

EXHIBIT B

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,	*	Docket No.
	*	1:23-cr-00037-JLS-MJR-1
	*	
	*	Buffalo, New York
v.	*	March 27, 2023
	*	1:36 p.m.
	*	
PETER GERACE, JR.,	*	DETENTION HEARING
	*	CONTINUATION
	*	
Defendant (1).	*	
	*	
* * * * *		

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE JOHN L. SINATRA, JR.
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Government:	TRINI E. ROSS,
	UNITED STATES ATTORNEY,
	By DAVID RUDROFF, ESQ.,
	JOSEPH M. TRIPI, ESQ.,
	NICHOLAS COOPER, ESQ.,
	Assistant United States Attorneys,
	Federal Centre,
	138 Delaware Avenue,
	Buffalo, New York 14202,
	Appearing for the United States
	And
	JORDAN ALAN DICKSON, ESQ.,
	U.S. Department of Justice,
	Criminal Division,
	Public Integrity Section,
	1331 F Street NW,
	Washington, DC 20004.

1 For the Defendant: LIPPES MATHIAS WEXLER FRIEDMAN, LLP,
2 By ERIC M. SOEHNLEIN, ESQ.,
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5 Buffalo, New York 14202
6 And
7 TIVERON LAW, PLLC,
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13 The Courtroom Deputy: KIRSTIE L. HENRY

14 The Court Reporter: BONNIE S. WEBER,
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20 Proceedings recorded by mechanical stenography,
21 transcript produced by computer.

22 (Proceedings commenced at 1:36 p.m.)

23 **THE CLERK:** All rise.

24 The United States District Court for the Western
25 District of New York is now in session. The Honorable
26 John Sinatra presiding.

27 **THE COURT:** Please be seated.

28 **THE CLERK:** The Court advises parties and listeners
29 that they are strictly prohibited from recording these
30 proceedings in whole or in part by any device.

1 In United States versus Peter Gerace, Jr., case number
2 23-CR-37, we're here for a continuation of a detention hearing.

3 Counsel, please state your appearances for the record.

4 **MR. TRIPI:** Joseph Tripi, David Rudroff, and
5 Nicholas Cooper for the United States. Good afternoon,
6 Your Honor.

7 **MR. SOEHNLEIN:** Good afternoon, Your Honor.
8 Eric Soehnlein for Mr. Gerace.

9 **MR. COHEN:** Good afternoon, Your Honor.
10 Steven M. Cohen and Tyler Eckert for Mr. Gerace.

11 **THE COURT:** Okay. Good afternoon, Counsel. Good
12 afternoon, Mr. Gerace.

13 Did I miss somebody who needed to make an appearance?

14 **MR. HARRINGTON:** James Harrington. I'm here just
15 observing.

16 **THE COURT:** Okay. All right. Just pick a better
17 seat, Mr. Harrington? That's all? Did you just pick a better
18 seat?

19 **MR. HARRINGTON:** Yep.

20 **THE COURT:** Got it. All right.

21 So we're going to pick up where we left off on Friday
22 in this detention hearing.

23 And, Mr. Tripi, have you supplied the loan documents
24 to Mr. Soehnlein?

25 **MR. TRIPI:** Yes, we did.

1 **THE COURT:** Okay. Is there anything I need to know
2 further on those loan documents from you, Mr. Tripi, or you,
3 Mr. Soehnlein?

4 **MR. TRIPI:** Not from us. If you have anything from
5 Mr. Soehnlein, I would like an opportunity to briefly respond.

6 **MR. SOEHNLEIN:** Well, Your Honor, this is the
7 continuation of the detention hearing. And with reflection, we
8 have a lot to say.

9 With respect to the loan documents, Your Honor, there
10 is a number of factors that the Court needs to consider, but I
11 think they demonstrate more of history of compliance than they
12 do any effort to not comply with the law or not to comply with
13 supervised release.

14 As Your Honor may understand, the EIDL program was
15 part of the Federal Government's COVID outreach program -- part
16 of the COVID Assistance Program.

17 Mr. Gerace, like many other business owners, was
18 solicited by a private bank to apply for that. Mr. Gerace
19 worked with that institution to fill out the application.

20 He worked with his accountant. He worked with a loan
21 broker through that institution. He didn't fill out any of the
22 applications on his own, Your Honor. That was the initial
23 application.

24 Over time, as the program became reauthorized,
25 Mr. Gerace also engaged the help of HoganWillig Law Firm. And

1 that law firm, at times, assisted him in preparing the
2 applications.

3 The actual questions on the applications, Your Honor
4 -- and I can't emphasize enough that this is an online
5 application; this is not a paper application, okay.

6 And I also can't emphasize enough that this is a COVID
7 era program. Meaning -- I don't want to say things are the Wild
8 West, but things are not necessarily well understood.

9 The questions with respect to whether or not his
10 business would have had to tick a box because it was sexual
11 nature, things like that; Mr. Gerace has a good faith basis to
12 believe he didn't have to click that box.

13 Both by the volume of sales -- because most of the
14 revenue from his business doesn't come from dances or things of
15 that nature, and also in understanding from the loan officers
16 and other professionals that he had engaged to fill out that
17 application.

18 With respect to the felony conviction, it's
19 Mr. Gerace's belief that he only had to check that box if the
20 felony was in the last ten years, and at the time that he was
21 filling out the application, it was not.

22 Once again, he has a good faith basis for relying on
23 the assistance of others, professionals, in that regard.

24 And finally, Your Honor, with respect to the
25 Government's point that somehow the PPP denial, you know, his --

1 Mr. Gerace's denial of the PPP loan should have played into the
2 EIDL process, that was not in any way communicated or consistent
3 with the advice that he got when he was applying.

