U.S. Department of Justice

United States Attorney
Eastern District of New York

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DMP:ICR/AFM/KCB
F. #2018R01047

April 7, 2022

By ECF

The Honorable Denis R. Hurley
United States District Court
Eastern District of New York
100 Federal Plaza
Central Islip, New York 11722

Re: United States v. Aventura Technologies
Docket No. 19-CR-582 (DRH) (ARL)

Dear Judge Hurley:

The government writes in support of Magistrate Judge Arlene R. Lindsay's March 10, 2022 Report & Recommendation (the "R&R"), ECF No. 242, recommending denial of the motion (the "Motion") by defendant Aventura Technologies ("Aventura") for a hearing seeking the release of seized funds, ECF No. 211. This submission also serves as a response to Aventura's March 24, 2022 objection to the R&R (the "Objection"), ECF No. 245.

As set forth below, Judge Lindsay correctly applied the relevant law in reaching her recommendation to deny the Motion without a hearing, and the government therefore submits that the Court should adopt Judge Lindsay's recommendation.

I. Factual and Procedural Background

Aventura was charged by complaint on November 6, 2019 with unlawful importation, money laundering conspiracy, and two counts of conspiracy to commit wire and mail fraud, see Dkt No. 1. In the same complaint, seven individual corporate employees were charged with varying combinations of these offenses. The charges stemmed from Aventura's operation of a 13-year scheme to defraud victims in the private and public sectors, both in the United States and abroad, by falsely claiming to sell American-made products and to be a woman-owned business, as well as to launder the proceeds of that scheme.

Aventura was controlled on paper by defendant Frances Cabasso, see Complaint at ¶ 5, but in fact was controlled by her husband, defendant Jack Cabasso, id. at ¶¶ 4-5, 81-90. The Cabassos funneled millions of dollars from Aventura to pay their personal and legal

expenses, including the purchase and maintenance of a yacht. See Complaint at ¶¶ 91-100. The government's investigation revealed that the Cabassos and Aventura owned a network of seemingly unrelated assets, including the yacht and multiple investment properties, [1] purchased with Aventura's funds, whose profits flowed to the Cabassos. The Cabassos also made use of complex transactions to siphon funds from Aventura, including rent payments to a Cabasso-owned company.

On November 6, 2019, the Honorable Vera M. Scanlon found probable cause that the funds in twelve bank accounts (two held by Aventura), as well as the yacht, constituted property traceable to the charged offenses. The government executed seizure warrants on the two accounts held by Aventura on or about November 7, 2019, as set forth in the table below:[2]

Institution	Last Four Digits of Account #	Amount Authorized to be Seized by Warrant	Amount Seized
J.P. Morgan Chase Bank	-0964	$3,100,000.00	$1,872,936.40
J.P. Morgan Chase Bank	-5656	$1,260,000.00	$1,863.08

The funds are currently held by the United States Marshals Service in interest-bearing accounts.

The government recently learned—subsequent to the issuance of Judge Lindsay's R&R—that defendant Frances Cabasso took steps after Aventura's assets were frozen to move hundreds of thousands of dollars into the custody of others, who then used the assets to fund Cabasso's defense in ways that appear to have been intended to evade detection by the government. Specifically, records recently obtained from UBS show the following:

- On November 15 and November 18, 2019—mere days after the government's seizure warrant was executed—$250,000 was transferred out of a UBS account under the control of Frances Cabasso and [redacted] that was not subject to seizure by the government (the "[redacted] Account") and into an account controlled solely by [redacted]
- Also on November 15, 2019, [redacted] sent $150,000 to an account belonging to the law office of Frances Cabasso's defense lawyer in this action.
- Between December 2, 2019 and December 9, 2019, a further $525,000 was transferred from the [redacted] Account to [redacted].

[1] These investment properties have not been restrained or forfeited.

