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

UNITED STATES OF AMERICA	**CRIM. NO. 21-017 (FAB)**
Plaintiff	
Vs.	
SIXTO JORGE DIAZ-COLON	
Defendant	

MEMORANDUM REPLY TO THE UNITED STATES RESPONSE TO DEFENDANTS MOTION TO RESCIND GAG-ORDER.

TO THE HONORABLE COURT:

HEREIN appears defendant **Sixto Jorge Diaz-Colon,** (hereinafter Mr. Diaz-Colon") through his undersigned attorney and most respectfully prays and requests:

I. PRELIMINARY STATEMENT

This Memorandum is being filed in Reply to the United States Response to Mr. Diaz-Colon motion to rescind GAG Order. In their Response the United States does not oppose Mr. Diaz-Colon's request to rescind the GAG order, in fact it recognizes that the GAG order in this case is stale. Nevertheless, the United States bringS to the Court's attention that Mr. Diaz-Colon intentions is to divulge to the public and the press Discovery Material which are protected under a Court order prohibiting its dissemination, requesting its return for destruction, a matter which is not appropriate at post-conviction stage, particularly where an appeal is pending and future 2255 proceedings could be filed.

As it will be discussed infra, the Court should allow Mr. Diaz-Colon to unseal his Rule 29(c) renewal motion for judgment of acquittal and for a new trial under Rule 33 of Federal Rules of Criminal Procedure, while keeping the grand jury material sealed, so that the press and public can have reasonable access to his proposed redacted version of the substance in the discovery material evidence used in support of his Government misconduct claims in compliance with the law but maintaining the right of the press and the public interest to be

informed on the Government's pretrial, trial and post-trial conduct.

BACKGROUND

1. On June 20, 2019, Mr. Diaz-Colon met with Raul Maldonado Nieves ("Rauli Maldonado") to discuss the dissemination of certain Chats comprising the cabinet of former Governor Ricardo Rossello entire cabinet through his news platform Nacion Z and delivered the following message to former Governor Rossello Secretary of Public Relations which later became Confidential Human Resource for the Federal Bureau of Investigations ("FBI"), Anthony Maceira ("CHR Maceira"):

2. Anthony Maceira ("CHR Maceira"):

   > Man, if Fortaleza doesn't stop fucking with Raul Maldonado, Raul Maldonado's Son has strong evidence to fuck this administration starting with Ricardo Rossello.
   > According to Rauli "son of RM," you and Fortaleza are the ones who are behind this firepower against Raul Maldonado.
   > I tell you brother; Raul's Son is going to destroy you all at other levels.
   > I don't know what you are going to do. But if they don't stop the Populares are going to be in power for 30 years.
   > Stop This.
   > This is crazy.
   > I have a friend who is a close friend of RM's son, and they want to see me to deliver hard evidence to me and other media. This administration is fucked. I need to stop this. (Government Exhibit 7 and 7T, 1/24/2023, presented at trial.)

3. On June 21, 2019, CHS Maceira requested a meeting with Diaz-Colon to discuss the specific of the contents of the June 20, 2019, message, because CHS Maceira believed that Mr. Diaz-Colon was threatening him. During the meeting Diaz-Colon clarified to him that the message was based on information gathered which he forwarded from Rauli Maldonado. Diaz-Colon clarified that the never meant to threaten Maceira and apologized to him if he misunderstood the message, and they both settled the matter. Unbeknownst to Mr. Diaz- Colon, CHS Maceira recorded the conversation. See CHS Anthony Maceira-Zayas testimony. [Case No: 21-CR-017(FAB) ECF 316 JURY TRIAL DAY 2 page 111-112]

4. On June 24, 2019, former Governor Rossello fired Secretary of Treasury Raul Maldonado Gautier, on the request and insistence of CHS Maceira. See CHS Anthony Maceira-Zayas testimony. [Case No: 21-CR-017(FAB) ECF 316 JURY TRIAL DAY 2 page 133]

5. On July 1, 2019, Rauli Maldonado went viral in the in social media, the TV, and the radio, attacking Governor Rossello and his administration. See CHS Anthony Maceira-Zayas testimony. [Case No: 21-CR-017(FAB) ECF 316 JURY TRIAL DAY 2 page 136]

6. On July 8, 2019, Rauli Maldonado released the first set of Chats which compromised the Rossello administration before the media**.** See CHS Anthony Maceira-Zayas testimony. [Case No: 21-CR-017(FAB) ECF 316 JURY TRIAL DAY 2 page 139]

7. On July 13, 2019, Rauli Maldonado published the entire remaining set of 889 pages of Chats, causing the entire Rossello cabinet to resign, except for Raul Llerandi, Governor Rossello and CHS Maceira. See CHS Anthony Maceira-Zayas testimony. [Case No: 21-CR-017(FAB) ECF 316 JURY TRIAL DAY 2 page 149-150]

8. Only July 15, 2019, CHS Maceira contacted the FBI, and informed FBI Special Agent Juan Carlos Lopez-

Velazquez ("FBI S/A Lopez"), that Mr. Diaz-Colon's was extorting him, and if he did not pay Rauli Maldonado $300,000, he would release chats which would destroy him and the Rossello administration's reputation. CHS Maceira provided to the FBI all the information that he had, which included messages, communications, and the recorded conversation of the June 21, 2019, at Musa Restaurant. See CHS Anthony Maceira-Zayas testimony. [Case No: 21-CR-017(FAB) ECF 316 JURY TRIAL DAY 2 page 157-158]. **The United States wants to destroy this evidence.**

