

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
HONORABLE DAVID O. CARTER, JUDGE PRESIDING

- - - - -

UNITED STATES OF AMERICA,)
) CERTIFIED
Plaintiff,)
)
vs.) No. 8:15-CR-0060-DOC
) Item No. 2
1) NADER SALEM ELHUZAYEL;)
2) MUHANAD ELFATIH M.A. BADAWI,)
)
Defendants.)
_____)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
Hearing on Motions
Santa Ana, California
Thursday, May 5, 2016

Debbie Gale, CSR 9472, RPR, CCRR
Federal Official Court Reporter
United States District Court
411 West 4th Street, Room 1-053
Santa Ana, California 92701
(714) 558-8141

1 **APPEARANCES OF COUNSEL:**

2 FOR THE UNITED STATES OF AMERICA:

3 DEPARTMENT OF JUSTICE
4 OFFICE OF THE UNITED STATES ATTORNEY
Criminal Division
5 BY: Judith A. Heinz
Assistant United States Attorney
6 312 North Spring Street
15th Floor
7 Los Angeles, California 90012
213-894-7280
8 USACAC.Criminal@usdoj.gov

9 DEPARTMENT OF JUSTICE
10 OFFICE OF THE UNITED STATES ATTORNEY
Criminal Division
11 BY: Deirdre Z. Eliot
Assistant United States Attorney
411 West 4th Street
12 Suite 8000
Santa Ana, California 92701
13 714-338-3500
USACAC.SACriminal@usdoj.gov

14 DEPARTMENT OF JUSTICE
15 OFFICE OF THE UNITED STATES ATTORNEY
General Crimes Section
16 BY: Julius J. Nam
Assistant United States Attorney
17 312 North Spring Street
Suite 1200
18 Los Angeles, California 90012
213-894-4491
19 julius.nam@usdoj.gov

20
21 FOR DEFENDANT NADER SALEM ELHUZAYEL:

22 Pal A. Lengyel-Leahu (*retained*)
LAW OFFICES OF PAL A. LENGYEL-LEAHU
23 360 East First Street
Suite 609
24 Tustin, California 92780
714-497-6813
25 plitigate@aol.com

1 **APPEARANCES (Continued:)**

2 FOR DEFENDANT MUHANAD ELFATIH M.A. BADAWI:

3 Katherine T. Corrigan (*CJA appointment*)
4 CORRIGAN WELBOURN AND STOKKE APLC
5 4100 Newport Place
6 Suite 550
7 Newport Beach, California 92660
8 949-251-0330
9 kate@cwsdefense.com

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

PROCEEDINGS	PAGE
Appearances	5
Discussion re health and weight of Defendant Badawi	5
Discussion re Defendant Elhuzayel incident	19
Further discussion re defendant badawi	21
Defendant Badawi's FISA motion	27
Argument by Mr. Lengyel-leahu	32
Argument by Ms. Heinz	34
Response by Ms. Corrigan	38
Rebuttal by Mr. Lengyel-Leahu	44
Rebuttal by Ms. Heinz	47
Defendant Elhuzayel's Motions to Dismiss	57
Response by Ms. Heinz	64
Response by Mr. Lengyel-Leahu	67
Defendant Elhuzayel's Second Motion to Dismiss	78
Response by Ms. Heinz	78

1 **SANTA ANA, CALIFORNIA, THURSDAY, MAY 5, 2016**

2 **Item No. 2**

3 (8:54 a.m.)

08:54 4 THE COURT: First, I'll call the matter of
5 Elhuzayel and Counsel Lengyel-Leahu; and Ms. Corrigan and
6 Mr. Badawi.

08:55 7 **APPEARANCES**

08:55 8 MS. CORRIGAN: Good morning, Your Honor.

08:55 9 THE COURT: And the government is represented --
10 although I know you, the record doesn't, so, please.

08:55 11 MS. HEINZ: Good morning, Your Honor. Judith
12 Heinz on behalf of the United States.

08:55 13 MS. ELIOT: Good morning, Your Honor. Deirdre
14 Eliot.

08:55 15 THE COURT: Okay. Thank you.

08:55 16 MR. NAM: Good morning, Your Honor --

08:55 17 THE COURT: Oh, I'm sorry. My apologies.

08:55 18 MR. NAM: That's fine, Your Honor. Julius Nam for
19 the United States, as well.

08:55 20 THE COURT: Thank you very much. It's a pleasure.

08:55 21 I want to note that the family's present. I see
22 the mother, the brothers -- I don't know you personally, but
23 I want to thank you for your presence today.

08:55 24 **DISCUSSION RE HEALTH AND WEIGHT OF DEFENDANT BADAWI**

08:55 25 THE COURT: Yesterday, the marshal came to me and

1 said that the records show that Mr. Badawi has decreased his
2 weight from 134 to 123. I note that that was informal
3 discussion. I asked to be notified if there was a
4 significant weight drop. There's been a significant weight
5 drop.

08:56 6 Now I'll make a note for the record that
7 Mr. Badawi looks substantially different to the Court today
8 than he did on the last occasion; although, I'm not making a
9 record of incompetency.

08:56 10 So let me speak to the family for a moment because
11 this Court's deeply appreciative of your efforts on his
12 behalf. The prior order that I had set forth on
13 December 14th ordered involuntary force-feeding. I'm going
14 to read that for a moment, and take the time so we're all on
15 the same page, although I know you have the order.

16 *(Reading:)*

08:57 17 *"The Court has received reports that*
18 *Defendant Muhanad Elfatih Badawi has*
19 *recently experienced significant weight*
20 *loss while in custody. Since being held*
21 *in custody, Mr. Badawi, at times,*
22 *refused to eat anything and at other*
23 *times ate only minimally. He has also*
24 *only had a minimal amount of liquids*
25 *during this time.*

08:57 1 "On December 10th and 14th, 2015, the
2 Court considered testimony and evidence
3 regarding Mr. Badawi's current medical
4 condition while in custody at the Santa
5 Ana Jail facility and at the
6 Metropolitan Detention Center in
7 Los Angeles. On December 14th, 2015,
8 Eliezer Ben-Shmuel, the supervising
9 attorney with the Department of Justice,
10 Federal Bureau of Prisons, submitted a
11 proposed order requesting approval for
12 Badawi to be involuntarily fed, which
13 was the BOP Proposed Order, Docket 61.

08:58 14 "The Court bases the following order on
15 both the filings from evidentiary
16 hearings and representations made in the
17 BOP Proposed Order.

08:58 18 "At these December 10 and 14th, 2015,
19 hearings, MDC personnel, including the
20 prison's warden, chief medical officer,
21 chief psychologist, as well as the
22 Federal Bureau of Prisons Medical
23 Director for the Western Region, James
24 Pelton, made the following
25 representations to the Court:

08:58 1 *"Upon his arrest, Mr. Badawi was*
2 *initially held at the Santa Ana City*
3 *Jail. He was transferred to the*
4 *Med- --MDC on November 23rd, 2015."*

08:58 5 *"Mr. Badawi's height is 6 feet, 4*
6 *inches. It was initially represented to*
7 *the Court that Badawi was 140 or more*
8 *pounds upon his intake at Santa Ana City*
9 *Jail. On November 23rd, 2015,*
10 *Mr. Badawi weighed 118. On*
11 *December 10th, 2015, Badawi weighed*
12 *110.8 pounds. As of December 12th,*
13 *2015, Badawi's weight had dropped to*
14 *190.6 pounds." (Verbatim as read.)*

08:59 15 Now that's an incomplete record because, at one
16 time it was represented to me, in the numerous phone calls
17 between the warden and myself, literally, over the Christmas
18 period, through the New Years, et cetera, he dropped to
19 105 pounds. But that's the official record. I'll stay with
20 109.8, but I'll inform you: He got as low as 105.

08:59 21 *"Since the hearing on December 10, 2015,*
22 *Badawi has refused to drink and*
23 *therefore became dehydrated while at*
24 *MDC. Badawi has also only eaten*
25 *minimally since that hearing. On*

1 December 12th, 2015, Badawi was
2 transported to White Memorial Medical
3 Center for treatment for his
4 dehydration. At White Memorial Medical
5 Center, medical professionals attempted
6 to give Badawi fluids through an IV, but
7 he ripped the IV out of his arm.

09:00

8 "On December 14, 2015, Dr. James Pelton
9 testified that the Bureau of Prisons
10 uses an evidentiary-based practice
11 guideline to determine when inmates need
12 to be involuntarily fed. Specifically,
13 Dr. Pelton stated that involuntary
14 feeding is considered for individuals
15 with Body Mass Index of under 17.
16 Additionally, Dr. Pelton stated that
17 standard BOP protocol is to weigh three
18 factors in deciding whether involuntary
19 feeding is necessary: The safety of the
20 inmate, the inmate's rights to protest,
21 up to the point of medical necessity,
22 and the safety of the institution."

09:00

23 "At the December 14th, 2015, (sic)
24 Dr. Pelton stated that Badawi's BMI is
25 currently under 14. Dr. Pelton also, in

1 his medical opinion, recommended
2 involuntary feeding should occur in this
3 case. Dr. Pelton based this
4 determination on evaluation of Badawi's
5 medical condition and the BOP protocol
6 to determine whether involuntary feeding
7 should occur.

09:01

8 "MDC officials have conveyed to the
9 Court that this BMI marks the defendant
10 as being significantly underweight and
11 places him in an increased risk of organ
12 damage, muscle loss, and damaged joints.
13 Further, the defendant's repeated
14 episodes of dehydration place him in
15 danger of cerebral edema, seizures,
16 hypovolemic shock, kidney failure, coma,
17 and death.

09:01

18 "Based on the forgoing, the Court
19 ordered, at the December 14th hearing,
20 that Badawi is to be involuntarily fed.

09:01

21 "It is further ordered that:

09:01

22 "First, if the Medical Director of the
23 Metropolitan Detention Center
24 determines, to a reasonable degree of
25 medical certainty, that Badawi is at

1 *risk of near-term death or great bodily*
2 *injury in the absence of intervention or*
3 *has become incompetent to give consent*
4 *or make medical decisions, involuntary*
5 *feeding or other life-saving measures*
6 *may continue without need of further*
7 *Court order.*

09:02

8 *"Second, all such feeding will be*
9 *undertaken in conformance with Title 28*
10 *of the Code of Federal Regulations,*
11 *sections 549.60, et seq., Federal Bureau*
12 *of Prisons Program Statement 5562.05,*
13 *Hunger Strikes and the Federal Bureau of*
14 *Prisons' Clinical Practice Guidelines*
15 *for the Medical Management of Inmates on*
16 *Hunger Strike."*

09:02

17 *"Third, per the applicable regulations*
18 *and guidelines, Mr. Badawi should be*
19 *given the opportunity to consume food*
20 *and liquids orally prior to being*
21 *involuntarily fed.*

09:03

22 *"Fourth, this order is not meant to*
23 *limit or override the exercise of sound*
24 *medical judgment by the physicians*
25 *responsible for medical care.*

09:03 1 *"Fifth, the Court will reconvene for a*
2 *hearing on this matter on Wednesday,*
3 *December 16th, 12:00 p.m., in the*
4 *Courtroom 890 in the Roybal Federal*
5 *Building and the U.S. Courthouse in*
6 *Los Angeles." (Verbatim as read.)*

09:03 7 Now that order's still in effect. And what you
8 should know is much of the morning's been consumed, with you
9 patiently waiting, while I've been talking to the captain at
10 MDC.

09:03 11 Warden Shinn is no longer there. He had a rich
12 history concerning this and I think, Ms. Corrigan, that we
13 spoke about your clients (*sic*) between Warden Shinn and
14 myself literally every day starting in December. I don't
15 know if it included New Years, but it was literally on
16 Christmas day also. It's a delicate balance, and I'm going
17 to seek your input and wisdom in just a moment.

09:04 18 First, you heard a lot of testimony from the
19 psychologist that this was manipulative, in her opinion;
20 that he was force-fed on one occasion in December; and after
21 that force-feeding, there was no other involuntary
22 force-feeding.

09:04 23 *(To audience:)* But also, I have to believe and
24 speculate that you, as the family, have been a tremendous
25 help in talking to your brother, and your son. And,

1 therefore, in balancing this, I've made the decision that
2 this case will be tried in Orange County and that the
3 resources will be here from this point forward for this
4 Division in terms of any medical needs that Mr. Badawi
5 needs.

