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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Case No. 12-CR-20031-SCOLA/O'SULLIVAN

UNITED STATES OF AMERICA,

Plaintiff,

MIAMI, FLORIDA

vs.

APRIL 23, 2013

JOAO LUIZ MALAGO,

Defendant.

TRANSCRIPT OF MOTION HEARING
BEFORE THE HONORABLE JOHN J. O'SULLIVAN,
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

FOR THE GOVERNMENT:

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1 (Call to order of the court)

2 THE CLERK: All rise.

3 THE COURT: We are here today in the case of the
4 United States of America versus Joao -- how do you say it?
5 Joao Malago?

6 MS. HOFFMAN: Joao.

7 THE COURT: It is case number 12-Criminal-20031. We
8 are here on a hearing regarding numerous motions that have been
9 filed by the defendant.

10 Can I have appearances. First for the United States.

11 MS. HOFFMAN: Andrea Hoffman from the United States
12 Attorney's Office, Your Honor, along with Evelyn Sheehan of our
13 office. I also have DEA agents present, Courtney Mattingly and
14 Terry Frankhowser, Your Honor.

15 THE COURT: Okay. Good.

16 MS. SHEEHAN: Good afternoon.

17 THE COURT: Good afternoon. You can be seated. And
18 who is here for the defendant?

19 MS. HORSTMAN: Brittney Horstman and Frank Quintero on
20 behalf of Mr. Malago, Your Honor.

21 THE COURT: And who is with you today?

22 MR. QUINTERO: Judge, this is the defendant who is
23 present in court, Mr. Malago.

24 MS. HORSTMAN: The defendant, Mr. Malago. Yes.

25 THE COURT: Okay. Good. And the other folks?

1 MR. QUINTERO: We have two court interpreters, Your
2 Honor.

3 THE COURT: Oh. Two. Okay. Yes. They are the
4 Portuguese interpreters?

5 THE INTERPRETER: Yes. Good afternoon, Your Honor.

6 THE COURT: Good afternoon. All right. Thank you.
7 You can be seated.

8 The first motion that I wanted to discuss were the
9 two, actually the first two I want to discuss is one by the
10 claimant for miscellaneous relief and permission to have the
11 NAASC execute and file with the FAA bills of sale as well as
12 the defendant had a very similar motion.

13 Ms. Moscowitz, are you here for the claimant?

14 MS. MOSCOWITZ: I am, Your Honor, and I am accompanied
15 by David Marco.

16 THE COURT: Come up to the microphone so we can hear
17 you.

18 MS. MOSCOWITZ: Good afternoon. Jane Moscowitz on
19 behalf of the claimants, and with me is David Marco and Carey
20 Dowling.

21 THE COURT: Okay. Good. The government has filed a
22 proposed order. Did you see a copy of that?

23 MS. MOSCOWITZ: Yes, sir. Before the court came in,
24 we conferred and we have come to I think an agreement on what
25 the order should be.

1 THE COURT: What is that?

2 MS. MOSCOWITZ: I don't know whether Your Honor wants
3 any background, now that we have an agreed order.

4 THE COURT: Well, I mean, the only thing is I was
5 concerned about your order because it has me making findings of
6 fact which there is no way I can make findings of fact without
7 some kind of affidavit or testimony.

8 MS. MOSCOWITZ: Well, this is much sketchier, or not
9 sketchier.

10 THE COURT: Sketchier? That's a fine word. If my
11 daughter says that, it is not a good thing.

12 MS. MOSCOWITZ: Yes. I was going to say I was
13 speaking on how my daughter speaks.

14 THE COURT: Why don't you hand it up and let me take a
15 look at it, and then if I have any questions I will ask you.

16 MS. MOSCOWITZ: May I hand it up?

17 THE COURT: Sure. Yes.

18 MS. MOSCOWITZ: May I hand it directly?

19 THE COURT: Yes. Yes. You can directly hand it to
20 me.

21 MS. MOSCOWITZ: Although I am really nasal today. I
22 don't think anybody should touch anything from me.

23 THE COURT: Okay. Do you want me to sign this or do
24 you want send me a clean one?

25 MS. MOSCOWITZ: Would you me prefer a clean one?

1 THE COURT: It doesn't matter to me, but the FAA may
2 prefer a clean copy.

3 MS. MOSCOWITZ: Yes. I think we will send you or we
4 will e-mail you a clean one to the court if you would like.

5 THE COURT: Yes. When are you going to do that,
6 because I am leaving town tomorrow morning? So if you want to
7 do it this afternoon, it would be best.

8 MS. HORSTMAN: I can do that in 5 minutes after this
9 hearing.

10 MS. MOSCOWITZ: Oh, that would be great. I really
11 would appreciate it.

12 THE COURT: Okay.

13 MS. MOSCOWITZ: So then, Your Honor, since we have all
14 agreed upon it, you don't need argument?

15 THE COURT: I don't need to hear argument. They are
16 disposed of. I think they are granted in part, and I will
17 enter this order.

18 MS. HORSTMAN: Can I see a copy of the order, Judge?
19 I haven't seen a copy on with the additions. I don't know what
20 it is, just to make sure.

21 THE COURT: Here you go.

22 MS. MOSCOWITZ: There are no additions. Just
23 deletions.

24 MS. HORSTMAN: Of what?

25 THE COURT: You can take a look.

1 MS. HORSTMAN: Okay.

2 THE COURT: Tell me if you have any problem with it.

3 MS. HORSTMAN: Our only concern, Judge, is that the
4 last time Mr. Malago sent a letter to the FAA, which isn't an
5 official document, or anything, the government responded in a
6 motion to the court that it was a violation of his bond
7 conditions, and so we want to make sure whatever he does is
8 approved.

9 THE COURT: Well, take a look and see what you think.

10 MS. MOSCOWITZ: Because he will be, you know, the
11 point is that now the planes are registered in his company's
12 name with the FAA, and that we need to get them out of his name
13 so that we can get them registered appropriately and exported
14 to Brazil.

15 THE COURT: Okay.

16 MS. MOSCOWITZ: So he will be completing that
17 ministerial act.

18 THE COURT: Do your clients get a good deal on the
19 planes?

20 MS. MOSCOWITZ: No. My clients had no use of them for
21 the two years that they were seized, but the government acted
22 beautifully.

23 When we explained to them who our clients were, the
24 government said, "That's right. We shouldn't be holding these
25 planes anymore."

1 This is a very non-adversarial matter. We are
2 grateful to the government. Ms. Sheehan spent a gazillion
3 hours trying to sort this out with the FAA.

4 THE COURT: Maybe they will be as reasonable with
5 Mr. Quintero.

6 MS. MOSCOWITZ: Maybe I should stick around.

7 THE COURT: Well, Jane Moscovitz is the one who is
8 promoting love and peace amongst the parties, and it makes you
9 seem very unreasonable.

10 Okay. Good enough. Ms. Moscovitz, good to see you.
11 I hope you feel better.

12 MS. MOSCOWITZ: Thank you.

13 THE COURT: All right. You are excused. Do you want
14 this? Leave a copy with me.

15 MS. HOFFMAN: We have it.

16 MS. HORSTMAN: We have got it.

17 MS. MOSCOWITZ: We have it.

18 MS. HOFFMAN: Okay.

19 THE COURT: Okay.

20 THE INTERPRETER: I am sorry, Your Honor. It seems
21 like his mike is not on.

22 THE COURT: Oh. Can you check, Maria?

23 MS. HORSTMAN: Judge, can I ask the court's
24 indulgence? I get very hot. Do you mind if I take off this
25 sweater jacket?

1 THE COURT: No. That's fine.

2 MS. HORSTMAN: Thank you very much.

3 THE COURT: Sweaters are not required. All right.

4 The bill of particulars, you know, that was withdrawn
5 from me. Judge Scola actually ruled on it. I don't know if
6 you all saw the order this afternoon.

7 MS. HORSTMAN: Yes, Your Honor, we did.

8 THE COURT: Okay. So as best I can tell we have got
9 the original motion to compel discovery which was filed quite a
10 while ago in September.

11 Now, I don't know. You all will have to tell me
12 whether or not, you know, since then whether the second motion
13 to compel is the one that is really left, or if there is still
14 left over from the first one, and then there is the second
15 motion to compel discovery.

16 First of all, there is a motion to compel production,
17 I guess. This one is a motion to compel discovery, and then
18 the last thing is the defendant's motion to compel compliance
19 with the subpoenas to the agencies which I granted a
20 continuance on, which then you all asked me not to allow the
21 continuance because of the upcoming trial.

22 So I guess we will discuss that at the end, although
23 the government filed something which is almost like the mirror
24 of your motion to compel is their motion for a protective
25 order. I am not sure how you term it.

1 MS. HORSTMAN: I think it applies to DEA subpoenas,
2 and this motion that you have in front of you is for ICE
3 subpoenas.

