

No. _____

In the
Supreme Court of the United States

Paul Rivera,
Petitioner,

v.

United States of America,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

APPENDIX

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¹ The *Faretta* hearing transcript was unsealed by U.S. District Court Order. *United States v. Rivera*, U.S. District Court for the Eastern District of New York, Docket No. 13-cr-149, ECF No. 576 (Jun. 8, 2020).

17-59-cr
United States v. Rivera

United States Court of Appeals For the Second Circuit

August Term 2020

Argued: March 12, 2021

Decided: July 28, 2022

No. 17-59-cr

UNITED STATES OF AMERICA,

Appellee,

v.

MICHAEL GARRETT, AKA RAB,

Defendant,

PAUL RIVERA, AKA PAUL ZANCE, AKA
PAULEE ZANCE, AKA PAULIE RIVERA, AKA
EDGAR RIVERA, AKA ZANCE, RIVERA, AKA
STEVEN RIVERA,

Defendant-Appellant.

Appeal from the United States District Court
for the Eastern District of New York
No. 13-cr-149-1, Kiyo A. Matsumoto, *Judge.*

Before: WESLEY, SULLIVAN, and MENASHI, *Circuit Judges*.

Defendant-Appellant Paul Rivera appeals from his conviction following a jury trial in the United States District Court for the Eastern District of New York (Matsumoto, *J.*) in which he was found guilty of racketeering, murder in aid of racketeering, various narcotics offenses, interstate prostitution, and sex trafficking of minors. On appeal, Rivera argues that the district court erred by permitting him to represent himself without a psychiatric evaluation. We disagree. While a district court has discretion to conduct an inquiry into a defendant's mental competence before granting a motion to proceed pro se, the court is not *required* to order psychiatric testing and did not err in granting Rivera's motion. For the reasons stated herein and in the accompanying summary order, which disposes of Rivera's other challenges, we **AFFIRM** the judgment of the district court.

AFFIRMED.

GWEN M. SCHOENFELD, Law Office of Gwen M. Schoenfeld, LLC, New York, NY, *for Defendant-Appellant*.

ALIXANDRA E. SMITH, Assistant United States Attorney (David C. James, Michael P. Robotti, Assistant United States Attorneys, *on the brief*), *for* Breon S. Peace, United States Attorney for the Eastern District of New York, Brooklyn, NY, *for Appellee*.

RICHARD J. SULLIVAN, *Circuit Judge*:

Defendant-Appellant Paul Rivera appeals from his judgment of conviction following a jury trial in the United States District Court for the Eastern District of New York (Matsumoto, *J.*) in which he was found guilty on fourteen counts

including racketeering, in violation of 18 U.S.C. §§ 1962(c) and 1963; murder in aid of racketeering, in violation of 18 U.S.C. § 1959(a)(1); drug-related offenses, in violation of 21 U.S.C. §§ 846 and 841(a)(1), (b)(1)(A)(i), (b)(1)(A)(iii), (b)(1)(C), and (b)(1)(D); gun-related offenses, in violation of 18 U.S.C. §§ 924(c) and (j)(1); interstate prostitution, in violation of 18 U.S.C. § 2422(a); and sex trafficking of children, in violation of 18 U.S.C. § 1591(a)(1), (a)(2), (b)(1), and (b)(2).

On appeal, Rivera raises several challenges to his conviction and sentence. We address only one of his challenges in this opinion and resolve his remaining arguments in a simultaneously-issued summary order. Here, we conclude that the district court did not err by permitting Rivera to represent himself without a psychiatric evaluation. Accordingly, for the reasons set forth here and in the accompanying summary order, we affirm the district court's judgment.

I. BACKGROUND

Rivera's charges and conviction stem from his involvement in a criminal organization known as "Together Forever" ("TF"), which Rivera co-founded in the 1980s and which engaged in drug trafficking, forced prostitution, and gang violence. He was arrested in January 2012 following a traffic stop in Pennsylvania that resulted in the seizure of approximately 170 grams of cocaine and 7.5 grams

of heroin. He spent the next fourteen months incarcerated in Pennsylvania, during which time the Federal Bureau of Investigation (“FBI”) began an investigation into Rivera and TF’s activities. On March 11, 2013, Rivera was indicted by a federal grand jury and charged with narcotics conspiracy in connection with his 2012 arrest in Pennsylvania. The superseding indictment charged Rivera with narcotics trafficking, sex trafficking, money laundering, witness tampering, and murder.

During the course of his federal criminal proceedings, Rivera cycled through seven different attorneys before finally electing to represent himself pro se. He was first represented by attorney Steve Zissou, who was appointed on March 1, 2013 and represented Rivera for his first appearance before the district court on the same day. On March 18, the government moved to disqualify Zissou based on an alleged conflict of interest after learning that Zissou’s wife was representing a cooperating victim-witness whose identity had to be withheld from Rivera for safety reasons. The government argued that Zissou’s disqualification was necessary because he knew the identity of the victim-witness and the fact that she had provided information to the government.

Zissou objected to the disqualification, arguing that “the potential complication from disqualification of counsel cannot be overstated.” App’x at 101.

He explained that Rivera is a “very difficult and sophisticated client” who is “extremely distrusting of courts and lawyers.” *Id.* He further noted that Rivera was “head[[]strong, opinionated, drug addicted[,] and likely suffering from some form of undiagnosed psychological instability,” and predicted that his disqualification would make it “extremely difficult for successor counsel.” *Id.*

A few days later, notwithstanding Zissou’s objection, the district court disqualified Zissou for a non-waivable conflict and appointed new counsel. Within two weeks of the district court’s appointment of replacement counsel, Rivera hired a new, privately-retained attorney to replace him. A little over a month later, on May 14, the private attorney withdrew due to a conflict, and the court appointed Martin Goldberg.

On September 23, Rivera sent a letter to the court stating that he and Goldberg were “at an impasse,” and that he “no longer ha[d] any faith in the attorney[-]client relationship nor the communication between [them.]” *Id.* at 145. Goldberg agreed that their “relationship [was] on the rocks” and explained to the court that “part of the problem is, he is enamored with one of the attorneys before me, Mr. Zissou[.]” *Id.* at 152. The court relieved Goldberg and appointed yet another lawyer, Guy Oskenhendler.

On October 7, the grand jury returned a second superseding indictment, which charged Rivera with, among other things, murder in aid of racketeering – a death-penalty-eligible offense. The court appointed David Stern as learned counsel to assist Oksenhandler on Rivera’s capital offense. When the government ultimately decided to forgo the death penalty on the murder count, the district court determined that Rivera no longer needed two attorneys; Rivera elected to proceed with Stern in April 2014. The following month, Rivera asked to replace Stern. During a July 2014 hearing, the court agreed to replace Stern with attorney Donald DuBoulay, but warned Rivera that “this is now your seventh lawyer, and there is not going to be another lawyer. There is not going to be an eighth lawyer appointed to you.” *Id.* at 318.

On April 27, 2015, Rivera requested to proceed pro se at his upcoming trial because he disagreed with DuBoulay on legal strategy and felt DuBoulay was “fighting the case as if [Rivera were] guilty.” *Id.* at 775. The district judge held an ex parte hearing pursuant to *Faretta v. California*, 422 U.S. 806 (1975), during which she repeatedly articulated the risks associated with Rivera’s self-representation and emphasized the mandatory life sentence he faced and the risk that he might inadvertently trigger the admission of his proffer statement, in which he had

admitted his involvement in the murder. The judge inquired of Rivera's "clarity of mind" and his understanding of the charges against him. *Id.* at 776–77. She also considered Rivera's previous pro se submissions and notified him – as she had at the time of his letter writing – that they contained harmful evidentiary admissions. Rivera nevertheless insisted that he understood the risks and stated that he was familiarizing himself with the Federal Rules of Evidence. Having presided over the case for over two years at the time of the hearing, during which time Rivera had "been a wonderful presence in this courtroom" who posed no "issues with [his] conduct," *id.* at 782–83, the judge granted Rivera's request to proceed pro se, with DuBoulay remaining in the role of standby counsel.

After the *Faretta* hearing, counsel for Rivera's co-defendant moved to sever his case from Rivera's, insisting that Rivera was suffering from "mental illness" and was acting "wacky." *Id.* at 791, 793. The prosecutor also expressed concern that Rivera was not making decisions "fully rationally." *Id.* at 793. The judge responded that she had "not observed any wackiness," and had "no doubt that [Rivera] knowingly and voluntarily and rationally, with full understanding of the risks, has chosen to proceed pro se." *Id.* at 793–94.

At trial, Rivera declined to change to civilian clothing and insisted on

wearing his prison uniform in the presence of the jury. Notwithstanding the district court's earlier warnings, Rivera asserted his factual innocence of the murder during his opening statement, thereby triggering the admission of his incriminating proffer statement to the government. He also conducted cross-examinations of the government's witnesses that his co-defendant's counsel described as "painful" and "cringe worthy." *Id.* at 2805. Midway through the cross examination of a cooperating witness, Rivera requested that DuBoulay take over, which the district court allowed.

