

APPENDIX

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UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

CCO-104-E

No. 21-2305

UNITED STATES OF AMERICA

v.

DELOUIS EDOUARD, JR.,
a/k/a JUNIOR,
Appellant

(E.D. Pa. No. 5-20-cr-00372-001)

Present: RESTREPO, MATEY & SCIRICA, Circuit Judges

1. Motion filed by Appellant Delouis Edouard, Jr. for bail pending trial.
2. Response filed by Appellee USA.

Respectfully,
Clerk/LMR

ORDER

The foregoing motion for bail pending trial is denied.

By the Court,

s/Anthony J. Scirica
Circuit Judge

Dated: July 27, 2021
Lmr/cc: All Counsel of Record



A True Copy:

Patricia S. Dodszuweit

Patricia S. Dodszuweit, Clerk
Certified Order Issued in Lieu of Mandate

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA

v.

DESLouis EDOUARD, JR.

:
:
CRIMINAL ACTION
NO. 20-372
:

ORDER

AND NOW, this 1st day of July, 2021, following a pretrial detention hearing, it is hereby ORDERED that the Defendant's Motion to Vacate the Pretrial Detention Order of the Honorable Carol Sandra Moore Wells [Doc. 9] is DENIED.

This case is appropriate for detention because the government has proven by a preponderance of the evidence that no condition or combination of conditions will reasonably assure the appearance of the defendant as required.

BY THE COURT:

/s/ Jeffrey L. Schmehl
JEFFREY L. SCHMEHL, J.

29

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA

v.

DESLouis EDOUARD, JR.

**CRIMINAL ACTION
NO. 20-372**

MEMORANDUM

SCHMEHL, J. /s/JLS

July 1, 2021

On October 21, 2020, Defendant was charged by indictment with two counts of mail fraud, in violation of 18 U.S.C. § 1341, two counts of wire fraud, in violation of 18 U.S.C. § 1343, one count of access device fraud, in violation of 18 U.S.C. § 1029(a)(2), one count of possessing device making equipment, in violation of 18 U.S.C. § 1029(a)(4), and four counts of aggravated identity theft, in violation of 18 U.S.C. § 1028A(a)(1), (c)(4), (c)(5). Following Defendant's arrest in Florida in January 2021, a Magistrate Judge of the Southern District of Florida found that the Defendant presented a serious risk of flight and ordered that he be detained pending transportation back to the Eastern District of Pennsylvania. On May 21, 2021, following oral argument, United States Magistrate Judge Carol Sandra Moore Wells of the Eastern District of Pennsylvania, ordered the Defendant detained pending trial. Magistrate Judge Wells found that the Defendant presented a substantial risk of flight and that no condition or combination of conditions could reasonably assure his appearance as required.

Presently before the Court is the Defendant's "Motion to Vacate the May 21, 2021 Detention Order." The Court held a hearing by video on the motion on June 28, 2021. For the reasons that follow, the motion is denied.

At the June 28, 2021 hearing, the Court heard testimony from the Defendant and his previous counsel, Robert Goldman, Esq. ("Goldman"). The Court also heard argument from defense counsel and the government.

On January 15, 2020, the FBI conducted a search of the Defendant's residence in the Eastern District of Pennsylvania which was allegedly rented in the name of an identity theft victim. Defendant was not arrested. Defendant subsequently retained Goldman to represent him. On May 8, 2020, Defendant appeared in person on his own volition to make a proffer to the government. In June, 2020, Defendant traveled to Florida to attend the funeral of his father who had suddenly passed away and to help his ailing mother. During the hearing, the government confirmed that Defendant's father had indeed passed away in June, 2020. Goldman testified that he never informed Defendant that he could not leave the Eastern District of Pennsylvania after the proffer with the government. Goldman testified that following the proffer, he did not know the whereabouts of the Defendant and whether he was living in the area. Goldman also testified that he did not know that Defendant's father had suddenly passed away in Florida or that the Defendant's mother was ailing.

Following the proffer, the government delivered a draft of a plea agreement to Goldman in July, 2020. Goldman emailed the plea agreement to Defendant. Defendant testified that he wanted to review the plea agreement before he signed it. Defendant testified that he ultimately did sign the plea agreement because he did not understand all of its provisions and Goldman had not explained those terms to him. Goldman testified that on September 15, 2020, Defendant informed him that he did not want to plead guilty and instead wanted to proceed by indictment and that he wanted to self-surrender when indicted.

Following Defendant's indictment by a grand jury on October 21, 2020, the government informed Goldman by phone that Defendant had been indicted. In the ensuing days, Goldman attempted to reach out to Defendant on at least five occasions through email, telling Defendant to "call me back", "call me-it is important", "need you here on Wednesday to appear for your arraignment, "I do not believe you are avoiding my emails" According to Goldman, Defendant "went dark" and did not respond to any of his emails and changed his phone number. On October 28, 2020, Goldman informed the government that he could not reach his client. Goldman testified that up until the time of Defendant's indictment, he could always get in touch with the Defendant.

Defendant testified that he did not receive the emails from Goldman and that in any event he did not respond to Goldman's attempts to reach him because he believed that Goldman had overcharged him and therefore there was no longer any need for him to respond to Goldman. Defendant testified that he did not learn he had been indicted until the time of his arrest in Florida on January 17, 2021. At the time of his arrest, Defendant was allegedly driving a vehicle that he had purchased in Pennsylvania with a stolen ID. According to the government, Defendant had already stated during the proffer that he no longer possessed this vehicle. At the time he was stopped, Defendant also presented his real driver's license to the arresting officer as well as a license to carry a firearm which was found in the vehicle.

This Court has jurisdiction to review the Magistrate Judge's decision under 18 U.S.C. § 3145(a)(1). Pursuant to Section 3145(a)(1), this Court is required to conduct a *de novo* review of the Magistrate Judge's ruling. See *United States v. Delker*, 757 F.2d 1390, 1394 (3d Cir. 1985); see also *United States v. Talbert*, No. 20-266, 2020 WL 6048788, at *3 (W.D. Pa. Oct. 13, 2020). In conducting this review, the district court may rely on the transcript of the proceeding before the Magistrate Judge. *Id.*; see also

United States v. Rodriguez, Criminal Action No. 07-709, 2007 WL 4373042, at *2 (E.D. Pa. Dec. 13, 2007).

The Bail Reform Act, which governs the issue of pretrial detention, delineates four factors that the Court consider in determining whether conditions of release exist that "will reasonably assure" Defendant's appearance as required and "the safety of any other person and the community":

- (1) the nature and circumstances of the offense charged;
- (2) the weight of the evidence against Defendant;
- (3) the history and characteristics of Defendant, including his 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
- (4) the nature and seriousness of the danger to the community posed by Defendant's release.

18 U.S.C. § 3142(g); see also *United States v. Himler*, 797 F.2d 156, 161 (3d Cir. 1986). ("Judicial officers making risk of flight determinations are guided by the factors set forth in § 3142(g)."); *United States v. Miller*, No. Crim.A. 00-103-02, 2000 WL 633048, at *2 (E.D. Pa. May 5, 2000).

The government has the burden of demonstrating risk of flight justifying pre-trial detention by a preponderance of the evidence. See *Himler*, 797 F.2d at 161. The government must show a defendant presents a danger to the community, such that pre-trial detention is warranted, by clear and convincing evidence. See 18 U.S.C. § 3142(f); *Himler*, 797 F.2d at 161. Although a rebuttable presumption applies to certain criminal violations, it does not apply in this case. See 18 U.S.C. § 3142(e).

After a *de novo* review, the Court concludes that the government has proven by a preponderance of evidence that Defendant presents a serious risk of flight and that no condition or combination of conditions will secure the Defendant's appearance as required. The Court finds that Defendant received and learned from Goldman's emails during the week of October 21, 2020 that he had indeed been indicted. After learning that he had been indicted Defendant "went dark" and did not contact Goldman to self-surrender as he had previously told Goldman was his desire. Defendant was then able to avoid authorities for three months. And, unlike in *Himler*, the Defendant does not have a prior record of appearing in court as a factor for the Court to consider.

The Court acknowledges that Defendant does not have a criminal history. Despite Defendant's lack of criminal history, if convicted of the charges in the Indictment, Defendant faces a significant term of imprisonment. The Court recognizes the United States Sentencing Guidelines are only advisory. The Court notes, however, that the government asserts that the advisory guideline sentence for Defendant, if convicted at trial, is 70 to 81 months' imprisonment, including a 24-month consecutive statutory mandatory sentence for the charge of aggravated identity theft. Further, the evidence against the Defendant, as outlined at length in the Indictment, is strong and includes witness testimony, numerous records, surveillance photographs and forensic evidence. As detailed in the Indictment, the defendant is charged with engaging in extensive identity theft activity involving more than 450 identity theft victims, including their personal identification information and credit card numbers associated with their names. Specifically, Defendant is charged with having used false names and identities to rent apartments, open accounts at AT&T Wireless stores in the Allentown, Pennsylvania area under which he purchased Apple brand products, and to make a fraudulent car purchase in the amount of \$32,000 using another individual's identity.

