

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CRIMINAL MINUTES - GENERAL

Case No. CR 22-482-GW Date September 25, 2023

Present: The Honorable GEORGE H. WU, UNITED STATES DISTRICT JUDGE

Interpreter NONE

<u>Javier Gonzalez</u> <i>Deputy Clerk</i>	<u>None Present</u> <i>Court Reporter/Recorder, Tape No.</i>	<u>Brian R. Faerstein - not present</u> <i>Assistant U.S. Attorney</i>
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<u>U.S.A. v. Defendant(s):</u>	<u>Present</u>	<u>Cust.</u>	<u>Bond</u>	<u>Attorneys for Defendants:</u>	<u>Present</u>	<u>App.</u>	<u>Ret.</u>
Jerry Nehl Boylan	not		✓	Georgina Wakefield	not		✓

IN CHAMBERS - TENTATIVE RULING ON DEFENDANT'S MOTION TO DISMISS INDICTMENT; MOTION FOR INJUNCTION, DISCOVERY, AND JURY INSTRUCTION REGARDING GOVERNMENT MISCONDUCT [79]; and DEFENDANT'S MOTION FOR SPECIAL JURY SELECTION PROCEDURES GIVEN THE NATURE OF THE CASE AND THE PROCEEDINGS: SIGNIFICANT PRETRIAL PUBLICITY IT HAS RECEIVED [95]

Attached hereto is the Court's Tentative Ruling on Defendant's Motions [79, 95], set for hearing on September 28, 2023 at 10:00 a.m.

Initials of Deputy Clerk JG

United States of America v. Boylan, Case No. 22-CR-482-GW

Tentative Rulings on: (1) Motion to Dismiss Indictment; Motion for Injunction, Discovery, and Jury Instruction Regarding Government Misconduct (ECF No. 79), and (2) Motion for Special Jury Selection Procedures Given the Nature of the Case and the Significant Pretrial Publicity It Has Received (ECF No. 95)

Defendant Jerry Nehl Boylan (“Defendant”) has filed two motions up for hearing on September 28, 2023. A lengthy discussion is not required to resolve either.

With respect to the first motion, a motion to dismiss the indictment (and other relief) based upon the Government’s purported improper investigatory interview practices, the Court will deny the motion. The Court has reviewed all of the transcriptions of interviews reflected in the motion. The Court is not nearly-as-troubled with the Government’s interview practices as Defendant and his counsel apparently are, and certainly not to an extent that would call for dismissal of the indictment. The Government did not coerce anyone into changing answers to any questions.¹ Furthermore, Defendant is free to examine any witness who takes the stand about any interactions they had with the Government and its agents, plus whether they felt any coercion in the process. To the extent any witness will not take the stand on Defendant’s behalf out of concern that their own practices would displease the Government, that is not the Government’s fault. The motion is DENIED.

As to the second motion, the Court will grant it in part and deny it in part. The Government does not oppose an expansion of the jury pool for this case, but neither it nor Defendant has proposed a number. The Court will grant this relief, and will discuss with the parties an appropriate number. The Court will also grant Defendant’s request for a written jury questionnaire (in addition to in-court voir dire questioning), though one much-smaller than what Defendant has proposed. The parties will meet-and-confer concerning the exact content of the questionnaire, which will be limited to 30 questions (allowing for sub-parts to those questions, where necessary, so long as they

¹ One of the main examples of the Government’s alleged coercion was in questioning Roy Hauser (the former owner and operator of the vessel Truth Aquatics) about whether it was his practice to have a “roving patrol” or an employee “standing watch” while passengers were asleep at night onboard. Hauser initially responded that he had “wheel watches and . . . anchor watches at night.” The Government then asked him whether he had “somebody standing watch that was also on the lookout for other dangerous situations, like fire or man overboard . . . [or a] roving patrol.” Hauser responded “No, not when I was on the boat.” Thereafter, the Government referenced Hauser to a Coast Guard Certificate of Inspection (which contained a roving patrol requirement) and asked him whether he would have followed that regulation. Hauser indicated that he would have.

Merely pointing to an applicable regulation and questioning the witness after he was apprised of it does not amount to improper coercion, even if it influences that witness in his subsequent testimony.

are directly-relevant to the content covered by the main question). *Voir dire* will be sufficient to otherwise-question potential jury members.

The Court will otherwise deny the second motion. It will not exclude all citizens/residents of Santa Barbara County from the jury pool. Given nature of the population within the Central District of California, there is no evidence that persons within Santa Barbra County² are more likely to be familiar with the tragedy than individuals residing in the adjacent San Luis Obispo or Ventura Counties.³ Moreover, it is presumed that one of the questions (that will be asked on the questionnaire form) will be whether the potential juror has any knowledge of the incident and, if so, what precise information the juror has, the source of that information, and the juror's reaction to/evaluation of it.

Likewise, the Court will not expand the number of peremptory challenges. The Court sees no reason why the already-allowed number of peremptory challenges (ten for the Defendant and six for the Government) will be insufficient to provide Defendant with a fair trial. This is especially so where the Defendant: (1) will have an extensive opportunity to question the potential jurors (both in writing and orally); and (2) will have had the opportunity to exclude potential jurors for cause before being required to utilize any peremptory challenges.

² For example, the media coverage primarily referenced by the Defendant is from the Los Angeles Times whose readership is not in any way limited to Santa Barbra County.

³ Indeed, it might be expected that – even more so than Santa Barbra residents – persons who are scuba divers within the Central District of California would be more aware of the incident and have formulated opinions or reactions to information about it.