

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

v.

LUIS POSADA CARRILES,

Defendant.

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SEALED-4
EP-07-CR-87-KC

ORDER

On this day, the Court considered the "Sealed Motion of Ann Louise Bardach for Clarification of Protective Order." ("Motion to Clarify") (Doc. No. 337). For the reasons set forth herein, the Motion is **GRANTED** in part. The Court clarifies its January 20, 2010 Order below.

Journalist Ann Louise Bardach ("Bardach") moves the Court to clarify its Order entered on January 20, 2010 granting Defendant Luis Posada Carriles's ("Posada") Motion to Expand the Court's August 2009 Protective Order. Mot. to Clarify 1. Bardach seeks clarification that the January 20, 2010 Order expanding the Court's August 25, 2009 Protective Order does not prohibit her from publishing information she has gathered through her own journalistic efforts. *Id.* at 5. Further, she asks the Court to specify that if Posada or his counsel "wish to provide Ms. Bardach or other non-parties Protected Materials or sealed documents filed in this case, they must first obtain agreement from Ms. Bardach or the other non-party that they will be bound by the protective order." *Id.* Without such an agreement, Bardach asks that Protected Materials and sealed documents should not be disseminated to her without a Court Order. *Id.*

On January 11, 2010, Posada filed his "Motion to Expand Protective Order" ("Motion to Expand") (Doc. No. 294). In this Motion to Expand, Posada requested that the Court extend the Protective Order in this case to include intervening and interested parties, including Bardach, Larry Rohter and *The New York Times*, because his Renewed Motion for a Subpoena Duces Tecum "necessarily discusses the content and other matters regarding the Bardach Tapes, which would violate the spirit of the Protective Order if Intervening or Interested Parties, who are not subject to the terms of the Protective [Order], were served with a copy of the motion or filed any papers without seeking leave for the papers to be filed under seal." Mot. to Expand 2. On January 20, 2010, the Court granted by text order this Motion.

Bardach's understanding of the Court's orders is correct when she states "the expanded order does not impose a prior restraint on Ms. Bardach from publishing information she has obtained through her own journalistic efforts." Mot. to Clarify 5. The January 20, 2010 Order was never intended to prevent Bardach from disseminating the product of her journalistic endeavors including her interviews with Posada.

Nothing in the Order granting the Motion to Expand alters what was stated in the August 2009 Protective Order and the related Order granting in part the Motion for Protective Order and Motion to Intervene. As Bardach points out in the Motion to Clarify, she did not obtain the tape recordings through this case. Mot. to Clarify 3. And, as she explains, one of the purposes of the Court's August 2009 Protective Order was to protect her economic and financial interests in the journalistic materials, including her ability to distribute these materials in any manner she sees fit. *See August 25 2009 Order regarding Motion for Protective Order and Motion to Intervene* 11. As set out in the August 25, 2009 Order, Bardach has the right to use information gathered

in her role as a professional journalist including publishing materials gathered in that role. *Id.* There is no prior restraint and the Court's granting Posada's Motion to Expand does not change this fact.

However, Bardach must keep in mind that the Court has entered the August 2009 Protective Order not only to protect her interests but also to protect the integrity of this trial. *See id.* at 11-13. For this reason, the Court granted Posada's Motion to Expand in order to extend, at this time, the scope of the August 2009 Protective Order to include Bardach, and the other intervening and interested parties, as parties to receive Posada's Renewed Motion for Subpoena Duces Tecum. *See* January 20, 2010 Text Order. Thus, knowledge of Protected Materials gained by Bardach, and other interested parties, through their direct participation in this case may be subject to the terms of the August 2009 Protective Order, as ordered by the Court.

Furthermore, the procedures for providing access to Protected Materials remain as set forth in the Court's August 2009 Protective Order.

SO ORDERED.

SIGNED on this 26th day of January 2010.



KATHLEEN CARDONE
UNITED STATES DISTRICT JUDGE

**UNITED STATES DISTRICT COURT****WESTERN DISTRICT OF TEXAS**

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Chambers Of
KATHLEEN CARDONE
Judge

FACSIMILE TRANSMISSION**Date:** January 27, 2010

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