

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

CASE NO.: 15-MJ-2465-MCALILEY

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UNITED STATES OF AMERICA,)
)
Plaintiff,)
v.)
)
MARTIN LUSTGARTEN ACHERMAN,)
)
Defendant.)
_____)

(Corrected case no.)
April 13, 2015
Pages 1 - 29

DETENTION HEARING
BEFORE THE HONORABLE EDWIN G. TORRES
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiff: UNITED STATES DEPARTMENT OF JUSTICE
Criminal Division
950 Pennsylvania Avenue, NW
Washington, DC 20530
BY: JOSEPH PALAZZO, AUSA

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CONTINUED APPEARANCES:

For the Defendant:

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I N D E X

THE WITNESS:

PAGE:

SPECIAL AGENT PHILIP LAVOIE

Cross Examination by Mr. Diamond:

9

Redirect Examination by Mr. Palazzo:

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1 (Thereupon, the following proceeding was held:)

2 THE COURTROOM DEPUTY: Calling the case of the United
3 States versus Martin Lustgarten Acherman; Case Number 15-2465, Judge
4 McAliley.

5 THE COURT: Prepared to proceed?

6 MR. DIAMOND: Yes.

7 THE COURT: How about the Government?

8 MR. PALAZZO: Good morning, Your Honor.

9 Joseph Palazzo from the Criminal Division, Department of
10 Justice in Washington, D.C.

11 It's nice to meet you.

12 And the Government today is moving for detention.

13 THE COURT: Thank you. Good morning.

14 And for the Defendant?

15 MR. DIAMOND: Good morning.

16 May it please the Court. Nathan Diamond on behalf of Mr.
17 Lustgarten who stands beside me.

18 THE COURT: Good morning.

19 Okay. Do you wish to proceed or do you want to waive these
20 hearings for -- are these charges up in Massachusetts, is that it?

21 MR. DIAMOND: Yes, but I think it is very important that we
22 move forward here because I think there are certain allegations that
23 are put forth that merit his being given a surety. And going up
24 there and being able to work with me throughout and during this
25 period of time.

1 THE COURT: Now, this is a first superseding. Was he ever
2 initialled?

3 MR. DIAMOND: I found that most unusual. I saw the same
4 thing. It says first superseding.

5 THE COURT: Did he ever have an initial up in
6 Massachusetts?

7 MR. DIAMOND: No, Your Honor.

8 THE COURT: Okay.

9 MR. DIAMOND: As far as I could tell after looking at PACER
10 there was no initial indictment. I saw first superseding and --

11 THE COURT: Did you wish to contest removal, or detention,
12 or both?

13 MR. DIAMOND: Detention.

14 THE COURT: You are waiving removal? Waiving identity?

15 MR. DIAMOND: Yes.

16 THE COURT: Government, ready to proceed on the detention
17 hearing for Mr. Acherman?

18 MR. PALAZZO: Yes, Your Honor.

19 THE COURT: Is it Acherman or Akerman?

20 THE DEFENDANT: Lustgarten Acherman.

21 THE COURT: Lustgarten.

22 Okay. Go ahead.

23 MR. PALAZZO: Your Honor, I am unfamiliar with the customs
24 down here.

25 I am appearing with AUSA John Byrne with the U.S.

1 Attorney's Office up here in Florida. The Government is prepared to
2 proffer evidence in support of its motion. And Special Agent Philip
3 Lavoie from Homeland Security Investigations is also here --

4 THE COURT: Okay.

5 MR. PALAZZO: -- to give testimony and support.

6 THE COURT: Okay. I will accept your proffer.

7 MR. PALAZZO: Your Honor, the Government moves for
8 detention today because no conditions or series of conditions --

9 THE COURT: Move the microphone a little closer.

10 MR. PALAZZO: Sure.

11 THE COURT: I want to make sure we pick you up.

12 MR. PALAZZO: How is that, Your Honor?

13 THE COURT: That's better.

14 MR. PALAZZO: Your Honor, no conditions or series of
15 conditions will reasonably assure Mr. Lustgarten's appearance in
16 Boston to face these charges.

