

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
FORT LAUDERDALE DIVISION

CASE NO.: 12-60049-CR-ROSENBAUM/MATTHEWMAN(s)(s)

5	UNITED STATES OF AMERICA,	)	
		)	
6	Plaintiff,	)	
	v.	)	January 17, 2014
7		)	
	ROGERIO CHAVES SCOTTON,	)	Pages 1 - 46
8		)	
	Defendant.	)	
9	_____	)	

HEARING PROCEEDINGS  
BEFORE THE HONORABLE ROBIN S. ROSENBAUM  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

14	For the Government:	UNITED STATES ATTORNEY'S OFFICE
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18	For the Defendant:	ROGERIO CHAVES SCOTTON, Pro Se
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1 (Thereupon, the following proceedings were held:)

2 THE COURT: All right. Case Number 12-60049; United States  
3 versus Rogerio Scotton.

4 Would the parties, please, state their appearances for the  
5 record.

6 MS. MITRANI: Good morning, Your Honor.

7 Bertha Mitrani on behalf of the United States. With me at  
8 counsel table is Special Agent Roy Van Brunt.

9 THE DEFENDANT: Good morning. Rogerio Scotton, pro se.

10 THE COURT: All right. We have several matters we need to  
11 address today. So let's just go through them. We have previously  
12 discussed the Government's Motion in Limine at 144, but I did not  
13 rule on all of it.

14 That is where the Government seeks to preclude Mr. Scotton  
15 from engaging in questioning concerning an alleged drug conspiracy  
16 carried out by Federal Express and/or the Department of Justice.

17 And the other half of it, I did address where the  
18 Government seeks to preclude Mr. Scotton from trying to garner  
19 sympathy from the jury since he is not represented by a lawyer,  
20 which I granted that part already.

21 As to the first part, I am not going to grant that Motion  
22 in Limine. I am going to deny it and we will see how it comes up  
23 during the trial. And if it appears that we are getting off onto a  
24 completely irrelevant area, then I will, of course, grant  
25 appropriate objections at that time, but I think it only seems to me

1 that this is Mr. Scotton's defense and I need to give him an  
2 opportunity to present it. So I will deny the Motions in Limine  
3 with respect to that.

4           Okay. For Docket Entry 145, the Government's Motion in  
5 Limine to resolve any recorded related issues, I have already  
6 addressed that. I think what we decided was that to the extent that  
7 the Government is able to prove the relevance with the exception of  
8 the one audio recording that Mr. Scotton had already challenged  
9 those would be admissible.

10           As to the other ones, we will have to wait and see what  
11 happens as far as what evidence, if any, Mr. Scotton presents that  
12 that recording has been doctored. As of the previous hearing,  
13 however, I had not seen or heard anything that would lead me to  
14 believe that any doctoring of that recording had occurred.

15           The way that I understood Agent Van Brunt's testimony was  
16 that the information is recorded by the device in what are sometimes  
17 referred to as packets of information. When the volume of  
18 information exceeds the maximum packet allowance, it goes  
19 automatically into the next packet, which is why there are four  
20 separate packets of information.

21           But I see nothing to suggest in any way that that has been  
22 doctored or it is not authentic but, I am going to withhold judgment  
23 on that in case Mr. Scotton has some evidence to present on that.  
24 But in fairness, I do want Mr. Scotton to know, at this time, if I  
25 were to decide on this record, I would decide to admit that.

1           Okay. Then, we have the Government's Motion in Limine to  
2 admit subject to determination of relevance the domestic bank  
3 records and other business records is Docket Entry 183. I have  
4 already ruled on that and nothing has been presented to show that  
5 these records are not authentic. So I am granting that.

6           It does not mean the evidence is coming in. It means, of  
7 course, because as the title of the motion itself suggests, the  
8 Court must still determine whether the records are relevant and,  
9 otherwise, admissible, but as far as authenticity goes, at this  
10 point, there has been nothing that would suggest that they are not  
11 authentic.

12           Okay. The Defendant's Motion to Dismiss the indictment at  
13 Docket Entry 218 is the subject of a report and recommendation found  
14 at Docket Entry 294. And as I mentioned, when we met a few days  
15 ago, I wanted to give the Defendant an opportunity to present any  
16 objections that he might have to that report and recommendation at  
17 the time.

18           Because normally, one would have 14 days to file  
19 objections, but because we are coming up on trial, I wanted to  
20 ensure that Mr. Scotton had an opportunity to have any objections he  
21 might have addressed before trial began.

22           So once again, this is with respect to the report and  
23 recommendation at Docket Entry 294 addressing the Motion to Dismiss  
24 the indictment at 218. And I will hear anything that Mr. Scotton  
25 wishes for me to consider at this time.

1 Mr. Scotton, was there anything?

2 THE DEFENDANT: Yeah, I was talking to Jason about that,  
3 Your Honor. I would like to object to magistrate order of the fact  
4 that the judge had stand at all points one of the brought in the  
5 letter from Duarte and the Government claim was a fake letter.

6 Most of time the Government was claiming in every single  
7 motion they have respond that they never saw the letter. But for  
8 them to claim now the letter is fake, seems to be they saw the  
9 letter, but bottom line, fake or not, the original seems to  
10 disappear.

11 Several weeks ago, Mr. Robert Abreu, my second lawyer, has  
12 confront to Investigator Martinez that she has give the letters and  
13 the videos.

14 THE COURT: Let me stop you for a second.

15 First of all, I do not know where the original is, if it  
16 ever existed here or where it was, but there is a copy of it and the  
17 copy is just as admissible as the original. So what difference does  
18 it make if the original disappeared?

19 Clearly, there is still a copy around. You have referred  
20 to it and you have given me a copy of it to look at. So I am not  
21 certain why it matters whether or not you can find the original.

22 THE DEFENDANT: Your Honor, this is a misconduct. Someone  
23 made this letter disappear one way to another.

24 THE COURT: Okay. But again, it does not matter.

25 A copy is admissible for every single purpose that an

1 original would be admissible for. If the original is not admissible  
2 neither is the copy, but if the original is admissible, as long as  
3 you can present testimony that the copy is a true and accurate copy  
4 that is just as admissible. It does not make any difference.

5           So again, why does it matter whether or not we can find the  
6 original?

7           THE DEFENDANT: Part I understand by my recollection look  
8 at Bradley (sic) -- I mean, the testimony they show the Government  
9 try to destroy evidence for me not be able to present, Your Honor.  
10 They destroy evidence. And it's not only the letter now --

11           THE COURT: Do you have any evidence that the Government  
12 destroyed evidence?

13           I know that you cannot find the original, but that does not  
14 mean that the Government destroyed evidence. If the Government were  
15 trying to destroy evidence, presumably we also would not have the  
16 copy.

17           THE DEFENDANT: Your Honor, when go ahead and make a photo  
18 the videos and everything disappear once everything was drop off  
19 here at courthouse. My extramarital (sic) has told the last lawyer  
20 to handle everything on my hand. All handle here legally and drop  
21 it off everything at court. From that point things has disappeared.

22           THE COURT: Okay. Just to be clear here, the discovery has  
23 been delivered to your attorneys and to you on more than one  
24 occasion.