Defendant was driving this vehicle when he was arrested. A search of the Defendant's residence in Florida revealed that he was allegedly renting the residence in the name of one of his victims and also revealed electronic devices (cell phone iPad laptop computer), fraudulent drivers licenses and device-making equipment. Thus, Defendant certainly possesses the skills necessary to evade law enforcement and, as was stated, "hide in plain sight." According to the Indictment, the total loss accumulated is over \$522,000.00.

Although Defendant claims he is a citizen and resident of the Commonwealth of Pennsylvania, the Defendant does not own any property in the Eastern District of Pennsylvania and is not currently employed. Defendant appears to have significant ties to the State of Florida where he was born and raised and where his mother, sisters and nephews live.

Defendant claims the fact that he presented his actual identification to the arresting officer on January 21, 2021 in Florida is proof that he is not a flight risk. However, it may well be that the only reason Defendant presented his actual ID was because there was a firearm in the vehicle (for which he had a valid License to Carry) at the time he was arrested and Defendant no doubt wanted to make sure the officer was aware that his actual identification matched the identification on the License to Carry.

Defendant claims he has employment "lined up" with a clothing company and can live with an Anthony Andoll in Bethlehem, Pennsylvania if Defendant is released. As the government points out, the Defendant was already living with Anthony Andoll for at least part of the time he was engaging in his alleged criminal actions in the Eastern District of Pennsylvania. Further, simply having some non-specific employment "lined up" is not at all persuasive.

In short, the weight of the evidence against Defendant combined with the potential significant penalty he faces if convicted creates a serious risk that Defendant will not only flee to avoid such penalties but has every means available to him to assume another person's identity and "hide in plain sight"; and even bond and electronic monitoring are not enough to ensure his obligation to appear before the Court.

For these reasons, the Court determines that no condition or combination of conditions will reasonably assure the appearance of Defendant as required.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

3 UNITED STATES OF AMERICA, :
4 Plaintiff(s), : Case No. 20-cr-372-1
5 v. : Philadelphia, Pennsylvania
6 DESLOUIS EDOUARD, : May 21, 2021
7 Defendant(s). : 12:22 p.m.

TRANSCRIPT OF HEARING

BEFORE THE HONORABLE CAROL SANDRA
UNITED STATES DISTRICT COURT JUDGE

11 APPEARANCES:

12 For the Plaintiff(s): Louis D. Lappen, Esq.
13 U.S. Attorney's Office
14 615 Chestnut Street, Ste. 1250
15 Philadelphia, PA 19106
16 For the Defendant(s): Hope C. Lefeber, Esq.
17 Law Offices Hope C. Lefeber, LLC
18 2 Penn Center, Suite 1205
19 150-0 John F. Kennedy Blvd.
20 Philadelphia, PA 19102

18 Court Recorder: Kenneth Duvak
19 Clerk's Office
U.S. District Court

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1

PROCEEDINGS

2

THE COURT: All right, who's first, please.

3

THE DEPUTY: Your Honor, we have Edouard
4 Deslouis.

5

THE COURT: Okay. Hold on. You said Margo?

6

THE DEPUTY: Edouard Deslouis.

7

THE COURT: Oh, Deslouis, okay. Hold on one
8 minute. Okay, I'm back. Say the last name again, because
9 I'm not getting a map.

10

THE DEFENDANT: Edouard Deslouis.

11

THE DEPUTY: It's the first name on the list,
12 Judge.

13

THE COURT: Oh, Edouard I have is the last name.
14 Okay. All right.

15

Can you raise your hand for me, Mr. Deslouis?

16

THE DEFENDANT: My right?

17

THE COURT: Do you need an interpreter?

18

THE DEFENDANT: No.

19

THE COURT: All right. Very well. We're here
20 today for possible arraignment and pretrial detention.
21 You're being charged with mail and wire fraud.

22

It's my understanding that Ms. Lefeber, whom I
23 see here on the screen, is representing you.

24

Ms. Lefeber, have you had an opportunity to
25 discuss the charges with your client?

1 MS. LEFEBER: Yes, I have, Your Honor.

2 THE COURT: Is he ready to be arraigned?

3 MS. LEFEBER: Yes.

4 THE COURT: All right. Ed, please arraign the
5 defendant.

6 THE DEPUTY: Mr. Deslouis, you've --

7 THE DEFENDANT: Yes.

8 THE DEPUTY: -- been charged with criminal
9 indictment number 20-372, defendant number 1, in Counts 1
10 and 2 with mail fraud, in Counts 3 and 4 with wire fraud,
11 and in Count 5 with access to device fraud, in Count 6
12 with possession device making equipment, and in Count 7
13 through 10 with aggravated identity theft.

14 What say you, guilty or not guilty?

15 MS. LEFEBER: Not guilty.

16 THE DEFENDANT: I am not guilty, right.

17 MS. LEFEBER: Not guilty today.

18 THE DEFENDANT: Yeah, not guilty.

19 THE DEPUTY: Thank you.

20 THE COURT: And I have in front of me some
21 things pertaining to detention. Could I hear from the
22 Government?

23 MR. LAPPEN: Yes, Your Honor. Can you hear me?

24 THE COURT: I can. I'm trying to see which --

25 MR. LAPPEN: Excellent. It's Lou Lappen for the

1 Government.

2 THE COURT: All right.

3 MS. LEFEBER: He's the one with that nice
4 colorful thing behind him.

5 MR. LAPPEN: Yes. It looks like I'm in a
6 church, but I'm not.

7 THE COURT: I can't see him.

8 MR. LAPPEN: All right, maybe we can --

9 THE COURT: Okay. Raise your hand. Can you put
10 your hand up? Mr. Lappen, can you put your hand so I can
11 see you?

12 MR. LAPPEN: I'm doing that. I'm giving -- I'm
13 waving.

14 MS. LEFEBER: He did disappear from my screen
15 too.

16 THE COURT: I think -- do the opposite hand. I
17 think I'm seeing you. Nope.

18 MR. LAPPEN: How about now?

19 THE COURT: Now --

20 MS. LEFEBER: There. There you are.

21 THE COURT: Okay. I touched and so they
22 switched which people I get to see. All right.

23 MR. LAPPEN: Okay.

24 THE COURT: Mr. Lappen, what's the Government's
25 spiel?

1 MR. LAPPEN: Your Honor, we are seeking
2 detention here. We think this presents a very clear case
3 for pretrial detention because there are no conditions or
4 combination of conditions that can assure the defendant's
5 appearance as required in this case.

6 THE COURT: Uh-huh.

7 MR. LAPPEN: The defendant has already proven
8 himself to be a flight risk. He went to Florida at a time
9 when he knew he was going to be indicted, knew that an
10 indictment was coming. He had been in touch with his
11 lawyer, we had been discussing the possibility of a
12 pretrial resolution to the case. The defendant was back
13 and forth on that with his lawyer and then said no, he
14 preferred to be indicted, and then he was indicted, Your
15 Honor, in October -- October 21st of 2020, and defense
16 counsel reached out to him in all the ways that he had
17 before and the defendant did not respond, did not
18 acknowledge the fact that he had been advised that he was
19 in fact indicted.

20 We believe he changed his name at that point --
21 not his name -- his phone number as well, and it took a
22 long time to find him. We did not find him until January
23 17th in Florida. And we found him at a time while he was
24 driving a car that he had obtained in somebody else's
25 name. He had fake IDs on him, including a Pennsylvania

/S/
a

1 driver's license with his picture, and one of his known
2 identity fraud victims on the license, and he also had a
3 gun.

4 So he's already fled, Your Honor, and before
5 even considering that if we look at the other factors,
6 looking at the nature and circumstances of this offense,
7 the offenses he's charged with involve fraud and deceit,
8 substantial amounts of identity fraud.

9 When he -- when we executed a search warrant at
10 his home and searched his computer we found evidence of
11 450 identity fraud victims, that included all kinds of
12 personal identifying information, licenses with his
13 picture and other people's names on it.

14 He had been living in -- serially living in
15 residences. Every time he moved to a residence he would
16 go there under a different name, he would get all the
17 services for the resident, heat, electricity, cable, in
18 other people's names, and when they started to catch up
19 with him and he wasn't paying he would leave, go to
20 another residence and do it again in a whole series of
21 different names.

22 So he's basically been living for many, many
23 years as a complete fraud, con artist, and somebody who
24 can easily hide from law enforcement.

25 The evidence against him is overwhelming. As

1 Your Honor might imagine in cases like this. There's
2 endless amounts of financial information from his
3 computers, all the notes that he had establishing his
4 involvement in this extensive identify fraud.