[2] The affidavit submitted to Judge Scanlon and the seizure warrants, as well as the executed returns and Aventura's bylaws, were produced in discovery to all defendants on July 23, 2021.

- On May 3, 2021, [redacted] withdrew approximately $500,000 from her account.[3]

On December 9, 2019, Aventura and the seven individual defendants were charged by indictment with the offenses set forth in the Complaint. Four individual defendants have since entered guilty pleas.

The indictment included three sets of criminal forfeiture allegations, seeking forfeiture pursuant to 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c); 18 U.S.C. § 982(a)(2); and 18 U.S.C. § 982(a)(1). See Indictment at ¶¶ 41-46. The funds to be forfeited by Aventura as described in the table above were specified in the indictment.

On August 11, 2021, Aventura submitted the Motion to Your Honor, seeking a hearing pursuant to United States v. Monsanto, 924 F.2d 1186, 1191 (2d Cir. 1991) (hereinafter, a "Monsanto hearing") as to the probable cause for the government's restraint of its assets.[4] Aventura asserted that the seized funds were needed both for its own defense and to "contribute to the defense expenses of its co-defendant corporate employees." Mot. 2. Aventura's counsel has stated that his fees are paid by defendants Jack and Frances Cabasso. See Letter Reply in Support of Motion, ECF No. 232, at 1; Affirmation of Samuel M. Braverman, ECF No. 232-2, at ¶ 11. Likewise, counsel has made clear that if Aventura's Monsanto motion is successful, the Cabassos intend to fund their own defense from the company's assets. See Reply Memorandum of Law, ECF. No. 232-1, at 5.

The government opposed the Motion, ECF No. 217; the defendant replied, ECF No. 232; and the government submitted a sur-reply with Judge Lindsay's permission, ECF No. 241.

On March 10, 2022, Judge Lindsay issued her Report and Recommendation, recommending denial of the Motion.

II. Standard of Review

A motion for the return of seized funds is a non-dispositive pretrial matter. See 28 U.S.C. § 636(b)(1)(A) (magistrate judge may determine "any pretrial matter pending before the court," with exception of enumerated dispositive motions). Accordingly, when a magistrate judge rules on a motion for a Monsanto hearing, the district court should disturb that ruling only "where it has been shown that the magistrate judge's order is clearly erroneous

[3] The government has redacted this discussion, and related arguments, in the publicly filed version of this submission inasmuch as they could be read to allege wrongdoing by uncharged persons. See United States v. Amodeo, 71 F.3d 1044, 1051 n.1 (2d Cir. 1995); United States v. Smith, 985 F.Supp.2d 506, 526 (S.D.N.Y. 2013).

[4] The government addresses below Aventura's contention that the hearing it seeks is not pursuant to Monsanto, but rather Kaley v. United States, 571 U.S. 320 (2014).

or contrary to law." 28 U.S.C. § 636(b)(1)(A); see Medrano v. Pugliese, No. 93-CV-3505 (DRH), 1996 WL 496626, at *1 (E.D.N.Y. Aug. 12, 1996); Lovelace v. Land Appliance Sales, Inc., No. 18-CV-689 (DLI), 2020 WL 8921381, at *1 (E.D.N.Y. Mar. 31, 2020).

"A finding is clearly erroneous if the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed," and an order is contrary to law "when it fails to apply or misapplies relevant statutes, case law, or rules of procedure." Dorsett v. Cnty. of Nassau, 800 F. Supp. 2d 453, 456 (E.D.N.Y. 2011), aff'd sub nom. Newsday LLC v. Cnty. of Nassau, 730 F.3d 156 (2d Cir. 2013) (internal quotation marks and citations omitted). Pursuant to this highly deferential standard of review, a magistrate judge is "afforded broad discretion in resolving non-dispositive disputes and reversal is appropriate only if their discretion is abused." Am. Stock Exch., LLC v. Mopex, Inc., 215 F.R.D. 87, 90 (S.D.N.Y. 2002). This standard "imposes a heavy burden on the objecting party." Mitchell v. Century 21 Rustic Realty, 233 F. Supp. 2d 418, 430 (E.D.N.Y. 2002).