9. By July 16, 2019, all the chats were out there, there were massive protests, and a lot of media personalities, influencers were asking for the governor's resignation. See CHS Anthony Maceira-Zayas testimony. [Case No: 21-CR-017(FAB) ECF 316 JURY TRIAL DAY 2 page 180]

10. On July 16, 2019, the FBI instructed CHS Maceira to meet again with Diaz-Colon to corroborate and record the alleged $300,000 extortion in exchange for Rauli Maldonado's damaging chats. During the conversation Diaz-Colon related to CHS Maceira, that Rauli Maldonado had sent him the following message: that he (Rauli Maldonado) would accept $3000,000 in exchange for not releasing the chats. Diaz-Colon made clear to CHS Maceira during the conversation that Rauli was crazy, and that he was not going to do that because this was called extorsion .However, CHA Maceira proceeded with the idea and insisted that Diaz Colon continue with the $300,000 offer in exchange for the chats. See CHS Anthony Maceira-Zayas testimony. [Case No: 21-CR-017(FAB) ECF 319 JURY TRIAL DAY 3 pages 32-35].

11. The truth of the matter is that all the Chats were disclosed publicly on July 8**th** and the 13th.By July 16th of 2019, there were no more unreleased chats and the only cabinet members remaining in the Rossello administration were Raul Llerandi and CHS Maceira. It was established during trial that Diaz-Colon never contacted Rauli Maldonado regarding the $300,000 extortion until forced to do so by FBI S/A Lopez on July 26, 2019.. See FBI S/A Lopez testimony. [Case No: 21-CR-017(FAB) ECF 339 JURY TRIAL DAY 6 page 16 through 21]. **The United States wants to destroy this evidence.**

12. On July 17, 2019, the Department of Justice authorized FBI S/A Lopez, the supervisor of the Public Corruption Unit in the San Juan field office to officially initiate the investigation regarding the alleged extorsion criminal scheme, involving Diaz-Colon and Rauli Maldonado, although by that time there was no quid pro quo to even attempt the alleged extorsion, since there were no more chats and the damage to the Rossello administration was already destroyed. **The United States wants to destroy this evidence.**

13. On July 21[1], 2019, FBI S/A Lopez, requested CHS Maceira to contact Mr. Diaz-Colon and offer him a $20,000 bait to bribe Rauli into accepting the money in exchange for not releasing the alleged remaining Chats, but CHS Maceira refused to do so, abandoned the FBI operation after he had instigated the FBI investigation and left the FBI with no extortionate case. At that time the criminal investigation should have been closed against Mr. Diaz-Colon. **The United States wants to destroy this evidence.**

14. On July 24, 2019, Governor Rossello officially resigned. By then there were no more chats, CHS Maceira had already abandoned the FBI criminal operation, and there was no Rossello administration to extort. See CHS Anthony Maceira-Zayas testimony. [Case No: 21-CR-017(FAB) ECF 319 JURY TRIAL DAY 3 pages 125].

15. On July 26, 2019, FBI S/A Lopez, and Special Agents Lajara and Rodriguez visited Diaz-Colon at his residence through the ruse of a search warrant and after being 4 hours at the home forced him to call Rauli Maldonado and relate to him that CHS Maceira was offering him $300,000 in exchange for not releasing any more chats. The conversation, which was recorded by the FBI, destroyed the FBI's extorsion

[1] During trial the United States submitted that this incident occurred on July 19, 2019. See CHS Maceira and FBI S/A Lopez testimony **[Case No: 21-CR-017(FAB) ECF 319 JURY TRIAL DAY 3 pages 124 though 128].**

investigation since Rauli informed he never wanted any money for the chats, only revenge against the Rossello administration for firing his dad, Raul Maldonado Gautier. **The United States wants to destroy this evidence.**

16. The FBI knew by July 26, 2019, that the extortion investigation had no basis. This is when FBI S/A Lopez opted to turn the investigation into a new "Public Corruption" case, involving Diaz-Colon and public officials of former Governor Ricardo Rossello's administration regarding two Corporations (Social Consulting and Collective Impact), for possible violations of the United States laws as prohibited under 18 U.S.C. § 371(Conspiracy); 18 U.S.C. § 641 (Theft Government Property), and §2 (Aiding and Abetting); 18 U.S.C. § 666 (a)(1)(A) (Theft concerning Programs receiving, Federal Funds). **The United States wants to destroy this evidence.**

17. During the investigation the United States interviewed several witnesses and subpoenaed dozens of documents from the Government of Puerto Rico regarding the alleged Public Corruption criminal scheme. However, at the end of the investigation, the Government concluded that the evidence obtained did not reveal any criminal conduct on the part of any of the targets of the criminal investigation and closed the Public Corruption case. This evidence was introduced at trial although Diaz-Colon was not charged with 18 U.S.C. § 371(Conspiracy); 18 U.S.C. § 641 (Theft Government Property), and §2 (Aiding and Abetting); 18 U.S.C. § 666 (a)(1)(A) (Theft concerning Programs receiving, Federal Funds) offenses. **The United States wants to destroy this evidence.**