5 He obviously has significant ties outside this
6 district, as he had been in Florida for some period of
7 time, and he's currently not employed.

8 So there really -- there is nothing here, Your
9 Honor, that even begins to suggest that this is somebody
10 who would follow the rules, who we could count on to show
11 up as required.

12 We have just showed by a preponderance of the
13 evidence that there are no conditions that can reasonably
14 assure his appearance, and it's clear here that there are
15 not.

16 Defense counsel has suggested filing a motion
17 this morning -- or a memo this morning that he's not a
18 flight risk because he didn't know about the charges. She
19 says in her motion that her client never spoke with Bob
20 Goldman after -- he was the former attorney -- after March
21 or April of 2020, and that's just simply false. We met
22 with Bob Goldman and her client in May of 2020 when he
23 proffered and admitted to the conduct in the case, lied
24 about some things, but you know, did admit to the conduct,
25 and we had multiple conversations after that with defense

1 counsel in which he was going back to his client and
2 saying, well this is what he says, and this is what he'll
3 do.

4 So it's clear they were in touch for many months
5 after that, and that the defendant knew full well he was
6 indicted, was about to be indicted, and he decided he
7 didn't want to deal with it and that's why he went to
8 Florida and waited 'til the marshals could find him, which
9 again, is very difficult and very difficult with
10 defendants like this who have access to all kinds of false
11 identification information and essentially operate their
12 whole lives as somebody else.

13 So we can't afford to let him out even under the
14 conditions that pretrial services might suggest where he
15 has an electronic bracelet, because he can easily cut it
16 in five minutes and be gone. We don't know who he is that
17 day or the day after that and we'll be sending the
18 marshals out again to waste their resources to try to find
19 him, and it might or might not be successful.

20 He's looking at significant time, has a
21 tremendous incentive to flee, he's looking at 70 to 81
22 months under the guideline range, and he may decide again
23 he doesn't want to deal with that, doesn't want to face
24 the consequences and flees. So we cannot afford to
25 release him.

1 V a

1 THE COURT: Ms. Lefeber --

2 MS. LEEFEBER: Yes, Your Honor.

3 THE COURT: -- do you wish to have a defense to
4 that? I read your memo --

5 MS. LEEFEBER: Yes, I absolutely do, Your Honor.

6 The Government has conflated a number of facts to suit
7 their need, and they're simply not true.

8 First of all, what the Government said and
9 reading my memo and -- about meeting with Mr. Goldman is
10 absolutely not true. Mr. Edouard believes that he
11 proffered in March of 2020 and met in person with the
12 Government. I asked Mr. Lappen when exactly was the
13 proffer. He believes it was May. And so now he's telling
14 the Court that oh, no he met many times after March trying
15 to make my sentencing memo not correct.

16 We believe he met in March in person, we don't
17 believe it was May because we think that the Court was
18 shut down, the U.S. Attorney's Office was shut down, but
19 there weren't any in-person meetings in March.

20 So we have a disagreement whether the meetings
21 and the proffering, first the proffer was March or May,
22 but that's really irrelevant. Let me give you the facts
23 here, Your Honor, and the Government has also painted a
24 picture here that is not true.

25 First of all, all the different residences, that

1 didn't produce a phony ID. And certainly that's evidence
2 that he was not avoiding prosecution, that he was not
3 fleeing, the fact that he produced his true, honest
4 identification. There's just no evidence, Your Honor, in
5 this record of flight or intent to evade prosecution.

6 And Your Honor, the case that I cited Your
7 Honor, Hinler (ph), is good law today in this circuit, and
8 it states that the fact that this is an identity theft
9 case and the possibility of recidivism, precludes finding
10 that -- is not valid grounds for pretrial detention.
11 There are no facts in this record to support a finding of
12 risk of flight. There's no evidence that he knew of the
13 indictment.

14 As I stated in my memo, he has a possible
15 residence. I represent as an officer of the court that
16 I've spoken with his brother and he indeed will allow the
17 defendant to reside with him, and that he will offer -- he
18 will also offer the defendant employment in his business,
19 and that he has also secured employment for him at the
20 Pennsylvania Health Management that provides mental health
21 counseling. The defendant has previously done that work
22 in the past.

23 Your Honor, there's a lot of hype here, and you
24 know, the underlying crime is serious, but Hinler directs
25 that that is not a grounds to pretrial detention.

1 So I ask -- I believe there are reasonable
2 conditions that will ensure his appearance at trial and
3 ask that Your Honor impose them.

4 THE COURT: Mr. --

5 MR. LAPPEN: Your Honor, may I briefly --

6 THE COURT: Mr. Lappen, what kind of time is he
7 facing if convicted?

8 MR. LAPPEN: He's facing --

9 MS. LEFEBER: Fifty-seven to 71 months, Your
10 Honor. I went over this with the Government and I wrote
11 down --

12 MR. LAPPEN: He's facing 70 to 81 months.

13 MS. LEFEBER: No --

14 MR. LAPPEN: It's lower if he pleads guilty.

15 MS. LEFEBER: Oh, okay. If he pleads guilty
16 it's 57 to 65 months, Your Honor. In any event, it's
17 nowhere near the ten-year presumption.

18 MR. LAPPEN: Your Honor, may I respond?

19 THE COURT: Yes.

20 MR. LAPPEN: Defense counsel is suggesting what
21 is --

22 THE COURT: But not repeat yourself.

23 MR. LAPPEN: I'm not going to repeat myself. I
24 got new stuff for you, because what we have is defense
25 counsel is just suggesting a completely fake and

1 Goldman ever communicated the fact of the indictment to
2 the defendant. If he indeed did where is Mr. Goldman?
3 Don't you think he'd be testifying right now and telling
4 the Court, you know, the Government would have called him
5 and said -- and had him tell Your Honor that he advised
6 the defendant that he was indicted.

7 Mr. Lappen stated, oh, defense counsel contacted
8 him in all the ways that he had before. Well what's that,
9 Your Honor? Do we have a voicemail? Do we have a text?
10 Do we have an email from Mr. Goldman? That would be real
11 simple wouldn't it? I mean I get in touch with my clients
12 with an email to prove that, especially something as
13 important as an indictment and the need to appear. Okay?
14 The Government has not presented any evidence, Your Honor,
15 to -- upon which to base a finding of risk of flight.

16 Now, the most telling point, Your Honor, is when
17 he was arrested in Florida, what happened as always
18 happens, is eventually he got stopped for a traffic
19 violation, okay? And what does he do when asked to
20 produce his driver's license? And we acknowledge he had
21 the false IDs on him, all of which were the subject of the
22 underlying indictment, Your Honor, they were old, but what
23 does he do when stopped by the officers? He produces his
24 true identity, his true driver's license. He produced a
25 driver's license in the name of Deslouis Edouard. He

1 occurred prior -- that's part of the indictment conduct.
2 You know, since he went to Florida in June he wasn't
3 moving any residences, anything of the sort.

4 The gun that he had on him was fully licensed.

5 He's licensed to carry a gun. The Government has the
6 license to carry in its possession, it knows that it was a
7 legal gun, and that is because the defendant has no prior
8 record whatsoever.

9 Your Honor, there was no evasion here. Indeed
10 the defendant proffered he wanted to cooperate with the
11 Government. We say it was March of 2020, the Government
12 thinks it was May. Be that as it may, that's irrelevant.

13 He had some conversations with his lawyer, Mr.
14 Goldman, and they had disagreements about a variety of
15 things and he didn't really want to proceed with him. He
16 told his lawyer, call me, let me know when I'm indicted,
17 okay? Meanwhile he didn't hear from Mr. Goldman.

18 He then traveled, and I've provided the airplane
19 ticket, to Florida on June 22nd, 2020 because his father
20 died. Your Honor, that's hardly flight to evade
21 prosecution. A man's father died and he went down there
22 to go to his funeral and to assist his mother who was not
23 -- who is not well, she suffers from hypertension,
24 diabetes, and other related illnesses. Okay?

25 The Government has absolutely no proof that Mr.

1 alternative universe.

2 Everything -- any number of the things that she
3 referred to and talked about involved the defendant not
4 surprisingly lying to her, because this is what he has
5 done for a living. This is what he does, he lies.

6 I spoke with Mr. Goldman, he's an officer of the
7 court, I'm an officer of the court. I can tell you on
8 countless occasions he talked about having conversations
9 with his client. If the Court wants to hear from Mr.
10 Goldman we'll bring him in, we'll bring him here this week
11 or Your Honor can continue this until next week.

12 Number two, the person that she wants to put her
13 client with who's going to ensure that he conducts himself
14 in a lawful fashion and shows up as required and is now
15 going to be straight, that's the same person he was living
16 with when he was committing all these crimes, and in part
17 our investigation has shown that he helped him to some
18 degree and was certainly aware of it.

19 This is not a reliable person for him to be
20 living with, this is somebody who has previously
21 facilitated, to some degree, his committing these crimes.

