

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

12-20031-CR-SCOLA/BANDSTRA

THE UNITED STATES OF AMERICA, )  
)  
PLAINTIFF, )  
)  
VS. )  
)  
JOAO LUIZ MALAGO, )  
)  
DEFENDANT. )

-----  
(TRANSCRIPT BY DIGITAL RECORDING)

TRANSCRIPT OF ARRAIGNMENT AND BOND HEARING HAD BEFORE  
THE HONORABLE JONATHAN GOODMAN, IN MIAMI, MIAMI-DADE COUNTY,  
FLORIDA, ON MARCH 22, 2012, IN THE ABOVE-STYLED MATTER.

APPEARANCES:

FOR THE GOVERNMENT: ANDREA G. HOFFMAN, A.U.S.A.  
11200 NW 20TH STREET  
MIAMI, FL 33172 - 305 715-7642

FOR THE DEFENDANT: MYCKI L. RATZAN, ESQ.  
1450 BRICKELL AVENUE, SUITE 2600  
MIAMI, FL 33131 - 305 374-5730

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1 APPEARANCES CONTINUED:

2 FOR THE DEFENDANT: BRITTNEY B. HORSTMAN, ESQ.  
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3 ONE SE THIRD AVENUE, SUITE 1700  
4 MIAMI, FL 33172 - 305 715-7642  
5

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1 (MIAMI, MIAMI-DADE COUNTY, FLORIDA; MARCH 22, 2012, IN OPEN  
2 COURT.)

3 THE COURT: PAGE FIVE. JOAO LUIZ MALAGO, CASE  
4 12-20031-CRIMINAL-SCOLA.

5 MS. RATZAN: GOOD AFTERNOON, YOUR HONOR. MYCKI RATZAN  
6 ON BEHALF OF MR. MALAGO WHO IS PRESENT BEFORE THE COURT.

7 THE COURT: GOOD AFTERNOON. GOOD TO SEE YOU.

8 MS. HOFFMAN: ANDREA HOFFMAN ON BEHALF OF THE U.S.  
9 ATTORNEY'S OFFICE.

10 THE COURT: OKAY. VERY WELL. THANK YOU,  
11 MISS HOFFMAN.

12 SO WE ARE HERE TODAY ON AN ARRAIGNMENT, BUT LET ME  
13 JUST ASK A QUESTION OR TWO.

14 MISS RATZAN, ARE YOU HERE PERMANENTLY?

15 MS. RATZAN: I AM, YOUR HONOR.

16 THERE WAS AN INITIAL INDICTMENT IN THIS CASE AND  
17 THIS -- THE MATTER BEFORE YOUR HONOR IS A SUPERSEDING  
18 INDICTMENT. I FILED A PERMANENT APPEARANCE ON THE INITIAL, AS  
19 WELL AS I WILL FILE ANOTHER ONE IF YOUR HONOR WISHES.

20 THE COURT: ALL RIGHT. I DON'T THINK THAT'S  
21 NECESSARY. BUT FOR SOME REASON ON MY PAPERWORK, AND IT DOESN'T  
22 REALLY MATTER, I'M JUST SORT OF CURIOUS. MY PAPERWORK IT SHOWS  
23 ATTORNEY BRITTNEY HORSTMAN, TEMPORARY. IS THAT A LAWYER WHO  
24 WORKS WITH YOU?

25 MS. RATZAN: YOUR HONOR, MISS HORSTMAN IS PRESENT AND

1 SHE FILED A TEMPORARY APPEARANCE, WILL BE FILING A PERMANENT  
2 APPEARANCE AS COUNSEL IN THIS CASE AS WELL.

3 THE COURT: ALL RIGHT. SO, MISS HORSTMAN, I'M  
4 GUESSING THAT YOU WOULD LIKE TO BE EXCUSED FROM ALL FURTHER  
5 RESPONSIBILITIES IN THIS CASE?

6 MS. RATZAN: NO. SHE IS COMING IN AS CO-COUNSEL.

7 THE COURT: YOU ARE GOING TO BE CO-COUNSEL.

8 MS. HORSTMAN: YES, YOUR HONOR.

9 THE COURT: SO THE LAST THING IN THE WORLD YOU WANT TO  
10 DO IS TO BE EXCUSED FROM ALL RESPONSIBILITY.

11 MS. HORSTMAN: YES, YOUR HONOR. I AM HERE BUT  
12 MISS RATZAN IS HANDLING THIS HEARING TODAY.

13 THE COURT: ALL RIGHT. WELL, IT'S NOT GOING TO LAST  
14 TOO MUCH LONGER.

15 MS. RATZAN: YOUR HONOR, THERE WILL ALSO BE A BOND  
16 DETERMINATION.

17 THERE IS ALREADY AN INITIAL BOND SET IN THIS MATTER ON  
18 THE INDICTMENT PREVIOUS --

19 THE COURT: YES?

20 MS. RATZAN: -- AND ON THE SUPERSEDING THE GOVERNMENT  
21 HAS STATED ITS INTENTION IN THE VARIOUS HEARINGS WE HAD ON BOND  
22 AND ON NEBBIA TO BE SEEKING THIS INDICTMENT THAT THEY WOULD BE  
23 SEEKING DETENTION.

24 SO IF, YOUR HONOR, WE WOULD BE HAPPY TO DO THE  
25 ARRAIGNMENT. I HAVE A REQUEST IF WE COULD MOVE THIS TO THE END

1 OF THE CALENDAR SO THAT WE CAN HANDLE THE BOND MATTER BEFORE  
2 YOUR HONOR AT THAT TIME I WOULD PREFER IT IF THAT WOULD BE OKAY  
3 WITH THE COURT.

4 THE COURT: OKAY. WELL, IS THERE ANY REASON WHY WE  
5 CAN'T DO BOTH RIGHT NOW?

6 MS. RATZAN: THERE IS -- I WOULD PREFER IT IF WE DID  
7 THEM BOTH AT THE END OF THE CALENDAR.

8 THE COURT: ANY OBJECTION, MISS HOFFMAN?

9 MS. HOFFMAN: NO. I'M HERE ANYWAY.

10 THE COURT: I WAS GOING TO SAY THAT. YOU ARE HERE IN  
11 FOR A DIME, IN FOR A DOLLAR.

12 MS. HOFFMAN: YOU GOT IT.

13 THE COURT: OKAY. VERY WELL WE WILL PUT THAT OFF TO  
14 THE END OF THE CALENDAR.

15 MS. RATZAN: THANK YOU VERY MUCH YOUR HONOR.

16 THE COURT: ALL RIGHT.

17 [WHEREUPON, THERE WAS A BRIEF RECESS]

18 THE COURT: DOES ANYBODY ELSE HAVE ANY MATTERS THIS  
19 AFTERNOON FOR THE COURT?

20 OH, THERE IS ONE MORE MATTER? OH, YES. RIGHT. SEE,  
21 WHEN YOU PUT THE CASE AT THE END OF THE CALENDAR I FORGET.

22 ALL RIGHT. MISS RATZAN.

23 MS. HOFFMAN: (INAUDIBLE) THE LAWYERS WEREN'T GOING  
24 ANYWHERE.

25 THE COURT: I UNDERSTAND. SOMEBODY WOULD HAVE TACKLED

1 ME BEFORE I LEFT THE COURTROOM.

2 MS. RATZAN: IN THIS CASE MAYBE, YOUR HONOR.

3 THE COURT: OKAY. I'M SORRY?

4 (INAUDIBLE)

5 THE COURT: ALL RIGHT, FOLKS, WE ARE BACK ON THE  
6 RECORD HERE.

7 PAGE FIVE. JOAO LUIZ MALAGO, CASE  
8 12-20031-CRIMINAL-SCOLA. WE ARE HERE TODAY AS SCHEDULED FOR AN  
9 ARRAIGNMENT ON A SUPERSEDING INDICTMENT.

10 MISS RATZAN, YOU HAVE ADVISED ME THAT YOU HAVE FILED A  
11 PERMANENT APPEARANCE.

12 MS. RATZAN: THAT'S CORRECT, YOUR HONOR, AND I WILL  
13 ARRAIGN MR. MALAGO AT THIS TIME.

14 WE WOULD ENTER A PLEA OF NOT GUILTY TO THE SUPERSEDING  
15 INDICTMENT. WE HAVE RECEIVED A COPY OF THAT AS WELL. WE WILL  
16 WAIVE READING AT THIS TIME. WE WOULD ASK YOUR HONOR TO ENTER  
17 THE STANDING DISCOVERY ORDER IN THIS MATTER.

18 WE'VE ALREADY HAD, SO YOUR HONOR KNOWS, A CALENDAR  
19 CALL YESTERDAY IN FRONT OF JUDGE SCOLA WHO IS AWARE OF THE  
20 SUPERSEDING INDICTMENT AND CONTINUED THE CASE AND SET A  
21 SUBSEQUENT CALENDAR CALL. SO YOUR HONOR DOESN'T NEED TO SET  
22 ANOTHER CALENDAR CALL WITH JUDGE SCOLA, THAT IS ALREADY SET.

23 THAT WOULD BE ALL FOR US AT THIS TIME, YOUR HONOR.

24 THE COURT: ALL RIGHT. VERY WELL.

25 TECHNICALLY I'M NOT SURE IF I EVEN NEED TO ENTER A

1 SECOND STANDING DISCOVERY ORDER BUT IN ABUNDANCE OF CAUTION  
2 LATER ON I WILL DO THAT ANYWAY.

3 ALL RIGHT. SO WE HAVE NOTED THE ENTRY OF THE NOT  
4 GUILTY PLEA TO THE SUPERSEDING INDICTMENT. I WILL IN AN  
5 ABUNDANCE OF CAUTION ENTER A SECOND STANDING DISCOVERY ORDER.  
6 YOU FOLKS HAVE ALREADY BEEN IN FRONT OF JUDGE SCOLA SO YOU KNOW  
7 WHAT'S HAPPENING THERE WITH THE TRIAL SCHEDULING.

8 ANY OTHER MATTERS THIS AFTERNOON CONCERNING  
9 MR. MALAGO?

10 MS. HOFFMAN: YES, YOUR HONOR.

11 THE U.S. ATTORNEY'S OFFICE AT ITS INITIAL APPEARANCE  
12 IN JANUARY OF THIS YEAR ASKED FOR A BOND CONDITIONAL WHICH WAS  
13 CURRENTLY SET AT \$100,000 CASH BOND TO BE PAID INTO THE  
14 REGISTRY OF THE COURT HAD IT BEEN MET.

15 THERE HAVE BEEN TWO ATTEMPTS TO MEET THAT BOND AND  
16 BOTH HAVE BEEN DENIED BY JUDGE TURNOFF. HOWEVER --

17 THE COURT: I'M SORRY FOR JUST ONE MINUTE.

18 WHEN YOU SAY THAT THEY WERE DENIED BY JUDGE TURNOFF,  
19 DO YOU MEAN THAT THE NEBBIA REQUIREMENT COULDN'T BE SATISFIED  
20 OR FOR SOME OTHER REASON IT WAS NOT MET?

21 MS. HOFFMAN: I FELT THE FIRST ONE WAS THAT HE DIDN'T  
22 FIND THE NEBBIA HAD BEEN MET, AND THEN ON THE SECOND ONE I  
23 REPRESENTED AND CAME TO THAT HEARING -- COUNSEL IS SHAKING HER  
24 HEAD VIGOROUSLY NEXT TO ME.

25 FOR THE GOVERNMENT'S PURPOSE, WHICHEVER REPRESENTATION

1 SHE WANTS IS FINE WITH ME. BOND WAS NOT ENTERED OR ALLOWED TO  
2 BE MET BY THE COURT. HE WAS NOT RELEASED ON THAT CASH BOND  
3 BECAUSE OF THE GOVERNMENT'S OBJECTIONS TO THE NEBBIA AND THE  
4 GOVERNMENT'S CONCERNS.

5 AT THE SECOND NEBBIA HEARING, WHICH OCCURRED NOT QUITE  
6 10 DAYS AGO, THE GOVERNMENT REPRESENTED ON MARCH 9TH THAT WE  
7 WOULD BE SUPERSEDING THE INDICTMENT SHOULD A TRUE BILL BE  
8 RETURNED ON MARCH 16TH WHICH DID SO OCCUR.

9 THE COURT: ALL RIGHT.

10 MS. HOFFMAN: AT THAT POINT, YOUR HONOR, WE TOOK  
11 MR. MALAGO OFF A CASE THAT HAD SIX COUNTS OF AN AVIATION  
12 REGULATORY TYPE OF OFFENSE TO A FULL BLOWN NARCOTICS AND MONEY  
13 LAUNDERING CASE WITH THE AVIATION CHARGES INTERWOVEN AMONGST  
14 THAT CASE.

15 THEREFORE, THE GOVERNMENT WILL CHANGE ITS CURRENT  
16 STATUS OF THIS DEFENDANT'S REQUEST TO DETENTION, NOT THE BOND  
17 SO THAT WE CAN CEASE TO CONTINUE TO HAVE THESE HEARINGS. THE  
18 GOVERNMENT BELIEVES HE SHOULD BE DETAINED. IT IS A OFFENSE  
19 THAT HAS A PRESUMPTION OF DETENTION. THERE IS A MANDATORY  
20 MINIMUM SENTENCE OF 10 YEARS AND A MAXIMUM SENTENCE OF LIFE.  
21 THERE WILL BE LEADERSHIP AND SPECIAL SKILL ROLES INVOLVED IN  
22 THIS CASE AND THERE IS OVER 580 KILOGRAMS OF SEIZED NARCOTICS,  
23 AS WELL AS SOME EVIDENTIARY ISSUES OF UP TO AS MUCH AS ANOTHER  
24 3.7 TONS OF NARCOTICS IN THE COURSE OF THIS CASE.

25 WE WOULD ASK THAT -- THIS DEFENDANT IS NOT A LEGAL



1 RESIDENT OF THE UNITED STATES, THERE IS AN IMMIGRATION DETAINER  
2 PENDING AGAINST THIS DEFENDANT. SO SEVEN IF ANYBODY SHOULD  
3 REACH A BOND THAT THE COURT CONTINUED TO FIND WERE APPROPRIATE  
4 HE WOULD BE IN KROME. HE IS A BRAZILIAN CITIZEN WITH EXTENSIVE  
5 ACCESS TO FLIGHT MECHANISMS IN THE UNITED STATES IN THE SMALL  
6 AIRPORTS THAT ARE EASY TO LEAVE THE COUNTRY WITHOUT --

7 THE COURT: MISS HOFFMAN, I'M SORRY FOR INTERRUPTING  
8 YOU.

9 BASICALLY THE GOVERNMENT IS REQUESTING PRETRIAL  
10 DETENTION.

11 MS. HOFFMAN: ABSOLUTELY.

12 THE COURT: OKAY. SO IT SOUNDS LIKE YOU ARE KIND OF  
13 GETTING INTO THE HEARING AND MAKING ARGUMENT, WHICH IS FINE.  
14 BUT LET'S JUST TAKE IT ONE STEP AT A TIME.

15 SO, MISS RATZAN, THE GOVERNMENT IS NOW MAKING A  
16 PRETRIAL DETENTION REQUEST FLOWING FROM THE NEW CHARGES  
17 OUTLINED IN THE SUPERSEDING INDICTMENT.

