

1                                   **IN THE UNITED STATES DISTRICT COURT**  
2                                   **FOR THE DISTRICT OF PUERTO RICO**

3   **UNITED STATES OF AMERICA,**

4   **Plaintiff,**

5   **v.**

**Crim No. 16-0009 (GAG)**

6   **JOSE E. FERRER-MARTELL, et al,**

7   **Defendant.**  
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10                                   **ORDER**

11           Magistrate Judge Bruce J. McGiverin's Report and Recommendation (Docket No. 60) is  
12 hereby **ADOPTED** in its entirety. The undersigned, in a *de novo* manner, has carefully reviewed  
13 the same, as well as the suppression hearing transcript (Docket No. 65), the Government's  
14 Objection to the Report and Recommendation (Docket No. 67) and Defendant's Response thereto  
15 (Docket No. 71). In doing so, I uphold Judge McGiverin's credibility findings, as well as his  
16 ultimate conclusion that "under the preponderance of the evidence that [officer] Burgos  
17 knowingly and intentionally stated falsely (or at the very least, stated with reckless disregard for  
18 the truth) that he received a report from an anonymous tipster." (Report and Recommendation,  
19 Docket No. 60 at 14.) More so, I further uphold Judge McGiverin's conclusion that "after  
20 excising the tainted evidence, the [search] warrant does not have an independent basis for  
21 probable cause and so the evidence discovered inside [defendant's] residence should be  
22 suppressed." (*Id.* at 17.) Because I am affirming Judge McGiverin's factual determinations and  
23 conclusions of law, a new evidentiary hearing is unwarranted.  
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**Crim No. 16-0009 (GAG)**

1 A final and necessary word. This ruling should in no way be interpreted to suggest that  
2 the U.S. Attorney's Office is doing a poor job in its firearms and narcotics initiatives. To the  
3 contrary. However, a successful prosecution depends not only on the excellent work of the  
4 Assistant U.S. Attorney, but also on that of the agent. Inasmuch as federal prosecutions  
5 increasingly rely on the actions of local law enforcement personnel, there is thus every more  
6 reason to require said officials to act in utmost accordance with federal constitutional standards.  
7 This requires the police officer at all times to provide truthful testimony, as well as observe the  
8 very mandates of the Fourth Amendment. There is simply no other route.

9 **SO ORDERED.**

10 In San Juan, Puerto Rico this 25th day of October, 2016.

11 *s/ Gustavo A. Gelpí*  
12 GUSTAVO A. GELPI  
13 United States District Judge  
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