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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

22 CR 251 (LJL)
Arraignment

5 RAFAEL MARTINEZ,

6 Defendant.

7
8 New York, N.Y.
9 May 12, 2022
11:01 a.m.

10 Before:

11 HON. LEWIS J. LIMAN,

12 District Judge

13
14 APPEARANCES

15 DAMIAN WILLIAMS,

16 United States Attorney for the
Southern District of New York

17 BY: MICAH F. FERGENSON

Assistant United States Attorney

18 WILLKIE FARR & GALLAGHER, LLP

19 Attorneys for Defendant

20 BY: RANDALL W. JACKSON

MICHAEL S. SCHACHTER

AND

21 MORVILLO ABRAMOWITZ GRAND IASON & ANELLO, PC

22 BY: TELEMACHUS P. KASULIS

ELKAN ABRAMOWITZ

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(In open court)

(Case called)

MR. FERGENSON: Good morning, your Honor. Micah Fergenson for the government.

THE COURT: Good morning.

MR. JACKSON: Good morning, your Honor. Randall Jackson, Michael Schachter, Tim Kasulis and Elkan Abramowitz on behalf of the defendant, Rafael Martinez.

THE COURT: Good morning. Good morning, Mr. Martinez.

THE DEFENDANT: Good morning.

THE COURT: I understand, Mr. Fergenson, we're here today for the purposes of arraigning the defendant on the indictment and the initial appearance; is that correct?

MR. FERGENSON: That's correct, your Honor.

THE COURT: Okay. Mr. Martinez, I have in front of me the indictment 22 CR 251. Have you received -- you may be seated. Have you received a copy of the indictment?

THE DEFENDANT: Yes, your Honor.

THE COURT: And have you had a chance to review it with your lawyers?

THE DEFENDANT: Yes, your Honor.

THE COURT: Would you like me to read the indictment to you?

THE DEFENDANT: No, your Honor.

THE COURT: How do you plead to the indictment?

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1 THE DEFENDANT: Not guilty, your Honor.

2 THE COURT: Thank you. Sir.

3 All right. Let me hear from the prosecution. Why
4 don't you tell me a little bit about your case, where you stand
5 with respect to discovery, and when the defendant was arrested
6 and indicted, and the conditions of bail?

7 MR. FERGENSON: Yes, your Honor. So this case
8 involves, most broadly speaking, a paycheck protection program
9 fraud. As detailed -- this defendant was initially arrested on
10 a complaint. As detailed in a rather extensive complaint, the
11 government charges that the defendant submitted false
12 applications both for a PPP, as it's known, loan for his
13 company, as well as an application to become a PPP lender; that
14 is, a commercial lender that actually issued these PPP loans to
15 other businesses.

16 The defendant was arrested on that complaint on
17 February -- charged and arrested on February 28th. He was
18 presented the following day, which I believe was March 1st. He
19 was then indicted on May 2nd, 2022, in five counts. The first
20 two counts relate to the -- call it the PPP lender scheme.
21 That first count is wire fraud, the second is false statements
22 to the SBA, the Small Business Administration.

23 The second two counts relate to the PPP loan scheme.
24 The third count is bank fraud. The fourth count is false
25 statements to a bank. And then the last count, aggravated

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1 identity theft, is in connection with the PPP loan scheme in
2 which the defendant forged the signature and name of his
3 accountant. It's in connection with that application.

4 THE COURT: Where do you stand with respect to
5 discovery?

6 MR. FERGENSON: Yes, your Honor. So I'll give a brief
7 summary of what it consists of. It includes subpoena returns
8 from at least 30 different entities. It includes voluminous
9 financial records, corporate records, tax and accounting
10 records, as well as records relating to how proceeds were
11 spent, including records from a chartered jet service, luxury
12 car dealers.

13 In addition to those tax returns, there are IRS
14 records for the defendant and his companies, SBA records
15 relating to the defendant and his companies. These SBA records
16 are actually quite voluminous. There are over 43,000
17 documents, and I would say I'm still confirming if we'll be
18 producing those SBA records in their entirety, or if there are
19 some that are actually not rule 16 discovery included in there,
20 but I expect the bulk of it will be produced.

21 There are records from the federal reserve, which as
22 your Honor may have seen in the complaint, operated a liquidity
23 facility to provide capital to PPP lenders; so \$823 million
24 came from the Fed to the defendant's company, MBE. Those are
25 not as voluminous as SBA. I think a little over a gigabyte of

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1 records.

2 There's an e-mail search warrant on the defendant's
3 work e-mail, relatively voluminous. There are over 91,000
4 documents. There was an extraction on the defendant's phone
5 seized at his arrest, but it appeared to be wiped. There
6 was --

7 THE COURT: So there's nothing from the phone that
8 you're aware of?

9 MR. FERGENSON: That's correct. Seizure warrant for
10 several bank accounts, and there was a video of the defendant's
11 post-arrest questioning, albeit, I don't believe there was much
12 of substance in it.

13 I think in light of the voluminous nature, we would
14 anticipate being able to produce it in about three weeks, but
15 perhaps, to be conservative, call it a month, just for
16 technical delays that often come up.

17 THE COURT: Besides the search warrant for the e-mail,
18 were there any other search warrants?

19 MR. FERGENSON: There was a search warrant for the
20 cell phone at his arrest, but like I said --

21 THE COURT: There's nothing that was obtained from
22 that that you could use. Nothing that was obtained, period?

23 MR. FERGENSON: There was an extraction, but the
24 contents of the phone appeared to have been wiped.

25 THE COURT: Okay. And I gather there's something of a

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1 post-arrest statement, and any other law enforcement techniques
2 that, from your perspective, that could give rise to a
3 suppression motion?

