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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

DOCKET NO. 1:19-mj-24

vs.

MUSE ABDIKADIR MUSE,
MOHAMED SALAT HAJI, and
MOHAMUD ABDIKADIR MUSE,

Defendants.

TRANSCRIPT OF ARRAIGNMENTS, INITIAL PRETRIAL CONFERENCES, AND
CONTINUATION OF DETENTION HEARINGS
BEFORE MAGISTRATE JUDGE PHILLIP J. GREEN
GRAND RAPIDS, MICHIGAN

January 31, 2019

Court Reporter: Glenda Trexler
 Official Court Reporter
 United States District Court
 685 Federal Building
 110 Michigan Street, N.W.
 Grand Rapids, Michigan 49503

Proceedings reported by stenotype, transcript produced by
computer-aided transcription.

1 A P P E A R A N C E S:

2 FOR THE GOVERNMENT:

3 MR. CLAY M. WEST
4 UNITED STATES ATTORNEY'S OFFICE
5 330 Ionia Avenue, N.W.
6 P.O. Box 208
7 Grand Rapids, Michigan 49501-0208
8 Phone: (616) 456-2404
9 Email: Clay.M.West@usdoj.gov

7 MR. CHRISTOPHER M. O'CONNOR
8 UNITED STATES ATTORNEY'S OFFICE
9 330 Ionia Avenue, N.W.
10 P.O. Box 208
11 Grand Rapids, Michigan 49501-0208
12 Phone: (616) 456-2404
13 Email: Christopher.m.o'connor@usdoj.gov

11 FOR THE DEFENDANT MUSE ABDIKADIR MUSE:

12 MS. SHARON A. TUREK
13 FEDERAL PUBLIC DEFENDERS OFFICE
14 50 Louis Street, N.W., Suite 300
15 Grand Rapids, Michigan 49503-2633
16 Phone: (616) 742-7420
17 Email: sharon_turek@fd.org

16 MR. JAMES S. FISHER
17 FEDERAL PUBLIC DEFENDERS OFFICE
18 50 Louis Street, N.W., Suite 300
19 Grand Rapids, Michigan 49503-2633
20 Phone: (616) 742-7420
21 Email: james_fisher@fd.org

20 FOR THE DEFENDANT MOHAMED SALAT HAJI:

21 MS. MARY CHARTIER
22 CHARTIER & NYAMFUKUDZA, PLC
23 1905 Abbot Road, Suite 1
24 East Lansing, Michigan 48823
25 Phone: (517) 885-3305
Email: mary@cndefenders.com

1 FOR THE DEFENDANT MOHAMUD ABDIKADIR MUSE:

2 MR. RICHARD E. ZAMBON
3 RICHARD E. ZAMBON, PLLC
4 202 Waters Building
5 161 Ottawa Avenue, N.W.
6 Grand Rapids, Michigan 49503
7 Phone: (616) 456-7831
8 Email: rick@zambonlaw.co

9 * * * * *

10 Grand Rapids, Michigan

11 January 31, 2019

12 2:15 p.m.

13 P R O C E E D I N G S

14 *THE COURT:* We're here on the matter of United States
15 versus Muse Abdikadir Muse, Mohamed Salat Haji, and
16 Mohamud Abdikadir Muse, case number 19-cr-25. This is the date
17 and time for a continuation of the detention hearing. In the
18 interim, since the last hearing, the grand jury returned an
19 Indictment which is filed at docket number 25. So it's my
20 intention, unless anyone has an objection, to go ahead and do
21 an arraignment on the Indictment and then we will proceed with
22 the continuation of the detention hearing.

23 Is there any objection from the government?

24 *MR. O'CONNOR:* No, Your Honor.

25 *THE COURT:* Mr. Zambon?

MR. ZAMBON: None, Your Honor.

MS. CHARTIER: No, Your Honor.

MS. TUREK: No, Your Honor.

1 *THE COURT:* All right. I suppose I should have
2 everyone make their appearance on the record. Why don't we go
3 ahead and do that as well.

4 *MR. WEST:* Good afternoon, Your Honor, Clay West and
5 Chris O'Connor for the United States.

6 *THE COURT:* Good afternoon.

7 *MR. ZAMBON:* Oh. Good afternoon, Your Honor.
8 Richard Zambon appearing on behalf of the Defendant
9 Mohamud Muse who is seated to my left.

10 *THE COURT:* All right. Good afternoon, Mr. Zambon.

11 *MS. CHARTIER:* Good afternoon, Your Honor.
12 Mary Chartier on behalf of Mohamed Haji who is seated to my
13 right.

14 *THE COURT:* All right. Good afternoon, Ms. Chartier.

15 *MS. TUREK:* Good afternoon, Your Honor. Sharon Turek
16 on behalf of Mr. Muse Muse seated at my right. Also at counsel
17 table is Mr. Fisher from my office who has also filed an
18 Appearance in this case.

19 *THE COURT:* All right. Good afternoon to all of you.

20 All right. Mr. -- let's see here. I'll get my notes
21 together.

22 Mr. Muse Muse and Mr. Mohamud Muse and
23 Mr. Mohamed Haji, I want to remind each of you that you have a
24 right to remain silent. That means you have no obligation to
25 say anything to anyone from the government, anyone in law

1 enforcement, or anyone else for that matter.

2 Do you understand that, Mr. Muse Muse?

3 *DEFENDANT MUSE MUSE:* Yes.

4 *THE COURT:* Do you understand that, Mr. Mohamed Haji?

5 *DEFENDANT HAJI:* Yes.

6 *THE COURT:* Do you understand that, Mr. Mohamud Muse?

7 *DEFENDANT MOHAMUD MUSE:* Yes.

8 *THE COURT:* All right. If you do make a statement,
9 what you say may be used against you in a later court
10 proceeding.

11 Do you understand that, Mr. Muse Muse?

12 *DEFENDANT MUSE MUSE:* Yes.

13 *THE COURT:* Mr. Mohamed Haji?

14 *DEFENDANT HAJI:* Yes.

15 *THE COURT:* Mr. Mohamud Muse?

16 *DEFENDANT MOHAMUD MUSE:* Yes.

17 *THE COURT:* You each have a right to the assistance of
18 an attorney throughout the proceedings in this case. If you
19 cannot afford an attorney, one will be appointed for you at no
20 cost to you.

21 Do you understand that Mr. Muse Muse?

22 *DEFENDANT MUSE MUSE:* Yes.

23 *THE COURT:* Mr. Mohamed Haji?

24 *DEFENDANT HAJI:* Yes.

25 *THE COURT:* Mr. Mohamud Muse?

1 *DEFENDANT MOHAMUD MUSE:* Yes.

2 *THE COURT:* Each of you has been appointed a
3 court-appointed attorney. Mr. Muse Muse, Sharon Turek has been
4 appointed to represent you. She is the Federal Public Defender
5 for the Western District of Michigan. Mr. James Fisher has
6 also been appointed and is representing you. He is an
7 Assistant Federal Public Defender. They are both very
8 experienced and very capable criminal defense attorneys.

9 Are you satisfied with their representation so far?

10 *DEFENDANT MUSE MUSE:* Yes.

11 *THE COURT:* They will continue to represent you no
12 matter how you choose to proceed in this case.

13 Do you understand that, sir?

14 *DEFENDANT MUSE MUSE:* Yes.

15 *THE COURT:* Mr. Mohamed Haji, Ms. Chartier has been
16 appointed by the court to represent you. She is a very
17 experienced and a very capable criminal defense attorney.

18 Are you satisfied with her representation so far?

19 *DEFENDANT HAJI:* Yes.

20 *THE COURT:* And you understand she will continue to
21 represent you no matter how you choose to proceed in this case?

22 *DEFENDANT HAJI:* Yes.

23 *THE COURT:* All right. Mr. Mohamud Muse, Mr. Zambon
24 has been appointed to represent you. He is also a very
25 experienced and a very capable criminal defense attorney.

1 Are you satisfied with his representation so far?

2 *DEFENDANT MOHAMUD MUSE:* Yes, sir.

3 *THE COURT:* He will continue to represent you in this
4 case no matter how you choose to proceed.

5 Do you understand that, sir?

6 *DEFENDANT MOHAMUD MUSE:* Yes.

7 *THE COURT:* Mr. Zambon, will your client waive reading
8 of the Indictment if I explain the charges to him?

9 *MR. ZAMBON:* Yes. Thank you, Your Honor.

10 *THE COURT:* All right. And, Ms. Chartier, will your
11 client also waive reading?

12 *MS. CHARTIER:* Yes, Your Honor.

13 *THE COURT:* Ms. Turek?

14 *MS. TUREK:* Yes, Your Honor.

15 *THE COURT:* All right. Very well. And before I get
16 into it, Mr. West or Mr. O'Connor, I saw in the penalty sheet a
17 reference to a forfeiture allegation, but I don't see it in the
18 Indictment.

19 *MR. WEST:* That's correct, Your Honor. There is a
20 statutory authority for forfeiture, but there is no forfeiture
21 allegation in the Indictment, and so the penalty sheet as filed
22 is erroneous.

23 *THE COURT:* All right. So I don't need to address
24 that?

25 *MR. WEST:* Correct.

1 *THE COURT:* Okay. Thank you.

2 All right. Mr. Muse Muse, Mr. Mohamed Haji, and
3 Mr. Mohamud Muse, you are each charged in Count 1 with
4 conspiracy to provide material support to a designated foreign
5 terrorist organization. The word "conspiracy" is used to refer
6 to a criminal agreement of sorts. If two or more persons agree
7 to cooperate with each other for the purposes of committing a
8 crime, that's called a conspiracy.

9 To be convicted of a conspiracy, the government would
10 have to prove beyond a reasonable doubt that the individual
11 voluntarily joined the conspiracy knowing the criminal purpose
12 of it. Here the grand jury is alleging that from January of
13 2017 through January 21st of this year that each of you agreed
14 to cooperate with others in committing the crime of providing
15 material support to a designated terrorist organization.

