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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),)	
)	JUNE 19, 2020.
Defendants.)	

STENORGRAPHIC REPORTER'S TRANSCRIPT OF PROCEEDINGS
STATUS HEARING
PAGES 1-20

Proceedings reported by stenography, transcript produced by CAT software

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1 San Diego, California; Friday, June 19, 2020; 1:30 p.m.

2 (Case 18CR5260-CAB called)

3 THE COURT: Can I have appearances of counsel, please
4 starting with defense counsel.

5 MR. WARWICK: Good afternoon, Your Honor. Tom
6 Warwick--

7 (Speakers overlapping)

8 THE COURT: One at a time.

9 MR. YOON: And Antonio Yoon on behalf of Ms. Razuki.

10 MR. FUNK: Brian Funk on behalf of Sylvia Gonzales.

11 MR. BLOOM: This is Allen Bloom on behalf of Elizabeth
12 Jaurez.

13 THE COURT: And for the government?

14 MR. THAKKAR: Good afternoon, Your Honor. Shital
15 Thakkar and Fred Sheppard on behalf of the United States.

16 THE COURT: All right. Thank you. We're primarily
17 here today just for a status hearing to follow up on discovery
18 issues that were raised the last time we spoke. So if I could
19 get an update regarding the issues we addressed last time
20 narrowing the witness and exhibit lists and any other steps
21 that have been taken to solve any of those issues.

22 Mr. Thakkar.

23 MR. SHEPPARD: Your Honor, this is Mr. Sheppard. Is
24 it all right if I address it? I was on the call.

25 THE COURT: Sure.

1 MR. SHEPPARD: I had sent an email to counsel
2 offering, if it were possible, to have a primary whittled down
3 witness list approximately two months prior to trial and a
4 further whittled down witness list approximately three weeks
5 prior to trial. I talked with counsel. The big primary
6 concern from most of the defense counsel is how long it would
7 be before the government would be able to even have a pared
8 down witness list because of limitations on prohibitions on
9 having contact with individuals both in California and outside
10 of California.

11 I envisioned and I had told counsel then that it would
12 take approximately, my understanding, was about four to six
13 weeks to get FBI clearance for a contact visit that was not
14 operationally essential or related to matters of national
15 security, and then it would take probably a couple of months to
16 go through and talk with those individuals.

17 I then offered up that if they wanted to still request
18 from the Court a whittled down witness list four months prior
19 just the way that we are -- I have always worked in the last 20
20 years, and Mr. Thakkar and I discussed, we would do that, but
21 knowing that the three-day estimate was based on the fact of
22 how we normally work, which is meeting with witnesses in the
23 months and weeks and days leading up to trial, going through
24 with what is being observed, heard, or knew as to what their
25 memory of events was as well as their availability, which is

1 obviously certainly still influx given this pandemic. But that
2 if that was the case, approximately four months out, our
3 estimate on trial would be approximately five to seven days,
4 and as I had said, four or five to 15, I thought it would be
5 more realistic approximately two months prior to trial.

6 Defense counsel said that they request a status in
7 approximately September -- middle to end of September to see
8 where the government was as far as dealing with these various
9 witnesses and, hopefully, having that whittled down ability to
10 do with regards to it, and that's how it was left, Your Honor.
11 Defense counsel can, obviously, correct anything I've said,
12 but.

13 THE COURT: All right. So right now, things stand as
14 they were last time, your witness list was some 100-something
15 people, and because of an inability to contact and discuss with
16 those people, you're not able to give counsel any idea as to
17 who you would necessarily be calling in your case in chief yet.

18 MR. SHEPPARD: That is true as to, I would say, an
19 overwhelming majority of the civilian witnesses because it
20 deals with a lot of -- the underlying dispute that led to the
21 allegations in this crime arise from business operations in
22 which there are a great many witnesses. With regards to law
23 enforcement, I believe there is some that we have whittled
24 down. The problem we have also been having with law
25 enforcement is also their availability because certain law

1 enforcement witnesses that we know we've been dealing with have
2 also been catching the Corona virus because of their operations
3 and having to go out and actually partake in certain
4 operations. So, again, I'm somewhat influx. We're just doing
5 the best we can.

