UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA

v. CASE NO. 8:19-cr-605-WFJ-CPT

MICHAEL J. DACORTA

UNITED STATES' RESPONSE IN OPPOSITION TO DACORTA'S MOTION TO SUPPRESS

This Court should deny defendant Michael J. DaCorta's motion to suppress statements made as a result of custodial interrogation (Doc. 43) because DaCorta was never in custody for *Miranda* purposes.

I. PROCEDURAL HISTORY

In December 2019, a grand jury in the Middle District of Florida returned an indictment charging DaCorta with having conspired to commit wire and mail fraud, in violation of 18 U.S.C. § 1349, as well as having engaged in an illegal monetary transaction, in violation of 18 U.S.C. § 1957. Doc. 1. In February 2021, a grand jury returned a superseding indictment, adding a charge for false and fraudulent statements on an income tax return, in violation of 26 U.S.C. § 7206(1) and 18 U.S.C. § 2. Doc. 39. This case is currently set on the October trial term. Doc. 36.

On April 27, 2021, DaCorta filed a motion to suppress his statements made during a purported custodial interrogation, which occurred on April 18, 2019. Doc. 43. DaCorta also moved for an evidentiary hearing on the matter. Doc. 44. The United States responds as directed by this Court. Doc. 45.

II. FACTUAL BACKGROUND[1]

In April 2019, federal law-enforcement officers secured a search warrant for DaCorta's residence in connection with a Ponzi-style scheme perpetrated by DaCorta and other coconspirators. Lost Key Pl. Search Warrant, Case No. 8:19-mj-1484-T-AAS. DaCorta's business, using the moniker Oasis International Group ("OIG" or "OASIS," referring to various other shell companies operated by DaCorta and others), had solicited over $70,000,000 from more than 700 investors. Almost immediately, DaCorta began to use significant portions of victim-investors' funds to pay for personal expenses.

On April 18, 2019, around 7:05 a.m., law-enforcement officers arrived at DaCorta's residence to execute the search warrant. DaCorta's residence is part of a wealthy, gated community, complete with pedestrian-friendly sidewalks, a country club building and swimming pool. The country club and other common amenities were a 15-minute walk from DaCorta's house.

In accordance with residential-search-warrant procedures for both the Federal Bureau of Investigation ("FBI") and the Internal Revenue Service ("IRS"), a group of law-enforcement officers wearing ballistic vests bearing police insignias approached the front door; consistent with standing operating practice, three of those

[1] Because DaCorta's motion presents mixed questions of fact and law, we do not oppose his motion for an evidentiary hearing, Doc. 44. The United States anticipates that evidence presented at an upcoming evidentiary hearing would establish the following facts. Should this Court set DaCorta's motion (Doc. 43) for an evidentiary hearing, the United States requests protection for June 2–June 8, 2021 and for June 28–July 6, 2021.

officers had their weapons drawn. Fully illuminated by the morning sunshine, agents rang the doorbell, knocked several times, and announced, "police with a search warrant." Def. Mot., Ex. A. DaCorta, whom agents believed from their investigation to be a gun owner and purchaser of gun accessories, opened the door in a tank-top and boxer briefs. *Id.* As he opened the door, he held back a barking dog by the collar with a second dog standing next to him. *Id.* His wife stood to his right, peering from around the vestibule-wall corner. *Id.* A. Still following standard procedure, agents asked DaCorta to keep his hands in the air, to about face, and to exit the doorway. *Id.* Agents likewise directed DaCorta's wife and daughter to step outside and join DaCorta so that agents could clear the residence for officer safety. Agents passed DaCorta to enter the residence and by 7:15 a.m. had cleared the house and secured the family's cars, which were subject to immediate seizure. *See* Lost Key Pl. Search Warrant, Case No. 8:19-mj-1484-T-AAS at 5.

