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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,)	
Plaintiff,)	15-CR-00252 (PC)
)	
V.)	United States Courthouse
)	Brooklyn, New York
)	
WEBB, ET AL.,)	MONDAY, SEPTEMBER 19, 2016
)	
Defendants.)	

TRANSCRIPT OF CRIMINAL CAUSE FOR STATUS CONFERENCE
BEFORE THE HONORABLE PAMELA CHEN
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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THE COURT REPORTER: NICOLE CANALES, RPR, CSR

1 THE CLERK: Criminal Cause for Status Conference,
2 Docket 15CR252, United States versus Webb, et al.

3 Will the parties please state their appearances for
4 the record, starting with the government.

5 MR. NORRIS: Good afternoon, your Honor. For the
6 government, Evan Norris, Amanda Hector, Sam Nitze, Kristin
7 Mace, Paul Tuchmann, Nadia Shihata, Keith Edelman and Tanya
8 Hijjar.

9 THE COURT: Is there anyone left at the office to do
10 any work?

11 MR. NORRIS: We left one person back there.

12 THE COURT: Who do we have for the defense?

13 MR. PAPPALARDO: My name is John Pappalardo. I'm
14 here with Silvia Pinera-Vasquez. We represent Mr. Napout.

15 THE COURT: Good afternoon to both of you.

16 MS. PINERA-VASQUEZ: Good afternoon.

17 MR. GOLDSTEIN: Good afternoon, your Honor. David
18 Goldstein for Mr. Esquivel, whose appearance is excused.

19 THE COURT: Good afternoon.

20 MR. SULLIVAN: Good afternoon, your Honor. William
21 Sullivan and Fabio Leonardi with Pillsbury. We're
22 representing Julio Rocha, who is present in your courtroom
23 today.

24 THE COURT: Good afternoon to all of you.

25 MR. MEHLER: Good afternoon, your Honor. Gordon

1 Mehler, representing Mr. Takkas, whose appearance has been
2 waived.

3 THE COURT: About afternoon, Mr. Mehler.

4 MR. ZENO: Good afternoon, your Honor. Thomas Zeno
5 on behalf of Mr. Li, who is here in the courtroom today.

6 THE COURT: Good afternoon to both of you.

7 MS. KRAMER: Good afternoon, your Honor. Jenny
8 Kramer on behalf of Aaron Davidson, whose appearance is also
9 waived.

10 THE COURT: Good afternoon.

11 MR. MIEDEL: Good afternoon, your Honor. Florian
12 Miedel and Joshua Paulson representing Hector Trujillo.

13 THE COURT: Who is present. Good afternoon to both
14 of you.

15 MR. PAULSON: His presence has been waived.

16 THE COURT: I'm so sorry. You're absolutely right.
17 I apologize. Good afternoon to both of you.

18 MR. STILLMAN: Good afternoon, your Honor. Charles
19 Stillman, Kendall Coffey, Julio Barbosa for Jose Marin. His
20 appearance has been waived.

21 THE COURT: Good afternoon to all of you.

22 All right. We are missing, actually, one defendant
23 and one defense attorney. Now Mr. Takkas, his appearance was
24 waived, but his attorney should be here.

25 MR. MEHLER: I am here, your Honor.

1 THE COURT: I'm sorry, Mr. Mehler. You said that
2 before. My apologies. So we're good on you. Sorry. I
3 didn't pay attention to who you actually represented. I'm
4 sorry about that.

5 So everyone is present and accounted for who should
6 be here. This is, of course, the first status conference
7 before me. As the parties are aware, the case was reassigned
8 to me on August 23rd of this year, and I have spent the time
9 between then and now to try to familiarize myself with the
10 history of the case, and the different proceedings, and
11 obviously the various parties. My goal today is to
12 essentially pick up where Judge Dearie left off and to set a
13 workable pretrial schedule, assuming a fall 2017 trial date.

14 Now as the parties may all recall, the last time you
15 were here in August, I think it was the 11th of August,
16 Judge Dearie had opined that a spring trial date was
17 unrealistic and had told everyone to prepare for a fall 2017
18 trial date, which I agree with. The only difference is I'm
19 going to assume a start date in November instead of September,
20 which is what I think he had preliminarily suggested. In
21 fact, I think his words were your September and October are
22 mine. But I'm going to operate a little differently, for
23 reasons that have more to do with our internal chambers
24 management and schedules that we have to deal with.

25 So here's what I'm going to propose, in terms of the

1 pretrial schedule, and I think it will come as no surprise,
2 because I think Judge Dearie had suggested something similar,
3 a sort of two-tiered approach to the pretrial motions, so the
4 first tranche, if you will, of pretrial motions that are
5 directed at the indictment. So any spatial challenges to the
6 indictment itself -- I assume jurisdictional challenges would
7 be the bulk of those -- those would be on the following
8 schedule. And I propose this but subject to further
9 discussion with the parties.

