

By Scott Stewart

Many people interested in security in Mexico and the Mexican cartels will turn their attention to Chicago today - September 11 is the deadline for the U.S. government to respond to a defense discovery motion filed July 29 in the case of Jesus Vicente Zambada Niebla, aka "El Vicentillo." El Vicentillo is the son of Ismail "El Mayo" Zambada Garcia, a principal leader of the Sinaloa Federation. While not as well-known as his partner, Joaquin "El Chapo" Guzman Loera, El Mayo nevertheless is a very powerful figure in Mexico's cartel underworld, and one of the richest men in Mexico.

The Mexican military arrested El Vicentillo in March 2009 in an exclusive Mexico City neighborhood. Grand juries in Chicago and Washington had indicted El Vicentillo on drug smuggling charges, prompting the United States to seek his extradition from Mexico. Upon his February 2010 extradition, it was decided he would first face the charges pending against him in the Northern District of Illinois. According to the Justice Department, El Vicentillo is "one of the most significant Mexican drug defendants extradited from Mexico to the United States since Osiel Cardenas Guillen, the accused leader of the notorious Gulf Cartel, was extradited in 2007."

The Zambada legal team's July 29 motion caused quite a stir by claiming that the U.S. government had cut a deal with the Sinaloa Federation via the group's lawyer, Humberto Loya Castro, in which El Chapo and El Mayo would provide intelligence to the U.S. government regarding rival cartels. In exchange, the U.S. government would not interfere in Sinaloa's drug trafficking and would not seek to apprehend or prosecute Loya, El Chapo, El Mayo and the rest of the Sinaloa leadership — a deal reportedly struck without the Mexican government's knowledge.

The allegations generated such a buzz in part because they came so soon after revelations that the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and the Justice Department had permitted guns illegally purchased in the United States to "walk" into Mexico in an operation called "Fast and Furious." Marked differences separate the two cases, however, making the existence of any deal between Sinaloa and the U.S. government highly unlikely. Accordingly, the government will likely deny the allegations in its impending response. Even so, the July 29 allegations still could prove useful for El Vicentillo's defense strategy.

A history of seizures and arrests

The many seizures and arrests during the period El Vicentillo's attorneys allege the truce was in effect — which the motion says began no later than January 2004 — are the first factor undermining the allegations. For example, in February 2007 the Drug Enforcement Administration (DEA) announced the culmination of "Operation Imperial Emperor," a 20-month

investigation directed against the Sinaloa Federation that resulted in 400 arrests and netted 18 tons of drugs and \$45 million in cash. In 2009, the DEA announced the conclusion of "Operation Xcellerator," a multiagency counternarcotics investigation that involved the arrests of more than 750 alleged Sinaloa Federation members and confederates across the United States over a 21-month period and the seizure of 23 tons of narcotics and \$53 million in cash.

The Northern District of Illinois indictment of El Vicentillo and other Sinaloa leaders contains a long list showing that the U.S. government seized thousands of kilograms of cocaine and more than \$19 million in cash in the district alone from 2005 to 2008.

And these are just a few examples of Sinaloa's losses during the time the DEA allegedly turned a blind eye to the cartel's smuggling activities. Based on the size and scope of these Sinaloa losses in manpower, narcotics and cash, it is hard to imagine that anyone affiliated with that organization honestly thinks the DEA gave Sinaloa a pass to traffic narcotics.

It's the politics, Stupid

The second element militating against the allegation that the U.S. government entered into an agreement with the Sinaloa Federation is politics. Such an agreement would be political suicide for any attorney general or DEA administrator and the president they served were it ever disclosed. And as anyone who has worked inside the Beltway knows, secrets are very hard to keep — especially because of the length of time alleged by the defense in this case and because the period spanned multiple U.S. administrations involving two political parties.

Not only are such secrets hard to keep at the top levels of an administration, they are tough to keep at the street level, too. Notably, the first information about Fast and Furious came from rank-and-file ATF special agents incensed that guns were being allowed to walk. These agents leaked information regarding the program to reporters. The same dynamic certainly would have emerged among street-level DEA, FBI and Immigration and Customs Enforcement agents who had spent their careers attempting to stem the flow of narcotics. These agents would not have just sat by and watched narcotics shipments walk into the United States. Thus, if a long-standing relationship between the U.S. government and the Sinaloa Federation really existed, the story most likely would not have emerged first from a Mexican drug trafficker.

And U.S. attorneys certainly take political considerations into account. They do not like to lose high-profile cases and enjoy much prosecutorial leeway, meaning they can decline cases they are likely to lose. The U.S. attorney for the Northern District of Illinois is Patrick Fitzgerald, who is no stranger to high-profile cases. He served as the special prosecutor in the Valerie Plame leak investigation, and he oversaw the prosecution of former Illinois Gov. Rod Blagojevich. As an assistant U.S. attorney in New York, Fitzgerald was involved in the prosecution of Sheikh Omar Abdul-Rahman and members of the Gambino crime family.

