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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

22 CR 00326 (JPC)
Plea

5 EDDY ALEXANDRE,

6 Defendant.
7 -----x

8
9 New York, N.Y.
February 10, 2023
10 3:00 p.m.

11 Before:

12 HON. JOHN P. CRONAN,

13 District Judge

14 APPEARANCES

15 PREET BHARARA

16 United States Attorney for the
Southern District of New York

17 NICHOLAS FOLLY

Assistant United States Attorney

18 CHIESA SHAHINIAN & GIANTOMASI PC

19 Attorneys for Defendant

20 EMIL BOVE III

BRITTANY A. MANNA

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1 (In open court; case called)

2 DEPUTY CLERK: Can counsel, starting with the
3 government, please state your name for the record.

4 MR. FOLLY: Good afternoon, your Honor.
5 Nicholas Folly for the government.

6 THE COURT: Good afternoon, Mr. Folly.

7 MR. BOVE: Good afternoon, your Honor.

8 Emil Bove and Brittany Manna for Mr. Alexandre, who is
9 here today and seated to my right.

10 THE COURT: Good afternoon, Mr. Bove, Ms. Manna, and
11 Mr. Alexandre.

12 THE DEFENDANT: Good afternoon, your Honor.

13 THE COURT: Good afternoon.

14 Mr. Bove, I understand we're here because your client
15 wishes to enter a guilty plea to Count One of the indictment
16 pursuant to a plea agreement with the government. Is that
17 right?

18 MR. BOVE: Yes, your Honor.

19 THE COURT: Mr. Alexandre, is that correct, do you
20 wish to enter a guilty plea today?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: You may stay seated other than when I ask
23 you to take an oath in a few moments, but you're welcome to
24 stay seated during the proceeding as well.

25 Mr. Alexandre, in light of that intention, I am going

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1 to ask you some questions this afternoon. These questions are
2 to assure myself that you wish to plead guilty because you are
3 in fact guilty and not for some other reason, and also to make
4 sure that you know what rights you would be giving up if you
5 were to plead guilty.

6 If you don't understand any of my questions, or if you
7 want to consult with your attorneys at any point for any
8 reason, please just let me know, and I will give you and your
9 attorneys as much time as you need in private to discuss
10 anything you need to discuss. Do you understand that?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: So now I will ask you to please stand and
13 for Ms. Henrich to please administer the oath.

14 (Defendant sworn)

15 DEPUTY CLERK: Thank you. Please be seated.

16 THE DEFENDANT: Thank you.

17 THE COURT: Mr. Alexandre, you're now under oath.
18 What that means is if you answer any of my questions falsely,
19 you can be prosecuted for a separate crime of perjury, and any
20 false answer you give under oath can you used against you in
21 such prosecution. Do you understand that?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: First, I'm going to ask you some questions
24 about yourself. Could you tell me your full name?

25 THE DEFENDANT: Eddy Alexandre. Eddy first name.

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1 Alexandre last name.

2 THE COURT: How old are you, Mr. Alexandre?

3 THE DEFENDANT: 50.

4 THE COURT: 50. How far did you go in school?

5 THE DEFENDANT: Master's level.

6 THE COURT: Where did you get your master's?

7 THE DEFENDANT: Phoenix University.

8 THE COURT: Phoenix?

9 THE DEFENDANT: Yes.

10 THE COURT: And when did you receive your master's
11 degree?

12 THE DEFENDANT: No, it was not completed.

13 THE COURT: Okay. When did you attend classes, I
14 assume, virtually for your master's?

15 THE DEFENDANT: Yes, virtually.

16 THE COURT: How long ago was that?

17 THE DEFENDANT: Couple years ago. I don't have a
18 recollection now.

19 THE COURT: What about jobs? What jobs have you held
20 in the past ten years?

21 THE DEFENDANT: In the past ten years, I held managing
22 IT operations, director of information security, director of
23 information technology I meant, director of technology itself
24 and information security architect, and recently for the past
25 five years, I would say, I was managing the entire information

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1 security operations as a senior architect for HBO and purchased
2 by AT&T and that became Warner Media. And my last job is the
3 CEO of EminiFX.

4 THE COURT: So your last job was CEO of EminiFX?

5 THE DEFENDANT: Correct, your Honor.

6 THE COURT: And also some other questions I must ask.
7 Have you ever been treated or hospitalized for any mental
8 illness?

9 THE DEFENDANT: No, your Honor.

10 THE COURT: Are you now or have you recently been
11 under the care of any doctor or psychiatrist?

12 THE DEFENDANT: No, your Honor.

13 THE COURT: Have you ever been treated or hospitalized
14 for any type of addiction, such as drug addiction or alcohol
15 addiction?

16 THE DEFENDANT: No, your Honor.

17 THE COURT: Have you taken any medicine or pills in
18 the past 48 hours?

19 THE DEFENDANT: No, your Honor.

20 THE COURT: Have you taken any drugs or drank any
21 alcohol in the past 48 hours?

22 THE DEFENDANT: No, your Honor.

23 THE COURT: Are you feeling well physically today?

24 THE DEFENDANT: Yes, considering.

25 THE COURT: Yes. I understand it's not the most

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1 pleasant experience, but does your mind feel clear?

