

Appendix A

E.D.N.Y.
18-cr-681
Kuntz, J.

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 16th day of May, two thousand nineteen.

PRESENT:

José A. Cabranes,
Peter W. Hall,
Circuit Judges,
Timothy C. Stanceu,
Judge.

United States of America,

Appellee,

ORDER

v.

19-1018-cr

Jean Boustani, AKA Jean Boustany,

Defendant-Appellant.

On April 18, 2019, Defendant-Appellant Jean Boustani (“Boustani”) filed an emergency motion for bail, seeking to vacate a detention order rendered orally on March 28, 2019, and by minute entry on April 10, 2019, by the United States District Court for the Eastern District of New York (William F. Kuntz, II, *Judge*). The Government opposed Boustani’s motion. On the basis of the record before us, and after oral argument, the motion is **DENIED**.

FOR THE COURT:
Catherine O’Hagan Wolfe, Clerk of Court


Catherine O'Hagan Wolfe

Appendix B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

X

UNITED STATES OF AMERICA, : 18-CR-00681 (WFK)

-against- : United States Courthouse
: Brooklyn, New York

JEAN BOUSTANI, : Thursday, March 28, 2019
: 12:00 p.m.

Defendant.

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TRANSCRIPT OF CRIMINAL CAUSE FOR STATUS CONFERENCE
BEFORE THE HONORABLE WILLIAM FRANCIS KUNTZ, II
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Government: RICHARD P. DONOGHUE, ESQ.
United States Attorney
Eastern District of New York
271 Cadman Plaza East
Brooklyn, New York 11201
BY: MATTHEW S. AMATRUDA, ESQ.
MARK E. BINI, ESQ.
Assistant United States Attorneys

UNITED STATES DEPARTMENT OF JUSTICE
Criminal Division
1400 New York Avenue, NW
Suite 10424
Washington, DC 20005
BY: MARGARET MOESER, ESQ.
DAVID M. FUHR, ESQ.

1 A P P E A R A N C E S: (Continued)
23 For the Defendant: WILLKIE FARR & GALLAGHER, LLP
4 787 Seventh Avenue
5 New York, New York 10019
6 BY: RANDALL W. JACKSON, ESQ.
MICHAEL S. SCHACHTER, ESQ.
CASEY E. DONNELLY, ESQ.7
8
9 Court Reporter: Stacy A. Mace, RMR, CRR, RPR, CCR
10 Official Court Reporter
E-mail: SMaceRPR@gmail.com11 Proceedings recorded by computerized stenography. Transcript
produced by Computer-aided Transcription.
1213
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16 ooo0ooo
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19 (In open court.)
20 THE COURTROOM DEPUTY: All rise.
21 (Judge WILLIAM F. KUNTZ, II entered the courtroom.)
22 THE COURTROOM DEPUTY: The Honorable William F.
23 Kuntz, II is now presiding.
24 Criminal cause for status conference, docket number
25 18-CR-681, USA versus Boustani, et al.

1 Counsel, please state your appearances for the
2 record and spell your first and your last names for the court
3 reporter.

4 (Defendant entered the courtroom.)

5 MR. AMATRUDA: Matthew Amatruda for the United
6 States. M-A-T-T-H-E-W, A-M-A-T-R-U-D-A.

7 Good afternoon, Your Honor.

8 THE COURT: Good afternoon, Mr. Amatruda. You may
9 be seated.

10 MR. AMATRUDA: Thank you, Your Honor.

11 MR. BINI: Mark Bini for the United States, M-A-R-K,
12 B-I-N-I.

13 THE COURT: Good afternoon, Mr. Bini. You may be
14 seated.

15 MS. MOESER: Margaret Moeser for the United States.
16 M-A-R-G-A-R-E-T, M-O-E-S-E-R.

17 Good afternoon, Your Honor.

18 THE COURT: You may be seated as well. Good
19 afternoon.

20 MR. FUHR: David Fuhr for the United States.
21 F-U-H-R. Good afternoon.

22 THE COURT: Good afternoon, sir. You may be seated.

23 SPECIAL AGENT TASSONE: Special Agent Angela Tassone
24 from the FBI. T-A-S-S-O-N-E.

25 THE COURT: And would you spell your name for the

1 reporter:

2 SPECIAL AGENT TASSONE: T-A-S-S-O-N-E.

3 THE COURT: Good afternoon, Special Agent. You may
4 be seated.

5 SPECIAL AGENT TASSONE: Thank you.

6 SPECIAL AGENT HAQUE: Special Agent Fatima Haque
7 with the FBI. F-A-T-I-M-A, H-A-Q-U-E.

8 THE COURT: Good afternoon, Special Agent. You may
9 be seated.

10 MR. JACKSON: Good afternoon, Your Honor. Randall
11 Jackson on behalf of Mr. Boustani. That's R-A-N-D-A-L-L,
12 J-A-C-K-S-O-N.

13 THE COURT: Good afternoon, Mr. Jackson. You may be
14 seated.

15 MR. SCHACHTER: Good afternoon, Your Honor. Michael
16 Schacter on behalf of Mr. Boustani. It's Michael,
17 M-I-C-H-A-E-L; Schacter, S-C-H-A-C-H-T-E-R.

18 THE COURT: Good afternoon. You may be seated as
19 well.

20 THE DEFENDANT: Good afternoon, Your Honor. Jean
21 Boustani, J-E-A-N, B-O-U-S-T-A-N-I.

22 THE COURT: Good afternoon, Mr. Boustani. You may
23 be seated.

24 THE DEFENDANT: Thank you.

25 MS. DONNELLY: And I'm Casey Donnelly on behalf of

1 Mr. Boustani, C-A-S-E-Y, D-0-N-N-E-L-L-Y.

2 THE COURT: Good afternoon. You may be seated as
3 well. Thank you.

4 We are here for a status conference in this action,
5 United States versus Boustani, 18-CR-681. The defendant,
6 Mr. Boustani, who is present here today, is currently in
7 custody.

8 The background is as follows:

9 On December 18th of 2018 a grand jury of the United
10 States of America returned a four-count indictment against
11 this defendant and others charging:

12 1. Conspiracy to commit wire fraud in violation of
13 Title 18 United States Code Section 1349;

14 2. Conspiracy to commit securities fraud in
15 violation of Title 18 United States Code Section 371;

16 3. Conspiracy to violate the FCPA anti-bribery and
17 internal controls provisions in violation of Title 18 United
18 States Code Section 371; and

19 4. Conspiracy to commit money laundering in
20 violation of Title 18 United States Code Section 1956(h).

21 This defendant is charged with Counts 1, 2 and 4.

22 The indictment avers this defendant created, with
23 others, maritime projects as fronts to raise money to enrich
24 themselves and diverted, with others, portions of loan
25 proceeds to pay at least \$20 million in bribes and kickbacks

1 to themselves, government officials in and of Mozambique, and
2 others.

3 On January 2nd of 2019, this defendant was arraigned
4 on the indictment before the Honorable Magistrate Judge Peggy
5 Kuo and the defendant pled not guilty to all charges set forth
6 in all counts. Denying the defendant's first bail
7 application, Magistrate Judge Kuo ordered detention, but
8 granted the defendant leave to renew his bail application.

9 On January 8th of 2019 the defense appealed the
10 order of detention to this court.

11 On January 22nd of 2019 this Court held its first
12 status conference in this case. The United States Government
13 reported it produced its first round of Rule 16 discovery,
14 including one million pages and bank records identifying what
15 it claimed were illegal transactions and expected and
16 anticipated it would be able to provide and would provide
17 additional discovery on or before February 1st of 2019. The
18 Court designated the case complex and entered an order of
19 excludable delay. The Court then heard oral argument on the
20 appeal of detention. The Court reserved decision, and on
21 February 4th of 2019 this Court denied the defendant's motion
22 appealing the order of detention.

23 The defendant subsequently appealed that order to
24 the United States Court of Appeals of the Second Circuit.

25 On February 7th of 2019 this Court held its second

1 status conference in this case. First, the Government
2 reported it had already produced and anticipated producing
3 hundreds of thousands of documents to complete its Rule 16
4 discovery obligations on or before March 31st of 2019.
5 Secondly, the Government discussed its progress on extraditing
6 the other defendants in this case. The Government submitted
7 defendant Manuel Chang, C-H-A-N-G, to his formal extradition
8 to the South African government, which was expected to be
9 discussed at Defendant Chang's hearing on February 26th of
10 2019. The Government also stated it did not know when the
11 extradition process in the United Kingdom would conclude.
12 Defense counsel advised the Court that it might take up to
13 three years for the defendants to be extradited from the
14 United Kingdom and there is the possibility Defendant Chang
15 will never be extradited from South Africa. However, as the
16 United States Government conceded, at this point there are no
17 other defendants and the Government is prepared to proceed
18 without them.

19 The Court will commence trial of this action on
20 Monday, October 7th of 2019 at 9:30 a.m. in this courtroom.
21 Counsel should calendar that date and that time.

22 Finally, the defense counsel informed the Court that
23 he requested search items from the Government, that the
24 Government had failed to produce documents to the defense.
25 The Court ordered the parties to submit a joint briefing

1 schedule on the search terms in the event the parties failed
2 to reach an agreement on that issue. Time was excluded in the
3 interest of justice to today's date, March 28th of 2019.

4 In a letter to the Court dated February 28th of 2019
5 the parties reported that they had resolved their issues
6 regarding the search terms. The Government filed letters on
7 March 12th, 2019 and March 19th, 2019, March 21st of 2019 and
8 March 27th of 2019 stating it had produced additional Rule 16
9 discovery and requested reciprocal discovery from the
10 defendant.

11 On March 7th of 2019 the United States Court of
12 Appeals for the Second Circuit unanimously affirmed this
13 Court's order on the defendant's appeal of detention and
14 denied the defendant's appeal without prejudice to present a
15 further bail application before this Court in the first
16 instance. The Second Circuit noted in the event the defendant
17 presents an amended bail package, the Government shall
18 continue to bear the burden of establishing by a preponderance
19 of the evidence that, one, the defendant presents an actual
20 risk of flight; and two, that no condition or combination of
21 conditions could be imposed that would reasonably assure his
22 presence in court.

23 On March 19th of 2019 defense counsel submitted an
24 amended bail package that includes the conditions described in
25 the initial bail application and proposes additional or

1 amended items as follows:

2 1. A \$20 million personal recognizance bond secured
3 by a \$2 million in cash position from personal accounts and
4 \$7 million in cash posted by defendant's father; amounting to
5 75 percent of the combined cash assets of the defendant and
6 his father;

7 2. A waiver of extradition relinquishing his rights
8 to fight extradition to the United States from anywhere in the
9 world;

10 3. The advancement of a year's worth of fees to
11 Guidepost or any private security firm designated by the
12 Government; and

13 4. An agreement to revisit the bail package in the
14 event the defendant's co-defendants cannot afford private
15 security as a condition of release.

16 Defense counsel also argues the Government's case
17 against the defendant is "substantially flawed" because the
18 indictment impermissibly applies wire fraud and securities
19 fraud statutes to reach extraterritorial conduct lacking a
20 sufficient domestic nexus. The defense asserts the securities
21 fraud statute does not extend to foreign securities trades
22 executed on foreign exchanges, even if purchased or sold by
23 American investors and even if some aspects of the transaction
24 occurred in the United States. According to defense counsel,
25 in order to properly allege a domestic application of the wire

1 fraud statute, the Government must show defendant committed a
2 substantial portion of the conduct in the United States of
3 America and that the conduct in the United States of America
4 was integral to the commission of the scheme to defraud.

5 Relying on the use of domestic wires is simply not enough.

6 See the renewed application for bail at ECF number 54.

7 On March 26th of 2019 the Government filed its
8 response in opposition to the defendant's renewed bail
9 application. The Government averred defendant remained a
10 flight risk and asserts the amended bail application fails to
11 assure reasonably his appearance for the following reasons:

12 First, the amount of cash offered to secure his bond
13 stems from the charged criminal scheme, the source of funds,
14 as was questioned and raised by Judge Raggi of the Second
15 Circuit in the oral argument of the appeal.

16 Secondly, the waiver of extradition would have no
17 practical or binding effect because a waiver of extradition
18 does not compel the nation in which the defendant would find
19 himself to honor the waiver.

20 Third, the defendant's offer to advance a year's
21 worth of fees to Guidepost or any other security firm
22 designated by the Government would not alleviate the inherent
23 conflict of interest faced by private jailers paid by the
24 defendant or his employer who might be called upon to exert
25 force, perhaps up to and including deadly force, to stop the

1 defendant from an attempted escape.

2 Fourth, the agreement to revisit his proposed bail
3 conditions in the event his co-defendants were extradited to
4 the United States and detained upon the basis that they could
5 not afford private security would not prevent this defendant
6 from fleeing before any of his co-defendants arrived, should
7 that ever be the case.

8 The Government further argues its application of the
9 wire fraud and securities statutes is domestic. In its view,
10 the Government actors, including the Securities Exchange
11 Commission and the Department of Justice, have
12 extraterritorial jurisdiction analogous to 304 jurisdiction of
13 bankruptcy courts over securities fraud violations where
14 significant conduct or foreseeable effects occur in the United
15 States of America. Moreover, the conspiracy charged is
16 domestic because it encompasses purchases of loan
17 participation notes and bonds by investors physically present
18 in the United States.

19 Finally, the Government argues the focus of the wire
20 fraud statute in the use of wires, which in this case occurred
21 domestically in the United States and in New York City. The
22 Government concludes that no combination of conditions will
23 reasonably assure the defendant's appearance in future court
24 proceedings.

25 Last evening the Court received, by way of ECF

1 filing, an eight-page letter from defense counsel. The letter
2 makes the following points:

3 First, it alleges that the posting of a majority of
4 Mr. Boustani's and his father's assets provides sufficient
5 moral suasion to ensure Mr. Boustani's appearance. Some
6 people don't think morality is what counts, it's getting
7 caught is what counts, but here we have the assertion of moral
8 suasion.

9 In any event, on page 3 of the letter, again, the
10 word moral force is used. It says midway through the first
11 full paragraph: It is hard to imagine a moral force more
12 compelling on Mr. Boustani than harm to those he loves most in
13 the world.

14 Page 3 also says further down that Mr. Boustani
15 presumed innocent; quite so. But it also states his earnings
16 from his lawful employment should be presumed to be legitimate
17 funds. That is not the position asserted by my learned Second
18 Circuit colleague Judge Raggi. Because while it may or may
19 not be the issue, Judge Raggi made it clear at the oral
20 argument that the source of funds is an issue in this case
21 that is of importance to her and to the judges on the Second
22 Circuit who heard this case. And as Judge Carney opined at
23 the time of the oral argument, it is clear that the question
24 of flight risk has not been sufficiently addressed to the
25 satisfaction of the Second Circuit at the time of the argument

1 to the Second Circuit.

2 The second point in the letter that came in last
3 night from the Willkie Farr law firm is the Government's
4 objections to Mr. Boustani's other additional conditions do
5 not satisfy its burden of proving that no conditions will
6 reasonably ensure Mr. Boustani's appearance. And, again, they
7 pick on the issue of the waiver of extradition. And, again,
8 the issue is the issue that was raised in response by the
9 Government as to whether or not a mere waiver by an individual
10 compels a government that does not have extradition with the
11 United States to extradite a citizen. And as the Government
12 pointed out, undoubtedly, the waiver that is executed here
13 would at the time, if one was in a country and did not want to
14 be extradited from that country, the argument would be made
15 that the waiver was done under compulsion. And in any event,
16 nations that decline to have extradition treaties with the
17 United States of America would certainly not be bound by any
18 signed document by this defendant.

19 Next is the statement that Mr. Boustani's challenge
20 to the indictments are not frivolous and militate in favor of
21 granting bail. Obviously, subject matter jurisdiction cannot
22 be conferred to a limited jurisdiction court, such as this
23 district court, as an Article III court. And the question of
24 whether or not there is subject matter jurisdiction is
25 certainly one that this Court will address. There has,

1 obviously, been an alleged statement by the defendant with
2 respect to subject matter jurisdiction and the ubiquity of the
3 great American dollar worldwide. The reality is that either
4 this Court has subject matter jurisdiction as a matter of law
5 or it does not. But in any event, those are issues that I am
6 sure will be briefed before this Court and will be decided
7 before this Court.

8 So the trial is going to commence in this action at
9 9:30 a.m. on Monday, October 7th of this year. We will pick
10 the jury here. We will go directly to trial. The amended
11 bail application is denied. It is not sufficient. This
12 defendant is still a flight risk. I am not approving it. The
13 defendant has not satisfied the moral issue, does not persuade
14 the Court, as is asserted by the Willkie Farr firm, and I do
15 not believe that putting people in countries that do not have
16 extradition with the United States in any way, shape or form
17 ensures that they will appear for trial.

18 Obviously, the Willkie Farr firm is absolutely free
19 to take an appeal, as they did before, with respect to this,
20 but I think the issues are important. I think it is clear
21 that this defendant continues to be a flight risk. I do not
22 think that the issues were adequately addressed, and I am not
23 persuaded by the moral suasion arguments that have come
24 forward by the Willkie Farr law firm in this case.

25 So having said that, I will now hear from the

1 Government, then I will hear from defense counsel.

2 MR. AMATRUDA: Thank you, Your Honor.

3 Just to give -- I will give the Court an update on
4 two matters; one is discovery in the case. The second are the
5 extradition proceedings related to the other defendants.

6 With respect to discovery, we have substantively
7 completed discovery in this case. We produced what now
8 amounts to approximately 5 million pages of documents, that
9 translates into a million actual records. Some of the records
10 are multiple pages. That discovery includes e-mail accounts,
11 personal e-mail accounts on which the Government executed
12 search warrants, documents from victims, documents from
13 third-party witnesses, as well as from the investment banks
14 that arranged the underlying transactions.

15 Of course, our discovery obligations we understand
16 are ongoing. And to that effect, we continue to scrub our
17 files to triple and quadruple check that we have produced
18 everything we are required to. Obviously, if we have other
19 documents that we did not produce earlier that we realize we
20 should have, we will get those out right away.

21 There are a few, some categories or some documents
22 that continue to come in that somebody received in the interim
23 between the last two status conferences, and there may very
24 well be more that we receive in the interim and we will move
25 to produce those documents expeditiously and get those to

1 defense right away.

2 The last category is that there are some documents
3 that were tied up in privilege analysis in a filter process.
4 Obviously, the e-mail accounts, the personal e-mail accounts
5 we have contained some documents that were arguably
6 communications between the e-mail holders and their counsel,
7 and we have instituted a filter process. And we are -- as we
8 get documents that are cleared through that filter process, we
9 are producing them as well.

10 THE COURT: Do you have a separate taint team or are
11 the same lawyers reviewing for privilege as are trying the
12 case?

13 MR. AMATRUDA: Thank you for clarifying, Your Honor.
14 There is a separate taint team who review those materials.

15 THE COURT: That's important. Go ahead.

16 MR. AMATRUDA: So that is the status of discovery,
17 but I would like to emphasize that my latter points are simply
18 to say that inevitably there are things that we find, there
19 are things that come up that we will produce expeditiously,
20 but substantively in terms of the discovery in this case,
21 we're done. We've produced -- we've produced with those, I
22 think, minor exceptions, we produced everything and the most
23 significant records that we're aware of.

24 So with respect to the extradition proceedings, the
25 defendant Manuel Chang remains detained in South Africa.

1 There is a hearing on April 8th to consider the merits of our
2 extradition request. We are hoping, obviously, that we will
3 get a ruling quickly. Procedurally after that we understand
4 there is another step to this that I am not -- we don't know
5 how long it will take, but that's where things stand with
6 that.

7 THE COURT: That's separate and apart, though; as
8 you said earlier, you are ready to go to trial on this case?

9 MR. AMATRUDA: Yes, Judge.

10 THE COURT: You will be ready to go on October 7th?

11 MR. AMATRUDA: That's exactly right, Judge. We are
12 ready to proceed. We will be -- you know, we will be here
13 April 7th -- I'm sorry, we will be here April 7th if the Court
14 wants us to be.

15 THE COURT: October 7th.

16 MR. AMATRUDA: We will be here October 7th. But if
17 Mr. Chang shows up tomorrow, certainly we may ask the Court to
18 consider that, but we are not asking the Court to delay the
19 proceedings while we wait for extradition.

20 THE COURT: That's good because the Court will not
21 do that.

22 MR. AMATRUDA: And that certainly is what we would
23 expect, Your Honor. We appreciate that. And we are not --
24 we're not going to go there.

25 So in terms of the proceedings in the United

1 Kingdom, the defendants have appeared. We have filed our
2 extradition papers. They've appeared. There is the
3 proceedings or litigation that goes on with those, but as the
4 Court has said, the defense counsel has made clear we don't
5 know how long that's going to take. Hopefully, it will be
6 fast, but --

7 THE COURT: That's what they said about Brexit, so
8 you never know.

9 MR. AMATRUDA: Yes, they have other things going on
10 over there, but we will keep the Court informed. And we will
11 move forward in the interim with this case and, as I made
12 clear, we are ready to go forward with Mr. Boustani.

13 I think that is -- those are the only things that I
14 wanted to raise with the Court.

15 THE COURT: I will urge the parties to put in a
16 briefing motion schedule. If you cannot do it consensually, I
17 will impose one. Now that you know the trial date, I think
18 you should work with defense counsel against a backdrop that
19 indicates if there are going to be motions to suppress or
20 other motions that need to be decided, and obviously you will
21 comply with the Court's individual rules for criminal trials,
22 but I just wanted to get you thinking about that sooner rather
23 than later. All right?

24 MR. AMATRUDA: Yes, and that's fine, Your Honor.
25 We've been able to work with defense counsel productively in

1 the past with regard to these things.

2 THE COURT: Good.

3 MR. AMATRUDA: I can't imagine that we're going to
4 have any issues figuring out a motion schedule.

5 THE COURT: Thank you.

6 I will hear from defense counsel.

7 MR. SCHACHTER: Your Honor, with respect to the
8 trial date --

9 THE COURT: I'm sorry, would you just speak into the
10 microphone?

11 MR. SCHACHTER: I'm sorry, yes, Your Honor.

12 With respect to the trial dates, I have a couple of
13 conflicts.

14 THE COURT: I am sorry to hear that, but you know,
15 you are the ones who said you wanted to go to trial sooner
16 rather than later. And I can ask the Government if they want
17 to go to trial sooner than October the 7th, but your
18 colleague, Mr. Jackson, talked about needing to get experts
19 and moving people in from around the world, so I thought
20 October 7th was a date that is far enough in the future for
21 you to prepare your defense adequately and for the prosecution
22 to go forward. But if you want to start talking about August
23 dates, we can talk about August dates.

24 Would that be better for you?

25 MR. SCHACHTER: It would, Your Honor.

1 THE COURT: Do you want to go to trial on this case
2 in August?

3 MR. AMATRUDA: Judge, I -- we certainly would be
4 ready whenever the Court would set the trial date. However,
5 what I would say is that we would anticipate having some
6 legitimate difficulty with witnesses in the middle of August
7 obtaining their appearance. Certainly, we'll be ready to go
8 whenever the Court sets.

9 THE COURT: All right, well, I am going to stick
10 with October the 7th, but I will hear from defense counsel
11 about your scheduling problems.

12 MR. SCHACHTER: Thank you, Your Honor, and I
13 apologize for needing to note this.

14 I have a criminal trial scheduled before Judge
15 Engelmayr on September 22nd that has already been scheduled,
16 as well as a criminal trial before Judge Koeltl on -- that's
17 scheduled for October the 25th. And if it wasn't for set
18 criminal trial dates, believe me, Your Honor, I would not have
19 even mentioned them.

20 THE COURT: Well, now you have another set criminal
21 trial date and my colleagues, Paul Engelmayr is a fine fellow
22 and I'm sure my colleague John Koeltl on the other side of the
23 harbor will understand that you cannot be there and certainly
24 the jury will understand that you can't be here during certain
25 parts the trial.

1 MR. SCHACHTER: So in light of those other trial
2 dates, Your Honor, and in light of the Government's
3 representation that it is ready for trial whenever the Court
4 sets it, we would ask if Your Honor could consider an earlier
5 trial date.

6 There are things to do in this case, but
7 particularly given Mr. Boustani's detention, we are anxious to
8 go to trial as swiftly as is humanly possible.

9 And so we understand that Your Honor has a crowded
10 schedule, but it would be our request that the Court set a
11 date, even if -- we certainly understand the Government's
12 concerns about witnesses' availability in August.

13 THE COURT: Well, I will tell you what we will do,
14 right now I am setting it for Monday, October 7th at 9:30
15 a.m., pick and go. If you and the Government want to come in
16 with a consensual request for a different trial date, you can
17 submit that on ECF and I will take it under advisement.

18 I have the power to move my cases around, just as
19 Engelmayer and Koeltl have the power to move their cases
20 around. So, Moses came down with ten things on the tablet;
21 our trial calendars, despite our enormous Article III egos,
22 were not on it. So, there you go.

23 MR. SCHACHTER: I appreciate that, Your Honor.
24 We'll confer with the Government. I just face three judges
25 who each have the power to incarcerate me.

1 THE COURT: And which are just great friends, but
2 you have those sort of back-to-school scheduling issues. I
3 get it, okay, go ahead.

4 MR. SCHACHTER: That's all with respect to trial
5 dates.

6 THE COURT: Okay.

7 MR. JACKSON: Again, good afternoon, Your Honor.

8 THE COURT: Good afternoon.

9 MR. JACKSON: Just to note a couple of things.

10 One, first Mr. Amatruda is absolutely correct, we
11 are confident that we can work with the Government in crafting
12 an appropriate briefing schedule that will be helpful to the
13 Court.

14 THE COURT: You handled those search term issues
15 very well, and I appreciate you doing that.

16 MR. JACKSON: We appreciate that, Your Honor.

17 I do want to raise with the Court that I anticipate
18 discussing with the Government an earlier schedule for some of
19 the productions that we typically make before trial than would
20 occur in some of the simpler trials that the Court deals with
21 because the last thing that we want is for the Court to have a
22 raft of extraordinarily complex motions on the eve of trial.
23 So we anticipate that one of the issues we'll be discussing
24 with the Government is early production of 3500 material and
25 exhibits so that we can file timely motions in limine.

1 We know that the Court, Your Honor's individual
2 rules for typical trials allows for motions in limine shortly
3 before trial, only ten days before, but we think that getting
4 out ahead of what we anticipate will be some significant
5 evidentiary issues and giving the Court adequate time will be
6 a better use of everyone's resources.

7 THE COURT: I appreciate that.

8 MR. JACKSON: Thank you, Your Honor.

9 Also wanted to flag that there are -- the Government
10 has been diligently moving through their rolling discovery.
11 There is a substantial amount of discovery that we've only
12 recently received, at least several hundred-thousand pages of
13 documents that we've gotten relatively recently, and one
14 statement that the Government identified as having been made
15 by Mr. Boustani that was delivered to us, I believe, just
16 yesterday.

17 THE COURT: I saw that statement and as I averred,
18 it seemed to have more to do with subject matter jurisdiction
19 than personal jurisdiction. So whether the statement was made
20 or not made, the reality is subject matter jurisdiction does
21 not depend on a statement made by an individual other than the
22 United States Supreme Court justices, Court of Appeals
23 justices, and occasionally District Court justices.

24 So I mean I read it, it is what it is, but it is no
25 more than what it is --

1 MR. JACKSON: Absolutely, Judge.

2 THE COURT: -- when it comes to subject matter
3 jurisdiction anyway.

4 MR. JACKSON: That makes sense, Judge. Wanted to
5 just flag that.

6 THE COURT: Consider it flagged.

7 MR. JACKSON: Yes, and we'll be discussing with them
8 sort of the schedule for additional motions.

9 THE COURT: Okay.

10 MR. SCHACHTER: And then, Your Honor, just one more
11 question about our conferring with the Government regarding
12 potential or earlier trial dates to see if they will be
13 amenable to a joint proposal on that.

14 Would it be helpful if we conferred with Your
15 Honor's Courtroom Deputy?

16 THE COURT: No, I think in this case because there
17 are so many moving parts, we have a number of criminal matters
18 that are also vying for the Court's time, and not to say that
19 Social Security appeals, habeas corpus cases, Fair Labor
20 Standard Act cases, Fair Debt Collection Practice Act action
21 cases are not important, and not to say that it has anything
22 to do with the fact that there were four colleagues who were
23 put forward for appointment to the District Court and that
24 Judge Bianco has been approved for the Second Circuit, that
25 has nothing to do with what we are talking about here.

1 MR. SCHACHTER: Yes, Your Honor. All right, we'll
2 confer with the Government and we'll submit something.

3 THE COURT: Thank you.

4 Anything else?

5 MR. AMATRUDA: Judge, I know that Your Honor will
6 get to this, but we would respectfully ask the Court to enter
7 an order excluding the time between now and trial.

8 THE COURT: We will do that, and Mr. Jackson will
9 circulate that order. Hopefully, all counsel and parties will
10 sign it, but in any event, even if they do not, I have already
11 deemed it a complex trial and I will exclude time in the
12 interest of justice through and including October 7th of 2019.

13 I would hope that the parties and counsel will sign
14 it, but if they do not, if they don't want to say this is a
15 complex case despite millions of documents and dozens of
16 witnesses and international issues, then that is the position
17 they can take.

18 Anything else?

19 MR. AMATRUDA: No; thank you, Your Honor.

20 THE COURT: Anything else from defense counsel?

21 MR. JACKSON: No, Your Honor; thank you.

22 THE COURT: All right, Mr. Jackson, would you
23 circulate the proposed order excluding time in the interest of
24 justice in this case through and including October 7th of
25 2019, so if we can have a sign-off from counsel?

1 MR. JACKSON: Your Honor, we have -- at this point
2 we are not in a position to waive our client's speedy trial.

3 THE COURT: Okay.

4 MR. JACKSON: Thank you.

5 THE COURTROOM DEPUTY: Here you are, Judge.

6 THE COURT: I have what has been marked as Court 1
7 for identification, a waiver of speedy trial and order of
8 excludable delay in the interest of justice excluding time in
9 this case from today's date, March 28th of 2019, to and
10 including October 7th of 2019.

11 The proposed order has been signed by the Assistant
12 United States Attorney, Mr. Amatruda, the defendant has
13 declined to sign it and defense counsel has declined to sign
14 it. I am signing it and admitting it into evidence as Court
15 1, and time in this case, it is clearly a complex case, is
16 excluded until October 7th, of 2019 when we will pick our jury
17 and go to trial.

18 Anything else I can help counsel with today?

19 Mr. Jackson, here is Court 1 in evidence.

20 (Court's Exhibit 1 was received in evidence.)

21 THE COURT: Anything else?

22 MR. AMATRUDA: No; thank you, Your Honor.

23 THE COURT: Anything else?

24 MR. JACKSON: No; thank you, Your Honor.

25 THE COURT: Thank you. We are adjourned.

SAM

OCR

RMR

CRR

RPR

Appendix C

MANDATE

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 7th day of March, two thousand nineteen.

Present:

Robert D. Sack,
Reena Raggi,
Susan L. Carney,
Circuit Judges.

United States of America,

Appellee,

v.

No. 19-344

Jean Boustani,

Defendant-Appellant.

Jean Boustani appeals from an order of the District Court for the Eastern District of New York (Kuntz, J.) entered on February 4, 2019, denying Boustani's bail application and directing that he be detained pending trial. Upon due consideration, the order of the District Court is AFFIRMED and Boustani's appeal is denied without prejudice to further bail applications before the District Court. Should Boustani present an amended bail package to the District Court, the government shall bear the burden of establishing by a preponderance that (1) Boustani presents an actual risk of flight and (2) no condition or combination of conditions could be imposed that would reasonably assure his presence in court. *See 18 U.S.C. § 3142(e); United States v. Sabhnani, 493 F.3d 63, 75 (2d Cir. 2007).*

For the Court:
Catherine O'Hagan Wolfe, Clerk of Court

Catherine O'Hagan Wolfe


A True Copy

Catherine O'Hagan Wolfe, Clerk

United States Court of Appeals, Second Circuit

Catherine O'Hagan Wolfe


MANDATE ISSUED ON 03/28/2019

App. 031

Appendix D

FILED
IN CLERK'S OFFICE
US DISTRICT COURT E.D.N.Y.

★ FEB 04 2019 ★

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA, :

v. :

JEAN BOUSTANI, :

Defendant. :

WILLIAM F. KUNTZ, II, United States District Judge:

On January 8, 2019, the defendant Jean Boustani ("Defendant") filed a motion for appeal of Magistrate Judge Peggy Kuo's Order of Detention filed on January 2, 2019. Magistrate Judge Kuo, finding Defendant failed to present credible sureties to ensure his appearance and the safety of the community, ordered detention and granted leave to renew the bail application. This Court held oral argument on the motion on January 22, 2019. For the reasons stated below, Defendant's appeal is **DENIED**.

