

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

WEST PALM BEACH DIVISION

CASE NO.: 15-20189-cr-Scola

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
v. )  
NIDAL AHMED WAKED HATUM, )  
Defendant. )

January 26, 2017

Pages 1 - 48

ARRAIGNMENT AND DETENTION HEARING PROCEEDINGS

BEFORE THE HONORABLE JOHN J. O'SULLIVAN  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

On behalf of the Plaintiff:

UNITED STATES ATTORNEY'S OFFICE  
99 NE 4 Street.  
Miami, FL 33132  
BY: FRANK TATEM, AUSA

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

APPEARANCES CONTINUED:

On behalf of the Defendant:

MOSCOWITZ & MOSCOWITZ, P.A.  
201 Alhambra Circle  
Suite 1200,  
Coral Gables, FL 33134  
BY: NORMAN A. MOSCOWITZ, ESQ.  
BY: JANE W. MOSCOWITZ, ESQ.

Transcribed By:

BONNIE JOY LEWIS, R.P.R.  
7001 SW 13 Street  
Pembroke Pines, FL 33023  
954-985-8875  
caselawrptg@gmail.com

1 (Thereupon, the following proceeding was held:)

2 THE COURT: United States of America versus Nidal  
3 Ahmed Waked Hatum.

4 THE INTERPRETER: Judge, can the interpreter be  
5 excused?

6 THE COURT: You are excused.

7 THE INTERPRETER: Thank you.

8 Do you have any Spanish speaking folks in this  
9 hearing?

10 UNIDENTIFIED SPEAKER: No, Your Honor.

11 THE COURT: And for the Government, does the  
12 Government have any Spanish speaking witnesses or anything?

13 MR. TAMEN: No, Your Honor.

14 Frank Tamen representing the United States.

15 THE COURT: Hold on.

16 MR. MOSCOWITZ: We need an interpreter.

17 THE COURT: Okay. You better hang around.

18 THE INTERPRETER: Okay.

19 THE COURT: Sorry.

20 All right. The public defender is excused.

21 THE PUBLIC DEFENDER: Thank you.

22 THE COURT: All right. Are you ready to arraign your  
23 client?

24 MR. MOSCOWITZ: Yes, Your Honor.

25 THE COURT: Go ahead.

1 No. Bring the client down, or you want the client  
2 down with you, or you want him to sit there?

3 MR. MOSCOWITZ: That's fine. He can (inaudible).

4 THE COURT: Okay. All right. Go ahead, Mr.  
5 Moscowitz.

6 MR. MOSCOWITZ: Good morning, Your Honor.

7 Norman Moscowitz and Jane Moscowitz entering a  
8 permanent appearance for Mr. Waked. Mr. Waked is here in  
9 court.

10 THE COURT: Okay. Are you ready to arraign him?

11 MR. MOSCOWITZ: Yes, Your Honor.

12 THE COURT: All right. Go ahead.

13 MR. MOSCOWITZ: Your Honor, we waive reading of the  
14 indictment. Mr. Waked enters his plea of not guilty, demands  
15 trial by jury, and enters the standing discovery order.

16 THE COURT: Okay. I will enter the standing discovery  
17 order and accept your plea of not guilty. The matter will be  
18 referred to Judge Scola for a jury trial.

19 And are we going forward with the detention hearing as  
20 well?

21 MR. MOSCOWITZ: Yes, we are, Your Honor.

22 THE COURT: Okay. The Government can proceed by  
23 proffer.

24 MR. MOSCOWITZ: Your Honor, can Mr. Waked sit here at  
25 the bench?

1 THE COURT: Is that okay with the Marshals if he sits  
2 there?

3 THE MARSHAL: Yes, Your Honor.

4 THE COURT: Okay. Mr. Moscowitz, I was a little  
5 concerned yesterday because I got this motion.

6 The Government has a copy of it now?

7 MR. MOSCOWITZ: We filed it on-line yesterday  
8 afternoon, Your Honor.

9 THE COURT: I know, but you should be filing it before  
10 you send it to me because I got it at 1:45.

11 When I looked on-line it wasn't there. Unless you  
12 served it to the Government at the same time, you should not be  
13 giving it to me before the Government gets it.

14 MR. MOSCOWITZ: Your Honor, it was our intention to do  
15 it simultaneously.

16 THE COURT: Well, it was not anywhere near  
17 simultaneous. In fact, I had my clerk call your office and say  
18 someone needs to file this and it still took until 3:45 until  
19 it was filed.

20 It was filed at 3:41 and it was received by chambers  
21 at 1:45. I should not be getting it until it is filed. I  
22 appreciate you sending over a courtesy copy or if you give the  
23 Government a courtesy copy at the same time.

24 MR. MOSCOWITZ: Your Honor, I apologize.

25 Besides filing it on-line we also e-mailed it, an

1 exact copy, to Mr. Tamen's office.

2 MR. TAMEN: I was not in my office yesterday. So I  
3 have no idea what we're talking about.

4 THE COURT: Oh, you have not seen the motion yet?

5 MR. TAMEN: No.

6 THE COURT: Okay. Well, do you have a copy for him?

7 MR. MOSCOWITZ: I've got --

8 MS. MOSCOWITZ: I think you're the second -- no, I  
9 didn't bring a copy.

10 THE COURT: Is Mr. Rabin your paralegal now?

11 MR. RABIN: Judge, I finally found a job I think I can  
12 handle.

13 MR. MOSCOWITZ: Mr. Rabin will be entering his  
14 appearance in this case with us.

15 THE COURT: Okay.

16 MR. MOSCOWITZ: He had represented Mr. Zafir when this  
17 case was dismissed.

18 THE COURT: Okay. Hold on a second.

19 Mr. Tamen, how do you want to proceed since you have  
20 not had an opportunity to review this thing?

21 MR. TAMEN: Well, I was prepared to go forward based  
22 on the risk of flight. And I have information to proffer to  
23 the Court and I have an agent here to testify.

24 It's a 18-page motion with about three quarters of an  
25 inch of exhibits. So I can't say there is any chance I could

1 absorb it right now.

2 Perhaps we can proceed. And then, if there is  
3 anything in this motion that I need to address, we might need  
4 to continue the hearing or adjourn it for a period of time  
5 until I can review this.

6 THE COURT: Okay. Do you want to proceed, then?

7 I mean, I am willing to put this matter over if you  
8 want to review that first, but if you are ready to proceed -- I  
9 mean, everybody is here.

10 If we can proceed, that's fine, or if you want  
11 additional time at the end to review that and, then, we can  
12 reconvene, we can do that.

13 MR. TAMEN: All right. Let's get started now.

14 If nothing else, maybe we would have to finish up this  
15 afternoon, but I have agents here that have come up from  
16 Homestead. So we might as well proceed.