10 November 7th for the initial motions by defense
11 counsel, spatially challenging the indictment. November 28th
12 for the government's response. And for what it's worth,
13 folks, this will be recapitulated in a docket order, so if you
14 don't want to write, you don't have to. And then
15 December 12th for any replies. So that will be the first set
16 of motions that I will decide. Then the second tranche will
17 be the standard pretrial motion, such as suppression, Bruton,
18 any other issues like that. And that would be on a proposed
19 schedule for March 6th, for the initial motions; April 3rd for
20 the government's reply; and April 17th for any replies from
21 the defense.

22 And, then, as I said before, I'm assuming a trial
23 date in November, starting the first week of November,
24 November 6th. Now, I certainly appreciate that there are
25 holidays interspersed throughout there, but to my mind -- and

1 I'm happy to hear any counterproposals or thoughts on this --
2 those tend to be the type of people who are gone for long
3 weekends, as opposed to two or three weeks at a time, which
4 often happens, for example, in the summer. So it seems to me,
5 if you block out all of November and all of December, we
6 should be able to get this trial done, I assume, within six
7 weeks.

8 Now, obviously, a lot of this is in the realm of
9 crystal ball, because who knows who will be going to trial,
10 whether it will even be defendants beyond those we have here,
11 or what's going to happen within the next three or four
12 months. But that's, at least, I think, a good operating
13 framework for everybody, and it gives some structure to going
14 forward, fully appreciating that I think we're going to have
15 to make adjustments for potentially new defendants or if there
16 are new charges.

17 So I'll hear from the government, if you have any
18 thoughts about that proposed schedule and then that approach.

19 MR. NORRIS: Your Honor, could I just have one
20 moment to confer?

21 THE COURT: Sure. Take your time.

22 (Counsel confer.)

23 (Pause in proceedings.)

24 THE COURT: I'll be asking the same of the defense,
25 so if you folks want to confer, feel free to get up, and move

1 around, and talk to each other.

2 MR. NORRIS: Your Honor, for the government, I think
3 the schedule is quite workable. The only request we would
4 make is -- we're anticipating quite a number of motions in
5 that first round and from -- possibly from different counsel.
6 If we can have an extra week to respond?

7 THE COURT: That seems fine.

8 MR. NORRIS: That would be great for us. That would
9 push our response date to early December.

10 THE COURT: For the challenges to the indictment
11 itself, the first date will be November 7th; the second date
12 will December 5th; and then the reply date will be
13 December 19th.

14 MR. NORRIS: Thank you, your Honor.

15 THE COURT: So let me hear from the defense. Any
16 thoughts or objections to the proposed schedule?

17 MR. MEHLER: I think, your Honor, our consensus is
18 it works. I do have one question. I have been chatting with
19 one of the assistants about the discovery. It's kind of the
20 nary destination.

21 THE COURT: The further away it seems.

22 MR. MEHLER: So I just wondered if somebody could
23 give us a current status report as to where we are?

24 THE COURT: That seems like an appropriate question.
25 I know that you have a lot of outstanding requests, probably

1 throughout the world, so do you have any sense of when the
2 bulk of the evidence is going to be turned over or the bulk of
3 the discovery will be turned over to this set of defendants we
4 have here?

5 MR. NORRIS: Absolutely, your Honor. We're
6 certainly well past the bulk point. We've produced
7 approaching 10 million pages of records to date. We've
8 produced a small batch last week, except a more sizeable batch
9 to be going out the door in the next few days.

10 THE COURT: When you say small, what does that mean?

11 MR. NORRIS: Small returns from a couple of
12 different countries, as to the number of pages, but definitely
13 digestible. We've been trying to get out bigger sets of
14 records or search warrant returns that are in electronic form,
15 and we got a bigger batch of those records that we expect
16 coming out in the next week or so. But we anticipate another
17 10 million. We're well past the midway point, so once we get
18 this additional set of records out in the next week or so, my
19 anticipation is in about two or more weeks to have one more
20 sizeable set.

21 And then from that point, as your Honor noted,
22 discovery continues. We continue to get evidence in. Just
23 last week, for instance, we got 24 binders from the Swiss
24 authorities. We're busy getting them right now and planning
25 on getting them out the door. We anticipate that that process

1 will continue. We've also got an ongoing privilege review
2 that as we get through records and determine if anything needs
3 to be disclosed, we get those out the door. And then also --
4 and this is important, which is for scheduling purposes, so I
5 don't think it impacts at all the schedule your Honor has
6 proposed, because the first round of briefing refers to legal
7 motions. There is a sizeable set of records that we received
8 from CONMEBOL, the South American Confederation, that we are
9 trying to address the disclosure for, but we anticipate it may
10 take a couple more months to get those out the door, and
11 that's for reasons I'll just explain briefly.

12 When we were before Judge Dearie last, in early
13 August, he referred us to Judge Levy to deal with a pretty
14 complicated privilege issue, and that would be exchange
15 briefing with Defendant Napout, and that has successfully
16 narrowed the issues somewhat. But we had asked for a hearing
17 to determine the scope and existence of two privileges that
18 Defendant Napout claims, and until that hearing happens, and
19 until the review happens thereafter, at some level that may
20 involve the defendant, as he's asked to be involved in that
21 review. We're not turning over any of those documents -- and
22 that's hundreds of thousands -- to any of the defendants.

