

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA

v.

Case No. 8:10-cr-00501-T-27MAP

DAVID R. LEWALSKI

**GOVERNMENT'S RESPONSE
IN OPPOSITION TO DEFENDANT'S MOTION FOR BOND**

The United States of America, by Robert E. O'Neill, United States Attorney for the Middle District of Florida, files this response in opposition to the defendant's Motion for Bond and urges this Court to continue the defendant's order of detention. In support thereof, the government states as follows:

I. Procedural History

On or about November 2, 2010, the Honorable Thomas B. McCoun, III authorized an arrest warrant for David R. Lewalski based upon a complaint that charged Lewalski with wire fraud. The complaint alleges that the defendant, in complicity with others, engaged in a Ponzi scheme wherein he told investors that through foreign currency trading ("forex"), he could generate returns of more than 10% per month. Lewalski falsely told individuals that he earned more than 10% per month trading, but paid them 10% returns compounded monthly and kept the remainder for himself. Lewalski promised investors that their investment was secure and that they could withdraw their funds at any time upon written notice. Lewalski and his coconspirator sent out regular statements via email and posted investor returns on a website, www.Botflyllc.com, that showed each investor earning 10% per month, compounded monthly, month in and month out.

Government investigators have reviewed Lewalski's trading accounts, his bank accounts, Botfly's various corporate bank accounts, and the bank accounts of Lewalski's coconspirators. This financial analysis demonstrates that Lewalski invested very little investor money in the forex market and never returned any profits from his supposed trading to any Botfly bank account, including those from which he paid investors. The analysis of Lewalski's and Botfly's trading accounts at Deutsche Bank, where Lewalski told his investors he traded their monies, shows that the vast majority of the small percentage of investor money Lewalski sent over to his trading accounts was lost. Lewalski's and Botfly's Deutsche Bank trading accounts experienced overall trading losses of between 64% - 96% and no monies were ever transferred out of these accounts to pay supposed investor returns.

In reality, Lewalski paid his investors their supposed accrued returns with the other investors' funds. Lewalski also lavishly spent investor funds on himself and gave investor money to his girlfriend, friends, and relatives. During the instant scheme to defraud, Lewalski took in nearly \$30 million from investors, \$15 million of which he used to pay "returns" to other investors.

On or about November 4, 2010, the defendant was arrested in the Southern District of New York. On the same date, the defendant had his initial appearance, was detained, and was ordered transported to the Middle District of Florida. During his initial appearance, Lewalski was represented by Craig Carpenito from the law firm of Alston and Bird. Mr. Carpenito, in addition to working for a large, resource-rich law firm with nine offices and more than 900 attorneys, was also a former Assistant United States Attorney for the Southern District of New York. Mr. Carpenito's law firm had been

retained by Lewalski to defend him in a civil lawsuit filed in Pasco County and, at the time of Lewalski's initial appearance, had been paid at least \$50,000 by a Botfly investor seeking to aid Lewalski with his legal defense in the hopes of regaining his investment. On that date, as the Court is aware from reviewing the transcript, Lewalski chose to proceed with a detention hearing in New York. The Court found that Lewalski was a risk of flight and ordered him detained.

On or about November 29, 2010, Lewalski arrived in the Middle District of Florida. On or about December 1, 2010, a grand jury returned a four count indictment charging Lewalski with conspiracy, mail fraud, and wire fraud. On or about December 10, 2010, Lewalski filed a motion for bond and a bond hearing.

II. Risk of Flight

The evidence gathered to date shows that Mr. Lewalski is a flight risk and should remain in detention pending the resolution of his case.

A. Offshore Bank Accounts and Access to Funds

In addition to the Botfly trading accounts, Lewalski opened and used investor monies to fund a trading account at Deutsche Bank in London in his own name. He also opened one or more trading accounts in Switzerland in his own name. He caused more than \$1 million in misappropriated investor funds to be deposited into these off-shore accounts. The Deutsche Bank trading account has been frozen as a result of the State's civil case, but Lewalski has hired British counsel to fight the freezing of the account. On or about August 27, 2010, Lewalski told his brother via Skype instant message that "[w]e now have lawyers in England" and "we have begun court processes now." The government has no official word on the status of the Swiss trading

account(s).