17 THE COURT: Okay. Why do you think this fellow is a  
18 risk of flight?

19 MR. MOSCOWITZ: Your Honor, first a couple of  
20 preliminary matters. First, Your Honor, as you know, Mr. Waked  
21 is designated on the OFAC list.

22 THE COURT: What does that mean?

23 THE COURTROOM DEPUTY: Counsel, put the microphone  
24 closer.

25 MR. MOSCOWITZ: OFAC, the Office of Foreign Assets

1 Control of the Treasury --

2 THE COURT: I know what it is.

3 MR. MOSCOWITZ: -- designated Mr. Waked and members of  
4 his family because as a narcotics kingpin on May 5th, which  
5 means that no U.S. person or entity can have any financial  
6 dealings with him. We have a license from the Treasury  
7 Department from OFAC to represent him.

8 In terms of bond sureties, we made an application to  
9 effect back in September authorizing persons to be sureties for  
10 his bond. That includes Mr. Walters, who is the bondsman, and  
11 family members here in Coral Gables who would be willing to be  
12 sureties.

13 We requested, several times, that they authorize --  
14 they give the license for that. Finally, two days ago, I  
15 received a letter from OFAC that they will not make a  
16 determination on the sureties until after his determination by  
17 the Court on bond.

18 So after, if the Court orders bond we, then, go back  
19 to OFAC and seek a license for the sureties. All that means  
20 is, Your Honor, we have proposed sureties here today available  
21 to be questioned by the Court and to make a proffer, but if the  
22 Court enters a bond the sureties cannot, I think, execute it  
23 until we get authorization from OFAC, but the hearing can go  
24 ahead.

25 THE COURT: Okay.

1 MR. MOSCOWITZ: The only other thing is, Your Honor, I  
2 don't know if the Court wants me to introduce the sureties  
3 or --

4 THE COURT: No. Let's hear from the Government first  
5 and, then, you can tell me why you believe a bond is  
6 appropriate.

7 MR. TAMEN: Judge, this Defendant is charged with two  
8 counts of money laundering, which involved a scheme using his  
9 company in Panama.

10 THE COURT: What happened to the bank fraud count?

11 MR. Tamen: We were advised by the Office of  
12 International Affairs that the nature of that bank fraud was  
13 such that the Colombian government would probably not extradite  
14 on that count.

15 So we said, fine, there is no point in arguing about  
16 it because the significance of that count was much less than  
17 the other two counts.

18 THE COURT: I see.

19 MR. TAMEN: So we are not going to be proceeding on  
20 that count.

21 But, the essence of the allegation is that he ran  
22 schemes that were carried out over a period of years to  
23 disguise and conceal drug proceeds.

24 And that, in the course of doing so, one of his  
25 methods of operation involved fraud on a foreign bank in which

1 he was wiring money from Panama to the United States under the  
2 guise of it being for the purchase of various types of goods  
3 when, in fact, there were no such goods.

4           It was all fictitious, which had the bank known of the  
5 fact that these wire transfers were not for the purchase of  
6 trade goods, would not have authorized the wiring. Obviously,  
7 the essence of the offense is that the charge, I think, was  
8 laundering the proceeds of drug trafficking.

9           This Defendant is a citizen of Panama. He is also a  
10 citizen of Spain, a citizen of Colombia, and a permanent  
11 resident of Canada.

12           THE COURT: And let me interrupt you just so I  
13 understand.

14           MR. TAMEN: Sure.

15           THE COURT: The underlying activity is narcotics or  
16 fraud?

17           MR. TAMEN: It's both.

18           THE COURT: Both?

19           MR. TAMEN: Yes.

20           THE COURT: So tell me the fraud is what?

21           MR. TAMEN: He lied to his bank in Panama in order to  
22 be able to engage in the financial transactions that were  
23 necessary for him to carry out his scheme to disguise drug  
24 proceeds.

25           THE COURT: Okay. So the fraud is really hiding the

1 drug proceeds.

2 MR. TAMEN: Basically.

3 THE COURT: It is really a drug money laundering case.

4 MR. TAMEN: That's the essence of it, yes.

5 THE COURT: Okay. And what is the essence of the drug  
6 money laundering? Where is he getting that money from and what  
7 is he doing with it?

8 MR. TAMEN: He's getting drug traffickers in Panama  
9 and he's moving it around various locations in Panama and  
10 making it available through trade based money laundering.

11 A lot of this are matters that will get to into in  
12 forms of evidence, but we have confidential sources who will  
13 testify to knowledge about his receipt of large sums of  
14 currency coming from Mexican traffickers.

15 Also, he has dealings with Venezuelans in which he  
16 receives large amounts of money. Hundreds of thousands of  
17 dollars in the form of checks that are made out to companies  
18 that he is not associated with.

19 And the checks have no endorsement on the back.  
20 Nonetheless, he deposits these checks to other people and other  
21 companies in his own account or his own company accounts. So  
22 it's a very elaborate scheme.

23 THE COURT: I mean, what is the purpose of this  
24 scheme?

25 Is he taking cash and trying to get it into the United

1 States or out of the United States or --

2 MR. TAMEN: No. He's disguising the movement of cash  
3 amongst various traffickers in Panama, and Colombia, and in  
4 Mexico.

5 THE COURT: Okay. All right. Go ahead. Tell me why  
6 he is a risk of flight.

7 MR. TAMEN: Okay. Well, he's a citizen of Panama and  
8 that's where he lives, but Panama, by it's own constitution,  
9 cannot extradite its own citizens and does not do so.

10 The United States waited until he traveled to  
11 Colombia. We had some advance notice that he would be doing  
12 that and had him arrested in Colombia so we could extradite him  
13 from there.

14 He holds passports from both Panama, Colombia, and  
15 Spain. He travels to all of those countries. He also has  
16 permanent residency in Canada. He travels to Canada  
17 frequently.

18 He has traveled to China on a number of occasions. So  
19 he is a global traveler. There are a lot of places he could go  
20 if he left the United States.

21 He used to have a visa for the United States and that  
22 was revoked in 2005 and the State Department has refused to  
23 reinstate his visa.

24 There is currently an immigration detainer against  
25 him. If he were able to bond out here, he would simply go from

1 FDC here to Krome Detention Center.

2 If he went to Krome Detention Center and he had a  
3 hearing in front of an immigration judge requesting an  
4 immigration bond, the immigration judge would probably ask him  
5 if he was willing to resolve the detainer by simply going back  
6 to his home country.

7 And if he says, yes, I would be happy to go back to  
8 Panama, then, he would be released from the immigration hold to  
9 go back to Panama, which doesn't exactly help out assuring that  
10 he comes to court in this case. So the fact that he has an  
11 immigration detainer on him is a major factor.

12 In terms of any assurance that he could post a bond  
13 that would insure that he would appear in court, his estimated  
14 worth is approximately 500 million dollars. He owns a chain of  
15 retail electronic and appliance stores in Panama. They've been  
16 compared to the Best Buy chain in terms of their merchandise  
17 mix.

