

1 (The following proceedings were held in open court
2 beginning at 10:51 a.m., reported as follows:)

3 **DEPUTY CLERK:** All rise.

4 **THE COURT:** You can be seated.

5 Good morning, everyone.

6 **MR. KOLAR:** Good morning, Your Honor.

7 **THE COURT:** We're on the record in Cause
8 No. 2:18-CR-33. The case is United States versus
9 Samantha Elhassani. And we're here, I guess, just for a status
10 hearing in the case.

11 If everybody could introduce themselves.

12 Mr. Durkin, state your appearance.

13 **MR. DURKIN:** Judge, Tom Durkin along with
14 Joshua Herman, who is the subject of a pending motion for an
15 appearance and appointment, along with the defendant who is
16 present and in custody.

17 **THE COURT:** Okay.

18 And, of course, Mr. Kolar.

19 **MR. KOLAR:** Josh Kolar for the government,
20 Your Honor.

21 **MR. ZANZI:** Abizer Zanzi for the government,
22 Your Honor.

23 **MS. FUTCHER:** Good morning, Your Honor. Mary Fletcher
24 from the Department of Justice. I'm also waiting to enter an
25 appearance.

1 **THE COURT:** I'm sorry. What was your last name?

2 **MS. FUTCHER:** Fatcher; F-U-T-C-H-E-R.

3 **THE COURT:** Got it. Okay.

4 So there's a number of motions that are pending before the
5 Court, and maybe they were handled in front of Judge Martin.
6 First of all, there was a motion to declare the case complex,
7 and so we can get this on some reasonable timetable -- was that
8 discussed down in front of Magistrate Judge Martin?

9 **MR. KOLAR:** That was not resolved, Your Honor.

10 **THE COURT:** Okay. Was that because it couldn't be
11 agreed to or it just didn't come up?

12 **MR. KOLAR:** Agreed, Your Honor. The parties agree, I
13 will say -- just to kind of set the stage, we've had a series
14 of conversations with defense counsel; and I think our most
15 recent -- and obviously defense counsel is free to correct
16 me -- but we all viewed the case in a similar manner in terms
17 of there's a lot there that needs to get addressed before
18 trial.

19 The government didn't want to unilaterally make
20 determinations that would potentially continue the trial, so we
21 were also trying to expedite things to the extent possible.
22 Defense had indicated that their trial preparation would not be
23 feasible even with a trial anytime this year, I believe was
24 even considering asking for a future status date in lieu of an
25 actual trial setting, which I haven't seen done before, but we

1 don't necessarily object to.

2 We had some questions just for the Court on the record in
3 terms of the timing for potential CIPA filings but didn't think
4 that that was necessarily something that could be resolved or
5 even intelligently discussed until we kind of understood how
6 far out the trial was set. So I think, Your Honor --

7 **THE COURT:** That's this Section 2 hearing that you
8 are talking about?

9 **MR. KOLAR:** That's correct, Your Honor.

10 **THE COURT:** Okay.

11 Mr. Durkin, let me just ask you, what do you sort of --
12 the best you can predict it -- have in mind about a reasonable
13 timetable here? Because what -- I'm going to be completely
14 reasonable and flexible. I understand it's a complicated case
15 and you will have a lot to do.

16 What I would really like to endeavor to do is get the case
17 set for trial. It might be next September, whatever is
18 reasonable, but we lock it in there, and absent some
19 extraordinary circumstance, we hold everybody to those dates.
20 That's kind of what I would like to be able to do. You talk to
21 me about where you see this going.

22 **MR. DURKIN:** The only reason -- we have -- Mr. Herman
23 and I have been involved in several of these cases, and it's
24 our experience that the CIPA hearings, and particularly in a
25 court that doesn't have a SCIF and doesn't have -- if your

1 court personnel needs to get cleared, there's a lot of delay,
2 unanticipated delay, that looks like it's going to get done and
3 then it doesn't get done. So that's the only reason I
4 suggested another status.

5 I'd be happy to set the case for trial. It just may have
6 to be reset. I think --

7 **THE COURT:** From your experience in handling these,
8 what's a reasonable timetable? 12 months? 18 months out?

9 **MR. DURKIN:** I would be surprised if we could get to
10 trial within 18 months. I mean, maybe we could shoot for 12,
11 but I think -- in my experience -- I don't think we've gotten
12 one to trial in less than 18 months.

