

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re: :
 UNITED STATES OF AMERICA, : Docket #13cr315
 Plaintiff, :
 - against - :
 FREDERIC CILINS, : New York, New York
 Defendants. : May 15, 2013
 ----- :

PROCEEDINGS BEFORE
 THE HONORABLE FRANK MAAS,
 UNITED STATES DISTRICT COURT MAGISTRATE JUDGE

APPEARANCES:

For the Government: U.S. ATTORNEY'S OFFICE
 SOUTHERN DISTRICT OF NEW YORK
 BY: DANIEL TEHRANI, ESQ.
 One Saint Andrew's Plaza
 New York, New York 10007
 (212) 637-2455

For the Defendant: LAW OFFICE OF MICHELLE P. SMITH, P.A.
 BY: MICHELLE SMITH, ESQ.
 827 Menendez Court
 Orlando, Florida 32801
 (407)-616-7641

INTERPRETER PRESENT

Transcription Service: Carole Ludwig, *Transcription Services*
 141 East Third Street #3E
 New York, New York 10009
 Phone: (212) 420-0771
 Fax: (212) 420-6007

Proceedings recorded by electronic sound recording;
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E X H I B I T S

<u>Exhibit Number</u>	<u>Description</u>	<u>ID</u>	<u>In</u>	<u>Voir Dire</u>
None				

1 THE CLERK: United States v. Frederic Cilins.
2 Counsel, state your name for the record.

3 MR. DANIEL TEHRANI: Good evening, Your Honor,
4 Daniel Tehrani for the Government. With me at counsel
5 table is Special Agent Christopher Martinez.

6 MS. MICHELLE SMITH: Good afternoon, again, Your
7 Honor, Michelle Smith on behalf of Frederic Cilins seated
8 to my right.

9 THE COURT: Good afternoon or evening. I
10 understand Judge Wood has referred the bail issue to me, as
11 I thought she might.

12 MR. TEHRANI: Yes, Your Honor.

13 THE COURT: I guess I have two questions beyond
14 what we discussed earlier, the first of which relates to
15 the underlying conduct. I read in some magistrate judge's
16 decision in Florida - I don't see a name on it - that the
17 conduct involved payment of as much as a million dollars in
18 bribes, but I don't think I understand much about the
19 underlying conduct. Let me start with that.

20 MR. TEHRANI: Sure, Your Honor. So by way of
21 background, the case ultimately arises out of an extremely
22 valuable mining contract.

23 THE COURT: That's the \$12 billion mining company
24 that's referred to?

25 MR. TEHRANI: Yes, most likely more than that.

1 Attained from the former government of Guinea by an entity
2 of which the defendant was a representative. There is an
3 ongoing criminal investigation into the circumstances
4 surrounding the procurement of that mining contract. And
5 in connection with that criminal investigation, the
6 defendant contacted a government cooperating witness, who
7 I'll refer to as a CW, that CW is a wife of a former high-
8 ranking Guinean government official in the prior
9 government. There's been sort of regime change.

10 And so the defendant contacted the CW to have the
11 CW destroy documents that purported to, that were
12 purportedly evidence of the CW's involvement with this
13 mining company, with payments to the CW, again, purportedly
14 to help that mining company obtain the contract.

15 THE COURT: So it's a Foreign Corrupt Practice
16 Act?

17 MR. TEHRANI: The underlying investigation, yes,
18 Your Honor, is an FCPA investigation. And in addition to
19 destruction of evidence, the defendant wanted the CW to lie
20 to the FBI.

21 And so that led to a series of recorded telephone
22 calls and recorded meetings. There was three recorded
23 telephone calls, four recorded meetings between the
24 defendant and the CW. And in those calls and in those
25 meetings, the defendant repeatedly asked the CW to destroy

1 the documents urgently. And not just documents, he wanted
2 to destroy the originals of these documents. He wanted to
3 witness the destruction of the documents so that he could
4 be certain that he observed the destruction of the original
5 documents.

6 At some point during the meetings and calls - it
7 wasn't the first call, it was meeting along the line, the
8 CW informed the defendant that she had been contacted by
9 the FBI, that the grand jury was involved, and, in fact,
10 provided a French description of what a grand jury is, and
11 the defendant was dismayed that they had not acted quickly
12 enough, that now the FBI was involved, and they really
13 needed now to urgently destroy these documents.

14 At another meeting, the CW brought copies of the
15 documents that the defendant wanted destroyed. The
16 defendant was, again, upset because these were not the
17 originals, and so would not serve his purpose or the
18 purposes of these meetings to destroy copies. He needed
19 the originals destroyed.