23 We're working as hard as we can to do it, but right
24 now the ball is not in our court, as it were, in terms of
25 getting through that. But just in terms of projecting forward

1 and thinking about time, that process, I think, conservatively
2 we anticipate taking easily several more weeks but probably
3 into a month.

4 THE COURT: Okay. Well, let me ask you a question.
5 I think, as you correctly point out, for the first round of
6 motions, the issues should be largely legal ones. And so I
7 ask whoever wants to answer this question, is there any real
8 concern about not getting enough discovery to make those first
9 motions by the date that's been proposed? You have a better
10 sense on the defense side what your motions might look like
11 that simply challenge the validity of the indictment as to
12 your particular defendant.

13 It would seem to me -- but, again, I don't know what
14 you plan to argue or what the law is -- that those motions
15 could be made without all the discovery being provided,
16 especially based on the representation that the bulk or the
17 core information has been turned over, and that what we have
18 now are some isolated pockets of various information.
19 Although, it sounds like discovery could be quite voluminous.

20 MR. NORRIS: Yes. I believe it's 350,000 documents.
21 I don't know about pages.

22 THE COURT: Do they relate to many of the defendants
23 in this case or probably a narrower subset?

24 MR. NORRIS: I think a fair number of defendants are
25 going to be interested in the records that were at CONMEBOL

1 headquarters.

2 THE COURT: Does anyone foresee the ongoing
3 discovery presenting an issue in terms of your first set of
4 motions?

5 MR. MEHLER: Your Honor.

6 THE COURT: Mr. Mehler.

7 MR. MEHLER: Your Honor, just to clarify, my
8 understanding, for example, with regard to any severance
9 motions, although one can make a challenges under Rule 8 based
10 on the indictment. I think the far more important and
11 difficult one is under Rule 14, and that really depends on
12 many things. It depends on who is left in the case, and it
13 depends on the evidence. It may spill over, prejudice
14 arguments and similar arguments. So my understanding is that
15 when the Court is talking about spatial challenges, it does
16 not include severance and should not include severance.

17 THE COURT: You're right; that would be under the
18 March briefing schedule. Does that seem too far out, from
19 your perspectives? Because I assume what gets coupled with
20 that sometimes is a joint severance and speedy trial motion,
21 so it would be somewhat ironic to put it out for six months
22 for you to argue about speedy trial. Does anyone anticipate
23 making such a combination of motions, and, if so, should we
24 build in maybe a January briefing schedule for those, in
25 between the spatial challenges and the more traditional

1 trial-related motions?

2 MR. PAPPALARDO: Yes, your Honor. On behalf of
3 Defendant Napout, we have been talking about filing a motion
4 to sever and a motion for a speedy trial going back to March
5 of this year. We intend to file such motion as quickly as we
6 can. The only thing we have been unable to do is to file it
7 based upon any kind of assigned date. We were cautioned not
8 to file it until the Court set an agreeable date, and then we
9 could move from that point on. We are ready to file that
10 motion, and I don't anticipate that there's going to be much
11 of an issue in connection with the CONMEBOL documents. I
12 think --

13 THE COURT: C-O-N-M-E-B-O-L, all caps, just for our
14 court reporter.

15 MR. PAPPALARDO: And we are ready to address that at
16 any point in time, so, in fact, I think that the -- while
17 there may be a lot of documents, it's probably not a lot that
18 involve counsel. In any event, we intend to file a motion as
19 quickly as possible to sever and a motion for a speedy trial
20 based upon the record today.

21 THE COURT: How many defendants anticipate filing
22 severance motions?

23 Mr. Mehler, for Mr. Takkas, you serve for --

24 MR. MEHLER: For Mr. Rocha.

25 THE COURT: And you serve for --

1 MR. STILLMAN: Mr. Marin, your Honor.

2 THE COURT: Okay. So let me put it out there. It
3 seems to me maybe we should have an interim filing date for
4 those sometime in January, starting in January, and finish up
5 sometime in February, essentially. Because while I understand
6 some of the evidence may assist the defense in deciding or
7 arguing in support of that motion, it does strike me -- and
8 this is based on my reading the indictment -- that your
9 argument is going to be basically based on sort of larger
10 issues, which is my client was really not involved -- if this
11 is a giant spoke, I guess, in a way, and there's people at the
12 hub of it, my guy was involved in a spoke that had nothing to
13 do with this other spoke.

14 So I think you're going to be making sort of gross
15 arguments, in a way, that won't necessarily come down to
16 finite evidence. Now, if anything, the government may be
17 prejudiced not being able to say here's all the evidence in
18 common, but at the same time, I think the government has a
19 pretty good idea of some of the major proof they're going to
20 have on certain issues. So I think these can be briefed in
21 January, without all of the evidence having been disclosed or
22 all the discovery, I should say.