17 There are four main factors that the Government would like
18 the Court to consider. The first is the seriousness of the crimes
19 for which Mr. Lustgarten is charged. And by my calculations, the
20 Sentencing Guidelines, I have him at 42 if he is convicted of all
21 three counts, which are laundering, drug proceeds, obstruction of
22 justice and a conspiracy count.

23 And according to the Sentencing Guidelines, the upper end
24 of that would be a life sentence. He is statutorily capped out at
25 20 years, but the severity of that sentence is something that the

1 Government would like the Court to consider.

2 The Government's case is also very strong. Mr.
3 Lustgarten's arrest last week was the culmination of several years
4 of investigation by a joint task force in the District of
5 Massachusetts. That included agents from the DEA, Homeland Security
6 and other agencies.

7 Wiretaps, extensive wiretaps were conducted in the United
8 States and in Colombia and several search warrants were executed on
9 Mr. Lustgarten's e-mails. So there is plenty of documentary
10 evidence supporting the charges as well.

11 The second factor is Mr. Lustgarten's significant financial
12 resources. There is evidence in the case that in the past several
13 years over hundred million dollars passed through accounts
14 controlled by Mr. Lustgarten in at least five different countries in
15 three different continents around the world.

16 Your Honor, Mr. Lustgarten also has extensive foreign ties.
17 He is in the United States. Although, he owns a home here, he is in
18 the United States on a B-2 tourist visa. He is a citizen, as far as
19 we know at least, of Austria and Venezuela and he is a resident of
20 Panama.

21 More than that, Your Honor -

22 THE COURT: Does he have any ties to Massachusetts, do you
23 know?

24 MR. PALAZZO: I believe a child --

25 MR. DIAMOND: He has a daughter that goes to school there.

1 THE COURT: A daughter.

2 MR. DIAMOND: And he lives here in Miami.

3 THE COURT: Okay.

4 MR. PALAZZO: Your Honor --

5 THE COURT: What is the crux of the evidence that are found
6 on the wiretaps?

7 MR. PALAZZO: Essentially, that Mr. Lustgarten
8 quarterbacked an international scheme to move U.S. dollars around on
9 behalf of -- in the amount of at least 40 million dollars on behalf
10 of drug cartels and revolutionary paramilitary organizations in
11 Colombia.

12 Essentially, the Government has evidence that Mr.
13 Lustgarten purports to run a so-called purchase order financing
14 company based in multiple countries that will loan individuals money
15 for the financing of goods in international trade.

16 The Government has evidence on wiretaps and elsewhere that
17 this is a false, that he is not in the purchase or finance business.
18 He is simply using that as a cover to launder money for drug cartels
19 and others.

20 He takes advantage of a unique situation in Venezuela, his
21 home country, where there is a significant restriction -- I am not
22 sure if the Court is aware, but on U.S. currency in the country. So
23 there is a parallel or a black market, as it is known down there.

24 And so Mr. Lustgarten has made a business of gathering U.S.
25 dollars and making them available in places where they are hard to

1 come by, such as Venezuela. And the significance of that is the
2 source of those dollars, Mr. Lustgarten is well aware that at least
3 forty million and possibly a hundred million comes from drug cartels
4 or paramilitary organizations.

5 On top of that, Your Honor, you will see in the indictment
6 that Mr. Lustgarten also stands charged with two counts involving
7 the obstruction of a judicial proceeding.

8 And that, essentially, is because Mr. Lustgarten is
9 basically a professional liar that has been lying to the DEA and to
10 Homeland Security and to the U.S. Attorney's Office in Boston for
11 several years.