18 And he, also, his corporation Vita Panama, which is a  
19 co-defendant in this case, is a Panamanian based corporation.  
20 It reported income to the Government of Panama of more than 15  
21 million dollars in 2014 and also in 2015.

22 So the amount of wealth that is at this Defendant's  
23 disposal is immense. He is one of the principal owners and on  
24 the board of directors of Balboa Bank in Panama. The net worth  
25 of that bank is approximately half a billion dollars.

1           This Defendant owns land and he owns residential  
2 construction companies in Panama. He owns a pharmacy and a  
3 medical supply company.

4           He owns a significant share of plasma maleno, which is  
5 a development in Panama City, which contains a complex of  
6 offices, a casino, and a Sheraton Hotel. He is the chairman of  
7 the Free Trade Zone Association of Cologne in Panama.

8           So as a result, he has an exceptional amount of  
9 wealth. He could meet and post any bond and he could disappear  
10 and just give up that bond. Because he has so much additional  
11 wealth in Panama, I don't think there is any way this Court  
12 could impose a bond that would significantly impair or hinder  
13 his economic status.

14           In addition, he's a world traveller with multiple  
15 passports and lives in a country that does not extradite his  
16 citizens to the United States. So I think he is an extreme  
17 risk of flight.

18           THE COURT: Just a couple of things that they brought  
19 up in their motion.

20           They said when he went to Colombia he said just take  
21 me to the United States and I will waive any extradition. Take  
22 me there so I can face these charges.

23           MR. TAMEN: Well, that's what he said, initially.

24           We have reason to believe that at some point in those  
25 proceedings, he had somewhat of a change of heart and tried to

1 delay things. I have not been able to get the details of that  
2 yet.

3 But, even so, if he came to the United States, it's  
4 one thing to be in jail in Colombia and want to come to the  
5 United States to face charges. It is something else to have an  
6 opportunity to leave the United States and go to Panama and not  
7 have to face the charges.

8 And I think amongst those three choices that the third  
9 would be his first choice.

10 THE COURT: The other thing they bring up is that they  
11 have people here who are, you know, upstanding citizens of our  
12 community -- I think maybe one is related to him -- who are  
13 willing to post substantial assets.

14 MR. TAMEN: I'm sure --

15 THE COURT: A member of the Bar, I think, a practicing  
16 lawyer that would want to post --

17 MR. TAMEN: We've seen that happen before.

18 I remember when I first joined the United States  
19 Attorney's Office, a member of the Bar got arrested on money  
20 laundering charges.

21 And half of the Miami-Dade Association of criminal  
22 defense lawyers came to court. And a lot of them posted bonds  
23 and he promptly left and went to Spain. It took like five  
24 years to extradite him.

25 He has enough wealth that if --

1 THE COURT: Who was that?

2 MR. TAMEN: -- he jumped bond --

3 THE COURT: Who was that person, do you know?

4 MR. TAMEN: He went to the University of Florida.

5 I believe he was in my law school class. His name  
6 escapes me. It's a long time ago.

7 THE COURT: I think Mr. Moscowitz is thinking of  
8 someone else.

9 MR. MOSCOWITZ: I was.

10 MR. TAMEN: Well, more than one person has had a  
11 roster of outstanding citizens come to his defense and post his  
12 bond has since disappeared.

13 With the kind of wealth that he has, I think a lot of  
14 the people willing to post his bond might think, well, if he  
15 jumps bond and disappears, eventually, I will get compensated.

16 And I think even if he did not make any such  
17 representations or agreement, that that would be likely to  
18 happen.

19 I mean, it just isn't a financial bond that would  
20 secure his appearance in court because of the amount of wealth  
21 he holds in foreign countries and the fact that he has every  
22 incentive to leave.

23 If he goes back home, where he is one of the richest  
24 men in Panama, he doesn't have to worry about ever having to  
25 face these charges or being further prosecuted.

1 THE COURT: All right.

2 MR. TAMEN: And I have an agent, Special Agent Troy  
3 Naredo from the DEA available for questioning.

4 THE COURT: All right. Mr. Moscovitz, how would you  
5 like to proceed?

6 MR. MOSCOWITZ: I would be happy to respond to what  
7 Mr. Tamen has just represented --

8 THE COURT: Okay.

9 MR. MOSCOWITZ: -- that I disagree with.

10 First of all, Your Honor, with regard to the  
11 extradition, as Judge Scola held when he dismissed the case  
12 against Mr. Waked's co-defendant, this was an unnecessary  
13 extradition.

14 Mr. Waked was arrested only in Bogota flying there  
15 with his family from Panama because the Government failed on at  
16 least 17 occasions, which Judge Scola found to be established  
17 fact, to arrest him.

18 They could have arrested him on numerous flights to  
19 Canada with which we have extradition treaties. They could  
20 have granted him a visa to come to Miami and they could have  
21 just arrested him in Miami.

22 Frankly, based on the record before Your Honor, they  
23 could have sent him a summons and he certainly would have shown  
24 up.

25 With regard to --

1 THE COURT: Did he know he was charged here?

2 MR. MOSCOWITZ: Sorry, Your Honor?

3 THE COURT: Did he know he was charged here while he  
4 was flying around the world?

5 MR. MOSCOWITZ: He did not.

6 He has been aware of this investigation since 2009.  
7 During that last decade, since 2009, he has been trying to get  
8 his visa to come to the United States.

9 He tried, as most recently as December 2015 several  
10 months after this, to get a visa to bring his three-year-old  
11 daughter here who has had a life-threatening illness to get her  
12 treated here. The Government denied all of them visas.

13 The point is, Your Honor, that during the ten-year  
14 period he has traveled internationally, he is not hidden in  
15 Panama.

16 When I represented him early on, he made clear that he  
17 would be happy to come here and talk with the Government about  
18 anything they wanted to talk about, about the case.

19 THE COURT: You represented him during the  
20 investigation?

21 MR. MOSCOWITZ: Yes, back in 2009.

22 With regard to, Your Honor, that night, we have  
23 submitted DEA reports showing that very night he told the DEA  
24 he wanted to come here immediately and face the charges.

25 THE COURT: Yes, I saw that.

1 MR. MOSCOWITZ: With regard to the extradition, there  
2 are extraditions from Colombia that could be very lengthy and  
3 involve lots of delays, which is odd since they could have  
4 arrested him here and could have arrested him in Canada, but  
5 they made their choice to wait until he was in Colombia.

6 The second trip to Colombia they could have gotten him  
7 two months before if that's what they wanted to do.

8 THE COURT: What do you mean they could have? How  
9 could they have arrested him here? Oh, you mean if they  
10 granted him a visa.

11 MR. MOSCOWITZ: Granted him a Visa.

12 Your Honor, the U.S. Attorney's manual says that for a  
13 citizen of a foreign --

14 MR. TAMEN: I would have to object to the relevance of  
15 this. He didn't know there was an indictment that was against  
16 him when he was traveling.