4 THE COURT: Oh. Is that right?

5 MS. HORSTMAN: So it is different individuals,
6 different agencies, although the case law and everything --

7 THE COURT: Is similar?

8 MS. HORSTMAN: Yes.

9 THE COURT: Yes.

10 MS. HORSTMAN: If we could, Judge, I think the second
11 motion to compel is the most recent and has the most up to date
12 information.

13 If we address that first, there might be only one or
14 two matters left over from the first motion that need to even
15 be addressed.

16 THE COURT: All right. Okay. Good. Well, go ahead.

17 MR. QUINTERO: Judge, if it please the Court, Your
18 Honor, Frank Quintero on behalf of Mr. Malago.

19 Judge, I would like to, before I begin, I would like
20 to provide the court with a time line.

21 THE COURT: Go ahead.

22 MS. HORSTMAN: A time line prospective of the criminal
23 conduct in this case because that will pretty much delineate
24 the discovery that we are seeking and why we are seeking it.

25 THE COURT: Okay. Good.

1 MR. QUINTERO: If the court will take a look at the
2 indictment in this case, the government initially, and I have
3 it here. I have an extra copy for the court.

4 THE COURT: Okay.

5 MR. QUINTERO: If I may approach?

6 THE COURT: Sure.

7 MR. QUINTERO: The government alleges that the
8 criminal conduct in this case, and part of the problem, Judge,
9 is that the government is changing its argument regarding the
10 criminal activity in this case, and that creates tremendous
11 problems for us.

12 The indictment alleges criminal activity from March of
13 2007 until May 22, 2011. It is almost a 4 year period. A
14 little over a 4 year period.

15 THE COURT: I note in their response to your motion to
16 compel, actually I had not looked at the indictment, but they
17 said it was from 2009 to 2011.

18 MR. QUINTERO: That is what I am getting at. Okay.

19 THE COURT: Okay.

20 MR. QUINTERO: They then have changed that position,
21 okay, over a series of time or a series of events, and what I
22 mean by that is this:

23 The reason why they claim that the criminal activity
24 initially began in March of 2007 is because the Homeland
25 Security report from --

1 MS. HOFFMAN: Your Honor, may I have copies of the
2 things the defense counsel is handing up?

3 MR. QUINTERO: This is a summary.

4 MS. HOFFMAN: No, but I don't necessarily have it with
5 me.

6 MR. QUINTERO: Okay. Well, I am sorry. It is just a
7 report.

8 THE COURT: Show her what you are giving me.

9 MR. QUINTERO: I don't have the file.

10 THE COURT: Presumably you know what your indictment
11 is.

12 MS. HOFFMAN: I do what my indictment is, Your Honor,
13 but there is more than 10,000 pages of discovery. So I just
14 want to see what he is referring to at the times that we are
15 using it. Thank you.

16 MR. QUINTERO: Here is the report. It states that
17 Operation Myan-Jaguar was shut down in March of 2007. That's
18 very important because Mr. Malago was a confidential informant
19 for ICE Tampa in operation Myan-Jaguar.

20 He participated, and the government took the position
21 that because the operation terminated in 2007, Mr. Malago was
22 terminated as an informant in 2007.

23 Now, unfortunately, that is not correct. What
24 happened was that the operation may have been terminated in
25 2007, but now the government concedes that Mr. Malago's conduct

1 as a confidential informant continued until at least the end of
2 2008.

3 That presents a problem because if you look at the
4 indictment, the indictment is charging criminal activity for
5 2007 and 2008 for which technically he has immunity because he
6 was a "confidential informant" working for ICE during that
7 period of time.

8 THE COURT: Well, that doesn't make you immune, but it
9 could I mean provide you with a defense.

10 MR. QUINTERO: Okay. That is what I am getting at.
11 That's where the discovery comes in.

12 If the government, okay, accuses him of committing a
13 criminal act in 2007 and 2008, we have the right to show that
14 he was working for the government and acting under the auspices
15 of ICE Tampa during that period of time. At least for that
16 period of time.

17 One of the things that we have asked for is
18 documentation that relates to his activity in 2007 and 2008.

19 The government has come back and said, "Oh, wait a
20 minute. We are not going to seek the "criminal activity in
21 this case prior to 2009," as the government, as you correctly
22 point out, the government in a pleading now takes the position
23 of "Well we are going only going to introduce or we are only
24 going to concern ourselves with criminal activity in 2009, 2010
25 and 2011, but I don't have a court order limiting the

1 government to that.

2 So they may take that position before you and then
3 show up in front of Judge Scola and say, "Hey, the indictment
4 alleges 2007 and 2008. We have the right to bring in
5 information as it relates to that."

6 My motion deals precisely with those issues. If you
7 look at my motion, the first series of exhibits, deal with the
8 "debriefing" of or rather the information provided by
9 Mr. Malago concerning an event that occurred in September of
10 2007.

11 THE COURT: I mean, just so I understand, just give me
12 a little background. Why is the OIG involved in this thing?

13 MR. QUINTERO: Okay. I am glad you asked. Okay. As
14 the report that you state that I gave you states, ICE says this
15 is a turf war.

16 Mr. Malago was caught in the middle. What happened
17 was this: ICE violated, allegedly, their memo of understanding
18 and started, the operation was really claimed to be a money
19 laundering operation, but what Mr. Malago was asked to do was
20 to place transponders inside aircraft.

21 ICE was supposed to follow those aircraft and take the
22 money that was used to purchase those aircraft and forfeit the
23 money, but they went a little farther.

24 They started to monitor the transponders because the
25 planes were being sold to target traffickers that, not just

1 Mr. Malago brought in, but that ICE themselves brought in some
2 of these buyers.

3 So, in conjunction with the people that Mr. Malago was
4 bringing in and in conjunction with the ICE targets, they were
5 able to put transponders.

6 Mr. Malago put transponders on these aircraft, and
7 then they were followed. Most of these aircraft were for sales
8 in Brazil.

9 They were sold to Brazilian buyers who then later
10 transferred to Colombia and Venezuela, and so on and so forth.
11 I am sorry. Colombia and Venezuela. I apologize. My
12 co-counsel knows those financial facts better than I do.

13 Then what happened was that the DEA got wind of what
14 was occurring. Why? Well, there is a guy by the name of
15 Francis Skeney who is now a Congressman in Brazil.

16 He was Brazilian drug police, and the agents that were
17 handling him introduced him to Francis Skeney and said, "This
18 is your contact. This is the guy that you are going to report
19 to."

20 THE COURT: He was an agent back then? Is that what
21 you are saying?

22 MR. QUINTERO: Yes. Francis Skeney was a drug agent
23 in Brazil, but working for the Brazilian Government, not for
24 the DEA.

25 THE COURT: Yes.

1 MR. QUINTERO: But he was working for the DEA because
2 he had a little bit of two hats on. He wanted to score some
3 point with the DEA, so he created all of these reports that
4 showed or pretended to show that Mr. Malago was "A target of
5 his investigation," and turned those over to the DEA.

6 When the DEA got wind of what ICE was doing, they shot
7 off a letter to Washington, and I have with me, and I can
8 provide copies for the court, letters from Homeland Security
9 back and forth from the DEA and ICE going back and forth, each
10 other accusing each other of over-stepping and violating the
11 memo of understanding. All of that came to a head in --

12 THE COURT: My understanding was in regards to the
13 operation, the investigation?

14 MR. QUINTERO: Jurisdiction. Operation, and all of
15 that came to a head when a plane crashed in Mexico carrying 3.5
16 tons of cocaine in September of 2007.

17 THE COURT: Okay.

18 MR. QUINTERO: That plane crashed with the transponder
19 that was placed on the plane by Mr. Malago.

20 So when the Mexican Government called and said, "Why
21 is there a plane with the ICE transponder or United States
22 Government transponder on our territory," nobody would give any
23 answers.

24 It hit the fan, and they shut down operation
25 Myan-Jaguar after OIG began to investigate and determine that

1 they had not only violated the memo of understanding, but also
2 the internal protocols.

3 Mr. Malago was interviewed as a result of that
4 investigation. The DEA and OIG began to interview, you know,
5 obviously the witnesses, so on and so forth.

6 THE COURT: You said the DEA. Why was DEA in it?

7 MR. QUINTERO: Because the DEA was involved in part of
8 the investigation. There is correlating reports going back and
9 forth. Some DEA some OIG.

10 They interviewed Mr. Malago. They go to his home.
11 They ask him whether or not he has any weapons.

12 THE COURT: When is this?

13 MR. QUINTERO: This is back in 2010?

14 MS. HORSTMAN: No, no, no. This is 2008, Your Honor.

15 MR. QUINTERO: 2008.

16 MS. HORSTMAN: The OIG comes to him and starts asking
17 him to, if I may, I am sorry, starts asking him about the
18 agents. They are investigating the agents.

19 THE COURT: Right.

20 MS. HORSTMAN: The ICE agents. DEA is involved
21 specifically during this because DEA has targets that ICE also
22 has targets, and it seems like they both have the same targets,
23 and Mr. Malago is going to do undercover conversations, and
24 those sorts of things with actual people that are working for
25 DEA in Miami, but ICE is asking him to do it for ICE in Tampa,

1 and so there is an overlap.