Minutes after clearing the residence with several other law-enforcement officers, Special Agents Volp and Batsch calmly approached DaCorta with their weapons holstered. Although DaCorta's wife had become verbally combative with law-enforcement officers, DaCorta had quietly waited on the residence's front steps with little-to-no police supervision. There, free from handcuffs or restraints, DaCorta received Special Agents Volp and Batsch. In a professional and tranquil tone, agents told DaCorta that they would like to speak with him and could explain why they were at his residence. DaCorta verbally agreed to speak with the agents. To avoid having to discuss DaCorta's fraud in front of his already-agitated wife, in an effort to

not taint other potential witnesses' testimony, and in order to steer clear of the DaCorta's home office (the central location of the search), the agents and DaCorta walked to a nearby billiards room. Three chairs were available behind the billiards table and next to what appeared to be a makeshift workstation, adorned with stacks of business papers and a computer. Def. Mot, Ex. B. DaCorta and the agents sat down facing each other in a spacious triangle, with DaCorta facing the exit door and the agents facing DaCorta. The well-lit room was sizable and allowed DaCorta paths of egress to his left and right.

Shortly after all three sat down, Special Agent Batsch—who had removed his ballistics vest—told DaCorta in a calm and non-confrontational tone: 1) that DaCorta was not under arrest; 2) that the agents would like to question him but that he could have an attorney present if he so desired; 3) that he did not have to answer their questions; and 4) that he could stop the interview any time. The agents added that, as they went through their questions, it would become obvious what the search warrant was about. DaCorta—now wearing pants—acknowledged Special Agent Batch's statements and agreed to answer the agents' questions.[2]

Agents began the interview at 7:20 a.m. in a cordial, conversational tone by informing DaCorta that they believed OIG/OASIS was a Ponzi scheme. The interview continued throughout in the same polite manner. At no point did either agent engage in "hardball" interview tactics. To the agents' surprise, DaCorta, who

[2] Following standard operating procedure for a non-custodial interview, agents neither recorded the interview nor recited formal *Miranda* warnings.

appeared solemn and slightly deflated, was nonetheless talkative from the beginning. In short, DaCorta explained he was trying to build a company with real value. He initially asserted that there were assets available to cover his losses but admitted after roughly 30 minutes that there were no such assets. DaCorta proceeded to answer follow-up questions about the numerous individuals involved with OIG/OASIS and their degree of knowledge and responsibility.

The interview was untroubled by interruptions. DaCorta did not at any point: 1) ask or attempt to stop the interview; 2) ask to speak with an attorney; 3) ask to speak with his wife; 4) ask or attempt to use the restroom or to take any other type of break; 5) ask for food or refreshment (although some was brought to him); or 6) ask or attempt to leave the billiards room. Agents did not search the billiards room until the interview had concluded and no other agents were stationed or working in the room during the interview besides Special Agents Volp and Batsch.

The only notable interruptions to DaCorta's detailed conversation with the agents came from DaCorta's dogs and his offer to assist law enforcement. At one point during the interview, DaCorta's dogs began barking in the backyard, which was directly behind the billiards room. DaCorta showed concern for the dogs' barking and offered to address it. He did not, however, ask to leave the room to attend to the dogs, nor did he express a desire to end the interview due to their barking. He was reassured by the agents' offer to have someone calm the dogs and bring them water. The barking stopped and the interview continued. The only additional interruption came before DaCorta rejoined his family. He agreed to show

agents where the gold coins he used to purportedly hedge OIG/OASIS trades were hidden (a paint can in his closet). Per standard operating procedure, agents accompanied DaCorta to his master bedroom to locate the coins and then accompanied him back to the billiards room where he continued his interview.

DaCorta's conversation with the agents ended as it began, in a calm and cordial manner. He admitted that he knew his OIG/OASIS-related conduct was wrong and that he wanted to make things right. The agents thanked DaCorta for speaking with them and then introduced him to a group comprised of two representatives from the Commodity Futures Trading Commission ("CFTC") and the Court-appointed receiver, informing DaCorta that the group would like to speak with him if he were willing. DaCorta agreed.

