**UNITED STATES DISTRICT COURT**
**DISTRICT OF MASSACHUSETTS**

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| UNITED STATES OF AMERICA | . MAGISTRATE JUDGE NO. 16-4117-MBB |
| | . |
| V. | . BOSTON, MASSACHUSETTS |
| | . APRIL 27, 2016 |
| MARTIN GOTTESFELD | . |
| Defendant | . |

. . . . . .

TRANSCRIPT OF DETENTION HEARING
BEFORE THE HONORABLE MARIANNE B. BOWLER
UNITED STATES MAGISTRATE JUDGE

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I N D E X


| WITNESS | DIRECT | CROSS | REDIRECT | RECROSS |
|---|---|---|---|---|
| Jeffrey Williams | 4 | 35 | | |

| EXHIBITS | DESCRIPTION | PAGE |
|---|---|---|
| Government's: | | |
| 1 | Screenshot of YouTube video | 11 |
| 2 | CD of You Tube video | 12 |
| 3,4,5 | Pictures of Boat | 25 |
| 6 | List of Items from Secondary Screen | 28 |
| Defendant's: | | IDENT. |
| A1 | Complaint/Affidavit | 40 |

(Court called into session)

(2:06:20 PM)

THE COURT: United States Court, District of Massachusetts is now in session. The Honorable Marianne B. Bowler residing. Today is Wednesday, April 27, 2016. U.S. v. Gottesfeld Magistrate Judge No. 1604117 will now be heard.

Could counsel please identify themselves for the record?

MR. BOOKBINDER: Good afternoon, Your Honor, Adam Bookbinder and Dave D'Addio for the United States.

MR. D'ADDIO: Good afternoon, Your Honor.

THE COURT: Thank you. Good afternoon.

MR. EKELAND: Tor Ekeland of Tor Ekeland, P.C. for defendant Martin Gottesfeld.

THE COURT: Thank you very much.

Well we're here for the purposes of detention and probable cause. Are we ready to proceed?

MR. BOOKBINDER: Your Honor, I believe PC was waived. We're here for the purpose of detention only.

THE COURT: Was it at the first hearing?

MR. BOOKBINDER: Yes, Your Honor.

THE COURT: All right, so just the matter of detention. Is the government ready to proceed?

MR. BOOKBINDER: We are, Your Honor. We have

one witness we'd like to call, Special Agent Jeffrey Williams.

THE COURT: Would you please come forward and be sworn.

WITNESS, JEFFREY WILLIAMS, SWORN

THE COURT: And I'll just ask you to keep your voice up and speak into the microphone please.

THE WITNESS: Yes, Your Honor.

DIRECT EXAMINATION

BY MR. BOOKBINDER:

Q Could you introduce yourself and spelling your name for the record?

A Yes, my name is Jeffrey, J-E-F-F-R-E-Y, M as in Mark, middle name, Williams, W-I-L-L-I-A-M-S, and I'm a special agent with the FBI here in Boston.

Q Good afternoon, Agent Williams. You said you're a special agent with the FBI. How long have you been with the bureau?

A I've been employed with the FBI for approximately six years.

Q So you joined in 2010?

A Yes.

Q And where are you stationed?

A I'm stationed here in Boston currently.

Q Are you associated with a particular unit?

A I am associated with the Cyber Crime Squad here in Boston.

Q Okay, and how long have you been with Cyber Crime Squad in Boston?

A Approximately two and half years.

Q Okay. Prior to that where were you?

A I was in our Las Vegas division of the FBI.

Q And what was your area of focus in Las Vegas?

A Also Cyber Crimes.

Q Can you briefly summarize some of your training and experience with respect to cyber investigations?

A Yes, so for the FBI I've investigated a number of different cybercrimes to include computer intrusions, both criminal in nature and as also, also ones originating from nation state threats.

Q Okay, ever received any specialized training in addition to all the on the job training and case work?

A Yes, I've attended FBI sponsored computer certification trainings.

Q And can you briefly summarize your educational background?

A I hold a Bachelor of Science in Information Systems from Drexel University as well as a Master of Science in Computer, Computer Information Systems from Boston University.

Q Agent Williams, are you familiar with the defendant in this case, Martin Gottesfeld?

A Yes, I am.

Q Okay, how are you familiar with him?

A I'm familiar with him by knowing he's, he's the target of a current FBI investigation involving the denial of service attacks against a Boston hospital.

Q Okay, do you see him in the courtroom today?

A I do.

Q Could you point him out and identify an article of clothing he's wearing?

A He's sitting here at the defense table wearing a tan and brown shirt.

MR. BOOKBINDER: Your Honor, for the record, we'd ask that the court records--

THE COURT: Let the record reflect that the witness has identified the defendant.

BY MR. BOOKBINDER:

Q Okay. Agent Williams, you spoke about a denial of service attack, can you explain who the target of that was and in general what that attack was?

A Yes, the target of the attack was Boston Children's Hospital here in Boston, Massachusetts and in, in general a denial service attack is when someone directs a number of computers to transmit traffic to a single computer for

purposes of bringing that computer down and not being able to communicate with other network computers.

THE COURT: Brendon, can I have a copy of the complaint?

BY MR. BOOKBINDER:

Q Essentially overwhelming the traffic. Is that fair to say?

A Yes.

Q Network traffic?

A Yes.

Q Is that what happened in this case?

A It is.

Q Are you familiar with how long the denial of service, distributed denial of service attack lasted in this case?

A I'm not certain of, of the duration. At least, at least a day from what I understand.

Q Were there other aspects of the attack beyond the DDOS on Children's Hospital that you're aware of?

THE COURT: Beyond the what?

MR. BOOKBINDER: Beyond, Your Honor. I'll back up.

THE COURT: For the record.

BY MR. BOOKBINDER:

Q For the record, is there an acronym that's often used to refer to distributed denial of service attacks?

A Yes, people often refer to it in short as a DDOS. D-D-O-S.

Q Okay, and so the DDOS attack was one aspect of the attack on Boston Children's Hospital computers? Is that fair to say?

A That's correct.

Q Were there other aspects of network attack as well?

A Yes.

Q Okay, can you briefly describe?

A Yes, from what was reported to us Boston, Boston Children's Hospital also received emails that contained malicious code that if opened would allow the attackers another avenue into their network.

Q Okay, during the attack, did Children's Hospital take steps to prevent the destruction, prevent the penetration of its networks?

A Yes.

Q And are you familiar with what it did?

A Yes, they ended up shutting off their hospital network essentially from the outside network not allowing physicians and patients to communicate with each other, among many ways and to include email. Due to this being shut down, they also were not able to fund raise for certain projects.

Q Was the website, the publically facing website for

Boston's Children's Hospital taken offline?

A Yes.

Q And was the publically facing fundraising site for Boston Children's Hospital taken offline?

A Yes.

Q And you testified that email communication within the hospital was effected?

A Yes.

Q Okay.

THE COURT: And what about access to medical records?