Lewalski left the United States for Europe on or about April 2, 2010, one day after the State filed its civil action, and returned more than six months later on October 23, 2010 (discussed below). During that time, Lewalski opened a Societe Generale bank account that was funded by unknown sources of money. This account was not known to the Receiver in the State case and has not been frozen. Among Lewalski's handwritten notes seized from his New York apartment on or about November 4, 2010, pursuant to a search warrant, are the following, "Societe Generale / 16 Ave de la Casta / MC 9800, Monaco / Monte Carlo / 0377 / tel 9315-5700" and "Societe Generale / Private Banking / 11 Avenue de Grande / Bretagne / 98000 Monaco / 00 377 9797 5800." In an email dated on or about April 29, 2010, to the concierge at the Mandarin Oriental Hotel, Lewalski stated that he had opened a Societe Generale bank account and expected a letter with a PIN to be sent to his condominium. Lewalski also stated that he was in Geneva, Switzerland when he sent the email. Finally, agents recovered numerous Societe General banking documents from Lewalski's wallet at the time of his arrest, including an ID banking card.

The search of Lewalski's New York residence provided additional evidence that shows while in Europe, Lewalski and his girlfriend, who has no source of income, had access to non-frozen funds to not only pay their day-to-day expenses, but to purchase a \$10,000 life insurance policy on or before August 1, 2010, two items totaling €1,025 at the Gucci store in Monte Carlo on or about June 12, 2010, and an Apple LED Cinema Display monitor for €849 at the Apple store in Paris also in June 2010, among other things. Seized documents also suggest Lewalski rented an apartment in Paris from

"Luxury Properties Europe" where the rent was €8,000 for one month, June 24, 2010, to July 24, 2010, and stayed at an exclusive Belgian resort called Auberge de Pecheur (keys for which were recovered during the search). Once back in New York, Lewalski and/or his girlfriend spent \$517.16 for two pairs of shoes at Ugs Australia and \$765.07 worth of clothes at Lucky Brand Stores in a single day, on or about November 1, 2010.

On or about August 24, 2010, Lewalski's brother asked Lewalski for some "cash" to pay his phone, electric, and cable bills. Lewalski responded, "I will get some to you should be getting paid on Friday." One potential source of Lewalski's income while overseas appears to be Treadstone. Treadstone is or was a group of individuals in Pennsylvania who received approximately \$863,000 in Botfly investor funds in referral fees. The Societe General bank statements the government recovered from Lewalski's condominium atop the Mandarin Oriental Hotel show deposits from Treadstone and/or its affiliates and Lewalski's personal notes recovered from the search reference "treadstone / Lorfa573 / Gwar 1035 / 7307." The evidence suggests the principals of Treadstone diverted Botfly investor money back to Lewalski to keep him afloat while in Europe.

On or about September 1, 2010, Lewalski exchanged Skype instant messages with an individual believed to be associated with Treadstone. The discussion centered around this individual wiring money to Lewalski overseas to his "cleaner," i.e. so the money could be laundered and disguised. Throughout the conversation, Lewalski, as he often did while on Skype, urged the person he was chatting with to delete the lines of text after they were written to avoid making a record of the conversation. The individual advised Lewalski, "he has agreed to the wire / i will wire it for you." Lewalski

replied, “do we have someone over there that could sign an affidavit [sic] claim to be my friend and then send my trading earnings to my attorney there / I need to ge [sic] them some more cash as the bitch receiver attotney [sic] is blocking Dr. K’s money.” The person on the other end of the chat stated that he needed a “business name, email, street addy [sic], city, country, post code” to direct the money to Lewalski, and Lewalski replied “Agora Estate Consulting Ltd.,” “this is my guy ...,” and then “he does the washing and forwards it.” Lewalski explained that Agora Estate Consulting was a private bank in Bern, Switzerland that he used. He also stated that “in teo [sic] weeks I can go to swiss pull money out myself and walk it to UK,” and that “n uk if it under 20k they will take cash in to payments which is sweet.”

On the same date, Lewalski instructed this individual to wire money to his personal Societe General account, and provided account details, noting that the account was held in his name. The individual then asked Lewalski “what currency does your cleaner want the money in,” and again later, “your swiss guy want it in swiss fran [sic], US or euro,” to which Lewalski replied “euro.” Lewalski then stated “send him [the “cleaner”] 8000 euro or just 10500 dollars which is 8000 euro” ... “and the balance of 100k to me.” The individual chatting with Lewalski confirmed that “the other 9k wire has already gone out to greg to put into dukas,” (referring to Dukascopy, a swiss forex trading portal,) “10,600 to your guy and 4783 to you.”

