IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA, **Plaintiff**	)	
V.	)	**Docket No. 19 CR-20693**
	)	**Honorable Patricia A. Seitz**
PETER SOTIS, **Defendant**	)	

Defendant's Reply to Objection for Bond Pending Appeal

Defendant, Peter Sotis, (hereinafter referred to as "Defendant" or "Mr. Sotis") respectfully submits this reply to the Government's Objection to Motion for Bond pending appeal.

The Government's response in opposition is a familiar theme throughout these proceedings. The Government obfuscates the issues until they are beyond recognition, and then rely on their authority as the United States to force their proposition. The arguments here are mere stumps, built on mis-statements of the record and taking information out of context to support an unstable and invalid conclusions. Hyperbole and *ipse dixits* cannot sustain the government's objection. The issues on appeal are close questions.

The appellate issues are close questions and involve a conviction with one of the most complex set of laws devised, the IEEPA. The government, whether it prefers to admit it or not, knows Sotis's case can go either way based on this point alone. It also knows that the appellate issues, even without this consideration, are substantial.

As a threshold matter, the government concedes that Sotis is not likely to flee or is a danger to the community. The latter point is asserted and conceded with some light doublespeak (*see* Doc. 220 at 4), but the fact still remains that these issues are not in dispute. Sotis has therefore met his burden with respect to this criterion. The government's only contention is that Sotis has not presented a close question on appeal.

As to this challenge, the government belies its own assertions. Indeed, by page 2 of its response, it admits the appeal "is tentatively scheduled for oral argument in February 2023." *Id.*

at 2. This is despite the government stating in their appellate brief that: "The United States of America suggests that the issues presented can be determined upon the record and that oral argument would not benefit the panel. The parties' positions are clear, and the record is uncomplicated." Gov. App. Brief. at 3 (citing FRAP 34(a)(2)(C)). Clearly, the appellate court did not receive this suggestion well, as oral arguments are scheduled. In fact, if found otherwise that the issues are complex and substantial enough to warrant oral argument. While Sotis does not suggest that there should be a *per se* rule that oral argument equates with there being a close question on appeal, the need for oral argument in his circumstance strongly supports that his issues are substantial. Oral argument would not have been granted if: (A) the appeal was frivolous; (B) the dispositive issues have been authoritatively decided; or (C) the facts and legal arguments were adequate on the record and in the briefs. *Id.* (a)(2). It is logical to infer that the appellate court would indulge oral arguments on appeals that present complex issues to aid the panel's decision making, and therefore issues that are close enough to go either way.

Moreover, the government. however, attempts to portray the issues as simple. This is absurd. The IEEPA laws at issue in this case require practically a PhD dissertation to understand them. They reference multiple statutes, the CFR, and several other provisions that consider eldritch concepts as to dual-use, military applications of consumer products, multiple exceptions, restrictions, several tables, and a list that references another list. See 50 U.S.C. § 1701 et seq.; 15 CFR § 764.21. To assert that understanding an applying the IEEPA as a simple matter is a bald contrivance.

The government, here and on appeal, wishes to portray that they can deprive Mr. Sotis of his liberty over a willful violation of the law for shipping diving equipment without a license. A license that Sotis apparently independently figured out was needed. This would require nothing short of sorcery. It does not follow the actual timeline of events.

First, no doubt owing to the inherent complexity of the IEEPA laws, not even the government (agent Wagner) knew the license was required until August 17, 2016. *See* Initial. Brief. at 46. This was after the rebreathers were picked up (August 9, 2016) on behalf of the U.S. corporation Ramas (who was the purchaser) by U.S. shipping company Shipco, LLC. Neither of these entities were under the control of Mr. Sotis, and neither was charged with any crime. *See id.* at 39-40. And to add insult to injury, the government is planning to give the rebreathers, the supposed objects of the criminal conspiracy to Ramas (*see* Doc. 217) who was the only party who planned on sending the rebreathers to Libya to begin with.

As argued in the appeal, there is no way Sotis could have understood at the time of shipment his legal duty if the government did not even contemporaneously know if a license was required. *See id.* at 38. A willful violation could therefore not have occurred. To argue otherwise is revisionist history and attributing hindsight as forethought.