On June 25, 2015, the jury returned guilty verdicts against Rivera on all counts. Rivera thereafter requested that DuBoulay be reappointed as his counsel, and the district court granted his request. DuBoulay then moved on Rivera's behalf for a judgment of acquittal pursuant to Federal Rule of Criminal Procedure 29, which the district court denied. On December 22, 2016, the district court sentenced Rivera to a mandatory life sentence for murder in aid of racketeering, a consecutive twenty-year sentence for the section 924(c) gun charge, and concurrent sentences for the remaining counts.

Rivera timely appealed, and now argues that the district court committed reversible error by permitting him to represent himself pro se.

II. STANDARD OF REVIEW

“[A] district court's conclusions regarding the constitutionality of a defendant's waiver of his right to counsel is subject to de novo review,” but “its supporting factual findings [are reviewed] under a clearly erroneous standard.” *United States v. Spencer*, 995 F.2d 10, 11 (2d Cir. 1993). “We will affirm a district court's conclusion that a defendant knowingly and voluntarily waived his constitutional rights if any reasonable view of the evidence supports it.” *Id.* (internal quotation marks omitted).

III. DISCUSSION

Rivera argues that he was denied the right to a fair trial when the district court permitted him to proceed pro se without first conducting an inquiry into whether he was competent to represent himself at trial. Specifically, he argues that he “suffered from a decades-long addiction to heroin and cocaine, exhibited signs of mental illness evident throughout the record, and was facing a mandatory life sentence if convicted,” yet the district court allowed Rivera to proceed pro se without “psychiatric reports” or a “psychiatric evaluation” and without taking any “further steps to determine whether Rivera was competent to represent himself at trial.” Rivera Br. at 45. Rivera contends that the district court's decision

“violated the principles” announced by the Supreme Court in *Indiana v. Edwards*, 554 U.S. 164 (2008). *Id.* We disagree.¹

The Supreme Court recognized the importance of a criminal defendant’s constitutional right to self-representation in *Faretta v. California*, 422 U.S. 806 (1975). This right reflects “a nearly universal conviction . . . that forcing a lawyer upon an unwilling defendant is contrary to his basic right to defend himself if he truly wants to do so.” *Id.* at 817. When a defendant proceeds pro se, however – and thus waives the right to counsel – he “relinquishes . . . many of the traditional benefits associated with the right to counsel.” *Id.* at 835. Accordingly, “in order to represent himself, the accused must ‘knowingly and intelligently’ forgo those relinquished benefits.” *Id.* (citing *Johnson v. Zerbst*, 304 U.S. 458, 464–65 (1938)). The district court must ensure that the defendant is “aware of the dangers and disadvantages of self-representation, so that the record will establish that ‘he knows what he is doing and his choice is made with eyes open.’” *Id.* (quoting *Adams v. U.S. ex rel. McCann*, 317 U.S. 269, 279 (1942)).

¹ The parties dispute whether Rivera preserved this issue for appeal and thus whether his challenge should be reviewed for clear error or plain error. We need not resolve this dispute because we conclude that the district court committed no error by failing to order psychiatric evaluations prior to granting Rivera’s motion to proceed pro se.

In *Edwards*, the Supreme Court identified a narrow exception to the right to self-representation recognized in *Faretta*. In the “exceptional” situation where a criminal defendant is “competent enough to stand trial” but “still suffer[s] from severe mental illness to the point where [he is] not competent to conduct trial proceedings by [himself],” the Constitution permits district courts to deny the right of self-representation and insist upon the appointment of counsel. *Edwards*, 554 U.S. at 178.

Rivera argues that, under *Edwards*, the district court had an affirmative duty to order a psychiatric evaluation to ensure that he did not fall into this narrow category of defendants who are competent to stand trial but not competent to represent themselves. We have explicitly rejected this argument in a non-precedential summary order, stating that “[t]he discretion to proceed with an [*Edwards*] inquiry before allowing a defendant to proceed pro se does not impose on the district court a duty to conduct such an inquiry.” *United States v. Scott*, 509 F. App’x 35, 36 (2d Cir. 2013); see also *United States v. Green*, 623 F. App’x 571, 573 (2d Cir. 2015) (stating that “*Edwards* nowhere explicitly suggests” such a requirement). Other circuit courts to consider this issue have reached similar conclusions. See *United States v. Stafford*, 782 F.3d 786, 791 (6th Cir. 2015) (“The

Supreme Court in *Edwards* permitted – but did not require – courts to impose counsel on defendants with mental issues who are nonetheless competent to stand trial.”); *Panetti v. Stephens*, 727 F.3d 398, 414 (5th Cir. 2013) (“*Edwards* is permissive, *allowing* the state to insist on counsel, but not requiring that the state do so.”); *Wright v. Bowersox*, 720 F.3d 979, 986 (8th Cir. 2013) (“*Edwards* did not announce a new constitutional rule for determining competency when a defendant wishes to waive his right to counsel; it merely allows, but does not require, states to have a heightened standard.”); *United States v. Bernard*, 708 F.3d 583, 590 (4th Cir. 2013) (“*Edwards* does not stand for the proposition that a state *must* deny the right of self-representation to a defendant of questionable mental competence or that district courts must conduct an additional ‘*Edwards*’ inquiry into the competency of every defendant who requests to proceed pro se.”); *United States v. DeShazer*, 554 F.3d 1281, 1289–90 (10th Cir. 2009) (“To the extent that [the defendant] suggests that the district court was duty-bound to deny him the right [to self-representation], we do not read *Edwards* as announcing such a new rule.”); *United States v. Berry*, 565 F.3d 385, 391 (7th Cir. 2009) (“The Constitution *may* have allowed the trial judge to block [the defendant’s] request to

go it alone, but it certainly didn't require it.”).² Indeed, Rivera points us to no decision in which a court held that, under *Edwards*, a district court has the affirmative duty to conduct an additional competency inquiry before allowing a defendant to represent himself.

We therefore hold that, where a defendant has been found competent to stand trial, *Edwards* does not *require* a court to conduct a further competency hearing or order psychiatric evaluations before permitting a defendant to proceed pro se. Moreover, on the facts before us, we cannot say that the district court abused its discretion in failing to sua sponte order a psychiatric evaluation prior to determining that Rivera “knowingly and intelligently” waived his right to counsel. *Faretta*, 422 U.S. at 835. The district court “will often prove best able to make more fine-tuned mental capacity decisions, tailored to the individualized circumstances of a particular defendant.” *Edwards*, 554 U.S. at 174. Here, the judge

² The Eleventh Circuit has adopted a similar holding in a nonprecedential opinion. See *United States v. Jackson*, 859 F. App'x 389, 390 (11th Cir. 2021). Two other circuits have left the issue open. See *United States v. Brugnara*, 856 F.3d 1198, 1213 (9th Cir. 2017) (declining to decide whether *Edwards* imposes a duty on the district court to terminate self-representation because the defendant “has not shown himself to be in the *Edwards* class of defendants ‘who suffer from severe mental illness to the point where they are not competent to conduct trial proceedings by themselves’”); *United States v. McKinney*, 737 F.3d 773, 777 (D.C. Cir. 2013) (“[B]ecause we see no clear error in the district court's finding that [the defendant] failed to meet this ‘threshold’ level of incompetency under *Edwards*, we have no need to determine whether ‘may’ means ‘must’ with respect to representation in the *Edwards* context.”).

clearly detailed the dangers of proceeding pro se and emphasized the advantages of representation by a trained, experienced attorney. *See* App'x at 765–771, 775. She questioned Rivera about his understanding of the risks he faced by waiving his right to counsel, prompted him to explain these risks in his own words, and asked Rivera about his physical and mental health. *See id.* at 771–785. The judge, who had presided over Rivera's case for two years at that point, further noted that she had had no "issues with [Rivera's] conduct." *Id.* at 782. When counsel for Rivera's co-defendant sought severance, the judge rejected the suggestion that Rivera had been acting "wacky" and again emphasized that she had "no doubt that [Rivera] knowingly and voluntarily and rationally, with full understanding of the risks, has chosen to proceed pro se." *Id.* at 793–94.

Though Rivera now insists that his self-representation was "irrational, self-destructive, and led to the unnecessary admission of devastating evidence," Rivera Br. at 62, this argument in no way undermines the district court's finding that Rivera knowingly waived his right to counsel or otherwise suggests that Rivera "suffer[ed] from severe mental illness to the point where [he was] not competent to conduct trial proceedings by [himself]." *Edwards*, 554 U.S. at 178. A defendant's choice to represent himself "must be honored," "although he may

conduct his own defense ultimately to his own detriment.” *Faretta*, 422 U.S. at 834.

We therefore conclude that the district court did not err in granting Rivera’s motion to proceed pro se.

IV. CONCLUSION

For the foregoing reasons and the reasons stated in the accompanying summary order filed simultaneously with this opinion, we **AFFIRM** the judgment of the district court.