18 WHAT IS YOUR POSITION ON THAT?

19 MS. RATZAN: YOUR HONOR, OUR POSITION IS THAT THE  
20 \$100,000 CASH BOND PREVIOUSLY SET BY MAGISTRATE JUDGE TURNOFF  
21 IN THIS CASE ENCOMPASSED THE IDEA THAT THESE CHARGES WERE GOING  
22 TO BE FILED, AND WE WOULD BE REQUESTING THAT BOND REMAIN THE  
23 SAME WITH THE NEBBIA CONDITION.

24 IT IS IN MY 20 YEARS, 20 YEARS WORKING ON SOME PRETTY  
25 CRAZY CASES WITH JEFF WEINER, THIS IS THE CRAZIEST CASE I HAVE

1 EVER HAD IN MY CAREER AND I REALLY LOOK FORWARD TO EXPLAINING  
2 WHY OUR POSITION IS APPROPRIATE.

3 THE COURT: ALL RIGHT. SIMILAR TO MISS HOFFMAN YOU  
4 ARE STARTING TO GET INTO THE ACTUAL MERITS --

5 MS. RATZAN: I WAS SHORTER.

6 THE COURT: WELL, THAT'S A SHORT LINE.

7 SO, BASICALLY MY QUESTION TO BOTH OF YOU THEN IS, ARE  
8 YOU PREPARED THIS AFTERNOON TO MOVE FORWARD ON A PRETRIAL  
9 DETENTION HEARING? IF THE ANSWER IS YES, WE WILL HAVE THE  
10 HEARING. IF THE ANSWER IS YOU NEED MORE TIME THEN WE WILL ROLL  
11 IT OVER FOR MORE TIME.

12 MY PRACTICE ON A PRETRIAL DETENTION HEARING, AS YOU  
13 MAY HAVE SEEN OR HEARD EARLIER, IS I ENTERTAIN A PROFFER FROM  
14 THE GOVERNMENT AND THEN I ALLOW DEFENSE COUNSEL TO  
15 CROSS-EXAMINE THE GOVERNMENT WITNESS.

16 SO, MISS HOFFMAN, WHAT IS YOUR VIEW ON WHETHER OR NOT  
17 YOU ARE PREPARED TO MOVE FORWARD THIS AFTERNOON ON A PRETRIAL  
18 DETENTION HEARING PURSUANT TO THE REQUEST THAT YOU JUST MADE?

19 MS. HOFFMAN: WE ARE PREPARED.

20 THE COURT: AND YOU HAVE A WITNESS HERE.

21 MS. HOFFMAN: I DO.

22 THE COURT: GREAT.

23 AND, MISS RATZAN, WHAT ABOUT YOU.

24 MS. RATZAN: WE ARE PREPARED AS WELL, YOUR HONOR.

25 THE COURT: ALL RIGHT. THEN IT IS A GOOD THING WE PUT

1 THIS AT THE END OF THE CALENDAR. THAT WAS A WISE REQUEST BY  
2 YOU.

3 I'M SORRY, BEAR WITH ME FOR JUST A MINUTE.

4 (INAUDIBLE)

5 THE COURT: FOLKS, LET ME ASK YOU A QUESTION.  
6 CANDIDLY I DON'T KNOW THE ANSWER TO THIS WHICH IS WHY I'M  
7 PUTTING IT OUT THERE. AND AGAIN, CANDIDLY MR. SANARUFO JUST  
8 BROUGHT IT TO MY ATTENTION BECAUSE I HADN'T THOUGHT ABOUT IT  
9 EARLIER. MR. SANARUFO HAS BASICALLY WHAT'S CALLED AN AAL  
10 DEGREE, ALMOST A LAWYER, WHICH IS BETTER THAN BEING A LAWYER.

11 MS. HOFFMAN: USUALLY.

12 THE COURT: SO HERE IS THE QUESTION.

13 DO I EVEN HAVE JURISDICTION TO ENTERTAIN THIS PRETRIAL  
14 DETENTION REQUEST OR IS IT MORE PROPERLY IN FRONT OF JUDGE  
15 TURNOFF WHO IS THE MAGISTRATE JUDGE WHO ENTERED THE INITIAL  
16 BOND AND WHO HAD THE SUBSEQUENT HEARINGS?

17 DO YOU ALL HAVE ANY SENSE OF THAT?

18 MS. RATZAN: WELL, I ASKED THE SAME QUESTION OF  
19 MAGISTRATE JUDGE TURNOFF THE LAST TIME WE WERE IN FRONT OF HIM  
20 BECAUSE THIS WAS OBVIOUSLY ANTICIPATED. HE FELT THAT THE  
21 MATTER WOULD BE BROUGHT BEFORE WHOEVER -- WHOMEVER THE DUTY  
22 MAGISTRATE --

23 THE COURT: DUTY MAGISTRATE JUDGE.

24 MS. HOFFMAN: AND A BOND WOULD BE APPROPRIATE BEFORE  
25 THAT JUDGE AS OPPOSED TO HIM.

1 THE COURT: ALL RIGHT. AND YOUR VIEW, MISS HOFFMAN?

2 MS. HOFFMAN: NOT THE CHARACTERIZATION ON BOND BECAUSE  
3 HE DIDN'T ENTERTAIN THE BOND ISSUE IN DEFERENCE TO THIS. BUT  
4 HE DID SAY THAT WE COULD RAISE THE MATTER BEFORE YOU.

5 THE COURT: ALL RIGHT. WELL, LET ME CROSS OUR T'S AND  
6 DOT OUR I'S.

7 MISS RATZAN, IF IT TURNS OUT THAT THE PROPER PROCEDURE  
8 WOULD BE TO HAVE THE CASE -- OR TO HAVE THE PRETRIAL DETENTION  
9 REQUEST HANDLED BY MAGISTRATE JUDGE TURNOFF, IF I GO AHEAD AND  
10 HANDLE THE MATTER THIS AFTERNOON DOES YOUR CLIENT WAIVE ALL  
11 OBJECTIONS TO THE FACT THAT I AM HANDLING THE MATTER INSTEAD OF  
12 MAGISTRATE JUDGE TURNOFF?

13 MS. RATZAN: YES, WE DO, YOUR HONOR.

14 THE COURT: ALL RIGHT. AND THE GOVERNMENT?

15 MS. HOFFMAN: THE GOVERNMENT IS FINE WITH YOUR HONOR  
16 HEARING IT.

17 THE COURT: ALL RIGHT. SO GIVEN THAT SITUATION LET'S  
18 MOVE FORWARD WITH THE PRETRIAL DETENTION HEARING.

19 MISS HOFFMAN, EVEN THOUGH YOU STARTED GETTING INTO  
20 YOUR ARGUMENT YOU ARE MORE THAN FREE TO MAKE YOUR PROFFER IN  
21 WHATEVER WAY YOU DEEM FIT, EVEN IF IT INCLUDES REPEATING A FEW  
22 OF THE POINTS OR EVEN ALL OF THE POINTS THAT YOU STARTED TO  
23 TELL ME EARLIER. SO AS THE SAYING GOES I'M ALL EARS.

24 MS. HOFFMAN: THANK YOU, YOUR HONOR.

25 I WON'T REPEATS WHAT THE INDICTMENT CHANGES ARE. THE

1 COURT IS AWARE OF THOSE.

2 (INAUDIBLE)

3 MS. HOFFMAN: NO. THE GOVERNMENT HAS NO BASIS FOR  
4 ASKING FOR THIS TO BE SEALED.

5 THIS CASE DOES INVOLVE NARCOTICS OFFENSES NOW LIKE THE  
6 PRIOR ITERATION. THERE IS THE PRESUMPTION OF DETENTION IN THIS  
7 CASE, YOUR HONOR. IT IS AN OFFENSE THAT INVOLVES MORE THAN A  
8 150 -- MORE THAN FIVE KILOGRAMS OF COCAINE AND IT IN FACT  
9 INVOLVES AT LEAST 580 KILOGRAMS OF SEIZED NARCOTICS. THERE IS  
10 A RELATED MATTER THAT'S 3.7 TONS OF SEIZED NARCOTICS. IT'S  
11 COCAINE IN BOTH CASES.

12 THIS CASE SPANS FROM 2007, YOUR HONOR, TO THE DATE OF  
13 THE ORIGINAL INDICTMENT, AND THE CHARGES INVOLVED INCLUDE THE  
14 LAUNDERING EVER APPROXIMATELY 7.5 MILLION DOLLARS WORTH OF  
15 MONEY THAT RELATED TO A SERIES OF AIRCRAFT.

16 THIS DEFENDANT IS AN AIRCRAFT BROKER IN THE UNITED  
17 STATES WHO SPECIALIZES BY HIS OWN WORDS IN IDENTIFICATION IN  
18 BRAZILIAN EXPORTATION OF -- EXPORTATION TO BRAZIL OF AMERICAN  
19 REGISTERED AIRCRAFT.

20 HE HAS PURCHASED IN EXCESS OF 33 UP TO I BELIEVE  
21 APPROXIMATELY 40-SOME AIRCRAFT IN THE LAST FEW YEARS, THREE  
22 YEARS APPROXIMATELY, EVERY ONE OF WHICH TO OUR KNOWLEDGE AND  
23 REVIEW HAS BEEN IMPROPERLY PURCHASED AND REGISTERED UNDER FALSE  
24 REGISTRY IN THE UNITED STATES. FIVE OF THOSE AIRCRAFT ARE THE  
25 BASIS OF CHARGES PENDING BEFORE THIS COURT. ONE OF THOSE FIVE

1 AIRCRAFT IS THE BASIS OF THE DRUG CHARGES RELATED TO THE 580  
2 KILOGRAMS OF NARCOTICS.

3 THIS DEFENDANT HAS EXTENSIVE HISTORY IN THE AIRCRAFT  
4 BROKERAGE INDUSTRY. HE IS BY HIS OWN WORDS BEEN INVOLVED IN  
5 THE INDUSTRY SINCE 1980. IN -- 1980'S, EXCUSE ME, NOT  
6 SPECIFICALLY 1980.

7 THIS DEFENDANT HAD A BRIEF PERIOD OF TIME, ROUGHLY  
8 THREE YEARS, YOUR HONOR, WHERE HE WORKED AS A CONFIDENTIAL  
9 INFORMANT FOR ICE. DURING THAT PERIOD OF TIME THAT HE WORKED  
10 AS A CONFIDENTIAL INFORMANT FOR ICE IT WAS SOLELY IN THIS KIND  
11 OF CAPACITY. HE SERVED AS A BROKER FOR ILLEGAL PLANE  
12 TRANSACTIONS TO DRUG TRAFFICKERS THAT ARE NOT NECESSARILY  
13 ILLEGAL BECAUSE -- ARE NOT ILLEGAL BECAUSE OF THE IMPETUR OF  
14 THE GOVERNMENT BEING INVOLVED.

15 WHEN HE CEASED TO BE A CI BY HIS OWN ACCOUNTING IN  
16 MARCH OF 2007 HE KEPT RIGHT ON WITH THE PRACTICE OF WHAT HE WAS  
17 DOING WITH ICE WITH NO LONGER THAT PROTECTION AND COVER OF  
18 AUTHORITY FOR BEING AN UNDERCOVER OPERATIVE.

19 THE PLANES THAT I -- THAT ARE AT ISSUE IN THIS CASE  
20 WERE ALL REGISTERED IN COMPANIES IN HIS NAME IN THE UNITED  
21 STATES, YOUR HONOR. THIS IS A UNIQUE STATUTE THAT YOU MAY NOT  
22 HAVE SEEN BECAUSE MOST PEOPLE IN THE U.S. HAVEN'T SEEN.

23 THIS REGULATORY AUTHORITY REQUIRES THAT AN AIRCRAFT  
24 REGISTERED TO -- IN AN AMERICAN REGISTRY, WHAT IS CALLED A  
25 NOVEMBER REGISTRY, EVERY AIRCRAFT IN THE UNITED STATES HAS AN N

1 THEN SOME SERIES OF LETTERS FOR IDENTIFICATION, MUST BE OWNED  
2 OR OPERATED BY EITHER AN AMERICAN CITIZEN OR AN AMERICAN  
3 CORPORATION, MEANING A CORPORATION THAT HAS MORE THAN  
4 TWO-THIRDS OF ITS SHAREHOLDERS ARE AMERICANS AND THE PRESIDENT  
5 OF THE COMPANY MUST BE AMERICAN.

6 AT NO TIME -- AND MR. MALAGO HAS AT VARIOUS POINTS  
7 ACKNOWLEDGED HIS AWARENESS OF THAT REQUIREMENT.

8 AT NO TIME IN THE PURCHASE OF THE 33 TO 40 AIRCRAFT AT  
9 ISSUE IN THIS CASE DID ANY OF THEM GET BOUGHT IN THE NAME OF A  
10 COMPANY THAT PROPERLY WAS HANDLED.

11 IN ADDITION, MANY OF THESE AIRCRAFTS, THE MONIES OF  
12 WHICH WERE USED TO PURCHASE THESE AIRCRAFT, WERE LAUNDERED OR  
13 LAYERED AS IS OFTEN DESCRIBED THROUGH ACCOUNTS OWNED OR  
14 CONTROLLED BY MR. MALAGO.

15 IN AN IMMIGRATION STATEMENT THAT MR. MALAGO SUBMITTED  
16 IN AN EFFORT TO GET ASYLUM IN THE UNITED STATES, MR. MALAGO  
17 EXPLAINED WHAT HE BELIEVED TO BE THE PROPER CHARACTERISTICS OF  
18 A LEGITIMATE PLANE TRANSACTION. AND UNFORTUNATELY FOR  
19 MR. MALAGO VERY FEW OF THESE PLANE TRANSACTIONS MEET WHAT HE  
20 IDENTIFIED AS THE PROPER CHARACTERISTICS.

21 ONE OF THOSE CHARACTERISTICS WERE THAT THE MONIES FOR  
22 AIRCRAFT PURCHASES ORDINARILY GO DIRECTLY TO THE ESCROW COMPANY  
23 FROM THE PURCHASER OF THE AIRCRAFT. IN VIRTUALLY EVERY CASE IN  
24 THIS INDICTMENT, YOUR HONOR, THE AIRCRAFT MONIES, THE PURCHASE  
25 MONIES WENT INTO ACCOUNTS OWNED OR CONTROLLED BY MR. MALAGO

1 WITH THEM LAYERED INTO SECOND ACCOUNTS OWNED OR CONTROLLED BY  
2 MR. MALAGO WERE THEN MOVED INTO THE ESCROW COMPANY'S ACCOUNTS  
3 AND IN MANY CASES, NOT ALL, OVERAGES WERE SENT IN AS WELL.

4 THE PLANE IS WORTH -- I'M SIMPLY GOING TO GIVE YOU A  
5 REPRESENTATIVE NUMBER, YOUR HONOR, NOT A SPECIFIC PLANE.  
6 PLANES WERE WORTH \$100,000, \$160,000 WOULD COME IN AND ALL  
7 160,000 WOULD GET MOVED ALL THE WAY TO THE ESCROW COMPANY AND  
8 BACK TO MR. MALAGO FOR ANY OVERAGES. THEREFORE, MOVING THE  
9 MONIES THROUGH MULTIPLE TIERS OF ACCOUNTS OBFUSCATING THE  
10 CUSTODY OR THE OWNERSHIP OR CONTROL OF THOSE MONIES BOTH FROM  
11 BANKS, FROM THE SENDERS OF THE MONEY, FROM THE RECEIVERS OF THE  
12 MONEY BECAUSE THEY CAME FROM SO MANY LAYERS.