6 MR. BLOOM: Your Honor, this is Allen Bloom. The
7 bottom line of our discussion was that after all of this
8 discussion that we had that we felt in order for the government
9 to complete the process to open up again, Mr. Sheppard told us
10 the middle of September, beginning of October at that point had
11 completed his process of evaluation of the case, and so we
12 agreed that would --

13 THE COURT: I'm sorry. Mr. Bloom. Mr. Bloom. I'm
14 getting like every other word. I'm not sure if you're on
15 speaker or you're too close to your phone or maybe you need to
16 slow down a little. You said you understood the process would
17 be completed by September or October?

18 MR. BLOOM: I'm sorry, Your Honor. I'm not on a
19 speaker, but I am far away. I apologize. Either Brian or Tom
20 could do this just as well. But the bottom line was that we
21 agreed that for the government to complete their process of
22 opening up to be able to start their interviews and then
23 complete the interviews, Mr. Sheppard told us he thought that
24 could be done by the end of September, beginning of October,
25 and we felt, okay, at that time when that's done, then we would

1 be in the position where we would request jointly, no
2 objection, to setting a status conference at the end of
3 September beginning of October and come back, again, at that
4 point.

5 THE COURT: Okay. And does the rest of counsel agree
6 with continuing this matter out to say the first week in
7 October to see how the process has proceeded and hopefully by
8 then, I may have the ability to give you a trial date?

9 MR. BLOOM: That's right.

10 MR. FUNK: Brian Funk for Ms. Gonzales. I am
11 concerned about Ms. Gonzales' status for bail.

12 THE COURT: We're going to talk about that in a
13 second, Mr. Funk. Just with regard to all the defendants,
14 though, and the issues that came up the last time we spoke, it
15 sounds like you met and conferred and had come up with a plan
16 that hopefully will be workable, so the Court accepts that and
17 I will set this for a further status on October 2nd, we'll do
18 it again at 1:30, and have an update on the narrowing at that
19 point of witnesses that would standard in the case and a true
20 understanding that other witnesses that would be in a reserve
21 list in case they're needed, any outstanding issues regarding
22 documents or discovery, and with any luck, I'll be able to give
23 you a trial date possibly in November.

24 We're looking cautiously at -- we sent out summons to
25 see if we can bring a venire panel in and do a pilot jury trial

1 in July. Chief Judge Burns is looking at trying to do that to
2 see if our social distancing spaces and procedures and
3 techniques will be sufficient. The first step is to see if
4 we'll actually get enough people to respond to a summons and
5 whether the composition of that panel will be sufficiently
6 reflective of the community to guarantee everybody's Fifth
7 Amendment rights. At least, we have a plan and are moving
8 forward. Hopefully, we won't have any measurable setbacks. So
9 the Court will --

10 MR. BLOOM: Your Honor. Your Honor. If I may, Your
11 Honor? This is Allen Bloom again. The Court had two things it
12 was concerned about, we have two things we're concerned about.
13 One is, you just mentioned, the availability of a path to get
14 to a jury trial and how that can come about, et cetera.

15 But the other was, if the Court recalls, we've had a
16 series of briefing schedules that the Court had issued that
17 required the people to complete their process, provide a list,
18 and we were going to take that list, and then from that, we
19 would be in a position to go forward with our severance motion
20 and other issues that might be before the Court. So I envision
21 that whenever dates would be set, if we're going to do it
22 October 2, then at that point, the Court would then set a
23 briefing schedule for us to go forward with completing that
24 briefing process, and, you know, work backwards from the jury
25 trial date.

1 I don't think it can be completed in a month's time,
2 but I don't know yet because I don't know what the people's --
3 the people aren't in a position to provide their list of
4 witnesses for all the reasons that he's mentioned. So that's
5 the only thing I would have is saying we have a penciled in
6 date for November, I don't think that's realistic even if the
7 path of Judge Burns could be followed, because in our case, we
8 still had what the Court set us out at approximately out four
9 months prior to trial, a briefing schedule, and I don't know if
10 you're going to adhere to that exactly or what, but we still
11 are in need of completing that process.

12 THE COURT: All right.

13 MR. SHEPPARD: I'm sorry, Your Honor. Oh, I'm sorry.

14 THE COURT: That's okay. Go ahead and s that
15 Mr. Sheppard.

16 MR. SHEPPARD: Yes, Your Honor. That was -- the Court
17 had previously continued the possibility of severance based on
18 whether or not the government would be seeking to admit
19 statements of the defendants. That was only reason that the
20 briefing for severance was continued out. And when the
21 government said that we would not be seeking to introduce any
22 statements in our case in chief, there was no other basis for
23 continuing the severance motions. There just -- there was no
24 others.