The search of Lewalski’s residence also revealed documents and hand written notes referencing multiple financial institutions in the U.S. and abroad, including Bank of America, Chase Bank in New York, ANZ Bank in the Cook Islands, and First Gulf

Bank in Dubai. On or about September 1, 2010, during a Skype chat session with a Botfly investor and promoter, Lewalski wrote, "I have some accounts in Luxembourg." Yet another Botfly investor reported that he had a conference call in late October 2010, with Lewalski, his lawyer, and other investors. The purpose of the call was to raise money for Lewalski's defense. The investors requested that in exchange for them helping Lewalski with his legal defense, Lewalski had to disclose the location of the Botfly investor funds he was supposedly withholding. Lewalski told the individuals the funds were in an account at a bank on a small Caribbean island and promised to provide the account information in a day or two. Lewalski failed to provide the account details in the days that followed.

When Lewalski arrived in the Middle District of Florida, he advised the Court that he was indigent and required court-appointed counsel. Between his arrival on or about November 29, 2010, and the entering of his counsel's notice of appearance on or about December 3, 2010, however, Lewalski accessed existing funds or raised funds sufficient to retain private counsel.

Since the filing of the State's civil suit, the appointment of the Receiver, and the freezing of Botfly and Lewalski's domestic bank accounts, Lewalski has claimed to be both a pauper and a millionaire, depending on which scenario best served his interests. Regardless, Lewalski's lifestyle, accommodations, travel, and expenditures over the months since the State of Florida filed its lawsuit show that he has access to hidden financial resources that make him a flight risk.

B. History of Foreign Travel

The day after the State of Florida filed its civil enforcement action on or about April 1, 2010, Lewalski left the country. On or about April 2, 2010, Lewalski boarded a private chartered Gulfstream IV jet brokered by Atlantis Jets Airlines from Gainesville, Florida to Brussels, Belgium. Although Lewalski now offers an explanation for the timing of this trip, the fact remains that his private jet itinerary shows a scheduled return flight for April 9, 2010, for which Lewalski failed to show up. He paid for the round trip private jet travel, which cost \$172,744, with Botfly investor monies.

On or about April 4, 2010, Lewalski sent an email to investors that stated, "I am still in Europe with access to trading funds." On or about April 6, 2010, Lewalski wrote an open letter to his investors in response to the Florida Attorney General's civil action. In that letter, Lewalski denied the charges levied against him in the State's civil complaint and by the press. Lewalski made reference to his accounts in the U.S. being frozen but observed, "fortunately [I] had cards from my overseas accounts to rely on for expenses, etc." Lewalski further stated he had trading accounts in six countries. Lewalski also told investors that he wanted to "sit down with the powers that be along with my attorney and straighten this out. But the recent 'Orwellian' totalitarian tactics of law enforcement and seizing business and personal monies and properties with a 'guilty until proven innocent' formula ... makes me believe that we are indeed losing more and more of our rights and freedom every day." Lewalski made no effort to inform his investors about the true fate or location of their funds, nor has he made efforts to repay them.

On or about April 10, 2010, Lewalski's coconspirator sent an email to Botfly's investors, attaching a letter from Lewalski. In the letter, Lewalski discussed his efforts to retain legal counsel and explained his presence in Europe. He falsely promised to return "soon" and stated that he "merely need[ed] a few extra days here to make phone calls without fear of being thrown out of my home without any assets etc." Instead, Lewalski stayed in Europe nearly seven months, living off of Botfly investor funds, despite demands from victims for a return of their invested monies.

During this time, Lewalski's investors, friends and family members tried to contact him. Lewalski, however, kept his location a secret from them and moved around frequently to avoid detection. In an email dated on or about September 29, 2010, Lewalski told the concierge at the Mandarin that "we are on our boat in Cannes [France] with limited email..." On or about September 1, 2010, a promoter of the scheme asked Lewalski via Skype, "you going to hang there [in Europe] mostly now I assume?" to which Lewalski replied, "proolly [*sic*]." In a message dated on or about September 8, 2010, with the same individual, Lewalski admonished his chat partner by saying "no geographical reference dude erase ok." In a Skype instant message with his brother on or about September 13, 2010, Lewalski wrote, "its freezing her [*sic*] like 48 degrees." When his brother asked where he was, Lewalski evasively typed, ";-)." On or about October 28, 2010, Lewalski wrote to his brother, "lay low should be back in the states in amonth [*sic*] or so," even though Lewalski had returned to New York five days earlier, according to U.S. Immigration records.