12 There is nothing he is not willing to lie about. He will
13 lie to this Court. And he certainly will not appear in Boston if
14 released under any series of conditions, Your Honor.

15 And for those reasons, Your Honor, the Government moves for
16 detention.

17 THE COURT: In other words, he testified before a grand
18 jury proceeding? Is that the idea?

19 MR. PALAZZO: No, he did not.

20 He had several interviews that the Court could hear
21 testimony about from Special Agent Lavoie where he made statements
22 about his business that were materially false.

23 Part of his scheme was also to go around and to brag to
24 potential clients that he was cooperating with DEA and that he had
25 some sort of special permission to move illicit funds with the

1 knowledge of the Government. That is materially false and that is
2 part and parcel with his scheme.

3 THE COURT: Do you wish to examine the agent?

4 MR. DIAMOND: Yes, absolutely.

5 THE COURT: Go ahead and call the agent.

6 MR. DIAMOND: Just so I could --

7 THE COURT: Just call the agent.

8 MR. DIAMOND: Okay.

9 (Witness sworn.)

10 THE COURTROOM DEPUTY: Please state your name, for the
11 record, spelling your first and last name.

12 THE WITNESS: Philip, P-H-I-L-I-P; last name, Lavoie,
13 L-A-V-O-I-E.

14 SPECIAL AGENT LAVOIE, GOVERNMENT'S WITNESS SWORN

15 CROSS EXAMINATION

16 BY MR. DIAMOND:

17 Q. Mr. Lavoie, you are an agent that is from the Boston Division
18 of this case, correct?

19 A. That's correct.

20 THE COURT: Which agency? I'm sorry.

21 THE WITNESS: I am with Homeland Security Investigations.

22 BY MR. DIAMOND:

23 Q. And there were other agents involved in this investigation,
24 correct?

25 A. Yes.

1 Q. And in other jurisdictions, correct?

2 A. Yes.

3 Q. Including the Southern District of Florida, correct?

4 A. That is correct.

5 Q. Were you involved with the Rosemount accounts --

6 A. Not directly.

7 Q. -- in 2009?

8 A. Not directly, no.

9 Q. That was a seizure, was it not, in Boston, correct?

10 A. That is correct.

11 Q. And in fact, those funds were seized from numerous companies
12 and were put together, I think, in this case.

13 You have a name for it. Although it's got about five inches of
14 documents that deal with the affidavits and all.

15 But Rosemount was part of a giant group of corporations that
16 you had under investigation, you, meaning the U.S. Government,
17 correct?

18 A. As I understand that investigation, that is correct. I was not
19 directly involved in it in any way.

20 Q. And part of that investigation involved three companies that
21 Mr. Lustgarten was involved in?

22 A. I'm not sure of the exact number of companies.

23 Q. I'm sorry. Two companies.

24 And those monies that were seized were ultimately returned to
25 Mr. Lustgarten in that litigation, correct?

1 A. It's my understanding that at least a portion of the proceeds
2 were returned to him. I'm not -- I'm not aware of the total
3 numbers.

4 Q. About 90 percent of it. So he would not have to pay the
5 attorney, I gather, correct?

6 A. (No audible response.)

7 Q. So the litigation wouldn't continue the attorney's fees. It
8 was more of a settlement for convenience, correct?

9 A. I cannot answer that. I don't know.

10 Q. You didn't review the documents?

11 A. Not regarding that case.

12 Q. You didn't review the papers and the monies that were given
13 back to Mr. Lustgarten?

14 A. In that case not all of them.

15 Q. And in fact, that's a part of what this indictment is about, is
16 it not?

17 A. It is.

18 Q. It is the litigation in Rosemount, correct?

19 A. That's correct.

20 Q. So it's your upset of giving back 90 percent of the monies
21 seized from Mr. Lustgarten that continued on with this from 2009 to
22 the present, correct?