23 MR. NORRIS: From our perspective, that makes a lot
24 of sense, and we would be ready to do it. I think the key
25 issues from our perspective is just that we be able to respond

1 to severance motions en masse, because there's so many
2 defendants planning to file them; and because there will be
3 such a heavy overlap in our response, we want to have that one
4 date to do it.

5 THE COURT: So let me ask this, since I'm presuming,
6 and maybe not correctly, that the severance motion is going to
7 be coupled with a speedy trial motion, it makes sense to do it
8 earlier than March, even though what we could do is move the
9 suppression motion deadline a little later, to give everybody
10 a little breathing room, because that may obviously obviate
11 the need for some of these motions entirely.

12 Go ahead.

13 MR. STILLMAN: Charles Stillman for Mr. Marin. I
14 think there are two -- a couple different things going on
15 here. Mr. Napout's counsel are seeking the relief that
16 they're seeking. I don't think anybody else is seeking that
17 same relief. Am I missing something?

18 THE COURT: When you say relief, you mean --

19 MR. STILLMAN: Speedy trial.

20 THE COURT: Oh, so you're saying -- the rest of you
21 just want severance but not necessarily speedy trial?

22 MR. STILLMAN: That's correct.

23 THE COURT: Okay. But it still seems to me to make
24 sense, to sort out who is going to go to trial with who,
25 relatively early on, I guess, especially because one of these,

1 at least, will be coupled with a speedy trial motion. Is
2 there an objection to doing it on the February or January
3 schedule?

4 MR. STILLMAN: Well, the point I would like to make,
5 your Honor, is that, for example, these CONMEBOL documents,
6 those are potentially important to us; and so I don't want to
7 be making a commitment to your Honor to be making a motion for
8 severance before I've seen documents that could be very
9 important, as far as my client is concerned. I'm perfectly
10 content to make the severance motion with the schedule that
11 your Honor has originally set. I don't mean to speak for the
12 others, but that's how I feel about it.

13 THE COURT: You just want to clarify that you're not
14 going to be seeking speedy trial relief, necessarily.

15 MR. STILLMAN: That's correct, your Honor.

16 THE COURT: Okay. Understood. But I still think
17 for the government's sake it certainly makes sense to combine
18 the motions on that particular issue together, if everyone on
19 the defense side feels that they can make that motion fully
20 and effectively in January or February.

21 And I don't hear anyone say anything otherwise;
22 right?

23 MR. PAPPALARDO: Your Honor, on behalf of
24 Mr. Napout, it has been right to file a motion to sever and a
25 motion for speedy trial for quite some time now, and I would

1 ask permission of the Court to file it expeditiously, within a
2 week.

3 THE COURT: Right.

4 MR. PAPPALARDO: He wants to assert his speedy trial
5 rights. There's a motion to sever. As you get into the case,
6 I think you will find that there's a substantial disparity in
7 the case with respect to Mr. Napout.

8 THE COURT: Let me ask you this, then, we could try
9 to accommodate that, especially if the other defendants don't
10 want to have a speedy trial motion coupled with their
11 severance motion. What we could do instead, then, is
12 entertain yours sooner, and then everybody else can brief
13 severance, along with the other motions, on the March
14 schedule; Bruton, suppression, etcetera. Why don't we do it
15 that way. I'm trying to avoid having the government respond
16 to motions every 20 minutes or so, which seems to be
17 counterproductive for everyone.

18 I'm going to have the government respond to
19 Mr. Napout's motion within the next month. We'll set a
20 separate schedule for him, but everybody else will go along
21 with the March schedule for the severance and other motions.

22 MR. NORRIS: Your Honor, if I can suggest perhaps
23 another workable way to do it would be to -- if Mr. Napout
24 wants to file his motion next week, fine, but if we can move
25 up the date for the severance motions to some time this fall,

1 October, November, and have everyone file them, that would
2 allow us to respond once. I think there's such a heavy
3 presumption in favor of a joint trial, and the issues in
4 response, from the government's perspective, the case law is
5 so strong and so clear on this issue that the idea of
6 responding once to Mr. Napout, and then responding again in
7 the spring to other defendants, seems to risk that we're going
8 to be -- both being repetitive and having to brief the issue
9 multiple times.

10 But also that really misses the point, which is
11 we're at eight defendants now, and we're going to be likely at
12 a somewhat more manageable portion, given that we're in
13 ongoing plea negotiations, with several defendants come
14 spring. And the idea of having two or three or four trials
15 for each person to be severed off of everyone else, if they
16 want them, clearly from our perspective it would be workable
17 and I suspect the Court's.

18 We think the most efficient, the most
19 straightforward way of dealing with the issue of severance is
20 make sure everyone who has a motion makes it. So someone says
21 I'm a little fish, and someone says there's not much evidence
22 against me, and someone makes whatever arguments they're going
23 to make are all seen once, and we're able to respond all
24 together at once, and the Court is able to see what it would
25 look like if the defense arguments in favor of severance are

1 granted.

