

**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.: 20-019 (FAB)

DEFENDANT JULIA BEATRICE KELEHER’S MOTION TO SUPPRESS¹

TO THE HONORABLE COURT:

COMES NOW Defendant Julia Beatrice Keleher (“Ms. Keleher”), through undersigned counsel, and, pursuant to Federal Rules of Criminal Procedure 12(b)(3)(C) and 41(h), respectfully moves to suppress and exclude all evidence—physical and testimonial—obtained or derived from unlawful searches and seizures of emails from Ms. Keleher’s personal email accounts by federal investigators. The investigators ventured well beyond the permitted scope of two search warrants issued in another, unrelated investigation and engaged in an unauthorized general search of her personal emails. The Government seeks to rely on the fruits of that unlawful search in this case. Because the evidence is the product of an unlawful search, it must be suppressed. Specifically, Ms. Keleher requests suppression and exclusion of all evidence unlawfully obtained or derived directly or indirectly from:

- (1) The search and seizure of Ms. Keleher’s entire personal email account JBK[REDACTED]@GMAIL.COM pursuant to a search warrant issued in Case No. 18-1506(M).

¹ Ms. Keleher hereby files this redacted Motion because the underlying search warrants remain sealed.

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- (2) The search and seizure of Ms. Keleher's entire personal email account JULIA [REDACTED]@GMAIL.COM pursuant to a search warrant issued in Case No. 18-1507(M).
- (3) All subsequent searches of these email accounts beyond the authorized scope of those search warrants, including whatever searches led to the acquisition of the emails identified in the Indictment in this matter (Doc. 3).
- (4) The continued seizure of emails beyond the scope of the search warrants, which continues to this day.

A memorandum of law in support of this Motion is attached.

Respectfully submitted on this 1st day of July, 2020, in San Juan, Puerto Rico.

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**Memorandum of Law in Support of
Ms. Keleher's Motion to Suppress**

PRELIMINARY STATEMENT

The Government acquired emails from two search warrants executed during an earlier and separate investigation, which authorized a limited search of two email mailboxes used by Ms. Keleher. Specifically, in the applications for the search warrants, the Government set forth what it asserted constituted probable cause to search for evidence of crimes committed pertaining to the award of two contracts by the Puerto Rico Department of Education during Ms. Keleher's tenure as Secretary of that agency, a contract awarded to Colon & Ponce, Inc. ("C&P") and a contract awarded to the J [REDACTED] E [REDACTED] Institute of Ethics (hereinafter, "JEJ Institute of Ethics"). In the warrant applications, the Government represented that it would employ a taint team to screen emails unrelated to its investigation from the prosecution team. The Magistrate Judge authorized seizure of the emails from Google and searches of the emails related to the award of these two contracts.

The Government's investigation culminated in the July 2019 Indictment of Ms. Keleher and others related to the C&P contract award and the award of other contracts or contract amendments to another company, BDO Puerto Rico, P.S.C. ("BDO"). Six months later, Ms. Keleher was indicted in this case alleging an honest services scheme to defraud relating to actions taken by Ms. Keleher pertaining to the Padre Rufo School, allegations that are factually wholly unrelated to the C&P, JEJ Institute of Ethics, and BDO contract awards. While no new search warrants were obtained, the Indictment in this case references emails from Ms. Keleher's Google email accounts, alleging them to be wires sent in furtherance of the alleged scheme to defraud related to the Padre Rufo School.

It is apparent from the charges in this case that the Government, without authorization, unlawfully searched the emails it had seized in the earlier investigation for evidence wholly unrelated to the two topics for which it had obtained authorization to search. By conducting impermissible searches beyond the authorized scope of the search warrants, the Government violated Ms. Keleher's Fourth Amendment rights. The evidence it obtained, directly and derivatively, from these Fourth Amendment violations must be suppressed.

FACTUAL AND PROCEDURAL BACKGROUND

I. The Government Applied for Search Warrants for Ms. Keleher's Emails to Probe Suspected Illegality Concerning the Awarding of Certain Public Contracts and Agreed to Filter Out Evidence Beyond the Scope of the Warrants.

On or before September 28, 2018, the Government applied to the Honorable Magistrate Judge Marcos E. López for two search warrants, one to search the email account associated with the address JBK[REDACTED]@GMAIL.COM (**Exhibit A**, Case No. 18-1506(M)) ("Search Warrant A") and the other to search the email account associated with the address JULIA.[REDACTED]-[REDACTED]@GMAIL.COM (**Exhibit B**, Case No. 18-1507(M)) ("Search Warrant B") (together, the "Search Warrants"). These are two personal email addresses that were used by Ms. Keleher. The applications for the two warrants are materially identical in their allegations and averments, which relate to alleged illegal misdirection of government contracts to private companies.

Specifically, the Government asserted that it had probable cause that these email accounts would contain evidence that Ms. Keleher was involved in illegally awarding contracts of the Puerto Rico Department of Education ("DOE") to two specified companies. (*See* Search Warrants, p. 22, Aff. ¶ 41.) The Government further represented to the Magistrate that it would employ a filter team to review the email accounts so that only emails relevant to the alleged crimes and scheme for

which the Government had probable cause would be seized and reviewed by the prosecution team.

(*See* Search Warrants, p. 26, Aff. ¶ 50.)

A. The affiant described the suspected schemes for which the Government believed it had probable cause, schemes that are unrelated to the scheme charged in this Indictment.

The Government listed the particular information to be seized in Attachment B to the two warrants at issue: all documents and information from Ms. Keleher’s email accounts that are evidence or instrumentalities of specific suspected federal crimes involving “Julia B. Keleher, Glenda PONCE, C [REDACTED] D [REDACTED] (hereinafter, “CD”), M [REDACTED] E. C [REDACTED] (hereinafter, “MEC”), V [REDACTED] M [REDACTED] (hereinafter, “VM”), M [REDACTED] C [REDACTED] (hereinafter, “MC”), COLON & PONCE, INC. and W [REDACTED] B [REDACTED] (hereinafter, “WB”) [.]” (*Id.* Attachment B, Section III.) The Government also limited the temporal scope of its request to the period of “July 1, 2016 to the present.” *Id.* The affidavits submitted to the Court then detailed the allegations that purported to establish probable cause related to those specific suspected crimes and individuals/entities.²

Specifically, the Government’s affidavits described the following suspected schemes:

Suspected Scheme 1: COLÓN & PONCE

COLÓN & PONCE was a Puerto Rico company; one of the principals of the company was Mayra Ponce. (Aff. ¶ 7.) Mayra Ponce’s sister is Glenda Ponce, who worked as a DOE contractor with the DOE Secretary’s Office. (*Id.* ¶ 8.) Glenda Ponce and CD, a Special Assistant with the DOE Secretary’s Office, approached Ms. Keleher about contracting with COLÓN & PONCE. (*Id.*

² Citations in this section refer to the affidavit at pages 11–27 of Exhibits A & B. While Ms. Keleher contests many of the facts alleged by the Government in the affidavits, these allegations are set forth in detail here to show that the present Indictment, and the email evidence that purports to support the charges therein, are completely unrelated to the suspected schemes for which the Government contended in the relevant affidavits it had probable cause to obtain authorization to search for evidence.

¶¶ 9–10.) Ms. Keleher thereafter indicated she wanted to contract with COLÓN & PONCE to assist her with duties or projects, notwithstanding a DOE policy requiring a competitive bidding process. (*Id.* ¶ 10.) The DOE, through its contracting unit, sent a request for quotes (“RFQ”) to seven vendors, including COLÓN & PONCE. (*Id.* ¶ 12.) Shortly after the RFQ was sent, Glenda Ponce approached the evaluating official, told him or her that COLÓN & PONCE had already submitted a proposal to the DOE, and told him or her that Ms. Keleher wanted to contract with COLÓN & PONCE. (*Id.* ¶ 13.)

The evaluating official received five proposals in total and recommended every company for selection *except* for COLÓN & PONCE, ostensibly because of a lack of experience among the company’s principals. (*Id.* ¶ 14.) Notwithstanding this single lower-level official’s decision not to recommend it, the DOE selected and awarded the contract to COLÓN & PONCE. (*Id.* ¶¶ 15–16.)

Thereafter, Ms. Keleher approved an amendment to the contract that increased the contract award amount. (*Id.* ¶ 17.) This amendment was approved mainly to allow MEC to receive compensation for acting as a special assistant to Ms. Keleher, a position that MEC held without compensation for months before she was employed by COLÓN & PONCE. (*Id.* ¶¶ 17, 19.)

VM—a former business associate of Ms. Keleher’s who had purchased Ms. Keleher’s company over six months earlier—reviewed COLÓN & PONCE’s original bid proposal and made suggestions, including “adding and/or boosting Glenda Ponce’s experience in education matters . . . and recommending the non-disclosure of Glenda Ponce’s name in the proposal.” (*Id.* ¶ 21.) She also reviewed the proposal to amend and increase the award amount. (*Id.* ¶ 21.) COLÓN & PONCE made payments to one of VM’s companies after the DOE contract was awarded. (*Id.* ¶ 26.) VM also exchanged emails with Ms. Keleher and Glenda Ponce about several other DOE matters not

related to COLÓN & PONCE, “such as the creation of [DOE] personnel positions and the development of academic projects by the [DOE].” (*Id.* ¶ 28.)

Suspected Scheme 2: T V C (“TVC”)

In February 2017, the Executive Director of the Puerto Rico Government Ethics Office, Z R (hereinafter, “ZR”), scheduled a meeting with Ms. Keleher, J D (hereinafter, “JD”) from the Puerto Rico company C M (hereinafter, “CM”), and other individuals related to a DOE project called “T V C” (hereinafter, “TVC”). (*Id.* ¶ 31.) In March 2017, ZR sent Ms. Keleher an email attaching the proposal for TVC. (*Id.*)

In July 2017, the Puerto Rico Fiscal Agency and Financial Advisory Authority (hereinafter, “FAFAA”) entered into a contract with Ms. Keleher for her to serve as Secretary of Education and FAFAA government restructure officer for education, in exchange for a salary of \$250,000 per year. (*Id.* ¶ 37.)

In September or October 2017, Ms. Keleher proposed the idea of creating a foundation to receive donations to help rebuild the public education system in Puerto Rico after Hurricane Maria in September 2017. (*Id.* ¶ 33.) In November 2017, the PR E F (hereinafter, “PREF”) was registered as a nonprofit to support the public education system on the island. (*Id.* ¶ 34.) MC is one of the three incorporators of the nonprofit. (*Id.*)

In October and November 2017, Ms. Keleher communicated with WB at a New Jersey nonprofit called T F (hereinafter, “TF”) to request a donation to the PREF. (*Id.* ¶ 35.) TF might have approved a \$15 million donation to the PREF to be disbursed over five years. (*Id.* ¶ 38.) The donation appeared intended to fund the salaries of officials to be hired in the independent education regions that DOE was going to create under Ms. Keleher. (*Id.*)

In December 2017, Ms. Keleher asked ZR (with the Government Ethics Office) whether there could be an ethical problem if a foundation made a donation to the Puerto Rico Fiscal Agency and Financial Advisory Authority (hereinafter, “FAFAA”). (*Id.* ¶ 36.) She explained that TF donated funds to the PREF, and one of the approved expenses was to cover Ms. Keleher’s salary for five years. (*Id.*)

Also in December 2017, DOE awarded a public contract related to the TVC program to a California company called JEJ Institute of Ethics, which was associated in Puerto Rico with the company CM, a longtime DOE contractor.

In January 2018, ZR—again, a top government ethics officer—assured Ms. Keleher that there were no ethical issues with the proposed donation transaction providing for her salary. (*Id.* ¶ 39.)

Summary of Suspected Schemes for Which Government Had Probable Cause

In sum, the affiant set forth facts purporting to show the Government had probable cause to suspect that:

- Ms. Keleher, CD, Glenda Ponce, Mayra Ponce, COLÓN & PONCE, VM, and others “devised a fraudulent scheme circumventing the [DOE] rules and regulations to illegally award a contract to [COLÓN & PONCE] and later amend and increase the [COLÓN & PONCE] contract amount for the sole purpose of benefiting [MEC] after her position as [a DOE] employee was not approved.” (*Id.* ¶ 41.)
- Ms. Keleher, ZR, JEJ Institute of Ethics, TF, PREF, and others “might have been involved in a fraudulent scheme to illegally award [JEJ Institute of Ethics] the contract in the [DOE] and to donate funds to [PREF] to pay for Secretary Keleher’s contract with FAFAA.”

The affiant further stated that these two particular schemes could constitute violations under 18 U.S.C. §§ 666, 371, 1341, 1343, 1346, and 1956 (theft or bribery concerning programs receiving federal funds, conspiracy, mail fraud, wire fraud, and money laundering). The affiant

also explained why the Government was requesting the information it asked to search: information stored in connection with an email account “may provide the crucial ‘who, what, why, when, where, and how’ of **the criminal conduct under investigation.**” (*Id.* ¶ 49) (emphasis added).

B. The Government requested that Google be required to provide all data from the accounts, but represented that it would employ a filter team so that only data authorized to be seized and searched would be available to the prosecution team.

The Government requested that Google be required to disclose all or nearly all of the data available from and about the two email accounts. (Search Warrants A & B, Attachment B, Sections I–II.) Specifically, Google was to provide the contents of all emails associated with the account (including stored copies, drafts, source and destination addresses, dates and time, and size and length of emails); all records or other information regarding the identification of the account (including full name, physical address, identifiers, records of session times and durations, and IP addresses); types of services utilized; and all records or other information (including address books, contacts, calendar data, and pictures). (*Id.*)

Although the Government requested that Google be ordered to disclose all of this data, the warrant only authorized the Government to search for and seize information “that constitutes fruits, contraband, evidence and instrumentalities of violations of Title 18, United States Code, Sections 666, 371, 1341, 1343, and 1346, those violations involving” Ms. Keleher, Glenda Ponce, CD, MEC, VM, MC, COLÓN & PONCE, and WB, “as well as other individuals/corporations³ and

³ This must refer to the individuals and entities in the second scheme—*i.e.*, Ms. Keleher, ZR, JEJ Institute of Ethics, TF, PREF, and others who the Government claimed “might have been involved in a fraudulent scheme to illegally award [JEJ Institute of Ethics] the contract in the [DOE] and to donate funds to [PREF] to pay for Secretary Keleher’s contract with FAFAA,”—because these individuals and entities are for some reason not specifically listed in the description of information to be searched for and seized.

occurring from July 1, 2016 to the present.” (*Id.*, Section III.) As stated earlier in the affidavit, the Government would employ a taint team and the prosecution team would only receive data that could provide information about the criminal conduct under investigation, *i.e.*, information that would fall within the authorized scope of the warrant. (Affidavit ¶¶ 49–50.)

This filter procedure, as explained in greater detail below, was necessary for the warrant to comply with the Fourth Amendment’s particularity requirement. The fact that the instant Indictment is based on emails completely unrelated to the two schemes under investigation when the Government applied for the search warrant, however, shows that something went seriously wrong with any filtering process the Government ultimately employed with respect to Ms. Keleher’s emails.

II. The Government Indicted Ms. Keleher for Conduct Connected with the DOE’s Awarding of Certain Public Contracts to COLÓN & PONCE and Another Company, BDO. [Crim. No. 19-431 (PAD)]

On July 9, 2019, a federal grand jury returned a 32–count indictment against Ms. Keleher and five other defendants, none of whom are defendants in this case. (*See* Crim. No. 19-431 (PAD), Doc. 3, Indictment, **Exhibit C**) (hereinafter, the “2019 Indictment”). The 2019 Indictment charges Ms. Keleher, Glenda Ponce-Mendoza, and Mayra Ponce-Mendoza with illegally steering the DOE contract identified in the affidavit to COLÓN & PONCE and thereafter amending it. (*Id.*) Thus, the Government charged Ms. Keleher, Glenda Ponce-Mendoza, and Mayra Ponce-Mendoza with the alleged conduct it described in the first scheme set forth in the search warrant affidavits described above.⁴

⁴ Apparently, the Government’s suspicion that the Secretary of Education and the Executive Director of the Government Ethics Office conspired together related to a program to help students on the island after Hurricane Maria and the award of a contract to the JEJ Institute of Ethics did not pan out; that second “scheme” for which the Government had represented it had probable cause was not charged.

The 2019 Indictment also charged Ms. Keleher and several individuals not identified in the affidavits with alleged illegality connected with another DOE contract that was awarded to a company called BDO Puerto Rico, P.S.C. (*See id.*) This scheme is not identified in the search warrant affidavits, but also relates to allegedly improper DOE contracting decisions. It too is factually unrelated to the wholly distinct scheme charged in the Indictment in this case.

Finally, the 2019 Indictment charged several individuals—but not Ms. Keleher—with a scheme involving public contracts of the Puerto Rico Health Insurance Administration. (*See id.*) This scheme and its participants are unrelated to the first two schemes charged in the 2019 Indictment allegedly involving Ms. Keleher, the two schemes described in the affidavits at issue, and the alleged scheme charged in this case.

III. The Government Indicted Ms. Keleher in this Case for Her Alleged Role in a Bribery Scheme Unrelated to the Allegations and Defendants that were the Subject of the Search-Warrant Applications and Case No. 19-431 (PAD).

