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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

11 Cv. 692 (LAK)

5 19 Cr. 561 (LAP)

6 STEVEN DONZIGER,

7 Defendant.

Conference

8 -----x

9 New York, N.Y.

10 December 4, 2019

11 9:30 a.m.

12 Before:

13 HON. LORETTA A. PRESKA,

14 District Judge

15 APPEARANCES

16 RITA M. GLAVIN, ESQ.

17 BRIAN MALONEY, ESQ.

18 Special Prosecutors

19 ANDREW J. FRISCH, ESQ.

20 Attorney for Defendant

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(Case called)

THE COURT: Good morning, counsel.

Would you please be seated.

United States v. Donziger.

Is the prosecution ready?

MS. GLAVIN: Yes, your Honor. Rita Glavin and Brian
Maloney. Good morning.

THE COURT: Good morning.

Is defense ready?

MR. FRISCH: Good morning, your Honor.

For Mr. Donziger, Andrew Frisch.

THE COURT: Good morning, Mr. Frisch.

How would you like to proceed, Mr. Frisch?

I think we're here by way of update.

MR. FRISCH: Yes. Let me start by talking about two
issues that are separate but also related.

The first is setting a trial date and a motion
schedule because that's where we're headed. I have spoken to
Ms. Glavin about this. She prefers a trial date in May to
accommodate her second, Mr. Maloney, who is seated to her left,
who I understand is beginning a trial in March.

The first best available date for Ms. Glavin, as I
understand it, is May. Putting aside the release issues for a
moment, that's consistent with my schedule as well. I have a
trial firmly scheduled before Judge Korman in March. It's a

JC4EDONC

1 case in which chambers reached out to me to appoint me to
2 represent this person CJA. He is in custody. He's a foreign
3 national. He was extradited here and it's a complex case and
4 it's not going to plead out. Anything can happen, but it's
5 about 98 percent certain it will go to trial, so a May date
6 works for me as well if the Court can accommodate us.

7 My concern continues to be the issue with regard to
8 Mr. Donziger's confinement, which is one of the reasons why I
9 wrote to the Court yesterday to give the Court and Ms. Glavin
10 some advance preview of what I might say today about that.

11 Here's what I believe, Judge, to be the bottom line.
12 I think we can and should be able to do this. I think on the
13 one hand we can acknowledge the issues of judicial authority
14 that are raised by the charges in this case. I think we should
15 be able to embrace and understand and litigate those issues --
16 as we're going to -- but also acknowledge the reality of some
17 of the facts, and the risk of flight and the extent to which
18 any concern about it at all can be adequately addressed other
19 than under these circumstances.

20 When we were last here, Ms. Glavin talked and your
21 Honor talked about the possibility of flight to Ecuador, which
22 I will tell the Court I didn't know much about until the past
23 two days when I'd gone online and learned a little bit about
24 Ecuadorian politics -- which I might add was little bit of a
25 refreshing change from waking up and reading about American

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1 politics.

2 That said, the lawyers in the Chevron case necessarily
3 met with representatives of the Government because of the
4 Government's role in the case. That was not unusual.

5 But as to President Correa, former President Correa,
6 he's not in Ecuador anymore. He's essentially -- he's
7 certainly in Belgium, from my understanding from what I'm
8 reading online, is in exile in Belgium, and he and his people
9 are out of favor with the current regime led by President
10 Moreno who has starkly changed politics in Ecuador, as
11 reflected in the remarks of Vice President Pence referred to in
12 my letter, to try and curry favor with the current
13 administration.

14 So Mr. Donziger has no incentive to flee to Ecuador,
15 or anywhere, but certainly the current political climate makes
16 it impossible -- if it were even plausible -- to get there
17 without a passport.

18 Your Honor said at the last court appearance, I
19 believe -- and we have the transcript if I'm wrong -- that
20 nothing has changed. I think everything has changed.

21 Officer Harmon, who I said last time -- and continue
22 to believe is exceptionally professional -- she is a straight
23 arrow, she calls balls and strikes as she sees them -- has
24 recommended a monitored curfew.

25 I don't believe that's necessary, but that's

JC4EDONC

1 preferable to the current state of affairs. She's a neutral,
2 independent officer of the court and that's her take. She's no
3 pushover. She wouldn't be taking this position unless she
4 truly believed that was appropriate in this case.

5 In another significant change of circumstances,
6 Ms. Glavin's stated position -- for the first time a week or
7 two ago -- is that she believes that this case is properly
8 treated as a misdemeanor. It's still very serious, and we will
9 take it seriously, but that changes things as least with regard
10 to Ms. Glavin's position and represents an important and
11 significant changed circumstance.

12 I appreciate the distinction that Ms. Glavin and your
13 Honor have made between the disciplinary hearing and appeal in
14 the Second Circuit, but those are things Mr. Donziger has done
15 since August 6th. He's appeared to challenge these things,
16 which is the direct opposite of any risk of flight --
17 especially in a case which is a misdemeanor, at least in the
18 eyes of Ms. Glavin, and where there is already a secured bond
19 in place.