13 **THE COURT:** Okay.

14 **MR. DURKIN:** And that's for a number of reasons. I
15 mean, the discovery is often voluminous, and there's an issue
16 of protective order we can discuss later, but you get into
17 issues like that.

18 The other reason I would be hesitant to set a trial date
19 here is that at least off the top of my head, and based on what
20 I've read so far about this case, there's actually been quite a
21 bit of information in the public domain about this case and the
22 camps that she was at. She was at an ISIS prison camp where
23 she was tortured. She was also at a Syrian-Kurdish refugee
24 camp.

25 There may be some significant Rule 15 depositions that

1 have to be taken and that gets into not just the issue of
2 whether they can be taken but how they would be taken, where
3 they would be taken, so -- I mean, I -- if you want -- if
4 it's -- if everybody is more accustomed to having a trial date, I
5 would suggest we go out about 18 months then.

6 **THE COURT:** I'm imperfect with it.

7 **MR. DURKIN:** I doubt we can do it sooner than that,
8 unless I'm wrong. Particularly if -- there appears to be a lot
9 of overseas witnesses that I can think of off the top of my
10 head. Now, whether they're actually locateable, whether they
11 are going to be willing to testify -- unfortunately, that looks
12 like we're going to have to travel to find that out. I do
13 happen to have a very talented overseas -- I have an
14 investigator I've used out of London that we've used on several
15 cases, so he might be able to save us some time. But that's
16 what I would recommend.

17 Whatever the Court's --

18 **THE COURT:** Sure.

19 **MR. DURKIN:** If everybody is more comfortable with a
20 trial date, that's fine with me too.

21 **THE COURT:** All right.

22 Mr. Kolar.

23 **MR. KOLAR:** Your Honor -- and for the record, and I
24 don't think we need to get, you know, into a back and forth --
25 the government understands that some Rule 15 depositions may be

1 called for here. It depends on some potential rulings, and we
2 don't necessarily agree to everything the defense just laid
3 out, but for planning purposes, yes, there's a lot of
4 potential.

5 We wouldn't necessarily object to a status. I wouldn't
6 want to set the status out too, too far. I think the two
7 options would be either setting it in -- over 12 -- between 12
8 and 18 months or potentially a status.

9 The question from the government's perspective on the CIPA
10 filings would be whether or not the Court wants us to wait
11 until all courtroom personnel are cleared before we go down
12 that road; so if the Court's preference is to ensure that not
13 just Your Honor but all the courtroom personnel are cleared as
14 well, then perhaps a reasonable status would be the Court
15 setting it once that's been done.

16 If the Court's ready to proceed with, obviously, the court
17 reporter, but potentially other personnel not cleared, then
18 maybe we have a quicker status.

19 **THE COURT:** How long do those background -- how long
20 does that normally take?

21 **MR. KOLAR:** There was one indication --

22 **THE COURT:** The clear --

23 **MR. KOLAR:** I'm sorry, go ahead.

24 **THE COURT:** The clearance process for, like, my staff
25 and that sort of thing.

1 **MR. KOLAR:** I think we had an e-mail from the
2 Classified Information Security Officer who will be appointed,
3 or one of their colleagues, that predicted potentially 120
4 days. I will say when the trial was set quickly and we didn't
5 know that the defense was comfortable potentially pushing that
6 out, that's a time frame that we pushed back on. We can try to
7 get a firmer answer.

8 **THE COURT:** Four months?

9 **MR. KOLAR:** Yes.

10 **MR. DURKIN:** It is four months plus.

11 **MR. KOLAR:** I would say, Your Honor, we did push
12 back.

13 **THE COURT:** Can you even have this so-called
14 Section 2 hearing prior to that, or is that Section 2 hearing
15 really just setting deadlines where we are not really
16 discussing any classified information?

17 **MR. KOLAR:** We certainly could have a Section 2
18 hearing, Your Honor, where likely part of it is ex-parte, and
19 there may be some motion practice on whether defense views that
20 as appropriate, but where we would set out the types of filings
21 that we would be engaging in in terms of which procedures under
22 CIPA we thought we would be utilizing.

23 But what we wouldn't be able to talk about or inform the
24 Court is the nature of the classified information. So if the
25 Court said, Well, okay, I understand that you are interested in

1 doing Q, Y, and Z but explain to me why as we are formulating
2 the scheduling, that's something we couldn't do without cleared
3 personnel.