2 THE DEFENDANT: My mind is fully clear, your Honor.

3 THE COURT: Do you understand what is happening at
4 today's proceeding?

5 THE DEFENDANT: Yes, your Honor. I'm changing my
6 plea.

7 THE COURT: Mr. Bove, I assume you've discussed this
8 matter with your client?

9 MR. BOVE: Yes, your Honor.

10 THE COURT: Do you think he is capable of
11 understanding the nature of today's proceeding?

12 MR. BOVE: I do.

13 THE COURT: Do you think he understands the rights he
14 would be waiving if he decides to plead guilty?

15 MR. BOVE: Yes, Judge.

16 THE COURT: Does either counsel have any doubt as to
17 the defendant's competence to plead guilty at this time?

18 MR. FOLLY: No, your Honor.

19 MR. BOVE: No, your Honor.

20 THE COURT: On the basis of Mr. Alexandre's responses
21 to my questions, my observations of his demeanor here in court
22 and the representations of counsel, I find that he is fully
23 competent to enter an informed plea of guilty at this time.

24 Mr. Alexandre, as I just mentioned, this is when I'm
25 going to ask you questions so I can assure that you understand

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1 what you are doing by pleading guilty, and that you wish to
2 plead guilty because you are in fact guilty and not for some
3 other reason. So that means I will explain to you certain
4 constitutional rights that you have. These are rights that you
5 would be waiving and giving up if you are to enter a guilty
6 plea. So it is important that you know and understand those
7 rights.

8 Again, please listen carefully to what I'm about to
9 say to you. As I mentioned earlier, if you don't understand
10 something, just stop me and either I or Mr. Bove will explain
11 the matter to you more fully.

12 Mr. Alexandre, under the Constitution and the laws of
13 the United States, you have a right to plead not guilty to the
14 charges in the indictment. Do you understand that?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: In fact, up until today's proceeding, you
17 have pled not guilty to the charges. Do you understand that?

18 THE DEFENDANT: Correct, your Honor.

19 THE COURT: If you did plead not guilty and you
20 continued to plead not guilty, you would be entitled to a
21 speedy and public trial by a jury on the charges contained in
22 the indictment. Do you understand that?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: At a trial, you would be presumed to be
25 innocent, and the government would be required to prove your

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1 guilt by competent evidence beyond a reasonable doubt before
2 you could be found guilty. Do you understand that?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: A jury of 12 people would have to agree
5 unanimously that you were guilty, and you would not have to
6 prove that you are innocent if you were to go to trial. Do you
7 understand that?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: And at that trial, and at every stage of
10 your case, you would be entitled to be represented by an
11 attorney, and if you cannot afford an attorney, one would be
12 appointed at public expense, meaning free of cost to you, to
13 represent you. Do you understand that?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: During the trial, the witnesses for the
16 government would have to come to this courtroom and testify in
17 your presence. Your lawyer could cross-examine the witnesses
18 for the government, object to evidence offered by the
19 government and offer evidence on your own behalf if you so
20 desired. Do you understand that?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: You also would have the right to have
23 subpoenas issued or other process used to compel witnesses to
24 testify in your defense. Do you understand that?

25 THE DEFENDANT: Yes, your Honor.

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1 THE COURT: At a trial, although you would have the
2 right not to testify -- I'm sorry, let me say that again.

3 At a trial, although you would have the right to
4 testify if you chose to do so, you also would have the right
5 not to testify. And if you decided not to testify, no one,
6 including the jury, could draw any inference or suggestion of
7 guilt from the fact that you did not testify. Do you
8 understand that?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: Have you had a full opportunity to discuss
11 with your lawyers whether there is a basis to seek suppression
12 of some or all of the evidence against you on the ground that
13 your constitutional rights were violated?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: And do you understand that by pleading
16 guilty, you would be giving up your right to seek suppression
17 of the evidence against you?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: And, Mr. Alexandre, if you were convicted
20 at a trial, you would have the right to appeal that verdict.
21 Do you understand that?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: And even now as you are entering this
24 plea, you have the right to change your mind, continue to plead
25 not guilty and proceed to trial on the charges contained in the

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1 indictment. Do you understand that?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Mr. Alexandre, if you plead guilty, and I
4 accept your plea, you will give up your right to a trial and
5 the other rights I have just discussed other than your right to
6 a lawyer, which you will have regardless of whether or not you
7 plead guilty, but there will be no trial, and I will enter a
8 judgment of guilty, and I at a later date will sentence you on
9 the basis of your plea, and after I've considered a presentence
10 report from the probation department and any submission that I
11 receive from your lawyers and from the government, but there
12 will be no appeal with respect to whether the government could
13 use the evidence it has against you or with respect to whether
14 you did or did not commit the crime that is charged. Do you
15 understand that?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Now, if you plead guilty, you also will
18 have to give up your right not to incriminate yourself. That
19 is because I will soon ask you what you did in order to satisfy
20 myself that you are guilty as charged, and that means you will
21 have to admit and acknowledge your guilt. Do you understand
22 that?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: Do you have any questions for me about any
25 of these rights?

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1 THE DEFENDANT: Not at this time, your Honor.

2 THE COURT: And are you willing to give up your right
3 to a trial and the other rights I just discussed with you?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: I've received from the parties what
6 appears to be a signed plea agreement. I will mark that as
7 Court -- I'll do Exhibit 1 because attached to the plea
8 agreement is a document marked as Exhibit A. I am holding up
9 are the plea agreement now including the signature page. Did
10 you sign this plea agreement, Mr. Alexandre?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Did you read the plea agreement before you
13 signed it?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: Did you also discuss it with your
16 attorneys before you signed it?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: And, Mr. Bove, is that correct, did you
19 discuss this plea agreement with Mr. Alexandre?

20 MR. BOVE: Yes, Judge, that's correct.

21 THE COURT: Mr. Alexandre, did you fully understand
22 the plea agreement before you signed it?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: Now, under this plea agreement, you would
25 be pleading guilty to Count One of the indictment which charges

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1 you with committing commodities fraud in violation of Title 7,
2 United States Code, Sections 9(1) and Section 13(a)(5), as well
3 as Title 17 of the Code of Federal Regulations, Sections 180.1,
4 and Title 18, United States Code, Section 2. Do you understand
5 that?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Now, Mr. Folly, would you please state the
8 elements of that offense?