2 THE COURT: That's certainly a fair point, given the
3 nature of severance motions, which is to argue the
4 efficiencies, fairness and unfairness, based on the
5 government's presentation.

6 So let me turn to the defense. Can all of you who
7 want to file severance motions do so over the next month or
8 so?

9 MR. MEHLER: Your Honor, I disagree -- if Mr. Norris
10 believes that the severance motion is something we would lose
11 anyhow, I don't know why he's so concerned about it. And,
12 moreover, even if the Court has a March deadline, you're
13 talking about a fall trial. How is the Court even going to
14 know who the players are? Mr. Norris himself said there are
15 plea negotiations going on with people. We have to have a
16 better sense, and when we argue spillover prejudice, we're
17 going to argue with regard to specific defendants.

18 A defendant may not be here a year from now. I
19 don't see what the prejudice is. The prejudice to us is
20 clear. We still have records coming in. Severance is not an
21 easy motion to win, and, again, Mr. Norris says we won't win
22 it. Okay. We're asking the Court to -- or at least I am --
23 to allow it, just as particularly in its own way, as a
24 suppression motion, maybe not quite as much, but more than
25 Mr. Norris is arguing. And for that reason, we think it makes

1 sense to have one set of motions that really relate to all
2 defendants, like jurisdiction.

3 Indeed, Judge Dearie said that he just wanted one
4 set of motions from everybody, I believe, on that, and
5 the Court can, perhaps, clarify it. But with regard to
6 everything else, it's particular; it depends on who is left
7 standing. And we would ask the Court to leave it, as
8 the Court intuitively understood was the fair way to proceed.

9 THE COURT: Thank you, Mr. Mehler. I think at the
10 end of the day that strikes me as correct. I'm denying the
11 request of Mr. Napout to file the motion now but, rather, keep
12 with the January schedule for all the severance motions.

13 Now, this case has been declared complex, so I'm not
14 concerned about any sort of formal speedy trial issues, and I
15 think this is an unusual case, to be sure, where there should
16 be some real recognition of efficiencies that we can achieve
17 by having motion practice combined, as much as it can be, in
18 this way. I think a difference of three months, which is what
19 we're talking about, for your motion to be filed, including
20 your speedy trial motion, is not significantly impairing your
21 client's right to speedy trial, especially because there's
22 ongoing discovery that I think is going to be relevant,
23 potentially, especially because there are privilege issues
24 that haven't been resolved as to this particular defendant.

25 So all of that, for me, is going to be information

1 that I would want to know about, because when we're talking
2 about the efficiency about presenting a case, it helps to know
3 all of the evidence that may or may not go in. So I'm denying
4 the request to file Mr. Napout's motion now. Let's set a
5 schedule for January and start briefing the severance issue.
6 How about mid January to begin that process?

7 MR. MEHLER: Your Honor, if I may just respond, I
8 understand what the Court has done, but I would object to
9 that. As far as I know, we are the only defendant who is
10 asking for a speedy trial. Everybody else may or may not,
11 depending upon what the evidence is, seek a motion to sever.
12 In the 2nd Circuit, we have to file a motion to sever, in
13 order to get to the point where the Court can entertain a
14 speedy trial motion. I think as you progress in this case,
15 while the case was certainly complex on May 27th of 2015, and,
16 perhaps, even there were lingering aspects of it on
17 December 4th of 2015, I would question whether, certainly as
18 to whether Napout, the case is complex. And I would raise
19 that, your Honor --

20 THE COURT: Let me stop you for one second. You're
21 telling me there's a privilege dispute over several -- tens of
22 thousands of documents doesn't make this complex?

23 MR. MEHLER: That's exactly what I am telling you,
24 your Honor. I have seen the discovery of what we received,
25 and that discovery, as to Mr. Napout, basically amounts to

1 zero, and we are insisting on a speedy trial. And if we are
2 forced to wait while everybody else catches up,
3 Mr. Napout's speedy trial rights are being severely hampered.
4 We've received discovery, your Honor. We have a good sense of
5 what discovery is left out there, and we are ready to file a
6 motion to sever, file a motion for a speedy trial, and before
7 you, with evidence with regard to whether or not this is
8 really a complex case.

9 At the end of the day, your Honor, there's a
10 substantial likelihood that many of these defendants will
11 negotiate with the government and plead guilty to the charges,
12 and I think that that's reasonable under most circumstances.
13 That's not going to happen here. We are in a different
14 posture, and we would really like, as Judge Dearie
15 suggested -- he would hear us on a motion for speedy trial,
16 and we can't file that, your Honor, unless we file a motion to
17 sever.

