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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
BEFORE HONORABLE CATHY ANN BENCIVENGO, JUDGE PRESIDING

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	CASE NO. 18CR5260-CAB
	)	
vs.	)	
	)	SAN DIEGO, CALIFORNIA
SALAM RAZUKI (1), SYLVIA	)	
GONZALES (2), ELIZABETH JUAREZ (3),	)	
	)	MAY 15, 2020
Defendants.	)	

STENOGRAPHIC REPORTER'S TRANSCRIPT OF PROCEEDINGS  
TELEPHONIC STATUS HEARING  
PAGES 1-17

Proceedings reported by stenography, transcript produced by CAT software

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1 San Diego, California; Friday, May 15, 2020; 1:30 p.m.

2 (Case 18CR5260-CAB called)

3 MR. WARWICK: Tom Warick who is on the call. And  
4 Mr. Razuki is also in my office.

5 MR. YOON: And, good afternoon, your Honor. Antonio  
6 Yoon, also appearing for Mr. Razuki. And I'm making a special  
7 appearance for Brian Funk for Ms. Sylvia Gonzales.

8 THE COURT: Thank you.

9 MR. BLOOM: Good afternoon, your Honor. This is Allen  
10 Bloom on behalf of Elizabeth Jaurez.

11 THE COURT: Thank you.

12 MR. SHEPPARD: And Fred Sheppard on behalf of the  
13 United States.

14 THE COURT: Thank you. All right. Thank you,  
15 gentlemen. I was going to schedule something anyway because  
16 of, obviously, the current situation to discuss the dates that  
17 I had set in my order, but then I got the motions from defense  
18 counsel regarding the government's disclosure that was made in  
19 response to the scheduling order that I entered back in January  
20 that required that the government identify the witnesses and  
21 exhibits that they intended to use in their case in chief, and  
22 a witness list of some 143 people was provided. Even taking  
23 out the custodians of record, it's still about 137 individuals.  
24 And in light of the fact that the government had indicated to  
25 me they thought they could do this trial in three days, that's

1 about six and a half minutes a witness, Mr. Sheppard. So are  
2 you really going to call all those people?

3 MR. SHEPPARD: So, Your Honor, when we talked about  
4 this and when you set your order in court and in your order,  
5 you said that -- provide a witness list of witnesses you may  
6 call in your case in chief.

7 THE COURT: No. Sir, sir, I have the order right in  
8 front of me. It very specifically says: The government will  
9 make a final disclosure of the names of witnesses and evidence  
10 it intends to use in its case in chief at trial. It intends to  
11 use.

12 Now, you could have given them a list of the people  
13 you intend and had a supplemental list of people you may call,  
14 but giving them a list of 137 people you may call with no  
15 indication, because it's in alphabetical order, which of those  
16 witnesses are truly the people you think you are going to call  
17 totally ignores the point to my order.

18 MR. SHEPPARD: Well, that certainly wasn't the  
19 intention at all. We were trying to be all inclusive because  
20 Your Honor said if we had added a single name past that date,  
21 we had to provide good cause as to why that name wouldn't have  
22 been on the list to begin with back on that date. And we had  
23 not determined -- we have not been able, as I'm sure Your Honor  
24 is aware, to even sit down and have discussions with these  
25 witnesses to determine whether or not those witnesses would be

1 called at that particular point in time, and the trial was four  
2 months away. We're not trying to do gamesmanship with it. We  
3 just truly had -- we're trying to make sure that we -- we did  
4 not want to come back and provide additional witnesses and the  
5 Court and defense counsel say, You knew these individuals could  
6 have been witnesses before. You didn't include them on the  
7 list. You're barred from using them.

