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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

13 Cr. 368 (DLC)

5 MARK MARMILEV, AZZEDDINE EL AMINE,  
6 MAXIM CHUKHAREV, et al.,

7 Defendants.  
8 -----x

9 May 9, 2014  
3:15 p.m.

10 Before:

11 HON. DENISE L. COTE  
12 District Judge

13 APPEARANCES

14 PREET BHARARA  
15 United States Attorney for the  
16 Southern District of New York  
17 BY: SERRIN TURNER  
18 CHRISTINE MAGDO  
19 Assistant United States Attorneys

20 SETH GINSBERG  
21 Attorney for Defendant Mark Marmilev

22 LEO KIMMEL  
23 Attorney for Defendant Azzeddine El Amine

24 SARAH KUNSTLER  
25 Attorney for Defendant Maxim Chukharev

ALSO PRESENT: TATE JARROW, Secret Service  
VALERY GLEIKH, Russian Interpreter

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1 (Case called)

2 (In open court)

3 MR. TURNER: Good afternoon, your Honor. Serrin  
4 Turner for the government. With me at counsel table is AUSA  
5 Christine Magdo and Special Agent Tate Jarrow from the Secret  
6 Service.

7 MR. GINSBERG: Good afternoon, your Honor. Seth  
8 Ginsberg on behalf of Mark Marmilev who is present in the  
9 courtroom today.

10 MR. KIMMEL: Leo Kimmel for Mr. El Amine. Good  
11 afternoon, your Honor.

12 MS. KUNSTLER: Good afternoon, your Honor. Sarah  
13 Kunstler for Maxim Chukharev.

14 THE COURT: Welcome everyone. We are assisted this  
15 afternoon by interpreters. We have a Russian interpreter here,  
16 and I believe he is serving as an interpreter to assist  
17 Mr. Chukharev.

18 Mr. Chukharev, if you have any difficulty  
19 understanding what is being said through the interpreter, will  
20 you please let me know immediately.

21 DEFENDANT CHUKHAREV: I understand.

22 THE COURT: And you will let me know immediately if  
23 you have any difficulty understanding?

24 DEFENDANT CHUKHAREV: I will.

25 THE COURT: Thank you. I would ask the interpreter,

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1 please, to stand. I don't believe I have qualified you before  
2 in this proceeding. So, if you could please advise me how did  
3 you learn English?

4 THE INTERPRETER: I graduated from the Foreign  
5 Language Institute in Moscow. Five years of English schooling,  
6 and then upon my graduation I actually I have been interpreting  
7 as an interpreter in the Soviet Union, and since I came here in  
8 the United States in '92, and I have been doing quite a few  
9 jobs for you in particular, Judge.

10 THE COURT: Thank you very much.

11 THE INTERPRETER: Good afternoon.

12 THE COURT: And Russian is your native tongue.

13 THE INTERPRETER: Yes.

14 THE COURT: Please place the interpreter under oath.

15 (Interpreter sworn)

16 THE COURT: And we have as well interpreters who are  
17 prepared to both interpret in French and in Spanish for Mr. El  
18 Amine.

19 Mr. Kimmel, does your client require the services of  
20 an interpreter?

21 MR. KIMMEL: No, your Honor. I've spoke with him many  
22 times; he speaks perfect English.

23 THE COURT: OK. Mr. El Amine, if you would please  
24 stand.

25 We have interpreters here who can interpret between

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1 English and Spanish and between English and French. Would you  
2 like any interpreter to assist you today?

3 DEFENDANT EL AMINE: No, it's OK, your Honor. It's OK  
4 for now.

5 THE COURT: OK. Will you please tell me immediately  
6 in any proceeding, either today or any future proceeding, if  
7 you need the services of an interpreter.

8 DEFENDANT EL AMINE: I will.

9 THE COURT: OK. Thank you.

10 DEFENDANT EL AMINE: Thank you.

11 THE COURT: You may be seated.

12 So, our French and Spanish interpreters are excused  
13 with the thanks of the court.

14 Mr. Turner, I will take a report.

15 MR. TURNER: Yes, your Honor. Since the last  
16 conference in this matter the government has begun the process  
17 of collecting discovery for production to the recently-arrived  
18 defendants. That process is ongoing.

