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Acting Under Authority
Conferred by 28 U.S.C. § 515
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

GIOVANNI VINCENZO TILOTTA (3),
aka “Gio Tilotta,”
WAIEL YOUSIF ANTON (5),
aka “Will Anton,”

Defendants.

Case No.: 19-CR-4768-GPC

Trial: March 8, 2022

Time: 2:30 p.m.

Honorable Gonzalo P. Curiel

UNITED STATES’ TRIAL BRIEF

The UNITED STATES OF AMERICA, by and through its counsel, LINDA FRAKES, Attorney for the United States Acting Under Authority Conferred by 28 U.S.C. § 515, and Nicholas W. Pilchak and Andrew R. Haden, Assistant U.S. Attorneys, hereby files its Trial Brief.

I.

STATEMENT OF THE CASE

A. Indictment & Superseding Indictment

On November 21, 2019, a federal grand jury in the Southern District of California returned a 23-count indictment charging five defendants with firearms and drug trafficking offenses. Defendant Wael Yousif Anton (5) was arraigned on the indictment on November 22, 2019 and entered a not guilty plea. Defendant Giovanni Vincenzo Tilotta (3) was arraigned on the indictment on November 25, 2019, and also pleaded not guilty. A federal grand jury returned an eight-count superseding indictment against Tilotta and Anton on April 2, 2021. Both men have pleaded not guilty to those charges, as well.

The Court dismissed counts 3 and 6 of the superseding indictment on January 12, 2022. ECF 243.

B. Trial Status

Trial is set for March 8, 2022 at 8:30 a.m. before the Honorable Gonzalo P. Curiel. The United States anticipates that its case-in-chief will last roughly eight full trial days. Earlier today, defense counsel notified the Court that Defendant Anton's personal circumstances would prompt his counsel to request a continuance of the trial date. A status hearing regarding the trial is presently set for March 2, 2022. ECF 265.

C. Status of Counsel

Defendant Tilotta is represented by appointed counsel Jeremy Warren, assisted by Katie Jenkins. Defendant Anton is represented by retained counsel Eugene Iredale. The Court has set a hearing concerning appointed counsel for a prospective witness on March 2, 2022. ECF 257.

D. Custody Status

Defendant Tilotta is released on a \$25,000 personal surety bond secured by his signature and the signature of one financially responsible adult. ECF 31. Defendant

Anton is presently released on a \$500,000 bond secured by real property, with GPS monitoring and a curfew. ECF 196, 211.

E. Interpreter

The United States does not require an interpreter for any of its witnesses.

F. Jury Trial

Defendants have not submitted a jury waiver.

G. Pretrial Motions

Defendant Tilotta filed a motion to dismiss Count 13 of the original indictment which was mooted by the filing of the superseding indictment. ECF 111, 152. Tilotta also filed motions to dismiss Counts 3 and Counts 5 or 6 of the superseding indictment, which were granted on January 12, 2022. ECF 225, 226, 243.

The United States filed a variety of motions *in limine*. ECF 224. Defendants filed none. At a hearing on January 12, 2022, the Court deferred ruling on most of the United States' motions, except: (1) it found the motion to preclude unnoticed defense expert witnesses moot, as the defense indicated they will not call experts; (2) it denied the United States' motion to admit physical firearms in court; (3) it granted in part the United States' motion to exclude evidence of any medical condition arising on Anton's family's part after either February 14, 2019 or February 18, 2019, contingent on a forthcoming ruling; and (4) it found the United States' motion to preclude an entrapment defense moot, as Anton indicated he will not present an entrapment defense. ECF 243. Similarly, Anton's counsel represented to the Court that Anton did not intend to pursue any advice of counsel defense based on advice from trial counsel.

The Court also granted several oral motions from Tilotta's counsel: (1) to allow attorney-conducted *voir dire*; (2) to keep the indictment from the jury room; and (3) to provide each juror with a copy of jury instructions. The Court denied Tilotta's oral motion for extra peremptory challenges for the defense. Id.