On January 14, 2020, more than six months after Ms. Keleher was charged in the 2019 Indictment, a federal grand jury returned the Indictment in this case, charging Ms. Keleher and Ariel Gutierrez-Rodriguez with Conspiracy to Commit Honest Services Wire Fraud (18 U.S.C. § 1349), substantive Honest Services Wire Fraud (18 U.S.C. § 1343), and Federal Program Bribery (18 U.S.C. §§ 666(a)(1)(B), (a)(2)). (Doc. 3, Indictment) (hereinafter, “2020 Indictment”).

These charges are completely unrelated to the schemes in the search warrant affidavits and the schemes ultimately charged in the 2019 Indictment. The 2020 Indictment alleges:

Gutierrez-Rodriguez was a consultant who provided services to Company A, a corporation dealing in real estate; and Company B, which operated out of the same office and had the same president as Company A. (2020 Indictment ¶¶ 9–10, 14.)

Company C owned a luxury apartment complex called “Ciudadela.” Individual A was the chief executive officer of Company C. Individual A also served as the president of Company D, a nonprofit that promoted education-related initiatives on the island.

In May 2018, Gutierrez-Rodriguez and others—on behalf of Company A, Company B, and Company C—communicated with a DOE employee at a public school in Santurce called the “Padre Rufo School.” (*Id.* ¶¶ 26–27.) Gutierrez-Rodriguez was trying to get that employee to agree to cede around 1,000 square feet of property owned by the Padre Rufo School to Company C. (*Id.*) Gutierrez-Rodriguez drafted a letter and sent it to the DOE employee; the letter was from the employee to Ms. Keleher agreeing to the transfer. (*Id.* at ¶ 29.)

On or about June 7, 2018, Ms. Keleher signed a lease agreement with a promise-to-purchase term for a two-bedroom apartment in the Ciudadela complex. (*Id.* ¶ 16.) Under the lease-to-purchase agreement, Ms. Keleher was permitted to occupy the apartment until August 15, 2018, for the nominal amount of \$1.00. (*Id.*) Ms. Keleher was to then purchase the apartment for \$297,500. (*Id.*) She was to receive \$12,000 off the price as an incentive bonus for the purchase. (*Id.*) Although the agreement was meant to expire on August 15, Ms. Keleher remained living in the apartment without paying additional rent until she completed the purchase on or about December 4, 2018. (*Id.*)

Ms. Keleher did not disclose in her financial disclosure statements with the Puerto Rico Office of Government Ethics that she was permitted to occupy the apartment for \$1.00 until she purchased it, or that she was to receive \$12,000 off the price as an incentive bonus for the purchase. (*Id.* ¶ 17.)

In July 2018, Gutierrez-Rodriguez drafted a letter and sent it to Ms. Keleher; the letter was from Ms. Keleher to the DOE employee at the Padre Rufo School authorizing the transfer of the

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1,000 square feet. (*Id.* at ¶ 29.) Ms. Keleher caused the letter to be placed on DOE letterhead and signed it. (*Id.*)

Despite this alleged scheme being unrelated to the schemes alleged in the search warrant affidavits, the emails referenced in the indictment are, in large measure, from the email boxes that were the subjects of the search warrants. For example, the following email forms the basis for Count 7, Wire Fraud:

| | | | |
|----|--------------------------------------|-----------------|------------------------------------------------------------------------------------------------------------------------------------|
| 7. | [2] ARIEL GUTIERREZ-RODRIGUEZ | August 20, 2018 | Email from [2] ARIEL GUTIERREZ-RODRIGUEZ to [1] JULIA BEATRICE KELEHER offering assistance in obtaining a bank loan. |
|----|--------------------------------------|-----------------|------------------------------------------------------------------------------------------------------------------------------------|

And the following emails, among other similar emails, are listed as overt acts of the alleged conspiracy:

| | |
|---------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| May 31, 2018 | Email from [1] JULIA BEATRICE KELEHER to employee of Company A confirming whether she would receive \$12,000.00 bonus in connection with her purchase of an apartment in Ciudadela. |
| June 22, 2018 | Email from [2] ARIEL GUTIERREZ-RODRIGUEZ to [1] JULIA BEATRICE KELEHER regarding Company C's request to acquire land of the Padre Rufo School. |
| June 23, 2018 | Email from [1] JULIA BEATRICE KELEHER to [1] JULIA BEATRICE KELEHER forwarding documents pertaining to Company C's request to acquire land from the Padre Rufo School. |
| July 17, 2018 | Email from [2] ARIEL GUTIERREZ-RODRIGUEZ to [1] JULIA BEATRICE KELEHER attaching documents relating to Company C's acquisition of 1,034 square feet of the Padre Rufo School. |
| July 17, 2018 | Email from [1] JULIA BEATRICE KELEHER to PR DOE employee attaching documents relating to Company C's acquisition of 1,034 square feet of the Padre Rufo School. |

That the prosecution team had access to these emails makes it clear the Government either failed to employ any filter at all during its searches of the two mailboxes, or the filter process failed in its purpose to screen from the prosecution team information that the warrants did not authorize be searched for or seized. Indeed, the prosecution team also produced in its

Rule 16 discovery productions the entire email boxes seized during the searches. Thus, ultimately, any filtering of the emails performed by the taint team was meaningless because, at some point, the particularity required in the warrant application and on which the warrant authorization was based was ignored and the entirety of the email contents was provided to the prosecution team. The Government unilaterally converted the limited search and seizure authorization it had obtained into the wholesale seizure of the entirety of Ms. Keleher's personal email and conducted a general search of that material for evidence entirely unrelated to the probable cause it had presented to the Magistrate Judge. The Government has violated Ms. Keleher's Fourth Amendment rights and the direct and derivative evidence of those searches must be suppressed.⁵

LAW AND ARGUMENT

The prosecution team, by seizing and searching emails outside the authorized scope of the two relevant warrants, deliberately or recklessly violated Ms. Keleher's Fourth Amendment rights. Evidence obtained or derived directly or indirectly from those unauthorized and unreasonable seizures and searches must be suppressed.

I. The Fourth Amendment Requires Suppression of Evidence Obtained by Law Enforcement Agents Who Exceed the Authorized Scope of a Search Warrant.

⁵ The Government's "flagrant disregard" for the terms of the warrants renders their entire search of the two email mailboxes invalid and requires suppression and return of all the documents seized from Google, not just those documents that were beyond the scope of the warrant. *United States v. Hamie*, 165 F.3d 80, 83–84 (1st Cir. 1999) (suppression of all evidence seized appropriate where, *inter alia*, "officers flagrantly disregarded the terms of the warrant"); *United States v. Medlin*, 842 F.2d 1194, 1198–99 (10th Cir.1988) (officers' "flagrant disregard" for terms of warrant renders entire search illegal). As a practical matter, however, since the only emails that the Government might seek to introduce in this case are emails that are beyond the scope of the warrant, it does not matter whether the Court suppresses the entirety of the Google emails or just the Google emails that were unlawfully searched.

The Fourth Amendment to the U.S. Constitution prohibits “unreasonable searches and seizures,” and further states that no search warrant “shall issue, but upon probable cause . . . and particularly describing the place to be searched, and the persons or things to be seized.” U.S. Const. amend. IV.⁶ These protections exist to “safeguard the privacy and security of individuals against arbitrary invasions by Government officials.” *Camara v. Mun. Ct.*, 387 U.S. 523, 528 (1967). The protections are enforced through the exclusionary rule, whereby courts prohibit the admission of evidence obtained or derived from a violative government search. *See United States v. Cruz-Mercedes*, 945 F.3d 569, 575 (1st Cir. 2019) (“The Supreme Court long ago recognized the exclusionary rule in response to the perniciousness of unlawfully obtained evidence.”).

The limitation on searches to only searches authorized with particularity by a neutral magistrate is a fundamental, bedrock constitutional principle. The Founding Fathers wrote the Fourth Amendment to the Bill of Rights specifically to prohibit the use of general searches:

The Founding generation crafted the Fourth Amendment as a “response to the reviled ‘general warrants’ and ‘writs of assistance’ of the colonial era, which allowed British officers to rummage through homes in an unrestrained search for evidence of criminal activity.” *Riley v. California*, 573 U.S. ___, ___ (2014) (slip op., at 27). In fact, as John Adams recalled, the patriot James Otis’s 1761 speech condemning writs of assistance was “the first act of opposition to the arbitrary claims of Great Britain” and helped spark the Revolution itself. *Id.*, at ___–___ (slip op., at 27–28) (quoting 10 Works of John Adams 248 (C. Adams ed. 1856)).

Carpenter v. United States, 138 S. Ct. 2206, 2213 (2018)

⁶ The Amendment’s rights are fundamental in the United States. Similar provisions exist in the state constitutions of California, where the search warrants were served on Google, and Pennsylvania, where Ms. Keleher lives. Cal. Const. art I § 13; Pa. Const. art I § 8. The Constitution of the Commonwealth of Puerto Rico mirrors these protections, and explicitly requires that evidence obtained in violation of those protections shall be inadmissible in the courts. *See* P.R. Const. art. II § 10.

Where a search is conducted pursuant to a properly issued search warrant, the scope of that search is “limited by the terms of its authorization.” *Walter v. United States*, 447 U.S. 649, 656 (1980).⁷ The Supreme Court reasons that:

[b]y limiting the authorization to search to the specific areas and things for which there is probable cause to search, the [particularity] requirement ensures that the search will be carefully tailored to its justifications, and will not take on the character of the wide-ranging exploratory searches the Framers intended to prohibit.

Maryland v. Garrison, 480 U.S. 79, 84 (1987). “When investigators fail to limit themselves to the particulars in the warrant,” in contrast, “both the particularity requirement and the probable cause requirement are drained of all significance as restraining mechanisms, and the warrant limitation becomes a practical nullity.” *United States v. Mousli*, 511 F.3d 7, 12 (1st Cir.2007); *see also United States v. Upham*, 168 F.3d 532, 536 (1st Cir.1999) (“It is settled law that the search and seizure conducted under a warrant must conform to the warrant.”).

If the Government circumvents or willfully exceeds the limitations in a search warrant, the exclusionary rule operates to exclude evidence obtained through that violative search and the fruits of that search. *See United States v. Aboshody*, 951 F.3d 1, 5 (1st Cir. 2020) (exclusionary rule applies where Government conduct reflects a deliberate, reckless, or grossly negligent disregard for Fourth Amendment rights); *United States v. Towne*, 705 F. Supp. 2d 125, 135 (D. Mass. 2010) (quoting *United States v. Hamie*, 165 F.3d 80, 84 (1st Cir.1999)) (“If items are seized outside the scope of the warrant, ‘the normal remedy is to suppress the use of all items improperly taken’”); *United States v. Comprehensive Drug Testing, Inc.*, 621 F.3d 1162, 1174 (9th Cir. 2010) (en banc) (per curiam) (“When, as here, the Government comes into possession of evidence by

⁷ Ms. Keleher assumes *arguendo* and for purposes of this Motion that Search Warrants A and B were properly issued.

circumventing or willfully disregarding limitations in a search warrant, it must not be allowed to benefit from its own wrongdoing by retaining the wrongfully obtained evidence or any fruits thereof.”), *overruled in part on other grounds as recognized by Demaree v. Pederson*, 887 F.3d 870, 876 (9th Cir. 2018) (per curiam).

II. The Government Exceeded the Scope of the Search Warrants when it Failed to Adequately Screen, then Searched Ms. Kelleher’s Email for Evidence of Criminal Activity Well Beyond the Alleged Criminal Activity Described in the Search-Warrant Application for which the Magistrate found Probable Cause.

A. The Fourth Amendment particularity and scope requirements apply with special force when a warrant authorizes a search of an email account.

“As technology has enhanced the Government’s capacity to encroach upon areas normally guarded from inquisitive eyes, [the Supreme] Court has sought to ‘assure[] preservation of that degree of privacy against government that existed when the Fourth Amendment was adopted.’ *Kyllo v. United States*, 533 U. S. 27, 34 (2001).” *Carpenter*, 138 S. Ct. at 2213. Courts consistently recognize that individuals have a reasonable expectation of privacy in emails sent through a commercial internet service provider. *See United States v. Warshak*, 631 F.3d 266, 288 (6th Cir. 2010) (cited with approval by the First Circuit in *Johnson v. Duxbury, Massachusetts*, 931 F.3d 102, 108 n.5 (1st Cir. 2019)); *see also In re Applications for Search Warrants for Information Associated with Target Email Address*, Nos. 12–MJ–8119–DJW & 12–MJ–8191–DJW, 2012 WL 4383917, at *5 (D. Kan. Sept. 21, 2012); *United States v. Ali*, 870 F.Supp.2d 10, 39 n.39 (D.D.C. 2012); *United States v. Lucas*, 640 F.3d 168, 178 (6th Cir. 2011); *United States v. Forrester*, 512 F.3d 500, 511 (9th Cir. 2008) (“Privacy interests in [mail and email] are identical.”); *c.f. United States v. Hamilton*, 701 F.3d 404, 408 (4th Cir. 2012) (“[E]mail has become the modern stenographer . . . [and] are confidential.”) Indeed, in today’s world, where people communicate significantly (if

not primarily) by electronic means, “[b]y obtaining access to someone’s email, Government agents gain the ability to peer deeply into his activities.” *See United States v. Warshak*, 631 F.3d at 284.

The Fourth Amendment’s requirements are never formalities, *McDonald v. United States*, 355 U.S. 451, 455 (1948), but its particularity and scope requirements are especially important when the Government seeks to intrude on the privacy of a person’s electronically stored information, like email communications. *United States v. Galpin*, 720 F.3d 436, 446 (2d Cir. 2013). As the Second Circuit, sitting *en banc*, recognized when considering the seizure and search of a computer hard drive,

The seizure of a computer hard drive, and its subsequent retention by the government, can give the government possession of a vast trove of personal information about the person to whom the drive belongs, much of which may be entirely irrelevant to the criminal investigation that led to the seizure.

United States v. Ganas, 824 F.3d 199, 217 (2d Cir. 2016) (*en banc*); *United States v. Burgess*, 576 F.3d 1078, 1091 (10th Cir.2009) (“If the warrant is read to allow a search of all computer records without description or limitation it would not meet the Fourth Amendment’s particularity requirement.”); *see also In the Matter of a Warrant for All Content and Other Information Associated with the Email Account xxxxxxxx gmail.com*, 33 F. Supp.3d 386, 394 (S.D.N.Y. 2014) (“We perceive no constitutionally significant difference between the searches of hard drives just discussed and searches of email accounts.”).

With respect to electronic discovery, there is no dispute that the Government initially is permitted to obtain the entire contents of an email account, but only so that it can separate the documents that have been set forth with particularity in the warrant from other documents that have not, *i.e.*, the relevant documents from the irrelevant documents. Fed. R. Crim. P. 41(e)(2)(B). Thus, to comport with the Fourth Amendment, the electronic information provided to a prosecution

team for use as evidence must be limited to that for which the government has probable cause to probe. *See Comprehensive Drug Testing, Inc.*, 621 F.3d at 1180 (“The Government’s search protocol must be designed to uncover only the information for which it has probable cause, and only that information may be examined by the case agents.”), *overruled in part on other grounds as recognized by Demaree v. Pederson*, 887 F.3d 870, 876 (9th Cir. 2018). Electronic documents that do not pertain to information for which the government has articulated probable cause cannot be seized. *See, e.g., Galpin*, 720 F.3d at 446 (“[A]n otherwise unobjectionable description of the objects to be seized is defective if it is broader than can be justified by the probable cause upon which the warrant is based.”) (citing 2 W. LaFave, *Search and Seizure* § 4.6(a) (5th ed. 2012); *United States v. Rosa*, 626 F.3d 56, 62 (2d Cir. 2010) (Warrants that fail to “link [the evidence sought] to the criminal activity supported by probable cause” do not satisfy particularity requirement because they “lack[] meaningful parameters on an otherwise limitless search” of a defendant’s electronic media); *In re Search of Records, Information, and Data Associated with 14 Email Addresses Controlled by Google, LLC*, --- F.Supp.3d ---, Case No. 18-mc-50318, 2020 WL 556205 at *7 (E.D. Mich. Feb. 4, 2020) (“[I]t is sufficiently particular for the warrant to permit seizure of items **related to the criminal statutes identified . . . within the context of the [redacted] scheme.**”); *United States v. Chavez*, No. 3:18-CR-00311-MOC-DCK-3, 2019 WL 5849895, at *9 (W.D.N.C. Nov. 7, 2019) (although probable cause supported the warrant to search the defendant’s Facebook account, the failure to limit the warrant temporally or to members of the fraud caused it to be overbroad); *United States v. Irving*, 347 F. Supp.3d 615, 624 (D. Kan. 2018) (a warrant to search a defendant’s Facebook was overbroad when defined only by a specified crime without any other scope or time limitations) (quoting *Cassady v. Goering*, 567 F.3d 628, 634 (10th Cir. 2009)); *see also Gmail Accounts*, 371 F.Supp.3d at 845–46; *In the Matter of the Search of Google Email Accts.*, 92 F.