22 I'm not saying he needs to be detained because
23 he has -- we have probable cause that he has committed the
24 crimes as charged in the indictment, I'm saying he needs
25 to be detained because he has proven himself to be a

1 flight risk, and the kinds of crimes that he has committed
2 helps support that in addition to everything else that he
3 has done.

4 So there is nothing here other than completely
5 false, not reliable suggestions to ensure his appearance
6 at trial. Everything --

7 MS. LEFEBER: Your Honor --

8 MR. LAPPEN: -- points in the other direction
9 that he is a tremendous --

10 MS. LEFEBER: Your Honor --

11 MR. LAPPEN: -- flight risk.

12 And it is relevant that he is saying that we had
13 a proffer in March when it was in May. It was in May, I
14 was there. It was in May. And he's saying I haven't
15 heard from my lawyer until March -- or I hadn't heard my
16 lawyer until after March --

17 MS. LEFEBER: This is irrelevant. This is just
18 --

19 MR. LAPPEN: -- he was meeting with us.

20 MS. LEFEBER: -- conflating facts.

21 Your Honor, the Government is being totally
22 disingenuous and dishonest with the Court. Of course he
23 had had conversations back and forth with Mr. Goldman at
24 the time of the proffer and shortly thereafter regarding
25 the plea agreement.

1 The -- Mr. Lappen cannot with a straight face
2 tell this Court that Mr. Goldman ever had a conversation
3 with the defendant about the fact of his indictment, and
4 he knows that and it just doesn't want to say that, and if
5 he did he'd have brought him in for the detention hearing.
6 When is he going to bring him in, next week? That's a
7 critical fact, and it's not in evidence, period.

8 MR. LAPPEN: This is a detention hearing, Your
9 Honor. I can proffer what I was told and I'm -- and if
10 Your Honor believes that's a critical fact we'll put it on
11 for next week and we'll get Goldman here. But I can tell
12 you with a straight face that Mr. Goldman advised me that
13 he reached out to his client numerous times after he was
14 indicted and that his client "went dark," which is
15 understandable, because he doesn't want to go to jail for
16 the amount of time that he is looking at, and he wanted to
17 avoid the situation, and he has such easy access and
18 ability to live as somebody else and remain outside of the
19 law and he would be again difficult to find.

20 He lied in the proffer about the car --

21 MS. LEFEBER: Yeah, I'm going to object to this,
22 Your Honor. Your Honor, I object to what the Government
23 says he lies to in the proffer, and again, he's referring
24 to the facts of the indictment which Hinler precludes this
25 Court from relying upon. Okay?

1 This is an identity theft case, and the fact is
2 when he was stopped he produced his real ID. That's says
3 it all.

4 MR. LAPPEN: Right, he was stopped in a car that
5 he purchased in the name of somebody else.

6 THE COURT: Okay.

7 MR. LAPPEN: All right.

8 THE COURT: I've listened to both sides. This
9 is not a presumption case; however, your client is facing
10 significant time.

11 I'm looking at the nature of the type of fraud
12 alleged, and not just because of the type of fraud alleged
13 just looking at he went to Florida for a funeral,
14 allegedly or whatever, he seemed to have stayed down there
15 for a good while.

16 I think that in order to make sure we cover the
17 flight risk, yeah, I'm not comfortable. I'm not
18 comfortable. So I'm going to order he be detained until
19 the time of his trial or when these proceedings have
20 concluded. That's my decision.

21 If something changes or I don't even know that
22 bringing Mr. Goldman is going to change my estimate of
23 whether or not he should be detained, I'm going to order
24 him detained until the time of his trial.

25 MR. LAPPEN: Thank you, Your Honor.

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1 (Proceedings concluded at 12:44 p.m.)

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C E R T I F I C A T I O N

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3 I, Dawn South, court approved transcriber, certify that
4 the foregoing transcript is a correct transcript from the
5 official electronic sound recording of the proceedings in
6 the above-entitled matter.

7

Dawn South

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June 15, 2021

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1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF PENNSYLVANIA

3 UNITED STATES OF AMERICA, }
4 vs. }
5 DESLOUIS EDOUARD, JR., }
6 Defendant. }
 }
 }
 }
 }
 }

7 TRANSCRIPT OF PROCEEDING
8 (BAIL HEARING)
9 BEFORE THE HONORABLE JEFFREY L. SCHMEHL
10 UNITED STATES DISTRICT COURT JUDGE

11 APPEARANCES:

12 For the Government: LOUIS D. LAPPEN, ESQ.
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T E S T I M O N Y

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WITNESS DIRECT CROSS REDIRECT RECROSS

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FOR THE GOVERNMENT:

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Bob Goldman 11 19 21

6

FOR THE DEFENSE:

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Deslouis 23 28
Edouard, Jr.

8

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C L O S I N G A R G U M E N T S

10

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1 PROCEEDINGS

2 THE COURT: -- I was stuck in court.

3 This is a hearing the Court has scheduled on the issue
4 of bail in the case of United States of America v.
5 Deslouis Edouard. It is case number 372 of 2020. We
6 have Mr. Lappen representing the government. Is that
7 correct?

8 MR. LAPPEN: Yes. Good afternoon, Your
9 Honor.

10 THE COURT: Good afternoon. Assistant
11 United States Attorney Louis Lappen. And who do we
12 have -- is it Jonathan Sobel for the defendant?

13 MR. SOBEL: Yes, it is, Your Honor.
14 Good afternoon.

15 THE COURT: (Indiscernible). And the
16 defendant is also present.

17 THE DEFENDANT: Yes.

18 THE COURT: So, Mr. Lappen, you have
19 the floor.

20 MR. LAPPEN: Yes, Your Honor. We
21 believe that Judge Wells correctly decided in this
22 case that there are no conditions or combination of
23 conditions that can reasonably assure the defendant's
24 appearance as required in this case and that Your
25 Honor should affirm that decision.

1 The defendant is a proven flight risk
2 in this case. He knew that in our dealings with his
3 attorney over the summer of 2020 when I was talking to
4 his attorney and working out a guilty plea agreement,
5 he knew he was going to get charged in the case. The
6 issue was only whether it was going to be a plea and
7 an information which he would have to waive indictment
8 or whether he preferred to be indicted. And we had a
9 proffer on May the 8th, 2020 where he admitted to his
10 criminal conduct and then continued negotiations about
11 a resolution and suit after that.

12 And sometime around August, I was
13 advised by defense counsel, who's also present here
14 today, Your Honor, as Your Honor requested. That's
15 Bob Goldman. I was advised that the defendant wanted
16 to proceed by indictment and did not want to plead
17 guilty to an information. So I said fine. We would
18 take the steps to indict him. And again, I remained
19 in contact with Mr. Goldman who said all along that
20 his client would want to self-surrender. And since we
21 have met with him in a proffer and he admitted to his
22 conduct, we wanted to show him and counsel the
23 courtesy that we would in a case like that and allow
24 him to self-surrender.

25 So on October 21st, 2020, when he was

1 then indicted, I advised defense counsel of this who
2 said he would reach out to his client which counsel
3 told me he did on numerous occasions and used the same
4 means of trying to reach him that he had successfully
5 used in the past. I know at least his e-mail. I
6 believe he tried to call him as well and the defendant
7 had changed his phone number which was a frequent
8 occurrence for this defendant. And as it turned out,
9 the defendant had fled to avoid these charges.

10 So he was not found until January 17th,
11 2021 hiding out in Florida. He was driving a car that
12 he had obtained in the name of an identity fraud
13 victim. This was a car that he, in the proffer, had
14 told us he didn't know where it was anymore because we
15 had been asking, listen, if you still have this car,
16 you should be turning it in. You obtained it by
17 fraud. He didn't know where it was. He had fake IDs
18 on him when he was stopped including a Pennsylvania
19 driver's license that was in the name of another
20 identity theft victim. And this was one we had talked
21 about also in the proffer. So he was, you know,
22 fundamentally dishonest in the proffer in that regard
23 and still engaged in his criminality. And that
24 Pennsylvania driver's license had the defendant's
25 photograph and the name of the identity fraud victim

1 on it.

2 He also had a gun on him.

3 So the defendant has proven himself to
4 be somebody, given the nature and circumstances of the
5 offense and the way that he conducted himself by
6 fleeing to Florida, as someone who does not want to
7 deal with the situation as it is, doesn't want to face
8 the charges and he has the ability to hide and play
9 safe.

10 The nature and circumstances of this
11 offense are fraud offense -- it's fraudulent conduct
12 involving multiple fake IDs and all kinds of false
13 information. So the defendant can easily avoid law
14 enforcement if he wants to. He was found with over
15 450 fake IDs on his computer. He was living in
16 residences on and off under false names obtaining
17 utilities in the names of false names. And then as
18 the folks would start to catch up with him, he would
19 just leave, move to another residence and do the same
20 thing.

