

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(Southern Division)**

UNITED STATES OF AMERICA,)	
)	
<i>Plaintiff,</i>)	
)	
v.)	Crim. No. DKC-99-0452
)	
FRANCISCO SANTINI, <i>et al.</i> ,)	
)	
<i>Defendant.</i>)	
_____)	

**DEFENDANT FRANCISCO SANTINI'S
MOTION PURSUANT TO FED. R. CRIM. P. 21(b)
TO TRANSFER HIS CASE TO PUERTO RICO FOR TRIAL**

Defendant Francisco Santini, by his undersigned counsel, hereby moves to transfer his case to the District of Puerto Rico for trial, pursuant to the provisions of Fed. R. Crim. P. 21(b). Defendant Santini further moves that this matter be set for briefing pursuant to the provisions of Local Rule 105(2) and a separate hearing, rather than following the schedule the Court has otherwise established for the motions in this case. (That schedule calls for the Government to respond to defendants' motions by September 18.) An expedited hearing on this motion is appropriate because, if defendant's motion to transfer is granted, it will facilitate setting this matter for trial in Puerto Rico and will allow Dr. Santini to be appointed new counsel in Puerto Rico on a timely basis. It will also permit Government counsel to plan their future work on this matter more effectively.

The particulars supporting this motion are stated in the accompanying memorandum of points and authorities.

Respectfully submitted,

By:

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**DEFENDANT FRANCISCO SANTINI'S
MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT
OF HIS MOTION TO TRANSFER HIS CASE TO PUERTO RICO FOR TRIAL**

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Pursuant to the provisions of Fed. R. Crim. P. 21(b), defendant Francisco Santini, by his undersigned counsel, hereby moves to transfer his case to the District of Puerto Rico for trial. The points and authorities in support of this motion are set forth below.

INTRODUCTION

Defendant Francisco Santini, M.D. is charged in three counts of an eight-count superseding indictment with conspiracy, mail fraud, and wire fraud relating to an alleged scheme to overprescribe electrocardiographic (ECG) monitoring devices. These charges arise out of prescriptions Dr. Santini wrote calling for the use of ECG monitoring devices supplied by Cardio-Tel, Inc., a Pennsylvania corporation with its principal offices located in Maryland, during an 18-month period in 1994-95.

Leaving aside his student years at the University of Salamanca in Spain, Dr. Santini is a life-long resident of Juana Diaz, a town located near the southern coast of Puerto Rico. Prior to his Indictment in this case, Dr. Santini had never been to Maryland. Indeed, since he established his practice in the small city of Juana Diaz back in the early 1970's, Dr. Santini has only rarely traveled outside of Puerto Rico. He has been found by this Court to be indigent and to qualify for the appointment of counsel under the Criminal Justice Act (CJA).

Although Cardio-Tel also provided its ECG monitoring services to many physicians in the mainland United States, the Indictment charges the existence of a scheme to defraud that is limited to Puerto Rico. Besides Daniel Gershoni, Cardio-Tel's President, the only named co-conspirators are Dr. Santini and a group of Puerto Rican medical clinics known as Servicios

Medicos, which are located in Cabo Rojo and elsewhere in Puerto Rico. Superseding Indictment, ¶s 1-3. Thus, this case will turn entirely on acts and transactions that took place in Puerto Rico.

The Indictment alleges that Dr. Santini and Servicios Medicos separately conspired with Mr. Gershoni to overutilize Cardio-Tel's monitoring services and then to improperly bill Medicare for these tests. Cardio-Tel maintained business offices and a sales force in Puerto Rico who visited the offices of Dr. Santini and other doctors and made presentations to them on the use of Cardio-Tel's ECG devices. Physicians such as Dr. Santini would write prescriptions for patients to be tested with the ECG monitors. Once a reading was taken, it was transmitted telephonically from Puerto Rico to Cardio-Tel's main office in Maryland, where the resulting heart sounds were transcribed into a report that was then mailed to the physician in Puerto Rico. Cardio-Tel billed for the "technical component" of the tests, i.e., the use of its ECG and its transcription onto monitoring strips of the sounds of the patient's heartbeat, while Dr. Santini billed for his interpretation of the resulting test reports. Cardio-Tel submitted its claims to Xact, a Medicare contractor or carrier located in Camp Hill, Pennsylvania, for processing and payment. Dr. Santini submitted his claims for his services to Triple-S, the Medicare carrier for Puerto Rico, whose offices are located in San Juan.

Thus, all of Dr. Santini's actions as part of this alleged scheme to defraud occurred in Puerto Rico. It was in Puerto Rico that Dr. Santini was visited by local Cardio-Tel sales representatives, who briefed him both on the capabilities of these ECG devices and on the codes he should use in billing Triple-S. It was in Puerto Rico that Dr. Santini met with his patients and determined whether to prescribe ECG monitoring services for them. It was in Puerto Rico that the readings were taken from his patients. It was in Puerto Rico that Dr. Santini received and

reviewed the resulting test reports. It was in Puerto Rico that Dr. Santini's billing service prepared and submitted bills to Triple-S reflecting his review of these reports. And it was in Puerto Rico that reimbursement checks were issued by Triple-S and mailed to Dr. Santini. All of the face-to-face meetings that Dr. Santini had with Cardio-Tel representatives occurred in Puerto Rico, and there is no evidence that Dr. Santini ever had significant discussions with Mr. Gershoni or anyone else at Cardio-Tel's Maryland offices by telephone. Accordingly, if a conspiracy was ever formed in this case, it was formed in Puerto Rico, and it could only be carried out by actions taken almost exclusively in Puerto Rico. It necessarily follows that if the Government is to prove that Dr. Santini committed the crimes charged, they will have to do so primarily with the testimony of witnesses from Puerto Rico.

We therefore move that the case against Dr. Santini be transferred to the District of Puerto Rico for trial. For the reasons shown below, transfer of the case against Dr. Santini will serve both the interests of justice and the convenience of the vast majority of the likely trial witnesses.

ARGUMENT

BOTH THE INTERESTS OF JUSTICE AND CONSIDERATIONS OF COST AND CONVENIENCE FOR WITNESSES AND PARTIES WILL BE SERVED BY TRANSFERRING THE CASE AGAINST DR. SANTINI TO PUERTO RICO FOR TRIAL

A. The Standards for Transfer of Venue Under Fed. R. Crim. P. 21(b).

Fed. R. Crim. P. 21(b) provides:

For the convenience of parties and witnesses, and in the interest of justice, the court upon motion of the defendant may transfer the proceeding *as to that defendant* or any one or more counts thereof to another district.