20 Of course, there's all the sureties who have come
21 forward. We can talk about their financial stake in this, but
22 the fact is that there are an awful lot of them and most of
23 them are very sophisticated and accomplished people who have
24 looked at this case, know this man very well -- as I've come to
25 know him -- and are confident he's not going anyplace, he's

JC4EDONC

1 completely engaged in this, and wants a trial to establish his
2 innocence.

3 Now, I don't know what the Court's calendar is. What
4 I can tell the Court is that the pretrial motions in this case,
5 like the case itself, are going to raise some interesting
6 issues of law and interesting issues of fact. I think it will
7 take Ms. Glavin sometime to respond and it will take me
8 sometime to prepare the best possible motion papers, but I can
9 work as quickly as required, and I think it will take the Court
10 sometime to reflect on the motions and to resolve them.

11 So I think the May trial date, while it may not be
12 optimal, it's what appears what we can do given our respective
13 schedules. I don't want see to Mr. Donziger continue to be on
14 home confinement under these circumstances for a period of time
15 that exceeds even what Mr. Cutler got as his sentence -- albeit
16 the facts are different -- every case is different -- but
17 that's the most comparable case that we can find.

18 That's our view with regard to the trial date. I
19 would ask the Court to reconsider your ruling on the conditions
20 of his release.

21 THE COURT: May I just ask you, in your letter, on
22 page 2, you had discussed the position of the factual situation
23 of the change of administration in Ecuador; and then in the
24 second paragraph you say that Mr. Donziger has no ties with
25 anyone in Ecuador.

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1 I guess I would find that shocking because he worked
2 with these plaintiffs for so many, many years and apparently so
3 closely that I don't understand that statement and why they
4 wouldn't be delighted to take in the person who worked for them
5 for so many years.

6 MR. FRISCH: With due respect, Judge, what I said was
7 Mr. Donziger has no ties with anyone in Ecuador, or anyplace
8 else in the world, that would have any incentive to help him
9 violate American law.

10 The fact that he knows people in Ecuador and that he
11 knows people who are friendly to him doesn't overcome the fact
12 of all the indicia that shows he's here, he's engaged in this
13 case, and he has no incentive to go anywhere, especially under
14 all the circumstances that we've stated.

15 Nobody in the world, as far as I know, has any
16 incentive to help this man run away from this case or to
17 violate American law.

18 THE COURT: But that's exactly what I'm saying. I am
19 not sure I wouldn't presume that the individuals whom Mr.
20 Donziger represented all these years and fought for all these
21 years would not be inclined to take care of him. That's my
22 point.

23 MR. FRISCH: Your Honor, my understanding is that
24 these people who he represented are indigenous people, local
25 communities in the Amazon. My understanding is that, while I

JC4EDONC

1 believe he may know other people than just people of that
2 standing, nobody has an incentive, as far as I know, to help
3 him violate the terms of his bond here and leave this country.

4 He has no incentive to do that. He has no passport.
5 He has no way of getting there. And the fact that he is so
6 engaged in this case, and so eager to establish his innocence,
7 and fight for himself by the demonstrated record of this case,
8 should overcome any such concern, especially since there's a
9 secured bond in place, especially in light of Officer Harmon's
10 recommendation of a monitored curfew.

11 We can talk about increasing the bond. I don't know
12 how we increased the bond to a figure that embraces 27 people
13 with the 3 already on the bond to create a sufficient financial
14 incentive. Under the circumstances of this case, I don't think
15 it's necessary. I don't think we need to go there. But we can
16 talk about it. We can talk about what the Court's comfortable
17 with under these circumstances.

18 Officer Harmon has recommended a monitored curfew for
19 someone with no record, with a family, a son, has lived in
20 Manhattan for, I believe, 25 years or so with no criminal
21 record.

22 It's not a crime of violence. It's a case where he
23 appeared in civil court every time required. Submitted lots of
24 papers. I don't see why this is a risk of flight at all; why
25 this is not ROR.

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1 But, OK, I realize I'm not going to win that argument.

2 We already have a secured bond in place and we can
3 keep him on monitoring but impose the curfew recommended by
4 Officer Harmon. Whatever concerns the Court may have, we want
5 to address so that he's not on electronic monitoring 24/7, home
6 confinement 24/7, but I can't see why under all these
7 circumstances that a monitored curfew wouldn't address those
8 concerns.

9 THE COURT: Thank you.

10 Ms. Glavin.

11 MS. GLAVIN: Your Honor, two points. First, with
12 respect to Mr. Frisch's letter, which was filed last night at
13 6:17 p.m., I was surprised to receive the letter because I had
14 been in communication with Mr. Frisch yesterday as well as
15 Monday and he never hinted to me that this letter was going to
16 be filed or that he would be making the arguments that he made
17 in his letter.

