

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

22 Cr. 251 (LJL)

5 RAFAEL MARTINEZ,

6 Defendant.

Curcio Hearing

7
8 New York, N.Y.
9 January 17, 2023
10:35 a.m.

10 Before:

11 HON. LEWIS J. LIMAN,

12
13 District Judge

14 APPEARANCES

15 DAMIAN WILLIAMS

16 United States Attorney for the
17 Southern District of New York

BY: KATHERINE CANNELIA REILLY

Assistant United States Attorney

18 WILKIE FARR & GALLAGHER LLP

BY: RANDALL W. JACKSON

19 MICHAEL SCHACHTER

STEVEN BELLEW

20 - AND -

MORVILLO ABRAMOWITZ GRAND lason & ANELLO P.C.

21 BY: TELEMACHUS P. KASULIS

1 (Case called)

2 THE DEPUTY CLERK: Counsel, for the government, please
3 state your appearance for the record.

4 MS. REILLY: Good morning. Katherine Reilly for the
5 government.

6 THE COURT: Good morning.

7 MR. JACKSON: Good morning, your Honor. Randall
8 Jackson, Michael Schachter, and Telm Kasulis on behalf of
9 Rafael Martinez. Also present today, your Honor, is our
10 associate, Steven Bellew.

11 THE COURT: Good morning to you. And good morning,
12 Mr. Martinez.

13 This matter was originally scheduled for oral argument
14 on the motion to dismiss the indictment. Since the scheduling
15 of that, I've received a letter from the government dated
16 January 4, 2023, requesting that I conduct a *Curcio* hearing in
17 light of the application of Mr. Bellew, an associate at Wilkie
18 Farr, for a position as an assistant United States attorney in
19 the Southern District of New York. And I've indicated that we
20 would hold a *Curcio* hearing today based upon that potential
21 conflict of interest.

22 I also received a letter from the government
23 indicating that the government intended to supersede the
24 indictment. And in light of that intention and at the
25 government's request and over the defendant's opposition, I

1 rescheduled the oral argument on the motion to dismiss the
2 indictment.

3 So it's my intention today to conduct a *Curcio*
4 hearing, using primarily the government's proposed *Curcio*
5 hearing questions. I've got a couple of questions for counsel
6 about those questions which I'll ask in a moment.

7 After conducting the *Curcio* hearing, I'm going to
8 inquire of the government its anticipated timing with respect
9 to the superseding indictment and discuss with counsel whether
10 there is a need for any further briefing or anticipated need
11 for any further briefing on the motion to dismiss the
12 indictment. And then I'll be prepared to address any other
13 matters that counsel wants to raise with me.

14 So with that in mind, a couple of questions about the
15 proposed *Curcio* hearing questions.

16 First, from the defense, is there any objection to me
17 asking the questions suggested by the government?

18 Mr. Schachter or Mr. Jackson?

19 MR. JACKSON: No, your Honor.

20 THE COURT: There are a couple of things that I've
21 got. First of all, from Wilkie Farr's perspective, I take it
22 Wilkie Farr is retained in this case.

23 Am I correct about that?

24 MR. JACKSON: That's correct.

25 THE COURT: Is there any need for me to ask that

1 particular question?

2 MS. REILLY: No, your Honor.

3 THE COURT: Is there counsel from Morvillo Abramowitz
4 present today?

5 MR. KASULIS: I am, your Honor. Telm Kasulis.

6 THE COURT: Mr. Kasulis, just so I know for purposes
7 of the question, has your client discussed with you the issues
8 that are raised in the *Curcio* hearing and Mr. Bellew's interest
9 or potential conflict of interest?

10 MR. KASULIS: Yes.

11 THE COURT: Then let me ask the questions of
12 Mr. Martinez.

13 Does the government think that Mr. Martinez needs to
14 be placed under oath for this? I don't think so.

15 MS. REILLY: I don't believe so, your Honor.

16 THE COURT: Mr. Martinez, let me address myself to
17 you.

18 I've got a series of questions. If you don't
19 understand any of my questions, just tell me that, and I'll try
20 to rephrase them. If you want to discuss any of the questions
21 that I've asked with your counsel, just let me know that.

22 It's critically important that you understand all of
23 the questions that I ask before you answer them. So, unless
24 you tell me you don't understand a question, I'm going to
25 assume that you understand a question.