2 THE COURT: All right. Go ahead.

3 MR. QUINTERO: So they go to Mr. Malago, and one of
4 the things they ask him is, "Do you have any weapons?"

5 He says, "Yeah. I bought this at a gun show. I
6 bought this."

7 He is arrested. So they arrested him for violating
8 the alien failure to have guns or whatever the law is that
9 aliens cannot have weapons.

10 THE COURT: Right.

11 MR. QUINTERO: And the case gets prosecuted. By the
12 way, he lives in Boca, Judge. The case is prosecuted out of
13 New York. The New York AUSA's put him on pretrial diversion,
14 okay, and dismiss the case.

15 THE COURT: Okay.

16 MR. QUINTERO: This is in 2008. Basically, he is told
17 that, you know, if he can provide information on the agents,
18 that all of this mecca will go away.

19 So he says, "I told you everything I know. I don't
20 know anything else. I can't tell you anything else."

21 The next thing he knows he gets charged in this case
22 initially because there is a superseding indictment after he
23 first gets charged with basically FAA violations, and then he
24 gets charged with conspiracy to possess narcotics on a U.S.
25 registered aircraft and the other slew of charges that are in

1 this case. So we then get involved in the discovery. We say,
2 "Okay. Fine "

3 From 2007 to 2011, give us to the information that he
4 was involved because you are claiming that are over 40 planes
5 involved in this case. We want information concerning his
6 involvement with those 40 planes as it relates to his
7 cooperation with the government so that we can determine which
8 ones we believe he has immunity for and which ones, you know,
9 we don't. We can concentrate on what is relevant.

10 We have asked for that information, Judge, going back
11 to last year. This is nothing new.

12 THE COURT: You are going to get it now because I
13 think Judge Scola said you are going to get.

14 MR. QUINTERO: Correct.

15 MS. HOFFMAN: Yes.

16 MR. QUINTERO: Correct. He just ordered it. I
17 haven't seen the contents of the order, but my co-counsel has
18 advised me that he entered the order. The order is pretty
19 broad and requires the government to produce many of the things
20 that we were requesting back in September by I think the 30th
21 of this month, but, in any event, the government then requests
22 from the Brazilian authorities, under a mutual assistance
23 treaty, a series of information to be used in this case. Okay.
24 One of the things that they tell the Brazilian government is --

25 MS. HOFFMAN: Can you give me a second to read it?

1 MR. QUINTERO: Sure. You sent me this.

2 MS. HOFFMAN: I am just checking what it was. I am
3 sorry.

4 THE COURT: If we have another one of these hearings,
5 beforehand tell the other opposing counsel, I assume you have
6 Bates numbers or something on these documents?

7 MR. QUINTERO: Well, some of these don't. These are
8 letters, Judge. Not everything is Bates stamped, which is the
9 problem.

10 THE COURT: Well, then, just give them copies of
11 everything that you are going to refer to so we are not sitting
12 here wasting time.

13 MS. HOFFMAN: Mr. Quintero?

14 MR. QUINTERO: These are the other things I want to
15 show you. So if I may approach for a moment?

16 THE COURT: Sure.

17 MS. QUINTERO: They notify and make requests for
18 assistance from the Brazilian authorities that I was referring
19 to in the middle paragraph.

20 THE COURT: Okay.

21 MR. QUINTERO: Where they say that from 2008, again,
22 remember what I said earlier. In the indictment they start
23 that it is criminal conduct in this case on behalf of
24 Mr. Malago that begins in March of 2007.

25 THE COURT: Right.

1 MR. QUINTERO: They come before Your Honor and they,
2 "Oh, it is really 2009 to 2011."

3 Well, that letter, which was written 6 months ago,
4 dated September 24, 2012 clearly shows that the allegations
5 against Mr. Malago keep going back and forth. Now in that
6 letter they are claiming that it goes to 2008. From 2008 to
7 the present.

8 THE COURT: Right.

9 MR. QUINTERO: Which means 2012. So now we have gone
10 beyond the indictment period into 2012. September 24th,
11 according to that letter, and this is part of the problem.

12 We keep moving the criminal activity dates that
13 Mr. Malago was set to defend himself against.

14 THE COURT: Right.

15 MS. HORSTMAN: Now.

16 THE CLERK: Counsel, you have to speak into the
17 microphone.

18 MR. QUINTERO: Yes. I am sorry. So it presents a
19 very big problem for the defense to be able to prepare for what
20 it is that the government is going to present.

21 One of the things that we are having huge problems
22 with is that in the records that they provided, and one of the
23 things that I was upset about is in my conversation with
24 Ms. Hoffman is she advised that she had allowed the "OIG" and
25 the other agents to redact the documents for her without her

1 first taking a look at them, which is humongously problematic,
2 because if you look at our exhibit number 1 to my motion, those
3 are a series of reports that were done, and this is the only
4 thing that we agree on.

5 We believe, and when I agree with her, this is her
6 theory, that these reports were done to cover up certain
7 improper activities by the agents. Not Mr. Malago, but by the
8 agents, and I would agree with that because these reports are
9 done in September of 2007 for activity that occurred in June
10 and July and May of 2007, 3, 4 months after the fact, and it
11 just co-incidentally they comport with the plane crash in
12 Mexico with the 3.5 tons of cocaine.

13 THE COURT: Right.

14 MR. QUINTERO: So exhibit number 1, if you take a look
15 at it, is a series of 9 reports. That's all there are
16 according to the cover sheet from the OIG agent that prepared
17 these reports.

18 They are completely redacted to the point where --

19 THE COURT: I mean they redacted peoples' names. Not
20 completely redacted, right?

21 MR. QUINTERO: Well, the problem is --

22 THE COURT: At least the names. Well, I guess the
23 name of the operation, but when I looked through these, it
24 looked like most of these are names of other people.

25 MR. QUINTERO: Well, that's a problem because how do

1 we, how do we contact witnesses that may have information that
2 may be Brady and Giglio material for us if their names are
3 blocked out?

4 THE COURT: Well, I mean first you have to show that
5 it is relevant. I mean, I am not sure I understand why you are
6 getting it. The government gave you these reports, but under
7 what theory are you entitled to reports of what happened in
8 June of 2007, assuming -- I mean, I think you had a better
9 argument when they were saying the conspiracy went from March
10 of 2007, but if they are now conceding that their conspiracy is
11 going to be from 2009 through, I think they said in their
12 response to 2011, then they are not alleging that while he was
13 a confidential informant that he was doing anything illegal
14 that they plan on proving.

15 MR. QUINTERO: If it please the Court, if this court
16 is prepared to enter a report and recommendation that says
17 based on the government's concession that the criminal activity
18 in this case is from 2009 to 2011, and that no evidence will be
19 introduced prior to 2009, then you are absolutely correct. It
20 would not be relevant.

21 THE COURT: Okay. It may not be relevant. Let's hear
22 from the government. That is what they told me in their
23 response that is what they are doing. Then, you know, maybe we
24 can obviate the need for all of this stuff.

25 MS. HOFFMAN: Your Honor, I have an alternative

1 proposal to make to the court of what I think will clean this
2 up for everybody's purposes, I think both as to the motions
3 that are outstanding with respect to subpoenas as to other
4 agencies.

5 The indictment stands as to March of 2007 for one
6 simple reason. Mr. Malago in a sworn statement, in an asylum
7 statement to ICE or immigration, stated that he knew that the
8 C.I. status of the entity who is working with had been put on
9 hold or frozen as of March of 2007.

10 THE COURT: Wait. I don't understand what you are
11 talking about.

12 MS. HOFFMAN: May I approach, Your Honor?

13 THE COURT: Yes. Sure.

14 MS. HOFFMAN: The government dated the indictment at
15 the date that it did, Your Honor, because in this statement on
16 page 4 Bates labeled 9785, Mr. Malago stated in a sworn
17 statement that was to ICE as part of an asylum package he was
18 petitioning ICE for or immigration for, that he had been told
19 that all operations under the undercover operation he was doing
20 business with through ICE were put on hold; that he would need
21 to wait for any further new agreements, further orders from
22 ICE, and in the meantime he asked if he could open his own
23 business to continue to sell planes, and he then established a
24 company Donna Blue.

25 It was the simple fact that he knew that there was

1 termination of the or freezing of the Tropical Air operations
2 that I had dated this statement back or this indictment back to
3 that date.

4 THE COURT: Tropical Air, that's the company that was
5 being used?

6 MS. HOFFMAN: The ICE undercover operation, Your
7 Honor, I believe.

8 THE COURT: And what is Donna Blue?

9 MS. HOFFMAN: That is the company that he created
10 after that point, Your Honor, and it is the company for which
11 the plane that went down in Mexico that they were referencing
12 that had 5 tons of cocaine on it in September of 2007 still
13 registered to Mr. Malago.

