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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

21 Cr. 746 (MKV)

5 ADEDAYO ILORI, CHRIS RECAMIER,

6 Defendants.

7 -----x
8 New York, N.Y.
9 December 15, 2021
3:47 p.m.

10 Before:

11 HON. MARY KAY VYSKOCIL,

12 District Judge

13 APPEARANCES

14 DAMIAN WILLIAMS,

15 United States Attorney for the
Southern District of New York

16 BY: DANIEL NESSIM

Assistant United States Attorney

17 LGR LAW LLC

18 Attorney for Defendant Chris Recamier

19 BY: LORRAINE GAULI-RUFO

20 PETER BRILL, ESQ.

Attorney for Defendant Adedayo Ilori

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2 MR. NESSIM: Good afternoon, your Honor. Daniel
3 Nessim for the government.

4 THE COURT: Good afternoon, Mr. Nessim.

5 MS. GAULI-RUFO: Good afternoon, your Honor. Lorraine
6 Gauli-Rufo on behalf of Chris Recamier, who is here seated in
7 the jury box furthest from your Honor in the front row.

8 THE COURT: Good afternoon, Ms. Gauli-Rufo, and good
9 afternoon, Mr. Recamier.

10 MR. BRILL: Good afternoon, your Honor. Peter Brill
11 on behalf of Adedayo Ilori, who, by process of elimination, is
12 to your left.

13 THE COURT: Good afternoon, Mr. Brill and Mr. Ilori.

14 So I am Judge Vyskocil. Gentlemen, you have each been
15 charged in a six-count indictment numbered 21CR746, which
16 charges you with:

17 Major fraud against the United States in violation of
18 Title 18, United States Code, Section 1031 and 2;

19 Second, conspiracy to commit wire and bank fraud in
20 violation of Title 18, United States Code, Section 1343 and
21 1344;

22 Count Three, wire fraud in violation of Title 18,
23 United States Code, Section 1343 and 2;

24 Count Four, bank fraud in violation of Title 18,
25 United States Code, Section 1344 and 2;

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1 Count Five, aggravated identity theft in violation of
2 Title 18, United States Code, Section 1028A(a)(1), (b) & (c)
3 (4)-(5), and 2; and

4 Count Six, conspiracy to commit money laundering in
5 violation of Title 18, United States Code, Section 1956(h).

6 Your case has been assigned to me. Let me ask each of
7 the defendants, first Mr. Recamier, do you speak and understand
8 English clearly.

9 DEFENDANT RECAMIER: Yes, I do.

10 THE COURT: Do you require the services of an
11 interpreter?

12 DEFENDANT RECAMIER: No, I don't.

13 THE COURT: Please fix your mask, sir, so it's
14 covering your nose. Thank you.

15 Mr. Ilori, do you speak and understand English
16 clearly?

17 DEFENDANT ILORI: Yes, I do.

18 THE COURT: Do you require the services of an
19 interpreter?

20 DEFENDANT ILORI: No, I don't.

21 THE COURT: Let me ask you first, Mr. Recamier, as I
22 understand, you were presented on October 8, 2021, before
23 Magistrate Judge Parker. Magistrate Judge Fox has entered an
24 order excluding time from November 9th through December 9th.
25 At some point, you filed a letter on the docket asking that

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1 some action be taken in connection with your case. The Court
2 has received that and we will be proceeding. Going forward, I
3 will be presiding over your case and we will be proceeding
4 apace.

5 So, we're here today for the arraignment of each of
6 you on the indictment in this case.

7 Mr. Ilori, it's the Court's understanding that you
8 have another case pending against you in front of Judge Liman.
9 You're represented by different counsel in that case; right?

10 DEFENDANT ILORI: Yes.

11 THE COURT: That counsel is not appearing here in this
12 matter?

13 DEFENDANT ILORI: No.

14 THE COURT: And will not be?

15 DEFENDANT ILORI: No, she will not be.

16 THE COURT: Thank you. And were you presented this
17 morning? Did you appear before a magistrate judge this
18 morning?

19 DEFENDANT ILORI: Yes.

20 THE COURT: All right. I'm going to arraign each of
21 you gentlemen on the charges against you contained in the
22 indictment.

23 Mr. Recamier, first, have you seen a copy of the
24 indictment in this case?

25 DEFENDANT RECAMIER: Yes, I did.

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1 THE COURT: Have you discussed it with your lawyer?