20 The defendant then had the CW sign a statement, a
21 declaration that included a number of false statements,
22 including the fact that the CW had never had any contact
23 with the mining company, that the CW had never been paid in
24 any way, that the CW had never intervened in any way on the
25 company's behalf. That document was recovered from the

1 defendant when he was arrested. This document that he
2 provided to the CW that the CW signed was recovered from
3 the defendant when he was arrested, after he was arrested,
4 in addition to \$20,000 in cash. And that \$20,000 in cash
5 was a downpayment on the million dollars that the defendant
6 offered the CW for the CW's assistance in both destroying
7 these documents as well as providing false information to
8 the FBI.

9 That was not the extent of the money that was
10 going to be paid. The defendant also offered the CW an
11 additional \$5 million contingent upon the mining company
12 ultimately maintaining these mining (inaudible).

13 THE COURT: Well, let's assume that the case is
14 strong and then there is a considerable inconsistency
15 between the representation to Pre-Trial Services that the
16 defendant makes - I don't have the report, but it was
17 something like 25,000 or 30,000 Euros, something on that
18 order, and the notion that he could come up with these
19 sums, perhaps with others, to pay to silence somebody and
20 for other corrupt purposes. What struck me in the
21 detention findings from Florida was that the defendant has
22 proposed, in addition to posting substantial property with
23 the other co-owners, 24-hour security. And assuming the
24 Government played a role in the selection of the security
25 company, I'm not sure why a private militia isn't enough to

1 ensure the defendant's appearance.

2 MR. TEHRANI: A couple of things on that point,
3 Your Honor. The first is that if the defendant has the
4 resources in order to pay for his own private security, he
5 certainly has the resources to evade security and to flee.

6 The other is that having --

7 THE COURT: I'm not sure that that follows. I
8 mean if he hires, to use mayoral candidate Lhota's
9 unfortunate phrasing, a mall cop, that would follow, but
10 if, after consulting with the U.S. Attorney's Office, he
11 hires a major security firm, then it seems highly unlikely
12 that they would allow any steps to take place where he
13 could flee.

14 MR. TEHRANI: The question is not whether the
15 security firm would be somehow in on it. It's more that he
16 has significant resources in order to concoct other ways
17 with other individuals who are certainly involved in this
18 scheme, the scheme to destroy documents, the scheme to
19 force witnesses to lie --

20 THE COURT: I'm just focusing, and you may be
21 right, but I was trying to focus on risk of flight first.
22 If he's guarded 24/7 by a security firm of some national
23 prominence, then I'm not sure that risk of flight is still
24 part of the equation. Risk of further obstruction perhaps,
25 but do you concede that risk of flight then would largely

1 be out of the case?

2 MR. TEHRANI: I don't, Your Honor, and I
3 understand the point you're making, but 24-hour
4 surveillance by security guards at your own home is not the
5 same level of security that you would have, or the
6 Government would be assured of, if he were detained. And
7 so there is going to be inherently some risk that, despite
8 the best efforts of this privately retained security
9 entity, that the defendant will be able to evade security.
10 And the point that I'm trying to make is to the extent he
11 has the resources for that, he has the resources to find
12 whatever loophole, whatever way he can find to evade that
13 security.

14 The other point that I'd like to make, Your Honor,
15 is having that kind of money is inconsistent with the
16 income that he's reported to Pre-Trial Services, which I
17 understand he's reported properties.

18 THE COURT: For some reason the Pre-Trial
19 Services report I guess maybe it got turned back. Is there
20 a copy floating around? Thank you. Go on, I'm sorry.

21 MR. TEHRANI: So the defendant has reported a
22 number of properties. As an initial item, not all of all
23 of those were initially disclosed to Pre-Trial Services.
24 So there was this initial issue of disclosing five
25 properties and then subsequently disclosing two additional

1 properties. Those turned out to be the most valuable of
2 the properties.

3 Owning those properties seems to me to be somewhat
4 inconsistent with what he's reporting as his monthly and
5 annual income. It also seems inconsistent to me to be the
6 income that someone who can afford to pay a million dollars
7 in cash and five million dollars later has access to. So
8 either the defendant is not being forthcoming with Pre-
9 Trial Services or it's not an accurate depiction of the
10 money and assets the defendant does, in fact, have access
11 to.

12 The second point about those properties, Your
13 Honor, is that, again, there was an issue with disclosing
14 the ownership of those properties and disclosing the
15 ownership of the entity that owned those properties. There
16 are these two LLC's.

17 And I understand, I know defense counsel will say
18 that was an oversight, but whether it is or it is not, the
19 two other individuals who are co-owners of these LLC's and
20 own these properties are very much coconspirators with the
21 defendant. They're individuals who have been intercepted
22 over wires talking to the defendant about the defendant's
23 meetings with the CW. They are individuals who signed some
24 of the contracts with the CW, the contracts that the
25 defendant was asking the CW to destroy. So their

1 incentives are very much aligned with the defendant as far
2 as the defendant not returning to court on these charges.

