UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

02CR0312

UNITED STATES OF AMERICA	)	
	)	No.
vs.	)	
	)	Violations: Title 16, United States Code, Sections 3372(a)(2)(A), 3372(d), 3373(d)(2), and 3373(d)(3)(A)(i); Title 18, United States Code, Section 545, Title 50, Code of Federal Regulations, Section 14.105(b)(2).
LABS OF VIRGINIA, INC., DAVID M. TAUB, CHARLES J. STERN, and WILLIAM CURTIS HENLEY III	)	

COUNTS ONE THROUGH FOUR
(THE FALSE RECORDS CHARGES)

The SPECIAL JULY 2000-2 GRAND JURY charges:

1. Defendant LABS OF VIRGINIA, INC. ("LABS"), a Virginia corporation, was engaged in the business of, among other things, breeding and selling non-human primates for use in medical research. LABS imported non-human primates for this purpose. One type of non-human primate which LABS imported for these purposes is known by the scientific name "Cynomolgolus macaques" (*Macaca fascicularis*) and by the common name "crab-eating macaques." LABS had a non-human primate breeding and storage facility located in Yemassee, South Carolina.

2. Defendant DAVID M. TAUB was LABS's President and Chief Operating Officer.

3. The Bionetics Corporation ("Bionetics") purchased the entity which became LABS from defendant TAUB in approximately May 1996. Bionetics had places of business in Hampton, Virginia and

Newport News, Virginia. TAUB remained at LABS after the sale to Bionetics.

4. Defendant CHARLES J. STERN was LABS's Chairman of the Board. STERN had an ownership interest in Bionetics. STERN served as Bionetics's President and/or Chief Executive Officer.

5. Defendant WILLIAM CURTIS HENLEY III was on LABS's Board of Directors. HENLEY was also Bionetics's Chief Financial Officer and/or Treasurer.

6. Indonesian Aquatics Export CV ("Inquatex") was a company located in Indonesia which was owned by Person A and which was engaged in the business of capturing, breeding and exporting non-human primates including crab-eating macaques.

Import and Export Treaties, Statutes and Regulations

7. The United States and Indonesia, among many other countries, are parties or signatories to an international treaty known as the Convention on International Trade in Endangered Species of Wild Fauna and Flora ("CITES"). CITES was enacted in order to protect, among other things, certain species of wildlife against over-exploitation. Species are designated under CITES according to a classification system known as "Appendices." Appendix II to CITES includes wildlife species which, although not necessarily threatened at the present time, may become threatened if trade in those species is not strictly limited. Thus, in an effort to monitor and to control the trade of Appendix II species,

CITES requires that a party to the treaty such as the United States only import species included in Appendix II that are accompanied by a valid foreign export permit (a "CITES" permit) from the species' country of origin or from the country from which the species were exported.

8. Crab-eating macaques have been designated as an Appendix II species under CITES since 1977.

9. The United States Fish and Wildlife Service ("USFWS") is designated by Congress as the authority within the United States which enforces CITES. The USFWS issues regulations to enforce the various wildlife protection provisions of CITES and to provide safeguards for the importation of wildlife into the United States. All persons, including corporations, involved in importing wildlife into the United States are required to adhere to these regulations.

10. All wildlife imported into the United States, including species included in Appendix II to CITES, must first be presented to the USFWS and the United States Customs Service for inspection. Certain documents must also accompany and be presented with each shipment. These documents include all permits and licenses required by the laws and regulations of the United States and all export-related permits required by the laws and regulations of any foreign country.

11. Shipments containing species included in Appendix II to CITES must be accompanied by a valid CITES permit. A CITES permit is valid only for the animals described in the permit.

12. The Lacey Act, Title 16, United States Code, Section 3371 et seq., among other statutes, governs the importation of species included in Appendix II of CITES into the United States. Section 3372(d) of the Lacey Act provides in pertinent part that "[i]t is unlawful for any person to make or submit any false record, account, label for, or any false identification of, any . . . wildlife . . . which has been . . . imported, exported, transported, sold, purchased, or received from any foreign country; or . . . transported in interstate or foreign commerce."

13. The term "person," as used in the Lacey Act, includes corporations.

14. The "records" to which Section 3372 refers includes, among other documents, CITES permits and health certificates, and the labels or identifications contained therein.

15. A country which is a party or signatory to CITES may also enact its own laws governing the trade in its wildlife in order to protect native-born species. These foreign laws may impose more restrictive conditions on the trade of CITES Appendix II species than CITES itself. Since 1994, for example, Indonesia has banned the export of wild-caught crab-eating macaques. This ban on exporting wild-caught crab-eating macaques is set forth in a law

titled The Decree of the Minister of Forestry No. 26/Kpts-11/94 ("Decree No. 26/Kpts-11/94"). Decree No. 26/Kpts-11/94 also governs those crab-eating macaques which were caught in the wild but which were kept in captivity after their capture. The decree does not apply to "captive-bred" crab-eating macaques, that is, crab-eating macaques which are bred (conceived), born and raised in captivity.

16. One of the columns on a CITES permit is labeled "Appendices (source)." A CITES permit which contains the designation "II" in this column reflects a reference to CITES Appendix II. A CITES permit which contains the designation "C" in this column, as the designation "C" is defined under CITES, means that the animals to which the CITES permit applies were bred in captivity.

Labs' Purchase of the Inquatex Crab-Eating Macaque Colony

17. In approximately May 1996, defendant LABS, through one of its employees ("Person B"), learned that Inquatex was offering for sale a "breeding" colony of crab-eating macaques (the "Inquatex colony"). A breeding colony contains adult male non-human primates and productive adult female non-human primates and is valuable because, based on this population mix, the colony is capable of regenerating itself. A breeding colony can provide a firm such as LABS with a steady supply of non-human primates to sell to medical research firms and institutions. LABS, through defendants TAUB,

STERN and HENLEY, began negotiations to purchase the Inquatex breeding colony from Person A.

18. In approximately June 1996, Person B traveled to Indonesia and inspected the Inquatex colony. On or about July 1, 1996, while Person B was still in Indonesia, Person B sent to defendant TAUB information about the Inquatex colony. Person B informed TAUB that Inquatex began to form the colony in July 1991 and that the non-human primates had been "trapped in the wild" and then transported to the Inquatex facility. Person B also informed TAUB that the colony contained a total of 1,397 non-human primates of which 533 were "parents."

19. On or about July 11, 1996, Person B, who had returned to the United States, distributed a memorandum to defendants TAUB, STERN and HENLEY about the Inquatex colony. Person B stated in the memorandum, among other things, that since exporting wild-caught crab-eating macaques was against Indonesian law unless some exception was written, Person A had gone to the Indonesian government and had cut a "baksheesh" deal to pay them off. Baksheesh means "bribe." Person B also stated that Inquatex's monthly expenses included $300 in "CITES charity" that needed to be paid out to various officials.

20. Person B included with his memorandum an Inquatex-prepared document called "Captive Breeding of Long-Tailed Macaque (Macaca fascicularis) in C.V. Inquatex - Primate Division"

("Inquatex brochure"). The Inquatex brochure stated that, as of October 1993, Inquatex had 668 heads of "conditional macaque (the ones from the wild)" and 762 heads of "breed" macaques.

21. In approximately late July 1996, after Person A visited defendant LABS' facility, LABS and Person A, through their respective representatives, began to prepare a Purchase Agreement for the Inquatex colony. Defendant TAUB and Person A also began to arrange for the first shipment of crab-eating macaques from the Inquatex colony.

22. On or about October 4, 1996, Person B sent defendants TAUB, STERN and HENLEY a memorandum in which Person B described a source other than the Inquatex colony by which to obtain crab-eating macaques. Person B informed TAUB, STERN and HENLEY that, in contrast to the Inquatex colony, the alternative source allowed them to "follow[] the spirit of CITES, i.e., we are only exporting purpose bred animals, not wild caught. . . ."

23. On or about January 31, 1997, the formal Purchase Agreement act for the purchase of the Inquatex colony was signed. The Purchase Agreement described the Inquatex colony as containing approximately 1,312 crab-eating macaques. The Purchase Agreement stated in part that each party was to provide the other with all applications and other documents filed as a part of the CITES permit process. The Purchase Agreement also required LABS to pay

Inquatex a monthly fee for the maintenance of the Inquatex colony.

The O'Hare Shipments

24. The Inquatex colony was transported from Indonesia to defendant LABS in the United States in seven separate shipments between on or about February 20, 1997 and on or about October 13, 1998. The first four shipments entered the United States through O'Hare International Airport ("O'Hare") in Chicago, Illinois. These four shipments arrived at O'Hare on or about the following dates: (a) February 20, 1997; (b) April 10, 1997; (c) May 1, 1997; and (d) May 30, 1997.

25. An employee of defendant LABS was present at the Inquatex facility in Indonesia prior to each shipment. These LABS employees monitored the selection and preparation of the crab-eating macaques in the Inquatex colony for shipment to the United States. The LABS employees communicated with defendant TAUB at the LABS facility in the United States during the course of their stay.

26. The four O'Hare shipments contained a mix of wild-caught and captive-bred crab-eating macaques. The CITES permits for each shipment, however, falsely represented that the shipments contained only captive-bred crab-eating macaques.

The February 20, 1997 Shipment

27. On or about February 7, 1997, Person A sent defendant TAUB four separate CITES permits dated February 5, 1997 for the 220 crab-eating macaques in the first shipment. Each CITES permit

authorized the export of 55 "crab-eating monkeys" and each described the contents of the shipment as "[c]aptive-bred specimens, no quota is allocated." Each permit contained the notation "II(C)" in the column marked "Appendices (source)."

28. The "Health Certificate" dated February 18, 1997 which defendant LABS submitted as a part of the first shipment represented that the 220 crab-eating macaques in the shipment had been "[c]aptive bred born at INQUATEX, facilities (Jakarta/ Indonesia).

The April 10, 1997 Shipment

29. On or about April 7, 1997, Person A sent defendant TAUB a copy of the CITES permit dated March 10, 1997 for the second shipment of crab-eating macaques. The CITES permit authorized the export of 255 "[c]rab-eating [m]acaque" which it described as "[c]aptive breed specimen, no quota allocated." The permit contained the notation "II(C)" in the column marked "Appendices (source)."

30. The second shipment consisted of approximately 253 crab-eating macaques from the Inquatex colony. Approximately 98 of these crab-eating macaques were wild-caught.

31. The "Health Certificate" dated April 8, 1997 which defendant LABS submitted as a part of the second shipment represented that the 253 crab-eating macaques in the shipment had

been "[c]aptive bred born at INQUATEX, facilities (Jakarta/ Indonesia)."

The May 1, 1997 Shipment

32. On or about April 16, 1997, Person A sent defendant TAUB the CITES permit dated April 14, 1997 for the third shipment. The CITES permit authorized the export of 120 "[c]rab-eating [m]acaque" which it described as "[c]aptive breed specimen, no quota allocated." The permit contained the notation "II(C)" in the column marked "Appendices (source)."

33. The third shipment consisted of approximately 120 crab-eating macaques from the Inquatex colony. Approximately 50 of these crab-eating macaques were wild-caught.

34. The "Health Certificate" dated April 23, 1997 which defendant LABS submitted as a part of the third shipment represented that the 120 crab-eating macaques in the shipment had been "[c]aptive bred born at INQUATEX, facilities (Jakarta/ Indonesia).

The May 30, 1997 Shipment

35. On or about May 9, 1997, Person A sent to defendant TAUB the CITES permit dated April 14, 1997 for the fourth shipment. The CITES permit authorized the export of 255 "[c]rab-eating [m]acaque" which it described as "[c]aptive breed specimen, no quota allocated." The permit contained the notation "II(C)" in the column marked "Appendices (source)."

36. The fourth shipment consisted of approximately 253 crab-eating macaques from the Inquatex colony. Approximately 99 of these crab-eating macaques were wild-caught.

37. The "Health Certificate" dated May 27, 1997 which defendant LABS submitted as a part of the fourth shipment represented that the 253 crab-eating macaques in the shipment had been "[c]aptive bred born at INQUATEX, facilities (Jakarta/ Indonesia).

38. On or the dates set forth below, each such date constituting a separate count of this indictment, at Chicago, in the Northern District of Illinois, Eastern Division,

LABS OF VIRGINIA, INC., and
DAVID M. TAUB,

defendants herein, did knowingly submit a false record, account, label for, and a false identification of wildlife, namely, CITES permits and health certificates for shipments described below containing wild-caught and captive-bred *Macaca fascicularis* which falsely represented that the shipments contained only captive bred *Macaca fascicularis*, which wildlife had been imported from a foreign country, namely, Indonesia, and transported in foreign commerce:

Count	Arrival Date at O'Hare	Total No. in Shipment	Approx. No. Wild-Caught
One	02/20/97	220	80
Two	04/10/97	253	98
Three	05/01/97	120	50
Four	05/30/97	253	99

All done in violation of Title 16, United States Code, Sections 3372(d) and 3373(d)(3)(A)(i).

COUNT FIVE
(THE TRAFFICKING CHARGE)

The SPECIAL JULY 2002-2 GRAND JURY further charges:

1. The allegations contained in Paragraphs 1 through 37 of Count One are incorporated as if set forth herein.

2. The Lacey Act, Title 16, United States Code, Section 3372(a)(2)(A), provides in pertinent part that "[i]t is unlawful for any person . . . to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce . . . any . . . wildlife . . . transported, or sold . . . in violation of any foreign law. . . ." Indonesian Decree No. 26.Kpts-11/94 is a foreign law which is encompassed within Section 3372(a)(2)(A) of the Lacey Act.

3. The four shipments from Inquatex which entered the United States through O'Hare contained productive wild-caught crab-eating macaques.

4. Between on or about February 20, 1997 and on or about May 30, 1997, at Chicago, in the Northern District of Illinois, Eastern Division,

LABS OF VIRGINIA, INC.,
DAVID M. TAUB,
CHARLES J. STERN, and
WILLIAM CURTIS HENLEY III,

defendants herein, did knowingly import wildlife in interstate and foreign commerce, namely, wild-caught *Macaca fascicularis,* and in the exercise of due care should have known that the wildlife was

transported and sold in violation of a foreign law, namely, Decree No. 26/Kpts-11/94, which imposed a ban on the transportation from Indonesia, that is, the export of wild-caught *Macaca fascicularis*;

In violation of Title 16, United States Code, Sections 3372(a)(2)(A) and 3373(d)(2).

COUNTS SIX THROUGH NINE
(THE IMPORTATION IN VIOLATION OF LAW CHARGES)

The SPECIAL JULY 2002-2 GRAND JURY further charges:

1. The allegations contained in Paragraphs 1 through 37 of Count One are incorporated as if set forth herein.

2. On or about the dates set forth below, each such date constituting a separate count of this indictment, at Chicago, in the Northern District of Illinois, Eastern Division,

LABS OF VIRGINIA, INC., and
DAVID M. TAUB,

defendants herein, did fraudulently and knowingly import into the United States certain merchandise contrary to law in the shipments described below, namely, wild-caught *Macaca fascicularis,* knowing the merchandise to have been imported into the United States contrary to law;

Count	Arrival Date at O'Hare	Total No. in Shipment	Approx. No. Wild-Caught
Six	02/20/97	220	80
Seven	04/10/97	253	98
Eight	05/01/97	120	50
Nine	05/30/97	253	99

All in violation of Title 18, United States Code, Section 545.

COUNTS TEN THROUGH TWELVE
(THE HUMANE TRANSPORT CHARGES)

The SPECIAL JULY 2002-2 GRAND JURY further charges:

1. The allegations contained in Paragraphs 1 through 37 of Count One are incorporated as if set forth herein.

2. Defendant LABS, through defendant TAUB, applied for and was issued by USFWS a Federal Fish and Wildlife Import/Export Permit which was effective between May 1, 1996 and May 31, 1997. The Import/Export Permit stated in pertinent part that its validity was "conditioned upon strict observance of all applicable foreign, state, local or other federal law."

3. The federal regulations issued by USFWS which govern the humane and healthful transport of wildlife to the United States are set forth at Title 50, Code of Federal Regulations, Section 14.105. Section 14.105 provides in pertinent part that "[a] nursing mother with young . . . shall be transported only if the primary purpose is for needed medical treatment and upon certification in writing by the examining veterinarian that the treatment is necessary and the animal is able to withstand the normal rigors of transport. . . ."

4. On or about April 7, 1997, defendant TAUB instructed the employee of defendant LABS at the Inquatex facility for the second O'Hare shipment to include "mothers with unweaned infants greater than 2 months of age" in the shipment.

5. On or about April 18, 1997, Person A informed an employee of defendant LABS that the third O'Hare shipment would include "17 mother with baby."

8. On or about May 26, 1997, Person A sent to an employee of defendant LABS a listing of the crab-eating macaques to be included in the fourth O'Hare shipment. The list reflected that the shipment would contain "19 HDS [heads] BABY AND MOTHER."

9. On or the dates set forth below, each such date constituting a separate count of this indictment, at Chicago, in the Northern District of Illinois, Eastern Division,

LABS OF VIRGINIA, INC., and
DAVID M. TAUB,

defendants herein, did knowingly import wildlife in interstate and foreign commerce in the shipments described below, namely, *Macaca fascicularis* which included nursing mothers with young when the primary purpose of their transport was not needed medical treatment, and in the exercise of due care should have known that the wildlife was transported to the United States in violation of a regulation of the United States, namely, Title 50, Code of Federal Regulations, Section 14.105(b)(2):

Count	Arrival Date	Total No. in Shipment	Approx. No. Pairs Nursing Mothers & Unweaned Young
Ten	04/10/97	253	20
Eleven	05/01/97	120	17
Twelve	05/30/97	253	19

All done in violation of Title 16, United States Code, Sections 3372(a)(2)(A) and 3373(d)(2).

A TRUE BILL:

FOREPERSON

UNITED STATES ATTORNEY

No.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA

vs.

LABS OF VIRGINIA, INC.,
DAVID M. TAUB,
CHARLES J. STERN, and
WILLIAM CURTIS HENLEY III

I N D I C T M E N T

Violations: Title 16, USC, Sections 3372(a)(2)(A), 3372(d), 3373(d)(2), and 3373(d)(3)(A)(i); Title 50, Code of Federal Regulations, Section 14.105(b)(2), and Title 18 USC Section 545

A true bill,

David L. Hopsberg

Foreman

Filed in open court this 2 day of April, A.D. 2002

Clerk

Bail, $ _____

PO 880.320

Minute Order Form (06/97)

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge		Sitting Judge if Other than Assigned Judge	
CASE NUMBER	98 GJ 364	DATE	APRIL 02, 2002
CASE TITLE	US V. LABS OF VIRGINIA, INC., DAVID M. TAUB, CHARLES J. STERN, and WILLIAM CURTIS HENLEY III		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nat the motion being presented.]

MOTION:

GRAND JURY PROCEEDING AND REQUEST TO SEAL

The Grand Jury for the SPECIAL JULY 2000-2 Session, a quorum being present, returns the above-entitled indictment in open Court this date before

Judge or Magistrate Judge [signature]

DOCKET ENTRY:

NO BOND SET AS TO LABS OF VIRGINIA, INC.,; DEFENDANT IS A BUSINESS. TO SET PRELIMINARY BAIL AT $4500.00 AND THAT DEFENDANT BE ALLOWED TO SIGN OWN RECOGNIZANCE BOND AS TO DAVID M. TAUB, CHARLES J. STERN AND WILLIAM CURTIS HENLEY III.

02CR0312

JUDGE CASTILLO

MAGISTRATE JUDGE BOI

SPECIAL JULY 2000-2

Grand Jury for the _____ Session.

By: [signature] Foreman.

SIGNATURE OF CHIEF JUDGE OR MAGISTRATE JUDGE _____ (ONLY IF FILED UNDER SEAL)

No notices required, advised in open court.

No notices required.

Notices mailed by judge's staff.

Notified counsel by telephone.

Docketing to mail notices.

Mail AO 450 form.

Copy to judge/magistrate judge.

courtroom deputy's initials

FILED

APR 02 2002

MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

ONE
number of notices

APR 03 2002
date docketed

docketing deputy initials

date mailed notice

mailing deputy initials

Document Number 3

Date/time received in central Clerk's Office

Minute Order Form (06/97)

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Ruben Castillo	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	02 CR 312	DATE	4/4/2002
CASE TITLE	USA vs. Labs of Virginia, et al.		

MOTION: [In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

DOCKET ENTRY:

(1) ☐ Filed motion of [use listing in "Motion" box above.]

(2) ☐ Brief in support of motion due _____.

(3) ☐ Answer brief to motion due_____. Reply to answer brief due_____.

(4) ☐ Ruling/Hearing on _____ set for _____ at _____.

(5) ☐ Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(7) ☐ Trial[set for/re-set for] on _____ at _____.

(8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.

(9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ General Rule 21 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).

(10) ■ [Other docket entry] Arraignment and plea hearing as to all defendants reset to April 16, 2002 at 1:30 p.m.

(11) ☐ [For further detail see order (on reverse side of/attached to) the original minute order.]

No notices required, advised in open court.

No notices required.

Notices mailed by judge's staff.

Notified counsel by telephone.

✓ Docketing to mail notices.

Mail AO 450 form.

Copy to judge/magistrate judge.

number of notices

APR 0 5 2002
date docketed

docketing deputy initials

Document Number

5

date mailed notice

R● courtroom deputy's initials

U.S. DISTRICT COURT CLERK 02 APR -4 PM 2:8

Date/time received in central Clerk's Office

mailing deputy initials

Minute Order Form (06/97)

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Ruben Castillo	**Sitting Judge if Other than Assigned Judge**	
CASE NUMBER	02 CR 312 - 1	**DATE**	4/16/2002
CASE TITLE	USA vs. Labs of Virginia Inc.		

MOTION: [In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

DOCKET ENTRY:

(1) ☐ Filed motion of [use listing in "Motion" box above.]

(2) ☐ Brief in support of motion due _____.

(3) ☐ Answer brief to motion due_____. Reply to answer brief due_____.

(4) ☐ Ruling/Hearing on _____ set for _____ at _____.

(5) ■ Status hearing set for 5/8/2002 at 9:45 A.M..

(6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(7) ☐ Trial[set for/re-set for] on _____ at _____.

(8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.

(9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ General Rule 21 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).

(10) ■ [Other docket entry] Arraignment and plea hearing held. Counsel appeared on behalf of the defendant. Defendant waives formal reading of the indictment and enters a plea of not guilty to all counts. Rule 16.1 conference to be held on or before 4/29/02. From today's date until 5/8/02 is excluded pursuant to 18 U.S.C. 3161(h)(8)(A)(B). (X-T).

(11) ☐ [For further detail see order (on reverse side of/attached to) the original minute order.]

No notices required, advised in open court.

No notices required.

Notices mailed by judge's staff.

Notified counsel by telephone.

✓ Docketing to mail notices.

Mail AO 450 form.

Copy to judge/magistrate judge.

RO courtroom deputy's initials

U.S. DISTRICT COURT CLERK 02 APR 16 PM 2:00

Date/time received in central Clerk's Office

number of notices

Apr 16 2002 date docketed

docketing deputy initials

date mailed notice

mailing deputy initials

Document Number 6

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Ruben Castillo	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	02 CR 312 - all	DATE	2/12/2003
CASE TITLE	USA vs. Labs of Virginia, et al.		

MOTION: [In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

DOCKET ENTRY:

(1) ☐ Filed motion of [use listing in "Motion" box above.]

(2) ☐ Brief in support of motion due _____.

(3) ☐ Answer brief to motion due_____. Reply to answer brief due_____.

(4) ☐ Ruling/Hearing on _____ set for _____ at _____.

(5) ■ Status hearing held and continued to 4/2/2003 at 9:30 A.M..

(6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(7) ☐ Trial[set for/re-set for] on _____ at _____.

(8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.

(9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ Local Rule 41.1 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).

(10) ■ [Other docket entry] The parties are to submit the revised Letters of Rogatory on or before 2/19/03. Defendants' oral motion to strike is granted. From 1/31/03 until 4/2/03 is excluded pursuant to 18 U.S.C. 3161(h)(1)(F) and 18 U.S.C. 3161(h)(8)(A)(B). (X-E and X-T).

(11) ☐ [For further detail see order (on reverse side of/attached to) the original minute order.]

No notices required, advised in open court.

No notices required.

Notices mailed by judge's staff.

Notified counsel by telephone.

✓ Docketing to mail notices.

Mail AO 450 form.

Copy to judge/magistrate judge.

RO courtroom deputy's initials

U.S. DISTRICT COURT CLERK'S OFFICE 03 FEB 13 PM 4:29

Date/time received in central Clerk's Office

number of notices

FEB 14 2003 date docketed

docketing deputy initials

date mailed notice

mailing deputy initials

Document Number 88

Minute Order Form (06/97)

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Ruben Castillo	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	02 CR 312	DATE	4/22/2002
CASE TITLE	USA vs. Labs of Virginia, Inc., David Taub, Charles J. Stern and William Curtis Henley, III		

MOTION: [In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

DOCKET ENTRY:

(1) ☐ Filed motion of [use listing in "Motion" box above.]

(2) ☐ Brief in support of motion due _____.

(3) ☐ Answer brief to motion due_____. Reply to answer brief due_____.

(4) ☐ Ruling/Hearing on _____ set for _____ at _____.

(5) ■ Status hearing re-set to 5/15/2002 at 10:00 A.M..

(6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(7) ☐ Trial[set for/re-set for] on _____ at _____.

(8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.

(9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ General Rule 21 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).

(10) ■ [Other docket entry] Status hearing set for 5/8/02 is vacated. From today's date until 5/15/02 is excluded pursuant to 18 U.S.C. 3161(h)(8)(A)(B). (X-T).

(11) ☐ [For further detail see order (on reverse side of/attached to) the original minute order.]

No notices required, advised in open court.

No notices required.

Notices mailed by judge's staff.

Notified counsel by telephone.

✓ Docketing to mail notices.

Mail AO 450 form.

Copy to judge/magistrate judge.

number of notices

APR 23 2002
date docketed

docketing deputy initials

Document Number

date mailed notice

RO courtroom deputy's initials

Date/time received in central Clerk's Office

mailing deputy initials

Minute Order Form (06/97)

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Ruben Castillo	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	02 CR 312	DATE	5/15/2002
CASE TITLE	USA vs. Labs of Virginia, et al.		

MOTION: [In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

DOCKET ENTRY:

(1) ☐ Filed motion of [use listing in "Motion" box above.]

(2) ☐ Brief in support of motion due _____.

(3) ☐ Answer brief to motion due_____. Reply to answer brief due_____.

(4) ☐ Ruling/Hearing on _____ set for _____ at _____.

(5) ■ Status hearing held and continued to 7/10/2002 at 10:00 A.M..

(6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(7) ☐ Trial[set for/re-set for] on _____ at _____.

(8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.

(9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ General Rule 21 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).

(10) ■ [Other docket entry] The defendants' presence is waived at the next status hearing. Any pretrial motions are to be filed on or before July 1, 2002. Parties are to note the filing date for pretrial motions is different from that stated on the record. Government's oral motion to amend the indictment in Counts Ten through Twelve to change the statutory reference from Title 16 Untied States Code Sections 3372(a)(2)(A) and 3373(d)(2) to Title 16 United States Code Sections 3372(a)(1)(A) and 3373(d)(2) is granted. From today's date until July 10, 2002 is excluded pursuant to 18 U.S.C. 3161(h)(1)(F) and 18 U.S.C. 3161(h)(8)(A)(B). (X-E and X-T).

(11) ☐ [For further detail see order (on reverse side of/attached to) the original minute order.]

No notices required, advised in open court.
No notices required.
Notices mailed by judge's staff.
Notified counsel by telephone.
✓ Docketing to mail notices.
Mail AO 450 form.
Copy to judge/magistrate judge.

RO courtroom deputy's initials

U.S. DISTRICT COURT
02 MAY 15 PM 3:01
FILED-CLK

Date/time received in central Clerk's Office

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MAY 16 2002

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date mailed notice

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA	)	
	)	No. 02 CR 0312
v.	)	
	)	Judge Castillo
LABS OF VIRGINIA, INC.	)	Magistrate Judge Bobrick
DAVID M. TAUB	)	
CHARLES J. STERN, and	)	
WILLIAM CURTIS HENLEY III	)	
	)	

DEFENDANT LABS OF VIRGINIA, INC.'S NOTICE OF JOINDER

Defendant Labs of Virginia, Inc. ("LABS"), by the undersigned counsel, hereby joins in and consents to various motions filed by Defendants David M. Taub, Charles J. Stern, and William Curtis Henley III, on July 1, 2002, pursuant to Federal Rule of Criminal Procedure 12(b). Defendant adopts and incorporates by reference the following motions in their entirety:

1) Defendant David M. Taub's Motion for Early Disclosure of Intention to Introduce Co-Conspirator Statements Pursuant to Federal Rule of Evidence 801(d)(2)(E);

2) Defendant David M. Taub's Motion for Leave to Issue Pretrial Subpoenas Pursuant to Rule 17(c) and Memorandum of Law in Support;

3) Defendant David M. Taub's Motion for Leave to File Additional Motions;

4) Defendant David M. Taub's Motion for Pretrial Disclosure of Exculpatory Evidence;

5) Defendant David M. Taub's Motion for Bill of Particulars and Supporting Memorandum of Law;

6) Motion of Defendants Charles J. Stern and William Curtis Henley III to Dismiss Count 5 of the Indictment under the Act of State Doctrine and Memorandum in Support of Motion of Defendants Charles J. Stern and William Curtis Henley III to Dismiss Count 5 of the Indictment under the Act of State Doctrine;

7) Motion of Defendants Charles J. Stern and William Curtis Henley III to Dismiss Count 5 of the Indictment under the Void for Vagueness Doctrine and Memorandum in Support of Motion of Defendants Charles J. Stern and William Curtis Henley III to Dismiss Count 5 of the Indictment under the Void for Vagueness Doctrine; and

8) Motion of Defendants Charles J. Stern and William Curtis Henley III to Dismiss Count 5 of the Indictment for Failure to Allege an Essential Element of the Offense and Memorandum in Support of Motion of Defendants Charles J. Stern and William Curtis Henley III to Dismiss Count 5 of the Indictment for Failure to Allege an Essential Element of the Offense.

Respectfully submitted,

Michael L. Fayad

By Michael L. Fayad/RHK
Attorney for Defendant LABS of Virginia, Inc.

GREENBERG TRAURIG, LLP
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Local counsel:
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July 1, 2002

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of July, 2002, a true and correct copy of the foregoing Defendant LABS of Virginia, Inc.'s Notice of Joinder, was served by hand delivery on the following:

Diane MacArthur, Esq.
Assistant United States Attorney
219 South Dearborn Street
Chicago, IL 60604

and by United States first class mail, postage prepaid, on the following:

Michael L. Fayad, Esq.
GREENBERG TRAURIG, LLP
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Samuel J. Buffone, Esq.
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725 Twelfth Street, N.W.
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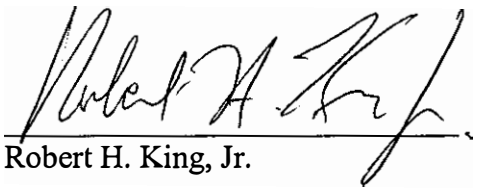

Robert H. King, Jr.

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA	)	
	)	No. 02 CR 0312
v.	)	
	)	Judge Castillo
LABS OF VIRGINIA, INC.	)	Magistrate Judge Bobrick
DAVID M. TAUB	)	
CHARLES J. STERN, and	)	
WILLIAM CURTIS HENLEY III	)	
	)	

DEFENDANT LABS OF VIRGINIA, INC.'S MOTION FOR LEAVE TO FILE IN EXCESS OF FIFTEEN PAGES

Defendant Labs of Virginia, Inc. ("LABS"), by and through undersigned counsel, respectfully moves, pursuant to Local Rule 7.1 of the Local Rules of the United States District Court for the Northern District of Illinois, for permission to exceed the fifteen-page limitation in its Motion to Dismiss and Memorandum of Law in Support ("Motion to Dismiss"). In support of this Motion, LABS states as follows:

1. The Motion to Dismiss is filed by LABS, but has been adopted by all three co-Defendants. The Motion to Dismiss raises numerous complex legal issues applicable in differing degrees to all of the Defendants.

2. The Indictment is eighteen pages in length, includes twelve counts, and contains many facial defects that demonstrate the insufficient and invalid nature of the Indictment. Each of these facial defects had to be separately addressed.

3. In order to adequately and properly address the issues raised in LABS' Motion to Dismiss, it was necessary for LABS to exceed the fifteen-page limit imposed by the Local Rules of this Court.

4. This Motion is brought in good faith, and will assist in clarifying the issues before the Court.

Respectfully submitted,

Michael L. Fayad

By _____
Attorney for Defendant LABS of Virginia, Inc.

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Local counsel:
Robert H. King, Jr.
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77 West Wacker Drive
Suite 2500
Chicago, Illinois 60601
(312) 456-8400

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of July, 2002, a true and correct copy of the foregoing Defendant LABS of Virginia, Inc.'s Motion for Leave to File in Excess of Fifteen Pages, was served by hand delivery on the following:

Diane MacArthur, Esq.
Assistant United States Attorney
219 South Dearborn Street
Chicago, IL 60604

and by United States first class mail, postage prepaid, on the following:

Michael L. Fayad, Esq.
GREENBERG TRAURIG, LLP
800 Connecticut Avenue, N.W.
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Washington, DC 20006

Samuel J. Buffone, Esq.
Kelly B. Kramer, Esq.
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Gerald A. Feffer, Esq.
David M. Zinn, Esq.
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725 Twelfth Street, N.W.
Washington, D.C. 20005

Robert H. King, Jr.

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA)
)
v.)
)
LABS OF VIRGINIA, INC.)
DAVID M. TAUB)
CHARLES J. STERN, and)
WILLIAM CURTIS HENLEY III)
)

No. 02 CR 0312

Judge Castillo
Magistrate Judge Brown

DEFENDANT LABS OF VIRGINIA, INC.'S MOTION TO STRIKE PORTIONS OF THE INDICTMENT AND MEMORANDUM OF LAW IN SUPPORT

Pursuant to Rules 7(d) and 12(b) of the Federal Rules of Criminal Procedure, Defendant Labs of Virginia, Inc. ("LABS" or "Defendant") hereby requests this Court to strike portions of the Indictment. Specifically, LABS respectfully requests that certain irrelevant and prejudicial surplusage be stricken from the Indictment. As will be explained herein, certain allegations in the Indictment are irrelevant and not essential to the Indictment. Moreover, these allegations are also inflammatory and prejudicial because they incite an improper, emotional response to the evidence presented, and have no probative value.

ARGUMENT

Federal Rule of Criminal Procedure 7(d) provides that surplusage may be stricken from an indictment by the court upon a motion made by the defendant. The purpose of Rule 7(d) is to "protect the defendant against prejudicial allegations or irrelevant or immaterial facts." 1 Charles Alan Wright, Wright & Miller Fed. Prac. & Proc. Crim. 3d §127. The rule helps to minimize the unfair effect of inflammatory and irrelevant language on the jury. See United States v. Andrews, 749 F. Supp. 1517, 1519 (N.D. Ill. 1990). "Prosecutors have been known to insert unnecessary

allegations for 'color' or 'background' hoping that these will stimulate the interest of the jurors." United States v. Brighton Building & Maintenance Co., 435 F. Supp. 222, 230 (N.D. Ill. 1977) (citing 1 Charles Alan Wright, Wright & Miller Fed. Prac. & Proc. Crim. 3d §127 at 277 (1969)). A court has discretion to strike immaterial or irrelevant allegations which may be prejudicial. Andrews, 749 F. Supp. at 1518 (citing United States v. Climatemp, Inc., 482 F. Supp. 376, 391 (N.D. Ill. 1979)).

The Indictment states that "Bionetics Corporation ("Bionetics") purchased the entity which became LABS…" and then proceeds to state Bionetics' address. Indictment, at 1-2, ¶ 3. The Indictment also describes positions held by Defendants Stern and Henley in Bionetics, and refers to Defendant Stern's interest in Bionetics. All of the above-mentioned statements are irrelevant. In addition, the statement that alleges "Bionetics purchased the entity which became LABS" is untrue, and improperly, incorrectly, and unnecessarily associates Bionetics with the allegedly unlawful activities of LABS described in the Indictment.[1] This statement misrepresents the legal status of LABS by indicating that LABS has a parent company that could be legally or financially responsible for LABS' actions.

The Indictment's use of the term "baksheesh" is also irrelevant, inappropriate, and untrue. See Indictment, at 6, ¶ 19. The use of the term "baksheesh", as well as the Government's statement that "[b]aksheesh means bribe" is a blatant attempt to prejudice Defendant and lure the jury and the Court into thinking that the Defendant was a party to or had knowledge of improper payments, which the Government would like to have charged, but, as their own evidence shows, did not happen.

[1] See Declaration of Ms. Janice Kennard, attached hereto as Exhibit 1.

I. Statements Regarding Defendant LABS' Ownership Must Be Stricken from the Indictment as Irrelevant and Prejudicial.

The Indictment states that Bionetics purchased the entity which became LABS. See Indictment, at 1-2, ¶ 3. This statement implies that LABS' parent company is Bionetics. This characterization of Bionetics is both untrue and irrelevant. Pursuant to Federal Rule of Evidence 401, "relevant evidence is that which has any tendency to make the existence of any fact of consequence to the action more or less probable than it would be without the evidence." United States v. Harris, 542 F.2d 1283, 1317 (7th Cir. 1976); see United States v. Neeley, 189 F.3d 670, 681-82 (7th Cir. 1999). The assertion that Bionetics owns LABS is simply irrelevant to the allegations set forth in the Indictment. According to Federal Rule of Evidence 402, the fate of irrelevant evidence is exclusion, for "[e]vidence which is not relevant is not admissible." Fed. R. Evid. 402. As such, there is no basis for including references to Bionetics in the Indictment and all such references should be stricken.

Furthermore, even if this Court determines that some assertion regarding LABS' ownership is relevant, true statements in the Indictment that Bionetics owns LABS must be stricken due to their prejudicial effect and because the statements are wrong. Pursuant to Federal Rule of Evidence 403, relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury … ." Fed. R. Evid. 403; see United States v. McPartlin, 595 F.2d 1321, 1345 (7th Cir. 1979). Here, the incorrect identification of LABS' owner, has no probative value whatsoever and is misleading.

II. Statements Alleging Bribery and Defendant's Knowledge Thereof Must Be Stricken from the Indictment as Irrelevant, Prejudicial, and an Improper Reference to Questionable Payment Allegations.

The Indictment contends that before buying the breeding colony, "Person B" distributed a memorandum to Defendant stating that "since exporting wild-caught crab-eating macaques was against Indonesian law unless some exception was written, Person A had gone to the Indonesian government and had cut a 'baksheesh' deal to pay them off." Indictment, at 6, ¶ 19. The Indictment further alleges, without any basis and incorrectly, that "[b]aksheesh means bribe." Id.[2] Finally, the Indictment asserts that "Person B also stated [in the memorandum] that Inquatex's monthly expenses included $300 in 'CITES charity' that needed to be paid out to various officials." Id. The Indictment's allegations incorrectly imply that Defendant knew the previous owner of the colony was involved in bribing the Indonesian government and in paying off various officials on a monthly basis in order to get permission to export the colony.

Either the Government elected not to include these prior bad acts allegations as violations in the Indictment it presented to the Grand Jury or the Grand Jury rejected them, because they either lacked merit or there was insufficient evidence.[3] Nevertheless, the Government included these allegations solely to prejudice the Court and the jury. Since the Indictment does not include any charges related to bribery, the only purpose of the allegations in paragraph 19 of the

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[2] This unsupported and purported statement of a legal definition is false, and points out the precise problem that the jury will have if these allegations remain. Baksheesh is defined as "a gratuity or tip to expedite service, especially in some near eastern countries." Dictionary.com (visited June 26, 2002) <http://www.dictionary.com/search?q=baksheesh>. The etymology of the word "baksheesh" is "Persian bakhshish, *present*, from Middle Persian bakhshishn, from bakhsh dan, bakhsh-, *to give presents*, from Avestan bakhsh-. See bhag- in Indo-European Roots." Id. Bribery is defined as "the offering, giving, receiving, or soliciting of any thing of value to influence action as an official or in discharge of legal or public duty." Black's Law Dictionary (5th ed. 1983).

[3] The Government's own evidence flatly contradicts the implication that a bribe was paid to obtain permission to export unproductive parent stock.

Indictment is to prejudice the Court and the jury against Defendant and attempt to show that Defendant has a propensity toward wrongful behavior. The Government's characterization of baksheesh as a "bribe" is incorrect and has illegal connotations that are highly prejudicial to Defendant in addition to being wrong.

The Court should strike the entirety of paragraph 19 of the Indictment for several reasons. First, statements regarding the alleged payment of "baksheesh", "bribes", or "charity" are irrelevant to this case because there are no counts in the Indictment that involve such payments. See Fed. R. Evid. 401 and 402. Second, the references to baksheesh, bribery, and charity have no probative value as to whether Defendant committed the acts alleged in the Indictment. Moreover, even if this Court determined that such statements had probative value, that value is substantially outweighed by the danger of unfair prejudice. See Fed. R. Evid. 403.

The Government's inclusion of references to baksheesh, bribes, and charity in the Indictment improperly suggests that there were wrongful, or possibly illegal, payments that occurred with Defendant's knowledge as part of the transaction between LABS and Inquatex. Rule 404(b) of the Federal Rules of Evidence states that "[e]vidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith." Fed. R. Evid. 404(b). "Federal Rule of Evidence 404(b) was designed to prevent the admission of such propensity evidence." United States v. Shields, 999 F.2d 1090, 1100 (7th Cir. 1993). The Seventh Circuit has established a four-prong test for admitting prior bad acts evidence under 404(b). Such evidence is admissible if:

> (1) the evidence is directed toward establishing a matter in issue other than the defendant's propensity to commit the crime charged, (2) the evidence shows that the other act is similar enough and close enough in time to be relevant to the matter in issue, (3) the evidence is sufficient to support a jury finding that the defendant committed the similar act, and (4) the probative value of the evidence is not substantially outweighed by the danger of unfair prejudice.

Shields, 999 F.2d at 1099 (citing United States v. Zapata, 871 F.2d 616, 620 (7th Cir. 1989)); see United States v. Williams, 216 F.3d 611, 614 (7th Cir. 2000).

The statements regarding baksheesh, bribes, and charity included in paragraph 19 of the Indictment clearly fail this four-prong test, and therefore, should be stricken from the Indictment. First, any evidence of whether Defendant was aware of the alleged payment of baksheesh, bribes, or charity by the prior owner of the breeding colony (or whether any such payments actually occurred) does not establish a matter in issue. Past acts of bribery are admissible only if evidence of prior bribery shows conformity with a plan or intent as to the charged crime. See e.g., United States v. Anderson, 809 F.2d 1281, 1285 (7th Cir. 1987) (court allowed evidence of one prior bribery incident to support an inference that the defendants had an ongoing plan to obtain bribes and acted in conformity with it); McPartlin, 595 F.2d at 1343 (prior bad act bribery evidence tended to refute defendant's defense that he lacked the intent to bribe city officials). However, unlike the cited cases, in this case, Defendant is not being charged with bribery and the Government's own evidence shows that an alleged payment of bribery was not part of the plan involving the alleged crimes set forth in the Indictment. Instead, the Government appears to be attempting to develop a perception of Defendant as a company that has a propensity toward committing bad acts. As such, the statements in paragraph 19 do not establish a matter in issue nor do they relate to a propensity to commit any of the crimes charged in the Indictment.

Second, the references to payments of bribes and Defendant's knowledge of such payments are not similar to any of the counts against Defendant. Prior bad acts must be "similar enough…[to the charged acts] to be relevant." McPartlin, 595 F.2d at 1343. In this case, alleged bribery payments by a previous owner of the breeding colony have no relationship to the charges

brought against Defendant. Therefore, the second prong of the four-part test for determining the admissibility of prior bad acts is not met.

Third, the allegations of prior acts of bribery, as presented in the Indictment, are insufficient, i.e., not clear and convincing, to support a jury finding that Defendant committed the similar act. See United States v. Tuchow 768 F.2d 855, 863 (7th Cir. 1985). In Tuchow, the Seventh Circuit found that the prior bribery evidence against defendant was clear and convincing because the conversation regarding the prior bribery was recorded on audiotape. Id. That is not the case here. The Government solely relies on a speculative statement by "Person B" that "Person A" made baksheesh or bribe payments to the Indonesian government in order to obtain permission to export the unproductive parent stock and that Inquatex's expenses included CITES charity payments to officials. The Indictment fails to definitively state that any payments to the Indonesian government officials in return for the grant of permission to export the wild caught monkeys actually occurred. In fact, Person A testified under oath before the grand jury that he did not pay money to Department of Forestry officials to obtain the CITES permit. The unsupported and conclusory references to the payment of baksheesh and charity, and the erroneous conclusion that baksheesh means bribe, are insufficient to support the inclusion of this highly prejudicial paragraph. Moreover, it would be an unjustified waste of judicial resources to allow the Government to proceed further on the subject of alleged bribery since there is not clear and convincing evidence of bribery, as required by prong three of the four-part test.

Fourth, the danger of unfair prejudice substantially outweighs the probative value of the bribery-related statements contained in paragraph 19 of the Indictment. In this case, the bribery allegations do not make the existence of any fact of consequence to the action more or less probable. The only real effect of this evidence is to surround Defendant in an aura of corruptness

and to prejudice the Court and jury against Defendant. Therefore, all references to bribery, baksheesh, and charity should be stricken from the Indictment.

Finally, Defendant's request that the Court strike paragraph 19 from the Indictment is supported by United States v. O'Connor, 580 F.2d 38 (2nd Cir. 1978). In O'Connor, the Second Circuit reviewed a federal district court's decision to admit evidence of a prior bribery. The Second Circuit reversed the lower court's decision because the prior bad act evidence was irrelevant and prejudicial. Similar to the instant case, proper identification of the defendant, intent, and knowledge were not at issue. The court held:

> Not only was the evidence irrelevant, it was prejudicial because it might lead a jury to convict because it thought the defendant's character was such that he frequently committed crimes. Moreover, the evidence distorted the emphasis at trial away from the crimes covered by the indictment to those not so charged.

Id. at 43. Likewise, the references to baksheesh, bribery, and charity payments in paragraph 19 of the Indictment distorts the focus at trial away from the charged crimes. In fact, the unsupported allegations in paragraph 19 are so serious that the Government, Defendant, and the Court are likely to spend considerable time proving, disproving and instructing the jury as to a crime not charged. Therefore, this issue should be excluded on the basis of judicial economy. Based on the foregoing, paragraph 19 of the Indictment fails the Seventh Circuit's four-prong test, and, therefore, must be stricken from the Indictment.

CONCLUSION

WHEREFORE, for the reasons stated above, and any additional reasons stated at any oral hearing on this Motion, Defendant respectfully moves the Court to grant this Motion and issue and issue an order striking the following portions of the Indictment in the instant proceeding:

1. pages 1-2, paragraph 3;

2. page 2, paragraph 4, second and third sentences;

3. page 2, paragraph 5, second sentence; and

4. page 6, paragraph 19.

Respectfully submitted,

Michael L. Fayad

By _____
Attorney for Defendant LABS of Virginia, Inc.

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July 1, 2002

See Case File for Exhibits

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA	)	No. 02 CR 0312
v.	)	Judge Castillo
LABS OF VIRGINIA, INC. DAVID M. TAUB CHARLES J. STERN, and WILLIAM CURTIS HENLEY III	)	Magistrate Judge Bobrick

DEFENDANT LABS OF VIRGINIA, INC.'S MOTION TO DISMISS AND MEMORANDUM OF LAW IN SUPPORT

Michael L. Fayad
Attorney for Defendant LABS of Virginia, Inc.

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July 1, 2002

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA	)	No. 02 CR 0312
v.	)	Judge Castillo
LABS OF VIRGINIA, INC. DAVID M. TAUB CHARLES J. STERN, and WILLIAM CURTIS HENLEY III	)	Magistrate Judge Bobrick

DEFENDANT LABS OF VIRGINIA, INC.'S MOTION TO DISMISS AND MEMORANDUM OF LAW IN SUPPORT

Pursuant to Federal Rule of Criminal Procedure 12(b), Defendant Labs of Virginia, Inc. ("LABS" or "Defendant"), by the undersigned counsel, hereby requests this Court to dismiss the Indictment against LABS. The Indictment is not legally sufficient and should be dismissed.

BACKGROUND

On April 2, 2002, an Indictment was issued against Defendants LABS of Virginia, Inc., David M. Taub, Charles J. Stern and William Curtis Henley III (collectively, the "Defendants") by a Grand Jury in Chicago, Illinois. The charges in the Indictment arise out of a transaction between LABS and Indonesian Aquatics Export CV ("Inquatex"), a company located in Indonesia. LABS breeds, raises, manages, and provides animals to United States Government ("Government") and private organizations for purposes of bio-medical research. In particular, the Indictment concerns alleged violations of federal statutes arising out of LABS' purchase of an entire colony of monkeys consisting of approximately 1,300 cynomolgus macaques (of the species "*Macaca fascicularis*" and commonly known as crab-eating or long-tailed macaques)

from Inquatex. The colony was shipped in six shipments beginning in February 1997. The point of entry into the United States for the first four shipments was Chicago's O'Hare International Airport. The instant Indictment concerns these four shipments.[1]

The Indictment alleges the following: Counts One through Four of the Indictment allege that Defendants LABS and Taub knowingly submitted false records related to the description of the monkeys with each of the four shipments in violation of 16 U.S.C. §§ 3372(d) and 3373(d)(3)(A)(i) (a felony); Count Five of the Indictment alleges that all Defendants knowingly imported monkeys and in the exercise of due care should have known that the importation violated a foreign law in violation of 16 U.S.C. §§ 3372(a)(2)(A) and 3373(d)(2) (a misdemeanor); Counts Six through Nine allege that Defendants LABS and Taub knowingly and fraudulently imported the four shipments of the monkeys contrary to law in violation of 18 U.S.C. § 545 (a felony); and Counts Ten through Twelve allege that Defendants LABS and Taub knowingly imported three shipments of monkeys and in the exercise of due care should have known that the importation violated a United States regulation allegedly governing the shipments of nursing mothers with infants in violation of 16 U.S.C. §§ 3372(a)(1)(A) and 3373(d)(2) (a misdemeanor).

The Indictment in this case is flawed for several reasons. First, Counts One through Five of the Indictment improperly allege multiple offenses in each count, and therefore, should be dismissed as duplicitous. Second, Counts One through Five of the Indictment are legally insufficient under the Sixth Amendment of the United States Constitution. Third, Counts One through Four and Counts Six Through Nine do not state all of the essential elements for the offenses charged. Fourth, Count Five, which requires a predicate offense, does not allege a

[1] Defendants' Motion Requesting Issuance of Letters Rogatory, filed July 1, 2002, contains a more detailed statement of facts applicable to all of Defendant LABS' motions.

legally sufficient predicate offense. Finally, Counts One though Five and Ten through Twelve in the Indictment allege conduct which is based on a reasonable interpretation of applicable United States and foreign laws and regulations. Thus, this Court should dismiss the Indictment in its entirety.

ARGUMENT

Pursuant to Federal Rule of Criminal Procedure 12(b), "any defense or objection which is capable of determination without the trial of the general issue may be raised before trial by motion." United States v. American Honda Motor Company, 273 F. Supp 810, 814 (E.D. Ill. 1967). Rule 12(e) of the Federal Rules of Criminal Procedure further provide that "[w]here factual issues are involved in determining a motion, the court shall state its essential findings on the record." Fed. R. Crim. P. 12(e). A motion to dismiss under Rule 12(b) is directed to the validity of the indictment and tests whether an offense has been sufficiently charged. See United States v. Yasak, 884 F.2d 996, 1001 (7th Cir. 1989) (citing United States v. Winer, 323 F. Supp 604, 605 (E.D. Pa. 1971)); see also United States v. Sampson, 371 U.S. 75 (1962). An indictment must sufficiently allege the essential facts constituting the offenses charged and fairly apprise the defendants of the unlawfulness of those offenses. See United States v. Grizaffi, 471 F.2d 69, 73 (7th Cir. 1972); see also Fed. R. Crim. P. 7(c)(1) (the indictment "shall be a plain, concise and definite written statement of the essential facts constituting the offense charged."). "An indictment is sufficient if it (1) states the elements of the offense charged, (2) fairly informs the defendant of the nature of the charge so that she may prepare a defense, and (3) enables her to plead an acquittal or conviction as a bar against future prosecutions for the same offense." United States v. Yoon, 128 F.3d 515, 521-22 (7th Cir. 1997) (citing Hamling v. United States, 418 U.S. 87, 117 (1974) and United States v. Allender, 62 F.3d 909, 914 (7th Cir. 1995)).

I. Counts One Through Five Must Be Dismissed Because They Improperly Join Multiple Offenses In A Single Count.

An indictment is required to adequately apprise the defendant of the nature of the charges against him. United States v. Smith, 230 F.3d 300, 305 (7th Cir. 2000). Duplicity is the "joining of two or more offenses in a single count" of an indictment. United States v. Marshall, 75 F.3d 1097, 1111 (7th Cir. 1996) (citations omitted). The prohibition on duplicitous counts is derived from Rule 8(a) of the Federal Rules of Criminal Procedure, which provides for a separate count for each offense. United States v. Beradi, 675 F.2d 894, 897 n.5; see Fed. R. Crim. P. 8(a). "The prohibition against duplicity is designed to protect a defendant's right under the sixth amendment to notice of the 'nature and cause of the accusation' against him so that he may prepare a defense, and to guard against the possibility that 'confusion as to the basis of the verdict may subject the defendant to double jeopardy in the event of a subsequent prosecution.'" United States v. Tanner, 471 F.2d 128, 139 (7th Cir. 1972) (quoting 8 J. Moore, Federal Practice ¶ 8.03[1], at 8-6, 7 (2d ed. 1970)).

The Seventh Circuit has held that the ban on duplicitous indictments arises from four concerns:

> First, courts condemn duplicitous indictments which fail to give defendants adequate notice of the nature of the charges against which they must prepare a defense. Second, courts denounce duplicitous counts which threaten to subject defendants to prejudicial evidentiary rulings at trial. Third, courts dismiss duplicitous indictments which produce trial records inadequate to allow defendants to plead prior convictions or acquittals as a bar to subsequent prosecution for the same offense. Finally, courts overturn duplicitous indictments which present a risk that the jury may have convicted a defendant by a nonunanimous verdict.

United States v. Kimberlin, 781 F.2d 1247, 1250 (7th Cir. 1985) (citations omitted). A duplicitous indictment is insufficient, and therefore must be dismissed.

A. Counts One through Four

In this case, Counts One through Four charge Defendant LABS with violating 16 U.S.C. §§ 3372(d) and 3373(d)(3)(A)(1) by submitting a CITES permit and a health certificate containing false information for the four separate shipments of *Macaca fascicularis* from Indonesia to the United States. Each of Counts One through Four charges one shipment; and, each of these counts is based upon two documents. Counts One through Four are duplicitous and must be dismissed because each count alleges one violation of Section 3372 based upon two independent documents and therefore, under the circumstances of this case, two independent offenses.

As stated earlier, duplicity under Rule 8(a) of the Federal Rule's of Criminal Procedure consists of joining in the same count of an indictment two or more distinct and separate offenses and is prohibited due to notice and double jeopardy concerns. Tanner, 471 F.2d at 138. The Seventh Circuit has not addressed the issue of duplicity in relation to false statement violations based on statements in separate documents. The Ninth Circuit, however, has ruled that separate documents, each of which contained allegedly false statements, could support separate counts.

In United States v. Nash, 115 F.3d 1431 (9th Cir. 1994), the Ninth Circuit reviewed the precise issue of whether false statements on separate documents could be charged in separate counts. The Defendant in Nash used two allegedly false tax returns, for 1985 and 1986, six times to support three applications which he made to two banks. Id. at 1434. The applications were for a loan and a line of credit for Nash's partnership, which were made to one bank, and a personal loan which was made to another bank. Id. The indictment charged Nash with, among other offenses, six violations of 18 U.S.C. § 1014, which prohibits knowingly making false statements to a federally insured lending institution. Id. Nash was convicted and appealed. Id.

On appeal, as to the six violations of 18 U.S.C. § 1014, Nash argued that the contemporaneous submission of multiple false documents, as a set of documents, can support only one charge. Id. at 1438-39. The court disagreed, noting that applicable precedent in the Fifth and Eleventh Circuits, while "admittedly ambiguous," allowed multiple counts for each false statement on a separate document and, in fact, allowed multiple counts for the same false statement used to obtain multiple loans. Id. at 1439. The courts decision in Nash stands for the principal that each use of a false document, whether it is a different false document or the same false document, can support separate counts. See also United States v. Fitzgerald, 2000 WL 1170140 (9th Cir. 2000) (unpublished opinion) (holding that it is permissible to have separate counts based on each document that allegedly contained a false statement).[2] Similarly, in this case, each document containing alleged false statements, i.e., the CITES permits and the health certificates, should have been charged in separate counts related to each of the four shipments. These two documents are not part of the same transaction and each has a different purpose.[3]

[2] The Fifth Circuit and Eleventh Circuit have also held that each false statement on a separate document constitutes a separate count. See United States v. Glanton, 707 F.2d 1238 (11th Cir. 1983); United States v. Guzman, 781 F.2d 428 (5th Cir. 1986). It should be noted, however, that this line of cases relies on Bins v. United States, 331 F.2d 390 (5th Cir. 1964). The court in Bins held that filing two different false documents in the same transaction constitutes two crimes and that any acts capable of being charged as separate offenses must be alleged in separate counts. Id. at 393. However, the court in United States v. Steurer, 942 F. Supp. 1183 (N.D. Ill. 1996), held that the decision in Bins was inapposite. The Steurer case stated that under United States v. Berardi, 675 F.2d 894 (7th Cir. 1982), it is permissible to join three acts, each of which could have constituted independent violations of a statute, in one count where the conduct could fairly be characterized as a single, continuing offense. Id. at 898. As will be explained, the Steurer case is inapposite to the case before this court because the court in Steurer limited its analysis to whether several false statements in a single document could be charged under the same count.

[3] While the health certificates reference the CITES permits, the two documents are issued by two different agencies of the Indonesian government. The CITES permits were issued by the Department of Forestry; the health certificates were issued by the Department of Agriculture, National Quarantine of Agriculture.

In United States v. Steurer, 942 F. Supp. 1183 (N.D. Ill. 1996), defendant Steurer was charged with making false statements of material facts to a financial institution in violation of 18 U.S.C. § 1014. In connection with a loan, Steurer submitted four different promissory notes, each containing a fictitious borrower's name, taxpayer identification number, address, and purpose for borrowing the funds. Id. at 1185-86. Each of the four counts in the indictment was based on each of the promissory notes. Each of the promissory notes contained four separate false statements. Id. at 1185. Steurer moved to dismiss each of the counts on the basis of duplicity because each count referred to four separate false statements in violation of 18 U.S.C. § 1014. Id. at 1186. The court denied the motion and held that the four false statements in each document were inextricably related and a part of a single course of conduct. Id. at 1187. Thus, the structure of the indictment in Steurer, whereby there was a separate count associated with each allegedly false document (even though each document contained several allegedly false statements), was acceptable to the court.

Defendant LABS acknowledges that the decisions on this issue do not clearly require a single result. Nevertheless, the use of two documents to support one count raises several issues. First, these counts prevent the jury from deciding guilt or innocence on each offense separately and have the potential to lead to a non-unanimous verdict. Second, the evidence as to the two documents in each count will likely confuse the trial jury. Third, these counts will make it difficult to determine whether an acquittal or conviction rests on only one of the documents or both. As such, Counts One through Four are duplicitous and must be dismissed.

B. Count Five

Count Five of the Indictment is also a duplicitous count and must be dismissed. Count Five charges Defendants with violating 16 U.S.C. § 3372(a)(2)(A). Count Five specifically

alleges that "four shipments from Inquatex which entered the United States through O'Hare contained productive wild-caught crab-eating macaques." See Indictment, at 13, ¶ 2. The Indictment further alleges that "[b]etween on or about February 20, 1997 and on or about May 30, 1997, . . . defendants herein, did knowingly import wildlife in interstate and foreign commerce, namely, wild-caught *Macaca fascicularis*, and in the exercise due care should have known that the wildlife was transported and sold in violation of a foreign law." See Indictment, at 13, ¶ 3.

The Indictment is not clear as to whether Count Five is alleging that one of the shipments of *Macaca fascicularis* violated 16 U.S.C. § 3372(A)(2)(A), whether it is alleging that each of the four shipments violated Title 16 or whether the four combined shipments violated Title 16. In this case, it is impossible to know whether the language of Count Five charges Defendant with one offense or four offenses. If the Government is contending that each of the four shipments violated Title 16, then each of the shipments constitutes a distinct offense, and therefore, must be charged in a separate count. Defendant LABS is unable to discern from Count Five which shipment or shipments form the basis for the charge that Defendant violated 16 U.S.C. § 3372(a)(2)(A).

Furthermore, Count Five is duplicitous because it unfairly exposes Defendant to the risk of prejudicial evidentiary rulings at trial, the inability to plead prior convictions or acquittals as a bar to subsequent prosecution for the same offense, and the possibility that the jury may convict Defendants by a nonunanimous verdict. See Tanner, 471 F.2d at 139. For example, if Defendant was convicted of Count Five, there would be no way to determine whether the jurors unanimously agreed that a particular shipment violated 16 U.S.C. § 3372(a)(2)(A), whether some parts of the four shipments collectively violated the statute, or whether each of the four

shipments violated the statute. Therefore, Count Five exposes Defendant to the risk of being convicted of an offense without a unanimous verdict. In light of the above arguments, the Defendant LABS moves to dismiss Count Five.

II. Counts One Through Five Of The Indictment Are Insufficient And Fail To Provide Defendant Its Sixth Amendment Right To Be Informed Of The Nature And Cause Of The Accusations.

The Sixth Amendment guarantees that in all criminal prosecutions, the accused shall "be informed of the nature and cause of the accusation" against him. U.S. Const. amend. VI. To be sufficient, an indictment must fulfill three distinct functions: 1) state all of the elements of the crime charged; 2) adequately apprise the defendant of the charges so he may prepare a defense; and 3) allege the facts in a sufficient manner to permit the defendant to plead former jeopardy in any subsequent prosecution for the same offense. Smith, 230 F.3d at 305. Because the requirement of a sufficient indictment serves to inform the defendant of the nature and cause of the accusation, "the indictment must be considered as it was actually drawn, not as it might have been drawn." U.S. v. Pirro, 212 F.3d 86, 93 (2d Cir. 2000).

The Indictment, as drafted and presented to the Grand Jury in the instant case, raises serious and fatal issues relating to sufficiency. As stated earlier, Counts One through Four of the Indictment charge Defendant LABS with violating 16 U.S.C. §§ 3372(d) and 3373(d)(3)(A)(1) by submitting a CITES permit and a health certificate allegedly containing false information for four separate shipments of *Macaca fascicularis* from Indonesia to the United States. Each of Counts One through Four charges one shipment; and, each of these counts is based upon two documents. The Indictment as presented to the Grand Jury was insufficient for several reasons.

First, the structure of the Indictment makes it impossible to ascertain whether the Grand Jury voted to return the Indictment on each of the first four counts based on the health certificate,

the CITES permit, both, or some parts of both combined. As a result, it is not possible to know whether the Grand Jury's decision was unanimous. Second, the Indictment does not allow this Court to discern whether the charges were legally valid. See Russell v. United States, 369 U.S. 749, 767-69, 82 S.Ct. 1038 (1962) (an important corollary purpose to the requirement that the indictment set out the specific offense with which defendant is charged is to inform the court of the facts alleged so that it may decide whether they are sufficient in law to support a conviction). Third, if Defendant is found guilty of Counts One through Four of the Indictment that was voted on and returned by the Grand Jury, Defendant will not be able to plead double jeopardy so as to bar the possibility of future prosecutions for the same offense. See United States v. Sabbeth, 262 F.3d 207, 217 (2d Cir. 2001) (indictment is required to inform defendant of charges in sufficient detail so that defendant may plead double jeopardy in future prosecution based on the same set of events). For the above-mentioned reasons, Counts One through Four are insufficient, fatally defective, and must be dismissed.

Count Five of the Indictment presents the identical problem. Count Five charges Defendant with violating 16 U.S.C. § 3372(a)(2)(A). Count Five specifically alleges that "four shipments from Inquatex which entered the United States through O'Hare contained productive wild-caught crab-eating macaques." See Indictment, at 13, ¶ 2. The Indictment further alleges that "[b]etween on or about February 20, 1997 and on or about May 30, 1997, . . . defendants herein, did knowingly import wildlife in interstate and foreign commerce, namely, wild-caught *Macaca fascicularis*, and in the exercise of due care should have known that the wildlife was

transported and sold in violation of a foreign law." See Indictment, at 13, ¶ 3. Count Five should be dismissed for the reasons set forth for Counts One through Four.[4]

III. Counts One Through Four Of The Indictment Must Be Dismissed Because They Fail To Allege An Essential Element Of The Offenses Charged.

Counts One through Four of the Indictment each fail to allege an essential element of the offense, namely, that Defendant LABS "knowingly violated" the Lacey Act's false statement provisions. See 16 U.S.C. § 3372(d); § 3373(d)(3)(A)(i). According to the Indictment, the macaques could not be exported and imported to the United States unless valid export CITES permits and health certificates were first obtained from Indonesia. See Indictment, at 2, ¶ 7. The Indictment alleges that, to avoid a purported Indonesian ban on the export of "wild-caught" macaques, Defendants "knowingly submitted a false record. . . namely the CITES permits and health certificates which falsely described the macaques as "captive-bred," when in fact some of the shipment contained both captive bred and wild-caught animals. See id. at 8-11, ¶¶ 27-37.

The argument in this section is based on two elementary principals of constitutional criminal law. First, a criminal defendant may be required to answer for capital or otherwise infamous crimes only on an indictment of a grand jury. See U.S. Const. amend. V. Second, an indictment must set forth "each element of the crime that it charges." Almendarez-Torres v. United States, 523 U.S. 224, 220 (1998). The False Records counts in this Indictment must be dismissed because they fail to set forth an essential element of the charged offense, and thus provide no assurance that the grand jury has performed its constitutional obligations.

[4] The Court should note that the structure of Count Five is different than the structure of Counts One through Four and Six through Nine. This difference adds to the uncertainty of the Grand Jury's intent, and adds to the confusion to be faced at trial.

A. The Felony Provisions of the Lacey Act.

Unlike many federal statutes, which include both a *mens rea* and an *actus reus* requirement in the same section, the false statement provisions of the Lacey Act are set forth in two distinct sections. See 16 U.S.C. § 3372(d); 16 U.S.C. § 3373(d)(3). The first section of the statute describes only the prohibited acts; it makes no reference to the mental state required to state an offense (16 U.S.C. § 3372(d)):

> (d) False Labeling offenses
>
> It is unlawful for any person to make or submit any false record, account, or label for, or any false identification of, any fish, wildlife, or plant which has been, or is intended to be –
>
> (1) imported, exported, transported, sold, purchased, or received from any foreign country; or
>
> (2) transported in interstate or foreign commerce.

The second section of the statute completes the definition of a Lacey Act felony by specifying the required mental state (16 U.S.C. § 3373(d) (emphasis added)):

> (d) Criminal penalties
>
> (3) Any person who *knowingly violates* section 3372(d) of this title –
>
> (A) shall be fined under title 18 or imprisoned for not more than 5 years, or both, if the offense involves –
>
> (i) the importation or exportation of fish or wildlife or plants . . . .

This two-part structure requires a distinct analysis and proof of both statutory sections in order to constitute a violation. Standing alone, the term "knowingly" usually signifies that proof of the offense requires a showing that a defendant engaged in volitional acts, that violated a statute, which were not mistakes or accidents. In some statutes, however, the term "knowing" can also require that a defendant know his actions to be "unauthorized by statute or regulations."

Liparota v. United States, 471 U.S. 419, 425 (1985). The issue is which essential elements of the offense must be accompanied by a "knowing" state of mind. See id. at 424-27.

The text of the statute in this case clearly states that knowledge of a violation is required by the Lacey Act's felony provision. When the meaning of a statute can be determined from its text, that meaning must be followed. See Hubbard v. United States, 514 U.S. 695, 70 (1995) (courts ordinarily must apply text of statutes as written). "[T]he definition of the elements of a criminal offense is entrusted to the legislature, particularly in the case of federal crimes, which are solely creatures of statute." Liparota, 471 U.S. at 424.

Given the Lacey Act's particular structure, Congress could have elected between two felony provisions. Congress could have, but did not, enact Section 3373 to state as follows: "[a]ny person who knowingly engages in conduct prohibited by § 3372(d) shall be fined under Title 18 or imprisoned for not more than 5 years." Had Congress done so, it would have made clear that knowledge of the law was not an element of the offense. Congress, instead, enacted Section 3373 to state that any person who "knowingly violates section 3372(d)" shall be guilty of a felony. The words "knowingly" and "violates" must be read together; i.e., a "knowing" state of mind must accompany the "violation"; just as in Liparota, the term "knowingly" was held to modify the term "violates." Accordingly, based on the plain text of the statute, a felony offense under the Lacey Act requires the Government to allege and prove that Defendant engaged in conduct knowing the conduct violated the statute.

The caselaw supports this reading of Sections 3372(d) and 3373 of the Lacey Act. The question whether an indictment must allege that defendants made or submitted a false record with knowledge that the conduct violated the Lacey Act has not been specifically addressed by

the federal courts.[5] The Eleventh Circuit construing another wildlife conservation statute using language identical to that found in the Lacey Act held that the term "knowingly violates" means that defendants can only violate the statute if they know their conduct violates the law. See United States v. Grigsby, 111 F.3d 806, 816-821 (11th Cir. 1997) (defendants can violate the African Elephant Conservation Act only if they had a specific intent to violate the law). Accordingly, like the text itself, Grigsby also suggests that the Lacey Act includes as an element that the defendants know that their conduct to be unlawful.[6]

Thus, consistent with Grigsby and the statutory text, this Court should find that, to state a felony offense under 16 U.S.C. § 3372(d), the Indictment must have alleged not only that Defendant knowingly submitted false records or labels in connection with the transport of wildlife, but also that Defendant did so knowing that this conduct violated the Lacey Act.

B. The False Records Charges Must Be Dismissed for Failing to Allege That Defendants Knowingly Violated the Lacey Act.

There can be no dispute that the False Records Charges fail to allege that defendants knowingly violated the Lacey Act. The charging paragraph of the Indictment alleges that defendants:

> did knowingly submit a false record, account, label for, and a false identification of wildlife, . . . , which wildlife had been imported from a foreign country, namely, Indonesia, and transported in foreign commerce . . . in violation of Title 16, United States Code, Sections 3372(d) and 3383(d)(3)(A)(i).

[5] The only federal decision to discuss the requisite mental state held, with minimal analysis, that the district court had not erred by failing to give a willfulness instruction in a Lacey Act false statement prosecution. See United States v. Fountain, 277 F.3d 714, 717 (5th Cir. 2001).

[6] Grigsby suggests the government need not allege and prove that a defendant had knowledge of the specific statute prohibiting the unlawful conduct; knowledge that the underlying conduct was unlawful would suffice. However, the most natural reading of 16 U.S.C. § 3373 is to require the government to allege and prove that a defendant had knowledge of § 3372(d). The Court need not resolve this question now because the Indictment's allegations are insufficient under either standard.

Indictment, at 11, ¶ 38. A "knowing submission" is not the same thing, of course, as a "knowing violation" of section 3372(d). The Indictment therefore fails to allege an essential element of the offense. It is additionally important to note that Defendant is charged with the act of submitting a false record, not the act of making a false record. Had Defendant been charged with making the statements at issue, the Government could at least have argued the likelihood of a knowing violation of law. This point supports Defendant's argument that the Indictment is fatally defective because it does not allege a knowing submission of documents known to violate CITES or any other law. The False Records Charges fail to allege an element of the Lacey Act felony offense. Having failed to do so, they must be dismissed.

IV. Counts Six Through Nine Of The Indictment Must Be Dismissed Because They Fail To Allege An Essential Element Of The Offenses Charged.

An "indictment must state all of the elements of the crime charged." United States v. Smith, 230 F.3d 300, 305 (7th Cir. 2000), cert. denied, 531 U.S. 1176 (2001). Counts Six through Nine charge Defendant LABS with smuggling goods into the United States in violation of the second paragraph of 18 U.S.C. § 545. Specifically, Counts Six through Nine of the Indictment allege that:

> defendants herein, did fraudulently and knowingly import into the United States certain merchandise contrary to law in the shipments described below, namely, wild caught *Macaca fascicularis*, knowing the merchandise to have been imported into the United States contrary to law.

See Indictment, at 15, ¶ 2. These four counts are fatally defective and must be dismissed because the counts fail to state all of the essential elements of a Section 545 violation.

The essential elements of an offense under the second paragraph of 18 U.S.C. § 545 are: 1) the defendant fraudulently and knowingly, 2) imported or brought into the United States, 3) any merchandise, 4) contrary to law. Olais v. United -Castro States, 416 F.2d 1155, 1158 (9th

Cir. 1969). The fourth element, "contrary to law", is not complete in itself. Id. It is necessary to look beyond Section 545 to determine whether an importation of merchandise is contrary to law because the phrase "contrary to the law" in Section 545 relates to legal provisions not found within the statute. See Babb v. United States, 218 F.2d 538, 539 (5th Cir. 1955); see also Pirro, 212 F.3d at 93 ("Where an indictment charges a crime that depends in turn on violation of another statute, the indictment must identify the underlying offense."). Thus, an indictment charging a violation of Section 545 must state what underlying law was violated by a defendant's actions.

The charging paragraphs in Counts Six through Nine fail to specify which law Defendant violated when importing wild caught *Macaca fascicularis* into the United States. Although an indictment that follows the language of a statute is ordinarily sufficient, where the words of the statute do not contain all of the essential elements of the offense the indictment is not sufficient. See Babb, 218 F.2d at 539. If the statute omits an essential element, the indictment must supply it with certainty. Id.; see 1 Charles Alan Wright, Federal Practice and Procedure: Criminal 3d § 24 (1999)("If a statute makes it an offense to do a certain act 'contrary to law,' it is not enough simply to cite that statute and to allege that the act was done contrary to law. The pleading must show what other law was violated, either by citation or by a sufficient statement of facts."). In this case, because Counts Six through Nine do not sufficiently inform Defendant of which statute or regulation the importation of *Macaca fascicularis* violated, the counts are fatally defective and must be dismissed.

Defendant's situation is substantially identical to that confronted by the defendant in Babb. Babb was convicted on an indictment brought under 18 U.S.C. § 545, charging him "with knowingly receiving, concealing, and transporting a number of Charolaise cattle, after

importation, knowing them to have been imported into the United States, contrary to law." Babb, 218 F.2d at 539. Babb filed a motion to dismiss each count because the indictment failed to allege what law was violated when the cattle were imported into the United States. Id. The motion was denied. Id. However, a bill of particulars alleged that the importation of the cattle had been contrary to section 1001, 1460, and 1484 of Title 19 of the United States Code, and a number of sections from Titles 9 and 19 of the Code of Federal Regulations. Id. On appeal, the court held that the indictment should have alleged some fact showing that the cattle in question were imported or brought in contrary to some law. Id. The court declared that it was not sufficient for the indictment to state that the cattle were imported "contrary to law." Id. at 541. The indictment was found to be fatally defective and the bill of particulars was insufficient to cure the defect. Id. at 539. Babb's conviction was reversed. Id. at 542.

In addition, Defendant's case is analogous to Keck v. United States, 172 U.S. 434, 19 S. Ct. 254 (1899). Keck was charged with a violation of Section 3082 of the Revised Statutes, which contains identical language as that contained in 18 U.S.C. § 545. Id. at 437. The indictment stated that the defendant did "knowingly, willfully, and unlawfully import and bring into the United States, and did assist in importing and bringing into the United States, to wit, into the port of Philadelphia, diamonds of a stated value, contrary to law and the provisions of the act of congress in such cases made and provided, with intent to defraud the United States." Id. The court held that the count was insufficient because the allegations were too general and did not sufficiently inform Keck of the nature of the accusation against him. Id. The court also stated that the words "contrary to law," contained in the statute clearly related to legal provisions not found in Section 3082 itself. Id. Furthermore, the court explained that the generic expression "import and bring into the United States" did not convey the necessary information, because

importing merchandise is not per se contrary to the law, and could only become so when done in violation of specific statutory requirements. Id.

Finally, the instant case also is comparable to Steiner v. United States, 229 F.2d 745, 747-48 (9th Cir. 1956). In Steiner, the indictment charged defendants with fraudulently and knowingly importing into the United States a number of psittacine birds, contrary to law. Id. The counts charging a violation of 18 U.S.C. § 545 failed to state what underlying law the importation violated, or in what respect such importation was contrary to law. Id. at 748. At the time, there was no law prohibiting the importation of psittacine birds into the United States. Id. at 748 n.7. Thus, the court found that the defendant's convictions on the smuggling counts were improper and that the defect in the indictment could not have been cured by a bill of particulars. Id. at 748.

Similar to the cases described supra, Counts Six through Nine of the Indictment are fatally defective because the counts only state that the importations are "contrary to law," the counts fail to specify which underlying law Defendant's importations violated, and the counts fail to sufficiently inform Defendant of the nature of the accusations against it. Therefore, the Court should dismiss Counts Six through Nine.