2 DEFENDANT RECAMIER: Yes, I did.

3 THE COURT: Did you read it carefully?

4 DEFENDANT RECAMIER: I read it several times.

5 THE COURT: And you've had the full opportunity to
6 discuss it with your lawyer?

7 DEFENDANT RECAMIER: Absolutely.

8 THE COURT: Do you need me to read the indictment
9 aloud or do you waive the public reading?

10 DEFENDANT RECAMIER: I don't need you to read it.

11 THE COURT: Counsel, he waives public reading?

12 MS. GAULI-RUFO: Yes, your Honor, he does.

13 THE COURT: All right. Sir, how do you plead at this
14 time to each of the counts contained in the indictment?

15 DEFENDANT RECAMIER: Not guilty.

16 THE COURT: Is that as to all six counts?

17 DEFENDANT RECAMIER: Absolutely.

18 THE COURT: All right. Mr. Ilori, I'm going to ask
19 you the same questions.

20 Have you seen a copy of the indictment in this matter?

21 DEFENDANT ILORI: Yes, I have.

22 THE COURT: Have you read that indictment?

23 DEFENDANT ILORI: Yes, I have.

24 THE COURT: Have you had the opportunity to discuss it
25 with your lawyer?

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1 DEFENDANT ILORI: Yes, I have.

2 THE COURT: Do you understand the charges contained in
3 the indictment?

4 DEFENDANT ILORI: Yes, I do.

5 THE COURT: Do you need me to read the indictment
6 aloud or do you waive public reading?

7 DEFENDANT ILORI: I waive.

8 THE COURT: You waive public reading?

9 DEFENDANT ILORI: Yes.

10 THE COURT: How do you plead at this time?

11 DEFENDANT ILORI: Not guilty.

12 THE COURT: And is that as to all six counts in the
13 indictment?

14 DEFENDANT ILORI: Yes.

15 THE COURT: All right. I'm going to proceed, then, to
16 conference this case at this time.

17 This is the first time that you've all been in front
18 of me in connection with this case. Before we talk about the
19 schedule for the conduct of this matter, I just want to remind
20 the government, as I'm obligated to do under an amendment
21 recently or relatively recently to Rule 5(f) for the Federal
22 Rules of Criminal Procedure, that the prosecution comply with
23 its obligations under *Brady v. Maryland* and its progeny, which
24 require you to disclose to the defense all information, whether
25 admissible or not, that is favorable to the defendant, material

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1 either to guilt or to punishment and known to the prosecution.

2 Possible consequences for noncompliance may include
3 dismissal of individual charges or of the entire case,
4 exclusion of evidence, and professional discipline or court
5 sanctions on any attorney responsible for violations of these
6 obligations.

7 I will enter a written order in this case more fully
8 describing this obligation and any possible consequences of
9 failure to meet your obligations. I direct that the
10 prosecution, anyone else on your team, carefully review that
11 order and comply with that order.

12 But at this time, I'd like counsel, for you,
13 Mr. Nessim, to please confirm that the government understands
14 its obligations and will fulfill them.

15 MR. NESSIM: Yes, your Honor.

16 THE COURT: Thank you. Let me first ask Mr. Nessim
17 and then I'll ask defense counsels to comment to this.

18 What is the status of the speedy trial clock?

19 MR. NESSIM: So the clock has been running since the
20 indictment has been returned last week. I believe we've lost
21 seven days on the clock, your Honor.

22 THE COURT: I will tell you, people in your office
23 take different positions on this. Some people show up and tell
24 me the clock starts to run at the time of arraignment, but
25 you're telling me that seven days have been lost with respect

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1 to both defendants. Is that what you're saying?

2 MR. NESSIM: Your Honor, I believe it does start
3 running from the time of arraignment. The statute is somewhat
4 ambiguous as to whether, even if the clock technically starts
5 running at the time of arraignment, you still count back to the
6 point that the indictment was returned.

7 In any event, because Mr. Ilori did not have counsel
8 appointed in this case, I did not seek an exclusion of time
9 under the act prior to today. I think that is somewhat of an
10 ambiguous question as to when exactly the time starts being
11 counted from.

12 THE COURT: All right. With respect to Mr. Recamier,
13 I said before that it's the Court's understanding that
14 Magistrate Judge Fox excluded time from November 9th until
15 December 9th, today is December 15. Is that consistent with
16 your understanding?

17 MR. NESSIM: No, your Honor, because Magistrate Judge
18 Fox excluded time under the Speedy Trial Act for the return of
19 an indictment or a preliminary hearing. So that does not
20 address that time.

21 THE COURT: I appreciate the clarification. I did not
22 understand that. So no time has been excluded under the Speedy
23 Trial Act then?