4 **THE COURT:** Okay.

5 Why don't we do this, why don't we set it down tentatively
6 for a trial date the first available Monday in 2020, January of
7 2020, and we'll work off of that date. If that ends up being
8 too aggressive, so be it.

9 To the extent you can predict it at this point, Mr. Kolar,
10 how long is the case going to take to try?

11 **MR. KOLAR:** As currently charged, Your Honor, I think
12 we could try this in three weeks. I think we do have a
13 government's case theory that is very narrow and precise right
14 now.

15 **THE COURT:** I assume you have no way of predicting
16 how long the case is going to take at this point?

17 **MR. DURKIN:** Other than I can confidently predict
18 we'll strongly disagree with the narrowness. I see what
19 they're doing even with the dates in the Indictment, and there
20 will be a significant disagreement over that.

21 **THE COURT:** Okay. Meaning there was a whole bunch of
22 things that occurred prior to this narrow window that --

23 **MR. DURKIN:** Both prior and after.

24 **THE COURT:** Okay. All right. Well, that's what
25 we'll do, we'll just set it for trial in that first -- I don't

1 know -- I don't have a 2020 calendar in front of me.

2 **MR. DURKIN:** January 6, Judge?

3 **THE COURT:** Is that the first Monday in 2020?

4 Noel, are you on our calendar right now?

5 **DEPUTY CLERK:** Yes.

6 **THE COURT:** Is there anything set?

7 **DEPUTY CLERK:** No.

8 **THE COURT:** Okay. We'll set it down for, just to be
9 safe, how about six weeks, just block that off, and then as
10 those dates come closer and as the litigation proceeds, we'll
11 be able narrow that or hone in on the real length here. I do
12 like to have a trial date just so I'm not losing track of the
13 case and it just doesn't kind of get away from us. It gives
14 everybody something to work towards.

15 So to have another status, what are we thinking, about 45
16 days, something like that?

17 Does that make sense to you, Mr. Kolar?

18 **MR. KOLAR:** Your Honor, I think that makes sense, and
19 we can ask the CISOs, the Classified Information Security
20 Officers, for an update on the clearances at that time, and we
21 can potentially file something maybe under seal with the Court
22 getting that answer so the Court can decide whether you want to
23 keep that schedule or move it to whenever the clearances are
24 complete.

25 **THE COURT:** Okay.

1 **MR. DURKIN:** Judge, could I inquire of Mr. Kolar. We
2 think we're going to agree, with one reservation, to the
3 protective order today; but can we get some idea of what the
4 volume of discovery is we are going to receive in the next
5 week -- today and --

6 **THE COURT:** That was on my list here to ask them.
7 What are we talking about in boxes of discovery or what have
8 you?

9 **MR. KOLAR:** So, Your Honor, I believe there are two
10 separate but related questions. I think the Court is asking
11 about the overall volume, and I think Mr. Durkin was asking
12 about what's kind of ready to be tendered now pending the
13 protective order.

14 The overall volume we do expect to be in the tens of
15 thousands of pages and a number of recordings. The volume
16 today is going to be several hundred, probably close to a
17 thousand pages, and some recordings. And we will -- we've been
18 working with multiple entities to ensure that we're getting the
19 materials in a form that they can be turned over. Obviously,
20 there will be additional discovery that will be held pending
21 the CIPA litigation.

22 **MR. DURKIN:** Could I also ask whether the
23 tape-recordings have draft transcripts yet, or are they just
24 the tape-recordings?

25 **MR. KOLAR:** For these recordings, we do not have

1 transcripts at this time.

2 **THE COURT:** They are all in, I assume, in English.

3 **MR. KOLAR:** Yes. I believe there's some background
4 conversation in Arabic, but the participants are primarily
5 English.

6 **THE COURT:** And do you have the -- is the defendant
7 on tape in some of these conversations?

8 **MR. KOLAR:** Yes, Your Honor.

9 **THE COURT:** Okay. Have they been notified who
10 individual A and individual B are that are identified in the
11 Indictment?

12 **MR. DURKIN:** Yes.

13 **MR. KOLAR:** Yes, Your Honor.

14 **THE COURT:** So you do have that information?

15 **MR. DURKIN:** (Nodding head in the affirmative.)

16 **THE COURT:** All right. So about 45 days for us to
17 meet again, Mr. Durkin?