9 MR. FOLLY: Yes, your Honor.

10 The elements of Count One are:

11 First, the defendant employed a device, scheme or
12 artifice to defraud, made an untrue statement of a material
13 fact or omitted to state a material fact, which made what was
14 said under the circumstances misleading, or engaged in an act,
15 practice, or a case of business that operated or would operate
16 as a fraud or deceit upon any person.

17 Second, the defendant's actions were taken in
18 connection with a contract of the sale of a commodity in
19 interstate commerce.

20 And, third, the defendant acted knowingly, willfully
21 and with the intent to defraud.

22 THE COURT: Thank you.

23 Mr. Alexandre, do you understand that if you were to
24 go to trial, the government would have to prove all of those
25 elements that Mr. Folly just mentioned beyond a reasonable

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1 doubt?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Mr. Folly, as to venue, is there a waiver
4 of venue or would the government also have to prove venue by a
5 preponderance?

6 MR. FOLLY: Your Honor, the government would also have
7 to prove venue by a preponderance.

8 THE COURT: And do you understand, Mr. Alexandre, as
9 well that the government also would have to prove that venue is
10 appropriate in this judicial district, although that would be
11 by a lower standard of proof that's called the preponderance of
12 the evidence. Do you understand that?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: I'm going to now tell you about the
15 maximum penalties for this crime in Count One of the
16 indictment.

17 Now, the maximum means just that; the maximum means
18 the most that could possibly be imposed. It does not mean it
19 is what you will necessarily receive, but it is important for
20 you to understand that by pleading guilty, you are exposing
21 yourself to the possibility of receiving any combination of
22 punishments up to the maximums I'm about to describe. Do you
23 understand that?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: First, I'm going to tell you about the

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1 possible restrictions on your liberty. The maximum term of
2 imprisonment for the crime charged in Count One of the
3 indictment is ten years in prison. Do you understand that?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Now, any term of imprisonment could be
6 followed by what is called a term of supervised release.
7 Supervised release means that you will be subject to
8 supervision by the probation department. There will be rules
9 of supervised release that you would have to follow, and if you
10 violate those rules, you could be returned to prison without a
11 jury trial to serve additional time and with no credit for time
12 you served in prison as a result of your sentence and no credit
13 for any time spent on post release supervision.

14 Now, Count One carries a maximum term of supervised
15 release of three years. Do you understand that?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: You also should understand that there is
18 no parole in the federal system, and if you are sentenced to
19 prison, you will not be released early on parole. There is a
20 limited opportunity to earn credit for good behavior which you
21 would have to serve at least 85 percent of the time you are
22 sentenced to. Do you understand that?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: Now, in addition to these restrictions on
25 your liberty, the maximum possible punishment also includes

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1 certain financial penalties. The maximum allowable fine for
2 the offense charged in Count One is the greatest of \$1 million
3 or twice the gross pecuniary gain derived from the offense, or
4 twice the gross pecuniary loss to persons other than yourself
5 resulting from the offense. Do you understand that?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Now, I also can order you to forfeit all
8 property that constitutes or is derived from proceeds traceable
9 to the commission of this offense. Under your plea agreement,
10 you are admitting the forfeiture allegation with respect to
11 Count One. And you also are agreeing to forfeit to the United
12 States pursuant to Title 18 United States Code, Section
13 981(a)(1)(C) and Title 28 United States Code, Section 2461(c) a
14 sum of money equal to \$248,829,276.73 in U.S. currency, as well
15 as all right, title and interest in various specific property
16 that is listed in the plea agreement. Do you understand that?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: Do you also understand that under the plea
19 agreement, you're agreeing not to file a claim or petition for
20 remission or mitigation in any forfeiture proceeding involving
21 that specific property, and you also are agreeing you will not
22 cause anyone to do so or help anyone else in doing so. Do you
23 understand that?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Do you also understand that under the plea

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1 agreement, you're agreeing to take all necessary steps to pass
2 clear title to that property to the United States, including by
3 executing any necessary documentation. Do you understand that?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: I mentioned earlier that there is an
6 Exhibit A attached to the plea agreement. This is the document
7 that is entitled Consent Preliminary Order of Forfeiture as to
8 Specific Property/Money Judgment. Now, this document also
9 appears to be signed by you and your attorneys. Did you sign
10 this document as well?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Did you also read this document before you
13 signed it?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: Did you discuss it with your attorneys
16 before you signed it?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: And, Mr. Bove, is that correct, did you
19 discuss this consent preliminary order of forfeiture with
20 Mr. Alexandre before you and he signed it?

21 MR. BOVE: Yes, Judge.

22 THE COURT: Mr. Alexandre, did you understand this
23 consent preliminary order of forfeiture before you signed it?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Do you have any questions about it?

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1 THE DEFENDANT: No, your Honor.

2 THE COURT: Do you understand that pursuant to this
3 order, you will be ordered to forfeit similar to what is in
4 your plea agreement \$248,829,276.73 in U.S. currency as well as
5 all right, title and interest in the various specific property
6 identified in that order. Do you understand that?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: Assuming I accept the defendant's plea of
9 guilty this afternoon, I will sign and enter the consent
10 preliminary order of forfeiture.

11 Do you also understand that any forfeiture that I
12 order will not be treated as satisfying any fine, restitution,
13 cost of imprisonment or any other penalty that I may impose on
14 you? Do you understand that?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: And, finally, I must order a mandatory
17 special assessment of \$100. Do you understand that?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: Do you have any questions about any of
20 these maximum penalties for me?