16 Now, here the government would first of all have to
17 prove that the organization to which you allegedly intended to
18 provide material support was a designated foreign terrorist
19 organization. And that is, if you read the Indictment, it goes
20 into some detail as to which entities have been designated by
21 the State Department which are collectively referred to as ISIS
22 for purposes of this Indictment.

23 It is further alleged that you agreed to provide
24 material support and resources specifically by way of
25 personnel, which I take to mean providing your services, to

1 ISIS. This would be a violation of Title 18, United States
2 Code § 2339B.

3 Mr. Muse Muse, do you think you understand what you're
4 being accused of in Count 1?

5 *DEFENDANT MUSE MUSE:* Yes.

6 *THE COURT:* Mr. Mohamed Haji, do you think you
7 understand what you're being accused of in Count 1?

8 *DEFENDANT HAJI:* Yes.

9 *THE COURT:* And Mr. Mohamud Muse, do you think you
10 understand what you're being accused of in Count 1?

11 *DEFENDANT MOHAMUD MUSE:* Yes.

12 *THE COURT:* I'm going to go on and talk about Count 2,
13 and then we'll talk about penalties as they are the same.

14 Count 2 charges each of you with attempting to provide
15 material support to a designated foreign terrorist
16 organization. Here it's alleged essentially that on
17 January 21st of this year each of you attempted to provide
18 material support to the organizations collectively referred to
19 as ISIS and that you aided and abetted each other in that
20 attempt.

21 Aiding and abetting -- excuse me -- is a separate
22 statutory provision, and that's under Title 18,
23 United States Code § 2. Aiding and abetting means to provide
24 assistance, to help somebody else in committing a crime knowing
25 that that person is committing a crime.

1 So here it's alleged that either you attempted to
2 provide material support, that is your services, to ISIS, or
3 you aided and abetted somebody else in attempting to provide
4 that material support. This would also be a violation of
5 Title 18, United States Code § 2339B.

6 Mr. Muse Muse, do you think you understand what you're
7 being accused of in Count 2?

8 *DEFENDANT MUSE MUSE:* Yes.

9 *THE COURT:* Mr. Mohamed Haji, do you think you
10 understand what you're being accused of in Count 2?

11 *DEFENDANT HAJI:* Yes.

12 *THE COURT:* And Mr. Mohamud Muse, do you think you
13 understand what you're being accused of in Count 2?

14 *DEFENDANT MOHAMUD MUSE:* Yes.

15 *THE COURT:* Gentlemen, if you are convicted of either
16 Count 1 or Count 2, you face a maximum penalty of 20 years in
17 prison, a fine of up to \$250,000. You would be subject to a
18 period of supervised release of up to three years. And you
19 would be required to pay a special assessment of a hundred
20 dollars.

21 Supervised release is a period of time following
22 incarceration in which an individual is subject to certain
23 terms and conditions set by the sentencing judge. If that
24 individual violates any term or condition, he could be sent
25 back to prison for up to the full term of supervised release.

1 In some instances that could result in an individual spending
2 more time in prison than what was allowed as the maximum
3 penalty for the offense of conviction.

4 Do you have any questions as to the penalties for
5 Count 1 or Count 2, Mr. Muse Muse?

6 *DEFENDANT MUSE MUSE:* No.

7 *THE COURT:* Do you have any questions,
8 Mr. Mohamed Haji?

9 *DEFENDANT HAJI:* No.

10 *THE COURT:* Do you have any questions,
11 Mr. Mohamud Muse?

12 *DEFENDANT MOHAMUD MUSE:* No.

13 *THE COURT:* All right. Mr. Muse Muse, you are also
14 charged in a third count of making a false statement in a
15 passport application. The grand jury is alleging that on
16 January 2nd of this year that you made an application for a
17 passport and that in that application you knowingly and
18 intentionally made a false statement of the type that would
19 cause the State Department to issue a passport where it might
20 otherwise not. It's alleged that you attested, meaning that
21 you stated under oath, on the application that you had
22 accidentally thrown out your prior passport on December 19th,
23 2018. And it's alleged that you knew at the time that that
24 statement was not true. This would be a violation of Title 18,
25 United States Code Section 1542.

1 Mr. Muse Muse, do you think you understand what you're
2 being accused of in Count 3?

3 *DEFENDANT MUSE MUSE:* Yeah.

4 *THE COURT:* If convicted of Count 3, you face a
5 maximum penalty of 10 years in prison, a fine of up to
6 \$250,000. You'd be subject to a period of supervised release
7 of up to three years. And would be required to pay a special
8 assessment of a hundred dollars.

9 Mr. Muse Muse, do you have any questions or concerns
10 about those penalties?

11 *DEFENDANT MUSE MUSE:* No.

12 *THE COURT:* All right. Gentlemen, there are four ways
13 that you could respond to the charges against you. You could
14 plead not guilty. You could plead guilty. You could plead
15 what's known as no contest, which requires the permission of
16 the district court judge, in this case Judge Gordon Quist. Or
17 you could stay silent, say nothing, in which case the Court
18 would automatically enter a not-guilty plea on your behalf.

19 I'm now going to ask each of you to enter a plea to
20 the charges against you through your attorney.

21 Ms. Turek, how does Mr. Muse Muse plead?

22 *MS. TUREK:* Your Honor, not guilty as to all three
23 counts.

24 *THE COURT:* Very well. A not-guilty plea will be
25 entered on behalf of Mr. Muse Muse as to each count, 1, 2, and

1 3 of the Indictment.

2 Ms. Chartier, how does Mr. Haji plead?

3 *MS. CHARTIER:* Mr. Haji pleads not guilty, Your Honor.

4 *THE COURT:* Very well. A not-guilty plea will be
5 entered on behalf of Mr. Haji as to each count 1 and Count 2.

6 Mr. Zambon?

7 *MR. ZAMBON:* Not guilty as to all counts, Your Honor.

8 *THE COURT:* Very well. A not-guilty plea will be
9 entered on behalf of Mr. Mohamud Muse as to each, Count 1 and
10 Count 2 in the Indictment.

11 Gentlemen, the next thing we're going to take up is
12 the initial pretrial conference. This is an opportunity for
13 you and your attorney to learn more about the government's case
14 against you. The prosecutors have filed an Initial Pretrial
15 Conference Summary Statement. This lists and identifies those
16 matters the government is required to disclose to you at this
17 time.

18 Mr. West, are there any corrections, additions, or
19 comments that you wish to make?

20 *MR. WEST:* No, Your Honor. I'll note that I've
21 discussed separately with each defense counsel that we intend
22 to transfer discovery to the final upload system early next
23 week.

24 *THE COURT:* This is going to the cloud?

25 *MR. WEST:* Yes, Your Honor.

1 *THE COURT:* Okay.

2 *MR. WEST:* Securely.

3 *THE COURT:* All right. I don't know anything about
4 the cloud, so that's fine. Mr. -- as long as the defense
5 attorneys do, that's all that matters.

6 Mr. Zambon, any questions or concerns?

7 *MR. ZAMBON:* I do, Your Honor. At the detention
8 hearing last week Agent Dunham testified that my client made no
9 statement when he was arrested, and I see that under I(A) that
10 "Post-arrest interviews of all three defendants." I don't
11 understand the difference.

12 *THE COURT:* Mr. West.

13 *MR. WEST:* May I clarify, Your Honor?

14 *THE COURT:* Yes, please.

15 *MR. WEST:* I believe there was no substantive
16 statement given by Mr. Mohamud Muse. I think to the degree
17 that a report was written to that effect, I constituted it in
18 that category.

19 *THE COURT:* All right. So are you saying that an
20 interview was attempted but he declined to answer questions?

21 *MR. WEST:* That's my understanding, Your Honor.

22 *THE COURT:* Does that help you, Mr. Zambon?

23 *MR. ZAMBON:* That does. Thank you, Your Honor.

24 *THE COURT:* Anything else, Mr. Zambon?

25 *MR. ZAMBON:* No, thank you, Your Honor.

1 *THE COURT:* All right. Ms. Chartier?

2 *MS. CHARTIER:* The only issue is I filed an Initial
3 Pretrial Conference Statement last week under the MJ. Would
4 the Court like me to refile one under the new docket, or does
5 it all get transferred over?

6 *THE COURT:* I think it gets transferred. I'm going to
7 say that with conviction.

8 *MS. CHARTIER:* Great.

9 *THE COURT:* Okay. The MJ case does get transferred
10 in. I think if you went on the CM/ECF under 19-cr-25 right
11 now, you would see everything from the MJ case.

12 *MS. CHARTIER:* Perfect.

13 *THE COURT:* So I don't see that there's any need for
14 you to file another one.

15 *MS. CHARTIER:* Thank you. Then I have no issues with
16 the statement filed by the government.

17 *THE COURT:* All right. Thank you.

18 Ms. Turek?

19 *MS. TUREK:* No issues, Your Honor.

20 *THE COURT:* All right. Very well.

21 Mr. Zambon, how much time would you like to file your
22 initial statement?

23 *MR. ZAMBON:* I filed my Initial Pretrial Statement.

24 *THE COURT:* Oh, you did.

25 And did you, Ms. Turek?

1 *MS. TUREK:* I did, Your Honor. It was also under the
2 MJ.

3 *THE COURT:* Excellent. Then we're all covered. Thank
4 you.

5 Is there anything else we need to take up before we
6 resume the detention hearing, Mr. West?

7 *MR. WEST:* No, Your Honor.

8 *THE COURT:* All right. Mr. Zambon?

9 *MR. ZAMBON:* No, thank you, Your Honor.

10 *THE COURT:* All right. Ms. Chartier?

11 *MS. CHARTIER:* No, Your Honor. Thank you.

12 *THE COURT:* And Ms. Turek?

13 *MS. TUREK:* No, Your Honor.