4 So, Your Honor, with respect to those EIDL loans, to
5 the extent there is anything wrong with them, you know,
6 Mr. Gerace has a good faith basis for believing he did
7 everything right.

8 More importantly, Your Honor, this is not a grant;
9 this is a loan. Mr. Gerace has been repaying it monthly with
10 interest.

11 There is no allegation that the money was used
12 improperly. He continues to make payments every month. He has
13 not heard from anybody, whether it be the SBA or the Department
14 of Justice or otherwise, before court on Friday, that there was
15 anything wrong with this application or the process that he
16 followed.

17 Your Honor, with reflection, we also have a number of
18 comments on other proof that was offered by the Government on
19 Friday.

20 Having had an opportunity to review it with
21 Mr. Gerace --

22 **THE COURT:** Hold on there. Let's do one topic at a
23 time.

24 So Mr. Tripi, regarding the loan applications, any
25 response?

1 **MR. TRIPI:** Yes, Your Honor. As I indicated on
2 Friday, there is an online application and all of Mr. Gerace's
3 information to include phone numbers; his e-mail address is
4 entered in there.

5 And the question asks: Applicant does not present
6 live performances of a prurient sexual nature -- sexual nature
7 or derived directly or indirectly more than de minimis gross
8 revenue through the sales of products or services, or the
9 presentation of any depictions or displays of a prurient sexual
10 nature.

11 And that box is answered: Yes. In other words,
12 denying that he's involved in that business.

13 Now, all the information suggests Mr. Gerace filled
14 this out. But if you have someone in your agency filling it out
15 for you, you are responsible for making sure that it's accurate.

16 So I guess that will be a defense for another day when
17 this case is charged, but from the bail report in this case,
18 Mr. Gerace reported, I think, making \$45,000 a month.

19 So Pharaoh's was his employment. He reported, I
20 think, making \$45,000 a month as the hundred percent owner of
21 Pharaoh's.

22 And it's a strip club, so I don't understand how he
23 can answer "yes" to: Applicant does not present live perform --
24 performances of a prurient sexual nature.

25 Now, then it gets on -- and if he would have checked

1 no, the online portal would not have allowed him to progress
2 with the application.

3 So if he acknowledged that that's what Pharaoh's was
4 about, he wouldn't have been able to proceed past that screen.

5 **MR. SOEHNLEIN:** Your Honor, if I may be heard on that
6 point?

7 **THE COURT:** One topic at a time, Mr. Soehnlein. I'll
8 come back to you and give you the last word on it.

9 **MR. TRIPI:** So then there is another question on
10 there: Applicant is not engaged in illegal activity. And he --
11 it's "yes".

12 We contend that that also was a false statement. That
13 Pharaoh's was engaged in illegal activity, as reflected by the
14 indictment, that would have been returned some time after that.

15 But at the -- at the -- one of the last questions is
16 -- it's very clear -- not within the last ten years or -- it's
17 for any criminal offense: Other than a minor vehicle violation,
18 have you ever -- so two words -- any and ever.

19 I mean, he went to St. Joe's, so he understands what
20 those words mean.

21 Any criminal offense: Have you ever been convicted,
22 pled guilty, pled nolo contendere, been placed on pretrial
23 divergent, or been placed on any form of parole or probation.

24 It's "yes" to all of those things. He was on
25 supervised release. He was -- for his Federal conviction. He

1 was on probation for his State assault conviction.

2 He was convicted of a State misdemeanor. He was
3 convicted of a Federal felony, so all of those should have been
4 "yes".

5 And if he had someone filling out the form -- which, I
6 highly doubt -- for him, they are under the obligation to do it
7 accurately.

8 He's responsible, but -- see, in our responses we also
9 obtained documents regarding his communications with the SBA.
10 And it's Mr. Gerace, at his e-mail address, at yahoo.com,
11 e-mailing them.

12 It's Mr. Gerace, calling -- and we have their
13 communications -- about his loan.

14 It's on -- when he asks for -- in June -- June 10th,
15 he reaches out to them to check on the status of his April 5th,
16 2020 loan.

17 And there's notes in there. So he's the one reaching
18 out, and then he's the one who signs the loan documents on
19 June 12th, 2020.

20 **THE COURT:** Which statements -- in the meantime, while
21 we're waiting for the ELMO to boot up -- which statements,
22 Mr. Tripi, were made in July of 2021, after Mr. Gerace was on
23 pretrial release on the 19-CR case?

24 **MR. TRIPI:** You want me to fast forward to 2021?

25 **THE COURT:** Yes.

1 **MR. TRIPI:** Yes. So on August 7th, he signed a loan
2 modification to increase the loan. So just real quick, before I
3 jump right to that --

4 **THE COURT:** All right.

5 **MR. TRIPI:** I'm showing you the document for the
6 June 12th application, which he signed it. He's signing: Peter
7 Gerace, owner/officer, June 12th.

8 Now, I'll fast forward to the 2021 --

9 **THE COURT:** And for chronology's sake, Mr. Gerace is
10 arrested and put on pretrial release in the 19-CR case, when in
11 2021 -- March?

12 **MR. TRIPI:** He was arrested -- the indictment was
13 returned, I believe, February 25th. He was arrested by March
14 5th, 2021 and put on release conditions.

15 **THE COURT:** All right.

16 **MR. TRIPI:** All right. So fast forwarding to the
17 August 7th.

18 So August 7th, he signs a loan modification, which I'm
19 putting up on the screen now. "Peter Gerace", he signs it.

20 It says that the undersigned agrees to be bound by the
21 terms and conditions herein during the term of this loan, and
22 further agrees that no provision stated herein will be waived
23 without prior consent of the SBA.