21 THE DEFENDANT: No, your Honor.

22 THE COURT: Mr. Alexandre, are you a United States
23 citizen?

24 THE DEFENDANT: No, your Honor.

25 THE COURT: Do you understand that as a result of your

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1 guilty plea, there may be adverse effects on your immigration
2 status, including further detention following completion of
3 your sentence and removal or deportation from the United
4 States. Do you understand that?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: And have you discussed the possible
7 immigration consequences of your plea with your attorneys?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Mr. Bove, have you discussed those
10 consequences with your client?

11 MR. BOVE: Yes, Judge.

12 THE COURT: Do you also understand, Mr. Alexandre,
13 that as a result of your guilty plea, you may lose certain
14 valuable civil rights to the extent you have them now or you
15 might be able to acquire them in the future, such as the right
16 to vote, the right to hold public office, the right to serve on
17 a jury, and the right to possess any kind of firearm. Do you
18 understand that?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: And are you serving any other sentence,
21 either state or federal or being prosecuted in state court for
22 any other crime?

23 THE DEFENDANT: No, your Honor.

24 THE COURT: Do you understand that if your lawyer or
25 anyone else attempted to predict what your sentence will be,

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1 their prediction could be wrong?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: Now, let me explain why that is the case.
4 No one, not your lawyer, not the government's lawyer, no one
5 could give you any assurance of what your sentence will be
6 because I am going to be the one who will decide your sentence,
7 and I'm not going to do that today. I'm going to wait until I
8 receive a presentence investigation report from the probation
9 department, I'm going to do my own independent calculation of
10 the applicable range under the U.S. Sentencing Guidelines, I
11 will consider that range and any departures from it, and then
12 determine what a reasonable sentence should be for you based on
13 all of the sentencing factors that I must consider under the
14 federal law that is at 18 United States Code, Section 3553(a).
15 Do you understand that?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Have you discussed these sentencing issues
18 with your attorneys?

19 THE DEFENDANT: Yes, your Honor.

20 THE COURT: Even if your sentence ends up being
21 different from what your attorneys or anyone else has told you
22 it might be, and even if it is different than what you expect
23 it to be or hope it to be, you will still be bound by your
24 guilty plea, and you will not be allowed to withdraw your
25 guilty plea. Do you understand that?

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1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: Mr. Alexandre, let me turn back to your
3 plea agreement for a moment. Your plea agreement also includes
4 a discussion of how the U.S. Sentencing Guidelines would apply
5 in your case. Do you understand that?

6 THE DEFENDANT: Yes, your Honor.

7 THE COURT: Now, in it, in your plea agreement you
8 agree that the base offense level for the offense in Count One
9 is 6 pursuant to Sentencing Guideline Section 2B1.1(a)(2); that
10 26 levels are added because the loss was greater than
11 \$150 million but not more than \$250 million pursuant to Section
12 2B1.1(b)(1)(N). Two levels are added because the offense
13 involved ten and more victims pursuant to Section
14 2B1.1(b)(2)(A)(i). Two levels are added because the offense
15 involved sophisticated means and because you intentionally
16 engaged in or caused a conduct constituting sophisticated means
17 pursuant to Section 2B1.1(b)(10)(C). Four more levels are
18 added because the offense involved a violation of the
19 commodities laws, and at the time of the offense you were a
20 commodity pool operator pursuant to Section
21 2B1.1(b)(20)(B)(iii). Do you understand that?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: So that comes to an offense level of 40.

24 The plea agreement also provides that you would
25 receive a three-level reduction for acceptance of

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1 responsibility pursuant to Section 3E1.1 given your timely
2 notice of your intent to plead guilty. That means your final
3 offense level would be 37. Do you understand that?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Do you also understand that in this plea
6 agreement, you have agreed that you have no criminal history
7 points which means you are in Criminal History Category I. Do
8 you understand that?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: So, Mr. Alexandre, this means that you
11 have stipulated that your guidelines range under the Sentencing
12 Guidelines would be 210 to 262 months' imprisonment, but, as I
13 mentioned earlier, the statutory maximum for your offense in
14 Count One is 10 years, so that means a stipulated guideline
15 sentence is 10 years' imprisonment. Do you understand that?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: Do you also understand that the applicable
18 fine range for the offense level of 37 is \$40,000 to \$1 million
19 given the offense you will be pleading to. Do you understand
20 that?

21 THE DEFENDANT: Yes, your Honor with the defendant's
22 ability to pay that.

23 THE COURT: Yes. And that is correct. In assessing
24 any fine in your case, one of the factors I would consider is
25 your ability to pay, so that is certainly correct.

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1 THE DEFENDANT: Thank you, your Honor.

2 THE COURT: Now, Mr. Alexandre, I emphasize that this
3 agreement as to the applicable guidelines range is binding on
4 you, it's binding on the government, but it's not binding on
5 me. That is because as the judge in this case, I have my own
6 obligation to determine the correct guidelines range and what
7 the appropriate sentence in your case should be. I am not
8 saying that I will come up with any guidelines range different
9 than the stipulated guideline sentence contained in this plea
10 agreement; but if I do, I will not let you withdraw your plea
11 even if the range I determine is different than the one in the
12 plea agreement. Do you understand that?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: In addition, even if I agree with the
15 guidelines range in your plea agreement, that range is not
16 mandatory. It is only advisory. I may sentence you to less
17 than ten years in prison. I may not sentence you to more than
18 ten years in prison because ten years is the statutory maximum.
19 But I will arrive at that sentence only after considering,
20 again, as I mentioned before, the presentence report, any
21 submissions from your lawyer and the government, and all of the
22 relevant factors I must consider under the law. Do you
23 understand that?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: In your plea agreement, you also have

