

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

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

5	UNITED STATES OF AMERICA,)	
)	
6	Plaintiff,)	
	v.)	December 6, 2013
7)	
	ROGERIO CHAVES SCOTTON,)	Pages 1 - 46
8)	
	Defendant.)	
9	_____)	

HEARING ON DEFENDANT'S MOTION TO COMPEL
VARIOUS PROCEDURAL MATTERS
AND MOTION TO COMPEL ALL HEARING TRANSCRIPTS

BEFORE THE HONORABLE WILLIAM MATTHEWMAN
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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

2 THE COURT: All right. Good afternoon everybody.

3 Let's go ahead and call the case, please.

4 THE COURTROOM DEPUTY: Calling United States of America
5 versus Rogerio Chaves Scotton.

6 Case Number 12-60019-cr-Rosenbaum/Matthewman, second
7 superseding.

8 THE COURT: All right. If we could have appearances in
9 this case starting with counsel for the Government.

10 MS. MITRANI: Good afternoon, Your Honor.

11 Bertha Mitrani on behalf of the United States.

12 THE COURT: All right. Good afternoon Miss Mitrani.

13 And for the Defendant we have Mr. Scotton proceeding
14 pro se.

15 Good afternoon, Mr. Scotton.

16 THE DEFENDANT: Good afternoon.

17 THE COURT: And we have standby counsel, Jason Kreiss?

18 MR. KREISS: Correct, Your Honor. Good afternoon.

19 Also at counsel table is Ninoshka Martinez that has been
20 working on the case as well.

21 THE COURT: Okay. Good afternoon to all of you.

22 All right. Well, the hearing today is on the Defendant's
23 Motion to Compel various procedural matters, which was at Docket
24 Entry 207 and the Defendant's Motion to Compel all hearing
25 transcripts, which is at Docket Entry 212.

1 Now, some of the issues in those two motions will likely
2 need to be discussed. It will need to be discussed ex-parte in a
3 sealed proceeding, I would imagine, because, for example, in the
4 motion for subpoenas to be issued the Defendant lists a number of
5 witnesses that he wishes to have subpoenaed.

6 And I think the Court has to inquire as to the basis of the
7 necessity of why they would be subpoenaed and the nature of their
8 testimony and it would seem that that would be best done in a sealed
9 ex-parte proceeding.

10 Would you agree, Miss Mitrani?

11 MS. MITRANI: Yes, Your Honor.

12 THE COURT: The other issue is the Motion to Compel all
13 hearing transcripts in Docket Entry 212. As to the hearing
14 transcripts that are public, I do not see any reason why that would
15 need to be sealed or ex-parte, but as to the hearing transcripts
16 that are sealed that may need to be done sealed or ex-parte.

17 Do the parties understand?

18 MS. MITRANI: Yes, Your Honor.

19 THE COURT: All right. Now, the other issue is that -- and
20 we will get to those in a minute, but the other issue is that since,
21 I believe, within the last week or so there have been two motions
22 filed by the Defendant.

23 The first one is at Docket Entry 218 and it was filed
24 December 2nd of 2013. And it is a Motion to Dismiss on
25 prosecutorial misconduct, Government's spy Defendant's defense,

1 Government harassment, magistrate harmless unreversible error, seek
2 justice and change venue.

3 The second motion at Docket Entry 220 and it was filed two
4 days later on December 4th of 2013 and it is motion to renew Brady
5 issues, prosecutorial misconduct issues, magistrate harmless error,
6 change of venue.

7 And the first motion at Docket Entry 218 is approximately
8 37 pages and the second motion at Docket Entry 220 is approximately
9 46 pages. And as to those two motions, even though they are not set
10 down for today, I have been reviewing those to see if an evidentiary
11 hearing is necessary on any of the allegations in those two motions.

12 Is the Government planning on filing responses? I know
13 they were just filed, but is the Government planning on filing
14 responses to those two motions?

15 MS. MITRANI: I suppose, Your Honor, we will file a
16 response. I don't know that our response is going to be anything
17 other than these issues have been raised before and decided. It
18 appeared to me, at first blush, that it was a rehash of everything
19 that has been heretofore litigated.

20 The only thing I would add, and I might as well add it
21 right now, one of the allegations is this issue of alleged
22 harassment by the FBI. And the Court will recall we had a hearing
23 because Special Agent Van Brunt, with the investigation and
24 prosecution in the instant case, served two subpoenas a year apart
25 on Mr. Colon's father. The Court remembers that hearing.

1 The only thing that I would add -- because that seems to be
2 a regurgitation of that -- and the only thing I would add is that
3 Mr. Scotton is referencing a third incident or a third contact which
4 happened in October of this year. I don't have the exact date. I
5 believe October 18th of -- but I'm not positive -- of this year --
6 where the FBI made contact with Carlos Colon, the Defendant's
7 stepfather.

8 I want the Court to be aware that that October 2013 contact
9 by the FBI with Mr. Colon, and very briefly with Mrs. Colon,
10 involved a separate -- it included a separate investigation
11 involving a separate prosecutor and a separate FBI agent.

12 So to the extent that the Court wants to hear any testimony
13 on that, or have any questions on that, I would bring in the AUSA
14 and bring in the other FBI agent to address the Court, but I will
15 also, at the same time, advise the Court in that investigation --
16 and I'm not sure how much the Government is free to discuss it in
17 public.

18 I will also say, though, that the allegations on their face
19 wouldn't rise to the level of an evidentiary hearing. It was a
20 contact by the FBI agent. And of course, in the investigation there
21 is nothing inherently improper in that.

22 THE COURT: All right. What we will do is we are going to
23 address these two motions and decide what to do with them.

24 Mr. Scotton, regarding Docket Entry 218, which is your
25 Motion to Dismiss on prosecutorial misconduct, Government's spy

1 Defendant's defense, Government harassment, magistrate harmless
2 unreversible error, seek justice and change venue, I notice you
3 attach an affidavit of Carlos Manuel Colon. And although it appears
4 to be an affidavit of Mr. Colon, it was also signed by Marina Colon,
5 his wife.

6 Are you requesting an evidentiary hearing to have those two
7 individuals come in and testify before this Court on the issues
8 raised in your motion?

9 THE DEFENDANT: I want to disqualify this Court because I
10 don't believe this Court can give me a fair trial here. I don't
11 want to discuss my motion in front of this Court.

12 THE COURT: Okay. Well, I am asking you a question. Do
13 you want to have an --

14 THE DEFENDANT: Yes.

15 THE COURT: -- evidentiary hearing?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: You want to have an evidentiary hearing and you
18 want to call Mr. Colon; is that right?

19 THE DEFENDANT: Yes.

20 THE COURT: And you want to call his wife; is that correct?

21 THE DEFENDANT: That's right.

22 THE COURT: Are there any other witnesses that you wish to
23 call at your evidentiary hearing that you are requesting if the
24 Court were to grant that?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: Who is that?

