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IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

UNITED STATES OF AMERICA
v.
LUIS POSADA CARRILES

No. EP:07-CR-87-KC
El Paso, Texas
February 5, 2010

STATUS CONFERENCE
BEFORE THE HONORABLE KATHLEEN CARDONE
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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computer-aided transcription.

1 (Esperanza Gallegos, Edna Ledesma, Spanish
2 Interpreters, present to interpret for defendant.)

3 COURTROOM DEPUTY: EP:07-CR-87, USA versus Luis Posada
4 Carriles.

5 MR. REARDON: Good morning, Your Honor, for the United
6 States, my name is Tim Reardon.

7 MR. TERESINSKI: Good morning, Your Honor, Jerome
8 Teresinski on behalf of the United States.

9 MS. BEHLING: Good morning, Bridget Behling on behalf
10 of the United States.

11 MR. HERNANDEZ: Good morning, Your Honor. Arturo V.
12 Hernandez on behalf of Mr. Posada, who is present in the
13 courtroom.

14 MS. ANDERSON: Good morning, Rhonda Anderson on behalf
15 of Mr. Posada.

16 MR. MILLAN: Good morning. Felipe Millan on behalf of
17 Mr. Posada Carriles.

18 THE COURT: All right. Before we get started I want
19 to go over a couple of things with everybody. First of all,
20 essentially, the Court's intention this morning is to handle
21 this hearing in two parts. The first part will be all of the
22 matters that are unsealed. And then we will go ahead and take
23 up the sealed matters separately. And we will have to seal the
24 courtroom at that point because they are sealed matters.

25 The first thing that I want to address with everyone

1 is the issues regarding the jury selection and how we will
2 proceed for jury selection. The Court received defendant's
3 motion for jury procedure. And so I'd like to go ahead and
4 start with that and address some of the issues involved in
5 that.

6 First of all, I want to mention as everyone knows that
7 we were at the point of trial in 2007, I guess, it was. And a
8 number of documents had been filed at that time. And the Court
9 had addressed a number of things. One of the issues was the
10 jury questionnaires. And, as you know, the Court has denied
11 that. The other issue was voir dire and how the voir dire
12 would be conducted.

13 Now I know that some of the attorneys that are here
14 are new to the case. But I also know that having reviewed
15 everybody's responses that you've reviewed all that has
16 happened previously at the prior trial.

17 The Court is not going to do anything any differently
18 than it did last time, nor am I going to do any procedures
19 differently. I haven't -- I did receive defendant's request
20 for specific questions this time as it involved the jury
21 questionnaire; I've reviewed those. I have the prior questions
22 defense proposed and the questions the Government proposed.
23 I've reviewed all of that.

24 The Court's position really hasn't changed. I would
25 be conducting all of the voir dire. I will take into

1 consideration all of the requests for questioning of the jury
2 that you have asked me to. And as I ruled previously, I will
3 be covering, I believe, everything that you've asked me to
4 cover, but the way the Court covers it.

5 So I don't know if there's anything there that we need
6 to address, any specific concerns. I think I spelled it out
7 clearly the last time. And I intend to do what I said
8 previously.

9 Anybody have any concerns about that?

10 MR. HERNANDEZ: If I may? Good morning.

11 THE COURT: Come up to the podium.

12 MR. HERNANDEZ: Absolutely. Thank you very much. As
13 the Court knows, I did file the first questionnaire which the
14 Court denied back in April, I think, of 2007. And then we
15 renewed it, essentially. And I don't wish to, you know, repeat
16 all the arguments. I accept the Court's ruling. But with
17 regard to the superseding indictment that underlied the
18 rationale for providing a second questionnaire. Now, the Court
19 having denied that our questions were framed within that juror
20 questionnaire and since we asked for individualized voir dire,
21 we did not submit additional questions that would address
22 Counts I and II, and Count III, the obstruction count of the
23 indictment.

24 And what I would ask is just simply leave of a few
25 days so, if the Court is going to be asking questions, that we

1 could supplement the ones we had already submitted back in
2 April of 2007 with additional questions that addressed Counts I
3 and II and the obstruction count which, I think, is Count III,
4 should not be more than maybe ten or 20 questions I would like
5 to give to the Court. Because under the framework of the juror
6 questionnaire, those issues would have been addressed.

7 So we're if the Court is going to do voir dire, we
8 would ask for leave to be able to supplement what we had
9 previously filed back in April to address the new counts.

10 THE COURT: You're correct. I mean, that's why I
11 wasn't overly concerned. Because in your request for jury
12 questionnaire, the number of those items were covered. So I
13 did intend to incorporate those concerns with my voir dire.

14 MR. HERNANDEZ: I see.

15 THE COURT: Because you raised them. But I don't have
16 any problems with you supplementing it. My question to the
17 Government is do you have any concerns with that?

18 MR. HERNANDEZ: Thank you, Judge.

19 MR. REARDON: Good morning, again, Your Honor. May I
20 say it's my first time to have the pleasure to be in El Paso
21 and to be in this courtroom.