09:04 6 Because, starting a trial under these
7 circumstances, on June 7th, with over 5,000 jury summons
8 going out, over 200 jurors that are going to be necessary
9 for at least a five- or six-week trial -- if you're accurate
10 in your assessment -- is going to put the Court in the
11 position of recessing and sending the gentleman down the
12 road to MDC, back after a forced-feeding -- if there are
13 two-a-day, like I've had to implement in Superior Court
14 before -- and as a presiding judge over there, although the
15 federal system finds this unique, this is not unique to the
16 Superior Courts. It's not an everyday occurrence. But over
17 there, because of the volume and violence that we're not
18 used to here in federal court -- I typically, as a presiding
19 judge, dealt with at least one suicide attempt: Usually
20 across the vein, which was playing. When they went up the
21 vein, it was serious.

09:05 22 And Mr. Badawi's situation is not unique to me.
23 It's unique to the federal court system, though.

09:05 24 I can't afford losing the resources of the family,
25 and the inconvenience of them going to Los Angeles to have

1 contact with their son and brother. He has to stay here.

09:05 2 Number two, this Division should have the medical
3 resources, whether it's by private contract or through the
4 jail contract to undertake force-feeding locally. And I and
5 the other judges are gonna demand that for this Division
6 from now on.

09:06 7 Number three, Mr. Badawi, you placed me in a very
8 unfortunate situation. You're not incompetent. You're
9 getting a little languid at the present time. But I don't
10 see the same stress factors or concern that I had when you
11 dropped to 105 or 109 pounds. And, as I said before, I
12 wouldn't put you in front of the jury.

09:06 13 Today, I would. But I can't afford any further
14 dissipation. You've already proven to me once that you're
15 willing to apparently starve yourself to death. And I can't
16 let that proceed down the road in an emergency condition on
17 each occasion, subject to your whim.

09:06 18 DEFENDANT BADAWI: Thank you.

09:06 19 THE COURT: So, therefore, you're going to stay
20 here because I think that's humane in terms of the family
21 having access.

09:06 22 DEFENDANT BADAWI: It is, Your Honor.

09:06 23 THE COURT: I want your counsel to have access.

09:06 24 You're not going to Los Angeles, except the
25 following: I'm prepared, subject to Ms. Corrigan's input,

1 to send him back to MDC. I don't want a helter-skelter
2 process in Orange County while we set that up. I want
3 Marcelino to proceed in a thoughtful manner. Because, if
4 this occurs during the trial, he'll be force-fed at
5 7:00 o'clock. He'll be back by 9:00 o'clock. He'll be
6 involuntarily force-fed at 4:30 or 5:00. And each time I'll
7 get a report.

09:07 8 I don't think it's appropriate that the Court, by
9 the way, Ms. Corrigan, inflicts an order of involuntary
10 force-feeding and leaves it to the side. I think I need to
11 constantly check in. And if he shows compliance and gains
12 weight back -- but he's not dropping below 123.

09:07 13 So that was why the excessive time was spent this
14 morning, to the detriment of some other counsel and to you
15 waiting patiently in my court. We're prepared to send him
16 to Los Angeles. But I'm prepared to send him there for an
17 indefinite period of time, which will cause some disruption.
18 But if I either have, once again, the assurance or the proof
19 that he's back up to, minimally, 134 -- that's my arbitrary
20 number now 'cause he was 140-something when he came in --
21 um, he's going to stay there up until the time trial.

09:08 22 I'm prepared to bring him back next week. I'm
23 prepared to bring him back the following week. That's up to
24 him. He will be involuntarily force-fed, though.

09:08 25 *(To the defendant:)* And I want you to hear that

1 clearly. And, once that order starts, don't expect my
2 intersession because, with good medical input, if the MDC
3 decides to do that, you'll be force-fed twice a day.

09:08 4 Do you understand me?

09:08 5 DEFENDANT BADAWI: Yeah.

09:08 6 THE COURT: Yes or no?

09:08 7 DEFENDANT BADAWI: Yes.

09:08 8 THE COURT: All right.

09:08 9 DEFENDANT BADAWI: Thank you.

09:08 10 THE COURT: This is going to cease immediately
11 or...

09:08 12 All right. Now, I'm not taking a chance on this.
13 So I'm sending you back to MDC no matter what today. I
14 don't care what you represent to me. I don't care if
15 there's a change'a heart.

09:08 16 And, in all likelihood, they're going to
17 force-feed you today. I want you understood -- I want you
18 to understand that fully and completely. And I'm not going
19 to intercede if they make that decision. But I'm going to
20 rely upon the professionals. So if they decide -- or you
21 decide to voluntarily start (*sic*) eating over a prolonged
22 period of time -- I hope that that doesn't take place. But
23 I will make that order so that MDC isn't criticized. That's
24 my responsibility. And you're not going to diminish any
25 further. But I hope I'm communicating with you.

09:09 1 Counsel, I'm speaking.

09:09 2 MR. LENGYEL-LEAHU: I'm sorry.

09:09 3 THE COURT: Now, Ms. Corrigan, this is uniquely a
4 problem for you, not the co-defendant for a moment.

09:09 5 Your input? You've heard where I'm at
6 tentatively, but always --

09:09 7 No, no. Have a seat.

09:09 8 -- I'm always listening to your wisdom.

09:09 9 MS. CORRIGAN: Well, Your Honor, this is something
10 that Marcelino has brought to my attention earlier this
11 week. I actually met with my client, discussed this with
12 him at the jail. I've also met with Officer Manriquez. And
13 then, this morning -- so the record's clear --
14 Mr. Hazelwood, who's present in the courtroom, was good
15 enough to show an e-mail that had been circulated, which
16 delineates out the weight issues.

09:09 17 THE COURT: By the way, I thought that that would
18 turn around. I thought when he got to 128, it might be a
19 little dehydration. I didn't know if he had diarrhea. I
20 didn't -- so I let that go into the low 120's. We could've
21 acted earlier. I didn't want to be precipitous. so you know
22 now we're at 123 and dissipating quickly.

09:10 23 MS. CORRIGAN: Understood.

09:10 24 And what I can tell the Court is that --
25 obviously, I think the Court can imagine what my advice is

1 to my client. He's indicated to me that he will comply.
2 Obviously, his actions will speak louder than his words.
3 And obvious -- I have the concerns over his health issues.
4 We can't get to where we were back in November and December.
5 Particularly in front of a jury.

09:10 6 But I will defer to the Court, but I do believe
7 that he -- particularly, with the Court now reminding him
8 today of what has been already talked to him about -- his
9 attention hopefully has been snapped. And his family, who
10 is present in the courtroom, I think will continue to
11 encourage him to engage in healthy habits.

09:11 12 THE COURT: So we can all agree, if we can get him
13 back to Orange County, if we can give you, as the family,
14 greater access, I'd like to do that. Just for humane
15 reasons. The young man's presumed to be not guilty. The
16 burden's on the government to prove him guilty.

09:11 17 But, by the same token, I want your involvement.
18 I think it's very humane. I think its helpful for you to
19 see your son, and your brother. I think it's helpful for
20 him in terms of support.

09:11 21 But, under these circumstances, he's going back to
22 MDC today. And how long he's there depends upon his
23 actions. But he has to minimally be 134. That's my
24 bottom-line criteria.

09:11 25 *(To the defendant:)* You're gaining 11 pounds

1 before I ever consider bringing you back. If that's
2 involuntary force-feeding twice a day, that's what will take
3 place.

09:11 4 If this occurs during trial, I will be prepared to
5 have you sent over to a local facility, force-fed, and it
6 will not disrupt the trial. And it'll be done twice a day.

09:12 7 Now, I need to check, Ms. Corrigan, every day,
8 though. I need to make a record, and I'll start calling up,
9 you know, to MDC, as I did before, probably at the end of
10 the day. But I'm not going to bring him up and down the
11 highway now. I think that that's cruel. He needs to remain
12 at the MDC with the staff.

09:12 13 MS. CORRIGAN: Understood, Your Honor.

09:12 14 THE COURT: Okay?

09:12 15 Okay. Mr. Badawi, I don't need any
16 representations from you. I'm not negotiating with you.
17 You've heard it. You haven't heard it from your counsel.
18 You heard it from me. That's the way it is. Your choice.
19 But you are going to trial on June 7th.

09:12 20 **DISCUSSION RE DEFENDANT ELHUZAYEL INCIDENT**

09:12 21 THE COURT: Now, let me turn to the co-defendant.

09:12 22 First of all, we had an incident, Mr. Elhuzayel,
23 on the last occasion where you had a little problem with my
24 deputies, in terms of pinching, and there was some
25 allegations concerning spitting, and I had to bring you in,

1 in a spit-hood and a chair. And then I put you in your
2 present situation.

09:13 3 I choose not to treat you in the same manner, as
4 long as you're well-behaved. Understood?

09:13 5 DEFENDANT ELHUZAYEL: Yeah, yeah.

09:13 6 THE COURT: Okay. No. You don't have to talk to
7 me. Just -- you can grin, but I want you to hear it from
8 me, not your counsel.

09:13 9 But if there's any altercation with my deputies,
10 if there's any alleged spitting, you'll be brought in a
11 spit-hood. You'll be brought down in a "tied-in" chair.

09:13 12 And, right now, I'm going to make a record that
13 I'm going to remain -- have you remain manacled. But I'm
14 going to now order the marshals to put him into the chair
15 with the belly chain, and I'm going to free your hands.

09:13 16 So if we need to remove Mr. Badawi, Marcelino, for
17 security purposes, but -- this is what we did during the
18 Aryan Brotherhood trial for nine months.

09:13 19 So, you're going to have a belly chain that's not
20 viewable to the jury. But I want your hands freed, and
21 we're going to see how you react.

09:14 22 Now, in the past, Counsel -- I want to inform you,
23 Mr. Lengyel-Leahu, I've actually had to protect some of my
24 counsel from the Aryan Brotherhood and Mexican Mafia. Now,
25 you don't know that. But one of my most difficult problems

1 was protecting defense counsel from their own clients.

09:14 2 I don't expect any conflict between you, and I
3 assume that you are in a good and safe condition with your
4 client.

09:14 5 MR. LENGYEL-LEAHU: Absolutely, Your Honor.

09:14 6 THE COURT: Okay. I just wanna check in because I
7 care about my counsel. And, it's funny: It's not the
8 prosecutors or judge, usually, it's the defense counsel that
9 for some reason meets with the disapproval of some'a their
10 clients. I'm very sensitive to that.

09:14 11 I choose not to have him in a restrained
12 condition. And we'll see how he does. But any spitting...

09:14 13 **FURTHER DISCUSSION RE DEFENDANT BADAWI**

09:14 14 THE COURT: Now, next thing is, let me talk to
15 both of you. I've gotta anticipate the worst and hope for
16 the best.

09:15 17 Just like with Mr. Badawi, I'm setting up a
18 process in Orange County so that I can get him force-fed, if
19 we go to trial and this occurs again. I can get 'em back to
20 court. I can do it during the evening. But he's gonna
21 remain local. I think that's more humane in balancing this
22 for the family and for counsel.

09:15 23 I'm going to assume that you're as well-behaved as
24 you are today, unlike the last occasion.

09:15 25 DEFENDANT ELHUZAYEL: Yeah, I mean --

09:15 1 THE COURT: No, no. I don't want to talk to you.
2 I don't want you to say anything.

09:15 3 But if I have an incident like the last occasion,
4 I'll remove you from the court, and I've made provisions to
5 have a television monitor set up in the backroom so that you
6 can view the proceedings. And so you know that the Court's
7 anticipating, but hoping that the following doesn't occur:
8 You'll be able to view the proceedings, but I won't let any
9 witness conclude their testimony until the next recess.

09:15 10 And, although you've been able to view the
11 evidence on a monitor -- that your counsel can take back the
12 evidence and discuss it with you. And, therefore, if you
13 have any input, further -- cross-examination can take place.
14 But no witness will leave, Counsel, if this occurs -- if the
15 worst occurs -- until you've had adequate time to speak to
16 your client.

09:16 17 I'm assuming that this isn't going to occur. But
18 if I have an indication, like the last incident -- hear me
19 out -- yelling, spitting, going after one of my deputies --
20 you're in the back with a nice monitor, and I'll make sure
21 that you have access. So I wanna forewarn you about that.

09:16 22 This trial's going forward on June 7th.

09:16 23 All right. So far, you're well-behaved. Thank
24 you. Hands are in an unmanacled condition.

09:16 25 And we need some civilian clothes for both of

1 these gentlemen, don't we?

09:16 2 MR. LENGYEL-LEAHU: Yes.

09:16 3 MS. CORRIGAN: I have arrangements already for my
4 counsel, Your Honor. That's been taken care of.

09:16 5 THE COURT: Counsel?