2 THE DEFENDANT: I prefer that to be sealed also.

3 THE COURT: I'm sorry?

4 THE DEFENDANT: I'm not going to discuss the witnesses in
5 front of the Government at this point.

6 THE COURT: How many other witnesses do you have besides
7 Mr. and Mrs. Colon?

8 THE DEFENDANT: At least five witnesses.

9 THE COURT: At least five witnesses and none of them that
10 you can discuss with the Government present?

11 THE DEFENDANT: No, Your Honor.

12 THE COURT: Do you understand that at an evidentiary
13 hearing your witnesses would have to be available to testify and be
14 cross-examined by the Government if --

15 THE DEFENDANT: Yes, I do.

16 THE COURT: -- if the Court allowed an evidentiary hearing
17 to take place?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: All right. We will address that and I will
20 determine if it is appropriate for an ex-parte sealing of the
21 proceedings and I will discuss that.

22 Yes, Miss Mitrani.

23 MS. MITRANI: To the extent that I wasn't clear, the
24 Government would oppose an evidentiary hearing on the matter set
25 forth in the U.S. affidavit. And to the extent the affidavit

1 discusses anything, it does pertain to this separate investigation.
2 So it's sort of like a two-prong opposition, Your Honor.

3 THE COURT: Right. And in looking through the Docket Entry
4 218, the Government makes a number of allegations.

5 MS. MITRANI: Not the Government.

6 THE COURT: I'm sorry. The Defendant makes a number of
7 allegations. One of which deals with a SWAT Team being sent out to
8 his legally blind 70-year-old mother, I guess it is. The Government
9 intentionally intimidating witnesses, friends, and family of the
10 Defendant.

11 That may be an issue that clearly I might be inclined to
12 set down an evidentiary hearing. Another matter is the missing
13 document, an Immigration letter. We've already had a hearing on the
14 Immigration letter issue and the Court is not going to have that
15 issue rehashed.

16 There is also a motion, which I take to be a motion to
17 recuse myself, which I will address shortly. There is an allegation
18 of the Government spying on the Defendant's defense.

19 There is a similar allegation, as I mentioned earlier, that
20 the Government is intentionally terrorizing and harassing his
21 family.

22 There is a similar allegation that has been made before
23 about whether the Government destroyed or fabricated evidence. We
24 have addressed those issues previously.

25 There are speedy trial issues which are raised. Again,

1 those issues have already been discussed and determined by the
2 Court.

3 And there are allegations as to the bond, the reasonable
4 bond issues and those matters have already been addressed by the
5 Court.

6 THE DEFENDANT: Your Honor --

7 THE COURT: Yes.

8 THE DEFENDANT: I understand you to say some of the motions
9 have already, presumed already resolved by the Court, but we been
10 conduct a lot of investigation now that I have a private
11 investigator and more things have come up.

12 And that's why I wanted the Court to even consider those
13 issues once again because the Defendant is waiting to prove here
14 whether Defendant be put in the papers.

15 THE COURT: Well, you will have an opportunity, perhaps,
16 for an evidentiary hearing on matters that are appropriate and you
17 will not have an opportunity of an evidentiary hearing on matters
18 that are not appropriate.

19 There is an allegation in this motion that the Court denied
20 a Motion to Compel any and all transcripts. Of course, we have that
21 set down for hearing today and that is simply another inaccurate
22 allegation.

23 THE DEFENDANT: There is --

24 THE COURT: One moment, Mr. Scotton.

25 Oh, and there is a motion for change of venue asking that

1 the venue be transferred to California or North Carolina and the
2 Court will deal with that.

3 Yes, Mr. Scotton.

4 THE DEFENDANT: Would I be able to at least one hand so I
5 could hold the books?

6 THE COURT: Yes. Could the marshal, please, remove his
7 handcuffs so he could operate as pro se, there being no attorney.

8 THE DEFENDANT: Thank you, Your Honor.

9 THE COURT: Then, there is also another motion that is very
10 similar to Docket Entry 218 and that is Docket Entry 220. And
11 Docket Entry 220 has certain attachments to it, including letters,
12 e-mails, and a letter from Miss Colon.

13 Now, I have reviewed this motion, Docket Entry 220, and the
14 Defendant seeks to dismiss the indictment, remove Prosecutor Mitrani
15 and Agent Van Brunt. The Motion to Dismiss indictment was
16 previously ruled upon. The motion to remove Prosecutor Miss Mitrani
17 and Agent Van Brunt was previously ruled upon.

18 Magistrate error and change of venue, it repeats the same
19 allegations regarding the SWAT Team harassing the Defendant's
20 family. Agent Van Brunt and the prosecutor intimidating and
21 blackmailing witnesses to give a false report and help the
22 prosecutor with the case. And alleging that they have also coached
23 a couple of inmates to jump in the case.

24 There is, again, allegations about the so-called Duarte
25 letter, which has previously been discussed and ruled upon.

1 There are allegations that the Government presented
2 irrelevant discovery to the Grand Jury. Allegations that the
3 prosecutor and the special agent spied and monitored the Defendant's
4 defense and sent the Defendant to SHU.

5 There is the issue of an alleged fraudulent videotape
6 which, again, has already been addressed previously and ruled upon.
7 In the motion, the Defendant alleges he has a new witness as to the
8 allegedly fraudulent videotape.

9 Mr. Scotton, are you prepared to address who this new
10 witness, on the alleged fraudulent videotape, is in open court?

11 THE DEFENDANT: The investigator is working on that right
12 now.

13 THE COURT: I'm sorry?

14 THE DEFENDANT: The investigator is working on that right
15 now.

16 THE COURT: Working on what?

17 THE DEFENDANT: To bring her to court.

18 THE COURT: Do you have a witness?

19 THE DEFENDANT: Yes, I do.

20 THE COURT: And are you prepared to name who that witness
21 is?

22 THE DEFENDANT: Not in open court.

23 THE COURT: But you are in a sealed hearing?

24 THE DEFENDANT: Yes.

25 THE COURT: All right. And then, there are, again,

1 re-allegations that the prosecutor destroyed and suppressed Brady
2 evidence, that the prosecutor sent the Defendant to solitary
3 confinement as punishment for asserting his legal rights. The
4 prosecutor suppressed other Brady evidence. And again, the
5 videotape issue.

6 The bottom of Page 5 of this, Docket Entry 220, the
7 Defendant states he will give to the Court an affidavit from the
8 witness that was at the video location to prove the missing
9 corruption of the video. The affidavit has not been supplied.

10 There are allegations of the form of Immigration letter and
11 that was the subject of a prior evidentiary hearing and the Court
12 has already ruled on that.

13 Again, similar allegations of the SWAT Team harassment and
14 prosecutorial misconduct. Again, recusal issues requesting this
15 Court to recuse itself.

16 More allegations about the Duarte letter that has already
17 been addressed. And as I said, various attachments. Okay. So
18 those are the two new motions and the Court will decide what to do
19 with them shortly.

20 As to the motions that are set down for a hearing today --
21 and before I get to them, Mr. Scotton, it appears that you have
22 filed two motions requesting that I recuse myself in this case. I
23 have read those two motions.

