

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA,

v.

JULIA BEATRICE KELEHER,
Defendant.

CRIMINAL NO. 19-431 (PAD)

INFORMATIVE MOTION

Due to an inadvertent oversight, the United States failed to make clear that the arguments set forth in Section II.B of its response in opposition to Defendant Fernando Scherrer-Caillet's motion filed at Docket No. 417, should be construed to apply to Defendant Julia Beatrice Keleher's motion to dismiss counts 16-23 which is filed at Docket No. 424. In this motion, Defendant Keleher argues that the counts comprising the Individual C subcontracting scheme (i.e., counts 16-23) are duplicitous inasmuch as they allege multiple schemes (i.e., a Colon & Ponce scheme and a BDO scheme) within a single scheme. *See generally* Docket No. 424. Defendant Keleher is wrong.

As the United States explained in the document filed at Docket No. 479, a single scheme to defraud and a single conspiracy may have multiple purposes, and may be carried out through multiple means. Furthermore, the unit of prosecution as to the substantive wire fraud counts is not the overall scheme to defraud, but each individual wire transmission. *See, e.g., United States v. Gordon*, 169 F.3d 301, 303 (D. Mass. 2016) ("Distinguishing the bank and wire fraud statutes, the First Circuit emphasized that 'the former statute criminalizes only the execution, or attempted execution, of a scheme to defraud a bank . . . , the latter statutes criminalize specifically enumerated actions, e.g., interstate wire transmissions . . . so long as any such action is for the purpose of executing a scheme to defraud.'") (quoting *United States v. Luongo*, 11 F.3d 7, 9 (1st Cir. 1993));

accord United States v. Reddy, 2010 U.S. Dist. LEXIS 82399, at *9 (N.D. Ga. Aug. 11, 2020) (rejecting argument that mail fraud counts were duplicitous because “each mailing in furtherance of the scheme constitutes a separate violation of the mail fraud statute.”). Accordingly there is no legal basis to conclude that counts 16-23 should be dismissed on duplicity grounds.

The United States respectfully requests that the Court excuse its oversight; take notice of the foregoing; and deny Defendant Keleher’s motion to dismiss counts 16-23 for the reasons set forth above and in the document filed at Docket No. 479.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico this 6th day of April, 2021.

W. STEPHEN MULDROW
UNITED STATES ATTORNEY

s/ Jose A. Ruiz-Santiago
Jose A. Ruiz-Santiago
Assistant U.S. Attorney

s/ Alexander L. Alum
Alexander L. Alum
Assistant U.S. Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this date, I electronically filed this response with the Clerk of the Court using the CM/ECF system which will send notification of the same to counsel for defendant.

s/ Alexander L. Alum

Alexander L. Alum,
Assistant United States Attorney