24 MR. NESSIM: As to the indictment, that's correct,
25 your Honor.

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1 THE COURT: Is that consistent with the defense's
2 understanding?

3 Let me ask each of you in turn. Ms. Gauli-Rufo?

4 MS. GAULI-RUFO: Yes, your Honor, it is.

5 THE COURT: Mr. Brill?

6 MR. BRILL: Yes, your Honor, that's my understanding.

7 THE COURT: Mr. Nessim, would you please speak to me
8 about what discovery you anticipate in this case, both the
9 nature of the discovery and the volume so that we can talk
10 about a schedule that makes sense.

11 MR. NESSIM: Yes, your Honor. Earlier today, I
12 submitted a draft proposed protective order to defense counsel.
13 Once that's reviewed and returned and hopefully entered by the
14 Court, we will be able to quickly begin producing discovery.
15 Discovery in this case is mostly subpoena returns, primarily
16 for financial institutions. Those returns do have the
17 personally identifying information of third-party victims,
18 which is the primary reason for the protective order.

19 THE COURT: Let me just interrupt you. Have you
20 provided notice to victims?

21 MR. NESSIM: We have provided notice to the victims
22 we've identified thus far, but we are still in the process of
23 identifying additional victims.

24 THE COURT: Okay.

25 MR. NESSIM: So there is a substantial amount of

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1 subpoena returns. That would be produced quickly. The volume
2 is somewhat substantial, but not an overbearing amount.

3 In addition, there are approximately 15 electronic
4 devices recovered from the defendants at the time of their
5 arrests. Those have mostly been imaged. It is our hope that
6 both defendants will agree to cross production of those
7 devices. I believe that that will be the case. In which case,
8 the government will make productions of the full devices that
9 have been imaged to counsel. We'll copy those on onto a hard
10 drive that they'll provide. The responsiveness review pursuant
11 to the search warrants executed is underway. We'll be
12 producing materials responsive to those reviews as they're made
13 available on a rolling basis.

14 In addition, one of the defendants made a postarrest
15 statement, which is video recorded.

16 THE COURT: Who is that?

17 MR. NESSIM: Mr. Recamier. We'll be making that
18 production, as well.

19 That is the major categories of discovery in this
20 case, your Honor.

21 THE COURT: All right. How long do you think you need
22 to produce this discovery?

23 MR. NESSIM: With the caveat that the holidays may
24 slow down the production of, sort of, the electronic devices,
25 because that requires the agents who are actually based in the

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1 D.C. area, so that might be somewhat delayed just because of
2 the holidays and logistics.

3 Once the protective order is signed, the paper
4 production can be made very quickly, within a week. So I would
5 expect that we would be able to have at least substantial
6 production made by the first week of January.

7 THE COURT: All right. It's very hard for me to get a
8 sense, as I'm sure it is for the defendants to get a sense of
9 what volume we're talking about and how long they will need to
10 review that discovery and consult with their clients about the
11 discovery and about whether there are any motions that are
12 contemplated.

13 Do either of you have thoughts about a schedule that
14 makes sense?

15 Before I hear from you, let me just say this.
16 Normally, I would set a schedule for motions and I would set a
17 trial date today, but given the restrictions that we're
18 operating under in times of COVID-19 where I don't even have
19 the latitude to set a trial date without requesting it through
20 a central scheduling office, the calendar for the first quarter
21 of next year is already set. I also will tell you I have a
22 fairly major trial that will be conducted in January. So with
23 that in mind, I think that what makes sense is for you to give
24 me your best sense of how long you think you need to review the
25 discovery materials after they're produced for you, and then

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1 for us to have a further conference at which I will set a
2 schedule for motion practice if there is going to be any and to
3 talk to you all about trial dates.

4 But with that in mind, do either of you have thoughts?

5 MR. BRILL: Your Honor, with the caveat from me that I
6 have a trial with Judge Crotty in March, in discussing with
7 cocounsel and with my client, at least, we would suggest 60
8 days for a status update with regard to discovery. We can then
9 tell the Court the volume we've received and give you a better
10 idea at that point of how much more time we would need.

11 THE COURT: Ms. Gauli-Rufo, does that make sense to
12 you?

13 MS. GAULI-RUFO: Yes, your Honor.

14 THE COURT: When you say a status update, are you
15 proposing not that I schedule a conference 60 days out, but
16 that you provide some kind of written status report and an
17 estimate of when it would make sense to have a conference, or
18 are you saying set a conference 60 days out?