18. On December 4, 2020, FBI S/A Lopez interviewed former governor Rossello regarding his relationship with Diaz-Colon. Former governor Rossello stated to FBI S/A Lopez his gratitude to Diaz-Colon, and his knowledge regarding HCS Maceira professional relationship with Diaz-Colon and spoke about how and why he hired Diaz-Colon during the Chats crisis of 2019, denied ever being extorted by Diaz-Colon, nor having any knowledge regarding leaks of the alleged chats, nor being aware of any scheme to extort his group by Diaz-Colon. Moreover, according to FBI S/A Miguel Rodriguez, former governor Rossello was surprised that HCS Maceira was not indicted since it was him the one behind the insistence in firing Raul Maldonado Gautier and knew the possible repercussions. **The United States wants to destroy this evidence.**

19. The record reveals the extortionate criminal investigation involving Diaz-Colon and Rauli concluded on July 26, 2019. For reasons unknown, two years later, on January 26, 2021, Diaz-Colon was indicted of attempting to extort CHR Maceira if he did not provide Rauli $300,000 in exchange for the damaging chats in violation of the Hobbs Act; transmitting in interstate commerce a communication containing a threat to injure the reputation of CHS Maceira, which consisted of the June 20, 2019 message, in violation of the interstate extortion laws, and for destroying messages during a criminal investigation. **The United States wants to destroy this evidence.**

20. On February 12, 2021, the United States filed Motion For A Protective Order Pursuant To Rule 16(d)(1), F.R.C.P. requesting that material deriving from the FBI interview reports ("302's"), notes related to interviews, verbal or written communications involving potential witnesses, information extracted from electronic devises, invoices and corporate documents containing the names, social security numbers or employer identification numbers, dates of birth, addresses, and telephone numbers, for anticipated witnesses and third parties; confidential and sensitive information developed through investigations of law enforcement and the use of the grand jury testimonies be protected from improper disclosure by the defense team to third parties, unless the dissemination of the information were in compliance with the proposed conditions enumerated by the United States in items 1 through 5 in said motion**.** [Case No: 21-CR-017(FAB) ECF 18 pages 2-4].

21. On February 12, 2021, the Court issued a Protective Order governing the pretrial disclosure discovery

material in this case. [21-cr-017 ECF 20]. The protective order stated: ¶2. All discovery material shall be used solely for the purpose of conducting pretrial, trial, and appellate proceedings in this action and for no other purpose whatsoever, In no event will the Defense team disclose, directly or indirectly, Discovery Material or the substance thereof to anyone, including the media **(excepting any disclosure that may occur during public proceedings at a hearing, trial, or appeal in connection with this matter),** except as provided herein. The use of Discovery Material at trial or at any-pre-or-trial hearing will be resolved at the time of the trial or hearing in question. ¶9. Nothing in this order shall prevent the United States or the **Defense Team from using Discovery Material, or from referring to or reciting any information contained is such Discovery Material, in connection with any pleading or motions filed in this action, provided that such material is properly redacted or, if such redactions cannot be readily accomplished, filed under seal.** ¶11. Nothing in this Order shall prevent disclosure beyond the terms of this Order if all parties consent in writing to such disclosure is ordered by the court.

22. On June 3, 2021, the United States produced 32 items of discovery material. **The United States wants to destroy this evidence.**

23. On May 4, 2022, the United States produced 7 items of discovery material. **The United States wants to destroy this evidence.**

24. On November 18, 2022, the United States produced 18 items of discovery material. **The United States wants to destroy this evidence.**

25. On December 31, 2022, the United States produced 101 items of discovery material. **The United States wants to destroy this evidence.**

26. On January 6, 2023, the United States produced 21 items of discovery material, for a total of 169 items of discovery material. **The United States wants to destroy this evidence.**

27. On January 23, 2023, Diaz-Colon informed the United States his intentions of using 84 items of the 169 items of discovery material produced by the United States. **The United States wants to destroy this evidence.**

28. On January 26, 2023, the United States had the audacity of filing a motion opposing Diaz-Colon's intention to use discovery evidence the United States had provided to him at trial. [21-cr-017 ECF 321]. **The United States wants to destroy this evidence.**

29. On January 30, 2023, Diaz-Colon filed a response to the United States opposition. [21-cr-017 ECF 330].

30. On January 30, 2023, the Court granted the United States motion and entered an order denying Diaz-Colon' right to use most of the discovery produced by the United States on his own defense, except for the admissibility of the hearsay statements, which were also denied during trial. During trial the United States was allowed to introduce the 42 exhibits of discovery items. See Copy of Exhibits log list in U.S. v. Sixto Jorge Diaz-Colon, dated 1/23/2023. Exhibit 1. Diaz-Colon was only authorized to introduce three pieces of discovery material out of the 84 items he requested. **The United States wants to destroy this evidence.**

31. On February 9, 2023, Mr. Diaz-Colon filed a motion to rescind the January 29, 2021 GAG order. [21-cr-017 ECF 10]. Diaz-Colon submitted that since the trial had concluded, the GAG Order was no longer necessary, and its continuing enforcement violated First Amendment principles of the press and his rights to freedom of expression. [21-cr-017 ECF 373].

