UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

WILLIAM RODRIGUEZ,	:	
	:	
Plaintiff,	:	Civil Case No. 04-4952
	:	
v.	:	
	:	
GEORGE HERBERT WALKER BUSH, et al.,	:	
	:	
	:	
Defendants.	:	
----------:		

ORDER

AND NOW, this _____ day of _____, 2005, after consideration of Defendants' Motion To Dismiss The Complaint, Or In The Alternative, To Transfer This Case To The U.S. District Court for the Southern District of New York ("SDNY") and their Memorandum of Law and Plaintiff's Answer, Brief and Affidavit In Opposition Thereto, it is hereby

ORDERED and DECREED that the Defendants Motion is Denied in its entirety and Defendants' shall answer Plaintiff's Complaint.

BY THE COURT:

_____
EDUARDO C. ROBRENO, J.

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

WILLIAM RODRIGUEZ,	:	
	:	
Plaintiff,	:	Civil Case No. 04-4952
	:	
vi.	:	
	:	
GEORGE HERBERT WALKER BUSH, et al.,	:	
	:	
	:	
Defendants.	:	
----------:		

PLAINTIFF'S ANSWER IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS, OR IN THE ALTERNATIVE, TO TRANSFER THIS CASE TO THE SOUTHERN DISTRICT OF NEW YORK

WILLIAM RODRIGUEZ ("Rodriguez"), the Plaintiff, by his attorney Philip J. Berg, respectfully answers the defendants' motion by opposing the motion of certain of the defendants, U.S. government officials in their official capacities only (the "Government"), to dismiss the action, or to transfer the same to the U.S. District Court for the Southern District of New York ("SDNY").

Plaintiff's opposition is based upon: 1) The Stabilization Acts do not entitle the government to transfer the case to the SDNY; the government lacks standing to assert the Stabilization Acts; the ATSSSA does not divest this Court of jurisdiction over Plaintiff's 9-11 related claims; Venue in this district is proper pursuant to 28 U.S.C. Section 1391(B) and 18 U.S.C. Section 1965(A) and/or Section 1965(B).

To support Plaintiff's opposition, Plaintiff submits:

1. Brief in Opposition thereto; and

2. Affidavit of Philip J. Berg, Esquire in Support of Opposition thereto.

Respectfully submitted,

_____

Philip J. Berg, Esquire
Attorney for Plaintiff,
William Rodriguez
706 Ridge Pike
Lafayette Hill, PA 19444-1711
(610) 825-3134

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

WILLIAM RODRIGUEZ,	:	
	:	
Plaintiff,	:	Civil Case No. 04-4952
	:	
vii.	:	
	:	
GEORGE HERBERT WALKER BUSH, et al.,	:	
	:	
	:	
Defendants.	:	
----------:		

Certificate Of Service

PHILIP J. BERG, ESQUIRE, attorney for the Plaintiff herein, William Rodriguez, hereby states he served a copy of the Answer To Dismiss Or Transfer, Brief And Affidavit In Support Thereof upon the following by First Class Mail:

Counsel for the Federal Defendants:

Viveca D. Parker, Esquire
Assistant United States Attorney
615 Chestnut Street, Suite 1250
Philadelphia, PA 19106-4476

on March 14, 2005

Respectfully submitted,

_____
Philip J. Berg, Esquire
Attorney for Plaintiff
William Rodriguez

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

WILLIAM RODRIGUEZ,	:	
	:	
Plaintiff,	:	Civil Case No. 04-4952
	:	
viii.	:	
	:	
GEORGE HERBERT WALKER BUSH, et al.,	:	
	:	
	:	
Defendants.	:	
----------:		

PLAINTIFF'S BRIEF IN OPPOSITION TO MOTION TO DISMISS THE COMPLAINT OR TO TRANSFER THE CASE TO THE SOUTHERN DISTRICT OF NEW YORK

WILLIAM RODRIGUEZ ("Rodriguez"), the Plaintiff, by his attorney Philip J. Berg, respectfully submits this brief in opposition to the motion by certain of the defendants, U.S. government officials in their official capacities only (the "Government"), to dismiss the action, or to transfer the same to the U.S. District

Court for the Southern District of New York ("SDNY") pursuant to the Air Transportation Safety and System Stabilization Act of 2001, Pub. L. No. 107-42, 114 Stat. 230, as amended by the Aviation and Transportation Security Act, Pub. L. No. 107-71, 115 Stat.597 (the "Stabilization Acts.").

