

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

UNITED STATES OF AMERICA,)	
)	
vs.)	Docket No. SA-15-CR-271 (1) -FB
)	
MARGARITA MONIR HOSSEINI,)	San Antonio, Texas
)	February 16, 2018
Defendant.)	
)	

TRANSCRIPT OF MISCELLANEOUS HEARING
BEFORE THE HONORABLE FRED BIERY
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE GOVERNMENT:
UNITED STATES ATTORNEY'S OFFICE
By: Greg Surovic, Esquire
601 N.W. Loop 410, Suite 600
San Antonio, TX 78216

FOR THE DEFENDANT:
THE LAW OFFICE OF ALBERT A. FLORES
By: Albert A. Flores, Esquire
3817 San Pedro Avenue
San Antonio, TX 78212

COURT REPORTER:
CHRIS POAGE
United States Court Reporter
655 E. Cesar E. Chavez Blvd., Rm. 314
San Antonio, TX 78206
Telephone: (210) 244-5036
chris_poage@txwd.uscourts.gov

Proceedings reported by stenotype, transcript produced by
computer-aided transcription.

1 (Open court)

2 THE COURT: Next will be *United States of America*
3 *versus Margarita Monir Hosseini*. Announcements for the
4 United States.

5 MR. SUROVIC: Your Honor, Greg Surovic for the
6 United States. Present and ready.

7 THE COURT: For the defense?

8 MR. FLORES: Good afternoon, Your Honor. Albert
9 Flores, and I'm stepping in for Mr. Barnes.

10 THE COURT: All right. Ms. Hosseini, come up here,
11 please. You can have a seat there.

12 Now, Mr. Flores, why don't you come to the lectern first.
13 And Mr. Surovic has his microphone there. And I realize
14 you're -- how long have you been connected to this case?

15 MR. FLORES: Your Honor, about two weeks.

16 THE COURT: Okay.

17 MR. FLORES: I was retained just to get some local
18 information for sentencing.

19 THE COURT: Okay.

20 MR. FLORES: And I have reviewed a lot of this stuff,
21 but I'm obviously not the man to argue it.

22 THE COURT: Well, that's fine.

23 And have you read Mr. Barnes' sentencing memorandum, which
24 he's now suggesting that he wants to withdraw?

25 MR. FLORES: I have, Your Honor.

1 THE COURT: Okay. Well, I don't know all the back
2 story, but I was not happy reading it. And it's a good thing
3 it's being asked to be withdrawn, which I wouldn't hold it
4 against Ms. Hosseini. But these out-of-town lawyers come in
5 here, and they don't know what they're doing. I mean, they're
6 very good lawyers, but they don't know this culture, and they
7 cite Ninth Circuit cases out of California. Well, this is not
8 the Ninth Circuit.

9 I had that happen one time with a lawyer from Chicago,
10 who -- he was being very professional and courteous, and he
11 wasn't accusing the government or U.S. Attorney's office of
12 misfeasance or malfeasance, but he represented a young man who
13 drove down here from Chicago and drove a load of cocaine back
14 to Chicago. And, of course, there was an ongoing
15 investigation, and the net finally came down. And this young
16 man got indicted here and was brought back. And he hired this
17 Chicago lawyer, which is fine.

18 And the lawyer came down and made this argument on behalf
19 of his client, doing the best that he could. And as I recall,
20 it was a five to 40 or ten to life, but it was a high sentence.
21 But this guy was a mule. And one of his arguments was telling
22 me that my colleagues in Chicago would -- in this kind of case
23 would give this young man probation. And I said: Well,
24 Counsel, we're not in Chicago.

25 At any rate, I'm going to hold onto this sentencing

1 memorandum. I will allow the defense to withdraw it. And,
2 again, I don't know the back story. I know why -- it should
3 never have been written in the first place.

4 MR. FLORES: Your Honor, if I may, just because this
5 has become an issue, could you spell out some of the issues
6 that you have with the memorandum? And that way I could relay
7 them to counsel and possibly not be repeated again.