Although it is not entirely clear how long DaCorta's conversation with the agents lasted, he voluntarily spoke with them for more than one hour but far less than the four hours he asserts. And, immediately after his interview with the agents, DaCorta spoke with the CFTC representatives and Court-appointed receiver for roughly one hour. That interview, too, unfolded in a professional and cordial way. Law-enforcement officers were not involved in or present for that second interview, which appears to have concluded by 10:25 a.m. Afterward, DaCorta, unescorted by law-enforcement officers, wandered through the house and rejoined his wife and daughter who had elected to wait-out the search in their living room. The entire search team had left the DaCorta residence by 12:30 p.m. DaCorta was not arrested until December 2019. Doc. 16.

III. MEMORANDUM OF LAW

DaCorta cannot meet his burden of establishing that the interview detailed above was custodial in nature.

The Fifth Amendment provides to every person a right against self-incrimination and, correspondingly, requires that trial courts exclude from evidence any incriminating statements an individual makes before being warned of his rights to remain silent and to obtain counsel. *Miranda v. Arizona*, 384 U.S. 436, 478–79. The entitlement to this warning, however, attaches only when custodial interrogation begins. *Id.* at 479; *Dickerson v. United States*, 530 U.S. 428, 435 (2000). A defendant challenging the admissibility of statements for failure to receive these warnings beforehand bears the burden of establishing that he was in custody and thus entitled to them. *United States v. de la Fuente*, 548 F.2d 528, 533 (5th Cir. 1978)[3]; *see also Rakas v. Illinois*, 439 U.S. 128, 132 n.1 (1978).

Custody for *Miranda* purposes is a "term of art" that generally engenders a "serious danger of coercion." *Howes v. Fields*, 565 U.S. 499, 508 (2012). The threshold consideration is whether a reasonable person would have felt "seized" by law-enforcement—that is, felt constrained not to leave the scene of a police encounter at a particular moment. *United States v. Luna-Encinas*, 603 F.3d 876, 881 (11th Cir. 2010). But whether a suspect is "in custody" for purposes of the Fifth Amendment looks beyond the Fourth Amendment's seizure inquiry. *E.g., Fields*, 565 U.S. at 509;

[3] The decisions of the former Fifth Circuit handed down before October 1, 1981, are binding in the Eleventh Circuit. *Bonner v. City of Prichard*, 661 F.2d 1206, 1207 (11th Cir. 1981) (en banc).

Luna-Encinas, 603 F.3d at 881; *United States v. Street*, 472 F.3d 1298, 1309 (11th Cir. 2006). The free-to-leave inquiry reveals only whether the person in question was seized. *E.g.*, *Fields*, 565 U.S. at 509 ("Determining whether an individual's freedom of movement was curtailed, however, is simply the first step in the analysis, not the last. Not all restraints on freedom of movement amount to custody for purposes of *Miranda*."). "In custody" for *Miranda* purposes, however, asks the additional question of whether the relevant environment presented the same inherently coercive pressures as the type of station-house questioning at issue in *Miranda*. *Id.* In other words, it asks whether the restraint on freedom of movement rose to the degree "associated with formal arrest." *California v. Beheler*, 463 U.S. 1121, 1125 (1983); *Luna-Encinas*, 603 F.3d at 882. This objective standard presupposes an innocent suspect and is not dependent on the suspect's nor the officer's belief about the degree to which the person was detained. *E.g.*, *Street*, 472 F.3d at 1309.

DaCorta contends that throughout the search warrant execution he was "seized" and his freedom of action curtailed to a degree that a reasonable person would associate with formal arrest. Not so. DaCorta's freedom of movement was not curtailed when his interview began—the relevant point of inquiry. And the interview's setting did not present the same, inherently coercive pressures that *Miranda* aimed to counteract. DaCorta was not confined to anywhere near the degree normally associated with a formal arrest.

