thirty-two counts. (*Id.*) The Indictment lays out three unique alleged schemes. Two of the alleged schemes involve

contracts issued to two different companies by the Puerto Rico Department of Education ("DOE"), for which Keleher served as Secretary from January 2017–April 2019 (First and Second Alleged Schemes). While Ms. Keleher is alleged to have participated in both schemes, the two alleged schemes otherwise involve completely different defendants and are factually unrelated. The Third Alleged Scheme involves the Puerto Rico Health Insurance Administration ("ASES"). There is no allegation that Ms. Keleher was involved in any way in that scheme. Ms. Keleher was not an employee of ASES and was not otherwise involved with the agency. The Third Alleged Scheme, like the Second Alleged Scheme, also alleges a money-laundering conspiracy and substantive money laundering counts that also do not involve Ms. Keleher. While there are common participants between the Alleged Second and Third Schemes (other than Ms. Keleher), these two schemes are factually unrelated both to each other and to the First Alleged Scheme.

Specifically, the Indictment alleges:

1. The First Alleged Scheme. Ms. Keleher improperly "steered" DOE contracts to the company Colón & Ponce ("Colón"), which was owned by Mayra Ponce-Mendoza, based not upon any personal financial interest of Ms. Keleher, but instead based on her friendship with Mayra Ponce-Mendoza's sister, Glenda Ponce-Mendoza, who worked as one of Ms. Keleher's several special assistants. It is not alleged that the alleged conspirators intended that Ms. Keleher would personally benefit in any way from this alleged conspiracy. The time period for this alleged conspiracy is January 2017–April 2018. [Counts 1–11]

2. The Second Alleged Scheme. Ms. Keleher was involved in awarding a DOE contract, and contract amendments, to the company BDO Puerto Rico, P.S.C. ("BDO"). BDO and Mr. Scherrer-Caillet are purported to have improperly subcontracted the work to other companies and improperly paid Mr. Velázquez-Piñol a commission for the awarding of the contract. It is not alleged that the alleged conspirators intended that Ms. Keleher would personally benefit in any way from this alleged conspiracy either. Indeed, the Indictment provides no explanation as to Ms. Keleher's supposed motivation for participating in this alleged scheme. The time period for this alleged conspiracy is January 2017–April 2019 [Counts 12–18]. The Indictment further alleges Mr. Velázquez-Piñol and Ms. Ávila-Marrero, without Ms. Keleher's participation, conspired to launder proceeds of this scheme

and that Mr. Velázquez-Piñol committed money laundering by engaging in transactions involving proceeds of this scheme. [Portion of Counts 26–32]

3. The Third Alleged Scheme. There is no allegation that Ms. Keleher was involved in any way in this alleged scheme. Ms. Ávila-Marrero provided internal information on several ASES contracts to Mr. Velázquez-Piñol, which BDO used to submit bid proposals to ASES. BDO paid Mr. Velázquez-Piñol a commission for the contracts ASES awarded. The time period for this alleged conspiracy is January 2017–June 2019 [Counts 19–25]. The Indictment alleges Mr. Velázquez-Piñol and Ms. Ávila-Marrero conspired to launder proceeds of this scheme and that Mr. Velázquez-Piñol committed money laundering by engaging in transactions involving proceeds of this scheme. [Portion of Counts 26–32] (Third Scheme)

Ms. Glenda Ponce-Mendoza and Ms. Mayra Ponce-Mendoza, both of whom were charged in the First Alleged Scheme, have requested hearings to enter pleas of guilty in the case. (Docket Nos. 259, 278.) As a result, neither of them will be tried as part of the prosecution of that scheme, leaving Keleher as the only defendant in the First Alleged Scheme.