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1 waived your right to appeal or otherwise challenge any sentence
2 that entails a term of imprisonment that is ten years or less,
3 and that includes bringing a collateral challenge, including a
4 habeas petition to challenge your sentence. In other words,
5 Mr. Alexandre, if I sentence you to ten years in prison or
6 anything less than ten years in prison, you would have no right
7 to appeal or otherwise try to challenge that sentence. Do you
8 understand that?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: Also, as part of your plea agreement, you
11 have agreed not to appeal any term of supervised release that
12 is less than or equal to the mandatory term, which, as I
13 mentioned before, is three years. Do you understand that?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: You also have agreed not to appeal or
16 bring a collateral challenge of any forfeiture amount that is
17 less than or equal to \$248,829,276.73. Do you understand that?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: You also have agreed not to appeal or
20 bring a collateral challenge of any restitution amount that is
21 less than or equal to \$213,639,133.53. Do you understand that?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: You also have agreed not to appeal or
24 bring a collateral challenge to any fine that is less than or
25 equal to \$1 million. Do you understand that?

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1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: And you also agreed not to appeal or bring
3 any collateral challenge to any special assessment that is less
4 than or equal to \$100. Do you understand that?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Have you discussed all of these issues
7 with your lawyers?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Are you satisfied with your lawyers'
10 representation of you in this case?

11 THE DEFENDANT: Completely, your Honor.

12 THE COURT: Does this written plea agreement
13 constitute your complete and total understanding of the entire
14 agreement that you have with the government?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: Has anything been left out of the plea
17 agreement that you agreed to with the government?

18 THE DEFENDANT: No, your Honor.

19 THE COURT: Other than what is written in the plea
20 agreement, has anyone made any promise or offered you any
21 inducement to plead guilty or sign the agreement?

22 THE DEFENDANT: No, your Honor.

23 THE COURT: Has anyone threatened you or forced you to
24 plead guilty or sign the agreement?

25 THE DEFENDANT: No, your Honor.

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1 THE COURT: Has anyone promised you what your sentence
2 will be?

3 THE DEFENDANT: No, your Honor.

4 THE COURT: Mr. Alexandre, now is the time when I'm
5 going to ask you to tell me in your own words what you did that
6 makes you believe you're guilty of the charge in Count One of
7 the indictment.

8 THE WITNESS: Your Honor, between approximately
9 September 2021 and approximately May 2022, I failed to inform
10 members and potential members of the EminiFX that some of the
11 trading functions advertised on the EminiFX website related to
12 cryptocurrency and foreign currency (FOREX) were not fully
13 functional. I understand the information I omitted about the
14 status of EminiFX trading functions would have been important
15 to the decisions that the investors were making about whether
16 or not to invest in the EminiFX. I knew this was misleading
17 and wrong. I alone was responsible for making decisions about
18 EminiFX trading functions. I alone made these decisions, and I
19 made some of them in Manhattan, New York and at EminiFX
20 headquarters. I also understood that people outside of New
21 York State were viewing the website. Although I fully believed
22 that I would ultimately be able to work things out so that no
23 one suffered a loss and all of the EminiFX members made money,
24 I understand that belief is not a defense to the charge I'm
25 pleading guilty to. I'm very sorry, your Honor, and I'm sorry

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1 to the members.

2 THE COURT: Mr. Folly, are there additional questions
3 you would like me to ask in connection with the factual
4 allocution?

5 MR. FOLLY: Yes, the defendant acted with the intent
6 to defraud the investors.

7 MR. BOVE: Judge, may I be heard on whether that
8 question is necessary?

9 THE COURT: Yes.

10 MR. BOVE: I think that the allocution that
11 Mr. Alexandre has provided today is adequate to provide a
12 factual basis for your Honor under Rule 11 to accept the guilty
13 plea and, in particular, to establish that he acted with the
14 requisite intent. And in talking with Mr. Alexandre about his
15 allocution today, we looked very carefully at the plea
16 allocution that your Honor conducted in U.S. -- I think it's --
17 Rogas.

18 THE COURT: Rogas, yes.

19 MR. BOVE: In March with Mr. Lenow, a similar issue
20 came up. There was a discussion of the same defense and belief
21 that Mr. Alexandre has referenced today, and your Honor put the
22 question to that defendant, Mr. Rogas: "At the time he made
23 the statements to investors, he knew the statements were false
24 and he intended the investors to invest based on the false
25 information even though perhaps down the road he was hoping

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1 they would recoup any investments. Is that correct?" And I
2 read that from the transcript of the Rogas proceeding at page
3 27. That defendant answered yes. And Mr. Lenow agreed that
4 that was sufficient to satisfy the intent element.

5 I think Mr. Alexandre's allocution today has hit that
6 element in the same way, and I just don't want to muddy the
7 record, unless the Court feels it's absolutely necessary to put
8 that question to him.

9 THE COURT: The plea in Rogas was to a different
10 statute. I'm not sure if that necessarily matters as to the
11 elements. One of the elements here though I believe is the
12 defendant acted knowingly, willfully, and with the intent to
13 defraud. I think we have the willfully and knowingly, but I
14 believe the intent to defraud is Mr. Folly's concern.

15 MR. BOVE: Understood, your Honor. And I appreciate
16 the point that Rogas was a securities fraud case.

17 Mr. Alexandre today is allocuting to a willful
18 violation of Title 7 U.S.C. Section 9 of the Commodities
19 Exchange Act, which relates to a manipulative device. The
20 underlying regulation that the Court has already cited in
21 today's proceeding, Section 180.1, includes as one of the
22 prongs that would provide an adequate basis for a willful
23 violation a defendant "that makes or attempts to make any
24 untrue or misleading statement of a material fact or to omit to
25 state a material fact necessary in order to make the statements

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1 made not untrue or misleading." And I endeavored to quote
2 there from 180.1(a)(2). And I think in that sense, in the same
3 way that there are parts of the Securities Fraud Statute that
4 don't in the text refer to intent to defraud, this is a similar
5 provision under the CFTC's regs defining the manipulative
6 device concept that Mr. Alexandre has allocuted to, and so I
7 think -- I understand the distinction, but I think it's one
8 that doesn't control here.

