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18 UNITED STATES DISTRICT COURT

19 FOR THE CENTRAL DISTRICT OF CALIFORNIA

20 RICHARD AYVAZIAN,
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21 "Iuliia Zhadko,"
MARIETTA TERABELIAN,
22 aka "Marietta Abelian" and
"Viktoria Kauichko,"
23 ARTUR AYVAZIAN,
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24 TAMARA DADYAN,
MANUK GRIGORYAN,
25 aka "Mike Grigoryan," and
"Anton Kudiumov,"
26 ARMAN HAYRAPETYAN,
EDVARD PARONYAN,
27 aka "Edvard Paronian" and
"Edward Paronyan," and
28 VAHE DADYAN,

No. CR 20-579(A)-SVW

GOVERNMENT'S REPLY IN SUPPORT OF
ITS MOTION IN LIMINE #3 TO EXCLUDE
EVIDENCE OR ARGUMENT THAT OCTOBER
19-20, 2020 MIAMI BORDER STOP AND
NOVEMBER 5, 2020 PREMISES SEARCHES
WERE UNLAWFUL

Hearing Date: June 14, 2021
Hearing Time: 1:30 p.m.
Trial Date: June 15, 2021
Location: Courtroom of the
Hon. Stephen V.
Wilson

Defendants.

Plaintiff United States of America, by and through its counsel of record, the Acting United States Attorney for the Central District of California, Assistant United States Attorneys Scott Paetty, Catherine S. Ahn, and Brian Faerstein, and Department of Justice Trial Attorney Christopher Fenton, hereby files its reply in support of its motion in limine #3 to exclude evidence and arguments, including on cross examination of government witnesses, that the border stop on October 19-20, 2020 at the Miami International Airport and the premises searches conducted on November 5, 2020 were unlawful (ECF 390). This reply is based upon the attached memorandum of points and authorities, the files and records in this case, and such further evidence and argument as the Court may permit.

Dated: June 7, 2021

Respectfully submitted,

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/s/

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REPLY MEMORANDUM OF POINTS AND AUTHORITIES

The government's motion in limine no. 3 seeks to exclude evidence and argument at trial that the border search in Miami or subsequent residence searches in this case were unlawful or violated defendants' constitutional rights. (ECF 390.) The legality of these searches and attendant conduct have been litigated extensively and ruled upon by the Court, and such issues are improper and irrelevant to the jury's consideration of guilt in this case.

Defendant Richard Ayvazyan's ("defendant") opposition states that he will not "argue to the jury that the investigatory activities were illegal but rather that they were emblematic of a shoddy investigation by law enforcement officials who had already concluded the defendants were guilty." (ECF 417 at 1.) But defendant realleges factual matters, including purported "military-style raids" and accusations of "being a terrorist," that pertain solely to the legality of the searches in this case and not to any issues at trial, while also insinuating his intent to raise other due process allegations for the jury's consideration.

This reply addresses defendant's mistaken contentions as to the permissible bounds of questioning the government's investigation at trial. The government also responds to what it perceives to be defendant's intention to make arguments at trial sounding in vindictive or discriminatory prosecution or outrageous government conduct, or arguing issues related to the purported "taint" of the government's evidence to the jury, all of which are improper as a matter of law.

I. EVIDENCE OR ARGUMENT AT TRIAL REGARDING THE ALLEGED UNLAWFULNESS OF GOVERNMENT SEARCHES UNDER THE GUISE OF QUESTIONING THE QUALITY OF THE INVESTIGATION IS IMPROPER

Defendant contends that he will ask the jury “to assess critical questions regarding the completeness and efficacy of the government’s investigation,” relying, in substantial part, on United States v. Sager, 227 F.3d 1138 (9th Cir. 2000). (ECF at 4, 5, 6.) The government does not dispute that the defense may, within prescribed limits and with adequate foundation, question at trial the “quality of the [government’s] investigation,” alleged defects in the evidence, or the credibility and potential bias of the government’s witnesses. Sager, 227 F.3d at 1145, 1146.

Inquiries about the government’s investigation are not without limits, however. As the Sager court observed, “[i]n circumstances different from these, a court may properly decide that such a line of investigation is to be limited for some independent evidentiary reason, such as that the evidence would be cumulative.” Id. at 1146 (citing United States v. Miller, 874 F.2d 1255, 1266 (9th Cir. 1989)). Similarly, in United States v. Yagman, this Court recognized that “Sager does not give Defendant carte blanche to attack all aspects of the [government’s] investigation,” including where “the relevance of such evidence would be substantially outweighed by the risk of jury confusion, undue delay, and prejudice.” United States v. Yagman, CR 06-227(A)-SVW, 2007 WL 9724391, at *6 (C.D. Cal. May 16, 2007); see also United States v. Yagman, 345 F. App’x 312, 314 n.1 (9th Cir. 2009) (affirming court’s exclusion of defense proposed “framing” evidence and noting “none of the proffered testimony would have raised any concerns over the credibility or validity of any of

1 the documentary evidence produced during the government's
2 investigation").

