IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS HOUSTON DIVISION

UNITED STATES OF AMERICA,	§	
	§	
	§	
v.	§	**Criminal No. 4:25-cr-00415**
	§	
	§	
MARIO ALBERTO AVILA LIZARRAGA AND RAMON ALEXANDRO ROVIROSA MARTINEZ,	§	
	§	
	§	
	§	
Defendants.		

GOVERNMENT'S OPPOSITION TO ROVIROSA'S MOTION TO DISMISS BASED ON CONSTITUTIONAL GROUNDS

The United States hereby responds in opposition to Defendant Ramon Alexandro Rovirosa Martinez's ("Rovirosa") Motion to Dismiss ("Motion"). ECF No. 33.

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INTRODUCTION AND ISSUES PRESENTED

Rovirosa's untimely and noncompliant Motion seeks extraordinary relief: to dismiss an indictment issued by a properly impaneled grand jury based on unsubstantiated and misleading allegations of misconduct. ECF No. 33. In his Motion, Rovirosa repeats the same flawed arguments he has made in a string of filings over the last several weeks[1], this time alleging violations of his rights under the Fifth and Sixth Amendments.

As background, Rovirosa's arguments center around and often conflate statements in two documents: (1) the Government's Motion for Release Conditions (the "Motion for Release Conditions"), ECF No. 11, filed in connection with its recommendation to the magistrate judge for stringent bond conditions and alerting the Court, as it should, that the investigation had uncovered evidence from multiple sources that Rovirosa had ties to Mexican cartel members and had engaged in violent conduct ("the Motion for Release Conditions statements"), and (2) a single sentence in the Government's press release stating that, "according to [public] court documents" (*i.e.*, the Motion for Release Conditions) Rovirosa "is alleged to have ties to Mexican cartel members." ECF No. 29-3. Although much of his Motion is superfluous, it boils down to two key issues for the Court to decide:

1) Do the Motion for Release Conditions statements and/or the press release statement affect Rovirosa's ability to obtain impartial jurors or to otherwise obtain a fair trial?

2) Does Rovirosa's speculation about the Government's motives amount to a legitimate allegation of selective prosecution?

As discussed in more detail below, both the Motion for Release Conditions statements and the press release statement were appropriate, and neither can form the basis for dismissing the

[1] *See* Motion to Strike, ECF No. 29; Motion for Bill of Particulars, ECF. No. 30 at 2-6; Amended Motion to Sever, ECF No. 40 at 6-8, 11-12; Omnibus Motion in Limine, ECF No. 43 at 3-4, 9-10.

Indictment. The Court should deny the Motion and allow the case to proceed to trial.

First, despite his inflammatory rhetoric, Rovirosa has failed to show any misconduct—let alone misconduct so severe as to affect his right to a fair trial. As the Government explained in its Response to Rovirosa's Motion to Strike, the Motion for Release Conditions statements were directly relevant to Rovirosa's risk of flight, and they were supported by evidence gathered from the Government's long-running investigation. *See* Government Response, ECF No. 38. Statements supporting a bond or detention argument need not be related to elements of the charged offenses, and, as here, they need not ultimately have anything to do with the trial.

Similarly, the press release statement accurately reported an allegation that was stated in a public filing, and that Rovirosa's former counsel reviewed and did not raise an objection to at the bond hearing. After the press release was issued, Rovirosa's then-counsel informed the Government that Rovirosa was receiving questions from others in the community that he claimed raised safety concerns, and Rovirosa's counsel requested that the Government remove the sentence from its press release. Out of an abundance of caution, the sentence was deleted from the press release the next day. ECF No. 38 at 10. On these facts, the notion that the Government was attempting to label Rovirosa a "supervillain" with the press release statement is absurd on its face.

Nor is there any reasonable concern that the jury pool in Houston is so affected by that sentence in the press release that Rovirosa cannot have a fair trial. While the sentence was in fact picked up by several media outlets, it did not garner the kind of widespread publicity that could taint an entire jury pool, especially a jury pool as large as this one. Indeed, the media outlets which cited the press release statement appear to be largely niche trade and legal publications and news media in Mexico. ECF No. 29, Ex. 5. In any event, virtually every judge in this district has handled significantly higher-profile matters than this one, and the Court is capable of screening

jurors who may have knowledge of the case through the ordinary *voir dire* process.