Transcript Excerpt

Faretta Hearing & Colloquy (April 27, 2015) [pages 1-2, 13-45]

United States v. Rivera

U.S. District Court for the Eastern District of New York

Docket No. 13-cr-149

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - -X
UNITED STATES OF AMERICA, : 13-CR-149(KAM)
: :
-against- : United States Courthouse
: Brooklyn, New York
: :
PAUL RIVERA and MICHAEL : Monday, April 27, 2015
GARRETT, : 9:00 a.m.
: :
Defendants. :
: :
- - - - -X

TRANSCRIPT OF CRIMINAL CAUSE FOR JURY SELECTION
BEFORE THE HONORABLE KIYO A. MATSUMOTO
UNITED STATES DISTRICT JUDGE

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Proceedings recorded by computerized stenography. Transcript
produced by Computer-aided Transcription.

Colloquy

13

1 They will be set forth in Court Exhibit 1-B.

2 Juror No. 4, hardship. Juror No. 12, hardship.

3 Juror 23, juror was familiar with me. Juror 56, the juror

4 provided name of its employer. Juror 67, hardship. Juror 84,

5 hardship. Juror 95, hardship. Juror 100, hardship. Juror

6 103, hardship. Juror 104, hardship. Juror 114, hardship.

7 Juror 153, hardship. Juror 154, hardship. Juror 159,

8 hardship. Juror 169, hardship. Juror 198, hardship. Juror

9 226, the juror was familiar with one of the Government's trial
10 team members.

11 And the following jurors were excused by the jury
12 clerk before all this started on April 21st. Juror 21,
13 hardship. Juror 29, lives out of the district. Juror No. 35,
14 hardship. Juror 149, language problems. So the remaining
15 jurors were called back today.

16 MR. DUBOLAY: If I can be heard, your Honor?

17 THE COURT: Yes.

18 MR. DUBOLAY: I've had extensive conversations with
19 my client and he desires a Faretta hearing to discuss the
20 possibility of him going pro se. He wishes to go pro se and
21 we request an Faretta hearing.

22 If that's granted, I would think the questions
23 should be added to the voir dire questions regarding the fact
24 that he's going pro se.

25 THE COURT: Well, I don't know if he's going pro se

Colloquy

14

1 we'll have to have a hearing, won't we?

2 All right. Is this something that I need to do
3 ex parte or can I do this on the record?

4 How do you want to proceed, Mr. DuBolay?

5 MR. DUBOLAY: In terms of the hearing?

6 THE COURT: Yes.

7 MR. DUBOLAY: I think we can do it in open Court,
8 Judge.

9 THE COURT: All right.

10 MR. DUBOLAY: Your Honor, my client desires to
11 conduct this hearing ex parte, I assume, because of
12 discussions he's going to have with me because of discussions
13 he's had with me.

14 THE COURT: All right. Well, I'll ask the marshals,
15 Ms. Sharkey, and the Government to step out of the room.
16 Mr. Garrett should also be taken out of the room, please, and
17 we'll just speak with Mr. Rivera and Mr. DuBolay.

18 MS. SHARKEY: Judge, I will have an application if
19 this is granted couple of applications.

20 THE COURT: I'm not going to entertain anything
21 without the Government in the room. I just want to make sure
22 everything is on the record.

23 MS. SHARKEY: Okay. And I just would ask that the
24 Court allow me to make a record with the Government. I'm
25 happy to do that.

Faretta Hearing

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1 THE COURT: Do you want to be locked in?

2 MS. SHARKEY: Are you going to be a long time?

3 THE COURT: I have no idea.

4 MS. SHARKEY: I will knock if I have to. Thank you,
5 Judge.

6 (Defendant Garrett exits from the courtroom.)

7 THE COURT: All right. This is an application by
8 Mr. Rivera to proceed pro se. I'll hear from Mr. Rivera. But
9 first let me ask you to raise your right hand.

10

11 **PAUL RIVERA**, having been first duly sworn, was examined and
12 testified as follows:

13

14 DEFENDANT RIVERA: Yes, I do.

15 THE COURT: All right. Yes, Mr. Rivera, I'll hear
16 from you.

17 DEFENDANT RIVERA: I would like to go pro se.

18 THE COURT: Bring the microphone over towards you
19 and you can remain seated.

20 Would you tell me why you would like to be pro se?

21 DEFENDANT RIVERA: Because I feel Mr. DuBoly and I
22 are on two different pages regarding my defense. I asked him
23 to put in certain motions, he refused to. And I think it's
24 unfair to my defense, and I don't believe that he's going to
25 vigorously ask questions as I will. He may be refraining to

Faretta Hearing

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1 say certain things where I may not, and I just think it's my
2 life is at stake and I need to take it into my own hands.

3 THE COURT: All right. Let me just.

4 DEFENDANT RIVERA: In fact, I really don't but I
5 feel I have to. I sent the Court an ineffective assistance of
6 counsel motion. I haven't heard anything back about it and
7 your Honor is telling me that absolutely you won't absolutely
8 assign another counsel. So I feel like my back is up against
9 the wall, really.

10 THE COURT: All right. Just for the record,
11 Mr. Rivera, as you know, you have, I think, Mr. DuBelay if I'm
12 not mistaken is the seventh attorney on this case who has
13 represented you. You have repeatedly asked me to excuse
14 counsel because you did not agree with their defense strategy.

15 You had said in the past that you thought that
16 certain motions were not being made on your behalf and that
17 you for those reasons did not feel that counsel was adequately
18 representing you.

19 I explained to you that an attorney trained in the
20 law particularly in the defense of individuals charged with
21 violating the law have a degree of training and experience and
22 expertise in defending somebody from charges that a lay person
23 does not have.

24 I understand, sir, that you have had experience with
25 the criminal justice system but as you point out these are

Faretta Hearing

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1 very serious charges and your liberty is at stake if you are
2 convicted of the charges you will be subject to mandatory life
3 terms and as you may recall this started out as you a death
4 eligible case, we did appoint two counsel for you.

5 At the end of that proceeding, you chose one lawyer,
6 David stern over Mr. Oksenhendler who is also appointed to
7 represent you. Mr. Stern was learned counsel who has been
8 qualified to represent individuals in death-eligible cases.

9 At your request, I continued with Mr. Stern and
10 excused Mr. Oksenhendler. After some time, the Court received
11 motions from the defendants, Mr. Stern filed motions on your
12 behalf and you modified to disqualify him or to substitute
13 him. And I agreed. Mr. Stern explained that he felt that he
14 filed motions that were appropriate and he was not going to
15 file motions that he did not believe were unwarranted or were
16 not in your best interests.

17 Mr. DuBelay has filed numerous defense motions on
18 your behalf as well. But he is a trained defense lawyer, a
19 criminal defense lawyer, and he filed the motions that he
20 thought were appropriate. You have written me occasionally
21 letters regarding pending motions or decided motions.

22 In those letters, you have made statements which I
23 believe are against your penal interest, meaning, that you've
24 made statements that could have hurts your interests, hurt
25 your ability to be defended because you've made what are

Faretta Hearing

18

1 basically under law, under the Rules of Evidence, admissions.

2 Mr. DuBolay, throughout this process, in my view as
3 represented you vigorously, zealously, appropriately, and has
4 made motions that are appropriate and that cover the whole
5 range of possible motions that could be made on a client's
6 behalf both with regard to the charges and with regard to the
7 evidence. I have no doubt that he was zealous. I have no
8 doubt that his representation was appropriate and adequate.

9 I did warn you in the past that I could not keep
10 changing lawyers and changing lawyers because it would have
11 the effect of delaying trial. Each time a new lawyer comes on
12 board, that lawyer has to familiarize himself or herself with
13 a very large volume of evidence. As I said, if you are
14 convicted of these charges, I will have no discretion in your
15 sentence with regard to some of these charges which would
16 carry a mandatory life sentence and it is for that reason I
17 want you to have every possible opportunity to be defended
18 appropriately.

19 If you do proceed pro se, the same rules of evidence
20 and the same rules of procedure will apply to you as they
21 apply to any other person whether represented or
22 unrepresented. I cannot make accommodations for your lack of
23 legal training, you will be held to the same standards. I
24 will not admit evidence that is not admissible because it is
25 irrelevant or it is unduly prejudicial or because it is not

Faretta Hearing

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1 appropriately admissible under the Federal Rules of Evidence,
2 the same rules will apply to you.

3 And, for that reason, my concern is that you are
4 placing yourself at grave risk if you do proceed pro se
5 because you will not know when to object. You will not know
6 what evidentiary objections could be lodged against the
7 Government's evidence. As I will tell the jury, and I'm
8 telling you now, you have no obligation to present any
9 evidence whatsoever. You have no obligation to call witnesses
10 to testify on your behalf. And you have no obligation to
11 cross-examine witnesses.

12 But Mr. DuBolay, in his legal judgment, and based on
13 his training, may decide that cross-examining witnesses
14 vigorously, which he's trained to do, objecting to evidence
15 based on the rules of evidence and asking me to compel
16 witnesses to come to court on your behalf are appropriate.
17 And if he makes those calls, and I rule that the evidence is
18 admissible, or that the witness has appropriate relevant
19 information, he will be able to present those witnesses and
20 that evidence and to launch into those cross-examinations.

21 Now, one thing that you should be aware of, and I
22 know you're aware of it, but I'm going to remind you about
23 this and I want this to be part of this record because I am
24 making a record of what is going on here so that if there is
25 an appeal the Court of Appeals will have an appropriate record

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1 to review.