25           I have physically been present when that has occurred on at

1 least one occasion and that was at the time when Miss Doakes and Mr.  
2 Adelstein came into court and physically presented the evidence.  
3 And the Government brought in a large rolling cart filled with  
4 evidence and I sent all of it back to the jail with you so that you  
5 could review it.

6 I know that you have received the evidence. Moreover, that  
7 was not the first time that the evidence was received. Both Miss  
8 Doakes and Mr. Adelstein explained that they had previously received  
9 the evidence.

10 The Government has also stated that they had also  
11 previously provided the evidence. So I do not know exactly what the  
12 problem here is, but we are past that point. You have been  
13 presented with the evidence on multiple occasions.

14 If your attorney was given the evidence, then, clearly the  
15 Government could not have destroyed it because your attorney could  
16 not have had it in that case. In any case, if what your complaint  
17 is, is that the original version of the Duarte letter is missing,  
18 that could be due to any number of circumstances.

19 But even if it is missing, it still has no practical affect  
20 on the litigation because you can still use the copy for every  
21 purpose that the original could be used for. If the original is not  
22 admissible, the copy would not be admissible either, but if the  
23 original is admissible, the copy will be admissible to the same  
24 extent that the original is.

25 So I will overrule that objection. I will hear your next

1 objection.

2           THE DEFENDANT: What I'm talking about is not the discovery  
3 the Government has present everything they have present by the  
4 Government. I'm talking about what is my personal file that has  
5 been give to the lawyers by family. My personal things, it was my  
6 defense that has been corrupt. That has been disappear.

7           So that's the thing that I ask even the Court to get the  
8 letter so I can retrieve all those paperwork back. I'm not talking  
9 about anything -- about anything the Government present here. I'm  
10 talking about files that my family has give to the lawyers and those  
11 file gone.

12           THE COURT: Well, that is a matter between you and the  
13 lawyers. I mean, the lawyers came in here and said that they gave  
14 everything that they received back to you. That is what they said.  
15 They came in here and they presented the evidence. They went to you  
16 while I was sitting here.

17           I had a hearing on it. They talked about how they tried to  
18 go through the evidence with you. You did not want to go through  
19 all of it with them. I found them to be credible and I find them  
20 still to be credible. So I am sorry, but that objection is  
21 overruled.

22           What is the next objection that you have?

23           THE DEFENDANT: What else can I say, Your Honor. Every  
24 single time that I say something here to this Court or file a motion  
25 it has been denied. I have not the -- my word doesn't stay anymore.

1           THE COURT: All right. That is not even accurate. So I am  
2 not going to address that further and I think you know that, Mr.  
3 Scotton.

4           THE DEFENDANT: I put a motion to the -- the day my mother  
5 lost her own mother. She health take so much different depression  
6 and medication and headache and they refuse to postpone the hearing.

7           THE COURT: Yes. But Mr. Scotton, first of all, you had  
8 asked for the hearing repeatedly.

9           Second of all, I think we can all agree that it is  
10 obviously a very terrible situation that your grandmother passed  
11 away. And I was really very sorry to hear that and I am sure Judge  
12 Matthewman was. But the hearing had been set. Your mother was  
13 there.

14           The Government agreed that it would stipulate to what your  
15 mother would testify to based on the affidavit that she had  
16 presented. And it was your decision to insist that your mother  
17 testify anyway. And your mother did not really say anything  
18 different from what was in the affidavit.

19           So you know, I do not think you can talk about there being  
20 an unfair procedure. You were given all of the process that you had  
21 sought. And I am truly sorry that for the timing of the way that it  
22 worked out, but as the order, or the report and recommendation from  
23 Judge Matthewman indicates, he went through and explained to you  
24 that your mother did not have to testify. That the Government would  
25 stipulate to what she would say and it was your decision to insist

1 that she testify regardless so.

2 THE DEFENDANT: I mean, if she's not going to testify, then  
3 what the hearing for? Because the hearing just for them to come  
4 testify. Then, who's going to come testify on, you know, on the --  
5 if the hearing is about them being intimidated by the Government,  
6 who else is going to testify?

7 THE COURT: As I said, the Government offered to stipulate  
8 to what your mother would have said as set forth in the affidavit.  
9 They did not have to do that, but they agreed to do that and that  
10 was to serve as the evidence. And I am not --

11 THE DEFENDANT: But --

12 THE COURT: That is it. We are done with this.

13 Mr. Scotton, we are noting getting anywhere and we are not  
14 going to argue about it. I am overruling the objection.

15 What is your next objection?

16 THE DEFENDANT: I don't have anymore, Your Honor.

17 THE COURT: Okay.

18 THE DEFENDANT: Because it doesn't matter what I say, it's  
19 going to be deny one way to another.

20 THE COURT: Well, this is your opportunity. And Mr.  
21 Scotton, you can make your editorial remarks, whatever you want to  
22 say here at the moment, but the record shows that that is just not  
23 accurate.

24 You have received numerous subpoenas. You have received  
25 expert witness authorization. You have received investigator

1 authorization. You have received three court appointed attorneys  
2 who had to come up to speed. The payment for a fourth attorney to  
3 serve as standby. And that fourth attorney is doing far more than  
4 this Court generally allows when we have a standby attorney.

5           So it is simply not accurate for you to sit there and say  
6 that it does not matter what you say that everything is denied.  
7 That is just not accurate. The record does not bear you out. The  
8 mere fact that you do not win on everything that you ask for does  
9 not mean the system is unfair or there is no sense in proceeding.

10           So I am not going to go through this again. I am saying it  
11 now, for the record, if you desire to make objections, I am here to  
12 hear them. You can put them on the record. And if I overrule them  
13 and I am wrong, and you want to appeal it, the Eleventh Circuit will  
14 have a record of it. If you do not put it on the record there will  
15 be no record of it, but that is a decision that you make.

16           So you can make your objections or not. I am not going to  
17 give you any more chances when you say I am not going to do it  
18 because -- I am not going to make objections because it does not  
19 matter what I say.

20           It is like a seven-year-old kid who is going to play  
21 football and does not get to be the quarterback and so he takes his  
22 football and goes home.

23           It is your choice. If you have objections, I will hear  
24 them now.

25           THE DEFENDANT: Your Honor, that's what I just say. A lot

1 of my personal file has been gone. I'm the one sitting in jail here  
2 and my file is gone. Things that I need to present to the jury to  
3 prove my innocence is gone. Robert Abreu confront to give this to  
4 Chantel, but then nobody seem to know where my files is now.

5           So that's the problem that I have. That's why I told the  
6 Court that I need some time. Investigator never really have a time  
7 to investigate this case. She has appoint to this case and I saw  
8 her two weeks for -- in December in two weeks and the holidays  
9 around the corner and she couldn't do anything.

10           And so now I have the trial and she couldn't retrieve my  
11 file. She couldn't going to the few that she need to interview.  
12 There was not enough time for her to do anything in my case. She  
13 never done exactly nothing. The reports that I told her I had to  
14 retrieve for me she couldn't even do it.

15           THE COURT: All right. As I said, when you here the other  
16 day, if you had a request for additional authorization of fees for  
17 the investigator, I would be happy to review it. I have not  
18 received such request.

19           THE DEFENDANT: I couldn't write any motion, Your Honor,  
20 because it was a shake-down in cell block and I don't have a pen,  
21 paper, or anything to write.