09:16 6 MR. LENGYEL-LEAHU: We are arranging for that,
7 Your Honor, yeah.

09:16 8 THE COURT: Okay. In the next appearance, I want
9 'em in civilian clothes, even though the jury hasn't been
10 summoned. In other words, we're back for motions at some
11 point, as well today.

09:17 12 And I believe you have a severance motion also
13 pending, and that's in May.

09:17 14 MS. CORRIGAN: Yes, Your Honor.

09:17 15 THE COURT: You have other motions pending today
16 that I'd like to hear at this time; take them under
17 submission in all likelihood.

09:17 18 I think that's enough of a discussion if -- it's
19 enough of a warning. And, therefore, Counsel, I wanted to
20 speak to each of your clients without a response. I want
21 them to hear that from the Court so they don't think it's
22 coming from you. It's coming from me.

09:17 23 Okay. Counsel, anything further before we hear
24 Ms. Corrigan's motions?

09:17 25 MR. LENGYEL-LEAHU: Just briefly, Your Honor.

09:17 1 The behavior issues that we experienced with my
2 client at the last, uh, court appearance, um, he had
3 indicated to me that there was --

09:17 4 *(Cellphone rings in courtroom.)*

09:17 5 MR. LENGYEL-LEAHU: I'm sorry.

09:17 6 THE COURT: Oh, that's fine. Don't worry about
7 that. I'm not having a seizure over a phone. That's fine.

09:17 8 MR. LENGYEL-LEAHU: Um, he indicated to me that he
9 wasn't quite feeling himself.

09:17 10 THE COURT: Well, we know that.

09:18 11 So do the marshals.

09:18 12 MR. LENGYEL-LEAHU: And --

09:18 13 THE COURT: You're lucky, by the way.

09:18 14 You go after one of the marshals and you might
15 meet -- get greeted with a surprise in terms of
16 self-defense. So let's -- let's put that off to the side.
17 Whatever that reason is, we're starting new.

09:18 18 MR. LENGYEL-LEAHU: Well, I think the reason's a
19 little important, uh, because I got a call from the jail
20 about a week or so later. And they indicated that my client
21 was not being compliant.

09:18 22 And I asked 'em -- I said, "What exactly do you
23 mean?"

09:18 24 And they said, "Well, he's not seeing his doctor
25 and he's not taking his medicines."

09:18 1 And I said, "What medicines is he under?"

09:18 2 And we went and obtained the medical records. And

3 he had been prescribed some psychotropic drugs, which was --

4 I was unaware of; he was unaware of -- and they were having

5 an effect on his behavior.

09:18 6 THE COURT: Was he taking those at the time? In

7 other words, had they come down from MDC?

09:18 8 'Cause your client has been held in Orange County.

09:18 9 MR. LENGYEL-LEAHU: Correct.

09:18 10 THE COURT: Normally, this facility isn't set up.

11 I mean, they can prescribe medication. But usually it takes

12 something from MDC.

09:19 13 So I'm curious how that's occurring. I wasn't

14 informed of that by Warden Shinn.

09:19 15 MR. LENGYEL-LEAHU: And I hadn't been, uh,

16 warned -- warned of it until --

09:19 17 THE COURT: What's the present status? Does he

18 have psychotropic medication?

09:19 19 MR. LENGYEL-LEAHU: None whatsoever.

09:19 20 And we have an expert who's going to evaluate him

21 a little bit today, and look at those medical records a

22 little closer, and give me, uh -- render an opinion about

23 what was going on, who was authorizing it. And I think that

24 would've been the only issue.

09:19 25 Because I have never had any contact with him

1 where there was any of those issues until that one brief
2 period of time. And it may've been a reaction to the drugs
3 that he -- he was being -- he was being fed -- that he
4 didn't realize what they were or what they were for, and the
5 effects that would have on him.

09:19 6 THE COURT: I'm not concerned. We're starting
7 over again. Okay?

09:19 8 But there is a history now; and, as such, you
9 know, I'm going to be aware of that and the marshals are not
10 going to be put in a position of anything other than safety,
11 getting him to court.

09:20 12 But, as you can see, minimally, I'm going to set a
13 record before trial. In all likelihood, your client will
14 remain in a belly-chain, but his hands will be free. The
15 jury can't see him in this condition. I'll take
16 photographs, just -- I did -- like I did with the Mexican
17 Mafia and Aryan Brotherhood so the Circuit can see what's
18 occurring.

09:20 19 With Mr. Badawi, I don't think that that's
20 necessary. I don't think I wanna set that record at the
21 present time, Ms. Corrigan. It seems to be involuntarily
22 (*verbatim*) -- you know, starvation or eating. He doesn't
23 seem to've acted out against the marshals.

09:20 24 MS. CORRIGAN: That's correct.

09:20 25 THE COURT: Okay.

09:20 1 Now, also, before you came over today, the
2 marshals were telling me that they were both well-behaved.
3 So that's why you're not coming in, in a chair, strapped
4 down at the present time, with that kind of drama. I don't
5 wanna set that tone unless it's necessary.

09:20 6 So, Ms. Corrigan, your motions.

09:20 7 MS. CORRIGAN: Thank you, Your Honor. Which
8 motion would you like to start with? The FISA?

09:21 9 THE COURT: FISA.

09:21 10 **DEFENDANT BADAWI'S FISA MOTION**

09:21 11 MS. CORRIGAN: So, Your Honor, without -- I guess,
12 the papers that I filed relative to suppressing what we
13 believe is a FISA motion because, obviously, in this
14 situation, we're without that information -- I'm going --
15 what I think is probably appropriate here is, as in other
16 motions, is that everything is covered in the written
17 materials. However, with that said --

09:21 18 THE COURT: But set a good record. Make sure
19 you're confident that he's heard your argument --

09:21 20 MS. CORRIGAN: Understood.

09:21 21 THE COURT: -- and that you have the time needed.

09:21 22 MS. CORRIGAN: So I think that one'a the things
23 that we all have to be concerned about here is the
24 unraveling and the tattering of the Constitution as a result
25 of what I view as the scare tactics and the horror that this

1 country has seen time and time again over the acts of ISIL.
2 ISIS, and other entities. And there is no question that
3 those -- in my mind, that those entities, foreign terrorism
4 organizations, have placed an enormous amount of fear, not
5 only in our citizenry, but in the world's citizenry.

09:22 6 We have a number of incidents. We have the Paris
7 incident. We have just the recent murder of SEAL -- or Navy
8 SEAL Keating, the young 31-year-old man. That's an
9 atrocity. We have atrocity after atrocity. We have
10 San Bernardino. We have the downing of planes. We have
11 bombings in Baghdad. We have bombings pretty much anywhere.

09:22 12 And my concern is that what has ended up happening
13 is that the FISA courts, that apparently meet in secret, are
14 rubber-stamping every single application that comes forward
15 to it. Now, I don't have any way to document that because
16 that information is not available to me 'cause it's not
17 public.

09:23 18 But I think that this Court should be very leery
19 of full-blown -- I'll call it the redaction of the
20 Constitution here -- where the Fourth Amendment has
21 essentially been taken out of the Constitution as it relates
22 to my client's rights.

09:23 23 And despite the fact that he is charged,
24 obviously, with financial aid fraud, but also the other
25 issue of material support to a foreign terrorist

1 organization by way of supplying personnel, being the
2 co-defendant, um, I think that we have to be very careful in
3 not letting our individual rights in this country be
4 destroyed systematically by pure fear that ISIS, ISIL, and
5 other groups have instilled in all of us and, unfortunately,
6 have forced upon us, and have ended up -- and it -- we -- I
7 think that, by not granting the motion, what the "message
8 out" to everyone, unfortunately, is that they win. And that
9 they win in destroying our ability to exercise our rights in
10 this country. And that is exactly what ISIL and ISIS is all
11 about.

09:24 12 And I think that probably some people in the
13 audience may be wondering why am I making these positions
14 (*sic*) when I have someone that's charged with providing
15 material support. 'Cause, the end of the day, the defense
16 is not about whether they're justified in what they're
17 doing, but, I think that when we get to the motion aspect,
18 when we're talking about our essential rights that we --
19 that are near and dear to all of us, and that we -- our
20 forefathers have fought valiantly to make sure that we have
21 and that our courts have enforced, our nation, our -- our
22 people enforce -- or want enforced.

09:24 23 Um, the disintegration of what this fear has
24 caused, um, I don't think is something that we should give
25 in -- because, ultimately, I think, if the motion is not

1 granted, it's a signal that all we're doing is giving in to
2 exactly what ISIL and ISIS want us to do; and that is, to
3 give up our rights and to -- and to go along with what
4 they -- what their beliefs are.

09:25 5 I'm not indicating that the Court would -- would
6 be -- you know, its thoughts are consistent with theirs.
7 But I do think that we -- there has to be a careful
8 examination here because I don't think these -- this'll be
9 the first or last case that deals -- deals with this issue.
10 We've had a number of these cases across the county.

09:25 11 Unfortunately, I think that too many courts don't
12 take the careful time that this Court does in evaluating
13 what it means to give up our rights wholeheartedly or
14 wholesale. And I think that, in this situation, the FISA
15 process is a complete destruction of my client's Fourth
16 Amendment rights and that the Court should, um -- should
17 grant the motion that I've filed and suppress the evidence
18 that has been apparently -- and I have to say "apparently"
19 'cause the government doesn't really confirm or deny that
20 there is a warrant.

09:26 21 Obviously, if here's no warrant, then it has to be
22 suppressed 'cause there's no way they can support the
23 seizures -- um, the searches and the seizures. But assuming
24 that there is a warrant, I'm assuming that it would be outta
25 the FISA court. Perhaps there's another secret court I'm

1 not aware of. But I think that the Court should, uh,
2 consider that and not give in to what I view as the ultimate
3 goal of ISIS and ISIL, which is to destrour -- destroy our
4 rights and the rights that my client enjoys in this country.

09:26 5 And I'd submit it on that basis.

09:26 6 THE COURT: Let me ask, Mr. Lengyel-Leahu, are you
7 joining in this motion along with Ms. Corrigan? So I have a
8 record.

09:26 9 MR. LENGYEL-LEAHU: We both filed separate
10 motions.

09:26 11 THE COURT: I know you did.

09:26 12 MR. LENGYEL-LEAHU: Yes.

09:26 13 THE COURT: But you're joining in her motion?
09:27 14 And I assume you're joining in co-counsel's
15 motion.

09:27 16 MS. CORRIGAN: I will, Your Honor.

09:27 17 THE COURT: Let's presume that for every motion
18 brought by either one of you -- so the default position is
19 always joinder of your respective motions, unless you make
20 known to the Court that you're not joining in a particular
21 motion, and that will perfect your record throughout the
22 process.

09:27 23 Do you have comments that you'd like to add, sir?

09:27 24 MR. LENGYEL-LEAHU: Yes, Your Honor.

25

09:27

1

ARGUMENT BY MR. LENGYEL-LEAHU

09:27

2

MR. LENGYEL-LEAHU: It's the constitution that makes us exceptional. Um, it is the very foundation of this country, and it makes us different. It's -- it's not so much the geography that we've been placed with, but the fact that we have a system of government that is acutely aware of individual rights. And the Fourth Amendment is the very foundation of our freedom from government intrusion.

09:27

9

And I clearly recognize that there have been occasions under time of war where the President has suspended the Constitution. Famously, Lincoln suspended the Writ of Habeas Corpus. And since then, the Japanese internment during World War II.

09:28

14

Uh, events have taken place in time of war. We have entered into a period of our history where the government refuses to declare war, yet nonetheless takes on these war powers. And in the -- in the instance of the Patriot Act, um, under the immediate threat of terrorism on our soil, there was this need and representations by the government that they would nonetheless protect us. And we're asked now to trust them.

09:28

22

"Trust us that we will do the right thing."

09:28

23

And what they did, immediately after the Patriot Act is completely disavow that trust. As it says in our papers, the violations that the government did under the

1 Patriot Act were outrageous and required federal judges to
2 step in and say, "No more. You're gonna have to start
3 giving notice to the defense so at least they're aware of
4 what's going on."

09:29 5 And by suspending the probable cause element in
6 order to do searches of American citizens, uh, it --
7 there -- there is no foundation for it. And that's why they
8 require a showing of a foreign agency. Yet the discovery
9 they turn over doesn't indicate any foreign agency
10 whatsoever of our clients.

09:29 11 So we're troubled. And -- and we're gonna have to
12 rely on your *in camera* review. But that's patently unfair
13 that a member of the court -- as an officer of the court,
14 that I can't be trusted. I can't be trusted with reviewing
15 the foundational requirements of what the government is
16 attempting to bring into court when they know they're
17 violating my clients' Fourth Amendment right. They know
18 that upfront because they do -- not required to show
19 probable cause.