18 THE COURT: I'll note your objection. I just want
19 to note for the record as well that last time the only
20 defendant who expressed an intent to file a motion for
21 severance was you, on behalf of your client. So at the time
22 that Judge Dearie may have said I'll entertain that motion as
23 soon as you file it -- and, quite frankly, he didn't set a
24 deadline, so the fact that it wasn't filed before today, I
25 don't think had anything to do with any express judgment of

1 Judge Dearie. But putting that aside --

2 MR. MEHLER: That's not true, your Honor. If I may,
3 I was in touch with Judge Dearie's clerk, and we were ready to
4 file the motion, and she said please do not file it until you
5 receive an order. And so it's been sitting there on the
6 shelf, and, of course, now Judge Dearie is no longer the
7 judge.

8 THE COURT: Fair enough. Even under that
9 circumstance, I still believe it's appropriate to handle it
10 this way. And I note for the record that this ongoing
11 dispute, or unresolved dispute, about the discovery relating
12 to the privileged documents, to me, is a significant factor
13 why I shouldn't entertain this motion now. I'm going to note
14 your objection, and you can continue to make it, but I think
15 this is the appropriate way to resolve it. I do not think
16 your client's speedy trial rights are so significantly
17 impaired.

18 MR. MEHLER: Can we ask, your Honor, for an
19 expeditious hearing on the CONMEBOL issue? That, I will
20 represent to the Court, is a nonissue.

21 THE COURT: I'm sorry. I'm not sure what you're
22 talking about.

23 MR. MEHLER: Issue of privilege.

24 THE COURT: Well, Judge Levy is handling that. That
25 was referred by Judge Dearie, so certainly you should take it

1 up with Judge Levy, in terms of resolving it expeditiously.
2 So if there's some problem with that, raise that with
3 Judge Levy, and I will await his ruling on that, as per
4 Judge Dearie's prior referral on that matter to him. I will
5 handle this expeditiously. Again, we're talking about a
6 difference of three-and-a-half months, and I do not think it's
7 an unfair delay with respect to your client.

8 And I think it's appropriate, in light of some
9 unresolved issues, particularly as to your defendant, with
10 respect to what evidence the government will be permitted to
11 produce. It strikes me that some of this allegedly privileged
12 material can be quite important to your defense, as well as,
13 potentially, to the government's case. But, again, I don't
14 have full knowledge of all of the evidence, but it strikes me
15 at least on the surface that that issue should be resolved
16 before I decide a severance motion, at a minimum. Given that,
17 I note your objection, but I still am going to link these
18 suppression motions -- severance motions together.

19 MR. MEHLER: So we're not permitted to file?

20 THE COURT: You're not permitted to file. Or you
21 can file it, but I'm not going consider it.

22 MR. MEHLER: Thank you, your Honor.

23 THE COURT: So we're thinking of January 17th for
24 the severance motions to be filed by all the parties who want
25 to sever. I'll give the government three weeks. All right.

1 I think that you can answer globally, if you like, because I
2 assume what will happen is you'll give me a very big
3 recitation of the evidence you anticipate and efficiencies
4 that will be achieved by having the defendants together, so
5 you can give one global response, if you would like.

6 MR. NORRIS: That would be great, your Honor. If we
7 can have a month for our response, we would appreciate that.

8 THE COURT: Where would that put us? February 17th.

9 THE CLERK: Yes.

10 THE COURT: February 17th.

11 MR. NORRIS: Thank you.

12 THE COURT: We'll do that. And then two weeks for
13 replies. So it will put us into the beginning of March.

14 THE CLERK: March 3rd.

15 THE COURT: Okay. Good. So that's the schedule for
16 the severance motions, and then, of course, Mr. Napout should
17 make his speedy trial requests at the same time. So you'll
18 have to respond to that as well, but it's really part and
19 parcel in many ways, perhaps another page or two, for why it's
20 not fair to have him linked to all the other defendants for
21 purposes of trial.

22 MR. PAPPALARDO: Our reply to the government is --

23 THE COURT: March 3rd. Again, look at the docket
24 order. We'll recapitulate that for you.

25 One question I did have, though, is about the status

1 before Judge Levy on the privilege issue. I think I saw a
2 docket order that Judge Levy noted there is nothing to be
3 resolved. I think I may have misread that. Has he taken it
4 under advisement, the privilege issue? And is it fully
5 briefed?

6 MR. NORRIS: We filed a breach Friday afternoon,
7 responding to Defendant Napout's letter from a week or two
8 prior. We've now filed that and identified the two issues
9 from our perspective that still require hearing, and
10 co-counsel would like to move expeditiously before Judge Levy.
11 We're in agreement with that, and will be ready to conduct the
12 hearing in any other proceedings that he wishes as soon as
13 he's ready.

14 THE COURT: Is there a date for a reply to be filed,
15 or no?

16 MR. MAHLER: I don't know, your Honor. The
17 government filed a letter, so that put us on notice of this.
18 We responded to the letter, and they filed a reply. I'm not
19 sure that it's -- I mean, it's ripe for a hearing.

