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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

12-20031-CR-SCOLA/BANDSTRA

THE UNITED STATES OF AMERICA,)
)
 PLAINTIFF,)
)
 VS.)
)
 JOAO LUIZ MALAGO,)
)
 DEFENDANT.)
 -----)

(TRANSCRIPT BY DIGITAL RECORDING)

TRANSCRIPT OF NEBBIA HEARING HAD BEFORE THE HONORABLE
WILLIAM C. TURNOFF, IN MIAMI, MIAMI-DADE COUNTY, FLORIDA, ON
FEBRUARY 23, 2012, IN THE ABOVE-STYLED MATTER.

APPEARANCES:

FOR THE GOVERNMENT: ANDREA G. HOFFMAN, A.U.S.A.
11200 NW 20TH STREET
MIAMI, FL 33171 - 305 715-7642

FOR THE DEFENDANT: MYCKI L. RATZAN, ESQ.
1450 BRICKELL AVENUE, SUITE 2600
MIAMI, FL 33131 - 305 374-5730

CARL SCHANZLEH
OFFICIAL COURT REPORTER
U. S. COURTHOUSE
299 E. BROWARD BLVD., 202B
FORT LAUDERDALE, FLORIDA 33301
954 769-5488

1 (MIAMI, MIAMI-DADE COUNTY, FLORIDA; FEBRUARY 23, 2012, IN OPEN
2 COURT.)

3 THE COURT: OKAY. THIS IS THE CASE OF THE UNITED
4 STATES VERSUS JOAO LUIZ MALAGO, AND IT IS CASE NUMBER 12-20031,
5 JUDGE SCOLA.

6 LET'S HAVE APPEARANCES, PLEASE, STARTING WITH THE
7 GOVERNMENT.

8 MS. HOFFMAN: ANDREA HOFFMAN FOR THE U.S. ATTORNEY'S
9 OFFICE, YOUR HONOR. I HAVE TWO DEA AGENTS AT THE TABLE WITH
10 ME, COURTNEY MATTINGLY AND TERRY FRANKHOUSER.

11 THE COURT: OKAY.

12 MS. RATZAN: GOOD AFTERNOON, YOUR HONOR. MYCKI RATZAN
13 ON BEHALF OF MR. MALAGO WHO IS PRESENT BEFORE THE COURT, YOUR
14 HONOR.

15 THE COURT: OKAY. THANK YOU.

16 LET'S HAVE YOUR CLIENT STATE HIS NAME AND AGE, PLEASE.

17 THE DEFENDANT: MY NAME IS JOAO LUIZ MALAGO, 52 YEARS.

18 THE COURT: ALL RIGHT. I SEE THE -- APPARENTLY THE
19 UNREASONABLY LOW BOND THAT I SET WAS A \$100,000 CASH BOND WITH
20 A NEBBIA, CORRECT?

21 MS. HOFFMAN: CORRECT, YOUR HONOR.

22 THE COURT: OKAY. AND ORIGINALLY IT WAS SET FOR A
23 MOTION TO REDUCE BOND, THE GOVERNMENT RESPONDED, ASKED FOR A
24 CONTINUANCE. THEN I WAS NOTIFIED, THIS MORNING I SAW A NOTE,
25 THAT THE MOTION TO REDUCE HAS BEEN WITHDRAWN AND WE ARE HERE

1 FOR A NEBBIA PROFFER.

2 MISS RATZAN, IS THAT CORRECT?

3 MS. RATZAN: THAT'S CORRECT, YOUR HONOR. SUBJECT
4 OBVIOUSLY IF THERE IS A PROBLEM WITH ANY OF THE NEBBIA PROFFER
5 I WOULD, OF COURSE, ASK THE COURT AT THAT TIME TO ADJUST THE
6 BOND ACCORDINGLY.

7 THE COURT: OKAY. NOW, LET ME HEAR FROM MISS HOFFMAN.
8 YOU CAN ADDRESS ANYTHING, THE BOND, THE NEBBIA, ANYTHING.

9 MS. HOFFMAN: YOUR HONOR, I THINK THE BOND IS
10 APPROPRIATELY SET BUT WE WILL DEAL WITH THAT IF THE COURT
11 SHOULD --

12 THE COURT: OKAY.

13 MS. HOFFMAN: -- CONSIDER IT AT A LATER POINT.

14 AS TO THE NEBBIA, YOUR HONOR, I WOULD CHALLENGE IN
15 FACT THE NEBBIA TO ALL PARTS OF THIS BONDS. THIS BOND IS SET
16 UP BEING PROPOSED IN THREE INCREMENTS, 30,000 COMING FROM A
17 GENTLEMAN BY THE NAME OF LARRY PETERS, 55,000 COMING FROM
18 MR. MALAGO'S BROTHER AND THE BROTHER'S BUSINESS PARTNER OR
19 BUSINESS ASSOCIATE, AND 15,000 COMING FROM AMERICAN BASED
20 PERSON WHO DOES BUSINESS AND HAS HAD SOME BUSINESS FOR YEARS
21 WITH MR. MALAGO.

22 EACH OF THESE AREAS OF THE BOND HAVE PROBLEMS. AS THE
23 COURT IS AWARE YOU RESET THIS FROM MY NOTICE. THE MOTION WAS
24 FILED ON THE 9TH OF FEBRUARY. THE NEBBIA DOCUMENTS WERE NOT
25 FILED UNTIL FRIDAY NIGHT AT EIGHT P.M.

1 I RECEIVED THEM ABOUT 8:50 ON TUESDAY MORNING AT WHICH
2 POINT I PROMPTLY SENT THEM TO THE AGENTS AND SAID DO WHAT YOU
3 CAN, DO THE BEST YOU CAN TO DETERMINE THIS. THE LARGEST
4 PORTION OF THIS BOND ARE MONIES THAT ARE COMING FROM BRAZIL,
5 AND IT IS FAMOUSLY CARNIVAL IN BRAZIL. SO THE --

6 THE COURT: REPEAT YOURSELF AND REMEMBER SPEAK INTO
7 THE MICROPHONE. EVERYTHING IS BEING RECORDED AND I'M OLD AND I
8 HAVE TO HEAR YOU.

9 MS. HOFFMAN: I'M GOING TO BRING IT DOWN THIS WAY. IS
10 THAT BETTER, YOUR HONOR?

11 THE COURT: YES.

12 MS. HOFFMAN: THE LARGEST PORTION OF THE BOND IS
13 \$55,000 COMING FROM BRAZIL. IN THE -- DESPITE OUR BEST EFFORTS
14 THIS WEEK WE CAN FIND OUT NO INFORMATION --

15 THE COURT: YOU SAID SOMETHING ABOUT CARNIVAL.

16 MS. HOFFMAN: IT IS CARNIVAL IN BRAZIL. IT IS
17 PROBABLY OVER NOW TODAY, BUT GETTING ANY INFORMATION OUT OF
18 BRAZIL HAS BEEN IMPOSSIBLE. SO I AM UNABLE TO DO ANYTHING BUT
19 SURMISE -- MAKE ASSUMPTIONS BASED ON PRIOR HISTORY OF THINGS I
20 KNOW OR RELATIONSHIPS. BUT IT IS JUST ASSUMPTIONS ON MY PART,
21 YOUR HONOR. I CANNOT DETERMINE ANY VALIDITY OF THAT \$55,000.

22 I THEN HAVE SUBSTANTIAL PROBLEMS WITH BOTH THE 30,000
23 AND 15,000 THAT ARE BEING PROPOSED OTHERWISE. SO, IN SHORT I
24 HAVE A SIGNIFICANT PROBLEM WITH EACH PORTION OF THIS BOND. I
25 WILL START AND GO THROUGH IT IF THE COURT PREFERENCES. I'M GOING

1 TO DO IT BY THE 30, THE 15, AND I'VE LARGELY SAID ABOUT THE 50
2 BUT I HAVE A LITTLE BIT MORE TO SAY ABOUT IT.

3 AS TO THE \$30,000 THAT'S BEING PROPOSED TO COME FROM
4 LARRY PETERS, IT IS OSTENSIVELY COMING FROM -- EXCUSE THE WORD
5 OSTENSIVELY. IT'S COMING FROM A HOME EQUITY LOAN AS THE
6 DOCUMENTS ARE SHOWING.

7 HOWEVER, WHAT THE COURT IS NOT AWARE OF YET, AND WHICH
8 I WOULD LIKE TO BRING TO THE COURT'S ATTENTION IS THE LONG
9 STANDING HISTORY OF THE RELATIONSHIP BETWEEN MR. PETERS AND
10 MR. MALAGO, BOTH AS IT PERTAINS TO DIRECTLY TO THE FLOW OF CASH
11 AND AS IT PERTAINS TO POTENTIALLY CRIMINAL ACTIVITY.

12 MR. MALAGO AND MR. PETERS WERE BOTH INVOLVED TOGETHER
13 IN A TRANSACTION THAT RESULTED IN THEIR -- MR. MALAGO BEING
14 STOPPED BY ICE IN 2004. HE WAS CARRYING AN EXCESSIVE AMOUNT OF
15 MONEY THAT COULD NOT BE EXPLAINED OR JUSTIFIED AT THE TIME. IT
16 DIDN'T HAVE -- IT ENDED UP BEING SEIZED AND MR. MALAGO BECAME A
17 CI FOR ICE BACK IN 2004.

18 IN 2007 MR. MALAGO WAS DEACTIVATED AS AN ICE CI. HE
19 WAS DEACTIVATED ACCORDING TO HIS OWN STATEMENTS IN HIS
20 IMMIGRATION PROCESS IN THE EARLY SPRING OF 2007.

21 MAY, JUNE, AND SEPTEMBER OF 2007 THREE PLANES THAT
22 MR. MALAGO AND MR. PETERS WERE INVOLVED IN WERE SEIZED OR
23 CRASHED CARRYING ANYWHERE FROM 600 KILOGRAMS OF DRUGS ON THEM
24 TO 3.7 TONS. THE FIRST PLANE CRASHED IN MAY OVERSEAS -- NO, IT
25 CRASHED. EXCUSE ME. IN MAY OF 2007 IN AFRICA, SKYWAY

1 AIRCRAFT, WHICH IS MR. PETERS' COMPANY WAS ONE OF THE BROKERAGE
2 ENTITIES INVOLVED IN THAT TRANSACTION. AS I SAID IT WAS
3 SEIZED -- OR CRASHED CARRYING 600 KILOGRAMS.

4 IN JUNE, AN AIRCRAFT WAS SEIZED IN VENEZUELA OF 2007
5 CARRYING 2.5 TONS OF COCAINE, ALSO BROKERED THROUGH MR. MALAGO
6 AND MR. PETERS' COMPANY, DONNA BLUE AT THE TIME AND SKYWAY
7 AIRCRAFT.

8 THEN IN SEPTEMBER OF 2007 A THIRD PLANE IN MEXICO WAS
9 SEIZED AT 3.7 TONS OF COCAINE AGAIN SKYWAY AND DONNA BLUE WERE
10 THE AMERICAN LINKAGES TO THOSE PLANES AND WHAT GOT THAT
11 AMERICAN PLANE INTO MEXICO.

12 IN THAT SIMILAR TIME PERIOD, YOUR HONOR, BETWEEN
13 SEPTEMBER OF 2007 AND SEPTEMBER OF 2008, MR. MALAGO WIRE
14 TRANSFERRED, ACCORDING TO THE WIRE RECORDS, JUST IN THE FED
15 WIRE RECORDS ALONE, YOUR HONOR, MR. MALAGO TRANSFERRED OVER
16 \$128,000 TO MR. PETERS. EACH ONE OF THOSE TRANSFERS WERE IN
17 PERFECT ROUND DOLLAR FIGURES, WHICH IS NOT ORDINARY IN
18 TRANSACTIONS IN WHICH SOMEONE IS GETTING PERCENTAGE FEES OR
19 PAYMENTS ON COMMISSION, WHICH ARE THE NORMAL ROUTE FOR THESE
20 KINDS OF TRANSACTIONS IF IT IS A LEGITIMATE TRANSACTION. THE
21 INCREMENTS WENT IN SUMS OF, YOU KNOW, 50,000, 15,000,
22 ET CETERA.

23 THEN THERE IS A HIATUS WHERE THERE DOES NOT APPEAR TO
24 BE A SUBSTANTIAL AMOUNT OF BUSINESS ACTIVITY BETWEEN MR. PETERS
25 AND MR. MALAGO BETWEEN SEPTEMBER OF TWO OH EIGHT AND SEPTEMBER

1 OF TWO OH NINE. BUT FROM SEPTEMBER OF TWO OH NINE TO JANUARY
2 OF 2011, MR. PETERS RECEIVED ANOTHER HUNDRED NINE -- EXCUSE ME,
3 A HUNDRED NINE? \$105,400 AGAIN IN ROUND DOLLAR FIGURES AND
4 TRANSFERRED OUT OF THE ACCOUNTS THAT ARE THE OPERABLE ACCOUNTS
5 FOR THE CRIMINAL ACTIVITY IN THIS CASE.

6 SO, ALL OF THAT BEING SAID AT THE SAME POINT IN TIME
7 MR. MALAGO IS REPRESENTING THAT HE MAKES \$68,000 A YEAR. SO I
8 QUESTION WHERE THE SOURCES OF THE MONEY ARE, WHAT THE SOURCES
9 OF THE TRANSFER ARE. I HAVE MOST OF THE PLANE TRANSFER RECORDS
10 IF NOT ALL OF THE PLANE TRANSFER RECORDS FROM THE THIRD-PARTY
11 ESCROW COMPANIES, YOUR HONOR, AND NOWHERE IN ANY OF THEM DO I
12 SEE A REASON WHY MR. PETERS WOULD BE GETTING LAWFULLY PAID
13 MONIES, INVOICES, OR RECORDS FOR WHY HE WOULD BE INVOLVED IN
14 THOSE TRANSACTIONS.

15 AS TO THE \$15,000 THAT WOULD BECOMING FROM BRAD
16 BERDU -- I THINK I'M SAYING HIS NAME RIGHT, YOUR HONOR -- HE
17 OPERATES COMPANIES THAT, FOR LACK OF THE BETTER PHRASE, DOES
18 THE AIRWORTHINESS AT AIRCRAFT. SO BEFORE THE AIRCRAFT LEAVES
19 THE UNITED STATES THERE HAS TO BE CERTAIN CERTIFICATIONS ABOUT
20 THEM.