3 Now, if Your Honor is inclined to think that the
4 security guard is going to address risk of flight, I don't
5 necessarily need to talk more about that. I just would
6 note for the record the defendant is not a citizen of the
7 United States. He has no ties to this community, has very
8 few ties to the United States. There is no extradition
9 treaty with France, so if he were to flee to France, he
10 could not be extradited back to the United States.

11 He is facing significant penalties, and, you know,
12 we credit the findings of the magistrate judge and defense
13 counsel that the exposure here is 97 to 121 months which is
14 still a significant amount of time. So that definitely
15 does give the defendant incentive to flee.

16 Focusing on dangerousness, and I mean
17 dangerousness by way of destroying evidence and
18 destruction. That is what the defendant did, that is what
19 he is charged with, and it was in a very overt way. These
20 were not coded conversations. There's nothing ambiguous
21 about what happened here. The defendant knew someone was a
22 key witness in a criminal investigation, sought to have
23 that person destroy documents, sought to have that person
24 obstruct a grand jury investigation, sought to have that
25 person lie to the FBI.

1 THE COURT: But the jig is pretty much up as to
2 that, wouldn't you agree?

3 MR. TEHRANI: I'm sorry?

4 THE COURT: The jig is pretty much up as to that.

5 MR. TEHRANI: As to that witness, yes, Your
6 Honor. You know, the defendant still has access to others.
7 The defendant still has access to his coconspirators. And
8 I think it speaks of the defendant's willingness to evade
9 prosecution and speaks of his willingness to do things to
10 ensure that criminal prosecutions, whether it's the
11 underlying FCPA one or it's this one, go away.

12 And for those reasons, Your Honor, the Government
13 agrees with the findings of the magistrate judge in the
14 Middle District of Florida, as well as Pre-Trial Services'
15 recommendation here that detention is warranted.

16 THE COURT: Miss Smith.

17 MS. SMITH: Your Honor, I'll begin with the
18 question that you posed to Mr. Tehrani about the underlying
19 offense. With all due respect to Mr. Tehrani, I think some
20 of the facts he's laid out are not necessarily what we
21 would propose to the Court and what we would be willing to
22 put in front of a jury with regard to the underlying facts.

23 We had roughly ten hours of hearings, and a lot of
24 that was me outlining the problems and issues with the
25 Government's case, beginning with what Mr. Tehrani told

1 Your Honor a while ago. Mr. Cilins prior was an agent of
2 BSGR. BSGR is the entity in question here. That was in
3 2006. He has not been an agent of the entity, from the
4 best of my knowledge and understanding, from all of the
5 investigation I've done, since 2006. And that's public
6 knowledge, it's all over the internet, it's been reported
7 by half the reporters that are sitting in the room, that he
8 has not been an agent. Some have reported other things.

9 The contracts in question were signed initially in
10 2006 and were renewed in 2008. Mr. Cilins was not present,
11 a part of, had anything to do with the 2008 signing of the
12 final contracts in Guinea. And, Your Honor, what happened
13 was Lansana Conté, the deceased president of Guinea, was
14 the one who initially, he and the minister of mines signed
15 the initial contracts. Then after he died and the interim
16 government took over, those contracts were reviewed as were
17 the contracts of Rio Tinto and Chinalco, and the contracts
18 of all the other mining companies that are in Guinea right
19 now. They were reviewed. They were approved, and BSGR was
20 let to go forward.

21 Rio Tinto had sat on these contracts since 1990's,
22 on these iron ore deposits. They had been sitting on them
23 and had done nothing. BSGR came in, and between 2006 and
24 2009, '11, '12 actually started into actually drilling,
25 production, and research. Rio Tinto sat on them probably

1 to keep the iron ore and the bauxite monies up and the
2 commodity prices up.

3 Once Rio Tinto had to give back concessions, some
4 of those concessions were what the mining contracts that
5 BSGR received. They bid on them like every other mining
6 contractor, there were three or four of them that bid.
7 They were the recipients in 2008.

8 THE COURT: Yeah, but the charges here at the
9 moment are not FCPA charges. They relate essentially to
10 the obstruction of the grand jury.

11 MS. SMITH: They do, Your Honor, but the problem
12 is is the Government wants to make it a very - this one
13 limited issue. You have to have the backdrop to understand
14 why Mr. Cilins was doing what he did, which we deny that he
15 was obstructing the grand jury. And if I could have just a
16 few minutes.

17 THE COURT: Sure.

18 MS. SMITH: In 2009 the CW, Mamadie Toure, which
19 it's all over the papers, is that she was the CW, who was a
20 consort of the deceased, not the wife, she was not the
21 legal wife, has never been the legal wife, according to her
22 own family, of the president. Was ran out by the next
23 government after he died, she was ran out of the country.