1 The Court heard further argument on the United States’ motion to exclude
 2 prejudicial evidence of a defense of recantation, abandonment or renunciation on
 3 February 18, 2022. ECF 243. An anticipated ruling from the Court is pending.

4 **H. Stipulations**

5 To streamline the proof at trial, the United States has proposed a series of
 6 stipulations since June 2021. ECF 224-1 at 16. To date, defendants have not entered
 7 into any written stipulations, although they have verbally agreed to stipulate that the
 8 alleged firearms were firearms under federal law.

9 **I. Discovery**

10 The United States has produced extensive discovery in this case, estimated at a
 11 total of roughly 154,861 pages of written discovery and 278 gigabytes of data. The
 12 United States has complied with its discovery obligations. To date, the United States
 13 has received zero pages of reciprocal discovery.

14 **II.**

15 **STATEMENT OF FACTS**

16 Former Sheriff’s Captain M. Marco Garmo engaged in the business of dealing in
 17 firearms without a license for years.¹ In particular, he specialized in obtaining “off-
 18 roster” handguns by falsely claiming to be their true buyer while intending to furnish
 19 them to private citizens prohibited by California law from directly obtaining the
 20 weapons themselves.² As part of that endeavor, Garmo repeatedly bought and sold (and
 21 straw-purchased) smaller and newer-model off-roster handguns especially well-suited
 22 for concealed carry.

23 Garmo was assisted in this illegal enterprise by Mr. Tilotta, Mr. Anton, and
 24 others. Tilotta acted as Garmo’s willing federal firearms licensee (“FFL”)—a licensed

25 ¹ This is a summary statement of facts for purposes of this brief only.
 26

27 ² On September 15, 2020, Garmo pleaded guilty to engaging in the business of
 28 dealing in firearms without a license. ECF 108, 110.

1 gun dealer willing to bend and break the laws for firearms transfers involving Garmo
2 and his close associates. Tilotta knowingly processed straw transfers in which Garmo
3 and Fred Magana (4)—Garmo’s immediate subordinate at the San Diego County
4 Sheriff’s Department (“SDCSD”)—acquired desirable new off-roster handguns for
5 others, including especially Leo Joseph Hamel (2).³ Tilotta unlawfully processed
6 transfer paperwork for firearms transactions that had not properly speaking even begun,
7 because the parties hadn’t yet appeared at his dealer (Honey Badger Firearms) to begin
8 the paperwork, and then allowed the parties to backdate the required forms after the
9 fact. Tilotta also processed a firearms transaction at an unlawful location: a firearms
10 transfer for defense attorney Vikas Bajaj inside Garmo’s Captain’s office at the SDCSD
11 Rancho San Diego station.⁴

12 For his part, Anton assisted Garmo by setting up a “consulting” scheme to help
13 applicants fill out a basic application for SDCSD-issued permits to carry a concealed
14 weapon (commonly known as “CCWs”). In exchange for thousands of dollars,
15 typically paid in cash, Anton fast-tracked applicants’ initial appointments with
16 SDCSD’s Licensing division, shaving an eight-month wait for the general public down
17 to two weeks for his “clients.” Anton accomplished this by leveraging his own cachet
18 at SDCSD from his proximity to powerful SDCSD figures like Garmo, and by
19 sprinkling gifts and an unlawful cash payment (and the promise of more) on SDCSD
20 Licensing staff. In turn, Anton paid Garmo a fraction of Anton’s “consulting” fee as a
21 kickback for each CCW client that Garmo sent Anton’s way.

22 The symbiosis of Anton’s CCW “consulting” arrangement with Garmo’s
23 unlicensed firearms trafficking was demonstrated when an undercover ATF agent
24

25 ³ On November 22, 2019, Hamel pleaded guilty to aiding and abetting Garmo’s
26 unlicensed dealing in firearms. ECF 8, 13.

27 ⁴ On December 9, 2020, Bajaj entered a guilty plea to aiding and abetting the false
28 entry of dealer records by Mr. Tilotta in related case no. 20-cr-3905-JLB; *see* ECF 5, 7.