23 A. That's not correct.

24 Q. Mr. Lustgarten has a company called Henlux, correct?

25 A. Yes.

1 Q. And Henlux is a financing company, correct?

2 A. I believe it's purchase order financing.

3 Q. Purchase order financing.

4 And that is what the prosecutor spoke to when he got up here in
5 making his proffer.

6 And that is if you are doing business in a foreign country, you
7 can't get paid right away, correct?

8 A. Not in all foreign countries.

9 Q. Venezuela, particularly?

10 A. Particularly, yes, there is currency controls.

11 Q. If you are sending goods to Venezuela, you can't get paid by
12 the importer immediately, can you?

13 A. As I understand it, that's correct.

14 Q. So it has to be financed, correct? If you need financing,
15 correct?

16 A. You would need to do so on the black market.

17 Q. So if I'm an American and I'm sending goods to Venezuela and I
18 want to get paid for those goods, I would go to somebody who can do
19 financing, correct?

20 A. (No audible response.)

21 Q. That's called trade financing?

22 A. Yes.

23 Q. And in fact, that's what Mr. Lustgarten's business is in
24 Venezuela and in other places, correct?

25 A. He proclaimed it to be.

1 Q. And in fact, we have to deal with lots of documents, correct?
2 Financial documents, correct?

3 A. Generally.

4 Q. In this case?

5 A. Yes.

6 Q. And in this case, there are lots of financial documents,
7 correct?

8 A. That is correct.

9 Q. And they deal with are numerous corporations, correct?

10 A. That's correct.

11 Q. And numerous individuals, correct?

12 A. That's correct.

13 Q. And there is a gentleman by the name of Bendayan, correct?

14 A. Yes.

15 Q. And he is somebody who you have your sights on, correct?

16 A. That's correct.

17 Q. And he was running a big group of people, correct?

18 A. He was involved the conspiracy.

19 Q. And you got search warrants -- or excuse me -- Title 3s, the
20 wiretap orders for Mr. Bendayan, correct?

21 A. I was not the affiant.

22 Q. You, meaning, your group, your agency, correct?

23 A. That's correct.

24 Q. And you got it against other people, did you not?

25 A. Yes, sir.

1 Q. You never got one for any phones that deal with Mr. Lustgarten,
2 correct?

3 A. I don't believe so.

4 Q. You don't believe you did, did you?

5 A. I don't believe so.

6 Q. Okay. And you did overhear certain conversations, though,
7 between this Bendayan and Mr. Lustgarten, correct?

8 A. That's correct.

9 Q. And one of those conversations, in fact, you put before the
10 grand jury, correct?

11 A. That's correct.

12 Q. Now, you say you don't speak Spanish; is that correct?

13 A. That is correct.

14 Q. Numerous of those calls were in Spanish, correct?

15 A. That's correct.

16 Q. Some were in Hebrew, correct?

17 A. That's correct.

18 Q. Do you understand what Kosher means?

19 A. I understand it to be good, or relatively speaking, okay.

20 Q. It is a dietary law, correct?

21 A. I believe so.

22 Q. Okay. And when somebody is doing something Kosher, they are
23 doing it properly, correctly according to law, correct?

24 A. Yes.

25 Q. And in fact, you heard that conversation between Mr. Lustgarten

1 and Mr. Bendayan that you got to do it Kosher, you got to do it
2 right, or I don't want to do it?

3 A. That's correct.

4 Q. And he maintained that throughout, did he not? His position
5 was do it right, correct?

6 A. That is correct.

7 Q. Get the paperwork. Do it right?

8 A. That's correct.

9 Q. And that's throughout the conversations that you overhear and
10 the e-mails that you saw, correct?

11 A. That's correct.

12 Q. And because he did it right the Government gave him back ninety
13 percent of the money in 2009?

14 A. I'm not aware.

15 Q. And then, there was a time when he was approached by somebody
16 who was not going to do it right.

17 Somebody who is Iranian, correct?

18 A. I'm familiar with it in the periphery.

19 Q. Sorry?

20 A. Excuse me?

21 Q. You are familiar with the fact that he came to the United
22 States Government and told them that there's an Iranian who wants to
23 move money through Venezuela, correct?

