

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

3 UNITED STATES OF AMERICA,)

4 Plaintiff,)

5 v.)

6 SERGIO FERNANDO CIFUENTES
7 SAGASTUME,)

8 Defendant.)

No. 3:17-CR-1465-LAB

May 2, 2023

Courtroom 2C

San Diego, California

9 TRANSCRIPT OF DIGITALLY RECORDED PROCEEDINGS
10 (Surety Exam and Bond Hearing)

11 BEFORE THE HONORABLE MICHAEL S. BERG, MAGISTRATE JUDGE

12
13 APPEARANCES:

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(Tuesday, May 2, 2023; 1:43 p.m.)

P R O C E E D I N G S

THE CLERK: The United States District Court for the Southern District of California is now in session. The Honorable Michael Steven Berg now presiding.

Calling matters 2, 3, and 4.

Matter 2, 17-CR-1465, United States of America versus Sergio Fernando Cifuentes Sagastume.

ATTORNEY CROWLEY: Good afternoon, your Honor. Nate Crowley appearing. My client is present.

ATTORNEY MURRAY: Good afternoon, your Honor. Allison Murray for the United States.

THE COURT: Thank you.

And which is Mr. Sagastume?

ATTORNEY CROWLEY: Uhm -- raising his hand. Yes.

THE COURT: Okay. Good.

(Other matters heard and not transcribed herein.)

THE COURT: And are the other two matters going forward?

ATTORNEY CROWLEY: Mr. Sagastume is.

(Other matters heard and not transcribed herein.)

THE COURT: And Mr. Sagastume, then, are we ready to go forward on that?

1 ATTORNEY CROWLEY: Yes.

2 THE COURT: So it appears to me -- I was looking at
3 the record -- that we already had -- not "we." Judge Dembin
4 had a detention hearing.

5 Is there some reason that we're doing it again?

6 ATTORNEY CROWLEY: So what happened at the previous
7 detention hearing is Judge Dembin granted the people's -- or
8 the Government's request for detention without prejudice. And
9 he expressed concern that the surety was setting herself up for
10 harm without being aware of the consequences. And so he denied
11 it without prejudice, and suggested that the surety and the
12 family member, who my client will be living with, appear.

13 One of them, his sister, is in the Bay Area. She's
14 appeared. And one of them, the surety, is in Texas. So she's
15 appeared. Both are (indiscernible). So I'm essentially going
16 along with his request for more information, I suppose, to hear
17 directly from the involved people.

18 THE COURT: And did he make any indication that --
19 because I have not talked to Judge Dembin about it. And,
20 obviously, he's no longer here. But did he make any indication
21 that he would grant detention -- or bond, if the sureties were
22 okay with that?

23 ATTORNEY CROWLEY: Go ahead. If you have a memory --

24 ATTORNEY MURRAY: I don't think that was his
25 intention, your Honor.

1 I think that he just said, "I simply don't have any
2 information before me to be able to make an informed decision
3 based on the surety."

4 But just looking at the detention order, it doesn't
5 appear that he then checked the mark for the insufficiency
6 of -- or (indiscernible) bond package as a -- as a reason
7 for -- for not granting bond.

8 THE COURT: Well, since the sureties were not at the
9 last hearing, and I have them -- apparently -- here on video,
10 is there any reason I cannot just take that as new information
11 and just do this detention hearing again? And not take
12 whatever has happened before Judge Dembin? And we just start
13 over?

14 ATTORNEY MURRAY: It would be -- it would be the
15 United States's position that this should be something that
16 is -- that the district court hears, since there -- since Judge
17 Dembin did hear that there were sureties in the United States,
18 did hear that they would be willing to put the property on the
19 line. But, obviously, it's speculative in that they weren't
20 there to say for themselves that they would be willing to do
21 that.

22 But I don't -- it's our position it's not really new
23 information. It was taken into account --

24 THE COURT: So you're saying it's not new
25 information. That Judge Dembin was informed there were

1 sureties -- sureties willing to post property?

2 ATTORNEY MURRAY: Yes, your Honor. That's what --

3 THE COURT: Is that correct?

4 ATTORNEY CROWLEY: Oh, yes. I made that information
5 known to him.

6 I -- I should say, with respect to new information, I
7 have something else that's new.

8 But the sense that I got, he didn't say, if -- if you
9 can get them here, I won't detain. But he -- I think he said
10 something like it would be helpful, or it would be nice;
11 something like that.