24 Is there anything else you wish to add regarding why I
25 should recuse myself from this case?

1 THE DEFENDANT: Not comfortable to make and want in sealed
2 and not in open court.

3 THE COURT: No, sir. If you are going to want to file a
4 Motion For Recusal, you file them in open court. If you have a
5 motion to make, I would certainly listen to it and --

6 THE DEFENDANT: A lot of thing --

7 THE COURT: Sir, do not interrupt me when I am talking.

8 You have filed two motions for recusal contained in those
9 two recent docket entries. If you have anything else to add to
10 those two motions, you can say it now in open court.

11 If there is some reason why you have to argue it in an
12 ex-parte sealed proceeding, I cannot envision why that would be.
13 You would have to explain why you need an ex-parte sealed proceeding
14 to argue for the recusal motion because the recusal motion is
15 something that should be addressed in open court with the Government
16 present, unless you have some reason why it cannot be.

17 THE DEFENDANT: A lot of danger and everything on this
18 case. As my investigator we've been getting a lot of witness.
19 We've been getting a lot of paperwork here. A lot fabrication and
20 things missing.

21 There's a lot of the motion that you just mention right now
22 that we went through this already, but at the time when we went
23 through, the Court has not provide me a date that I can bring
24 witness. I never have a chance to present all the paperwork that
25 now I have. A lot of thing has been disappeared. Malicious,

1 whatever it is --

2 THE COURT: Sir, I understand. I am asking you about the
3 Motion to Recuse. You are talking about --

4 THE DEFENDANT: Yes, Your Honor. I --

5 THE COURT: Let me finish, please.

6 Don't interrupt me. Do you understand, sir? Do you
7 understand, Mr. Scotton --

8 THE DEFENDANT: Yes.

9 THE COURT: -- do not interrupt me when I am speaking?

10 THE DEFENDANT: Okay.

11 THE COURT: I asked you what your argument was on the
12 recusal. I read your two motions. And I have asked you if you had
13 anything else to add on the recusal here in this public hearing.

14 THE DEFENDANT: No, Your Honor.

15 THE COURT: Not as to Government misconduct, or anything
16 else, but as to why this Court should recuse itself.

17 Do you have anything else that you wish to add orally?

18 THE DEFENDANT: I don't think this Court can be fair to me.

19 THE COURT: All right. Anything else?

20 THE DEFENDANT: No.

21 THE COURT: All right. The motion is legally insufficient
22 and the Court is denying your Motion to Recuse.

23 Now, let's go to the motions that are set down for today.
24 Today we have a Motion to Compel all of the hearing transcripts and
25 all sealed hearings, which is Docket Entry Number 212.

1 Now, Judge Rosenbaum had this matter addressed with her
2 some time ago and Judge Rosenbaum advised you that you need to have
3 a specific basis as to why you need certain transcripts.

4 So sir, what transcripts do you need and why do you need
5 them?

6 THE DEFENDANT: Last time in front of Judge Rosenbaum, I
7 specifically ask the Court to provide me with court report that I
8 could go off the court report and see the errors that I was going to
9 present.

10 THE COURT: You are talking about a docket sheet?

11 THE DEFENDANT: Yes.

12 THE COURT: And your standby counsel has not given you a
13 copy of the docket sheet?

14 THE DEFENDANT: No.

15 THE COURT: You don't have a copy of --

16 THE DEFENDANT: I need a complete one. That one not
17 complete.

18 THE COURT: Mr. Kreiss, does Mr. Scotton have a copy of the
19 docket sheet, a complete one?

20 MR. KREISS: The last -- when I gave him a docket sheet,
21 the last docket sheet was one hundred percent complete. I did not
22 bring a new one today, but when I saw him in jail, yes.

23 And I think the issue was when we were before Judge
24 Rosenbaum, I think her deputy clerk was going to provide a courtesy
25 copy and for whatever reason didn't. After that hearing I did

1 provide a copy.

2 MS. MITRANI: Your Honor, I have a copy of the docket sheet
3 and I'm happy to use this one.

4 THE COURT: All right.

5 MS. MITRANI: It was printed out today. So I have an
6 accurate -- I have another one in my car and I don't think I'll need
7 one, but if for some strange reason I'll need one, I might ask the
8 Court for a recess to get the other one.

9 THE COURT: That's fine.

10 MS. MITRANI: Thank you, Your Honor.

11 THE COURT: And if you would hand that to Mr. Kreiss and he
12 can hand it to Mr. Scotton.

13 Mr. Scotton, you have there a completed docket sheet that
14 has been provided to you. You have filed a motion for hearing
15 transcripts.

16 Now, as far as hearing transcripts, which were publically
17 recorded and not sealed or held ex-parte, which hearing transcripts
18 do you need, which dates, and why do you need them?

19 THE DEFENDANT: In order to be able to review, Your Honor,
20 to prepare for trial.

21 THE COURT: But sir, I need to know which specific dates
22 and which transcripts. There have been a lot of hearings in your
23 case. There have been arraignment hearings. There have been all
24 types of hearings that you may not need the transcript for.

25 And what I have asked you, and I believe Judge Rosenbaum

1 asked you, what specific hearing transcripts do you want and why do
2 you need them?

3 THE DEFENDANT: Your Honor, that's why I want the report in
4 first place because I need to have time to go ahead and go over
5 them. I can't just come to the Court in five minutes and go whole
6 docket sheet, you know, which hearings that I need.

7 THE COURT: I understand that Mr. Kreiss gave you the
8 docket sheet previously, sir, and you haven't done anything and --

9 THE DEFENDANT: It was not complete.

10 THE COURT: -- you haven't gone through -- sir, it does not
11 have to be completed. As long as it was up to the certain date that
12 it was given to you, you could have gone through that and told me
13 which hearing transcripts you want.

14 THE DEFENDANT: There's a lot of things on the docket right
15 now show they sealed. I don't understand the docket complete.
16 There's a lot of things here that I have no idea what it is.
17 Everything is sealed now. So why is it sealed? Nobody has told me
18 why those docket has been sealed.

19 THE COURT: Sir, you were present for the hearings.

20 THE DEFENDANT: Your Honor, when I go to the docket here
21 there's a lot of spots in the docket here that shows that it's
22 sealed. What does that mean?

23 THE COURT: It means that the transcript was sealed.

24 THE DEFENDANT: Right. And why was it sealed?

25 THE COURT: Well, every one of those hearings it was

1 discussed why it was sealed. It was usually at your request, or at
2 your counsel's request, or because it had matters that might divulge
3 attorney/client privileges or other privileges and the Government
4 was excused from the hearing.

5 And you know that very well because you made that very
6 request. You requested that the hearings be sealed.

7 THE DEFENDANT: Then, how can I find out which one is the
8 one that I need by looking at the docket?

9 THE COURT: Sir, all I can tell you is, in order to receive
10 copies of transcripts, you need to tell the Court which transcripts
11 you need and why you need them.