As the Court already is aware, the filing of the Indictment in this matter and a lengthy U.S. Attorney's Office press conference about the Indictment stoked intense anger and outrage among the public in Puerto Rico. There is anecdotal and empirical evidence that the public has lumped all the defendants together and formed hardened negative opinions about the defendants, presupposing their guilt. These arguments and the evidence in support thereof have been laid out in detail in the briefings and oral argument on the defendants' joint motion to transfer venue. (*See* Docket Nos. 172, 177, 217, 258.) There is also evidence that the public, including the media, misapprehends the allegations in the Indictment. These arguments have also been laid out before the Court, including in Ms. Keleher's request to modify the gag order. (Docket Nos. 199, 258.) As a result, the risk of prejudicial spillover between the charged offenses and between the defendants is far greater than it would be in a typical case involving multiple charges and multiple defendants.

LAW AND ARGUMENT

The three charged schemes all involve public contracts. Each purported scheme, however, is distinct in terms of identity of participants, time periods, and goals. As a result, any similarity that exists between the three distinct schemes is not sufficient to satisfy Rule 8's joinder requirements. To the contrary, the superficial similarities between the schemes would only increase the risk of substantial prejudice to Ms. Keleher (and the other defendants) in a joint trial by confusing the jury and leading to probable spillover evidence. This prejudice would trigger a grave injustice against Ms. Keleher, who is already struggling to defend herself amidst a widespread misreading of the case, and overwhelming negative public sentiment presuming her guilt.

I. The Three Separate Schemes Are Misjoined as a Matter of Law Under Rule 8.

A. The three schemes do not involve the same act or transaction and do not involve a common scheme; the schemes are factually unrelated.

Federal Rule of Criminal Procedure 8 governs joinder of offenses and defendants in criminal cases. Rule 8(a) forbids joinder of two or more charges unless the charges are: (1) based on the same act or transaction; (2) connected with or constitute parts of a common scheme or plan; or (3) are of the same or similar character. Fed. R. Crim. P. 8(a). Two or more defendants may be joined in the same indictment only if the defendants are alleged to have participated in the same act or transaction, or in the same series of acts of transactions, constituting an offense. Fed. R. Crim. P. 8(b).

Here, the First and Second Alleged Schemes are not properly joined under Rule 8(a) because they are factually unrelated. They do not allege the same act or transaction or a common scheme or plan. The Third Alleged Scheme is not properly joined under Rule 8(b) with the First and Second Alleged Schemes because the defendants in that alleged scheme are not alleged to

have engaged in the same acts or transactions as Ms. Keleher. While a defendant need not be involved in each offense charged in an indictment, Rule 8 only allows joinder of defendants when there is "some common activity binding the objecting defendant with all the other indictees and that common activity encompasses all the charged offenses." *United States v. Natanel*, 938 F.2d 302, 307 (1st Cir. 1991).

A rational basis for joinder must be discernible from the face of the indictment. *United States v. Boylan*, 245 F.2d 230, 245 (1st Cir. 1990). Moreover, "mere similarity of acts, without more, does not justify joinder" under Rule 8(b). *Id.*; *Natanel*, 938 F.2d at 307. If counts or defendants are misjoined, the remedy is severance. *Natanel*, 938 F.2d at 306; *see also* Charles Alan Wright, 1A Federal Practice & Procedure: Criminal § 145, at 89–90 (3d ed. 1999) ("Misjoinder of offenses or defendants . . . raises only a question of law. If there has been misjoinder, the trial court has no discretion to deny the motion [to sever].").

Here, misjoinder is clear from the face of the Indictment. There is no common activity binding Ms. Keleher with all the other defendants in the case in a manner that encompasses all the charged offenses. Indeed, Ms. Keleher has no alleged involvement whatsoever in the ASES Scheme, which does not even involve the DOE. There is no allegation that Ms. Keleher was aware of any aspect of that scheme. Similarly, there is no allegation that Ms. Avila-Moreno knew about or had any involvement in either the First or Second Alleged Schemes, which were wholly unconnected to ASES. The First Circuit and district courts in this Circuit have routinely granted severance pursuant to Rule 8 in similar situations.