14 It was in his private company's name. I don't, as a
15 representative of the government, speak to ICE's belief about
16 that case. My perception of ICE's belief with respect to that
17 that plane is that they effectively ratified actions that he
18 did as an individual, not under the corporate entities for ICE.

19 I am not seeking to prove and I have said that in
20 court since the day I started litigating against Mr. Malago in
21 January, 2012, I have said I never intend to prove any
22 allegations with respect to the two planes purchased through
23 the Donna Blue entity, because of whatever happened with ICE
24 and the papering of that deal after the fact.

25 The reports that are written, the positions that ICE

1 took, I have no intentions, and I have been saying that since
2 the day he was arrested in the first bond or detention hearing
3 that we had with respect to him, and we had multiple hearings
4 between January and March of 2012.

5 So, in short order, Your Honor, the company at issue
6 in this indictment is North Atlantic Aircraft Services
7 Corporation. Excuse me. There are a lot of iterations, and I
8 want to make sure I said the name right. That company was put
9 into business on June 12th of 2008.

10 I propose I will supersede my indictment and return
11 the date of the first piece of that indictment to June 12th of
12 2008.

13 The statement that I wish to use that incorporates his
14 knowledge in March of 2007 is dated in 2010. So I will use it
15 from that asylum statement to the extent that a court chooses
16 to let me enter that into evidence.

17 I believe my superseding indictment is through -- the
18 date of the current indictment is through March 19th, I believe
19 it is, the 16th or the 19th, of 2012 when I returned that
20 indictment.

21 I will get the correct date. The indictment will
22 track from June 12th of 2008 to March 16th. Oh, no, no.
23 Through May 22nd of 2011. So the indictment will track June
24 8th. Excuse me. Let me start all over again so I say the
25 numbers correctly because everybody is going to care very

1 precisely.

2 The superseding indictment, and the only change I
3 intend to make to the superseding indictment is these dates
4 would read, June 12th of 2008 through May 22nd of 2011.

5 THE COURT: Okay.

6 MS. HOFFMAN: Your Honor, I will also as my forfeiture
7 guru is sitting next to me said I will take out the planes that
8 have just been the subject of the prior motion of the court,
9 and that at everyone's behest, I will do what she just asked as
10 well.

11 THE COURT: Right. Right.

12 MS. SHEEHAN: Strictly from the forfeiture
13 allegations.

14 THE COURT: Yes. Yes. I understand.

15 MS. HOFFMAN: So I will make those two modifications
16 to the indictment. That I believe puts to rest this debate
17 about these documents, from my perspective.

18 MR. QUINTERO: It doesn't put it to rest, but it does
19 clear it up. Let me show you what I am talking about. She
20 says that the --

21 THE COURT: Just so I understand, do the parties agree
22 on when he stopped being a confidential informant or source or
23 whatever he was for ICE?

24 MR. QUINTERO: I think that we have a general idea. I
25 think we can agree that he stopped providing information to

1 ICE, whether formally or informally, sometime in late 2008 to
2 2010.

3 MS. HOFFMAN: It is March of 2008 that I believe ICE
4 deactivated this C.I. or this gentleman as a C.I. from ICE.

5 MS. HORSTMAN: Judge, if I may address that, the
6 documents relating to his cooperation that we have been able
7 to, the information we have been able to glean from that is
8 that Tropical Air was operating as a government business.

9 They controlled everything, but when D.C. told ICE
10 that they were not operating appropriately with the money and
11 tracking the money, they said, "You have to shut down that
12 company."

13 ICE said, "Okay. We are going to do it a different
14 way. Mr. Malago, open up your company and we are going to do
15 the operations, but we are going to do it through your company
16 so we don't have to violate what D.C. is telling us what we
17 can't do."

18 So they told him to open up Donna Blue.

19 He asked, "Can I open up Donna Blue?"

20 They said, "Yes. Open up Donna Blue."

21 That was in 2007 to 2008, and he did one deal which is
22 the one that crashed in Mexico.

23 The government seized those funds. The transponder
24 was on the plane. It was part of his cooperation, and then
25 when he left or when he came to the U.S. in May of 2008 when

1 ICE told him, "It is dangerous for you. You need to move your
2 family up here," he moved his entire family up here and they
3 continued to ask him to cooperate, and he continued to provide
4 information and transactional details on every plane that he
5 did to ICE up to the beginning or the end of 2008.

6 Ms. Hoffman sent an e-mail to the ICE Agency saying in
7 her letter -- I am sorry. Let me give her a copy of her e-mail
8 that she sent to us in discovery so she can review it.

9 I am specifically talking about this paragraph right
10 there.

11 MS. HOFFMAN: The no contacting?

12 MS. HORSTMAN: Yes. Where she says that, and that by
13 the end of 2008 he was no longer working as an ICE C.I.

14 So now she is going to amend her indictment to June of
15 2008. We have a conflict that he was still providing
16 information as a C.I., although not under operation
17 Myan-Jaguar, but as a C.I. for ICE Tampa, and if I can
18 approach? To the tend of 2008. So we have a 6 month period of
19 time.

20 THE COURT: Where is it?

21 MS. HORSTMAN: If I can approach? So although the
22 government talks about operation Myan-Jaguar, it is really not
23 whatever operation he was cooperating under. It is that he was
24 still cooperating.

25 MR. QUINTERO: And this is the problem, going back and

1 forth changing dates, and it is a problem.

2 One of the things that, yes, she cleared up right now
3 is, "Okay, I am not going after him for the Donna Blue
4 operations." That means that she is going after him for the
5 North Atlantic plane deals.

6 THE COURT: Right.

7 MR. QUINTERO: Now, this is the problem: I am going
8 to show the court these Bates stamped documents.

9 THE COURT: Hold on. Hold on. If you are handing me
10 something, I have got to look at it. All right.

11 MR. QUINTERO: And if I may show you what the real
12 problem is in the documents, the production of the documents,
13 if I can approach?

14 I have already provided copies or I have shown them to
15 Ms. Hoffman, rather. It is her copy. Those are documents that
16 the government provided to us that were redacted.

17 You can see the only thing that identifies that
18 document from the transaction or tells us what type of
19 transaction it is, is the phrase "North Atlantic" that has not
20 been redacted, okay, which means that that document relates to
21 some kind of deal related to North Atlantic, the same thing
22 with the other document behind it.

23 These documents do not provide tail numbers for the
24 aircraft. They don't provide dates of sales. So we are
25 blinded, Judge. We don't know what these documents relate to.

1 We know they relate to a plane deal, but we don't know which
2 one it is, and there are 40 of them. So we need these
3 documents unredacted so that we can know what it is that we are
4 talking about.

5 For example, on that first document that I showed you,
6 the seller is blocked off.

7 Well, we just witnessed the government giving back two
8 planes to two people. They wouldn't be giving them back if
9 there was any kind of criminal activity related to those
10 people, those buyers or those individuals involved with these
11 aircraft. We have the right to contact them.

12 THE COURT: This is a whole different issue here, but
13 why are you blocked out? You are alleging that he is doing
14 something wrong when he is --

15 MS. HOFFMAN: It is not one of the planes that is a
16 party to this transaction, Your Honor, and I have said that to
17 them on multiple occasions.

18 Mr. Malago showed up in an unrelated investigation.
19 He got a party to a wire investigation which I had produced
20 certain materials to.

21 That is an ongoing case, and it is not a part of my
22 criminal case, and I have told them that, and that plane is not
23 a part of my criminal case, and I have told them that.

24 MR. QUINTERO: How is that? Your claim is it is.

25 THE COURT: Hold on, Mr. Quintero. Don't interrupt

1 her. Okay. But he wouldn't know that this is not part of it
2 unless you tell him what the plane is.

3 I mean, I think Judge Scola is telling you that you
4 have got to disclose that stuff, anyway.

5 MS HOFFMAN: Judge Scola has said I need to --

6 THE COURT: It is pointless to give him this and say
7 "This isn't part of our investigation," when all it shows is
8 Joao Malago.

9 You have to tell him what the plane is, at least. I
10 mean, there has got to be something on here that identifies the
11 plane with the tail number or the serial number, or something.

12 What is the point of saying this doesn't relate to
13 your investigation without telling him what the plane is?

14 MR. QUINTERO: Let me add to that. If I may show you
15 Bates stamp number 0002477. It is a bill of sale.

16 MS. HOFFMAN: It is the same plane.

17 MR. QUINTERO: This is a document that they got from
18 the FAA, but I can't get it because I have got no information
19 to get it from.

20 In other words, what am I asking the FAA for? Give me
21 a bill of sale with a Bates stamp sometime in 2008 or 2009.
22 They blocked off all of the information that relates to who is
23 the plane, what is the N number, what is the serial number of
24 the aircraft? Who owns the aircraft?

25 THE COURT: Okay.

1 MR. QUINTERO: Who was it sold to?

2 THE COURT: Okay. I understand all of that. I mean,
3 I don't understand why you are redacting this stuff. Is there
4 a reason?

5 MS. HOFFMAN: It is a part of an ongoing investigation
6 that is unrelated to Mr. Malago, just as the wire that he was
7 intercepted in is unrelated.