13 IN AT LEAST ONE OF THE INSTANCES CHARGED AS A  
14 SUBSTANTIVE OFFENSE IN THIS CASE THE MONIES CAME FROM THE  
15 SOURCE OF A BANK FRAUD IN BRAZIL. THAT BANK FRAUD WAS KNOWN TO  
16 MR. MALAGO AS THE GOVERNMENT HAS RECEIVED DOCUMENTATION  
17 CORROBORATING HIS ABILITY TO KNOW THAT THE FRAUD IN THAT CASE  
18 AND THEN LATER THROUGH HIS ACCOUNTS AS I HAVE JUST DESCRIBED.  
19 A TOTAL OF ABOUT 7.5 MILLION DOLLARS MOVED THROUGH FOR THESE  
20 PLANES.

21 IN MORE THAN ONE OCCASION, BUT LET'S FOCUS  
22 SPECIFICALLY ON THE PLANE THAT'S CHARGED IN THE INDICTMENT,  
23 YOUR HONOR. IN MARCH OF 2011 AN AIRCRAFT THAT MR. MALAGO HAD  
24 PURCHASED IN HIS COMPANY'S NAME IN THE MANNER THAT I HAVE JUST  
25 DESCRIBED, I WON'T REHASH. IN SEPTEMBER OF 2010 HE PURCHASED



1 THE PLANE -- LET ME REPHRASE THAT BECAUSE I CONFUSED IT.

2 IN SEPTEMBER OF 2010 HE PURCHASED A PLANE IN HIS  
3 COMPANY'S NAME IN THE SAME MANNER AS I HAVE JUST DESCRIBED. IN  
4 MARCH OF 2011 THAT AIRCRAFT CRASHED IN BRAZIL CARRYING 580  
5 KILOGRAMS OF COCAINE. THAT PLANE WAS STILL REGISTERED TO  
6 MR. MALAGO'S NAME.

7 MR. MALAGO WAS AWARE VIRTUALLY INSTANTANEOUSLY OF THE  
8 CRASH AND IT WAS AT THAT POINT THAT HE ATTEMPTED TO DEREGISTER  
9 THE AIRCRAFT FROM HIS REGISTRY IN THE UNITED STATES. BUT HE  
10 DID NOT AS A FORMER CONFIDENTIAL INFORMANT AND HAS ALL WELL  
11 KNOWLEDGE OF WHO MIGHT BE INVESTIGATING SUCH OFFENSES, DID NOT  
12 INFORM THE FAA, ICE, DEA OF ANY KNOWLEDGE OR RELATIONSHIP HE  
13 KNEW OF THAT PLANE. BUT INSTEAD WHAT HE FILED WITH THE FAA,  
14 YOUR HONOR, WAS A REPRESENTATION THAT HE WAS SEEKING TO  
15 DEREGISTER THE PLANE BECAUSE IT WAS ABOUT TO BE EXPORTED TO  
16 BRAZIL, A PLANE THAT IS ALREADY IN HIS NAME, HAD BEEN FLYING  
17 FOR MONTHS IN BRAZIL IN HIS NAME AND CONTROLLED AND HAD CRASHED  
18 WITH NARCOTICS. HE KNEW WELL HE WAS LYING TO THE FAA AT THE  
19 TIME THAT HE SUBMITTED IT.

20 SO, IN SHORT, YOUR HONOR, THERE ARE A VARIETY OF  
21 SOPHISTICATED REQUIREMENTS FOR EXTRADITION -- OR EXPORTATION --  
22 EXCUSE ME, I HAVE BEEN DOING A LOT OF EXTRADITION CASES.  
23 EXPORTATION OF AIRCRAFT TO BRAZIL. MR. MALAGO IS SELF-STYLED  
24 HIMSELF IN WEB CITES AND ELSEWHERE AS BEING A PARTICULAR  
25 EXPERTISE IN THIS.

1           INAP, THE FAA VERSION OF BRAZILIAN AVIATION AUTHORITY,  
2 TELLS US THAT THE KINDS OF CRITERIA AND REQUIREMENTS THAT ARE  
3 NECESSARY TO DO A PLANE TRANSACTION CORRECTLY IN VIRTUALLY  
4 EVERY CASE OF MR. MALAGO'S WERE DONE -- WERE AVOIDED. AND ONE  
5 OF THE MOST SIGNIFICANT COMPONENTS OF THAT IS THAT MANY OF THE  
6 PLANES THAT MR. MALAGO EXPORTED TO BRAZIL, THE OWNERS AND/OR  
7 MR. MALAGO, WHOMEVER WAS ACTUALLY IN CONTROL OF THESE PLANES,  
8 DIDN'T PAY THE IMPORT TAXES THAT WERE REQUIRED ON THE PLANES IN  
9 BRAZIL CAUSING A FRAUD UPON THE BRAZILIAN AUTHORITIES, WHICH IS  
10 PART OF THE UNDERLYING CHARGING TO THE MONEY LAUNDERING. IT IS  
11 ACTUALLY THE FRAUD AND THE OFFENSES IN BRAZIL, NOT TYPICAL DRUG  
12 TRAFFICKING OR SOMETHING WITHIN THE UNITED STATES, WHICH IS WHY  
13 I'M BRINGING THOSE FACTS TO THE COURT'S ATTENTION.

14           THE COURT: SO WHAT IS THE POTENTIAL EXPOSURE? HOW  
15 MANY YEARS OF POTENTIAL INCARCERATION IS THE DEFENDANT FACING,  
16 ASSUMING THAT YOU WERE TO SUCCEED ON OBTAINING A CONVICTION ON  
17 ALL COUNTS?

18           MS. HOFFMAN: LIFE, YOUR HONOR. HE IS A LEVEL 38 FOR  
19 THE NUMBER OF DRUGS, A POTENTIAL OF UP TO FOUR POINT THREE ROLE  
20 AND TWO POINTS FOR SPECIAL SKILL. HE IS A LEVEL 44 -- HE IS  
21 SOMEWHERE BETWEEN A 42 AND A 44, YOUR HONOR. I BELIEVE ALL OF  
22 THEM CARRY LIFE.

23           I DO NOT KNOW WHETHER MR. MALAGO'S PRIOR CONVICTION  
24 WILL BE SUFFICIENT TO HAVE HIM AS A CATEGORY TWO. I THINK IT  
25 PROBABLY IS, BUT I HAVEN'T LOOKED AT THAT, YOUR HONOR. JUST IN

1 FAIRNESS, I KNOW HE HAS A PRIOR WITHHELD ADJUDICATION KIND OF  
2 CASE FOR A GUN OFFENSE. I DON'T KNOW WHETHER THAT WILL KICK  
3 HIM UP OR NOT. IT'S NOT SOMETHING I INVESTIGATED OR FRANKLY  
4 USUALLY WORRY ABOUT WHEN I'M CHARGING CASES. I JUST WANT THE  
5 COURT TO KNOW IT'S OUT THERE. SO MY REPRESENTATIONS OF  
6 GUIDELINES ARE BASED ON A CATEGORY ONE, WHICH IS WHAT ALL I WAS  
7 WORRYING ABOUT.

8 IN ADDITION, YOUR HONOR, I DON'T BELIEVE HE WILL BE  
9 ELIGIBLE FOR SAFETY VALVE BECAUSE OF THE ROLE IN THE OFFENSE  
10 AND THE COMPLEXITY THAT IT DID TAKE. SO THAT'S PART OF HOW I  
11 GET TO THAT ANALYSIS AND CALCULATION.

12 IN ADDITION, YOUR HONOR, IN THE COURSE OF THIS  
13 ATTEMPTS FOR BOND, MR. MALAGO -- WE HAVE DONE MORE  
14 INVESTIGATION THAN WE HAD PREVIOUSLY DONE AS TO ASSETS AND  
15 FINANCES OF MR. MALAGO.

16 HE REPRESENTS IN HIS PRETRIAL SERVICES REPORT THAT HE  
17 MAKES A SALARY OF 60-SOME THOUSAND. I AM NOT REMEMBERING  
18 EXACTLY RIGHT THIS SECOND, YOUR HONOR, A YEAR. DESPITE THAT HE  
19 HAS MOVED HUNDREDS OF THOUSANDS OF DOLLARS THROUGH ACCOUNTS IN  
20 JUST THE LAST TWO YEARS ALONE. AND IN THE ASSET PROVISION OF  
21 HIS PRETRIAL SERVICES REPORT HE DOES LIST SOME PROPERTY IN  
22 BRAZIL AND HE DOES LIST CERTAIN ACCOUNTS BUT HE DOES NOT LIST  
23 THE ENTIRETY OF WHAT WE HAVE LOCATED IN THE COURSE OF  
24 RESPONDING TO THE NEBBIA ALLEGATIONS.

25 HE HAS NEITHER -- I DON'T BELIEVE HIS FAMILY EITHER

1 HAVE LEGAL STATUS IN THE UNITED STATES. THEY CAME IN -- HE IS  
2 IN A VISA OVERSTAY CIRCUMSTANCE. I AM TOLD THAT ONE OF THEM  
3 MARRIED A COUNSEL HERE FOR MR. MALAGO CONTACTED ICE THIS WEEK  
4 TO ATTEMPT TO TALK -- TO SEE WHETHER ICE WOULD LIFT THE  
5 IMMIGRATION DETAINER. ICE WAS NOT A PARTY OF THAT. I DID NOT  
6 KNOW THAT WAS GOING ON. I RECEIVED A CALL FROM A  
7 REPRESENTATIVE FROM ICE TO TELL ME THAT THEY WERE NOT LIFTING  
8 THE DETAINER, AND THAT THE -- THAT MR. MALAGO AND/OR ANY  
9 MEMBERS OF HIS FAMILY THAT CAME IN ON THE SAME VISA ARE IN AN  
10 OVERSTAY STATUS.

11 IN ADDITION, YOUR HONOR, MR. MALAGO'S TIES ARE TO THE  
12 SMALL AIRPORTS IN THE AREA AND THE ABILITY TO WALK INTO MIA AND  
13 GET OUT OF THE COUNTRY ILLEGALLY, A LITTLE HARDER. THE ABILITY  
14 TO WALK INTO TAMiami AIRPORT OR FORT LAUDERDALE EXECUTIVE  
15 AIRPORT AND GET ON A PLANE AND LEAVE THE COUNTRY ARE  
16 EXTRAORDINARY. MR. MALAGO HAS TREMENDOUS CONTACTS AND ACCESS  
17 TO PERSONS IN THE PLANE INDUSTRY AND I BELIEVE HE WOULD FACE A  
18 TREMENDOUS FLIGHT RISK.

19 I THINK YOU ARE GOING TO HEAR FROM DEFENSE COUNSEL,  
20 BECAUSE I HAVE HEARD IT BEFORE, YOUR HONOR, SO I'M GOING TO  
21 ANTICIPATES IT SLIGHTLY, THAT OF COURSE HE IS NOT A FLIGHT RISK  
22 BACK TO BRAZIL BECAUSE HE THINKS HE'S IN DANGER IN BRAZIL.

23 IT'S IMMATERIAL WHETHER MR. MALAGO THINKS HE'S IN  
24 DANGER IN BRAZIL. MY FLIGHT RISK CONCERN IS THAT HE WON'T BE  
25 STANDING IN THE SOUTHERN DISTRICT OF FLORIDA. I DON'T KNOW

1 WHERE HE MIGHT RUN TO BUT I DOUBT IT WILL BE IN THE SOUTHERN  
2 DISTRICT OF FLORIDA TO FACE THESE CHARGES WHICH, IN ALL  
3 FAIRNESS, HE PROBABLY FELT WERE NEVER GOING TO COME.

4 HE HAS HAD SOME KNOWLEDGE THAT THEY WOULD BE COMING  
5 OVER TIME BUT IT JUST KEPT NOT HAPPENING AND NOT HAPPENING AND  
6 NOT HAPPENING. WELL, THE DAY -- YOU KNOW, THE DAY OF RECKONING  
7 HAS COME AND NOW IT IS ACTUALLY STARING HIM IN HIS FACE, AND  
8 THAT'S A VERY DIFFERENT ANALYSIS THAN NOT FLEEING WHEN IT  
9 HASN'T HAPPENED FOR THREE YEARS.

10 THE COURT: ALL RIGHT. THANK YOU FOR THAT  
11 COMPREHENSIVE PROFFER.

12 PLEASE PUT YOUR AGENT ON.

13 MS. HOFFMAN: SPECIAL AGENT COURTNEY MATTINGLY, YOUR  
14 HONOR, THE DRUG ENFORCEMENT ADMINISTRATION.

15 THE COURT: ALL RIGHT.

16 THE CLERK: RAISE YOUR RIGHT HAND.

17 (WITNESS SWORN)

18 THE CLERK: (INAUDIBLE)

19 THE WITNESS: COURTNEY MATTINGLY, M-A-T-T-I-N-G-L-Y.

20 THE COURT: MISS RATZAN, YOU MAY PROCEED.

21 MS. RATZAN: THANK YOU VERY MUCH, YOUR HONOR.

22

23

24

25

COURTNEY MATTINGLY,

1 BEING DULY SWORN, WAS EXAMINED AND TESTIFIED AS FOLLOWS:

2 CROSS EXAMINATION

3 BY MS. RATZAN:

4 Q. AGENT MATTINGLY, DID I PRONOUNCE THAT CORRECTLY?

5 A. YES, MA'AM.

6 Q. THANK YOU. AGENT MATTINGLY, YOU ARE AWARE THAT THE 3.7  
7 TONS SEIZURE THAT THE GOVERNMENT REFERRED TO WAS ON AN AIRPLANE  
8 THAT CRASHED, ARE YOU NOT?

9 A. CORRECT.

10 Q. AND YOU ARE AWARE THAT MR. MALAGO AT THAT TIME WAS  
11 COOPERATING WITH ICE AGENTS AND HAD PUT A TRANSPONDER ON THAT  
12 PLANE NOTIFYING ICE AGENTS ABOUT ITS POTENTIAL SEIZURE AND  
13 WHEREABOUTS, CORRECT?

14 A. NO, MA'AM, THAT'S NOT MY UNDERSTANDING.

15 Q. OKAY. WHEN WAS THE LAST COOPERATION AGREEMENT ENTERED INTO  
16 BETWEEN MR. MALAGO AND THE UNITED STATES GOVERNMENT VIA ICE?

17 A. I AM NOT SURE THE TIME THAT IT WAS ENTERED INTO.

18 Q. OKAY. WELL, IF I HAD A COPY OF IT AND IT SAYS MAY OF 2007,  
19 WHEN DID THE PLANE CRASH THAT YOU ARE AWARE OF?

20 A. THE PLANE CRASHED IN SEPTEMBER OF 2007.

21 Q. OKAY. AND IT'S YOUR INFORMATION THAT MR. MALAGO WAS NOT  
22 COOPERATING WITH ICE AT THAT TIME.

23 A. CORRECT.

24 Q. OKAY. ARE YOU AWARE THAT AFTER THE PLANE CRASHED ICE  
25 REQUESTED THAT MR. MALAGO COME TO THE UNITED STATES, SURRENDER

1 HIS VISA BECAUSE THEY WERE AFRAID FOR HIS SAFETY IN BRAZIL AND  
2 IT WAS AT THEIR REQUEST THAT HE CAME TO THE UNITED STATES AFTER  
3 THAT. ARE YOU AWARE OF THAT?

