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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.

Conference

7 -----x  
8 New York, New York  
9 December 22, 2017  
9:20 a.m.

10 Before:

11 HON. PAUL A. ENGELMAYER,

12 District Judge

13 APPEARANCES

14  
15 JOON H. KIM  
16 Acting United States Attorney for the  
17 Southern District of New York  
18 BY: GEORGE TURNER  
19 Assistant United States Attorney

20 SABRINA SHROFF  
21 Attorney for Defendant

22 ALSO PRESENT:

23 ANTHONY STRAZZA  
24  
25

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1 (Case called)

2 MR. TURNER: Good morning, your Honor.

3 George Turner, for the government.

4 THE COURT: Good morning, Mr. Turner.

5 MS. SHROFF: Good morning, your Honor. On behalf of

6 Mr. Almeti, Federal Defenders of New York, by Sabrina

7 Shroff.

8 THE COURT: Good morning, Ms. Shroff.

9 Good morning to you, Mr. Almeti.

10 THE DEFENDANT: Good morning.

11 THE COURT: I understand that somewhere out there is

12 Anthony Strazza, correct?

13 MR. STRAZZA: Yes. Good morning, your Honor.

14 THE COURT: Good morning.

15 Mr. Strazza is here as CJA counsel. Depending on the  
16 course that events take today, I may well be appointing  
17 Mr. Strazza for a limited purpose in connection with the *Curcio*  
18 issue that has arisen.

19 In any event, I thank you for being here. You may all  
20 be seated. I wanted to thank counsel for accommodating this  
21 short-notice hearing.

22 To set the stage here, I received a letter on December  
23 19 from the government indicating the perceived need for a  
24 *Curcio* procedure, and a separate letter filed under seal on the  
25 same day elaborating on relevant issues. My law clerk was then

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1 notified by defense counsel that they could make themselves  
2 available for a *Curcio* conference.

3           Given the trial date in the case and all the work  
4 ahead of us, and the fact that the *Curcio* issue here intersects  
5 with one of the issues that is *sub judice* as the subject of a  
6 motion *in limine*, it seemed to me important to gather us now.

7           I thought that it was particularly important given the  
8 likelihood that this will be, as is commonly the case, a  
9 two-step *Curcio* process in which the defendant at the first  
10 conference is educated as to the issues that are presented and  
11 then has an opportunity to reflect on them, confer with  
12 conflict-free counsel, and then report back to the Court as to  
13 whether or not he waives the potential conflict.

14           Given that, I wanted to have our initial conference  
15 sooner rather than later. In any event, I'm mindful that you  
16 may have had other things to do, and I appreciate everyone  
17 accommodating the schedule.

18           With that, I think what would be most useful before I  
19 turn any attention to the defendant would be for me to have a  
20 colloquy with the government at which the government can slowly  
21 and distinctly set out the facts that can be put on the public  
22 record relating to the *Curcio* issue here.

23           At the end of that, I want to make sure that I have an  
24 itemized colloquy with you, Mr. Turner, that sets out the areas  
25 of potential conflict that the government perceives.

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1 I want to make sure that our discussion essentially  
2 ventilates the issues here, because that will promote greater  
3 understanding for all concerned, including Mr. Almeti.

4 So the floor is yours.

5 MR. TURNER: Yes, Judge.

6 There are three defendants involved here, as we set  
7 forth in our letter of the 19th, Mr. Almeti, defendant  
8 Rahimi, and the defendant that we referred to at Defendant 1 in  
9 our publicly filed letter of the 19th. All three of those  
10 defendants are represented concurrently by the Federal  
11 Defenders.

12 Ms. Shroff, one of the cocounsel here on behalf of  
13 Mr. Almeti, represents both Rahimi and, of course,  
14 Mr. Almetii.

15 Recently, the government learned -- and again as we've  
16 set fourth in greater detail in our letters -- that those three  
17 defendants have been involved in the receipt and dissemination  
18 of terrorist propaganda materials within the Metropolitan  
19 Correctional Center.

20 Specifically, there are several pieces of media  
21 involved. There is a hard drive that was recovered from a  
22 locker assigned to Mr. Almeti at the MCC. That drive  
23 appears to contain materials produced in discovery both to  
24 Mr. Rahimi and to Mr. Almeti.

25 Again, Judge, let me just say that --

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1 THE COURT: The hard drive in his locker --

2 MR. TURNER: Yes.

3 THE COURT: -- you represent has discovery material as  
4 to his own case, which doesn't present an issue, but also the  
5 Rahimi case?

6 MR. TURNER: Correct.

7 When I say discovery materials, I'm referring  
8 specifically to what we've identified as terrorist propaganda  
9 materials in our submissions.

10 I would also note, Judge, that the FBI's forensic  
11 examination is ongoing of these piece of media.

12 Second, there is a disk which is the disk referred to  
13 as disk 1 in the government's December 19 letter, which was  
14 also recovered from the same locker assigned to Mr. Almeti  
15 at the MCC, and it contains a series of lectures by Anwar  
16 al-Awlaki, a former senior leader of al-Qaeda in the Arabian  
17 Peninsula, known as AQAP, materials that were located on  
18 devices or at least a device seized from Mr. Almeti during  
19 this case and then produced to him in the course of discovery.  
20 In other words, Mr. Almeti's discovery materials. Those  
21 files, those lectures, as we also explain in our letter --

22 THE COURT: Sorry. Wait. The disk that is found in  
23 Mr. Almeti's locker contains material that is discovery in  
24 his own case. Maybe you haven't gotten to it yet. Does that  
25 disk contain materials of this nature that were not discovery

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1 in Mr. Almeti's case, but were discovery in either the  
2 Rahimi or Defendant 1 case?

3 MR. TURNER: Our current assessment, Judge is that,  
4 first of all, the disk contains only that set of lectures. It  
5 is not those lectures and other materials.

6 THE COURT: OK.

7 MR. TURNER: It is a set of lectures, approximately  
8 20.

9 And our current assessment is that all of those files  
10 are contained in Mr. Almeti's discovery materials. We are  
11 in the process of determining whether there is overlap. And  
12 those materials are also contained in Mr. Rahimi's materials.

13 THE COURT: Assuming that all of the lectures are in  
14 the Almeti discovery materials, you would need some forensic  
15 proof to show that they nevertheless got to this disk via some  
16 other defendant's discovery material.

17 In other words, the natural inference would be, if it  
18 was already produced to him and is on a disk in his locker,  
19 absent some other proof, that it presumably came from the  
20 discovery in his own case.

21 MR. TURNER: That is correct. That is our current  
22 assessment. But let me add one gloss, which is that as we've  
23 also explained there is a notebook that was seized from  
24 Rahimi's cell which contained several pages identifying  
25 itemizing files of terrorist propaganda materials, including

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1 what appears to be a close, if not exact, match of these 20  
2 approximately 20 files that were located on the disk that I  
3 just described.

4 THE COURT: When you say there is a file in the Rahimi  
5 cell, is it an electronic file or a hard copy file?

6 MR. TURNER: It is a hard copy, paper notebook  
7 handwritten.

8 THE COURT: So it is actually not photographic  
9 reproductions, but it's his own handwritten summary?

10 MR. TURNER: Yes.

11 I should note that those, or at least a subset of  
12 those lectures also appear on the drive that was obtained from  
13 Mr. Almeti's locker.

14 THE COURT: Sorry. What is similar between what is in  
15 the locker and Rahimi -- the last point I didn't follow.

16 MR. TURNER: The last point is that the materials on  
17 the disk --

18 THE COURT: Right.

19 MR. TURNER: -- the al-Awlaki lectures, some or all of  
20 those also appear on the hard drive that I mentioned first.

21 THE COURT: I see.

22 MR. TURNER: That was seized from the locker, which  
23 contains a larger volume of materials.

24 THE COURT: Right.

25 But, again, Mr. Almeti's possession, in whatever

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1 form, of materials that either are or are derivatives of his  
2 own Rule 16 material presents no issue. It's only when it  
3 cross-pollinates with a different defendant, either his sharing  
4 his materials with that defendant or his possessing materials  
5 from a different defendant's case that the issue is joined?

6 MR. TURNER: Which is I think what we can get to now  
7 with the laptop as well as the disk that was obtained from  
8 Defendant 1 as we've referred to him.

9 THE COURT: Go ahead.

10 MR. TURNER: A laptop was provided to Rahimi for  
11 purpose of Rahimi viewing discovery, and as we have set forth  
12 in our letter, the FBI's forensic examination has shown that  
13 the hard drive that was seized from Mr. Almeti's locker was  
14 plugged into, used by the laptop that was produced to defendant  
15 Rahimi.

16 THE COURT: Meaning it was -- just help me with the  
17 technology here. How does the hard drive physically intersect  
18 with the laptop?

19 MR. TURNER: In other words, the hard drive was  
20 connected to the laptop. The hard drive in Mr. Almeti's  
21 locker was connected to the laptop that was provided to and in  
22 the possession of defendant Rahimi.

23 THE COURT: Just help me with the technology.  
24 Particularly in the context of the MCC, how would one sync up  
25 or connect the hard drive in a locker with the laptop? What

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1 would that entail doing?

2 MR. TURNER: Again, so this is naturally somewhat  
3 speculative.

4 THE COURT: Right. What are the ways in which it  
5 might have happened?

6 MR. TURNER: The ways in which it could have happened  
7 is if the two defendants were in close proximity reviewing  
8 discovery material. The cord that is attached to the hard  
9 drive could be essentially connected to, plugged into the  
10 laptop and files could be modified on the hard drive through  
11 use of the laptop.

12 THE COURT: And how would one forensically -- is there  
13 a way forensically of proving that that happened?

14 MR. TURNER: There is a way forensically to determine  
15 if the hard drive was connected to the laptop, and the FBI is  
16 in the process of determining whether we can say more about  
17 exactly what was or was not done to files on the hard drive --

18 THE COURT: I see.

19 MR. TURNER: -- by the laptop.

20 THE COURT: Got it.

21 But, for the time being, you are making the  
22 circumstantial inference that the presence of the materials on  
23 both and the presence of both defendants in the same facility,  
24 circumstantially it gets us somewhere down the road of the  
25 inference that there was sharing. The manner of proof remains

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1 to be seen.