1 Do you understand that?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: How old are you, sir?

4 THE DEFENDANT: Fifty-seven.

5 THE COURT: How far did you go in school?

6 THE DEFENDANT: Third year of college.

7 THE COURT: Are you currently consulting a doctor for
8 any condition?

9 THE DEFENDANT: No, your Honor.

10 THE COURT: Are you currently under the influence of
11 alcohol or drugs of any kind?

12 THE DEFENDANT: No, your Honor.

13 THE COURT: Are you feeling well enough to proceed
14 with the hearing today?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: And do you understand the purpose of the
17 hearing today?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: Is your mind clear today?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Now, are you currently represented by,
22 among other attorneys, Michael Schachter, Randall Jackson, and
23 Stephen Bellew of the law firm Willkie Farr & Gallagher LLP?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Do you know, sir, that Mr. Bellew has

1 applied for a position with the United States Attorney's Office
2 for the Southern District of New York? That is, the office
3 that is currently prosecuting you.

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Now, because of Mr. Bellew's pending
6 application with the United States Attorney's Office for the
7 Southern District of New York, I wish to advise you of certain
8 matters.

9 You should understand that under the Constitution and
10 laws of the United States, you are entitled to the aid and
11 assistance of counsel at all times in these proceedings. You
12 are entitled to counsel of your own choice, unless there is a
13 strong legal reason for disqualifying that counsel. If you
14 could not afford an attorney, an attorney would be appointed to
15 represent you without costs.

16 Do you understand all that have?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: And it is essential to the idea of an
19 adequate defense in a criminal proceeding that your attorney
20 have no conflicts or adverse interests of any kind. That is to
21 say, he cannot, unless it is with your knowledge and consent,
22 have any conflicting interest in the case.

23 You have the right to the assistance of a lawyer whose
24 loyalty to you is undivided and not subject to any factor that
25 might intrude upon that loyalty. The purpose of this law and

1 these principles is to ensure that you have the full, devoted
2 defense furnished to you by an attorney who has no possible
3 interest of any kind in this matter.

4 Do you understand all of that?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Now, this Court, having presided as the
7 judge in a number of trials in this courthouse and having
8 served as counsel for a long time, believes that representation
9 where there is a potential conflict of interest may be
10 ill-advised.

11 Do you understand that?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Do you understand that Mr. Bellew's
14 application for employment with the United States Attorney's
15 Office for the Southern District of New York as a prosecutor
16 creates a potential that he may have allegiances to interests
17 that may be adverse to your own interests?

18 Do you understand that?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Do you understand that by deciding to
21 proceed with Mr. Schachter, Mr. Jackson, and Mr. Bellew as part
22 of your defense team, you are waiving any argument, after your
23 sentencing, that they were ineffective or deficient in their
24 representation of you because Mr. Bellew suffered from a
25 conflict of interest by virtue of his application for a

1 position with the United States Attorney's Office?

2 Do you understand that?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: Now, have you discussed these conflict of
5 interest matters with Mr. Schachter, Mr. Jackson, and
6 Mr. Bellew?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: Are you satisfied with their
9 representation of you?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Now I want you to describe for me in your
12 own words your understanding of the conflict of interest that
13 potentially arises from Mr. Bellew's representation of you
14 while pursuing his application for a position with the
15 United States Attorney's Office as a federal prosecutor.

16 THE DEFENDANT: Well, my understanding is that a
17 member of our legal team has applied for a position with the
18 very same office as is prosecuting me. But I feel comfortable
19 with the team that I have, the lead team, extremely
20 comfortable, with my defense going forward.

21 THE COURT: Do you understand that with respect to
22 Mr. Bellew specifically, that Mr. Bellew's application to the
23 very office that's prosecuting you may create for him a
24 conflict of interest in that he might have interest with the
25 U.S. Attorney's Office that would be inconsistent with his

1 interest in protecting you and your interests?

2 THE DEFENDANT: I understand that.

3 THE COURT: Now, do you understand that you've got a
4 right to consult with a lawyer, other than Mr. Schachter,
5 Mr. Jackson, and Mr. Bellew, in order to determine whether you
6 wish Wilkie Farr to continue to represent you?

7 THE DEFENDANT: I do, your Honor.

8 THE COURT: And have you consulted with any attorney,
9 other than Mr. Schachter, Mr. Jackson, and Mr. Bellew, to
10 determine whether you wish Wilkie Farr to represent you and to
11 discuss the issue of potential conflict of interest?

12 THE DEFENDANT: Well, I've had conversations with one
13 of our attorneys that is here today, Mr. Kasulis, and feel very
14 comfortable moving forward with the additional team of Wilkie
15 Farr.

16 THE COURT: So have you discussed with Mr. Kasulis of
17 the Morvillo firm the issues of potential conflict of interest
18 and your right to undivided counsel?

