

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

UNITED STATES :
 :
 v. :
 : **Criminal No. 09-0466(BMC)**
 JOAQUÍN GUZMÁN LOERA, :
 :
 Defendant. :

**DEFENDANT’S MOTION TO RECONSIDER
ORDER GRANTING GOVERNMENT’S MOTION FOR
AN ANONYMOUS AND PARTIALLY SEQUESTERED JURY**

DEFENDANT Joaquín Guzmán Loera (“Guzman”), by and through undersigned counsel, respectfully submits his Motion to Reconsider Order Granting Government’s Motion for an Anonymous and Partially Sequestered Jury. In support of this Motion, Mr. Guzmán states as follows:

1. The government moved the Court to empanel for trial an anonymous and partially sequestered jury. The government cited internet articles, internet videos and referred to at least seven *ex parte* (i.e., one-sided) proffers that Mr. Guzmán was not permitted to rebut, much less address. D.E. 182.

2. Mr. Guzmán opposed the government’s motion, arguing that “[s]uch an order would unduly burden Mr. Guzmán’s presumption of innocence, impair his ability to conduct meaningful *voir dire* and create the extremely unfair impression that he is a dangerous person from whom the jury must be protected.” D.E. 185.

3. In granting the government’s motion, D.E. 187, the Court acknowledges that the types of precautionary measures sought by the government “have serious implications

for a defendant's interest in effectively conducting *voir dire* and in maintaining the presumption of innocence." Order at 1 (quotations and citations omitted). The Court then noted that such measures are "constitutional when genuinely warranted and *properly* implemented." *Id.* (emphasis added).

4. Although it is well settled in the Second Circuit that "when genuinely called for and when properly used, anonymous juries do not infringe a defendant's constitutional rights," analysis of the potential constitutional impact of an anonymous jury on a defendant "must receive close judicial scrutiny and be evaluated in the light of reason, principle and common sense." *United States v. Vario*, 943 F.2d 236, 239 (2d Cir. 1991). In resolving motions for anonymous and partially sequestered juries, courts must balance "the defendant's interest in conducting meaningful *voir dire* and in maintaining the presumption of innocence, against the jury's interest in remaining free from real or threatened violence and the public interest in having the jury render a fair and impartial verdict." *United States v. Quiñones*, 511 F.3d 289, 295 (2d Cir. 2007).

5. The Court's Order notes that the government has "presented strong and credible reasons to believe that the jury needs protection." Order at 2. Of course, the "credible reasons" presented by the government have been in an *ex parte* fashion and appear to have been accepted in their entirety by the Court even though Mr. Guzmán could not rebut them for the simple reason that he is prohibited from even knowing what those "credible reasons" are. The Court also cites the allegations made in the indictment in support of its decision. However, it is axiomatic that "an indictment is not evidence of guilt," nor may it alter the presumption of innocence with which every defendant is cloaked; it is "only a finding of *probable cause* that a crime has been committed." *United States v. Romano*, 706 F.2d 370, 374 (2d Cir. 1983).

6. The Court further cites the government's reliance on a YouTube video purporting to show prisoners pledging allegiance to Mr. Guzmán. In addition to there apparently being no attempt by the government to authenticate the video, to identify the participants or to even confirm whether they had any connection to Mr. Guzmán, the government's description of the video is simply misleading. In the video, the men say, "We want to tell the people this: If you bring *el señor* here and if *el señor* asks us to free him, we are going to take him out immediately." See Veronica Rocha, "Video Shows California Prisoners Offering Protection and Escape Help to Drug Lord 'El Chapo,'" Los Angeles Times (Jan. 26, 2017).¹ By their very words, the men are not saying they are going to kill anyone, intimidate jurors or witnesses or even take any action. They are saying that "if" Mr. Guzmán is incarcerated there and "if" Mr. Guzmán asks them to free him, they intend to do so. That is a lot of "ifs" for the Court to seriously consider in making a decision that severely curtails Mr. Guzmán's right to due process.