32. On February 17, 2023, Diaz-Colon Renewed his Motion for Judgment of Acquittal and requested a New

Trial Pursuant To Rules 29(C) And 33 Of The Federal Rules Of Criminal Procedure. **This motion was filed under seal since the evidence substantiating his constitutional violations is part of the discovery material the United States wants to destroy and keep suppressed from the press and the public.[2] [**21-cr-017 ECF 321].

33. In his motion for judgment of acquittal, Diaz-Colon is challenging the sufficiency of the evidence, requested the court set aside the jury verdict and enter a judgment of acquittal, since the government's evidence at the conclusion of this case is insufficient to sustain a conviction under the offenses charged in the indictment. Diaz-Colon is also requesting that the Court should order a New Trial under Rule 33 in the interests of justice. Diaz-Colon claims that the Government convicted him in violation of the Fifth and Sixth Amendment Due Process Constitutional rights for committing prosecutorial misconduct during Grand Jury and Trial proceedings. [21-cr-017 ECF 321].

34. Diaz-Colon contends that CHS Maceira perjured himself when he falsely testified[3] at trial that Diaz-Colon attempted to extort CHS Maceira at the June 21, 2019, Musa restaurant meeting, by threatening CHS Maceira that if he did not pay Rauli Maldonado the sum of $300,000 and help him with the government contracts, Rauli Maldonado was going to publish the Chats, and destroy the governor's and CHS Maceira's reputation. The Musa Restaurant recorded conversation was made public by the associated press. [21-cr-017 ECF 321].

35. Diaz-Colon submitted evidence proving that the United States knew that the June 21, 2019, Musa restaurant recorded conversation between CHS Maceira and Diaz-Colon did not contain any threats to CHS Maceira, that if he did not pay Rauli Maldonado the sum of $300,000 and helped him with the government contracts, Rauli Maldonado was going to publish the damaging Chats. See copy of the recording transcript and translation in Spanish and English. (Exhibit 3 and 3T) The complete recorded conversation between CHS Maceira and Diaz-Colon reflects he only apologized to Maceira if he felt threatened by the June 20, 2019, message. The Musa Restaurant conversation was made public by the associated press. **The United States wants to destroy this evidence.**

36. Diaz-Colon also submitted that on January 26, 2021, FBI S/A Lopez also committed perjury before the Grand Jury when he falsely testified that Diaz-Colon had asked person 4 (CHS Maceira) to help him with several government contracts through which he received compensation, and that if Mr. Diaz-Colon did not receive $300,000 he was going to facilitate the publishing of telegrams messages containing damaging information about CHS Maceira. This statement was never given by nor recorded against Mr. Diaz-Colon; the United States knew they were false yet promoted its falsehood before the grand jury and included the same in the indictment. See Indictment [21-cr-17-FAB ECF 1, ¶¶ 10, 13 (e), 19, 20 and 21]. FBI S/A Lopez grand jury testimony remains seal.[4] **The United States wants to destroy this evidence.**

37. On February 23, 2023, the United States filed its Response Diaz-Colon's Motion to Rescind GAG Order in ECF No. 373, requesting continued enforcement of the Protective Order at ECF No. 20; that the court

[2] The Press is entitled to file an In Re and seek this information. See In Re Providence Journal, 293 F.3d 1, 9 (1st Cir.2002) (quoting Siedle v. Putnam Inv., Inc., 147 F.3d 7, 10 (1st Cir.1998) ("Courts have long recognized 'that public monitoring of the judicial system fosters the important values of quality, honesty and respect for our legal system.") This recognition is embodied in two related but distinct presumptions of public access to judicial proceedings and records: a common-law right of access to "judicial documents," and a First Amendment right of access to certain criminal proceedings and materials submitted therein. See In Re Providence Journal, 293 F.3d id. at 9–10. See also Frederic Dannen, The G–Man and the Hit Man, The New Yorker, Dec. 16, 1996, at 68, reporting one of the most terrifying scandals of the FBI, passing along information to the Colombo Mafia Crime Family in New York, creating a two-way street for communications which was dangerous and untheorized. Id. Orena v. United States, 956 F.Supp. 1071 (E.D.N.Y. 1997) (The Brady Bible).

[3] The knowing presentation of false testimony is the gravest of sins a prosecutor can commit. Such conduct denies a defendant due process of law; Moohney v. Holohan, 55 S.Ct. 340 (1935); Giles v. Maryland, 386 US 66, 87 S.Ct.793 (1967); Napue v. Illinois, 79 S.Ct. 1173 (1959); Alcorta v. Texas, 78 S.Ct. 103 (1957); Hysler v. Florida, 62 S.Ct. 688 (1942); Pyle v. Kansas, 63 S.Ct. 177 (1942). The result is the same whether the Government actively solicits false testimony or merely allows it to go uncorrected. Napue, 79 S.Ct. at 1177.

[4] See Footnote 3 above.

require Diaz-Colon to Return all Grand Jury/discovery to the government and allow it to destroy all discovery produced to the defense in Diaz-Colon's criminal case. [21-cr-17-FAB ECF 388].