(Emphasis added.) As the language of the rule itself makes plain, the Court may transfer all or part of a case when it believes that doing so will serve the convenience of parties and witnesses and the interest of justice. It may transfer the case as to one defendant, but not as to others, and it may choose to transfer some charges, but not others. In accordance with the express language of the Rule, courts frequently grant transfer motions that apply to only some of the defendants in a case. *See, e.g., United States v. Choate*, 276 F.2d 724, 726, 729 (5th Cir. 1960) (five of seven defendants were transferred for trial from Miami to Birmingham); *United States v. Bein*, 539 F. Supp. 72 (N.D. Ill. 1982) (court granted motion to transfer trial of three of seven defendants from Chicago to New York); *United States v. Barrientos*, 485 F. Supp. 789, 789-90 (E.D. Pa. 1980) (transfer from Philadelphia to Miami granted for two of four defendants); *United States v. Aronoff*, 463 F. Supp. 454 (S.D.N.Y. 1978) (court granted motion to transfer as to one of three defendants); *United States v. Clark*, 360 F. Supp. 936, 945-46 (S.D.N.Y. 1973) (trial of five defendants was transferred to Oklahoma City, while trial of three others remained in New York); *United States v. Erie Basin Metal Products Co.*, 79 F. Supp. 880, 885-86 (D. Md. 1948) (four of six defendants were transferred from Baltimore to the Northern District of Illinois for trial); *United States v. Jessup*, 38 F.R.D. 42, 47-48 (M.D. Tenn. 1965) (two of three defendants transferred from Nashville to Southern District of Mississippi for trial). *See also Yeloushan v. United States*, 339 F.2d 533, 536 (5th Cir. 1964) (“There is no constitutional requirement that all parties defendant in a multiple indictment be tried in the same district.”).

Rule 21(b) “vests broad discretion in the trial court to determine whether the interests of justice dictate a transfer” *United States v. Aronoff*, 463 F. Supp. 454, 456 (S.D.N.Y. 1978); *United States v. Russell*, 582 F. Supp. 660, 662 (S.D.N.Y. 1984). As Judge Posner of the Seventh Circuit has written, “Nothing in Rule 21(b) or in the cases interpreting it place on the defendant seeking a change of venue the burden of establishing ‘truly compelling circumstances’ for such a change. It is enough if, all relevant things considered, the case would be better off transferred to another district.” *Matter of Balsimo*, 68 F.3d 185, 187 (7th Cir. 1995).

In determining whether a case against a particular defendant should be transferred to another district, the court considers the familiar list of ten factors originally set forth in *Platt v. Minnesota Mining & Mfg. Co.*, 376 U.S. 240, 244 (1964) and elaborated upon in subsequent decisions:

- (1) the location of the defendant;
- (2) location of possible witnesses, including co-conspirators;
- (3) location of events likely to be at issue;
- (4) location of documents and records likely to be involved;
- (5) disruption caused to the defendant’s personal, business, and family responsibilities;
- (6) expense to the parties and to witnesses;
- (7) location of counsel;
- (8) relative accessibility of each potential place of trial;
- (9) docket condition of each district involved;
- (10) any other special elements that might support or disfavor the motion for transfer.

See also United States v. Maldonado-Rivera, 922 F.2d 934, 966 (2d Cir. 1990); *Aronoff*, 463 F. Supp. at 456-57; *United States v. Connelly*, 405 F. Supp. 735, 737-38 (S.D.N.Y. 1975); *Clark*, 360 F. Supp. at 941. A court considering a motion for transfer under Rule 21(b) should look to all of these factors and determine whether the interests of justice would be better served by changing the trial venue.

In this case, at least five of the nine standard factors – the defendant’s location; the location of the great majority of likely witnesses; the location of the events likely to be at issue; the disruption of the defendant’s personal life and medical practice; and the expense to the parties and the witnesses – weigh strongly in favor of transferring the case against Dr. Santini back to Puerto Rico. The remaining standard factors are either neutral, mixed, or simply are not entitled to significant weight in the analysis of a motion for transfer under Rule 21(b). We also submit that there are several special factors present here that weigh strongly in favor of transferring this case to Puerto Rico, as set forth below.

B. The Indictment Demonstrates that this Case is Centered on Events Occurring in Puerto Rico, and the Vast Majority of Witnesses With Testimony Pertinent to Dr. Santini's Culpability will be Residents of that Island.

The Superseding Indictment makes it clear from its third paragraph that the entire focus of this case will be on medical services that Cardio-Tel provided or purported to provide “*throughout Puerto Rico* through various health care providers, including **FRANCISCO SANTINI** and Norbert Limited, d/b/a Servicios Medicos Preventivos (hereinafter “Servicios Medicos”), a medical facility/clinic located in Cabo Rojo, Puerto Rico.” Superseding Indictment, Count I, ¶ 3 (emphasis added). Dr. Santini is not in any way affiliated with Servicios Medicos.¹ The Indictment therefore alleges a “hub and spoke” conspiracy, with Cardio-Tel (and its President, Mr. Gershoni) as the “hub” and Servicios Medicos in Cabo Rojo and Dr. Santini in Juana Diaz as the two separate spokes. Thus, although Cardio-Tel supplied its services to many

¹ It is our understanding that Servicios Medicos is actually a chain of medical clinics located around Puerto Rico, rather than a single facility in Cabo Rojo.

physicians and their patients in the mainland United States, the Indictment expressly states in its very first paragraphs that it is *only* the services Cardio-Tel provided in Puerto Rico that are at issue here.

The “Manner and Means” section of the Indictment (Count I, ¶s 16-20) identifies five separate ways the defendants (and their unindicted co-conspirator, Servicios Medicos) supposedly executed the alleged scheme to defraud. At least with regard to Dr. Santini’s role in this case, all of the alleged conduct relating to the “Manner and Means” took place in Puerto Rico.

For example, ¶ 16 charges that Dr. Santini “did submit false and fraudulent claims to Medicare Part B for cardiac event monitoring services when, in truth and in fact, the services represented were not provided to Medicare beneficiaries.” The acts or omissions underlying this allegation all occurred in Puerto Rico, and the proof at trial relating to this claim will thus largely -- if not exclusively -- involve witnesses from Puerto Rico. To sustain this allegation against Dr. Santini, the Government presumably will call one or more of the three Cardio-Tel sales representatives who dealt with Dr. Santini at different times – Ramon Zayas, Manuel Soldevila, and Jose Gonzalez Nego. All of these individuals were life-long residents of Puerto Rico at the time of these events, and the defense is aware of no information suggesting that all three cannot be found there today. The Government likewise would presumably call patients of Dr. Santini’s to testify that they never received ECG services from Cardio-Tel. Since Dr. Santini’s practice is limited to the country around Juana Diaz, on the south coast and mountainous central spine of Puerto Rico, any of his patients who may be called as witnesses will come from that area. Finally, Dr. Santini's claims for reimbursement based on his review of the cardiac monitoring

strips were prepared by his billing service and then submitted to Triple-S, the Medicare carrier for Puerto Rico, in San Juan, which denied some, paid others, and mailed the checks including these payments from San Juan back to his office in Juana Diaz. In short, with regard to Dr. Santini's alleged culpability, every operative act put at issue by this allegation occurred in Puerto Rico.