25 MR. FUNK: There are --

1 (Speakers Overlapping)

2 MR. FUNK: There are some possible situations between
3 the defendants that still need to be briefed.

4 THE COURT: All right. I'm not going to preclude the
5 defendants from raising an issue if it was already raised and
6 ruled on, and I will recognize that if it's something new that
7 results from some the ongoing process that we're in, again, you
8 know in the interest of justice, this case had stops and starts
9 a number of times now, and we're currently in a stop and start
10 that no one has any real control over. So, yes, when we
11 convene on October 2nd, if there are motions that the
12 defendants believe have not already been decided and are new or
13 have been left open for consideration, please bring those to my
14 attention again.

15 And if you have something you think is teed up and you
16 want the Court to consider it on the 2nd, then it should be
17 filed and renewed on the 18th of September so that the
18 government has a week to file any response to either point out
19 that the Court has already ruled on it or that it is somehow
20 untimely or just to oppose.

21 MR. BLOOM: Well, Your Honor, with regards to that --
22 this is Allen Boom again -- it's my understanding, it's my
23 belief we're not in a position to even address the questions of
24 on the 2nd of October because it's not going to be until that
25 date that Mr. Sheppard completes the process of having the

1 government, or the FBI rather open up to conduct interviews and
2 then completing the interviews.

3 THE COURT: All right. All right.

4 MR. BLOOM: I assume sometime on October 2nd
5 Mr. Sheppard will have our list of witnesses that he expects to
6 call, or he'll be in a position to say I don't have it for this
7 reason or that reason, but we can't address the issue of -- we
8 know these motions are there, but we can't go forward with them
9 until the people have completed their list. If the Court
10 recalls, that's where we were at the beginning of our last
11 hearing when Mr. Sheppard said, Well, I couldn't do anything
12 but give you a 130 witness list because we had shut down and we
13 couldn't complete the process, so in abundance of caution, I
14 just basically listed everyone or most everyone. So, yes, I
15 think we have to have our status, but it's so at that point we
16 can be informed of what the people expect to call, and then we
17 will be able to present our motions.

18 THE COURT: All right. That's fine. I'm not going to
19 cut you off. I'm just saying that if there is something you
20 think based on information that rolls out to you between now
21 and then that you would like to have heard on the 2nd, I would
22 just need to have any motions filed by the 18th of September so
23 that I can get an opposition by the 25th. But I understand
24 your condition that actually the 2nd will be a date for us to
25 do a status and set a scheduling order going forward that would

1 include any outstanding motion practices as well as motions in
2 limine and look for potentially a trial date, which would
3 suggest that -- I don't know whether we'll get a trial in this
4 calendar year or not, but.

5 Okay. So with that understanding that I will see you
6 on the 2nd and we'll get an update and, hopefully, a conclusory
7 update from the government, but I understand they may not be
8 ready on the 2nd, and they'll just be able to give me a
9 representation of when they can be finished. But they're going
10 to strive to be finished by the 2nd.

11 If Counsel has any new motions or renewed motions that
12 you're ready to file or have already filed or plan to file, we
13 can discuss those on the 2nd as well, as well as the rest of
14 the pretrial scheduling order in this case. Is everybody on
15 board with that?

16 MR. BLOOM: Allen Bloom for Ms. Jaurez. Yes, that's
17 what our plan was.

18 MR. YOON: And, Your Honor, this is Antonio Yoon for
19 Mr. Razuki. One of the problems that I think the Court might
20 remember is, for example, Mr. Sheppard has said today that the
21 severance motion may be moot because the government has told us
22 that they are not going to use any statements, but that is not
23 what their witness and exhibit list says. As the Court may
24 recall their exhibit list listed as potential statements
25 recordings from the defendants. So we really still don't know

1 what they are going to use or what they're not going to use.
2 Today Mr. Sheppard says they're not going to use any, but their
3 filings have said otherwise.

4 THE COURT: I understand that, Mr. Yoon. I think the
5 motion for severance was originally postured as post-arrest
6 statements that were given after the parties were Mirandized,
7 and the government has represented they're not using any of
8 those. Whether or not statements that were made that were
9 recorded during the course of the alleged conspiracy or jail
10 calls that were made and can be used, I think will be briefed
11 on a different basis than the basis of a post-arrest statement,
12 and it is my recollection that there was a general disclosure
13 that there would be statements made by defendants either during
14 the course of the investigation or jail calls that were,
15 perhaps, not specific as to the content and whether those calls
16 would implicate the other defendants and whether or not they
17 give rise to Bruton motions and whatever.

