

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF FLORIDA
3 MIAMI DIVISION
4 CASE NO. 21-cr-20231-DMM

5 UNITED STATES OF AMERICA,
6 Plaintiff,

7 VS.

8 Miami, Florida
9 CARLOS VAZQUEZ, July 20, 2021
10 Defendant. Pages 1-9

11 TRANSCRIPT OF STATUS CONFERENCE
12 BEFORE THE HONORABLE DONALD M. MIDDLEBROOKS
13 UNITED STATES DISTRICT JUDGE

14 APPEARANCES:

15 FOR THE PLAINTIFF:

16 *United States Attorney's Office*
17 BY: HAYDEN O'BYRNE, A.U.S.A.
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Miami, Florida 33132

18 FOR THE DEFENDANT:

19 BY: CARLOS M. FLEITES, ESQ.
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21 REPORTED BY:

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25

1 (Court called to order)

4:33 PM 2 THE COURT: Good afternoon. Please be seated.

4:33 PM 3 This is the case of the United States versus Carlos
4 Vazquez. It's a continuation of a change of plea that we had,
5 was it last week? The week before.

4:33 PM 6 MR. O'BYRNE: I believe it was Monday of last week.

4:33 PM 7 THE COURT: Monday of last week. Yeah, the days catch
8 up with me.

4:33 PM 9 The case number is 21-20231. Could we have
10 appearances?

4:33 PM 11 MR. O'BYRNE: Good afternoon, Your Honor.

4:33 PM 12 THE COURT: If you want to remove your mask when you
13 speak, it would be helpful with these machines.

4:33 PM 14 MR. O'BYRNE: Good afternoon, Your Honor. Hayden
15 O'Byrne on behalf of the United States.

4:34 PM 16 THE COURT: Good afternoon.

4:34 PM 17 MR. FLEITES: Good afternoon, Your Honor. Carlos
18 Fleites on behalf of Carlos Vazquez.

4:34 PM 19 THE COURT: Good afternoon.

4:34 PM 20 Okay. Where do we stand in this case?

4:34 PM 21 MR. FLEITES: It's my understanding Mr. Vazquez, at
22 this time, wishes to retain new counsel moving forward.

4:34 PM 23 THE COURT: Okay. So there's no change of plea then or
24 -- is that what we're doing? Everything changes by the moment
25 almost.

4:34 PM 1 MR. FLEITES: That's my understanding, Your Honor.

4:34 PM 2 THE COURT: Is that the case, Mr. Vazquez? You want
3 another lawyer?

4:34 PM 4 THE DEFENDANT: Yes, Your Honor. I respectfully
5 request -- I am hiring Albert Levin. He's unable -- he was
6 unable -- he told me to tell you that he was unable to come,
7 he's not in the city. He spoke on the phone yesterday with
8 Mr. Hayden O'Byrne, and it is my idea from what Mr. Fleites just
9 said that he received a call from him, I'm not sure. But yes, I
10 would respectfully request that this Court give me the
11 opportunity to change counsel. I'm not in understanding of full
12 of my case, and I'm not having a good situation with my attorney
13 right now. I would respectfully request a change without
14 upsetting this court, Your Honor, or the government. I feel it
15 needs to be done in order for me to proceed in my best interests
16 of my future, my life and what's going on.

4:35 PM 17 THE COURT: All right. Now, we were -- I thought I'd
18 been told that not only were you going -- did you still wish to
19 plead guilty, but you had signed a factual proffer. Is that
20 inaccurate? Was there a factual proffer signed now in this
21 case?

4:35 PM 22 MR. O'BYRNE: There was, Your Honor.

4:35 PM 23 THE COURT: So when did this all happen? Today? This
24 dissatisfaction? Or what happened?