09:29 20 And I -- I think it's a -- it's a horrible
21 situation that, if we're going to be engaged in a war on
22 drugs or a war on terror or a war on any other amorphous
23 entity or threat, that this will go on forever; that we have
24 modified the Constitution by Executive Order.

09:30 25 And, truly, you are the last bastion of upholding

1 what we all thought we held dear. And -- and I know you
2 take your job seriously, as we all do. Um, and -- and it's
3 absolutely imperative that somewhere, someplace, sometime
4 someone says "No."

09:30 5 And I urge you to look at the evidence that
6 they're attempting to present on the basis they're
7 attempting to present it, and -- and I believe my client's
8 due process rights are directly violated by my inability to
9 point the Court to the direction that we think you should be
10 looking at with respect to the admissibility of this
11 evidence.

09:30 12 And, on that, we would submit on the FISA.

09:31 13 THE COURT: Thank you. We'll come back for
14 further argument and comments.

09:31 15 Let me turn to the government.

09:31 16 Counsel, which one of you will be arguing on
17 behalf of the United States?

09:31 18 MS. HEINZ: Your Honor, Judith Heinz on behalf of
19 the United States.

09:31 20 **ARGUMENT BY MS. HEINZ**

09:31 21 The FISA statute does not violate the
22 Constitution, does not trample on the Constitution, does not
23 trample on Fourth Amendment rights, nor is it driven by a
24 particular fear of terrorism or terrorist organizations.

09:31 25 The FISA statute was enacted by Congress

1 specifically to set up a way to gather intelligence
2 information and to deal with it, and for there to be a legal
3 framework that would work for the gathering of intelligence
4 information, and for that information to be used, if
5 appropriate, in a criminal proceeding.

09:32 6 So let's start here: It was Congress that enacted
7 the FISA statute. It was Congress that set up FISA.
8 Congress, duly-elected representatives of people of the
9 United States, enacted this law. It has not been
10 overturned.

09:32 11 FISA -- the FISA statute sets up a court. It's
12 called the FISC. The FISC are Article III judges who are
13 appointed to sit on the FISC. This is a panel of judges,
14 Article III judges, and they look very closely at all FISA
15 applications that are introduced.

09:33 16 The FISA applications that are introduced to the
17 FISC are extremely detailed, as the Court can see from the
18 applications in this case. They are extremely detailed, and
19 they are presented to the FISC. The FISC is not a rubber
20 stamp for the government. The FISC looks very carefully at
21 the applications, and then can either grant the application
22 or not.

09:33 23 It is not true that defendants are totally in the
24 dark here, or that they have no notice about the fact that
25 FISA collection occurred in this case. In fact, the

1 defendant received a notice, a written notice from the
2 government shortly after they were arrested in this case and
3 brought to court. They received a notice that said, "*We*
4 *hereby notify you that information, evidence, evidence*
5 *collected through FISA will be used against you in this*
6 *case.*"

09:34 7 So they have known for nearly a year about this.
8 And they received notice as required under the law: The law
9 that was passed by Congress.

09:34 10 This is not law that was modified by some
11 Executive Order. This is law that was passed by Congress.
12 There is a procedure that is done by judges. There are
13 lawful orders issued here which allowed for the collection
14 of the information.

09:35 15 Many, many courts have looked at FISA information
16 and have carefully considered the arguments that the
17 defendants make here: The arguments that FISA effectively
18 takes the Fourth Amendment out of the Constitution,
19 arguments that FISA violates due process, all of these
20 arguments have been considered by many, many courts, as the
21 government has briefed in its extensive opposition to the
22 motions, and those courts have found that the collection of
23 information under FISA and the procedures for litigating
24 FISA suppression motions do not violate the Fourth Amendment
25 and do not violate due process.

09:36 1 The government absolutely agrees that the
2 United States Constitution makes our country exceptional. A
3 FISA is absolutely consistent with the Constitution of the
4 United States.

09:36 5 The defense makes the argument the FISA does not
6 require probable cause. That, of course, is directly
7 contrary to the law, as the government has briefed in its
8 opposition. The FISC must, of course, find, based on the
9 application, that there is probable cause for the
10 collection. It is the same standard that is used for a
11 federal search warrant. Probable cause is probable cause.

09:36 12 The Article III judges that sit on the FISC are
13 highly qualified to make this determination. And they are
14 not rubber stamps. They make this determination the same
15 way that Article III judges here in this courthouse make
16 that determination.

09:37 17 Obviously, this country should not allow its fears
18 to trample the Constitution, but that is not what is
19 happening here. We have a very well-qualified District
20 Court Judge, Your Honor, who is highly qualified to look at
21 the FISA application and the other materials that have been
22 presented to this Court. They are complete. They are
23 everything that the FISC saw. And this Court is highly
24 qualified and highly capable of looking at those materials
25 and making a determination, a legal determination, based on

1 the law, based on the legal standards that apply here.

09:38 2 It is absolutely inappropriate for the defense to
3 suggest that this Court should grant their motion to
4 suppress simply to send a message, simply to send some
5 message that we should not allow our fears to trample the
6 Constitution. Rather, the Court, the government expects,
7 will make its decision based on the law because it is the
8 rule of law in this country which secures our rights and our
9 freedoms, and ultimately protects us all.

09:38 10 Now, Your Honor, I would like to confer briefly
11 with co-counsel.

09:39 12 THE COURT: Please.

09:39 13 MS. HEINZ: Nothing further from the government.

09:39 14 THE COURT: Thank you.

09:39 15 Counsel, your response.

09:39 16 MS. CORRIGAN: Thank you, Your Honor.

09:39 17 **RESPONSE BY MS. CORRIGAN**

09:39 18 MS. CORRIGAN: Briefly, I would concur with
19 Ms. Heinz that -- or with the government -- that there was a
20 notice on the FISAL -- or FISA Act Information. Uh, there
21 was a notice that was provided to us. It was a two-page
22 document that's found at Docket Entry 38. And it is
23 literally a -- looks like a three-sentence notice. And it
24 says,

09:39 25 *"Plaintiff, United States of America, by*

1 *and through its counsel of record,*
2 *hereby provides notice of -- to*
3 *defendants, uh, and to the Court that*
4 *pursuant to" --*

09:39

5 And then the code sections are cited.

09:39

6 "*-- that the United States intends to*
7 *offer into evidence or otherwise use or*
8 *disclose in any proceedings in the*
9 *above-captioned matter information*
10 *obtained or derived from electronic*
11 *surveillance and physical searches*
12 *conducted pursuant to the Foreign*
13 *Intelligence Surveillance Act of 1979."*

09:40

14 And then the code section is specifically
15 indicated.

09:40

16 We did receive that notice. But that notice is --
17 gives no -- no information whatsoever. That is strictly
18 saying, "*Hey, guys, um, just so you know, we -- we're gonna*
19 *be giving you something."*

09:40

20 It doesn't tell you what. It doesn't tell you how
21 you -- we got it. We also got a subsequent notice -- and
22 it's not been the subject of this, uh, or a prior notice --
23 on June 19th, 2015, at ECF number -- or Docket Entry 29, um,
24 with the -- a notice of government's intent to invoke the
25 Classified Information Procedures Act. And that's a similar

1 notice that's quite short.

09:40 2 So, yes, is there technically notice? There was.
3 But it's meaning -- it's meaningless. I coulda figured that
4 out just by looking at the evidence because it's clear that
5 we -- that they didn't have what I'll call regular search
6 warrants: The ones that we see that come through these
7 courts and, um -- you know, another Article III judge.

09:41 8 But, in the situation here, the FISA or FISC court
9 is in a situation where, yes, we're told that there're
10 Article III judges that look over this, uh -- these matters.
11 But it is my understanding -- and it's -- again, I don't
12 have data because there -- I don't think there is data
13 available to us. But, at least from what I read in
14 *The Register* and other newspapers out there -- the *New York*
15 *Times* -- there's a recent op-ed in *The Register* this week
16 about the FISA court being a rubber stamp for the
17 government, and that it operates in that way.

09:41 18 So did we get notice? We did. But at the end of
19 the day, that notice is -- is -- might as well not've been
20 given because it was clear that something was going on that
21 was not supported by a finding of probable cause by a court
22 that would -- by a court, um, such as this one, in other
23 words, that we would be able to access those records in some
24 way, in -- in our normal procedures.

09:42 25 In this setting, we are not given that benefit.

1 We are not -- our -- the -- our defendants -- our clients
2 are not given the benefit of being on notice, being assured
3 that their Fourth Amendment rights have been secured and
4 enforced. We have no way of knowing, in terms of filing
5 these motions -- it's kind of the scatter-shot way of
6 filling a motion here.

09:42 7 For the first time in my life, here I am filing a
8 motion to suppress based on the Fourth Amendment vio- -- or
9 what I believe is a Fourth Amendment violation, and having
10 absolutely no idea where to start. Right? Because I don't
11 have any kind of an affidavit. I don't have any kind of a
12 probable cause statement. I have nothing to base it on. So
13 what we do, instead, is we have this scatter-shot motion
14 that sets out every possible way of attacking the Fourth
15 Amendment -- or Fourth -- Fourth Amendment violation.

09:43 16 It's kind of akin to the old suppression motions
17 that I think this Court was -- was familiar with back in the
18 Court's C-5 days, where I think the Court might recall --
19 and I try to find one 'cause I thought it'd be fun to -- not
20 "fun," but interesting to attach as an exhibit to my motion.
21 But I couldn't find it -- find one.

09:43 22 But I think the court'll recall where the Public
23 Defender's Office used to just file a motion and check off
24 boxes, and that would be it. Right? But that's the way I
25 felt like in this -- in filing this motion -- is that

1 literally I did not know. All I knew is we've -- we had
2 recordings inside of vehicles. We have a variety of
3 different ways -- um, surveillance, intelligence-gathering
4 is -- has gone on in this case, or at least appears to be --
5 have gone on, without the benefit of knowing how they got
6 it. A wiretap, Title 3 --

09:43 7 *(Court reporter requests clarification for the*
8 *record.)*

09:43 9 MS. CORRIGAN: A Title 3 wiretap.

09:43 10 We know we don't have that. Which, normally we
11 get a copy of -- the Court is well familiar with 'em. I've
12 attacked those wiretaps before. We get tons of paper to
13 show what the basis is.

09:44 14 Here we've got nothing. And I think that the
15 Court -- and I -- I understand that other courts have
16 blessed this procedure. But, you know, I think that what we
17 end up with is, that, *"Oh, well, this is what everybody else*
18 *does."* This is the common practice. This is what is going
19 on in this country.

09:44 20 Well, I think that this Court -- and I know this
21 Court will -- it, obviously, takes this very seriously --
22 but I'm suggesting that the Court be very mindful that we
23 are consistently, through these processes, trampling the
24 rights of every citizen in this country.

09:44 25 But, in particular, my concern is today and -- and

1 Mr. Badawi's rights, and his rights being trampled here.
2 Because there really is no way that I can confirm one way or
3 the other whether there was, in fact, probable cause to do
4 what they did. There's -- whether -- and what the court
5 actually looked at. I mean, as the Court knows, I haven't
6 been -- I, to this day, still have not been provided with
7 adequate -- with information or the documents that support
8 the request -- the information that was given to those
9 Title III judges in the FISC court, the FISA court --
10 whatever we're gonna call it.

09:45 11 We don't know. And so we are shooting in the dark
12 here. Um, I don't think that this is something that our --
13 that should be tolerated under our Constitution. I think
14 our Fourth Amendment is -- is there for a reason. It's
15 tattered. I -- I think, just under general law these days,
16 it's tattered. But what this FISA Court suggests, it should
17 be -- should be obliterated, and that the information --
18 that we should just trust what's gone on.

09:45 19 And I'm just gonna go back to what I said earlier:
20 I think as a matter of policy, to give in to ISIS and ISIL
21 on this issue -- on this very issue -- gives in to them.
22 But more -- but, at the end of the day, we cannot give in as
23 a nation or in -- in the courts to the obliteration of our
24 rights. Because it's not just the rights of my client; it's
25 the rights of everyone in this courtroom. It's the rights

1 of everyone who's going to Crave and all the other
2 restaurants in this -- in Santa Ana today, throughout
3 Orange County, and across our nation.

09:46 4 Um, we give in to that, I think that we -- it's a
5 sorry day that we give in to that. And I think that the --
6 by not granting the motion, this Court gives in to it.

09:46 7 And I would submit.

