

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
WACO DIVISION

UNITED STATES OF AMERICA

V.

CECILY ANN AGUILAR

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NO. W-20-CR-00097-ADA

**MOTION FOR ORDER PROHIBITING  
PREJUDICIAL EXTRAJUDICIAL STATEMENTS**

COMES NOW the Defendant, CECILY ANN AGUILAR (“Ms. Aguilar”), by and through her counsel, Lewis B. Gainor, Supervisory Assistant Federal Public Defender, and files this motion requesting an order prohibiting extrajudicial statements by trial participants, including the parties, witnesses, victim’s family, and their attorneys, that would reasonably be expected to be disseminated by means of public communication and have a substantial likelihood of materially prejudicing Ms. Aguilar’s right to a fair trial. In support of this motion, Ms. Aguilar respectfully shows as follows:

**I. BACKGROUND**

A grand jury indicted Ms. Aguilar on July 14, 2020, for her alleged role in covering-up the murder of United States Army Specialist Vanessa Guillen (“Spc. Guillen”).<sup>1</sup> See ECF No. 17 (“Indictment”). The grand jury accused Ms. Aguilar of conspiring to “corruptly alter, destroy,

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<sup>1</sup> The Army posthumously promoted Spc. Guillen from Private First Class to the rank of Specialist on July 1, 2020. See SBG San Antonio, *Soldier Vanessa Guillen promoted to specialist, Fort Hood press conference set*, Fox San Antonio (July 2, 2020), <https://foxsanantonio.com/news/local/missing-soldier-vanessa-guillen-promoted-to-specialist-fort-hood-press-conference-set>.

mutilate, and conceal... the body of V.G.” and other misdeeds in violation of 18 U.S.C. §§ 1512(c)(1) and (k). *See id.*

Spc. Guillen, a soldier stationed at Fort Hood, Texas, was reported missing on April 23, 2020, and became the subject of a search closely followed by the media.<sup>2</sup> On June 30, 2020, contractors working on a fence adjacent to the Leon River near Belton, Texas, discovered human remains. *See* ECF No. 1 (“Criminal Complaint”).

The complaint filed against Ms. Aguilar alleges that Army Specialist Aaron Robinson (“Spc. Robinson”) was “one of the last people known to have seen PFC Guillen” on April 22, 2020. *See* ECF No. 1 (“Criminal Complaint”). The complaint alleges that Ms. Aguilar, under questioning, said that Spc. Robinson admitted he murdered Spc. Guillen with a hammer in an arms room on Fort Hood, and that she and Spc. Robinson attempted to dispose of the body. *See id.*

Ms. Aguilar cooperated with law enforcement in their attempt to apprehend Spc. Robinson. *See* ECF No. 1 (“Criminal Complaint”). Although Spc. Robinson was supposed to be “confined to his barracks room on Fort Hood,” *see* ECF No. 1 (“Criminal Complaint”), the Army apparently could not control him. Instead, Spc. Robinson “absconded” and was outside the base, roaming the streets of Killeen, Texas, with a firearm. *See id.* When confronted by the police, Spc. Robinson “shot himself in the head, killing himself.” *See id.*

Ms. Aguilar has pleaded not guilty to the crimes alleged in the indictment. *See* ECF No. 20 (“Minute Entry”). No trial date has been set.

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<sup>2</sup> *See, e.g.*, FBI Reveals New Details In The Case Of Missing Fort Hood Pfc. Vanessa Guillen, National Public Radio (July 3, 2020), <https://www.npr.org/2020/07/03/887128883/fbi-reveals-new-details-in-the-case-of-missing-fort-hood-pfc-vanessa-guillen>; *see also* Ignacio Torres et al., *Vanessa Guillen didn't report harassment because she says she wouldn't be believed, mom says*, ABC News (July 16, 2020), <https://abcnews.go.com/US/vanessa-guillen-didnt-report-harassment-wouldnt-believed-mom/story?id=71780670>.

## II. PRETRIAL PUBLICITY

“She’s a terrorist. She’s a murderer. She’s a sicko. You know, she’s a danger to society. She killed a U.S. soldier in vain, you know, and I hope that she takes the maximum sentencing. They should do to [Ms. Aguilar], what she did to her.”<sup>3</sup>

The family of Spc. Guillen is represented by an attorney, Natalie Khawam (“Ms. Khawam”), of the Whistleblower Law Firm, P.A., in Tampa, Florida.<sup>4</sup> During the search for Spc. Guillen and later commencement of this prosecution, Ms. Khawam has made multiple statements to the media about Ms. Aguilar, including the one above.