THE WITNESS: Patients were also not able to access their medical records which include the ability to understand medication refills and in some instances, physicians could not communicate with each other to discuss those medical records. I'm not certain about specific medical record information systems.

MR. BOOKBINDER: Okay.

THE COURT: Well, was a physician able to access a medical record if he needed it?

THE WITNESS: Potentially, but they weren't able, again to refer back to other physicians through email.

BY MR. BOOKBINDER:

Q Do you know when this attack began?

A April 19th--

Q Okay.

A --of 2014. Excuse me.

Q When, when did the FBI learn about it approximately?

A That same day.

Q And did the FBI begin its investigation around that time?

A Yes, we did.

Q Was there public information that the FBI became aware of relating to the attack and the, the purported reasons for the attack?

A Yes, there were two specific pieces of information that came to our attention. One was a You Tube video and a second was a posting on a website, Pastebin.

MR. BOOKBINDER: Okay.

THE COURT: On, what was the name of the website?

THE WITNESS: Pastebin, P-A-S-T-E-B-I-N.com.

BY MR. BOOKBINDER:

Q Agent Williams, we'll talk about each of those in turn.

MR. BOOKBINDER: Your Honor, may I approach the witness?

THE COURT: You may and you need not ask again.

MR. BOOKBINDER: Thank you, Your Honor.

BY MR. BOOKBINDER:

Q Agent Williams, I put two exhibits in front of you that have been marked for identification as Exhibits 1 and 2. One is the paper exhibit and two is the CD. Can you, starting with one, can you take a look at that and tell me if you recognize what that is?

A I do, I do recognize it. It is for Exhibit 1. It is a screenshot of a YouTube video posted by the user shut down Logan River Academy calling, or basically calling for the attack of the particular hospital.

Q And was there a date that that was published on the document?

A It was published, the documents date's is published March 23, 2014.

Q Does that, is that screen captured, does that relate to the YouTube video you were referring to earlier?

A Yes.

MR. BOOKBINDER: Your Honor, with the Court's permission we move into evidence Exhibit 1?

THE COURT: Hearing no objection, Exhibit, Government Exhibit 1 is made part of the record for the purpose of this hearing.

MR. BOOKBINDER: Okay.

GOVERNMENT'S EXHIBIT NO. 1, ADMITTED

BY MR. BOOKBINDER:

Q Now turning to Exhibit 2, can you take a look at that CD and tell me if you recognize it?

A I do recognize it.

Q How do you recognize it?

A It's one that we, we reviewed in your office earlier today.

Q How do you recognize the actual physical object?

A I dated and initialed, the CD.

Q And what is, what's on the CD?

A The CD contains the full content of the video that we described in Exhibit 1.

MR. BOOKBINDER: The government offers Exhibit 2 into evidence and requests permission to publish the exhibit?

THE COURT: Hearing no objection, Government Exhibit 2 is made part of the record.

GOVERNMENT'S EXHIBIT NO. 2, ADMITTED

TAPE PLAYED FOR COURT

(2:16:47 PM-2:22:00 PM)

BY MR. BOOKBINDER:

Q Agent Williams, you testified earlier about the website Pastebin, was that referred to on the You Tube posting?

A Yes, it was.

Q Did that website contain information that the link

described on the You Tube posting regarding the DDOS attack on Boston Children's Hospital?

A Yes, it did.

Q Did it identify a particular server?

A Yes.

Q Was that the server that was the subject of the DDOS attack on April 19, 2014?

A It was.

Q And the video was posted by an account that went by the name of Shut Down Logan River Academy. Is that right?

A Yes.

Q Did FBI obtain records regarding that account from Google?

A Yes.

Q And what did those records show with regard to that account?

A Those records indicated that it was registered by Martin Gottesfeld.

Q Okay.

A And it also included a number of IP address records.

Q Did it include information regarding the IP address that was used to post the video?

A Yes.

Q And were you able to obtain additional information, you being the FBI, additional information regarding that

IP address?

A Yes.

Q And what were you able to find?

A That the IP address belonged to the provider RCN and then upon gathering further information from RCN, it led us back to Martin Gottesfeld's apartment in Somerville, Massachusetts.

Q Was that at 12 Albion Street, Apartment No. 1 in Somerville?

A Yes.

Q Did the FBI take any investigative steps relating to that address?

A Yes, the FBI executed a search warrant on that address in approximately October 2014.

Q Okay. Did Mr. Gottesfeld, Gottesfeld speak to FBI agents during the course of executing that search warrant?

A Yes, he agreed to be interviewed.

Q Okay, can you describe what he said regarding, can you describe what he said?

A He stated that he was the individual who operated the Shut Down Logan River Twitter account.

Q Okay, did he talk about--

A Oh sorry, yup, Twitter.

Q YouTube account?

A Yes.

Q Did he discuss posting the video?

A Yes. He said that he was the one who posted the video but did not put his faith in DDOS.

Q Okay, did FBI seize evidence from the apartment, from Mr. Gottesfeld's apartment?

A Yes, we seized a number of computers that he identified as his own.

Q Okay, did FBI examine those computers?

A We did.

Q And was there information on there relating to DDOS attacks?

A There were. Through a review of those computers we found messages where these DDOS attacks were discussed for other treatment facilities, resid, youth residential treatment facilities.

Q And were some of those messages from Gottesfeld?

A Yes.

Q Okay. So, fair to say that at the point of executing the search warrant this was no longer a covert investigation of the DDOS attack on Children's?

A No, it was, it was not covert.

Q You spoke to him.

A He was aware that the FBI was there investigating this.

Q Was there any additional formal communication

notifying him regarding his status in this investigation?

A Yes. Martin was also, provided a target letter to notify him that he was in fact a target of the investigation.

Q Did FBI later meet with Martin Gottesfeld?

A Yes.

Q And do you recall roughly when that happened?

A That was in May of 2015.

Q Okay, and where did that meeting take place?

A It took place at the U.S. Attorney's Office here in Boston, Massachusetts.

Q Was Mr. Gottesfeld represented by an attorney at that time?

A Yes.

Q And who was present at the meeting?

A Mr. Gottesfeld, Mr. Gottesfeld's attorney, who, who are present here today, members of the FBI and members of the United States Attorney's office.

Q Without getting into specifics, what in general was discussed at that meeting?

A The, the evidence in the case and, and next steps—

Q Okay.

A --because of to come, to attempt to come to a resolution.

Q All right, so fair to say that the government shared some of its evidence gathered in the investigation of Mr. Gottesfeld?

A Yes.

Q Was there a later meeting that took place with Mr. Gottesfeld?

A Yes, there was.

Q And when did that take place, approximately?

A December of 2015.

Q And was that also at the U.S. Attorney's Office?

A It was.

Q Was Mr. Gottesfeld represented by an attorney?

A He was.

Q Mr. Ekeland?

A Yes.

Q Without getting into the specifics of that meeting, was the DDOS attack on Children's hospital discussed?

A Yes, it was.