2 MR. TURNER: Yes, including specifically the fact  
3 that, as your Honor noted, the hard drive contains materials  
4 that were produced both to Almeti and to Rahimi. So  
5 defendant Rahimi's discovery materials appear on the hard drive  
6 that was plugged into the laptop that was produced provided --

7 THE COURT: The inference therefore being that there  
8 was some collaboration between the two?

9 MR. TURNER: Yes, Judge. That inference also being  
10 strengthened by the fact that you also have a page in the  
11 Rahimi notebook that lists the 20 some-odd al-Awlaki lectures  
12 specifically found on the disk that was in Mr. Almeti's  
13 possession in his locker.

14 THE COURT: All right. Go ahead.

15 MR. TURNER: Your Honor, the last category is what is  
16 referred to as Disk 2 in our December 19 letter, the disk that  
17 was obtained from Defendant 1.

18 That disk contains terrorist propaganda materials that  
19 were contained in both discovery materials provided to  
20 Mr. Rahimi as well as discovery materials that were provided to  
21 Mr. Almeti. In other words, another example of a  
22 combination of materials from the two defendants.

23 THE COURT: OK. May I just ask, before we proceed  
24 with this, I am asking this purely in my supervisory capacity  
25 here, but when the government searches material of this nature

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1 that is found in a defendant's possession in a facility like  
2 the MCC, who does that, and what protections are there to make  
3 sure that attorney-client communications aren't inadvertently  
4 or otherwise reviewed?

5 MR. TURNER: Judge, we have specifically instituted a  
6 wall procedure in the first instance at the U.S. Attorney's  
7 Office so that members not of the case team are in the first  
8 instance ensuring that there is no attorney-client material on  
9 the media before it is reviewed by either FBI personnel or U.S.  
10 Attorney's Office personnel specific to the case.

11 THE COURT: How was it in this case, if I may, that it  
12 was determined that the sharing or the cross-pollination, or  
13 whatever word we are going to say is the right word, that this  
14 occurred, *i.e.*, that as among these three inmates there appears  
15 to have been Rule 16 sharing?

16 MR. TURNER: If I am appreciating your Honor's  
17 question.

18 THE COURT: How did you figure out that this had  
19 occurred, if you can say?

20 MR. TURNER: The first instance, your Honor, the first  
21 piece of media that was came into the government's possession  
22 was disk 2, the disk obtained from Defendant 1. And it was  
23 immediately apparent that it --

24 THE COURT: I see.

25 MR. TURNER: -- contained materials --

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1 THE COURT: You then followed --

2 MR. TURNER: -- that were not produced to that  
3 defendant.

4 THE COURT: I see.

5 You followed leads from that.

6 MR. TURNER: Yes, Judge.

7 THE COURT: OK. Thank you.

8 The purpose, of course, today is not to discuss the  
9 motion *in limine*, but the operating premise here has to be that  
10 it is possible that the motion *in limine*, it is possible that  
11 some or all of the species of evidence that is being covered  
12 would be admitted at trial.

13 So, defense, to the extent that we are discussing the  
14 *Curcio* here, you are, of course, conceding nothing by  
15 participating in the *Curcio* proceeding, but I have to operate  
16 on the presumption that this is within play and that the  
17 evidence at issue here may come up at trial and therefore that  
18 this implicates *Curcio* issue.

19 But I want to make it clear that in no way, shape, or  
20 form am I assuming an outcome with respect to the embedded  
21 motion *in limine*.

22 I am still in the middle of speaking with Mr. Turner.

23 MS. SHROFF: Sorry.

24 THE COURT: Having now gotten the facts, is there any  
25 other further factual material you want to bring to my

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1 attention here?

2 MR. TURNER: I think that's sufficient on the factual  
3 background, your Honor.

4 THE COURT: OK.

5 So when did you first discover the potential *Curcio*  
6 issue, *i.e.*, that there were Federal Defenders' representations  
7 implicated here?

8 MR. TURNER: Your Honor, we first learned about the  
9 involvement of Mr. Almeti in these activities in  
10 mid-November, and we promptly provided 404(b) notice on  
11 November 18, which was a Saturday, the day that we learned that  
12 the drive that was obtained from Mr. Almeti's locker  
13 contained some of his discovery materials. It was apparent in  
14 the days and weeks following that that there was the  
15 possibility of a conflict issue here.

16 THE COURT: In other words, the conflict is presented,  
17 for example, by learning the identity of the sharing defendant  
18 or the defendant with whom he is sharing, *i.e.*, Rahimi or  
19 Defendant 1.

20 When did you become aware of those people as  
21 potentially implicated here?

22 MR. TURNER: I think it is fair to say, Judge, that  
23 the time frame that I just laid out is when we first understood  
24 at least the identities of all the three participants.

25 However, in our view, the important additional point

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1 is that we were not yet aware of the full factual nature of the  
2 activities or even how to flesh out the full nature of the  
3 potential conflict at that point.

4 We submit that it was only significantly more recently  
5 that we were able to get our hands around the nature of the  
6 conflict that would allow us in our view to present it in an  
7 acceptable fashion.

8 THE COURT: Understood.

9 I'm more just trying to understand the chronology.

10 So on November 22 is when you put defense counsel in  
11 this case on notice that there is a potential issue here  
12 presented by the shared discovery materials?

13 MR. TURNER: The 18th I believe, Judge.

14 THE COURT: November 18, I'm sorry.

15 At that point both sides are aware that there is  
16 material that is -- I use the word in a nonjudgmental way --  
17 implicating two Federal Defenders' clients at least?

18 MR. TURNER: At least two, your Honor.

19 To be very specific, the 18th notice that we provided  
20 made very clear that we had found media in the MCC which  
21 contained materials attributable both to defendant Rahimi and  
22 defendant Almeti.

23 I believe our disclosure regarding the third  
24 defendant, Defendant 1, was somewhat after that. But, yes,  
25 that initial disclosure made very clear that two Federal

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1 Defenders' defendants were involved here.

2 THE COURT: Can you estimate approximately in time  
3 when you notified Federal Defenders that Defendant 1 was  
4 involved in these events?

5 MR. TURNER: I believe we made that disclosure, Judge,  
6 when we set out the facts in the background in our *in limine*  
7 brief, which was on December 8.

8 THE COURT: OK. So from November 18 on, both sides in  
9 this case have been aware of an issue percolating that would  
10 lend itself to an eventual *Curcio* motion, even if the full  
11 range of facts were as yet, as they will continue to be, a work  
12 in progress?

13 MR. TURNER: I believe that is accurate, Judge.

14 THE COURT: Had there been any discussions prior to  
15 your December 19 letter between you and the defense in this  
16 case in either direction as to *Curcio* or conflict issues?

17 MR. TURNER: I do not believe that we have had a  
18 *Curcio*-related discussion with defense counsel.

19 THE COURT: May I ask you just in fairness, because we  
20 are now here the day before the holidays -- and the same  
21 question of-course goes to the defense, but you are speaking  
22 now -- why that wasn't raised if only because the *Curcio*  
23 process always benefits by letting issues marinate with the  
24 defendant.

25 So, for example, had you in November said to

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1 Ms. Shroff it is a matter of time before we raise a *Curcio*  
2 issue with the Court, just alerting you to that so that you and  
3 your client can begin to talk, maybe Ms. Shroff has somebody  
4 she would like to use the as the independent counsel to consult  
5 with her client on.

6 Is there a reason why this wasn't highlighted at least  
7 in your discussions earlier so that we wouldn't be time  
8 constrained, as we are now?

9 MR. TURNER: Judge, I certainly appreciate the point  
10 that is being raised by the Court. Our response would be  
11 twofold:

12 First, it was our view that by providing the notice  
13 that we did, both sides were at that point on notice that there  
14 was an issue that was percolating.

15 THE COURT: Sure. But there's also no harm in putting  
16 the *Curcio* label on it. I appreciate that the facts would lead  
17 a counsel on either side to connect the dots, at least as to  
18 Rahimi, where it's literally the same lawyers. With respect to  
19 Defendant 1, I suppose the question would be whether your  
20 disclosure identified that person as represented by a sister  
21 Federal Defender office.

22 But as for Rahimi, I take the point that it would be  
23 easily inferred. Nonetheless, if it was the case that you  
24 perceived an eventual *Curcio* coming, can you explain to me why  
25 you wouldn't use those words in your communication to

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1 Ms. Shroff, who's got a busy practice and a lot of other things  
2 to do and no doubt would have been benefited by your  
3 highlighting the *Curcio* point?

4           Again, it is more a best-practice point I'm making,  
5 but the *Curcio* issues more than most really benefit by the  
6 passage of time and an opportunity for calm reflection by the  
7 defendant.

8           MR. TURNER: Understood, Judge.

9           The only second point that I would raise to try to  
10 provide the Court with some insight into where we were coming  
11 from on this is, as I'm sure the Court can appreciate, there  
12 were numerous pieces of media devices involved, and we believed  
13 it was appropriate and ultimately would be helpful for all  
14 involved to have a fuller understanding of what really had gone  
15 on here.

16           For example, it's only re recently that we learned and  
17 then disclosed that the forensic examination had determined  
18 that the laptop had, in fact, been connected to the drive, and  
19 that the second disk did, in fact, contain materials that were  
20 obtained from both Mr. Almeti and Mr. Rahimi.

21           We did not feel on November 18, and frankly until  
22 fairly recently, that we had a sufficient understanding of the  
23 facts here that would allow all involved to fully flesh out the  
24 conflict for purposes of the sort of colloquy that would need  
25 to occur.

