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Arraignment

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 v.

16 CR 398 (PAE)

5 SAJMIR ALMEHMETI,

6 Defendant.

7 -----x
8 New York, N.Y.
9 June 9, 2016
3:00 p.m.

10 Before:

11 HON. PAUL A. ENGELMAYER,

12 District Judge

13 APPEARANCES

14 PREET BHARARA

15 United States Attorney for the
16 Southern District of New York

17 BRENDAN QUIGLEY

18 EMIL BOVE

Assistant United States Attorneys

19 FEDERAL DEFENDERS OF NEW YORK

Attorneys for Defendant

20 SABRINA SHROFF
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1 THE DEPUTY CLERK: In the matter of the United States
2 v. Alimehmeti. Please state your appearance for the record.

3 MR. QUIGLEY: Good afternoon, your Honor. Brendan
4 Quigley and Emil Bove for the United States.

5 THE COURT: Good afternoon to you.

6 MS. SHROFF: Good afternoon, your Honor. For
7 Mr. Sajmir Alimehmeti, Federal Defenders of New York by Sabrina
8 Shroff.

9 THE COURT: Good afternoon, Ms. Shroff, and good
10 afternoon to you, Mr. Alimehmeti. Do I have that correctly?

11 THE DEFENDANT: Yes.

12 THE COURT: Good afternoon to you, and good afternoon
13 to the members of the public who are here. You may all be
14 seated.

15 My understanding, Mr. Quigley, is that the defendant
16 was arrested on a complaint, presented in magistrate's court,
17 but this will be the first opportunity for him to be arraigned
18 on the indictment. Correct?

19 MR. QUIGLEY: That's correct, your Honor.

20 THE COURT: When was the indictment returned?

21 MR. QUIGLEY: The indictment was returned on Tuesday,
22 your Honor.

23 THE COURT: Ms. Shroff, I'll then proceed to arraign
24 your client on the indictment. May I just confirm with you,
25 Ms. Shroff, you have shown your client the indictment and he's

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1 had an opportunity to read it?

2 MS. SHROFF: Yes, your Honor. My colleague
3 Ms. Levine, who cannot be here today, and I have reviewed the
4 indictment. We both reviewed it with him.

5 THE COURT: Have you had an opportunity to review with
6 him the questions that I'll be putting to him by way of
7 arraignment?

8 MS. SHROFF: I have reviewed those questions with him.

9 THE COURT: Let me say to the defendant -- I want to
10 make sure I have the pronunciation right. "Alimehmeti"?

11 THE DEFENDANT: Alimehmeti, yes.

12 THE COURT: I'm going to ask you a handful of
13 questions right now, before asking you ultimately this
14 question, which is how do you plead to the charges. That's
15 ultimately the question I'm going to put to you. But before I
16 do that, I'm going to ask you a few questions just about your
17 mental health, and about the use of any drugs or alcohol.

18 The only reason I'm asking you these questions is to
19 make sure that you are of sound mind before I ask you the
20 question about how you plead. So I want you to understand
21 that's the reason I am asking you those questions, okay?

22 THE DEFENDANT: Okay.

23 THE COURT: Very good. What is your full name?

24 THE DEFENDANT: Sajmir Alimehmeti.

25 THE COURT: How old are you, sir?

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1 THE DEFENDANT: 22.

2 THE COURT: A little louder.

3 THE DEFENDANT: 22.

4 THE COURT: 22? How far did you go in school?

5 THE DEFENDANT: I was currently in private college
6 prior to my arrest.

7 THE COURT: You're currently in college?

8 THE DEFENDANT: Yes.

9 THE COURT: Where is that?

10 THE DEFENDANT: AAMI, funeral directing college.

11 THE COURT: Where is that?

12 THE DEFENDANT: In West 54th Street and 11th Avenue.

13 THE COURT: Are you able to speak and understand
14 English?

15 THE DEFENDANT: Yes.

16 THE COURT: Have you ever been treated or hospitalized
17 for any mental illness?

18 THE DEFENDANT: No.

19 THE COURT: Have you ever been hospitalized or treated
20 for addiction to any drugs or to alcohol?

21 THE DEFENDANT: No.

22 THE COURT: Are you now or have you recently been
23 under the care of a doctor or a psychiatrist?

24 THE DEFENDANT: No.

25 THE COURT: In the past 24 hours, have you taken any

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1 drug, medicine or pills, or drunk any alcoholic beverages?

