

The government transported Mr. Guzmán to the MCC in a multi-vehicle motorcade that included several marked police cars, black Suburban SUVs, an ambulance and an emergency response vehicle. The MCC was flanked by countless law enforcement officers wearing tactical vests displaying the insignias of the Drug Enforcement Agency, Homeland Security, the Marshals Service, the New York State Police, and others. Many of the law enforcement officers were outfitted in military style gear and carried side arms as well as assault-style weapons.¹ The media extensively covered Mr. Guzmán's arrival at the MCC.

The government alleges that Mr. Guzmán engaged in a drug distribution conspiracy affecting numerous districts around the country. As a government press release states, the case against Mr. Guzmán bears no particularized relationship to the Eastern District of New York.² In fact, there are indictments pending against Mr. Guzmán in the Southern District of California, the Northern District of Illinois, the Western District of Texas, the District of New Hampshire, the Southern District of Florida and the Southern District of New York. The Mexican government granted Mr. Guzmán's extradition only to the Southern District of California and the Western District of Texas. As the Court is aware, however, after the government of Mexico apparently waived the Rule of Specialty, the United States government chose to bring him to the Eastern District of New York to face the indictment filed in this court.³

¹ <https://www.facebook.com/ABCNews/videos/10155281956278812/>

² *See, e.g.*, Department of Justice Press Release 17-104, <https://www.justice.gov/opa/pr/joaquin-el-chapo-Guzmán-loera-faces-charges-new-york-leading-continuing-criminal-enterprise> (“As one of the principal leaders of the Sinaloa Cartel, Guzmán Loera allegedly also oversaw the cocaine, heroin, methamphetamine, and marijuana smuggling activities by the Sinaloa Cartel to wholesale distributors in Atlanta, Chicago, Miami, New York, as well as in various locations in Arizona, Los Angeles and elsewhere.”).

³ It is not clear why the government chose the Eastern District. Some journalists have speculated that it was the result of then-Attorney General Loretta Lynch's familiarity with the District. *See, e.g.*, “Drug lord 'El Chapo' likely to be prosecuted in Brooklyn,” Chicago Sun-Times, June 12, 2016. <http://www.chicagotribune.com/news/nationworld/ct-el-chapo-trial-20160612-story.html>

Thus, given the government's self-authorized, virtually limitless choice of venue, it was in a position to select any jurisdiction where Mr. Guzmán was charged and where it could house him in a facility with the security capabilities the government believed necessary. Instead, it chose to try him in the EDNY and then claimed a need to house him at the MCC located within the SDNY. Because of that choice made by the government, each time Mr. Guzmán is transported to the EDNY courthouse from the MCC, the government assembles scores of United States Marshals and other law enforcement officers and escorts Mr. Guzmán in a multi-vehicle motorcade of marked and unmarked police cars, armored cars, and other emergency response vehicles.⁴ The government then proceeds to order the closing of the Brooklyn Bridge while the motorcade crosses from the MCC in Manhattan to the EDNY courthouse in Brooklyn. The process is repeated when Mr. Guzmán is taken back to the MCC. Mr. Guzmán has now made seven court appearances, each directly exposing countless of New Yorkers and potential jurors to this spectacle and inconveniencing thousands more by the traffic disruptions created.⁵

ARGUMENT

A criminal defendant is guaranteed a fair trial by Fifth and Sixth Amendments to the United States Constitution. U.S. Const. amends. V, VI. Embodied in these guarantees is the principle that "one accused of a crime is entitled to have his guilt or innocence determined solely on the basis of the evidence introduced at trial, and not on grounds of official suspicion,

⁴ See, e.g., <https://www.reuters.com/video/2017/02/03/el-chapo-heads-to-ny-court?videoId=371055677>, <https://www.youtube.com/watch?v=X4M8ekzqYWo>. See also Exhibit A.

