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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,

6 Defendant.

7 -----x
8 New York, N.Y.
9 July 12, 2022
11:00 a.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

JULIANA MURRAY

17 Assistant United States Attorneys

18 PETER E. BRILL

19 Attorney for Defendant
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(Case called)

MR. NESSIM: Good morning, your Honor. Daniel Nessim and Juliana Murray for the government.

THE COURT: Good morning, Mr. Nessim and Ms. Murray.

MR. BRILL: Good morning, your Honor. Peter Brill on behalf of Mr. Ilori. Mr. Ilori is seated to my left.

THE COURT: Good morning, Mr. Brill. And good morning, Mr. Ilori.

THE DEFENDANT: Good morning.

THE COURT: So we are here for a final pretrial conference and arraignment of the defendant on a superceding indictment. This was supposed to have taken place last week, Mr. Brill just didn't show up at the scheduled time for the pretrial conference. I have, Mr. Brill, your letter that you sent to me that afternoon blaming this basically on your office staff for not properly diarying the date when they got Ms. Dempsey's email to the parties on June 27th.

MR. BRILL: I think, your Honor, blaming --

THE COURT: Let me finish.

MR. BRILL: Yes, your Honor.

THE COURT: The Court also issued a scheduling order on May 20th. So apparently you didn't pay attention to that order either and you've now put us in a position, we're supposed to begin a trial tomorrow of your client, who hasn't even been arraigned on the operative superceding indictment.

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1 Did you want to say something?

2 MR. BRILL: I wasn't only blaming my office staff,
3 your Honor. I didn't mean to give you that impression. It was
4 an attempt to explain to the best that I could what had
5 occurred, but I take full responsibility for the situation.

6 THE COURT: I should have said good morning to our
7 court reporter, too. Good morning, Mr. Malinowski.

8 It seems to me that the first order of business is
9 that Mr. Ilori needs to be arraigned on the superceding
10 indictment.

11 MR. NESSIM: Yes, your Honor.

12 THE COURT: Counsel.

13 MR. BRILL: Yes, your Honor. I have discussed the new
14 charge, your Honor, with Mr. Ilori. He understands the new
15 charge and we would waive a reading of that charge and enter a
16 plea of not guilty.

17 THE COURT: I'm sorry. I couldn't hear you. You
18 would what?

19 MR. BRILL: We would waive a reading of the new
20 indictment and enter a plea of not guilty.

21 THE COURT: Thank you very much, but I need to hear
22 that from Mr. Ilori, as you well know.

23 MR. BRILL: Yes, Judge.

24 THE COURT: So let me just confirm before we get
25 started here.

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1 Mr. Ilori, do you speak and understand English
2 clearly?

3 THE DEFENDANT: Yes, I do.

4 THE COURT: And you do not need the services of an
5 interpreter; is that correct?

6 THE DEFENDANT: Yes, I don't.

7 THE COURT: Let me remind you all, too, of the new
8 protocols in place with respect to COVID.

9 When you are addressing the Court, you may remove your
10 mask just to facilitate my understanding what you're saying
11 and, as importantly, our court reporter being able to
12 accurately transcribe what we're doing here today.

13 So, Mr. Ilori, you have been named in a six-count
14 superceding indictment in this case. That indictment charges
15 you with the following: One, major fraud against the United
16 States, in violation of Title 18, United States Code, Section
17 1031, 2, and 3147; conspiracy to commit wire and bank fraud, in
18 violation of 18, United States Code, Section 1349 and 3147;
19 wire fraud, in violation of 18, United States Code, Section
20 1343, 2, and 3147; bank fraud, in violation of 18, United
21 States Code, Section 1344, 2, and 3147; aggravated identity
22 theft, in violation of 18, United States Code, Section
23 1028A(a)(1), B, C (4-5), 2 and 3147; and finally, conspiracy to
24 commit money laundering, in violation of 18, United States
25 Code, Section 1956H and 3147.

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1 Mr. Ilori, have you seen a copy of this superceding
2 indictment?

3 Don't tell him how to answer. Either he's seen it or
4 he hasn't seen it.

5 THE DEFENDANT: No, I have not.

6 THE COURT: Mr. Brill.

7 MR. BRILL: I provided Mr. Ilori a copy, your Honor,
8 if I could --

9 THE COURT: When?

10 MR. BRILL: At the jail.

11 THE COURT: When? Not where. When?

12 MR. BRILL: Last week. Your Honor, if I could borrow
13 a copy from the government, I'd be happy to go over it again
14 with Mr. Ilori.