In *United States v. Fuentes*, for example, an indictment charged twenty defendants with conspiracy to possess with the intent to distribute cocaine from San Juan to the East Coast of the mainland United States. 979 F.Supp.2d 224, 225 (2013) (D.P.R. 2013) (Besosa, J.). A superseding

indictment was returned, adding a charge against one of those defendants and adding two new defendants. The new charge alleged a conspiracy to launder proceeds of drug smuggling between the Dominican Republic and Puerto Rico. Judge Besosa severed the money-laundering count under Rule 8 because "[t]he only links between the two schemes apparent from the indictment [were] 1) the identity of one participant . . . and 2) the fact that count three relate[d] to a drug trafficking conspiracy." In severing the relevant counts, Judge Besosa also emphasized that not a single overt act or substantive offense alleged in the drug-distribution counts related in any meaningful way to the overt acts and substantive offenses alleged in the money-laundering count. The Court also noted that there was no allegation in the indictment that the other nineteen defendants charged in the drug distribution counts were even aware of the money laundering scheme.

Similarly, in *United States v. Ramallo-Diaz*, the indictment charged two schemes, one a conspiracy to embezzle and launder union funds in the form of membership dues, and the other a conspiracy to embezzle and launder funds from the union's health care plan. 455 F.Supp. 2d 22, 25–26, 30 (D.P.R. 2006) (Perez-Gimenez, J.). The Government argued that joinder was proper because the victims of the two schemes were the same: the union members. *Id.* at 30. The Government also argued that the co-defendant involved in picking up the checks that were diverted in the first scheme was employed by the health care plan targeted in the second scheme. *Id.* The court found those links "superficial at best, and chimerical at worst." *Id.* More specifically, the court found that the two separate conspiracies had "at most, two common participants and, generously construed, one common purpose, i.e. personal enrichment at the expense of [the union's] assets." *Id.* The Court severed the indictment, including splitting portions of several forfeiture counts to fit their place with one of the two schemes alleged in the indictment. *Id.* at 31.

Here, as in *Fuentes* and *Ramallo-Diaz,* the only link between the First Alleged Scheme (COLON) and the Second Alleged Scheme (BDO) is "the identity of one participant[,]" Ms. Keleher, and the fact that both alleged schemes involve public contracts of the DOE. 979 F.Supp.2d at 225; 455 F.Supp. 2d 25–26. Similarly, the only link between the Second Alleged Scheme (BDO) and the Third Alleged Scheme (ASES) is the identity of two participants (Scherrer-Caillet and Velaquez-Piñol) and the fact that both schemes involve public contracts. There is no link whatsoever between the First Alleged Scheme and the Third Alleged Scheme, other than the extremely general fact that both involve public contracts.

Just as in *Fuentes*, it also is clear from the Indictment that the overt acts alleged in furtherance of each of the three primary schemes do not in any way aid the commission of the other two primary schemes. Furthermore, there is no allegation that the non-overlapping individuals purportedly involved in the various schemes knew about the other schemes in which they are not charged. In essence, the Government has simply tried to string these three separate schemes together by general theme (*i.e.*, alleged public contract fraud) and minimally overlapping participants between two of the three alleged schemes. That is not sufficient to justify joinder. The Indictment therefore must be severed under Rule 8.

B. Judicial economy cannot justify joinder under Rule 8.

The Government may attempt to oppose severance by arguing that trying these three distinct schemes together would promote judicial efficiency and conserve judicial resources. But courts consistently have rejected considerations of judicial economy—and must do so—where, as here, there is otherwise no proper basis for joinder under Rule 8. As the Court reasoned in *Ramallo Diaz*, "[t]hough a system cannot be fair if it is not efficient, ours is not one of mere expediency and convenience, but of fundamental fairness and impartiality based on established rules and

principles." 455 F.Supp. 2d at 31. Stated less eloquently, appeals to efficiency and the conservation of resources—even if factually supported—cannot justify joinder where, as here, there is no common activity joining all the defendants and charges.

In any event, whatever purported efficiencies the government may claim from stringing the three schemes at issue together is minimal at best. Severance will drastically simplify the cases and issues presented to the jury, and in so doing avoid substantial prejudice to Ms. Keleher.