Lewalski and his girlfriend actively monitored the State's civil case and the Receiver's actions, as noted in their Skype communications. On or about August 24,

2010, Lewalski stated in a message to his brother, "looks like the unfair trade practices charge is going to get dismissed then the money from folks who want to help will be allowed / my attorneys are telling the receiver that we [arent] giving up the cars and we are pleading the fifth on their ... / so fuck her what a bitch." The "her" to which Lewalski refers is Karen Cox, counsel and representative for the Receiver during hearings associated with the State case. During the same conversation, Lewalski went on to write, "I can come back now but they will want to depose me and try to put me in contempt so we are almost there." On or about September 13, 2010, Lewalski chatted on Skype that "at this point in time I am about to jump on a boat and disappear / I think about it every day lately." These and other conversations show Lewalski's desire to stay out of the U.S. while the civil case was pending.

Later discussions that took place while he was in Europe, detailed below, indicate that Lewalski was aware and fearful of the potential of criminal charges and that this also motivated him to stay out of the United States. On or about September 13, 2010, Lewalski wrote via Skype, "trading keeps me from jumping out the window. Its not so much an AG thing now as trying to make sure nothing criminal follows and having a solid plan in place. Everyone in contradicting myself and my attorney in new York says its scary how they operate ..." On the same date, Lewalski skyped, "we have a deposition [*sic*] this eek [*sic*] with AG and my attorney are shutting down without cash / If I cant make it happen I am taking my toys and going to play somewhere else..." When his apartment was searched upon arrest, agents recovered a card from Lewalski's wallet entitled "10 things NOT to do if arrested."

While Lewalski did return to New York City on or about October 23, 2010, he made no efforts to return to the Middle District of Florida and kept his presence in the U.S. a secret from his friends and family. It should also be noted that when Lewalski returned to the U.S., he already had purchased a return flight to France. U.S. Immigration authorities reported that Lewalski was scheduled to depart on American Airlines flight #120, from JFK airport in New York, on November 15, 2010, at approximately 10:10 p.m., and arrive in Paris the next day at 10:30 a.m. local time.

Lewalski took drastic measures to evade detection during the pendency of the State's civil suit and to avoid the potential of arrest. It is ridiculous then to suggest that he would hang around to face criminal charges that could result in much more severe penalties of up to twenty years in prison per count.

C. Disregard for the Law

Lewalski has demonstrated by his actions and his statements that he has no regard for the obligations of the law and no hesitation to lie to or withhold information from the authorities when confronted. In 2007, an Inspector with the United States Postal Inspection Service visited Lewalski in response to a consumer complaint. This complaint came from an Arizona investor who claimed Lewalski promised to invest her money in the forex market and generate returns of 10% per month. The complainant related that after making only a few "interest" payments, Lewalski took her money and refused to return it. When the Postal Inspector confronted Lewalski, he told her that he had been investigated and cleared by the Securities and Exchange Commission. The government has been unable to find any evidence verifying such a claim.

Lewalski was again confronted by law enforcement agents in 2009, when the FBI went to his house. During that meeting, Lewalski admitted that he was a trader and made his income solely by trading his and his investors' monies. He stated that he refused to provide the names or contact information for his investors based on the Fifth Amendment protection against self-incrimination. When asked, Lewalski told the FBI agents that he had not filed income tax returns since at least 2005.

During a video taped session with an investor and promoter, Lewalski told the individual that he chose to trade at Deutsche Bank for several reasons, including the fact that it was up to the individual whether to report their earnings to the IRS. Lewalski also sold securities, in the form of promissory notes that he gave investors, and acted as a commodities trader, without seeking a license from any state or federal regulatory agency.

In addition, Lewalski was very aware of the State injunction and the efforts of the Receiver to freeze his assets in order to preserve and return what money was left to investors. Lewalski has expended a great deal of time and energy, however, working to frustrate the efforts of the Receiver and defy the State court's orders and, in doing so, has further defrauded his investors. For example, when Lewalski was arrested, he and his girlfriend were residing in a condominium atop the Mandarin Oriental Hotel in New York City. The condominium was rented by Lewalski from December 1, 2009, through November 30, 2010, for \$143,000. Lewalski paid the entire year's rent in advance with Botfly investor funds. Lewalski made no attempt to advise the Receiver or his investors that the lease on this condominium could have been terminated during the seven months he spent in Europe. Instead, according to Lewalski's own Skype messages, he

maintained the empty condominium and even had his son travel there in August 2010 to "set up the apartment" in anticipation of his potential return. Lewalski noted of the condominium, "cable is on and everything." Lewalski sent pictures of the condo to his brother, who responded it looked "cool." Lewalski replied, "it ought to be the nicest place in New York," and "go up and hang out man / cable and internet is on..."