21 HE IS IN THAT 33 PLANES THAT ARE THE SUBJECT OF THE
22 CRIMINAL CONDUCT IN THIS CASE INVOICED TO MR. MALAGO FOR HIS
23 INVOLVEMENT OR BUSINESS RELATIONSHIP OVER THE SAME SPAN OF
24 PERIOD IN MANY OF THESE PLANE TRANSACTIONS. THE INVOICES ARE
25 FOR 54,000 AND CHANGE. AND WHEN I SAY, IN CHANGE, YOUR HONOR,

1 IT'S BECAUSE IT IS IN UNROUND DOLLAR FIGURES, \$54,899.04.

2 YET MR. BERDU HAS RECEIVED FROM DECEMBER OF TWO OH
3 NINE TO JUNE OF TWO ELEVEN TWO THOUSAND THIRTY -- 232,000,
4 SORRY, I DIDN'T GET THAT NUMBER OUT CORRECTLY, \$232,000 AGAIN
5 IN ROUNDS DOLLAR FIGURES. IT DOESN'T MATCH TO THE INVOICES AT
6 ALL, IT DOESN'T HAVE ANY OF THE INCREMENTS OR THE INDICIA OF
7 THE ORDINARY TRANSACTIONS THAT WOULD BE PAID.

8 AS TO THE BRAZILIAN FUNDS, YOUR HONOR, AS I SAID
9 ALREADY, THERE IS NO WAY FOR ME TO TRULY VERIFY. THAT SAID LET
10 ME TELL YOU WHAT ANALYSIS I CAN MAKE ABOUT THOSE MONIES.

11 THE COMPANIES THAT ARE OPERABLE IN THE CRIMINAL
12 CONDUCT HERE ARE NORTH ATLANTIC AIRCRAFT SERVICES AND NORTH
13 ATLANTIC AIRCRAFT HOLDING, TWO COMPANIES THAT ARE HERE IN THE
14 UNITED STATES THAT ARE LARGELY CONTROLLED BY MR. MALAGO. FOR
15 THE RECORD, JUST FOR THE COURT'S EDIFICATION, MR. PETERS WAS
16 ONE OF THE ORIGINAL VICE-PRESIDENT I BELIEVE OF NORTH ATLANTIC
17 AIRCRAFT SERVICES. BUT HE SINCE HAS BEEN REMOVED FROM THAT
18 POSITION.

19 THE COMPANIES IN BRAZIL THAT THEY ARE SEEKING TO GET
20 THE MONIES FROM ARE SOUTH ATLANTIC TRADING AND AIRCRAFT
21 SERVICES I BELIEVE. CLOSE AFFILIATION IN NAME. WE KNOW THAT
22 THE PLANES ARE MOVING FROM THE U.S. DIRECTLY TO BRAZIL. WE
23 KNOW THAT THEY ARE HANGARED IN BRAZIL. WE KNOW THAT THEY ARE
24 HANGARED IN BRAZIL, WE BELIEVE, AT A HANGAR RUN AND CONTROLLED
25 FROM SOUTH ATLANTIC, AND THE BUSINESS PARTNER WHO IS LENDING

1 THE BULK OF THE MONIES, THE \$50,000 EFFECTIVELY DOES A JOB IN
2 BRAZIL THAT IS -- THE DOCUMENTATION AND THE PAPERWORK OF
3 BRINGING THE PLANE LAWFULLY INTO THE UNITED STATES WHICH SHOULD
4 CARRY WITH IT THE CONCOMITANT TAXES AND OBLIGATIONS THAT WOULD
5 GO WITH IMPORTING SUCH A LARGE SCALE ITEM INTO ANOTHER COUNTRY,
6 AND THAT IS IN FACT PART OF THE CRIMINALITY OF THIS SCHEME.

7 IN THE UNITED STATES IT'S LEAVING THE COUNTRY
8 ILLEGALLY REGISTERED. WHEN IT GETS INTO BRAZIL BY GOING INTO
9 THE COUNTRY IN THE MANNER IN WHICH MR. MALAGO IS ASSISTING IN
10 THE ILLEGAL REGISTRY, TAX ISSUES AND A VARIETY OF DOCUMENTATION
11 AND FEE ISSUES ARE NOT BEING PAID IN BRAZIL.

12 SO WHILE I CANNOT SAY, AND I AM NOT SAYING TO THIS
13 COURT THAT THIS BUSINESS PARTNER IS THE OTHER HALF OF THE
14 CRIMINAL SCHEME, HE MAY WELL BE. I CAN'T DETERMINE THAT SINCE
15 I WAS NOT NOTIFIED OF ANY OF THIS UNTIL TUESDAY MORNING AT NINE
16 O'CLOCK. I CAN'T MAKE ANY DETERMINATION, WHICH LEAVES THE
17 \$50,000 SUSPECT FOR ME. THE MONEY IS COMING ENTIRELY FROM
18 BRAZIL.

19 I CAN'T -- AGAIN, I'M GOING TO USE A HYPOTHETICAL, I
20 AM NOT SUGGESTING THIS IS WHAT HAPPENED, BUT JUST
21 HYPOTHETICALLY. SOMEONE COULD HAVE WALKED INTO ANY ONE OF
22 THOSE BANKS WITH, YOU KNOW, \$200,000 IN DRUG PROCEEDS, OPENED
23 UP AN ACCOUNT. THEY ARE NOW CREDITWORTHY IN THAT BANK AND
24 BORROWED 50,000 ON THE OTHER SIDE.

25 AGAIN, AS THE COURT KNOWS ME WELL ENOUGH, I AM NOT

1 SAYING THAT'S WHAT HAPPENED. I'M SAYING I CAN'T TELL YOU WHAT
2 HAPPENED BECAUSE I CAN'T GET AT THE ACCESS OR THE RECORDS TO
3 DETERMINE WHETHER THIS MONEY REALLY IS CLEAN.

4 SO, LAST BUT NOT LEAST, YOUR HONOR, MR. MALAGO HAS
5 REPRESENTED TO THE COURT IN THE PRETRIAL SERVICES REPORT THAT
6 HE MAKES \$68,000 A YEAR. FROM -- WE SEIZED, THE GOVERNMENT'S
7 SEIZED THESE PLANES IN MAY OF 2011. SEIZED FOUR PLANES TOTALLY
8 5.2 MILLION DOLLARS, YOUR HONOR.

9 WE WERE -- WE SPOKE TO AND INTERVIEWED MR. MALAGO THAT
10 DAY. WE HAVE BEEN -- I DON'T REMEMBER THE EXACT DATE IN WHICH
11 I INFORMED -- IF THE COURT MIGHT REMEMBER IN ONE OF THE EARLIER
12 HEARINGS THERE WAS A TEMPORARY APPEARANCE BY A GENTLEMAN BY THE
13 NAME OF DALE SISCO WHO IS A LAWYER OUT OF TAMPA I BELIEVE IT
14 IS. I DON'T REMEMBER THE EXACT DATE BUT I KNOW BY THE FALL OF
15 LAST YEAR I HAD INFORMED MS. SISCO PERSONALLY THAT I WAS
16 INTENDING TO INDICT MR. MALAGO, THAT THAT WAS ABSOLUTELY COMING
17 AND THE KINDS OF THINGS THAT I WAS GOING TO INDICT HIM ON.

18 SINCE AUGUST OF 2011, SO AFTER OUR SEIZURE AND AT OR
19 AROUND THE TIME THAT HE WAS NOTIFIED OF THE INTENTION TO BE
20 CHARGED, THROUGH DECEMBER OF 2011, MR. MALAGO HAS WHAT'S CALLED
21 REVERSED STRUCTURED. SO HE HAS A SET OF MONIES IN AN ACCOUNT
22 AND HE IS PULLING THEM OUT AS OPPOSED TO DEPOSITING THEM IN
23 BELOW THE REQUIRED REPORTING REQUIREMENTS TO THE TUNE OF A
24 \$112,503.

25 IN ADDITION, ON THE DAY -- OR AT OR ABOUT THE DAY OF

1 HIS ARREST HE TRANSFERRED \$90,000 TO MR. SISCO. THIS IS AN
2 INCREDIBLE AMOUNT OF MONEY WHEN YOU ADD UP THE TWO DIFFERENT
3 \$100,000 INCREMENTS TO MR. PETERS, THE TWO HUNDRED AND SOME
4 THOUSAND DOLLARS TO MR. BERDU, 112,000 THAT HE HAS REVERSED
5 STRUCTURED OUT HIMSELF, AND THE 90,000 WHICH DON'T GET ME WRONG
6 MAY BE LEGITIMATELY LEGAL FEES. BUT WHAT'S THE SOURCE OF ALL
7 OF THIS MONEY?

8 SO -- AND THERE HAVE BEEN MULTIPLE SARS FILED ON
9 MR. MALAGO'S ACCOUNTS UNRELATED TO THIS INVESTIGATION.

10 THE COURT: MULTIPLE WHAT?

11 MS. HOFFMAN: EXCUSE ME, YOUR HONOR. SARS, WHICH
12 STANDS FOR SUSPICIOUS ACTIVITY REPORTS THE BANKS ARE REQUIRED
13 TO FILE WHEN THE CONDUCT INHERENTLY RAISES QUESTION FOR WHETHER
14 THERE IS AN ILLEGALITY TO IT. AND THERE WAS AT LEAST TWO SARS
15 FILED ON THE KINDS OF TRANSACTIONS THAT MR. MALAGO WAS DOING
16 ACROSS THE FALL OF THIS PAST YEAR.

17 GIVEN ALL OF THESE CONCERNS I DO NOT BELIEVE THAT AT
18 THIS POINT MR. MALAGO HAS MET IN A SUFFICIENT STANDARD THE
19 NEBBIA CONDITIONS THAT WOULD BE NECESSARY FOR THIS COURT TO
20 TRUST THAT THE MONIES BEING DEPOSITED IN THE REGISTRY OF THIS
21 COURT ARE CLEAN, AND I WOULD ASK THAT THE NEBBIA BE REJECTED.

22 THE COURT: THANK YOU VERY MUCH, COUNSEL.
23 MISS RATZAN.

24 MS. RATZAN: THANK YOU VERY MUCH, YOUR HONOR.

25 YOUR HONOR SET A BOND IN THIS CASE ON A SIX COUNT

1 INDICTMENT CHARGING MOSTLY TITLE 49 VIOLATIONS THAT WOULD BE
2 CONSIDERED REGULATORY TYPE PLANE OFFENSES, REGULATORY PAPERWORK
3 OFFENSES.

4 YOUR HONOR, I CALLED THE SENTENCING COMMISSION
5 BECAUSE, OF COURSE, THE FIRST THING I DID WAS LOOK UP AND SEE
6 WHAT KIND OF OFFENSES WE ARE DEALING WITH BECAUSE THESE ARE NOT
7 EVEN IN THE GUIDELINES. THERE IS NOT A SECTION THAT
8 CORRESPONDS TO THE GUIDELINES.

9 THE SENTENCING COMMISSION SAID THAT THE MOST ANALOGOUS
10 OFFENSE WOULD BE 1001 TYPE OF OFFENSE WHICH WOULD BE A ZERO TO
11 SIX MONTH OFFENSE. IN OTHER WORDS, MY THOUGHT PROCESS HERE IS
12 IF I WOULD HAVE PLED MR. MALAGO TO THESE OFFENSES, WAIVED PSI
13 AND SENTENCED HIM HE WOULD PROBABLY ALREADY BE OUT.

14 HOWEVER, HE IS CHOOSING, OF COURSE, HIS RIGHT, AND
15 THIS CASE FROM EVERYTHING I HAVE BEEN INVOLVED WITH I WOULD SAY
16 TO THIS COURT IS ONE OF THE MOST UNBELIEVABLE CASES I EVER HAD
17 IN MY 20 YEAR CAREER.

18 HE SHOULD BE CHALLENGING THESE OFFENSES BECAUSE WHAT
19 THE GOVERNMENT HASN'T TOLD YOU IS DURING THE FOUR YEARS THAT
20 MR. MALAGO COOPERATED WITH THE UNITED STATES GOVERNMENT PUTTING
21 TRANSPONDERS ON PLANES, TALKING ABOUT TONS AND TONS AND TONS OF
22 COCAINE THAT WAS SEIZED, ILLEGAL PROCEEDS, ILLEGAL PLANES,
23 ILLEGAL DRUGS BECAUSE OF MR. MALAGO'S ASSISTANCE WITH ICE THAT
24 THEY WERE SO PLEASED WITH HIM, AND IN FACT HE HAD AT ONE POINT
25 ENDANGERED HIMSELF SO MUCH THAT THEY ASKED HIM THAT IT WAS TIME

1 FOR HIM TO MOVE FROM BRAZIL TO THE UNITED STATES.

2 THEY ASSISTED IN THAT PROCESS, AND SINCE THEN IT HAS
3 BEEN THE GOVERNMENT'S BELIEF, IN PARTICULAR THE AGENTS AND
4 PROSECUTOR HERE, THAT MR. MALAGO AND THE ICE AGENTS THAT HE
5 COOPERATED WITH WERE SOMEHOW DOUBLE-DEALING, OR SOMEHOW THERE
6 WAS SOME UNLAWFUL ACTIVITY THAT WENT ON. AND THAT THOSE ICE
7 AGENTS, WHO BY THE WAY ARE STILL WORKING FOR THE GOVERNMENT AT
8 THIS TIME, DID SOMETHING UNLAWFUL. SINCE THAT TIME IN 2008 TO
9 THE PRESENT THEY HAVE DONE NOTHING, THE GOVERNMENT, BUT ATTEMPT
10 TO PUT SIGNIFICANT PRESSURE ON MR. MALAGO TO COOPERATE AND FLIP
11 AGAINST THESE ICE AGENTS.

12 HE HAS ASSISTED THEM IN EVERY WAY HE POSSIBLY CAN,
13 TOLD THEM EVERYTHING HE COULD. THEY JUST DON'T BELIEVE HIM.
14 AND WE HAVE BEEN WAITING FOR YEARS FOR THEM TO NOW COME UP WITH
15 THE INDICTMENT WITH THE ICE AGENTS AND MR. MALAGO SO THAT WE
16 COULD JUST ADDRESS THIS SQUARE ON. BUT YOUR HONOR SHOULD KNOW
17 A FEW OTHER THINGS.