4 A. I AM UNAWARE.

5 Q. ARE YOU AWARE THAT WHEN HE CAME TO THE UNITED STATES HE MET  
6 WITH PROSECUTORS IN TAMPA, THE UNITED STATES GOVERNMENT  
7 PROSECUTORS IN TAMPA, AND THE ICE AGENTS IN THE PARTICULAR CASE  
8 THAT WERE HIS HANDLERS WHEN HE CAME TO THE UNITED STATES AND  
9 WAS FULLY DEBRIEFED AT THAT TIME, AND IT'S NOT A FULL BRIEF BUT  
10 THANKED PROFUSELY BY THE UNITED STATES GOVERNMENT AND PROMISED  
11 THAT THEY WOULD AID AND ASSIST IN HIS STAY IN THE UNITED  
12 STATES?

13 A. I AM NOT AWARE OF ALL THE DEBRIEFINGS THAT WOULD HAVE TAKEN  
14 PLACE OF MR. MALAGO.

15 Q. HAVE YOU HAD ANY CONVERSATIONS WITH THE FEDERAL PROSECUTORS  
16 IN TAMPA IN RELATION TO MR. MALAGO'S COOPERATION?

17 A. NO, I HAVE NOT.

18 Q. HAVE YOU HAD ANY CONVERSATIONS WITH THE TWO ICE AGENTS WHO  
19 WORKED WITH MR. MALAGO EXTENSIVELY FROM 2004 UNTIL 2008?

20 A. NO, I HAVE NOT.

21 Q. YOU ARE AWARE THAT THE UNITED STATES GOVERNMENT HAS BEEN  
22 INVESTIGATING THE ICE AGENTS SINCE WELL BEFORE 2008 UNDER  
23 ALLEGATIONS THAT THEY SOMEHOW HAVE DONE SOMETHING WRONG IN  
24 RELATIONSHIP TO --

25 MS. HOFFMAN: YOUR HONOR, I OBJECT TO THE RELEVANCE OF

1 THAT TO MR. MALAGO'S DETENTION. IT HAS NO BEARING ON THE CASE  
2 BUT THE ACTUAL PROFFER AS IT WAS PRESENTED.

3 MS. RATZAN: YOUR HONOR, IT IS OUR POSITION THAT THIS  
4 CASE HAS COME ABOUT BECAUSE THEY WANT MR. MALAGO'S COOPERATION  
5 AGAINST THE ICE AGENTS. HE HAS SPOKEN TO THEM ON NUMEROUS  
6 OCCASIONS BUT CANNOT GIVE THEM WHAT THEY WANT SINCE HE DOESN'T  
7 KNOW IT. THAT'S WHY WE BELIEVE THIS INDICTMENT HAS COME ABOUT.

8 THE COURT: I UNDERSTAND WHERE YOU ARE GOING ON THAT,  
9 BUT THAT PARTICULAR QUESTION I AM NOT GOING TO PERMIT. YOU CAN  
10 MAKE OTHER INQUIRIES WHICH RELATES TO WHETHER OR NOT THIS  
11 PARTICULAR DEA AGENT IS FAMILIAR WITH WHATEVER LEVEL OR TYPE OF  
12 COOPERATION YOU ARE REPRESENTING WAS PROVIDED BY YOUR CLIENT,  
13 THE TIME FRAME, IT'S RELEVANCE TO THE PLANE CRASH IN BRAZIL, AS  
14 WELL AS OTHER FACTS AT ISSUE IN THIS INDICTMENT.

15 MS. RATZAN: OKAY. THANK YOU VERY MUCH, YOUR HONOR.

16 BY MS. RATZAN:

17 Q. I MEAN, I THINK WE ALREADY ESTABLISHED YOU ARE REALLY NOT  
18 FAMILIAR WITH ANY OF HIS COOPERATION FROM 2004 UNTIL 2008, IS  
19 THAT CORRECT?

20 A. I AM AWARE THAT THERE MAY HAVE BEEN COOPERATION BUT AS FAR  
21 AS WHAT COOPERATION TOOK PLACE OR SPEAKING WITH ICE AGENTS, NO.

22 Q. OKAY. BUT YOU ARE AWARE THAT THAT COOPERATION INVOLVED  
23 PUTTING TRANSPONDERS ON PLANES AND ALLOWING THE GOVERNMENT TO  
24 SEIZE PLANS, NARCOTICS, AND MONEY OVER AN EXTENSIVE FOUR YEAR  
25 PERIOD. ARE YOU AWARE OF THAT?



1 A. DURING WHAT DURATION OF TIME?

2 Q. 2004 TO 2008 EARLY. EITHER THE END OF 2007 OR EARLY 2008.

3 A. APPROXIMATELY. I WOULDN'T AGREE WITH THAT TIME FRAME  
4 ENTIRETY.

5 Q. WHAT PART OF THE TIME FRAME DO YOU NOT AGREE WITH?

6 A. AFTER APPROXIMATELY MARCH OF 2007.

7 Q. IT'S YOUR POSITION THAT AFTER MARCH OF 2007 HE NO LONGER  
8 COOPERATED.

9 A. YES.

10 Q. OKAY. EVEN THOUGH THERE IS AN AGREEMENT THAT HE SIGNED IN  
11 MAY OF 2007 IT'S STILL YOUR POSITION THAT HE DIDN'T COOPERATE.

12 A. I HAVEN'T SEEN THAT AGREEMENT.

13 Q. OKAY. YOU'RE AWARE THAT THE ICE AGENTS IN CONJUNCTION WITH  
14 MR. MALAGO SET UP A COMPANY IN ORDER TO BE ABLE TO HANDLE THESE  
15 MULTI-PLANE DEALS AND COOPERATION DURING THE SAME RELEVANT TIME  
16 PERIOD, ARE YOU?

17 MS. HOFFMAN: YOUR HONOR, I WOULD OBJECT TO THIS LINE  
18 OF QUESTIONING. THERE IS NO ALLEGATIONS CURRENTLY, NO  
19 SUBSTANTIVE CHARGES IN THIS INDICTMENT BASED ON WHAT  
20 MISS RATZAN IS ASKING ABOUT.

21 THE SUBSTANTIVE CHARGES PERTAIN TO THE CONDUCT OF  
22 MR. MALAGO AFTER ANY POSSIBLE ALLEGATION THAT HE WAS  
23 COOPERATING. THE DATE AND TIME FRAMES OF THE CONSPIRACY ARE  
24 WIDER THAN THAT BASED ON MR. MALAGO'S STATEMENTS IN HIS ASYLUM  
25 PAPER THAT HE SIGNED UNDER PLENTY OF PERJURY.

1 BUT THERE IS NOT, AS THE COURT CAN WELL SEE, ANY  
2 SUBSTANTIVE OFFENSE IN 2007, 2008 AGAINST MR. MALAGO.  
3 THEREFORE, WHATEVER ISSUES WERE GOING ON WITHIN THAT ICE  
4 COOPERATION ARE NOT RELEVANT TO THIS ANALYSIS FOR DETENTION.

5 THE COURT: THE OBJECTION TO THAT PARTICULAR QUESTION  
6 IS SUSTAINED.

7 MS. HOFFMAN: THANK YOU, YOUR HONOR.

8 MS. RATZAN: JUST FOR THE RECORD, THE INDICTMENT DOES  
9 START IN MARCH OF 2007.

10 BY MS. RATZAN:

11 Q. AS FAR AS THE PLANE CRASH THAT'S THE BASIS FOR COUNT ONE IN  
12 THE INDICTMENT, WHEN DID THAT OCCUR?

13 A. WHEN DID THE PLANE CRASH?

14 Q. CORRECT.

15 A. APPROXIMATELY MARCH 5TH, 2011.

16 Q. AND WHERE DID THAT PLANE CRASH?

17 A. IN BRAZIL.

18 Q. AND IN THE COURSE OF YOUR INVESTIGATION YOU HAVE MADE  
19 REQUESTS TO THE BRAZILIAN GOVERNMENT TO ASK THEM TO SUBMIT  
20 DOCUMENTS TO YOU AND THE UNITED STATES IN REFERENCE TO THAT  
21 PLANE CRASH, IS THAT CORRECT?

22 A. YES, MA'AM.

23 THE COURT: COUNSEL, EXCUSE ME FOR A MINUTE. I MAY BE  
24 CONFUSED. LET ME ASK YOU A QUESTION REAL QUICK.

25 I THOUGHT I HEARD YOU SAY THAT THERE WAS A PLANE CRASH

1 IN SEPTEMBER 2007, AND NOW I HEAR MARCH 5TH, 2011. WHERE THERE  
2 TWO PLANE CRASHES?

3 MS. RATZAN: YES, SIR.

4 THE COURT: THERE WERE TWO PLANE CRASHES.

5 MS. RATZAN: YES, SIR.

6 THE COURT: AND THEY BOTH INVOLVED NARCOTICS ABOARD  
7 THE AIRCRAFT?

8 MS. RATZAN: YES, SIR.

9 THE COURT: ALL RIGHT. SO THE RECORD WILL REFLECT I  
10 AM NOT CONFUSED. IT IS ACTUALLY TWO DATES.

11 ALL RIGHT. I UNDERSTAND. NOW I GET IT.

12 MS. RATZAN: THANK YOU VERY MUCH.

13 THE COURT: ALL RIGHT.

14 MS. RATZAN: NOW I DON'T REMEMBER MY QUESTION.

15 THE COURT: SORRY.

16 BY MS. RATZAN:

17 Q. THE DOCUMENTS FROM BRAZIL IN REFERENCE TO THE PLANE CRASH,  
18 YOU HAVE RECEIVED SOME BUT NOT ALL, IS THAT CORRECT?

19 A. YES, MA'AM.

20 Q. SO YOU'RE FAMILIAR AT LEAST IN SOME RESPECT TO THE  
21 BRAZILIAN INVESTIGATION OF THAT PLANE CRASH, IS THAT CORRECT?

22 A. YES, MA'AM.

23 Q. OKAY. AND THERE ARE TWO PILOTS, AS I UNDERSTAND, PERHAPS  
24 OTHERS IN CUSTODY IN REFERENCE TO THAT PLANE CRASH, IS THAT  
25 CORRECT?

1 A. THERE ARE TWO INDIVIDUALS, YES, MA'AM.

2 Q. AND THOSE INDIVIDUALS HAVE BEEN INTERVIEWED AND HAVE  
3 REPEATEDLY STATED THAT MR. MALAGO -- THEY DO NOT KNOW  
4 MR. MALAGO AND HAVE HAD -- HE WAS NOT RESPONSIBLE OR A PARTY TO  
5 THIS PLANE CRASH IN ANY WAY, SHAPE, OR FORM, IS THAT CORRECT?

6 A. THAT'S INACCURATE.

7 THE COURT: MISS RATZAN, I'M SORRY.

8 YOU CAN ANSWER THE QUESTION AND THEN I WILL MAKE A  
9 COMMENT.

10 GO AHEAD.

11 THE WITNESS: THAT'S INACCURATE.

12 THE COURT: INACCURATE.

13 THE WITNESS: INACCURATE.

14 THE COURT: ALL RIGHT. I UNDERSTAND.

15 MISS RATZAN, LET ME JUST MAKE AN OBSERVATION IF I CAN.

16 THIS IS ALREADY AN INDICTED CASE AND, THEREFORE, THE  
17 GOVERNMENT HAS ALREADY ESTABLISHED PROBABLE CAUSE TO BELIEVE  
18 THAT YOUR CLIENT HAS COMMITTED THE OFFENSES AT ISSUE IN THE  
19 INDICTMENT.

20 MOST OF THE QUESTIONS THAT YOU ARE ASKING MAY BE FINE  
21 FOR THE TRIAL, FOR CROSS-EXAMINATION AT TRIAL TO DEMONSTRATE AT  
22 TRIAL THAT YOUR CLIENT DIDN'T COMMIT THE OFFENSES OUTLINED IN  
23 THE INDICTMENT. BUT MOST OF YOUR QUESTIONS TO ME ARE  
24 IRRELEVANT FOR THE PRESENT PURPOSES OF PRETRIAL DETENTION  
25 BECAUSE THEY BASICALLY RELATE TO THE ISSUE OF PROBABLE CAUSE

1 AND THE GRAND JURY HAS ALREADY DETERMINED THAT.

2 MS. RATZAN: I AGREE, YOUR HONOR.

3 THE COURT: ALL RIGHT.

4 MS. RATZAN: I DON'T THINK THAT THERE IS ANY REASON  
5 FOR ME TO CONTINUE WITH THE AGENT.

6 WHAT I WOULD LIKE TO DO IS MAKE A PROFFER TO THE  
7 COURT --

8 THE COURT: SURE.

9 MS. RATZAN: -- OF HOW THIS CASE SORT OF GOT TO THIS  
10 POINT.

11 THE COURT: SURE.

12 MS. RATZAN: AND WHY I BELIEVE THE CURRENT BOND IS  
13 APPROPRIATE AND I DO NOT BELIEVE MR. MALAGO IS A RISK OF FLIGHT  
14 IN ANY WAY, SHAPE, OR FORM.

15 THE COURT: ALL RIGHT.

16 MS. RATZAN: BUT I DO UNDERSTAND THE PRESUMPTION --

17 THE COURT: BUT LET ME JUST MAKE THIS COMMENT, WHICH  
18 IS, I APPRECIATE THAT YOU ARE NOT GOING TO BE PROCEEDING  
19 FURTHER WITH THE QUESTIONING OF THIS AGENT AND THAT IS FINE.

20 LET ME JUST ASK THE GOVERNMENT IF IT HAS ANY  
21 ADDITIONAL QUESTIONS ON RELEVANT ISSUES TO ELICIT FROM THIS  
22 WITNESS BEFORE WE EXCUSE THE WITNESS FROM THE WITNESS STAND.

23 MS. HOFFMAN: ONE LIMITED THING, YOUR HONOR.

24 THE COURT: SURE.

25 REDIRECT EXAMINATION

1 BY MS. HOFFMAN:

2 Q. THE DATE OF THE CONSPIRACIES IN THE INDICTMENT BEGIN IN  
3 MARCH OF 2007.

4 A. YES, MA'AM.

5 Q. ARE YOU AWARE OF WHY THAT DATE WAS SELECTED?

6 A. YES, MA'AM.

7 Q. AND WHY?

8 A. BECAUSE IN MR. MALAGO'S ASYLUM STATEMENT WHICH HE PRESENTED  
9 HE CONFIRMS IN THERE THAT AT APPROXIMATELY EARLY SPRING OF 2007  
10 HE WAS AWARE THAT HE WASN'T ALLOWED TO CONTINUE ON WORKING WITH  
11 ICE IN THAT MANNER, THAT THEY HAD LOST THEIR ABILITY TO DO WHAT  
12 THEY HAD BEEN DOING.

13 Q. AND IN THAT STATEMENT DID HE ALSO ACKNOWLEDGE THAT AFTER  
14 HIS AWARENESS OF THAT HE OPENED THE COMPANIES THAT THEN WENT ON  
15 TO BE THE COMPANIES YOU WERE INVESTIGATING?