8 He happened to speak to a target. So I gave him, for
9 example, the communications in that wire, even though he is not
10 or there is no evidence of this case. It is not being used in
11 this case.

12 This plane is the same thing, Your Honor, and
13 certainly Mr. Malago has said and has a listing of all of the
14 planes he was involved in.

15 I blocked off the other parties because it is an
16 investigation that is independent from this one, as I have
17 said, and it is not a plane that I intend to show any evidence
18 of.

19 The court has directed the bill of particulars today
20 and asked that I identify the tail numbers related to Counts I
21 and II, which I will do by April 30th.

22 I have identified the 43 planes. Up until now, I have
23 identified the 40. Well, I will pull back the 40. The 40 plus
24 planes, Your Honor, because right at this second I am not sure
25 if I have got the number of 43 in my head correct, but the 40

1 plus planes that we have investigated with respect to
2 Mr. Malago, I have identified them.

3 I have given him entire spread sheets. I have given
4 an analysis of them. I have given all sorts of documentations.
5 That's why there is 10,000 pages plus of discovery in this
6 case.

7 The court asked why was there OIG information. I did
8 not at any point say to Mr. Quintero that I allowed somebody
9 else to redact documents that then set my name to.

10 OIG's investigation is independent of mine. It has no
11 bearing on this criminal investigation. I have not used their
12 information or intel to develop the investigation against
13 Mr. Malago.

14 They have asked repeatedly -- let's put it in that
15 more polite fashion -- for materials related to that.

16 At some point I said to OIG, "Look, I am getting
17 harangued for these materials. Is there anything you care
18 about whether, you know, is there anything that can be
19 produced?"

20 It is not part of my case, but are you willing to
21 produce anything?" And what I got is what I produced. It is
22 not materials within my custody and control within this
23 investigation, within this case, but I gave them what I had
24 that ICE gave to me.

25 And when I gave it to them I said, "Look, I just got

1 this and this is what I got from ICE," and I got it whatever
2 date I transmitted it, I should have checked the date, Your
3 Honor. I apologize. I did not.

4 So whatever date I got it is effectively the day or
5 week that I got it from OIG. It is not a part of the
6 underlying case, and it never has been. You know, I don't
7 expect the court or ask the court to go back and read the
8 transcripts of earlier, but I have said all of this that I am
9 saying today every single time I have had a communication.

10 The defense are the parties that wish to prove his
11 C.I. status and everything that happened with respect to his
12 C.I. status, and not the government.

13 The government is operating on the theory that North
14 Atlantic Aircraft Services Corporation and planes purchased
15 through it were done both in registration issues illegally and
16 improperly and in drug seizures of a plane particularly that
17 was seized in Brazil carrying more than 700 kilos or more than
18 I believe 800 kilos. Excuse me. More than 500 kilos.

19 I am mixing up plane cases, Your Honor. I apologize.
20 More than 500 kilos of narcotics on it.

21 It is charged as a violation of having narcotics on a
22 U.S. registered aircraft. It is an aircraft that was
23 registered in Mr. Malago's name. He de-registered it 3 days
24 after the seizure.

25 That is the heart of the government's case, which I

1 have said from the get-go. I have not been playing hide the
2 ball or hide the game here at all, Your Honor.

3 Everything I am saying to you today I said it in a 2
4 to a 3 day hearing.

5 THE COURT: Okay. But I mean what we are trying to
6 figure out here is what happened has to be turned over and what
7 does not have to be turned over.

8 At one point you are saying that he was no longer an
9 informant in March of '08 and then another thing you are saying
10 is it was the end of '08, and you are charging in this case in
11 the middle of '08.

12 MS. HOFFMAN: March 28, 2008 is the date that ICE
13 deactivated this C.I. This gentleman as a C.I. from ICE.

14 I cannot speak to whether he gave any information
15 after March 28th of 2008, Your Honor. Again, ICE in their case
16 is not a party to mine.

17 What I know is that any activities that go from the
18 registration of North Atlantic Aircraft Services Corporation to
19 the date of my indictment do not involve any information,
20 intel, planes or anything having to do with ICE.

21 I know that because we haven't had anything to do with
22 ICE. This is a DEA only case. We have never received any
23 intel information or resources from ICE. So even if he called
24 a handler in November of 2008 and gave them some intel about
25 something or other, it is not a party to this case.

1 THE COURT: Okay.

2 MR. QUINTERO: If I may respond briefly?

3 THE COURT: Okay. Go ahead.

4 MR. QUINTERO: Number 1, we would not know that there
5 was a "collateral unrelated investigation" regarding the
6 documents you have in front of you unless she told us that
7 there is a "unrelated pending collateral investigation" and is
8 using that to avoid having to give us those documents.

9 That's just like if give you a deed to a piece of
10 property in Dade County, if I didn't tell you that there is a
11 collateral investigation, you wouldn't know and I would say to
12 you, "Your Honor, this has nothing to do with the case I am
13 prosecuting on, but we just want to give you, out of an
14 abundance of caution, a bill of sale of these documents because
15 your client did sell this house at some point." We are not
16 going to introduce it.

17 How would I know that there would be a collateral
18 investigation on it? So by disclosing the collateral
19 investigation, she is, in essence, using that to avoid turning
20 over the documents. We need those documents.

21 THE COURT: Why do you need the documents? Why are
22 the documents that are not related to the aircraft that she is
23 alleging that he, you know, either bought and sold illegally or
24 were involved in the drugs, why do you need those documents?

25 MR. QUINTERO: Well, before Judge Scola ruled on the

1 bill of particulars, we did not have that information. If now
2 what we are going to get is exactly the plane deals from the
3 North Atlantic that she is claiming were involved in criminal
4 activity, that's a whole different story, but up to now we did
5 not have that information.

6 When I filed my motion to compel, we did not have that
7 information.

8 THE COURT: Okay. Well, here is my first ruling: Any
9 documents relating to the sale or transfer of aircraft that
10 relate to the aircraft that are going to be disclosed pursuant
11 to Judge Scola's bill of particulars order, you are to provide
12 unredacted documents for it.

13 So if you have documents that look like this for the
14 ones that you are going to list in your bill of particulars,
15 you need to provide unredacted copies of those aircraft related
16 documents.

17 MS. HOFFMAN: Your Honor I don't believe that there is
18 anything that is redacted in the category that the court just
19 said, but to the extent there is, if something unique to a
20 particular thing, I would ask the right to come back and show
21 it to the court in-camera and to explain why, but as I stand
22 here right now, I don't think this is going to be an issue, but
23 I just wanted to raise that small possibility.

24 THE COURT: Well, I mean you can file a motion then
25 and ask me to do that if you want.

1 I can't imagine if you are alleging, you know, how a
2 bill of sale on an aircraft is going to be redacted if it is
3 the aircraft that you are contending that there was illegal
4 contact, you know, that you are anticipating --

5 MS. HOFFMAN: Well, it is your order that you just
6 said any documents? It is not the bill of sale. There just
7 might be some other document. That was why I responded to it.

8 THE COURT: Well, you need to do that. You discuss it
9 with opposing counsel. Tell him, you know, in general terms
10 why it has to be redacted.

11 If you cannot agree to it, then come to me.

12 All right. The next ruling: ICE.

13 I am ruling that ICE provide any documents that they
14 have regarding this gentleman or North Atlantic Aircraft
15 Services Corporation for the period June 12th, 2008 --

16 MS. HORSTMAN: Your Honor, if I may interrupt?

17 THE COURT: -- that relates to this defendant's
18 cooperation for the period of June 12th, 2008 through May 22nd,
19 2008.

20 MS. HORSTMAN: Your Honor, I asked for and you gave us
21 the right to respond. I know that they are going to file or
22 that they are seeking to file motions to not respond and not to
23 quash, and you gave us time to respond to that with an
24 extension.

25 THE COURT: Well, I believe that the defense in this

1 case is that he was acting on behalf of ICE at the time that he
2 did these acts.

3 There is only a small amount of overlap which is,
4 according to you there should be no overlap.

5 You tell me that he was deactivated in March of 2008.
6 They are going to come back and say there are no documents.

7 If there are documents, if he was, you know,
8 discussing North Atlantic Aircraft Services Corporation with
9 them during that time, if they were giving him instructions
10 with regard to that, then I believe that the defendant has
11 made, you know, sufficient allegations here that they should
12 get those documents in unredacted form.

13 MR. QUINTERO: Judge, I would also request that the
14 order for the disclosure of aircraft documents relates to, for
15 example, any witness that they have that is going to testify
16 about a particular plane deal.

17 They may not introduce the plane deal, but the witness
18 may identify the plane. I don't want to get it backwards.

19 THE COURT: I don't understand how you get witnesses.
20 I mean, Rule 16 doesn't provide for it to tell people who the
21 government witnesses are.

22 I mean, they have to provide documents that they
23 intend to introduce. They have to provide Brady material, you
24 know, if they have any of that, but they don't have to tell you
25 who their witnesses are and give you reports of their

1 MR. QUINTERO: No. That's not what I am asking. What
2 I am asking is that, let me give you an example. Let's suppose
3 they intend to call Joe Smith.