18 IN ADDITION TO THE FACT THAT MR. MALAGO WAS HANDLING
19 ALL OF THESE PLANE DEALS FOR THE GOVERNMENT WITH ICE, WITH NOT
20 ONLY THEIR PERMISSION BUT THEY SET UP A COMPANY FOR HIM TO DO
21 IT, HE WAS DOING THE PLANE TRANSACTIONS EXACTLY THE SAME WAY AS
22 THE PLANE TRANSACTIONS HE WAS INDICTED FOR HERE AS WE SIT HERE
23 TODAY. SO, FOR SOME REASON IT WAS LAWFUL AND OKAY DURING THAT
24 TIME PERIOD, NOBODY EVERY NOTIFIED HIM THAT THE WAY HE WAS
25 HANDLING THESE TRANSACTIONS WAS IN VIOLATION OF FEDERAL LAW IN

1 ANY WAY, SHAPE, OR FORM OR HE WOULDN'T HAVE DONE THAT.

2 IN ADDITION, MR. MALAGO WENT OUT OF HIS WAY TO HIRE
3 AVIATION COUNSEL TO MAKE SURE THAT ALL OF THE PAPERWORK IS DONE
4 CORRECTLY. YOUR HONOR SHOULD KNOW THAT ALL OF THESE PLANE
5 TRANSACTIONS, WE ARE TALKING ABOUT THE SALE OF PLANES, ARE
6 MOSTLY DONE THIS WAY, THE SAME WAY MR. MALAGO DOES THEM BY
7 EVERYONE ELSE IN THE INDUSTRY, INCLUDING WELLS FARGO BANKS AND
8 EVERYONE ELSE WHO PARTICIPATE IN ESCROWING MONEY FOR THE SALE
9 OF A PLANE. YOU KNOW, YOUR HONOR, SELL ANYTHING. BUT IN THIS
10 CASE IT'S A PLANE.

11 A PERSON SELLS IT, MONEY GOES INTO ESCROW, PAPERWORK
12 GETS DONE, SOMEBODY BUYS IT, TITLE ISN'T TRANSFERRED UNTIL ALL
13 THE TRANSACTIONS AND ALL THE PAPERWORK ARE LAWFULLY DONE SO
14 THAT EVERYBODY MAKES SURE THAT IT IS A LEGITIMATE DEAL, NUMBER
15 ONE, ALL THROUGH BANKS, ALL THROUGH ESCROW AGENTS, ALL DONE
16 WITH -- MR. MALAGO HAS AN FAA DEALER CERTIFICATE. HE HAS TO
17 PROVIDE PAPER FORK TO THE FAA. NO ONE HAS EVER PLACED HIM ON
18 NOTICE AT ALL DURING ALL OF THE YEARS THAT HE HAS BEEN DOING
19 THIS THAT THERE HAS EVER BEEN ANY PROBLEM.

20 IN 2008, YOUR HONOR, A SEARCH WARRANT WAS ISSUED FOR
21 MR. MALAGO'S HOME, PRESUMABLY AND I SAY PRESUMABLY BECAUSE THE
22 AFFIDAVIT IN SUPPORT OF THAT SEARCH WARRANT REMAINS UNDER SEAL
23 TO THIS DAY IN THIS DISTRICT. FROM 2008, PRESUMABLY IT'S ABOUT
24 THE ICE AGENTS AND HIS COOPERATION WITH --

25 THE COURT: REPEAT THAT SENTENCE OVER AGAIN ABOUT THIS

1 AFFIDAVIT.

2 MS. RATZAN: THERE IS A WARRANT THAT WAS ISSUED TO
3 SEARCH MR. MALAGO'S RESIDENCE IN 2008. ALL OF THE PAPERWORK,
4 OTHER THAN THE ACTUAL WARRANT, REMAIN UNDER SEAL TO THIS DAY.

5 I PRESUME THAT THE PURPOSE OF THAT WARRANT WAS FOR
6 THEM TO CONTINUE THIS INVESTIGATION INTO MR. MALAGO AND THE
7 GOVERNMENT'S BELIEF ARE THINKS DIRTY ICE AGENTS. I DON'T KNOW
8 BECAUSE ALL THE PAPERWORK IS UNDER SEAT SEAL. BUT THAT IS MY
9 PRESUMPTION BASED UPON WHAT THEY SEIZED AT THAT TIME,
10 COMPUTERS, DOCUMENTS, RECORDS, IT WAS ALL THAT KIND OF
11 INFORMATION --

12 THE COURT: HAVE YOU MOVED TO UNSEAL THAT OR MADE ANY
13 OTHER EFFORTS TO REVIEW THAT DOCUMENT?

14 MS. RATZAN: NO, YOUR HONOR. I RECENTLY CAME INTO
15 THIS CASE.

16 THE COURT: RIGHT.

17 MS. RATZAN: SO WHAT HAPPENED IS, MR. MALAGO HAS AN
18 IMMIGRATION HEARING SCHEDULED FOR TOMORROW, BECAUSE IN ADDITION
19 TO THE GOVERNMENT INDICTING HIM ON THESE REGULATIONS THEY TELL
20 HIM TO COME TO THE UNITED STATES BECAUSE HIS LIFE IS IN DANGER
21 AS A RESULT OF HIS COOPERATION AND A PLANE CRASHING AND THEY
22 FELT THAT HE WAS PROBABLY OUT IT AT THAT POINT, SOMETHING THAT
23 HAS BEEN CONFIRMED BECAUSE ITS IS ALL OVER THE INTERNET.

24 HOWEVER, THE AGENTS, ICE AGENTS, TELL HIM, PLEASE COME
25 TO THE UNITED STATES. HE COMES TO THE UNITED STATES. THEY

1 PROMISE HIM THAT THEY ARE GOING TO GIVE HIM S VISAS AND HELP
2 HIM OUT, AND THEN WHEN THE GOVERNMENT BELIEVED THAT HE WAS
3 DIRTY WITH THEIR ICE AGENTS AND THEY COULDN'T GET HIM TO SAY
4 THAT SINCE HE SAT DOWN AND COOPERATED WITH THEM EXTENSIVELY BUT
5 THEY DIDN'T LIKE WHAT HE HAD TO SAY, THEY ALSO AT THAT POINT
6 AFFECTED HIS VISAS AND HIS STATUS AND HE HAS REMAINED IN THIS
7 COUNTRY SINCE 2008 WITHOUT THE ABILITY TO TRAVEL. HE HAS AN
8 IMMIGRATION HEARING SCHEDULED TOMORROW AND --

9 THE COURT: AN IMMIGRATION HOLD WAS PLACED ON HIM
10 PRIOR TO HIM BEING INDICTED IN THIS CASE.

11 MS. RATZAN: THERE IS NOT A HOLD, YOUR HONOR.

12 IMMIGRATION COUNSEL IS PRESENT AND PROBABLY CAN
13 EXPLAIN HIS IMMIGRATION STATUS A LITTLE BIT BETTER THAN I CAN.
14 BUT AS I UNDERSTAND IT THERE IS NOT A HOLD. WHAT THERE IS, IS
15 A CHALLENGE TO HIS ABILITY TO REMAIN IN THE UNITED STATES AND
16 HE IS SEEKING ASYLUM BASED ON THE FACT THAT IF HE GOES -- IF HE
17 IS DEPORTED --

18 THE COURT: OKAY. IT SOUNDS LIKE HE WAS -- AND AGAIN
19 DON'T READ ANYTHING INTO THIS.

20 MS. RATZAN: NO. NO. SURE.

21 THE COURT: HE WAS TRICKED INTO THIS COUNTRY AND NOW
22 HE CAN'T LEAVE BECAUSE IMMIGRATION IS HOLDING HIM. IN FACT,
23 BEFORE HIS INDICTMENT I GUESS, OR MAYBE EVEN NOW, HE WANTS TO
24 REMAIN IN THIS COUNTRY, IS THAT RIGHT?

25 MS. RATZAN: WELL, I THINK BECAUSE OF HIM COMING INTO

1 THIS COUNTRY ACTUALLY GETS A LITTLE BIT MORE TAWDRY THAN THAT.

2 THE COURT: ALL RIGHT.

3 MS. RATZAN: HE CAN'T LEAVE. IF HE GOES BACK TO
4 BRAZIL HE WILL SURELY BE KILLED. THAT IS ALL OF OUR POSITIONS.

5 I THINK IF THE ICE AGENTS WERE TO SHOW UP THEY WOULD
6 PROBABLY CONFIRM SOMETHING ALONG THOSE LINES BECAUSE THAT'S THE
7 REASON THEY BROUGHT HIM HERE. CERTAINLY IF HIS COOPERATION WAS
8 KNOWN THAT HE WAS ASSISTING THE GOVERNMENT PUTTING TRANSPONDERS
9 ON PLANES THAT HE WAS SELLING TO INDIVIDUALS IN SOUTH AMERICA,
10 AND THOSE PLANES TURNED OUT TO HAVE NARCOTICS AND THAT THEY
11 WERE SEIZED I DON'T THINK THAT THOSE INDIVIDUALS WOULD TAKE
12 KINDLY TO THAT SORT OF COOPERATION. AND, SO HE IS IN A CATCH
13 22 AND HAS BEEN SO SINCE 2008.

14 BUT I HAVE TO MOVE BACK ACTUALLY A LITTLE EVEN MORE.
15 IN 2008 WHEN THEY SEARCHED MR. MALAGO'S RESIDENCE, THEY FIND A
16 COUPLE OF FIREARMS. HE IS NOT AT THAT TIME A UNITED STATES
17 CITIZEN, AND THEREFORE THAT IS TECHNICALLY A VIOLATION OF
18 FEDERAL LAW. SO THE SOUTHERN DISTRICT OF NEW YORK, DON'T EVEN
19 ASK ME HOW THEY GET INVOLVED, I HAVE NO IDEA. BUT THE SOUTHERN
20 DISTRICT OF NEW YORK -- THE SEARCH OCCURS IN PALM BEACH HERE IN
21 FLORIDA. THE SOUTHERN DISTRICT OF NEW YORK INDICTS HIM ON
22 THOSE CHARGE IS.

23 THE AGENTS SAY, PLEASE COME AND COOPERATE WITH US AND
24 WE WILL BE HAPPY TO RESOLVE THOSE CHARGES. MR. MALAGO AND HIS
25 COUNSEL, MR. SISCO, THAT YOU HAVE HEARD ABOUT FLY UP TO

1 NEW YORK ON A NUMBER OF OCCASIONS AND HE IS DEBRIEFED A NUMBER
2 OF TIMES, OF COURSE, NOTHING HAVING TO DO WITH THE FIREARMS BUT
3 HAVING EVERYTHING TO DO WITH THE DIRTY ICE AGENTS.

4 HE, OF COURSE, TELLS HIM EVERYTHING HE KNOWS AND THEY
5 AT THAT TIME PLACE THAT CASE IN DEFERRED PROSECUTION. HE
6 RECEIVES A DEFERRED PROSECUTION AGREEMENT AT NEW YORK, YET
7 EVERYTHING REMAINS SEALED FROM THE 2008 SEARCH WARRANT.

8 NOW I CAN FAST FORWARD A LITTLE BIT TO SOME CURRENT
9 TIMES. IN 2011 YOU HEARD FROM THE GOVERNMENT THEY SEIZED THE
10 PLANES THAT ARE THE SUBJECT OF THE INDICTMENT. DURING THAT
11 TIME FRAME --

12 THE COURT: IN WHAT YEAR?

13 MS. RATZAN: 2011, MAY OF 2011, SO COMING UP SOON
14 ALMOST A YEAR AGO. AND AS MISS HOFFMAN EXPLAINED TO THE COURT
15 SHE EXPRESSED TO MR. SISCO THAT THEY WERE GOING TO BE INDICTING
16 MR. MALAGO, AND SHE HAS EXPRESSED THOSE VERY SAME SENTIMENTS TO
17 ME, THAT THEY ARE GOING TO BE INDICTING MR. MALAGO. SHE HAS
18 EXPRESSED THEM TO YOUR HONOR AT THE BOND HEARING, THEY ARE
19 GOING TO BE INDICTING MR. MALAGO ON SOME NARCOTICS OFFENSE.

20 I'M NOT SURE IF IT IS THE NARCOTICS OFFENSE THAT
21 RELATES TO THESE ALLEGED ICE AGENTS OR SOMETHING ELSE. BUT ALL
22 OF THIS, YOUR HONOR, IS IN AN EFFORT TO GET MR. MALAGO TO
23 COOPERATE AGAINST THE ICE AGENTS, WHICH HE HAS TRIED TO DO FROM
24 THE BEGINNING BUT UNFORTUNATELY THE GOVERNMENT DOESN'T BELIEVE
25 THAT HE SIMPLY DOESN'T POSSESS THE INFORMATION THAT THEY WANT.

1 IF HE DID HE WOULD HAVE WILLINGLY GIVEN IT TO THEM
2 SINCE HE HAS DONE NOTHING SINCE 2004 BUT COOPERATE WITH THE
3 UNITED STATES AT EVERY SINGLE TURN, WITHOUT COUNSEL, WITH
4 COUNSEL, WHEN REQUESTED, WHEN NOT REQUESTED. I MEAN, IT IS AN
5 UNBELIEVABLE AMOUNT OF COOPERATION AND YET HERE WE STAND WITH
6 ZERO TO THREE FAA PLANE REGULATION VIOLATIONS AND \$100,000 CASH
7 BOND THAT THE GOVERNMENT NOW SAYS THAT THE NEBBIA IS
8 INSUFFICIENT BECAUSE SOMEHOW THE PEOPLE THAT ARE HELPING
9 MR. MALAGO POST THE BOND HAD BUSINESS DEALINGS WITH HIM IN THE
10 PAST. AND, SO I GUESS THE GOVERNMENT'S ATTITUDE IS ALL OF
11 MR. MALAGO'S BUSINESS IS SOMEHOW ILLEGITIMATE IN ANY, WAY,
12 SHAPE, OR FORM.

13 I WANT TO TOUCH NOW ON THE PROFFER, YOUR HONOR. I
14 PROVIDED THIS COURT AND THE GOVERNMENT WITH AS MUCH
15 DOCUMENTATION AS I HAVE EVER PROVIDED IN A NEBBIA BEFORE THIS
16 COURT OR ANY OTHER IN MY 20 YEARS.

17 LARRY PETERS AND LISA PETERS, BY THE WAY, YOUR HONOR,
18 POSTED THE BOND USING THEIR HOME IN THE NEW YORK CASE THAT I
19 TALKED ABOUT FROM 2008, AND IT WAS DEEMED SUFFICIENT BY A
20 PROSECUTOR UP THERE, AND IT WAS DEEMED SUFFICIENT BY A COURT
21 THAT THEIR HOME COULD BE USED TO COLLATERALIZE A BOND IN THAT
22 PARTICULAR CASE.