22 THE COURT: Nice weather.

23 MR. REARDON: Very nice whether. I talked to my
24 children this morning and it's about two and a half feet
25 coming. I think I'm going to be the guest of the lovely City

1 of El Paso for longer than I hoped.

2 We would have, I think, a parallel interest. I think
3 it would be -- Mr. Hernandez and I have spoken. I think we've
4 had a very good professional relationship. I expect it to
5 continue. He has been collegial and courteous to me as a new
6 boy in town. And I think that's -- I'm hopeful that will
7 continue. Something like this, covering the additional counts
8 in the superseding indictment, I think I'd like to see what he
9 has to say. And our thought is we're rather minimalist.

10 But in one sense we would like to have the opportunity
11 to submit something also that would address concerns, if I
12 examine what has been proffered to the Court by the defendant,
13 we'd need to ask the Court to consider something we might
14 offer.

15 THE COURT: And I have no problems with that.

16 MR. REARDON: Thank you.

17 THE COURT: I have no problems. Thank you. What I
18 will request then is that both sides -- how much time do you
19 anticipate, Mr. Hernandez, for to you get me those questions?

20 MR. HERNANDEZ: Your Honor, it should take maybe seven
21 days.

22 THE COURT: Okay. If I give you until next week, the
23 16th, is that enough time?

24 MR. HERNANDEZ: Oh, yes. Thank you. That's generous.

25 THE COURT: If the Government would have any response

1 by the 18th?

2 MR. REARDON: Sure.

3 THE COURT: That's mostly because I need to have
4 everything in for jury selection.

5 If then I receive some question I have a concern
6 about, then we will address those. Frankly, as you know, I'm
7 conducting voir dire. So I'm going to win in probably any
8 arguments we may have. So I'm happy to consider anything you
9 would like.

10 MR. REARDON: Thank you.

11 THE COURT: So that will be the issues on jury
12 questionnaires.

13 The next issue is the issue of the defendant had
14 requested some extra peremptory challenges. I've reviewed
15 that. I don't know if you would like to add anything on the
16 record before I rule.

17 MR. HERNANDEZ: No.

18 THE COURT: Government?

19 MR. REARDON: No, Your Honor.

20 THE COURT: I think the federal rules are pretty
21 clear. I understand your concerns. But I think the rules are
22 pretty clear what it -- is required. The Court will allow the
23 defendant ten peremptory strikes and the Government six.
24 There's nothing in the rules that indicate otherwise. And I'm
25 not going to go outside the rules.

1 Now, the plan is so everybody is aware and plan ahead,
2 the jury selection -- we will have a large panel. As you can
3 see this is a small courtroom. We will not be doing selection
4 here. We will be doing it upstairs in the larger courtroom.
5 Then once the jury is selected, we will move back downstairs to
6 begin the trial. We will select the jury. And then once the
7 jury is selected, we will start. And witnesses need to be here
8 March 1st from that point forward.

9 The only other thing -- I believe that pretty much
10 covers everything that we need to discuss on getting ready for
11 trial. Is there anything other than that that the parties feel
12 they need to address publicly? Because we have quite a bit to
13 go into at the -- on the sealed matters. I want to make sure.

14 MR. REARDON: Yes, ma'am. I'd like to address the
15 Court's process in regard to witnesses being here actually on
16 March 1st. We have a substantial number of witnesses. I think
17 Mr. Hernandez and I have been speaking about a lot of things we
18 could do to make the trial as efficient as possible and still
19 be fair to our -- those whom we represent.

20 In regard to the Government's witnesses, the United
21 States has people coming from overseas. And because the trial
22 may be of some duration, I'd like to be able to have the
23 Court's permission not to have all our witnesses here on March
24 1st. Because, in fact, they come from all over, the United
25 States and overseas. And I was thinking if the Court has a

1 process that might address its concerns. I know we like to
2 have the witnesses -- potential witnesses identified to the
3 respective jurors to see if they know them. I don't suspect
4 that's going to be a concern with our witnesses.

5 So I was just inquiring of the Court whether we could
6 have some flexibility in terms of who needs to be present here
7 March 1st, physically.

8 THE COURT: Let me respond. A couple of things.
9 First of all, at voir dire I will require both sides to have
10 ready a list of who they believe the witnesses are going to be.

11 MR. REARDON: Yes.

12 THE COURT: At that time I will require each of you to
13 announce to the panel who they believe the witnesses are going
14 to be with some minimal identifiers.

15 MR. REARDON: Of course.

16 THE COURT: For example, especially, here in El Paso
17 if somebody is named Jose Hernandez, I need you to be able to
18 say Jose Hernandez who does this.

19 MR. REARDON: I've learned this.

20 THE COURT: However, other than some minimal
21 identifiers, that's all I will need. As both of you are aware,
22 most of the information in this trial is outside of El Paso.
23 So the odds of our jury panel knowing these people is probably
24 pretty remote. But we need to make sure. You don't need to
25 have them here. As long as you can identify who your witnesses

1 are, that will be fine.