Lewalski also lavishly spent Botfly investor money on personal items such as jewelry. Rather than returning those items to the Receiver so they could be liquidated and the funds returned to defrauded investors, Lewalski sought to hide or sell items for his and his family's use, in defiance of the State's injunction. On or about August 27, 2010, Lewalski's brother told him he (the brother) might have to sell one of Lewalski's watches. Lewalski advised him via Skype instant message, "dude sell anything you need ok." On or about October 14, 2010, Lewalski sent a message via Skype to his brother asking for "a list [sic] of what watch boxes you have I need to liquidate some stuff and folks want boxes." Lewalski's brother replied that he did not have any boxes. Lewalski stated, "I thought you grabbed the watches and the boxes when you went to my house ... you grabbed the watches right?" Lewalski's brother stated that he had sold the watches and later, that he had "sold them to a pawn shop." Specifically, Lewalski's brother reported that he sold the Cartier limited watch for \$2,000, an Omega watch for \$500, and the small Tank watch for \$1,000 approximately three weeks earlier. On or about October 28, 2010, Lewalski's brother advised that he had sold yet another watch for \$5,000. Lewalski also asked his brother via Skype how much he thought Lewalski could get for his Rolex.

In addition to jewelry, Lewalski used Botfly investor funds to purchase luxury cars, including a 2010 Corvette ZR1 for \$110,800; a 2010 Porsche 911 Turbo Cabriolet for \$145,560; a 2010 Land Rover for \$94,022; a 2008 Ferrari F430 for \$200,000; a 2008 Porsche 911 Coupe for \$113,140; and a 2002 Porsche Turbo for \$41,500. Lewalski knew that some of the cars had been seized by the Receiver, and that others had not yet been found but were actively being sought. For instance, on or about October 1, 2010, Lewalski's brother advised Lewalski via Skype instant message that "on the court website it talks about the vehicles the desposiontion [*sic*] of vehicles?" to which Lewalski responded, "yes I know we will have an attorney there fighting it." Lewalski's brother asked Lewalski about the locations of the cars in a Skype instant message on or about August 27, 2010. Lewalski replied that "we have plead the fifth on them so for now they stay," meaning stay in his possession, in direct contravention of the State court's order.

The investigation has revealed that Lewalski employed the help of an individual to hide two of the cars, a Land Rover and a Corvette, both purchased with Botfly investor funds, in New York and out of reach of the Receiver. On or about October 1, 2010, Lewalski's brother informed Lewalski via Skype instant message that the Receiver was looking for the vehicles at a certain person's house in Florida, to which Lewalski replied, "they are way off."

Lewalski also referenced the use of steroids during Skype chats with his brother. On or about October 28, 2010, Lewalski wrote to his brother via Skype instant message, "you still got my roids. I am all fat and shit," to which his brother replied, "ya they are here." Lewalski stated, "cool I need the clen bad to burn up some fat" and also

asked "what do you have there exactly of mine." Lewalski's brother responded that he had "the clen and some hgh." Lewalski wrote that there "should be couple bottles of test too." In sum, although Lewalski does not have a criminal record, he has a history of at best disregarding, and often working openly to frustrate, laws and legal processes to which he is subject. His contempt for the law, together with the other factors discussed in this Response, make Lewalski a flight risk.

III. Danger to the Community

A. Witness Tampering

Lewalski involved his closest friends and family in his scheme to defraud and ensured that they received the proceeds of the crime. For example, Lewalski's brother recruited investor MC to the scheme, as described in the Complaint. Lewalski lived with his brother at his mother's residence in Bayonet Point when he established and operated Botfly, and listed his mother's residence as the principle place of business on Botfly's incorporation documents and correspondence. Lewalski diverted more than \$63,000 in Botfly investor funds to accounts in his mother's name. His aunts and cousins, referred to in his Motion for Bond, invested \$100,000 and received more than \$1 million in supposed returns on their investments and in commissions for bringing other investors to Botfly. Lewalski also used Botfly victims' monies to invest in Fairway Golf Carts, where his cousin is employed, and used his cousin and Fairway Golf Carts to purchase some of the luxury vehicles described above. Since the inception of the State's civil case and the criminal investigation, which is the basis for the Indictment in the instant case, Lewalski has urged these family members and other potential witnesses to stay quiet and not cooperate with law enforcement.