Next, ¶ 17 of Count One charges that Cardio-Tel and Dr. Santini "did conduct and bill cardiac event monitoring tests which were unnecessary, illegible and/or otherwise unacceptable." The Government's claim that the tests were unnecessary will presumably involve the testimony of expert witnesses and/or the testimony of other physicians from Puerto Rico who have treated Dr. Santini's patients. We yet do not know the identity or location of the Government's experts, but it seems likely that the Government may intend to use government-employed physicians, whom of course can be required to travel anywhere at Government expense as part of their jobs and who will not be billing the Government high fees for their travel time. Dr. Santini has not yet retained expert witnesses; accordingly, if his case is transferred to Puerto Rico, he can easily concentrate his efforts on locating experts who reside on the island itself.

We believe that this paragraph's allegation that the Cardio-Tel tests were "illegible and/or otherwise unacceptable" may be largely based on testimony by Federal Bureau of Investigation (FBI) Special Agent David Roden relating to statements he claims Dr. Santini made to him and two other FBI agents at an interview in March 1999. The other two FBI agents present at this interview were apparently assigned to the FBI's San Juan field office or to another field office in Puerto Rico. Dr. Santini may also testify in his own defense concerning what he actually told the FBI agents in this interview. Thus, three of the four witnesses most likely to testify with regard

to this allegation are from Puerto Rico, while the fourth is the case agent, an employee of a Federal investigative agency whom the Government could certainly fly there again to testify at Dr. Santini's trial.

Paragraph 18 of Count One alleges that Dr. Santini “utilize[d] cardiac event monitoring equipment which did not have the capability of providing the service billed.” Any witnesses with testimony bearing on Dr. Santini’s knowledge relating to this allegation will almost inevitably come from Puerto Rico. Possible candidates could include one or more of the three Cardio-Tel sales representatives discussed above, or other witnesses who claim to have had discussions on this subject with Dr. Santini.

In ¶19 of Count One, the Government charges that Dr. Santini and his co-defendant “did improperly utilize the cardiac event monitoring equipment by using a single piece of equipment to take measurements of multiple patients at scheduled or pre-determined periods rather than permitting each patient to keep his or her equipment as needed to record an event.” Once again, the key witnesses in support of such an allegation would have to be one or more of the Cardio-Tel sales representatives and/or technicians and one or more of Dr. Santini’s patients. Again, all of these witnesses should be residents of Puerto Rico, and certainly the activity that is at issue here all occurred in Puerto Rico.

Finally, in ¶ 20 of the “Manner and Means,” the Government charges (with remarkable vagueness) that Dr. Santini “did pay and/or receive illegal kickbacks for the purpose of encouraging the overutilization of the cardiac event monitoring services billed to Medicare Part B.” (The overt acts offer no further clarification with regard to this allegation.) Since Dr. Santini has never been to Maryland and travels outside Puerto Rico only rarely, any such kickbacks must

presumably have been paid – and/or received – on the island. Again, the most likely witnesses to testify in support of such an allegation would be one or more of the Cardio-Tel sales representatives. Documents custodians from Puerto Rican banks may also be called in an effort to substantiate (or to refute) this allegation. Once again, it is practically inconceivable that any witnesses from outside Puerto Rico will have anything material to say with regard to this claim.

The Indictment's conspiracy count also includes fifteen overt acts. Only one of those fifteen counts even involves alleged conduct by Dr. Santini (overt act m). Of the others, six (overt acts a, d, g, j, k, & n) relate to the transmission of cardiac data from various Medicare patients in Puerto Rico to Cardio-Tel's offices in Maryland, and thus conceivably could involve testimony both from witnesses located in Puerto Rico and in Maryland – although it may well be that Dr. Santini would be prepared to stipulate that the data was received by Cardio-Tel. Three other overt acts (b, e, & h) involve billings by Cardio-Tel's billing service, Professional Management Billing and Systems (PMBS). Again, Dr. Santini would likely be willing to stipulate to the fact that these billings were made if he faces trial separately in Puerto Rico, for these acts shed no significant light on the Government's allegations against him. Another four overt acts (c, f, i, l) relate to the deposit of reimbursement checks received from Medicare into Cardio-Tel's bank account. Again, these acts are immaterial to Dr. Santini's knowledge, intent or culpability, so he would likely be willing to stipulate to their admission at a separate trial. The remaining overt act (o) involves the mailing of a check from Medicare to Cardio-Tel – again, a fact that in and of itself is completely immaterial to Dr. Santini's culpability and to which he would likely stipulate at a separate trial.

Dr. Santini is named in only two of the Indictment's remaining six substantive counts. Count Five charges him with "caus[ing]" a Medicare check payable to Cardio-Tel to be delivered in early March 1995. Again, any testimony relating to any acts by which Dr. Santini "caused" this occur necessarily will come from Puerto Rican witnesses testifying about events in Puerto Rico. The same is true of Count Seven, which charges Dr. Santini with "caus[ing]" a transmission of cardiac data from Puerto Rico to Cardio-Tel's Maryland offices on March 23, 1995.

We turn now to specific consideration of each of the standard *Platt* factors, as well as of some special considerations that support transfer of the case against Dr. Santini.

C. The *Platt* Factors Weigh Strongly in Favor of Transferring the Prosecution Against Dr. Santini to Puerto Rico.

1. The Location of the Defendant

"It has been stated, therefore, that as a matter of policy, a defendant should ordinarily be tried, whenever possible, where he resides." *United States v. Aronoff*, 463 F. Supp. 454, 457 (S.D.N.Y. 1978). *See also Hyde v. Shine*, 199 U.S. 62, 78 (1905); *United States v. Cashin*, 281 F.2d 669, 675 (2d Cir. 1960); *United States v. Russell*, 582 F. Supp. 660, 662 (S.D.N.Y. 1984). This policy, grounded in fundamental concepts of fairness, has deep roots in our history and constitutional law. The English traditionally considered the right to trial near a defendant's residence and in the vicinity of which the crime was committed as one of their most important safeguards against the abuse of governmental power. As one leading commentator notes, "Long before the American colonies were settled, the right to trial by jurors of the vicinage – the place where the offense had been committed – was established and cherished." 2 C. WRIGHT,

FEDERAL PRACTICE AND PROCEDURE: CRIMINAL, § 301 at 189 (1982). The famous Virginia Resolves of 1769 denounced a parliamentary proposal to transport colonists to England for trial on criminal offenses allegedly committed in the colonies as an infringement upon “the inestimable Privilege of being tried by a jury from the Vicinage,” and seven years later the Declaration of Independence likewise condemned King George III “for transporting us beyond Seas to be tried . . .” – which, of course, is quite literally what the Government proposes to do with Dr. Santini here.

