



v. Sandini, 888 F.2d 300, 405 (3d Cir. 1989). A defendant claiming improper joinder under Rule 14 must demonstrate “clear and substantial prejudice.” United States v. Davis, 397 F.3d 173, 182 (3d Cir. 2005); see also United States v. Eufrazio, 935 F.2d 553, 568 (3d Cir. 1991) (quoting United States v. Reicherter, 647 F.2d 397, 400 (3d Cir. 1981)) (noting that a defendants must demonstrate “clear and substantial prejudice” that would result in a “manifestly unfair trial” in order to establish the need for severance). A trial court must make this assessment in light of the particular circumstances of a case and carefully consider whether the charges and evidence that will be presented is such that a jury could not be expected to “compartmentalize” it for the purpose of determining guilt or innocence. See United States v. Inigo, 925 F.2d 641, 655 (3d Cir. 1991); United States v. Dansker, 537 F.2d 40, 62 (3d Cir. 1976). The Supreme Court has stated that while “mutually antagonistic” or “irreconcilable” and “mutually exclusive” defenses may, in some circumstances, support severance, such defenses presented in the same case are not prejudicial per se. Zafiro v. United States, 506 U.S. 534, 538 (1993). Some courts have characterized the appropriateness of severance as requiring the defenses of the joined defendants to be so antagonistic that in order for the jury to believe the defense of one defendant, it must necessarily disbelieve the defense of another defendant. See, e.g., United States v. Knowles, 66 F.3d 1146 (11th Cir. 1995); United States v. Shivers, 66 F.3d 938 (9th Cir. 1995); United States v. Talavera, 668 F.2d 625 (1st Cir. 1982).

In this case, Mr. Melendez argues that he should have a trial separate and apart from his co-defendants because the nature of the charges against him “occupy a scant twelve pages” of the 67-page indictment and that the allegations against Mr. Melendez constitute only two overt acts, while the indictment contains 26 counts. Motion to Sever at 8. Mr. Melendez further argues that

the charges against him do not appear to span the entire length of time the alleged conspiracy was operational, but rather mostly focus on only two days. Id. To this end, Mr. Melendez argues that the sheer volume of extraneous evidence with which the jurors will be presented will eradicate any possibility that the jury will be able to compartmentalize the evidence with respect to Mr. Melendez, and that the evidence is so complicated that no special instruction would assist the jury in doing so. Id.

Mr. Melendez also urges the Court to follow United States v. Gomez, 111 F. Supp. 2d 571, 574 (E.D. Pa. 2000), in which one of the Court's very experienced and analytically rigorous colleagues granted a severance motion of a defendant charged as being an alleged member of a conspiracy and with selling and conspiring to sell drugs where his co-defendants were charged with crimes of much greater gravity with which the defendant had not been charged. The facts in Gomez are fundamentally different from those here. In Gomez, the co-defendants were charged with murder and conspiracy to murder, and there were no allegations that the Gomez defendant knew, or even constructively knew, about the murder conspiracy. Gomez, 111 F. Supp. 2d at 573. In this case, Mr. Melendez is not only charged with conspiracy to distribute drugs, but is also charged with conspiracy to commit kidnaping in aid of racketeering, kidnaping in aid of racketeering, conspiracy to maim in aid of racketeering, conspiracy to commit murder in aid of racketeering and using and carrying a firearm during a violent crime, as are others of his co-defendants. Indictment at 34-44. The relatively brief time frame during which these alleged acts took place is not relevant to the gravity of the crimes charged; in fact, this temporal circumstance may actually assist the jury in properly compartmentalizing the evidence against Mr. Melendez. The counts of the indictment with respect to Mr. Melendez are not so vague as to introduce the

risk that a juror could become confused regarding Mr. Melendez's alleged participation in the crimes charged, and, as such, a properly instructed reasonable juror will be able to compartmentalize it properly. The Court also notes that courts of appeals in several circuits have met head-on the "bottom line" defense argument in cases such as this by holding that a defendant's argument that he or she stands a better chance for an acquittal if tried separately is not enough to gain a severance, without demonstration of the substantial prejudice to be suffered by the defendant at a joint trial. United States v. Doyle, 60 F.3d 396 (8th Cir. 1995); United States v. Mangano, 543 F.2d 431 (2nd Cir. 1976); United States v. Serlin, 538 F.2d 737 (7th Cir. 1976). Mr. Melendez has made no such showing. Therefore, the motion is denied, and an appropriate Order follows.

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Gene E.K. Pratter  
United States District Judge

January 6, 2006

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

|                                 |          |                        |
|---------------------------------|----------|------------------------|
| <b>UNITED STATES OF AMERICA</b> | <b>:</b> | <b>CRIMINAL ACTION</b> |
|                                 | <b>:</b> |                        |
| <b>v.</b>                       | <b>:</b> |                        |
|                                 | <b>:</b> |                        |
| <b>ALEX MELENDEZ</b>            | <b>:</b> | <b>No. 05-44-7</b>     |

**ORDER**

**AND NOW**, this 6th day of January, 2006, upon consideration of Defendant Alex Melendez's Motion to Sever (Docket No. 301), the response thereto (Docket No. 312), and after hearing argument on the Motion, it is **ORDERED** that the Motion is **DENIED**.

**BY THE COURT:**

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**GENE E.K. PRATTER**  
**United States District Judge**