18 So I get it. I don't think you're foreclosed. I
19 don't think we need to revisit the post-arrest Mirandized
20 statements based on the representation that government has made
21 that they're not using anything from those. If that has
22 somehow changed, then we'll revisit that issue as well. Okay?

23 MR. BLOOM: Yes, Your Honor. This is Allen Bloom for
24 Ms. Jaurez. Yes.

25 THE COURT: It's tough to do this with no visual

1 feedback. Okay. The Court will, again, continue this for
2 status on October 2nd at 1:30. Time remains excluded in light
3 of all of these issues and in the interest of justice.

4 I would like the government and Mr. Funk to stay on to
5 talk about Ms. Gonzales' motion or tender for a bond. The
6 other counsel is welcome to stay on, but I don't think you have
7 to, so.

8 MR. BLOOM: Thank you, Your Honor. Allen Bloom for
9 Ms. Jaurez. I am going to stay on. Obviously, I don't have
10 standing, so I won't be saying anything. Thank you.

11 THE COURT: This got more complicated than it needed
12 to be, I think. I raised the issue of considering bond for
13 Ms. Gonzales. I asked for the briefing. I was going to decide
14 the request. I don't know why Judge Dembin got involved in
15 this. I didn't ask him to. I never referred the matter to
16 him. And, frankly, local rules or not aside, this was my
17 request. It was my order. I issued a minute order asking for
18 the briefing and said I would take it under submission. So his
19 opinion is very nice, but I don't care about it.

20 What I am more interested in is the information that
21 was provided regarding the ability of Ms. Gonzales to secure
22 her release. And, I guess, Mr. Funk, based on the
23 representation that you made the surety has \$130,000 of equity
24 in real property and would be willing to be her surety, the
25 Court wants a property bond in this case.

1 These are very serious charges, and in the
2 consideration of the factors regarding pretrial release, you
3 know, everyone else here has -- I mean, \$130,000 would be
4 pretty much on par with what the other defendants did as well.
5 If this surety is willing to secure her release using that as
6 collateral, if you will, the Court would require a real
7 property bond in the amount of \$130,000 or at least a \$100,000
8 cash bond for this defendant with the same conditions that the
9 other defendants have, all the mandatory conditions, the
10 standard conditions: Travel restricted to San Diego, no trips
11 to Mexico, surrender her passport.

12 I would actually put this defendant on home
13 incarceration with GPS and, obviously, avoid any contact with
14 any of the other parties or witnesses. And so those would be
15 the conditions that I would submit -- would allow for her
16 release.

17 And I would encourage you to, therefore, proceed with
18 seeing if that surety would be willing to put the equity of
19 their property up to secure her release, because short of
20 that -- you know, I'm trying to create a situation here where
21 you can have better access to your client to meet and prepare
22 for trial and her not just to be sitting in custody while this
23 case is somewhat languishing, but, on the other hand, the order
24 of detention was not out of the question in this case.

25 I have a new condition that may be not necessarily be

1 part of the statute, but in the interest of justice, I would
2 like to get her out of custody to facilitate this case
3 preparation, but it's not a get-out-of-jail-free card either.
4 We need some reasonable security. She's facing very serious
5 charges. And while I know it's disputed and she's presumed
6 innocent, the description of her role make her a significant
7 player here and her -- I think she's a flight risk. So I need
8 somebody on the line to assure that she will stay and return to
9 court and not disappear on me.

10 So is this just not conceivable that this individual
11 will post his property?

12 MR. FUNK: Well, Your Honor, if I can address the
13 Court? We had spoken to him at length. The piece of property
14 that he was tendering that he has equity in is actually a
15 residence, but they use it as a commercial property. It's a
16 rental property. It's honestly owned by a corporation which he
17 is the owner of the corporation. It's in a corporate name.
18 The trust deed is held by the corporation. So he's going to
19 have to do -- there's a lot of corporate paperwork that would
20 be involved in getting a trust deed conveyed. And that's why
21 he's reluctant to do so.

22 He's available for a Nebbia hearing. I don't see the
23 point to do that at this point because the Court's position is
24 considerably greater than what he was willing to do. He was
25 only willing to put up approximately \$50,000 worth of bond and

1 he was willing to pay 10 percent cash.