09:46 8 THE COURT: Counsel, thank you.

09:46 9 Mr. Lengyel-Leahu.

09:46 10 MR. LENGYEL-LEAHU: Thank you, Your Honor.

09:46 11 **REBUTTAL BY MR. LENGYEL-LEAHU**

09:46 12 MR. LENGYEL-LEAHU: I also got notice of their
13 intent to introduce the FISA-acquired information.

09:46 14 And let's not forget that the only reason I got
15 that notice is because they were found in violation of
16 Patriot Act. And when I say "they," the Justice
17 Department -- they repeatedly violated the Patriot Act to
18 the point that the federal court had'a get involved and say,
19 *"You must give notice."*

09:47 20 And, as co-counsel said, it's the bare-minimal of
21 notice. *"Oh, by the by, we're using information acquired
22 through the Patriot Act."* And that's all we get, which is
23 an absolute violation of the notion that we have an
24 adversarial system. And the whole point of an adversarial
25 system is basically to find the truth of issues.

09:47 1 Yet, I'm being denied -- my client is being denied
2 the opportunity to adversarial-ly litigate the issue as to
3 whether or not the information was obtained in accordance
4 with our Constitution.

09:47 5 And, yes, we all know Congress passed a law. But
6 that has never been the standard under the Constitution.
7 They passed the Alien and Sedition Acts, too. Congress can
8 do things that are unconstitutional. And it is incumbent
9 upon you and the federal justice system to step in and say
10 *"No more."*

09:48 11 We have to do something to protect our rights.
12 And, clearly, the government is embarrassed by this because
13 their arguments make no sense whatsoever. They tell us that
14 the judges look very closely and offer no evidence of that.
15 In fact, what we know is there have been specific violations
16 where they've been caught.

09:48 17 They say they're not a rubber stamp, but don't
18 provide us with any statistics to that effect. How many
19 applications have been denied? We have no idea. Yet we
20 hear reports and rumors. But we'll never get into the weeds
21 of the thing because they won't provide the information.

09:48 22 An open government? Hardly on this issue.

09:48 23 Others say it's okay? Let's take a poll of
24 everyone who believes that the Constitution should be
25 suspended for these issues. And that's what we're going to

1 base the Constitution on from here on in? Absolutely not.

09:48 2 You took an oath. We all took an oath. We're
3 gonna uphold the Constitution. And we either -- we either
4 respect those oaths that we personally took, or we ignore
5 them because a lot of people agree with it. That can't be
6 the standard. We have to have the gold standard. We are
7 the gold standard.

09:49 8 Absolutely consistent with the Constitution?
9 Clearly that's what the government position is. And they're
10 advocating it. But it's not clearly anything. When you say
11 the word "clearly" or "absolutely," that's the absence of
12 argument. That's a conclusion.

09:49 13 And if the Court, alone, is allowed to look at it,
14 as I mentioned before, it is not an adversarial process at
15 all. And if we're gonna suspend the adversarial process,
16 then we're gonna suspend the search for truth and we're just
17 going to rely on the whims and prejudices of the
18 individuals.

09:49 19 We're not a country of men. We're a country of
20 laws. It's what makes us unique. And when we're going to
21 step away from that and allow individuals to determine what
22 is Constitutional and what isn't, then we have failed.

09:50 23 And I hope we don't fail in this case.

09:50 24 I submit.

09:50 25 THE COURT: All right. Thank you, Counsel.

09:50 1 Counsel on behalf of the government.

09:50 2 MS. HEINZ: Just briefly, Your Honor.

09:50 3 **REBUTTAL BY MS. HEINZ**

09:50 4 MS. HEINZ: The reason that counsel received the
5 notice of the FISA -- the FISA notice in this case was
6 because it's required by law, not because they violated the
7 Patriot Act or some other reason. It is because it is
8 required by law, and because government -- the government
9 complies with the law and provided the notice in compliance
10 with the law.

09:50 11 Counsel makes a lot of different arguments
12 complaining about the statute. The statute is the law. If
13 they want the law changed, then they need to get Congress to
14 change the law. That's the way it is. Many, many courts
15 have upheld this law and have found that FISA is
16 constitutional.

09:51 17 Your Honor, may I check with co-counsel for a
18 moment?

09:51 19 THE COURT: Absolutely.

09:51 20 MS. HEINZ: Nothing further from the government,
21 Your Honor.

09:51 22 THE COURT: All right.

09:51 23 Now, let me ask, are there other motions that you
24 wish to argue today?

09:51 25 You have a pending severance motion, for instance,

1 that's set later in May.

09:51 2 MS. CORRIGAN: Correct.

09:51 3 THE COURT: Let me talk to all of you about that.

09:51 4 You haven't received a ruling yet from this Court,
5 but you can probably expect a ruling by sometime next week.

6 I tend to get back to matters immediately and I'll work
7 through the weekend.

09:52 8 MS. HEINZ: Your Honor, the government would like
9 the opportunity under the schedule to file oppositions.

09:52 10 THE COURT: Oh, why was -- was it set, then, for
11 hearing today?

09:52 12 MS. HEINZ: No. The severance motion is set
13 for --

09:52 14 THE COURT: Oh, no. Let me talk to you about
15 that. Just a moment. Just a minute. I understand that. I
16 thought we were back on the original motion. No. The FISA
17 suppression.

09:52 18 More than welcome to, obviously. What I'm
19 suggesting is this: If your motion was successful, and it
20 was severed, the government needs to have notice because
21 there would be two consecutive trials. They would be back
22 to back. In other words, it's not going over. But I need
23 to rely upon the availability of witnesses. That's a
24 hardship for you, in a sense.

09:52 25 If we're proceeding in a non-severed trial, I

1 think the defense needs to know that. So presently the
2 motion is scheduled for what day? I think it's May 31st.
3 Could you check?

09:53 4 MS. CORRIGAN: Yes.

09:53 5 MS. HEINZ: Yes, Your Honor.

09:53 6 THE COURT: May 31st?

09:53 7 Let me see if we can take that a little bit
8 earlier. But, obviously, you're gonna file opposition.
9 There could be a reply.

09:53 10 I'm just wondering if we can tweak that schedule a
11 little bit. Maybe it's just better to leave it for
12 May 31st.

09:53 13 MS. HEINZ: Your Honor, I believe -- yes, the
14 government's oppositions, under the current schedule, are
15 due next Monday, Your Honor.

09:53 16 THE COURT: Next Monday. I'd forgotten that. I
17 couldn't remember the date offhand.

09:53 18 MS. HEINZ: And I believe the date for replies is
19 the following Monday.

09:53 20 THE COURT: And I wanna apologize. All my papers
21 are nextdoor -- when we had an issue this morning.

09:53 22 MS. HEINZ: Yes.

09:53 23 THE COURT: I spent most the morning on the phone
24 with MDC. We moved nextdoor, so I just don't have those
25 dates.

09:53 1 Well, let's keep the schedule for now. But I want
2 to ask the government: It proceeds forward in a non-severed
3 trial, is your estimate still about 15 days?

09:54 4 That was the original -- I'm not holding you to
5 that. I'm just trying to get an idea. Because you know
6 we're going to be in recess over that 4th of July. Maybe
7 the jury is able to proceed, but I don't wanna take the
8 chance on losing jurors. 'Cause we're sending out over
9 5,000 jury summons.

09:54 10 In the Aryan Brotherhood we had to send out 18,000
11 jury summons for trial.

09:54 12 Ms. Corrigan, were you involved in that case? You
13 were involved in the second trial.

09:54 14 MS. CORRIGAN: Yes.

09:54 15 THE COURT: You were involved in the nine-month
16 trial.

09:54 17 The six-month trial, we had to send out 18,000
18 jury summons for a jury pool of, I think, 200 in both your
19 five- or six-month trial and the first trial.

09:54 20 Here, we're sending out a lot less. But I intend
21 to have a jury pool of 200. And the reason for that is I
22 think the questionnaire -- once those questions are asked --
23 are going to cause a reaction from some members of the
24 public.

09:54 25 Second, I want to address the timing of this.

1 This case was set for trial -- what? -- nine, ten months
2 ago.

09:55 3 MS. CORRIGAN: That's correct.

09:55 4 THE COURT: Okay. Now, believe it or not,
5 sometimes judges are rational. You won't believe this, but
6 I didn't know who would be the potential nominees from the
7 respective parties. But I do know that the war on terror,
8 immigration -- you know, all these things are hot-button
9 issues. And one of the reasons that the Court picked June
10 is it tends to be what I call a "lull."

09:55 11 Normally, the parties have people in places, their
12 nominees, unlike --

09:55 13 MS. HEINZ: Unlike now.

09:55 14 THE COURT: -- yeah, unlike now. It's been
15 interesting for both parties.

09:55 16 So you have to know that that was one of the
17 considerations. Because I couldn't anticipate, you know,
18 the next act or non-act. Could never have anticipated
19 San Bernardino when this was set. Could've never
20 anticipated Paris or Belgium. Couldn't anticipate the Navy
21 SEAL, who you brought into the record.

09:56 22 So my evaluation at the time was there might be a
23 terrorist act, and I didn't certainly want the drama of that
24 carryover to your client, but I'd recognized -- very
25 possible. That's why you're getting a questionnaire.

09:56 1 I caution you, though, when I've used these
2 extensive questionnaires, both in state court for death
3 penalty cases, and here for, uh -- well, the death penalty
4 cases involving the A.B. and the Mexican Mafia -- you go at
5 your own -- well, let me say -- just say, you tread a narrow
6 road. I won't cut you off. I'll give you a period of time
7 for voir dire. But if you ask the wrong question and it
8 opens up Pandora's box, I'm not going to step in and protect
9 you. So that's why the questionnaire's there. That
10 questionnaire's an in-depth look, where we can get down to
11 bias, cause, et cetera, and have a discussion.

09:56 12 Now, we can do an old *Hovey* voir dire process. We
13 can -- in most death penalty cases on the State Court level,
14 unlike some of my colleagues, who moved rapidly, tried to
15 get a jury in one day, I've always gone through a *Hovey* voir
16 dire. I don't intend to do that here; in other words, where
17 each juror was called in. I used to be able to do ten in
18 the morning. It got up to 15 or so. So we went through
19 about 30 jurors a day.

09:57 20 That individual questioning in a death penalty
21 case about whether you would always or substantially, uh --
22 have a substantial likelihood of finding death, if you
23 reached first-degree murder and special circumstances on the
24 state level or the federal level, or if you would never, or
25 have a substantial likelihood of never finding for death --

1 you know, got rid of what I call the *Witt/Witherspoon*
2 dichotomy of people who never or would always rush to that
3 kinda judgment.

09:57 4 I contemplated that here, but I chose not to. I
5 think that the questionnaire is enough to sort out the
6 obvious bias. You can make motions for cause. And on this
7 occasion, I anticipate more time in the hallway than we
8 would normally spend. But be careful of your questions.

09:58 9 I'm not limiting you. But once you ask the wrong
10 question, you may get the answer that one'a colleagues got
11 who decided that he would take a shortcut --

09:58 12 And you love stories, don't you?

09:58 13 MS. HEINZ: Yes, Your Honor.

09:58 14 THE COURT: 1984 -- won't name the judge 'cause
15 most of you weren't alive then -- decided that he was going
16 to get a death penalty jury in one day. And I've told this
17 story many times.

09:58 18 Instead of following *Witt/Witherspoon* and slowing
19 down for fairness, he decided to prove how economical he
20 was. And so he asked a hundred jurors in the hallway:

09:58 21 *"Would any of you have a substantial*
22 *likelihood, or automatically, or always*
23 *find for death, if you reach*
24 *first-degree murder and special*
25 *circumstances; or is there a substantial*

1 *likelihood that you would never find for*
2 *death, or that you would never find for*
3 *death?" (Verbatim.)*

09:58 4 One gentleman seated amongst the twelve
5 perspective jurors got up and said the following:

09:58 6 *"My sister was raped and murdered, and*
7 *I'd kill every sonofabitch I could."*

09:59 8 Now, pardon the expression, pardon the vernacular,
9 but that's an absolute accurate quote. Now that judge went
10 on to pretend that the jury wasn't influenced by that, made
11 a nice record, and apparently -- but you know the impact of
12 that. So I tell you that little dramatic story about
13 just -- you've got a questionnaire. I've tried to make that
14 as thorough as possible and take into account...

09:59 15 The second thing, is I've got more questionnaires
16 over more years than you can possibly imagine. I've got 32
17 pages, which are the Circuit's delight. They're not
18 workable. In a trial situation, you can't go through 32
19 pages. That's why it's been trimmed down to about 9 pages
20 or so. It's a very workable document.