18 **MR. DURKIN:** I think -- I think that might be a
19 little premature, but could we defer that until we discuss the
20 appointment of Mr. Herman and some other practical things?

21 **THE COURT:** Sure.

22 **MR. DURKIN:** I can give you a better answer then.

23 **THE COURT:** Sure.

24 I want to take that under advisement though. I just got
25 it today, frankly -- or looked at it today, so I really haven't

1 had a chance to study it. This is the request for the second
2 CJA lawyer that you are getting at?

3 **MR. DURKIN:** Yes.

4 **THE COURT:** In all likelihood, I'm going to agree
5 with it, but I want to have a chance to study it, frankly.

6 **MR. DURKIN:** There are a couple of issues related to
7 that. I had discussed with Mr. Flynn -- while we haven't done
8 it in any of the cases we've been in, and we've been in, I want
9 to say this may be our tenth, in other cases, particularly
10 those on the East Coast -- they generally put together budgets
11 on CJA.

12 We're not always appointed. We've only been appointed on
13 a couple cases. We do some of them pro bono, but it -- we will
14 probably be presenting to the Court a budget, particularly in
15 light of the overseas travel.

16 And you'll have to forgive me. I'm a little -- I've never
17 done one before, so I make take a while. I've seen some.
18 They're, essentially, Excel spreadsheets with a breakdown of
19 certain -- you know, we anticipate -- and the reason I asked
20 about the phone calls --

21 **THE COURT:** Can you get into the microphone there,
22 Mr. Durkin.

23 **MR. DURKIN:** I said the reason I asked about the
24 phone calls is that we may have to ask for the appointment of a
25 clerk, and I think you have to get permission to have a clerk

1 do transcripts or review the tapes, so there will be something
2 like that.

3 But 45 days is fine with us. The only problem with 45
4 days, Mr. Herman reminds me, we're starting a National Security
5 Trial the Monday after Thanksgiving, which I believe is the
6 26th, and that's the Daoud case from the Seventh Circuit, you
7 might have seen that case. It's a 2012 case. He was declared
8 incompetent and is now competent. So if we could do it
9 either -- I hope we could do it before that date.

10 **THE COURT:** Yeah. Here is what I'm going to do, I
11 ask you to get with Noel after the hearing today, both sides,
12 and she'll get you a date that's conducive for both people's
13 schedule for another status.

14 **MR. DURKIN:** That's fine.

15 **THE COURT:** On the budgeting issue, those are,
16 frankly, things that I take up ex-parte --

17 **MR. DURKIN:** Okay.

18 **THE COURT:** -- outside the presence of the
19 government, and so I would request you file it in the form of a
20 motion. I will do an order requiring a budget. We have done
21 these a number of times in the past, usually in death penalty
22 cases is where we require that kind of budgeting, but it does
23 strike me that this case would also -- that would be useful.
24 And it's your effort to just give us your best estimate, you
25 are not bound to it, but it is your best estimate --

1 **MR. DURKIN:** That's fine.

2 **THE COURT:** -- of how you are going to proceed on the
3 case and what the cost's going to be. If you need the
4 assistance of paralegals, you can also make that request; and
5 we'll deal with it forthwith.

6 There's one other pending ex-parte motion before me. I've
7 issued the order today on another issue that you had raised,
8 but I don't want to talk about it at this point.

9 Here's what will be helpful to me, and so I'm not
10 springing it on you, maybe at the next status hearing I would
11 ask the government to come prepared to kind of really handhold
12 me through, and the defense as well since you all have
13 experience on this, how do these work in a pragmatic way. Just
14 give me sort of a "how to," predicting going forward, you know,
15 this CIPA process. Because I have been here 16 years. I've
16 never laid eyes on it, so that's going to be helpful to me.

17 I've read the statute. I glanced at some other material
18 that we just pulled off of Westlaw, but what I am looking for
19 is a practical "walk me through what I can expect here in the
20 next 18 to 24 months" kind of discussion, and we'll do that at
21 our next hearing, okay.

22 **MR. DURKIN:** Be prepared to have your mind numbed.

23 **THE COURT:** It is already.