19 THE DEFENDANT: Yes. And I feel extremely comfortable
20 moving forward with them.

21 THE COURT: If you wanted the opportunity to consult
22 with Mr. Kasulis further, I would give you that opportunity.

23 Do you understand that?

24 THE DEFENDANT: I do, your Honor.

25 THE COURT: Now, I've got no other questions for

1 Mr. Martinez, unless the government has any questions. I do
2 have questions for defense counsel.

3 MS. REILLY: No other questions for Mr. Martinez.

4 THE COURT: Thank you, Mr. Martinez.

5 I guess I should address myself to you, Mr. Jackson.
6 Is that fair?

7 MR. JACKSON: If it pleases the Court.

8 THE COURT: Mr. Jackson, have you and Mr. Schachter
9 and Mr. Bellew discussed the potential conflicts of interest
10 with Mr. Martinez?

11 MR. JACKSON: We have, your Honor.

12 THE COURT: Do you feel that he understands the
13 possible risks of being represented by a lawyer with potential
14 conflicts of interest?

15 MR. JACKSON: Yes, your Honor.

16 THE COURT: Let me just ask one or two more questions
17 of Mr. Martinez.

18 Mr. Martinez, you may retain seated.

19 Thank you, Mr. Jackson.

20 Mr. Martinez, if you wanted, I would give you several
21 more days to consult about the conflict of interest issues.

22 Do you want those several days?

23 THE DEFENDANT: No, your Honor. I'm comfortable with
24 the decision moving forward with the team.

25 THE COURT: Is there anything that the Court has said

1 that you wish to have explained further?

2 THE DEFENDANT: No, your Honor.

3 THE COURT: Is anything unclear?

4 THE DEFENDANT: No. Everything is clear.

5 THE COURT: And are you prepared to proceed with
6 representation by Wilkie Farr, understanding the potential
7 risks?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Anything further the government would have
10 my ask?

11 MS. REILLY: No, your Honor.

12 THE COURT: Anything further the defense would have me
13 ask?

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

15 THE COURT: All right. I find that Mr. Martinez has
16 knowingly and voluntarily waived any potential conflict of
17 interest that arises from Mr. Bellew's application to the
18 United States Attorney's Office for the Southern District of
19 New York.

20 Now let me address some of the other matters.

21 What is the government's anticipated timing with
22 respect to the superseding indictment?

23 MS. REILLY: Your Honor, in our letter we filed on
24 Friday, we have asked for 14 days. And I think that is a
25 conservative estimate. I am hopeful we will have a superceding

1 indictment this week. But I have asked for the extra time just
2 in light of the vagaries of scheduling with the grand jury.

3 So this week is my best estimate. If you can give us
4 the 14 days, I think that would be helpful. We'll obviously
5 let the Court and defense counsel know as soon as a superseding
6 indictment is returned.

7 THE COURT: So 14 days -- I don't have the calendar in
8 front of me.

9 MS. REILLY: I was thinking two weeks from last
10 Friday, your Honor.

11 THE COURT: So that would be the 27th.

12 MS. REILLY: Yes, your Honor.

13 THE COURT: Am I correct in understanding that there
14 won't be any new counts? It's just going be to changes to the
15 mail fraud or the wire fraud count?

16 MS. REILLY: Yes, your Honor. That's correct.

17 THE COURT: So let me ask, Mr. Jackson. We'll need to
18 arraign Mr. Martinez on the superseding indictment.

19 Is there any reason why that couldn't be done on
20 February 17, which is the date that we've got scheduled for
21 oral argument?

22 MR. JACKSON: No, your Honor. That would be our
23 preference.

24 THE COURT: Working off of the date of January 27 as
25 the latest date for the superseding indictment, I anticipate

1 that you might want to put in papers addressing the effect of
2 the superseding indictment, whether or not it cures the defect
3 that you've identified.

4 I'm going to want that obviously in advance of
5 February 17, sufficiently in advance that the government would
6 have a week to respond to whatever you've put it in.

7 What's your request in that respect?

8 MR. JACKSON: May I have just one moment, your Honor?

9 (Pause)

10 MR. JACKSON: Your Honor, would our filing any papers
11 by February 3, with the government filing by February 10, be
12 acceptable to the Court?

13 THE COURT: That is. If you want to put in a reply,
14 you would put it in by February 14 at 5:00 p.m.

15 Are those dates acceptable to the government?

16 MS. REILLY: Yes, your Honor.

17 THE COURT: And to you, Mr. Jackson?

18 MR. JACKSON: Yes, your Honor. Thank you.

19 THE COURT: February 3 for a supplemental brief from
20 defense counsel addressed to the effect of the superseding
21 indictment with respect to the current motion to dismiss
22 indictment and the arguments in there. February 10 for the
23 government's opposition. February 14 for the reply.

24 Is there anything further from the government to
25 discuss today?

1 MS. REILLY: Nothing further from the government, your
2 Honor.

3 THE COURT: Mr. Jackson, anything further?

4 MR. JACKSON: Nothing further. Thank you, Judge.

5 THE COURT: Thank you, all. Apologies that we got
6 started a little bit late this morning. See you on
7 February 17.

8 (Adjourned)