09:59 21 If you have suggestions in the meantime, or if you
22 come to me with a stipulation, I'll modify that
23 questionnaire. But eventually we're gonna start sending out
24 an initial 5,000 jury summons. We think we can get 180 to
25 200 people from that.

09:59 1 But I wanna ask your permission about something:
2 Let's just say we got lucky -- which we won't -- and we had
3 380 to 400 that came back, and said, "Oh, yeah,
4 Judge Carter, I can serve for six weeks" -- which, by the
5 way, is not a long trial for this Court.

10:00 6 Do I stop at 200? Or do you want me to continue
7 to collect those questionnaires? Because, remember, when I
8 collect those question -- and we bring these people in,
9 we're gonna have a courthouse with 400 people. Now, in the
10 past, we've stopped with the first 200, for instance, but by
11 consent of counsel. 'Cause you don't know what you're going
12 to get when you send out 5,000 jury summons.

10:00 13 So, two things in summary: First, I think this is
14 the most applicable time in fairness the case could be tried
15 because there's no "rhetoric" taking place in June. There
16 will be a lot of pronouncements in the political arena by
17 both eventual candidates, whoever they are, starting
18 after -- or during the conventions and after the
19 conventions. It's a very dangerous time for you to try the
20 case. Hopefully we'll be done with it by that time.

10:01 21 Number two, you can't control another attack.
22 There's just no way to have a timing. (*Verbatim.*) So
23 hopefully, you know, the world is peaceful up until at least
24 the time of the trial.

10:01 25 I'll hold to May 31st, then, in terms of motion to

1 sever. Fair enough?

10:01 2 MS. HEINZ: It's fine with the government.

10:01 3 THE COURT: Not gonna spoil your opposition or the
4 reply. Okay? We'll hear it on May 31st. So don't be
5 concern.

10:01 6 Now, is there any other business that you'd like
7 to bring to my attention today? And, if not, Mr. Badawi,
8 you're going to be ordered by the Court to be forthwith
9 transported to MDC.

10:01 10 With my apologies to the family. I'll get 'em
11 back to you as fast as possible. Just as quick as I can.
12 But he's gotta voluntarily eat.

10:01 13 Meanwhile, Marcelino is going to set up a process
14 here locally. I didn't want 'em to do it today, because I
15 think they're well-suited, with the prior history,
16 Ms. Corrigan, in Los Angeles to treat this.

10:01 17 But during the trial, I can't take the time to run
18 him down to MDC, run him back, run 'em down, run 'em back --
19 it's almost cruel to do that. So there'll be a "local"
20 procedure. I don't think it's going to have to be used, but
21 I've got to be prepared to have it used, 'cause we're not
22 recessing.

10:02 23 So, Mr. Badawi, I didn't want this news to come to
24 you from your counsel. I don't wanna speak to you right
25 now. There's no negotiation with me. This is what's

1 happening. You've a choice in the next couple hours and a
2 decision to make whether you're gonna voluntarily eat.

10:02 3 But you're minimally -- "minimally" -- 134 pounds.
4 If it was my preference, you'd be well-under (*sic*) 140.
5 Your choice. Otherwise, the tube's going in you today. I
6 don't have to describe that to you. You went through it
7 once. It's not pleasant. And I'll make the order, and I've
8 already done so.

10:02 9 All right. Now, anything further on behalf of the
10 government?

10:02 11 MS. HEINZ: Your Honor, you did have on calendar
12 for today the two motions to suppress that were filed by
13 counsel for Mr. Elhuzayel. I'm sorry. I misspoke. Motions
14 to dismiss.

10:03 15 THE COURT: Motions to dismiss.

10:03 16 We've been through the motions to suppress and --

10:03 17 MS. HEINZ: Yes.

10:03 18 THE COURT: -- they're under submission now.

10:03 19 Counsel, motions to dismiss?

10:03 20 MR. LENGYEL-LEAHU: Those would be my motions,
21 Your Honor.

10:03 22 THE COURT: Please.

10:03 23 **DEFENDANT ELHUZAYEL'S MOTIONS TO DISMISS**

10:03 24 MR. LENGYEL-LEAHU: The government, in their
25 response to our motion, obviously identifies the importance

1 of the motion.

10:03 2 (Court reporter requests clarification for the
3 record.)

10:03 4 MR. LENGYEL-LEAHU: We have brought a motion
5 indicating that my client is being accused of attempting to
6 provide material support to a foreign terrorist
7 organization, as those items are specifically defined by
8 statute. And, in this case, a foreign terrorist
9 organization must be so designated in collaboration between
10 the Secretary of State, the Department of Treasury, and the
11 Attorney General's Office.

10:04 12 I went on the website just yesterday, and the
13 State Department has a list of foreign terrorist
14 organizations that they publish and, um, make American
15 citizens aware of what organizations they can or cannot --

10:04 16 THE COURT: Certifications.

10:04 17 Certifications?

10:04 18 MR. LENGYEL-LEAHU: Um, and I notice, as of
19 yesterday, "The Islamic State" is not listed anywhere on the
20 list, and has never been listed on their website.

10:04 21 THE COURT: Now, let me ask you: Assuming that
22 they're not listed or will not be listed by the time of
23 trial, it leaves you two in a precarious position, a
24 tactical decision: One, I can anticipate the government
25 saying, "You know, Judge Carter, we need to show this

1 organization, its structure, and its acts," which is the
2 very thing I would assume that you don't want a detailed
3 expert or evidence on.

10:05 4 There's not a certification, is there, at the
5 present time that the government's aware of?

10:05 6 MS. HEINZ: Your Honor, the -- of course, ISIL --
7 the organization, ISIL, which also has many, many aka's,
8 is --

10:05 9 THE COURT: DAESH? ISIS?

10:05 10 MS. HEINZ: -- is a designated foreign terrorist
11 organization, and has been so designated for all the
12 relevant time period in this case.

10:05 13 And, in addition, Your Honor, the State Department
14 has also designated the, quote/unquote, "Islamic State" as
15 an alias, an aka for ISIL, although that was done after
16 these defendants were arrested.

10:05 17 THE COURT: I see.

10:05 18 Okay. Counsel?

10:06 19 MR. LENGYEL-LEAHU: I don't believe that the
20 activities of a terrorist organization are even relevant to
21 the proceedings because it does not matter what the
22 organization does. If they're listed on and certified by
23 the State Department, the Department of Treasury, and the
24 Attorney General's Office -- if they're certified, we're not
25 allowed to litigate whether or not they should be listed.

10:06 1 It could be *The Little Sisters of Mercy*. If
2 they're on the list, they're on the list.

10:06 3 And what our objection is "The Islamic State"
4 clearly has been added as of September 2015 -- not added to
5 the website to give notice to the population, but added into
6 the Federal Register. And what's curious is the
7 government's position on that, because it's clearly an *ex*
8 *post facto* law.

10:06 9 What they are attempting to do, by passing a
10 certification in September, is to bootstrap-in everybody who
11 was attempting to go over to join the new Caliphate, which
12 is a completely different structure. It's a completely
13 different identity. In fact, they specifically declare an
14 end to ISIS and ISIL, and have never used it since.
15 (*Verbatim.*)

10:07 16 They have a very extensive market in public
17 relations. They -- they have a very extensive media
18 presence. And they were very clear that ISIS and ISIL is no
19 more as of June of 2014. And Baghdadi declared himself as
20 the new Khalif of the new universal Caliphate. And we have
21 his speech, Your Honor. And we have the, uh, translations
22 of the announcements to the world.

10:07 23 The entire world recognizes The Islamic State as
24 something new and different than an insurgency that grew up
25 out of Iraq and an insurgency that grew up inside of Syria.

1 This is a different animal. It's a different entity.

10:08 2 And it's completely disingenuous to say that the
3 government can add this alias a year and four months after
4 the creation of the new organization and say, "*Oh, but it*
5 *includes everyone in history that's ever been arrested.*"
6 It's not right. That is an *ex post facto* law. And that's
7 why we specially reject it.

10:08 8 Notice that an activity is a crime -- is a
9 necessary prerequisite in our jurisprudence. We have to
10 know that an act -- a specific act is illegal. And, again,
11 to point to an historical reference, we're talking of the
12 Star Chamber or, in fiction, Kafka's *The Trial*.

10:08 13 How can anyone know that The Islamic State is, in
14 fact, an organization that is not allowed to be materially
15 supported, unless we're given notice of it? And that notice
16 doesn't come out -- it comes out in the Federal Register,
17 which isn't dramatically published. And what's incredibly
18 curious is the State Department did not put out a press
19 release -- that I could find -- that -- that -- that
20 indicated that The Islamic state is now also added to this
21 list.

10:09 22 They put out press releases for everybody else
23 they do. But I can't find one on The Islamic State. It's
24 almost as if they snuck it in and kept really quiet about
25 it. You will never hear the Secretary of State, the

1 President or the Attorney General refer to "The Islamic
2 State." It's always "ISIL" or "DAESH" or "ISIS," never "The
3 Islamic State." And I think there's an important
4 distinction. Because they're completely different entities.

10:09 5 What's also interesting: On the Department of
6 State website, where it lists all of the FTO's --

10:10 7 *(Court reporter requests clarification for the*
8 *record.)*

10:10 9 MR. LENGYEL-LEAHU: FTO's, Foreign Terrorist
10 Organizations.

10:10 11 When I filed my motion, I obviously was looking at
12 the website. And I noticed some really interesting
13 language, um -- and it was at the bottom of the website.

10:10 14 Now, I was able to find it again on the press
15 release of May of 2014. And it says -- it says in the press
16 release, uh, in short:

10:10 17 *"Tension piqued in early 2014, when*
18 *al-Qa'ida leader" --*

10:10 19 *(Court reporter requests clarification for the*
20 *record.)*

10:10 21 THE COURT: Give it with the spellings.

10:10 22 MR. LENGYEL-LEAHU: I'll spell the names for you.

10:10 23 *"-- Ayman al-Zawahiri" --*

10:10 24 A-Y-M-A-N, A-L, hyphen, Z-A-W-A-H-I-R-I.

10:11 25 *"-- released a statement dismissing ISIL*

1 *from AQ" -- Al Qa'ida. "Therefore, we*
2 *have amended the AQI designation to*
3 *better reflect the change in status of*
4 *both ISIL and ANF."*

10:11 5 Here's the important part:

10:11 6 *"We review our designations regularly*
7 *and, as needed, make adjustments to*
8 *ensure we remain current with*
9 *nomenclature and other changes."*

10:11 10 Since my motion, that language has been removed
11 from the State Department's website. And I wonder why. But
12 I don't really have to wonder. We know why. Because we
13 made a motion that's absolutely dispositive in this case.

10:11 14 The government's hiding from the fact that The
15 Islamic State exists. They don't wanna talk about it. They
16 don't wanna refer to it, and they don't. But it does. And
17 because it does, it needs to be on the list.

10:12 18 Now, they mighta snuck it in on the Federal
19 Register and not told anybody about it. Granted. But we
20 still have a Constitution that says you cannot have an
21 *ex post facto* law. And if that's the case, Your Honor,
22 that's exactly what they're trying to do here. And that's
23 why Counts One and Two should be dismissed. Because,
24 clearly, my clients said over and over in his interview with
25 the FBI he was going to join The Islamic State. He was

1 migrating there and he was never coming back.

10:12 2 Thank you, Your Honor.

10:12 3 We'll submit.

10:12 4 THE COURT: Counsel, I want to make sure. Are you
5 joining in this motion, Ms. Corrigan?

10:12 6 MS. CORRIGAN: Can I approach? I'm not gonna
7 answer that with a yes or no, Your Honor.

10:12 8 THE COURT: Okay.

10:12 9 MS. CORRIGAN: I may just answer it this way:
10 This folds right into what's not --

10:12 11 THE COURT: The motion to sever?

10:12 12 MS. CORRIGAN: The motion to sever because --

10:12 13 THE COURT: Let's delay that.

10:12 14 MS. CORRIGAN: I have very grave concerns over
15 these arguments and how they're gonna present my client.

10:13 16 THE COURT: I read your opening motion.
17 Obviously, I haven't read governor's -- uh, the government's
18 yet. But I saw your opening motion, so we'll just delay
19 that. Okay.

10:13 20 MS. CORRIGAN: Thank you.

10:13 21 THE COURT: Okay.

10:13 22 Counsel on behalf of the government?

10:13 23 MS. HEINZ: Briefly, Your Honor.