8 THE COURT: Well, maybe not as direct as it might be,
9 but it looks like it's accusing the United States, law
10 enforcement and U.S. Attorney's office, of bad conduct. It's
11 not the kind of tone that I see in the practice here. But at
12 any rate, the other --

13 Mr. Surovic.

14 MR. SUROVIC: Your Honor, just to give the Court a
15 little bit of a feel for what the back story is on this --

16 THE COURT: Okay.

17 MR. SUROVIC: -- you know, that was filed late
18 Wednesday evening. I saw it yesterday morning. And in the
19 course of reviewing it, I reached out to Mr. Barnes to suggest
20 that I may need some additional time because he's making
21 certain allegations concerning A) the testimony in the case,
22 and some other factors; and that I might want to investigate
23 those.

24 In the course of our discussion -- we talked -- we
25 exchanged emails back and forth. And one of the things I threw

1 out to him is that this is a little different from the way we
2 normally handle it. This is the first notice that I received
3 of exactly what complaints he has about the numbers the
4 government's provided as far as the calculations of the loss.
5 And then normally what happens in these cases is that we have
6 whatever expert they wish to choose -- usually it's an expert
7 that's retired IRS agent or something like that -- meet with
8 the case agent in the case. They sit down. They go through
9 each of the individual returns, and they come up with a number
10 that both sides can live with. And we then provide that to the
11 Court.

12 THE COURT: And, indeed, I was going to allude to that
13 anyway. I think that's what happened in the Lopez mother and
14 daughter case. And, indeed, they reached an agreement. And
15 these folks don't have near the assets that Ms. Hosseini has,
16 but that hundred thousand dollars got paid up before
17 sentencing.

18 MR. SUROVIC: In the case of the daughter, before even
19 she entered her plea, Your Honor.

20 THE COURT: Right.

21 And I also recall, in terms of professionalism, that I
22 think the daughter -- yes, one of the daughter's lawyers may
23 have been a former IRS agent. But at any rate, I observed a
24 very camaraderie, professional -- after she did enter her plea,
25 between the agent and Ms. Lopez' lawyer; that, you know, they

1 had come to a reasonable agreement and so forth. I haven't
2 seen that in this case yet.

3 At any rate -- but I did make some notes here of things I
4 wanted to ask about, one of which I think, Mr. Surovic, you may
5 have alluded to. This subpoena of Sheriff Price's gambling
6 activities came in -- according to the letterhead from the
7 casino, came in two days after Ms. Hosseini had entered her
8 plea. I'm thinking, well, if that was -- I assume that defense
9 knew about Deputy Price and they could have done all that
10 effective assistance of counsel investigating before the trial.

11 Another factor, again, Mr. Flores, so that you -- I mean,
12 you obviously practice here. Most of these cases, like the
13 Lopez case and others, the plea gets entered long before
14 everybody has to gear up for trial and bring in 16 witnesses
15 and this, that and the other, which isn't what happened in this
16 case. And then Ms. Hosseini, after we were just about finished
17 I think with the government's case -- Mr. Surovic?

18 MR. SUROVIC: We had only to put Agent Robles on the
19 stand, Your Honor, or we would have rested.

20 THE COURT: And then she decided to enter a plea,
21 which is fine. I have the transcript here. We went through it
22 very carefully to make sure she knew what she was doing. And
23 the government -- frankly, I was somewhat shocked. But knowing
24 Mr. Surovic and the kind of collegial atmosphere that we have
25 in this court, Mr. Surovic nevertheless let Ms. Hosseini plead

1 to the one count that she could have pled long before.

2 Some Assistant U.S. Attorneys would have said: Well, you
3 could have pled to one back here. Now you have to plead to
4 three, or let the jury decide on the whole 22 counts. But
5 Mr. Surovic didn't do that, to his credit and to the benefit of
6 Ms. Hosseini.

7 And as I was reading this this morning, but for the
8 witnesses and the jurors and the lawyers -- if it were just up
9 to me, I am real tempted to say: Okay. The Court withdraws
10 the plea, grants a new trial, and let's go to trial. That's my
11 gut feeling after reading this. But, again, it's not just me.
12 That would impose a great burden on a whole nother jury panel
13 and the lawyers and Ms. Hosseini. And I suspect Ms. Hosseini
14 only paid for one trial. And the witnesses have to come down,
15 take off of work again and all that. So I won't. But that
16 certainly was something that crossed my mind.

17 In the meantime, Mr. Barnes, on behalf of Ms. Hosseini --
18 one of the big disputes or the big dispute is the amount in
19 controversy. The government has 104,784. The defense is
20 postulating the figure 37,000 some odd. And as was made very
21 clear in all of these cases, but with Ms. Hosseini, when we get
22 to this point, it's very important in the Court's decision as
23 to how much of that restitution is paid beforehand, like the
24 Lopez mother and daughter, or is brought to court.