The statements of Ms. Khawam have been reported not just nationally, but internationally, such as the following:

““She did exactly how ISIS<sup>5</sup> would treat one of our soldiers... They decapitate our soldiers. They dismember them. They light them on fire. She did exactly that to Vanessa who is a U.S. soldier and I want her to be treated as the same way and punished as a terrorist because she is.””<sup>6</sup>

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<sup>3</sup> See Jim Hice, *Cecily Aguilar pleads not guilty, bond denied until trial for her suspected role in death of Vanessa Guillen*, KCENNews (July 14, 2020), <https://www.kcentv.com/article/news/local/vanessa-guillen-supporters-protest-outside-federal-courthouse-ahead-of-hearing-for-suspect-in-her-disappearance-and-death/500-e88515b6-f607-4493-a00b-f5c8d8b0ec14>.

<sup>4</sup> See Member Profile, The Florida Bar, <https://www.floridabar.org/mybarprofile/27997>.

<sup>5</sup> ISIS is short for Islamic State of Iraq and Syria. See The Global Coalition to Defeat ISIS, Department of State, <https://www.state.gov/bureaus-offices/bureaus-and-offices-reporting-directly-to-the-secretary/the-global-coalition-to-defeat-isis/>.

<sup>6</sup> See Laura Gesualdi-Gilmore, *ACTED LIKE ‘TERRORISTS’ Vanessa Guillen lawyer says she was ‘decapitated and dismembered exactly like how ISIS would treat a US soldier,’* The U.S. Sun (July 15, 2020), <https://www.the-sun.com/news/1141971/vanessa-guillen-decapitated-dismembered-like-isis-would/>; see also Joseph Wilkinson, *Suspected accomplice in Vanessa Guillen case pleads not guilty, denied bail*, New York Daily News (July 14, 2020), <https://www.nydailynews.com/news/national/ny-vanessa-guillen-case-cecily-aguilar-accomplice-denied-bail-20200715-fy4prez5craffapohtplviaz3e-story.html> (same); Knewz, *Family of Vanessa Guillen compares woman who helped behead and dismember her to ‘an ISIS terrorist’*, News Break (July 16, 2020),

Ms. Khawam has repeatedly invoked dehumanizing tropes to condemn Ms. Aguilar as an animal or something less than human: “She’s barbaric, ok? There’s not another, there’s not another word for a savage that does that to a human being...”<sup>7</sup> On another occasion, Ms. Khawam said in reference to Ms. Aguilar, “Uh, this Cecily girl? Or, I shouldn’t say girl. This Cecily savage, this monster...”<sup>8</sup>

Ms. Khawam has stated that her law firm is doing its own investigation into Spc. Guillen’s death.<sup>9</sup> Rather than allow the Government to complete its investigation, Ms. Khawam has attempted to insert herself into this cause, calling for witnesses to come forward directly to her:

“As I said, it’s an open investigation, so we do look forward to more people coming forth and telling us anything and everything what they know. Any witnesses, please let us know what you know, uh, because it’s not said and done yet, it has just begun.”<sup>10</sup>

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<https://www.newsbreak.com/news/0PcOMQfC/family-of-vanessa-guillen-compares-woman-who-helped-behead-and-dismember-her-to-an-isis-terrorist> (same).

<sup>7</sup> See *Not guilty plea from Cecily Aguilar in Vanessa Guillen case, bond denied*, KCENNews (July 15, 2020), available at <https://www.youtube.com/watch?v=3dNsanvY6Pk>.

<sup>8</sup> *Abogada describe los hechos que supuestamente derivaron en la muerte de Vanessa Guillén*, Univision Houston (July 6, 2020), available at <https://www.youtube.com/watch?v=dyPNqBwaplE> (minute 2:20-30).

<sup>9</sup> Christian Aleman, *Attorney pursues independent investigation, legislation in Vanessa Guillen’s name*, KCENNews (July 7, 2020), <https://www.kcentv.com/article/news/congressional-press-conference-rally-planned-in-dc-for-bill-in-vanessa-guillens-name/500-9aa4e052-ca5c-4c18-9a34-6c92d342f217>.

<sup>10</sup> Hice, *Cecily Aguilar pleads not guilty*, *supra* n.3.