Q Were you aware of discussions between the U.S. Attorney's Office and Mr. Gottesfeld's attorney regarding potentially resolving this matter?

A Yes.

Q And fair to say those discussions had progressed over months?

A Yes.

Q And are you aware of whether any proposed resolutions were discussed?

A They were.

Q Okay, and roughly what time frame was that occurring?

A Towards the end of December into January 2016.

Q And focusing on January of 2016, was FBI contacted by local law enforcement regarding Mr. Gottesfeld's whereabouts?

A Yes, we were.

Q Can you describe that communication?

A So, towards the end of Jan, January 2016, the FBI was contacted by Somerville police department because Mr. Gottesfeld's employer had contacted them saying that he had not shown up to work and they requested that a wellness check be done on his, on him at his residence.

Q Did Somerville P.D. conduct that check?

A They did conduct that check and did not find any what, anyone at home at the time the check was conducted.

Q Anything unusual?

A Nothing unusual.

Q And that's the same apartment that FBI had searched earlier, is that right?

A Yes.

Q Okay. Did Sergeant Whelan talk about any attempts that the employers had made to communicate with Mr.

Gottesfeld?

A Just, they attempted to contact him. There was no, no answer.

Q Okay. Was there further communication with local law enforcement about Mr. Gottesfeld's whereabouts?

A Yes, so, now moving into the beginning of February, another police department, Andover police department had contacted Somerville police department, one, asking, asking them the whereabouts of Mr. Gottesfeld because they had a family medical emergency and they were trying to get in contact with, with him.

Q Were they able to reach him?

A No, they were not.

Q Was Somerville PD ever able to reach Mr. Gottesfeld?

A No.

Q So moving forward, were you, was FBI still in communication with Somerville PD regarding the defendant's whereabouts?

A Yes, and it turns out, again another person was looking for Mr. Gottesfeld and his wife.

Q Who was that?

A Martin's wife's mother was attempting to get ahold of her daughter.

Q Had she contacted Somerville PD?

A She did.

THE COURT: The defendant's mother?

THE WITNESS: The defendant's wife's mother.

THE COURT: Defendant's mother-in-law.

THE WITNESS: Mother-in-law. Yup. Sorry, Your Honor.

THE COURT: That's all right.

BY MR. BOOKBINDER:

Q And is the defendant's wife's name Dana Gottesfeld?

A Yes.

Q And the mother's name, Terri Barrack?

A Yes.

THE COURT: Terri Barrett?

THE WITNESS: Barach.

MR. BOOKBINDER: Barach?

THE COURT: Can we have a spelling please?

BY MR. BOOKBINDER:

Q B-A-R-A-C-H. Is that correct agent?

THE WITNESS: Yes.

BY MR. BOOKBINDER:

Q What did Mrs. Barach report to Somerville P.D?

A She reported that she had not been able to contact her daughter for over a month. That she pays or she paid her daughter's cellphone bill and saw activity on the cellphone drop basically no communications happened on that phone after January the 15th, and that she was

1 considering filing a missing person's report because she
2 was not able to contact her daughter.
3 Q Did Somerville PD conduct any follow up
4 investigation?
5 A They did. They contacted both of the employers of
6 Martin and Dana.
7 Q And what did they find?
8 A They found out that both individuals last returned,
9 last worked at their respective employers January 15th and
10 both requested off on the subsequent Monday and Tuesday so
11 they, 18th and 19th and they were both due back to work on
12 the 20th of January.
13 Q Was that a holiday weekend do you recall?
14 A Yes, I believe it was Martin Luther King, Jr.
15 weekend.
16 Q Okay, and you said they didn't show up on the 20th, is
17 that right?
18 A That's correct.
19 Q Did they show up at any point after that?
20 A No.
21 Q Any contact with the employers after that?
22 A No.
23 Q Did FBI contact the defendant's mother-in-law, Ms.
24 Barach?
25 A Yes.

Q And roughly when did that happen?

A Approximately the middle of, of February.

Q Okay, and what in substance did Ms. Barach tell the FBI about the whereabouts of her daughter?

A She was not certain where her daughter was. She had not heard from her for this point about a month and a half. Again, that the cell phone activity had, there was no activity after the 15th, and additionally she was able to find the landlord's phone number for the apartment they were renting in Somerville, Massachusetts, ultimately meeting up with the landlord in person. They live in the same geographical area in California and the landlord had informed Mrs. Barach that the rent had not, the rent was paid for in January 2016 but not for February of 2016.

Q And you testified earlier that she told Somerville PD she was considering filing a missing person's report. By the time of FBI's contact with her had she filed a missing's person report?

A Yes, she, she told FBI she had filed a report at that time.

Q Had she reached out to the defendant's family to find out his whereabouts and the whereabouts of her daughter?

A She had. She did.

Q And what were the results of that?

A Negative results. It was uncertain where they were

still.

Q Did you ask her or did FBI, excuse me, ask her to call them if she heard anything?

A We did.

Q Did she ever?

A She, at that point it was just left at if, if you do hear from him, please let us know and kind of likewise--

Q Okay.

A --if you do learn about their whereabouts we, you know, distinguish we'll definitely speak with some Somerville PD as well, police department.

Q Did she ever communicate the whereabouts of her daughter to FBI?

A No.

Q Did FBI eventually learn where Dana and Martin Gottesfeld were?

A We did.

Q And when did that happen?

A Approximately February 16th--

Q Okay.

A --of 2016.

Q Where were they?

A Turns out they were rescued at sea off the coast of Cuba after placing a mayday call because their, the vessel they were on had lost propulsion.

Q How'd you learn about that?

A Two separate ways. We learned that they were a passenger on a cruise ship through customer, Customs and Boarder Protection and then later learned through our legal attaché office in the Bahama's that they actually had been rescued at sea.

Q Okay, did you contact anybody at, you said it was a Disney Cruise ship. Is that right?

A Yes.

Q Did you contact anybody at that, at the Disney Cruise ship to find out what the story was?

A Yes, we spoke with the director of security for that cruise, specific cruise ship.

Q What, and do you remember what that person's name is?

A Phil Halshall.

Q Okay, what is--

THE COURT: Spelling of the last name?

THE WITNESS: believe H-A-L-S, H-A-L-S-H-A-L-L.

THE COURT: Thank you.

BY MR. BOOKBINDER:

Q What did Mr. Halshall tell the FBI?

A He, he informed the FBI that the, the ship had to, had responded to a mayday call for a boat that had lost propulsion. They had rescued these two individuals and that they had given different statements to different

members of the crew on the ship. In addition, they were able to grab some but not all of the belongings from the boat that Martin and Dana were rescued from.

Q Agent Williams, we'll, we'll talk about that in a little more detail. I'm going to assist with that discussion and give you a few exhibits here--

A Sure.

Q --three, four and five for identification. Can you take a look at this and tell me if you recognize them?

A I do.

Q What are they?

A They are pictures of, of the boat Martin and Dana were on that were provided from that Disney Cruise line to Customs and Boarder Detection who then in turn gave them to the FBI.