8           So we may -- then I will redo the list if Your Honor  
9 would like, but we have not had a chance to sit down and  
10 definitively talk with them. Some of those witnesses may be  
11 impeached with regards to this, and we would absolutely intend  
12 to call other witnesses on the list to prove up that  
13 impeachment to go forward with in our case in chief. I'm  
14 just-- I'm not --

15           THE COURT: All right. Fine. I understand your  
16 rationale. There would have been a better way to do it  
17 because, clearly, in this list, you have a top five, ten people  
18 that you know, I hope, by now are the people that are going to  
19 make up your case in chief. Whether or not you have a list of  
20 potential impeachment witnesses or people you might call on  
21 tangential issues if it's necessary, you can identify them  
22 separately.

23           But this is not a helpful list to the defendants, and  
24 it is not helpful to the purposes that the Court required it.  
25 So I want you to provide them with an amended list that is --

1 has a better sense of who you really are going to be relying on  
2 in this case so that they can evaluate who those people are and  
3 what they might be testifying about. And the same thing with  
4 exhibits. They're rather broad descriptions.

5 And the one confirmed that I would like to have you  
6 address because it seems an inconsistency, but there may be a  
7 reasonable explanation is you had indicated you were not going  
8 to use post-arrest statements of any of these defendants, but  
9 then there's a list of exhibits that says: Recordings of  
10 interviews of the defendants. And I don't know what -- how you  
11 reconcile that.

12 MR. SHEPPARD: So, Your Honor, again, with regards to  
13 that, I also, and without going -- I've had various individuals  
14 reach -- one of these defendants reach out as to the  
15 possibility of a plea offer. If that were to be the case and  
16 come to fruition, and during the course of our case in chief,  
17 that person testifies, then that statement certainly may come  
18 into play in the case in chief in order to buttress that  
19 testimony on redirect if the credibility were attacked and said  
20 something that they had or had not said prior to it.

21 With regards to other exhibits, at the time that this  
22 order was due, as your Honor is aware, a lot of these exhibits  
23 and this evidence is contained in FBI headquarters, which is on  
24 absolute lockdown by national order. There was absolutely  
25 "no". Now, at this point in time, the FBI is starting to phase

1 in a third workaround to get into the building. I can ask  
2 whether or not additional TP and clearance would be provided to  
3 either myself, dependent upon what the safety conditions are  
4 there given some other personal issues I have at home with  
5 regards to it, and the same with regards to Mr. Thakkar.

6 But what exhibits specifically is in this photo is yes  
7 or this photo is not, in honesty, with a trial being four  
8 months away, it was -- we didn't know which photos specifically  
9 we were going to use, except that we would use photos from the  
10 search site. And so, again, so as not to be barred from being  
11 able to use them if we decided closer to trial, we identified  
12 all the photos. And if it comes down to then you have to  
13 introduce all the photos, then that is the path we would take  
14 so as not to be barred later on from them.

15 THE COURT: Does anybody on the defense side want to  
16 respond?

17 (Undiscernible crosstalk)

18 THE COURT: One at time. And identify yourself.

19 MR. BLOOM: All right. Let Mr. Yoon go first. That's  
20 okay.

21 MR. YOON: Well, your Honor, I feel the government's  
22 comments -- I think that the Court's January 21st order did  
23 take into account the government was supposed to make the final  
24 disclosure of the named witnesses they intend to use in trial,  
25 and then by July 17th, the government was allowed to file their

1 final exhibit and witness list. So that was my recollection of  
2 the hearing.

3 MR. BLOOM: Your Honor, Alan Bloom. It was clear that  
4 the intention of the Court was an attempt to require the  
5 government to do what the government now says it has not done,  
6 namely, to sit down, syphon through thousands of documents and  
7 hundreds of witnesses and make a decision so that a real trial  
8 can be prepared in a real way. And the government's response,  
9 except for the fact having to do with any complication for the  
10 Corona virus and the FBI shutdown, except for that, basically  
11 what I heard the government say is that they haven't done that.

12 MR. SHEPPARD: Your Honor --

13 MR. BLOOM: This case has been ongoing for a number of  
14 years, and it was clearly the direction or the request of the  
15 Court that the government do that.