19 MR. BRILL: That's a good question. I think we'll
20 know the scope of discovery before 60 days, your Honor. So if
21 your Honor would like to set -- if you simply wanted a status
22 update, we could probably do that in about 30 days and advise
23 the Court and then perhaps the Court could then set a status
24 conference once we have a better idea of the scope of
25 discovery.

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1 THE COURT: I'm going to do the following, unless
2 anybody else wishes to be heard on this subject. With the best
3 will in the world, good will in the world, you've told me that
4 you've provided a draft of a protective order. We are roughly
5 one business week before the Christmas holiday break. I don't
6 think it's realistic, really, to think that you're going to be
7 well underway with all of this in 30 days. So, 45 days from
8 today I would like a written status report, a joint report from
9 the government and the defendants just telling me, has the
10 protective order been agreed to and submitted, has discovery
11 been produced, have defendants had an opportunity first through
12 counsel and then with your clients to review it, do you need
13 more time, what volume are we talking about, and how long do
14 the defendants request in order to review that discovery and be
15 prepared to come back and talk to me about motion practice, and
16 then when I receive that report, I will enter an order after I
17 look at my calendar to have you back in for further conference
18 at which we'll set a schedule for any practice and target a
19 schedule for trial.

20 Does that make sense, Mr. Nessim?

21 MR. NESSIM: Yes, your Honor, it does.

22 MS. GAULI-RUFO: Yes, your Honor, it does.

23 MR. BRILL: Yes, your Honor.

24 THE COURT: So today is the 15th. I would like to
25 receive that report from you then, why don't we say

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1 January 31st. That's a weekday. January 31st, I will receive
2 a joint written status report. If you can't agree -- although,
3 this is just status, so I would find it impossible to believe
4 you can't agree, but if you can't agree, set forth the
5 government's position and then the defendant's position on what
6 the status of things is, and the defendants separately can tell
7 me how long you think you need to meet with your clients and
8 evaluate that discovery. All right?

9 MS. GAULI-RUFO: Yes, your Honor. Thank you.

10 THE COURT: All right, then. Is there anything
11 further? Does the government have a motion with respect to the
12 Speedy Trial Act?

13 MR. NESSIM: Yes, your Honor. The government moves to
14 exclude time under the Speedy Trial Act through January 31st of
15 2022, and that exclusion would allow the defendants time to --
16 the government time to prepare discovery and the defendants
17 time to receive and review discovery.

18 THE COURT: Is there any objection?

19 MS. GAULI-RUFO: No, your Honor. No objection.

20 MR. BRILL: No, your Honor.

21 THE COURT: You consent to the exclusion of time?

22 MS. GAULI-RUFO: Yes, we do, your Honor.

23 MR. BRILL: Yes, your Honor.

24 THE COURT: All right. The Court will exclude all
25 time from today through and until January 31st of -- actually,

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1 I'm going to exclude it, with your permission, and I'll come
2 back and get your reaction through February 2nd just so that I
3 can receive your report. The report should include a request
4 for further exclusion of time, if that's appropriate. If you
5 serve the status report at the end of the day, it will allow me
6 time to review that and enter a further exclusion order, but
7 the Court will exclude time between today and February 2nd,
8 2022, in order to allow for the discussion among counsel about
9 a protective order, further production of discovery pursuant to
10 that protective order, and for defense counsel to review that
11 discovery, and then consult with the government and prepare a
12 status report.

13 To the extent you're able to do so, I would suggest
14 you include in that status report a proposed schedule going
15 forward or if there are dates that you're not available for a
16 conference, let me know that so we can cut down on the back and
17 forth.

18 But just to complete my order, I do exclude time from
19 today until February 2nd under the Speedy Trial Act to allow
20 for the production of discovery by the government and initial
21 review of that by defense counsel. I find that the ends of
22 justice served by excluding such time outweigh the interests of
23 the public and the defendants in a speedy trial.

24 Is that acceptable to the defense?

25 MS. GAULI-RUFO: Yes, your Honor.

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1 MR. BRILL: Yes, your Honor.

2 THE COURT: All right. Thank you. Is there anything
3 further that we should talk about today, Mr. Nessim?

4 MR. NESSIM: No. Thank you, your Honor.

5 THE COURT: All right. Ms. Gauli-Rufo?

6 MS. GAULI-RUFO: No, your Honor. Thank you.

7 THE COURT: Mr. Brill?

8 MR. BRILL: No, your Honor. Thank you.

9 THE COURT: All right. I thank our court reporter for
10 being with us and we stand adjourned.

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