38. On February 28, 2023, Mr. Diaz-Colon requested leave to file a Reply to the United States Response to Mr. Diaz-Colon Motion to Rescind GAG. [21-cr-17-FAB ECF 388]. The Court granted the motion.

39. This is the incredible case of a crime that was never committed and should never have been prosecuted. Justice requires setting aside the jury verdict for insufficiency of evidence and dismissal with prejudice of the indictment. **What is worse,** the United States now pretends to move the Court to **allow it to** destroy all the evidence in this case. **Diaz-Colon submits that this is nothing more than a coverup by the FBI Office in San Juan, Puerto Rico and federal prosecutors who want to destroy all of the evidence of their wrongdoing and prevent Diaz-Colon of publicly demonstrating their misconduct in the public arena, interfering with his constitutional rights of freedom of expression and grievances.**

LEGAL DISCUSSION

Rule 16(d) governs protective orders regarding discovery material in criminal cases. Fed.R.Crim.P. 16(d)(1); see United States v. Lee, 374 F.3d 637, 652 (8th Cir. 2004); United States v. Smith, 985 F.Supp.2d 506, 522 (S.D.N.Y. 2013) (Rule 16 contains a "provision governing protective orders related to the production of pretrial discovery"). The rule requires a showing of good cause. Fed.R.Crim.P. 16(d); see United States v. Bulger, 283 F.R.D. 46, 52 (D.Mass. 2012) (under Rule 16(d), "good cause provides the basis to enter a protective order"). Good cause ordinarily requires "a particularized, specific showing." United States v. Bulger, 283 F.R.D. at 52; see United States v. Wecht, 484 F.3d 194, 211 (3rd Cir. 2007) ("'[b]road allegations of harm, unsubstantiated by specific examples or articulated reasoning, do not support a good cause showing'"); United States v. Carriles, 654 F.Supp.2d 557, 565 (W.D.Tex. 2009) ("motion for a protective order ordinarily 'contemplates a particular and specific demonstration of fact'"); see also Anderson v. Cryovac, Inc., 805 F.2d 1, 7 (1st Cir. 1986) (under Fed.R.Civ.P. 26©, "finding of good cause must be based on a particular factual demonstration of potential harm, not on conclusory statements"). "The nature of the showing of particularity, however, depends upon the nature or type of protective order at issue." United States v. Bulger, 283 F.R.D. at 52 (citing Manual for Complex Litigation (Fourth) § 11.432 (2012)). Blanket or umbrella protective orders, such as the ones proposed by the government, by their nature are "'typically made without a particularized showing to support the claim for protection, but such showing must be made wherever a claim under an order is challenged.'" Id. At 53 (quoting Manual for Complex Litigation (Fourth) § 11.432 (2012), in parenthetical). Whereas blanket protective orders are "'useful and expeditious in large scale litigation,' ... they can be overbroad and unnecessary." United States v. Smith, 985

F.Supp.2d at 545 (citations omitted). Moreover, in determining the appropriate level of protection, it is important to "ensure that a protective order 'is no broader than is necessary' to serve the intended purposes." Id. Here, the government's interest of protecting potential witnesses from intimidation and retaliation is undeniably a valid concern. See United States v. Bulger, 283 F.R.D. at 55-56. Indeed, "the advisory committee notes to Rule 16(d) recognize the need to protect material when disclosure may impact the safety of a witness or lead to witness intimidation." Id. At 55; Fed.R.Crim.P. 16(d), Advisory Committee Notes to the 1966 Amendments.

Nevertheless, Courts long have recognized "that public monitoring of the judicial system fosters the important values of quality, honesty and respect for our legal system." Siedle v. Putnam Inv., Inc., 147 F.3d 7, 10 (1st Cir.1998) (citation and internal quotation marks omitted). This recognition has given rise to a presumption that the public has a common-law right of access to judicial documents. Nixon v. Warner Communications, Inc., 435 U.S. 589, 597, 98 S.Ct. 1306, 55 L.Ed.2d 570 (1978). This presumptive right of access attaches to those materials "which properly come before the court in the course of an adjudicatory proceeding**,** and which are relevant to that adjudication." FTC v. Standard Fin. Mgmt. Corp., 830 F.2d 404, 412–13 (1st Cir.1987). It follows, then, that the common-law right of access extends to "materials on which a court relies in determining the litigants' substantive rights." Anderson v. Cryovac, Inc., 805 F.2d 1, 13 (1st Cir.1986). When considering whether the common law right of access applies, the cases turn on whether the documents that are sought constitute "judicial records." Such records are those "materials on which a court relies in determining the litigants' substantive rights." In re Providence Journal, 293 F.3d at 9–10 (quoting Anderson, 805 F.2d at 13). Such materials are distinguished from those that "relate[ ] merely to the judge's role in management of the trial" and therefore " 'play no role in the adjudication process.' " In re Boston Herald, Inc., 321 F.3d 174, 189 (1st Cir.2003) (quoting F.T.C. v. Standard Fin. Mgmt. Corp., 830 F.2d 404, 408 (1st Cir.1987)). There is an abiding presumption of access to trial records and ample reason to "distinguish materials submitted into evidence from the raw fruits of discovery." Littlejohn v. BIC Corp., 851 F.2d 673, 678, 684 & n. 28 (3d Cir.1988). As we have said elsewhere, " '[o]nly the most compelling reasons can justify the non-disclosure of judicial records.' " FTC v. Standard Financial Management Corp., 830 F.2d 404, 410 (1st Cir.1987) (quoting In re Knoxville News–Sentinal Co., 723 F.2d 470, 476 (6th Cir.1983)). Accord, Joy v. North, 692 F.2d 880, 893–94 (2d Cir.1982). Explicitly or implicitly, the view that a

