

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF PUERTO RICO

3 RAFAEL OCASIO-LOZADA, et al.,

4 Plaintiffs,

5 v.

6 UNITED STATES OF AMERICA, et al.,

7 Defendants.

Civil No. 09-1192 (JAF)

8 **ORDER**

9 On February 19, 2010, counsel for the United States, a Defendant in this case, submitted
10 a motion under Federal Rule of Civil Procedure 12(b)(6) to dismiss Plaintiffs' action against
11 the other remaining Defendants, eight unknown agents of the Federal Bureau of Investigation.
12 (Docket No. 37.) Plaintiffs opposed by noting that counsel for the United States does not
13 represent the eight unknown agents. (Docket No. 39.)

14 Counsel states that she does not represent these eight unknown Defendants. (Docket
15 No. 37.) While we appreciate counsel's desire to expedite the resolution of this case, there is
16 no prejudice to the eight unknown agents if we permit them to present defenses on their own
17 behalf if and when they receive service of process. We summarily reject this untimely attempt
18 to interpose defenses on behalf of Defendants who have yet to appear in the instant case.

19 At the same time, we note that five months have elapsed since an earlier order
20 concerning a challenge to Plaintiffs' service of process. (See Docket No. 19.) In that order, we

1 admonished Plaintiffs for the delay engendered by their failure to follow proper procedure. (Id.)
2 More than one year has wasted since Plaintiffs filed their complaint in the instant case. (See
3 Docket No. 1.) We, thus, command Plaintiffs to demonstrate by affidavit what discovery
4 devices they have diligently employed to discover the identity of the eight unknown Defendants
5 so that these agents may be served with process. See Fed. R. Civ. P. 26–37.

6 Accordingly, we hereby **DENY** the present motion to dismiss (Docket No. 37). We
7 **ORDER** Plaintiffs to **SHOW CAUSE, on or before April 29, 2010**, as to why we should not
8 dismiss their claims against the eight unknown Defendants for failure to diligently prosecute.

9 **IT IS SO ORDERED.**

10 San Juan, Puerto Rico, this 16th day of April, 2010.

11 s/José Antonio Fusté
12 JOSE ANTONIO FUSTE
13 Chief U.S. District Judge