ARGUMENT

POINT I

THE STABILIZATION ACTS DO NOT ENTITLE THE GOVERNMENT TO TRANSFER OF THE CASE TO THE SOUTHERN DISTRICT OF NEW YORK

The Government wants this case transferred to the Southern District of New York, no doubt in large measure because it is obvious that attorneys willing to stand and accuse the Government of criminal complicity in 9-11 are few, and Rodriguez's counsel is not admitted to practice in the SDNY. Thus, the Government — as always, eager to avoid sworn testimony by Bush Administration officials concerning 9-11, or indeed any inquiry into 9-11 that it cannot stifle or control — hopes that if this Court will accommodate an unwarranted transfer of the case, whereupon the difficulties that Rodriguez may have in securing new counsel (or local counsel) may extinguish the case altogether.

In centering its motion upon the Stabilization Act, the Government has unabashedly distorted both the nature of the claims alleged in the complaint against the Government defendants (who are being sued in their individual, not their official, capacities) and the effect of the Stabilization Acts themselves.

The crux of the Government's motion is neatly summarized at page 7 of its Brief, as follows:

> The gravamen of the complaint is the terrorist attacks of September 11, 2001. As such, the complaint is governed by the ATSSSA. This Court lacks jurisdiction to consider plaintiff's claims because the ATSSSA vests exclusive jurisdiction over the claims made herein [in] the courts of the SDNY.

> The complaint should be dismissed for lack of subject matter jurisdiction and improper venue, or in the alternative, transferred to the SDNY.

The Government characterizes as "clear and unequivocal" the language and the intent of ATSSSA § 408(b)(3), which provides:

> Jurisdiction. — The United States District Court for the Southern District of New York shall have original and exclusive jurisdiction over all actions brought for any claim (including any claim for loss of property, personal injury, or death) resulting from or relating to the terrorist-related aircraft crashes of September 11, 2001.

Thus, the Government claims, ATSSSA § 408(b)(3) fixes a "bright line" rule that no court, excepting the Southern District of New York, has original jurisdiction over any case related to the 9-11 attacks, wherefore the case at bar must be dismissed, or else transferred to the Southern District of New York.

The Government's argument does not withstand analysis.

1. ATSSSA Does Not Apply to These Claims.

Section 408 is specifically titled "Limitation on Air Carrier Liability." Subsection (a) of Section 408 refers to claims "against any air carrier . . . " Subsection (c), called "Exclusion," specifically exempts "any liability of any person who is a knowing participant in any conspiracy to hijack any aircraft or commit any terrorist act." Section 403, titled "Purpose," provides, "It is the purpose of this title to provide compensation to any individual . . . who was physically injured or killed as a result of the terrorist-related aircraft crashes of September 11, 2001." And Section 405(c), titled "Eligibility," states that "A

claimant shall be determined to be an eligible individual . . . if . . . such claimant . . . suffered physical harm or death as a result of such an air crash . . . "

Plaintiff in this case is not seeking damages for death or physical injury as a result of the September 11 airline crashes, and the language of ATSSSA specifically forecloses him from suing under it. He is suing the defendants in their individual, not their official, capacities, for RICO and other violations related to a wide-ranging conspiracy, extending back for decades and occurring at many locations besides the World Trade Center.

2. The Government Lacks Standing to Assert the Stabilization Acts.

The primary causes of action alleged in the complaint are that defendants — most of whom are government officials — comprise a RICO racketeering enterprise, and that the 9-11 attacks (and various RICO predicate crimes committed in preparation for, or in furtherance of them) are part of a "pattern of racketeering activity" that is intended to, and in fact has, personally enriched the defendants (as well as being part of a political agenda, espoused in the 2000 declaration of the Project for the New American Century, entitled "*Rebuilding America's Defenses*").