protective order that restricts the dissemination of discovery-related information obtained independently of pretrial discovery violates the First Amendment. See In Re San Juan Star Co. (1981, CA1 Puerto Rico) 662 F2d 108, 7 Media L R 2144, 32 FR Serv 2d 1671 (by implication). The courts of appeals have recognized a right of access to various pre-trial proceedings and the documents filed in regard to them, including, for example, suppression, due process, entrapment, and plea hearings. See In re Hearst Newspapers, L.L.C., 641 F.3d 168, 176 (5th Cir.2011) (collecting cases). Apart from the prerogatives attendant to the common-law right of access to judicial records, the public and the press enjoy a First Amendment constitutional right of access to criminal proceedings. Globe Newspaper Co. v. Super. Ct., 457 U.S. 596, 603–06, 102 S.Ct. 2613, 73 L.Ed.2d 248 (1982); Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555, 575–80, 100 S.Ct. 2814, 65 L.Ed.2d 973 (1980) (plurality op.). The constitutional right of access is not limited to the actual trial itself, but also encompasses most pretrial proceedings. See Press–Enterprise Co. v. Super. Ct., 478 U.S. 1, 11–13, 106 S.Ct. 2735, 92 L.Ed.2d 1 (1986) (Press–Enterprise II); In re Globe Newspaper Co., 729 F.2d 47, 52 (1st Cir.1984); see also Anderson, 805 F.2d at 11 (collecting cases). ***Political corruption cases tend to attract widespread media attention, and this case is a paradigmatic example.*** We have held that this constitutional right—which serves to ensure a "full understanding" of criminal proceedings, thereby placing the populace in a position "to serve as an effective check on the system"—extends to documents and kindred materials submitted in connection with the prosecution and defense of criminal proceedings. See also Globe Newspaper Co. v. Pokaski, 868 F.2d 497, 502 (1st Cir.1989) (citation and internal quotation marks omitted). Open trials protect not only the rights of individuals, but also the confidence of the public that justice is being done by its courts in all matters, civil as well as criminal. See Seattle Times Co., 467 U.S. at 33, 104 S.Ct. at 2207–08 (distinguishing discovery material, traditionally not available to the public, from trial evidence, which is normally available).

The government submits that several of the Protected Materials relate to grand jury proceedings and are therefore subject to the additional protection of Fed. R. Crim. P. 6(c). Rule 6(c) provides strict secrecy requirements and disclosure limitations for matters occurring before a grand jury. Fed. R. Crim. P. 6(c)(2). However, in Douglas Oil Co. of California v. Petrol Stops Northwest, 441 U.S. 211, 218, 99 S.Ct. 1667, 60 L.Ed.2d 156 (1979), the Supreme Court held that the scope of Rule 6(c) is "necessarily broad." Documents

"created for purposes independent of grand jury investigations" are not subject to the same presumption of secrecy. See Church of Scientology Intern. V. U.S. Dep't of Justice, 30 F.3d 224, 235-36 (1st Cir. 1994) (With respect to such materials, the government must demonstrate that "release of the sought-after documents would compromise the secrecy of the grand jury process, mere exposure to the grand jury is insufficient to protect information from disclosure). Rule 6(c) is not, however, a complete bar to disclosure. Indeed, a court may authorize the disclosure of such materials "preliminarily to or in connection with a judicial proceeding." Fed. R. Crim. P. 6(e)(3)(E)(i). To authorize such a disclosure, the court must be satisfied that the requesting party has demonstrated that the material they seek is needed to avoid a possible injustice in another judicial proceeding, that the need for disclosure if greater than the need for continued secrecy, and that their request is structured to cover only the material so needed. See Douglas Oil Co. of California, supra, 441 U.S. at 222, 99 S.Ct. 1667.