2 THE DEFENDANT: No.

3 THE COURT: Is your mind clear today?

4 THE DEFENDANT: Yes.

5 THE COURT: Do you understand what's happening in this
6 proceeding?

7 THE DEFENDANT: Yes.

8 THE COURT: Have you received a copy of the indictment
9 in this case?

10 THE DEFENDANT: Yes.

11 THE COURT: Have you had an opportunity to consult
12 with your attorney about the indictment?

13 THE DEFENDANT: Yes.

14 THE COURT: Do you wish to have the indictment read
15 aloud or do you waive its public reading?

16 THE DEFENDANT: I waive its public reading.

17 THE COURT: Thank you. How do you plead to the
18 charges in the indictment?

19 THE DEFENDANT: Not guilty.

20 THE COURT: Thank you.

21 Does either counsel believe any further questions need
22 be put to the defendant by way of arraignment?

23 MR. QUIGLEY: No, your Honor.

24 MS. SHROFF: No, thank you, your Honor.

25 THE COURT: Very good. With that, Mr. Quigley, can

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1 you tell me a little bit about the case.

2 MR. QUIGLEY: Yes, your Honor. The defendant is
3 charged in a two-count indictment.

4 Count One charges him with providing and attempting to
5 provide material support to a designated foreign terrorist
6 organization, specifically the Islamic State of Iraq and the
7 Levant, also known as ISIL or ISIS. And the defendant took a
8 number of steps to provide support or attempt to provide
9 support for ISIS since September 2014. And most recently last
10 month he attempted to assist an individual who is purportedly
11 traveling overseas to train and fight with ISIS in Syria.

12 Count Two charges the defendant with making a false
13 statement in an application for a United States passport. And
14 specifically here, in October 2015, the defendant submitted an
15 application for a passport claiming his previous passport was
16 lost. He was later recorded in a conversation with an
17 undercover law enforcement employee admitting that he had not
18 in fact lost his passport, and that he was seeking a new
19 passport because his old passport had rejection stamps on it.
20 And in fact, the old passport was located the day of the
21 defendant's arrest during a search warrant at his residence.

22 THE COURT: Thank you. Tell me about the Rule 16
23 discovery in the case.

24 MR. QUIGLEY: Your Honor, there are essentially I
25 think four main categories of Rule 16 discovery. The first

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1 would consist of search warrant returns from social media
2 search warrants. The next category would --

3 THE COURT: Those are social media websites of the
4 defendant's or other people's or both?

5 MR. QUIGLEY: Both, your Honor.

6 The second category, and I think the largest category
7 in terms of volume, would consist of materials from electronic
8 media belonging to the defendant. Some of those materials were
9 received via MLAT. They're discussed in the complaint. Some
10 of those materials were received or obtained during a search
11 warrant that we undertook during the course of the
12 investigation. And some those materials were obtained during
13 the premises search warrant that was executed at the
14 defendant's apartment.

15 And the premises search warrant alone, there were
16 approximately three cell phones, three computers, and I think
17 over 10 external hard drives of various types. So all together
18 we'd estimate the volume of that category of discovery is
19 approaching four terabytes. So it's somewhat voluminous.

20 THE COURT: I take it you've not had an opportunity to
21 assess how much of those terabytes are potentially relevant as
22 opposed to being clearly extraneous.