Supp.3d at 946; *In re Redacted@gmail.com*, 62 F. Supp.3d at 1104; *United States v. Matter of Search of Info. Assoc. with Fifteen Email Addresses*, 2017 WL 4322826, at *7, 11; *cf. United States v. Chalavoutis*, 2019 WL 6467722 at *5 (E.D.N.Y. Dec. 2, 2019) (search upheld where warrant appropriately “limited the information to be seized . . . by reference to the crimes investigated, the participants, a time frame, and types of information and documents.”).

B. The Government deliberately or recklessly exceeded the authorized scope of the search warrants by seizing and searching information completely and obviously unrelated to the schemes for which it had provided probable cause.

The two search warrants at issue here were granted to allow the Government to examine emails relating to: (1) CD, Glenda Ponce, COLÓN & PONCE, and VM with respect to the awarding of DOE contracts to COLÓN & PONCE, and (2) ZR, JEJ Institute of Ethics, TF, and PREF with respect to the awarding of a DOE contract related to the TVC program. *See supra* Section II.a.1. The Magistrate approved the warrants with the limitation that only information related to the conduct under investigation would be transmitted to the prosecution team. *See Affidavit* ¶¶ 49–50; *supra* Section II.a.2.⁸

Despite the search warrants’ clear limitation on scope, which was required to satisfy the particularity requirement of the Fourth Amendment, the Government searched Ms. Keleher’s emails for information far beyond the scope of the probable cause and activities described in the search warrants. The Government searched for information regarding Ms. Keleher’s rental and then purchase of an apartment in Cuidadela. The Government searched for information involving

⁸ The Government, despite its own express language to the contrary in the search-warrant applications, may now argue that the search warrant authorized the seizure and search of *all* of Ms. Keleher’s emails. If that were the case (it is not), the search warrants on their face would violate the Fourth Amendment’s particularity and breadth/scope requirements, as the Government’s search warrant affidavits do not even attempt to justify such a sweeping search of Ms. Keleher’s email accounts.

the transfer of land adjacent to the Padre Rufo School to the company that owned Cuidadela. In addition to communications with or involving Glenda Ponce, COLÓN & PONCE, or the other individuals and entities the Government at least argued to the Magistrate it had probable cause were involved in illegal activity, the Government searched emails between Ms. Keleher and Ariel Gutierrez-Rodriguez.⁹

The Government's conduct was deliberate or, at the very least, reckless. The Government was aware of the requirement that only emails relevant to the schemes set out in the affidavit could be seized. It explicitly built a filter process to do just that into its search-warrant applications. Despite acknowledging that a filter was necessary and explicitly representing that one would be employed, however, the Government did not properly screen or limit its search of Ms. Keleher's emails as required by the terms of the search warrants and the probable cause supporting them.

It is difficult to fathom, for example, how an email from someone not in any way connected to the conduct referenced in the search warrant affidavits, purportedly offering Ms. Keleher help securing a personal bank loan, could be viewed by the Government as an email legitimately relating to the “‘who, what, why, when, where, and how’ of the criminal conduct under investigation”—the award of DOE contracts to Colon & Ponce and to the JEJ Institute of Ethics (*See id.* ¶ 49). Yet it is clear that exact email was seized and searched, because it is charged as one of the substantive counts of Wire Fraud in this case:

⁹ The fact the Government has turned over the entirety of the email contents in discovery demonstrates there was effectively no taint team process employed at all. The Government's prosecution team in this team appears to have had unfettered access to the entirety of the email data, not merely to those emails for which the Government had in the unrelated investigation obtained a warrant to search and seize.

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| | | | |
|----|--------------------------------------|-----------------|------------------------------------------------------------------------------------------------------------------------------------|
| 7. | [2] ARIEL GUTIERREZ-RODRIGUEZ | August 20, 2018 | Email from [2] ARIEL GUTIERREZ-RODRIGUEZ to [1] JULIA BEATRICE KELEHER offering assistance in obtaining a bank loan. |
|----|--------------------------------------|-----------------|------------------------------------------------------------------------------------------------------------------------------------|

Emails similarly unrelated to the suspected conduct and individuals identified in the affidavits include emails related to: (a) Ms. Keleher's negotiation of a lease contract for a personal apartment; and (b) a company's request to DOE regarding the proposed transfer of a small piece of property adjacent to a local school. Yet these emails too were seized and searched, and now serve as overt acts or substantive counts in the Indictment:

| | |
|---------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| May 31, 2018 | Email from [1] JULIA BEATRICE KELEHER to employee of Company A confirming whether she would receive \$12,000.00 bonus in connection with her purchase of an apartment in Ciudadela. |
| June 22, 2018 | Email from [2] ARIEL GUTIERREZ-RODRIGUEZ to [1] JULIA BEATRICE KELEHER regarding Company C's request to acquire land of the Padre Rufo School. |
| June 23, 2018 | Email from [1] JULIA BEATRICE KELEHER to [1] JULIA BEATRICE KELEHER forwarding documents pertaining to Company C's request to acquire land from the Padre Rufo School. |
| July 17, 2018 | Email from [2] ARIEL GUTIERREZ-RODRIGUEZ to [1] JULIA BEATRICE KELEHER attaching documents relating to Company C's acquisition of 1,034 square feet of the Padre Rufo School. |
| July 17, 2018 | Email from [1] JULIA BEATRICE KELEHER to PR DOE employee attaching documents relating to Company C's acquisition of 1,034 square feet of the Padre Rufo School. |

These and other similar emails identified in the Indictment are not between Keleher and any of the individuals or entities specified in the search warrants or the body of the probable-cause affidavits. Nor do they pertain to any of the schemes identified in the affidavits, even if such schemes are broadly construed. They are plainly beyond the authorized scope of the two warrants at issue, which only permitted the Government to seize and review information within the scope of the probable cause and activities described in the search warrants.

Such emails never should have been turned over to the prosecution team by the Government's filter team. *Comprehensive Drug Testing, Inc.*, 621 F.3d at 1180; *Chavez*, 2019 WL 5849895, at *9; *Irving*, 347 F. Supp.3d at 624. That they not only were reviewed, but now serve as the predicate for this wholly separate case, illustrates the gravity of the Fourth Amendment violation. The Government engaged in exactly the type of "general, exploratory rummaging in a person's belongings" that the Fourth Amendment is supposed to prevent. *See Coolidge v. New Hampshire*, 403 U.S. 443, 467 (1971); *Andresen v. Maryland*, 427 U.S. 204, 220 (1981). Evidence seized as a result of such a venture, together with any derivative evidence, must be suppressed.

C. The Government's unlawful search and seizure of emails plainly outside the scope of the probable cause and activities described in the search warrants cannot be justified under the plain view doctrine.

"The plain view doctrine constitutes an exception to the warrant requirement of the fourth amendment. Under certain circumstances, evidence discovered in plain view may be lawfully seized even though the police were not originally authorized to search for it." *United States v. Rutkowski*, 877 F.2d 139, 140 (1st Cir. 1989). A law enforcement officer "may seize an object in plain view as long as he has lawfully reached the vantage point from which he sees the object, has probable cause to support his seizure of that object, and has a right of access to the object itself." *United States v. Paneto*, 661 F.3d 709, 713 (1st Cir. 2011).

"In general terms, probable cause exists when police have sufficient reason to believe that they have come across evidence of a crime." *Id.* at 714 (citing *Texas v. Brown*, 460 U.S. 730, 742 (1983)). "In the 'plain view' context, 'probable cause exists when the incriminating character of [the] object is immediately apparent to the police.'" *United States v. Mata-Pena*, 233 F. Supp. 3d 281, 288 (D.P.R. 2017); *Horton v. California*, 496 U.S. 128, 136–37 (1990) (for plain view doctrine to apply, the "incriminating character" of evidence must be "immediately apparent");

Coolidge v. New Hampshire, 403 U.S. 443, 466 (1971) (extension of original search pursuant to plain view doctrine “legitimate” only where “it is immediately apparent to the police that they have evidence before them”). “Put in more conventional terms, the [government’s] discovery of the object [at issue] must so galvanize their knowledge that they can be said, at that very moment or soon thereafter, to have probable cause to believe the object to be contraband or evidence.” *Rutkowski*, 877 F.2d at 141; *United States v. Perrotta*, 289 F.3d 155, 167 (1st Cir. 2002) (“Evidentiary value is ‘immediately apparent’ if there are ‘enough facts for a reasonable person to believe that the items in plain view may be contraband or evidence of a crime.’”). “[T]he government . . . has the burden of establishing entitlement to the exception, which means that it must demonstrate in any given case” that each element of the doctrine has been satisfied. *Rutkowski*, 877 F.2d at 141.

Here, Ms. Keleher does not dispute the Government’s “taint team” was entitled, by the terms of the warrant and under Rule 41, to conduct a preliminary review of her emails to determine what information was within the scope of the search warrants issued, and to then turn over to the prosecution team that subset of her emails. Fed. R. Crim. P. 41(e)(2)(B). This limited authority to separate out relevant and irrelevant information did not, however, permit the Government to seize emails beyond the scope of the authorized warrant, rummage through them looking for evidence of unrelated misconduct, and then use them as the basis for bringing an entirely unrelated set of criminal charges against Ms. Keleher. Rule 41 makes clear that the Government’s review of electronic media must be “consistent with the warrant.” Fed. R. Crim. P. 41. And here, the Government expressly agreed to use a taint team to ensure the prosecution team did not even *access* emails outside the scope of the warrant. Under such circumstances, allowing the taint team to turn the very same emails over to the prosecution team under the auspices of the plain view doctrine would

neuter the Fourth Amendment's particularity requirements in electronic discovery cases and significantly expand the "serious risk that every warrant for electronic information will become, in effect, a general warrant, rendering the Fourth Amendment irrelevant." *United States v. Galpin*, 720 F.3d 436, 447 (2d Cir. 2013); *United States v. Carey*, 172 F.3d 1268 (10th Cir.1999) (suppressing child pornography evidence found on defendant's computer where scope of warrant was limited to suspected drug crimes).

The plain view doctrine need not be expanded beyond recognition. If the Government believed it had a basis to search through Ms. Keleher's emails for information pertaining to the Padre Rufo School or Ms. Keleher's apartment lease, the proper recourse was clear. It could and should have simply submitted a new search warrant application to the court detailing its basis for probable cause, and delineating with particularity what it sought to seize. *See United States v. Burgess*, 576 F.3d 1078, 1092 (10th Cir.2009) (affirming denial of motion to suppress where officer searching computer files for drug evidence "immediately stopped [his review] upon seeing an instance of suspected child pornography and obtained another warrant to search for pornography.").¹⁰

The substantial gap in time between the execution of the two search warrants and the eventual Indictment in this case clearly demonstrates that the Government had ample time to seek a second warrant. And, because the Government already had seized the entirety of Ms. Keleher's

¹⁰ If in searching for evidence related to the Colon & Ponce or JEJ Institute of Ethics contracts, the taint team saw contraband (such as child pornography) in plain view, it would nonetheless have been required to obtain a new warrant before conducting a search of the emails for additional evidence of contraband. As set forth below, that requirement applies with greater force if the taint team, in searching for evidence related to the Colon & Ponce or JEJ Institute of Ethics contracts, saw not contraband in plain view, but rather merely an email related to the Padre Rufo School or Ms. Keleher's apartment lease that it deemed suspicious. The taint team, merely because it saw what it believed might be evidence of an unrelated crime, could not simply redirect its search and start searching for any emails relevant to the Padre Rufo School or Ms. Keleher's apartment lease. Such a search indisputably would have required a new warrant.

mailboxes, there was no risk that relevant information would be lost while a second warrant was sought and, if appropriate, authorized. That the Government chose not to take such an obvious step is deeply concerning, and reflects, at a minimum, the reckless way the Government has investigated this case in complete disregard of Ms. Keleher's rights.

In any event, the Government's reliance on the plain view doctrine here would clearly be misplaced because there is no way the "incriminating character" of the emails at issue was "immediately apparent" to investigators. *Horton*, 496 U.S. at 136. This is not a case where the Government executed a search warrant at the defendant's residence and immediately saw drugs and weapons sitting on the kitchen table. Nor is this a case where the Government searched emails between individuals suspected of committing financial crimes and inadvertently came across a single example of child pornography exchanged between those very same individuals. The emails here have nothing to do with the criminal violations the Government was actually investigating, *or any other obviously criminal conduct*. There is no way, for example, that when an investigator reviewed an email in which Ms. Keleher was negotiating the purchase of an apartment, the investigator immediately had "probable cause to believe [it] to be contraband or evidence." *Rustkowski*, 877 F.2d at 141.¹¹ As a result, it is clear the Government's otherwise unlawful search and seizure of the emails at issue could not be salvaged under the plain view doctrine and that those emails must instead be suppressed.

III. Alternatively, if this Motion is Not Granted on the Papers, the Court Should Order an Evidentiary Hearing.

¹¹ Moreover, even if an investigator immediately would have had probable cause to believe such an email was contraband, this would only allow the Government to seize that single email, not to continue to search for additional email related to Ms. Keleher's apartment purchase without obtaining a warrant to do so.

This Motion should be granted on the papers because it cannot reasonably be disputed that the email evidence related to the charge brought in the Indictment has nothing to do with the criminal activity the Magistrate Judge authorized investigators to search for and seize. Personal emails between Ms. Keleher and others pertaining to her purchase of an apartment bear no relation to any of the suspected criminal schemes identified in the affidavits of probable cause. Likewise, emails concerning the requested transfer of land adjacent to the Padre Rufo School have nothing to do with the allegedly unlawful award of contracts by DOE to Colon and Ponce or the JEJ Institute of Ethics. Moreover, none of the emails upon which the Government seemingly intends to rely in this case involve Glenda Ponce, CD, MEC, VM, MC, COLÓN & PONCE, or WB, who are the specific individuals and entities identified by the Government in the search warrant affidavits as potentially having responsive information concerning the suspected crimes under investigation.

Nevertheless, if the Government claims that these emails were somehow properly discovered pursuant to the search warrants or otherwise, or the Court finds that this Motion cannot be granted on the papers for any other reason, an evidentiary hearing should be ordered. The Court has wide discretion to hold an evidentiary hearing on this Motion. *See United States v. Brown*, 621 F.3d 48, 57 (1st Cir. 2010) (“[T]he decision of whether to conduct an evidentiary hearing [on a motion to suppress] is left to the sound discretion of the district court.”). To obtain a hearing, “a defendant bears the burden of “mak[ing] a sufficient threshold showing that material facts are in doubt or dispute, and that such facts cannot reliably be resolved on a paper record.”” *United States v. Agosto-Pacheco*, Criminal No. 18-082 (FAB), 2019 WL 4566956 at *6 (D.P.R. Sept. 20, 2019) (Besosa, J.) (quoting *United States v. Cintrón*, 724 F.3d 32, 36 (1st Cir. 2013)).

Here, it is clear from the record that the Government applied for search warrants and obtained authorization only to look for and seize evidence of two specific schemes for which they

arguably had probable cause: alleged illegality in connection with the awarding of DOE contracts to COLÓN & PONCE and alleged illegality in connection with the awarding of a DOE contract to the JEJ Institute of Ethics related to the TVC program. Despite representing that it would filter the email returns to only seize evidence relevant to those schemes, the Government appears to have seized and searched the entirety of Ms. Keleher's email boxes. Almost a year and a half after the seizure, the Government indicted Ms. Keleher for an alleged bribery scheme connected with an apartment in San Juan, identifying emails from that seizure in the Indictment and producing the seized email boxes in their entirety in discovery.

A number of material facts are not apparent from the record as it currently exists, however, including: (1) the manner in which the Government carried out its filter review, assuming such a review was conducted at all; (2) how that filter process possibly could have failed to remove the emails at issue from the scope of materials turned over to the Government's investigative team; (3) the exact time and manner in which emails pertaining to the alleged bribery scheme were turned over to the investigative team, including whether this happened as part of the initial filter process or through later, targeted searches unsupported by a new search warrant; and (4) why the Government chose to retain and utilize for purposes of the instant case such emails, which clearly have nothing whatsoever to do with the focus of the previous investigation, or the probable cause provided to the Court for the two warrants in question.

If the Court determines that the Motion cannot be granted on the papers, an evidentiary hearing should be granted because material questions remain in doubt or, depending on the Government's response, in dispute.

CONCLUSION

The Government asked for search warrants to look for and seize evidence regarding whether Ms. Keleher and others were involved in a scheme to divert a public contract to COLÓN & PONCE and whether Ms. Keleher and others were involved in a scheme to divert a public contract to the JEJ Institute of Ethics related to the TVC program. Consistent with the Fourth Amendment, the Government assured the Magistrate Judge that it would employ a taint team to screen the email boxes so that only information responsive to the probable cause described in the search warrant application would be given to the prosecuting team. And that is precisely what the Magistrate Judge authorized the Government to do.

Despite what it told the Court, the Government seized the entirety of the email boxes for the specified time frame and exceeded the authority the Magistrate Judge granted it by having the taint team search them for information about completely unrelated individuals and transactions, seizing those emails, and providing them to the prosecution team or by having the prosecution team conduct the unauthorized and unlawful search and seizure in the first instance. What resulted was the Indictment in this case, regarding Ms. Keleher's acquisition of a personal apartment in the Cuidadela complex and the wholly unrelated transfer of land adjacent to the Padre Rufo School to the company that owned Cuidadela. The events and participants in this Indictment are completely unrelated to the schemes set forth in the search-warrant applications.