14 *THE COURT:* All right. As I understand it, Counsel,
15 when we were last here I advised everyone that I did not
16 believe the Court could entertain a statutory rebuttable
17 presumption in favor of detention unless it ran a preliminary
18 hearing and made such a finding of probable cause at the
19 conclusion of that hearing. The government didn't agree with
20 me on that, but that was the approach I took.

21 Intervening circumstances have occurred in that the
22 grand jury has returned an Indictment. There is no question at
23 this point that the statutory rebuttable presumption now
24 applies. The Sixth Circuit in *United States versus Stone*,
25 608 F.3d. 939 at 945, a 2010 case, ruled that the presentment

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1 of an Indictment satisfies the prerequisite for the statutory
2 rebuttable presumption. So it does now apply.

3 All right. Mr. Zambon, I believe you were about to
4 cross-examine Special Agent Dunham. Please proceed.

5 MR. ZAMBON: Thank you, Your Honor.

6 CROSS-EXAMINATION

7 BY MR. ZAMBON:

8 Q. Good afternoon, Agent Dunham.

9 A. Good afternoon, sir.

10 Q. As you know, sir, I represent Mohamud Muse. And I'm going
11 to ask you questions concerning him but also possibly touch on
12 some of the testimony from last week.

13 When I ask you a question, I'll refer to "you," and I mean
14 that in the larger sense. You, the FBI, all these other
15 government agencies that you spoke about last week, state and
16 federal agencies and everybody else.

17 Do you understand that?

18 A. I do.

19 Q. Okay. So at some point Mr. Muse, my client -- we'll refer
20 to -- I'll refer to him as Mr. Muse -- came to the attention of
21 the government, correct?

22 A. That's correct.

23 Q. And it was through a Facebook posting?

24 A. Through a Facebook profile, that's correct.

25 Q. A Facebook profile. What is that?

1 A. A Facebook profile is going to be a page that's on the
2 Internet that may contain pictures, statements, commentary,
3 likes, things of that sort.

4 Q. And I truly don't have a Facebook account and I'm not very
5 knowledgeable, but I have a rudimentary knowledge of it. I
6 understand that there's a private and a public page, correct?

7 A. There are user settings. So a user decides what they want
8 people to be able to see or not see.

9 Q. And Mr. Mohamud Muse had a public page, is that correct, or
10 posting or whatever it's called?

11 A. He had material that was available to other Facebook users,
12 yes.

13 Q. Now, how did that get brought to the attention of the
14 government?

15 A. So as I shared last week, there were analyses that were
16 being conducted by the FBI for other Facebook accounts that had
17 material that suggested extremist views, and so Mohamud Muse's
18 was one of the accounts that came up during that analysis.

19 Q. How do they do this analysis? Does the FBI just look at
20 everybody's Facebook account?

21 A. No. So in conjunction with other accounts that
22 demonstrated extremist material, the Facebook account
23 Mohamud A. Muse with an "A" displayed other pro-ISIS,
24 pro-Jihad, pro-violence, and pro-martyrdom type material.

25 Q. And who are these other accounts that are associated with

CROSS-EXAMINATION OF PAUL DUNHAM

1 Mr. Mohamud Muse?

2 A. I think I would have to be careful in answering some of
3 those questions.

4 *THE COURT:* Do the best you can.

5 *THE WITNESS:* I couldn't tell you the specific names
6 of those accounts, but some came on for reasons that were
7 unclassified. Some came on for reasons that were classified.

8 Q. (BY MR. ZAMBON) So what were the -- I assume you don't
9 want to talk about the classified reasons or you can't.

10 A. I'm not able to, sir, that's correct.

11 Q. What about the unclassified reasons?

12 A. So these are accounts that demonstrated pro-ISIS,
13 pro-violence, pro-Jihad, pro-martyrdom exchanges of material.
14 So there's linkage amongst the accounts.

15 Q. So it would not initially -- Mr. Muse, he was connected
16 with some other account?

17 A. That's correct.

18 Q. Okay. Now -- and when did that occur?

19 A. This was in the spring of 2016.

20 Q. 2016?

21 A. That's correct.

22 Q. And you mentioned something last week about a grand jury in
23 Miami. Is that correct?

24 A. So the matter started with not knowing if that Facebook
25 account was used by a person inside the United States or

1 outside the United States.

2 *THE COURT:* Let me interject here. I have concerns
3 about Rule 6(e) here. We're not invading that rule, are we?

4 *THE WITNESS:* I guess I'm doing my very best here to
5 answer the questions.

6 *THE COURT:* All right.

7 *THE WITNESS:* So we can say that process was served in
8 order to determine where the IP logins were, the Internet
9 protocol logins were for that account. So in the beginning it
10 wasn't clear if the account user was in the United States or
11 not in the United States. So the IP logins revealed logins
12 from internet service providers in Omaha, Nebraska.

13 Q. (BY MR. ZAMBON) All right. And how does that connect
14 with Miami?

15 A. So, again, Miami had subjects and individuals they were
16 investigating. The Facebook account Mohamud A. Muse came about
17 during their investigation. As the investigation of that
18 began, it revealed that the user was likely in Omaha, Nebraska,
19 based on the internet protocol logins.

20 Q. There wasn't any large like NSA looking at all of these
21 accounts that I might read about in some mystery or something
22 like that?

23 A. There was not.

24 Q. Okay. Thank you. I assume, then, that when Mr. Muse came
25 to the attention of the FBI you did a background search on him;

1 is that correct?

2 A. Eventually, once we identified who we believed the user of
3 the account was, that's correct.

4 Q. Once you identified him. And you identified him about when
5 then?

6 A. It would have been in the fall of 2016.

7 Q. All right. And to start off in the spring of 2016 I think
8 you said?

9 A. That's when some of the initial work was conducted. You
10 know, it basically brought the account to the FBI's attention
11 and then subsequent investigation occurred.

12 Q. And was the purpose of the investigation into the
13 background of Mr. Muse to conduct a risk assessment of him?

14 A. No. No. Just trying to determine who the user of that
15 account was.

16 Q. All right. At some point did you do a risk assessment of
17 Mr. Muse?

18 A. Can you define "risk assessment" for me?

19 Q. I think it's probably self-evident. You decided whether or
20 not he was a credible threat, an imminent threat?

21 A. I mean, I guess, just by way of background, so I'm a
22 certified public accountant, and risk assessment means
23 something very different to me in the context of financial
24 reporting, compliance, operations. So I guess I'm just trying
25 to understand when you say risk assessment, that's not a word

CROSS-EXAMINATION OF PAUL DUNHAM

1 we use in the FBI. How about that?

2 Q. But you're also a special agent. You've gone beyond just
3 financial accounting, correct?

4 A. That's correct.

5 Q. Okay. And so you understand by that I mean about an
6 imminent threat to the safety and welfare of the United States.

7 A. So we're trying to assess intentions and capabilities, if
8 that's what you're asking.

9 Q. And that started in the fall of 2016, two and a half years
10 ago?

11 A. That's fair, yes.

12 Q. Okay. Did you determine where Mr. Muse was born?

13 A. Yes, eventually.

14 Q. And where was that?

15 A. My understanding from his alien file from the United States
16 Citizenship and Immigration Service, it was in a refugee camp
17 in Dadaab, Kenya.

18 Q. When did he come to the United States?

19 A. Um, I want to say around 2003. That's my best
20 recollection.

21 Q. All right. And he is about 23 years old I think you
22 testified?

23 A. That's correct.

24 Q. Did you check out his educational background?

25 A. Limited, yes.

1 Q. His educational background is limited or you did a limited
2 search?

3 A. We did a limited search.

4 Q. What did you discover?

5 A. It's my understanding that he graduated from high school
6 and might have started some college.

7 Q. In Nebraska?

8 A. The only piece I'm aware of for college is -- no, I take
9 that back. Yes, in Nebraska, yes.

10 Q. At some point he came to Michigan?

11 A. Yes.

12 Q. Did he obtain a driver's license?

13 A. In the state of Michigan?

14 Q. In the state of Michigan.

15 A. Yes, he did.

16 Q. All right. And did you seize that driver's license? Is it
17 in your possession?

18 A. I'm not aware if his driver's license was seized or not.

19 Q. He was arrested at the airport, correct?

20 A. He was, that's correct.

21 Q. And he's been locked up since then?

22 A. Yes, he's been in the custody of the Marshal Service,
23 that's correct.

24 Q. And the usual course of procedure is that defendants are --
25 all their property is taken from them, including driver's

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1 licenses, et cetera, correct?

2 A. Yes. Again, because they were arrested on a holiday,
3 though, they started in the custody of the Kent County
4 Sheriff's Office, so I personally wasn't involved in that
5 process, so I'm not sure what property went to what agency.

6 Q. Did you ever verify that he lived in Lansing?

7 A. When you say verify, what do you mean?

8 Q. Well, that you know that he was -- moved to Lansing,
9 correct?

10 A. So like there are driver's license records that reflect --

11 Q. Right.

12 A. -- an address of record in the state of Michigan in the
13 Lansing area, yes.

14 Q. And he put a driver's -- excuse me -- put an address on his
15 driver's license, correct?

16 A. He did.

17 Q. Did you ever verify that the address on his driver's
18 license was in fact where he lived?

19 A. Um, so he moved multiple times. Is there a particular
20 point in time you're referencing?

21 Q. The last year.

22 A. Um, I'm going to estimate I think he moved three to four
23 times within the last year.

24 Q. Did he change his driver's license --

25 A. He did not.

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1 Q. -- to reflect that?

2 A. He did not.

3 Q. Okay. Did you check to see if he had a passport?

4 A. Yes, I did.

5 Q. And did that reveal any travels --

6 A. Um, so I could --

7 Q. -- outside of the United States?

8 A. So I think your question was two parts. Yes, I did check
9 to see if he had a passport, and then based on the limited
10 records I saw, no, I'm not aware of any international travel.