The party opposing disclosure must make a particular and specific demonstration of fact showing that disclosure would result in an injury sufficiently serious to warrant protection; broad allegations of harm unsubstantiated by specific examples or articulated reasoning fail to satisfy the test. See Cipollone v. Liggett Group, Inc., 785 F.2d 1108, 1121 (3d Cir.1986); Schiller v. City of New York, 04 Civ. 7922(KMK)(JCF), 04 Civ. 7921(KMK) (JCF), 2007 WL 136149 at *5 (S.D.N.Y. Jan. 19, 2007), quoting In re Terrorist Attacks on Sept. 11, 2001, 454 F.Supp.2d 220, 222 (S.D.N.Y.2006); Blum v. Schlegel, 150 F.R.D. 38, 41 (W.D.N.Y.1993) ("The party seeking protection from disclosure has the burden of making a particular and specific demonstration of fact, as distinguished from general, conclusory statements revealing some injustice, prejudice, or consequential harm that will result if protection is denied."); see also Bridge C.A.T. Scan Assocs. V. Technicare Corp., 710 F.2d 940, 944–45 (2d Cir.1983) (Rule 6(c)) "is not a blanket authorization for the court to prohibit disclosure of information whenever it deems it advisable to do so, but is rather a grant of power to impose conditions on discovery in order to prevent injury, harassment, or abuse of the court's processes**").** We have no doubt that, in rare circumstances, material introduced at trial can be safeguarded against disclosure afterwards. See Anderson v. Cryovac, Inc., 805 F.2d 1, 11–12 (1st Cir.1986)(only the most compelling showing can justify post-trial restriction on disclosure of testimony or documents actually introduced at trial). ***The subject could be national security, the formula for Coca Cola, or embarrassing details of private life. In determining whether good cause exists, courts have***

considered whether (1) disclosure of the materials in question would pose a hazard to others; (2) the defendant would be prejudiced by a protective order; and (3) the public's interest in disclosure outweighs the possible harm. See, e.g., United States v. Smith, 985 F.Supp.2d 506 (S.D.N.Y. 2013). "Among the considerations to be taken into account by the court will be the safety of witnesses and others, a particular danger of perjury or witness intimidation, and the protection of information vital to national security." United States v. Cordova, 806 F.3d 1085, 1090 (D.C. Cir. 2015) (cleaned up).

Finally, the Court should consider redaction on a document-by-document basis. After all, Courts have an obligation to consider all reasonable alternatives to foreclosing the constitutional right of access. In re Globe Newspaper Co., 729 F.2d at 56. Redaction constitutes a time-tested means of minimizing any intrusion on that right. See United States v. Amodeo, 44 F.3d 141, 147 (2d Cir.1995) (stating "that it is proper for a district court, after weighing competing interests, to edit and redact a judicial document in order to allow access to appropriate portions of the document"); see also United States v. Biaggi (In re N.Y. Times), 828 F.2d 110, 116 (2d Cir.1987) (rejecting "wholesale sealing" of papers partly because "limited redaction [might] be appropriate").

In this case, there are no separate findings by the district court explaining the need for post-trial protection of trial evidence. While in some cases "compelling reasons" might be apparent from the record, this is not so here.

Diaz-Colon submits that the United States intention to resurrect the moribund Protective Order is all about his Motion under Rule 29(c) to set aside the jury's verdict and enter a judgment of acquittal since the government's evidence at the conclusion of this case is insufficient to sustain a conviction, the dismissal of his indictment or for new trial, after engaging in outrageous government misconduct during the pre-indictment (Grand Jury), pre-trial (Dispositive Pleadings), and (Petit Jury) trial proceedings, pursuant to Rule 33 of the Federal Rules of Criminal Procedure, where Diaz-Colon argued his due process rights under the Fifth Amendment were violated when the United States used perjured testimony to convict him in violation of the Supreme Court precedents in Napue v. Illinois, supra, Giglio v. United States, 405 U.S. 150, 92 S.Ct. 763, 31 L.Ed.2d 104 (1972) and the use of perjured testimony to obtain an indictment as prohibited in United States v. Mechanick, 106 S.Ct. 938, 943 (O'Connor, J.

concurring) Wood v. Georgia, 82 S.Ct. 1364, 1373 (1962); see also United States v. Pabian, 704 F.2nd 1533, 1535 (11th Cir. 1983) (Fifth Amendment presupposes a grand jury "acting independently of either prosecuting attorney or judge" so as to be "a protective bulwark standing solidly between the ordinary citizen and the overzealous prosecutor.") While prosecutors are accorded latitude in presenting a case to the grand jury "they are bound by a few, clear rules". United States v. Mechanik, 106 S.Ct. at 1373. One of these rules is that the Government may not use perjured testimony before a grand jury or at trial. See United States v. Hogan, 712 F.2d 757, 761 (2d Cir.1983) ("prosecutor may not mislead grand jury ... Due process considerations prohibit the Government from obtaining an indictment based on known perjured testimony"). In Hogan, the Second Circuit held that misconduct of prosecutor, who presented extensive hearsay and double hearsay before the grand jury regarding a defendant's involvement in two murders, corrupt activities as a policeman and a reason for terminating his participation in proposed heroin deal and whose accusations appeared to have been made in order to depict defendants as bad persons rather than to support additional charges, mandated dismissal of indictment. United States v. Camborne, 601 F.2nd 616, 623 (2nd Cir. 1979) (same); United States v. Basurto, 497 F.2nd 781, 785 (9th Cir. 1974) (Due process violated where defendant stands trial on indictment which the Government knows to be based on perjured testimony.); United States v. Pabian, 704 F.2nd at 1536 (approving Basurto).

In an attempt to coverup a cloud of questionable ethics and judgment involving F.B.I. Special Agents Juan Carlos Lopez-Velazquez, Miguel E. Rodriguez and Mariela Lajara and Assistant United States Attorneys Timothy Henwood, Myriam Fernandez and Michael Lang in government misconduct involving the solicitation of false testimony and knowing presentation of perjured testimony before the Grand and Petit Trial Jury regarding the testimony of witnesses FBI S/A Lopez, Lydmarie Torres and Anthony Maceira, the United States is now asking this Court to authorize the destruction of the evidence proving how they interrupted the truth-seeking process in this case and avoid the press expose their misconduct.