17 And when we chose to arrest him has nothing to do with  
18 whether he's a risk of flight. And that now that he is under  
19 indictment --

20 THE COURT: I will let you address that when he has  
21 finished.

22 MR. MOSCOWITZ: Your Honor, there are two types of  
23 extraditions from Colombia. There's the simplified and there  
24 is the regular, which can go on for years.

25 Mr. Waked, after asking to come here and was turned

1 down, through counsel we submitted an affidavit from counsel  
2 from his lawyers, a former Chief Justice of the Colombian  
3 Supreme Court.

4 He opted for, what is called a simplified extradition  
5 where you waive all your legal and factual defenses to  
6 extradition. The idea to move it along.

7 THE COURT: And what happens at the end of that, he  
8 does some kind of appeal, though, right?

9 MR. MOSCOWITZ: Right.

10 But it is also addressed in the affidavit. His lawyer  
11 determined in reviewing the Government's resolution extraditing  
12 him --

13 THE COURT: The Colombian Government.

14 MR. MOSCOWITZ: Colombian Government.

15 Did not address a number of procedural matters, which  
16 they are required to address.

17 One of which is a judicial hearing now, which is  
18 providing regular family visits for close family to come see  
19 him and we will address that later.

20 The appeal was only an appeal for clarification for  
21 those particular issues as Mr. Calvete, his lawyer, explains in  
22 the affidavit -- I can read from it -- he made clear that he  
23 did not --

24 THE COURT: I read it, but I don't think --

25 MR. MOSCOWITZ: He did not revoke his request for

1 extradition -- I'm sorry -- for simplified extradition. He  
2 made clear that he was not attacking it on the merits. He  
3 still wanted that clarification.

4           And as he said in his request for simplified  
5 extradition, he's doing it to get here as soon as possible to  
6 face the charges. And as he laid out at great length, Mr.  
7 Tamen talks about Mr. Waked's great wealth.

8           Mr. Waked is one of four sons of parents who  
9 immigrated to Panama decades ago. His father, Ahmed Waked,  
10 started his businesses, which have been very successful.

11           It involves Vita Panama, this company which sells  
12 electronics and kitchen appliances sold throughout Central  
13 America and South America. They built a hotel. He was one of  
14 the founders of the Free Trade Zone. There are real estate  
15 developments.

16           And we submitted a very large number of statements  
17 from Panamanians. Members of the national legislature, the  
18 former mayors, including the current mayor of Panama, members  
19 of clergy.

20           All of which attest, first of all, to the family's  
21 excellent reputation for honesty and integrity and being civic  
22 minded members of the community and Mr. Waked as well.

23           He is a son of that family. The day after he was  
24 arrested and OFAC issued its OFAC designations on all of his  
25 brothers and with the family businesses this was -- it rendered

1 them basically -- it's effectively the equivalent of an asset  
2 freeze.

3           They lost all their banking relationships. They lost  
4 all of their credit cards personally and business wise. No  
5 bank will accept a check. Basically, they are back to, you  
6 know, a cash barter economy. There is no great wealth. I  
7 mean, there was substantial wealth there, but it is not liquid.

8           THE COURT: What about the money that he has in the  
9 bank, can't he go and take that out? The money he has in the  
10 bank.

11           MR. MOSCOWITZ: The money that he has in the bank is  
12 frozen. In terms of --

13           THE COURT: So OFAC asked Panama to -- I am talking  
14 about money he has in the bank in Panama. How is that frozen?

15           MR. MOSCOWITZ: They didn't ask -- the Panamanian  
16 government on its own, froze his bank accounts and his  
17 children's bank accounts and the accounts of all his family.  
18 They cannot take that money out.

19           There is only one account with which could be used to  
20 pay legal fees, but that's the only bank relationship which is  
21 permitted in Panama.

22           What that has meant is that Vita Panama, which is the  
23 co-defendant with a very substantial business, Mr. Tamen  
24 mentioned his annual income, is basically winding down. It's  
25 dying.

1           It represented all of the major electronic brands,  
2 Samsung, Sony, et cetera, U.S. kitchen appliance brands. They  
3 have all stopped doing business with him. They are simply  
4 selling off their inventory for cash.

5           A lot of the customers, of course, are saying, well,  
6 we can't pay you. We're concerned about OFAC designation.  
7 There are not assets that are usable, which really goes to why  
8 he is not a risk of flight which goes to why, in fact, he  
9 wanted to get here.

10           This has been a complete disaster. A terrible  
11 disaster, not only for him personally, but for his entire  
12 family. They are still respected in the community. People  
13 know who they are. They respected the father and mother for  
14 decades. They respect the brothers for their decency and  
15 honesty.

16           And the only chance for getting over this, for helping  
17 this family rebuild at some point -- and you know, who knows  
18 how long the OFAC sanctions are going to be in effect. It's a  
19 black box. You are not entitled for judicial review,  
20 particularly when you're not American citizens.

21           The only hope is by staying here and facing these  
22 charges and fighting them. If he would have become a  
23 fugitive --

24           THE COURT: Well, your plan to defend against this is  
25 to get him dismissed because the Government waited too long to

1 extradite him. That is not really facing the charge, is it?

2 MR. MOSCOWITZ: I mean, he's entitled to the dismissal  
3 on the fact that they waited. I mean, he is certainly -- I  
4 mean, that dismissal should be granted.

5 He can, then, return to Panama and work with his  
6 family to the extent possible to deal with the OFAC issues. To  
7 the extent that we're aware of what they are, the OFAC  
8 allegations are similar to the ones in the criminal case.

9 They are false. If we have to confront them at trial,  
10 there are substantial defenses that we can present at trial  
11 against those charges.

12 THE COURT: Right.

13 MR. MOSCOWITZ: But, certainly, this case was  
14 dismissed by Judge Scola against his co-defendant on grounds  
15 which were equally applicable to him, which is why is another  
16 reason, in terms of the strength of the Government's case,  
17 there's a likelihood -- one can never predict -- there's a  
18 likelihood on the same facts of the Government's failure to  
19 exercise due diligence in regard to apprehending Mr. Waked.  
20 This case should be dismissed against him as well.

21 If that doesn't happen and we go to trial, we have a  
22 very different view of the evidence that Mr. Tamen has  
23 suggested where he has talked about what Mr. Waked has done in  
24 this business.

25 By the way, this is the family business started by the

1 father 40 years ago, which is moving money around for drug  
2 smugglers. What the business does is sell consumer electronics  
3 and kitchen compliances throughout Central America and South  
4 America. That's the business.

5           There were millions of dollars in sales in previous  
6 years. It is one of the largest distributors in the Free Trade  
7 Zone and Panama no longer. Others now, of course, have taken  
8 that place. The allegation that we're referring to -- really  
9 there are two sides to it.