15 THE COURT: Please. How can you come to court,
16 Mr. Brill, without a copy of the operative charging document?

17 MR. BRILL: Your Honor, I have everything
18 electronically, and I have a significant amount of paper, as
19 you can see in front of me.

20 THE COURT: It seems to me, as do I, but the charging
21 document, when you're going to trial and your client hasn't
22 been arraigned, it would seem to me, is a pretty basic --

23 MR. BRILL: Your Honor, as I said, I have everything
24 electronically.

25 THE COURT: Show your client the indictment and spend

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1 some time talking to him about it.

2 MR. BRILL: Yes, your Honor.

3 THE COURT: Because I cannot properly arraign him if
4 he's telling me he hasn't even seen it, much less obviously
5 discussed it with you.

6 MR. BRILL: Yes, your Honor.

7 THE COURT: And please let Ms. Dempsey know when
8 you've finished conferring with your client and we will resume.

9 In the meantime, we'll stand in recess.

10 MR. BRILL: Yes, your Honor.

11 (Recess)

12 THE COURT: Mr. Ilori, you can remove your mask
13 because I'm going to be speaking with you.

14 Are you prepared to proceed?

15 THE DEFENDANT: Yes, I am.

16 THE COURT: I'm sorry?

17 THE DEFENDANT: With the indictment, yes. With the
18 arraignment, yes, I am.

19 THE COURT: So I asked you before, I'll ask you again.
20 Have you now seen a copy of the superceding indictment?

21 THE DEFENDANT: Yes, I have now seen it.

22 THE COURT: Do you have a refreshed recollection that
23 your lawyer previously showed this to you at the detention
24 center?

25 THE DEFENDANT: No, I don't.

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1 THE COURT: But are you comfortable with the amount of
2 time -- you've discussed it now with your lawyer?

3 THE DEFENDANT: I'm not comfortable with the -- no, I
4 am not, because I'm not comfortable with the entire -- and the
5 thing is that --

6 THE COURT: Hold the microphone closer to your mouth.
7 Pull the microphone over. It's moveable.

8 THE DEFENDANT: Yes. I have not been able to properly
9 speak to my lawyer about this case at all.

10 THE COURT: Are you prepared for me to arraign you,
11 meaning are you prepared to enter a plea, one way or another,
12 to the charges in the superceding indictment or do you need
13 today's arraignment to be adjourned to allow you time to talk
14 to your lawyer?

15 THE DEFENDANT: Yes, I do.

16 THE COURT: You need to be adjourned?

17 THE DEFENDANT: Yes.

18 THE COURT: All right. I have no choice, counsel, but
19 to adjourn things. We were supposed to go to trial tomorrow,
20 and as I told you, Mr. Brill, at the outset, your failure to
21 appear last week put the trial in jeopardy. I had
22 reservations, in any event, about moving forward on a trial
23 tomorrow when Mr. Ilori hadn't even been arraigned on the
24 operative charging document, and that's on you.

25 So, we'll find a new date for the arraignment,

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1 Mr. Ilori. At the arraignment, I'm simply asking you have you
2 seen the superceding indictment, have you discussed it with
3 your lawyer, do you need me to read it aloud and how do you
4 plead, and you're telling me you're not prepared to make an
5 informed statement about how you plead; correct?

6 THE DEFENDANT: Yes.

7 THE COURT: Okay. Then we will adjourn today's
8 proceeding and reschedule it as soon as thereafter as I am
9 able, and we will have to find a new date for the trial of this
10 matter. I will find a date as soon as I am able. Mr. Ilori,
11 this case is going to trial.

12 I will note for the record that you were previously
13 arraigned on the indictment in this case.

14 THE DEFENDANT: Yes.

15 THE COURT: As I understand it, but I am not your
16 lawyer, so I am not giving you advice, but the Court's review
17 and understanding is that the difference between this
18 indictment and the original indictment to which you pled not
19 guilty is that certain factual --

20 First of all, Mr. Recamier has been dropped from the
21 indictment, because as I think you know, he's pled guilty.

22 THE DEFENDANT: Yes.

23 THE COURT: Second, each count includes a charge under
24 a section known as 3147 of Title 18. Section 3147 is basically
25 a sentencing enhancement section, and that charge was added

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1 presumably based on a contention that you continued to commit
2 the wrongful conduct charged in the original indictment after
3 you were out on bail.