25 So inferentially, Mr. Barnes -- Ms. Hosseini agreed that

1 she owes at least \$37,000. And she has a considerable net
2 worth, far more than the Lopez group or other defendants. So
3 do we have any \$37,000 here today or --

4 MR. FLORES: Your Honor, my understanding is that the
5 closer we get to that bottom number, yes, we have every
6 intention of paying that amount. It becomes impossible as we
7 get to the higher numbers.

8 THE COURT: Well, there's a lot of assets here.

9 MR. FLORES: Correct, Your Honor. Most of them are
10 not liquid. But I don't want to --

11 THE COURT: That's the other thing. I've heard that
12 argument. But Ms. Hosseini has had since 2015 to know about
13 this case. And presumably, with very effective counsel, she's
14 had advice about the downside risks. And then she's had since
15 September the 20th of last year, knowing that this day was
16 going to come, to start liquidating assets.

17 And I don't know yet, obviously -- I guess both sides don't
18 know yet what the proper number is. But when you say every
19 intention of having the 37,000 that apparently is agreed that's
20 owed, that's different than bringing 37,000 to the court like
21 the Lopez defendants did and others. So I'm --

22 (Discussion off the record between Mr. Flores and the
23 defendant)

24 MR. FLORES: And, Your Honor, just to be clear, when
25 we say "every intention," that was the big push behind getting

1 a solid number. My instruction to Ms. Hosseini is to bring a
2 checkbook today and to be able to write some significant amount
3 of money. So that's what I mean by "every intention."

4 THE COURT: Okay. Well, did she bring her checkbook?

5 MR. FLORES: She did, Your Honor.

6 THE COURT: How much is the check going to be for?

7 (Discussion off the record between Mr. Flores and the
8 defendant)

9 MR. FLORES: At least the 37,000 that we're agreeing
10 to legally.

11 THE COURT: Okay. Wonderful. All right. And
12 presumably the check will be good. It would be a very bad
13 thing to write a hot check to the United States government.

14 MR. FLORES: That's correct, Your Honor.

15 THE COURT: Or to the Court, actually, because it's
16 going into the registry of the Court.

17 All right. Well, with that understanding that 37,000 is
18 going to be paid today and then we'll move forward on whatever
19 else is owed, then the Court will grant the continuance. I
20 guess -- the motion was not for very long, till March the 9th.
21 Mr. Surovic, is that going to be enough time?

22 MR. SUROVIC: I believe three weeks will do it, Your
23 Honor. And one of the reasons why I suggested to Mr. Barnes we
24 don't want a long continuance -- the Court knows that I've been
25 opposing continuances in this case. Three weeks forces

1 everyone to work hard to get this matter resolved. That
2 includes both Agent Robles. It includes their expert and
3 Mr. Barnes.

4 And, of course, the whole purpose for requesting a
5 continuance, Your Honor, is I'm hoping that we can come to a
6 point where we do not have to have a litigated sentencing like
7 I anticipated we were going to have this morning if I had not
8 had my discussion with Mr. Barnes.

9 The government's pretty confident about the numbers that
10 they are throwing out. But we admit that there may be some
11 errors. We need to sit down and look at the transcript again
12 with the defense so we can figure out exactly what the
13 testimony was. And if there are errors there, we will concede
14 that the number should be lower.

15 But, you know, there needs to be a consensus that that's
16 what we're working towards, trying to come up with numbers that
17 are agreeable to both parties, that the Court will accept.

18 THE COURT: All right. Well, let me address a couple
19 of things. First of all, this exhibit in here about the
20 witness who used to be a sheriff detective being fired for
21 criminal activity, was that something that the government knew
22 about before?

23 MR. SUROVIC: Yes, sir. We provided that information
24 to the defense.

25 THE COURT: Oh, okay. So he could have been

1 cross-examined on that?

2 MR. SUROVIC: Absolutely, Your Honor. That was -- in
3 fact, a specific request of their discovery was that we provide
4 criminal histories of each of our witnesses. We did. That was
5 mentioned in the criminal history of Mr. Dominguez.