In addition to RICO-based claims that refer to the 9-11 attacks *per se,* the complaint alleges further claims for relief under the Anti-Terrorism Act of 1991, (the "ATT"), 18 U.S.C. § 2333, the War Crimes Act of 1996, 18 U.S.C. § 2441,

misprision of felony, 18 U.S.C. § 4; misprision of treason, 18 U.S.C. § 2382, and the Declaratory Judgment Act, 28 U.S.C. § 2202 *et seq.*

The Government's Notice of Motion is express that:

> The United States responds to the complaint only on behalf of federal defendants acting in their official capacities, and only for the purposes of moving to dismiss or transfer this action in its entirety. Counsel for the United States is not authorized [to] represent, and does not represent herein, any defendant in any individual capacity, private defendants, or for any other purpose.

Rodriguez, for his part, does not sue any of the RICO defendants who are government employees asserting that such defendants' lawful acts or omissions, in their capacities as government employees, can somehow be transformed into RICO predicate crimes. Although negligence or nonfeasance on such officials' part in failing to stop the attacks no doubt reflects negatively on their fitness to govern, Rodriguez concurs that negligence — even gross negligence — would not elevate defendants' acts or omissions into RICO predicate crimes.[1]

Conversely, however, Rodriguez submits that if, as he alleges, individual defendants who happen to be United States government (or military) employees committed RICO predicate crimes, or knowingly furthered the 9-11 attacks (whether by affirmatively sponsoring, planning or executing the attacks, or by

[1] And, while Rodriguez proposes as a suspicious circumstances that none of the defendants, nor indeed (so far as known to Rodriguez) anyone has been fired or forced to resign in consequence of the 9-11 attacks, of course the general fitness of the defendants to hold their positions is not directly in issue here.

withholding, obstructing, or delaying — willfully, and with the intent that the attacks go forward — measures within their power as they were responsible to take in order to stop the attacks) then, unless the United States has ceased to be a government of laws, their positions of power cannot insulate the defendants from the legal consequences of their actions.

In other words, defendants have no right to define "national security" so as to conceal, much less to excuse, crimes tantamount to treason. If defendants, or any of them, determined (as many of them stated in "*Rebuilding America's Defenses*") that the national interest (felicitously coinciding with their own, personal financial interests) would be promoted by a "catastrophic and catalyzing event, like a new Pearl Harbor" to obtain public support and political cover for the overthrow of the Saddam Hussein regime, the establishment of permanent U.S. military installations in Iraq, acts aimed at controlling the energy resources of the Middle East and Caspian Basin, and increased military expenditures and assertiveness, they did not become entitled to carry out — or knowingly to permit others to carry out — mass-casualty attacks on the American homeland. Aircraft hijacking, arson, and murder, if carried out by (or with the connivance of) public officials, are still crimes, even if such officials have published position papers stating that such "catastrophic events" would advance some perceived national interest.[2]

[2] If the President, and the several co-signers of "*Rebuilding America's Defenses*" who are defendants here, enjoy impunity to slaughter, or to permit the slaughter, of United States

For the purposes immediately at hand, Plaintiff Rodriguez notes that his complaint is express that the United States, its agencies and officials insofar as they are sued in their official, and not their individual, capacities are not defendants in the RICO counts of the complaint, nor indeed in any of Plaintiff's claims for relief that are based on the 9-11 attacks.

Rodriguez is heartened that the attorneys for the Government are not openly asserting (as Attorney General Gonzales and others have done in discussing torture and the commission of war crimes) that defendants' official, United States government capacities confer any immunity upon them for sponsoring, planning, executing, or knowingly withholding measures as might have stopped the 9-11 attacks, with the intent that those attacks occur. Accordingly, and as any RICO crimes as the Government defendants are alleged to have committed would appear to have been, and undisputedly so, *ultra vires;* and as the Government defendants represented by the United States attorney are not defendants in their official capacities under the 9-11, RICO-based claims for relief set forth in the complaint, Rodriguez submits that the Government has no standing to move against those counts of the complaint.

Regrettably, by undertaking to make the instant motion, the Government is in effect providing legal services, at taxpayer expense, to the RICO defendants (the government-employee defendants, *sued in their individual capacities).* The

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citizens on American soil to advance even desirable foreign policy objectives, this should be made clear to the American people, so that they may protect themselves accordingly.

Government reveals itself, moreover, to be the party guilty of "forum-shopping," in trying to dismiss or to move the action, based on only those claims of the complaint as to which its interests are not implicated.