22           THE COURT: Okay. But you did not make one verbally  
23 either.

24           THE DEFENDANT: I would like to make one now, Your Honor,  
25 request for more funds for Martinez.

1           THE COURT: All right. Well, let's wait until the  
2 Government is not here. You can do it at that time. I don't want  
3 to do it while the Government is here because I need to hear what it  
4 is that you need me to do so that I can go ahead and authorize the  
5 appropriate amount of funds.

6           All right. Any other objections, then, on the R and R at  
7 294?

8           THE DEFENDANT: On that magistrate error, Your Honor, as I  
9 say before, at one point, I advise Magistrate Matthewman that I have  
10 a dispute with Stuart. We have an open lawsuit pending and he  
11 decide to take Stuart as my lawyer, but I leave him on the case as  
12 standby lawyer.

13           I have the motion and I read the motion. The magistrate  
14 say I come to FDC and they handle everything to me. Two weeks later  
15 I'm here in front of you, Your Honor, when she brought all this  
16 paperwork here to court. Intentionally or not, things has  
17 disappeared. My personal file and my evidence that I want to  
18 present to the jury is gone.

19           So I think this was a mistake of keeping this man on this  
20 case knowing that we already got a problem. It doesn't matter what  
21 he has put on the record here, he has been in this case for six  
22 months. As I asked the Court before --

23           THE COURT: Okay. We are not going to start complaining  
24 about your prior attorneys again. We have already been through this  
25 multiple times.

1 Is there an objection to the report and recommendation?

2 THE DEFENDANT: Your Honor, if I'm suing someone, I don't  
3 think it's someone that going to help one way to another.

4 It was error for Magistrate to keeping him as standby  
5 lawyer. I mean, if I'm suing you, are you going to --

6 THE COURT: All right.

7 THE DEFENDANT: -- bring to your house to have a cup of  
8 coffee? I don't think so.

9 THE COURT: He is not your standby lawyer and he has not  
10 been your standby lawyer for --

11 THE DEFENDANT: He was at one point.

12 THE COURT: He was your standby lawyer for a few days.

13 And then, during that time, I am not aware that he actually  
14 met with you because he objected to being your standby lawyer and  
15 filed another motion asking to be taken off, which was granted.

16 Mr. Kreiss has been your standby lawyer for close to -- I  
17 want to say five months now. I have to go back and check exactly,  
18 but I think it has been since about August or September and --

19 THE DEFENDANT: I have no complaints.

20 THE COURT: -- we are halfway through January.

21 THE DEFENDANT: I have no complaints at all. I wish I  
22 would have met him from day one.

23 THE COURT: All right. So if there are no further  
24 objections, then, to the report and recommendation at 294 on the  
25 Motion to Dismiss the indictment, let's proceed to Defendant's

1 motion to renew Brady issues that is also the same report and  
2 recommendations.

3           Are there any objections that you wish to state with  
4 respect to that?

5           THE DEFENDANT: As the motion, as I say before, Your Honor,  
6 things has disappear. Letters has been falsified, but the Court  
7 keep deny. And the fact that Immigration letter is fake and I have  
8 one Immigration officer going to come testify on that matter during  
9 that matter trial, but I don't understand how the Court doesn't see  
10 how fake the letter is.

11           THE COURT: Okay. Once again, the letter has nothing to do  
12 with this case. It just does not. It was for your bond. It was  
13 not for anything else. That is it. It does not have anything to do  
14 with this case. So I realize that you are upset about this letter,  
15 but it does not have to do with the charges here. So I do not see  
16 that as a basis for granting any objections.

17           THE DEFENDANT: Your Honor, can I ask the Court a question  
18 on that? And I'm not a lawyer and I just try to understand here.  
19 I've been charged with a fraud, but that's okay for the Government  
20 commit fraud and bring something here that's not real?

21           THE COURT: First of all, there is no evidence whatsoever  
22 that there was anything fraudulent that was produced. You asked for  
23 a copy of the A-file. The A-file was provided to you. You saw in  
24 the A-file this letter that you thought was fraudulent. They  
25 explained that it was a draft letter and it was never sent out.

1 There is nothing fraudulent about that.

2           It has been examined, really, ad nauseam at this point, by  
3 a number of different people. By Judge Matthewman. It was examined  
4 by Judge Snow, at the time, and now I have examined it. There is no  
5 basis for even suggesting that there was anything fraudulent at all  
6 done by the Government with respect to the draft letter that was  
7 never sent to you. It just does not even make sense.

8           All right. Just one second.

9           Any other objections on the report and recommendations on  
10 your motion to renew Brady issues?

11           THE DEFENDANT: No, Your Honor.

12           THE COURT: All right. Then, I will adopt the report and  
13 recommendations at 294 on both of those motions.

14           Okay. Then, we have pending your Motion to Compel  
15 suppression of legal mail issues, which is Docket Entry 244. The  
16 report and recommendations is at 291 and it recommends denying that  
17 motion and I will hear any objections you might have to that.

18           THE DEFENDANT: I have sent several different mails to  
19 Appellate Court and Supreme Court. The Supreme Court has sent me  
20 some forms to fill it out and send back to them with some -- it's a  
21 yellow book. They have some rules. And they told me to go ahead  
22 and fill it out under Rule 22 and send back to them.

23           I have a confirmation that I sent them day before I was  
24 transfer back to West Palm Beach. That was November 15. Supreme  
25 Court say they have receive the letter. My family has call them

1 several times to confront the letter and they never show up with all  
2 the funds. Another motion has been filed also to the Appellate  
3 Court and Appellate Court still also has confront they never receive  
4 those motions.

5 THE COURT: Now, I could be wrong and maybe I am thinking  
6 of the wrong motion, but I did see something from the Appellate  
7 Court that dismissed your Appeal because there was no jurisdiction  
8 at that time. So maybe it is possible that you might be a little  
9 confused.

10 THE DEFENDANT: It has nothing to do with the speedy trial,  
11 Your Honor. It's some denial here from this Court and appeal to  
12 them. One of them, as a matter of fact, the letter rogatory.  
13 Several different motions are so misconducted that I sent it in and  
14 they never receive those motions.

15 THE COURT: Well, I do not know what to tell you about  
16 that, but that does not prove that the Government is somehow  
17 interfering with your mail. I mean, it just --

18 THE DEFENDANT: Live in this country for 25 years and never  
19 see any mail of not getting delivery. And now I'm in jail and try  
20 to send mail to different courts and the courts say they have not  
21 receive. So show me something here.

22 THE COURT: All right. Well, do you have some evidence or  
23 anything? You said you have confirmation that you sent it.

24 THE DEFENDANT: My confirmation by the CSOs in jail say  
25 that your mail went out. I'm in jail, Your Honor, and that's why

1 from day one I'm trying to get a release on a monitor, or whatever  
2 it is, that I can go ahead and prepare for this trial because in  
3 jail seems to be impossible. Every single thing that I'm trying to  
4 do end up in denial, or people don't receive things, or things seems  
5 to get disappear.

6 THE COURT: All right. Well, I am sorry, Mr. Scotton, but  
7 you, yourself, have said that the CSOs have confirmed that they sent  
8 out your mail.