Second, although Rovirosa claims he is the target of selective prosecution due to his race and the current administration's alleged political agenda, Rovirosa has adduced no evidence that he was charged or targeted because of improper motives. Rovirosa and his co-defendant were charged after a long-running investigation carried out by career prosecutors that began under the previous administration. His allegations about the Government's motives, its "political directives," and why other cases were pursued or not pursued are merely deliberatively provocative speculation designed to distract from the evidence and charges against him.

ARGUMENT

I. The Government's Statements Do Not Amount to Prosecutorial Misconduct, and Rovirosa's Constitutional Rights Were Not Violated.

Rovirosa has failed to provide any evidence of prosecutorial misconduct, let alone of misconduct "so outrageous" that it impinges on his constitutional right to have a fair trial. *See, e.g.*, *United States v. Johnson*, 68 F.3d 899, 902 (5th Cir. 1995). In fact, in the more than 40 pages of his Motion, Rovirosa cites no authority for his main claims and fails to engage at all with the robust body of case law that rejects precisely the types of arguments he advances here.

The Fifth Circuit has consistently held that "[t]o prevail on [] a claim [of prosecutorial misconduct], [defendant] must make two showings. First, he must show that 'the prosecutor made an improper remark.' . . . And second, he must show prejudice." *United States v. Beaulieu*, 973 F.3d 354, 360 (5th Cir. 2020) (citations omitted); *United States v. Lankford*, 196 F.3d 563, 574 (5th Cir. 1999); *United States v. Fields*, 72 F.3d 1200, 1207 (5th Cir. 1996).

The Fifth Circuit has emphasized that "'[t]he prejudice step of the inquiry sets a high bar: 'Improper prosecutorial comments constitute reversible error only where the defendant's right to a fair trial is substantially affected.'" *Trottie v. Stephens*, 720 F.3d 231, 253 (5th Cir. 2013)

(quoting *United States v. Ebron*, 683 F.3d 105, 140 (5th Cir. 2012) (quoting *United States v. Holmes*, 406 F.3d 337, 355-56 (5th Cir. 2005))).

Similarly, the Fifth Circuit has repeatedly held that the standard for dismissal of an indictment based on government misconduct in violation of a defendant's due process rights is exceptionally high and appropriate only in extreme cases. "Government misconduct does not mandate dismissal of an indictment unless it is 'so outrageous' that it violates the principle of 'fundamental fairness' under the due process clause of the Fifth Amendment. Such a violation will only be found in the rarest circumstances." *Johnson*, 68 F.3d at 902 (quoting *United States v. Russell*, 411 U.S. 423, 431-32 (1973)).

Moreover, "even in the case of the most 'egregious prosecutorial misconduct,' [an] indictment may be dismissed only 'upon a showing of actual prejudice to the accused.'" *United States v. McKenzie*, 678 F.2d 629, 631 (5th Cir. 1982) (quoting *United States v. Merlino*, 595 F.2d 1016, 1018 (5th Cir. 1979)). "Dismissal of an indictment with prejudice is a rare result because, even in the face of prosecutorial misconduct, there is a 'public interest in having indictments prosecuted.'" *United States v. Swenson*, 894 F.3d 677, 685 (5th Cir. 2018) (quoting *United States v. Welborn*, 849 F.2d 980, 985 (5th Cir. 1988)).

A similar analysis applies to the evaluation of claims of prejudicial pretrial publicity under the Fifth and Sixth Amendments. "A presumption of prejudice . . . attends only the extreme case." *Skilling v. United States*, 561 U.S. 358, 381 (2010); *see also Neb. Press Ass'n v. Stuart*, 427 U.S. 539, 554 (1976) ("pre-trial publicity even pervasive, adverse publicity does not inevitably lead to an unfair trial"). Indeed, the Supreme Court recognized in *Skilling*that a fair trial is possible even for the most notorious or high-profile defendants. *Skilling*, 561 U.S. at 377-85 (holding that the defendant was able to have a fair trial despite relentless press coverage of the Enron scandal in the

Houston area). The Court noted that "the size and characteristics of the community in which the crime occurred" and the nature of the pretrial publicity are factors which should inform a court's decision as to whether there should be a presumption of juror prejudice. *Id.*; *see also United States v. Chagra*, 669 F.2d 241, 251 (5th Cir. 1982) ("The principle of presumptive prejudice…is only rarely applicable, and is confined to those situations where the petitioner can demonstrate an extreme situation of inflammatory pretrial publicity that literally saturated the community in which his trial was held.") (quoting *Mayola v. Alabama*, supra, 623 F.2d 992, 997 (5th Cir. 1980)) (citations omitted)).