24 In bold: Under penalty of perjury of the United
25 States of America, I hereby certify that I am authorized to

1 apply for and obtain a disaster loan on behalf of borrower in
2 connection with the effects of the COVID-19 emergency.

3 It's signed by Peter Gerace in his personal capacity,
4 Pharaoh's GC, Inc.; August 7th, 2021.

5 By that point, he's been on pretrial conditions set by
6 a Florida magistrate judge and Judge Roemer for about five
7 months. He's clearly indicted.

8 **THE COURT:** And when are the denials of the
9 indictment, supervised release, parole, et cetera -- when are
10 those denials occurring?

11 **MR. TRIPI:** Those denials occurred during the initial
12 application, but there is also in this loan document here, there
13 is a statement -- I just need to find it -- certifying that
14 all -- there's been no substantial adverse change in borrower's
15 financial condition since the date of the application of this
16 loan.

17 Adverse changes include, but are not limited to
18 judgment liens, tax liens, mechanics liens, bankruptcy,
19 financial reverses for arrest or conviction of a felony, et
20 cetera.

21 So here's the certification that precedes that suture
22 /THA*EUFPBLG that I just showed you. And it reads, as I just
23 stated: Borrower certifies that there has been no substantial
24 adverse change in borrower's financial condition -- I'm skipping
25 over the parens -- since the date of the application of this

1 loan -- which I stated previously was the April 5th, 2020 --
2 adverse changes include, but are not limited to judgment liens,
3 tax liens, mechanics liens, bankruptcy, financial reverses,
4 arrests, or conviction of felony, et cetera.

5 All representations in the borrower's loan
6 application -- and that would date back to the original
7 application -- including all supplementary submissions are true,
8 correct, and complete, and are offered to induce the SBA to make
9 this loan.

10 No claim or applications for any other compensation
11 for disaster losses has been submitted to or requested of any
12 source, and no such other compensation has been received, other
13 than that which borrower has fully disclosed to the SBA.

14 Now, we will have to look further into that, because
15 he was separately looking into PPP, so that might raise that --
16 that question as well.

17 **THE COURT:** All right. Let's wrap up on the --

18 **MR. TRIPI:** On the loan?

19 **THE COURT:** -- on the loan issue. Anything else from
20 you, Mr. Tripi?

21 **MR. TRIPI:** No, Judge. I'll end it there.

22 **THE COURT:** Mr. Soehnlein, last word on the loan
23 issue --

24 **MR. SOEHNLEIN:** Unfortunately, it's going to be more
25 than a word, Your Honor. I apologize, but I think I need to

1 make the record clear on this.

2 The loan application, Your Honor -- the original loan
3 application, it's done online. Mr. Gerace is doing it in
4 consultation with other experts.

5 The reapplications come when the private bank that the
6 loan is made through solicit people like Mr. Gerace for
7 additional funds.

8 The additional funding comes so easily; it's click the
9 box. It's check-the-box-type stuff.

10 Maybe, Your Honor, maybe Mr. Gerace missed something,
11 although we don't think he did, okay? We think that he relied
12 in good faith on his experts and consultants.

13 More importantly, Your Honor, I don't think that this
14 issue speaks to detention. To the extent that there is anything
15 that may have been done wrong, Mr. Gerace did it in error.

16 It doesn't evidence dangerousness. It doesn't
17 evidence any desire to violate supervised release terms, and we
18 believe that the story shows a desire and an effort to comply,
19 which is exactly what probation has told you Mr. Gerace has done
20 while he's been on supervised release, Your Honor.

21 I'm hard pressed to find a case in this district where
22 probation has taken a position that the defendant should be
23 released, and the Government has taken a position, as here, that
24 probation doesn't do a good enough job.

25 That's a novel one to me, Your Honor. Particularly

1 given the high degree of supervision that Mr. Gerace has
2 experienced, including the monitoring, the GPS monitoring, and
3 things like that.

4 I simply don't think that this issue speaks to
5 detention. It doesn't speak to dangerousness. It doesn't speak
6 to witness tampering. It doesn't speak to return to court. It
7 doesn't speak to safeguarding the community, Your Honor.

8 I believe that this is a red herring to try and keep
9 Mr. Gerace incarcerated through the trial.

10 **THE COURT:** Well, we've kind of painted Mr. Macaluso
11 in a box. He was never consulted on Friday about his
12 recommendation in this 23-CR case, and it's on my list of things
13 to do to ask him.

14 Mr. Macaluso, in the 23-CR case, does probation have a
15 recommendation?

16 **PROBATION OFFICER:** Yes, Your Honor. We would
17 recommend that he be released on all his previous conditions,
18 based on -- there is no violation here, because the conduct is
19 from 2019 and his supervision started in 2021.

20 And as previously stated Friday, the two years he's
21 been on supervision, he's had no violations. There has been no
22 positive drug tests, no issues.

23 He's been extremely compliant in terms of the
24 conditions set by this court. He's moved from home detention to
25 curfew, and he's been doing well.

1 **THE COURT:** Thank you, Mr. Macaluso.

2 All right. Is there anything left? I see there's
3 something new on the overhead.

4 **MR. TRIPI:** I put something on the screen, Judge,
5 because -- this is just one example of Mr. Gerace calling on
6 April 21st. This is the note from the SBA.

7 Mr. Gerace called in regards to requesting more funds
8 April 21st, 2021 via e-mail to -- and it gives the e-mail.
9 There has not been anything since, so this is him following up.
10 Mr. Gerace was the one doing this activity.