24 **MR. KOLAR:** Your Honor, we did discuss with our
25 colleagues in DC and FBI and some of the people who hold the

1 classified information what we could say today, and we would be
2 ready to walk through, in an ex-parte proceeding, kind of the
3 steps and the specific CIPA provisions that we anticipate with
4 what we've already seen. I'm not saying we have to do that
5 today, but we're certainly ready to do some of the --

6 **THE COURT:** Yeah, and I'm not even talking about
7 specific to Ms. Elhassani. I'm just talking in a very general
8 sense, to the extent you can do that, here's how this works.
9 That's going to be helpful to me. And maybe it's in the form
10 of, if you want to put something in writing, just a memorandum
11 for the Court of here's the process. But let's hold off on
12 that. I don't want to create work here.

13 **MR. DURKIN:** I'm not trying to be difficult either
14 but we would object to any ex-parte -- we're happy to
15 participate in that with the Court, but we have objected in the
16 past even to procedures where it's discretionary for the Court
17 to do things ex-parte. So I don't want my silence to be
18 acquiescence to their giving you anything ex-parte yet, other
19 than I think it's Section 4 and there's a couple other sections
20 that they can do that under.

21 **THE COURT:** Okay. Fair enough.

22 What else are we going to talk about today? You got this
23 protective order you need to get worked out?

24 **MR. KOLAR:** Your Honor, we do have a draft protective
25 order that I believe defense has indicated that they have one

1 issue with we're going to try to work out. But just so that
2 things can get advanced, they were going to agree to it today.
3 I can either e-mail it to your chambers or Judge Martin's.

4 And then we also had the -- I don't think a finding has
5 officially been made on the complex case order. We did submit
6 a draft order, I believe, to Judge Martin's chambers, but we
7 can certainly forward that on to Ms. Collins as well.

8 **THE COURT:** Yeah, I'm going to deem the case complex
9 under 18 U.S.C. 3161(h)(7)(E)(2). And send the form of order
10 to us, and we'll go ahead and get it entered.

11 So what are the issues that you have with their proposed
12 protective order? Is this stuff that you need the assistance
13 of the Court on, or you need to work it out?

14 **MR. DURKIN:** No, no. I think I just want to put it
15 of record so -- we may have to raise it later. We're agreeing
16 to it now so we can get the discovery, but -- do you have a
17 copy of the --

18 **THE COURT:** I don't think I do.

19 Did you serve a copy on the Court yet?

20 **MR. KOLAR:** No, Your Honor. We were trying to work
21 it out with the parties. I have a copy.

22 **THE COURT:** Do you mind giving me a copy, Josh?

23 **MR. KOLAR:** Absolutely, Your Honor.

24 **THE COURT:** What page are you on?

25 **MR. DURKIN:** Judge, page 3, six lines down, at the

1 end of the line, "The defendant may view general discovery
2 materials in the presence of her counsel of record but is not
3 permitted to retain such copies." That sentence we're going to
4 try to convince the government -- or they may see whether they
5 can change that.

6 We have had other protective orders that the National
7 Security Division has authorized that had permitted us to leave
8 the documents with the defendant, mainly because it would be
9 inordinately -- it would be a big waste of time and an extreme
10 cost to the Court if I had to have a lawyer sit there while she
11 reads every piece of discovery.

12 And I think we can -- I think we'll resolve it, but I just
13 want to reserve our right to -- the agreement says it's all
14 subject to modification, so...

15 **THE COURT:** Mr. Kolar.

16 **MR. KOLAR:** That's correct, Your Honor. It was an
17 issue that defense raised today right before court, and I --
18 frankly, in hearing it, it wouldn't be in anyone's interest to
19 force an attorney to sit there as she reviews thousands of
20 pages and, obviously, has a right to review all the discovery.

21 So what I think we talked about was, essentially, giving
22 us a little bit of time to work with the marshals.

23 **THE COURT:** How does that work? Do you have to set
24 up some secured location for her to do that and --

25 Where is she being held at by the way? Is she in the MCC?

1 **MR. DURKIN:** Porter County.

2 **THE COURT:** Porter County.

3 **MR. KOLAR:** And I believe, Your Honor, the issue is,
4 unlike some other cases, I do think FBI and some of the holders
5 of this material would be very reticent to allow it in a
6 situation where, essentially, anyone could get access to it
7 within the facility, but I don't know what we might be able to
8 work out with the marshals. We are hoping to enter the
9 protective order. It's a valid point that defense counsel is
10 raising and just try to work towards some type of resolution.