2 For the purposes of trial itself, what I want is that
3 this case flow smoothly. We haven't talked about the length of
4 the trial yet because some of the issues we're going over today
5 are going to affect the length. I have heard from Government
6 and defendant all the way from one week to eight weeks. And I
7 can't, at this point, put my finger exactly on how long this is
8 going to take.

9 I certainly want to give both sides the opportunity to
10 try this case fully and fairly. But I think some of the
11 rulings are going to affect that. I want to make sure we're
12 all on the same page. So I will say that I -- originally, what
13 we talked about was about four weeks. And so there's no need
14 to have everybody here for four weeks. I do want everybody
15 here so it flows smoothly. You're going to have to gauge that.

16 MR. REARDON: I understand that. I would say in that
17 regard, Your Honor, I would hope that as a concomitant thought
18 to that process, that we would, on occasion -- of course, it's
19 at our peril in terms of our trial strategy to take someone out
20 of order to keep that flow going even if it's not the flow that
21 would be ideal to us in order to keep the trial going, and to
22 also accommodate witnesses who come from very far. So I would
23 ask the Court's consideration for that.

24 THE COURT: I never have any problems with taking
25 people out of order. Normally, the only caveat, that we talk

1 to the defendant if there's some prejudice to the defendant or
2 problem. Other than that, I have no problems.

3 MR. REARDON: I will always be sharing with my
4 colleagues that process.

5 THE COURT: All right. Anything, Mr. Hernandez,
6 you're concerned about?

7 MR. HERNANDEZ: Thank you. May I approach?

8 THE COURT: Sure.

9 MR. HERNANDEZ: Yes, Judge, I want to -- I wanted to,
10 again, perhaps sensitize the Court to a potential issue before
11 we leave the question of voir dire and jury selection because
12 it's -- it's related. And that is, that we have information
13 that there will be protestors during the jury selection
14 procedure. I recalled at -- the last time we were here we did
15 have protestors. And the Court I think, intelligently changed
16 the date or did not publish the date. I don't remember
17 exactly. But we played around with the date of when jury
18 selection was going to take place pretty much to a hide the
19 football kind of thing so we could get the jurors in and out.

20 It is obviously more of a concern for us than anyone
21 else about jury contamination that underlied our reasons for
22 filing the pleadings that we filed.

23 What I have is an article from the AP about a group
24 called the Committee for the Release of the Five Cuban Spies,
25 who are incarcerated, who, in their web sites have also been

1 talking about having protests at or near the courthouse.

2 What I would ask -- and we spoke about this the last
3 time that we were here back in 2007, that some procedure be
4 thought of that would accommodate for the jurors -- the flow in
5 and out of the building in a way that does not expose them to
6 these protestors. I have no idea whether they're going to show
7 up, have posters, what those posters are going to say. But we
8 did discuss it last time. And the Court did, if my memory
9 serves me correctly, did devise some procedure for the jury
10 meeting somewhere at a different location and then being bussed
11 all together into the courthouse through either the sally
12 port -- I don't recall exactly. But I know that we did have
13 those discussions in chambers. Perhaps the Court recalls.

14 I anticipate the same kind of environment is going to
15 be replayed. And I just wanted to bring that to the Court's
16 attention and see what the Court's thoughts are on that.
17 Basically, that's it.

18 THE COURT: Mr. Hernandez, again, I appreciate the --
19 the concern. As you know, we have talked about the high
20 profile nature of this case. The Court does intend to
21 implement procedures to protect the integrity of the trial.
22 Those procedures, as you saw this morning, have pretty much
23 been put in place. We're having sealed hearings in just a
24 minute. I want to assure you that we are going to make sure
25 that there's no problems with the jury, jury selection or

1 actually once the jury is seated.

2 And at this point, I haven't decided fully. I'm
3 consulting with the Marshals to make sure how we're going to
4 handle everything. I assure you, you and the Government will
5 be fully informed once those decisions are made. I can't make
6 them in a vacuum. I want to make sure we're fully apprised of
7 everything.

8 MR. HERNANDEZ: Great. Great. Thanks so much.

9 THE COURT: You're welcome. Anything else we need to
10 take up?

11 MR. REARDON: There is, Your Honor. It's housekeeping
12 again. But I've made a terrible mistake. I haven't
13 identified, for the Court, Amera Sherren from Homeland Security
14 and Omar Vega from our FBI, without whom we wouldn't be here
15 today.

16 THE COURT: I appreciate that today. I assume they're
17 agents sitting in for purposes of the Government?

18 MR. REARDON: Yes.

19 THE COURT: Welcome.

20 Anything else we need to take up at this point?

21 Let's take a short break. We're going to clear the
22 courtroom and take up the sealed matters. We stand in recess.

23 (Recess.)

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I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter. I further certify that the transcript fees and format comply with those prescribed by the Court and the Judicial Conference of the United States.

Signature: /s/ David A. Perez, RMR, RPR Date: March 11, 2010

David A. Perez, RMR, RPR