The authority granted to the Government by the Magistrate Judge was bounded by the Government's promise to search only for evidence of Scheme A and Scheme B and turn over only such emails to the prosecution team. When the Government deliberately or recklessly decided to exceed the scope of that authorization, searching for evidence of a Scheme C, without applying for a new warrant authorizing it to search for and seize evidence of Scheme C, it violated the

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Fourth Amendment. The resulting evidence, and evidence derived from that evidence, must be suppressed.

WHEREFORE, the defendant, Julia Beatrice Keleher, respectfully requests that the Court GRANT this motion.

Respectfully submitted on this 1st day of July, 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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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

IN RE:

SEALED

NO. 18- 1506 (M)

MOTION TO SEAL

TO THE HONORABLE COURT:

COMES NOW, the United States of America, by and through its undersigned attorneys and respectfully states and prays as follows:

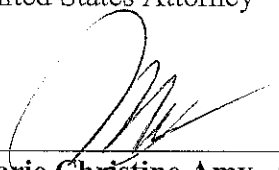
1. The accompanying envelope contains a pleading that is self-explanatory. The United States of America respectfully requests that the pleading be accepted for filing, kept secret, and remain under seal until further order from this Court.

WHEREFORE, the Government respectfully requests the instant motion be granted.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico this 26th day of September, 2018.

ROSA EMILIA RODRIGUEZ-VELEZ
United States Attorney


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Granted.  9/28/18

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

IN RE: SEARCH WARRANTS

Case No. 18-1506(M)

Filed Under Seal

APPLICATION FOR ORDER COMMANDING GOOGLE, INC. NOT TO NOTIFY ANY
PERSON OF THE EXISTENCE OF A WARRANT

The United States of America requests that the Court order Google Inc. not to notify any person including the subscribers and customers of the account associated with: JULIA [REDACTED]@GMAIL.COM; and JBK [REDACTED]@GMAIL.COM; listed in the attached Search Warrants, Cases No. 18-1506(M), and 18-1507(M), of the existence of the attached Search Warrants until further order of the Court.

Google Inc. is a provider of an electronic communication service, as defined in 18 U.S.C. § 2510(15), and/or a remote computer service, as defined in 18 U.S.C. § 2711(2). Pursuant to 18 U.S.C. § 2703, the United States obtained the attached Search Warrants, which requires Google Inc. to disclose certain records and information to the United States. This Court has authority under 18 U.S.C. § 2705(b) to issue "an order commanding a provider of electronic communications service or remote computing service to whom a warrant, subpoena, or court order is directed, for such period as the court deems appropriate, not to notify any other person of the existence of the warrant, subpoena, or court order." *Id.*

In this case, such an order would be appropriate because the attached Search Warrants relates to an ongoing criminal investigation that is neither public nor known to all of the targets of the investigation, and its disclosure may alert the targets to the ongoing investigation. Accordingly, there is reason to believe that notification of the existence of the attached Search Warrants will seriously (a) jeopardize the investigation, (b) give targets an opportunity to flee

from prosecution and destroy or tamper with evidence, and (c) change patterns of behavior in order to conceal their location or intimidate potential witnesses. *See* 18 U.S.C. § 2705(b). Some of the evidence in this investigation is stored electronically and is within the custody and control of Google, Inc. If alerted to the existence of the attached Search Warrant, the subjects under investigation could destroy that evidence, as well as information saved to their personal computers.


WHEREFORE, the United States respectfully requests that the Court grant the attached Order directing Google, Inc. not to disclose the existence or content of the attached Search Warrants for ninety (90) days, except that Google, Inc. may disclose the attached Search Warrants to an attorney for Google, Inc. for the purpose of receiving legal advice.

The United States further requests that the Court order that this application and any resulting order be sealed until further order of the Court. As explained above, these documents discuss an ongoing criminal investigation that is neither public nor known to all of the targets of the investigation. Accordingly, there is good cause to seal these documents because their premature disclosure may seriously jeopardize that investigation.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, on 26th day of September, 2018.

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UNITED STATES ATTORNEY



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

IN RE: SEARCH WARRANTS

Case No. 18-1506(M)

Filed Under Seal

ORDER

The United States of America has submitted an application pursuant to Title 18, United States Code, Section 2705(b), requesting that the Court issue an order commanding Google Inc., an electronic communication service provider and/or a remote computing service, not to notify any person including the subscribers and customers of the accounts listed in the Search Warrants, to wit, JULIA [REDACTED]@GMAIL.COM; and JBK [REDACTED]@GMAIL.COM; of the existence of the attached Search Warrants until the **27th of December , 2018**.

The Court determines that there is reason to believe that notification of the existence of the attached Search Warrants, Cases No. 18-1506(M), and 18-1507(M), will seriously jeopardize the investigation or unduly delay a trial, including by giving targets an opportunity to flee or continue flight from prosecution, destroy or tamper with evidence, change patterns of behavior, or intimidate potential witnesses. See Title 18, United States Code, Section 2705(b).

IT IS THEREFORE ORDERED, under Title 18, United States Code, Section 2705(b) that Google Inc. shall not disclose the existence of the attached Search Warrants or this Order of the Court, to the listed subscribers or to any other person, unless and until otherwise authorized to do so by the Court, except that Google Inc. may disclose the attached Search Warrants to an attorney for Google Inc. for the purpose of receiving legal advice.

IT IS FURTHER ORDERED that the application and this Order are sealed until otherwise ordered by the Court.

9/28/18
Date


Hon. Marcos E. López
United States Magistrate Judge

UNITED STATES DISTRICT COURT

for the
District of Puerto RicoIn the Matter of the Search of
(Briefly describe the property to be searched
or identify the person by name and address)JBK [REDACTED]@GMAIL.COM that is stored at premises controlled by
Google, a company that accepts service of legal process at 1600
Amphitheatre Parkway, Mountain View, CA 94043

Case No. 18-1500(M)

SEARCH AND SEIZURE WARRANT

To: Any authorized law enforcement officer

An application by a federal law enforcement officer or an attorney for the government requests the search
of the following person or property located in the JUDICIAL District of PUERTO RICO
(identify the person or describe the property to be searched and give its location):

See Attachment A of the Affidavit in Support of an Application for a Search Warrant, incorporated by reference herein.

The person or property to be searched, described above, is believed to conceal (identify the person or describe the
property to be seized):

See Attachment B of the Affidavit in Support of an Application for a Search Warrant, incorporated by reference herein.

I find that the affidavit(s), or any recorded testimony, establish probable cause to search and seize the person or
property.

YOU ARE COMMANDED to execute this warrant on or before

10/12/18

(not to exceed 14 days)

☐ in the daytime 6:00 a.m. to 10 p.m.☒ at any time in the day or night as I find reasonable cause has been
established.Unless delayed notice is authorized below, you must give a copy of the warrant and a receipt for the property
taken to the person from whom, or from whose premises, the property was taken, or leave the copy and receipt at the
place where the property was taken.The officer executing this warrant, or an officer present during the execution of the warrant, must prepare an
inventory as required by law and promptly return this warrant and inventory to United States Magistrate Judge
on Duty

(name)

☒ I find that immediate notification may have an adverse result listed in 18 U.S.C. § 2705 (except for delay
of trial), and authorize the officer executing this warrant to delay notice to the person who, or whose property, will be
searched or seized (check the appropriate box) ☐ for _____ days (not to exceed 30).☒ until, the facts justifying, the later specific date of 12/27/18.

Date and time issued: 9/28/18 at 10:35 am.

Judge's signature

City and state: SAN JUAN, PUERTO RICO

US MAGISTRATE JUDGE MARCOS E. LÓPEZ

Printed name and title

ATTACHMENT A

Property to Be Searched

This warrant applies to information associated with JBK [REDACTED]@GMAIL.COM that is stored at premises controlled by Google, a company that accepts service of legal process at 1600 Amphitheatre Parkway, Mountain View, CA 94043.

ATTACHMENT B

Particular Things to be Seized

I. Information to be disclosed by Google (the “Provider”)

To the extent that the information described in Attachment A is within the possession, custody, or control of the Provider, including any emails, records, files, logs, or information that has been deleted but is still available to the Provider, or has been preserved pursuant to a request made under 18 U.S.C. § 2703(f) on September 11, 2018, the Provider is required to disclose the following information to the government for each account or identifier listed in Attachment A:

a. The contents of all emails associated with the account, including stored or preserved copies of emails sent to and from the account, draft emails, the source and destination addresses associated with each email, the date and time at which each email was sent, and the size and length of each email;

b. All records or other information regarding the identification of the account, to include full name, physical address, telephone numbers and other identifiers, records of session times and durations, the date on which the account was created, the length of service, the IP address used to register the account, log-in IP addresses associated with session times and dates, account status, alternative email addresses provided during registration, methods of connecting, log files, and means and source of payment (including any credit or bank account number);

c. The types of service utilized;

d. All records or other information stored at any time by an individual using the account, including address books, contact and buddy lists, calendar data, pictures, and files;

II. All records pertaining to communications between the Provider and any person regarding the account, including contacts with support services and records of actions

taken.

III. Information to be seized by the government

All information described above in Section I and II that constitutes fruits, contraband, evidence and instrumentalities of violations of Title 18, United States Code, Sections 666, 371, 1341, 1343, and 1346, those violations involving Julia B. KELEHER, Glenda PONCE, C [REDACTED], D [REDACTED], M [REDACTED] E. C [REDACTED], V [REDACTED] M [REDACTED], M [REDACTED] C [REDACTED], COLON & PONCE, INC. and W [REDACTED] B [REDACTED], as well as other individuals/corporations and occurring from **July 1, 2016 to the present**, including, for each account or identifier listed on Attachment A, information pertaining to the following matters:

(a) The complete contents of Electronic Mail addresses/accounts:

JBK [REDACTED]@GMAIL.COM including without limitation all opened and unopened electronic mail messages sent to, from or through such accounts from July 1, 2016, or the date on which the particular account was opened, whichever is later, through the present, all header information associated with any such electronic mail messages, and all files stored in such accounts.

(b) All business records in the possession of Google that pertain to the subscribers and the accounts associated with the following Electronic Mail addresses/accounts:

JBK [REDACTED]@GMAIL.COM, including but not limited to records showing the subscribers' full name, all screen names associated with these subscribers or these subscribers' accounts, all account names associated with these subscribers, all methods of payment, phone numbers, as well as all residential, business, mailing and electronic mail addresses, detailed billing records, types and lengths of service, and any other identifying information.

UNITED STATES DISTRICT COURT

for the
District of Puerto Rico

In the Matter of the Search of

*(Briefly describe the property to be searched
or identify the person by name and address)*JBK [REDACTED]@GMAIL.COM that is stored at premises controlled by
Google, a company that accepts service of legal process at 1600
Amphitheatre Parkway, Mountain View, CA 94043

Case No. 18- 1506(M)

APPLICATION FOR A SEARCH WARRANT

I, a federal law enforcement officer or an attorney for the government, request a search warrant and state under penalty of perjury that I have reason to believe that on the following person or property *(identify the person or describe the property to be searched and give its location)*:

See Attachment A of the Affidavit in Support of an Application for a Search Warrant, incorporated by reference herein.
located in the _____ District of _____ Puerto Rico _____, there is now concealed *(identify the person or describe the property to be seized)*:

See Attachment B of the Affidavit in Support of an Application for a Search Warrant, incorporated by reference herein.

The basis for the search under Fed. R. Crim. P. 41(c) is *(check one or more)*:

- ☒ evidence of a crime;
☒ contraband, fruits of crime, or other items illegally possessed;
☒ property designed for use, intended for use, or used in committing a crime;
☐ a person to be arrested or a person who is unlawfully restrained.

The search is related to a violation of:

Code Section
18 USC §§ 666, 371, 1341,
1343, 1346 and 1956

Offense Description
Theft of bribery concerning programs receiving federal funds; conspiracy to
commit offense or to defraud; mail fraud; wire fraud; honest services; and money
laundering

The application is based on these facts:
See Attached Affidavit in Support of an Application for a Search Warrant, incorporated by referenced herein.

- ☒ Continued on the attached sheet.
☒ Delayed notice of _____ days (give exact ending date if more than 30 days: _____) is requested
under 18 U.S.C. § 3103a, the basis of which is set forth on the attached sheet.

Renewed by AUSA Name Christine Arroyo

Applicant's signature

Robert A. Wolfe, S.A., U.S.D.E.-O.I.G.

Printed name and title

Sworn to before me and signed in my presence.

Date:

9/28/18

City and state: San Juan, Puerto Rico

Judge's signature

Magistrate Judge Marcos E. López

Printed name and title

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

IN THE MATTER OF THE SEARCH OF
INFORMATION ASSOCIATED WITH
JBK [REDACTED]@GMAIL.COM THAT IS
STORED AT PREMISES CONTROLLED BY
GOOGLE; 1600 AMPHITHEATRE
PARKWAY; MOUNTAIN VIEW, CA 94043

Case No. 18-1506(F)

Filed Under Seal

**AFFIDAVIT IN SUPPORT OF
AN APPLICATION FOR A SEARCH WARRANT**

I, ROBERT A. WOLFE, being first duly sworn, hereby depose and state as follows:

INTRODUCTION AND AGENT BACKGROUND

1. I make this affidavit in support of an application for a search warrant for information associated with a certain account that is stored at premises controlled by GOOGLE, an email provider at 1600 Amphitheatre Parkway, Mountain View, CA 94043. The information to be searched is described in the following paragraphs and in Attachment A. This affidavit is made in support of an application for a search warrant under 18 U.S.C. §§ 2703(a), 2703(b)(1)(A) and 2703(c)(1)(A) to require Google to disclose to the government copies of the information (including the content of communications) further described in Section I of Attachment B. Upon receipt of the information described in Section I of Attachment B, government-authorized persons will review that information to locate the items described in Section II of Attachment B.

2. I am a Special Agent ROBERT A. WOLFE with the U.S. DEPARTMENT OF EDUCATION (USDOE), OFFICE OF INSPECTOR GENERAL (OIG), and have been assigned to the San Juan Office since February of 2003. During this period, I have conducted numerous criminal investigations related to criminal offenses involving federal educational grant programs, such as, wire fraud, education fraud, false statements, embezzlement, and money laundering. I

am a graduate of the Federal Law Enforcement Training Center at Glynco, Georgia and have received training in the execution of federal search warrants.

3. This affidavit is intended to show merely that there is sufficient probable cause for the requested warrant and does not set forth all of my knowledge about this matter.

4. Based on my training and experience and the facts as set forth in this affidavit, there is probable cause to believe that violations of Title 18, United States Code, Sections 666, 371, 1341, 1343 and 1346, have been committed by Julia B. KELEHER, Glenda PONCE, C [REDACTED] D [REDACTED], M [REDACTED] C [REDACTED], V [REDACTED] M [REDACTED], M [REDACTED] [REDACTED], COLON & PONCE, INC., and W [REDACTED] B [REDACTED], as well as other individuals/corporations. There is also probable cause to search the information described in Attachment A for evidence, instrumentalities, contraband or fruits of these crimes further described in Attachment B.

JURISDICTION

5. This Court has jurisdiction to issue the requested warrant because it is “a court of competent jurisdiction” as defined by 18 U.S.C. § 2711. 18 U.S.C. §§ 2703(a), (b)(1)(A) & (c)(1)(A). Specifically, the Court is “a district court of the United States . . . that – has jurisdiction over the offense being investigated.” 18 U.S.C. § 2711(3)(A)(i).

BACKGROUND

1. The Puerto Rico Department of Education (PRDE) is responsible for the planning and administration of all public elementary, secondary and some post-secondary education throughout Puerto Rico.

2. The PRDE administers various federal financial assistance programs funded by the United States Department of Education (USDOE) intended for students in public and private schools. The Elementary and Secondary Education Act of 1965 (ESEA), as amended by the

Improving America's Schools Act (IASA) (P.L. 103-382), provided for a comprehensive overhaul of programs providing more than \$10 billion a year of federal support for education, and restructured how these programs provide services.

3. The PRDE may award contracts to service providers in order to carry out its mission following federal and state policies and regulations.

4. The "*GUIA PARA LA SELECCION DE SERVICIOS PROFESIONALES QUE SON SUFRAGADOS CON FONDOS FEDERALES*" (translated to "Guidance for the Selection of Professional Services to be Funded with Federal Funds") approved on January 26, 2007 by PRDE Secretary Rafael Aragunde-Torres establishes the requirements to award professional service contracts to be funded with federal funds. Professional services contracts must meet the following requirements, including but not limited to:

- a. For contracts over \$6,000 up to \$50,000, a minimum of three quotes (proposals) are required. Price quotes must be requested either verbally or in writing.
- b. For contracts over \$50,000 up to \$100,000, a minimum of three quotes (proposals) are required. Price quotes must be requested in writing.
- c. For contracts over \$100,000, a formal Request for Proposals (RFP) process must be followed.

For all requirement levels, PRDE must document the selection process and the reasons for selecting the vendor.

5. The Adjudication of Funds and Contracts Unit within the PRDE Assistant Secretariat of Federal Affairs is in charge of processing requests submitted within PRDE units for professional services contracts. It also evaluates proposals and quotes from prospective contractors and makes recommendations to assist in the contractor selection process.

