

UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA,

v.

[1] JULIA BEATRICE KELEHER and  
[2] ARIEL GUTIERREZ-RODRIGUEZ,  
Defendants.

CRIMINAL NO. 20-19 (FAB)

**MOTION REQUESTING AN ORDER PROHIBITING ALL PARTIES FROM MAKING  
PUBLIC STATEMENTS THAT WOULD HAVE A DETRIMENTAL EFFECT ON THE  
INTEGRITY OF THE JUDICIAL PROCESS**

On January 14, 2020, the grand jury returned an indictment charging Defendants Julia Beatrice Keleher and Ariel Gutierrez-Rodriguez with bribery, wire fraud, and conspiracy to commit honest services fraud. After the indictment became public the following day, counsel for Gutierrez accused the United States of either “not understanding the facts” or of “twisting the facts.”<sup>1</sup> Counsel for Keleher, for her part, 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 have derailed the accusation.”<sup>2</sup> Counsel for Keleher also 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, they attempt to remedy

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<sup>1</sup> Melissa Correa Velázquez, *Coacusado en Nuevo caso contra Keleher se declara no culpable*, Vocero, Jan. 15, 2020, available at [https://www.elvocero.com/ley-y-orden/coacusado-en-nuevo-caso-contra-keleher-se-declara-no-culpable/article\\_8e074e40-37d1-11ea-928b-afdf914cca9d.html](https://www.elvocero.com/ley-y-orden/coacusado-en-nuevo-caso-contra-keleher-se-declara-no-culpable/article_8e074e40-37d1-11ea-928b-afdf914cca9d.html) (last visited Jan. 17, 2020).

<sup>2</sup> 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).

the situation by bringing another case.”<sup>3</sup>

The United States respectfully submits that such statements imputing nefarious motives on prosecutors serve no proper purpose. Inasmuch as she commented on the case pending before Judge Pedro A. Delgado, the statements of Keleher’s counsel also arguably violate a standing court order. *See* Criminal No. 19-431 (PAD) at Docket No. 17. Rather than promote the integrity of the judicial process, the respective statements of counsel for Keleher and counsel for Gutierrez threaten to interfere with the possibility of a fair trial by turning this matter into a referendum on irrelevant issues.

At issue in this case is whether Keleher and Gutierrez committed the offenses alleged in the indictment, not about anything else. Within the four walls of the courtroom is the place for the United States to present its case against the defendants, and for the defendants to undermine the United States’ proof (inasmuch as they seek to do so at all). For the sake of ensuring the integrity of the judicial process, and that all litigants receive the fair trial to which they are entitled, the United States respectfully requests that the Court adopt the order which Judge Pedro Delgado entered at Docket No. 17 in Criminal No. 19-431.

## DISCUSSION

“At a time when passion and prejudice are heightened by emotions stirred by [current events] . . . the dignity and good order with which all proceedings in court should be conducted” require the parties to keep their focus squarely on the “facts or issues in the case.” *Viereck v. United States*, 318 U.S. 236, 247-48 (1943). Otherwise, we, as a society, run the risk that the result of the trial will reflect more the “passion and prejudice” of the venire, than the fundamental

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<sup>3</sup> *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).

promise “that justice shall be done.” *See id.*

The United States is mindful that “intense publicity surrounding a criminal proceeding – what Justice Frankfurter referred to as ‘trial by newspaper’ – poses significant and well-known dangers to a fair trial.” *United States v. Brown*, 218 F.3d 415, 423 (5th Cir. 2000) (quoting *Pennekamp v. Florida*, 328 U.S. 331, 359-61 (1946) (Frankfurter, J., concurring)). “Paramount among these dangers is the potential that pretrial publicity may taint the jury venire, resulting in a jury that is biased toward one party or another.” *Id.* “Few, if any, interests under the Constitution are more fundamental than the right to a fair trial by impartial jurors, and an outcome affected by extrajudicial statements would violate that fundamental right.” *Id.* (quoting *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1075 (1991)). “Accordingly, trial courts have ‘an affirmative constitutional duty to minimize the effects of prejudicial pretrial publicity.’” *Id.* (quoting *Gannett Co. v. DePasquale*, 443 U.S. 368, 378 (1979)). “This duty comports with the constitutional status of all First Amendment freedoms, which are not absolute but must instead be ‘applied in light of the special characteristics of the [relevant] environment.’” *Id.* at 424 (alteration in original) (quoting *Tinker v. Des Moines Indep. Cmty. Sch. Dist.*, 393 U.S. 503, 506 (1969)). Thus, “[o]n several occasions [the Supreme] Court has approved restriction on the communications of trial participants where necessary to ensure a fair trial for a criminal defendant.” *Id.* (quoting *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 32 n.18 (1984)). It is beyond dispute that the interest of the public, the state, and a defendant in “a fair trial may not be compromised by commentary, from any lawyer or party, offered up for media consumption on the courthouse steps.” *Id.* (citing *Estes v. Texas*, 381 U.S. 532, 540 (1965)).

The Supreme Court has held that “the speech of lawyers representing clients in pending cases may be regulated under a less demanding standard than that established for regulation of the press.” *Gentile*, 501 U.S. at 1074; *see also In re Morrissey*, 168 F.3d 134 (4th Cir. 1999)

(affirming that “the ‘reasonable likelihood’ standard [i]s constitutional” when applied to lawyers); *In re San Juan Star Co.*, 662 F.2d 108, 116 (1st Cir. 1981) (holding that restrictions on the dissemination of information related to a pending case are constitutional if dissemination would be “reasonably likely” to “threaten[] material harm” to the fairness of a trial). “Lawyers should not be surprised when they learn that their chosen professional status, as in the cases of judges, restricts their conduct and speech at times.” *United States v. Scarfo*, 263 F.3d 80, 93 (3d Cir. 2001). “Lawyers representing clients in pending cases are key participants in the criminal justice system, and the [court] may demand some adherence to the precepts of that system in regulating their speech as well as their conduct.” *Gentile*, 501 U.S. at 1074. Indeed, “as officers of the court,” lawyers “have a fiduciary responsibility not to engage in public debate . . . that will obstruct the fair administration of justice.” *Id.* (quoting *Nebraska Press Ass’n v. Stuart*, 427 U.S. 539, 601 n.27 (1976) (Brennan, J., concurring)). Since they “have special access to information through discovery and client communications, their extrajudicial statements pose a threat to the fairness of a pending proceeding since [their] statements are likely to be received as especially authoritative.” *Id.*

To conclude, our legal system contemplates that criminal proceedings should be resolved in a courtroom, not before television cameras, radio microphones, and news reporters. To preserve the integrity of the judicial process and to ensure a fair trial, the Court should restrict the parties’ ability to make public statements about this case, and adopt the order which Judge Delgado entered at Docket No. 17 in Criminal No. 19-431.

**RESPECTFULLY SUBMITTED.**

In San Juan, Puerto Rico, this 17th day of January, 2020 in San Juan, Puerto Rico

W. STEPHEN MULDROW  
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/s/ Jose Capo Iriarte

Jose Capo Iriarte  
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/s/ Alexander L. Alum

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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