Second, the government attempts to change or shift their burden of proof. Insidiously it admits to equating "knowledge" with "willfulness" during the trial. Doc. 220 at 9-10. Willful acts are ones "undertaken with bad purpose. *Bryan v. United States*, 524 U.S. 184, 191-92 (1998). And in the hierarchy of criminal liability *mens rea:* states: "A person acts purposefully

[willfully] when he consciously desires a particular result. ... He acts knowingly when he is aware that a result is practically certain to follow from his conduct, what ever his affirmative desire. *Borden v. United States*, 141 S.Ct. 1817, 1823 (2021). Under these standards and factual circumstances,, Sotis could not have had any conscious desire to ship without a license because no one knew one was needed until after they left Sotis' control. Moreover, Sotis did not ship the rebreathers. Initial. Brf. at 48. A willful violation could not have occurred.

The government tries to shuffle around this issue by invoking the "invited error doctrine." They quote former counsel's one time statement in support of this. Doc. 220 at 5 (citing Doc. 175 at 29//5-6). These statements are not evidence. *INS v Phinpathva,* 464 U.S. 183, 188 n.6 (1984)

The government also misstates counsel's actual argument, which supports a major issue on appeal. The immediately preceding quote reads: "But, we will prove to you that this man, Agent Wagner, did not know until August 19th [sic] when that determination was made by this agency, that the license was required." Doc. 175 at 29//2-5. Even if a license is required (and Sotis does not concede that it is), the government cannot claim that Sotis could have known this duty before the government experts did. Frankly, the government's asserts that criminal liability should attach under the theory that "Even if we didn't know a license was required, you should have known."

The government also makes several other misstatements in an attempt to trip up the court:

-Trying to present former Add Helium, LLC employee and antagonist to Sotis, Shawn Robotka, as an expert in the IEEPA laws. *See* Doc. 220 at 6-7. Robotka was not qualified as an expert.

- Declaring that Sotis acknowledged the rebreathers were an "illegal shipment" in an email. *Id.* at 7. This email actually states that Sotis did not want to involve himself with the shipment if it was illegal. July 30, 2016, Sotis's email to Voissem: "OK, if the president has banned all shipments to Libya, they are going to have to find another route or handle it from here. We do not need trouble from the government for making an illegal shipment. I think it's time for Osama and Mohammed manage this problem and let us know how they intend to receive their goods as we can't ship to Libya." This alone belies the government's assertion of willfulness.

-Claiming that Sotis lied to the Zaghabs about what agent Wagner asserted regarding if the rebreathers could be shipped. Doc. 220 at 7. Sotis could not know the status of the shipment if the government did not, and the communications reflected this.

The government presented this information by citing to 6 pages of the government's appellee brief, a veritable silo of information that the government expects the court to sift through in order to hide the actual facts and their real significance. *Id.* at 7 (citing Gov. App. Brf. at 35-41).

Indeed, the government mostly sticks to these simple tricks, but it tries a new tact near the end of their response by making nonsensical arguments. They try to equate exposition of facts

with determination of issues by the factfinder (i.e. telling the jury what to think). Id. at 8 (citing *United States v. Fuentes-Coba*, 738 F.2d 1191, 1197 (11th Cir. 1984)). This was to conceal that the district court erred by permitting the witnesses to testify on Sotis' willfulness, the ultimate issue that was for the jury to decide Initial. Brief. at 51-52.

It also, bizarrely, tries to "give comfort to the court" at one point by introducing facts outside the record. *Id.* at 6 (government citing a commercial website). The government is not in the business of giving comfort to anyone, and this is an inappropriate ploy that misdirects the court from the issue at hand.

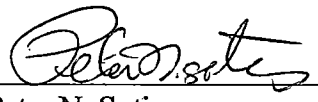
The government just gives up in its last argument. It fails to address the sentencing guidelines under USSG § 2M5.2, ultimately forfeiting its objections. Instead, it weakly justifies that the sentence is appropriate because this guideline is meant for the statute of conviction, 50 U.S.C. Section 1705(a). So does USSG §2M5.1, but unlike §2M5.2, however, it does not include a required cross- reference to the United States Munitions List under 22 CFR Section 121.1. Compare USSG §2M5.2 Application Notes with USSG §2M5.1 Application Notes. This list quite explicitly does not include rebreathers. And to construe a person with a rebreather as a vessel as this court did is certainly a close question on appeal.

The government signs of with one last misstatement: that Sotis played a leadership role." This was never found by the court to be part of Sotis' sentence.

The IEEPA is incredibly complex and the government's oversimplification of what Sotis is accused of is, frankly, that Sotis' appeal involves some very close questions by necessity to resolve their complexity, and the Appellate court's inevitable answer will shape how these offenses are handled in the future. Admittedly, Sotis is not a danger to the community, he will not abscond on release, and he has quite a good chance of prevailing on appeal.