BACKGROUND

On December 19, 2018, the United States of America (the "Government") filed a four-count indictment (the "Indictment") charging Defendant and others in connection with a \$2 billion fraud, bribery, and money laundering scheme. The Indictment charges Defendant with the following crimes: (1) conspiracy to commit wire fraud in violation of 18 U.S.C. § 1349; (2) conspiracy to commit securities fraud in violation of 18 U.S.C. § 371; and (3) conspiracy to commit money laundering in violation of 18 U.S.C. § 1956(h). *See* Indictment, ECF No. 1. The Government alleges Defendant "was a central organizing figure in a \$2 billion fraud, bribery and money laundering scheme that resulted in the payment of at least \$200 million in bribes and kickbacks to government officials in Mozambique and to investment bankers." Gov.'s Opp'n to Def.'s Renewed Appl. for Bail ("Gov.'s Opp'n") at 1, ECF No. 27.

Defendant is, at 40 years of age, a wealthy international businessman. He is a citizen of Lebanon, Antigua, and Barbuda and has no ties to the United States. On January 2, 2019,

Defendant, while en route to the Dominican Republic with his wife, was arrested by Dominican authorities and transferred to the United States, pursuant to the Indictment. He was arraigned later that day before Magistrate Judge Kuo and presented a bail application consisting of \$2 million dollars cash and a dollar amount on the bond to be determined by the Court. January 2, 2019 Minute Entry, ECF No. 15. The Government opposed Defendant's bail application based on risk of flight. *Id.* After hearing argument from both parties, Magistrate Judge Kuo ordered detention and granted Defendant leave to renew his bail application. *See id.*; Order of Detention, ECF No. 16.

In a letter dated January 8, 2019, Defendant filed a motion appealing this detention order to the district court. Def.'s Renewed Appl. for Bail ("Def.'s Appeal"), ECF No. 21. The Government filed its opposition brief on January 16, 2019. *See* Gov.'s Opp'n. Defendant filed its reply brief on January 18, 2019. *See* Def.'s Reply in Support of Renewed Appl. for Bail ("Def.'s Reply"), ECF No. 29. This Court then heard oral argument on the application on January 22, 2019. The Court further directed the parties to submit proposed findings of fact and conclusions of law.

The defense now proposes the following bail conditions:

- A \$20 million personal recognizance bond, secured by \$1 million cash
- Travel restricted to the Eastern and Southern Districts of New York;
- Surrender of all travel documents with no new applications¹;
- Surrender of all travel documents of Defendant's wife to the FBI, with no new applications;

¹ The defense notes "Mr. Boustani's travel documents have already been surrendered to the FBI." Def.'s Proposed Findings of Fact and Conclusions of Law ("Def.'s Mem.") Ex. A ¶ 9-10, ECF No. 36-1.

- Strict supervision by Pretrial Services;
- Home confinement with GPS monitoring to be secured by security company Guidepost Solutions², along with additional restrictions:
 - 24-hour armed former or off-duty law enforcement officers;
 - Two officers per shift;
 - One supervisory security professional overseeing and scheduling the security detail, who shall take directions from, and reports to, the Government and Pretrial Services;
 - Surveillance and security technology³ throughout the residence;
 - Visitors limited to Defendant's attorneys and his immediate family except upon application to Pretrial Services and the Government;
 - Travel limited to Court appearances and to counsel's office, except upon application to Pretrial Services and the Government, with two officers to accompany Defendant during all such travel;
 - A security vehicle and driver for travels to Court or to counsel's office, when needed;
 - Security personnel posted at the residence whenever Defendant leaves the unit; and
 - Communication between Guidepost and Pretrial Services, the Court and/or the U.S. Attorney's Office, if required by the Court. Def.'s Proposed Findings of Fact and Conclusions of Law ("Def.'s Mem.") Ex. A ¶ 5, ECF No 36-1.

Defendant also signed a declaration consenting to any and all actions taken by Guidepost, including the use of force, and waiving his right to bring any action against Guidepost, the Court,

² If there are objections to the retention of Guidepost, Defendant will retain an alternative private security firm that is acceptable to the Government, Pretrial Services, and the Court. Def.'s Mem. Ex. A ¶ 5.

³ Surveillance and security technology includes: (1) motion sensors on all windows and exterior doors; (2) 24-hour camera recording throughout the residence, except for the bathroom and master bedroom, with all videotape preserved and immediately available to the Government on request; (3) bi-weekly searches of the residence for weapons or contraband; and (4) screening of all visitors (and their possessions) for weapons or contraband with a metal detector and pat-down searches by armed officers. Def.'s Mem. Ex. A at ¶ 5.

the United States Government, and/or any other party in connection with any risks or dangers associated with his release. *See* Def.'s Mem. Ex. 4.

In support of its bail proposal, the defense argues: "Given the proposed bail conditions render it *impossible* for [Defendant] to flee, there is no lawful basis for his continued detention." Def.'s Appeal at 15.

The Government opposes pre-trial release, arguing: "the defendant is a flight risk with access to significant financial resources and no ties to the United States, and no condition or combination of conditions of release can reasonably assure the appearance of the defendant." Gov.'s Proposed Findings of Fact and Conclusions of Law ("Gov.'s Mem.") at 1, ECF No. 35.

LEGAL STANDARDS

The Eighth Amendment to the United States Constitution provides that "[e]xcessive bail shall not be required." U.S. Const. amend. VIII. It does not create a right to bail; rather, it prohibits *excessive* bail. *See United States v. Salerno*, 481 U.S. 739, 754-55 (1987). Under the Bail Reform Act, a court must order pre-trial release of a defendant on a personal recognizance bond if such release will "reasonably assure the appearance of the [defendant] as required and will not endanger the safety of any other person in the community." 18 U.S.C. § 3142(b) (2018). Thus, if no condition or combination of conditions will reasonably assure the defendant will not flee or will not endanger others, a court must order detention. *Id.*

A district court reviews *de novo* a magistrate judge's decision to release or detain a defendant pending trial. *See United States v. Esposito*, 309 F. Supp. 3d 24, 30 (S.D.N.Y. 2018) (Marrero, J.) (citing *United States v. Leon*, 766 F.2d 77, 80 (2d Cir. 1985)). A district court undertakes a two-step inquiry when evaluating an application for bail. *See* 18 U.S.C. § 3142(e). *First*, the Court must determine whether the Government has established the defendant presents a

danger to the community or a risk of flight. *See* 18 U.S.C. § 3142(e). *Second*, if the Government meets its initial burden, the Court must determine whether no conditions or combination of conditions of release could reasonably assure the defendant will not flee or will not endanger others. *See United States v. Sabhnani*, 493 F.3d 63, 75 (2d Cir. 2007). In making that determination, the Court must consider the following factors: (1) the nature and circumstances of the offense charged; (2) the weight of the evidence against the person; (3) the history and characteristics of the person; and (4) the nature and seriousness of the danger to any person in the community that would be posed by the person's release. *See* 18 U.S.C. § 3142(g).

The Government must support a finding of dangerousness by clear and convincing evidence, *see United States v. Ferranti*, 66 F.3d 540, 542 (2d Cir. 1995), and a finding of risk of flight by a preponderance of the evidence, *see United States v. Jackson*, 823 F.2d 4, 5 (2d Cir. 1987); *see also United States v. Abuhamra*, 389 F.3d 309, 320 n.7 (2d Cir. 2004). Because the "rules concerning admissibility of evidence in criminal trials do not apply" to bail hearings, *see* 18 U.S.C. § 3142(f)(2)(B), the parties may proceed by way of proffer, *United States v. LaFontaine*, 210 F.3d 125, 130-31 (2d Cir. 2000). As such, courts often base detention decisions on hearsay evidence.

ANALYSIS

The Government argues Defendant poses a serious flight risk such that no combination of conditions could reasonably assure his appearance in this proceeding. For the reasons discussed below, the Court agrees.

I. The Government Has Demonstrated Defendant's Risk of Flight

Because the Government does not argue Defendant's release poses a danger to the community, the Court considers each of the 18 U.S.C. § 3142(g) factors (the "bail factors") in

turn, other than 18 U.S.C. § 3142(g) (danger posed by Defendant's release). In this Court's view, the bail factors support continued detention rather than release by a preponderance of the evidence.

A. The Nature and Circumstances of the Offenses

The defense asserts federal fraud charges, though "serious," are not the type of dangerous or obstructive criminal activity that demand long-term pretrial detention. According to the defense, "white-collar fraud defendants are almost always released on bail prior to trial, unless there is specific evidence that the defendant is willing to subvert the justice system or otherwise cannot be trusted to comply with the Court's orders." Def.'s Appeal at 8-9.

According to the Government, Defendant and his employer, Privinvest, are at the center of a \$2 billion fraud, bribery, and money laundering scheme. The Indictment alleges the \$2 billion in loan funds went to Privinvest, and Defendant personally received \$15 million for his role in the scheme. Indictment ¶¶ 24-26. Defendant and his co-conspirators allegedly orchestrated and paid bribes and kickbacks, procured secret government guarantees, and bloated borrowing and lending by corrupt government officials and bankers. Gov.'s Opp'n. at 7. These actions resulted in staggering losses to not only foreign, but American investors, and devastated the economy of Mozambique, causing "Mozambican companies and the Mozambican government [to default] on \$2 billion in loans and . . . miss[] more than \$700 million in loan payments." *Id.* If convicted, Defendant faces a cumulative statutory maximum of 55 years imprisonment. In sum, the Government argues "this serious potential sentence," "the staggering losses to investors," and "the real world effect of the defendant's actions" highlight the seriousness of this case. *Id.*

The federal fraud charges, which implicate devastating loss amounts upwards of \$2 billion, are indeed serious. Moreover, Defendant is not just alleged to be a participant, but the principal figure in a fraud, bribery, and money laundering scheme of international proportions. As this Court has observed, a defendant's "alleged ties to a large [] syndicate indicate that he has strong connections to people who have the resources to, ability to, and interest in helping him flee the jurisdiction" favors denying bail. Moreover, if convicted, Defendant will face lengthy and onerous maximum penalties. When faced with the possibility of a significant prison term, defendants have a strong incentive to flee. *See Sabhnani*, 493 F.3d at 66-67, 76 (noting defendants had a strong motive to flee in part because they were charged with a serious crime and, if convicted, they would likely face a lengthy sentence of incarceration—a statutory maximum of 40 years imprisonment and a Guidelines range of 210 to 262 months); *see also United States v. Khusanov*, 731 F. App'x 19, 21 (2d Cir. 2018) (summary order) ("[A] district court does not clearly err in concluding that a defendant facing a potentially lengthy prison sentence possesses a strong motive to flee.") Accordingly, the Court concludes the nature and circumstances of the offenses favor detention.

B. The Weight of the Evidence

The defense argues the Government fails to proffer sufficiently strong evidence against Defendant. According to the defense, the Indictment focuses on evidence of bribes paid to co-conspirators and false statements made to investors, which do not support the allegations of wire fraud, securities fraud, and money laundering charged against Defendant. Def.'s Reply at 7. The defense also asserts Defendant has strong extraterritoriality and willfulness defenses. Because the Indictment, as the defense characterizes it, "does not allege that any securities transaction occurred in the United States" and "fails to set forth with any specificity the Government's

allegation as to the defendant's domestic conduct," applying the federal fraud and money laundering statutes to the defendant's extraterritorial conduct would be a violation of his Fifth Amendment right to due process. Def.'s Reply at 21.

The Government argues the overwhelming evidence against the defendant favors his detention because it provides him with a motive and incentive to flee. The Government has proffered numerous emails sent by Defendant that allegedly show he participated in an agreement to pay \$50 million in bribes, instructed kickback payments to investment bankers, and planned and executed a money laundering scheme involving false invoices to mask payments to co-conspirators. *See* Gov.'s Opp'n at 8. The Government has also gathered correspondent bank records confirming these alleged bribes and kickbacks in fact occurred. *See* Gov.'s Mem. at 16. As an example, the Government references an email exchange showing a "a thinly-veiled reference to bribes," in which a Mozambican government co-conspirator requested '50 million chickens,' and the defendant responded, 'LOLLOLLL. I love your chicken bro. Done.'" Indictment ¶ 32(a)). This "arrangement" ultimately resulted in \$50 million in bribes paid to Mozambican government officials according to the Government. Gov.'s Mem. at 5.

Because it is "contrary to our legal system to impose punishment for a crime that a defendant has not yet been shown to have committed," courts are cautious in affording undue weight to this factor. *See United States v. Motamedi*, 767 F.2d 1403, 1408 (9th Cir. 1985) (Kennedy, J); *see also United States v. Paulino*, 335 F. Supp. 3d 600, 613 (S.D.N.Y. 2018) (Carter, J.). At this early stage in the proceedings, the Court makes no conclusions about the merits of the Government's case. *See United States v. Zarrab*, 15-CR-867, 2016 WL 3681423, at *7 (S.D.N.Y. July 16, 2016) (Berman, J.) ("The Court recognizes the difficulty inherent in assessing the Government's case before trial, and is mindful not to reach any conclusions about

[Defendant's] guilt or innocence." (internal citation and quotations omitted)). But significant evidence, including extensive documentation, of a defendant's role in a crime may weigh against release. *See United States v. Fishenko*, 12-CR-626, 2013 WL 3934174, at *2 (E.D.N.Y. July 30, 2013) (Johnson, J.) (finding evidence of "hundreds of pertinent recorded conversations and email exchanges that reveal [the defendant's] role in the conspiracy" weighed against release). This evidence appears strong, and this factor weighs in favor of continued detention. *See United States v. Bruno*, 89 F. Supp. 3d 425, 431 (E.D.N.Y. 2016) ("When evidence of a defendant's guilt is strong, and when the sentence upon conviction is likely to be long . . . a defendant has stronger motives to flee." (quoting *United States v. Iverson*, 14-CR-197, 2014 WL 5819815, at *4 (W.D.N.Y. Nov. 10, 2014) (Arcara, J.))).

Moreover, the Court is not convinced Defendant—college-educated in finance and employed as a business development executive—was "unaware that fraud in connection with loans he specifically negotiated through international investment banks would be sold to investors in the United States." Gov.'s Opp'n. at 8. As the Government notes, "[i]t is hornbook law that . . . ignorance of the law is not a defense and the government is not required to prove that the defendant was aware of the specific law that he is charged with violating." *Id.* (citing *Bryan v. United States*, 524 U.S. 184, 194 (1998) (internal quotation marks omitted)). At this time, the Court cannot reasonably conclude Defendant has strong extraterritoriality and willfulness defenses that can seriously rebut the weight of the evidence against him.

C. The History and Characteristics of Defendant

In assessing Defendant's characteristics, the Court looks to "the person's character, physical and mental condition, family ties, employment, financial resources, length of residence

in the community, community ties, past conduct.” *Fishenko*, 12-CR-626, 2013 WL 3934174, at *2 (quoting 18 U.S.C. § 3142(g)(3)).

As noted, Defendant is, at 40 years of age, a successful businessman and an experienced international traveler. He is a citizen of Lebanon, Antigua, and Barbuda and has no ties to the United States. With college and graduate degrees in finance, he is employed as a business development executive for Privinvest, an international naval, commercial, and private shipbuilding company based in Abu Dhabi, UAE. *See* Pretrial Services Report (“PSR”), ECF No. 38. Defendant has an approximate net worth of \$4,556,700.00 and stands to inherit the proceeds of a bank account that has a current approximate value of \$7,000,000.00.⁴ *See* PSR at 3. According to defense counsel, Defendant is also a beneficiary of a trust that holds two London-based apartments purchased by a Privinvest subsidiary.

The Government argues Defendant’s deceptive character, substantial wealth, minimal ties to the United States, and extensive ties to countries without extradition weigh in favor of continued detention. According to the Government, Defendant provided work visas bearing false information to Mozambican co-conspirators, assisted them in obtaining UAE bank accounts, and took steps to avoid detection, all pointing to “a demonstrated ability to bribe government officials, and to use fraudulent documents to assist co-conspirators in their travel to foreign jurisdictions.” Gov.’s Mem. at 17. The Government contends Defendant, in addition to his own wealth, has vast financial resources, including the \$15 million he allegedly received for his role in orchestrating a massive \$2 billion corruption scheme, and the assets of his employer Privinvest and its billionaire owner, who may possess a strong interest in assisting his flight. *Id.*

⁴ Defendant advised his counsel he gifted his father those funds, and his father is responsible for managing the account and investing the principal. *See* PSR at 3.

at 16-17. Given Defendant's lack of ties to the United States, and strong ties to the UAE and Lebanon, two countries that do not have extradition treaties with the United States, the Government argues nothing binds Defendant to stay. *Id.* at 18.

The defense argues Defendant's wealth and ties to foreign countries that may not grant extradition are insufficient bases for denying bail. According to the defense, "Defendants who possess, or have access to, 'significant financial resources' are routinely released on bail, despite the fact that these defendants 'could' use their wealth to fund a theoretical escape from the country." Def.'s Mem. Ex. A ¶ 36. Moreover, concerns about Defendant's wealth should be mitigated under circumstances, in which private security has been retained to ensure Defendant cannot escape home detention. *See Sabhnani*, 493 F.3d at 72, 77; *see also Esposito*, 18-CR-923, 2018 U.S. App. LEXIS 25654 at *8-9 (noting economic equality concerns were not present in [Sabhnani] because the defendants' wealth was a significant contributor to their flight risk, and defendants of lesser means, lacking the resources to flee, might have been granted bail without such a condition in the first place). Although the defense admits Defendant has no ties to the United States, Defendant is willing to relocate his family for the duration this case. His Lebanese citizenship, defense argues, "merely suggests a hypothetical opportunity to flee exists" and falls short of demonstrating an actual risk of flight. Def.'s Appeal at 13.

The Court disagrees. Each factor is not considered in isolation. This Court must look to the totality of the circumstances and of Defendant's characteristics, which ultimately demonstrate a risk of flight. It is not, as Defendant puts it, "just that the person is a foreigner" or "just that the person has means." January 22, 2019 Tr. 20:22-24. Rather, the combination of Defendant's alleged deceptive actions, access to substantial financial resources, frequent international travel, complete lack of ties to the United States, and extensive ties to foreign

countries without extradition demonstrates Defendant poses a serious risk of flight. *See, e.g., Zarab, 15-CR-867, 2016 WL 3681423, at *8* (“Defendant’s lack of ties to the United States; his significant wealth and his substantial resources; his extensive international travel; and his strong ties to foreign countries, including countries without extradition . . . among others stated, provide [the defendant] with the incentive and the wherewithal to flee and render him a flight risk.”); *United States v. Epstein, 155 F. Supp. 2d 323, 326 (E.D. Pa. 2001)* (Bartle, J.) (“The crucial factor, however, is defendant’s lack of ties to the United States and his extensive ties to Brazil with which no extradition treaty exists. In our view, his forfeiture of \$1 million worth of assets in the United States would not deter him from flight when in Brazil he has significant wealth, a lucrative job, the presence of his family, and insulation from ever being forced to stand trial.”). Although Defendant expressed his willingness to relocate his family (currently living in Lebanon) to the United States during the pendency of this case, efforts to create ties to the United States where none previously existed do not sufficiently diminish Defendant’s flight risk under the unique circumstances here. Notwithstanding the Defendant’s proposed conditions of bail, the history and characteristics of Defendant favor continued detention.

In light of these concerns, the Court concludes the Government has shown by a preponderance of the evidence Defendant poses a serious risk of flight.

II. The Government Has Demonstrated No Conditions or Combination of Conditions Can Reasonably Assure the Defendant’s Appearance in Court

Notwithstanding Defendant’s risk of flight, the defense argues it would be “virtually impossible” for Defendant to flee under his proposed bail package—which in effect creates a private jail for Defendant. Defendant would be detained in the presence of 24-hour private armed guards, who would be responsible for keeping him confined in a highly securitized and heavily monitored residence.

According to the defense, “[n]o defendant has ever failed to appear in any of the cases in this Circuit where private security was imposed as a bail condition.” Def.’s Mem. Ex. A ¶ 8. Defendant points to cases in which courts have released defendants like himself—foreign nationals of means from countries that do not extradite—under stringent bail conditions like those proposed in this case. *See, e.g.*, Order, *United States v. Seng*, 15-CR-706, 2017 WL 2693625, (S.D.N.Y. Oct. 23, 2015) (granting release of Chinese national charged with FCPA violations and conspiracy to commit the same pursuant to a bail package that included home confinement and round-the-clock private armed security). In the Federation Internationale de Football Association (“FIFA”) cases, in which the Government charged twenty-five foreign nationals with participation in a wire fraud scheme involving bribes paid to FIFA officials, all defendants arraigned were released on bail. *See, e.g.*, Order Setting Conditions of Release and Appearance Bond, *United States v. Jimenez*, 15-CR-252, (E.D.N.Y. Mar. 3, 2016) (granting bail of Guatemalan national charged with accepting hundreds of thousands of dollars in bribes despite his access to significant wealth and limited ties to the United States); Order Setting Conditions of Release and Appearance Bond, *United States v. Rocha*, No. 15-CR-252 (E.D.N.Y. May 18, 2016) (granting bail of Nicaraguan national accused of accepting bribes despite his limited ties to the United States). The defense argues *United States v. Bodmer* is “particularly instructive because it involved a wealthy Swiss-national—who could not be extradited from Switzerland—charged with bribery and money laundering offenses in connection with Azerbaijani oil transactions and for whom bail was granted over the Government’s objection.” Def.’s Mem. Ex. A ¶ 30 (citing *Bodmer*, 03-CR-947, 2004 WL 169790, at *2 (S.D.N.Y. Jan. 28, 2004) (Scheindlin, J.). Moreover, the defense notes “[i]n at least five of the cases where the court approved bail conditions that included private security, the United States Attorney’s Office

for the Eastern District consented to these bail conditions.” Def.’s Mem. Ex. A ¶ 8 (listing cases). “Given these precedents,” the defense asserts it is clear Defendant’s proposed conditions, “which are meaningfully more vigorous than those proposed in the cases described, are sufficient to ensure Mr. Boustani’s continued appearance in court.” *Id.* ¶ 33.

Each of these cases are distinguishable in important ways. The defendants in *Seng*, the FIFA cases, and *Bodner* all voluntarily waived extradition to the United States, and none of them were alleged to have procured false travel documents. Although the defense emphasizes the Swiss defendant in *Bodner* “could not be extradited,” he nevertheless consented to execute a waiver of extradition from Switzerland and forego any rights he may have in Switzerland to fight a return to the United States. That the Government has previously agreed to private jail proposals in other cases highlighted by the defense, yet strenuously opposes bail here, further underscores the serious concerns Defendant’s pretrial release would present.

Having carefully evaluated Defendant’s bail proposal under the circumstances of this case, the Court is convinced no conditions can reasonably assure Defendant’s appearance throughout the pendency of this case.

First, based on the financial resources reported by Defendant, the amount of cash offered as collateral does not appear sufficient. *See Sabhnani*, 493 F.3d at 77 (“[T]he deterrent effect of a bond is necessarily a function of the totality of a defendant’s assets.”) Given that Defendant’s net worth and assets amount to well over \$11 million, the Court is not convinced the \$1 million cash offered as collateral would meaningfully induce Defendant to stand trial. *Cf. Bodmer*, 03-CR-947, 2004 WL 169790, at *2 (holding a \$1.5 million bond, and home confinement, a sufficient condition of release for Swiss national defendant with a net worth of \$2.4 million). Nor does Defendant offer any sureties who would stand to lose financially if he were to flee.

Compare Endorsed Letter, *United States v. Nejad*, 18-CR-224 (S.D.N.Y. May 31, 2018), ECF No. 31 (releasing on bail an Iranian national, charged with violating U.S. economic sanctions, pursuant to a \$20 million bond, secured by assets based partly in the United States, with 15 different co-signers approved by the Government). Defendant has no assets in the United States and “has also thus far not indicated the source of \$1 million in cash he is posting, and whether it is traceable to funds from the fraud scheme the government charges or comes from Privinvest’s billionaire owner.” Gov.’s Mem. at ¶ 9. The Court is not persuaded the proposed bail package, funded by substantial, unknown, and unverified sources, would reasonably assure Defendant’s appearance in court proceedings. *See United States v. Raniere*, 18-CR-204-1, 2018 WL 3057702 at *7 (E.D.N.Y. June 20, 2018) (Garaufis, J.) (denying pre-trial release where there were “grave concerns” that defendant’s proposal would be paid for by “an unidentified trust funded by anonymous third parties”).

Second, Defendant’s forfeiture of his two passports does not mitigate his risk of flight. *See, e.g., United States v. Bonilla*, 388 F. App’x 78, 80 (2d Cir. 2010) (affirming detention order “even though [defendant] offered some evidence to challenge the statutory presumption of flight” based on surrender of his passport). As noted above, the Government has alleged Defendant procured visas and employment documents with false information for his co-conspirators.

Third, the Court is not persuaded the private armed guards responsible for preventing Defendant’s escape would reasonably ensure his appearances throughout this case. Def.’s Mem. Ex. A at ¶ 7. Guidepost employees would face a clear conflict of interest—private prison guards paid by an inmate. To illustrate this Court’s concerns, and as the Government notes, “the defendant in [Seng], who was released to private armed guards from Guidepost in an

arrangement similar to what defendant proposes here, was outside of his apartment virtually all day, every weekday; was visited by a masseuse for a total of 160 hours in a 30-day period; and went on an unauthorized visit to a restaurant in Chinatown with his private guards in tow.”

Gov.’s Mem. ¶ 10. In his affidavit, Guidepost President Andrew O’Connell affirmed no Guidepost employee or officer would operate as an employee of, or take any direction from Defendant or his employer, and Defendant would not supervise them or otherwise have any control over their duties. *See* Def.’s Mem. Ex. 3, Ex. A ¶ 4. This Court finds instructive the following reasoning from Judge Walton of the U.S. District Court for the District of Columbia:

While the Court has no reason to believe that the individuals selected for the defendant’s security detail would intentionally violate federal law and assist the defendant in fleeing the Court’s jurisdiction, it nonetheless is mindful of the power of money and its potential to corrupt or undermine laudable objectives. And although these realities cannot control the Court’s ruling, they also cannot be absolutely discounted or ignored.

United States v. Tajideen, 17-CR-46, 2018 WL 1342475, at *6 (D.D.C. Mar. 15, 2018).

Fourth, Defendant’s private jail proposal raises several issues related to use of force. Although Defendant has consented to the use of “any” force by Guidepost and has waived his right to sue any party in connection with the risks and dangers associated with escape attempts, it is not clear such an agreement is enforceable—and the defense fails to point to precedent suggesting it would be. Defendant cannot consent to the use of deadly force. And as noted in *Raniere*, “any escape attempt would also present the risk of a confrontation between armed guards and Defendant (or his followers) in the streets of New York City, which would mean that any reduction in the Defendant’s flight risk from this proposal would be at least partially offset by a greater risk to the community.” 18-CR-204-1, 2018 WL 3057702 at *7. This is why, as the Government correctly notes, federal prisoners should be detained in facilities run by trained personnel from federal correctional facilities. *See Sabhnani*, 493 F.3d at 74 n.13 (“To the extent

[armed private guards] implies an expectation that deadly force may need to be used to assure defendant['s] presence at trial . . . [s]uch a conclusion would, in fact, demand a defendant's detention."). Ultimately, the Court concludes private security is no substitute for a federal correctional facility under the unique circumstances in this case.

Finally, although this Defendant has vast financial resources to construct his own "private prison," the Court is not convinced "disparate treatment based on wealth is permissible under the Bail Reform Act." *Bruno*, 14-CR-556, 89 F. Supp. 3d at 431. "[T]roubled by th[e] possibility" that wealthy defendants could lawfully buy their way out of incarceration by constructing their own prison, the Second Circuit has not decided whether district courts "routinely must consider the retention of self-paid private security guards as an acceptable condition of release before ordering detention." *United States v. Banki*, 369 F. App'x 152, 153-54 (2d Cir. 2010). Although courts in this jurisdiction have permitted private jail solutions where there was no possibility one "defendant might be detained while a wealthy defendant could be released with a private guard solution," *Esposito*, 18-CR-923, 2018 WL 4344332, at *3, Defendant's release could very well produce disparate treatment based on wealth, as other co-defendants may not currently possess the financial capacity to pay for the private jail solution Defendant requests. *See* Gov.'s Mem. ¶ 13.

CONCLUSION

For the foregoing reasons, the Court concludes the Government has demonstrated by a preponderance of the evidence Defendant is a flight risk, and no combination of conditions can reasonably assure Defendant's presence at future court proceedings. Accordingly, Defendant's motion for appeal of detention is DENIED. Defendant will remain detained pending trial or another final disposition of this action.

SO ORDERED.

s/WFK

HON. WILLIAM F. KUNTZ, II

United States District Judge

Dated: February 4, 2019

Brooklyn, New York

Appendix E

KeyCite Red Flag - Severe Negative Treatment
Unconstitutional or Preempted Held Unconstitutional by U.S. v. Karper, N.D.N.Y., Aug. 10, 2011

United States Code Annotated

Title 18. Crimes and Criminal Procedure (Refs & Annos)

Part II. Criminal Procedure

Chapter 207. Release and Detention Pending Judicial Proceedings (Refs & Annos)

18 U.S.C.A. § 3142

§ 3142. Release or detention of a defendant pending trial

Effective: December 23, 2008

Currentness

(a) In general.--Upon the appearance before a judicial officer of a person charged with an offense, the judicial officer shall issue an order that, pending trial, the person be--

(1) released on personal recognizance or upon execution of an unsecured appearance bond, under subsection (b) of this section;

(2) released on a condition or combination of conditions under subsection (c) of this section;

(3) temporarily detained to permit revocation of conditional release, deportation, or exclusion under subsection (d) of this section; or

(4) detained under subsection (e) of this section.

(b) Release on personal recognizance or unsecured appearance bond.--The judicial officer shall order the pretrial release of the person on personal recognizance, or upon execution of an unsecured appearance bond in an amount specified by the court, subject to the condition that the person not commit a Federal, State, or local crime during the period of release and subject to the condition that the person cooperate in the collection of a DNA sample from the person if the collection of such a sample is authorized pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135a), unless the judicial officer determines that such release will not reasonably assure the appearance of the person as required or will endanger the safety of any other person or the community.

(c) Release on conditions.--(1) If the judicial officer determines that the release described in subsection (b) of this section will not reasonably assure the appearance of the person as required or will endanger the safety of any other person or the community, such judicial officer shall order the pretrial release of the person--

(A) subject to the condition that the person not commit a Federal, State, or local crime during the period of release and subject to the condition that the person cooperate in the collection of a DNA sample from the person if the collection

of such a sample is authorized pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. 14135a); and

(B) subject to the least restrictive further condition, or combination of conditions, that such judicial officer determines will reasonably assure the appearance of the person as required and the safety of any other person and the community, which may include the condition that the person--

(i) remain in the custody of a designated person, who agrees to assume supervision and to report any violation of a release condition to the court, if the designated person is able reasonably to assure the judicial officer that the person will appear as required and will not pose a danger to the safety of any other person or the community;

(ii) maintain employment, or, if unemployed, actively seek employment;

(iii) maintain or commence an educational program;

(iv) abide by specified restrictions on personal associations, place of abode, or travel;

(v) avoid all contact with an alleged victim of the crime and with a potential witness who may testify concerning the offense;

(vi) report on a regular basis to a designated law enforcement agency, pretrial services agency, or other agency;

(vii) comply with a specified curfew;

(viii) refrain from possessing a firearm, destructive device, or other dangerous weapon;

(ix) refrain from excessive use of alcohol, or any use of a narcotic drug or other controlled substance, as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802), without a prescription by a licensed medical practitioner;

(x) undergo available medical, psychological, or psychiatric treatment, including treatment for drug or alcohol dependency, and remain in a specified institution if required for that purpose;

(xi) execute an agreement to forfeit upon failing to appear as required, property of a sufficient unencumbered value, including money, as is reasonably necessary to assure the appearance of the person as required, and shall provide the court with proof of ownership and the value of the property along with information regarding existing encumbrances as the judicial office may require;

(xii) execute a bail bond with solvent sureties; who will execute an agreement to forfeit in such amount as is reasonably necessary to assure appearance of the person as required and shall provide the court with information

regarding the value of the assets and liabilities of the surety if other than an approved surety and the nature and extent of encumbrances against the surety's property; such surety shall have a net worth which shall have sufficient unencumbered value to pay the amount of the bail bond;

(xiii) return to custody for specified hours following release for employment, schooling, or other limited purposes; and

(xiv) satisfy any other condition that is reasonably necessary to assure the appearance of the person as required and to assure the safety of any other person and the community.