6 THE COURT: All right. Well, let's talk about March
7 the 9th. There's a problem with that because there's a little
8 red-headed four-year-old who has spring break that week. And
9 her mama works. And I would much rather be with my
10 granddaughter than -- I love you-all to death. But we're going
11 to set it for March the 9th to keep the pressure on both sides
12 to get this thing done.

13 If, in fact, you can come up with a consensus number, then
14 we will go forward on March the 9th and finish this thing up.
15 Hopefully there will be enough time for Ms. Hosseini, if the
16 number is bigger than 37,000, to get that number together. If
17 we're going to have to have a litigated sentencing hearing,
18 then that'll have to be later on at some point.

19 In the meantime, let's assume the number is 90,000 -- pick
20 one, okay -- and that Ms. Hosseini has paid 37 or will pay it,
21 still owes some more, needs some time. Because she's had a
22 good record on pretrial release, the Court -- if the Court
23 imposes prison time, the Court could do a hip-pocket
24 wait-and-see before I sign the judgment to give her time to
25 liquidate -- reasonable time, not forever.

1 But the example of that that I had -- I've forgotten who
2 the AUSA was. But this lady had embezzled \$250,000 from her
3 employer over a course of years and, like Ms. Hosseini, didn't
4 have any prior record, had kids and all that. Well, her
5 husband was an engineer for the city, making a reasonably good
6 salary but not -- you know, paycheck to paycheck. But --
7 although, I don't know whether he knew what she was doing. But
8 certainly, if you get an extra \$250,000 into the family
9 coffers, it's a benefit to the whole family, including the
10 husband. And, of course, he didn't want her to go to prison.

11 So he volunteered to go be a civil contractor engineer in a
12 war zone in the Middle East where he could get extra pay to pay
13 this restitution back. And eventually, after a number of
14 resets, he did. Well, of course, Ms. Hosseini isn't going to
15 owe anything like that, and she has a lot of assets.

16 And I think I've made this clear before. But if the
17 restitution gets paid, like has happened many times, then
18 there's not -- there's always a likelihood of prison time if
19 something should happen between now and then. But certainly, a
20 big factor in these cases is the restitution. And, of course,
21 she's also paid a lot of money for her lawyers.

22 Now, the other question I want to take up is, the business
23 income that's mentioned in here is \$30,000 a month. And then
24 presumably there's a lot of business expense for salaries and
25 so forth.

1 And, Mr. Surovic, what is the government's position --
2 we're in tax season. She's pled guilty. I think I accepted
3 her plea, so she's a federal felon. In terms of this ongoing
4 business -- I know we had this discussion before about she can
5 prepare the returns, but policy-wise she loses her tax ID
6 number or what?

7 MR. SUROVIC: Correct, Your Honor. She cannot file as
8 a tax preparer in her own name.

9 THE COURT: Now?

10 MR. SUROVIC: Now. But she can certainly prepare
11 taxes and have somebody else file them. She can supervise
12 people who are filing them. And that's the problem the
13 government has with her, you know, continuing to be able to
14 operate Rapid Return Tax Service during the tax season.

15 I mean, some of the information we have, which I asked
16 Agent Robles to exclude, involved tax returns that the IRS had
17 examined that were after the period that was charged in the
18 indictment. I did not think we should include that in our loss
19 calculation. But there are some issues with taxes that she's
20 done since this period. I don't want to see it going forward
21 in -- for the 2017 tax year, that there's continuing problems
22 with the tax returns because she's looking to make money in
23 order to pay off her restitution in this case.

24 THE COURT: Well, I would think, Mr. Flores, that your
25 client --

1 MR. FLORES: May I approach, Your Honor, and hand the
2 Court something?

3 THE COURT: Yeah.

4 MR. FLORES: And this is one of the issues that I
5 addressed with Ms. Hosseini, should this have been the
6 sentencing hearing, Judge. But these are changes that she
7 implemented almost four years ago with her employees. It's
8 kind of a checklist to where nobody can do the things that she
9 was doing. It specifies a business expense, what
10 proportionality is, explains to them how it should be divided.
11 And then everybody signs off on it. So there's responsible
12 parties. So these are things that she's addressed so that
13 there's really no wiggle room for that stuff anymore.