2 This is a situation where, unfortunately, Ms. Gonzales
3 does not have the means or family that has the means that the
4 codefendants have. I know it's a serious case, but she's been
5 held for a year and a half based on the fact she has no income
6 and has nobody in her sphere of relatives that has any
7 substantial property.

8 That being said, also, the fact that she's been
9 sitting for a year and a half and now we have the COVID
10 situation where being in jail is putting people at very high
11 risk of contacting a possibly fatal disease should be a fact
12 the Court considers in setting the bond, in addition to the
13 fact this case has been on hold for a year and a half, and now
14 we're in a situation where I can't even talk to the witnesses
15 or I have to send a letter down to the jail to have her call me
16 just to communicate with her.

17 So that's why this is the best bond that I could come
18 up with. I can talk to him again and see if he is willing to
19 issue a trust deed in the amount of equity. But as I said, the
20 difficulty is it's a commercial property.

21 THE COURT: All right. Well, I under- ---

22 MR. FUNK: That's --

23 THE COURT: Go ahead.

24 MR. FUNK: I'm sorry.

25 THE COURT: No, that's fine.

1 MR. FUNK: That's the situation.

2 THE COURT: I would just maybe dispute that she's not
3 being held in custody because she can't meet the bond. She's
4 being held in custody because she's a flight risk and possibly
5 a danger to the community, and she's been detained. And the
6 question here is whether I can feel comfortable to set
7 sufficient conditions to allow her release from custody
8 considering all of the new variables as factors as well in
9 doing that.

10 And I still consider your client a potential flight
11 risk in this case, and I want some reasonable and solid
12 assurance that somebody that she cares about, if it's not her
13 personal property and her money, somebody who would be really
14 out of pocket quite a bit if she decided to disappear on me.

15 So I'm willing to entertain another submission on your
16 part, but a \$50,000 with a 10 percent, that's not going to do
17 it. If he need take a loan out on that equity and put more
18 cash down, then I'd -- I'll reconsider the terms, but the
19 present offer that you've put on the table, I don't find
20 adequate. I still would prefer some property behind this, but
21 I understand the complications of commercial property and what
22 it would take to get that. So I don't know if he can take a
23 loan against that equity or there's some other person you can
24 get, two people, but right now, that's not going to do it. I'm
25 still open to you coming back with an additional offer on a

1 bond here and I will consider it.

2 I understand the government's position, but I do want
3 to try to get Ms. Gonzales out of custody, but it has to be on
4 reasonable terms that will assure her appearance in court, and
5 right now, I don't feel like I have that.

6 MR. FUNK: Understood. I will go back to Mr. Vargas
7 and speak with him after court today.

8 THE COURT: All right.

9 MR. FUNK: I want to apologize to the Court. I was
10 following Judge Major's April 15th order. See, the magistrate
11 set an order on the bond hearings which we had to go through
12 them first, and I was following Judge Major's request, and
13 that's why I sent this to Judge Dembin initially. I wasn't on
14 the hearing at the 15th so that's why I didn't know you wanted
15 it to come to you.

16 THE COURT: And I understand that and that is the
17 normal course, but, obviously, with any of our rules, it's
18 subject to the Court ordering you to do something otherwise.
19 And, yes, you weren't here, but I had generated this request
20 and didn't really need for somebody else to be in the middle of
21 it.

22 So you should -- whatever you're going to tender to
23 the Court, provide it to the U.S. Attorney's Office and then
24 just submit it directly to me as a package that you're
25 proposing, and I'll consider it and, you know, with the

1 comments and the guidance I just gave you. Let's try to find
2 something that is sufficiently secure enough that I can feel
3 comfortable that Ms. Gonzales isn't going to go to Mexico and
4 never come back.

5 MR. FUNK: I understand the Court's concerns as a
6 flight risk, so I will address and I will also submit it --
7 thank you.

8 THE COURT: All right. Anything else we need to
9 address today?

10 MR. BLOOM: Yes, Your Honor. This is Allen Bloom. I
11 just wanted to clarify that October 2nd is at 1:30 Pacific
12 Time; is that correct?

13 THE COURT: Yes.

14 MR. BLOOM: Thank you very much.

15 THE COURT: Thank you.

16 *** End of requested transcript ***

17 CERTIFICATE OF OFFICIAL STENOGRAPHIC REPORTER

18
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4 Dated this 23rd day of November 2020.

5

6 /S/ Mauralee Ramirez
7 Mauralee Ramirez, CSR No. 11674, RPR
8 Federal Official Stenographic Reporter

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