On or about August 27, 2010, Lewalski was advised by his brother over Skype that "there is this ... lady with the FDLE who is trying to indict everyone in our family." Lewalski replied that "they may want to serve you and depose you. But you wil *[sic]* plead the fifth on everything ok." Lewalski also advised his brother that FDLE was "trying to intimidate everyone as we go to court" and to "tell them you are getting an attorney and then your attorney will call them. we don't think you will need representation but if you do I will take care of it here."

Lewalski went on to state, "these next two or three weeks are all out warfare and it will get ugly." He also advised his brother to "tell mom any money she received from me or my company was merely a repayment of the loan she gave me with reverse mortgage," if questioned by FDLE, and to advise his mother that she won't be charged even though "she gave [Lewalski] money to start the company." In telling his brother not to worry, Lewalski advised, "listen, my attorney was an SEC prosecutor for 15 years and is a partner at one of the world's largest law firms. he has NEVER lost a case. And you have an FDLE chick from Pasco county think about it." Lewalski went on to state, "I am very confident in my attorneys ... , but let mom know and [others] know that this woman is nuts from the FDLE and there is always *[sic]* the nuclear option."

With regard to his coconspirator, Lewalski told his brother via Skype text message on or about September 3, 2010, that "he is making this more difficult with my lawyer running his mouth. he has to be quiet." On or about September 8, 2010, Lewalski told his brother, who was on the phone with their mother as the brothers chatted over Skype, "[y]ou need to tell mom to stay calm and she needs to plead the fifth and remain silent, ok?" and later, "[l]ook just tell her she can take it [a subpoena]

we will have an attorney there. She is to plead the fifth and not say anything. But I did not tell her to do that or I will get in trouble. she is pleading the fifth of her own volition." When Lewalski's brother told him the Receiver was looking to depose people, including his mother, in an effort to identify Botfly assets, Lewalski wrote, "tell her to get her irish up and not say a word..." Later the same day, Lewalski's brother asked him about his aunt and cousin and Lewalski replied via Skype text message, "they will take 5."

On or about September 7, 2010, Lewalski urged a promoter of the scheme to tell another promoter to not speak to the Receiver's counsel and to assert his Fifth Amendment privilege. Lewalski wrote "[witness] should plead the fifth and let her [Receiver's counsel] waste her day / don't let her know you are pleading the fifth." And shortly thereafter, Lewalski wrote, "yes please remind [witness] it is the Receivers attorney and not law enforcement ... plead the fifth."

Lewalski had a Skype instant message conversation with his cousin, who was a major promoter and beneficiary of the scheme, on or about October 26, 2010. During the chat, the counsin stated, "doesn't make any sense why I would be told about the fed shit and you/craig [Carpenito, Lewalski's Alston & Bird lawyer] haven't heard anything about it," to which Lewalski replied, "dude the only way you would know about a fed sealed indictment is if you are cutting a deal and I know you arent."

When Lewalski and his brother spoke on or about October 6, 2010, concerning the actions of the Receiver and the Receiver's counsel, Karen Cox, they discussed threats against her. Lewalski wrote via Skype instant message, "also she [attorney Cox] told folks that if they put in 20k originally and then over the years took out all there [sic] interest say 60k they would owe the receiver 40k. Nice huh?" to which Lewalski's

brother replied, "... how do you fight that?" Lewalski stated, "we tell the judge our argument tomorrow that she is doing this and it will be considered untimely and possibly tampering with witnesses so fuck her." Lewalski's brother stated, "hey special forces said he could take her [attorney Cox] out and no one would know who did it, make it look like an accident" to which Lewalski merely replied that the hearing the next day was scheduled for 11:00 a.m. and then specifically identified Ms. Cox by name as the Receiver's attorney.