MR. BOOKBINDER: Your Honor, the government moves in 3, 4 and 5 into evidence.

THE COURT: Hearing no objection, Government Exhibits 3, 4 and 5 will be admitted and made part of the record for the purpose of this hearing.

GOVERNMENT'S EXHIBIT NOS. 3, 4 AND 5, ADMITTED

BY MR. BOOKBINDER:

Q Let's start with three, Agent Williams. What's in that picture?

A It's the overall shot of the, of the boat. You can

see Mr. Gottesfeld in the middle of, of the boat, kind of near steering area there, steering wheel, with a life preserver on.

Q And then four and five?

A Four and five are close ups of the front and rear of the boat.

Q Which one's the front?

A Number five is the front, four is the rear.

Q Okay, were Dana and Martin Gottesfeld the only people on that boat?

A Yes.

Q About how big is that boat?

A It was estimated to be approximately 23 feet.

Q Was there any identifying information on the boat that you're aware of?

A No, in fact the director of security for the cruise line had informed the FBI that it was unregistered, uninsured and unnamed.

Q Okay. You said that they were rescued. How does it work? A cruise ship's a big thing and that's a 23 foot boat. How does that happen?

A Sure. So the way it was explained to me, it could happen a number of ways. Sometimes the cruise ships have the ability to deploy a separate vessel to go perform these types of rescue, rescues. In this case, the cruise

ship actually pulled up next to this particular boat and for lack of a better term, hoisted them and some of their belongings up off of the boat.

Q You said some of their belongings. Were there things left behind on the boat?

A Yes, the director of security indicated that only a subset of items that were on that boat were brought on to, on board to the Disney Cruise line.

Q Did the defendant and his wife seek to go back to the boat to obtain the rest of their belongings?

A Yes, from what was described to us they did.

Q Were they able to do that?

A They were not allowed to do that.

Q Okay. Were those items inventoried at some point?

A They--

Q The items that were brought onto the boat, not the ones that were left behind?

A Oh, when, when the cruise ship reached port in Miami they were searched, secondary searched by officers of Customer, Customs and Border Patrol for protection.

Q I'm showing you what's been marked for identification as Exhibit 6. Can you take a look at that and tell me if you recognize it?

A Yes, I do recognize it.

Q And what is it?

A It's a, a list of some of the items that were observed during the secondary screening.

MR. BOOKBINDER: Your Honor, the government offers Exhibit 6 into evidence.

THE COURT: Hearing no objection, Government Ex--

MR. EKELAND: Your Honor, may I just get some clarification here. It's my understanding that the Federal Rules of Evidence don't apply in a detention hearing--

THE COURT: That's correct.

MR. EKELAND: --to the extent that I, it's unnecessary that we move things into evidence. We're not, we can't object.

THE COURT: Well it is necessary to move it into evidence to make it part of the record, and there may be other objections that you could make but--

MR. EKELAND: Very well, Your Honor. No objection.

THE COURT: All right, Government Exhibit 6 is made part of the record for the purpose of this hearing.

GOVERNMENT'S EXHIBIT NO. 6, ADMITTED

BY MR. BOOKBINDER:

Q So let's talk about a few of these items here. There are laptop computers, is that correct?

A Yes.
Q Cell phones?
A Yes.
Q And it says GPS device, what is that referring to?
A For, for what we observed, it appeared to be a standalone type GPS device as opposed to one that you would use on your cell phone.
Q Okay and there were calling cards and data cards. What were those for?
A Based off of my training and experience, I believe those were used for, for monthly calling plans. For phones that were potentially purchased.
Q Okay, and data capable phones?
A Yes, for both talk, text and data or all three.
Q And there are a number of, I guess you describe them as personal items. Is that fair to say?
A Yes.
Q Can you describe some of those?
A Sure. There was a photo album from Martin and Dana's wedding, their marriage license, a number of identifying documents to include Dana's social security card and passport.
Q Were there any stamps on Dana's passport?
A There were not. Then Dana and Martin's Massachusetts driver's license as well as Martin's birth certificate.

We did not observe a passport for Martin.

Q Okay. Where about's were they rescued?

A It was explained to us that they were rescued off the coast of, of Cuba and on the boat in fact we found a Cuban wind chart as well as some Cuban stamped cigarettes.

THE COURT: On the boat you found?

THE WITNESS: Oh, I'm sorry, within their belongings that were recovered from the boat.

THE COURT: Okay.

MR. BOOKBINDER:

Q Were there, was there money and financial documents?

A Yes, some checks and checkbooks, credit or debit cards and there were at least $500 in cash. We, we did inventory of the money fully.

Q Okay, and listed down at the bottom are receipts for bank withdrawals and recent purchases. Were you able at some point to take a look at some of those items?

A Yes, not only did we review as we took photographs of them as well and essentially there was a number of, of cash withdrawals or ATM withdrawals that appeared ranging from amounts from $500 to $4,900 and then there, the receipts that we observed were from Walmart to purchase electronics. These calling cards that we described earlier and theirs were also paid in cash.

Q Okay, did you talk to folks at Disney, you again,

when I say you I'm referring to FBI generally, not you in particular, but did the FBI talk to Disney about any communications they had with Martin and Dana Gottesfeld on the ship?

A Yes.

Q Can you describe some of those?

A One of, one of the, one of the, initially there was, appeared to be some type of screaming or hysteria in terms of what was going on and then when asked about what, where they were, what they were doing, where they were, one crew member, it was described by one crew member as they were, they had just left Key West that day, but based off of that crew member's experience, they looked and smelled like they had been at sea for some time.

Q Just to be clear, who told the crew member that they had just left that day from--

A Martin and Dana.

Q Okay.

THE COURT: Both?

THE WITNESS: Just, I would go with just Martin from what I recall.

BY MR. BOOKBINDER:

Q That's your recollection from your--

A Yes.

Q --conversation with the security officer at Disney.

Is that right?

A Yes.

Q Okay. Did Martin make any statements regarding where the boat came from?

A No, only that it was purchased for $4,000 approximately four weeks ago.

Q So getting back to our timeline, I think you testified earlier that they were, that you learned that they were on this boat on or about February 16, 2016. Is that correct?

A Yes.

Q And at that point, where was the boat, where was the Disney Cruise ship heading?

A They were, they were still obviously at sea but they were making their way back to the port of Miami, to--

Q When were they due to dock in Miami?

A February 17th.

Q So at that point, FBI has communicated with customs with its attaché and with Disney. Is that right?

A Yes.

Q What steps did FBI take next?

A So we contacted the U.S. Attorney's Office and prepared a complaint for Martin's arrest.

Q Okay. Was that complaint issued?

A It, it was issued on February the 16th.

Q Was an arrest warrant issued?

A Yes.

Q Was that arrest warrant executed?

A Yes, that was es, executed the very next day on the 17th.

Q And where did that take place?

A At the port of Miami.

Q Were you there?