New arguments raised in objections to a magistrate judge's report that could have been raised previously are generally not considered. See Diaz v. Portfolio Recovery Associates, LLC, No. 10–CV–3920 (MKB) (CLP), 2012 WL 1882976, at *2 (E.D.N.Y. May 24, 2012); Zhao v. State Univ. of New York, No. 04–CV–0210 (KAM) (RML), 2011 WL 3610717, at *1 (E.D.N.Y. Aug. 15, 2011).

III. Applicable Law

Forfeitures serve to "ensure that crime does not pay: They at once punish wrongdoing, deter future illegality, and lessen the economic power of criminal enterprises." Kaley v. United States, 571 U.S. 320, 323 (2014) (internal citation and quotation marks omitted). In line with that purpose, 21 U.S.C. § 853(e)(1) "empowers courts to enter pre-trial restraining orders or injunctions to 'preserve the availability of [forfeitable] property' while criminal proceedings are pending. Such an order, issued '[u]pon application of the United States,' prevents a defendant from spending or transferring specified property, including to pay an attorney for legal services." Id. (quoting statutory language). In addition, 21 U.S.C. § 853(f) provides for the issuance of warrants authorizing the seizure of property upon a showing of probable cause to believe that the seized assets would, in the event of conviction, be subject to forfeiture. See United States v. Dupree, 781 F. Supp. 2d 115, 130-31 (E.D.N.Y. 2011) (Matsumoto, J.) (holding that government may seize property prior to conviction).

The government may restrain tainted funds regardless of whether a defendant wishes to use them to pay for counsel, because "[t]he robber's loot belongs to the victim, not to the defendant." Luis v. United States, 136 S. Ct. 1083, 1090 (2016). Thus, the defendant's Sixth Amendment right to retain counsel of choice is limited to the use of "her own 'innocent' property to pay a reasonable [attorney's] fee." Id. at 1096; see also United States v. Monsanto, 924 F.2d 1186 (2d Cir. 1991) (abrogated in part by Kaley). In line with this principle, a defendant may seek a hearing "to litigate . . . whether probable cause exists to believe that the

assets in dispute are traceable or otherwise sufficiently related to the crime charged in the indictment."[5] Kaley, 571 U.S. at 324.[6]

The grant of such a hearing is not automatic, however, because "the defendant's constitutional right to use his or her own funds to retain counsel of choice . . . is not implicated unless the restraint actually affects the defendant's right to choose counsel and present a defense." United States v. Bonventre, 720 F.3d 126, 131 (2d Cir. 2013). "[I]f a defendant has sufficient unrestrained assets with which to fund his or her defense," then no hearing is warranted. Id.

Thus, under Bonventre, in order to trigger the requirement of a hearing, the defendant must "demonstrate that he or she does not have sufficient alternative assets to fund counsel of choice." Id. This showing "requires more than a mere recitation; the defendant must make a sufficient evidentiary showing that there are no sufficient alternative, unrestrained assets" to retain counsel. Id. The defendant's burden is "analogous to a defendant's burden under the Criminal Justice Act [] to show that he is unable to afford representation." United States v. Kolfage, No. 20 CR. 412 (AT), 2021 WL 1792052, at *5 (S.D.N.Y. May 5, 2021) (internal quotation marks omitted).

Courts frequently reject applications for a Monsanto hearing where the defendant has not made the threshold showing of need. For example, in Bonventre, the defendant submitted affidavits listing his assets and liabilities, as well as the anticipated cost of legal representation. Id. at 132-33. The Second Circuit nonetheless upheld the district court's denial of the request for a hearing, noting that the defendant "did not disclose his net worth, provide a comprehensive list of his assets, or explain how he has been paying his significant living expenses." Id. at 133. The Second Circuit reasoned that "[w]hile the affidavits describe the aggregate balances of bank accounts enumerated in the government's submissions, they do not clarify whether [the defendant had] access to other accounts and, if so, their value." Id.