4:35 PM 25 THE DEFENDANT: Since Friday, Your Honor. Because I've

1 asked over and over repeatedly what the facts are, what my
2 situation is what. All I've been able to get my from my
3 attorney is possibly, maybe, it looks that way. And we've been
4 at odds for many, many, many weeks to the point where I've asked
5 him to withdraw, return my money, he's refused. His answer to
6 me was, you know, I'll return your money if you'll return my
7 time. All this is in emails. I'm not here, you know, to throw
8 dirt on my attorney; I'm here to try to help myself in a
9 situation because quite frankly, that's not what I wanted to do.

4:36 PM 10 THE COURT: All right. Have you hired Mr. Levin?

4:36 PM 11 THE DEFENDANT: I have a check in my pocket that I will
12 deliver to his office once we leave here. He told me not to say
13 -- just tell you, and I can show you the e-mail and the
14 correspondence that I am in the process of hiring -- I verbally
15 hired him, but I haven't had a chance to get with him because
16 he's out of the state of Florida and he will not be back. And I
17 believe he did relay that to Mr. O'Byrne.

4:36 PM 18 MR. O'BYRNE: Your Honor, Mr. Levin called me yesterday
19 to ask about this case. I told him that he should probably
20 direct his conversations with Mr. Fleites since he is his
21 attorney. He said he might be coming into it, and that's where
22 we left it.

4:37 PM 23 THE COURT: Well, this case was set for August 2nd.
24 Are you -- what's the position of the government on that? Are
25 we going to trial on August 2nd? I don't see how a new lawyer

1 comes in and is ready for August 2nd.

4:37 PM 2 MR. O'BYRNE: Your Honor, we have no objection to a
3 continuance. I've got a couple of other cases that are set for
4 that time.

4:37 PM 5 THE COURT: And you want to withdraw so Levin can come
6 in?

4:37 PM 7 MR. FLEITES: Yes, Your Honor.

4:37 PM 8 THE COURT: All right. Well, I'll grant the motion to
9 withdraw. I'm assuming Levin's coming in.

4:37 PM 10 What's your position on bond and remand? I was
11 considering remanding the Defendant at the last hearing because
12 of the Pretrial Services Report which I don't know if the
4:37 PM 13 government saw that or not. What's your position on that?

4:37 PM 14 MR. O'BYRNE: Your Honor, this is a difficult case when
15 we initially got it, and we were initially going to seek
16 pretrial detention with respect to this Defendant. But he did
17 self-surrender at the initial appearance. We executed a search
18 warrant at his house then he became aware of it. He became
19 aware of this case through that and then he did self-surrender.
20 I think there might have -- I don't know if probation is here, I
21 don't think they are. I know they had some calls about
22 situations here.

4:38 PM 23 THE COURT: Well, there was a question about where he
24 was living and then apparently he got angry at the Pretrial
25 Services Officer and there was some -- I guess I got a

1 communication about some previous history of the Defendant's.
2 So I had some concerns about it and -- but at that point we were
3 going to trial or resolving this case within a week or so.

4:39 PM 4 So you told me he did self-surrender. Do you want to
5 leave him on bond, or what's our situation?

4:39 PM 6 MR. O'BYRNE: Your Honor, at this point I haven't
7 spoken with probation in a few weeks so I don't know if anything
8 has changed. At this point I know COVID-19 is tricky and is
9 causing issues with trials and prisoner movement, so at this
10 point I think we can leave him out, but I think this has to be
11 the last time. We've got to move this case one way or another
12 either by plea or by trial, and I think this is the fourth or
13 fifth attorney that's reached out to me with respect to this
14 case.

4:39 PM 15 THE DEFENDANT: Your Honor, you have my word this will
16 be the last time. And I was named last week as the most
17 positive member of the meeting.

4:39 PM 18 THE COURT: The most what?

4:39 PM 19 THE DEFENDANT: I was the most positive member of the
20 meeting of -- the meeting that I'm doing on the phone every
21 Tuesday that Your Honor send me to. I've basically grown leaps
22 and bounds by the treatment that I've been getting, and you have
23 my word that you won't have any trouble out of me. I'm living
24 at the address where you sent me. No problems. I haven't
25 violated any conditions of my release. All my tests are clean.