Moreover, as will shortly be seen, even apart from the issue of the Government's lack of standing, its argument based on the Stabilization Acts is without merit.

3. The ATSSSA Does Not Divest This Court of Jurisdiction Over Plaintiff's 9-11 Related Claims.

In addition to demanding the dismissal of the entire complaint, because of a claimed lack of jurisdiction over certain counts as to which the United States attorney does not represent any party in interest, the government makes the linchpin of its motion an interpretation of the Stabilization Acts that was rejected by the only court that, to date, has considered it in the context that is presented at bar.

As already summarized, the Government's main argument is that "the gravamen of the complaint is the terrorist attacks of September 11, 2001," and that ATSSSA § 408(b)(3) permits only the SDNY to entertain claims for loss of property, personal injury, or death relating to the terrorist-related aircraft crashes of September 11, 2001.

However, the Government does not cite, nor has Plaintiff's research disclosed, any case that holds that the Stabilization Act:

(A) Was intended by Congress to apply to causes of action other than those seeking to recover for loss of property, personal injury, or wrongful death, due to negligence, *e.g.*, on the part of the airlines, owners of the World Trade Center, or others, relating to the 9-11 attacks;

(B) Was intended by Congress to apply to actions, or to causes of action, against persons alleged to have been knowing participants in the 9-11 attacks, or any conspiracy to hijack any aircraft, or commit any terrorist act; or

(C) Extends to causes of action, including Rodriguez's RICO causes of action, other than the cause of action created by the ATA.

So far as Rodriguez has found, the only case to date addressing the substance of the Government's argument is Burnett v. Al Baraka Investment and Development Corp., 274 F.Supp.2d 86 (D.D.C. 2003). In Burnett, the Court held that construing ATSSSA § 408(b)(3) literally, to bar claims against September 11th terrorists and conspirators in any court other than the SDNY, would bring the ATSSSA irreconcilably into conflict with the Antiterrorism Act. The Court thus declined to construe § 408(b)(3) in the manner urged by the Government at bar, its facially unequivocal language notwithstanding.

The Burnett action, like the action at bar but unlike the cases relied on by the Government in its Brief, named as defendants persons who allegedly participated in the 9-11 attacks by supporting and funding the same. The defendants moved to dismiss, based on ATSSSA § 408(b)(3). While acknowledging that, read in isolation, § 408(b)(3) "appears to require that plaintiffs' claims be heard in the Southern District of New York," 274 F.Supp. 2d

at 93, a consideration of "the specific context in which the language is used" is indicated, *id., citing* United States v. Barnes, 295 F.3d 1354, 1359 (D.C. Cir. 2002); *see also* Goodrich Corp. v. Winterthur Int'l Am. Ins. Co., 2002 WL 31833646 at *4 (N.D. Ohio 2002).

The Court in Burnett, holding that the SDNY was not vested with exclusive original jurisdiction except as to actions arising under ATSSSA § 408(b)(1), the Court stated:

> Construing the ATSSSA's exclusive language to encompass claims against the September 11 terrorists and their conspirators would bring the ATSSSA irreconcilably into conflict with the ATA. Congress did not "clearly express" an intention that Section 408(b)(3) was to render the ATA's jurisdictional provision [18 U.S.C. § 2334(a)] ineffective . . .
>
> There is no conflict between the ATSSSA and the ATA if both statutes are given effect. That is accomplished here by giving a narrow construction to the "exclusive jurisdiction" language of Section 408(b)(3).

In its Brief in the case at bar, the Government dignifies Burnett with only passing mention in a footnote, and it stresses that the Burnett case was (more than a year after it was commenced) transferred to SDNY by the Multidistrict Litigation Panel, where it was consolidated with five other actions. While it is true that the Burnett action was transferred to SDNY by the MLP, *see* In re Terrorist Attacks on September 11, 2001, 295 F.Supp.2d 1377 (M.L.P. 2003) a reading of the Multidistrict Litigation Panel's Order offers no support to the Government's primary claim (*i.e.,* that the court of original instance in Burnett lacked subject matter jurisdiction) and virtually no support to the Government's

fallback stance (that this case should be packed off to the SDNY, whether jurisdiction here is permissible or not).