23 MR. QUIGLEY: That's correct, your Honor.

24 THE COURT: That's two categories. You said there
25 were four?

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1 MR. QUIGLEY: The third category is recordings and
2 other materials related to meetings that the defendant had with
3 undercover law enforcement employees.

4 And the final category I would describe as
5 miscellaneous documentary evidence, bank records, passport
6 records and filings for the defendant. Things of that nature.
7 That's probably the smallest category.

8 THE COURT: When do you expect to be able to produce
9 these materials to the defense?

10 MR. QUIGLEY: We would estimate we would -- we've
11 given the defense a stipulated protective order, so as soon as
12 we get a protective order signed, we can begin producing the
13 materials. And we'd estimate it will take approximately two to
14 three weeks to produce the materials I've just described.

15 THE COURT: I take it all of this will be produced
16 electronically?

17 MR. QUIGLEY: Yes, your Honor, yes. For the
18 electronic media we'll be asking the defense to provide a hard
19 drive.

20 THE COURT: All right. You know that I ask this in
21 every initial conference, but tell me as best as you can all of
22 the Fourth, Fifth, and Sixth Amendment events that you are
23 presently aware of in the case. And I ask this question just
24 for the defense benefit, because at an early stage in the case
25 if there is going to be a potential suppression hearing, I like

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1 to be able to schedule it and schedule appropriate briefing.
2 So I try to use the first conference to identify the events,
3 searches, seizures, post-arrest statements, line-ups, that sort
4 of thing, that tend to be the fodder for suppression motions.

5 I've heard you describe a number of search warrants.
6 Just can you lay out for me various searches, seizures, and
7 other responsive events, if any.

8 MR. QUIGLEY: Yes, your Honor. So all of the
9 searches -- well, all the electronic materials in this case
10 were either obtained via search warrants, or in one case,
11 obtained via an MLAT after a foreign government conducted a
12 search, and that's the materials from the United Kingdom that
13 are referenced in the complaint. So there were no exceptions
14 to the warrant requirement.

15 THE COURT: There were no domestic searches other than
16 pursuant to an authorized search warrant?

17 MR. QUIGLEY: Correct. And there is no post-arrest
18 statement to speak of nor were there any line-ups.

19 THE COURT: The defendant was not interviewed post
20 arrest?

21 MR. QUIGLEY: Basic pedigree information, your Honor.
22 He invoked.

23 THE COURT: No line-ups?

24 MR. QUIGLEY: No.

25 THE COURT: Have you had any initial discussions with

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1 the defense about a next date in the case?

2 MR. QUIGLEY: We have not, your Honor. No.

3 THE COURT: Anything else you want to put on the
4 record at this point before I turn to Ms. Shroff?

5 MR. QUIGLEY: Just briefly, your Honor. All the
6 materials that I've described in terms of discovery so far are
7 unclassified. I think it is likely we'll produce additional
8 materials in classified discovery and/or engaging in motion
9 practice under the Classified Information Procedures Act.
10 We're currently actively working with representatives from the
11 FBI and people in Washington, D.C. to obtain the necessary
12 approvals to produce any materials.

13 THE COURT: What is the timetable on that?

14 MR. QUIGLEY: We'd estimate 35 to 45 days, your Honor.

15 THE COURT: To the extent you can say, and maybe you
16 can put it in terms of the elements of the offense, what
17 category or what issues would that material likely be germane
18 to?

19 MR. QUIGLEY: Potentially state of mind. State of
20 mind.

21 THE COURT: This would not relate, I take it, to the
22 classification of ISIL, which is a juridical fact. This would
23 go to issues specific to this defendant?

24 MR. QUIGLEY: Yes, your Honor.

25 THE COURT: Very helpful.

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1 Ms. Shroff, anything from you?

2 MS. SHROFF: Sure.

3 THE COURT: I realize you've got a forbidding amount
4 of discovery coming your way. Tell me what next date in the
5 case you would like to be, how long you're going to need to
6 review the discovery, how you would like to proceed.