12 The Government just does not simply print out transcripts
13 and pay the court reporters for transcripts just because you have no
14 basis for them. If you have a basis for them, the Court will
15 certainly consider that. And if you have a good basis for a hearing
16 transcript and you are appearing indigent and pro se, the Court will
17 certainly order transcripts for you.

18 Now, if you would like -- now that you have a complete
19 docket sheet -- if you would like, I can reset this hearing for a
20 further date and give you all time that you would like to go through
21 the docket sheet. And you can come back to court and explain to me
22 which transcripts you wish to be transcribed and provided to you and
23 why you need them.

24 It is very simple. It is the same thing that any defendant
25 has to establish in this court. The defendant simply just can't

1 come in and say I want this transcript paid at the Government's
2 expense if there is no basis for it.

3 Do you understand that?

4 THE DEFENDANT: So necessary for me to go ahead and have
5 another hearing just for the transcript?

6 THE COURT: Yes, sir. Unless you want to tell me now. You
7 are the one who told me which transcript.

8 I mean, I will be happy to recess this matter for ten or 15
9 minutes and let you go through the docket sheet with Mr. Kreiss and
10 you can come back, or we can reset this matter for a later date. If
11 we are going to have an evidentiary hearing, then it is going to
12 have to be reset for a later date anyway.

13 So you tell me, sir. I will give you the option of either
14 having a break at some point this afternoon to go through the docket
15 sheet and come back and explain to me what hearing transcripts you
16 want and why you want them, or the matter can be reset to a date
17 later this month.

18 THE DEFENDANT: I prefer to do this now.

19 THE COURT: So we will do that in just a second.

20 Let me, also, go to the issue of the next motion, which is
21 the Motion to Compel various procedural matters. This is Docket
22 Entry Number 207. The first request that is made -- and this was
23 filed October 29th of 2013.

24 Do you have that there, Mr. Scotton, in your Motion to
25 Compel various procedural matters?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: All right. And your first request is for
3 appointment by the Court of a private investigator to find documents
4 and witnesses. Well, the Court has already granted that request and
5 has already appointed a private investigator as you requested in
6 this case.

7 The second is the appointment of a phone voice expert to
8 prove that the voice on the telephone calls referenced by the
9 Government was not that of the Defendant. And to call in the DHL,
10 UPS, and FedEx tech that has collected evidence to testify.

11 Now, that phone voice expert that you wish to have
12 appointed, do you have a name and a CV, or a resume of that expert?
13 And is that something that you wish to discuss in open court or do
14 you wish to discuss it in a sealed proceeding?

15 THE DEFENDANT: In a sealed proceeding, Your Honor.

16 THE COURT: And are you prepared to proceed with that this
17 afternoon?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: All right. The third request is appointment of
20 a computer expert to prove that collection of phone evidence by the
21 Government was calculated to destroy authenticity.

22 Do you have that expert?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: And do you have a resume or CV that you are
25 prepared to produce for the Court?

1 THE DEFENDANT: I think I got enough information on him
2 here.

3 THE COURT: All right. Do you want to do that now or do
4 you want to do that in a sealed ex-parte proceeding?

5 THE DEFENDANT: Sealed proceeding.

6 THE COURT: All right. And then, we have a number four,
7 which is subpoena the following critical witnesses.

8 What is the status of that, sir? And I am not asking you
9 what the witnesses would testify to, at this point, but since you
10 filed a public motion which lists all of your witnesses that you
11 want subpoenaed, what is the status of that? Have you subpoenaed
12 any of those witnesses?

13 THE DEFENDANT: No. None of them have been subpoenaed yet.

14 THE COURT: And why is that?

15 THE DEFENDANT: I'm sitting in jail, Your Honor. How can I
16 do that from sitting in jail?

17 THE COURT: Well, under Rule 17(b) -- and I am sure that
18 Mr. Kreiss advised you of this -- but under Rule 17(b) you can file
19 a motion requesting that the U.S. Marshal serve the subpoenas for
20 you.

21 And now, you have filed a motion here requesting the
22 effecting of service by the marshal, but Rule 17(b) states that upon
23 a defendant's ex-parte application -- you have made a public
24 application, but it says upon a defendant's ex-parte application,
25 the Court must order that a subpoena be issued for a main witness if

1 the defendant shows an inability to pay the witness' fees, which I
2 find that you are unable to pay the witness' fee.

3 And then, it also says and the necessity of the witness'
4 presence for an adequate defense. That is the issue that you have
5 not established. You have not established the necessity of the
6 witness' presence for an adequate defense. All you have done is
7 list a number of witnesses. It appears to be 33 witnesses. And you
8 have not explained why they are necessary for an adequate defense.

9 So is that something you wish to address in a sealed
10 ex-parte hearing or is that something that you wish to address here
11 in a public hearing?

12 THE DEFENDANT: Sealed, Your Honor.

13 THE COURT: So here's what we are going to do. We are
14 going to take a 15-minute break. I am going to let the Defendant,
15 and Mr. Kreiss, and his investigator go through the docket sheet so
16 he can determine which hearings he wishes transcribed and why he
17 wants them transcribed.

18 And then, after that, we will come back after 15 minutes
19 and we are going to go ahead and address whether the Court is going
20 to grant an evidentiary hearing on these newly filed motions of Mr.
21 Scotton that I just discussed. And then, I will go to the ex parte
22 hearing where we will discuss the sealed ex-parte matters that need
23 to be addressed.

24 Is there anything that the Government wishes to comment on
25 that procedure?

1 MS. MITRANI: No, Your Honor.

2 To the extent that the Court has now gone through Docket
3 Entries 218 and 220, which are the new dockets and has seen the
4 repetitive nature of -- the Court asked me earlier whether the
5 Government would be filing a response. I guess, in light of all
6 that has happened, the Government does not intend to file a response
7 unless the Court orders or wishes the Government to file a response
8 to a specific issue.

9 THE COURT: All right. And I will deal with that when we
10 come back from the break.

11 Mr. Scotton, is there anything else that you wanted to
12 address or add regarding the procedure the Court has just
13 established?

14 THE DEFENDANT: No, Your Honor.

15 THE COURT: All right. Then, we will take a 15-minute
16 break. If you need an extra five minutes or so, Mr. Kreiss, and Mr.
17 Scotton, you can let me know and if you let my courtroom deputy know
18 and I will give you another five minutes or so.

19 Mr. Scotton, do you think 15 or 20 minutes would give you
20 enough time to go through the docket sheet and decide which
21 transcripts you want transcribed, and which hearings you want
22 transcribed, and why you want them?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: All right. We will take a quick break and come
25 back.

1 (Recess.)

2 THE COURT: All right. We are back on the record.

3 I see Miss Mitrani is here from the Government.

4 Mr. Scotton is here representing himself, along with Mr.
5 Kreiss.

6 And good afternoon, again, to everybody.

7 Before we go to the hearing issue, what I am going to do, I
8 am going to set down an evidentiary hearing in this case. And the
9 issues that I am going to address I will specify in the order, but
10 primarily they are going to refer to the facts -- or the evidentiary
11 hearing is going to refer to and relate to the matters, including
12 the following, which would be Defendant's allegation supported by an
13 affidavit of his stepfather and mother that the Government has
14 harassed and intentionally persecuted them and the other allegations
15 that he makes in his motions and in the affidavit.