1 bought two off-roster handguns advertised by Garmo. Garmo told the agent that, if he
2 was interested in a CCW, he could get a faster CCW appointment with SDCSD
3 Licensing by hiring Anton, because Anton was helping Garmo's cousin in the same way
4 in exchange for a fee.

5 At a February 5, 2019 meeting, Anton charged the undercover agent \$1,000 for
6 his "consulting" services, which mostly consisted of calling the clerk at the Sheriff's
7 Department to whom Anton had made an unlawful cash payment to secure an
8 appointment about eight months earlier than those then available to the general public.
9 During their meeting, Anton showed the undercover agent Anton's credentials from the
10 Honorary Deputy Sheriff's Association ("HDSA") and a handgun that Anton had
11 recently purchased from Garmo. Anton also invited the undercover agent to refer him
12 other "consulting" clients and volunteered to pay a referral fee of \$100 a head.
13 Similarly, one of the \$100 bills the agent paid to Anton was found inside Garmo's wallet
14 days later—a kickback paid to Garmo by Anton from a portion of the "consulting" fee
15 Anton charged the undercover agent whom Garmo had referred.

16 Anton's home was searched by federal agents on February 13, 2019—just eight
17 days after Anton met with the undercover agent. That same day, hours later, Anton
18 placed an unsolicited phone call to the agent. During the call, Anton urged the agent
19 nine times in about six minutes not to tell federal investigators about the \$1,000 that he
20 had paid Anton. Anton repeated this instruction in separate telephone calls later that
21 evening and the following day.

22 III.

23 WITNESSES

24 The United States has provided the defense with a draft witness list. The United
25 States will file under separate cover a copy of its anticipated witness list, pending the
26 results of the imminent hearing concerning the defense's request for a continuance of
27 the trial date.

1 IV.

2 **EXHIBITS**

3 The United States has provided the defense with a draft exhibit list and will tender
4 a final exhibit list the morning of trial. Presently, the United States intends to offer in
5 evidence the following categories of exhibits:

- 6 1. Firearms transaction records for relevant transactions, including transfers
7 processed at Honey Badger Firearms
- 8 2. Acquisition and disposition logs for Honey Badger Firearms and Leo
9 Hamel Fine Jewelers
- 10 3. Photographs of relevant firearms, including firearms transferred at Honey
11 Badger Firearms; physical locations and items seized; and Defendants and
12 their associates at certain events
- 13 4. Email messages
- 14 5. Text messages
- 15 6. Audio and video recordings, and associated English-language transcripts
- 16 7. Cellular telephones
- 17 8. The handwritten note accompanying Anton's \$100 payment to Teresa
18 Collier
- 19 9. Anton's Honorary Deputy Sheriff's Association badge and credentials
- 20 10. Anton's Sheriff's Department duffel bag, SWAT jacket, police radio,
21 handcuffs, and Sheriff's Department fleet access card

22 V.

23 **PERTINENT LAW**

24 **A. Elements of the Charged Crimes**

25 The United States submitted proposed jury instructions setting out the elements
26 of the charged crimes on February 21, 2022. ECF 256. Tilotta filed proposed
27 instructions the next day. ECF 258. On February 23, 2022, Anton submitted general
28

1 objections to the United States’ proposed instructions but filed no proposed language
 2 for his challenged instructions. ECF 259.

3 **B. Forfeiture**

4 To streamline the trial of this matter, the United States intends to seek a
 5 stipulation as to forfeiture of property forfeitable pursuant to conviction of either
 6 defendant on Counts 1 through 7. In the alternative, the United States will file under
 7 separate cover proposed jury instructions for use at a forfeiture proceeding if demanded
 8 by either defendant.

9 **VI.**

10 **VOIR DIRE**

11 The United States respectfully requests that the Court make the following
 12 inquiries of the members of the jury venire.

13 1. Has anyone had an unpleasant experience with local law enforcement,
 14 including the San Diego County Sheriff’s Department?

15 2. Is anyone a current or former member of the Honorary Deputy Sheriff’s
 16 Association? What about the San Diego County Gun Owner’s Association?

