

FILED

United States Court of Appeals  
Tenth Circuit

PUBLISH

UNITED STATES COURT OF APPEALS **October 27, 2022**

FOR THE TENTH CIRCUIT

**Christopher M. Wolpert**  
Clerk of Court

---

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

No. 19-2126

CARLOS HERRERA, a/k/a Lazy,

Defendant - Appellant.

---

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

No. 19-2141

DANIEL SANCHEZ, a/k/a Dan,

Defendant - Appellant.

---

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

No. 19-2195

ANTHONY RAY BACA, a/k/a Pup,

Defendant - Appellant.

---

**APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO  
(D.C. Nos. 2:15-CR-04268-JB-25, 2:15-CR-04268-JB-18,  
2:15-CR-04268-JB-21)**

---

Ryan J. Villa, The Law Office of Ryan J. Villa, Albuquerque, New Mexico, for Defendant-Appellant Carlos Herrera; Josh Lee, Assistant Federal Public Defender, Office of the Federal Public Defender, Districts of Colorado and New Mexico (Virginia L. Grady, Federal Public Defender, with him on the briefs), Denver, Colorado, for Defendant-Appellant Daniel Sanchez; and Theresa M. Duncan, Duncan Earnest LLC, Santa Fe, New Mexico, for Defendant-Appellant Anthony Ray Baca.

Richard Williams, Assistant United States Attorney (Fred J. Federici, Acting United States Attorney, with him on the briefs), Las Cruces, New Mexico, for Plaintiff-Appellee.

---

Before **BACHARACH**, **BRISCOE**, and **McHUGH**, Circuit Judges.

---

**BACHARACH**, Circuit Judge.

---

**TABLE OF CONTENTS**

1. Mr. Herrera, Mr. Sanchez, and Mr. Baca were convicted of violating VICAR .....	8
A. The district court severed the case into multiple trials. ....	9
B. The government continued to furnish discovery during and even after the trial. ....	9
C. The government furnished much of the discovery through tablets, which the cooperating witnesses allegedly viewed to coordinate their testimony. ....	9
D. The government attributed the Molina murder to orders issued by Mr. Baca, Mr. Sanchez, and Mr. Herrera. ....	10

(1) Mr. Baca allegedly ordered the “hit” on Javier Molina. ....	10
(2) Mr. Baca also allegedly planned the murder of two corrections officials. ....	10
(3) Mr. Herrera allegedly gave the Molina paperwork to Mr. Rodriguez and Mr. Sanchez. ....	11
2. All defendants: The government did not suppress materially favorable evidence. ....	12
A. The government must disclose evidence that’s favorable, that’s in its possession, and that’s material. ....	12
B. We use different standards for reviewing the district court’s legal conclusions and factual findings. ....	14
C. The government delayed many of its disclosures. ....	14
D. The recording of Mr. Rodriguez’s phone call with his mother was not material. ....	15
(1) The Rodriguez recording didn’t bear materially on Mr. Baca’s guilt ....	16
(2) Nor was the recorded phone call material as to Mr. Herrera or Mr. Sanchez. ....	23
E. The government did not commit a due process violation by delaying disclosure of Mr. Urquizo’s recorded phone calls about the discovery tablets. ....	23
(1) We review for plain error because the Defendants failed to preserve their challenges to the Urquizo recordings. ....	24
(2) Mr. Baca does not satisfy the plain-error standard because the government had not obviously suppressed the Urquizo recordings. ....	26

F.	The government did not deny due process to the Defendants by delaying disclosure of the FBI's typed notes. ....	30
G.	The government did not violate due process by delaying disclosure of an FBI questionnaire about SNM. ....	33
H.	Considered cumulatively, the late-disclosed evidence was not material. ....	36
3.	Defendants Sanchez and Baca: The district court didn't err in allowing introduction of the evidence of prior bad acts. ....	37
A.	Mr. Sanchez and Mr. Baca forfeited their Rule 403 arguments involving the probative value of enterprise evidence. ....	38
(1)	Mr. Sanchez and Mr. Baca preserved a general Rule 403 argument, triggering the abuse-of-discretion standard. ....	38
(2)	Mr. Sanchez and Mr. Baca forfeited two of their arguments. ....	40
(3)	Even without a waiver, the Defendants' new appellate arguments would fail under the plain-error standard. ....	44
B.	The district court did not abuse its discretion in allowing introduction of evidence about Mr. Sanchez's 2005 assaults. ....	48
C.	Any possible error would have been harmless when the district court allowed the introduction of evidence of Mr. Baca's commission of murder in 1989. ....	51
4.	Defendants Sanchez and Herrera: The district court did not err in declining to sever Counts 6–7. ....	55
A.	The district court did not violate Rules 403 and 404(b) in allowing the introduction of evidence as to the conspiracy to kill the corrections officials. ....	56

(1) Mr. Sanchez and Mr. Herrera generally preserved their arguments on probative value. ....	57
(2) The district court did not abuse its discretion in applying Rule 404(b). ....	59
(3) The district court did not abuse its discretion in applying Rule 403. ....	60
B. Rule 14 did not require severance. ....	64
5. Defendants Sanchez and Baca: The district court did not abuse its discretion in declining to sever the Defendants' trials. ....	71
A. The codefendants' out-of-court statements didn't require severance. ....	72
(1) Mr. Sanchez and Mr. Baca waived the issue involving severance of Defendants based on the out-of-court statements. ....	73
(2) Mr. Sanchez and Mr. Baca failed to timely file pretrial motions to sever the case as to the defendants. ....	74
(3) The district court did not raise the issue. ....	79
(4) Without good cause, Mr. Sanchez and Mr. Baca waived their arguments under Rule 14 for severance of Defendants based on the recorded statements. ....	81
(5) Even without a waiver, the district court would not have erred when declining to sever the case as to the defendants. ....	82
(a) The district court did not err in declining to sever the Defendants based on the government's recordings. ....	83
(i) Mr. Sanchez and Mr. Baca had not shown actual prejudice. ....	83

# Explore Litigation Insights



Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

### API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

### LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

### FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

### E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.