23 AND, OH, BY THE WAY, MR. MALAGO HAS APPEARED FOR EVERY
24 SINGLE COURT HEARING THAT HE HAS EVER BEEN REQUIRED TO. AND,
25 BY THE WAY, HAD MISS HOFFMAN LET EITHER MR. SISCO OR MYSELF

1 KNOW ABOUT THIS IMPENDING ONE HE WOULD HAVE SURRENDERED ON THAT
2 AS WELL. SINCE SHE HAS OBVIOUSLY MADE HER POSITION CLEAR THAT
3 SHE IS GOING TO CONTINUE TO INDICT HIM WE WILL MAKE HIM
4 AVAILABLE ON LETTING THIS COURT AND MISS HOFFMAN KNOW RIGHT
5 NOW, IF HE NEED BE ANYWHERE WE WILL HAVE MR. MALAGO HERE. HE
6 OBVIOUSLY CAN'T LEAVE THE UNITED STATES. HE HAS IMMIGRATION
7 COUNSEL WHO IS HANDLING HIS IMMIGRATION MATTERS. WHENEVER YOUR
8 HONOR OR MISS HOFFMAN NEED HIM WE WILL MAKE HIM AVAILABLE.

9 BUT IT APPEARS --

10 THE COURT: YOU ARE SAYING THIS IS THE ONE AIRPLANE
11 CASE WHERE THE DEFENDANT IS NOT A FLIGHT RISK.

12 MS. RATZAN: EXACTLY SINCE HE CAN'T GET ON THEM AND
13 FLY THEM ANYWAY NOR WOULD HE.

14 BUT, YOUR HONOR, ON LARRY PETERS AND LISA PETERS, THE
15 DOCUMENTS PROVIDED, YOUR HONOR, ALL OF THE MONIES BY THE WAY TO
16 SUPPORT THIS BOND COME FROM BANKS. ALL OF THOSE MONIES HAVE
17 BEEN WIRED INTO MY PERSONAL TRUST ACCOUNT. THE CHECK THAT I
18 WILL BE PROVIDING TO THE CLERK OF THE COURT IN THIS PARTICULAR
19 CASE IS A MYCKI RATZAN P.A. TRUST ACCOUNT CHECK, AND ALL MONIES
20 HAVE BEEN WIRED TO ME DIRECTLY FROM BANKS. SO I JUST WANT THAT
21 CLEAR.

22 SO MR. PETERS AND MRS. PETERS, HIS WIFE, WHO BY THE
23 WAY MR. PETERS RETIRED, YOUR HONOR, FROM UNITED STATES AIRWAYS,
24 U.S. AIRWAYS, WHERE HE WAS EMPLOYED FOR 33 YEARS AND RECEIVES A
25 CONSIDERABLE PENSION FROM HIS RETIREMENT, THEN SUBSEQUENTLY

1 OPENED UP THE COMPANY THAT MISS HOFFMAN HAS DISCUSSED.

2 BUT IT IS IMPORTANT FOR YOUR HONOR TO NOTE THAT
3 MR. PETERS ALSO COOPERATED EXTENSIVELY WITH THE UNITED STATES
4 GOVERNMENT, HAS NEVER BEEN INDICTED, HAS NOT BEEN THREATENED TO
5 BE INDICTED, AND IT IS HIS MERE I GUESS CLOSENESS WITH THE
6 DEFENDANT THAT RENDERS HIS NAME I GUESS DISPARAGED HERE IN THIS
7 COURT.

8 BUT MR. AND MRS. PETERS TOOK OUT A \$144,000 LINE OF
9 CREDIT WITH FIRST COMMUNITY BANK OF AMERICA IN
10 SAINT PETERSBURG, FLORIDA, IN 2007. THAT LINE OF CREDIT HAS
11 REMAINED IN PLACE SINCE 2007, AND THERE IS APPROXIMATELY AT
12 THIS TIME \$44,139.81 REMAINING ON THAT LINE. THAT LINE IS
13 COLLATERALIZED BY THEIR HOME IN THE SAINT PETE AREA THAT THEY
14 HAVE OWNED FOR THE PAST 20 YEARS.

15 THE BANK OBVIOUSLY HAS CHECKED OUT THEIR HOME AND
16 BELIEVES IT HAS SUFFICIENT VALUE IN ORDER FOR THEM TO BE ABLE
17 TO QUALIFY FOR THIS LOAN. THEY OBVIOUSLY -- THE BANK BELIEVES
18 THAT THEY HAVE SUFFICIENT FUNDS TO PAY A LOAN BACK OR THEY
19 WOULDN'T BE GIVEN, AND THE NOTE BECOMES DUE IN 2022.

20 THEY UPON THEIR REQUEST TOOK OUT \$30,000 OF THE
21 REMAINING \$44,000 FROM THAT LINE OF CREDIT AND HAD THAT WIRED
22 DIRECTLY FROM THEIR BANK, COMMUNITY BANK IN SAINT PETERSBURG TO
23 MY TRUST ACCOUNT. SO THIS IS BANK LOAN MONEY COMING TO MY
24 TRUST ACCOUNT. I CAN THINK OF NO CLEANER SOURCE OF FUNDS THAN
25 THAT.

1 AND, YOU KNOW, IF YOUR HONOR WANTS TO GIVE ME SOME
2 IDEA OF WHAT ELSE I COULD POSSIBLY PROVIDE TO SHOW THIS COURT
3 THAT THAT IS LEGITIMATE FUNDS. I MEAN, YOUR HONOR IS WELL
4 AWARE FROM THE YEARS YOU HAVE BEEN ON THE BENCH LONGER THAN I
5 HAVE BEEN PRACTICING, NEBBIA IS IN PLACE TO MAKE SURE THAT THE
6 FUNDS THAT ARE USED TO SUPPORT A BOND ARE NOT ILLICIT OR
7 ILLEGAL FUNDS. THE IDEA BEING BACK IN 1966 WHEN THE NEBBIA
8 CASE CAME AROUND THAT THE MOBSTERS WHEN THEY WERE GOING TO BE
9 ARRESTED WERE GOING TO POST CASH BONDS AND NOT CARE ABOUT THE
10 SOURCE OF THE FUNDS BECAUSE IT WOULD BE ILLEGAL AND TAKE OFF.

11 HERE WE HAVE AN INSTANCE WHERE MONEY IS COMING FROM A
12 BANK BASED ON A LINE OF A CREDIT ON A HOME THAT IF THE PETERS
13 DON'T PAY IT BACK THEY WILL LOSE THEIR HOME. IT WOULD BE -- IT
14 IS ALMOST, IF NOT BETTER, AS GOOD AS POSTING YOUR ACTUAL HOUSE
15 FOR A BOND BECAUSE THE HOUSE IS COLLATERALIZING THE LOAN THAT'S
16 GIVING THE MONEY.

17 SO \$30,000 DIRECTLY FROM A BANK CAN'T BE ILLEGAL FUNDS
18 IN ANY WAY, SHAPE, OR FORM. IT IS BANK MONEY UNLESS THE FIRST
19 COMMUNITY BANK OF AMERICA IS PARTICIPATING IN SOME UNLAWFUL
20 SCHEME THAT I'M UNAWARE OF. I'M SURE THE PEOPLE OF THE UNITED
21 STATES THINK ALL BANKS ARE PARTICIPATING IN A SCHEME THIS DAY
22 AND AGE. BUT AS FAR AS I KNOW, THE BANK HAS NOT BEEN INDICTED
23 FOR ANYTHING AND THEIR FUNDS ARE LAWFUL.

24 I AM GOING TO SKIP TO THE LAST \$15,000 BEFORE I
25 DISCUSS THE MONEY FROM BRAZIL BECAUSE IT SEEMS TO BE THE EASIER

1 WAY TO DO IT.

2 THE SAME SITUATION RELATES TO MR. BRAD BERDU, WHERE
3 \$15,000 IS COMING FROM PNC BANK. MR. BERDU IS THE OWNER AND
4 PRESIDENT OF B. D. AEROWORKS, LIMITED, AND HAS BEEN SO FOR
5 EIGHT YEARS. THE DOCUMENTS I ATTACHED, YOUR HONOR, INCLUDE THE
6 COPY OF THE PNC BANK ACCOUNT WHERE THE MONEY IS COMING FROM
7 SHOWING THAT HE HAS A BALANCE AS OF JANUARY 31ST OF THIS YEAR
8 OF \$62,000.

9 THERE IS A COPY OF HIS PARTNERSHIP AND CORPORATION
10 DOCUMENTS SHOWING THAT HE IS LAWFULLY INCORPORATED IN THE STATE
11 OF OHIO TO RUN THIS BUSINESS. THERE IS A COPY OF TAX DOCUMENTS
12 SHOWING THAT HIS BUSINESS MAKES MONEY. AND IF FOR SOME REASON
13 THE GOVERNMENT THINKS THAT MR. BERDU IS SOMEHOW ENGAGED IN
14 UNLAWFUL BUSINESS WITH MR. MALAGO I AM PRETTY SURE THE
15 \$77,700.26 SHOWING ON HIS TAX RETURNS AS GROSS RECEIPTS DID NOT
16 ALL COME FROM MR. MALAGO.

17 AND, IN FACT, HE PROVIDED AN AFFIDAVIT, YOUR HONOR, TO
18 THIS COURT EXPRESSING THAT HE IS HELPING MR. MALAGO BECAUSE OF
19 HIS CLOSE PERSONAL RELATIONSHIP WITH HIM AND THAT NONE OF THE
20 MONIES THAT HE IS USING HAVE COME FROM, WILL COME FROM
21 MR. MALAGO. THEY ARE IN FACT MONIES FROM HIS BUSINESS THAT HE
22 OPERATES INDEPENDENTLY OF MR. MALAGO.

23 THEY ACTUALLY HAPPEN TO HAVE BUSINESS TOGETHER BECAUSE
24 AS THE GOVERNMENT EXPLAINED HIS COMPANY IS VERY WELL KNOWN FOR
25 THE AIRWORTHINESS AND A LOT OF COMPANIES USE HIM, INCLUDING A

1 NUMBER OF MULTI-NATIONAL CORPORATIONS ALL OVER THE UNITED
2 STATES WHEN THEY WANT TO EXPORT PLANES MAKING SURE THEY ARE
3 AIRWORTHY BEFORE THEY FLY THEM OUT OF THE COUNTRY AND SELL THEM
4 TO OTHER INDIVIDUALS.

5 AND, SO AGAIN THAT MONEY FROM MR. BERDU CAME DIRECTLY
6 FROM PNC BANK TO MY TRUST ACCOUNT AT MY BANK HERE IN MIAMI,
7 FLORIDA. SO AGAIN WE ARE TALKING ABOUT BANK FUNDS. THESE ARE
8 MONIES IN HIS BUSINESS BANK ACCOUNT COMING DIRECTLY TO MY BANK
9 ACCOUNTS. AND THAT TOTALS \$45,000.

10 IF YOUR HONOR IS HESITANT IN ANY WAY, SHAPE, OR FORM
11 ABOUT USING THE FUNDS COMING FROM BRAZIL, WHICH I WILL TALK
12 ABOUT, I BELIEVE BASED ON THE PRETRIAL SERVICE REPORT -- AND I
13 UNDERSTAND WHY YOUR HONOR PUT IN PLACE THE \$100,000 CASH BOND
14 I -- YOU KNOW, LISTENING TO THE GOVERNMENT IN DRUGS AND PLANES
15 AND ALL SORTS OF STUFF I WOULD OBVIOUSLY ERR ON THE SIDE OF
16 CAUTION AS WELL.

17 THE COURT: DID THE GOVERNMENT REQUEST DETENTION IN
18 THIS CASE?

19 MS. HOFFMAN: WE DID NOT, YOUR HONOR. WE REQUESTED A
20 HIGH CORPORATE SURETY AND THE COURT DID IT AS A CASH BOND
21 INSTEAD.

22 MS. RATZAN: IF YOUR HONOR IS AT ALL CONCERNED ABOUT
23 THE BRAZIL MONEY, RIGHT THERE IS \$45,000 WHICH I THINK IS
24 SUFFICIENT FOR THE BOND ON THESE PARTICULAR CHARGES. IF THE
25 GOVERNMENT DECIDES AT SOME LATER POINT THAT THEY ARE GOING TO

1 INDICTS HIM FOR SOMETHING ELSE CERTAINLY --

2 THE COURT: I'M SORRY, THE \$45,000 YOU ARE REFERRING
3 TO WHAT?

4 MS. RATZAN: I ALL REFERRING TO THE \$30,000
5 CONTRIBUTION FROM THE PETERS BASED UPON THE TRANSFER FROM THE
6 BANK TO ME, AND THE \$15,000 FROM --

7 THE COURT: OKAY.

8 MS. RATZAN: -- FROM MR. BERDU. SO I'M SECTIONING OUT
9 ANY MONEY COMING FROM OVERSEAS.

10 THE COURT: SO NOW WE ARE TALKING ABOUT \$55,000 FROM
11 BRAZIL.

12 MS. RATZAN: AND NOW WE ARE GOING TO TALK ABOUT
13 \$55,000 FROM BRAZIL.

14 LIKewise, THE \$55,000 FROM BRAZIL, YOUR HONOR, IS
15 COMING DIRECTLY FROM A BANK. BANK SANTANDER IN BRAZIL DIRECTLY
16 TO MY TRUST ACCOUNT -- WELL, IT TOOK A STEP BECAUSE THE MONEY
17 WAS BASED UPON LOANS THAT HIS BROTHER, MR. MALAGO'S BROTHER,
18 RECEIVED IN BRAZIL FROM BANK SANTANDER. THOSE MONIES WERE THEN
19 TRANSFERRED TO MR. MALAGO'S PERSONAL ACCOUNT HERE IN FLORIDA
20 THAT HE HAS WITH HIS WIFE WHO IS PRESENT BEFORE THE COURT, AND
21 THAT MONEY WAS THEN TRANSFERRED FROM THAT ACCOUNT DIRECTLY TO
22 MY ACCOUNT.

23 THE MONEY FROM BRAZIL, YOUR HONOR, CAME DIRECTLY FROM
24 MR. LUIZ MALAGO WHO IS MY CLIENT'S 48 YEAR OLD BROTHER. HE
25 RESIDES IN BRAZIL WITH HIS WIFE AND HIS FAMILY. HIS WIFE IS AN

1 EMPLOYEE OF A BANK, AND MR. MALAGO WAS PREVIOUSLY EMPLOYED -- I
2 WANT TO SAY WITH THE GOVERNMENT BUT I'M NOT QUITE SURE IN A
3 JOB -- IN A CUSTOMS TYPE SORT OF JOB THAT HE WAS TERMINATED
4 FROM AND HE RECEIVED A LARGE SETTLEMENT OR DISPENSATION FROM
5 THAT --

6 THE COURT: WOULD YOU REPEAT THAT SENTENCE AGAIN?

7 MS. RATZAN: SURE. MR. MALAGO -- NOT THIS

8 MR. MALAGO -- I'M GOING TO CALL HIM LUIZ MALAGO JUST TO MAKE
9 LIFE EASY.

10 LUIZ MALAGO WAS TERMINATED FROM A JOB THAT HE HELD FOR
11 A VERY LONG PERIOD OF TIME IN BRAZIL, AND AS A RESULT HE
12 RECEIVED A LARGE AMOUNTS OF MONEY AS A SEVERANCE.