24 A. Yes. Generally is how I understand it.

25 Q. And as a result of that, he became documented, correct?

1 A. Documented? I'm not sure how you mean?

2 Q. As a confidential source of information?

3 A. I'm not clear if he was, actually, documented or was the
4 source.

5 Q. Well, do you know who Brian Dejoy (phonetic) is?

6 A. I do.

7 Q. Who is he?

8 A. He's a special agent with the DEA in Boston.

9 Q. Okay. And he was the control agent, was he not, for Mr.
10 Lustgarten, correct?

11 A. Yes. He would speak to Mr. Lustgarten.

12 Q. And you would understand the process of documenting, do you
13 not?

14 A. I do.

15 Q. And do you know that, in fact, Mr. Lustgarten was documented by
16 Mr. Dejoy?

17 A. I don't know for certain if he was or was not documented.

18 Q. And in fact, you knew he worked with Mr. Dejoy, correct?

19 A. I knew they were in communication. That's correct.

20 Q. You had meetings, did you not, with Mr. Lustgarten; is that
21 correct?

22 A. That's correct.

23 Q. And Mr. Dejoy together, correct?

24 A. That's correct.

25 Q. And you learned that there were numerous meetings between Mr.

1 Dejoy and Mr. Lustgarten --

2 A. Yes.

3 Q. -- under these financial transactions?

4 A. Yes.

5 THE COURT: So is that what the obstruction charge is based
6 upon that he was providing information that the Government believes
7 was false?

8 THE WITNESS: Yes, that's correct.

9 BY MR. DIAMOND:

10 Q. And there were other occasions when he worked with Mr. Dejoy
11 that related to another transaction that you saw him -- did you see
12 him in Colombia?

13 A. That's correct. I did.

14 Q. Okay. And at that time, Mr. Lustgarten was with a group of
15 people, correct?

16 A. That's correct.

17 Q. And that was, what, September of last year?

18 A. Yes.

19 Q. And then, he saw you and he called you out?

20 A. Yes.

21 Q. And that he knew you because he had been with you and Mr. Dejoy
22 before, correct?

23 A. That's correct.

24 Q. And he came and, then, when he called you out you went outside
25 and discussed things with him?

1 A. That's correct.

2 Q. And these informant things between agents are somewhat touchy
3 are they not?

4 A. (No audible response.)

5 Q. If you have a CS and someone else has a CS, you do not normally
6 step on the other guy's CS, correct?

7 A. That's correct.

8 Q. Information is not provided between agents, necessarily, except
9 on a need-to-know basis, correct?

10 A. That's correct.

11 Q. Okay. That's why you are called a control agent and Mr. Dejoy
12 would be called a control agent, correct?

13 A. That's correct.

14 Q. And Mr. Dejoy was a control agent as it related to Mr.
15 Lustgarten, correct?

16 A. I knew that Mr. Dejoy was the primary contact for Mr.
17 Lustgarten.

18 Q. And when you saw Mr. Lustgarten at a hotel in Colombia, he
19 called you out and you spoke, correct?

20 A. That's correct.

21 Q. And he thought that there was something wrong with that
22 transaction, correct?

23 A. What do you mean?

24 Q. The transaction he was in Colombia to deal with?

25 A. I'm not clear on your question.

1 Q. In your report --

2 A. Yes.

3 Q. He indicated that he told you -- excuse me -- I think you even
4 testified to it in the grand jury.

5 That he told you he would be contacting you because he didn't
6 like this particular transaction, correct?

7 A. He said that at that point in time, he was going to be -- he
8 was meeting with these people.

9 And that what we had just seen that he was opening bags, but he
10 was going to after-the-fact, even though he had opened an account,
11 he would reach out to Brian Dejoy.