11 **MR. DURKIN:** Judge, it may be worth your while, just
12 take a look at paragraph -- the next page, on page 4. In the
13 middle of the first paragraph, it reads: "The defendant" --
14 there's two separate kinds of discovery, general and sensitive,
15 and the sensitive, as it says here, "The defendant may view
16 sensitive discovery materials in the presence of her counsel of
17 record but is not permitted to retain any such copies."

18 That's kind of the same issue, and I think it will depend
19 on how much sensitive versus general there is.

20 **THE COURT:** I guess what I'm not understanding is in
21 these other cases where this has been removed, is this corpus
22 of documents held by the marshal service --

23 **MR. DURKIN:** No.

24 **THE COURT:** -- and she's given access in the jail to
25 review them, or does she actually have them in her cell?

1 **MR. DURKIN:** Mr. Herman says it's his understanding,
2 and I think he's correct, that at the MCC, for example, they
3 put it in a footlocker in her -- in defendant's cell or room or
4 whatever it is. I don't know how they do it at Porter County.

5 But I think one of the issues the government wants to talk
6 to the marshals about is whether it would be possible to -- you
7 know, when she's -- I know sometimes at the MCC they let them
8 go into a separate room with computers and things like that, so
9 it may be that there's a way to work out that she can get
10 access to the materials and then they collect it or they lock
11 it up, I don't know.

12 But that's -- that would be our recommended solution
13 because I understand the government's concern. And, frankly, I
14 don't -- that's a concern of ours too. I don't want her
15 documents -- I don't want any of my client's documents sitting
16 anywhere where some other inmate can review them, but I think
17 it's particularly important in a case like this.

18 **THE COURT:** I'll hold off on entering the protective
19 order until the government is able to get some answers about
20 how they can meet this --

21 **MR. DURKIN:** We would prefer to get the discovery, so
22 I'm willing to agree to this today.

23 **THE COURT:** Subject to this being revisited?

24 **MR. DURKIN:** Yes.

25 **THE COURT:** All right. And if you can't agree, then

1 it will be subject to motions that you can file with the Court.

2 **MR. DURKIN:** That's fine.

3 **THE COURT:** So we'll go ahead and enter the
4 protective order that I have before me, the stipulated
5 protective order, subject to this caveat that we just discussed
6 on the record, and then the government can immediately turn
7 over the discovery that they have now subject to that
8 protective order. And if this, sort of, blip here can't be
9 resolved, then I just ask you all to file a motion to amend the
10 protective order and I'll sort it out at that point.

11 **MR. DURKIN:** That's fine.

12 **THE COURT:** Okay. What else do we need to talk
13 about?

14 Mr. Kolar, anything from your perspective?

15 **MR. KOLAR:** Nothing from the government, Your Honor.
16 We are ready to talk a little bit more in-depth on CIPA and,
17 kind of, the procedures, but I think the Court was indicating
18 the forthcoming status would be the appropriate time to do
19 that. We'll be ready then.

20 **THE COURT:** Okay.

21 Mr. Durkin, anything else from your perspective?

22 **MR. DURKIN:** One other issue, Judge, and perhaps I
23 could give you more information. It is related to the ex-parte
24 motion that's pending for services.

25 Dr. Xenakis -- and the government is aware of this --

1 visited with the defendant. I was with him, I think it was --
2 time flies when you're having fun -- Tuesday maybe. And he is
3 concerned about whether she can get some medication for anxiety
4 and depression as part of what he believes is a post-traumatic
5 stress disorder from the events over there.

6 He's a former military brigadier general, retired army
7 psychiatrist, who has a lot of experience. I met him in
8 Guantanamo in the military commissions, and he's got
9 considerable experience. He's worked with us on maybe half a
10 dozen cases now.

11 He is -- I spoke with him as late as this morning, and he
12 believes that she is in need of some type of antidepressant,
13 antianxiety medication. And he would need further -- some
14 further testing to be more specific, which is what I wanted to
15 talk to you about later; but it would probably be -- he said
16 that it would be even helpful if the Court could order someone
17 to look at her.

18 I know the nurse -- she has talked to nurses, and the
19 nurses were concerned at one point and gave her some breathing
20 instructions. But she has not had -- she has not seen a
21 doctor, and he believes that even -- it was his belief,
22 Dr. Xenakis's belief, that anybody that would see her would
23 probably order Lexapro or some type of mild antidepressant to
24 start. He said that would even help.