16 And Mr. Scotton, if he desires to, can call his stepfather,
17 I believe, Mr. Colon.

18 Is that right?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: And make sure you have a microphone that you
21 speak into.

22 MR. KREISS: Can I get the microphone, Your Honor?

23 THE COURT: Yes, please do.

24 MR. KREISS: And could I just ask a quick question. Are we
25 referring to Docket Entry 220, at this point?

1 THE COURT: Right now what we are referring to are the two
2 most recently filed motions. They are not going to be heard today.

3 What I wanted to do is sort of have almost like a status
4 conference here on those two motions so that Mr. Scotton knows the
5 date of the upcoming evidentiary hearing and knows that the Court is
6 going to grant an evidentiary hearing on those matters.

7 There are also certain allegations that are made regarding
8 a further witness who is some sort of computer expert, or something
9 of that nature, that he wishes to call.

10 Is that right, Mr. Scotton?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: All right. And then, I believe that there are
13 allegations that the Government has been spying on the Defendant's
14 case.

15 And if you have any witnesses, Mr. Scotton, that you wish
16 to present on that issue, you can certainly call them.

17 Do you understand?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: All right. So I am going to grant you an
20 evidentiary hearing. Not as to all of the matters contained in your
21 pleadings. And certainly not as to matters that have already had
22 evidentiary hearings, or matters that do not require an evidentiary
23 hearing, or matters that have already been addressed, but I am going
24 to grant an evidentiary hearing as to a limited number of issues
25 that you have raised in your motions.

1 MS. MITRANI: Your Honor --

2 THE COURT: Yes.

3 MS. MITRANI: I think I understand the first basis of the
4 alleged harassment prosecution. I don't understand the second
5 matter. He said something about a computer expert?

6 THE COURT: Well, let me go through it because I think it
7 is important of having to go through the motions.

8 It is Docket Entry 218, Motion to Dismiss on prosecutorial
9 misconduct, Government's spy of Defendant's defense, Government
10 harassment, magistrate harmless unreversible error, seek justice and
11 change venue.

12 The issue regarding what Mr. Scotton alleges are sending of
13 the SWAT Team and attempts to intimidate his family, and did not
14 bring witnesses, or to somehow persecute them, or threaten them,
15 those will be matters that if he wishes to present evidence on, he
16 can do that at an evidentiary hearing.

17 There are also issues, he goes on to say as I mentioned
18 earlier, that the Government has intentionally intimidated
19 witnesses, friends, and family of Defendant. So that issue is
20 something that I will address at an evidentiary hearing.

21 I am not going to address anything about the Immigration
22 letter. That has already been addressed and dealt with and ruled
23 upon.

24 THE DEFENDANT: Your Honor --

25 THE COURT: Yes, Mr. Scotton.

1 THE DEFENDANT: I would like to reconsider the letter
2 because I have an expert that's going to come and testify on the
3 letter.

4 THE COURT: No, sir. It has already been ruled upon and
5 decided. I am not going to reopen the evidence. If you wanted to
6 present evidence on that matter you should have presented it when we
7 had the hearing.

8 There is going to be no evidentiary hearing on any type of
9 speedy trial. That has been ruled upon and decided many times
10 previously.

11 THE DEFENDANT: Your Honor, on reference to that, once
12 again, at the time the Court that I have no investigator. I have no
13 way to present any evidence here at that time.

14 THE COURT: Sir, the hearing was taken. I listened to the
15 testimony and I am not going to open up another hearing on that
16 matter as well. My prior rulings on that are very clear.

17 There is going to be no evidentiary hearing on the bond
18 matter. The bond issue has already been resolved and determined and
19 prior orders have been entered on that. So that is Docket Entry
20 218.

21 As far as Docket Entry 220, which is Motion to Renew Brady,
22 issues prosecutorial conduct issues, and magistrate harmless error
23 and change venue, he makes an allegation here that is on Page 2 of
24 46:

25 "The accusation from agent to Mr. Colon and Defendant that

1 they are conspired to terminate S.A. Roy Van Brunt and the
2 intimidation. If Mr. Colon do not be a witness for Prosecutor
3 Mitrani he could face charges."

4 And so that will be encompassed in the evidentiary hearing.
5 Paragraph 2 on Page 2 of 46 states that:

6 "With the knowledge of coupled Defendant witness illegal
7 act of prosecutor and S.A. Van Brunt has intimidated and blackmailed
8 those witnesses to give a false report and help prosecutor with the
9 case. They also have coach couple inmate to jump in this case."

10 Mr. Scotton, if you wish to present evidence on that
11 allegation, you may do so.

12 The Duarte letter will not be addressed. That has already
13 been ruled upon and determined.

14 Presentation of irrelevant discovery to the Grand Jury is
15 not going to be subject to the evidentiary hearing and that is on
16 Page 3 of Docket Entry 220.

17 In paragraph 5 on Page 3 the allegation: "That prosecutor
18 and S.A., special agent, spied and monitored Defendant's defense and
19 Defendant's team and family."

20 And apparently, Mr. Scotton is making an allegation that
21 the Defendant was sent to the SHU for no reason. I assume Mr.
22 Scotton is alleging that was done by the Government. And being
23 transferred to a different jail, Mr. Scotton is alleging that is
24 also being done by the Government prosecution. If Mr. Scotton
25 wishes to present evidence on that matter he may do so.

1 The fraudulent videotape issue, we have already had a
2 hearing on that issue.

3 What other evidence would you wish to present on this
4 so-called fraudulent videotape issue, Mr. Scotton?

5 THE DEFENDANT: I have a witness.

6 THE COURT: And what would that witness testify to?

7 THE DEFENDANT: She's present. She passed by. She's going
8 to be able to testify and she's -- the part of the video is gone.

9 THE COURT: What do you mean she was present? She was
10 present during the video?

11 THE DEFENDANT: Yes. If he's recording a video, there's a
12 part on the video this person went on the table and this part of the
13 video is not in the tape.

14 THE COURT: I am not following you.

15 THE DEFENDANT: Your Honor, I'm sitting on the table the
16 FBI agent. A person pass by the video. I get up. I hug this
17 person. We kiss. She say goodbye. We sit down with conversation.
18 Where is that piece of the video if it is recorded? That piece is
19 gone.

20 THE COURT: I am going to deny that witness and we will not
21 have an evidentiary hearing on that issue.

22 THE DEFENDANT: Your Honor, the video --

23 THE COURT: The video issue has already been decided.

24 THE DEFENDANT: Judge Rosenbaum not ruled on that.

25 THE COURT: I'm sorry?

1 THE DEFENDANT: Judge Rosenbaum never made any final
2 decision that video and we agreed to get our expert.

3 I've been tried to present to this Court a lot of paperwork
4 here that can prove like a lot of -- like a lot of errors, a lot of
5 mistakes in this case here, but the Court not allowing to present
6 what I need to.