The Framers of the Constitution were therefore keenly aware “of the unfairness and hardship to which trial in an environment alien to the accused exposes him” *United States v. Johnson*, 323 U.S. 273, 275-76 (1944);² see also *United States v. Cores*, 356 U.S. 405, 407 (1958) (“The provision for trial in the vicinity of the crime is a safeguard against the unfairness and hardship involved when an accused is prosecuted in a remote place.”). A defendant's right to trial in the vicinity in which the crime was committed was deemed of such fundamental importance by the Framers that it is guaranteed in two separate places in the Constitution. Article III, Section 2 provides that “The trial of all Crimes . . . shall be held in the State where the said crimes shall have been committed” The Sixth Amendment likewise provides in pertinent part that “in all criminal prosecutions, the accused shall enjoy the right to a speedy and

² The Supreme Court in *Johnson* also expressed its concern that the leeway afforded to prosecutors by the “continuing offense” venue provision of 18 U.S.C. § 3237 “not only opens the door to needless hardship to an accused by prosecution remote from home and from appropriate facilities for defense,” but “also leads to the appearance of abuses, if not to abuses, in the selection of what may be deemed a tribunal favorable to the prosecution.” *Id.*

public trial, by an impartial jury of the State and district wherein the crime shall have been committed”

Accordingly, in analyzing motions for transfer under Rule 21(b), the residence of the defendant must be given “real weight.” *United States v. Haley*, 504 F. Supp. 1124, 1126 (E.D. Pa. 1981) (granting motion for transfer of trial from Philadelphia to Atlanta). The court should consider such factors as where the defendant lives; what family he or she has; whether his or her family life will be disrupted by a long trial; whether he or she would be able to bring their family to the district for the trial; and thus, whether a prolonged trial “would deprive him of their support during a trying time.” *Aronoff*, 463 F. Supp. at 458. Another important consideration is whether the defendant would be financially able to return to his home periodically during the trial. *Aronoff*, 463 F. Supp. at 460. While disruption of family and business life occurs with any trial, this disruption is necessarily increased where the trial is long and conducted far from home. *Clark*, 360 F. Supp. at 944.

In this case, all of these factors weigh strongly in favor of Dr. Santini's request that his case be transferred to Puerto Rico. His residence in Juana Diaz is little more than an hour by interstate expressway (I-52) from the federal courthouse in San Juan, but it is almost 1600 miles from the District of Maryland. Neither his four children nor other family members or friends would be able to attend his trial in this district. It is unlikely that the Marshals Service would pay for him to return to his home during trial, so he would be required to stay over for weekends in an alien jurisdiction where he has no friends or contacts aside from his court-appointed defense counsel. And given that this trial may well last some four to five weeks, he will be asked to

endure these hardships for an extended period of time. This factor accordingly weighs strongly in favor of Dr. Santini's motion to transfer.

2. The Location of Possible Witnesses, Including Co-Conspirators.

As we have seen, the vast majority of the witnesses who will have material testimony in this case are residents of Puerto Rico, and essentially all of the witnesses who will have anything significant to say about Dr. Santini's culpability are residents of that island. Moreover, given the nature of the Government's charges, it is inevitable that at least some of Dr. Santini's patients will be called as witnesses. The patients in question are all elderly (some of them in their eighties) and there should be little dispute that all of them in fact suffer from some kind of heart problems. Under these circumstances, it is patently clear that it would be preferable to try this case close to their homes in Puerto Rico, rather than requiring these witnesses to travel from their homes to Maryland, and then perhaps spend several days staying at hotels in this jurisdiction during the rigors of a Maryland January while they wait to take the witness stand.

In addition, it is likely that the Government or the defense will want to call other Puerto Rican physicians to testify at the trial of this case. The Government may intend to call other physicians who have treated some of Dr. Santini's patients, or who have examined them in connection with this investigation. The defense may likewise wish to call other physicians who can confirm that the patients for whom he prescribed ECG readings did suffer from heart disease. In addition, the defense is likely to call other Puerto Rican physicians who were briefed on the capabilities of Cardio-Tel's ECG monitors by the same sales representatives who briefed Dr. Santini, and it may call other Puerto Rican physicians to testify concerning their understanding of

the use of these devices and their eligibility for reimbursement during the time period at issue in this case. The defense further anticipates that it will be calling one or more representatives from Triple-S as witnesses; various documents custodians from banks, telephone companies and other institutions in Puerto Rico; character witnesses and others who know Dr. Santini or who had dealings with him in connection with the operation of his clinic;³ and witnesses who have knowledge material to the credibility of the individuals that we believe are the Government's principal co-operating witnesses -- Ramon Zayas and Manuel Soldevila.

For all of these individuals, there can be no comparison between the impact on their lives, businesses, and daily routine of being subpoenaed to testify in Maryland as opposed to being called to testify a short distance away in San Juan. For the physicians, in particular, testifying in this district would mean taking at least 2-3 days away from their practices. The Court cannot of course reimburse them for their lost income during this period, and dozens of their patients will be inconvenienced for each physician who has to be summoned to the district to testify. The same is true of the documents custodians and other witnesses who will be asked to expend at least a full day both in traveling to and in returning from this district, as well as an unknown amount of time waiting to testify.

Moreover, as the court pointed out in *Clark*, "the convenience factor should relate not only to the calling of witnesses, but to the process of interviewing and determining which

³ The courts analyzing Rule 21(b) motions have recognized that character witnesses may be particularly important to the defendant in a conspiracy case such as this one, where "the defendant's knowledge of the fraudulent objectives of the conspiracy, and his intent to join it, are likely to be key issues on which evidence of his reputation for honesty and integrity may be highly probative." *Aronoff*, 463 F. Supp. at 458-59; *see also United States v. Posner*, 549 F. Supp. 475, 477-78 (S.D.N.Y. 1982).

witnesses should be called." *Clark*, 360 F. Supp. at 943. Here, the lion's share of the prospective witnesses with relevant testimony to offer are in Puerto Rico. It will be extremely difficult for Dr. Santini's Maryland-based court-appointed counsel to adequately investigate this case, given both the geographic distance that separates us from the scene of the events at issue, as well as the language barrier we face with the predominantly Spanish-speaking potential witnesses from the villages and small towns of Puerto Rico's mountainous interior and south coast. Transfer of Dr. Santini's case to Puerto Rico will permit local counsel to be appointed who will not face the same significant obstacles in investigating and presenting Dr. Santini's defense in this matter.⁴

In addition, it is well-known that, in view of the limited discovery of the Government's factual and legal theories that is permitted in federal criminal cases, defense counsel often cannot fully anticipate what witnesses will be needed until the Government begins presenting its case at trial. *United States v. Benjamin*, 623 F. Supp. 1204, 1214 (D.D.C. 1985). If the case against Dr. Santini proceeds to trial in Maryland, defense counsel will essentially lose any ability to

⁴ Considerations such as these prompted the court in *United States v. Clark* to order the transfer of five of eight defendants charged in a complex securities fraud case from New York to Oklahoma. Judge Griesa noted that where these defendants and almost all of the key witnesses resided in Oklahoma, forcing these defendants to go to trial in New York with New York counsel necessarily presented the defense with "severe and unwarranted obstacles." As Judge Griesa explained:

The issues in this case are complex. Much analytical work with documents and witnesses is necessary. It is obviously difficult for a New York lawyer to handle this work effectively with the documents in New York and most of the witnesses 1500 miles away.