A I was present.

Q So you flew down to Miami?

A Yes.

Q Were you able to see some of the items that were inventoried in Exhibit 6?

A Yes.

THE COURT: So it's unclear to me Special Agent Williams, the ship came in a day early or did it come in on the 16th or the 17th?

THE WITNESS: The 17th.

THE COURT: It was due the 17th and it arrived on the 17th?

THE WITNESS: Yes.

BY MR. BOOKBINDER:

Q And the arrest warrant was issued on the 16th. Is that right?

A Yes.

Q And when did you fly down?

A The night of the 16th. We, we landed just after midnight on the 17th.

Q And approximately when was the defendant arrested on the 17th?

A Approximately 6:45 in the morning.

Q Okay. Did you make any attempts to speak with the defendant?

A No, other than general booking questions.

Q Okay. What about Dana?

A We did attempt to interview Dana and she indicated that she did have an attorney.

Q Did she say who that attorney was?

A Mr. Ekeland.

Q Okay. Did you tell Dana any other information?

A We told her that she should consider calling her mother due to the circumstances that we learned about earlier in the month.

Q Was Dana arrested?

A No, she was not.

Q Were any of the items that they had aboard the Disney Cruise ship seized?

A No.

Q Did they have access to these items while they were on the cruise ship?

A It was my understanding that they did not.

Q Okay. So Dana was free to go. Is that right?

A Yes.

Q And did she leave?

A She did.

Q Okay. Did she take anything with her?

A She took all of the belongings.

Q Okay.

THE COURT: Your Honor, if I could just have a brief moment?

THE COURT: Um-hmmm.

PAUSE

MR. BOOKBINDER: Nothing further from the government.

THE COURT: Cross examination?

MR. EKELAND: Yes, Your Honor.

CROSS EXAMINATION

BY MR. EKELAND:

Q Mr. Williams, thank you for coming in and testifying today. I want to just ask you a couple questions about Mr. Gottesfeld being picked up as you said off the coast of Cuba.

Now when Mr. Gottesfeld was picked up by the Disney Cruise ship, he hadn't been formally charged with any crime, correct?

A That's correct.

Q And you actually have no idea which direction Mr. Gottesfeld was heading, correct?

A I, I am not aware of the exact direction, no.

Q As a matter of fact you can't tell me exactly where he was picked up, correct?

A That's correct.

Q Okay. So he might have been heading back the United States for all you know, correct?

A Correct, all we, all we know is what was told to us from the cruise line.

Q And, and at the time that Mr. Gottesfeld was picked up, he wasn't under any kind of travel restrictions, correct?

A Correct.

Q He was free to go wherever he wanted, correct?

A Yes.

Q And now, you mention that you've been working on this investigation for a while now, correct?

A I'm not the case agent of the investigation. I've assisted with various steps of it but--

Q Well you're, you're famil, you, it's fair to say--

A Right.

Q --that you're familiar with it, correct?

THE COURT: Let the witness finish.

MR. EKELAND: Oh, I'm sorry, Your Honor.

A No, yeah, so I, I, I've assisted with the execution of the search warrant as well as execution of the arrest warrant and you know, bits and pieces here and there but I, I can answer your questions the best I can.

BY MR. EKELAND:

Q Okay, and you testified about the execution of the search warrant I believe, correct?

A Yes.

Q And you testified about, I believe what Mr. Gottesfeld said when the search warrant was executed, correct?

A Yes.

Q But you actually weren't there when the search warrant was executed, correct?

A No, I, I was in the residence. I was not one of the agents speaking directly with Mr. Gottesfeld. I only know what was told to me from, from other agents.

Q From other agents. So you weren't, you weren't present when Mr. Gottesfeld made his statements to the other agents, correct?

A No. I--

Q And, sorry--

A I, I was just going to say, I, I'm sure Mr. Gottesfeld remembers but I did use his restroom. I walked

through with him, but I wasn't adamantly involved in, in the discussion. I was, I was, there was a separate roommate also living there that was also, you know, free to leave but you know, in the meantime he decided he wanted to stay in his residence so I was actually in that other room with him.

Q And you also testified to some conversations that Mr. Gottesfeld had when he got picked up I guess in, in the Caribbean, correct? But you weren't present for those conversations, correct?

A No, I was not.

Q You're just repeating what other people told you?

A Yes, what, what the cruise line has reported to us.

Q Uh-huh, and you also testified that you, that you worked on the drafting of the criminal complaint in this matter?

A I didn't, no, there was another special agent, but I did read the complaint.

Q You, you're familiar with the complaint and you're familiar with the affidavit in this case?

A Yes.

MR. EKELAND: Your Honor, may I approach? I'd just like--

THE COURT: Yes, and you need not ask again.

MR. EKELAND: Thank you, Your Honor.

BY MR. EKELAND:

Q Mr. Williams, I'm just handing you what's been marked for identificat--

THE COURT: You've showed it to your brother?

MR. EKELAND: What?

THE COURT: You've showed it to your brother?

MR. EKELAND: I am about to, Your Honor.

THE COURT: We usually exchange exhibits.

MR. EKELAND: And this, this is the criminal complaint and the affidavit in this matter because your copier--

THE COURT: I think they're familiar with it.

MR. EKELAND: I, I hope so.

BY MR. EKELAND:

Q So, Mr. Williams, I'm just handing to you the criminal complaint and the affidavit. Would the Court like a copy, Your Honor?

THE COURT: No.

MR. EKELAND: All right.

BY MR. EKELAND:

Q So, Mr. Williams, I'm showing you what's been marked for identification as Exhibit 1A which is the criminal complaint.

THE COURT: I think we already have Exhibit 1. You would be Defendant's Exhibit A.

MR. EKELAND: Defense Exhibits A. Your, Your Honor, I've pre-marked these. If you'd like, I can, I'll change the--

THE COURT: Well, it's always best to check with the clerk when you're not familiar with the practice in the district.

MR. EKELAND: Very well. So should I just remark these right now as I go along?

THE COURT: And refer to Exhibit A, Defendant's Exhibit A.

DEFENDANT'S EXHIBIT 1A, MARKED FOR IDENTIFICATION

MR. EKELAND: Yes, yes, Your Honor.

BY MR. EKELAND:

Q So I'm showing you what's now being marked as Defendant's Exhibit A1. That is the criminal complaint--

A Yes.

Q --in this matter. Is that correct?

A Yes.

Q And that essentially charges Mr. Gottesfeld with the violation of 18 U.S., United States Code 371, correct?

A That's correct.

Q And that's just the general conspiracy statute, correct?

A Yes.

Q And the conspiracy that's being alleged in this

complaint is a violation of 18 U.S.C. 1030(a)(5)(A), correct?

A Yes.

Q And that is essentially knowing transmission of a code with the intent to cause damage to a computer, correct?

A Yes.

Q And, and those allegations are based on the alleged DDOS attacks against Boston Children's Hospital and Wayside Youth Center, correct?

A Yes.