In any case that involves a minor victim under section 1201, 1591, 2241, 2242, 2244(a)(1), 2245, 2251, 2251A, 2252(a)(1), 2252(a)(2), 2252(a)(3), 2252A(a)(1), 2252A(a)(2), 2252A(a)(3), 2252A(a)(4), 2260, 2421, 2422, 2423, or 2425 of this title, or a failure to register offense under section 2250 of this title, any release order shall contain, at a minimum, a condition of electronic monitoring and each of the conditions specified at subparagraphs (iv), (v), (vi), (vii), and (viii).

(2) The judicial officer may not impose a financial condition that results in the pretrial detention of the person.

(3) The judicial officer may at any time amend the order to impose additional or different conditions of release.

(d) Temporary detention to permit revocation of conditional release, deportation, or exclusion.--If the judicial officer determines that--

(1) such person--

(A) is, and was at the time the offense was committed, on--

(i) release pending trial for a felony under Federal, State, or local law;

(ii) release pending imposition or execution of sentence, appeal of sentence or conviction, or completion of sentence, for any offense under Federal, State, or local law; or

(iii) probation or parole for any offense under Federal, State, or local law; or

(B) is not a citizen of the United States or lawfully admitted for permanent residence, as defined in section 101(a)(20) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(20)); and

(2) such person may flee or pose a danger to any other person or the community;

such judicial officer shall order the detention of such person, for a period of not more than ten days, excluding Saturdays, Sundays, and holidays, and direct the attorney for the Government to notify the appropriate court, probation or parole

official, or State or local law enforcement official, or the appropriate official of the Immigration and Naturalization Service. If the official fails or declines to take such person into custody during that period, such person shall be treated in accordance with the other provisions of this section, notwithstanding the applicability of other provisions of law governing release pending trial or deportation or exclusion proceedings. If temporary detention is sought under paragraph (1)(B) of this subsection, such person has the burden of proving to the court such person's United States citizenship or lawful admission for permanent residence.

(e) Detention.--(1) If, after a hearing pursuant to the provisions of subsection (f) of this section, the judicial officer finds that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of any other person and the community, such judicial officer shall order the detention of the person before trial.

(2) In a case described in subsection (f)(1) of this section, a rebuttable presumption arises that no condition or combination of conditions will reasonably assure the safety of any other person and the community if such judicial officer finds that--

(A) the person has been convicted of a Federal offense that is described in subsection (f)(1) of this section, or of a State or local offense that would have been an offense described in subsection (f)(1) of this section if a circumstance giving rise to Federal jurisdiction had existed;

(B) the offense described in subparagraph (A) was committed while the person was on release pending trial for a Federal, State, or local offense; and

(C) a period of not more than five years has elapsed since the date of conviction, or the release of the person from imprisonment, for the offense described in subparagraph (A), whichever is later.

(3) Subject to rebuttal by the person, it shall be presumed that no condition or combination of conditions will reasonably assure the appearance of the person as required and the safety of the community if the judicial officer finds that there is probable cause to believe that the person committed--

(A) an offense for which a maximum term of imprisonment of ten years or more is prescribed in the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46;

(B) an offense under section 924(c), 956(a), or 2332b of this title;

(C) an offense listed in section 2332b(g)(5)(B) of title 18, United States Code, for which a maximum term of imprisonment of 10 years or more is prescribed;

(D) an offense under chapter 77 of this title for which a maximum term of imprisonment of 20 years or more is prescribed; or

(E) an offense involving a minor victim under section 1201, 1591, 2241, 2242, 2244(a)(1), 2245, 2251, 2251A, 2252(a)(1), 2252(a)(2), 2252(a)(3), 2252A(a)(1), 2252A(a)(2), 2252A(a)(3), 2252A(a)(4), 2260, 2421, 2422, 2423, or 2425 of this title.

(f) **Detention hearing.**--The judicial officer shall hold a hearing to determine whether any condition or combination of conditions set forth in subsection (c) of this section will reasonably assure the appearance of such person as required and the safety of any other person and the community--

(1) upon motion of the attorney for the Government, in a case that involves--

(A) a crime of violence, a violation of section 1591, or an offense listed in section 2332b(g)(5)(B) for which a maximum term of imprisonment of 10 years or more is prescribed;

(B) an offense for which the maximum sentence is life imprisonment or death;

(C) an offense for which a maximum term of imprisonment of ten years or more is prescribed in the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46;

(D) any felony if such person has been convicted of two or more offenses described in subparagraphs (A) through (C) of this paragraph, or two or more State or local offenses that would have been offenses described in subparagraphs (A) through (C) of this paragraph if a circumstance giving rise to Federal jurisdiction had existed, or a combination of such offenses; or

(E) any felony that is not otherwise a crime of violence that involves a minor victim or that involves the possession or use of a firearm or destructive device (as those terms are defined in section 921), or any other dangerous weapon, or involves a failure to register under section 2250 of title 18, United States Code; or

(2) upon motion of the attorney for the Government or upon the judicial officer's own motion, in a case that involves--

(A) a serious risk that such person will flee; or

(B) a serious risk that such person will obstruct or attempt to obstruct justice, or threaten, injure, or intimidate, or attempt to threaten, injure, or intimidate, a prospective witness or juror.

The hearing shall be held immediately upon the person's first appearance before the judicial officer unless that person, or the attorney for the Government, seeks a continuance. Except for good cause, a continuance on motion of such person may not exceed five days (not including any intermediate Saturday, Sunday, or legal holiday), and a continuance on motion of the attorney for the Government may not exceed three days (not including any intermediate Saturday, Sunday, or legal holiday). During a continuance, such person shall be detained, and the judicial officer, on motion of the attorney for the Government or *sua sponte*, may order that, while in custody,

a person who appears to be a narcotics addict receive a medical examination to determine whether such person is an addict. At the hearing, such person has the right to be represented by counsel, and, if financially unable to obtain adequate representation, to have counsel appointed. The person shall be afforded an opportunity to testify, to present witnesses, to cross-examine witnesses who appear at the hearing, and to present information by proffer or otherwise. The rules concerning admissibility of evidence in criminal trials do not apply to the presentation and consideration of information at the hearing. The facts the judicial officer uses to support a finding pursuant to subsection (e) that no condition or combination of conditions will reasonably assure the safety of any other person and the community shall be supported by clear and convincing evidence. The person may be detained pending completion of the hearing. The hearing may be reopened, before or after a determination by the judicial officer, at any time before trial if the judicial officer finds that information exists that was not known to the movant at the time of the hearing and that has a material bearing on the issue whether there are conditions of release that will reasonably assure the appearance of such person as required and the safety of any other person and the community.

(g) Factors to be considered.--The judicial officer shall, in determining whether there are conditions of release that will reasonably assure the appearance of the person as required and the safety of any other person and the community, take into account the available information concerning--

(1) the nature and circumstances of the offense charged, including whether the offense is a crime of violence, a violation of section 1591, a Federal crime of terrorism, or involves a minor victim or a controlled substance, firearm, explosive, or destructive device;

(2) the weight of the evidence against the person;

(3) the history and characteristics of the person, including--

(A) the person's character, physical and mental condition, family ties, employment, financial resources, length of residence in the community, community ties, past conduct, history relating to drug or alcohol abuse, criminal history, and record concerning appearance at court proceedings; and

(B) whether, at the time of the current offense or arrest, the person was on probation, on parole, or on other release pending trial, sentencing, appeal, or completion of sentence for an offense under Federal, State, or local law; and

(4) the nature and seriousness of the danger to any person or the community that would be posed by the person's release. In considering the conditions of release described in subsection (c)(1)(B)(xi) or (c)(1)(B)(xii) of this section, the judicial officer may upon his own motion, or shall upon the motion of the Government, conduct an inquiry into the source of the property to be designated for potential forfeiture or offered as collateral to secure a bond, and shall decline to accept the designation, or the use as collateral, of property that, because of its source, will not reasonably assure the appearance of the person as required.

(h) Contents of release order.--In a release order issued under subsection (b) or (c) of this section, the judicial officer shall--

(1) include a written statement that sets forth all the conditions to which the release is subject, in a manner sufficiently clear and specific to serve as a guide for the person's conduct; and

(2) advise the person of--

(A) the penalties for violating a condition of release, including the penalties for committing an offense while on pretrial release;

(B) the consequences of violating a condition of release, including the immediate issuance of a warrant for the person's arrest; and

(C) sections 1503 of this title (relating to intimidation of witnesses, jurors, and officers of the court), 1510 (relating to obstruction of criminal investigations), 1512 (tampering with a witness, victim, or an informant), and 1513 (retaliating against a witness, victim, or an informant).

(i) **Contents of detention order.**--In a detention order issued under subsection (e) of this section, the judicial officer shall--

(1) include written findings of fact and a written statement of the reasons for the detention;

(2) direct that the person be committed to the custody of the Attorney General for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal;

(3) direct that the person be afforded reasonable opportunity for private consultation with counsel; and

(4) direct that, on order of a court of the United States or on request of an attorney for the Government, the person in charge of the corrections facility in which the person is confined deliver the person to a United States marshal for the purpose of an appearance in connection with a court proceeding.

The judicial officer may, by subsequent order, permit the temporary release of the person, in the custody of a United States marshal or another appropriate person, to the extent that the judicial officer determines such release to be necessary for preparation of the person's defense or for another compelling reason.

(j) **Presumption of innocence.**--Nothing in this section shall be construed as modifying or limiting the presumption of innocence.

CREDIT(S)

(Added Pub.L. 98-473, Title II, § 203(a), Oct. 12, 1984, 98 Stat. 1976; amended Pub.L. 99-646, §§ 55(a), (c), 72, Nov. 10, 1986, 100 Stat. 3607, 3617; Pub.L. 100-690, Title VII, § 7073, Nov. 18, 1988, 102 Stat. 4405; Pub.L. 101-647, Title X, § 1001(b), Title XXXVI, §§ 3622-3624, Nov. 29, 1990, 104 Stat. 4827, 4965; Pub.L. 104-132, Title VII, §§ 702(d), 729, Apr. 24, 1996, 110 Stat. 1294, 1302; Pub.L. 108-21, Title II, § 203, Apr. 30, 2003, 117 Stat. 660; Pub.L. 108-458, Title VI, § 6952, Dec. 17, 2004, 118 Stat. 3775; Pub.L. 109-162, Title X, § 1004(b), Jan. 5, 2006, 119 Stat. 3085; Pub.L. 109-248, Title II, § 216, July 27, 2006, 120 Stat. 617; Pub.L. 109-304, § 17(d)(7), Oct. 6, 2006, 120 Stat. 1707; Pub.L. 110-457, Title II, §§ 222(a), 224(a), Dec. 23, 2008, 122 Stat. 5067, 5072.)

Notes of Decisions (1022)

18 U.S.C.A. § 3142, 18 USCA § 3142

Current through P.L. 116-21.

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Appendix F

United States Code Annotated
Constitution of the United States
Annotated
Amendment VIII. Excessive Bail, Fines, Punishments

U.S.C.A. Const. Amend. VIII

Amendment VIII. Excessive Bail, Fines, Punishments

Currentness

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Notes of Decisions (6575)

U.S.C.A. Const. Amend. VIII, USCA CONST Amend. VIII
Current through P.L. 116-21.

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Appendix G

United States District Court
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA
v.

Jean Bovstani

ORDER OF DETENTION PENDING TRIAL

Case Number: 18CR 681 (WFK)

In accordance with the Bail Reform Act, 18 U.S.C. §3142(f), a detention hearing has been held. I conclude that the following facts require the detention of the defendant pending trial in this case.

Part I - Findings of Fact

- (1) The defendant is charged with an offense described in 18 U.S.C. §3142(f)(1) and has been convicted of a (federal offense) (State or local offense that would have been a federal offense if a circumstance giving rise to federal jurisdiction had existed) that is
 a crime of violence as defined in 18 U.S.C. §3156(a)(4).
 an offense for which the maximum sentence is life imprisonment or death.
 an offense for which a maximum term of imprisonment of ten years or more is prescribed in _____
 a felony that was committed after the defendant had been convicted of two or more prior federal offense described in 18 U.S.C. §3142(f)(1)(A)-(C), or comparable state or local offenses.
- (2) The offense described in finding (1) was committed while the defendant was on release pending trial for a federal, state or local offense.
- (3) A period of not more than five years has elapsed since the (date of conviction)(release of the defendant from imprisonment) for the offense described in finding (1).
- (4) The defendant has not rebutted the presumption established by finding Nos.(1), (2) and (3) that no condition or combination of conditions will reasonably assure the safety of (an)other person(s) and the community.

Alternative Findings (A)

- (1) There is probable cause to believe that the defendant has committed an offense
 for which a maximum term of imprisonment of ten years or more is prescribed in 21 U.S.C. §
 under 18 U.S.C. §924(c).
- (2) The defendant has not rebutted the presumption established by finding (1) that no condition or combination of conditions will reasonably assure the appearance of the defendant as required and the safety of the community.

Alternative Findings (B)

- (1) There is a serious risk that the defendant will not appear.
- (2) There is a serious risk that the defendant will endanger the safety of another person or the community.

Part II - Written Statement of Reasons for Detention

I find that the credible testimony and information submitted at the hearing establishes by a *preponderance of the evidence/clear and convincing evidence* that no conditions will reasonably assure *defendant's appearance/the safety of the community* because
 defendant lacks substantial ties to the community.
 defendant is not a U.S. citizen and an illegal alien.
 defendant has no stable history of employment.
 defendant presented no credible sureties to assure his appearance.
 but leave is granted to reopen and present a bail package in the future.
 defendant's family resides primarily in _____

Part III - Directions Regarding Detention

The defendant is committed to the custody of the Attorney General or his designated representative for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal. The defendant shall be afforded a reasonable opportunity for private consultation with defense counsel. On order of a court of the United States or on request of an attorney for the Government, the person in charge of the corrections facility shall deliver the defendant to the United States marshal for the purpose of an appearance in connection with a court proceeding.

Dated: Jan. 2, 2019
Brooklyn, New York

s/ Peggy Kuo

UNITED STATES MAGISTRATE JUDGE

Appendix H

1
UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK
-----x2
UNITED STATES OF AMERICA, : 18-CR-681 (WFK)
3 Plaintiff, : United States Courthouse
4 : Brooklyn, New York
-against- :
5 : January 22, 2019
JEAN BOUSTANI, : 12:00 p.m.
6 :
7 Defendant. :
-----x8
TRANSCRIPT OF CIVIL CAUSE FOR STATUS CONFERENCE
9 BEFORE THE HONORABLE WILLIAM F. KUNTZ, II
UNITED STATES DISTRICT JUDGE

APPEARANCES

10
For the Plaintiff: RICHARD P. DONOGHUE
11 UNITED STATES ATTORNEY
12 271 Cadman Plaza East
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MARK E. BINI
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MARGARET MOESER, ESQ.
18For the Defendant: WILLKIE FARR & GALLAGHER LLP
19 787 Seventh Avenue
20 New York, New York 1001921 BY: CASEY E. DONNELLY, ESQ.
RANDALL W. JACKSON, ESQ.
22 MICHAEL S. SCHACHTER, ESQ.23 Court Reporter: LINDA A. MARINO, Official Court Reporter
24 225 Cadman Plaza East
Brooklyn, NY 10021
(718) 613-248425 Proceedings recorded by mechanical stenography. Transcript
produced by computer-aided transcription.

Proceedings

1 THE COURTROOM DEPUTY: The Honorable William F.
2 Kuntz, II, now presiding. Criminal cause for status
3 conference, Docket No. 18-CR-681, USA v. Jean Boustani.

4 Counsel, will you please state your appearances for
5 the record and spell your first and last names for the court
6 reporter?

7 MR. AMATRUDA: Matthew Amatruda, A-M-A-T-R-U-D-A,
8 for the United States, Eastern District of New York.

9 Good afternoon, your Honor.

10 THE COURT: Good afternoon, Mr. Amatruda. Please be
11 seated.

12 Everyone please be seated, just use the microphone.

13 MR. BINI: Mark Bini for the United States, B-I-N-I.

14 THE COURT: Thank you.

15 MS. MOESER: Good afternoon, your Honor. Margaret
16 Moeser, M-O-E-S-E-R, for the United States.

17 THE COURT: Good afternoon.

18 MR. FUHR: Good afternoon, your Honor. David Fuhr,
19 F-U-H-R, with the Criminal Division of DOJ.

20 THE COURT: Good afternoon, counsel.

21 MR. BINI: Your Honor, at the end of the table we
22 have Special Agent Angela Tassone from the FBI, T-A-S-S-O-N-E.

23 THE COURT: Good afternoon, Special Agent.

24 For the Defense?

25 MR. JACKSON: Good afternoon, your Honor. Randall

1 Jackson on behalf of Mr. Boustani.

2 THE COURT: Good afternoon.

3 MR. SCHACHTER: Good afternoon. Michael Schachter
4 on behalf of Mr. Boustani.

5 THE COURT: Good afternoon.

6 And your firm is?

7 MR. JACKSON: Willkie Farr & Gallagher, your Honor.

8 THE COURT: And your firm, sir?

9 MR. SCHACHTER: Willkie Farr.

10 THE COURT: Thank you.

11 MS. DONNELLY: My name is Casey Donnelly, also from
12 Willkie Farr, on behalf of Mr. Boustani.

13 THE COURT: And would you spell your name, counsel?

14 MS. DONNELLY: Of course. Donnelly is
15 D-O-N-N-E-L-L-Y.

16 THE COURT: Thank you.

17 And with you at counsel table is also?

18 MR. JACKSON: Mr. Boustani is also present, your
19 Honor.

20 THE COURT: Would you spell his name for the record,
21 please.

22 MR. JACKSON: Yes, your Honor. His first name is
23 Jean, J-E-A-N, last name Boustani, B-O-U-S-T-A-N-I.

24 THE COURT: Thank you.

25 Are there any other counsel who wish to make their

1 appearances known for the record today?

2 Hearing none, I will start with the status
3 conference and then we will proceed to the argument on the
4 bail bond application.

5 And I will hear from prosecution first and then from
6 defense counsel.

7 MR. AMATRUDA: Sure, your Honor. Thank you.

8 Your Honor, as you indicated, this is the first
9 status conference in this case. In between the time when the
10 Defendant was arrested and today, we have met with counsel and
11 reviewed some of the documents that were quoted in the
12 indictment, provided counsel with copies of those, explained
13 further our theories of the case.

14 In addition, today we turned over a million pages of
15 discovery, which constitute a wide range of documentation from
16 banks and, also, communications from -- related to some of the
17 transactions that I know your Honor is familiar with at this
18 point that are at issue in the case.

19 And then we've also turned over a large number of
20 bank records; specifically, a large number of bank records
21 that show a number of the illegal payments that the Defendant
22 made in furtherance of the fraud scheme as charged in the
23 indictment.

24 What remains in discovery is the contents of a
25 number of e-mail accounts that we've done search warrants on,

1 and we are preparing that for discovery as we speak. And I
2 expect that probably before then but certainly by the end of
3 not this week but next week we will have that turned over to
4 the defense. And at that point, the bulk of our discovery
5 will have been completed.

6 And, so, that's sort of the status with respect to
7 discovery in the case. I think your Honor, one, there's sort
8 of two matters, at least on my list, that I would have left to
9 raise with the Court.

10 One is, your Honor, our view, the Government's view,
11 is that this case should be designated as a complex case given
12 the number of financial transactions, the number of
13 financings -- they are international in nature -- there's
14 allegations of bribery in an African nation as well as two
15 Credit Suisse bankers in furtherance of the scheme. And,
16 also, just given the volume of discovery material in this
17 case, we would move for the case to be designated complex.

18 THE COURT: Let me stop you right there.

19 Defense counsel, what is your response to the motion
20 to have this case declared a complex case?

21 MR. JACKSON: Your Honor, we oppose that
22 application.

23 THE COURT: On what basis?

24 MR. JACKSON: Your Honor, even though the case does
25 involve some allegations of international matters, it's our

1 position this is a case that is not extraordinarily complex.
2 The number of documents that the prosecution is talking about
3 producing is a number that's well within manageable limits.
4 It's an amount of discovery that we can review in a short
5 amount of time.

6 The actual allegations of the indictment, even
7 though they are legally flawed in ways that we think are quite
8 significant, are quite simple: They are wire fraud
9 allegations, they're securities fraud allegations of the type
10 that are litigated over and over again in the Southern and
11 Eastern Districts of New York.

12 So, for the purposes of the analysis of the Speedy
13 Trial Act, they can't establish that this is a complex case
14 that would justify extending the time period of the Speedy
15 Trial Act.

16 THE COURT: Thank you. The objection is overruled.

17 Next point?

18 MR. AMATRUDA: Your Honor, the only thing left on my
19 list would be a date for the next status conference, and I
20 don't know whether your Honor would prefer to address that
21 now.

22 THE COURT: We can address that in a bit.

23 I think the issues now with respect to discovery,
24 the only item that I don't believe we touched on is the
25 parties have submitted on ECF a proposed stipulation and order

1 with respect to confidentiality. I approved that order, I
2 signed it, I believe I had entered it on ECF. But, in any
3 event, if I haven't, it will certainly be entered within an
4 hour.

5 Did you get notice that I approved that order?

6 MR. AMATRUDA: Your Honor, we did see over the
7 weekend that you approved the order.

8 THE COURT: Did you as well, defense counsel?

9 MR. JACKSON: Yes, your Honor.

10 THE COURT: So, I take it that everyone is
11 comfortable in that sense. There was a stipulation and
12 proposed order.

13 Dr. King came to help many people be free, but
14 lawyers and judges were not among them. So, I was certainly
15 here working this weekend, as you have seen.

16 We'll talk about the next status conference after I
17 hear from defense counsel with respect to any items that the
18 prosecution did not raise in its opening status report, and
19 then we'll turn to the appeal from Magistrate Judge Kuo's
20 order.

21 Defense counsel?

22 MR. JACKSON: Your Honor, the only item that we
23 would raise is that we would like to seek a trial date as
24 early as possible.

25 THE COURT: I'll give you a trial date as early as

1 possible.

2 MR. JACKSON: Thank you, your Honor.

3 THE COURT: You're welcome.

4 Anything else?

5 MR. JACKSON: No, Judge.

6 THE COURT: We're here on an appeal from Magistrate
7 Judge Kuo's order. What I typically say to lawyers is usually
8 the Appellant would go first, so I'll hear from defense
9 counsel as to the basis on which you're appealing the
10 magistrate judge's order.

11 MR. JACKSON: Thank you, your Honor.

12 Should I remain seated?

13 THE COURT: Whatever you wish. You can remain
14 seated, you can go to the podium, just don't make the court
15 reporter crazy going back and forth. Pick a location and have
16 at it from there.

17 MR. JACKSON: I think I'll go to the podium.

18 THE COURT: Absolutely you may do that, sir. Just
19 make sure the microphone is on there. We've lost Mr. Jackson,
20 at least momentarily.

21 (Pause in proceedings.)

22 THE COURT: Why don't you start from the table?
23 Then, when we have our techmeister return, unless we have our
24 junior techmeister, associate techmeister -- hang on.

25 Want to try it again?

1 MR. JACKSON: Sure.

2 THE COURT: Do you think you've got it, counsel?

3 MR. JACKSON: I'm not getting anything, Judge.

4 THE COURT: Sorry.

5 MR. JACKSON: No worries, Judge.

6 THE COURT: There's only one person here who can
7 speak without one, and that's not you.

8 Please be seated. When Mr. Jackson returns, we will
9 hook you up.

10 MR. JACKSON: Thank you, your Honor.

11 Your Honor, I'm glad that your Honor mentioned the
12 Dr. King holiday a moment ago. I hope that the Court and all
13 the parties had a good opportunity over the weekend to at
14 least have some break with the holiday.

15 I began yesterday, the holiday, with an e-mail that
16 went out to all defense counsel, indicating that both the MDC
17 and MCC prisons will be closed again. As we've described in
18 our papers, there have been several days where the MDC has
19 been closed to attorney visitation. And we began the day
20 discussing the fact that apparently the MDC and the MCC will
21 be closed again to attorney visitation. I understand that the
22 MCC remained closed throughout the day; at some point, the MDC
23 may have reopened.

24 But what that ultimately led to is instead of the
25 opportunity to visit any of our clients that morning, I did

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1 reflect a little bit on some of the words of Dr. King in one
2 of his famous letters. And I think it frames, your Honor,
3 what we're talking about today, just one aspect of it, which
4 is he said that there are some instances when a law is just on
5 its face and unjust in its application.

6 Your Honor, I would submit to you that what the
7 Government has described in their papers responding to our
8 bail application is a proposal to the Court for an unjust
9 application of the laws that relate to the detention of
10 Mr. Boustani. There is nowhere in the Government's submission
11 where they address the two key issues that are for the Court
12 to determine whether or not detention in this case is
13 appropriate.

14 And they are simply: One, what is the specific
15 evidence that demonstrates that Mr. Boustani is a risk of
16 flight; and, two, then, and only then, if it can demonstrate
17 that Mr. Boustani is a risk of flight on the basis of
18 appropriate evidence, can they demonstrate, can they meet
19 their burden of demonstrating that there are no conditions or
20 combination of conditions that can be set that would
21 reasonably assure Mr. Boustani's presence in court?

22 With all the briefing that was submitted by the
23 Government, those two questions are almost entirely ignored,
24 your Honor. And instead, what the Government does is it goes
25 through the factors that have been set out by the courts in

1 terms of the determination of whether or not detention is
2 appropriate, what the Court should consider. I just want to
3 respond a little bit, your Honor, to what the Government has
4 said and talk about why it's inadequate.

5 With regard to the first factor, the nature and
6 circumstances of the offense, the first and most important
7 aspect of that, your Honor, is that the almost entire focus in
8 terms of the nature and circumstances of the offense to the
9 Government is on the loss amount in this case. Now, we
10 dispute that the loss amount in this case is actually high for
11 a number of reasons.

12 THE COURT: Your papers say it's zero.

13 MR. JACKSON: We believe it will be demonstrated to
14 be zero, your Honor.

15 THE COURT: Right.

16 MR. JACKSON: And the Government has failed to set
17 out any actual specific evidence that can help us to
18 understand why the loss amount would be as high as they are
19 suggesting.

20 But putting that aside, your Honor, even if the loss
21 amount is high, that is not what the courts are talking about
22 in terms of the nature and circumstances of the offense. If
23 it were, it would not be the case that in almost all of the
24 white collar cases and almost all of the bribery cases that
25 are brought in the Southern and Eastern Districts of New York

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1 the courts have determined that conditions can be set that
2 will allow the Defendant to remain out on bail and, in fact,
3 that the Government can't meet its burden of establishing that
4 the Defendant is a risk of flight.

5 For example, the *Madoff* case, which we talk about
6 significantly in our brief. In the *Madoff* case, Judge Ellis'
7 point in rejecting the Government's motion for detention, one
8 of his points that he was making is the significance of the
9 evidence against Mr. Madoff didn't matter, the nature of the
10 circumstances of the offense didn't indicate -- the fact that
11 it was a very significant fraud with a lot of money wasn't the
12 type of nature and circumstances of offense that can militate
13 in favor of detention.

14 THE COURT: Wasn't Bernie Madoff -- and I recall
15 Magistrate Judge Ellis' decision being affirmed by then
16 district court judge and, ultimately, by the Circuit Court of
17 Appeals, wasn't Bernie Madoff a United States citizen with a
18 wife who lives in New York?

19 At the time, he had two adult sons; one of them, of
20 course, very tragically committed suicide. But he was an
21 American citizen, a New York resident, with a New York spouse
22 who lived in New York and had a residence in New York, and,
23 obviously, the home detention monitors and the FBI and other
24 agents had eyeballs on him.

25 I think that when you talk about Bernie Madoff,

1 you're talking about a different factual premise in terms of
2 determining the risk of flight. I hear you with respect to
3 the dangerousness argument, which I know you're going to get
4 to, but just to show you, A, that I did read and consider your
5 papers very carefully.

6 Not to short circuit your argument, but it seems to
7 me you have here a Lebanese national. As I understand it, his
8 wife and his five-year-old are not here in the United States.
9 As I understand it, he has no property in the United States.
10 As I understand it, he may or may not have had a Lebanese
11 passport. There was mention of an Antigua passport. I'm not
12 exactly clear as to how many passports he had from what
13 nations or what the situation is.

14 And I had the first two FIFA cases before Judge
15 Dearie kindly agreed to take them off my hands. So, bottom
16 line -- and I say that with all due respect to the former
17 Chief Judge, who's on the FISA Court. Don't rat me out to my
18 good friend Judge Ray Dearie.

19 Bottom line is this: I understand when people get
20 out and when people stay in. And I read the references to my
21 Gennaro case and I read my references to my brother Garaufis'
22 case. Deal with the facts of this case.

23 You have a Lebanese national who allegedly was
24 accused of being involved in a \$2 billion fraud with
25 \$50 million or 50 million chickens coming home to roost. And

1 the bottom line is, talk about his case and whether or not he
2 should be, with a nonresident wife, a nonresident
3 five-year-old, whether he should be allowed to be not
4 incarcerated pending trial because of the flight risk or
5 whether you're saying that he can have the alternative to
6 detention and not have the Court be castigated by giving him a
7 Wilson Fisk Daredevil private security force of guards that he
8 pays for.

9 MR. JACKSON: Your Honor, absolutely. And I
10 appreciate the Court's distinction --

11 THE COURT: And you have very good papers and you
12 spent a lot of time on it. And I read them and think very
13 seriously about this. So, this is an important issue in an
14 important case.

15 Go ahead.

16 MR. JACKSON: I appreciate that, your Honor. Let me
17 focus in on that. I think what your Honor is talking about
18 ties in to the third factor in terms of the history and
19 characteristics of the Defendant.

20 And just to put aside the first part, I do submit,
21 for the reasons we describe in our paper, the first two
22 factors weigh in favor, according to the case law, of
23 releasing Mr. Boustani because of the reasons that we
24 described.

25 Focusing in on the distinctions between Mr. Boustani

1 and someone like Mr. Madoff, I think in terms of the history
2 and characteristics of the Defendant in the ways that have
3 mattered to the courts, Mr. Boustani is actually better
4 situated than someone like a Madoff. Similarly to a Madoff --

5 THE COURT: Why?

6 Is he an American citizen?

7 MR. JACKSON: He's not an American citizen.

8 THE COURT: Does he hold an American passport?

9 MR. JACKSON: He does not.

10 THE COURT: Is his wife here?

11 MR. JACKSON: His wife is sitting in the courtroom.

12 THE COURT: Is she an American citizen?

13 MR. JACKSON: She's not, your Honor.

14 THE COURT: Is his child an American citizen?

15 MR. JACKSON: He is not, your Honor.

16 THE COURT: Is the child enrolled in an American
17 school?

18 MR. JACKSON: No, your Honor.

19 THE COURT: All right. Go ahead.

20 MR. JACKSON: What I would emphasize is Mr. Boustani
21 has no criminal history whatsoever in this district or any
22 other district.

23 THE COURT: Right.

24 MR. JACKSON: In terms of -- the reality of the
25 situation is that Mr. Madoff had a situation of an incredibly

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1 broken family situation, which was understood at the time.
2 Mr. Boustani is happily married. He has a young son. His
3 wife has traveled here to be with him. She's dedicated to
4 staying here with him throughout this as they fight this
5 prosecution.

6 Mr. Boustani has operated in businesses. Unlike
7 someone like Mr. Madoff, who admitted at the time of his
8 detention that his business had been entirely fraudulent the
9 entire time he had been operating, Mr. Boustani has been
10 operating in legitimate business throughout the entirety of
11 his career.

12 THE COURT: But Mr. Madoff's businesses were all --
13 perhaps corrupt, as they proved to be, or nonexistent, as they
14 proved to be -- in the United States of America, at least for
15 the most part, whereas you make a big point of saying that
16 your client not only is not an American citizen but has not
17 been indicted under the Foreign Corrupt Practices Act and,
18 indeed, he's here essentially on wire transfer arguments and
19 on the subsequent sale of securities into the securities
20 markets of the United States after the initial alleged fraud
21 occurred in other jurisdictions.

22 So I think, again, the *Madoff* situation is highly
23 distinguishable in this Court's eyes from the situation that
24 you have here.

25 MR. JACKSON: Fair enough, Judge.

1 THE COURT: I'm a district court judge. I just look
2 at the facts. I'm not talking about what an appellate court
3 might see.

4 But when you focus in on the facts, I don't see this
5 case as analogous to, I see it much more if you're going to
6 make your argument in terms of dealing with some of the FIFA
7 cases, where not only Ray Dearie but also Judge Kuntz granted
8 relief for people who were not U.S. citizens and who were
9 allegedly engaged in international fraud. But that came
10 against -- spoiler alert -- the context of early guilty pleas
11 for many of those same people who were released pending
12 further litigation in the case.