7. The Court specifically cites the government contention that in the video the prisoners pledge to be "hitmen who are going to take care of [Mr. Guzmán]" and that "[h]ere you have more than 3,500 soldiers." (Order at 3). However, the very article cited by the government impeaches the government's contention:

The video was shot in a privately operated prison under contract with the Federal Bureau of Prisons, agency spokeswoman Jill Tyson said.

"Upon learning of the video, BOP oversight staff on-site at the facility began working with the contractor to investigate the allegations of irregularities at the facility," she said.

¹ Available at <http://www.latimes.com/local/lanow/la-me-ln-california-prisoners-el-chapo-escape-protection-video-20170126-story.html>. The video itself is available at https://www.youtube.com/watch?v=CcGgb1a_N_c

According to the bureau's website, a contracted correctional institution in Taft, Calif., is the only federal facility operated by a private corporation in the state. The low- to minimum-security facility in Kern County has 2,175 inmates.

Id. Considering the statements made in the video and the information in the article, it is plain that the prisoners are at best exaggerating because the actual number of inmates housed at the prison is much lower than the number of "soldiers" the men claim. Additionally, the prison houses low to minimum security inmates, not the hardened and dangerous "hitmen" alleged by the government. This is why the defense views the video as "nothing short of a bad joke" that should not be seriously considered by this Court.

8. The Court concludes that "any potential prejudice to the defendant will be mitigated when the Court advises the jury that their names are not being publicly disclosed out of respect and concern for their privacy It is speculative, considering the evidence expected to be produced in this case, that the jurors will think defendant is violent because their privacy has been protected." Order at 4. That conclusion is belied by the Court's recognition that "[b]ased on the allegations in the indictment and the evidence that the Court has reviewed in connection with other motions, it seems likely that the trial evidence will depict a pattern of violence by the defendant and his associates such as would cause a juror to reasonably fear for his own safety." *Id.* (citation omitted). Simply put, if the Court believes that the evidence will make the jury fear for their safety, how is potential prejudice to Mr. Guzmán credibly mitigated by merely telling the jury that their names are not being disclosed out of privacy concerns?

9. The Court's Order does not balance Mr. Guzmán's "interest in conducting meaningful *voir dire* and in maintaining the presumption of innocence, against the jury's interest in remaining free from real or threatened violence and the public interest in having the jury render a fair and impartial verdict." *Quiñones*, 511 F.3d at 295. In fact, the Court's Order

only appears to consider the jury's interests. The Order does not address the inability of Mr. Guzmán to conduct meaningful *voir dire* with an anonymous jury. It does not address the prejudice against Mr. Guzmán created by the jury's partial sequestration under armed United States Marshals. It does not address the public's or, more importantly, Mr. Guzmán's interest in having the jury render a fair and impartial verdict. It also does not address Mr. Guzmán's reasonable suggestion to allow the parties to have access to juror information while withholding that information from the public and from Mr. Guzmán himself. Unless the Court reasonably believes that the parties (here, presumably the defense) cannot be trusted to follow this procedure, it is a fair and just compromise that balances Mr. Guzmán's, the jury's and the public's interests.

10. A hearing on this Motion is requested.

WHEREFORE, for the foregoing reasons and any other that may become apparent to the Court, Mr. Guzmán respectfully requests that this Motion be **GRANTED**.

Dated: Washington, DC
February 8, 2018

Respectfully submitted,

BALAREZO LAW

By:

A. Eduardo Balarezo, Esq.
EDNY Bar # AB7088
400 Seventh Street, NW
Suite 306
Washington, DC 20004
Tel: (202) 639-0999
Fax: (202) 639-0899
E-mail: aeb@balarezolaw.com

Counsel for Defendant Joaquín Guzmán Loera

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of February 2018, I caused a true and correct copy of the foregoing Defendant's Motion to Reconsider Order Granting Government's Motion for an Anonymous and Partially Sequestered Jury to be delivered via Electronic Case Filing to the parties in this case.

A. Eduardo Balarezo, Esq.