14 THE COURT: Well, and I would think it would be very
15 clear that someone in Ms. Hosseini's position would be under
16 constant surveillance anyway. It wouldn't take much
17 commonsense to know that. Unlike, apparently, Dr. Beck -- I
18 don't know if you-all are familiar with Dr. Beck. His was a
19 civil IRS thing that he thought he didn't have to pay taxes --
20 his own taxes. And then eventually, out of Dallas, DOJ Tax
21 Division latched onto 107 acres that he was trying to hide,
22 shell corporation. Anyway, so they finally got that.

23 And this guy was a United States Olympian in 1960, I think
24 it was, in the Mexico City Olympics. He was U.S. Army officer.
25 Taxpayers paid for his medical dental education. But he

1 doesn't think he has to pay taxes. Anyway, he did. And that
2 land paid everything back pretty much. But now he's still not
3 paying. So we're going to start over again.

4 All right. So, Mr. Flores, to your knowledge then, or you
5 can ask Ms. Hosseini, right now the business is in operation?

6 MR. FLORES: The business is in operation, yes.

7 THE COURT: And who is -- if she can't be the
8 supervisor tax -- the official person, who is?

9 MR. FLORES: My understanding is that the IRS is going
10 to permit her to continue under her own name. She just cannot
11 increase her status to be a representative for people. But I
12 explained to her that if the Court requires, she's willing to
13 comply with just extra training for her employees. And some of
14 them have their own tax preparer ID numbers, yes. So it's just
15 like the Court said, that they could do it on their own.

16 THE COURT: Okay. Mr. Surovic.

17 MR. SUROVIC: And, Your Honor, the IRS doesn't control
18 or have any regulations concerning who operates a tax preparer
19 business. They do control who has a tax preparer ID number.
20 Hers has been revoked, from what I understand.

21 THE COURT: Okay.

22 MR. SUROVIC: It'd just be like, Mr. Poage can, on the
23 side, file tax returns or fill out people's tax returns.

24 THE COURT: He's not smart enough to do that.

25 COURT REPORTER: I can't do my own.

1 THE COURT: Nor am I.

2 MR. SUROVIC: I understand, Your Honor. I have that
3 same problem.

4 But the issue would be the tax ID number -- if her
5 employees have tax ID numbers, they could file it under their
6 own name. The government's concern is she might be influencing
7 them, but that's neither here nor there.

8 THE COURT: All right. Well, I'm signing the order
9 granting the motion to continue to March the 9th. The official
10 record sentencing memorandum will show that it's been
11 withdrawn. But, again, I'm going to keep it for my own use if
12 necessary.

13 And then, Ms. Fernandez, where do Mr. Flores and
14 Ms. Hosseini have to go to pay to the registry?

15 THE COURTROOM DEPUTY: Clerk's office.

16 THE COURT: Okay. All right. You know about that,
17 Mr. Flores?

18 MR. FLORES: Yes, Your Honor.

19 MR. SUROVIC: Your Honor, if I could make a proposal
20 just so we're all on notice and we try to get this thing moved
21 as smoothly as possible. You've set March 9th for the
22 sentencing if we can work everything out. I would like to
23 propose that we advise the Court, Mr. Barnes and I, by
24 Wednesday, December 7th -- or excuse me -- March 7th as to
25 whether we've worked it out or we haven't worked it out. And

1 then by March 9th, if we have not worked it out, I think it
2 would be fair for both parties to file with the Court notices
3 of our calculations of exactly what the --

4 THE COURT: Yes. And if you'll prepare an order to
5 that effect. Why don't you do it, Mr. Surovic, and give it to
6 Ms. Fernandez.

7 MR. SUROVIC: Will do, Your Honor.

8 THE COURT: And then if it can't be worked out, we'll
9 have a formal sentencing hearing at some point in the future.

10 MR. SUROVIC: Yes, sir.

11 THE COURT: All right. Mr. Flores, anything further?

12 MR. FLORES: That's all from us, Judge.

13 THE COURT: All right.

14 * * *

15 (Hearing adjourned)

16
17
18
19
20
21
22
23
24
25

1 -oOo-

2 I certify that the foregoing is a correct transcript from
3 the record of proceedings in the above-entitled matter. I
4 further certify that the transcript fees and format comply with
5 those prescribed by the Court and the Judicial Conference of
6 the United States.

7
8 Date: 2/20/2018 /s/ Chris Poage
9 United States Court Reporter
10 655 East Cesar E. Chavez Blvd., Rm. 314
11 San Antonio, TX 78206
12 Telephone: (210) 244-5036
13
14
15
16
17
18
19
20
21
22
23
24
25