A. The Statements in the Motion for Release Conditions and Press Release Were Accurate and Consistent with Department of Justice ("DOJ") Policies and Rules of Professional Conduct

As discussed in detail in the Government's Opposition to Rovirosa's Motion to Strike, the allegations implicating Rovirosa's violent conduct and connections to cartel members in the Motion for Release Conditions were serious and were substantiated by evidence from multiple sources. *See* ECF No. 38 at 6-7, 9-10; Exs. 8-11, 11T. Rovirosa's persistent descriptions of and referrals to the Government's Motion for Release Conditions as "a false document" (ECF No. 33 at 4); "improper, misleading, and false information" (*id*. at 13-14); "patently false" (*id*. at 21); and a "fake filing" (*id*. at 23) are directly contradicted by the underlying documents that the Government submitted as exhibits with its Opposition to the Motion to Strike. Those documents present serious evidence of Rovirosa's alleged connections to cartel members and prior violent conduct. ECF No. 38 at Exs. 8-11, 11T. While Rovirosa attempts to dismiss some of those materials as "internet nonsense" (ECF No. 33 at 21) and "internet rumors and innuendo" (*id*. at 23), he does not and cannot refute that the Government's evidence covers a five-year timeframe

and came from multiple sources, including [redacted]. *See* ECF No. 38 at 6-7, 9-10.[2]

These allegations were properly presented to the magistrate judge in order to help inform his decision regarding conditions of release. *See* 18 U.S.C. § 3142(g) (listing the factors to be considered by a judicial officer when determining conditions of release, including "the history and characteristics of the person"). When evaluating detention or other conditions of pretrial release, judicial officers are statutorily permitted to consider various types of evidence, often including evidence inadmissible at a substantive trial. *See* 18 U.S.C. § 3142(f); *United States v. Fortna*, 769 F.2d 243, 250 (5th Cir. 1985).

Rovirosa's alleged ties to cartel members and prior involvement in violent conduct—along with his significant financial resources and access to a private jet that he previously used for international travel—were part of the mix of information that a magistrate judge should properly consider when determining the appropriate conditions for release. It was therefore appropriate for the Government to bring that information to the magistrate judge's attention in the Motion for Release Conditions. Indeed, filing such a motion was consistent with recent DOJ practice across districts around the country. *See* ECF No. 38 at 11-12.

Rovirosa argues that the Government's statements were improper for two reasons, both of which fail.

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[2] Rovirosa claims that he "had never heard [the allegations about his links to cartel members] before in his life" before his arraignment and that "[n]o one had." ECF No. 33 at 14. This assertion is contradicted by the evidence. The materials the Government submitted with its Opposition to the Motion to Strike clearly demonstrate [redacted] going back at least as far as 2019 and continuing at least until 2024. *See* ECF No. 38 at Exs. 8-11, 11T. In fact, one of the exhibits [redacted] *Id.* at Exs. 11, 11T.