11 Q. What about his employment? Do you know if he was employed?

12 A. I do.

13 Q. And where was he employed?

14 A. Most recently at WalMart.

15 Q. And before that?

16 A. Um, he's been at WalMart for a while. I'd have to go back
17 into records.

18 Q. Perhaps Home Depot or someplace like that?

19 A. He was at Home Depot, that's correct.

20 Q. Did it appear to you that he's been employed since he's
21 moved to the Lansing area?

22 A. Continuously?

23 Q. Sure.

24 A. I think there's periods of time that he was not.

25 Q. For how long of periods of time?

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1 A. I don't recall right now. Again, I would have to go back.
2 They are detailed records.

3 Q. But he's had several jobs in the Lansing area since he
4 moved here to Lansing; is that correct?

5 A. That's correct.

6 Q. When did you say he moved to Lansing?

7 A. I think it was around the fall of 2016. Either late summer
8 or early fall.

9 Q. Now, did you ever know him to use an alias to obtain
10 fraudulent identification?

11 A. Not that I'm aware of, no.

12 Q. Okay. Did you check to see whether or not he had any bank
13 accounts?

14 A. I did.

15 Q. And does he have any bank accounts?

16 A. Yes.

17 Q. And where are his bank accounts located? The bank.

18 A. You're asking the name of the financial institution?

19 Q. The name of the bank, correct.

20 A. Is it problematic to reveal?

21 *THE COURT:* No, not that I know of.

22 *THE WITNESS:* Okay. Fifth Third Bank.

23 Q. (BY MR. ZAMBON) All right. In Lansing? A particular
24 branch in Lansing? Do you know? Or just generally
25 Fifth Third Bank?

1 A. Yeah. I mean, I don't know that financial institutions
2 necessarily work that way. I think you can show up at whatever
3 branch you want.

4 Q. Okay. What were the accounts? Checking? Savings? That
5 kind of accounts?

6 A. I'd have to go back to the detail, but, yeah, those types
7 of accounts, yes.

8 Q. What about a credit card? Did he obtain any credit card?

9 A. I don't recall off the top of my head. There was a debit
10 card, but I don't recall if there was a credit card or not. A
11 debit card that was linked to a checking account.

12 Q. Now, having been an accountant, still being an accountant,
13 did you do an analysis of his checking/savings accounts?

14 A. His financial records were reviewed, yes.

15 Q. Okay. Did that reveal any transactions where he sent money
16 to a foreign country?

17 *MR. O'CONNOR:* Your Honor, I would just object. To
18 the extent that Mr. Zambon is calling for information derived
19 through the grand jury, we need to be careful about Rule 6(e)
20 disclosures of information that this agent -- to the extent
21 this agent only knows certain information through the
22 grand jury, I'm not sure that that's something --

23 *THE COURT:* Well, it would certainly be problematic if
24 the agent was disclosing the source of the information. I
25 suppose any piece of information that was obtained solely

1 through a grand jury subpoena would be considered a matter
2 occurring before the grand jury and would be considered 6(e).
3 So I recognize that the agent cannot under law disclose matters
4 if they were only obtained through a grand jury subpoena.

5 Q. (BY MR. ZAMBON) Was that information only obtained with a
6 grand jury subpoena?

7 A. Yes. I would have no other basis to speak to that.

8 Q. Okay. Now, Mr. Muse had this Facebook account and then
9 your ECU I believe it is Number 1 made contact with him; is
10 that correct?

11 A. I'm sorry, ECU? Are you saying undercover employee, UCE?

12 Q. Correct.

13 A. Yes, that's correct.

14 Q. What did I say? And what's the right term?

15 A. I think the letters were transposed when you said it, but
16 the substance of what you were explaining made sense.

17 Q. UCE?

18 A. UCE. Undercover employee, UCE.

19 Q. Undercover employee. Okay. I'll get it right. Okay.

20 It's UCE-1, okay. And I assume that was the first undercover
21 agent to make contact with Mr. Muse, that's why he's designated
22 Number 1?

23 A. So as I summarized last Friday in my testimony, there was
24 an undercover employee prior to Undercover Employee 1 in the
25 Criminal Complaint.

1 Q. And I know you answered a lot of questions about these
2 undercover agents, and we went through this, whether or not
3 they are employees of the FBI. Are they special agents or
4 agents?

5 A. Um, most of the people are in what we call a category of
6 professional support employees, so they are not special agents.
7 But they are other direct employees of the FBI.

8 Q. Is there some kind of background that you have to have in
9 order to be an undercover?

10 A. Um, so there's specialized training that occurs. There's a
11 process associated with that.

12 Q. Is there some protocol for that, some document which I
13 could look at to see if I would be qualified?

14 A. I don't know the answer to that question.

15 Q. Do you know if there's any written protocol or anything
16 like that?

17 A. I'm saying I don't know. There could be, but I don't know.

18 Q. Okay. There was also testimony, I think, that the
19 government has in its possession contacts between my client and
20 UCEs that are text messages, correct?

21 A. You're saying written exchanges?

22 Q. Correct.

23 A. Typed exchanges. Yes, that's written material.

24 Q. Any other kind of material, like a recorded phone call or
25 something like that?

1 A. So through Facebook there's voice communication capability,
2 and so there are recorded audio communications as well.

3 Q. Is that only through Facebook or were there any phone
4 calls?

5 A. No, there were no phone calls.

6 Q. I did not know that you could make an audio contact through
7 Facebook.

8 A. You can do it through WhatsApp as well, which is the same
9 here.

10 Q. WhatsApp, is that the application for Facebook?

11 A. No. So WhatsApp is a completely separate communication.
12 So it's its own application that allows for voice
13 communications and/or written communications between parties.

14 *THE COURT:* How do you spell that?

15 *THE WITNESS:* W-A -- W-H-A-T-S-A-P-P. WhatsApp.

16 *THE COURT:* Thank you.

17 *THE WITNESS:* So there are WhatsApp communications
18 between undercover employees and Mohamud Muse.

19 Q. (BY MR. ZAMBON) And I understand, then, that those are
20 all preserved?

21 A. They are.

22 Q. Okay. You also said last week that Mr. Muse had been in
23 contact with people in other countries?

24 A. He had.

25 Q. And what kind of contact was that?

1 A. Facebook.

2 Q. The written or the WhatsApp?

3 A. Um, so I can speak to the written. Based on your question
4 we would tread into other material if we answered the rest
5 of --

6 Q. Fair enough. Understood. So it's the Facebook, the
7 written parts?

8 A. Correct.

9 Q. All right. And what other countries are those?

10 A. Specifically Ghana and Nigeria.

11 Q. And is the person or -- how many people in each country?

12 A. One person in each.

13 Q. Have you determined whether or not that person is an ISIS
14 or an ISIL member, or are we treading --

15 A. I don't think I can speak to that.

16 Q. Now, I understand Mr. Muse's brother engaged in a financial
17 transaction with the FBI to get money to buy an airplane
18 ticket, correct?

19 A. Again, I guess I struggle with that characterization only
20 because Muse Muse was communicating with the person he
21 understood to be an ISIS fighter in Somalia.

22 Q. Right, but we know the truth.

23 A. I don't know how I'd rewind that and reconcile that with
24 the events of the time versus what people are aware of now.

25 Q. Okay. Do you know if my client received any money in order

1 to purchase an airplane ticket?

2 A. I know that \$300 was transmitted in your client's name to
3 pick up money in furtherance of Muse Muse's request for money
4 to purchase an airplane ticket, yes.

5 Q. And how was that transferred? Was that in a money order?

6 A. So it was through the service MoneyGram.

7 Q. All right. And that's some kind of online money-transfer
8 organization?

9 A. So MoneyGram is a money service business. They have a lot
10 of locations in WalMarts. WalMart stores. So you can send
11 money from one location to another.

12 Q. You can also buy money orders and that kind of thing there?
13 Is that kind of the same idea?

14 A. I don't know if that technically belongs to MoneyGram's
15 service. That could be WalMart or another provider. I don't
16 know if MoneyGram issues money orders or not. But it's
17 basically an ability to transfer cash from one place to
18 another.

19 Q. Did Mr. Muse purchase any money orders at any of these
20 locations, WalMart or anyplace else?

21 A. Did he purchase money orders?

22 Q. Correct.

23 A. Not that I'm aware of, no.

24 Q. The ticket that was purchased for his brother, was that a
25 one-way ticket?

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1 A. No, that was not.

2 Q. It was a roundtrip ticket?

3 A. It was.

4 Q. Was there a return date on that?

5 A. There was.

6 Q. What date was he supposed to return?

7 A. I don't remember the exact date, but it was in early
8 February. Like around a handful of days from now.

9 Q. So he would have been gone around two months, then; is that
10 correct?

11 A. No, about two weeks or even less than. Maybe 10 days-ish.

12 Q. So he's supposed to fly to Somalia, be there 10 days, and
13 then come back?

14 A. The ticket date was a departure of January 21st and a
15 return date in early February. I don't remember exactly.

16 Q. All right. And it's to your knowledge that Facebook closed
17 down Mr. Muse's account; is that right?

18 A. So Mohamud Muse had a total of four Facebook accounts.

19 Q. Correct. And I was going to talk about the first one.

20 A. Okay. And I'm sorry, your question is what regarding the
21 first account?

22 Q. Facebook closed down the account; is that right?

23 A. Facebook disabled it, that's correct.

24 Q. Now, they did that independent of the government, right?

25 A. That's correct.

1 Q. They just have their own people who review postings and
2 look to see if somebody appears to be dangerous or a threat; is
3 that right?

4 A. That's my understanding as well, yes.

5 Q. I assume you never worked with Facebook or --

6 A. I have not.

7 Q. But you -- okay. What does it take to obtain a Facebook
8 account? I assume not a whole lot, right? I can go on there
9 if I wanted to and enter some information?

