EXHIBIT 1

No. 03-2073
No. 04-1424

In the United States Court of Appeals for the First Circuit

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

EDISON MISLA ALDARONDO,
Defendant-Appellant.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

BRIEF FOR THE APPELLANT

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nature, location, source, ownership, or control of the proceeds of such unlawful activity. The government argued that Misla conspired to launder the money that was coming from the hospital. (TJT 12/10/02 p. 52 l. 21 to p. 54 l. 3) **The indictment clearly stated that the specified unlawful activity was the extortion.** Until the money reached Misla it could not convert into proceeds of a specified unlawful activity. **If Ramos would have kept the money provided by De Jesus and Ramirez, through checks of HAOL and other sources, then the extortion would have never happened and the specified unlawful activity would have never been born. The laundering of funds cannot occur in the same transaction through which those funds first became tainted by crime.** *United States v. Butler*, 211 F.3d 826, 830 (4th Cir. 2000), cited in *United States v. Richard*, 234 F.3d 763 (1st Cir. 2000). The government was wrong in their assumption that evidence of Ramos's receipt of the money and deposit of the money in his accounts to give to Misla was sufficient to prove money laundering. (TJT 12/10/02 p. 55 l. 7-17)

C. Count Six

Misla was convicted of aiding and abetting others to tamper with witness Ramos. To convict Misla on this count, the government had to prove beyond a reasonable doubt that he: (i) knowingly (ii) used intimidation, threatened, corruptly persuaded another person, or attempted to do so, or engaged in misleading conduct toward

another person (iii) with intent to influence testimony (iv) in an official proceeding. 18 U.S.C. §§1512(b)(1). Trying to persuade a witness to give false testimony counts as "corruptly persuading" under §§1512(b). *United States v. Khatami*, 280 F.3d 907, 912-13 (9th Cir. 2002) cited by *United States v. Cruzado*, 404 F.3d 470 (1st Cir. 2005)

Misla insists that Ramos **was not a witness and that his actions did not carry the necessary *mens rea* under the statute**. Ramos was Misla's co-conspirator. Ramos testified **"we were planning strategy of how to tell or how to submit."** (TJT 12/02/02 p. 94 l.10) A plan to conceal the crime between co-conspirators cannot be witness tampering on account of one of the co-conspirators. Ramos testified that Misla was planning what it was "they would have to say. In one conversation [Misla] says to [Ramos], if we don't come to an agreement we're going to be confronting one another." (TJT 12/02/02 p. 100 l. 1-5) The recordings clearly demonstrate that Misla did not view Ramos as a witness, but as his co-conspirator. The one assisting him in the efforts to conceal the crime. Ramos testifies that they were planning what to tell Montilla. (TJT 12/02/02 p. 59 l.7) In Ramos 's own words, "We were studying the possibility..." of what to say. (TJT 12/02/02 p. 71 l. 4-7) When Misla's employees at the House of Representatives, Victor Pares and Alberto Rodriguez, received their Grand Jury subpoenas, Misla

sent them to Ramos . They would find out with Ramos about the checks. (TJT 12/5/02 p. 65 l. 10-16, p. 68 l. 4-7) The court erred in allowing the jury to make a finding on this count. All the elements of the offense were not present for the jury to find that Misla intended to tamper with Ramos . In fact, the charge states that Misla was aided and abetted by others, that were never mentioned in the indictment. The plan instituted by conspirators to provide a false story to protect themselves cannot constitute witness tampering. There was never evidence of any awareness on the part of Misla of Ramos 's role as a witness for the prosecution.

In *United States v. Baldyga*, 233 F.3d 674 (1st Cir. 2000), this court found that the jury could have concluded that Baldyga revealed an awareness of Chenevert's cooperation with law enforcement authorities by telling him he heard he would be wearing a wire, and by searching for the listening device. The jury also could have concluded that Baldyga intended to prevent or discourage such cooperation when he ripped the wire away from the transmitter. It does not get clearer than that.

In *United States v. Black*, 78 F.3d 1, 6-7 (1st Cir. 1996) the court found sufficient evidence under § 1512(b)(3) where the defendant, accompanied by a co-defendant who commented on the witness's cooperation with law enforcement, said nothing to the witness about her cooperation with federal officials but displayed a leather holster on his ankle. In *United States v. Victor*, 973 F.2d 975, 978 (1st Cir. 1992) where the

court found abundant proof from which the jury could have determined that the **defendant was aware of the witness's cooperation** with the federal authorities, where the defendant made an "unannounced visit" and "intrusive search" of the witness's apartment and stated only that the witness "talked too much in federal court."

During cross-examination, Ramos testified he did not believe Misla was faking his answers during their conversations. (TJT 11/4/02 p. 100 l. 1-5) What more proof of the fact that Misla was unaware of Ramos' status as a government witness.