Similarly, in United States v. Fishenko, Judge Johnson declined to order a Monsanto hearing where corporate defendant Arc Electronics "provided a conclusory affidavit from [its president] claiming that Arc has no additional assets." Judge Johnson observed that

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[5] The defendant may not, however, litigate the question of whether there is probable cause to conclude that he committed the crime charged, because the grand jury's determination on that score controls and may not be revisited. Kaley, 571 U.S. at 340-41.

[6] The question of whether a corporate defendant is entitled to a Monsanto hearing to advance a Sixth Amendment pretrial challenge to restraint of assets does not appear to have been addressed in the Second Circuit. In United States v. Unimex, Inc., 991 F.2d 546, 550 (9th Cir. 1993), the Ninth Circuit held that a corporate entity had the right to bring a Monsanto challenge to a seizure, although it was not entitled to appointed counsel.

the defendant's affidavits were "insufficient in that they do not allow the court to evaluate the extent of its unrestrained funds . . . [and failed] to disclose the Corporation's net worth or provide a comprehensive list of its assets." United States v. Fishenko, No. 12 CV 626, 2014 WL 4804041, at *2 (E.D.N.Y. Sept. 25, 2014) (citing Bonventre; internal alterations omitted). See also Venkataram v. United States, No. 06 CR 102, 2013 WL 6508819, at *2–3 (S.D.N.Y. Dec. 12, 2013) (declining to reconsider denial of Monsanto hearing where defendant asserted, without further detail, that he "needed $1 million to retain [his] counsel of choice to try the case (naming firms)" but nonetheless "was able to afford and retained a number of attorneys"); United States v. Martinez, No. 11 CR 445 NRB, 2011 WL 4949873, at *1–2 (S.D.N.Y. Oct. 18, 2011) (denying request for Monsanto hearing because defendant failed to "produce[] evidence that he will not be able to pay for private counsel without access to the funds"); Fed. Trade Comm'n v. 4 Star Resolution, LLC, No. 15-CV-112S, 2016 WL 768656, at *1 (W.D.N.Y. Feb. 29, 2016) (denying motion for release of funds for use in parallel criminal action; holding that threshold showing "requires a full accounting, and not simply general assertions that [defendant] does not have adequate assets with which to fund his criminal defense apart from the frozen assets" (internal quotation marks omitted)); United States v. Egan, No. 10-CR-191, 2010 WL 3000000, at *6 (S.D.N.Y. July 29, 2010) (denying request for Monsanto hearing; "Because Defendant has not submitted any evidence that suggests that the restrained assets are necessary to retain his counsel of choice, his request for a *Monsanto* hearing is denied. The absence of such evidence perhaps is explained by its nonexistence.").

Where seized funds belong to a corporation, employees ordinarily lack standing to challenge that seizure pretrial, because an individual defendant has no Sixth Amendment right to the release of funds seized from his or her employer. Cf. Caplin & Drysdale, Chartered v. United States, 491 U.S. 617, 626 (1989) ("A defendant has no Sixth Amendment right to spend another person's money for services rendered by an attorney, even if those funds are the only way that that defendant will be able to retain the attorney of his choice."); United States v. Amiel, 995 F.2d 367, 371 (2d Cir. 1993) ("Only those with legitimate possessory interests have standing to challenge forfeitures."). An individual can establish a cognizable property interest in a corporate entity's seized assets only by showing, among other factors, "a valid expectation that the company would advance its funds for the defendant's legal fees," as where, for example, "the company's by-laws state that an employee's legal fees will be paid by the company in the event of an employment-related civil or criminal case; or, where a personal employment contract, signed agreement or repeated representations to the employee provide that legal fees and costs will be paid by the company." United States v. Dupree, 781 F. Supp. 2d 115, 139-40 (E.D.N.Y. 2011) (Matsumoto, J.) (concluding that, for purposes of Sixth Amendment, defendant lacked property interest in employer's seized funds since he had not "established a valid expectation that [the company] and its subsidiaries would advance his fees and costs").[7]

[7] The only copy of Aventura's bylaws that the government has been able to locate does not provide for reimbursement of employees' legal expenses.