16 A. YES, MA'AM. AS A BUSINESS ENTITY OF HIS OWN NOT WITH ICE  
17 CREATING THE CORPORATION.

18 Q. AND THE FIRST OF THOSE BUSINESS ENTITIES WAS IN FACT OPENED  
19 IN MARCH OF 2007.

20 A. YES, MA'AM.

21 MS. HOFFMAN: NOTHING FURTHER, YOUR HONOR.

22 THE COURT: ALL RIGHT. THANK YOU. YOU MAY BE  
23 EXCUSED. THANK YOU.

24 THE WITNESS: THANK YOU, YOUR HONOR.

25 THE COURT: ALL RIGHT, MISS RATZAN, TAKE AS MUCH TIME

1 AS YOU NEED FOR YOUR PROFFER. I THINK NO FURTHER MATTERS THIS  
2 AFTERNOON SO I AM ALL EARS AS THEY SAY.

3 MS. RATZAN: THANK YOU. THANK YOU, JUDGE.

4 BEAR WITH ME BECAUSE THIS IS SOMEWHAT CONFUSING AS  
5 YOUR HONOR POINTED OUT BECAUSE THERE ARE SOME MULTI-FACETS TO  
6 THIS CASE.

7 THE COURT: ALL RIGHT. SURE.

8 MS. RATZAN: AS YOUR HONOR HAS ALREADY HEARD,  
9 MR. MALAGO IS A PLANE WORKER. AND, SO HE WILL BUY AND SELL AT  
10 VARIOUS DIFFERENT TIMES WITH VARIOUS INDIVIDUALS IN THE UNITED  
11 STATES AND IN BRAZIL AND OTHER FOREIGN COUNTRIES PLANES USUALLY  
12 SMALL, SMALLER TYPE PLANES. WE ARE NOT TALKING ABOUT  
13 COMMERCIAL JETS.

14 HE TYPICALLY USES, PRIOR TO HIS WORK WITH THE UNITED  
15 STATES GOVERNMENT AND THEN POST HIS WORK WITH THE UNITED STATES  
16 GOVERNMENT, A -- AN ESCROW AGENT, AS YOU WOULD IMAGINE IS  
17 NORMALLY DONE IN ANY SORT OF TRANSACTION INVOLVING PROPERTY  
18 LIKE A HOUSE OR ANYTHING ALONG THOSE LINES.

19 AND, SO THERE ARE ESCROW AGENTS, AND DOCUMENTS, AND  
20 PAPERWORK, AND LAWYERS. HE RETAINED THE SERVICES OF A VERY  
21 FINE AVIATION LAWYER UP IN FORT LAUDERDALE WHO HAS ADVISED HIM  
22 ON THE FAA PAPERWORK. THE ESCROW AGENTS PREPARE THE FAA  
23 PAPERWORK THAT IS SUBMITTED. AND, SO AT NO TIME IN THE COURSE  
24 OF THIS ENTIRE CASE HAS MR. MALAGO EVER BEEN NOTIFIED BY EITHER  
25 THE UNITED STATES GOVERNMENT OR THE FAA WHERE HE HOLDS A

1 DEALER'S CERTIFICATES, OR THE ESCROW AGENTS, OR LAWYERS, OR  
2 ANYONE ELSE INVOLVED THAT THE PAPERWORK THAT WAS BEING  
3 SUBMITTED FOR THE PURCHASE AND SALE OF AIRPLANES WAS FAULTY,  
4 FALSE, FRAUDULENT, OR EVEN WRONG IN ANY WAY, SHAPE, OR FORM.  
5 SO FROM A KNOWLEDGE STANDPOINT I JUST BRING THAT TO THE COURT'S  
6 ATTENTION.

7           HOWEVER, MR. MALAGO BEGAN COOPERATING WITH ICE, TWO  
8 AGENTS IN PARTICULAR, WITH THE UNITED STATES GOVERNMENT BACK IN  
9 2004. WHEN HE BEGAN HIS WORK FOR THE UNITED STATES GOVERNMENT  
10 HE OWNED HIS OWN COMPANY. THE GOVERNMENT CAME TO HIM AND ASKED  
11 HIM WOULD HE AGREE TO ASSIST THE GOVERNMENT TO CONTACT KNOWN  
12 INDIVIDUALS AND IN SOME CASES UNKNOWN INDIVIDUALS IN BRAZIL WHO  
13 THEY BELIEVED WERE NARCO TRAFFICKERS IN ORDER TO SELL THEM  
14 AIRPLANES AND WOULD HE PUT TRANSPONDERS ON THOSE PLANES.

15           IT DIDN'T INITIALLY START AS A -- THAT SORT OF  
16 RELATIONSHIP BUT IT KIND OF GREW INTO THAT. AND OVER THE FOUR  
17 YEARS THAT HE DID THAT, AS YOUR HONOR CAN IMAGINE, THERE WERE  
18 NUMEROUS AIRPLANES THAT WERE SEIZED WITH NARCOTICS ON THEM.  
19 THERE WERE NUMEROUS PLANES THEMSELVES THAT WERE SEIZED. THERE  
20 WAS MULTI, MULTI, MULTI-THOUSANDS IF NOT MILLIONS OF DOLLARS  
21 THAT THE GOVERNMENT RECEIVED AS A RESULT OF MR. MALAGO'S  
22 COOPERATION. AND, OF COURSE, A NUMBER OF INDIVIDUALS WERE  
23 PROSECUTED ACCORDINGLY.

24           IN ADDITION AT SOME POINT THROUGH THE MIDDLE OF THAT  
25 THE UNITED STATES GOVERNMENT DECIDED THAT THEY NO LONGER WANTED



1 TO USE MR. MALAGO'S COMPANY SO THEY SET UP THEIR OWN FICTITIOUS  
2 ENTITY AND HAD MR. MALAGO CONTINUE HIS COOPERATION USING THAT  
3 CORPORATION. THERE WAS AN AGREEMENT WITH THE UNITED STATES  
4 GOVERNMENT AND MR. MALAGO ABOUT PROFITS AND FEES FROM, YOU  
5 KNOW, A SALE OF A PLANE, HOW THIS WAS GOING TO WORK OUT.  
6 OBVIOUSLY THEY DIDN'T EXPECT HIM TO BE WORKING COMPLETELY FOR  
7 FREE.

8 AND DURING -- SOMEHOW DURING THAT TIME PERIOD OR  
9 TOWARDS THE END OF THAT ENGAGEMENT THE FIRST PLANE CRASHES THAT  
10 YOUR HONOR HEARD ABOUT WITH COCAINE ON IT. THERE WAS A  
11 TRANSPONDER ON THAT PLANE. THE PLANE CRASHES I BELIEVE IN  
12 YUCATAN. AT THAT TIME THE AGENTS COME TO MR. MALAGO AND THEY  
13 SAY, WE THINK YOU ARE BURNED AS A CONFIDENTIAL SOURCE. WE NEED  
14 YOU TO LEAVE BRAZIL -- AT THE TIME HE WAS RESIDING THERE. WE  
15 NEED YOU TO LEAVE BRAZIL, COME TO THE UNITED STATES FOR YOUR  
16 OWN SAFETY. YOU NEED TO GIVE UP YOUR VISA THAT YOU HAVE, WHICH  
17 AT THE TIME WAS WHAT'S CALLED AN LV THAT ALLOWS AN INDIVIDUAL  
18 AS A COMPANY IN BRAZIL AND A COMPANY IN THE UNITED STATES TO BE  
19 ABLE TO TRAVEL FREELY FOR BUSINESS PURPOSES.

20 COME TO BRAZIL, GIVE UP YOUR VISA. WE, THE UNITED  
21 STATES GOVERNMENT, ARE GOING TO HANDLE YOUR VISAS. WE ARE  
22 GOING TO TAKE CARE OF YOU.

23 HE COMES TO THE UNITED STATES, MEETS WITH FEDERAL  
24 PROSECUTORS IN TAMPA, HE'S THANKED PROFUSELY AND THEN TOLD, WE  
25 CAN'T USE YOU ANYMORE BECAUSE WE THINK THAT YOU ARE BURNED BUT

1 WE WANT YOU HERE BECAUSE WE THINK YOU NEED IT FOR YOUR SAFETY  
2 AND SECURITY.

3 MR. MALAGO WHO HAS COOPERATED WITH THE GOVERNMENT AS  
4 YOUR HONOR KNOWS FROM THE BEGINNING AGREES AND MOVES HIS FAMILY  
5 HERE TO THE UNITED STATES WHERE HE HAS RESIDED EVER SINCE.

6 IN 2008 AGENTS FROM THE DEPARTMENT OF HOMELAND  
7 SECURITY, OFFICE OF INSPECTOR GENERAL SHOW UP AT MR. MALAGO'S  
8 RESIDENCE HERE IN WEST PALM BEACH WITH A SEARCH WARRANT. THAT  
9 SEARCH WARRANT IS STILL SEALED TO THIS DATE. IT IS UNDER  
10 UNITED STATES OF AMERICA VERSUS SEALED SEARCH WARRANT, CASE  
11 NUMBER 08-MJ-08307, A WARRANT SIGNED BY JUDGE VITUNAC.

12 THE AFFIDAVIT AND APPLICATION IN SUPPORT OF THE  
13 WARRANT, AS I EXPLAINED, ARE STILL UNDER SEAL SO I CAN ONLY  
14 GUESS WHAT THAT WAS ALL ABOUT. BUT WHEN THE AGENTS SHOW UP  
15 BASED UPON WHAT THEY ARE ASKING FOR THEY SEIZED FROM  
16 MR. MALAGO'S RESIDENCE ALL COMPUTERS, DOCUMENTS, ANYTHING THAT  
17 HAD A MEMORY, PHOTOGRAPHS, CAMERAS, YOU NAME IT.

18 AT THE TIME THE AGENTS TELL MR. MALAGO THAT THEY ARE  
19 INVESTIGATING THE TWO ICE AGENTS THAT MR. MALAGO WORKED WITH  
20 FOR FOUR YEARS. THE BELIEF BEING, AND I USE THAT WORD BECAUSE  
21 I HAVE YET TO SEE THE APPLICATION, THE BELIEF BEING THAT  
22 MR. MALAGO RECEIVED CERTAIN FUNDS FROM THE UNITED STATES  
23 GOVERNMENT DURING THAT TIME PERIOD APPARENTLY THAT WAS SPLIT IN  
24 SOME WAY AND THE UNITED STATES GOVERNMENT WAS SUPPOSED TO  
25 RECEIVE ITS SHARE AND APPARENTLY THEY BELIEVE THAT THE AGENTS

1 ABSCONDED WITH IT OR SOMEHOW THEY WERE ALL IN CAHOOTS TO DO  
2 SOMETHING. THAT IS WHAT MR. MALAGO WAS BEING TOLD BACK IN  
3 2008.

4 HE SITS DOWN WITH THE AGENTS FROM THE DEPARTMENT OF  
5 HOMELAND SECURITY AND COOPERATES FULLY. PROVIDES WHATEVER  
6 DOCUMENTS HE HAS, AND HE HAD EXTENSIVE DOCUMENTATION OF HIS  
7 COOPERATION, WIRE TRANSFERS, MONEY TRANSFERS, EVERYTHING WAS OF  
8 RECORD. HE PROVIDES THAT TO THE UNITED STATES GOVERNMENT.

9 AT THE TIME THEY EXECUTE THE WARRANT BACK IN 2008,  
10 MR. MALAGO COLLECTS FIREARMS. HE HAD PURCHASED SOME FIREARMS  
11 AT THAT TIME, OR AT LEAST THIS IS WHAT THE BELIEF WAS. HE WAS  
12 NOT A UNITED STATES CITIZEN AND, THEREFORE, THAT IS CONSIDERED  
13 UNLAWFUL TO BE IN POSSESSION OF A FIREARM BY AN INDIVIDUAL WHO  
14 IS NOT A UNITED STATES CITIZEN. THEREFORE, HE WAS PROSECUTED  
15 OUT OF THE SOUTHERN DISTRICT OF NEW YORK IN CASE NUMBER  
16 08-CRIM-1211 FOR POSSESSION OF A FIREARM BY AN INDIVIDUAL NOT A  
17 UNITED STATES CITIZEN AND CAPABLE OF HAVING REGISTRATION OF A  
18 FIREARM.

19 WHY THE SOUTHERN DISTRICT OF NEW YORK? I DO NOT HAVE  
20 ANY IDEA SINCE ALL THE APPLICATIONS AND EVERYTHING FOR THIS  
21 CASE ARE UNDER SEAL. HOWEVER, IT IS MY UNDERSTANDING THAT THE  
22 INVESTIGATION INTO THE TWO ICE AGENTS STEMMED OUT OF NEW YORK  
23 AND THAT'S WHY THE CASE ENDED UP IN NEW YORK.

24 HE AGAIN WENT UP TO NEW YORK WITH COUNSEL, MET WITH  
25 THE UNITED STATES ATTORNEY IN NEW YORK, AS WELL AS THE AGENTS

1 FROM THE OFFICE OF INSPECTOR GENERAL AND AGAIN WAS FULLY  
2 DEBRIEFED.

3 AS A RESULT OF THAT, I WAS NOT HIS COUNSEL AT THE TIME  
4 BUT I CAN ONLY IMAGINE THAT THEY BELIEVED WHATEVER INFORMATION  
5 HE PROVIDED BECAUSE THEY GAVE HIM A DEFERRED PROSECUTION  
6 AGREEMENT, YOUR HONOR. AND, SO I BELIEVE THAT MISS HOFFMAN  
7 MISUNDERSTOOD WHEN SHE SAID A WITHHOLD OF ADJUDICATION ON A GUN  
8 CHARGE. THERE IS NO WITHHOLD. I DON'T BELIEVE IT WOULD COUNT  
9 AS A PRIOR. IT'S A --

10 MS. HOFFMAN: I USED THE STATE WORDS INSTEAD THE  
11 FEDERAL WORDS. LIKE I SAID I DIDN'T HANDLE IT.

12 MS. RATZAN: SURE. IT'S A DIFFERENT PROSECUTION  
13 AGREEMENT. AND MR. MALAGO COMES BACK AND GOES ABOUT HIS WAY.

14 IN 2011 -- AND I'M TRYING TO FIGURE OUT WHEN. I  
15 BELIEVE IN JUNE OF 2011 UNDER CASE NUMBER 11-2-764-SIMONTON A  
16 WARRANT WAS ISSUED FOR THE SEIZURE OF FOUR PLANES.

17 MS. HOFFMAN: JUST FOR THE RECORD PURPOSES, YOUR  
18 HONOR, THAT'S IN MAY OF 2011.

19 MS. RATZAN: THANK YOU.

20 MAY 2011 MAYBE THE SEIZURE -- IN 2011 FOUR PLANES WERE  
21 SEIZED. THOSE PLANES ARE THE SAME PLANES THAT ARE THE SUBJECT  
22 OF THE CURRENT INDICTMENT AND SUPERSEDING INDICTMENT.

23 SO, FROM A NOTICE PERSPECTIVE SINCE 2011 -- ACTUALLY I  
24 WOULD ARGUE SINCE 2008 WHEN HE WAS FIRST CONTACTED BY AGENTS  
25 MR. MALAGO HAS KNOWN THAT THE GOVERNMENT BELIEVED THAT THE ICE

1 AGENTS WERE DIRTY, THAT MR. MALAGO WAS SOMEHOW IN CAHOOTS WITH  
2 THEM. THAT HAS BEEN STATED TO HIM DURING NUMEROUS, NUMEROUS  
3 MEETINGS. AND THEN IN 2011 FOUR PLANES ARE SEIZED.