1 I spoke to my probation officer at length yesterday and she was
2 extremely happy with me. You won't have any problems out of me,
3 sir. I give you my word.

4:40 PM 4 THE COURT: All right. I will leave you on bond, but
5 please make sure you continue to perform in good fashion because
6 --

4:40 PM 7 THE DEFENDANT: You have my word on that, sir.

4:40 PM 8 THE COURT: All right. Good. We'll allow the lawyer
9 to withdraw. Let's continue the case for -- what do you think
10 they're going to need? 30 days?

4:40 PM 11 GOVERNMENT 3: I think that's probably reasonable, Your
12 Honor.

4:40 PM 13 THE COURT: So first week of September, something like
14 that? When can we do this case? All right. We'll continue it
15 to August 30th.

4:41 PM 16 I will tell you that it is -- we have a number of
17 criminal trials set for that calendar. That's a difficult
18 calendar.

4:41 PM 19 I don't know where the guidelines come. At least the
20 third point is forfeited. He's had plenty of time to decide his
21 case. The government's going to now have to prepare for trial.
22 You won't get credit for at least the third point if you change
23 your mind and decide that you want acceptance of responsibility.
24 Whether the other two points are in jeopardy, we'll decide those
25 down the road if you change your mind. But this indecision is

1 impacting the scheduling of other cases, the government's need
2 to prepare and my ability to control the docket, which is one of
3 the things acceptance of responsibility looks at.

4:42 PM 4 So when you get together with Levin you need to make
5 some decisions and figure out how you're going to handle this
6 case.

4:42 PM 7 THE DEFENDANT: Yes, sir.

4:42 PM 8 THE COURT: Okay.

4:42 PM 9 THE DEFENDANT: You have my word on that, sir.

4:42 PM 10 MR. O'BYRNE: Your Honor, if I could suggest one thing.
11 I don't think Mr. Levin has been retained at this point, so it
12 makes sense to set a report re counsel date or something similar
13 so we can make sure Mr. Levin has been retained and there's no
14 issues going forward.

4:42 PM 15 THE COURT: Yeah, you need -- we need to have
16 confirmation of Levin's status. How do you suggest we get that?

4:42 PM 17 THE DEFENDANT: Are you speaking to me, sir? I'll have
18 him call you.

4:42 PM 19 THE COURT: The prosecutor largely. I mean --

4:42 PM 20 GOVERNMENT 3: Perhaps we set a date next week for
21 report re counsel and hopefully Mr. Levin will -- and it's on
22 the docket and we'll know that Mr. Levin is going to appear.

4:43 PM 23 THE COURT: Well, I don't want to have -- it's
24 difficult to have a hearing next week. We're in trial in West
25 Palm. All right. We can have them -- the duty magistrate judge

1 in Miami, but we need to set a date?

4:43 PM 2 All right. We'll have a report re counsel to the duty
3 magistrate in Miami next week. So you need to get this
4 situation square with Levin. Either he's retained or isn't
5 retained.

4:43 PM 6 THE DEFENDANT: He'll be retained, sir.

4:43 PM 7 THE COURT: And if he isn't retained, you need somebody
8 else because we've got to move forward.

4:43 PM 9 THE DEFENDANT: Yes, sir. You have my word.

4:43 PM 10 THE COURT: Okay. All right. Have a good day.

4:43 PM 11 COURT SECURITY OFFICER: All rise.

4:43 PM 12 (PROCEEDINGS CONCLUDED)

4:43 PM 13 **C E R T I F I C A T E**

4:43 PM 14 I certify that the foregoing is a correct transcript from the
4:43 PM 15 record of proceedings in the above-entitled matter.

4:43 PM 16 12/22/2021
4:43 PM 17 Date

/s/ Dawn M. Savino, R.P.R., C.R.R.
DAWN M. SAVINO, R.P.R., C.R.R.