13 THE COURT: WHY WAS HE TERMINATED?

14 MS. RATZAN: I BELIEVE THAT -- IF I RECALL CORRECTLY
15 THAT THE BUSINESS -- THE COMPANY HE WAS WORKING FOR WHATEVER,
16 IF IT WAS TIED WITH THE GOVERNMENT OR NOT ENDED UP DOWNSIZING
17 AND AS A RESULT HE WAS DOWNSIZED OUT OF THE JOB. IN BRAZIL
18 THEY HAVE INTERESTING LEGAL RULES AND IT ALLOWED HIM TO RECEIVE
19 SEVERANCE BECAUSE OF THAT SITUATION.

20 HE USED THAT MONEY TO START HIS OWN COMPANY CALLED
21 SOUTH ATLANTIC TRADING COMPANY. HE IMPORTS ALL TYPES OF GOODS
22 INTO BRAZIL, YOUR HONOR, INCLUDING AGRICULTURAL, FOODS STUFFS.
23 ATTACHED TO MY NEBBIA PROFFER, YOUR HONOR, IS A COPY OF THE
24 CORPORATE DOCUMENTS FROM BRAZIL SHOWING THE PURPOSE OF HIS
25 BUSINESS AND EXACTLY WHAT IT DOES AND THE OWNERSHIP STRUCTURE

1 OF THAT BUSINESS.

2 ALSO ATTACHED IS A COPY OF THE LOAN APPLICATION THAT
3 HE FILED WITH BANK SANTANDER. HE RECEIVED TWO LOANS FROM THE
4 BANK, ONE BUSINESS LOAN BASED UPON HIS BUSINESS CREDIT AND THE
5 MONEY THAT HE GENERATES FROM A HIS BUSINESS, AND A SECOND LOAN,
6 YOUR HONOR, THAT IS A PERSONAL LOAN TO HIM BASED UPON THE FACT
7 THAT HE OWNS A HOME THAT HE HAS A SUBSTANTIAL AMOUNT OF ASSETS
8 INCLUDING, YOUR HONOR, PART OF THE MONEY THAT HE RECEIVED AS A
9 SEVERANCE PAY IN HIS ACCOUNTS WITH BANK SANTANDER, AND HIS AND
10 HIS WIFE'S INCOME AS REPORTED ON THEIR TAX DOCUMENTS THAT I
11 ALSO PROVIDED COPIES OF WITH TRANSLATIONS FOR THIS COURT.

12 THE TOTAL AMOUNT OF THOSE TWO LOANS, YOUR HONOR, IS
13 65,000 REIS, WHICH TRANSLATES TO APPROXIMATELY \$30,000 WHEN YOU
14 HANDLE THE CONVERSION --

15 THE COURT: THIS IS MONEY THAT THE BROTHER BORROWED?

16 MS. RATZAN: BORROWED FROM THE BANK. AND BANK
17 SANTANDER LOANED HIM THIS MONEY, AND THAT MONEY WAS DIRECTLY
18 TRANSFERRED TO THE MALAGO'S PERSONAL BANK ACCOUNT AND THEN
19 SUBSEQUENTLY TO MINE. THE WIRE TRANSFERS, INCLUDING THE COMEX
20 REPORT THAT COMES FROM BRAZIL WHENEVER MONEY IS TRANSFERRED IS
21 ALL ATTACHED AS PART OF THE NEBBIA PROFFER.

22 IN ADDITION, MR. LUIZ MALAGO PROVIDED A DECLARATION TO
23 THIS COURT THAT IS OTHERWISE KNOWN AS AN AFFIDAVIT TO US THAT
24 THE MONEY IS COMING FROM LOANS THAT HE RECEIVED DIRECTLY FROM
25 THE BANK, THAT THE INCOME TO SUPPORT THE LOANS IS FROM HIS

1 PERSONAL INCOME AND HIS WIFE'S INCOME, AS WELL AS HIS BUSINESS
2 INCOME, AND THAT HIS BROTHER IS NOT GOING TO BE PAYING FOR
3 THOSE LOANS OR PROVIDING HIM ANY OF THE MONEY BACK FOR THOSE
4 LOANS. THAT HE IS PERSONALLY RESPONSIBLE FOR THOSE LOANS. AND
5 ALL OF THOSE DOCUMENTS ARE PROVIDED IN THE NEBBIA PROFFER.

6 THE LAST PORTION OF THE LOAN, WHICH IS 50,000 REIS --
7 AM I PRONOUNCING THAT RIGHT? REIS, WHICH IS A BRAZILIAN
8 CURRENCY, WHICH EQUATES TO ABOUT \$25,000 U.S. CURRENCY IS A
9 LOAN THAT MR. LUIZ MALAGO, THE DEFENDANT'S BROTHER, RECEIVED
10 FROM A BUSINESS ASSOCIATE. THAT IS THE BUSINESS ASSOCIATE THAT
11 THE GOVERNMENT HAS CLAIMED IS POTENTIALLY INVOLVED IN
12 SOMETHING, ALTHOUGH WHAT I OF COURSE DON'T KNOW BECAUSE I DON'T
13 HAVE ACCESS TO THEIR DOCUMENTS.

14 THAT INDIVIDUAL WORKS IN A CUSTOMS TYPE CAPACITY. HE
15 IS RESPONSIBLE FOR, I THINK THE WORD WE WOULD USE IN THE UNITED
16 STATES EXPEDITING ALL PAPERWORK FOR ALL PLANES THAT COME INTO
17 BRAZIL FROM ALL SOURCES AND HE DOES ALL THAT WORK. HE HAS A
18 VERY NICE PERSONAL RELATIONSHIP WITH MR. LUIZ MALAGO, THE
19 DEFENDANT'S BROTHER, AND WAS WILLING TO GET -- TAKE A LOAN AND
20 PROVIDE THAT MONEY TO MR. MALAGO TO SUPPORT THE BOND IN THIS
21 PARTICULAR CASE.

22 ATTACHED TO THE NEBBIA PROFFER, YOUR HONOR, IS A COPY
23 OF THE DOCUMENTS SHOWING HIS OWNERSHIP OF THE COMPANY, AS WELL
24 AS WHAT HIS COMPANY DOES AND HIS AGREEMENT TO LOAN THAT PORTION
25 OF THE MONEY.

1 SO, AGAIN -- AND, BY THE WAY, YOUR HONOR, THE
2 INDIVIDUAL WHO OWNS THAT COMPANY, ANDRAS LUIZ DIAZ RODRIGUEZ,
3 CAME TO THE UNITED STATES AND MET WITH THE GOVERNMENT, AND I
4 BELIEVE WITH ACTUALLY MISS HOFFMAN, TO EXPLAIN TO HER EXACTLY
5 HOW THE PLANE TRANSACTIONS AND IMPORT AND EXPORT OF PLANES WORK
6 IN BRAZIL IN AN EFFORT TO FURTHER THE GOVERNMENT'S KNOWLEDGE OF
7 THAT SITUATION --

8 THE COURT: I'M SORRY, ARE YOU REFERRING TO THE SOURCE
9 OF THE LAST LOAN THAT YOU DESCRIBED?

10 MS. RATZAN: I AM, YOUR HONOR.

11 THE COURT: OKAY.

12 MS. RATZAN: EXACTLY. AND, SO THE GOVERNMENT IS AWARE
13 OF MR. DIAZ RODRIGUEZ AND ALL OF HIS INFORMATION AND EVERYTHING
14 HE'S ABOUT AND WHO HE IS IN THIS PARTICULAR INSTANCE.

15 SO IF YOUR HONOR IS UNCOMFORTABLE WITH THAT LAST LOAN
16 BUT IS FINE WITH THE BANK LOANS DIRECTLY TO MR. MALAGO'S
17 BROTHER IN BRAZIL, THEN WE ARE UP TO -- OH, IF MATH WAS MY
18 STRENGTH I WOULD BE A DOCTOR. \$75,000. YES. THANK YOU. AS A
19 BOND IN THIS PARTICULAR CASE.

20 CERTAINLY, YOUR HONOR, I WOULD BE WILLING THAT YOUR
21 HONOR COULD FASHION ANY SORT OF COMBINATION BOND. IF YOUR
22 HONOR WASN'T WILLING TO ACCEPT THE NEBBIA PROFFER IN ITS
23 ENTIRETY BUT PORTIONS OF IT WERE OKAY, IF YOUR HONOR WISHED TO
24 EMPLOY AN ANKLE BRACELET OR ANYTHING ELSE ALONG THOSE LINES ON
25 MR. MALAGO, NOT THAT I PERSONALLY THINK HE NEEDS IT AT THIS

1 POINT CONSIDERING HIS STATUS IN THIS COUNTRY, THERE IS REALLY
2 NO WHERE ELSE FOR HIM TO GO SAFELY, I SHOULD SAY. I DON'T
3 THINK IT IS NECESSARY, BUT WE ARE WILLING TO DO WHATEVER IS
4 NECESSARY TO EFFECTUATE THE RELEASE OF MR. MALAGO, SOMETHING
5 THIS COURT INTENDED, SOMETHING THE GOVERNMENT I BELIEVE
6 INTENDED AT LEAST INITIALLY IN THIS PARTICULAR CASE.

7 AND, SO I WELCOME YOUR HONOR TO ASK ANY QUESTIONS OF
8 MR. MALAGO, ALTHOUGH I DON'T THINK IT WILL HELP SINCE HE IS NOT
9 THE ONE USING ANY OF THE MONEY TO SUPPORT THE BOND. I
10 PURPOSELY DID NOT USE ANY MONIES AT ALL THAT IN ANY WAY, SHAPE,
11 OR FORM MR. MALAGO EARNED AS A RESULT OF HIS BUSINESS
12 TRANSACTIONS IN THIS CASE OR FOR THE YEARS HE HAS BEEN DOING
13 THIS.

14 AND, BY THE WAY, TO ANSWER THE QUESTION FROM THE
15 GOVERNMENT AS TO HOW MR. MALAGO COULD HAVE FUNDS. HE HAS SOLD
16 47 PLANES WITH HIS BUSINESS THAT WAS BY THE WAY RECENTLY SET UP
17 WITH THE ASSISTANCE THAT I DISCUSSED WITH YOUR HONOR THROUGH
18 AVIATION COUNSEL. AND AVIATION COUNSEL CERTAINLY LET'S ME KNOW
19 THAT THEY WOULD BE SHOCKED AND SURPRISED SINCE THEY ARE THE
20 ONES WHO HANDLED THE MAJORITY OF THESE TRANSACTIONS THROUGH
21 ESCROW AND OTHERWISE IF THERE WAS ANYTHING UNLAWFUL WITH NORTH
22 ATLANTIC HOLDINGS, INC., BUT THAT STILL I DIDN'T USE ANY FUNDS
23 FROM THERE, YOUR HONOR.

24 THE COURT: WHO IS PRESENT IN COURT, IF ANYBODY, ON
25 BEHALF OF THE DEFENDANT?

1 MS. RATZAN: PRESENT IN COURT, YOUR HONOR, IS THE
2 DEFENDANT'S WIFE ALEXANDRA MALAGO.

3 IF YOU WOULD PLEASE RISE.

4 AS WELL AS HER FRIENDS AND GOOD FRIENDS OF MR. MALAGO
5 WHO HAVE ASSISTED ME WITH THE GATHERING OF ALL OF THESE
6 DOCUMENTS, YOUR HONOR.

7 THE COURT: OKAY.

8 MS. RATZAN: AS WELL AS, I'M SORRY, IMMIGRATION
9 COUNSEL, MY ESTEEMED COLLEAGUE MARY KRAMER, AND I HAVE TO SAY
10 THIS, THE BEST IMMIGRATION LAWYER I EVER MET JACOB BRADSON
11 BECAUSE HE IS RELATED TO ME.

12 THE COURT: IS THAT YOUR HUSBAND?

13 MS. RATZAN: NO. MY HUSBAND'S BROTHER.

14 THE COURT: OH, MY GOSH.

15 MS. RATZAN: YEAH. BUT HE IS FABULOUS IN ANY EVENT.
16 THEY HAVE LIVED WITH THIS CASE LONGER, THEY COULD SHED SOME
17 LIGHT ON THIS, YOUR HONOR. I FEEL A BOOK COMING ON THIS ONE.

18 THE COURT: YOU FEEL A WHAT?

19 MS. RATZAN: A BOOK, A GOOD NOVEL BECAUSE THIS IS
20 CRAZY.

21 THE COURT: THANK YOU VERY MUCH.

22 MS. RATZAN: THANK YOU VERY MUCH, YOUR HONOR.

23 THE COURT: GOVERNMENT, DON'T REHASH WHAT YOU HAVE
24 ABLY SET FORTH.

25 MS. HOFFMAN: YOUR HONOR, WITH ALL DUE RESPECT TO SAY

1 THAT -- I BELIEVE MS. RATZAN'S GOOD INTENTIONS WHEN SHE FEELS
2 THAT SHE -- WHEN SHE PRESENTED THIS NEBBIA THAT THERE WAS NO
3 TIES TO ANY OF THE PROCEEDS OF THE CRIMINAL CONDUCT AT ISSUE
4 HERE BECAUSE I THINK THESE FACTS WERE BEYOND MS. RATZAN'S
5 KNOWLEDGE AND PROBABLY BEYOND HER ABILITY TO KNOW AT THAT
6 POINT. BUT THE REALITY IS AT LEAST TWO OF THE THREE PERSONS
7 PUTTING FORTH THE NEBBIA HAVE RECEIVED IN EXCESS OF \$400,000
8 OUT OF MR. MALAGO'S CRIMINAL CONDUCT.

9 THE 47 PLANES THAT SHE'S TALKING ABOUT I CAN TELL YOU
10 FOR CERTAINTY 33 OF THEM ARE ILLEGALLY DONE. PROBABLY ALL 47.
11 I KNOW THE NUMBER IS ABOVE 33, BUT I DON'T REMEMBER RIGHT THIS
12 SECOND HOW MANY OF THE 47 WE HAVE PEELED APART BUT THEY ARE ALL
13 DONE INCORRECTLY.