11 And just to answer the probation issue for a moment;
12 there are plenty of times when we disagree with probation.

13 I'm unaware of a case where someone has a pending
14 indictment and is charged with witness tampering, and the
15 Government has proffered continuing criminal activity, that went
16 undetected by probation, where the person was not detained and
17 where probation had not reversed their recommendation to some
18 extent, and so that's new for me.

19 **THE COURT:** All right. The next topic is something
20 else that caught my eye when I was reading the transcript from
21 Friday.

22 And that is -- this suggestion, it's at pages 36 and
23 37, but I'll just give you the topic and I kind of want to walk
24 through this a little more slowly.

25 It's the proffer where someone -- some lawyer in town

1 is contacting one of your witnesses, Mr. Tripi, and offering
2 himself to that witness in case she needs representation.

3 Somebody who -- a witness who is represented already.
4 And the way I kind of read that proffer -- and you're going to
5 give it to me again -- is that that defense lawyer says that
6 he's already spoken to someone on Gerace's team, and he's
7 reaching out to see if she needs counsel.

8 And, obviously, the concern there is -- even just from
9 the ethical side is -- is you can't thrust yourself upon a
10 client, unless you've represented that client beforehand.

11 Mr. Tripi, did I walk through that in my mind
12 correctly when I was reading it?

13 **MR. TRIPI:** Yes. And now I'll elaborate on that.

14 **THE COURT:** Or should we slow it down and take a
15 closer look at it?

16 **MR. TRIPI:** I will.

17 **THE COURT:** All right.

18 **MR. TRIPI:** So there's a witness in this indictment.
19 Frankly, it's the person that actually transmitted the messages.

20 That person was approached by the FBI before being
21 charged by a criminal complaint.

22 Unclear to me as I stand here, whether it was post
23 approach by the FBI or post charging by criminal complaint, but
24 that particular person was represented by a particular defense
25 attorney.

1 That particular defense attorney, who currently
2 represents the witness, has indicated to prosecutors that I'm
3 working with, that he has represented this individual in every
4 criminal matter that this individual has had.

5 All right. So the current lawyer made that
6 representation to us, and the current lawyer provided the text
7 messages to us by screenshot from his client.

8 And those screenshots -- I don't have in front of me,
9 so I'm going to do my best to paraphrase -- okay. I have them
10 here. Thank you.

11 So, I have them in front of me now. Those text
12 messages were forwarded from the witness to her attorney by
13 screenshot, and then forwarded them to us.

14 And the screenshots were from a person who is
15 apparently an attorney, but also someone who plays in a band in,
16 like, the local bar scene.

17 The witness indicated she knows this attorney/person
18 who is in the band from the bar scene, not from prior
19 representation.

20 So that's what's been represented to us between the
21 witness and her current attorney. And the current attorney is
22 Michael D'Amico. No problem putting his name on the record.

23 But the text message -- the solicitation, so-to-speak,
24 reads: "Hey, (insert name). It's (insert name). How have you
25 been? Are you free to talk at all today?"

1 I just want to go over something and make sure you're
2 okay, and let you know, if you need me, I'm here."

3 The witness responds: "I'm actually headed to
4 Mike D'Amico at 1:30. After I meet with him, I can give you a
5 call, but I just had a surgical procedure, so I basically can't
6 walk."

7 This individual then texts: "Oh my God, I'm sorry to
8 hear that, honey. Where are you living now? Are you okay
9 otherwise?"

10 I know Mike well. Great guy and great attorney. I'm
11 guessing he's meeting you for the same concern I had, as I got a
12 call from Peter Gerace's attorney, Steve Cohen, concerning that
13 the Feds might be trying to intimidate you, or even just bring
14 you in for questioning.

15 He saw that I was your attorney in the past and
16 reached out to me for me to make sure you were okay, and knew
17 I'm here if you need representation. And I want you to know I'm
18 here, even if you just need a friend as well."

19 Then as explained to us, the witness meant to text
20 Mike D'Amico, who has the same first name as this attorney, and
21 wrote: "By the way, never used him for an attorney. That's
22 bullshit."

23 The person who reached out got that text, and said,
24 "Never used who as an attorney?"

25 And the witness explained to us -- the witness thought

1 on her feet, and wrote the following: "Thought you meant Steve
2 Cohen, LOL. Sorry. I'm confused. Have a great day." Trying
3 to end the communications.

4 This attorney follows up: "No sorry, hon. I meant
5 Steve saw that you had me as your attorney and that's why you
6 reached out to me.

7 You have a great day too and let me know how things
8 go. I'm here if you need, babe."

9 The witness responds: "Thanks. I'm just focusing on
10 my recovery."

11 The attorney writes: "Absolutely. That's the most
12 important thing right now. If you need anything, I'm here."

13 Those were the communications that were provided by
14 Mike D'Amico to us.

15 Mr. D'Amico further stated: To his knowledge, he's
16 represented this particular witness in every case she's had
17 since she was a teenager.

18 **THE COURT:** Okay. Let's talk about that topic.

19 Mr. Soehnlein, anything that you wish to say on that
20 topic?

21 **MR. SOEHNLEIN:** Your Honor, it's -- obviously we don't
22 have the texts and this is the first that I've heard them. And
23 we certainly would like to have them.

24 However, the thing that jumps out at me, Your Honor,
25 is that nowhere did this attorney say that she wanted to help

1 the witness lie, or that he wanted to help the witness protect
2 Peter, or that she wanted to do anything of that nature.

3 Clearly, what I'm understanding, there was some
4 previous personal relationship, or else -- presumably, the
5 witness would not have responded.