Indeed, Ms. Keleher seeks severance in a manner that promotes judicial efficiency. Thus, even though she is not named in any of the money laundering counts, she does not seek to sever the BDO money laundering counts from the underlying BDO Scheme, recognizing the common facts and judicial economy of trying them together. Conversely, while she does seek to sever the ASES Scheme from the COLON and BDO Schemes, there is little, if any, judicial economy in trying any of those schemes together, since each relates to different contracts, different participants, and in the case of the ASES Scheme, an entirely different government agency. As but one example, while Ms. Glenda Ponce-Mendoza and Ms. Mayra Ponce-Mendoza may be witnesses with respect to the COLON scheme, they would not be witnesses with respect to either the BDO Scheme or the ASES scheme. Similarly, while Ms. Ms. Ávila-Marrero may wish to testify in her own defense with respect to the ASES Scheme, there is no reason to believe she would be a witness with respect to the COLON or BDO Schemes.

II. Alternatively, the Three Schemes Should Be Severed and Tried Separately Under Rule 14(a) to Prevent Undue Prejudice to Ms. Keleher.

Because, as set forth above, the three schemes are not properly joined under Rule 8, severance must be granted without regard to Rule 14. *See United States v. Jawara*, 474 F.3d 565, 573 (9th Cir. 2007) (Rule 14 should not be viewed as a backstop or substitute for the initial analysis"

under Rule 8). Even if charges and defendants were properly joined in the same indictment under Rule 8, however, which decidedly is not the case here, Rule 14 would permit the court to order separate trials of charges or defendants in its discretion "[i]f the joinder of offenses or defendants in an indictment . . . appears to prejudice a defendant . . . ." Fed. R. Crim. P. 14(a). While there is a "preference in the federal system to jointly try defendants who are indicted together," *United States v. Ayala Lopez*, 319 F.Supp.2d 236, 237 (D.P.R. 2004) (Cassellas, J.) (citing *Zafiro v. United States*, 506 U.S. 534, 537 (1993)), the U.S. Supreme Court has cautioned that district courts should grant severance under Rule 14 "if there is a serious risk that a joint trial would compromise a specific trial right of one of the defendants, or prevent the jury from making a reliable judgment about guilt or innocence." *Id.* at 237–38 (citing *Zafiro*, 506 U.S. at 539). Indeed, if the presumption in favor of trying properly joined counts together were not a rebuttable one, there would be no need for Rule 14. Here, if the Court does not find that severance is mandated under Rule 8, it should nonetheless exercise its discretion and sever the counts under Rule 14. *See id.* at 238 (citing *United States v. O'Bryant*, 998 F.2d 21, 25 (1st Cir. 1993)).

Ms. Keleher has no alleged involvement in the ASES Scheme. Similarly, Ms. Avila-Moreno has no alleged involvement in either the First or the Second Alleged Schemes. Where a defendant is not charged as a co-conspirator with other defendants, she "faces a slightly smoother road" to demonstrate prejudice actionable under Rule 14 than co-defendants charged in a conspiracy. *See United States v. Vazquez-Rijos*, Crim. No. 08-216/15-562 (DRD), 2017 WL 2628871 at *6 (D.P.R. June 19, 2017) (Dominguez, J.).

The First Circuit has recognized that joinder of several offenses in an indictment potentially involves three kinds of prejudice: (1) embarrassment or confusion "in presenting separate defenses"; (2) evidentiary spillover through which proof of one offense may be used to convict a

defendant of a second, "even though such proof would be inadmiss[i]ble in a second trial for the second offense"; and (3) forcing a defendant who wants to testify "in his own behalf on one of the offenses but not another" to choose between "testifying as to both or testifying as to neither." *United States v. Richardson*, 515 F.3d 74, 81 (1st Cir. 2008) (quoting *United States v. Jordan*, 112 F.3d 14, 17 (1st Cir. 1997)).[1]