9 So you know, it is pure speculation as to where it got  
10 lost, if it got lost, and what happened to your mail. It is just  
11 pure speculation on your part. There is no evidence whatsoever.  
12 The Government has previously denied that it had anything to do --

13 THE DEFENDANT: Of course.

14 THE COURT: -- with intercepting your mail and there is no  
15 evidence that would suggest in any way that they are not being  
16 truthful.

17 Mr. Scotton, as I have previously allowed you to do, even  
18 though it is not customary to allow the standby lawyer to assist  
19 you, really, in any way during the course of your representation of  
20 yourself, if you wish to provide Mr. Kreiss with copies of the  
21 filings and have him make them, I do not have any objection to your  
22 doing that. That is fine with this Court.

23 If there is something that you wish to hand to the Court at  
24 this time to be filed with the District Court, I am happy to do that  
25 as well, as I have for you in the past, but there is no evidence at

1 all in this record to suggest that the Government has somehow stolen  
2 or interfered with your mail delivery. So that is going to be  
3 overruled.

4 Any other objections?

5 THE DEFENDANT: No, Your Honor.

6 THE COURT: Okay. Then, I will go ahead and adopt the  
7 R and R at 291.

8 The next thing is your pending motion requesting Government  
9 expert testimony summary and request of lists of experts and summary  
10 of testimony.

11 And let me ask the Government, is the Government intending  
12 to present any expert testimony?

13 MS. MITRANI: Yes, Your Honor.

14 We have provided the Defendant -- and I think I filed it  
15 and I am trying to look at the Docket Entry -- presenting the expert  
16 testimony of Bruce Marmar. He is with the United States Citizen and  
17 Immigration Services.

18 He is going to testify about the Cuban Adjustment Act and  
19 is going to testify about the facts that are material to processing  
20 an application under the Cuban Adjustment Act, which is the vehicle  
21 there the subject of Counts 28 and 29 of the indictment. We have  
22 provided that to him. We do not, at this point, anticipate any  
23 further experts, subject to change depending on what, if anything,  
24 Mr. Scotton does.

25 THE COURT: Okay. Let me just double-check with you. Is

1 this the Government's intention to ask him questions opining on  
2 legal matters?

3           Because I would say that the Court would not allow him to  
4 testify as an expert in legal matters, but if he is testifying about  
5 facts that is a different issue.

6           MS. MITRANI: Factual matters as to what facts on an  
7 application to adjust status are material and important and material  
8 to the USCIS --

9           THE COURT: Okay. Fair enough.

10          MS. MITRANI: -- in determining those statuses.

11          THE COURT: Okay. Very good, then.

12          All right. So Mr. Scotton, you have heard that there is  
13 only one expert that the Government intends to call. Have you  
14 received a copy of that expert report and summary?

15          THE DEFENDANT: Yes, Your Honor.

16          THE COURT: Okay. So it appears that that is addressed.

17          Is there anything else about that motion that I have  
18 neglected to address?

19          THE DEFENDANT: I don't get the question, Your Honor.

20          THE COURT: I think that motion is addressed.

21          THE DEFENDANT: Yes.

22          THE COURT: Is there anything else that we need to talk  
23 about on that motion?

24          THE DEFENDANT: No, Your Honor.

25          THE COURT: So I am going just deny that as moot since it

1 has already been handled.

2           Okay. The next thing is -- and let me say this. I want to  
3 make sure the record is complete on this issue. I know that we have  
4 addressed this previously when Mr. Adelstein was here, but I do not  
5 want to have any open questions if there has to be an appeal in this  
6 case.

7           So what we are going to do is, we are going to have Mr.  
8 Adelstein come in here at 9:00 on Wednesday morning and I will  
9 question him and allow you to question him regarding your  
10 allegations that he somehow did away with your evidence.

11           Is that good for you, Mr. Scotton?

12           THE DEFENDANT: Yes, Your Honor.

13           THE COURT: Okay. Which means that we may start trial on  
14 Thursday because I have to decide -- well, has the Government called  
15 its witnesses to come in on Wednesday already?

16           MS. MITRANI: Yes and no, Your Honor.

17           I mean, the wheels are in motion. If the Court decides to  
18 try it Thursday, we will reboot the wheels. My ears perked up to  
19 the extent that there's a delay that would naturally affect things.

20           THE COURT: Here is what I am thinking. I do not  
21 anticipate that there would be anything that would come from that  
22 hearing that would require me to delay the start of trial by a day.

23           On the other hand, I also do not want a situation where I  
24 call more than 50 jurors in here and pay for them to come and, then,  
25 I do not get around to questioning them. But as I think of it, it

1 seems to me like that should not be an issue.

2           One way or the other, we will resolve what is going on and  
3 we would start trial anyway, I would imagine. So we probably will  
4 be able to start on Wednesday. It just would not be at 9:00 in the  
5 morning.

6           MS. MITRANI: As indicated, Your Honor, I certainly don't  
7 want to suggest that we have flown anybody in today because we  
8 haven't.

9           So if the Court wanted to change it, we certainly can make  
10 the appropriate phone calls and change it this afternoon. If the  
11 Court wants to keep it on Wednesday, that's fine too. To the extent  
12 the Court could make a final decision today that certainly would be  
13 easier than --

14           THE COURT: Sure. Let's do this. Let's have the rest of  
15 the hearing. And if there is anything else that I think might need  
16 to be addressed on Wednesday, then I will switch it to Thursday.  
17 And if not, we will keep it on Wednesday because I do not anticipate  
18 that that would be the type of thing that would take much of the day  
19 and eat up the time that we would otherwise have with the jury.

20           MS. MITRANI: Thank you, Your Honor.

21           THE COURT: So Mr. Scotton, have you received a copy of the  
22 Government's proposed voir dire questions in this case?

23           THE DEFENDANT: Yes, Your Honor.

24           THE COURT: Okay. And so, let me just explain. I know we  
25 have talked about this previously, but I want to make sure that I am

1 clear. Mr. Creary, do we have some copies of the --

2 THE COURTROOM DEPUTY: I gave it to them.

3 THE COURT: Oh, we do. Okay. Great.

4 You have received copies of the juror questionnaire that we  
5 have every juror go through and answers every question on there.

6 And then, at the end, I would ask appropriate voir dire questions of  
7 the entire panel. The Government has asked that I ask the questions  
8 that it has provided to you.

9 Do you have any objections to any of those questions and do  
10 you have any questions of your own that you wish for me to consider  
11 asking the jury?

12 THE DEFENDANT: Your Honor, I'm going to go ahead and put  
13 in my question in writing to the Court. I want to be able to  
14 question the jurors myself.

15 THE COURT: I am not going to allow that, but I will allow  
16 you to tell me what the questions are that you would like for the  
17 Court to ask. And I will consider asking those questions, but I  
18 will ask all of the questions, not only for you, but also for the  
19 Government.

20 So it would not be like the Government gets to ask  
21 questions and you do not. I will be asking all of the questions,  
22 but I am happy to consider any questions that you want for me to ask  
23 to the jury. So I will hear those at this time.

