

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

----- X  
:  
UNITED STATES OF AMERICA, :  
:  
- against - :  
:  
JOAQUIN ARCHIVALDO GUZMAN :  
LOERA, :  
:  
Defendant. :  
----- X

**ORDER**

09-cr-0466 (BMC)

COGAN, District Judge.

The Government [334] moves the Court to impose sanctions on defense counsel A. Eduardo Balarezo for what it alleges was a violation of the Court’s protective order issued on April 3, 2017. That order provides that the Government will produce “Protected Discovery” to defense counsel, which “will not be copied or disseminated to anyone other than the defendant Joaquin Archivaldo Guzman Loera [], Defense Counsel, or Defense Counsel’s Team [], and must remain in the custody of the Defense Counsel at all times.” “Protected Discovery” includes “[i]nformation that could lead to the identification of potential witnesses, including . . . cooperating witnesses.”

The impetus for this motion is a text message that Mr. Balarezo sent on September 23, 2018 to a fellow attorney who represents a cooperating witness in this case. That text message read, “You know the gov outed [cooperating witness]? See you in EDNY.” Mr. Balarezo does not dispute the text message’s contents or that he sent it to the attorney.

Mr. Balarezo argues that he did not violate the protective order by sending the text message because he knew the witness’s identity and the fact that the witness was cooperating through his own background research for defendant’s defense, and that he acquired this knowledge before the Government provided him with any Protected Discovery. He explains that

he knew the witness was arrested [REDACTED]. After the arrest, Mr. Balarezo monitored the docket and attended a status hearing in the witness's criminal case that was open to the public (the Government states that Mr. Balarezo sat in the front row, Mr. Balarezo does not remember where he sat). Mr. Balarezo deduced from the fact that the case was repeatedly continued without motions or a set trial date that the witness was cooperating with the Government.

This conduct did not amount to a literal violation of the Court's protective order. Mr. Balarezo obtained and acted on information from a source independent from the Protected Discovery and used it in a way that did not disclose "[i]nformation that could lead to the identification of potential witnesses." As a result, sanctions are not warranted.

That being said, the Court is still very concerned by Mr. Balarezo's conduct. He conveyed false information to a cooperating witness's lawyer (and by extension, to the cooperating witness) when he stated in the text message that the Government "outed" the witness. Although Mr. Balarezo claims that the text message was not malicious and did not convey any threats, his use of the term "outed" plainly suggests that the Government somehow failed to protect the witness's identity from the public. Mr. Balarezo knew or should have known that his attorney friend would understand the message's potentially serious implications, and would not only likely communicate the "outed" comment to the cooperating witness, but that his attorney friend was probably obligated to do so. Mr. Balarezo also knew or should have known that when a cooperating witness in a case like this is told by their attorney that the Government is exposing the cooperating witness deliberately or recklessly, it would be odd indeed if the witness was not intimidated to some degree.

Mr. Balarezo states that he is ethically obligated to conduct a fulsome investigation into the Government's case and that his conduct was in furtherance of that obligation. The Court agrees that Mr. Balarezo must zealously advocate for and investigate on behalf of his client. But Mr. Balarezo has not explained why sending this text message furthered that investigation and the Court fails to see how it could. And although Mr. Balarezo's attendance at the witness's hearing might be innocuous standing alone, his prior attendance increased the likelihood that the text message would intimidate the witness.

Whether Mr. Balarezo's conduct amounted to obstruction of justice is not for this Court to decide; this Court's purview is over the terms of its orders. Although Mr. Balarezo did not violate those orders here, in the future, Mr. Balarezo and all other defense counsel are prohibited from disclosing or otherwise acting upon any non-public information related to this case (information that is redacted from the Government's public filings or otherwise not made public) unless it is specifically to prepare defendant's defense. To be clear, this means that defense counsel may not discuss with third parties (not including other defense counsel, defense counsel's paralegals, or defendant himself) any information relating to this case that is redacted from the Government's public filings or otherwise not made public, whether or not defense counsel also obtained or learned that information from an independent source. If defense counsel acquired information from an independent source before the Government disclosed that information to them as Protected Discovery, defense counsel can always approach the Court, on an *ex parte* basis if need be, to obtain relief from this order to use that information for a proper purpose and in a proper way. Defense counsel are also prohibited from contacting cooperating witnesses, their lawyers, or their friends and family about the Government's efforts to protect those witnesses.

Any future conduct like the kind at issue here will constitute a sanctionable violation of this order.

**SO ORDERED.**

---

U.S.D.J.

Dated: Brooklyn, New York  
October 11, 2018