7 THE COURT: Okay. Sir, we had a hearing where Agent
8 Van Brunt, as I recall, testified that there was no modification to
9 the videotape whatsoever.

10 Do you recall that hearing?

11 THE DEFENDANT: This is in front of Judge Rosenbaum and she
12 didn't give me a rule because she believe that something is on that
13 video. And what do I have to prove here? At that point in the
14 hearing I have no way to prove that.

15 THE COURT: Miss Mitrani --

16 THE DEFENDANT: And he say --

17 THE COURT: One second, Mr. Scotton.

18 Miss Mitrani, am I remembering incorrectly, or did we not
19 have Agent Van Brunt testify about the fact that there were no
20 alterations on the videotape?

21 MS. MITRANI: If my memory serves me correctly, the
22 videotape hearing was before Judge Rosenbaum. And Agent Van Brunt
23 testified before Your Honor concerning, I think, the Immigration
24 letter.

25 THE COURT: I recall that, certainly, the Immigration

1 letter.

2 MS. MITRANI: And his service of subpoenas on Mr. Colon in
3 August of 2012, 2013.

4 I don't recall whether the video -- whether Special Agent
5 Van Brunt testified about the video in this Court, but certainly we
6 had a full fledged hearing, complete with cross-examination, in
7 front of Judge Rosenbaum.

8 THE COURT: And that was cross-examination of Agent Van
9 Brunt?

10 MS. MITRANI: Yes, Your Honor, by the Defendant back in
11 August.

12 THE COURT: All right. I will consider that.

13 When I issue my order, I will put in there whether we are
14 going to have any type of evidentiary hearing as to the videotape
15 issue. I want to review the prior hearings and I will take a look
16 at that.

17 Again, the Immigration letter, that has already been
18 decided and I am not going to hear any more testimony on that.

19 THE DEFENDANT: Reference the letter Immigration, then
20 should I then go ahead and submit another motion to appeal that and
21 have the Court reconsider that?

22 THE COURT: Sir, it is up to you to do what you want to do.
23 I cannot give you any advice.

24 Okay. So those would be the matters. The last matter we
25 discussed I will take under advisement.

1 Yes, Miss Mitrani.

2 MS. MITRANI: Your Honor, needless to say, we would oppose
3 an evidentiary hearing on the videotape that has already been before
4 the District Court.

5 To the extent this Court is inclined to have any kind of
6 hearing, from what I gather, though, it's difficult to understand.
7 Mr. Scotton is alleging that he has some kind of expert who is going
8 to testify.

9 We would demand advance notice of who this expert is and
10 what his or her credentials are, if any, and a summary of her
11 report. Then, we would be in a position to cross-examine. If not,
12 it would be a difficult hearing for the Government to participate
13 in.

14 THE COURT: I understand.

15 Mr. Scotton, do you have an expert witness that you plan on
16 calling at the evidentiary hearing, and if so, as to what issue?

17 THE DEFENDANT: Which one, Your Honor?

18 THE COURT: You had indicated that you wanted to call some
19 woman about the videotape issue, but I did not gather she was an
20 expert witness. I --

21 THE DEFENDANT: She's not expert. She's just part of the
22 video.

23 THE COURT: Okay. So you do not have any expert witnesses
24 you wish to call regarding the issue at the evidentiary hearing?

25 THE DEFENDANT: On the video, I'll call. Yeah, I'm going

1 to call.

2 THE COURT: I'm sorry?

3 THE DEFENDANT: I'm going to have an expert present to the
4 video.

5 THE COURT: An expert to testify as to what regarding the
6 video?

7 THE DEFENDANT: That the video has been edit.

8 THE COURT: And you want to have that expert available to
9 you?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: Okay. Well, I will discuss that --

12 THE DEFENDANT: Wait a minute. I haven't hired him yet.

13 THE COURT: You have not hired him yet?

14 THE DEFENDANT: No. I only have spoke to him.

15 THE COURT: Well, has he reviewed the videotape?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: Okay. Well, let me address that issue when I
18 do the order on the evidentiary hearing. I am not sure we are going
19 to have an evidentiary hearing on the videotape issue.

20 If we do, then, I will address the issue regarding any
21 expert witness. I still have not had the ex-parte hearing with
22 Mr. Scotton to see if that expert witness is going to be appointed
23 or not. I need to get more information about that, but we will deal
24 with that, the appointment issue, at an ex-parte hearing.

25 MS. MITRANI: Thank you, Your Honor.

1 THE COURT: You're welcome.

2 All right. So let's go ahead and get a date right now.

3 Ken, do we have a date before the end of the year where we
4 could set aside several hours for an evidentiary hearing?

5 MS. MITRANI: Your Honor, I hate to be difficult, but if we
6 could have some flexibility, if I can. I'm going to have to
7 coordinate with at least one FBI agent, possibly two or three, and
8 another AUSA.

9 Is there any way that maybe different dates can be
10 proposed? And I am more than happy to call Mr. Zuniga and get back
11 on Monday.

12 THE COURT: All right. Let me tell you some of the dates
13 we are looking at.

14 And Mr. Scotton, you should make note of these, too,
15 because you are going to need to have your witnesses here if you
16 decide, if you wish, to put them on.

17 December 10th at 2:30, December 19th at 2:15 p.m., December
18 23rd at 1:30, December 26 at 1:30, December 27 at 1:30 and December
19 30th at 1:30.

20 What I will ask the parties to do, because I understand
21 both parties have scheduling issues, so I want to be fair to both
22 sides. If you will go back and discuss, with whoever you may need
23 at the hearing, those dates.

24 And then, Miss Mitrani, if you could call Mr. Kreiss and
25 Mr. Kreiss if you could speak to Mr. Scotton. If you could both

1 agree on perhaps two of those dates in the event that we need to
2 continue it from one afternoon to another date.

3 So the dates that I am available are December 10th at 2:30,
4 December 9th at 2:15, December 23rd at 1:30, December 26th at 1:30
5 and December 27th at 1:30 and December 30th at 1:30 and all of those
6 would be for the remainder of the afternoon from that point onward.

7 MS. MITRANI: Yes, Your Honor.

8 I'll coordinate with Mr. Kreiss and should we, then, call
9 Mr. Zuniga?

10 THE COURT: Please do.

11 Mr. Kreiss, would you be able to assist Mr. Scotton in the
12 course of doing that?

13 MR. KREISS: Of course.

14 MS. MITRANI: I assume Mr. Scotton is available because I
15 believe he is in custody. So it is just a matter of counsel and the
16 agent.

17 THE COURT: And any witnesses Mr. Scotton may need to call.

18 MS. MITRANI: Oh, I see. I'm going to shoot for the first
19 two days so we can get this out of the way, but again, I have to
20 coordinate.