4 THE COURT: Yes.

5 MR. QUINTERO: Joe Smith is an individual who may be
6 in custody.

7 THE COURT: Yes.

8 MR. QUINTERO: Joe Smith is going to testify about a
9 deal that he bought, that Mr. Malago knows about cocaine deals
10 and knows about how to put cocaine on aircraft because he had
11 these conversations with him while he was negotiating a
12 particular plane deal, say, for example, in 2007.

13 THE COURT: Okay.

14 MR. QUINTERO: 2006.

15 THE COURT: Yes.

16 MR. QUINTERO: You know, we want obviously those
17 documents that relate to that plane deal as well because what
18 if the witness is lying through his teeth, and what if the
19 witness never had a "plane deal "with Mr. Malago?

20 THE COURT: Well, I mean if the government is calling
21 them as witness and they don't know it, then you got Brady, but
22 the government doesn't have to tell you who their witnesses
23 are.

24 They have to determine who their witnesses are and
25 determine whether or not they have anything that is exculpatory

1 regarding your client or that could be used as impeachment.

2 MR. QUINTERO: Very well.

3 THE COURT: But they don't have to provide witness
4 statements. I mean, to me it seems to me like the government
5 has provided an awful lot of stuff in this case that perhaps
6 they didn't have to provide, you know, but I think that they
7 should provide stuff where he is a confidential informant and
8 there is an overlap with the allegations in the indictment that
9 that should clearly be provided.

10 MS. HORSTMAN: Judge, I wanted to, and if I may point
11 out one issue with that.

12 THE COURT: Yes.

13 MS. HORSTMAN: The government in this case has given
14 us a person they say they intend to call. They have given us a
15 plea agreement on the person here.

16 THE COURT: Who is that?

17 MS. HORSTMAN: It is San Marteen Geraldo; Mr. San
18 Marteen Geraldo who is in custody and was recently sentenced in
19 front of I believe Judge Martinez.

20 THE COURT: Okay.

21 MS. HORSTMAN: And they released his plea agreement.
22 When we asked for these documents, they said that they released
23 the plea agreement in anticipation of potentially calling him
24 as a witness.

25 THE COURT: Right.

1 MS. HORSTMAN: Of course, there is no real description
2 of his activity in relation to Mr. Malago and his plea
3 agreement.

4 THE COURT: Right.

5 MS. HORSTMAN: Just a general time frame.

6 THE COURT: Right.

7 MS. HORSTMAN: And his plea agreement has to do with
8 planes in other countries like Colombia, Panama and potentially
9 Brazil. I don't know.

10 THE COURT: Right.

11 MS. HORSTMAN: But if we are in trial and they have
12 already told us this, that they are going to call him --

13 THE COURT: Yes.

14 MS. HORSTMAN: -- and we are getting to trial and they
15 start talking about a specific plane, we need to be able to
16 access registry documents in Brazil, registry documents in
17 Colombia to get them translated, to get them certified.

18 We cannot do that in the middle of trial. So the only
19 reason we ask for that is because logistically in the middle of
20 trial, since they have already revealed who that person is and
21 who they are going to call, and they have to provide the N
22 numbers that the court just ordered them in the bill of
23 particulars --

24 THE COURT: Right.

25 MS. HORSTMAN: -- associated with this person so that

1 if we need to go look for foreign records and foreign documents
2 and be able to introduce them as our defense, we have an
3 opportunity to do that instead of in the middle of trial.

4 THE COURT: But I mean it is not called for under Rule
5 16. I mean, I would like to tell them to give you everything
6 and then you wouldn't have to be here today, but I have to
7 order them to do stuff that is within the law.

8 It has got to be relevant, you know, to the case in
9 chief. It has got to be introduced, and they are not required
10 to provide witness statements until after a witness testifies,
11 and that's only if it is a statement that the witness has
12 adopted, or if the agent testifies somehow to what a witness
13 says they have to provide the report, but there is the way the
14 rules go.

15 Now, my impression is if that happens, I don't think
16 Judge Scola is going to be very happy if you have got to stop
17 the trial in the middle of the trial so you can go to Brazil
18 and get the records.

19 I mean, you know, that could affect the government's
20 ability to introduce documents at trial, but I am not aware of
21 any rules that allow me to order that.

22 You know, I am bound by Rule 16 which is what Congress
23 and the Supreme Court decided are the appropriate rules for
24 criminal cases.

25 MS. HOFFMAN: I think this is probably a moot issue,

1 but just for an abundance of clarity, Your Honor, defense
2 counsel, I made a mistake in one of the communications that I
3 communicated.

4 I was referencing paragraphs that they had done and I
5 referenced them in a response I had done, and one of the
6 references that I included suggested that I anticipated calling
7 a Brian Synder as a witness.

8 I don't believe who Brian Synder is, Your Honor. I
9 incorporated the paragraph that his name in it by mistake. He
10 is apparently somebody with ICE. He is apparently somebody I
11 assume with the ICE, OIG investigation. He is not a witness in
12 the government's case.

13 THE COURT: Okay. Well, we are not talking about him
14 right now, anyway.

15 MR. QUINTERO: Well, there are two other names in that
16 paragraph. One was Francis and the other one was Mike Plus and
17 Hatfield. I am sorry. Mike Hatfield.

18 MS. HORSTMAN: Mike Hatfield.

19 MR. QUINTERO: Mike Hatfield and Mack Plus which were
20 the two lead agents. The two lead ICE agents that were
21 handling Mr. Malago.

22 MS. HOFFMAN: These are not witnesses as I have said
23 all the way long I am not calling these witnesses. I have
24 never been incorporating the ICE case, and I am still not.

25 THE COURT: She indicated that in her response. She

1 is not calling Snyder Hatfield or Frank Skeney, or whatever his
2 name is.

3 MR. QUINTERO: Yes. And, Judge, I just want to
4 correct something as well. She did provide the oral, or what
5 happened was that the tapes, the conversations were included
6 but they required a Kodak or some special program to be able to
7 listen to them. We finally deciphered it, and I apologize.
8 They were included in the response.

9 THE COURT: Okay no. Problem.

10 MR. QUINTERO: So that paragraph is moot from our
11 request, and that pretty much handles the second motion to
12 compel, I believe. Do you have anything else?

13 MS. HORSTMAN: No. There are only one or two matters
14 that are from the first motion to compel that need to be
15 addressed.

16 MR. QUINTERO: If I may sit down, Judge? I think my
17 co-counsel will handle that.

18 THE COURT: Sure. Okay. All right.

19 MS. HORSTMAN: The biggest issue, Judge, on the first
20 motion to compel are documents relating to the money laundering
21 counts.

22 THE COURT: Hold on a second.

23 THE COURT: Okay.

24 MS. HORSTMAN: This is Section H of the motion. Let
25 me get to the specific page I am talking about. It is on

1 page -- I am sorry.

2 THE COURT: What page?

3 MS. HORSTMAN: On page -- Judge, I am sorry. Do you
4 know what? I printed out the copy from my computer and not the
5 one I filed. So I only have the section it is Section H. It
6 is about 3 pages from the end.

7 THE COURT: Section 8? Are we looking at defendant's
8 motion to compel production of Federal Rule of Criminal
9 Procedure?

10 MS. HORSTMAN: Yes, Your Honor.

11 THE COURT: I have got letters on mine.

12 MS. HORSTMAN: Letters. Yes. H. I am sorry.

13 THE COURT: O. H. I thought you said "8." Okay.

14 MS. HORSTMAN: H.

15 THE COURT: I have got it, right.

16 MS. HORSTMAN: It is the third page from the end.

17 THE COURT: Information pertaining to the alleged bank
18 fraud?

19 MS. HORSTMAN: That's correct.

20 THE COURT: Okay. This is the one that Judge Scola
21 actually referred to

22 MS. HORSTMAN: Yes. Exactly, because the government
23 has, and they have communicated to us that they have asked for
24 them and they haven't received any responsive documents.

25 So basically we have not a single document in

1 discovery from the government applying to these counts, and so
2 we are asking for the discovery.

3 The government in its motion to the court, when they
4 asked for a continuance of trial, said that if they did not
5 have them 45 days prior to the trial date, they would not ask
6 for any further continuances to get those documents.

7 In conversations with Ms. Hoffman, she represented to
8 us that she would not or she would dismiss these counts and not
9 proceed on the bank fraud counts if she didn't have that
10 information 45 days before trial.

11 THE COURT: When is the trial again?

12 MS. HORSTMAN: May 20th. We are now I think 27 days
13 before trial or 28 days, or however many.

14 THE COURT: Right. So what do you say about that,
15 Ms. Hoffman?

16 MS. HOFFMAN: Your Honor, getting the records from
17 Brazil has been a nightmare. One of the key documents that the
18 government is relying upon in this was obtained from Mr. Malago
19 himself. It is a copy of loan documentation from Brazil, and
20 so they do have that particular piece.