13 So, the FIFA cases go on, very complicated, civil
14 and criminal. The Court is well aware of those. I just think
15 it's important not to get sidetracked by the surface
16 comparisons to the Madoff case because the differences are
17 just, in my view, which at least today matters, a showstopper
18 for you.

19 MR. JACKSON: Understood, your Honor. I think the
20 Court makes a good point.

21 We would ask the Court to -- we would ask the Court
22 to focus on the FIFA cases. The Government, in its
23 submission, did not to distinguish this case from the
24 situation of the FIFA cases.

25 THE COURT: I'm about to ask them about that.

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1 MR. JACKSON: Obviously, your Honor, there are some
2 superficial levels or maybe they can point to things, but the
3 bottom line is Mr. Boustani, like the defendants in those
4 cases, is a foreigner, but he's a person who has absolutely no
5 criminal history, he's a person who in all of the important
6 respects is indistinguishable from those defendants.

7 If you look at the *Sabhnani* case that we discuss at
8 length in our brief, your Honor, those were defendants who had
9 significant foreign ties. And Judge Raggi, in her opinion,
10 focused in on the fact that even given those foreign ties,
11 where you can create conditions that will reasonably assure
12 this person will appear in court, that's not a basis for
13 denying --

14 THE COURT: You're talking about two people who
15 allegedly employed foreign workers in, to quote Dr. King,
16 slavish conditions in Long Island, as opposed to a businessman
17 who was allegedly in a \$2 billion fraud and has pocketed or
18 allegedly pocketed tens of millions, if not more, dollars.

19 So, when you talk about the Raggi case -- and I read
20 Judge Raggi's decision very carefully -- I don't think that
21 factual situation in terms of two people and household
22 employees as horrific as it was to the household employees is
23 comparable to the alleged business fraud which you've got
24 here, with billions of dollars, nonU.S. citizens, nonpresent
25 in New York.

1 This is what happens when I have time to read the
2 cases.

3 MR. JACKSON: Yes, your Honor.

4 THE COURT: And good briefs.

5 MR. JACKSON: In the *Sabhnani* case, and this is part
6 of what the Second Circuit is saying: The Government is also
7 questioned reliably --

8 THE COURT: One of the things you have to do when
9 you start reading -- and even I do this, you speed up -- slow
10 it down.

11 MR. JACKSON: Let me slow down.

12 The Court emphasized at Page 5 of the decision
13 that -- actually, of the actual reported decision, Page 67,
14 that the summary that had been submitted in that case of the
15 defendant's assets failed to explain wire transfers in excess
16 of \$17 million from countries in the Middle East into
17 defendant's business account.

18 And the point of that, your Honor, is that like in
19 this case, you're dealing with a defendant that the Second
20 Circuit understood to be people of relative means.

21 THE COURT: But they had a home in New York. They
22 lived in New York. They were here.

23 This Defendant is someone who was arrested outside
24 of the United States and someone who does not even hold a U.S.
25 passport, who owns no U.S. property, whose wife is not a U.S.

1 citizen, whose child is not a U.S. citizen.

2 I think that, putting aside the scale of the nature
3 of the infractions in terms of the alleged crimes and as
4 horrific as they were for the individuals who were allegedly
5 enslaved to be household people, you're talking about a
6 different kind of situation: A foreign national allegedly
7 involved in a \$2 billion fraud with millions of dollars in his
8 pocket, allegedly, as opposed to people who are allegedly
9 importing domestic workers on a slave-based bit of behavior.

10 It may not be apples and oranges, but they're
11 certainly oranges and tangerines. They're different.

12 I hear you.

13 MR. AMATRUDA: The only point that I'm making, your
14 Honor, in terms of the question of whether or not you were
15 dealing with foreigners who had means and some ties to a
16 foreign country, they're similar in that respect --

17 THE COURT: I understand the analogy.

18 What else do you have?

19 MR. JACKSON: Your Honor, I think that that ties
20 into -- that gets us -- we don't think they've met their
21 burden at all in determining -- of proving that the Defendant
22 is a risk of flight. The courts have said it can't just be
23 that the person is a foreigner, it can't just be that the
24 person has means. And those are the only two things they've
25 talked about.

1 But putting that aside, even if they could
2 determine, even if they could prove that Mr. Boustani was a
3 risk of flight, they still would have to demonstrate that
4 there were no conditions that could be set that would
5 reasonably assure his appearance.

6 THE COURT: But aren't you concerned the appearance
7 of giving him what I refer to in shorthand as the Wilson Fisk
8 private prison, where he's got guards that he's paying for
9 himself, Upper East Side --

10 I'm assuming he's not going to be housed anywhere by
11 the other gentleman who's being tried nearby in this
12 courthouse.

13 You're talking about having him in a private prison
14 paid for by his money, his guards. One of the decisions that
15 was decided, the estimate was \$144,000 a month to buy the
16 apartment, to pay the guards 24/7.

17 Putting aside the sources and uses of those funds,
18 is that the kind of justice system we have, where because he
19 has means he gets to build his own private prison?

20 MR. JACKSON: Your Honor, I think that the Second
21 Circuit's decision we talked about a little bit, in *Esposito*,
22 is what really what underscores the appropriateness of what
23 we're talking about here. And *Esposito* is the decision just
24 last year, just in 2018, where the defendant was literally a
25 Mafia boss. And the Second Circuit discussed some of those

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1 concerns, which we acknowledge are real concerns.

2 No one is more invested, as a person who has
3 operated as a prosecutor and defense attorney in the system,
4 in a system that provides equal justice under the law. We
5 believe in that as much as the Court does.

6 The point that was made by the Second Circuit in the
7 *Esposito* decision was that while that's a valid concern, you
8 run into a fundamental unfairness if the key basis for
9 detaining the person who the Government is focused in on is
10 the idea that this is a person who has significant means. And
11 then we say you can't utilize those means in order to create
12 conditions that would allow the person to be detained.

13 THE COURT: I'm asking you a different question,
14 which is a fundamental question.

15 MR. JACKSON: Yes.

16 THE COURT: Suppose you have someone who is an
17 indigent member of an alleged organized crime family, whether
18 it's Mafia, Crips and Bloods, are you saying the person who
19 has funds should always be able to build an alternative to
20 prison?

21 MR. JACKSON: No, your Honor.

22 THE COURT: Is that your argument to deal with the
23 risk of flight and dangerous approach?

24 If you have \$50 million in pocket and you can build
25 the Wilson Fisk castle down the street -- that's where you get

1 to go and pay your employees -- as opposed to going to the MCC
2 or the MDC, putting the shutdown issues aside for the moment
3 because, sooner or later they're going to be resolved, bottom
4 line is aren't you really saying that you have a right to
5 create an alternative because you've got money in your pocket
6 in terms of incarceration?

7 Because if that's what we're going to do, then why
8 don't we just have a means test, forget about cash bail, and
9 say, Do you have assets X? Build your own prison and have
10 your own guards who are your employees and we'll make sure you
11 show up.

12 Isn't that what you're really asking the Court to
13 do?

14 MR. JACKSON: That is absolutely not what we're
15 asking the Court to do, your Honor.

16 I think that if we look at Judge Bianco's decision,
17 it really underscores the distinction between a case like that
18 and this case. In the Judge Bianco decision which the
19 Government cites in their brief, you are dealing with a person
20 who was guilty of some of the most heinous crimes imaginable;
21 child pornography, the production of it, involving very young
22 minors. And I think that the Court appropriately determined
23 that, look, the circumstances that would have to be created in
24 order for us to avail ourselves, in order for the defendant to
25 avail himself of the private security and able solution, would

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1 be so onerous that you would essentially have to create a
2 private jail. And looking at the entirety of the
3 circumstances surrounding that type of Defendant, it simply
4 wasn't fair to anyone, including the community where that
5 level of dangerousness was at issue, to conclude that this was
6 an appropriate solution.

7 That is not the situation with Mr. Boustani.
8 Mr. Boustani, the Government concedes, poses no danger to the
9 community, he's a person who has no criminal history, he's a
10 person who is charged with a type of crime that literally
11 every American who gets charged with it gets bail.

12 So, the only real question is because Mr. Boustani
13 is Lebanese and the Government has decided to pick him up
14 while he was on vacation with his wife in Dominican Republic,
15 should he have to spend the next two years in jail when there
16 is a very clear, definable combination of conditions that can
17 be set that will impose no burden to the Government, either
18 financially or logistically; where there is that set of
19 conditions that can be set, should Mr. Boustani be put in the
20 situation where his health, his life, are going to be
21 compromised, his ability to prepare for trial is going to be
22 severely compromised, he's not going to be able to have
23 contact with his family, and his psychological ability to
24 prepare for trial is going to be compromised?

25 And the answer, your Honor, we submit to that, is

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1 no. The whole point of this decision, the *Esposito* decision,
2 where you had a Mafia boss released, as opposed to somebody
3 like Mr. Boustani, who has never been accused of any violence
4 in his life, is not any defendant who has means should be
5 released under private security, it's that we should take that
6 into consideration if it's an option and if looking at the
7 other factors you can say that this is a person who under
8 ordinary circumstances will be entitled to some bail.

9 So, your Honor, we submit it's the Government's
10 burden. They haven't cited specific evidence that will allow
11 them to meet their burden under any of the factors.

12 And we believe we have set out in our proposal not
13 just private security. It includes a number of the standard
14 conditions of strict supervision that the Court has in
15 circumstances like this, like GPS monitoring, and it's a set
16 of conditions that will assure that Mr. Boustani appears.

17 And they haven't done anything to explain to your
18 Honor why that's an insufficient condition, other than saying
19 that there's concern about economic inequality, which is what
20 everyone is concerned about but which is addressed squarely in
21 the *Esposito* decision. And this is the perfect situation that
22 they're talking about.

23 They have to explain, we would submit, your Honor,
24 how Mr. Boustani would flee under these circumstances. They
25 haven't described any Jedi powers he has to escape New York.

1 They haven't described Mr. Boustani as a person who has ever
2 done anything to demonstrate that he would engage in the type
3 of activity that would lead to flight.

4 So, your Honor, we submit that under the law here
5 and considering all the factors, the just and fair outcome
6 under the statute is for Mr. Boustani to be bailed.

7 THE COURT: Thank you.

8 I'm going to ask the Government now, Judge Vader is
9 going to ask you, what about this, his lack of Jedi powers to
10 escape?

11 And what about the FIFA situation?

12 Isn't he like the FIFA folks who were not U.S.
13 nationals, from abroad, had lots of money, and your office in
14 particular allowed them to remain free?

15 What's the difference between this defendant and the
16 gentlemen of FIFA-land?

17 MR. BINI: Your Honor, every bail decision, as
18 you've pointed out, is very fact specific.

19 THE COURT: I'll ask you to pull the microphone
20 close.

21 MR. BINI: Every bail decision is always extremely
22 fact specific, as your Honor has pointed out. With respect to
23 the FIFA defendants, I would note that here we have a
24 defendant who is charged with offenses so serious that if
25 convicted the Government believes his recommended guidelines

1 will be 55 years in prison.

2 And the 3553 factors are so significant that a
3 sovereign nation, Mozambique, defaulted on its debt.

4 THE COURT: I understand that, but you must admit
5 that there's pretty sizeable numbers for the FIFA defendants
6 too.

7 MR. BINI: It's absolutely a very serious case.

8 Another point of distinction here, your Honor, I
9 would note the facts specific to this case that are troubling
10 and favor that there are no reasonable color of conditions
11 that can reasonably assure his appearance here short of
12 detention, are, as your Honor pointed out, he's a citizen of
13 Lebanon and he also works for a United Arab Emirates company.
14 Those are both countries which do not have extradition
15 treaties with the United States.

16 But more than that and in direct response to defense
17 counsel, Oh, the Defendant doesn't have Jedi mind powers, the
18 Government has put forth evidence that the Defendant has
19 exactly the ability that would be required to escape here.
20 And that's set out on Pages 9 and 10 of our opposition brief
21 in that the Defendant helped procure fraudulent entry
22 documents into the United Arab Emirates for multiple
23 co-conspirators in this case so they could pull off this fraud
24 scheme.

25 So, pairing up both his apparently unlimited

1 resources, based upon his own wealth stolen in this scheme,
2 the wealth of Privinvest, which is apparently paying for this
3 Wilson Fisk-like virtual private jail that he would seek from
4 your Honor, and, as we pointed out, in fact, the billionaire
5 owner of Privinvest appears to be -- he and Privinvest appear
6 to be providing resources to the Defendant.

7 So, with those nearly unlimited resources and the
8 ability and the demonstrated conduct of procuring fraudulent
9 entry documents, we believe the Defendant could create
10 fraudulent documents to leave and leave by private jet or
11 other means under false identity.

12 Your Honor, you've pointed out some of the issues
13 that the private jail solution that Defendant requests raise;
14 first, the very real possibility of disparate treatment under
15 the Bail Reform Act that your Honor addressed in the *Bruno*
16 decision.

17 And while certainly the Second Circuit has permitted
18 virtual private jails in certain situations, as we note in our
19 opposition brief at Page 11, Footnote 5, defense's reliance on
20 *United States v. Esposito* is no aid to him here because that
21 decision recently, from September 11, 2018, was in a situation
22 where the Second Circuit indicated that while district courts
23 are not required to consider private security guards as a
24 condition of release, they are not precluded from doing so
25 when the Defendant has substantial resources and wealth

1 contributes to his risk of flight.

2 They noted that the other co-defendants in the
3 case -- excuse me, in that case there was no possibility of
4 disparate treatment among the other co-defendants. There was
5 no one who was going to have to stay in because they didn't
6 have the unlimited resources to pay for a virtual private
7 jail.

8 In this case, we do not yet know if the other
9 defendants are going to present such a situation where they
10 don't have the backing of a billionaire owner who is willing
11 to pay for a Wilson Fisk-type detention facility, as your
12 Honor has noted. So, the disparate treatment is a real issue
13 here.

14 Putting that aside, your Honor, a second issue is
15 that a virtual private jail would give this defendant the
16 opportunity to flee because, as your Honor has pointed out,
17 the jailers would, in essence, be his employees. This is
18 something that's addressed in the *Zarrab* decision by Judge
19 Berman, we noted in our brief.

20 Defense counsel in their briefing also points to a
21 case that raises this issue. They mention the -- I'm going to
22 mispronounce the name, Mr. Seng, *United States v. Seng*.

23 THE COURT: Would you spell that for the court
24 reporter?

25 MR. BINI: Yes, your Honor, S-E-N-G, which is a case

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1 out of the Southern District of New York, 15-CR-706, where, as
2 defense counsel notes, a virtual private jail was given to a
3 very wealthy defendant.

4 However, after that happened, your Honor, during the
5 pendency of that action, one day a government employee was at
6 lunch in Chinatown. The Defendant in that case was permitted
7 to go to visit his attorney; otherwise, he had to stay in his
8 virtual private jail apartment. And the Government employee
9 happened to be at lunch in Chinatown, and who did they see?
10 They saw the defendant, your Honor.

11 And that is noted in Document 340, where the
12 Government in that case, a copy of which I have and I'll hand
13 up, if I could --

14 THE COURT: Why don't we mark it as an exhibit and
15 give the number. We'll take it as Court Exhibit 1 in
16 evidence.

17 (Court Exhibit 1 so marked.)

18 THE COURT: Just give the citation so your adversary
19 knows what it is. Read out the case.

20 MR. BINI: Yes, your Honor. *United States v.*
21 *Seng* --

22 THE COURT: Can you spell that again?

23 MR. BINI: S-E-N-G, 15-CR-706.

24 THE COURT: And the judge on that case?

25 MR. BINI: The judge on that was The Honorable

1 Vernon S. Broderick.

2 And what I'm handing up is Document 340 from that
3 document, which was a letter from the Government, where the
4 Government pointed out that this had happened.

5 THE COURT: What did Judge Broderick do?

6 MR. BINI: Judge Broderick permitted the defendant
7 to remain out.

8 However, the reason why I think it's so serious,
9 what is attached are pictures of the Defendant getting
10 apparently Chinese food, being out for about 20 minutes.

11 THE COURT: I guess he didn't favor takeout, but go
12 ahead.

13 MR. BINI: It just points out to a real issue where
14 you have private jailers because they are employees of
15 Defendant and may be influenced to do something which the
16 employer wants him to do even though it's against the Court's
17 restrictions.

18 By the way, that was Guidepost in that case. That
19 was the private jailer.

20 THE COURT: The same private jailer that's being
21 proffered in this case; is that what you're saying?

22 MR. BINI: Yes, your Honor.

23 THE COURT: Go ahead.

24 MR. BINI: That's set out at Page 3 of the letter
25 that I asked to be Court Exhibit 1.

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1 The Government noted that the Defendant while on
2 home detention apparently visited his defense counsel every
3 weekday and was out of his apartment virtually all day every
4 day. He was visited by a masseuse on 16 occasions, who stayed
5 for a total of 160 hours in the 30 days preceding the filing,
6 and he was observed on unauthorized visit to a Chinatown
7 restaurant.

8 Your Honor, as a third issue with virtual private
9 jail and why the Government believes it's inappropriate here,
10 it raises serious practical issues related to the use of
11 force. This is something that's pointed out in some of the
12 cases, including the *Zarrab* case.

13 What exactly would Guidepost do if the Defendant
14 sought to flee?

15 Would the armed guard shoot him?

16 Has the Defendant consented to being shot?

17 And can he consent to being shot?

18 Your Honor, the Government submits that the
19 Defendant can't consent to being shot, even if he wished to.
20 Under New York State law, it would be an illegal --

21 THE COURT: Let me ask you a hypothetical question.

22 Suppose you have Guidepost Security guarding him and
23 on the way back from the Chinese restaurant or the Italian
24 restaurant or the soul food restaurant -- we won't limit the
25 great ethnic foods of New York -- he made a break for it and

1 the guard did shoot him or club him or stop him in some way
2 and he was injured.

3 Who would the Defendant have a right to bring an
4 action against?

5 Would he have a right to bring an action against not
6 just the private security company presumably or allegedly
7 engaging in a tort, but would he also have a right to sue the
8 United States of America for having put him in a situation
9 where the guard -- would he have a right to sue the Court that
10 authorized the private security force to take care of him?

11 If you have a situation where an inmate is abused by
12 a prison official, the lines of responsibility are very clear.

13 What are the lines with respect to the private
14 security interest if there is an injury inappropriately
15 inflicted on the Defendant?

16 Have you ever had a case where that's come up?

17 MR. BINI: I have not, your Honor; however, I think
18 that your Honor raises excellent questions that would have to
19 be resolved by law. Because whatever they might agree to, I
20 don't think they necessarily would withstand a court of law --

21 THE COURT: Do you know what the contract agreements
22 in Judge Broderick's case or other cases where you've had
23 these private jail setups, what they deal with in terms of the
24 infliction of intentional torts, in the old Williston Corbin
25 language; do you know?

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1 MR. BINI: I do not know.

2 THE COURT: Maybe the defense counsel knows since
3 they are the ones who are suggesting that the private security
4 force would be appropriate.

5 Let's move on.

6 MR. BINI: Yes, your Honor.

7 I would just note as another point that tort with a
8 virtual private jail, that it's not at all clear who the
9 United States would have recourse to in the event of the
10 defendant fleeing.

11 Accordingly, many courts in this district and in the
12 Second Circuit have rejected virtual private jail requests,
13 including Judge Johnson in the *Zhong* case, which was affirmed
14 by the Second Circuit.

15 THE COURT: Can you spell that for the reporter?

16 MR. BINI: Yes, Z-H-O-N-G. 682 Federal Appendix 71,
17 a 2017 decision from the Second Circuit.

18 Judge Garaufis, who your Honor mentioned, in *United*
19 *States v. Rainere*, 2018 Westlaw 3057702, a June 20, 2018,
20 decision, where Judge Garaufis detained the defendant based
21 upon flight risks that were similar to here, where the
22 defendant seemed to have access to enormous resources and
23 offered to be guarded by a private security company.

24 *United States v. Patrick Ho*, and this is a case that
25 was related to the *Seng* case. *Seng* was permitted to have the

1 virtual private jail and he was going to lunch at a Chinese
2 restaurant. Patrick Ho, however, was detained. That was by
3 Judge Forrest in the Southern District of New York, and that
4 was at 17-CR-779. Docket Entry 49 is a transcript of the
5 hearing on February 5, 2018, where Judge Forrest detained the
6 defendant. The relevant pages are 66 to 76.

7 The *Zarrab* decision, Z-A-R-R-A-B, cited in our
8 papers. And, also, *United States v. Kassim Tajideen*,
9 T-A-J-I-D-E-E-N, 17-CR-46, which is a District of D.C.
10 decision from March 15 of 2018.

11 THE COURT: Decided by?

12 MR. BINI: Judge Walton of that district, your
13 Honor.

14 He detained defendant based upon flight risk and
15 rejecting the virtual private jail solution from Guidepost,
16 your Honor.

17 Your Honor, here there is great incentive for
18 Defendant to flee because of the seriousness of the case, the
19 potential sentence, the overwhelming evidence as set out in
20 our bail letter, which I will not repeat here, but, in short,
21 he and Privinvest are the quarterback of the scheme where they
22 received \$2 billion in funds and he and Privinvest pay out
23 50 million on one side to the investment bankers who were key
24 to getting this deal approved --

25 THE COURT: Including Credit Suisse?

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1 MR. BINI: Yes, your Honor.

2 -- and 150 million to Mozambique and public
3 officials, including key signatories to the loan agreements,
4 including a guarantee for Mozambique signed by Finance
5 Minister Manuel Chang, who remains detained in South Africa.

6 THE COURT: Not to get out over our skis in terms of
7 the legal theories of the case, but I take it that the
8 payments to Credit Suisse occurred outside of the United
9 States, within the United States. I understand that you're
10 attacking the alleged sale of the securities in the, quote,
11 aftermarket or secondary market that went to investors here in
12 the Eastern District of New York and elsewhere in the U.S.

13 But with respect to the wire transfers involving the
14 banks, did that occur exclusively outside of the United
15 States -- because I have some *Cornwell* concerns floating
16 around about that -- or did it occur with transfers that
17 occurred within the United States, or are you not in position
18 to respond to that at this point in the case?

19 MR. BINI: No, your Honor, I am in a position to
20 respond, and the answer is that almost all of the bribe and
21 kickback payments were in U.S. dollars.

22 THE COURT: I'm not asking a currency question --

23 MR. BINI: Right.

24 THE COURT: -- I'm asking a venue question.

25 MR. BINI: No, no, no.

1 THE COURT: I'm an old bank lawyer. You can't get
2 away with that.

3 In what venues did the wire transfers occur?

4 Did they occur within the United States, were they
5 all offshore, or you're not in a position to respond?

6 MR. BINI: While they were offshore, they passed
7 through correspondent bank accounts, including through the
8 Eastern District of New York.

9 THE COURT: The correspondent banks located within
10 the United States of America. That's your position.

11 MR. BINI: In New York City.

12 THE COURT: And here in the Eastern District of New
13 York as well.

14 MR. BINI: Yes.

15 And I would just point out that the reason why this
16 case is here, your Honor, is that many of the investors are in
17 the United States, including an investor in New York City with
18 \$124 million, approximately, invested in EMATUM bonds --

19 THE COURT: Would you spell that for the court
20 reporter?

21 MR. BINI: EMATUM is E-M-A-T-U-M, which was the tuna
22 boat portion of the loans.

23 The loan funding wires ran through New York City,
24 including correspondent transfers through New York City, but,
25 also, actual wires into and out of New York City for the

1 funding wires that related to the loans. The loan agreements
2 themselves that are at issue caused for the payments related
3 to the loans to be made to New York City bank accounts that
4 were specified.

5 THE COURT: And the time period roughly beginning
6 when and ending when, roughly, according to your indictment?

7 MR. BINI: Yes, your Honor. The conduct is from
8 2011 to present. The loans are primarily 2013 through 2016,
9 when there was an exchange of the EMATUM loan participation
10 note for a Eurobond.

11 And during that exchange, your Honor -- and this was
12 the key to part of the scheme and continuing the scheme -- in
13 fact, Mozambique and co-conspirators flew to John F. Kennedy
14 Airport, in our district, so that they could do a roadshow
15 with New York City investors because they needed to get their
16 consent to extend the loans because they couldn't pay for the
17 loans.

18 And they continued, as part of that, to make false
19 statements regarding their ability, intent to pay back the
20 loans, and all of the underlying conduct which we're
21 discussing. In fact, this was all built on misuse of
22 proceeds, that the loans instead of going to the boats, as
23 they were supposed to exclusively, were being used for bribes
24 and kickbacks, which were actually specifically prohibited in
25 the loan agreements which are at the centerpiece of the case.

1 Your Honor, in the face of this overwhelming
2 evidence and based upon the risk of flight, the nature and
3 seriousness of the case, the Defendant's bad character as
4 defined by this scheme that went on for years, beginning in
5 2011, starting with those e-mails your Honor referenced
6 regarding the 50 million chickens, as the Defendant e-mailed
7 with a co-conspirator in Mozambique to plan the first
8 \$50 million in bribes, based upon the Defendant's vast
9 financial resources and his extensive ties to countries that
10 do not extradite to United States, the Government believes
11 that Magistrate Judge Kuo appropriately found Defendant should
12 be detained and that there are no conditions of release that
13 can reasonably assure his appearance before your Honor.

14 THE COURT: Thank you, counsel.

15 Just to be clear, the legal standard by which I am
16 to determine whether you have met your burden is what?

17 MR. BINI: Preponderance of the evidence, your
18 Honor.

19 THE COURT: Preponderance of the evidence. Okay.

20 Let me hear from defense counsel in response.

21 MR. JACKSON: Thank you, your Honor. So, a few
22 things I wanted to respond to, your Honor.

23 First of all, the Government still has not
24 articulated any meaningful distinction between Mr. Boustani
25 and the FIFA defendants for whom the Government agreed in

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1 multiple instances conditions could be set up that were
2 similar to the conditions that are proposed here. They still
3 have not articulated any meaningful difference between
4 Mr. Boustani and those defendants, and we believe that's fatal
5 to the argument that no conditions can be set which will
6 reasonably assure Mr. Boustani's presence.

7 Now, they talked about the idea that they have some
8 theory that he has the ability to get entry into the UAE.
9 That has nothing to do with his risk of flight from the United
10 States because they have not proffered even to the Court any
11 explanation as to how Mr. Boustani, here in the United States,
12 with travel documents surrendered, with GPS monitoring, with
13 his movements monitored 24 hours a day by Guidepost, will be
14 able to even leave the United States.

15 THE COURT: Just so we're clear, he has surrendered
16 all of his travel documents?

17 MR. JACKSON: Yes, your Honor.

18 THE DEFENDANT: Yes.

19 THE COURT: What about this Antigua passport, he's
20 surrendered that; is that right?

21 THE DEFENDANT: Yes, your Honor.

22 MR. JACKSON: Yes.

23 THE COURT: Just so we're clear. I just want to
24 know what the facts are.

25 How many passports did he have from how many

1 countries, as far as you know?

2 MR. JACKSON: He had three passports, your Honor.

3 THE COURT: One from Antigua --

4 MR. JACKSON: I'm sorry, two.

5 THE COURT: One from Lebanon and one from Antigua
6 and Barbuda; is that right?

7 MR. JACKSON: That's it.

8 THE COURT: So, two passports, both of which have
9 been surrendered.

10 MR. JACKSON: Yes, your Honor.

11 THE COURT: Go ahead.

12 MR. JACKSON: Just to circle back to the Guidepost,
13 the Government has raised questions with reference to the same
14 case in which Judge Broderick appropriately determined that
15 conditions could be set, including Guidepost monitoring, for
16 that defendant. And I want to underscore that defendant
17 reported as was required at every occasion and ultimately
18 reported to jail. There was no failure on Guidepost's part,
19 but the Government is casting dispersions on Guidepost.

20 Guidepost is a firm with an unimpeachable
21 reputation. It is run by, as your Honor saw in the affidavit,
22 a former Assistant United States Attorney, former federal
23 officer. The two other principals -- two of the other
24 principals of Guidepost include a former EDNY AUSA. And
25 Mr. Andy O'Connell, Mr. Andrew O'Connell, who submitted the

1 affidavit, is here today prepared to testify to answer any
2 questions the Court has, if the Court has any questions, about
3 the same situation, which we believe, we submit, your Honor,
4 is being greatly overplayed.

5 All that happened in that situation was that on the
6 way back from court -- as the Court is aware, Chinatown is
7 directly next to the Southern District of New York. On the
8 way back from court, they stopped and got Chinese food. And
9 the Defendant, as we understand it, came in to explain part of
10 what his order was, et cetera, to a person who didn't speak
11 English. It was not some grand violation of the terms of
12 release. And the important thing is, again, the Defendant
13 reported as he was supposed to and is now in jail.

14 In fact, your Honor, Guidepost has done this a
15 number of times and has never failed to secure a defendant's
16 appearance on multiple occasions. The idea that there is some
17 question of legal liability in terms of what will happen with
18 the private security, we would submit, your Honor, is a red
19 herring.

20 THE COURT: I hope not, because I raised the
21 question.

22 I'm just curious because we do have instances where
23 deliberate torts are alleged with respect to defendants and
24 the line of responsibility is clear, decisional law, we can
25 have someone who's in the custody of the Attorney General of

1 the United States, whereas in this situation, I'm just curious
2 because there is this alternative to incarceration that
3 involves private, distinct facility, whether or not, and I'll
4 ask you the same question I asked the Government, whether or
5 not there is clear authority as to who bears the liability
6 should there be, for example, someone who's injured while
7 preventing an escape, either with a firearm or other less
8 deadly force.

9 Do you have any cases where that has occurred and
10 the defendant has brought an action against, to use the
11 old-fashioned term, his jailers?

12 And who does that action lie against?

13 MR. JACKSON: Your Honor, we would note that in the
14 *Sabhnani* case, it was specifically made a condition -- and the
15 Second Circuit approved of this -- that the defendants and
16 their daughters also consent to the use of reasonable force by
17 the security agency to temporarily detain them if the security
18 agency employees determine that the defendants and their
19 daughters are attempting to flee.

20 THE COURT: I'm asking a different question, law
21 school-type question.

22 Assume that there's an attempted escape or what is
23 perceived to be an attempted escape and the private security
24 jailer uses force and the defendant then says the force was
25 excessive. If that happened at the MDC or MCC, it's clear how

1 that case plays out.

2 How does it play out against private security
3 forces, if you know?

4 And if you don't know -- the Government says they
5 don't have any cases. You may not have any cases either.
6 Hopefully, it will never come to pass, but sooner or later
7 these things do tend to happen. I was just wondering if there
8 was known authority with respect to that situation, not the
9 waiver of the release forms. I get that.

10 MR. JACKSON: I understand, your Honor. I don't
11 have a specific case where that occurred, but we have thought
12 through and talked through this issue.

13 First of all, Guidepost has insurance to deal with
14 that. Guidepost could itself face legal liability,
15 theoretically.

16 I would submit, your Honor, that the liability of
17 the Court is no different from any situation where the
18 defendant would be released. A defendant could be released on
19 home confinement in any case and commit a tort, and the
20 question then is: Does the Court have some liability if the
21 defendant who is released commits a crime against a third
22 person? That's been, I'm sure, addressed in a number of
23 situations.

24 I think it's very fact-specific, but the bottom line
25 is I think that the Government, to try to answer your Honor's

1 appropriate question, suggesting that this militates against
2 the use of this condition is just wrong. And it's in conflict
3 with what the Second Circuit said in *Sabhnani* and it's in
4 conflict with the way that the Court every day grants bail.

5 I would just, your Honor, emphasize some of the
6 language that Judge Scheindlin used in the *Bodmer* case, which
7 is another case --

8 THE COURT: Spell that for the reporter, please.

9 MR. JACKSON: Yes, Judge. *United States v. Bodmer*,
10 B-O-D-M-E-R, 2004 Westlaw 169790.

11 And what Judge Scheindlin said is whenever a court
12 grants bail to the defendant, there is a risk that the
13 defendant will flee; yet, our judicial system favors bail and
14 requires the Government to prove by a preponderance of the
15 evidence that there are no conditions or combination of
16 conditions that will reasonably assure the presence of the
17 defendant at trial. And the Court determined that where this
18 person was a Swiss national.

19 Even though the Government could identify some
20 theoretical risk of flight, the Government failed to meet its
21 burden because its argument was based, in large part, on
22 speculation, without any evidence to support the Government's
23 claim.

24 So, here, your Honor, we think it's directly
25 analogous. There is nothing but the fact that Mr. Boustani is

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1 from Lebanon and that he has means that the Government is
2 pointing to in terms of his potential for escape, risk of
3 flight. And there's nothing that they said that explain the
4 distinction between the FIFA defendants and the other
5 defendants for whom courts have determined the conditions
6 could be set that were like this.