10 A. That's correct.

11 Q. Even after my account was closed by Facebook?

12 A. That's correct.

13 Q. What information is required to open a Facebook account?

14 A. I think it's very minimal. Basically a name.

15 Q. Do you have a Facebook account?

16 A. I do not.

17 Q. Okay.

18 *THE COURT:* I don't either, Mr. Zambon, if that helps
19 you.

20 *MR. ZAMBON:* There's three of us. Three of us in
21 West Michigan all in one room.

22 Q. *(BY MR. ZAMBON)* All right. So it's minimal information.
23 And then there were four Facebook accounts opened by Mr. Muse?

24 A. That's my understanding of how many are attributed to him,
25 yes.

1 Q. Do you know if the same information was used to open each
2 account?

3 A. You're saying like the listed name --

4 Q. Correct.

5 A. -- of the user? No, it was not the same on any of them.

6 Q. What names were used?

7 A. So the first one was Mohamud A. Muse ending with an A.

8 Q. The second one, do you know?

9 A. Yes, Abu Usama. So A-B-U U-S-A-M-A.

10 Q. And the third?

11 A. The third was Abu Osama with an O. So O-S-A-M-A.

12 And then the fourth I don't remember the name off the top
13 of my head.

14 Q. All right. Now, were these the names of the -- you used
15 some term last week like an ISIS fighter name or something like
16 that.

17 A. The latter two were made, and then ISIS we talked about
18 kunya, K-U-N-Y-A.

19 Q. Kunya. That's the term. What is that term again? What
20 does that mean? Is that a fighter name for --

21 A. It's your ISIS fighter name.

22 Q. Who gives you that? Or do you just pick out one?

23 A. You select it yourself. You decide what your fighter name
24 is going to be.

25 Q. The first Facebook account was closed when?

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1 A. It was closed around July of 2017.

2 Q. And when was it -- the second one opened?

3 A. Right around July of 2017.

4 Q. Do you know when that second one was closed?

5 A. To the best of my recollection maybe like Octoberish of
6 2017. It wasn't open for very long. A couple of months.

7 Q. Did Facebook close that one down also?

8 A. It did.

9 Q. All right. And the third one was opened?

10 A. The third one was opened in November of 2018.

11 Q. Closed down by Facebook when, do you know?

12 A. It has not been closed down.

13 Q. What about the fourth one?

14 A. What --

15 Q. You said the fourth account.

16 A. Yes. I'm sorry.

17 Q. When was that opened?

18 A. You're correct. The third account was closed. The fourth
19 account was opened in December of 2018. So Facebook closed all
20 three accounts that preceded the fourth one.

21 Q. Were there any contacts with your UCEs on every account,
22 every of the four accounts?

23 A. There was. There was contact between UCEs on all four of
24 those Facebook accounts, yes.

25 Q. Was it just UCE-1 or had UCE-2, 3, 4, and 5, et cetera,

1 jumped in?

2 A. Again, to the best of my recollection, because there was a
3 lot of communication, UCE-1 would have probably been exclusive
4 to just the first two accounts, and then UCE-2 for the second
5 two accounts.

6 Q. When an account was closed, let's say account number 1 was
7 closed, did UCE-1 then try -- or did UCE-1 initiate contact
8 to -- with Mr. Muse in account number 2?

9 A. Yes. Yes.

10 Q. What about when account 2 was closed and account 3 was
11 opened, did a UCE initiate contact then?

12 A. So that would have been the reverse. That would have been
13 contact being initiated by the Abu Osama account to UCE-2.

14 Q. All right. And then what about when that third one was
15 closed and the fourth one was opened, who initiated the
16 contact?

17 A. That would have been the fourth account initiating contact
18 with Undercover Employee 2.

19 Q. You obtained a number of search warrants out of this case;
20 is that correct?

21 A. When you say a number, like just give me a sense of what
22 you mean.

23 Q. Well, a dozen or so. Twelve or so.

24 A. All the way through the events of January 21st of this
25 year, that's correct.

1 Q. Correct. Were all of these search warrants obtained
2 through the Western District of Michigan?

3 A. Yes, they were.

4 Q. Nothing in Omaha, Nebraska, or Miami?

5 A. No. None.

6 Q. Let's go to some of the exhibits here. Do you have your
7 exhibit book up there?

8 A. I do, sir.

9 Q. There's mention of the word "kuffar" through several of the
10 exhibits, K-U-F-F-A-R.

11 A. That's correct.

12 Q. And I know you explained that before. What is that
13 exactly?

14 A. Again, in my understanding, that's the Arabic word for
15 nonbeliever or disbeliever. Someone who does not believe in
16 Islam.

17 Q. Does that refer to the universal nonbeliever like in any
18 country in the world or just in particular areas?

19 A. It's my understanding it's universal. Anyone that's not --
20 that basically is not a follower of Islam.

21 Q. A typical exchange here -- or maybe that's a bad way of
22 saying it. Go to Exhibit 15, if you would, please. The way I
23 understand it, the first page I've got, which is page 110, you
24 start at the bottom and you work your way up to the top and
25 then you flip the page over and 109, is that how it works? Or

1 do I have it backwards?

2 A. No, you have it correct. So Facebook produces the records
3 from the most recent to the oldest. But the page order, in
4 order to follow along, would require what you just described.

5 Q. Okay. And that's what it appears to me. Just looking at
6 the times that are listed, the oldest time, 17:03:02, and you
7 get to the top it's about five minutes later. You go to the
8 bottom of 109 at 17:07:36 and you work your way up. That's
9 right?

10 A. That's correct.

11 Q. I do have that right. Good.

12 Is this a complete record of all of the transactions or
13 texts or whatever they are, or did you just cherry pick these
14 out between Mr. Muse and your undercover people?

15 A. When you say cherry pick, what do you mean?

16 Q. Well, at one point in here it says "Well, what do you mean?
17 I got a little busy, akhi." And there's, you know, a little
18 bit of a time break there. So were there other texts in
19 between those two?

20 A. For this particular exchange?

21 Q. Yeah. Well, is this particular exchange -- were other
22 people texting, or whatever you want to call it, with Mr. Muse
23 there in this time frame that are not listed here on this
24 exhibit?

25 A. Again, there are literally hundreds of thousands of pages,

1 so I don't know off the top of my head if there are other
2 things -- you're saying are there other things happening
3 simultaneously?

4 Q. Right.

5 A. I would have to reference that material. I don't know.

6 Q. Okay. It's a little confusing because, you know, there's a
7 time gap there of, you know, seven minutes. He said, "What you
8 mean? Sorry, got a little busy, akhi."

9 Do you see that on page 109 about the third one down?

10 A. I do, from the top.

11 Q. Right.

12 A. I do.

13 Q. Okay. Now --

14 MS. CHARTIER: Your Honor, I apologize for
15 interrupting. Would it be possible -- is there a sweatshirt or
16 something for Mr. Haji? He's been shivering because he's cold.
17 I don't know if there's anything that we could put over him.
18 No? Okay.

19 THE COURT: I think I have something. All right?
20 Hang on.

21 MS. CHARTIER: Thank you, Your Honor.

22 Sorry, Mr. Zambon.

23 THE COURT: I don't think he wants to wear a black
24 robe.

25 MR. ZAMBON: I'm almost done. I don't anticipate

1 being much longer either, so . . .

2 *THE COURT:* Mr. Zambon, you're not in any hurry.

3 Nobody is going to rush you here. There are important issues
4 at stake here. Please take your time.

5 *MR. ZAMBON:* No, that's -- it's more for the
6 defendant's sake.

7 *THE COURT:* It is a little chilly in here.

8 You may proceed, Mr. Zambon.

9 *MR. ZAMBON:* Thank you.

10 Q. (BY MR. ZAMBON) Now, the reason I'm bringing that up is
11 because there was, I think it was paragraph 31 of the
12 Complaint, a passage about my client having just been married.
13 Are you familiar with that passage?

14 A. Yes. I'm flipping to it right now, but I am aware that he
15 was recently married.

16 Q. And that's a correct statement, right? He was just
17 recently married?

18 A. Yes. I don't see that reflected in paragraph 31, but if
19 you're asking, yes, it's my understanding he was married in the
20 summer of 2018.

21 Q. And do you know if his now wife is pregnant?

22 A. That's my understanding, yes.

23 Q. And he wrote that he would travel to Somalia to join ISIS
24 soon after the birth of his child.

25 Was there, to your knowledge, an exchange about, well, why

1 did he have to wait until after the birth of your child? Why
2 don't you come on now?

3 A. Was there an exchange between whom?

4 Q. Well, between whoever is -- UCE-2 I suppose it is and
5 Mr. Muse.

6 A. And I'm sorry, so your question is what then?

7 Q. Okay. Well, do you know if -- it appears to be some kind
8 of reluctance to travel to Somalia by Mr. Muse at the present
9 time on December 17th. Correct? Because he's not -- he's
10 going to wait until after his child is born.

11 A. Right. That's what Mr. -- that's what Mohamud Muse is
12 citing to UCE-2, yes.

13 Q. Did UCE respond to that?

14 A. There was a lot of discussion between UCE-2 and
15 Mohamud Muse about that topic.

16 Q. Well, about -- right about December 17th, you know, I know
17 there's a lot of conversations, but about that particular
18 exchange, like waiting until the child is born.

19 A. That was part of what was discussed, yes.

20 Q. Okay. And what was discussed? What did UCE-2 say?

21 A. Um . . .

22 Q. Are we again --

23 A. No. I don't want the material to get too embarrassing.
24 But if you're fine, I can share it. But there are definitely
25 people in the courtroom that it could be embarrassing for.

1 Q. Okay. Fair enough. I appreciate that.

2 A couple more questions. Do you have any knowledge of my
3 client trying to recruit people to join ISIS other than his
4 codefendants?