20 THE COURT: Okay. Well, obviously, I'll leave it to
21 Judge Levy.

22 MR. MAHLER: Do we get another reply? I'd rather
23 just go to the hearing and move this.

24 THE COURT: You can take it up with Judge Levy. He
25 has a lot of experience, and so I'm sure he will decide

1 whether or not he needs a hearing or what other replies he
2 might need. It strikes me, though, that this is a complicated
3 issue for him, because while the legal issues may be divided
4 into two distinct legal issues, there are a lot of documents
5 to be analyzed, and so I trust in his discretion to move it
6 along expeditiously. But, realistically, I think it's going
7 to take him some time to go through the documents, and he'll
8 presumably want to hear from the parties again. I'll leave it
9 to his good judgment. Is there anything else?

10 MR. STILLMAN: A tiny question. I ask Mr. Norris
11 through your Honor whether this issue that Mr. Napout has
12 raised with respect to privilege affects all of the CONMEBOL
13 documents, whether we get some of them?

14 MR. NORRIS: It does affect all of them, and if
15 your Honor would like us to respond --

16 THE COURT: To the extent that you can, and I think
17 you said earlier all the defendants will presumably be
18 interested in the documents, but maybe I missed that they were
19 referred to as the entire universe of CONMEBOL documents.

20 MR. NORRIS: Just ask co-counsel Kristen Mace to
21 respond. I think she can give the parties a better sense of
22 the documents.

23 THE COURT: Go ahead, Ms. Mace.

24 MS. MACE: Thank you. So we requested by via M-let
25 (phonetic) a search of the CONMEBOL headquarters, and we made

1 that request in January. The search was conducted, and then
2 in May, we received a bulk of material that we understand to
3 have approximately 350,000 documents. We don't know yet what
4 is in there because we have not yet looked through the
5 documents.

6 THE COURT: 350,000 documents or pages of documents?

7 MR. NORRIS: Documents.

8 MS. MACE: Documents. So we have not looked through
9 it because there are these difficult privilege issues that
10 could implicate the materials several different ways. For
11 example, Defendant Napout asserted a common interest privilege
12 that could touch on documents in various different ways, so we
13 wanted to hold off and not look at them at all, so we can't
14 comment specifically what is in there. For example, Defendant
15 Marine was also with CONMEBOL, and so I think it's reasonable
16 to presume that other defendants would be interested as well.

17 THE COURT: How many of the remaining defendants
18 have some connection to CONMEBOL? Of the, I think, eight we
19 have, would you say pretty much everyone has some connection?

20 MR. NORRIS: Looks like there are three defendants
21 here who were South America soccer officials, but I would note
22 that the schemes that are alleged, some of the schemes span
23 Confederation. For instance, Defendant Davidson is charged,
24 even though he's a sports marketing executive from Miami and
25 from the CONCACAF region. One of the schemes that he's

1 alleged to have participated in, along with Marin, Napout,
2 Esquivel and others, was a scheme that involved both CONCACAF
3 and CONMEBOL. So in a very real way, we don't know what's in
4 the documents, so this isn't based on any ability to have
5 reviewed them. But in a very real way, CONMEBOL was operating
6 at a time, and searched at a time, when its activities and
7 ongoing contracts affected business matters, not just in
8 South America but also in North American as well.

9 THE COURT: So it seems to me the takeaway, to the
10 extent that Judge Levy rules that the government gets to use
11 some or all of these documents, they are going to be
12 potentially significant to all of the defendants or at least
13 the majority. And the government unfortunately is not in the
14 position to say exactly what they are, because they're
15 remaining same (phonetic) for the moment until that issue is
16 resolved. But you're on notice that you're going to want to
17 take a look at whatever documents end up getting released.

18 Now, I will talk to Judge Levy, of course, and he'll
19 see the ECF entry, so he'll know that I have set these
20 deadlines. But I have no doubt he will move as expeditiously
21 as possible, but I'll explain to him my view resolving this
22 issue is going to be necessary before we get to the severance
23 motions.

24 MS. PINERA-VAZQUEZ: Your Honor, I would just like
25 to point out, in addition to the CONMEBOL privilege issues, we

1 alerted the government back in December, when Mr. Napout was
2 arrested and they seized his electronic devices, that there
3 was also privileged communication in those devices. We've
4 been asking for a taint team since December. So we still have
5 not received any of those documents or any of those
6 communications. We've been asking for that, and for some
7 reason -- I don't want the Court to misinterpret as to why
8 these two issues got grouped together, when we've been asking
9 for these documents since December.

10 We're now nine months down the road, and we still
11 don't have my of the documents, and we also don't have a
12 taint team person that we can speak to recording the private
13 electronic devices of our client. And for some reason these
14 two privilege issues have been meshed together when, really,
15 they shouldn't, because we've been asking for this since
16 December of 2015.

17 THE COURT: You have gotten no downloads from the
18 devices that were seized from your client nine months ago?

19 MS. PINERA-VAZQUEZ: The only thing we did get --
20 that's correct. We got the downloads from the iPad, I
21 believe, two or three weeks ago, but the two iPhones, we have
22 not received any sort of -- anything. We haven't gotten the
23 downloads or anything. We've been asking for that since
24 December. This team cannot look at it because we've alerted
25 them there's privileged documents. Just like the CONMEBOL

1 documents, no one can look at them because they're the
2 prosecution team.

