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UNITED STATES OF AMERICA

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

RICHARD AYVAZYAN,
aka "Richard Avazian" and
"Iuliia Zhadko,"
MARIETTA TERABELIAN,
aka "Marietta Abelian" and
"Viktoria Kauichko,"
ARTUR AYVAZYAN,
aka "Arthur Ayvazyan," and
TAMARA DADYAN,
MANUK GRIGORYAN,
aka "Mike Grigoryan," and

No. CR 20-579(A)-SVW

GOVERNMENT'S MEMORANDUM IN OPPOSITION TO MOTIONS FOR JOINDER [ECF 346, 347, 348 AND 350]

"Anton Kudiumov,"
ARMAN HAYRAPETYAN,
EDVARD PARONYAN,
aka "Edvard Paronian" and
"Edward Paronyan," and
VAHE DADYAN,

Defendants.

The United States hereby submits this memorandum in opposition to defendants Manuk Grigoryan's, Vahe Dadyan's, Edvard Paronyan's, Artur Ayvazyan's, and Tamara Dadyan's (collectively, the "moving defendants") motions to join defendants Richard Ayvazyan and Marietta Terabelian's "Motion for a Kastigar Hearing, to Disqualify the Prosecution Team, and to Dismiss." (ECF 346, 347, 348, and 350.)

I. Introduction

On May 17, 2021, Ayvazyan and Terabelian moved the Court for a Kastigar hearing premised on the Court's finding that they were coerced into providing border agents with their cellular telephone pass codes. (ECF 338.) See Kastigar v. United States, 406 U.S. 441 (1972). On May 19 and 20, 2021, the moving defendants applied to join Ayvazyan and Terabelian's motion. (ECF 346, 347, 348, and 350.) The motions for joinder do not allege that the moving defendants were compelled to make any statement to law enforcement – much less a testimonial statement compelled by a grant of immunity. Instead, they argue that the government should be required to prove that they were not prejudiced by what the Court found to be a violation of Ayvazyan's and Terabelian's Fifth Amendment rights. As set forth below, the Court should reject the moving defendants' motions for

joinder because criminal defendants lack standing to assert a violation of another individual's Fifth Amendment rights.[1]

II. Argument

The moving defendants should not be permitted to participate in any Kastigar hearing relating to statements made by Ayvazyan and Terabelian because "[i]t has long been settled that the privilege against self-incrimination is personal to the witness." Bowman v. United States, 350 F.2d 913, 915 (9th Cir. 1965) (denying standing to raise objection to improper denial of another's right to "take the Fifth"); see also Moran v. Burbine, 475 U.S. 412, 433 n.4 (1986) (noting "the elemental and established proposition that the privilege against compulsory self-incrimination is, by hypothesis, a personal one that can only be invoked by the individual whose testimony is being compelled").

In In re Grand Jury Subpoena Dated August 14, 2019, the Eighth Circuit rejected the same argument advanced by the moving defendants when it held that the Fifth Amendment did not prohibit the government from offering statements compelled by several police officers in an excessive force investigation of another officer. 964 F.3d 768 (8th Cir. 2020). Specifically, the court held "the privilege [against self-incrimination] only prohibits the use of compelled statements and their fruits against the person making the compelled statements. Therefore it does not prohibit a grand jury or government

[1] The government hereby incorporates by reference the arguments that it raised in its motion for reconsideration. (ECF 344.) The government submits that the motions for joinder should be denied because no Kastigar hearing should be held as to any defendant. While preserving the argument that no Kastigar hearing should be held, this submission addresses the moving defendants' lack of standing even if a Kastigar hearing for defendants Ayvazyan and Terabelian is held.

investigators from using compelled statements of other officers against the target of the investigation." Id. at 772 (emphasis in original).[2] Kastigar itself made clear that its independent source doctrine applied only to statements made by a defendant who was compelled to make a statement under a grant of immunity: "Immunity from the use of compelled testimony, as well as evidence derived directly and indirectly therefrom, affords this protection. It prohibits the prosecutorial authorities from using the compelled testimony in any respect, and it therefore insures that the testimony cannot lead to the infliction of criminal penalties on the witness." Kastigar, 406 U.S. at 453 (emphasis added).

The unstated premise of the moving defendants' argument is that the government is prohibited from using compelled testimony – or investigative leads derived from compelled testimony – in any criminal investigation of any person. That proposition is perfectly at odds with 18 U.S.C. §§ 6002 and 6003, which permit courts, upon an application of the Attorney General, to immunize and compel a witness to testify in a criminal case.[3] Kastigar emphasized the important and legitimate law enforcement functions that these statutes serve: "[a]mong the necessary and most important of the powers of the States as well as the Federal Government to assure the effective functioning of government in an ordered society is the broad power to compel residents to testify in court or before grand juries or agencies." 406 U.S. at 444. Requiring the government to make a Kastigar showing

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[2] Grigoryan's motion cites United States v. Montoya, but that case made clear that its decision did not address the Fifth Amendment standing of the defendant who did not make a statement under compulsion. 45 F.3d 1286, 1291 n.4 (9th Cir. 1995).

[3] Why would Congress create a procedure for prosecutors to obtain evidence which they could never use?

in any case in which it exercised 18 U.S.C.§§ 6002 and 6003 would render these important powers meaningless.

III. Conclusion

For the foregoing reasons, the Court should deny the motions to join filed as ECF 346, 347, 348 and 350.

Dated: May 20, 2021

Respectfully submitted,

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