2 You made a proffer statement to the
3 Assistant U.S. Attorney in Pennsylvania. I have ruled that
4 that proffer statement was not made under any duress but
5 rather it was knowing and voluntary and you were represented
6 by a Federal Defender in Pennsylvania during that proffer.

7 Those statements that you made during that proffer
8 could be very harmful to your interests because you made
9 admissions of some very serious offenses, that you committed
10 some very serious offenses.

11 Now, generally, under the terms of the proffer
12 agreement the Government cannot use that proffer against you.
13 But certain events may trigger the use of that proffer and
14 those are set forth in the proffer agreement.

15 So, for example, if you testify in a manner that
16 contradicts statements that you made in your proffer or if you
17 make arguments to the jury or raise issues that contradict,
18 that could trigger a waiver, meaning, that the statements may
19 come in.

20 The Government may use those statements against you.
21 Your statements and your admissions will be very harmful to
22 your interests. And Mr. DuBelay as a trained, experience,
23 highly regarded attorney, defense attorney, will be very
24 careful to do everything in his power to prevent any of the
25 circumstances to occur that would trigger the waive and would

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1 allow that proffer that you made to be used against you. And
2 I saw evidence of that skill when we had testimony during your
3 suppression hearing. He was very careful to not trigger the
4 use of that.

5 So when he examined the federal defender, when he
6 asked other parties who were present during your waiver, he
7 was very came, and this is something that I think underscores
8 that Mr. DuBelay is knowledgeable, skilled, and highly
9 qualified to represent you. I cannot force you to proceed
10 with a lawyer but I do have to assure myself that any waiver
11 of counsel is made knowingly and voluntarily and that you
12 fully understand the very serious negative consequences that
13 could result, and that are likely to result, if you do proceed
14 pro se.

15 There is a lot of evidence here that the Government
16 is going to present they do have the burden to prove you
17 guilty beyond a reasonable doubt. But based on what I have
18 seen so far based on the submissions that the Government has
19 made, and the correspondence from your lawyers and
20 Mr. Garrett's lawyer, I believe that these are -- there are
21 cooperating witnesses, fact witnesses, and there's documentary
22 evidence that will be very difficult for someone who is not
23 skilled to counter and that's why I would urge you to think
24 very carefully about not having me dismiss Mr. DuBelay.

25 Now, let me ask you, do you understand what I've

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1 told you so far?

2 DEFENDANT RIVERA: Absolutely.

3 THE COURT: Can you just tell me in your own words
4 what you understand about what I've told you?

5 DEFENDANT RIVERA: You said a lot and --

6 THE COURT: What is your understanding about why --

7 DEFENDANT RIVERA: I'm going to get fried without a
8 lawyer, that's my understanding. You're telling me that more
9 than likely I probably will be found guilty.

10 THE COURT: Well, no.

11 DEFENDANT RIVERA: That's my understanding. You
12 asked me.

13 THE COURT: What I'm saying is that Mr. DuBelay,
14 your defense lawyer, has the skill, the passion. He has a
15 concern for your interests to do what he can for you.

16 DEFENDANT RIVERA: I believe it.

17 THE COURT: He has the legal judgment and training
18 to look at the evidence and to know what objections would be
19 appropriate to make both as to documents and testimony. He
20 knows when to jump up and say, "objection." He knows what
21 rule to invoke so that I will know why he's objecting. He
22 knows how to present evidence and he knows how to
23 cross-examine witnesses and to look for their points in their
24 testimony that would be ripe ground to have the witnesses's
25 credibility or motives or bias to be put before the jury.

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1 So I have no way to predict what the jury will do.
2 What I'm saying is given the volume of the evidence the
3 Government has a lot of evidence that it intends to present.
4 Mr. DuBelay, with his legal training, would be well suited and
5 qualified to defend you against these very serious charges.
6 Do you understand what I've said so far.

7 DEFENDANT RIVERA: Absolutely.

8 THE COURT: Now, I know that you have been in the
9 past, you have in the past been tried before a court. You
10 have, in the past, had defense lawyers represent you and you
11 have some familiarity with the criminal justice system but it
12 doesn't mean you have the requisite skill and training to be
13 an effective advocate for yourself. Even a graduate fresh out
14 of law school would not be qualified. Even if he or she have
15 passed the bar with flying colors, it would be I mean he or
16 she would be licensed and qualified legally to represent a
17 client. But in terms of having the ability and experience to
18 really know how to conduct themselves through a trial on
19 behalf of a client who is facing very serious charges.

20 DEFENDANT RIVERA: It's scary.

21 THE COURT: You would want someone with
22 Mr. DuBelay's experience. The experience of all the other
23 lawyers, several other lawyers, who had been appointed from
24 the Court's CJA panel before Mr. DuBelay to represent you. At
25 some point, we have to say, you know, this case has to be

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1 tried and that's why I did tell you at the last point where we
2 substituted your current counsel for Mr. DuBolay that there
3 would be no further lawyers appointed because the delay in
4 this trial, given the preparation, would be tremendous.

5 So, for that reasons, I wanted you to have a heads
6 up from day one of Mr. DuBolay's appointment that no other
7 lawyers would be appointed because at some point everyone has
8 to get ready for trial. The attorneys have been working hard
9 all weekend long. We got submissions all weekend long from
10 Mr. DuBolay. And, you know, he's been working around the
11 clock on your behalf.

12 Now, the dangers and disadvantages that you face
13 going pro se are very significant and I want you to be sure
14 that you fully understand those risks.

15 Do you, sir?

16 DEFENDANT RIVERA: Yes, I do.

17 THE COURT: Would you try to tell me what you
18 understand those risks to be?

19 DEFENDANT RIVERA: That I may not know when to
20 object. I don't know the proceedings as well as someone who
21 is experienced. I get that totally. And I'm taking a great
22 chance representing myself.

23 THE COURT: I think the risks to you, sir, are more
24 serious and more significant if you proceed pro se than if you
25 continue with Mr. DuBolay and that is my view for any case but

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1 particularly where you face serious charges and if convicted,
2 serious penalties.

3 I want you to be well aware that you are putting
4 yourself at greater risk if you go pro se than if you continue
5 with Mr. DuBolay.

6 Do you understand that, Mr. Rivera?

7 DEFENDANT RIVERA: Yes, I do. The way the
8 Government is picturing me out to be, I would want somebody
9 like me to spend the rest of their life in jail. Mr. DuBolay
10 is doing an excellent job to where he believes the case has to
11 go; however, I think Mr. DuBolay somewhere in himself believes
12 I'm guilty and is fighting the case as if I'm guilty, hence is
13 why I feel I'd like to take this into my own hands.

14 THE COURT: Sir, what a lawyer thinks is less
15 important than what a lawyer does based on what he or she has,
16 based on his or her review of the evidence, and based on his
17 or her review or conversations with his or her client.

18 Mr. DuBolay, as far as I can see, and based on what
19 he submitted to me for review and decision, has been fighting
20 very hard for you and has indicated in all of his submissions
21 in his belief in the presumption of your innocence.

22 There is nothing that he has said or done that hints
23 in the least that he is operating from an assumption of guilt.
24 He is absolutely fighting and holding on to the presumption of
25 innocence that you are entitled and to which, you know, again

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1 you're entitled to have throughout these proceedings.

2 DEFENDANT RIVERA: If you grant it can I have a
3 stand-by counsel?

4 THE COURT: I would absolutely give you stand-by
5 counsel.

6 DEFENDANT RIVERA: Can I have him as my stand-by
7 counsel?

8 THE COURT: Of course. Of course you can have
9 Mr. DuBoly as your stand-by counsel.

10 Let me ask you, sir, are you feeling physically
11 well? Have you been sick recently physically?

12 DEFENDANT RIVERA: I'm good. I'm well physically.

13 THE COURT: I understand that this is very
14 stressful.

15 DEFENDANT RIVERA: Yes.

16 THE COURT: I have no doubt. And I do try every day
17 to imagine, you know, what it must be like from your
18 perspective, and I understand how serious this is, but I want
19 you to tell me how you're feeling in terms of your clarity of
20 mind.

21 Do you understand what I've said to you, sir?

22 DEFENDANT RIVERA: I would like to use the term
23 "overstand."

24 THE COURT: You "overstand," meaning, you do
25 understand what I said?

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1 DEFENDANT RIVERA: Yes.

2 THE COURT: Do you understand how serious the
3 charges are against you?

4 DEFENDANT RIVERA: We're speaking about life in
5 jail.

6 THE COURT: Do you understand how serious the
7 penalties are if you are convicted?

8 DEFENDANT RIVERA: Life in jail.

9 THE COURT: And do you understand that the
10 Government has a tremendous amount of evidence that they
11 intend to present to the jury?

12 DEFENDANT RIVERA: Yes.

13 THE COURT: To prove you guilty beyond a reasonable
14 doubt.

15 DEFENDANT RIVERA: Yes.

16 THE COURT: All right.

17 Do you understand that Mr. DuBolay, who is a well
18 trained, well regarded, experienced criminal defense lawyer
19 has more experience and more training in defending individuals
20 at trial than you do?