Venue in This District Is Proper.

If the complaint be read as the Plaintiff intended — as one based primarily on the RICO anti-racketeering statute —the relevant venue statutes are civil RICO's venue provisions, 18 U.S.C. § 1965(a) and (b), as the same supplement the basic venue provisions of 18 U.S.C. § 1391.

Preliminarily, venue is, of course, supremely a matter of convenience. The over-arching intent of the venue statutes is to protect the defendant from oppression in having to appear for depositions and, especially, for trial at an inconvenient location. It would be well to keep in mind that in this action, certainly as to the defendants who are federal agencies or senior government officials, substantially all of them are believed to reside or to be based in Washington, D.C., or in nearby suburbs in Maryland or Virginia. As a practical matter, wherever venue might ultimately be laid, Rodriguez would expect that any judge supervising discovery in this case would, in deference to the Government defendants' positions, require that they be deposed in Washington, D.C., or a nearby locale, if they so desire. Insofar as Government defendants are sued in their official capacities, they have the enormous advantage of having available to them attorneys of the U.S. Attorneys' offices, in every judicial district nationwide.

As will be argued below, moving defendants' argument that the Southern District of New York is a suitable forum, based on the pendency there of various negligence actions and actions against foreign persons with which this action could be conjoined, is unsupported.

28 U.S.C. § 1391(b) provides that a civil action, other than one in which jurisdiction is based solely on diversity of citizenship, "may be brought only in the judicial district where all defendants reside, or in which the claim arose, except as otherwise provided by law." There is, manifestly, no single district in which all of the defendants arise, as former President George H. W. Bush has homes in Texas and Maine, Jeb Bush resides in Florida, and as mentioned many of the defendants (some of whose residence addresses are more or less undiscoverable to plaintiff, as they are senior government officials) reside or are presumed to reside in Washington, D.C., or nearby places in Maryland or Virginia.

Neither can it be said with any definiteness that Rodriguez's claims — even limiting this examination to those relating to RICO and to the 9-11 attacks — arose in one district only, to the exclusion of any others. The World Trade Center, to be sure, was felled within the Southern District of New York. The two planes believed to have been flown into the Twin Towers, however, departed from an airport within the District of Massachusetts; the timelines suggest that one of them was commandeered while flying over western Massachusetts, and

the other while overflying the Northern District of New York. The other two doomed flights of 9-11 departed from Newark, in the District of New Jersey.

Rodriguez alleges that both President Bush and Vice President Cheney advisedly declined to direct energetic measures as might have stopped the 9-11 attacks as the same unfolded. The President was in the Southern District of Florida until approximately 9:30 A.M. EDT on the morning of 9-11, and later that day in the District of Nebraska at Offutt AFB; the Vice President was reportedly at the White House, in the District of Columbia.

If Rodriguez is correct that high-level Executive Branch and military actors knew of the 9-11 attacks in advance, and conspired to carry them out or to permit them to happen, it would seem virtually certain that communications on the subject, in the months preceding 9-11, would have been exchanged among defendants in the District of Columbia and the Pentagon, the latter in the Eastern District of Virginia, and of course the site also where Flight 77 is believed to have crashed.

The Eastern District of Virginia has a further nexus to the 9-11 attacks as it was from the FAA Command Center, in Herndon, Virginia, that FAA official Ben Sliney is believed to have issued an unprecedented nationwide "ground stop" order, believed by Rodriguez to have been the means chosen by defendants to cause the U.S. military to "stand down," while placing on such order the "fingerprints" not of senior Executive Branch or military figures, but an FAA employee working his very first day in a new position.

Flight 93 reportedly overflew the Eastern District of Pennsylvania, en route to its presumed final resting place, in the Western District of Pennsylvania.

The President, notoriously, spent much of the summer of 2001 in Crawford, Texas in the Western District of Texas, Waco Division, much of that time in the company of his then-National Security Advisor, Dr. Condoleeza Rice. Vice President Cheney, another high-level defendant, passed much of the summer at his vacation residence in Wyoming. As these top officials by their acts or omissions are alleged to have caused, or knowingly permitted, the attacks to occur, their presence in the Western District of Texas and the District of Wyoming during much of the months leading up to the attacks creates a significant nexus with these districts, also.