6 It was an amicable relationship, or else the witness
7 would not have responded. And I didn't hear -- or -- yeah, I
8 didn't hear any text that would indicate that the attorney was
9 trying to suborn perjury, or suggest obstruction, or even
10 suggest that they not meet with Federal authorities in this
11 case.

12 Obviously, I don't know the blow-by-blow. And if
13 Your Honor wants more information about it, I'd love an
14 opportunity to review it with the defense team and provide you
15 with additional information.

16 But at first blush, it doesn't appear to be any form
17 of witness tampering and more important -- perhaps most
18 importantly, Your Honor, there is nothing there that suggests it
19 came from Mr. Gerace himself.

20 The suggestion is that it came from Gerace's attorney.
21 It does not say Peter told me to call you; Peter told me we had
22 to talk; Peter tells you to not talk to Federal authorities,
23 that's not anywhere in the message, Your Honor.

24 And so I don't believe that that should weigh against
25 Mr. Gerace in Your Honor's calculus on this issue.

1 **THE COURT:** All right. I'm not going to consider that
2 issue, but I'm just simply going to say, as an
3 issue-spotting-kind-of-person, it does cause me some concern, so
4 I would advise the defense team to be careful on that front.

5 All right. So next is Mr. Soehnlein -- other topics,
6 any proffer, any evidence, that sort of thing.

7 **MR. SOEHNLEIN:** I do have a proffer, Your Honor. And
8 I think Your Honor knows me, I try hard to be succinct.

9 But the thing that I note from Friday is that most of
10 what the Government relies upon is consistent with prior
11 proffers that the Government has made in favor of detention at
12 other times in this case.

13 It's not new information, Your Honor. It may be
14 amplified information, but it's not new. It's stuff that was
15 known to probation when probation made the recommendation for
16 Mr. Gerace's release.

17 It's things that were known to Your Honor or
18 allegations that were known to Your Honor.

19 More importantly, Your Honor, the Government's
20 argument relies on their position that probation can't and does
21 not do its job.

22 That's a new one to me, given the number of cases that
23 they rely on probation's recommendation in favor of detention.
24 This is the first time that that's happened.

25 Your Honor, I wanted to show you -- I'd also like the

1 ELMO --

2 Mr. Tripi, if I can use the ELMO --

3 **MR. TRIPI:** Certainly.

4 **MR. SOEHNLEIN:** In my view, Your Honor, the most
5 serious allegation had to do with what the Government had to say
6 about Mr. Tripi -- or sorry, Mr. Gerace's ex-wife.

7 And it's there. He had a son with the young lady, and
8 I'll get to how he assaulted her in a moment -- but while she
9 was afraid of him and on the run in fear for her life, hiding
10 out, the judge -- excuse me -- this defendant did a pro se
11 motion for a name change, to have his son's name changed to this
12 name.

13 That judge granted it the same day. The mother was
14 nowhere to be found, but of course, it was applied for and
15 granted the same day.

16 Your Honor, that's a hundred percent untrue. The
17 woman is sitting right there. That's Mr. Gerace's ex-wife.
18 We've spoken with her. This is not true.

19 This is not how the name change happened. It took
20 several months. They were both there. She didn't fear for her
21 life. That's not true. That's not accurate.

22 She is sitting right there, supporting Mr. Gerace's
23 release, because they co-parent his 16-year-old son, Nick, who
24 lives primarily with Mr. Gerace.

25 Further down, the Government says in 2010, there was

1 information that the defendant was traveling with a young lady
2 from New York City.

3 There was a tip she had drugs in a false compartment
4 coming through the airport. At that time, law enforcement had a
5 canine do a sniff.

6 The dog didn't alert, and they decided not to step in
7 and stop and question, but the information about the defendant
8 having a supplier in that timeframe, there is other information
9 that suggests that -- that I've reviewed in this
10 investigation -- so looking back at that tip, it didn't turn out
11 to be anything. I will consider asking you to consider that
12 part of his history.

13 Your Honor, that was kind of a throwaway ploy at the
14 time, and I guess I didn't catch it as it was going by.

15 But this tells us something about the case, Your
16 Honor. This tells us that Mr. Gerace has been under
17 investigation for Federal law enforcement for drugs since at
18 least 2010.

19 It's 2023. In that timeframe, he's been supervised by
20 probation. There have been multiple search warrants on his
21 homes and businesses.

22 There have been some probation violations --
23 supervised release things. There's no drugs here, Judge.
24 There's no drugs. There's no controlled buy. There's no
25 cocaine in the courtroom.

1 There's no massive quantities of anything. There's no
2 media of a buy-and-bust from 2010 until now.

3 The Government wants to rely on an unsubstantiated
4 allegation from 2010 to keep Mr. Gerace locked up. This is
5 where we're at. There's no there there.

6 **THE COURT REPORTER:** I'm sorry, what did you say?

7 **MR. SOEHNLEIN:** There is no there there. It's
8 colloquialism. Sorry. Maybe not a good one.

9 Your Honor, with regard to the new allegations, these
10 are things that the Government has had for four years, as I've
11 said.

12 These are messages the Government has referenced in
13 the past and spoken about in front of Your Honor.

14 The text messages don't -- they do not in any way
15 indicate that Mr. Gerace intends to do violence. They don't
16 indicate that Mr. Gerace intends to do anything to this witness.

17 What they say is that whoever this third party was,
18 might do some violence. And it references things that I believe
19 show personal animus between the two women involved that don't
20 involve Mr. Gerace.

21 The Government is going to say, well, we trust but
22 verify, and now we're verified.

23 Given the scope and timing of this investigation,
24 Your Honor, I have to believe the Government has spoken with
25 this witness more than one time. Perhaps more than twice.