21 The evidence in the case is
22 overwhelming. There's a -- as Your Honor might
23 imagine, a huge paper trail that leads to the
24 defendant. He had -- we seized his computer which has
25 all the evidence of the crime on it, personal notes,

1 photo IDs, financial records. We have surveillance
2 evidence of him engaged in some of the identity fraud
3 activity. And he is not employed. He has significant
4 ties outside the district. And so he has a tremendous
5 incentive to flee in this case. He's facing 70 to 81
6 months in prison. He's never faced that in his life.
7 And he has the ability to flee and he's already
8 demonstrated a desire to flee.

9 And quite frankly, throughout these
10 proceedings that we've had on the detention issue, I
11 believe he's continued to be dishonest. His lawyers
12 have represented that he had a proffer in March and
13 never spoke to his or communicated with his counsel
14 again after March of 2020. We know that for a hundred
15 reasons to be false. We met with him in May. We had
16 all these plea negotiations. And counsel had numerous
17 contacts with him. And if Your Honor wants to hear
18 from Mr. Goldman on that point, he's here and he can
19 testify or speak to those issues.

25 So the system should not run the risk

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1 again that he will flee and we can't count on an ankle
2 bracelet or any other condition to ensure his
3 appearance as required at trial.

4 THE COURT: All right. Thank you. I
5 guess, Mr. Goldman, the main question is the U.S.
6 attorney notified you in October of 2020 that an
7 indictment had come down. Is that correct?

8 MR. GOLDMAN: Yes, he did, Your Honor.

9 THE COURT: And then you tried to
10 contact your client.

11 MR. GOLDMAN: Yes, sir. I -- my
12 recollection is that I contacted him but in going
13 through e-mails on whether or not I connected with him
14 on the 21st, I couldn't find any e-mails. I need to
15 get some explanation on that.

16 But I do have this. And, Your Honor,
17 just for my sake, I know it's relevant, my efforts to
18 contact my client. I don't believe it's
19 attorney/client privilege. But I need to raise that
20 and you advised me that that type of information is
21 not attorney/client privilege.

22 THE COURT: Right. I mean, well, I'm
23 not asking you about the contents of what you said.
24 There were allegations, though, made in the
25 government's motion and the government's brief and the

1 government's response. So --

2 MR. GOLDMAN: Yes, Your Honor.

3 THE COURT: -- I'm asking you,
4 basically, what the government said was the indictment
5 came down. You tried to contact your client and
6 whatever e-mail or phone call -- number or whatever he
7 gave you, there was never any response.

8 MR. GOLDMAN: Yes, Your Honor. I do
9 have an e-mail on the day of the indictment, October
10 21st, 2020 at 12:40 in the afternoon to an e-mail
11 address that Mr. Edouard and I always communicated
12 from and Mr. Edouard advised me, because I had
13 complained or -- he changed his number a few times in
14 dealing with me. He said you can always contact me by
15 this e-mail.

16 So on the 21st, midday, I said call me.

17 On the 22nd, 2020 at 12:49, I said "Call me.

18 Important." About an hour and a half later, I
19 e-mailed him at the same address, saying "Call me
20 back."

21 On the -- the reason why I think I had
22 some sort of contact -- he would call me, Your Honor,
23 when I reached out to him in the past by e-mail. On
24 the 26th, I sent him an e-mail that says
25 "Arraignment". And I said, "Need you hear on

1 Wednesday. Please immediately confirm by reply
2 e-mail. I am in court and cannot take a call or leave
3 voice message confirming."

4 The next day, October 27th at 6:23 p.m.

5 -- I'm sorry. Yeah. The next day on 10/26/2020 at
6 4:12 p.m., I e-mailed him. The subject was "Need you
7 here on Wednesday. Call me. I need to return call of
8 prosecutor to confirm your appearance."

14 And then -- that's it, Your Honor.

15 I believe it was the 28th, I advised
16 the FBI Mr. Lappen and I weren't successful in
17 reaching my client.

23 THE COURT: All right. Thank you. Mr.
24 Sobel, do you want ask -- Mr. Goldman is an officer of
25 the court. Do you want to ask him any questions?

1 MR. SOBEL: I do, Your Honor. Could I
2 make argument after I question --

3 THE COURT: Yes. Yes.

4 MR. SOBEL: -- Mr. Goldman?

5 THE COURT: Yes.

6 MR. SOBEL: Thank you.

9 MR. SOBEL: Yes. Yes.

10 THE COURT: (Indiscernible) -- but
11 (indiscernible) testimony of witnesses (indiscernible)
12 moved in.

13 MR. SOBEL: Thank you.

14 CROSS-EXAMINATION

15 BY MR. SOBEL:

17 A How you doing?

18 Q Good. You were retained to represent Mr. --
19 or Deslouis after the government had executed a search
20 warrant on one of his residences. Is that correct?

21 A Yes.

22 Q And subsequent to that, we know that in May
23 of 2020 -- May of 2020, you (indiscernible) Deslouis.

24 A I did what? I'm sorry. It broke up on you.

25 Q You went to a proffer with him.

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1 A I did.

2 Q Okay. And that proffer was in person?

3 A Yes, it was. May 8th.

4 Q Okay. May 8th. And you'd agree with me
5 that that was a decision that Mr. Deslouis voluntarily
6 made to go with you to the proffer.

7 A After full consultation with me about the
8 pros and cons, yes.

9 Q Right. He wasn't forced to go to the
10 proffer, was he?

11 A No.

12 Q Okay. Then subsequent to the
13 (indiscernible) why you received a draft plea
14 agreement from Mr. Lappen, is that correct?

15 A That's correct.

16 Q Do you remember when that was?

17 A That was in July of 2020. And on -- towards
18 the end of July -- he did it the day that
19 (indiscernible), I --

20 Q Oh, that's right. Did --

21 A Yeah. I e-mailed it to Mr. -- or to
22 Deslouis and Deslouis responded, "Okay. I'll review
23 it." Words to that effect, in e-mail.

24 Q Okay. And is it fair to say that you and he
25 went back and forth or had a discussion about that

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1 plea agreement?

2 A Yes. The -- actually, the plea agreement
3 would have been discussed even before the proffer.

4 Q Okay.

5 A I'm sure you know, because, obviously, he
6 has to understand what the ramifications of a proffer
7 are. And I always explain to my clients, and I
8 explained to Mr. Deslouis, you're not -- don't proffer
9 if you're not going to plead guilty --

10 Q Correct.

11 A -- (indiscernible) perjure yourself.

12 Q And at some point, a decision was made that
13 he was not going to execute that plea agreement. Is
14 that fair to say?

15 A Not until -- yes. Not until the latter part
16 of September of 2020. Up until that point in time,
17 let's just say I don't know if this is attorney/client
18 privilege but I always --

19 THE COURT: Let's not get into stuff --

20 MR. GOLDMAN: Okay.

21 THE COURT: -- that may or may not
22 be --

23 MR. SOBEL: Okay.

24 THE COURT: -- attorney/client
25 privilege. Not for purposes of this hearing.

1/2a

1 MR. SOBEL: Well, we --

2 THE COURT: Were you in contact with
3 him and when because he was in Florida and it appears
4 that he was -- that knew he was indicted and then just
5 ignored it.

6 MR. GOLDMAN: Right.

7 MR. SOBEL: Okay.

8 MR. GOLDMAN: Yeah.

9 BY MR. SOBEL:

10 Q Did you --

11 MR. GOLDMAN: I had the e-mails where
12 I'm trying to set an appointment up with him at my
13 office in Allentown. I proposed September 17th. Then
14 I told him I was available on September 16th. And in
15 September -- I did not know where he was. He never
16 advised me where he was. He advised me in response to
17 one of those e-mails that he was not near
18 (indiscernible). (Indiscernible) said that I don't
19 want the plea. And I would have conveyed that to Mr.
20 Lappen.

21 BY MR. SOBEL:

22 Q And in September, are you saying you didn't
23 know that he was in Florida?

24 A No, I did not.

25 Q Did you know in October that he was in

1 Florida?

2 A No, I did not.

3 Q But you knew he was out of town?

4 A I knew from the e-mail he says he was out of
5 town and that's why he couldn't meet me on the
6 suggested days.

7 Q And that was in September.

8 A Yes. I can give you the date if you want.

9 On September 15th, he advised, "I will not be signing
10 that plea agreement. I will just plead guilty in
11 court." September 15th.

12 Q And September 15th, did you know where he
13 was?

14 A No.

15 Q Okay. Did you know that his father had
16 passed away and he had gone to Florida for the
17 funeral?

18 A No.

19 Q Did you know that his mother lived in
20 Florida and she was ailing?

21 A No.

22 Q Now he's not indicted for another month or
23 so, correct?

24 A That's correct.

25 Q And Mr. Lappen, I presume, called you and

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1 let you know or e-mailed you that Deslouis has been
2 indicted?