7 And, in fact, Mr. Boustani is an infinitely less
8 dangerous person than many of the people who the courts have
9 determined could be released. The Government concedes he
10 poses absolutely no danger to the community.

11 We would suggest, your Honor, just a couple other
12 notes.

13 The *Zarrab* case that the Government is focused on is
14 a very different case in that in the *Zarrab* case, there were
15 grave issues of national security that were at issue that were
16 part of the focus of the district court in that case. That is
17 not an issue in this case. There is no allegation that
18 there's a threat to national security that is posed by the
19 potential release on bail for Mr. Boustani.

20 And with regard to the investors in the U.S. which
21 the Government is pointing to under the idea that the weight
22 of the evidence is significant, nowhere in the indictment and
23 nowhere in their arguments, in their briefs, and nowhere today
24 has the Government been able to explain how that connects to
25 Mr. Boustani.

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1 And the fact of the matter is even if the Government
2 can demonstrate that Mr. Boustani was guilty of bribery in
3 Mozambique, he is not charged with bribery in Mozambique. He
4 is charged with a scheme to defraud investors using wires in
5 the United States and securities fraud.

6 And the fact of the matter is they haven't
7 identified any communications with investors, they haven't
8 described any communications about investors. They don't have
9 any evidence that actually relates to the charges in this
10 case, just evidence that relates to an overall theory of
11 wrongdoing that is disconnected from their actual burden that
12 they will have to establish at trial.

13 So, your Honor, the thing that the Government has
14 failed to answer is why where the Second Circuit has said it
15 can be appropriate to utilize private security, in this
16 situation why is it that Mr. Boustani is different from the
17 defendants for whom they have consented to this in the past
18 and for whom the Second Circuit has said it's okay?

19 I would just note, your Honor, that with regard to
20 Mr. Boustani's putative co-defendants, they have been
21 bailed -- the ones that have been arrested have been bailed in
22 the United Kingdom. And apparently, that's a -- the issue
23 that they're talking about in terms of disparity, at least as
24 it is now, is certainly not in Mr. Boustani's favor.

25 And moreover, your Honor, there's not even a

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1 timetable that the Government can reasonably set as to when
2 those co-defendants will be in the United States. It's our
3 understanding the extradition from the United Kingdom can take
4 a period of years.

5 So, what the Government is potentially suggesting or
6 they are suggesting that there's a co-defendant disparity
7 issue, that Mr. Boustani should be required to sit in jail for
8 what could be a very extended period in connection with this
9 without any justification for the distinction they are drawing
10 between him and the FIFA defendants or the *Sabhnani*
11 defendants, your Honor, we simply submit they have not met
12 their burden.

13 This notion that Mr. Boustani could somehow get a
14 private jet is completely disconnected from the reality of the
15 application as set out, it's disconnected from the sworn
16 declaration of Mr. O'Connell, who described the fact that no
17 one is going to be allowed to enter the premises without being
18 subject to search, that there will be people monitoring him at
19 all times who are former law enforcement officers who are
20 trained to deal with the situation, and the fact that
21 Mr. Boustani is not a Mafia chieftain or someone connected to
22 organized crime, he's a man who worked at Deloitte and he's a
23 man who's worked at a company that deals with some of the most
24 sophisticated navies in the world and has operated
25 legitimately in numerous jurisdictions throughout the course

1 of his entire life.

2 I just want to underscore, your Honor, this notion
3 that everything that was involved, that the money -- that the
4 Government is going to be able to establish that the money
5 that was to be used for buying boats was instead used for
6 bribes and kickbacks is a complete distortion of what actually
7 happened in terms of the transaction that occurred here.

8 I think your Honor has seen in our submission our
9 attachments, the exhibits that we attach, which we would offer
10 in connection with this hearing, which detail the significant
11 amount of infrastructure that was supplied by Privinvest to
12 the Government of Mozambique. We are talking about numerous
13 ships that are in Exhibits 1, 2, 3, that were exactly what the
14 investors bargained for to be delivered here.

15 So, the Government has failed to explain how they're
16 going to demonstrate that Mr. Boustani is actually guilty of
17 the crimes charged here, the weight of the evidence doesn't
18 weigh in favor of detention, and, even getting past that,
19 there is no demonstration that no conditions could be set
20 which would allow Mr. Boustani to be released with the
21 reasonable assurance that he will be here.

22 THE COURT: Thank you.

23 Anything in response?

24 MR. BINI: Your Honor, just in summary, the
25 Defendant has access to near limitless resources, including

1 the \$2 billion from this fraud scheme that went to Privinvest;
2 second, the Defendant has, set out in Pages 9 and 10 of our
3 opposition, procured fake travel documents for
4 co-conspirators; third, the Defendant has no ties to the U.S.
5 other than this fraud scheme; and, fourth, he's closely tied
6 to countries that do not extradite to the United States.

7 For all of these reasons, the Government believes
8 that Magistrate Judge Kuo correctly detained him.

9 THE COURT: Thank you.

10 I want to thank both sides for an excellent
11 argument. The Court will reserve decision and issue its
12 decision promptly. I want to thank you. We are adjourned
13 until then.

14 I would expect in the next status conference -- I
15 think we should probably set one now. I've declared the case
16 a complex case. Why don't we look at our respective
17 calendars, and we will set a status conference.

18 MR. BINI: Your Honor, one other thing, if I could.

19 THE COURT: Of course.

20 MR. BINI: The Government would ask to hand up -- we
21 had produced to Defendant's counsel some of the fake travel
22 documents.

23 THE COURT: What I'm going to allow is a
24 one-week-from-today period for both sides to submit proposed
25 findings of fact and conclusions of law in addition to

1 everything that you have submitted; you don't have to submit
2 again, you are free to submit it again. But, obviously, I've
3 got the world's best law clerks, and they have advised me
4 extensively in terms of what the law is. So, a week from
5 today by 5 p.m.

6 What's the exact date on that, Mr. Jackson?

7 THE COURTROOM DEPUTY: Week from today, Judge, will
8 be January 28.

9 THE COURT: January 28, 5 p.m. on ECF, you will
10 submit your proposed findings of fact and conclusions of law.

11 Is that right, the 28th? Does that work?

12 MR. AMATRUDA: Seven days from now would be the
13 29th.

14 THE COURT: Off by one. That's why I have people
15 check me on the math.

16 The 29th, 5 p.m. on ECF, proposed findings of fact
17 and conclusions of law, including the documents that I decide
18 which is to specifically offer, and then I will render
19 decision promptly thereafter.

20 Fair enough?

21 MR. AMATRUDA: Thank you, your Honor.

22 MR. JACKSON: Yes, thank you very much.

23 THE COURT: With respect to the next status
24 conference, would you consult your calendars and suggest a
25 date that makes sense, and we will try to accommodate you.

1 (Pause in proceedings.)

2 MR. JACKSON: Your Honor, we would propose
3 February 7, if it's acceptable.

4 THE COURT: Does February 7 work for the Government?

5 MR. AMATRUDA: That's fine, your Honor.

6 THE COURT: What day of the week is that?

7 THE COURTROOM DEPUTY: It's a Thursday, Judge.

8 THE COURT: Do we have something else on that day?

9 THE COURTROOM DEPUTY: We have a jury trial
10 scheduled and a status conference set for 12 o'clock noon.

11 THE COURT: Civil or criminal jury trial?

12 THE COURTROOM DEPUTY: It's a jury civil trial,
13 Judge.

14 THE COURT: Civil. All right.

15 Why don't we say does 11 a.m. work for the parties
16 on that date for the status conference?

17 MR. JACKSON: Yes, your Honor.

18 MR. AMATRUDA: That's fine, your Honor. Thank you.

19 THE COURT: So, we will see you --

20 Mr. Jackson, would you proffer the blurb extending
21 time in the interest of justice excluding time for the parties
22 to sign if they're amenable. I've already declared it a
23 complex case, so I think it's appropriate at this time.

24 MR. JACKSON: Yes, your Honor.

25 Your Honor, may I raise one additional issue?

1 THE COURT: Yes, of course.

2 MR. JACKSON: We wanted to circle back, your Honor,
3 to the question of trial date.

4 THE COURT: I assure you I will address that at the
5 next conference. And, indeed, you can make that part of your
6 written submission to the Court.

7 And the Government can reply to it, they can put in
8 their estimate as a trial date as well, and then we will
9 certainly address it at the status conference.

10 So, you can address it in your papers, you've
11 already addressed it here today, you can address it in
12 post-argument papers, and we will certainly address it at the
13 time of our next status conference.

14 Fair enough?

15 MR. JACKSON: Thank you, your Honor.

16 MR. AMATRUDA: Thank you.

17 THE COURT: I'm sorry, we're not quite adjourned
18 yet. We have to have the proposed exclusion of time signed by
19 the Defendant and defense counsel.

20 And I also want to admit Court 1 and Court 2; Court
21 1 being the proffered authority, and Court 2 being the
22 exclusion of time.

23 (Pause in proceedings.)

24 THE COURTROOM DEPUTY: This is Court 1, Court 2.

25 THE COURT: Court 1 has previously been admitted

1 into evidence.

2 I have a waiver of speedy trial and order of
3 excludable delay in this action, excluding time in the
4 interest of justice from today's date, January 22, 2019, to
5 and including February 7, 2019. The proposed order excluding
6 time has been signed by the Defendant, by defense counsel, and
7 by the Assistant United States Attorney. I'm signing it as
8 the United States District Judge.

9 May I have a motion from the Government to have
10 Court 2 admitted into evidence, please?

11 MR. AMATRUDA: So moved, your Honor.

12 THE COURT: Any objection?

13 MR. JACKSON: No, your Honor.

14 THE COURT: It's admitted. Thank you.

15 (Court Exhibit 2 so marked.)

16 THE COURT: Here you are, Mr. Jackson.

17 Is there anything else?

18 MR. AMATRUDA: No. Thank you very much, your Honor.

19 MR. JACKSON: No. Thank you.

20 THE COURT: Thank you very much. We're adjourned.

21 Thank you, ladies and gentlemen, we're adjourned.

22 THE DEFENDANT: Thank you, your Honor.

23 THE COURT: Thank you, sir.

24 THE DEFENDANT: Have a good day.

25 (Matter concluded.)

E X H I B I T S

Court Exhibit 1 Page 30

Court Exhibit 2 Page 54

* * * *

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

/s/ Linda A. Marino

January 25, 2019

LINDA A. MARINO

DATE

Appendix I

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----X
UNITED STATES OF AMERICA, : Dkt. No. 19-344
Appellee :
: **AFFIRMATION OF
RANDALL JACKSON IN
SUPPORT OF JEAN
BOUSTANI'S
EMERGENCY MOTION
FOR BAIL AND APPEAL
FROM AN ORDER OF
DETENTION PENDING
TRIAL**
v. :
JEAN BOUSTANI, :
Defendant-Appellant. :
-----X

I, Randall Jackson, pursuant to 28 U.S.C. § 1746(a), hereby declare
under penalty of perjury:

1. I am an attorney duly licensed to practice law in the State of New York and I am admitted to practice before this Court. I am a partner at Willkie Farr & Gallagher LLP, counsel for Defendant-Appellant Jean Boustani in this appeal.
2. I submit this affirmation in support of Mr. Boustani's emergency motion for bail and his appeal from the District Court's order denying pretrial release, which was entered on February 4, 2019 (ECF No. 39). Mr. Boustani also respectfully submits the accompanying memorandum of law in support of this motion.

3. This motion should be heard on an emergency basis because Mr. Boustani is currently being detained at the Metropolitan Detention Center in Brooklyn—where he has been subject to deplorable and inhumane living conditions and denied consistent access to his attorneys—despite the fact that bail conditions exist that would assure his appearance in the criminal case below. (Ex-A; Ex-B.) Furthermore, Mr. Boustani's continued detention is unquestionably affecting his ability to prepare a defense and for his attorneys to adequately counsel him in this white collar case. Moreover, despite Mr. Boustani's repeated requests for a speedy trial, or even a trial date, no trial date has been set in this action and the next status conference is not for another six weeks. The continued detention of an individual whose future appearance can be reasonably assured by bail conditions, especially under these conditions of confinement, for a yet undetermined period of time, violates both the Constitution and the Bail Reform Act and is also contrary to fundamental principles of justice. Prompt review by this Court is justified and necessary. Accordingly, Mr. Boustani respectfully requests that the Government file its opposition to this motion, if any, by Friday, February 15, 2019. Mr. Boustani will file his reply on Wednesday, February 20, 2019.
4. The attached memorandum of law references the fact that this Court and district courts in at least twelve recent cases in this Circuit have granted

defendants pretrial release on conditions which include private security services, one of the conditions proposed by Mr. Boustani. Those cases are described below.

5. In *United States v. Sabhnani*, the Second Circuit reversed a district court’s order of detention when the defendants’ proposed bail conditions required they agree not only to surrender their passports and be subject to home confinement, with electronic monitoring and unannounced visits by Pretrial Services, but also to 24-hour-a-day visual surveillance of their home by on-site private security guards, who would wiretap defendants’ telephone, monitor their computer use, search their visitors when they entered and left the home, and escort defendants on all authorized trips. *United States v. Sabhnani*, 493 F.3d 63, 77 (2d Cir. 2007). This Court reiterated the “statutory presumption . . . in favor of release,” concluding that “there is no reason in this case to think that the proposed conditions of home confinement cannot reasonably mitigate any concerns about defendants’ risk of flight.” *Id.* at 78. At no point did the defendants escape from their home.
6. In *United States v. Esposito*, this Court affirmed an order releasing a defendant charged with racketeering and extortion conspiracies when the bail package included “home confinement monitored by an armed guard, surveillance cameras, and electronic monitoring,” and a \$6 million bond.

See United States v. Esposito, No. 18-cr-923, 2018 U.S. App. LEXIS 25654 (2d Cir. Sep. 11, 2018); *see also* Order, *United States v. Esposito*, 309 F. Supp. 3d 24, 32 (S.D.N.Y. 2018) (district court opinion and order releasing Esposito on bail). The Government argued that Esposito should be detained pretrial due to his “alleged leadership role and significant personal wealth” of approximately \$4 million (in cash), but Magistrate Judge Barbara Moses, District Judge Victor Marrero, and this Court all agreed that the defendant’s bail package was appropriate and confirmed that private security guards are a “lawful” condition of release under the Bail Reform Act. *See* 2018 U.S. App. LEXIS 25654, at *3; Order, 309 F. Supp. 3d at 32.

7. In *United States v. Napout*, Magistrate Judge Levy ordered a Paraguayan national with limited ties to the United States be released pursuant to conditions that included house arrest at an apartment in Florida with permission to leave for religious services, ninety minutes of daily exercise, and food shopping, and 24/7 private security and video surveillance paid for entirely by the defendant. *See* Order, Attach. A, *United States v. Napout*, No. 15-CR-252 (E.D.N.Y. Dec. 16, 2015), ECF No. 127. The Government did not object to the bail package.
8. In *United States v. Marin*, District Judge Dearie granted bail to a Brazilian national under conditions that included electronic monitoring and home

detention, secured by a private security firm, with exceptions to leave similar to co-defendant Napout's home confinement (*e.g.*, permitted, upon notice to FBI and PTS, to leave the apartment once a week to food shop and attend church services, with the ability to seek written approval from FBI and PTS to leave the apartment for other purposes). *See Order, Attach. A, United States v. Marin*, No. 15-CR-252 (E.D.N.Y. Nov. 3, 2015), ECF No. 74. The Government also consented to Marin's bail conditions.

9. In *United States v. Seng*, District Judge Vernon Broderick found that the defendant, a billionaire Chinese national, was eligible for pretrial release pursuant to conditions that included home confinement in a Manhattan apartment and round-the-clock private armed security by Guidepost Solutions (the same security firm Mr. Boustani has retained). *See Order, United States v. Ng Lap Seng*, No. 15-cr-706 (S.D.N.Y. Oct. 23, 2015), ECF No. 53. Despite the fact Seng was "wildly wealthy" and China does not extradite its citizens to the United States, Judge Broderick found the proposed conditions sufficient to ensure his appearance. In fact, he was so confident in Guidepost's ability to secure Mr. Seng's appearance that he permitted Mr. Seng to remain bailed in his apartment even after he was convicted at trial and was awaiting sentencing. *See Order, Seng*, No. 15-cr-706 (S.D.N.Y. July 27, 2017), ECF No. 570; Order, *Seng*, No. 15-cr-706

(S.D.N.Y. Aug. 7, 2017), ECF No. 616. Mr. Seng did not miss a single court appearance.

10. In *United States v. Burzaco*, Magistrate Judge Scanlon ordered an Argentinian national, charged with wire fraud and money laundering conspiracy, be released pursuant to conditions that included electronic monitoring and home detention secured by a private security firm. *See* Order, Attach. A, ¶ 6, *United States v. Burzaco*, No. 15-CR-252 (E.D.N.Y. July 31, 2015), ECF No. 57. The Government consented to his release on these conditions.
11. In *United States v. Webb*, Magistrate Judge Scanlon granted bail to a Cayman national who faced a litany of charges associated with the FIFA bail scheme. *See* Order, *United States v. Webb*, No. 15-cr-252 (E.D.N.Y. July 20, 2015), ECF No. 40. Judge Scanlon found—and the Government agreed—that a bail package with conditions including home detention, with exceptions to leave for attorney visits, court visits, church visits, and medical emergencies, 24-hour per day private security provided by Guidepost Solutions, and electronic monitoring, was sufficient to ensure the defendant's appearance. *Id.*
12. In *United States v. Cosmo*, District Judge Denis Hurley ordered that Nicholas Cosmo, who was accused of running a \$413 million Ponzi scheme,

be subject to electronic home detention at his parent's house and be escorted by the security firm of Andrews International, Inc., whenever he needed to leave the premises as conditions of Cosmo's pretrial release. Order, *United States v. Cosmo*, No. 2:09-cr-00255-DRH (E.D.N.Y. Jul. 23, 2009), ECF No. 61.

13. In *United States v. Dreier*, District Judge Jed S. Rakoff ordered the defendant, charged with securities fraud, be released pursuant to a bail package that included home detention secured by both electronic monitoring and private armed guards. *United States v. Dreier*, 596 F. Supp. 2d 831, 834 (S.D.N.Y. 2009). Although Judge Rakoff recognized that "Dreier's motive to flee is palpable, for he faces potentially large sentences if convicted, his money and assets are either frozen or spent, his family ties appear strained, and he has become a pariah to the profession in which he once practiced, as well as to much of the community at large," he still found that the proposed bail conditions minimized Dreier's risk of flight and would reasonably assure his appearance in court as required. *Id.* at 834. Dreier appeared at all court appearances.
14. In *United States v. Madoff*, Magistrate Judge Ellis ordered Bernie Madoff—who was "charged in perhaps the largest Ponzi scheme ever"—be released on bail pursuant to conditions which included home confinement with 24-

hour per day monitoring by a private security firm. *United States v. Madoff*, 586 F. Supp. 2d 240, 255 (S.D.N.Y. 2009). Although at time he was granted pre-trial release, Madoff had literally confessed in great detail the entirety of his crime and his conviction was a virtual certainty, Judge Ellis found that the Government had failed to meet its burden of demonstrating that no conditions could be set that would reasonably assure the defendant's presence. *See id.* As is the case with all of the above defendants, the bail conditions fulfilled their purpose: Madoff appeared for each of his court appearances.

15. In *United States v. Schlegel*, Judge Seybert released the defendant, charged with mail fraud, wire fraud, securities fraud, obstruction of justice, and conspiracy to commit the same, pursuant to a bail package that included home confinement under guard of two private security officers and electronic monitoring. *See United States v. Schlegel*, No. 06-cr-550, 2008 WL 11338900, at *1 (E.D.N.Y. June 13, 2008). Although the Government contended that “[the defendant] was a sophisticated businessman of considerable wealth and had the means and ability to flee,” Judge Seybert nevertheless found that the package would reasonably ensure the defendant’s appearance. *Id.*

16. In *United States v. Gotti*, the Court ordered that John Gotti, Jr., who was facing multiple racketeering charges, be confined to his house, submit to electronic monitoring, and have a security guard that he paid for posted at his house at all times as conditions of his pretrial release. Order, *United States v. Gotti*, No. 7:98-CR-42-SCR-1 (S.D.N.Y. Oct. 01, 1998), ECF No. 270.
17. Mr. Boustani has made no prior application to this Court. Pursuant to Local Rule 27.1, I have consulted with opposing counsel, Assistant U.S. Attorney Matthew S. Amatruda, who advised me that the Government intends to oppose this motion.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: February 11, 2019
New York, New York

/s/ Randall Jackson
Randall Jackson

Appendix J

1 UNITED STATES COURT OF APPEALS

2 FOR THE SECOND DISTRICT

3 Case# 19-344-cr

4 -----x

5 UNITED STATES OF AMERICA

6 -against-

7 JEAN BOUSTANI,

8 Also known as "Jean Boustany",

9 Defendant.

10 -----x

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12 March 5, 2019

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22 B E F O R E :

23 HON. ROBERT D. SACK

24 HON. REENA RAGGI

25 HON. SUSAN L. CARNEY

1 HON. SUSAN L. CARNEY: -- begin with
2 argument in a bail motion, United States vs.
3 Boustani.

4 MR. JACKSON: Good morning, Your
5 Honors. May it please the Court. If a Court
6 determines that a Defendant poses a risk of
7 flight --

8 HON. RONALD D. SACK: Can I start out
9 by asking you what the standard of review is or
10 is that what you're about to tell me?

11 MR. JACKSON: Your Honor, I can tell
12 you that the standard of review we believe that's
13 relevant today is essentially de novo review.
14 The Court reviews factual findings for clear
15 error, but the Court reviews in a bail
16 determination like this, where there are mixed
17 questions of fact at law, and ultimately, as we
18 assert here, a misapplication of the law.
19 There's plenary review.

20 HON. REENA RAGGI: That would be to the
21 legal error, but why don't you start your
22 argument and let's see how that evolves?

23 MR. JACKSON: Absolutely, Your Honor.
24 As I was saying, if a Court determines that a
25 Defendant poses a risk of flight, the bail

1 reformat poses only one question. And that is,
2 are there any conditions that can be set that
3 would reasonably assure a Defendant's presence in
4 Court?

5 And here, the District Court aired
6 blow, because it failed to hold the government to
7 its burden and it never arrived at any coherent
8 explanation of why the conditions that were
9 suggested by the Defendant in this case would be
10 insufficient to reasonably assure the Defendant's
11 presence.

12 Now the private security solution that
13 the Defendant proposed in this case has been
14 utilized numerous times by Courts in this
15 circuit. It has been discussed and utilized in
16 decisions, including the Sabnani decision that
17 Your Honor author --

18 HON. REENA RAGGI: People who had roots
19 in the community, and that was a circumstance
20 where the government agreed to that, even before
21 it was proposed. So it seems to me the case is
22 quite distinguishable. You don't have either of
23 those circumstances here.

24 MR. JACKSON: Your Honor, I think that
25 the case is not distinguishable in the most

1 important ways, which is, the government did
2 ultimately agree to the use of the condition, but
3 it had opposed it in the District Court.

4 And when the Court, when the government
5 came before Your Honor at oral argument, the
6 Court pressed the government to do exactly what
7 the District Court did not do in this case, which
8 is explain exactly why the conditions that had
9 been proposed by the defendant, including strict
10 pre-trial supervision with electronic monitoring,
11 private security. And the other conditions that
12 we've suggested, including the surrender of all
13 travel documents would be insufficient.

14 HON. REENA RAGGI: I remember the
15 argument quite vividly. I'm not sure we ever
16 discussed whether home monitoring was sufficient
17 in light of the government's concession that it
18 was. That's quite different from this case,
19 isn't it?

20 MR. JACKSON: Your Honor, I --

21 HON. REENA RAGGI: More to the point,
22 your client doesn't have any roots in the
23 communities. Sabnani had -- they had means and
24 wherewithal to flee. There were concerns there,
25 but they did have roots in the community. Your

1 client has none.

2 MR. JACKSON: Well, Your Honor, we
3 believe that that can go appropriately to the
4 question of risk of flight. And if the Court --

5 HON. REENA RAGGI: Well, that's the
6 issue.

7 MR. JACKSON: And well, that's one of
8 the issues. And I agree, Judge Raggi. But once
9 you get past risk of flight, the question that
10 really is at the center of our appeal is, are
11 there any conditions for a man presumed innocent,
12 a man presumed innocent in this case --

13 HON. REENA RAGGI: So when you say get
14 past the risk of flight, what do you mean? Isn't
15 the concern is, are these conditions sufficient
16 to assuage the risk of flight? Isn't that what
17 we're really talking about here?

18 MR. JACKSON: I don't -- Your Honor,
19 Judge Raggi, I would respectfully say that it's
20 slightly different from that. I think that the
21 first question is, is -- has the government met
22 its burden of demonstrating that the Defendant is
23 a risk of flight.

24 HON. REENA RAGGI: And you don't think
25 they've met that burden?

1 MR. JACKSON: We don't need to argue
2 that for today. We don't think that they have,
3 but --

4 HON. REENA RAGGI: So for purposes of
5 today, you accept that he's a risk of flight.

6 MR. JACKSON: For the purpose of today,
7 we'd ask the Court --

8 HON. REENA RAGGI: Okay.

9 MR. JACKSON: -- to focus more on the
10 second prong. We don't think he's a risk of
11 flight, but we'd ask the Court to focus on the
12 second prong. And once you get there, the only
13 question is, are there any conditions, any
14 conditions that can be set that would reasonably
15 assure the Defendant's presence?

16 And what the Court said in Sabnani is
17 that the conditions that Your Honor described as
18 extraordinary would guarantee the Defendant's
19 presence, would reasonably assure the Defendant's
20 presence, even in a situation where the
21 Defendants had substantial overseas ties,
22 substantial wealth.

23 And in that case, they were accused of
24 a violent crime. Mr. Boustani, on this, on the
25 other hand, is accused of no violence. His

1 family is here. His wife has traveled here to
2 support him during the time of the trial.

3 And what the government's attempting to
4 do is ask him to be detained for perhaps a period
5 of years. We don't even have a trial date
6 separated from his wife, and his five-year-old
7 son for a man presumed innocent, while there has
8 not been a determination yet of his guilt.

9 And with the Bail Reform Act we submit
10 provides is if there are any conditions that can
11 be set that would reasonably assure his presence,
12 bail should be set.

13 HON. REENA RAGGI: We'd only review
14 these conditions. If you want to propose a
15 different set of conditions to the Judge, you're
16 always free to do that. So the question is
17 whether the Judge abused his discretion in not
18 releasing him on these conditions. Isn't it?

19 MR. JACKSON: I respectfully disagree,
20 Your Honor. I think it's slightly different.
21 The question is, did the Court, did the District
22 Court fulfill its duty to hold the government to
23 its burden by determining whether there were any
24 conditions that could be set.

25 And what the District Court did in this

1 case is it said, okay, your proposal is
2 insufficient. The \$1 million is insufficient.
3 The -- and I have questions about the potential
4 conflicts of interest of this security firm.
5 That's not enough under the Bail Reform Act.

6 HON. SUSAN L. CARNEY: Let me ask. Did
7 you go back and propose a greater amount? Some -
8 - I mean, the Judge Kuntz's decision is dated
9 February 4th, and a month has passed in that
10 time. And I'll ask the Government as well, but
11 it struck me that some of his concerns that were
12 expressed in his written opinion might have been
13 allayed, had you gone back and proposed a greater
14 bond and identified the source of the bond money
15 and offered to voluntarily waive extradition and
16 other factors that he considered. Did you go
17 back to the District Judge on that?

18 MR. JACKSON: Your Honor, we didn't go
19 immediately back to the District Judge. What we
20 did was, in the District Court, we suggested to
21 the Judge that we were willing to accept
22 extraordinary conditions and we, in -- we were
23 prepared to accept additional conditions.

24 But what the Judge did was, he made his
25 decision before we had an opportunity to discuss

1 any additional conditions that the Court would
2 find appropriate.

3 HON. REENA RAGGI: It would have been
4 reasonable -- You can always ask to be put on the
5 Judge's calendar and say we have a new bail
6 package to consider, to propose. That happens
7 all the time. You know that.

8 MR. JACKSON: Absolutely, Your Honor.
9 You're absolutely correct. However, it was the
10 burden of the government, we would suggest, in
11 this case, to identify the additional conditions
12 that would be necessary. And the District Court,
13 if it felt that additional conditions were
14 necessary to assure the Defendant's presence,
15 should have identified those conditions without
16 making a determination. That was the opportunity
17 to engage with the parties.

18 HON. REENA RAGGI: I'm not sure I'm
19 following that because a District Court might
20 very well say, you know, \$2 million bond would
21 satisfy me, if it's the Defendant's money.
22 That's a different question from whether it's his
23 mother-in-law's money, his business's money and
24 all of that.

25 And so, you're asking the District

1 Judge to engage in hypotheticals about what would
2 or wouldn't be accepted. I mean, usually how
3 I've seen this is the parties come to the Judge
4 with a package, and the government says it
5 doesn't think that that's satisfactory, for
6 whatever reasons, and the Defense argues why it
7 would be sufficient, and the Judge rules on that
8 package.

9 You're not foreclosed from coming
10 forward with another one, or even from inviting a
11 suggestion as to what particular concerns the
12 Judge has. But I don't see how we're supposed to
13 conclude here that there is -- I mean, are we
14 supposed to say there's some package out there
15 that would be sufficient for your client? There
16 may well be, but the District Judge hasn't said
17 no way, no how yet.

18 MR. JACKSON: Well, Your --

19 HON. SUSAN L. CARNEY: Mr. Jackson, I
20 just wanted to say, take your time in answering.

21 MR. JACKSON: Thank you very much,
22 Judge Carney. Judge Raggi, I think you ask
23 important questions there, but I think that the -
24 - our experience in the District Court has been
25 in many, many bail arguments, has been that when

1 the Court is appropriately discharging its
2 responsibilities under the Bail Reform Act, when
3 it finds that the conditions are not sufficient
4 that have been proposed by the Defense, what the
5 Court says is, I don't think that's enough money.
6 I'm going to suggest that you increase the amount
7 by another million dollars, that you go with a
8 different security firm, and that in addition to
9 what you've suggested, which would be regular
10 pre-trial supervision, we bump it up to strict
11 pre-trial supervision with electronic monitoring.

12 Now here, we already had conditions
13 proposed that this Court described as
14 extraordinary in the Sabnani case. And I would
15 note that private security has literally never
16 failed in this circuit, in the many times it's
17 been utilized, including the many times where the
18 government has consented to its use.

19 The District Court didn't do that. The
20 District Court -- it wasn't for us to go back to
21 the District Court after the Court had made its
22 ruling, and continue with the process of keeping
23 on asking, well, let's raise the stakes. Let's
24 move to reconsider and raise them again, until we
25 reach a point where the District Court gives us

1 an order that says that we've met the conditions
2 that it thinks are sufficient. It --

3 HON. REENA RAGGI: Am I right that this
4 bail package has your client putting up nothing?

5 MR. JACKSON: That's --

6 HON. REENA RAGGI: That the assets are
7 all being put up by his company?

8 MR. JACKSON: No, Your Honor.

9 HON. REENA RAGGI: What is he putting
10 up?

11 MR. JACKSON: He is putting up -- he
12 proposed putting up \$1 million in his own money
13 in this bond.

14 HON. REENA RAGGI: It's a bond, right?

15 MR. JACKSON: That's correct, Your
16 Honor, a -- we propose --

17 HON. REENA RAGGI: So he's not posting
18 a million dollars with the Court?

19 MR. JACKSON: No, no, no, we proposed a
20 \$20 million personal recognizance model, where we
21 would put up \$1 million in cash. What we said in
22 our brief in this Court is that we would be
23 willing to put up any amount of money that is
24 within the Defendant's possession that the
25 government suggested.

1 There are literally no conditions that
2 the government could suggest that have been
3 utilized in any other case that we would not be
4 willing to put up.

5 HON. RONALD D. SACK: (indiscernible)
6 did the Judge suggest anything that might be
7 satisfactory or was the Judge relatively clear
8 that nothing would be satisfactory?

9 MR. JACKSON: Nothing, Your Honor.
10 That's exactly right, Judge Sack.

11 HON. RONALD D. SACK: Did he say that
12 or how did he say that?

13 MR. JACKSON: He said that there would
14 be no conditions that would guarantee the
15 Defendant's appearance and gave us no
16 opportunity, didn't suggest to us anything that
17 would fix it.