5 A. I do.

6 Q. In the United States?

7 A. Um -- yes.

8 Q. And when was that?

9 A. Again we're going to get into --

10 Q. Okay.

11 A. We're going to get into that material.

12 Q. And can you -- was it an extensive effort? Without parsing
13 what "extensive" means.

14 *THE COURT:* The Court won't consider this. In terms
15 of today's purpose in determining whether the government has
16 sustained its burden for pretrial detention, I'm not going to
17 consider that evidence.

18 *MR. ZAMBON:* Okay.

19 *THE COURT:* Any evidence that cannot be explored
20 because it is classified will remain unspoken, but the Court is
21 not going to rely upon it. At the end of the day the Court has
22 to be satisfied that the defendants' due process rights have
23 been preserved.

24 Go ahead, Mr. Zambon.

25 Q. (BY MR. ZAMBON) The Secretary of State has listed an FTO,

1 correct? And it's the Islamic State, ISIL, ISIS, et cetera.
2 Are they all one in the same?

3 A. So there are various names by which ISIS is known, yes. So
4 those are all like synonyms.

5 Q. So ISIS is like the umbrella, the group, and then other
6 people -- and they call themselves other names?

7 A. So it would start with the Islamic State of Iraq and the
8 Levant or the Islamic State of Iraq and Al-Sham. That's how
9 you get to ISIL and ISIS respectively. And then it starts to
10 tread into some of the Arabic words like Daesh, dawla,
11 et cetera. Other names that they are known by in other
12 languages.

13 Q. Is there a relationship to Somalia in all of this?

14 A. So ISIS declared a caliphate, another welayah -- I
15 shouldn't say caliphate -- a welayah, another province in
16 Somalia, so ISIS al Somal, is the Somali province of ISIS.

17 MR. ZAMBON: If I may have just a minute, Your Honor.

18 THE COURT: Certainly.

19 MR. ZAMBON: Thank you, Your Honor. I think that
20 wraps it up.

21 THE COURT: I have a couple of questions I want to
22 ask, Mr. Zambon, and I'll give you an opportunity to follow up.

23 MR. ZAMBON: Okay.

24 THE COURT: Special Agent Dunham, I believe you
25 previously testified that undercover cooperating employee 1

1 became involved June 21st of 2017.

2 *THE WITNESS:* Yes.

3 *THE COURT:* Was introduced, I should say, more
4 precisely.

5 *THE WITNESS:* That's correct.

6 *THE COURT:* And you've testified here that there was
7 an undercover cooperating employee before UCE-1. Was that --
8 was that undercover cooperating employee actively in
9 communication with any of the defendants?

10 *THE WITNESS:* The first party? I think we started to
11 come up with our own nomenclature, I think it was something
12 like the preundercover employee 1, was not in contact with the
13 other two, no.

14 *THE COURT:* What I want to clear up is at what point
15 was there active FBI involvement and communications with any of
16 the defendants?

17 *THE WITNESS:* With any of them? It started in --
18 around March of 20 -- March of 2017.

19 *THE COURT:* All right. Now, the other question I have
20 relates to something that Mr. Zambon was asking about. These
21 Facebook records that are exhibits, for example, Exhibit 15, it
22 lists a number of entries with dates and times. Do these
23 records, to the extent we have them, reflect all the
24 communications during that date and time? In other words, if
25 there was somebody else that was -- I don't know if texting is

1 the right word -- communicating on Facebook with Mr. Muse Muse,
2 for example, would that be on this page or this only contains
3 communications between these individuals?

4 *THE WITNESS:* So Exhibit 15, as an example, is solely
5 communications between the profile Abu Osama and
6 Ebrahim Salmujahid al muhajir.

7 *THE COURT:* Understood. Thank you.

8 Anything further, Mr. Zambon?

9 Q. (BY MR. ZAMBON) And is it the complete communication or
10 were some not inserted here because you did not think they were
11 important for the purpose of today?

12 A. You're saying is this a complete communication? Like is
13 there a reason to think that this doesn't run chronologically?

14 Q. Not chronologically but completely. In other words, were
15 there any other communications between these two people in this
16 time frame that are not in there because they might be talking
17 about something that you do not think was important to put in
18 here?

19 A. So these excerpts were solely for the purpose of
20 demonstrating either danger to the community or risk of flight.
21 So these were basically passages we were trying to get material
22 that was on point for the purpose of the hearing.

23 Q. Okay. Just for -- okay. I think you answered my question.

24 *MR. ZAMBON:* Thank you, Your Honor.

25 *THE COURT:* You're welcome, Mr. Zambon.

1 Mr. West or Mr. O'Connor, redirect?

2 MR. O'CONNOR: No further questions, Your Honor.

3 THE COURT: All right. Thank you.

4 May this weapon -- weapon -- this witness be excused?

5 All right, Special Agent, you may step down.

6 Any further proofs or proffer, Mr. O'Connor?

7 MR. O'CONNOR: Yes, Your Honor. We would like to
8 introduce some evidence through proffer. We have no other live
9 witnesses today.

10 THE COURT: Okay.

11 MR. O'CONNOR: I'll start by proffering what's been
12 marked as Government Exhibit 20. May I approach?

13 THE COURT: You may.

14 MR. O'CONNOR: Your Honor, Government Exhibit 20 is an
15 excerpt from a 2016 report issued by the U.S. Department of
16 Defense. The cover page and page 35 of that report. The
17 government proffers the information that appears on the bottom
18 half of Government Exhibit 20 on that page 35 which indicates
19 that approximately half or 50.8 percent of all active-duty
20 enlisted personnel are 25 years of age or younger in the
21 United States military. And I would move Government Exhibit 20
22 into evidence.

23 MR. ZAMBON: I'm not sure I see the relevance.

24 THE COURT: Well, I was going to ask that myself.

25 Mr. O'Connor, what is the relevance of this?

1 *MR. O'CONNOR:* We heard a lot of questioning,
2 Your Honor, last week from defense counsel concerning the ages
3 of the defendants. There were references to defendants being
4 teenagers. This evidence will be used by the government to
5 rebut any argument by defense counsel that these individuals
6 were of a certain age that does not pose any danger to the
7 community by the fact of their tender ages, as seemingly argued
8 through the cross-examination last week.

9 *THE COURT:* I'm assuming you're not suggesting
10 enlisted members of our Armed Forces are a danger to the
11 community. The point is that if they are old enough to join
12 the Army, they are old enough to be dangerous?

13 *MR. O'CONNOR:* That's correct, Your Honor.

14 *THE COURT:* That's of tenuous relevance, I think.
15 Thank you.

16 Next.

17 *MR. O'CONNOR:* I have other information to proffer,
18 Your Honor. I don't know if the Court wishes for me to do that
19 now separate from argument. Or I know typically we tend to
20 combine proffered information from the background information
21 compiled by the Probation Office with argument, so I'll defer
22 to the Court's --

23 *THE COURT:* I think in this instance it makes sense to
24 separate the proffered information from argument and we'll go
25 from there.

1 This Court has to make an individualized assessment,
2 and I don't want things to get blurred.

3 *MR. O'CONNOR:* Certainly, Your Honor.

4 *THE COURT:* Go ahead.

5 *MR. O'CONNOR:* Thank you. The government then also
6 proffers information concerning some information provided by
7 the investigation conducted by Pretrial Services.

8 First, with respect to Mr. Haji, he was arrested on
9 December 26th, 2018, for providing false identification to
10 police. There is a pending criminal matter for his failure to
11 provide his true identity to the police in December of 2018.

12 With respect to family ties, the government proffers
13 that Defendant Muse Muse is single and has no children.

14 Defendant Haji has never been married. He has one
15 child age 4 who lives with his mother, not with Mr. Haji. And
16 Mr. Haji sees that child every one to two weeks.

17 And Defendant Mohamud Muse, as the Court just heard,
18 is married, is expecting his first child in March.

19 With respect to information relevant to ties to the
20 community, the government submits that all three defendants
21 were born in Africa. With respect to Muse Muse, he does not
22 own a residence. He lives with codefendant Mohamud Muse. He's
23 lived for approximately only two years in the Western District
24 of Michigan. He had a valid U.S. passport. In fact had two
25 passports at the time of the offense.

1 With respect to Mohamud Muse, he was only living in
2 the Western District of Michigan for approximately two years.
3 Also has a valid U.S. passport and has claimed that it was
4 lost. It was not found, apparently, during any searches in
5 this case. He also does not own his own home. He lives in an
6 apartment.

7 With respect to Mr. Haji, he entered the United States
8 from Africa in 2004. He also does not own a residence. His
9 history, as the Court just heard through testimony, is very
10 transient. He periodically stays with a friend Nick whose last
11 name is not known. He sometimes stays at his parents'
12 residence. And he does not recall where he lived before moving
13 to Michigan. And he does also have a U.S. passport. And,
14 excuse me, I think I may have misspoke. The testimony earlier
15 was regarding Mohamud Muse and his transient residence.

16 **MR. ZAMBON:** Then if you could repeat that, because I
17 was not paying attention because I did not think it applied to
18 my client.

19 **THE COURT:** Mr. Zambon is clued in for when he hears
20 his client's name, so would you repeat that, please.

21 **MR. O'CONNOR:** I will try to clarify, Your Honor.

22 **THE COURT:** All right.

23 **MR. O'CONNOR:** With respect to the testimony you just
24 heard regarding Mohamud Muse, he has been very transient. He
25 has moved residences frequently in the last year. Not always

1 updating his residence on his driver's license.

2 With respect to Mr. Haji, there's also evidence that
3 he does not own a residence, that he is somewhat transient. He
4 periodically stays with a friend by the first name of Nick. He
5 did not know or would not provide the last name of this
6 individual. That he sometimes stays at his parents' residence.
7 And could not recall where he lived before moving to Michigan
8 five to six years ago. Mr. Haji also has a valid
9 U.S. passport.

10 With respect to employment, Your Honor, the government
11 proffers that Mohamud Muse was working at WalMart in
12 Grand Ledge before his arrest. Mr. Haji worked at a Meijer
13 Distribution Center in Lansing. With respect to Muse Muse he
14 is unemployed. In fact, it appears he quit his job prior to
15 his departure for what he believed was Somalia.