24 The following year a new interim government came
25 into play in Guinea. They, again, reviewed the mining

1 contracts of Rio Tinto, Chinalco, BSGR, and all of the
2 other entities in Guinea. The contracts were approved.
3 Nothing was found to be out of line.

4 In 2010, Alpha Condé, the current president, he
5 won the election. There was speculation in the election,
6 and Alpha Condé right now, it is under investigation, my
7 understanding is from the World Bank, that he and his son
8 Mohamed Condé who are the driving force, along with George
9 Soros and Walter Hennig, and that is the George Soros we
10 all know, are behind this investigation because they want
11 Chinalco, who has paid something to the tune of \$25 million
12 currently to Alpha Condé's son Mohamed.

13 So there are many investigations going on in
14 Guinea now into both the current president, past contracts,
15 and everything. These contracts are worth a lot of money.
16 But Mr. Cilins is not a beneficiary thereto. His deal and
17 work, to the best of my understanding, was done in 2006.

18 Now backdrop this over Mamadie Toure. Throughout
19 the years, and especially in 2010 when there was an effort,
20 either on her behalf, with her name, or the use of her
21 name, to exact payments from various sources, i.e. Rio
22 Tinto, BSGR, and other mining companies.

23 THE COURT: BSGR is a U.S. company or --

24 MS. SMITH: It is not a U.S. company. It is the
25 Benny Steinmetz Diamond Group. Benny Steinmetz Resources

1 Group is what it would be.

2 THE COURT: And where's it located?

3 MS. SMITH: England, the U.K.

4 THE COURT: Okay.

5 MS. SMITH: Rio Tinto is Australia, Chinalco is
6 obviously China, Brazil Vale is Vale from Brazil, and then
7 there's other companies, but those are the major four, five
8 players in Guinea right now.

9 Rio Tinto is now in - well, let me back up.
10 Mamadie Toure, others are on her behalf are and have been
11 attempting to exact payments, blackmail, and extort money.
12 They were presented - and I'll use this - this is a
13 contract that was signed, you owe me money, I introduced
14 you to this person, I introduced you to that person. The
15 contracts, Your Honor, that are floating around that he
16 Government I believe has and are relying on are frauds.
17 There are no originals, there have never been originals,
18 and that was exactly what we put forward at the detention
19 hearing.

20 The reason, as I said at the detention hearing,
21 that Mr. Cilins wanted to retrieve this is to stop the
22 blackmail once and for all. She signed a prior attestation
23 - excuse me - her attorney signed a prior letter to BSGR in
24 2010 saying that these contracts that the Government is
25 relying on are fraudulent, they're forgeries. We don't

1 want to get into this, we want to back off. She signed
2 two, Mamadie Toure, two attestations in 2012 saying
3 virtually identically what she signed with Mr. Cilins
4 during the pendency of this case, long before the grand
5 jury started.

6 Your Honor, it is our position, Mr. Cilins'
7 position, that these purported original contracts, these
8 purported business dealings are non-existent with Mamadie
9 Toure. BSGR never had any business dealings with Mamadie
10 Toure. Furthermore, she was ran out of Guinea January of
11 2009 within weeks of Lansana Conté dying.

12 THE COURT: So your position is your client is a
13 victim rather than a --

14 MS. SMITH: Yes, Judge, we are, and that's
15 exactly our position. And because Mamadie Toure had
16 absolutely no ability to influence any contracts. They're
17 saying 2009, 2010, 2011, 2012. She is not welcome in the
18 country of Guinea. How is she going to get the Guinean
19 government to do anything on anyone's behalf - BSGR, Rio
20 Tinto, Chinalco - if she's not welcome in the country and
21 she's no longer a part.

22 THE COURT: How do I square what your client
23 reports as income to Pretrial with his assets by way of
24 real estate?

25 MS. SMITH: Very simply, Your Honor. As I've

1 explained and I tried to explain in the court there and I
2 explained to Mr. Jeff Stimel, I believe his name, with Pre-
3 Trial Services today --

4 THE COURT: Stimel, yeah.

5 MS. SMITH: His income for the last two years has
6 decreased. The income he reported is his income from the
7 company CWF, I think it's CWF or CFW, that he actually
8 runs. Previous to that he has larger amounts of income.
9 He is a legitimate, respected businessman. He travels to -
10 hasn't traveled to Guinea in several years, but he travels
11 to Guinea, to Sierra Leone, Mali, Morocco. He's traveled
12 all over Africa, all over Europe. I don't know that he's
13 been to Brazil, but they're had dealings with Brazil to
14 import chicken from Brazil, Halal chicken from Brazil into
15 South Africa. They've imported foods, medicines into
16 Africa. He has acted as a broker and middleman in business
17 in Africa since the late 1990's if not the early 2000's,
18 2000, 2001, and, forgive me, I'm not real sure on the
19 dates.