In her call for witnesses, Ms. Khawam implied that Ms. Aguilar was not deserving of the presumption of innocence<sup>11</sup> or any other protections guaranteed<sup>12</sup> to the accused under the Constitution:

“And this is why it’s important for people, witnesses to come forth, because... right now this girl is getting away with a lot.”<sup>13</sup>

Ms. Khawam’s media campaign shows no signs of letting up. After a memorial service for Spc. Guillen held on July 17, 2020, she repeated her call for a congressional investigation.<sup>14</sup> Ms. Khawam announced that she is scheduled to meet with President Donald Trump on July 29, 2020, and march the following day in Washington, D.C., in support of new legislation addressing sexual assault and harassment in the military.<sup>15</sup>

### III. LEGAL ARGUMENT

The Court has “an affirmative constitutional duty to minimize the effects of prejudicial pretrial publicity.” *Gannett Co. v. DePasquale*, 443 U.S. 368, 378 (1979). “Intense publicity surrounding a criminal proceeding” or “‘trial by newspaper’ ... poses significant and well-known

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<sup>11</sup> “The principle that there is a presumption of innocence in favor of the accused is the undoubted law, axiomatic and elementary, and its enforcement lies at the foundation of the administration of our criminal law.” *Taylor v. Kentucky*, 436 U.S. 478, 483 (1978).

<sup>12</sup> *See, generally*, U.S. Const. amend. V and VI.

<sup>13</sup> Hice, *Cecily Aguilar pleads not guilty*, *supra* n.3.

<sup>14</sup> Olivia P. Tallet, *Vanessa Guillen remembered at Fort Hood memorial; family lawyer demands congressional inquiry*, *Houston Chronicle* (July 17, 2020), <https://www.houstonchronicle.com/news/houston-texas/houston/article/Vanessa-Guillen-remembered-at-Fort-Hood-memorial-15415749.php>.

<sup>15</sup> Hice, *Cecily Aguilar pleads not guilty*, *supra* n.3; *see also* Talia Kaplan, *Vanessa Guillen family attorney alleges ‘cover-up’ on soldier’s death at Fort Hood*, *Fox News Channel* (July 16, 2020), <https://www.foxnews.com/media/attorney-for-vanessa-guillens-family-how-could-a-soldier-be-murdered-on-us-base>.

dangers to a fair trial.” *United States v. Brown*, 218 F.3d 415, 423 (5th Cir. 2000) (quoting *Pennekamp v. Florida*, 328 U.S. 331, 359 (1946) (Frankfurter, J., concurring)).

One principal danger is “the potential that pretrial publicity may taint the jury venire, resulting in a jury that is biased toward one party or another.” *See Brown*, 218 F.3d at 423. “Few, if any, interests under the Constitution are more fundamental than the right to a fair trial by ‘impartial’ jurors, and an outcome affected by extrajudicial statements would violate that fundamental right.” *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1075 (1991).

The Fifth Circuit recognizes that orders restricting trial participants’ speech, commonly referred to as gag orders, must be weighed against the rights afforded by the First Amendment. *See Brown*, 218 F.3d at 424. It approved the gag order in *Brown* because it was “based on a reasonably found substantial likelihood that comments from the lawyers and parties might well taint the jury pool... [was] the least restrictive corrective measure available to ensure a fair trial, and [was] sufficiently narrowly drawn.” 218 F.3d at 423.

Gag orders on trial participants are evaluated under a less stringent standard than gag orders on strangers to the litigation, such as the press. *See Brown*, 218 F.3d at 425. While a showing of “clear and present danger” is required for restrictions on the press, the Fifth Circuit held that if the trial court finds “a ‘substantial likelihood’ (or perhaps even merely a ‘reasonable likelihood,’ a matter we do not reach) that extrajudicial commentary by trial participants will undermine a fair trial, then it may impose a gag order on the participants, as long as the order is also narrowly tailored and the least restrictive means available.” *Brown*, 218 F.3d at 428. When “the court’s overriding interest is in preserving a fair trial and the potential prejudice caused by extrajudicial commentary does not significantly depend on the status of the speaker as a lawyer or party,” the standard applies to both lawyers and parties. *Id.*

The Fifth Circuit has also explained that prior restraints on attorney speech can apply to attorneys who are not counsels of record in the case. *In re Goode*, 821 F.3d 553, 557-58 (5th Cir. 2016). It found that a defendant's former counsel of record, who still consulted with the defendant and his new attorney, was associated with the defense and could be subject to an ethical rule prohibiting extrajudicial statements to the presps during trial. *See Goode*, 821 F.3d at 561 (ultimately finding the ethics rule unconstitutional because it imposed a complete bar to speech, not a narrowly tailored one as in *Brown*).

#### IV. REQUEST FOR RELIEF

##### A. Without a gag order, there is a substantial likelihood that extrajudicial comments by trial participants will result in an unfair trial.