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1 THE COURT: Look. While I appreciate that, and it  
2 sounds as if your view is that it wasn't until recently that  
3 the dimensions of the conflict came into more crystallized  
4 form, you know I offer as a friendly supervisory suggestion  
5 that in the future, as soon as you can even begin to see in a  
6 dim way a *Curcio* taking shape in any case, you ought to alert  
7 your adversary, because they're busy, they have other things to  
8 do, and the process of explaining *Curcio* with a client is not  
9 necessarily an easy one. It requires some understanding of the  
10 legal system. The sooner Ms. Shroff, or in a future case her  
11 analog is notified that the government in any way sees such a  
12 proceeding coming down the pike, the sooner those discussions  
13 within the defense function can take place. Enough said.

14 Let me pivot you then towards your articulation of the  
15 conflict issues.

16 MR. TURNER: Yes, Judge.

17 Again, as we've tried to summarize in our submission,  
18 we do believe that in light of the facts that we have just  
19 discussed, the concurrent representation of these three  
20 defendants does pose challenges to the Federal Defenders duties  
21 of loyalty.

22 THE COURT: And all three representations are  
23 confirmed, right?

24 MR. TURNER: That is correct.

25 THE COURT: The status of the Rahimi case is what?

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1 MR. TURNER: Pending sentencing.

2 THE COURT: Following a trial or a plea?

3 MR. TURNER: Following a trial. We are, of course, on  
4 the eve of trial.

5 THE COURT: Right.

6 MR. TURNER: I understand that Defendant 1's case is  
7 also ongoing, your Honor.

8 THE COURT: Is Defendant 1's case postindictment  
9 prereresolution? There's not been a sentencing in the case, is  
10 that correct?

11 MR. TURNER: I believe it is actually on appeal, your  
12 Honor.

13 THE COURT: OK.

14 Just tell me what the public docket would reflect.

15 MR. TURNER: I believe that case is on appeal, your  
16 Honor.

17 THE COURT: OK. Thank you.

18 Your understanding is that Rahimi and Defendant 1  
19 continue to be represented by the respective offices of Federal  
20 Defenders?

21 MR. TURNER: Yes.

22 THE COURT: So, we are in the concurrent  
23 representation box such that there are ongoing duties, active  
24 duties to each of the three clients?

25 MR. TURNER: Yes, that is our understanding.

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1 THE COURT: Go ahead.

2 MR. TURNER: Judge, perhaps starting at a macro level  
3 and then to the extent the Court wants to drill down on  
4 particular scenarios, putting it in general form, we believe it  
5 is conceivable that there is the potential for Federal  
6 Defenders, to take an example, to take Mr. Rahimi and  
7 Mr. Almeti just as an example, an incentive with respect to  
8 the issues that we have been discussing today to take positions  
9 with the Court to cross-examine witnesses, to frame arguments,  
10 even to investigate these issues in a way that, wearing the hat  
11 as Mr. Rahimi's attorney, there would be an incentive to  
12 perhaps attribute the dissemination or larger aspects of the  
13 dissemination to Mr. Almeti; whereas the opposite could be  
14 true wearing the hat as Mr. Almeti's attorney, to attribute  
15 the conduct and the dissemination and the activities within the  
16 MCC to Mr. Rahimi.

17 THE COURT: Let me see if I can sharpen that. Let me  
18 ask you -- Mr. Almeti, I want you to pay very close  
19 attention to the discussion I am having with the prosecutor  
20 now. What he and I are discussing are potential conflicts.  
21 There's no suggestion here that any lawyer did anything wrong,  
22 but we are merely trying to identify ways in which a lawyer in  
23 the situation your lawyers find themselves in, in theory could  
24 have competing loyalties or incentives to do things that are  
25 not exclusively in your best interest.

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1 In no way am I suggesting that your lawyers would, in  
2 fact, do that, and I'm certainly not suggesting that any lawyer  
3 did anything wrong. They did not.

4 But the purpose of this discussion is to make sure  
5 that you're educated about what in theory the problems could be  
6 by your continued representation by Federal Defenders.

7 Because I am having a precise discussion with  
8 Mr. Turner trying to identify the issues it's important that  
9 you pay close attention. OK?

10 THE DEFENDANT: I understand, your Honor.

11 THE COURT: As to this first category of issues, the  
12 concern would be, Mr. Turner, from Mr. Almeti's perspective  
13 in particular, that Federal Defenders might try to protect  
14 Mr. Rahimi at the risk of not using all the arguments or  
15 ammunition they might use on Mr. Almeti's part.

16 So, for example, Federal Defenders, if only  
17 representing Mr. Almeti, might have an incentive to thrust  
18 responsibility for any of the sharing exclusively on let us say  
19 Mr. Rahimi and not at all on Mr. Almeti.

20 But the concern would be that, because Mr. Rahimi is  
21 also a client of Federal Defenders, Federal Defenders might be  
22 less willing to cast responsibility on Mr. Rahimi?

23 MR. TURNER: Yes, Judge.

24 THE COURT: So that's one category.

25 That I take it would apply to a variety of tasks that

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1 Federal Defenders might carry out, investigating what happened,  
2 making arguments to the Court or to the jury about what  
3 happened, or developing evidence, including through  
4 cross-examination or presentation of direct testimony as to  
5 what happened.

6 MR. TURNER: Yes, Judge.

7 We see that as the primary articulation of the  
8 potential conflict here, and that there are any number of  
9 permutations. Naturally it is impossible to see every  
10 permutation, but there are many different permutations of that  
11 articulation.

12 THE COURT: OK.

13 The second parallel point is the same point, but as it  
14 relates to Defendant 1?

15 MR. TURNER: That's right.

16 THE COURT: I take it within each of those there are a  
17 number of different defense functions or tasks that could be  
18 affected by, in theory, the same motivation?

19 MR. TURNER: That's right, Judge.

20 THE COURT: Are there any other areas of potential  
21 conflict that the government has identified?

22 MR. TURNER: Well, the one other issue that we did try  
23 to flag in our letter is that, because of the concurrent  
24 representations of the three defendants, it is also possible  
25 that members of the Federal Defenders may have learned

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1 information during the course of their representation of one or  
2 more of these defendants that is relevant to this issue and  
3 their ability to investigate and litigate the issue on behalf  
4 of Mr. Almeti that may be privileged within the confines of  
5 the attorney-client privilege of that other defendant that they  
6 may not be able to use, and we wanted to flag that issue as  
7 well.

8 THE COURT: Let me push back on that and just  
9 understand it. If what you are saying is that Federal  
10 Defenders may have learned something relevant from the, let's  
11 say Rahimi representation, but they can't use it to benefit  
12 Mr. Almeti because it's privileged, I understand that  
13 they're limited in that sense, but they wouldn't have had that  
14 information had they not represented Rahimi. So in that  
15 respect they are in the same position they would have been with  
16 or without the Rahimi representation.

17 MR. TURNER: To your Honor's point, an independent  
18 attorney would, of course, not have come to be privy to that  
19 information in the first place.

20 So that is not what we see as the primary articulation  
21 of the conflict here. It is just an issue that we thought it  
22 was worth flagging.

23 THE COURT: I'm glad you did. I suppose the way to  
24 put the conflict would then be that an attorney who is  
25 possessing privileged information let's say from Mr. Rahimi

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1 might overdeter. In other words, in order to make sure that  
2 they are not running afoul of the their duties to Mr. Rahimi,  
3 they might be extra careful in using information at trial for  
4 Mr. Almeti, lest it be suggested that they were dipping into  
5 privileged information that was known only in the context of  
6 the Rahimi representation?

7 MR. TURNER: Yes, Judge.

8 THE COURT: OK.

9 So we have the issue of divided loyalties in theory  
10 with respect to Rahimi, divided loyalties with respect to  
11 Defendant 1. We have the issue of overdeterrence in terms of  
12 privileged information with respect to Rahimi, and the same for  
13 Defendant 1.

14 Any other potential conflicts you see here?

15 MR. TURNER: Those are the conflicts that we see,  
16 Judge.

17 THE COURT: OK.

18 All right. Thank you very much.

19 Anything else you want to raise before I speak with  
20 Ms. Shroff?

21 MR. TURNER: No, your Honor.

22 THE COURT: Ms. Shroff, again I'm going to preface  
23 this by saying what I said a few moments ago. I'm not  
24 presupposing any outcome on the motion in limine. We just have  
25 to have this conversation on the premise that this evidence is

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1 potentially in play, number one.

2           Number two, I want to make it absolutely clear that --  
3 and I'm really saying this for the benefit of your client, but  
4 it's always worth saying this on the record -- that the fact  
5 that this issue has arisen is no ill reflection. It's just the  
6 sort of process that we have to go through in many cases where  
7 at some point midstream in a case a potential conflict arises.

8           So, take no umbrage at the fact that we're having this  
9 discussion. It's a necessary procedure that I need to go  
10 through to make sure that your client is aware of the potential  
11 conflict and to determine, if he waives it, that he's doing so  
12 knowledgeably.

13           So, with that preface, before I work with you to  
14 sharpen and articulate the theories of potential conflict, is  
15 there anything you want to put on the table?

16           MS. SHROFF: If I may, your Honor, just briefly.

17           THE COURT: Yes.

18           MS. SHROFF: I appreciate that, and I really do  
19 appreciate that for the government and Mr. Turner, whom I have  
20 other cases with, that it takes time for something to  
21 percolate. I have been at fault for not having it percolate  
22 faster, so I appreciate that.

23           I do want to just say one thing about Person 1.  
24 Person 1's identity was only known to us I think as of Friday  
25 of last week, which I think was the 19th. I don't think before

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1 that we knew the identity of Person 1.

2 THE COURT: You have known that person's identity  
3 since about December 15, a week ago?

4 MS. SHROFF: If that's the Friday, OK. Whatever that  
5 date was, on Friday, but when we were last here in Court, we  
6 inquired as to that, and we were told by government counsel  
7 that we would have that information on the Friday before -- the  
8 Court is right, the 15th. The 19th was this Tuesday. I  
9 understand.

10 THE COURT: OK.

11 MS. SHROFF: So the Federal Defenders' position is  
12 that we asked this Court most -- I'm sorry, I'm having trouble  
13 because I am not feeling well -- that we ask the Court most  
14 respectfully to resolve the pending motion *in limine* portion on  
15 this particular topic before engaging in the *Curcio*.