19 We expect discovery to be produced to Mr. Chukharev's  
20 counsel by approximately June 1. We recently got the drives  
21 that are needed to copy that discovery recently. We are still  
22 awaiting drives from Mr. El Amine.

23 We have one defendant, as the court is aware, who is  
24 still awaiting extradition from Spain, Mr. Budovsky.  
25 Obviously, nothing is a guarantee, but our expectation is that

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1 he is likely to arrive in or before August of this year,  
2 assuming that his latest and last appeal is denied. Basically  
3 his extradition was approved by the three court panel that  
4 initially hears such matters, and then he petitioned for the  
5 equivalent of rehearing en banc and is awaiting a decision from  
6 that body. Our understanding is that that's essentially the  
7 last stop in the process.

8 We have been in contact with Mr. Budovsky's criminal  
9 counsel, separate and apart from his extradition counsel, and  
10 we have basically kept him apprised of what is going on here.  
11 We have offered to start producing discovery to his counsel  
12 now, and I am waiting to hear back from him on that.

13 In the meantime, your Honor, we have had discussions  
14 with defense counsel here about proposed trial dates, and have  
15 arrived at an agreed-upon proposed schedule for the court.

16 THE COURT: And why don't you review that with me.

17 MR. TURNER: Sure. So, first of all, the schedule  
18 calls for defense motions -- well, I will start with the trial  
19 date. The proposed trial date is April 27, 2015. Working  
20 backwards from there, 3500 would be produced early on April 3,  
21 2015 by the government. In limine motions would be due March  
22 9, with oppositions due March 23. The parties would exchange  
23 exhibits February 16, 2015, and also the government would  
24 provide notice of its 404(b) evidence on that same date.

25 And in terms of suppression motions, motions to

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1 dismiss the indictment, etc., those would be due November 21,  
2 2014; with government opposition being due December 19; and  
3 defense replies being due January 9, 2015.

4 THE COURT: Is that schedule agreeable to you,  
5 Mr. Ginsberg?

6 MR. GINSBERG: The schedule is agreeable, your Honor.  
7 I would just like to clarify one thing, if I might.

8 Mr. Budovsky, as Mr. Turner pointed out, is still in  
9 Spain. I do understand that he has another appeal that is  
10 either about to be submitted or had recently been submitted.  
11 It is my understanding that there is a potential appeal after  
12 that.

13 I have spoken with the government and gotten  
14 information from other sources as well, and the best guess from  
15 the government, based on the information that it is receiving,  
16 is that he will be here sometime in August. But, as Mr. Turner  
17 indicated, there is no guaranty of that.

18 Mr. Marmilev has been before your Honor almost a year  
19 now. He is somewhat eager to move the process forward, and I  
20 just want to understand that if Mr. Budovsky doesn't arrive in  
21 July or August, and he arrives in January, for example, and his  
22 lawyer says that he is not going to be able to start a trial on  
23 April 27, how that's going to play out. Because obviously  
24 Mr. Marmilev has certain interests in moving the process  
25 forward, and the court has always been sensitive to that and

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1 worked with us to accommodate our needs along the way. I just  
2 want to make sure his interests are explained and put on the  
3 record, and we have an understanding how that's going to work  
4 going forward.

5 THE COURT: Thank you, Mr. Ginsberg.

6 Yes, we have been addressing speedy trial issues all  
7 along, and I appreciate the concern of any defendant that a  
8 trial date be set at the earliest appropriate time. And if  
9 there is ever an application to move the trial date of April  
10 27, I will not move it without giving everybody an opportunity  
11 to be heard.

12 So, should we set April 27, 2015 today as our trial  
13 date -- and I have yet to hear from two codefendants -- but  
14 should we do that, and should something happen either  
15 associated with Mr. Budovsky or some other event, and there is  
16 an application to move the trial date, I will, as I said, give  
17 everyone an opportunity to be heard on that issue.

18 But if we set this trial date today, I want everyone  
19 to have confidence that in my mind it's a firm trial date, and  
20 everyone should work towards that. If the defendants want to  
21 change counsel or need additional counsel, they should do so  
22 promptly, because I'm not going to move the trial date that I  
23 set today except for very good cause shown.