⁵ In addition to the press coverage of the events to which potential jurors have been exposed, the New York state government estimated in 2015 that there are over 100,000 vehicle crossings of the Brooklyn Bridge every day. <http://www.nyc.gov/html/dot/downloads/pdf/nyc-bridge-traffic-report-2015.pdf>.

indictment, continued custody, or other circumstances not adduced as proof at trial.” *Taylor v. Kentucky*, 436 U.S. 478, 485 (1978). On several occasions, the Supreme Court has addressed whether security measures taken to control a criminal defendant, which are visible to a jury, can erode a defendant’s presumption of innocence. For example, in *Deck v. Missouri*, the Court noted that shackling a defendant during the sentencing phase of a death penalty trial “inevitably implies to a jury, as a matter of common sense, that court authorities consider the offender a danger to the community.” *Deck v. Missouri*, 544 U.S. 622, 633 (2005). As a result, the Court has explained that such measures should be subjected to “close judicial scrutiny” and should be upheld only where there exists an “essential state policy,” requiring the particular practice. *Estelle v. Williams*, 425 U.S. 501, 503-504 (1976)).

In this case, the unprecedented, highly visible, and disruptive security measures taken by the government every time it transports Mr. Guzmán, are likely to be seen or heard about by innumerable potential and seated jurors and run the precise risk the Supreme Court warned against: that Mr. Guzmán, while presumed innocent, is already considered by authorities to be an extreme danger to the community. Moreover, there is no essential state policy requiring the government to try Mr. Guzmán in a jurisdiction requiring transportation by armored motorcade and closing of a major city thoroughfare in order for him to attend trial.

The government could easily try Mr. Guzmán in the SDNY, which is immediately adjacent to and connected to the MCC. The proximity between the MCC and SDNY courthouses would allow for the secure transfer of Mr. Guzmán to and from court without the current prejudicial spectacle of a multi-vehicle armed convoy and the closing of the Brooklyn Bridge. Similarly, the case can be transferred to the Eastern District of Pennsylvania, where the federal detention center there previously created a unit capable of housing inmates held under

SAMs and where Mr. Guzmán could be transported to the courthouse via a tunnel connecting it to the detention facility.⁶ Thus, a remedy for the highly prejudicial security measures associated with transporting Mr. Guzmán could be achieved by transferring venue to the SDNY or to the EDPA. The inconvenience to the Court and the government caused by transferring venue to the SDNY is minimal given the close proximity of the SDNY and EDNY courthouses.

The Constitution provides, for the protection of the criminal defendant, that criminal trials “shall be held in the State where the ... Crimes ... have been committed.” U.S. Const. art. III, § 2, cl. 3; amend. VI. These provisions are in place, not to provide the government with any right or discretion to choose a venue where it feels it is most likely to succeed at trial, but to protect criminal defendants from being hailed to trial in remote locations removed from the locations of the charged offenses. *See United States v. Cores*, 356 U.S. 405, 407 (1958) (The provision for trial in the vicinity of the crime is a safeguard against the unfairness and hardship involved when an accused is prosecuted in a remote place.). As a result, under the Federal Rules, venue may only be changed upon the defendant’s motion, as it is his right to waive. Federal Rule of Criminal Procedure 21(a) provides that the court is required to transfer venue “if the court is satisfied that so great a prejudice against the defendant exists in the transferring district that the defendant cannot obtain a fair and impartial trial there.” Fed. R. Crim. Pro. 21(a).

Motions under this section are generally raised in the event of a saturation of negative publicity in a particular district. In this case, however, media attention to the case in general is pervasive in all districts. Thus, this motion does not challenge venue on those grounds. This motion challenges venue on the distinct ground that the venue itself is creating

⁶ *See United States v. Savage*, 07-CR-0550 (E.D. Pa.).

unnecessary, localized prejudice by requiring the spectacle of Mr. Guzmán's transportation. As discussed above, the extent of this security display portends irrevocable and unavoidable prejudice. As a result, Mr. Guzmán respectfully requests that this Court consider the same principles underlying a more traditional media-based claim under Rule 21 when considering Mr. Guzmán's request.

For example, in *United States v. Maldonado-Rivera*, the court stated the factors this Court should consider when evaluating a motion for change of venue include under Rule 21(a),

the extent to which the government is responsible for generating the publicity, the extent to which the publicity focuses on the crime rather than on the individual defendants charged with it, and other factors reflecting on the likely effect of the publicity on the ability of potential jurors in the district to hear the evidence impartially.