7 MS. SHROFF: Your Honor, I want to be clear about --
8 may I just address certain issues that -- may I address certain
9 issues?

10 THE COURT: Of course.

11 MS. SHROFF: One is I just want to start with
12 something the government just said. He said Mr. Alimehmeti
13 invoked. Right?

14 THE COURT: I understood Mr. Quigley to be saying
15 that, by shorthand, that your client was advised of his rights
16 under Miranda and he invoked his rights under Miranda.

17 MS. SHROFF: Your Honor, it is our position -- our
18 investigation reveals that the law enforcement entities at play
19 here were with Mr. Alimehmeti for a period of approximately
20 three hours, prior to the invocation. To the extent that those
21 questions are noted somewhere, and any 302s created as a result
22 of that three-hour questioning should be made available to us
23 as part of Rule 16 discovery.

24 THE COURT: Let me see if I understand. You are
25 saying that before your client was given a Miranda warning and

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1 invoked, he was questioned for three hours?

2 MS. SHROFF: Either he was given Miranda warnings and
3 then talked to for three hours, or he intermittently invoked
4 and they continued to talk to him. Whatever it is, I don't
5 know what's in there. But if I'm wrong, Mr. Quigley can let me
6 know I'm wrong. But --

7 THE COURT: Mr. Quigley?

8 MS. SHROFF: If I'm right --

9 THE COURT: Mr. Quigley, is there anything you can put
10 on the record as to the series of events leading to the arrest
11 of the defendant and where the Miranda warnings are situated in
12 that series?

13 MR. QUIGLEY: Your Honor, we're not aware of any
14 substantive post-arrest statement. We are aware of our -- I
15 understand he invoked relatively early on. Certainly if there
16 were any post-arrest statement that he made to law enforcement,
17 that would be discoverable and will be produced.

18 THE COURT: I think what Ms. Shroff may be saying is
19 that she may situate the moment of arrest earlier than you do.
20 I'm not opining on who is right or who is wrong. She may be
21 saying that her client was effectively in custody at some
22 period of time before Miranda warnings were given, and
23 therefore that the warnings should have been given earlier, and
24 that because the several circumstances amount to a de facto
25 arrest, any statements made afterwards pre-Miranda would be

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1 suppressible.

2 Ms. Shroff, I'm putting words in your mouth. Is that
3 more or less what you are trying to say in legalese?

4 MS. SHROFF: That's one part. But there is also the
5 other part where I'm trying to see -- I'm trying to figure out
6 if the government is going to give me the 302s of the entire
7 process from when they sat Mr. Alimehmeti down until the time
8 he invoked, which seems to be a period of more than an hour,
9 more than two, and almost up to three hours.

10 THE COURT: Mr. Quigley, I take it you know of your
11 obligation that if there is anything said to law enforcement by
12 the defendant, that needs to be produced.

13 MR. QUIGLEY: Absolutely, your Honor.

14 THE COURT: Ms. Shroff, apart from that, let us
15 suppose that your supposition is that the government talked at
16 your client for a period of time, apparently before the Miranda
17 warning, maybe after, but your client said nothing. You're
18 asking if there is a memo that records that, for that memo to
19 be produced.

20 MS. SHROFF: Exactly.

21 THE COURT: On what authority?

22 MS. SHROFF: I think it is Rule 16 because they
23 intermittently spoke to him. Whether or not they plan to use
24 my client's statements or not, it is still my client's
25 statements to them. So, hypothetically, say they said to him

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1 you have these rights, and he replied "could you explain right
2 number five to me."

3 THE COURT: It is premature for me to resolve anything
4 here. I will say this: Mr. Quigley has acknowledged his
5 obligation to produce any statements of your client. If there
6 are no such statements, it is not clear that anything sounding
7 in Miranda would be generated by this exchange.