21 THE COURT: And when is the trial set for in this case?

22 MS. MITRANI: January 21st, Your Honor; Tuesday, January
23 21st.

24 THE COURT: And that is another reason that I want to
25 address these issues as quickly as possible. But I think that

1 because Mr. Scotton raised certain allegations and presented an
2 affidavit of an individual who wishes to testify, and perhaps his
3 mother who also wishes to testify, then, the Court wishes to be fair
4 to Mr. Scotton and give him the opportunity to establish his
5 allegations at an evidentiary hearing.

6 MS. MITRANI: I understand, Your Honor.

7 I will be diligent in contacting Mr. Kreiss. So there
8 should be no holdup on our part. And we thank you for not setting
9 it right this moment and allowing me to coordinate it.

10 THE COURT: The other thing I would request is that the
11 Government prepare and file a response to the motions, to the extent
12 that the motions address issues, which you have already addressed
13 and responded to, you could simply refer to prior pleadings.

14 But to the extent that Mr. Scotton has raised new issues, I
15 would ask that the Government respond with any argument that it may
16 have.

17 MS. MITRANI: Okay, Your Honor.

18 THE COURT: And I will give you time to do that, but
19 obviously, it would have to be done before whatever hearing we have
20 scheduled.

21 MS. MITRANI: It will be.

22 THE COURT: All right. And then, I believe, Mr. Scotton
23 will be remaining here at the Palm Beach County Jail why these
24 hearings are pending.

25 Is that right, Marshal?

1 THE MARSHAL: I'm sorry?

2 THE COURT: Will Mr. Scotton be remaining here?

3 THE MARSHAL: Yes, Judge.

4 THE COURT: He will be. All right. So Mr. Scotton will be
5 remaining here at the Palm Beach County Jail. So we can set these
6 hearings quickly and have him brought over from the Palm Beach
7 County Jail.

8 And if you do file a motion what I would do is, Mr. Kreiss,
9 if you would, please, print out copies of anything that is filed or
10 either deliver or mail them to Mr. Scotton at the Palm Beach County
11 Jail. And he will be here at least until the completion of these
12 hearings that are going to be set in the very near future.

13 MR. KREISS: Absolutely, Your Honor.

14 We can't rely on the mail. It just doesn't seem to work
15 very well for whatever reason. I'll either have to hand-deliver or
16 Miss Martinez will hand-deliver.

17 THE COURT: That's fair enough.

18 So why don't I say -- how many days in advance, Miss
19 Mitrani, would you need to get your response in? In other words, if
20 we set the hearing for December 10th, which is the first date I
21 gave, which is already next Tuesday --

22 MS. MITRANI: That's going to be a little tight.

23 THE COURT: That is going to be a little tight.

24 If we set it for, say, December 19th, would you be able to
25 get your response in -- let's see. Today is the 6th. Would you be

1 able to get it in by the 13th?

2 MS. MITRANI: Yes, Your Honor.

3 Once I sit down, again, I will file a response. A lot of
4 the Court's wishes, I think a lot of it will be referring to things.
5 I just do need a block of time to try to sort out what's there. So
6 for December 19th, if you want it by the 13th --

7 THE COURT: Will that give you enough time?

8 MS. MITRANI: I'll make sure it does.

9 THE COURT: And as long as you respond to those newly filed
10 motions, those new docket entries.

11 And as I said, if you want to refer to prior pleadings that
12 you filed, or prior hearings, or prior court orders, or R and Rs,
13 you can certainly do that. If there are new issues you are
14 addressing, or the new affidavit which has been filed, then, please
15 address those issues.

16 MS. MITRANI: Okay, Your Honor.

17 THE COURT: All right. And Mr. Scotton, you will be
18 getting a copy of the Government's response and you can review that
19 and prepare for that prior to the upcoming hearing.

20 Do you understand?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: All right. So is there anything else that we
23 need to discuss now in a public hearing?

24 If not, what I was going to do is go to the ex-parte
25 hearing and I don't think I need to keep the Government around, the

1 prosecutor around because that hearing could take a while. So if
2 there is nothing else that needs to be addressed in a public setting
3 -- I will ask the Government first.

4 Is there anything else that we need to address in a public
5 setting?

6 MS. MITRANI: No, Your Honor.

7 THE COURT: Mr. Scotton, is there anything else that you
8 wish to address with the Court in a public setting before I excuse
9 the prosecutor and go into an ex-parte sealed hearing?

10 THE DEFENDANT: My concern right now, Your Honor, is all my
11 legal papers are in FDC. I did not expect to come here to Palm
12 Beach at any time soon before the trial.

13 The marshal took me to FDC probably two weeks ago, or
14 maybe, I don't know, maybe more. And the hearing, this hearing has
15 been set up last week. I got the answer from Jason that just come
16 up to county a week ago. So I don't know why I even been moved from
17 FDC to Palm Beach and sit here for three weeks and wait for hearing
18 when I need to prepare for trial.

19 I have a lot of paperwork that I been, for whatever reason,
20 the jail doesn't allow me to bring in. And I even told them that I
21 have an order from Judge Rosenbaum whenever I been moved to other
22 place all my paperwork has to come with me, but no one seems to
23 transfer the paperwork.

24 So once again, I'm going to be sitting here. Subpoenas
25 haven't been sent. Again, I have a lot of witness. The motion I

1 have is 33, but is not all my witness. I have over 140 witness.

2 THE COURT: That is a trial issue, which we will be
3 discussing.

4 THE DEFENDANT: Right. And not only that, everything else
5 that I need to talk to my investigator. So all the legal paper I
6 have is sitting there FDC when I'm down here in Palm Beach.

7 THE COURT: Who has your legal papers, sir?

8 THE DEFENDANT: The property FDC.

9 THE COURT: All right. Mr. Kreiss, have you made any
10 inquiries about how to get those papers or whether your client, Mr.
11 Scotton, and the investigator could go and pick those papers up?

12 MR. KREISS: We are in the process and I have explained.
13 I've advised Mr. Scotton that it's in his best interest that all of
14 his possessions be given to Miss Martinez, all the paperwork that he
15 has.

16 So that in the event that he's transferred, which we don't
17 anticipate he will be transferred, at some point he will not lose
18 his paperwork again and he will be ready for trial. I told him to
19 put everything in Miss Martinez' possession. As he needs things,
20 she will bring them to him and she will take them back and they
21 won't disappear in the system again.

22 THE COURT: Is that what you want to do, Mr. Scotton?

23 THE DEFENDANT: Yes.

24 THE COURT: You want to have all of your papers that are
25 being maintained at FDC Miami given over to your investigator, Miss

1 Martinez?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: All right. Let me ask the marshal.

4 If I enter an order directing the FDC to turn over any of
5 his papers to Miss Martinez, would there be any problem with that,
6 do you know?

7 THE MARSHAL: Not that I know of, Judge, as long as they
8 still have it.

9 THE DEFENDANT: They might have at least three box because
10 before leave FDC they make us box everything else in box. So it be
11 like three or four box of paper.