Rodriguez alleges that FEMA ensured that the World Trade Center debris would be unavailable to nonfederal investigators, by setting up a command center at Pier 92 in Manhattan in advance of 9-11, dispatching teams to New York City (on the pretext of taking part in an exercise) arriving on September 10, 2001 and September 11, 2001, and seizing control of the WTC crime scene almost instantaneously after the attacks occurred. The first two FEMA teams at the scene are believed by Rodriguez to have been dispatched from Beverly, Massachusetts (the District of Massachusetts) and Harrisburg, Pennsylvania (in the Middle District of Pennsylvania).

The Government's Brief points to the existence of a "United States Liability Subcommittee" in connection with which will:

> . . . focus upon the issues relating to the legal liability of the United States, if any, and the issue of whether but for the negligence of the United States and its agencies, the terrorist attacks on September 11, 2001 could have been prevented as well as upon issues related to disclosure of "sensitive security information." In re September 11, 2001 Litigation, 2002 WL 31260017 (S.D.N.Y. 2002) at *2. (Emphasis added).

"[T]ransferring this case to the SDNY," the Government contends, "would conserve precious judicial resources, would obviate the risk of inconsistent judgments, and would serve the parties' interests more justly and efficiently." Government Brief at 14. The Government argues further as follows:

> Rather than having the discovery process relating to September 11 conducted along two separate tracks in separate jurisdictions, one court would preside and the parties would be afforded consistency of timetables, locations, and requirements for discovery. Transfer would reduce needless duplication of effort and redundancy. Common issues of fact and law would be determined once, which would serve the interests of efficiency and fairness. (Government Brief at 14).

This argument is charitably described as disingenuous. What the Government appears to be attempting is to submerge Rodriguez's action in negligence actions in SDNY, and in effect to supply a defense, at taxpayer expense, to Bush Administration officials in this action who are not entitled to be defended by the U.S. Attorney's Office, inasmuch as they are not sued in their official capacities at all, except as to the non-RICO, non-September 11th claims for relief.

Whatever its intent, the Government's argument shoots wide of the mark. The "United States Liability Subcommittee" is irrelevant: Rodriguez is not suing

the Government, individual government defendants in their official capacities, nor indeed anyone for negligence.

There are lawsuits pending in SDNY against the airlines, the owners of the World Trade Center, and others alleging negligence in connection with the 9-11 attacks. There is a group of additional civil actions against Osama bin Laden, and an assortment of foreign, evidently mostly Muslim, governments and other organizations alleged to be financiers of terrorism. So far as known to Rodriguez, not one of the 9-11 related actions pending in SDNY includes the central allegations made in the complaint in the action here.

Specifically, it is the crux of this action that defendants, acting outside the scope of their lawful duties as government and military officers, either:

(A) sponsored, planned, and executed the 9-11 attacks, including the destruction of the Twin Towers at the World Trade Center in New York, or in the alternative,

(B) were criminally complicit in the attacks, as defendants, having foreknowledge of the attacks, permitted the same to occur — not negligently, but by withholding, obstructing and/or delaying counter-measures to stop the attacks, with the intent that the attacks be carried out.

Rodriguez alleges that part of defendants' motives in causing or permitting the attacks was to bring about the "New Pearl Harbor" described in the Project for the New American Century's "*Rebuilding America's Defenses*" as necessary to win public support for war to overthrow the Saddam Hussein regime in Iraq and a broad program of wars to control foreign energy resources, the increased militarization of American society and the American economy (and attacks on civil liberties and dissent, as embodied *inter alia* in the Patriot Act, and the appointment of apologists for torture to be Attorney General and Director of Homeland Security, in the persons of Alberto Gonzales and Michael Chertoff).

Further motives alleged for the defendants' criminal complicity in the 9-11 attacks are spelled out in detail in Plaintiff's Complaint.