Counts Six through Nine also assert that Defendant "fraudulently and knowingly" imported goods into the United States in violation of 18 U.S.C. § 545. Counts Six through Nine are also fatally defective in that they fail to allege any of the elements of common law fraud. Section 545 of Title 18 contains two distinct prohibitions. The first paragraph of the statute prohibits knowing and willful acts of smuggling when such acts are intended "to defraud the United States." 18 U.S.C. § 545. The second paragraph of the statute prohibits "fraudulently or knowingly" importing goods into the United States contrary to law. See id. Both paragraphs of

the statute make use of words – "defraud" or "fraudulently" – that have established meanings under the common law. See, e.g., Neder v. United States, 527 U.S. 1, 21-23 (1999). Consistent with Neder, Section 545 therefore must be read to incorporate the elements of common law fraud: a knowing, intentional, and material falsehood; reliance on the falsehood by the party deceived; and money or property damage on the part of the deceived.[7]

The Indictment must be examined in light of this common-law backdrop. Counts Six through Nine allege Defendant LABS "did fraudulently *and* knowingly import into the United States certain merchandise contrary to law. . . ." Indictment, at 15, ¶ 2 (emphasis added). The Indictment's use of conjunctive language signifies the Grand Jury intended to allege that the merchandise was not only knowingly, but also *fraudulently* imported into the United States. Yet despite the Indictment's deliberate use of this meaningful term, nowhere does the Indictment allege any of the elements of common law fraud.

The Indictment does not state, for example, that any of the allegedly false statements charged in the Indictment were material or that any party relied on the purportedly false statement. The Indictment does not identify the victim of the alleged fraud. Nor does it explain what damages were inflicted upon the unidentified victim as a result of the fraud. The Indictment's failure to allege any of these elements of common law fraud, which Congress incorporated into 18 U.S.C. § 545, is fatal. Having failed to allege these elements, the counts must be dismissed.

[7] In Neder, the Court held that mail and wire fraud crimes do not include reliance as an element of the crime. Neder, 527 U.S. at 25. Neder also held that Congress intends to incorporate the common-law elements of a crime, unless a statute dictates otherwise. Id. at 21-23; see also United States v. Watkins, 278 F.3d 961, 969 (9th Cir. 2002). This case does not involve allegations of mail or wire fraud. Therefore, the holding in Neder regarding the elements of mail and wire fraud is inapposite to this case.

V. Count Five Of The Indictment Must Be Dismissed Because It Fails To Allege A Legally Sufficient Underlying Offense.

As explained in Part I of this Motion, Count Five of the Indictment charges Defendants with violating 16 U.S.C. § 3372(a)(2)(A) by knowingly importing wildlife that in the exercise of due care Defendants should have known was transported and sold in violation of a foreign law. See Indictment, at 13, ¶ 3. A Lacey Act trafficking violation under 16 U.S.C. § 3372 requires proof of both a separate and independent predicate violation of a law, as well as proof of an overlying violation of the Lacey Act's list of prohibited acts. The underlying violation occurs when someone illegally takes, possesses, transports, or sells fish or wildlife in violation of any state, Indian tribal or foreign law. See 16 U.S.C. § 3372. The underlying violation of law taints the wildlife and thereby exposes an individual to a potential Lacey Act violation if an individual commits or attempts to commit an import, export, transport, sale, receipt, acquisition, or purchase of the tainted wildlife. See 16 U.S.C. § 3372; see United States v. Carpenter, 933 F.2d 748, 750 (9th Cir. 1991) ("In order to violate the Lacey Act a person must do something to wildlife that has already been 'taken and possessed' in violation of law.").

A single act may not constitute both the predicate violation and the Lacey Act violation. Carpenter, 933 F.2d at 750-51. In Carpenter, a goldfish farmer and his company were charged with killing migratory birds and burning or burying the birds on his property in violation of the Migratory Bird Treaty Act, 16 U.S.C. § 701, and in violation of the Lacey Act, 16 U.S.C. § 3372. Id. at 749. The Lacey Act charge alleged, in essence, that the farmer had taken the birds in violation of the Migratory Bird Treaty Act, and that in doing so he acquired the birds in violation of the Lacey Act. Id. at 750. Thus, the Lacey Act charge divided a single act (killing the birds) into an underlying violation of the Migratory Bird Treaty Act and a Lacey Act acquisition of the tainted birds. The defendants in Carpenter were convicted of violations of the Migratory Bird

Treaty Act and the Lacey Act. The defendants appealed their convictions to the United States Court of Appeals for the Ninth Circuit.

On appeal, the Ninth Circuit in Carpenter held that the government's position that Carpenter and his company violated the Lacey Act was contrary to the plain words of the Lacey Act. Id. at 750. The court explained that the government's position collapsed the two steps required by the Lacey Act, i.e., proof that the wildlife was taken, possessed, transported or sold in violation of an underlying law and separate proof that the wildlife was imported exported, transported, sold, received, acquired, or purchased, into a single step. Id. Thus, the defendants' taking of the birds (by shooting them), and nothing more, on defendant's own property, was not sufficient to constitute both the predicate offense of taking the birds in violation of a law and the overlying offense of acquiring the birds. See id. The court noted that the birds must be illegally taken before acquiring the bird would be a violation of the Lacey Act.[8] Id.

In the instant case, Count Five charges the Defendants with violating the Lacey Act by importing wild-caught *Macaca fascicularis* into the United States in violation of an Indonesian law which prohibits the exportation of wild-caught *Macaca fascicularis*. See Indictment, at 13-14. Similar to Carpenter, the exporting/importing of *Macaca fascicularis*, and nothing more, is not enough to constitute both the predicate offense and the Lacey Act violation. Defendant LABS' conduct of exporting and importing *Macaca fascicularis* is a unitary act. Export is

[8] In United States v. Hobbs, 1992 WL 144709 (9th Cir. 1992) (unpublished opinion), the defendant was convicted of one count of violating the Lacey Act, by acquiring and transporting a buck deer knowing that it was taken and possessed in violation of section 7.3.11 of the Colville Tribal Code, which prohibits the use of artificial lights while hunting game animals. Id. at *1. On appeal, Hobbs relied on Carpenter to argue that the hunting violation by itself could not be the basis for the Lacey Act violation under Carpenter. Id. at *2. The court held that the case was distinguishable from Carpenter because Carpenter involved a hunting violation without a subsequent act. Id. Therefore, according to the court, Hobbs, unlike the defendant in Carpenter, was properly convicted of the Lacey Act because not only did he commit a hunting violation, but he also transported the deer. Id.

defined as "to carry or send (goods) to another country or countries." Webster's New World College Dictionary 479 (3d ed. 1997). Import is defined as "to bring (goods) from another country or countries, esp. for the purposes of sale." Id. at 678. Thus, importing and exporting are part of a unitary transaction. The Government may not rely on Defendant's unitary act of engaging in a transaction for the acquisition of *Macaca fascicularis*, as the basis for a predicate offense and a Lacey Act violation. Unlike Hobbs, in the instant case, there is not a violation of a predicate law along with a subsequent act that violates 16 U.S.C. 3372. Defendant's act in purchasing the *Macaca fascicularis* from Inquatex encompassed both export and import components.

Moreover, the instant case should also be contrasted with United States v. Lee, 937 F.2d 1388 (9th Cir. 1991). Lee is similar to the instant case in that the defendant was charged with a Lacey Act violation based on foreign law. Specifically, the defendant was charged with a Lacey Act violation for attempting to import 500 metric tons of salmon taken in violation of Taiwanese law. Id. at 1391. The underlying violation of the Lacey Act was a Taiwanese law that prohibits Taiwanese squire fishing vessels from catching salmon. Id. The Lacey Act violation was importing the tainted salmon into the United States. Id. at 1393. Unlike the instant case, however, the predicate violation and the Lacey Act violation in Lee were based on two separate and distinct acts. In Defendant's case, the predicate violation and the Lacey Act violation are

both based on a unitary act. In light of Carpenter and the other cases discussed above, the Government has not alleged a violation of the Lacey Act and Count Five must be dismissed.[9]

VI. Counts One Through Five And Ten Through Twelve Of The Indictment Must Be Dismissed Because They Allege Conduct That Comports With The Defendant's Reasonable Interpretation Of Applicable Legal Requirements, And As Such, The Government Cannot Meet Its Burden of Proof.

A criminal charge must be dismissed as unconstitutionally vague if it is based on a law that fails to provide the kind of notice that will enable ordinary people to understand what conduct the law prohibits. Dismissal is also warranted if the law alleged to be violated authorizes arbitrary and discriminatory enforcement. City of Chicago v. Morales, 527 U.S. 41, 56, 119 S.Ct. 1849, 1859 (1998). Furthermore, a charge should be dismissed if the law upon which the charge is based does not "convey[] sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices." Belsic v. Immigration and Naturalization Service, 265 F.3d 568, 572 (7th Cir. 2001) (quoting Jordan v. De George, 341 U.S. 223, 231-32, 71 S.Ct. 703 (1951)). A defendant's reasonable interpretation of ambiguous legal requirements protects a defendant from criminal charges based on an alleged violation of law. See United States v. Whiteside, 285 F.3d 1345 (11th Cir. 2002). In this case, LABS' actions, as alleged in the Indictment, comport with a reasonable interpretation of ambiguous law

[9] Counts Six through Nine of the Indictment, which allege that Defendant violated 18 U.S.C. § 545, should also be dismissed because the Government has failed to allege a separate predicate offense as required by the language of Section 545. Counts Six through Nine allege that Defendant "did fraudulently and knowingly import into the United States certain merchandise contrary to law in the shipments described below, namely, wild-caught *Macaca fascicularis*, knowing the merchandise to have been imported into the United States contrary to law." See Indictment, at 15, ¶ 2. The phrase "contrary to law" in 18 U.S.C. § 545 requires an underlying offense. See Babb, 218 F.2d at 539. As argued Part IV of this Motion, Counts Six through Nine fail to identify what underlying law was violated by Defendant, and thus, the counts are fatally defective. In the event that this Court determines that the Government's omission is not fatal to the Indictment, Defendant reserves the right to file a supplemental Motion to Dismiss Counts Six through Nine based on an argument that the underlying offense and the smuggling offense are the same act and violate the principle laid out in Carpenter, 933 F.2d at 748.

applicable to Counts One though Five and Ten through Twelve of the Indictment. As such, the Government is unable to meet its burden of proving any of the charges beyond a reasonable doubt. Id. at 1351. Moreover, the laws alleged to be violated in the Indictment fail to sufficiently apprise Defendant of the conduct that is prohibited. Therefore, this Court should dismiss Counts One through Five and Ten through Twelve of the Indictment.

Courts have reversed convictions when a defendant's actions are determined to be in accord with a reasonable interpretation of the law. In United States v. Anderson, 579 F.2d 455, 460 (8th Cir. 1978), the court reversed a conviction under 18 U.S.C. § 1001 for making a false certification on a reimbursement invoice submitted to the Arkansas Manpower Council. 579 F.2d at 459. The court found the certification clause to be ambiguous and held that under a reasonable interpretation of certain terms in the certification clause, defendant's adoption of the certification clause was not false. The court held that:

> in light of these ambiguities ... it was incumbent upon the government to introduce proof sufficient to establish the falsity of the statements, as well as the knowing and willful submission of the statements. In carrying out that burden the government must negative any reasonable interpretation that would make the defendant's statement factually correct.

Id. at 460.

In United States v. Race, 632 F.2d 1114, 1120 (4th Cir. 1980), the court applied the principles set forth in Anderson to a government contract clause that was not ambiguous. In Race, the court reversed a conviction under 18 U.S.C. § 1001 because under a reasonable construction of the contract clause related to the alleged false statement, the statement would be true. The court found that the contract clause in question was not ambiguous and that defendant's interpretation was reasonable. In reversing defendant's conviction under 18 U.S.C. § 1001, the court stated that "one cannot be found guilty of a false statement under a contract

beyond a reasonable doubt when his statement is within a reasonable construction of the contract." Id. at 1120. The court further held that "the Government must prove both the falsity of the statement, and, in addition, that the utterer knew the statement was false." Id. (citing United States v. Weatherspoon, 581 F.2d 595, 601 (7th Cir. 1978)). The holdings of Anderson and Race, when read together, show that a reasonable interpretation of a government contract clause protects a defendant from conviction whether the clause in question is ambiguous or clear. This legal principle applies equally to a defendant's reasonable interpretation of laws and regulations.

In United States v. Whiteside, the court extended the principles in Anderson and Race to ambiguous laws. In Whiteside, the government contended that defendant submitted a cost report for Medicare/Medicaid reimbursement that classified debt interest expense in manner that was inconsistent with Medicare regulations, and therefore, contained a false statement in violation of 18 U.S.C. § 1001. See Whiteside, 285 F.3d at 1351. The defendant asserted that there was no Medicare regulation or other authority which indicated the defendant incorrectly characterized debt interest. The defendant further argued that "the government failed to prove that the statements at issue were not a reasonable interpretation of ambiguous Medicare reimbursement requirements." Id. The court stated that "[i]n a case where the truth or falsity of a statement centers on an interpretive question of law, the government bears the burden of proving beyond a reasonable doubt that the defendant's statement is not true under a reasonable interpretation of law." Id. (citing United States v. Race, 632 F.2d 1114, 1120 (4th Cir. 1980) and United States v. Anderson, 579 F.2d 455, 460 (8th Cir. 1978)) (other citations omitted). The court held that the government could not meet its burden of proving that defendant's statement was false because there was no Medicare regulation or other authority that clearly required defendant to report debt

interest expense in the manner that the government believed to be correct. Moreover, the administrator of the Medicare program admitted that reasonable people could differ as to how to characterize the debt interest. Id. at 1352. The court concluded that given reasonable competing interpretations of applicable law, the government failed to prove the falsity of defendant's statement as a matter of law. Id. at 1352-53.

The principles established in Whiteside, as well as in Race and Anderson, are equally applicable to this case. Although the above-mentioned cases concern a violation of the False Statements Act (18 U.S.C. § 1001), their holdings support LABS' position in this case that it may not be prosecuted for acting in compliance with a reasonable interpretation of relevant law. Just as a defendant cannot be prosecuted for making a false statement when the statement is based on a reasonable construction of a contract clause or law, neither should defendant's actions based on a reasonable construction of legal requirements be actionable.

The violations in Counts One through Five of the Indictment depend upon an interpretation of CITES and Indonesian law, i.e. Decree No. 26/Kpts-11/94. Counts One through Four charge Defendant with violations of the Lacey Act for allegedly submitting false statements with respect to the CITES permits and health certificates. As to these counts, the Indictment alleges that the permits and certificates represent that the shipments of monkeys "contained only captive-bred *Macaca fasicularis*. . ." Indictment, at 11, ¶ 38. Count Five charges LABS with a Lacey Act criminal misdemeanor violation for importing *Macaca fasicularis*, and alleges that LABS in the exercise of due care should have known that the shipments were transported and sold in violation of Indonesian law, namely Decree Decree No. 26/Kpts-11/94. Indictment, at 13, ¶ 4.

The Indonesian Decree is the lynchpin for all of these counts. If the CITES permits and health certificates are false as alleged in Counts One through Four, they can only be false if they are false under Indonesian law since they were approved and issued by the Indonesian government. See Indictment at 2-4, ¶¶ 7-11 (recognizing that Indonesia's Department of Forestry was responsible for issuing a CITES permits for the shipment of *Macaca fascicularis* from Indonesia to the United States) Similarly, if the importation as alleged in Count Five is a violation of United States law, the importation must first violate Indonesian law since *Macaca fasicularis* are species listed in Appendix II of CITES, and therefore, may only be exported if the exporting country approves the shipment and issues a CITES permit. See Defendants' Motion for Issuance of Letters Rogatory and Memorandum of Law in Support, at 2-4, filed on July 1, 2002, for a discussion of the requirements of CITES relating to the export of *Macaca fascicularis.*

The Indonesian law, which is at the center of Counts One though Five is Indonesian Decree No. 26/Kpts-11/94.[10] The decree provides, in part:

> To Stipulate Firstly: The use of Long-tail macaque (Macaca fascicularis), Short-tail Macaque (Macaca nemestrina) and Arowana Fish (Scleropages formasus) species for export purposes must come from breeding efforts.
>
> Secondly: Exporters for those species as mentioned in the first part, must meet obligation of the breeding efforts by themselves, in line of the existing and valid regulations.
>
> Thirdly:
> 1) The number of animals/species which can be exported by licensed exporters, is based on export quota decided by the Department of Forestry.
> 2) This decision of the export quota of animal/species as mentioned in the First point, after investigated/evaluated by the Accreditation Team, is based on the result of breeding efforts.

[10] Defendant LABS does not concede at this time that Decree No 26/Kpts-11/94 is the only law, regulation or decree that bears upon this case. There may be others that come to light during the expected discovery in Indonesia.

Fourthly: This Decree shall come into force as from the date decided.

The Indictment asserts that the decree "ban[s] the export of wild-caught crab-eating macaques." Indictment, at 4, ¶ 15. However, the decree, as translated in the documents produced by the Government to LABS, does not clearly and definitively ban the export of wild-caught crab-eating macaques.[11] See Whiteside, 285 F.3d at 1352 (the government could not meet its burden of proof because no regulation "clearly require[d]" the defendant to report interest expense in the manner the government contended to be correct). Rather, the decree states that the use of *Macaca fascicularis* "for export purposes must come from breeding efforts." The decree does not define the meaning of the phrase "breeding efforts." The phrase could mean that *Macaca fascicularis* may only be exported if they are bred and born in captivity, as the Government asserts, or it could mean that the animals may only be exported if they are maintained at a husbandry or breeding facility. The latter interpretation is reasonable and consistent with the Indonesian government's actions in approving the export of the *Macaca fascicularis* colony maintained at Inquatex's breeding facility.[12] Furthermore, the decree explicitly reserves to the Department of Forestry the ability to establish export quotas if an Accreditation Team determines that the animals "come from breeding efforts." Given the existence of reasonable

[11] For purposes of this Motion, Defendant relies on the translation of the Indonesian decree that appears in the documents that the Government produced to LABS and is attached hereto as Exhibit 1. However, LABS does not admit to or agree to the accuracy of the translation for purposes of determining the merits of any of the charges in the Indictment.

[12] Correspondence between Inquatex and Indonesia's Department of Forestry produced by the Government to LABS shows that the Department of Forestry knew that the Inquatex colony included unproductive parent stock prior to issuing the CITES permits covering the export of the entire Inquatex colony. Defendants' Motion Requesting Issuance of Letters Rogatory and Memorandum of Law in Support, filed July 1, 2002, includes a summary of the relevant correspondence. Moreover, CITES was designed to attack the world-wide problem of poaching, and its effect on the presentation of certain species. In this case, Inquatex was a licensed breeding effort or endeavor. Mr. Darmawan's plan contributes to the presentation of *Macaca fascicularis.*

competing interpretations of the Indonesian decree, the Government is unable to prove that Defendant violated the decree as a matter of law. See Whiteside 285 F.3d at 1352-53.

In this case, Counts One through Five present this Court with a situation in which Defendant's actions are based upon a reasonable interpretation of the Indonesian decree. Regarding Counts One through Four, LABS submitted the CITES permits and health certificates to United States Fish and Wildlife Service and United States Customs Service inspectors, both of which were issued by and obtained from the Indonesian government. LABS' actions in submitting these documents were done in reliance on the Indonesian government's interpretation and implementation of the CITES Treaty and Indonesian law. Moreover, regarding Count Five, LABS reasonably interpreted the Indonesian government's actions in issuing CITES permits and health certificates as the Indonesian government's approval of the export of the *Macaca fascicularis* from Inquatex which conduct was required by the CITES Treaty. Accordingly, for these reasons, the statements in the CITES permits and health certificates are not false.

It is important to note that the Indictment incorrectly states that the CITES permits and health certificates "falsely represented that the shipment contained only captive bred *Macaca fascicularis*. . . ." Indictment, at 11, ¶ 38. Neither of these documents use the word "only". The first statement in the CITES permit alleged by the Indictment to be false is the statement found in Box IX, which states "[c]aptive bred specimen, no quota allocated."[13] This statement does not represent that the shipment contains "only" captive-bred animals, in the sense of exclusively captive-bred. It does state that there are no quotas allocated by Indonesia to the export of captive-bred specimens.

[13] A CITES permit is attached hereto as Exhibit 2.

While the CITES Treaty does not require quotas, the practice of the Parties has been, from time to time, to establish quotas. The website for CITES contains a section on export quotas. This site states that "the use of export quotas has become an effective tool for the regulation of international trade in wild fauna and flora." The CITES export quotas (visited June 29, 2002) <http://www.cites.org/eng/resources/quotas/index.shtml>. In 1997, Indonesia did not set any quotas for captive-bred or wild-caught *Macaca fascicularis*. In 1998, Indonesia set a quota for "unproductive parents from captive breeding operations only"; in 1999 and 2000 Indonesia set a quota for "live nonproductive and captive-bred animals only"; and in 2001 Indonesia set a quota for "live (non-productive, wild-taken).[14] CITES-listed species database (using search criteria: *Macaca fascicularis* and Indonesia) (visited June 29, 2002) <www.cites.org/eng/resources/species.html>. The fluctuations in the quota descriptions explain the first statement in the CITES permit as meaning the colony had captive-bred and there were no quotas for captive-bred animals for the year 1997.

The second statement in the permit which the Indictment alleges to be false is "II(C)," in column 5 of Box VIII. The Heading for this column is "Appendices (source)". This statement means the animals, including the non-productive parent stock and the captive bred animals came from breeding or husbandry efforts. This statement is consistent with the Decree which allows the export of nonproductive parent stock of *Macaca fascicularis* which were wild-caught, as long

[14] The 1998 quota description is the same description used by Mr. Darmawan, the Department of Forestry and the Indonesian Accreditation Team. In 1997 the Department of Forestry granted Mr. Darmawan permission to export and put to use by LABS his parent stock which were no longer economically productive. In 1998, the Department of Forestry granted this permission to other licensed breeding operations.

as the animals were being exported from a licensed breeding facility.[15] See Decree No. 26/Kpts-11/94.

The language in the health certificate which the Indictment alleges is false is the veterinarian's certification: "I, undersigned, Lukas A. Tonga, DVM certifies to have examined this day 220 Cynomolgus (*Macaca fascicularis*) Captive bred born at INQUATEX, facilities (Jakarta/Indonesia)." See Exhibit 5, attached hereto. This statement does not state that the shipment contains "only" captive-bred animals; it does state that the captive-bred animals, which were in the shipment, were born at Inquatex. This statement was required by the Indonesian Decree, which requires the Cynos to be from captive breeding efforts. The foregoing explanation regarding the meaning of the statements alleged to be false in the Indictment supports LABS' position that the information contained in the CITES permits and health certificates is not false under a reasonable interpretation of the statements at issue. See Race, 632 F.2d at 1120 ("one cannot be found guilty of a false statement under a contract beyond a reasonable doubt when his statement is within a reasonable construction of the contract.").

[15] If Person B sought to convince the Indonesian Management Authority that the entire colony was captive-bred, the Management Authority would have issued a "Certificate of Captive Breeding", not a Permit. See CITES Treaty, Article VII (Exemptions And Other Special Provisions Relating To Trade), Paragraph 5. (See Exhibit 3, attached hereto). The CITES Treaty Parties have agreed to utilize standardized documents in CITES Resolution 10.2 and its predecessor, 9.3. See CITES Conference Resolution 10.2, attached hereto as Exhibit 4. Accordingly, these Resolutions contain a section entitled "Regarding the standardization of CITES permits and certificates". Subparagraph (c) includes the certificate of captive breeding as one of the standardized documents. Further, CITES permits issued by the Department of Forestry for shipments five and six, after the fourth shipment when both the Indonesian Department of Forestry and the United States Fish and Wildlife Service were well aware of the CITES permit issues arising out of the Inquatex and LABS transaction, contained in column five of box VIII, "II(W)." ("W" means wild-caught.) See id. If "II(C)" was false because the colony was a mix of wild-caught and captive-bred, "II(W)" is equally false. Nevertheless, the permits were issued by the Department of Forestry, submitted to and accepted by the United States Fish and Wildlife Service, and the shipments were allowed.

In conclusion, LABS' submission of the CITES permits and the health certificates and LABS' importation of monkeys that originated from Inquatex's facility were in accord with a reasonable interpretation of the Indonesian decree and related Indonesian correspondence. As such, the Government is unable to prove that LABS actions, as alleged in the Indictment in Counts One through Five, constitute a violation of the Lacey Act[16]

Finally, Counts Ten through Twelve of the Indictment charge Defendant LABS with knowingly importing *Macaca fascicularis* monkeys, which included nursing mothers with young, in violation of 50 C.F.R. § 14.105(b)(2). In this case, due to the ambiguity, vagueness, and inconsistency of the United States law governing the transportation of live animals, LABS' importation of *Macaca fascicularis* monkeys, which included nursing mothers with their young, was a lawful action performed in accordance with a reasonable interpretation of the law governing the transportation of live animals.

The Government bears the burden to negate any reasonable interpretations of applicable law that would make Defendant's importation of *Macaca fascicularis* mothers with their young lawful due to the fact that regulations relating to transportation of mothers and unweaned infants are ambiguous. See Whiteside, 285 F.3d at 1351. The regulatory structure concerning the transportation of animals, taken as a whole, does not convey a sufficiently definitive warning as to the proscribed conduct when measured by common understanding and practices. This failure is particularly acute when the charges are criminal. In fact, the language of 50 C.F.R.

[16] The argument for dismissal of Counts One through Five may also apply to Counts Six through Nine, which charge Defendant with fraudulently importing *Macaca fasicularis* knowing the importation was contrary to law. As argued in Part IV of this Motion, the Government's failure to identify a "contrary law" is a fatal omission that demands the dismissal of Counts Six through Nine. In the event that this Court determines that the Government's omission is not fatal to the Indictment, Defendant reserves the right to file a supplemental Motion to Dismiss Counts Six through Nine based upon the Whiteside, Anderson, and Race cases cited supra.

§ 14.105(b)(2) conflicts with other governmental and industry guidance, available to companies like LABS at the time of the shipments.

50 C.F.R. § 14.105(b)(2) states:

> A nursing mother with young, an unweaned mammal unaccompanied by its mother, or an unweaned bird shall be transported only if the primary purpose is for needed medical treatment and upon certification in writing by the examining veterinarian that the treatment is necessary and the animal is able to withstand the normal rigors of transport. Such an unweaned mammal or bird shall not be transported to the United States for medical treatment unless it is accompanied at all times by and completely accessible to a veterinary attendant.

The legislative history of this regulation provides no guidance on the intended purpose of 50 C.F.R. § 14.105(b)(2). However, a reasonable interpretation of this regulation is that the regulation was intended to prohibit the transport of animals that would disrupt the mother-infant relationship. Given the plan to ship the entire colony, the shipment of mothers with unweaned infants was reasonable. Therefore, it would be lawful for nursing mothers with unweaned infants to be transported, as long as they are transported together.

Even if this Court does not consider the language of Section 14.105(b)(2) to be ambiguous, the existence of a vague and ambiguous regulatory structure related to the shipment of live animals, and LABS' reasonable actions given that structure, require this Court to dismiss Counts Ten through Twelve. The legislative history of Section 14.105(b)(2) indicates that the section was developed, in part, in reliance on the Animal Welfare Act, 7 U.S.C. § 2131 et seq. The implementing regulations promulgated by the Secretary of Agriculture for the Animal Welfare Act include 9 C.F.R. § 3.87, which concerns "primary enclosures used to transport nonhuman primates." Subsection 3.87(d)(1)(i) regarding "compatibility" states in relevant part:

> Only one live nonhuman primate may be transported in a primary enclosure, except as follows: A mother and her nursing infant may be transported together.

This regulation, which was in effect in 1997 at the time of the shipments from Indonesia, indicates that it is lawful to ship a nonhuman primate mother and her nursing infant since it permits a mother and her infant to be shipped within the same primary enclosure.

In addition, the legislative history of 50 C.F.R. § 14.105 shows that it was drafted, in part, in reliance on the Interagency Primate Steering Committee ("IPSC") Guidelines for the Transportation of Nonhuman Primates (March 1981). Although the IPSC Guidelines address shipment of pregnant females (which is permitted under certain circumstances), they do not address, and therefore do not prohibit, the shipment of nursing mothers and their young. See Whiteside, 285 F.3d at 1352 (government could not prove that defendants violated a law when "[n]either the regulations nor administrative authority clearly answer[ed] the dilemma the defendants faced here" and defendants' interpretation of legal requirements "was not unreasonable.").

Furthermore, the legislative history to 50 C.F.R. § 14.105 also discloses that it was originated, in part, in reliance on the Guidelines for Transport and Preparation for Shipment of Live Wild Animals and Plant. The "Guidelines for Transport" provide in relevant part:

> 1.3 Pregnant animals, or animals that are still dependent on their mother, should not be transported, but there are exceptions to this . . . there may be sound reasons for [transporting animals that are still dependent on mothers].

On the one hand, this guideline is ambiguous in that it is unclear whether shipping unweaned animals dependent on their mothers is prohibited in all cases. This regulation appears to allow the shipment of nursing infants with their mothers for "sound reasons."

The ambiguity and relative obscurity of the regulations described in this subsection apparently affected the United States Fish and Wildlife Service and the United States Customs Service because they inspected each of the four shipments, and permitted unweaned infants to

enter the United States.[17] According to the Indictment, the second, third and fourth shipments contained 20, 17, and 19 respectively, unweaned infants accompanied by their mothers. In United States v. Cowden, 677 F.2d 417, 420 (8th Cir. 1982), the Eighth Circuit Court of Appeals issued the following admonition regarding the purpose of the United States Customs Service inspection process:

> Against this background of anticipated criminal charges, it is incumbent upon the government to live within the letter as well as the spirit of its own regulations. The Customs inspection should be conducted so that the probable result is compliance with the law, not the eliciting of a violation of the law. United States v. Gomez-Londono, 422 F. Supp. 519, 526 (E.D.N.Y. 1979), rev'd on other grounds, 553 F.2d 805 (2d Cir. 1977), and aff'd without op., 580 F.2d 1046 (2d Cir. 1978); see also Note, Fairness in Criminal Investigations Under the False Statement Statute, 77 Colum.L.Rev. 316 (1977).

Because the regulatory structure relating to the transportation of animals is unconstitutionally vague and ambiguous, the Government cannot prove beyond a reasonable doubt that Defendant's action was an unreasonable interpretation of the law. Therefore, Counts Ten through Twelve must be dismissed.

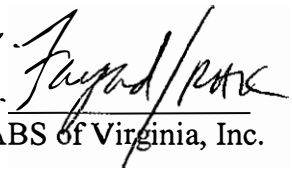
[17] An inspector cannot miss a mother carrying an unweaned infant on her shoulder.

CONCLUSION

Wherefore, for the reasons set forth above, and any additional reasons stated at any oral hearing on this Motion, Defendant requests this Court grant this Motion and issue an Order dismissing the Indictment against Defendant LABS.

Respectfully submitted,

Michael L. Fayad

By 

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July 1, 2002

See Case File for Exhibits

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA

v.

LABS OF VIRGINIA, INC.
DAVID M. TAUB
CHARLES J. STERN, and
WILLIAM CURTIS HENLEY III

No. 02 CR 0312
Judge Castillo
Magistrate Judge Bobrick

DEFENDANT LABS OF VIRGINIA, INC.'S MOTION FOR A BILL OF PARTICULARS AND MEMORANDUM OF LAW IN SUPPORT

NOW COMES Defendant Labs of Virginia, Inc. ("LABS"), by the undersigned counsel, and respectfully requests this Court to grant this Motion for a Bill of Particulars in accordance with Fed. Rule Crim P. 7(f). As grounds for this Motion, Defendant states the following:

BACKGROUND

On April 2, 2002, an Indictment was issued against Defendants LABS of Virginia, Inc., David M. Taub, Charles J. Stern, and William Curtis Henley III (collectively, the "Defendants") by a Grand Jury in Chicago, Illinois. The charges in the Indictment arise out of a transaction between LABS, a company that breeds, raises, manages, and provides animals for Government and private organizations for purposes of bio-medical research, and Indonesian Aquatics Export CV ("Inquatex"), a company located in the Republic of Indonesia. In particular, the Indictment concerns alleged violations of federal statutes arising out of LABS' importation of a colony of monkeys consisting of approximately 1,300 cynomolgus macaques (of the species "*Macaca fascicularis*" and commonly known as crab-eating or long-tailed macaques) from Indonesia beginning in February 1997.

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The Indictment alleges the following: Counts One through Four of the Indictment allege that Defendants LABS and Taub knowingly submitted false records related to the description of the monkeys with each of the four shipments in violation of 16 U.S.C. §§ 3372(d) and 3373(d)(3)(A)(i) (a felony); Count Five of the Indictment alleges that all Defendants knowingly imported monkeys and in the exercise of due care should have known that the importation violated a foreign law in violation of 16 U.S.C. §§ 3372(a)(2)(A) and 3373(d)(2) (a misdemeanor); Counts Six through Nine allege that Defendants LABS and Taub knowingly and fraudulently imported the four shipments of the monkeys contrary to law in violation of 18 U.S.C. § 545 (a felony); and Counts Ten through Twelve allege that Defendants LABS and Taub knowingly imported three shipments of monkeys and in the exercise of due care should have known that the importation violated a United States regulation allegedly governing the shipments of nursing mothers with young in violation of 16 U.S.C. §§ 3372(a)(1)(A) and 3373(d)(2) (a misdemeanor).

LABS' Motion for a Bill of Particulars focuses on Counts One through Four and Six through Nine of the Indictment, which concern statements included in documents allegedly issued by the Indonesian government and submitted to the U.S. Fish and Wildlife Service and the U.S. Customs Service and accompanying the four shipments of monkeys and the legality of those shipments. The documents accompanying the four shipments include an export permit required by the Convention on International Trade in Endangered Species of Wild Fauna and Flora ("CITES") and a health certificate, both issued by the Indonesian government. A bill of particulars is necessary in this case because the Indictment fails to allege the specific conduct and facts at issue, as well as the Government's theory of the case, with the precision required to

minimize surprise at trial or to give Defendant a fair chance of preparing a defense or raising a double jeopardy defense in any subsequent prosecution.

In particular, regarding Counts One through Four of the Indictment, the Government has failed to identify persons that appear to have a role in the Inquatex transaction, has failed to disclose its theory regarding allegations of the payment of baksheesh, has failed to identify the specific authority it relies upon for alleging that LABS had to provide Inquatex with any documentation filed by LABS as part of the CITES permit process, has failed to meaningfully identify conduct and facts that concern the truth of statements included in the CITES permits and health certificates, has failed to disclose the government's theory for alleging such statements to be false, and has failed to allege who placed the allegedly false statements on the CITES permits and health certificates. In addition, concerning Counts Six through Nine of the Indictment, the Government has failed to reveal its theory as to why LABS' alleged conduct was fraudulent and has failed to allege an underlying offense which is an essential element of the violation charged. A bill of particulars setting forth the following requested information is therefore required.

DEFENDANT'S REQUESTS FOR PARTICULARS

I. Counts One through Four

A. Indictment Reference: Paragraph 19 refers to a "baksheesh" deal to pay off the Indonesian government and defines "baksheesh" as a "bribe".[1]

B. Requests for Particularization:

(1) Identify and particularize the Government theory as to why the term "baksheesh" means "bribe".

[1] Defendant LABS has moved to strike paragraph 19. See Defendant LABS of Virginia, Inc.'s Motion to Strike, filed July 1, 2002, at 4-8.

(2) Identify any persons alleged to have offered, made, or accepted payments of baksheesh or a bribe.

(3) Particularize the amount of all alleged payments of baksheesh or a bribe.

(4) Particularize the alleged purpose of any alleged payments of baksheesh or a bribe.

(5) Particularize the Indonesian government action alleged to have occurred as a result of alleged payments of baksheesh or a bribe.

(6) Particularize the Government theory as to the relevance of any alleged baksheesh deal, or payments of baksheesh or a bribe, to the charges alleged in the Indictment.

C. Indictment Reference: Paragraph 23 states that "[t]he Purchase Agreement stated in part that each party was to provide the other with all applications and other documents filed as a part of the CITES permit process."

D. Requests For Particularization: Specify the paragraph in the Purchase Agreement, or in the CITES Treaty that requires the buyer, in this case, LABS, to provide the other, in this case, Inquatex, any documentation filed by LABS as part of the CITES permit process.

E. Indictment Reference: Paragraphs 6, 17, 19, 21, 27, 29, 32, and 35 of Counts One through Four (and paragraph 8 of Counts Ten through Twelve) refer to "Person A" and paragraphs 17, 18, 19, 20, and 22 of Counts One through Four refer to "Person B".

F. Requests for Particularization: Identify "Person A" and "Person B".

G. Indictment Reference: Paragraphs 27, 29, 32, and 35 contain two quotes from the CITES permits. Paragraph 38, the charging paragraph, alleges the following statements

to be false because each shipment contained wild-caught and captive-bred monkeys and the statements in the CITES permits "falsely represented that the shipments contained only captive-bred *Macaca fascicularis*. . . ." The Indictment alleges that:

(1) the CITES permits for the February 20, 1997 shipment "authorized the export of 55 'crab-eating monkeys' and each described the contents of the shipment as '[c]aptive-bred specimens, no quota is allocated'";

(2) the CITES permits for the April 10, 1997, May 1, 1997, and May 30, 1997 shipments "authorized the export of . . . '[c]rab-eating [m]acaque' which [the permits] described as '[c]aptive breed specimen, no quota allocated'"; and

(3) the CITES permits for each shipment 'contained the notation 'II(C)' in the column marked 'Appendices (source)'".

H. Requests For Particularization:

(1) Particularize the CITES Treaty section(s) or CITES permit instructions which render these three statements false.

(2) Particularize the CITES Treaty section(s) or CITES permit instructions which make the statements in paragraphs G.(l) and (2) of this Motion applicable to the actual respective shipments from the Inquatex facility to LABS.

(3) Particularize the CITES Treaty section(s) or CITES permit instructions that indicate that the two statements described in paragraphs G.(l) and (2) of this Motion refer to the contents of the shipments or a description of the shipments.

(4) Particularize the CITES Treaty section(s) or the CITES permit instructions which limit the three statements described in paragraphs G.(l), (2), and (3) of this

Motion in such a way as to mean "only" captive bred, as in exclusively captive bred.

(5) Identify any United States and Indonesian agencies or authorities to whom the CITES permit applications were submitted and the CITES permits were submitted.

(6) Identify and particularize the Government theory that a nexus exists between the statements quoted in paragraphs G.(l), (2), and (3) of this Motion and any function of a United States agency.

(7) Identify and particularize who placed the allegedly false information on the CITES permits.

I. Indictment References: Paragraphs 28, 31, 34, and 37 contain one quote from the health certificate: "[c]aptive bred born at INQUATEX facility (Jakarta/Indonesia)". Paragraph 38, the charging paragraph, alleges these statements in the health certificates to be false because the statements falsely represented that the shipments contained "only" captive-bred animals.

J. Requests for Particularization:

(1) Identify and particularize the Government theory that the health certificate is one of the documents required by United States laws and regulations or Indonesian export-related laws or regulations.

(2) Identify and particularize the United States or Indonesian law or regulation, or the health certificate instructions which limit the statement on the health certificate, as stated in Paragraph I. of this Motion in such a way as to mean "only" captive-bred, as in exclusively captive-bred.

(3) Identify any United States and Indonesian agencies or authorities to whom the health certificate was submitted.

(4) Identify and particularize the Government theory that a nexus exists between the statement quoted in Paragraph I. of this Motion and any function of a United States agency.

(5) Identify and particularize who placed the allegedly false information on the health certificates.

II. Counts Six through Nine.

A. Indictment Reference: Counts Six through Nine charge Defendant with fraudulently and knowingly importing into the United States the wild-caught *Macaca fascicularis* contrary to law.

B. Requests for Particularization:

(1) Defendant requests the particularization of the theory and identity of the victim of the fraudulent conduct.

(2) Defendant requests the Government to identify which law makes the importation of the wild-caught *Macaca fascicularis* a violation.[2]

[2] As argued in Defendant LABS' Motion to Dismiss, at Part IV, which was filed July 1, 2002, Counts Six through Nine of the Indictment, which allege a violation of 18 U.S.C. § 545, are fatally flawed because they fail to allege essential elements of the offenses alleged, i.e., what underlying law was violated by Defendant's actions and the elements of common law fraud. These legally insufficient counts cannot be cured by a bill of particulars and must be dismissed. Russell v. United States, 369 U.S. 749, 770, 82 S.Ct 1038 (1962). However, in the event that this Court disagrees with Defendant's position as presented in the Motion to Dismiss, Defendant has included a request for particularization about the alleged fraudulent conduct and the underlying law alleged to have been violated in Counts Six through Nine of the Indictment.

MEMORANDUM OF LAW

Rule 7(f) of the Federal Rules of Criminal Procedure allows the Court to direct the Government to file a bill of particulars, which is a "more specific expression of the activities defendant is accused of having engaged in which are illegal." United States v. Canino, 949 F.2d 928, 949 (7th Cir. 1991). A bill of particulars should be provided "to clarify the nature of the offense charged and the ultimate facts necessary to avoid surprise or double jeopardy." United States v. Messino, 855 F. Supp. 955, 962 (N.D. Ill. 1994) (quoting United States v. Isaacs, 347 F. Supp. 743, 762 (N.D. In. 1972)). "The defendant's constitutional rights under the fifth and sixth amendments require that [the defendant] be informed of the nature of the offense charged to allow him to prepare a defense and to protect his double jeopardy rights." United States v. Glecier, 923 F.2d 496, 502 (7th Cir. 1991).

A decision to require a bill of particulars is within the sound discretion of the district court. Canino, 949 F.2d at 949. The court's discretion should be guided by the intent of Fed. R. Crim. P. 7(f), which was amended in 1966 "to encourage a more liberal attitude by Courts towards bills of particulars." United States v. Addonizio, 451 F.2d 49, 64 (3d Cir, 1971) (citing advisory committee notes). Any doubts as to whether a bill of particulars should issue should be resolved in favor of the defendant because "[s]ince [a] defendant is presumed innocent . . . it cannot be assumed that he knows the particulars sought." United States v. Tucker, 262 F. Supp. 305, 307 (S.D.N.Y. 1966).

When deciding whether a motion for a bill of particulars should be granted, the court will assess "whether the indictment sets forth the elements of the offense charged and sufficiently apprises the defendant of the charges to enable him to prepare for trial." United States v. Kendall, 665 F.2d 126, 134 (7th Cir. 1981) (quoting United States v. Roya, 574 F.2d 386, 391 (7th

Cir. 1978)); see also Canino, 949 F.2d at 949. Although a defendant is not entitled to know all of the evidence the government may produce, the defendant is entitled to know the theory of the government's case. Kendall, 665 F.2d at 135 (citing United States v. Giese, 597 F.2d 1170, 1181 (9th Cir. 1979)). Moreover, "[i]t is well settled law that 'where an indictment fails to set forth specific facts in support of requisite elements of the charged offense, and the information is essential to the defense, failure to grant a request for a bill of particulars may constitute reversible error.'" See United States v. Cole, 755 F.2d 748, 760 (11th Cir. 1985) (quoting United States v. Crippen, 579 F.2d 340, 347 (5th Cir. 1978)).

In this case, the Indictment filed against LABS does not adequately inform LABS of the nature of the offenses charged or the underlying facts in Counts One through Four. In addition, the Indictment does not sufficiently inform LABS of the essential elements of the offenses charged in Counts Six through Nine or the underlying facts supporting the allegation of fraudulent conduct. The requirement of a bill of particulars will prevent prejudice against LABS and will enable LABS to thoroughly prepare its defense and avoid surprise at trial.

Paragraph 23 of the Indictment, which is part of Counts One through Four, and incorporated by reference in Counts Five through Twelve, alleges that "[t]he Purchase Agreement stated in part that each party was to provide the other with all applications and other documents filed as a part of the CITES permit process." Furthermore, several paragraphs in the Indictment refer to "Person A" and "Person B" as having roles in the conduct alleged in the Indictment. LABS' requests for particularization concerning Paragraph 23 and the references to "Person A" and "Person B", appropriately seek information that is required to prepare for its defense and to avoid surprise at trial. Counts One through Four of the Indictment allege that LABS submitted false documentation, including CITES permits, for the four shipments of

monkeys. The allegation at Paragraph 23 of the Indictment implies that the Government may believe that LABS was responsible for providing or filing documents as part of the CITES permit process. However, LABS is not aware of any provision in the Purchase Agreement that required LABS to provide Inquatex with "documents filed as a part of the CITES permit process" or that required LABS to make any filing to obtain a CITES permit for the shipments. LABS is entitled to know the nature of the offense charged, as well as the facts upon which the Government bases any charges, to adequately prepare a defense to Counts One through Four of the Indictment. The Government's disclosure of the section in the Purchase Agreement that provides the basis for the statement in Paragraph 23 of the Indictment concerning LABS' responsibilities under that agreement will give LABS insight into the Government's theory supporting Counts One through Four. This information, as well as the identification of "Person A" and "Person B" will enable LABS to prepare for trial with a complete understanding of the charges against it.

LABS' additional requests for particularization related to Counts One through Four ask the government to identify conduct and facts about the Indictment's reference to a "baksheesh deal", statements in the CITES permits and health certificates, and the Government's theory for alleging that a baksheesh deal occurred and that LABS submitted false statements. The Indictment asserts that "Person A had gone to the Indonesian government and had cut a 'baksheesh' deal to pay them off." Indictment, at 6, ¶ 19. However, the Indictment fails to identify facts and conduct regarding the alleged "baksheesh" payments with enough specificity to apprise LABS about the nature of any alleged baksheesh deal and fails to disclose the

Government's theory regarding the relevance of any alleged baksheesh deal to the charges in the Indictment.[3]

The Indictment also contends in Counts One through Four that LABS "falsely represented that the shipments contained only captive bred *Macaca fascicularis*." Indictment, ¶ 38. However, the government has failed to identify conduct and facts that concern the truth of statements included in the CITES permits and health certificates referenced in the Indictment and has failed to set forth the Government's theory for alleging such statements to be false. LABS' requests for particularization are narrowly focused on unveiling the Government's general theory for interpreting statements on the CITES permits and health certificates to be false. Defendant LABS is entitled to learn the government's theory regarding all counts in the Indictment to be able to prepare for trial with full knowledge of the charges against it. See Kendall, 665 F.2d at 135.

Defendant also has the right to know the identity of the victim of the alleged crime. See United States v. Davidoff, 845 F.2d 1151, 1155 (2d Cir. 1988) (defendants are entitled to "a straightforward identification in a bill of particulars of the identity of victims of the offense that the prosecution intends to prove."). Counts One through Four of the Indictment only allege that LABS "knowingly submit[ted]a false record . . . ." Indictment, ¶ 38. The Indictment does not identify who received the alleged false record nor who was harmed by the submission of any such record. LABS needs to know who was harmed as a result of their alleged conduct to develop a relevant and appropriate defense for the charges filed against it.

Furthermore, LABS' requests for particularization regarding Counts One through Four, as well as Counts Six through Nine (which allege that LABS fraudulently and knowingly

[3] See supra n.1.

imported into the United States merchandise contrary to law), are justified. A bill of particulars is especially necessary when charges against a defendant involve alleged false statements and fraudulent conduct. In United States v. Trie, 21 F. Supp. 2d 7, 21-22 (D.D.C. 1998), the court ordered the government to file a bill of particulars detailing the government's allegations of fraud. Trie involved a prosecution against a campaign contributor for allegedly defrauding the United States, committing mail and wire fraud, and making false statements to the Federal Elections Commission regarding his campaign contributions. Id. The court granted the defendant's motion for a bill of particulars and stated that the "government must provide information as to exactly what the false statements are, what about them is false, who made them, and how [the defendant] caused them to be made." Id. In this case, the Court similarly should require the Government to file a bill of particulars, in conformance with requests for particularization, regarding the precise conduct upon which the Government has based its allegations of false statements and fraudulent conduct.

Finally, LABS' requests for particularization concerning Counts Six through Nine of the Indictment rightfully seek the Government's theory as to why the Government considers LABS' conduct to be fraudulent and the identity of the victim of the fraud. Moreover, the requests properly ask the Government to provide Defendant with an essential element of the offense charged in Counts Six through Nine, i.e., the identification of the underlying law which allegedly had been violated. Indeed, these counts are fatally defective and should be dismissed because they fail to set forth any law that was violated by LABS by importing wild-caught *Macaca fascicularis* into the United States.[4]

[4] Defendant addresses this issue further in Defendant LABS of Virginia, Inc.'s Motion to Dismiss, filed July 1, 2002.

In conclusion, the Indictment's lack of specificity, as detailed in this Motion, unfairly subjects LABS to the possibility that the prosecution will continually shift its theory of the case and be able to vary the Indictment to fit the evidence adduced at trial. A bill of particulars is necessary in this case to ensure that LABS is fairly informed of the nature of the charges against it with enough specificity to prepare a defense, to protect against surprise, and to avoid the potential for variance or constructive amendment of the Indictment.

CONCLUSION

Wherefore, for the reasons set forth above, and any additional reasons stated at any oral hearing on this Motion, Defendant LABS requests this Court grant this Motion and issue an Order directing the Government to serve LABS with a Bill of Particulars.

Respectfully submitted,

Michael J. Fayad

By 
Attorney for Defendant LABS of Virginia, Inc.

GREENBERG TRAURIG, LLP
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Local counsel:
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Suite 2500
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July 1, 2002

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of July, 2002, a true and correct copy of the foregoing Defendant LABS of Virginia, Inc.'s Motion for a Bill of Particulars and Memorandum of Law in Support, was served by hand delivery on the following:

Diane MacArthur, Esq.
Assistant United States Attorney
219 South Dearborn Street
Chicago, IL 60604

and by United States first class mail, postage prepaid, on the following:

Michael L. Fayad, Esq.
GREENBERG TRAURIG, LLP
800 Connecticut Avenue, N.W.
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Samuel J. Buffone, Esq.
Kelly B. Kramer, Esq.
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WILLIAMS & CONNOLLY
725 Twelfth Street, N.W.
Washington, D.C. 20005

Robert H. King, Jr.

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA

v.

LABS OF VIRGINIA, INC.
DAVID M. TAUB
CHARLES J. STERN, and
WILLIAM CURTIS HENLEY III

No. 02 CR 0312

Judge Castillo
Magistrate Judge Bobrick

DEFENDANT CHARLES J. STERN AND WILLIAM CURTIS HENLEY III's DESIGNATION OF LOCAL COUNSEL FOR SERVICE

Pursuant to Local Rule 83.15, Defendants Charles J. Stern and William Curtis Henley III designate the following individual as local counsel for service:

Robert H. King, Jr.
GREENBERG TRAURIG, P.C.
77 West Wacker Drive
Suite 2500
Chicago, Illinois 60601
(312) 456-8400

Respectfully submitted,

GERALD A. FEFFER*
DAVID M. ZINN*

By: _____
Attorneys for Charles J. Stern and
William Curtis Henley III

Williams & Connolly LLP
725 12th St., N.W.
Washington, DC 20005
(202) 434-5000

*Pro hac vice status applied for.

Dated: July 1, 2002

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of July, 2002, I caused a true and correct copy of the foregoing Defendants Charles J. Stern and William Curtis Henley III's Designation of Local Counsel for Service, to be served by hand delivery on the following:

Diane MacArthur, Esq.
Assistant United States Attorney
219 South Dearborn Street
Chicago, IL 60604

Michael L. Fayad, Esq.
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Washington, DC 20005-3333

David M. Zinn

Minute Order Form (06/97)

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Ruben Castillo	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	02 CR 312	DATE	7/10/2002
CASE TITLE	USA vs. Labs of Virginia, et al.		

MOTION: [In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

DOCKET ENTRY:

(1) ☐ Filed motion of [use listing in "Motion" box above.]

(2) ☐ Brief in support of motion due _____.

(3) ☐ Answer brief to motion due_____. Reply to answer brief due_____.

(4) ☐ Ruling/Hearing on _____ set for _____ at _____.

(5) ■ Status hearing held and continued to 11/6/2002 at 9:45 A.M..

(6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(7) ☐ Trial[set for/re-set for] on _____ at _____.

(8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.

(9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ General Rule 21 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).

(10) ■ [Other docket entry] From today's date until 11/6/02 is excluded pursuant to 18 U.S.C. 3161(h)(1)(F) and 18 U.S.C. 3161(h)(8)(A)(B). (X-E and X-T). Defendant Labs' motion for leave to file in excess of fifteen pages [26-1] is granted. Defendant Taub's motion for leave to file additional motions [31-1], motion for pretrial disclosure of exculpatory evidence [33-1] and motion for early disclosure of intention to introduce co-conspirator statements pursuant to Federal Rule of Evidence 801(d)(2)(E) [34-1] are all granted. Government to file its written Santiago Proffer six weeks prior to trial. Defendant Taub's motion for leave to issue pretrial subpoenas pursuant to Rule 17(c) is granted as to all parties.

(11) ☐ [For further detail see order (on reverse side of/attached to) the original minute order.]

No notices required, advised in open court.

No notices required.

Notices mailed by judge's staff.

Notified counsel by telephone.

✓ Docketing to mail notices.

Mail AO 450 form.

Copy to judge/magistrate judge.

number of notices

JUL 12 2002

date docketed

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Document Number

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Minute Order Form (06/97)

United States District Conrt, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Ruben Castillo	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	02 CR 312	DATE	7/10/2002
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MOTION:

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(1) ☐ Filed motion of [use listing in "Motion" box above.]

(2) ☐ Brief in support of motion due _____.

(3) ☐ Answer brief to motion due_____. Reply to answer brief due_____.

(4) ☐ Ruling/Hearing on _____ set for _____ at _____.

(5) ☐ Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(7) ☐ Trial[set for/re-set for] on _____ at _____.

(8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.

(9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ General Rule 21 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).

(10) ■ [Other docket entry] Government's response to Defendants' motion for issuance of letters rogatory [24-1] is due on or before 9/9/02. Defendants' reply will be due 9/30/02. Court will rule 11/6/02 at 9:45 a.m. Government's response to Defendant Labs' motion to strike portions of the indictment [27-1], motion to dismiss [28-1], and motion for a bill of particular [29-1] is due on or before 9/9/02. Defendant's reply will be due 9/30/02. Court will rule 11/6/02 at 9:45 a.m.

(11) ☐ [For further detail see order (on reverse side of/attached to) the original minute order.]

No notices required, advised in open court.
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Minute Order Form (06/97)

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Ruben Castillo	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	02 CR 312	DATE	7/10/2002
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MOTION:

DOCKET ENTRY:

(1) ☐ Filed motion of [use listing in "Motion" box above.]

(2) ☐ Brief in support of motion due _____.

(3) ☐ Answer brief to motion due_____. Reply to answer brief due_____.

(4) ☐ Ruling/Hearing on _____ set for _____ at _____.

(5) ☐ Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(7) ☐ Trial[set for/re-set for] on _____ at _____.

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(9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ General Rule 21 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).

(10) ■ [Other docket entry] Government's response to defendant Taub's motion to dismiss the indictment [30-1] and motion for a bill of particulars [35-1] is due on or before 9/9/02. Defendant's reply will be due 9/30/02. Court will rule 11/6/02 at 9:45 a.m.

(11) ☐ [For further detail see order (on reverse side of/attached to) the original minute order.]

____ No notices required, advised in open court.
____ No notices required.
____ Notices mailed by judge's staff.
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____ Copy to judge/magistrate judge.

RO courtroom deputy's initials

U.S. DISTRICT COURT CLERK
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MOTION:

DOCKET ENTRY:

(1) ☐ Filed motion of [use listing in "Motion" box above.]

(2) ☐ Brief in support of motion due _____.

(3) ☐ Answer brief to motion due_____. Reply to answer brief due_____.

(4) ☐ Ruling/Hearing on _____ set for _____ at _____.

(5) ☐ Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(7) ☐ Trial[set for/re-set for] on _____ at _____.

(8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.

(9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ General Rule 21 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).

(10) ■ [Other docket entry] Government's response to Defendants Stern and Henley's motion to dismiss counts Five of the indictment under the void for vagueness doctrine [36-1], motion to dismiss count Five of the indictment under the act of state doctrine [38-1], motion to dismiss count Five of the indictment for failure to allege an essential element of the offense (no predicate act) [40-1], motion to dismiss count Five of the indictment for failure to allege any factual basis for the offense [42-1], motion for a bill of particulars [44-1], and motion for severance [47-1] is due on or before 9/9/02. Defendants' reply will be due 9/30/02. Court will rule 11/6/02 at 9:45 a.m.

(11) ☐ [For further detail see order (on reverse side of/attached to) the original minute order.]

No notices required, advised in open court.

No notices required.

Notices mailed by judge's staff.

Notified counsel by telephone.

✓ Docketing to mail notices.

Mail AO 450 form.

Copy to judge/magistrate judge.

number of notices

JUL 12 2002

date docketed

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Document Number

57

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U.S. DISTRICT COURT CLERK
02 JUL 10 PM 4:06
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Date/time received in central Clerk's Office

Minute Order Form (06/97)

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Ruben Castillo	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	02 CR 312	DATE	7/10/2002
CASE TITLE	USA vs. Labs of Virginia, et al.		

MOTION: [In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

DOCKET ENTRY:

(1) ☐ Filed motion of [use listing in "Motion" box above.]

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(4) ☐ Ruling/Hearing on _____ set for _____ at _____.

(5) ☐ Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(7) ☐ Trial[set for/re-set for] on _____ at _____.

(8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.

(9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ General Rule 21 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).

(10) ■ [Other docket entry] Defendants Stern and Henley's motion of joinder in co-defendants' motions [46-1], and motion for leave to file additional motions after 7/1/02 [49-1] are granted.

(11) ☐ [For further detail see order (on reverse side of/attached to) the original minute order.]

No notices required, advised in open court.
No notices required.
Notices mailed by judge's staff.
Notified counsel by telephone.
✓ Docketing to mail notices.
Mail AO 450 form.
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number of notices

JUL 12 2002
date docketed

docketing deputy initials

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mailing deputy initials

Document Number

58

RO courtroom deputy's initials

U.S. DISTRICT COURT CLERK
02 JUL 10 PM 4:06
FILED-ED 10

Date/time received in central Clerk's Office

Minute Order Form (06/97)

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Ruben Castillo	**Sitting Judge if Other than Assigned Judge**	
CASE NUMBER	02 CR 312	**DATE**	7/23/2002
CASE TITLE	USA vs. Labs of Virginia, et al.		

MOTION: [In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

DOCKET ENTRY:

(1) ☐ Filed motion of [use listing in "Motion" box above.]

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(7) ☐ Trial[set for/re-set for] on _____ at _____.

(8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.

(9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ General Rule 21 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).

(10) ■ [Other docket entry] Enter Order. The Court orders that the reference in the last paragraph of Counts Ten through Twelve in the indictment to "Title 16, United States Code, Sections 3372(a)(2)(A) and 3373(d)(2)" be changed to "Title 16, United States Code, Sections 3372(a)(1) and 3373(d)(2).

(11) ■ [For further detail see order attached to the original minute order.]

No notices required, advised in open court.

No notices required.

Notices mailed by judge's staff.

Notified counsel by telephone.

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JUL 24 2002

date docketed

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59

date mailed notice

mailing deputy initials

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA)
)
vs.)
)
LABS OF VIRGINIA, INC., et al.)

No. 01CR312
Judge Ruben Castillo

ORDER

On or about May 15, 2002, this Court granted the government's request to amend a statutory reference in Counts Ten through Twelve of the indictment. The Minute Order describing this amendment did not fully set forth the requested change. This Court orders that the reference in the last paragraph of Counts Ten through Twelve in the indictment to "Title 16, United States Code, Sections 3372(a)(2)(A) and 3373(d)(2)" be changed to "Title 16, United States Code, Sections 3372(a)(1) and 3373(d)(2)."

SO ORDERED:

RUBEN CASTILLO, JUDGE
UNITED STATES DISTRICT COURT

DATED: 7/23/02

59

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA	)	
	)	No. 02 CR 312
v.	)	Judge Ruben Castillo
	)	
LABS OF VIRGINIA, INC.	)	
DAVID M. TAUB,	)	
CHARLES J. STERN, and	)	
WILLIAM CURTIS HENLEY III	)	

SEP 10 2002

FILED
SEP 11 2002
MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

NOTICE OF MOTION

To: SEE ATTACHED LIST

9:45 **PLEASE TAKE NOTICE** that on Wednesday, September 18, 2002 at ~~9:30~~ a.m., or as soon thereafter as counsel may be heard, I will appear before Judge Castillo in the courtroom usually occupied by her in the United States Courthouse, 219 South Dearborn Street, Chicago, Illinois, or before such other judge who may be sitting in her place and stead, and then and there present the **GOVERNMENT'S MOTION FOR AN EXTENSION OF TIME IN WHICH TO FILE CONSOLIDATED RESPONSE TO PRETRIAL MOTIONS** at which time and place you may appear if you see fit.

Diane MacArthur BG ADS

DIANE MacARTHUR
Assistant United States Attorney
219 South Dearborn Street - 4th
Chicago, Illinois 60604
(312) 353-5352

STATE OF ILLINOIS	)	
	)	SS
COUNTY OF COOK	)	

Angela Savage, being duly sworn on oath, deposes and says that she is employed in the Office of the United States Attorney for the Northern District of Illinois; and that on the 11th day of September she caused a copy of the above-mentioned notice to be delivered to the individuals named above.

Angela Savage

SUBSCRIBED and SWORN to before me

this 11th day of September 2002

Cheryl M. Guest
NOTARY PUBLIC

"OFFICIAL SEAL"
Cheryl M. Guest
Notary Public, State of Illinois
My Commission Exp. 07/31/2005

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA	)	
	)	No. 02 CR 312
v.	)	Judge Ruben Castillo
	)	
LABS OF VIRGINIA, INC.	)	
DAVID M. TAUB,	)	
CHARLES J. STERN, and	)	
WILLIAM CURTIS HENLEY III	)	

FILED
SEP 11 2002
MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

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Diane MacArthur By ADS

DIANE MacARTHUR
Assistant United States Attorney
219 South Dearborn Street - 4th
Chicago, Illinois 60604
(312) 353-5352

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

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SUBSCRIBED and SWORN to before me

this 11th day of September 2002

Cheryl M. Guest
NOTARY PUBLIC

"OFFICIAL SEAL"
Cheryl M. Guest
Notary Public, State of Illinois
My Commission Exp. 07/31/2005

SERVICE LIST

UNITED STATES V. LABS OF VIRGINIA, et al.,
No. 02 CR 312

Labs of Virginia, Inc.	Michael L. Fayad, Esq. Greenberg & Traurig 800 Connecticut Avenue, N.W. Suite 500 Washington, D.C. 20006 (202) 533-2327 (202) 331-3101 (fax)
David M. Taub	Samuel J. Buffone, Esq. Ropes & Gray One Franklin Square 1301 K Street, N.W. Suite 800 East Washington, D.C. 20005-3333 (202) 626-3900 (202) 626-3961 (fax)
Charles J. Stern William C. Henley	Gerald A. Feffer, Esq. David M. Zinn, Esq. Williams & Connolly LLP 725 Twelfth Street, N.W. Washington, D.C. 20005-5901 (202) 434-5000 (202) 434-5029 (fax)

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA	)	
	)	No. 02 CR 312
vs.	)	Judge Ruben Castillo
LABS OF VIRGINIA, INC., DAVID M. TAUB, CHARLES J. STERN, and WILLIAM CURTIS HENLEY III	)	

GOVERNMENT'S MOTION FOR AN EXTENSION OF TIME IN WHICH TO FILE CONSOLIDATED RESPONSE TO PRETRIAL MOTIONS

The United States of America, by its attorney, Patrick J. Fitzgerald, United States Attorney for the Northern District of Illinois, respectfully requests an extension of time in which to file a Consolidated Response to the multiple pretrial motions filed by all of the defendants in this case. In support of this motion, the government states as follows:

1. The defendants have filed multiple pretrial motions in this case which range from motions to dismiss the indictment based on the "act of state" doctrine to motions for bills of particulars. The government's Consolidated Response to these motions was due on or before September 8, 2002.

2. The undersigned attorney has not been able to complete the Consolidated Response in the allotted time due to her involvement in, among other things, a trial in United States v. Trombetta et al., No. 01 CR 730 (Gettleman, J.), an arrest and detention hearing in United States v. Collins, No. 02 CR 831 (Nolan, J.), and the need to prepare a consolidated response to

pretrial motions in United States v. Burke, No. 01 CR 1049 (Pallmeyer, J.), which is scheduled for trial on October 7, 2002.

3. The government respectfully requests leave to file the Consolidated Response on or before September 18, 2002. The defendants' replies are currently due September 30, 2002. This case is set for status and a ruling on the pretrial motions on November 6, 2002 at 10:00 a.m.

4. Counsel for defendants Labs of Virginia, Inc., Charles Stern and William Henley oppose this request. Counsel for defendant David Taub does not oppose this request.

Respectfully submitted,

PATRICK J. FITZGERALD
United States Attorney

By: Diane MacArthur
DIANE MacARTHUR
Assistant U.S. Attorney
219 South Dearborn Street
Chicago, Illinois 60604
(312) 353-5352

Minute Order Form (06/97)

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Ruben Castillo	**Sitting Judge if Other than Assigned Judge**	
CASE NUMBER	02 CR 312 - all	**DATE**	9/13/2002
CASE TITLE	USA vs. Labs of Virginia, et al.		

MOTION: [In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

DOCKET ENTRY:

(1) ☐ Filed motion of [use listing in "Motion" box above.]

(2) ☐ Brief in support of motion due _____.

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(7) ☐ Trial[set for/re-set for] on _____ at _____.

(8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.

(9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ Local Rule 41.1 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).

(10) ■ [Other docket entry] Government's motion for an extension of time in which to file consolidated response to pretrial motions is granted. The parties do not need to appear for the motion call on September 18, 2002. Government's consolidated response to the defendants' pending motions is due on or before September 18, 2002. Defendants' replies will be due September 30, 2002. The court will rule on November 6, 2002 at 10:00 a.m.

(11) ☐ [For further detail see order (on reverse side of/attached to) the original minute order.]

No notices required, advised in open court.
No notices required.
Notices mailed by judge's staff.
Notified counsel by telephone.
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Document Number

61

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Date/time received in central Clerk's Office

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA	)	
	)	No. 02 CR 312
v.	)	Judge Ruben Castillo
	)	
LABS OF VIRGINIA, INC.	)	
DAVID M. TAUB,	)	
CHARLES J. STERN, and	)	
WILLIAM CURTIS HENLEY III	)	

NOTICE OF FILING

To: SEE ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that on September 18, 2002, the undersigned filed with the Clerk of this Court, **GOVENMENT'S CONSOLIDATED RESPONSE TO PRETRIAL MOTIONS OF DEFENDANTS LABS OF VIRGINIA, INC., DAVID M. TAUB, CHARLES J. STERN AND WILLIAM CURTIS HENLEY III** service of which is being made upon you.

Diane MacArthur By: Acts

DIANE MacARTHUR
Assistant United States Attorney
219 South Dearborn Street - 4th
Chicago, Illinois 60604
(312) 353-5352

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

Angela Savage, being duly sworn on oath, deposes and says that she is employed in the Office of the United States Attorney for the Northern District of Illinois; and that on the 18th day of September, 2002 she caused a copy of the above-mentioned notice to be delivered to the individuals named above.

Angela Savage

SUBSCRIBED and SWORN to before me

this 18th day of September, 2002

"OFFICIAL SEAL"
Cheryl M. Guest
Notary Public, State of Illinois
My Commission Exp. 07/31/2005

Cheryl M. Guest
NOTARY PUBLIC

62

SERVICE LIST

UNITED STATES V. LABS OF VIRGINIA, et al.,
No. 02 CR 312

Labs of Virginia, Inc.	Michael L. Fayad, Esq. Greenberg & Traurig 800 Connecticut Avenue, N.W. Suite 500 Washington, D.C. 20006 (202) 533-2327 (202) 331-3101 (fax)
David M. Taub	Samuel J. Buffone, Esq. Ropes & Gray One Franklin Square 1301 K Street, N.W. Suite 800 East Washington, D.C. 20005-3333 (202) 626-3900 (202) 626-3961 (fax)
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA	)	
	)	No. 02 CR 312
vs.	)	Judge Ruben Castillo
	)	
LABS OF VIRGINIA, INC.	)	
DAVID M. TAUB,	)	
CHARLES J. STERN, and	)	
WILLIAM CURTIS HENLEY III	)	

GOVERNMENT'S CONSOLIDATED RESPONSE TO PRETRIAL MOTIONS OF DEFENDANTS LABS OF VIRGINIA, INC., DAVID M. TAUB, CHARLES J. STERN AND WILLIAM CURTIS HENLEY III

All four defendants have filed a variety of pretrial motions attacking the indictment in this case. Each defendant has moved to dismiss the indictment for varying reasons and each requests a bill of particulars. Defendants Charles J. Stern and William Curtis Henley III have moved for a severance from the other defendants. All four defendants join in a motion requesting the issuance of Letters Rogatory in order to conduct overseas discovery. The government's consolidated response to these motions is set forth below.

I. BACKGROUND

Defendant Labs of Virginia, Inc. is involved in breeding primates for use in medical research. Labs is located in Yemassee, South Carolina. The indictment focuses on four shipments of primates to Labs from Indonesia that entered the United States through O'Hare International Airport. The indictment alleges that these shipments violated the law in the following ways: (1) the shipments contained at least some "wild-caught" primates even

though Indonesian law prohibited the export of feral monkeys; (2) the export permits and the health certificates for the shipments falsely listed the primates in the shipments as being "captive-bred"; and (3) some of the shipments contained nursing mothers and unweaned young.

A. The Export Restrictions Governing the Four Shipments.

The Convention on International Trade in Endangered Species of Wild Fauna and Flora ("CITES") is an international treaty governing the importation and export of certain wildlife species. The United States and Indonesia, among 140 other nations, are both parties to the treaty. Appendix II to CITES lists certain potentially endangered species which are subject to CITES's restrictions. Crab-eating macaques, a particular primate species, have been included on the list since 1977. The scientific name for crab-eating macaques is *Macaca fascicularis*. The primates imported into the United States by Labs were crab-eating macaques. A firm such as Labs, then, that sought in the 1990s to import crab-eating macaques had to first obtain a valid foreign export permit issued by the country of origin before importing any Appendix II species into the United States.

In 1994, Indonesia, the "country of origin" in this case, banned the export of wild-caught crab-eating macaques. The phrase "wild-caught" refers to those primates which were caught in the jungles of Indonesia. "Captive-bred" primates, in contrast, are

those primates which were born in captivity. After 1994, then, a firm such as Labs could not export wild-caught primates from Indonesia absent an exception from the law and could not export "captive-bred" primates without a valid "CITES" permit.

The four O'Hare shipments at issue in this case contained a mix of wild-caught and captive-bred primates. The CITES permits for each shipment, however, reflected that the crates contained "captive-bred" primates. The last three of the four O'Hare shipments contained nursing mothers and unweaned young in violation of federal regulations. The four O'Hare shipments are summarized below:

Port of Entry	Date of Entry	Approx. No. of Primates
Chicago O'Hare	02/20/97	220
Chicago O'Hare	04/10/97	253
Chicago O'Hare	05/01/97	120
Chicago O'Hare	05/30/97	253

B. The Purchase of the Indonesian Colony.

Defendant David Taub acquired Labs in 1987. Six years later, in March 1993, Taub applied for an U.S. Fish & Wildlife ("USFWS") import-export license. Taub certified in his application that he "ha[d] read and was familiar with" certain cited USFWS regulations. The cited regulations included those pertaining to the above-mentioned CITES and humane transport regulations.

In May 1996, Taub sold Labs's assets to Stern and/or a company or entity with which Stern was affiliated. Stern is the primary

owner of Bionetics, Inc. which is located in Virginia. Henley is Bionetics's Chief Financial Officer. The three individual defendants in this case assumed leadership positions at Labs after the sale. Stern became Labs's Chairman of the Board and Henley assumed a position on Labs's Board of Directors. Taub, who remained at the Yemassee facility, became Labs's President and Chief Operating Officer. Henley, based in Virginia, was Taub's immediate supervisor and Henley, in turn, reported to Stern. Taub, however, frequently forwarded correspondence and status reports to both Stern and Henley about the Indonesian shipments in this case.

In May 1996, shortly after the sale took place, a Labs employee identified in the indictment as "Person B," learned that Person A's "breeding" colony of crab-eating macaques in Indonesia was for sale. Breeding colonies are considered valuable because a colony provides a domestic company with a steady "at hand" supply of primates to sell to medical research firms and institutions. The most valuable components of the colony are productive adult females or "breeders" because these females ensure that the colony regenerates itself. Labs negotiated to buy Person A's breeding colony over the course of the next eight months (May 1996 through January 1997). Stern, Henley and Taub were all actively involved in these negotiations.

The communications between Stern, Henley and Taub during the negotiation process reveal that the primary reason Labs was

interested in the Indonesian colony was because it was a "breeding" colony. These communications also reveal, however, that the corporate officers were also aware of the difficulties in securing the export of the Indonesian colony to the United States. In May 1996, for example, Person B wrote a memo to Stern, Henley and Taub in which he summarized his contact with the primate broker who first brought the Indonesian colony to Person B's attention. Person B noted in the memo that Person A, the colony's owner, had "535 breeders, 33 males, . . . 900 weaned offspring and 100 unweaned offspring."[1] Person B also noted that Person A thought "a one-time CITES permit to release the animals" was "90% possible." Handwritten notes dated June 17, 1996 in Bionetics's possession further reflect a notation that "[s]pecial approval [was] needed by Govt for export."

Person B, the Labs employee, traveled to Indonesia in June 1996 to inspect Person A's facility. On or about July 1, 1996, Person B's final day in Indonesia, Person B sent a memo to Taub in which he described in detail the colony and the feasibility of shipping the colony to the United States. Person B attached to the memo a printout of the demographics of the colony. The printout, which contained data as of June 1991, reflected that Inquatex began to form the colony in July 1991 and that it contained a total of

[1] In a memo to Stern and Henley dated June 19, 1996, Taub defined "adult/breeding" primates as those who were "4 years old and older."

1,397 primates of which 533 were "parents." Person B stated in the memo that "[r]eproduction of the breeding stock ha[d] been good" and that the primates had been "trapped in the wild" and then transported to the Inquatex facility. Person B attached to the memo a chart dated June 21, 1996 from Inquatex showing the number of "parents" and babies per year between 1991 and 1996. Person B transmitted this memo to Labs. Labs, in turn, on July 2, 1996, faxed the memo to Stern at Bionetics in Virginia.

On or about July 3, 1996, Labs sent Person A a "Letter of Intent" signed by Stern and Taub to purchase the Inquatex colony. The Letter of Intent stated that the purchase was conditioned on Inquatex "obtaining the necessary CITES permits from the Indonesian government." The Letter of Intent also specified that Labs would export the 533 adults, i.e., the breeding stock, within six months after the sale to be followed within another six months by the remaining 900 non-parent stock.

On July 11, 1996, Person B, who had returned to the United States, circulated a memo to the "Board of Directors" about the Inquatex deal. Person B related in the memo that Person A had told him that he (Person A) was going to restock the colony with "feral trapped animals" because he (Person A) had received a permit from the government to do so. Person B also stated in the memo that, since exporting wild-caught primates was clearly against Indonesian law unless some exception were written, Person A had gone to the

Indonesian government and had cut a "baksheesh" deal to pay them off. Baksheesh is a Moroccan term for bribe. Person B also wrote in his memo that Inquatex's monthly expenses included $300 in "CITES charity" or "baksheesh" that needed to be paid out to various officials. Person B attached to the memo a sheet listing Inquatex's monthly expenses. The noted expenses include "1000" for "charity."

Person B attached to his July 11, 1996 submission to Labs's Board of Directors an Inquatex-prepared document called "Captive Breeding of Long-Tailed Macaque (Macaca fascicularis) in C.V. Inquatex - Primate Division" ("Inquatex brochure"). The document described the Inquatex facility and noted that Inquatex had been observing and analyzing primates "[s]ince July 1991." The document also stated that Inquatex "gets the parent stocks from its supplier in Jambi which is consisted of 8 catcher groups." At one point, in discussing treatment of parent stocks, the document states, "[b]efore the macaques from the wild are chosen as parent stocks, they were tested for contaminating diseases. . . ." The brochure stated that, as of October 1993, Inquatex had 668 heads of "conditional macaque (the ones from the wild)" and 762 heads of "breed" macaques.

Person B sent a separate memo to Henley at the same time as his lengthy submission to the Labs Board of Directors. Person B proposed in his memo to Henley that Labs bring in young research

animals first as they would "attract only moderate attention and would still provide us cover for bringing in the adults."

On or about July 23, 1996, Person A and his son-in-law traveled to the Labs facility in Yemassee and met with Stern, Henley, Taub and Person B. Person A told the Labs group that half the monkeys in his colony were wild-caught and told them about the 1994 Indonesian ban on exporting wild-caught primates. Person A showed Stern a letter from the Indonesian Management Authority dated July 15, 1996. The letter, which Person A translated into English, lists its "subject" as "Permit of export Parent stock." The letter is signed by the Indonesian Director of Nature Reserve Management and Flora Fauna Conservation and states, in pertinent part:

> Regarding of your letter dated July 5 1996 . . . about requesting permit of exporting parent stocks, we hereby announce that in principle there is not objection of your company to export the unproductive parent stocks, in connected [sic] with your restocking the breeding program.

