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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 the may be entitled to inspect.

Alderman v. Unites 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,

/s/ Maria Dominguez Victoriano
Maria Dominguez Victoriano
U.S.D.C. # 210908
Ernesto G. Lopez Soltero
U.S.D.C # 208806
United States Attorney's Office, District of
Puerto Rico
350 Carlos Chardon Avenue
Torre Chardon, Suite 1201
Hato Rey, P.R. 00918
Telephone: (787) 766-5656
Fax: (787) 766-5326
Email: maria.a.dominguez@usdoj.gov;
ernesto.lopez2@usdoj.gov

Daniel A. Schwager
U.S. Department of Justice, Criminal Division
Public Integrity Section
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
Telephone: (202) 307-3302
Fax: (787) 766-5398
Email: daniel.schwager@usdoj.gov

Attorneys for the United States of America

/s/ Thomas C. Green
Thomas C. Green*
Bradford A. Berenson*
SIDLEY AUSTIN LLP
1501 K Street, N.W.
Washington, D.C. 20005
Telephone: (202) 736-8000
Fax: (202) 736-8711
Email: tcgreen@sidley.com;
bberenson@sidley.com

* admitted pro hac vice

Harry Anduze Montano
U.S.D.C. # 114910
HARRY ANDUZE MONTANO LAW OFFICE
1454 Fernandez Juncos Avenue
San Juan, PR 00909
Telephone: (787) 723-7171
Fax: (787) 723-7278
Email: handuze@microjuris.com

Attorneys for Defendant Anibal Acevedo Vila

/s/ Francisco Rebollo Casaldue
Francisco Rebollo Casaldue
U.S.D.C. # 205603
FRANCISCO REBOLLO CASALDUE
LAW OFFICE
P.O. Box 195571
San Juan, P.R. 00919
Telephone: (787) 765-0505
Fax: (787) 765-0585
Email: frc@onelinkpr.net

Attorney for Defendant Candido Negron Mella

/s/ Michael M. Mustokoff
Michael M. Mustokoff*
Duane Morris LLP
30 South 17th Street
Philadelphia, PA 19103-4196
Telephone: (215) 979-1810
Fax: (215) 979-1020
Email: mmustokoff@duanemorris.com

* admitted pro hac vice

Thomas R. Lincoln
THOMAS R. LINCOLN LAW OFFICE
P.O. Box 363852
San Juan, PR 00936-3852
Telephone: (787) 292-1099
Fax: (787) 293-2062
Email: tomlincoln@onelinkpr.net

Attorneys for Defendant Salvatore Avanzato

/s/ Maria H. Sandoval
Maria H. Sandoval
U.S.D.C. # 201210
MARIA H. SANDOVAL LAW OFFICE
P.O. Box 9878
San Juan, P.R. 00908
Telephone: (787) 282-0281
Fax: (787) 282-0281
Email: mhsandoval@att.net

Attorney for Defendant Jorge Velasco Mella

/s/ Henry E. Hockeimer, Jr.
Henry E. Hockeimer, Jr.*
Kurt K. Lunkenheimer*
BALLARD SPAHR ANDREWS &
INGERSOLL, LLP
1735 Market Street
Philadelphia, PA 19103
Telephone: (215) 665-8500
Fax: (215) 864-9470
Email: hockeimerh@ballardspahr.com;
lunkenheimerk@ballardspahr.com

* admitted pro hac vice

Ramon Garcia Garcia
U.S.D.C. # 120511
P.O. Box 9047 Santurce Station
Santurce, P.R. 00908
Telephone: (787) 759-7440
Fax: (787) 763-5223
Email: rmgs@coqui.net

Attorneys for Defendant Robert M. Feldman

/s/ Thomas M. Gallagher

Thomas M. Gallagher*
PEPPER HAMILTON LLP
3000 Two Logan Square
18th & Arch Streets
Philadelphia, PA 19103
Telephone: (215) 981-4068
Fax: (215) 981-4750
Email: gallaght@pepperlaw.com

* admitted pro hac vice

Diego A. Ramos
U.S.D.C. # 127513
Roberto A. Camara Fuertes
U.S.D.C. # 219002
FIDDLER, GONZALEZ & RODRIGUEZ
P.O. Box 363507
San Juan, P.R. 00936
Telephone: (787) 759-3162
Fax: (787) 759-3123
Email: dramos@fglaw.com;
rcamara@fglaw.com