10:13 24 **RESPONSE BY MS. HEINZ**

10:13 25 MS. HEINZ: Defense -- um, Counsel for

1 Mr. Elhuzayel claims that The Islamic State is a
2 completely -- completely different organization from ISIL.
3 The government, of course, disagrees. It is the same
4 organization. It is the same structure. It is the same
5 leadership. And the government will present evidence at
6 trial as to that fact.

10:13 7 It is -- Counsel for Mr. Elhuzayel also argues
8 that the entire world recognizes that The Islamic State is a
9 different organization from ISIL. Again, that is just
10 patently wrong. It's just wrong.

10:14 11 The fact that members of the United States
12 Government, such as the President and the Secretary of
13 State, rarely use the term "The Islamic State" is actually
14 evidence of the fact that they do not recognize that as a
15 government, as a legitimate government, or a legitimate
16 organization who should be recognized as being legitimately
17 in control of the territory that they hold.

10:14 18 The Indictment here charges the defendants with
19 providing material support to ISIL, also known as a variety
20 of other names, also known as "The Islamic State."
21 Therefore, the Indictment gives the defendants fair notice
22 that they are charged with providing material support to a
23 designated foreign terrorist organization, ISIL, that is
24 also now known as The Islamic State. So they -- the
25 defendants have exact knowledge about what the government is

1 alleging here.

10:15 2 There is no -- there is no argument, I think, by
3 the defense that ISIL is not designated. I think the
4 defense agrees that ISIL is designated. So the only
5 argument here is whether or not a defendant, who claims that
6 they are going to join The Islamic State, somehow is free to
7 do so even though that is the same organization that is
8 designated as ISIL.

10:15 9 The government would also introduce at trial
10 evidence that the defendants here both knew that the,
11 quote/unquote, "Islamic State" was the same as ISIL because
12 they used those terms interchangeably in the evidence.

10:16 13 The government -- just briefly on the evidence
14 that the government would introduce at trial: The
15 government has the burden of proving that the defendants in
16 this case knew that ISIL, aka The Islamic State, engaged in
17 terrorism and terrorism activities. Therefore, it is
18 necessary for the government to introduce that kind of
19 evidence.

10:16 20 And, to the extent that defendants are using the
21 term "Islamic State" rather than ISIL in some of the
22 evidence, then the government also needs to introduce some
23 evidence that ISIL and The Islamic State are the same
24 organization. So while the government is very, very
25 cognizant of issues of inflaming the jury or unfair

1 prejudice, quite frankly, the evidence at trial, um, it is
2 necessary to present evidence that these defendants did know
3 that ISIL, aka The Islamic State, was engaged in terrorism.
4 And the evidence that the government will be showing is
5 evidence that the defendants themselves disseminated.

10:17 6 So it is not -- we are not planning on showing a
7 lot of ISIL propaganda off the Internet that these
8 defendants did not have, or not themselves disseminating,
9 and that kind of evidence. The evidence that the government
10 will show is highly relevant and necessary to prove the
11 defendants' intent in this -- and knowledge in this case.

10:18 12 THE COURT: All right.

10:18 13 MS. HEINZ: I'm sorry, Your Honor. May I consult
14 with co-counsel briefly?

10:18 15 THE COURT: Certainly.

10:18 16 MS. HEINZ: Nothing further, Your Honor.

10:18 17 THE COURT: Submitted? Or would you like another
18 round of argument?

10:18 19 MR. LENGYEL-LEAHU: Just briefly, Your Honor.

10:18 20 **RESPONSE BY MR. LENGYEL-LEAHU**

10:18 21 MR. LENGYEL-LEAHU: From the same press release I
22 quoted from earlier -- uh, from the same quotation from the
23 State Department website that's now been removed, the
24 State Department indicated, about the amendments, when
25 changing the designations of aliases or whatnot, they say,

1 "differences over management and tactics." So if there's a
2 change in management or a change in tactics of an
3 organization, then they feel that it's obviously something
4 different.

10:18 5 And I -- I draw on for historical perspective --
6 is our own -- our own government. Originally, the Articles
7 of Confederation were the original 13 colonies' form of
8 government. When they went into constitutional convention
9 (*verbatim*) and created the Constitution, it was exactly the
10 same people. It was the exact same management, but it was a
11 completely different government.

10:19 12 Even the State Department recognizes that there
13 was an announcement of a Caliphate. Even the State
14 Department recognizes that there were no longer -- in fact,
15 Baghdadi says it very clearly: They are no longer just
16 going to be an insurgency in Iraq and Syria. It is now a
17 global call for a worldwide Muslim, uh, form of
18 government -- or form of, uh, the -- the Caliphate.

10:19 19 Consequently, that is a complete difference in
20 both tactics and management, and that would require that the
21 government add them as a foreign terrorist organization.
22 And they haven't.

10:20 23 It's not that the President or the Secretary'a
24 State rarely used "Islamic State." They never use it.
25 Never. Those words -- and I've checked -- have never come

1 across their lips. They refer to them as the old
2 designation "ISIS" and "ISIL," which no longer exists. And
3 (*inaudible*).

10:20 4 (*Court reporter requests clarification for the*
5 *record.*)

10:20 6 MR. LENGYEL-LEAHU: And consequently we would
7 submit.

10:20 8 THE COURT: Okay.

10:20 9 All right. Counsel, any response?

10:20 10 MS. HEINZ: Nothing further from the government.

10:20 11 THE COURT: All right.

10:20 12 For the government, I'm not holding you to an
13 exact time. You understand that? You'll have time, as will
14 the defense, to put on your case.

10:20 15 Is your estimate still about 15 days? Has it
16 increased or decreased?

10:20 17 MS. HEINZ: Your Honor, I think it's going to
18 decrease. Earlier today, before the hearing, we met --
19 defense counsel and the government counsel met. And I think
20 we are hopeful --

10:21 21 THE COURT: Three days? I'm just kidding you,
22 Counsel.

10:21 23 MS. HEINZ: Yeah.

10:21 24 We are hopeful we are going to be able to enter
25 into some stipulations which may reduce --

10:21 1 THE COURT: Let's leave it at 15 --

10:21 2 MS. HEINZ: It may reduce --

10:21 3 THE COURT: -- but it could be a little shorter.

10:21 4 MS. HEINZ: It could be shorter, of course. But

5 it also depends on the defendants, so...

10:21 6 THE COURT: Well, the reason I'm asking you both

7 this is, if we get into a trial that week is a guesstimate

8 on my part -- it's just a guess that we're going to

9 significantly decrease our jury pool unless we take that

10 week off. And I don't wanna fight that, getting 200 people

11 in here, and having 15 hands go up and say, "*Oh, there's*

12 *been a problem,*" because that whole pool will walk out on

13 you.

10:21 14 So I think we made the wide decision -- wise

15 decision. It's conclusive. What I worry about is splitting

16 the defense, splitting an argument. And the one thing I

17 pledge to you is the arguments will come in close proximity

18 to each other. The jury instructions will come at the same

19 time.

10:22 20 What you won't have is the Court instructing on

21 jury instructions on a Friday and your argument on a Monday.

22 We'll make that work.

10:22 23 The second thing is, you know about the horrendous

24 hours. But it's not because I choose that. It's just

25 because complex cases demand an awful lotta time. So here's

1 what I'm anticipating; and that is, at the last moment,
2 oftentimes I get complete disagreement. If the rule -- if I
3 rule favorable to the defense, it resolves it. If I don't,
4 though, now we're into the quandary of what is the
5 government presenting.

10:22 6 And the government's represented fairness and
7 moderation. But, from your perspective, that may not be the
8 moderation you're seeking. So I'm gonna be blunt.

10:23 9 You're producing an expert; is that correct?

10:23 10 MS. HEINZ: Yes, Your Honor.

10:23 11 THE COURT: Are you going to show beheadings? No,
12 no. That's an easy: Yes or no.

10:23 13 MS. HEINZ: Um.

10:23 14 THE COURT: Why don't you consult with your
15 different -- in other words, am I going to see that, and am
16 I gonna get -- hold on -- am I going to get a last-moment
17 pushback when you start seeing what the expert's presenting?
18 Because then I wanna be in session earlier. I wanna start
19 resolving what those *in limine* motions are that you believe
20 are so simply decided.

10:23 21 Or am I going to eventually evidence where the
22 defense allegedly have this material in their possession,
23 whether they're beheadings or not, and disseminating 'em?
24 Or am I just going to see words?

10:23 25 And I want you to meet for a moment and just

1 decide. Because, otherwise, I'm not going to get caught
2 with 200 jurors coming in because I'll --

10:23 3 Ms. Corrigan, how late were you here with the
4 Court?

10:23 5 MS. CORRIGAN: 1:35 in the morning.

10:24 6 THE COURT: 1:35 a.m. Now, we were on the record.
7 And there's no problem. I really don't care. But you hold
8 the key to the courthouse.

10:24 9 So that last moment is going to leave you
10 absolutely exhausted. I don't need sleep. I don't care
11 anymore. I'm joking with you. But I'm telling you that
12 that jury is not going to be disturbed.

10:24 13 So I need to wrestle with that last moment 'cause
14 it always comes as a flurry. It's in good faith. I know
15 that you're very fair, from the government's perspective.
16 But what you think is fair is anathema to the defense.

10:24 17 So take a moment, and I'm -- my question's simple:
18 Am I going to see, through your expert, films of beheadings?

10:24 19 And I'm not against that. I just wanna make sure
20 that we're wrestling with that on the record. We're having
21 *in limine* motions, if you're pushing back. Talk.

10:24 22 MS. CORRIGAN: And, just for the record,
23 Your Honor, I have filed a motion as to that expert.

10:24 24 THE COURT: I know. But they haven't responded.
25 I know.

10:24 1 So we're raising it right now.

10:24 2 Am I going to see beheadings, potentially?

10:24 3 MS. HEINZ: Your Honor, there will be no videos of
4 beheadings. The defendants in this case disseminated still
5 photos of beheadings, so that evidence will come in --

10:25 6 THE COURT: From the defense?

10:25 7 MS. HEINZ: -- from -- no, well, from the
8 government.

10:25 9 THE COURT: I'm sorry. Let me summarize that very
10 quickly. The evidence, then, is evidence already in the
11 defendants' possession that they're disseminating.

10:25 12 Far different, from your perspective, than you
13 getting an expert on the stand and proving the actions of
14 ISIS, ISIL, DAESH, Islamic State through this expert
15 bringing in --

10:25 16 MS. HEINZ: The expert is not going to himself
17 bring in any evidence. He is -- he is going to have viewed
18 the evidence that the defendants themselves disseminated and
19 talk about it.

10:25 20 THE COURT: Okay. Now, the reason I'm asking you
21 this is I don't want you caught the day before trial on June
22 6th -- we're going to have enough issues concerning jury
23 questionnaires, et cetera. Since we're disseminating
24 (*verbatim*) them on Wednesday -- and I don't have my calendar
25 in this court right now 'cause we moved so hastily this

1 morning -- um, the jury questionnaire goes out on Wednesday.

10:26 2 We'll do all the xeroxing like we've done before.

3 You'll get them back on Thursday. You've got Friday,

4 Saturday, Sunday. If we need to be in session, we'll be in

5 session on Saturdays. I think we had six consecutive

6 sessions with the Aryan Brotherhood: Saturday and Sundays.

10:26 7 I'm not planning on taking your weekend from you.

8 But you will be available to me, so cancel any plans in case

9 I need you. You'll be in session on Monday.

10:26 10 My question is, do we need to wrestle with some of

11 these last moment issues? And I think we do. I think we

12 need to set aside some time and plan for the worst, and hope

13 for the best.

10:26 14 So I'm going to send out notice to you, when I

15 look at my calendar -- 'cause I don't want counsel sitting

16 around, as they are today -- and let me clear off that week

17 before, so we start wrestling with some of these issues.

18 And, therefore, you know the presentation and you know what

19 you have to defend.

10:27 20 The third or fourth or fifth question is, can I

21 stop at 200? I'm happy to bring 400 people into the

22 courthouse. I've done it before. But I think we all agree

23 that we really need a pool of 200 potential jurors who can

24 serve, you know, five or six weeks. And, after that, I just

25 don't think, even on the death penalty cases that we've had,

1 that we went beyond a pool of 200, even with the AB, you
2 know, and their notoriety. I haven't needed that in State
3 Court on death cases either.

10:27 4 So I'm just suggesting if you can reach by
5 stipulation that we cut it at 200 -- we can keep the others
6 on call -- but I just think, if 200 can serve with that
7 letter that goes out, that we ought'a cut it.

10:27 8 MS. CORRIGAN: Your Honor, from my perspective, if
9 we were to leave them the -- I think the terrorism issues
10 are far different than even with the AB, as notorious as
11 they are.