21 DEFENDANT RIVERA: Absolutely.

22 THE COURT: All right.

23 Well, I am glad you understand. Have you ever
24 studied the law on your own or taken law classes?

25 DEFENDANT RIVERA: No.

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1 THE COURT: Have you ever represented yourself
2 before in a criminal case?

3 DEFENDANT RIVERA: Other than putting in pro se
4 motions, no.

5 THE COURT: Do you understand the charges that have
6 been brought against you, sir?

7 DEFENDANT RIVERA: Yes.

8 THE COURT: And are you aware of the maximum penalty
9 for those charges?

10 DEFENDANT RIVERA: Absolutely.

11 THE COURT: All right. And what's the maximum
12 penalty that you may face?

13 DEFENDANT RIVERA: Life.

14 THE COURT: And do you understand that that's a
15 mandatory life sentence, meaning, I don't have any discretion.
16 Do you understand?

17 DEFENDANT RIVERA: I want you to give me the most
18 you can if I'm found guilty. I'm an animal, I believe I need
19 to be in jail with all the things that they alleged on me. I
20 shouldn't be out in the world. If that's true, what they're
21 alleging?

22 THE COURT: Well, it's going to be up to the jury to
23 decide whether the Government has proven that beyond a
24 reasonable doubt.

25 Do you understand?

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1 DEFENDANT RIVERA: Yes. I understand.

2 THE COURT: And do you also understand, given all
3 the charges against you, that I do have the discretion to
4 order that your sentences will be served consecutively,
5 meaning, one after another rather than altogether which would
6 be the word "concurrently."

7 DEFENDANT RIVERA: I thank you when the time comes,
8 if it comes. I don't mean that in a bad way. I'm very
9 serious about that.

10 THE COURT: All right.

11 When, if you are found guilty, I will have to come a
12 number of different factors. But in the end, if there's a
13 mandatory minimum sentence, I don't have the lawful ability to
14 give you anything less than what the law requires.

15 Do you understand?

16 DEFENDANT RIVERA: Yes, I do.

17 THE COURT: If you do represent yourself, do you
18 understand that you would be on your own; that it would be up
19 to you and not up to Mr. DuBolay to object to any of the
20 evidence or testimony offered by the Government and to
21 cross-examine witnesses.

22 DEFENDANT RIVERA: Yes, I do.

23 THE COURT: And cross-examination is a skill. One
24 thing that lawyers train themselves to do is to make sure that
25 they can control a witness who is being cross-examined and to

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1 make sure that whatever comes out of that witness's mouth
2 during cross-examination is what that lawyer hopes to achieve
3 through generally what's called a "limited" or
4 cross-examination form that elicits yes-or-no answers. And
5 that is a skill that is developed through training and
6 experience and also law school mock trial. There are training
7 courses, trial training courses, for lawyers that they attend.
8 That is a skill.

9 Do you understand?

10 DEFENDANT RIVERA: Yes.

11 THE COURT: The last thing you want on
12 cross-examination is for a witness to say something that you
13 didn't anticipate that will be very damaging to you.

14 Do you understand?

15 DEFENDANT RIVERA: Yes.

16 THE COURT: I would not be able to tell you how to
17 try your case or what questions to ask or how to ask the
18 questions or what objections to make.

19 Do you understand?

20 DEFENDANT RIVERA: Yes.

21 THE COURT: I will have the ability to control my
22 courtroom which means that I can rule that you cannot ask
23 certain questions and you will have to abide by my rulings.

24 Do you understand?

25 DEFENDANT RIVERA: Yes.

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1 THE COURT: Are you familiar with the Federal Rules
2 of Evidence?

3 DEFENDANT RIVERA: I'm trying to familiarize myself
4 now. I understand some of them but I have gone through it.

5 THE COURT: Well, Mr. DuBelay is familiar with the
6 Federal Rules of Evidence he's made motions on your behalf
7 invoking those Federal Rules. And I have no doubt that given
8 his experience and skill that he does, he is familiar with
9 those rules and he will use them to defend you zealously from
10 those charges.

11 Do you understand?

12 DEFENDANT RIVERA: Yes, I do.

13 THE COURT: Those rules of evidence, what evidence
14 may come in at the trial both on your own, if you decide to
15 present evidence, and on the Government's end.

16 Do you understand?

17 DEFENDANT RIVERA: Yes, I do.

18 THE COURT: And you must comply with those rules and
19 my rulings.

20 Do you understand?

21 DEFENDANT RIVERA: Yes.

22 THE COURT: And even if you are upset or you
23 disagree with my rulings you will be expected to conduct
24 yourself in an appropriate and professional way just as every
25 lawyer and every person in this courtroom is required to

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1 conduct himself or herself appropriately, professionally, and
2 with the proper conduct in Court.

3 Do you understand?

4 DEFENDANT RIVERA: Yes.

5 THE COURT: You may be upset, you may be
6 disappointed but you have to steel yourself and conduct
7 yourself.

8 Do you understand?

9 DEFENDANT RIVERA: I will behave.

10 THE COURT: You have been a wonderful presence in
11 this courtroom thus far. I haven't had any issues with your
12 conduct.

13 Are you familiar with the Federal Rules of Criminal
14 Procedure and the Sentencing Guidelines which are advisory as
15 well as the statutes that regard how judges should impose
16 sentence if a defendant is found guilty?

17 DEFENDANT RIVERA: I am.

18 THE COURT: All right. The rules of criminal
19 procedure would also govern how this case unfolds and is
20 conducted and those rules will have to be enforced against all
21 parties.

22 Do you understand?

23 DEFENDANT RIVERA: Yes, I do.

24 THE COURT: I want to tell you both as a judge and
25 as someone who has watched this case unfold over the past

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1 several years that, my opinion, Mr. DuBolay is a trained and
2 experienced criminal defense lawyer and a member of this
3 Court's Criminal Justice Act Panel will defend you far better
4 and more zealously and more appropriately than you will be
5 able to and I believe.

6 And it is my strong opinion, that it will be very
7 unwise of you to try to represent yourself given your lack of
8 familiarity with the law. You're familiar with the facts.
9 You are familiar with some of the witnesses who may testify.
10 You are familiar with some of the evidence that may be
11 presented but you are not familiar with the law and how to use
12 the law with those facts to present the best possible defense.

13 Do you understand?

14 DEFENDANT RIVERA: Yes, I do.

15 THE COURT: I do not believe that you are familiar
16 as you should be with Court procedure, the rules of evidence,
17 or the criminal rules of procedure. And that Mr. DuBolay has
18 a far superior understanding and far superior experience with
19 all of those rules and for that reason he will best be able to
20 use those rules to defend you.

21 Do you understand?

22 DEFENDANT RIVERA: Yes.

23 THE COURT: I urge you to think carefully and to
24 choose to have Mr. DuBolay represent you. I'm urging you to
25 do that, sir. I think your best interests would be to have

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1 Mr. DuBolay represent you.

2 Do you understand?

3 DEFENDANT RIVERA: Yes.

4 THE COURT: And in light of the penalties that you
5 would face if you are convicted, in light of the Government's
6 evidence that they intend to present, and in light of all the
7 difficulties that you face if you represent yourself, do you
8 still wish to represent yourself and give up your right to be
9 rented by an attorney?

10 DEFENDANT RIVERA: Yes, I do.

11 THE COURT: Is your decision voluntary?

12 DEFENDANT RIVERA: Yes, it is.

13 THE COURT: Did anyone threaten or force you or put
14 any pressure on you to proceed pro se?

15 DEFENDANT RIVERA: Other than what I explained
16 earlier that I can't ask for another lawyer, the Court has
17 asked me not to ask for another lawyer, and I don't believe
18 Mr. DuBolay is doing all that I would want and like him to do
19 as far as defending my case.

20 THE COURT: Do you understand that Mr. DuBolay's
21 reluctance to take certain actions could be in part because
22 based on his experience and knowledge of the law it would not
23 be appropriate for him to take those steps?

24 DEFENDANT RIVERA: Yes.

25 THE COURT: And do you understand that even if you

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1 are pro se, I may not permit you to, or if you do make certain
2 motions, they will not be successful, let me put it that way.

3 DEFENDANT RIVERA: Yes.

4 THE COURT: All right. Just one moment.

5 (A brief pause in the proceedings was held.)

6 THE COURT: Mr. Rivera, is your decision to proceed
7 pro se entirely voluntary?

8 DEFENDANT RIVERA: Yes.

9 MS. SHARKEY: Can I grab something?

10 THE COURT: Yes.

11 MS. SHARKEY: Sorry for interrupting. Thank you.

12 THE COURT: Do you want to take a few minutes to
13 speak to Mr. DuBoley?

14 DEFENDANT RIVERA: Please.

15 THE COURT: All right. Would you like to speak to
16 each other?

17 MR. DUBOLAY: Sure.

18 THE COURT: The microphones, I'm going to turn off.
19 They're off.

20 (A brief pause in the proceedings was held.)

21 THE COURT: Mr. Rivera, did you have a chance to
22 discuss what I've discussed with you with Mr. DuBoley?

23 DEFENDANT RIVERA: Yes.

24 THE COURT: And after having spoken to Mr. DuBoley,
25 sir, and in light of the penalty that you may face if you are

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1 convicted, and in light of the difficulties and complexities
2 in this case and the volume of evidence that the Government
3 intends to introduce against you, and in light of all the
4 warnings and advice and opinion that I have made urging you to
5 continue with Mr. DuBolay, do you still wish to proceed pro
6 se, sir?