Notably, ownership of shares in a corporation is not sufficient for an employee to demonstrate the required Sixth Amendment interest in the release of seized funds. See Dupree, 781 F. Supp. 2d at 140 (letting company owner "treat . . . corporate funds . . . as his personal funds" for Sixth Amendment purposes would "violate[] basic tenets of corporate law" because "shareholders do not hold legal title to any of the corporation's assets . . . [and only] the corporation—the entity itself—is vested with title" (internal quotation marks omitted)); see also United States v. Funds in the amount of $130,000 United States Currency, No. 19 CV 3440, 2021 WL 2433733, at *5 (N.D. Ill. June 15, 2021) ("Only the corporate entity, and not its shareholders or employees, has statutory standing to contest the forfeiture.").

IV. Argument

Judge Lindsay's Report and Recommendation was neither clearly erroneous nor contrary to law, and the Court should therefore adopt her recommendations in full. Judge Lindsay correctly stated the law in holding that Bonventre continues to impose a threshold requirement on movants seeking a Monsanto hearing, and correctly found that Aventura had not satisfied that requirement. Aventura's claim, raised for the first time in its Objection, that it does not seek a Monsanto hearing but rather a novel proceeding under United States v. Kaley, has no legal basis and should be rejected both because it was not raised before Judge Lindsay and on the merits.

A. Judge Lindsay Correctly Held That *Bonventre* Continues to Impose a Threshold Requirement on Movants Seeking a *Monsanto* Hearing

As Judge Lindsay correctly held, a defendant seeking a Monsanto hearing is required under United States v. Bonventre to "demonstrate that he or she does not have sufficient alternative assets to fund counsel of choice," through "more than a mere recitation; the defendant must make a sufficient evidentiary showing that there are no sufficient alternative, unrestrained assets" to retain counsel. 720 F.3d at 131.

The defendant argued before Judge Lindsay that three decisions of the Supreme Court abrogated Bonventre and the cases applying its threshold requirement. See Mot. 3 (calling Bonventre, Fishenko and Dupree "unpersuasive" because they were decided prior to Kaley v. United States, 571 U.S. 320 (2014), Luis v. United States, 578 U.S. 5 (2016), and Honeycutt v. United States, 137 S.Ct. 1626 (2017): "Each of the government's cited cases have as a core legal principle something that was either modified or outright overruled by *Kaley, Luis,* and *Honeycutt.* The restrictions proffered by the government on the right of Aventura to have a hearing on this issue are simply not the law anymore.").

Judge Lindsay properly rejected that argument, holding that the cited Supreme Court cases "do not directly address the Second Circuit's requirement of an evidentiary submission demonstrating the unavailability of alternative funds as required by *Bonventre*" and citing numerous recently decided cases postdating Kaley, Luis and Honeycutt that continue to apply the Bonventre rule. See R&R at 4-5.