6. On January 12, 2018, I spoke with **CW 1**, who provided me with information and, later, documentation about possible fraudulent activity with federal educational funds. The **CW 1**, a PRDE employee with many years of experience in the professional services contracting process, explained how C&P was awarded a contract from PRDE following an irregular competitive bidding/proposal process.

7. C&P is a company registered at the Puerto Rico Department of State since February 24, 2006 (originally Colon & Suarez) as a domestic for-profit corporation. The nature of the company is to engage in any licit business activity. **O [REDACTED] C [REDACTED]** and Mayra S. Ponce are listed as corporate principals.

8. Glenda Ponce is a PRDE contractor that works at the PRDE Secretary's Office. Glenda Ponce and Mayra S. Ponce are sisters.

9. Julia B. Keleher is the current Secretary of the PRDE and was appointed in January of 2017. **C [REDACTED] D [REDACTED]** is currently a Special Assistant assigned to the PRDE Secretary's Office and works closely with Secretary Keleher. **L [REDACTED] E. C [REDACTED]** is the Director of the PRDE Assistant Secretariat of Federal Affairs (PRDE-ASFA). **B [REDACTED] E [REDACTED]** is the Supervisor of the Adjudication of Funds and Contracts Unit within the PRDE-ASFA.

10. On January 23, 2018, I spoke with **CW 2**, who provided additional information related to C&P contracting process. **CW 2** stated that Secretary Keleher told him/her that she wanted to contract C&P with federal funds to assist her with some duties/projects. **CW 2** advised Secretary Keleher that PRDE regulations for contracts funded with federal funds required a competitive bidding process. Secretary Keleher indicated more than once that regardless of the policy in place she wanted to contract C&P. **CW 2** also provided copies of

emails containing relevant information on how Glenda Ponce and C█████ D█████ initially approached Secretary Keleher about contracting C&P.

11. The investigation has revealed that in or about May 2017, PRDE-ASFA Director L█████ E. C█████ completed form PSF-1 (Request for Professional Services) requesting the services of a company that could provide technical assistance related to the management of federal funded projects. The PSF-1 form is required to initiate the process for professional services contracts to be funded with federal funds. The PSF-1 was certified by Secretary Keleher, who then submitted it to the Adjudication of Funds and Contracts Unit for processing.

12. The Adjudication of Funds and Contracts Unit evaluating official sent petitions for quotes/proposals via email to seven different vendors, including C&P. CW 1 informed that either Ms. C█████ or Ms. E█████ suggested C&P as one of the companies to be sent a request for a quote (proposal). The evaluating official also sent petitions for quotes (proposals) to other companies which had prior experience in providing education-type services.

13. CW 1 informed that shortly after the emails were sent to the different vendors, PRDE Secretary's Office employee Glenda Ponce approached him/her as the evaluating official saying that C&P had already submitted a proposal (quote) to the PRDE and that Secretary Keleher wanted to contract C&P. The evaluating official was disturbed by Glenda Ponce's irregular approach and comments, which gave him/her reason to believe that the evaluation and selection process had already been adjudicated.

14. The evaluating official received quotes/proposals from five companies, including C&P. The evaluating official reviewed all proposals and issued a recommendation for the selection of all companies except C&P, because the corporate principals had no experience in education and/or government services, and all other companies had vast experience, particularly

in education. C&P was the lowest bidder but this was only one of the criteria for the recommendation and selection process.

15. A few days later, Ms. E [REDACTED] informed the evaluating official that C&P had been selected to provide the services. Ms. E [REDACTED] also handed to the evaluating official an explanatory memorandum for his/her signature recommending the selection of C&P. The evaluating official refused to sign the memorandum telling Ms. E [REDACTED] that C&P was not within the recommended companies.

16. On June 8, 2017, the PRDE awarded services contract number 2017-AF0220 to C&P for \$43,550, which expired in December of 2017.

17. Further, in relation to C&P, CW 2 alleged that in October 2017 Secretary Keleher approved an amendment to C&P's services contract in order to increase its award amount to mainly allow Ms. M [REDACTED] E. C [REDACTED], who had been acting as a special assistant to Secretary Keleher, to receive compensation/salary. CW 2 advised that Ms. M [REDACTED] E. C [REDACTED] had been working closely with Secretary Keleher at the PRDE Secretary's Office. CW 2 informed that C [REDACTED] identified herself as Special Assistant to the Secretary when in reality she was not a PRDE employee before she became employed by C&P.

18. The investigation has revealed that C [REDACTED] had been the campaign director for [REDACTED] candidate M [REDACTED] C [REDACTED] in the 2016 Puerto Rico general elections. In June 2017, Mr. C [REDACTED] sent an email to Secretary Keleher with C [REDACTED] curriculum vitae. Per CW 2, Mr. C [REDACTED] has personally met in many occasions with Secretary Keleher at her offices since becoming the PRDE Secretary in January 2017.

19. The investigation revealed that C [REDACTED], although employed by C&P since October 2017, had been working at Secretary Keleher's Office since at least August 2017 as a

special assistant to Secretary Keleher and was not receiving compensation for her work. The investigation has revealed that, before C[REDACTED] became employed by C&P, Secretary Keleher sought to have C[REDACTED] formally appointed as one of her Special Assistants but the Puerto Rico Governor's Office did not approve the appointment.

20. The investigation has revealed that on October 25, 2017, the C&P services contract was amended (2017-AF0220-A) and the award amount increased from \$43,550 to \$95,000. An analysis of invoices submitted by C&P to the PRDE from June to November 2017 showed [REDACTED] as part of the C&P employees starting in October 2017. C[REDACTED] did not appear as C&P employee in the invoices prior to October 2017. C[REDACTED] received payments from C&P for the months of October, November and December of 2017.

21. On January 26, 2018 and May 17, 2018, respectively, federal search warrants were issued by a magistrate judge in the District of Puerto Rico to obtain electronic communications associated with several individuals' email accounts as they related to the services contract awarded to C&P, including but not limited to, email accounts [REDACTED]@GMAIL.COM, [REDACTED]@GMAIL.COM and [REDACTED]DE.JBK@GMAIL.COM. A review of the email accounts has revealed that Ms. V[REDACTED] M[REDACTED]-G[REDACTED] (M[REDACTED]) participated in the contracting process by reviewing C&P's proposal and making recommendations. M[REDACTED] specifically provided recommendations on how to revise the C&P proposal by, among other things, adding and/or boosting Glenda Ponce's experience in education matters to the C&P proposal and recommending the non-disclosure of Glenda Ponce's name in the proposal. M[REDACTED] also reviewed the proposal to amend and increase the award amount for the C&P services contract in October 2017.

22. M[REDACTED] is a former PRDE employee, current President of KELEHER & ASSOCIATES, LLC, and owner/president of companies M[REDACTED] CONSULTING, LLC (M[REDACTED] CONSULTING) and S[REDACTED] & C[REDACTED] CONSULTING, LLC (S[REDACTED]).

23. M[REDACTED] has been a long-time business associate of Secretary Keleher at KELEHER & ASSOCIATES, LLC, a consulting company based in Washington, D.C. with an office registered in Puerto Rico and owned by Secretary Keleher up and until her appointment as Secretary of the PRDE in January of 2017. M[REDACTED] was previously a senior consultant at KELEHER & ASSOCIATES, LLC.

24. The investigation has revealed that in or about January 2017, M[REDACTED] entered into a sale agreement to acquire KELEHER & ASSOCIATES, LLC. Documents and checks obtained seem to evidence that M[REDACTED] purchased KELEHER & ASSOCIATES, LLC from Secretary Keleher for \$1,000 in shares. Currently, M[REDACTED] is the sole authorized signatory for KELEHER & ASSOCIATES, LLC's bank account. The review of M[REDACTED] email account [REDACTED]@GMAIL.COM revealed that Secretary Keleher used the email account JULIA [REDACTED]@GMAIL.COM to exchange emails with M[REDACTED] about the sale transaction of KELEHER & ASSOCIATES, LLC.

25. The investigation has revealed that M[REDACTED] CONSULTING and C&P had a long-time business relationship. From November 2013 to May 2017, M[REDACTED] CONSULTING paid C&P approximately \$154,000 for services related to Puerto Rico Government contracts awarded to M[REDACTED] CONSULTING. Since January 2017, no Puerto Rico Government contracts have been awarded to M[REDACTED] CONSULTING.

26. The investigation has further revealed that from August to November 2017, C&P issued payments to M ██████████ CONSULTING. This is the period after PRDE awarded the contract to C&P.

27. Upon review of bank records, after M ██████████ incorporated S ██████████ in July 2017, M ██████████ issued checks from KELEHER & ASSOCIATES, LLC to S ██████████ amounting to approximately \$111,000. S ██████████ bank account did not show deposits from any other source up until May of 2018.

28. The review of the email accounts pursuant to the January and May 2018 search warrants also revealed that M ██████████ is somehow involved in the PRDE's operations despite not having a personal and/or corporate contract with the PRDE. M ██████████ exchanged emails with Secretary Keleher and Glenda Ponce about several PRDE matters not related to C&P, such as the creation of PRDE personnel positions and the development of academic projects by the PRDE.

29. Additionally, my investigation and review of the January and May 2018 search warrant emails has also revealed information about possible criminal violations concerning the possible fraudulent award of other contracts by the PRDE and other government entities where some of the aforementioned individuals as well as other individuals and corporations to be subsequently mentioned appear to be involved.

30. In or about March 2018, there was a public controversy in Puerto Rico about a \$16 million contract awarded by PRDE for a project known as "T ██████████ V ██████████ C ██████████". Apparently, PRDE awarded the contract to a California based company called J ██████████ E ██████████ J ██████████ INSTITUTE OF ETHICS that was associated in Puerto Rico with the company C ██████████ M ██████████, a long time PRDE contractor. The allegations included that

apparently Z [REDACTED] R [REDACTED], Executive Director of the Puerto Rico Government Ethics Office, referred this vendor to Secretary Keleher, which would have potentially been inappropriate and unethical.

31. The review of the search warrant emails revealed that on February 18, 2017, R [REDACTED] scheduled a meeting with Secretary Keleher, J [REDACTED] D [REDACTED] from C [REDACTED] M [REDACTED], and other individuals related to "T [REDACTED] V [REDACTED] C [REDACTED]". On March 18, 2017, R [REDACTED] sent an email to Secretary Keleher attaching the "T [REDACTED] V [REDACTED] C [REDACTED]" proposal.

32. On December 22, 2017, PRDE awarded a contract to J [REDACTED] [REDACTED] E [REDACTED] J [REDACTED] INSTITUTE OF ETHICS in the amount of \$16,926,280 for the "T [REDACTED] V [REDACTED] C [REDACTED]" project. It is uncertain whether a competitive process was followed to award the contract as required at PRDE for federally funded contracts.

33. In or about September/October 2017, Secretary Keleher proposed the idea of creating a foundation to receive donations to help rebuild the public education system in Puerto Rico after the passing of hurricane Maria on September 20, 2017.

34. The PR E [REDACTED] F [REDACTED] [REDACTED] was registered in the Puerto Rico Department of State on November 15, 2017 as a non-profit, apolitical organization that supports the strategic innovation and transformation of the public education system in Puerto Rico. The foundation later amended its articles of incorporation to state that the foundation was organized exclusively for charitable, religious, educational, and scientific purposes, including, for such purposes, the making of distribution to organizations that qualify as exempt organizations described under Section 501(c)(3) of the Internal Revenue Code, or corresponding section of any future federal tax code. This foundation receives donations to further its mission. M [REDACTED]

C[REDACTED] is one of three incorporators. Secretary Keleher is not a member of the foundation's board of directors.

35. In or about October/November 2017, Secretary Keleher engaged in communications with T[REDACTED] F[REDACTED] to request a donation for the PR E[REDACTED] F[REDACTED]. T[REDACTED] F[REDACTED] is a Christian Science non-profit organization based in New Jersey, US. W[REDACTED] B[REDACTED], also known as B[REDACTED] B[REDACTED], was the contact person with Secretary Keleher at T[REDACTED] F[REDACTED].

36. In or about December 2017, Secretary Keleher contacted R[REDACTED] via email to consult whether or not there could be an ethical problem if a foundation in Puerto Rico makes a donation to the PUERTO RICO FISCAL AGENCY AND FINANCIAL ADVISORY AUTHORITY (FAFAA) to fund her contract for five years. Secretary Keleher explained to R[REDACTED] that there was a foundation called T[REDACTED] F[REDACTED] that donated funds to the PR E[REDACTED] F[REDACTED] and that one of the approved expenses for those funds was to cover Secretary Keleher's salary/contract for five years. Secretary Keleher indicated that T[REDACTED] F[REDACTED] wanted to remain anonymous.

37. FAFAA had entered into a contract with Secretary Keleher for the payment of \$250,000 for a year as PRDE SECRETARY and FAFAA government restructure officer for education on July 21, 2017.

38. The investigation has revealed that T[REDACTED] F[REDACTED] might have approved a \$15,000,000 donation to the PR E[REDACTED] F[REDACTED] to be disbursed over five years. Initially, \$3,000,000 would be disbursed and, subsequently, \$3,000,000 annually. The donation appears to be intended to fund the salaries of the top officials to be hired in the 7 independent education regions that will be created at PRDE by Secretary Keleher.

39. On January 26, 2018, R [REDACTED] sent a letter to Secretary Keleher indicating there were no ethical issues with the proposed donation transaction to fund her contract with FAFAA.

40. The review of email accounts [REDACTED]@GMAIL.COM and [REDACTED]DE.JBK@GMAIL.COM revealed that Secretary Keleher used either email accounts JBK [REDACTED]@GMAIL.COM and/or [REDACTED]DE.JBK@GMAIL.COM to communicate with the members of the PR E [REDACTED] F [REDACTED] board of directors regarding the T [REDACTED] F [REDACTED] donation. Secretary Keleher also used email account JBK [REDACTED]@GMAIL.COM and/or [REDACTED]DE.JBK@GMAIL.COM to consult with R [REDACTED] about the T [REDACTED] F [REDACTED] donation to fund her contract.

41. For all the above, I have probable cause to believe that Julia B. KELEHER, C [REDACTED] D [REDACTED], Glenda PONCE, Mayra S. PONCE, COLON & PONCE, INC. and V [REDACTED] M [REDACTED], and other persons or entities, some of which are mentioned herein, devised a fraudulent scheme circumventing the PRDE rules and regulations to illegally award a contract to C&P and later amend and increase the C&P contract amount for the sole purpose of benefiting C [REDACTED] after her position as an PRDE employee was not approved. Additionally, I have probable cause to believe that Secretary Keleher, R [REDACTED], J [REDACTED] [REDACTED] E [REDACTED] J [REDACTED] INSTITUTE OF ETHICS, T [REDACTED] F [REDACTED], PR E [REDACTED] F [REDACTED] and other individuals and/or entities might have been involved in a fraudulent scheme to illegally award J [REDACTED] A [REDACTED] E [REDACTED] J [REDACTED] INSTITUTE OF ETHICS the contract in the PRDE and to donate funds to PR E [REDACTED] F [REDACTED] to pay for Secretary Keleher's contract with FAFAA. These actions may constitute violations under Title 18, United States Code, Sections 666, 371, 1341, 1343, 1346 and 1956 (theft or bribery

concerning programs receiving federal funds, conspiracy, mail fraud, wire fraud and money laundering, respectively).

42. Thus far, the investigation has revealed that Secretary Keleher used private email accounts JULIA [REDACTED]@GMAIL.COM and JBK [REDACTED]@GMAIL.COM to discuss the above-mentioned potential fraudulent schemes. The review of the January and May 2018 search warrant emails also revealed that Secretary KELEHER used private email accounts JULIA [REDACTED]@GMAIL.COM and JBK [REDACTED]@GMAIL.COM for official communications as PRDE Secretary. Based on my training and experience, Secretary KELEHER may have used private email account JULIA [REDACTED]@GMAIL.COM and JBK [REDACTED]@GMAIL.COM in furtherance of these and other fraudulent activities.

43. On September 11 and 24, 2018, respectively, I sent formal requests for the preservation of all stored communications, records, and other evidence in the possession of Google regarding the email account(s) JULIA [REDACTED]@GMAIL.COM and JBK [REDACTED]@GMAIL.COM. In general, an email that is sent to a GMAIL subscriber is stored in the subscriber's "mail box" on Google servers until the subscriber deletes the email. If the subscriber does not delete the message, the message can remain on Google servers indefinitely. Even if the subscriber deletes the email, it may continue to be available on Google's servers for a certain period of time.

BACKGROUND CONCERNING EMAIL

44. In my training and experience, I have learned that Google provides a variety of on-line services, including electronic mail ("email") access, to the public. Google allows subscribers to obtain email accounts at the domain name gmail.com like the email account[s] listed in Attachment A. Subscribers obtain an account by registering with Google. During the

registration process, Google asks subscribers to provide basic personal information. Therefore, the computers of Google are likely to contain stored electronic communications (including retrieved and unretrieved email for Google subscribers) and information concerning subscribers and their use of Google services, such as account access information, email transaction information, and account application information. In my training and experience, such information may constitute evidence of the crimes under investigation because the information can be used to identify the account's user or users.