4 I assume this is the case in front of Judge Liman?

5 MR. NESSIM: Yes, your Honor.

6 THE COURT: You understand, sir?

7 THE DEFENDANT: Yes.

8 THE COURT: And then the final change, as I understand
9 it, is that certain activities in connection with the money
10 laundering count have been explained a little bit further in
11 Count Six. Those are the changes that I see in the indictment,
12 but you need to talk to your lawyer about this. We will get
13 you back in as soon as I possibly can to arraign you on the
14 superceding indictment.

15 THE DEFENDANT: Yes.

16 THE COURT: All right. Now, let me talk, in the
17 meantime then, with the lawyers about a few things.

18 I have ruled on the *in limine* motions in this case, I
19 have also ruled on the motion to suppress. Those rulings are
20 outstanding.

21 Is there additional discovery that needs to be
22 produced?

23 MR. NESSIM: Your Honor, I believe we're expecting a
24 small production today. As we're preparing for trial, new
25 stuff comes in and we produce it, but there is not an

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1 outstanding body of discovery to be produced.

2 THE COURT: Is that routine materials that you would
3 produce in any event in preparation for trial or is it
4 predicated on the superceding indictment?

5 MR. NESSIM: It's routine preparation for trial, new
6 materials coming into our possession.

7 THE COURT: When will you be producing that?

8 MR. NESSIM: We produce them on a rolling basis as
9 soon as we obtain them.

10 THE COURT: You have some you'll produce today?

11 MR. NESSIM: Yes, within 20 minutes of this
12 proceeding. And to the extent new materials come into our
13 possession, we will produce them immediately.

14 THE COURT: Mr. Brill, you need, when you receive
15 these materials, to figure a time to go and spend some time
16 with Mr. Ilori and review the superceding indictment, be sure
17 he understands the charges against him, talk to him about
18 potential defenses, talk to him about the discovery you have
19 and the discovery that the government is going to give you.
20 And as I say, we'll set a date for arraignment on the
21 superceding indictment as soon as I possibly can, including as
22 early potentially as next week, which means you better get over
23 to meet with your client promptly.

24 MR. BRILL: Yes, your Honor.

25 To clarify what Mr. Nessim said, they had produced not

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1 a huge amount, but a significant amount of discovery in the
2 last few days, as well. We have almost all of it here that is
3 relevant --

4 THE COURT: That's not an insurmountable pile of
5 materials for you to --

6 MR. BRILL: To be clear, your Honor, the full breadth
7 of discovery is on a hard drive. I, of course, couldn't bring
8 that all out.

9 THE COURT: Counsel, are you prepared to proceed and
10 represent this client?

11 MR. BRILL: I certainly am, your Honor.

12 THE COURT: Then fine. You're shaking your head no,
13 Mr. Ilori.

14 THE DEFENDANT: No, I'm --

15 THE COURT: Are you concerned?

16 THE DEFENDANT: Yes, I am very, very concerned.

17 THE COURT: Tell me your concern.

18 THE DEFENDANT: We have -- and I just received the
19 discoveries about two weeks ago, and I've been asking for it,
20 the discoveries since March and I just got it two weeks ago.

21 The 3500 material was in on Friday. We only spent 10
22 minutes together. I cannot defend myself for a charge that I
23 might be spending 20 years or more in on a 10-minute meeting.
24 I don't know. And a lot of the stuff that I see, I don't
25 understand it, I don't know it, I don't know what is going on,

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1 what strategy that we are going to employ in this trial. I
2 have absolutely no idea what my lawyer is doing and I am not
3 going to go on a trial for a case not knowing anything, not
4 knowing what strategies, not knowing what the government has.
5 I have absolutely no clue.

6 THE COURT: Are you making an application to me? Are
7 you asking me to do something?

8 THE DEFENDANT: Yes, I am.

9 THE COURT: What are you asking me for?

10 THE DEFENDANT: I'm asking for a new lawyer.

11 THE COURT: All right. Mr. Brill, do you want to be
12 heard?

13 MR. BRILL: Your Honor, while I certainly don't want
14 to stand in the way of Mr. Ilori, if he feels that he's lost
15 confidence in his counsel, I can tell you I'm fully prepared,
16 I've reviewed every single piece of paper that came in on this
17 case, every piece of 3500, spent hours printing these things
18 out.