10:28 12 THE COURT: I mentioned John Gotti in
13 Count No. 104. That got the public's attention.

10:28 14 MS. CORRIGAN: Right. That did.

10:28 15 But, in any event, I think that if -- we could
16 potentially set a number, but if we had the agreement that
17 if we had to go over the 200, that the other -- any other
18 people that are time-qualified should be at least available
19 to us so that we don't end up --

10:28 20 THE COURT: Let's do this: Why don't I tell
21 Kathy, with both of your permission, to cut it at 200, but
22 not "relieve." In other words, let's see what that initial
23 group comes back -- not the quality, but the number of
24 people willing to serve for six weeks.

10:28 25 And then I'll keep the jury commissioner alerted

1 that in case we need 50 more --

10:28 2 Sir, would you be kind enough to sit down.

10:28 3 *(Member in audience complies.)*

10:29 4 THE COURT: If we need more, we'll get them in.

10:29 5 In other words, we -- we'll have time, starting
6 May 31st and earlier to see what that group looks like.

7 Kathy will probably tell me the week before.

10:29 8 So, tentatively, 200. That means we're not
9 picking and choosing. A hundred of them could be absolutely
10 biased one way or the other. We could excuse them. But I'm
11 not measuring that. I'm measuring the initial group of 200.

10:29 12 And we still need the following, don't we?

10:29 13 We need twelve in the box.

10:29 14 Six alternates. I think eight -- don't think we
15 need eight. Six alternates.

10:29 16 That's 18. So help me count.

10:29 17 Um, ten and six, still? It's not a death case.
18 It's not 20 and 20. So ten and six.

10:29 19 MS. CORRIGAN: On that issue, Your Honor. I may
20 make a motion to expand, depending on how things go.
21 Because I think that -- and, particularly as to the motion
22 to sever, I may have a different angle on issues.

10:30 23 THE COURT: Right.

10:30 24 But, right now, by code, it's ten and six --

10:30 25 MS. CORRIGAN: Understood.

10:30 1 THE COURT: -- but that awaits your motion.

10:30 2 So that means that we've got 18. 22. We are at
3 40 jurors right there, aren't we?

10:30 4 Now, we're going to take -- besides that, we've
5 never decided the number of peremptories. And forget the
6 code. Make that fair to each of you. You can have one
7 peremptory, if you choose, between -- for each of the six,
8 which would give you six more, and six more. So I would add
9 twelve.

10:30 10 Or we can go with a lesser number. So let's plan
11 for the worse. 52. We absolutely need a bare minimum of
12 52. And we know what we're going to get back on some of
13 these questionnaires in the real world. It'll be motions
14 for cause. Maybe some of those can be stipulated to. Maybe
15 you need questioning. But that's where it gets interesting.

10:31 16 200 is about right, I think, but it's a guess. I
17 don't -- I just don't wanna get 400. It's almost unwieldy.
18 We can bring them in later on when we talk to Kathy.

10:31 19 So let's take a look at that week for a moment.
20 And, once again --

10:31 21 *(To the clerk:)* Nancy, we're going to square this
22 courtroom away. I need a calendar. Can I borrow yours?

10:31 23 THE CLERK: I'll go grab one.

10:31 24 THE COURT: Okay. I want to get through the
25 Monday calendar, but I think I wanna be in session the rest

1 of that week. In other words, I think I'm going to draw you
2 in on Tuesday. And I want to get the date.

10:31 3 MS. HEINZ: And, Your Honor, just with respect to
4 today, Counsel for Mr. Elhuzayel had one other motion to
5 dismiss. Had a second one.

10:31 6 THE COURT: Okay.

10:31 7 All right. Well, Counsel, while we're waiting for
8 a calendar, your argument.

10:32 9 MR. LENGYEL-LEAHU: Thank you, Your Honor.

10:32 10 **DEFENDANT ELHUZAYEL'S SECOND MOTION TO DISMISS**

10:32 11 MR. LENGYEL-LEAHU: I believe she's talking about
12 the "vagueness" issue.

10:32 13 There's also a corollary to our other motion that
14 we have an enemy combatant situation. I think we can submit
15 on the paperwork that was submitted to the Court.

10:32 16 THE COURT: Okay.

10:32 17 Counsel.

10:32 18 **RESPONSE BY MS. HEINZ**

10:32 19 MS. HEINZ: The "Enemy Combatant Immunity" claim
20 was made in the motion to dismiss Counts One and Two, that
21 was in connection with the previous FTO argument.

10:32 22 The second Motion to Dismiss Counts One and Two
23 was based on alleged violations of the First and Fifth
24 Amendment, Your Honor.

10:32 25 THE COURT: Counsel?

10:32 1 MR. LENGYEL-LEAHU: Yes. We'll submit on the
2 paperwork.

10:32 3 THE COURT: Satisfied, Counsel?

10:32 4 MS. HEINZ: Yes, Your Honor. Thank you.

10:33 5 THE COURT: All right. You'll probably hear from
6 me next week. It'll give me the weekend to work through
7 without other cases on my calendar.

10:33 8 Then, is there anything further today? Let me
9 turn to the government first.

10:33 10 MS. HEINZ: Nothing further from the government
11 today, Your Honor.

10:33 12 THE COURT: Okay. I want to thank you very much.
10:33 13 Counsel, anything further on behalf of your
14 client?

10:33 15 MR. LENGYEL-LEAHU: Um, I mentioned to co-counsel,
16 but I haven't -- I haven't got my hands around the idea.

10:33 17 My client needs financial assistance, although I
18 am retained counsel. He has not been providing any, uh,
19 financial help for his own defense, but he's gonna need at
20 least one expert to come visit him, um, and perhaps some
21 ancillary services.

10:33 22 THE COURT: Make that known to me by court
23 order -- an under-seal order.

10:33 24 MR. LENGYEL-LEAHU: An under-seal order?

10:33 25 THE COURT: Under seal.

10:33 1 MR. LENGYEL-LEAHU: Ex parte to the Court?

10:33 2 THE COURT: I think so, Counsel, at least
3 initially. But, eventually, it's going to be disclosed to
4 the government.

10:34 5 MR. LENGYEL-LEAHU: Okay.

10:34 6 THE COURT: I just don't think that you have to
7 give away a defense this early; but, eventually, that
8 witness will be made known to the government. I just don't
9 know if it has to be made at this time, unless the
10 government's objecting. And if so, tell me the section,
11 then.

10:34 12 MS. HEINZ: No, Your Honor.

10:34 13 THE COURT: In other words, in death penalty
14 cases, the government actually has three days before the
15 death penalty -- which is ludicrous -- or the start of the
16 trial to disclose witnesses.

10:34 17 I'd like to afford the defense the same
18 opportunity, at least, to, you know, set forth a defense
19 without being bound to it.

10:34 20 MS. HEINZ: Your Honor, my understanding is this
21 would simply be a motion for funds in order to engage an
22 expert. And the government would agree that that is
23 properly *ex parte*.

10:34 24 THE COURT: And the actual motion that justifies
25 that, the affidavit?

10:34 1 MS. HEINZ: Yes, Your Honor. The government would
2 agree that's properly *ex parte*.

10:34 3 THE COURT: Obviously, if there's testimony,
4 you'll be notified of that.

10:34 5 All right. Then anything further, sir?

10:34 6 MR. LENGYEL-LEAHU: Can't think of a thing.

10:34 7 THE COURT: Ms. Corrigan, anything further?

10:34 8 MS. CORRIGAN: Just as a logistics matter,
9 Your Honor. I think that, in light of the fact my clients'
10 gonna be, at least for some period'a time, up at MDC -- for
11 purposes of the May 31st hearing, if he's still at MDC, what
12 I'd like to propose -- and I can get together with
13 Mr. Hazelwood on the clothing issue -- that, perhaps, I just
14 have the clothing brought to the courtroom that day, rather
15 than trying to rely on MDC dressing him out.

10:35 16 My suspicion is he'll be back-it-up (*sic*) uh -- up
17 in 8 North again. And that's -- I'm not so sure we'll be
18 guaranteed that he'd be in civil -- civilian clothing. I
19 don't wanna end up with the hassles of trying to retrieve
20 the clothing from L.A. on the 31st. It'll delay the
21 proceedings. So if I could have an outfit brought --
22 I'll -- I'll make the arrangement. I'll get together with
23 the marshals so that -- on that date, if we could have at
24 least a Plan B for clothing, if need be.

10:35 25 THE COURT: Marcelino?

10:35 1 U.S. MARSHAL: No issues.

10:35 2 MR. LENGYEL-LEAHU: Okay.

10:35 3 Excuse me, Your Honor. I was thinking that we
4 were gonna bring the clothes here anyway.

10:35 5 MS. CORRIGAN: No. You don't.

10:35 6 THE COURT: No. Let me help you with the process
7 and procedure. And it makes sense from a security
8 standpoint, but in this kinda litigation, it doesn't.

10:36 9 The Marshal's rules are they're basically dressed
10 out at the facility that they're being held, and then
11 brought to court. The problem is it doesn't make any sense.
12 You need a backup set of clothing. Yes, they can be dressed
13 out. But we need a set of clothing in court.

10:36 14 And I -- you weren't here when I told the infamous
15 story of the Mexican Mafia, where, in the fifth month of
16 trial, twelve defendants -- they reeked one morning.
17 Smelled like a sewer. And they're sitting there very
18 calmly. And I asked what the smell was. And they informed
19 me that the sewage pipe had broken over their dry cleaning
20 clothes over at the MDC, and that they'd been dressed out
21 anyway. I'm joking, but I'm not. We had to run 'em back
22 through the tunnel. Get clean clothes, and bring 'em back.

10:36 23 Marcelino, the marshals here, have been through
24 more complex litigation than any group of marshals in the
25 country. So we'll somewhat violate that security rule.

1 We'll have a backup set of clothing, Mr. Corrigan and
2 Counsel, that you submit to the court.

10:37 3 (To the marshal:) Marcelino, you'll check that.

10:37 4 (To counsel:) Okay?

10:37 5 MR. LENGYEL-LEAHU: Okay.

10:37 6 THE COURT: Anything else?

10:37 7 MS. HEINZ: No, Your Honor.

10:37 8 THE COURT: Okay. I apologize for the lateness.

10:37 9 All this started occurring earlier in the week.

10 And there was no reason to bring you in, you know, yesterday
11 or today. But it's --

10:37 12 Okay. Mr. Badawi, you're ordered to be
13 transported forthwith to MDC.

10:37 14 Thank you very much.

10:37 15 Oh, by the way, one more thing: From now on,
16 Counsel, when we go into session from this point forward,
17 you're ordered not to stand.

10:37 18 MR. LENGYEL-LEAHU: Thank you.

10:37 19 MS. HEINZ: Yes, Your Honor.

10:37 20 THE COURT: The reason for that is -- and, the
21 audience, thank you very much -- but you're ordered, as
22 Counsel, not to stand; and the reason for that is, if you
23 stand in my presence, it becomes obvious that the two
24 gentlemen aren't standing; therefore, there's something
25 different. So I'll train you to do that. It's a little

1 hard. And thank you for the respect.

10:38 2 But in complex litigation where one of the
3 gentlemen is going to be restrained --

10:38 4 MS. CORRIGAN: Your Honor, can we confirm what
5 time we're here on the 31st?

10:38 6 THE COURT: I'm sorry?

10:38 7 MS. CORRIGAN: What time --

10:38 8 THE COURT: I'm sorry?

10:38 9 MS. CORRIGAN: -- you want us here?

10:38 10 THE COURT: 7:30.

10:38 11 MS. CORRIGAN: Okay. 7:30. Great.

10:38 12 *(Proceedings adjourned at 10:38 p.m.)*

10:38 13 -oOo-

10:38 14

15

16

17

18

19

20

21

22

23

24

25

10:38 1
10:38 2
10:38 3
10:38 4
10:38 5
10:38 6
10:38 7
10:38 8
10:38 9
10:38 10
10:38 11
10:38 12
10:38 13
10:38 14
10:38 15
10:38 16
10:38 17
18
19
20
21
22
23
24
25

-oOo-

CERTIFICATE

I hereby certify that pursuant to Section 753,
Title 28, United States Code, the foregoing is a true and
correct transcript of the stenographically reported
proceedings held in the above-entitled matter and that the
transcript page format is in conformance with the
regulations of the Judicial Conference of the United States.

Date: March 31, 2017

/s/ Debbie Gale

DEBBIE GALE, U.S. COURT REPORTER
CSR NO. 9472, RPR, CCRR