14 THERE IS -- IT IS NOT AT ALL SURPRISING THE WHOLE
15 POINT OF UNDERCOVER OR CI OPERATIONS ARE, THERE ARE CERTAIN
16 TIMES AND CIRCUMSTANCES UNDER WHICH LAW ENFORCEMENT CAN DO
17 SOMETHING THAT WOULD ORDINARILY BE ILLEGAL, BUT THERE ARE
18 CERTAIN CONTROLLED CIRCUMSTANCES IN WHICH YOU CAN DO SOMETHING
19 AND THAT THEREFORE BE GIVEN THE (UNINTELLIGIBLE) LEGALITY SO
20 THAT YOU CAN INFILTRATE DRUG ORGANIZATIONS.

21 MR. MALAGO PERFECTED SOMETHING HE WAS DOING BEFORE HE
22 MET DEA -- EXCUSE ME, ICE. I APOLOGIZE. AND CONTINUED TO DO
23 IT WHEN HE NO LONGER WAS ASSOCIATED WITH THE GOVERNMENT WHICH
24 WIPED OUT. IF HE HAD ANY IMPETUR OF LEGALITY, WHICH THERE IS
25 CERTAIN ARGUMENT THAT HE DID HAVE AT SOME POINT IT GOT WIPED

1 OUT --

2 THE COURT: BY THE WAY, YOU ARE MAKING A RECORD HERE.
3 ICE. WHAT DOES THAT STAND FOR.

4 MS. HOFFMAN: IMMIGRATION AND CUSTOM ENFORCEMENT.
5 THAT'S NOT THEIR NAME ANYMORE, BUT IT WAS THEIR NAME WHEN THEY
6 WERE WORKING WITH HIM AND THEY ARE NOW HOMELAND SECURITY
7 INVESTIGATIONS, I BELIEVE.

8 THE COURT: AND THE INVESTIGATION AGENCY IN THIS CASE
9 ON THIS INDICTMENT IS THE DEA, CORRECT?

10 MS. HOFFMAN: YES. THE DRUG ENFORCEMENT
11 ADMINISTRATION, YOUR HONOR.

12 THE COURT: OKAY.

13 MS. HOFFMAN: SO, WHAT --

14 THE COURT: WHAT IS HE INDICTED FOR?

15 MS. HOFFMAN: HE IS CURRENTLY INDICTED FOR THE
16 REGULATORY OFFENSES OF ALL OF THE 33 PLANES THAT I HAD TRACED
17 OUT WITH REPRESENTATIVE SUBSTANTIVE COUNTS ON FOUR PLANES THAT
18 WERE SEIZED IN MAY AND ONE OF THE DRUG PLANES THAT WAS SEIZED
19 IN MARCH.

20 THE COURT: HOW MANY COUNTS?

21 MS. HOFFMAN: SIX I BELIEVE.

22 THE COURT: AND WHAT KIND OF REGULATORY VIOLATIONS?

23 MS. HOFFMAN: THE FAA'S VIOLATION HAS AN UP TO FIVE
24 YEAR OFFENSE FOR THE PLANES THAT ARE NOT NECESSARILY LINKED TO
25 DRUGS. IF -- MY INTENTION IS TO SUPERSEDE NEXT MONTH, YOUR

1 HONOR. I FRANKLY RAN OUT OF TIME THIS MONTH. I HAD PLANNED TO
2 DO IT BY THIS MONTH BUT I'M JUST NOT GOING TO GET IT DONE. SO
3 MY INTENTION IS TO SUPERSEDE --

4 THE COURT: WELL, THE FIRST QUESTION WAS, WHAT KIND OF
5 VIOLATIONS?

6 MS. HOFFMAN: THE FAA VIOLATIONS ARE -- THERE IS A
7 CIVIL VERSION OF IT AND A CRIMINAL VERSION. THE CRIMINAL
8 VERSION MAKES IT A CRIMINAL OFFENSE TO REGISTER A PLANE USING
9 FALSE NOMINEES, OR REGISTRIES, OR PROVIDING FALSE INFORMATION
10 TO THE FAA. AND IN THIS CIRCUMSTANCE THERE ARE A COUPLE OF
11 DIFFERENT COMPONENTS OF IT.

12 TO SAY THAT THIS IS LIKE ANY PLANE -- ANY PURCHASE IN
13 THE --

14 THE COURT: I MEAN, CIVIL AND CRIMINAL. WHEN DOES IT
15 BECOME CRIMINAL?

16 MS. HOFFMAN: FRANKLY THE EXACT SAME CONDUCT, YOUR
17 HONOR, COULD BE HANDLED CIVILLY OR CRIMINALLY IF --

18 THE COURT: SO A DETERMINATION WAS MADE NOT TO MAKE IT
19 CIVIL AND FINE HIM, OR WHATEVER --

20 MS. HOFFMAN: CORRECT.

21 THE COURT: -- BUT MAKE IT CRIMINAL, CORRECT?

22 MS. HOFFMAN: CORRECT. IT WAS, YOUR HONOR.

23 THE COURT: NOW YOU SAY -- AND COUNSEL REPRESENTED
24 THAT -- OF COURSE, JAYWALKING IS A CRIME TOO. I'M NOT
25 BELITTLING THE SERIOUSNESS OF THIS CHARGE.

1 MS. HOFFMAN: NOT AT ALL.

2 THE COURT: BUT THEY ARE REGULATORY TYPE VIOLATIONS,
3 AND MISS RATZAN HAS REPRESENTED THAT IF SHE WOULD HAVE PLED THE
4 GUY OUT HE WOULD PROBABLY WOULD HAVE OUT BY NOW GIVEN THE
5 GUIDELINES. NOW, YOU SAY THAT YOU -- YOU HAVEN'T HAD THE TIME
6 TO SUPERSEDE BUT THAT IS YOUR INTENTION.

7 MS. HOFFMAN: IT IS.

8 THE COURT: CAN YOU TELL US WHAT YOU INTEND TO
9 SUPERSEDE WITH?

10 MS. HOFFMAN: YES, YOUR HONOR. THE PLANES THAT I
11 LISTED HERE FOR YOU TODAY ABOUT THE DRUG TRAFFICKING
12 ACTIVITIES, I INTEND TO SUPERSEDE WITH AT LEAST TWO IF NOT ALL
13 FOUR OF THOSE PLANES.

14 THE COURT: CHARGING WHAT?

15 MS. HOFFMAN: CHARGING 959(B)(2) OFFENSES, WHICH ARE
16 USING AMERICAN REGISTERED AIRCRAFT FOR THE PURPOSES OF
17 IMPORTING OR DISTRIBUTING DRUGS THAT WILL BE IMPORTED INTO THE
18 UNITED STATES.

19 IT WILL THEN BE ENCOMPASSED IN THE CONSPIRACY OFFENSE
20 THAT IS THE TITLE 21, UNITED STATES CODE, SECTION 963. THERE
21 WILL BE BOTH A CONSPIRACY AND THERE MAY BE SUBSTANTIVE
22 OFFENSES. BUT THERE WILL CERTAINLY BE A CONSPIRACY, AND THE
23 CONSPIRACY WILL ENTAIL AS MUCH AS SIX TONS OF COCAINE. IT WILL
24 INVOLVE --

25 THE COURT: WHAT KIND OF PENALTIES ARE INVOLVED,

1 POTENTIAL PENALTIES.

2 MS. HOFFMAN: THE PENALTIES OF THAT ARE MANDATORY
3 MINIMUM OF 10 YEARS. THE PRIOR WEAPONS OFFENSE IS -- MAY OR
4 MAY NOT HAVE -- I DON'T THINK IT COMES IN. I DON'T THINK IT
5 COMES IN AS AN AGGRAVATOR. I HAVEN'T THOUGHT ABOUT THAT ONE,
6 YOUR HONOR, UNTIL I'M STANDING HERE AND ANSWERING YOUR
7 QUESTIONS. I DON'T THINK IT COMES IN AS AN AGGRAVATOR,
8 ALTHOUGH THE WEAPONS WERE SEIZED AS A PART OF AN INVESTIGATION
9 OF THE DRUG ISSUE.

10 SO THERE IS ALSO A SPECIAL SKILLS. SO THERE WILL BE A
11 TWO POINT BUMP FOR THAT, AND THERE MAY OR MAY NOT BE A POINT --
12 AN INCREASE FOR ROLE.

13 WORSE CASE SCENARIO. YOUR HONOR, A LEVEL 38 FOR
14 DRUGS, A FOUR POINT ROLE ENHANCEMENT AND A TWO POINT SPECIAL
15 SKILLS ENHANCEMENT WHICH MEANS YOU ARE AT A LEVEL 44, WHICH
16 WITHOUT ACCEPTANCE OF RESPONSIBILITY IS A MANDATORY LIFE
17 OFFENSE, YOUR HONOR.

18 THE COURT: ALL RIGHT. AND WHEN DO YOU EXPECT TO BE
19 GOING BACK BEFORE THE GRAND JURY?

20 MS. HOFFMAN: PROBABLY THE WEEK THAT HAS THE 21ST IN
21 IT, YOUR HONOR. BECAUSE THE WEEK BEFORE THAT IS -- I WILL BE
22 ON LEAVE.

23 THE COURT: SO THAT --

24 MS. HOFFMAN: ABOUT THREE WEEKS. ABOUT THREE WEEKS.

25 THE COURT: IN ABOUT A MONTH, RIGHT?

1 MS. HOFFMAN: YES, SIR. YES, SIR.

2 THE COURT: EVERY MONTH HAS A 21ST IN IT.

3 MS. HOFFMAN: IT DOES.

4 THE COURT: EVEN FEBRUARY. BUT YOU'RE TALKING ABOUT
5 MARCH 21ST.

6 MS. HOFFMAN: I AM, SIR.

7 THE COURT: OKAY. THIS IS ALL RELEVANT FOR THE
8 PURPOSES OF WHAT I AM REQUIRED TO CONSIDER UNDER THE BIG
9 PICTURE, THE BAIL REFORM ACT.

10 THE GOVERNMENT'S REPRESENTATIVE IS MAKING THESE
11 REPRESENTATIONS OF THE SUPERSEDING INDICTMENT TO FOLLOW WHICH,
12 YOU KNOW, OBVIOUSLY IN IS THE MIND OF THE DEFENDANT. IT DOES
13 NOT MEAN HE'S GOING TO FLEE, BUT HE IS AWARE THAT THESE CHARGES
14 ARE COMING. AND, SO THAT'S WHY IT IS RELEVANT AND THAT'S WHY
15 THE COURT NEEDS TO KNOW AND WHY IT NEEDS TO BE ON THE RECORD.

16 IS THERE ANYTHING ELSE YOU WANTED TO SAY?

17 MS. HOFFMAN: YES, YOUR HONOR.

18 THE OTHER FACTOR THAT I HAD WANTED TO ILLUMINATE FOR
19 THE COURT IS THAT THE -- IT JUST WENT TOTALLY OUT OF MY BRAIN.
20 I APOLOGIZE.

21 THAT WHEN MISS RATZAN --

22 THE COURT: MISS RATZAN, SHE GOT INTO CORNELL LAW
23 SCHOOL LONG AFTER I DID. IF I WOULD HAVE APPLIED WHEN SHE DID
24 I WOULD NOT HAVE BEEN ADMITTED. SO IF SHE HAS A MOMENTARY
25 LAPSE, YOU FOLLOW ME?

1 MS. RATZAN: WE ARE BLAMING CORNELL FOR MOMENTARY
2 LAPSES?

3 THE COURT: WHEN SHE WAS ADMITTED THE STANDARDS WERE
4 MUCH HIGHER (UNINTELLIGIBLE) SUCH AS MISS HOFFMAN ARE ENTITLED
5 TO HAVE A MOMENTARY PAUSE. IT'S NORMALLY CAUSED BY THE
6 AMBIANCE THAT I INSPIRE. BUT GO AHEAD.

7 MS. HOFFMAN: I APPRECIATE THAT, YOUR HONOR.

8 WHAT I STARTED TO SAY IS, FRANKLY I HAD NOT PUT TWO
9 AND TWO TOGETHER UNTIL MISS RATZAN WAS SPEAKING THAT A
10 GENTLEMAN I MET -- HE WAS PRESENT IN AN INTERVIEW WITH SOMEBODY
11 ELSE IS THE GENTLEMAN THAT SHE'S TALKING ABOUT. I DIDN'T KNOW
12 THAT. ONE, I'M TERRIBLE AT NAMES; BUT, TWO, IT DIDN'T -- IT
13 DIDN'T MAKE CONNECTION.

14 I WILL TELL THE COURT ON THAT DAY I SAID TO HIM THAT
15 HIS IS THE PERFECT ROLE THAT'S THE COVER THAT'S NEEDED FOR THE
16 CRIMINAL COULD CONDUCT IN THIS CASE. I DIDN'T ACCUSE HIM OF
17 BEING THE PERSON WHO DID IT ANYMORE THAN I ACCUSE HIM TODAY
18 BECAUSE I HAVE NOT BEEN ABLE TO PEEL THAT APART IN BRAZIL YET.
19 I AM WORKING ON IT.

20 BUT IT IS THAT JOB THAT SHE IS DESCRIBING THAT IS THE
21 SOURCE OF THAT SECOND -- THAT LAST \$25,000. THAT IS EXACTLY
22 THE JOB THAT IS NEEDED FOR MR. MALAGO TO HAVE PULLED OFF WHAT
23 HE PULLED OFF IN TWO AND A HALF YEARS WITHOUT ANY LAWFUL
24 GOVERNMENT ASSISTANCE TO MOVE THAT VOLUME OF PLANES INTO BRAZIL
25 IN THE MANNER THAT HE DID.

1 SO I WOULD ASK THE COURT TO DISREGARD THE BRAZILIAN
2 MONIES. AND FOR ALL THAT THEY CAN SAY THAT THE MONIES IS
3 COMING FROM A LOAN AT THE MOMENT, THEY CANNOT AND HAVE NOT
4 EXPLAINED WHERE THAT \$400,000 CAME FROM THAT MR. PETERS AND
5 MR. BERDU RECEIVED, OR THAT IT ISN'T IN FACT ULTIMATELY A
6 SOURCE OF REPAYMENT REGARDLESS OF WHAT SOMEBODY IS WILLING TO
7 SAY IN AN AFFIDAVIT OR NOT.

8 THEY HAVE NOT ADDRESSED THAT \$400,000, NOR THE
9 \$112,000 WORTH OF MONIES THAT WERE REVERSED STRUCTURED BY
10 MR. MALAGO. THAT IS TOO MUCH MONEY FLOATING AROUND. AND WITH
11 ALL DUE RESPECT TO MISS RATZAN THIS GENTLEMAN CAN WALK ON TO A
12 PLANE IN TAMiami AIRPORT, OR FORT LAUDERDALE EXECUTIVE AIRPORT
13 AND GET OUT OF THE COUNTRY IN A NEW YORK SECOND WITHOUT ANY --
14 ANY OF THE ORDINARY CLEARANCES THAT HAPPEN AT AN AIRPORT, AND
15 HE IS CAPABLE OF FLYING A PLANE IF HE WANTED TO.