7 DEFENDANT RIVERA: Yes, ma'am.

8 MR. DUBOLAY: May I have one second, please.

9 THE COURT: Yes.

10 (A brief pause in the proceedings was held.)

11 MR. DUBOLAY: Your Honor, we are ready.

12 THE COURT: You have had opportunity to consult with
13 Mr. DuBolay and you wished to proceed pro se and I want to
14 find out and make sure that based on your conversations with
15 Mr. DuBolay, what is your decision, sir?

16 DEFENDANT RIVERA: Go pro se.

17 THE COURT: All right. And understands you have a
18 constitutional right to a lawyer. The United States
19 Constitution guarantees you the right to be represented and
20 Mr. DuBolay has been appointed to represent you.

21 Do you understand?

22 DEFENDANT RIVERA: Yes, I do.

23 THE COURT: But you are waiving that constitutional
24 right to have an opportunity represent you.

25 Is that what you wish to do?

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1 DEFENDANT RIVERA: I feel I have to.

2 THE COURT: Well, no one has to. Why do you have
3 to?

4 DEFENDANT RIVERA: Because Mr. DuBolay is not
5 representing me the way I would like him to or the way, you
6 know, just we are on two different pages.

7 THE COURT: Well, what you must understand is --

8 DEFENDANT RIVERA: He has the professionalism, I
9 understand that, and I just see it different and opposed to
10 because I feel like I'm going to be found guilty if I continue
11 with him, so if I'm -- I don't have anything to lose at this
12 point. I feel like I might as well do my best and do what I
13 can it.

14 THE COURT: Okay. I want you to understand before
15 you say that Mr. DuBolay is representing you the way that you
16 want to be represented, I want to address that comment that
17 you made.

18 You may represent yourself but you should not assume
19 that evidence or statements or arguments that you might want
20 to make, motions that you might want to make on your own
21 behalf are necessarily going to be decided any differently
22 than if Mr. DuBolay made them.

23 I don't know what in particular you would -- you
24 have identified as Mr. DuBolay's, you know, lack of motion
25 practice on your behalf. I have gotten some sentence of what

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1 will you have wanted to do based on your letters where, you
2 know, you've tried to, for example, point out contradictions
3 between what one witness said and another witness said. And I
4 have reviewed, I have reviewed the testimony and the documents
5 and the statements. And I've reviewed your letters even
6 though Mr. DuBoly didn't make those on your behalf and I'm
7 not technically required to review what you've submitted. I
8 have reviewed them because I want to make sure that everything
9 is before me and that nothing is overlooked. And, in my view,
10 Mr. DuBoly has not overlooked anything. I've looked at what
11 you've submitted to me on your own.

12 I don't think it's helpful to you, sir. If
13 anything, it's creating a record of admissions that you've
14 made that could be used against you and that's been my
15 concern. And that's why if a letter comes directly to me
16 rather than through our clerk's office, I will ask
17 Mr. DuBoly, as your very experienced counsel, whether he
18 thinks that letter ought to be posted on the docket.

19 And, you know, he has told me no and I would imagine
20 that the reason for the no is that you're making statements
21 that are going to come back or could be used against you.

22 So I don't want you to have some misunderstanding
23 that because you are pro se that motions that you wish
24 Mr. DuBoly had made and didn't make that you may try to make
25 now that you're pro se would necessarily come out in your

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1 favor and that's true for Mr. Stern and Mr. Oksenhendler and
2 any other lawyer who has represented you and has been in a
3 position to make motions on your behalf.

4 Now, one thing I would like to just make sure that
5 nobody has threatened you or forced you to proceed pro se; is
6 that correct, sir?

7 DEFENDANT RIVERA: Only threats I got is to make me
8 make them proffers that I made. Other than that nobody has
9 threatened me.

10 THE COURT: All right.

11 Do you understand that you have a constitutional
12 right to be represented by an attorney throughout these
13 proceedings from beginning to end.

14 Do you understand?

15 DEFENDANT RIVERA: Only I feel like I haven't an had
16 attorney that was representing me properly to my likeness
17 other than that, yes, I do understand that I'm entitled to an
18 attorney.

19 THE COURT: All right, sir.

20 I do find, then, that you have knowingly and
21 voluntarily waived your right to be represented by counsel at
22 your request. I will ask Mr. DuBolay to continue to be
23 stand-by counsel. Mr. DuBolay may offer you advice and assist
24 you with your defense but he will not be allowed to take over
25 your defense.

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1 Your defense will be handled by you. You will be
2 obligated to make the proper objections to any evidence that
3 you think should not be admitted against you and you should
4 familiarize yourself with the prior rulings that I've made. I
5 make rulings, I'm not going to revisit them. I make rulings
6 about evidence that you believe should be suppressed. I'm not
7 going to revisit them simply now because you're pro se.

8 Do you understand?

9 DEFENDANT RIVERA: I understand, I'm trying to
10 absorb that.

11 THE COURT: Because this case I've given everybody
12 full opportunity. I've read your submissions, Mr. Rivera.
13 I've read Mr. DuBoley's submissions on your behalf and all the
14 defense counsel before him and I've read the Government's
15 motions. I've made decisions they're not going to be
16 revisited. I'm not going to change my mind, we're going
17 forward with the trial.

18 Do you understand?

19 DEFENDANT RIVERA: Yes, ma'am.

20 THE COURT: Mr. DuBoley, is there anything that
21 you'd like to say for the record?

22 MR. DUBOLAY: No, your Honor.

23 THE COURT: All right. Will you continue to act as
24 stand-by counsel for Mr. Rivera?

25 MR. DUBOLAY: Of course, your Honor.

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1 THE COURT: I will ask the marshals to bring
2 Mr. Garrett and Ms. Sharkey back in and, Ms. Jackson, would
3 you please ask the Government to return to the table.

4 (A brief pause in the proceedings was held.)

5 MS. SHARKEY: Judge, I have an ex parte motion for
6 Mr. Garrett with the Court. This was brought up last week
7 because it is ex parte because it reveals defense strategy.

8 THE COURT: Write "ex parte" on it.

9 (A brief pause in the proceedings was held.)

10 THE COURT: All right. We have Mr. Garrett and
11 Mr. Rivera and the Government back in the room as well as
12 Ms. Sharkey and Mr. DuBolay.

13 Just for the record, I have granted Mr. Rivera's
14 application to proceed pro se and Mr. DuBolay has been
15 appointed to be stand-by counsel.

16 MS. SHARKEY: I object. I object. And I will alert
17 the Court that I will also be filing a severance motion again
18 and I would ask for the opportunity to file that, with all due
19 respect to Mr. Rivera, the harm that will flow over to
20 Mr. Garrett based on Mr. Rivera's acting not only as counsel
21 but also purposefully, respectfully, bringing in his prior
22 statements, refusing to wear clothes that are court
23 appropriate. There were jurors who commented on that in their
24 questionnaire that he must be a thug and he must be guilty.
25 It's not spillover prejudice, it's a tsunami as far as

Colloquy

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1 prejudice that enures to Mr. Garrett and I'll memorialize
2 this.

3 I know the Court has ruled but I just wanted to
4 alert the Court that we will be seeking severance and likely
5 multiple mistrial motions as we go through.

6 THE COURT: All right. Let me just alert the
7 parties to an occurrence involving our jurors. I was advised
8 by the jury clerks during this hearing that I was having with
9 Mr. Rivera that Juror No. 210, in front of the entire jury
10 pool, began yelling and screaming at the jury department
11 clerks about the fact that he had to check his cell phone with
12 the marshals. Five CSOs had to be called to just calm the
13 situation down and maintain order in our jury room. And based
14 on what I have learned from Ms. McCarthy about this juror's
15 conduct, I have ordered him excused.

16 So he or she, I'm assuming it's a he.

17 MS. MERKL: It's a male.

18 THE COURT: Is excused. Juror No. 210 is out of the
19 pool.

20 MS. SHARKEY: And I take it you'll talk to the
21 venire about any effect this may have on them or any
22 conversations they had with him prior to that outburst on a
23 previous day.

24 THE COURT: Yes. Ms. Merkl, you look like you're
25 standing ready to be heard.

Colloquy

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1 MS. MERKL: Thank you, your Honor.

2 The Government also has concerns about the Court's
3 determination to allow Mr. Rivera to proceed pro se. We
4 obviously were not present for the hearing as to the basis
5 that the Court made to make the determination the Court made.
6 We're not seeking to relitigate the issue but we just want to
7 ensure, of course, for the record that the Court's
8 determination was based on all of the criteria set forth in
9 Farettta and its progeny in the Second Circuit and I'm sure it
10 was.

11 But given the sort of back and forth and back and
12 forth that this case has been going on for so many years with
13 regard to Mr. Rivera's desire to go pro se, the Government is
14 just concerned as the Court was on Friday that I guess it was
15 Wednesday of last week that Mr. Rivera is, you know, not
16 necessarily acting completely rationally at this point and is
17 acting out of emotion or acting out of fear or acting out of
18 some other impulse and not fully rationally deciding that this
19 is actually in his best interests.

