IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA	:	
VS.	:	CRIMINAL NO. 09-496-3
JOSEPH LIGAMBI, et al.	:	

MOTION FOR BAIL ON BEHALF OF DEFENDANT JOSEPH LIGAMBI

Defendant Joseph Ligambi, by and through his attorney, EDWIN J. JACOBS, JR., ESQUIRE, respectfully files this Motion for Bail and submits the following in support thereof:

1. Pursuant to the Bail Reform Act, 18 U.S.C. §3142, Defendant seeks release on bail pending the filing of post-trial motions and the government's decision to retry him on the remaining four charges pending against him. Defendant requests a hearing on February 25, 2013 at 11:00 am to determine whether any conditions or combination of conditions will reasonably assure his appearance as required, as well as the safety of the community.

PROCEDURAL AND FACTUAL BACKGROUND

2. On July 25, 2012, the government charged various Defendants under a Third Superseding Indictment with sixty-one Counts of alleged criminal activity. Of these sixty-one Counts, Defendant was charged with the following nine:

- (1) **RICO** – Count 1
- (2) **Conspiracy To Make Extortionate Extensions of Credit** – Count 39

- (3) **Collection and Attempted Collection of Credit by Extortionate Means** – Count 42
- (4) **Conspiracy To Conduct an Illegal Gambling Business** – Count 43
- (5) **Illegal Electronic Gambling Device Business** – Count 44
- (6) **Illegal Sports Bookmaking Business** – Count 49
- (7) **Obstruction of Justice** – Count 50
- (8) **Conspiracy to Commit Theft from Employee Benefit Plan and False Statements Relating to Documents Required by ERISA** – Count 51
- (9) **Theft from Employee Benefit Plan** – Count 52

Doc. No. 723, Filed 07/25/12

3. One year prior, on May 25, 2011, the government filed a Motion for Pretrial Detention on the following grounds:

- (1) Defendant was the "leader" of a "violent criminal enterprise".[1]
- (2) Defendant was charged with "multiple violent crimes".[2]
- (3) Defendant faced a "maximum sentence of 95 years in prison" with an "estimated sentencing guideline range of 97-121 months".[3]

[1] Doc. No. 48, Filed 05/25/11, p. 1
[2] Id.
[3] Id. at 6.

- (4) The evidence in the case was "strong".[4]
- (5) Defendant had made "threatening statements" to a photographer, causing him to withhold an innocuous personal photograph from a Grand Jury.[5]
- (6) Defendant had a "history of failing to abide by the law" and if released, would "undoubtedly continue to run his criminal enterprise".[6]
- (7) Defendant lacked "community ties" and had "no steady legitimate employment".[7]

4. On May 26, 2011, a bail hearing was held before the Honorable Timothy J. Rice in the United States District Court for the Eastern District of Pennsylvania. At this hearing, Defendant's then attorney, Joseph C. Santaguida, Esquire, made statements that would later prove prophetic.

> We have a gambling investigation. That's what this boils down to, Judge, a gambling investigation….the government is making the case a lot bigger than it is.

Doc. No. 153-2, Filed 06/21/11, p. 24 (original pagination).

AUSA David Troyer, Esquire, representing the government, argued that the government's case was much more than a gambling case because:

> (1) Defendant committed "extortion", which was "a crime of violence" (Id. at 4); and

[4] Id. at 2.
[5] Id. at 5.
[6] Id. at 6.
[7] Id. at 7.

> (2) Defendant had made threatening statements to a photographer, causing him to withhold an innocuous personal photograph from a Grand Jury. Id. at 10-11 (original pagination).

Troyer went on to state that Defendant, despite his advanced age, "chose to be the boss" of the Enterprise.