A. DaCorta was not seized when his interview began, and his motion therefore fails on that basis alone

With respect to the threshold seizure inquiry, although DaCorta's freedom of movement was briefly curtailed in the moments following law-enforcement's entry into his residence, that effect was fleeting and had dissipated by the time of his interview. DaCorta's motion mischaracterizes the facts by straining to extend this momentary encounter over five hours and into the afternoon. But DaCorta and his family were merely asked to show their hands and step outside to clear the doorway so that the breach team could sweep the residence (which occurs, per standard procedure, in nearly every residential search warrant executed across the country). DaCorta and his family waited on the front steps accompanied by little-to-no police presence. DaCorta was not handcuffed, was not told he was under arrest and, more broadly, was not ordered to do anything except to stand aside to avoid interfering with the initial clearance team. Ten to 15 minutes passed before the interviewing agents approached DaCorta (their guns reholstered). As detailed above, DaCorta verbally accepted the agents' offer to explain the nature of their presence at his house and verbally agreed to speak with them. Under his own volition, he walked—free from any form of restraint—to the billiards room, a more private area in his house away from his wife and daughter.

Agents removed their tactical vests and sat down with him. From the outset, they informed him in a calm and non-confrontational tone: 1) that he was not under arrest; 2) that they would like to question him but that he could have an attorney

present if he so desired; 3) that he did not have to answer their questions; and 4) that he could stop the interview any time. The interview began and DaCorta's statements immediately followed. This admonition therefore marks relevant period of inquiry for this Court—not the front door breach.

Consequently, the relevant, threshold question raised by DaCorta's motion is whether a reasonable person who was calmly told by agents in charge that he was not under arrest, did not have to speak to them, and could stop the interview at any time, "[would] have felt he or she was not at liberty to terminate the interrogation and leave." *See Thompson v. Keohane*, 516 U.S. 99, 112 (1995). A reasonable person would not have felt that way and DaCorta cannot satisfy his burden to prove otherwise.

The Eleventh Circuit Court of Appeals has consistently recognized that the type of admonition DaCorta received is a "powerful," "important," and "non-coequal" factor in the free-to-leave inquiry. *United States v. Brown*, 441 F.3d 1330, 1347 (11th Cir. 2006); *United States v. Muegge*, 225 F.3d 1267, 1271 (11th Cir. 2000); *see also United States v. Salvo,* 133 F.3d 943, 951 (6th Cir.1998) (noting that a statement from officers that a suspect is not in custody and is free to leave is an "important factor…"). So powerful is this factor that it "generally will lead to the conclusion that the defendant is *not* in custody absent a finding of restraints that are 'so extensive that telling the suspect he was free to leave could not cure the custodial aspect of the interview.'" *Brown*, 441 F.3d at 1347 (quoting *Muegge*, 225 F.3d at 1271) (emphasis in original). As the Eight Circuit Court of Appeals has explained:

> That a person is told repeatedly that he is free to terminate an interview is powerful evidence that a reasonable person would have understood that he was free to terminate the interview. So powerful, indeed, that no governing precedent of the Supreme Court or this court, or any case from another court of appeals that can be located (save one decision of the Ninth Circuit decided under an outmoded standard of review) […] holds that a person was in custody after being clearly advised of his freedom to leave or terminate questioning.

United States v. Czichray, 378 F.3d 822, 826 (8th Cir.2004). This is especially true if the defendant acknowledges the admonition. *Brown*, 441 F.3d at 1348.

Such is the case here. The agents told DaCorta that he was not under arrest and did not have to speak with them. No extensive restraints were present. Indeed, even DaCorta's factual recitation—deeply wanting for accuracy—does not allege restraints sufficient to overcome the agents' clear admonition.[4] *See* Doc. 43. When his interview began, a reasonable, innocent person would have felt free to leave. DaCorta was not seized during his interview and his motion thus fails on that basis alone.

B. DaCorta's interview carried nowhere near the coercive pressures and restraints of a "formal arrest"

Even if this Court concluded that DaCorta was seized when his interview

[4] DaCorta's motion also presents erroneous facts and omits material details that seriously undermine the relief he seeks. For example, he makes no mention of the law enforcement officer's pre-interview admonition that DaCorta was not under arrest, could speak with an attorney, and could end the interview at any time. No interviewing agents denied DaCorta use of the washroom, and his conversation with the agents did not last four hours. Additional exaggeration abounds. Agents did not command DaCorta to show them where the gold coins were—he offered to do so. The search warrant was executed in broad daylight and after 7:00 a.m.—not in the "early morning hours." DaCorta sat in a chair, not a stool, and was not "made to" sit anywhere. What is more, the agents did not deny DaCorta the ability to tend to his dogs or to leave the room—he never asked or attempted to do so.

