

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS**

**CASE NO: EP-07-CR-87-KC**

**THE UNITED STATES OF AMERICA,**

**Plaintiff,**

**v.**

**LUIS POSADA CARRILES,**

**Defendant.**

**MOTION TO STRIKE GOVERNMENT'S EXPLOSIVES EXPERT  
WITNESS REPORT, AND EXCLUSION OF TESTIMONY,  
ALTERNATIVELY MOTION FOR PRODUCTION OF EVIDENCE FOR  
TESTING BY DEFENSE EXPERT**

Comes Now, Luis Posada-Carriles, pursuant to Rule 16 of the Federal Rules of Criminal Procedure and Rules 104, 403, 802, 901 and 1002 of the Federal Rules of Evidence, as well as the Court's order on discovery, by and through his undersigned counsel, and respectfully moves this Court to strike the Government's explosives expert witness report, and to exclude the testimony of the expert at the trial and alternatively to compel the production of evidence for defense expert examination, and as grounds the Defendant would therefore show:

**A. MOTION TO STRIKE AS UNTIMELY AND TO EXCLUDE:**

1. On the eve of trial, and before the Government requested an emergency continuance, Government disclosed to the Defendant on February 12, 2010 two reports of explosives expert witness scientific examinations. These reports (see reports bate stamped 10-0465 through 10-0467, attached) are dated November 13, 1998. These reports of a field scientific forensic examination of “blasting caps” conducted by an FBI explosives expert in Havana, Cuba on June 17<sup>th</sup>, 1998, and a subsequent report of chemical examination of explosive samples conducted by the FBI laboratory, have been in the Government’s possession for over 12 years. Their disclosure on February 12, 2010 was untimely, and the reports and testimony accordingly should be stricken by this Court.<sup>1</sup>

2. In addition, the evidence is subject to exclusion for foundational reasons. These would include: a significant gap in the chain of custody created by the Cuban authorities who obtained the evidence, the failure to maintain a proper chain of custody by both Cuban and American investigators, a lack of authentication and hearsay. Finally, this evidence is irrelevant and violates Rule 403 of the Federal Rules of Evidence as its prejudicial value far exceeds any probative value.

**B. MOTION TO PRODUCE EVIDENCE:**

3. Alternatively, the Defendant Luis Posada-Carriles, respectfully requests this Court compel the Government to produce to an appropriate defense expert the

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<sup>1</sup> The Court’s discovery deadline expired on December 1, 2009 (See D.E. 189 Text Order 10-21-09).

physical evidence scientifically examined by the Government's experts as identified in the attached reports.

The Government's counsel opposes this motion.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 18th day of May 2010, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

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and I hereby certify that I have mailed by United States Postal Service the document to the following non-CM/ECF participants: None.

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