16 And finally the government proffers evidence
17 concerning the defendants' records of appearance in court
18 proceedings. With respect to Muse Muse and Mohamud Muse there
19 is no history, so we simply don't know. There is no history of
20 appearing when required to appear.

21 And with respect to Mr. Haji, there is a record. We
22 have evidence of a failure to pay fines and costs for failing
23 to display a valid license, and he failed to appear in state
24 court on December 18th, 2018, at which time a show cause order
25 was entered.

1 Thank you, Your Honor. With that the government rests
2 its case on detention.

3 *THE COURT:* All right. Thank you, Mr. O'Connor.

4 Who would like to go first? Ms. Turek?

5 *MS. TUREK:* Your Honor, it's just proffer material.

6 *THE COURT:* Go ahead.

7 *MS. TUREK:* Some of which is already in the
8 Pretrial Services Report, but I would like to just expand on
9 some of it.

10 *THE COURT:* I'm sorry, Ms. Turek, to interrupt you.
11 Jess, if you hear me, could you bring me my iPad,
12 please.

13 Go ahead, Ms. Turek.

14 *MS. TUREK:* Thank you. My client was born in Kenya.
15 He just turned 20 about a week and a half ago. He has a high
16 school diploma from Eastern High School in the Lansing area.
17 He took classes for one semester at L tri C, Lansing Community
18 Court -- Lansing Community College.

19 He became a naturalized citizen in this country in
20 either 2013 or '14. He has a large family. His parents are
21 here in this country, and he is one of 11 children. He's not
22 married. Has -- nor has he any children. He has no prior
23 criminal history. He has no substance abuse or alcohol issues.
24 He's in good physical health. He maintained a checking account
25 as noted in the Pretrial Services Report with modest means.

1 And that would be by way of proffer, Your Honor.

2 *THE COURT:* All right. Thank you, Ms. Turek.

3 *MS. TUREK:* Thank you.

4 *THE COURT:* Ms. Chartier.

5 *MS. CHARTIER:* Thank you, Your Honor. By way of
6 proffer, some of the information is listed in the Presentence
7 Investigation Report. Mr. Haji was employed at the Meijer
8 Distribution Center for approximately five years. He worked an
9 average of between 32 and 40 hours a week. He has extended
10 family in Michigan, some of whom are in the courtroom today,
11 including his parents. He was in the process of purchasing a
12 home on Bement Street in Lansing.

13 *THE COURT:* When you say he was in the process, what
14 do you mean?

15 *MS. CHARTIER:* I believe he had given some money to
16 the individuals, and it seemed like it might have been
17 something along like of a land contract.

18 *THE COURT:* I see. Okay.

19 *MS. CHARTIER:* As it relates to the allegations of a
20 criminal history, I would point out that it was a traffic
21 offense in May of 2018, and his failure to appear was actually
22 failure to pay fines and costs. And then he was arrested on
23 that.

24 The December 2018 for providing false identification
25 to the police, it appears that that was a false name, and it

1 was Mr. Haji's nickname. So he did use Haji when he provided
2 that information to the police. We're trying to get those
3 records. But Mr. Haji was actually the passenger in a vehicle,
4 and we have been unable to ascertain why the vehicle was even
5 stopped by the police.

6 I will point out that on the Register of Actions no
7 attorney was appointed to represent Mr. Haji. Generally what
8 that means in Ingham County is that the court would not be
9 placing Mr. Haji into custody even if he were to be convicted
10 of the offense.

11 Mr. Haji is a United States citizen. His passport is,
12 I believe, at a residence. His residence can be verified by
13 his family, again whom are in the courtroom today. He does
14 have one child and he's in a committed relationship with the
15 child's mother. His ties to a foreign country are only that he
16 was born there, but, again, he is a United States citizen. The
17 pending charge, again, is a misdemeanor for which there would
18 be no jail time allotted.

19 *THE COURT:* The pending charge in Ingham County?

20 *MS. CHARTIER:* In Ingham County District Court. It's
21 a misdemeanor.

22 And I have nothing else to proffer. Thank you,
23 Your Honor.

24 *THE COURT:* Thank you, Ms. Chartier.

25 Mr. Zambon.

1 *MR. ZAMBON:* Thank you, Your Honor. My client has no
2 ties to a foreign country. I have received prior to court,
3 just prior to court this afternoon, his Certificate of
4 Citizenship which shows that he is a citizen of the
5 United States. I have that in my hand if the Court would like
6 to look at that.

7 *THE COURT:* It is not necessary. It's in the
8 Pretrial Services Report too, Mr. Zambon.

9 *MR. ZAMBON:* I believe in the Criminal Complaint it's
10 stated that my client is a derivative citizen of the
11 United States, which means to me that he has obtained
12 citizenship. Derivative I think would be kind of like a chain
13 migration they might call it, and we all know that the
14 president's inlaws are citizens of the United States and are
15 probably derivative. So I think that --

16 *THE COURT:* As I understand it, Mr. Zambon, a
17 derivative citizenship means he was a minor at the time his
18 parents became a citizen and he obtained the citizenship with
19 their naturalization.

20 *MR. ZAMBON:* That's what I understand.

21 *THE COURT:* I try to avoid any discussion --

22 *MR. ZAMBON:* Okay.

23 *THE COURT:* -- that relates to any political topics.

24 *MR. ZAMBON:* Okay. Thank you, Your Honor.

25 And I also have received his passport, which

1 Agent Dunham testified that there was no travel outside the
2 United States. That's verified by the passport I have in my
3 hand which I'll gladly turn over to pretrial release people to
4 assure that he has does not travel outside the United States.
5 But the passport itself shows no travel outside of the
6 United States.

7 He has a verified address. I'm not sure why the
8 Pretrial Release Report says unverified address. The police
9 went there pursuant to a search warrant and searched his house.

10 He has a driver's license. There is listed on a
11 driver's license, which is in the possession of the police, I
12 understand that not only is the address on the driver's license
13 but there's another address on the back of the license which
14 shows that he does -- when he does move, he does attempt to
15 change his address. Although I do think that he moved within
16 the last 30 days and had not gotten around to changing his
17 address a final time. But it's the same address where his
18 wife, pregnant wife lives.

19 So he did not use an alias to -- for false
20 identification. I'm not sure where that came from. I asked
21 the agent that. He did not attempt to use false
22 identification -- or an alias to obtain false identification.

23 He has financial ties to the Western District. He
24 works. He has bank accounts. He has been employed at several
25 places in the Lansing area. It's the first time I've heard of

1 the lack of a record as being a reason to think he won't
2 appear. Usually that's a good thing. But also the fact that
3 he lives in an apartment at age 23, I hate to tell you how old
4 I was before I bought my first home, but it was substantially
5 more than age 23, Your Honor. So I would -- I believe that's
6 the extent of my proffer.

7 *THE COURT:* Thank you, Mr. Zambon.

8 Argument, Mr. O'Connor?

9 *MR. O'CONNOR:* Thank you, Your Honor.

10 In this case there is no condition or combination of
11 conditions that would reasonably assure the appearance of the
12 defendants as required and to ensure the safety of any other
13 person in the community.

14 As Your Honor pointed out this morning, we do have a
15 presumption of detention in this case due to the grand jury
16 finding of probable cause to indict each defendant of a
17 terrorist offense, Title 18 §3142(e)(3)(B) and (C) both give us
18 the presumption of detention in this case.

19 As this Court well knows, that means each defendant
20 has the burden to produce evidence that he is not a flight risk
21 or a danger to the community. Importantly, however, as the
22 Sixth Circuit has told us in the Stone case that Your Honor
23 cited also at the beginning of today's session, even if the
24 defendants present some evidence to rebut the burden of
25 detention, the presumption does not disappear. The presumption

1 becomes a factor that this Court should take into
2 consideration. And that's because Congress has, in Congress's
3 judgment, they decided that a particular class of defendants
4 and types of cases should ordinarily be detained pending trial.
5 So to the extent this Court finds that the rebuttable
6 presumption has been rebutted, it's still a factor that the
7 government requests this Court take into consideration.

8 The evidence that we have provided to the Court
9 through the agent's testimony, the entire Complaint Affidavit
10 which is in evidence, as well as the exhibits that were
11 admitted into evidence at the last session, establishes clear
12 and convincing evidence that the safety of the community cannot
13 be assured and that there's a preponderance of the evidence
14 that the defendants will not appear as required.

15 Simply put, the evidence in this case, Your Honor,
16 shows that the defendants stated in their own words that if
17 they were not able to travel to make hijrah to Somalia to join
18 a fight with ISIS, they had a plan B. They talked about it.
19 This plan was to attack nonbelievers. There were references to
20 using vehicles and driving vehicles to attack nonbelievers. In
21 their own words this Court heard them talk about their plan.
22 So the fact that they were stopped and that Muse Muse was
23 stopped specifically on January 21st from traveling to
24 Mogadishu doesn't mean he's not a danger to the community.
25 He's more of a danger to the United States now that his plan to

1 make hijrah has been thwarted. And the other defendants, as
2 the evidence shows, joined him in his beliefs.

3 So we look at the factors that the Court should
4 consider in this case. The nature and circumstances of the
5 offense charged. We know Section 2339B is a federal crime of
6 terrorism. And we know that there's a presumption of detention
7 in a case like this.

8 With regard to the nature and seriousness of the
9 danger to the community or any person, if any of these
10 individuals were released, the Court saw through repeated
11 exhibits, through a long period of time, Facebook
12 communications, both between the defendants and in
13 communications with FBI undercover employees, indicating their
14 strong desire to either make hijrah and travel to join ISIS or
15 to kill anyone, the kuffar, anyone who doesn't share their
16 extremist Islam ideology.