12 THE COURT: I'm just going to -- I'm going to find
13 there's new information. I just want to hear it fresh.
14 They're all here. He's here. Let's just do it.

15 So I understand your objection, Ms. Murray. I am
16 going to overrule the objection, and just have the detention
17 hearing. And so if you don't mind going forward, then?

18 ATTORNEY MURRAY: Yes, your Honor.

19 The United States is moving to detain based on
20 serious risk of flight. This is an individual who was
21 extradited to the United States from Guatemala. He is indicted
22 for conspiracy to possess with intent to distribute cocaine
23 while aboard a vessel, subject to the jurisdiction of the
24 United States.

25 The investigation revealed that he's a member of a

1 Guatemalan-based drug trafficking organization, and has
2 participated in a position of leadership as the mayor of
3 Zacapa, Guatemala, in doing so. And --

4 THE COURT: He was a mayor?

5 ATTORNEY MURRAY: He was the mayor at the time, your
6 Honor.

7 And the shipments -- there's at least two seizures
8 associated with the defendant. One involving 866 kilograms of
9 cocaine on board a go-fast vessel, which was detained by the
10 Coast Guard. And then an additional 69 kilograms of cocaine
11 from the Port of Quetzal in Guatemala.

12 Based on that, it is a presumption case. And he
13 would be -- he would be facing a serious sentence, if
14 convicted.

15 The weight of the evidence -- though the least
16 significant factor in this case -- it is strong. There are
17 wire -- there are lawful interceptions of the defendant
18 coordinating these maritime shipments.

19 And as far as the history and characteristics of the
20 defendant, they, too, favor detention. He is not a citizen of
21 the United States, though he has family in the United States.
22 He has no ability to live and work in the United States, as he
23 is awaiting procedure in this case.

24 And based on -- based on just the -- the nature and
25 the circumstances, weight of the evidence, the -- the lengthy

1 conviction that he could -- or the lengthy sentence he could
2 face if convicted, and the significant ties outside of the
3 United States -- there is a flight risk with -- with just
4 crossing the border and heading -- heading back to help, if --
5 if he's facing charges here. The United States does believe
6 detention is appropriate, and that there's no condition or set
7 of conditions that would reasonably assure appearance at trial.

8 THE COURT: Did he stipulate to extradition or waive
9 it? Or did he fight it?

10 ATTORNEY MURRAY: It does appear that he fought
11 extradition in this case.

12 THE COURT: Okay. All right. Mr. Crowley?

13 ATTORNEY CROWLEY: So the -- thank you.

14 The new information -- the second piece of new
15 information that I wanted to present is I looked up the
16 sentences. It looks like a handful -- more than a handful.
17 Maybe 12 co-defendants in this 17-CR-1465 matter have been
18 sentenced.

19 My client reports to me -- I can't confirm this right
20 now -- that he's spent about five and a half years in a
21 Guatemalan jail, awaiting extradition. And it sounds like he
22 was litigating it.

23 First of all, I would ask you not to hold his
24 exercise of his rights to litigate extradition against him.
25 But my -- my point in bringing this up is the vast majority of

1 these sentences of the other defendants in this cause number
2 are in the 60- to 70-month range. There are a couple who got
3 48 months and a couple who got 78 months. And the highest was
4 87 months. And all of this I bring up because Mr. Cifuentes
5 Sagastume is not in the same position as somebody facing that
6 much time without potentially five and a half years of earning
7 credit while awaiting extradition.

8 If he got, say, 66 months, he would have served that
9 day for day by now. And so that, I believe, decreases the
10 likelihood of him fleeing.

11 The second point I want to make on that is he has a
12 wife and children in Guatemala. And he already knows that
13 Guatemala as a country who is willing to extradite him to the
14 United States.

15 He was miserable in that Guatemalan jail with respect
16 to food, sanitary conditions, threats of violence, and things
17 of that nature. He does not want to end up back there.

18 He doesn't -- as a practical matter, if he were to
19 run, he knows that Guatemalan authorities would send him back
20 at the request of the United States.