8 Nevertheless, I would suggest what you do is let's see
9 what you get from the government in discovery. And if you
10 believe, based on your client, your discussions with your
11 client or your other investigation, that there is something
12 else you have a right to, whether under Rule 16, Brady,
13 otherwise, Miranda, and Mr. Quigley won't give it to you, I'm
14 happy to receive a very prompt motion.

15 MS. SHROFF: Okay.

16 THE COURT: I think that's about as far as I can go
17 right now.

18 MS. SHROFF: That's fine.

19 THE COURT: Okay.

20 MS. SHROFF: On the different categories of
21 information, your Honor, of course we'll provide the hard drive
22 to the government. We would like the Court to rule on a
23 matter --

24 THE COURT: Just explain to me, I didn't follow that.
25 You are in possession of a hard drive which the government is

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1 seeking?

2 MS. SHROFF: We're going to give them a blank hard
3 drive so they can copy it for us.

4 THE COURT: I see.

5 MS. SHROFF: I'll make sure Mr. Quigley gets an extra
6 one so he can send it to my client in custody.

7 THE COURT: Right.

8 MS. SHROFF: There is an issue on the protective
9 order, and of course I do apologize, I should have briefed it
10 earlier on. But I can certainly write to the Court and ask the
11 Court for I think somewhat of a ruling on it.

12 The problem with the protective order, as it is
13 written now, is it precludes us, without making a motion to the
14 Court, from sharing the discovery with any fact witness.

15 So, just to get the procedure, the case going, the
16 discovery started, we could proceed in one of two ways. I
17 could sign the protective order now, because we don't have fact
18 witnesses that we need to show it to, and then litigate the
19 protective order. But we don't want the government coming back
20 and saying you signed it once, so you can't litigate it down
21 the road.

22 THE COURT: You are putting on the record right now if
23 you sign the protective order, it is without prejudice to your
24 right to seek from the government, and if you don't have
25 success with the government, seek from me, a modification of

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1 the term that restricts you from describing contents to a fact
2 witness.

3 MS. SHROFF: Right.

4 THE COURT: Mr. Quigley, nobody's rights are being
5 disturbed by that arrangement.

6 MR. QUIGLEY: That's fine with the government, your
7 Honor.

8 THE COURT: Very good.

9 MS. SHROFF: Then I think we can just pick another
10 date to come back to the court. And I am assuming that
11 Mr. Quigley will produce these documents to us in, I don't
12 know, 45 days?

13 THE COURT: He has told us a moment ago he'll be
14 producing the material in two to three weeks. Obviously there
15 is a lot to review here. Although if it is electronic,
16 hopefully you'll be able to use some expedited search
17 techniques.

18 How much time realistically will you need to have made
19 some sense of the case and to be in a position to tell me in
20 particular whether you're moving to suppress anything?

21 MS. SHROFF: 45 days after the production is complete.

22 THE COURT: All right. Why don't we do this. Why
23 don't we choose a time in late July for our next conference.

24 MS. SHROFF: That's fine.

25 THE COURT: Mr. Smallman.

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1 THE DEPUTY CLERK: Wednesday, July 27 at noon.

2 THE COURT: Wednesday, July 27 at noon?

3 MS. SHROFF: July 27 it is.

4 THE COURT: Is that okay for everyone?

5 MR. QUIGLEY: Yes, your Honor.

6 THE COURT: Is there an application for the exclusion
7 of time?

8 MR. QUIGLEY: Yes, your Honor. The government moves
9 to exclude time between now and July 27, to allow the defendant
10 time to review the discovery that's been produced, to allow
11 continuity of counsel, and preparation for trial.