922 F.2d 934, 967 (2d Cir.1990) (internal citation omitted). In this case, the government is completely responsible for generating the publicity at issue. The government unilaterally chose the district where it preferred to try Mr. Guzmán and it unilaterally chose to house him under restrictions it could not accommodate in that district. Second, the security display is entirely focused on the identity of the defendant. It is not akin to dispassionate news coverage of a proceeding – it is akin to driving a sign, illuminated by sirens and flanked by police vehicles, marked with government insignia, that says “dangerous man inside.” Finally, the number of potential jurors that have been and will continue to be exposed to this spectacle is unquantifiable. Mr. Guzmán contends that under these circumstances, Rule 21(a) requires a change of venue to a jurisdiction where Mr. Guzmán can be housed according to the government's demands and transported to trial in a manner that preserves his constitutional rights to a fair trial.

Federal Rule of Criminal Procedure 21(b) gives this Court discretion to grant the defendant's motion for a change of venue "for the convenience of the parties, any victim, and the witnesses, and in the interest of justice." Fed. R. Crim. Pro. 21(b). These factors weigh in favor of granting a change of venue. Surely the convenience of the defendant would be better served by being tried in proximity to where he is housed. It would seem also, that avoiding the unnecessary diversion of law enforcement resources to this transportation detail would be more convenient for the government.⁷ And, the interests of justice plainly weigh against transporting the defendant in this public, bridge-closing, riot-gear-wearing, phalanx of cars and officers – a process which will grow only more frequent and visible as trial approaches. The undersigned are aware of no criminal defendant that has been regularly transferred to court with this level of theatrics and disruption.

In resolving a motion under 21(b) this Court is to consider a non-exhaustive list of factors including:

(1) the location of the defendant; (2) the location of possible witnesses; (3) the location of events likely to be at issue; (4) the location of relevant documents; (5) the potential for disruption of the defendant's business if transfer is denied; (6) expenses to be incurred by the parties if transfer is denied; (7) the location of counsel; (8) the relative accessibility of the place of trial; (9) docket conditions in each district; and (10) any other special circumstances that might bear on the desirability of transfer. No one of these factors is dispositive, and a balance should be struck in determining which are of the greatest importance in the case before the court.

Maldonado-Rivera, 922 F.2d at 966 (internal citations omitted).

Here, the first factor – the location of the defendant – weighs heavily in favor of changing venue. Mr. Guzmán is currently held in a location remote from the courthouse in

⁷ Although the interest of the public is not expressly noted as a factor, if the government is truly concerned about a security threat associated with transporting Mr. Guzmán, it should be the first to agree that minimizing that transport would be the better course.

which he is to be tried, requiring the employment of a dramatically prejudicial motorcade to transport him to and from court. This factor favors transferring him to a location where this is not necessary. The second, third and fourth factors concerning the location of witnesses, events, and documents are not implicated here because, by the government's own admissions, they are national and international in scope. Most if not all events occurred in foreign locations; witnesses will be travelling from other places; and documents are already in the government's possession. A transfer of venue of a few or a hundred miles would not be contraindicated on these grounds. The fifth and sixth factors do not apply. Regarding the seventh factor, counsel for the government are already from New York or Miami, thus a transfer to Manhattan would post little inconvenience. A transfer to Philadelphia would create modest inconvenience for government counsel from New York but is balanced with slightly less inconvenience for government counsel from Florida. The undersigned would not be inconvenienced by either move. Both Manhattan and Philadelphia are easily accessible, thus the suggested locations themselves do not factor against transfer. If the Court traveled with the case to Manhattan, the issue of docket control would be unaffected. It is not clear how moving the case to Philadelphia would affect this factor.