Here, the second of these factors, by itself, justifies severance because the risk of evidentiary spillover plainly is unacceptably high. The evidence that will be adduced at trial with regard to the ASES Scheme will not be admissible against Ms. Keleher, but involves two of the same defendants who are alleged to have conspired with Ms. Keleher in the Second Alleged Scheme. The scheme also involves a similar general theme—misconduct in obtaining public contracts. If the jury is convinced that Mr. Velázquez-Piñol and Mr. Scherrer-Caillet conspired with Ms. Ávila-Marrero to obtain ASES contracts, they will surely be more inclined to believe that Mr. Velázquez-Piñol and Mr. Scherrer-Caillet conspired with Ms. Keleher to obtain DOE contracts, despite the fact that none of the ASES evidence should be admissible against Ms. Keleher. Ms. Ávila-Marrero would experience the same prejudice in reverse. The three schemes having the same superficial theme serves to mutually reinforce each other—if the jury believes one of the schemes, they will be inclined to believe all of them. The risk of such spillover in this case is particularly high, given the extraordinary pretrial publicity related to the case and the widespread reporting (and misreporting) that has conflated the allegations in the eyes of the public. No limiting instruction at trial possibly can adequately mitigate the resulting prejudice to Ms. Keleher.

[1] More than ten months before trial, undersigned counsel is not prepared to set forth in detail each of the defenses that may be offered at trial for the various schemes at issue, or commit Ms. Keleher to testifying in her own defense. But Ms. Keleher's trial strategy generally, and her decision to testify specifically, plainly will be impacted if these three schemes are tried together.

Indeed, declining to sever the factually unrelated counts would have the effect of allowing the Government to skirt Federal Rule of Evidence 404(b)'s ban on propensity evidence, which "reflects the longstanding concern that evidence . . . offered only to show the defendant's propensity to commit the charged crime, 'is said to weigh too much with the jury and to so over persuade them as to prejudice one with a bad general record and deny him a fair opportunity to defend against a particular charge.'" *United States v. Caldwell*, 760 F.3d 267, 275 (3d Cir. 2014) (internal citations omitted). By trying these schemes together, the jury might infer, as it otherwise could not, that Ms. Keleher's involvement in the direction of ***two*** DOE contracts to ***two*** different companies, in purported contravention of DOE contracting procedures, is itself probative of her guilt. By joining the additional ASES Scheme, the implied kicker would be the jury would be left to impermissibly wonder: "what are the chances that one of those companies that got a DOE contract just happens to have also fraudulently obtained a contract from ASES?"

Put another way, the Indictment positions three dominoes so that if any one of them falls, it will knock down the other two. The unfairness and prejudice comes from the fact that the schemes here at issue have nothing to do with each other, except sharing one or two alleged participants in common, in two of the three schemes, and a very general common theme. The potential prejudicial evidentiary spillover is "so pervasive that a miscarriage of justice looms." *United States v. Trainor*, 477 F.3d 24, 26 (1st Cir. 2007). This conclusion is further supported by the recent decision of co-defendants Glenda Ponce-Mendoza and Mayra Ponce-Mendoza to plead guilty in connection with the alleged First Alleged Scheme. If either sister testifies about conversations they had with Ms. Keleher related to that alleged scheme, or otherwise purport to implicate Ms. Keleher in that scheme, there is little doubt that the jury will be more inclined to believe the charges leveled against Keleher in connection with the Second Alleged Scheme (BDO) as well.

Moreover, the indictment in this case involves numerous individuals with multiple separate conspiracies. If everything is tried together, it will be an ordeal sorting through evidentiary concerns like admissibility of co-conspirator statements. Indeed, under the current circumstances, there is a significant risk that a purported co-conspirator statement may be presented to the jury, only to be later deemed inadmissible. Courts have found that "[t]he danger of prejudicial spillover is great when such inadmissible statements are heard by the jury." *United States v. McNatt*, 842 F.2d 564, 566 (1st Cir. 1988).