20 He has had resources, he's worked hard the last
21 two years, income has not been good, but he invested and
22 invested wisely. He invested in real estate here. The
23 properties are paid for, and they're now, one property is
24 rented this coming month, well, it'll be rented. His
25 income will increase and be another \$1,200 in addition to

1 what we reported.

2 He is not receiving payments, to the best of my
3 knowledge, from BSGR. Mamadie Toure has never received.
4 So it is our position that it can't have happened.

5 With regards to the income, again, Your Honor, he
6 has made significant income over the years. The last two
7 years are not good. And, Your Honor, with all due respect
8 to Pre-Trial Services in Jacksonville, the Pre-Trial
9 Services officer testified that she did not have an
10 interpreter. She was not sure if Mr. Cilins did or did not
11 understand, she thought he did, some of the questions. But
12 she was not sure if he did or did not understand, and he
13 certainly did not have me present.

14 Upon my first meeting, and it's 188 miles for me
15 to have gone from my office to South Georgia where he's
16 housed, we talked about what he had. With regard to the
17 incident where the one-third was not disclosed, Your Honor,
18 as I told the court there, as an officer of the court, I
19 take responsibility for that. Mr. Cilins had nothing to do
20 with that. He told me about the properties, I asked the
21 attorney Allen Marcus in Miami to prepare the deeds, to
22 talk to the other - and he sent me the deed and mortgage
23 packages that I presented to the court in Jacksonville.

24 I did not, my bad, I did not fly speck those. I
25 saw what the values were of the properties. They looked

1 okay. When I was submitted - and later during the hearing
2 I caught some typos and asked the judge to have time to
3 review them, and that's in the transcript, Judge. There's
4 about 400 pages of transcripts. I asked him, when I looked
5 at them and actually sat down to fly speck them, I realized
6 we had a problem. I called Allen Marcus. I represented to
7 the court at the last hearing. I called Mr. Marcus and I
8 said is he the 100 percent owner or the one-third owner?
9 He goes one-third. He says I did the affidavits one-third,
10 and I said, no, Allen, go look at them. You didn't. You
11 sent me that he's the sole owner.

12 So we corrected tem, I brought that to the court,
13 and I accept responsibility because I should have double-
14 checked them. But that certainly was not Mr. Cilins'
15 fault.

16 With regard to bond and the issues raised by the
17 United States here today, the problem that I have with the
18 court's ruling, in addition to what we've discussed, is he
19 never found he was a serious risk of flight, and that's the
20 standard in this circuit and virtually every circuit in the
21 country. He said he's a risk of flight. He didn't find
22 he's a serious risk of flight.

23 Assuming, for argument's sake, that the Government
24 met its burden to show that Mr. Cilins is --

25 THE COURT: Wait, let me go back. Why didn't he

1 have to find --

2 MS. SMITH: It's on page, Your Honor --

3 THE COURT: No, I accept what you say --

4 MS. SMITH: It's the case law in this circuit,
5 and I don't have it with me. I think it's in Khashoggi or
6 Dreyer that I cited to the court. I think it's in the
7 Dreyer case. And forgive me, I didn't bring the case with me,
8 Your Honor, but it's either in Khashoggi or Dreyer where it
9 lays out that the U.S. Attorney has to prove that he's a
10 serious risk of flight not just a risk of flight. And I
11 believe the statute also tracks that language.

12 THE COURT: I guess I've always focused on
13 preponderance rather than clear and convincing for the two --

14 MS. SMITH: Yes. And we do that, Judge, you know
15 that we tend to just - yeah, it's preponderance on the risk of
16 flight, but it has to be a serious risk of flight, and I
17 believe it's clear and convincing for danger, but danger's not
18 the issue here. And the Government, neither in this hearing
19 or in the other hearings, has really moved under the
20 dangerousness prong.

21 Mr. Cilins is 50 years old. He's married. He's
22 been with his - he recently married in the United States to
23 the woman he's been with -

24 (conversation in French between attorney and
25 defendant)

1 MS. SMITH: Twenty-one.

2 MR. CILINS: (in French)

3 MS. SMITH: He's been with her twenty-three years.
4 They have three children. They recently married; they married
5 here in the United States. He travels frequently to the
6 United States. He's done so, as represented in both the
7 passport that the Government has, the passport that I have
8 here. He has two legitimate French passports. The documents
9 are with the court, and they were rendered as exhibits in
10 Florida.

11 He is willing to - he's willing to surrender both
12 passports. He's willing to sign over all of the properties
13 that he has, the five properties that he solely owns. He and
14 the other business partners are willing to sign over the other
15 two partners, totalling \$3.6 million worth of assets.