16 If I may just have one minute to tell the Court why.  
17 Unlike the government, we are in the very unique and somewhat  
18 nonenviable position of disrupting three relationships, the  
19 Federal Defenders' relationship with Mr. Rahimi --

20 THE COURT: What three relationships?

21 MS. SHROFF: Three --

22 THE COURT: I didn't hear the verb. I thought  
23 something three relationships. I didn't hear what the verb  
24 was.

25 MS. SHROFF: We did not want to rupture our

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1 relationship with three separate clients.

2           The Court knows the three clients, Mr. Almeti,  
3 Mr. Rahimi, and Client 1, right? As far as the Federal  
4 Defenders is concerned, even if Mr. Almeti -- if this *Curcio*  
5 hearing should play out, and Mr. Almeti were to, and I don't  
6 know if he is, were to tell this Court that he plans to waive  
7 the conflict and keep the Federal Defenders, we still have an  
8 obligation to go through the same steps with Mr. Rahimi as well  
9 as with Client 1. So we have an obligation, an independent  
10 obligation, it appears, to flesh this out with all three  
11 clients.

12           It would involve discussing attorney-client  
13 relationships. It would involve assigning three *Curcio* lawyers  
14 and then going back trying to figure out which of the three  
15 waived and what that waiver means vis-a-vis our relationship to  
16 the other two.

17           For defense counsel, this issue is not that simple.  
18 We most respectfully ask this Court, before we engage in  
19 conversations that literally involve -- and it is a rupture, it  
20 may be a healable rupture, but there's a definite rupture,  
21 because I'm sure no matter how much Mr. Almeti knows me or  
22 Ms. Levine by now, I'm sure there is some part of this young  
23 man that wonders, Is she going to put Mr. Rahimi ahead of me,  
24 or if somebody going to force her to put Mr. Rahimi or Client 1  
25 ahead of me? That's the foundation that I wanted to --

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1 THE COURT: Let me pause you on that.

2 The problem with that is that your representation of  
3 the defendant in connection with the motion *in limine* itself is  
4 affected by the conflict. In other words, I can't resolve the  
5 motion *in limine* without satisfying myself that you are  
6 conflict free in litigating that very motion.

7 The problem is that if hypothetically there was a  
8 problem infecting your representation -- and again we are  
9 talking entirely theory here -- but if there were, it would  
10 affect your ability to litigate even on the motion *in limine*.

11 As a result I can't simply resolve the motion *in*  
12 *limine* and say this evidence is in or out or a split decision  
13 or some is in and some is out where your representation as to  
14 the motion *in limine* has not itself been vetted for *Curcio*  
15 purposes. That is number one.

16 Number two is, whatever the evidentiary ruling is  
17 here, it is my expectation that some form of *Curcio* probably  
18 has to happen for those other clients as well. The parameters  
19 of it change to some degree depending on the ruling here,  
20 because if some or all of the evidence is in as it relates to a  
21 different client, that adds another dimension to the areas of  
22 theoretical conflict.

23 But when all is said and done, even for the other two  
24 people, if one hypothesizes that there was improper sharing,  
25 surely hypothetically, some judge is going to need to

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1 presumably make a *Curcio*-related determination as to those  
2 clients.

3 So, with respect, that moment is coming; it is just a  
4 matter of when. I don't opine in the other cases when you need  
5 to have that resolved, although I would urge that the courts in  
6 each of these cases be made aware sooner rather than later that  
7 this issue is marinating, even if the application is to hold  
8 off doing anything until we have more certainty as to where  
9 this case stands.

10 But it seems to me that one way or the other it's  
11 likely that those *Curcio* inquiries in those other cases are  
12 going to have to happen. Fundamentally the reason I don't  
13 agree with you is that the motion *in limine* itself can't be  
14 resolved until I have confirmed that you are conflict free as  
15 to it.

16 MS. SHROFF: Your Honor, then the motion *in limine*  
17 response is improper in itself.

18 THE COURT: It is not that it is improper.

19 MS. SHROFF: It is conflicted. It is the response  
20 submitted by a conflicted lawyer, which is why I was trying  
21 to -- as the Mr. Turner uses the word cabin only this portion  
22 of the motion *in limine*.

23 THE COURT: Right. Where I'm going is I want to have  
24 the *Curcio* proceeding first, because if we meet today and then  
25 on a later date in early January, depending on the outcome of

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1 the *Curcio*, I may then be able to resolve the motions in  
2 *limine*. I may not be able to.

3 If you are out of the case, we have a fundamental  
4 issue that affects scheduling, and your successor counsel would  
5 presumably have an opportunity to take a whack at the  
6 then-pending motions in *limine*. If you are out of the case,  
7 our trial date is I expect likely going to move.

8 So there are a whole host of issues. If, however, you  
9 are in the case and there has been a valid waiver -- which  
10 there may well be, there very often is where the conflict is  
11 waivable -- in that case I can proceed on the submissions  
12 you've made to resolve the issue.

13 So sequencing here has to be that we square away  
14 whether there is a knowing *Curcio* waiver before I make any  
15 further determinations in the case. The lawyering prior to  
16 your awareness of any conflict here including all the  
17 litigation that went before is unaffected by any of this. It  
18 is your awareness of the sharing within the MCC or the alleged  
19 sharing that gives rise to any of these issues, but I want to  
20 resolve that first.

21 So let's move on.

22 We are going to deal with the *Curcio* first.

23 MS. SHROFF: Your Honor, just one final point so that  
24 I have done what I'm supposed do in terms of keeping a record.

25 It is our office's position that our response in terms

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1 of simply this issue, right, no other part of the motion *in*  
2 *limine*, just in terms of saying that this evidence simply  
3 should not be considered by this Court is not a conflicted  
4 position because Mr. Almeti and Mr. Rahimi's interests are  
5 not conflicted on that point.

6 THE COURT: I'm trying to understand, to pin down what  
7 it is you are saying. Your opposition to the motion *in limine*  
8 as it relates to the MCC discovery communications the due date  
9 on that is what?

10 MS. SHROFF: Tomorrow, your Honor.

11 THE COURT: OK. So is what you are saying that you  
12 don't want to submit your opposition tomorrow?

13 MS. SHROFF: I have submitted it already. I submitted  
14 it yesterday. I filed it on ECF yesterday, just so the Court  
15 would not think --

16 THE COURT: I'm sorry. I thought you said tomorrow.

17 MS. SHROFF: It's due tomorrow.

18 THE COURT: But you submitted it?

19 MS. SHROFF: I finished it earlier, so we filed it  
20 earlier.

21 THE COURT: Look, what I am saying is I am not going  
22 to engage on the merits of that motion and I am not going to  
23 reach any final determination on it until I confirm that any  
24 conflict that you may have, in theory, labored under in  
25 connection with it is one that has been waived.

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1 I get that. I fully understand that. But assuming  
2 that the defendant waives the conflict, your having submitted  
3 that submission, I can then consider that submission. Bottom  
4 line is we need to deal with the *Curcio* first.

5 MS. SHROFF: OK.

6 THE COURT: With that, is there anything you want to  
7 say about the *Curcio*?

8 MS. SHROFF: Well, your Honor, on the *Curcio* itself,  
9 the other thing I would like to say is we are all proceeding on  
10 the very premise that this is a waivable conflict.

11 THE COURT: Right.

12 MS. SHROFF: I am not sure anybody has engaged in --  
13 maybe I shouldn't say that --

14 THE COURT: Do you believe it is a waivable conflict?

15 MS. SHROFF: We are not sure.

16 THE COURT: OK.

17 MS. SHROFF: As you know, this for many is a holiday  
18 season. We have tried to get our appeals people moving on  
19 this. We are simply not sure that whether this is a waivable  
20 or a nonwaivable conflict. I don't have a final answer on  
21 that.

22 THE COURT: OK. I would like a final answer on that  
23 soon, because I had taken as a premise of the government's  
24 letter that they perceived this as a waivable conflict. That  
25 was my initial read on the situation. But if you have a

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1 different view, I need to hear it.

2 MS. SHROFF: Right. We were trying to get that, your  
3 Honor. It is just that I'm here, but not many in my office  
4 are. I have flagged it for Mr. Patton, and we are trying to  
5 get an answer for the Court as soon as possible.

6 THE COURT: OK.

7 MS. SHROFF: We also wanted to make sure that the  
8 government had thought that -- I wanted to make sure of the  
9 government's position. To the extent I am used to this Court  
10 being miles ahead of me, I just thought --

11 THE COURT: I am glad you raised the issue. Here's  
12 what I would like do. I need like to give you a deadline so we  
13 can actually work this. If you take the view that this is a  
14 nonwaivable conflict, please get me a letter within a week.

15 MS. SHROFF: Sure.

16 THE COURT: The reason is I am going to proceed on the  
17 assumption today -- since we are not going to complete any  
18 *Curcio* proceeding today, we are simply going to do step one --  
19 that it is a waivable conflict and we will proceed on that  
20 premise.

21 If, however, you believe it is not, please get me a  
22 letter a weak from today. Then, government, I will need you  
23 pronto to respond to any such letter because I am going to be  
24 bringing you all back in here I expect on January 2 on one side  
25 or the other of the conference we've already scheduled.

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1           If we are headed towards a *Curcio* waiver, that would  
2 be the conference at which I would ordinarily take up that  
3 second stage, where I allocute the defendant as to the *Curcio*  
4 waiver. If there are other issues, implicated so be it.

5           MR. TURNER: If A letter to that effect is submitted  
6 on Friday, the 29th, could we submit a letter by Monday, which  
7 would be the 1st?

8           THE COURT: Yes.

9           MR. TURNER: So you would have an opportunity to  
10 review it before the 2nd.

11          THE COURT: Absolutely.

12          I am mindful of what days all that is, but I think you  
13 understand the urgency of all of this. In the event,  
14 obviously, that you are submitting such a letter, ECF will be  
15 closed, so make sure it is e-mailed to counsel and to the  
16 Court.