Clark, 360 F. Supp. at 944. The same considerations apply here, but with added force owing to the language differences between this venue and Puerto Rico.

investigate unanticipated claims that the Government advances at trial, or to develop additional witnesses to meet and answer these claims.

If the Government opposes the transfer of its case against Dr. Santini on grounds of inconvenience to its witnesses, then it should present to the court a list of the witnesses involved. *Aronoff*, 463 F. Supp. at 458. In any case, where the witnesses that the Government can place in or around the judicial district where the case is currently docketed “are *not* generally those who can testify about the really essential issues in this case,” this does not militate against transfer. *Clark*, 360 F. Supp. at 943. We believe that will be the case here. This factor therefore strongly supports Dr. Santini's motion to transfer his case to Puerto Rico.

3. The Location of Events Likely to be at Issue.

Because of our Constitution's strong policy favoring trial where the events at issue in a criminal case occurred, *see* discussion at pages 11-12 *supra*, courts analyzing motions seeking transfer under Rule 21(b), courts must determine whether the current district or the proposed transferee district constitutes the "nerve center" or "center of gravity" of the events put at issue by the Indictment. *See, e.g., United States v. Haley*, 504 F. Supp. 1124, 1128 (E.D. Pa. 1981); *Clark*, 360 F. Supp. at 944-46.

In this case, there can be no serious dispute that Puerto Rico constitutes the "center of gravity" of the alleged conspiracy. The Indictment itself expressly states as much in its opening paragraphs, and as we have seen -- *see* discussion at pages 6-10 *supra* -- the rest of the Indictment only confirms that the trial of the allegations against Dr. Santini will be overwhelmingly, if not exclusively, centered on events occurring in Puerto Rico.

Where most, if not all, of the acts and conduct in furtherance of the alleged scheme to defraud occurred in the proposed transferee district and it appears that this was the “nerve center” of the alleged illicit operations, this weighs strongly in favor of transfer. *United States v. Alter*, 81 F.R.D. 524, 526 (S.D.N.Y. 1979). Accordingly, the transfer from New York to Miami of a major federal criminal tax prosecution was held to be appropriate where the facts at issue and the overall circumstances meant that “this is peculiarly and inherently a Florida case.” *United States v. Posner*, 549 F. Supp. 475, 480 (S.D.N.Y. 1982). In *Posner*, the lead defendant -- the financier and corporate raider Victor Posner -- made his principal residence in Miami, and the property that was the subject of the disputed income tax deduction was located there, but the challenged tax return was prepared by accountants in New York and was filed there. Although Posner was breathtakingly wealthy, a transfer order would require the Government to shift its prosecutors and the case documents from New York to Miami, and docket conditions in Miami were likely to delay the trial, Judge Leonard Sand found that transfer was appropriate under Rule 21(b). His ruling stressed that both defendants resided in Miami; that the vast majority of potential trial witnesses (including character witnesses) resided in the Miami area; that essentially all of the operative events at issue in the case occurred in southern Florida; that one of the defendants would suffer disruption to his business and added financial expense if the case was tried in New York. Judge Sand appears to have considered it particularly significant that the case was originally indicted in New York only due to the happenstance that this was where the Government prosecutors and investigators who conducted the investigation were based.

Even a cursory reading of the Indictment demonstrates that this likewise "is peculiarly and inherently" a Puerto Rico case. Cardio-Tel is alleged to have conducted its operations

fraudulently in only a single venue: Puerto Rico. Two of the three named co-conspirators, and we believe practically all of the unindicted co-conspirators, are residents of Puerto Rico. All of the tests at issue were prescribed by Puerto Rican physicians for Puerto Rican patients. The tests were performed (or not performed) in Puerto Rico, and they were interpreted (or not interpreted) there. The central allegation of the Government's case is that Puerto Rican physicians conspired with the local representatives of an out-of-state corporation to defraud the Medicare system by prescribing unnecessary or ineffective treatments for their patients. Where there is virtually no local interest in having a case tried in the district where the Indictment was returned, while there is considerable local interest in having it tried in the transferee district, this factor weighs strongly in favor of transfer. *United States v. Russell*, 582 F. Supp. 660, 664 (S.D.N.Y. 1984). This factor therefore counts strongly in favor of Dr. Santini's motion to transfer.

4. The Location of Documents and Records Likely to be Involved.

At present, the Government has collected several dozen boxes of records that it gathered or subpoenaed during the course of its investigation in a storage room at the FBI's offices in Calverton, Maryland. The vast majority of these boxes consist of the corporate records of Cardio-Tel. Because many of these boxes relate to Cardio-Tel's dealings with physicians and treatment of their patients on the mainland United States, or include documents that shed no light on the matters put at issue by this Indictment, the vast majority of these documents would be irrelevant to the issues presented at a separate trial of Dr. Santini. The documents collected in Calverton also include four boxes of Dr. Santini's original patient files, voluminous billing reports obtained from Triple-S, and documents turned over to the Government by Manuel

Soldevila and possibly other unindicted co-conspirators, all of which originally came from Puerto Rico.

Moreover, substantial quantities of documents relevant to the defense case are located in Puerto Rico. Defense counsel has not yet had an opportunity to travel to Dr. Santini's office to review the remainder of his medical and billing records, but it will clearly be necessary to do so before the trial commences. Documents found recently in Dr. Santini's office have already helped to undercut some of the Government's principal allegations against him, and clearly counsel will need to conduct a thorough search of his remaining records prior to trial.⁵

Other documents relevant to Dr. Santini's defense are also much more likely to be located in Puerto Rico than in the United States. These would include financial records pertaining to both Dr. Santini and to the various unindicted co-conspirators in this case. If some of Dr. Santini's patients whose medical condition is placed at issue have also seen other physicians, it will be necessary for the defense to obtain their records as well, and all of these will be found in Puerto Rico. Most significantly, the billing records and files of Dr. Santini's Medicare carrier, Triple-S, are likely to prove an extremely important source of information for Dr. Santini's defense, and all of these records are located at its offices in San Juan.

In addition, there appears to be a relationship between this case and another federal health care fraud prosecution, *United States v. Roberto Rosich-Bachs, et al.*, 96-CR-289 (D.P.R.), which

⁵ In particular, the only medical records of Dr. Santini's that the Government has obtained were those relating to patients for whom Cardio-Tel submitted a request for reimbursement at some time. To present the jury a full picture of Dr. Santini's prescribing and billing practices, defense counsel will obviously need to undertake a detailed review of the remainder of Dr. Santini's patient files, which are located in his office and residence in Juana Diaz.

is presently pending in the District of Puerto Rico. The *Rosich-Bachs* case also involves allegations of health care fraud arising out of the operation of the Servicios Medicos clinics.⁶ Based on our review of the federal court docket entries for this case, it appears that there are well over 100 boxes of Servicios Medicos records that the Government has collected in San Juan. Some review of those documents may well prove necessary for Dr. Santini's counsel, and it is likely to prove essential for Mr. Gershoni's counsel.