18 HON. RONALD D. SACK: I'm just asking
19 whether he essentially cut it off or whether he
20 said this is not enough.

21 MR. JACKSON: He cut it off, Your
22 Honor. He cut it off. He said that in light of
23 the Government's allegations and the -- in light
24 of the Government's allegations and the nature of
25 the Defendant, no conditions would be sufficient.

1 HON. REENA RAGGI: But what he said was
2 having carefully evaluated Defendant's bail
3 proposal under the circumstances of the case, the
4 Court is convinced no conditions can reasonably
5 assure the Defendant's appearance throughout the
6 pendency of this case.

7 That could be construed to mean that
8 that's the -- he has to make the no conditions
9 finding. The conditions that have been proposed
10 to him, if those are the conditions, they don't
11 assure the Defendant's appearance. I mean, this
12 seems to me to be how judges deal with bail
13 proposals all the time.

14 MR. JACKSON: And Judge Raggi, again, I
15 would just respectfully slightly disagree with
16 that, because I think that what that does is it
17 improperly shifts the burden to the defense to
18 try to come up with the appropriate bail package
19 that will satisfy the Court. It's the --

20 HON. SUSAN L. CARNEY: Could you
21 describe, please, the operation of the retention
22 of a private company to provide surveillance and
23 monitoring? The Judge identified a conflict of
24 interest concern that the -- your client would be
25 the employer and therefore, would have the

1 loyalty of the individuals.

2 But I assume pre-trial services is
3 heavily involved in actually -- that the -- your
4 client wouldn't be paying the company directly.
5 Or maybe can you describe the circumstances that
6 should allay that concern.

7 MR. JACKSON: Absolutely, Your Honor.
8 And this is -- I think Judge Carney, that's
9 exactly the question here. This is a situation
10 that has been utilized in numerous cases and it
11 never failed. The company that would be utilized
12 Guidepost Security, that we proposed, and we
13 suggested to the government we'd be willing to
14 use any company that the government wanted, but
15 the -- and we put that in our papers before the
16 Judge. But Guidepost is run by former federal,
17 high-ranking federal law enforcement officers.

18 HON. RONALD D. SACK: Bart Schwartz's -

19 -

20 MR. JACKSON: Bart Schwartz's firm,
21 exactly, Your Honor, who is one of the most
22 respected people in law enforcement. He's the
23 monitor for GM. He's the monitor for the recent
24 NYCHA situation. The government itself has
25 utilized him.

1 And what they would be doing is posting
2 all former law enforcement officials, including
3 federal former law enforcement officials, to
4 monitor Mr. Boustani 24 hours a day. And they
5 would be answerable to the Court. They would
6 coordinate with pre-trial services and answer any
7 concerns pre-trial services had.

8 Now the money that would be utilized to
9 pay Guidepost would come either from our
10 defendant or our defendant's company, which is
11 indemnifying him in this case. But the -- as Mr.
12 O'Connell, the President of Guidepost put in his
13 sworn affidavit before the District Court, they
14 would in no way be employed by the Defendant.

15 They would in no way answer to the
16 Defendant. And indeed, the entire reputation of
17 Guidepost, which is excellent in this industry,
18 is dependent on the idea that the Courts can
19 trust them, because they are dedicated to their
20 mission of serving exactly the purpose that we're
21 talking about in this case.

22 HON. RONALD D. SACK: Can I ask you --

23 MR. JACKSON: Yes, Your Honor.

24 HON. RONALD D. SACK: -- one question,
25 even though your red light is on. What is it

1 that your colleague wants to say?

2 MR. JACKSON: My colleague, Your Honor,
3 I think wanted to --

4 HON. RONALD D. SACK: You don't have to
5 answer that.

6 HON. REENA RAGGI: I meant going back
7 to Judge (indiscernible) decision --

8 MR. JACKSON: I'm not sure, Judge.

9 HON. REENA RAGGI: And he express -- he
10 quotes the Government's memorandum for this, but
11 he says that the Defense had thus far not
12 indicated the source of the \$1 million in cash
13 being posted. I think that's where I got the
14 impression that it wasn't your client's money.
15 In any event, what was told to the Judge about
16 the source of the money?

17 MR. JACKSON: Your Honor, we told the
18 Judge that Mr. Boustani would post the \$1
19 million, and that the private security would
20 likely be paid for by his company, which is
21 indemnifying him.

22 HON. REENA RAGGI: Right. But his
23 concern, if I read this correctly, is whether the
24 monies were traceable to the alleged crime. And
25 in that respect, that your client might very well

1 rather risk the profits of the crime than his
2 liberty. I'm not saying that that's this Court's
3 finding, but I think that's the reasoning of the
4 Judge.

5 MR. JACKSON: And Your Honor, we think
6 that if that's the reasoning of the Judge, that's
7 a fair reasoning. The money would be in the
8 possession of the Court, so I think it would be
9 available for all appropriate purposes. But
10 that's exactly what Your Honor identified, Judge
11 Raggi, in the Sabnani case, as something that
12 could be a concern that a defendant might value
13 his freedom more than his money.

14 But Your Honor noted in Sabnani that
15 the extraordinary conditions that were put in
16 place in that case mitigated that concern because
17 they eliminated the realistic possibility that
18 the Defendant could flee.

19 And in this case, there was never any
20 articulation of how Mr. Boustani, who is not
21 alleged to be a violent person, unlike some of
22 the other Defendants, who had been released
23 pursuant to these kinds of conditions, like the
24 Defendant in Esposito. He's not alleged to be
25 connected to any violent organization. There's

1 no danger to the community. He --

2 HON. REENA RAGGI: Well, I mean, I
3 think you're not addressing the primary concerns
4 of the District Judge. A million dollars, with
5 the source unknown, it could be traceable to the
6 fraudulent scheme, for a person who has tens of
7 millions of dollars is something he might be
8 willing to lose, rather than his liberty.

9 And then, when his security firm is
10 paid by his company, which you know, faces some
11 criminal exposure here, and so it's paid for by a
12 possible target of the investigation, that raises
13 concerns.

14 And then, there are the added concerns
15 that, you know, how these private companies
16 enforce the bail bond is a -- or the bail
17 conditions is a further concern. Your client can
18 sign all the waivers he wants. There might still
19 be concerns about what they can do as compared to
20 law enforcement officers.

21 Now if you're arguing to us those are
22 wrong assumptions and this bail bond is
23 sufficient, I'd like to hear that argument. If
24 your argument is there's another bail bond that
25 would assuage these concerns and we're prepared

1 to meet it, then my question is, why don't you
2 just go to the District Court, if he rejects
3 that, we'll hear you.

4 MR. JACKSON: Well, Your Honor,
5 argument is both. Argument is that these
6 conditions are sufficient and that if there are -
7 -

8 HON. REENA RAGGI: Why should we find
9 that it's wrong for a District Court to conclude
10 that a million dollars from someone who's got
11 tens of millions of dollars, particularly where
12 it's unclear what the source of the money is is
13 not an acceptable -- is not an acceptable way to
14 assuage the risk of flight? Why shouldn't we --
15 why should we find that error?

16 MR. JACKSON: Because Your Honor for
17 the exact reason that Your Honor identified in
18 the Sabnani case. That goes to the risk of
19 flight. It does not go to whether the conditions
20 proposed would be adequate. And I would just --

21 HON. REENA RAGGI: I'm sorry, but
22 you're totally confusing me. The whole point of
23 the conditions is to assuage the risk of flight.
24 If they don't do that, then there's no conditions
25 that assure his appearance.

1 MR. JACKSON: And Your Honor, it's up
2 to the District Court to identify how the
3 additional money would --

4 HON. REENA RAGGI: That point, we
5 understand.

6 MR. JACKSON: -- lead to his release.
7 And I would just note, Judge Raggi, with regard
8 to Guidepost, the particular company that we've
9 identified in this situation, there is no
10 explanation anywhere that suggests that this is a
11 situation where the Defendant would be able to
12 evade the conditions that are employed here.

13 And the concerns that are identified
14 would literally apply to any situation where
15 you're utilizing private security, the
16 theoretical conflict of interest. It can't be
17 the case that the District Court is saying at
18 large, this can never be utilized because it's
19 explicitly authorized in the Bail Reform Act.

20 The very first condition that the Bail
21 Reform Act suggests that a District Court should
22 consider is the release of a Defendant to an
23 authorized third party designee, who would be
24 responsible for securing the person and returning
25 them to the Court.

1 HON. SUSAN L. CARNEY: Thank you very
2 much. I think we have the arguments now.

3 MR. JACKSON: I appreciate the Court's
4 time. Thank you very much.

5 HON. REENA RAGGI: And you have
6 reserved a minute of rebuttal. We'll hear from
7 the Government.

8 MR. JACKSON: Thank you very much Your
9 Honors.

10 MR. BINI: May it please the Court.

11 Mark Bini for --

12 HON. SUSAN L. CARNEY: And you should
13 take your time, sir.

14 MR. BINI: Sure, thank you. Mark Bini
15 for the United States, and I represented the
16 United States in the District Court. Your Honors
17 asked about the Sabnani case, and I just wanted
18 to point out that in addition to the points that
19 Judge Raggi made regarding why that case has no
20 application here, I would note that that case, in
21 addition to involving natural -- in addition, I
22 should say, involved naturalized US citizens who
23 had been here for 25 years.

24 HON. RONALD D. SACK: How long until
25 trial of the Defendant here?

1 MR. BINI: Judge Kuntz has indicated at
2 the next status conference, which is set for
3 March 28th, that he will set a trial date, which
4 I should --

5 HON. REENA RAGGI: Turned over all
6 discovery yet?

7 MR. BINI: We have turned over
8 virtually all the discovery and have indicated
9 that we would turn over the rest of the discovery
10 in the coming weeks and before that date. And --

11 HON. REENA RAGGI: Before the March
12 28th date?

13 MR. BINI: Yes, Your Honor. And I
14 would note that in fact, we've turned over more
15 than two million pages' worth of discovery,
16 almost immediately.

17 HON. RONALD D. SACK: I was under the
18 impression that there was some delay waiting for
19 other possible co-defendants to be brought into
20 the United States for trial.

21 MR. BINI: There are other co-
22 defendants who are subject to extradition
23 proceedings. However, as we said before the
24 District Court Judge, we are ready for trial. So
25 if the Judge sets a date --

1 HON. RONALD D. SACK: (indiscernible),
2 all right.

3 MR. BINI: Yes, we will be ready to try
4 it.

5 HON. SUSAN L. CARNEY: Is it your
6 position that the conflict of interest that the
7 Judge identified is a factor arguing against
8 retention of a third party service in all cases?
9 Or is it exaggerated in this case and why?

10 I mean, because I -- it's my
11 understanding that this has been done on several
12 occasions, if not numerous occasions, and that
13 Guidepost has been used by the Government and
14 relied on in similar circumstances, where the
15 individual who had a risk of flight and faced a
16 long sentence was allowed to be on bail before
17 trial.

18 MR. BINI: Is the conflict an issue in
19 all cases? Absolutely. Private jail is never
20 going to be as good as detention in a government
21 facility. However --

22 HON. REENA RAGGI: (indiscernible) from
23 a conflict. That's the adequacy of it, but
24 you've argued that there's a conflict. I mean,
25 you may be right, that it's -- that it exists in

1 all cases, but then, how is it ever agreed to
2 specifically since you all agreed to it in
3 Sabnani? I can't speak for the rest of the panel
4 members, but I never would have gone along with
5 that, had the government not said that was a
6 satisfactory condition.

7 MR. BINI: Absolutely. And Your Honor,
8 in that case, that's what the prosecutors in
9 applying the 18 USC 31-42(g) factors to that
10 particular defendant --

11 HON. REENA RAGGI: Well, that had a --
12 there was a conflict there, right? It's the same
13 conflict. They're being paid by the people who
14 they're guarding.

15 MR. BINI: That's correct, Your Honor.

16 HON. REENA RAGGI: So if it didn't --
17 if it wasn't a problem in Sabnani, how is it a
18 problem in this case?

19 MR. BINI: It is because the Judge set
20 out at least six reasons why he found a private
21 jail inappropriate. Judge Kuntz in the District
22 Court, and this is at Pages essentially 14 to 16
23 of his decision, sets out six reasons why he
24 found. That was one of them. And he said first
25 --

1 HON. SUSAN L. CARNEY: But is -- that
2 doesn't speak just -- one of the reasons was the
3 conflict issue that Judge Raggi and I are
4 speaking with you about. He sets out other
5 reasons, some of which --

6 MR. BINI: Yeah.

7 HON. SUSAN L. CARNEY: -- seem to have
8 been outdated. This was a month ago. He says
9 the amount wasn't enough. He says that he
10 distinguishes cases because there hadn't been a
11 discussion of voluntary waiver of extradition.
12 He sets out a concern about disparate treatment,
13 about use of force, about the Visa fraud in the
14 UAE. And then, the amount is sufficient.

15 And a lot of these things, this is a
16 month ago, seems to me that it could've been the
17 topic of discussion between the Government and
18 the Defendant during this period. And one could
19 have, if one were acting on a sense of obligation
20 under this Bail Reform Act, to identify
21 circumstances in which a non-convicted person
22 could be released that many of these conditions
23 or concerns could have been addressed. But I
24 take it that hasn't happened, is that right?

25 MR. BINI: The Defense Counsel has not

1 presented anything other than in their papers,
2 they've now raised some additional arguments, but
3 they haven't come to the government and said,
4 hey, here are the conditions that we would ask
5 you to consider.

6 HON. SUSAN L. CARNEY: So in what, from
7 the Government's point of view as opposed to
8 Judge Kuntz's point of view, in what respect are
9 the conditions that have been offered
10 insufficient to reasonably assure his appearance
11 in Court?

12 MR. BINI: The conditions that have
13 been set forward are insufficient because the
14 Defendant is a tremendous flight risk, who has
15 access to vast financial resources.

16 HON. SUSAN L. CARNEY: Well, everyone
17 agrees that he's a flight risk. So I'd like to
18 know in what respect, particularly, are the
19 conditions insufficient to guarantee his
20 appearance?

21 MR. BINI: The Government believes that
22 for -- well, first let me say that the
23 Government's position has been that no set of
24 conditions would reasonably assure short of
25 detention this Defendant's appearance in Court.

1 However, in --

2 HON. REENA RAGGI: Because?

3 MR. BINI: Because the Defendant has
4 access to vast financial resources, is closely
5 tied to countries, including Lebanon and the
6 United Arab Emirates that do not extradite to the
7 United States.

8 HON. REENA RAGGI: What is this, the
9 means and the incentive to flee?

10 MR. BINI: And he has -- yes, Your
11 Honor. And he has the demonstrated ability to
12 procure false entry documents, which we set out -
13 -

14 HON. SUSAN L. CARNEY: Yeah, but the
15 extradition -- so if he were to come to you and
16 say, I agree to extradition proceedings or
17 analogs no matter where I may be, that wouldn't
18 assuage your concern in that respect?

19 MR. BINI: We would certainly consider
20 any package that the Defendant presents to us.
21 However, the --

22 HON. REENA RAGGI: You can't bind a
23 foreign country.

24 MR. BINI: I'm sorry?

25 HON. REENA RAGGI: He can say he'll

1 agree to extradition all he wants. He can't bind
2 a foreign --

3 MR. BINI: That's exactly right. And
4 in this case, as we set out in our papers, the
5 Defendant is closely tied to the billionaire
6 owner of Privinvest, his employer, who's an un-
7 indicted coconspirator in the indictment.

8 And that is the person who is going to
9 pay for the virtual private jail solution that he
10 is offering. And the Government has legitimate
11 concerns about the source of funds, where as we
12 set out in the indictment, he received \$15
13 million from this \$2 billion fraud scheme, and
14 the rest of the funds went to his employer.

15 HON. REENA RAGGI: So --

16 HON. RONALD D. SACK: So you talk about
17 disparate treatment, right?

18 MR. BINI: Yes, Your Honor.

19 HON. RONALD D. SACK: Disparate, what
20 disparate? Disparate between whom? I thought,
21 from what I've seen, that it was disparate
22 between this Defendant and co-defendants?

23 MR. BINI: Yes, Your Honor.

24 HON. RONALD D. SACK: But you've just
25 told me he's not waiting for co-defendants, he's

1 going to be tried without co-defendants.

2 MR. BINI: That is very possible, that
3 the --

4 HON. RONALD D. SACK: Well, but then
5 that doesn't make any sense. I mean, if it
6 happens, fine, and the -- your adversary says if
7 that happens, you can revisit it. But how can
8 you talk about disparate, when you don't --
9 defendants, when there's only one defendant?

10 MR. BINI: Your Honor, in the United
11 States v. Esposito, the Court indicated that in
12 that case, you would permit a virtual private
13 jail for a wealthy defendant because there was no
14 possibility of disparate treatment. And while
15 there may not be immediately, I don't know when
16 the other defendants will appear --

17 HON. RONALD D. SACK: It's strange to
18 keep him in jail because maybe some day there's
19 going to be a disparate treatment of people who
20 aren't before the Court, and it can be changed if
21 that happens. It's a very strange thing, it
22 seems to me, to take into account at this point.

23 MR. BINI: Your Honor, in addition to
24 those concerns about that was one of several
25 concerns the District Court raised and that the

1 government had. In addition to those concerns
2 regarding the potential for disparate treatment,
3 because it exists here, unlike those other cases,
4 first, the cash was from an unverified source,
5 and the Government has issues regarding again --

6 HON. RONALD D. SACK: But that's not
7 disparate treatment. Okay, if you want to go
8 onto another thing, that's fine. I'm --

9 MR. BINI: And so, what I'm saying to
10 Your Honor is, is that in addition to disparate
11 treatment, there were other concerns. And those
12 concerns --

13 HON. RONALD D. SACK: My concern is --

14 MR. BINI: Yes?

15 HON. RONALD D. SACK: -- there is a
16 different way to understand that, which is, is
17 here, and that is disparate treatment means not
18 just to these defendants, but the disparate
19 treatment of a very wealthy person as opposed to
20 somebody who isn't so wealthy. And that's a
21 problem here, too. I don't know that we are
22 allowed or supposed to take it into account, but
23 that's a disparate treatment, also, and that
24 makes some sense in this, whereas the use of it
25 with co-defendants who don't exist.

1 That's partly I guess because things
2 are changing. When this all started, there was
3 the notion that you were going to wait for other
4 co-defendants, and now, that's not the case. But
5 --

6 MR. BINI: Well, Your Honor, it
7 depends. For example, the Judge has said he's
8 going to set his trial date. It's possible that
9 other co-defendants appear here in the next few
10 months, regardless.

11 HON. RONALD D. SACK: It's possible and
12 you deal with it, if it happens.

13 MR. BINI: Yes.

14 HON. REENA RAGGI: That becomes
15 relevant though to, we asked you how quickly
16 you'd go to trial because if the Defendant is
17 going to get his trial very quickly, that may
18 assuage certain concerns that are viewed very
19 differently, if he's going to be in custody for
20 more than a year.

21 We've kept you past your time, but I
22 want to ask you a question about your case,
23 because the strength of the case is of course
24 another factor that was considered here. What is
25 the security that was fraudulently offered to

1 United States investors?

2 MR. BINI: Your Honor, the -- well, the
3 security is the EMATUM security, which was a loan
4 participation note. This involves two syndicated
5 loans and in the middle, there is a syndicated
6 loan called Proindicus and one called MAM, and in
7 the middle is a security.

8 So the entire thing is a wire fraud,
9 and the thing in the middle, EMATUM, was a
10 security. It was a loan participation note that
11 was later sold as a Euro bond.

12 HON. REENA RAGGI: Sold --

13 MR. BINI: And these were sold to US
14 investors --

15 HON. REENA RAGGI: And what's the
16 fraudulent statement material omission or
17 statement that was made to these investors?

18 MR. BINI: The loan agreements for all
19 three of these loans, because these are
20 principally loans, indicated that the --

21 HON. REENA RAGGI: I'm interested in
22 the security that was sold to US investors.

23 MR. BINI: Yes, Your Honor.

24 HON. REENA RAGGI: What's the false
25 statement or the fraudulent statement?

1 MR. BINI: The false statement is the
2 use of proceeds and the explicit violation of an
3 anti-bribery provision that was in all these loan
4 agreements. The loan agreements and the
5 materials that were marketed to investors claim
6 that this money would be used to pay for boats
7 and projects in Mozambique.

8 And the Government's indictment sets
9 out and its case will prove that in fact, those
10 prices were grossly inflated. The \$2 billion --

11 HON. REENA RAGGI: I understand this.
12 I read the indictment. But what's confusing to
13 me is, I thought from the indictment that the
14 money was loaned to Mozambique by the two
15 unidentified investment banks, who then created
16 securities that were offered to the American
17 public. Is that not right?

18 MR. BINI: It is, with respect to
19 EMATUM, which is a security, and the loan
20 participation notes.

21 HON. REENA RAGGI: I'm just interested
22 in what --

23 MR. BINI: Yes.

24 HON. REENA RAGGI: -- we sold to US
25 investors, because that's the only basis for your

1 bringing this charge in the United States, right?

2 MR. BINI: Well, yes and no, as we also
3 set out, all of these loan agreements required
4 that the money be paid from and to bank accounts
5 in New York City.

6 HON. REENA RAGGI: We'll get to that in
7 a minute.

8 MR. BINI: And you have the investors -
9 -

10 HON. REENA RAGGI: We'll get to that in
11 a minute.

12 MR. BINI: Okay, yes.

13 HON. REENA RAGGI: I want you to answer
14 my question. To the extent that the US investors
15 were putting up their money, who did that money
16 go to? I don't -- I didn't understand that their
17 money went to the Government in Mozambique, it
18 went to whoever loaned the money to the
19 Government in Mozambique, right?

20 MR. BINI: It went to -- oftentimes, it
21 went to the New York City bank account to be
22 distributed to the -- to actually to the employer
23 for this Defendant, Mr. Boustani, Privinvest. So
24 the money went to the bank, and then the bank
25 gave it directly to Privinvest, which was to --

1 HON. REENA RAGGI: Is Privinvest the
2 issuer of the security?

3 MR. BINI: No, the issuer is --

4 HON. REENA RAGGI: You've got a lengthy
5 indictment here. I don't understand what the
6 security is or what the fraudulent statement is.
7 So there's pages and pages about what went on in
8 Mozambique, and you don't tell us what the
9 fraudulent security is. I don't think you'd
10 satisfy this if this were a civil complaint on
11 what the fraud is in the instrument.

12 But that -- I think I've gotten enough
13 to get a sense of what your case is. You're not
14 trying it here after all. But with respect to
15 the money moving through US accounts, how did the
16 money moving through US accounts contribute to
17 the laundering or the fraud?

18 I mean, I thought it was coincidental,
19 and that under our case law, that wouldn't be
20 enough to give you jurisdiction in the United
21 States. What are you going to rest it on?

22 MR. BINI: Your Honor, among other
23 things, first of all, these are conspiracy
24 counts, and the investors were hundreds of
25 millions of dollars, the investments were sold

1 into the United States. And those money went
2 through, again, bank accounts in New York --

3 HON. REENA RAGGI: Now I'm dealing with
4 the transactions --

5 MR. BINI: Yes.

6 HON. REENA RAGGI: -- that don't
7 involve the investors, but that involve the money
8 moving among the confederates, which you, in your
9 indictment highlight, went through US bank,
10 clearing banks. And what's the case that allows
11 you to say that the fact that that money went
12 through US clearing banks is enough to give you
13 jurisdiction here in the United States?

14 MR. BINI: The name escapes me, but I
15 know that there's the case where there's a
16 Southern District of New York case, where the
17 drug dealers are driving across the Goethals
18 Bridge. And the communication in furtherance of
19 the conspiracy in the -- over the territorial
20 waters conveyed jurisdiction in the Southern
21 District of New York.

22 HON. REENA RAGGI: (indiscernible) bank
23 clearing. And that -- I mean, I assumed, since
24 this is the whole theory of your case, that
25 you've got legal support for this being enough to

1 give you a hook in the United States --

2 MR. BINI: Yes, Your Honor. And the
3 wires did pass through the Eastern District of
4 New York in going to those correspondent bank
5 accounts. And since the wires passed through, as
6 part of this, and frankly, these were all
7 denominated in US dollar accounts. So this was
8 always conceived of and known by the co-
9 defendants that this in fact would occur.

10 HON. REENA RAGGI: I suspect you'll
11 have some interesting litigation on all of this.
12 I don't want to hold you any more on bail --

13 HON. SUSAN L. CARNEY: Let me ask just
14 -- let me just ask one, maybe -- so I just wanted
15 to make sure I understand. Is it the
16 Government's position that there is no bail
17 package or condition of confinement package that
18 the Defendant can offer that would provide
19 reasonable assurance that he will appear in
20 Court? None? So there's no point in Mr. Jackson
21 going back to the District Court? Is that your
22 position?

23 MR. BINI: The Government's position is
24 is that there is no set of conditions that would
25 reasonably assure his appearance. However, the

1 Government will always consider a bail package,
2 perhaps they'll convince us.

3 I'm not saying it's likely, but I'll
4 always look at a bail package rather than one
5 that keeps changing. I think they have to
6 present one. And I think the one that has been
7 presented, certainly, is insufficient.

8 And the District Court did not commit
9 clear error, because this was a factual finding,
10 in finding it insufficient.

11 HON. REENA RAGGI: But your adversary's
12 arguments is that that's not the proper way to
13 look at it, that it's not their burden to show
14 that a particular bail package is adequate,
15 though they often do that in cases, when they
16 proffer to the District Court.

17 It's yours to show that there is no
18 reasonable -- there is no package available. Now
19 as I understand it, neither your position in the
20 District Court, nor the District Court's finding
21 is -- was, well, there may be one, but it's not
22 this.

23 And I'm not going to speculate now as
24 to what that would be. I'll consider whatever
25 you present to me. That's not what the District

1 Court said. The District Court said, and I
2 thought it was the Government's position, there's
3 no conditions here that would satisfy it.

4 So if that's your position, we just
5 want to know, you know, how you justify it. You
6 just said you're willing to entertain a bail
7 application that suggests you think there might
8 be one that would satisfy it.

9 MR. BINI: No, we do think -- the
10 Government is -- does believe that no set of
11 conditions would reasonably assure his
12 appearance. However, I just meant that we would
13 always consider something, if the Defendant
14 raised it. But we -- our position is, is that no
15 set of conditions would reasonably assure his
16 appearance.

17 HON. RONALD D. SACK: I find that
18 disturbing. And I find it disturbing because
19 there's some -- there's a dynamic at work here,
20 which I find disturbing, and it affects me and
21 you.

22 And that is, let's say the chances are
23 one in 10,000 that he would flee if he goes under
24 this. If he is the one in 10,000, if he's the
25 other, I can't subtract one from 10,000, but if

1 he is -- but if he's any of those, and he shows
2 up to the trial because he has to, no one will
3 remember this.

4 He'll remember it. No one will
5 remember this. If he's the one in 10,000,
6 they're going to blame you and they're going to
7 blame me. And that sure puts the -- puts me, I'm
8 not speaking for my colleagues, me in something
9 of a -- to worry about whether I'm really
10 approaching this logically or whether I'm
11 protecting myself from that one in 10,000, and
12 whether you are.

13 MR. BINI: And Your Honor, that's
14 exactly why the District Court in this case --

15 HON. RONALD D. SACK: The District
16 Court is in the same position, of course.

17 MR. BINI: Yes. And why the District
18 Court, in recognizing this inherent conflict of
19 interest, the possibility is shown in the
20 (indiscernible) case of their being --

21 HON. SUSAN L. CARNEY: But Mr. Sang
22 showed up. Mr. Sang, yes, he was, you know, at
23 some Chinese restaurant at some point, but he
24 showed up.

25 MR. BINI: He did show up.

1 HON. SUSAN L. CARNEY: He did not --
2 his appearance was reasonably assured.

3 MR. BINI: It was, however, Your Honor,
4 in that case as we pointed out and as the
5 District Court noted, the Defendant received
6 something in the order of 160 hours of medical
7 massage in a 30-day period, was out at the
8 Chinese restaurant --

9 HON. SUSAN L. CARNEY: But the question
10 is, was his presence reasonably assured by the
11 conditions imposed? And he showed up.

12 MR. BINI: The District Court found in
13 that case and involving that 67-year-old
14 defendant, who did show up, that those conditions
15 were sufficient. However, a defendant in a
16 related case, Patrick Ho was detained by Judge
17 Forrest.

18 HON. SUSAN L. CARNEY: Well, so
19 different people will assess circumstances in
20 different ways. But we're talking about
21 reasonably assured presence as the standard
22 that's set by the statute. And I have some
23 difficulty understanding why these extraordinary
24 conditions that are outlined here wouldn't do so.

25 MR. BINI: Okay, and so --

1 HON. SUSAN L. CARNEY: Why don't you
2 make one final point? We've let you --

3 MR. BINI: Yes, Your Honor.

4 HON. SUSAN L. CARNEY: -- put you way
5 over your time.

6 MR. BINI: Yes, Your Honor. Just that
7 in different courts will make different decisions
8 in assessing something. And this District Court,
9 reasonably, just like Judge Forrest did in her
10 case, involving a similarly situated defendant
11 found that he should be detained.

12 This Defendant, based upon the reasons
13 set out by the District Court, including the
14 access to vast financial resources, that
15 demonstrated ability to procure false entry
16 documents to foreign jurisdictions found that he
17 should be detained.

18 HON. SUSAN L. CARNEY: Work permit to
19 the UAE was hardly a false US passport of a
20 document of that magnitude or gravity.

21 MR. BINI: And three false fraudulent
22 Visas to enter for co-conspirators, who are --
23 who indicated as petrol mechanic, petrol engine -
24 -

25 HON. SUSAN L. CARNEY: We have the

1 argument.

2 MR. BINI: Right.

3 HON. SUSAN L. CARNEY: Yeah.

4 MR. BINI: Who are in fact government -
5 - two of them were government officials. And
6 Your Honor, just to your point before I forgot,
7 but now I remember the case, the United States v.
8 Rutigliano regarding passage of wires through the
9 district in -- with respect to venue and
10 jurisdiction.

11 HON. SUSAN L. CARNEY: Thank you very
12 much.

13 MR. BINI: Thank you very much Your
14 Honors.

15 HON. SUSAN L. CARNEY: Mr. Jackson, you
16 have a minute rebuttal.

17 MR. JACKSON: Thank you, Your Honor. I
18 just wanted to make a few brief points in
19 response and answer any questions the Court has.
20 One, I think the issue was raised of disparate
21 treatment. And I just wanted to note, to say,
22 the question that Your Honor raised in terms of
23 disparate treatment.

24 I think what's particularly important
25 to remember is what this Court said -- noted in

1 both Sabnani and in Esposito that where the
2 government is relying on the wealth of the
3 Defendant as a very significant factor in terms
4 of the need to detain the Defendant, then it's
5 particularly unfair to conclude that that wealth
6 can't be utilized in order to try to create
7 conditions of --

8 HON. RONALD D. SACK: You're wealthy,
9 and therefore, you have to stay in jail, but
10 you're wealthy, and therefore you can't have an
11 alternate means of assuring you're showing up.

12 MR. JACKSON: Exactly, Your Honor.

13 HON. REENA RAGGI: Let's talk about
14 your client's wealth to see the issue that you
15 raised about there not being any conditions not
16 being adequately shown. Part of the Court's
17 concern was the million dollars and where it came
18 from. Is your client prepared to make a full
19 disclosure of all his assets everywhere in the
20 world, so that the Court has a sense of what his
21 wealth is and whether a million dollars is a drop
22 in the bucket or a serious deterrent to flight?

23 MR. JACKSON: Absolutely, Your Honor.
24 Not only is he willing to, he already has. He
25 sat down with pre-trial services, outlined all of

1 his assets. His wife outlined all of their
2 assets overseas. The government never at any
3 point --

4 HON. SUSAN L. CARNEY: How can pre-
5 trial services verify that?

6 MR. JACKSON: They -- there's an extent
7 to which they can verify, I don't know all of
8 their investigative methods, but there was never
9 any allegation in the District Court, unlike in
10 Sabnani, there was never any allegation in the
11 District Court that my client had hidden any of
12 his wealth.

13 He identified his bank accounts, where
14 he had money. He expressed his willingness to
15 transfer. We -- you know, to wealth here in
16 order to secure his bond.

17 And you know, just more to that point,
18 Your Honor, I would just emphasize that with
19 regard to the one in 10,000 point, the Supreme
20 Court has repeatedly emphasized that the fact
21 that there is some theoretical risk that a
22 defendant might be able to escape is really
23 grossly insufficient for us to justify detaining
24 a person who is presumed innocent, that the
25 entire point of the constitutional right to bail

1 and of the Bail Reform Act is that we're willing
2 to deal with some miniscule risk in order to
3 assure that the very fundamental value of our
4 criminal justice system, the fact that a man is
5 presumed innocent until proven guilty is not
6 completely run over by the Government's ability
7 to detain him, perhaps for a period of years.