At the conclusion of Person A's visit, Person A, Stern and Taub signed the Letter of Intent for the sale of the colony. An addendum to the Letter of Intent specified that it was Person A's responsibility to "obtain CITES permit and applicable exportation documentation" and that "all breeders" were to be shipped first "except those that are in the last trimester of pregnancy."

Over the next several months, Labs, Person A, and their respective representatives negotiated the terms of a Purchase

Agreement. On July 23, 1996, the parties executed a more formal Letter of Intent. Person A was then supposed to make efforts in preparation for shipping the primates to Labs's facility including securing CITES permits for the first shipment. The parties targeted September 30, 1996 as deadline by which to conclude their negotiations. During this period, in the last half of 1996, Person B stepped down as Labs's Director in order to resume a full-time research position at Labs. Taub then became Person A's principal Labs contact.

On August 26, 1996, Person A faxed Taub a note in which Person A apologized for not sending the primates. Person A explained that "it was beyond [his] expectation that to export feral must have minister decree. . . ." On August 30, 1996, one of Person A's United States-based representatives faxed Stern a letter in which he informed Stern that Person A would incur "substantial additional cost to obtain government approval allowing the transfer of the colony to LABS." The representative also objected to Labs's original plan to ship out first the colony's mature adults. The representative stated:

> These are obviously the most valuable monkeys in the colony and constitute the breeders, which are critical to the colony's operation. If, for some reason, we shipped you the breeders first, and after sending you 533 adults, you backed out of the deal, we would be stuck holding 779 youngsters that were no longer part of a breeding colony and that have a much lower value individually than as part of the colony. therefore, we suggest sending you 1.5 youngsters for every one mature adult sent to you (779 youngsters divided by 533 adults).

On September 6, 1996, Taub sent a memo to Stern and Henley in which Taub relayed Person A's apology for the delay in sending the primates and Person A's proffered explanation that the exportation of ferals required a minister decree. The following week, on or about September 17, 2001, Stern sent Person A a letter in which he rejected Person A's request for more money due to the "legally binding agreement" that Person A had signed at the Labs facility in South Carolina. Stern also stated that "[w]e understand the need to send bred animals together with the breeders." The next day, on or about September 18, 1996, Person A sent Stern a note by telefax in which Person A stated that he had applied for "the Cites for adult and youngster on your behalf. I will send the copy to you soon, and hope can reach to our final deal." On September 19, 1996, Person A faxed Stern a note in which Person A stated that he would send Stern the CITES permits as soon as the final agreement had been resolved.

At some point between September 19, 1996 and September 27, 1996, Person A faxed to Labs CITES permits for the first shipment. All of these permits listed the primates to be shipped as "Captive-breed [sic] stock - no quota allocated." The CITES permits had to be used by December 1996 or Person A had to apply for new ones.

The prolonged negotiations led to consideration of less problematic alternative breeding colonies. On or about October 4, 1996, Person B sent Stern, Henley and Taub a memo describing the

possible availability of crab-eating macaques from a Chinese exporter in lieu of the deal with Person A. Person B's memo, however, underscored again one of his concerns about the Person A deal. Person B stated in his memo that the Chinese exporter had "no problem with CITES" and that, with the Chinese deal, "we are following the spirit of CITES, i.e., we are only exporting purpose bred animals, not wild caught. . . ." In contrast, one of Person A's brokers tried to keep the deal with Labs afloat. On October 18, 1996, for example, the broker sent a fax to Henley in which the broker expressed some dismay that there had not been any "movement toward getting the breeding stock moving while he [Person A] has valid CITES and before someone in Jakarta change their minds about permitting the export of the feral animals."

Labs did not pursue the Chinese option and instead continued to negotiate with Person A. The defendants continued to discuss with each other the problems associated with bringing the Indonesian colony into the United States. On January 21, 1997, for example, Taub sent Stern and Henley a memo in which Taub discussed the Purchase Agreement. Taub opined, in the context of discussing who should bear the financial responsibility for infants born into the colony, that Labs should hold the line at a particular per infant cost "given the grave uncertainties of shipping the adults to us. . . ."

Taub continued to try to set a date for the first shipment even as the Purchase Agreement negotiations dragged on. On January 30, 1997, Taub sent a memo to Stern and Henley in which he summarized his efforts in trying to secure a shipment of Person A's colony from Jakarta on Air France in early February 1997. Taub stated, "We can fax GSW [Labs veterinarian George Ward] with the details and arrangements can (must) be made at the Jakarta end. A little extra in per diem to be sure the first shipment goes good is a small price to pay."

On or about January 31, 1997, the contract between Labs and Inquatex, Person A's firm, was finally signed. The contract stated in part that the agreement was contingent upon Inquatex receiving the required permits and consent of the Indonesian government and that each party was to provide the other with all applications and other documents filed as a part of the permit process. Inquatex, then, bore responsibility under the Purchase Agreement for securing all necessary export approvals and documents while Labs bore responsibility for ensuring that all import requirement were satisfied. Labs was also required to pay Inquatex a monthly maintenance fee for the monkeys. The monthly fee was calculated based on a set daily fee for each Labs-owned monkey still in Inquatex's possession. The Purchase Agreement contained a deadline by which the approximately 1,312 primates involved were to be shipped from Inquatex to the United States.

On January 31, 1997, the same day the Purchase Agreement became final, Taub sent the Labs veterinarian a memo in which Taub told the veterinarian that "[w]e need to push the envelope to get the maximum numbers of adults out as quickly as possible" because "getting all the animals out ASAP has significant financial implications." The veterinarian was the designated Labs employee scheduled to be in Indonesia for the start of the shipments to the United States. The veterinarian left for Indonesia on February 3, 1997.

C. The Four O'Hare Shipments.

1. The February 20, 1997 Shipment.

On February 1, 1997, Person A sent a fax to Taub in which he notified Taub that he planned to send the first shipment on February 18, 1997. Person A described 220 primates involved in the shipment as consisting of "80 adult and 140 heads of captived [sic] bred cynos." On February 3, 1997, Taub sent a memo to Person A in which he asked Person A to send him the CITES permits for the first shipment. (The earlier-acquired CITES permits expired in December 1996.) Person A sent the permits to Taub the next day. All of the permits falsely reflect that the primates in this first shipment consisted of "Captive-breed [sic] - no quota allocated."

On February 5, 1997, the day after faxing Taub the CITES permits, Person A informed Taub by fax that he (Person A) was waiting for the "extended Cites." Person A promised to send it to

Taub as soon as he received it. Person A then stated: "Please try to keep the deal silence, because I am afraid if to many people knows about it, they will make some noice [sic]. If possible I don't want people know about it until our shipments has been done for three of four shipments."

On or about February 7, 1997, the veterinarian, who by that time had arrived in Indonesia, sent Taub a note by telefax informing him that Person A was restocking the breeding facility with wild-caught animals. A short time later, Taub sent the veterinarian a memo by telefax to Indonesia informing the veterinarian that, due to Labs's agreement to pay maintenance costs on all primates four months or older, there was a "need to get all pregnant animals out ASAP."

The veterinarian referred to the issue of "charity" in a February 17, 1997 letter to Taub. The veterinarian opined that Person A had to sell 1,000 primates a year to realize a profit. The veterinarian then stated:

> "that [Person A's ability to sell 1,000 primates per year] doesn't appear to be a problem given his connections with the local F[ish] & W[ildlife]. It is very impressive to me - I needed 6 months to complete all steps (9) in exporting a monkey from Bangkok and [Person A] can accomplish (albeit only 6 steps here) it in 1½ weeks. Of course the 'charity' is a very important aspect. I'm still not convinced what our long range relationship should be. You have to look closely at past performance – it obviously didn't work for [Person A's broker]."

The first shipment was actually sent from Indonesia on or about February 20, 1997. The shipment consisted of 220 crab-eating

macaques. The health certificate, a document prepared in Indonesia which is a part of the package presented to U.S. Customs and the USFWS, falsely reflected that the primates in the shipment were all "Captive bred born."

2. The April 10, 1997 Shipment.

On March 4, 1997, Taub sent a memo by telefax to Stern and Henley in which he informed them that the Labs veterinarian was selecting the second shipment and that the veterinarian "intends to send some mothers with suckling infants (about 15) to see how this will work out." Later, on March 25, 1997, Person A sent a letter to Person B, the Labs employee, by telefax in which he warned Person B that if Labs insisted on shipping pregnant females and unweaned young then it would be "completely at [Labs's] risk." Person B circled this section of Person A's letter and wrote "heads up" next to it. Person B then forwarded Person A's letter to Taub.

On April 7, 1997, Person A sent Taub by fax copies of the CITES permits for the second shipment. Taub then sent Person A's fax to Stern and Henley. The CITES permits falsely described the shipments as consisting of "captive-breed [sic]" primates. The same day, April 7, 1997, Taub sent the Labs employee who had replaced the veterinarian in Indonesia a fax in which Taub told the employee to go ahead with a normal shipment, i.e., 1.5 non-adults to every 1 adult including pregnant primates and "mothers with unweaned infants greater than 2 months of age."

On or about April 10, 1997, Person A sent the second shipment to Labs via O'Hare. This shipment consisted of 253 crab-eating macaques. There were approximately 98 wild-caught primates in this group as well as approximately 20 pairs of nursing mothers and unweaned young. The health certificate for the shipment, like the CITES permits, falsely reflected that all of the primates were "Captive bred born."

3. The May 1, 1997 Shipment.

On April 16, 1997, Person A sent Taub the CITES permits for the third shipment. The permits allowed for the shipment of a specified number of "captive-breed [sic]" primates. On April 18, 1997, the Labs veterinarian, at the Labs facility, sent Person A a fax in which he instructed Person A to pull 48 adults and 72 heads of "bred" primates for the next shipment. The same day, April 18, 1997, Person A sent a telefax to the veterinarian at Labs informing the veterinarian that the third shipment would have 7 pregnant primates and 17 mothers with babies.

On or about May 1, 1997, Inquatex sent the third shipment to Labs via O'Hare. A Labs employee was present in Indonesia for this shipment. The third shipment consisted of approximately 120 primates. Roughly half, or approximately 50 of the primates, were wild-caught. The shipment also contained approximately 17 pairs of nursing mothers and unweaned young. The health certificate falsely represented that all of the primates were "Captive bred born."

4. The May 30, 1997 Shipment.

On or about May 30, 1997, Inquatex sent the fourth shipment to Labs. This was the last of the O'Hare shipments. There was a Labs employee present in Indonesia for this shipment. The shipment consisted of approximately 253 primates of which approximately 99 were wild-caught primates. The shipment contained approximately 19 pairs of nursing mothers and unweaned young. The health certificate and the CITES permits falsely reflected that all of the primates were "Captive bred born" or "captive-breed [sic]."

II. THE INDICTMENT

The indictment contains four principal types of importation of wildlife-related charges: (1) felony false records charges under 16 U.S.C. §§ 3372(d) and 3373(d)(3)(A)(i) (Counts One through Four); (2) misdemeanor trafficking charges under 16 U.S.C. §§ 3372(a)(2)(A) and 3373(d)(2) (Count Five); (3) felony illegal importation charges under 18 U.S.C. § 545(Counts Six through Nine); and misdemeanor humane transport violations under 3372(a)(1) and 3373(d)(2)(Counts Ten through Twelve). Labs and Taub are charged in all twelve counts of the indictment. Stern and Henley are charged only in Count Five.

III. DEFENDANTS' PRETRIAL MOTIONS

A. Motions to Dismiss the Indictment.

1. Counts One Through Five Properly Cite Two False Documents in Support of a Single False Records Offense.

Labs and Taub claim that the reference to both the CITES permit and a health certificate as false documents in each of Counts One through Five renders each count improperly duplicitous in violation of Rule 8(a) of the Federal Rules of Criminal Procedure. The "offense" charged in these counts, however, involves false records, and the counts properly allege two different ways in which the defendants committed the particular single offense charged.

Rule 8(a) provides in pertinent part that "[t]wo or more offenses may be charged in the same indictment . . . in a separate count for each offense. . . ." A duplicitous count, and one that violates Rule 8(a), is one that charges more than one distinct and separate offense. United States v. Berardi, 675 F.2d 894, 896 (7th Cir. 1982). "A count is not duplicitous, however, if it simply charges the commission of a single offense by different means." Id. Indeed, Rule 7(c) of the Federal Rules of Criminal Procedure provides that "[i]t may be alleged in a single count that . . . the defendant committed [the offense] by one or more specified means." Fed.R.Crim.P. 7(c)(1).

Counts One through Four of the indictment allege violations of Sections 3372(d) and 3373(d)(3)(A)(i) of the Lacey Act. The Lacey Act, 16 U.S.C. §§ 3371-3378, is the premier wildlife protection statute. Section 3372(d) encompasses violations arising from the documents which must accompany a wildlife shipment.[2] Section 3372(d) provides in pertinent part that "[i]t is unlawful for any person to make or submit any false record, . . . label for, or any false identification of, any . . . wildlife, . . . which has been, or is intended to be . . . (1) imported, exported, transported, sold, purchased, or received from any foreign country; or (2) transported in interstate or foreign commerce." 16 U.S.C. § 3372(d). Counts One through Four are based on the four O'Hare shipments (one count for each shipment). The counts each allege that, as to the particular O'Hare shipment involved, Labs and Taub "did knowingly submit a false record, account, label for, and a false identification of wildlife, namely, CITES permits and health certificates for [the particular shipment] containing wild-caught and captive bred *Macaca fascicularis* which falsely represented that the shipments contained only captive bred *Macaca fascicularis*, which wildlife had been imported from foreign country, namely, Indonesia, and transported in interstate commerce. . . ."

[2] Section 3373(d)(3)(A)(i) is the corresponding penalty provision.

The single offense charged in Counts One through Four is a false records offense. The counts properly allege that the false records involved were the CITES permit and the health certificates which falsely represented that all the primates in the shipments were captive-bred. The inclusion of both documents in the single counts means simply that the single false records offense was committed in more than one way. Both documents were issued at approximately the same time and as part of the same course of conduct, i.e., the compilation of the required documentation for the export of the primates in the particular shipment charged from Indonesia to the United States.[3] The two documents are each closely interrelated with the particular shipment which forms the basis of the false records charge in each of the four counts.

Labs and Taub wrongly claim that Counts One through Four are duplicitous because each document, the CITES permit and the health certificate, could have served as the basis of separate false records counts and that, as a result, each count alleges two independent offenses. Each false document, however, does not constitute a different offense, but rather separate means by which the same offense was committed. The inclusion in one count of multiple means of committing the single offense charged does not render the count duplicitous. See United States v. Pavloski, 574

[3] Labs wrongly claims that the CITES permit and the health certificate are "not part of the same transaction. . . ." Motion at 6.

F.2d 933, 936 (7th Cir. 1978) (Rule 7(c)(1) necessarily contemplates that two or more acts, each one standing alone, may be joined in a single count without offending the rule against duplicity); United States v. Steurer, 942 F.Supp. 1183, 1187 (N.D.Ill. 1996) (district court found that four false statements charged in single count were "actually part of a single course of conduct" and, as such, it was "entirely appropriate" to join the four false statements in a single count).[4]

[4] Labs's reliance on United States v. Fitzgerald, 234 F.3d 1278 (9th Cir. 2000), and United States v. Nash, 115 F.3d 1431 (9th Cir. 1994), for the proposition that the two false documents must be charged in separate counts is misplaced. These cases hold only that separate false statements may be charged in separate counts, not that they must be so charged. The fact that two separate documents are cited in the indictment in the instant case does not change the equation. The false statement, that is, the reference to the shipment containing captive bred primates, in both documents is the same, and therefore the proof as to the false nature of both documents is the same. The decision of the Fifth Circuit in Bins v. United States, 331 F.2d 390, 393 (5th Cir. 1964)(count was duplicitous because it relied on two separate documents which required proof of dissimilar facts and therefore count improperly contained more than one offense), is therefore inapposite in the context of this case. This aspect of Bins, arguably, is not even followed in this circuit. See Steurer, 942 F.Supp. at 1187 ("The holding in Bins--that any acts capable of being charged as separate offenses must be alleged in separate counts--is inapposite to the Seventh Circuit's holding in Berardi, which held that it was permissible to allege three acts of obstruction in a single count where they occurred in a continuing course of conduct notwithstanding the fact that each act by itself could have constituted an independent violation of the statute."). See also United States v. Perez, 2002 WL 1461504 at *8 (N.D.Ill. 2002) ("While it is a often a fine line to draw, a count is not duplicitous where it alleges multiple acts which each constitute separate violations of the same statute, if the multiple acts are part of a continuing course of conduct.")

Labs and Taub claim that, in keeping with the concerns outlined in United States v. Tanner, 471 F.2d 128, 139 (7th Cir. 1972), the reference to two false documents in the same count will lead to non-unanimous verdicts, confusion of the jury, and difficulty in determining whether the verdict rests on one document or both. All of these concerns, however, are specious and, in any event, easily cured. Counts One through Four adequately notify Labs of the charges and, through the detail provided, prevent Labs from being tried again for these same false statements following a verdict in this case. United States v. Perez, 2002 WL 1461504 at *9 (N.D.Ill. 2002); United States v. Mebust, 857 F.Supp. 609, 614 (N.D.Ill. 1996). The Court may ensure a unanimous verdict by instructing the jury that it must be unanimous in finding that the defendant did at least one of the acts charged. Berardi, 675 F.2d at 899.

Count Five alleges a "trafficking" violation by each of the four defendants under Sections 3372(a)(2)(a) and 3373(d)(2) of the Lacey Act. Section 3372(a)(2)(A) provides in pertinent part that "[i]t is unlawful for any person . . . to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce . . . any . . . wildlife taken, possessed, transported, or sold in violation of any law or regulation of any State or in violation of any foreign law. . . ." 16 U.S.C. § 3372(a)(2)(A). Count Five alleges that, between "on or about

February 20, 1997 and on or about May 30, 1997," the four defendants "did knowingly import wildlife in interstate and foreign commerce . . . and in the exercise of due care should have known that the wildlife was transported and sold in violation of foreign law, . . . that is, the export of wild-caught *Macaca fascicularis*.

Labs and Taub claim that Count Five is a duplicitous count which must be dismissed because the count is unclear as to whether each shipment constitutes a trafficking violation and if so, according to the defendants, then each shipment must be alleged in a separate trafficking count. Count Five, however, is clear on its face and is not duplicitous. The count, as the alleged time frame demonstrates, reflects a continuous course of conduct over the four month period in which the four O'Hare-based shipments occurred. The count plainly alleges that, based on the shipments that occurred during that time frame, the defendants "in the exercise of due care should have known that the wildlife was transported and sold in violation of foreign law. . . ."

The fact that four shipments occurred during the time frame alleged in Count Five does not render Count Five duplicitous. Labs purchased the entire colony from Person A with the goal of transporting the colony to the United States through a series of shipments. The O'Hare shipments, because they each contained wild-caught primates, violated foreign law, that is, the Indonesian law against the export of wild-caught crab-eating macaques. Count

Five, then, with its four month time frame, is based upon a series of shipments which comprise a single continuing offense and, as such, is not duplicitous in any way. See Bernardi, 675 F.2d at 898 (government's choice to charge several acts of obstruction of justice in single count not duplicitous because obstruction statute contemplated a continuing course of conduct and defendant's alleged obstructive actions reflected a solitary object of influencing a grand jury witness).

Lab and Taub complain that, as alleged, Count Five "unfairly exposes" it to "prejudicial evidentiary rulings at trial, the inability to plead prior convictions or acquittals as a bar to subsequent prosecution for the same offense, and the possibility that the jury" might convict by a non-unanimous verdict. Motion at 8, citing Tanner, 471 F.2d at 139. All of these fears are unfounded. Labs does not specify what or the type of "prejudicial evidentiary rulings" it may face based on the manner in which Count Five is presented. Count Five, by incorporating the descriptive paragraphs of Counts One through Four, clearly provides Labs with sufficient notice as to the conduct which comprises the trafficking violation. Count Five, through the use of a discrete time frame, makes clear that, for jeopardy purposes, a verdict on the count encompasses all four O'Hare shipments. The trafficking nature of the violation does not require the jury to find that any one O'Hare shipment violated Sections 3372(a)(2)(A) and 3373(d)(2) but, to the

extent the Court may disagree, a specific instruction to the jury can easily cure this concern.

2. Counts One Through Five Adequately Inform the Defendants of the Nature and Cause of the Accusations Against Them.

Labs and Taub claim that Counts One through Four violate their Sixth Amendment right to be informed of the nature and cause of the accusation against them because the reference to two separate documents containing false statements: (1) makes it impossible to know whether the grand jury's vote was unanimous; (2) does not allow this Court to discern whether the charges are legally valid; and (3) will prevent it from pleading double jeopardy so as to bar future prosecutions for the same offense. Motion at 10. Labs also claims without elaboration that Count Five "presents the identical problem." Id.

The defendants' Sixth Amendment claims fail because the indictment, particularly with the extensive detail set forth in Counts One through Four, amply advises Labs of the nature and cause of the accusations against it. The indictment sets forth the chronology of events, the individuals involved, the governing treaties and law, and the nature of the violations involved. The indictment makes clear that it is premised upon the four shipments of primates which entered the United States through O'Hare and the specific events which triggered the alleged violations. The Sixth Amendment requires nothing more.

Labs's three individual claims in support of this argument are also specious. The grand jury's decision need not be unanimous in order for the indictment to be valid. Compare Fed.R.Crim.P. 6(a)(1) ("The grand jury shall consist of not less than 16 nor more than 23 members.") with Fed.R.Crim.P. 6(f) ("A grand jury may indict only upon the concurrence of 12 or more jurors."). See also United States v. White, 879 F.2d 1509, 1512 (7th Cir. 1989) ("The statutory offense is bankruptcy fraud and, and the grand jury is not obligated in our view to place every piece of the fraud in a separate count."). The indictment, with its ample detail, also provides this Court with a sufficient basis upon which to determine its validity. Counts One through Four, by expressly identifying two documents containing false statements, and Count Five, by charging trafficking during the time span involving the four O'Hare shipments, signal the bases upon which double jeopardy will attach if Labs is convicted and will prevent reprosecution on those same grounds.[5]

Taub also claims that Counts One through Four are defective because they fail to allege that he knowingly violated Section 3372(d) of the Lacey Act. The indictment alleges, however, that Taub was Labs's chief operating officer and that Taub, along with the other individual defendants, secured the four shipment of the

[5] Jeopardy will attach to false records charges on either of these two documents or trafficking charges as to any of the shipments which occurred during the alleged time frame.

primates through O'Hare. The indictment further alleges that Taub received copies of the CITES permits from Person A prior to the shipments and that the CITES permits were obtained and submitted as part of the export process. Taub, then, through both his personal involvement in securing the shipments and his role as an officer of Labs, is responsible for the submission of the false export paperwork.

3. Counts One Through Four Properly Allege All Elements, Including the Requisite Mental State, for a Lacey Act False Records Violation.

Section 3372(d) of the Lacey Act provides in pertinent part that "[i]t is unlawful for any person to make or submit any false record, account, or label for, or any false identification of, any . . . wildlife, . . . which has been, or is intended to be . . . imported, exported, transported, sold, purchased, or received from any foreign country. . . ." 16 U.S.C. § 3372(d) (emphasis supplied). Section 3373(d), the corresponding penalty provision, provides in pertinent part, that "[a]ny person who knowingly violates Section 3372(d) . . . shall be fined under Title 18, or imprisoned for not more than 5 years, or both. . . ." 16 U.S.C. § 3373(d)(3)(A)(i) (emphasis supplied). Counts One through Four of the indictment in the instant case allege that the defendants "did knowingly submit a false record, account, label for, and a false identification of wildlife, namely, CITES permits and health certificates . . ., which wildlife had been imported from a foreign

country, namely, Indonesia, and transported in interstate commerce." (Emphasis supplied.)

Labs argues that, based on the phrasing of Section 3373(d), "knowingly" means that a defendant must be shown to have known that its conduct violated the law and that the indictment in the instant case is defective because Counts One through Four use "knowingly" in the context of submitting a false record. Labs's interpretation of the phrase "knowingly violates," however, is faulty and is contrary to case law and common sense. The operative phrase in Section 3373(d) is "knowingly violates Section 3372(d)." The gravamen of Section 3372(d), i.e., the conduct which violates the statute, is the submission of a false record. A "knowing violation" of Section 3372(d), then, means knowledge that a record submitted was false and not, as Labs claims, knowledge that a false record violated the statute itself. This interpretation, and not the one supplied by Labs, has been utilized by district courts in other cases. In United States v. Fountain, 277 F.3d 714, 716 (5th Cir. 2001), for example, a Section 3372(d) case, the defendant requested that the district court submit a jury instruction defining the term "willfully." The court noted that word "knowingly," which is used in Section 33372(d)'s penalty provision, requires proof of the facts that constitute the offense whereas word "willfully" requires proof that the defendant acted with knowledge that his conduct violated the law. The court determined

that, because Congress chose to use word "knowingly" and not "willfully" in Section 3372, there was no basis for the district court to instruct the jury on the term willfully in a Section 3372(d) false records prosecution. The court, in making this distinction, implicitly found that the mens rea requirement for a Section 3372(d) offense applied to the knowing submission of false records and not to knowledge that the submission of false records violated the law. See also United States v. Nystrom, 116 F.3d 489, 1997 WL 345973 at *6 (10th Cir. 1997) (unpublished opinion) (neither court nor parties questioned that Section 3372(d)'s knowledge requirement meant "knowing submission of false record" and not to a knowing violation of the statute); Newell v. Baldridge, 548 F.Supp. 39 W.D. Wash. 1982) (shipper of sea turtles found liable under civil penalty provisions of Lacey Act for having known or being in a position where he should have known that the shipments were mislabeled).[6]

[6] This interpretation, and not Labs's, also appears to be supported by legislative history. The Senate Report to the 1988 amendments to the Lacey Act states in pertinent part as follows: "Section 101 amends the false labeling provision of the Act to include falsifications related to articles intended to be imported, exported or transported. Current coverage extends only to articles once they have actually been imported, exported or transported. this section clarifies that false labeling of fish and wildlife products is an offense under the Lacey Act regardless of whether the wildlife was taken in violation of an underlying Federal or State law." S.Rep. 100-563 at *5, 1998 U.S.C.C.A.N. 5366, 5370 (emphasis supplied). See also 134 Cong.Rec. S15931-04, 1988 WL 177815 (Cong.Rec.).

The two cases cited by Labs, Liparota v. United States, 471 U.S. 419, 425 (1985), and United States v. Grigsby, 111 F.3d 806, 816-21 (11th Cir. 1997), do not support Labs's statutory construction of the Lacey Act's false records provision. The statute at issue in Liparota involved using or possessing food coupons in a manner not authorized by statute.[7] The statute at issue in Grigsby concerned the importation of ivory in violation of the African Elephant Conservation Act ("AECA").[8] The conduct

[7] The federal food coupon statute at issue in Liparota provided that "whoever knowingly uses, transfers, acquires, alters, or possesses coupons or authorization cards in any manner not authorized by [the statute] or the regulations" shall be guilty of a criminal offense. 471 U.S. at 419. The Supreme Court rejected the government's argument that the defendant violated the statute if he knew that he acquired or possessed the food stamps and if in fact that acquisition was in a manner not authorized by statute or regulations. Id. at 423-24. The Court held that, under the language of the statute, the government had to prove that the defendant knew that his acquisition or possession of the food stamps was in a manner unauthorized by statute or regulations.

[8] In Grigsby, the defendants were convicted of, among other things, conspiracy to import raw African elephant ivory in violation of the African Elephant Conservation Act ("AECA"), 16 U.S.C. § 1538(c)(1). Section 4223, the AECA statute at issue, provided that it was unlawful for any person to import raw ivory from any country other than an ivory producing country. Section 4224 of the AECA provides that "[w]hoever knowingly violates" Section 4223 shall have committed a criminal offense. The district court instructed the jury that violation of the AECA required general intent: "In order for a defendant to be found guilty of Count Two [AECA violation], the government must prove the following elements beyond a reasonable doubt. That the defendant either knowingly or fraudulently imported into the United States raw African elephant ivory. And secondly, that the importation was from a non-ivory producing country, in this case the country of Canada." 111 F.3d at 817. The Eleventh Circuit found that the district court should have given a specific intent, not a general

proscribed by these two statutes, possession or importation, is not inherently illegal and only becomes so if prohibited by law. The violation of these statutes, then, requires a showing that a defendant knew the possession or importation was in violation of law. The conduct proscribed by Section 3372(d), in contrast, the submission of false records, is inherently illegal in and of itself and without regard to any law which regulates it. The "knowledge" component of this statute, then, involves the knowing submission of the false records and not that the submission of false records is prohibited by law.

4. Count Five Adequately Sets Forth the Underlying or Predicate Act for a Lacey Act Trafficking Violation.

A Section 3372 trafficking violation requires proof of two separate violations. It must first be shown that the wildlife was taken, possessed, transported or sold in violation of an underlying law, i.e., the "underlying" or predicate offense. It must also be shown that the wildlife was imported, exported, transported, received, acquired, or purchased in a manner prohibited by the Lacey Act, i.e., the "overlying" offense. The Lacey Act violation, then, does not come to fruition until a defendant commits one of the acts specified in the Lacey Act with wildlife "tainted" by the

intent instruction, which required the jury to determine whether the defendants knew their movement of tusks into the United States from Canada violated United States law. Id. at 822.

predicate offense.[9] The two elements cannot be compressed into a single step. See, e.g., United States v. Carpenter, 34 F.3d 923 (9th Cir. 1994) (farmer's killing of migratory birds and burying them on his property could not be split for purposes of a Lacey Act conviction into a "taking," i.e., a "predicate" offense under the Migratory Bird Treaty Act, and an "acquisition," the "overlying" offense under the Lacey Act because, by killing the birds, the farmer "took" the birds and "acquired" them at that same time).

Here, the "underlying" or "predicate offense" is the transportation and selling of the wild-caught primates in violation of a foreign law, that is, Decree No. 26/Kpts-11/94, which imposed a ban on the transportation from Indonesia of wild-caught *Macaca fascicularis*. The "overlying" offense is the importation of the wild-caught primates into the United States. The transportation of the primates here, unlike Carpenter, involves two distinct steps: (1) the sale and transportation of the monkeys out of Indonesia; and (2) the importation of the monkeys into the United States. The Lacey Act, through its express language, contemplates this type of division of events for charging purposes.[10]

[9] The descriptive terms "underlying," "overlying" and "tainted" are from Anderson, The Lacey Act: America's Premier Weapon in the Fight Against Unlawful Wildlife Trafficking. 16 Pub. Land L.Rev. 27, 58 (1995).

[10] Section 3372(a)(2)(A), the Lacey Act trafficking violation, provides in pertinent part that "[i]t is unlawful for any person . . . to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce . . . any .

The defendants wrongly characterizes the underlying and overlying acts in Count Five as the export and import of the primates, respectively, and argues that, as such, the allegations reflect a unitary act and not the bifurcated events required for a trafficking violation. This view, however, ignores the plain language of Count Five which provides in pertinent part that the defendants "did knowingly import wildlife in interstate and foreign commerce [the overlying act] . . . and in the exercise of due car should have known that the wildlife was transported and sold in violation of a foreign law [the underlying act]. . . ." The underlying act, then, is more than just the "export" in this case but consists instead in the transportation and sale in violation of foreign law. These allegations, then, are in keeping with, and not distinguishable, as Labs claims, from the "two-step" violations in United States v. Hobbs, 1992 WL 144709 (9th Cir. 1992), and United States v. Lee, 937 F.2d 1388 (9th Cir. 1991).

5. Count Five Does Not Violate the Act of State Doctrine.

Stern and Henley argue that Count Five should be dismissed because, pursuant to the "act of state doctrine," it improperly requires this Court to conclude that the Indonesian government's

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. . wildlife . . . transported, or sold . . . in violation of any foreign law. . . ." Indonesian Decree No. 26.Kpts-11/94 is a foreign law which is encompassed within Section 3372(a)(2)(A) of the Lacey Act.

approval of the O'Hare shipments and the issuance of the export permits was illegal or invalid. This case, however, does not require the Court to find that the Indonesian officials improperly issued the export permits in this case but, even if it did, the act of state doctrine is not implicated here.

The act of state doctrine dictates that courts will not sit in judgment of acts of another country within that country's territory where deciding the case might frustrate the conduct of foreign relations by political branches of the government. U.S. v. Funmaker, 10 F.3d 1327, 1333 (7th Cir. 1993). To meet its burden and show that the act of state doctrine applies, the party asserting application of the doctrine must show that the foreign state was acting in the public interest of its country and that a judicial inquiry into this action would either (1) cause harm to the interests of another branch of the United States government, or (2) question the legality of the foreign state's sovereign actions. Virtual Def. and Dev. Int'l, Inc. v. Republic of Moldova, 133 F. Supp. 2d 1, 8 (D.D.C. 1999). Under the current view of the act of state doctrine, an action will be barred if: (1) there is an official act of a foreign sovereign performed within its own territory, and (2) the relief sought or the defense interposed in the action would require a court in the United States to declare invalid the foreign sovereign's official act. But, "[a]ct of state issues only arise when a court must decide - that is, when the

outcome of the case turns upon - the effect of official action by a foreign sovereign. When that question is not in the case, neither is the act of state doctrine." W.S. Kirkpatrick & Co. v. Envt'l. Tectonics Corp., Int'l., 493 U.S. 400, 409 (1990).

The fundamental issue in Count Five is whether the defendants should have known in the exercise of due care that the wildlife was transported or sold in violation of foreign law, i.e., the Indonesian Decree. This issue does not require this Court to determine whether Indonesian officials violated the Decree because the CITES permits and health certificates at issue here authorized the export of "captive-bred" primates which is in keeping with the Indonesian Decree.[11] This Court also need not find that bribes were paid to Indonesian officials in order to secure the CITES permits and other paperwork. The "baksheesh" information in this case is not offered to show that bribes were paid but rather that, because the defendants were aware of Person A's practice in making baksheesh payments, the documents obtained for the export of the colony might have falsely represented the true nature of the shipments. The focus of the inquiry in this case, then, is the defendants' knowledge of the false nature of the documents or the violation of the foreign law, and not on whether the actions of the

[11] The government is not asking this Court, as in some of the cases cited by Stern and Henley, to invalidate the actions of a foreign sovereign or to find the sovereign's actions to have been illegal.

Indonesian officials was illegal. This Court need not inquire, then, into "the validity of the public acts of a recognized foreign sovereign power committed within its own territory." Banco Nacional de Cuba v. Sabbatino, 376 U.S., 398, 401 (1964).

Even if Count Five implicates the actions of the Indonesian officials, however, the government may still proceed on Count Five because the foreign government's actions involve a treaty, CITES, to which both the United States and Indonesia are parties. See United States v. 2,507 Live Canary Winged Parakeets, 689 F.Supp 1106 (S.D. Fla. 1988). In Parakeets, the United States brought a civil in rem forfeiture action under the Lacey Act against canary-winged parakeets imported from Peru. The district court held that the act of state doctrine did not prelude the court from scrutinizing whether a Peruvian official had authority to issue the permit for export of parakeets pursuant to CITES where the validity of the CITES permit was a requirement of laws of both the United States and Peru. "The [act of state] doctrine is a prudential limitation on the exercise of jurisdiction designed so as to avoid harming relations with other nations." CITES "clearly requires member nations to ensure the validity of the exportation of another nation's protected wildlife for that benefit of that nation." (Emphasis supplied.) Thus, as in Parakeets, the government is seeking to ensure through this action the validity of the

exportation of Indonesia's wildlife and, as such, is not precluded by the act of state doctrine in its attempts to do so.

6. Counts Six Through Nine of the Indictment Allege and Identify All Essential Elements of a Section 545 Offense.

Counts Six through Nine of the indictment charge that Labs and Taub "did fraudulently and knowingly import into the United States certain merchandise contrary to law . . . , namely, wild-caught *Macaca fascicularis*, knowing the merchandise to have been imported into the United States contrary to law. . . ." Labs argues that Counts Six through Nine must be dismissed because the charging language does not identify the "law" the importations were "contrary to" and because the charging language does not set forth the elements of common law fraud. Both of these arguments lack merit.

"In setting forth the offense, it is generally acceptable for the indictment to 'track' the words of the statute itself, so long as those words expressly set forth all the elements necessary to constitute the offense intended to be punished." United States v. Smith, 230 F.3d 300, 305 (7th Cir. 2000), cert. denied, 531 U.S. 1176 (2001). The mere tracking of the statutory language, however, can be deficient if the language does not provide enough factual particulars to "'sufficiently apprise the defendant of what he must be prepared to meet.'" Id., quoting Russell v. United States, 369 U.S. 749, 763 (1962). The indictment, then, must "provide some

means of pinning down the specific conduct at issue." Smith, 230 F.3d at 305. The elements of the Section 545 offense charged in Counts Six through Nine are: (1) defendant fraudulently or knowingly; (2) imported or brought into the United States; (3) any merchandise; (4) contrary to law. Olais-Castro v. United States, 416 F.2d 1155, 1158 (9th Cir. 1969). The charging language in Counts Six through Nine in the instant case properly track this statutory language. The statutory term "merchandise" is defined in the counts as "wild-caught *Macaca fascicularis*.

Labs claims, however, that pursuant to Olais-Castro, Babb v. United States, 218 F.2d 538 (5th Cir. 1955), Keck v. United States, 172 U.S. 434 (1899), and Steiner v. United States, 229 F.2d 745 (9th cir. 1956), the counts are fatally defective because the charging language does not define "contrary to law." These cases hold that for a Section 545 offense it is not enough for the charging language to recite, in keeping with the statutory language, that the importation was "contrary to law." The cases reflect that the indictment must identify the "law" to which a defendant's action was contrary.

Counts Six through Nine, however, are sufficient as alleged and give ample notice to Labs as to which "law" is at issue. Labs fails to mention in its attack on Counts Six through Nine that each count specifies in Paragraph 1 that "[t]he allegations contained in Paragraphs 1 through 37 of Count One are incorporated as if set

forth herein." Paragraphs 12 through 14 of Count One provides as follows:

> 12. The Lacey Act, Title 16, United States Code, Section 3371 et seq., among other statutes, governs the importation of species included in Appendix II of CITES into the United States. Section 3372(d) of the Lacey Act provides in pertinent part that "[i]t is unlawful for any person to make or submit any false record, account, label for, or any false identification of, any . . . wildlife . . . which has been . . . imported, exported, transported, sold, purchased, or received from any foreign country; or . . . transported in interstate or foreign commerce."
>
> 13. The term "person," as used in the Lacey Act, includes corporations.
>
> 14. The "records" to which Section 3372 refers includes, among other documents, CITES permits and health certificates, and the labels or identifications contained therein.

Counts Six through Nine, then, through the reference to "wild-caught *Macaca fascicularis*" in the charging language as the "merchandise [which was imported] contrary to law," when coupled with the express incorporation of Paragraphs 12 through 14 from Count One, sufficiently set forth facts and identify the "contrary law" to support the Section 545 offenses alleged. See United States v. Waggstaff, 572 F.2d 270, 273 (10th Cir. 1978) (citation of the law violated by book and page is unnecessary where the facts establishing the unlawfulness in a Section 545 prosecution are set forth so as to apprise the accused of the offense that he must meet). Olais-Castro, Babb, Keck, and Steiner require no more than that which is provided by the allegations set forth and incorporated within Counts Six through Nine in this case.

Labs also argues that Counts Six through Nine are deficient because Section 545 uses the word "fraudulently" and the counts fail to set forth the elements of common law fraud. Labs, however, cites no Section 545 case holding that such common law fraud elements are necessary in the charging language and the available Section 545 cases do not require this type of allegation. See, e.g., United States v. Davis, 597 F.2d 1237 (9th Cir. 1979); United States v. Wagstaff, 572 F.2d 270 (10th Cir. 1978); Babb v. United States, 252 F.2d 702 (1958); United States v. Mueller, 178 F.2d 593 (5th Cir. 1949); United States v. Asper, 2000 WL 821714 (N.D.Ill. 2000).[12] The principal case Labs cites in support of this argument, Neder v. United States, 527 U.S. 1, 25 (1999), holds only that, as to the federal mail, wire and bank fraud statutes, materiality of the falsehood is an element of the offense.

7. The Applicable Statutes, Laws and Regulations Are Not Ambiguous or Subject to Multiple Reasonable Interpretations.

All of the defendants claim that their interpretation of ambiguous laws and regulations was reasonable and that, as a result, the government cannot meet its burden of proving the charges in Counts One through Five and Ten through Twelve beyond a reasonable doubt. The defendants claim that the appropriate

[12] Indeed, as noted by Judge Gottschall in United States v. Asper, 2000 WL 821714 (N.D.Ill. 2000), the Fifth Circuit is the only circuit with a pattern instruction on Section 545's second paragraph. The pattern instruction does not include any reference to the elements of common law fraud. 2000 WL at 1 and 1, n.1.

sanction under these alleged circumstances is the dismissal of the counts. The governing authority for these counts is not ambiguous, however, and, even if they were, the defendants have asserted no more than a defense at trial and not a valid basis for dismissing the counts.[13]

Counts One through Four allege that the defendants knowingly submitted false records, CITES permits and health certificates, which falsely represented that the shipments contained captive-bred primates when, in fact, the shipments contained a mixture of captive-bred and wild-caught animals. The key to these charges, then, is Labs's knowledge as to the wild-caught or captive-bred nature of the primates in each shipment. The Indonesian law banning the export of wild-caught primates may show the relevance or significance of this knowledge, but the Indonesian law is not, as Labs claims, the "lynchpin" of the counts. Any alleged ambiguity in the Indonesian law, then, does not affect these counts.

Count Five does refer to a violation of foreign law, the Indonesian Decree, in its charging language. The translated

[13] The three principal cases cited by Labs, United States v. Whiteside, 285 F.3d 1345 (11th Cir. 2002); United States v. Race, 632 F.2d 1114 (4th Cir. 1980); and United States v. Anderson, 579 F.2d 455 (8th Cir. 1978), involve situations where defendants have raised a "reasonable interpretation" claim as a defense at trial or on appeal following convictions. None of these cases stand for the proposition that a court should dismiss a count prior to trial simply because the defendant claims, without a full airing of the evidence, that its interpretation of a statute was reasonable.

language of the Decree, however, is not ambiguous. The Decree states that "[t]he use of . . . [*Macaca fascicularis*] . . . species for export purposes must come from breeding efforts." Captive-bred primates, not wild-caught primates, "come" from "breeding efforts." The language is clear particularly to those in the primate business, as Taub, Stern and Henley can be considered to be, who are familiar with the distinctions between captive-bred and wild-caught primates. But, even if the Decree is ambiguous, Labs's argument still fails.[14] Labs, as well as the three individual defendants, had ample notice that the Indonesian colony contained wild-caught primates and that there was a law in Indonesian which banned their export.[15] Handwritten notes dated June 17, 1996 in

[14] The government notes that Labs cannot have it both ways. Labs will not be able to claim as a defense that it did not know of the Indonesian Decree if it is going to argue that the Decree was ambiguous and that it's interpretation was reasonable.

[15] Stern and Henley argue that the Indonesian Decree is void for vagueness because Indonesia itself did not interpret the Decree to ban the export of the primates because the government issued CITES permits for the shipments here. This argument, however, ignores the facts in this case. Stern and Henley were aware, through information provided by Persons A and B alone, that the colony contained wild-caught primates and that the Indonesian government banned the export of such primates. Stern and Henley also knew that Person A used baksheesh payments in connection with his colony and in his dealings with the Indonesian government. Finally, Stern and Henley knew that the CITES permits clearly specified that the shipments contained only "captive-bred" primates when, in fact, as they well knew, the shipments contained a mix of wild-caught and captive-bred primates. It is disingenuous then, under these circumstances, for Stern and Henley to claim the Indonesian Decree was ambiguous on the basis that the exports took place in this case. Similarly, it is disingenuous to challenge Count Five by claiming that the "foreign government already has

Bionetics's files, for example, state "[s]pecial approval [was] needed by Govt for export." Person B also informed the individuals in the memorandum he circulated in connection with his Indonesian visit that the exporting of wild-caught primates was clearly against Indonesian law unless some exception was written.[16]

The defendants also try to twist the clear language of the Code of Federal Regulations provision in order to create an ambiguity for its own benefit. The language of the governing provision, however, is crystal clear: nursing mothers and unweaned young shall not be shipped unless for medical purposes. The fact that there is another regulation concerning how nursing mothers and unweaned young are to be caged during shipment does not modify in any way the circumstances under which they can be shipped. Labs, through the individual defendants, made a conscious decision in this case to ship nursing mothers and unweaned young. They cannot

concluded that the alleged conduct does not violate its law." The CITES permits in this case, as issued by the government, granted permission for the export of captive-bred primates. The shipments contained a mix. Also, the purported "exception" obtained by Person A, as described in the Background section above, referred to permission to export unproductive stock. The O'Hare shipments contained productive stock. Indeed, Stern and Henley were interested in buying the colony because it was a breeding colony.

[16] Labs's efforts to inject ambiguity into the "II(C)" notation on the CITES permits similarly fails. The use of the "(C)" designation, as mandated by CITES, stands for "captive-bred" and nothing else. The use of this notation on a CITES permit, then, signifies that the primates in the shipment had been born in captivity.

now hide behind an ambiguity in regulatory language which does not exist.[17]

B. Motions for Bill of Particulars.

All four defendants have filed Motions for a Bill of Particulars in which they each seek a multitude of additional information which they each claim to need in order to prepare a defense at trial. Labs requests, among other things, that the government be required to reveal its "theory" concerning the payment of baksheesh or the falsity of certain statements. Taub claims he requires more information because the indictment does not specifically allege that he personally ever submitted a false document or transported wildlife in inhumane conditions. Similarly, Stern and Henley, for their part, also cry foul because, according to them, Count Five, the sole count in which they are charged, does not allege facts that they personally "did anything." The detailed indictment and the tendered discovery in this case, however, lay to rest the defendants claimed need for more information in order to prepare a defense. Absent a showing that the indictment and the discovery materials taken together are inadequate to enable the defendants to prepare a defense the motion

[17] The government notes in this context as well that Counts Ten through Twelve, as misdemeanors, carry a "should have known in the exercise of due care" standard as to knowledge of the pertinent regulation. Labs's apparent pursuit of an ambiguity defense must mean that it concedes knowledge of the pertinent regulation on the shipment of nursing mothers and unweaned young.

for a Bill of Particulars should be denied. United States v. Lavin, 504 F. Supp. 1356, 1361-62 (N.D. Ill. 1969).

Rule 7(f) authorizes the court to order the filing of a Bill of Particulars whenever the indictment fails to sufficiently apprise the defendant of the charges in the indictment (1) to enable the defendant to prepare a defense, (2) avoid unfair surprise to the defendant at trial, and (3) preclude a second prosecution for the same offense. Wong Tai v. United States, 273 U.S. 77, 82 (1927). The grant or denial of a motion for a Bill of Particulars is within the sole discretion of the District Court. Wong Tai v. United States, 273 U.S. 77 (1927); United States v. Kendall, 665 F.2d 126,134 (7th Cir. 1981), cert. denied, 455 U.S. 1021 (1982). The standard for determining whether a defendant is entitled to a Bill of Particulars is not whether additional information would be useful or convenient to the defendant, but rather, whether the information is necessary to the preparation of the defense. United States v. Lavin, 504 F.Supp. 1356, 1356-62 (N.D. Ill. 1982). Relevant factors in the exercise of the court's discretion include: (1) the complexity of the charged offense; (2) the clarity of the indictment; and (3) the degree of discovery available to the defendant without the bill. United States v. Esteves, 886 F. Supp. 645 (N.D. Ill. 1995); United States v. Horak, 633 F. Supp. 190, 195 (N.D. Ill. 1986), citing to United States v.

Kendall, 665 F.2d 126 (7th Cir. 1981), cert. denied 455 U.S. 1021 (1982).

The defendants seek not only information which has already been provided to them but also information to which they are not otherwise entitled. The defendants' requests are, in reality, nothing more than an inappropriate effort on their part to force the government to apply the evidence to the charges for them. A Bill of Particulars, however, is not to be used as a substitute for reviewing the documents made available to defense counsel which contain the very information they seek, and should not be permitted to be used to require the government to answer a wide range of defense requests and inquiries, particularly when the information has already been made available to them. Although a defendant is entitled to know the factual basis surrounding the offense with which he or she is charged, the defendant is not entitled to know the details of how the offense will be proved. United States v. Glecier, 923 F.2d 496, 502 (7th Cir.), cert. denied, 502 U.S. 810 (1991). "The defendant's constitutional right is to know the offense with which he is charged, not to know the details of how it will be proved". United States v. Kendall, 665 F.2d at 135. Courts have consistently held that it is not the function of a Bill of Particulars to compel the government to make a detailed disclosure of its evidence and a defendant is not entitled to know all of the evidence the government intends to produce, but only the theory of

the government's case, and the government is not required to disclose its witnesses in advance of trial. Kendall, 665 F.2d at 135; United States v. Heidecke, 683 F.Supp. 1211, 1213 (N.D. Ill. 1988). A Bill of Particulars should not be granted where a defendant has been sufficiently apprised by means of the indictment, prior proceedings, and discovery, of the essential facts of the alleged crime for which he has been indicted and the details would unduly restrict the government in presenting its proof at trial. United States v. Heidecke, 683 F.Supp. at 1213. A Bill of Particulars is not required when information can be obtained through some other satisfactory form, such as the willingness of the government to make documents available to the defense and provide them with information. United States v. Canino, 949 F.2d 928, 949 (7th Cir. 1991); United States v. Esteves, 886 F.Supp. at 647. The government has already done this in this case.

C. Motion of Labs of Virginia, Inc. to Strike Portions of the Indictment.

Labs requests pursuant to Rule 7(d) of the Federal Rules of Criminal Procedure that two items be stricken from the indictment: (1) the reference to "Bionetics" and the fact that Stern and Henley hold positions with Bionetics; and (2) the reference to "baksheesh" and the description that "baksheesh" means "bribe." These references are relevant to the facts in the case, however, and were not included, as Labs claims, as a means of prejudicing the defendants.

The fact that defendant Taub sold Labs to defendant Stern or an entity with which Stern and Henley were affiliated is relevant because it shows the relationship between and the motives of the parties. The government intends to present evidence to show that Stern and Henley, as officers of a larger entity, were interested in acquiring the Indonesian colony for profit-related reasons and not necessarily for medical research purposes. This translated into the fact that, as the documents show, Stern and Henley wished to remove the colony from Indonesia as quickly as possible. This is relevant to establish the "should have known" mens rea requirement in the count in which they are charged. The manner in which Taub reported the daily activities of Labs to Stern and Henley, particularly concerning the Indonesian colony, is also significant. If, as Labs claims, it was not Bionetics which purchased Labs, then this problem can be cured either by making a technical amendment to the indictment.

The reference to "baksheesh" and "baksheesh means bribe" was not included in the indictment to tarnish the defendants without any basis in fact. The indictment does not allege, and the government does not intend to prove, that the defendants actually paid a bribe to secure the exports in this case. The issue of baksheesh, however, is highly relevant to the fact that, by being told by Person B about Person A's use of baksheesh, the defendants were on notice that Person A might not obtain the CITES permits or

requisite health certificates through orthodox means in light of the Indonesian ban on the export of wild-caught *Macaca fascicularis*. The documents in this case show that the defendants were aware of Person A's practice and the practice in general of paying Indonesian officials to make things happen. Person B, for example, circulated a memo to the three individual defendants in which he stated that since exporting wild-caught primates was clearly against Indonesian law unless some exception was written that Person A had gone to the government and had cut a baksheesh deal to pay them off. The reference to baksheesh is relevant to the other allegations and the nature of the violations charged because, when coupled with the evidence that the defendants knew the shipments contained wild-caught primates despite the fact that shipping documents show captive-bred, it is probative of the defendants' knowledge of either the falsity of the documents or the violation of Indonesian law. The references to the payment of baksheesh was one of several significant warnings the defendants received about problems in exporting Person A's colony which, at a minimum, required them to apply special scrutiny to the paperwork submitted by Person A as part of the export process. Moreover, the actual meaning of "baksheesh" is a factual issue which the government has the burden of establishing along with its other proof in the case.

D. Motion of Stern and Henley for Severance.

Stern and Henley seek a severance from the trial of Labs and Taub because they claim a joint trial will "be highly prejudicial to their fair trial rights while yielding only negligible efficiency advantages over separate trials." The evidence against Stern and Henley, however, is interrelated with that of the other defendants and a separate trial will be largely duplicative and highly inefficient.

When evaluating whether a defendant should be severed to a separate trial, "the district court must balance the benefit of judicial efficiency in a joint trial with the risk of prejudice to the defendant." United States v. Donovan, 24 F.3d 908, 914-15 (7th Cir. 1994). Even where a defendant can show prejudice from being tried with his codefendants in a single joint trial, such prejudice typically can be cured by appropriate limiting instructions to the jury. See, e.g., United States v. Cyprian, 23 F.3d 1189, 1195 (7th Cir. 1994); United States v. Bruun, 809 F.2d 397, 407-08 (7th Cir. 1987). Because the district court is best able to balance the systemic efficiencies of a single joint trial against prejudice to a defendant, "'the defendant bears an extremely difficult burden of showing on appeal that the district court abused its discretion'" by denying a severance motion. United States v. Balzano, 916 F.2d 1273, 1281 (7th Cir. 1990) (quoting United States v. Moya-Gomez, 860 F.2d 706, 754 (7th Cir. 1988)).

Stern and Henley offer two specific reasons why they should be given a separate trial: (1) there is a risk of prejudicial "spillover" from the evidence against the codefendants; and (2) there is a vast disparity in the weight of the evidence between the defendants in this case. Each of these reasons is routinely offered, and routinely rejected, in this Circuit.

The Seventh Circuit has repeatedly held that even where some evidence is admissible against only certain defendants (for example, in relation to substantive counts in which one defendant in a multi-defendant case is not charged), appropriate limiting instructions to the jury will cure any prejudice. See, e.g., United States v. Stillo, 57 F.3d 553, 557 (7th Cir. 1995). In addition, juries are presumed to be able to "capably sort through the evidence" and use only relevant and admissible evidence against any given defendant in a multi-defendant trial. Stillo, 57 F.3d at 557 (applying presumption, and also stating that if a defendant is involved in only a few of many events, the jury will be able to compartmentalize relevant evidence more easily); accord, e.g., United States v. Lopez, 6 F.3d 1281, 1286 (7th Cir. 1993). Accordingly, courts routinely dismiss severance claims based on assertions that a case is "too complex" or involves "too many charges" for the jury. See, e.g., United States v. Hernandez, 921 F.2d 1569, 1580-81 (11th Cir. 1991) (collecting cases); United States v. Manzella, 782 F.2d 533, 540 (5th Cir. 1986) (rejecting

severance claim and stating "[a]s in most RICO cases, the evidence here is both massive and complex"); United States v. Isaacs, 493 F.2d 1124, 1160 (7th Cir. 1974) (suggesting that, in a complex case, court may consider severance less justified because of problem of "[d]uplication of an unusually complex trial").[18]

Stern and Henley are also incorrect in their assertion that evidence as to Labs and Taub will not apply to them. It is not accurate to say that the evidence presented about Labs and Taub is not relevant to Stern and Henley in this case. Stern and Henley are charged with the fact that they "should have known" that the shipments of primates were in violation foreign law. The evidence as to the acquisition of the Labs colony, the documents exchanged between the parties (including the CITES permits reflecting "Captive-bred"), the repeated discussion about the wild-caught nature of some of the primates in the colony, and the concerns expressed by Persons A and B about obtaining an export permit will all be used to establish this mens rea requirement. The fact that Stern and Henley are charged in a single count, then, does not mean that they are isolated from the majority of the evidence which the

[18] Accord, e.g., United States v. Infelise, 1991 WL 152532, *5-6 (N.D.Ill. 1991) (Williams, J.) (rejecting "too complex" and "too much evidence" claims); United States v. Dempsey, 1990 WL 139279, *3 (N.D.Ill. 1990) (Marovich, J.) ("We will not presume that, just because a trial is large and complex, a jury is unable to follow limiting instructions or to separate the various defendants from one another").

government will present in the case. The majority of the evidence does indeed apply directly to them.

The Seventh Circuit has routinely rejected severance claims based on a defendant's assertion that there is a disparity in the evidence against him as compared to codefendants. See, e.g., United States v. Caliendo, 910 F.2d 429, 438 (7th Cir. 1990) ("[A] simple `disparity in evidence' will not suffice to support a motion for severance--i.e., it does not independently establish 'actual prejudice'"); United States v. Hendrix, 752 F.2d 1226, 1232 (7th Cir. 1985) ("[T]he fact that the evidence against his co-defendants might have been proportionally greater than the evidence against him is not itself grounds for a severance."); see also United States v. Dempsey, 1990 WL 139279, *3 (N.D.Ill. 1990) (Marovich, J.) (rejecting claim that defendant should be severed from four to six month trial because he was charged in a relatively small number of counts, and because otherwise he would incur large legal bills and suffer large lost wages).

There are obvious reasons for trying Stern and Henley with Labs and Taub because of the duplicative nature of the evidence in this case. Appropriate limiting instructions will sufficiently cure any prejudice to the isolated extent to which evidence may not apply to Stern and Henley, for example, as to the humane transport violations set forth in Counts Ten through Twelve. The request of

Stern and Henley for a separate trial is not justified under Seventh Circuit law and it should be denied.

E. Motion of All Defendants for Issuance of Letters Rogatory.

All of the defendants request that this Court authorize the issuance of Letters Rogatory in order to allow them to explore in Indonesia what they claim to be relevant aspects of this case. The government opposes this request because it seeks non-material information and information to which the defendants are not otherwise entitled pursuant to discovery in this case.

A federal district court may, in its sole discretion, grant Letters Rogatory on behalf of a party in a criminal action pursuant to Rule 15 of the Federal Rules of Criminal Procedure. See United States v. Korogodsky, 4 F. Supp 2d. 262, 265 (S.D.N.Y. 1998). See also United States v. Sensi, 879 F.2d 888, 898 (D.C. Cir. 1989). Rule 15(a) provides that a court may order the taking of depositions "[w]henever due to exceptional circumstances of the case it is in the interest of justice that the testimony of a prospective witness of a party be taken and preserved for use at trial." Fed.R.Crim.P. 15. To meet Rule 15's exceptional circumstances standard, the party seeking a deposition must show "(1) that the witness will be unavailable at trial; and (2) that

the information sought is material to the party's case." Korogodsky, 4 F. Supp 2d. at 265.[19]

The government believes that the letters rogatory requested by the defendants are not necessary in this case because the government does not intend to prove that bribes were actually paid to secure the CITES permits at issue or the mind set of the Indonesian officials who authorized the permits' issuance. Again, as mentioned above, the focus of the inquiry in this case is on the defendants' own knowledge and the impact of that knowledge on the shipping documents they received. Extensive discovery in Indonesia is not necessary for either the prosecution or the defense of this case.

[19] In Korogodsky, a wire fraud case, the district court denied the defendant's request for letters rogatory. The charge in the case involved money obtained from Russians seeking to buy goods under false promises that goods would be supplied. The defendants attempted to depose the persons certifying as to the reliability of purported contracts between the defendant and the Russian buyers, money transfer records prepared by banks, and documents obtained from Russian insurance companies. Id. at 263-64. The court denied the request because the wrongdoing of the Russian buyers, which the defendants sought to established through the depositions, was independent of the reliability of any of the documents. Id. at 267-68.

IV. CONCLUSION

For the foregoing reasons, the United States respectfully requests that this Court deny the various pretrial motions of the defendants as described and set forth herein.

Respectfully submitted,

PATRICK J. FITZGERALD
United States Attorney

By: _____
DIANE MacARTHUR
Assistant U.S. Attorney
219 South Dearborn Street
Chicago, Illinois 60604
(312) 353-5352

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA

v.

LABS OF VIRGINIA, INC.
DAVID M. TAUB
CHARLES J. STERN, and
WILLIAM CURTIS HENLEY III

No. 02 CR 0312
Judge Castillo
Magistrate Judge Bobrick

NOTICE OF AGREED MOTION

To: Diane MacArthur, Esq.
Assistant United States Attorney
219 South Dearborn Street
Chicago, IL 60604

PLEASE TAKE NOTICE that, on Wednesday, September 25, 2002, at 9:~~30~~ 45 a.m., or as soon thereafter as counsel may be heard, we shall appear before the Honorable Ruben Castillo, or any other judge sitting in his stead, in Room 2319 of the Dirksen Federal Building, 219 South Dearborn Street, Chicago, Illinois, and shall present Defendant Labs of Virginia, Inc.'s Motion for Extension of Time to File Replies to the Government's Responses to Defendant's Pretrial Motions, copies of which are attached hereto.

Respectfully submitted,

By _____
Attorney for Defendant LABS of Virginia, Inc.

Michael L. Fayad
GREENBERG TRAURIG, LLP
800 Connecticut Avenue, N.W.
Suite 500
Washington, D.C. 20006
(202) 331-3100

Local counsel:
Robert H. King, Jr.

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GREENBERG TRAURIG, P.C.
77 West Wacker Drive
Suite 2500
Chicago, Illinois 60601
(312) 456-8400

September 17, 2002

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA	)	No. 02 CR 0312
v.	)	Judge Castillo
LABS OF VIRGINIA, INC. DAVID M. TAUB CHARLES J. STERN, and WILLIAM CURTIS HENLEY III	)	Magistrate Judge Bobrick

DEFENDANT LABS OF VIRGINIA, INC.'S AGREED MOTION FOR EXTENSION OF TIME TO FILE REPLIES TO THE GOVERNMENT'S RESPONSES TO DEFENDANTS' PRETRIAL MOTIONS

Defendant Labs of Virginia, Inc. ("LABS" or "Defendant") hereby requests this Court to grant LABS additional time in which to file its replies to the Government's responses to pretrial motions. The Government does not oppose the motion. Specifically, LABS respectfully requests that the Court grant LABS permission to file its replies on or before October 9, 2002. This extension of time is necessary to account for the Government's belated filing of its responses to pretrial motions and to allow LABS the entire period of time to file replies that the Court ordered during the July 10, 2002 status hearing.

In accordance with the Court's minute order dated May 15, 2002, LABS, as well as the other named defendants in the above-captioned case, filed pretrial motions on July 1, 2002. During a status hearing on July 10, 2002, the Government informed the Court that the pretrial motions had been read and requested 60 days to file responses to the pretrial motions. During the status hearing, the Court granted the Government's request and ordered Defendants to file replies three weeks thereafter. See Transcript of Proceedings, July 10, 2002, at page 5, lines 6-17. In a Minute Order dated July 10, 2002, the Court ordered the Government to file responses

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to the pretrial motions on or before September 9, 2002, and ordered the Defendants file replies on or before September 30, 2002.

The Government did not file any responses to the pretrial motions on September 9, 2002, nor did it comply with this Court's rule regarding extensions of time to file pleadings. Defendant LABS was not notified that the Government would not be timely filing its responses. LABS did not learn until September 10, 2002, that the Government had not filed any responses to the pretrial motions, when the Government left a message for LABS' counsel in response to an inquiry by LABS' counsel regarding whether the Government had filed its responses. The Government also advised LABS' counsel in a message, that it planned to file a motion for extension of time to file its responses to pretrial motions, and requested LABS' position regarding such a request. On September 11, 2002, LABS' counsel advised the Government that, under these unique circumstances, counsel had no choice but to oppose a request for additional time.

On September 13, 2002, the Court issued an order granting the Government's motion. LABS understands that the Government filed a motion for an extension of time to file its responses. However, LABS did not receive a copy of the Government's motion prior to receiving the Court's order granting that motion and did not have an opportunity to oppose the motion. The Court's order permits the Government to file its responses to the pretrial motions on or before September 18, 2002, nine days after the responses were due, but did not similarly adjust the filing date for Defendants' replies. By this motion, LABS requests that the Court allow LABS to file its replies on or before October 9, 2002, which is three weeks after the filing date for the Government's responses to pretrial motions. This adjusted filing date for LABS is

consistent with this Court's order during the July 10, 2002 status hearing and ensures that LABS will not be prejudiced by the Government's late filing of its responses.

CONCLUSION

WHEREFORE, for the reasons stated above, Defendant LABS respectfully moves the Court to grant this Motion and issue an order allowing LABS to file replies to the Government's responses to pretrial motions on or before October 9, 2002.

Respectfully submitted,

By _____
Attorney for Defendant LABS of Virginia, Inc.

Michael L. Fayad
GREENBERG TRAURIG, LLP
800 Connecticut Avenue, N.W.
Suite 500
Washington, D.C. 20006
(202) 331-3100

Local counsel:
Robert H. King, Jr.
GREENBERG TRAURIG, P.C.
77 West Wacker Drive
Suite 2500
Chicago, Illinois 60601
(312) 456-8400

September 17, 2002

CERTIFICATE OF SERVICE

I, Robert H. King, Jr., an attorney, hereby certify that on this 17th day of September, 2002, a true and correct copy of the foregoing Notice of Agreed Motion and Defendant LABS of Virginia, Inc.'s Motion for Extension of Time to File Replies to the Government's Responses to Defendants' Pretrial Motions, was served by hand delivery on the following:

Diane MacArthur, Esq.
Assistant United States Attorney
219 South Dearborn Street
Chicago, IL 60604

and by United States first class mail, postage prepaid, on the following:

Michael L. Fayad, Esq.
GREENBERG TRAURIG, LLP
800 Connecticut Avenue, N.W.
Suite 500
Washington, DC 20006

Samuel J. Buffone, Esq.
Kelly B. Kramer, Esq.
ROPES & GRAY
One Franklin Square
1301 K Street, N.W.
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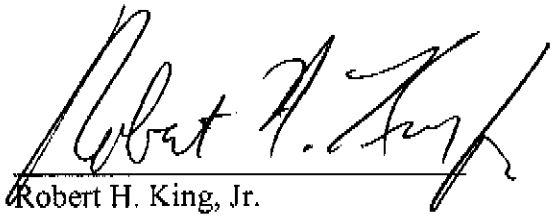
Washington, DC 20005-3333

Gerald A. Feffer, Esq.
David M. Zinn, Esq.
WILLIAMS & CONNOLLY
725 Twelfth Street, N.W.
Washington, D.C. 20005



Robert H. King, Jr.

Minute Order Form (06/97)

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Ruben Castillo	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	02 CR 312 - all	DATE	9/24/2002
CASE TITLE	USA vs. Labs of Virginia, et al.		

MOTION: [In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

DOCKET ENTRY:

(1) ☐ Filed motion of [use listing in "Motion" box above.]

(2) ☐ Brief in support of motion due _____.

(3) ☐ Answer brief to motion due_____. Reply to answer brief due_____.

(4) ☐ Ruling/Hearing on _____ set for _____ at _____.

(5) ☐ Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(7) ☐ Trial[set for/re-set for] on _____ at _____.

(8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.

(9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ Local Rule 41.1 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).

(10) ■ [Other docket entry] Defendant Labs of Virginia, Inc.'s agreed motion for extension of time to file replies to the Government's responses to defendants' pretrial motions and Defendant Charles J. Stern and William Curtis Henley III's motion for extension of time are granted. Defendants' replies to the pending pretrial motions are due on or before October 9, 2002.

(11) ☐ [For further detail see order (on reverse side of/attached to) the original minute order.]

	No notices required, advised in open court.		Document Number
	No notices required.	number of notices	
	Notices mailed by judge's staff.	SEP 25 2002 date docketed	
	Notified counsel by telephone.		
✓	Docketing to mail notices.	docketing deputy initials	65
	Mail AO 450 form.		
	Copy to judge/magistrate judge.	date mailed notice	
RO	courtroom deputy's initials	Date/time received in central Clerk's Office	mailing deputy initials

U.S. DISTRICT COURT

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA	)	No. 02 CR 0312
v.	)	Judge Castillo
LABS OF VIRGINIA, INC. DAVID M. TAUB CHARLES J. STERN, and WILLIAM CURTIS HENLEY III	)	Magistrate Judge Bobrick

DEFENDANT LABS OF VIRGINIA, INC.'S NOTICE OF JOINDER

Defendant Labs of Virginia, Inc. ("LABS"), by the undersigned counsel, hereby joins in and consents to various reply memoranda in support of motions filed by Defendants Charles J. Stern, William Curtis Henley III, and David M. Taub on October 9, 2002, pursuant to Federal Rule of Criminal Procedure 12(b). Defendant adopts and incorporates by reference the following motions in their entirety:

1) Defendants Charles J. Stern and William Curtis Henley III Reply Memorandum in Support of Motion to Dismiss Count Five of the Indictment Under the Act of State Doctrine;

2) Defendants Charles J. Stern and William Curtis Henley III Reply Memorandum In Support of Motion for a Bill of Particulars;

3) Defendants Charles J. Stern and William Curtis Henley III Reply Memorandum in Support of Motion to Dismiss Count Five of the Indictment for Failure to Allege Any Factual Basis for the Offense;

4) Defendants Charles J. Stern and William Curtis Henley III Reply Memorandum in Support of Motion to Dismiss Count Five of the Indictment for Failure to Allege an Essential Element of the Offense (No Predicate Act);

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5) Defendants Charles J. Stern and William Curtis Henley III Reply Memorandum in Support of Motion to Dismiss Count Five of the Indictment Under Void for Vagueness Doctrine; and

6) Defendant David M. Taub's Consolidated Reply Memorandum.

Respectfully submitted,

Michael L. Fayad

By _____
Attorney for Defendant LABS of Virginia, Inc.

GREENBERG TRAURIG, LLP
800 Connecticut Avenue, N.W.
Suite 500
Washington, D.C. 20006
(202) 331-3100

Local counsel:
Robert H. King, Jr.
GREENBERG TRAURIG, P.C.
77 West Wacker Drive
Suite 2500
Chicago, Illinois 60601
(312) 456-8400

October 9, 2002

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of October, 2002, a true and correct copy of the foregoing Defendant LABS of Virginia, Inc.'s Notice of Joinder, was served by hand delivery on the following:

Diane MacArthur, Esq.
Assistant United States Attorney
219 South Dearborn Street
Chicago, IL 60604

and by United States first class mail, postage prepaid, on the following:

Michael L. Fayad, Esq.
GREENBERG TRAURIG, LLP
800 Connecticut Avenue, N.W.
Suite 500
Washington, DC 20006

Samuel J. Buffone, Esq.
Kelly B. Kramer, Esq.
ROPES & GRAY
One Franklin Square
1301 K Street, N.W.
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Washington, DC 20005-3333

Gerald A. Feffer, Esq.
David M. Zinn, Esq.
WILLIAMS & CONNOLLY
725 Twelfth Street, N.W.
Washington, D.C. 20005

Robert H. King, Jr.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA	)	
	)	No. 02 CR 0312
v.	)	
	)	Judge Castillo
LABS OF VIRGINIA, INC.	)	Magistrate Judge Bobrick
DAVID M. TAUB	)	
CHARLES J. STERN, and	)	
WILLIAM CURTIS HENLEY III	)	

NOTICE OF MOTION

To: See Attached Service List

PLEASE TAKE NOTICE THAT on October 16, 2002, at 9:45 a.m., or such other time as counsel may be heard, defendants, by their attorneys, will appear before the Honorable Judge Castillo in Courtroom 2319, Dirksen Building, 219 S. Dearborn Street, Chicago, Illinois, and then and there present Defendant Labs of Virginia Inc.'s Motion for Leave to File in Excess of Fifteen Pages, a copy of which is hereby served upon you.

GREENBERG TRAURIG, P.C.

By _____
Robert H. King, Jr.

Robert H. King, Jr.
Greenberg Traurig, P.C. (#36511)
77 West Wacker Drive
Suite 2500
Chicago, Illinois 60601
(312) 456-8400

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SERVICE LIST

I, Robert H. King, Jr., an attorney, hereby certify that on this 9th day of October, 2002, a true and correct copy of the foregoing Defendant LABS of Virginia, Inc.'s Motion for Leave to File in Excess of Fifteen Pages, was served by hand delivery on the following:

Diane MacArthur, Esq.
Assistant United States Attorney
219 South Dearborn Street
Chicago, IL 60604

and by United States first class mail, postage prepaid, on the following:

Michael L. Fayad, Esq.
GREENBERG TRAURIG, LLP
800 Connecticut Avenue, N.W.
Suite 500
Washington, DC 20006

Samuel J. Buffone, Esq.
Kelly B. Kramer, Esq.
ROPES & GRAY
One Franklin Square
1301 K Street, N.W.
Suite 800 East
Washington, DC 20005-3333

Gerald A. Feffer, Esq.
David M. Zinn, Esq.
WILLIAMS & CONNOLLY
725 Twelfth Street, N.W.
Washington, D.C. 20005

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA	)	
	)	No. 02 CR 0312
v.	)	
	)	Judge Castillo
LABS OF VIRGINIA, INC.	)	Magistrate Judge Bobrick
DAVID M. TAUB	)	
CHARLES J. STERN, and	)	
WILLIAM CURTIS HENLEY III	)	

DEFENDANT LABS OF VIRGINIA, INC.'S MOTION FOR LEAVE TO FILE IN EXCESS OF FIFTEEN PAGES

Defendant Labs of Virginia, Inc. ("LABS"), by and through undersigned counsel, respectfully moves, pursuant to Local Rule 7.1 of the Local Rules of the United States District Court for the Northern District of Illinois, for permission to exceed the fifteen-page limitation in its Reply to the Government's Consolidated Response to Defendants' Pretrial Motions. In support of this Motion, LABS states as follows:

1. The Government's Consolidated Response to the Pretrial Motions was fifty-six pages and responded to four separate motions filed by LABS. In order to adequately and properly address the Government's Response, it was necessary for LABS to exceed the fifteen-page limit imposed by the Local Rules of this Court.

2. This Motion is brought in good faith, and will assist in clarifying the issues before the Court.

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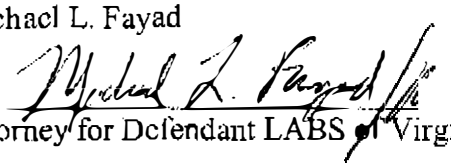
Respectfully submitted,

Michael L. Fayad

By 
Attorney for Defendant LABS of Virginia, Inc.

GREENBERG TRAURIG, LLP
800 Connecticut Avenue, N.W.
Suite 500
Washington, D.C. 20006
(202) 331-3100

Local counsel:
Robert H. King, Jr.
GREENBERG TRAURIG, P.C.
77 West Wacker Drive
Suite 2500
Chicago, Illinois 60601
(312) 456-8400

October 9, 2002

CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of October, 2002, a true and correct copy of the foregoing Defendant LABS of Virginia, Inc.'s Motion for Leave to File in Excess of Fifteen Pages, was served by hand delivery on the following:

Diane MacArthur, Esq.
Assistant United States Attorney
219 South Dearborn Street
Chicago, IL 60604

and by United States first class mail, postage prepaid, on the following:

Michael L. Fayad, Esq.
GREENBERG TRAURIG, LLP
800 Connecticut Avenue, N.W.
Suite 500
Washington, DC 20006

Samuel J. Buffone, Esq.
Kelly B. Kramer, Esq.
ROPES & GRAY
One Franklin Square
1301 K Street, N.W.
Suite 800 East
Washington, DC 20005-3333

Gerald A. Feffer, Esq.
David M. Zinn, Esq.
WILLIAMS & CONNOLLY
725 Twelfth Street, N.W.
Washington, D.C. 20005

Robert H. King, Jr.

Minute Order Form (06/97)

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Ruben Castillo	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	02 CR 312	**DATE**	10/10/2002
CASE TITLE	USA vs. Labs of Virginia, et al.		

MOTION: [In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

DOCKET ENTRY:

(1) ☐ Filed motion of [use listing in "Motion" box above.]

(2) ☐ Brief in support of motion due _____.

(3) ☐ Answer brief to motion due_____. Reply to answer brief due_____.

(4) ☐ Ruling/Hearing on _____ set for _____ at _____.

(5) ☐ Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(7) ☐ Trial[set for/re-set for] on _____ at _____.

(8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.

(9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ Local Rule 41.1 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).

(10) ■ [Other docket entry] Defendant Labs of Virginia, Inc.'s motion for leave to file in excess of fifteen pages is granted. The parties do not need to appear for the motion call on October 16, 2002.

(11) ☐ [For further detail see order (on reverse side of/attached to) the original minute order.]

___ No notices required, advised in open court.

___ No notices required.

✓ Notices mailed by judge's staff.

___ Notified counsel by telephone.

___ Docketing to mail notices.

___ Mail AO 450 form.

___ Copy to judge/magistrate judge.

RO courtroom deputy's initials

Date/time received in central Clerk's Office

6 number of notices

OCT 11 2002 date docketed

docketing deputy initials

10/10/2002 date mailed notice

RO mailing deputy initials

Document Number 75

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA

v.

LABS OF VIRGINIA, INC.
DAVID M. TAUB
CHARLES J. STERN, and
WILLIAM CURTIS HENLEY III

No. 02 CR 0312

Judge Castillo
Magistrate Judge Bobrick

DEFENDANT LABS OF VIRGINIA, INC.'S REPLY TO GOVERNMENT'S CONSOLIDATED RESPONSE TO DEFENDANTS' PRETRIAL MOTIONS

Michael L. Fayad
Attorney for Defendant LABS of Virginia, Inc.