First, Rovirosa incorrectly claims that 28 C.F.R. § 50.2 "flatly prohibits" the Government's filing of the Motion for Release Conditions. ECF No. 33 at 25. As an initial matter, Section 50.2 applies to the "release of information to news media," 28 C.F.R. § 50.2(b)(1), not court filings like the Motion for Release Conditions. As for the press release statement, internal regulations and guidance documents like 20 C.F.R. § 50.2 do not give rise to a private right of action. *United States v. Perez*, Case No. 6:17-35, 2017 WL 4682321, at *4 (S.D. Tex. Oct. 18, 2017) ("As a policy statement only, § 50.2 does not create a private right of action for enforcement") (citing *Hatfill v. Ashcroft*, 404 F. Supp. 2d 104, 121 (D.D.C. 2005)). In any event, even if the regulation could form the basis of an action, on its face, it only addresses statements or information furnished "for the purpose of influencing the outcome of a defendant's trial," or which "may reasonably be expected to influence the outcome of a pending or future trial." 28 C.F.R. § 50.2(b)(2). Rovirosa fails to explain how a single, factually accurate sentence, which was removed at the request of then-counsel after one day, could reasonably be understood to have been furnished "for the purpose of influencing the outcome of [Rovirosa's] trial" or could reasonably be expected by the Government "to influence the outcome of" his foreign bribery trial. The press release statement, after all, merely states in colorless fashion that a publicly filed court document contains *allegations* that Rovirosa has ties to cartel members. It neither discusses nor describes anything about the nature of those ties. Nor does it discuss anything else about Rovirosa's character, or anything involving violence, drugs, or terrorism. The notion that the press release statement was designed to paint Rovirosa as a "supervillain" is therefore not plausible.

Second, following a similar line of logic, Rovirosa argues that the Motion for Release Conditions statements and/or the press release statement run afoul of the Model Rules of Professional Responsibility and the Texas Disciplinary Rules of Professional Conduct.

As a threshold matter, the rules of professional conduct do not confer substantive rights on criminal defendants and are not a basis for any relief, much less dismissal of an indictment. *See United States v. Parrish*, No. 4:20-CR 124, 2022 WL 662306, at *4 (S.D. Ga. Mar. 4, 2022), *report and recommendation adopted*, No. 4:20-CR-124, 2022 WL 987994 (S.D. Ga. Mar. 31, 2022) (noting that "this Court, like other courts considering similar arguments, has rejected the argument that professional conduct rules confer substantive rights on criminal defendants"); *United States v. Acosta*, 111 F.Supp.2d 1082, 1095 (E.D. Wis. 2000) ("[T]he rules of professional conduct are not intended to create substantive rights."); Tex. R. Prof. Cond. Preamble ¶ 15 (stating that a "[v]iolation of a rule does not give rise to a private cause of action"); Model R. Prof. Cond. Scope ¶ 20 ("Violation of a Rule should not itself give rise to a cause of action against a lawyer nor should it create any presumption in such a case that a legal duty has been breached.").

In any event, as Rovirosa expressly acknowledges, Model Rules 3.6 and 3.8 and Texas Rules 3.07 and 3.09 apply only to *extrajudicial* statements, not to court filings such as the Motion for Release Conditions. ECF No. 33 at 26-27. Thus, this argument can only apply to the press release statement. The press release statement, for its part, does not implicate either the Model Rules or the Texas Rules because, on its face, it does not "have a substantial likelihood of materially prejudicing an adjudicatory proceeding." Model R. 3.6(a); Texas R. 3.07(a). Nor is it an "extrajudicial comment[] that ha[s] a substantial likelihood of heightening public condemnation of the accused . . . ." Model R. 3.8(f). Indeed, Rovirosa has not and cannot explain how a brief statement that accurately described court filings (which were themselves appropriate and backed by evidence) could materially prejudice Rovirosa at his future trial for charges related to separate allegations. Nor can he explain how that statement could rise to the level of "heighten[ed] public condemnation."

Under similar circumstances, courts have routinely rejected defendants' efforts to seek dismissal on these bases. Judge Rainey's decision in *Perez* is instructive. There, the court rejected the defendant's argument that the Acting United States Attorney had violated 28 C.F.R. § 50.2 by issuing a media advisory and holding a press conference on the day of indictment, observing that the Acting United States Attorney "explicitly stated that Defendant is innocent until proven guilty, limited his comments to uncontroverted facts allowed under § 50.2(b)(3)—most of which was already revealed at Defendant's detention hearing—and did not make any subjective statements concerning Defendant or release any information prohibited under §§ 50.2(b)(4) or 50.2(b)(6)." *Perez*, 2017 WL 4682321, at *5. The court further noted that the U.S. Attorney's Manual authorized discussion of the public policy significance of a case by the appropriate United States Attorney or Assistant Attorney General, in the interest of furthering law enforcement goals. *Id*. Here, like *Perez*, the DOJ press release stated that the indictment is "merely an allegation" and that "[a]ll defendants are presumed innocent until proven guilty beyond a reasonable doubt in a court of law." Furthermore, the statement itself merely reported that "according to Court documents" Rovirosa "is alleged" to have ties to cartel members, and that information had already been revealed at Rovirosa's bond hearing.[3] Moreover, any discussion by the Acting Assistant Attorney General regarding the public policy significance of the case in furtherance of law enforcement goals was proper under Justice Manual § 1-7.500.[4]