16 THE COURT: (INAUDIBLE)

17 MS. HOFFMAN: HE IS CAPABLE OF FLYING A PLANE. HE HAS
18 THOSE SKILL SETS. SO I WOULD ASK THAT THIS COURT STICK WITH
19 THE BOND THAT YOU HAVE SET AND THAT YOU REJECT THIS PARTICULAR
20 SET OF NEBBIA FOR THIS BOND.

21 THE COURT: ALL RIGHT. THANK YOU, COUNSEL.

22 LET ME NOTE FOR THE RECORD WHAT FINE LAWYERS I HAVE
23 TODAY. MISS HOFFMAN REPRESENTS THE INTEREST OF THE UNITED
24 STATES AND THE PEOPLE COMPLETELY, THOROUGHLY. MISS RATZAN WAS
25 CHARACTERIZED AS THE (UNINTELLIGIBLE) APPROACH, AND MISS RATZAN

1 IS ALWAYS IS A DELIGHT AND AN HONOR TO HAVE YOU PRESENT IN
2 COURT.

3 I WILL TELL YOUR CLIENT AND HIS WIFE YOU CANNOT BE
4 BETTER REPRESENTED THAN WITH MISS RATZAN. MISS RATZAN IS AMONG
5 THE BEST -- AND SHE WAS ENCOURAGE FUTURE LITIGATION, BUT AS
6 COMPLETE A NEBBIA PROFFER AS I HAVE EVER SEEN AND HER
7 PRESENTATION WAS ENORMOUSLY PERSUASIVE AND COMPLETE. I WANT
8 YOU TO KNOW THAT, SIR. AND I WANT YOUR FAMILY TO KNOW THAT.

9 SHE HAS BEEN DEALT CERTAIN CARDS AND YOU CAN ONLY DO
10 SO MUCH WITH THE CARDS THAT SHE HAS BEEN DEALT, AND SHE IS
11 DEALT WITH EVERYTHING THAT SHE HAS TO WORK WITH AND MORE.

12 IN FACT, THE QUALITY OF THE PLEADINGS CAUSED ME, AND
13 WE ARE PRETTY BUSY DOWN HERE, TO PROPERLY HAVE THIS MATTER SET
14 DOWN FOR A HEARING. AND IN FAIRNESS TO THE GOVERNMENT TO ALLOW
15 A SHORT CONTINUANCE SO THAT THEY COULD PREPARE TO THE EXTENT
16 THAT THEY COULD. YOU HAVE TO UNDERSTAND THESE THINGS DON'T
17 JUST HAPPEN. YOU FOLLOW ME? I HAVE FILE MANY SUCH MOTIONS
18 THAT COME IN. SO YOU ARE HERE TODAY AS QUICKLY AS YOU ARE WITH
19 THE INTENTION OF THE COURT BECAUSE OF MISS RATZAN.

20 NOW, I'M MAKING A COUPLE OF OBSERVATIONS HERE.

21 THE MOTION TO REDUCE BOND. NOTHING IS WITHOUT
22 PREJUDICE HAS BEEN WITHDRAWN AND I'M ACTING ACCORDINGLY. THAT
23 DOESN'T MEAN I CAN'T BE MET EVEN IF THE NEBBIA IS SATISFIED IT
24 CAN'T BE RENEWED IN THE FUTURE. BUT THAT'S OFF THE TABLE.

25 THAT HAS BEEN WITHDRAWN, LATASHA.

1 SO WHAT I HAVE BEFORE ME IS THE NEBBIA PROFFER AND A
2 NEBBIA HEARING. THIS IS NOT YOUR TRIAL. THE ONLY ISSUE BEFORE
3 ME TECHNICALLY IS, HAS THE NEBBIA CONDITION BEEN MET ON
4 \$100,000 BOND THAT I SET. THAT IS THE ONLY ISSUE THAT IS
5 BEFORE ME, NOT YOUR GUILT OR INNOCENCE, NOT THE ABILITY OF YOUR
6 LAWYER.

7 THESE FACTORS ARE ONLY THINGS THAT I CAN CONSIDER --
8 THE MANY THINGS I'M REQUIRED TO CONSIDER UNDER THE BAIL REFORM
9 ACT, AND I HAVE CONSIDERED ALL OF THEM. ALL THE THINGS THAT
10 I'M REQUIRED TO CONSIDER UNDER A NEBBIA, WHICH YOUR LAWYER HAS
11 DESCRIBED ITS HISTORY AND ITS PURPOSES. THAT IS ALL THAT IS
12 BEFORE ME.

13 AND I HAVE CAREFULLY REVIEWED THE PLEADINGS AND
14 LISTENED TO THE ARGUMENT. RATHER THAN GO INTO GREAT DETAIL I
15 WILL JUST SAY GENERALLY THAT WHILE REASONABLE PEOPLE I GUESS
16 CAN DISAGREE AND AS PERSUASIVE AS MISS RATZAN IS, SHE IS NOT
17 ONLY PERSUASIVE, SHE BELIEVES IN YOU, SIR, AND BELIEVES IN YOUR
18 CASE. BUT IN FAIRNESS I MUST SAY THAT -- AND I REALIZE WHAT
19 YOU ARE DEALING WITH, MISS RATZAN, BRAZIL, FOREIGN DOCUMENTS,
20 LOTS OF PEOPLE, GIVING ALL THIS TIME AND ATTENTION IN YOUR BUSY
21 PRACTICE TO THIS DESERVING CLIENT WHICH YOU HAVE. YOU HAVE
22 TREATED HIM LIKE HE IS THE ONLY CLIENT THAT YOU HAVE. THAT'S
23 HOW WELL HE'S REPRESENTED.

24 BUT THE PROBLEM IS IN FAIRNESS THAT I WANT TO DO THE
25 RIGHT THING. AND YOU KNOW WHAT? EVEN IF I GIVE YOU THE RELIEF

1 THAT YOU ARE REQUESTING ON THIS RECORD I COULD BE REVERSED
2 LATER THIS AFTERNOON BECAUSE THERE IS -- A HIGHER AND WISER
3 AUTHORITY COULD DISAGREE WITH MY CONCLUSIONS.

4 WE DON'T KNOW ENOUGH ABOUT THE DOCUMENTS. WE DON'T
5 KNOW ENOUGH ABOUT SOME OF THESE PEOPLE. WE DON'T KNOW ENOUGH
6 ABOUT THE BUSINESSES. SO IT WOULD BE -- I CAN COMFORTABLY
7 AGREE WITH MISS RATZAN, HAVE SOME SUSPICIONS, BUT I COULD AGREE
8 BUT IT COULD ALL BE FOR NOUGHT BY THIS AFTERNOON.

9 AND, SO THAT BEING SAID I MUST SAY THAT I BELIEVE THE
10 GOVERNMENT IS ENTITLED TO A REASONABLE OPPORTUNITY TO FURTHER
11 EXAMINE THE DOCUMENTS THAT HAVE BEEN SUBMITTED, TO MAKE FURTHER
12 INQUIRIES WITH RESPECT TO THE PEOPLE WHO ARE STANDING UP AND
13 PUTTING THEMSELVES -- MAKING THEMSELVES INVOLVED WITH THIS
14 BOND. ONCE THE COURT ACCEPTS A NEBBIA PROFFER IT IS A CONTEMPT
15 OF COURT AND OTHER PROBLEMS IF THE MONEY DOESN'T COME FROM
16 THESE SOURCES, AMONG OTHER PROBLEMS.

17 NOW, I ALSO WANT TO PUT IN PERSPECTIVE SO YOU
18 UNDERSTAND, THE GOVERNMENT IS OBLIGED TO MAKE EVERY ARGUMENT
19 THEY HAVE. YOU KNOW, BUT I GIVE APPROPRIATE WEIGHT AND
20 CREDIBILITY EVEN THOUGH THE GOVERNMENT MAKES THESE
21 REPRESENTATIONS IN GOOD FAITH WHEN THEY TALK ABOUT POSSIBLE
22 NARCOTICS INVOLVEMENT AND SUSPICIOUS BEHAVIOR, AND SO FORTH AND
23 SO ON.

24 WELL, THEY HAVE AN OBLIGATION TO BRING THIS TO THE
25 COURT'S ATTENTION BUT I HAVE AN OBLIGATION TO GIVE IT WHATEVER

1 WEIGHT IT DESERVES AND THAT VARIES FROM ZERO TO A HUNDRED
2 PERCENT. SO DON'T MISUNDERSTAND THAT. THEY HAVE AN OBLIGATION
3 TO DO THAT.

4 BUT IN FAIRNESS THEY ALSO HAVE AN OPPORTUNITY TO GO
5 OVER THE DOCUMENTS MORE CAREFULLY. I KNOW MISS RATZAN GOT THEM
6 TO THE GOVERNMENT AS QUICKLY AS SHE COULD BUT, YOU KNOW, THE
7 GOVERNMENT GOT THE DOCUMENTS LATE FRIDAY NIGHT, MONDAY WAS A
8 HOLIDAY, AND THEY COME BACK TUESDAY MORNING AND HERE WE ARE
9 THURSDAY.

10 MISS HOFFMAN IS A VERY POPULAR PROSECUTOR, AND SHE --
11 SO MISS RATZAN DID EVERYTHING SHE COULD TO GET THIS HEARING,
12 GET THE PAPERWORK, MASTER IT, PASS IT ON TO THE GOVERNMENT.
13 MAYBE THE FAULT IS MINE BECAUSE I SET THIS MATTER DOWN SO FAST,
14 THANKS TO MISS RATZAN. BUT IT IS HERE AND WE HAVE A RECORD. I
15 WOULD FEEL MORE COMFORTABLE IF THE GOVERNMENT IS GIVEN MORE OF
16 AN OPPORTUNITY TO LOOK AT THE DOCUMENTS.

17 AND WHAT I'M GOING TO SUGGEST THAT YOU DO -- I WILL
18 GIVE YOU THE OPPORTUNITY NOW. I HAVE NOTHING ELSE SCHEDULED
19 UNLESS SOME EMERGENCY COMES INTO COURT. SINCE YOU ARE HERE
20 MISS RATZAN AND HOW BUSY YOU ARE LETTER, SINCE THE MARSHAL'S
21 HAVE YOUR CLIENT HERE, SINCE THE GOVERNMENT IS HERE WITH THE
22 DEA AGENTS, SINCE THE WIFE IS HERE AND THE FAMILY, AND THE
23 IMMIGRATION LAWYERS, I THINK, MISS HOFFMAN, IF YOU MEAN
24 BUSINESS, AND I'M SURE THAT YOU DO, YOU GOT EVERYBODY HERE
25 EXCEPT SOME OF THE NAMED PEOPLE INVOLVED THAT I'M SURE

1 MISS RATZAN IS FAMILIAR WITH AND HER CLIENT IS FAMILIAR WITH, I
2 THINK YOU SHOULD STAY HERE, MISS RATZAN, IF MISS HOFFMAN IS
3 SERIOUS AND ASK WHATEVER QUESTIONS YOU HAVE WITHOUT VIOLATING
4 ANY RIGHTS OF YOUR CLIENTS BUT ANYTHING PERTAINING TO THE BOND
5 AND THE SOURCE OF THE BOND.

6 YOU HAVE YOUR AGENTS HERE, MISS HOFFMAN, MISS RATZAN
7 IS HERE, THE DEFENDANT IS HERE, THE IMMIGRATION LAWYER IS HERE,
8 THE WIFE IS HERE, FRIENDS ARE HERE. YOU WANT MORE TIME? WELL,
9 YOU GOT EVERYBODY HERE NOW IF YOU HAVE ANY LEGITIMATE, YOU
10 KNOW, QUESTIONS ASK THEM. I UNDERSTAND YOU NEED TIME TO REVIEW
11 THE DOCUMENTS, AND SO FORTH AND SO ON. YOU MAY WANT SOME
12 ADDITIONAL STUFF IF YOU REALLY NEED IT, AND IF MR. RATZAN CAN
13 COMPLY ALL WELL AND GOOD.

14 BUT I WILL TELL YOU THAT I WAS VERY CLOSE TO GRANTING
15 AND APPROVING THE NEBBIA PROFFER JUST SO YOU KNOW. SO WHAT I
16 WILL DO -- I DON'T WANT TO MISLEAD YOU, MISS RATZAN, OR YOUR
17 CLIENT. I AM JUST TELLING YOU WHAT MY PRESENT THINKING WAS AND
18 IS. IT CAN CHANGE ONE WAY OR THE OTHER IN THE FUTURE. BUT
19 THAT'S WHAT'S GOING ON HERE.

20 SO, MISS HOFFMAN, YOU HAVE A TRACK RECORD WITH ME AND
21 I KNOW THAT YOU MEAN WHAT YOU SAY AND I WILL GIVE YOU A
22 REASONABLE OPPORTUNITY TO EXPLORE FURTHER, BUT A REASONABLE
23 PERIOD OF TIME.

24 MS. HOFFMAN: CERTAINLY, YOUR HONOR.

25 THE COURT: AND WHAT I WILL DO, MISS RATZAN, IS THE

1 FOLLOWING.

2 I WILL DENY THE NEBBIA PROFFER, THE MOTION TO APPROVE
3 NEBBIA CONDITIONS WITHOUT PREJUDICE. THE MOTION TO REDUCE BOND
4 IS WITHDRAWN.

5 WHAT I WILL ALLOW YOU TO DO IS TO RENEW THAT MOTION,
6 MOTION TO REDUCE AND/OR A MOTION TO SATISFY A NEBBIA PROFFER.
7 DON'T RUSH IT. DIGEST WHAT HAS OCCURRED THIS AFTERNOON. BUT
8 ALL THIS IS WITHOUT PREJUDICE AND YOU ARE -- IF YOU DEEM IT
9 APPROPRIATE, YOU DO IT. YOU EITHER RENEW THE MOTION TO PRODUCE
10 OR MODIFY AND RENEW YOUR MOTION NEBBIA PROFFER.

11 I WOULD EXPECT YOU CAN INCORPORATE BY REFERENCE THAT
12 YOU HAVE HERE BUT YOU CAN MODIFY IT, SUPPLEMENT, WITHDRAW,
13 WHATEVER IN ANY RENEWED MOTION THAT YOU FILE.