9 And, again, my purpose in raising the issue is just to
10 try and make sure that the factual basis here is clear, and
11 that Mr. Alexandre has an opportunity to enter a plea based on
12 statements he believes are accurate and truthful.

13 MR. FOLLY: Your Honor, I might ask that we take a
14 five-minute adjournment. I think at least with the
15 government's -- on the government's side, we'd just like to
16 consider this issue a little further.

17 THE COURT: That is certainly fine with me. I was
18 reading Section 180.1 right now. Why don't we take a quick
19 five-minute adjournment and see if we can figure this out.

20 MR. FOLLY: Thank you, Judge.

21 (Recess)

22 THE COURT: So maybe I will just start with Mr. Folly
23 and ask where things are.

24 MR. FOLLY: Yes, your Honor. The government's view is
25 that the allocution as it stands is insufficient; that more is

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1 required, and, in particular, it's unclear as the allocution
2 currently is whether the defendant made the false statements
3 that he referred to in his allocution for the purpose of
4 deceiving the investors in order to get them to invest. And
5 the government's view of the law is somehow the allocution that
6 speaks to that part of the commodities fraud charge is required
7 here.

8 THE COURT: Mr. Bove?

9 MR. BOVE: I think that Mr. Alexandre is prepared to
10 address a question along the lines of what Mr. Folly just
11 described.

12 THE COURT: Okay. So, Mr. Folly, if I were -- in
13 terms of the question that you would propose, is whether
14 Mr. Alexandre made the misstatements that he referred to with
15 the purpose of deceiving investors in order to get them to
16 invest?

17 MR. FOLLY: Yes, your Honor, in order to get them to
18 invest or to remain invested.

19 THE COURT: Mr. Alexandre, when you were telling me
20 what you did that makes you believe you are guilty of the
21 charge in Count One, you discussed statements that you made to
22 investors that you knew were misleading and wrong. Do you
23 recall that?

24 THE DEFENDANT: Yes, your Honor.

25 THE COURT: Were those statements that you knew

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1 investors would be relying on in making their decision whether
2 or not to invest?

3 THE DEFENDANT: Yes, your Honor. Telling the members
4 that we have the AI software was part of my marketing strategy
5 to attract investors to join me in EminiFX to invest with us.

6 THE COURT: When you made misstatements to investors,
7 did you do that with the intent to deceive them to get them to
8 invest or possibly to get them to remain invested?

9 THE DEFENDANT: I made them as part of my marketing
10 strategy campaign to get them to join intentionally and
11 willfully to get them to invest with EminiFX.

12 THE COURT: And also if they already were invested,
13 was that to get them to remain invested?

14 THE DEFENDANT: Truthfully, they didn't need that to
15 remain invested. They needed to join.

16 THE COURT: To join?

17 THE DEFENDANT: Yes.

18 THE COURT: Mr. Folly, is that sufficient from the
19 government's perspective?

20 MR. FOLLY: I think the defendant is not answering
21 your question directly as to whether he intended to mislead
22 them or to deceive them for the purpose of getting them to
23 invest or remain invested. That's the part when you asked the
24 question, his answer did not respond to.

25 THE COURT: Mr. Bove.

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1 MR. BOVE: I think that Mr. Alexandre can allocute
2 without using the precise words chosen by Mr. Folly. I think
3 he's done that here. Mr. Folly said that he was concerned
4 about a linkage between the statements and Mr. Alexandre's
5 intent to cause investors to invest. Mr. Alexandre has
6 allocuted and provided a factual basis to close to address that
7 link, and I don't think more is required to provide a
8 sufficient Rule 11 factual basis for his plea.

9 THE COURT: Maybe I will just ask one last question
10 that I think Mr. Alexandre basically touched upon.

11 When you made the misstatements to investors, was that
12 intended to convince them -- were those false statements
13 intended to convince the investors, the potential investors to
14 invest?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: Mr. Bove, I assume you think that's
17 sufficient?

18 MR. BOVE: Yes, Judge.

19 THE COURT: The provision under the Code of Federal
20 Regulations at 180.1(a) has various ways that that provision
21 could be violated. It requires that the person directly or
22 indirectly -- I'm leaving out some language that doesn't
23 apply -- in connection with the contract of sale of any
24 commodity and interstate commerce intentionally or recklessly,
25 and then subparagraph two, make or attempt to make any untrue

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1 or misleading statement of a material fact or to omit to state
2 a material fact necessary in order to make the statement made
3 not untrue or misleading. And then Title 7 U.S. Code, Section
4 13(a)(5) in turn makes it a crime to willfully violate any
5 provision of that chapter or any rule or regulation thereunder.

6 So both from the allocution, which I do sufficiently
7 understand as acknowledging that the misstatements were made
8 with the intent of convincing investors to -- potential
9 investors to invest based on untrue information and also the
10 language of the regulation and the statute, I find that
11 allocution to be sufficient for Count One.

12 Other than what you raised, Mr. Folly, are there any
13 additional questions you would like me to ask Mr. Alexandre?

14 MR. FOLLY: Your Honor, with respect to venue, the
15 government would just proffer that the EminiFX office was
16 located in Manhattan, New York, the defendant met with
17 investors from the office in person, on the phone and
18 virtually, and made false statements to investors in connection
19 with the sale of commodities from that location.