A district court's decision in *United States v. Woodberry*, 546 F. Supp. 3d 180 (E.D.N.Y. 2021) also directly undermines Rovirosa's claims here. In *Woodberry*, the defendant sought

[3] As noted above, the information was uncontroverted at the hearing.

[4] Although the Justice Manual supports the propriety of the conduct here, even if it did not, it "is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter, civil or criminal." JM § 1-1.200.

dismissal of an indictment based on alleged violations of pretrial publicity rules relating to a press release and statement by the United States Attorney. The government filed a Detention Memorandum on the public docket and described various robberies and attempted robberies by the defendant in support of its detention arguments. The United States Attorney's Office later cited those descriptions in a press release and statement. *Id*. at 183-84. Among other reasons, the court rejected the defendant's arguments regarding improper pretrial publicity because (1) whether the press release and statement violated DOJ policy or rules of professional conduct was "immaterial to the motion before the Court," (2) the press release was proper because it "did not comment on any information that was not part of public filings before the Court," since "the Government's Detention Memorandum, also a public document, described all of Defendant's alleged robberies and attempted robberies," and (3) the press statement "was made by the U.S. Attorney himself, not by a line prosecutor assigned to the case," and "it is part of the role of a U.S. Attorney to make policies in connection with the administration of the USAO." *Id*. at 187-88. The same reasoning applies here. Neither the C.F.R., the Texas Disciplinary Rules, nor the Model Rules create substantive rights for defendants. Even if they did, the Government's properly filed Motion for Release Conditions and the Criminal Division's press release discussing information filed on the public docket would not run afoul of those rules.

B. Rovirosa Cannot Show Prejudice

Because Rovirosa has not established that the Government's conduct or statements were improper, the Court's inquiry should end there. But even if the Government's statements were improper, Rovirosa could not show any prejudice resulting from those statements. Indeed, Rovirosa's theory of prejudice is based on an entirely false premise: that the Motion for Release Conditions statements and/or the press release statement mean that Rovirosa's alleged tie to cartel members will become a central focus of *voir dire* and of the trial itself.

For example, when discussing the alleged "Constitutional Impact," of the statements, Rovirosa represents that the Government "ha[s] forced [him] to put on a cartel case," claiming that

> Rovirosa will now have to address this issue with the jurors in *voir dire*, contend with it as part of the trial (explaining why the prosecutors would bring a "cartel" FCPA case to the *petit* panel) and challenge the "cartel" investigation when questioning witnesses (it is the reason prosecutors brought this case).

ECF No. 33 at 29.

None of this is correct. To the extent Rovirosa is concerned that potential jurors might be aware of his alleged cartel ties, his counsel can solve that issue in *voir dire* by asking whether any of the jurors have heard of Rovirosa or have read anything in the press about Rovirosa. If the answer to those questions is "no," then, with great certainty, the jurors would have no knowledge of his alleged cartel ties and there would be no reason to raise the issue. As for the trial, the Indictment charges Rovirosa with three counts of violating the FCPA and one count of conspiring to violate the FCPA in connection with a scheme to bribe PEMEX and PEP officials. ECF No. 1 at ¶¶ 64-65. The Government has not alleged *any* facts that would require evidence of Rovirosa's alleged cartel ties (or the absence thereof). The Government has no intention of raising this issue or introducing related evidence in its case-in-chief and sees no legitimate, probative reason why Rovirosa would need to do so in his defense. In fact, the Government has filed a motion *in limine* making this representation and asking the Court to prohibit Rovirosa from mentioning anything about cartels without previewing its relevance to the Court. Accordingly, Rovirosa has made no showing of prejudice at all.