17          With that, Ms. Shroff, I appreciate that you are  
18 reserving the right to argue that this is a nonwaivable  
19 conflict, and I will make that determination.

20          Let's operate on the assumption for the time being  
21 that it is a waivable conflict. The articulation of the areas  
22 of potential conflict that I just went through with Mr. Turner,  
23 which is broadly in line with the letter that he wrote me, do  
24 you take issue with any of those as being areas of potential  
25 conflict, and do you have other areas of potential conflict

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1 that you can identify?

2 MS. SHROFF: Your Honor, I don't have other areas of  
3 potential conflict that I would identify. I would just note  
4 that we would have to have similar discussions with our other  
5 two clients.

6 THE COURT: With your what?

7 MS. SHROFF: Our other two clients.

8 THE COURT: Right. And I hope you are doing that.

9 MS. SHROFF: We are proceeding as I'm sure the Court  
10 would expect the Federal Defenders to proceed.

11 THE COURT: All right.

12 MS. SHROFF: Is that fair?

13 THE COURT: Let me just say this, to the extent that  
14 discussions with your other clients are in any way a predicate  
15 for any discussion with Mr. Almeti, you need to do that  
16 pronto.

17 To the extent is that there is a freestanding issue of  
18 your obligation to your other clients, I'm not going to  
19 choreograph what you do, except to say as a general practice  
20 clients, criminal, civil, paid, appointed, tend to like prior  
21 notice of issues that may affect them, early notice. So I  
22 leave that to you.

23 To the extent your discussions with either of the  
24 other clients conceivably could affect your discussions with  
25 Mr. Almeti, and it's not clear to me that they would, but

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1 you will make that judgment, that's really important to do  
2 pronto.

3 With that, though, I take it you are not taking issue  
4 with any of the areas that Mr. Turner and I identified as areas  
5 of potential conflict?

6 MS. SHROFF: I am not taking issue with any of them.

7 I am saying, though, your Honor, that given the  
8 posture of conflict that we are in, we are not able to engage  
9 in any investigation of those matters.

10 THE COURT: All right.

11 I mean, I guess the issue is -- I understand it might  
12 be that there's something that none of us are imagining, but  
13 for the purposes of this exercise I am trying to and government  
14 counsel is trying to use our respective imaginations to imagine  
15 the full scope of potential conflicts.

16 So I understand that one can have out of left field  
17 facts that emerge that add conflict wrinkles, but the purpose  
18 of this exercise for us to be as broad thinking as we can so as  
19 to identify all issues for your client.

20 All right. With that --

21 MS. SHROFF: Your Honor -- I'm sorry. Go ahead.

22 THE COURT: Have you spoken with your client prior to  
23 the beginning of this conference today about the potential  
24 conflict, the *Curcio* issue?

25 MS. SHROFF: Yes, your Honor.

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1 THE COURT: OK. I am not asking about the substance  
2 of your communication, but just trying to get a sense of the  
3 extent to which he is coming into this conference familiar with  
4 the issue at hand and what a *Curcio* proceeding is.

5 Can you give me a sense of your assessment of his  
6 knowledge of that legal -- that background?

7 MS. SHROFF: Your Honor, I can tell the Court that  
8 Ms. Levine and I visited with Mr. Almeti on two separate  
9 occasions to discuss this matter.

10 THE COURT: Discuss the *Curcio* issue?

11 MS. SHROFF: Yes. I'm only speaking to the *Curcio*  
12 issue, to discuss the *Curcio* issue. I believe we first  
13 presented a general overview, because *Curcio* -- I am not trying  
14 to overinflate our representation of him or anything, but  
15 sometimes it invokes a little bit of panic when you are going  
16 to lose the person you are with, so we had a preliminary  
17 discussion on one event, and then we went back on a second  
18 legal visit to sort of lay out the parameters a little bit  
19 more.

20 I explained to him the case name, and, you know, the  
21 types of questions you would ask. I explained to him the  
22 process. And I'm happy to tell the Court that I explained to  
23 him that he would get, that the *Curcio* hearing could go in one  
24 of three ways: Sometimes the client just waives and says I  
25 don't want to talk to a *Curcio* lawyer, sometimes they say they

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1 want to talk to a *Curcio* lawyer take some time and come back,  
2 and then they come back with difference expense.

3 THE COURT: Understood.

4 MS. SHROFF: I explained to him, of course, this Court  
5 would assign him a conflict-free lawyer, who is here today.

6 I was not able to see Mr. Almeti yesterday, but  
7 some member of our team kind of flagged for him that there had  
8 been a schedule for an appearance today and likely he would  
9 meet conflict-free counsel, and I think that Mr. Almeti has  
10 been informed of that process.

11 THE COURT: First of all, thank you for doing all of  
12 this. I realize it was something of an expedited schedule.

13 Were the two meetings you have had with Mr. Almeti  
14 as to this both this week?

15 MS. SHROFF: I think so. There might have been -- I  
16 was wrong about the 15th and the 19th, so my -- I've seen him  
17 so many times. I can't --

18 THE COURT: The government's letter first came in  
19 alerting me to the issue on Tuesday, the 19th.

20 Did you speak with your client about this subject  
21 prior to then?

22 MS. SHROFF: It may have been.

23 THE COURT: OK. Look I'm glad you got ahead of it.

24 Thank you. All right.

25 What I am going to, unless you have something further,

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1 turn to speaking with your client.

2 I'll again by just prefacing for him my assessment  
3 situation, and then I will go through questions substantially  
4 in line with what the government proposed.

5 MS. SHROFF: May I just have one second.

6 THE COURT: Of course.

7 MS. SHROFF: We are good.

8 Thank you, your Honor.

9 THE COURT: OK.

10 MS. SHROFF: I just wanted to make sure of the  
11 accuracy of what I recited to the Court.

12 THE COURT: By the way, Mr. Turner, may I clarify  
13 something which may be useful, among other things, for thinking  
14 about *Curcio* and may also be relevant to the issue of  
15 waivability or not.

16 I think you had already taken off the table, I'm quite  
17 sure you had, any allegation that it was improper, against the  
18 rules for Mr. Almeti or for that matter any of the other  
19 affected people to be swapping or sharing the information.

20 In other words, what's at issue here is not any  
21 allegation of wrongdoing with respect to the sharing of  
22 information within the MCC; it's the fact of that which was  
23 shared, that is the point the government is hoping to establish  
24 through this evidence, is that correct?

25 MR. TURNER: That is correct. We did agree to take

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1 that off the table at the December 12 conference, your Honor.

2 THE COURT: Right.

3 So, to the extent that had that not been taken off the  
4 table, there might have been some argument about fault or as to  
5 whose responsibility, both or neither, as to any act of  
6 sharing. That is to say, did somebody break a rule, that part  
7 is off the table.

8 Nevertheless, in theory, Mr. Almeti could argue  
9 that somebody put something on his computer without his  
10 knowledge or something of that ilk, and in that respect we  
11 still have a *Curcio* issue as to causation in effect.

12 MR. TURNER: We agree with that assessment, Judge.

13 THE COURT: With that, Mr. Almeti in a few moments  
14 I am going to ask you some questions, but I want to just begin  
15 by putting this in a context for you.

16 You can be seated, but when you speak, I will just  
17 need the microphone in front of you.

18 You have clearly been listening very closely during  
19 this conference, and I want to thank and commend you for doing  
20 that.

21 THE DEFENDANT: Thank you, your Honor.

22 THE COURT: The purpose of this exercise is to make  
23 sure that you are ultimately satisfied with the lawyers that  
24 you have and that you are prepared, if you choose to be  
25 prepared to do so, to proceed with the lawyers you have,

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1 notwithstanding what is a theoretical conflict.

2 I say "theoretical" because I have hearings like this  
3 not at all infrequently. There are many cases in which there  
4 is some issue that is presented that in theory could lead a  
5 lawyer to be less than fully loyal to his or her client. They  
6 might do something a little different than they otherwise would  
7 if they didn't have some conflict or other incentive.

8 It's, therefore, a Court's responsibility to have a  
9 conversation with the client to make sure that you're  
10 comfortable proceeding notwithstanding that issue.

11 I have had many, many, cases with Federal Defenders,  
12 and a good number with Ms. Shroff, and some with Ms. Levine as  
13 well, and they are superb lawyers and professionals who are  
14 very high in my estimation.

15 So I want to make it clear to you that what I am doing  
16 here is going through the process of identifying for you in  
17 theory the incentives that might exist for a lawyer who has a  
18 different representation, like the ones of Rahimi or the person  
19 we are describing as Defendant 1. But I want to make it clear  
20 to you that there's no suggestion that your lawyers did  
21 anything wrong; they did not. I'm merely identifying for you  
22 the theoretical conflicts that could be presented by lawyers in  
23 the situations in which Ms. Shroff and Ms. Levine find  
24 themselves.

25 Do you understand that?

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1 THE DEFENDANT: I understand, your Honor. Thank you.

2 THE COURT: What I am going to do now is I am going to  
3 ask you a bunch of questions to make sure that you basically  
4 understand for now the nature of the conflict.

5 At the end, although I will elicit your view as to  
6 whether you want to decide this today, it's my strong  
7 preference that you not and that you let me appoint a  
8 Court-appointed lawyer for you so that you have an independent  
9 person to talk to about these issues.

10 Then, if we go that route, we would meet again in  
11 early January. At that point, you would have had an  
12 opportunity to talk with the independent lawyer, and I will  
13 then take up with you what your decision is. I'll make sure  
14 then that you understand what the issues are, and I'll find out  
15 for you then whether you do or don't waive the conflict.

16 OK?

17 THE DEFENDANT: OK.

18 THE COURT: So, with that, I am going to just ask  
19 Mr. Smallman just to place you under oath.

20 (Defendant sworn)

21 THE COURT: Mr. Almeti, you will forgive me. A few  
22 of the questions I am going to ask at the beginning about your  
23 background have almost certainly been asked of you at the time  
24 of arraignment. I am just doing this now so I can make a fresh  
25 assessment of your ability to understand the issues here. OK?