It is highly unlikely a U.S. attorney of Fitzgerald's experience would have pushed for such a high-profile case had he known of an agreement between the U.S. government and the Sinaloa Federation. Instead, he could have sat back and allowed the U.S. attorney in Washington to take the first crack at El Vicentillo — and deal with the fallout. That Fitzgerald pressed to

prosecute this case suggests no deal existed — as does the fact that the U.S. government pressed so hard for his extradition; why would a government seek an extradition that would cause major embarrassment?

When taking politics into account, it is also critical to remember the looming 2012 U.S. elections. Republican lawmakers have hammered the Obama administration over Fast and Furious, holding several high-profile congressional hearings on the subject. The Obama administration and congressional Democrats certainly have investigated the Zambada defense team's allegations. Any truth to the allegation that the Bush administration had cut a deal with the Sinaloa Federation almost certainly would have prompted high-profile hearings by Democratic lawmakers in the Senate to reveal the truth — and to offset negative publicity from Fast and Furious.

That no hearings publicizing the allegations have been forthcoming is very revealing. The issue of publicity itself points toward another potential motive for the defense claims.

## Legal Dream Team II

Wealthy defendants naturally seek the best representation money can buy, and that has held true in this case. Court filings indicate that El Vicentillo has retained a host of high-profile criminal defense attorneys, including New York attorneys Edward Panzer and George Santangelo, who have previously defended John Gotti and other members of the Gambino crime family; Los Angeles lawyer Alvin Michaelson, who has represented defendants such as former Los Angeles Mafia boss Dominic Brooklier; and Tucson defense attorney Fernando Gaxiola, a Spanish-speaking attorney who has worked several high-profile cases related to border crime.

A defense attorney's prime objective is to sow doubt regarding a defendant's guilt in the minds of jurors. In high-profile cases, big-money attorneys begin that task well ahead of trial with potential jurors. One means of accomplishing this is with a court motion certain to attract much media attention — like a motion claiming that the U.S. government allowed the Sinaloa Federation to smuggle tons of narcotics into the United States. Such charges also put the question of government integrity on trial.

The legal memorandum filed in support of the discovery motion in the present case stands out not only because it mistakenly refers to El Vicentillo's father as "Ismael Zambada-Niebla" several times instead of consistently using his real name, Ismael Zambada Garcia, and incorrectly refers to the defendant as "Vicente Jesus Zambada Niebla," but also because of its focus. It is very general, providing few details regarding the alleged agreement between the U.S. government and the Sinaloa Federation. It does not identify a single person who allegedly met with Loya or El Vicentillo and who claimed to speak on behalf of the U.S. government.

Normally, high-level confidential informants must sign detailed agreements delineating the criminal activities in which they are allowed to engage, in accordance with the attorney general's guidelines on the use of such informants. Typically, such authorizations run for 90-day periods, and the respective law enforcement agency is tasked with exercising careful supervision over

the informant's activities. The process described in the defense memorandum sharply deviates from this typical U.S. law enforcement practice, with the Sinaloa leadership allegedly receiving free rein and immunity for years.

It is certainly possible that members of the Sinaloa Federation provided information to the U.S. and Mexican governments about the activities of rival drug cartels. El Chapo is well-known for using governments as a tool against his enemies, and even against potential rivals within his own organization like Alfredo Beltran Leyva and Ignacio "El Nacho" Coronel Villarreal. Still, it is quite unlikely the Sinaloa leadership ever had a working source relationship with the DEA.

Large portions of the discovery request also focus on obtaining documents from the Fast and Furious hearings, and the defense team appears to be attempting to establish that if the U.S. government was willing to let guns walk in Fast and Furious, it also would be willing to let narcotics walk into the United States. In the words of the defense memorandum:

Essentially, the theory of the United States government in waging its "war on drugs" has been and continues to be that the "end justifies the means" and that it is more important to receive information about rival drug cartels' activities from the Sinaloa Cartel in return for being allowed to continue their criminal activities, including and not limited to their smuggling of tons of illegal narcotics into the United States.

In practical terms, however, the concept behind Fast and Furious was quite different from the allegations made by El Vicentillo's defense. The idea behind Fast and Furious was to allow low-level gunrunners to walk so law enforcement could trace the big players for subsequent arrest. In Fast and Furious, ATF agents never dealt with high-level gun dealers or cartel leaders; such individuals were the target of the ill-fated operation. Fast and Furious also was not nearly as wide-ranging or as long-lived as the alleged deal with the Sinaloa leadership. It also did not promise immunity from prosecution to cartel leaders.

The two cases thus are starkly different. But if the press can be persuaded to equate the two and widely disseminate this view to the public over the next few months, the defense team may have an easier time sowing a reasonable doubt in the minds of potential jurors. El Vicentillo's trial begins in February 2012, which means that any publicity surrounding the case could reach potential jurors. And even if the government shows they are false, the allegations are likely to have a long shelf-life among conspiracy-minded individuals and Internet sites. As such, they will continue to be useful in El Vicentillo's defense efforts.

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