21 And then there's the idea that he might go to some
22 third country. But that's why I bring up the fact that the
23 wife and the children are in Guatemala. He comes to tears in
24 talking about them, missing them. And there's really nothing
25 to show that he would -- has plans to go to a third country or

1 a desire to go to a third country, or ties to some third
2 country. And so that would be purely speculative that he would
3 end up in some third country.

4 With respect to the surety, we do have an aunt who my
5 client lived with during high school in Massachusetts. She's
6 the one who is appearing from Texas, on video now. She owns a
7 home there. And she told me the address. I saw that it was
8 worth just over 500,000, according to Zillow. She's willing to
9 sign on as a surety.

10 Depending on the amount, she -- it, of course, brings
11 her pause to sign up to be liable for that amount of money.
12 But this is somebody who was essentially a mother figure for my
13 client and certainly wants to help, as long as she is able.
14 It's just that it's been difficult for her to commit fully,
15 without knowing what the dollar amount would be. But I would
16 invite you to speak to her about that when the time comes.

17 And then the other family member we have is my
18 client's sister, Maria, who's logged in, I believe. She's with
19 a couple of other people.

20 There's a large group of family members who all live
21 in Hayward, California, willing to have my client live with
22 them. Willing to feed and shelter him. Willing to bring him
23 back down here for court, whether it's driving or arranging
24 plane tickets.

25 The situation in Hayward is there are multiple young

1 children between the ages of two and seven who are my
2 client's -- I suppose, they're children of my client's nieces.
3 And their hands are full as stay-at-home parents with these
4 young children. And so my client's contribution would be
5 assisting with caring for these young children. And I believe
6 there's another child who is soon to be born. So their hands
7 will definitely be full. And he is able to assist in that way,
8 where we don't run into the problem of his inability to work
9 lawfully.

10 As you can see from the bail packet, my client was
11 actually paroled into the United States I think in 2008 or
12 2006. He then reports to me that he took voluntary departure.

13 Because it's been more than ten years, my
14 understanding is that he would be -- not be admissible and not
15 removable. He has no criminal history. And so the immigration
16 status is essentially not going to be a problem here.

17 So we've got somebody with significant ties to -- to
18 California and the United States, generally; which is, I think,
19 unusual for somebody who's extradited from another country.

20 He's never fled. He's never failed to appear. We
21 don't have these situations where there's plans to go to
22 another country or harmful jail calls where they're discussing
23 running away. And we have somebody who, if the sentence is
24 anywhere near the average of what the other defendants are
25 getting in this matter, he's already completed it.

1 And so what I'm going to ask is that you consider
2 conditions that will reasonably assure his appearance. I don't
3 believe that detention is necessary here to assure his
4 appearance, given the totality of this situation as an
5 individual who has a lot of family in the Bay Area, who are
6 willing to do anything they can to get him to court. And this
7 is a -- there's just not evidence here that supports a risk of
8 flight, considering all of this information.

9 THE COURT: And then the family that -- that you
10 indicated, it was his sister or cousin that had the
11 half-a-million-dollar home?

12 ATTORNEY CROWLEY: That's his aunt.

13 THE COURT: Aunt. And there's other family. Do they
14 have both a home, too? Or no?

15 ATTORNEY CROWLEY: They, I believe, are renters.

16 THE COURT: Everybody?

17 ATTORNEY CROWLEY: Sorry?

18 THE COURT: Everybody?

19 ATTORNEY CROWLEY: I don't want to say the wrong
20 thing, but I believe they are all renters.

21 THE COURT: Are you typing a question? Is that what
22 you're doing?

23 ATTORNEY CROWLEY: No. I'm looking at my -- just to
24 speculate, I see that there's apartment numbers, for just
25 about --

1 THE COURT: And you said that he was -- he fought
2 extradition for five years?

3 ATTORNEY CROWLEY: I'm working off of --

4 THE COURT: I mean, I'm certainly not holding the
5 fact that he wanted to fight extradition against him. However,
6 it's somewhat of a contradiction in the fact that you said he
7 was so miserable in jail there and hated being in custody in
8 Guatemala. And all he had to do is simply say he would be
9 willing to come to this country, and he would be out the next
10 day. Or roughly -- I mean, figuratively speaking. So I
11 certainly -- didn't have to wait five years to make his
12 appearance here. That was sort of on him.