19 What Mr. Ilori is referring to on Friday is I was at
20 the jail for nearly two and a half hours, including well over
21 half an hour to deliver his court clothes after his sister
22 dropped them off -- his wife, excuse me. Dropped them off at
23 my office and I got, first time in 15 years, an overt apology
24 from the MDC staff for their screwup in how late they got me
25 into the visiting room. They're kicking me out at the count

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1 despite me telling them I wanted to stay through the count.

2 THE COURT: Through the what?

3 MR. BRILL: The count. They do a count twice a day.
4 So they actually apologized to me.

5 THE COURT: That's all well and good, Mr. Brill, but
6 you're an experienced defense lawyer. The fact that you've
7 read the materials and you have a strategy and know what you
8 think you're going to do, he's the client, it's his call
9 whether to go to trial.

10 MR. BRILL: 100 percent.

11 THE COURT: And it's Mr. Ilori's right to have your
12 time to prepare for trial. If you were having a problem
13 getting that time, it was incumbent upon you to reach out to
14 the Court and ask for assistance, not to blow off a pretrial
15 conference and then not to show up here without having reviewed
16 all the discovery and spent time with your client to prepare
17 the case for trial.

18 I have an application from Mr. Ilori to change
19 counsel. Mr. Ilori, you have to understand that if I grant
20 your application, I am not putting this trial off indefinitely.

21 THE DEFENDANT: Yes, I do understand.

22 THE COURT: I'm going to schedule your arraignment
23 promptly. I'd like you to work with Mr. Brill so that we can
24 get you arraigned in the next week or two, and thereafter, if
25 you still wish to have new counsel appointed, you can tell me

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1 that and we'll make that arrangement and make that happen on
2 the day of the arraignment.

3 THE DEFENDANT: Thank you.

4 THE COURT: Then you need to meet with that lawyer and
5 we're going to trial on this matter.

6 THE DEFENDANT: I would love to go to trial on this
7 matter.

8 THE COURT: Okay. Anything from the government?

9 MR. NESSIM: Your Honor, just because we've arranged
10 for travel for witnesses, obviously we'll have to change those
11 plans, but just some of these witnesses are victims and have
12 spent some time already preparing for trial and have cleared
13 their schedule to make this week available. In order for us to
14 help them --

15 THE COURT: I'm obviously not happy.

16 MR. NESSIM: Understood, your Honor. In order to give
17 them some indication, does the Court have some general sense?

18 THE COURT: I don't. I have to go back and look at my
19 calendar. I'm sure you can appreciate from the master
20 scheduling system that we had in COVID, there is a backlog of
21 availability. So I will go back and work with my staff to try
22 to figure something out and talk to you about dates as soon as
23 I possibly can, but what I said to Mr. Ilori is how I intend to
24 proceed.

25 I'm going to try to have you in in the next week or

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1 two for arraignment and at that time, we will set the trial
2 date and get Mr. Ilori new counsel if he still wishes it. It
3 may be that he and Mr. Brill work together between now and the
4 arraignment and Mr. Ilori is satisfied. I don't know.

5 MR. NESSIM: Understood, your Honor. Should the
6 parties submit updated blackout dates or will we have an
7 opportunity to discuss at the arraignment, some input on our
8 trial availability?

9 THE COURT: I will listen to you, but I have to say
10 that counsel needs to get a little bit real about the fact that
11 when the Court schedules a trial, I can't operate around the
12 availability of everyone who's appearing before me. If there
13 are absolute dates that you know don't work, both sides, you
14 can submit them to my courtroom deputy by email and we'll try
15 to work around them, but there are limits to how much I can
16 accommodate everybody's preferences.

17 MR. NESSIM: Understood, your Honor.

18 THE COURT: Mr. Ilori does have a right to a speedy
19 trial.

20 MR. NESSIM: Of course.

21 THE COURT: Which brings me to the question of where
22 are we at on that issue?

23 MR. NESSIM: Well, I believe we're excluded through
24 the trial date and we would ask to exclude time through a
25 control date of approximately two weeks from today, which we

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1 anticipate the arraignment will happen within that time period
2 and that will allow Mr. Ilori time to prepare for trial.

3 THE COURT: Mr. Brill, what's your understanding of
4 the speedy trial clock?

5 MR. BRILL: As Mr. Nessim said, I believe we have
6 waived time through the trial date.

7 THE COURT: Meaning tomorrow?

8 MR. BRILL: Yes.

9 THE COURT: And what is your position on excluding
10 time until -- let me first ask, Mr. Brill, will you have time
11 to meet with Mr. Ilori between now and next Wednesday in order
12 that we can conduct the arraignment then?