10           One relates to the business in Miami, but the other is  
11 the drug trafficking he's talking about in Panama going down to  
12 Colombia. It is what is referred to as trade based money  
13 laundering, where more specifically, the allegation is that  
14 drug traffickers bring cash into Panama.

15           And there have been no allegations, by the way, that  
16 Mr. Waked that has transported the money into Panama. There is  
17 no allegation that he is involved in any way in narcotics  
18 dealing in trafficking, but they bring the money into Panama.

19           And then, pay it to a business like Vita Panama for  
20 credit for the sale of their goods to merchants in Colombia.  
21 The goods are, then, shipped -- this is the allegation -- the  
22 goods are, then, shipped to Colombia to real merchants. There  
23 are real shipments of goods. There are real merchants who  
24 receive them.

25           And then, those merchants pay the drug dealers in

1 Colombia rather than paying Vita Panama. That's the  
2 allegation.

3 THE COURT: That is a pretty standard scheme, isn't  
4 it?

5 MR. MOSCOWITZ: Right.

6 But the question is the basis for their claim that it  
7 was knowingly done by Mr. Waked is a paid informant.

8 Someone who they say that they don't want to disclose  
9 him, but if they're going to proceed with this case they are  
10 going to have to because he will have to testify.

11 Someone who has been paid by them, who claims on a  
12 number of occasions he met with Mr. Waked and discussed it.

13 There is, of course, a serious question -- I don't  
14 know who this person is man or and woman -- about the  
15 credibility of paid informants under these circumstances.

16 Indeed, just last year, the OIG of the Department of  
17 Justice was very critical about DEA's practice of relying  
18 extensively on paid informants like whoever this character is.

19 For lots of reasons they're not reliable and they're  
20 not supervised. They get paid lots of money and there are lots  
21 of reasons to doubt their reliability. That's as far as we  
22 know. That's what they got.

23 If you take this paid informant out, if a jury decides  
24 not to credit him -- and these people are often not credible --  
25 then what you've got is ordinary business dealing.

1           It is common practice in Panama that companies of the  
2 Free Trade Zone deal in cash. They accept cash. And there is  
3 good reason why they accept U.S. dollars rather than bolivars  
4 and other South American currencies. Cash is reliable. You  
5 know what you're getting.

6           Most companies deal in cash. That's not illegal in  
7 Panama. It is acceptable. And indeed, there are cash  
8 reporting requirements in Panama, similar to the cash reporting  
9 requirements that we have here.

10           Indeed, right now, they are more stringent. There is  
11 no mention of this and I would be curious as to whether their  
12 agent has looked into it.

13           From the very beginning these requirements, going back  
14 to the mid-90s, the extent that we can still trace those  
15 records, Vita Panama has scrupulously complied with all of its  
16 cash reporting requirements and that's a fact.

17           THE COURT: Are you representing the corporation as  
18 well?

19           MR. MOSCOWITZ: Yes, Your Honor.

20           Mr. Rabin may represent the corporation. They're  
21 closely aligned.

22           THE COURT: Right.

23           MR. MOSCOWITZ: It is a fact that they have always  
24 complied with their cash reporting requirements, which is a  
25 fact.

1           And I am proffering that to the Court, which is  
2 completely inconsistent with their theory that they've been  
3 involved in trying to hide their transactions. The  
4 transactions on their face are simply ordinary sales  
5 transactions.

6           If it turns out that merchants receiving goods in  
7 Panama are doing something like this, that's not something that  
8 Mr. Waked is charged with knowing.

9           If there is evidence, that's one thing, but we know of  
10 no evidence that that's the case.

11           THE COURT: Other than the informant?

12           MR. MOSCOWITZ: Other than whoever this informant is.

13           We've been told that it may be someone who is  
14 cooperating in another case. I have no idea what that person's  
15 testimony is going to be.

16           Otherwise, what you've got is a company, a man and his  
17 family, who have for years dealt honorably and honestly and had  
18 excellent reputations in business in Panama.

19           And you have someone alleging that, no, it's part of  
20 this chain and that remains to be proven in court.

21           THE COURT: How much time do you think he is facing on  
22 these charges if he is convicted?

23           MR. MOSCOWITZ: Well, I don't know because there are  
24 two parts to it. There are two money laundering conspiracies.

25           This one relating to the trade based money laundering,

1 we've asked the Government what's their estimate of the money  
2 involved and I think it's pure speculation.

3           They had an MLAT to Panama going back in 2010, 2012  
4 where they subpoenaed his bank records. And by the way, he was  
5 aware of that subpoena. Panamanian banks are not as careful as  
6 U.S. banks, but he was aware that this investigation was  
7 continuing.

8           They did not subpoena or request -- and I do not know,  
9 you know, whether they could have asked the Panamanian  
10 government for VitaPanama's records, which would show clearly  
11 what type of activity they were involved in and what their  
12 sales were. And what their cash receipts were and how cash  
13 receipts to Colombia compared to cash receipts from businesses  
14 from other companies.

15           They have not told us -- and I want to hear from the  
16 agent if he is prepared to say it in terms of -- I don't think  
17 they have any idea what --

18           THE COURT: I do not want to get into too much of --  
19 you know, because I am not here to try the case, but tell me  
20 what you would do to assure his appearance here.

21           He is a Panamanian citizen. Any assets he has,  
22 although they may be frozen, are in Panama. Why would they let  
23 him out of jail here?

24           MR. MOSCOWITZ: Well, first of all, Your Honor, he has  
25 family here who live in Coral Gables.

1           It's his brother-in-law Abraham Barakat, and his wife  
2 Mimi Barakat. Mimi is Mr. Waked's sister, who is in Panama.  
3 Mr. Barakat is a partner at McDermott Will here in Miami. He's  
4 a graduate of the University of Miami. He went to Cornell Law  
5 School. He told me, in fact, when he was interning, he  
6 interned for Judge Turnoff one summer.

7           He well understands --

8           THE COURT: How come he did not go to the University  
9 of Miami Law School?

10          MR. BARAKAT: I went for undergrad.

11          THE COURT: I know, but you should have gone there for  
12 law school. It's much more credible than some lower end school  
13 up in the sticks of New York.

14          MR. MOSCOWITZ: That's when he moved back.

15          THE COURT: Go ahead. I'm sorry.

16          MR. MOSCOWITZ: He well understands his  
17 responsibilities.

18           He well understands, as does Mr. Waked that if Mr.  
19 Waked flees, he's not going to be made whole. Their house has  
20 substantial equity and they are prepared to post, you know, to  
21 put their house up.

22          THE COURT: What is his equity?

23          MR. MOSCOWITZ: It's about 1.5 million.

24          THE COURT: In equity?

25          MR. MOSCOWITZ: Yes.

1 Erika Kam is here. Erika is a United States citizen  
2 also. She lives in Doral. She's a childhood friend of Mr.  
3 Waked from Cologne. She works as an investment advisor. She's  
4 a licensed Series 7 -- I don't remember what the other series  
5 is -- for a firm here in Broward County.