began due to some lingering impact of the breach—which it should not for the reasons set forth above—that alone would be insufficient to establish *Miranda* custody. *See Maryland v. Shatzer*, 559 U.S. 98, 112 (2010) ("Our cases make clear…that the freedom-of-movement test identifies only a necessary and not a sufficient condition for *Miranda* custody."). DaCorta must also establish that the atmosphere surrounding his interview presented the coercive pressures at issue in *Miranda* and the confining restraint of movement associated with formal arrest. *See*, *e.g.*, *Fields*, 565 U.S. at 509; *Luna-Encinas*, 603 F.3d at 881. He cannot.

A broad range of commonly considered factors weigh against DaCorta's motion. Examining the totality of the circumstances surrounding the interview, courts have placed great weight on: the interview's location, *e.g.*, *Shatzer*, 559 U.S. at 112; the use of physical restraints, *e.g.*, *New York v. Quarles*, 467 U.S. 649, 655 (1984); the defendant's requests to end the interview or see an attorney, *e.g., United States v. Phillips*, 812 F.2d 1355, 1357 (11th Cir. 1987); the interview's character, statements made during the interview and the behavior, tone and mannerisms of the law-enforcement officers, *e.g.*, *United States v. Long*, 866 F.2d 402, 405 (11th Cir. 1989); the interview's duration, *e.g.*, *Berkemer v. McCarty*, 468 U.S. 420, 437 (1984); and whether the defendant freely left after questioning. *E.g.*, *Beheler*, 463 U.S. at 1122.

Applied here, these factors do not come close to suggesting the degree of seizure or coercive pressures associated with formal arrest. Agents interviewed DaCorta not in a police station interrogation room, but rather in a billiards room

turned makeshift office in the comfort of his own home. As the Eleventh Circuit Court of Appeals explained in *United States v. Brown* and reiterated in *United States v. Luna-Encinas*, familiar or neutral surroundings such as a defendant's home are "much less likely" to bring about custodial circumstances. 603 F.3d at 882; 441 F.3d at 1348.

Those decisions are particularly instructive. In *Brown*, the defendant had murdered a postal worker and was later encountered by law-enforcement officers at his girlfriend's house. 441 F.3d at 1340. Officers had arrived at that house to execute a search warrant, with one officer holding a shotgun. Officers detained Brown for the first 15 minutes while they entered the house. *Id*. at 1340–47. As officers searched the house, Brown agreed to speak with them about the post office murder and further agreed to have that conversation at the police station. *Id*. Officers accompanied Brown to another room to get his shoes. *Id*. Upon realizing that the shoes matched the prints at the crime scene, the officers abruptly seized his shoes as evidence. *Id*. Brown had no other shoes, refused to leave the house without shoes, and agreed to speak to officers at the house as an alternative to the police station. *Id*. Still escorted, Brown sat down in the living room (later moving to more private room), spoke with two officers, and confessed to the crime. *Id*. Concluding that the interview was non-custodial, *Brown* placed significant weight on factors also present here. Before the interview, the officers warned Brown that he was not under arrest and was free to leave, warnings Brown acknowledged. *Id.* at 1347–49. Moreover, as here, Brown's

interview occurred in a familiar setting—a residence where he often resided. *Id.*

The circumstances here also bear resemblance to that of *Luna-Encinas*. *See* 603 F.3d at 877. In that case, officers entered Luna-Encinas's back yard looking for his neighbor. *Id.* at 877–80. Officers had their firearms drawn, ordered him to raise his shirt to reveal his waistband, and then directed him to sit down until the residence was secured. *Id.* At least 10 minutes passed before officers (guns holstered) escorted Luna-Encinas, who was not touched or restrained, to his front yard. *Id.* Once in front, they ordered him to sit on the ground for roughly five minutes, at one point directing him to stop speaking to his friend. *Id.* Officers, who had found a handgun box in Luna-Encinas's bedroom, then asked him where the gun was located. *Id.* Luna-Encinas informed them it was under his bed. *Id.*