3 Here, in elaborating on the anticipated scope of his inquiry
4 about the government's investigation, defendant states his intention
5 to raise with the jury allegations pertaining to the execution of the
6 searches in this case that have no relevance to the issues at trial.
7 For instance, defendant once again contends that he was "wrongfully
8 accused of being a terrorist" and "l[ied] to . . . about whether he
9 was entitled to a lawyer." (ECF 417 at 2, 4.) He also points once
10 again to purported "military-style raids of the defendants' homes
11 that involved the harassment of the defendants' children." (Id. at
12 2.) Putting aside the inaccuracy and exaggeration of these
13 allegations, which the parties litigated extensively in pretrial
14 motions, these and other potential claims relating to the manner and
15 execution of the border search and premises warrants are irrelevant
16 to the jury's consideration of the evidence at trial, including any
17 purported gaps in the government's investigation.

18 Among other things, these issues pertain (and pertained) solely
19 to the Court's evaluation of defendants' suppression arguments. As
20 noted in the government's moving brief, United States v. Reed, 575
21 F.3d 900 (9th Cir. 2009), is instructive. There, the district court
22 excluded defense expert testimony at trial where the defense "sought
23 to present the same evidence adduced at the hearings on the renewed
24 motion to suppress" relating to alleged "'anomalies' in the wiretap
25 that could indicate that the Government was conducting illegal
26 wiretaps." Id. at 919. The Ninth Circuit affirmed the district
27 court's exclusion of the evidence, reasoning that the "legality of a
28 wiretap and the question of whether the Government had a warrant for

1 a wiretap is not a question for the jury to consider, because it is
2 not immediately relevant to the question of guilt." Id. (citing
3 Jones v. United States, 362 U.S. 257, 264 (1960)); see also Jones,
4 362 U.S. at 264 (requirement that motions to suppress "be made before
5 trial . . . is designed to eliminate from the trial disputes over
6 police conduct not immediately relevant to the question of guilt").
7 The legality of the searches in this case and purported
8 constitutional violations relating thereto are not "immediately
9 relevant to the question of guilt" and thus are irrelevant and carry
10 no probative value at trial.

11 Defendant's anticipated arguments about the conduct of Customs
12 and Border Protection ("CBP") officers in Miami and law enforcement
13 executing the premises search warrants in this District similarly are
14 irrelevant to issues of guilt. Defendant has not proffered any
15 credible information, other than repeated broad and baseless attacks
16 leveled at law enforcement and government personnel, calling into
17 question the validity and integrity of the actual admissible evidence
18 obtained as a result of the border and premises searches. See
19 Yagman, 345 F. App'x at 314 n.1.

20 Moreover, any alleged deficiencies in CBP's questioning of
21 defendant or its border search procedures have already been litigated
22 and ruled upon by the Court. CBP's role in the investigation was
23 minimal in any event. The investigation was conducted primarily by
24 the United States Small Business Administration, Federal Bureau of
25 Investigation, and Internal Revenue Service Criminal Investigation
26 Division. These agencies, not CBP, directed the course of the
27 investigation. CBP became involved only briefly by virtue of
28 defendant's decision to fly through Miami on the way back from Turks

1 & Caicos, and CBP's involvement was limited to conducting its border
2 search procedures during this limited window of time. In his
3 opposition, defendant identifies the government's strategic choices
4 and guiding theories of culpability as the primary purported bases of
5 relevance for introducing evidence about the government's
6 investigation. (See generally ECF 417.) But details about CBP's
7 activities, while relevant to the Court's earlier rulings on the
8 border search, are irrelevant to these broader issues or to any fact
9 of consequence at trial. Fed. R. Evid. 401, 402.

10 Nor is information relating to law enforcement's tactical
11 preparation and safety precautions for the premises search warrants
12 on November 5, 2020 relevant to issues pertaining to the government's
13 broader investigatory strategy. Defendant takes issue with the
14 government's potential need to introduce rebuttal evidence regarding
15 law enforcement's belief about defendant's and several codefendants'
16 association with Armenian Power and possession of numerous firearms.
17 (ECF 417 at 7-8.) Defendant challenges the factual foundation for
18 this information, which the government has explained in multiple
19 filings in this case. (See ECF 188 at 4-6; ECF 207 at 4-6; ECF 310
20 at 13-15). Defendant also posits that the government would be
21 seeking to obtain convictions based on his and his codefendants'
22 "shared Armenian ethnicity." (Id. at 7.) The government intends to
23 do nothing of the kind, but defendant misses the larger point. The
24 government does not intend to introduce any evidence regarding
25 Armenian Power or any of the defendants' possession or suspected
26 possession of firearms. But it would be required to do so if
27 defendant opens the door to issues of law enforcement safety and
28 tactics by injecting irrelevant issues regarding "military-style

1 raids" into trial. See, e.g., United States v. Wales, 977 F.2d 1323,
2 1326 (9th Cir. 1992) (evidence about false driver's licenses
3 admissible where defense "opened the door" on cross-examination);
4 United States v. Segall, 833 F.2d 144, 148 (9th Cir. 1987) (evidence
5 about bank account funds admissible where defense "opened the door"
6 and created "false impression" on cross-examination).