4 MR. FERGENSON: None that I'm aware of, your Honor, or
5 none that come to mind immediately.

6 THE COURT: And I'll turn to the defense in a moment,
7 but stay standing for a moment more because I have a couple
8 more questions.

9 First of all, I take it that the defendant has been
10 released. What are the conditions of bail?

11 MR. FERGENSON: Your Honor, I'm actually not -- I
12 don't have it in front of me right now, but he was released on
13 a negotiated package that included posting his property --
14 excuse me, posting as security four properties, two in
15 New Jersey, two in SDNY, and I'm not sure if I got that
16 incorrectly, but the defense can correct it.

17 I was actually not the AUSA on the case at the time of
18 the presentment, but it was a negotiated package. And I
19 believe he's being supervised by pretrial in New Jersey, which
20 was his --

21 THE COURT: District of residence?

22 MR. FERGENSON: Correct, your Honor.

23 THE COURT: And the last question I've got for you is
24 my standard one, which is, how does the government propose that
25 I proceed? It seems to me that the next step would be a status

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1 conference, where I hear about any potential motions. But give
2 me your thoughts about next steps and the timing of next steps.

3 MR. FERGENSON: We agree with that, your Honor, and I
4 would defer, I think in the first instance, to how much time
5 the defense would like to review discovery and assess any
6 potential motions, and as long as that's reasonable, I'm sure
7 it will be fine with the government.

8 THE COURT: Okay. All right. Let me turn to the
9 defense, a lot of familiar faces on the defense side. Welcome
10 to all of you.

11 MR. JACKSON: Thank you, your Honor.

12 THE COURT: So tell me your perspective on next steps
13 and where you think the case should go.

14 MR. JACKSON: Yes, your Honor, and just to answer the
15 Court's question, I believe AUSA Fergenson described the bail
16 conditions correctly. It's also a \$10 million personal
17 recognizance bond secured by the property, the four properties
18 that were described.

19 Your Honor, given the volume of the discovery, we
20 would request -- we do agree with the Court that a status
21 conference to follow up the production of discovery would be
22 appropriate. We would request something in area of 90 days
23 from now. Assuming that we get the discovery in 30 days, that
24 would give us several weeks to be able to make a determination
25 as to whether there are any applications we need to make and

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1 also to be able to advise the Court with regard to additional
2 scheduling.

3 THE COURT: I think that puts us sometime in the month
4 of August, and I'd like to do it the second week in August. My
5 expectation would be that at that conference, I hear from you
6 with respect to whether you plan to make any motions, we set a
7 date for motions, and we set a tentative trial date for the
8 case.

9 MR. JACKSON: Yes, your Honor. That would make
10 perfect sense.

11 THE COURT: Okay. Mr. Fishman, sometime the week of
12 August 8th.

13 (Pause)

14 August 11 at 3:00 p.m., does that work for the
15 defense?

16 MR. JACKSON: Yes, your Honor.

17 THE COURT: And does that also work for the
18 government?

19 MR. FERGENSON: Yes, your Honor.

20 THE COURT: Okay. Before we get to the matter of the
21 Speedy Trial Act, anything further from the defense?

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

23 THE COURT: Anything from the government besides the
24 Speedy Trial Act?

25 MR. FERGENSON: Only that, your Honor.

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1 THE COURT: Do you want to make your application?

2 MR. FERGENSON: Yes, your Honor. The government moves
3 to exclude time until the next conference on August 11th under
4 the Speedy Trial Act in order to allow the government to
5 produce discovery, the defense to review it and also assess any
6 potential motions.

7 THE COURT: Okay. What's the defense's position?

8 MR. JACKSON: Your Honor, we have no objection.

9 THE COURT: Okay. All right. The Court will exclude
10 time from today until August 11th, 2022, under the Speedy Trial
11 Act, 18 U.S.C. 3161(h)(7)(A). I find that the ends of justice
12 outweigh the interests of the defendant and the public in a
13 speedy trial, in that the time from today until August 11th can
14 be used by the government to make production and by the defense
15 to review the production of discovery and to consider any
16 potential motions.

17 Before we break, I do have an oral order that I'm
18 going to deliver to the government. It either has been
19 accompanied by or will be accompanied by a written order placed
20 on the docket.

21 I direct the prosecution to comply with its
22 obligations under *Brady against Maryland* and its progeny to
23 disclose to the defense all information, whether admissible or
24 not, that is favorable to the defendant, material either to
25 guilt or to punishment, and known to the prosecution.

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1 Possible consequences for noncompliance may include
2 dismissal of individual charges or the entire case, exclusion
3 of evidence, and professional discipline or court sanctions on
4 the attorneys responsible.

5 I will or have entered a written order more fully
6 describing this obligation and the possible consequences of
7 failing to meet it, and I direct the prosecution to review and
8 comply with that order.

9 Does the prosecution confirm that it understands its
10 obligations and will fulfill them?

11 MR. FERGENSON: Yes, your Honor.

12 THE COURT: Okay. Thank you.

13 Anything further from the government, Mr. Fergenson?

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

15 THE COURT: Mr. Jackson, anything further?

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

17 THE COURT: Okay. Good day. Everybody stay safe and
18 stay healthy and see you in August.

19 MR. JACKSON: Thank you, Judge.

20 (Adjourned)