Aventura now repeats, in objecting to the R&R, its argument that Bonventre and its progeny "are simply not the law anymore." because they predate Kaley, Luis and Honeycutt. Objection at 6. Aventura also asserts, incorrectly, that the cases cited by the government and by Judge Lindsay in the R&R likewise are "all prior to *Kaley*, *Luis*, and *Honeycutt*." Objection at 6. In so arguing, Aventura mischaracterizes both the government's filing and the R&R, each of which cited numerous cases decided after 2017 that continue to apply a threshold requirement to *Monsanto* applications, including a February 2022 decision by Judge Garaufis. See United States v. Kurland, No. 20-CR-306 (NGG) (E.D.N.Y.), Order Entered on February 1, 2022 (directing defendant to detail his "net worth, provid[e] a comprehensive list of his assets, and explain[] how he has been paying his significant living expenses."). See also United States v. Kolfage, No. 20 CR. 412 (AT), 2021 WL 1792052, at *5 (S.D.N.Y. May 5, 2021) (declining to order Monsanto hearing because defendant had failed to show that he was unable to fund his defense). As discussed further below, nothing in Kaley, Luis or Honeycutt abrogates or even purports to abrogate the Second Circuit's requirement of a threshold showing as set forth in Bonventre.

In short, Judge Lindsay properly held that Aventura's argument in this regard was legally incorrect, and this Court should reject it for the same reason.

B. Judge Lindsay Correctly Found That Aventura Had Not Satisfied the *Bonventre* Standard

Judge Lindsay did not err, much less clearly err, in finding that Aventura had "failed to satisfy even the minimal burden imposed by *Bonventre*." R&R at 5. As Judge Lindsay correctly found, the defense has failed to quantify, with the required specificity, the finances of Aventura and of Jack and Frances Cabasso. Id.

Indeed, Judge Lindsay's decision seems especially percipient in light of facts recently learned by the government about defendant Frances Cabasso's financial dealings, discussed above. The Motion is silent about Frances Cabasso's finances, and Judge Lindsay observed in her Report and Recommendation that counsel for Aventura had failed to "indicate whether Defendant or Jack or Frances Cabasso have access to other accounts." R&R at 6.

In fact, the government has since learned that Frances Cabasso does have another account, hitherto undisclosed by Aventura, which held approximately $725,000 at the time that defendants' funds were seized. Frances Cabasso has since drained that account by sending its contents to [redacted] who in turn used the funds to pay Frances Cabasso's counsel and, in addition, withdrew half a million dollars. Aventura's representations that the Cabassos are in dire financial straits and unable to pay counsel therefore require appropriate testing, and Aventura should not be accorded a Monsanto hearing until the Cabassos have provided a sworn accounting of their financial situation. Anything less would allow them to make an end run around the Monsanto proceeding by tactically funding and defunding Aventura's representation as their litigation strategy dictates, effectively siphoning money from Aventura's corporate treasury while shielding their own finances from depletion.

In disputing that Jack or Frances Cabasso should have to satisfy the Bonventre threshold, Aventura appears to suggest that this is not required under the novel procedural mechanism it proposes, which is supposedly an alternative to the established procedure under Monsanto. Objection at 8. As discussed below, because no such proceeding exists, the argument fails.[8]

C. There Is No Such Thing As a *Kaley* Hearing

Aventura asserts in the Objection that it does not actually seek a Monsanto hearing – what it really wants is something called a "Kaley hearing," to which it claims an independent right under Kaley, Luis, and Honeycutt. See, e.g., Objection at 3 (asserting that Judge Lindsay "incorrectly framed the relief sought by Aventura"); id. at 5 (Judge Lindsay "incorrectly . . . recast[] Aventura's argument as a Monsanto application").

This is news to the government, because Aventura's submissions to Judge Lindsay liberally cited Monsanto and Bonventre. See, e.g., Reply Mem. 4 (paragraph-long block quote boldfacing Bonventre standard). Accordingly, the Court should decline to consider this argument because Judge Lindsay was not given an opportunity to assess it in the first instance. See Zhao v. State University of N.Y., No. 04-CV-210 (KAM) (RML), 2011 WL 3610717, at *1 (E.D.N.Y. Aug. 15, 2011) ("[I]t is established law that a district judge will not consider new arguments raised in objections to a magistrate judge's report and recommendation that could have been raised before the magistrate but were not.").