4 HE HIRES COUNSEL AT THAT TIME, OR HE ACTUALLY HAD  
5 COUNSEL AT THAT TIME FROM THE NEW YORK CASE WHO WAS IN CONTACT  
6 I BELIEVE WITH MISS HOFFMAN IN REFERENCE TO THE SEIZURE OF  
7 THOSE PLANES. MISS HOFFMAN BOTH TO PREVIOUS COUNSEL, TO  
8 CURRENT COUNSEL, TO JUDGE TURNOFF, AND I BELIEVE IN PLEADINGS  
9 BEFORE THIS COURT IN GENERAL HAS CONSISTENTLY STATED THAT HER  
10 INTENTION FROM BACK IN 2011 TO TODAY WAS TO INDICT MR. MALAGO  
11 ON THIS CURRENT INDICTMENT. SHE MADE THAT FACT VERY, VERY WELL  
12 KNOWN TO EVERYBODY AND ANYBODY CONNECTED TO MR. MALAGO.

13 SO HE HAS KNOWN ABOUT THIS SINCE, WOULD I ARGUE 2008,  
14 BUT AT LEAST 2011 IN MAY OF 2011, AND YET MR. MALAGO FILED HIS  
15 ASYLUM PETITION WITH THE DEPARTMENT OF HOMELAND SECURITY  
16 REQUESTING TO STAY IN THE UNITED STATES BECAUSE HE BELIEVES  
17 THAT IF HE GOES BACK TO BRAZIL OR IN FACT ANYWHERE IN LATIN  
18 AMERICA BECAUSE OBVIOUSLY THE MAJORITY OF THE INDIVIDUALS HE  
19 COOPERATED AGAINST WERE NARCO TRAFFICKERS FROM SOUTH AMERICA,  
20 EITHER COLOMBIA AND/OR BRAZIL, AND/OR PERU, AND/OR -- THERE  
21 SIMPLY ISN'T ANYPLACE THAT MR. MALAGO BELIEVES HE IS SAFE.

22 THE BASIS OF HIS PETITION IS THAT HE COOPERATED. THAT  
23 COOPERATION OVER THE SPAN OF FOUR YEARS, YOUR HONOR, WHEN THESE  
24 PLANES CRASHED THERE WERE SOME INVESTIGATIVE REPORTING DONE  
25 INTO THESE MATTERS IN THE UNITED STATES. AND IF YOUR HONOR

1 GETS ON GOOGLE AND GOOGLES MR. MALAGO YOU WILL FIND ALL OF THIS  
2 INFORMATION ABOUT HIS BELIEF THAT HE IS A COOPERATOR, THAT HE  
3 PUT TRANSPONDERS ON PLANES.

4 IT IS HIS POSITION, AND IT IS COUNSEL'S POSITION THAT  
5 IS PRESENT THAT HIS LIFE IS IN JEOPARDY ALMOST ANYWHERE EXCEPT  
6 FOR THE UNITED STATES OF AMERICA. AND, SO, HE HAS FOUGHT TO  
7 REMAIN IN THIS COUNTRY EVEN WITHOUT THE HELP OF THE UNITED  
8 STATES GOVERNMENT BECAUSE, THOUGH THEY PROMISED TO ASSIST HIM  
9 ONCE THOSE AGENTS CAME UNDER INVESTIGATION THOSE PROMISES  
10 SEEMED TO OF COURSE DISAPPEAR.

11 AND, SO THERE REALLY ISN'T ANYWHERE FOR HIM TO GO. AS  
12 FAR AS A RISK OF FLIGHT IS CONCERNED, IN MY OPINION THERE IS NO  
13 SAFER DEFENDANT BECAUSE I THINK THAT FACING LIFE IN PRISON,  
14 WHILE OF COURSE NO ONE WOULD WANTED TO DO THAT, FACING CERTAIN  
15 DEATH I THINK IS EVEN WORSE. IT IS NOT JUST HIS BUT IT WOULD  
16 BE HIS FAMILY'S, HIS WIFE IS PRESENT WITH HIS DAUGHTER. THEY  
17 HAVE A YOUNG SON AS WELL. THEY RESIDE HERE IN THE UNITED  
18 STATES AND ARE FIGHTING TO REMAIN HERE.

19 THERE IS AN ASYLUM HEARING PENDING BEFORE THE  
20 IMMIGRATION COURT ON APRIL 10TH. OBVIOUSLY MR. MALAGO NEEDS TO  
21 BE PRESENT IN ORDER TO TESTIFY IN THAT BUT THAT'S FOR ANOTHER  
22 DAY. BUT AT LEAST I WANT YOUR HONOR TO KNOW THAT THAT IS OUT  
23 THERE AND IT EXISTS.

24 IN EARLY -- THE LATTER PART OF THIS LAST YEAR, EARLY  
25 PART OF THIS YEAR I BECAME INVOLVED WITH MR. MALAGO IN THIS

1 CASE BECAUSE HIS IMMIGRATION COUNSEL WANTED TO BE ABLE TO  
2 SUPPORT THEIR PETITION BEFORE THE ASYLUM COURT THAT MR. MALAGO  
3 WAS IN DANGER, THAT HE HAD COOPERATED. SO WE WANTED TO OBTAIN  
4 SOME OF THE PROPERTY THAT WAS SEIZED PURSUANT TO THE 2008  
5 SEALED SEARCH WARRANT. THAT WOULD BE HIS COMPUTERS AND ALL OF  
6 THE INFORMATION THAT HE HAD.

7 AT THAT TIME I CONTACTED THE UNITED STATES GOVERNMENT,  
8 THE PROSECUTOR WHO WAS LISTED ON PACER AND WAS ULTIMATELY FED  
9 DOWN THE LINE -- I DON'T KNOW IF IT IS DOWN OR UP TO  
10 MISS HOFFMAN. WE SPOKE IN DETAIL --

11 MS. HOFFMAN: CERTAINLY DOWN.

12 MS. RATZAN: WELL, THAT ONLY BECAUSE IT CAME FROM WEST  
13 PALM TO MIAMI. SO, I ENDED UP IN CONVERSATIONS WITH  
14 MISS HOFFMAN, AND PRIOR TO MY FILING THE RULE 41 MOTION  
15 MR. MALAGO WAS INDICTED IN THIS CASE WHICH WOULD HAVE BEEN ON  
16 JANUARY 13TH OF 2012 AND HE WAS ARRESTED AND TAKEN INTO  
17 CUSTODY.

18 THAT INDICTMENT WAS FOR SIX COUNTS BUT REALLY INVOLVED  
19 THE FOUR PLANES I PREVIOUSLY DISCUSSED OF REGULATORY VIOLATIONS  
20 FOR FILING FAA PAPERWORK IMPROPERLY AS IT RELATED TO PLANES.  
21 AND IT IS MY UNDERSTANDING FROM WHAT THE GOVERNMENT'S DISCOVERY  
22 AND WHAT MISS HOFFMAN HAS SAID IS THAT THE WAY THAT THE PLANES  
23 WERE TRANSFERRED, THE MONEY WAS TRANSFERRED AND THE PLANES WERE  
24 TRANSFERRED THAT THE GOVERNMENT BELIEVES, AT LEAST ACCORDING TO  
25 THE INDICTMENT, THAT MR. MALAGO WAS TRYING TO CONCEAL THE OWNER

1 OF THE PLANE.

2 WHEN MR. MALAGO REGISTERS HIS PLANES, JUST FOR EASE OF  
3 PURPOSE, THERE IS A BUYER IN BRAZIL, THERE IS A SELLER IN THE  
4 UNITED STATES. THE BUYER SENDS THE MONEY THROUGH ESCROW  
5 AGENTS. WHEN THAT MONEY REACHES HERE THE SELLER TRANSFERS THE  
6 PLANE. MR. MALAGO TAKES POSSESSION OF THE PLANE, REGISTERS IT  
7 WITH THE FAA, NOT AS THE OWNER. REGISTRATION IS NOT OWNERSHIP,  
8 YOUR HONOR, IT IS REGISTRATION. IT IS DIFFERENT. THE PAPER  
9 THAT IS SUBMITTED TO THE FAA INCLUDES THE NAME OF THE OWNER OF  
10 THE ACTUAL AIRCRAFT.

11 THEN WHEN THAT OCCURS MR. MALAGO FIXES UP THE PLANE TO  
12 WHATEVER EXTENT HIS CLIENTS IN BRAZIL REQUIRE TO BE DONE. IT  
13 IS THEN TRANSFERRED TO BRAZIL. UPON REACHING BRAZIL THERE IS A  
14 PROCESS THAT OCCURS FOR THE TRANSFER OF THE REGISTRATION FROM  
15 MR. MALAGO TO THE ACTUAL OWNER IN BRAZIL. APPARENTLY IT TAKES  
16 SOME TIME FOR THAT TO OCCUR. THAT IS THE SITUATION IN ALMOST I  
17 UNDERSTAND EVERY SINGLING ONE OF THESE PLANES.

18 HOWEVER, I HAVE RECENTLY LEARNED, I BELIEVE, THAT WHEN  
19 THE UNITED STATES GOVERNMENT DID SOME OF THE WORK WITH  
20 MR. MALAGO WHEN HE WAS COOPERATING, WHEN THEY WERE DEALING WITH  
21 DRUG DEALERS SOME OF THOSE DEALINGS WERE OBVIOUSLY DONE VERY  
22 DIFFERENTLY BECAUSE DRUG DEALERS DON'T WANT THINGS OF RECORD,  
23 AND PAPERED, AND THINGS OF THOSE SORT.

24 WE ARE NOT TALKING ABOUT BANK TRANSFERS OF MONEY OR  
25 LOANS TAKEN TO SUPPORT A PURCHASE OF A PLANE. SO THE DRUG



1 DEALS DONE WITH THE UNITED STATES GOVERNMENT WERE SOMEWHAT  
2 DIFFERENT ON THE PLANE FRONT. SO I THINK THAT'S AN IMPORTANT  
3 FACT.

4 AT THE INITIAL BOND HEARING WHEN THE \$100,000 CASH  
5 BOND WAS SET BY MAGISTRATE JUDGE TURNOFF ON THAT INITIAL  
6 REGULATORY PLANE VIOLATION, YOUR HONOR -- BY THE WAY,  
7 REGULATORY PLANE VIOLATIONS ZERO TO THREE, THREE BEING THE  
8 STATUTORY MAX. THERE ARE NOT EVEN SENTENCING GUIDELINES FOR  
9 THESE REGULATORY OFFENSES BECAUSE THEY ARE TRADITIONAL CIVIL  
10 PENALTY OFFENSES.

11 I CALLED THE UNITED STATES SENTENCING COMMISSION, AND  
12 UPON SPEAKING TO THEM THEY TOLD ME THAT YOU LOOK TO A SIMILAR  
13 PROVISION WHICH WOULD HAVE BEEN ZERO TO SIX. WE ARE TALKING  
14 ABOUT ZERO TO SIX MONTH OFFENSES. HOWEVER, \$100,000 CASH BOND,  
15 WHICH I CONSIDER TO BE AN EXTREMELY SUBSTANTIAL BOND WITH A  
16 NEBBIA CONDITION WAS PUT INTO PLACE AT THAT TIME BECAUSE THE  
17 UNITED STATES GOVERNMENT TOLD MAGISTRATE TURNOFF THAT THEY  
18 ANTICIPATED THAT MR. MALAGO WOULD BE INDICTED IN THE FUTURE FOR  
19 NARCOTICS OFFENSES. THAT THEY BELIEVED HE WAS EITHER  
20 DOUBLE-DEALING WHEN HE WAS AN AGENT OF -- OR AN ARM OF THE  
21 GOVERNMENT, OR IMPROPERLY DEALING, OR SOMEHOW IN CAHOOTS WITH  
22 THESE AGENTS. AS A RESULT THAT BOND WAS PUT INTO PLACE,  
23 100,000 WITH A NEBBIA.

24 I THEN BECAME COUNSEL OF RECORD AFTER THAT CAME INTO  
25 BEING. WHEN I FILED MY FIRST NEBBIA REQUEST WITH SUBSTANTIAL

1 DOCUMENTS THAT WERE BASED ON LOANS FROM HIS FAMILY MEMBERS THAT  
2 THEY HAD RECEIVED IN BRAZIL, AS WELL AS SOME FRIENDS WHO HAD  
3 TAKEN MONEY OUT OF LINES OF CREDIT FOR THEIR HOMES WE HAD A  
4 SUBSTANTIAL DOCUMENTS -- IT IS IN THE DOCKET, YOUR HONOR, COULD  
5 CERTAINLY SEE IT, THE GOVERNMENT AT THAT INITIAL HEARING TOLD  
6 THE JUDGE THAT THESE DOCUMENTS ALL CAME FROM BRAZIL, TRUE FACT.  
7 THAT THEY NEEDED ADDITIONAL TIME.

8 THE JUDGE DENIED NEBBIA WITHOUT PREJUDICE TO REFILE  
9 BECAUSE THEY WANTED THE GOVERNMENT TO HAVE ADDITIONAL TIME TO  
10 REVIEW THE RECORDS THAT I HAD PROVIDED AND ASKED COUNSEL FOR  
11 THE GOVERNMENT AND I TO GET TOGETHER TO SEE IF WE COULD RESOLVE  
12 THE MATTER WHICH WE, OF COURSE, COULD NOT.

13 SO AT THAT POINT IN TIME I REFILED MY NEBBIA  
14 SUBMISSION, ADDED ADDITIONAL MONEY. SO YOUR HONOR KNOWS, I  
15 HAVE \$115,000 IN MY TRUST ACCOUNT THAT HAS BEEN SENT TO ME,  
16 WIRED TO ME FROM BANKS IN BRAZIL AND VARIOUS OTHER BANKS IN  
17 SUPPORT OF THE NEBBIA PETITION AND ALL DOCUMENTS HAVE BEEN  
18 PROVIDED TO THE COURT. SO THERE WAS A SECOND NEBBIA PETITION.

19 AT THAT HEARING IN FRONT OF MAGISTRATE JUDGE TURNOFF  
20 THE GOVERNMENT INFORMED THE JUDGE AGAIN -- THIS WOULD BE THE  
21 THIRD TIME -- THAT THEY WERE SEEKING THIS INDICTMENT, BUT NOW  
22 APPARENTLY A GRAND JURY HAD BEEN IMPANELED. AND, SO THE  
23 GOVERNMENT COULD GIVE JUDGE TURNOFF A DATE CERTAIN WHEN THEY  
24 FELT THAT THE TRUE BILL WOULD BE RETURNED.

25 AS A RESULT THE GOVERNMENT WAS GOING TO BE SEEKING A

1 STAY. MAGISTRATE JUDGE TURNOFF INSTEAD OF HEARING THE NEBBIA  
2 AND GRANTING STAY DENIED NEBBIA SAYING, COUNSEL, YOU CAN JUST  
3 APPEAL IT. BUT WE KNEW THAT BY THE TIME I GOT TO JUDGE SCOLA  
4 ON THAT THE INDICTMENT WAS GOING TO COMING OUT. IT DIDN'T SEEM  
5 LIKE THERE WAS ANY REASON TO DO THAT. AND, SO TRUE TO HER WORD  
6 MISS HOFFMAN RECEIVED THE TRUE BILL AND HERE WE ARE ON THIS  
7 SUPERSEDING INDICTMENT THAT WAS FILED.