GREENBERG TRAURIG, LLP
800 Connecticut Avenue, N.W.
Suite 500
Washington, D.C. 20006
(202) 331-3100

Local counsel:
Robert H. King, Jr.
GREENBERG TRAURIG, P.C.
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Chicago, Illinois 60601
(312) 456-8400

October 9, 2002

TABLE OF CONTENTS

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA	)	
	)	No. 02 CR 0312
v.	)	
	)	Judge Castillo
LABS OF VIRGINIA, INC.	)	Magistrate Judge Bobrick
DAVID M. TAUB	)	
CHARLES J. STERN, and	)	
WILLIAM CURTIS HENLEY III	)	
	)	

DEFENDANT LABS OF VIRGINIA, INC.'S REPLY TO GOVERNMENT'S CONSOLIDATED RESPONSE TO DEFENDANTS' PRETRIAL MOTIONS

Defendant Labs of Virginia, Inc. ("LABS" or "Defendant"), by the undersigned counsel, hereby files this reply to the Government's Consolidated Response to Defendants' Pretrial Motions. The Government's consolidated response to Defendant LABS' pretrial motions does not present any legal precedent or arguments to support a denial of the motions. Moreover, a sworn declaration from the Indonesian Department of Forestry ("DOF") directly negates the basic premise of the Indictment issued in this case, and as such, mandates the Court's dismissal of the Indictment.

PRELIMINARY STATEMENT

On April 2, 2002, an Indictment was issued against Defendants LABS of Virginia, Inc., David M. Taub, Charles J. Stern and William Curtis Henley III (collectively, the "Defendants") by a Grand Jury in Chicago, Illinois. The Indictment alleges violations of 16 U.S.C. §§ 3372 and 3373 and 18 U.S.C. § 545. The charges in the Indictment arise out of a transaction between LABS and Indonesian Aquatics Export CV ("Inquatex"), a company located in Indonesia,

whereby LABS purchased an entire colony of monkeys consisting of approximately 1,300 cynomolgus macaques (of the species "*Macaca fascicularis*" and commonly known as crab-eating or long-tailed macaques) from Inquatex.[1]

The Indictment is based substantially on the Government's assumed premise that Inquatex's export of macaques violated an Indonesian Decree issued by the DOF (Decree No. 26/Kpts-II/94). However, a declaration of the Director of the DOF Directorate responsible for issuing permits to export animals from Indonesia pursuant to the Convention on International Trade in Wild Fauna and Flora ("CITES"), demonstrates the erroneous nature of the Government's assumptions about the meaning and application of the Indonesian Decree.[2] In a declaration dated September 17, 2002, Ir. Adi Susmianto, MSc, the Director of the DOF Directorate of Biodiversity, stated that the DOF, with complete knowledge about the types of macaques to be exported by Inquatex (i.e., captive bred and born or wild-caught), issued valid CITES permits for the export of macaques residing at Inquatex's facilities, and that the DOF's issuance of the CITES permits complied with the Indonesian Decree. See generally, DOF Declaration. Ir. Susmianto's conclusion was based on his review of correspondence between Inquatex and the DOF, CITES permits issued by DOF, the Indonesian Decree, and internal DOF

[1] Counts One through Four of the Indictment allege that Defendants LABS and Taub knowingly submitted false records related to the description of the monkeys in violation of 16 U.S.C. §§ 3372(d) and 3373(d)(3)(A)(i); Count Five of the Indictment alleges that all Defendants knowingly imported monkeys and in the exercise of due care should have known that the importation violated a foreign law in violation of 16 U.S.C. §§ 3372(a)(2)(A) and 3373(d)(2); Counts Six through Nine allege that Defendants LABS and Taub knowingly and fraudulently imported the four shipments of the monkeys contrary to law in violation of 18 U.S.C. § 545; and Counts Ten through Twelve allege that Defendants LABS and Taub knowingly imported three shipments of monkeys and in the exercise of due care should have known that the importation violated a United States regulation allegedly governing the shipments of nursing mothers with infants in violation of 16 U.S.C. §§ 3372(a)(1)(A) and 3373(d)(2).

[2] A copy of the Declaration of Ir. Adi Susmianto ("DOF Declaration") is attached hereto as Exhibit 1. The original Declaration is in the possession of counsel for LABS and is available to the Court.

information. See id. ¶ 2. As will be explained in this Reply, the DOF Declaration mandates the dismissal of Counts One through Nine of the Indictment.[3]

On July 1, 2002, LABS, as well as the other named defendants, filed various motions related to the Indictment. LABS filed motions to dismiss the Indictment, for a bill of particulars, to strike portions of the Indictment, and for the issuance of letters rogatory. LABS maintains its position that the Indictment is not legally sufficient and must be dismissed. As argued in detail in LABS' Motion to Dismiss, Counts One through Five are duplicitous and legally insufficient under the Sixth Amendment of the United States Constitution. In addition, Counts One through Four and Counts Six Through Nine fail to state all of the essential elements for the offenses charged and Count Five does not allege a legally sufficient predicate offense. Counts One though Five and Ten through Twelve in the Indictment allege conduct which is based on a reasonable interpretation of applicable United States and foreign laws and regulations. The Government's arguments neither justify nor cure the fatal defects present in the Indictment. Moreover, the DOF Declaration requires that Counts One through Nine be dismissed.

In the event that the Court does not dismiss all counts against LABS in the Indictment, LABS requests the Court to grant its remaining pretrial motions. Contrary to the Government's position, a bill of particulars is warranted because LABS has not received all of the information to which it is entitled to adequately prepare a defense to the Indictment. Moreover, the

[3] One of Defendants' previously filed motions requests the issuance of letters rogatory to obtain documents and other information from Indonesia. The letters rogatory process will consume time and money. Defendants, with the assistance of the Indonesian law firm of Frans Winarta and Partners, undertook the initial step of obtaining the DOF Declaration to support several of Defendants' arguments in their motions, in the hope of convincing the Court, and possibly the Government, of the flawed premise of this prosecution, and that a significant part of the Indictment should be dismissed; and, thereby all of us could avoid the cost of letters rogatory. If, however, Counts One through Nine remain for trial, then Defendants will vigorously pursue the Motion Requesting Issuance of Letters Rogatory.

references to Bionetics Corporation ("Bionetics") and "baksheesh" in the Indictment must be stricken as irrelevant and prejudicial. The Government's contention that it did not include these references as a means to prejudice LABS neither excuses nor neutralizes the prejudicial impact of the references to Bionetics and "baksheesh." Finally, the issuance of letters rogatory is required to obtain information that is essential and material to LABS' defense.

ARGUMENT

I. LABS' Motion to Dismiss

A. Counts One Through Five Of The Indictment Must Be Dismissed As Duplicitous.

Rule 8(a) of the Federal Rules of Criminal Procedure specifically prohibits joining two or more distinct and separate offenses in one count. As stated in Defendant's Motion to Dismiss, the Seventh Circuit has held that the ban on duplicitous indictments arises from four concerns:

> First, courts condemn duplicitous indictments which fail to give defendants adequate notice of the nature of the charges against which they must prepare a defense. Second, courts denounce duplicitous counts which threaten to subject defendants to prejudicial evidentiary rulings at trial. Third, courts dismiss duplicitous indictments which produce trial records inadequate to allow defendants to plead prior convictions or acquittals as a bar to subsequent prosecution for the same offense. Finally, courts overturn duplicitous indictments which present a risk that the jury may have convicted a defendant by a non-unanimous verdict.

United States v. Kimberlin, 781 F.2d 1247, 1250 (7th Cir. 1985) (citations omitted).

Counts One through Four of the Indictment, as drafted, violate Rule 8(a) and should be considered duplicitous by this Court because each count alleges one violation of 16 U.S.C. §§ 3372(d) and 3373(d)(3)(A)(1) based upon two independent and autonomous documents -- a CITES permit and a health certificate.

The Seventh Circuit Court of Appeals has not specifically addressed the issue of duplicity in relation to a false statements violation based on statements in separate documents. Thus, there

is no binding Seventh Circuit precedent exactly on point. However, several other federal courts of appeal have held that separate false statement violations based on statements in separate documents may support separate counts. See, e.g., United States v. Nash, 115 F.3d 1431 (9th Cir. 1994); United States v. Guzman, 781 F.2d 428 (5th Cir. 1986); United States v. Glanton, 707 F.2d 1238 (11th Cir. 1983). In the instant case, charging the alleged false statements in the CITES permits and the alleged false statements in the health certificates in separate counts is both permissible and mandated. The CITES permit and the health certificate are two separate documents issued by two different Indonesian agencies for different purposes. These unique circumstances present a risk that the jury may get confused or that the jury may convict the Defendant by a non-unanimous verdict. In other words, some members of the jury might vote to convict based on the CITES permit while other members of the jury might vote to convict based on the health certificate. This confusion or non-unanimity would not arise because of a different view by jurors over which one of two pieces of evidence supports a single violation. Rather, the confusion or non-unanimity would arise because of different views by jurors over two distinct violations.

The Government's reliance on United States v. Steurer, 942 F. Supp. 1183 (N.D. Ill. 1996), is misplaced. See Government's Response, at 21, n.4. Although Steurer addressed the issue of duplicity in relation to a false statements violation, Steurer has no bearing on the instant case for two reasons. First, a district court decision is not binding precedent on district courts. Howard v. Wal-Mart Stores, Inc., 160 F.3d 358, 359 (7th Cir. 1998); Hanna v. City of Chicago, 212 F.Supp.2d 856, 860 (N.D.Ill. 2002). Second, the facts surrounding this case are clearly distinguishable from the facts in Steurer. Unlike the instant case, Steurer involved four false statements in a single document. In connection with a loan, the defendant submitted four

separate promissory notes, each containing four false statements -- a fictitious borrower's name, taxpayer identification number, address, and purpose for borrowing the funds. Id. at 1185-86. The four counts in the indictment were based on each of the four promissory notes. Id. at 1185. The defendant in Steurer moved to dismiss the counts based on duplicity, but the court denied the motion finding that the making of multiple false statements to a lending institution in a single document constituted one criminal violation. See id. at 1187. Unlike the situation in Steurer, the Indictment against LABS charges two false statements found in two separate documents issued by two different agencies of the Indonesian government. Thus, the factual differences between Steurer and the instant case demonstrate that the holding in Steurer is inapposite to this case.

The Government relies on United States v. Pavloski, 574 F.2d 933, 936 (7th Cir. 1978), for the proposition that inclusion in one count of multiple means of committing the single offense charged does not render the count duplicitous. See Government's Response, at 20. The Government, however, omits an important part of the court's statements in Pavloski. The court specifically found:

> When the offenses joined bear a relationship to one another and may be said to constitute a continuing course of conduct, the "distinct and separate" test should be applied, not as a metaphysical exercise, but with a view toward serving the purposes of the prohibition against duplicity. Those purposes . . . are prevention of double jeopardy, of prejudice with respect to evidentiary rulings during trial, and of conviction by a verdict that is not unanimous.

Id. at 936. LABS argues that the alleged false statement in the health certificate and the alleged false statements in the CITES permit do not constitute a continuing course of conduct. Nevertheless, LABS asserts that this Court must consider the Seventh Circuit's statement in Pavloski that even when the offenses joined together in one count bear a relationship to one another, the distinct and separate test still must be viewed toward serving the purposes of the prohibition against duplicity. See Pavloski, at 936. The duplicity concerns raised by the court in

Pavloski equally apply in the instant case. The use of two separate documents to support a single false records count in the instant case raises several serious issues including: 1) preventing the jury from deciding guilt or innocence on each offense separately; 2) potentially leading to a non-unanimous verdict; 3) confusing the trial jury; and 4) making it difficult to determine whether an acquittal or conviction rests on only one of the documents or both. Thus, Counts One through Four must be dismissed as duplicitous.

Similarly, Count Five of the Indictment is duplicitous. The Government argues in its response that Count Five is not duplicitous because the alleged relevant time frame reflects a continuous course of conduct over the four month period in which the four O'Hare based shipments occurred. See Government's Response, at 23. Nevertheless, it is impossible to know whether the language of Count Five charges Defendant with one offense or four offenses. If the Defendant was convicted of Count Five, it would be impossible to determine whether the jurors unanimously agreed that a particular shipment violated 16 U.S.C. § 3372(a)(2)(A), whether some parts of the four shipments collectively violated the statute, or whether each of the four shipments violated the statute. Therefore, Count Five exposes Defendant to the risk of being convicted of an offense by a non-unanimous verdict and exposes the Defendant to the inability to plead prior convictions or acquittals as a bar to subsequent prosecution for the same offense.

The case law recognizes that there is a fine line to draw in determining whether a count is duplicitous. See United States v. Perez, 2002 WL 1461504, at *8 (N.D. Ill. July 3, 2002); Steurer, 942 F. Supp. at 1186. In light of the harm that could result from permitting the prosecution to go forth on Counts One through Five, these Counts must be dismissed.

B. Counts One Through Five Of The Indictment Must Be Dismissed Because They Fail To Sufficiently Inform The Defendant Of The Nature And Cause Of The Accusations.

The Sixth Amendment guarantees that in all criminal prosecutions the accused shall "be

informed of the nature and cause of the accusation" against him. U.S. Const. amend. VI. An indictment must be sufficiently detailed so that it adequately apprises the defendant of the charges, thereby enabling him to prepare his defense. See United States v. Smith, 230 F.3d 300, 306 (7th Cir. 2000), cert. denied, 531 U.S. 1176 (2001). The Indictment in this case is legally insufficient in several respects, and therefore, must be dismissed.

As argued in Defendant's Motion to Dismiss, Counts One through Four of the Indictment do not enable this Court to discern whether the charges are sufficient in law to support a conviction. In addition, if Defendant is found guilty of Counts One through Four of the Indictment, Defendant will not be able to plead double jeopardy as to bar the possibility of future prosecutions for the same offense. Finally, one of the most serious insufficiencies of the Indictment is that the structure of Counts One through Four make it impossible to ascertain whether the grand jury voted to return the Indictment on each of the first four counts based on the health certificate, the CITES permit, both, or some parts of both combined.

In regard to this last argument, the Government contends that the grand jury's decision need not be unanimous in order for the Indictment to be valid. See Government's Response, at 26. The Government cites to Federal Rule of Criminal Procedure 6(a)(1), which states that the grand jury shall consist of not less than 16 or more than 23 members. Id. In addition, the Government cites to Rule 6(f) of the Federal Rules of Criminal Procedure, which states that a grand jury may indict only upon the concurrence of 12 or more jurors. Although the Government accurately quotes Rules 6(a)(1) and 6(f), the Government appears to misinterpret the substance of Defendant's argument. Specifically, LABS' argument is that due to the structure of the Indictment, it cannot be determined whether the grand jurors unanimously voted to indict Defendant on Counts One through Four based on the same document. For example, six

jurors might have based their vote to indict on a false statement in the health certificate while the other six jurors voted to indict based on a false statement in the CITES permit. Thus, although 12 jurors voted to indict, it is not possible to know whether these 12 jurors unanimously voted to indict based on one of the documents referred to in Counts One through Four.

Count Five, as drafted, presents the same three sufficiency problems that exist in Counts One through Four. In particular, it cannot be discerned from Count Five which shipment or shipments form the basis for the charge that Defendant violated 16 U.S.C. § 3372(a)(2)(A). In addition, it is not clear whether Count Five is charging Defendant with one offense or four offenses.

In light of the fact that Counts One through Five do not provide ample detail and fail to provide Defendant with its Sixth Amendment right to be informed of the nature and cause of the accusations, these counts must be dismissed.

C. Count Five Of The Indictment Must Be Dismissed Because It Fails To Allege A Provable Or Legally Sufficient Underlying Offense.

A Lacey Act trafficking violation under 16 U.S.C. § 3372 requires proof of both a separate and independent predicate violation of law, as well as proof of an overlying violation of the Lacey Act's list of prohibited acts. See 16 U.S.C. § 3372. The underlying violation occurs when someone illegally takes, possesses, transports or sells fish or wildlife in violation of any state, Indian tribal or foreign law. Id. In the instant case, there is no basis for the Lacey Act charge because there is no underlying violation. The macaques at issue in this case were not illegally taken, possessed, transported or sold in violation of any state, Indian tribal or foreign law. The Government contends that the actions of transferring and selling wild-caught macaques from Indonesia to the United States violated the Indonesian Decree, and therefore, these actions constitute the underlying Lacey Act violation. However, the September 17, 2002, DOF

Declaration unambiguously proves that there was no underlying violation of the Indonesian Decree. The DOF Declaration specifically states:

> Indonesian law does not prohibit the export of macaques caught in the wild, such as unproductive parent stock macaques, if the DOF determines that the macaques are permitted to be exported. The DOF has determined that the export of unproductive parent stock macaques is appropriate and consistent with Indonesian law. . . . Based on my review of the above-described documents, the issuance of the CITES export permits for the export of Inquatex's colony of macaques complied with all DOF procedures and decrees, including Decree No. 26/Kpts-11/94. Based on the foregoing, I have concluded that the CITES permits issued by DOF to Inquatex for the export of macaques in 1997 were valid CITES permits and that the CITES permits complied with Indonesian law, including the Decree.

See DOF Declaration, ¶¶ 3, 7-8. In light of the above Declaration provided by the DOF, it is apparent that there was no underlying violation of the Lacey Act because the macaques were not illegally taken, possessed, transported or sold in violation of any Indonesian law.

Even if the above-quoted DOF Declaration did not exist, this Court would still be required to dismiss Count Five due to the fact that a single act may not constitute both the predicate violation and the overlying violation. See United States v. Carpenter, 933 F.2d 748 (9th Cir. 1991). As Defendant maintained in its Motion to Dismiss, the exporting/importing of macaques is a unitary act and cannot constitute both the predicate offense and the overlying offense. In its response to the Motion to Dismiss, the Government contends that the predicate offense for Count Five is the transportation and selling of the wild-caught primates in violation of a foreign law, and that the overlying offense is the importation of wild-caught primates into the United States. See Government's Response, at 32. The Government further explains that the underlying act is more than just the export of macaques, but instead consists of the transportation and sale of macaques. Id. at 33. However, export is defined as "to send or transport abroad

merchandise, especially for sale or trade."[4] Thus, the term "export" and the phrase "transportation and sale" have the same meaning. In conclusion, if the Court does not determine that the DOF Declaration renders the existence of a predicate offense a moot issue, the Government's use of a unitary act for both the predicate offense and the overlying offense requires the Court to dismiss Count Five.

D. Counts Six Through Nine Of The Indictment Must Be Dismissed Because They Fail To Allege An Essential Element Of The Offenses Charged.

Counts Six through Nine charge Defendant with violating 18 U.S.C. § 545. The elements of Section 545 are: 1) the defendant fraudulently and knowingly, 2) imported or brought into the United States, 3) any merchandise, 4) contrary to law. See Olais-Castro v. United States, 416 F.2d 1155, 1158 (9th Cir. 1969). It is well-established that an indictment must state all of the elements of the crime charged. United States v. Smith, 230 F.3d at 305. If a statute provides that it is an offense to do a certain act contrary to law, it is not enough to simply cite that statute and to allege that the act was done contrary to law. 1 Charles Alan Wright, Federal Practice and Procedure: Criminal 3d § 24 (1999). The indictment must show what other law was violated, either by citation or by a sufficient statement of facts. Id.

Counts Six through Nine of the Indictment in the instant case neither cite to the law which Defendant's acts were allegedly contrary to nor does the Indictment include a statement of facts that sufficiently indicates the underlying law allegedly violated. Counts Six through Nine specifically state:

> [D]efendants herein, did fraudulently and knowingly import into the United States certain merchandise contrary to law in the shipments, described below, namely, wild-caught *Macaca fascicularis*, knowing the merchandise to have been imported into the United States contrary to law.

[4] Dictionary.com (visited October 1, 2002) <http://www.dictionary.com/search?q=export>.

See Indictment, at 15, ¶ 2. A review of the Indictment indicates that importing macaques into the United States could have been contrary to several laws. For example, importing macaques into the United States could have been contrary to 16 U.S.C. §§ 3372(d) and 3373(d)(3)(A)(i) (Counts One through Four), 16 U.S.C. § 3372(a)(2)(A) (Count Five), the Indonesian Decree, or the United States Fish and Wildlife Service's regulations.

By inserting language in Paragraph 1 of Counts Six through Nine that "[t]he allegations contained in paragraphs 1 through 37 of Count One are incorporated as if set forth herein," the Government contends that it gave ample notice of which "law" was at issue. However, the Lacey Act, the Indonesian Decree and the United States Fish and Wildlife Service's regulations were each discussed in paragraphs 1 through 37 of Count One. Thus, incorporating paragraphs 1 through 37 of Count One into Counts Six through Nine does not shed any light on the "contrary to law" issue, but rather makes the issue more confusing. Moreover, the Government's Response asserts that Counts Six through Nine are based upon an underlying violation of one law, and cite that law. However, Counts Six through Nine and paragraphs 1 through 37 of Count One, taken together as suggested by the Government, refer to two laws, a foreign decree and a set of federal regulations, anyone of which could be the underlying law.

In addition, the Government cites United States v. Wagstaff, 572 F.2d 270, 273 (10th Cir. 1978), for the proposition that citation of the law violated by book and page is unnecessary where the facts establishing a Section 545 prosecution are set forth so as to apprise the accused of the offense he must meet. See Government's Response, at 39. The court in Wagstaff also recognized that:

> Rule 7(c)(1), F.R.Crim.P., demands that the indictment be "a plain, concise and definite written statement of the essential facts constituting the offense charged." Also necessary are facts which describe the essential elements of the offense intended to be charged. Also, it must be sufficient to apprise the accused of the

nature of the offense so that he may adequately prepare his defense.

Id. at 272-73. In the instant case, Defendant is not contending that the Government should have cited the underlying law by book and page. Rather, Defendant is arguing that, at a minimum, the facts within the Indictment should have sufficiently apprised Defendant of the nature of the offense in order to adequately permit Defendant to prepare a defense. However, the Indictment fails to meet this minimum threshold because the alleged facts refer to numerous laws and regulations, and Counts Six through Nine do not indicate which law was at issue for the required underlying offense. Therefore, Counts Six through Nine must be dismissed because they fail to allege an essential element of a violation of 18 U.S.C. § 545.

E. Counts One Through Five And Ten Through Twelve Of The Indictment Must Be Dismissed Because They Allege Conduct That Comports With The Defendant's Reasonable Interpretation Of Applicable Legal Requirements, And As Such, The Government Cannot Meet Its Burden of Proof.

Criminal charges that are based on laws that do not "convey[] sufficiently definite warning as to the proscribed conduct" must be dismissed. See Belsic v. Immigration and Naturalization Service, 265 F.3d 568, 572 (7th Cir. 2001). In this case, Counts One through Five and Counts Ten through Twelve are premised on alleged violations of laws and regulations that include ambiguous prohibitions.[5] LABS' conduct, which was consistent with a reasonable interpretation of those laws and regulations, cannot form the basis for a criminal prosecution. See United States v. Whiteside, 285 F.2d 1345 (11th Cir. 2002).

The Indonesian Decree is the lynchpin of Counts One through Five of the Indictment. Counts One through Four of the Indictment allege that Defendant submitted CITES permits and health certificates that included false statements in violation of 16 U.S.C. §§ 3372(d) and

[5] Whether the United States or foreign law, decree, treaty, or regulations are ambiguous or unambiguous, Defendant LABS' interpretation is one reasonable interpretation.

3373(d)(3)(A)(i). The Government's Response does not address LABS' arguments that none of the alleged false statements set forth in Counts One through Four of the Indictment are indeed false.[6] Moreover, the Government's only response to LABS' position that Counts One through Four should be dismissed because they are premised on an assumed violation of the Indonesian Decree, is that the Indonesian Decree has no bearing on these counts. See Government's Response, at 41. The Government overlooks the fact that these documents were approved and issued by the Indonesian government.[7] Thus, the documents can only be false, if they are false under applicable Indonesian law. See Indictment, at 2-4, ¶¶ 7-11 (recognizing that the Indonesian DOF was responsible for issuing the CITES permits for the export of macaques from Inquatex to LABS). The Indonesian Decree addresses the export of macaques, and therefore, the DOF was required to consider the Indonesian Decree when it issued the CITES permits.

A September 17, 2002 declaration of Ir. Adi Susmianto, MSc, Director of the DOF Directorate responsible for issuing permits to export animals from Indonesia pursuant to CITES, further supports LABS' position that the information contained in the CITES permits is not false,

[6] In its Response, the Government describes the alleged false statement in the health certificates as "Captive bred born." Government's Response, at 15-17. This description is inaccurate and misleading. The complete statement contained in the health certificates is "Captive bred born at INQUATEX, facilities (Jakarta/Indonesia)." The Government included this description in the Indictment. This statement does not mean that a shipment contains "only" captive bred animals; it means that the captive bred animals in the shipment were born at Inquatex. LABS contends that its interpretation of the statement in the health certificates is reasonable, and therefore, LABS cannot be found guilty of submitting a false statement beyond a reasonable doubt. See United States v. Race, 632 F.2d 1114, 1120 (4th Cir. 1980).

[7] Counts One through Four of the Indictment should also be dismissed under the act of state doctrine, which prohibits a court from inquiring into the validity of official acts undertaken by a foreign sovereign within its territory. See Banco National de Cuba v. Sabbatino, 376 U.S. 398, 401 (1964). The Government has never asserted that the Indonesian government officials who approved and issued the CITES permits and health certificates were not acting in their official capacities nor has it alleged that Indonesian government officials were improperly or unlawfully influenced to issue the CITES permits or health certificates. Therefore, the Government may not challenge the validity of the information contained in the documents.

and as such, may not subject Defendant to criminal charges. The DOF Declaration states that DOF issued valid CITES permits for the export of macaques residing at Inquatex's facilities, and that the DOF's issuance of the CITES permits complied with the Indonesian Decree, which limits the export of macaques to those monkeys that reside at breeding facilities. See DOF Declaration, ¶¶ 3, 6-8. The DOF issued the CITES permits knowing that Inquatex's colony included macaques that were originally obtained from the wild.[8] Id. ¶ 5. Accordingly, the DOF Declaration directly supports Defendant's argument that the two allegedly false statements (i.e., "[c]aptive bred specimens, no quota allocated" and "II(C)") are not statements that any shipment contained "only" captive-bred animals. Rather, as Defendant's assert in the Motion to Dismiss, [c]aptive bred specimens, no quota allocated" means that the colony had captive-bred animals and there were no quotas for captive-bred animals in 1997, and "II (C)" means that the animals in the shipment came from breeding or husbandry efforts. The DOF, with knowledge of the source of the macaques and with knowledge of the Indonesian Decree, issued the CITES permits in a manner that reflected that knowledge.[9] Under LABS' interpretation of the Indonesian Decree, Inquatex needed to obtain permission from the DOF to export the macaques. LABS was aware that Inquatex had requested DOF permission to export the macaques and that DOF had granted permission for the export. The Declaration, which supports LABS' interpretation of the

[8] Ir. Susmianto's conclusion was based on his review of correspondence between Inquatex and the DOF, CITES permits issued by DOF, the Indonesian Decree, and internal DOF information. See id. ¶ 2.

[9] In the Motion to Dismiss, Defendant stated that its arguments for dismissal of Counts One through Five of the Indictment may also apply to Counts Six through Nine. Defendant maintains its position, as originally stated in Part IV of Defendant's Motion to Dismiss and restated in Part I.(D) of this Reply, that the Government's failure to identify a "contrary law" in Counts Six through Nine is fatal to those counts. However, in the event that the Court determines that Counts Six through Nine sufficiently apprised Defendant that the underlying offense was a violation of 16 U.S.C. §§ 3372(d) and 3373(d)(3)(A)(i) (Counts One through Four), Defendant asserts that the Government will be unable to prove that this underlying offense occurred given the existence of the DOF Declaration.

Indonesian Decree and LABS' position that the CITES permits are valid and accurate, prevents the Government from proving that the CITES permits included false statements. Therefore, the Court should dismiss Counts One through Four.

Count Five of the Indictment charges Defendant with a Lacey Act violation, 16 U.S.C. § 3372(a)(2)(A), for importing macaques into the United States. See Indictment, at 13, ¶ 2. The charging language specifically states that:

> [D]efendants herein, did knowingly import wildlife in interstate and foreign commerce, namely, wild-caught *Macaca fascicularis*, and in the exercise of due care should have known that the wildlife was transported and sold in violation of a foreign law, namely, Decree No. 26/Kpts-11/94, which imposed a ban on the transportation from Indonesia, that is, the export of wild-caught *Macaca fascicularis.*

Id. at 13, ¶ 4.

The Indonesian Decree, as the asserted predicate offense of Count Five, is the lynchpin of that count. The Government contends that the Indonesian Decree unambiguously bans the export of wild-caught primates from Indonesia. See Government's Response, at 42. The Government further argues that the language in the Indonesian Decree, which permits the export of macaques that "come from breeding efforts," can only be interpreted to mean that persons are permitted to export primates that are captive bred, but are prohibited from exporting primates that are wild-caught. Id.

Contrary to the Government's view, the Indonesian Decree, as translated, does not clearly and definitely ban the export of wild-caught crab-eating macaques. Due to the fact that the Decree does not define the meaning of the phrase "come from breeding efforts," this phrase could be interpreted several ways, including allowing the export of macaques that are maintained at a husbandry or breeding facility.

The DOF Declaration lends further support to Defendant's argument. The Declaration specifically states:

> The Decree, which has been in effect since January 1994, limits the export of macaques to those monkeys that reside at breeding facilities. The purpose of the Decree is to encourage the restocking of macaques at breeding facilities by allowing for the export of unproductive parent stock macaques and to prevent the capture of macaques from the wild followed by the immediate export of the captured macaques. Indonesian law does not prohibit the export of macaques caught in the wild, such as unproductive macaques, if the DOF determines that the macaques are permitted to be exported. The DOF has determined that the export of unproductive parent stock macaques is appropriate and consistent with Indonesian law.

See DOF Declaration, at ¶ 3. In light of the Declaration, transporting and selling macaques is lawful under a reasonable interpretation of the Indonesian Decree. Accordingly, the importation of macaques into the United States cannot violate the Lacey Act because there was no illegal taking, possession, transportation or sale of fish or wildlife in violation of a foreign law. See 16 U.S.C. §3372.

Given that there are multiple reasonable interpretations of the applicable law, whether or not that law is ambiguous or unambiguous, and that Defendant's reasonable interpretation is supported by a Declaration from the Indonesian DOF, the Government could never meet its burden of proof for this charge because there will always be this reasonable interpretation. See Race, 632 F.2d at 1120 ("one cannot be found guilty of a false statement under a contract beyond a reasonable doubt when his statement is within a reasonable construction of the contract."). Therefore, Count Five must be dismissed.

Finally, regarding Counts Ten through Twelve, the Government asserts that the language in 50 C.F.R. § 14.105(b), the regulation upon which these counts are based, is "crystal clear." Government's Response, at 43. The Government does not address the reasonableness of LABS' interpretation of Section 14.105(b)(2). Rather, the Government presents its own interpretation of

Section 14.105(b)(2) as requiring that nursing mothers and unweaned young shall not be shipped unless for medical purposes. Id. The Government's interpretation ignores the structure and language of the regulation. The regulation states that "[a] nursing mother with young, an unweaned mammal unaccompanied by its mother, or an unweaned bird shall be transported only if the primary purpose is for needed medical treatment . . . ." 50 C.F.R. § 14.105(b)(2). If the regulation prohibited the shipment of nursing mothers accompanied by their unweaned infants, as urged by the Government, there would be no need for the regulation to list two separate categories relevant to mammals: nursing mothers with young and unweaned mammals unaccompanied by their mothers. Furthermore, if the regulation was intended to prohibit the shipment of unweaned mammals whether or not accompanied by their mother, the regulation could have simply prohibited the shipment of unweaned mammals, just as it prohibited the shipment of "unweaned birds." Instead, the regulation is concerned about protecting the mother-infant bond at a stage when the infant still relies on its mother for nourishment by ensuring that the infant will not be separated from its mother while it is still nursing. At a minimum, the Government's alternative interpretation of Section 14.105(b)(2) indicates that there is more than one interpretation of the regulation. As such, the Government is unable to prove beyond a reasonable doubt that LABS' actions were based on an unreasonable interpretation of the Section 14.105(b)(2). See Race, 632 F.2d at 1120. Therefore, Counts Ten through Twelve must be dismissed.

II. A Bill of Particulars Is Necessary To Ensure That LABS Is Fully And Specifically Informed Of The Nature Of The Charges Against It.

A bill of particulars should be granted when an indictment fails to "set forth essential elements of the offense charged" and fails to "sufficiently apprise[] the defendant of the charges to enable him to prepare for trial." United States v. Kendall, 665 F.2d 126, 134 (7th Cir. 1981)

(quotation omitted). A bill of particulars is also mandated when an indictment "fails to set forth specific facts in support of requisite elements of the charged offense, and the information is essential to the defense." United States v. Crippen, 579 F.2d 340, 347 (5th Cir. 1978). LABS' Motion for a Bill of Particulars requests that the Government provide additional particularization regarding Counts One through Four and Counts Six through Nine of the Indictment. LABS' Motion is extremely detailed and includes a rationale for each request for particularization. See LABS' Motion for a Bill of Particulars, at 9-13. For example, regarding Counts One through Four, LABS explains that it is entitled to know the victim of LABS' alleged false statements, as well as what information is false, who made the alleged false statements, and how the defendant caused the alleged false statements to be made. See id. at 11-12.

The Government's Response does not address any of LABS' specific requests for particularization nor does it acknowledge or counter the arguments proffered by LABS in support of the Motion. Instead, the Government describes the standards applicable to a request for a bill of particulars and summarily concludes that the Defendants "seek information which has already been provided to them but also information to which they are not otherwise entitled." Government's Response, at 46. LABS has carefully reviewed the Indictment and all documents produced by the Government.[10] Contrary to the Government's position, LABS does not possess information that answers its requests for particularization. Moreover, the Government has not identified which requests for particularization seek information to which LABS is not entitled. The Government's conclusory arguments in response to LABS' Motion do not meaningfully address the bases for LABS' Motion and provide no legitimate justification for denying LABS'

[10] Defendant LABS has not received any responses from the Government to LABS' discovery requests contained in letters dated May 16 and May 29, 2002. At the Status Conference on July 10, 2002, the Government advised the Court that it planned to respond to all of the Defendants' discovery requests.

Motion. As such, this Court should grant LABS' Motion and require the Government to serve LABS with a bill of particulars that complies with LABS' request for particularization.

III. The Indictment Improperly Includes Irrelevant And Prejudicial Statements That Must be Stricken.

Pursuant to Federal Rule of Criminal Procedure 7(d), the court may strike surplusage from an indictment. This rule "introduces a means of protecting the defendant against immaterial or irrelevant allegations in an indictment . . . which may, however, be prejudicial." Fed. R. Crim. P. 7(d) advisory committee's note. The Government's statement that references to Bionetics and to baksheesh "were not included, as Labs claims, as a means of prejudicing the defendants," does not excuse or remedy the prejudicial impact of those statements. Government's Response, at 47.

The Indictment's references to Bionetics as the owner of LABS, to the positions held by Defendants Stern and Henley at Bionetics, and to Defendant Stern's ownership interest in LABS are irrelevant to the charges brought in the Indictment. Moreover, the reference to Bionetics' purchase of LABS is inaccurate. The Government's suggestion that a technical amendment could be employed if Bionetics did not purchase LABS does not cure the prejudicial impact of the Bionetics-related statements that would remain in the Indictment. See Government's Response, at 48. The Government's asserted purpose for including references to Defendant Stern's ownership interest in Bionetics is to "show[] the relationship between and the motives of the parties." Id. Bionetics is not a party to this case. Furthermore, none of the charges in the Indictment directly state or even suggest that Bionetics had a role in any of the Defendants' alleged conduct.

The Government also states that it "intends to present evidence to show that Stern and Henley, as officers of a larger entity, were interested in acquiring the Indonesian colony for

profit-related reasons and not necessarily for medical research purposes." Government's Response, at 48. LABS does not dispute that it is a business established to, among other things, make a profit. However, whether or not LABS is a "for profit" or "not for profit" business has no bearing on the issues in this case. In addition, since Bionetics is not an owner of LABS, whether or not Stern and Henley are officers of a "larger entity" (i.e., Bionetics) is irrelevant and immaterial to Stern and Henley's actions as directors of LABS. The inclusion of references to Bionetics in the Indictment creates the incorrect and prejudicial impression that LABS has a parent company that is financially and legally responsible for LABS' actions or the actions of any of the named Defendants. The Government has not presented any valid basis for including references to Bionetics in the Indictment, and therefore, these references must be stricken.

In addition, the Government's claim that references to "baksheesh" are highly relevant to the case, has no basis. The inclusion of references to baksheesh, which the Government incorrectly characterizes as a bribe, will improperly focus the attention of the jury on alleged wrongful behavior that has not been charged in the Indictment. The Government contends that the references to baksheesh are probative of Defendants' knowledge of the falsity of documents or a violation of Indonesian law. See Government's Response, at 49. However, the Government's position is based on its mischaracterization of a memorandum that includes a reference to baksheesh and its misconception of the meaning of baksheesh. The memorandum the Government mentions in the Indictment does not state that Person A had actually "cut a baksheesh deal." Rather, the memorandum only includes a speculation by Person B regarding Person A's conduct without any basis in fact. Moreover, the Government's description of baksheesh as a bribe is both inaccurate and prejudicial. Person A testified before the grand jury that he gave a "tip" to DOF after the first permit was granted and that such gratuities are a

custom in Indonesia. As LABS explained in its Motion to Strike, baksheesh is a gratuity or tip to expedite service; it is not a payment to influence the actions of government officials. Based on the foregoing, the Government's inclusion of references in the Indictment to baksheesh, and especially the Government's definition of baksheesh as a bribe, does not have any probative value and unfairly prejudices LABS. Therefore, the references to baksheesh must be stricken.

IV. The Issuance Of Letters Rogatory Is Required To Obtain Information That Is Essential And Material To LABS' Defense.

Letters rogatory are formal requests from a United States court addressed to a foreign court "seeking its assistance in gathering evidence from witnesses residing there." U.S. v. Sensi, 879 F.2d 888, 899 (D.C. Cir. 1989). Letters rogatory can encompass requests for testimony or documentary or other evidence. See 28 U.S.C. § 1782. Defendants' Request for International Assistance ("Defendants' Letters Rogatory"), which accompanies the Motion for Issuance of Letters Rogatory, requests documents and deposition testimony from Indonesian government officials and private citizens. Defendants' Letters Rogatory requests documents and deposition testimony from individuals in Indonesia regarding several subjects including, but not limited to: the origin of the macaques that were part of the Inquatex colony; communications between Inquatex and LABS concerning the sale of the Inquatex colony to LABS; Indonesian laws, regulations, and decrees governing the export of macaques; and several aspects of the Indonesian government's review and approval of Inquatex's export of the macaques. See Defendants' Motion Requesting Issuance of Letters Rogatory, at 9-10; id. Exhibit 1, at 6-7.

The Government's sole basis for objecting to Defendants' request is that the "government does not intend to prove that bribes were actually paid to secure the CITES permits at issue or the mind set of the Indonesian officials who authorized the permits' issuance." Government's Response, at 55. The Government further asserts that the "focus of the inquiry in this case is on

the defendants' own knowledge and the impact of that knowledge on the shipping documents they received." Id. The Government inaccurately characterizes Defendants' Letters Rogatory and the Government's own case. First, Defendants' Letters Rogatory are not limited to requests for testimony and information regarding whether bribes were paid to Indonesian government officials for the issuance of CITES permits or the mind set of those government officials when they issued the permits. In fact, only a small percentage of the document requests and deposition questions relate to payments or offers of payments to Indonesian government officials or employees or to the "mind set" of the individuals who authorized the CITES permits. See Defendants' Motion Requesting Issuance of Letters Rogatory, Exhibit 1. As explained above and in Defendants' Motion Requesting the Issuance of Letters Rogatory, Defendants seek testimony and documents regarding numerous issues that are material to Defendants' defense.

Second, Defendants' Letters Rogatory, including the requests that relate to payments of money to Indonesian government officials and the mind set of Indonesian officials who authorized the issuance of CITES permits to Inquatex, concern information that is highly material to this case. Contrary to the position presented in the Government's Response, the Government's case is not limited to LABS' knowledge and its impact on shipping documents received. Indeed, the Government acknowledges in its Response that it is "seeking to ensure through this action the validity of the exportation of Indonesia's wildlife... ." Government's Response, at 36-37. Given that the Indonesia DOF approved the export, and that Inquatex, and not LABS, applied for and obtained the CITES export permits, evidence regarding the validity of the exportation of Indonesia's wildlife can only be obtained from private individuals in Indonesia and government officials and employees in Indonesia. Although LABS was aware that Inquatex had requested permission from DOF to export the macaques, LABS was not part of that process.

Moreover, the charges in the Indictment require proof of elements that have no relationship to LABS' knowledge. For example, Counts One through Four of the Indictment allege that LABS violated 16 U.S.C. § 3372 by knowingly "submit[ting] a false record, account, label for, and a false identification of wildlife, namely, CITES permits and health certificates . . . ." Indictment, at 11, ¶ 38. One of the elements of this offense is proving beyond a reasonable doubt that the statements alleged by the Government to be false are in fact false. The CITES permits and health certificates were issued by Indonesian authorities who did not have any contact with LABS. Therefore, evidence from relevant Indonesian authorities, as well as from Inquatex and its officers and employees, regarding the rationale for the manner in which the CITES permits and health certificates were completed is essential for LABS to adequately defend its position that the CITES permits and health certificates do not contain false statements.[11] In addition, Count Five of the Indictment alleges that LABS knowingly imported macaques and in the exercise of due care should have known that the importation violated a foreign law in violation of 16 U.S.C. §§ 3372(a)(2)(A) and 3373(d)(2). The Government identifies the foreign law as the Indonesian Decree. LABS' knowledge is only one element of the offense charged in Count Five. The Government must also prove that the importation of the macaques from Indonesia actually violated the Indonesian Decree. Evidence from DOF (the agency that issued the Indonesian Decree and has responsibility for interpreting and applying the Decree) regarding the meaning and purpose of the Indonesian Decree is highly material to LABS' case. If LABS can demonstrate that its importation of macaques did not violate the Indonesian Decree, then the Government will not be able to prove Count Five.

[11] If the Court agrees with the Government's position that Counts Six through Nine of the Indictment incorporate an underlying violation of 16 U.S.C. § 3372(d), i.e., Counts One through Four, then LABS would also assert that it is essential for LABS to obtain information from Indonesia to prepare its defense to Counts Six through Nine.

Finally, the Government's reliance on U.S. v. Korogodsky, 4 F.Supp.2d 262 (S.D.N.Y. 1998), is misplaced. In Korogodsky, the defendant was charged with wire fraud related to a scheme to defraud 30 Russian firms by collecting advance payments from the firms for products when the defendant had no intention of providing the products to the Russian firms. Id. at 264. The defendant requested issuance of letters rogatory to obtain evidence regarding the Russian firms' misconduct and certifications concerning the reliability of foreign contracts and bank documents. Id. at 265. The court allowed the defendant to obtain evidence regarding the reliability of the contracts and bank documents. Id. at 267. However, the court refused to issue letters rogatory regarding the Russian firms' alleged misconduct because it is not a defense that the victims of fraud may have engaged in misconduct. Id. at 265-66. Unlike the defendant in Korogodsky, Defendants' Letters Rogatory are justified because they seek evidence regarding essential elements of the charges brought by the Government. Based on the foregoing, issuance of Defendants' Letters Rogatory is required to enable Defendants to obtain information that is material and critical to the defense in this case.

CONCLUSION

Wherefore, for the reasons set forth above, and any additional reasons stated at any oral hearing, Defendant requests this Court:

1) grant LABS' Motion to Dismiss and issue an Order dismissing the Indictment in its entirety against Defendant LABS;

2) or in the alternative,

a) grant LABS' Motion for Bill of Particulars and issue an Order directing the Government to serve LABS with a Bill of Particulars; and

b) grant LABS' Motion to Strike, and issue an Order striking the portions of the Indictment listed in LABS' Motion; and

c) grant Defendants' Motion Requesting Issuance of Letters Rogatory, issue an Order approving the issuance of Letters Rogatory, execute the Letters Rogatory, and require the Clerk of the Court to execute and append the seal of this Court to the Letters Rogatory.[12]

Respectfully submitted,

Michael L. Fayad

By /Michael L. Fayad/RHK
Attorney for Defendant LABS of Virginia, Inc.

GREENBERG TRAURIG, LLP
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Washington, D.C. 20006
(202) 331-3100

Local counsel:
Robert H. King, Jr.
GREENBERG TRAURIG, P.C.
77 West Wacker Drive
Suite 2500
Chicago, Illinois 60601
(312) 456-8400

October 9, 2002

[12] Defendants' Letters Rogatory, as filed, include a post office box address for Mr. Agus Darmawan because Defendants were unaware of a street address for Mr. Darmawan at the time of filing their Request for Issuance of Letters Rogatory. If the Court decides to grant Defendants' request, then LABS reserves the right to supplement the Letters Rogatory to include a street address for Mr. Darmawan.

See Case File for Exhibits

Minute Order Form (06/97)

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Ruben Castillo	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	02 CR 312	DATE	11/4/2002
CASE TITLE	USA vs. Labs of Virginia, et al.		

MOTION: [In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

DOCKET ENTRY:

(1) ☐ Filed motion of [use listing in "Motion" box above.]

(2) ☐ Brief in support of motion due _____.

(3) ☐ Answer brief to motion due _____. Reply to answer brief due _____.

(4) ☐ Ruling/Hearing on _____ set for _____ at _____.

(5) ■ Status hearing re-set for 11/27/2002 at 9:15 A.M..

(6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(7) ☐ Trial[set for/re-set for] on _____ at _____.

(8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.

(9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ Local Rule 41.1 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).

(10) ■ [Other docket entry] Status hearing set for 11/6/02 is vacated. Status hearing set for 11/27/02 will be by telephone. The Court will rule on all pending motions on 11/27/02 at 9:15 a.m. The parties will not need to appear in open court. Counsel should arrange to have all parties on the line and then call chambers at (312) 435-5878. From today's date until 11/27/02 is excluded pursuant to 18 U.S.C. 3161(h)(1)(F) and 18 U.S.C. 3161(h)(8)(A)(B). (X-E and X-T).

(11) ☐ [For further detail see order (on reverse side of/attached to) the original minute order.]

No notices required, advised in open court.

No notices required.

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Minute Order Form (06/97)

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Ruben Castillo	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	02 CR 312 - all	DATE	11/27/2002
CASE TITLE	USA vs. Labs of Virginia, Inc., et al.		

MOTION: [In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

DOCKET ENTRY:

(1) ☐ Filed motion of [use listing in "Motion" box above.]

(2) ☐ Brief in support of motion due _____.

(3) ☐ Answer brief to motion due_____. Reply to answer brief due_____.

(4) ☐ Ruling/Hearing on _____ set for _____ at _____.

(5) ■ Status hearing held and continued to 1/10/2003 at 10:00 A.M..

(6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(7) ☐ Trial[set for/re-set for] on _____ at _____.

(8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.

(9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ Local Rule 41.1 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).

(10) ■ [Other docket entry] Oral argument on defendants' motions for bill of particulars and defendants' motion for issuance of letters rogatory set for 1/10/2003 at 10:00 a.m. From today's date until 1/10/03 is excluded pursuant to 18 U.S.C. 3161(h)(1)(F) and 18 U.S.C. 3161(h)(8)(A)(B). (X-E and X-T).

(11) ☐ [For further detail see order (on reverse side of/attached to) the original minute order.]

No notices required, advised in open court.

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Document Number
78

Minute Order Form (06/97)

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Ruben Castillo	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	02 CR 312 - all	DATE	11/27/2002
CASE TITLE	USA vs. Labs of Virginia, Inc., et al.		

MOTION: [In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

DOCKET ENTRY:

(1) ☐ Filed motion of [use listing in "Motion" box above.]

(2) ☐ Brief in support of motion due _____.

(3) ☐ Answer brief to motion due_____. Reply to answer brief due_____.

(4) ☐ Ruling/Hearing on _____ set for _____ at _____.

(5) ☐ Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(7) ☐ Trial[set for/re-set for] on _____ at _____.

(8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.

(9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ Local Rule 41.1 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).

(10) ■ [Other docket entry] Defendants Charles J. Stern and William Curtis Henley's motions to dismiss Count 5 of the indictment under the void for vagueness doctrine [36-1], motion to dismiss Count 5 of the indictment under the act of state doctrine [38-1], to dismiss Count 5 of the indictment for failure to allege an essential element of the offense (no predicate act) [40-1], motion to dismiss Count 5 of the indictment for failure to allege any factual basis for the offense [42-1] and motion for severance [47-1] are denied for the reasons stated on the record and in the government's response.

(11) ☐ [For further detail see order (on reverse side of/attached to) the original minute order.]

No notices required, advised in open court.

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79

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Minute Order Form (06/97)

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Ruben Castillo	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	02 CR 312 - all	DATE	11/27/2002
CASE TITLE	USA vs. Labs of Virginia, Inc., et al.		

MOTION: [In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

DOCKET ENTRY:

(1) ☐ Filed motion of [use listing in "Motion" box above.]

(2) ☐ Brief in support of motion due _____.

(3) ☐ Answer brief to motion due_____. Reply to answer brief due_____.

(4) ☐ Ruling/Hearing on _____ set for _____ at _____.

(5) ☐ Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(7) ☐ Trial[set for/re-set for] on _____ at _____.

(8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.

(9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ Local Rule 41.1 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).

(10) ■ [Other docket entry] Defendant Labs of Virginia Inc.'s motion to strike portions of the indictment [27-1], and motion to dismiss [28-1] are denied for the reasons stated on the record and in the government's response. Defendant David M. Taub's motion to dismiss the indictment [30-1] is denied for the reasons stated on the record and in the government's response.

(11) ☐ [For further detail see order (on reverse side of/attached to) the original minute order.]

No notices required, advised in open court.

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Document Number

Minute Order Form (06/97)

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Ruben Castillo	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	02 CR 312	DATE	1/3/2003
CASE TITLE	USA vs. Labs of Virginia, et al.		

MOTION: [In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

DOCKET ENTRY:

(1) ☐ Filed motion of [use listing in "Motion" box above.]

(2) ☐ Brief in support of motion due _____.

(3) ☐ Answer brief to motion due_____. Reply to answer brief due_____.

(4) ☐ Ruling/Hearing on _____ set for _____ at _____.

(5) ☐ Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(7) ☐ Trial[set for/re-set for] on _____ at _____.

(8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.

(9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ Local Rule 41.1 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).

(10) ■ [Other docket entry] Enter Consent Order. Defendant David Taub's request for leave to travel outside the United States is granted. Defendant is granted leave to travel to Merida Yucatan, Mexico from January 30, 2003 through February 6, 2003.

(11) ■ [For further detail see order attached to the original minute order.]

No notices required, advised in open court.

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JAN 06 2003 date docketed

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Document Number

81

U.S. DISTRICT COURT CLERK'S OFFICE 03 JAN -3 PM 4:27 FILED

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA v. LABS OF VIRGINIA, INC. DAVID M. TAUB CHARLES J. STERN, and WILLIAM CURTIS HENLEY III	No. 02 CR 0312 Judge Castillo Magistrate Judge Bobrick

CONSENT ORDER

1. David Taub, Defendant in the above-captioned action, seeks Leave of the Court to travel outside of the United States to Merida Yucatan, Mexico from January 30 through February 6, 2003.

2. The purpose of Mr. Taub's visit is both business and personal vacation. He will be accompanied on the trip by Scott Graber, Esquire, an attorney of record in this matter.

3. Assistant United States Attorney Diane MacArthur has been notified of this request and has consented to grant of this request.

Based upon the foregoing, it is hereby,

ORDERED that Defendant David M. Taub is granted permission to travel outside of the United States to Merida Yucatan, Mexico, departing on January 30, 2003 and returning on February 6, 2003.

SIGNED this 3rd day of January, 2003.

Hon. Ruben Castillo
U.S. District Court Judge

81

Minute Order Form (06/97)

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Ruben Castillo	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	02 CR 312 - all	DATE	1/10/2003
CASE TITLE	USA vs. Labs of Virginia, et al.		

MOTION: [In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

DOCKET ENTRY:

(1) ☐ Filed motion of [use listing in "Motion" box above.]

(2) ☐ Brief in support of motion due _____.

(3) ☐ Answer brief to motion due_____. Reply to answer brief due_____.

(4) ☐ Ruling/Hearing on _____ set for _____ at _____.

(5) ■ Status hearing held and continued to 1/31/2003 at 10:00 A.M..

(6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(7) ☐ Trial[set for/re-set for] on _____ at _____.

(8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.

(9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ Local Rule 41.1 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).

(10) ■ [Other docket entry] After due consideration of all the relevant pleadings and the arguments of counsel, defendants' motions requesting issuance of letters of rogatory and defendants' motions for a bill of particulars are all granted for the reasons stated in open court. The parties are directed to confer and prepare a narrower proposed letters rogatory which allows for the deposition of five persons and the related production of relevant documents on or before 1/17/03. A response to the bill of particulars will also be due on 1/17/03. From today's date until 1/31/03 is excluded pursuant to 18 U.S.C. 3161(h)(1)(F) and 18 U.S.C. 3161(h)(8)(A)(B). (X-E and X-T).

(11) ☐ [For further detail see order (on reverse side of/attached to) the original minute order.]

No notices required, advised in open court.

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Notified counsel by telephone.

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U.S. DISTRICT COURT CLERK 03 JAN 10 PM 1:11

Document Number

number of notices JAN 13 2003

date docketed

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date mailed notice

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Minute Order Form (06/97)

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Ruben Castillo	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	02 CR 312 - all	DATE	1/16/2003
CASE TITLE	USA vs. Labs of Virginia, et al.		

MOTION: [In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

DOCKET ENTRY:

(1) ☐ Filed motion of [use listing in "Motion" box above.]

(2) ☐ Brief in support of motion due _____.

(3) ☐ Answer brief to motion due_____. Reply to answer brief due_____.

(4) ☐ Ruling/Hearing on _____ set for _____ at _____.

(5) ☐ Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(7) ☐ Trial[set for/re-set for] on _____ at _____.

(8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.

(9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ Local Rule 41.1 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).

(10) ■ [Other docket entry] This Court's 1/10/2003 minute order is amended as follows: The parties are directed to confer and prepare a narrower proposed letters rogatory which allows for the deposition of five persons and the related production of relevant documents on or before 1/24/03. A response to the bill of particulars will also be due on 1/24/03.

(11) ☐ [For further detail see order (on reverse side of/attached to) the original minute order.]

No notices required, advised in open court.
No notices required.
Notices mailed by judge's staff.
Notified counsel by telephone.
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83

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA	)	
	)	
v.	)	No. 02 CR 312
	)	Judge Ruben Castillo
LABS OF VIRGINIA, INC.	)	
DAVID M. TAUB,	)	
CHARLES J. STERN, and	)	
WILLIAM CURTIS HENLEY III	)	

NOTICE OF FILING

TO: Michael L. Fayad, Esq.
Greenberg Traurig
800 Connecticut Avenue, N.W.
Suite 500
Washington, D.C. 20006

Samuel J. Buffone, Esq.
Ropes & Gray
One Franklin Square
1301 K Street, N.W., Suite 800
Washington, D.C. 2005-3333

Gerald A. Feffer, Esq.
David Zinn, Esq.
Williams & Connolly
725 12th Street, N.W.
Washington, D.C. 2005-5901

PLEASE TAKE NOTICE that on January 24, 2003, the undersigned filed with the Clerk of this Court, **GOVERNMENT'S CONSOLIDATED RESPONSE TO DEFENDANTS' BILLS OF PARTICULARS,** service of which is being made upon you.

Respectfully submitted,

PATRICK J. FITZGERALD
United States Attorney

By: Diane MacArthur (pk)
DIANE MacARTHUR
Assistant United States Attorney
219 South Dearborn Street, 5000
Chicago, Illinois 60604
(312) 353-5352

STATE OF ILLINOIS)
) ss
COUNTY OF COOK)

Phyllis Knobbe, being first duly sworn on oath, deposes and says that she is employed in the Office of the United States Attorney for the Northern District of Illinois; that on January 24, 2003, she caused a copy of the foregoing Motion to be faxed and mailed to the above individuals.

Phyllis Knobbe

SUBSCRIBED and SWORN to before me this 24th day of January, 2003.

Joan J. Poninski
NOTARY PUBLIC

"OFFICIAL SEAL"
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA	)	
	)	No. 02 CR 312
vs.	)	Judge Ruben Castillo
	)	
LABS OF VIRGINIA, INC.	)	
DAVID M. TAUB,	)	
CHARLES J. STERN, and	)	
WILLIAM CURTIS HENLEY III	)	

GOVERNMENT'S CONSOLIDATED RESPONSE TO DEFENDANTS' BILLS OF PARTICULARS

The United States of America, by its attorney, Patrick J. Fitzgerald, United States Attorney for the Northern District of Illinois, respectfully responds to the Bills of Particulars of defendants Labs of Virginia, Inc. ("Labs"), David M. Taub, Charles J. Stern, and William Curtis Henley III as follows:

A. BILL OF PARTICULARS OF LABS OF VIRGINIA, INC.

1. "Identify and particularize the Government theory as to why the term 'baksheesh' means 'bribe.'"

The Merriam-Webster Dictionary defines baksheesh to mean "payment (as a tip or bribe) to expedite service."

In June and July 1996, then-Labs employee Patrick Mehlman visited the Inquatex facility in Indonesia in order to inspect the colony of primates which Labs was interested in purchasing. On or about July 11, 1996, after Mehlman had returned to the United States, Mehlman distributed a memo to the Labs "Board of Directors" (of which defendants Taub, Stern and Henley were members at the time). Mehlman stated in the memo, among other things, that since

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exporting wild-caught primates was clearly against Indonesian law unless some exception were written, Agus Darmawan, Inquatex's owner, had gone to the Indonesian government and had cut a "baksheesh" deal to pay them off.

> As I [Mehlman] developed idea about longer term arrangements, Agus [Darmawan] kept talking about worries that government might stop export or that animal rights problems might arise. He did not want to outright sell to us for that reason. I said that I could propose that he would be silent partner, lease us the property, and we would run colony at costs, monkeys would be ours. He would out, could do administrative for us, but he would have steady income on lease. Whenever not profitable, we terminate relationship. Breeding stock over there costs less than $100 each.
>
> Perhaps he knows something about Indonesia's plans for the future that he is not sharing with us, but he clearly was expressing some anxiety that if we did business with him, something negative would occur in the future. I never did get him to disclose on that one. My own personal view of his reason for selling is that he's losing his shirt. His operating costs are at least $720,000 since start up (at $180,000 operating costs per year for at least four years – conservative figure). His start up costs were at least $300,000, so his put a million in this. He has exported 508 animals. If he's received $1000 per animal he is short about $500,000. **This advice he got from everyone that colony bred animals are the wave of the future has not paid off for him, so he has gone to the Indonesian government and cut a baksheesh deal to pay them off so that he can export feral caught animals (that clearly violates their law, unless some exception is written).** With the export of the breeding stock and our payment to him of $700-800,000, he perhaps breaks even and even makes a couple of thousand dollars. This would explain his anxiety about the future. **If he's cutting a deal with government, he's worried about Animal Rightists or others finding out that he's exporting feral caught, and the possible withdrawal of government from the deal.** That's my best guess.
>
> This brings up the last issue. If we are going to get involved in a deal where feral caught animals are sold from a colony and the colony is restocked with more ferals, we could come under fire for engaging in anti-conservation behavior.

> We are violating the spirit of the CITES convention. . . . I had the most trouble getting any clear answers from him [Darmawan] on questions related to the future. . . . I got as much as I could, but he got vague on me on that one. I just get the feeling that he is in cohoots [sic] with Indonesian government. Also, he got CITES for blood export really quickly. He dines at a big expensive restaurant under the offices of Indonesian Fish and Wildlife (and joked about taking them there), and he has been trafficking in birds and fish for a couple of decades. We went to the bird market together, and it was obvious that Agus had status. He's been around. . . .

Labs Nos. 005070-05072)[1] (emphasis supplied).

Mehlman, Labs's own employee, then, used the word "baksheesh" to mean "bribe" (as opposed to "tip" or "gratuity") when he discussed Darmawan's "cutting a deal [with the Indonesian government] to pay them off." Similarly, Mehlman, in the same memorandum, talked about his feeling that Darmawan was in "cahoots" with the Indonesian government.

2. "Identify any persons alleged to have offered, made, or accepted payments of baksheesh or a bribe."

Mehlman included as "Table 1" to his July 11, 1996 memorandum a chart captioned "Cost of Running Inquitex [sic] As It Was Described to Me." Labs No. 05073. Mehlman listed certain items as expenses on a "per month basis in U.S. dollars." Id. One line item, listed between "transportation" and "diesel for electricity" was "CITES charity" in the amount of "$300." Id. Mehlman then listed "12,450" as the "total" of the monthly expenses and after

[1] "Labs No." refers to document production numbers placed by Labs and/or Bionetics on documents they produced in response to an earlier-served grand jury subpoena in this case.

that figure listed "charity" in the amount of "1000." Id. Mehlman's monthly breakdown of expenses, then, appears to include approximately $1,300 in monthly payments of CITES "charity." Labs, as part of the Purchase Agreement executed in January 1997, agreed to pay $0.30 per monkey per day as maintenance fees between the date on which the Purchase Agreement was executed and November 30, 1997. Labs No. 06282 (¶ 3.2.4).[2] Labs's payment of this maintenance fee, at least for the first month after entering into the Purchase Agreement and before the first O'Hare shipment, roughly equals this $13,450 "charity"-inclusive monthly expense breakdown.[3] Labs, then, by paying monthly maintenance expenses, indirectly but knowingly funded Darmawan's practice of making baksheesh payments as a part of his business operations.

In November 1998, during an interview with Special Agent David Kirkby, Darmawan agreed with the statement that he (Darmawan) paid baksheesh to Indonesian Wildlife Management Authority officials for

[2] This paragraph reference is to a document labeled "final draft" of the Purchase Agreement. The government did not receive from Labs pursuant to the grand jury subpoena a final and/or an executed Purchase Agreement.

[3] The Purchase Agreement refers to 1,312 monkeys as being in the colony at the time of the purchase. Labs No. 06278 (¶ 3.1). Labs, then, paid approximately $11,808 the first month in maintenance fees for all 1,312 monkeys until the first shipment occurred ((1,312 x $0.30) x 30 days = $11,808.00). This amount, when $1,000 is added to it for charity as reflected in Mehlman's memorandum, roughly equals the $ $13,450 per month which Mehlman was told it took to run Inquatex on a monthly basis.

the purpose of exporting the illegal monkeys to Labs and that the officials made the shipments look legal. Darmawan also stated during the interview that, during his 1996 visit with the defendants in the United States before the Inquatex deal was finalized, he (Darmawan) described generally to the defendants his payment of baksheesh to Indonesian Wildlife Authority officials.

Darmawan testified in the grand jury that he (Darmawan) gave individuals in the CITES permit office a $50.00 tip when he submitted the CITES applications. Tr. 76. Darmawan testified that the tip was given to the clerks and that the clerks were to split up the tip among the various employees. Id. Darmawan also testified that after the first CITES application was granted, he gave a particularly large tip, approximately $250, to the Indonesian Management Authority because he was happy his application had been granted. Id. at 79. Darmawan further testified that he told Mehlman during Mehlman's visit at the Inquatex facility, that as part of Darmawan's operating expenses Darmawan would be required to pay charity or tips to Indonesian wildlife officials. Id. at 85.

The government notes that, while the shipments at issue in this case concluded by the end of May 1997, Labs itself expressed willingness to pay baksheesh in November 1997 in order to resume the shipment of monkeys following the Paris incident and Air France's refusal to transport any more monkeys from Indonesia.

Taub stated in a memorandum to Stern dated November 28, 1997 that "[s]taying out of Chicago [O'Hare] and going into Atlanta [as the port of entry for the next shipment] is a must, and if we have to pay a little 'bachshish' to get this done, it is money well spent." Labs No. 06083.

3. "Particularize the amount of all alleged payments of baksheesh or a bribe."

The amounts of the documented baksheesh payments are set forth above in the Response to Request No. 2. Mehlman's estimate of Inquatex's monthly expenses, as explained to him by Darmawan, included a total of $1,300 in CITES "charity." Darmawan described his payment of a total of $300 in baksheesh after the first CITES applications were approved by Indonesian officials. Darmawan made it clear, however, to the defendants during his visit to the Labs facility in 1996 that he paid baksheesh to the Indonesian Wildlife Authority officials as part of his business dealings. It is likely, then, that there were additional (but undocumented) payments to ensure that the four O'Hare shipments at issue in this case took place.

4. "Particularize the alleged purpose of any alleged payments of baksheesh or a bribe."

The purpose of the baksheesh payments was to secure from the Indonesian government: (a) approval of the CITES applications; and (b) the issuance of CITES permits and health certificates reflecting that the shipments contained captive-bred monkeys

without reference to the fact that the shipments contained productive wild-caught monkeys as well.

5. "Particularize the Indonesian government action alleged to have occurred as a result of alleged payments of baksheesh or a bribe."

The Indonesian government, on four separate occasions and in connection with each O'Hare shipment, issued CITES permits and health certificates which reflected, respectively, that the shipments contained captive-bred monkeys and that the monkeys had been "captive-bred born" at the Inquatex facility. The shipments, in fact, contained productive wild-caught monkeys, i.e., monkeys that had not been captive-bred or born in captivity at the Inquatex facility. The CITES permits and health certificates, then, made it appear as if the shipments complied with the Indonesian ban against the export of wild-caught monkeys when the shipments, as the defendants in this case knew or in the exercise of due care should have known, did not so comply.

6. "Particularize the Government theory as to the relevance of any alleged baksheesh deal, or payments of baksheesh or a bribe, to the charges alleged in the Indictment."

The defendants wanted to purchase a breeding colony for use at its own United States-based facility. From the outset, the defendants knew that there were significant problems associated with the export of the Inquatex colony for this purpose. The defendants knew, from its own research and the various documents exchanged between the parties that the Inquatex colony contained

wild-caught monkeys and they also knew, because Mehlman, among others, told them, that Indonesian law prohibited the export of wild-caught monkeys unless some exception were written.

The defendants placed the burden on Darmawan to secure the requisite Indonesian-based documents, including the CITES permits, in order to allow the shipments to take place. The CITES permits and other documents that Darmawan sent to the defendants in advance of each shipment clearly reflected that the shipments contained captive-bred monkeys with no reference to the fact, as defendants well knew, that the shipments contained wild-caught monkeys as well. The defendants also knew that the document which Darmawan presented from the Department of Forestry, the so-called "exception" to the Indonesian ban on the export of wild-caught monkeys, clearly referred to the export of unproductive wild-caught monkeys. The defendants knew that the wild-caught monkeys in the shipments were, in fact, productive and that the productive nature of the Inquatex colony was the reason for purchasing it in the first place.

The disconnect or dis-juncture between what the defendants knew to be the demographics of the colony and what the CITES permits and health certificates reflected is what makes the issue of baksheesh relevant to this case. The defendants were told repeatedly that Darmawan relied heavily on baksheesh to influence Indonesian officials.

There are other documents in the defendants' possession which also put the defendants on notice about payments to government officials. On or about August 30, 1996, for example, Barry Brant, one of Agus Darmawan's United States-based representatives, sent to defendant Stern by telefax a letter in which Brant stated that Darmawan would incur "substantial additional cost to obtain government approval allowing the transfer of the colony to LABS." On or about February 17, 1997, Dr. George Ward, Labs's veterinarian who was in Indonesia at the time, wrote a letter to Taub in which he stated as follows:

> "that [Darmawan's ability to sell 1,000 primates per year] doesn't appear to be a problem given his connections with the local F[ish] & W[ildlife]. It is very impressive to me – I needed 6 months to complete all steps (9) in exporting a monkey from Bangkok and Agus [Darmawan] can accomplish (albeit only 6 steps here) it in 1½ weeks. Of course the 'charity' is a very important aspect. I'm still not convinced what our long range relationship should be. You have to look closely at past performance – it obviously didn't work for Peter Savage."

Typed notes of Dr. Ward about his trip to Indonesia also contain the statement "Agus has 'established' good connections – can obtain all permits necessary to ship monkeys in less than two weeks. Took GSW [Dr. Ward] six months in Thailand." Labs No. 05619.

7. "Specify the paragraph in the Purchase Agreement, or in the CITES Treaty that requires the buyer, in this case, LABS, to provide the other, in this case, Inquatex, any documentation filed by LABS as part of the CITES permit process."

Paragraph 2.1 of the "Final Draft" of the Purchase Agreement (Labs Nos. 06269-06298) provides in pertinent part as follows: "It is understood that Seller's [Inquatex] obligations under this Agreement are contingent upon the Seller successfully obtaining the required permits and consents of the governmental authorities of Indonesia to export the Colony to the United States and the Buyer's [Labs] obligations under this Agreement are contingent upon the Buyer successfully obtaining the required permits and consents of federal and state authorities in the United States to import the Colony from Indonesia and to keep it in the United States. Labs No. 06278.[3]

Paragraph 2.2 of the Purchase Agreement provides in pertinent part as follows: "Upon execution of this Agreement, each party shall diligently proceed to secure the required governmental permits and consents, and **each party** shall regularly advise the other of its progress **and provide copies of all applications and**

[3] Similarly, Paragraph 4.1.2 provides "Seller [Inquatex] shall be responsible for securing any and all governmental permits and consents necessary and required to export the Monkeys from Indonesia, including the CITES permit and all necessary export documentation" (Labs No. 06283) and Paragraph 5.1.1 provides "Buyer [Labs] shall secure any and all governmental permits and consents to import the Monkeys into the United States." (Labs No. 06284).

other documents filed in connection with obtaining such permits and consents. . . . Each party shall promptly forward to the other copies of the governmental approvals obtained by such party as contemplated by Section 2.1 hereof." Labs No. 06278 (emphasis supplied).

8. "Identify 'Person A' and 'Person B.'"

Person A is Patrick Mehlman and Person B is Agus Darmawan.

9. "Particularize the CITES Treaty section(s) or CITES permit instructions which render [the notations in the CITES permits for the four shipments at issue about 'crab-eating macaques' and '[c]aptive-bred specimens, no quota allocated' and the designation 'II(C)'] [to be] false."

Article VI, paragraph 2, of the Convention on International Trade in Endangered Species of Wild Fauna and Flora ("CITES") provided in pertinent part that "Appendix II shall include: (a) all species which although not necessarily now threatened with extinction may become so unless trade in specimens of such species is subject to strict regulation in order to avoid utilization incompatible with their survival; and (b) other species which must be subject to regulation in order that trade in specimens of certain species referred to in subparagraph (a) of this paragraph may be brought under effective control." Crab-eating macaques, or *macaca fascicularis*, were included on Appendix II at all relevant times in this case. In November 1994, during the Proceedings of the Ninth Meeting of the Conference of the Parties to CITES,

Resolution 9.3 was adopted. This resolution standardized the codes and the meaning of the codes to be used on CITES permits. The resolution directed that the letter "C" be used to designate shipments containing species which contained "[a]nimals bred in captivity in accordance with Resolution Conf. 2.12, as well as parts and derivatives thereof, exported under the provisions of Article VII, paragraph 5 of the Convention (specimens of species included in Appendix I that have been bred in captivity for non-commercial purposes and specimens of species included in Appendices II and III)." The Resolution also included in "Annex 1" as "[i]nformation that [s]hould [b]e [i]ncluded in CITES [p]ermits and [c]ertificates" the following categories, among others, of information: "h) [t]he appendix in which the species or subspecies or population is listed; i) [t]he source of the specimen; j) [t]he quantity of specimens and, if appropriate, the unit of measure used; . . . p) [t]he actual quantity of specimens exported. . . ."

The CITES permits in this case referred to "captive-bred" specimens without reference to the wild-caught monkeys that each shipment at issue contained. The use of "captive-bred," then, was false. The CITES permits also each contained the standardized notation "II(C)." The fact that each shipment also contained wild-caught monkeys also rendered the use of the II(C) notation false. The government does not contend that the phrase "no quota allocated" was false. There was no quota allocated by Indonesia

for the export of *macaca fascicularis* at the time of the shipments at issue in this case.

10. "Particularize the CITES Treaty section(s) or CITES permit instructions which make the statements [concerning 'crab-eating macaques' and '[c]aptive-bred specimens, no quota allocated'] applicable to the actual respective shipments from the Inquatex facility to LABS."

Indonesia was a party to CITES at the time of the relevant shipments and each shipment of crab-eating macaques in this case was governed by CITES. Each shipment utilized a standard form bearing the CITES logo next to the CITES full name (Convention on International Trade in Endangered Species of Wild Fauna and Flora). Each permit bore a CITES stamp upon issuance.

11. "Particularize the CITES Treaty section(s) or CITES permit instructions that indicate that the two statements [concerning 'crab-eating macaques' and '[c]aptive-bred specimens, no quota allocated'] refer to the contents of the shipments or a description of the shipments."

See Response to Request No. 9 above. The standard permit forms as to the four relevant shipments contain a large box (Part "VIII") which contains the descriptive notation (in English and Indonesian) "The above mentioned permittee is authorized to export the wild fauna and flora specified hereunder." (Emphasis supplied.) The "II(C)" notation on each of these forms appears under the smaller box within this box labeled (again in English and Indonesian) "Source." This standardized designation, as noted above, means that permission is given as to the export of monkeys "bred in captivity." An asterisk appears in the next box labeled

in both languages with "Total exported (Quota)." In Box IX ("Special Conditions"), below the above-described large box, the asterisk is explained on each of the permits at issue with the notation "captive bred specimens, no quota is allocated." The "captive-bred" notation is in keeping with the II(C) designation and the "no quota allocated" is in keeping with the fact that there was no quota allocated at that time. The CITES form as to each shipment also contained a notation at the bottom that the "Original [of the form] (Accompanies the specimen)."

12. "Particularize the CITES Treaty section(s) or CITES permit instructions which limit the statements [about 'crab-eating macaques' and '[c]aptive-bred specimens, no quota allocated' and the designation 'II(C)'] in such a way as to mean 'only' captive bred, as in exclusively captive bred."

Conference Resolution 9.3 (described above) defines "C" to mean "bred in captivity." The definition does not include any reference to wild-caught monkeys and/or to monkeys not bred in captivity, i.e., in the wild. The permits at issue in this case also did not refer in any way to the fact that the shipments which they authorized and with which they were associated contained wild-caught monkeys.

13. "Identify any United States and Indonesian agencies or authorities to whom the CITES permit applications were submitted and the CITES permits were submitted."

The government does not know currently with certainty the Indonesian agencies to which the CITES permit applications and the

CITES permits were submitted. The government notes, however, that the standard forms used in this case bore the notation next to the CITES logo "Ministry of Forestry of the Republic of Indonesia Directorate General of Forest Protection and Nature Conservation." In the United States, the CITES permits ultimately submitted to the Unites States Fish and Wildlife Service Division of Law Enforcement.

14. "Identify and particularize the Government theory that a nexus exists between the statements [about 'crab-eating macaques' and '[c]aptive-bred specimens, no quota allocated' and the designation 'II(C)'] and any function of a United States agency."

The United States Fish and Wildlife Service has been delegated the responsibility of enforcing CITES and, as a part of that responsibility, ensuring that shipments of CITES wildlife into the United States are legal and that the records that accompany the shipments are accurate. See, e.g., 16 U.S.C. § 1538(c)(1) (It is unlawful for any person subject to the jurisdiction of the United States to engage in any trade in any specimens contrary to the provisions of the [CITES] Convention. . . .") and 16 U.S.C. § 3372(d) ("It is unlawful for any person to make or submit any false record . . . or any false identification of, any . . . wildlife . . . . which has been transported . . . in foreign . . . commerce . . . .."). The words "captive-bred specimens" and the designation "II(C)" on a shipment which actually contains wild-caught monkeys renders the shipment illegal and the accompanying records false.

These violations are therefore within the jurisdiction of the United States Fish and Wildlife Service.

15. "Identify and particularize who placed the allegedly false information on the CITES permits."

The government does not know the identity of the specific individual in Indonesia who typed the CITES permits for the shipments at issue in this case. The government notes however, that, as to each shipment, the defendants received copies of the applicable CITES permits before each shipment took place.

16. "Identify and particularize the Government theory that the health certificate is one of the documents required by United States laws and regulations or Indonesian export-related laws or regulations."

Count One, paragraph 10 of the indictment alleges that "[c]ertain documents must also accompany and be presented with each [wildlife] shipment." No specific documents, however, are described in this paragraph. Later, in Count One, paragraph 14, the indictment alleges that the word "records" in Lacey Act Section 3372(d), "includes . . . health certificates." Count One later alleges that the defendants, in connection with each shipment, submitted false CITES permits and health certificates. See, e.g., Count One, ¶¶ 28, 31, 34, 37. It is not a part of the government's theory, then, and the government need not prove, that (as stated in the Request) "the health certificate is one of the documents required by United States laws and regulations or Indonesian export-related laws or regulations." Instead, the government has

alleged and must prove that the health certificates which Labs did submit were false. The government notes, however, that Title 50, Code of Federal Regulations, Section 14.52(c)(2) provides in pertinent part that to obtain clearance for the entry of a shipment into the United States, the importer must submit "[a]ll permits, licenses or other documents required by the laws and regulations of the United States." Similarly, Section 14.52(d) provides that the importer must provide "[a]ll permits or other documents required by the laws or regulations of any foreign country." Title 7, United States Code, Sections 2131-2159 ("The Animal Welfare Act") regulates, among other things, the transportation of animals in interstate and foreign commerce. Title 9, Code of Federal Regulations, Section 2.78(a) provides in pertinent part that "[n]o dealer . . . [or] broker . . . shall deliver to any intermediate handler or carrier for transportation, in commerce, or shall transport in commerce any . . . nonhuman primate unless the . . . nonhuman primate is accompanied by a health certificate executed and issued by a licensed veterinarian."