3 A Yeah. I believe that would have been by a
4 telephone because I can't find any text or e-mail to
5 that regard. But the fact that I'm immediately
6 sending the e-mails I told you on that date would lead
7 me to believe it was on the 21st. Mr. Lappen and I
8 were on the phone -- my practice is all over the
9 place. And frequently, both my client and Mr. Lappen
10 would catch me in the car.

11 Q And one of the e-mails that you described --
12 I think it was October 21st -- said something about
13 "Call me back"?

14 A Yes. There were "Call me", "Call me back",
15 "Call me immediately".

16 Q So if you're saying "Call me back", wouldn't
17 that lead you to believe that he had called you and
18 you may --

19 A No. I mean, it could mean that. When I say
20 "Call me back", it's like I'm calling. Call me back.
21 That's how I view "Call me back". That's what I take
22 my words to mean.

23 Q I lost you for a second.

24 A I'm sorry.

25 Q What was your answer?

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1 A Yeah. When I use "Hey, call me back", it
2 just -- all it means is please call me. I'm calling
3 you; call me back. That's -- that means
4 (indiscernible) when I use that --

5 Q Did you -- okay. Did you ever talk to him
6 on the phone in or around October of 2020?

7 A No. I don't have a specific recollection of
8 a call. But as I stated with my follow-up e-mails, I
9 mean, I certainly believe that I spoke with him. And
10 at that point in time -- I can't retrieve phone
11 messages. I tried. I can't retrieve old texts. I've
12 tried because I've deleted them, you know, when your
13 box gets too full. So I can't give you a date on that
14 or specifics on that other than my belief. And then I
15 don't -- it might be e-mailing him talking about self-
16 surrender and if you're not here, they're going to
17 indict you and didn't communicate with him that he'd
18 been charged. But my records are what my records are.

19 Q And is it your testimony that you did e-mail
20 him and tell him that he had an arraignment and he had
21 to be back for an arraignment or be present for an
22 arraignment?

23 A Yes. I have those e-mails.

24 Q Okay. And after that, when he didn't appear
25 at the arraignment, did you have any further

1 communication?

2 A No. I never had any communication with him
3 until I was notified by either a family member or
4 girlfriend, I believe it was in January, that he was
5 arrested and brought in.

6 Q Okay. Did you ever tell him that he
7 couldn't leave the state between the time of the
8 proffer and the time he got indicted?

9 A No.

10 Q Okay. And that was your entire involvement,
11 basically, what you testified to?

12 A You mean with my client?

13 Q Yes.

14 A No. He would stop in my office on many
15 occasions with no appointment. And if I wasn't seeing
16 a client, I let people come in like that. That's the
17 nature of my practice. I would have lots of phone
18 calls typically initiated by him. Actually, it's an
19 hour drive for me to go to Allentown and an hour drive
20 for me going home from Allentown or I'm in the car.
21 So we talked a lot on the phone. I can't give you
22 dates. We had an excellent relationship up until the
23 end.

24 Q Okay.

25 MR. SOBEL: That's all I have. Thank

1 you.

2 THE COURT: All right. Mr. Lappen, do
3 you have any follow-up for Mr. Goldman?

4 REDIRECT EXAMINATION

5 BY MR. LAPPEN:

6 Q Just to cover quick questions to make sure
7 the record is clear, Mr. Goldman, up until the point
8 at which the defendant was indicted, were you always
9 able to communicate with him by sending him an e-mail
10 and then him calling you back?

11 A Yes. I mean, he -- he directed
12 (indiscernible) strong. He said if you ever need me,
13 contact me by the e-mail. And as I just told you, I
14 used the same e-mail address over my relationship with
15 him.

16 Q And did you get the impression at a certain
17 point in your dealings with him that he did not want
18 you to know where he was?

19 A Well, I could start with this that he never
20 told me where he was and it was always kind of like
21 I'm -- you know, I'm not, you know, in the area or
22 this or that. I didn't press him on it. It wasn't
23 important to me. But he never offered it and I never
24 knew where he was during my entire relationship with
25 him.

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1 Q And then after October 26th and 27th when
2 you reached out to him a couple of different times in
3 an e-mail to tell him he needed to be in Philadelphia
4 to answer the charges, he never responded to those,
5 right?

6 A That's correct.

7 Q And it was your phrase, your language, he
8 "went dark" on you. Is that right?

9 A Well, I felt he -- I felt he did because I
10 was -- I don't know if you want me to get into this.
11 I was a little upset at that point in time because of
12 -- you and I had been dealing with each other for
13 close to a year. And -- and I was always telling you
14 everything, you know, it's okay, he's going to sign
15 the plea agreement. I thought he was going to sign
16 the plea agreement at first. He's going to plead
17 guilty. Go ahead. You know, if you got to bring
18 charges, go ahead and bring charges. And then he's
19 not responding to me and he's gone. And I was
20 concerned -- I mean, the reputation for any attorney
21 is important that the government, you, or the FBI
22 might believe that, you know, I somehow or other, you
23 know, facilitated.

24 MR. LAPPEN: All right. I have nothing
25 further.

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1 THE COURT: Thank you, Mr. Goldman.

2 You can sign off if you want to. Or, Mr. Sobel, do
3 you have a question?

4 MR. LAPPEN: Mr. Sobel, we can't hear
5 you. You might have your microphone --

6 MR. SOBEL: (Indiscernible) ask you.

7 No. It's on. Can you hear me?

8 MR. LAPPEN: Now we can hear you.

9 MR. SOBEL: Hello?

10 MR. LAPPEN: We can -- I can hear you.

11 MR. SOBEL: Okay.

12 RECROSS-EXAMINATION

13 BY MR. SOBEL:

14 Q Mr. Goldman, just three -- three questions.

15 Yeah. The last time -- do you have any recollection
16 of the last time you actually spoke to Deslouis on the
17 phone?

18 A No.

19 Q Okay. You have any recollection of the last
20 time that he e-mailed you back?

21 A I know I have a September 11th -- oh. I
22 have a September 15th. I have a couple from September
23 15th. And September --

24 Q September what? I'm sorry.

25 MR. LAPPEN: September 15th. We lost

Sc a

1 you on that.

2 MR. GOLDMAN: September 16th.

3 THE COURT: So none in October.

4 MR. GOLDMAN: I do not have e-mails
5 from him in October, Your Honor.

6 THE COURT: So he never sent you an
7 e-mail after you told him he was indicted.

8 MR. GOLDMAN: No, Your Honor.

9 BY MR. SOBEL:

10 Q But you didn't tell him he was indicted
11 until October 21st.

12 A Well, I couldn't have.

13 Q Right, 'cause he wasn't.

14 A Right.

15 Q And nothing -- your testimony is nothing
16 after October 21st.

17 A Yeah. Well, the -- there's a September
18 e-mail from me -- I'll give you the date. It's in the
19 middle or the next week in September is when I again
20 asked him to contact me. And it's the day of or the
21 day after Mr. Lappen communicated to me by text that
22 said if you don't give me the plea agreement, you
23 know, soon I'm going to have to proceed by complaint.

24 Q Mr. Deslouis received any of those e-mails
25 in October? Is that fair to say?

S/a

1 A No. I -- the only e-mails I have in October
2 is what I testified to.

3 Q Right. But you don't know if he received
4 them.

5 A Well, I know -- I can't establish that he
6 received them or not.

7 Q Right. Okay.

10 THE COURT: All right. Thank you.

11 Mr. Sobel, you want to make argument
12 now?

13 MR. SOBEL: Afterwards -- I believe I
14 may want to call Mr. Deslouis to testify.

15 THE COURT: Then we should do that now.

16 MR. SOBEL: Okay.

17 THE COURT: Mr. Deslouis, please raise
18 your right hand.

19 DEFENDANT, DESTOUTS EDOUARD, SWORN

20 THE COURT: All right. You're now

21 under oath. Anything you say if it is not true can be
22 used to prosecute you for perjury.

23 Question your witness

24 MR. SOBEL: Thank you, Your Honor.

25 DIRECT EXAMINATION

1 BY MR. SOBEL:

2 Q Deslouis, good afternoon. How are you?

3 A Good afternoon. I'm good.

4 Q Okay. Just want to go through this very
5 briefly, the background. You did meet with the U.S.
6 attorney, is that correct?

7 A Yes, that's correct.

8 Q And did Mr. Goldman go with you?

9 A Yes.

10 Q And were you presented with a plea
11 agreement?

12 A I was pres -- I was given a plea agreement
13 in June. I wasn't given it to me before the proffer,
14 no.

15 Q After the proffer.

16 A Yeah. After the proffer.

17 Q Okay. And had Mr. Goldman been representing
18 you since roughly January or February of 2020?

19 A Yes.

20 Q Okay. And in June, did something happen in
21 your personal life?

22 A In July, my father died, yes.

23 Q Okay. And when was that?

24 A I can't remember the date exactly but I know
25 it was like the beginning of July.

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1 Q And when your father passed away, where was
2 he living?