Given the number of relevant documents that are dispersed at various locations around Puerto Rico, as well as the clear need for Dr. Santini to spend significant time reviewing documents with his counsel, proceeding with the case against Dr. Santini in this district will plainly present the defense with just the sort of "severe and unwarranted obstacles" that concerned the court in *Clark*. As Judge Oberdorfer in the District of Columbia has recognized, "Normally, the defense of a complex criminal case can only be finally organized after the prosecution has showed its evidence at trial. It would seem to be more difficult for defendants sitting at trial in Washington to search for, assemble, and transport counterdocuments from California and Washington, D.C., than it would be for the government to assemble rebuttal documents in Washington (or California) and produce them in California." *United States v. Benjamin*, 623 F. Supp. 1204, 1214 (D.D.C. 1985). The same clearly applies with regard to Dr. Santini's case.

⁶ Counsel have only recently learned about the *Rosich-Bachs* case, and its apparent relationship to this proceeding. We have recently obtained the docket entries from the U.S. District Court in Puerto Rico, and have requested copies of the Indictment and other pertinent documents that will enable us to determine the specific allegations at issue in that proceeding.

Thus, it is far from clear that the preponderance of relevant records are even located in this district at present. In any case, because of the relative ease of transporting boxes of documents from one jurisdiction to another, courts rarely accord significant weight to the fact that the Government has collected the documents *it* deems significant in the jurisdiction where the Indictment was returned. *See, e.g., Posner*, 549 F. Supp. at 478; *United States v. Bein*, 539 F. Supp. 72, 74 (N.D. Ill. 1982); *Clark*, 360 F. Supp. at 944. Moreover, if Dr. Santini's case is transferred to Puerto Rico, the likely trial date there will certainly afford ample time for the materials that the Government and defense counsel deem relevant from among the Calverton documents to be relocated to Puerto Rico.⁷

Under all the circumstances present here, this factor is either neutral or may weigh slightly in favor of Dr. Santini's motion to transfer.

5. Disruption of the Defendant's Medical Practice and Family Life Unless the Case is Transferred.

Dr. Santini continues to maintain an active primary-care practice at his clinic in Juana Diaz, where he services the needs of hundreds of patients every month. Many of these patients are elderly, and have been seeing Dr. Santini for as long as fifteen to twenty years. In addition to the patients he sees at his clinic, Dr. Santini deals with patients by telephone and -- in contrast to most mainland practitioners -- still makes house calls (at hours as early as 7:30 a.m.) and on federal holidays. While the need to spend at least four days a week in trial will obviously impact

⁷ As noted above, if the case is transferred to Puerto Rico, Dr. Santini should certainly be assigned a new court-appointed counsel resident on the island. Between that attorney's need to thoroughly investigate the Government's allegations and the need for Government counsel to finish trying the case against Mr. Gershoni, Dr. Santini's case probably would not be set for trial until the spring or summer of next year.

on Dr. Santini's ability to continue to serve his patients even if his trial is transferred to Puerto Rico, he will be far better able to continue to meet at least some of their needs on evenings, on weekends, and on whatever day the court allots to pending motions and other duties during the week. Moreover, since a separate trial of Dr. Santini is likely to be shorter than a combined trial with Mr. Gershoni, that will further reduce the impact on both Dr. Santini and the patients he serves if the case is transferred.

From a business standpoint, the impact on Dr. Santini of spending at least five to seven weeks in Maryland preparing for and then attending his trial will be incalculable. Dr. Santini will lose all income for that period of time aside from his checks as a social security recipient. Even if he is fully acquitted, he will lose some patients to other physicians if it is necessary for him to be away from his practice for such an extended period.

Finally, although Dr. Santini is divorced and his four children are grown, his ties to family and friends will never be of more importance to him than when he is undergoing trial on federal fraud charges that could not only bring his career to an end in disgrace, but result in his exclusion from the practice of medicine, the destruction of a professional reputation built up over thirty years of unglamorous general practice, and (possibly) his imprisonment. Accordingly, this factor also weighs strongly in favor of transfer.

6. Expense to the Parties.

Even aside from the income he will lose from his practice during the trial, the personal financial cost to Dr. Santini of being required to stand trial in this district, more than 1600 miles from his home residence, weighs strongly in favor of his request for transfer. *United States v.*

Haley, 504 F. Supp. 1124, 1129 (E.D. Pa. 1981) provides an excellent description of the likely financial impact on an indigent defendant of a trial far from home. As the Court there explained:

Regrettably and importantly, the modicum of economic relief afforded indigent defendants under federal law fails to remedy the ‘fundamental disadvantage’ created by the ‘comparative financial burdens’ placed upon defendants if forced to trial in this district. Under 18 U.S.C. § 4285 the court may order ‘noncustodial transportation’ of indigent defendants to trial by the United States Marshal and further allows the court to direct the Marshal to furnish defendant ‘an amount of money for subsistence expenses to his destination.’ *However, the statute does not authorize subsistence funding for defendants once they arrive at the place of trial and during trial, which could be extended.*

(Emphasis added.) Thus, if Dr. Santini is required to stand trial in this district, he will be required to pay out of his own pocket for his transportation to this district and his lodging and subsistence once he gets here. That will apply not only to the trial itself -- which the Government is now estimating may last as long as five weeks -- and preparation time in advance of the trial, but also to every visit that Dr. Santini is required to make to this district in advance of trial for document review (which, given the facts at issue in this case, is likely to require a number of trips of many days each), preparation time with his counsel, and attending motions hearings.

If we assume that Dr. Santini will need to spend at least 60 days in this district for document review, motions arguments, preparation with counsel, and trial itself, and that his costs for lodging and subsistence total \$180 a day,⁸ then his expected out-of-pocket costs for the remainder of this case will total close to \$11,000 -- an amount that is almost double the \$5,700 that appears to be the total amount of reimbursement he received for the services at issue! Moreover, this figure of course does not reflect the cost of at least several round-trip plane fares

⁸ The Washington, D.C. metropolitan area, where the Greenbelt courthouse is located, is one of the most expensive venues in the country for travelers. Daily rates at hotels close to the Courthouse in Greenbelt range from \$120 to \$170.

between San Juan and the United States, which will likely add at least another several thousand dollars to the total amount.

In contrast, if the case against Dr. Santini is transferred to Puerto Rico for trial, the Government will be able to choose whether it wishes to use the current prosecution team from the District of Maryland, or to simply reassign the case to one of the several dozen Assistant U.S. Attorneys serving in the U.S. Attorney's Office in San Juan. Transfer of responsibility for the case against Dr. Santini to the San Juan U.S. Attorney's Office will certainly be facilitated by that Office's involvement in prosecuting another substantial health care fraud case involving Servicios Medicos. (Indeed, the case against Mr. Gershoni and Dr. Santini may well be an outgrowth of the San Juan U.S. Attorney's Office's original investigation of Servicios Medicos.) At the very least, the San Juan U.S. Attorney's Office apparently has no shortage of experienced health care prosecutors who could handle the task of trying the case against Dr. Santini.