17. "Identify and particularize the United States or Indonesian law or regulation, or the health certificate instructions which limit the statement on the health certificate . . . [concerning captive-bred born at INQUATEX facility (Jakarta/Indonesia)'] in such a way to mean 'only' captive-bred, as in exclusively captive-bred."

The government is not currently aware of any Indonesian law or regulation which is specifically responsive to this request.

Section 3372(d) of The Lacey Act, 16 U.S.C. § 3372(d), provides in pertinent part that "[i]t is unlawful for any person to make or submit any false record, account, label for, or any false identification of, any . . . wildlife . . . which has been . . . imported, exported, transported, sold, purchased, or received from any foreign country; or . . . transported in interstate or foreign commerce." Health certificates containing the notation "captive-bredborn at INQUATEX facility" accompanied shipments at issue in this case. The shipments contained wild-caught monkeys, monkeys which, based on common sense alone, cannot if wild-caught be "captive-bredborn." The Health Certificates also did not contain any reference to wild-caught monkeys being part of the shipments.

18. "Identify any United States and Indonesian agencies or authorities to whom the health certificate was submitted."

The government is not currently aware of the specific Indonesian agencies or authorities to whom the health certificates were submitted. Upon entry into the United States, however, the broker who handled the transportation of the shipments from Chicago to South Carolina submitted the paperwork accompanying the shipments (including the health certificates) to any or all of the following agencies for inspection: the Unites States Fish and Wildlife Service, the United States Department of Agriculture and the United States Department of Public Health. The U.S. Fish and

Wildlife Service maintained copies of the health certificates in the files associated with the shipments.

19. "Identify and particularize the Government theory that a nexus exists between the statement . . . [concerning 'captive-bred born at INQUATEX facility (Jakarta/Indonesia)'] and any function of a United States agency."

Section 3372(d) of The Lacey Act, 16 U.S.C. § 3372(d), provides in pertinent part that "[i]t is unlawful for any person to make or submit any false record, account, label for, or any false identification of, any . . . wildlife . . . which has been . . . imported, exported, transported, sold, purchased, or received from any foreign country; or . . . transported in interstate or foreign commerce." Health certificates containing the notation "captive-bredborn at INQUATEX facility" accompanied shipments at issue in this case. Section 3375 of the Lacey Act provides in pertinent part that "[t]he provisions of this Act and any regulations issued pursuant thereto shall be enforced by the Secretary [of the Interior] . . . . Such Secretary may utilize by agreement . . . the . . . services . . . of any other Federal Agency [such as the U.S. Fish and Wildlife Service] . . . for purposes of enforcing this Act."

20. "Identify and particularize who placed the allegedly false information on the health certificates."

The government is not currently aware of the actual individual who placed the false information on the health certificates. The

name of the individual who certified the health certificates, however, appears on the face of the certificates.

21. "Defendant requests the particularization of the theory and identity of the victim of the fraudulent conduct."

The government does not have a "theory" about the victim of the defendants' fraudulent conduct because the "identity of the victim" is not as a part of the government's burden in this case. The government notes, however, that there are multiple victims from defendants' conduct which include: (1) the monkeys themselves; and (2) the exporters and importers who do comply with the law by submitting true and accurate documentation.

22. "Defendant requests the Government to identify which law makes the importation of the wild-caught *macaca fascicularis* a violation."

Counts Six through Nine of the indictment charge that Labs and Taub "did fraudulently and knowingly import into the United States certain merchandise contrary to law . . . , namely, wild-caught *Macaca fascicularis*, knowing the merchandise to have been imported into the United States contrary to law. . . ." The "contrary law" for purposes of Counts Six through Nine, is set forth in Paragraphs 12 through 14 of Count One. These paragraphs, which are incorporated by reference in Counts Six through Nine, provide as follows:

> 12. The Lacey Act, Title 16, United States Code, Section 3371 et seq., among other statutes, governs the importation of species included in Appendix II of CITES into the United States. Section 3372(d) of the Lacey Act provides in pertinent part that "[i]t is unlawful for any person to make

> or submit any false record, account, label for, or any false identification of, any . . . wildlife . . . which has been . . . imported, exported, transported, sold, purchased, or received from any foreign country; or . . . transported in interstate or foreign commerce."
>
> 13. The term "person," as used in the Lacey Act, includes corporations.
>
> 14. The "records" to which Section 3372 refers includes, among other documents, CITES permits and health certificates, and the labels or identifications contained therein.

The indictment does not allege and the government need not prove that there is a specific United States-based law that makes it illegal to import wild-caught *Macaca fascicularis* from Indonesia. The illegality charged in the indictment flows instead from the false nature of the importation documents, the defendants' fraudulent importation of the monkeys through the use of false documents, and the illegal importation of nursing mothers with unweaned young.

B. BILL OF PARTICULARS OF DAVID M. TAUB.

1. "[T]he identity of 'Person A' referenced in paragraph 6 of Counts One through Four of the Indictment."

Person A is Patrick Mehlman.

2. "[T]he identity of 'Person B' referenced in paragraph 6 of Counts One through Four of the Indictment."

Person B is Agus Darmawan.

3. "[T]he counts of the Indictment as to which Dr. Taub is alleged to be guilty, in whole or in part, as to 18 U.S.C. § 2."

The government is not clear as to what information Taub seeks through this request. Taub is not charged with specific violations of 18 U.S.C. ss 2 in the indictment. The government has not yet determined whether it will submit as part of the jury instructions Seventh Circuit Pattern Instruction No. 5.06 concerning acting through another or aiding and abetting responsibility.

4. "[T]he legal, statutory or regulatory basis for the allegation in paragraph 10 of Counts One through Four of the Indictment that '[c]ertain documents must . . . accompany and be presented with each shipment' of wildlife imported into the United States."

See 50 C.F.R. § Section 14.52(c)(2) provides in pertinent part that to obtain clearance for the entry of a shipment into the United States, the importer must submit "[a]ll permits, licenses or other documents required by the laws and regulations of the United States." Similarly, Section 14.52(d) provides that the importer must provide "[a]ll permits or other documents required by the laws or regulations of any foreign country."

5. "[T]he legal, statutory or regulatory basis for the allegation in paragraph 14 of Counts One through Four of the Indictment that the records referred to by section 3372 include CITES permits and/or health certificates."

Section 3372(d) of The Lacey Act, 16 U.S.C. § 3372(d), provides in pertinent part that "[i]t is unlawful for any person to make or submit any false record, account, label for, or any false

identification of, any . . . wildlife . . . which has been . . . imported, exported, transported, sold, purchased, or received from any foreign country; or . . . transported in interstate or foreign commerce." The health certificates were among the records submitted by Labs in connection with each of the four shipments. The health certificates each contained the false notation "captive-bredborn at INQUATEX facility."

6. **"[T]he particulars of the ''baksheesh' deal' referenced in paragraph 19 of Counts One through Four of the indictment including, without limitation, the identity of any person alleged to have made, accepted, or offered a bribe or bribes; the amount of any alleged bribe or bribes, the frequency of any alleged bribe or bribes; and what was given up or obtained as a result of any alleged bribe or bribes."**

See the responses to Labs Request Nos. 1-6 above.

7. **"[T]he LABS officer, agent, or employee alleged to have submitted the health certificates referred to in paragraphs 28, 31, 34, 37, and 38 of Counts One through Four of the Indictment."**

Labs used Tower Group as its broker in connection with the four shipments at issue. Labs employee Donna Jones submitted the documentation to Tower Group in connection with each shipment. The Tower Group then gave the documents to agent Anthony P. Carbatta. (The government has been informed that Mr. Carbatta is no longer associated with Tower Group.) Mr. Carbatta then gave the documents to the United States Fish and Wildlife.

8. "[T]he LABS officer, agent, or employee alleged to have submitted the CITES permits referred to in paragraphs 27, 29, 32, 35, and 38 of Counts One through Four of the Indictment."

See response to Taub Request No. 7 above. The government also notes that the Labs files, at the time of the United States Fish and Wildlife 1997 inspection of the facility, contained the following relevant documentation as to the last three of the four O'Hare shipments:

Shipment Date	**Documents**
04/10/97	(a) CITES permit stating "captive-breed." (b) Health Certificate stating "captive-bred." (c) Observation in shipping notes that shipment contained mothers nurturing their young. (d) List of primates in shipment with DOBs.
05/01/97	(a) CITES permit stating "captive-breed." (b) Health Certificate stating "captive-bred." (c) List of primates in shipment with DOBs.
05/30/97	(a) CITES permit stating "captive-breed." (b) Health Certificate stating "captive-bred." (c) List of primates in shipment with DOBs.

9. "[T]he person, agency or entity to whom the allegedly false CITES permits and/or health certificates referred to in paragraph 38 of Counts One through Four of the Indictment are alleged to have been submitted."

The United States Fish and Wildlife Service received the original CITES permits accompanying the shipments and at least copies of the health certificates accompanying each shipment. Other agencies which reviewed the paperwork at the time the shipments entered the United States through O'Hare may also have received copies of the shipping and/or importation documentation.

10. "[T]he primates alleged to have been 'productive wild-caught crab-eating macaques' (Indictment, Count Five, ¶ 3)."

The early focus of then-Labs employee Patrick Mehlman was to determine the projected productivity levels of the Inquatex colony. This focus on productivity permeates the Labs-based documentation of the negotiations for the purchase of the colony. See, e.g., Labs Nos. 05204 (Labs wants parent breeding stock of 533 adults within 6 months); 05210 (handwritten notation "533 adult breeders" on demographic profile); 06186 (Shipping Protocol divided between "parent breeders" and "colony-bred" offspring); 06215 (letter from Stern to Darmawan in which Stern states "[w]e understand the need to send bred animals together with the breeders."). These documents establish that Labs viewed the adult monkeys in the colony as "breeders." The Purchase Agreement set forth the requirement that each shipment was to contain 1.5 juvenile monkeys

for each adult monkey shipped. Each shipment, then, contained adult monkeys which, in Labs's view, contained productive monkeys.

The number of wild-caught monkeys in each shipment can be determined by comparing the list containing the dates of birth of each monkey in the colony with the tattoo numbers of the monkeys involved in each shipment. Labs well knew that Darmawan created his colony in 1991. Thus, any monkey 6 years old or older in the colony was wild-caught and not captive-bred. The fact that each shipment contained a mix of wild-caught and captive-bred monkeys (and that the defendants knew it) is also apparent from the way in which Labs described the monkeys in each shipment. The Labs documentation categorizes the monkeys in each shipment as either "adults" or as "captive breds." See, e.g., Labs Nos. 05416, 05554.

11. "[T]he primates alleged to have been 'nursing mothers with young' (Indictment, Counts Six through Nine, ¶ 9)."

The tattoo lists for the final three O'Hare shipments reflected the number of nursing mothers and young in each shipment. In addition, Labs documentation demonstrates that the defendants were well aware of and approved the inclusion of nursing mothers and unweaned young in the shipments. See, e.g., Labs Nos. 05565, 05585, 05624, 05635. The government also notes that Taub admitted to the United States Fish and Wildlife Inspector during the 1997 inspection of the Labs facility that he knew that Labs had shipped nursing mothers with unweaned young. Similarly, during Mehlman's

wrongful discharge trial, Stern testified that nursing mothers and unweaned young had been shipped.

12. "[T]he particulars of the alleged fraud referred to in paragraph 2 of Counts Six through Nine of the Indictment."

The fraud alleged in Counts Six through Nine occurred when Labs and Taub imported monkeys in four separate shipments through the use of documents which misrepresented the true source of the monkeys and the contents of each shipment. The fraud was significant because the shipping records concealed the fact that the shipments contained monkeys which had not been approved for export from Indonesia, i.e., productive wild-caught monkeys, and which were protected from export by Indonesian law.

13. "[T]he victim of the alleged fraud referred to in paragraph 2 of Counts Six through Nine of the Indictment."

See the response to Labs Request No. 21 above.

14. "[T]he object of the alleged fraud referred to in paragraph 2 of Counts Six through Nine of the Indictment."

The object of the fraud alleged in Counts Six through Nine was to transfer the newly-purchased Inquatex colony from Indonesia to the United States.

C. BILL OF PARTICULARS OF CHARLES J. STERN AND WILLIAM CURTIS HENLEY III.

1. Role of Stern and Henley in Importation of Monkeys.

The documents previously produced by Labs and Bionetics in this proceeding are replete with examples of the actions taken by Stern and Henley about the importation of the Inquatex colony. These documents show that Stern and Henley, among other things, participated in the importation of the Inquatex colony through: (a) their active participation in the negotiations to purchase the colony including meeting with Darmawan in person in 1996; (b) their receipt of memoranda prepared by Patrick Mehlman describing the origins and demographics of the colony; (c) their frequent if not daily receipt of copies of the communications Taub sent to or received from Darmawan including CITES permits; (d) their review and approval of letters Taub drafted to Darmawan about the purchase of the colony and the shipment of the monkeys within it; (e) their direct communication with Darmawan about certain aspects of the transaction; (f) their approval of the payment of the monthly maintenance fees to Inquatex while the shipments were ongoing; and (g) their direction of the manner in which the shipments would occur.

2. Knowledge of Stern and Henley about Wild-Caught Monkeys.

The knowledge of Stern and Henley about the wild-caught nature of the monkeys in the Inquatex colony is also apparent from the documents Labs and Bionetics produced earlier in this case. See,

e.g., Labs Nos. 05281 (attachment to Mehlman memo which reflects that Inquatex had 668 "conditioned macaques (the ones from the wild)" and "breed" macaque"); 06215 (letter from Stern to Darmawan in which Stern stated "[w]e understand the need to send bred animals together with the breeders"); 06254 (letter from Mehlman to Stern and Henley in which Mehlman stated that, unlike the Inquatex deal, a deal for a Chinese colony "follow[ed] the spirit of CITES, i.e., we are only exporting purpose bred animals, not wild caught").

Darmawan also talked with Stern and Henley about the wild-caught nature of the monkeys in his colony during the 1996 visit. During the meeting, for example, Stern asked Darmawan how he was going to export feral monkeys to the United States knowing there was a ban. Mehlman also discussed with Stern and Henley his concerns that Darmawan would be able to get a CITES permit for the Inquatex colony.

Respectfully submitted,

PATRICK J. FITZGERALD
United States Attorney

By: _____
DIANE MacARTHUR
Assistant U.S. Attorney
219 South Dearborn Street
Chicago, Illinois 60604
(312) 353-5352

Minute Order Form (06/97)

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Ruben Castillo	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	02 CR 312 - all	DATE	1/27/2003
CASE TITLE	USA vs. Labs of Virginia, et al.		

MOTION: [In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

DOCKET ENTRY:

(1) ☐ Filed motion of [use listing in "Motion" box above.]

(2) ☐ Brief in support of motion due _____.

(3) ☐ Answer brief to motion due_____. Reply to answer brief due_____.

(4) ☐ Ruling/Hearing on _____ set for _____ at _____.

(5) ■ Status hearing re-set for 2/6/2003 at 9:30 A.M..

(6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(7) ☐ Trial[set for/re-set for] on _____ at _____ .

(8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.

(9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ Local Rule 41.1 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).

(10) ■ [Other docket entry] Status hearing set for 1/31/2003 is vacated. Ruling on all pending motions reset to 2/6/2003 at 9:30 a.m.

(11) ☐ [For further detail see order (on reverse side of/attached to) the original minute order.]

No notices required, advised in open court.

No notices required.

✓ Notices mailed by judge's staff.

Notified counsel by telephone.

Docketing to mail notices.

Mail AO 450 form.

Copy to judge/magistrate judge.

RO courtroom deputy's initials

Date/time received in central Clerk's Office

7 number of notices

JAN 28 2003 date docketed

docketing deputy initials

1/27/2003 date mailed notice

RO mailing deputy initials

Document Number

85

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS

In the Matter of

United States of America

v.

Case Number: 02 CR 312

Judge: Ruben Castillo

Magistrate Judge Mason

Labs of Virginia, Inc., et al.

APPEARANCES ARE HEREBY FILED BY THE UNDERSIGNED AS ATTORNEY(S) FOR:

Labs of Virginia, Inc.

Charles J. Stern

William Curtis Henley III and David M. Taub

(A)

SIGNATURE

NAME

FIRM

STREET ADDRESS

CITY/STATE/ZIP

TELEPHONE NUMBER | FAX NUMBER

E-MAIL ADDRESS

IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE)

MEMBER OF TRIAL BAR? YES ☐ NO ☐

TRIAL ATTORNEY? YES ☐ NO ☐

(B)

SIGNATURE

NAME James G. Richmond

FIRM Greenberg Traurig, P.C.

STREET ADDRESS 77 West Wacker Drive, Suite 2500

CITY/STATE/ZIP Chicago, Illinois 60601

TELEPHONE NUMBER 312-456-8400 | FAX NUMBER 312-456-8435

E-MAIL ADDRESS richmondj@gtlaw.com

IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE) 06206371

MEMBER OF TRIAL BAR? YES ☒ NO ☐

TRIAL ATTORNEY? YES ☐ NO ☒

DESIGNATED AS LOCAL COUNSEL? YES ☒ NO ☐

(C)

SIGNATURE

NAME

FIRM

STREET ADDRESS

CITY/STATE/ZIP

TELEPHONE NUMBER | FAX NUMBER

E-MAIL ADDRESS

IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE)

MEMBER OF TRIAL BAR? YES ☐ NO ☐

TRIAL ATTORNEY? YES ☐ NO ☐

DESIGNATED AS LOCAL COUNSEL? YES ☐ NO ☐

(D)

SIGNATURE

NAME

FIRM

STREET ADDRESS

CITY/STATE/ZIP

TELEPHONE NUMBER | FAX NUMBER

E-MAIL ADDRESS

IDENTIFICATION NUMBER (SEE ITEM 4 ON REVERSE)

MEMBER OF TRIAL BAR? YES ☐ NO ☐

TRIAL ATTORNEY? YES ☐ NO ☐

DESIGNATED AS LOCAL COUNSEL? YES ☐ NO ☐

INSTRUCTIONS FOR COMPLETING APPEARANCE FORM

1. General Information

Local Rule 83.17 provides that once an attorney has filed an appearance form on behalf of a party, no additional appearances or substitutions may he made without leave of court. The Rule also provides that the attorney may not withdraw without leave of court. Therefore, if more than one attorney is going to represent the party or parties shown on the front of this form, each should complete the attorney appearance section of the form.

This form is designed to permit the filing of appearances by up to four attorneys who represent the same party or parties. If more than four attorneys representing the same party or parties wish to file appearances, additional forms should be used and the letters (A), (B), (C), and (D) indicating the attorneys should be altered to (E), (F), (G), (H), respectively for the fifth through the eighth attorneys, etc.

2. Listing of Parties for Whom the Attorney is Appearing

The names of each of the parties represented by the attorney(s) filing the appearance are to be listed on the lines immediately below the words "Appearances are hereby filed by the undersigned as attorney(s) for:". The type of party, *e.g.*, plaintiff, defendant, third party plaintiff, should follow each party. If all of the parties are of the same type, *e.g.*, all parties represented are plaintiffs, then the type of party can be shown at the end of the listing of parties.

3. Completing Attorney Information

The information requested should be completed for each attorney filing an appearance. Where two or more attorneys are from the same firm, only the first listed from the firm need complete the information for firm name, street address, and city/state/ZIP. The others may indicate "Same as (letter designation of first attorney)."

4. Identification Number

Attorneys who are members of the Illinois bar should enter the identification number issued to them by the Illinois Attorney Registration and Disciplinary Commission (ARDC). Attorneys who are not members of the Illinois bar should leave this item blank.

5. Attorney (A) and Notices

Where more than one attorney is listed on the appearance form, all listed will be entered on the docket of the Clerk, as attorneys of record. However, notices will only be mailed to the attorney shown in box (A) on the form except where local counsel has been designated pursuant to Local Rule 83.15 (see below). The attorney is responsible for notifying all other attorneys included on the form of the matter noticed.

Where appearances are filed on behalf of attorneys representing a state or local government, *e.g.*, states attorney, corporation counsel, the persons filing the appearance may wish to list the name of the assistant who is in active charge of the case in box (A) and the appearance of the head of the agency, *e.g.*, attorney general, corporation counsel, or any other assistant assigned to such cases in subsequent boxes. In that way, the assistant in active charge will receive notice.

6. Appearances and Trial Bar Membership

All attorneys filing appearances must indicate whether or not they are members of the trial bar of this Court and whether or not they are the attorney who will try the case in the event that it goes to trial.

In criminal actions, an attorney who is not a member of the trial bar may not file an individual appearance. Pursuant to Local Rule 83.12, a member of the trial bar must accompany such attorney and must also file an appearance.

In civil actions, an attorney who is not a member of the trial bar should designate the trial bar attorney who will try the case in the event that it goes to trial. If a trial bar attorney is not listed on the initial appearance and the case goes to trial, a trial bar attorney, pursuant to Local Rule 83.17, must obtain leave of court to file an appearance.

7. Designation of Local Counsel

Pursuant to Local Rule 83.15, an attorney who does not have an office in this District may appear before this Court "only upon having designated, at the time of filing his/her initial notice or pleading, a member of the bar of this Court having an office within this District upon whom service of papers may be made." No attorney having an office in this District may designate local counsel. No attorney may designate more than one attorney as local counsel. Notices will be mailed by the Clerk's Office to both the attorney shown in box (A) and the attorney designated as local counsel.

8. Parties are Required to Consider Alternative Dispute Resolution

Pursuant to 28 U.S.C. §652(a), all litigants in civil cases pending before this Court are directed to consider the use of an alternative dispute resolution process at the earliest appropriate stage of the litigation. Such process may include mediation, early neutral evaluation, minitrial, or arbitration.

9. Local Rule 3.2 Requires Notification As To Affiliates

In every action in which an affiliate of a public company is a party, counsel for such party shall file with the Clerk a statement listing each public company of which such party is an affiliate. Where such party is a plaintiff the statement shall be filed with the complaint. Where such party is a defendant the statement shall be filed with the answer or motion in lieu of answer.

SERVICE LIST

I, James G. Richmond, an attorney, hereby certify that on this 31st day of January, 2003, a true and correct copy of the foregoing Appearance of James G. Richmond for Defendants was served by depositing same in the U.S. Mail Depository at 77 West Wacker Drive, Chicago, Illinois, on the following:

Diane MacArthur, Esq.
Assistant United States Attorney
219 South Dearborn Street
Chicago, IL 60604

Michael L. Fayad, Esq.
GREENBERG TRAURIG, LLP
800 Connecticut Avenue, N.W.
Suite 500
Washington, DC 20006

Samuel J. Buffone, Esq.
Kelly B. Kramer, Esq.
ROPES & GRAY
One Franklin Square
1301 K Street, N.W.
Suite 800 East
Washington, DC 20005-3333

Gerald A. Feffer, Esq.
David M. Zinn, Esq.
WILLIAMS & CONNOLLY
725 Twelfth Street, N.W.
Washington, D.C. 20005

Minute Order Form (06/97)

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Ruben Castillo	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	02 CR 312 - all	DATE	2/3/2003
CASE TITLE	USA v. Labs of Virginia, et al.		

MOTION: [In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

DOCKET ENTRY:

(1) ☐ Filed motion of [use listing in "Motion" box above.]

(2) ☐ Brief in support of motion due _____.

(3) ☐ Answer brief to motion due_____. Reply to answer brief due_____.

(4) ☐ Ruling/Hearing on _____ set for _____ at _____.

(5) ☐ Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(7) ☐ Trial[set for/re-set for] on _____ at .

(8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.

(9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ Local Rule 41.1 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).

(10) ■ [Other docket entry] Defendant's oral request to reset the status hearing is granted. Status hearing reset to 2/12/03 at 1:00 p.m. The parties do not need to appear for the hearing on 2/6/03.

(11) ☐ [For further detail see order (on reverse side of/attached to) the original minute order.]

No notices required, advised in open court.

No notices required.

✓ Notices mailed by judge's staff.

Notified counsel by telephone.

Docketing to mail notices.

Mail AO 450 form.

Copy to judge/magistrate judge.

8 number of notices

FEB - 4 2003 date docketed

IS docketing deputy initials

2/3/2003 date mailed notice

RO mailing deputy initials

Document Number

87

RO courtroom deputy's initials

U.S. DISTRICT COURT CLERK 03 FEB -3 PM 3:09

Date/time received in central Clerk's Office

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA	)	
	)	No. 02 CR 0312
v.	)	
	)	Judge Castillo
LABS OF VIRGINIA, INC.	)	Magistrate Judge Bobrick
DAVID M. TAUB	)	
CHARLES J. STERN, and	)	
WILLIAM CURTIS HENLEY III	)	

DEFENDANTS' NOTICE OF FILING FIRST AMENDED REQUEST FOR INTERNATIONAL JUDICIAL ASSISTANCE

Defendants, by undersigned counsel, respectfully submit this Notice to inform the Court that Defendants are filing a First Amended Request for International Judicial Assistance. On July 1, 2002, Defendants jointly filed the following documents: 1) Motion Requesting Issuance of Letters Rogatory and Memorandum of Law in Support and 2) Request for International Judicial Assistance. The Request for International Judicial Assistance (the "Letters Rogatory") includes a list of individuals to answer questions, areas of inquiry and related questions, and document requests. During a hearing on January 10, 2003, the Court granted Defendants' Motion Requesting Issuance of Letters Rogatory and requested the parties to attempt to agree on a more concentrated set of letters rogatory regarding the individuals to be deposed and the areas of inquiry for depositions and document requests.

The parties attempted to reach an agreement regarding the scope of the Letters Rogatory. During a hearing on February 12, 2003, the Court ordered that the scope of the Letters Rogatory, as presented in Defendants' letter to the Government dated January 17, 2003, was acceptable to the Court, with one exception to the list of subject matter areas of inquiry. The parties have

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attempted to reach an agreement regarding the description of that subject matter area, which relates to requests by Inquatex to the Indonesian Government to obtain permission to export the Inquatex colony (listed as item number 4 in the areas of inquiry set forth in the Request for International Judicial Assistance). Regarding that subject matter, the Government has informed Defendants that it does believe it is necessary to refer to correspondence or to refer to the Declaration of Adi Susmianto. In response to the Government's comments, Defendants have revised item number 4 to refer to correspondence described in Schedule B which is attached to the Request for International Judicial Assistance. Defendants contend that this revision comports with the Court's order.

During the February 12, 2003 hearing, the Court further ordered that Defendants file revised Letters Rogatory. By this Notice, the Defendants advise the Court of the filing of amended Letters Rogatory, including related schedules listing documents, deponents, and questions. The Letters Rogatory are attached hereto as Attachment 1.

Based on the foregoing, Defendants respectfully request this Court to accept Defendants' First Amended Request for International Judicial Assistance, execute the attached Letters Rogatory, and require the Clerk of the Court to execute and append the seal of this Court to the Letters Rogatory.

Respectfully submitted,

Michael L. Fayad

By _____
Attorney for Defendant LABS of Virginia, Inc.

GREENBERG TRAURIG, LLP
800 Connecticut Avenue, N.W.
Suite 500
Washington, D.C. 20006
(202) 331-3100

Samuel J. Buffone

By _____
Attorney for Defendant David M. Taub

ROPES & GRAY
One Franklin Square
1301 K Street, N.W.
Suite 800 East
Washington, DC 20005-3333
(202) 626-3900

Gerald A. Feffer

By _____
Attorney for Charles J. Stern and
William Curtis Henley III

WILLIAMS & CONNOLLY
725 Twelfth Street, N.W.
Washington, D.C. 20005
(202) 434-5000

Local counsel:
James G. Richmond
GREENBERG TRAURIG, P.C.
77 West Wacker Drive
Suite 2500
Chicago, Illinois 60601
(312) 456-8400

February 20, 2003

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of February, 2003, a true and correct copy of the foregoing Defendants' Notice of Filing First Amended Request for International Judicial Assistance, including all attachments, was served by hand delivery on the following:

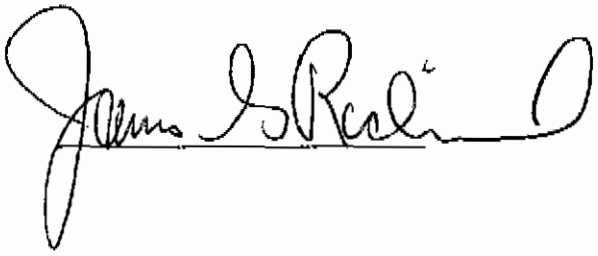
Diane MacArthur, Esq.
Assistant United States Attorney
219 South Dearborn Street
Chicago, IL 60604

and by United States first class mail, postage prepaid, on the following:

Michael L. Fayad, Esq.
GREENBERG TRAURIG, LLP
800 Connecticut Avenue, N.W.
Suite 500
Washington, DC 20006

Samuel J. Buffone, Esq.
Kelly B. Kramer, Esq.
ROPES & GRAY
One Franklin Square
1301 K Street, N.W.
Suite 800 East
Washington, DC 20005-3333

Gerald A. Feffer, Esq.
David M. Zinn, Esq.
WILLIAMS & CONNOLLY
725 Twelfth Street, N.W.
Washington, D.C. 20005



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ATTACHMENT 1

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA	)	
	)	No. 02 CR 0312
v.	)	
	)	Judge Castillo
LABS OF VIRGINIA, INC.	)	Magistrate Judge Bobrick
DAVID M. TAUB	)	
CHARLES J. STERN, and	)	**LETTERS ROGATORY**
WILLIAM CURTIS HENLEY III	)	
	)	

REQUEST FOR INTERNATIONAL JUDICIAL ASSISTANCE

Sender:

United States District Court
Northern District of New York
Eastern Division
219 South Dearborn Street
Chicago, Illinois 60604
U.S.A.

To:

Appropriate Judicial Authority of Indonesia

The United States District Court, Northern District of Illinois presents its compliments to the appropriate judicial authority of Indonesia, and requests international judicial assistance to obtain evidence to be used in a criminal proceeding before this Court in the above-captioned matter. An Indictment has been filed in this matter.

This Court requests the assistance described herein as necessary in the interests of justice. The assistance requested is that the appropriate judicial authority of Indonesia compel the production of documents from the below-named individuals and compel the appearance of the

below-named individuals to give evidence and answer questions upon oral deposition as outlined below:

Requested Deponents

1) Adi Susmianto
Director of the Directorate of Biodiversity Conservation
Department of Forestry
Gedung Manggala Wanabakti
Block I, 8th floor
General Gatot Subroto Street
Jakarta, Indonesia

2) Representative of the Department of Agriculture who can provide information and testimony regarding the issuance of the health certificates for the Inquatex colony exported to the United States.

3) Dondin Sajuthi, Ph.D.
Department of Education and Culture
Center of Primate Studies
Research Institute of Bogor Institute of Agriculture
(Primate Research Center, Bogor Agricultural University)
Lodaya Street II No. 3
Bogor 16151 Indonesia
Phone: (0251) 320417, 313637
Fax: (0251) 360712

4) Agus Darmawan
President, Indonesia Aquatics Export CV
Inquatex Primates Division
P.O. Box 4342
Jakarta 11110, Indonesia
Phone: (021) 567 1952
Fax : (021) 566 2093

5) Such other person that the Indonesian Department of Forestry or Department of Agriculture may designate.

FACTUAL BACKGROUND

On April 2, 2002, an Indictment was issued against Defendants LABS of Virginia, Inc., David M. Taub, Charles J. Stern, and William Curtis Henley III (collectively, the "Defendants") by a grand jury in Chicago, Illinois. Defendant LABS is in the business of raising, breeding,

managing, and providing animals to Government and private organizations for purposes of bio-medical research.

The charges in the Indictment arise out of a transaction between LABS and Indonesian Aquatics Export CV ("Inquatex"), a company located in Indonesia. In particular, the Indictment concerns alleged violations of federal statutes arising out of LABS' importation of a colony of monkeys consisting of approximately 1,300 cynomolgus macaques from Indonesia beginning in February 1997. The importation of the colony was accomplished by six separate shipments in 1997 and 1998, the first four of which arrived in the United States at Chicago. It is these four shipments that are the subject of the Indictment.

The Indictment alleges the following: Counts One through Four of the Indictment allege that Defendants LABS and Taub knowingly submitted false records related to the description of the monkeys with each of the four shipments in violation of 16 U.S.C. §§ 3372(d) and 3373(d)(3)(A)(i); Count Five of the Indictment alleges that all Defendants knowingly imported monkeys and in the exercise of due care should have known that the importation violated a foreign law in violation of 16 U.S.C. §§ 3372(a)(2)(A) and 3373(d)(2); Counts Six through Nine allege that Defendants LABS and Taub knowingly and fraudulently imported the four shipments of the monkeys contrary to law in violation of 18 U.S.C. § 545; and Counts Ten through Twelve allege that Defendants LABS and Taub knowingly imported three shipments of monkeys and in the exercise of due care should have known that the importation violated a United States regulation allegedly governing the shipments of nursing mothers with young in violation of 16 U.S.C. §§ 3372(a)(1)(A) and 3373(d)(2). Defendants deny all of the charges and are defending against them.

In accordance with Rule 16 of the of the Federal Rules of Criminal Procedure and Rule 16.1 of the Local Rules of the Northern District of Illinois, the United States Attorney's Office in Chicago, Illinois provided Defendants with copies of documents that constitute some of the government's evidence against the Defendant. The Court understands that after reviewing these documents and the Indictment, the Defendants believe that there are individuals located in Indonesia that possess additional documents or have information that is relevant to the subject matter involved in the pending action against defendants. Specifically, Defendants seek documents or information from individuals in Indonesia regarding the following subjects:

1) Indonesian laws, regulations and decrees and decisions related to Decree No. 26/Kpts-11/94 regarding the export of macaques, including export quotas, and any communications between the United States and the Indonesian Government regarding Indonesian laws and regulations, decrees and decisions related to Decree No. 26/Kpts-11/94.

2) Communications between LABS, Inquatex, and/or the Indonesian Government about the colony of *Macaca fascicularis* ("the colony") and legal requirements for the export and import of the colony including the shipment of nursing mothers and unweaned infants.

3) Demographics and ages of the monkeys in the colony that resided at Inquatex's facilities.

4) Requests by Inquatex to the Indonesian Government to obtain permission to export the Inquatex colony, including documents referred to in Schedule B (attached hereto), CITES permits, health certificates, exceptions to Indonesian laws and decrees, and responses to such requests.

5) Examination of the colony by any veterinarian, including a veterinarian from Boger University.

6) Review, approval, and issuance of the permission to export the colony, including CITES permits and health certificates.

7) Purpose of the health certificates.

8) Payments or offers of payments made by or on behalf of Mr. Darmawan or Inquatex to Indonesian government officials that relate to the permission to export or export of the Inquatex colony.

However, none of the individuals who may have knowledge of the above-described subjects is a party to the case, and this Court does not have jurisdiction over any such individuals. As such, the Court is precluded from compelling the production of information possessed by the individuals.

REQUESTS FOR DOCUMENTS

This Court requests the appropriate judicial authority in Indonesia to compel the production of the documents listed in Schedule A (attached).

DEPOSITIONS

This Court requests the appropriate judicial authority in Indonesia to compel the appearance of the requested deponents listed in Schedule B of this Letter of Request to give evidence and answer questions upon the subject areas attached as Schedule C.

PROCEDURE

Defendants request that: (1) the witnesses are examined under oath or affirmation to be administered by a person authorized to administer oaths in accordance with the federal law of the

United States of America or local law; (2) they receive permission to have a representative appear before the court to examine, cross-examine and re-examine the witness, as necessary; (3) they are notified, at the address listed below, of the date, time and place of the hearing; (4) the examination is produced in writing, verbatim, by an authorized court reporter in question-answer format; (5) the examination is authenticated by the person recording the deposition; and (6) the deposition transcript and any documents produced at the deposition are returned to the Defendants' attorney at the following address:

James G. Richmond, Esq.
GREENBERG TRAURIG, P.C.
77 West Wacker
Suite 2500
Chicago, Illinois 60601
U.S.A.

RECIPROCITY

This Court remains ready and willing to fulfill the same request by the appropriate judicial authority of Indonesia in a similar case when required.

REIMBURSEMENT FOR COSTS

This Court expresses its willingness to reimburse the appropriate judicial authority of Indonesia for costs incurred in executing this letter.

IT IS ORDERED that the Clerk of the Court is hereby directed to append to these Letters Rogatory the seal of this Court and to certify my signature and office.

WITNESS, the Honorable Ruben Castillo, District Judge of the United States District Court for the Northern District of Illinois, the ____ day of _____ 2003.

Ruben Castillo, U.S.D.J.
United States District Court
Northern District of New York
219 South Dearborn Street
Chicago, Illinois 60604
U.S.A.

I, Michael W. Dobbins, Clerk of the United States Court for the Northern District of Illinois, on this ____ day of _____ 2003, hereby append the seal of this Court and certify that the Honorable Ruben Castillo, who signed these Letters Rogatory, is a United States District Judge in and for the Northern District of Illinois.

Michael W. Dobbins
Clerk of Court
United States District Court
Northern District of New York
219 Dearborn Street
Chicago, Illinois 60604
U.S.A.

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LETTERS ROGATORY REQUEST
Schedule A: Documents

I. DOCUMENTS

A. Indonesian Laws, Regulations and Decrees:

1. All decrees, laws, regulations, rules, interpretive opinions, or policies of the Minister of Forestry, or any other Indonesian government body or agency, relating to the export or transport of Long Tail Macaque (*Macaca fascicularis*) from January 1990 through December 1998, including Decree 26/Kpts-II/94 and quotas established for the export of *Macaca fascicularis* .

2. All decrees, laws, regulations, rules, interpretive opinions, or other government announcements from 1989 to the present establishing quotas, issuing permits, or issuing health certificates for the export of *Macaca fascicularis*, including, but not limited to wild-caught, parent stock, or captive-bred *Macaca fascicularis*.

B. Department of Forestry, or the appropriate government agency documents.

1. All documents relating to the export of the Inquatex Colony, which occurred in 1997, to or from any of the following:

a. Agus Darmawan, CV INQUATEX-PRIMATES DIVISION, P.O. Box 4342 Jakarta 11110, Indonesia.

b. Department of Forestry, Director General of the Forest Protection and Nature Conservation, Gedung Manggala Wanabakti Block I, 8th floor, General Gatot Subroto Street, Jakarta, Indonesia.

c. The Director of Conservation, Supervision Support, Nature and Conservation of Flora and Fauna, Gedung Manggala Wanabakti, 7th floor, General Gatot Subrota Street, Jakarta, Indonesia

d. The Director of Support of Regional Nature Protection and Conservation of Flora and Fauna, Gedung Manggala Wanabakti, 7th floor, General Gatot Subrota Street, Jakarta, Indonesia

e. Secretary General of Forest Observation and Nature Conservation, Department of Forestry, Gedung Manggala Wanabakti, Jakarta.

f. Any employee of the Department of Forestry.

g. Dondin Sajuthi, Ph.D., Department of Education and Culture, Center of Primate Studies, Research Institute of Bogor Institute of Agriculture (Primate Research Center, Bogor Agricultural University), Lodaya Street II No. 3, Bogor 16151, Indonesia, Phone: (0251) 320417, 313637, Fax: (0251) 360712

2. All applications, documents, or correspondence requesting CITES permits, including documents submitted by or on behalf of Agus Darmawan and/or Inquatex, and all CITES permits issued concerning the

export of the Inquatex colony of *Macaca fascicularis* beginning in January, 1996.

3. All applications, documents, or correspondence requesting permits or approvals and all permits or approvals issued for the export of unproductive parent stock Cynos from 1994 until the present.

4. All internal memoranda relating to the decision to permit Mr. Darmawan and/or Inquatex to export the Cynos.

5. All documents related to the inspection of the Cynos by a veterinarian at the request of the Department of Forestry.

6. All documents that in any way relate to payments or offers of payments by or on behalf of Mr. Darmawan or Inquatex to Indonesian government officials or employees related to the issuance of CITES permits for the Cynos or the export of the Cynos to the United States.

C. Department of Agriculture, National Quarantine of Agriculture, Soekarno Hatta Quarantine Center for Domestic Animals.

1. All documents that in any way relate to the examination of each of the first four shipments of Mr. Darmawan's and/or Inquatex's Cynos to the United States.

2. All documents that in any way relate to the health certificate issued for each of the first four shipments of Mr. Darmawan's and/or Inquatex's Cynos to the United States.

3. All documents that in any way relate to payments or offers of payments by or on behalf of Mr. Darmawan or Inquatex to Indonesian government officials or employees related to the issuance of the health certificates for Mr. Darmawan's and/or Inquatex's Cynos which were shipped to the United States.

LETTERS ROGATORY REQUEST
Schedule B: Depositions

II. DEPOSITIONS

A. Indonesian Government Officials.

1. Adi Susmianto
Director of the Directorate of Biodiversity Conservation
Department of Forestry
Gedung Manggala Wanabakti
Block I, 8th floor
General Gatot Subroto Street
Jakarta, Indonesia

or the designated representative(s) of the Indonesian Department of Forestry who can provide information and testimony regarding the following:

(i) reviewing, considering, or approving applications and requests for CITES permits and reviewing, approving, completing, issuing, or transmitting CITES permits;

(ii) the letter and request of Agus Darmawan, dated July 5, 1996, to the Director of Support of Regional Nature Protection and Conservation of Flora and Fauna ("PHPA");

(iii) the response to Mr. Darmawan from PHPA, dated July 15, 1996;

(iv) letter from Mr. Darmawan to PHPA, dated August 9, 1996;

(v) letter from Dondin Sajuthi, Ph.D. NIP (Employee Registration Number 130.536.684) to the Secretary General of

Forest Observation and Nature Conservation, dated September 12, 1996; [1]

(vi) applications, correspondence or documents from Mr. Darmawan requesting CITES permits for the export of the Cynos from the Inquatex colony dated 1996 to the present, and the review, issuance and approval of the CITES permits allowing export of Mr. Darmawan's and/or Inquatex's colony; and

(vii) Internal memoranda relating to the decision to permit Mr. Darmawan and/or Inquatex to export the Cynos; and

(viii) payments or offers of payments made by on behalf of Mr. Darmawan or Inquatex to Indonesian government officials or employees to obtain permission to export the Cynos.

2. Representative(s) of the Department of Agriculture, who can provide information and testimony regarding the issuance of the health certificates for the Inquatex colony exported to the United States and who was or were responsible for, had knowledge of, or have knowledge of the following:

(i) reviewing, considering, or approving health certificates for Mr. Darmawan's and/or Inquatex's Cynos exported to the United States and reviewing, approving, completing, issuing, or transmitting the health certificates;

[1] Copies of the correspondence described in II.A.1. (ii)-(v) are included in Exhibits 1 through 4 attached to these Schedules.

(ii) requests from Mr. Darmawan and responses to Mr. Darmawan regarding the health certificates to export the Inquatex colony; and

(iii) internal memoranda relating to the decision to permit Mr. Darmawan and/or Inquatex to export the Cynos.

B. Other Indonesian Citizens.

1. Agus Darmawan.

2. Dondin Sajuthi, Ph.D. NIP (Employee Registration Number 130.536.684).

3. Such other person that the Indonesian Department of Forestry or Department of Agriculture may designate.

LETTERS ROGATORY REQUEST
Schedule C: Questions

III. AREAS OF INQUIRY

A. Indonesian laws, regulations and decrees and decisions related to Decree No. 26/Kpts-11/94 regarding the export of macaques, including export quotas, and any communications between the United States and the Indonesian Government regarding Indonesian laws and regulations, decrees and decisions related to Decree No. 26/Kpts-11/94.

B. Communications between LABS, Inquatex, and/or the Indonesian Government about the colony of *Macaca fascicularis* ("the colony") and legal requirements for the export and import of the colony, including the shipment of nursing mothers and unweaned infants.

C. Demographics and ages of the monkeys in the colony that resided at Inquatex's facilities.

D. Requests by Inquatex to the Indonesian Government to obtain permission to export the Inquatex colony, including documents referred to in Schedule B, CITES permits, health certificates, exceptions to Indonesian laws and decrees, and responses to such requests.

E. Examination of the colony by any veterinarian, including a veterinarian from Boger University.

F. Review, approval, and issuance of the permission to export the colony, including CITES permits and health certificates.

G. Purpose of the health certificates.

H. Payments or offers of payments by or on behalf of Mr. Darmawan or Inquatex to Indonesian government officials that relate to the permission to export or export of the Inquatex colony.

See Case File for Exhibits

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA	)	
	)	No. 02 CR 312
vs.	)	Judge Ruben Castillo
	)	
LABS OF VIRGINIA, INC.	)	
DAVID M. TAUB,	)	
CHARLES J. STERN, and	)	
WILLIAM CURTIS HENLEY III	)	

GOVERNMENT'S RESPONSE TO RENEWED MOTION OF DEFENDANTS TO DISMISS COUNT 5 OF THE INDICTMENT UNDER THE ACT OF STATE DOCTRINE BASED ON PROSECUTION'S ADMISSIONS IN THE BILL OF PARTICULARS

This Court previously denied the motion of defendants Labs of Virginia, Inc., David M. Taub, Charles J. Stern, and William Curtis Henley III to dismiss Count 5 of the Indictment on the basis of the "act of state doctrine." The defendants now claim that particular government responses to their Bills of Particulars so alter the government's theory of the case that this Court must grant their earlier dismissal motion. Nothing in the government's responses, however, causes the act of state doctrine to be implicated in this case and, as a result, the defendants' renewed motion to dismiss must be denied.

I. BACKGROUND

In 1994, Indonesia banned the export of a species of wild-caught monkeys known as crab-eating macaques ("Decree No. 26/Kpts-11/94"). The phrase "wild-caught" refers to those primates which were caught in the jungles of Indonesia. "Captive-bred" primates, in contrast, are those primates which were born in captivity. In 1997, defendant Labs of Virginia, Inc. caused four shipments of these monkeys to be sent from Indonesia into the United States as a part of Labs's purchase of an entire colony of crab-eating macaques. Each of the shipments at issue were

accompanied by a "CITES" permit issued by the Indonesian government. The CITES permits represented that each shipment contained "captive-bred" primates when, in fact, the shipments contained a mix of "captive-bred" and "wild-caught" primates.

The defendants in this case, Labs and its then-officers, David Taub, Charles Stern, and William Henley, are charged in Count 5 of the indictment with violations of Sections 3372(a)(2)(A) and 3373(d)(2) of the Lacey Act. 16 U.S.C. 3372(d)(2) and 3373(d)(2). These sections provide in pertinent part that "[i]t is unlawful for any person . . . to import, export, transport, sell, receive, acquire, or purchase in interstate or foreign commerce . . . any . . . wildlife . . . transported, or sold . . . in violation of any foreign law. . . ." Count 5 alleges that the defendants "did knowingly import wildlife in interstate and foreign commerce, namely, wild-caught *Macaca fascicularis*, and in the exercise of due care should have known that the wildlife was transported and sold in violation of a foreign law, namely, Decree No. 26/Kpts-11/94, which imposed a ban on the transportation from Indonesia, that is, the export of wild-caught *Macaca fascicularis*.

II. ARGUMENT

A. The Government's Theory of the Case Does Not Implicate the Act of State Doctrine.

"The act of state doctrine in its traditional formulation precludes the courts of this country from inquiring into the validity of the public acts a recognized foreign sovereign power committed within its own territory." *Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398, 401 (1964). *See also United States v. Funmaker*, 10 F.3d 1327, 1333 (7th Cir. 1993) (act of state doctrine "dictates that courts will not sit in judgment on the acts of another country done within that country's territory."). The doctrine, however, is to be applied sparingly, and only where the validity of a foreign sovereign

is at issue. *Ampac Group Inc. v. Republic of Honduras*, 797 F.Supp. 973, 978 (S.D. Fla. 1992), *citing W.S. Kirkpatrick & Co. v. Environmental Tectonics Corp. Int'l*, 493 U.S. 400, 409-10 (1990), *aff'd*, 40 F.3d 389 (11th Cir. 1994).

The charge in Count 5 in the instant case does not implicate the act of state doctrine because the charge does not require this Court to inquire into the validity or legality of any public acts by the Indonesian government. The government in this case is not challenging the validity of an Indonesian law, i.e., Decree No. 26/Kpts-11/94 banning the export of wild-caught *Macaca fascicularis,* or the Indonesian government's general authority to issue the CITES permits associated with the four shipments in this case. Instead, the focus of the charge in Count 5 is on whether the defendants knew that the shipments contained wild-caught *Macaca fascicularis*, even though the CITES permits for the shipments specified "captive-bred," and whether, in the exercise of due care, the defendants should have known that the primates were thereby transported in violation of the Indonesian Decree.[1] The proof of this charge can be accomplished without challenging either the general authority of the Indonesian government to act or the specific actions taken by the Indonesian government in this case.[2]

[1] Thus, the instant case is significantly different than those cases in which the act of state doctrine has been found to apply because the cause of action challenges a foreign law or decree (*Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398 (1964); *World Wide Minerals, Ltd. v. Republic of Kazakhstan*, 296 F.3d 1154 (D.C. Cir. 2002), *cert. denied*, 123 S.Ct. 1250 (2003)) or a foreign government's ability to act in a particular way (*Oetjen v. Central Leather Co.*, 246 U.S. 297 (1918); *Underhill v. Hernandez*, 168 U.S. 250 (1897); *Mol, Inc. v. Peoples Republic of China,* 572 F.Supp. 79 (D. Ore. 1983), *aff'd*, 736 F.2d 1326 (9th Cir.), *cert. denied*, 469 U.S. 1037 (1984); *Bokkelen v. Grumman Aerospace Corp.*, 432 F.Supp. 329 (E.D.N.Y. 1977)).

[2] The fact that a case involves actions by a foreign government does not automatically trigger application of the act of state doctrine. The act of state doctrine has routinely been found not to bar causes of action focusing on misrepresentations made as a part of a government authorized

B. Nothing in the Government's Response to the Bills of Particulars Changes Either the Focus of the Charge in Count 5 or the Government's Theory of the Case.

The government responded to a multitude of requests set forth in Bills of Particulars from each defendant. The defendants claim that, through these responses, the government has "completely reversed course" and now espouses as its principal theory that the defendants committed the violations charged in Count 5 because the CITES permits were obtained by fraud (bribes). The defendants argue that this allegedly new theory directly implicates the act of state doctrine because the government must now prove at trial that "the Indonesian government's approval of the exports was improper or corrupted." Renewed Motion at 2. The responses, however, do not change either the government's theory or its proof at trial. The government responded to the defendants' questions about bribes in good faith and the defendants' deliberate efforts to twist these answers into a defense-created and defense-imposed all-encompassing government theory of the case wholly fails.

Requests 1 through 3 asked the government to identify the government's theory as to why the term "baksheesh" meant bribe, the persons alleged to have offered or accepted payments of

or government sanctioned action. The courts in these cases have recognized that proof of the misrepresentations does not involve a challenge to the foreign government's authority to act or as an effort to negate the action itself. *See, e.g., Perenco Nigeria Ltd. v. Ashland Inc.,* 242 F.3d 299, 306 n.28 (5th Cir. 2001) (court rejected defendant's invitation to apply the act of state doctrine in fraud action which followed Nigerian government's disapproval of sale because the misrepresentation at issue turned on defendant's own knowledge of a government official's position on the sale and not on the legality or validity of the official's subsequent actions with respect to blocking the sale); *Forum Financial Group v. President and Fellows of Harvard College*, 173 F.Supp.2d 72, 103-04 (D. Maine) (court rejected application of act of state doctrine because contract with a foreign sovereign (Russia) was not at issue in the case, rather the litigation involved the alleged tortious interference with the contract as well as other tortious conduct on the part of the defendants); *Ampac,* 797 F.Supp. at 978, 978 n.1 (S.D. Fla. 1992) (act of state doctrine did not apply because contract action did not require court to pass on the validity of any governmental act by a foreign sovereign; instead the litigation involved the "existence *vel nom* and precise terms of a contract for the sale of a corporation).

baksheesh or bribes, and the amounts of the alleged payments. The government drew upon the defendants' own documents and evidence from defendants' own former employees or agents in responding to these requests. Request 4 then asked the government to "[p]articularize the alleged purpose of any alleged payments of baksheesh or a bribe." The government responded as follows:

> The purpose of the baksheesh payments was to secure from the Indonesian government: (a) approval of the CITES applications; and (b) the issuance of CITES permits and health certificates reflecting that the shipments contained captive-bred monkeys without reference to the fact that the shipments contained productive wild-caught monkeys as well.

Request 5 asked the government to "particularize the Indonesian government action alleged to have occurred as a result of alleged payments of baksheesh or a bribe." The government responded as follows:

> The Indonesian government, on four separate occasions and in connection with each O'Hare shipment, issued CITES permits and health certificates which reflected, respectively, that the shipments contained captive-bred monkeys and that the monkeys had been "captive-bred born" at the Inquatex facility. The shipments, in fact, contained productive wild-caught monkeys, i.e., monkeys that had not been captive-bred or born in captivity at the Inquatex facility. The CITES permits and health certificates, then, made it appear as if the shipments complied with the Indonesian ban against the export of wild-caught monkeys when the shipments, as the defendants in this case knew or in the exercise of due care should have known, did not so comply.

These responses reflect what the defendants believed the "purpose" and impact of the baksheesh payments to be since the response was based on the defendants' own materials or individuals with whom the defendants associated. The government, for example, noted in its response to Request 1 that Patrick Mehlman, a former employee, informed the defendants in a memorandum that the person from whom the defendants were purchasing the primate colony "ha[d] gone to the Indonesian government and cut a baksheesh deal to pay them off so that he can export feral caught animals." Gov't Response at 2. The responses to Requests 1 through 5 in no way reflect

the government's particular "theory of the case" as to the allegations contained in Count 5 and in no way mean that, in order to prove the charges, the government intends to show that the Indonesian government's approval of the CITES permits was corrupt.

The fact that the government does not intend to prove as a part of the allegations in Count 5 that Indonesian officials did accept bribes and/or that the officials knew the shipments contained wild-caught primates is evident from the government's response to Request 6, which the defendants do not cite in their renewed motion. Request 6 asked the government to "[p]articularize the Government theory as to the relevance of any baksheesh . . . payments . . . to the charges alleged in the Indictment." The government responded as follows:

> The defendants wanted to purchase a breeding colony for use at its own United States-based facility. From the outset, the defendants knew that there were significant problems associated with the export of the Inquatex colony for this purpose. The defendants knew, from its own research and the various documents exchanged between the parties that the Inquatex colony contained wild-caught monkeys and they also knew, because Mehlman, among others, told them, that Indonesian law prohibited the export of wild-caught monkeys unless some exception were written.
>
> The defendants placed the burden on Darmawan to secure the requisite Indonesian-based documents, including the CITES permits, in order to allow the shipments to take place. The CITES permits and other documents that Darmawan sent to the defendants in advance of each shipment clearly reflected that the shipments contained captive-bred monkeys with no reference to the fact, as defendants well knew, that the shipments contained wild-caught monkeys as well. The defendants also knew that the document which Darmawan presented from the Department of Forestry, the so-called "exception" to the Indonesian ban on the export of wild-caught monkeys, clearly referred to the export of unproductive wild-caught monkeys. The defendants knew that the wild-caught monkeys in the shipments were, in fact, productive and that the productive nature of the Inquatex colony was the reason for purchasing it in the first place.
>
> The disconnect or dis-juncture between what the defendants knew to be the demographics of the colony and what the CITES permits and health certificates reflected is what makes the issue of baksheesh relevant to this case. The defendants were told repeatedly that Darmawan relied heavily on baksheesh to influence Indonesian officials.

> There are other documents in the defendants' possession which also put the defendants on notice about payments to government officials. On or about August 30, 1996, for example, Barry Brant, one of Agus Darmawan's United States-based representatives, sent to defendant Stern by telefax a letter in which Brant stated that Darmawan would incur "substantial additional cost to obtain government approval allowing the transfer of the colony to LABS." On or about February 17, 1997, Dr. George Ward, Labs's veterinarian who was in Indonesia at the time, wrote a letter to Taub in which he stated as follows:
>
> > "that [Darmawan's ability to sell 1,000 primates per year] doesn't appear to be a problem given his connections with the local F[ish] & W[ildlife]. It is very impressive to me – I needed 6 months to complete all steps (9) in exporting a monkey from Bangkok and Agus [Darmawan] can accomplish (albeit only 6 steps here) it in 1½ weeks. Of course the 'charity' is a very important aspect. I'm still not convinced what our long range relationship should be. You have to look closely at past performance – it obviously didn't work for Peter Savage."
>
> Typed notes of Dr. Ward about his trip to Indonesia also contain the statement "Agus has 'established' good connections – can obtain all permits necessary to ship monkeys in less than two weeks. Took GSW [Dr. Ward] six months in Thailand." Labs No. 05619.

Gov't Response at 7-9. The relevance of baksheesh payments, then, under the government's theory of the case, is to the defendants' knowledge that the shipments were in violation of Indonesian law and not the Indonesian officials' knowledge or actions in issuing and approving the CITES permits. The government has never intended to prove as a part of its case that Indonesian officials knew that the shipments contained wild-caught primates or that the Indonesian officials approved the shipments in exchange for the payment of bribes. Nothing in the government's responses to the Bills of Particulars changes this approach.

The defendants' improper attempt to manufacture an act of state doctrine issue in this case through the government's good faith responses to the defendants' requests for information should not be allowed. The defendants can neither elevate their previously-espoused views of the role of baksheesh payments into a controlling description of the nature of the case nor can the defendants

impose their views about the baksheesh payments on the way in which the government intends to try the case.[3]

The government notes, however, that the act of state doctrine would not bar this prosecution even if the government, as a part of its theory and proof, wished to show that Indonesia's issuance of the CITES permits had been procured by fraud. In *W.S. Kirkpatrick & Co. v. Environmental Tectonics Corp. Int'l*, 493 U.S. 400 (1990), the Supreme Court held that "[a]ct of state issues only arise when a court *must decide*--that is, when the outcome of the case turns upon--the effect of official action by a foreign sovereign. When that question is not in the case, neither is the act of state doctrine." 493 U.S. at 406 (emphasis in original). In *Kirkpatrick*, the plaintiff alleged that a competitor had obtained a contract with the Nigerian government through bribery of Nigerian officials. The district court dismissed the lawsuit under the act of state doctrine on the basis that in order to prevail the plaintiff would have to show, among other things, that Nigerian officials knew of the bribe and that but for the bribe plaintiff would have been awarded the contract. The district court concluded that the act of state doctrine applied since the lawsuit required an examination of the motivation of a sovereign act that would result in embarrassment to the foreign sovereign or constitute interference in the conduct of foreign policy of the United States. *Id.* at 403. The Third Circuit reversed and the Supreme Court affirmed the Third Circuit's decision. The Court found the act of state doctrine to be inapplicable because "[n]othing in the present suit require[d] the Court to declare invalid, and thus ineffective as 'a rule of decision for the courts of this country,' . . . the

[3] Indeed, the limited role that baksheesh payments play in the government's case is evident in the fact that the government can establish the requisite elements of the violations alleged in Count 5 without any reference to baksheesh payments at all. Nothing in these elements requires the government to show that the CITES permits were procured by fraud or that the Indonesian officials knew the shipments contained wild-caught primates.

official act of a foreign sovereign." *Id.* at 405 (citation omitted). The "official act" at issue in *Kirkpatrick* was the awarding of the contract itself. Similarly, in the instant case, even if the government sought to prove that the CITES permits at issue had been obtained through the payment of bribes, this Court would not as a result be required to declare the actual issuance of the CITES permits by the Indonesian government to be invalid. Here, as in *Kirkpatrick*, the government, as the proponent of the legal proceeding, is not through the proceeding trying to undo or disregard an action of the Indonesian government.[4] *See Kirkpatrick, id.* at 407.

Moreover, due to the CITES-based nature of this case, at least one case has held that the act of state doctrine does not apply even if the validity of a foreign action is challenged. *See United States v. 2,507 Live Canary Winged Parakeets*, 689 F.Supp. 1106, 1120 (S.D. Fla. 1988). In *Parakeets*, the United States sought to forfeit parakeets exported in violation of Peruvian law. The defendant challenged the prosecution under the act of state doctrine because, the defendant claimed, the case required the determination of whether a Peruvian official had the authority to issue the CITES permit at issue. The district court rejected the defendant's act of state challenge. The court found that "[t]he purpose of CITES is to further international cooperation in assisting other countries in the enforcement of their wildlife protection laws. Thus, the treaty clearly *requires* member nations to ensure the validity of the exportation of another nation's protected wildlife for that benefit for that

[4] The instant case differs in this sense from cases such as *World Wide Minerals, Ltd. v. Republic of Kazakhstan*, 296 F.3d 1154 (D.C. Cir. 2002), *cert. denied*, 123 S.Ct. 1250 (2003), in which the act of state doctrine was found to apply where the gravamen of the plaintiff's claims involved challenges to a foreign sovereign's denial of a license and its expropriation of property governed by contract. *See also Mol , Inc. v. Peoples Republic of Bangladesh*, 572 F.Supp. 79 (D. Ore. 1983) (cancellation by Bangladesh of license to export wildlife), *aff'd,* 736 F.2d 1326 (9th Cir.), *cert. denied,* 469 U.S. 1037 (1984); *Bokkelen v. Grumman Aerospace Corp.*, 432 F.Supp. 329 (E.D.N.Y. 1977) (denial of import license by Brazil).

nation." *Id.* at 1120. The court held that, on this basis, the act of state doctrine had no prudential application to the case. *Id.* Much of the prosecution of the instant case is predicated on representations contained within the CITES permits for the four shipments at issue and the fact that the shipments contained wild-caught primates whose export was banned by Indonesian law. Thus here, as in *Parakeets*, the government is seeking to protect the wildlife of Indonesia in the manner contemplated by the Indonesian Decree.

C. The Instant Case is in Keeping With and Not in Opposition to Indonesia's Official Acts and Will Not Hinder Foreign Affairs.

The jurisprudential rationale behind the act of state doctrine involves "'the strong sense of the Judicial Branch that its engagement in the task of passing on the validity of foreign acts of state may hinder' the conduct of foreign affairs." *Kirkpatrick,* 493 U.S. at 404, *quoting Banco Nacional de Cuba v. Sabbatino*, 376 U.S. 398 (1964). "The policies underlying the doctrine include 'international comity, respect for the sovereignty of foreign nations on their own territory, and the avoidance of embarrassment to the Executive Branch in its conduct of foreign relations.'" *World Wide Minerals,* 296 F.3d at 1165, *quoting Kirkpatrick*, 493 U.S. at 408.[5] The prosecution of the instant case upholds, and does not violate, the rationale and policies underlying the act of state doctrine. The government, through this action, is in effect seeking to uphold the Indonesian Decree and to protect Indonesia's wildlife. The prosecution of the charges in this case government, then,

[5] The mere fact that a case may embarrass a foreign government, however, is not enough to bar the action under the act of state doctrine. The Supreme Court in *Kirkpatrick* noted that the act of state doctrine does not establish an exception for cases that "may embarrass foreign governments." *Kirkpatrick*, 493 U.S. at 409 ("The act of state doctrine does not establish an exception for cases and controversies that may embarrass foreign governments, but merely requires that, in the process of deciding, the acts of foreign sovereigns taken within their own jurisdictions shall be deemed valid.").

supports, rather than challenges, Indonesia's positions on these matters, and respects, rather than disparages, Indonesia's efforts to control the export of its endangered species.[6] The prosecution of this case will in no way "'frustrate the conduct of foreign relations by the political branches of the government. . . .'" *Funmaker*, 10 F.3d at 1333, *quoting First Nat'l City Bank v. Banco Nacional de Cuba*, 406 U.S. 759, 767-68 (1972).

III. CONCLUSION

For the foregoing reasons, the United States respectfully requests that this Court deny the various pretrial motions of the defendants as described and set forth herein.

Respectfully submitted,

PATRICK J. FITZGERALD
United States Attorney

By: Diane MacArthur
DIANE MacARTHUR
Assistant U.S. Attorney
219 South Dearborn Street
Chicago, Illinois 60604
(312) 353-5352

[6] The defendants' parting shot that the government has "proposed to introduce evidence of bribery without permitting defendants (or Indonesia) to show that nothing untoward occurred in that country" is completely unfounded. The government has strived throughout these proceedings to make clear that the evidence of baksheesh payments, like a non-hearsay statement, is not being offered for its truth, that is, that bribe payments actually occurred, but rather for the effect of the evidence on the defendants. The evidence is relevant because it is probative of the defendants' knowledge that the shipments contained wild-caught primates and that the shipments were in violation of Indonesian law. The government objected to the Letters Rogatory in part because proof of corruption in the Indonesian government, or the actual payment of bribes in this case, are neither elements of the offense nor relevant to the prosecution of the current charges.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA	)	
	)	
Plaintiff,	)	**No. 02 CR 312**
	)	
vs.	)	**Judge Ruben Castillo**
LABS OF VIRGINIA, INC., et al.	)	**Magistrate Judge Mason**
	)	
Defendants.	)	

NOTICE OF MOTION

TO: See Certificate of Service

PLEASE TAKE NOTICE that on ~~Thursday~~ WEDNESDAY, March ~~20~~ 19, 2003 at 9:45 a.m. or as soon thereafter as counsel may be heard, we shall appear before the Honorable Judge Ruben Castillo, or any Judge sitting in his stead, in Courtroom 2319 of the Dirksen Federal Building, 219 S. Dearborn St., Chicago, Illinois and shall then and there present the attached *Motion To Withdraw* and the proposed *Order*, copies of which are hereby served upon you.

Dated: March 7, 2003

GREENBERG TRAURIG, P.C.

One of the Attorneys for Defendants

Robert H. King, Jr.
James G. Richmond
GREENBERG TRAURIG, P.C.
77 West Wacker Drive, Suite 2500
Chicago, Illinois 60601
Phone: (312) 456-8400
Fax: (312) 456-8435

91

CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that he caused the foregoing *Motion to Withdraw* to be served upon:

Diane MacArthur, Esq.
Assistant United States Attorney
219 South Dearborn Street
Chicago, IL 60604

Michael L. Fayad, Esq.
GREENBERG TRAURIG, LLP
800 Connecticut Avenue, N.W.
Suite 500
Washington, DC 20006

Samuel J. Buffone, Esq.
Kelly B. Kramer, Esq.
ROPES & GRAY
One Franklin Square
1301 K Street, N.W.
Suite 800 East
Washington, DC 20005-3333

Gerald A. Feffer, Esq.
David M. Zinn, Esq.
WILLIAMS & CONNOLLY
725 Twelfth Street, N.W.
Washington, D.C. 20005

by placing true and correct copies of same, postage prepaid, in the United States mail at 77 W. Wacker Drive, Chicago, Illinois, on or before 5:00 p.m. this 7th day of March, 2003.

Robert H. King, Jr

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA	)	
	)	
Plaintiff,	)	**No. 02 CR 312**
	)	
vs.	)	**Judge Ruben Castillo**
	)	
LABS OF VIRGINIA, INC., et al.	)	**Magistrate Judge Mason**
	)	
Defendants.	)	

MOTION TO WITHDRAW

NOW COMES Robert H. King, Jr. of Greenberg Traurig, P.C., and moves this Honorable Court for leave to withdraw his appearance as attorney for Defendants Labs of Virginia, Inc., David M. Taub, Charles J. Stern, and William Curtis Henley, III, in Case No. 02 CR 312, filed by the United States of America, and in support thereof, states as follows:

1. On April 16, 2002, Robert H. King, Jr. of Greenberg Traurig, P.C. entered his appearance as attorney of record for Defendants Labs of Virginia, Inc., David M. Taub, Charles J. Stern, and William Curtis Henley, III in this matter.

2. On January 31, 2003, attorney James G. Richmond of Greenberg Traurig, P.C. filed his Appearance on behalf of Defendants Labs of Virginia, Inc., David M. Taub, Charles J. Stern, and William Curtis Henley, III in this matter.

3. This motion is presented to expedite the delivery of all future communications to Mr. Richmond rather than Mr. King and the undersigned counsel respectfully submits that Plaintiff will not suffer any prejudice if the Court grants the relief requested herein.

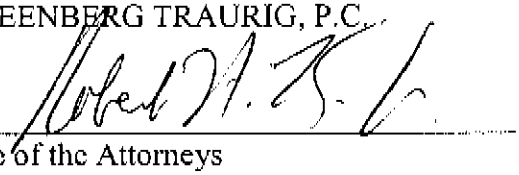
WHEREFORE, Robert H. King, Jr. of Greenberg Traurig, P.C. respectfully moves this Court for leave to withdraw his appearance as attorney of record for Defendants Labs of

Virginia, Inc., David M. Taub, Charles J. Stern, and William Curtis Henley, III as well as for any other relief this Court finds just and reasonable.

Dated: March 7, 2003

Respectfully submitted,

GREENBERG TRAURIG, P.C.



One of the Attorneys

Robert H. King, Jr.
James G. Richmond
GREENBERG TRAURIG, P.C.
77 West Wacker Drive, Suite 2500
Chicago, Illinois 60601
Phone: (312) 456-8400
Fax: (312) 456-8435

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA	)	
	)	
Plaintiff,	)	**No. 02 CR 312**
	)	
vs.	)	**Judge Ruben Castillo**
	)	
LABS OF VIRGINIA, INC., et al.	)	**Magistrate Judge Mason**
	)	
Defendants.	)	

ORDER

Upon notice to all parties and the Court being duly advised,

IT IS HEREBY ORDERED THAT:

Robert H. King, Jr. of Greenberg Traurig, P.C., is granted leave to withdraw his appearance as Attorney of Record for Defendants Labs of Virginia, Inc., David M. Taub, Charles J. Stern, and William Curtis Henley, III, in Case No. 02 CR 312.

ENTERED:

The Honorable Judge Ruben Castillo

Robert H. King, Jr.
James G. Richmond
GREENBERG TRAURIG, P.C. (Firm #36511)
77 West Wacker Drive, Suite 2500
Chicago, Illinois 60601
Phone: (312) 456-8400

Minute Order Form (06/97)

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Ruben Castillo	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	02 CR 312- all	DATE	3/18/2003
CASE TITLE	USA vs. Labs of Virginia, et al.		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

DOCKET ENTRY:

(1) ☐ Filed motion of [use listing in "Motion" box above.]

(2) ☐ Brief in support of motion due _____.

(3) ☐ Answer brief to motion due_____. Reply to answer brief due_____.

(4) ☐ Ruling/Hearing on _____ set for _____ at _____.

(5) ☐ Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(7) ☐ Trial[set for/re-set for] on _____ at _____.

(8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.

(9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ Local Rule 41.1 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).

(10) ■ [Other docket entry] Robert H. King, Jr. of Greenburg Traurig, P.C.'s motion to withdraw as counsel on behalf of the defendants is granted. The Clerk of Court is directed to send notices of all orders to attorney James G. Richmond of Greenberg Traurig, P.C. The parties do not need to appear for the motion call on March 19, 2003.

(11) ☐ [For further detail see order (on reverse side of/attached to) the original minute order.]

_____ No notices required, advised in open court.
_____ No notices required.
_____ Notices mailed by judge's staff
_____ Notified counsel by telephone.
✓ Docketing to mail notices.
_____ Mail AO 450 form.
_____ Copy to judge/magistrate judge.

RO courtroom deputy's initials

U.S. DISTRICT COURT CLERK 03 MAR 18 PM 3:43 FILED

Date/time received in central Clerk's Office

Document Number

number of notices

MAR 19 2003

date docketed

docketing deputy initials

92

date mailed notice

mailing deputy initials

Minute Order Form (06/97)

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Ruben Castillo	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	02 CR 312 - all	DATE	3/19/2003
CASE TITLE	USA vs. Labs of Virginia, et al.		

MOTION: [In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

DOCKET ENTRY:

(1) ☐ Filed motion of [use listing in "Motion" box above.]

(2) ☐ Brief in support of motion due _____.

(3) ☐ Answer brief to motion due_____. Reply to answer brief due_____.

(4) ☐ Ruling/Hearing on _____ set for _____ at _____.

(5) ☐ Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(7) ☐ Trial[set for/re-set for] on _____ at _____.

(8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.

(9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ Local Rule 41.1 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).

(10) ■ [Other docket entry] Defendants' oral request to reset the status hearing is granted in part. Telephone status hearing set for 4/2/03 at 1:30 p.m. Counsel for defendants should get all parties on the line and then call chambers.

(11) ☐ [For further detail see order (on reverse side of/attached to) the original minute order.]

No notices required, advised in open court.
No notices required.
Notices mailed by judge's staff.
Notified counsel by telephone.
✓ Docketing to mail notices.
Mail AO 450 form.
Copy to judge/magistrate judge.

number of notices
MAR 20 2003
date docketed
docketing deputy initials
date mailed notice
mailing deputy initials

Document Number
93

RO courtroom deputy's initials

U.S. DISTRICT COURT CLERK
03 MAR 19 PM 4:38

Date/time received in central Clerk's Office

Minute Order Form (06/97)

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Ruben Castillo	**Sitting Judge if Other than Assigned Judge**	
CASE NUMBER	02 CR 312 - all	**DATE**	4/2/2003
CASE TITLE	USA vs. Labs of Virginia, et al.		

MOTION: [In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

DOCKET ENTRY:

(1) ☐ Filed motion of [use listing in "Motion" box above.]

(2) ☐ Brief in support of motion due _____.

(3) ☐ Answer brief to motion due_____. Reply to answer brief due_____.

(4) ☐ Ruling/Hearing on _____ set for _____ at _____.

(5) ☐ Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(7) ☐ Trial[set for/re-set for] on _____ at _____.

(8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.

(9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ Local Rule 41.1 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).

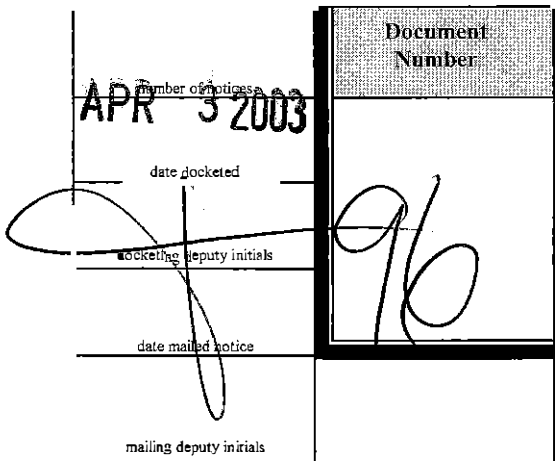
(10) ■ [Other docket entry] Telephone status hearing held and continued to 6/11/03 at 12:45 p.m. Parties are to note that the time of the next hearing is different from that stated in open court. Government's response to Defendants' renewed motion to dismiss count five of the indictment is due on or before 5/2/03. Defendants' reply will be due on or before 5/16/03. The Court will rule on 6/11/03 at 12:45 p.m. From today's date until 6/11/03 is excluded pursuant to 18 U.S.C. 3161(h)(1)(F) and 18 U.S.C. 3161(h)(8)(A)(B). (X-E and X-T).

(11) ☐ [For further detail see order (on reverse side of/attached to) the original minute order.]

_____ No notices required, advised in open court.
_____ No notices required.
_____ Notices mailed by judge's staff.
_____ Notified counsel by telephone.
✓ Docketing to mail notices.
_____ Mail AO 450 form.
_____ Copy to judge/magistrate judge.

RO courtroom deputy's initials

Date/time received in central Clerk's Office



UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA	)	
	)	
v.	)	No. 02 CR 312
	)	Judge Ruben Castillo
LABS OF VIRGINIA, INC.	)	
DAVID M. TAUB,	)	
CHARLES J. STERN, and	)	
WILLIAM CURTIS HENLEY III	)	

NOTICE OF MOTION

TO: Michael L. Fayad, Esq.
Greenberg Traurig
800 Connecticut Avenue, N.W.
Suite 500
Washington, D.C. 20006
FAX: (202) 331-3101

Samuel J. Buffone, Esq.
Ropes & Gray
One Franklin Square
1301 K Street, N.W., Suite 800 East
Washington, D.C. 20005-3333
FAX: (202) 626-3961

Gerald A. Feffer, Esq.
David Zinn, Esq.
Williams & Connolly
725 12th Street, N.W.
Washington, D.C. 2005-5901
FAX: (202) 434-5029

PLEASE TAKE NOTICE that on **Wednesday, May 14, 2003 at 9:45 a.m.** or as soon thereafter as counsel may be heard, I will appear before **Honorable Ruben Castillo** in the courtroom usually occupied by him in the Everett McKinley Dirksen Building, 219 South Dearborn Street, Chicago, Illinois, or before such other judge who may be sitting in his place and stead, and then and there present:

GOVERNMENT'S AGREED MOTION FOR LEAVE TO FILE *INSTANTER* RESPONSE TO RENEWED MOTION OF DEFENDANTS TO DISMISS COUNT 5 OF THE INDICTMENT UNDER THE ACT OF STATE DOCTRINE BASED ON PROSECUTION'S ADMISSIONS IN THE BILL OF PARTICULARS

in the above-captioned case, at which time and place you may appear if you see fit.