17 3. Has anyone had an unpleasant experience with federal law enforcement,
 18 including the Federal Bureau of Investigation (“FBI”) or the Bureau of Alcohol,
 19 Tobacco, Firearms and Explosives (“ATF”)?

20 4. Does anyone own a firearm, or live in the same household with someone
 21 who does? Does anyone own more than ten firearms, or live with someone who does?

22 5. Has anyone ever conducted a private party transfer (or “PPT”) of a
 23 firearm? Has anyone conducted more than five PPTs?

24 6. Has anyone ever applied to the County of San Diego for a license to carry
 25 a concealed weapon (or “CCW”)?

26 7. Does anyone have strong beliefs about the Second Amendment of the U.S.
 27 Constitution, which safeguards the right to keep and bear arms? Does anyone believe
 28

1 that the Second Amendment means that the State of California should not be able to
2 regulate the ownership or transfer of firearms?

3 8. Does anyone think they will have trouble deciding whether Defendants are
4 guilty or not guilty, regardless of the strength of the evidence? Does anyone have any
5 religious or moral beliefs that would prevent them from finding Defendants guilty or
6 not guilty in this case?

7 9. Agreeing and disagreeing with our society's laws is fundamental to the
8 concept of a democracy. Nevertheless, if selected as jurors, you will be instructed that
9 this trial is not a forum for you to express your agreement or disagreement with the
10 firearms laws of the United States or the State of California. The jurors selected in this
11 case must be prepared to take an oath to follow the law as I instruct you. Does anyone
12 think they would be unable or unwilling to follow the law because of their personal
13 beliefs about firearms laws?

14 10. One of the charges in this case alleges that one of the Defendants attempted
15 to obstruct justice. Does anyone think that it should not be a crime to try to interfere
16 with a federal criminal investigation?

17 11. The indictment in this case charges two Defendants, both of whom are
18 presumed innocent unless and until proven guilty beyond a reasonable doubt. During
19 this trial, you will hear evidence about these two Defendants, but you will also hear
20 evidence about other individuals who may have been involved in some of the conduct
21 but are not facing charges at this trial. You may also hear evidence about the
22 consequences of this case for some of those other individuals. Regardless, if selected
23 as a juror for this case, you would be required to take an oath to follow the law as I
24 instruct you. Does anyone think that they may be unable or unwilling to follow the law
25 in deciding whether the Defendants in this case are guilty or not guilty because of
26 concerns about other individuals who are not charged in this trial?

27 12. Some of the individuals you may hear about during this trial may have
28 been the subject of attention in the media, including former Sheriff's Captain Marco

1 Garmo, jeweler Leo Hamel, defense attorney Vikas Bajaj, and others. Does anyone
2 here think they may have heard or read anything about this case in the media? What
3 have you heard or read? Do you believe you will be able to set that aside if selected as
4 a juror in this case and consider only the evidence admitted during this trial?

5 13. This trial may involve testimony from federal agents who investigated in
6 an undercover capacity, which means that they did not reveal that they were law
7 enforcement agents and instead posed as someone else. Although this investigative
8 technique is permitted by law, does anyone feel that their personal views about this
9 technique would make it hard for them to evaluate such an agent's testimony fairly and
10 consistent with my instructions?

11 14. This trial may involve testimony from individuals who have made an
12 agreement with the United States and hope to receive a benefit under that agreement.
13 Other individuals may discuss their participation in potentially criminal conduct, but
14 may not have been personally charged with a crime. I will give an instruction on
15 weighing and evaluating the credibility of witnesses, including how to evaluate the
16 testimony of someone who may have received a benefit in connection with their
17 testimony. Does anyone have strong personal views about someone who would
18 cooperate with law enforcement in exchange for a benefit that may make them unable
19 or unwilling to follow my instructions in considering such a witness's testimony?
20

21 DATED: February 28, 2022

22 LINDA FRAKES
23 Attorney for the United States
24 Acting Under Authority
25 Conferred by 28 U.S.C. § 515

26 /s/ Nicholas W. Pilchak
27 NICHOLAS W. PILCHAK
28 Assistant United States Attorney

/s/ Andrew R. Haden
ANDREW R. HADEN
Assistant United States Attorney

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