3 A He was living in Miami, Florida.

4 Q And was his death something that you had
5 anticipated or was it out of the blue?

6 A It was really out of the blue.

7 Q Okay. And when you went to Florida in July
8 for your father's passing, was there a point in time -
9 -

10 A I didn't hear nothing you said.

11 THE COURT: Bad Wi-Fi. Bad connection.

12 MR. SOBEL: I'm sorry.

13 THE COURT: You froze, Mr. Sobel.

14 BY MR. SOBEL:

15 Q From the time --

16 MR. SOBEL: Okay. It could be me.

17 BY MR. SOBEL:

18 Q From the time that you went to Florida in
19 July of 2020 till you were arrested, had you been back
20 to Philadelphia?

21 A I came back (indiscernible) 'cause I do have
22 (indiscernible).

23 Q (Indiscernible)?

24 A Yes.

25 Q Okay. Now are any of your other family

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1 members in Florida?

2 A Yes. My mother and my sisters, nephews.

3 Yes.

4 Q Okay. We heard that you had some
5 communication with Mr. Goldman in September of 2020.
6 Do you remember that?

7 A I probably did. When he gave me the plea
8 agreement, I looked over it. He just told me to sign
9 it and we'll go over it eventually. I didn't feel
10 comfortable signing something I didn't understand. So
11 I told him that I refused to sign something that I
12 don't understand.

13 Q Okay. And there was some testimony that, in
14 October, he had sent you a series of e-mails advising
15 you that you had been indicted. Did you receive those
16 e-mails?

17 A No. The last time that I spoke or received
18 a e-mail from him when he complained that I owed him
19 money.

20 Q You remember when that was?

21 A I can't remember exactly when that was but I
22 know it wasn't in October. After the fact that he
23 told me that I owed him money that I know I paid, I
24 just didn't see the sense of dealing with him anymore.
25 I told him let me know when I will be indicted or when

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1 they want to press charges.

2 Q And did he let you know that?

3 A That's what he said but I never received
4 anything.

5 Q Okay.

6 A I didn't know I was indicted till I was
7 arrested.

8 Q And when were you arrested?

9 A January 17, 2021.

10 Q And the circumstances of your arrest, you
11 were driving in a car?

12 A Yes.

13 Q And when you were arrested, did you present
14 your legitimate Pennsylvania identification?

15 A Yes. I presented my -- I gave them my
16 driver's license and I gave them my license to carry
17 'cause I did have a firearm on me.

18 Q Okay. So you weren't hiding at that point.

19 Is that correct?

20 A No. I pulled over. The cop asked me for my
21 ID. I gave it to him. He came back to the car. He
22 said you have a warrant and that was it.

23 Q And you have a valid license to carry that
24 firearm, correct?

25 A Yes. It's valid, yes. Pennsylvania --

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1 Florida honors Pennsylvania's license to carry.

2 Q Okay. At any point in time, were you hiding
3 or evading being caught because you knew that you were
4 indicted?

5 A No.

6 Q Did you know you were being indicted?

7 A No. I didn't know till I was arrested.

8 MR. SOBEL: That's all I have. Thank
9 you.

10 THE COURT: All right. Mr. Lappen?

11 CROSS-EXAMINATION

12 BY MR. LAPPEN:

13 Q Do you remember when we had the proffer in
14 May, May 8th, 2021?

15 A Yeah.

16 Q And during that proffer, you admitted to all
17 kinds of identity fraud and other activity, right?

18 A I might have, yes.

19 Q Might have or did?

20 A I mean, yeah. I admitted to some things,
21 yes.

22 Q Yeah. You admitted that you were stealing
23 people's IDs or using people's identification, staying
24 in apartments under their name, right? You admitted
25 to that?

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1 A Yes.

2 Q And you admitted that you were using
3 people's IDs and credit card information to get iPads
4 and other things from AT&T stores, right?

5 A Yes.

6 Q And you admitted --

7 MR. SOBEL: Judge, at this point, I
8 would object to this line of questioning. I don't
9 know --

10 THE COURT: All right. I think I know
11 --

12 MR. SOBEL: -- how this helps this bail
13 issue.

14 THE COURT: -- where he's going. But,
15 Mr. Lappin, you don't need to ask multiple questions.

16 MR. LAPPEN: Okay.

17 THE COURT: The purpose is the
18 defendant kind of indicated he didn't know whether or
19 not he was going to be indicted when -- I mean, it's
20 pretty clear he was going to be indicted.

21 MR. LAPPEN: Right.

22 THE WITNESS: At the proffer, there was
23 never anything stated that I was going to be indicted.
24 They said they was going to bring charges against me.
25 I didn't know if that meant an indictment. I thought

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1 I was just going to be charged. I didn't know what
2 the significance of it was going to be.

3 BY MR. LAPPEN:

4 Q Right. And then at a certain point, you got
5 a plea agreement, maybe around July, a proposed plea
6 agreement in July of 2020?

7 A Yes.

8 Q From your lawyer?

9 A June or July, around that time.

10 Q Right. At that point, you knew that you
11 could either get -- charges would proceed with the
12 plea agreement or we would just have to indict you or
13 charge you --

14 A Well, like I said -- and like I said, when
15 Mr. Goldman presented me with the plea agreement, I
16 told him that I don't understand it. I don't feel
17 comfortable signing anything that I don't understand.
18 So when the government is ready to press charges, let
19 me know. The plea agreement --

20 Q So --

21 A -- (indiscernible) sign because he never
22 took the time to explain it to me.

23 Q So you're saying -- you're saying today with
24 your lawyer in a little video right above your head, I
25 can see him, you're saying that your lawyer didn't

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1 explain the terms of the plea agreement. You just
2 said I didn't understand it. That was basically the
3 end. That's what happened?

4 A His words were I e-mailed you the plea
5 agreement. Look over it and sign it. I was like,
6 okay. Then I seen something on there that says
7 something about 20 years. I'm like I don't feel
8 comfortable signing anything that I don't understand.
9 Therefore, I'm not signing it. And he said okay.

10 Q And then at that point --

11 A And he said in his own e-mail if I don't
12 feel comfortable signing the plea agreement. The
13 government can just charge me.

14 Q All right. So at that point --

15 A (Indiscernible) see from me.

16 Q All right. And you knew that the next thing
17 then that was going to happen was the government was
18 going to just charge you, right?

19 A At some point. I didn't know --

20 Q Right. This wasn't going to magically
21 disappear or go away, right?

22 A I mean, that's the whole reason of me
23 getting a lawyer because I was ready to deal with the
24 consequences of my actions, yes.

25 Q Exactly. And Bob Goldman was your lawyer,

1 right?

2 A For the time being, yes.

3 Q And the e -- and you communicated with him
4 through an e-mail that said deslouis131@gmail? Is
5 that it?

6 A Yeah. Whenever --

7 Q So you didn't --

8 A Whenever he would e-mail me, I would call
9 him or I would call him and let him know, like, I'm
10 leaving out of town. Is it okay for me to leave town.
11 And he would say, yes, you're fine.

12 Q Right. And he would say that because it was
13 easy to reach you on the deslouis131 e-mail address,
14 right?

15 A Yes, and because whenever I called him, his
16 phone would always go to voicemail.

17 Q And that's your -- that e-mail remained your
18 e-mail until you were arrested. I don't know if you
19 get e-mail in prison but deslouis131@gmail, that's
20 your e-mail address, right?

21 A It was an e-mail that I used for him and
22 other things but not really. It wasn't my personal
23 main e-mail, no.

24 Q So it was one of your e-mail addresses,
25 right?

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1 A For the time being.

2 Q And you used a lot of e-mail addresses like
3 in the fraud scheme you're talking about, all kinds of
4 other people's e-mails, right?

5 A I mean, I don't know what that has to do
6 with everything else that we're talking about. But,
7 yes, I have multiple e-mails, yes.

8 Q All right. So the e-mail -- the e-mail that
9 you used to communicate with your lawyer who made it
10 clear to you that you were getting charged one day was
11 deslouis131, right?

12 A That's the e-mail that he used, yes.

13 Q Right. And so are you saying -- so you went
14 to Florida and stopped looking at that e-mail?

15 A I stopped looking at the e-mail when he made
16 me pay him more than I was supposed to and I didn't
17 really want to deal with him anymore. So there was no
18 need for me to be in contact with him.

19 Q Well, wasn't --

20 A He knew how to be in contact with me if he
21 really wanted to. He could have --

22 Q Well, you were --

23 A -- my baby mother -- he could have called my
24 child's mother and told her that he's getting indicted
25 or he had her number and all those things.