Respectfully submitted,

PATRICK J. FITZGERALD
United States Attorney

By: Diane MacArthur

DIANE MacARTHUR
Assistant U.S. Attorney
219 South Dearborn
Chicago, Illinois 60604
(312) 353-5352

STATE OF ILLINOIS)
) ss
COUNTY OF COOK)

Phyllis Knobbe being first duly sworn on oath deposes and says that she is employed in the Office of the United States Attorney for the Northern District of Illinois, and on the 5th day of May 2003, she caused a copy of the above mentioned motion to be mailed and faxed to the above individuals on said date.

Phyllis Knobbe

SUBSCRIBED AND SWORN TO BEFORE ME
this 5th day of May 2003

NOTARY PUBLIC

"OFFICIAL SEAL"
MICHELLE APPLING
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 5/26/2004

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA	)	
	)	No. 02 CR 312
vs.	)	Judge Ruben Castillo
	)	
LABS OF VIRGINIA, INC.	)	
DAVID M. TAUB,	)	
CHARLES J. STERN, and	)	
WILLIAM CURTIS HENLEY III	)	

GOVERNMENT'S AGREED MOTION FOR LEAVE TO FILE *INSTANTER* RESPONSE TO RENEWED MOTION OF DEFENDANTS TO DISMISS COUNT 5 OF THE INDICTMENT UNDER THE ACT OF STATE DOCTRINE BASED ON PROSECUTION'S ADMISSIONS IN THE BILL OF PARTICULARS

The United States of America, by its attorney, Patrick J. Fitzgerald, United States Attorney for the Northern District of Illinois, respectfully moves this Court for leave to file *instanter* its Response to Renewed Motion of Defendants to Dismiss Count 5 of the Indictment Under the Act of State Doctrine Based on Prosecution's Admissions in the Bill of Particulars ("Renewed Motion"). In support of this motion, the government states as follows:

1. The government's Response to the Renewed Motion was due to be filed on or before Friday, May 2, 2003. Due to the involvement of the undersigned attorney in other matters, the undersigned attorney was unable to complete the Response by May 2, 2003.

2. The government requests leave to file *instanter* the Response. A copy of the proposed Response is attached to this motion.

3. The government will send a copy of the proposed Response to the defendants by facsimile transmission on Monday, May 5, 2003 so as not to delay their preparation of any Reply Memorandum.

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4. Attorneys for the defendants have no objection to the filing of the government's Response *instanter*.

WHEREFORE, for the foregoing reasons, the government respectfully requests leave to file the attached Response *instanter*.

Respectfully submitted,

PATRICK J. FITZGERALD
United States Attorney

By: Diane MacArthur
DIANE MacARTHUR
Assistant U.S. Attorney
219 South Dearborn Street
Chicago, Illinois 60604
(312) 353-5352

Minute Order Form (06/97)

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Ruben Castillo	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	02 CR 312	**DATE**	5/6/2003
CASE TITLE	United States of America vs. Labs of Virginia, Inc., et al.		

MOTION: [In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

DOCKET ENTRY:

(1) ☐ Filed motion of [use listing in "Motion" box above.]

(2) ☐ Brief in support of motion due _____.

(3) ☐ Answer brief to motion due_____. Reply to answer brief due_____.

(4) ☐ Ruling/Hearing on _____ set for _____ at _____.

(5) ☐ Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____

(7) ☐ Trial[set for/re-set for] on _____ at _____.

(8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.

(9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ Local Rule 41.1 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).

(10) ■ [Other docket entry] Telephone status conference reset to 6/12/03 at 12:45 p.m. Telephone status conference set for 6/11/03 is vacated. Government's agreed motion for leave to file instanter response to renewed motion of defendants to dismiss Count 5 of the indictment under the Act of State Doctrine based on Prosecution's admissions in the bill of particulars is granted. Defendants' reply will be due on or before 5/20/03. The parties do not have to appear for the motion call on 5/14/03.

(11) ☐ [For further detail see order (on reverse side of/attached to) the original minute order.]

___ No notices required, advised in open court.
___ No notices required.
___ Notices mailed by judge's staff.
___ Notified counsel by telephone.
√ Docketing to mail notices.
___ Mail AO 450 form.
___ Copy to judge/magistrate judge.

R● courtroom deputy's initials

Date/time received in central Clerk's Office

Document Number

number of notices

MAY 07 2003

date docketed

98

docketing deputy initials

date mailed notice

mailing deputy initials

Minute Order Form (06/97)

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Ruben Castillo	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	02 CR 312 - all	DATE	6/12/2003
CASE TITLE	USA vs. Labs of Virginia, et al.		

MOTION: [In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

DOCKET ENTRY:

(1) ■ Filed motion of [use listing in "Motion" box above.]

(2) ☐ Brief in support of motion due _____.

(3) ☐ Answer brief to motion due _____. Reply to answer brief due _____.

(4) ☐ Ruling/Hearing on _____ set for _____ at _____.

(5) ■ Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(7) ☐ Trial[set for/re-set for] on _____ at _____.

(8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.

(9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ Local Rule 41.1 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).

(10) ■ [Other docket entry] Telephone status hearing held and continued to 7/23/03 at 11:00 a.m. From today's date until 7/23/03 is excluded pursuant to 18 U.S.C. 3161(h)(1)(F) and 18 U.S.C. 3161(h)(8)(A)(B). (X-E and X-T).

(11) ☐ [For further detail see order (on reverse side of/attached to) the original minute order.]

No notices required, advised in open court.

No notices required.

Notices mailed by judge's staff.

Notified counsel by telephone.

✓ Docketing to mail notices.

Mail AO 450 form.

Copy to judge/magistrate judge.

RO courtroom deputy's initials

U.S. DISTRICT COURT CLERK 03 JUN 13 PM 1:39 FILED-EDNY

Date/time received in central Clerk's Office

number of notices JUN 16 2003

docketing deputy initials

date mailed notice

mailing deputy initials

Document Number 101

Minute Order Form (06/97)

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Ruben Castillo	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	02 CR 312 - 1	DATE	7/23/2003
CASE TITLE	USA vs. Labs of Virginia, et al.		

MOTION: [In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

DOCKET ENTRY:

(1) ☐ Filed motion of [use listing in "Motion" box above.]

(2) ☐ Brief in support of motion due _____.

(3) ☐ Answer brief to motion due _____. Reply to answer brief due _____.

(4) ☐ Ruling/Hearing on _____ set for _____ at _____.

(5) ☐ Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(7) ☐ Trial[set for/re-set for] on _____ at _____.

(8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.

(9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ Local Rule 41.1 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).

(10) ■ [Other docket entry] Telephone status conference held and continued to 9/30/03 at 11:30 a.m. From today's date until 9/30/03 is excluded pursuant to 18 U.S.C. 3161(h)(8)(A)(B) and 18 U.S.C. 3161(h)(2). (X-T and X-I).

(11) ☐ [For further detail see order (on reverse side of/attached to) the original minute order.]

No notices required, advised in open court.

No notices required.

Notices mailed by judge's staff.

Notified counsel by telephone.

✓ Docketing to mail notices.

Mail AO 450 form.

Copy to judge/magistrate judge.

RO courtroom deputy's initials

Date/time received in central Clerk's Office

Document Number

number of notices

JUL 24 2003

date docketed

docketing deputy initials

103

date mailed notice

mailing deputy initials

Minute Order Form (06/97)

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Ruben Castillo	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	02 CR 312 - all	**DATE**	9/5/2003
CASE TITLE	USA vs. Labs of Virginia, et al.		

MOTION: [In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

DOCKET ENTRY:

(1) ☐ Filed motion of [use listing in "Motion" box above.]

(2) ☐ Brief in support of motion due _____.

(3) ☐ Answer brief to motion due_____. Reply to answer brief due_____.

(4) ☐ Ruling/Hearing on _____ set for _____ at _____.

(5) ☐ Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(7) ☐ Trial[set for/re-set for] on _____ at _____.

(8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.

(9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ Local Rule 41.1 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).

(10) ■ [Other docket entry] Telephone status conference reset to 9/30/03 at 12:45 p.m.

(11) ☐ [For further detail see order (on reverse side of/attached to) the original minute order.]

No notices required, advised in open court.

No notices required.

Notices mailed by judge's staff.

Notified counsel by telephone.

✓ Docketing to mail notices.

Mail AO 450 form.

Copy to judge/magistrate judge.

RO courtroom deputy's initials

U.S. DISTRICT COURT CLERK 03 SEP -5 PM 3:32 FILED-DOCKETING

Date/time received in central Clerk's Office

Document Number

number of notices

SEP 08 2003

date docketed

docketing deputy initials

104

date mailed notice

mailing deputy initials

Minute Order Form (06/97)

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Ruben Castillo	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	02 CR 312 - all	DATE	9/30/2003
CASE TITLE	USA vs. Labs of Virginia, et al.		

MOTION: [In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

DOCKET ENTRY:

(1) ☐ Filed motion of [use listing in "Motion" box above.]

(2) ☐ Brief in support of motion due _____.

(3) ☐ Answer brief to motion due_____. Reply to answer brief due_____.

(4) ☐ Ruling/Hearing on _____ set for _____ at _____.

(5) ☐ Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(7) ☐ Trial[set for/re-set for] on _____ at _____.

(8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.

(9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ Local Rule 41.1 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).

(10) ■ [Other docket entry] Telephone status conference held and continued to 10/30/03 at 12:45 p.m. From 7/22/03 until 10/30/03 is excluded pursuant to 18 U.S.C. 3161(h)(1)(F) and 18 U.S.C. 3161(h)(8)(A)(B). (X-E and X-T).

(11) ☐ [For further detail see order (on reverse side of/attached to) the original minute order.]

No notices required, advised in open court.

No notices required.

Notices mailed by judge's staff.

Notified counsel by telephone.

✓ Docketing to mail notices.

Mail AO 450 form.

Copy to judge/magistrate judge.

RO courtroom deputy's initials

U.S. DISTRICT COURT CLERK 03 SEP 30 PM 3:20

Date/time received in central Clerk's Office

Document Number

number of notices

SEP 30 2003 date docketed

105

docketing deputy initials

date mailed notice

mailing deputy initials

Minute Order Form (06/97)

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Ruben Castillo	**Sitting Judge if Other than Assigned Judge**	
CASE NUMBER	02 CR 312 - all	**DATE**	10/30/2003
CASE TITLE	USA vs. Labs of Virginia, et al.		

MOTION: [In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

DOCKET ENTRY:

(1) ☐ Filed motion of [use listing in "Motion" box above.]

(2) ☐ Brief in support of motion due _____.

(3) ☐ Answer brief to motion due_____. Reply to answer brief due_____.

(4) ☐ Ruling/Hearing on _____ set for _____ at _____.

(5) ☐ Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(7) ☐ Trial[set for/re-set for] on _____ at _____.

(8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.

(9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ Local Rule 41.1 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).

(10) ■ [Other docket entry] Telephone status conference held and continued to 12/10/03 at 12:45 p.m. From today's date until 12/10/03 is excluded pursuant to 18 U.S.C. 3161(h)(8)(A)(B). (X-T).

(11) ☐ [For further detail see order (on reverse side of/attached to) the original minute order.]

No notices required, advised in open court.

No notices required.

Notices mailed by judge's staff

Notified counsel by telephone.

✓ Docketing to mail notices.

Mail AO 450 form.

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RO courtroom deputy's initials

U.S. DISTRICT COURT CLERK 03 OCT 30 PM 2:11 Date/time received in central Clerk's Office

number of notices

OCT 31 2003

date docketed

docketing deputy initials

date mailed notice

mailing deputy initials

Document Number

106

Minute Order Form (06/97)

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Ruben Castillo	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	02 CR 312 - all	DATE	12/10/2003
CASE TITLE	USA vs. Labs of Virginia, et al.		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

DOCKET ENTRY:

(1) ☐ Filed motion of [use listing in "Motion" box above.]

(2) ☐ Brief in support of motion due _____.

(3) ☐ Answer brief to motion due_____. Reply to answer brief due_____.

(4) ☐ Ruling/Hearing on _____ set for _____ at _____.

(5) ☐ Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(7) ☐ Trial[set for/re-set for] on _____ at _____.

(8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.

(9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ Local Rule 41.1 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).

(10) ■ [Other docket entry] Telephone status conference held and continued to 1/28/04 at 12:45 p.m. From today's date until 1/28/04 is excluded pursuant to 18 U.S.C. 3161(h)(8)(A)(B). (X-T).

(11) ☐ [For further detail see order (on reverse side of/attached to) the original minute order.]

_____ No notices required, advised in open court.

_____ No notices required.

_____ Notices mailed by judge's staff

_____ Notified counsel by telephone.

✓ Docketing to mail notices.

_____ Mail AO 450 form.

_____ Copy to judge/magistrate judge.

RO courtroom deputy's initials

Date/time received in central Clerk's Office

Document Number

number of notices

DEC 11 2003

date docketed

docketing deputy initials

107

date mailed notice

mailing deputy initials

Minute Order Form (06/97)

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Ruben Castillo	**Sitting Judge if Other than Assigned Judge**	
CASE NUMBER	02 CR 312 - all	**DATE**	1/28/2004
CASE TITLE	USA vs. Labs of Virginia, et al.		

MOTION: [In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

DOCKET ENTRY:

(1) ☐ Filed motion of [use listing in "Motion" box above.]

(2) ☐ Brief in support of motion due _____.

(3) ☐ Answer brief to motion due_____. Reply to answer brief due_____.

(4) ☐ Ruling/Hearing on _____ set for _____ at _____.

(5) ■ Status hearing set for 3/3/2004 at 9:30 A.M..

(6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(7) ☐ Trial[set for/re-set for] on _____ at _____.

(8) ☐ [Bench/Jury trial] [Hearing] held/continued to ___ at __ _.

(9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ Local Rule 41.1 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).

(10) ■ [Other docket entry] Telephone status conference held. Parties to file their status reports on or before 3/1/04. From today's date until 3/3/04 is excluded pursuant to 18 U.S.C. 3161(h)(8)(A)(B) and 18 U.S.C. 3161(h)(2). (X-T and X-I).

(11) ☐ [For further detail see order (on reverse side of/attached to) the original minute order.]

___ No notices required, advised in open court.
___ No notices required.
___ Notices mailed by judge's staff.
___ Notified counsel by telephone.
✓ Docketing to mail notices.
___ Mail AO 450 form.
___ Copy to judge/magistrate judge.

RO courtroom deputy's initials

Date/time received in central Clerk's Office

Document Number

number of notices

JAN 29 2004

date docketed

docketing deputy initials

108

date mailed notice

mailing deputy initials

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA	)	
	)	
v.	)	No. 02 CR 312
	)	Judge Ruben Castillo
LABS OF VIRGINIA, INC.	)	
DAVID M. TAUB,	)	
CHARLES J. STERN, and	)	
WILLIAM CURTIS HENLEY III	)	

NOTICE OF MOTION

TO: Michael L. Fayad, Esq.
Debra Mercer, Esq.
Greenberg & Traurig
800 Connecticut Ave., N.W.
Suite 500
Washington, D.C. 20006
(202) 533-2327
(202) 331-3101 (fax)

Samuel J. Buffone, Esq.
Ropes & Gray
One Metro Center
700 12th St., N.W.
Suite 900
Washington, D.C. 20005-3948
(202) 508-4600
(202) 508-4657 (Buffone direct)
(202) 508-4650 (fax)

Gerald A. Feffer, Esq.
David M. Zinn, Esq.
Williams & Connolly LLP
725 Twelfth St., N.W.
Washington, D.C. 20005-5901
(202) 434-5000
(202) 434-5029 (fax)

PLEASE TAKE NOTICE that on Tuesday, February 24, 2004, at 12:15 p.m. or as soon thereafter as counsel may be heard, I will appear before Judge Castillo in the courtroom usually occupied by him in the Everett McKinley Dirksen Building, 219 S. Dearborn Street,

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Chicago, Illinois, or before such other who may be sitting in his place and stead, and then and there present by telephone:

GOVERNMENT'S OBJECTION TO AND REQUEST FOR PARTICIPATION OF COURT IN TELEPHONIC DESPOSITION OF GOVERNEMNT WITNESS PURSUANT TO LETTERS ROGATORY

in the above-captioned case.

Respectfully submitted,

PATRICK J. FITZGERALD
United States Attorney

By: Diane MacArthur

DIANE MacARTHUR
Assistant United States Attorney
219 S. Dearborn Street
3rd Floor
Chicago, Illinois 60604
(312) 353-5352

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA	)	
	)	No. 02 CR 312
vs.	)	Judge Ruben Castillo
	)	
LABS OF VIRGINIA, INC.	)	
DAVID M. TAUB,	)	
CHARLES J. STERN, and	)	
WILLIAM CURTIS HENLEY III	)	

GOVERNMENT'S OBJECTION TO AND REQUEST FOR PARTICIPATION OF COURT IN TELEPHONIC DEPOSITION OF GOVERNMENT WITNESS PURSUANT TO LETTERS ROGATORY

The United States of America, by its attorney, Patrick J. Fitzgerald, United States Attorney for the Northern District of Illinois, respectfully presents this motion in connection with a deposition in Indonesia tentatively scheduled for March 1, 2004 pursuant to the Letters Rogatory. In support of this motion, the government states as follows:

1. This case involves alleged violations of law in connection with shipments in 1997 of a colony of primates from Indonesia to the United States. Defendant Labs of Virginia, Inc. purchased the colony from an Indonesian-based firm known as Indonesian Aquatics Export CV ("Inquatex"). Inquatex was owned by Agus Darmawan. The defendants had substantial contact with Darmawan during their negotiations with him for the purchase of the primate colony and their arrangements through him of the actual shipments at issue in the case.

2. On or about January 10, 2003, this Court authorized the issuance of Letters Rogatory to Indonesia. The Letters Rogatory sought depositions and/or information from a number of individuals. The defendants included Darmawan on the list of individuals and the defendants wish to question him about the areas designated in the Letters Rogatory. The parties have tentatively

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arranged for Darmawan to appear for a deposition at the United States Embassy in Jakarta, Indonesia on March 1, 2004 pursuant to the Letters Rogatory process. The undersigned attorney, as well as the attorneys for the defendants in this proceeding, intend to participate in the deposition from their respective offices by way of telephonic hook-up with Darmawan at the Embassy.

3. Darmawan was immunized pursuant to Title 28, United States Code, Section , during the course of the government's investigation and he has previously testified in the grand jury. As counsel for the defendants are aware, Darmawan has previously provided substantial information contrary to the defendants' positions in this case. The government intends to call Darmawan in its case in chief at trial.

4. The defendants have notified the government that they wish to proceed with Darmawan's deposition as if by Rule 15 of the Federal Rules of Criminal Procedure with the government having the opportunity to cross-examine. The government objects to this proposed order of questioning. If the defendants wish to preserve Darmawan's testimony for trial, then the government should be allowed to question Darmawan first, as if on direct examination, and the defendants should question him thereafter as if on cross-examination.

5. The government requests that, since this anticipated session with Darmawan on March 1, 2004 may result in his deposition testimony being used in lieu of his trial testimony, this Court participate in the deposition as if in a trial proceeding to, among other things, rule on objections from either side as those objections are made. The deposition would not commence until approximately 8:00 p.m. on March 1, 2004 because of the significant time difference between the United States and Indonesia.

6. The government does not object to presenting this motion to the Court by way of telephonic conference call with defense counsel so as to obviate the need for defense counsel to travel from Washington, D.C. for purposes of the motion.

Respectfully submitted,

PATRICK J. FITZGERALD
United States Attorney

By: _____
DIANE MacARTHUR
Assistant U.S. Attorney
219 South Dearborn Street
Chicago, Illinois 60604
(312) 353-5352

AFFIDAVIT OF FACSIMILE AND FEDERAL EXPRESS

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

Carol Bithos, being first duly sworn on oath deposes and says that she is employed in the Office of the United States Attorney for the Northern District of Illinois; that on the 23rd day of February, 2004 she caused a copy of:

GOVERNMENT'S OBJECTION TO AND REQUEST FOR PARTICIPATION OF COURT IN TELEPHONIC DESPOSITION OF GOVERNEMNT WITNESS PURSUANT TO LETTERS ROGATORY

to be faxed and Federal Expressed to the following named individuals, on said date.

Michael L. Fayad, Esq.
Debra Mercer, Esq.
Greenberg & Traurig
800 Connecticut Ave., N.W.
Suite 500
Washington, D.C. 20006
(202) 533-2327
(202) 331-3101 (fax)

Samuel J. Buffone, Esq.
Ropes & Gray
One Metro Center
700 12th St., N.W.
Suite 900
Washington, D.C. 20005-3948
(202) 508-4600
(202) 508-4657 (Buffone direct)
(202) 508-4650 (fax)

Gerald A. Feffer, Esq.
David M. Zinn, Esq.
Williams & Connolly LLP
725 Twelfth St., N.W.
Washington, D.C. 20005-5901
(202) 434-5000
(202) 434-5029 (fax)

Carol Bithos

SUBSCRIBED and SWORN TO BEFORE me this 23rd day of February, 2004.

Notary Public

OFFICIAL SEAL
Jamie Lynn Lacy
Notary Public, State of Illinois
My Commission Expires

Minute Order Form (06/97)

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Ruben Castillo	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	02 CR 312 - all	DATE	2/24/2004
CASE TITLE	USA vs. Labs of Virginia, et al.		

MOTION: [In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff. and (b) state briefly the nature of the motion being presented.]

DOCKET ENTRY:

(1) ☐ Filed motion of [use listing in "Motion" box above.]

(2) ☐ Brief in support of motion due _____.

(3) ☐ Answer brief to motion due _____. Reply to answer brief due_____.

(4) ☐ Ruling/Hearing on _____ set for _____ at _____.

(5) ☐ Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(7) ☐ Trial[set for/re-set for] on _____ at _____.

(8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.

(9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ Local Rule 41.1 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).

(10) ■ [Other docket entry] Defendants' response to the Government's objection to and request for participation of court in telephonic deposition of government witness pursuant to letters rogatory is due on or before 2/27/04. Government's reply will be due on or before 3/2/04. The Court will rule on 3/3/04 at 9:30 a.m.

(11) ☐ [For further detail see order (on reverse side of/attached to) the original minute order.]

No notices required, advised in open court.

No notices required.

Notices mailed by judge's staff.

Notified counsel by telephone.

✓ Docketing to mail notices.

Mail AO 450 form.

Copy to judge/magistrate judge.

RO courtroom deputy's initials

Date/time received in central Clerk's Office

number of notices

FEB 25 2004

date docketed

docketing deputy initials

date mailed notice

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Document Number

110

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA	)	No. 02 CR 0312
v.	)	Judge Castillo
LABS OF VIRGINIA, INC. DAVID M. TAUB CHARLES J. STERN, and WILLIAM CURTIS HENLEY III	)	

DEFENDANTS' RESPONSE TO GOVERNMENT'S OBJECTION TO AND REQUEST FOR PARTICIPATION OF COURT IN TELEPHONIC DEPOSITION OF GOVERNMENT WITNESS PURSUANT TO THE LETTERS ROGATORY

Defendants LABS of Virginia, Inc. ("LABS"), Charles J. Stern, William Curtis Henley III, and David M. Taub, by the undersigned counsel, hereby file this Response to the Government's Objection to and Request for Participation of Court in the Telephonic Deposition of Agus Darmawan ("Government Objection").

1. On approximately January 26, 2004, the U.S. Embassy advised our representative that we could conduct the Letters Rogatory depositions at the Embassy. Based upon this assurance, the deposition of Mr. Darmawan was initially set to occur on March 1, 2004, at the Embassy in Jakarta before a properly authorized court reporter. On February 24, 2004, despite earlier indications that the Embassy's facilities could be used to conduct a video conference deposition, the consular section of the Embassy stated that it would not allow depositions on Embassy grounds due to security concerns. The Embassy staff did agree that it would appear and administer the oaths for deponents at Indonesian counsel's office or another location in

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Jakarta, such as a hotel, on any Wednesday, beginning on March 10, 2004. Accordingly, counsel is seeking to obtain other dates on which the prosecution and other counsel are available.

2. In the Government Objection, for the first time, the Government announced it intended to call Mr. Darmawan as a witness in its case-in-chief. Previously and repeatedly, the Government made representations that it did not consider Mr. Darmawan or any other Indonesian witness as a part of its case. The Government's Consolidated Response to Pretrial Motions of Defendants, filed September 18, 2002, stated: "Extensive discovery in Indonesia is not necessary for either the prosecution or the defense of this case."[1] Similarly, at a January 10, 2003, hearing before the Court, the Government represented: "... I don't think that the Indonesian side of things is relevant or certainly not to the extent to which the defendants now wish to pursue by way of a trip to Indonesia or depositions of government officials."[2] Indeed, the Government represented to the Court: "Mr. Darmawan is a separate issue. He's clearly Indonesian based, but I know, Judge, that certainly the defendants had contact with him and it's the documents we'll be relying on from him primarily that will establish our proof in this case."[3] In addition, the Government stated at that same hearing: "As to Taub, again, I think the focus is that which happened in the United States and the documents and the knowledge that they had acquired here . . . I don't think it's necessary to go over there even for the broader allegations against Dr. Taub."[4] In light of these representations, it appeared to Defendants that the Government had no intention of calling Mr. Darmawan or any other Indonesian witness to testify at trial.

[1] Government's Consolidated Response to Pretrial Motions of Defendants, filed September 18, 2002 ("Government Response"), at 55.

[2] Tr. 24:5-9.

[3] Tr. 25:21-25.

[4] Tr. 24:10-15.

3. The Government acknowledged in its Consolidated Response to Pretrial Motions, "[a] federal district court may, in its sole discretion, grant Letters Rogatory on behalf of a party in a criminal case pursuant to Rule 15 of the Federal Rules of Criminal Procedure."[5] The Government further asserted in its Response that Federal Rule of Criminal Procedure 15 provides that a court may order the taking of a deposition in a criminal case "because of exceptional circumstances", and that courts have interpreted the "exceptional circumstances" standard of Federal Rule of Criminal Procedure 15 to require "(1) that the witness will be unavailable for trial; and (2) that the information sought is material to the party's case." United States v. Korogodsky, 4 F.Supp.2d 262, 265 (S.D.N.Y. 1998) (citations omitted).[6] Despite the Government's invocation of Rule 15's exceptional circumstances test as requiring the unavailability of the witness, the Government never indicated that Mr. Darmawan was in fact available to testify at trial. If the Government can provide a written assurance that Mr. Darmawan will appear at trial, then Defendants acknowledge that there is no reason for Defendants to depose Mr. Darmawan prior to trial. If such assurance cannot be provided, then the deposition of Mr. Darmawan should be taken consistent with Rule 15 of the Federal Rules of Criminal Procedure.

4. Although Defendants discussed Mr. Darmawan's deposition with the Government, Defendants did not learn of the Government's desire that the Court participate in the deposition until Defendants received the Government's Objection. Defendants do not object to this Court's participation in the deposition. Defendants submit that the Court has discretion to determine whether and how it will participate in Mr. Darmawan's deposition, as well as any subsequent depositions, conducted pursuant to the Letters Rogatory. It should be noted that the

[5] Government Response, at 54.

[6] Id. at 54-55.

deposition of Mr. Darmawan will take place via teleconference, although there is a possibility of using videoconferencing. In either case, questions posed to Mr. Darmawan along with his responses will have to be translated. These difficulties could result in a substantial protraction of the deposition. In addition, the deposition could take an extended period of time if it is conducted with all objections being ruled on, as suggested by the Government, and a full direct examination and cross examination.

5. Defendants object to the Government's view – stated for the first time more than one year after the Letters Rogatory motion was filed -- that it should be permitted to question the witness first. Defendants filed a Motion Requesting Issuance of Letters Rogatory to Indonesia on July 1, 2002. On February 21, 2003, the Court approved and executed the Letters Rogatory. The Government first expressed its position regarding the order of questioning in depositions taken pursuant to the Letters Rogatory in its Motion filed February 24, 2004. The Letters Rogatory set forth documents and deposition testimony sought by Defendants and detail Defendants' request that certain procedures be used during depositions of individuals in Indonesia. The Letters Rogatory, as issued, specifically state that:

> The assistance requested is that the appropriate judicial authority of Indonesia compel the production of documents from the below-named individuals and compel the appearance of the below-named individuals to give evidence and answer questions upon oral deposition as outlined below.[7]

The Request also contains the following two sections:

> **DEPOSITIONS**
>
> This Court requests the appropriate judicial authority in Indonesia to compel the appearance of the requested deponents listed in Schedule B of this Letter of Request to give evidence and answer questions upon the subject areas attached as Schedule C.

[7] Request for International Judicial Assistance, at 1-2 (emphasis added).

PROCEDURE

> Defendants request that: (1) the witnesses are examined under oath or affirmation to be administered by a person authorized to administer oaths in accordance with the federal law of the United States of America or local law; (2) they receive permission to have a representative appear before the court to examine, cross-examine and re-examine the witness, as necessary . . . .[8]

The Government did not seek any variation of this standard procedure. Furthermore, the Letters Rogatory contemplate a thorough examination of the subject matters listed in Schedule C of the Court's Request for International Judicial Assistance. When the Court granted Defendants' Request for issuance of Letters Rogatory, it stated that the "standard [for issuance of letters rogatory] is not one that requires a showing that admissible evidence will necessarily be yielded, but that potential admissible evidence could be yielded."[9] A deposition of Mr. Darmawan is necessary based on the possibility that Mr. Darmawan will not appear for trial. Based on the Court's order granting the issuance of letters rogatory, the strict standards of trial admissibility are not applicable to the deposition of Mr. Darmawan because the deposition may yield information that does not currently appear to be admissible at a future trial, but may become admissible based on events that occur at the trial.

6. Notably, the Government has not sought to obtain information from Mr. Darmawan, nor from any other individual in Indonesia pursuant to the Letters Rogatory process. In fact, the Government has consistently objected to Defendants' request for Letters Rogatory as being irrelevant and unnecessary. See supra, ¶ 2. The Government's consistent position throughout this case has been that only the state of mind of the Defendants is at issue and events in Indonesia are irrelevant and that the Government's entire case can be proven with contemporaneous documents. In contrast, the Defendants' position is that the truth of the

[8] Id. at 5-6 (emphasis added).

[9] Tr. 46:13-16.

allegations of bribery (if they are permitted to be part of this case at trial), the circumstances surrounding the issuance of the CITES and health certificates, and the approval of the export by the Indonesian government are highly relevant issues. This is the evidence that Defendants seek in the Letters Rogatory. Defendants, as the parties who requested the deposition of Mr. Darmawan, should proceed first in the order of questioning at his deposition. Mr. Darmwan is Defendants' witness in accordance with the Letters Rogatory. Defendants object to the Government's characterization of Mr. Darmawan's grand jury testimony as contrary to Defendants' positions in this case, and contend that the Government's view on whether Mr. Darmawan's testimony would support Defendants' case does not alter the fact that Defendants, not the Government, have noticed Mr. Darmawan for a deposition.

7. Defendants will fully comply with any deposition procedures required by this Court.

Respectfully submitted,

Michael L. Fayad

By Michael L. Fayad jtz
Attorney for Defendant LABS of Virginia, Inc.

GREENBERG TRAURIG, LLP
800 Connecticut Avenue, N.W.
Suite 500
Washington, D.C. 20006
(202) 331-3100

Samuel J. Buffone

By Samuel J. Buffone jtz
Attorney for Defendant David M. Taub
ROPES & GRAY
One Franklin Square
1301 K Street, N.W.
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Gerald A. Feffer

By Gerald A Feffer pgs
Attorney for Charles J. Stern and
William Curtis Henley III

WILLIAMS & CONNOLLY
725 Twelfth Street, N.W.
Washington, D.C. 20005
(202) 434-5000

Local counsel:
James G. Richmond
GREENBERG TRAURIG, P.C.
77 West Wacker Drive
Suite 2500
Chicago, Illinois 60601
(312) 456-8400

February 27, 2004

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of February, 2004, a true and correct copy of the foregoing Defendants' Response to Government's Objection to and Request for Participation of Court in Telephonic Deposition of Government Witness Pursuant to the Letters Rogatory, was served by hand delivery on the following:

Diane MacArthur, Esq.
Assistant United States Attorney
219 South Dearborn Street
Chicago, IL 60604

and by United States first class mail, postage prepaid, on the following:

Michael L. Fayad, Esq.
GREENBERG TRAURIG, LLP
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA	)	
	)	
v.	)	No. 02 CR 312
	)	Judge Ruben Castillo
LABS OF VIRGINIA, INC.	)	
DAVID M. TAUB,	)	
CHARLES J. STERN, and	)	
WILLIAM CURTIS HENLEY III	)	

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PLEASE TAKE NOTICE that on Monday, March 1, 2004, I caused to be filed with the Clerk of this Court,

GOVERNMENT'S REPORT TO THE COURT CONCERNING STATUS OF LETTERS ROGATORY AND GOVERNMENT'S REPLY MEMORANDUM CONCERNING OBJECTION TO TELEPHONIC DEPOSITION

service of which is being made upon you.

Respectfully submitted,

PATRICK J. FITZGERALD
United States Attorney

By: 
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112

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA	)	
	)	No. 02 CR 312
vs.	)	Judge Ruben Castillo
	)	
LABS OF VIRGINIA, INC.	)	
DAVID M. TAUB,	)	
CHARLES J. STERN, and	)	
WILLIAM CURTIS HENLEY III	)	

GOVERNMENT'S REPORT TO THE COURT CONCERNING STATUS OF LETTERS ROGATORY AND GOVERNMENT'S REPLY MEMORANDUM CONCERNING OBJECTION TO TELEPHONIC DEPOSITION

The government presents this status report to the Court concerning the letters rogatory as well as its Reply in connection with an objection filed by the government to manner in which the defendants have proposed to conduct the deposition of Agus Darmawan in the letters rogatory process.

A. STATUS REPORT ON LETTERS ROGATORY.

1. On February 21, 2003, at the defendants' request, this Court approved the issuance of letters rogatory to Indonesia. The letters rogatory authorized the questioning of six individuals: (1) Adi Susmianto (Department of Forestry); (2) a representative of the Department of Agriculture; (3) Dondin Sajuthi, Ph.D; (4) Agus Darmawan; and (5) a representative of the Departments of Forestry or Agriculture to be designated by Indonesian officials.

2. Between February 21, 2003 and December 2, 2003, the proceedings in this case focused on attempts to secure the requested information through the letters rogatory. On December 2, 2003, the first of the individuals designated in the letters rogatory, Dr. Sajuthi, appeared at a police station in Bogor City, Indonesia for questioning as a part of the letters rogatory process. The defendants

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appeared at the questioning session through their Indonesian-based local counsel. The government was not notified of the deposition and did not have a representative present. The transcript from that session consists of five pages of 33 enumerated questions and answers. The transcript reflects that an investigator with the Indonesian Criminal Investigation Department asked Dr. Sajuthi the questions.

3. No other designated individual was deposed between December 3, 2003 and January 28, 2004. On January 28, 2004, during a telephonic status conference, the defendants reported to the Court that they were having continuing difficulties with local police officials in Indonesian in securing the cooperation and presence of the remaining designated individuals. The Court ordered that the government attempt to facilitate the letters rogatory by involving, if possible, the United States Embassy in the process. The Court also ordered the parties to report to the Court by March 1, 2004 their respective progress in securing forward movement or the completion of the process.

4. On January 28, 2004, after the telephonic status conference, the government, through the undersigned attorney, contacted the Department of Justice's Office of International Affairs ("OIA") for direction as to the most appropriate and efficient means of communicating with the Embassy and local police officials. The OIA told the undersigned attorney that she should request that a Special Agent of the Federal Bureau of Investigation in Jakarta, Indonesia reach out to the police officials. The case agent in this case, Special Agent David Kirkby of the United States Fish and Wildlife Service, sent an email message that day (January 28, 2004) or the next day to the FBI Special Agent in Jakarta requesting assistance. The FBI Special Agent responded that he would be willing to help provided that he received a "lead" from his agency approving his involvement in another agency's case. The FBI Special Agent, however, required information as to the specific police officials with

whom the defendants had dealt in attempting to secure the designated individuals for questioning. The government did not receive that information from the defendants after the January 28, 2004 telephonic status conference.

5. In a letter dated January 27, 2004, the defendants made certain new proposals concerning the manner in which the remaining questioning of individuals would be conducted.

> It [is] our strong preference to obtain the testimony of the Indonesian individuals in the form that most closely resembles what we would normally do in the United States where a witness is unavailable for trial – take a deposition of the witness with the government having the opportunity to cross examine. To that end, we have asked our Indonesian representative to request that the witnesses either (1) appear for a Rule 15 deposition in a location outside of Indonesia (such as London), where both defense counsel and the government could attend, or (2) appear for a deposition at the U.S. embassy in Jakarta, where defense counsel and the government could participate in person or by telephone.

The government did not receive a copy of the January 27, 2004 letter until after the January 28, 2004 telephonic status conference had taken place.

6. On February 5, 2004, in a letter to defense counsel, the undersigned attorney noted that the government had not yet received specific information about the Indonesian officials with whom the defendants were having difficulty. The government requested that the defendants provide the following information so that the information could be transmitted to the Jakarta-based FBI agent: (1) the names, positions, addresses and telephone numbers of the remaining individuals whose testimony was required; and (2) the names and locations of the local police officials or other individuals with the defendants' representatives had dealt in trying to arrange for the testimony to take place. The undersigned attorney emphasized in the letter that, based on defense counsel's description to the Court of the problems they had encountered in the letters rogatory process, the government's efforts were focused on attempting to break the apparent log-jam in the willingness

of Indonesian officials to secure the attendance of the designated individuals at the depositions and not in negotiating with Indonesian officials as to where those depositions were to take place or who could or would attend them.

7. The government never did receive from the defendants any details about local police officials or other individuals with whom they had had difficulty. Instead, on February 12, 2004, the undersigned attorney received an email from Michael Fayad, one of the defense attorneys who wrote on behalf of all defense counsel, announcing that the defendants had made arrangements to take the depositions of four individuals at the United States Embassy in Jakarta. The individuals identified, in the order in which the defendants wished to depose them, were: (1) Agus Darmawan; (2) Adi Susmianto (former Director in the Department of Forestry); (3) Dr. Sajuthi; and (4) Mr. Widodo (a current Director in the Department of Forestry). The email contained proposed dates for the Darmawan deposition ranging from February 24, 2004 and March 9, 2004. There were no dates of deposition proposed for the other individuals.

8. On February 18, 2004, the undersigned attorney and Mr. Fayad spoke by telephone. The undersigned attorney expressed concern about the change in format of the questioning of the individuals identified in the letters rogatory and told Mr. Fayad that she wished to examine the original letters rogatory to see if the proposed format was in keeping with their terms. The undersigned attorney also stated that, if necessary, she would file objections with the Court concerning the new proposals by defense counsel. The undersigned attorney received an email later that day, sent on Mr. Fayad's behalf but in which all defense counsel joined, in which defense counsel stated that the taking of depositions was contemplated by and approved in the letters rogatory issued by this Court. The undersigned attorney stated in an email response that day, among

other things, that she would be prepared to go forward with the Darmawan deposition on March 1, 2004.

9. On February 23, 2004, the government filed with the Court an objection to the Darmawan deposition, specifically, the defendants' proposal that they question Darmawan first to be followed by a government "cross-examination." The government also requested in the submission that the Court participate in the deposition.

10. On February 24, 2004, Mr. Fayad informed the undersigned attorney that the United States Embassy would not allow depositions to take place at the Embassy and that the Embassy official would only be available on Wednesdays in which to travel to another location to swear in any witness appearing for a deposition. The deposition of Darmawan on March 1, 2004, therefore, could not go forward as planned. The defendants wish to proceed first with the deposition of Darmawan and, to the government's knowledge, the depositions of the other designated individuals have not yet been scheduled.

B. GOVERNMENT'S REPLY TO OBJECTIONS AS TO PROPOSED FORMAT OF DARMAWAN DEPOSITION.

11. Defendants incorrectly claim that the government's representation in its motion that it intends to call Darmawan in its case in chief at trial reflects a change in the government's position in this case. The government maintained at the time of the argument on the letters rogatory request, and still maintains, that testimony of Indonesian officials as to the permit process or the specific permits in this case is not relevant. Darmawan, however, is not an Indonesian official and is the individual with whom the defendants dealt directly in the transactions underlying this case.[1] The

[1] Darmawan and the defendants had extensive dealings with one another which, for the most part, are documented through correspondence and other materials. The indictment in this case

government does intend to call Darmawan in its case in chief at trial and, to the undersigned attorney's knowledge, has never stated otherwise to the Court or to defense counsel. The government intends to question Darmawan on direct examination, if he appears for trial, about the primate colony, his contacts and communications with the defendants, and the actual shipments of the primates to the defendants' United States facility. The government does not intend to question Darmawan on direct examination as to whether he or anyone else actually paid or received a bribe to allow the shipments to take place.

12. Darmawan is a citizen of Indonesia and Darmawan currently resides in Indonesia. The United States government has no subpoena power over Darmawan and the United States government cannot compel his appearance at the trial of this case. Darmawan's presence in the United States, therefore, would be voluntary on his part and, as a result, the government is prepared to proceed at trial if necessary without Darmawan's testimony as a part of its case in chief.

13. The government filed its objection to the Darmawan deposition because the defendants recently, and significantly, changed the manner in which the depositions pursuant to the letters rogatory apparently will be conducted.[2] Dr. Sajuthi, the first person to appear pursuant to the letters rogatory, was apparently questioned by an Indonesian official. In late January 2004, for the first time, after the Dr. Sajuthi session took place, defense counsel made arrangements to allow United

refers repeatedly to Darmawan under the designation "Person A."

[2] The defendants also announced for the first time on February 12, 2004 that they wish Dr. Sajuthi to appear again for questioning, even though he was previously deposed pursuant to the letters rogatory. The defendants apparently wish to take advantage of their newly proposed, changed format in the depositions in order to allow them (the United States-based attorneys) to question Dr. Sajuthi directly. The government has not yet determined whether it will object to this proposal.

States-based counsel, for both the defendants and the government, to question the designated individuals by means of telephonic hook-up or videoconferencing technology.

14. The defendants wish to question Darmawan at the deposition pursuant to Rule 15 of the Federal Rules of Criminal Procedure, *i.e.*, "in order to preserve his testimony for trial." Fed.R.Crim.P. 15. If, indeed, as the defendants represent, the deposition may have to be used in lieu of Darmawan's appearance at trial, then the deposition should proceed in the manner which would best replicate Darmawan's testimony at trial, *i.e.*, a direct examination by the government to be followed by a cross-examination by the defendants.

15. Nothing in Rule 15, when used in the context of a letters rogatory proceeding, requires that the defendants be allowed to question Darmawan first. This deposition is a part of the letters rogatory process and not an independent procedural step requested and conducted at the behest of one party in a pending case. The government, while it initially objected to the letters rogatory, is now a part of the letters rogatory process too. The letters rogatory were issued under the authority of this Court and the United States and are not party specific. The defendants, despite their apparent belief to the contrary, do not have exclusive control over the manner in which these depositions will take place, *i.e.*, it is not exclusively their deposition to take and, in the context of the letters rogatory process, they do not have an automatic right to proceed first simply because they requested the Darmawan deposition first in the context of their letters rogatory motion.

16. The "exceptional circumstances" under which depositions in criminal cases are allowed do not include giving a defendant a free opportunity prior to trial to cross-examine a government witness. There is no prejudice to the defendants in requiring them to question Darmawan at a deposition after direct examination-like questions by the government. The defendants will not in

any way be deprived of an opportunity to confront Darmawan and to otherwise question him under the government's proposed format.

Respectfully submitted,

PATRICK J. FITZGERALD
United States Attorney

By: _____
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Assistant U.S. Attorney
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AFFIDAVIT BY FACSIMILE AND MAIL

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

Carol Bithos, being first duly sworn on oath deposes and says that she is employed in the Office of the United States Attorney for the Northern District of Illinois; that on the 1st day of March, 2004 she faxed and deposited in the mail a copy of

GOVERNMENT'S REPORT TO THE COURT CONCERNING STATUS OF LETTERS ROGATORY AND GOVERNMENT'S REPLY MEMORANDUM CONCERNING OBJECTION TO TELEPHONIC DEPOSITION

to the following named individual(s) on said date.

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Carol Bithos

SUBSCRIBED and SWORN TO BEFORE
me this 1st day of March, 2004

Jamie Lynn Lacy
Notary Public

OFFICIAL SEAL
Jamie Lynn Lacy
Notary Public, State of Illinois
My Commission Exp. 09/17/2006

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA	)	
	)	No. 02 CR 0312
v.	)	
	)	Judge Castillo
LABS OF VIRGINIA, INC.	)	
DAVID M. TAUB	)	
CHARLES J. STERN, and	)	
WILLIAM CURTIS HENLEY III	)	
	)	

DEFENDANTS' LETTERS ROGATORY STATUS REPORT

Pursuant to the Court's January 28, 2004 Order, Defendants LABS of Virginia, Inc. ("LABS"), Charles J. Stern, William Curtis Henley III, and David M. Taub, by the undersigned counsel, hereby submit this Status Report outlining the progress towards completing the process ordered by this Court in its Request for International Judicial Assistance to the appropriate authority in Indonesia.

On February 21, 2003, this Court granted Defendants' First Amended Request for International Judicial Assistance (hereinafter, the "Request"). The approved Request petitioned the Indonesian government for assistance in obtaining specified documents and in compelling a list of identified witnesses to "answer questions upon oral deposition." Request, at 2. The list of deponents included three named individuals, Adi Susmianto, Dondin Sajuthi, and Agus Darmawan, and two individuals listed by official title. Attached hereto as Attachment A is a detailed report on the history and current status of the execution of this Court's Request. This Status Report summarizes the current status of , and plans to complete, the Request.

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I. Current Status.

A. Deposition Procedures.

Over the past several months, defense counsel have succeeded in implementing a procedure for the taking of the depositions in Indonesia, as ordered by the Court in the Request. The implementation of this procedure is significant because execution of the Letters Rogatory is not centralized through a judicial authority. Rather, it is coordinated by various local police authorities.

The procedure that has been arranged is as follows: Counsel will take the depositions of the designated individuals by video-conference or teleconference, so that all U.S. counsel, and the Court if it chooses to do so, can participate in the proceedings. The depositions will take place at a law office or hotel, with a translator and court reporter. The U.S. Embassy has agreed to administer the proper oaths. All of these procedures should ensure that testimony is taken in accordance with Fed. R. Crim. P. 15.

At the most recent status conference, the Court expressed some concern with the length of time that it has taken to complete the Request. The procedures for processing and transmitting the Request through the U.S. Government and the Government of Indonesia have been cumbersome. The Court granted Defendants' Request on February 21, 2003. By April 24, 2003, the Request had been translated into Indonesian and authenticated by the U.S. Department of Justice, U.S. Department of State, and the Indonesian Embassy in the U.S. On June 5, 2003, the fully authenticated Request was hand-delivered to the Department of State in order to be sent to Indonesia. On June 11, 2002, the Request was sent from the Department of State to the U.S. Embassy in Jakarta, Indonesia. On June 27, 2003, receipt of the Request by the U.S. Embassy in Jakarta was confirmed. The U.S. Embassy in Jakarta did not sign the Requests and forward it to

its Indonesian government counterpart, the Indonesian Department of Foreign Affairs ("DFA"), until July 29, 2003, more than four weeks later. The Indonesian DFA, in turn, has been involved in arranging for the execution of the Request, which has required coordination among the U.S. Embassy and several Indonesian central government departments, as well as local authorities.

In Indonesia, requests for international judicial assistance in taking depositions are officially assigned and transmitted to the local police facility in which the deponent is located. The police then are charged with asking questions based on the information in the Request, and may or may not allow a representative of the any of the foreign parties to propose questions or otherwise participate. As the Court recalls from the discussion of the Dondin Sajuthi deposition at the Bogor police station during the last status conference, this procedure does not lend itself to a case like this, involving numerous documents and complex legal issues, and led the Court to encourage a process whereby all parties participate. Accordingly, defense counsel requested that their Indonesian counsel, Mr. Frans Winarta, explore other alternatives.

Initially, Mr. Winarta arranged for the depositions to be taken at the U.S. Embassy in Jakarta. After Mr. Winarta took initial steps to have one witness (Mr. Darmawan) summoned for a deposition at the Embassy, however, the Embassy informed Mr. Winarta on February 24, 2004 that the depositions could not be held there for security reasons.

At defense counsel's request, Mr. Winarta has now arranged for the depositions to take place outside of the Embassy under the same procedures that would be used at the Embassy. The Consular staff at the U.S. Embassy in Jakarta have advised Mr. Winarta that the Embassy staff will be available on Wednesdays (beginning March 10, 2004) to administer oaths for depositions. (Note that, due to the 12 hour time difference, a deposition commencing at 9:00 AM on a Wednesday morning in Indonesia, would commence on Tuesday night in the U.S. at

9:00 PM EST and 8:00 PM CST.) Mr. Winarta has determined that the Grand Hyatt Hotel in Jakarta can arrange video-conferencing at their business center. Counsel for Defendants have secured the services of a translator in Washington D.C., Ms. Nine Syarikin, and have forwarded her biographical information to AUSA MacArthur. Counsel for Defendants have also secured the services of an official court reporting service, Blender Reporting, Inc.

To summarize the status of deposition procedures, we have concluded arrangements for video-conferencing or teleconferencing, administration of the oath, a translator, and a court reporter. All defense counsel are available on the following Tuesday nights/Wednesday mornings in Indonesia: March 23-24, March 30-31, April 20-21, April 27-28, May 4-5, and May 11-12. Defense counsel estimate four full nights/days will be necessary: a full night for Mr. Darmawan, a full night for Mr. Susmianto, a full night for Mr. Susmianto's successor, Mr. Widodo Sukohadi Ramono, and one night for both Dr. Sajuthi and Mr. Muchtar Baraniah, the official designated by the Department of Agriculture (hereinafter, "DOA"). Defense counsel suggest proposing to the Indonesian side at least six options to accommodate their schedules. Also, our experience with telephonic communications with Indonesia is that technical difficulties may arise, which is another reason for securing more than the minimum number of dates.

B. Deponents.

Summary of Scheduling Specific Deponents.

Defense counsels' representative in Indonesia has been required to coordinate among numerous local, national, and international government bodies to coordinate the deposition process, including four local police facilities, Jakarta Police Headquarters, the Indonesian DFA, the U.S. Embassy, and the two Indonesian central government departments involved in this case. The current status is as follows:

1. Agus Darmawan.

Mr. Darmawan's role is well known to the Court, and needs no summary in this Report. Mr. Darmawan has agreed to appear for a deposition if properly summoned by the police. His deposition was scheduled to occur on March 1, 2004, at the U.S. Embassy in Jakarta. Because the Embassy changed its position and will not allow the depositions to be taken at the Embassy, the plan to take Mr. Darmawan's deposition was cancelled. The West Jakarta Police will summon Mr. Darmawan, and we understand he will appear, at the next mutually convenient date. Mr. Winarta will make the request as soon as the Court rules on the Government's pending objections concerning the deposition procedures, and we advise him of the parties' available dates, including the Court if it chooses to participate.

2. Adi Susmianto and Widodo Sukohadi Ramono.

Adi Susmianto was the Director of the Directorate of Biodiversity of the Department of Forestry (hereinafter, "DOF") at the time counsel for Defendants began making preliminary inquiries of the DOF about the issuance of the CITES permits involved in this case. Mr. Susmianto gave a sworn statement which was previously submitted to this Court and the Government as an attachment to Defendants' Reply to the Government's Consolidated Response to Defendants' Pretrial Motions. Mr. Susimianto testified in his declaration, contrary to the charges in the Indictment, that the Indonesian government issued permits "authoriz[ing] the export of the entire colony, including parent stock macaques that were caught in the wild." Id. ¶ 6.

Mr. Susmianto was served a summons on October 13, 2003. He appeared at the Department of Protection of Indonesian Citizens and Legal Entities, DFA, on October 14, 2003, and stated that he was not the correct person to give testimony because he no longer held the

position of Director of the Directorate of Biodiversity of the DOF. Since Mr. Susmianto supervised the research of the issuance of the CITES permits in this case, and gave a sworn declaration about the issuance of the permits, it is necessary to depose Mr.Susmianto. Defense counsel has instructed Indonesian counsel to reserve him with a subpoena to appear in accordance with the procedures outlined in this Report. It also is necessary to depose Mr. Ramono, as the current Director and successor to Mr. Susmianto, because he is now the official in charge of the Directorate that had issued the CITES permits, and is the current spokesperson for DOF. Indonesian counsel has advised that the Central Jakarta Police are willing to summon both Messrs. Susmianto and Ramono. Mr. Winarta will make the request as soon as the Court rules on the Government's pending objections concerning the deposition procedures and we advise him of the parties' available dates.

3. Mr. Dondin Sajuthi.

Dondin Sajuthi was the veterinarian who examined Mr. Darmawan's colony, at the request of the DOF, in accordance with DOF procedures for exporting animals from Indonesia. Dr. Sajuthi was summoned and questioned by Indonesian police on November 21, 2003. United States counsel for Defendants did not learn of the deposition until after it occurred. There is an official stamped and signed version of the deposition in the Indonesian language. Defense counsel have obtained an English translation of the deposition transcript and provided a copy to the Government. The transcript of the questioning of Mr. Sajuthi reflects the limitations of questioning by Indonesian police officers who lack familiarity with the facts of the case or nature of the pending charges. Since neither United States defense counsel nor the Government were in attendance at the deposition, and the areas set forth in Schedule C of the Request were not fully addressed, it is necessary to depose Dr. Sajuthi in accordance with the procedures set forth

herein. Mr. Winarta will request Bogor Police to summons Dr. Sajuthi as soon as the Court rules on the Government's pending objections to the deposition procedures, and we advise him of the parties' available dates.

4. Muchtar Baraniah.

Muchtar Baraniah, one of the individuals not specifically named in the Request, is the designated DOA official. Mr. Baraniah is in the jurisdiction of the South Jakarta Police, and has not been summoned because the South Jakarta Police state they do not have the authority to serve a summons on Mr. Baraniah because the alleged crime occurred out of their precinct. The Indonesian DFA has stated that it will assist in facilitating an examination possibly through the Jakarta Police Headquarters. Mr. Winarta sent a letter to the DFA on February 27, 2004, and will meet with an official of DFA on March 1, 2004. We will advise the Court and Government of the results of this meeting at the hearing on March 3, 2004. As with the other deponents, Mr. Winarta will be in a better position to resolve any issues with DFA and Jakarta Police Headquarters if we can advise him of definitive dates on which the deposition can proceed.

C. Documents.

On January 30, 2004, Indonesian counsel informed defense counsel that all documents listed in Schedule A of the Request had been obtained except for the quotas from the DOF and documents from the Soekarno-Hatta Quarantine Center of the DOA. On February 9, 2004, Indonesian counsel went to the Directorate of Biodiversity Conservation at the DOF and learned that DOF was prepared to certify some copies of the documents, however, it could not certify the CITES permits because the originals were missing. On February 10, 2004, Indonesian counsel were advised by DOA that other than the health certificates there were no documents relating to this case. On February 11, 2004, Indonesian counsel advised that they had received the quotas

for capture and export of wild animals from DOF, but were still waiting to receive officially stamped health certificates from DOA and CITES permits form DOF. On February 27, 2004, Indonesian counsel advised defense counsel that all available documents in Schedule A of the Request had been obtained. Defense counsel has requested Indonesian counsel to send these documents immediately.

II. Plan to Complete Request.

Defense counsel are prepared to schedule and participate in the deposition of Mr. Darmawan as early as possible in March 2004. As stated above, we have confirmed the availability of video-conferencing and teleconferencing, administration of the oath, a translator, and a court reporter. Once the Court rules on the Government's pending procedural objections and identifies whether it will participate in this and future depositions, and proposed dates are confirmed, defense counsel will instruct Mr. Winarta to request Indonesian police to summon the deponents to appear. Defendants propose the following dates: March 23-24, March 30-31, April 20-21, April 27-28, May 4-5, and May 11-12. Finally, regarding the documents requested in Schedule A of the Request, defense counsel will forward copies of all documents to the Government after receiving them from Indonesian counsel.

Respectfully submitted,

Michael L. Fayad

By _____
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March 1, 2004

Attachment A

This attachment provides a detailed outline of the status of the Letters Rogatory. The first section details the progression of the Letters Rogatory from the U.S. Department of State to the Department of Foreign Affairs in the Republic of Indonesia. The second section details the progression of scheduling depositions for each witness listed in Schedule B of the Letters Rogatory. The third section details the progression of obtaining documents listed in Schedule A of the Letters Rogatory.

I. Letters Rogatory (U.S. Department of State to Indonesian Department of Foreign Affairs)

- On February 21, 2003, Judge Castillo granted LABS' Request for Letters Rogatory.
- On April 24, 2003, the Letters of Rogatory were authenticated by the U.S. Department of Justice, U.S. Department of State, and the Indonesian Embassy in the U.S.
- On June 5, 2003, the Letters of Rogatory were hand-delivered to the Department of State in order to be sent to Indonesia.
- On June 11, 2002, the Letters of Rogatory were sent from the Department of State to the U.S. Embassy in Jakarta, Indonesia.
- On June 27, 2003, it was confirmed that the U.S. Embassy in Jakarta had received the Letters Rogatory.
- On July 29, 2003, the Letters Rogatory were signed by the U.S. Ambassador and sent to four different people at the Department of Foreign Affairs ("DFA") in Indonesia.
- On July 30, 2003, LABS' Indonesian counsel conducted a survey of the DFA to determine the status of the Letters Rogatory.
- On August 29, 2003, Indonesian counsel learned that the Letters Rogatory would be sent to the police station in the city where each deponent resides on September 1, 2003.
- On September 2, 2003, the Letters Rogatory were sent to each of the police stations where the witnesses listed in Section II of this memorandum resided (except for the police station where Agus Darmawan resided).

II. Individual Deponents

Adi Susmianto

- On October 7, 2003, Indonesian counsel went to the Central Jakarta Police Station and met with the head of the Detective Unit. Indonesian counsel learned that a summons for Mr. Susmianto had been prepared and was to be sent out on October 13, 2003.

- On October 14, 2003, Mr. Susmianto appeared at the DFA and explained that since he no longer held the position as Director of the Directorate of Biodiversity Conservation of the Department of Forestry, he was not the correct person to give testimony.

- On November 13, 2003, a letter was sent by Indonesian counsel to Ms. Garbe at the U.S. Embassy. This letter was not in regard to any particular witness, however, the letter stated that, in general, the police have not been cooperating in having witnesses deposed. In addition, the letter requests the attendance by an Embassy representative at the deposition of any witnesses in order to record their statements.

- On December 5, 2003, we were informed that Mr. Susmianto had given his relevant documents to the new person in charge. In addition, Indonesian counsel stated that they would find the name of Mr. Susmianto's replacement at the Department of Forestry in order to have him summoned through the DFA.

- We have since learned that Mr. Widodo Sukohadi Ramono is Mr. Susmianto's replacement at the Department of Forestry.

Dondin Sajuthi

- On October 15, 2003, Indonesian counsel met with the Bogor Police Station, who is in charge of the Letters Rogatory for Mr. Sajuthi. The head of the Crime Unit Division, Mr. Soleh, stated that he had prepared the summons for Mr. Sajuthi and that he would make a record of the interview. However, Mr. Soleh first needed the Indonesian version of the Letters of Rogatory.

- On October 20, 2003, the Indonesian version of the Letters Rogatory was provided to Mr. Soleh.

- On November 17, 2003, Indonesian counsel traveled to the Bogor Police Station again to check on the progress in summoning Mr. Sajuthi.

- On November 19, 2003, the Bogor Police confirmed that they served Mr. Sajuthi with a summons to appear before them on November 21, 2003 at 8:30 a.m. At that time, Indonesian counsel was still trying to confirm whether this schedule was suitable for a consular official of the U.S. Embassy to attend and certify the deposition.

- On November 20, 2003, Indonesian counsel stated that due to the upcoming Lebaran Muslim holidays, the deposition of Mr. Sajuthi had been postponed until December. No exact date in December had been determined.

- On November 24, 2003, Indonesian counsel stated that there was a change in plans and the deposition of Mr. Sajuthi went forward on November 21, 2003. The U.S. Embassy consular official could not attend the deposition on such short notice. Defense counsel

were provided with an official stamped and signed version of the deposition in Indonesian.

Muchtar Baraniah (Department of Agriculture)

- On October 7, 2003, Indonesian counsel went to the South Jakarta Police Station to monitor the Letters Rogatory for Mr. Baraniah. The Chief of the South Jakarta Police, Mr. Gufron, stated that summons for the Letters Rogatory should be sent through the Jakarta Police Headquarters rather than the South Jakarta Police Station.

- On October 21, 2003, Indonesian counsel met the head of the Special Crime Unit Division at the South Jakarta Police Station. According to the head of the Special Crime Unit, a summons had been prepared for Mr. Baraniah and was to be delivered "as soon as possible."

- On October 24, 2003, the South Jakarta Police stated that it was unwilling to serve a summons on Mr. Baraniah because the police lack authority since the alleged crime occurred out of their precinct. At that time, Indonesian counsel stated that they would attempt to contact the U.S. Embassy.

- On December 29, 2003, Indonesian counsel stated that the DFA will give instructions to the Jakarta Metropolitan Police to summon Mr. Baraniah, however, activity has slowed down due to the holiday season.

- On January 27, 2004, Indonesian counsel stated that DFA requires proof that the South Jakarta District Police are unwilling to conduct examination and then the DFA will facilitate examination through Jakarta Metropolitan Police.

Agus Darmawan

- On August 29, 2003, it was relayed by the DFA that the address for Mr. Darmawan was incorrect, and therefore, a copy of the Letters of Rogatory could not be sent to him.

- After investigation by Indonesian counsel, Mr. Darmawan's current home address and telephone number were located on October 24, 2003.

- On December 5, 2003, Mr. Kemi at the Department of the Protection of Indonesian Citizens and Legal Entities, DFA was contacted in order to have Mr. Darmawan summoned at his address in Jakarta.

- On December 22, 2003, the DFA sent a letter to the West Jakarta Metropolitan Police Station requesting them to summons Mr. Darmawan.

- On January 14, 2004, Mrs. Elba of the Department of Protection of Indonesian Citizens and Legal Entities, a department within the DFA, was contacted again. At that time, Indonesian counsel obtained a copy of the relevant letter of instruction dated December

22, 2003, from the DFA to the West Jakarta Police Station requesting the police to summons Mr. Darmawan at his home address.

- On February 2, 2004, defense counsel learned that the West Jakarta Police lost the copy of the summons for Mr. Darmawan, which was sent to the police by the DFA on December 22, 2003. On February 2, 2004, Indonesian counsel stated that they would bring the West Jakarta Police additional copies of the letter from the DFA and the Letters Rogatory.

- On February 5, 2004, we learned from Indonesian counsel that the West Jakarta Police have conducted a surveillance of Mr. Darmawan's house with a view to summoning him. Mr. Darmawan would be summoned to the police station first and then to the U.S. Embassy.

- On February 9, 2004, Mr. Darmawan was summoned to the West Jakarta Police Station. Mr. Darmawan stated that he is willing to attend the U.S. Embassy for a deposition at a time suitable to himself and to the other parties involved, however, he will need 3 days advance notice. The relevant officer at West Jakarta Police has confirmed his willingness to arrange for attendance of Mr. Darmawan at a time suitable to us.

- The deposition of Mr. Darmawan was scheduled for March 2, 2004 (the evening of March 1, 2004 in the U.S.). West Jakarta Police confirmed that they would summon Mr. Darmawan to appear on March 2, 2004, once the U.S. Embassy has confirmed availability.

- On February 24, 2004, the consular section of the Embassy stated that it would not allow depositions to occur on Embassy grounds due to security concerns. However, the Embassy consular staff were available to administer oaths to deponents at another location. Embassy staff are available beginning on Wednesday, March 10, 2004, and every subsequent Wednesday thereafter.

III. Documents

- On January 30, 2004, Indonesian counsel informed defense counsel that all documents listed in Schedule A of the Letters of Rogatory had been obtained except for the quotas from the Department of Forestry and the documents from the Soekarno-Hatta Quarantine Center of the Department of Agriculture. In addition, defense counsel learned that there was difficulty in the authentication the documents by the Department of Forestry.

- On February 9, 2004, Indonesian counsel went to the Directorate of Biodiversity Conservation at the Department of Forestry. The Department of Forestry were prepared to certify some copies of the documents, however, the Department represented that they could not certify the CITES permits because the originals were missing. The Department of Forestry planned to search for the quota documents from 1997-2001 and stated that they would get back to us by Thursday, February 12, 2004.

- On February 10, 2004, two of LABS' Indonesian lawyers went to the Department of Agriculture. The Department officials reported that other than the health certificates there were no documents relating to this case. The lawyers requested the Department to officially stamp copies of the health certificates.

- On February 11, 2004, Indonesian counsel advised that they had received the quotas for capture and export of wild animals from the Department of Forestry for 1998-2002. Indonesian counsel is still waiting to have the health certificate and CITES documents officially stamped by the Department of Agriculture and the Department of Forestry.

- On February 12, 2004, Indonesian counsel was directed to inquire with the Departments of Agriculture and Forestry to determine if they have any responsive documents in addition to the final versions of the health certificates, CITES permits, and quotas.

- On February 27, 2004, Indonesian counsel advised defense counsel that all available documents in Schedule A of the Request had been obtained. Defense counsel has requested Indonesian counsel to send these documents.

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of March, 2004, a true and correct copy of the foregoing Defendants' Letters Rogatory Status Report, was served by hand delivery on the following:

Diane MacArthur, Esq.
Assistant United States Attorney
219 South Dearborn Street
Chicago, IL 60604

and by United States first class mail, postage prepaid, on the following:

Michael L. Fayad, Esq.
GREENBERG TRAURIG, LLP
800 Connecticut Avenue, N.W.
Suite 500
Washington, DC 20006

Samuel J. Buffone, Esq.
Kelly B. Kramer, Esq.
ROPES & GRAY
One Metro Center
700 12th Street, N.W.
Suite 900
Washington, DC 20005-3948

Gerald A. Feffer, Esq.
David M. Zinn, Esq.
WILLIAMS & CONNOLLY
725 Twelfth Street, N.W.
Washington, D.C. 20005

James G. Richmond

Minute Order Form (06/97)

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Ruben Castillo	**Sitting Judge if Other than Assigned Judge**	
CASE NUMBER	02 CR 312 - all	**DATE**	3/3/2004
CASE TITLE	USA vs. Labs of Virginia, et al.		

MOTION: [In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

DOCKET ENTRY:

(1) ☐ Filed motion of [use listing in "Motion" box above.]

(2) ☐ Brief in support of motion due _____.

(3) ☐ Answer brief to motion due_____. Reply to answer brief due_____.

(4) ☐ Ruling/Hearing on _____ set for _____ at _____.

(5) ■ Status hearing held and continued to 4/29/2004 at 10:00 A.M..

(6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(7) ☐ Trial[set for/re-set for] on _____ at _____.

(8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.

(9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ Local Rule 41.1 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).

(10) ■ [Other docket entry] A firm trial date will be set at the next status hearing. Government's objection to and request for participation of court telephonic deposition of government witness pursuant to letters rogatory is granted. From today's date until 4/29/04 is excluded pursuant to 18 U.S.C. 3161(h)(2) and 18 U.S.C. 3161(h)(8)(A)(B). (X-I and X-T).

(11) ☐ [For further detail see order (on reverse side of/attached to) the original minute order.]

No notices required, advised in open court.

No notices required.

Notices mailed by judge's staff.

Notified counsel by telephone.

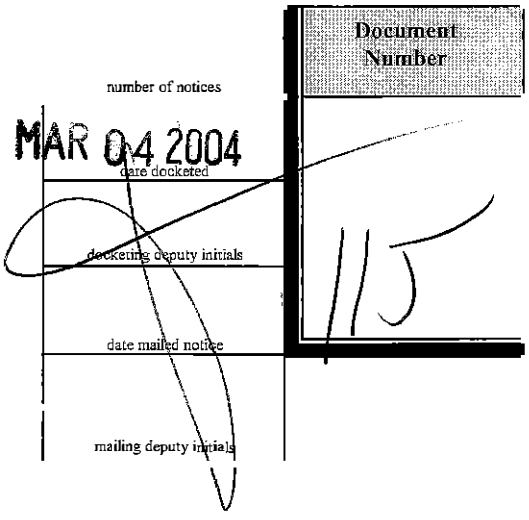
✓ Docketing to mail notices.

Mail AO 450 form.

Copy to judge/magistrate judge.

RO courtroom deputy's initials

Date/time received in central Clerk's Office



UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA	)	
	)	
v.	)	No. 02 CR 312
	)	Judge Ruben Castillo
LABS OF VIRGINIA, INC.	)	
DAVID M. TAUB,	)	
CHARLES J. STERN, and	)	
WILLIAM CURTIS HENLEY III	)	

NOTICE OF MOTION

TO: Micheal Fayed - Debra Mercer
Samuel Buffone
Gerald Feffer - David M. Zinn

PLEASE TAKE NOTICE that on Tuesday, April 13, 2004, at 9:45 a.m. or as soon thereafter as counsel may be heard, I will appear before Judge Castillo in the courtroom usually occupied by him in the Everett McKinley Dirksen Building, 219 S. Dearborn Street, Chicago, Illinois, or before such other who may be sitting in his place and stead, and then and there present:

GOVERNMENT'S EMERGENCY MOTION CONCERNING DESPOSITION SCHEDULED FOR APRIL 13, 2004 PURSUANT TO LETTERS ROGATORY

in the above-captioned case, at which time and place you may appear if you see fit.

Respectfully submitted,

PATRICK J. FITZGERALD
United States Attorney

By: _____

DIANE MacARTHUR
Assistant United States Attorney
219 S. Dearborn Street
3rd Floor
Chicago, Illinois 60604
(312) 353-5352

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA	)	
	)	No. 02 CR 312
vs.	)	Judge Ruben Castillo
	)	
LABS OF VIRGINIA, INC.	)	
DAVID M. TAUB,	)	
CHARLES J. STERN, and	)	
WILLIAM CURTIS HENLEY III	)	

GOVERNMENT'S EMERGENCY MOTION CONCERNING DEPOSITION SCHEDULED FOR APRIL 13, 2004 PURSUANT TO LETTERS ROGATORY

The United States of America, by its attorney, Patrick J. Fitzgerald, United States Attorney for the Northern District of Illinois, respectfully presents this emergency motion in connection with the scheduling of Agus Darmawan's deposition pursuant to the Letters Rogatory. The defendants have scheduled Darmawan's deposition to be taken on April 13, 2004 beginning at 9:00 p.m. local (Chicago) time. The parties have not been able to resolve this scheduling issue without the intervention of the Court. In support of this motion, the government states as follows:

1. The parties appeared before this Court for a status hearing on March 3, 2004. At that time, the parties discussed with the Court the taking of depositions pursuant to the Letters Rogatory. The Court granted the government's request that, as to the deposition of Agus Darmawan, the government would proceed first with questioning to be followed by cross-examination by defense counsel. The Court left to the parties to resolve the government's request that Darmawan's deposition be scheduled last in the sequence of depositions.

2. On March 11, 2004, in response to an email from defense counsel, AUSA MacArthur informed defense counsel of the five proposed dates between March 23, 2004 and May 12, 2004 on which the government preferred depositions to take place. Neither the defense attorneys nor the

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government discussed in the email exchange the particular individuals to be deposed on the specific dates discussed. At the conclusion of the email response, however, AUSA MacArthur again informed defense counsel that she did not want the Darmawan deposition to be scheduled first.

3. The government did not hear anything from the defendants between March 9, 2004 and April 7, 2004 about dates on which any individual had been scheduled for a deposition. On April 7, 2004, one of the defense attorneys sent by telefax to AUSA MacArthur a letter informing her that the defendants intended to depose Darmawan on Tuesday, April 13, 2004 as the first individual to be deposed as part of the Letters Rogatory process. AUSA MacArthur received the telefaxed letter on Thursday, April 8, 2004. AUSA MacArthur immediately contacted defense counsel and objected to both the short notice given as to the actual date of Darmawan's deposition. Defense counsel refused to schedule Darmawan's deposition later in the sequence of dates even though, to date, no other depositions have been scheduled and all other previously-agreed upon dates remain open. The last of the agreed upon available dates are May 11 and 12, 2004.

4. It appears that defense counsel's refusal to change the date is premised on a desire on their part to be able to report to the Court during the next scheduled status on April 29, 2004 that at least one deposition has been completed. Darmawan's deposition is apparently the only deposition that the defendants have been able to schedule thus far.

5. The government objects to proceeding with the Darmawan deposition on August 13, 2004 for the following reasons:

a. The defense attorneys waited until only six days before the scheduled deposition, with an intervening holiday weekend, before advising the government that they had scheduled

Darmawan's deposition on April 13, 2004 and that they had not honored (or felt they could not honor) the request to schedule Darmawan's deposition last.

b. Darmawan advised the government in a telefaxed letter dated March 23, 2004 that due to health reasons he would not be able to travel to the United States for the trial of this case. The fact that Darmawan currently does not agree to appear for the trial increases the importance of his videotaped deposition and the wisdom of taking his deposition last in the sequence of scheduled dates.

c. Darmawan's expressed inability to travel to the United States means that, in order to obtain the most complete form of his testimony possible, AUSA MacArthur will likely travel to Indonesia to attend the deposition herself if she is able to secure permission to do so from the various authorities. While the defendant's were not aware of AUSA MacArthur's interest in traveling to Indonesia before scheduling Darmawan's deposition on April 13, 2004, upon learning of her intention to travel they have continued to refuse to change the deposition date.

d. The parties had earlier agreed with each other that April 23, 2004, among other dates, was also available for a deposition. Thus, even if the defendants wish to complete a deposition before the April 29, 2004 status, the April 23, 2004 date is also a possibility for the Darmawan deposition.

6. If the Court is available the morning of Tuesday, April 13, 2004, the government requests the opportunity to discuss these scheduling issues with the Court by telephone with the participation

of defense counsel.

Respectfully submitted,

PATRICK J. FITZGERALD
United States Attorney

By: _____
DIANE MacARTHUR
Assistant U.S. Attorney
219 South Dearborn Street
Chicago, Illinois 60604
(312) 353-5352

AFFIDAVIT OF FACSIMILE

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

Carol Bithos, being first duly sworn on oath deposes and says that she is employed in the Office of the United States Attorney for the Northern District of Illinois; that on the 12th day of April, 2004 she caused a copy of:

GOVERNMENT'S EMERGENCY MOTION CONCERNING DEPOSITION SCHEDULED FOR APRIL 13, 2004 PURSUANT TO LETTERS ROGATORY

to be faxed to the individual(s) named below on said date.

Michael Fayed - Debra Mercer
FAX: (202) 331-3101

Samuel Buffone
FAX: (202) 508-4650

Gerald Feffer - David M. Zinn
FAX: (202) 434-5029

Carol Bithos
SUBSCRIBED and SWORN TO BEFORE me this 12th day of April 2004.

Cecilia M. Barazowski
Notary Public

OFFICIAL SEAL
CECILIA M. BARAZOWSKI
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 4-24-2005

Minute Order Form (06/97)

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Ruben Castillo	**Sitting Judge if Other than Assigned Judge**	
CASE NUMBER	02 CR 312	**DATE**	4/13/2004
CASE TITLE	USA vs. Labs of Virginia, et al.		

MOTION: [In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

DOCKET ENTRY:

(1) ☐ Filed motion of [use listing in "Motion" box above.]

(2) ☐ Brief in support of motion due _____.

(3) ☐ Answer brief to motion due__ . Reply to answer brief due ___ .

(4) ☐ Ruling/Hearing on _____ set for _____ at _____.

(5) ☐ Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(7) ☐ Trial[set for/re-set for] on _____ at _____.

(8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.

(9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ Local Rule 41.1 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).

(10) ■ [Other docket entry] Government's emergency motion concerning deposition scheduled for April 13, 2004 pursuant to Letters Rogatory is denied as moot by agreement between the parties.

(11) ☐ [For further detail see order (on reverse side of/attached to) the original minute order.]

No notices required, advised in open court.

No notices required.

Notices mailed by judge's staff.

Notified counsel by telephone.

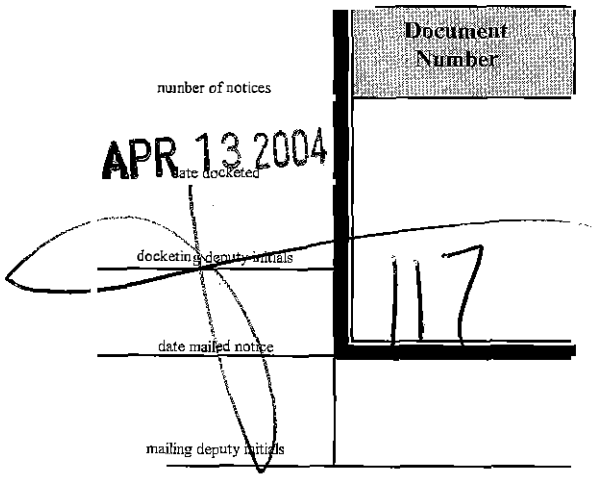
✓ Docketing to mail notices.

Mail AO 450 form.