16 MR. SHEPPARD: Your Honor.

17 MR. BLOOM: It only makes it fair so that we can have  
18 a level playing field so that we know when we get into trial  
19 what really is going to be presented.

20 And so, that's my impression of what the Court -- I  
21 mean, what the prosecution has just said with regards to their  
22 response to the court order. The court order is very clear.  
23 The government's response to it is basically just saying we  
24 don't know, so we have to keep every option open. And that's  
25 not in compliance with the order of the Court.



1 THE COURT: All right.

2 MR. SHEPPARD: Well --

3 THE COURT: Go ahead.

4 MR. SHEPPARD: I'm sorry.

5 THE COURT: Go ahead.

6 MR. SHEPPARD: Sorry. Fred Sheppard. What I would  
7 say is this, we absolutely were not in any way trying to  
8 disrespect or play games or anything of this sort, Your Honor.  
9 The fact of the matter is, in preparing for this trial in  
10 addition to the multitude of other trials that have been set  
11 before this one, it wasn't as if we were going to sit down with  
12 all these witnesses five months ahead of time and then hope  
13 that nothing had changed in the intervening four months between  
14 that list and our case in chief. At that particular point in  
15 time as we came closer to it, yes -- and, in fact, we were  
16 still interviewing witnesses who were providing credible  
17 information to us with regards to it up until a month or four  
18 weeks at some point in time prior to the shutdown, in fact, to  
19 the point in time one of those witnesses lead in the week  
20 leading up to that order had provided definitive information as  
21 to where the payment provided to the informant as a down  
22 payment for the violent act had originated from.

23 And so, we were trying to go forward, but we had not  
24 gotten through. A lot of those are employees on the witness  
25 list, employees of Golden Bloom who had provided information as

1 to the activities and the duties of the defendants and whether  
2 or not they had specific duties or responsibilities or the  
3 ability to withdraw certain funds from Golden Bloom without the  
4 authority of (audio breaking up) but those are people that we  
5 had been making and still continuing to make strides to speak  
6 with because we hadn't intended to and weren't including on  
7 this list, and we full well -- I mean, it's not in the sense  
8 they were just on there and, you know, I'm trying to be up  
9 front that these people are potential witnesses in our case in  
10 chief. So I think ultimately until we speak with them and this  
11 particular person has a full understanding so that we don't  
12 need to call four other witnesses, we can't make that decision.  
13 And we're still trying to do that with the other cases that  
14 we've also got, and this the situation we find ourselves in.  
15 And so I -- that's where we're at.

16 THE COURT: All right. You need to get practical  
17 here. This case has a trial date in August. I have very  
18 little confidence, if any at all, I will be able to summon a  
19 venire panel for the first week of August. I don't see that  
20 happening. We're having conversations about how to do this,  
21 how to potentially bring in a jury, do social distances, and  
22 all of that, but we're a long way from really being able to  
23 implement anything along those lines.

24 Because there's a lot of dates in here that require  
25 that things get done with the expectation this case is going to

1 trial in August, I think it's best that I vacate all of that in  
2 my orders at docket, what is it? 80.

3 And part of the explanation, as I understand it, from  
4 the government is when I issued this scheduling order back in  
5 January and gave you an April date, this all preceded the  
6 complications of being able to meet with people. And,  
7 obviously, things went completely off the rails by March and  
8 so, when you filed your April disclosures that I required, you  
9 were over inclusive to make sure you would not be prejudiced by  
10 failing to identify somebody, but you have not had really a  
11 significant opportunity to meet and confer with all these  
12 potential witnesses to really narrow the field. And I suspect  
13 at this point, that it's still problematic for you; is that  
14 correct?