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1 THE DEFENDANT: OK.

2 THE COURT: How old are you?

3 THE DEFENDANT: 24 years old.

4 THE COURT: Again, how far did you go in school?

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

7 THE COURT: OK. How far had you gotten in college?

8 THE DEFENDANT: I was about a year into it.

9 THE COURT: And are you currently under the care of a  
10 doctor or a mental health professional?

11 THE DEFENDANT: No.

12 THE COURT: Are you currently under the influence of  
13 alcohol or drugs?

14 THE DEFENDANT: No.

15 THE COURT: Is there anything today that's interfering  
16 with your ability to understand what's been happening?

17 THE DEFENDANT: Nothing, your Honor.

18 THE COURT: Have you been able to follow our  
19 discussion so far?

20 THE DEFENDANT: I have.

21 THE COURT: When you have had your discussions with  
22 your lawyers, and I don't want to hear about the content, have  
23 you been able to follow what they have told you?

24 THE DEFENDANT: I have been able to make an  
25 understanding about the issue, yeah.

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1 THE COURT: In general, apart from this issue, just  
2 when you have been speaking with your lawyers about the case,  
3 have you been able to follow clearly as they have given you  
4 advice, told you information?

5 THE DEFENDANT: Yes.

6 THE COURT: OK.

7 Ms. Shroff, are you confident that your client is of  
8 sound mind and is capable of understanding the issues at hand?

9 MS. SHROFF: Yes, your Honor.

10 THE COURT: All right.

11 You are currently represented, are you not, by  
12 Ms. Shroff and Ms. Levine of the Federal Defenders of New York?

13 THE DEFENDANT: That's correct.

14 THE COURT: I am going to call them Federal Defenders  
15 for the purpose of this discussion.

16 Have you been satisfied with the work and the  
17 representation by Ms. Shroff and Ms. Levine so far?

18 THE DEFENDANT: So far I have, your Honor.

19 THE COURT: OK. Have they told you that in a separate  
20 criminal case Ms. Shroff and Federal Defenders represent a  
21 defendant named Ahmad Khan Rahimi, who was convicted of  
22 terrorism offenses at a trial that occurred earlier this fall,  
23 in October of 2017?

24 THE DEFENDANT: Yes, I have been made aware of that.

25 THE COURT: OK. And your attorneys have discussed

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1 that fact with you, correct?

2 THE DEFENDANT: Yes.

3 THE COURT: Now, earlier this week, the government  
4 submitted two letters to the Court and to your attorneys, and  
5 they describe a different defendant in a case, a criminal case  
6 in the Eastern District of New York. That's the court right  
7 across the river in Brooklyn. I am going to call that  
8 defendant Defendant 1.

9 Have you read both of the government's letters of  
10 December 19?

11 THE DEFENDANT: I have, your Honor.

12 THE COURT: And have you discussed those letters with  
13 your attorneys Ms. Shroff and/or Ms. Levine?

14 THE DEFENDANT: I haven't really got a chance to  
15 discuss the letter once I got it, just briefly.

16 (Counsel conferred with the defendant)

17 THE DEFENDANT: Briefly, I have.

18 THE COURT: OK. But your intention would be to  
19 discuss it more fully with them?

20 THE DEFENDANT: That's correct.

21 THE COURT: Could you move the mic a little closer to  
22 you. Thank you. All right.

23 Have your attorneys informed you that other lawyers,  
24 not Ms. Shroff and not Ms. Levine, but others lawyers from  
25 Federal Defenders represent Defendant 1?

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1 THE DEFENDANT: Yes.

2 THE COURT: And do you understand that the fact that  
3 Ms. Shroff and Federal Defenders represent Ahmad Khan Rahimi  
4 may put them in a position where their duties to Mr. Rahimi  
5 potentially conflict with the duties to you?

6 THE DEFENDANT: I understand.

7 THE COURT: Do you understand that, similarly, the  
8 fact that Federal Defenders represent Defendant 1 may put  
9 Federal Defenders in a position where the duties of that  
10 organization to Defendant 1 may conflict with Federal  
11 Defenders' duties to you?

12 THE DEFENDANT: Yes.

13 THE COURT: OK. I am going to list now a number of  
14 contexts or times or parts of the case where the potential  
15 conflict, at least in theory, could affect their representation  
16 of you, and then I am going give you some more specific  
17 examples, but just to put it at a large level, the areas in  
18 which a lawyer's conflict like this at least potentially could  
19 affect the representation, affect a whole lot of different  
20 potential situations, to begin with, whether you should guilty  
21 or go to trial, whether you should seek to cooperate with the  
22 government or not, what defenses you should raise at trial,  
23 whether you should testify at trial, which witnesses should be  
24 cross-examined, and what questions they could be asked, which  
25 witnesses, if any, you may call, and your lawyers might ask

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1 those witnesses, what arguments to the jury might be made, or  
2 what arguments to the Court might be made, and, in the event  
3 that there is a conviction or a guilty plea, what arguments  
4 might be made at sentencing.

5 I've described really more or less the entirety of the  
6 steps at issue in the case. Those are all areas that could be  
7 affected by this potential conflict in theory.

8 Do you understand?

9 THE DEFENDANT: I understand.

10 THE COURT: I should add that right now pending in  
11 front of me is a decision on what is called a motion *in limine*,  
12 whether to admit or not some of the evidence that Mr. Turner  
13 has just described, that is, the fact that certain discovery  
14 material from other people's cases was found allegedly in your  
15 possession and certain discovery material from your case was  
16 allegedly found in their possession.

17 So the potential conflict could affect the way in  
18 which Federal Defenders makes arguments to me about that issue.

19 Do you understand that?

20 THE DEFENDANT: Yes.

21 THE COURT: To be a little more precise, were you able  
22 to follow the discussion that Mr. Turner and I were having  
23 earlier as we tried to identify some of the more concrete ways  
24 in which this potential conflict might affect your  
25 representation?

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1 THE DEFENDANT: Yes, your Honor.

2 THE COURT: OK. I am just going to elaborate.

3 One possible way is that it might be that the lawyers  
4 for Federal Defenders might have an incentive to protect  
5 Mr. Rahimi.

6 Do you understand that?

7 THE DEFENDANT: Yes.

8 THE COURT: So, in theory, they might try to suggest  
9 that any sharing of these materials, if it occurred, was  
10 attributable to -- let me back up.

11 An independent attorney might have an interest in  
12 saying that Mr. Rahimi and Mr. Rahimi alone let's say was  
13 responsible for the sharing of these discovery materials with  
14 you, but because Federal Defenders represents Mr. Rahimi, they  
15 might go easy on Mr. Rahimi and not try to argue that he was  
16 the source of that.

17 Do you understand that?

18 THE DEFENDANT: Yes.

19 THE COURT: That could come up in a different number  
20 of contexts. It could affect the way they submit their legal  
21 briefs to me.

22 Do you understand that?

23 THE DEFENDANT: Yes.

24 THE COURT: It might affect the arguments they make to  
25 the jury about who was responsible for the fact of the material

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1 being shared across the cases if that happened.

2 Do you understand that?

3 THE DEFENDANT: Yes.

4 THE COURT: It might affect the way witnesses are  
5 questioned. Understand?

6 THE DEFENDANT: Yes.

7 THE COURT: And at least in theory, it might affect --  
8 your lawyers might want to consider calling Mr. Rahimi as a  
9 witness in this case. It seems unlikely, but it could in  
10 theory happen.

11 Do you understand that?

12 THE DEFENDANT: Yes.

13 THE COURT: But if that were to happen, they might be  
14 conflicted from calling him or they might need to have a  
15 different lawyer handle that part of the case.

16 Do you understand that?

17 THE DEFENDANT: Yes.

18 THE COURT: I realize that seems improbable, and it  
19 would seem unlikely that Mr. Rahimi would himself ever submit  
20 to such testimony given privileges that he has, but I'm  
21 identifying all of these as potential areas.

22 Understood?

23 THE DEFENDANT: Yes.

24 THE COURT: All the same things that I just talked  
25 about as to Mr. Rahimi, the same issues could occur with

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1 respect to Defendant 1; that is, that Federal Defenders might  
2 in one way or the other try not to make Defendant 1 look bad,  
3 and so they might blame it solely on you that there was any  
4 sharing between you and Defendant 1 of any such material.

5 Do you understand that?

6 THE DEFENDANT: Yes.

7 THE COURT: Relatedly, as I discussed with Mr. Turner,  
8 it's possible that your attorneys would be a little less  
9 aggressive or less aggressive in representing you because they  
10 would be concerned about this issue, that they might be accused  
11 of using privileged information they'd gotten either from their  
12 representation of Mr. Rahimi or from their representation of  
13 Defendant 1.

14 Do you understand that?

15 THE DEFENDANT: Yes, your Honor.

16 THE COURT: Now, I think I'm speaking for everyone  
17 here in saying that, so far as we all know now, all of these  
18 issues only occur in the context of the sharing of prison  
19 information. There has been no suggestion to me that either of  
20 these other two clients of Federal Defenders in any way are  
21 connected with any of the other issues in your case.

22 Do you understand?

23 THE DEFENDANT: Yes.

24 THE COURT: Mr. Turner, is that correct, that all of  
25 the discussions we are having solely are relevant to the

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1 discovery-sharing issue, correct?

2 MR. TURNER: That's correct, Judge.

3 THE COURT: Ms. Shroff, is that a fair summary, to the  
4 best of your knowledge?

5 MS. SHROFF: Yes, your Honor.

6 THE COURT: So all of those are some examples of the  
7 potential conflict.

8 Do you understand the examples I've given?

9 THE DEFENDANT: I understand.

10 THE COURT: Can you tell me in your own words the  
11 potential conflict.

12 Again, I am emphasizing, I'm not saying that this is  
13 an actual conflict, and I'm not saying it would in any way by  
14 any means necessarily affect a thing that Ms. Shroff or  
15 Ms. Levine would do, but it is a potential conflict.