24 THE DEFENDANT: Your Honor, can I just put in writing  
25 because I need to be able to think and put in writing, Your Honor,

1 for the Court. I can't just come up with questions that --

2 THE COURT: All right. Well, previously we have discussed  
3 this. You know, I will be happy to take a look at what you submit,  
4 but I am not going to be able to spend an extended period of time on  
5 Wednesday morning going through every question with the parties to  
6 decide whether or not they are appropriate. That is why you were  
7 supposed to do this ahead of time.

8 Do you have objections to any of the Government's proposed  
9 questions?

10 THE DEFENDANT: Yes, I do, Your Honor.

11 THE COURT: Okay. I will hear them.

12 THE DEFENDANT: This motion say I select and not  
13 represented by a lawyer and this is not true.

14 THE COURT: It says that you elected and not that you  
15 selected. And what it could say is that through your conduct you  
16 elected not to be represented by an attorney, but I think that would  
17 be unfairly prejudicial.

18 So it has to be addressed with the jury that you are  
19 representing yourself and that you should not be held to a higher  
20 standard, but you also should not be held to a lower standard.

21 And that is a decision that you made through your conduct,  
22 but I do not think it would be fair to say that it is as a result of  
23 your conduct because that is like telling the jury that you may not  
24 have been doing everything you are supposed to be doing and that  
25 would not be fair to you. So that is why it says elect as opposed

1 to something else.

2 THE DEFENDANT: Let me have a minute with the lawyer here,  
3 Your Honor.

4 THE COURT: Sure.

5 THE DEFENDANT: Your Honor, I have no objection.

6 THE COURT: I'm sorry?

7 THE DEFENDANT: I have no more objection.

8 THE COURT: Now, the last thing that I have on the list of  
9 things to cover today is, on Wednesday you and I had a discussion  
10 about some North Carolina charges.

11 Do you remember this, Mr. Scotton?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: All right. And I want to ask the Government,  
14 does the Government intend to bring up any North Carolina charges  
15 during the trial?

16 MS. MITRANI: Not in its case-in-chief.

17 If the Defendant elects to testify that might be potential  
18 cross-examination material.

19 THE COURT: Okay. Was he convicted?

20 MS. MITRANI: I believe so -- no, he wasn't convicted.

21 THE COURT: So how would it, then, be cross-examination  
22 material?

23 MS. MITRANI: Your Honor, it has been a while since I've  
24 looked. I think those North Carolina charges have to do with bad  
25 checks. It may very well not be, but I don't want to give an

1 unequivocal no without taking a further look at it.

2           THE COURT: I will tell you what. Why don't you take a  
3 look at it and let me know on Wednesday when we come back because it  
4 may affect certain decisions that I make.

5           MS. MITRANI: I understand, Your Honor. Okay. Fair  
6 enough. I certainly will.

7           THE COURT: Okay, Mr. Scotton?

8           THE DEFENDANT: Yes.

9           THE COURT: All right. Thank you.

10           Is there anything else we need to addresses before trial  
11 begins on Wednesday?

12           MS. MITRANI: Nothing from the Government.

13           THE COURT: Mr. Scotton?

14           THE DEFENDANT: I'm just concerned about -- I guess, we can  
15 talk about --

16           THE COURT: But I mean, is there anything else we need to  
17 discuss with the Government here?

18           THE DEFENDANT: No, Your Honor.

19           THE COURT: Okay. In that case, let me go ahead and excuse  
20 the Government and we will see you on Wednesday morning.

21           MS. MITRANI: Your Honor, we will be picking a jury?

22           THE COURT: We will pick a jury on Wednesday. First we  
23 will do the proceeding with Mr. Adelstein. And then, we will  
24 proceed to trial following the conclusion of that proceeding.

25           MS. MITRANI: Thank you, Your Honor.

1 THE COURT: All right. Thank you.

2 THE DEFENDANT: Your Honor, since the Court going to bring  
3 Adelstein --

4 THE COURT: Wait. Is this something that the Government  
5 needs to be here for?

6 THE DEFENDANT: I don't know.

7 THE COURT: Well, wait then, Miss Mitrani.  
8 What is the question?

9 THE DEFENDANT: Since Adelstein is going to come here, I  
10 guess, I need to bring Robert Abreu. He's the one going to confront  
11 all the files and all the evidence that exist at one point.

12 THE COURT: Okay. Well, you can arrange to bring Mr.  
13 Abreu, if that is what you would like to do.

14 THE DEFENDANT: Okay.

15 THE COURT: But that is up to you and you need to make  
16 those arrangements.

17 Do you understand?

18 THE DEFENDANT: Yes.

19 THE COURT: All right. Anything else?

20 THE DEFENDANT: No, that's it, Your Honor.

21 THE COURT: All right. Thank you.

22 Mr. Scotton, I was going to hear your request for  
23 additional funds for the investigator. What is it that you need the  
24 investigator to do so I can determine whether I can authorize the  
25 funds?

1           THE DEFENDANT: Your Honor, she has some files, those  
2 missing files that she's trying to retrieve. She need to have  
3 several people from the DHL, FedEx interview as well that was  
4 involve in this matter. I guess, I don't know, first time or files  
5 to do such a thing. That's why she even request the help for  
6 another investigator that work with her also. Her name is Marcella.

7           Right?

8           That can help her in a short time. She cannot do all this  
9 by herself. She's really asking for --

10          THE COURT: How many hours of time does she need?

11          This is what I need to know. How many hours she needs,  
12 what her hourly rate is, and what she is going to do with those  
13 hours. That is what I need.

14          THE DEFENDANT: She's going to need to coordinate witness,  
15 as well, Your Honor. She has not present me with any kind of paper  
16 saying how many hours. So I know it's a lot of work they have to  
17 do, Your Honor.

18          THE COURT: All right. Well, here is my problem. I will  
19 give you some authorizations, but without knowing how many hours she  
20 needs -- how much does she charge per hour?

21          THE DEFENDANT: \$60.

22          THE COURT: Okay. So without knowing how many hours she  
23 needs it is hard for me to know what to authorize.

24          THE DEFENDANT: I guess she have send message to Mr. Jason.  
25          I think 40, right?

1 THE COURT: 40 hours?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: So you need me to authorize \$2,400, right?

4 THE DEFENDANT: The Court think that Marcello there, the  
5 secretary to be able to work to go on this?

6 THE COURT: I do not know because if you are telling me  
7 that 40 hours are needed, I will authorize 40 hours at \$60 an hour.  
8 However they want to divide it up between themselves, that is fine  
9 with me.

10 THE DEFENDANT: Okay, Your Honor.

11 THE COURT: I mean, I am not going to just sort of  
12 authorize two investigators for whatever it turns out to be. I need  
13 to know in advance that that is the requirement.

14 I think 40 hours, based on what you said, seems a little  
15 bit high, but considering that this trial might go on for some time,  
16 I think that I am going to authorize it.

17 Anything else?

18 THE DEFENDANT: No, that's it, Your Honor.

19 THE COURT: All right. Then, is there anything else we  
20 need to address today? Any ex-parte proceedings?

21 MR. KREISS: Judge, can I just inquire, if I may, Your  
22 Honor, as to my role. I don't want to violate any Court orders and  
23 I don't want to overstep my --

24 THE COURT: I appreciate that, Mr. Kreiss.

25 MR. KREISS: -- my bounds. And this is kind of a unique

1 situation and I feel like I'm sitting here and as a lawyer it's  
2 tough to sit back. And I don't want to violate the Court's orders  
3 and I also want to make sure when I submit a bill that I am  
4 compensated for my efforts and --

5 THE COURT: Absolutely. And I appreciate that and that's a  
6 fair request.

7 As you know, the traditional role of a standby attorney in  
8 this court and by circuit law has always been that the standby  
9 attorney is exactly that. The attorney stands by and does not take  
10 any role in the preparation of the case for trial whatsoever.