1 Q Right. So, first of all, you're changing
2 your phone number multiple times, right?

3 A I mean, if -- sometimes yes.

4 Q Okay. And your baby's mother -- what's her
5 name?

6 A Nikia (ph) Anderson.

7 Q Nikia Anderson. Nikia Anderson -- after you
8 were indicted, she didn't know where you were, right?

9 A I don't know about that.

10 Q Well, you know the FBI went out to talk to
11 her and she said she didn't know where you were,
12 right?

13 A I didn't know anything about that. I didn't
14 know I was indicted till I got arrested.

15 Q Right. But the way you could easily have
16 found out what was going on with your case is you
17 could have called your lawyer, right? You had his
18 phone number, right?

19 A Yes.

20 Q You could have checked your e-mail, right?

21 A Yes.

22 Q And you didn't do any of that, right?

23 A I didn't need to check the e-mail because I
24 was no longer using it. I didn't need to talk to Mr.
25 Goldman because I honestly, once things got deeper in,

1 I was going to get a new lawyer because I felt like he
2 wasn't on my side. Just off of the fact that he
3 wanted me to sign a plea agreement that I didn't
4 understand.

5 MR. LAPPEN: I have nothing further,
6 Your Honor.

7 THE WITNESS: That was one of the
8 arguments that we had.

9 THE COURT: Thank you. Mr. Sobel --
10 MR. LAPPEN: I have nothing further of
11 this witness. But if Mr. Goldman's on, I believe he
12 could address this defendant's statement about never
13 going over the agreement with him. And I think that
14 would go right to his credibility without going into
15 any of the details of their confidential
16 communications. But I'm quite sure Mr. Goldman would
17 say he did not do what the defendant says he did.

18 THE COURT: All right. Mr. Sobel --

19 MR. SOBEL: Judge, I'm not sure how Mr.
20 Lappen would know -- I'm not sure how Mr. Lappen would
21 know that.

22 THE COURT: No. No.

23 MR. SOBEL: And I don't think it's
24 relevant for --

25 THE COURT: I don't think it's relevant

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1 either. So, Mr. Sobel, any further questions of your
2 client otherwise?

3 MR. SOBEL: No, Your Honor. Just
4 argument.

5 THE COURT: All right. Then I'm going
6 to turn the floor over to you, Mr. Sobel, to argue.

7 MR. SOBEL: Thank you. Judge, just let
8 me know if the sound goes out.

9 THE COURT: All right. I'll raise my
10 hand.

11 MR. SOBEL: Going back, Your Honor --
12 going back, it's clear that Deslouis -- his property
13 was searched. The government -- he hires a lawyer.
14 He goes into proffer -- voluntarily goes into proffer
15 with the U.S. attorney. Doesn't have to. Takes the
16 affirmative step of going into proffer. Retains a
17 lawyer and they go.

18 At some point in time, a plea agreement
19 is drafted and whether it was reviewed, whether it
20 wasn't reviewed, the real issue is whether he was
21 hiding, whether he was trying to secret himself from
22 the government. He doesn't have to put his life on
23 hold simply because Mr. Lappen wants to take six
24 months to indict him, five months to indict him.

25 One of the critical points in this is

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1 that when he's arrested -- and Mr. Lappen says, well,
2 he's got all these IDs on him. But the ID that he
3 chose to give to the police officer was his real ID,
4 the ID that had his name and address. So when the
5 officer went and looked it up, he found that that was
6 who he was.

24 THE COURT: But they're saying he is a
25 serious risk of flight --

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1 MR. SOBEL: I understand that but I
2 don't believe --

3 THE COURT: -- because he was
4 unavailable and unfindable for three or four months.

5 And also --

6 MR. SOBEL: But he has to know -- I'm
7 sorry. I don't want to interrupt you, Your Honor.

10 He wasn't hiding. He was in Florida. It wasn't like
11 he went overseas. He's in Florida living his life not
12 hiding from the government and driving a car up and
13 down the road. To me, he doesn't present a serious
14 risk of flight. And if the Court did find that, there
15 are special conditions that the Court could put upon
16 him where he could be released under those conditions
17 and allowed -- and handle this case and represent --
18 get representation outside of pretrial detention.
19 There are other alternatives other than strictly
20 pretrial detention. And that's what I'm asking the
21 Court to consider in this case. It's not a case that
22 screams this defendant should be detained. Simply
23 not.

24 MR. LAPPE: Your Honor, with all due
25 respect, just very briefly. I can't imagine a case

1 screaming louder this defendant should be detained
2 than this one. Himmler has nothing to do with this
3 case. This is all about risk of flight. It's not
4 about danger to the community. We're not trying to
5 detain him because he committed economic crimes.
6 We're detaining him because he has proven himself to
7 be a flight risk. He's practically wearing a shirt --

8 THE COURT: Why wouldn't an electronic
9 monitor or ankle bracelet or something like that --
10 why wouldn't there be some other means -- why wouldn't
11 that be sufficient, Mr. Lappen?

12 MR. LAPPEN: Because, Your Honor, ankle
13 bracelets can be cut. And people can flee. And it
14 takes -- it then can take forever, if at all, for the
15 marshals to find somebody like that. This is a
16 defendant who has access, who has proven access to
17 false identification and who didn't stop using false
18 identification when he was -- after he had admitted to
19 the crimes in a proffer. He's still walking around
20 with one of his identity theft victim's fake IDs.
21 He's extremely skillful at obtaining these. He
22 obviously has been committing these crimes for a long
23 time, has never been caught and had over 450 different
24 people's identities on -- in his computer.

25 So it's true, an ankle bracelet is a

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1 first step. You could use that for anybody and
2 theoretically, you'd never have to detain anybody as a
3 risk of flight if an ankle bracelet were perfect. But
4 it isn't because once you cut it, you're gone. And
5 this defendant has completely flouted the law, shown a
6 complete disrespect for the criminal justice system in
7 every way, shape or form. And we cannot take the risk
8 that he is somebody who's going to show up again.

9 We've already been fooled by this guy. I was dealing
10 with his attorney I believed in good faith. I believe
11 Mr. Goldman was conducting himself in good faith. And
12 this guy was jerking us around the whole time. And
13 when push came to shove, he went to Florida. He
14 either knew or should have known he was indicted.

15 I --

16 THE COURT: You're not disputing --
17 wait. You're not disputing the fact that his father
18 died, correct?

19 MR. LAPPEN: No. No. But, you know,
20 I'm also -- I don't know how long he was in Florida.
21 He was in Florida when he was arrested. I don't know
22 that he went to Florida in June and never came back.
23 But he certainly knew how to be in touch with his
24 lawyer about this. And from the e-mails that his
25 lawyer sent, it looks like he knew full well that he

1 was indicted and was just ignoring it. That's the
2 e-mail he was using. And he didn't stop using it.

3 So this is somebody who is actively
4 trying to avoid indictment -- knowledge and
5 responsibility for being charged in this case. He
6 chose not to appear. And we can't run the risk by
7 just throwing an ankle bracelet on him when he can
8 certainly easily flee.

9 THE COURT: All right. Thank you. I
10 understand your position.

11 Mr. Sobel, I'm going to give you one or
12 two minutes for last word and then I'm going to
13 conclude and take the matter under advisement.

14 MR. SOBEL: Thank you, Your Honor.

15 Your Honor, what I would say is
16 carefully look at Himmler because I think the
17 circumstances are fairly similar to this case. And in
18 that case, again, the mere fact of deceit is not
19 enough to pose a serious risk of flight.

20 Now the Court made a good point that
21 ankle monitor or electronic monitoring is a reasonable
22 solution to allow him out of pretrial detention. The
23 argument that, well, he could cut it off, well,
24 everybody could cut it off. That doesn't mean he's
25 going to do it. We're asking for some special

1 conditions that the Court feels comfortable with. And
2 I didn't mention that I had spoken to pretrial. And I
3 know they presented Your Honor with a report. But
4 they agree with this. They have no objection to him
5 being out on an electronic monitoring and getting out
6 of pretrial detention. So I would offer that as well.

7 Your Honor, he's been in since January
8 17th. Now that's over five months. There's a statute
9 which I didn't cite in the brief but 3164 says he's
10 got to be brought to trial. Even on a transfer case.
11 He wants to transfer to this district for at least
12 three months, three, four months. That has to account
13 for something. And the fact of the matter is there
14 are conditions which would reasonably assure his
15 appearance at trial. And I would ask the Court to
16 consider allowing him out on those special conditions.

17 Thank you.

18 THE COURT: All right. Thank you,
19 counsel. I'll take the matter under advisement. This
20 hearing is now adjourned.

21 MR. LAPPEN: Thank you, Your Honor.

22 MR. SOBEL: Thank you.

23 (Proceeding is adjourned)

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C E R T I F I C A T I O N

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3 I, Lisa Beck, certify that the foregoing is
4 a correct transcript from the official electronic
5 sound recording of the proceedings in the above-
6 entitled matter.

7

Lisa Beck

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9 Lisa Beck

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13 Dated: July 7, 2021

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