Finally, while the Court has ruled on the motion to transfer venue and Ms. Keleher will not re-litigate that issue here, she respectfully submits that the evidence supporting that motion is also relevant to the Court's weighing of the potential for Rule 14 prejudice with a joint trial. The evidence shows a public chomping at the bit to see Ms. Keleher found guilty, and in so doing, the public lump the defendants together in precisely the way Rules 8 and 14 are designed to prevent. Even if an impartial jury can be impaneled, in light of the preexisting biases and negative publicity of this case, there is an unacceptable risk that—consciously or not—jurors will allow evidence from one scheme to spill over into their consideration of guilt or innocence for the other, separate schemes. This is exactly the kind of situation in which the Court, even if it were to find the charges properly joined under Rule 8, should exercise its considerable discretion under Rule 14 and sever these charges.

A joint trial here also would result in juror confusion. There are three complex schemes alleged in the Indictment, each with almost entirely different players and time periods. There will already be significant jury instructions as a result of the nature of the cases, number of defendants, trial publicity, and the complexity of each individual scheme. It will be difficult for a juror to remember at the end of a long trial, for instance, whether Mr. Fernando-Caillet was talking to Ms.

Ávila-Marrero when he said "X," or whether he was talking to Ms. Keleher. Separate trials eliminate these risks. Jurors will hear only evidence related and probative to the scheme at issue in that trial, and each trial itself will be shorter.

As discussed above, the lack of factual overlap between the alleged schemes minimizes the judicial economy that would otherwise be gained by a joint trial. The only minor inefficiency in such trying the cases separately would be empaneling three juries and having a limited number of witnesses called in two trials.[2]

This inefficiency pales in comparison to the benefits to mitigating risk of juror confusion and spillover evidence or "guilt by association." The relevant facts and circumstances therefore weigh heavily toward severing these charges under Rule 14, even if they had been properly joined in the first place, which they were not.

CONCLUSION

The Indictment improperly joins three separate schemes together, which respectively concern: (1) alleged steering of DOE contracts to Colón by Ms. Keleher and the Ponce-Mendoza sisters; (2) alleged improprieties with the awarding and performance of DOE contracts with BDO by Ms. Keleher and two people not alleged to have participated in the COLON Scheme, over a different time period; and (3) a scheme to defraud ASES that is completely unrelated to Ms. Keleher. The only common thread between these three sets of charges is that they all seem to have arisen from the same investigation[3], and this is not nearly enough to permit joinder in one indictment.

[2] There may be witnesses who are relevant to both the first and second schemes. There may be other witnesses who are relevant to both the second and third schemes. It is difficult to envision many, if any, witnesses who would be relevant to all three schemes.

[3] The impermissible manner in which these schemes arose from the same investigation is the subject of Ms. Keleher's soon-to-be-filed *Motion to Suppress*.

Because the sets of charges are misjoined as a matter of law, and trying them together would prejudice Ms. Keleher, the charges must be severed under Rules 8. Moreover, there would be substantial risk of undue prejudice to Ms. Keleher (and the other defendants) if the three sets of charges were tried together, which would warrant severance under Rule 14, even if joinder were proper under Rule 8.

Severance will ultimately promote efficiency by simplifying the issues placed in front of the jury. But more importantly, severance will promote "fundamental fairness and impartiality based on established rules and principles," *see Ramallo-Diaz*, 455 F.Supp. 2d at 31, and in doing so will promote respect for the law and the criminal justice system itself.

WHEREFORE, Julia Beatrice Keleher, respectfully requests that the Court GRANT this motion and sever the Indictment into three: (1) Counts 1–11; (2) Counts 12–18 and the portion of Counts 26–32 involving alleged proceeds of Counts 12–18; (3) Counts 19–25 and the portion of Counts 26–32 involving alleged proceeds of Counts 19–25.

Respectfully submitted on this 18th day of May, 2020, in San Juan, Puerto Rico.

I HEREBY CERTIFY that on this date, I electronically filed the foregoing with the Clerk of the Court, using the CM/ECF system, which will provide access to all parties of record.

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