16 Can you tell me in your own words your understanding  
17 of the potential conflict?

18 THE DEFENDANT: I understand that because me, the  
19 defendant Rahimi and Defendant 1 are represented by Federal  
20 Defenders, that in defending us with this conflict that has  
21 arisen with the discovery, the lawyers from Federal Defenders  
22 could either choose to side with one of the defendants and that  
23 will affect the representation of either me or Rahimi or  
24 Defendant 1. So that might be one possible conflict that I  
25 understand.

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1 THE COURT: OK. In other words -- I think I get that.  
2 Do either counsel believe I need to question the  
3 defendant further as to his understanding of the potential  
4 conflict?

5 MR. TURNER: No, your Honor.

6 MS. SHROFF: I do, your Honor. I think that might be  
7 better after Mr. Strazza speaks with Mr. Almeti.

8 THE COURT: I agree. The question is at this stage do  
9 I need to?

10 MS. SHROFF: No. I don't need permutations of it. He  
11 would have to be able to articulate how my defense of him could  
12 be hampered by my --

13 THE COURT: Right.

14 I am just asking you, before I proceed on to explain  
15 to him his procedural rights, I just want to ask you at this  
16 stage -- there will be a second stage.

17 MS. SHROFF: OK.

18 THE COURT: Do you believe I need to inquire further  
19 as to his understanding at this point?

20 MS. SHROFF: I think you may want to flesh out how  
21 certain defenses would be presented for him versus Mr. Rahimi,  
22 how they are at odds?

23 THE COURT: What do you propose I ask him?

24 MS. SHROFF: That he should be able to understand that  
25 our investigation itself, for example, an investigation of the

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1 disks or the hard drive, even that creates a potential  
2 conflict, which there may be certain information that we want  
3 to learn that would help him, when we learn that information it  
4 could hurt Rahimi or vice versa. So there is an inherent  
5 conflict even in the work we would be doing to get to the  
6 ultimate answer. That's what I was trying to flesh out.

7 THE COURT: OK. Thank you. It is a fair point. It's  
8 within the context of I think the broader points that have  
9 already been made, but it is a valid point.

10 Ms. Almeti, did you hear what Ms. Shroff just said?

11 THE DEFENDANT: Yes.

12 THE COURT: In your own words, can you explain to me a  
13 little more about the ways in which actions that Ms. Shroff  
14 might take or not take could be affected by the fact that she  
15 and Federal Defenders represent these other two individuals?

16 THE DEFENDANT: Yeah.

17 I understand, like Ms. Shroff mentioned during the  
18 investigation, they could come up with certain facts of  
19 conflict that might hurt me or might hurt Rahimi or could be in  
20 my favor and if it's in my favor they won't really be able to  
21 use it if it's hurting their other client, Rahimi and vice  
22 versa.

23 What I also understand about the conflict is there  
24 could be an eventuality where, like, as you mentioned earlier,  
25 where the blame might be pointed to Rahimi and that Ms. Shroff

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1 wouldn't really be able to represent me in that eventuality; or  
2 if Rahimi pointed the finger at me, the same: Ms. Shroff  
3 wouldn't be able to represent me or him without a conflict at  
4 that point.

5 THE COURT: In other words, just to be clear, the  
6 government is not going to be allowed to argue, and they are  
7 not going to be arguing that you broke a prison rule by  
8 sharing, a rule by sharing discovery material, if that was what  
9 was found, and they are not going to be arguing that the other  
10 defendants did either.

11 They are simply going to be arguing, assuming this  
12 evidence is allowed in, that the material from other cases was  
13 found on your computer or your discovery material was found on  
14 other people's computers and that that in turn reflects, for  
15 example, your interest in such material.

16 But they are not going to be allowed to argue that it  
17 was against a rule.

18 Do you understand that?

19 THE DEFENDANT: Yes.

20 THE COURT: So, in theory, the defense might have an  
21 interest in arguing that Mr. Rahimi planted this material on  
22 your computer from his case, for example, and Ms. Shroff is  
23 saying in theory she would have an incentive not to hire an  
24 expert who could study whether there was anything to do theory  
25 by inspecting your computer because she wouldn't want to walk

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1 into a situation where Mr. Rahimi then would be exposed as  
2 having planted things on your computer, that kind of thing.

3 Understood?

4 THE DEFENDANT: Yes.

5 THE COURT: Do you understand that in every criminal  
6 case, including this one, the defendant is entitled to the  
7 assistance of counsel whose loyalty to him is undivided and who  
8 is not subject to any factor that might in any way intrude on  
9 the attorney's loyalty to his interests?

10 THE DEFENDANT: Yes.

11 THE COURT: Do you understand that you are entitled to  
12 an attorney who has only your interests in mind and not the  
13 interests of another client?

14 THE DEFENDANT: Yes.

15 THE COURT: Do you understand that you have the right  
16 to object to continued representation by Federal Defenders  
17 based on the existence of a conflict of interest?

18 THE DEFENDANT: Yes.

19 THE COURT: Have you received any inducements,  
20 promises, or threats with regard to your choice of counsel in  
21 this case?

22 THE DEFENDANT: No.

23 THE COURT: Do you understand that one danger to you  
24 in this situation is my inability and the lawyer's inability to  
25 foresee all of the potential conflicts that could arise because

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1 of Federal Defenders' representation of you on the one hand and  
2 of Rahimi and Defendant 1 on the other?

3 In other words, we have all done our business today to  
4 try to imagine what the conflict could be, but something could  
5 come up that we just can't perceive right now.

6 Do you understand that?

7 THE DEFENDANT: I understand.

8 THE COURT: It is important that you understand that  
9 no one, including the Court, as hard as we're all trying here,  
10 can predict with any certainty the course that this case will  
11 take, and no one, including me, can foresee all the ways in  
12 which you could at least in theory be disadvantaged by the fact  
13 that the Federal Defenders represent those other people as well  
14 as you?

15 Do you understand that?

16 THE DEFENDANT: Yes.

17 THE COURT: Do you understand that you have a right to  
18 consult with an attorney who is free from any conflict of  
19 interest in this case and that I will give you the opportunity  
20 to do that if there's any aspect of this issue or the  
21 information that we've covered today that you wanted to discuss  
22 with a conflict-free attorney?

23 THE DEFENDANT: Yes.

24 THE COURT: I will adjourn the remainder of this  
25 proceeding, and it's my preference that I do that so that you

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1 can consult with a conflict-free attorney, a lawyer who doesn't  
2 work at Federal Defenders, about the potential conflict of  
3 interest that I've described today, and I will appoint free of  
4 charge an attorney to consult with you for that purpose.

5 Would you like me to do that?

6 THE DEFENDANT: Yes, your Honor, I would like that.

7 THE COURT: Good. I will do that.

8 We have the great fortune ever having Mr. Strazza,  
9 Anthony Strazza here today. He is among the lawyers who is  
10 court certified, meaning he has been approved by a board of  
11 judges in this district as among the lawyers who gets appointed  
12 in criminal cases to represent defendants, so he is learned and  
13 knowledgeable in this area, and I'm appointing Mr. Strazza,  
14 therefore, for the limited purpose of being your conflict-free  
15 counsel.

16 He's not here to represent you at trial. He's here  
17 simply to guide you independently on the issues presented.

18 Mr. Strazza, you can come forward, and I want to thank  
19 you for your service.

20 MR. STRAZZA: Thank you, your Honor.

21 THE COURT: What I am going to do, then, is direct  
22 that Mr. Strazza with dispatch begin conferring with  
23 Mr. Almeti about these issues.

24 I would encourage you, Mr. Strazza, to speak with  
25 government counsel and defense counsel so that you understand

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1 the history of the case, the nature of the charges, and where  
2 this issue fits in.

3 I will give you my perspective in a moment to the  
4 extent it helps educate you, but I would urge you to speak with  
5 the very thoughtful lawyers in this case so that you can factor  
6 in what they have told you and to your appreciation of the  
7 broader case because it's been pending for a little while.

8 MR. STRAZZA: Yes, your Honor.

9 THE COURT: OK. We have next scheduled in this case a  
10 conference on January 2 at 2 p.m.

11 The purpose of that conference is counsel are aware is  
12 twofold: One is to take up, to give notice to the members of  
13 the public an opportunity for the members of the public to  
14 comment on the pending motion by the government for a partial  
15 courtroom closure as to the testimony of certain personnel;  
16 and, second, to the extent the Court has factual issues about  
17 the pending motions *in limine*, it is a forum in which I can  
18 raise issues with counsel before those issues are resolved.

19 It would be my suggestion that we meet before the 2  
20 p.m. conference, but that same day, to make these efficient for  
21 everybody for the purpose of having a continuation of the  
22 *Curcio* proceeding.

23 I propose that we meet at 1 p.m. that day.

24 Does that work for counsel?

25 MR. STRAZZA: It works for me.

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1 MR. TURNER: Yes, your Honor.

2 MS. SHROFF: May I just have a second with

3 Mr. Strazza?

4 THE COURT: Yes.

5 MR. STRAZZA: Your Honor, if I may, I think I just  
6 wanted to announce this to the Court, that date and time would  
7 work. With the caveat that I would be able to -- that we would  
8 be able to speak today at the appropriate location in this  
9 building and then again January 2 before the 1 o'clock  
10 conference, again in this building.

11 THE COURT: "We" meaning? Who is the "we"?

12 MS. SHROFF: Myself and the client?

13 THE COURT: Right. In other words, you are available?

14 MR. STRAZZA: I will not be able to go see him where  
15 he's being housed in between today and January 2. I don't  
16 think that is a problem because I'll have sufficient time to  
17 speak with him today, and I will have sufficient time to speak  
18 with him again on January 2.

19 THE COURT: Will you have some other means of  
20 communicating with him in between by phone?

21 MR. STRAZZA: Yes.

22 THE COURT: OK. Look, I leave it to you as a  
23 professional to make the judgments about what time is  
24 available, but I need to tell you obviously that this is an  
25 important issue, and I will be asking Mr. Almeti whether

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1 he's had enough time with you to work through the issues.