21 I, as recently as of today, have been told that I
22 should be getting them any day. I don't have them.

23 I have also informed counsel multiple times I am
24 starting trial on May 6th, as they well know, in a different
25 case, and I will be in trial on May 20th.

1 We will not be able to proceed with this case. This
2 has been an incredible litigated case before Judge Cooke, and
3 there is no expectation that this case will go in anything but
4 a trial.

5 THE COURT: You are talking about the other case?

6 MS. HOFFMAN: The other case. Well, this has been an
7 incredibly litigated case too.

8 THE COURT: Okay.

9 MS. HOFFMAN: And there is no expectation that this
10 will be anything but a trial, also, but the Judge Cooke case
11 will start. It is older in time. It was set before all of the
12 earmarks of where the competing obligations are.

13 THE COURT: You need to provide the documents as soon
14 as you get them.

15 MS. HOFFMAN: I do. Absolutely.

16 THE COURT: If it is too close to trial, you can make
17 the argument to Judge Scola, "Hey, you know, we don't have time
18 to investigate this," and then you shouldn't have to introduce
19 it.

20 MS. HOFFMAN: I fully understand all of those issues,
21 and I am doing the best I can to get them from a foreign
22 government, and if it ends up hamstringing me at the end, I am
23 not seeking to dismiss anything at this point because between
24 Ms. Horstman's schedule and mine --

25 MS. HORSTMAN: My schedule is not going to interfere,

1 Judge. I don't care what I have to do. I am going to trial on
2 this case on May 20th or May 27th, the second week of the trial
3 period, but I will be here.

4 MS. HOFFMAN: And I will be in trial the entire month.

5 THE COURT: All right. In regards to the documents
6 pertaining to the alleged bank fraud specified in Counts 4
7 through 11, immediately upon their receipt from the Brazilian
8 Government, the United States shall provide them to the
9 defendant, and the defendant will be free to make any motion
10 they believe is appropriate if they don't believe they have
11 sufficient time to review those documents and, you know,
12 investigate them prior to the trial.

13 MS. HORSTMAN: Judge, the other remaining issue -- I
14 am sorry. Just because now the time frame has shifted, I am
15 making sure I am not arguing something that is not in that time
16 frame that we just narrowed.

17 THE COURT: Okay.

18 MS. HORSTMAN: There is one issue with regards to
19 Mr. Malago's cooperation with DEA in D.C., DEA Agent Mahoney.

20 THE COURT: Is this in the motion somewhere?

21 MS. HORSTMAN: This is in the motion somewhere. If
22 you look at page 2, number 7, it gives you the request that we
23 have asked for reports and documentation regarding the DEA's
24 contact --

25 THE COURT: Oh, yes.

1 MS. HORSTMAN: -- with Mr. Malago, and the time period
2 specified is March, I believe, through July of 2011.

3 THE COURT: Well, actually it says the time period
4 specified in the superseding indictment which would be March of
5 '07 until March of 2012.

6 MS. HORSTMAN: Yes.

7 THE COURT: No, no, no. I am sorry. May of 2011.

8 MS. HORSTMAN: Right, but now because we have changed
9 the time a little bit --

10 THE COURT: Right. So you want to change that to
11 what?

12 MS. HORSTMAN: I am going to narrow it because I have
13 gotten further information since I wrote this month motion in
14 September, that Mr. Malago is represented by counsel at that
15 time. He flew up to D.C. on March 31st of 2011 for the first
16 time to meet with DEA Agent Mahoney and another DEA agent
17 there --

18 THE COURT: Okay.

19 MS. HORSTMAN: -- to provide cooperation. Subsequent
20 to that he provided bank records and other documents to them,
21 and this is a DEA agent, and we asked for this information
22 regarding his cooperation since it is directly during the time
23 period of the indictment when he was operating North Atlantic
24 Aircraft Services and his bank records that he provided
25 associate with North Atlantic Aircraft Services.

1 THE COURT: So this is what? The date is March 11th
2 or I mean March of 2011? Is that what you are saying?

3 MS. HORSTMAN: Yes. I believe the first meeting was
4 on March 31st, 2011, and I believe it took a couple of months.
5 I don't have the exact dates that records were provided because
6 they were a running provision of documents.

7 THE COURT: Okay.

8 MS. HORSTMAN: So we were asking for the reports
9 associated with his own meetings and his statements that he
10 gave to DEA.

11 THE COURT: Okay.

12 MS. HORSTMAN: These would be defendant's statements.

13 THE COURT: Okay. What do you say about that?

14 MS. HOFFMAN: Your Honor, I am told there are none. I
15 have spoken to the G.S. over at that group at some point during
16 the course of this in September when I got this first motion,
17 and I am told there is nothing from them.

18 I have specifically asked for it. I did it
19 personally. I communicated. I had my own agents present, but
20 I am unaware of anything that is in anybody's possession that
21 is responsive. I will make or I will ask again, but I am
22 unaware of anything I have.

23 THE COURT: What about the records that were provided?

24 MS. HOFFMAN: I asked for it. They said they didn't
25 have anything, Your Honor.

1 THE COURT: Okay.

2 MS. HOFFMAN: That's all I can tell you.

3 THE COURT: Okay.

4 MS. HOFFMAN: I will put it in writing to them.

5 THE COURT: Within two weeks you are to formally
6 notify the defendants of your response to request number 7.

7 If there are any reports or documentation or
8 documents, then they are to be provided. If there are none,
9 then you are to assert that.

10 MS. HOFFMAN: And I have asked, and I will do it again
11 and will give that answer.

12 THE COURT: Okay. Good.

13 MS. HORSTMAN: Judge, on page 3 of the motion number
14 11.

15 THE COURT: Page 3. Yes.

16 MS. HORSTMAN: It says, "All documents." We asked for
17 documents pertaining to Mr. Andres Gonzalez which I then
18 amended to Ms. Hoffman to be Mr. Andres Rodriguez. I had the
19 name incorrect when I typed this motion.

20 THE COURT: Okay.

21 MS. HORSTMAN: That this is under Brady. We requested
22 this under Brady. We have had conversations with this witness.

23 THE COURT: Who is he?

24 MS. HORSTMAN: I am sorry. Mr. Andres Rodriguez is --

25 THE COURT: Well, I mean I know the name, but how is

1 he related to this case?

2 MS. HORSTMAN: Yes. He owns a company in Brazil that
3 when aircraft are imported into Brazil, he submits like J.P.
4 Reynolds.

5 He submits all of the Customs paper work and has his
6 own records and processes the importation of aircraft through
7 the equivalent of FAA in Brazil. ANOCKE.

8 THE COURT: Okay.

9 MS. HORSTMAN: And he does that for Mr. Malago, and
10 specifically on plane N-6106J which the government has returned
11 to the claimants, he came up in 2011 before Mr. Malago's
12 indictment and met with Ms. Hoffman and Mr. Frank Howser, and I
13 am not sure if Ms. Mattingley was there or not or Agent
14 Mattingly was there or not.

15 He met with them along with attorney Terresa VanFliet
16 and an investigator to specifically discuss one of the planes
17 named in the indictment that they just returned.

18 THE COURT: Right.

19 MS. HORSTMAN: And provided documentation and supposed
20 statements according to my interview that this was all done
21 legally; that N-6106J was owned by lawful or that was owned by
22 people in Brazil who bought it and were lawful people, not
23 operating in drug activity, and that all of the proper steps
24 and everything had been taken in Brazil to register the plane
25 appropriately.

1 THE COURT: Okay.

2 MS. HORSTMAN: And I had asked for that information
3 from Ms. Hoffman as Brady material back in May of last year,
4 and again when I filed this motion, and I haven't gotten any
5 response from her.

6 THE COURT: Okay.

7 MS. HOFFMAN: And as I had said at that point, they
8 came and made a presentation to me. I don't have any materials
9 from that.

10 THE COURT: Well, regardless if it is written down, if
11 they came and told you something that is exculpatory, you have
12 to disclose that.

13 MS. HOFFMAN: But we have had this conversation. I
14 don't have anything else to disclose other than the fact that
15 that person comes in and argues that the planes were lawfully
16 done. That's all I know. I don't have anything else from
17 them, Your Honor.

18 THE COURT: Okay.

19 MS. HOFFMAN: I don't have any documentation. I don't
20 have any other supporting document.

21 THE COURT: All right. So within two weeks you are to
22 provide a summary of the conversation.

23 In other words, it sounds like you are in agreement
24 with what she is saying, that he came in and told you that the
25 that this particular plane was transferred legitimately.

1 I mean, that's all. You still have to provide the
2 information, regardless of whether or not there is a report.

3 It sounds like you have done it informally, but let's
4 just do it. When I say "formally," you can do it in the form
5 of a letter which is sufficient just in case it comes up at
6 trial where they have your assertion.