Copy to judge/magistrate judge.

RO courtroom deputy's initials

Date/time received in central Clerk's Office



Minute Order Form (06/97)

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Ruben Castillo	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	02 CR 312 - all	DATE	4/23/2004
CASE TITLE	USA vs. Labs of Virginia, et al.		

MOTION: [In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

DOCKET ENTRY:

(1) ☐ Filed motion of [use listing in "Motion" box above.]

(2) ☐ Brief in support of motion due _____.

(3) ☐ Answer brief to motion due_____. Reply to answer brief due____ _.

(4) ☐ Ruling/Hearing on _____ set for _____ at _____.

(5) ☐ Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(7) ☐ Trial[set for/re-set for] on _____ at _____.

(8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.

(9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ Local Rule 41.1 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).

(10) ■ [Other docket entry] Status hearing reset to 12:30 p.m. on 4/29/04.

(11) ☐ [For further detail see order (on reverse side of/attached to) the original minute order.]

___ No notices required, advised in open court.

___ No notices required.

✓ Notices mailed by judge's staff

___ Notified counsel by telephone.

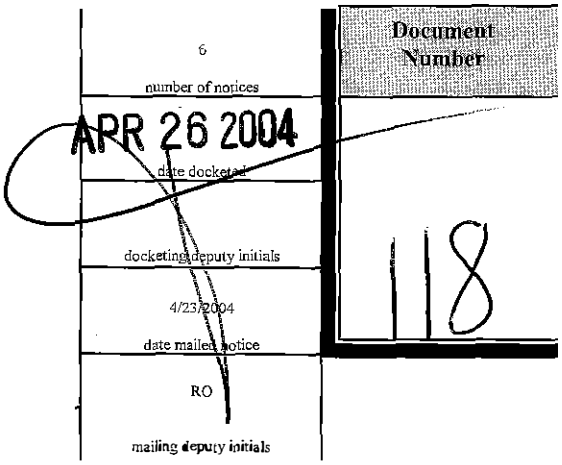
___ Docketing to mail notices.

___ Mail AO 450 form.

___ Copy to judge/magistrate judge.

RO courtroom deputy's initials

Date/time received in central Clerk's Office



Minute Order Form (06/97)

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Ruben Castillo	**Sitting Judge if Other than Assigned Judge**	
CASE NUMBER	02 CR 312 - all	**DATE**	4/29/2004
CASE TITLE	USA vs. Labs of Virginia, et al.		

MOTION: [In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

DOCKET ENTRY:

(1) ☐ Filed motion of [use listing in "Motion" box above.]

(2) ☐ Brief in support of motion due _____.

(3) ☐ Answer brief to motion due_____. Reply to answer brief due_____.

(4) ☐ Ruling/Hearing on _____ set for _____ at _____.

(5) ■ Status hearing held.

(6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(7) ☐ Trial[set for/re-set for] on _____ at _____.

(8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.

(9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ Local Rule 41.1 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).

(10) ■ [Other docket entry] Change of plea hearing set for 6/11/04 at 1:00 p.m. From today's date until 6/11/04 is excluded pursuant to 18 U.S.C. 3161(h)(2) and 18 U.S.C. 3161(h)(8)(A)(B). (X-I and X-T).

(11) ☐ [For further detail see order (on reverse side of/attached to) the original minute order.]

No notices required, advised in open court.

No notices required.

Notices mailed by judge's staff.

Notified counsel by telephone.

✓ Docketing to mail notices.

Mail AO 450 form.

Copy to judge/magistrate judge.

RO courtroom deputy's initials

Date/time received in central Clerk's Office

Document Number

number of notices

APR 30 2004

date docketed

docketing deputy initials

date mailed notice

mailing deputy initials

Minute Order Form (06/97)

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Ruben Castillo	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	02 CR 312 - all	DATE	5/25/2004
CASE TITLE	USA vs. Labs of Virginia, et al.		

MOTION: [In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

DOCKET ENTRY:

(1) ☐ Filed motion of [use listing in "Motion" box above.]

(2) ☐ Brief in support of motion due ____ .

(3) ☐ Answer brief to motion due ____ . Reply to answer brief due ____.

(4) ☐ Ruling/Hearing on ___ __ set for __ ___ at ____ .

(5) ☐ Status hearing[held/continued to] [set for/re-set for] on __ ___ set for __ ___ at ____.

(6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on ____ set for ____ at ____ .

(7) ☐ Trial[set for/re-set for] on _ ____ at ____ _.

(8) ☐ [Bench/Jury trial] [Hearing] held/continued to ____ at ___ ___.

(9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ Local Rule 41.1 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).

(10) ■ [Other docket entry] Change of plea hearing reset to June 14, 2004 at 12:30 p.m. Change of plea hearing set for June 11, 2004 is vacated.

(11) ☐ [For further detail see order (on reverse side of/attached to) the original minute order.]

No notices required, advised in open court.

No notices required.

Notices mailed by judge's staff.

Notified counsel by telephone.

✓ Docketing to mail notices.

Mail AO 450 form.

Copy to judge/magistrate judge.

RO courtroom deputy's initials

Date/time received in central Clerk's Office

Document Number

number of notices MAY 25 2004

date docketed

docketing deputy initials

120

date mailed notice

mailing deputy initials

Minute Order Form (06/97)

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Ruben Castillo	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	02 CR 312 - all	DATE	6/10/2004
CASE TITLE	USA vs. Labs of Virginia, et al.		

MOTION: [In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

DOCKET ENTRY:

(1) ☐ Filed motion of [use listing in "Motion" box above.]

(2) ☐ Brief in support of motion due _____.

(3) ☐ Answer brief to motion due_____. Reply to answer brief due_____.

(4) ☐ Ruling/Hearing on _____ set for _____ at _____.

(5) ☐ Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(7) ☐ Trial[set for/re-set for] on _____ at _____.

(8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.

(9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ Local Rule 41.1 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).

(10) ■ [Other docket entry] Parties' oral request to reset the change of plea hearing is granted. Change of plea hearing reset to June 21, 2004 at 12:30 p.m. From today's date until June 21, 2004 is excluded pursuant to 18 U.S.C. 3161(h)(2) and 18 U.S.C. 3161(h)(8)(A)(B). (X-I and X-T).

(11) ☐ [For further detail see order (on reverse side of/attached to) the original minute order.]

No notices required, advised in open court.

No notices required.

Notices mailed by judge's staff.

Notified counsel by telephone.

✓ Docketing to mail notices.

Mail AO 450 form.

Copy to judge/magistrate judge.

number of notices

JUN 14 2004

date docketed

docketing deputy initials

Document Number

121

RO courtroom deputy's initials

U.S. DISTRICT COURT

2004 JUN 10 PM 3:19

Date/time received in Central Clerk's Office

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Minute Order Form (06/97)

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Ruben Castillo	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	02 CR 312 - all	DATE	6/17/2004
CASE TITLE	USA vs. Labs of Virginia, et al.		

MOTION: [In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

DOCKET ENTRY:

(1) ☐ Filed motion of [use listing in "Motion" box above.]

(2) ☐ Brief in support of motion due ____.

(3) ☐ Answer brief to motion due_____ . Reply to answer brief due_____ .

(4) ☐ Ruling/Hearing on ____ set for _____ at ____.

(5) ☐ Status hearing[held/continued to] [set for/re-set for] on _____ set for ____ at ____.

(6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(7) ☐ Trial[set for/re-set for] on ____ at _____ .

(8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____ .

(9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ Local Rule 41.1 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).

(10) ■ [Other docket entry] Parties' oral request to reset the change of plea hearing is granted. Change of plea hearing reset to 6/29/04 at 12:30 p.m. From today's date until 6/29/04 is excluded pursuant to 18 U.S.C. 3161(h)(2) and 18 U.S.C. 3161(h)(8)(A)(B). (X-I and X-T).

(11) ☐ [For further detail see order (on reverse side of/attached to) the original minute order.]

No notices required, advised in open court.
No notices required.
Notices mailed by judge's staff.
Notified counsel by telephone.
✓ Docketing to mail notices.
Mail AO 450 form.
Copy to judge/magistrate judge.

RO courtroom deputy's initials

Date/time received in central Clerk's Office

Document Number

number of notices JUN 18 2004

date docketed

docketing deputy initials

date mailed notice

mailing deputy initials

122

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Ruben Castillo	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	02 CR 312 - all	DATE	6/28/2004
CASE TITLE	USA vs. Labs of Virginia, David M. Taub, Charles J. Stern, and William Curtis		

MOTION: [In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

DOCKET ENTRY:

(1) ☐ Filed motion of [use listing in "Motion" box above.]

(2) ☐ Brief in support of motion due ____.

(3) ☐ Answer brief to motion due_____. Reply to answer brief due_____.

(4) ☐ Ruling/Hearing on _____ set for _____ at _____.

(5) ☐ Status hearing[held/continued to] [set for/re-set for] on _____ set for ____ at _____.

(6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at ____.

(7) ☐ Trial[set for/re-set for] on _____ at _____.

(8) ☐ [Bench/Jury trial] [Hearing] held/continued to ____ at _____.

(9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ Local Rule 41.1 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).

(10) ■ [Other docket entry] Parties' oral request to reset the change of plea hearing reset to 7/15/04 at 1:30 p.m. From today's date until 7/15/04 is excluded pursuant to 18 U.S.C. 3161(h)(2) and 18 U.S.C. 3161(h)(8)(A)(B). (X-I and X-T).

(11) ☐ [For further detail see order (on reverse side of/attached to) the original minute order.]

No notices required, advised in open court.
No notices required.
Notices mailed by judge's staff.
Notified counsel by telephone.
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Mail AO 450 form.
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RO courtroom deputy's initials

U.S. DISTRICT COURT CLERK 2004 JUN 28 PM 1:36

Date/time received in Central Clerk's Office

Document Number

number of notices

JUN 28 2004
date docketed

123

docketing deputy initials

date mailed notice

mailing deputy initials

Minute Order Form (06/97)

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Ruben Castillo	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	02 CR 312 - all	DATE	7/14/2004
CASE TITLE	USA vs. Labs of Virginia, et al.		

MOTION: [In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

DOCKET ENTRY:

(1) ☐ Filed motion of [use listing in "Motion" box above.]

(2) ☐ Brief in support of motion due ___.

(3) ☐ Answer brief to motion due ___. Reply to answer brief due ___.

(4) ☐ Ruling/Hearing on ___ set for ___ at ___.

(5) ☐ Status hearing[held/continued to] [set for/re-set for] on ___ set for ___ at ___.

(6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on ___ set for ___ at ___.

(7) ☐ Trial[set for/re-set for] on ___ at ___.

(8) ☐ [Bench/Jury trial] [Hearing] held/continued to ___ at ___.

(9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ Local Rule 41.1 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).

(10) ■ [Other docket entry] Defendants' oral request to reset the change of plea hearing is granted. Change of plea hearing reset to 7/29/04 at 11:00 a.m. From today's date until 7/29/04 is excluded pursuant to 18 U.S.C. 3161(h)(2) and 18 U.S.C. 3161(h)(8)(A)(B). (X-I and X-T).

(11) ☐ [For further detail see order (on reverse side of/attached to) the original minute order.]

___ No notices required, advised in open court.

___ No notices required.

___ Notices mailed by judge's staff.

___ Notified counsel by telephone.

✓ Docketing to mail notices.

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RO courtroom deputy's initials

U.S. DISTRICT COURT CLERK 2004 JUL 14 PM 4:15

Date/time received in central Clerk's Office

Document Number

number of notices JUL 15 2004

date docketed

docketing deputy initials

124

date mailed notice

mailing deputy initials

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Ruben Castillo	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	02 CR 312 - all	DATE	7/28/2004
CASE TITLE	USA vs. Labs of Virginia, et al.		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MOTION:

DOCKET ENTRY:

(1) ☐ Filed motion of [use listing in "Motion" box above.]

(2) ☐ Brief in support of motion due _____.

(3) ☐ Answer brief to motion due _____. Reply to answer brief due _____.

(4) ☐ Ruling/Hearing on _____ set for _____ at _____.

(5) ☐ Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(7) ☐ Trial[set for/re-set for] on _____ at _____.

(8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.

(9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ Local Rule 41.1 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).

(10) ■ [Other docket entry] Parties' oral motion to reset the change of plea hearing is granted. Change of plea hearing reset to 8/18/04 at 11:30 a.m. From today's date until 8/18/04 is excluded pursuant to 18 U.S.C. 3161(h)(2) and 18 U.S.C. 3161(h)(8)(A)(B). (X-I and X-T).

(11) ☐ [For further detail see order (on reverse side of/attached to) the original minute order.]

No notices required, advised in open court.

No notices required.

Notices mailed by judge's staff.

Notified counsel by telephone.

✓ Docketing to mail notices.

Mail AO 450 form.

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RO courtroom deputy's initials

U.S. DISTRICT COURT
2004 JUL 28 PM 3:35

Date/time received in central Clerk's Office

Document Number

number of notices

JUL 28 2004
date docketed

126

docketing deputy initials

date mailed notice

mailing deputy initials

Minute Order Form (06/97)

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Ruben Castillo	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	02 CR 312 - 1	DATE	8/18/2004
CASE TITLE	USA vs. Labs of Virginia, Inc.		

MOTION: [In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

DOCKET ENTRY:

(1) ☐ Filed motion of [use listing in "Motion" box above.]

(2) ☐ Brief in support of motion due _____.

(3) ☐ Answer brief to motion due_____. Reply to answer brief due_____.

(4) ☐ Ruling/Hearing on _____set for _____ at _____.

(5) ■ Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.

(7) ☐ Trial[set for/re-set for] on _____ at _____.

(8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.

(9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ■ Local Rule 41.1 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).

(10) ■ [Other docket entry] Change of plea hearing held. Defendant appeared and entered a plea of guilty to Count One of the Indictment. The Court finds the defendant is competent to plead, the plea is voluntary and there is a factual basis for the plea. Enter judgment of guilty on Count One of the Indictment. Enter Plea Agreement. Cause referred to the Probation Dept. for a presentence investigation. Sentencing set for 11/16/04 at 1:00 p.m.

(11) ☐ [For further detail see order (on reverse side of/attached to) the original minute order.]

	No notices required, advised in open court.	Document Number
	No notices required.	number of notices
	Notices mailed by judge's staff.	AUG 19 2004
	Notified counsel by telephone.	date docketed
✓	Docketing to mail notices.	docketing deputy initials
	Mail AO 450 form.	127
	Copy to judge/magistrate judge.	date mailed notice
RO	courtroom deputy's initials	mailing deputy initials

Date/time received in central Clerk's Office

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA)
)
vs.) No. 02 CR 312
) Judge Ruben Castillo
LABS OF VIRGINIA, INC.)

PLEA AGREEMENT

This Plea Agreement between the United States Attorney for the Northern District of Illinois, PATRICK J. FITZGERALD, and the defendant, LABS OF VIRGINIA, INC. ("LABS"), by its authorized representative for the limited purpose of accepting the terms of this Plea Agreement and entering the plea of guilty or authorizing counsel to enter the plea of guilty, CHARLES J. STERN, and its attorneys, MICHAEL L. FAYAD and JAMES G. RICHMOND, is made pursuant to Rule 11 of the Federal Rules of Criminal Procedure and is governed in part by Rule 11(c)(1)(C), as more fully set forth in paragraph 17 below.

Charles J. Stern was Chairman of the Board of Directors of LABS at the time of the issuance of the indictment in this case. Stern, along with William Curtis Henley and David M. Taub, were also named as defendants in the indictment. Defendant LABS was sold after the issuance of the indictment and is now owned by individuals other than Stern, Henley or Taub. As part of the sale agreement, Stern, on behalf of the now former owners of LABS, retained responsibility to direct the defense and any resolution of the charges in the indictment and the civil forfeiture action, and for any liability to LABS arising from both matters. The new owners of LABS were not involved in the conduct giving rise to the charges in the indictment and the new owners did not assume any personal responsibility for this conduct through their post-indictment acquisition of LABS.

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Charles J. Stern has been authorized by the terms of the stock sales agreement, and by the Notarized Letter of Authorization attached hereto as Exhibit 1, dated August 18, 2004, and by the current ownership of LABS to enter into this Plea Agreement, and to enter the plea of guilty on behalf of defendant LABS. A copy of the Letter of Authorization shall be made part of the record of this case at the time of the entry of the plea of guilty. The Letter of Authorization also authorizes Mr. Fayad and Mr. Richmond, the attorneys for defendant LABS, to appear before this Court pursuant to Federal Rule of Criminal Procedure 43(b)(1) and to enter the plea on behalf of defendant LABS.

This Plea Agreement is entirely voluntary and represents the entire agreement between the United States Attorney and defendant LABS regarding defendant's criminal liability in Case No. 02 CR 312, any liability which LABS may have had as a result of the Complaint for Forfeiture referred to in paragraph 18 of this Plea Agreement, and any civil, judicial claim, demand, or cause of action whatsoever of the United States or its agencies relating to the facts and allegations set out in the indictment in this case.

This Plea Agreement concerns only criminal liability and any forfeiture liability under the Complaint for Forfeiture. Moreover, this Agreement is limited to the United States Attorney's Office for the Northern District of Illinois and cannot bind any other federal, state or local prosecuting, administrative or regulatory authorities except as expressly set forth in this Agreement.

By this Plea Agreement, PATRICK J. FITZGERALD, United States Attorney for the Northern District of Illinois, and the defendant, LABS, by CHARLES J. STERN, its authorized representative, and its attorneys, MICHAEL L. FAYAD and JAMES G. RICHMOND, have agreed upon the following:

1. Defendant LABS acknowledges that it has been charged in the indictment in this case with: (a) submitting false records in connection with four shipments of primates from Indonesia to the United States in violation of Title 16, United States Code, Sections 3372(d) and 3373(d)(3)(A)(i) (Counts One through Four); (b) importation of wildlife in violation of foreign law, in violation of Title 16, United States Code, Sections 3372(a)(2)(A) and 3373(d)(2)(Count Five); (c) importation of primates into the United States contrary to law, in violation of Title 18, United States Code, Section 545 (Counts Six through Nine); and (d) importation of nursing female primates and their unweaned young, in violation of Title 16, United States Code, Sections 3372(a)(1) and 3373(d)(2) (Counts Ten through Twelve).

2. Defendant LABS's authorized representative has read the charges against defendant contained in the indictment, and those charges have been fully explained to defendant's authorized representative by defendant's attorneys.

3. Defendant LABS's authorized representative fully understands the nature and elements of the crimes with which defendant has been charged.

4. Defendant LABS will enter a voluntary plea of guilty to Count One of the indictment in this case.

5. Defendant LABS will plead guilty because it is in fact guilty of the charge contained in Count One of the indictment. In pleading guilty, defendant admits the following facts and that those facts establish its guilt and relevant sentencing facts beyond a reasonable doubt:

(a) During the period from at least 1996 through 1998, defendant LABS, a Virginia corporation, was engaged in the business of, among other things, breeding, selling, and maintaining non-human primates for use in medical research. LABS imported non-human primates for these

purposes. One type of non-human primate which defendant LABS imported for these purposes was known by the scientific name "Cynomolgolus macaques" (*Macaca fascicularis*), and by the common name "crab-eating macaques" ("macaques"). Defendant LABS had a non-human primate facility located in Yemassee, South Carolina.

(b) Co-defendant Charles J. Stern was defendant LABS's Chairman of the Board. Co-defendant William Curtis Henley III was on defendant LAB's Board of Directors. Co-defendant David M. Taub was the President and Chief Operating Officer of defendant LABS and was on LABS's Board of Directors.

(c) Indonesian Aquatics Export CV ("Inquatex") was a company located in Indonesia that was owned by Person A and which was engaged in the business of breeding, raising and exporting non-human primates, including macaques.

(d) The United States and Indonesia, among many other countries, are parties or signatories to an international treaty known as the Convention on International Trade in Endangered Species of Wild Fauna and Flora ("CITES"). CITES was enacted in order to protect, among other things, certain species of wildlife against over-exploitation. Species are designated under CITES according to a classification system known as "Appendices." Appendix II to CITES includes wildlife species which, although not necessarily threatened at the present time, might become threatened if trade in those species is not strictly limited. Thus, in an effort to monitor and to control the trade of Appendix II species, CITES requires that a party to the treaty such as the United States only import species included in Appendix II that are accompanied by a valid foreign export permit (a "CITES" permit) from the species' country of origin or from the country from which the species were exported.

(e) Macaques have been designated as an Appendix II species under CITES since 1977.

(f) The United States Fish and Wildlife Service ("USFWS") is designated by Congress as the authority within the United States which enforces CITES. The USFWS issues regulations to enforce the various wildlife protection provisions of CITES and to provide safeguards for the importation of wildlife into the United States. All persons, including corporations, involved in importing wildlife into the United States are required to adhere to these regulations.

(g) All wildlife imported into the United States, including species in Appendix II to CITES, have to first be presented to the USFWS and the agency which, at the time period relevant to this case, was known as the United States Customs Service ("Customs") for inspection. Certain documents also have to accompany and be presented with each shipment. These documents include all permits and licenses required by the laws and regulations of the United States and all export-related permits required by the laws and regulations of the country of export.

(h) Shipments containing species included in Appendix II to CITES have to be accompanied by a valid CITES permit. A CITES permit is valid only for the animals described in the permit.

(i) One of the columns on a CITES permit is labeled "Appendices (source)." A CITES permit which contains the designation "II" in this column reflects a reference to CITES Appendix II. A CITES permit which contains the designation "II(C)" in this column means that the animals to which the CITES permit applied were bred in captivity.

(j) On or about January 31, 1997, defendant LABS entered into a formal agreement with Inquatex for the purchase of the Inquatex colony of approximately 1,312 macaques. The

Inquatex colony contained both male and female non-human primates. The colony consisted of macaques caught in the wild at the time the colony was started, bred in the wild and born in captivity at Inquatex, and bred and born in captivity at Inquatex.

(k) The Inquatex colony was transported from Indonesia to defendant LABS in the United States in seven separate shipments between on or about February 20, 1997 and on or about October 13, 1998. The first four shipments entered the United States through O'Hare International Airport ("O'Hare") in Chicago, Illinois. These four shipments arrived at O'Hare on or about the following dates: (1) February 20, 1997; (2) April 10, 1997; (3) May 1, 1997; and (4) May 30, 1997.

(l) The four O'Hare shipments contained a mix of wild-caught and captive-bred macaques. The CITES permits for each shipment, however, through the use of the "II(C)" designation, falsely represented that the shipments contained only captive-bred macaques.

(m) On or about February 7, 1997, Person A sent defendant, through Taub, four CITES permits dated February 5, 1997, for the 220 macaques in the first shipment. Each of the CITES permits authorized the export of 55 "crab-eating monkeys."

(n) On or about February 20, 1997, defendant did knowingly submit to the USFWS and/or Customs a false record, account, label for, and a false identification of wildlife, namely, CITES permits for the shipment of approximately 220 *Macaca fascicularis* which, through the "II(C)" notation, falsely represented that the shipments contained only captive-bred *Macaca fascicularis*, when, in fact, the shipment contained approximately 80 wild-caught *Macaca fascicularis,* which wildlife had been imported from a foreign country, namely, Indonesia, and transported in foreign commerce.

6. Defendant LABS, by its authorized representative, also acknowledges that pursuant to 18 U.S.C. §§ 3553 and 3572, the court may consider the following conduct for purposes of computing its sentence:

(a) On or about April 10, 1997, defendant did knowingly submit to the USFWS and/or Customs a false record, account, label for, and a false identification of wildlife, namely, CITES permits for a shipment consisting of approximately 253 *Macaca fascicularis* which, through the "II(C)" notation, falsely represented that the shipments contained only captive-bred *Macaca fascicularis*, when, in fact, the shipment contained approximately 98 wild-caught *Macaca fascicularis,* which wildlife had been imported from a foreign country, namely, Indonesia, and transported in foreign commerce.

(b) On or about May 1, 1997, defendant did knowingly submit to the USFWS and/or Customs a false record, account, label for, and a false identification of wildlife, namely, CITES permits for a shipment consisting of approximately 120 *Macaca fascicularis* which, through the "II(C)" notation, falsely represented that the shipments contained only captive-bred *Macaca fascicularis*, when, in fact, the shipment contained approximately 50 wild-caught *Macaca fascicularis,* which wildlife had been imported from a foreign country, namely, Indonesia, and transported in foreign commerce.

(c) On or about May 30, 1997, defendant did knowingly submit to the USFWS and/or Customs a false record, account, label for, and a false identification of wildlife, namely, CITES permits for a shipment consisting of approximately 253 *Macaca fascicularis* which, through the "II(C)" notation, falsely represented that the shipments contained only captive-bred *Macaca fascicularis*, when, in fact, the shipment contained approximately 99 wild-caught *Macaca*

fascicularis, which wildlife had been imported from a foreign country, namely, Indonesia, and transported in foreign commerce.

7. For purposes of applying the guidelines promulgated by the United States Sentencing Commission pursuant to Title 28, United States Code, Section 994, the parties agree on the following points:

(a) The Sentencing Guidelines in effect on November 1, 2003 are applicable to defendant's offense.

(b) Restitution is not an issue in this case and therefore restitution pursuant to Guideline § 8B1.1 is not appropriate.

(c) A remedial order pursuant to Guideline § 8B1.2(a) is not appropriate.

(d) Community service pursuant to Guideline § 8B1.3 is not appropriate.

(e) An order of notice to victims, pursuant to Guideline § 8B1.4 is not appropriate.

(f) The provisions of Guideline §§ 8C2.2 through 8C2.9 do not apply because defendant's offense of conviction is an offense against the environment.

(g) Defendant has the ability to pay a fine and, thus, pursuant to Guideline § 8C2.10. a fine is appropriate and should be determined by applying the provisions of 18 U.S.C. §§ 3553 and 3572.

(h) A term of probation is necessary to reduce the likelihood of future criminal conduct, pursuant to Guideline § 8D1.1(a)(6). The term of probation shall be at least one year but not more than five years, pursuant to Guideline § 8D1.2(a)(1) because the offense of conviction is a felony; and

(i) The defendant and its attorneys and the government acknowledge that the above calculations are preliminary in nature and based on facts known to the government as of the time of this Agreement. The defendant's authorized representative understands that the Probation Department will conduct its own investigation and that the Court ultimately determines the facts and law relevant to sentencing, and that the Court's determinations govern the final Sentencing Guidelines calculation. Accordingly, the validity of this Agreement is not contingent upon the probation officer's or the Court's concurrence with the above calculations.

8. Errors in calculations or interpretation of any of the guidelines may be corrected by either party prior to sentencing. The parties may correct these errors or misinterpretations either by stipulation or by a statement to the probation office and/or court setting forth the disagreement as to the correct guidelines and their application. The validity of this Agreement will not be affected by such corrections, and the defendant shall not have a right to withdraw its plea on the basis of such corrections.

9. Defendant, by its authorized representative, understands the count to which defendant will plead guilty carries the following penalties: (a) a term of probation for defendant of between one to five years pursuant to 16 U.S.C. § 3373(d)(3)(A) and 18 U.S.C. § 3561; (b) a maximum fine of $500,000, or a fine of twice the pecuniary gain to the defendant or twice the pecuniary loss to the victims, whichever is greater; and (c) any restitution ordered by the Court. The parties agree that, pursuant to 18 U.S.C. § 3571(d), the pecuniary gain or pecuniary loss would be difficult to ascertain or estimate due to the nature and circumstances of defendant's offense and any attempt at such calculation would unduly complicate and prolong the sentencing process.

10. The defendant's authorized representative understands that in accord with federal law, Title 18, United States Code, Section 3013, upon entry of judgment of conviction, the defendant will be assessed $400 on each count to which it has pled guilty, in addition to any other penalty imposed. The defendant agrees to pay the special assessment of $400 at the time of sentencing with a check or money order made payable to the Clerk of the U. S. District Court.

11. Defendant's authorized representative understands that by pleading guilty the defendant surrenders certain rights, including the following:

(a) If defendant persisted in a plea of not guilty to the charges against it, it would have the right to a public and speedy trial. The trial could be either a jury trial or a trial by the judge sitting without a jury. The defendant has a right to a jury trial. However, in order that the trial be conducted by the judge sitting without a jury, the defendant, by its authorized representative, the government, and the judge all must agree that the trial be conducted by the judge without a jury.

(b) If the trial is a jury trial, the jury would be composed of twelve laypersons selected at random. Defendant and its attorneys would have a say in who the jurors would be by removing prospective jurors for cause where actual bias or other disqualification is shown, or without cause by exercising so-called peremptory challenges. The jury would have to agree unanimously before it could return a verdict of either guilty or not guilty. The jury would be instructed that defendant is presumed innocent, and that it could not convict it unless, after hearing all the evidence, it was persuaded of defendant's guilt beyond a reasonable doubt and that it was to consider each count of the indictment separately.

(c) If the trial is held by the judge without a jury, the judge would find the facts and determine, after hearing all the evidence, and considering each count separately, whether or not the judge was persuaded of defendant's guilt beyond a reasonable doubt.

(d) At a trial, whether by a jury or a judge, the government would be required to present its witnesses and other evidence against defendant. Defendant would be able to confront those government witnesses and its attorneys would be able to cross-examine them. In turn, defendant could present witnesses and other evidence in its own behalf. If the witnesses for defendant would not appear voluntarily, it could require their attendance through the subpoena power of the court.

(e) At a trial, if defendant desired to do so, defendant could, through its agents, testify in its own behalf.

12. The defendant understands that it may be entitled to have any disputed sentencing fact which could increase its sentence determined at a jury trial under a proof beyond a reasonable doubt standard. The defendant further understands that by pleading guilty, it agrees:

(a) To have its sentence determined under the Sentencing Guidelines; and

(b) To waive having sentencing facts alleged in the indictment and found by the jury beyond a reasonable doubt; and

(c) To have the court determine its sentencing facts by a preponderance of the evidence; and

(d) To allow the court to consider any reliable evidence, including hearsay, in determining its sentence.

13. Defendant, by its authorized representative, understands that by pleading guilty the defendant is waiving all the rights set forth in paragraphs 11 and 12. Defendant's attorney has explained those rights to defendant's authorized representative, and the consequences of its waiver of those rights. Defendant, by its authorized representative, further understands defendant is waiving all appellate issues that might have been available if defendant had exercised its right to trial.

14. The defendant is also aware that Title 18, United States Code, Section 3742 affords a defendant the right to appeal the sentence imposed. Acknowledging this, the defendant, by its authorized representative, knowingly waives the right to appeal any sentence within the maximum provided in the statute of conviction (or the manner in which that sentence was determined), on the grounds set forth in Title 18, United States Code, Section 3742 or on any ground whatsoever, in exchange for the concessions made by the United States in this Plea Agreement. The defendant also waives its right to challenge its sentence or the manner in which it was determined in any collateral attack. The waiver in this paragraph does not apply to a claim of involuntariness, or ineffective assistance of counsel, which relates directly to this waiver or to its negotiation.

15. Defendant understands that the indictment and this Plea Agreement are matters of public record and may be disclosed to any party.

16. Defendant understands that the United States Attorney's Office will fully apprise the District Court and the United States Probation Office of the nature, scope and extent of defendant's conduct regarding the charges against it, and related matters, including all matters in aggravation and mitigation relevant to the issue of sentencing.

17. This Plea Agreement is governed, in part, by Federal Rule of Criminal Procedure 11(c)(1)(C). That is, the parties have agreed that:

(a) The sentence imposed by the Court shall include a term of probation of two years which shall be served by defendant LABS through its current ownership.

(b) As a part of the sentence, the parties agree that the court shall order defendant to pay a fine in the amount of $500,000. The parties agree that this fine reasonably reflects the seriousness of defendant's offense and the need to provide just punishment and adequate deterrence and that this fine is consistent with the factors enumerated in 18 U.S.C. §§ 3553 and 3572 as relevant to the imposition of a fine. The parties agree that the fine shall be designated for deposit into the "Lacey Act Reward Account" if authorized by law.

(c) The defendant shall pay the fine ordered by the Court on the day of sentencing with a certified or cashier's check or, in the event the sentencing hearing does not conclude by 4:00 p.m. on the day on which it is scheduled, then defendant shall submit the certified or cashier's check in the full amount of the fine by the close of business on the day following the sentencing hearing.

(d) Other than the agreed terms set forth in paragraphs 17(a) through 17(c) above, the parties have agreed that the Court remains free to impose the sentence it deems appropriate. If the Court accepts and imposes the parties' agreed terms, the defendant may not withdraw this plea as a matter of right under Federal Rules of Criminal Procedure 11(c) and (d). If, however, the Court refuses to impose the agreed terms, thereby rejecting the Plea Agreement, or otherwise refuses to accept the defendant's plea of guilty, this Agreement shall become null and void and neither party will be bound thereto.

18. The United States previously instituted a civil forfeiture proceeding captioned *United States v. Monkey Money: The Value of Monkeys Illegally Imported by Labs of Virginia, Inc., and Its Officers as Alleged in United States v. Labs of Virginia, Inc., et al., No. 02 CR 312 (N.D. Ill)*, No.

02 C 3833. This forfeiture proceeding sought to forfeit the proceeds from the importation of the primates pursuant to 18 U.S.C. § 545. Defendant LABS, by its authorized representative, agrees to pay the United States of America the sum of $64,675.00 in full satisfaction of the allegations in the Complaint in Case No. 02 C 3833. This sum is in addition to the criminal fine described above in paragraph 17.[1] Defendant LABS agrees to pay the $64,675.00 on the day of sentencing in the criminal proceeding with a certified or cashier's check or, in the event the sentencing hearing does not conclude by 4:00 p.m. on the day on which it is scheduled, then defendant shall submit the certified or cashier's check in the full amount by the close of business on the day following the sentencing hearing.

19. Defendant LABS, by its authorized representative and on behalf of the members of the Board of Directors at the time of the allegations in the indictment, including Stern, Henley and Taub, agrees that during the period of probation imposed in this case Stern, Henley and Taub will have no personal involvement in any application for a license from the United States Fish and Wildlife Service to import wildlife or any importation of wildlife after any such license application is granted. Stern, Henley, and Taub each understand that in the event of a violation of this paragraph, the government, at its option, may move to vacate the Plea Agreement as to the particular individual defendant or defendants who violated this paragraph, rendering the Plea Agreement null and void as to that particular defendant or defendants, and thereafter prosecute that particular defendant or

[1] Defendant LABS, by its authorized representative and its attorneys, prior to any substantive discussions about the civil forfeiture proceeding with the representatives of the government assigned to this criminal proceeding, informed the representatives of the government assigned to this criminal proceeding that it wished to resolve the civil forfeiture proceeding at the same time as and as a part of the criminal proceeding and that it had no objection to the joint resolution of the two proceedings.

defendants not subject to any of the limits set forth in this Agreement. Stern, Henley and Taub each understand and agree that in the event that any of them individually breach this paragraph of the Plea Agreement, and the Government elects to void the Plea Agreement and prosecute the particular defendant or defendants who violated this paragraph, any prosecutions that are not time-barred by the applicable statute of limitations on the date of the signing of this Agreement may be commenced against that particular defendant or defendants in accordance with this paragraph, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement of such prosecutions. Stern (in his individual capacity), Henley and Taub are not signatories to this Plea Agreement but defendant LABS, by its authorized representative, acknowledges that it has received the specific approval of these individuals to abide by the representations in this paragraph.

20. After sentence has been imposed on the count to which defendant LABS pleads guilty as agreed herein, the government will move to dismiss the remaining counts as to defendant LABS and all counts as to defendants Stern, Henley and Taub.

21. The United States Attorney's Office for the Northern District of Illinois agrees not to refer this matter to the Department of Justice or any of its agencies for civil or administrative proceedings based on the facts and allegations set out in the indictment in this case. The Department of Justice's Environment and Natural Resources Division has advised the United States Attorney's Office for the Northern District of Illinois that it will not institute any separate criminal proceedings based on the facts and allegations set out in the indictment in this case.

22. Defendant LABS, by its authorized representative, understands that its compliance with each part of this Plea Agreement extends throughout the period of its sentence, and failure to abide

by any term of the Plea Agreement is a violation of the Agreement. Defendant further understands that in the event it violates this Agreement, the government, at its option, may move to vacate the Plea Agreement, rendering it null and void, and thereafter prosecute defendant LABS not subject to any of the limits set forth in this Agreement, or to resentence defendant LABS. Defendant LABS understands and agrees that in the event that this Plea Agreement is breached by defendant LABS, and the Government elects to void the Plea Agreement and prosecute defendants LABS, any prosecutions that are not time-barred by the applicable statute of limitations on the date of the signing of this Agreement may be commenced against this defendant in accordance with this paragraph, notwithstanding the expiration of the statute of limitations between the signing of this Agreement and the commencement of such prosecutions.

23. Defendant LABS, by its authorized representative and its attorneys acknowledge that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in this Agreement, to cause defendant to plead guilty.

24. Defendant agrees this Plea Agreement shall be filed and become a part of the record in this case.

25. Defendant, by its authorized representative, acknowledges that it has read this Agreement and carefully reviewed each provision with its attorneys. Defendant further acknowledges that it

understands and voluntarily accepts each and every term and condition of this Agreement.

AGREED THIS DATE: August 18, 2004

PATRICK J. FITZGERALD
United States Attorney

LABS OF VIRGINIA, INC.
Defendant

CHARLES J. STERN,
Defendant's Authorized Representative

DIANE MacARTHUR
Assistant United States Attorney

MICHAEL L. FAYAD
Attorney for Defendant

JAMES G. RICHMOND
Attorney for Defendant

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Ruben Castillo	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	02 CR 312 - 1	DATE	10/14/2004
CASE TITLE	USA vs. Labs of Virginia		

MOTION: [In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

DOCKET ENTRY:

(1) ☐ Filed motion of [use listing in "Motion" box above.]

(2) ☐ Brief in support of motion due _____.

(3) ☐ Answer brief to motion due ___. Reply to answer brief due___ .

(4) ☐ Ruling/Hearing on _____ set for _____ at _____ .

(5) ☐ Status hearing[held/continued to] [set for/re-set for] on _____ set for ____ at _____.

(6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at ____.

(7) ☐ Trial[set for/re-set for] on _____ at _____.

(8) ☐ [Bench/Jury trial] [Hearing] held/continued to _____ at _____.

(9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]
☐ FRCP4(m) ☐ Local Rule 41.1 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).

(10) ■ [Other docket entry] Parties' oral request to reset the sentencing hearing is granted. Sentencing reset to 12/15/04 at 1:00 p.m. Sentencing set for 11/16/04 is vacated.

(11) ☐ [For further detail see order (on reverse side of/attached to) the original minute order.]

No notices required, advised in open court.

No notices required.

Notices mailed by judge's staff.

Notified counsel by telephone.

✓ Docketing to mail notices.

Mail AO 450 form.

Copy to judge/magistrate judge.

number of notices

OCT 15 2004
date docketed

15
docketing deputy initials

date mailed notice

mailing deputy initials

Document Number

130

RO courtroom deputy's initials

Date/time received in central Clerk's Office

U.S. DISTRICT COURT
2004 OCT 14 PM 1:17

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 02 CR 0312
	)	Judge Castillo
LABS OF VIRGINIA, INC., DAVID M. TAUB,	)	Magistrate Judge Bobrick
CHARLES J. STERN, and	)	
WILLIAM CURTIS HENLEY III,	)	
	)	
Defendants.	)	
	)	

NOTICE OF FILING

To: The Attached Service List

PLEASE TAKE NOTICE that on Friday, December 10, 2004, pursuant to United States District Court for the Northern District of Illinois Local Criminal Rules 32.1(e) and (g), the undersigned timely filed with the Court **Defendant LABS of Virginia, Inc.'s Version Of The Offense Conduct And Position Paper As To Sentencing Factors**, a copy of which is attached hereto and hereby served upon you.

Respectfully submitted,

LABS of Virginia, Inc.

By: _____
One of Its Attorneys

James G. Richmond
GREENBERG TRAURIG, LLP
77 West Wacker Drive
Suite 2500
Chicago, IL 60601
Tel. (312) 456-8400
Fax (312) 456-8435

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CERTIFICATE OF SERVICE

The undersigned, an attorney, hereby certifies that on this 10th day of December, 2004, a true and correct copy of the foregoing **Notice Of Filing** was served by hand delivery on the following:

Diane MacArthur, Esq.
Assistant United States Attorney
219 South Dearborn Street
Chicago, IL 60604

Kelly Hendrickson
United States Probation Office
55 East Monroe Street
Suite 1500
Chicago, IL 60603

and by United States first class mail, postage prepaid, on the following:

Michael L. Fayad, Esq.
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800 Connecticut Avenue, N.W.
Suite 500
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Samuel J. Buffone, Esq.
ROPES & GRAY
One Metro Center
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Gerald A. Feffer, Esq.
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725 Twelfth Street, N.W.
Washington, D.C. 20005

James G. Richmond

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 02 CR 0312
	)	Judge Castillo
LABS OF VIRGINIA, INC., DAVID M. TAUB,	)	Magistrate Judge Bobrick
CHARLES J. STERN, and	)	
WILLIAM CURTIS HENLEY III,	)	
	)	
Defendants.	)	
	)	

DEFENDANT LABS OF VIRGINIA, INC.'S VERSION OF THE OFFENSE CONDUCT AND POSITION PAPER AS TO SENTENCING FACTORS

LABS of Virginia, Inc. ("LABS") and LABS of Virginia, Inc. d/b/a Alpha Genesis, Inc. ("Alpha Genesis"),[1] by their counsel, with the permission of the Court, hereby submit this combined "Defendant's Version Of The Offense Conduct" and "Position Paper As To Sentencing Factors" (hereinafter, "LABS' Memorandum") in accordance with U.S. District Court, N.D. Ill., Local Rule ("LCrR") 32.1(e) and (g).[2]

[1] Unless otherwise indicated, all references to LABS in this Memorandum, are to LABS, as owned and structured as of the date of the Indictment. As explained in this Memorandum, all of the stock of LABS was sold to Dr. Gregory C. Westergaard after the return of the Indictment. Dr. Westergaard has registered LABS of Virginia, Inc. as "d/b/a Alpha Genesis, Inc." All references to LABS under its current ownership are to Alpha Genesis. With the consent of LABS and Alpha Genesis, undersigned counsel represent the former shareholders of LABS and Alpha Genesis in connection with sentencing in the above captioned matter.

[2] In accordance with LCrR 32(e) the Government's Version Of The Offense Conduct was due to be submitted to the Probation Officer and "served" on each defendant within 14 days after the determination of guilt, or on September 1, 2004. It appears this pleading was submitted to the Probation Officer on November 23, 2004, and sent by regular mail to counsel for Defendant LABS. It was received on November 30, 2004. Under the local rule, LABS has 7 days to respond by submitting Defendant's Version Of The Offense Conduct. Defendant's Position

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On August 18, 2004, the United States Attorney for the Northern District of Illinois and Defendant LABS entered into a Plea Agreement resolving the above-captioned case. The parties presented the Plea Agreement to the Court on August 18, 2004, and LABS, through counsel, entered a plea of guilty pursuant to Federal Rule of Criminal Procedure 11(c)(1)(C). This Court conditionally accepted the plea of guilty and referred the matter to the U.S. Probation Office for a presentence review and a Presentence Investigation Report. By this Memorandum, LABS and Alpha Genesis provide the Court and Probation Officer with additional facts and circumstances surrounding the events alleged in the Indictment in order to complete the Statement of Facts as presented in the Plea Agreement, and submit Defendant LABS' Version Of The Offense Conduct. LABS and Alpha Genesis also present herein factors important to the sentencing determination which are in dispute, and a description of the LABS and Alpha Genesis Ethics and Compliance Program.[3] LABS requests that the Court and Probation Officer consider the information provided herein when determining whether to accept the Plea Agreement, the plea of guilty, and in setting any conditions of probation as part of the sentence to impose on Alpha Genesis.

THE INDICTMENT AND RELATED FORFEITURE ACTION

On April 2, 2002, an Indictment was issued against Defendants LABS, David M. Taub, Charles J. Stern and William Curtis Henley III (collectively, the "Defendants") by a Grand Jury in Chicago, Illinois. The charges in the Indictment arose out of a transaction between LABS and

Paper is due to be filed with the Court and Probation Officer 7 days before sentencing. With the Court's permission, and in order to maintain the current sentencing date, Defendant LABS has combined its Version Of The Offense Conduct and Position Paper in one pleading and files the combined pleading today, December 10, 2004. The Government and Probation Officer have no objection to the combined pleading.

[3] See 18 U.S.C. Section 3572(a)(8).

Indonesian Aquatics Export CV ("Inquatex"), a company located in Indonesia. LABS breeds, raises, manages, and provides certain species of non-human primates ("NHPs"), commonly referred to as monkeys, to United States Government and private organizations for purposes of bio-medical research. Under permits and Decrees of the Government of Indonesia, which were granted at least as early as 1993, Inquatex captures certain species of NHPs from islands in proximity to Indonesia, and raises, breeds, maintains and sells these species of NHPs. In particular, the Indictment charged alleged violations of federal statutes arising out of LABS' purchase of an entire colony of a species of NHPs, consisting of approximately 1,300 cynomolgus macaques, of the species "*Macaca fascicularis*" and commonly known as crab-eating or long-tailed macaques ("Macaques") from Inquatex.[4] The colony was shipped in six shipments beginning in February 1997. The point of entry into the United States for the first four shipments was Chicago's O'Hare International Airport. The Indictment concerned these four shipments. The remaining Macaques were imported at other points of entry on February 13, 1998, October 7, 1998, and October 14, 1998.

The Indictment alleged the following violations: Counts One through Four of the Indictment alleged that Defendants LABS and Taub knowingly submitted false records related to the description of the monkeys with each of the four shipments in violation of 16 U.S.C. §§ 3372(d) and 3373(d)(3)(A)(i) (a felony); Count Five of the Indictment alleged that all Defendants knowingly imported monkeys and in the exercise of due care should have known that the importation violated a foreign law in violation of 16 U.S.C. §§ 3372(a)(2)(A) and 3373(d)(2) (a misdemeanor); Counts Six through Nine alleged that Defendants LABS and Taub knowingly

[4] Historically, due to the demand for healthy and disease-free Macaques, both LABS and Inquatex, separated by one-half the circumference of the globe, engaged in breeding and maintaining healthy and disease-free Macaques.

and fraudulently imported the four shipments of the monkeys contrary to law in violation of 18 U.S.C. § 545 (a felony); and Counts Ten through Twelve alleged that Defendants LABS and Taub knowingly imported three shipments of monkeys and in the exercise of due care should have known that the importation violated a United States regulation allegedly governing the shipments of nursing mothers with infants in violation of 16 U.S.C. §§ 3372(a)(1)(A) and 3373(d)(2) (a misdemeanor).

On May 30, 2002, the United States filed a criminal forfeiture action pursuant to Title 18 U.S.C. Section 981(a)(1)(C) and based on the violations of Title 18 Section 545 in counts Six through Nine. This proceeding sought to forfeit the proceeds of the importation of the Macaques, and was stayed pending the completion of the criminal case. The Court dismissed the forfeiture action with prejudice on January 29, 2004.[5]

THE STOCK SALE TRANSACTION

On December 31, 2003, while the Indictment was pending, the then Shareholders of LABS ("Former Shareholders") sold all of the stock of LABS to Dr. Gregory C. Westergaard, Ph.D., who is now the President and Chief Executive Officer of the company.[6] Dr. Westergaard began his employment with LABS in July, 1998, as the Head of the LABS Division of Research and Development, and therefore, had no involvement in the conduct which is the subject of the Indictment. The Stock Sale Agreement requires Dr. Westergaard to maintain the name listed in

[5] At one point the case was dismissed, then the Government, with the consent of LABS, on January 23, 2004, filed a Motion to Reinstate and Voluntarily Dismiss pending settlement of the criminal case. The Court reinstated the forfeiture complaint, and then dismissed it with prejudice on January 29, 2004, which was the final disposition of this case.

[6] The information and supporting Exhibits in this section were presented during the Change of Plea hearing on August 18, 2004. At the Court's request, and because this information is material to the acceptance of the Plea Agreement and the sentence to be imposed on Alpha Genesis, it is included herein.

the original Articles of Incorporation, LABS of Virginia, Inc., until the conclusion of the subject litigation. On January 27, 2004, Dr. Westergaard, by counsel, recorded a registration of trade name in Beaufort County, South Carolina for LABS to operate under the name of Alpha Genesis, Inc. The registration was recorded in the Register of Deeds for Beaufort County, in compliance with South Carolina and Virginia law.

The Stock Sale Agreement specifically identified the pending Indictment and the civil forfeiture action (the "Litigation"), and the potential impact on the Company of any consequent civil and criminal fines and penalties, as well as the collateral consequence of possible suspension and debarment from future U.S. Government contracts and grants.[7] Dr. Westergaard and the Former Shareholders agreed that after closing of the sale, the Former Shareholders would remain responsible for the Litigation and the payment of any consequent fines and penalties upon any judgment of conviction, and the resolution of any collateral suspension and debarment through an "Administrative Agreement", if the Federal Government Department(s) with whom LABS did business would agree to such a resolution. The Stock Sale Agreement required Dr. Westergaard to execute a Consent to the designation of the Former Shareholders as "attorneys-in-fact" for LABS in connection with the Former Shareholders' retained responsibility. Dr. Westergaard signed the required Consent dated December 31, 2003.[8] The Former Shareholders designated Mr. Stern to act on their behalf in connection with the responsibility and authority described in paragraph 7 of the Stock Sale Agreement and the Consent of Dr. Westergaard.

[7] See Stock Sale Agreement, ¶ 7.1 and 7.2, attached hereto as Exhibit 1. References to the "Company" encompass LABS as it was operated under former ownership and LABS (now called Alpha Genesis) as it is currently being operated under new ownership.

[8] See Stock Sale Agreement, Exhibit I, attached hereto as Exhibit 2.

THE PLEA AGREEMENT

The Plea Agreement, which was executed by the Government and LABS on August 18, 2004, provided that LABS would enter a plea of guilty to Count One of the Indictment. (Plea Agreement, ¶ 4). The false records underlying Count One are four permits submitted to the then United States Fish and Wildlife Service ("USFWS") and/or the United States Customs Service ("Customs") pursuant to the Convention of International Trade in Endangered Species of Wild Fauna and Flora ("CITES"), each of which authorized the export of 55 Macaques. In particular, the conduct underlying Count One is the submission to USFWS and/or Customs of CITES permits for the first shipment of 220 Macaques that falsely represented, through the notation of II(C) on the permits, that the shipment included only captive-bred Macaques, when the shipment actually contained 80 Macaques caught in the wild for Inquatex, in accordance with permission granted by the Indonesian Department of Forestry and Estate Crops ("DOF") in order for Inquatex to start and replenish its colony.[9]

The Plea Agreement requires LABS to pay a fine of $500,000 in connection with the plea to Count One and an amount of $64,675.00 in connection with the dismissed forfeiture complaint. The Plea Agreement also requires LABS, under its new ownership, to serve a two year term of probation.

Undersigned counsel explained all provisions of the Plea Agreement and consequences of entering a plea of guilty to Mr. Stern on behalf of the Former Shareholders and to Dr. Westergaard and his counsel. All parties agreed to the terms. Mr. Stern executed a Declaration stating that he had the authority to act on behalf of the Former Shareholders, to agree to the terms

[9] A CITES permit with the notation "II(C)" is a reference to CITES Appendix II and an identification of the animals in the shipment as being bred in captivity.

of the Plea Agreement, and to enter the plea of guilty or authorize the undersigned counsel to do so.[10] By letter dated August 18, 2004, Mr. Stern advised the undersigned counsel that he had been fully advised of the terms of the Plea Agreement and bis rights if he decided to proceed to trial, and executed the Plea Agreement and authorized undersigned counsel to enter the plea of guilty on behalf of LABS.[11] Paragraph 19 of the Plea Agreement requires the individual defendants in the above-captioned matter to agree to certain conditions. Each of the individual defendants have signed representations that they will abide by the terms of paragraph 19 of the Plea Agreement.[12] The Plea Agreement further states that after sentence has been imposed on LABS for the plea of guilty to Count One, the Government will move to dismiss the remaining counts as to LABS and all counts as to Defendants Stern, Henley, and Taub. This Court conditionally accepted the Plea Agreement, subject to the Presentence Investigation Report of the Probation Office.

THE GOVERNMENT'S VERSION OF THE OFFENSE CONDUCT

Apparently, the Government submitted its version of the offense conduct pursuant to LCrR 32.1(e) on November 23, 2004.

[10] See Declaration of Charles J. Stern, dated August 18, 2004, attached hereto as Exhibit 3.

[11] See Letter from C. Stern to counsel, dated August 18, 2004, attached hereto as Exhibit 4.

[12] See Memo from C. Stern to C. Stern, August 18, 2004; Memo from W. Henley to C. Stern, August 18, 2004; Letter from D. Taub to C. Stern, August 17, 2004, attached hereto as Exhibit 5.

The discussion of the so-called "*Blakely* waiver"[13] in the Government's Version Of The Offense Conduct addresses sentencing enhancements, which appears to be, for the most part, a moot point, and if this point is not moot, the Government incorrectly describes the scope of the waiver.[14] The Government and the Defendant have agreed that Defendant will pay the maximum fine, which the Court cannot exceed when imposing the sentence, and a term of probation of two years, three years less than the maximum term. Thus, the open sentencing issues are whether the Court will finally accept the Plea Agreement and the plea and the two-year term of probation. The Probation Officer has recommended a fine and term of probation which are consistent with the Plea Agreement. Since the plea agreement was executed and the plea entered pursuant to Rule 11(c)(1)(C), if the Court imposes a term of probation in excess of two years, the Defendant could withdraw the plea, if it chooses to do so. Accordingly, while the term of probation is important, it is also important for Defendant LABS to conclude this case.

The Blakely scope of the *Blakely* waiver is equal to and circumscribed by the facts admitted by the defendant in the plea agreement and change of plea hearing. These "admitted

[13] In Blakely v. Washington, 124 S.Ct. 2531 (2004) the Supreme Court held, in part, that other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury and proved beyond a reasonable doubt. Blakely specifically concerned sentencing law in the State of Washington, and the Supreme Court stated that it was not expressing an opinion on the lawfulness of the federal sentencing guidelines. However, subsequent to the issuance of the Blakely decision, several federal courts, including the United States Court of Appeals for the Seventh Circuit, have issued decisions addressing whether and how the holding in Blakely applies to the federal sentencing guidelines. See United States v. Booker, 375 F.2d 508 (7th Cir. 2004) (holding that the federal sentencing guidelines were unconstitutional as applied to the sentence in the case). Given the uncertain status of the federal sentencing guidelines, federal prosecutors, including the Assistant United States Attorney representing the Government in this case, have insisted that plea agreements include language whereby the defendant agrees to waive its right to a determination of sentencing facts by a jury.

[14] See Government's Version Of The Offense Conduct, at 10.

facts", and only these facts, are the "sentencing facts" that the Court may consider in determining the appropriate sentence.

The Government, in its Version Of The Offense Conduct, inappropriately includes facts that may not be considered by the Court as sentencing facts. Those facts include the Government's discussion of the view of a former LABS employee, Patrick Mehlman, that Mr. Darmawan had cut a "baksheesh" deal with the Indonesian government to pay them off for the issuance of CITES permits and that "charity" was an important aspect of obtaining the CITES permits.[15] As discussed below, the Government's conclusion is inaccurate and directly contradicted by the documents and grand jury testimony in this case. Moreover, the Government did not charge LABS with paying a bribe to obtain CITES permits. Furthermore, the Government indicates that financial reasons motivated LABS to "push the envelope" to get the adult Macaques out of Indonesia as soon as possible.[16] An economic motive is not an element of the crime to which LABS pled guilty, nor is it relevant to the offense conduct. In addition, the Government's Version Of The Offense Conduct includes statements regarding the shipment of pairs of nursing mothers and unweaned young in the last three of the four shipments charged in the Indictment, and further characterizes LABS' conduct regarding such shipments as an aggravating factor to be considered in sentencing.[17] None of the foregoing facts constitute sentencing facts as such facts are defined in the Plea Agreement, nor do they relate to conduct relevant to the violation to which LABS pled guilty. Therefore, they may not be relied upon by this Court to determine the sentence.

[15] See id., at 6 and 7.

[16] See id.

[17] See id. at 8-9 and 13.

The Plea Agreement does contain a *Blakely* waiver.[18] However, by that waiver, Defendant only waived its right to have sentencing facts found by a jury beyond a reasonable doubt. The Plea Agreement details the precise facts and conduct subject to the *Blakely* waiver, and only these facts may be considered by this Court when determining LABS' sentence. Paragraph 5 of the Plea Agreement states: "In pleading guilty [to the charge contained in Count One of the Indictment], defendant admits the following facts and that those facts establish its guilt and relevant sentencing facts beyond a reasonable doubt." (emphasis added) Thus, the Defendant admits that the facts set forth in Paragraph 5 establish beyond a reasonable doubt: 1) its guilt, and 2) relevant sentencing facts. The facts stipulated in Paragraph 5 include a description of the structure of CITES, the parties to the transaction for the importation of the Macaques, and the CITES permits issued for the Macaques. Paragraph 5 does not mention the payment of baksheesh, charity or a bribe, does not refer to an economic motive underlying LABS' conduct, and does not discuss the shipment of nursing mothers and unweaned young. In addition, in Paragraph 6 of the Plea Agreement, the Defendant acknowledges certain specific additional conduct that may be considered by the Court in computing its sentence. The conduct described in Paragraph 6 includes Defendant's knowing submission to USFWS and/or Customs of CITES permits that falsely represented the content of the last three of the four shipments that were the subject of the Indictment, essentially the same conduct described in Paragraph 5. Issues regarding baksheesh, unweaned infants, and economic motive are not encompassed by this conduct, nor are they relevant to sentencing for a crime concerning submission of documents including a false Source Code. In accordance with the Plea Agreement, the Court may not

[18] See Plea Agreement, ¶ 12.

consider facts, other then those set forth in Paragraphs 5 and 6 of the Plea Agreement, when determining LABS' sentence.

SUMMARY OF DEFENDANT'S VERSION OF THE OFFENSE CONDUCT

LABS has admitted that it should have more closely scrutinized the CITES permits, and that it is legally responsible for submitting the CITES permits for the first shipment of Macaques each of which contained the a false designation of "II(C)" in "Source" column, indicating that the animals were bred in captivity, because the first shipment contained 220 Macaques, 80 of which were wild-caught. Accordingly, LABS has admitted the facts which provide a factual basis for it plea of guilty to Count One.

As explained in more detail below, by the terms of contract for the purchase of the Inquatex colony, Agus Darmawan, the owner of Inquatex, was responsible for obtaining all licenses, CITES permits, and other permits required by the Indonesian Government for the export of the colony. According to Mr. Darmawan's grand jury testimony, the Indonesian DOF typed the information on the CITES permits. LABS received copies of correspondence between Mr. Darmawan and Indonesian authorities stating that the request for issuance of the CITES permits for the wild-caught and captive-bred Macaques had been approved, and received copies of the CITES permits prior to the first shipment. LABS had no contact with the DOF concerning the CITES permits. Correspondence between Mr. Darmawan and Indonesian officials, together with the recent signed Declaration of a DOF official, establishes that Mr. Darmawan advised the DOF that he sought permission to export certain wild-caught Macaques that were no longer economically productive to keep for breeding, that the DOF followed their own Decrees and procedures when issuing the CITES permits, and that the DOF issued valid and lawful CITES permits for the wild-caught and captive-bred Macaques.

Furthermore, LABS' admitted conduct concerning Count One is not representative of the manner in which LABS has conducted its business since its inception in 1996. Rather, it is an aberration and not systemic. LABS, under former and current ownership, is committed to a strong business ethics and compliance program which is integrated into its daily operations. LABS has a history of compliance with all applicable legal and industry standards that govern its unique business. Moreover, LABS' current owner, Dr. Westergaard, has strengthened and unified the ethics and compliance program, chosen highly qualified professionals to manage and operate the business and the ethics and compliance program, and clearly communicated the importance of ethical and legal compliance to all employees. These actions ensure that the conduct underlying Count One will not be repeated.

I. Statement of Facts.

A. History of LABS of Virginia, Inc.

In 1974, Litton Bionetics Inc.("LBI") established the Yemassee Primate Center ("YPC") in rural southeastern South Carolina for the purpose of inexpensively and efficiently breeding and maintaining NHPs for biomedical research.[19] The initial YPC facility was established on 30 forested acres for the purpose of developing large-scale NHP breeding, originally supporting several U.S. Government projects for the National Institutes of Health ("NIH"), Division of Research Resources ("DRR"). NIH is an institute within what is now called the Department of Health and Human Services ("HHS"). From 1974 until 1982, the YPC facility was primarily devoted to breeding and maintaining rhesus monkeys for the NIH. An additional animal project

[19] LBI has no connection to, and is a wholly different company, than the Bionetics Corporation of Newport News, Virginia.

at YPC included breeding rabbits for in-house serum antibody production, although this program is no longer in place. In 1982, the DRR terminated its rhesus-breeding program at YPC.

In 1979, LBI secured a rhesus NHP breeding contract from the Food and Drug Administration ("FDA"), an administration also within HHS, and established the Morgan Island ("MI") satellite facility as a programmatic and administrative adjunct to the YPC. Morgan Island is a remnant island in St. Helena Sound, close to Yemassee, South Carolina, and completely surrounded by St. Helena Sound and the Atlantic Ocean. In 1985, a Dutch conglomerate, Akzo International, purchased a portion of LBI that included the YPC and MI, and continued its operations variously as Organon Teknika Corp. ("OTC") and Bionetics Research Inc. ("BRI").

In May 1987, Dr. David M. Taub purchased YPC, including Morgan Island, and continued its operation as Laboratory Animal Breeders & Services, Inc. ("LABS, Inc."), a South Carolina corporation. In 1991, LABS, Inc. added the Hampton Primate Center ("HPC"), a few miles from YPC, as a third site where NHPs were maintained, principally for the breeding of Macaques. In 1989, LABS, Inc. received an NIH grant to develop a "Specific Pathogen Free" breeding colony of rhesus and pigtailed macaques. In 1991, a large cynomolgus macaque breeding program was developed at HPC for a major U.S. pharmaceutical company.

In May 1996, all of the shares of LABS, Inc. were purchased by a trust. The shareholders of the trust included Messrs. Stern and Henley[20] LABS was registered as a Virginia corporation named LABS of Virginia, Inc. ("LABS"). In 1997, a domestic breeding colony of cynomolgus macaques at was established HPC. In 1998, LABS established a Centers for

[20] Messrs. Stern and Henley were officers of the Bionetics Corporation ("TBC"), a Virginia corporation. TBC never had any ownership interest in LABS.

Disease Control ("CDC") registered quarantine facility at YPC. In December, 2003, as noted above, all of the shares of LABS were sold to Dr. Westergaard.

Since at least 1987, LABS business has been breeding, selling, maintaining and conducting research on NHPs. Well in excess of 75 percent of the NHPs that were sold by LABS to U.S. Government and commercial customers, and educational institutions were kept at LABS facilities and maintained by LABS staff. Well in excess of 50 percent of the research was conducted by LABS alone, and most of the remainder was jointly conducted by LABS and the Principal Researchers of the customers and institutions. Very few NHPs were sold and immediately sent to customers or institutions, they were maintained at and by LABS. In this regard, LABS is unique.

As noted throughout this Memorandum, LABS has always been involved, directly or indirectly, in biological and neurological medical research on NHPs. The research always has involved many of the most important biological and neurological conditions faced by humans of all ages around the world. Two examples include Auto-Immune Deficiency Syndrome ("AIDS") and Attention-Deficit/Hyperactivity Disorder ("ADHD"). More recently the spectrum has included bio-terrorism research, including vaccines for anthrax and smallpox outbreaks on a large scale. This work has attracted the attention of diverse "animal rights" groups, including extremists elements. For this reason, both Mr. Darmawan and LABS tried to complete the colony transaction with minimal public visibility. While "animal rights extremists" are entitled to state their view, if the members of such groups do not want to take advantage of the biological, neurological and Homeland security advances achieved by research on NHPs for themselves or their families, that is their right, but it is not their right to deny these solutions to the world-population at-large. The Government's statements in its Version Of The Offense

Conduct that this effort at low visibility is evidence of criminal conduct is narrow-minded and short-sighted, as well as contrary to the intent of both LABS and Inquatex.

B. Indonesian Government's Recognition that Captive Breeding of Macaques is Necessary and Approval of Inquatex as a Captive Breeding Facility and Exporter of Macaques.

Inquatex - Primate Division began operations in July, 1991, in accordance with Indonesian law, when it began observing and analyzing the captive breeding, productivity, management and growth of Macaques, and the prospect of sale and export of this species. In approximately 1993, Inquatex requested permission from the Indonesian Government to be designated as a breeding facility which has successfully bred the species in a manner that is not detrimental to the survival of the species. The Indonesian Institute of Sciences, Research Centre for Biology ("Institute of Sciences"), performed a study on Inquatex's captive breeding facility, located in the village of Rumpin, for the Indonesian Government.[21] The Institute of Sciences Report, published in 1993, recommended that Inquatex be designated by the Indonesian Government as successfully engaging in captive breeding for international trade, as long as CITES permits were granted and the requirements of applicable Indonesian Decrees were met. The Institute of Sciences Report acknowledges that Inquatex had 34 wild-caught Macaques in 1991 and that the number of wild-caught had increased to 352 as of the 1993 study. The Institute of Sciences Report also details the location of capture, the supplier, the manner of capture, the manner in which Macaques are selected for the Inquatex breeding program, and notes that the supplier released Macaques that did not meet certain requirements.[22]

[21] Captive Breeding of Long-Tailed Macaques (Macaca fascicularis) in C.V. Inquatex – Primates Division, Research and Development Centre for Biology, The Indonesian Institute of Sciences (1993) (hereinafter, "The Institute of Sciences Report"), attached hereto as Exhibit 6.

[22] See Institute of Sciences Report, at 6.

The Institute of Sciences Report clearly explains the Indonesian approach to striking a balance between conservation, sustained usage, and trade in this breed. The Institute of Sciences Report notes that the use of an export quota limiting the number of Macaques exported each year, "is found to be useful and beneficial to reduce illegal capture of this macaque in the wild."[23] Sustained use or breeding increases the supply of Macaques to meet the demands of biomedical research community, and therefore reduces the export of wild-caught animals and the consequent threat to the Macaque population in the wild. As the Institute of Sciences Report recognizes, without managed breeding, Macaques would become extinct as a result of exporting to meet the demand for Macaques. The Institute of Sciences Report concludes that managed breeding of Macaques should begin immediately to reduce the dependency on wild-caught Macaques to meet the increasing demand.[24]

The Indonesian Government, in addition to recognizing the necessity of using managed breeding to meet the demand for Macaques, has addressed a problem that is inherent in the operation of captive breeding facilities. It is a biological fact that managed breeding of Macaques requires the replenishment of the parent stock as the Macaques age or acquire health-related conditions. Older Macaques that have lived in captivity for many years, as well as Macaques that have health related conditions, cannot be returned to the wild. An unpopular solution is to prematurely euthanize these Macaques to make space at captive breeding facilities for productive breeders. LABS' purchase of a colony of Macaques from Inquatex, described below, was an alternative and preferable way to provide space for younger parent stock Macaques at the Inquatex captive breeding facility because the colony included older parent

[23] Id., at 16.

[24] Id.

stock Macaques that were no longer economically productive as breeders. LABS' purchase of these Macaques allowed the older Macaques to have a longer life span in a healthier environment while making significant contributions to human health. Moreover, LABS' purchase of older parent stock Macaques was consistent with Indonesian law which permitted the export of such Macaques.

Long before LABS sought to purchase the Inquatex colony, Indonesia recognized the benefit of allowing Inquatex to sell and export older parent stock Macaques that were originally captured from the wild. In 1993, following the Institute of Sciences Report, the DOF passed Indonesian Decree No. 145/Kpts/DJ-VI/93 which allowed Inquatex to export 300 wild-caught Macaques. In 1994, the DOF issued Decree No. 26/Kpts –11/94 which applied to the Macaques in this case and a certain species of fish. This Decree was one of many Decrees issued by the Indonesian Government implementing CITES and addressing CITES-related issues, in accordance with all of the factors unique to Indonesia regarding their flora and fauna. This Decree required that Macaques used for export must come from "breeding efforts", which "breeding efforts" must meet the Indonesian Decrees and requirements for that activity. As such, the exporter must be licensed, the number of Macaques exported must not exceed applicable export quotas, and approval of the export must be based on an investigation and evaluation by an Accreditation Team. Accordingly, this Decree does not ban the export of wild-caught or captive-bred Macaques, rather, it allows the export of both subject to a preliminary requirement that they come from breeding efforts, i.e., the Inquatex breeding program, which are approved by DOF because they meet the requirements of other Decrees. The intent of the Decree No. 26/Kpts-11/94 is to prevent "poaching". Moreover, in this case, in 1996-97, the DOF approved the

export and issuance of the CITES permits to Inquatex, and reaffirmed this decision to the U.S. Government in connection with this Indictment in 2002, and again 2004.

C. CITES Policy Regarding Trade In Covered Species

CITES is an International Convention that was entered into force on July 1, 1975, and has been signed and adopted by 166 governments. Both the United States and Indonesia are parties to CITES as of 1975 and 1979, respectively. The purpose of CITES is to ensure that international trade in wild animals and plants does not threaten their existence. In the early days of CITES, trade in wildlife was viewed as exploitation and contrary to a basic letter and spirit of CITES principal of conservation. More recently, particularly after about 1992, some trade measures were viewed as enhancing the effectiveness of environmental protection regulations. For example, the 1992 United Nations Conference on Environment and Development "addressed the fact that, in several multilateral environment agreements, trade provisions play a role in tackling global environmental challenges and use trade measures to enhance the effectiveness of environment protection regulations. The U.N. Conference recognized that such regulations should address the root causes of environmental degradation so as not to result in unjustified restrictions on trade, and that the challenge was to ensure that trade and environment policies were consistent and reinforced the process of sustainable use."[25] Sustainable use and trade restrictions have always been the challenge for CITES members.

Indonesia in particular has had a long evolution of Presidential Decisions and Decrees implementing CITES, and more recently has issued Decrees which try to strike this balance among meeting the international demand for Macaques, trade in this species, and conservation of the species. For example, Indonesia issued Presidential Decisions related to the preservation of

[25] Willem Wijnstekers, The Evolution of CITES, at 7 (6th ed. 2001).

flora and fauna as early as 1931. As CITES was debated among countries concerned about the preservation of flora and fauna, and finally adopted in July of 1975, Indonesia issued related Decrees in numerous years, including 1967, 1974, 1978, 1982, 1988, 1989, 1990, 1993, 1994, 1996, and 1998. Indeed, as described above, Indonesia issued Decrees particularly aimed at preserving Macaques in 1993 and 1994. The existence of numerous Indonesian Decrees governing trade in wildlife indicates that Indonesia takes the letter and spirit of the principles of CITES seriously, and does not cavalierly authorize the export of protected species, particularly Macaques. In fact, the permission to export the wild-caught Macaques in this case was viewed by the Indonesian DOF as an integral part of its effort to use trade to preserve the species, while using the most humane way to deal with the wild-caught Macaques that could no longer be relied on to create healthy offspring in an economical way.

CITES provides a framework for each party to adopt its own national legislation to ensure that the requirements and the basic philosophy of CITES are implemented in a way that fits the different conditions within each member country as to animals and plants listed in CITES Appendices I, II, and III. Each party to CITES must designate a Management Authority to administer the permit system, and a Scientific Authority to determine scientific issues. The USFWS, Division of Management Authority, is the Management Authority for the United States, and the USFWS, Division of Scientific Authority, is the Scientific Authority; the Directorate General of Forest Protection and Nature Conservation at the DOF is the Management Authority for Indonesia and the Indonesian Institute of Sciences is the Scientific Authority. Species covered by CITES may only be traded between parties to CITES if the appropriate documentation has been obtained from the Management Authority of the country of origin.

The species of animals and plants covered by CITES are listed in three Appendices based on the degree of protection the species need. *Macaca fascicularis*, the species involved in this case, is an Appendix II species. Species listed in Appendix II of CITES are not necessarily threatened with extinction, but trade in such species must be controlled to avoid utilization of the species in a manner that is incompatible with survival. To engage in trading Appendix II animals, an export permit issued by the Management Authority of the state of export. There is no need to obtain a CITES permit from the state of import, unless such a permit is required by the importing state.[26] The United States does not require importers of Appendix II animals to obtain a CITES import permit. Therefore, under CITES, the only permit that is required for the shipment of Macaques from Indonesia to the United States is an export permit issued by Indonesia's DOF.

The CITES permit requirements are not aimed at prohibiting commercial trade in wildlife. Rather, CITES requirements ensure that CITES members can easily monitor trade in wildlife in accordance with the principles underlying CITES. In fact, as noted above, CITES has emphasized that controlled commercial trade can facilitate the preservation of a species, such as the Macaques in this case. For example, the CITES Conference of the Parties in 1992, in Kyoto Japan, recognized, just as did the United Nations Conference, that commercial trade can enhance conservation and the sustained use principles of CITES. Resolution 8.3 from the Kyoto Conference reads as follows:

Conf. 8.3

Recognition of the benefits of trade in wildlife

[26] See CITES, Article IV.

NOTING that the majority of species of wild fauna and flora that CITES seeks to protect and enhance occur in the developing countries of the world;

RECOGNIZING that the sustainable use of wild fauna and flora, whether consumptive or non-consumptive, provides an economically competitive land-use option;

BEING AWARE that, unless conservation programmes take into account the needs of local people and provide incentives for sustainable use of wild fauna and flora, conversion to alternative forms of land use may occur;

RECOGNIZING that over-utilization is detrimental to the conservation of wild fauna and flora;

RECOGNIZING further that legal trade in a species should not lead to increases in illegal trade anywhere in its range;

RECOGNIZING also that the returns from legal use may provide funds and incentives to support the management of wild fauna and flora to contain the illegal trade;

ACKNOWLEDGING that the aesthetic, scientific, cultural, recreational and other largely non-consumptive uses of wild fauna and flora are also of enormous importance;

RECOGNIZING that there are many species for which trade would be detrimental to their survival;

THE CONFERENCE OF THE PARTIES TO THE CONVENTION

RECOGNIZES that commercial trade may be beneficial to the conservation of species and ecosystems and/or to the development of local people when carried out at levels that are not detrimental to the survival of the species in question.

Indonesia's Decrees, which permit the export of wild-caught and captive-bred Macaques within the export quota determined by an Accreditation Team, comport with the CITES principles expressed in Conference Resolution 8.3. Indonesia's use of export quotas ensures that any export of a particular species of wildlife is not detrimental to the survival of that species. Furthermore, LABS' purchase of the Inquatex colony, described below, exemplifies the principles that scientific and non-consumptive use of wildlife is of enormous importance and that commercial trade is beneficial to conservation of a species.

D. LABS' Purchase of the Inquatex Colony

As noted in Section A of this Memorandum, historically LABS has engaged in breeding and maintaining Macaques, and conducting and assisting government and commercial customers in conducting research using this breed. For example, the HPC was added as third the LABS site principally for the breeding of Macaques. In 1989, LABS received an NIH grant to develop a "Specific Pathogen Free" breeding colony which included pigtailed macaques. In 1991, a large Macaque breeding program was developed at HPC for a major U.S. pharmaceutical company.

In 1996, Macaques were in high demand by government, institutional, and private researchers.[27] The research required healthy Macaques whose genetic history was known and could be documented. At this time, the available supply of Macaques was frequently infected or prone to infection by Simian Retro Virus ("SRV"), an AIDS-like disease that infects NHPs, including Macaques. For LABS, acquiring an entire SRV-free colony, consisting of several established breeding groups, could provide a steady and reliable supply of this species for its government, institutional and commercial research projects. Since LABS' care and treatment environment was of such high quality, acquiring a self-sustaining colony seemed a viable option. After making inquiries through the international NHP community, LABS discovered that Inquatex had a colony of Macaques that it would sell. LABS planned to import the Inquatex

[27] In the late 1980's there was an outbreak of the ebola virus among Rhesus monkeys (*Macaca mulatta*) located at a facility in Reston, Virginia. After this outbreak, the U.S. Government banned the importation of Rhesus monkeys and established a number of domestic breeding colonies of Rhesus monkeys to insure a clean safe supply. LABS owned one of these colonies. In the 1990's researchers moved away from the Rhesus monkeys and focused on cynomolgus monkeys ("Cynos"). Cynos are smaller and less expensive to import than Rhesus. LABS noticed that imported cynos (mainly from China) were not clean and possessed a risk to the researcher and the general public. LABS determined that breeding a domestic Cyno colony would provide a clean, readily available supply of Cynos in the event of an outbreak of a disease that affected Cynos, and the Government banned the importation of this species.

colony so it could maintain that colony and, using that colony, breed its own domestic colony of Macaques. On January 29, 1997, Inquatex and LABS signed the contract for the sale of the colony. Mr. Darmawan was responsible for obtaining all permits, including the CITES permits, from the Indonesian Government necessary for the export from Indonesia and import to the U.S.