45. A Google subscriber can also store with the provider files in addition to emails, such as address books, contact or buddy lists, calendar data, pictures (other than ones attached to emails), and other files, on servers maintained and/or owned by Google. In my training and experience, evidence of who was using an email account may be found in address books, contact or buddy lists, email in the account, and attachments to emails, including pictures and files.

46. In my training and experience, email providers generally ask their subscribers to provide certain personal identifying information when registering for an email account. Such information can include the subscriber's full name, physical address, telephone numbers and other identifiers, alternative email addresses, and, for paying subscribers, means and source of payment (including any credit or bank account number). In my training and experience, such information may constitute evidence of the crimes under investigation because the information can be used to identify the account's user or users. Based on my training and my experience, I know that even if subscribers insert false information to conceal their identity, I know that this information often provide clues to their identity, location or illicit activities.

47. In my training and experience, email providers typically retain certain transactional information about the creation and use of each account on their systems. This

information can include the date on which the account was created, the length of service, records of log-in (i.e., session) times and durations, the types of service utilized, the status of the account (including whether the account is inactive or closed), the methods used to connect to the account (such as logging into the account via the provider's website), and other log files that reflect usage of the account. In addition, email providers often have records of the Internet Protocol address ("IP address") used to register the account and the IP addresses associated with particular logins to the account. Because every device that connects to the Internet must use an IP address, IP address information can help to identify which computers or other devices were used to access the email account.

48. In my training and experience, in some cases, email account users will communicate directly with an email service provider about issues relating to the account, such as technical problems, billing inquiries, or complaints from other users. Email providers typically retain records about such communications, including records of contacts between the user and the provider's support services, as well records of any actions taken by the provider or user as a result of the communications. In my training and experience, such information may constitute evidence of the crimes under investigation because the information can be used to identify the account's user or users.

49. As explained herein, information stored in connection with an email account may provide crucial evidence of the "who, what, why, when, where, and how" of the criminal conduct under investigation, thus enabling the United States to establish and prove each element or alternatively, to exclude the innocent from further suspicion. In my training and experience, the information stored in connection with an email account can indicate who has used or controlled the account. This "user attribution" evidence is analogous to the search for "indicia of

occupancy” while executing a search warrant at a residence. For example, email communications, contacts lists, and images sent (and the data associated with the foregoing, such as date and time) may indicate who used or controlled the account at a relevant time. Further, information maintained by the email provider can show how and when the account was accessed or used. For example, as described below, email providers typically log the Internet Protocol (IP) addresses from which users access the email account along with the time and date. By determining the physical location associated with the logged IP addresses, investigators can understand the chronological and geographic context of the email account access and use relating to the crime under investigation. This geographic and timeline information may tend to either inculcate or exculpate the account owner. Additionally, information stored at the user’s account may further indicate the geographic location of the account user at a particular time (e.g., location information integrated into an image or video sent via email). Last, stored electronic data may provide relevant insight into the email account owner’s state of mind as it relates to the offense under investigation. For example, information in the email account may indicate the owner’s motive and intent to commit a crime (e.g., communications relating to the crime), or consciousness of guilt (e.g., deleting communications in an effort to conceal them from law enforcement).

50. A taint team will initially review the data if there is a reason to believe there may be privileged communications. The taint team will only provide the case agent with data that falls within the scope of the warrant.

CONCLUSION

51. Based on the foregoing, I request that the Court issue the proposed search warrant. Because the warrant will be served on Google who will then compile the requested records at a

time convenient to it, reasonable cause exists to permit the execution of the requested warrant at any time in the day or night.

REQUEST FOR SEALING

52. I further request that the Court order that all papers in support of this application, including the affidavit and search warrant, be sealed until further order of the Court. These documents discuss an ongoing criminal investigation that is neither public nor known to all of the targets of the investigation. Accordingly, there is good cause to seal these documents because their premature disclosure may give targets an opportunity to flee/continue flight from prosecution, destroy or tamper with evidence, change patterns of behavior, notify confederates, or otherwise seriously jeopardize the investigation.

Respectfully submitted,



Robert A. Wolfe, Special Agent
U.S. Department of Education
Office of Inspector General

In San Juan, Puerto Rico. Subscribed and sworn to before me on 29th of September, 2018.



HONORABLE MARCOS E. LÓPEZ
UNITED STATES MAGISTRATE JUDGE
DISTRICT OF PUERTO RICO

ATTACHMENT A

Property to Be Searched

This warrant applies to information associated with JBK [REDACTED]@GMAIL.COM that is stored at premises controlled by Google, a company that accepts service of legal process at 1600 Amphitheatre Parkway, Mountain View, CA 94043.

ATTACHMENT B

Particular Things to be Seized

I. Information to be disclosed by Google (the "Provider")

To the extent that the information described in Attachment A is within the possession, custody, or control of the Provider, including any emails, records, files, logs, or information that has been deleted but is still available to the Provider, or has been preserved pursuant to a request made under 18 U.S.C. § 2703(f) on September 11, 2018, the Provider is required to disclose the following information to the government for each account or identifier listed in Attachment A:

a. The contents of all emails associated with the account, including stored or preserved copies of emails sent to and from the account, draft emails, the source and destination addresses associated with each email, the date and time at which each email was sent, and the size and length of each email;

b. All records or other information regarding the identification of the account, to include full name, physical address, telephone numbers and other identifiers, records of session times and durations, the date on which the account was created, the length of service, the IP address used to register the account, log-in IP addresses associated with session times and dates, account status, alternative email addresses provided during registration, methods of connecting, log files, and means and source of payment (including any credit or bank account number);

c. The types of service utilized;

d. All records or other information stored at any time by an individual using the account, including address books, contact and buddy lists, calendar data, pictures, and files;

II. All records pertaining to communications between the Provider and any person regarding the account, including contacts with support services and records of actions

taken.

III. Information to be seized by the government

All information described above in Section I and II that constitutes fruits, contraband, evidence and instrumentalities of violations of Title 18, United States Code, Sections 666, 371, 1341, 1343, and 1346, those violations involving Julia B. KELEHER, Glenda PONCE, C [REDACTED], D [REDACTED], M [REDACTED] E. C [REDACTED], V [REDACTED] M [REDACTED], M [REDACTED] C [REDACTED], COLON & PONCE, INC. and W [REDACTED] B [REDACTED], as well as other individuals/corporations and occurring from **July 1, 2016 to the present**, including, for each account or identifier listed on Attachment A, information pertaining to the following matters:

(a) The complete contents of Electronic Mail addresses/accounts:

JBK [REDACTED]@GMAIL.COM including without limitation all opened and unopened electronic mail messages sent to, from or through such accounts from July 1, 2016, or the date on which the particular account was opened, whichever is later, through the present, all header information associated with any such electronic mail messages, and all files stored in such accounts.

(b) All business records in the possession of Google that pertain to the subscribers and the accounts associated with the following Electronic Mail addresses/accounts:

JBK [REDACTED]@GMAIL.COM, including but not limited to records showing the subscribers' full name, all screen names associated with these subscribers or these subscribers' accounts, all account names associated with these subscribers, all methods of payment, phone numbers, as well as all residential, business, mailing and electronic mail addresses, detailed billing records, types and lengths of service, and any other identifying information.

**CERTIFICATE OF AUTHENTICITY OF DOMESTIC
BUSINESS RECORDS PURSUANT TO FEDERAL RULE
OF EVIDENCE 902(11)**

I, _____, attest, under penalties of perjury under the laws of the United States of America pursuant to 28 U.S.C. § 1746, that the information contained in this declaration is true and correct. I am employed by Google, and my official title is _____. I am a custodian of records for Google. I state that each of the records attached hereto is the original record or a true duplicate of the original record in the custody of Google, and that I am the custodian of the attached records consisting of _____ (pages/CDs/kilobytes). I further state that:

a. all records attached to this certificate were made at or near the time of the occurrence of the matter set forth, by, or from information transmitted by, a person with knowledge of those matters;

b. such records were kept in the ordinary course of a regularly conducted business activity of Google; and

c. such records were made by Google as a regular practice.

I further state that this certification is intended to satisfy Rule 902(11) of the Federal Rules of Evidence.

Date

Signature

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

IN RE:

SEALED

NO. 18- 1507 (L1)

MOTION TO SEAL

TO THE HONORABLE COURT:

COMES NOW, the United States of America, by and through its undersigned attorneys and respectfully states and prays as follows:

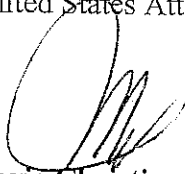
1. The accompanying envelope contains a pleading that is self-explanatory. The United States of America respectfully requests that the pleading be accepted for filing, kept secret, and remain under seal until further order from this Court.

WHEREFORE, the Government respectfully requests the instant motion be granted.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico this 27th day of September, 2018.

ROSA EMILIA RODRIGUEZ-VELEZ
United States Attorney



Marie Christine Amy -G02309
Assistant United States Attorney
U.S. Attorney's Office
Torre Chardón, Suite 1201
350 Carlos Chardón Ave.
Hato Rey, PR 00918
Tel.: (787) 766-5656
Email: marie.c.amy@usdoj.gov

Granted. / Marie Christine Amy
9/28/18

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

IN RE: SEARCH WARRANTS

Case No. 18-1507(M)

Filed Under Seal

**APPLICATION FOR ORDER COMMANDING GOOGLE, INC. NOT TO NOTIFY ANY
PERSON OF THE EXISTENCE OF A WARRANT**

The United States of America requests that the Court order Google Inc. not to notify any person including the subscribers and customers of the account associated with: JULIA [REDACTED]@GMAIL.COM; and JBK [REDACTED]@GMAIL.COM; listed in the attached Search Warrants, Cases No. 18-1506(M), and 18-1507(M), of the existence of the attached Search Warrants until further order of the Court.

Google Inc. is a provider of an electronic communication service, as defined in 18 U.S.C. § 2510(15), and/or a remote computer service, as defined in 18 U.S.C. § 2711(2). Pursuant to 18 U.S.C. § 2703, the United States obtained the attached Search Warrants, which requires Google Inc. to disclose certain records and information to the United States. This Court has authority under 18 U.S.C. § 2705(b) to issue "an order commanding a provider of electronic communications service or remote computing service to whom a warrant, subpoena, or court order is directed, for such period as the court deems appropriate, not to notify any other person of the existence of the warrant, subpoena, or court order." *Id.*

In this case, such an order would be appropriate because the attached Search Warrants relates to an ongoing criminal investigation that is neither public nor known to all of the targets of the investigation, and its disclosure may alert the targets to the ongoing investigation. Accordingly, there is reason to believe that notification of the existence of the attached Search Warrants will seriously (a) jeopardize the investigation, (b) give targets an opportunity to flee

from prosecution and destroy or tamper with evidence, and (c) change patterns of behavior in order to conceal their location or intimidate potential witnesses. See 18 U.S.C. § 2705(b). Some of the evidence in this investigation is stored electronically and is within the custody and control of Google, Inc. If alerted to the existence of the attached Search Warrant, the subjects under investigation could destroy that evidence, as well as information saved to their personal computers.

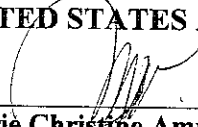
WHEREFORE, the United States respectfully requests that the Court grant the attached Order directing Google, Inc. not to disclose the existence or content of the attached Search Warrants for ninety (90) days, except that Google, Inc. may disclose the attached Search Warrants to an attorney for Google, Inc. for the purpose of receiving legal advice.

The United States further requests that the Court order that this application and any resulting order be sealed until further order of the Court. As explained above, these documents discuss an ongoing criminal investigation that is neither public nor known to all of the targets of the investigation. Accordingly, there is good cause to seal these documents because their premature disclosure may seriously jeopardize that investigation.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, on 28 day of September, 2018.

ROSA EMILIA RODRIGUEZ-VELEZ
UNITED STATES ATTORNEY



Marie Christine Amy - G02309
Assistant United States Attorney
U.S. Attorney's Office
Torre Chardón, Suite 1201
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Hato Rey, PR 00918
Tel.: (787) 766-5656
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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO**

IN RE: SEARCH WARRANTS

Case No. 18-1507(M)

Filed Under Seal

ORDER

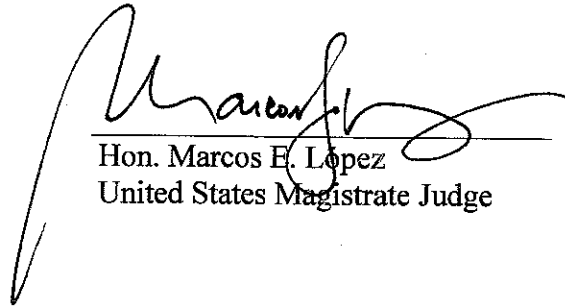
The United States of America has submitted an application pursuant to Title 18, United States Code, Section 2705(b), requesting that the Court issue an order commanding Google Inc., an electronic communication service provider and/or a remote computing service, not to notify any person including the subscribers and customers of the accounts listed in the Search Warrants, to wit, JULIA [REDACTED]@GMAIL.COM; and JBK [REDACTED]@GMAIL.COM; of the existence of the attached Search Warrants until the **27th of December, 2018**.

The Court determines that there is reason to believe that notification of the existence of the attached Search Warrants, Cases No. 18-1506(M), and 18-1507(M), will seriously jeopardize the investigation or unduly delay a trial, including by giving targets an opportunity to flee or continue flight from prosecution, destroy or tamper with evidence, change patterns of behavior, or intimidate potential witnesses. See Title 18, United States Code, Section 2705(b).

IT IS THEREFORE ORDERED, under Title 18, United States Code, Section 2705(b) that Google Inc. shall not disclose the existence of the attached Search Warrants or this Order of the Court, to the listed subscribers or to any other person, unless and until otherwise authorized to do so by the Court, except that Google Inc. may disclose the attached Search Warrants to an attorney for Google Inc. for the purpose of receiving legal advice.

IT IS FURTHER ORDERED that the application and this Order are sealed until otherwise ordered by the Court.

9/28/18
Date


Hon. Marcos E. Lopez
United States Magistrate Judge

UNITED STATES DISTRICT COURT

for the
District of Puerto RicoIn the Matter of the Search of
(Briefly describe the property to be searched
or identify the person by name and address)JULIA [REDACTED]@GMAIL.COM that is stored at premises
controlled by Google, a company that accepts service of legal process
at 1600 Amphitheatre Parkway, Mountain View, CA 94043

Case No. 18-1507(u)

SEARCH AND SEIZURE WARRANT

To: Any authorized law enforcement officer

An application by a federal law enforcement officer or an attorney for the government requests the search
of the following person or property located in the JUDICIAL District of PUERTO RICO
(identify the person or describe the property to be searched and give its location):

See Attachment A of the Affidavit in Support of an Application for a Search Warrant, incorporated by reference herein.

The person or property to be searched, described above, is believed to conceal (identify the person or describe the
property to be seized):

See Attachment B of the Affidavit in Support of an Application for a Search Warrant, incorporated by reference herein.

I find that the affidavit(s), or any recorded testimony, establish probable cause to search and seize the person or
property.

YOU ARE COMMANDED to execute this warrant on or before

10/12/18

(not to exceed 14 days)

☐ in the daytime 6:00 a.m. to 10 p.m.☒ at any time in the day or night as I find reasonable cause has been
established.Unless delayed notice is authorized below, you must give a copy of the warrant and a receipt for the property
taken to the person from whom, or from whose premises, the property was taken, or leave the copy and receipt at the
place where the property was taken.The officer executing this warrant, or an officer present during the execution of the warrant, must prepare an
inventory as required by law and promptly return this warrant and inventory to United States Magistrate Judge
on Duty

(name)

☒ I find that immediate notification may have an adverse result listed in 18 U.S.C. § 2705 (except for delay
of trial), and authorize the officer executing this warrant to delay notice to the person who, or whose property, will be
searched or seized (check the appropriate box) ☐ for _____ days (not to exceed 30).☒ until, the facts justifying, the later specific date of 12/27/18

Date and time issued: 9/28/18 at 10:42 a.m.

Judge's signature

City and state: SAN JUAN, PUERTO RICO

US MAGISTRATE JUDGE MARCOS E. LÓPEZ

Printed name and title

ATTACHMENT A

Property to Be Searched

This warrant applies to information associated with JULIA [REDACTED]@GMAIL.COM that is stored at premises controlled by Google, a company that accepts service of legal process at 1600 Amphitheatre Parkway, Mountain View, CA 94043.

ATTACHMENT B

Particular Things to be Seized

I. Information to be disclosed by Google (the “Provider”)

To the extent that the information described in Attachment A is within the possession, custody, or control of the Provider, including any emails, records, files, logs, or information that has been deleted but is still available to the Provider, or has been preserved pursuant to a request made under 18 U.S.C. § 2703(f) on September 11, 2018, the Provider is required to disclose the following information to the government for each account or identifier listed in Attachment A:

- a. The contents of all emails associated with the account, including stored or preserved copies of emails sent to and from the account, draft emails, the source and destination addresses associated with each email, the date and time at which each email was sent, and the size and length of each email;
 - b. All records or other information regarding the identification of the account, to include full name, physical address, telephone numbers and other identifiers, records of session times and durations, the date on which the account was created, the length of service, the IP address used to register the account, log-in IP addresses associated with session times and dates, account status, alternative email addresses provided during registration, methods of connecting, log files, and means and source of payment (including any credit or bank account number);
 - c. The types of service utilized;
 - d. All records or other information stored at any time by an individual using the account, including address books, contact and buddy lists, calendar data, pictures, and files;
- II. All records pertaining to communications between the Provider and any person regarding the account, including contacts with support services and records of actions**

taken.