Q I just want to, and in this complaint it mentions that, a, it doesn't actually mention the hospital or the youth treatment center by name, but the hospital is Boston Children's Hospital, correct?

A Yes.

Q And the treatment center in question is Wayside Youth and Family Center in Framingham, Massachusetts. Is that correct?

A Yes.

Q And the one thing that these two places had in common is that they both essentially detained Justina Pelletier, correct?

A They had some involvement in, in the care of her. They were custody was granted to them. I'm not sure if I

1 want to use the word detained myself, but, they were
2 involved in, in the custody issue and, and, and it was
3 very public so.
4 Q So, but, so, it's correct to say that the patient A
5 referred to in the affidavit is Justina Pelletier,
6 correct?
7 A Correct, yup.
8 Q And it is correct to say that Boston Children's
9 Hospital gained custody of Justina Pelletier from her
10 parents by going to Massachusetts State Court?
11 A Yes.
12 Q And they, are you aware that they call that a
13 parentectomy at Boston Children's Hospital?
14 A I'm not aware of that term.
15 MR. BOOKBINDER: Objection, Your Honor.
16 THE COURT: Sustained.
17 BY MR. EKELAND:
18 Q Are you aware that Justina Pelletier spent roughly 16
19 months in the custody of BCH--
20 MR. BOOKBINDER: Objection, Your Honor.
21 Relevance grounds? We're here on risk of flight.
22 THE COURT: If he knows?
23 A I'm not, I'm not aware of, of the exact conditions of
24 the case or anything for that matter in regards to her
25 care or treatment or--

BY MR. EKELAND:

Q But you would agree that as stated in the criminal complaint affidavit at paragraph six that both religious and political organizations and others asserted that this case was an example of governmental interference with parental rights?

A That, that's the way that it was explained on the news, yes.

Q And it's fair to say that this case attracted a fair amount of media attention both locally in Boston and nationally, correct?

A It did.

Q Now I just want to turn your attention to the March 23, 2014, YouTube video.

A Yes.

Q Now at the point of this, that this YouTube video that's posted on March 23rd, Ms. Pelletier had been in the custody of Boston Children's Hospital a little bit over a year, correct?

A Yeah.

Q And as we'd mentioned, this was a very controversial thing, her being held by a, being in the custody of Boston Children's Hospital, correct?

A Yes.

Q And in that video, you recall watching that video.

Do you recall it asking for a letter writing campaign to the judge who gave custody of Peltier to Boston Children's Hospital?

A Yes.

Q And that it called for the firing of Dr. Alice Newton who's the, allegedly the doctor at Boston Children's Hospital who asked that the hospital gain custody of her?

A Yes.

Q And you're aware that that video says, asks for Justina to be set free, correct?

A Yes.

Q And you mentioned, you testified about the Pastebin.com listing as, I believe the affidavit says it provided information about BCH's server necessary to initiate a DDOS attack, correct? That's a--

A Yes.

Q But you've looked at that Pastebin post?

A I didn't re-verify it, no.

Q Oh, so you wouldn't be able to tell me that, whether or not it actually explicitly calls for a DDOS attack, would you?

A It did list an IP address as well as some additional address information of the hospital. I don't believe it, from my recollection did not specifically call for it. It was just referenced to from the video.

Q Right, and an IP address that's public information, correct?

A It is.

Q And the Boston Children's Hospital's website was a publically facing website, correct?

A Yes, it, it was publically facing.

Q And the type of server running the website, that's public information as well, correct?

A I'm not sure, I'm not certain how they have their system set up to make it public or I'm not sure if they make that information public. I do know that you, publically you can figure out who that network, who, who owns that IP address, but I'm not sure if they publically say what type of, what, what server it is.

Q Are you aware of a service called Netcraft that will tell you what sort of servers websites are running?

A Yes.

THE COURT: Netcraft?

MR. EKELAND: Netcraft, Your Honor. That's N-E-T-C-R-A-F-T.

THE COURT: Thank you.

BY MR. EKELAND:

Q And the affidavit states that the YouTube video traced directly back to Mr. Gottesfeld, correct?

A Yes.

Q And that's because the YouTube account was in his name, correct?

A Yes.

Q And the IP address resolved to Mr. Gottesfeld's address?

A Yes, to his apartment.

Q So it would be fair to say that Mr. Gottesfeld made no effort to hide the fact that he uploaded this video, correct?

A Yeah, I guess that's a fair assessment. Sometimes people assume that they're using an anon, anonymizing service, and they believe they're using that service and then for one reason or another their true information comes through so while they're, while they believe they're hiding their IP address or their true identify, they do often make mistakes.

Q But when Mr. Gottesfeld was interviewed by the FBI he didn't deny that this--

A No.

Q --was, was his at all?

A Right.

Q He admitted it freely? Okay, so now I just want to turn just briefly to the March 25, 2014 alleged DDOS of Wayside Youth?

A Sure.

Q Are you familiar that in January 2014, Justina Pelletier was transferred to Wayside Youth?

A I'm not certain of the dates but, but I do know that Wayside was involved in, in the issue or in the matter.

Q You have no reason to think that that she wasn't transferred there at some point, correct?

A Right.

Q And you're aware that people were protesting outside Wayside Youth's Framingham campus in, in March?

A Yes.

Q And are you aware that they've been protesting there for weeks?

A I'm not certain of the time period, but I wouldn't, I wouldn't dispute that. I know it was very public so.

Q Um-hmmm, and did you say, how long did the, you say that the Wayside DDOS lasted?

A I don't have the specific time period. I do know it did occur, but I'm not certain of a specific time period.

Q And you're not, you're not, you're not certain how long, and, and those Wayside services--

THE COURT: And the date that it occurred?

THE WITNESS: That was the, the March, the March 25th date.

THE COURT: Thank you.

BY MR. EKELAND:

Q And those Wayside services were publically facing as well, correct?

A Yes.

Q And, and your, are you aware of the allegations of abuse against Justina Pelletier at the Wayside?

A Yes.

Q And, but the FBI never investigated Wayside, did they?

A Not that I'm aware of.

Q And are you aware that both BCH and Wayside received about a half a million dollars and various types of--

MR. BOOKBINDER: Objection.

BY MR. EKELAND:

Q --government funding including Medicaid for their treatment of Justina Pelletier?

MR. BOOKBINDER: Objection, Your Honor.

THE COURT: If he knows.

A I'm not aware of the, the funding that they receive.

BY MR. EKELAND:

Q And are you aware that Massachusetts Health and Human Services Secretary John Palanowicz wrote a letter to the media at the end of April 2014 stating that Justina should be released to her parents?

A No, I did not. I'm not aware of that.

Q All right. I'd like to turn your attention to the

April 19, 2014 alleged DDOS of Boston's Children's Hospital. At this point in time, on April 19, 2014, is it your understanding that Boston Children's Hospital still has custody of Justina Pelletier?

A I believe so.