The government's demands at this point of judicial proceedings have no legal bearing justifying the request to reenforce the Protective Order under established law. The United States exaggerated demand to destroy evidence, most of which has been made public or used during trial which only consists of discovery material

derived from the FBI interview reports ("302's"), interviews, verbal or written communications involving potential witnesses, information extracted from electronic devises, invoices and corporate documents containing the names, social security numbers or employer identification numbers, dates of birth, addresses, and telephone numbers, for anticipated witnesses, third parties, and confidential and sensitive information developed through investigations of law enforcement, has no legal justification under the "good cause" standard. Just because the United States is worried that Diaz-Colon pretends to publish the grand jury materials, when he has never done so in any of the court proceeding, or through the filing of his pre-trial pleadings in this case does not justify a destruction of evidence in a criminal proceeding that has not finalized.

Diaz-Colon only intends to make public some of the discovery material used/excluded during trial, evidence which falls under public domain that was subpoenaed by the United States from the Government of Puerto Rico. If necessary, said evidence can properly be redacted if it contains sensitive information. Most of the material has already been made public by government witnesses through media outlets. Many of the FBI 302's ROI' have already been exposed by persons linked to the prosecution. Evidence in support of future appeals or post-conviction motions should not be destroyed and can be publicized under the First Amendment right of freedom of expression and the right of the press to keep the public informed about government misconduct, and any other exception under Diaz-Colon's right to disclose Grand Jury transcripts excerpts containing false and perjured testimony, pursuant to the rigors set forth in United States v. Hogan, 712 F.2d 757, 761 (2d Cir.1983), or Hogan and Mechanik, supra.

In addition, the cats (government witnesses), that the United States is now trying to protect under the order, for having testified in the grand jury, came out of the bag when they testified publicly, exposing the secret of the grand jury vault. Evidence paraded in the public trial is no longer subject to any protection. The intention of the United States to come now at this point and request authorization to destroy evidence in this case, relies solely on the destruction of evidence[5] involving government misconduct, evidence that the Protective order in this case does

[5] The United States pretends to have this Court destroy the illegal recorded conversation CHS Maceira conducted in violation of 25 L.P.R.A. § 971q of the Judicial authorization to record nontelephonic conversations between him and Mr. Diaz-Colon proving that Mr. Diaz-Colon never stated to CHS Maceira that Rauli Maldonado wanted $300,000 or else he would release the damaging Chats or any request regarding the alleged assistance in having two corporation contract be re-approved by the government as falsely testified by FBI S/A Lopez at the Grand Jury and CHS Maceira during his trial testimony as requested by AUSA Michael

not cover.

Moreover, CHA Anthony Maceira openly discussed with the press the evidence the United States is now trying to destroy in "El Cuarto Poder". **He discussed evidence of the electronic chats extracted from Mr. Diaz-Diaz phone messages, which the Protective Order prohibited.** See https://youtu.be/qzs22FzJDv8. See also "El Cuarto Poder" **second interview discussing the transcripts of the Il Postino recorded conversation, which the Protective Order prohibited.** See https://youtu.be/B1R0o7D-jsw. See also "El Cuarto Poder" where **Jay Fonseca** claims that he ***has been working Mr. Diaz-Colon case for years*** and even goes on and relates publicly that Diaz-Colon had sued him in his personal capacity for damaging his reputation. How did Jay Fonseca obtain access to Grand Jury Secrecy prior to Diaz-Colon being indicted, when said grand jury material was solely in the hands of the United States? Re-exposing twice, publicly, in his television program "El Cuarto Poder," evidence that could have been given to him by the United States, which includes the witnesses they are now trying to protect from exposure. See https://youtu.be/3T5g1dEV_mk. **Should Jay Fonseca be subpoenaed by a Grand Jury to expose who gave him access to pre-indictment grand jury material?**

This Court should reject in its entirety the United States request to destroy the evidence. The United States Attorney is "the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done." Berger v. United States, 295 U.S. 78, 88, 55 S.Ct. 629, 79 L.Ed. 1314 (1935).

CONCLUSION

WHEREFORE, for all the above stated reasons, it is respectfully requested that this Honorable Court allow Diaz-Colon to file publicly his post-trial motions, appellate brief arguments, so long as he complies with justified restrictions at this stage of the case, other than the government misconduct claims which is subject to public scrutiny under First Amendment freedoms, and Diaz-Colon's right to inform the public of his Fifth

Lang. Furthermore, see also "eyboricua.com" Publication by Sandra D. Rodriguez Cotto where she is publicly discussing the contents of this first recorded conversation between Mr. Diaz-Colon and CHS Anthony Maceira by the letter of the transcripts **even prior to the selection of the trial jury.** See https://eyboricua.com/noticias/puerto-rico/audios-revelan-complot-entre-sixto-george-y-anthony-maceira/

Amendment protections to be free from conviction obtained through the use of perjured testimony.

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 8th day of March 2023.

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