14 I WILL TELL YOU THAT IF I HAD FOUND THE NEBBIA
15 CONDITION SATISFIED I WOULD HAVE ADDED SOMETHING THAT WOULD NOT
16 COST YOUR CLIENT ANY MORE MONEY BUT I WOULD HAVE ADDED A
17 SIGNIFICANT PERSONAL SURETY BONDS CO-SIGNED AS WELL. THAT WAS
18 MY PRESENT THINKING. BUT ALL OF THIS IS WITHOUT PREJUDICE.

19 THE GOOD NEWS FOR YOUR CLIENT IS, IN THE NORMAL COURSE
20 OF THINGS THIS COULD HAVE BEEN DENIED WITHOUT A HEARING. YOU
21 FOLLOW ME? WE ARE JUST VERY BUSY AND WE GIVE EVERYTHING
22 CAREFUL ATTENTION BUT, YOU KNOW, IT IS THE REAL WORLD HERE.
23 YOU FOLLOW ME? SO YOU HAVE REALLY GAINED A LOT.

24 NOW, I DON'T WANT TO MISLEAD YOU. I DON'T WANT TO
25 MISLEAD YOU, BUT I'M JUST TELLING YOU WHAT MY CONCLUSIONS WERE

1 AND ARE AT THIS POINT.

2 NOW, I WILL LEAVE IT TO MISS RATZAN WHEN YOU THINK IT
3 IS APPROPRIATE TO REFILE IF YOU WOULD LIKE -- WAIT ONE SECOND.

4 AND LET ME SAY TO THE GOVERNMENT AND MISS RATZAN, OF
5 COURSE, THE COURT HAS TO APPROVE IT, BUT THE GOVERNMENT
6 UNDERSTANDS THAT THEY NOT ONLY REPRESENT THE PEOPLE AND HAVE AN
7 OBLIGATION TO PURSUE THOSE WHO HAVE BROKEN THE LAW, BUT THEY
8 HAVE A RESPONSIBILITY TO ALL THE CITIZENS, INCLUDING THOSE
9 ACCUSED OF, AND ALL PEOPLE IN THIS COUNTRY THAT ARE ACCUSED OF
10 A CRIME.

11 AND IT MAY BE, MISS RATZAN, THAT YOU WILL BE ABLE TO
12 PERSUADE THE GOVERNMENT TO MODIFY THE CONDITIONS. I AM SIMPLY
13 SAYING THAT DO NOT RULE OUT ANYTHING. ULTIMATELY I WILL DECIDE
14 AND JUDGE SCOLA WILL DECIDE. YOU FOLLOW ME? BUT DON'T RULE
15 OUT ANYTHING. I JUST TOLD THE GOVERNMENT HOW CLOSE I HAD COME
16 TO APPROVING THIS NEBBIA PROFFER. ALL RIGHT?

17 SO YOU ARE WELCOME TO STAY HERE AFTER I LEAVE. YOU
18 SHOULD ACT PROMPTLY UPON ANY QUESTIONS THAT YOU HAVE AND
19 MISS RATZAN SUPPLYING ANY ANSWERS. IF THERE ARE PEOPLE THAT
20 SHE WANTS TO SPEAK TO, YOU KNOW, AND IT'S CONSISTENT WITH THE
21 RIGHTS OF YOUR CLIENT, YOU THINK IT'S IN HIS BEST INTEREST,
22 ALLOW THEM TO DO SO. YOU FOLLOW ME?

23 I HAVE HAD NAMES MENTIONED HERE, ALLEGATIONS
24 SUGGESTED. YOU KNOW, THERE MAY BE OTHERS PLUS OR MINUS THAT
25 ARE INVOLVED HERE. I DON'T KNOW. BUT I'M GIVING EVERYBODY THE

1 OPPORTUNITY TO INQUIRE AND TO PROVIDE ANSWERS TO THE EXTENT
2 THAT THEY THINK THAT'S IN THEIR BEST INTEREST OF YOUR CLIENT
3 AND NECESSARY FOR THE GOVERNMENT.

4 I WILL LEAVE IT TO YOU, MISS RATZAN, IF YOU DEEM IT
5 APPROPRIATE TO RENEW YOUR PLEADINGS UNDER THE CONDITIONS THAT I
6 SET FORTH.

7 NOW, MISS RATZAN.

8 MS. RATZAN: THANK YOU.

9 I NEED A LITTLE BIT MORE GUIDANCE FROM THE COURT. I'M
10 SORRY TO PUT YOU IN THIS POSITION, BUT THE GOVERNMENT HAS MADE
11 THEIR POSITION PRETTY CLEAR, AND I'M HAPPY TO SPEAK TO
12 MISS HOFFMAN AT LENGTH. BUT THEIR POSITION IS THAT BECAUSE
13 THESE INDIVIDUALS HAD ANY BUSINESS DEALINGS WITH MY CLIENT THEY
14 ARE NOT GOING TO AGREE THAT ANY MONEY COMING FROM THEM IS
15 LEGITIMATE SOURCE FUNDS.

16 AND, SO I WILL BE BACK BEFORE YOUR HONOR -- I HAVE
17 PROVIDED EVERY DOCUMENT I COULD POSSIBLY THINK OF. SO I NEED
18 SOME GUIDANCE AS TO WHAT ELSE THIS COURT WOULD LIKE TO SEE OR
19 KNOW BECAUSE I CAN'T ANSWER WHAT THE GOVERNMENT THINKS IS GOING
20 ON IN THEIR HEAD AND PRESUMPTIONS AND ALLEGATIONS.

21 I CAN ONLY ANSWER THE INDICTMENT IN FRONT OF ME, WHICH
22 IS PRETTY SIMPLE AND EASY TO DO, BUT I CAN'T DEAL WITH WHAT
23 THEY THINK IS REALLY GOING ON SOMEWHERE IN BRAZIL. I NOTICE
24 ALL OF THE DISCUSSIONS THAT WE ARE HAVING ABOUT DRUGS AND
25 PLANES, EVERYTHING IS IN BRAZIL.

1 SO I AM INTERESTED TO SEE HOW JURISDICTION LANDS
2 BEFORE THIS COURT ON THOSE MATTERS. BUT ANYWAY, I DON'T KNOW
3 WHAT ELSE I CAN DO SHORT OF SCRAPING THIS ENTIRE NEBBIA PROFFER
4 AND FINDING OTHER PEOPLE THAT DON'T HAVE ANYTHING TO DO WITH
5 MR. MALAGO AT ALL. AND YOUR HONOR CAN APPRECIATE THAT IT IS A
6 LITTLE DIFFICULT TO WALK UP TO PEOPLE WHO DON'T HAVE ANYTHING
7 TO DO WITH YOU AND ASK THEM FOR A \$100,000 CASH.

8 SO EVERYBODY WHO IS GOING TO BE WILLING TO POST MONEY
9 FOR MR. MALAGO IS GOING TO HAVE SOME CONTACT WITH HIM AND I --
10 YOUR HONOR TELL ME WHAT OTHER DOCUMENTS YOU WANT AND I WILL GET
11 THEM.

12 THE COURT: MISS RATZAN, YOU HAVE DONE EVERYTHING THIS
13 AFTERNOON SHORT OF PUTTING ON A FRUITY HAT AND DOING A CARMEN
14 MIRANDA IMITATION.

15 MS. RATZAN: AND I CAN DO THAT.

16 THE COURT: I DON'T DOUBT IT. HOWEVER, AT A MINIMUM I
17 COULD ADD NOTHING TO WHAT I HAVE HEARD THIS AFTERNOON AND SAID.

18 BUT AT A MINIMUM I WILL SAY THAT THE GOVERNMENT HAS
19 SUGGESTED STRONGLY THAT THEY HAVEN'T HAD THE OPPORTUNITY TO
20 THOROUGHLY EXAMINE ALL THE DOCUMENTS. THAT THEY JUST CAME,
21 THEY HAVEN'T HAD A CHANCE TO FULLY EXPLORE THEM. SO AT A
22 MINIMUM, AT A MINIMUM, AND IT'S ON THE RECORD THAT THEY HAVE
23 HAD THAT OPPORTUNITY AND I HAVE HAD A CHANCE TO BENEFIT FROM
24 ANYTHING THAT THEY DISCERN FROM THE DOCUMENTS.

25 YOU HAVE A CHANCE TO EXPLAIN OR REBUT ANYTHING THAT'S

1 CONTAINED IN THE DOCUMENTS BY WAY OF AN EXAMPLE. YOU FOLLOW
2 ME? THAT IS SOMETHING THAT CAN BE DONE IN THE INTERIM.

3 IF YOU DON'T WANT TO GO BEYOND THAT THIS AFTERNOON, SO
4 BE IT. I LEAVE IT TO YOU. IT IS ON THE RECORD. I HAVE GIVEN
5 YOU ALL THAT OPPORTUNITY. IT CUTS BOTH WAYS. AND I'M NOT JUST
6 TRYING TO MAKE A RECORD HERE. I WANT THE BENEFIT OF YOUR
7 COLLECTED WISDOM HERE AND YOUR THOUGHTS, AND MAYBE THERE IS
8 SOMETHING -- DOCUMENTS THAT YOU COULD EXPLAIN NOW, MISS RATZAN,
9 WHILE YOU ARE HERE. YOU FOLLOW ME?

10 THERE MAY -- IN THE SHORT PERIOD OF TIME THEY MAY WANT
11 SOMETHING. I DON'T KNOW. BUT WE KNOW THAT YOU PRODUCED A
12 BUNCH OF DOCUMENTS. THEY REPRESENTED THEY HAVEN'T HAD A CHANCE
13 TO DIGEST THEM. AND, SO IF NOTHING ELSE THAT'S WHAT REMAINS TO
14 BE ACCOMPLISHED. I AM NOT LIMITING IT TO THAT, BUT THAT'S ONE
15 CONCRETE EXAMPLE THAT I CAN GIVE IN RESPONSE TO YOUR PERFECTLY
16 LEGITIMATE QUESTION.

17 MS. RATZAN: I'M HAPPY TO ANSWER ANYTHING ABOUT THE
18 DOCUMENTS. I JUST -- I CAN'T ANSWER ANYTHING ABOUT --

19 THE COURT: I WILL LEAVE THAT TO YOU TO MAKE YOUR
20 DETERMINATION.

21 MS. RATZAN: THANK YOU, YOUR HONOR.

22 THE COURT: I WANT TO ASSURE YOUR CLIENT, AND THE
23 RECORD WILL REFLECT, THAT YOU HAVE DONE EVERYTHING IN YOUR
24 POWER TO -- IN SUPPORT OF YOUR CLIENT'S POSITION. I WILL TELL
25 YOU THAT. YOUR CLIENT OUGHT TO KNOW. MISS RATZAN IS CORRECT.

1 I HAVE BEEN AROUND A LONG TIME. AS YOUTHFUL AS I LOOK I'M VERY
2 OLD. YOU COULD BE ASSURED THAT YOU ARE WELL REPRESENTED.

3 MISS HOFFMAN, IS THERE ANYTHING?

4 MS. HOFFMAN: THE ONLY OTHER THING TO SAY TO THE COURT
5 IS THAT -- AS I UNDERSTAND BRAZIL IS BACK IN BUSINESS MONDAY
6 AND WE WILL --

7 THE COURT: I BEG YOUR PARDON?

8 MS. HOFFMAN: BRAZIL IS BACK IN BUSINESS COME MONDAY
9 AND WE WILL BE WORKING AS -- WE ACTUALLY SORT OF --

10 THE COURT: THIS BEING THURSDAY. YOU'RE SAYING THEY
11 ARE OUT OF BUSINESS UNTIL MONDAY?

12 MS. HOFFMAN: THE BRAZILIANS ARE. THE AMERICANS WHO
13 ARE BASED IN BRAZIL ARE BACK AT WORK BUT THE BRAZILIANS ARE OUT
14 OF POCKET STILL, BUT BY MONDAY WE SHOULD BE ABLE TO START --

15 THE COURT: DUE TO CARNIVAL?

16 MS. HOFFMAN: BELIEVE IT OR NOT I THINK I MAY HAVE TO
17 GO SOME DAY. BUT I'M TOLD THAT THE BRAZILIANS WILL BE ABLE TO
18 START GETTING SOME SORT OF INFORMATION CLOSE STARTING NEXT
19 WEEK. SO HOPEFULLY I CAN SAY TO MYCKI THAT I HAVE DONE

20 WHATEVER I CAN DO IN DUE DILIGENCE IN A FOREIGN COUNTRY --

21 THE COURT: WELL, YOU HAVE A BUNCH OF DOCUMENTS THAT
22 YOU CAN START WORKING ON BETWEEN NOW AND THEN.

23 MS. HOFFMAN: OH, CERTAINLY WE ARE DOING THINGS IN THE
24 UNITED STATES, YOUR HONOR. I JUST MEANT WHAT WE ARE TRYING TO
25 DO IN BRAZIL. I HOPE TO BE ABLE TO HAVE SOME SORT OF ANSWER

1 QUICKLY.

2 THE COURT: WELL, I WILL LEAVE IT TO MISS RATZAN AS TO
3 TIMING. OKAY?

4 MS. RATZAN: I'M HAPPY TO GET THE BANK PEOPLE ON THE
5 PHONE FOR YOU IF THAT'S WHAT YOU WANT BECAUSE IT'S MY
6 UNDERSTANDING THAT THEY ARE BACK IN BUSINESS.

7 MS. HOFFMAN: THE PERSONS I NEED --

8 THE COURT: OKAY. WE DON'T NEED TO DISCUSS THIS ON
9 THE RECORD. YOU KNOW, AS FAR AS I'M CONCERNED LIFE IS A
10 CARNIVAL, CORRECT?

11 MS. RATZAN: CORRECT.

12 THE COURT: RIGHT. OKAY. IF CARNIVAL WAS MY LIFE
13 THIS WOULD BE ONE BORING WORLD.

14 ALL RIGHT, IT IS SO ORDERED.

15 NICE TO SEE YOU ALL.

16 MS. HOFFMAN: THANK YOU.

17 MS. RATZAN: THANK YOU, YOUR HONOR.

18 THE COURT: WE ARE IN RECESS.

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C E R T I F I C A T E

UNITED STATES OF AMERICA
SOUTHERN DISTRICT OF FLORIDA

I, CARL SCHANZLEH, OFFICIAL COURT REPORTER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA, DO HEREBY CERTIFY THAT THE FOREGOING 51 PAGES CONSTITUTE A TRUE TRANSCRIPT OF THE PROCEEDINGS HAD BEFORE THE SAID COURT HELD IN THE CITY OF MIAMI, FLORIDA, IN THE MATTER THEREIN STATED.

IN TESTIMONY WHEREOF, I HEREUNTO SET MY HAND ON THIS 22ND DAY OF JULY 2012.

/S/CARL SCHANZLEH
CARL SCHANZLEH, RPR-CM
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