15 MR. SHEPPARD: It is, your Honor. And just -- I won't  
16 belabor it. We had been meeting with people up until we were  
17 shut down and then receiving lists of individuals, of potential  
18 witnesses up until that point and, in fact, had planned to meet  
19 with additional witnesses in those weeks. As it stands, Your  
20 Honor, we have a call with the FBI after this. I know that as  
21 of last week, federal agencies were being forbidden from  
22 interacting with the public except on an absolutely necessary  
23 national security matters because of --

24 (Court reporter interruption regarding audio breaking up)

25 THE COURT: That's fine, Mr. Sheppard. I get the gist

1 of it.

2           Your motion in limine hearing was scheduled for  
3 June 19th at 1:30. I'm converting that to another status  
4 conference in this case. I'm vacating all of the filing  
5 requirements that I previously set. I'd like the parties to,  
6 perhaps, meet and confer between now and then and file a joint  
7 statement as to what you think is a reasonable schedule going  
8 forward to be able to narrow this case to an appropriate  
9 witness list and exhibit identification that, yes, will be  
10 subject to modification if things change, but at least will let  
11 the defendants get a better sense of getting their arms around  
12 the foundational elements of the government's case.

13           And then we can -- I'm hoping to have a little more  
14 daylight into what our jury situation is going to be by  
15 mid-to-late June in terms of whether we're going to be able to  
16 actually call panels in. But in the meantime, since I really  
17 have no prospect of doing that, it seems like an awful lot of  
18 work for people to do and then just sit on it.

19           And I appreciate the government's position that you're  
20 hampered by being able to collect and finalize documents and  
21 witness interviews when facilities are not available to you.  
22 So, again, I'm just vacating all the dates and requirements you  
23 have.

24           We will have a status conference on June 19th at 1:30,  
25 which was your original motion in limine date.

1           And the Court excludes time under the general order in  
2 light of the COVID-19 crisis, as well as the fact there are  
3 motions pending in this case.

4           And because two of the defendants are out on bond, the  
5 prejudice to them is less. I know that Mr. Funk is not on the  
6 phone. And, Mr. Yoon, I would encourage you to discuss with  
7 him and with counsel for the government any options to try to  
8 create a bond situation for Ms. Gonzales to minimize the delay  
9 prejudice to her of being unable to get a trial date as well as  
10 to facilitate her ability to meet with counsel, because while  
11 people are incarcerated right now, there's very limited access  
12 to counsel. But, obviously, there would have to be appropriate  
13 conditions.

14           I don't know what her situation is right now. I don't  
15 recall what it was when bond was set for her, if it was, but  
16 I'd like you to explore that because I'm concerned about having  
17 people indefinitely in custody when I can't set a trial date  
18 because I can't call a jury.

19           Alternatively, and it's always an option that the  
20 parties could consider if they want to get this matter done, is  
21 opting for a bench trial. We could certainly give you a much  
22 more date certain. I think the handling of witnesses with  
23 social distancing is going to be more manageable from a  
24 practical point of view earlier than bringing in, screening,  
25 and sitting a jury. So I would like you to, at least, discuss

1 that with your clients, think about it, and decide whether you  
2 think that might be an appropriate alternative here given the  
3 unknown amount of delay we have for a jury trial.

4           So with that, everything that has been filed: On the  
5 order to compel compliance, the Court is denying that without  
6 prejudice but I'm going to request that the government give a  
7 more substantial update on June 19th at the status hearing as  
8 to the true nature, who the witnesses and exhibits are going to  
9 be based on your ability between now and then to try to hone  
10 that field, and I would encourage you to try to have frank  
11 conversations with defense counsel, particularly as to the  
12 exhibits because I'm assuming, I hope correctly, that all this  
13 is from discovery that's been provided to the defendants, and  
14 so narrowing documents might be easier to do than perhaps  
15 identifying witnesses.

16           I do understand the complications, Mr. Sheppard, but I  
17 think the defendants need a little more transparency as to  
18 where the government is going specifically in this case in  
19 terms of the who, the what, the where, the when, et cetera.