11 And we have as a bench held standby attorneys to that  
12 standard and not authorized them to assist in any way the Defendant  
13 because there is no such thing in this circuit as hybrid  
14 representation. Either an attorney represents the Defendant or the  
15 Defendant represents the Defendant.

16 In this case, because of the way that Mr. Scotton came to  
17 represent himself in this matter, and because of the challenges that  
18 there seems to be associated with his being able to get people  
19 served and things of that nature, I have asked -- and you have  
20 graciously taken on the responsibility to assist Mr. Scotton with  
21 the logistics of, for example, ensuring that his subpoenas get to  
22 the Marshal Service.

23 And it is still Mr. Scotton's responsibility to prepare  
24 them, but for you to sort of facilitate their getting from Mr.  
25 Scotton to the Marshal Service. And if you need to provide him with

1 some basic information on how to fill out a subpoena, then, I would  
2 allow that as well in this unique case. Things of that nature, that  
3 is sort of facilitating the logistics of trial.

4           And it would be my intention that you be compensated for  
5 all the time that you spend on any task of that nature, or in  
6 connection with your standby representation.

7           Does that clear it up?

8           MR. KREISS: Sure.

9           THE COURT: Okay.

10          MR. KREISS: And I anticipate that my bill will far exceed  
11 the cap should the trial proceed forward, based upon the estimation  
12 of the parties.

13          Does this Court require a motion in advance or a letter at  
14 the time that the bill is sent?

15          THE COURT: You know, I do not know the answer to that, but  
16 I think it is a better idea to do the letter in advance. And, then,  
17 if I authorize it, at that point, I do not think you should have a  
18 problem on the end of the litigation.

19          MR. KREISS: All right. I will do that.

20          And I'm trying to do everything I can to logistically -- I  
21 need a call center opened up to answer all of the witnesses and try  
22 to coordinate them. And I spoke to the Government and we are going  
23 to try to do everything we can and they're going to give me notice  
24 as far as possible so we can create a schedule for those witnesses.

25          THE COURT: I very much appreciate that, Mr. Kreiss.

1           And just for purposes of the record, once again, I have  
2 authorized it in this unique case because of the circumstances that  
3 resulted in Mr. Scotton representing himself, the scope of this  
4 case, the number of witnesses who are involved, and a concern that  
5 the witnesses not be inconvenienced any more than they absolutely  
6 must. And that the jury not be inconvenienced any more than it  
7 absolutely must by having to wait for extended breaks while we try  
8 to figure out who the witnesses are and things of that nature.

9           And so I think it is warranted in the circumstances. And  
10 so for those reasons, I will authorize payments in connection with  
11 Mr. Kreiss' activities in facilitating the logistics of the defense  
12 that Mr. Scotton chooses to present. Mr. Scotton will actually be,  
13 of course, presenting his defense and making any legal arguments he  
14 wishes to make.

15           THE DEFENDANT: I'm okay for to direct to him and I stay  
16 back, Your Honor. It's fine with me.

17           THE COURT: I understand that.

18           THE DEFENDANT: We have a great relationship and we have a  
19 well -- and I have no objection if he want to go ahead and step in  
20 at this point.

21           THE COURT: I understand why you like Mr. Kreiss. I like  
22 Mr. Kreiss too and, in fact, everybody I know likes Mr. Kreiss.

23           THE DEFENDANT: Your Honor, I know. I know what the Court  
24 going to say but --

25           THE COURT: I cannot do it. I just cannot do it.

1 THE DEFENDANT: That's the motion that I put to the Court  
2 here and I don't never see the Court make a comment about it.

3 THE COURT: I issued an order on it yesterday.

4 Mr. Creary, would you mind printing out a copy of the two  
5 orders that I issued yesterday and provide them to Mr. Scotton?

6 THE COURTROOM DEPUTY: Yes, Your Honor.

7 THE COURT: I am sorry, but I have denied it. And the  
8 reason is what I said previously, but I will say it again.

9 The first reason is that I think it is just too late at  
10 this point. We have been through all these attorneys. And I know  
11 that you have good intentions, but even as wonderful as Mr. Kreiss  
12 is, I am concerned that there will come a point where you also wind  
13 up in an abusive relationship with him and you are not able to  
14 continue.

15 THE DEFENDANT: Well --

16 THE COURT: Based on your prior conduct in this case and  
17 before this Court, even as recently as Wednesday.

18 And second, because this case has just been delayed for so  
19 long. It is 22 months that we have been into this case and I have  
20 granted five continuances. And you have a right to speedy trial  
21 but, you know what, so does the public.

22 And it is just time to try this case. If I bring another  
23 attorney in, at this point, it is inevitable that -- even if it is  
24 Mr. Kreiss -- he will need additional time to prepare for trial. He  
25 is not going to be able to walk into trial on Wednesday and present

1 the kind of defense that he would want to present.

2           So I am just not going to authorize that.

3           THE DEFENDANT: And that's the thing that has been concern  
4 all this time, Your Honor, as I say. As I understand, the Court  
5 doesn't want to get involve in the whole lawyer issue. And I  
6 appreciate that too because we seek really not to get on that issue,  
7 but it's not that I was trying to delay any proceeding here, or try  
8 to give anybody hard time.

9           I mean, Your Honor, I'm not a lawyer, but I know how things  
10 handle. I educated man. I am professional race car drive. I have  
11 degrees. And when someone try to play me, I know. When they cross  
12 the line I have to stop and that's what I did with previous lawyers.

13           Mr. Jason, everything he say follow through. Everything he  
14 done, he follow through. Lawyers previous has say they going to do  
15 something and when they not do. And so it is my life here on the  
16 line. My career is very bad damage already. I lost 2.5 million  
17 dollar contract in 2012 and I should be right now racing NASCAR. So  
18 I don't know what's going to happen this point in my life.

19           So I want the Court to understand that nothing that I have  
20 done so far this 22 months has been intentionally to delay trial or  
21 to give a hard time to the judge or the magistrate.

22           THE COURT: I am not suggesting that you are purposefully  
23 trying to give a hard time. I am not saying that. I understand you  
24 are in a very frustrating position.

25           THE DEFENDANT: I mention to Mr. Jason this, because it

1 took so long to even give me the investigator.

2           And I know all the paperwork and all the stuff that I need  
3 to retrieve to be able to go ahead and bring it in and show to the  
4 jury that what happen this case. As the judge saw the report, I  
5 have asked those lawyers before, Your Honor, to get those police  
6 report. Simple task. The investigator just get those report couple  
7 weeks ago.

8           So I been sitting here for 22 months and I got one report  
9 in Georgia that has file against me of Osvani Duarte. In 22 months  
10 nobody has retrieve that report. So things in those days with  
11 technology we can get every single -- police station has website.  
12 It is public record and you can get it. I don't understand why when  
13 I ask a simple task to my attorney, please retrieve report because  
14 it's important for me for my defense and nobody has done.