6 She is prepared to post her home. There are some  
7 things that I have asked to proffer to the Court with Mr. Tamen  
8 present about that, but she understands also what's involved in  
9 being a surety and she is prepared to do that.

10 THE COURT: What is the equity in her home?

11 MR. MOSCOWITZ: It's about \$150,000, but there are  
12 certain things that I would bring to the Court's attention  
13 about that.

14 And Mr. Waked is prepared also to post a corporate  
15 surety bond. Russ Walters is here. He has done the due  
16 diligence and we would ask for \$100,000 corporate surety bond.

17 Now, in addition to that --

18 THE COURT: Where is he getting the money for that?  
19 Where is he getting the \$15,000 to --

20 MR. MOSCOWITZ: I have -- well, two possibilities.

21 One is, I have received funds through my license from  
22 Vita Panama, which should be used for his defense.

23 The indictment against Vita Panama only goes up to  
24 2011. That's the last date of the charge. So there are no  
25 allegations of criminal activity over, you know, over the last

1 four years.

2 THE COURT: I see.

3 MR. MOSCOWITZ: If it turns out that that's not  
4 acceptable, then, there are other sources that we can provide.

5 THE COURT: And OFAC needs to get involved in this  
6 even -- let's say they have a friend who put up the \$15,000 for  
7 the surety --

8 MR. MOSCOWITZ: They would have to be --

9 THE COURT: -- OFAC still has to get involved with it?

10 MR. MOSCOWITZ: Yes, Your Honor.

11 THE COURT: Because people put up their money on his  
12 behalf?

13 MR. MOSCOWITZ: Yes.

14 Frankly, I think it is nuts. Particularly, since we  
15 asked them back in September if we could get this resolved and  
16 they've failed off.

17 In addition, Your Honor, with regard to -- look, the  
18 issue that he cannot be extradited back to Panama as Justice  
19 Brennan in the Trunk case which I cited and noted, that's a  
20 theoretical possibility.

21 The Court's, you know, job is of course to look at all  
22 the factors as to whether he is a risk of flight. And there is  
23 absolutely nothing else about him. You have a ten-year record  
24 of his behaving, not like a fugitive, but like somebody who is  
25 prepared to step forward.

1           And specifically, when he was arrested, he asked to  
2 come here and he's moved -- he sought to move his extradition  
3 forward so he could confront his charges. Every fact about him  
4 suggests he's not a risk of flight.

5           The other point, Your Honor, is simply again who he  
6 is. He has no arrest record. He went to FSU. He's educated.  
7 All four sons are educated in the United States.

8           This is a well established proud family which cares  
9 about their reputation for honesty, decency, and being good  
10 members of the community.

11           His only chance of getting them out from under is by  
12 staying and fighting these charges. If he flees it is all  
13 over. I mean, they are just in a terrible situation. So there  
14 is no dictation subjectively he would flee. It's not in his  
15 interest to flee. His motivation is to stay.

16           You know, I have no doubt that, you know, he  
17 understands that if this gets to trial, if this case is not  
18 dismissed, trials are not easy. The Government will present  
19 evidence, but we have substantial evidence to present as well.

20           I haven't even addressed, yet, the allegations  
21 relating to the company here in Miami. I won't get into the  
22 evidence, but to proffer, Mr. Tamen says this was a fraud  
23 involving to come here in Miami, a fraud on the Panamanian  
24 banks. There was no fraud.

25           The Government says, in fact, the relationship with

1 the Panamanian banks was, Vita Panama, Mr. Waked was the owner  
2 of Star Textiles here in Miami. Vita Panama had lines of  
3 credit at Panamanian banks. And it was advancing those funds  
4 to Star Textiles here in Miami. Star Textiles relied on those  
5 and they would periodically renew the loans. They're real  
6 loans.

7           The Government maintains that because of the way that  
8 the funds moved back and forth that this was simply a sham.  
9 This is not a sham. The Government doesn't have the loan  
10 records. The records they received from the Panamanian banks  
11 were very partial.

12           At Vita Panama we have records of every loan. And  
13 those records would show that there are approximately 20  
14 million dollars in funds advanced. Of that, 19 point something  
15 million are directly the proceeds of loans advanced by the  
16 Panamanian banks and the evidence will show that.

17           The Government doesn't have that evidence. The  
18 evidence they got from the Panamanian banks shows a smaller  
19 percentage of loans.

20           Now, their position is that these were not real loans.  
21 That these were simply monies being sent by Vita Panama and  
22 they were pretending. Mr. Waked was pretending that they were  
23 loans.

24           They do concede with the one bank they know about that  
25 the money came from a line of credit, but somehow maintaining

1 that's not evidence, it's a loan, it was part of a sham.

2 You know, we will be able to show that they were real  
3 loans and there was no intent to defraud the banks. There were  
4 two banks. There are several banks involved.

5 There is Ocean Bank here where they had a large line  
6 of credit fully secured by a standby letter of credit. At the  
7 end of the day, Ocean Bank was paid off in full and recovered  
8 every penny.

9 With regard to the loans of the Panamanian banks,  
10 which were loans, at the end of the day, Mr. Waked made sure  
11 that those banks were paid back every penny that they were  
12 owed.

13 So you've got an allegation of bank fraud with no  
14 victim. No bank lost a penny. Now, he mentions that -- I  
15 don't know if he mentioned. I can't remember, but there were  
16 false invoices sent to the banks to induce him to make the  
17 loans.

18 We've talked to bankers who said, yes, but they  
19 understood that those were to kind of paper the file. They  
20 didn't rely on them. And they lent the money because of Mr.  
21 Waked and his family's reputation and their personal  
22 guarantees.

23 And in fact, the evidence is at the time that Mr.  
24 Waked and Mr. Zafir, his manager here, were well aware of those  
25 guarantees and were well aware that the banks, both the Ocean

1 Bank and the Panamanian banks, were going to be fully secured.

2 And in fact, they were right.

3 Now, it is often the case when you've got, you know,  
4 prosecuting a bank fraud or an investment fraud, the defense is  
5 I thought I could pay it back and, then, of course, they don't.

6 Here, at the time they knew they were going to pay it  
7 back and the best evidence of the state of mind is described by  
8 the fact that they did pay it back.

9 Now, there is a distinction in the Eleventh Circuit  
10 law between a scheme to defraud and a scheme to deceive. And  
11 in fact, it is a recent case. It's the *Takhalov case*. I could  
12 give the Court the citation in which Judge Scola was reversed  
13 where there were misrepresentations made, but they were not  
14 part of the scheme to defraud.

15 These false invoices, if anything, they would be a  
16 good legal argument -- and we would want that instruction --  
17 that this is an indication of a scheme to deceive because there  
18 was no intent to defraud. These defendants did not intend to  
19 defraud and they knew it.

