

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA

v.

ANIBAL ACEVEDO-VILA,
CANDIDO NEGRON-MELLA,
SALVATORE AVANZATO,
JORGE VELASCO-MELLA,
ROBERT M. FELDMAN,
MARVIN I. BLOCK,
RAMON VELASCO-ESCARDILLE,
EDWIN COLON-RODRIGUEZ,
ENEIDY COREANO-SALGADO,
LUISA INCLAN-BIRD,
MIQUEL NAZARIO-FRANCO,
RICARDO COLON-PADILLA, and
JOSE GONZALEZ-FREYRE

Crim. Number 3:08-cr-00036 PJB

**MEMORANDUM OF LAW IN SUPPORT OF THE JOINT MOTION FOR ENTRY OF
A PROTECTIVE ORDER**

This case involves literally hundreds of thousands of pages of documents, scores of witnesses, and a trial expected to last at least one to two months. This case has also garnered a significant amount of pre-trial publicity and that attention will likely continue. While the exchange of pre-trial discovery between the Government and Defendants is ongoing, the vast amount of pre-trial discovery materials and the number of defendants receiving the discovery are large and raise concerns that the public dissemination of such materials could lead to added pre-trial publicity to the case, violate the privacy rights of those named in the pre-trial discovery materials (but not named in the indictment) and possibly endanger obtaining an impartial jury. Therefore, the United States and Defendants move for the entry of a protective order pursuant to Federal Rule of Criminal Procedure 16(d)(1) and in accordance with District of Puerto Rico Local Rule 83.7(b).

I. BACKGROUND

The indictment in this case lists thirteen defendants, contains twenty-seven counts, and is fifty-five pages long. The government investigations underlying the indictment received intensive news coverage due to their relationship to public officials. The Government has parceled out discovery to each defendant based on their inclusion in counts of the indictment and is in the midst of providing all defendants with universal discovery. The universal discovery consists of approximately one hundred thousand documents and several tapes and compact disks of recorded conversations. In addition, there are approximately four hundred boxes of documents that the Government does not anticipate using in its case-in-chief that it is allowing all defendants to inspect. The documents already produced contain the names of persons not named in the indictment who have privacy interests that must be recognized and protected.

In the initial status conference, the Court, in discussing best methods to ensure that there is a possibility of selecting an impartial jury panel, directed the parties to review District of Puerto Rico Local Rule 83.7 and ensure compliance with the rule. District of Puerto Rico Local Rule 83.7(b) pertains to the release of information concerning court proceedings. In addition, the lead Assistant United States Attorney handling this matter informed the Court and defense counsel that an investigation was still ongoing.

Despite the Court's reference for all attorneys involved in this case to review and abide by Local Rule 83.7, in an abundance of caution, considering the number of parties and counsel working on this case, and the public interest in the case, the United States and Defendants jointly move for the entry of a protective order regarding the dissemination of pre-trial discovery materials.

II. ARGUMENT

Federal Rule of Criminal Procedure 16(d)(1) states that “[a]t any time the court may, for good cause, deny, restrict, or defer discovery or inspection, or grant other appropriate relief.” In addition, District of Puerto Rico Local Rule 83.7(b), titled “Duty of Attorneys Not to Release or Authorize Release of Information”, states:

As officers of this Court, it is the duty of the United States Attorney and all assistants, as well as all attorneys engaged in the practice of law before this Court, to refrain from releasing, or authorizing anyone within his or her control to release, information for public use or dissemination in connection with pending or imminent criminal litigation, if there is a reasonable likelihood that such use or dissemination will interfere with a fair trial or otherwise prejudice the due administration of justice.

D.P.R. Loc. R. 83.7(b).

The Supreme Court has recognized the use of protective orders which restrict the use of pre-trial discovery materials:

[T]he trial court can and should, where appropriate, place a defendant and his counsel under enforceable orders against unwarranted disclosure of the materials which they may be entitled to inspect.

Alderman v. United States, 394 U.S. 165, 185 (1969).

Allowing public dissemination of the pre-trial discovery documents and materials would conflict with the privacy rights of those persons named in the pre-trial discovery materials that are not named in the indictment. While Local Rule 83.7(b) already instructs the attorneys in this case to refrain from disseminating and from authorizing others to disseminate information connected with this case, the additional protections of a protective order would form an additional layer of protections to those persons vulnerable to possibly irreparable harm by such public dissemination of documents and materials.

In addition, a change of venue may be granted by a district court pursuant to Federal Rule of Criminal Procedure 21(a) if there exists in the district “so great a prejudice against the defendant that he cannot obtain a fair and impartial trial.” The relevant questioning for making this determination is “whether a juror has such a fixed opinion that he or she cannot impartially judge the guilt of the defendant.” United States v. Drougas, 748 F.2d 8, 30 (1st Cir. 1984).

This case already has and continues to experience intensive media coverage in print and in other forms of media. Permitting the disclosure and public dissemination of the documents and materials exchanged in pre-trial discovery would only enhance the already intense media coverage and potentially further taint a jury pool already saturated in news coverage of this case. Therefore, in addition to granting entry of a protective order to protect the privacy rights of persons not named in the indictment, the Court should enter the protective order to help preserve the hope that the pre-trial publicity of this case does not reach a sensational and inflammatory level that would make the selection of an impartial jury impossible. Defendants are entitled to a fair trial by an impartial jury. Sheppard v. Maxwell, 384 U.S. 333, 362 (1966) (“Due process requires that the accused receive a trial by an impartial jury free from outside influences. Given the pervasiveness of modern communications and the difficulty of effacing prejudicial publicity from the minds of the jurors, the trial courts must take strong measures to ensure that the balance is never weighed against the accused.”)

III. CONCLUSION

The United States and Defendants respectfully request that the Court grant their Joint Motion for Entry of a Protective Order.

Respectfully submitted,

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