7 Balanced against the lack of any probative value of evidence or
8 arguments regarding the purported unlawfulness of the searches in
9 this case, defendant's retreaded attacks on this basis would pose a
10 substantial danger of unfair prejudice, confusing the issues,
11 misleading the jury, undue delay, and wasting time. Fed. R. Evid.
12 403. The Court already has considered and ruled upon the factual
13 contentions pertaining directly to the suppression motions in this
14 case, as is required. Fed. R. Evid. 104(a). Allowing the jury to
15 hear evidence relating to admissibility issues but untethered to any
16 credible information calling into question the actual integrity of
17 the evidence obtained from the searches would only mislead and
18 confuse the jury. It also would unnecessarily delay trial and waste
19 time by requiring the government to put in rebuttal evidence
20 otherwise not relevant to issues of guilt.

21 **II. DEFENDANT SHOULD BE PRECLUDED FROM OFFERING EVIDENCE OR ARGUMENT**
22 **AT TRIAL REGARDING ALLEGATIONS OF DUE PROCESS VIOLATIONS**

23 In his opposition, and consistent with his approach of casting
24 baseless accusations against the government throughout this case,
25 defendant insinuates that he may seek to raise, directly or
26 indirectly, improper arguments at trial premised on vindictive or
27 discriminatory prosecution or outrageous government conduct. The
28 government's instant motion initially focused on the impropriety of

1 defense arguments at trial regarding the unlawfulness or
2 unconstitutionality of the searches in this case. However, in light
3 of defendant's previous unfounded claims of prosecutorial misconduct,
4 which the Court has rejected, and the tenor of his current filing,
5 defendant once again puts at issue the impropriety of potential
6 defense arguments bearing on purported due process violations at
7 trial.

8 Defendant contends that, "[e]arly in the investigation, the
9 government decided that defendant Richard Ayvazyan and a group of
10 other people of Armenian descent were involved in a single conspiracy
11 and/or scheme to secure" fraudulent COVID-19 disaster relief loans.
12 (ECF 417 at 1-2.) Defendant describes the government's development
13 of evidence against him as a "pre-existing conclusion," "find[ing]
14 evidence that would support the government's unfounded suspicions,"
15 "find[ing] evidence to support its preferred theory," and seeking to
16 "ramrod through a conviction rather than to discover the truth."¹
17 (Id. at 2, 6, 7.)

18
19 ¹ Defendant claims, as he has previously, that the government
20 "failed to follow leads that other people used the identities alleged
21 to have applied for PPP and EIDL loans -- leads that were apparent in
22 the government's own evidence." (ECF 417 at 2.) Defendant provides
23 one example of "an October 13, 2020 purchase at Lamps Plus in
24 California" reflected in a Chase bank statement for an account in the
25 name of "Turing Info Solutions, Inc." controlled by "Iuliia Zhadko."
26 (See Exhibit 3 (Under Seal) to the Declaration of Brian Faerstein,
27 ECF 219-1, at DOJ_PROD_0000099291.) Defendant claims that he could
28 not have been using the "Zhadko" alias because he was in Turks &
Caicos at that time. The evidence demonstrates just the opposite.
Not only does defendant disregard the ubiquity and ease of online or
over-the-phone purchases, but also the Chase bank account statement
in question reflects that the purchase was made through a "Card
Purchase," specifying "Card 3537." (Id.) When defendant was stopped
by CBP in Miami, officers seized, among other things, a physical
Chase credit card in the name of "Iuliia Zhadko, Turing Info
Solutions," with an account number ending in -3537. (See Exhibit 3
(Under Seal) to the Declaration of Scott Paetty, ECF 152-1, at
DOJ_PROD_0000023739.)