13 MR. BRILL: Yes, your Honor. The only concern I have
14 is Mr. Ilori has expressed some interest in seeing some of the
15 videos, but I'm sure I can arrange that between now and then.

16 THE COURT: You need that, Mr. Ilori, before you can
17 tell me how you plead?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: All right. Make it happen, Mr. Brill.

20 MR. BRILL: Yes, your Honor.

21 THE COURT: And if you run into problems with making
22 it happen, let us know and it may be that either the U.S.
23 Attorney's Office or our chambers can intercede at the prison
24 to get you time.

25 Are you at MDC, sir?

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1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: If you tell the people there that you have
3 a trial date -- have you told them that?

4 MR. BRILL: Your Honor, all due respect, they don't
5 care.

6 THE COURT: Don't all due respect me, because that's
7 not respectful.

8 MR. BRILL: I didn't mean it that way.

9 THE COURT: And it's not respectful to them either.
10 In my experience, they have been cooperative, and when you
11 speak to the people in the office of legal counsel at MDC and
12 tell them that you have a trial date, in my experience, they
13 have generally been working with people.

14 MR. BRILL: I agree the legal department is more
15 responsive.

16 THE COURT: Did you try that?

17 MR. BRILL: I was physically there on that day, Judge,
18 and they leave at 3 o'clock. I was there at that point after
19 3 o'clock.

20 THE COURT: One day, and there is such a thing as a
21 telephone.

22 MR. BRILL: We've had videoconferences, Judge --

23 THE COURT: Not with your client. To call legal
24 counsel's office.

25 MR. BRILL: At that point, Judge, but they were gone

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1 at 3 o'clock that day.

2 THE COURT: You could have called in advance to tell
3 them, I have a trial next week.

4 MR. BRILL: I'm sorry. I don't know if I'm being
5 clear, your Honor. I arrived almost three hours before --

6 THE COURT: I got that. One week before your client
7 is supposed to be arraigned on new charges and have a trial the
8 next day. We could have dealt with some of this last week had
9 you shown up. Have a seat, Mr. Brill.

10 MR. NESSIM: Your Honor, if I may, briefly.

11 We, of course, want the defendant to have time to
12 understand the indictment and the charges against him, but we
13 also -- and I know the Court does not want to have this, an
14 opportunity for delay. The defendant's need to review videos
15 to understand the charges against him, that's not required to
16 understand the charging instrument itself and enter a plea of
17 guilty or not guilty.

18 THE COURT: It may be. Let's just hypothesize.
19 Suppose whatever these videos are convince him he doesn't
20 really have a defense. It may sway him that he should plead
21 guilty or it may be the converse. It may persuade him that he
22 has an ironclad defense and he should plead not guilty.

23 MR. NESSIM: It may alter determination to go to
24 trial, but the procedural step of arraignment, which is
25 required to proceed under this indictment, simply requires an

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1 understanding of the charges against him and not the evidence
2 supporting those charges.

3 THE COURT: You really want to go to trial on the
4 state of --

5 MR. NESSIM: No. No. We want to have him to have
6 time to review it, but his comment on needing to review certain
7 categories of discovery raises a concern that this may also be
8 a delay tactic and a fear of trial --

9 THE COURT: I said next Wednesday.

10 MR. NESSIM: Okay.

11 THE COURT: That's an inordinate delay in your mind
12 for this man to spend some time talking to his lawyer?

13 MR. NESSIM: No, your Honor. That's fine.

14 THE COURT: All right. Then have a seat.

15 Does next Wednesday, the 20th, work for people? All
16 right, 11:00 a.m. on Wednesday, the 20th.

17 Mr. Brill, please speak to Mr. Ilori, because I need
18 to ask you whether there is a consent to exclude time through
19 next Wednesday.

20 MR. BRILL: Yes, your Honor.

21 (Defendant and counsel conferred)

22 Mr. Ilori is willing to continue his waiver of time,
23 your Honor.

24 THE COURT: All right. So I am going to exclude all
25 time between today and next Wednesday, July 20th, the adjourn

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1 date for Mr. Ilori to be arraigned on the superceding
2 indictment. I do find that the exclusion of such time serves
3 the ends of justice and that it will allow Mr. Ilori the
4 opportunity to confer with his counsel and prepare himself to
5 be arraigned, decide what plea he wishes to enter on the
6 charges against him. I find, for those reasons, the exclusion
7 of time outweighs the interests of the defendant and the public
8 in a speedy trial.