20 Now, Mr. Tamen mentions the detainer. There is an  
21 immigration detainer, but there is good law -- and as a matter  
22 of fact, I could give the Court and Mr. Tamen citations -- that  
23 when the Government proceeds criminally against a defendant, it  
24 often comes up in false entry cases and files a detainer.

25 It has to make the choice. One Government -- two

1 agents, but one Government. And if it chooses to proceed  
2 criminally, it proceeds under the Bail Reform Act. And the  
3 findings of the Court under the Bail Reform Act bind the entire  
4 Government.

5 It chooses to proceed by the detainer, then, the case  
6 gets dismissed and, then, they could order removal and deport  
7 him, but they can't play at both games. It's one or the other.

8 THE COURT: Where is that case law?

9 MR. MOSCOWITZ: Sorry?

10 THE COURT: Where is that case law from?

11 MR. MOSCOWITZ: There are several recent cases.

12 THE COURT: So you are saying if I set a bond that is  
13 binding on the immigration judge?

14 MR. MOSCOWITZ: It's binding on the Government.  
15 That's right. In other words, the Government cannot -- let me  
16 just find it.

17 In fact, this other case --

18 THE COURT: The Government cannot detain -- the  
19 Immigration Service cannot detain him. Is that what you are  
20 saying?

21 MR. MOSCOWITZ: As I read these cases, no.

22 Immigration is bound by this Court's determination as  
23 well. If the Court sets a bond in the criminal case, then,  
24 Immigration will have to live with that as well. We will have  
25 to deal with about the case.

1           The most recent case is United States -- may I hand it  
2 up, Your Honor?

3           THE COURT: Yes. Sure.

4           MR. MOSCOWITZ: I will give Mr. Tamen a copy also.

5           It is *United States v. Hernandez-Bourdier*. It is a  
6 Western District of Pennsylvania on January 5th, 2017.

7           THE COURT: Are there any appellate cases on this?

8           MR. MOSCOWITZ: No, I couldn't find any appellate --  
9 well, this case, there's another case, an earlier case which  
10 cites an appellate case that says basically the same thing.

11           One Government -- it's one or the other. The  
12 Government decides how to proceed. So a detainer, if Mr. Waked  
13 is released on conditions set by this Court, you know, we will  
14 come back here if they try to scoop him up and detain him  
15 because the law holds that --

16           THE COURT: Well, that would be interesting.

17           I do not need the cases now and I am not going to get  
18 into that now, but that is not my understanding of the law. My  
19 understanding of the law is that he goes to immigration and  
20 they decide.

21           What I would agree with you is that if the guy says,  
22 okay, well, I will just go back to Panama that the Government  
23 is, then, going to let him go to Panama. They're not going to  
24 allow that to happen while they have a criminal case pending.

25           Presumably, Mr. Tamen would assert whatever influence

1 he has in his big Government to make sure that he did not  
2 freely go back to Panama.

3 MR. MOSCOWITZ: That's the point.

4 It's their choice. They can either remove him because  
5 he is undesirable or they can prosecute him.

6 But, if they choose to prosecute him, then, they --  
7 the entire Government -- is bound by this Court's determination  
8 if the Court enters conditions of release.

9 Now, with regard to Panama and other countries, there  
10 are a couple of things that we propose. One is we've asked --  
11 and by the way, Your Honor, we cited them in our motion. There  
12 are lots of cases in which courts -- the Government has argued  
13 he can't be extradited back.

14 THE COURT: Yes, I understand that.

15 It goes into kind of the whole -- you look at the  
16 whole thing together.

17 I consider that, but it does not mean that if you do  
18 not have extradition that the person could never get a bond if  
19 they are from a country that does not extradite its own  
20 citizens.

21 MR. MOSCOWITZ: So what we've done, we've contacted,  
22 in terms of evidence the Panamanian passport office, and  
23 notified them that he's under criminal indictment here.

24 He will be required -- I have all of his passports and  
25 identity documents that would be surrendered to the Court and

1 that he should not be granted a Panamanian passport until  
2 after, you know, further order of the Court.

3 We received the declaration, which I can hand up, from  
4 the Panamanian office that they received this and they're aware  
5 of this of the notice received from us.

6 They told Mr. Waked's lawyer that under Panamanian  
7 law, the Panamanian passport office will refuse to issue a new  
8 passport upon request of a foreign government authority.

9 So the Government can make that a request to insure  
10 that he will not receive a passport to travel. In addition,  
11 with regard to all other countries, there is no worry about  
12 Colombia. They will extradite him again. He will sign and  
13 execute a worldwide extradition waiver.

14 So that any place else, if he were to flee -- and like  
15 I say, that's a theoretical possibility. There's nothing they  
16 can point to that suggests that that will happen that he would  
17 be subject to extradition.

18 So, those are, in addition to what I think is a  
19 substantial bond, including the bond by a bondsman. Those  
20 substantial conditions which will insure he will do what he  
21 wants to anyway, which is to stay here and litigate this case.  
22 He ain't going anywhere.

23 THE COURT: All right. What do you say about all  
24 that, Mr. Tamen?

25 MR. TAMEN: Well, I am not going to present my theory

1 of prosecution in this case because I don't think the Court is  
2 here to try it. Except that it does differ somewhat from what  
3 Mr. Moscowitz has interpreted it.

4 THE COURT: One of the issues that I have to address  
5 is risk of flight.

6 They are saying that it is easy because Judge Scola  
7 dismissed the co-defendant and they are going to dismiss him.  
8 So why does he stay around here?

9 If he stays around for months, Judge Scola is going to  
10 dismiss this case and he's got no motivation to leave.

11 MR. TAMEN: I'm not really ready to argue a motion  
12 they haven't even filed yet, but this situation is quite  
13 different between the two.

14 Thomas Zafir was living in Miami the entire time.  
15 This Defendant is a resident of a country in Central America  
16 that does not extradite its citizens.

17 In addition, there are certain evidence that we intend  
18 to put on at a motion to dismiss before Judge Scola that we  
19 chose, for a variety of reasons, not to present in terms of the  
20 co-defendant.

21 So Judge Scola is going to be presented with a lot of  
22 additional information that he did not take into account in  
23 considering the motion to dismiss filed on behalf of Thomas  
24 Zafir.

25 So Mr. Moscowitz may be confident that his client is

1 going to get a dismissal of the indictment. We do not believe  
2 that that is going to happen in his case.

3 He cannot argue the merits of a motion that he has not  
4 filed yet, but the facts are different. The citizenship and  
5 nationality is different and the evidence that is presented  
6 before the Court will be different between the two.

7 THE COURT: Let me ask you something else.

8 MR. TAMEN: Yes.

9 THE COURT: According to the DEA-6, which I think is a  
10 DEA-6, which is attached to his motion, the agent writes in  
11 there that he offered to return to the United States  
12 immediately when he was arrested in Colombia.