The government will surely claim that *voir dire* can eliminate jurors who have been exposed to this spectacle or who cannot guarantee that they can be fair despite having been exposed to it. The government's argument must fail for two reasons. First, given the extent of the disruption caused by this extraordinary security detail involved in transferring Mr. Guzmán to and from court, it will be impossible to guarantee that a seated juror will not be exposed to it, putting the fairness of the trial in jeopardy while it is already underway, and putting untold taxpayer dollars at risk when a mistrial must be granted as a result of that juror's exposure to this

scene on the Brooklyn Bridge. Second, attempting to redress this problem solely through *voir dire* risks disproportionately eliminating jurors from areas closer to the city – who will more likely be exposed to the motorcade. For example, according to the most recent census data, the population of Kings County, the most likely to witness the security display, is 35% African American. On the other hand, Suffolk County, the least likely to be exposed to it, is 8.5% Black.⁸ Thus, failing to transfer venue will risk disproportionately eliminating African American jurors, in violation of the defendant’s Fifth and Fourteenth Amendment rights.

Finally, and perhaps most importantly, the government has very little legal basis on which to oppose this Motion. Choice of venue is not a right or privilege that is afforded to the government. Fair trial guarantees include a venue provision to protect the defendant. The government is certainly able and obliged to bring a case in the jurisdiction where the crime is charged. In this case, however, the government has alleged that the crime touches essentially all jurisdictions in this country, and has specifically alleged that venue is proper in the Southern District of New York by returning an indictment there.⁹ The government has no right to insist that a case remain in a district where the defendant will be subject to prejudicial security measures of the government’s creation, for no other reason than it believes it enjoys litigation advantage in that venue.

This Court should conclude that the government’s unexplained desire to try Mr. Guzmán in the Eastern District of New York, as opposed to one of the other numerous jurisdictions in which he could have been hailed to trial, is not an essential state policy justifying the exposure of potential and likely seated jurors to the prejudicial security measures associated

⁸ See www.census.gov.

⁹ See *United States v. Guzmán*, 12-CR-439.

with transporting Mr. Guzmán from the jurisdiction where the government chooses to house him. As such, this Court should transfer venue to the Southern District of New York or to the Eastern District of Pennsylvania as mandated or permitted by Federal Rule of Criminal Procedure 21. Failure to do so will result in a deprivation of Mr. Guzmán's Fifth, Sixth, and Fourteenth Amendment rights.

WHEREFORE, Mr. Guzmán respectfully requests that this Court transfer venue to the Southern District of New York or to the Eastern District of Pennsylvania.

Dated: Washington, DC
May 6, 2018

Respectfully submitted,

BALAREZO LAW

/s/

By: _____

A. Eduardo Balarezo, Esq.
EDNY Bar # AB7088
400 Seventh Street, NW
Suite 306
Washington, DC 20004
Tel: (202) 639-0999
Fax: (202) 639-0899
E-mail: aeb@balarezolaw.com

PURPURA & PURPURA

/s/

By: _____

William B. Purpura, Esq.
8 East Mulberry Street
Baltimore, MD 21202
Tel: ((410) 727-8550
Fax: (410) 576-9351
E-mail: wpurpura@purpuralaw.com

Counsel for Defendant Joaquín Guzmán Loera

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th day of May 2018, I caused a true and correct copy of the foregoing Defendant's Motion to Transfer Venue to be delivered via Electronic Case Filing to the Parties in this case