12 THE COURT: Ms. Shroff, I want to make sure that you
13 understand that pursuant to my usual practice, I will expect
14 you to tell me then whether there is any suppression motion
15 being made. I'm not asking for other motions, and I understand
16 that if there is late produced discovery that reveals a basis
17 for suppression, you are not foregoing that. But I do want to
18 make sure if you're going to be moving for suppression based on
19 any of the, for example, searches and seizures that have been
20 disclosed today, you understand that that's the time at which I
21 will be asking you to tell me whether you're so moving. You
22 don't need your motion due then. I will be duly respectful of
23 people's August schedules. But I do need to know then whether
24 there will be such a motion, so I can use that conference to
25 set a rational date for briefing and a rational date for any

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1 hearing that's generated. Okay, Ms. Shroff?

2 MS. SHROFF: Yes, your Honor. I'm familiar with the
3 Court's practice.

4 THE COURT: I wanted to make sure you understand
5 that's something I would be putting to you on the 27th.

6 MS. SHROFF: Certainly.

7 MR. QUIGLEY: Your Honor, if I may, I think just to
8 clarify the timeline here, I think two to three weeks is
9 realistic for the unclassified materials that I described.

10 The classified materials which could conceivably be
11 the basis of CIPA motion practice or other motion practice, we
12 expect to get a decision from people in D.C. in 30 to 45 days.

13 THE COURT: Let me pause you on that. I understood
14 that. To the extent, of course, that you produce material
15 later than on the timetable you anticipated of two to three
16 weeks, it is not realistic to expect Ms. Shroff to commit as to
17 a motion, if she gets new information and she's entitled to act
18 on it and to make a motion after that date.

19 That said, the defendant is in custody. And I'm not
20 delighted with the prospect of you getting a decision from
21 people in D.C. in, what did you say? Six weeks? 45 days?

22 Please convey to all concerned that the Court is
23 breathing down your neck and would like them to expedite, given
24 that the defendant is in custody, whatever CIPA decision that
25 needs to be made.

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1 MR. QUIGLEY: We'll do that.

2 THE COURT: That's not a court order. I'm using my
3 bully pulpit. But for the time being I'm simply conveying I
4 want prompt response. Whatever CIPA material winds up being
5 called for here, I want it to be produced as fast as humanly
6 possible.

7 MR. QUIGLEY: Understood, your Honor.

8 THE COURT: Ms. Shroff, any objection to the exclusion
9 of time?

10 MS. SHROFF: No.

11 THE COURT: I'll exclude time between now and July 27,
12 our next conference date, pursuant to Title 18, United States
13 Code, Section 3161(h)(7)(A). I find that the interests of
14 justice outweigh the interests of the public and the defendant
15 in a speedy trial.

16 The excluded time is important for several reasons.
17 To begin with, and most important, it will allow the defendant
18 to make sense of what sounds like will be a very substantial
19 amount of electronic discovery, and I want to make sure that
20 Ms. Shroff and her client, who has equal access to that
21 discovery, have a real opportunity to review it and determine
22 what its implications are, whether for motions practice, trial
23 preparation or whatnot.

24 Second of all, government counsel has identified a
25 number of searches, albeit, at least domestically, all pursuant

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1 to warrant. I want Ms. Shroff to be able to have enough time
2 to make sense of whether there is any legal infirmity with
3 respect to any of those searches so she can determine whether
4 there is any motions practice.

5 Third of all, counsel have disclosed to me the
6 potential for CIPA-related discovery, that has its own
7 complexities, and the exclusion of time is designed to enable
8 the government, albeit moving with more than deliberate speed,
9 to obtain that material and produce it.

10 Anything further from the government?

11 MR. QUIGLEY: No, your Honor.

12 THE COURT: Anything further from the defense?

13 MS. SHROFF: Your Honor, just on the CIPA issue, there
14 is no delay from the defense part because he has cleared
15 counsel.

16 THE COURT: Say it again?

17 MS. SHROFF: He has cleared counsel, so there is no
18 delay on our part.

19 THE COURT: I'll see you on July 27. Thank you.

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