13 MR. TAMEN: He was arrested in Colombia and that's the  
14 difference. He was lodged in Picota prison.

15 Every time I have a drug trafficker from Colombia  
16 coming up for sentencing, they want to ask for like extra  
17 credit for time served in Picota because the conditions in that  
18 prison are so miserable.

19 Anybody there seems to want to come to the United  
20 States just to get out of that place. That's a lot different  
21 from being a free man walking the streets.

22 If he has a choice of being lodged in Picota or being  
23 lodged in FDC, most people would choose to be lodged in FDC.

24 If he is offered a third choice of being left walking  
25 around the streets and taking the next available opportunity to

1 go back to Panama, I think his third choice would be his  
2 preference.

3 THE COURT: That would be most people's preference,  
4 wouldn't it?

5 MR. TAMEN: Yes. And no less so for this Defendant.

6 THE COURT: And assuming you did not need to be here  
7 for some reason, but let me ask you something else.

8 You said that he's got 500 million dollars. He's  
9 worth 500 million dollars in Panama and he's got all these  
10 companies and assets there.

11 And Mr. Moscowitz says, no, because of OFAC they are  
12 all gone out-of-business and they have no value and he cannot  
13 take any money out of any of them.

14 What do you say about all that?

15 MR. TAMEN: I think he still has substantial wealth.  
16 The Government was never aware of all of the wealth that he  
17 has.

18 We have seen evidence that he has control of money  
19 that is not in his name. And I have no reason to believe that  
20 those methods of access to wealth have suddenly disappeared.

21 The problem Mr. Waked has is not with all of the  
22 legitimate business that he has done. And we have no doubt  
23 that he has been a legitimate businessman in many respects and  
24 has earned a lot of money legitimately.

25 The problem he is facing is with that portion of his

1 financial activities that were not legitimate. And that is  
2 what he has to go to trial on.

3 And the last point that I want to make, he has no  
4 legal status in the United States. His visa was cancelled. He  
5 does not have the legal right, under immigration law, to be  
6 walking around.

7 He would be picked up and taken to the Krome Detention  
8 Center following if he was released on bond from here. And  
9 they would hold him pending some sort of determination by an  
10 immigration judge whether he would remain in the United States  
11 illegally or go back to Panama.

12 And if the judge found that, well, he wants to go back  
13 to Panama, then, they would probably release him on an  
14 immigration bond.

15 And he would, in the Government's opinion, go back to  
16 Panama because there is a much stronger incentive for him to  
17 flee than to remain and face charges.

18 MR. MOSCOWITZ: May I respond briefly?

19 THE COURT: Yes.

20 MR. MOSCOWITZ: What Mr. Tamen says about 500 million  
21 dollars, that is complete speculation. Even at the best day,  
22 that's a made up number that has no source in evidence.

23 There is no doubt that this family was wealthy and was  
24 quite prosperous. The assets, the companies are owned by his  
25 father. They are not owned by the sons. Mr. Waked is, of

1 course, a participant in that, but he doesn't own that. It's  
2 his father's.

3 With regard to the bank, Your Honor, that they  
4 mentioned Mr. Waked, on behalf his family, was a director of  
5 this bank. He was approved by the Panamanian authorities to  
6 serve as a bank director.

7 And in fact, in Panama one goes through a rigorous  
8 vetting to serve on the board. They were, at most, a 20  
9 percent -- not a majority shareholder of the bank -- a 20  
10 percent shareholder of that bank.

11 That bank, Your Honor, is now effectively -- I don't  
12 know what the term is in Panama -- is in receivership. It is  
13 going to be sold because it is also under the OFAC sanctions.  
14 They will not receive -- the Wakedes as with the other  
15 shareholders -- will not receive the proceeds of that sale  
16 until the OFAC matter is settled. Everything is frozen.

17 Like I said, you know, I respect Mr. Tamen a great  
18 deal and he's a fine prosecutor, but these facts are not facts  
19 about his capacity, in fact, to flee and live comfortably in  
20 Panama.

21 It's not just financially. Again, the point of all  
22 those letters is that this family and he, has a reputation. He  
23 can't go home and hide there. That, like I say, that ends it  
24 for all of them.

25 Things in Panama since this case was indicted have

1 changed. This is a very political case in Panama. It's a  
2 small country. It's split. People take sides. There are  
3 winners and losers.

4 That's for another day, but there are people, other  
5 families, other people in business, other people in politics  
6 who profited by the charges against him and the separate OFAC  
7 charges against their uncle whose business assets are  
8 completely different.

9 So, Your Honor, like I say, the only way out for him  
10 and his family is for him to stay here and face these charges.

11 THE COURT: Okay. All right.

12 I find the weight of the evidence against the  
13 Defendant is substantial. The Government has indicated that he  
14 was involved with the movement of drug monies through his  
15 legitimate business and through bank accounts.

16 They have an informant who, apparently, supports that  
17 theory. Although the case sounds like it is certainly  
18 defensible, both substantively as well as on the Sixth  
19 Amendment speedy trial issues.

20 There is a substantial amount of evidence and the  
21 Grand Jury has also found probable cause to believe that he  
22 committed those crimes.

23 I find by a preponderance of the evidence that no  
24 condition or combination of conditions will reasonably assure  
25 the appearance of the Defendant as required in future

1 proceedings.

2 The reason I find that is because of the Defendant's  
3 very close ties to Panama. In addition, he is a citizen of  
4 Colombia and Canada and --

5 MR. TAMEN: He is not a citizen of Canada.

6 THE COURT: I'm sorry.

7 MR. MOSCOWITZ: Colombia and Spain and permanent  
8 resident of Canada.

9 THE COURT: Oh, I'm sorry. The Pretrial Services  
10 Report says he's a citizen of Canada.

11 Okay. He's a citizen of Panama, and Colombia, and  
12 Spain and apparently has some status in Canada.

13 He's a world traveler. He's got -- at least in his  
14 better days he had access to large amounts of money. He still  
15 has access to a large amount of influence in Panama, as  
16 evidenced by the number of letters that were written to the  
17 Court supporting him by the folks from Panama who are involved  
18 in business in the government there.

19 I find that due to his close ties to Panama, his  
20 family's ties to Panama, the seriousness of the offenses to  
21 which he has been charged that there is no conditions that I  
22 could set that would reasonably assure his appearance at future  
23 proceedings.

24 And therefore, I am going to order that he be detained  
25 pending trial in this matter.

1 All right. Anything else with this gentleman?

2 MR. MOSCOWITZ: Nothing further, Your Honor.

3 THE COURT: Okay. Thanks a lot.

4 The Court is in recess.

5 Anything else for the Court? No? All right. Court  
6 is in recess.

7 (Thereupon, the proceedings concluded.)

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

CERTIFICATE

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

01/31/17

Bonnie Joy Lewis,  
Registered Professional Reporter  
CASE LAW REPORTING, INC.  
7001 Southwest 13 Street,  
Pembroke Pines, Florida 33023  
954-985-8875