III. Information to be seized by the government

All information described above in Section I and II that constitutes fruits, contraband, evidence and instrumentalities of violations of Title 18, United States Code, Sections 666, 371, 1341, 1343, and 1346, those violations involving Julia B. KELEHER, Glenda PONCE, C [REDACTED], D [REDACTED], M [REDACTED] E. C [REDACTED], V [REDACTED] M [REDACTED], M [REDACTED] C [REDACTED], COLON & PONCE, INC. and W [REDACTED] B [REDACTED], as well as other individuals/corporations and occurring from **July 1, 2016 to the present**, including, for each account or identifier listed on Attachment A, information pertaining to the following matters:

(a) The complete contents of Electronic Mail addresses/accounts:

JULIA [REDACTED]@GMAIL.COM including without limitation all opened and unopened electronic mail messages sent to, from or through such accounts from July 1, 2016, or the date on which the particular account was opened, whichever is later, through the present, all header information associated with any such electronic mail messages, and all files stored in such accounts.

(b) All business records in the possession of Google that pertain to the subscribers and the accounts associated with the following Electronic Mail addresses/accounts:

JULIA [REDACTED]@GMAIL.COM, including but not limited to records showing the subscribers' full name, all screen names associated with these subscribers or these subscribers' accounts, all account names associated with these subscribers, all methods of payment, phone numbers, as well as all residential, business, mailing and electronic mail addresses, detailed billing records, types and lengths of service, and any other identifying information.

UNITED STATES DISTRICT COURT

for the
District of Puerto Rico

In the Matter of the Search of

*(Briefly describe the property to be searched
or identify the person by name and address)*JULIA [REDACTED]@GMAIL.COM that is stored at premises controlled
by Google, a company that accepts service of legal process at 1600
Amphitheatre Parkway, Mountain View, CA 94043

Case No. 18-1507(n)

APPLICATION FOR A SEARCH WARRANT

I, a federal law enforcement officer or an attorney for the government, request a search warrant and state under penalty of perjury that I have reason to believe that on the following person or property *(identify the person or describe the property to be searched and give its location)*:

See Attachment A of the Affidavit in Support of an Application for a Search Warrant, incorporated by reference herein.
located in the _____ District of _____ Puerto Rico, there is now concealed *(identify the person or describe the property to be seized)*:

See Attachment B of the Affidavit in Support of an Application for a Search Warrant, incorporated by reference herein.

The basis for the search under Fed. R. Crim. P. 41(c) is *(check one or more)*:

- ☒ evidence of a crime;
☒ contraband, fruits of crime, or other items illegally possessed;
☒ property designed for use, intended for use, or used in committing a crime;
☐ a person to be arrested or a person who is unlawfully restrained.

The search is related to a violation of:

Code Section
18 USC §§ 666, 371, 1341,
1343, 1346 and 1956

Offense Description
Theft of bribery concerning programs receiving federal funds; conspiracy to
commit offense or to defraud; mail fraud; wire fraud; honest services; and money
laundering

The application is based on these facts:
See Attached Affidavit in Support of an Application for a Search Warrant, incorporated by referenced herein.

- ☒ Continued on the attached sheet.
☒ Delayed notice of _____ days (give exact ending date if more than 30 days: _____) is requested
under 18 U.S.C. § 3103a, the basis of which is set forth on the attached sheet.

Reviewed by AUSA Hane Canishne Amy [Signature]

Applicant's signature

Robert A. Wolfe, S.A., U.S.D.E.-O.I.G.

Printed name and title

Sworn to before me and signed in my presence.

Date: 9/28/18

City and state: San Juan, Puerto Rico

Judge's signature

Magistrate Judge Marcos E. López

Printed name and title

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

IN THE MATTER OF THE SEARCH OF
INFORMATION ASSOCIATED WITH
JULIA [REDACTED]@GMAIL.COM THAT IS
STORED AT PREMISES CONTROLLED BY
GOOGLE; 1600 AMPHITHEATRE
PARKWAY; MOUNTAIN VIEW, CA 94043

Case No. 18-1507 (M)

Filed Under Seal

**AFFIDAVIT IN SUPPORT OF
AN APPLICATION FOR A SEARCH WARRANT**

I, ROBERT A. WOLFE, being first duly sworn, hereby depose and state as follows:

INTRODUCTION AND AGENT BACKGROUND

1. I make this affidavit in support of an application for a search warrant for information associated with a certain account that is stored at premises controlled by GOOGLE, an email provider at 1600 Amphitheatre Parkway, Mountain View, CA 94043. The information to be searched is described in the following paragraphs and in Attachment A. This affidavit is made in support of an application for a search warrant under 18 U.S.C. §§ 2703(a), 2703(b)(1)(A) and 2703(c)(1)(A) to require Google to disclose to the government copies of the information (including the content of communications) further described in Section I of Attachment B. Upon receipt of the information described in Section I of Attachment B, government-authorized persons will review that information to locate the items described in Section II of Attachment B.

2. I am a Special Agent ROBERT A. WOLFE with the U.S. DEPARTMENT OF EDUCATION (USDOE), OFFICE OF INSPECTOR GENERAL (OIG), and have been assigned to the San Juan Office since February of 2003. During this period, I have conducted numerous criminal investigations related to criminal offenses involving federal educational grant programs, such as, wire fraud, education fraud, false statements, embezzlement, and money laundering. I

am a graduate of the Federal Law Enforcement Training Center at Glynco, Georgia and have received training in the execution of federal search warrants.

3. This affidavit is intended to show merely that there is sufficient probable cause for the requested warrant and does not set forth all of my knowledge about this matter.

4. Based on my training and experience and the facts as set forth in this affidavit, there is probable cause to believe that violations of Title 18, United States Code, Sections 666, 371, 1341, 1343 and 1346, have been committed by Julia B. KELEHER, Glenda PONCE, C [REDACTED] D [REDACTED], M [REDACTED] E. C [REDACTED], V [REDACTED] M [REDACTED] M [REDACTED] C [REDACTED], COLON & PONCE, INC., and W [REDACTED] B [REDACTED], as well as other individuals/corporations. There is also probable cause to search the information described in Attachment A for evidence, instrumentalities, contraband or fruits of these crimes further described in Attachment B.

JURISDICTION

5. This Court has jurisdiction to issue the requested warrant because it is "a court of competent jurisdiction" as defined by 18 U.S.C. § 2711. 18 U.S.C. §§ 2703(a), (b)(1)(A) & (c)(1)(A). Specifically, the Court is "a district court of the United States . . . that – has jurisdiction over the offense being investigated." 18 U.S.C. § 2711(3)(A)(i).

BACKGROUND

1. The Puerto Rico Department of Education (PRDE) is responsible for the planning and administration of all public elementary, secondary and some post-secondary education throughout Puerto Rico.

2. The PRDE administers various federal financial assistance programs funded by the United States Department of Education (USDOE) intended for students in public and private schools. The Elementary and Secondary Education Act of 1965 (ESEA), as amended by the

Improving America's Schools Act (IASA) (P.L. 103-382), provided for a comprehensive overhaul of programs providing more than \$10 billion a year of federal support for education, and restructured how these programs provide services.

3. The PRDE may award contracts to service providers in order to carry out its mission following federal and state policies and regulations.

4. The "*GUÍA PARA LA SELECCIÓN DE SERVICIOS PROFESIONALES QUE SON SUFRAGADOS CON FONDOS FEDERALES*" (translated to "Guidance for the Selection of Professional Services to be Funded with Federal Funds") approved on January 26, 2007 by PRDE Secretary Rafael Aragunde-Torres establishes the requirements to award professional service contracts to be funded with federal funds. Professional services contracts must meet the following requirements, including but not limited to:

- a. For contracts over \$6,000 up to \$50,000, a minimum of three quotes (proposals) are required. Price quotes must be requested either verbally or in writing.
- b. For contracts over \$50,000 up to \$100,000, a minimum of three quotes (proposals) are required. Price quotes must be requested in writing.
- c. For contracts over \$100,000, a formal Request for Proposals (RFP) process must be followed.

For all requirement levels, PRDE must document the selection process and the reasons for selecting the vendor.

5. The Adjudication of Funds and Contracts Unit within the PRDE Assistant Secretariat of Federal Affairs is in charge of processing requests submitted within PRDE units for professional services contracts. It also evaluates proposals and quotes from prospective contractors and makes recommendations to assist in the contractor selection process.

6. On January 12, 2018, I spoke with CW 1, who provided me with information and, later, documentation about possible fraudulent activity with federal educational funds. The CW 1, a PRDE employee with many years of experience in the professional services contracting process, explained how C&P was awarded a contract from PRDE following an irregular competitive bidding/proposal process.

7. C&P is a company registered at the Puerto Rico Department of State since February 24, 2006 (originally Colon & Suarez) as a domestic for-profit corporation. The nature of the company is to engage in any licit business activity. O [REDACTED] C [REDACTED] and Mayra S. Ponce are listed as corporate principals.

8. Glenda Ponce is a PRDE contractor that works at the PRDE Secretary's Office. Glenda Ponce and Mayra S. Ponce are sisters.

9. Julia B. Keleher is the current Secretary of the PRDE and was appointed in January of 2017. C [REDACTED] D [REDACTED] is currently a Special Assistant assigned to the PRDE Secretary's Office and works closely with Secretary Keleher. L [REDACTED] E. C [REDACTED] is the Director of the PRDE Assistant Secretariat of Federal Affairs (PRDE-ASFA). B [REDACTED] E [REDACTED] is the Supervisor of the Adjudication of Funds and Contracts Unit within the PRDE-ASFA.

10. On January 23, 2018, I spoke with CW 2, who provided additional information related to C&P contracting process. CW 2 stated that Secretary Keleher told him/her that she wanted to contract C&P with federal funds to assist her with some duties/projects. CW 2 advised Secretary Keleher that PRDE regulations for contracts funded with federal funds required a competitive bidding process. Secretary Keleher indicated more than once that regardless of the policy in place she wanted to contract C&P. CW 2 also provided copies of

emails containing relevant information on how Glenda Ponce and C [REDACTED] D [REDACTED] initially approached Secretary Keleher about contracting C&P.

11. The investigation has revealed that in or about May 2017, PRDE-ASFA Director L [REDACTED] E. C [REDACTED] completed form PSF-1 (Request for Professional Services) requesting the services of a company that could provide technical assistance related to the management of federal funded projects. The PSF-1 form is required to initiate the process for professional services contracts to be funded with federal funds. The PSF-1 was certified by Secretary Keleher, who then submitted it to the Adjudication of Funds and Contracts Unit for processing.

12. The Adjudication of Funds and Contracts Unit evaluating official sent petitions for quotes/proposals via email to seven different vendors, including C&P. CW 1 informed that either Ms. C [REDACTED] or Ms. E [REDACTED] suggested C&P as one of the companies to be sent a request for a quote (proposal). The evaluating official also sent petitions for quotes (proposals) to other companies which had prior experience in providing education-type services.

13. CW 1 informed that shortly after the emails were sent to the different vendors, PRDE Secretary's Office employee Glenda Ponce approached him/her as the evaluating official saying that C&P had already submitted a proposal (quote) to the PRDE and that Secretary Keleher wanted to contract C&P. The evaluating official was disturbed by Glenda Ponce's irregular approach and comments, which gave him/her reason to believe that the evaluation and selection process had already been adjudicated.

14. The evaluating official received quotes/proposals from five companies, including C&P. The evaluating official reviewed all proposals and issued a recommendation for the selection of all companies except C&P, because the corporate principals had no experience in education and/or government services, and all other companies had vast experience, particularly

in education. C&P was the lowest bidder but this was only one of the criteria for the recommendation and selection process.

15. A few days later, Ms. E [REDACTED] informed the evaluating official that C&P had been selected to provide the services. Ms. E [REDACTED] also handed to the evaluating official an explanatory memorandum for his/her signature recommending the selection of C&P. The evaluating official refused to sign the memorandum telling Ms. E [REDACTED] that C&P was not within the recommended companies.

16. On June 8, 2017, the PRDE awarded services contract number 2017-AF0220 to C&P for \$43,550, which expired in December of 2017.

17. Further, in relation to C&P, CW 2 alleged that in October 2017 Secretary Keleher approved an amendment to C&P's services contract in order to increase its award amount to mainly allow Ms. M [REDACTED] E. C [REDACTED] who had been acting as a special assistant to Secretary Keleher, to receive compensation/salary. CW 2 advised that Ms. M [REDACTED] E. C [REDACTED] had been working closely with Secretary Keleher at the PRDE Secretary's Office. CW 2 informed that C [REDACTED] identified herself as Special Assistant to the Secretary when in reality she was not a PRDE employee before she became employed by C&P.

18. The investigation has revealed that C [REDACTED] had been the campaign director for [REDACTED] candidate M [REDACTED] C [REDACTED] in the 2016 Puerto Rico general elections. In June 2017, Mr. C [REDACTED] sent an email to Secretary Keleher with C [REDACTED] curriculum vitae. Per CW 2, Mr. C [REDACTED] has personally met in many occasions with Secretary Keleher at her offices since becoming the PRDE Secretary in January 2017.

19. The investigation revealed that C [REDACTED], although employed by C&P since October 2017, had been working at Secretary Keleher's Office since at least August 2017 as a

special assistant to Secretary Keleher and was not receiving compensation for her work. The investigation has revealed that, before C [REDACTED] became employed by C&P, Secretary Keleher sought to have C [REDACTED] formally appointed as one of her Special Assistants but the Puerto Rico Governor's Office did not approve the appointment.

20. The investigation has revealed that on October 25, 2017, the C&P services contract was amended (2017-AF0220-A) and the award amount increased from \$43,550 to \$95,000. An analysis of invoices submitted by C&P to the PRDE from June to November 2017 showed C [REDACTED] as part of the C&P employees starting in October 2017. C [REDACTED] did not appear as C&P employee in the invoices prior to October 2017. C [REDACTED] received payments from C&P for the months of October, November and December of 2017.

21. On January 26, 2018 and May 17, 2018, respectively, federal search warrants were issued by a magistrate judge in the District of Puerto Rico to obtain electronic communications associated with several individuals' email accounts as they related to the services contract awarded to C&P, including but not limited to, email accounts [REDACTED]@GMAIL.COM, [REDACTED]@GMAIL.COM and [REDACTED]DE.JBK@GMAIL.COM. A review of the email accounts has revealed that Ms. V [REDACTED] M [REDACTED] -G [REDACTED] (M [REDACTED]) participated in the contracting process by reviewing C&P's proposal and making recommendations. M [REDACTED] specifically provided recommendations on how to revise the C&P proposal by, among other things, adding and/or boosting Glenda Ponce's experience in education matters to the C&P proposal and recommending the non-disclosure of Glenda Ponce's name in the proposal. M [REDACTED] also reviewed the proposal to amend and increase the award amount for the C&P services contract in October 2017.

22. M [REDACTED] is a former PRDE employee, current President of KELEHER & ASSOCIATES, LLC, and owner/president of companies M [REDACTED] CONSULTING, LLC (M [REDACTED] CONSULTING) and S [REDACTED] & C [REDACTED] CONSULTING, LLC (S [REDACTED]).

23. M [REDACTED] has been a long-time business associate of Secretary Keleher at KELEHER & ASSOCIATES, LLC, a consulting company based in Washington, D.C. with an office registered in Puerto Rico and owned by Secretary Keleher up and until her appointment as Secretary of the PRDE in January of 2017. M [REDACTED] was previously a senior consultant at KELEHER & ASSOCIATES, LLC.

24. The investigation has revealed that in or about January 2017, M [REDACTED] entered into a sale agreement to acquire KELEHER & ASSOCIATES, LLC. Documents and checks obtained seem to evidence that M [REDACTED] purchased KELEHER & ASSOCIATES, LLC from Secretary Keleher for \$1,000 in shares. Currently, M [REDACTED] is the sole authorized signatory for KELEHER & ASSOCIATES, LLC's bank account. The review of MONROY's email account [REDACTED]@GMAIL.COM revealed that Secretary Keleher used the email account JULIA [REDACTED]@GMAIL.COM to exchange emails with M [REDACTED] about the sale transaction of KELEHER & ASSOCIATES, LLC.

25. The investigation has revealed that M [REDACTED] CONSULTING and C&P had a long-time business relationship. From November 2013 to May 2017, M [REDACTED] C [REDACTED] paid C&P approximately \$154,000 for services related to Puerto Rico Government contracts awarded to M [REDACTED] CONSULTING. Since January 2017, no Puerto Rico Government contracts have been awarded to M [REDACTED] CONSULTING.

26. The investigation has further revealed that from August to November 2017, C&P issued payments to M ██████████ CONSULTING. This is the period after PRDE awarded the contract to C&P.

27. Upon review of bank records, after M ██████████ incorporated S ██████████ in July 2017, M ██████████ issued checks from KELEHER & ASSOCIATES, LLC to S ██████████ amounting to approximately \$111,000. S ██████████ bank account did not show deposits from any other source up until May of 2018.