9 So let's talk about a few questions I have with
10 respect to the trial in order that I can keep moving forward
11 with trial prep in any event.

12 First, how long is the government anticipating that it
13 needs for trial?

14 MR. NESSIM: We anticipate that our direct case,
15 assuming reasonable cross examinations, would be approximately
16 three days of testimony.

17 THE COURT: Have the parties talked to one another
18 about how many alternates you think are appropriate?

19 MR. NESSIM: Yes, your Honor. We would ask the Court
20 seat four alternates.

21 THE COURT: That's your view, too, Mr. Brill?

22 MR. BRILL: I have no issue with that, your Honor.

23 THE COURT: On the plan that we are going to trial
24 tomorrow, I had in my own mind come around to the view that we
25 probably needed four alternates for the reason that I have an

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1 unavoidable conflict this Friday, and I did have concern about
2 things, having to adjourn over the weekend and whether we would
3 lose prospective jurors.

4 If we are able to begin this trial on a Monday and
5 move straight through, I'm not sure we need four alternates.
6 So I'm going to reserve decision on whether we'll have two or
7 whether we'll have four. Obviously counsel knows how that
8 impacts the jury selection process and the number of challenges
9 that you get; correct, Mr. Brill?

10 MR. BRILL: I'll have to look it up to refresh my
11 memory, Judge, but yes, I've done it a number of times before.

12 THE COURT: You understand, Mr. Nessim?

13 MR. NESSIM: Yes, your Honor.

14 THE COURT: You did get the order on delivering
15 clothes for Mr. Ilori?

16 MR. BRILL: Yes, thank you. That was one of the
17 things I did on Friday.

18 THE COURT: I have gone through the proposed voir dire
19 questions that you all submitted. We have very minor
20 modifications that I made in what I was planning to do
21 tomorrow, so I'm going to ask my clerk to give each of a red
22 line copy of those. There should not be any issue or problems
23 with them. I simply moved a couple of questions up to the
24 front because if someone is not a United States citizen, for
25 example, that eliminates them. I added social media, when you

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1 talked about have you read any news reports. There should not
2 be any comments, but if there are, please submit them to us in
3 writing, talk to one another and get back to me. Otherwise,
4 that is set.

5 The verdict form you submitted looks fine to the
6 Court. So I'm assuming we're going to go forward with that.

7 With respect to the requests to charge, you gave me
8 some proposed requests to charge. Let me just confirm for the
9 record that these documents that you submitted, the requests to
10 charge, the verdict form, and the voir dire were on consent;
11 right?

12 MR. NESSIM: Yes, your Honor.

13 THE COURT: Mr. Brill?

14 MR. BRILL: Yes, your Honor.

15 THE COURT: The requests to charge basically looked
16 okay to the Court. You asked me to pull and insert my standard
17 requests for certain topics. I have those that I can give to
18 you, as well. So please take a look at those and be prepared
19 when we get together next week. Talk to one another. If there
20 are comments or objections, I'd like to receive them in writing
21 prior to next Monday, close of business, in writing, any
22 comments that you have on the standard request to charge that
23 I'm proposing to pull into the documents that you sent me and
24 any comments on the voir dire, because I'd like these
25 finalized.

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1 Understood?

2 MR. BRILL: Yes, your Honor.

3 MR. NESSIM: Yes, your Honor. But for the request to
4 charge specifically, do you anticipate a formal charge
5 conference if things come up during trial?

6 THE COURT: Of course.

7 MR. NESSIM: Thank you.

8 THE COURT: You want to give them the standard ones,
9 because I do have one question on the request to charge. You
10 ask us to insert our standard charge, interest and outcome. I
11 don't know what you mean by that. Does anyone want to explain
12 further.

13 MR. BRILL: Your Honor, I imagine that's the
14 interested witness charge.

15 MR. NESSIM: Yes, a witness with the interest in the
16 outcome of the trial. We can propose common language if that
17 would be helpful.

18 THE COURT: Why don't you talk to each other and when
19 you send me, by the close of business, I want to receive
20 something – it can be joint or it can be individual, I don't
21 care – telling me the revised voir dire looked fine, the
22 standard request to charge looked fine, and if you can agree on
23 the interested witness charge, include that with what you send
24 me. If there are objections, obviously you're going to give me
25 them by the close of business on Monday, but I can't imagine

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1 there would be any. These are fairly standard charges.