Also during a Skype chat with a promoter of Botfly on or about September 7, 2010, Lewalski, whose Skype name is "blackswantrader" and a promoter of the scheme chatted about the actions of the Receiver and his counsel as follows:

[Promoter]	i have a deposition with Karen Cox (and who ever else is on the phone) next week, and I am worried, that is all.
blackswantrader	plead the fifth it is your right
[Promoter]	i will be meeting my attorney this Friday to discuss this all.
[Promoter]	i just hoped that your team was going to throw some punches and knock her off her ass by this time
blackswantrader	karen Cox is a cunt who will not work with us in anyway and refuses to let anyone help in my defense. If she was fair at all I wouldnt be so hostile
[Promoter]	i understand
blackswantrader	she will be getting a nice surprise here shortly just cant tell you
[Promoter]	i don't what you to tell me
blackswantrader	till its done
[Promoter]	that is fine by me, i just wanted you to know
blackswantrader	I would plead the fifth why would you want to help her
[Promoter]	i will be telling this to me attorney this Friday
[Promoter]	that i want to plead the fifth
[Promoter]	at least with regards to any fees that we were paid by Botfly, etc.

blackswantrader	yes it what my attorney has my family and friends doing and it is your right especially with a nazi like her
[Promoter]	just please kick her ass
[Promoter]	peace, thanks for listening, that is what my partner, DM, is telling me to do also.
blackswantrader	yeah in a time when our government is moving further and further away from the founding principles of our constitution it is important to remember we still have one!
[Promoter]	i just want this entire thing to go away
[Promoter]	like everyone else
[Promoter]	good luck to you and your team
blackswantrader	thanks

B. Continued Victimization of The Public

In addition to the threats against the Receiver's counsel detailed above, Lewalski poses a danger to the community through his continued efforts to defraud existing and new investors. This Ponzi scheme, unlike others that collapse in on themselves when the perpetrators run out of money, was just hitting its stride when the State intervened and shut it down. This swift action by the State left the impression among some investors that Lewalski's company and trading returns were real. The Receiver's reports detail the fact that Lewalski had less than \$5 million of the approximately \$30 million in principal he raised from investors (not to mention the 10% per month compounded monthly he owed them) in his and the Botfly accounts when they were frozen, the fact that the only source of income to Lewalski and Botfly was investor funds, and the reality that Lewalski paid investors with other investors' monies. Despite this, however, some victim investors continue to believe that the State's intervention has prevented them from getting their money back. Lewalski has exploited this misperception for his personal gain.

On or about October 26, 2010, Lewalski told his cousin via Skype that he was “sending out a letter to ask members to donate to the cause because I am tapped out,” and that “we just need another 100k to get us through the dismissal.” Notably, Lewalski told his cousin on the same date, “I will be back in the states shortly which should help,” when Lewalski had already returned to New York three days earlier.

On or about October 15, 2010, Lewalski engaged in a Skype chat with a Botfly investor and spoke of this investor writing a letter intended to raise support for Lewalski among victims of the scheme. They discussed the tone of the letter, building trust, and that “[m]embers know you [Lewalski] have the overseas account.” The investor said to Lewalski, “[b]uilding trust and validity will be the most important part of this letter,” to which Lewalski replied, “brilliant thanks. Your emails are always so well crafted.” The investor continued, “[s]ince the DOJ has acted and has frozen your accounts. This information would be invaluable to our members to build trust and hope for their future. If they think there is only the 4 or 5 mil locally they will be less trusting. With holding any amounts will not be an issue as they are aware that the AG’s office is looking for more information.” Lewalski then stated, “so we must tread carefully / don’t want any new trouble.” The investor asked Lewalski “on this point I must be crystal. If the DOJ is aware of the accounts. Do they know the amounts and why have they not shared that information with the State,” to which Lewalski replied, “they have not moved forward with criminal charges yet because they know funds are out there.”

Lewalski, through his contact with investors and via statements by his coconspirators, has perpetuated the myth that he can return investors’ money if he gets access to additional funds. During a hearing on November 22, 2010, in the Circuit

Court of the Sixth Judicial Circuit of the State of Florida, in and for Pasco County, Civil Division, one investor told the judge that “David Lewalski came forward through [coconspirator] and said, ‘We will make the entire group whole,’” which the investor understood to mean Lewalski would “give [the investors] back every penny we have with him.” These statements are emblematic of the efforts Lewalski has made to garner support among his investors and prey upon their hopes of having their funds returned in order to raise additional money from them, supposedly for his various legal defenses. This group of individuals is particularly vulnerable to Lewalski’s efforts because of the trajectory of the State’s civil case and the unintended consequence that the victims of the fraud believe it was the State, not Lewalski, who is responsible for their losses. Lewalski is aware and has exploited this notion, stating in a September 13, 2010, Skype chat, “if the bitch from FDLE presses criminal charges it makes getting money a lot [sic] easier.”