16 Again, he is only - assuming he is convicted, he is
17 only facing ten years, 97 to 121 months, and that's assuming
18 he doesn't plead or assuming he's not - but if he's convicted,
19 he's not looking at a thirty or forty or even a twenty or
20 twenty-five-year sentence.

21 THE COURT: Well, between ten years or being in the
22 country with no extradition for this type of offense, ten
23 years might seem like a very long time.

24 MS. SMITH: I understand that, but, Your Honor,
25 someone with legitimate business ties like Mr. Cilins who's

1 made his business and his reputation on brokering businesses,
2 brokering deals, supplying food stuffs, medicines, etc. in all
3 these foreign countries on three or four continents is not
4 going to be able to look over his shoulder and run from the
5 United States government forever. He would be virtually
6 penniless to have to sit at home in France and hide in his
7 home and not go anywhere. He couldn't conduct business.

8 And that likens to the Adnan Khashoggi case where
9 bond in that case was granted, and he was a Saudi businessman
10 with no way of extradition who was facing significantly more
11 time. Like Mr. Cilins, he did not have significant ties to
12 the United States, but because of the conditions fashioned,
13 this court granted him bail.

14 THE COURT: Although there the Royal Consulate said
15 that they would ensure that he was sent back if he fled to the
16 Kingdom.

17 MS. SMITH: And, Your Honor, I'm not gonna argue
18 with the Royal Consulate, but we all know how foreign
19 countries, if they really wanted to keep him, he would stay,
20 and if he really wanted, they wanted to send him back, they
21 could send him back. It's extremely funny to me that the 911
22 bombers came out of that very same country, and we didn't get
23 any Intel from Saudi Arabia about those people. So I don't
24 take that with a whole grain of salt what the Saudi Arabian
25 Consulate or the Embassy says.

1 THE COURT: I think I've heard enough unless the
2 Government wants to add something.

3 MR. TEHRANI: I do, but before I do, Your Honor,
4 may I just confer with defense counsel for a minute?

5 THE COURT: Sure.

6 THE COURT: I've got the Southern District
7 supplement, but do you have the underlying Georgia report?
8 Thanks.

9 (pause in proceeding)

10 MS. SMITH: Your Honor, Mr. Tehrani brought
11 something that I probably need to bring to the Court's
12 attention. The properties owned - number one, I noticed in
13 the revised Pre-Trial Services report there's actually a
14 property missing, I believe. If I can just - Judge, I think
15 there should be - I don't want to speak out of turn, but I
16 believe we're missing the Turnberry - I believe we're missing
17 the Turnberry property which is the actual vacation home that
18 he owns with his wife. It's owned by Fie Investments (ph),
19 he's the sole owner of that, and that's the affidavit --

20 THE COURT: How much roughly is it worth?

21 MS. SMITH: It doesn't change the analysis. It was
22 245,000 if I remember correctly or 240, but it doesn't change
23 the 3.6 million, the 3.6 was the total. And that is where he
24 would propose to stay. Your Honor, I don't know if you have
25 attached to the back of the report - this it is - it's

1 Turnberry Isle South. It's \$252,410.

2 THE COURT: Is that one of the affidavits here?

3 MS. SMITH: Yes, Judge. And, of course, he would
4 execute those as well as the mortgages. I have the mortgages
5 signed by the manager of the LLC's. Mr. Cilins would also
6 execute those. We did not execute at the time. I have those
7 in my possession if the Court granted bond.

8 Your Honor, the only other thing that if I could
9 just briefly, it's illogical that someone would put their
10 bribe, if they were bribing someone, this Mamadie Toure, in
11 writing. As a prudent businessman you're not gonna lay out
12 your dirty deeds for the world to see in all these
13 contracts, and that's always struck me as odd that BSGR
14 hires, is a huge company, Rio Tinto is a huge company.
15 She's attempted to blackmail both of those companies.
16 Neither one of them I can believe, being multinational,
17 using the best law firms, are going to let their client put
18 that kind of - even if it's true - put it in writing. So
19 that's the thing that is sort of - you said things struck
20 you odd. That's something that struck me as odd, and I'll
21 sit down.

22 MR. TEHRANI: Your Honor, if I may.

23 THE COURT: Yes.

24 MR. TEHRANI: So defense counsel's characterization
25 of what was going on here between defendant and the CW is just

1 simply inconsistent with the recordings were. So as an
2 initial matter, it really doesn't even matter what these
3 documents --

4 THE COURT: Are they in French or --

5 MR. TEHRANI: The documents are in French.

6 THE COURT: The recordings.

7 MR. TEHRANI: The recordings are in French as well.

8 THE COURT: That's what I meant.

9 MR. TEHRANI: And we proposed - we have proposed,
10 some reason, snippets in the complaint, which we could give
11 Your Honor to review. I'm sure defense counsel will take
12 exception to certain of those translations. But as in the
13 sworn complaint - the initial point though is, it almost
14 doesn't even matter what these documents are, and defense
15 counsel could be entirely right, that these documents are
16 entirely fraudulent. The fact of the matter is that the
17 defendant was trying to destroy documents that were the
18 subject of a grand jury subpoena, that the defendant knew were
19 the subject of a grand jury investigation.