Q Now you mentioned that I believe BCH, I'm using the abbreviation for Boston Children's Hospital--

A Sure.

Q --received emails where essentially people were, were fishing, correct?

A That's correct.

Q They were with malice, but you don't have any evidence that Mr. Gottesfeld ever sent one of those emails, do you?

A No.

Q As a matter of fact, you don't know who sent those emails, do you?

A No.

Q And you don't have any evidence that any medical records were ever accessed, correct?

A No, only that, only what was described to us by the, by the hospital, that they had to shut down some of their systems. It caused issues with doctors communicating with each other as well as patients communicating with those systems.

Q Well, the, the phone systems were never shut down at BCH, correct?

A I don't believe so.

Q So the doctors could call their patients, correct?

A That's correct.

Q And the patients could call their doctors, correct?

A That's correct, but I'm also not certain of the number of patients that they have on, on a daily basis that would need to be contacted so in terms of the effort or, or whatnot, you know, I'm not sure. It involves feasible, feasible option, I'm not certain that, you know, that would be the best--

Q I'm sorry. Is it your testimony that you have no idea the number of patients at Boston Children's Hospital handles?

A Well, in, in terms of communicating on a daily basis with all their patients, while it could be an option, it could be an option for them to do that, yes.

Q I'm sorry, I didn't, I just didn't hear you.

A I'm not aware of the number of patients that they communicate with on a daily basis so while I do agree that it is a good option for them, or one option is for them to call their patients on the phone to communicate with each other, you know, in terms of types of communications and what needs to happen, I'm not certain of, if in

practicality that would, that would work.

Q But you'd agree with me that the DDOS attack the alleged DDOS attack did not target the phone system, correct?

A That's correct.

Q And it did not target the personal emails of the doctors at BCH?

A No.

Q And you're not aware of any medical records that were destroyed, correct?

A No.

Q And you're not aware of any medical records that were accessed for that matter, correct?

A No.

Q And the, I believe the affidavit says that some research was allegedly interrupted, but you can't specifically tell me what research was interrupted, can you?

A No, we'd have to ask the hospital for that.

Q And this entire time, this period during this DDOS in April 19, 2014, this case is still in the national media, correct?

A It is.

Q It's very controversial, correct?

A Yes.

Q The governor of Massachusetts is getting involved in it, correct?

A Yes.

Q It's on Fox News. Mike Huckabee's doing pieces about it, correct?

A Um-hmmm. Yes.

Q It's fair to say it's a very politically controversial case, correct?

A Yes.

Q Which brings me to June 2014. Are you aware that in June 2014, mainly because of all the controversy surrounding this case and the governor of Massachusetts getting involved, the judge, the state judge, who had--

MR. BOOKBINDER: Objection, Your Honor. Objection.

THE COURT: Let him finish the question.

BY MR. BOOKBINDER:

Q --the state judge who had granted custody to Justina, to Boston Children's Hospital, returned custody of Justina to her parents. Are you aware of that?

A Yes.

Q And to the best of your knowledge, you, you testified that the FBI never investigated Wayside Youth for any alleged abuse of Justina Pelletier, correct?

A That's right.

Q And as far as you're aware, the FBI never investigated Boston Children's Hospital for any alleged abuse of Justina Pelletier, correct?

A Yes.

MR. EKELAND: One moment, Your Honor.

PAUSE

MR. EKELAND: I have no further questions, Your Honor.

THE COURT: All right. We'll take a short break. I'll handle a couple civil matters in the interim.

(Court in recess)

(3:04:40 PM)

(Court back in session)

(3:36:22 PM)

THE COURT: Okay. All right, Mr. Garvin.

THE CLERK: Resuming on the record. U.S. v. Gottesfeld, Magistrate Judge No. 16-4117.

THE COURT: Further cross examination?

MR. EKELAND: None, Your Honor.

THE COURT: All right. Redirect?

MR. BOOKBINDER: No, Your Honor.

THE COURT: All right. Then you may step down.

THE WITNESS: Thank you, Your Honor.

WITNESS, excused

THE COURT: Further witnesses for the

government?

MR. BOOKBINDER: No, Your Honor.

THE COURT: All right, witnesses for the defendant?

MR. EKELAND: No, Your Honor.

THE COURT: All right, then I'll hear argument. Division of Labor here.

MR. BOOKBINDER: Division of Labor, absolutely, Your Honor. It appears from what we heard from, from Mr. Ekeland that one of the things he's attempting to do is to explain or excuse his client's conduct because the matter, the medical matter, child custody matter was controversial and people were concerned about it and people were interested in it and it changed over time. I don't want to spend much time on that because I'd suggest that that's not either a moral defense and certainly not a legal one to the crimes that Mr. Gottesfeld is charged with. You can't join a conspiracy to damage computer systems because you don't like something that the institution whose computer systems those are is doing. I don't, as I said want to spend a lot more time on that except to point out one more thing which is he also seems to be suggesting that some aspects of that conspiracy were unsuccessful and he's right to a point. It appears that the defendant and his co-conspirators were unable to actually intrude into

1 the system to get anything out of it, to, to destroy
2 data, to steal data. They certainly tried through those
3 emails with the, the malicious code in them, but they were
4 unsuccessful and part of the reason they were unsuccessful
5 is because Children's Hospital took such significant
6 defensive measures to prevent them from doing that. They
7 were worried, the hospital was worried, this was exactly
8 what they were trying to do and that's part of the reason
9 why they had to shut down so many parts of the network.
10 So they were successful there. But of course other parts
11 of the attack were very successful. The, the denial of
12 service attack took down the website and caused the
13 hospital to have to shut off essentially all external
14 communications and that meant, as Special Agent Williams
15 testified that, you know, that those doctors and there are
16 many of them that are at the Harvard hospitals that are
17 outside the hospital physically, could not access patient
18 records of their patients in the hospital, that they
19 couldn't place orders with pharmacies for medications,
20 they couldn't communicate through the hospital portal with
21 their patients.
22 Now, I mean obviously, Mr. Ekeland is right,
23 this was not a, you know, a cyber 911 that took out all
24 communications. It was possible to use phones, but in
25 this day and age to say anybody who needed to know

anything or needed to know anything could have just made a phone call to try to get the information to communicate, I'd suggest that's not how any major institutions work now and certainly not this one. So it was tremendously disruptive and all of the measures that the hospital had to take to respond to this attack as the complaint sets out cost more than $300,000. So, and that doesn't even include the fundraising that was disruptive. So not only was it operationally disruptive, it was expensive and tremendously concerning for everyone at the hospital because they were worried that patient records could be stolen, damaged, altered and that could be catastrophic so this was a significant, very significant disruption for the hospital and can't be excused because Mr. Gottesfeld didn't happened to like and maybe some other people didn't happen to like how they were, how, how the courts dealt with this matter and that the Massachusetts court awarded custody to the state which then put the def, the, the juvenile into Children's Hospital. So, there's no excuse. It's not a moral one. It's not a legal one but that's really not why we're here. We're not here to litigate this case. We're confident that we will prevail on that at trial and that is a factor the Court can consider, but we're here because the question is, is Mr. Gottesfeld a flight risk and can, are there conditions of release that