Of course, if the Government elects to send its current prosecution team to San Juan for Dr. Santini's trial, they will be supported during their tenure by their government *per diem* expense payments and regular salaries and thus will suffer nothing like the individual financial hardship that Dr. Santini will endure if forced to stand trial in Maryland.

Because of considerations such as these, the Fifth Circuit has flatly stated that the convenience of the prosecution is not a factor that should even be considered in analyzing motions to change venue. *United States v. Dickie*, 775 F.2d 607, 610 (5th Cir. 1985). Other courts have likewise stated that, since government lawyers and agents have nationwide responsibility and are equipped to operate in every district in the country, inconvenience to the Government has minimum relevance in the inquiry mandated by Rule 21(b). *See United States v.*

Benjamin, 623 F. Supp. 1204, 1213 (D.D.C. 1985); *United States v. Gruberg*, 493 F. Supp. 234 (S.D.N.Y. 1979); *United States v. Erie Basin Metal Products Co.*, 79 F. Supp. 880, 885-86 (D. Md. 1948) (where other factors favor transfer under Rule 21, it is of little significance that the transfer will force the Government to try the case twice). Judge Oberdorfer's decision in *United States v. Benjamin* provides a cogent statement of the reasons why convenience to the Government is not a major factor in analyzing transfer motions under Rule 21(b):

The United States is ubiquitous. The [federal investigating agencies] and the Department of Justice are, or should be, 'at home,' not only in Washington, D.C., but also in Fresno or any other place in California or elsewhere in which a federal court sits. . . . In any federal district, the government lawyers have a built-in office, complete with local logistical support from parallel local staffs of the U.S. Attorney, IRS, and the FBI. Each of these organizations has established telephone and telecopying access to its national office in Washington, D.C., with back-up and supervisory personnel easily available. The Justice Department is, or should be, staffed, so that if one prosecuting team is away from Washington, supervisors and other lawyers can carry on for them in any other matters for which they are responsible.

See also *United States v. Russell*, 582 F. Supp. 660, 664 (S.D.N.Y. 1984) (recognizing that "it is no great problem" for the government to move its investigative team from one district to another for trial); *Gruberg*, 493 F. Supp. at 243 ("The Government's convenience is, however, a factor given little weight when other considerations of convenience suggest transfer of a trial under Rule 21(b)"). Moreover, where -- as appears to be the case here -- the U.S. Attorney's Office in the proposed transferee district "already has substantial familiarity" with at least one alleged conspirator and some of the issues in the case, this further weighs in favor of transfer. *Russell*, 582 F. Supp. at 664.

In light of all these considerations, this factor weighs very heavily in favor of transferring the case against Dr. Santini to Puerto Rico.

7. The Location of Defendant's Counsel.

Although Dr. Santini's current court-appointed counsel is located in Maryland, that is of course purely a reflection of the Government's decision to indict him here, and it is therefore entitled to no weight whatsoever. Moreover, as noted above, Dr. Santini's Maryland counsel will be seriously disadvantaged in preparing his defense by the simple physical distance that separates Baltimore from Puerto Rico, where practically all of the known or potential witnesses are located. Moreover, given that most of Dr. Santini's patients and many of the other potential witnesses speak little English and that Dr. Santini's counsel has very limited knowledge of Spanish, it is clear that current counsel will face "severe and unwarranted obstacles" in preparing Dr. Santini's defense that would not hamper counsel in Puerto Rico to anything like the same degree.

The Court in *Clark* described "the ability or inability of the parties to handle th[e] case effectively and economically" as "[p]erhaps the ultimate consideration." 360 F. Supp. at 944. Because the entire "center of gravity" in this case is located 1600 miles away from Maryland counsel's offices, on an island where most of the inhabitants speak a different language, Dr. Santini is clearly disadvantaged by being placed in a position where his court-appointed attorney is so far removed from the witnesses who must be located and interviewed and many of the documents that must be examined to prepare his defense. *See Clark*, 360 F. Supp. at 944 (when the issues in a case are complex and much analytical work with documents and witnesses is necessary, this weighs strongly in favor of transfer of the case to the district where the witnesses are located, since "It is obviously difficult for a New York lawyer to handle this work effectively

with the documents in New York and most of the witnesses 1500 miles away”). Transfer of the case against Dr. Santini back to Puerto Rico will permit appointment of a local attorney to represent him, who will have far readier access to potential witnesses (including Dr. Santini himself) and who will speak their primary language. The current location of counsel is thus a negative factor that in fact further supports Dr. Santini’s motion to transfer this case to Puerto Rico.

8. The Relative Accessibility of the Alternative Venues.

More than thirty years ago, one court noted that when reviewing motions seeking transfer under Rule 21(b), “[t]he efficiency of modern air transportation renders rather sterile any argument” that one forum is more accessible than another. *United States v. United States Steel Corp.*, 233 F. Supp. 154, 158 (S.D.N.Y. 1964). The real issue here is whether the Government can point to any problems of accessibility in the proposed alternate venue. Puerto Rico is of course abundantly served by air connections from a number of points on the east coast of the United States, as legions of sun-loving northeastern snowbirds can annually attest. What is more significant in the context of this case, however, is that the United States District Courthouse in San Juan is far more accessible to the vast majority of the potential witnesses than is the courthouse where this case is currently docketed in Greenbelt, Maryland. As noted above, San Juan can be readily reached from Juana Diaz and Ponce, the two cities on the south coast where most of Dr. Santini's patients and potential witnesses are located, in a drive of little more than an hour by interstate highway. Under conditions such as these, witnesses can be allowed to remain on call, and only required to report to court shortly before they are expected to testify. In

contrast, if the trial against Dr. Santini proceeds in Greenbelt, many of those witnesses will be required to make advance arrangements to fly to Maryland based on necessarily imprecise estimates of when their testimony will be needed. Rather than devoting a morning or an afternoon to their testimony in this matter, it will likely be necessary for them to commit at least three days to flying up to Maryland, waiting to testify, and then returning to Puerto Rico. Thus, this factor strongly supports Dr. Santini's motion to transfer.

9. The Docket Condition of Each District Involved.

The key issue here is simply whether there is any indication that the district sought to be transferred to “is unable to provide a reasonably prompt trial. . . .” *Clark*, 360 F. Supp. at 944; *see also Benjamin*, 623 F. Supp. 1215; *Bein*, 539 F. Supp. at 75; *Haley*, 504 F. Supp. at 1129 (“The Speedy Trial Act has negated, in reality, any real concern for docket conditions.”). As Judge Griesa recognized in *Clark*, the mere fact that “some limited delay may be inevitable simply because of the transfer” (and because of an anticipated change in defense counsel) does not weigh significantly against the defendant’s motion. *Id.* If a transfer order is entered promptly here, there is little reason to suspect that this matter could not be set for trial in Puerto Rico sometime next spring or summer. In addition, a certain amount of delay beyond the January 2000 trial date set in this district will be necessary in any case, both to permit Dr. Santini's Puerto Rico counsel to get up to speed on the case; to allow the Government's trial team to be available to try the case in Puerto Rico, if necessary; and to provide for the transfer of the Government's documents from Calverton to San Juan after Mr. Gershoni's trial is concluded.