20 THE COURT: Mr. Alexandre, I believe you mentioned
21 before that some of your statements were made from the EminiFX
22 office in Manhattan, but do you agree that the misstatements
23 made included acts -- misstatements that were made while you
24 were in Manhattan?

25 THE DEFENDANT: Yes, sir. Yes, your Honor.

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1 THE COURT: When you engaged in these acts, did you
2 understand, did you know what you were doing was wrong and
3 illegal?

4 THE DEFENDANT: Yes, I knew this was misleading and
5 wrong, your Honor.

6 THE COURT: And did you know you were breaking the
7 law?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: So, Mr. Folly, let me ask you to summarize
10 what the government's evidence would be if this case were to
11 proceed to trial.

12 MR. FOLLY: Your Honor, the government's evidence
13 would include witness testimony, email evidence, text messages,
14 bank and other financial records, including trading records,
15 evidence from electronic devices that were searched and seized,
16 EminiFX investor account statements which contained
17 misrepresentations about earnings, among other evidence.

18 THE COURT: And do both counsel agree, subject to any
19 prior concerns raised by Mr. Folly, that there is a sufficient
20 factual predicate for the guilty plea?

21 MR. FOLLY: Yes, your Honor.

22 MR. BOVE: Yes, Judge. Thank you.

23 THE COURT: And, more generally, with respect to
24 today's plea allocution, are there any additional questions
25 that either counsel would like me to ask Mr. Alexandre?

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1 MR. FOLLY: Not from the government, your Honor.

2 MR. BOVE: No, your Honor. Thank you.

3 THE COURT: Mr. Bove, do you know of any valid defense
4 that would prevail if this case were to go to trial?

5 MR. BOVE: No, Judge.

6 THE COURT: Does either counsel know of any reason I
7 should not accept Mr. Alexandre's plea of guilty at this time?

8 MR. FOLLY: No, your Honor.

9 MR. BOVE: No, your Honor.

10 THE COURT: Mr. Alexandre, now I ask you how do you
11 plead to Count One of the indictment?

12 THE DEFENDANT: I plead guilty, your Honor.

13 THE COURT: And we talked also about the forfeiture
14 allegation in the indictment. Do you admit the forfeiture
15 allegation as to Count One of the indictment?

16 THE DEFENDANT: I consent, your Honor.

17 THE COURT: Mr. Alexandre, because you acknowledge
18 that you are in fact guilty as charged in Count One of the
19 indictment, and because I am satisfied that you know of your
20 rights, including your right to go to trial, and that you are
21 aware of the consequences of your plea, including the sentence
22 that may be imposed, and because I find that you are knowingly
23 and voluntarily pleading guilty, I accept your guilty plea and
24 will enter a judgment of guilty on Count One of the indictment.
25 You may be seated.

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1 THE DEFENDANT: Thank you, your Honor.

2 THE COURT: As I've mentioned a few times today, the
3 probation department will want to interview you in connection
4 with the presentence investigation report that they will
5 prepare. This is the report I mentioned throughout today's
6 proceeding. It will be very important to me when I determine
7 what sentence to impose.

8 Mr. Bove, do you wish to be present for any interview?

9 MR. BOVE: Yes, Judge.

10 THE COURT: I will order that no interview shall occur
11 unless counsel is present.

12 Mr. Alexandre, if you choose to speak to the probation
13 department, please make sure anything you say is truthful and
14 accurate. I will read that report very carefully. You and
15 your attorneys will have the right to comment on the report,
16 both prior to and at sentencing, so please read it closely,
17 discuss it with your lawyers. If you see any errors in the
18 report, please let them know about it, so they could bring it
19 to probation's attention or to my attention.

20 Do the parties have a view as to when sentencing
21 should occur? I believe 90 days would bring us to around
22 May 11. Is there thought on whether a later sentencing date
23 might be needed in this case?

24 MR. FOLLY: I'll let defense counsel address that.

25 MR. BOVE: Yes, Judge. We would request the Court set

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1 a date for sentencing in July to allow time, in particular, to
2 work on the restitution calculations that will be necessary.

3 THE COURT: I thought given those issues, it might
4 make sense to do it a little bit later than normal.

5 Would July 12 at 4:00 p.m. work for the parties?

6 MR. FOLLY: That's fine for the government, your
7 Honor.

8 MR. BOVE: Yes, Judge. Thank you.

9 THE COURT: And the reason I'm doing 4:00 p.m. is
10 right now I'm scheduled to have a trial that week. If that
11 trial does not go, I can let the parties know and see if
12 earlier that day might be better.

13 Mr. Folly, I direct the government to provide the
14 probation officer with its factual statement seven days prior
15 to sentencing, and also the defense should arrange for
16 Mr. Alexandre to be interviewed by the probation department
17 within the next two weeks. My individual rules have my rules
18 regarding sentencing submissions. Nothing particularly out of
19 the order. The defense submissions are due two weeks prior to
20 sentencing. The government's submission is due one week prior
21 to sentencing. But in this case that would be -- it won't be
22 July 4, so that will be July 5 for the government.

23 If there are any redactions, proposed redactions in
24 the sentencing submissions, I also flag my individual rules as
25 to that. And, in particular, if there are proposed redactions,

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1 you should send to me via chambers email an unredacted version
2 with the proposed redactions highlighted, so I could see
3 exactly what you are proposing to redact.

4 I assume the bail conditions will be continued pending
5 sentencing. Is that right, Mr. Folly?

6 MR. FOLLY: Your Honor, the government is not seeking
7 remand. I understand defense counsel has a bail application.
8 We would ask the Court to defer ruling on it until Monday to
9 give the government the opportunity to consider it.