1 It leads me to believe that the first time they spoke
2 with her, she probably either denied wrongdoing, denied the
3 message, or made some other statement to law enforcement that
4 did not corroborate the tampering charge.

5 If the Government is going to rely on her now, I think
6 Your Honor ought to see all of the 302 material, which isn't
7 here. You didn't see it.

8 Your Honor, I want to talk about proof. What the
9 Government has -- they've offered words. They've made some very
10 serious, very scandalous allegations.

11 We know that at least some of them were wrong. She is
12 here; she can tell you that they are wrong. That's on the one
13 hand -- remember, you were weighing factors. The allegations.

14 On the other hand, we have probation and a history of
15 compliance while on supervised release. We have probation
16 saying, you should let him out, Judge. There is no need to
17 detain him.

18 Alternatives exist. Alternatives to incarceration
19 exist that can secure his return to court and safeguard the
20 community.

21 We would submit it's a continuation of the same
22 conditions, but Your Honor is certainly capable of fashioning
23 some other appropriate way of monitoring that would keep him
24 from being incarcerated.

25 Your Honor, Mr. Gerace is not in great health, as I'm

1 sure you understand. He has cardiac issues. He suffers from
2 depression.

3 And as is well-documented, incarceration in local
4 facilities is particularly hard for people who have those health
5 concerns, particularly in the era of COVID.

6 What's more though, Your Honor, is he's the sole
7 provider for his 16-year-old son. He has him 28 days out of the
8 month. He's had custody of his son since he was four years old.

9 Now, it's true, he does co-parent very well with his
10 child's mother, who is here in support of him, but that son
11 needs his father, particularly in the lead up to trial.

12 More critically, Your Honor, in my estimation,
13 detention will be an undue burden on defense counsel in
14 preparing for this case.

15 We don't have the discovery material. We don't have
16 the most critical stuff. It's still forthcoming.

17 As we get it, we need Mr. Gerace to be able to review
18 this stuff and inform us what's true, what's false, where to
19 look, how to investigate defense leads.

20 That process, Your Honor, is unreasonably and unduly
21 hampered if Mr. Gerace is incarcerated in any form.

22 And so, Your Honor, I submit there are terms and
23 conditions that Your Honor can fashion that will safeguard the
24 community, ensure his return to court, and be appropriate that
25 are short of detention, Your Honor.

1 **THE COURT:** Mr. Tripi -- I'm sorry. I thought you
2 were done.

3 **MR. SOEHNLEIN:** I'm sorry.

4 **THE COURT:** Go ahead.

5 **MR. SOEHNLEIN:** Sometimes I stop and really I'm just
6 getting tired.

7 Your Honor, finally, the timing of this motion, after
8 we have made a motion to provide Mr. Gerace with important
9 discovery materials, that we believe show false testimony in
10 front of the Grand Jury is suspect, at best.

11 Your Honor, some of Mr. Tripi's proffer came from that
12 witness. It did. Some of the most scandalous, salacious
13 allegations came from that witness.

14 **MR. TRIPI:** From what witness?

15 **THE COURT:** Hold on, Mr. Tripi.

16 **MR. SOEHNLEIN:** And we know, Your Honor, as set forth
17 in our motion, under seal -- we know, Your Honor, that that
18 witness has lied.

19 We also know that the U.S. Attorney's Office went
20 through efforts to rehabilitate that client's testimony in the
21 Grand Jury, as is laid out in our motion.

22 We need to be able to provide that material to
23 Mr. Gerace, so he can inform us what's true, what's false, so we
24 can make a calculation about what to do with that information.

25 It's suspect, Your Honor, that we make that motion on

1 a Tuesday, and the new arrest comes on Friday with the tampering
2 charges.

3 Information that the Government has had for four years
4 -- suddenly there is a new indictment.

5 So, Your Honor, we'd ask you to continue the terms and
6 conditions of Mr. Gerace's release, consistent with the
7 recommendation from the United States Probation.

8 **MR. TRIPI:** Just a few points, Judge.

9 **THE COURT:** Yeah. Before you go there, though, let me
10 ask you to go right to this suggestion from Mr. Soehnlein, that
11 the two women in the basement on the Facebook account somehow
12 were doing this of their own volition, without any involvement
13 of Mr. Gerace; so how do you respond to that?

14 **MR. TRIPI:** I think the Grand Jury indictment speaks
15 for itself. We have a probable cause determination by a Federal
16 Grand Jury that heard the evidence.

17 And that Grand Jury considered evidence from the
18 recipient of the messages in the form of Grand Jury transcripts
19 and the other individuals.

20 There is a probable cause finding, so all three other
21 people who had a part in this were considered.

22 And so I think the Second Circuit case law is
23 abundantly clear that it's the indictment that triggers the
24 probable cause determination, and you have an indictment before
25 you.

1 Now, I would note, to go back to probation's
2 recommendation, the probation office in Florida during -- you
3 want to talk about COVID -- during the middle of COVID,
4 recommended that he be detained.

5 Now, it was about five minutes before the detention
6 hearing, and after we made representations to Mr. Daniels about
7 the fact that his client would have been allowed -- had he been
8 arrested in Buffalo, would have been allowed to surrender
9 himself.

10 So, the only reason the Government didn't move for
11 detention was we were battling distance, initially, during the
12 heart of COVID, and we thought that an AUSA who had no clue
13 about any of these facts would be the one left to proffer it.

14 And we had made representations previously to
15 Mr. Daniels that we wanted to uphold. We weren't anticipating
16 in arresting in Florida at that time.