7 All right. What else?

8 MS. HORSTMAN: Just one more. Let me read these last
9 three just to sure that there is nothing.

10 THE COURT: Okay.

11 MS. HORSTMAN: That's it, Judge. That's all that is
12 remaining from the first motion to compel. Thank you.

13 THE COURT: Okay. Anything else I can help anybody
14 with?

15 Now, Ms. Hoffman, you were concerned about DHS wanting
16 to respond to these subpoenas. I mean, the subpoenas I think
17 are another matter.

18 I am going to require that if there is anything after
19 the June 12th, '08 date regarding North Atlantic or this
20 gentleman, any contacts with DHS that they are to provide that.

21 That may take care of it because, in other words, I am
22 ruling today that the stuff before that is not relevant.

23 It seems like a lot of this stuff relates to that, and
24 so the rest of this just may go away.

25 MS. HOFFMAN: And I understand, Your Honor, and I

1 committed the primary lawyer's error which is I started
2 responding to the court before I listened to you fully, and I
3 should have listened to you fully, because to the extent that
4 you have directed that ICE needs to produce anything from June
5 12th of 2008 to the return of the indictment, as it will be
6 superseded May 22nd of 2011 that relates to Mr. Malago or North
7 Atlantic Aircraft Services Corporation and any confidential
8 source relationship he had with respect to that entity, I will
9 ask for that.

10 THE COURT: Okay.

11 MS. HOFFMAN: And I believe that that will be able to
12 probably address it quite quickly.

13 Now, I do have to go to ICE and say, "Here. Go look,"
14 and so I will notify everyone by letter and provide a copy to
15 the court of the timing of how fast ICE can make a search of
16 that nature, but I will impress upon them this need for speed.

17 THE COURT: Okay. Well, anything that I have ordered
18 done today needs to be done within two weeks time. So today is
19 April 23rd. So that would be by May. When is the trial set in
20 this case?

21 MS. HORSTMAN: May 20th.

22 MS. HOFFMAN: May 20th, Your Honor.

23 THE COURT: Okay. So May 7th. That will give the
24 defendants two weeks to do what they want with these documents,
25 and you need to do it. Well, you know, the documents relating

1 to the aircraft that you are going to disclose --

2 MS. HOFFMAN: April 30th, Your Honor.

3 THE COURT: -- is April 30th.

4 MS. HOFFMAN: I presumed you meant that, sir.

5 THE COURT: And actually what I would like, I would
6 like ICE to comply by April 30th, if possible. If not, then at
7 the latest May 7th.

8 MS. HOFFMAN: I will let them know that and I will
9 seek to have it done, if there is anything responsive.

10 THE COURT: All right. What else? Anything else that
11 you want to talk about?

12 MR. QUINTERO: Not from the defense, Your Honor.

13 MS. HORSTMAN: Just I think, Judge, the compliance
14 with the subpoenas then will depend upon on what is turned
15 over. I think you said we were maybe going to talk about that
16 at the end.

17 THE COURT: Yes.

18 MS. HORSTMAN: The subpoenas.

19 THE COURT: Well, based on my ruling today, they are
20 not going to be required to provide anything that occurred
21 before June 12th, 2008.

22 MS. HORSTMAN: Right.

23 THE COURT: I have already ruled that they have to
24 provide stuff after that. So I don't know if there are any
25 issues left for the subpoenas.

1 MS. HORSTMAN: Right. The only issue, the subpoena
2 wasn't just a subpoena duces tecum. It was for their trial,
3 and I think the government, in their trial testimony I think
4 the government was seeking to quash their trial testimony if it
5 would be relevant to that time period that Your Honor just
6 ruled to as well.

7 THE COURT: Okay.

8 MS. HORSTMAN: So I don't know. We can just wait to
9 address that.

10 THE COURT: Well, it is really going to go, and I
11 think one of the issues is going to be if they have any of this
12 information. If they don't have anything after June 12, 2008,
13 then you are not going to subpoena any witnesses.

14 MS. HORSTMAN: Right.

15 THE COURT: If they do, then the company is going to
16 need to see who those witnesses are.

17 In other words, if there is somebody from ICE who is
18 familiar with this and who dealt with this gentleman, then it
19 may very well be that they will meet the requirements, but it
20 is hard to predict that until we fined this out.

21 MS. HOFFMAN: Your Honor, you have received the bill
22 of particulars, the referral of the DEA subpoenas and the
23 motion to quash the DEA subpoenas that just was referred to you
24 today.

25 THE COURT: Yes.

1 MS. HOFFMAN: Also unbeknownst to this court, because
2 it has not arisen to litigation yet, but it is going to get
3 there, there was a subpoena served on the FAA as of yesterday,
4 I believe it was, that is seeking all knowledge and documents
5 pertaining to the two aircraft that were the subject of the
6 first piece of litigation that the court dealt with today with
7 Ms. Moscowitz, as well as all knowledge of documents pertaining
8 to Mr. Malago and North Atlantic Aircraft Services from the FAA
9 and all communications by Ms. Sheehan and Wendy Jacobus on
10 because of the U.S. Government in the resolution of the release
11 of the aircraft that were the subject of this morning's, this
12 earliest litigation today.

13 So I expect that to be a contested matter as well. It
14 has not arisen to litigation into the court yet because the
15 witnesses, the FAA just received it yesterday. So there has
16 not been any opportunity to respond yet, but I expect there are
17 more issues coming.

18 THE COURT: Okay. Well, I mean the FAA, some of those
19 documents are just public documents. What is the point?

20 MS. HOFFMAN: We produced the blue certified file
21 related to every plane that we intend to use. We have produced
22 the FAA records, Your Honor, already.

23 THE COURT: Okay.

24 MS. HORSTMAN: Judge, it doesn't have to do with that.
25 It has to do with Brady and I can respond appropriately if the

1 government files a motion to quash.

2 THE COURT: Well, let me see. What did you want to
3 say?

4 MS. SHEEHAN: Your Honor, the heart of our concern
5 currently is strictly the communications between myself and the
6 Chief of the Civil Division while we communicated with the FAA
7 related to the two planes that we just gave back.

8 THE COURT: Right.

9 MS. SHEEHAN: So we are still analyzing that. We are
10 just bringing it to your attention that that is likely to be a
11 contested issue if they don't agree with our position.

12 THE COURT: Okay. So we will see. I mean, it is
13 going to be tough for you to get communications between
14 attorneys and a law office.

15 MS. HORSTMAN: Well, I have already spoken to them
16 personally. So that's why I have a basis for filing it.
17 That's why I have a basis for that.

18 THE COURT: Okay.

19 THE COURT: Maria, do you know when we ordered the
20 response on the DHS subpoenas? Is that what it is, DHS these
21 days?

22 MS. HORSTMAN: I think May 6th.

23 MR. QUINTERO: I think May 9th.

24 MS. HORSTMAN: Ma 6th or May 9th, or something.

25 THE COURT: What is it?

1 MR. QUINTERO: May 9th.

2 THE COURT: Okay. So by then the records will be
3 provided. Hopefully you all will be able to confer and
4 determine whether or not it is necessary to file a response or
5 you can determine that based on my ruling today and narrow the
6 issues, and then you need to file a response to the narrowed
7 issues or indicate that the parties have agreed that there is
8 nothing to address.

9 MS. HOFFMAN: I do anticipate, so that I make sure
10 that I was scribbling as fast as I can, but just to make sure I
11 do everything correctly based on the orders, I do anticipate
12 ordering at least the part of the court's order where you set
13 court rulings.

14 THE COURT: Okay.

15 MS. HOFFMAN: So that I can make sure that I do
16 everything correctly.

17 THE COURT: No. You are probably going to have to get
18 the whole thing.

19 MS. HOFFMAN: Which is fine with me. I don't mind
20 getting the whole thing. I just wanted to let you know so that
21 I make sure that I dot my I's and cross my T's.

22 THE COURT: Okay.

23 MS. HOFFMAN: I will be ordering that as well.

24 THE COURT: Well, we will get you an order as well
25 then.

1 MS. HOFFMAN: O. That will be better, Your Honor.

2 THE COURT: It will tell you in general what my
3 rulings are.

4 MS. HOFFMAN: That will be better, Your Honor.

5 THE COURT: If you want the transcript, that would be
6 good as well.

7 MS. HOFFMAN: A written order will be more than
8 sufficient, Your Honor. Thank you.

9 THE COURT: All right. What else? Anything else?

10 MS. HORSTMAN: No, Your Honor.

11 THE COURT: No. All right. Good seeing you.

12 MR. QUINTERO: Good seeing you, Judge.

13 MS. HORSTMAN: Thank you, Your Honor

14 MS. HOFFMAN: Thank you.

15 THE COURT: Can you send that order over like right
16 now?

17 MS. HORSTMAN: Yes. As soon as I get back, I will
18 send it.

19 THE COURT: Okay. Great. Thanks.

20 (Whereupon the proceedings were concluded)

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C E R T I F I C A T E

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

JUNE 25, 2013

S/JERALD M. MEYERS

DATE

JERALD M. MEYERS, RPR-CM



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Case Style: U.S.A. vs. Joao Luiz Malago

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