Ms. Khawam's statements are poisoning the pool of potential jurors for Ms. Aguilar. Defense counsel has filed an exhibit, hereinafter Ex. 1 ("Sealed Exhibit"), under seal because it contains the publicly displayed names and images of Facebook users who have commented on Ms. Khawam's suggestion to treat Ms. Aguilar as though she were an Islamic State terrorist. *See* Ex. 1 ("Sealed Exhibit"). The exhibit is a Facebook page that displays a meme quoting Ms. Khawam's call for Ms. Aguilar "to be treated as the same way and punished as a terrorist because she is."<sup>16</sup>

One user, inspired by Ms. Khawam's observation that ISIS would "light [soldiers] on fire," posted in response: "Burn her entire freaken body!!!" *See* Ex. 1 ("Sealed Exhibit"). Another user directly endorsed Ms. Khawam's statement: "Yes I agree with Guillens [sic] attorney. She is a terrorist. She needs to be punished like what they did to Vanessa." *See id.*

According to public posts on each of foregoing accounts, the users are people who could be potential jurors in this cause. The users appear to be military personnel or family members of military personnel stationed at Fort Hood, which is located in Bell County, Texas, from which

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<sup>16</sup> Gesualdi-Gilmore, *ACTED LIKE 'TERRORISTS,' supra* n.6.

potential jurors may be selected. Thus, there is a substantial likelihood that the extrajudicial comments by Ms. Khawam will result in an unfair trial because jurors would be biased against Ms. Aguilar. *See Brown*, 218 F.3d at 423.

Aside from their dissemination on social media, Ms. Khawam's comments themselves likely generate more news coverage of the case because they are so scandalous.<sup>17</sup> Local media in central Texas, the area from which a jury would be impaneled, have also highlighted Khawam's comparison of Ms. Aguilar to an ISIS terrorist.<sup>18</sup>

Ms. Khawam's support of legislation to protect soldiers from sexual assault and harassment is laudable, but her statements about this case go too far. Rule 3.6 of the Model Rules of Professional Conduct states that "[a] lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter." MRPC Rule 3.6(a).

Ms. Khawam has made herself a participant in this cause by announcing that her law firm is conducting its own investigation and asking witnesses to come forward to her. She is not the legal representative of a disinterested party. To the contrary, Ms. Khawam represents the family members of Spc. Guillen, who are potential witnesses at trial with a right to be heard under the

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<sup>17</sup> *See supra* n.6 (collecting a sample of news stories including Ms. Khawam's description of Ms. Aguilar as a terrorist).

<sup>18</sup> *See, e.g., Hice, Cecily Aguilar pleads not guilty, supra* n.3 (station for Waco and Temple, Texas); Acacia Coronado, *Woman accused of helping dismember Vanessa Guillen's body pleads not guilty to charges*, ksat.com (July 15, 2020), <https://www.ksat.com/news/local/2020/07/15/woman-accused-of-helping-dismember-vanessa-guillens-body-pleads-not-guilty-to-charges/> (station for San Antonio, Texas); Acacia Coronado, *Woman pleads not guilty to charges in Spc. Vanessa Guillen's death*, cbsaustin.com (July 14, 2020), <https://cbsaustin.com/news/local/woman-pleads-not-guilty-to-charges-in-spc-vanessa-guillens-death> (station for Austin, Texas).

Crime Victims Act, 18 U.S.C. § 3771. Ms. Khawam is a participant in this cause by virtue of representing the Guillen family, and as such, is bound by MRPC Rule 3.6. Because Ms. Khawam is a participant in this cause, a gag order is appropriate under the standard set forth by *Brown*. See 218 F.3d at 425.

*B. The requested order is narrowly tailored.*

Ms. Aguilar is not requesting a blanket no-comment order. She is asking the Court to impose an order similar to the one upheld in *Brown* that mirrors the rules of professional conduct for attorneys. Specifically, Ms. Aguilar asks the Court to prohibit parties, potential witnesses, the victim's family, and their attorneys from making extrajudicial statements that a reasonable person would expect to be disseminated by means of public communication if the person knows or reasonably should know that it will have a substantial likelihood of materially prejudicing an adjudicative proceeding due to its creation of an imminent and substantial detrimental effect on that proceeding. See MRPC Rule 3.6(a). This prohibition includes statements or information intended to influence public opinion regarding the merits of this case but does not include statements regarding the general nature of any allegations or defenses, information contained in the public record, scheduling information, any decision or order that is public record, and the contents of any motion that is part of the public record.