2 MR. NESSIM: Yes, your Honor.

3 THE COURT: That work for you, Mr. Brill?

4 MR. BRILL: Thank you, your Honor. Yes.

5 THE COURT: I have received the witness list and the
6 location list from the government. I assume you shared that
7 with Mr. Brill in advance?

8 MR. NESSIM: Yes, your Honor.

9 THE COURT: Any objections or additions, Mr. Brill?

10 MR. BRILL: I have a witness matter to discuss at some
11 point, your Honor, but no. Beyond that, no.

12 THE COURT: Why don't you tell me what your witness
13 matter is.

14 MR. BRILL: Thank you. Your Honor, Mr. Ilori wishes
15 to call Mr. Recamier as a defense witness. We have subpoenaed
16 Mr. Recamier, given notice to the government, and to his
17 counsel who agreed to accept service on his behalf. They have
18 also represented to myself and to the government that
19 Mr. Recamier will invoke his right against selfincrimination.
20 Mr. Would still like him produced in court to do that outside
21 the presence of the jury, of course, but he does not believe
22 that Mr. Recamier will, in fact, invoke his right against
23 selfincrimination. So would like him produced at some point
24 during the trial so that that can be explored.

25 THE COURT: It's just informational, you served a

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1 subpoena, you talked to his lawyer, he says he'll appear, but
2 he's going to take the Fifth.

3 MR. BRILL: The lawyer's position was that
4 Mr. Recamier did not have to be produced because this was what
5 he was going to do.

6 THE COURT: No, he has to be produced.

7 MR. BRILL: Thank you, your Honor.

8 THE COURT: Now, you've talked to Mr. Ilori about
9 this?

10 MR. BRILL: Yes, your Honor.

11 THE COURT: Is there anything I'm supposed to be doing
12 about this?

13 MR. BRILL: No, your Honor. I just wanted to bring it
14 to your attention.

15 THE COURT: Thank you. Anything from you, Mr. Nessim?

16 MR. NESSIM: Yes, your Honor. I'd like to put on the
17 record that on June 6th, 2022, the government extended a plea
18 offer to Mr. Ilori, and that was a plea to Count Two of the
19 prior indictment, which is conspiracy to commit wire and bank
20 fraud. Count Two in the superceding indictment is the same
21 count number and the same offense.

22 Under the terms of the plea agreement, the defendant
23 would be pleading to that count, which has a statutory maximum
24 sentence of 30 years, a maximum fine of \$1 million or twice the
25 gross pecuniary gain or twice the gross pecuniary loss, as well

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1 as maximum supervised release term of five years.

2 Under the calculation of the guidelines range in this
3 offer, the defendant would be subject to a guidelines range of
4 210 to 262 months' imprisonment, and he would also have a
5 guidelines fine range of \$35,000 to \$1 million, and that's
6 based on a guidelines offense level of 34 and a criminal
7 history category of IV.

8 We understand that the defendant rejected that offer.
9 We would ask that the Court confirm that the defendant rejected
10 that offer.

11 We also informed defense counsel that our rough
12 calculation of the defendant's guidelines posttrial in the
13 event that he is convicted of all counts in the indictment, the
14 guidelines range would be 360 to life.

15 THE COURT: Mr. Brill.

16 MR. BRILL: Your Honor, I'm not sure if I feel
17 comfortable making representations as to Mr. Ilori's plea
18 posture if he's not interested having me as his counsel
19 anymore, so I don't know if we can hold off on that
20 representation. I can represent that is what happened in the
21 past, but that may not be his --

22 THE COURT: Is that an accurate representation?

23 MR. BRILL: Yes, your Honor.

24 THE COURT: Have you communicated that plea offer to
25 Mr. Ilori?

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1 MR. BRILL: Yes, your Honor.

2 THE COURT: And you've discussed it with him?

3 MR. BRILL: Yes, your Honor.

4 THE COURT: Do you want to speak privately with
5 Mr. Ilori at this point?

6 MR. BRILL: I'd be happy to, your Honor.

7 THE COURT: Why don't you so we can know whether we're
8 proceeding or if he doesn't wish to, we'll leave it as the
9 record stands.

10 MR. NESSIM: Your Honor, just to clarify one point
11 before they begin discussing, that plea offer was rejected, as
12 we understand it, and has expired. So it's not necessarily
13 available in the event that Mr. Ilori wanted to take it today,
14 although if he did express interest in pleading guilty, we
15 would of course deal with that possibility.