12 Q. Because it was not Kosher or a hundred percent by the book,
13 correct?

14 A. Meaning, he said he was going to relay the information. I'm
15 not aware of it.

16 MR. DIAMOND: If I could just have one moment, please.

17 I don't have anything further with this witness.

18 THE COURT: Any questions from the Government?

19 MR. PALAZZO: No, Your Honor.

20 THE COURT: Thank you very much, Agent Lavoie.

21 Anything else from the Government?

22 MR. PALAZZO: Yes, Your Honor. I just want to make two
23 points.

24 The first, I just want to remind the Court that the reason
25 that Mr. Lustgarten is here today is because the District Court in

1 Boston found probable cause on all or -- sorry -- the grand jury
2 sitting in the District of Massachusetts found there to be probable
3 cause to bring these charges, all three.

4 And in addition, I think I may have misspoken earlier when
5 I said that the Government believes that some of the statements that
6 Mr. Lustgarten made to DEA that we believed they were false, the
7 Government knows those statements to be false.

8 Mr. Lustgarten was telling potential clients that he had
9 the blessings of DEA to do all kinds of financial transactions that
10 he did not have permission to do.

11 THE COURT: Okay.

12 MR. DIAMOND: I think that probably would come best from my
13 client, but what I am going to ask the Court to do is to accept the
14 recommendation of Pretrial Services in their report.

15 I have before the Court, if the Court wants to hear it at
16 this time, in regards to ties to the community. I have present in
17 the courtroom numerous people who stand behind Mr. Lustgarten.

18 THE COURT: What alternative do I have to detention as it
19 relates to him?

20 MR. DIAMOND: I think the Court should follow the
21 recommendation of the Pretrial Services report and that is a
22 percentage bond is respectfully recommended with the following
23 special conditions.

24 And I think that there are conditions, including the
25 electronic monitoring, which is not mentioned here. It is just this

1 is a complex case, as the Court can see. There are substantial ties
2 between relatives and friends, besides the home that he owns and has
3 owned for a substantial period of time.

4 So I would ask the Court to set a bond, a reasonable bond
5 with such conditions as the Court deems necessary as indicated by
6 Pretrial Services Report as directed. Surrender travel documents.
7 They have already been surrendered.

8 Not visiting any transportation establishments. That's not
9 a problem at all. And reside at the residence with a curfew, but at
10 least give me the opportunity to work with him for a defense of a
11 very complex case.

12 It was just difficult enough in the last couple of days for
13 me to go through documents with him because of the manner in which
14 he is being housed. And that travel be extended simply between the
15 Southern District of Florida and Massachusetts and nowhere else.

16 THE COURT: And what about his immigration status and the
17 fact that he has Venezuelan citizenship.

18 MR. DIAMOND: We are prepared to deal with, if he posts
19 bond here, to deal with it at Krome with an immigration judge. I've
20 done this in the past.

21 THE COURT: What about his Venezuelan citizenship? Doesn't
22 that pose a problem for extradition?

23 MR. DIAMOND: Absolutely not.

24 He has a visa and they will extradite in a heartbeat.
25 Particularly in a case like this. Particularly in a case like this

1 because, in effect, what the Government is alleging is that he is
2 working against the Venezuela Government.

3 MR. PALAZZO: Your Honor, I would like to point out that
4 Mr. Lustgarten has a United States detainer lodged here.

5 MR. DIAMOND: That's what Krome is about. That is what
6 immigration judges deal with.

7 MR. PALAZZO: It's my understanding that they won't hold
8 him in Krome.

9 THE COURT: That they won't or what? I'm sorry.

10 MR. PALAZZO: Will not hold him.

11 THE COURT: So they would release him? Is that what you
12 are saying?

13 MR. PALAZZO: Yes.

14 MR. DIAMOND: That's why this Court should, then, issue a
15 bond consistent with the recommendation of Pretrial Services.
16 Whatever conditions including house arrest.