Despite facing allegations of fraud and an injunction in the State’s civil case, Lewalski was undeterred and continued to trade other individuals’s money until the time of his arrest. On or about August 18, 2010, Lewalski sent a Skype instant message to a Botfly investor and promoter stating, “I have 2 db accounts right now trading for local lawyer,” with “db” likely referring to Deutsche Bank. On or about September 13, 2010, Lewalski also chatted via Skype with a Botfly investor who asked Lewalski if he would trade for them because they were “desperate.” Lewalski replied, “that would be illegal. The AG does not know about me trading and I am not supposed to be. so keep it on the down low.”

As mentioned above, Lewalski persuaded an investor and physician to give him \$50,000 supposedly to pay for his civil lawyers at Alston & Bird to defend him in the State civil action. But Lewalski's Skype messages reveal that he actually entered into an investment deal with this individual, promising him a return on his investment. On or about September 8, 2010, a promoter of the Botfly scheme and friend of Lewalski's asked him via Skype instant message, "does craig [Carpenito - Alston & Bird lawyer] know about the repayment terms to the dr? / 10% or whatever it is youre [*sic*] doing," to which Lewalski replied, "sort of." Lewalski and his friend then chatted about ways in which supporters could route their money through this physician and investor, who had been approved by the state court to aid in Lewalski's defense, without alerting Lewalski's lawyer, his firm's ethics committee, or the court as to the true source or purpose of funds. Lewalski said of approaching the doctor about such a plan, "yeah I understand but I have to sell him."

Not only did the State's civil suit do nothing to deter Lewalski's efforts to defraud, it seems to have only increased his appetite. His Skype messages are replete with his efforts to raise more money and he has been emboldened by his investors' discontent. Releasing him would provide him unfettered access and time to exploit his existing investors and to target new victims.

IV. Conclusion

In this case, Lewalski's own words and actions leave little doubt as to his intentions. He fled the country and remained overseas for seven months, despite promises to the contrary, in the face of much less serious legal charges. He was motivated to stay abroad in order to avoid his then-current legal problems but also

because he feared criminal charges and arrest. Lewalski took efforts to keep his location a secret by moving around and refusing to disclose where he was to even his closest family, friends and allies. Lewalski also made it clear that should things not go his way, he intends to disappear.

During his time abroad, Lewalski found the means to travel, support a lavish lifestyle, hire expensive legal counsel in several countries, and find funds to trade. By his own admissions, he has multiple financial accounts overseas, including at least France, Luxembourg, Switzerland, and the Carribean, that also according to him have not been frozen. He also continues to trade money on behalf of new and old investors.

Lewalski has not missed a beat in his efforts to raise money, often by playing on people's fear and misunderstanding surrounding the State's case. He has no hesitation defying the state court's injunction and the efforts of the appointed Receiver by continuing to solicit investors and by concealing and selling assets.

Lewalski's contempt for the law stretches beyond his efforts to defy the orders in the State's case, as demonstrated by his involvement in threats against the Receiver's counsel, his reference to using performance-enhancing drugs, his disregard for his and others' income tax obligations, and his failure to register to sell securities, pay commissions, or act as a commodities trader. Lewalski also admitted to laundering funds while overseas in order to conceal his ongoing criminal activity.

The ties to the community offered by the defendant provide little if any security to this Court. The defendant references his mother, who as discussed above has been told to lie to law enforcement by Lewalski, benefitted from the scheme, and housed the defendant, Botfly, and the defendant's brother (who was involved in the threat on the

Receiver's counsel described above). The defendant further states that his ties to the community extend to his aunts, uncles and cousins, the Steads, who as also described above realized \$1,180,000 in dividends and commissions from the Botfly scheme. To the extent these individuals even have funds to secure Lewalski's bond, they are likely proceeds of the fraud and should be preserved for victim investors, not used to secure Lewalski's freedom.

There exists no conditions or combination of conditions that could assure the defendant's appearance in this case and that could protect the community from David Lewalski. Accordingly, he should remain detained.

Respectfully submitted,

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U.S. v. DAVID R. LEWALSKI

Case No. 8:10-Cr-501-T-27MAP

CERTIFICATE OF SERVICE

I hereby certify that on December 17, 2010, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to the following:

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