10 THE COURT: Can you preview, Mr. Bove what the
11 application is?

12 MR. BOVE: I do have an application your Honor, and it
13 is to strike the home detention condition that Mr. Alexandre is
14 currently subject to and to substitute in its place strict
15 pretrial supervision. I understand that today the proceedings
16 today reflect the changed circumstance, but I think there are
17 others that strongly support this requested modification.

18 And just to give some context, the additional current
19 conditions to which Mr. Alexandre is subject are substantial.
20 There is a \$3 million bond secured by five financially
21 responsible persons, secured by three pieces of property, his
22 travel is limited to this district, Eastern and the district of
23 New Jersey. He's also signed an extradition waiver. And he's
24 been subject to home detention since July 2022, which is
25 currently enforced by location monitoring.

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1 The changed circumstances that I've referenced are
2 that, to my mind the real sticking point when bail was set in
3 this case was Mr. Alexandre's decision not to waive his Fifth
4 Amendment right and his decision not to make disclosures to
5 pretrial services or the government relating to his financials.

6 Since that time, because of the way that the CFTC case
7 has proceeded and the way that the receivership has operated,
8 Mr. Alexandre has made substantial financial disclosures, and I
9 think that the government has a very clear picture of his
10 financial situation.

11 Not only is that picture clear, but it's equally clear
12 that those assets are restrained to the satisfaction of the
13 receiver because no issue has been brought to Judge Caproni's
14 attention. In fact, the receiver has noted in public filings
15 that Mr. Alexandre has cooperated, at least in some respects,
16 with the receivers's efforts. And so in light of that, your
17 Honor, I think the modification is appropriate, and it's also
18 important for a couple reasons.

19 One is that the current conditions, his home detention
20 condition, has limited our ability to consult with
21 Mr. Alexandre. Not in a way that impacted my advice to him up
22 to date in this case, but in a way that has inconvenienced the
23 three of us at counsel table for sure, and to some extent the
24 Court, because I'm sure your Honor remembers that at the first
25 proceeding in this case, he wasn't provided with enough time to

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1 travel here to be here on time.

2 We made an application in November when pretrial
3 services declined to allow Mr. Alexandre to attend a religious
4 gathering, so we had to make an emergency application right
5 before Thanksgiving. And I think most problematic in the way
6 that this has been administered to my mind is that during the
7 course of our plea negotiations, we asked for a meeting with
8 Mr. Alexandre. I made that request on Sunday tonight. There
9 was no response provided. We wanted to have a meeting on
10 Tuesday. Mr. Alexandre called his pretrial services officer.
11 There was no response to that phone call. We ended up having
12 the meeting. I don't want to make more of a deal out of this
13 than I need to, but I do need to call to the Court's attention
14 because I expect that it will be more important to have quick
15 access to Mr. Alexandre and for us to be able to meet as we
16 prepare for a very consequential sentencing in his life. And

17 the way that home detention has been administered to
18 date is just not consistent with those needs. And obviously if
19 flight concerns justify having that condition in place in
20 imposing visa inconveniences, I would understand that, but I
21 think that the main things that the government was concerned
22 about with respect to flight risk have been addressed. There
23 are other issues that I think support this application.

24 Mainly, I think your Honor is aware that to my
25 knowledge there are two overflow courtrooms filled today with

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1 respect to this proceeding. I don't think -- there are not
2 many defendants that make that kind of showing of ties to the
3 community. The only place that Mr. Alexandre wants to be in
4 light of the immigration consequences that he faces between now
5 and his sentencing is with friends and family in Long Island
6 preparing for that very important day.

7 He wants an opportunity to be able to visit his
8 mother, who is elderly, at her home in a way that makes it
9 easier for that interaction to happen and that relationship
10 to continue before sentencing. He wants an opportunity to
11 attend his children's sports events. And realistically between
12 now and sentencing is the only time in his life left that he's
13 going to have an opportunity to do that.

14 I understand that -- I mentioned this application to
15 the government during our plea negotiations, and so I don't
16 think it's a total surprise to them that I'm making it. We
17 would ask the Court to rule now so that Mr. Alexandre can spend
18 time with his mother this weekend. His 14-year-old son has a
19 soccer match on Sunday that he would attend and begin to take
20 advantage of his time that he has left prior to sentencing in
21 this case.

22 THE COURT: In terms of electronic monitoring, have
23 you considered that?

24 MR. BOVE: To the extent pretrial services thinks that
25 it makes sense under strict supervision to maintain location

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1 monitoring, we have no objection to that.

2 THE COURT: Mr. Folly, are you in a position to
3 address that request now? I know you asked to be able to write
4 on it.

5 MR. FOLLY: Yes, your Honor. I think defense counsel
6 is right that they indicated at some point in time, they
7 intended to make a bail application. It was never communicated
8 to the government that that would be today. We have not had
9 the chance to discuss it internally. The defendant is facing a
10 ten-year sentence in this case under this plea agreement. It's
11 nearly a \$250 million fraud. He's going to get removed from
12 the United States. To say that there are no longer any serious
13 risk of flight issues here is to completely ignore this factual
14 record.

15 We would like to consider it further and consider
16 whether there may be some other bail modifications that should
17 coincide the defendant being let off of home detention, and it
18 doesn't seem to the government that a two-day period between
19 now and Monday is unreasonable.

20 THE COURT: I will give the government until Monday to
21 respond in writing, and unless I need something further, from
22 you, Mr. Bove, I will resolve this very quickly. I certainly
23 encourage the parties to talk and try to see if there can be
24 agreement on modifications that would be acceptable for both
25 sides.

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1 Are there any other matters we need to take up this
2 afternoon?

3 MR. FOLLY: Not from the government, your Honor.

4 MR. BOVE: No, your Honor. Thank you.

5 THE COURT: Thank you all.

6 I hope everyone stays well. Have a good rest of the
7 day.

8 (Adjourned)

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