17 THE COURT: And is it true that he was at one point -- is
18 that the problem, basically, that he was an informant for an HSI
19 agent and that the Government alleged that he basically provided
20 false information?

21 Is that the nature of the charge?

22 MR. PALAZZO: That is the nature of the obstruction
23 charges, but the money laundering charges are based on the fact that
24 he moved at least 40 million, possibly one hundred million dollars
25 for drug cartels in Colombia, paramilitary organizations in

1 Colombia.

2 Therefore, this is not a man that comes before the Court
3 very often. He has tremendous financial means and he has a network
4 of contacts all around the world that will immediately help him
5 abscond from the United States if he is not detained.

6 THE COURT: Oh, I think I may have asked you. What ties
7 does he have to the District of Massachusetts?

8 MR. DIAMOND: He has a daughter that goes to school there.

9 THE COURT: What do you mean goes to school there?

10 MR. DIAMOND: Boston University.

11 THE COURT: Any other assets or does he have people living
12 there?

13 MR. DIAMOND: Assets here, no.

14 THE COURT: Okay.

15 MR. DIAMOND: His assets are here; a home.

16 His father-in-law is here and is willing to sign. There
17 are plenty of co-sureties that are here and there is an outpouring
18 of people who have come here. I think every one of them is prepared
19 to sign.

20 MR. PALAZZO: Your Honor, his assets are not just here in
21 South Florida or in the United States.

22 He has assets in at least three continents that we know of,
23 at this point. He has access to millions of dollars. There is no
24 amount of money -- he is facing 20 years in prison. There is no
25 amount of money that he would not be willing to give up in order to

1 go back to Venezuela and hide with his contacts.

2 MR. DIAMOND: There is a restraining order on all -- I
3 received an e-mail when I got a little package of Jencks material
4 that said that all of the accounts are frozen.

5 So these monies would be subject to a Nebbia, which we
6 would present to the Court. As I said, there is an outpouring of
7 the family that are all seated in the back of the courtroom from his
8 wife to his in-laws.

9 THE COURT: What about the argument about a corporate
10 surety bond being sufficient because he would not flee to Venezuela
11 because, in effect, he is -- the allegation is that he was moving
12 black market money contrary to which is the Government of Venezuela?

13 MR. PALAZZO: Your Honor, it is my understanding that
14 without an order from the Court, the Immigration Services would
15 proceed with whatever procedure they have in place to --

16 THE COURT: No, no, no. I am talking about Venezuelan
17 authorities.

18 MR. PALAZZO: Well, part and parcel of the scheme --

19 THE COURT: Part of the Court's normal concern would be
20 that somebody with such foreign ties that we could not get him back
21 if he fled.

22 MR. PALAZZO: That's right.

23 THE COURT: And the response to that would be Venezuela
24 would have no interest in keeping him because he was, basically,
25 according to the allegation in the indictment, he was engaged in a

1 business that was designed to get around Venezuelan money, currency
2 laws.

3 MR. PALAZZO: Well, Your Honor, that is an interesting
4 theory, but I don't know of any track record in recent years of any
5 extraditees from Venezuela.

6 And part and parcel with the scheme that the Government has
7 evidence on is that Mr. Lustgarten is working with paramilitary
8 organizations and cartels that control parts of Venezuela and
9 Colombia.

10 As the Court is well aware, the Government of Colombia and
11 Venezuela don't necessarily govern all territories there. And in
12 fact, some of the monies that he is accused of laundering furthers
13 these endeavors outside the big cities in Venezuela.

14 MR. DIAMOND: I did not hear any of that from the agent if
15 they had that.

16 To me it is just total fantasy. To me it is throw whatever
17 you can at a Court to keep a person who is accused. To keep a
18 person who is not guilty, as he stands before this Court, to keep
19 him locked up and put as much pressure as you can on him.