Attorneys for Defendant Marvin I. Block

/s/ Juan R. Acevedo-Cruz

Juan R. Acevedo-Cruz
U.S.D.C. # 120701
Banco Cooperativo Plaza, Suite 501-A
623 Avenue Ponce de Leon
San Juan, P.R. 00917
Telephone: (787) 751-2341
Fax: (787) 751-2795
Email: jracevedo@coqui.net;
juanra1@coqui.net

Attorney for Ramon Velasco Escardille

/s/ Hector E. Guzman Silva

Joseph C. Laws
U.S.D.C. # 120306
Hector E. Guzman Silva
U.S.D.C # 216108
Rafael Andrade Ravelo
U.S.D.C. # 221308
FEDERAL PUBLIC DEFENDER'S OFFICE
241 Franklin D. Roosevelt Avenue
Hato Rey, P.R. 00918
Telephone: (787) 281-4922
Fax: (787) 281-4899
Email: joseph_laws@fd.org;
hector_guzman@fd.org;
rafael_andrade@fd.org

*Attorneys for Defendant Edwin Colon
Rodriguez*

/s/ Jose R. Aguayo Caussade

Jose R. Aguayo Caussade
JOSE R. AGUAYO LAW OFFICE
U.S.D.C. # 123301
569 Tnte. Cesar Gonzalez St.
San Juan, P.R. 00918
Telephone: (787) 765-0814
Fax: (787) 274-0071
Email: joseraguayo@cs.com

Richard O. Dansoh
U.S.D.C. # 223013
2600 Douglas Road #PH-7
Coral Gables, FL 33134
Telephone: (305) 573-4444
Fax: (305) 446-3538
Email: rodansoh@aol.com

Attorneys for Defendant Miguel Nazario Franco

/s/ Michael S. Pasano

Michael S. Pasano*
Paul A. Calli*
CARLTON FIELDS
4000 International Place
100 S.E. Second Street
Miami, FL 33131
Telephone: (305) 530-0050
Fax: (305) 530-0055
Email: mpasano@carltonfields.com;
pcalli@caroltonfields.com

* admitted pro hac vice

Eliseo Roques Arroyo
U.S.D.C. # 215706
P.O. Box 190998
Banco Popular Center
San Juan, P.R. 00919-0998
Telephone: (787) 274-2931
Fax: (787) 759-9075
Email: era@mocpr.com

Attorneys for Defendant Luisa Inclan Bird

/s/ Ramon A. Cestero Jr.

Ramon A. Cestero Jr.
U.S.D.C # 115809
RAMON A. CESTERO LAW OFFICE
Tres Rios Building, Suite 300
27 Gonzalez Giusti, San Patricio
Guaynabo, P.R. 00968
Telephone: (787) 250-8040
Fax: (787) 759-6768
Email: racestero@hotmail.com

Roberto Buso Aboy
U.S.D.C. # 111408
BUSO ABOY LAW OFFICE
Westerbank World Plaza, Suite 1905
268 Munoz Rivera Avenue
San Juan, P.R. 00918
Telephone: (787) 250-7171
Fax: (787) 758-2448
Email: busoaboy@gmail.com

Attorneys for Defendant Ricardo Colon Padilla

/s/ Joaquin Monserrate Matienzo

Joaquin Monserrate Matienzo
JOAQUIN MONSERRATE MATIENZO
LAW OFFICE
606 Munoz Rivera Avenue
San Juan, P.R. 00918
Telephone: (787) 764-8960
Fax: (787) 751-7114
Email: jmm@monserratelaw.com

Antonio Moreda Toledo
U.S.D.C. # 121610
MOREDA & MOREDA
P.O. Box 366066
San Juan, P.R. 00936
Telephone: (787) 754-6290
Fax: (787) 753-2768
Email: amoreda@moredalaw.com

Irma R. Valldejuli Perez
U.S.D.C. # 124303
P.O. Box 361228
San Juan, PR 00936-1228
Telephone: (787) 754-6290
Fax: (787) 753-2768
Email: irvalldejuli@moredalaw.com

Attorneys for Defendant Jose Gonzalez Freyre

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