13 ATTORNEY CROWLEY: There is --

14 THE COURT: So --

15 ATTORNEY CROWLEY: Oh, I'm sorry.

16 THE COURT: I was just going to say, so although I
17 don't hold it against him, I certainly -- it does give me some
18 concern that if he were not here and presented himself here --
19 he didn't just show up at the border and say, "Hey, there's a
20 case out against me. I would like to resolve it."

21 And so if he were to take off and not appear, I don't
22 think he's going to willingly come back. How's that?

23 But looking at the 3142 factors, there's -- looking
24 at his character, there's been no evidence presented about
25 that. That would be neutral, as well as his physical and

1 mental conditions.

2 He's got family ties here, as you've indicated, so
3 that would certainly favor setting bond.

4 He's not employed. He has no financial resources of
5 his own, that I can see. He's got no length of time in this
6 community. So those would all favor setting -- or not setting
7 bond but detaining him.

8 ATTORNEY CROWLEY: Your Honor, just respectfully, I
9 don't know if I indicated this.

10 He did attend high school in Massachusetts. Not all
11 four years but at least a year or two while living with the
12 aunt. And I -- I don't know if I just missed that. But my --

13 THE COURT: That's fine.

14 ATTORNEY CROWLEY: That's --

15 THE COURT: When I say about his ties to this
16 community or length of residence here, he has -- that doesn't
17 really -- to me -- seem to be indicative of setting bond; as
18 far as length of residence in the community at this point in
19 time, if he went to high school in Massachusetts years ago. So
20 that doesn't sway me one way or the other.

21 He does have community ties, which would favor
22 setting bond.

23 And as you indicated, he has no prior criminal
24 history or past conduct or failure to appear in court, which
25 would favor setting bond. No history of alcohol or drug abuse

1 that has been presented, so that would be a neutral.

2 Overall, I -- I mean, the factors setting bond
3 certainly outweigh those in favor of detaining him. But I am
4 concerned about the fact that he was extradited here and took
5 so long in fighting the case. Although, not holding that
6 against him, it certainly does give me some great concern. And
7 the fact that he is seen as not just a low-level individual in
8 this conspiracy. Although some people have -- as you've
9 said -- gotten 48 to 60 months or 70 months. But I'm assuming,
10 maybe wrongly so, that they were individuals that were less
11 involved than he was in this case.

12 Ms. Murray, is that a fair statement?

13 ATTORNEY MURRAY: I believe that's -- that is the
14 case, your Honor.

15 THE COURT: So all in all, Mr. Crowley, I would be
16 inclined to set a bond, but it would be a much higher bond than
17 somebody I would normally set for in this circumstance, based
18 on all of the factors.

19 And so if his aunt is willing to pledge her entire
20 home, \$500,000, I would do that. But I don't know if that's
21 something that she wants to do.

22 So do you want to talk to her about that? We can put
23 her on, and see. But it would be her entire house.

24 What's her name?

25 ATTORNEY CROWLEY: Ana -- I'm sorry. Ana Christina

1 Gomez.

2 THE COURT: Is she on the camera, in the blue?

3 ATTORNEY CROWLEY: I believe she is in the blue, yes.

4 THE COURT: Ms. Gomez, can you hear me?

5 TELEPHONIC SPEAKER GOMEZ: Yes, I can hear you.

6 THE COURT: You don't have to make any decision right
7 now. I will let you spend some time thinking about that.

8 I would consider approving a bond in this case, if
9 you were to put your house up. Which means that should
10 Mr. Sagastume either fail to appear in court or violate any of
11 the conditions of the bond I would set, you would be at risk of
12 losing your house. And when I say that, "at risk," that would
13 be up to the Government. But I could probably guess 99 percent
14 that they would move to forfeit your home. And so you would
15 honestly lose your home, if that were to happen. So this is
16 not something that you should consider lightly.

17 Do you understand?

18 TELEPHONIC SPEAKER GOMEZ: Yes, I do.

19 THE COURT: So I -- I won't set -- I won't put you on
20 the spot now unless you want a surety exam. So --

21 ATTORNEY CROWLEY: I was going to suggest letting her
22 think about it. I've sent her the forms that she would have to
23 sign.