10. Several Other Special Considerations Likewise Support Transfer of Dr. Santini's Case to Puerto Rico.

There are also several special factors that support transfer of this case to Puerto Rico.

In deciding whether "all relevant things considered, the case would be better off transferred to another district" (*Balsimo*, 68 F.3d at 187), this Court should also consider that the costs of paying transportation, lodging, and subsistence for all of the defense witnesses (most of whom can be expected to be indigent) that Dr. Santini would otherwise need to summon from Puerto Rico to Maryland will be substantial.⁹ Moreover, to the extent that any of Dr. Santini's defense witnesses (such as other Puerto Rican physicians) are not in themselves indigent, they will suffer severe financial losses from being compelled to attend these distant proceedings, not only in terms of their travel expenses but in terms of lost income from the patients they are unable to see during their absence. In addition, of course, the court should take into account the inconvenience and loss of access to their physicians that will be suffered by the patients of these doctors while they are away.

Another factor that should be considered here is that Dr. Santini is relatively elderly (65 years old), and not in the best of health. According to the Pre-Trial Services Report, he suffers from diabetes, shortness of breath, chronic bronchitis, and a circulation disorder in his legs. He also has a fused disk in his neck. His age and physical ailments will doubtless further add to the hardship on him of spending six or seven weeks preparing for and attending a trial in this district during the worst of the winter.

⁹ The Court can order that these witnesses' expenses be paid pursuant to Fed. R. Crim. P. 17(b).

Finally, our strong legal tradition favoring trial in the vicinage where the crime occurred is ultimately founded not just on a concern for the rights and needs of defendants, but on the recognition that juries with some knowledge of local conditions can usually produce a more fair, just, and generally accepted verdict than those who are completely unfamiliar with the setting and circumstances in which a crime is alleged to have taken place. A jury composed of Puerto Ricans will be far more familiar with the circumstances of medical practice on the island, the level of staff support available to most physicians there, and the difficulties that previously existed in making high-quality ECG monitoring services available to elderly residents in the mountainous interior of the island, where some of Dr. Santini's patients resided. A Puerto Rican jury would also have a far better sense of the geographic distances and road conditions prevalent in much of the island. These will clearly be at issue in this case given the Government's theory that Cardio-Tel's ECG devices were taken sequentially from patient to patient, rather than being left with patients for them to activate.

Most significant of all, however, is that federal court jurors in Puerto Rico are required to be fully bilingual in both Spanish and English, whereas few if any jurors seated in Maryland will be. Many of the potential witnesses in this case – very likely including Dr. Santini himself – will testify in Spanish. A bilingual jury composed of fluent Spanish speakers will be far better able to follow the nuances of each witness's emphasis, intonation, and word choice – all factors that play a significant role in assessing witness credibility – than will a jury that must await the interpretation of a translator.

Finally, of course, the legitimacy of the trial process turns in no small measure on a defendant's sense that he or she has been judged by a jury of his or her peers, who have some

understanding of the circumstances in which they have acted and against which a crime is alleged to have taken place. We believe that a case that involves events alleged to have occurred in the small towns and rural areas of central, southern and far southwestern Puerto Rico should therefore be tried with jurors from that island, rather than before a jury composed primarily of Washington, D.C. suburbanites, many of whom are likely to be federal government employees.

11. There Are No Factors Entitled to Significant Weight That Count Against Transfer of Dr. Santini's Case.

While the Government often complains that a transfer of venue as to some defendants “will result in two lengthy trials and much unnecessary duplication of effort because of the common issues involved,” *Clark*, 360 F. Supp. at 946, the courts do not accord this consideration significant weight. This is because it is usually the case that “the situation the Government now faces was brought about by its own questionable decision to prosecute this case in a district remote from most of the events and persons involved.” *Id.*; *see also Bein*, 539 F. Supp. at 76 (government's concerns about being required to try a case twice as a result of the entry of a transfer order under Rule 21(b) are entitled to little weight when the problem only arises as a result of the Government's decision to indict the case in a venue other than its "natural center of gravity"); *Gruberg*, 493 F. Supp. at 243 ("The Government's convenience is, however, a factor given little weight when other considerations of convenience suggest transfer of a trial under Rule 21(b). . . ."); *Erie Basin Metal Products Co.*, 79 F. Supp. at 885-86 (when the Justice Department complains that transfer will result in two trials rather than one, “it would seem that the Department of Justice should have given more complete consideration to the question whether, in the first instance, this indictment should not have been brought in the [other]

jurisdiction”).¹⁰ Because the courts have recognized that, in a multi-defendant case, the rule does not authorize transfer as to defendants who do not move or who object to transfer, *Clark*, 360 F. Supp. at 945; *see also Yeloushan v. United States*, 339 F.2d 533, 536-37 (5th Cir. 1964), severance is simply a necessary concomitant when a transfer motion is not joined by all of the defendants charged. *Aronoff*, 463 F. Supp. at 458 n.4; *Clark*, 360 F. Supp. at 945-46. Courts therefore frequently grant transfer motions that apply to only some of the defendants in a case. *See, e.g., Bein*, 539 F. Supp. at 72 (court granted Rule 21(b) motion to transfer trial of three of seven defendants from Chicago to New York); *United States v. Barrientos*, 485 F. Supp. 789, 789-90 (E.D. Pa. 1980) (transfer from Philadelphia to Miami granted for two of four defendants); *Aronoff*, 463 F. Supp. at 460-61 (court granted motion to transfer under Rule 21(b) as to one of three defendants); *Clark*, 360 F. Supp. at 945-46 (trial of 5 defendants was transferred to Oklahoma City, while trial of 3 others remained in New York), and other authorities cited at page 4 *supra*.

CONCLUSION

For the reasons stated above, Dr. Santini's defense will be subject to "severe and unwarranted obstacles" if he is forced to stand trial in the District of Maryland. The letter and spirit of the constitutional guarantee of trial where the crime was committed -- as well as that of the strong policy favoring trial where a defendant resides -- can only be met here by transfer of the case against him to the District of Puerto Rico for trial. The Court should therefore grant Dr.

¹⁰ Moreover, the Government usually has available to it the option of dismissing the case and re-indicting it so that it can consolidate the entire proceeding in the transferee district. *Id.*; *see also Clark*, 360 F. Supp. at 946.

Santini's motion, sever his case from that of Mr. Gershoni, and order it transferred to the District of Puerto Rico to be set for trial.

Respectfully submitted,

By: _____
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CERTIFICATE OF SERVICE

I hereby certify that I have, this ___ day of ____, caused a copy of the foregoing Defendant Francisco Santini's Motion to Transfer his Case to Puerto Rico for Trial to be delivered by first-class mail, postage prepaid, to:

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