12 THE COURT: Miss Mitrani, do you see any reason why the
13 Court cannot simply enter an order, which on Mr. Scotton's request,
14 requires FDC to turn over any documents that it is holding or any
15 paperwork it is holding of Mr. Scotton to give to his investigator,
16 Miss Martinez?

17 MS. MITRANI: I've never seen an order like that, which I
18 understand that is the issue.

19 THE COURT: I do not know that we need an order. It is
20 possible that they will turn them over to Miss Martinez anyway.

21 MS. MITRANI: Yeah, I would prefer that we not issue an
22 order until I look into it. I know FDC has always been responsive
23 to the Court. I believe he has a counselor or a case manager and
24 that's the person he works through to effectuate these things. I
25 don't know who that person is.

1 THE COURT: Well, could you and Mr. Kreiss contact FDC and
2 determine if they will simply, at Mr. Scotton's request, turn over
3 all of his paperwork to Miss Martinez, his private investigator.

4 MS. MITRANI: Now, is he saying this is paperwork that he
5 doesn't have in his possession? Because I don't think FDC houses
6 documents. In other words, documents travel with the person.

7 THE COURT: I do not know if they have them or not.

8 Mr. Scotton is making an allegation that there are three
9 boxes of documents that were at FDC when he was moved to Palm Beach
10 County Jail and that they have not traveled with him.

11 Is that correct, Mr. Scotton?

12 THE DEFENDANT: Yes.

13 MS. MITRANI: Mr. Kreiss and I will --

14 THE COURT: So if you could both address that issue.

15 And if somebody needs to file a motion or a status report
16 to the Court, I would just like to, if at all possible, make sure
17 that Mr. Scotton has his paperwork since he is proceeding pro se,
18 acting as his own attorney, in this case.

19 MS. MITRANI: I understand, Your Honor.

20 Before we file any orders because they may impede on other
21 matters, let Mr. Kreiss and I see if we can see, one, whether there
22 are documents independent of Mr. Scotton and, two, who may have
23 them.

24 THE COURT: And FDC has always been responsive. So I do
25 not think that we have to necessarily enter an order.

1 Mr. Kreiss, is there anything you want to add on that
2 matter?

3 MR. KREISS: We will give it a shot, Your Honor.

4 THE COURT: All right.

5 MR. KREISS: It's sometimes a hit or miss with FDC and I
6 will make every effort to try. And I told Mr. Scotton this a long
7 time ago that this is the right procedure, but I will continue to
8 look into it. And if there's counsel maybe we can work backwards
9 and I'll talk to the marshals also and maybe they have some idea of
10 who we need to speak to.

11 THE COURT: All right.

12 THE DEFENDANT: I have to put in writing maybe because I'm
13 a pro se. So maybe something I may have to write to FDC for Miss
14 Martinez to pick it up.

15 THE COURT: I will leave that to you and Mr. Kreiss and
16 also to whatever FDC says, but the Court is certainly willing to
17 assist to the extent it legally can to get your paperwork to whoever
18 you wish to have it, to have hold it for you.

19 You have to understand, Mr. Scotton, when you file motions
20 the Court reads them and sets down hearings when necessary.
21 Hearings have to be set down. When we set down a hearing, if it's
22 set in Broward County in front of Judge Rosenbaum, you are taken to
23 Broward County. If you are set for a hearing in front of me in Palm
24 Beach County, you are taken up here.

25 There is nothing nefarious behind it. It is simply you

1 just have to be transferred, transported, for the court hearing. So
2 it is as simple as that. So when you are going to file motions you
3 can expect that, if appropriate, the hearing will be set. And if
4 there is a hearing set, you need to be there and that is why the
5 hearings are set.

6 So you can anticipate being at Palm Beach County Jail on
7 Gun Club Road until matters, pending before me, are resolved. And
8 the evidentiary hearing, in any event, is held which we hope to be
9 able to hold it within the next week or two, especially in light of
10 the fact that your trial date is January 21st.

11 And I think you have a calendar call coming up as well,
12 which would be January 15th at 1:00 p.m. in Fort Lauderdale. So
13 your calendar call, as far as trial before Judge Rosenbaum, is
14 January 15th of 2014 at 1:00 p.m. before Judge Rosenbaum.

15 THE DEFENDANT: I have file two other motions and I don't
16 think the Court received. In fact, one of the motion ask for
17 continuance.

18 THE COURT: That will be decided by Judge Rosenbaum.

19 What was your other motion?

20 THE DEFENDANT: I guess two weeks ago is some property that
21 needs to be turned over by the Government back to me.

22 THE COURT: Okay. Well, that motion can be addressed. If
23 it has never been filed -- it is not in the court file as of now.
24 So until it gets filed the Court cannot address it, but when it gets
25 filed it will be addressed.

1 All right. So is there anything else that we need from
2 either side that we need to bring up in the public portion of the
3 hearing today?

4 MS. MITRANI: Nothing from the Government, Your Honor.

5 THE COURT: Mr. Scotton, before we go to a sealed hearing,
6 is there anything else that you need to bring up in the public
7 portion of the hearing today?

8 THE DEFENDANT: No, Your Honor.

9 The other issue I'll go ahead and send other motions to the
10 Court with reference to the letter.

11 THE COURT: So Miss Mitrani, what I am going to do, then,
12 is I am going to excuse you now. And I am going to go ahead and
13 hold the sealed ex-parte hearing as far as the other issues that
14 have been addressed. And then, we will get a hearing date set as
15 soon as you make your inquiries, and Mr. Kreiss, and you get back to
16 Mr. Zuniga.

17 But I will make myself available in December so that these
18 evidentiary hearings can be held. All the hearings can be held on
19 all the motions that we need to hold and the Court can get its
20 rulings out and the matter can be ready for trial in January before
21 Judge Rosenbaum.

22 MS. MITRANI: Thank you so much.

23 THE COURT: Thank you. Have a good weekend.

24 MS. MITRANI: You too, sir.

25 THE COURT: All right. Now, the next portion of the

1 hearing that we are going to go to is the ex-parte hearing.

2 I notice that there is somebody in the back of the
3 courtroom.

4 THE DEFENDANT: My mother, Your Honor.

5 THE COURT: All right. And do you wish your mother to be
6 present --

7 THE DEFENDANT: Yes.

8 THE COURT: -- here in this sealed ex-parte hearing?

9 THE DEFENDANT: If she wants to, yes.

10 THE COURT: All right. I have no problems with that. Your
11 mother can stay here.

12 So in the courtroom we have marshals, court security, my
13 staff, we have Mr. Kreiss, Mr. Scotton, Investigator Martinez, and
14 the Defendant's mother. So we will go ahead and seal the courtroom
15 and we will go ahead with these hearings now.

16 (Sealed proceedings.)

17 THE COURT: All right. Thank you.

18 You all have a good weekend.

19 THE COURTROOM DEPUTY: All right. Court is in recess until
20 December 10th at 2:30 p.m.

21 (Thereupon, the proceedings concluded.)

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CERTIFICATE

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

07/30/14

Bonnie Joy Lewis,
Registered Professional Reporter
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