> This defendant probably given his age and his longevity in the organization perhaps he could have let that torch pass to somebody else. Perhaps he could have chosen retirement as opposed to stepping up and becoming the acting boss and then the boss, but he didn't. Again, he chose to be the boss, he chose to involve himself in this continuing criminal enterprise. So, I think in this case the fact that he knew that he was under investigation, and the fact that he is 71 or 72 years old works against him. This is a person who even at his age, he had decided this is what he is going to do, this is the oath he had taken, he is going to follow that oath, and he is going to continue to commit crimes.

Id. at 16-17 (original pagination).

While Pretrial Services recommended that the Defendant be released on house arrest with $200,000.00 bond, Judge Rice ruled that no bail conditions could ensure the safety of the community because:

> (1) Defendant had demonstrated a "pattern of intimidating witnesses[8], potentially obstructing a federal grand jury investigation." Id. at 27 (original pagination).
>
> (2) Defendant had an "extensive criminal history, including his 1988 federal conviction." Id.

[8] There was only one allegation of witness intimidation. It is likely that Judge Rice was referring to the "witnesses" who would testify at trial as having felt intimidated by alleged extortion attempts.

(3) A Grand Jury alleged that he was the leader of an "organized crime family" which had a "ten year pattern of racketeering" according to the sixty-one Counts in the government's Indictment. Id. at 28 (original pagination).

As of this date, Defendant has been incarcerated for almost two years.

LEGAL ARGUMENT

POINT I

NINETY PERCENT OF THE GOVERNMENT'S CASE (i.e. "THE PATTERN OF RACKETEERING") HAS BEEN OBLITERATED

5. On February 5, 2013, after an almost four month trial, including twenty-one days of deliberation, the jury rejected more than ninety percent of the allegations constituting the "pattern of racketeering" alleged by the government. Of the sixty-one Counts alleged in the government's Third Superseding Indictment, only five resulted in convictions. Of the remaining Counts, 45 resulted in acquittals and 11 in a hung jury. The remaining case is far different than what was presented to the Grand Jury in 2011. The importance of this fact cannot be overstated.

6. Despite the government's claim that the evidence against Defendant was "strong", the jury failed to convict him on any of the nine Counts for which he was charged, acquitting him of five Counts and failing to reach a decision on the remaining four Counts. The table below illustrates the jury's verdict in regard to the Defendant.

THE JURY AQUITTED DEFENDANT OF THE FOLLOWING FIVE (5) COUNTS:	**THE JURY FAILED TO REACH A VERDICT AS TO DEFENDANT ON THE FOLLOWING FOUR (4) COUNTS**:
1. Conspiracy to Make Extortionate Extensions of Credit – Count 39	1. Conspiracy to Conduct an Illegal Gambling Business – Count 43
2. Collection and Attempted Collection of Extensions of Credit by Extortionate Means – Count 42	2. Illegal Electronic Gambling Device Business – Count 44
3. Conspiracy to Commit Theft from Employee Benefit Plan and False Statements Relating to Documents Required by ERISA – Count 51	3. Obstruction of Justice – Count 50
4. Theft from Employee Benefit Plan – Count 52	4. RICO – Count 1
5. Illegal Sports Bookmaking Business – Count 49	

7. As illustrated by the above table, Defendant has been acquitted of Counts 39 ("Conspiracy to Make Extortionate Extensions of Credit") and 42 ("Collection and Attempted Collection of Extensions of Credit by Extortionate Means") -- the Counts described by the government as "crimes of violence" that distinguished their case from a mere "gambling case". Bereft of these charges, the government is now unable to argue that Defendant is charged with a single "violent crime", much less "multiple violent crimes". Further, the government's claim that the evidence against Defendant is "strong" must be viewed with skepticism in light of jury's verdict *and* the fact that the removal of the extortion charges significantly changes the architecture of the government's case. Evidence of prior bad acts allegedly committed by various defendants was introduced as evidence at trial to prove the extortion Counts. Now that the extortion Counts are out of the case, such

information is unlikely to be admitted into evidence, making an acquittal even more likely than at the previous trial.