3 THE COURT: Slow down. That's all I was going to
4 say. So is there some process in place to download those
5 without your viewing them to turn over?

6 MR. NORRIS: The process is very much in place,
7 your Honor. The question of privilege that we're trying to
8 resolve with Judge Levy will also apply to these records, and
9 we haven't had authority to search them until this summer.
10 We've had authority to search them, but they are, just like
11 CONMEBOL records, being held in suspense pending the outcome
12 of this privilege question.

13 THE COURT: But the defense has gotten the copies of
14 all the materials in dispute, including they should get the
15 ones from the phones, right, from -- not from you guys but
16 from the taint team.

17 MR. NORRIS: Yes. They have gotten a copy of
18 everything that we've been able to obtain out of those devices
19 from the taint team, yes.

20 MS. PINERA-VAZQUEZ: We do not have copies of the
21 two phones.

22 THE COURT: That presumes that the government has
23 extracted that information, actually. All I can say to the
24 government, this part of the government before me, is alert
25 your taint team to the fact that the defense is saying they

1 haven't gotten anything from the phones, and, obviously, if
2 there's some technical issue, they should be allowed to speak
3 to the defense directly to figure out how to resolve it or
4 what the problem is. Talking to you, you're the intermediary,
5 at this point, but we should make that happen as soon as
6 possible.

7 MR. NORRIS: We have put the taint team in touch
8 with counsel, and they've been able to have a discussion, if
9 they need to. And we have also informed defense counsel that
10 we haven't been able to extract anything from the phones, and
11 so there's nothing to provide.

12 THE COURT: The bottom line is talk to the taint
13 team.

14 MS. PINERA-VAZQUEZ: I just don't have a name. I've
15 been asking for a name. I don't have a name for the taint
16 team. And I just thought I heard him say he'd been authorized
17 to extract the documents.

18 THE COURT: That happened in the summer. Apparently
19 a search warrant was authorized. Why don't you guys resolve
20 this offline. Okay. And get defense whatever contact
21 information they need, so that they can hear directly from the
22 taint team what the status is.

23 MR. NORRIS: Yes, your Honor.

24 THE COURT: As I understand, the privilege issue as
25 to those electronic data, or that electronic data, will be

1 resolved by Judge Levy as well.

2 MR. NORRIS: Yes.

3 THE COURT: Anything else from anyone else?

4 All right. Terrific. Good meeting all of you, and we'll see
5 you again soon. As I said, the schedules that we said will
6 all be put on ECF. My very good.

7 We have a couple people who have not entered their
8 appearance yet in this case. So, Mr. Barbosa, you, sir, need
9 to enter your appearance, if you're going to be appearing in
10 this case, along with Mr. Coffey.

11 MR. BARBOSA: Yes, your Honor.

12 THE COURT: Terrific. I think those are the only
13 two. One last thing. I apologize. The last time you were
14 before Judge Dearie, there was some talk of potentially new
15 defendants or maybe a Superseding Indictment. I'm not going
16 to ask you to give me an estimate, but I do want to let
17 everybody know that if there are new parties, we're going to
18 have to figure out whether the schedule makes sense to them.
19 It may be -- and I'm just putting the government on notice --
20 if they come a little too late, we're just going to have to
21 handle them as a separate case, as not to prolong the
22 proceedings against the existing defendants.

23 MR. NORRIS: Your Honor, with respect to speedy
24 trial --

25 THE COURT: Yes, I don't think -- my assumption is

1 the case is still operating as a complex case, so no specific
2 exclusions are needed, but I will exclude the time from now
3 until the end of --

4 What was your last briefing date?

5 THE CLERK: April 17th --

6 THE COURT: -- for these motions to be filed and
7 resolved.

8 MR. NORRIS: Your Honor, just so the record is
9 clear, if your Honor could find that the cases for the
10 exclusion, the complexity of the case, and nature and ongoing
11 discovery justifies exclusion, I would appreciate that.

12 THE COURT: So there is still a complex designation
13 for this case, but I do find there's evidence to support,
14 based on the number of defendants, the complexity of the
15 evidentiary issues, and the discovery that is still incoming
16 from various sources throughout the world, obviously, and also
17 the nature of the charges against all of the defendants.

18 Let me add excluding time specifically is
19 appropriate to allow plea negotiations to continue, because I
20 think that there may still be some, as well as to resolve all
21 the motions that I have now set the schedule for. So
22 technically I could exclude time until the end of the briefing
23 schedule at a minimum of our last set of motions, because the
24 time could be excluded until I resolve all these motions.

25 Anything else?

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MR. NORRIS: Nothing from the government.

THE COURT: Good meeting all of you.

(Proceedings adjourned.)

* * *

I certify that the foregoing is a true and correct transcription of the record from proceedings in the above-entitled case.

/s/ Nicole Canales
Nicole Canales

September 20, 2016
Date