

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA,

v.

[1] JULIA BEATRICE KELEHER,
Defendant.

CRIMINAL NO. 19-431 (PAD)

**SUR-REPLY IN OPPOSITION TO
DEFENDANT’S MOTION TO MODIFY GAG ORDER**

In replying to the United States’ written opposition to her motion to modify the Court’s gag order, Defendant Julia Beatrice Keleher emphasizes two main points: (1) “[t]he gag order in this case has not served its intended purpose” and (2) Keleher has no intention of making any public statements about her case.

As to the first point, the United States actually agrees. In spite of the existence of the gag order, on January 15, 2020, counsel for Keleher appeared on a radio program during which she accused the United States Attorney’s Office of “demonstrating a pattern of conduct in which when they [i.e., federal prosecutors] bring a weak case with legal flaws [an obvious reference to the indictment in Criminal No. 19-431 (PAD)], they attempt to remedy the situation by bringing another case [an obvious reference to the more recent indictment filed in Criminal No. 20-19 (FAB)].”¹ On that same date, Keleher’s counsel appeared on *Jugando Pelota Dura*, a widely broadcast television program, and accused the United States of making “serious, serious, serious false representations” of which if “the grand jury had been aware, it is very possible that it would

¹ See *Segundo arresto implica a Keleher cediendo terreno de escuela por un apartamento*, NotiCel (Jan. 15, 2020), available at <https://www.noticel.com/la-calle/segundo-arresto-implica-a-keleher-cediendo-terreno-de-escuela-por-un-apartamento/1156999503> (last visited Jan. 17, 2020).

have derailed the accusation.”² Such extrajudicial statements imputing nefarious motives on federal prosecutors are presumably the precise types of statements the Court intended to prohibit when it issued its gag order.

Keleher’s second point begs the following question—if Keleher has no intention of making public comments about her case, then why is she insisting that the Court modify the gag order? And if Keleher is not seeking to modify the gag order as it pertains to counsel, *see* Docket No. 215 at 3, why is there a motion pending before the Court? Based on the media tour upon which Keleher’s counsel embarked on the day the indictment filed in Criminal No. 20-19 (FAB) became public, the United States must assume that Keleher, through her representatives, seeks to make further extrajudicial statements about the case of the type she made on January 15, 2020.³ The United States respectfully submits that such statements do not promote the integrity of the judicial process, and present an obstacle to ensuring a fair trial for *all* parties.

As the United States previously argued, the Court’s gag order is narrowly tailored toward achieving a compelling public interest—a fair trial. The gag order should remain in place as drafted, and Keleher’s motion to modify it should be denied.

A. The Gag Order Does Not Serve to Completely Silence Anyone

Contrary to what Keleher argues, the order does not completely bar all forms of expression

² Interview of María A. Domínguez on *Jugando Pelota Dura* on Jan. 15, 2020, *available at* <https://www.univision.com/local/puerto-rico-wlii/habla-en-exclusiva-la-abogada-de-julia-keleher-quien-fue-arrestada-por-presunto-fraude-y-soborno-video> (last visited Jan. 17, 2020).

³ To be clear, the United States is *not* requesting that the Court sanction Keleher’s counsel, a respected colleague. Nor is the United States accusing Keleher’s counsel of intentionally violating this Court’s order, even though her comments arguably ran afoul of it. The United States merely brings the public comments of Keleher’s counsel to the Court’s attention to underscore why the gag order the Court entered is necessary to preserve the integrity of the judicial process.

about the case. The order specifically permits the parties to discuss information that is publicly viewable on the docket or “disclosed in open court.” *See* Docket No. 17. Furthermore, the order allows the parties “to seek relief under seal for good cause shown.” *Id.* Consequently, if Keleher wishes to comment about matters that are not part of the public record (either personally or through counsel), she has the option of requesting that the Court allow her to do so. If she wishes to respond to any particular claim a media outlet makes about her, nothing in the order prevents her from doing so as long as her response is either cleared with the Court, or does not relate to a non-public matter concerning the case. If Keleher wants to claim that she is innocent to media outlets, nothing in the order prevents her from doing so as her “not guilty” plea is part of the public record.

In short, modification of the Court’s order is unnecessary. Read in a commonsensical way, the Court’s order prohibits only that speech which is likely to interfere with the rights of the parties to a fair trial, and denigrate the judicial process—that is, the type of speech Keleher’s counsel communicated through media outlets on January 15, 2020.

B. The Gag Order is Constitutional

It is true that prior restraints on speech must be narrowly tailored toward achieving a compelling interest. *See, e.g., United States v. Brown*, 218 F.3d 415, 428 (5th Cir. 2000). As the United States argued in its opposition brief, the Court has the authority to restrict the parties’ speech as it relates to this case to ensure a fair trial for all litigants. The Court’s gag order strikes the appropriate balance between protecting the First Amendment rights of the parties and the press on the one hand, and ensuring a fair trial by prohibiting only that speech which is likely to interfere with the fair administration of justice on the other.

The United States remains hopeful that Keleher and her legal team will commit to abide by this Court’s order, and refrain from making any further public comments about this case which

are detrimental to the integrity of the judicial process.⁴

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico, this 30th day of January, 2020 in San Juan, Puerto Rico

W. STEPHEN MULDROW
UNITED STATES ATTORNEY

/s/ Jose Capo Iriarte
Jose Capo Iriarte
Senior Litigation Counsel

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this date, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system and a copy of such filing will be emailed to defense counsel of record.

/s/ Alexander L. Alum
Alexander L. Alum
Assistant United States Attorney

⁴ As the United States previously argued, inasmuch as Keleher seeks to raise defenses to the offenses charged, *see* Docket No. 215 at 5, the place to raise such defenses is before the Court, not before the press.