20 MS. SHARKEY: Or mental illness. Mr. Rivera has
21 been wacky.

22 THE COURT: Well.

23 MS. SHARKEY: Respectfully.

24 THE COURT: I have not observed any wackiness and I
25 have no evidence before me to doubt that Mr. Rivera is

Colloquy

44

1 physically well, that he is coherent. That he fully
2 understands all that I have said to him and warned him about
3 the risks of going pro se. I am confident that he understand
4 as I've talked to him about my view of Mr. DuBelay's
5 representation and I have no doubt that he knowingly and
6 voluntarily and rationally, with full understanding of the
7 risks, has chosen to proceed pro se.

8 Now, I understand that I have perhaps enhanced
9 discretion to have denied his application had this trial
10 started, but I don't believe technically within the case law
11 this case has started despite the fact that we have over 140
12 jurors waiting downstairs to go through jury selection.

13 I am concerned about the outburst by the juror. I
14 don't know really what was said I perhaps could ask
15 Ms. McCarthy to come up and convey but rather than have her
16 continue to scream and yell in front of the other jurors. It
17 would be safe to excuse him and have him leave the courthouse.

18 The issue is whether we proceed with the selection
19 today and then decide whether or not we are going to sever or
20 whether it makes sense to decide the severance motion first
21 and then proceed with, unfortunately, a new jury selection
22 which I'm reluctant to do because this would result in a huge
23 waste of everyone's time and a tremendous waste of the Court's
24 resources which are scarce.

25 MS. SHARKEY: I understand that. I do think that

Colloquy

45

1 the prejudice to Mr. Garrett is overwhelming with Mr. Rivera
2 going pro se. Let's put aside what happened in the jury room
3 although, obviously, the Court is going to investigate that
4 and we'll find out.

5 But I imagine that Mr. Rivera will purposefully kick
6 open every single door to allow the introduction of evidence
7 that the Court may have kept out and I notice Mr. Rivera is
8 nodding his head. I imagine that Mr. Rivera will do
9 everything he can to do prejudice this jury against himself
10 and perhaps against Mr. Garrett. It's a mess. And I think
11 Mr. Garrett's opportunity to have a fair trial is negated by
12 Mr. Rivera's actions despite the Court's best intentions at
13 ameliorating that sort of issue.

14 MS. MERKL: Your Honor, I would also just note and,
15 you know, we're happy to do further research that in
16 United States v. Stevens, the Second Circuit indicated that
17 the Court does have increased discretion to whether or not to
18 determine a defendant to switch to pro se status after the
19 commencement of jury selection and that is
20 United States v. Stevens, 83 F.3d, 60. Second Circuit 1996.

21 And one of the Government's concerns is sort of the,
22 you know, the jury was already introduced to Mr. DuBoyle they
23 were already told this is the lawyer for Mr. Rivera and now to
24 have Mr. Rivera appear pro se I would be concerned. We would
25 obviously ask for some sort of limiting instruction to advise

UNITED STATES DISTRICT COURT

Eastern District of New York

UNITED STATES OF AMERICA

v.

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

Paul Rivera

★ DEC 29 2016 ★

BROOKLYN OFFICE

JUDGMENT IN A CRIMINAL CASE

Case Number: 13CR149[KAM]

USM Number: 46704-053

Donald DuBoulay, Esq.

Defendant's Attorney

THE DEFENDANT:

☐ pleaded guilty to count(s)☐ pleaded nolo contendere to count(s)
which was accepted by the court.☒ was found guilty on count(s) 1 through 7, and Counts 9 through 15 of a fifteen-count, third superseding indictment
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. § 1962(c)	Racketeering, Class A Felony	2/12/2013	1sss
18 U.S.C. § 1963(a)			
18 U.S.C. § 1962(d),	Racketeering Conspiracy, Class A Felony		2sss
18 U.S.C. § 1963(a)			
18 U.S.C. § 2422(a)	Interstate Prostitution, Class C Felony		

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s)☒ The defendant not named in Count 8☒ Count(s) The remaining underlying indictments are ☒ dismissed on the motion of the United States

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

12/22/2016

Date of Imposition of Judgment

s/KAM

Signature of Judge

Kiyo A. Matsumoto., USDJ

Name and Title of Judge

12/22/2016

Date

DEFENDANT: Paul Rivera
CASE NUMBER: 13CR149[KAM]

ADDITIONAL COUNTS OF CONVICTION

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense</u>	<u>Count</u>
18 U.S.C. § 2422(a)	Interstate Prostitution, Class C Felony		3sss
18 U.S.C. § 1594(c), 1594(c), 1591(b)(1) and 1591(b)(2)	Conspiracy to Engage in Sex Trafficking and Sex Trafficking of Children, Class A Felony		4sss
18 U.S.C. § 1591(a)(1), 1591(a)(2), 1591(b)(1) and 1591(b)(2)	Sex Trafficking/Sex Trafficking of Children, Class A Felony		5sss
21 U.S.C. § 846, 21 U.S.C. § 841(b)(1)(A)	Conspiracy to Distribute and Possess with Intent to Distribute Heroin, Cocaine Base, Cocaine and Marijuana, Class A Felony		6sss
21 U.S.C. § 841(a)(1), 21 U.S.C. § 841(b)(1)(C)	Possession with Intent to Distribute Heroin and Cocaine, Class C Felony		7sss
18 U.S.C. § 1959(a)(5) 18 U.S.C. § 1959(a)(1)	Conspiracy to Commit Murder in -Aid-of Racketeering, Class C Felony Murder in-Aid-of Racketeering, Class A Felony		9sss 10sss
21 U.S.C. § 848(e)(1)(A), 21 U.S.C. § 848(e)(1)(A)	Murder While Engaged in Narcotics Trafficking Offense, Class A Felony		11sss
18 U.S.C. § 1512(b)(1), 18 U.S.C. § 1512(b)(2)(A)	Witness Tampering, Class C felony		12sss
18 U.S.C. § 1512(c)	Attempted Obstruction of Justice, Class C Felony		13sss
18 U.S.C. § 924(c)(1)(A)	Using, Carrying & Possessing a Firearm, Class A Felony		14sss
18 U.S.C. § 924(j)(1)	Causing Death Through Use of a Firearm, Class A felony		15sss

DEFENDANT: Paul Rivera
CASE NUMBER: 13CR149[KAM]

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:

SEE ATTACHMENT

☒ The court makes the following recommendations to the Bureau of Prisons:

The Court recommends that the BOP designate the defendant to a facility close to the NYC metropolitan area to facilitate family visits; and the BOP is requested to provide Mr. Rivera with mental health counseling, and substance abuse treatment or counseling as well as educational or vocational training.

☐ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____.

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____.

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
a _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: Paul Rivera
CASE NUMBER: 13CR149[KAM]

ADDITIONAL IMPRISONMENT TERMS

- I. For Counts 1: 20 years in custody to run concurrently with all other counts except Count 14.
- II. For Counts 2: 20 years in custody to run concurrently with all other counts except Count 14.
- III. For Counts 3: 20 years in custody to run concurrently with all other counts except Count 14.
- IV. For Counts 4: 18 years in custody to run concurrently with all other counts except Count 14.
- V. For Counts 5: 20 years in custody to run concurrently with all other counts except Count 14.
- VI. For Counts 6: 15 years in custody to run concurrently with all other counts except Count 14.
- VII. For Counts 7: 15 years in custody to run concurrently with all other counts except Count 14.
- VIII. For Counts 9: 10 years in custody to run concurrently with all other counts except Count 14.
- IX. For Counts 10: Life imprisonment to run concurrently with all other counts except Count 14.
- X. For Counts 11: 20 years in custody to run concurrently with all other counts except Count 14.
- XI. For Counts 12: 15 years in custody to run concurrently with all other counts except Count 14.
- XII. For Counts 13: 15 years in custody to run concurrently with all other counts except Count 14.
- XIII. For Count 14: 20 years, to run consecutively to all other counts.
- XIV. For Counts 15: 20 years in custody to run concurrently with all other counts except Count 14.

DEFENDANT: Paul Rivera
CASE NUMBER: 13CR149[KAM]

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>JVTA Assessment*</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$ 1,400.00	\$ 0.00	\$ 0.00	\$ 0.00

☐ The determination of restitution is deferred until _____. An *Amended Judgment in a Criminal Case (AO 245C)* will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss**</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
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TOTALS	\$ <u>0.00</u>	\$ <u>0.00</u>
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☒ Restitution amount ordered pursuant to plea agreement \$ 0. Victims did not complete loss affidavits.