Rovirosa also fails to show any prejudice resulting from pretrial publicity. A criminal defendant arguing that pretrial publicity violates the right to a fair trial must either show that the publicity resulted in (1) actual prejudice or (2) presumed prejudice. Actual prejudice does not apply at the pretrial stage, since it requires a showing that an actual panel of jurors was prejudiced.

A presumption of prejudice "attends only the extreme case." *Skilling*, 561 U.S. at 381.

Rovirosa does not and cannot explain how a single sentence that was present for one day in a DOJ press release has so poisoned the potential jury pool in the Houston Division of the Southern District of Texas—a geographic area covering 13 counties with a population of over 5.5 million people[5]—so as to make it "impossible to get a fair trial in this case going forward." ECF No. 33 at 38.

Indeed, the Supreme Court has specifically distinguished Houston from other, smaller communities in this regard, noting that:

> Houston, in contrast, is the fourth most populous city in the Nation: At the time of Skilling's trial, more than 4.5 million individuals eligible for jury duty resided in the Houston area…Given this large, diverse pool of potential jurors, the suggestion that 12 impartial individuals could not be empaneled is hard to sustain.

Skilling, 561 U.S. at 382. *See also Mu'Min v. Virginia,* 500 U.S. 415, 429 (1991) (potential for prejudice mitigated by the size of the "metropolitan Washington [D. C.] statistical area, which has a population of over 3 million, and in which, unfortunately, hundreds of murders are committed each year"); *Gentile* v. *State Bar of Nev.*, 501 U.S. 1030, 1044 (1991) (plurality opinion) (reduced likelihood of prejudice where venire was drawn from a pool of over 600,000 individuals).

In any event, the sparse nature of the pretrial publicity in this case cannot support a presumption of prejudice to the jury pool. Despite Rovirosa's rhetoric to the contrary, there is no "global media campaign," ECF No. 33 at 38, permeating the news such that Rovirosa cannot receive a fair trial. The Government does not contest that certain news outlets have reported on Rovirosa's alleged ties to cartel members. However, the news stories about this case have, to the Government's knowledge, not contained any "confession or other blatantly prejudicial information

[5] United States Attorney's Office, Southern District of Texas, "About Us," available at https://www.justice.gov/usao-sdtx/about-us.

of the type readers or viewers could not reasonably be expected to shut from sight." *Skilling*, 561 U.S. at 382; *see also Mu'Min*, 500 U.S. at 429. Nor has the media coverage clearly "saturated the community," *United States v. Lipscomb*, 299 F.3d 303, 344 (5th Cir. 2002). Indeed, the exhibit that Rovirosa attached to his Motion in support of his "global media campaign" claim, ECF No. 33 at 27 (citing ECF No. 33-23), contains a total of eight articles, most of which focus on the foreign bribery charges that have been brought against Rovirosa and Avila, and only briefly mention Rovirosa's alleged ties to cartel members. Most of the articles concerning this case are in niche and specialized *legal* publications that cover white-collar criminal enforcement and the FCPA (Global Investigations Review, Law360, Bloomberg Law, etc.), or are in Mexican news media. In fact, as of the date of this filing, the Government was unable to even find one article in the Houston Chronicle on this case.

Even in cases in which a defendant has provided documentation establishing that his case has received extensive pretrial publicity, the Fifth Circuit has rejected claims that such widespread publicity itself can be used to demonstrate "pervasive community prejudice," when a defendant has failed to show that the publicity "involve[d] incriminating information [of] the type that would influence a decision by a potential juror." *United States v. Parker*, 877 F.2d 327, 331 (5th Cir. 1989); *see also United States v. Fastow*, 292 F. Supp. 2d 914, 918 (S.D. Tex. 2003) (finding defendant could not establish a presumption of prejudice from pretrial publicity where "[a]ll statements made by the Government were relevant and appropriate to the issues they were discussing at the time-indictment and conditions of bond").