Again, the Government has no licit stake in remitting Rodriguez to try to distinguish his unique claims in the morass of unrelated actions in SDNY. The Government is a defendant in this action only as to counts of the complaint that are not directly related to the occurrences of 9-11. Likewise, the Government officials sued as to the 9-11 related counts are accused of criminal complicity, not negligence. As such, they are sued on these counts of the action only in their individual capacities. Unless the Government is asserting that sponsoring, or permitting, the 9-11 attacks (acts that Rodriguez characterizes as murder and treason) was within the Government-related defendants' lawful duties, or that some privilege attaches thereto, said defendants are not entitled to be defended,

as to these counts of the complaint, by the U.S. Attorney's Office, and at taxpayer expense.

And, certainly, no interest in the nature of judicial economy or avoiding duplication in discovery will be promoted by sending this action, which is dissimilar to the SDNY actions as to the identity of the defendants and the nature of the allegations made, to be drowned by immersion in either group of utterly unrelated actions now pending in SDNY.

POINT II

VENUE IN THE EASTERN DISTRICT OF PENNSYLVANIA IS PROPER PURSUANT TO 28 U.S.C. § 1391(B) AND 18 U.S.C. § 1965(A) AND/OR § 1965(B)

In those cases in which two or more districts are can fairly be said to be "the district" in which the plaintiff's claim may be said to have arisen, for purposes of establishing venue a plaintiff may select one of "approximately equal plausibility — in terms of the availability of witnesses, the accessibility of other relevant evidence, and the convenience of the defendant," Leroy v. Great Western United Corp., 443 U.S. 173, ___, ___ Sup. Ct. ____ (1979)."

Clearly, the SDNY is by no means the solo district in which plaintiff's RICO claims can be said to have arisen, and indeed as most of the defendants are government officials who work in Washington, D.C., and reside there or in nearby places in Maryland or Virginia, clearly Philadelphia, which is approximately 145 miles by automobile from the capital, is more plausible than New York City, which is about 232 miles from Washington, in terms of the availability of witnesses, the accessibility of evidence, and the convenience of the defendants.

The political underpinnings of the Government's motion are further revealed, plaintiff submits, by the fact that the obvious alternate venue to Philadelphia would be not New York City — which is significantly further away from Washington, D.C. than Philadelphia is — but the District of Columbia itself. Perhaps the fact that Rodriguez has demanded a trial by jury, and the 2004 election results showed Senator Kerry getting 90% of the vote in the District of Columbia *versus* a mere 9% for President Bush, have dampened the President's enthusiasm for a trial before a jury of his peers in his temporary hometown.

As the RICO enterprise alleged in Rodriguez's complaint can be roughly described as the upper echelons of the U.S. Government, venue in this district is proper whether it can be sustained under 28 U.S.C. § 1391(b) or not. Under the RICO venue statute, 18 U.S.C. § 1965(a), venue is proper where a defendant has an agent or conducts its business, and the presence of FEMA and FBI offices in Philadelphia are sufficient grounds to base venue here, as the heads of both of

those agencies are defendants alleged to have participated in the 9-11 conspiracy. In addition, under 18 U.S.C. § 1965(b), where the ends of justice so require, even RICO defendants who, but for this statute, might not be subject to venue in this district can be required to defend the action here.

If this Court should determine that venue in this district is not permitted, certainly Washington, D.C. affords better access to sources of proof and to witnesses than does the Southern District of New York. So far as known to Plaintiff, there are no actions in New York in which officials of the federal government are alleged to have sponsored or permitted the 9-11 attacks, and thus joinder either with negligence suits against the airlines and others, or claims against Saudi or other foreign nationals, would not be appropriate. Thus, the ability to consolidate this action with a closely-related one is simply not a factor.

Finally, this action is believed to be unique, the only active case alleging a RICO conspiracy involving government officials relating to the 9-11 attacks, wherefore it cannot be said that any particular district should be favored, by reason of more extensive experience with the subject matter.

Certainly, the Government has not alleged grounds sufficient to warrant a transfer to SDNY. Its Stabilization Act argument is spurious, and (apart from the Government's dubious standing even to assert the issue) it is a bizarre request to demand the transfer from this district to SDNY, given that the latter is less suitable in terms of access to witnesses and other proofs, and is less convenient to the defendants.

CONCLUSION

For the foregoing reasons, the government's motion should be denied in its entirety.

Respectfully submitted,

_____

Philip J. Berg, Esquire
Attorney for Plaintiff,
William Rodriguez
706 Ridge Pike
Lafayette Hill, Pennsylvania 19444