

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

UNITED STATES OF AMERICA

Plaintiff

Vs.

SIXTO JORGE DIAZ-COLON

Defendant

CRIM. NO. 21-017 (FAB)

MOTION TO RESCIND GAG ORDER

TO THE HONORABLE COURT:

HEREIN appears Defendant Sixto **Jorge Diaz-Colon** through his undersigned attorney and most respectfully prays and requests:

INTRODUCTION

This motion is to move the Court to rescind GAG Order entered on January 29, 2021. [ECF 10] The trial in this case as concluded, and the GAG Order is no longer necessary. Its continuing enforcement violates the First Amendment principles of the press and the party's rights to freedom of expression.

BACKGROUND

1. On January 29, 2021, the Court entered an order as cautionary measure to protect the rights of all parties and preserve the integrity of all future proceedings, instructing the Defendant, Defense Attorneys, Prosecutors, Federal Law Enforcement officers, and the U.S. District Court personnel from divulging, talking to, or discussing with, the press, media, and public, including without limitation, through social networks, any information other than that entered without restriction on the docket or disclosed in open

court, relating to the facts of the captioned case. Furthermore, the Court stated that [T]he Order will be in full force from the date of its execution **until the conclusion of trial**. [ECF 10 at page 2].

2. The trial in this case began on January 23, 2023, and ended on February 3, 2023, therefore, according to the Court the GAG order is no longer necessary since the trial as already concluded.

DISCUSSION

A. THE LAW

Among First Amendment claims, GAG orders warrant a most rigorous form of review because they rest at the intersection of two disfavored forms of expressive limitations: prior restraints and content-based restrictions. Like all “court orders that actually forbid speech activities,” Alexander v. United States, 509 U.S. 544, 550, 113 S.Ct. 2766, 125 L.Ed.2d 441 (1993), GAG orders are prior restraints. Prior restraints bear “a heavy presumption against [their] constitutional validity.” Bantam Books, Inc. v. Sullivan, 372 U.S. 58, 70, 83 S.Ct. 631, 9 L.Ed.2d 584 (1963). Prior restraints upend core First Amendment principles because “a free society prefers to punish the few who abuse rights of speech after they break the law [rather] than to throttle them and all others beforehand.” See Promotions, Ltd. v. Conrad, 420 U.S. 546, 559, 95 S.Ct. 1239, 43 L.Ed.2d 448 (1975).

Similarly, GAG orders are presumptively unconstitutional because they are content based. Nat'l Inst. of Family and Life Advocates v. Becerra, — U.S. —, 138 S.Ct. 2361, 2371, 201 L.Ed.2d 835 (2018) (presumption against content-based restraints). Content-based restrictions target “particular speech because of the topic discussed or the idea or message expressed.” Reed v. Town of Gilbert, — U.S. —, 135 S.Ct. 2218, 2227, 192 L.Ed.2d 236 (2015). GAG orders

inherently target speech relating to pending litigation, a topic right at the core of public and community life. But the “government has no power to restrict expression because of its message, its ideas, its subject matter, or its content.” Ashcroft v. ACLU, 535 U.S. 564, 573, 122 S.Ct. 1700, 152 L.Ed.2d 771 (2002) (internal quotation marks omitted).

Considering these twin presumptions, GAG orders must survive strict scrutiny. Reed, 135 S.Ct. at 2226 (strict scrutiny for content-based restrictions). Strict scrutiny first requires that a GAG order serve a “compelling” public interest. See Reed, 135 S.Ct. at 2226. “Our system of justice properly requires that litigants be assured the right to a fair trial.” Hirschkop v. Snead, 594 F.2d 356, 373 (4th Cir. 1979) (en banc) (per curiam). Ensuring fair trial rights is a compelling interest, however, only when there is a “reasonable likelihood” that a party would be denied a fair trial without the order under challenge. In re Russell, 726 F.2d 1007, 1008 (4th Cir. 1984); In re Wall St. Journal, 601 F. App'x 215, 218 (4th Cir. 2015) (per curiam) (reviewing sealing and GAG order).

Diaz-Colon submits that the GAG order entered in this case to ensure him a fair trial is longer warranted to protect his trial rights since the trial has already concluded, and any enforcement of the GAG in this case will only serve as a violation constitutional laws freedom of expression and the right of the press to information regarding public figures of the former administration of Governor Ricardo Rossello and other media public figures.

CONCLUSION

WHEREFORE, based on all the above mentioned reasons, this Court should enter an order reaffirming the order entered on January 29, 2021, [ECF 10] that the GAG order is no longer necessary once the trial has concluded.

RESPECTFULLY SUBMITTED.

I hereby certify that on this same date, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all parties involved.

In San Juan, Puerto Rico, this 9th day of February 2023.

S/ Rafael F. Castro Lang

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