1 Defendant's allegations echo, in type if not in degree, his
2 numerous baseless accusations about government misconduct throughout
3 this case. For instance, in defendant's filings seeking to dismiss
4 the case for prosecutorial misconduct, defendant made the following
5 unfounded allegations:

- 6 • "[T]he government assumed that [defendant Ayvazyan] too
7 must be culpable. But there was a hole in that
8 assumption: Ayvazyan was not involved in Zhadko's
9 allegedly fraudulent application. In an effort to fill
that hole, the government began a pattern of misconduct
that has plagued this case," (ECF 289 at 1);
- 10 • "[T]he government attempted to amplify the misimpression
11 it had created that Ayvazyan was some sort of 'ring
12 leader' instead of someone who merely received funds from
13 an array of friends and associates including several
people who had allegedly submitted fraudulent PPP loan
applications," (id. at 3);
- 14 • "While shocking the universal sense of justice is a high
15 standard, the government's determination to trample the
16 civil liberties while cloaking itself in 'terrorism' and
17 'national security' is so outrageous as to merit
dismissal, particularly when combined with the consequent
deletion of evidence and pattern of misconduct," (id. at
18 19);
- 19 • "As a result of its erroneous conclusion based on
20 unlawfully seized evidence, the government became
21 convinced that Ayvazyan was somehow the leader of what
22 the government continuously characterizes as a 'fraud
ring.' The government therefore acted on the unlawfully
seized evidence to turn Ayvazyan's life upside down,"
(id. at 21);
- 23 • "The government has committed flagrant misconduct in
24 violation of ethical rules, the Fourth Amendment, assault
25 and battery laws, destruction of property laws, the
26 Federal Rules of Criminal Procedure and the Court's
discovery order. As a result Ayvazyan has suffered...",
(id. at 23); and
- 27 • "The government's misconduct began with the unlawful
28 interrogation of Ayvazyan at Miami International Airport

1 on October 19, 2020 and has continued into new misconduct
2 as recently as the last two weeks." (ECF 329 at 1.)

3 The Court rejected defendant's allegations of prosecutorial
4 misconduct and should not allow defendant to make such claims to the
5 jury.

6 To the extent defendant intends to argue at trial that he was
7 the victim of vindictive or discriminatory prosecution or outrageous
8 government conduct (all of which are wholly without merit), he should
9 be precluded from doing so. See, e.g., United States v. Sotelo-
10 Murillo, 887 F.2d 176, 182 (9th Cir. 1989) ("Whether the government's
11 conduct is sufficiently outrageous to violate due process is a
12 question of law reviewed de novo. It is not an issue for the jury
13 and Sotelo was not entitled to a jury instruction on the issue.")
14 (internal citation omitted); United States v. Wylie, 625 F.2d 1371,
15 1378 (9th Cir. 1980) ("The question of the outrageous involvement of
16 government agents is a question of law for the court."); United
17 States v. Berrigan, 482 F.2d 171, 174-75 (3d Cir. 1973) ("question of
18 discriminatory prosecution relates not to the guilt or innocence of
19 appellants, but rather addresses itself to a constitutional defect in
20 the institution of the prosecution"); see also Yagman, 2007 WL
21 9724391, at *4 ("Defendant cannot cloak vindictive prosecution
22 arguments under the guise of a defense that he has been framed.").

23 **III. DEFENDANT SHOULD BE PRECLUDED FROM OFFERING EVIDENCE OR ARGUMENT**
24 **AT TRIAL REGARDING PURPORTED "TAINT" OF GOVERNMENT EVIDENCE**

25 Defendant raises another argument in his opposition not
26 addressed initially in the government's motion in limine but that
27 warrants a response. Specifically, defendant contends numerous times
28 that he should be entitled to "probe the government's investigation"

1 to prevent the government from “further benefit[ing] from the taint
2 that has infected the government’s indictment and evidence.” (ECF
3 417 at 1; see also id. at 2 (“government has relied on tainted
4 evidence to form and repeatedly confirm its flawed central theory of
5 the case”); id. at 9 (“the indictments in this case are already
6 tainted”); id. (“cut[ting] off questioning regarding its
7 investigation tactics gives the government the opportunity to
8 directly and indirectly use tainted evidence with abandon”).

9 The Court has ordered that a Kastigar hearing be held post-trial
10 to determine the extent, if any, to which the government has used
11 purportedly tainted evidence in investigating and prosecuting this
12 case. That hearing, not trial, will be the appropriate time and
13 place for defendant to explore his theories about allegedly tainted
14 evidence. These legal issues are irrelevant to the jury’s
15 consideration of guilt and pose a substantial danger of confusing the
16 issues and misleading the jury, and defendant should be precluded
17 from raising them at trial. Fed. R. Evid. 401-403.

18 **IV. CONCLUSION**

19 For the foregoing reasons, and the reasons set forth in its
20 motion (ECF 390), the government respectfully requests that this
21 Court exclude defense evidence and arguments that the border stop on
22 October 19-20, 2020 in Miami and the residence searches conducted on
23 November 5, 2020 were unlawful or that the manner in which law
24 enforcement agents engaged in these searches violated defendants’
25 constitutional rights. The government further requests that this
26 Court exclude defense evidence and arguments regarding alleged due
27 process violations or allegedly “tainted” evidence.