Completion of the shipment of the entire colony was important to both companies for a number of reasons, including the economics of the sale. Mr. Darmawan needed the space and profit from the sale to continue his breeding efforts, and LABS needed both research and breeding eligible Macaques as soon as possible for its business activities. Established breeding groups had to be maintained within each shipment, and if members were separated, they had to be rejoined as soon as possible or they would be rejected, which would create a virtually insolvable problem for the established breeding group and the rejected Macaques. Specific examinations on pregnant females were performed by the then LABS Head of Veterinary Medicine to estimate the stage of pregnancy and ship pregnant females before their third trimester. Generally, LABS wanted to get as many Macaques out of Inquatex and established at LABS because of its far superior facilities and staff. The urgency to remove the entire colony as soon as possible was driven by many of these related factors, including economics, but was by no means driven only or primarily by the "profit" aspect of the economics factors of the transaction.

E. The Issuance of the CITES Permits Accompanying the Shipment of Macaques.

The DOF issued CITES permits for the export of each of the four Chicago shipments of Macaques, as well as the three additional shipments in 1998. Prior to the DOF's issuance of the CITES permits, Mr. Darmawan, in July 1996, submitted a formal written request to the DOF for permission to sell and export a colony of Macaques, which were part of the population of his

breeding efforts. Mr. Darmawan was a licensed exporter, and, as noted above, in 1993 his breeding efforts at his Rumpin facility were studied and evaluated by Indonesian Institute of Sciences, and approved by the Indonesian Government to engage in breeding efforts. Also, in 1993, Inquatex had been authorized by an Indonesian Decree to export 300 wild-caught Macaques. As demonstrated by the following summary of correspondence and actions that preceded the DOF's issuance of the CITES permits, Mr. Darmawan requested permission to export an entire colony of Macaques, and fully disclosed that the colony included a number of wild-caught Macaques that were used to start and replenish that colony. In accordance with the Indonesian Decrees referenced above, including Decree No. 26/Kpts-11/94, the DOF sent an Accreditation Team, including an internationally known veterinary doctor, Dondin Sajuthi, Ph.D.,[28] to examine the colony.[29] The CITES permits were reviewed, completed and approved by Indonesian authorities and sent to Mr. Darmawan, who forwarded them to LABS. Thus, the Indonesian Management and Scientific Authorities, with full knowledge that the Inquatex colony included wild-caught animals, issued the CITES permits.

As demonstrated below, the Government, in its Version Of The Offense Conduct, rolls-up into a ball statements which are rank speculation or simply not true, and tosses it to the Court and Probation Officer in the hope the ball will stick. One example is the references to bribery. The Government refers to three statements, two in a memorandum from Patrick Mehlman and

[28] Dr. Sajuthi graduated from the Bogor Agricultural Institute in Indonesia in 1979, and holds a Masters degree from the University of Wisconsin (1984) and a doctorate degree from Wake Forest University (1992). Dr. Sajuthi is currently the Director of International Programs at the Bogor Agricultural University in Indonesia and is the author of numerous scientific articles concerning NHPs, including articles related to Macaque genetics and immune systems.

[29] A copy of the correspondence referenced in this Memorandum is attached as Exhibit 7. Exhibit 7 includes the Indonesian language version of the correspondence as produced to Defendants by the Government, as well as a certified translation of the correspondence into English.

one statement in a hand-written note from George Ward to Mr. Taub, and encourages the conclusion that a "bribe" was paid by Mr. Darmawan to obtain the CITES permits. The Government did not charge LABS with paying a bribe to obtain the CITES permits, and the referenced statements do not support that conclusion. Moreover, the conclusion itself is in direct contradiction to the to the sworn testimony of Mr. Darmawan before the grand jury.

As background, Mr. Darmawan's ability to understand and speak English is poor. Mr. Darmawan did make valid charitable contributions to two Indonesian universities and supported research students from at least one of these universities at his facility. Mr. Darmawan, in his grand jury testimony, stated that he did give small amounts of money to Indonesian DOF administrative clerks to process CITES permits, including, as he testified in the grand jury, to type the CITES permits. These "tips", or "baksheesh" as the Government calls them, were customary in Indonesia. More importantly, these tips were never concealed but were referred to openly by Mr. Darmawan, and, again, according to his sworn testimony before the grand jury, were not given to obtain the permits but to type the permits and process the paperwork.

In the Mehlman memorandum cited by the Government, Mr. Mehlman states explicitly that his reference to "cut a baksheesh deal to pay them off..." is his "own personal view . . . ." The statement by the veterinarian, Dr. Ward, that Mr. Darmawan completed all steps necessary to export the colony 1½ weeks is simply wrong. As detailed above, Mr. Darmawan started the export process, including the CITES permit request, on July 5, 1996, and did not complete the process, until six months later, on February 5, 1997, the same amount of time it took Dr. Ward, a non-resident of Bangkok where he requested permission to export a monkey. Similarly, giving non-government Indonesian workers a little extra money to work longer and harder make the

export go smoothly is not only customary in Indonesia but in virtually every country in the world, and is not, as the Government suggests, illegal, improper or unethical.

Correspondence between Mr. Darmawan and DOF indicates that DOF knew that Mr. Darmawan's colony included parent stock Macaques that had reached the end of their breeding cycle. In a letter dated July 5, 1996, Mr. Darmawan notified and requested permission from the Director of Support of Regional Nature Protection and Conservation of Flora and Fauna, a division of the DOF, for the sale of economically unproductive parent stock in his colony. Mr. Darmawan explained in the letter that Inquatex had limited space available to hold additional parent stock to be used as breeders. Mr. Darmawan also stated that the parent stock in the colony had become economically unproductive and that Inquatex desired to restock the parent stock of the colony with more productive Macaques. Mr. Darmawan proposed that the DOF give him permission to export the economically unproductive parent stock, thereby giving Inquatex permission to sell those Macaques.

Generally, the Macaque breeding cycle begins at about age four for males and age three for females. While the cycle does not begin and end on exact dates, the effective breeding period typically occurs in the middle of the cycle. The effective breeding period means the period when the male and female animals are most likely to achieve conception, and the female is least likely to experience illness or miscarriage during pregnancy. The Indonesian Institute of Sciences Report concluded that the most productive period of the Inquatex Macaques was age three to four for females and age four to five for males. Veterinary scientists would agree, as a general proposition, that both males and females are less likely to achieve conception, and females are less likely to experience the pregnancy without difficulty and less likely to produce healthy offspring as they reach the later stages of the breeding cycle. The failure to conceive and

successfully produce offspring in a given year means that the male and female have grown one year older and one year closer to the end of the most productive period within the breeding cycle without producing offspring. As the Macaques reach the end of their breeding cycle, they are less likely to produce offspring and are considered to be economically unproductive. The Indonesian Government's grant of authority to export economically unproductive Macaques in 1993, and again for the sale to LABS in 1996 and 1997, were necessary steps in Indonesia's plan to balance conservation and trade, as described in the Institute of Sciences Report. This proven principle was the reason for Mr. Darmawan's request and for DOF's approval, as described in the correspondence discussed below. By granting permission to export, DOF facilitated more effective conservation of Macaques by allowing Mr. Darmawan to replenish his parent stock and therefore, to achieve more successful breeding results.

In a letter dated July 15, 1996, the DOF informed Mr. Darmawan that it did not have any objection "in principle" to Inquatex exporting its unproductive parent stock. By letter dated August 9, 1996, Mr. Darmawan provided a certified statement to the DOF representing that the Inquatex veterinarian had examined the parent stock and determined that 533 Macaques were unproductive parent stock. At the direction of the DOF, and in accordance with the Decree No. 26/Kpts-11/94, an Accreditation Team, including Dr. Sajuthi, the Director of the Bogor Institute of Agriculture, Primate Research Center, examined the parent stock Macaques at Inquatex on September 6, 1996, and determined that 521 of the 533 wild-caught parent stock Macaques in the colony Inquatex proposed to sell to LABS, and that Mr. Darmawan had certified to be not economically productive in his August 9, 1996 letter, "are no longer productive and economical for further keeping as breeders." In a letter dated September 12, 1996, Dr. Sajuthi advised the DOF of his examination and findings regarding Inquatex's parent stock. The DOF subsequently

issued CITES permits to Inquatex for the export of the colony of the Macaques, which included the 521 parent stock Macaques which were no longer productive and economical to keep as breeders. The CITES permits for the export of the first shipment of Mr. Darmawan's colony were issued on February 5, 1997, by the Indonesian DOF. On or about February 7, 1997, the CITES permits for this shipment were sent to LABS, which submitted them to USFWS through its Customs broker in Chicago.

As noted above, the CITES permits for the first shipment were issued and signed by DOF on February 5, 1997, and send by Mr. Darmawan to LABS on or about February 7, 1997. The "Source" column of the permits, which was completed by DOF, listed the notation "II(C)". This source designation is currently defined as "bred in captivity". LABS reviewed the CITES permits, but did not closely scrutinize the notations in the "Source" column of the permits, and sent them to their Customs Broker in Chicago, which presented them to the USFWS. The first shipment contained 220 Macaques, 80 of which were wild-caught. Thus, LABS' failure to closely examine the CITES permits caused the submission of permits containing a false "II(C)" designation in the Source column.

Prior to the arrival of the first shipment in Chicago on February 20, 1997, LABS sent a letter to Division of Quarantine at CDC concerning LABS' certification as a registered facility for quarantining NHPs. In that letter, LABS stated that the Inquatex colony was "composed of animals that were originally caught from the wild under the proper authority and licensure of the Indonesian Government, as well as animals born in and recruited from this colony."[30] In

[30] Letter from D. Taub to T. DeMarcus, February 18, 1997, attached hereto as Exhibit 8. This document was produced by LABS to the Government in response to the Grand Jury subpoena.

addition, inventories accompanying the shipments listed the birth dates of all monkeys, thereby identifying their age.

In support of Defendants' Pre-trial Motions and Reply to the Government's Omnibus Response to the Motions, Defendants obtained a Declaration, dated September 17, 2002, from Ir. Adi Susmianto, MSc, the then current Director of the DOF Directorate of Biodiversity, in order to confirm the facts detailed above.[31] In the Declaration, Ir. Susmianto stated that the DOF, with complete knowledge that the colony to be exported by Inquatex included Macaques that were bred and born in captivity, and wild-caught Macaques, issued valid CITES permits for the export of Macaques residing at Inquatex's facilities, and that the DOF's issuance of the CITES permits complied with the Indonesian Decree.[32] Ir. Susmianto stated that the DOF conclusion in the Declaration was based on the review of the above-described correspondence between Inquatex and the DOF, CITES permits issued by DOF, the Indonesian Decree, and internal DOF information.[33] In particular, Ir. Susmianto certified that DOF knew that the Inquatex colony included economically unproductive parent stock Macaques which were originally obtained from the wild when Mr. Darmawan started his colony, and issued CITES permits to Inquatex for the export of the entire colony of Macaques residing at Inquatex's facility, including Macaques that were caught in the wild. Ir. Susmianto concluded that the CITES permits issued by DOF to Inquatex for the export of Macaques in 1997 were valid CITES permits and that the CITES

[31] Defendants sought and obtained the Declaration because the events had occurred several years earlier. Mr. Darmawan refused to talk to counsel for Defendants and the Government had not interviewed the Indonesian Government officials, so Defendants sought to do so. The Declaration was presented to the Government and the Court as a preliminary indication of the position of the DOF.

[32] See generally, DOF Declaration , attached hereto as Exhibit 9.

[33] See id. ¶ 2.

permits complied with Indonesian law, including the Decree. On June 18, 2004, Defendants again confirmed the DOF position regarding both the validity of the CITES permits and validity of the importation Mr. Widodo S. Ramono, the current Director of Biodiversity Conservation at the DOF, confirmed in writing that Ir. Susmianto's Declaration was valid based on Indonesian laws and relevant Government decrees.[34]

Finally, LABS, from its inception, has been committed to a strong and comprehensive ethics and compliance program. While LABS did not have a standard operating procedure for the importation of NHP's at the time of the conduct in the Indictment, it did have an effective program in all other areas, as evidenced by its impeccable record. The failure to scrutinize the Source Code designation in the CITES permits which resulted in the submission of the false Source Code information was an aberration, which, as noted below, has been corrected.

F. The Shipment of Unweaned Infants.

By shipping nursing mothers together with their young, LABS intended to act in the best interest of the animals and to conduct the shipment in a manner that was humane and healthful.[35] LABS was concerned with maintaining and nurturing the bond between a nursing mother and her young. Indeed, the Shipping Protocol drafted by LABS for Inquatex's export of the Macaques stated that "[s]mall infants must accompany their mothers." The Shipping Protocol further

[34] Confirmation of Widodo S. Ramono, attached hereto as Exhibit 10.

[35] As explained below, LABS conducts its business in a manner that ensures that all animals under its care are treated humanely and live in a healthy environment. LABS is accredited by AAALAC International and has been approved by NIH as being in compliance with NIH's Public Health Service Policy on Humane Care and Use of Laboratory Animals. Moreover, the Macaques imported by LABS enjoyed living conditions that were far superior to those at Inquatex. Dr. George Ward, a LABS veterinarian who spent several months at Inquatex, reported that Inquatex had an inadequate supply of monkey chow, unhygienic water delivery system, and problems with cages.

stated: "Females in last trimester will be excluded from selection until after they give birth and their infant stabilizes after at least 2 weeks."

Prior to the first shipment containing pairs of nursing mothers and unweaned young, Mr. Darmawan advised LABS in a message dated March 25, 1997, that including pregnant Macaques in their first trimester and mothers with unweaned infants was "OK" with him. However, Mr. Darmawan wanted LABS to take full responsibility if anything happened to the shipment, such as the pregnant Macaques experiencing a miscarriage or the young Macaques dying in transport. If a miscarriage or death occurred, Mr. Darmawan was concerned that airlines may refuse to carry the Macaques or the Indonesian Government would refuse to allow the export of the Macaques remaining in the Inquatex colony, and apparently Mr. Darmawan did not want LABS to blame him for any such problems with executing the export. Mr. Darmawan did not express any concerns to LABS about the lawfulness of transporting nursing mothers with unweaned young. Indeed, in a memorandum to LABS dated August 1, 1997, Mr. Darmawan stated that there is no ban shipping a mother with infant in the International Air Transport Association regulations.

The Government's Version Of The Offense Conduct includes the Government's conclusion that LABS' conduct violated 50 C.F.R. § 14.105(b)(2), which addresses consignment of live wild mammals and birds to carriers. LABS did not plead guilty to such a violation. Moreover, the sentencing facts as determined in the Plea Agreement, do not contain any facts related to the shipment of nursing mothers and unweaned young.

Section 14.105(b)(2) provides: A nursing mother with young, an unweaned mammal unaccompanied by its mother, or an unweaned bird shall be transported [to the United States] only if the primary purpose is for needed medical treatment . . . ." The regulation is concerned

with protecting the mother-infant bond at a stage when the infant still relies on its mother for nourishment by ensuring that the infant will not be separated from its mother while it is still nursing. A reasonable interpretation of this regulation is that the regulation was intended to prohibit the transport of animals that would disrupt the mother-infant relationship. Therefore, it would be lawful for nursing mothers with unweaned infants to be transported, as long as they are transported together.[36] LABS' actions were consistent with the purpose of the regulation, i.e., to promote humane and healthful transport, and LABS' actions resulted in the humane and healthful transport of the Macaques. In fact, there was only one death in transit for the entire colony of over 1,000 Macaques.

Moreover, LABS actions were consistent with 9 C.F.R. § 3.87, promulgated by the Secretary of Agriculture, which governs humane transportation of NHPs and concerns "primary enclosures used to transport nonhuman primates." Subsection 3.87(d)(1)(i) regarding "compatibility" states in relevant part:

> Only one live nonhuman primate may be transported in a primary enclosure, except as follows: A mother and her nursing infant may be transported together.

This regulation, which was in effect in 1997 at the time of the shipments from Indonesia, indicates that it is lawful to ship a nonhuman primate mother and her nursing infant.

At the time of the shipments at issue in this litigation, LABS was not aware of any statute or regulation that prohibited the shipment of nursing mothers accompanied by their young.

[36] If the regulation prohibited the shipment of nursing mothers accompanied by their unweaned infants, as the Government contends, there would be no need for the regulation to list two separate categories relevant to mammals: nursing mothers with young and unweaned mammals unaccompanied by their mothers. Furthermore, if the regulation was intended to prohibit the shipment of unweaned mammals whether or not accompanied by their mother, the regulation could have simply prohibited the shipment of unweaned mammals, just as it prohibited the shipment of "unweaned birds."

However, LABS did not intend to violate any laws when it imported the Macaques and was open about its practice of shipping nursing mothers accompanied by their young. The documentation sent to USFWS and Customs before each shipment and the documentation accompanying each shipment clearly indicated that there were unweaned infants in the second, third, and fourth shipments. The documentation included lists that identified some of the Macaques in each shipment as being babies and noted each Macaque's date of birth, thereby indicating that unweaned infants were included in the shipments. Furthermore, both USFWS and Customs inspectors saw that there were unweaned infants in these three shipments,[37] but allowed these shipment to enter the United States and did not advise LABS that the shipments violated any laws or regulations.

II. The LABS and Alpha Genesis Ethics and Compliance Program.

A. U. S. Government Regulatory Authority Over LABS and Alpha Genesis.

LABS, now operating as Alpha Genesis, performs a significant amount of work for U.S. Government departments and agencies, in addition to working for private pharmaceutical companies and research institutes, including major universities.[38] As a "government contractor", the Company is subject to the complex Federal Acquisition Regulation ("FAR"), including provisions requiring government contractors to be "presently responsible" to perform government contracts, provisions governing the Government's decision to suspend or debar a government contractor receiving

[37] An unweaned infant is easy to identify because a nursing mother carries her infant on her shoulder.

[38] LABS, now doing business as Alpha Genesis, is a party to five government contracts, three of which were entered by LABS under former ownership. Regarding the three government contracts that were entered into by LABS prior to its sale, Dr. Westergaard, has advised the appropriate contracting officer of LABS' change in ownership. Under FAR Section 42.1204(b) (48 C.F.R. § 42.1204(b)), a novation agreement is not necessary when there is a change in the ownership of a government contractor as a result of a stock purchase.

government contracts, and provisions detailing mitigating factors that the Government should consider in deciding whether to suspend or debar a government contractor or take another action in lieu of suspension or debarment.[39] Many federal departments and agencies have their own "Suspension and Debarment Official" who has authority to impose suspension or debarment on a government contractor. When a government contractor, such as the Company, performs work for multiple federal departments and agencies, there may be several suspension and debarment officials that share the responsibility of assessing whether a contractor should be suspended or debarred. The regulations and procedures governing suspension and debarment set forth in the FAR apply to all federal agencies and departments, although some federal agencies and departments have additional regulations that are only applicable to them. Typically, the agency that has the most current contracts measured in dollars or significance of the work is the "cognizant suspension and debarment authority", and the official who will coordinate with the suspension and debarment officials of the other agencies that may have an interest in the present responsibility of the contractor. Alpha Genesis performs work under contracts the Department of Health and Human Services' NIH at the National Institute on Alcohol Abuse and Alcoholism ("NIAAA") and the National Institute of Allergy and Infectious Diseases ("NIAID"), and for the Food and Drug Administration ("HHS/FDA"). Alpha Genesis has entered into two additional contracts with NIH/Office of Research Services ("ORS") and the Department of Defense's Department of the Army ("DOD/DA").

[39] See 48 C.F.R. §§ 9.406-1(a); 9.407-1(b)(2). If a government contractor is suspended or debarred from receiving government contractors, a government agency may continue any contracts in existence at the time of the suspension or debarment unless the agency head directs otherwise. 48 C.F.R. § 9.405-1(a).

The return of an Indictment and a plea and judgment of guilty are both separate grounds for suspension or debarment under the FAR and the corresponding HHS FAR regulations.[40] In these circumstances, the Suspension and Debarment Official has discretion whether to suspend, debar, take some other action or defer any action. Any action must take into account the mitigating factors, must be based on whether the contractor is presently responsible, and may not be punishment for the underlying conduct.[41]

Prior to the return of the Indictment in April, 2002, counsel for LABS informed the HHS Suspension and Debarment Official of the possibility of the return of an indictment. HHS assumed the role of the cognizant suspension and debarment authority, and subsequent to the issuance of the Indictment LABS submitted its ethics and compliance material to the HHS Suspension and Debarment Official. HHS is an especially appropriate agency to assume this role because, in addition to being responsible for the Company's compliance with the FAR, it is also responsible for the Company's compliance with regulations applicable to animal research, care, and use. HHS has continued to monitor the progress of the criminal case, and following the plea of guilty on August 18, 2004, advised counsel for the Company that it would continue to be the cognizant suspension and debarment authority to address Alpha Genesis' present responsibility to perform government contracts.

The HHS Suspension and Debarment Official has stated that an administrative agreement with Alpha Genesis appears to be the best resolution of the Company's present responsibility. An administrative agreement, sometimes called a corporate integrity agreement, is a recognized alternative to suspension or debarment. The agreement, between the agency with suspension and debarment authority and the contractor, requires the contractor to implement and maintain a complete ethics and

[40] See 48 C.F.R. §§ 9.406-2(a); 9.407-2(b).

[41] See 48 C.F.R. § 9.402(b).

compliance program that is, in part, tailored to the type of work the contractor does for the agency, in part on other provisions of the FAR or comparable agency regulations, and has a visible ethics component. In this case, HHS would review the Alpha Genesis Ethics and Compliance Program, may require changes or additions, and would require Alpha Genesis to maintain this Program for the period of the agreement, usually three years, as well as after the expiration of the agreement. Periodic audits are required, usually annually, and periodic reports are required regarding compliance with the agreement and summarizing other ethics and compliance developments, usually semiannually or in some cases quarterly. A failure to comply with the agreement allows the agency to reconsider its suspension or debarment decision based on the underlying conduct as well as the violation of the agreement. HHS's decision to enter such an agreement means that HHS will not issue a notice of proposed suspension or debarment to Alpha Genesis, as long as it is in full compliance with the agreement. Alpha Genesis and HHS are in the process of discussing the terms of such an agreement, and Alpha Genesis plans to provide HHS with a draft of the agreement within the next month. Alpha Genesis proposes that it submit all reports required under the administrative agreement to the Probation Office in accordance with the reporting schedule set by in the administrative agreement, and that no additional reports be required during its term of probation. In addition, Alpha Genesis suggests that HHS, the agency with special expertise in regulating companies in the animal care industry, notify the Probation Office if HHS determines that Alpha Genesis has breached the terms of the administrative agreement or engaged in conduct that HHS suspects to be unlawful.

B. The LABS and Alpha Genesis Ethics and Compliance Programs

Since its inception in April 1996, LABS has been committed to a strong ethics and compliance program. LABS' history demonstrates that, with the exception of the conduct underlying the count to which LABS has pled guilty in this Litigation, LABS has had a history of

full compliance with all laws and regulations applicable to its unique business. While the regulations applicable to LABS, and now to Alpha Genesis, as a government contractor are extensive and complex, the laws and regulations applicable to the Company as an animal care and research business are equally extensive and complex. Since LABS began operations under these two sets of regulations, LABS has never been subject to any investigations, notices of violations, or enforcement actions concerning violations of any of the applicable laws or regulations.[42]

On May 23, 2002, following the return of the Indictment, LABS provided a written submission to the Assistant Secretary for Administration and Management at HHS, the HHS Suspension and Debarment Official. This Submission detailed LABS' ethics and compliance program ("LABS' Program"), which was in place prior to the conduct that was the subject of the Indictment, and was in place at the time of the submission.[43]

LABS' Program was made up of three primary components: (1) a Code of Ethics and Standards of Conduct (the "Code"); (2) the Institutional Animal Care and Use Program and the Institutional Animal Care and Use Committee (the "IACUC"), which is an semi-autonomous body composed of five voting members;[44] and (3) the Standard Operating Procedures (the "SOP's"), which include an extensive training program for all employees. At the time of the

[42] In 1998, following a fire in one of the buildings, LABS voluntarily agreed to install an HVAC monitoring system.

[43] A copy of LABS' submission to HHS, without exhibits, is attached hereto as Exhibit 11. Current versions of some of the exhibits that were previously submitted to HHS are submitted as exhibits to this Memorandum as part of the Alpha Genesis Ethics and Compliance Program. Alpha Genesis' current Program and LABS' Program are substantially similar. The differences between these two programs are detailed below.

[44] The establishment of the IACUC is required by 9 C.F.R. § 2.31.

conduct in the Indictment, there was no SOP that detailed the legal requirements for the importation of animals. However, Alpha Genesis, has established and implemented an SOP specifically addressing the laws and industry standards that govern the importation of animals.

On December 31, 2003, Dr. Westergaard purchased all of the stock owned by the then Shareholders of LABS.[45] Dr. Westergaard is the sole owner of all of the stock of Alpha Genesis, and currently holds the title of President and Chief Executive Officer. Dr. Westergaard and his family reside in Beaufort, South Carolina. Upon the purchase of LABS, Dr. Westergaard adopted and maintained the LABS' Program as it existed at the time of purchase. With this purchase, LABS was under a new management team whose members were full-time residents of the Yemassee area. Several key executive positions were filled with other veterinary scientists, who also are full-time residents in the Yemassee area. Susan Menkus Howell, Ph.D., is Alpha Genesis' Director of Research and Development. Dr. Howell holds Masters and Doctorate degrees in Anthropology from Arizona State University, has worked as a professor of Anthropology at Arizona State University, and has published numerous articles and presentations regarding the behavior of NHPs.[46] Dr. Jose Francisco Rodriguez is Alpha Genesis' Director of Veterinary Medicine. Dr. Rodriguez received his degree in veterinary medicine from the University of Puerto Rico, served as the Chief Staff Veterinarian at the Caribbean Primate Research Center of that university from 1989 through 2002, and has published numerous articles regarding Macaques and rhesus monkeys.[47]

[45] A copy of Dr. Westergaard's curriculum vitae is attached hereto as Exhibit 12.
[46] A copy of Dr. Howell's curriculum vitae is attached hereto as Exhibit 13.
[47] A copy of Dr. Rodriguez's curriculum vitae is attached hereto as Exhibit 14.

Under the leadership of Dr. Westergaard and his new team, Alpha Genesis thoroughly reviewed and strengthened the ethics and compliance program. The Alpha Genesis team started by giving the program a formal name: the Alpha Genesis Ethics and Compliance Program (hereinafter, the "Program"). Next, members of the team reviewed the Code, IACUC program, and each SOP. Some changes were made and all SOPs were reissued on September 14, 2004, under the name of Alpha Genesis. Alpha Genesis has not significantly altered the structure of the Program as it existed under former ownership. Alpha Genesis' revisions to the Program have resulted in the implementation of a strengthened and unified Program that specifically addresses the alleged conduct underlying the Indictment. The following important changes occurred under Alpha Genesis:

1. The Program was given a formal name and unified around the three foundation components (i.e., the Code, IACUC, and SOPs). These steps gave the Program a new image, associated it with new management, and made it user-friendly by explaining that the Program was not another complex set of requirements, but a unified structure built upon components with which each employee was familiar.

2. Dr. Westergaard has issued a "Statement from the President" to all employees that explains the importance of the Program, describes how each of the parts work together, clearly identifies the Ethics Official, and encourages employees to report suspected violations and make suggestions on how to further strengthen the Program. Dr. Westergaard's message explains that senior management of Alpha Genesis is committed to the Program, and both requests and demands that all employees take personal ownership of the Program in order to maintain and further build an environment of trust among employees and with all customers.

This message is itself a fourth structural point to the Program, and was an important step in creating a culture of ethics and compliance among all employees, and informing employees that Alpha Genesis had undertaken a value-shift with the initiation of the Program. That shift was a rebirth of the Program as a company asset in which each employee had personal interest and stake.

3. Alpha Genesis centralized responsibility for the Program in the IACUC, and appointed the Chairperson of the IACUC, Dr. Howell, as the Ethics Official. The IACUC was the natural place for the Program because the IACUC plays a central role in the everyday operations of Alpha Genesis. Also, Dr. Howell, as the Chair of the IACUC and the Ethics Official, is perfect choice for establishing and maintaining a visible and accessible Program. Dr. Howell's impeccable credentials and dynamic presence within the Alpha Genesis community will reinforce management's commitment to the Program and the Program's role in the daily operations of Alpha Genesis.

4. The new SOP detailing procedures for importing animals, whether or not Alpha Genesis imports in the future, communicates to employees that the Alpha Genesis community must always be vigilant in looking for ways to improve the Program, and for gaps, as no ethics and compliance program is perfect. The SOP covers all laws and regulations governing the importation of animals and includes a checklist of requirements to be followed by all employees involved in any aspect of importing animals.[48]

[48] The SOP governing the importing of animals is attached hereto as Exhibit 15.

C. Summary of the Ethics and Compliance Program

1. The Code of Ethics and Standards of Conduct.

Each Alpha Genesis is required to read the Code and attend annual training about the Code. At the conclusion of this training, each employee is required to execute a Code Certification that they have reviewed the Code, understand it, and will comply with it.[49] The Code consists of 15 Sections.[50] The Sections are built upon the Code's foundation which is set forth in Section 1. Section 1 of the Code clearly states the overarching principle that guides Alpha Genesis' conduct: the company mandates of full compliance with applicable laws, regulations, the highest industry standards for research animal care and use, the Institutional Animal Care and Use Program, and the SOPs. Section One unifies these government and industry regulations and standards and all components of the Program under management's guiding philosophy of "trust in the skill and personal integrity of its employees." Although the SOPs are comprehensible, full compliance with regulations and standards as detailed in the SOPs, and the extensive training requires substantial effort by employees. The Program assumes there will be occasions when applicable regulations and standards do not provide a clear answer to issues arising in daily operations. Ethics serves to guide employee conduct to do the "right thing" when gaps in regulations and standards are present. If the right course of action is not easily apparent, employees must ask for help from a supervisor, member of the IACUC, or the Ethics Official, or the company Hotline. Moreover, if an employee is directed to a course of action that does not seem right, or appears to contravene an SOP, the employee must report this direction to designated management. The Code prohibits threats of reprisal or actual reprisal.

[49] The Code Certification is attached hereto as Exhibit 16.

[50] The Code is attached hereto as Exhibit 17.

Such reprisals are themselves violations. In both situations, employees are directed to call or write to the Ethics Official (Dr. Howell) or the President (Dr. Westergaard).

Section 3 of the Code is compliance and Discipline. Section 3 advises employees that failure to comply with the Code may be the basis for termination. Since the Code requires compliance and ethical behavior by employees in conducting Alpha Genesis' business, an employee is subject to disciplinary action for violations of laws, regulations, industry standards, and contract terms, as well as for violations of Program's ethics standards. Thus, no improper conduct escapes the possibility of disciplinary action.

Section 4 covers Animal Care Guidelines. There are many guidelines and requirements that are detailed in the IACUC Program documentation, the SOPs, the training, and the several certifications and accreditations maintained by the Company. Section 4 identifies the following: Importation of Animals, Quarantine of Animals, the Animal Welfare Act and Amendments, the American Association for Laboratory Animal Science ("AALAS") Certification process, and the Animal Welfare Assurance Program which must be reviewed and approved by the Office of Laboratory Animal Welfare ("OLAW") of the Public Health Service under the Animal Welfare Act.[51] The IACUC, which is summarized below, is the "heart" of the Program because it must comply with detailed requirements set by law and because its members are highly credentialed and experienced with the care of animals. The remaining components of this Code Section on Animal Care are the American Association for Accreditation of Laboratory Animal Care ("AAALAC"), the SOPs, the Animal Health Program, and the Occupational Health Program which protects the health of employees and requires a safe working environment for employees.

[51] See Public Service Health Service Policy on Humane Care and Use of Laboratory Animals, Office of Laboratory Animal Welfare, National Institutes of Health, amended, August 2002.

Sections 5 through 7 of the Code make Research Programs, Reporting of Animal Abuse or Research Misconduct, and Animal Care Recordkeeping part of the Code. Sections 8 through 15 incorporate into the Code certain sections of the FAR which employees commonly encounter when bidding, negotiating, and performing government contracts. Violation of the legal requirements in Sections 8 through 15 can create significant risk for Alpha Genesis. Thus, the Code gives added visibility to the requirements discussed in these sections, beyond the guidance contained in SOPs and training.

2. The IACUC.

The IACUC includes five members: Dr. Sue Howell, Ph.D. (the IACUC Chair and Director of Research and Development at Alpha Genesis); Dr. Jose Rodrigez, D.V.M. (Director of Veterinary Medicine at Alpha Genesis); Isabelle Lussier, B.S. (Project Manager for Alpha Genesis' Hampton colony); Mr. Theodore Evan, M.S. (Research Associate at Alpha Genesis); and Reverend Ronald Cellini (a Catholic priest and the public member of the IACUC). As explained in Alpha Genesis' Description of Institutional Animal Care and Use Program, the IACUC's responsibilities include: 1) reviewing project protocols, including all protocols related to research projects, breeding projects, and all SOPs related to the care and use of animals, and recommending modifications to improve the welfare of the animals; 2) recommending changes to institutional policies on animal welfare and animal husbandry; 3) reviewing and establishing training programs; and 4) reporting its recommendations and actions to the Institutional Official, Dr. Westergaard, and Dr. Howell, the IACUC Chair and Ethics Official.

The IACUC conducts an audit of Alpha Genesis' facilities and SOP's at least twice each year and responds to any concerns about Alpha Genesis' care and use of the animals in its facilities whenever such concerns are raised.

The IACUC Chair serves as the Ethics Official, and works in consultation with the IACUC and Institutional Official to implement, enforce, and update the Program. The responsibilities of the Ethics Official include: managing all aspects of the Program, responding to reports of possible violations of the Program, and responding to questions regarding the Program, monitoring and auditing the terms of the Administrative Agreement and probation. The Ethics Official reports directly to Dr. Westergaard.

The Ethics Official maintains a file of the Certificates of Acceptance of the Code of Ethics and Standards of Conduct ("Code Certificates") which each employee signs during their annual training. Alpha Genesis employees also are required to review and sign a Notification of Animal Abuse and Neglect and Reporting Deficiencies in Animal Care and Treatment. Notifications are maintained by the IACUC Chair and passed on to the Institutional Official for action. The Institutional Official may request guidance from the IACUC in investigating and resolving any issues that arise with regard to any deficiencies.

3. The SOPs and Training.

Alpha Genesis requires all employees to adhere to the SOPs that are applicable to their work as a condition of employment. There are approximately 60 SOPs, which clearly define the way Alpha Genesis conducts its day-to-day business. The following are representative day-to-day operations covered in the SOPs: care and treatment of the animals, facility maintenance, research procedures, and quality assurance. All directors, managers, and supervisors maintain copies of SOPs. In addition, copies are available in each building. SOPs are reviewed by the IACUC and signed off by the IACUC Institutional Official, Dr. Westergaard, following IACUC review and approval. The IACUC has oversight of all SOPs in use at Alpha Genesis.

Employees receive training in all SOPs relevant to their job responsibilities. Alpha Genesis' extensive training program ensures that Alpha Genesis will be able to provide a safe, healthy environment for both employees and animals. Alpha Genesis also documents training to provide management with a tool to follow employee development, to ensure that employees have received the necessary training, and to demonstrate to outside agencies that employees are trained. All employees receive mandatory orientation and safety training during their first week of employment. Employees receive job specific training during their 90 day probationary period and at periodic intervals appropriate to the topic, but no less than annually. In addition, quarantine training is mandatory for all animal care and veterinary technicians. Alpha Genesis complies with all training required by the Animal Welfare Act. This training ensures that scientists, investigators, and research technicians utilize humane methods of animal maintenance and experimentation. Each employee receives annual training in the Code during the employee's Job Specific Training, and signs the Code Certificate. Each new hire must meet with the Head of Human Resources for orientation, during which the Code will be reviewed and the new hire will execute the Code Certificate. Thereafter, each employee is trained in the Code as part of the employee's annual Job Specific Training. The Code Certificate contains a representation the employee has read, understood and agrees to comply with the Code.

4. Accreditations and Audits.

During the time period of the conduct underlying this litigation, LABS was fully accredited by the Association for Assessment and Accreditation of Laboratory Animal Care International ("AAALAC International"), which is considered the highest industry standard achievable with regards to laboratory animal practices. AAALAC accreditation is valid for three years. LABS was initially accredited by AAALAC International on March 1, 1993, and has been

re-accredited every three years thereafter. LABS also maintained the Assurance of Compliance with Public Health Service Policy on Humane Care and Use of Laboratory Animals with the OLAW, NIH. On January 16, 2002, LABS received approval from the OLAW of LABS' Assurance of Compliance that expires on December 31, 2006. Therefore, the Assurance of Compliance, as applied to Alpha Genesis, is valid until December 31, 2006. OLAW's approval was based upon a review by OLAW of the following components of LABS' Program: LABS' organization structure; the membership, procedures, and policies of the IACUC; LABS' Health and Safety Orientation Manual; a description of LABS' facilities and the species located within LABS' facilities; and LABS' training programs. The AAALAC International accreditation and Assurance of Compliance issued by NIH continue to apply to Alpha Genesis.

LABS was routinely and regularly audited and inspected by the United States Department of Agriculture ("USDA"). LABS was also subject to audits and inspections by CDC for purposes of ensuring that LABS complies with applicable law and standards governing the quarantine of imported animals. Subsequent to the importation that is the subject of this litigation, LABS has not imported any animals. Throughout LABS' history, it passed all such audits and inspections. LABS submitted quarterly reports to the FDA, one of the government agencies with which LABS contracted and the FDA visited LABS' facilities on a annual basis. Alpha Genesis is now subject to audits and inspections of government agencies and is required to submit quarterly reports to the FDA.

There is little risk that any of the conduct alleged in the Indictment will occur in the future because Alpha Genesis has a comprehensive and detailed Program, established and operational since, at least 1996, and recently upgraded, which is designed to ensure that all employees are aware of and comply with legal and ethical requirements applicable to Alpha

Genesis. Alpha Genesis has invested substantial resources to ensure that Alpha Genesis employees are trained and that they comply with all legal, regulatory, contractual, and ethical obligations applicable to Alpha Genesis' business. Alpha Genesis, and LABS before it, has been committed to operating in a legal and ethical manner as an integral part of its business, and Alpha Genesis will continue this commitment in the future.

CONCLUSION

LABS and Alpha Genesis respectfully request the Court to consider the foregoing when determining the appropriate sentence to be imposed.

Date: December 10, 2004

Respectfully submitted,

Defendant LABS of Virginia, Inc.
and LABS of Virginia, Inc., d/b/a Alpha Genesis, Inc.

By: _____
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EXHIBIT INDEX	
Exhibit	Description
1	Stock Sale Agreement, ¶ 7.1 and 7.2
2	Stock Sale Agreement, Exhibit I
3	Declaration of C. Stern, dated August 18, 2004
4	Letter from C. Stern to M. Fayad and J. Richmond, dated August 18, 2004
5	Memorandum from C. Stern to C. Stern, dated August 18, 2004; Memorandum from W. Henley to C. Stern, dated August 18, 2004; Letter from D. Taub to C. Stern, dated August 17, 2004
6	Captive Breeding of Long-Tailed Macaques (Macaca fascicularis) in C.V. Inquatex – Primates Division, Research and Development Centre for Biology, The Indonesian Institute of Sciences (1993)
7	Indonesian correspondence re CITES permits
8	Letter from D. Taub to T. DeMarcus, dated February 18, 1997
9	Declaration of Adi Susmianto, MSc, dated September 17, 2002
10	Confirmation of Widodo S. Ramono, dated June 18, 2004
11	Letter from M. Fayad and D. Mercer to A. Schoenberg, dated July 25, 2002
12	Dr. Westergaard's curriculum vitae
13	Dr. Howell's curriculum vitae
14	Dr. Rodriguez's curriculum vitae
15	Import Nonhuman Primate Quarantine Policy and Procedures
16	Code Certificate
17	Code of Ethics and Standards of Conduct

See Case File for Exhibits

AO 245B (Rev. 12/03) Judgment in a Criminal Case
Sheet 1

UNITED STATES DISTRICT COURT

NORTHERN District of ILLINOIS

UNITED STATES OF AMERICA
V.
Labs of Virginia, Inc.

JUDGMENT IN A CRIMINAL CASE

Case Number: 02 CR 312-1

USM Number:

Michael L. Fayad
Defendant's Attorney

THE DEFENDANT:

■ pleaded guilty to count(s) Count One(1)

☐ pleaded nolo contendere to count(s) which was accepted by the court.

☐ was found guilty on count(s) after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
16 USC §§3372(d) and 3373(d)(3)(A)(i)	Submitted False Records and False Identification of Wildlife that had been Imported from a Foreign Country and Transported in Foreign Commerce.	2/20/97	One(1)

The defendant is sentenced as provided in pages 2 through 4 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s)

■ Count(s) Two(2) - Four(4) ☐ is ■ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

December 15, 2004
Date of Imposition of Judgment

Signature of Judge

Honorable Ruben Castillo, U.S. District Court Judge
Name and Title of Judge

12/15/04
Date

AO 245B (Rev. 12/03) Judgment in a Criminal Case
Sheet 4—Probation

DEFENDANT: Labs of Virginia, Inc.
CASE NUMBER: 02 CR 312-1

PROBATION

The defendant is hereby sentenced to probation for a term of :
Two(2) year Probationary period for the Company.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of placement on probation and at least two periodic drug tests thereafter, as determined by the court.

■ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)

■ The defendant shall not possess a firearm, destructive device, or any other dangerous weapon. (Check, if applicable.)

☐ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)

☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)

☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of probation that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with anyadditional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
2) the defendant shall report to the probation officer and shall submit a truthful and complete writtenreport within the first five days of each month;
3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4) the defendant shall support his or her dependents and meet other family responsibilities;
5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Labs of Virginia, Inc.
CASE NUMBER: 02 CR 312-1

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Fine	Restitution
TOTALS	$ 400.00	$ 500,000.00	$ N/A

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage

2004 DEC 17 PM 3:00
U.S. DISTRICT COURT

TOTALS	$ _____	$ _____

☐ Restitution amount ordered pursuant to plea agreement $ _____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

■ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

■ the interest requirement is waived for the ■ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

Judgment — Page 4 of 4

DEFENDANT: Labs of Virginia, Inc.
CASE NUMBER: 02 CR 312-1

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

A ■ Lump sum payment of $ 500,000.00 due immediately, balance due

☐ not later than _____, or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or

B ☐ Payment to begin immediately (may be combined with ☐C, ☐D, or ☐F below); or

C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or

D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ■ Special instructions regarding the payment of criminal monetary penalties:

Fine of $500,000.00 payable immediately as well as the forfeiture agreement by the parties in the amount of $64,675.00 to be designated for deposit into the "Lacey Act Reward Account."

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA	)	
	)	No. 02 CR 312
vs.	)	Judge Ruben Castillo
	)	
LABS OF VIRGINIA, INC.	)	

GOVERNMENT'S AGREED MOTION TO CORRECT CLERICAL ERROR IN JUDGMENT IN A CRIMINAL CASE

The United States of America, by its attorney, Patrick J. Fitzgerald, respectfully requests that this Court correct a clerical error pursuant to Federal Rule Criminal Procedure 36 in the Judgment in a Criminal Case as to defendant Labs of Virginia, Inc. In support of this motion, the government states as follows:

1. On December 15, 2004, this Court imposed sentence as to defendant Labs of Virginia, Inc. pursuant to the written Plea Agreement in the case. The Court ordered, as a part of defendant Labs's sentence, that Labs pay a fine of $500,000 and that the fine would be designated to the "Lacey Act Reward Account." The Court also ordered defendant Labs to pay to the United States of America the sum of $64,675.00 as full satisfaction of the allegations in a previously instituted a civil forfeiture proceeding captioned *United States v. Monkey Money: The Value of Monkeys Illegally Imported by Labs of Virginia, Inc., and Its Officers as Alleged in United States v. Labs of Virginia, Inc., et al., No. 02 CR 312 (N.D. Ill)*, No. 02 C 3833.

2. The Judgment in a Criminal Case as to defendant Labs, issued on December 15, 2004, provides as a part of the "Special instructions regarding the payment of criminal monetary penalties" section as follows:

> Fine of $500,000 payable immediately as well as the forfeiture agreement by the parties in the amount of $64,675.00 to be designated for deposit into the "Lacey Act Reward Account."

Judgment at 4 ("Schedule of Payments"). A copy of the Judgment is attached to this motion.

3. The current Judgment does not reflect that the forfeiture sum should be deposited into a separate account from the Lacey Act Reward Account. Defendant Labs, at the government's request, prepared a check in the amount of $64,675.00 payable to the USMS [United States Marshal's Service] Seized Asset Management Account in full satisfaction of the forfeiture obligation. The government therefore requests that the Judgment be corrected so as to reflect that the $64,675.00 be deposited into the Seized Management Account. The government proposes the following modified language for the Judgment:

> Fine of $500,000 payable immediately to be designated for deposit into the "Lacey Act Reward Account,"and $64,675.00 payable immediately to be designated for deposit into the "USMS Seized Asset Management Account" in full satisfaction of the civil forfeiture proceeding.

4. Counsel for defendant Labs does not object to this request.

Respectfully submitted,

PATRICK J. FITZGERALD
United States Attorney

By: Diane MacArthur

DIANE MacARTHUR
Assistant U.S. Attorney
219 South Dearborn Street
Chicago, Illinois 60604
(312) 353-5352

AO 245B (Rev. 12/03) Judgment in a Criminal Case
Sheet 1

USA

1998R00364
MacArthur

8-18-04
PLEA

UNITED STATES DISTRICT COURT

NORTHERN District of ILLINOIS

UNITED STATES OF AMERICA
V.
Labs of Virginia, Inc.

JUDGMENT IN A CRIMINAL CASE

Case Number: 02 CR 312-1

USM Number:

Michael L. Fayad
Defendant's Attorney

DEC 20 2004

THE DEFENDANT:

■ pleaded guilty to count(s) Count One(1)

☐ pleaded nolo contendere to count(s) which was accepted by the court.

☐ was found guilty on count(s) after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
16 USC §§3372(d) and 3373(d)(3)(A)(i)	Submitted False Records and False Identification of Wildlife that had been Imported from a Foreign Country and Transported in Foreign Commerce.	2/20/97	One(1)

The defendant is sentenced as provided in pages 2 through 4 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s)

■ Count(s) Two(2) - Four(4) ☐ is ■ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

December 15, 2004
Date of Imposition of Judgment

Signature of Judge

Honorable Ruben Castillo, U.S. District Court Judge
Name and Title of Judge

Date 12/15/04

DEFENDANT: Labs of Virginia, Inc.
CASE NUMBER: 02 CR 312-1

PROBATION

The defendant is hereby sentenced to probation for a term of :
Two(2) year Probationary period for the Company.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of placement on probation and at least two periodic drug tests thereafter, as determined by the court.

■ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)

■ The defendant shall not possess a firearm, destructive device, or any other dangerous weapon. (Check, if applicable.)

☐ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)

☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)

☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of probation that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with anyadditional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
2) the defendant shall report to the probation officer and shall submit a truthful and complete writtenreport within the first five days of each month;
3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4) the defendant shall support his or her dependents and meet other family responsibilities;
5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Labs of Virginia, Inc.
CASE NUMBER: 02 CR 312-1

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Fine	Restitution
TOTALS	$ 400.00	$ 500,000.00	$ N/A

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage

TOTALS	$	$_____

☐ Restitution amount ordered pursuant to plea agreement $ _____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

■ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

■ the interest requirement is waived for the ■ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Labs of Virginia, Inc.
CASE NUMBER: 02 CR 312-1

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

A ■ Lump sum payment of $ 500,000.00 due immediately, balance due

☐ not later than , or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or

D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ■ Special instructions regarding the payment of criminal monetary penalties:

Fine of $500,000.00 payable immediately as well as the forfeiture agreement by the parties in the amount of $64,675.00 to be designated for deposit into the "Lacey Act Reward Account."

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

AFFIDAVIT BY FACSIMILE AND MAIL

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

Carol Bithos, being first duly sworn on oath deposes and says that she is employed in the Office of the United States Attorney for the Northern District of Illinois; that on the 28th day of January, 2005 she faxed and deposited in the mail a copy of

GOVERNMENT'S AGREED MOTION TO CORRECT CLERICAL ERROR IN JUDGMENT IN A CRIMINAL CASE

to the following named individual(s) on said date.

TO: Michael L. Fayed, Esq.
800 Connecticut Ave., N.W.
Suite 500
Washington, D.C. 20006
FAX: (202) 331-3101

Carol Bithos

SUBSCRIBED and SWORN TO BEFORE
me this 28th day of January, 2005

Barbara J. Sims

Notary Public

"OFFICIAL SEAL"
Barbara J. Sims
Notary Public, State of Illinois
My Commission Exp. 05/21/2005

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA	)	
	)	
v.	)	No. 02 CR 312
	)	Hon. Ruben Castillo
LABS OF VIRGINIA, INC.	)	

NOTICE OF MOTION

TO: Michael L. Fayed, Esq.
800 Connecticut Ave., N.W.
Suite 500
Washington, D.C. 20006
FAX: (202) 331-3101

PLEASE TAKE NOTICE that on Wednesday, February 2, 2005, at 9:45 a.m. or as soon thereafter as counsel may be heard, I will appear before Judge Castillo in the courtroom usually occupied by him in the Everett McKinley Dirksen Building, 219 S. Dearborn Street, Chicago, Illinois, or before such other who may be sitting in his place and stead, and then and there present:

GOVERNMENT'S AGREED MOTION TO CORRECT CLERICAL ERROR IN JUDGMENT IN A CRIMINAL CASE

in the above-captioned case, at which time and place you may appear if you see fit.

Respectfully submitted,

PATRICK J. FITZGERALD
United States Attorney

By: Diane MacArthur

DIANE MacArthur
Assistant U.S. Attorney
219 S. Dearborn St., 3rd Floor
Chicago, Illinois 60604
(312) 353-5352

United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Ruben Castillo	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	02 CR 312 - 1	**DATE**	2/17/2005
CASE TITLE	U.S.A. vs. Labs of Virginia		

DOCKET ENTRY TEXT:

(Defendant Labs of Virginia only). The Government's Agreed Motion to correct clerical error in judgment in a criminal case [134] is granted.

Docketing to mail notices.

Courtroom Deputy Initials:	SB

UNITED STATES DISTRICT COURT

Northern District of Illinois

UNITED STATES OF AMERICA
V.
Labs of Virginia, Inc.

AMENDED JUDGMENT IN A CRIMINAL CASE

Case Number: 02 CR 312-1
USM Number:
Michael L. Fayad
Defendant's Attorney

Date of Original Judgment: December 15, 2004
(Or Date of Last Amended Judgment)

Reason for Amendment:

- ☐ Correction of Sentence on Remand (18 U.S.C. 3742(t)(1) and (2))
- ☐ Reduction of Sentence for Changed Circumstances (Fed. R. Crim. P. 35(b))
- ☐ Correction of Sentence by Sentencing Court (Fed. R. Crim. P. 35(a))
- ■ Correction of Sentence for Clerical Mistake (Fed. R. Crim. P. 36)
- ☐ Modification of Supervision Conditions (18 U.S.C. §§ 3563(c) or 3583(e))
- ☐ Modification of Imposed Term of Imprisonment for Extraordinary and Compelling Reasons (18 U.S.C. § 3582(c)(1))
- ☐ Modification of Imposed Term of Imprisonment for Retroactive Amendment(s) to the Sentencing Guidelines (18 U.S.C. § 3582(c)(2))
- ☐ Direct Motion to District Court Pursuant ☐ 28 U.S.C. § 2255 or ☐ 18 U.S.C. § 3559(c)(7)
- ☐ Modification of Restitution Order (18 U.S.C. § 3664)

THE DEFENDANT:

- ■ pleaded guilty to count(s) One(1)
- ☐ pleaded nolo contendere to count(s) which was accepted by the court.
- ☐ was found guilty on count(s) after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
16 USC §§3372(d) and 3373(d)(3)(A)(i)	Submitted False Records and False Identification of Wildlife that had been Imported from a Foreign Country and Transported in Foreign Commerce.	2/20/97	One(1)

The defendant is sentenced as provided in pages 2 of 3 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984. Other than the amendments or modifications stated in this judgment, the judgment entered _____ is to stand (see attachment).

- ☐ The defendant has been found not guilty on count(s)
- ■ Count(s) remaining _____ ☐ is ■ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

December 15, 2004
Date of Imposition of Judgment

Signature of Judge

Honorable Ruben Castillo, U.S. DISTRICT JUDGE
Name and Title of Judge

3/2/05
Date

DEFENDANT: Labs of Virginia, Inc.
CASE NUMBER: 02 CR 312-1

CRIMINAL MONETARY PENALTIES

The defendant must pay the following total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Fine	Restitution
TOTALS	$ 400.00	*$500,000.00 and $64,675.00	$ N/A

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant shall make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage

TOTALS	$ _____	$

☐ Restitution amount ordered pursuant to plea agreement $ _____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

■ The court determined that the defendant does not have the ability to pay interest, and it is ordered that:

■ the interest requirement is waived for ■ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Labs of Virginia, Inc.
CASE NUMBER: 02 CR 312-1

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties shall be due as follows:

A ■ Lump sum payment of $ _500,000.00_____ due immediately, balance due

☐ not later than , or
☐ in accordance with ☐ C, ☐ D, ☐ E, or ☐ F below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or

D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ■ Special instructions regarding the payment of criminal monetary penalties:

*Fine of $500,000.00 payable immediately to be designated for deposit into the "Lacey Act Reward Account", and $64,675.00 payable immediately to be designated for deposit into the "USMS Seized Asset Management Account", in full satisfaction of the civil forfeiture proceeding.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

AO 245B (Rev. 12/03) Judgment in a Criminal Case
Sheet 1

UNITED STATES DISTRICT COURT

NORTHERN District of ILLINOIS

UNITED STATES OF AMERICA
V.
Labs of Virginia, Inc.

DOCKETED
DEC 17 2004

JUDGMENT IN A CRIMINAL CASE

Case Number: 02 CR 312-1

USM Number:

Michael L. Fayad
Defendant's Attorney

THE DEFENDANT:

■ pleaded guilty to count(s) Count One(1)

☐ pleaded nolo contendere to count(s) _____ which was accepted by the court.

☐ was found guilty on count(s) _____ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
16 USC §§3372(d) and 3373(d)(3)(A)(i)	Submitted False Records and False Identification of Wildlife that had been Imported from a Foreign Country and Transported in Foreign Commerce.	2/20/97	One(1)

The defendant is sentenced as provided in pages 2 through 4 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

■ Count(s) Two(2) - Four(4) ☐ is ■ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

December 15, 2004
Date of Imposition of Judgment

Signature of Judge

Honorable Ruben Castillo, U.S. District Court Judge
Name and Title of Judge

12/15/04
Date

133

DEFENDANT: Labs of Virginia, Inc.
CASE NUMBER: 02 CR 312-1

PROBATION

The defendant is hereby sentenced to probation for a term of:
Two(2) year Probationary period for the Company.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of placement on probation and at least two periodic drug tests thereafter, as determined by the court.

- ■ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ■ The defendant shall not possess a firearm, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☐ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of probation that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4) the defendant shall support his or her dependents and meet other family responsibilities;
5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

AO 245B (Rev. 12/03) Judgment in a Criminal Case
Sheet 5 — Criminal Monetary Penalties

DEFENDANT: Labs of Virginia, Inc.
CASE NUMBER: 02 CR 312-1

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Fine	Restitution
TOTALS	$ 400.00	$ 500,000.00	$ N/A

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage

2004 DEC 17 PM 3:00
U.S. DISTRICT COURT

TOTALS	$ _____	$ _____

☐ Restitution amount ordered pursuant to plea agreement $ _____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

■ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

■ the interest requirement is waived for the ■ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Labs of Virginia, Inc.
CASE NUMBER: 02 CR 312-1

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

A ■ Lump sum payment of $ 500,000.00 due immediately, balance due

☐ not later than _____, or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or

B ☐ Payment to begin immediately (may be combined with ☐C, ☐D, or ☐F below); or

C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or

D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ■ Special instructions regarding the payment of criminal monetary penalties:

Fine of $500,000.00 payable immediately as well as the forfeiture agreement by the parties in the amount of $64,675.00 to be designated for deposit into the "Lacey Act Reward Account."

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

UNITED STATES DISTRICT COURT

Northern District of Illinois

UNITED STATES OF AMERICA
V.
Labs of Virginia, Inc.

AMENDED JUDGMENT IN A CRIMINAL CASE

Case Number: 02 CR 312-1
USM Number:
Michael L. Fayad
Defendant's Attorney

Date of Original Judgment: December 15, 2004
(Or Date of Last Amended Judgment)

Reason for Amendment:

- ☐ Correction of Sentence on Remand (18 U.S.C. 3742(t)(1) and (2))
- ☐ Reduction of Sentence for Changed Circumstances (Fed. R. Crim. P. 35(b))
- ☐ Correction of Sentence by Sentencing Court (Fed. R. Crim. P. 35(a))
- ■ Correction of Sentence for Clerical Mistake (Fed. R. Crim. P. 36)
- ☐ Modification of Supervision Conditions (18 U.S.C. §§ 3563(c) or 3583(e))
- ☐ Modification of Imposed Term of Imprisonment for Extraordinary and Compelling Reasons (18 U.S.C. § 3582(c)(1))
- ☐ Modification of Imposed Term of Imprisonment for Retroactive Amendment(s) to the Sentencing Guidelines (18 U.S.C. § 3582(c)(2))
- ☐ Direct Motion to District Court Pursuant ☐ 28 U.S.C. § 2255 or ☐ 18 U.S.C. § 3559(c)(7)
- ☐ Modification of Restitution Order (18 U.S.C. § 3664)

THE DEFENDANT:

- ■ pleaded guilty to count(s) One(1)
- ☐ pleaded nolo contendere to count(s) which was accepted by the court.
- ☐ was found guilty on count(s) after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
16 USC §§3372(d) and 3373(d)(3)(A)(i)	Submitted False Records and False Identification of Wildlife that had been Imported from a Foreign Country and Transported in Foreign Commerce.	2/20/97	One(1)

The defendant is sentenced as provided in pages 2 of 3 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984. Other than the amendments or modifications stated in this judgment, the judgment entered _____ is to stand (see attachment).

- ☐ The defendant has been found not guilty on count(s)
- ■ Count(s) remaining _____ ☐ is ■ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

December 15, 2004
Date of Imposition of Judgment

Signature of Judge

Honorable Ruben Castillo, U.S. DISTRICT JUDGE
Name and Title of Judge

3/2/05
Date

DEFENDANT: Labs of Virginia, Inc.
CASE NUMBER: 02 CR 312-1

CRIMINAL MONETARY PENALTIES

The defendant must pay the following total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Fine	Restitution
TOTALS	$ 400.00	*$500,000.00 and $64,675.00	$ N/A

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant shall make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage

TOTALS	$ _____	$

☐ Restitution amount ordered pursuant to plea agreement $ _____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

■ The court determined that the defendant does not have the ability to pay interest, and it is ordered that:

■ the interest requirement is waived for ■ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Labs of Virginia, Inc.
CASE NUMBER: 02 CR 312-1

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties shall be due as follows:

A ■ Lump sum payment of $ _500,000.00_____ due immediately, balance due

☐ not later than , or
☐ in accordance with ☐ C, ☐ D, ☐ E, or ☐ F below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or

D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ■ Special instructions regarding the payment of criminal monetary penalties:

*Fine of $500,000.00 payable immediately to be designated for deposit into the "Lacey Act Reward Account", and $64,675.00 payable immediately to be designated for deposit into the "USMS Seized Asset Management Account", in full satisfaction of the civil forfeiture proceeding.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

AO 245B (Rev. 12/03) Judgment in a Criminal Case
Sheet 1

UNITED STATES DISTRICT COURT

NORTHERN District of ILLINOIS

UNITED STATES OF AMERICA
V.
Labs of Virginia, Inc.

DOCKETED
DEC 17 2004

JUDGMENT IN A CRIMINAL CASE

Case Number: 02 CR 312-1

USM Number:

Michael L. Fayad
Defendant's Attorney

THE DEFENDANT:

■ pleaded guilty to count(s) Count One(1)

☐ pleaded nolo contendere to count(s) which was accepted by the court.

☐ was found guilty on count(s) after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
16 USC §§3372(d) and 3373(d)(3)(A)(i)	Submitted False Records and False Identification of Wildlife that had been Imported from a Foreign Country and Transported in Foreign Commerce.	2/20/97	One(1)

The defendant is sentenced as provided in pages 2 through 4 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s)

■ Count(s) Two(2) - Four(4) ☐ is ■ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

December 15, 2004
Date of Imposition of Judgment

Signature of Judge

Honorable Ruben Castillo, U.S. District Court Judge
Name and Title of Judge

12/15/04
Date

133

DEFENDANT: Labs of Virginia, Inc.
CASE NUMBER: 02 CR 312-1

PROBATION

The defendant is hereby sentenced to probation for a term of:
Two(2) year Probationary period for the Company.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of placement on probation and at least two periodic drug tests thereafter, as determined by the court.

- ■ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ■ The defendant shall not possess a firearm, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☐ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of probation that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4) the defendant shall support his or her dependents and meet other family responsibilities;
5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Labs of Virginia, Inc.
CASE NUMBER: 02 CR 312-1

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Fine	Restitution
TOTALS	$ 400.00	$ 500,000.00	$ N/A

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage

2004 DEC 17 PM 3:00
U.S. DISTRICT COURT

TOTALS	$ _____	$ _____

☐ Restitution amount ordered pursuant to plea agreement $ _____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

■ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

■ the interest requirement is waived for the ■ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Labs of Virginia, Inc.
CASE NUMBER: 02 CR 312-1

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

A ■ Lump sum payment of $ 500,000.00 due immediately, balance due

☐ not later than _____, or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or

B ☐ Payment to begin immediately (may be combined with ☐C, ☐D, or ☐F below); or

C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or

D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ■ Special instructions regarding the payment of criminal monetary penalties:

Fine of $500,000.00 payable immediately as well as the forfeiture agreement by the parties in the amount of $64,675.00 to be designated for deposit into the "Lacey Act Reward Account."

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

UNITED STATES DISTRICT COURT

Northern District of Illinois

UNITED STATES OF AMERICA
V.
Labs of Virginia, Inc.

AMENDED JUDGMENT IN A CRIMINAL CASE

Case Number: 02 CR 312-1
USM Number:
Michael L. Fayad
Defendant's Attorney

Date of Original Judgment: December 15, 2004
(Or Date of Last Amended Judgment)

Reason for Amendment:

- ☐ Correction of Sentence on Remand (18 U.S.C. 3742(t)(1) and (2))
- ☐ Reduction of Sentence for Changed Circumstances (Fed. R. Crim. P. 35(b))
- ☐ Correction of Sentence by Sentencing Court (Fed. R. Crim. P. 35(a))
- ■ Correction of Sentence for Clerical Mistake (Fed. R. Crim. P. 36)
- ☐ Modification of Supervision Conditions (18 U.S.C. §§ 3563(c) or 3583(e))
- ☐ Modification of Imposed Term of Imprisonment for Extraordinary and Compelling Reasons (18 U.S.C. § 3582(c)(1))
- ☐ Modification of Imposed Term of Imprisonment for Retroactive Amendment(s) to the Sentencing Guidelines (18 U.S.C. § 3582(c)(2))
- ☐ Direct Motion to District Court Pursuant ☐ 28 U.S.C. § 2255 or ☐ 18 U.S.C. § 3559(c)(7)
- ☐ Modification of Restitution Order (18 U.S.C. § 3664)

THE DEFENDANT:

- ■ pleaded guilty to count(s) One(1)
- ☐ pleaded nolo contendere to count(s) which was accepted by the court.
- ☐ was found guilty on count(s) after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
16 USC §§3372(d) and 3373(d)(3)(A)(i)	Submitted False Records and False Identification of Wildlife that had been Imported from a Foreign Country and Transported in Foreign Commerce.	2/20/97	One(1)

The defendant is sentenced as provided in pages 2 of 3 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984. Other than the amendments or modifications stated in this judgment, the judgment entered _____ is to stand (see attachment).

- ☐ The defendant has been found not guilty on count(s)
- ■ Count(s) remaining _____ ☐ is ■ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

December 15, 2004
Date of Imposition of Judgment

Signature of Judge

Honorable Ruben Castillo, U.S. DISTRICT JUDGE
Name and Title of Judge

3/2/05
Date

DEFENDANT: Labs of Virginia, Inc.
CASE NUMBER: 02 CR 312-1

CRIMINAL MONETARY PENALTIES

The defendant must pay the following total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Fine	Restitution
TOTALS	$ 400.00	*$500,000.00 and $64,675.00	$ N/A

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant shall make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage

TOTALS	$ _____	$

☐ Restitution amount ordered pursuant to plea agreement $ _____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

■ The court determined that the defendant does not have the ability to pay interest, and it is ordered that:

■ the interest requirement is waived for ■ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Labs of Virginia, Inc.
CASE NUMBER: 02 CR 312-1

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties shall be due as follows:

A ■ Lump sum payment of $ _500,000.00_____ due immediately, balance due

☐ not later than , or
☐ in accordance with ☐ C, ☐ D, ☐ E, or ☐ F below; or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or

D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ■ Special instructions regarding the payment of criminal monetary penalties:

*Fine of $500,000.00 payable immediately to be designated for deposit into the "Lacey Act Reward Account", and $64,675.00 payable immediately to be designated for deposit into the "USMS Seized Asset Management Account", in full satisfaction of the civil forfeiture proceeding.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

AO 245B (Rev. 12/03) Judgment in a Criminal Case
Sheet 1

UNITED STATES DISTRICT COURT

NORTHERN District of ILLINOIS

UNITED STATES OF AMERICA
V.
Labs of Virginia, Inc.

DOCKETED
DEC 17 2004

JUDGMENT IN A CRIMINAL CASE

Case Number: 02 CR 312-1

USM Number:

Michael L. Fayad
Defendant's Attorney

THE DEFENDANT:

■ pleaded guilty to count(s) Count One(1)

☐ pleaded nolo contendere to count(s) _____ which was accepted by the court.

☐ was found guilty on count(s) _____ after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
16 USC §§3372(d) and 3373(d)(3)(A)(i)	Submitted False Records and False Identification of Wildlife that had been Imported from a Foreign Country and Transported in Foreign Commerce.	2/20/97	One(1)

The defendant is sentenced as provided in pages 2 through 4 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

■ Count(s) Two(2) - Four(4) ☐ is ■ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

December 15, 2004
Date of Imposition of Judgment

Signature of Judge

Honorable Ruben Castillo, U.S. District Court Judge
Name and Title of Judge

12/15/04
Date

133

DEFENDANT: Labs of Virginia, Inc.
CASE NUMBER: 02 CR 312-1

PROBATION

The defendant is hereby sentenced to probation for a term of:
Two(2) year Probationary period for the Company.

The defendant shall not commit another federal, state or local crime.

The defendant shall not unlawfully possess a controlled substance. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of placement on probation and at least two periodic drug tests thereafter, as determined by the court.

- ■ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse. (Check, if applicable.)
- ■ The defendant shall not possess a firearm, destructive device, or any other dangerous weapon. (Check, if applicable.)
- ☐ The defendant shall cooperate in the collection of DNA as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall register with the state sex offender registration agency in the state where the defendant resides, works, or is a student, as directed by the probation officer. (Check, if applicable.)
- ☐ The defendant shall participate in an approved program for domestic violence. (Check, if applicable.)

If this judgment imposes a fine or restitution, it is a condition of probation that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.

The defendant must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
4) the defendant shall support his or her dependents and meet other family responsibilities;
5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court; and
13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

DEFENDANT: Labs of Virginia, Inc.
CASE NUMBER: 02 CR 312-1

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	Assessment	Fine	Restitution
TOTALS	$ 400.00	$ 500,000.00	$ N/A

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss*	Restitution Ordered	Priority or Percentage

2004 DEC 17 PM 3:00
U.S. DISTRICT COURT

TOTALS	$ _____	$ _____

☐ Restitution amount ordered pursuant to plea agreement $ _____

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

■ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

■ the interest requirement is waived for the ■ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Labs of Virginia, Inc.
CASE NUMBER: 02 CR 312-1

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties are due as follows:

A ■ Lump sum payment of $ 500,000.00 due immediately, balance due

☐ not later than _____, or
☐ in accordance ☐ C, ☐ D, ☐ E, or ☐ F below; or

B ☐ Payment to begin immediately (may be combined with ☐C, ☐D, or ☐F below); or

C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or

D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of $ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ■ Special instructions regarding the payment of criminal monetary penalties:

Fine of $500,000.00 payable immediately as well as the forfeiture agreement by the parties in the amount of $64,675.00 to be designated for deposit into the "Lacey Act Reward Account."

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA	)	
	)	No. 02 CR 312
vs.	)	Judge Ruben Castillo
	)	
DAVID M. TAUB,	)	
CHARLES J. STERN, and	)	
WILLIAM CURTIS HENLEY III	)	

GOVERNMENT'S AGREED MOTION FOR ENTRY OF ORDER REFLECTING DISMISSAL OF COUNTS AGAINST INDIVIDUAL DEFENDANTS

The United States of America, by its attorney, Patrick J. Fitzgerald, respectfully requests the entry of a written order reflecting the earlier oral dismissal of the counts in the indictment against the individual defendants, David M. Taub, Charles J. Stern, and William Curtis Henley, in this proceeding. In support of this motion, the government states as follows:

1. On December 15, 2004, this Court imposed sentence as to defendant Labs of Virginia, Inc. pursuant to the written Plea Agreement in the case. At the conclusion of the sentencing hearing, the government orally moved for the dismissal of all counts against Taub, Stern, and Henley. The Court granted this motion.

2. It does not appear that a written order reflecting the dismissal of counts against the three individual defendants was entered following the sentencing hearing. The government requests that, in order to clarify the final disposition of this case as to the three individual defendants, this Court enter an order confirming the dismissal of Taub, Stern and Henley from the proceeding. A copy of a draft Order is attached for the Court's review.

3. Counsel for Taub, speaking collectively on behalf of the three individual defendants, has no objection to this request.

Respectfully submitted,

PATRICK J. FITZGERALD
United States Attorney

By: 
DIANE MacARTHUR
Assistant U.S. Attorney
219 South Dearborn Street
Chicago, Illinois 60604
(312) 353-5352

AFFIDAVIT OF MAILING AND FACSIMILE

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

Carol Bithos, being first duly sworn on oath deposes and says that she is employed in the Office of the United States Attorney for the Northern District of Illinois; that on the 10th day of March, 2005 she placed a copy of

GOVERNMENT'S AGREED MOTION FOR ENTRY OF ORDER REFLECTING DISMISSAL OF COUNTS AGAINST INDIVIDUAL DEFENDANTS

in a Government franked envelope addressed to the following named individual(s) and caused the envelope(s) to be deposited in the United States mail chute located in the Everett McKinley Dirksen Building, Chicago, Illinois, and faxed copies on this date.

TO: Michael L. Fayad, Esq.
Debra Mercer, Esq.
Greenberg & Traurig
800 Connecticut Ave., N.W.
Suite 500
Washington, D.C. 20006
(202) 331-3101 (fax)

Samuel J. Buffone, Esq.
Ropes & Gray
One Metro Center
700 12th St., N.W.
Suite 900
Washington, D.C. 20005-3948
(202) 508-4650 (fax)

Gerald A. Feffer, Esq.
David M. Zinn, Esq.
Williams & Connolly LLP
725 Twelfth St., N.W.
Washington, D.C. 20005-5901
(202) 434-5029 (fax)

Carol Bithos

SUBSCRIBED and SWORN TO BEFORE me this 10th day of March, 2005.

Barbara J. Sims
Notary Public

"OFFICIAL SEAL"
Barbara J. Sims
Notary Public, State of Illinois
My Commission Exp. 05/21/2005

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA	)	
	)	
v.	)	No. 02 CR 312
	)	Judge Ruben Castillo
DAVID M. TAUB,	)	
CHARLES J. STERN, and	)	
WILLIAM CUTRIS HENLEY III	)	

NOTICE OF MOTION

TO: Michael L. Fayad, Esq.
Debra Mercer, Esq.
Greenberg & Traurig
800 Connecticut Ave., N.W.
Suite 500
Washington, D.C. 20006
(202) 331-3101 (fax)

Samuel J. Buffone, Esq.
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One Metro Center
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David M. Zinn, Esq.
Williams & Connolly LLP
725 Twelfth St., N.W.
Washington, D.C. 20005-5901
(202) 434-5029 (fax)

PLEASE TAKE NOTICE that on Wednesday, March 16, 2005, at 9:45 a.m. or as soon thereafter as counsel may be heard, I will appear before Judge Castillo in the courtroom usually occupied by him in the Everett McKinley Dirksen Building, 219 S. Dearborn Street, Chicago, Illinois, or before such other who may be sitting in his place and stead, and then and there present:

GOVERNMENT'S AGREED MOTION FOR ENTRY OF ORDER REFLECTING DISMISSAL OF COUNTS AGAINST INDIVIDUAL DEFENDANTS.

in the above-captioned case, at which time and place you may appear if you see fit.

Respectfully submitted,

PATRICK J. FITZGERALD
United States Attorney

By: FOR:
DIANE MacArthur
Assistant U.S. Attorney
219 S. Dearborn St., 3rd Floor
Chicago, Illinois 60604
(312) 353-5352

UNITED STATES GOVERNMENT

MEMORANDUM

DATE: March 22, 2005

REPLY TO ATTN OF: U. S. Probation Office
Northern District of Illinois - Chicago

SUBJECT: Transfer of Jurisdiction

TO: Clerk of Court
ATTN: Criminal Docketing

RE: LABS OF VIRGINIA, INC.

DOCKET NO.: ~~04~~ 02 cr 312-1

Enclosed is a copy of Probation Form 22, where the Court for the **District of South Carolina - Charleston** has accepted jurisdiction and pertinent case file material needs to be transferred to that district.

Attachment

cc: Kelly Hendrickson
U. S. Probation Officer

KLJ

PROB 22
(Rev. 2/88)

TRANSFER OF JURISDICTION

02

DOCKET NUMBER *(Tran. Court)*
04 CR 312-1

DOCKET NUMBER *(Rec. Court)*

RECEIVED
CLERK OF COURT
2005 MAR 10 A 10:49
DISTRICT COURT

NAME AND ADDRESS OF PROBATIONER/SUPERVISED RELEASEE:

LABS of Virginia, Inc.
95 Castle Hall Road
Post Office Box 557
Yemassee, South Carolina 29945

DISTRICT
Illinois Northern

DIVISION
Eastern Division

NAME OF SENTENCING JUDGE
Ruben Castillo

DATES OF PROBATION/SUPERVISED RELEASE:	FROM	TO
	December 15, 2004	December 14, 2006

OFFENSE

Submitting False Records and False Identification of Wildlife Which Wildlife Had Been Imported from a Foreign Country and Transported in Foreign Commerce - 16 U.S.C. §§3372(d) and 3373(d)(3)(A)(i)

FILED
MAR 10 2005
MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

PART 1 - ORDER TRANSFERRING JURISDICTION

UNITED STATES DISTRICT COURT FOR THE "Northern District of Illinois "

IT IS HEREBY ORDERED that pursuant to 18 U.S.C. 3605 the jurisdiction of the probationer or supervised releasee named above be transferred with the records of the Court to the United States District Court for the **District of South Carolina** upon that Court's order of acceptance of jurisdiction. This Court hereby expressly consents that the period of probation or supervised release may be changed by the District Court to which this transfer is made without further inquiry of this Court.*

1/24/05
Date

United States District Judge

*This sentence may be deleted in the discretion of the transferring Court.

PART 2 - ORDER ACCEPTING JURISDICTION

UNITED STATES DISTRICT COURT FOR THE District of South Carolina

IT IS HEREBY ORDERED that jurisdiction over the above-named probationer/supervised releasee be accepted and assumed by this Court from and after the entry of this order.

March 10 2005
Effective Date

United States District Judge

PROB 22
(Rev. 2/88)

TRANSFER OF JURISDICTION

DOCKET NUMBER (Tran. Court)
04 CR 312-1

DOCKET NUMBER (Rec. Court)

NAME AND ADDRESS OF PROBATIONER/SUPERVISED RELEASEE:

LABS of Virginia, Inc.
95 Castle Hall Road
Post Office Box 557
Yemassee, South Carolina 29945

DISTRICT
Illinois Northern

DIVISION
Eastern Division

NAME OF SENTENCING JUDGE
Ruben Castillo

DATES OF PROBATION/SUPERVISED RELEASE:	FROM	TO
	December 15, 2004	December 14, 2006

OFFENSE

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3/24/05
Date

United States District Judge

*This sentence may be deleted in the discretion of the transferring Court.

PART 2 - ORDER ACCEPTING JURISDICTION

UNITED STATES DISTRICT COURT FOR THE District of South Carolina

IT IS HEREBY ORDERED that jurisdiction over the above-named probationer/supervised releasee be accepted and assumed by this Court from and after the entry of this order.

March 10, 2005
Effective Date

United States District Judge

AE

FILED

APR 19 2005

MICHAEL W DOBBINS
CLERK, U.S. DISTRICT COURT

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

MR. TERRANCE E. SHEAHAN
UNITED STATES DISTRICT COURT
HOLLINGS JUDICIAL CENTER II
83 BROAD STREET
CHARLESTON, SOUTH CAROLINA 29401

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X Jane Walpe ☐ Agent ☐ Addressee

B. Received by (Printed Name) Jane Walpe
C. Date of Delivery 4/12/05

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

83

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☐ Insured Mail ☐ C.O.D.

02cr312-1

4. Restricted Delivery? (Extra Fee) ☐ Yes

2. Article Number
(Transfer from service label) 7004 2510 0000 9121 8170

PS Form 3811, August 2001 Domestic Return Receipt 2ACPRI-03-Z-0985