Finally, even if Rovirosa could show sufficient prejudice from pretrial publicity (he cannot), he cites no legal authority in support of his claim that dismissal of the Indictment would

be the appropriate remedy.[6] In fact, courts around the country have routinely found otherwise. *See, e.g.*, *Parrish*, No. 4:20-CR 124, 2022 WL 662306, at *6 ("Courts have noted the complete absence of federal precedent dismissing an indictment for pretrial publicity, and this Court is similarly unaware of any such precedent."); *Woodberry*, 546 F. Supp. 3d at 188 (denying dismissal and noting "as a general matter, adverse pretrial publicity is not a sufficient ground to dismiss an indictment"); *United States v. Silver*, 103 F. Supp. 3d 370, 380 (S.D.N.Y. 2015) (denying dismissal and noting that the defendant was "unable to cite a single case where a court has taken the extreme step of dismissing an indictment solely based on pre-indictment publicity, whether instigated by the prosecutor or simply derived from the media at large"); *United States v. Smith*, No. CR-13-14-RMP-1, 2014 WL 1744253, at *4 (E.D. Wash. Apr. 30, 2014) ("Other courts have noted the complete absence of federal precedent for dismissing an indictment no matter how widespread or prejudicial the publicity.") (internal quotations omitted).

II. Rovirosa's Selective Prosecution Claim Is Unfounded.

Rovirosa also moves to dismiss the Indictment on the grounds of "selective prosecution." ECF No. 33 at 39-44. He argues, without basis, that "the only reason he was prosecuted is because he is a wealthy Mexican," *id.* at 39, and because "they needed a brown-skinned Mexican to make politicians happy." *Id*. at 42. These unfounded allegations are entirely false.

A defendant asserting a selective prosecution claim bears the burden of proof and must demonstrate with "clear evidence" that the prosecution "had [1] a discriminatory effect and [2] that it was motivated by a discriminatory purpose." *United States v. Armstrong*, 517 U.S. 456, 465

[6] In fact, Rovirosa barely cites any legal authority at all in his Motion, apart from quotations about general constitutional principles lifted from cases with no bearing on the issues raised in his Motion. For example, *United States v. Chapman*, 524 F.3d 1073, 1078 (9th Cir. 2008), the case Rovirosa relies on to suggest "the Court may exercise its supervisory power to dismiss this case," ECF No. 33 at 36, has nothing to do with pretrial publicity and discusses instead various issues related to discovery violations.

(1996) (emphasis added) (quoting *Wayte v. United States*, 470 U.S. 598, 608 (1985)). This "standard is a demanding one." *Id.* at 463.

To establish "discriminatory effect" based on race, the defendant must make a "credible showing that similarly situated individuals of a different race were not prosecuted." *Id*. at 470; *see also United States v. Bass*, 536 U.S. 862, 863 (2002). To establish "discriminatory purpose," the defendant must establish that a "decisionmaker singled out a particular group for disparate treatment and selected his course of action at least in part for *the purpose* of causing its adverse effect on an identifiable group." *Taylor v. Johnson*, 257 F.3d 470, 473 (5th Cir. 2001) (citing *Lavernia v. Lynaugh,* 845 F.2d 493, 496 (5th Cir. 1988)) (emphasis in original). Specifically, the evidence must show that when acting with discriminatory purpose or intent, the government was acting "at least in part *because* of, not merely in spite of," the defendant's protected characteristic. *See Wayte*, 470 U.S. at 610 (citation and internal quotations omitted) (emphasis added).

Unless a defendant has established a threshold case of discriminatory effect and discriminatory purpose, he or she is not entitled to related discovery. *See Bass*, 536 U.S. at 863.

A. Rovirosa Cannot Meet His Burden to Demonstrate Any Actual Discriminatory Effect

As "evidence" of the purportedly discriminatory effect of his prosecution, Rovirosa offers, without support, that "this is attethe only individual FCPA case filed" since the issuance of the Executive Order and DOJ guidance on FCPA enforcement. ECF No. 33 at 42. He also baldly asserts—without any evidence—that "[DOJ's] FCPA policy said they needed a person with brown skin, a Mexican." *Id*. at 41.

The lack of any support for these allegations is striking. To begin with, Rovirosa is wrong when he alleges that "[DOJ] policy said they needed a person with brown skin." The DOJ guidance documents cited by Rovirosa say nothing about race at all.