Officers had initially informed Luna-Encinas that he was not the suspect they sought. But once in his front yard and clearly then the suspect of a gun crime, he never received the admonitions afforded to DaCorta. *See id.* The Eleventh Circuit nonetheless concluded that Luna-Encinas's statement, though made while he was seized, was not custodial for *Miranda* purposes. *Id.* at 882. In so holding, the Court emphasized that, like DaCorta, Luna-Encinas was not physically touched, threatened, nor verbally or physically intimated. *See id.* at 881–82. As here, officers holstered their weapons after initial contact. *See id.* And, as here, questioning took place on familiar ground at Luna-Encinas's residence, which the court described as a "neutral…location." *See id.* at 882. The familiar setting of DaCorta's home thus

weighs heavily against his interview being custodial for *Miranda* purposes.

DaCorta's lack of restraints inside his home, too, indicates that his interview was non-custodial. He was not arrested or placed in handcuffs during the interview. In fact, he was not handcuffed at any point during the day, including during the breach. Agents did not physically move or restrain him as they made their way to the billiards room. Throughout his interview, agents did not touch him, and their guns were not drawn. Nothing suggested formal arrest or its equivalent. *Cf. Luna-Encinas*, 603 F.3d at 880–83; *Brown*, 441 F.3d at 1347–49. Indeed, courts have found even more extreme forms of restraint to be non-custodial. *See United States v. Moya*, 74 F.3d 1117, 1119 (11th Cir.1996) (concluding that defendant was not in custody, and citing *United States v. Blackman*, 66 F.3d 1572, 1576–77 & n.4 (11th Cir.1995), for the proposition that even handcuffing and holding a suspect at gunpoint would not necessarily constitute custody); *United States v. Setzer*, 654 F.2d 354 (5th Cir.1981) (non-custodial interrogation when agent stopped defendant in airport and continued questioning even after defendant refused to be searched).

DaCorta nonetheless argues that the he was effectively detained inside his home because his daughter was told she could not leave in a car subject to seizure, and because he was accompanied by agents during the search. But courts have consistently declined to give these circumstances considerable weight. For example, in *United States v. Matcovich*, the Eleventh Circuit held that the "police-dominated atmosphere" accompanying a residential search warrant and certain attendant restraints on movement within the defendant's home did not render an in-home

interrogation custodial. *See* 522 F. App'x 850, 852 (11th Cir. 2013); *see also Brown*, 441 F.3d at 1348 (noting that an officer accompanied the defendant around the house for safety reasons). The same is true here. Although DaCorta was not entirely free to roam his house, he was free to leave his house and spend his morning doing any number of things. He could have relaxed by the pool or socialized at the country club, both a reasonable walk from his street address in his affluent gated community. He could have Ubered to a coffee shop. Perhaps instinctively, he and his family chose to stay at their house and wait for the search team to leave. That decision, though understandable, does not render his interview custodial. *Cf. Brown*, 441 F.3d at 1349 (highlighting that despite a lack of shoes, defendant had alternative, barefoot options but decided to remain in the house when he could have left to avoid speaking with law-enforcement officers).

The language and tone used by the interviewing agents also weighs against DaCorta's assertion that his interview was custodial. *See, e.g.*, *Long*, 866 F.2d at 405. The agents' invitation to talk and the ensuing conversation with DaCorta was calm, professional, and civil. DaCorta put pants on and voluntarily agreed to speak with the agents. The agents politely advised him that he was not under arrest, that he did not have to speak with them, and that he could stop at any time. Taken together, these statements plainly suggest that he was free to leave. DaCorta acknowledged these admonitions.