will assure his appearance, and I would suggest that one of the things that's unusual about this situation is there's no question about whether he's a flight risk, he's already fled. He's fled once and he fled in this case before he was even charged. He was aware of what was happening. He knew about what the government's evidence was and how strong it was because we presented it to him in a, in a, what's essentially a reverse proffer as Special Agent Williams testified. We were in the process of negotiating whether we could come up with a plea agreement and close to a resolution, close to the day when he was going to have to sign a plea agreement and come in and pled guilty and all of a sudden he disappeared, and this wasn't just a, you know, stressed out on a Friday night and decided to go hiking in the White Mountains and no one knew where he was for a couple of days kind of thing. This was planned, thought out, they took cash, they took computers, they took, you know, a wedding album and their marriage certificate. They, they took everything they needed to permanently disappear, the defendant and his wife. They cut off all, they just disappeared from their jobs for a month and they cut off all ties with their family without any notice. I mean this is a tremendously draconian effort to disappear and avoid prosecution.

There were, Mr. Gottesfeld was only arrested frankly because of bad luck. If the engine on the boat that he was in off the coast of Cuba hadn't died, he wouldn't be here today. It did, he put out a distress call, had he been picked up by the Cuban Coast Guard he probably wouldn't be here today. The place that he was near and he had wind charts for, Cuba's a place where he'd probably still be. A country that's trying to modernize, where his computer skills would probably be valuable and we certainly would never had gotten him back from there, but he had bad luck. His boat died. He ended up on a Disney Cruise ship and here he is. He did all of this before he had been charged with any crime. Now his situation and his motivation to flee are greater. His situation is worse. His motivation is greater. He's now been charged. He knows that he will be indicted or charged by information if he at some point works out a plea agreement, but he's been charged and he is likely facing a higher sentencing recommendation at least from the government and likely a higher sentence from a judge based on his flight and what he's already done.

THE COURT: What's the guideline range?

MR. BOOKBINDER: The guideline range, Your Honor, that we were looking at before his flight was, I believe with acceptance of responsibility, was 30 to 37

1 months. Without acceptance of responsibility obviously
2 would have been greater and now it likely will be at least
3 somewhat greater. It is unlikely he would get three
4 points for acceptance of responsibility if any in light of
5 his flight. He may get some. So that's sort of the
6 range. We're talking three, four years, would be the
7 guideline range. So he's looking at meaningful amount of
8 prison. Like I said, somewhat more than he was before,
9 and so the remaining question is just are there conditions
10 of release that would assure his appearance here and I'd
11 suggest there's, there absolutely not. I know that he has
12 prepared, he's got friends and family who are prepared to
13 put up money, some amount of cash for him, I think
14 totaling somewhere around 50 or $60,000. I'm sure you'll
15 hear about that from Mr. Ekeland, but I'd suggest that,
16 you know, only a couple of months ago he was willing to
17 flee without money. This isn't his money for the most
18 part and he was willing to flee without even telling these
19 people where he was. His family were, were putting in
20 missing persons or at least his wife's family were filing
21 missing persons reports with the police. They thought
22 maybe she was missing, dead, who knows and he and his
23 wife, they didn't care. They just wanted to get away. So
24 the idea that now these people have put up some cash and
25 all of a sudden he won't flee because, because he's so

concerned about that, I'd suggest he's proven that's not a concern for him, and, and, you know, I understand I'm sure he would be willing to wear a bracelet, monitoring bracelet, but as the Court knows, all that does is just limit the amount of a head start he would get, but he can cut that off and be in the wind and, you know, if he gets a boat this time with a better engine or makes his way into Canada or somewhere else, you know, he's not going to be here.

I'd suggest, Your Honor, that Mr. Gottesfeld had a chance to stay out of jail and was on a path to stay out of jail if he had a negotiated plea agreement. A plea to an information as the Court knows, in those cases defendants are not detained pending trial and pending plea and sentencing. He had a chance to work that out and to stay out pending a sentencing. Instead he chose to flee and at this point there is no way to secure his presence in this Court except through detention, Your Honor.

THE COURT: All right, thank you. Mr. Ekeland?

MR. EKELAND: Thank you, Your Honor. Your Honor, in the *United States v. Salerno*, 481 U.S. 739 755 1987, the United States Supreme Court recognized that in our society liberty is the norm and detention prior to trial or without trial is the carefully limited exception.

THE COURT: I know the law well. I've been

doing this for 26 years. What are you offering?

MR. EKELAND: What am I offering, Your Honor? $55,000 cash bail put up by his sisters and his nephew, electronic monitoring which this district, this circuit is recognized has been effective since *United States v. O'Brien* in 1990 over a quarter of a century ago. Greg Brown who is present in court, who is also willing to put up some bail money will act as the custodian. He's, lives roughly 10 blocks away.

THE COURT: Where will the defendant reside?

MR. EKELAND: He'll reside at his current place with his wife.

THE COURT: The current place being?

MR. EKELAND: 28 Albion in Somerville. Do I have that address correct? Yeah, 28 Albion in Somerville, Massachusetts, Your Honor. And regular check ins with pretrial services, obviously he would actively seek employment. We're actually looking for a job for him right now and obviously, standard conditions like refraining from any contact with the alleged victims.

THE COURT: All right. I'll take it under advisement. In the meantime the defendant's wife can be interviewed by pretrial services.

Now what about, did the defendant ever have a passport? Do we know?

MR. EKELAND: No, he didn't, Your Honor.

THE COURT: All right. So we'll take it under advisement.

Ms. Brown, you will give it a look?

MS. BROWN: Yes, Your Honor.

THE COURT: All right, so we'll look at the conditions.

MR. EKELAND: Your Honor, may I just add one more thing? Pretrial services in Miami actually recommended that Mr. Gottesfeld be released on, on pretrial, release--

THE COURT: Well, you're in Boston now. And also you might introduce Ms. Brown the proposed custodian.

MR. EKELAND: It's Mr. Brown and--

THE COURT: Yes, you can introduce him to Ms. Brown.

MR. EKELAND: Oh, yes, yes, Your Honor.

THE COURT: All right.

MS. BROWN: Obviously he doesn't need a probation officer as well.

THE COURT: Yes, he will soon enough. He will soon enough.

MS. BROWN: I'm wondering, Your Honor, if by check it out, do you want me to have someone go to the residence--

THE COURT: Well let's start with the initial interview and then we'll go from there.

MS. BROWN: Thank you, Your Honor.

THE COURT: All right.

MR. EKELAND: Thank you, Your Honor.

(Court adjourned)

(3:49:35 PM)

CERTIFICATION

I, Maryann V. Young, court approved transcriber, certify that the foregoing is a correct transcript from the official digital sound recording of the proceedings in the above-entitled matter.

/s/ Maryann V. Young May 23, 2016