25 **THE COURT:** What are you looking for me to do? Do

1 you want me to issue an order saying that --

2 **MR. DURKIN:** I know that you can't order anybody to
3 do anything in the Bureau of Prisons or whatever; but if you
4 could simply enter an order asking that the defendant be
5 provided with a mental health examination, I think that would
6 help.

7 If we discuss the pending motion, that might solve it too
8 but I don't know how quickly.

9 **THE COURT:** Okay.

10 Do you want to say anything about any of that, Mr. Zanzi
11 or Mr. Kolar?

12 **MR. DURKIN:** I think they know what motion I'm
13 talking about.

14 **MR. KOLAR:** If it's easier, Your Honor, we could
15 certainly excuse ourselves.

16 **MR. DURKIN:** It doesn't need to be -- we've told them
17 about it. It's simply Dr. Xenakis.

18 **THE COURT:** You just told them what the nature --

19 **MR. DURKIN:** Right. And it's his opinion -- there's
20 no secret to this. It's his opinion that he needs -- in order
21 to further evaluate her, he needs neuropsychology --
22 neuropsychological testing done, and that's what we're going to
23 be asking you for.

24 **THE COURT:** Yeah. And I've granted the motion.
25 That's what I was alluding to earlier.

1 **MR. DURKIN:** Okay.

2 **THE COURT:** And I'll fashion some order just
3 instructing the marshals to have her undergo a psychological
4 examination.

5 **MR. DURKIN:** Thank you.

6 **THE COURT:** Beyond that, that's up to them; that's up
7 to them and it's up to the warden at Porter County Jail.

8 **MR. DURKIN:** Porter County has been very good, so I
9 can't -- can't say enough about them. It's a very
10 user-friendly place, and they were very supportive of bringing
11 Dr. Xenakis in.

12 Could we file a separate motion then as soon as I get the
13 examiner on the psychological testing so we'll get authority
14 for that as well?

15 **THE COURT:** Yes. Yeah. Again, file that ex-parte.
16 Anything relating to CJA, that's what I ask you to do.

17 Okay.

18 **MR. DURKIN:** I think that's -- could I speak with
19 Mr. Herman?

20 **THE COURT:** Yeah, sure.

21 **MR. DURKIN:** That's fine.

22 **THE COURT:** So don't leave before you talk to Noel.
23 She'll get you another date hopefully a week before
24 Thanksgiving or a couple weeks before that, and I really want
25 to be prepared at that hearing to really get this thing kind of

1 on track and hopefully, you know, have -- I want to get some
2 dates to you all and then get this thing teed up.

3 **MR. DURKIN:** The only other thing I'd ask, Judge, on
4 Document No. 26, the unopposed motion for additional counsel,
5 if that could be *nunc pro tunc* when you enter it. He's been
6 with me since the day she was arrested.

7 **THE COURT:** Oh, sure. Yeah. What was the date just
8 so when I --

9 **MR. KOLAR:** Taken into custody July 24th,
10 Your Honor, but I believe counsel was July 25th.

11 **THE COURT:** All right. So if we grant that we want
12 to grant it effective July 25th.

13 **MR. DURKIN:** Thank you.

14 **THE COURT:** Okay. All right. One second.
15 Denise.

16 (Discussion held off the record.)

17 **THE COURT:** All right, Guys. We'll see you in a
18 couple months. Thanks.

19 **MR. DURKIN:** Thanks.

20 **MR. KOLAR:** Thank you, Judge.

21 (A recess was had at 11:27 a.m.)

22 * * *

23 (End of requested transcript.)

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CERTIFICATE

I, Stacy L. Drohosky, certify that the foregoing is a true and correct transcript from the record of proceedings in the above-entitled matter.