Moreover, no aspect of the agents' interview request, warnings, or questioning implied an intent to compel compliance or demand admissions. Not once in the

interview did any party raise their voice or speak in a threatening manner, and DaCorta's interview did not involve prolonged, coercive, and accusatory questioning. The foundational Fifth Amendment concern upon which *Miranda* was based "is governmental coercion." *Colorado v. Connelly*, 479 U.S. 157 (1986). Yet, nothing here suggests a coercive and interrogative atmosphere that could objectively and reasonably be associated with a formal-arrest interrogation. *Cf. Miranda*, 384 U.S. at 457 (emphasizing that the defendants were "thrust into an unfamiliar atmosphere and run through menacing police interrogation procedures.").

Although DaCorta's subjective beliefs are not relevant to the reasonable person inquiry, his eagerness and willingness to speak freely with the agents at length about OIG/OASIS and its numerous members and employees further suggests an environment that, to a reasonable person, would not be commensurate with formal arrest. Equally important is what DaCorta did not do or say. He did not: 1) ask or try to stop the interview; 2) ask to speak with an attorney; 3) ask to speak with his wife; 4) ask to or attempt to use the restroom; 5) ask for food or refreshment; or 6) ask to or attempt to leave the billiards room or take any other type of break. *Cf. Phillips*, 812 F.2d at 1362 (concluding that defendant was not in custody because, among other things, he "never requested a lawyer or to terminate the interview."); *Luna-Encinas*, 603 F.3d at 882 (highlighting that the defendant never asked to leave nor informed officers of a desire to not comply).

What DaCorta did do, though, weighs heavily in favor of a non-custodial finding. After the interview had concluded in a friendly and non-confrontational

manner, the agents left DaCorta—further indicating an environment free from coercion and restraint. DaCorta then agreed to speak at length (and privately) with CFTC representatives and the Court-appointed receiver before rejoining his family in the living room. That DaCorta felt comfortable enough to return to his billiards room and speak to additional attorneys and representatives—who were unarmed and unrelated to the criminal investigation—further suggests an environment free from restraint, coercion, and compulsion.

Finally, although it is unclear precisely how long DaCorta's interview with the agents lasted, it appears to have been far less than four hours. As detailed above, his interview with agents began at 7:20 a.m. and proceeded without any significant interruptions. The CFTC's interview *concluded* around 10:25 a.m. It is therefore likely that DaCorta spoke with agents for approximately two hours. In any event, the length of his interview was driven not by repeated forays of interrogative compulsion, but rather by his willingness to speak to agents and his own verbosity.

Taken together, the above factors reveal that DaCorta's interview was nowhere near the type of highly intrusive, coercive atmosphere that requires *Miranda* warnings. A reasonable person in DaCorta's position would not have felt: "utterly at the mercy of the police, away from the protection of any public scrutiny, and had better confess or else." *See United States v. Acosta*, 363 F.3d 1141, 1150 (11th Cir. 2004). Put simply, after the agents' admonitions, DaCorta sat in his billiards room and had a consensual conversation with them. Nothing in this setting bespeaks the compulsion "inherent in custodial settings." *See Miranda*, 384 U.S. at 458. Nowhere

present were the pressures that sufficiently impair the "free exercise of his privilege against self-incrimination." *See McCarty*, 468 U.S. at 437.

The three decisions that DaCorta cites miss the mark and, in any event, do not bind this Court. DaCorta relies on the unique facts of *United States v. Craighead* for the proposition that an in-home interrogation can turn custodial. 539 F.3d 1073, 1077 (9th Cir. 2008). Indeed, in certain instances it may. But *Craighead* is unique. In that case, an FBI-led search team executed a warrant on an airman's Air Force-base residence. *Id*. at 1077–87. Investigators from the Air Force Office of Special Investigations were present, along with Craighead's first sergeant, who was his direct report and superior. *Id*. Law-enforcement officers led Craighead to a cluttered, unfurnished storage room in the back of his residence. *Id*. There, they interviewed him as he sat on a box, while an armed detective who did not participate in the interview leaned back against a closed door (the only exit). *Id*.