24 THE COURT: Why don't -- why don't we do this. Why
25 don't we examine her now, and so she's aware of it. And then

1 if she decides to, that's fine. And if she decides not to,
2 that's fine, also.

3 So could you please state your name -- your full name
4 and spell your last name, ma'am?

5 TELEPHONIC SPEAKER GOMEZ: (Indiscernible.)

6 THE COURT: I'm sorry. I didn't hear you.

7 TELEPHONIC SPEAKER GOMEZ: (Indiscernible.)

8 THE COURT: It's not coming across. You're breaking
9 up.

10 TELEPHONIC SPEAKER GOMEZ: Yes. My name is Ana
11 Christina Gomez.

12 THE COURT: Okay. Could you spell your last name.

13 TELEPHONIC SPEAKER GOMEZ: G-O-M-E-Z

14 THE COURT: Okay. Could you place her under oath.

15 THE CLERK: Ms. Gomez, could you please raise your
16 right hand.

17 (Witness sworn.)

18 THE WITNESS: Yes.

19 THE CLERK: Thank you.

20 You may lower your hand.

21 THE COURT: And, Ms. Gomez, do you know Sergio
22 Cifuentes Sagastume?

23 THE WITNESS: Yes, I do.

24 THE COURT: And how do you know him?

25 THE WITNESS: Well, he -- I -- he used to -- he used

1 to live with me in (indiscernible), Massachusetts, while he was
2 in high school.

3 THE COURT: Okay. And you're related to him?

4 THE WITNESS: He -- my nephew. He's my sister's son.

5 THE COURT: Do you know why he is in court?

6 THE WITNESS: No, I don't.

7 THE COURT: He is charged with conspiracy to possess
8 with intent to distribute cocaine on board a vessel;
9 international conspiracy to distribute controlled substances,
10 cocaine; and criminal forfeiture.

11 He is charged with the distribution of over 5
12 kilograms or more of cocaine.

13 Roughly how much cocaine, Ms. Murray?

14 ATTORNEY MURRAY: It would be over -- over 900
15 kilograms, your Honor.

16 THE COURT: He's charged with -- in a conspiracy with
17 other individuals with moving over 900 kilograms of cocaine.

18 He is facing a sentence of approximately --

19 ATTORNEY MURRAY: I would just estimate ten years.

20 THE COURT: A minimum mandatory of ten years in
21 custody, and it could be longer.

22 He is in court fighting those charges. But if you
23 were to post a bond for him, you would be required to post your
24 house as collateral. And if he failed to show up or violated
25 any condition of the bond, you would be at risk of losing that

1 home.

2 Do you understand?

3 THE WITNESS: Yes, I understand. And
4 (indiscernible).

5 THE COURT: I'm sorry? You cut out again.

6 THE WITNESS: Okay. I -- I understand that, and I
7 will have to consider that.

8 I would love to help, but I -- it's something that I
9 will have to think about it.

10 THE COURT: Right. I don't want you to make any rush
11 decision because it would be -- honestly, it would be horrific
12 were you to lose your home in this situation. And everybody
13 would hate to see it.

14 But if that were to happen, the Government would take
15 the hard line, and they wouldn't use your feelings about
16 whether or not they were going to move against you.

17 Do you understand?

18 THE CLERK: Ms. Gomez, would you please hold the
19 phone close to you, so that the Court can listen.

20 THE WITNESS: Yes, I understand that.

21 THE COURT: Okay. Ms. Murray, would you like to ask
22 her any questions?

23 ATTORNEY MURRAY: No, your Honor. That's -- she
24 sufficiently understands.

25 THE COURT: Okay. And, Mr. Crowley, anything?

1 ATTORNEY CROWLEY: No, thank you.

2 THE COURT: All right. Ms. Gomez, you'll have as
3 much time as you want to make any decision. There's no rush at
4 all. You can take a day, a week, six months. There's -- it's
5 entirely up to you whether you decide to do it or not.

6 I just wanted to be sure that you are aware of the
7 fact that if in fact you do post your home and he were to fail
8 to appear in court or violate it, that it is a real event.
9 That the Government would move to take that house.