8 SO IT'S OUR POSITION, YOUR HONOR, THAT THE \$100,000  
9 CASH BOND, TO WHICH I HAVE 115, IS A SUFFICIENT BOND BECAUSE IT  
10 ENCOMPASSED AND ANTICIPATED THIS VERY INDICTMENT. THERE IS  
11 NOTHING NEW, EXCITING, OR DIFFERENT ABOUT THIS INDICTMENT OTHER  
12 THAN THE FACT THAT IT NOW IS ON PAPER. BUT PRIOR TO THAT TIME  
13 THIS HAS BEEN THE GOVERNMENT'S INTENTION. SHE HAS MADE THIS  
14 KNOWN TO THE COURT, TO THE DEFENDANT, TO COUNSEL, TO EVERYONE.

15 SO, YES, THESE ARE SERIOUS CHARGES. I AGREE. THEY  
16 CARRY WITH IT A PRESUMPTION. HOWEVER, IT IS NOT THAT THIS  
17 DEFENDANT DIDN'T HAVE ANY ANTICIPATION THAT THIS WAS COMING AND  
18 HE COULD HAVE AT LEAST SINCE JUNE OF 2011 WHEN FOUR PLANES WERE  
19 SEIZED CERTAINLY LEFT THIS COUNTRY, ABANDONED HIS ASYLUM  
20 PETITION. BUT HE HAS MAINTAINED HIS INNOCENCE IN THIS  
21 SITUATION FROM DAY ONE, FROM THE DAY THAT HE WAS CONFRONTED BY  
22 AGENTS IN 2008 UNTIL HE STANDS BEFORE THIS COURT TODAY.

23 WHEN THIS INDICTMENT CAME OUT OBVIOUSLY IT'S A HEAVY  
24 BURDEN FOR ANYONE. BUT MR. MALAGO WAS RELIEVED BECAUSE IT IS  
25 THE FIRST TIME THAT HE ACTUALLY HAS PROCESS IN A COURT TO BE

1 ABLE TO CHALLENGE WHAT EVERYBODY HAS BEEN SAYING FOR YEARS, AND  
2 YEARS, AND YEARS BUT HAS BEEN SEALED, HAS BEEN -- YOU KNOW,  
3 NONE OF US HAVE HAD ANY ACCESS OR ABILITY TO FIGHT IT.

4 YOU KNOW, AT THE PREVIOUS HEARING ON NEBBIA WHEN  
5 MISS HOFFMAN RAISED ALL OF THE DRUG ISSUES, AND HE HAS BEEN A  
6 DRUG DEALER, AND A DRUG DEALER, AND A DRUG DEALER, I LOOKED AT  
7 THE JUDGE AND SAID, I DON'T KNOW HOW YOU WANT ME TO DEFEND  
8 THIS, YOU KNOW. AT LEAST NOW I HAVE AN AVENUE TO DO THAT. IT  
9 IS GOING TO BE INTERESTING BECAUSE I DON'T KNOW HOW I AM GOING  
10 TO SUBPOENA THESE AGENTS TO BE ABLE TO COME AND TESTIFY SINCE  
11 THEY ARE TARGETS THEMSELVES, AND THOUGH THEY ARE NOT  
12 INDICTED -- BY THE WAY THEY ARE STILL WORKING FOR ICE, I FIND  
13 THAT TO BE SOMEWHAT INTERESTING.

14 SO, FROM A RISK OF FLIGHT, YOUR HONOR, MR. MALAGO HAS  
15 NOWHERE TO GO. AS I EXPLAINED HIS SMALL YOUNG EIGHT YEAR OLD  
16 SON THEY RESIDES IN WEST PALM BEACH. THE HOUSE, BY THE WAY,  
17 THE GOVERNMENT HAS PLACED A LIS PENDENS ON IT. AND, SO HE WILL  
18 HAPPILY REMAIN IN THAT HOME WITH WHATEVER CONDITIONS OR  
19 COMBINATION OF CONDITIONS YOUR HONOR FEELS IS APPROPRIATE.

20 HOWEVER, AS THE GOVERNMENT STATED HE DOES HAVE  
21 DETAINER PLACED ON HIM FROM IMMIGRATION. SO UPON POSTING  
22 WHATEVER BOND THIS COURT WITH BE WILLING TO SET HE WOULD BE  
23 MOVED OVER TO KROME AND WOULD PROBABLY AT THAT POINT IN TIME  
24 HAVE TO POST EITHER ANOTHER BOND, BE IT MONETARY, OR THAT COURT  
25 OVER THERE WOULD REQUIRE AN ANKLE BRACELET OR SOME OTHER

1 ASSURANCE.

2 SO, IN ESSENCE, YOUR HONOR, YOU GETS DOUBLE ASSURANCES  
3 AS FAR AS HIM APPEARING BECAUSE THE SAME IS GOING TO HAPPEN  
4 OVER IN IMMIGRATION, AND I HAVE SPOKEN TO HIS IMMIGRATION  
5 COUNSEL. THESE CHARGES, THOUGH SERIOUS, DO NOT REQUIRE  
6 MANDATORY DETENTION. AND, SO IS IMMIGRATION COUNSEL'S BELIEF  
7 THAT HE WILL BE BONDABLE UPON REACHING IMMIGRATION CUSTODY. SO  
8 THERE WILL BE TWO BONDS, ONE YOUR HONOR WILL HOPEFULLY SET AND  
9 ONE FROM IMMIGRATION. AND HE HAS EVERY -- NOT ONLY REASON BUT  
10 EVERY -- YOU KNOW, EVERY SINGLE THING HE HAS DONE FROM DAY ONE  
11 IS TO PUT HIS BELIEF AND TRUST IN HIS IMMIGRATION LAWYERS TO  
12 FIGHT FOR ASYLUM, AND THAT AGAIN HEARING IS ON APRIL 10TH. SO  
13 I CAN ASSURE THIS COURT HE WILL BE THERE ON APRIL 10TH IF HE IS  
14 RELEASED FROM CUSTODY.

15 AS FAR AS DANGER TO THE COMMUNITY, YOUR HONOR. IT'S  
16 DIFFICULT TO ANSWER IN THIS CASE IN THE SENSE THAT THE  
17 INDICTMENT ITSELF BECAUSE OF THE LENGTH OF TIME CREATES THAT  
18 PRESUMPTION. HOWEVER, THE ONLY CHARGES THAT MR. MALAGO HAS  
19 EVER FACED ALL STEM FROM HIS COOPERATION WITH THE UNITED STATES  
20 GOVERNMENT. SORT OF LIKE THE EQUITY NEVER AIDS THE VOLUNTEER.  
21 YOU KNOW, IF HE NEVER WOULD HAVE HELPED BACK IN 2004 HE  
22 WOULDN'T FIND HIMSELF IN THE SITUATION THAT HE IS BEFORE THIS  
23 COURT ON NOW.

24 I KNOW THE GOVERNMENT IS GOING TO STAY, WELL, IF HE  
25 DIDN'T, YOU KNOW, PUT DRUGS ON PLANES OR BE INVOLVED IN THAT.

1 BUT TO DATE I HAVE YET TO SEE ANY SINGLE EVIDENCE. THAT PLANE,  
2 YOUR HONOR, THAT CRASHED WAS A PLANE THAT WAS FINANCED THROUGH  
3 A BANK WITH REPUTABLE INDIVIDUALS. THEY PURCHASED IT. WHAT  
4 HAPPENED ONCE IT REACHED BRAZIL I DON'T KNOW HOW THE UNITED  
5 STATES GOVERNMENT IS GOING TO BE ABLE TO SHOW ANY CONNECTION TO  
6 THAT PLANE OTHER THAN THE FACT THAT MR. MALAGO WAS THE BROKER  
7 FOR IT. ANY MORE REASON THAN THE PERSON WHO SOLD IT TO THEM  
8 WOULD HAVE KNOWLEDGE WHAT WAS GOING TO HAPPEN TO IT ONCE IT  
9 ENDED UP IN BRAZIL.

10 SO I LOOK FORWARD TO RECEIVING SOME DISCOVERY IN THIS  
11 CASE THAT SHOWS SOME CONNECTION TO DRUGS BECAUSE THE ONLY  
12 CONNECTION THAT I KNOW OF WITH MR. MALAGO AND DRUGS IS BASED ON  
13 HIS COOPERATION WITH THE UNITED STATES GOVERNMENT.

14 AND, SO WE WOULD ASK THAT YOUR HONOR MAINTAIN THE  
15 \$100,000 CASH BOND, OR \$115,000 CASH BOND. BY THE WAY, THE  
16 GOVERNMENT HAS ALREADY PLACED PROTECTIVE ORDERS ON MR. MALAGO'S  
17 VEHICLES, ON MR. MALAGO'S BANK ACCOUNTS. I SAW SOMETHING VERY  
18 RECENTLY NOW PUTTING POTENTIAL PROTECTIVE ORDERS IS HIS WIFE'S  
19 BANK ACCOUNT. SO THEY'VE GOT ALL THE PROTECTION IN THE WORLD  
20 THAT THE MONEY THAT -- I DON'T KNOW HOW HE COULD GO ANYWHERE AT  
21 THIS POINT.

22 IN ADDITION, YOUR HONOR, I HAVE HIS BRAZILIAN PASSPORT  
23 IN MY CUSTODY AS WELL. I DON'T BELIEVE THERE IS ANY WAY HE  
24 COULD LEAVE THE COUNTRY LEGALLY WITHOUT HIS PASSPORT IN  
25 ADDITION BECAUSE HE IS IN REMOVAL, SLASH, ASYLUM PROCEEDINGS HE

1 CAN'T DO THAT ANYWAY OR HE WOULD VACATE HIS RIGHTS AND ALL OF  
2 THAT AS WELL.

3 SO, FOR THAT REASON, YOUR HONOR, I BELIEVE IF THE  
4 COURT IS EXTREMELY CONCERNED BECAUSE OF THE CHARGES YOUR HONOR  
5 COULD PUT AN ANKLE BRACELET ON MR. MALAGO WITH WHATEVER OTHER  
6 CONDITIONS, REPORTING TO PRETRIAL SERVICES. BUT THIS AS YOU  
7 CAN IMAGINE IS A COMPLICATED, COMPLEX UNDERTAKING FOR COUNSEL  
8 THIS CASE. AS YOUR HONOR CAN IMAGINE I HAVE A DRUG CASE, A  
9 PLANE CASE. NOW I HEARD BANK FRAUD AND MONEY LAUNDERING.

10 TO DO THIS WITH MY CLIENT IN CUSTODY WHO IS THE  
11 INDIVIDUAL WHO COOPERATED, WHO HAS ALL OF THE INFORMATION WOULD  
12 BE NEXT TO IMPOSSIBLE. I KNOW THAT THAT'S NOT YOUR HONOR'S  
13 CONCERN, BUT IT SHOULD BE A LITTLE BIT AT LEAST BECAUSE THE  
14 MAJORITY OF THE INFORMATION AS FAR AS BRAZIL IS CONCERNED IS  
15 DOWN IN BRAZIL, AND THAT CREATES A PROBLEM.

16 THE OTHER PART OF THIS CASE HAS AGENTS WHO ARE UNDER  
17 INVESTIGATION. THAT CREATES SOME PROBLEMS. SO BASICALLY THE  
18 GOVERNMENT IS GOING TO GIVE ME DISCOVERY WHICH IS A BUNCH OF  
19 BANK RECORDS AND A BUNCH OF PLANE DOCUMENTS AND I NEED BETTER  
20 ACCESS TO MY CLIENT AND I JUST DON'T SEE UNDER THESE  
21 CIRCUMSTANCES IN THIS CASE WITH THESE FACTS WHY DETENTION IS  
22 APPROPRIATE.

23 THEY CERTAINLY THANKED HIM FOR FOUR YEARS OF GOOD  
24 SERVICE AND I'M SOMEWHAT FLABBERGASTED THAT THEY ARE SEEKING IT  
25 AT THIS TIME.

1 THAT'S ALL I HAVE, YOUR HONOR.

2 THE COURT: ALL RIGHT. THANK YOU.

3 MISS HOFFMAN, DO YOU HAVE ANY COMMENTS IN RESPONSE TO  
4 MISS RATZAN'S DEFENSE PROFFER?

5 MS. HOFFMAN: ABOUT THREE SMALL POINTS, YOUR HONOR.

6 THE COURT: SURE.

7 MS. HOFFMAN: I AM NOT GOING TO GO THROUGH AND ADDRESS  
8 THE ICE ISSUES, YOUR HONOR, BECAUSE I AM NOT CHARGING THOSE AS  
9 SUBSTANTIVE OFFENSES.

10 THE CONDUCT THAT IS AT ISSUE IN MY INDICTMENT SPANS  
11 THE DATE SET FROM MR. MALAGO'S OWN STATEMENTS IN A SWORN  
12 AFFIDAVIT THROUGH CONDUCT THAT'S INTO 2011 WHERE NO ONE CAN  
13 POSSIBLY ARGUE THAT HE WAS OPERATING FOR ICE.

14 THE (UNINTELLIGIBLE) OPERATION LOST ITS AUTHORITY IN  
15 2007. WHETHER IT IS IN MARCH OF 1007 OR SEPTEMBER OF 2007, IT  
16 IS 2007. SO ALL CONDUCTS AFTER THAT, AND THE MAJORITY OF THE  
17 CONDUCT IN THIS CASE ARE RELATED TO A COMPANY THAT WAS FORMED  
18 IN 2008 AND ONWARD, AND MR. MALAGO WAS UNDER NO CIRCUMSTANCE A  
19 COOPERATING WITNESS IRRESPECTIVE OF HIS OWN STATEMENTS AND  
20 ACKNOWLEDGEMENTS OF WHEN HE STOPPED BEING A COOPERATOR FOR ICE.

21 I DON'T THINK THERE IS ANYTHING FURTHER I REALLY NEED  
22 TO ADDRESS WITH RESPECT TO THOSE MATTERS BECAUSE IT IS NOT THE  
23 BASIS OF MY DETENTION EXCEPT FOR ONE.

24 MISS RATZAN HAS LEFT YOU PROBABLY WITH THE IMPRESSION  
25 THAT ICE KNEW OF MR. -- OF THIS AIRPLANE BROKER, TAPPED HIM ON



1 THE SHOULDER AND SAY, HEY, CAN YOU HELP US? AND THAT'S NOT HOW  
2 IT HAPPENED. MR. MALAGO WAS CAUGHT IN THE UNITED STATES WITH  
3 ALMOST \$250,000 WORTH OF CASH WITH NO PROPER DOCUMENTATION  
4 REPORTING, OR ISSUES RELATED TO THAT CASH, WAS BROUGHT IN AS A  
5 SUSPECT IN A CASE AND FLED AND HE BECAME A WORKING CI.