Craighead testified that he did not know whether the FBI agent's free-to-leave warning encompassed the other present entities, such as the Air Force. He also did not know why his sergeant was present and assumed he was there on behalf of the Air Force. *Id*. In a decision that the Ninth Circuit Court of Appeals has since had occasion to distinguish on its unique facts, the Court held Craighead's interview to be custodial. *Id* at 1077; *United States v. Bassignani*, 575 F.3d 879, 884 n.6 (9th Cir. 2009) (distinguishing *Craighead*).

Cavazos and *Sprotsy* are likewise distinguishable. *See United States v. Cavazos*,

668 F.3d 190 (5th Cir. 2012); *Sprosty v. Buchler*, 79 F.3d 635 (7th Cir.1996). In *Cavazos*, police awoke Cavazos at 5:30 a.m. breaching his door. Officers ran into his bedroom and handcuffed him as he arose from his bed. 668 F.3d at 191–95. Officers, who monitored his phone calls by making him hold his phone to their ears and watched him as he used the bathroom, interviewed him on his son's bed. *Id*. This is a far cry from the context surrounding DaCorta's interview. *Sprosty* is another outlier. There, officers arriving to execute a search warrant on Sprosty's mobile home encountered him in his car in the driveway and boxed him in with a patrol car. *Sprosty,* 79 F.3d 638–43. They then led him into his mobile home, *Mirandized* him, and shut down attempts to contact an attorney. *Id*. For three hours, officers repeatedly questioned him about the location of evidence in his trailer and offered him a deal if he disclosed it. *Id*. Neither *Craighead*, *Cavazos* nor *Sprosty* present this Court with any reason to depart from our Circuit's guiding precedent or to ignore the factors analyzed above, which overwhelmingly weigh against finding DaCorta's interview to be custodial.

DaCorta cannot satisfy his burden of establishing that a reasonable person would not have felt free to leave. Nor has he satisfied his burden to establish that such a seizure, combined with the atmosphere of his interview, rises to the level of coerciveness attendant to formal arrest that *Miranda* warnings were designed to counteract. Even the incomplete and inaccurate factual recitation offered by DaCorta's motion, if credited, would not establish a *Miranda*-type environment analogous to formal arrest. A full and accurate recitation of the facts, detailed above,

certainly does not support a finding that DaCorta was in custody for *Miranda* purposes. Because DaCorta was not "in custody" during his interview with agents in April 2019, he was not entitled to *Miranda* warnings before his interview and his Fifth Amendment rights were therefore not violated. This Court should deny his motion to suppress his statements, Doc. 43.

IV. CONCLUSION

For the foregoing reasons, this Court should deny DaCorta's suppression motion, Doc. 43.

Respectfully submitted,

KARIN HOPPMANN
Acting United States Attorney

By: */s/ Francis D. Murray*
Francis D. Murray
Assistant United States Attorney
Florida Bar No. 0108567
400 N. Tampa Street, Suite 3200
Tampa, Florida 33602-4798
Telephone: (813) 274-6000
Facsimile: (813) 274-6358
E-mail: Francis.Murray2@usdoj.gov

By: */s/ Rachelle DesVaux Bedke*
Rachelle DesVaux Bedke
Assistant United States Attorney
Florida Bar No. 0099953
400 N. Tampa St., Ste. 3200
Tampa, FL 33602-4798
Telephone: (813) 274-6000
Facsimile: (813) 274-6358
E-mail: Rachelle.Bedke@usdoj.gov

/s/ David W.A. Chee

David W.A. Chee
Assistant United States Attorney
Florida Bar No.: 109659
400 N. Tampa St., Ste. 3200
Tampa, FL 33602-4798
Telephone: (813) 274-6000
Facsimile: (813) 274-6358
E-mail: David.Chee@usdoj.gov

U.S. v. DaCorta **Case No. 8:19-cr-00605-WFJ-CPT**

CERTIFICATE OF SERVICE

I hereby certify that on May 21, 2021, 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:

/s/ Francis D. Murray
Francis D. Murray
Assistant United States Attorney
Florida Bar No. 0108567
400 N. Tampa Street, Suite 3200
Tampa, Florida 33602-4798
Telephone: (813) 274-6000
Facsimile: (813) 274-6358
E-mail: Francis.Murray@usdoj.gov