8 HON. REENA RAGGI: Let's deal with the
9 unarticulated concern that we might have about
10 only the wealthy being able to afford private
11 detention.

12 MR. JACKSON: I think, Your Honor, that
13 it's an important concern and it's one that I
14 think everyone who's a stakeholder in the justice
15 system cares about. But I think Judge Rakoff, in
16 his opinion in the Dreier case really hit the
17 nail on the head with this issue.

18 Everything in terms of bail,
19 unfortunately, to some degree prejudices people
20 who have less means. If you're homeless, you
21 don't have the ability to put up a home. You
22 probably don't have the ability to put up any
23 money.

24 What we have in this situation is a
25 Defendant who's really being penalized for having

1 more money than the average Defendant. And in
2 this particular situation, I would just suggest,
3 Your Honor --

4 HON. REENA RAGGI: (indiscernible)
5 penalized, the question is whether or not the
6 package provides a sufficient deterrent, you
7 know, when your mother puts up her home and your
8 beloved mother's going to be out on the street if
9 you abscond, that's often a strong deterrent
10 because it has a moral suasion component as well
11 as the value of the home.

12 Indeed, often, the Judges don't care
13 what the value of the home is, if Mom's going to
14 be on the street. But that's not your client's
15 situation. And so, what we've got here is a
16 relatively modest amount of his assets, coupled
17 with private detention services.

18 And that it's in that context, that I
19 ask you, why isn't this troubling, that it comes
20 only to the wealthy. And not even your client's
21 money, a potential co-conspirator.

22 MR. JACKSON: Well, I think that Your
23 Honor hits it on the head when you talk about the
24 mother's home because what that identifies is
25 that this is -- the Bail Reform Act is focused on

1 focusing on the individual defendant. And the
2 mother's home is a situation where the Court has
3 the ability to create flexible solutions for
4 different types of defendants.

5 There will be some defendants who don't
6 need 24 hour private security monitoring, and
7 they can achieve the goals of the Bail Reform Act
8 simply by making the mother a co-signer on a
9 significant bond.

10 For this particular Defendant, we don't
11 believe that this is necessary because our
12 client, as Your Honor identified, is fully aware
13 of all of the significant problems in the
14 indictment and has a very strong interest in
15 clearing his name.

16 His wife is here waiting for him to
17 fight this case because they have an interest in
18 clearing their name. But this condition, these
19 conditions we've suggested go far beyond what is
20 necessary. They go to the point of virtually
21 guaranteeing that this defendant cannot flee.

22 And so, no matter what can be said
23 about the potential risk of flight, there is no
24 articulation and there is no articulation when
25 Your Honors press the government on this

1 question, why would this fail? Why would this
2 fail?

3 The Government can't answer that
4 question. No one can answer that question. And
5 under those circumstances, Your Honor, we submit
6 that the Defendant should be released.

7 HON. SUSAN L. CARNEY: Thank you very
8 much for your argument.

9 MR. JACKSON: Thank you very much for
10 your time.

11 HON. SUSAN L. CARNEY: We'll take the
12 matter under advisement and try to get you a
13 decision promptly.

14 MR. JACKSON: Thank you, Your Honor.

15 HON. SUSAN L. CARNEY: Thank you.

16 HON. REENA RAGGI: We'll proceed --

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1 C E R T I F I C A T I O N

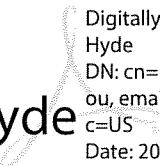
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3 I, Sonya Ledanski Hyde, certify that the
4 foregoing transcript is a true and accurate
5 record of the proceedings.

6

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8 Ledanski Hyde

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App. 194

Appendix K

1 UNITED STATES COURT OF APPEALS
2 FOR THE SECOND CIRCUIT

3 -----
4 CASE NO. 19-1018
5 -----

6 UNITED STATES OF AMERICA,
7 Appellee,

8 v.

9 JEAN BOUSTANI, AKA JEAN BOUSTANY,
10 Defendant-Appellant.

11 -----

12

13 April 17, 2019
14 Oral Argument

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22 BEFORE:

23 HON. JOSÉ ALBERTO CABRANES

24

25

1 THE COURT: Good afternoon. The Clerk
2 informs us that, as far as the day calendar is
3 concerned and the motions that we have, that
4 counsel have signed in, everything is in order,
5 so we'll dispense with the call of the calendars.
6 We'll turn to the motions calendar, the first two
7 cases of which are on submission, and then we'll
8 turn to U.S.A. v. Jean Boustani. Good morning,
9 Mr. Jackson.

10 MR. JACKSON: Thank you very much, Your
11 Honor. I'd like to respectfully request two
12 minutes of time for rebuttal. Thank you.

13 Now, may it please the Court, if a
14 Court determines that a defendant poses a risk of
15 flight, the Bail Reform Act ask only one
16 question; and that is, are there any conditions
17 that could be set that would reasonably assure
18 the defendant's presence.

19 Now, after the initial appeal in this
20 case, this Court gave the authority to go back to
21 the District Court to propose conditions that
22 have been dismissed in the Circuit here and
23 present them to the District Court with specific
24 instructions that the District Court was to
25 follow the law as set out by this Court's

1 precedent in Sabhnani, which required the Court
2 to hold the government to its burden of proving
3 that there were no conditions, no conditions
4 whatsoever that could be set that would
5 reasonably assure the defendant's presence.

6 THE COURT: It didn't go quite that
7 far, did it? I mean, we can all imagine things
8 that would reasonably assure somebody's presence.
9 Like, yeah, you could be out on -- well, it's
10 shackled to a tree, and you could be out not on
11 bail, but you're going to be present.

12 And there's some crazy things that can
13 be done. But what's our standard of review here?
14 I mean, this is a fact-finding, right?

15 MR. JACKSON: No, Your Honor. And I
16 think that's a point where the government's brief
17 --

18 THE COURT: Well, at some point, it's a
19 fact-finding.

20 MR. JACKSON: I think there's a --

21 THE COURT: I listen to the facts and I
22 say, if I'm the trial judge and I say I'm
23 listening to all of this and, based on this, the
24 evidence is equipoise. And I'm concerned that if
25 I say you are free on bond and you can be subject

1 to surveillance by -- and supervision by armed
2 guards whom you have hired who are on your
3 payroll, so to speak, I've got to let you go?

4 MR. JACKSON: No, Your Honor. Let me
5 respond to that in two points. First, the
6 standard of review as described in the
7 government's brief is just wrong. This Court's
8 decisions, if you read the entirety of what is
9 said in both of the decisions that the government
10 cites in its brief where it suggests that clear
11 error is the view, they both say that once you
12 get past the pure factual findings and you get to
13 the question of law that is at the heart of our
14 determination, it's essentially *de novo* review.

15 This is a question of whether or not,
16 looking at the facts, and there's a huge
17 disagreement here about the facts. The question
18 is, looking at those facts whether, as a matter
19 of law, it can be determined that the government
20 has met its burden of showing that there are no
21 conditions that could reasonably assure the
22 defendant's presence.

23 Now, Your Honor, you make a good point
24 in terms of being tied to a tree or something
25 like that. I think that's where the statute

1 importantly provides for reasonably assure. And
2 right here, as was much of the discussion in the
3 Second Circuit when we came here last time, it
4 has to be the case. The private security is a
5 reasonable solution for two reasons: one, it's
6 utilized over and over and over again in this
7 Circuit, including on many occasions where the
8 government has consented to the use.

9 I mean, in the FIFA cases, every
10 defendant was released, even though they
11 foreigners with substantial ties overseas and
12 substantial resources, but they were all
13 released, several of them with private security
14 solutions, and it has literally never failed.

15 So we're not talking about the
16 situation where something is being proposed
17 that's at the far extreme, like tying someone to
18 a stump. We're talking about right within the
19 heartland of not only what happens regularly in
20 this Court, but also what the Bail Reform Act
21 specifically provides for.

22 I mean, the very first condition that
23 is enumerated as a condition that a Court should
24 consider under the Bail Reform Act is release to
25 a third party who will be answerable to the

1 Court, and that's exactly what we're talking
2 about here when we talk about this condition.

3 JUDGE CABRANES: Mr. Jackson, this is a
4 body of law which is relatively new, this
5 business of permitting people to handle their own
6 security on the basis of their private means.

7 I was on the panel that first adopted
8 this arrangement. And is it not the case that
9 this has created a two-tier system for bail,
10 where people who have the means to provide for a
11 private service, of which we know many luminaries
12 in the recent past, they can somehow get bail and
13 live comfortably, while those without -- under
14 private guard; and yet, those with fewer means
15 have to be detained?

16 MR. JACKSON: Judge Cabranes, you raise
17 what is, I think, one of the most important
18 questions in this. And I would submit to you
19 that the answer is no, this is not creating a
20 two-tiered system for the exact reasons that this
21 Court set out in the Esposito decision.

22 Now, we talk a little bit about
23 Esposito, but that was a case that involved a
24 person, unlike Mr. Boustani, et al, a person
25 who'd been involved in very complex violent

1 crimes, the head of a criminal organization, a
2 Mafia boss. And what this Court said is that,
3 basically, where the defendant's wealth is the
4 primary factor that the government is relying on
5 in order to argue that they are such a risk of
6 flight that they can't be released.

7 It is fundamentally unfair and
8 offensive to, I think, our fundamental notions of
9 how a man presumed innocent should be treated, to
10 not allow him to utilize that wealth in order to
11 create a condition that will allow him to
12 adequately defend himself. And I would just
13 submit, Your Honor --

14 THE COURT: So are we -- are we, as the
15 Court at large, precluded from inferring what
16 seems to me a fairly logical inference that
17 somebody with a million dollars in the bank is
18 far more able to get to Cuba than somebody with
19 \$5,000 in the bank.

20 MR. JACKSON: Not at all, Your Honor.
21 And I think --

22 THE COURT: All right. So why then,
23 what's the distinction? A million versus \$5,000;
24 isn't that a wealth factor that says if
25 somebody's got a lot of money and has the ability

1 to travel internationally, that's something the
2 Court needs to be concerned about in order to
3 ensure that person's continuing presence at Court
4 proceedings?

5 MR. JACKSON: Yes, Your Honor. You hit
6 it right on the head. That is a critical factor
7 that the Court can and should take into account
8 in terms of the first prong of the determination
9 under the Bail Reform Act, whether the defendant
10 is a risk of flight. The defendant who has a
11 million dollars is much more of a risk of flight.

12 But the second prong is what we're
13 focused in on today, and that is whether or not
14 there are any conditions that could be set that
15 would reasonable assure the defendant's presence.
16 We're talking about a man who's facing a case
17 with millions of pages of discovery. He's going
18 to be able to see his lawyers for no more than a
19 couple of hours a day while he's dealing with the
20 fight of his life.

21 We submit that the Bail Reform Act was
22 set up in order to make a situation where it is -
23 - where a defendant has that opportunity to
24 defend himself in a way that's fair.

25 THE COURT: You've reserved two minutes

1 and I've given you some extra time.

2 MR. JACKSON: I appreciate you, Your
3 Honor. Thank you.

4 THE COURT: You reserved two minutes.

5 MR. JACKSON: Thank you.

6 THE COURT: Thank you.

7 MR. BINI: May it please the Court,
8 Mark Bini for the United States. I represented
9 the United States in the District Court.

10 Your Honors, the government requests
11 that this Court affirm the District Court's
12 decision because it was not clear error. And I
13 would note to Judge Hall's questions, that is the
14 standard here because this is a uniquely factual
15 determination because we're concerned with
16 whether there's a set of conditions that could
17 reasonably assure the defendant's appearance.

18 The District Court did not clearly err
19 in finding that no combination of conditions
20 could reasonably assure the appearance of this
21 defendant, where the record shows: first, the
22 defendant faces a great deal of evidence of guilt
23 and, if convicted, a likely very lengthy prison
24 sentence; second, has access to vast financial
25 resources; third, has demonstrated expertise in

1 both bribing government officials and high level
2 bank officials and procuring fraudulent legal
3 documents for entry to a foreign jurisdiction;
4 and fourth, no attachment to the United States,
5 other than in connection with this fraud scheme,
6 and lives and works in countries that do not
7 extradite to the United States.

8 THE COURT: Did Judge Kuntz make
9 findings on all of these things that you're
10 bringing to our attention?

11 MR. BINI: Yes, Your Honor. He issued
12 an 18-page written decision finding that the
13 defendant was a flight risk by a preponderance,
14 which I think is unchallenged at this point, and
15 that no set of conditions could reasonably assure
16 his appearance.

17 It went up to this Court. And at that
18 time, the Second Circuit affirmed and sent it
19 back down and gave the defendant the ability to
20 file a renewed bail application. But when he did
21 so, Your Honors, it became clear that the bail
22 application was even weaker than it first
23 appeared. The big difference between the first
24 and the second bail application is that the
25 defendant now says that he will put up \$9

1 million, rather than \$1 million to -- as
2 collateral for his bail.

3 However, for the first time, the
4 government got to see the pretrial services
5 report. And in the pretrial services report, the
6 defendant frankly admitted that he makes \$84,000
7 a year from Privinvest; but yet, five years ago,
8 he gave approximately \$8 million to his father.

9 He gifted it to him to hold for him, which --

10 THE COURT: Why wasn't the pretrial
11 services report available in the first go-round,
12 or was it a supplemental that was done in
13 connection with the application?

14 MR. BINI: Your Honor, it was written
15 after the Judge heard oral argument the first
16 time. He referred to it in his decision, but the
17 government had not seen it. However, when it got
18 sent back down, we did have a chance to review
19 it. And he indicated he made \$84,000 a year; and
20 yet, he had approximately 12 million in assets.
21 And as I said, 8 million apparently was gifted to
22 his father five years ago.

23 Well, as we set out in the indictment -
24 - and this is Paragraph 92 of our indictment --
25 the defendant received approximately \$15 million

1 from this fraud scheme five years ago. So we put
2 that in our papers, with respect to the amended
3 bail application, and that was the focus of our
4 argument with respect to his amended bail
5 application.

6 And the District Court, in considering
7 this, very reasonably found that this was no
8 assurance that the defendant would appear.

9 And in this, I would note that the
10 first time that we argued this case, Judge Raggi
11 raised issue, saying in reading the Judge's
12 decision in the proceedings below, that -- and
13 this is at Page 17 through 19 of the transcript
14 that is attached as Exhibit E to the defendant's
15 papers.

16 She noted that, if I read this
17 correctly, whether the monies were traceable to
18 the alleged crime, and in that respect, your
19 client might very well rather risk the profits of
20 the crime than his liberty.

21 I'm not saying that this Court's
22 finding, but I think that's the reasoning of the
23 Judge. And when it appeared -- when we appeared
24 before Judge Kuntz with respect to this amended
25 bail package, he went specifically to that,

1 speaking to the moral suasion. Those were the
2 government's arguments that this, in fact, would
3 not keep him here.

4 I would also note for Your Honors that
5 defense counsel relies on 12 cases that they say
6 have been successful involving private jails.
7 However, those cases are much different than this
8 case. Many of them involved United States
9 citizens with long ties to the community.

10 For example, Judge Cabranes, you were
11 on the Sabhnani panel. And in that case, the
12 defendants were naturalized United States
13 citizens who had been more than 25 years, so a
14 much different factual setting.

15 JUDGE CABRANES: That's the opinion of
16 Judge Roggi in that case is as it were the font
17 of all of the later cases; is that right?

18 MR. BINI: Yes, Your Honor. And I
19 should note in that case as well, the government
20 did not -- had at some point had conceded that a
21 private jail would be sufficient in the
22 circumstances of that case, and that is not the
23 case here.

24 The other cases involving foreign
25 defendants that were released to private jail, or

1 the FIFA cases the defendant cites. However, in
2 all of those cases, the government, in its
3 estimation of those particular defendants
4 applying the 3142(g) factors, thought that they
5 were capable of release under those
6 circumstances.

7 That is not the case here. This is not
8 like Sabhnani and it's not like the FIFA cases.
9 The government has consistently argued against
10 the defendant's release because of the extreme
11 flight risk.

12 The remaining case which the defendant
13 points to is the Ng Lap Seng case from the
14 Southern District of New York, where the
15 defendant was released to private jailers over
16 the government's objection. And while that case,
17 the defendant did appear for court, I would note
18 that the record indicates that that defendant,
19 who is a 67-year-old billionaire, had many
20 opportunities to flee.

21 And that's what the government is
22 concerned with her and has pointed to at the
23 District Court level and were raised to Your
24 Honor. The Southern District noted that the
25 defendant in the Ng Lap Seng case was outside of

1 his apartment virtually all day every weekday,
2 was visited by a masseuse for a total of 160
3 hours and went on an unauthorized visit to a
4 restaurant in Chinatown with his private guards
5 in tow.

6 An FBI employee happened to be at that
7 restaurant in Chinatown and took a picture of the
8 defendant out, and then reported it, and that's
9 how it was reported to the Court. While the
10 defendant was not put in custody after that and
11 did report to Court, it points to the
12 opportunities to flee.

13 And while the 67-year-old Ng Lap Seng
14 didn't flee, this underscores exactly how
15 Boustani, who's only 40 years old, could flee.
16 At any time he was out of his guarded apartment
17 would be an opportunity for flight. Anytime he's
18 at his attorney's law offices that, obviously,
19 not set up the way the MDC or the MCC is, they're
20 not designed for prisoners to be there, would be
21 an opportunity to flee.

22 And he could flee aided by his co-
23 conspirators at Privinvest by private plane or by
24 private boat because he has access to the vast
25 financial resources, including the 15 million

1 from this fraud scheme that he's received, but
2 also to the resources of the billionaire who's an
3 unindicted co-conspirator and the principal of
4 the company, cited in Paragraph 13 of our
5 indictment.

6 THE COURT: Let me ask you this.

7 MR. BINI: Yes, Your Honor.

8 THE COURT: Your adversary raises on
9 behalf of his client issues regarding review of
10 discovery and the massive amount of discovery
11 that's going to be involved in this case. Does
12 the government have a mechanism for making
13 arrangements that essentially enable that in some
14 way that's fair to the defendant?

15 MR. BINI: The government would take
16 any steps necessary to further facilitate his
17 review, if necessary, at the MDC of any documents
18 they wish to review with the defendant.

19 THE COURT: Does the government have
20 that ability? And I'm not questioning your bona
21 fides, but sometimes, I know from experience,
22 it's tough to ask the Bureau of Prisons to do
23 certain things and have them respond positively.

24 MR. BINI: Certainly. Your Honor, I
25 don't know that standing here today what their

1 present abilities. I know that there is, you
2 know, access to both the attorney meeting room
3 and also to lap -- or computers while at the MBC.

4 But I would note that the government
5 would stand willing to do whatever we could to
6 seek to facilitate his review of discovery in the
7 case.

8 I would note also that the government
9 met with the defense attorneys at the very outset
10 of the case and gave a high-level overview of the
11 evidence and has produced virtually all of the
12 discovery already, so, hopefully, to aid the
13 defendant to prepare for trial.

14 Your Honors, for all of the reasons
15 that the government has set out, the government
16 submits that the District Court's decision was
17 not clear error. It was error at all, and should
18 be affirmed because the government has shown, by
19 a preponderance of the evidence, that the
20 defendant is a flight risk and that no set of
21 conditions would reasonably assure his appearance
22 here.

23 THE COURT: Mr. Jackson, you have two
24 minutes.

25 MR. JACKSON: Thank you, Your Honor.

1 To the last question, Your Honor, the answer to
2 that question is no. There is no way to recreate
3 what Mr. Boustani would be able to do in terms of
4 defending himself in this case if he is on bail
5 in the MDC. Right now, he's situated far away in
6 Brooklyn.

7 This case involves allegations that
8 involve Europe, the Middle East, Africa. We plan
9 to be meeting with witnesses who are potentially
10 overseas. If Mr. Boustani is on bail, he can
11 participate in some of those discussions with
12 potential experts, potential witnesses, the video
13 conference. He can't do any of that in jail.

14 There's a very serious limit on the
15 amount of discovery. We can't bring millions of
16 pages into the jail. And so, our ability to work
17 with Mr. Boustani is severely limited.

18 Now, I just want to underscore, the
19 notion that -- first, the prosecutor noted that
20 the Southern District had suggested in the Seng
21 case that the defendant in that case posed a
22 number of problems; that was what the prosecutor
23 said.

24 What the District Court did in the Seng
25 case, he's quoting the prosecutor's language in a

1 brief that was ultimately rejected by the
2 District Court in that case. The District Court
3 said no when the government repeatedly attempted
4 to put Mr. Seng in. All that happened is he
5 stopped to get some Chinese food on one day back
6 from the Court. He reported, as he was required,
7 as every single defendant who's been released
8 under conditions with private security has been
9 release has reported. There's never been a
10 single failure.

11 And I would just underscore, Your
12 Honor, also this notion that Mr. Boustani
13 received 15 million from the fraud scheme is
14 false. Mr. Boustani never hid from pretrial
15 services; I was there for the interview. He
16 described his regular salary as being 84,000 and
17 admitted that he had gotten bonuses. Because of
18 the nature of his position, those bonuses were
19 millions of dollars. He never hid his assets.
20 He described them openly to pretrial. We
21 described them in the District Court.

22 And it's been clear from the beginning
23 that Mr. Boustani is like any employee of a
24 company that is a legitimate company; he's
25 attempting to use his earnings in order to post

1 bail.

2 We respectfully request that Your
3 Honors allow Mr. Boustani to be released pursuant
4 to the extraordinarily strict additions we
5 proposed.

6 THE COURT: Thanks very much, Mr.
7 Jackson.

8 MR. JACKSON: Thank you, Your Honor.

9 THE COURT: We'll reserve decision.
10 You'll hear from us in due course. Thank you
11 both for a well-argued motion.

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1 C E R T I F I C A T I O N

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3 I, Sonya Ledanski Hyde, certify that the
4 foregoing transcript is a true and accurate
5 record of the proceedings.

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16 Date: May 16, 2019

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Appendix L

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, : 18-CR-681 (WFK)
:
:
-against- : United States Courthouse
: Brooklyn, New York
:
:
DETELINA SUBEVA, : Monday, May 20, 2019
: 4:00 p.m.
Defendant. :
:
----- -X

TRANSCRIPT OF
CRIMINAL CAUSE FOR ARRAIGNMENT AND GUILTY PLEA
BEFORE THE HONORABLE WILLIAM F. KUNTZ, II
UNITED STATES DISTRICT JUDGE

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Proceedings recorded by computerized stenography. Transcript produced by Computer-aided Transcription.

1 (In open court.)

2 (Defendant present in open court.)

3 COURTROOM DEPUTY: All rise. The United States
4 District Court for the Eastern District of New York is now in
5 session. The Honorable William F. Kuntz, II is now presiding.

6 (Honorable William F. Kuntz, II takes the bench.)

7 COURTROOM DEPUTY: Calling criminal cause for
8 arraignment and guilty plea in Docket No. 18-CR-681,
9 *United States of America against Detelina Subeva.*

10 Counsel, please note your appearances for the
11 record.

12 MR. BINI: For the United States of America,
13 Assistant United States Attorney Mark Bini.

14 Good afternoon, your Honor.

15 MR. MCGOVERN: Michael G. McGovern for Detelina
16 Subeva.

17 Good afternoon, your Honor.

18 (Defendant present in open court.)

19 COURTROOM DEPUTY: Criminal cause for arraignment
20 and pleading, Docket No. 18-CR-681, United States v. Subeva.

21 Counsel, please state your appearances for the
22 record and spell your first and your last names for the court
23 reporter including the pretrial officer.

24 MR. BINI: Mark Bini, Hiral Mehta, David Fuhr, Sean
25 O'Donnell, Angela Tassone and Fatima Haque.

1 THE COURT: Good afternoon. Would you give the
2 spellings please.

3 MR. BINI: Mark Bini. That is M-a-r-k, B-i-n-i.
4 For Mr. Mehta.

5 MR. MEHTA: Good afternoon your Honor.

6 THE COURT: Good afternoon.

7 MR. MEHTA: H-i-r-a-l. M-e-h-t-a.

8 MR. FUHR: Good afternoon, your Honor.

9 THE COURT: Good afternoon.

10 MR. FUHR: D-a-v-i-d. F-u-h-r.

11 MR. O'DONNELL: Good afternoon, your Honor. Sean
12 O'Donnell. S-e-a-n. O'D-o-n-n-e-l-l.

13 THE COURT: Good afternoon.

14 MS. HAQUE: Good afternoon Fatima, F-a-t-i-m-a.
15 Haque, H-a-q-u-e.

16 THE COURT: Good afternoon.

17 MS. TASSONE: Good afternoon. Angela, A-n-g-e-l-a.
18 Tassone, T-A-S-S-O-N-E.

19 THE COURT: Good afternoon.

20 MS. VAZQUEZ: Pretrial Officer Lourdes Vasquez.
21 L-o-u-r-d-e-s. V-a-z-q-u-e-z.

22 THE COURT: Good afternoon, Ms. Vazquez. I'm going
23 to ask you to shift around to the other side so that you'll be
24 facing the other side and you can all be seated, thank you.

25 MR. MCGOVERN: Good afternoon, your Honor. Michael

1 McGovern on behalf of the defendant Ms. Lina, Detelina Subeva
2 who is present here in the courtroom. Next to me is
3 Ms. Subeva.

4 I'm also accompanied by my partner Ms. Amanda Raad
5 as well as our colleague Ms. Zaneta Wykovska.

6 THE COURT: Good afternoon. Please be seated.
7 Thank you very much.

8 MR. MCGOVERN: Thank you.

9 THE COURT: Are think any other counsel who wish to
10 state their appearances for the record? Hearing none, I am
11 now going to arraign the defendant on the indictment which was
12 filed in this case on December 19th of 2018.

13 Would the defendant please rise. And, Mr. Jackson,
14 would you please administer the oath to the defendant. And
15 the defendant is to raise your right hand.

16 COURTRoom DEPUTY: Raise your right hand.

17 (Defendant sworn.)

18 THE DEFENDANT: Yes.

19 THE COURT: Thank you. Please be seated.

20 I'm going to ask all the parties who speak, parties
21 and counsel, to make sure they're using the microphones. Pull
22 them towards you when you speak and make sure the green light
23 is lit so that we can hear you clearly.

24 I'm going to ask the defendant to begin by asking a
25 few questions about your background. Would you please state

1 your full name and pronounce it so we can pronounce it
2 properly in here.

3 THE DEFENDANT: Detelina Subeva, your Honor.

4 THE COURT: Okay. Spell your name.

5 THE DEFENDANT: Detelina, D-e-t-e-l-i-n-a. Last
6 name Subeva, S-u-b-e-v-a.

7 THE COURT: Thank you. Have you ever used any other
8 name?

9 THE DEFENDANT: I go by Lina as well.

10 THE COURT: Spell that.

11 THE DEFENDANT: L-i-n-a.

12 THE COURT: Thank you. What is your date of birth,
13 ma'am.

14 THE DEFENDANT: August 28, 1981, your Honor.

15 THE COURT: And where were you born.

16 THE DEFENDANT: In Pleven, Bulgaria. In Pleven,
17 Bulgaria.

18 THE COURT: What nation are you a citizen as we sit
19 here today?

20 THE DEFENDANT: I am a citizen of Bulgaria, your
21 Honor.

22 THE COURT: Would you please briefly describe your
23 educational background beginning with secondary school, high
24 school.

25 THE DEFENDANT: I went to the American College of

1 Sofia in Sofia, Bulgaria for high school. For one of the
2 years for the junior year of high school, I went to
3 Mercersburg Academy in Pennsylvania on a scholarship and I
4 finished high school back in Bulgaria. And then I attended
5 Princeton University until 2004 and graduated with B.A. in
6 economics.

7 THE COURT: Have you done any formal study since
8 then?

9 THE DEFENDANT: No, I have not, your Honor.

10 THE COURT: Have you taken any drugs, any medicine,
11 any pills, or consumed any alcoholic beverage within the past
12 24 hours?

13 THE DEFENDANT: No, I have not, your Honor, with the
14 exception of some cold medicine.

15 THE COURT: What was the nature of that cold
16 medicine?

17 THE DEFENDANT: Paracetamol, aspirin-type.

18 THE COURT: Has that affected your ability to
19 understand these proceedings in terms of what is happening
20 here today?

21 THE DEFENDANT: No, your Honor.

22 THE COURT: Do you understand what is happening here
23 today?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Defense counsel, do you have any doubt

1 as to the defendant's competence to proceed at this time?

2 MR. MCGOVERN: No, your Honor.

3 THE COURT: You can remain seated, sir, just use the
4 microphone.

5 Let me ask the prosecutors. Do you have new doubt
6 as to the defendant's competence to proceed at this time?

7 MR. BINI: No, your Honor.

8 THE COURT: The Court hereby finds based on the
9 defendant's representations, and the representations of all
10 counsel of record, that the defendant is competent to proceed.

11 Let me ask the defendant now. It is important for
12 you to understand these proceedings. If, for any reason, you
13 do not understand something that is being said to you, please
14 indicate that you do not understand and I will repeat and
15 restate whatever you do not understand.

16 Is that clear to you, ma'am?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: Now, these proceedings are being
19 recorded both electronically and stenographically. If I ask
20 you a question, it is important that you speak into the
21 microphone and answer each question by saying either yes or no
22 or you don't know the answer to the question so that the
23 record will reflect your answer completely and accurately.

24 Do you understand that?

25 THE DEFENDANT: Yes, your Honor.

1 THE COURT: The purpose of today's proceedings is to
2 make certain that you understand the nature of the charges
3 that have been brought against you by the United States of
4 America and to make certain that you understand that you have
5 certain rights under the constitution and the laws of the
6 United States of America.

7 First, you have the right to be represented by an
8 attorney at today's proceedings and at all future proceedings
9 before the courts of the United States.

10 Who is your counsel today?

11 THE DEFENDANT: My counsel is next to me.

12 THE COURT: Okay. Could you state their names for
13 the record again.

14 THE DEFENDANT: Michael McGovern, Amanda Raad, and
15 Zaneta Wykovska.

16 THE COURT: Now, if, for any reason, you do not
17 understand anything, please indicate that that is the case.

18 Next, you have the right to remain silent. If you
19 start to make a statement, ma'am, you may stop at any time.
20 Any statement that you make to anyone other than your
21 attorneys may be used against you in a court of law.

22 Do you understand that?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: Now, ma'am, do you understand that you
25 have the right to counsel and you have the right to remain

1 silent?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Ma'am, you are here today because a
4 United States grand jury has returned an indictment filed on
5 December 19th of 2018 charging you with the following:

6 Count One: Conspiracy to commit wire fraud in
7 violation of Title 18 of the United States Code, Section 1349.

8 Count Two: Conspiracy to commit securities fraud in
9 violation of 18, United States Code, Section 371.

10 Count Three: Conspiracy to violate the Foreign
11 Corrupt Practices Act antibribery and international controls
12 provisions in violation of Title 18, United States Code,
13 Section 371.

14 And Count Four: Conspiracy to commit money
15 laundering in violation of 18, United States Code,
16 Section 1956(h).

17 Ma'am, have you seen the indictment that was filed
18 against you in this case?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: And have you read it?

21 THE DEFENDANT: Yes.

22 THE COURT: Do you understand it?

23 THE DEFENDANT: Yes.

24 THE COURT: Did you discuss it with your counsel?

25 THE DEFENDANT: I have.

1 THE COURT: Do you understand the charges that have
2 been made against you in the indictment?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: Defense, Counsel have you had an
5 opportunity to your satisfaction to review the indictment that
6 has been filed against your client in this case with her.

7 MR. MCGOVERN: Yes, I have, your Honor.

8 THE COURT: Do you have any concerns about whether
9 she understands fully the charges against her?

10 MR. MCGOVERN: None whatsoever, your Honor.

11 THE COURT: Have you advised your client of her
12 constitutional rights, sir?

13 MR. MCGOVERN: Yes, I have.

14 THE COURT: Now, the Court has marked the indictment
15 in this case as Court Exhibit 1 for identification.

16 May I have a motion from the Government to have
17 Court 1 admitted into evidence?

18 MR. BINI: So moved, your Honor.

19 THE COURT: Any objection.

20 MR. MCGOVERN: None, your Honor.

21 THE COURT: Court 1 is admitted into evidence.

22 (Court's Exhibit 1 was marked in evidence as of this
23 date.)

24 THE COURT: I am prepared to read the charges listed
25 of in the indictment out loud unless the parties agree to

1 waive the reading of the indictment in whole or in part.

2 First, let me first ask the Government. Do you
3 waive the reading of the indictment?

4 MR. BINI: Yes, your Honor.

5 THE COURT: Defense counsel, do you waive the
6 reading of the indictment?

7 MR. MCGOVERN: Yes, we do, your Honor.

8 THE COURT: All right. The Court accepts those
9 representations and the indictment will not be read out loud.
10 It is in evidence.