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☐ the interest requirement is waived for the ☐ fine ☐ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: Paul Rivera
CASE NUMBER: 13CR149[KAM]

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A ☒ Lump sum payment of \$ 1,400.00 due immediately, balance due
- ☐ not later than _____, or
☒ in accordance with ☐ C, ☐ D, ☐ E, or ☒ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☒ Special instructions regarding the payment of criminal monetary penalties:
- The assessment shall be mailed to:
the Clerk of Court,
U.S. District Court,
225 Cadman Plaza East,
Brooklyn, NY 11201

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Defendant and Co-Defendant Names and Case Numbers (including defendant number), Total Amount, Joint and Several Amount, and corresponding payee, if appropriate.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☒ The defendant shall forfeit the defendant's interest in the following property to the United States:

Mr. Rivera shall forfeit the firearms and ammunition that were seized from Mr. Rivera's tattoo parlor and from a co-conspirator on August 25, 2011, as specified in the Order of Forfeiture, which is attached hereto and incorporated herein as part of this Judgment.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) JvTA assessment, (8) penalties, and (9) costs, including cost of prosecution and court costs.

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

★ DEC 29 2016 ★

BROOKLYN OFFICE

SLR:LDM:TRP
F. #2013R00169

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA

– against –

PAUL RIVERA,

Defendant.

-----X

FINAL
PRELIMINARY ORDER OF
FORFEITURE

13-CR-149 (S-3) (KAM)

WHEREAS, on June 25, 2015, the defendant PAUL RIVERA was convicted following a jury trial of all counts in which he was charged in the third superseding indictment, as follows: Count 1, Racketeering, in violation of 18 U.S.C. §§ 1962(c) and 1963(a); Count Two, Racketeering Conspiracy, in violation of 18 U.S.C. §§ 1962(c) and 1963(a); Count Three, Interstate Prostitution, in violation of 18 U.S.C. § 2422(a); Count Four, Conspiracy to Engage in Sex Trafficking and Sex Trafficking of Children, in violation of 18 U.S.C. §§ 1594(c), 1591(b)(1) and 1591(b)(2); Count Five, Sex Trafficking/Sex Trafficking of Children, in violation of 18 U.S.C. §§ 1591(a), 1591(b)(1) and 1591(b)(2); Count Six, Conspiracy to Distribute and Possess with Intent to Distribute Heroin, Cocaine Base, Cocaine and Marijuana, in violation of 21 U.S.C. §§ 846, 841(b)(1)(A); Count Seven, Possession with Intent to Distribute Heroin and Cocaine, in violation of 21 U.S.C. §§ 841(a)(1), 841(b)(1)(C); Count Nine, Conspiracy to Commit Murder in-Aid-of Racketeering, in violation of 18 U.S.C. § 1959(a)(5); Count Ten, Murder in-Aid-of Racketeering, in violation of 18 U.S.C. § 1959(a)(1); Count Eleven, Murder While Engaged in Narcotics

Trafficking Crime, in violation of 21 U.S.C. § 841(e)(1)(A); Count Twelve, Witness Tampering, in violation of 18 U.S.C. §§ 1512(b)(1) and 1512(b)(2)(A); Count Thirteen, Attempted Obstruction of Justice, in violation of 18 U.S.C. §§ 1512(c)(2); Count Fourteen, Using, Carrying and Possessing a Firearm, in violation of 18 U.S.C. § 924(c)(1)(A); and Count Fifteen, Causing Death Through Use of a Firearm, in violation of 18 U.S.C. § 924(j), and;

WHEREAS, the Court has found by a preponderance of the evidence that, pursuant to Fed. R. Crim. P. 32.2(b)(1)(A) and pursuant to 18 U.S.C. § 924(d)(1) and 28 U.S.C. § 2461(c), the defendant must forfeit all right, title and interest in the following (the “Seized Firearms and Ammunition”):

- a. one Colt semi-automatic .25 caliber pistol with a silver and black handle, bearing serial number 254498;
- b. one silver slide for a .380 caliber semi-automatic pistol;
- c. one .380 caliber semi-automatic ammunition round;
- d. one gray magazine for a .380 automatic pistol containing four (4) .380 rounds, all of which were seized from 361B Sutter Avenue Brooklyn, New York, on or about August 22, 2012;
- e. one Llama semi-automatic .45 caliber firearm, bearing serial number 71-04-12570-01;
- f. one Colt semi-automatic .45 caliber firearm, bearing serial number PG008894; and
- g. 25 rounds of .45 caliber ammunition, all of which were seized from a coconspirator in Brooklyn, New York seized on or about August 25, 2011;

as firearms or ammunition involved in or used in a knowing violation of 18 U.S.C. § 924 (c)(1)(A) and 18 U.S.C. § 924(j), and/or as substitute assets, pursuant to 21 U.S.C. § 853(p).

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, as follows:

1. Pursuant to 18 U.S.C. § 924(d)(1), 28 U.S.C. § 2461(c) and 21 U.S.C. § 853(p), the defendant shall forfeit to the United States all right, title and interest in the Seized Firearms and Ammunition.
2. Upon entry of this Preliminary Order of Forfeiture (“Preliminary Order”), the United States Attorney General or her designee is authorized to seize the Seized Firearms and Ammunition and to conduct any proper discovery, in accordance with Fed. R. Crim. P. 32.2(b)(3) and (c), and to commence any applicable proceeding to comply with statutes governing third-party rights, including giving notice of this Preliminary Order.
3. The United States shall publish notice of this Preliminary Order, in accordance with the custom and practice in this district, on the government website www.forfeiture.gov, of its intent to dispose of the Seized Firearms and Ammunition in such a manner as the Attorney General or her designee may direct. The United States may, to the extent practicable, provide direct written notice to any person known or alleged to have an interest in the Seized Firearms and Ammunition as a substitute for published notice as to those persons so notified.
4. Any person, other than the defendant, asserting a legal interest in the Seized Firearms and Ammunition may, within thirty (30) days of the final publication of notice or receipt of notice, or no later than sixty (60) days after the first day of publication on an official government website, whichever is earlier, petition the Court for a hearing without a jury to adjudicate the validity of his or her alleged interest in the Seized Firearms and Ammunition, and for an amendment to the order of forfeiture, pursuant to 21 U.S.C.

§ 853(n)(6). Any petition filed in response to the notice of forfeiture of the Seized Firearms and Ammunition must be signed by the petitioner under penalty of perjury and shall set forth the nature and extent of the petitioner's right, title and interest in the property, the time and circumstances of the petitioner's acquisition of any right, title, or interest in the property, and any additional facts supporting the petitioner's claim and relief sought.

5. The defendant shall not file or interpose any claim or assist others to file or interpose any claim to the Seized Firearms and Ammunition in any administrative or judicial forfeiture proceeding. The defendant shall fully assist the government in effectuating the surrender and forfeiture of the Seized Firearms and Ammunition to the United States. If the Seized Firearms and Ammunition, or any portion thereof, is not forfeited to the United States, the United States may seek to enforce this Preliminary Order against any other assets of the defendant up to the value of Seized Firearms and Ammunition, pursuant to 21 U.S.C. § 853(p), the Federal Debt Collection Procedures Act, or any other applicable law.

6. Pursuant to Fed. R. Crim. P. 32.2(b)(4)(A) and (B), this Preliminary Order shall become final at the time of sentencing and shall be made part of the defendant's sentence and included in his judgment of conviction. If no third party files a timely claim, this Preliminary Order, together with Supplemental Orders of Forfeiture, if any, shall become the Final Order of Forfeiture, as provided by Fed. R. Crim. P. 32.2(c)(2). At that time, the Seized Firearms and Ammunition shall be forfeited to the United States for disposition in accordance with the law.

7. The United States alone shall hold title to the Seized Firearms and Ammunition following the Court's disposition of all third-party interests, or, if none, following the expiration of the period provided in 21 U.S.C. § 853(n)(2).

8. The forfeiture of the Seized Firearms and Ammunition shall not be considered a payment of a fine, penalty, restitution loss amount, or any income taxes that may be due, and shall survive bankruptcy.

9. This Preliminary Order shall be binding upon the defendant and the successors, administrators, heirs, assigns and transferees of the defendant, and shall survive the bankruptcy of any of them.

10. This Preliminary Order shall be binding only upon the Court "so ordering" this order.

11. The District Court for the Eastern District of New York shall retain jurisdiction over this action to enforce the Preliminary Order and to amend it as necessary, pursuant to Fed. R. Crim. P. 32.2(e).

12. The Clerk of the Court is directed to send, by inter-office mail, four (4) certified copies of this executed Preliminary Order to FSA Paralegal Yvette Ramos, United States Attorney's Office, Eastern District of New York, 271 Cadman Plaza East, Brooklyn, New York 11201.

Dated: Brooklyn, New York
DiCunzio 27/2016

SO ORDERED:

s/KAM
KAM
HONORABLE KIYO A. MATSUMOTO
UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

**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 30th day of September, two thousand twenty-two.

United States of America,

Appellee,

v.

Michael Garrett, AKA Rab,

Defendant,

Paul Rivera, AKA Paul Zance, AKA Paulee Zance, AKA
Paulie Rivera, AKA Edgar Rivera, AKA Zance Rivera,
AKA Steven Rivera,

Defendant - Appellant.

ORDER

Docket No: 17-59

Appellant Paul Rivera filed a petition for panel rehearing, or, in the alternative, for rehearing *en banc*. The panel that determined the appeal has considered the request for panel rehearing, and the active members of the Court have considered the request for rehearing *en banc*.

IT IS HEREBY ORDERED that the petition is denied.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk

 