10 Do you understand?

11 THE WITNESS: I understand that and -- yes, I
12 understand. This is -- this is what I have from all of my
13 work. Right now, at this time. So --

14 THE COURT: Okay. Thank you for being on the -- on
15 the line today.

16 Anything further, Mr. Crowley?

17 ATTORNEY CROWLEY: No. Thank you.

18 THE COURT: Okay. Mr. Sagastume, I ruled.

19 UNIDENTIFIED SPEAKER: Your Honor?

20 If I could, if there -- if a bond is set, we would
21 request there is GPS monitoring and other -- other measures in
22 place.

23 THE COURT: Sure. I would add that.

24 So, Mr. Sagastume, if you do decide that this bond
25 were to happen, I will allow you to live in --

1 Was it San Francisco?

2 ATTORNEY CROWLEY: Hayward.

3 THE COURT: Is that the Northern District?

4 THE CLERK: Yes, it is.

5 THE COURT: Okay. And we'll set the bond in the
6 amount of \$500,000, secured by a Trust Deed.

7 If you are released, sir, you are to reside with a
8 family member, a surety, or at a residence approved by Pretrial
9 Service.

10 You are to participate in a location monitoring
11 program, specifically the home detention aspect. And the
12 technology I will leave up to Pretrial Service's discretion.

13 THE PRETRIAL SERVICES OFFICER: Good afternoon, your
14 Honor. Melissa Ruiz with Pretrial. We did speak to the
15 Northern District of California Pretrial. And they only
16 have -- their availability RF. So they would suggest curfew.

17 THE COURT: I would just leave it up to your
18 discretion, so I'll just leave it. Whatever you put.

19 THE PRETRIAL SERVICES OFFICER: Okay. And if he is
20 to be released to Immigration, then he just has to report
21 within 24 hours.

22 THE COURT: Well, if he's put into Immigration
23 custody, then I don't know that he's going to want to post a
24 bond because he would be doing dead time.

25 THE PRETRIAL SERVICES OFFICER: Okay.

1 THE COURT: Because he would have to get a separate
2 immigration bond, and I don't know if they're going to want to
3 do that.

4 THE PRETRIAL SERVICES OFFICER: Yeah, we just request
5 if he ends up posting, that he report to the nearest Pretrial
6 Services Office to get installed with GPS.

7 THE COURT: Okay.

8 THE PRETRIAL SERVICES OFFICER: Thank you, your
9 Honor.

10 THE COURT: Anything further, Mr. Crowley?

11 ATTORNEY CROWLEY: No. Thank you.

12 THE COURT: All right. Mr. Sagastume, I don't know
13 if the bond is going to happen or not. I've given you an
14 opportunity. It's up to your aunt. I would certainly hope
15 that no family members pressure her to do this because, as she
16 just indicated, it is her life savings. But that's entirely up
17 to her, so we'll see what happens.

18 THE DEFENDANT: Thank you, your Honor.

19 THE COURT: You're welcome. Good luck to you, sir.

20 UNIDENTIFIED SPEAKER: Your Honor, real quickly.

21 Just to clarify the travel, is it all in the state of
22 California?

23 THE COURT: Yes.

24 UNIDENTIFIED SPEAKER: And if you could ask that we
25 be notified when the bond packet is submitted to the Court.

1 THE COURT: Sure.

2 ATTORNEY CROWLEY: Sure.

3 UNIDENTIFIED SPEAKER: Please?

4 (Pause, Spanish being spoken.)

5 THE COURT: Thank you.

6 Thank you, Ms. Murray.

7 (Conclusion of proceedings at 2:13 p.m.)

8

9 --oOo--

10 I certify, by signing below, that the foregoing is a correct
11 stenographic transcript, to the best of my ability, of the
12 digital recording of the audio proceedings had in the
13 above-entitled matter this 8th day of May, 2023. A transcript
14 without an original signature or conformed signature is not
15 certified. I further certify that the transcript fees and
16 format comply with those prescribed by the Court and the
17 Judicial Conference of the United States.

18 /S/ Amanda M. LeGore

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20 AMANDA M. LeGORE, RDR, CRR, CRC, FCRR, CACSR 14290

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