This court should order Sotis' immediate release on bond pending appeal.

Respectfully submitted by Peter N. Sotis on December 01, 2022



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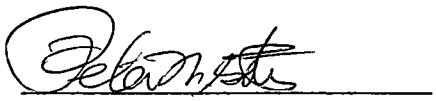
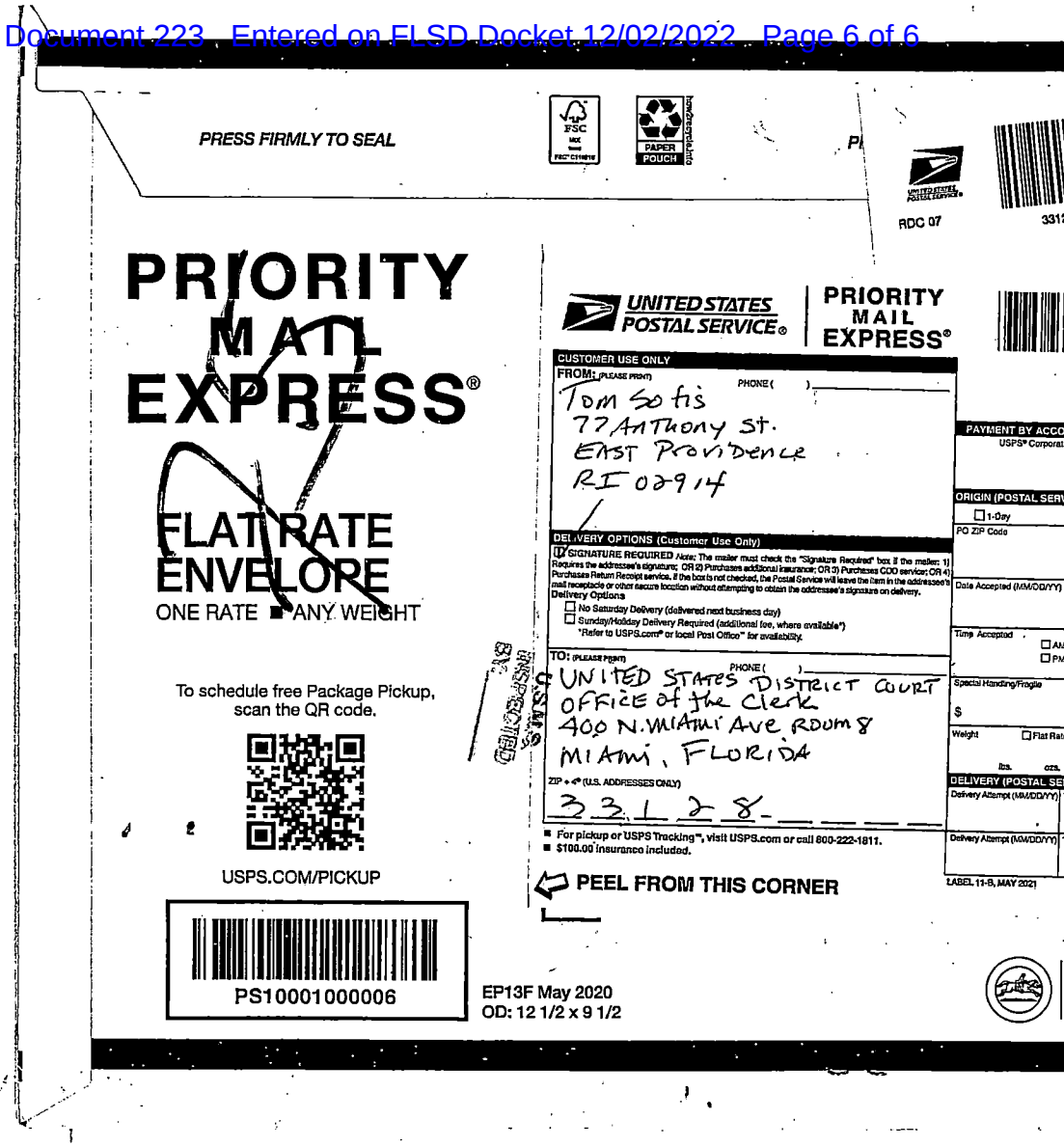


Peter N. Sotis

VERIFICATION

Under Penalty of perjury as authorized by 28 U.S.C. Section 1746. I declare that the factual allegation and factual statements contained in this document are true and correct to the best of my knowledge.

Peter N. Sotis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