18 But what's done is done. To the extent that
19 Mr. Frisch raises -- and it is quite surprising to me to hear
20 this -- that Mr. Donziger is now distancing himself from
21 Ecuador and his extensive ties there over the last 25 years --
22 that do include ties with high-level Government officials --
23 and, in fact, using the Government of Ecuador to pursue his
24 interests and the interests of his thousands of clients that
25 reside in Ecuador currently, I would like an opportunity to

JC4EDONC

1 respond, if the Court deems it necessary, on his ties to
2 Ecuador in writing and sort of list them out, which is what
3 informs my concern about risk-of-flight in this particular
4 case.

5 THE COURT: You don't have any objection to that, Mr.
6 Frisch?

7 MR. FRISCH: Do I have an objection to Ms. Glavin
8 having an opportunity to submit something in response? Of
9 course not.

10 THE COURT: We always tell law students not to ask the
11 court for anything you haven't asked your opponent for. This
12 is why. Wonderful.

13 To the extent you want to talk about trial dates. I
14 can give you any of the following, and I know, Mr. Frisch, it
15 might be influenced by the outcome of your argument, but I can
16 give you February 3rd, April 20th, May 4th, or June 15th.

17 I'm not asking you to tell me now because I know it
18 will be influenced by the outcome of the reconsideration
19 request.

20 Where are we on preparing for trial, Friends? Is
21 there any update on that? I thought you were going to know
22 something today.

23 MS. GLAVIN: My understanding is that we're going to
24 trial, your Honor, which is why we're seeking a trial date. I
25 have not gotten an indication from Mr. Frisch that this is

JC4EDONC

1 going to resolve itself.

2 MR. FRISCH: We have all been doing this long enough
3 to know there is a possibility of disposition in any case. I
4 hope to keep lines of communication open with Ms. Glavin. That
5 said, it's prudent to be setting a trial date as that certainly
6 is something that could happen in this case, so it's prudent to
7 be talking about a schedule.

8 THE COURT: OK. You have dates available. It's a
9 broad range of dates for you. Once you decide on a trial date,
10 I will ask you to figure out a schedule for your motions to
11 give yourselves time to write them and certainly give me time
12 to read them.

13 What else today, Friends?

14 MR. FRISCH: Nothing else from Mr. Donziger. Thank
15 you.

16 MS. GLAVIN: If I might have a moment to confer with
17 Mr. Frisch.

18 THE COURT: Yes, ma'am.

19 MS. GLAVIN: So, your Honor, I think it makes sense to
20 try and hold one of those dates down so that I can be
21 contacting witnesses and getting people to adjust their
22 schedules.

23 Mr. Frisch indicated to me that he thinks the
24 June 15th date would work best for him given his own schedule.
25 That's fine with me. I would prefer to lock that date down

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1 knowing that Mr. Frisch may come back and seek another date. I
2 prefer to get something on the calendar.

3 THE COURT: You're welcome to have that, but we'll
4 hold the other dates for you.

5 MS. GLAVIN: Yes.

6 MR. FRISCH: I wanted to add to that the reason I
7 asked for June 15th is that I just can't say for certain how
8 long the Judge Korman trial is going to take and I want to give
9 myself enough of a window between the end of that trial and the
10 beginning of this one, which is why I prefer June 15th over
11 May 4th. But I think if your Honor can simply hold that date
12 and let us know if becomes a problem, hopefully we can report
13 back and confirm or not.

14 THE COURT: That's the question. Do you want to set a
15 date for you now to report back? Two weeks, first week in
16 January? What do you want?

17 MR. FRISCH: I think that makes sense. I think,
18 obviously, Mr. Donziger and I would be guided to some extent by
19 the result of the other application, but sure, a couple of
20 weeks probably makes sense.

21 THE COURT: What do you want, December or the first
22 week of January?

23 MS. GLAVIN: That's fine, with me. Your Honor.

24 MR. FRISCH: Let me check my schedule, if I could.

25 THE COURT: Yes, sir.

JC4EDONC

1 MR. FRISCH: I think that's OK.

2 THE DEPUTY CLERK: How's January 6th at 10 a.m.?

3 MR. FRISCH: That's good.

4 MS. GLAVIN: That works, your Honor.

5 THE COURT: As we have been doing, I take it there is
6 no objection in an excess of caution to excluding time between
7 today and January 6th?

8 MR. FRISCH: Correct, Judge.

9 MS. GLAVIN: Yes, your Honor, but not conceding that
10 the speedy trial act applies.

11 THE COURT: Exactly. In order to permit counsel to
12 figure out what we're doing next, time between today and
13 January 6th is excluded from calculation under the speedy trial
14 act without ruling that it is applicable.

15 Anything else today, Friends?

16 MR. FRISCH: No, Judge. Thank you.

17 MS. GLAVIN: No, your Honor.

18 THE COURT: Thank you, counsel. Good morning.

19 (Adjourned)
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