15           That has been my frustration with previous lawyer like  
16 Friedman come to my family, tell him to plea out that he do less  
17 time. What kind of comment is this when I told him from day one  
18 that I'm innocent and I want to go to trial? So he show me that  
19 something not right and I need to make it stop right there.

20           THE COURT: All right. Mr. Scotton, your attorney is not  
21 there to tell you what you want to hear. Your attorney is there to  
22 give you his or her best advice based on what he or she knows about  
23 the law and about the facts of this case.

24           And you may not always agree with all of it, but ultimately  
25 it is your decision whether you wish to plead guilty or whether you

1 wish to go to trial and that is a decision only you can make. But  
2 it is appropriate for an attorney to advise you what he or she  
3 thinks you should do, even though the ultimate decision on that is  
4 up to you.

5           And if the attorney did not advise you as to what he or she  
6 thought was the right way to handle the case, then, that attorney  
7 would not be doing his or her job appropriately. It does not mean  
8 that the attorney does not believe you. It does not mean that the  
9 attorney is not doing his or her job.

10           In fact, it may mean exactly the opposite. That the  
11 attorney, after having spoken with you and looked at the  
12 Government's evidence and things of that nature, has concluded that  
13 it might be in your best interest to do one thing as opposed to  
14 another. And that is the attorney's responsibility to do. So I  
15 understand you were not happy with that, but I have to say it has  
16 been my observation that whenever somebody disagrees with you, you  
17 seem to get quite unhappy and I understand that.

18           It is not fun to be disagreed with, but the point is, you  
19 have to learn to work with people who do not agree with you all the  
20 time. When the Court does not agree with you, that is the ruling  
21 and you have to move on.

22           When your attorney does not agree with you, then, you need  
23 to work through that. You just cannot be abusive to them and  
24 threaten their lives and sue them for millions of dollars. That  
25 does not work. You cannot do that.

1           And so I understand that, at this point, you want to be  
2 represented by counsel and that it is -- I think it probably is your  
3 genuine intention to try to behave in a way, and conduct yourself in  
4 a way where that relationship could work. But what I am saying is,  
5 based on my observation of your interactions with everybody on this  
6 case, I just do not believe, unfortunately, that you are capable of  
7 doing that at this point in time.

8           I know you want to, but I cannot delay this case again to  
9 have this same exact problem occur again. So I am sorry, but the  
10 motion is denied and I have already explained it on the record.

11           THE DEFENDANT: I understand that, Your Honor.

12           As I say, there has been cases here that I have sitting  
13 with Jason in Palm Beach jail and we have disagreement.

14           Right?

15           We didn't throw punches at each other.

16           THE COURT: Well, I do not want to get into what you have  
17 discussed with Mr. Kreiss.

18           THE DEFENDANT: And I haven't sued him with a lawsuit yet.

19           THE COURT: Well, the word 'yet' is a little concerning.

20           THE DEFENDANT: Your Honor, with all due respect, like I  
21 say, from day one I'm not a lawyer and when I feel that my life is  
22 on the line here, I have to act.

23           THE COURT: I understand, but I am sorry. We are past the  
24 point where another attorney will be appointed.

25           I mean, you know, we have been through six attorneys total

1 and three that have been paid for by the Government to come up to  
2 speed on this case. And it just not appropriate for the Court to  
3 pay for a fourth attorney to learn this case.

4 THE DEFENDANT: Can I correct the record for once?

5 THE COURT: Sure.

6 THE DEFENDANT: Five attorneys. I don't know why always  
7 the Court say six, but it's five.

8 THE COURT: Well, I have to go back through and --

9 THE DEFENDANT: I think like you remember at the beginning  
10 of my case, I remember see you for the first day.

11 I guess, at that point, Your Honor, you a magistrate judge?

12 THE COURT: Yes.

13 THE DEFENDANT: And the day I was arrest and my family send  
14 the lawyer here that handling my back injury, a civil matter that I  
15 have outside. And that's when he even told me I cannot handle this  
16 kind of case and they retain Friedman, but the first lawyer, John --  
17 whatever his name was -- he was not even my lawyer. He was just my  
18 civil lawyer connect with my injury case, my car accident case that  
19 I have outside.

20 THE COURT: All right. He did make an appearance on your  
21 behalf that day.

22 THE DEFENDANT: That's why I don't want the Court to think  
23 that I fire him, or throw a punch, or try to sue him either. So  
24 that was not the case here.

25 THE COURT: Okay. I understand.

1           And you know, the other day when we were here, you did  
2 bring to my attention that you had problems with the Immigration  
3 attorneys who had represented you as well. I mean, I am not trying  
4 to, you know --

5           THE DEFENDANT: Unfortunately, everybody has a job to do  
6 and I understand I'm not going to take the time of the Court.

7           Unfortunately, I cannot present some reality of every  
8 single case to the Court, but during the trial, even the Immigration  
9 lawyer is going to testify. And she is going to go ahead and prove  
10 to the Court also what the previous Immigration lawyer done in  
11 several cases they put me in they did it completely wrong. They  
12 took advantage that I don't know the law, but they took pretty much  
13 over \$40,000 from me and \$40,000 was for nothing.

14          THE COURT: Well, you cannot go into the money that they  
15 took from you. I mean, that is not relevant to whether you did the  
16 things that are charged in the indictment.

17          You can go into if they advised you to do certain things.  
18 What they advised you to do, that's fair. If what they advised you  
19 to do is something that you are not charged for, that is absolutely  
20 fair and appropriate. You can go into that, but how much you paid  
21 for that advice, you cannot.

22          I am sorry, but that is just not relevant. And it is  
23 bringing into the case a matter that the jury should not take into  
24 consideration. So I will tell you, you cannot go into the money  
25 that they were paid for. This is not a civil lawsuit against those

1 attorneys. Maybe you have one pending against them. I have no  
2 idea, but you cannot do that in this forum.

3 Do you understand?

4 THE DEFENDANT: I understand. Am I allowed to bring some  
5 videos as evidence as well?

6 THE COURT: You can bring whatever you want as evidence.  
7 You have to turn the stuff over -- you may have to turn some of it  
8 over to the Government.

9 It depends on what it is. And I may have to preview it  
10 beforehand to determine -- if it is a video -- because I cannot look  
11 at it outside the jury's presence during the trial. If you have a  
12 video, or something that you want for the jury to see, then, you  
13 will need to let me know so that I can make a day where I can review  
14 these things while you are here, if you like -- and the Government  
15 -- while you are here so I can review these things and determine  
16 whether they are admissible because I would not be able to do that  
17 during the middle of the trial.

18 Do you understand, Mr. Scotton?

19 THE DEFENDANT: Yes, Your Honor.

20 During the opening statement any kind of Power presentation  
21 or any kind of video to give the knowledge of the jurors who I am,  
22 what I do for live, what I am and what I have done for this  
23 community, is this going to be allowed to present to the jury or  
24 not?

25 THE COURT: No, you cannot -- okay. Let me explain

1 something.

2           You have two roles here. One, you are the representation,  
3 but the other one, you are the Defendant. If you want to testify,  
4 you have to do that under oath. So in other words -- and I want to  
5 be very clear about this.