Date: October 12, 2018

S/Stacy L. Drohosky
S/STACY L. DROHOSKY
Court Reporter
U.S. District Court

DEPUTY CLERK: [3] 2/2 9/4 10/8 MR. DURKIN: [47] MR. KOLAR: [29] MR. ZANZI: [1] 2/20 MS. FUTCHER: [2] 2/22 3/1 THE COURT: [71]	above [1] 26/4 above-entitled [1] 26/4 absent [1] 10/13 Absolutely [1] 17/23 access [3] 19/6 19/24 20/10 accustom [1] 6/4 acquiescence [1] 16/18 actual [1] 3/25 actually [3] 5/20 6/10 19/25 additional [2] 11/20 25/4 addressed [1] 3/17 advanced [1] 17/2 advisement [1] 12/24 affirmative [1] 12/15 after [3] 9/23 14/5 14/11 again [2] 12/17 24/15 aggressive [1] 9/8 agree [7] 3/12 7/2 11/2 13/4 17/2 20/22 20/25 agreed [2] 3/11 3/12 agreeing [1] 17/15 agreement [1] 18/13 ahead [3] 7/23 17/10 21/3 all [19] 2/3 3/6 3/16 6/21 7/11 7/13 9/24 12/2 12/16 13/4 15/12 18/13 18/20 20/25 21/9 25/2 25/11 25/14 25/17 allow [1] 19/5 alluding [1] 23/25 along [2] 2/13 2/15 already [2] 15/23 16/4 also [8] 1/25 2/24 3/21 5/23 11/22 14/23 15/4 17/4 always [1] 13/12 am [1] 15/18 amend [1] 21/9 AMERICA [1] 1/3 another [5] 5/4 10/15 14/13 15/7 24/23 answer [3] 8/7 10/22 12/22 answers [1] 20/19 antianxiety [1] 22/13 anticipate [2] 13/19 16/3 antidepressant [2] 22/12 22/23 anxiety [1] 22/3 anybody [2] 22/22 23/2 anyone [1] 19/6 anyone's [1] 18/18 anytime [1] 3/23 anywhere [1] 20/16 appearance [3] 2/12 2/15 2/25 appears [1] 6/8 appointed [3] 8/2 13/12 13/12 appointment [3] 2/15 12/20 13/24 appropriate [2] 8/20 21/18	Arabic [1] 12/4 are [30] army [1] 22/6 arrested [1] 25/6 ask [10] 4/11 10/19 11/6 11/22 13/24 14/11 15/11 21/9 24/16 25/3 asked [2] 13/19 13/23 asking [5] 3/24 11/10 11/11 23/4 23/23 assistance [2] 15/4 17/12 assume [2] 9/15 12/2 attorney [1] 18/19 Attorney's [1] 1/14 authority [1] 24/13 authorized [1] 18/7 available [1] 9/6 aware [1] 21/25 away [1] 10/13	cell [2] 19/25 20/3 certain [1] 13/19 certainly [1] 8/17 16/5 17/7 23/15 CERTIFICATE [1] 26/1 certify [1] 26/2 chambers [2] 17/3 17/6 chance [2] 13/1 13/5 change [1] 18/5 charged [1] 9/11 Chicago [2] 1/19 1/23 CIPA [8] 4/3 4/24 7/9 8/22 11/21 15/15 16/3 21/16 Circuit [1] 14/6 circumstance [1] 4/19 CISOs [1] 10/19 CJA [3] 13/2 13/11 24/16 Clark [1] 1/19 classified [5] 8/2 8/16 8/24 10/19 16/1 clear [1] 7/22 clearance [1] 7/24 clearances [2] 10/20 10/23 cleared [5] 5/1 7/11 7/13 7/17 9/2 clerk [2] 13/25 13/25 client's [1] 20/15 close [1] 11/16 closer [1] 10/10 Coast [1] 13/10 colleagues [2] 8/3 15/25 collect [1] 20/10 Collins [1] 17/7 comfortable [2] 6/19 8/5 commissions [1] 22/8 competent [1] 14/8 complete [1] 10/24 completely [1] 4/13 complex [3] 3/6 17/5 17/8 complicated [1] 4/14 computers [1] 20/8 concern [2] 20/13 20/14 concerned [2] 22/3 22/19 conductive [1] 14/12 confidently [1] 9/17 considerable [1] 22/9 considering [1] 3/24 continue [1] 3/20 conversation [1] 12/4 conversations [2] 3/14 12/7 convince [1] 18/4 copies [2] 18/3 19/17 copy [4] 17/17 17/19 17/21 17/22 corpus [1] 19/21 cost [1] 18/10 cost's [1] 15/3 couldn't [2] 3/10 9/2 counsel [7] 3/14 3/15 18/2 19/9 19/16 25/4 25/10	County [5] 19/1 19/2 20/4 24/7 24/8 couple [5] 3/6 13/13 16/19 24/24 25/18 course [1] 2/18 Court's [3] 6/17 7/12 7/16 courtroom [2] 7/11 7/13 CR [2] 1/5 2/8 create [1] 16/12 currently [1] 9/11 custody [2] 2/16 25/9
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