20 The defendant encouraged the CW to lie, the
21 defendant wanted to see the destruction of documents. That he
22 - bear with me. In paragraph 22(a) of the complaints, Cilins
23 or Cilans (ph) stated in substance that the CW needed to lie
24 to the FBI. That's after the CW had informed the defendant
25 that she had been contacted by the FBI, and he was, again,

1 very aggravated that they hadn't moved quickly enough.

2 And then the whole structure of payments here is
3 entirely inconsistent with the defendant having nothing to do
4 with the mining company with the extraordinarily valuable
5 contract. He offered a million dollars up front for the CW to
6 destroy these documents and to lie to the FBI and to obstruct
7 the grand jury investigation. As soon as she did that, she
8 got a million dollars.

9 THE COURT: Assuming that she?

10 MR. TEHRANI: If she did those things, she
11 cooperated with the defendant, she got a million dollars. If
12 she did all of those things and the mining company retained,
13 after the entire criminal investigation, the broader criminal
14 investigation, the mining company retained its contract,
15 mining contract in Guinea, the CW would get five more million
16 dollars, five additional million dollars. That is entirely
17 inconsistent with the defendant being concerned about the
18 blackmail. That's entirely inconsistent with the defendant
19 having nothing to do with this mining company from 2006. And
20 it is very much consistent with the defendant having access to
21 all of the resources at this company's disposal, all of the
22 resources that may be used or may be needed to protect this
23 extraordinarily valuable mining contract.

24 THE COURT: Thank you.

25 (pause in proceeding)

1 THE COURT: Whether or not he currently has a large
2 income, it seems that the defendant is a person of means, and
3 certainly some of his associates are persons of means. I
4 understand what the Government has said in relation to danger
5 to the community, but it seems to me the danger of
6 obstruction, no matter how much money the defendant and his
7 colleagues may have, is largely past in relation to this
8 crime, and there's certainly nothing in the traditional sense
9 of dangerousness in terms of weapons and the like.

10 So the issue is risk of flight to my mind, whether
11 it's risk of flight or serious risk of flight, it's will the
12 defendant be available for trial. And the fact that France
13 does not have an extradition treaty with the United States
14 certainly is a significant factor favoring the Government's
15 position.

16 But the question before me is are there any
17 conditions that would reasonably assure the defendant's
18 presence in court for trial, and I conclude that there are,
19 but I think persons beyond his colleagues who are the owners
20 of the other two-thirds of some of the properties need to have
21 some skin in the game.

22 I'm going to fix bail in the amount of a \$15 million
23 personal recognizance bond to be cosigned by five financially
24 responsible people, and further secured by \$5 million cash or
25 property. So it calls for property beyond that which has been

1 proffered thus far.

2 The defendant's travel would be restricted to the
3 Southern and Eastern Districts of New York and the Middle
4 District of Florida.

5 MS. SMITH: Your Honor, Southern District. He
6 actually lives (indiscernible).

7 THE COURT: Oh, okay, he was -I saw he was arrested
8 in the Middle District.

9 MS. SMITH: Sorry, Judge, for interrupting you.

10 THE COURT: No, thank you. Appreciate that
11 correction. He's to surrender all travel documents and not
12 seek new ones. He'll be subject to strict Pre-Trial Services
13 supervision with home incarceration at the Turnberry Isle
14 property to be enforced through electronic monitoring, and,
15 far more importantly, I'm providing that he's to be guarded
16 24/7 by a reputable, capable security company approved both by
17 the United States Attorney's Office and by the Court. So some
18 local security company is not what I have in mind. What I
19 have in mind is people who are armed and who are from a
20 company of some renown. And I'm providing that the defendant
21 is to be detained until all those conditions are met. Any
22 questions about my bail conditions?

23 MS. SMITH: Actually, Your Honor, since I don't
24 practice in this jurisdiction and I'm pro hac, everybody's
25 definition of responsible financial third party is different.

1 THE COURT: And it varies from case to case I find
2 in this district. Sometimes individuals who one would think
3 could not honor a bond are accepted by the United States
4 Attorney's Office after an interview. Sometimes, and Mr.
5 Tehrani can correct me if I'm wrong, my impression is that the
6 Government takes the position that each person would have to
7 be solvent enough to honor the unsecured portion of the bond.
8 More frequently, I think the analysis is could all of the
9 people collectively honor that unsecured portion of a bond.