17 So -- but that -- interestingly, that Florida
18 probation department recommended detention, just on the face of
19 the indictment. Nevertheless, we agreed to conditions, but a
20 whole lot has changed since then.

21 So the defense proffer is that probation knows all
22 these things.

23 Probation didn't know anything that I said yesterday,
24 because all they did was get the reclamation from Florida and
25 disagree with it while submitting a memo that says: Oh, by the

1 way -- Andre McCray wrote a memo that says he lied to the
2 Florida Probation Department, because he said he didn't do drugs
3 and he tested positive for cocaine. So that addresses a little
4 bit of that.

5 I heard Mr. Gerace has health issues for the first
6 time. When he was arrested the other day, he was on his way to
7 the gym, dressed in gym clothes.

8 So apparently it doesn't block him from working out.
9 I submit to you, he's just fine.

10 The Government laid out the timeline of its
11 indictment, and one of the acquired witnesses on Friday.

12 No later than March 14th was approval sought to return
13 the indictment in this matter; well before any defense motion.

14 If you would like to call Criminal Chief Kresse, have
15 at it. But as an officer of the Court, that's the date we
16 purposed charging him, and that's our internal process that I
17 just put on the record.

18 In terms of pointing to Mr. Gerace's ex-wife in the
19 back, I feel bad for Ms. Arida to be placed in this situation.

20 To have a documented history of abuse, to have a child
21 in common with this man, and now be called out to come to court
22 and sit there and pretend you're okay with this, or what?

23 What's the alternative for her with that show that was
24 displayed a moment ago?

25 The facts are, we recovered the order signed by Judge

1 Michalski, Mr. Gerace's good friend.

2 It was a pro se order signed July 7th, 2008, the same
3 day as the pro se application.

4 And in it, it wrote: The order -- the order does not
5 indicate that Arida was present or on notice of the petition.

6 The order states: It appearing that notice is not
7 required to be given to any person, and the Court being
8 satisfied -- apparently because of the personal relationship
9 between the judge and Mr. Gerace -- there is no reasonable
10 objection to the change of name proposed.

11 He signs the order, as followed. This excerpt is from
12 the search warrant application of Judge Michalski.

13 And so, I'd ask you to disregard that little show from
14 a few moments ago. He's continuing to commit crimes. He will
15 continue to commit crimes.

16 He's a danger to the community. He has resources
17 making him a flight risk. The indictment triggers the statutory
18 presumption that he's a flight risk and a danger, and the weight
19 of the evidence clearly shows this Court that he is and he
20 should be detained.

21 **THE COURT:** Thank you, Mr. Tripi.

22 Mr. Soehnlein, last word.

23 **MR. SOEHNLEIN:** Thank you, Your Honor.

24 Your Honor, this hearing is about a return to court,
25 safeguarding the community, making sure that Mr. Gerace is not a

1 flight risk.

2 His history of supervision shows that he's none of
3 those things, Your Honor. There are certainly terms and
4 conditions that Your Honor could impose, short of detention, to
5 ensure that those things are done.

6 While there may be a presumption, it's rebutted by the
7 time that he's been on supervised release, Your Honor. Even the
8 time that -- even the time when the Government alleges that he
9 was under investigation, he didn't go anywhere. He didn't fly
10 out of town.

11 He didn't skip town. He's here to answer the charges.
12 He engaged attorneys. He's made it to every court appearance.

13 Aside from the EIDL controversy, there's no other
14 criminality during that time. Not only is probation watching
15 him, but you know that Federal law enforcement is watching him
16 during that time as well.

17 Your Honor, we ask that you continue the terms and
18 conditions of his release.

19 **THE COURT:** Thank you, Mr. Soehnlein.

20 All right. So I'm going to walk through my thoughts
21 about my conclusion and my reasons and then, obviously, there
22 will be a standard order that comes -- a written order to make
23 sure that I've tracked all the items.

24 I've heard everything I heard on Friday and today, all
25 pursuant to the factors in subsection G of 3142, which I've

1 studied at length.

2 Like I noted on Friday, a major focus for me is how
3 I'm to weigh Mr. Gerace's compliance with the conditions in the
4 19-CR-227 case, on the one hand, with several items to kind
5 of -- the counter way and stand in the face of that; and things
6 like the new detail that I've heard from Mr. Tripi surrounding
7 the Facebook incident, which resulted in the three counts of
8 indicted conduct related to the Facebook incident in this case,
9 including the corroboration of those details.

10 Also new to me is the Government's proffer about
11 Mr. Gerace referring to the victim witness as a snitch prior to
12 the November 19, 2019 alleged conduct, and in real time as well.

13 I still have some concerns as well about the
14 Government's proffer about Mr. Gerace's apparent willingness to
15 use his contacts in the legal system to improperly disadvantage
16 those perceived as being against him.

17 And there, in part, I'm concerned about the Michalski
18 incident, also, as well as the Amherst Police Department
19 detective incident that I heard about on Friday as well.

20 The cocaine and drug supplying and prostitution items
21 aren't good facts either.

22 The loan application issues, at a minimum, present
23 recent untrustworthy activity from June, 2020 and July, 2021.
24 Some of that activity after the releases in the 19-CR case.

25 And in particular, noteworthy is the denial of prior

1 convictions and current indictment, among other items on those
2 applications.

3 I also note that -- I don't know if I need to note
4 that, but I note that witness tampering is something that goes
5 to the heart of the justice system.

6 And I think that's something that, at a minimum, the
7 LaFontaine case accounts for and speaks to.

8 Taking into account all of the G factors, including
9 defendant's past conduct and how that relates to the safety of
10 witnesses in this case and the safety of witnesses in the 19-CR
11 case, I note that defendant's record of compliance is sufficient
12 to rebut the presumption in section E-3.