2 MR. STRAZZA: Sure.

3 THE COURT: I am not going to micromanage the how and  
4 the when you speak, but I do obviously ask you, in taking this  
5 on, to treat it with what I know will be great professionalism  
6 but also with dispatch.

7 MR. STRAZZA: Yes, your Honor.

8 THE COURT: All right. Let's schedule the  
9 continuation of this for 1 p.m. on January 2.

10 Mr. Smallman has passed me a note that may have some  
11 practical suggestions on where you can meet today. I will  
12 leave that for when I adjourn this. I will leave that for you  
13 Mr. Smallman, the marshals, and perhaps Ms. Shroff to work  
14 through those mechanics.

15 But let me just offer the following thoughts from the  
16 Court's perspective may, which be helpful for you in this case.

17 Jury selection is scheduled for January 29, and the  
18 substance of the trial, that is a Monday, is scheduled for the  
19 week following.

20 As I perceive the conflict, it is limited to a  
21 discrete issue, which has only very recently arisen in the  
22 case.

23 As I think you have gotten wind of somewhat today,  
24 relatively recently the government has become aware, it  
25 represents that Rule 16 discovery material from this case was

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1 found on other defendants' either electronic devices or  
2 possession, and, vice versa, some such material from their  
3 cases was found in the possession or on the devices of  
4 Mr. Almeti, so it is alleged.

5 This is subject of a pending motion *in limine*, which I  
6 won't resolve until obviously I have resolved the conflict  
7 issue. There is not any broader allegation that there is any  
8 conflict here. It's really limited to this discrete evidence.

9 To further narrow the issue at hand, I had a  
10 conference in this case with counsel a little over a week ago  
11 as we considered the motions *in limine* that had then been filed  
12 by the government, but as of then had not been responded to by  
13 the defense, and I was trying to get a preview and understand  
14 what the motions were about.

15 As we discussed this motion, I expressed considerable  
16 concern with the government that if this evidence were received  
17 of the communications being on people's computers, it would  
18 devolve into a dispute about whether Mr. Almeti broke a rule  
19 or regulation or restriction on discovery sharing by letting  
20 another defendant see Rule 16 material from his case or that  
21 some other defendant broke a rule in sharing information with  
22 him or that the recipient in either situation broke a rule.

23 The government I think recognized the  
24 trial-within-a-trial possibility that I was worried about,  
25 which is there would be debates back and forth about fault and

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1 who knew what about the rules.

2 I was, without ruling on it, signaling that I saw some  
3 countervailing Rule 403 issues in allowing that evidence to  
4 turn into a discussion about rule breaking.

5 Mr. Turner's cocounsel, Mr. Bove, took that issue off  
6 the table. In effect at the conference the government took off  
7 the table the idea that they would be arguing that there had  
8 been any rule violation in the sharing.

9 So, if this evidence is permitted to be received,  
10 *i.e.*, if I grant in part or in whole the government's motion *in*  
11 *limine*, there will be no hint or way, shape, or form of any  
12 fault here, and the jury will not be permitted to speculate  
13 about whether anyone broke any rule in sharing the material.  
14 So far as the jury is concerned, it's a permissible thing to  
15 do.

16 The issue, therefore, will be whether the fact of the  
17 material being shared in either direction is probative of, for  
18 example, the defendant's interest in the subjects covered by  
19 that material, *e.g.*, ISIS, ISOL, that sort of thing.

20 So, as you are considering the conflict issues here, I  
21 think one thing you ought to be aware of is I'm not going to be  
22 inviting debate about fault or rules breaking. The proffer of  
23 relevance has to do with the defendant's interest in the  
24 materials, not his breaking any such rule.

25 That may have significant relevance to whether or not

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1 there really is a deep-seated conflict between these two  
2 clients in your estimation. It is for you to gauge this.

3 But, notwithstanding the tenor of a few of the  
4 questions or comments I have made, I am not going to be  
5 allowing this chapter of evidence to turn into a issue of  
6 fault.

7 There might in theory though be an issue of causation  
8 in that I suppose, for example, Mr. Almeti might say, look,  
9 I allowed him to see my computer, but I didn't ask him to put  
10 on my computer material from his case or something like that.

11 So, you could have a situation in which it is alleged  
12 that the sharing outstripped that which was permitted, or there  
13 could be an argument that the computer was simply obtained  
14 without the knowledge or consent of Mr. Almeti, but the  
15 notion of rules breaking is out of the case.

16 I think that has significant relevance for the  
17 imaginable areas of potential conflict, and I wanted to set  
18 that out for you now.

19 There's no suggestion, as you can tell, that either of  
20 the other defendants has any other hand in the facts or issues  
21 in the case. This conflict issue solely relates to the  
22 presence on respective devices or computers or records of  
23 material that had been in the discovery possession of other.

24 MR. STRAZZA: I understand. Thank you.

25 THE COURT: Hopefully that's helpful for you in

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1 bracketing the issue.

2 All right. Yes.

3 MR. TURNER: One possible subsidiary point, your  
4 Honor, is that, as we noted in our letter of the 19th, the  
5 government is no longer seeking to disclose to the jury the  
6 identity of Rahimi or details regarding the offenses that he  
7 committed in connection with our presentation of proof on this  
8 issue at trial.

9 THE COURT: Thank you.

10 Sorry, Ms. Shroff. You will have a chance to speak  
11 with counsel. I just want to make sure a hearing what is  
12 being said.

13 That is important, Mr. Strazza. One of the issues  
14 that came up at the earlier conference involved the nature of  
15 the people in question, *i.e.*, crimes that they were charged  
16 with, the status of their cases. I believe at that prior  
17 conference I expressed concern of 403 issues that might arise  
18 if the defendant were associated with other people who were  
19 alleged to have done bad things.

20 That is more a 403 issue than a conflict issue, but I  
21 think it's relevant to your consideration.

22 What the government is saying is that they are not  
23 going to elicit the who, the name of the other defendant, or,  
24 for that matter, the litigation context, the crimes with which  
25 those two people were charged or the status of the proceedings

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1 as to them.

2 Is that correct, Mr. Turner?

3 MR. TURNER: Yes. We would reserve the right to find  
4 a middle ground with respect to a general characterization  
5 perhaps of the offenses of the which the other unnamed inmate  
6 is there for, but not anything disclosing the identity of  
7 Rahimi or the particular acts that he engaged in.

8 THE COURT: OK. I'm obviously not weighing in on the  
9 substance now, but, in any event, the people are off the table,  
10 the specifics of those crimes are off the table, and what may  
11 be further off the table may or may not be even a general  
12 description of the crimes charged.

13 The relevant point is what's germane here is the  
14 materials found on the respective devices. I understand why,  
15 to the extent that Almeti discovery materials found on  
16 somebody else's computer, it may be necessary to make clear  
17 that that person wasn't charged with postal theft as opposed to  
18 something that is more in this space, but I am not expecting  
19 that there will be any articulation before the jury of  
20 specifics.

21 MR. STRAZZA: Thank you, your Honor.

22 THE COURT: Hopefully that also brackets your tasks.

23 Ms. Shroff is there something you want to say?

24 MS. SHROFF: No, your Honor. I can talk about the  
25 crux of the conflict with Mr. Strazza rater on.

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1 THE COURT: Good. With that, is there anything  
2 further from the government.

3 MR. TURNER: One very last point, your Honor.

4 THE COURT: Yes.

5 MR. TURNER: Just for the avoidance of any ambiguity  
6 on this, earlier today at Ms. Shroff's request we did agree  
7 that the sealed letter that we submitted in conjunction with  
8 our publicly filed letter on December 19 relating to Defendant  
9 1 and providing some more information regarding Defendant 1 has  
10 been shared with Mr. Strazza at this point so he has access to  
11 that for purposes of the consultation.

12 THE COURT: For avoidance of doubt, I am authorizing  
13 the parties in their collective judgment to share with  
14 Mr. Strazza any sealed, as opposed to classified, information  
15 in the case. There is no reason any of that classified stuff  
16 has anything to do with this issue, but with respect to sealed  
17 material, if either of you believes that it is important for  
18 him to see some of that material for the purposes of  
19 facilitating his review of the conflict issue -- I am not sure  
20 there would be anything more other than that letter -- I'm  
21 authorizing you on an attorneys'-eyes-only basis to share that  
22 with him. Each of you is independently authorized to do that.  
23 OK.

24 With that, anything further from the government?

25 MR. TURNER: No, your Honor.

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1 THE COURT: Anything further from Ms. Shroff?

2 MS. SHROFF: Your Honor, one matter. It's not related  
3 to the *Curcio* or anything other than the trial date and  
4 Mr. Almeti's position. Just hear me out before --  
5 Mr. Almeti was recently moved within the MCC.

6 Unfortunately, his legal paperwork has not moved with him.

7 I take this opportunity just for the Court -- I am  
8 going to order these minutes anyway for our office to read -- I  
9 just ask that the Court recommend to the Metropolitan  
10 Correction Center, that to the extent they possibly can, please  
11 get Mr. Almeti his legal paperwork as soon as possible.

12 THE COURT: Yes. I certainly make that  
13 recommendation, but I urge you to work with the government on  
14 this. I've had this sort of issue arise time and again, and it  
15 almost invariably, when the parties work together, they are  
16 able to get the attention of the prison authorities.

17 But I obviously share exactly your objective, and I'm  
18 happy to make that recommendation.

19 MS. SHROFF: Thank you, your Honor.

20 THE COURT: Anything further from you, Mr. Strazza?

21 MR. STRAZZA: No. Thank you.

22 THE COURT: Let me just adjourn by wishing everybody a  
23 healthy and a happy new year. That goes for all three counsel,  
24 that goes for you, Mr. Almeti, as well and for the marshals  
25 who have been patiently here during this conference.

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Counsel in the next case, I will be out in five minutes.

Thank you.

(Adjourned)