10 So it's a bit of a moving target, but if the issue
11 arises, then the Court will get involved in that. If folks
12 who are acceptable to the Government after an interview are
13 proffered, then it's not an issue that the Court has to deal
14 with. So I guess that's something that would be decided down
15 the road. Any other questions on your part, Miss Smith?

16 MS. SMITH: Your Honor, the other question that I
17 have are just two little brief matters. I do have his
18 passport. The Government has his 2008 French passport that
19 was issued 2008. I have the 2007. Would you like me to
20 surrender it to --

21 THE COURT: Please.

22 MS. SMITH: -- Your Honor or to --

23 THE COURT: Not to me.

24 MS. SMITH: To the Government?

25 THE COURT: Yes.

1 MS. SMITH: Okay, I'll take care of that. And the
2 other issue, while he's being detained, I know that there is
3 an issue, he has high blood pressure, and he is only getting
4 one portion of his medication.

5 THE COURT: Okay.

6 MS. SMITH: He --

7 THE COURT: Yeah, go on.

8 MS. SMITH: I have the prescription. He takes
9 Temerit which - and I'll spell it for the Court - T-E-M-E-R-I-
10 T, 5 mg one time each day, and I can provide the Court with
11 the actual U.S. name, but the other drug he takes he Coaprovel
12 which is C-O-A-P-R-O-V-E-L, and it's 150 mg by 12.5 mg and he
13 --

14 THE COURT: Wait, 150 mg by what?

15 MS. SMITH: 12.5, it's 150 mg/12.5 mg, and he takes
16 --

17 THE COURT: That's with a B or a V?

18 MS. SMITH: V, V like Victor.

19 THE COURT: Right.

20 MS. SMITH: And he takes one time per day. He is
21 currently receiving the two pills that are the equivalent of
22 Coaprovel, but he's not receiving the equivalent of the
23 Temerit.

24 THE COURT: Ironically, there was a meeting of the
25 criminal justice advisory counsel today with both wardens of

1 the two facilities in New York, and there was some discussion
2 about this. Frequently, they do not have precise analogs or
3 drugs. They always use generic versions. I'll fill out a
4 medical attention slip, but there's no guarantee that they
5 will conclude that the second drug is required. You can
6 always take it up with the warden's office if you think the
7 treatment's inadequate, but I will fill out a medical
8 attention slip.

9 MS. SMITH: Thank you, Judge.

10 THE COURT: Any other questions?

11 MR. TEHRANI: Yes, Your Honor, just one question
12 about court approval of the security firm. Should we come to
13 Your Honor with that, Judge Wood?

14 THE COURT: I guess it's her call in the first
15 place.

16 MR. TEHRANI: Okay.

17 THE COURT: If you chose to appeal it, I guess if
18 she reverses me, it becomes academic. If you don't appeal or
19 if she sides with me on that issue and she wants to refer that
20 to me, that's fine too. I wouldn't suggest you go to whoever
21 the duty magistrate judge is whenever it's ripe for
22 consideration. You can certainly bring that issue to me if
23 Judge Wood approves.

24 THE COURT: Understood, Your Honor, thank you.

25 MS. SMITH: And, Your Honor, would it be

1 appropriate in that case if Mr. Tehrani or Mr. Kobre and I sat
2 down and maybe picked five or six companies, and then we can
3 figure out --

4 THE COURT: Well, ideally you'll agree on one.
5 Failing that, however you want to present the issue to me is
6 fine, but what I don't have in mind, if it comes before me, is
7 hearing about some company I've never heard of even if you can
8 tell me it's the best darn company in the Southern District of
9 Florida. And when I say 24/7, I mean 24/7, such that to the
10 extent that the defendant has to travel to court, that these
11 folks will be traveling with him.

12 I don't know whether you can meet the conditions I
13 fixed, Mr. Cilins, but if you are able to and you thereafter
14 violate any condition of the bond, you and whoever cosigns the
15 bond with you will each become liable for the full \$15 million
16 amount of the bond. Further, if you fail to appear as
17 required, you can be charged with the crime of bail-jumping.
18 So even if for some reason this obstruction of justice case
19 were to be dismissed, you could be prosecuted on that charge.
20 Do you understand all that, sir?

21 MR. CILINS: Yes.

22 THE COURT: Thank you all.

23 MR. TEHRANI: Thank you, Your Honor.

24 MS. SMITH: Thank you, Judge.

25 (Whereupon the above matter was adjourned.)

C E R T I F I C A T E

I, Carole Ludwig, certify that the foregoing transcript of proceedings in the United States District Court, Southern District of New York, United States of America v. Cilins, Docket #13cr315 was prepared using digital electronic transcription equipment and is a true and accurate record of the proceedings.

Signature_____

Date: July 2, 2013