28. The review of the email accounts pursuant to the January 2018 search warrants also revealed that M ██████████ is somehow involved in the PRDE's operations despite not having a personal and/or corporate contract with the PRDE. M ██████████ exchanged emails with Secretary Keleher and Glenda Ponce about several PRDE matters not related to C&P, such as the creation of PRDE personnel positions and the development of academic projects by the PRDE.

29. Additionally, my investigation and review of the January and May 2018 search warrant emails has also revealed information about possible criminal violations concerning the possible fraudulent award of other contracts by the PRDE (and other government entities) where some of the aforementioned individuals as well as other individuals and corporations to be subsequently mentioned appear to be involved.

30. In or about March 2018, there was a public controversy in Puerto Rico about a \$16 million contract awarded by PRDE for a project known as "T ██████████ V ██████████ C ██████████". Apparently, PRDE awarded the contract to a California based company called J ██████████ E ██████████ J ██████████ INSTITUTE OF ETHICS that was associated in Puerto Rico with the company C ██████████ M ██████████, a long time PRDE contractor. The allegations included that apparently Z ██████████ R ██████████, Executive Director of the Puerto Rico Government Ethics Office,

referred this vendor to Secretary Keleher, which would have potentially been inappropriate and unethical.

31. The review of the search warrant emails revealed that on February 18, 2017, R [REDACTED] scheduled a meeting with Secretary Keleher, J [REDACTED] D [REDACTED] from C [REDACTED] M [REDACTED], and other individuals related to "T [REDACTED] VA [REDACTED] C [REDACTED]". On March 18, 2017, ROSARIO sent an email to Secretary Keleher attaching the "T [REDACTED] VA [REDACTED] C [REDACTED]" proposal.

32. On December 22, 2017, PRDE awarded a contract to J [REDACTED] E [REDACTED] J [REDACTED] INSTITUTE OF ETHICS in the amount of \$16,926,280 for the "T [REDACTED] V [REDACTED] C [REDACTED]" project. It is uncertain whether a competitive process was followed to award the contract as required at PRDE for federally funded contracts.

33. In or about September/October 2017, Secretary Keleher proposed the idea of creating a foundation to receive donations to help rebuild the public education system in Puerto Rico after the passing of hurricane Maria on September 20, 2017.

34. The PR E [REDACTED] F [REDACTED] [REDACTED] was registered in the Puerto Rico Department of State on November 15, 2017 as a non-profit, apolitical organization that supports the strategic innovation and transformation of the public education system in Puerto Rico. The foundation later amended its articles of incorporation to state that the foundation was organized exclusively for charitable, religious, educational, and scientific purposes, including, for such purposes, the making of distribution to organizations that qualify as exempt organizations described under Section 501(c)(3) of the Internal Revenue Code, or corresponding section of any future federal tax code. This foundation receives donations to further its mission. M [REDACTED] C [REDACTED] is one of three incorporators. Secretary Keleher is not a member of the foundation's board of directors.

35. In or about October/November 2017, Secretary Keleher engaged in communications with T [REDACTED] F [REDACTED] to request a donation for the PR E [REDACTED] F [REDACTED]. T [REDACTED] F [REDACTED] is a Christian Science non-profit organization based in New Jersey, US. W [REDACTED] B [REDACTED], also known as B [REDACTED] B [REDACTED], was the contact person with Secretary Keleher at T [REDACTED] F [REDACTED].

36. In or about December 2017, Secretary Keleher contacted R [REDACTED] via email to consult whether or not there could be an ethical problem if a foundation in Puerto Rico makes a donation to the PUERTO RICO FISCAL AGENCY AND FINANCIAL ADVISORY AUTHORITY (FAFAA) to fund her contract for five years. Secretary Keleher explained to R [REDACTED] that there was a foundation called T [REDACTED] F [REDACTED] that donated funds to the PR E [REDACTED] F [REDACTED] and that one of the approved expenses for those funds was to cover Secretary Keleher's salary/contract for five years. Secretary Keleher indicated that T [REDACTED] F [REDACTED] wanted to remain anonymous.

37. FAFAA had entered into a contract with Secretary Keleher for the payment of \$250,000 for a year as PRDE SECRETARY and FAFAA government restructure officer for education on July 21, 2017.

38. The investigation has revealed that T [REDACTED] F [REDACTED] might have approved a \$15,000,000 donation to the PR E [REDACTED] F [REDACTED] to be disbursed over five years. Initially, \$3,000,000 would be disbursed and, subsequently, \$3,000,000 annually. The donation appears to be intended to fund the salaries of the top officials to be hired in the 7 independent education regions that will be created at PRDE by Secretary Keleher.

39. On January 26, 2018, R [REDACTED] sent a letter to Secretary Keleher indicating there were no ethical issues with the proposed donation transaction to fund her contract with FAFAA.

40. The review of email accounts [REDACTED]@GMAIL.COM and [REDACTED]@GMAIL.COM revealed that Secretary Keleher used either email accounts [REDACTED]@GMAIL.COM and/or [REDACTED]@GMAIL.COM to communicate with the members of the PR E [REDACTED] F [REDACTED] board of directors regarding the T [REDACTED] F [REDACTED] donation. Secretary Keleher also used email account [REDACTED]@GMAIL.COM and/or [REDACTED]@GMAIL.COM to consult with R [REDACTED] about the T [REDACTED] F [REDACTED] donation to fund her contract.

41. For all the above, I have probable cause to believe that Julia B. KELEHER, C [REDACTED] D [REDACTED], Glenda PONCE, Mayra S. PONCE, COLON & PONCE, INC. and V [REDACTED] M [REDACTED], and other persons or entities, some of which are mentioned herein, devised a fraudulent scheme circumventing the PRDE rules and regulations to illegally award a contract to C&P and later amend and increase the C&P contract amount for the sole purpose of benefiting C [REDACTED] after her position as an PRDE employee was not approved. Additionally, I have probable cause to believe that Secretary Keleher, R [REDACTED], J [REDACTED] E [REDACTED] J [REDACTED] INSTITUTE OF ETHICS, T [REDACTED] F [REDACTED], PR E [REDACTED] F [REDACTED] and other individuals and/or entities might have been involved in a fraudulent scheme to illegally award J [REDACTED] E [REDACTED] J [REDACTED] INSTITUTE OF ETHICS the contract in the PRDE and to donate funds to PR E [REDACTED] F [REDACTED] to pay for Secretary Keleher's contract with FAFAA. These actions may constitute violations under Title 18, United States Code, Sections 666, 371, 1341, 1343, 1346 and 1956 (theft or bribery

concerning programs receiving federal funds, conspiracy, mail fraud, wire fraud and money laundering, respectively).

42. Thus far, the investigation has revealed that Secretary Keleher used private email accounts JULIA [REDACTED]@GMAIL.COM and JBK [REDACTED]@GMAIL.COM to discuss the above-mentioned potential fraudulent schemes. The review of the January and May 2018 search warrant emails also revealed that Secretary KELEHER used private email accounts JULIA [REDACTED]@GMAIL.COM and JBK [REDACTED]@GMAIL.COM for official communications as PRDE Secretary. Based on my training and experience, Secretary KELEHER may have used private email account JULIA [REDACTED]@GMAIL.COM and JBK [REDACTED]@GMAIL.COM in furtherance of these and other fraudulent activities.

43. On September 11 and 24, 2018, respectively, I sent formal requests for the preservation of all stored communications, records, and other evidence in the possession of Google regarding the email account(s) JULIA [REDACTED]@GMAIL.COM and JBK [REDACTED]@GMAIL.COM. In general, an email that is sent to a GMAIL subscriber is stored in the subscriber's "mail box" on Google servers until the subscriber deletes the email. If the subscriber does not delete the message, the message can remain on Google servers indefinitely. Even if the subscriber deletes the email, it may continue to be available on Google's servers for a certain period of time.

BACKGROUND CONCERNING EMAIL

44. In my training and experience, I have learned that Google provides a variety of on-line services, including electronic mail ("email") access, to the public. Google allows subscribers to obtain email accounts at the domain name gmail.com like the email account[s] listed in Attachment A. Subscribers obtain an account by registering with Google. During the

registration process, Google asks subscribers to provide basic personal information. Therefore, the computers of Google are likely to contain stored electronic communications (including retrieved and unretrieved email for Google subscribers) and information concerning subscribers and their use of Google services, such as account access information, email transaction information, and account application information. In my training and experience, such information may constitute evidence of the crimes under investigation because the information can be used to identify the account's user or users.

45. A Google subscriber can also store with the provider files in addition to emails, such as address books, contact or buddy lists, calendar data, pictures (other than ones attached to emails), and other files, on servers maintained and/or owned by Google. In my training and experience, evidence of who was using an email account may be found in address books, contact or buddy lists, email in the account, and attachments to emails, including pictures and files.

46. In my training and experience, email providers generally ask their subscribers to provide certain personal identifying information when registering for an email account. Such information can include the subscriber's full name, physical address, telephone numbers and other identifiers, alternative email addresses, and, for paying subscribers, means and source of payment (including any credit or bank account number). In my training and experience, such information may constitute evidence of the crimes under investigation because the information can be used to identify the account's user or users. Based on my training and my experience, I know that even if subscribers insert false information to conceal their identity, I know that this information often provide clues to their identity, location or illicit activities.

47. In my training and experience, email providers typically retain certain transactional information about the creation and use of each account on their systems. This

information can include the date on which the account was created, the length of service, records of log-in (i.e., session) times and durations, the types of service utilized, the status of the account (including whether the account is inactive or closed), the methods used to connect to the account (such as logging into the account via the provider's website), and other log files that reflect usage of the account. In addition, email providers often have records of the Internet Protocol address ("IP address") used to register the account and the IP addresses associated with particular logins to the account. Because every device that connects to the Internet must use an IP address, IP address information can help to identify which computers or other devices were used to access the email account.

48. In my training and experience, in some cases, email account users will communicate directly with an email service provider about issues relating to the account, such as technical problems, billing inquiries, or complaints from other users. Email providers typically retain records about such communications, including records of contacts between the user and the provider's support services, as well records of any actions taken by the provider or user as a result of the communications. In my training and experience, such information may constitute evidence of the crimes under investigation because the information can be used to identify the account's user or users.

49. As explained herein, information stored in connection with an email account may provide crucial evidence of the "who, what, why, when, where, and how" of the criminal conduct under investigation, thus enabling the United States to establish and prove each element or alternatively, to exclude the innocent from further suspicion. In my training and experience, the information stored in connection with an email account can indicate who has used or controlled the account. This "user attribution" evidence is analogous to the search for "indicia of

occupancy” while executing a search warrant at a residence. For example, email communications, contacts lists, and images sent (and the data associated with the foregoing, such as date and time) may indicate who used or controlled the account at a relevant time. Further, information maintained by the email provider can show how and when the account was accessed or used. For example, as described below, email providers typically log the Internet Protocol (IP) addresses from which users access the email account along with the time and date. By determining the physical location associated with the logged IP addresses, investigators can understand the chronological and geographic context of the email account access and use relating to the crime under investigation. This geographic and timeline information may tend to either inculcate or exculpate the account owner. Additionally, information stored at the user’s account may further indicate the geographic location of the account user at a particular time (e.g., location information integrated into an image or video sent via email). Last, stored electronic data may provide relevant insight into the email account owner’s state of mind as it relates to the offense under investigation. For example, information in the email account may indicate the owner’s motive and intent to commit a crime (e.g., communications relating to the crime), or consciousness of guilt (e.g., deleting communications in an effort to conceal them from law enforcement).

50. A taint team will initially review the data if there is a reason to believe there may be privileged communications. The taint team will only provide the case agent with data that falls within the scope of the warrant.

CONCLUSION

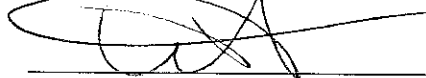
51. Based on the forgoing, I request that the Court issue the proposed search warrant. Because the warrant will be served on Google who will then compile the requested records at a

time convenient to it, reasonable cause exists to permit the execution of the requested warrant at any time in the day or night.

REQUEST FOR SEALING

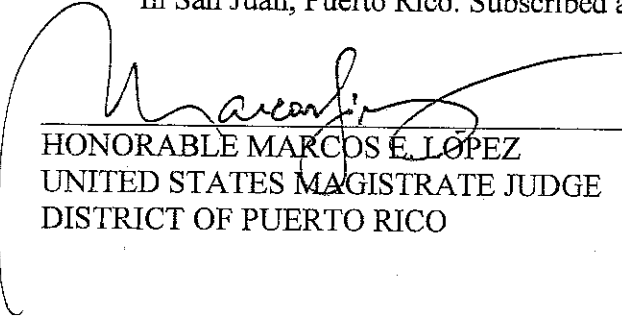
52. I further request that the Court order that all papers in support of this application, including the affidavit and search warrant, be sealed until further order of the Court. These documents discuss an ongoing criminal investigation that is neither public nor known to all of the targets of the investigation. Accordingly, there is good cause to seal these documents because their premature disclosure may give targets an opportunity to flee/continue flight from prosecution, destroy or tamper with evidence, change patterns of behavior, notify confederates, or otherwise seriously jeopardize the investigation.

Respectfully submitted,



Robert A. Wolfe, Special Agent
U.S. Department of Education
Office of Inspector General

In San Juan, Puerto Rico. Subscribed and sworn to before me on 28th of September, 2018.



HONORABLE MARCOS E. LOPEZ
UNITED STATES MAGISTRATE JUDGE
DISTRICT OF PUERTO RICO

ATTACHMENT A

Property to Be Searched

This warrant applies to information associated with JULIA [REDACTED]@GMAIL.COM that is stored at premises controlled by Google, a company that accepts service of legal process at 1600 Amphitheatre Parkway, Mountain View, CA 94043.

ATTACHMENT B

Particular Things to be Seized

I. Information to be disclosed by Google (the "Provider")

To the extent that the information described in Attachment A is within the possession, custody, or control of the Provider, including any emails, records, files, logs, or information that has been deleted but is still available to the Provider, or has been preserved pursuant to a request made under 18 U.S.C. § 2703(f) on September 11, 2018, the Provider is required to disclose the following information to the government for each account or identifier listed in Attachment A:

- a. The contents of all emails associated with the account, including stored or preserved copies of emails sent to and from the account, draft emails, the source and destination addresses associated with each email, the date and time at which each email was sent, and the size and length of each email;
 - b. All records or other information regarding the identification of the account, to include full name, physical address, telephone numbers and other identifiers, records of session times and durations, the date on which the account was created, the length of service, the IP address used to register the account, log-in IP addresses associated with session times and dates, account status, alternative email addresses provided during registration, methods of connecting, log files, and means and source of payment (including any credit or bank account number);
 - c. The types of service utilized;
 - d. All records or other information stored at any time by an individual using the account, including address books, contact and buddy lists, calendar data, pictures, and files;
- II.** All records pertaining to communications between the Provider and any person regarding the account, including contacts with support services and records of actions

taken.

III. Information to be seized by the government

All information described above in Section I and II that constitutes fruits, contraband, evidence and instrumentalities of violations of Title 18, United States Code, Sections 666, 371, 1341, 1343, and 1346, those violations involving Julia B. KELEHER, Glenda PONCE, C [REDACTED], D [REDACTED], M [REDACTED] E. C [REDACTED], V [REDACTED] M [REDACTED], M [REDACTED] C [REDACTED] COLON & PONCE, INC. and W [REDACTED] B [REDACTED], as well as other individuals/corporations and occurring from **July 1, 2016 to the present**, including, for each account or identifier listed on Attachment A, information pertaining to the following matters:

- (a) The complete contents of Electronic Mail addresses/accounts:

JULIA [REDACTED]@GMAIL.COM including without limitation all opened and unopened electronic mail messages sent to, from or through such accounts from July 1, 2016, or the date on which the particular account was opened, whichever is later, through the present, all header information associated with any such electronic mail messages, and all files stored in such accounts.

- (b) All business records in the possession of Google that pertain to the subscribers and the accounts associated with the following Electronic Mail addresses/accounts:

JULIA [REDACTED]@GMAIL.COM, including but not limited to records showing the subscribers' full name, all screen names associated with these subscribers or these subscribers' accounts, all account names associated with these subscribers, all methods of payment, phone numbers, as well as all residential, business, mailing and electronic mail addresses, detailed billing records, types and lengths of service, and any other identifying information.

**CERTIFICATE OF AUTHENTICITY OF DOMESTIC
BUSINESS RECORDS PURSUANT TO FEDERAL RULE
OF EVIDENCE 902(11)**

I, _____, attest, under penalties of perjury under the laws of the United States of America pursuant to 28 U.S.C. § 1746, that the information contained in this declaration is true and correct. I am employed by Google, and my official title is _____. I am a custodian of records for Google. I state that each of the records attached hereto is the original record or a true duplicate of the original record in the custody of Google, and that I am the custodian of the attached records consisting of _____ (pages/CDs/kilobytes). I further state that:

- a. all records attached to this certificate were made at or near the time of the occurrence of the matter set forth, by, or from information transmitted by, a person with knowledge of those matters;
- b. such records were kept in the ordinary course of a regularly conducted business activity of Google; and
- c. such records were made by Google as a regular practice.

I further state that this certification is intended to satisfy Rule 902(11) of the Federal Rules of Evidence.

Date

Signature