24 So, let me ask you, Mr. Kimmel, is the trial date of  
25 April 27, 2015 agreeable to you?

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1 MR. KIMMEL: Yes, your Honor.

2 THE COURT: And let me ask you, Ms. Kunstler, is a  
3 trial date of April 27, 2015 agreeable to you?

4 MS. KUNSTLER: It is, your Honor. I still have the  
5 concerns I outlined in my letter to the court. I feel a lit  
6 bit like I'm being asked to count the number of jelly beans in  
7 a jar I haven't seen yet, but it is an acceptable date.

8 I wanted to let the court know that I am also  
9 consulting at the court's recommendation with Jerry Tritz on  
10 putting together a budget, a case budget as well.

11 THE COURT: Thank you, Ms. Kunstler, I appreciate  
12 that.

13 OK. So we will set our trial date for April 27, 2015.

14 Mr. Marmilev, do you understand that that is a firm  
15 trial date?

16 DEFENDANT MARMILEV: Yes.

17 THE COURT: Mr. El Amine, do you understand that is a  
18 firm trial date?

19 DEFENDANT EL AMINE: Yes.

20 THE COURT: Mr. Chukharev, do you understand that  
21 that's a firm trial date?

22 DEFENDANT CHUKHAREV: Yes.

23 THE COURT: So, what that means is -- again, just to  
24 underscore this for each of the defendants -- you have a right  
25 to retain counsel, you have a right to retain other counsel.



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1 If you at any point in time can't afford counsel -- you now  
2 have retained counsel but want the court to appoint counsel to  
3 represent you, I will be happy to do so, but you have to make  
4 those decisions far enough in advance of our trial date,  
5 because that new lawyer needs an opportunity to prepare, and I  
6 am not going to move the trial date because of incoming  
7 counsel.

8 OK. So, do I have any objection to an exclusion of  
9 time from today until April 27, 2015?

10 MR. GINSBERG: No, your Honor.

11 MR. KIMMEL: No, your Honor.

12 MS. KUNSTLER: No, your Honor.

13 THE COURT: So, I am going to exclude time pursuant to  
14 the Speedy Trial Act, Title 18 United States Code, Section  
15 3161(h)(7)(A), finding the exclusion is in the interests of  
16 justice and outweighs the best interests of the public and the  
17 defendants in a speedy trial.

18 There is voluminous discovery to be produced to our  
19 newest defendants here, and all counsel need extensive time to  
20 review it and consult with their clients with respect to their  
21 client's wishes.

22 If their clients desire to enter a plea of guilty,  
23 their attorneys will need an opportunity to negotiate that  
24 disposition with the government. If the defendants wish to  
25 proceed to trial, their attorneys need time to prepare motion

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1 practice; I need an opportunity to review any motions submitted  
2 to me and rule on them. And as the scheduled proposed by  
3 counsel today suggests, there may be extensive motion practice  
4 both in terms of a first waive of motions and also motions in  
5 limine. For all those reasons it is appropriate to exclude  
6 this time.

7 Does the government have any additional issue that  
8 needs to be addressed?

9 MR. TURNER: No. Thank you, your Honor.

10 THE COURT: Give me just one second, counsel.

11 Is there any issue that any one of the defense counsel  
12 would like to raise at today's conference?

13 MR. GINSBERG: Nothing on behalf of Mr. Marmilev.  
14 Thank you, your Honor.

15 MR. KIMMEL: Nothing on behalf of Mr. El Amine, your  
16 Honor.

17 MS. KUNSTLER: I guess I just wanted a little bit of  
18 clarity on the June 1st discovery date, whether that was a date  
19 for defendants or whether that was just a date to be produced  
20 to defense counsel.

21 THE COURT: I will allow you to discuss that with the  
22 government, Ms. Kunstler. And, of course, if at any time there  
23 is any problem with discovery or production of discovery  
24 issues, you are going to discuss that with each other, try to  
25 resolve it in good faith. But if you have an outstanding

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1 problem, please feel free to write me promptly, and I will make  
2 sure I address it promptly.

3 MS. KUNSTLER: Thank you, your Honor.

4 THE COURT: Thank you. Thank you, all.

5 (Adjourned to April 27, 2015)

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