/s/

A. Eduardo Balarezo, Esq.

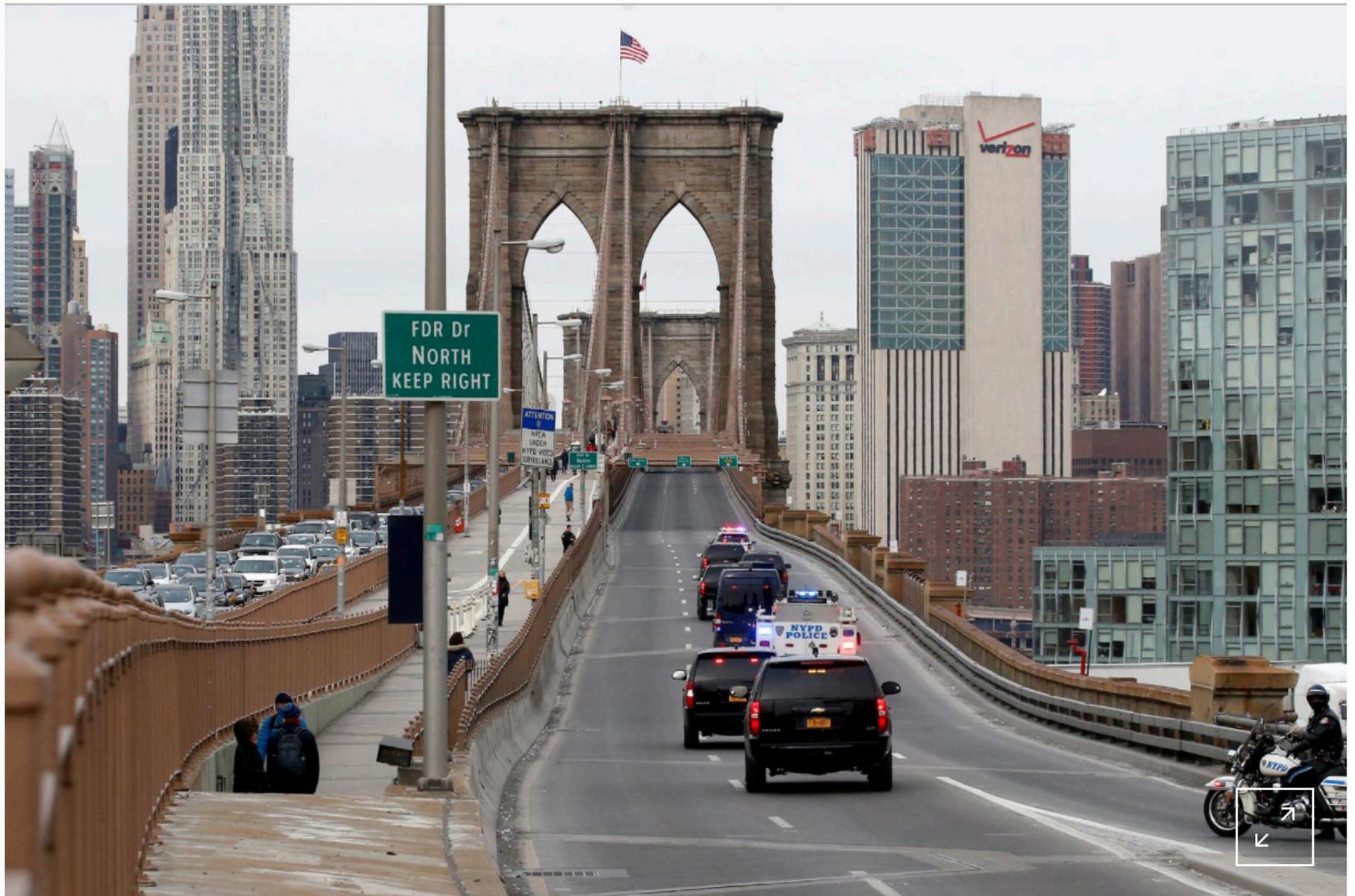
EXHIBIT A



Source: <https://www.reuters.com/article/us-usa-mexico-elchapo/mexican-drug-lord-el-chapo-to-face-u-s-trial-in-september-idUSKCN1FZ2CG>



Source: <https://www.reuters.com/article/us-usa-mexico-elchapo/mexican-drug-lord-el-chapo-to-face-u-s-trial-in-september-idUSKCN1FZ2CG>



Source: <https://in.reuters.com/article/mexico-crime-chapo/el-chapo-lawyers-complain-about-strict-new-york-jail-conditions-idINKBN15I2IR>



Source: <http://wlos.com/news/nation-world/gallery/el-chapos-new-home-a-jail-that-held-mobsters-terrorists#photo-1>

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

UNITED STATES

v.

JOAQUÍN GUZMÁN LOERA,

Defendant.

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Criminal No. 09-0466(BMC)

ORDER

Upon consideration of Defendant’s Motion for Change of venue, any opposition thereto and for good cause shown, it is this ____ day of _____ 2018, hereby

ORDERED, that Defendant’s Motion is **GRANTED**.

BRIAN M. COGAN
UNITED STATES DISTRICT JUDGE