The Fifth Circuit affirmed a similar order in *Brown*, finding it narrowly tailored “to eliminate substantially only that speech having a meaningful likelihood of materially impairing the court's ability to conduct a fair trial.” 218 F.3d at 429. The court also concluded it was sufficiently specific and clear. *Id.* at 430. And the requested order mirrors the ethics rules currently in effect in Texas and Florida, where Ms. Khawam is licensed. See Tex. Disc. R. Prof. Conduct 3.07; see also Fla. St. Bar. R. 4-3.6(a).

C. The requested order is the least restrictive means to protect Ms. Aguilar's right to a fair trial.

Before entering a gag order, a court must consider whether it is the least restrictive means to accomplish the goal of ensuring a fair trial. *See Brown*, 218 F.3d at 430. In cases addressing gag orders on the press, the Supreme Court suggested courts consider several alternatives including an order on trial participants, as requested here, and a “change of venue, jury sequestration, ‘searching’ voir dire, and ‘emphatic’ jury instructions.” *Id.* (quoting *Nebraska Press Ass’n v. Stuart*, 427 U.S. 539, 564 (1976)). Given the significant national and international press coverage this case has already generated, spurred by the interviews and prejudicial comments by Ms. Khawam, these suggested measures “would be inappropriate or insufficient to adequately address the possible deleterious effects of enormous pretrial publicity on this case[.]” *Id.*

Specifically, a change of venue will not address the taint of prejudicial pretrial publicity because that coverage has largely been nationwide. *See Brown*, 218 F.3d at 430 (citing *Gentile*, 501 U.S. at 1075). Jury sequestration would be ineffective because the prejudice of continued commentary by Attorney Khawam, by the time of trial, would have infiltrated the jury pool. And extensive voir dire and emphatic jury instructions “may not be able to filter out all of the effects of pretrial publicity[.]” *Id.* (quoting *Gentile*, 501 U.S. at 1076)). Such measures would also fail to address the threat of a ‘carnival atmosphere’ around the trial.” *Id.* (quoting *Sheppard v. Maxwell*, 384 U.S. 333, 358 (1966)). Rather, “the cure lies in those remedial measures that will prevent the prejudice at its inception.” *Sheppard*, 384 U.S. at 363 (reversing a habeas denial because “the state trial judge did not fulfill his duty to protect Sheppard from the inherently prejudicial publicity which saturated the community and to control disruptive influences in the courtroom”). The prejudicial pretrial publicity in this cause is arguably moving on from its inception into being fully developed.

**V. CONCLUSION**

WHEREFORE, Ms. Aguilar asks the Court enter an order prohibiting extrajudicial statements by trial participants, including the parties, witnesses, victim's family, and their attorneys, that would reasonably be expected to be disseminated by means of public communication and have a substantial likelihood of materially prejudicing Ms. Aguilar's ability to have a fair trial, and grant any further relief it deems necessary.

Maureen Scott Franco  
Federal Public Defender

/S/

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**CERTIFICATE OF SERVICE**

I hereby certify that on the 27th day of July, 2020, I electronically filed the foregoing with the Clerk of Courts using the CM/ECF system which will send notification of such filing to the following:

Mark Frazier, Assistant United States Attorney

/S/  
LEWIS B. GAINOR  
*Attorney for Defendant*

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
WACO DIVISION

UNITED STATES OF AMERICA

V.

CECILY ANN AGUILAR

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NO. W-20-CR-00097-ADA

**ORDER PROHIBITING PREJUDICIAL EXTRAJUDICIAL STATEMENTS**

On this day, the Court considered Defendant’s Motion for Order Prohibiting Prejudicial Extrajudicial Statements (ECF No. \_\_\_) filed in the above-captioned cause. After considering the Motion, this Court is of the opinion that the Motion should be GRANTED.

IT IS THEREFORE ORDERED that the parties, witnesses, victim’s family, and their attorneys (“trial participants”) not make extrajudicial statements that a reasonable person would expect to be disseminated by means of public communication if the person knows or reasonably should know that it will have a substantial likelihood of materially prejudicing an adjudicative proceeding due to its creation of an imminent and substantial detrimental effect on that proceeding.

This prohibition includes statements or information intended to influence public opinion regarding the merits of this case.

This prohibition does not include statements regarding the general nature of any allegations or defenses, information contained in the public record, scheduling information, any

decision or order that is public record, and the contents of any motion that is part of the public record.

SIGNED this \_\_\_\_ day of \_\_\_\_\_, 2020.

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THE HONORABLE ALAN D. ALBRIGHT  
UNITED STATES DISTRICT JUDGE