20           So anything else from counsel?

21           MR. BLOOM: This is Alan Bloom, Your Honor. I  
22 understand the Court's order to remove all the dates except for  
23 June 19th. In terms of the meet and confer, while everybody is  
24 on the line since it's difficult to that, I'll take a moment of  
25 the Court's time, Fred and Tom and Mr. Yoon, it probably make

1 sense for us to use email to try to schedule a joint call so we  
2 can all speak about the idea of availability and when the  
3 Court -- or when the government thinks it will be ready, and so  
4 we can come back to that. So I'll try to send some emails to  
5 try to do some scheduling with regards to having some sort of  
6 joint conversation on that.

7 THE COURT: Thank you., Counsel. I appreciate you  
8 taking that initiative. Anybody else?

9 MR. YOON: Your Honor, this is Antonio Yoon. I will  
10 relay the message to Mr. Funk regarding Your Honor's request  
11 for him to explore any bond situation with Mr. Sheppard and the  
12 government.

13 THE COURT: Okay. Anything from government?

14 MR. SHEPPARD: No, your Honor. I was going on say I  
15 would reach out to counsel as soon as we were done, but I'll  
16 wait for Mr. Bloom to send an email.

17 THE COURT: All right. Thank you, gentlemen. I'll  
18 talk you to in June, and, hopefully, we will have a better  
19 sense of where we are in this whole unique and troubling  
20 process.

21 MR. BLOOM: Your Honor. Your Honor, before you leave,  
22 this Alan Bloom. There is another question I have. I know  
23 we -- obviously, we have the issue as to how can we maintain  
24 social distancing and pull in a jury. Obviously, that deals  
25 with this case, but can the Court give us any guidance as to

1 how you even plan on handling all the backlog of cases? Would  
2 you, for example, put this case somewhere in the mix, or is  
3 it -- is there an indication, perhaps, it's going to go -- I  
4 mean, obviously, this is not your first case that has been  
5 impacted by this and so you probably have, I don't know, two  
6 months of cases before this which has been impacted. Does the  
7 Court have any sense as to whether or not it's going to go --  
8 when you recommence, whether you're going to go back and start  
9 with the March cases and then go forward, or you're going to  
10 pick up a case out of order or anything?

11 THE COURT: Actually, our backlog of criminal trials  
12 is not that bad. A lot of the matters that we had because they  
13 involve immigration issues, people have reached accommodations  
14 and resolved them to get people out of custody and out of the  
15 country. I have this case and one other case I can think of  
16 off the top of my head that will need to get scheduled. And  
17 criminal matters will, of course, have priority over my civil  
18 cases that have been disrupted by this.

19 So it's not going to be first come, first serve, and  
20 it's not necessarily going to be who was scheduled before we  
21 went dark, but we'll look at who's ready and set dates, and the  
22 length of trials and how long it will take to fit them in. So  
23 the sooner all the pieces are in place for any case, and I can  
24 actually line up a jury, then you'll get on the list.

25 MR. BLOOM: Thank you, Your Honor.



1 THE COURT: Okay. All right. Thank you.

2 (Court in recess at 2:30 p.m.)

3 \*\*\* End of requested transcript \*\*\*

4 CERTIFICATE OF OFFICIAL STENOGRAPHIC REPORTER

5

6 I, Mauralee Ramirez, Federal official stenographic  
7 reporter, in and for the United States District Court for the  
8 Southern District of California, do hereby certify that  
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10 foregoing is a true and correct transcript of the  
11 stenographically reported proceedings held in the  
12 above-entitled matter and that the transcript page format is in  
13 conformance with the regulations of the Judicial Conference of  
14 the United States.

15

16 Dated this 23rd day of November 2020.

17

18 /S/ Mauralee Ramirez  
19 Mauralee Ramirez, CSR No. 11674, RPR  
Federal Official Stenographic Reporter

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