POINT II

THE RECORD HAS REVEALED THAT DEFENDANT NEVER MADE THREATENING STATEMENTS TO A GRAND JURY WITNESS

8. The government alleges in Count 50 of the Indictment that Defendant placed his hand on the shoulder of a Grant Jury witness and made "threatening statements", resulting in the withholding of a single photograph out of more than seven-hundred photographs subpoenaed by the government. The witness, however, tells a different story. When called before the Grand Jury, the witness testified to the following:

- (1) Defendant never made any "threatening" statements. Instead, Defendant merely told the witness not to turn over a specific photograph.
- (2) There was nothing strange about Defendant placing his hand on the witness's shoulder as Defendant always touched him when he spoke to him.
- (3) Defendant was "laughing" as he made the statement.
- (4) Defendant was "joking" around and "was not really that mad" about the subpoena.

9. Thus, not only did Defendant never make any threatening statements, but he was laughing when he told the witness not to turn over an innocuous personal photograph; a photograph that was not indicative of any criminal conduct and had absolutely nothing to do with the government's investigation. While Defendant was not acquitted on this Count, it was the government's claim that Defendant had made

"threatening statements" (along with the extortion allegations) that led Judge Rice to rule that Defendant had demonstrated a "pattern of intimidating witnesses, potentially obstructing a federal grand jury investigation."

POINT III

A REASONABLE INFERENCE CAN BE DRAWN THAT THE JURY DID NOT BELIEVE DEFENDANT WAS THE BOSS OF THE "ENTERPRISE" BASED ON THE JURY'S FAILURE TO REACH A VERDICT AS TO THE DEFENDANT ON THE RICO COUNT

10. The jury convicted three co-defendants, Joseph Massimino, Damon Canalicho, and Gary Battaglini, of being part of a racketeering conspiracy in violation of the Racketeer Influenced Corrupt Organizations (RICO) Act. By contrast, the jury failed to reach a verdict as to Defendant and co-defendant George Borgesi. Defendant and Borgesi share two important characteristics.[9] First, the jury chose not to convict them of *any* of the Counts in the Indictment. Second, significant doubts were raised at trial as to their alleged involvement in the Philadelphia La Cosa Nostra due to Borgesi's incarceration and Defendant's advanced age and lack of criminal history. At trial, former FBI Agent Jack Garcia testified that the FBI had falsely believed that Ralph Natale was the boss of the Philadelphia La Cosa Nostra before discovering that he was a mere "figurehead". It would be remiss to pretend that this statement did not play a role in the jury's reasoning.

[9] This statement should not be read as an endorsement of the verdicts against Defendants Massimimo, Canalicho, or Battaglini.

POINT IV

THE REPRESENTATION OF DEFENDANT'S CRIMINAL HISTORY BOTH IN THE DETENTION ORDER AND AT THE DETENTION HEARING WAS INACCURATE

11. Section C of the May 26, 2011 Detention Order, entitled "Criminal Record," provides the following:

> The defendant is a convicted felon. He was indicted in 1988 on federal racketeering and gambling charges. He pleaded guilty to federal gambling charges and was sentenced to 3 ½ years imprisonment and a $10,000 fine. He also has the following history of arrests:
>
> 1971: Violation of Pennsylvania Cigarette Tax Act, in Philadelphia.
>
> 1973: Forgery, false insurance claims, and conspiracy, in Philadelphia.
>
> 1985: Conspiracy to commit homicide and obstruction, in New Jersey.
>
> 1987: Murder, in Philadelphia. In 1987, Ligambi was arrested in Philadelphia for the murder of bookmaker Frank "Frankie Flowers" D'Alphonso. He was convicted of the murder after a jury trial. The conviction was later overturned on appeal. Ligambi was acquitted after a re-trial and released from prison on March 6, 1997.

Doc. No. 61, Filed 05/26/11, p. 6.

12. The Court failed to refer to the results of the above arrests, other than the 1987 murder charge of which Defendant was ultimately acquitted.[10] The rest of the story is as follows:

> 1971: Defendant pled guilty to violating the Pennsylvania Cigarette Tax Act and was fined $100.00.