20 I think it's laughable that the agent's testimony is that
21 it is not even drug money. That it is money that was part of a
22 trade situation. And that's what they talk about in their -- I just
23 got some of the paperwork.

24 There is kitchen equipment being sold to Venezuela. It was
25 that type of thing. It was heavy duty equipment. That type of

1 thing and I am just going through it. I mean, drug money comes into
2 it because it is an easy thing to say and it is an easy thing to get
3 a Court upset over, but there has been no showing of that. None.

4 MR. PALAZZO: Your Honor, there has been a showing of
5 probable cause in Massachusetts that he was laundering tens of
6 millions of dollars for drug cartels.

7 THE COURT: Okay. The question for me is really, as I sit
8 here on behalf of the District of Massachusetts, is whether or not
9 there is sufficient ties or means of securing the Defendant's
10 appearance in Massachusetts because that is where the indictment is
11 based out of.

12 Rather the grand jury, the District of Massachusetts has
13 accused him of providing false information in that district but in
14 addition, distributing money, laundering proceeds in connection with
15 drug trafficking activities in violation of federal law.

16 Now, given the fact that he has no criminal history, even
17 in a money laundering case often a bond is granted in a case.
18 Although, this case involves a substantial amount of money, far more
19 than I have ever seen, number one.

20 More importantly than that, there are significant foreign
21 ties that the Defendant has including to -- although, I hear what
22 Mr. Diamond has to say about it, but there is nevertheless a concern
23 that if he were to flee, he would not be extraditable given the
24 governmental situation in Venezuela.

25 So at this point, what I am going to do, I am going to -- I

1 could see though, where a court could fashion by maybe there is some
2 way to house him in Massachusetts pending the duration of the bond
3 where the court in Massachusetts may decide that they can come up
4 with an alternative to detention if he is adequately secured up
5 there. It is possible if that is the case in a money laundering
6 case. I don't know.

7 So just based upon the information that has been presented
8 to me, given the extensive foreign ties and the nature of the
9 proceedings, I think there is a sufficient basis to hold him
10 strictly as a risk of flight.

11 And also, given the amount of money involved for which
12 \$100,000 corporate surety bond would not be sufficient.

13 MR. DIAMOND: Well, I can't --

14 THE COURT: So I will grant the Government's motion for
15 detention based on risk of flight at this point in time.

16 You have a right to appeal that decision, Mr. Lustgarten,
17 in Massachusetts. And the court in Massachusetts could certainly
18 look at your case and decide that it is not deserving of detention.

19 Especially, if in the interim period you are able to
20 present evidence that undermines the grand jury's indictment. All I
21 have is what is in front of me and the allegation of the Government
22 and the grand jury that is in front of me.

23 So if the court in Massachusetts wants to change my order,
24 they certainly have that right and jurisdiction to do so, but in the
25 meantime, I am going to grant the Government's motion.

1 MR. DIAMOND: What I was going to suggest was, then, more
2 than \$100,000 that the Court has talked about.

3 He has his whole family here all willing to sign. He is
4 never going to do that to his family. He is going to see this thing
5 through. Particularly when you see the affidavits and the documents
6 and the paperwork. It makes no sense. He wants to see it through.
7 He saw it through in 2009.

8 THE COURT: I hear you, but I think a sufficient case has
9 been made and I think that you should present that argument to the
10 District of Massachusetts, okay.

11 MR. DIAMOND: Thank you, Your Honor.

12 THE COURT: Sign the waiver. Mr. Diamond is having him
13 sign the waiver.

14 Are we done? Okay.

15 (Thereupon, the proceedings concluded.)
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CERTIFICATE

I hereby certify that the foregoing transcript is an accurate transcript of the audio recorded proceedings in the above-entitled matter.

04/24/15

Bonnie Joy Lewis,
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