16 THE COURT: What is your point in making this a matter
17 of public record, which is not normal.

18 MR. NESSIM: Your Honor, it is typical before a trial
19 to put a prior plea offer on the record, to make very clear
20 that the defendant was aware of the possibility of pleading
21 guilty, he had a possibility to a potentially improved
22 sentencing outcome and he rejected that offer, and nonetheless
23 exercised his constitutional right to a trial, which we
24 understand to be happening in this case. It's helpful to
25 understand, just for the record going forward, that the

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1 defendant made that conscious choice.

2 THE COURT: Mr. Ilori, let me speak to you directly.
3 You want to take your mask off, please.

4 Was the offer, as just outlined by the government that
5 it made on June 6th of 2022, communicated to you?

6 THE DEFENDANT: Yes.

7 THE COURT: Are you comfortable that you had time to
8 discuss it with your lawyer?

9 THE DEFENDANT: Yes.

10 THE COURT: And you understand what the offer was?

11 THE DEFENDANT: Yes.

12 THE COURT: And you rejected that offer; correct?

13 THE DEFENDANT: Yes, I did.

14 THE COURT: All right. Then the record is what the
15 record is.

16 And you do understand what counsel for the government
17 has told you, I haven't verified it, but that should you go to
18 trial and be convicted, as I understand what you're saying,
19 Mr. Nessim, is that the maximum sentence range is 360 months to
20 life?

21 MR. NESSIM: That is the guidelines sentencing range,
22 yes.

23 THE COURT: You understand that, Mr. Ilori?

24 THE DEFENDANT: Yes, I do.

25 THE COURT: The record is what it is then.

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1 You may speak with your lawyer obviously between now
2 and next week. Next week, Mr. Ilori, I need you to tell me are
3 you continuing with Mr. Brill or do you wish to have new
4 counsel appointed.

5 THE DEFENDANT: Okay.

6 THE COURT: You need to understand, if you want new
7 counsel, I am not putting this trial off for three or six or
8 nine months just because you have new counsel.

9 THE DEFENDANT: Yes, I understand.

10 THE COURT: New counsel needs to review the record and
11 get up to speed.

12 THE DEFENDANT: Yes.

13 THE COURT: Anything further we can accomplish?

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

15 THE COURT: Mr. Brill?

16 MR. BRILL: Your Honor, before what happened today
17 happened, I'd ask the marshals for an opportunity to speak with
18 Mr. Ilori downstairs. And although, of course, I will go see
19 him at the MDC, if I could see him a few minutes downstairs
20 before he's transported, I'd appreciate it.

21 THE COURT: Is that workable?

22 THE MARSHAL: It shouldn't be a problem.

23 THE COURT: Thank you very much. I appreciate it.
24 And thank you to the marshals for being here.

25 MR. NESSIM: Your Honor, just one more request. Would

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1 it be possible for Mr. Ilori to consult with a standby CJA
2 counsel either today or in advance of the arraignment next week
3 so he can have a second opinion since this does implicate
4 scheduling.

5 THE COURT: We don't normally do that unless there is
6 a conflict of interest.

7 MR. NESSIM: One moment, your Honor.

8 (Pause)

9 Your Honor, just because Mr. Ilori indicated on the
10 record that he may want a new lawyer and the time period
11 pressures that we're dealing with --

12 THE COURT: You're creating the time pressures,
13 counsel.

14 MR. NESSIM: Your Honor, understood if you don't want
15 to make that available. It's just a proposal.

16 THE COURT: I will see everyone next Wednesday at
17 11:00 a.m. Thank you very much to our court reporter.

18 Mr. Brill, you need to spend time with Mr. Ilori.

19 Mr. Ilori, I will tell you, I said this a minute ago,
20 I am not putting this trial off simply because you might elect
21 next week that you want new counsel. Mr. Brill has all of the
22 discovery materials, he's represented to me that he spent a
23 great deal of time reviewing them. You're going to talk to him
24 now. He represents he's going to come and see you before next
25 week. We'll leave it at that. But you'll tell me next week

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1 how you wish to proceed. But in all events, we're proceeding
2 promptly.

3 THE DEFENDANT: Thank you very much.

4 THE COURT: We stand adjourned then. Thank you to our
5 court reporter and thank you to the marshals.

6 * * *