

March 13, 2021

By E-mail to castelnysdchambers@nysd.uscourts.gov

Hon. P. Kevin Castel, United States District Judge
Southern District of New York, 500 Pearl Street New York, NY 10007

Re: Access to US v. Fuentes-Ramirez 15-cr-379 (PKC) via listen-only audio call-in line

Dear Judge Castel:

This concerns, in the above-captioned criminal case, your Order of March 12, 2021 (Docket Number 261). The Order would seem to terminate the call-in line through which people have been able to follow the trial, stating "[t]here is no right of access to a call-in conference line. It is merely a courtesy when and if appropriate. The Court has endeavored to provide it where appropriate."

While acknowledging this Court's efforts on access in such cases as *US v. Virgil Griffith*, 20-cr-15, responding to an Inner City Press application to unseal, and *US v. Peter Bright*, (same), on behalf of Inner City Press and in my personal capacity this is an application to maintain or resume the call-in line.

The First Amendment to the U.S. Constitution guarantees to the public a right of access to court proceedings. U.S. CONST. AMEND. I; *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 603 (1982). The public's right of access is strongest when it comes to criminal proceedings such as these, which are matters of the "high[est] concern and importance to the people." *Richmond Newspapers, Inc. v. Virginia*, 448 U.S. 555, 575 (1980) (plurality opinion).

Clearly, this long-standing right has to be affirmed differently in this time of COVID-19, in which in this case one prospective juror left on the first day, and another juror's possible exposure canceled proceedings in this case on March 12. In this context, even an additional overflow room in the courthouse is not enough.

That some individual, of the many interested inside and beyond the United States interested in this case may have recorded and republished online some of the audio should not eviscerate the right of access of all. Beyond being akin to collective punishment, it may be important to consider the possibility that supporters of the Honduras political figures being named in the trial as taking bribes could record and republish precisely in order to trigger the cut-off of access, so that fewer learn of these alleged bribes.

By US analogy, what if the Proud Boys uploaded audio of the detention proceedings now in the District for the District of Columbia, so that fewer (including Inner City Press) could call in and learn and report on what is said in these judicial proceedings?

This is a formal application that the call-in line for these proceedings be maintained or resumed. The loss of First Amendment freedoms, even for a short period of time, unquestionably constitutes irreparable injury. *Elrod v. Burns*, 427 U.S. 347, 373 (1976).

Also in this case, we continue to contest the many redactions to the Government's submission, including for example photographs and exhibits that have now been entered into evidence in the case.

The Government's March 2, 2021 submission, Docket Number 253, without explanation or justification redacted not only text but also photographs, of CC-4 on pages 3 and 7. These were presumably the photos that DEA Agent Fairbanks testified about earlier in the trial.

But the government's submissions remain redacted in the docket. Covering the trial for Inner City Press, as I did that of Juan Antonio Hernandez, I have raised this issue since March 8-9, 2021. These are, needless to say, judicial documents within the mention of *United States v. Aref*, 533 F.3d 72, 81-83 (2d Cir. 2008) and *Lugosch v. Pyramid Co.*, 435 F.3d 110 (2d Cir. 2006) - they should be made available.

Please confirm receipt of and docket this application, and thank you for your attention to it.

Respectfully submitted,

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