Assuming arguendo, however, that Aventura properly raised this argument before Judge Lindsay, the Court should reject it because it is wrong. The Supreme Court in Kaley did not create an independent right to a hearing that is distinct from the right afforded by Monsanto and Bonventre. Indeed, Kaley did not establish a right to any hearing at all – rather, the decision expresses the Court's skepticism about the constitutional basis for Monsanto hearings, declining to opine as to whether they are constitutionally required. 571 U.S. at 324 & n.3; accord United States v. Chierchio, No. 20-CR-306 (NGG), 2022 WL 624523, at *4 (E.D.N.Y. Mar. 3, 2022) (citing Kaley and observing that Monsanto hearings are "a procedural hearing to which the Supreme Court has not held defendants [are] entitled").

To the extent that the Court in Kaley observed, in dicta, that "lower courts have generally . . . allowed the defendant to litigate . . . whether probable cause exists to believe that the assets in dispute are traceable . . . to the crime charged in the indictment," the proceedings

[8] Aventura also asserts that Frances Cabasso's financials are unnecessary to satisfy the Bonventre requirements because Aventura has asserted, through counsel, that Jack Cabasso is Aventura's de facto principal. Given that Frances Cabasso desires to fund her own and the company's defense through the release of seized funds, the question of who was Aventura's true chief executive is irrelevant to the Bonventre inquiry. Inquiry into Frances Cabasso's finances is all the more crucial because the Cabassos have a decades-long practice of keeping their assets (including all of Aventura's bank accounts) in Frances Cabasso's name alone.

the Court was referring to have been universally understood, by courts within the Second Circuit, to be those guaranteed by Monsanto and Bonventre. See, e.g., United States v. Kolfage, 537 F. Supp. 3d 559, 564 (S.D.N.Y. 2021) (citing Kaley and Luis in describing Monsanto hearings); United States v. Fishenko, No. 12-CV-626 (SJ), 2014 WL 4804041, at *1 (E.D.N.Y. Sept. 25, 2014) (citing Kaley).

Moreover, courts outside the Second Circuit have explicitly rejected the proposition, like the one advanced by Aventura, that Kaley or Luis grant an entitlement to a Monsanto-like hearing without a prior threshold showing.[9] See, e.g., United States v. Paronuzzi, No. 4:17CR111, 2018 WL 1938463, at *1–2 (E.D. Va. Apr. 24, 2018) ("Defendant appears to argue that the Supreme Court's decision in Luis v. United States . . . has abrogated the need for a Defendant to make the Farmer threshold showings. . . . Defendant has cited no passage in Luis demonstrating that the threshold showings necessary under Farmer are no longer required, nor has she cited any other authority subsequent to Luis showing that the threshold showings have been abolished. Indeed, as the Government points out, courts post–Luis have continued to require the type of threshold showings articulated in Farmer before granting a post-seizure probable cause hearing"); United States v. Singleton, No. 5:13-CR-8-KKC-REW, 2018 WL 5075982, at *48–49 (E.D. Ky. Mar. 20, 2018), report and recommendation adopted, No. CR 5:13-08-KKC, 2018 WL 8949240 (E.D. Ky. Oct. 17, 2018) ("Nothing about *Kaley* or *Luis* purports to (or does) overrule or invalidate the [] hearing preconditions or burden regime.").

In short, the defendant's contention that Kaley or Luis confer on Aventura an independent entitlement to a hearing without the showing required by Bonventre is legally incorrect, and Judge Lindsay properly so held.

[9] Courts outside the Second Circuit typically impose more demanding threshold requirements than those set forth in Bonventre. See United States v. Farmer, 274 F.3d 800, 804–05 (4th Cir. 2001).

IV. Conclusion

For the reasons set forth above, the government respectfully submits that the Court should adopt in its entirety the Report and Recommendation issued by Judge Lindsay on March 10, 2022 and should deny Aventura's motion for a Monsanto hearing.

Respectfully submitted,

BREON PEACE
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