As the Government explained in its Response to the Motion to Strike, the DOJ's June 2025 guidance on FCPA enforcement[7] instructs prosecutors to consider *several* non-exhaustive areas of priority—of which the fight against cartels and transnational criminal organizations is one—when pursuing an FCPA enforcement action. *See* ECF No. 38 at 15-16. This holistic assessment is entirely consistent with the Supreme Court's recognition in *Armstrong* that prosecutorial discretion involves a highly complex assessment of factors including deterrence, resources, and enforcement priorities—and that these are matters that "are not readily susceptible to the kind of analysis the courts are competent to undertake." *Armstrong*, 517 U.S. at 465.

Rovirosa cites a small collection of public reports about an FCPA corporate enforcement action, two closed corporate FCPA investigations, and one dismissed FCPA indictment, *id*. at 9 n. 7, and claims, in conclusory fashion, that the dismissed indictment involved "non-Mexican, non-Hispanic individuals." *Id*. at 9. But Rovirosa does not come close to establishing that the Government did not enforce the law against *similarly situated* individuals of another race. Nothing in his analysis shows that the other defendants or subjects under investigation were similarly situated. Naturally, each matter involved different subjects (both corporate and individual), different facts, and different circumstances. It is clear, even from his own string cite, that the Department has continued to prosecute FCPA cases without regard to race or ethnicity. *See, e.g.*, *United States v. Zaglin*, No. 1:23-cr-20454, ECF No. 233 (S.D. Fla. Sept. 15, 2025) (jury verdict finding the defendant guilty on the charged counts, including violating the FCPA and conspiring to violate the FCPA); *see also* FCPA Guidelines at 3 (directing that FCPA enforcement (like all enforcement of federal law) should take place "not by focusing on particular individuals or companies on the basis of their nationality . . . .").

[7] Guidelines for Investigations and Enforcement of the Foreign Corrupt Practices Act (FCPA), June 9, 2025, available at https://www.justice.gov/dag/media/1403031/dl?inline ("FCPA Guidelines").

B. Rovirosa Cannot Meet His Burden to Show Any Discriminatory Intent or Purpose

Rovirosa fares no better on the second prong of the *Armstrong* test. In fact, he provides no evidence at all—let alone the required "clear evidence"—to support his assertion that the Government "targeted Mr. Rovirosa because he is a wealthy Mexican," ECF No. 33 at 39. Nor does he offer any evidence for the extraordinary claim that the prosecutors responsible for this criminal case acted with or were motivated by a discriminatory intent or purpose. The Grand Jury charged Rovirosa because there is compelling evidence of his criminal conduct. *See, e.g.*, ECF No. 1 at ¶¶ 12-58, 62-63; ECF No. 37 at 2-4 (summarizing the factual allegations in the Indictment). Rovirosa has produced no evidence to the contrary and therefore cannot overcome the "presumption of regularity" in prosecutorial decision making.[8] *Armstrong*, 517 U.S. at 463.

CONCLUSION

For the foregoing reasons, the Court should deny Rovirosa's Motion to Dismiss, and the case should proceed to trial.

[8] Because he cannot satisfy the *Armstrong* test, Rovirosa is not entitled to obtain discovery materials related to his unfounded allegation. *Armstrong*, 517 U.S. at 468-70.

Dated: September 26, 2025

Respectfully submitted,
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CERTIFICATE OF SERVICE

On September 26, 2025, I electronically filed this document through the CM/ECF system and served this filing via email to counsel of record.

/s/ Lindsey D. Carson
Lindsey D. Carson

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS HOUSTON DIVISION

UNITED STATES OF AMERICA,	§	
	§	
	§	
v.	§	**Criminal No. 4:25-cr-00415**
	§	
	§	
MARIO ALBERTO AVILA LIZARRAGA AND RAMON ALEXANDRO ROVIROSA MARTINEZ,	§	
	§	
	§	
	§	
Defendants.		

ORDER

Having considered Defendant Ramon Alexandro Rovirosa Martinez's Motion to Dismiss (ECF No. 33) and the Government's response, the Court find that the Motion should be **DENIED**.

Signed in Houston, Texas on the ___ day of _____, 2025.

_____
HON. KENNETH M. HOYT
SENIOR UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF TEXAS