6           If you want the jury to be able to consider the words that  
7 you are saying, then, you have to say them under oath. They cannot  
8 consider, as evidence, what you say in your opening statements, or  
9 in your questions of witnesses, or in your arguments. That is not  
10 evidence.

11           And I am going to give an instruction to the jury that says  
12 you cannot consider, as evidence, what the attorneys or the parties  
13 say in their opening statements, in their questioning of the  
14 witnesses, or in their closing arguments. The only evidence in this  
15 case is what comes from the witness stand under oath and in the way  
16 of exhibits that I admit into the record.

17           So you know, you can go into what you want to go into, but  
18 the jury is not going to be able to consider any of that unless you  
19 testify to it under oath. And you should not put it into your  
20 opening statement if you do not intend to provide evidence that  
21 would be admissible during the proceedings.

22           Now, I want to tell you that it is your absolute right not  
23 to testify. You do not have to testify. No one can force you to  
24 testify and you have a constitutional right not to testify. And if  
25 you do not testify, the fact that you do not testify -- and even if

1 you choose not to put on any evidence -- the fact that you do not  
2 testify and do not put on any evidence whatsoever those facts, in  
3 and of themselves, cannot be used against you in the jury's  
4 consideration of whether or not you did the things that you are  
5 charged with.

6 Do you understand that?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: Okay. On the other hand, if you want to  
9 testify it is your absolute right to do so. I want to be very clear  
10 about this because I had pro se trial once where I explained this to  
11 the defendant. And for whatever reason, he chose not to testify and  
12 instead made all of his testimony, if you will, in closing argument,  
13 but the jury could not consider any of it.

14 So if you want the jury to consider things, then, it has to  
15 come in as evidence, which means you do not necessarily have to say  
16 it, but somebody has to testify to it on the stand, or it has to  
17 come in through an admissible exhibit. If you want to testify to  
18 it, that is fine, too.

19 Do you understand?

20 THE DEFENDANT: Yes.

21 THE COURT: Do you have any questions at all about any of  
22 that?

23 THE DEFENDANT: Yes, I do.

24 THE COURT: All right. I will hear it now.

25 THE DEFENDANT: All right. So I go ahead and take the

1 stand and testify. The prosecutor is going to cross-exam me?

2 THE COURT: That is right.

3 THE DEFENDANT: I don't have a lawyer to go ahead and  
4 cross-exam me. Who is going to cross-exam me after the prosecutor?

5 THE COURT: Well, then, you will have the opportunity to  
6 redirect yourself. That is, after you are cross-examined, you will  
7 be able to put on what would effectively be your redirect  
8 examination.

9 Do you understand?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: Okay. So that is how it works.

12 THE DEFENDANT: How much can I put in record here intimacy  
13 of my marriage? How far can I push that?

14 THE COURT: Whatever you think you need to say in order to  
15 -- as long as it is relevant to the issues before the Court the --

16 THE DEFENDANT: Well, it is.

17 My concern here it is more like what is jury allowed to see  
18 is not going to be offending to the Court because, basically --

19 THE COURT: Well, maybe you should tell me what you are  
20 talking about.

21 THE DEFENDANT: Well, Your Honor, I'm talking about some  
22 intimacy with my wife because the Government say that my marriage is  
23 not real. And I have some stuff that jury going to believe it was  
24 real.

25 THE COURT: I hesitate to ask this but --

1 THE DEFENDANT: Yes.

2 THE COURT: I think I would rather find out now rather than  
3 in the middle of trial.

4 What exactly are we talking about?

5 THE DEFENDANT: Some butt naked pictures, some videos.  
6 That kind of thing, Your Honor.

7 THE COURT: I am not sure we need to put -- I think we have  
8 to protect the privacy of your wife as well.

9 I want to allow you to put on your defense, but I do not  
10 want to cause your wife unfair or unnecessary harassment, or  
11 intimidation. So perhaps there are things that you think that  
12 should go on in your defense in that regard, we should have a closed  
13 hearing with the Government, and you, and me, to evaluate that. And  
14 I need to know that as soon as possible so I can set aside time to  
15 do that.

16 THE DEFENDANT: Yes. I mean --

17 THE COURT: And maybe what I would do is I would start  
18 trial on Thursday in that case and we will do all those things on --

19 THE DEFENDANT: Because I don't want to embarrass with you,  
20 Your Honor. Like I say, whatever it take to prove my innocence I'm  
21 going to do it.

22 THE COURT: Well, so, if you have those materials, you will  
23 need to bring them in on Wednesday. I am going to reset the trial  
24 for Thursday, then, and we will take care of all of this on  
25 Wednesday.

1 THE DEFENDANT: Okay.

2 THE COURT: Is there anything else that we need to address?

3 MR. KREISS: No, Your Honor.

4 THE DEFENDANT: Once again, I understand, then, I can go  
5 ahead and give the okay to the investigator. They can -- is any  
6 order that I need from the Court to show that Marcello be able to --

7 THE COURT: I do not think so. I am going to issue an  
8 order, of course, and it will be in the record. But I think that if  
9 you tell her -- and Mr. Kreiss is here as well -- that I have  
10 approved it, that she will go ahead and be able to do that.

11 THE DEFENDANT: Okay. And --

12 THE COURT: I should say this. It is subject to the  
13 approval of the Eleventh Circuit Court of Appeals, I think. I have  
14 to double-check, but I think that it has to be subject to the  
15 approval of the Eleventh Circuit Court of Appeals, but I do not want  
16 to dare speak on their behalf, but I believe in good faith that they  
17 would approve it in view of the scope of the charges and the need  
18 for the investigator.

19 THE DEFENDANT: For the last, Your Honor, one thing that I  
20 never see the Court bring this issue again. In one hearing here,  
21 from the evidence the Government tried to bring it in, I guess this  
22 going to be something that I have to talk in front of the Government  
23 but -- because I don't see the Court make a decision on that when it  
24 come to they want to present some partial of some videos.

25 And I say, no, if they going to present something they

1 better present the whole thing because when I see the evidence, I  
2 understand what they trying to do it. They going to present  
3 something that going to benefit the prosecution here, but a whole  
4 lot more on the video that shows the intention and shows the  
5 motivation that really shows that I'm innocent of what they accuse  
6 me for.

7 THE COURT: Well, let me say this. They are not here right  
8 now, so I cannot really discuss it.

9 THE DEFENDANT: Right.

10 THE COURT: Except to say that you can always do  
11 cross-examination and if additional parts need to be played, then,  
12 you can do that.

13 THE DEFENDANT: No. It's just because, Your Honor, you say  
14 that at that point, I'm not going to be make decision on this yet.

15 So I want to kind of remind the Court that decision has not  
16 been made on that scenario yet. Again, it something that we need to  
17 talk about on Wednesday perhaps.

18 THE COURT: Okay.

19 THE DEFENDANT: And that will be it.

20 THE COURT: All right. Then, we will be in recess. We  
21 will see you Wednesday and we will start the trial on Thursday.

22 THE DEFENDANT: Your Honor, thank you so much.

23 THE COURT: All right.

24 (Thereupon, the proceedings concluded.)

25

## CERTIFICATE

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

07/30/14

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