13 Nevertheless, I find by clear and convincing evidence
14 that no condition or combination of conditions will reasonably
15 assure the safety of any other person in the community,
16 especially vis-a-vis witnesses against Mr. Gerace.

17 And I also note that the case law, for example,
18 LaFontaine, about detention and witness tampering cases also
19 notes cases about detention and obstruction of justice cases,
20 even absent violence or threats of violence.

21 Therefore, I order Mr. Gerace detained pending trial.
22 He -- at the end of this proceeding, will be committed to the
23 custody of the Attorney General. The balance of the order
24 that's forthcoming will follow.

25 We need to look at and think about a couple things,

1 next, given this 23-CR case conclusion.

2 It triggers a couple of things in my mind, which is
3 what are we doing about the release order in the 19-CR case.

4 Is there going to be a violation proceeding, and/or is
5 the hearing -- there was never a detention hearing in that case,
6 so we can't reopen it under the statute under -- again,
7 subsection F, the flush language.

8 The point is -- we've got incongruous orders out
9 there. Certainly, the detention order is going to trump, but I
10 still have to deal with the fact that we've got an order in the
11 19-case, so we've got to deal with that some some way.

12 Mr. Tripi, what's your suggestion?

13 **MR. TRIPI:** I think the indictment in this case is a
14 changed circumstance that would allow for the Court to consider
15 the fact that it's now heard additional information and entered
16 a detention order.

17 **THE COURT:** Right. Well, why don't you submit
18 something and --

19 **MR. TRIPI:** I will.

20 **THE COURT:** -- and then give the defense a chance to
21 respond to that.

22 I -- even before I came out here, Mr. Soehnlein,
23 Mr. Cohen, I'm acutely aware that the trial date is 12 weeks
24 away or so.

25 I've accounted for that before I came out here and

1 now, and listening to Mr. Soehnlein reminded me of it.

2 So what I'm -- defendants prepare for trial from
3 county jails here all the time. I'm sure it's not fun, but it
4 happens, and it's the norm for them.

5 So what I want to say is, is this: I'll consider
6 every motion on the merits. I always do.

7 But if you're going to make a motion for temporary
8 release to prepare for trial, it can't be on this record,
9 because I've already considered all these things.

10 So there's got to be something new and compelling for
11 me to consider in order to justify something like a temporary
12 release under subdivision I.

13 Remember you have Judge Roemer tomorrow, I believe, at
14 2 o'clock. Is there anything else that we need to talk about in
15 the 23-CR case?

16 **MR. TRIPI:** No, Your Honor.

17 **MR. SOEHNLEIN:** Nothing further, Your Honor.

18 **THE COURT:** Okay. So let's call the 19-case, and
19 we're going to do the Curcio piece now. Status conference on
20 the Curcio motion.

21 **THE CLERK:** Court calls United States versus
22 Peter Gerace, Jr., case number 19-CR-227 for a status
23 conference.

24 Counsel, please state your appearances.

25 **MR. TRIPI:** Joseph Tripi, David Rudroff, and

1 Nicholas Cooper for the United States. Good afternoon.

2 **MR. SOEHNLEIN:** Eric Soehnlein, Steve Cohen for
3 Peter Gerace.

4 **MR. COHEN:** Tyler Eckert as well, Your Honor.

5 **THE COURT:** I'm sorry, what's that?

6 **MR. COHEN:** I beg your pardon, sir. Tyler Eckert,
7 E-C-K-E-R-T, is here as well. He's sitting behind me.

8 **THE COURT:** Okay. So on the Curcio process, there is
9 the motion to determine whether a conflict exists and what to do
10 about it.

11 There's been a response from Mr. Soehnlein, and I have
12 a call in to Mr. Spitler to see what his availability is like,
13 since he seems to be of -- by conflict purposes, available to
14 us, and he served as Curcio counsel once before in this case for
15 Mr. Gerace.

16 So I'd like to use him again, if he's available and
17 willing to do it. He hasn't gotten back to me yet.

18 I know that I think I heard you say, Mr. Tripi, that
19 he wasn't around today anyway, which is why he hasn't called me
20 back.

21 **MR. TRIPI:** There was sort of a family emergency
22 today.

23 **THE COURT:** Okay. So when he calls me -- I'm going to
24 leave the next appearance on this Curcio process unscheduled, so
25 that we can see what his calendar looks like when he calls me

1 back.

2 And then I'll put out a text order and have you come
3 back and we'll do part two of Curcio and then part three after
4 that, so that's probably all I can do at this point on that
5 front.

6 Mr. Tripi --

7 **MR. TRIPI:** I have nothing else, Judge.

8 **THE COURT:** Mr. Soehnlein?

9 **MR. SOEHNLEIN:** Nothing further, Judge.

10 **THE COURT:** Mr. Cohen?

11 **MR. COHEN:** Nothing further, Judge.

12 **THE COURT:** All right. So that does it for the Curcio
13 process status conference in the 19-CR case.

14 If there is nothing further from any of you, the
15 defendant will remain detained pending trial in the 23-CR-37
16 case, which is what brought us here in the first place.

17 Okay. Thank you.

18 **MR. TRIPI:** Thank you.

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20 (Proceedings concluded at 2:28 p.m.)

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In accordance with 28, U.S.C., 753(b), I certify that these original notes are a true and correct record of proceedings in the United States District Court for the Western District of New York before the Honorable John L. Sinatra, Jr.

s/ Bonnie S. Weber
Signature

March 31, 2023
Date

BONNIE S. WEBER, RPR
Official Court Reporter
United States District Court
Western District of New York