11 Let me ask the defendant, are you prepared to plead
12 today?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: Now, let's do this count by count.

15 With respect to Count One of the indictment, which
16 is in evidence, how do you plead, guilty or not guilty? Count
17 One.

18 THE DEFENDANT: Not guilty, your Honor.

19 THE COURT: With respect to Count Two of the
20 indictment, how do you plead, guilty or not guilty?

21 THE DEFENDANT: Not guilty, your Honor.

22 THE COURT: With respect to Count Three of the
23 indictment, how do you plead, guilty or not guilty?

24 THE DEFENDANT: Not guilty.

25 THE COURT: With respect to Count Four of the

1 indictment, how do you plead, guilty or not guilty?

2 THE DEFENDANT: Guilty, your Honor.

3 THE COURT: I understand the parties have reached a
4 written agreement in this case.

5 Do the parties have a signed copy of that agreement
6 to provide to the Court.

7 MR. BINI: Yes, your Honor, and I've handed it up to
8 Mr. Jackson.

9 THE COURT: Thank you.

10 I have a copy of the signed agreement in this case,
11 the original of it which has been marked as Court Exhibit 2
12 for identification.

13 The agreement has been signed by the defendant who
14 states that she has read the entire agreement and discussed it
15 with her attorneys; that she understands all of its terms, and
16 that she is entering into the agreement knowingly and
17 voluntarily.

18 The form of the agreement has been approved by her
19 counsel, Mr. McGovern. The agreement has also been signed by
20 Mr. Mark Bini, Assistant United States Attorney, and his
21 colleagues, Mr. Hiral Mehta. It's been approved as to form by
22 the supervising Assistant United States Attorney Alixandra
23 Smith. It's also been approved by Margaret Moser, M-o-s-e-r,
24 and Sean W. O'Donnell as trial attorneys. And it's also been
25 approved by David M. Fuhr, F-u-h-r, Trial Attorney/Acting

1 Chief of the Special Fraud Unit. It's dated May 20th of 2019.

2 Is there a motion again for this agreement to be
3 admitted into evidence?

4 MR. BINI: The Government so moves, your Honor.

5 THE COURT: Any objection?

6 MR. MCGOVERN: No, your Honor.

7 THE COURT: Your motion to have the agreement
8 admitted under seal?

9 MR. BINI: Yes, your Honor. We would ask that it be
10 under seal for the reasons set out in our sealed submission.

11 THE COURT: Any objection?

12 MR. MCGOVERN: No, your Honor.

13 THE COURT: All right. The agreement is admitted
14 under seal.

15 (Court's Exhibit 2 was marked in evidence as of this
16 date.)

17 THE COURT: Now, I say to the defendant that unless
18 your counsel or government counsel wish to be heard at this
19 time, or has an objection at this time, the Court believes you
20 may now turn to the final procedures for taking a plea in your
21 case, ma'am.

22 Your attorney advises this court that you wish to
23 plead guilty to Count Four in the indictment as stated earlier
24 today that you do wish to plead guilty to Count Four in the
25 indictment pursuant to the agreement.

1 I say again this is a serious decision and I must be
2 certain that you make it understanding your rights and the
3 consequences of your plea. You understand that having been
4 sworn to tell the truth to this court you must do so. If you
5 were to lie to this court deliberately in response to any
6 question I ask you, you could and would face further criminal
7 charges for perjury.

8 Do you understand?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: It is important that you understand
11 everything that goes on today. If you need me to repeat
12 anything, you have only to ask.

13 Do you understand that?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: Now, I'm going to ask you questions
16 because I must be certain that whatever decision you make
17 today you make with a clear head. Some of the questions I've
18 touched on earlier but I'm going to repeat some of them just
19 to make sure.

20 Are you presently or have you recently been under
21 the care of any kind of doctor, psychiatrist, physician, or
22 psychologist for any reason?

23 THE DEFENDANT: No, your Honor.

24 THE COURT: In the past 24 hours, have you taken any
25 pills, any drugs or any medicine of any kind other than what

1 you previously described?

2 THE DEFENDANT: No, your Honor.

3 THE COURT: Have you ever been hospitalized or
4 treated for any drug-related problem?

5 THE DEFENDANT: No, your Honor.

6 THE COURT: Have you ever participated in any
7 court-ordered drug treatment program?

8 THE DEFENDANT: No, your Honor.

9 THE COURT: In the past 24 hours, ma'am, have you
10 consumed any alcoholic beverage?

11 THE DEFENDANT: No, your Honor.

12 THE COURT: Have you ever been hospitalized or
13 treated for any reason alcohol-related problem?

14 Have you every been hospitalized for treated for any
15 alcohol-related problem?

16 THE DEFENDANT: No, your Honor, with the exception
17 of two occasions in college where I spent the evening in the
18 college health center for overindulging with alcohol.

19 THE COURT: And what years did that occur or year if
20 it was the same year?

21 THE DEFENDANT: Perhaps around 2003.

22 THE COURT: 2003. Since that year, on those two
23 occasions, have you ever been hospitalized or treated for any
24 alcohol-related problem?

25 THE DEFENDANT: I have not.

1 THE COURT: Have you ever participated in any
2 court-ordered alcohol treatment program?

3 THE DEFENDANT: I have not, your Honor.

4 THE COURT: Is your mind clear as you sit here
5 today?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: You understand everything being said to
8 you today?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: Defense counsel, have you discussed the
11 question of a guilty plea with your client?

12 MR. MCGOVERN: Yes, your Honor.

13 THE COURT: In your view, sir, does she understand
14 the rights that she would be waiving by pleading guilty?

15 MR. MCGOVERN: Yes, she does, your Honor.

16 THE COURT: Defense counsel do you have any
17 questions as to her competence to proceed today?

18 MR. MCGOVERN: None, your Honor.

19 THE COURT: Now, ma'am, are you satisfied with the
20 assistance your attorney has given you thus far in your case?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: You believe that you have received the
23 effective assistance of counsel in your case?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: If you believe you have not received the

1 effectiveness of counsel, you have a right to appeal on that
2 basis.

3 Defense counsel do you feel you need more time to
4 discuss the question of a guilty plea with your client?

5 MR. MCGOVERN: No, your Honor.

6 THE COURT: Ma'am, I have previously offered to read
7 out loud to you the indictment which is in evidence.

8 Do you need me to read it out loud to you?

9 THE DEFENDANT: No, your Honor. Thank you.

10 THE COURT: Now, ma'am, you have a right to plead
11 not guilty. No one can be forced to plead guilty.

12 Do you understand that?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: If you plead not guilty, you have a
15 right under the constitution and the laws of the United States
16 of America to a speedy trial and a public trial before a jury
17 of your peers with the assistance of your attorney.

18 Do you understand?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: At any trial, ma'am, you would be
21 presumed to be innocent. You would not have to prove that you
22 were innocent. This is because under the American system of
23 law, it is the United States Government that must come forward
24 with proof that establishes beyond a reasonable doubt that you
25 are, in fact, guilty of the crime charged. If the Government

1 failed to meet this burden of proof, the jury would have the
2 duty to find you not guilty and I would instruct them of that
3 fact.

4 Do you understand?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: At a trial, ma'am, witnesses for the
7 Government would have to come here to this courtroom to
8 testify in your presence. Your lawyer would have the right to
9 cross-examine these witnesses and could raise legal objections
10 to the evidence the Government sought to offer against you.
11 Your lawyer could also offer evidence on your behalf if you
12 thought there was evidence that might help you in your case,
13 or compel witnesses to come to court and to testify in your
14 defense if you thought that would help your case.

15 Do you understand that?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: At a trial, ma'am, you would have the
18 right to testify on your own behalf if you wished to do so.
19 On the other hand, you could not be forced to be a witness at
20 your trial. This is because under the constitution and the
21 laws of the United States, no person can be compelled to be a
22 witness against yourself. If you wish to go to trial, but
23 chose not to testify, the Court would instruct the jury that
24 it could not hold that against you.

25 Do you understand?

1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: If instead of going to trial you plead
3 guilty to the crime charged, and if I accept your guilty plea,
4 you will be giving up your right to a trial and all the other
5 rights I've just discussed. There will be no trial in this
6 case. There will be no appeal on the question of whether you
7 did or you did not commit the offenses charged in Count Four
8 of the indictment.

9 Pursuant to Paragraph 3 of your agreement, you are
10 also waiving your right to appeal or otherwise to challenge
11 your conviction or sentence if this court imposes a term at or
12 below 240 months of imprisonment. If you violate this
13 agreement and file an appeal resulting in your sentencing
14 being vacated or set aside, or if you otherwise challenge your
15 conviction or sentence, you could very well face a much
16 greater sentence than the one you receive under this
17 agreement, specifically, a sentence of up to 20 years of
18 imprisonment, which is the statutory maximum provided by the
19 Congress of the United States for the crimes charged in Count
20 Four of the indictment.

21 Do you understand?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: You could appeal or otherwise challenge
24 your conviction or sentence only if the sentence I imposed
25 exceeded the statutory maximum of 240 months of imprisonment.

1 If I thereafter imposed a sentence that exceeded that amount,
2 240 months, you would have a right to appeal or otherwise
3 challenge that sentence to a higher court.

4 Do you understand?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: To be crystal clear, if I were to
7 sentence you to above 240 months regardless of how I did it,
8 you would have a right to appeal or otherwise challenge that
9 sentence. And if you could no longer at that point afford the
10 fees and expenses associated with the appeal or challenge
11 including attorneys fees, you could appeal to the Court for
12 the appointment of counsel and the fees and expenses to be
13 paid at prescribed rates set by the United States Government
14 pursuant to the authority of the Criminal Justice Act.

15 Do you understand?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Nothing, however, prevents from you
18 raising a claim ineffective assistance of counsel at an
19 appropriate time and in an appropriate forum.

20 Do you understand that?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: If you do plead guilty, I would have to
23 ask you certain facts, certain questions, about what you did
24 and where you did it in order to satisfy the Court that you
25 are, in fact, guilty of the charges set forth in Count Four of

1 the indictment. You will have to answer my questions and to
2 acknowledge your guilt. If you do this, you will be giving up
3 your right not to incriminate yourself.

4 Do you understand?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Ma'am, are you willing to give up your
7 right to a trial and all the other rights I've just discussed
8 with you?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: Is there any other agreement other than
11 the aforementioned written agreement and any other written
12 proffer agreement, if applicable, that has been reached or
13 that has been made with you in order to get you to plead
14 guilty?

15 THE DEFENDANT: No, your Honor.

16 THE COURT: You understand the consequences of
17 pleading guilty to the charges set forth in Count Four of the
18 indictment in terms of incarceration?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: I'm now going to discuss with you some
21 important information in detail relative to sentencing,
22 namely, the statutory terms that you face for Count Four of
23 the indictment.

24 These are the penalties written directly by the
25 Congress of the United States for violation of the statute

1 you're charged with today.

2 Count Four, you face a minimum term of imprisonment
3 of zero years and a maximum term of imprisonment of 20 years.

4 Do you understand?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: You also face a maximum term of
7 supervised release of three years following any term of
8 imprisonment.

9 Do you understand?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: If you violate a condition of release,
12 you may be sentenced to up to two years of imprisonment without
13 credit for pre-release-imprisonment or time previously served
14 on post-release supervision.

15 Do you understand?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: You also face a maximum fine of the
18 greater of \$500,000 or twice the value of the monetary
19 instruments or funds involved in the transactions.

20 Do you understand?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: You also face mandatory restitution in
23 the full amount of each victim's losses as determined by this
24 court.

25 Do you understand?

1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: You also face a mandatory special
3 assessment of \$100 which I'm required to impose in all cases
4 per count per individual.

5 Do you understand?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: You also face removal from this country
8 as set forth in Paragraph 18 of the agreement.

9 Do you understand?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Finally, you also face criminal
12 forfeiture as set forth in Paragraphs 6 through 12 of the
13 agreement.

14 Ma'am, this is a sentencing guidelines case. So, in
15 sentencing you, the court will have to consider certain
16 guidelines. Those guidelines do in control this court, but
17 they inform this court.

18 Has defense counsel discussed the sentencing
19 guidelines with the defendant?

20 MR. MCGOVERN: Yes, we have, your Honor.

21 THE COURT: Is that accurate, ma'am?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: When the Court sentences you, the Court
24 will have to consider certain factors about you and about
25 Count Four of the indictment. That inquiry will lead this

1 court to a guideline sentencing range. The Court is not
2 required to sentence you within that range, the Court is
3 empowered to impose a sentence less than, equal to, or greater
4 than provided by the guidelines subject to the statutory
5 maximum. But in all cases including this one this court must,
6 and this court will, consult the applicable guideline
7 sentencing guideline range.

8 Before this court imposes sentence, this Court will
9 receive a report prepared by probation department which will
10 recommend a particular sentence to this court. You and your
11 counsel will have the opportunity to see that report, and if
12 you think that report is mistaken, incomplete, or simply wrong
13 in any way you will have the opportunity to bring that to the
14 attention of the Court.

15 Now, ma'am, do you have any questions you would like
16 to ask the Court today?

17 THE DEFENDANT: No, your Honor.

18 THE COURT: Does defense counsel have any questions
19 for the Court today?

20 MR. MCGOVERN: No, your Honor.

21 THE COURT: Is there anything else defense counsel
22 would like the Court to address today?

23 MR. MCGOVERN: No thank you, your Honor.

24 THE COURT: Does the Assistant United States
25 Attorney have any questions for the Court today?

1 MR. BINI: No, your Honor.

2 THE COURT: Is there anything else the Assistant
3 United States Attorney would like the Court to address at this
4 moment today?

5 MR. BINI: No, your Honor, not from the Government.

6 THE COURT: Defense counsel, do you know of any
7 reason why your client should not enter a plea of guilty to
8 the charges set forth in Count Four of the indictment?

9 MR. MCGOVERN: No, your Honor.

10 THE COURT: Are you aware of any viable legal
11 defense to the charges set forth in Count Four of the
12 indictment against your client?

13 MR. MCGOVERN: No, your Honor.

14 THE COURT: Ma'am, are you ready to plead?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: How do you plead to the charges set
17 forth in Count Four of the indictment against you charging a
18 violation of Title 18 of the United States Code
19 Section 1956(h), guilty or not guilty?

20 THE DEFENDANT: Guilty, your Honor.

21 THE COURT: Are you making this plea of guilty
22 voluntarily?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: Are you making this plea of guilty of
25 your own free will?

1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Has anyone threatened you to get you to
3 plead guilty?

4 THE DEFENDANT: No, your Honor.

5 THE COURT: Has anyone forced you to plead guilty?

6 THE DEFENDANT: No, your Honor.

7 THE COURT: Other than your agreement with the
8 Government, has anyone made you any promise that caused you to
9 plead guilty?

10 THE DEFENDANT: No, your Honor.

11 THE COURT: Has anyone made you any promise about
12 the sentence you will receive from this court in this case?

13 THE DEFENDANT: No, your Honor.

14 THE COURT: Now, ma'am, would you briefly describe
15 in your own words what you did to commit the offense charged
16 in Count Four of the indictment, namely, a violation of Title
17 18 of the United States Code, Section 1956(h) and where you
18 did it?

19 THE DEFENDANT: Your Honor, I have prepared a
20 written statement I would like to read it if that's okay.

21 THE COURT: You may do that, of course. Just read
22 slowly so we can take it down with the court reporter and the
23 recording devices.

24 Go ahead, ma'am.

25 THE DEFENDANT: During the time period alleged in

1 Count Four of the indictment, I agreed with others to help
2 launder the proceeds of criminal activity, namely, illegal
3 kickbacks paid by a company called Privinvest.

4 THE COURT: Spell that.

5 THE DEFENDANT: P-r-i-v-i-n-v-e-s-t.

6 Namely, illegal kickbacks paid by a company called
7 Privinvest and its representative, Jean Boustani.

8 THE COURT: Spell that name, please.

9 THE DEFENDANT: First name Jean, J-e-a-n. Last
10 name, Boustani. B-o-u-s-t-a-n-i.

11 And its representative, Jean Boustani, in connection
12 with certain loans that Credit Suisse provided to state-owned
13 maritime entities in Mozambique and that resulted in profits
14 to Credit Suisse.

15 In or about April or May 2013, while working on the
16 bank's 372 million U.S. Dollar loan to the Mozambican
17 state-owned entity, Proindicus.

18 THE COURT: Would you spell that?

19 THE DEFENDANT: P-r-o-i-n-d-i-c-u-s.

20 While working on the Proindicus -- allow me to start
21 the sentence again.

22 In or about April or May 2013, while working on the
23 bank's 372 million U.S. Dollar loan to the Mozambican
24 state-owned entity, Proindicus, my then boss at Credit Suisse,
25 Andrew Pierce, told me that he had received, approximately,

1 1 million U.S. Dollars from Privinvest and Mr. Boustani in
2 exchange for substantially reducing the fees paid by
3 Privinvest on that loan.

4 A month or so later, on or about June 12, 2013,
5 Mr. Pierce told me that he had transferred to my recently
6 opened bank account in the UAE approximately 200,000 U.S.
7 Dollars of money that he had received from Privinvest.

8 THE COURT: What does UAE stand for? United Arab
9 Emirates.

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Please continue.

12 THE DEFENDANT: I agreed to accept and keep these
13 monies knowing that they were the proceeds of illegal
14 activity. That it was illegal for me to do so, and that by
15 doing so, I was helping to conceal the source of the proceeds
16 of the unlawful activity.

17 THE COURT: Does that complete your statement?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: I'm going to ask the court reporter to
20 read it back. Keep your voice up. Then, I will ask the
21 Government if they have any additional questions they would
22 like for me to ask the defendant. Why don't we hear a
23 readback of what you got so keep your voice up reading it
24 back.

25 (The requested portion of the record was read back

1 by the Official Court Reporter.)

2 THE COURT: One question about the readback. Did
3 you state that these funds were transferred, is that the word?

4 THE DEFENDANT: Yes, your Honor. We're missing a
5 few words. I apologize.

6 THE COURT: No need to apologize. Read it again
7 slowly with respect to the sections that you want to make
8 clear and complete.

9 THE DEFENDANT: So, in the first sentence, I will
10 read the whole thing.

11 Where we have, Jean Boustani, in connection with
12 certain loans that Credit Suisse provided to state-owned
13 maritime entities in Mozambique. We're missing the word
14 "provided."

15 THE COURT: Anything else?

16 THE DEFENDANT: And in the sentence, a month or so
17 later on or about June 12, 2013, Mr. Pierce told me that he
18 had transferred to my recently opened bank accounts in the
19 UAE. Missing the word, "He had transferred."

20 THE COURT: Anything else?

21 THE DEFENDANT: No, your Honor.

22 THE COURT: All right. I'll hear from the
23 Government. Is there anything else the Government would like
24 the Court to ask the defendant at this time?

25 MR. BINI: Yes, your Honor.

1 There are two factual areas that the Government
2 would proffer and ask if the Court would ask the defendant to
3 stipulate to those.

4 THE COURT: What are those? Let's do it seriatim.

5 MR. BINI: First, your Honor, if this case were to go
6 to trial, the Government would also?

7 THE COURT: Slowly.

8 MR. BINI: Thank you, your Honor.

9 If this case were to go to trial, the Government
10 would also prove that as part of the money laundering
11 conspiracy that the defendant joined, funds were transferred
12 from a place in the United States to or through a place
13 outside the United States, and to a place in the United States
14 from or through a place outside of the United States.

15 THE COURT: That's the first one; right?

16 MR. BINI: Yes, your Honor.

17 THE COURT: Let me ask the defendant and defense
18 counsel.

19 Do you stipulate that that, in fact, is the case in
20 this case?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: Defense counsel, do you agree?

23 MR. MCGOVERN: Yes, I do, your Honor.

24 THE COURT: All right. Next point.

25 MR. BINI: Thank you, your Honor.

1 With respect to venue, the Government would prove
2 that the loan funding wires, many wires related to investments
3 by investors, and many wires related to the payment of bribes
4 and kickbacks to corrupt foreign officials and bankers passed
5 through the Eastern District of New York.

6 And in addition, the Government would prove that in
7 March 2016, co-conspirators flew to John F. Kennedy Airport in
8 Queens in order to attend a road show to promote an exchange
9 of the Ematum Loan Participation Note for a Eurobond,
10 E-u-r-o-b-o-n-d, in furtherance of the scheme.

11 THE COURT: Does the defendant stipulate to those
12 facts?

13 MR. MCGOVERN: Your Honor, is it sufficient that the
14 defendant stipulates that the Government does have that
15 evidence? Not all of those facts are knot known personally to
16 Ms. Subeva.

17 THE COURT: Well, let's do it seriatim. Let's take
18 it through fact by fact, area by area. Go ahead.

19 Just ask if you know point one. Just see what she
20 knows, what she doesn't.

21 MR. BINI: Sure.

22 Do you know that the Government would prove the loan
23 funding wires -- excuse me -- prove that many of the loan
24 funding wires passed through the Eastern District of New York?

25 THE DEFENDANT: Yes, your Honor.

1 THE COURT: Next.

2 MR. BINI: That many wires related to investments by
3 investors passed through the Eastern District of New York?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Next.

6 MR. BINI: Many wires related to the payment of
7 bribes and kickbacks to corrupt foreign officials and bankers
8 passed through the Eastern District of New York?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: Next.

11 MR. BINI: That in March 2016, co-conspirators flew
12 to John F. Kennedy Airport in Queens in order to attend a road
13 show to promote an exchange of the Ematum Loan Participation
14 Neat for a Eurobond in furtherance of the scheme.

15 THE COURT: Do you know that that happened?

16 THE DEFENDANT: I know there was a road show in the
17 U.S. I apologize, I'm not sure precisely who the attendees
18 were.

19 THE COURT: Well, without knowing precisely who the
20 attendees were, do you know that the road show came through
21 the Eastern District of New York and was held at least in part
22 through the Eastern District of New York?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: You know that. Okay.

25 MR. BINI: Thank you, your Honor.

1 THE COURT: Anything else?

2 MR. BINI: No, your Honor.

3 THE COURT: Is there anything else defense counsel
4 would like the Court to ask the defendant at this time?

5 MR. MCGOVERN: No, your Honor.

6 THE COURT: Is there anything else the defendant
7 would like to say to the Court at this time?

8 THE DEFENDANT: No, your Honor.

9 THE COURT: Based on the information provided to
10 this court, I find the defendant is acting voluntarily. I
11 find that the defendant fully understands the charges against
12 her. I find the defendant fully understands her rights and
13 the consequences of her plea.

14 I find there is, moreover, a factual basis for her
15 plea. I, therefore, accept the defendant's plea of guilty to
16 the charges set forth in Count Four of the indictment. I
17 hereby order the probation department to provide the
18 presentence investigation report with any modifications within
19 six months from today, that is to say, on or before
20 November 20th of 2019.

21 Now, I'm going to ask the Government's position and
22 then I'll ask the defense position and probation's position
23 with respect to the question of detention or bail as to this
24 defendant.

25 I'll hear from the Government first, then from

1 probation, then from defense counsel.

2 Government what is your position?

3 MR. BINI: The Government believes that bail
4 conditions can be set here, your Honor. And, specifically,
5 the Government believes that there is clear and convincing
6 evidence the defendant will not flee and will appear for her
7 sentence in this case and that, therefore, these conditions
8 can be set.

9 Among other reasons, the Government believes this
10 based upon, first, the defendant's guilty plea and acceptance
11 of responsibility for her conduct in this case very quickly
12 after her arrest. Second, her personal and family
13 circumstances including a baby that she is still caring for.
14 Third, her less substantial role in the conspiracy as compared
15 to many of her co-defendants. Fourth, her waiver of
16 extradition and voluntary appearance in the United States.

17 THE COURT: Waiver of extradition and voluntary or
18 involuntary?

19 MR. BINI: No, your Honor. I should say, her waiver
20 of extradition and her voluntary appearance in the
21 United States. I will note the Government has more fully set
22 forth its reasons for this recommendation in a sealed
23 submission to the Court.

24 THE COURT: Thank you. I will hear from Probation.
25 Do you agree with those?

1 MS. VAZQUEZ: Yes, your Honor.

2 THE COURT: I'll hear from defense counsel and the
3 defendant if you wish to be heard on that issue.

4 MR. MCGOVERN: Your Honor, only to say that we do
5 agree with the Government's recommendation based on the
6 reasons stated here today as well as those in the sealed
7 submission of which we did receive a copy.

8 THE COURT: Thank you. In light of the arguments
9 today, and in light of the sealed submission to which the
10 Court has reviewed, the Court now, enters the following order.

11 The Court hereby orders the defendant be released on
12 bail under the following conditions:

13 First, a \$2 million bond secured by \$500,000 in
14 cash. The defendant shall remit the \$500,000 to a client
15 account, held in New York by defense counsel Ropes & Gray, LLP
16 in advance of the May 20, 2019, initial appearance. That's
17 today's appearance. And defense counsel shall subsequently
18 deposit that item with the clerk of this court within 48 hours
19 of the this Court's order setting bail conditions.

20 Secondly, travel shall be restricted to the
21 United Kingdom, the Eastern District of New York and the
22 Southern District of New York with travel between the
23 United Kingdom and New York for the purposes of court
24 proceedings only.

25 Third, written notice, I emphasize, written notice

1 shall be provided to the Government of all itineraries in
2 advance of travel to and from New York for purposes of these
3 proceedings including for meetings with the Government. This
4 court is to be provided with copies of a written notice at the
5 time -- at the same time as the Government.

6 Fourth, the defendant shall surrender her passport
7 to defense counsel who shall not release her passport except
8 temporarily for the purposes of travel that's approved between
9 the United Kingdom and New York and shall accompany the
10 defendant for all such travel. The defendant shall not apply
11 for any travel documents.

12 Five, the defendant shall not engage in financial
13 transactions above the \$15,000 U.S. without the prior consent
14 of the United States Attorney's Office and the express
15 written -- on express written notice to this court.

16 Six, the defendant shall report to Pretrial Services
17 via telephone and Internet as directed.

18 Seven, the defendant shall report in person to
19 defense counsel's office in London, United Kingdom, on a
20 weekly basis. Defense counsel shall provide same-day written
21 confirmation to Pretrial Services of each check-in.

22 Eight, the defendant shall report by telephone or
23 video conference on a weekly basis to the Federal Bureau of
24 Investigation agents handling the case.

25 That is so order by this court. I'm signing it.

1 May I have a motion to have Court Exhibit 3 admitted
2 into evidence, please.

3 MR. BINI: So moved, your Honor.

4 THE COURT: Any objection?

5 MR. MCGOVERN: None, your Honor.

6 THE COURT: It's admitted. Here's Court 3, I have
7 signed the original. Here you are Mr. Jackson. Thank you.

8 (Court's Exhibit 3 was marked in evidence as of this
9 date.)

10 THE COURT: Now, typically, in bail situations such
11 as this, we have a court form.

12 You have that form, Mr. Jackson --

13 COURTROOM DEPUTY: Yes.

14 THE COURT: -- to be signed by the parties and
15 provided to the Marshals Service.

16 (A brief pause in the proceedings was held.)

17 MR. BINI: Ms. Subeva has to sign. We also have the
18 rider.

19 COURTROOM DEPUTY: Thank you, Counsel.

20 MR. MCGOVERN: Thank you.

21 COURTROOM DEPUTY: Judge, the document is signed.

22 THE COURT: Mr. Jackson, we're going to mark this as
23 Court 4, I believe. Mark it as one document, the document and
24 the rider.

25 Thank you.

1 I have what has been marked as Court Exhibit 4 for
2 identification, the order setting conditions of release and
3 appearance bond and the rider attached thereto. It's been
4 signed by the appropriate parties.

5 May I have a motion to have court four admitted into
6 evidence.

7 MR. BINI: Your Honor, the Government moves to admit
8 Court 4 into evidence.

9 THE COURT: Any objection?

10 MR. MCGOVERN: No, your Honor.

11 THE COURT: It is admitted. Thank you.

12 (Court's Exhibit 4 was marked in evidence as of this
13 date.)

14 THE COURT: All right, Mr. Jackson.

15 (A brief pause in the proceedings was held.)

16 THE COURT: It's one composite exhibit. Court 4 is
17 both the preprinted form and the addendum thereto.

18 Here you are, Mr. Jackson.

19 All right. Is there anything else that we need to
20 attend to today?

21 First, I will ask the Government.

22 MR. MCGOVERN: Not from the Government, your Honor
23 thank you.

24 THE COURT: Probation? Anything?

25 MS. VAZQUEZ: No, your Honor. But I think there is

1 one additional condition.

2 THE COURT: Pull the microphone closer to you.

3 MS. VAZQUEZ: I want to put on the record that I
4 think there was another condition on the bond that said no
5 contact with co-defendants.

6 THE COURT: Keep your voice up.

7 MS. VAZQUEZ: There's a condition on Page 1 of the
8 bond that says no contact with co-defendants.

9 THE COURT: Is that on the preprinted form?

10 MR. BINI: Yes, your Honor.

11 THE COURT: So then you have it, right?

12 MS. VAZQUEZ: Yes, your Honor.

13 THE COURT: Everything on the form you got?

14 MS. VAZQUEZ: Yes.

15 THE COURT: Okay. Anything else?

16 MS. VAZQUEZ: No, your Honor.

17 THE COURT: All right. Defense counsel.

18 MR. MCGOVERN: Nothing further, your Honor.

19 THE COURT: The defendant.

20 THE DEFENDANT: No thank you.

21 THE COURT: Thank you. We're adjourned then.

22 MR. BINI: Thank you.

23 MR. MCGOVERN: Thank you.

24 COURTROOM DEPUTY: Counsel, before you leave for the
25 afternoon, please fill out the conviction notification form by

1 defense counsel and the Government. Thank you.

2 (WHEREUPON, this matter was adjourned.)

3

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CERTIFICATE OF REPORTER

7

8 I certify that the foregoing is a correct transcript of the
record of proceedings in the above-entitled matter.

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Anthony D. Frisolone

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Anthony D. Frisolone, FAPR, RDR, CRR, CRI
Official Court Reporter

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Appendix M

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

UNITED STATES, :
: :
v. :
: :
DETELINA SUBEVA, : ORDER
: 18-CR-681-8
: :
Defendant. :
-----X

WILLIAM F. KUNTZ, II, United States District Judge:

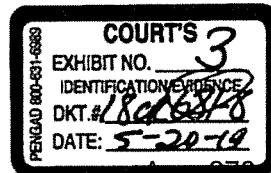
The Court hereby ORDERS the defendant Detelina Subeva ("Defendant") be released on bail under the following conditions:

1. A \$2 million bond secured by \$500,000.00 in cash. Defendant shall remit the \$500,000.00 to a client account held in New York by defense counsel, Ropes & Gray, LLP, in advance of her May 20, 2019 initial appearance, and defense counsel shall subsequently deposit it with the Clerk of the Court within 48 hours of the Court's order setting bail conditions.

2. Travel shall be restricted to the United Kingdom, the Eastern District of New York, and the Southern District of New York, with travel between the United Kingdom and New York for the purposes of court proceedings only.

3. Written notice shall be provided to the government of all itineraries in advance of travel to and from New York for purposes of these proceedings, including for meetings with the government. This Court is to be provided with copies of the written notice at the same time as the government.

4. Defendant shall surrender her passport to defense counsel, who shall not release her passport except temporarily for the purposes of approved travel between the United Kingdom



and New York and shall accompany the defendant for all such travel. Defendant shall not apply for any travel documents.

5. Defendant shall not engage in financial transactions over \$15,000.00 without the prior consent of the U.S. Attorney's Office and the express, written notice of this Court.

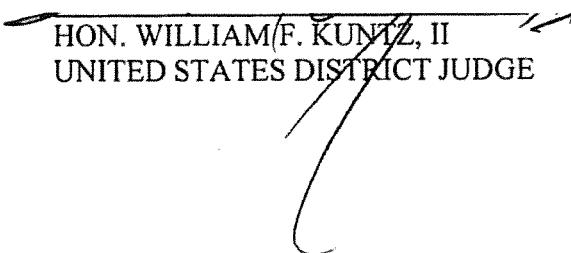
6. Defendant shall report to Pretrial Services via telephone and internet as directed.

7. Defendant shall report in person to defense counsel's office in London, United Kingdom, on a weekly basis, and defense counsel shall provide same-day, written confirmation to Pretrial Services of each check-in.

8. Defendant shall report by telephone or video conference on a weekly basis to the Federal Bureau of Investigation agents handling this case.

SO ORDERED.

s/WFK


HON. WILLIAM F. KUNTZ, II
UNITED STATES DISTRICT JUDGE

Dated: May 20, 2019
Brooklyn, New York