6 THEY DID NOT CHARGE HIM. I DO NOT KNOW ANY OTHER  
7 FACTS UNDERLYING THAT CASE EXCEPT THE CIRCUMSTANCES ARISING TO  
8 THAT ARE SEARCHABLE INSIDE LAW ENFORCEMENT DATA INDICES SHOWING  
9 YOU IT WAS A SUSPECT CRIMINAL INVESTIGATION AT THE TIME, NOT A  
10 REACH OUT TO A CLEAN CIVILIAN AND ASKED THEM IF THEY CAN HELP  
11 US DO SOMETHING AT RISK THEMSELVES.

12 IN ADDITION, YOUR HONOR, VIRTUALLY ALL, IF NOT EVERY  
13 SINGLE PLANE IN THE ICE OPERATION THAT HAD A TRANSPONDER ON IT,  
14 THOSE AREN'T THAT WERE CAPTURED. AND THERE ARE TO MY KNOWLEDGE  
15 NO SEIZURES IN THE UNITED STATES, NOR PROSECUTIONS IN THE  
16 UNITED STATES OUT OF (UNINTELLIGIBLE) JAGUAR WHICH IS THE ICE  
17 OPERATION.

18 THERE ARE PLANES AND SEIZURES AND CAPTURES HAPPENED  
19 LARGELY FROM CRASHES OR FOREIGN NATIONAL ACTIVITY WITH AFTER  
20 THE FACT PURPORTING TO U.S. AUTHORITIES, NOT THE OTHER WAY  
21 AROUND. IT WASN'T AMERICAN INSTIGATED INVESTIGATIONS THAT DREW  
22 IN FOREIGN NATIONALS. THERE WERE TRANSPONDERS ON PLANES. DO  
23 NOT GET ME WRONG. I'M NOT SAYING MRS. RATZAN STATED IT  
24 INCORRECTLY. IT'S JUST COINCIDENTALLY THAT NONE OF THOSE  
25 PLANES EVER HAD DRUGS ON THEM. IT WAS ALL THE PLANES THAT

1 DIDN'T HAVE TRANSPONDERS ON THEM THAT HAD DRUGS ON THEM.

2 AS TO JUDGE TURNOFF, YOUR HONOR. THIS ISSUE HAS BEEN  
3 LITIGATED IN FRONT OF JUDGE TURNOFF TWICE. AND HAD JUDGE  
4 TURNOFF FELT THAT THE \$100,000 CASH SURETY BOND WAS THE  
5 APPROPRIATE HE WOULD NOT HAVE REFERRED THIS BACK TO THIS COURT.  
6 HE WOULD HAVE SAID SO IN HEARING THE OTHER DAY.

7 HE COULD HAVE MAINTAINED THAT BOND, HE COULD HAVE SET  
8 IT FOR A HEARING. I SAT BEFORE THAT JUDGE THE DATE IN WHICH I  
9 WOULD DO THE ARRAIGNMENT, THE TERMS AND CONDITIONS IN WHICH I  
10 WOULD BE SETTING. ALL OF THE DATES. I DID IT IN OPEN COURT ON  
11 THE 9TH WITH GETTING AGREED DATES FROM MISS RATZAN'S SCHEDULE  
12 AND EVERYONE SO THAT THESE THINGS WERE ALL DISCUSSED IN OPEN  
13 RECORD ON A WAY THAT AREN'T ORDINARILY.

14 HAD MR. -- NOT MR., I APOLOGIZE. JUDGE TURNOFF FELT  
15 THAT HE HAD ALREADY TAKEN ALL OF THESE MATTERS INTO  
16 CONSIDERATION, THAT HE FELT THAT HE HAD SET THE BOND HE WOULD  
17 HAVE ASKED FOR ME TO SET THIS ISSUE BEFORE HIM AGAIN AND HE DID  
18 NOT.

19 LAST BUT NOT LEAST, YOUR HONOR, THIS DEFENDANT HAS  
20 BEEN ENGAGED IN TWO SUSPECT THINGS SINCE MAY OF 2011. WE  
21 SEIZED FOUR PLANES FROM HIM IN 2011. ONE OF THOSE PLANES, AND  
22 ONE OF THE PLANE THAT CRASHED IN BRAZIL, BOTH MATCHED THE  
23 INDICATED QUALITIES -- MR. MALAGO HAS ALSO GONE ON RECORD AS  
24 SAYING WHAT THE PREFERRED BRAZILIAN DRUG PLANE IS. THE  
25 BRAZILIAN CRASHED PLANE MATCHES IT PERFECTLY. ONE OF THE

1 SEIZED PLANES IN MAY ALSO MATCHES THOSE CHARACTERISTICS  
2 PERFECTLY.

3 MR. MALAGO WAS IN THE PROCESS OF YET ANOTHER PLANE  
4 TRANSACTION AT THE TIME THAT WE SEIZED THOSE, AND THAT IS THE  
5 SOLE PLANE TRANSACTION THAT I CAN FIND RECORD OF THAT  
6 MR. MALAGO DID CORRECTLY AND IT ONLY HAPPENED AFTER THE FACT.  
7 AFTER WE SEIZED THESE PLANES, AFTER WE MADE REPRESENTATIONS OF  
8 WHAT WE FELT WERE THE ILLEGALITIES AND THE IMPROPRIETIES THEN  
9 COUNSEL CAME IN WITH MR. MALAGO, AND EVERY PLACE THAT  
10 MR. MALAGO HAS STOOD IN EVERY ONE OF THESE PRIOR TRANSACTIONS  
11 THEY CHANGED THE PAPERWORK.

12 NOW MR. MALAGO WAS NOT OR HIS COMPANIES STANDING IN AS  
13 THE BUYER OR THE ACTUAL OWNER. ALL OF THE PAPERWORK THAT WE  
14 SAY HAD FALSEHOODS THEY FIXED TO ERASE THOSE FALSEHOODS IN THE  
15 SUMMER OF 2011 AFTER WE SEIZED THOSE FOUR PLANES. I THINK IT  
16 IS EVIDENCE TO SHOW THAT THERE WERE ERRORS IN THE PRECEDING  
17 PAPERWORK. I WILL PROVE AT TRIAL HOW I KNOW MR. MALAGO KNEW  
18 THAT.

19 LAST BUT NOT LEAST, THE OTHER THING THAT HAS HAPPENED  
20 THAT IS SUSPICIOUS IS FROM AUGUST OF 2011 TO DECEMBER OF 2011,  
21 MR. MALAGO HAS REVERSED STRUCTURED ALMOST \$120,000 WORTH OF  
22 CASH OUT OF THE UNITED STATES. THAT'S ASIDE FROM THE HUNDREDS  
23 OF THOUSANDS OF DOLLARS THAT I SHOWED JUDGE TURNOFF WENT TO THE  
24 VARIOUS PEOPLE THEY WERE SEEKING TO HAVE PUT UP MONIES FOR  
25 BOND. THERE WERE HUNDREDS OF THOUSANDS OF DOLLARS THAT WENT TO

1 EVERY PERSON THAT WAS SEEKING TO PUT UP BOND FOR HIM.

2 THIS \$112,000 OR ALMOST \$120,000, I CAN'T TELL YOU  
3 WHERE IT WENT BUT IT WAS REVERSED STRUCTURED OUT OF THE BANKS  
4 IN THE UNITED STATES. AND THAT'S NOT ALL THE MONEY THAT HAS  
5 MOVED OUT. SOME OF IT -- YOU KNOW, HE THEN MOVED A BUNCH OF  
6 OTHER MONIES IN DECEMBER AND JANUARY, SOME OF WHICH WENT TO  
7 LAWYERS, SOME OF WHICH WENT TO HIS HOUSEKEEPER, SOME OF WHICH  
8 WENT TO HIS OTHER FAMILY MEMBERS, YOU KNOW, ASTOUNDING AMOUNTS  
9 OF MONEY THAT HAVE BEEN MOVED SINCE AUGUST. SO TO SAY THAT HE  
10 HAS NO ACCESS TO CASH IS SIMPLY FALSE.

11 THE COURT: THANK YOU.

12 ALL RIGHT. THIS IS A RELATIVELY STRAIGHTFORWARD  
13 MATTER DESPITE THE COMPREHENSIVE FACTUAL SCENARIO BECAUSE THIS  
14 IS A STATUTORY PRESUMPTION CASE, AND I DON'T REALLY NEED TO  
15 MAKE A FINDING OF PROBABLE CAUSE TO BELIEVE THAT THE NECESSARY  
16 STATUTES HAVE BEEN COMMITTED BY THE DEFENDANT BECAUSE A FEDERAL  
17 GRAND JURY HAS ALREADY DONE THAT.

18 SO THERE IS IN FACT A STATUTORY PRESUMPTION THAT THE  
19 DEFENDANT HAS COMMITTED IN FACT SEVERAL NARCOTICS OFFENSES,  
20 WHICH CARRY A MAXIMUM SENTENCE OF 10 YEARS OR MORE, AND BASED  
21 ON THIS RECORD I FIND THAT THE PRESUMPTION HAS NOT BEEN  
22 REBUTTED.

23 AND ALTHOUGH I NEED NOT GO ANY FURTHER THAN THAT, I  
24 WOULD ALSO FIND THAT THE DEFENDANT IS IN FACT A FLIGHT RISK.  
25 AND ONE OF THE PRIMARY FACTORS IS THAT HE IS FACING LIFE IN

1 PRISON, HE IS NOT A CITIZEN OF THE UNITED STATES, HE HAS A  
2 HISTORY OF FOREIGN TRAVEL, FAMILY TIES TO BRAZIL, FINANCIAL  
3 TIES TO BRAZIL, THE FACT THAT ACCORDING TO THE GOVERNMENT HE  
4 REVERSED STRUCTURED CASH WITHIN THE PAST YEAR OUTSIDE OF THE  
5 UNITED STATES.

6 HE IS IN THE AIRCRAFT BROKERAGE BUSINESS AND  
7 APPARENTLY HAS CONTACTS THROUGHOUT THE WORLD, OR MUCH OF THE  
8 WORLD IN THE AIRCRAFT BUSINESS. SO WE FIND THAT HE IS IN FACT  
9 A RISK OF FLIGHT BY A PREPONDERANCE OF THE EVIDENCE.

10 LET ME JUST ALSO MAKE ONE ADDITIONAL COMMENT,  
11 MR. MALAGO, WHICH IS AS FOLLOWS.

12 I THINK IT IS OBVIOUS THAT YOU WOULD BE DISAPPOINTED  
13 THAT I'M GRANTING THE GOVERNMENT'S PRETRIAL DETENTION REQUEST.  
14 BUT LET ME JUST POINT OUT TO YOU THAT BASED ON THESE FACTS, AND  
15 BASED ON THE FACT THAT THERE ALREADY IS AN INDICTMENT, AND  
16 BASED ON THE FACT THAT YOU ARE FACING LIFE IN PRISON I DON'T  
17 KNOW OF ANY LAWYER WHO WOULD HAVE BEEN ABLE TO MAKE A  
18 COMPELLING ARGUMENT ON YOUR BEHALF BASED ON THE UNDISPUTED  
19 FACTS AND YOUR PERSONAL SITUATION THAT WOULD HAVE OVERCOME THE  
20 STATUTORY PRESUMPTION.

21 NEVERTHELESS, I THINK IN FAIRNESS I SHOULD TELL YOU  
22 THAT MISS RATZAN HAS REALLY DONE A MASTERFUL JOB. SHE HAD BEEN  
23 SPEAKING FOR PROBABLY CLOSE TO 40 MINUTES IN A VERY  
24 COMPREHENSIVE, ORGANIZED, LOGICAL WAY AND I CAN'T THINK OF  
25 ANYBODY WHO WOULD HAVE DONE A BETTER JOB.

1 SO THE ULTIMATE RESULT IS NOT IN YOUR FAVOR YOU  
2 CERTAINLY CAN CREDIT HER AND COMMEND HER FOR DOING SUCH A  
3 WONDERFUL JOB. IT WAS A VERY INTERESTING PRESENTATION.

4 TO A CERTAIN EXTENT MY CURIOSITY HAS NOW BEEN PEAKED.  
5 I WOULD LOVE TO BE THE JUDICIAL OFFICER PRESIDING OVER THE CASE  
6 BECAUSE IT SOUNDS LIKE A FASCINATING CASE.

7 I UNDERSTAND, MISS RATZAN, YOU ARE GOING TO HAVE YOUR  
8 CHALLENGES GETTING READY FOR TRIAL. THERE IS NOT MUCH I CAN DO  
9 ABOUT THAT. I AM NOT GOING TO SAY I DON'T CARE ABOUT IT. I  
10 MEAN, IT WOULD BE OF CONCERN TO ANYBODY, BUT I JUST UNDER THE  
11 CIRCUMSTANCES CAN'T DO ANYTHING ABOUT IT.

12 SO I THANK YOU FOR YOUR VERY COMPELLING PRESENTATION,  
13 VERY ORGANIZED, VERY LOGICAL, AND IT IS CLEAR TO ME YOU SPENT A  
14 GREAT DEAL OF TIME PREPARING. SO DESPITE THE FACT THAT I AM  
15 GRANTING THE GOVERNMENT'S PRETRIAL DETENTION REQUEST I JUST  
16 WANTED THE RECORD TO REFLECT WHAT A WONDERFUL JOB MISS RATZAN  
17 DID GIVEN THE LIMITED CIRCUMSTANCES AT HER DISPOSABLE.

18 LET ME ALSO ASK MISS HOFFMAN TO GET TO ME A PROPOSED  
19 WRITTEN PRETRIAL DETENTION ORDER IN A WORD FORMAT, NOT WORD  
20 PERFECT, AND HAVE IT FILED IN MY E-FILE IN BOX BY THE END OF  
21 BUSINESS ON MONDAY. IF FOR SOME REASON YOU ARE HAVING  
22 DIFFICULTY MEETING THAT DEADLINE JUST GIVE CHAMBERS A CALL AND  
23 LET US KNOW THAT YOU ARE JAMMED UP AND HOW MUCH ADDITIONAL TIME  
24 YOU WILL NEED. ALL RIGHT?

25 MS. HOFFMAN: YES, SIR.

1 THE COURT: ANYTHING FURTHER THIS AFTERNOON FROM  
2 EITHER THE GOVERNMENT OR THE DEFENSE CONCERNING MR. MALAGO?

3 MS. RATZAN: NOTHING FROM THE DEFENSE, YOUR HONOR.

4 MS. HOFFMAN: NOTHING FROM THE GOVERNMENT, YOUR HONOR.

5 THE COURT: THANK YOU.

6 GOOD LUCK TO YOU, MR. MALAGO.

7 MS. RATZAN: THANK YOU VERY MUCH, YOUR HONOR.

8 THE COURT: ALL RIGHT.

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## C E R T I F I C A T E

UNITED STATES OF AMERICA

SOUTHERN DISTRICT OF FLORIDA

I, CARL SCHANZLEH, OFFICIAL COURT REPORTER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA, DO HEREBY CERTIFY THAT THE FOREGOING 55 PAGES CONSTITUTE A TRUE TRANSCRIPT OF THE PROCEEDINGS HAD BEFORE THE SAID COURT HELD IN THE CITY OF MIAMI, FLORIDA, IN THE MATTER THEREIN STATED.

IN TESTIMONY WHEREOF, I HEREUNTO SET MY HAND ON THIS 22ND DAY OF JULY 2012.

/S/CARL SCHANZLEH  
CARL SCHANZLEH, RPR-CM  
OFFICIAL FEDERAL COURT REPORTER  
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