[10] The only proper consideration of that acquittal should militate against pretrial detention, given that Defendant spent a decade in prison before ultimately being acquitted by a jury. Any Court considering whether to incarcerate such a defendant prior to an adjudication of guilt should be particularly mindful of this previous encroachment upon his liberty.

1973: The charges against Defendant were dismissed.

1985: The charges against Defendant were dismissed.

13. The Detention Order's Criminal History section was incomplete in that it failed to recognize that Defendant is virtually a first offender: his only serious conviction was on charges of gambling and resulted in a three-and-a-half-year sentence almost three decades ago. A review of the transcript from the May 26, 2011 Detention Hearing indicates that the Court based its Order partly on its view of Defendant's criminal history as "extensive". In reality, Defendant's criminal history does not "include" his 1988 federal gambling conviction but consists solely of it.

POINT V

DEFENDANT HAS SIGNIFICANT COMMUNITY AND FAMILY TIES TO THE PHILADELPHIA AREA. HIS RELATIVES HAVE MADE SEVEN PROPERTIES AVAILABLE TO POST AS PROPERTY BOND

14. At Defendant's May 25, 2011 detention hearing, his then counsel stated that relatives had made seven properties available to post as property bond to secure his appearance at trial. Doc. No. 153-2, Filed 06/21/11, p. 17-19 (original pagination). Appraisals and other documentation will be made available to the Court at the time of the hearing, if not prior thereto. It should be noted that Judge Rice did not believe that Defendant was a flight risk. In fact, he specifically crossed out the section of the government's proposed Order alleging such. The Court should also note that the aforementioned properties can be fashioned as collateral by the Court to ensure compliance with *any* bail conditions, not simply his appearance at trial.

POINT VI

DEFENDANT HAS BEEN OFFERED STEADY EMPLOYMENT WITH A RESPECTED PHILADELPHIA BASED CORPORATION TO BEGIN IMMEDIATELY UPON HIS RELEASE

15. Defense counsel has spoken to the CEO of a respected Philadelphia-based Corporation who has made an employment offer to the Defendant that would begin immediately upon his release. A signed certification from this individual will be provided to the Court at the time of the hearing, if not prior thereto.

POINT VII

DEFENDANT'S ADVANCED AGE MAKES IT HIGHLY UNLIKELY THAT ANY OF THE GOVERNMENT'S PARADE OF HORRIBLES WILL COME TO FRUITION

16. Defendant, having been born on August 9, 1939, is now approaching 75 years of age. While the government will likely argue that he is a danger to the community, the Court should note that his only serious conviction stemmed from events occurring when he was 45 years of age.

CONCLUSION

17. In sum, the arguments asserted by the government at the May 26, 2011 hearing before Judge Rice are no longer applicable. WHEREFORE, Defendant Joseph Ligambi, respectfully requests that Your Honor grant his release on bail with appropriate conditions.

Respectfully Submitted,

/s/ Edwin J. Jacobs, Jr.
Edwin J. Jacobs, Jr., Esquire
Jacobs & Barbone, P.A.
1125 Pacific Avenue
Atlantic City, New Jersey 08401
(609) 348-1125
Attorneys for Defendant Joseph Ligambi

Dated: February 13, 2013

CERTIFICATE OF SERVICE

I, EDWIN J. JACOBS, JR., ESQUIRE, certify that on this 13th day of February 2013, I have served a copy of the attached Motion via electronic filing upon:

Frank Labor, Esquire
Assistant United States Attorney
615 Chestnut Street, Suite 1250
Philadelphia, PA 19106

The Honorable Eduardo Robreno
U.S. Courthouse
601 Market Street
Philadelphia, PA 19106

/s/ Edwin J. Jacobs, Jr.
EDWIN J. JACOBS, JR., ESQUIRE
Attorney for Defendant Joseph Ligambi