17 Exhibits 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, those
18 exhibits are all conversations between the defendants. Not
19 conversations with undercover FBI employees. The record is
20 full of examples of these defendants talking on their own about
21 their desire to join ISIS, or if they can't do that, to kill
22 nonbelievers here in the United States.

23 We heard evidence concerning the defendants'
24 naturalized citizenship. Well, Your Honor, from the
25 government's perspective that doesn't mean very much. Not when

1 you have evidence that each individual defendant recorded their
2 own bay'a video pledging allegiance not to the United States,
3 not to the country that has conferred citizenship on them, but
4 to ISIS, the terrorist organization that they wanted to join
5 and fight with. So the fact that these individuals are
6 naturalized citizens really doesn't give this Court much
7 comfort when they have effectively renounced their citizenship
8 by pledging allegiance to an enemy of the United States.

9 I think there are a few exhibits that the Court should
10 pay particular attention to. Exhibit 3 in June of 2017,
11 Mohamud Muse and Mr. Haji are communicating and they are
12 referring with each other to speaking to a mujahid. And
13 Mr. Haji says "I pray Allah gives the mujahideen the victory.
14 Insha'Allah, always victory, Allah. And we are next to step up
15 on the battlefield." This is back in June of 2017.

16 Before that in January of 2017, as the Court knows
17 through the Complaint Affidavit in paragraph 12, Mr. Haji and
18 Mohamud Muse are talking about how great these ISIS videos are
19 that they are seeing. That they love it. They love how ISIS
20 burned people. Haji wrote to Mohamud Muse: "He put fuel on
21 that dude while he's burning. That's funny, dude." That's the
22 mind-set of these individuals all the way back in January of
23 2017.

24 Mohamud Muse in June of 2017 expressly stated he
25 planned to die with a gun in his hand fighting for ISIS.

1 In November of 2017 Muse Muse sent Mr. Haji a screen
2 capture by Messenger -- again, this is not communications with
3 FBI undercovers, these are communications with each other --
4 where Muse Muse sends a picture of that Tribeca truck attack in
5 New York City on Halloween in 2017. And then they talk about
6 what's happened the day before. And they talk about real civil
7 war. "And if this doesn't wake the people up, nothing will.
8 This is a call for hijrah. We can't live here. I'm trying to
9 plan for hijrah now."

10 In March of 2018 in Exhibit 6 we see another
11 conversation between Mr. Haji and Muse Muse. This is the
12 exhibit that contains the picture of the slaughtered goat. And
13 the context of delivering that picture was Mr. Haji saying "I
14 want to catch kuffar," nonbelievers, "and do my jihad training
15 on them. That would be in dawla," or ISIS.

16 In April of 2018 in Exhibit 7 Muse Muse is talking
17 again with Mr. Haji and they are talking about ISIS videos and
18 how hot they are. And Muse Muse says "You're absolutely right.
19 Seeing those heads getting cut off heals the heart and makes me
20 want to be with them more. May Allah make us steadfast upon
21 this" -- a word I don't understand -- "until we are in the
22 ranks of the khalifa and until we die." Again, not
23 conversations with the FBI.

24 There's repeated examples, and I won't burden the
25 Court going through each and every exhibit that the government

1 introduced, where there was conversation along these same
2 lines. How they want to kill the kuffar. They want a lot of
3 the kuffar dead.

4 There's conversations about martyrdom operations using
5 a vehicle. Muse Muse and Mr. Haji in August of 2018 exchanged
6 a series of conversations back and forth about how great it was
7 that Muse Muse could drive now so that he could drive that
8 stashahadi, which is the word for martyrdom, car, right.

9 There is one example the Court should consider in a
10 conversation with an FBI undercover and that occurred in
11 November of 2018. That's Exhibit 12. Muse Muse said to the
12 undercover FBI employee "I've come this far. I'm not letting
13 the kuffar stop me now. I swear to Allah I'd never go to jail.
14 It's either hijrah or shahad." Which as you heard from the
15 agent means death of a martyr.

16 He's told this Court in his own words, "If I can't get
17 to Mogadishu, Somalia, and join ISIS, I'm not going to jail.
18 It's either hijrah or martyrdom." And they talked about the
19 martyrdom that they were contemplating. There were references
20 to the Paris attacks. There were references to vehicles. And
21 that's the plan B that should shake everybody in this
22 courtroom, to hear in their own words what their plans were if
23 they couldn't make it to join ISIS. Muse Muse explained in
24 December of 2018, "I was the first." Yet there are a lot of
25 conversations between Muse Muse and Mr. Haji, I concede that

1 there are not quite as many -- because, of course, as the Court
2 knows, Muse Muse and Mohamud Muse lived together -- so I
3 understand some kids sit around the dinner table and text each
4 other at the table, but we're not seeing as many conversations
5 on Facebook Messenger. Probably because they lived together.

6 *THE COURT:* Well, that doesn't happen at my house,
7 Mr. O'Connor, and I'm not going to speculate about what happens
8 in someone else's house.

9 *MR. O'CONNOR:* Well, it doesn't happen in my house,
10 Your Honor, either because I don't have kids. But the point
11 is, there are lots of conversations between two of the
12 defendants. But make no mistake, Mohamud Muse makes it very
13 clear what his -- what his interest is with ISIS here. We saw
14 that all the way back in January of 2017. In fact, it's his
15 postings and comments in support of ISIS that launched this
16 whole investigation.

17 But jumping forward to December of 2018, Mohamud Muse
18 has a conversation in Exhibit 15 with the FBI undercover
19 employee and he describes his full understanding of dawla. And
20 he says "I was supporting ISIS in my family before anyone else
21 did. I just want Islam to win. I want to kill kuffar." And
22 that's also in the Indictment -- or in the Complaint Affidavit
23 at paragraph 29.

24 And if we haven't heard enough already, we know in
25 December of 2018 on the 14th Muse Muse and Mr. Haji met with

1 somebody that they thought they were trying to recruit. So we
2 have another element of danger in the community. We have
3 evidence that these guys thought that UCE-3, an FBI undercover,
4 was somebody that they could recruit to join them and join ISIS
5 and to travel with them. In fact, Muse Muse thought he was
6 going to the Gerald Ford Airport on December 21st to meet
7 UCE-3. And they have a meet-up. The meet-up was their idea,
8 not the undercover's. The undercover didn't suggest this.
9 These guys say, "Hey, we want to meet." So they make
10 arrangements to meet with the undercover officer in
11 Benton Harbor, Michigan, where they helped him make his own
12 pledge of allegiance to ISIS.

13 So we have expressions out of their mouths to each
14 other about what they want to do and what they are going to do
15 if they can't do it. And now we see them trying to recruit
16 other people to do this. And what's really frightening about
17 that interaction, Your Honor, is that on December 14th, 2018,
18 Muse Muse says to the undercover FBI if he's not able to make
19 hijrah, he's going to take a car and run down the kuffar. And
20 he makes a reference to what happened in France. And Muse Muse
21 and Mr. Haji stated that Allah commanded that martyrdom is the
22 only option. And that's in paragraph 30 of the
23 Complaint Affidavit.

24 And it doesn't stop there. This goes on. There are
25 opportunities left and right from even before January of 2017,

1 but through 2017 and through 2018 and now into 2019 in January
2 multiple opportunities for them to say "Wait a second. I'm not
3 doing this. This is crazy. I don't know what I was thinking.
4 We shouldn't be doing this. This isn't the right thing to do.
5 We shouldn't be talking about running down nonbelievers. We
6 shouldn't talk about joining ISIS."

7 But we know what happens in January. On January 9th,
8 2019, there's a conversation about -- from Mohamud Muse to FBI
9 UCE-2 that he might have to leave his wife behind. He's at the
10 point he's so dedicated to this, Your Honor -- we've heard this
11 afternoon he's so dedicated to this, every time Facebook shuts
12 down his account, he's opening a new one. He's not giving up.
13 He's dedicated. He's determined to do this. He's following
14 through. He changes the information. He changes his alias.
15 They come up with these kunya names. They open up new Facebook
16 accounts in these kunya names. This is dedication that these
17 individuals have shown.

18 And on January 15th again Muse Muse and Mr. Haji meet
19 up with the person they think they are recruiting to join
20 Muse Muse to join ISIS in Somalia. They meet UCE-3 at a
21 WalMart in Lansing to shop for supplies so they'd have in this
22 case boots for the trip. And what happens again? Another
23 frightening conversation. Muse Muse and Mr. Haji tell the FBI
24 undercover that if they failed in their attempt to join ISIS,
25 they would conduct an attack or a martyrdom operation. And

1 again there's a reference to France, to the terror attack in
2 Paris. And that appears in paragraph 45 of the Affidavit.

3 Your Honor, these men have demonstrated to you through
4 their own words with each other that they cannot be released.
5 If this Court releases any of these defendants, the next step
6 is grabbing a vehicle and running down kuffar. And you know
7 that because they told you that that's what they would do. The
8 government asks for detention pending trial in this matter.
9 Thank you.

10 *THE COURT:* All right. Thank you, Mr. O'Connor.
11 Ms. Turek.

12 *MS. TUREK:* Thank you, Your Honor. Your Honor, of the
13 factors that you must consider, I'm going to start with the
14 personal history and characteristics of my client. And I do
15 that for a special reason. As we heard, he's young. He just
16 turned 20 about a week and a half ago. When this -- when the
17 FBI became involved in this case, you know, he was 16, 17 years
18 old. He graduated from Eastern High School. Learned the
19 language. Has a semester -- some classes at a community
20 college. Has some employment record, although not as much as
21 the others, perhaps because he's younger. He has a very
22 supportive family. They were in the courtroom last week at the
23 hearing. Many are back here today.

24 *THE COURT:* I remember you pointing them out.

25 *MS. TUREK:* Yes. Thank you. And many are still here

1 today.

2 He comes from a large family, and they are more than
3 willing to have him stay with them should the Court release
4 him.

5 He has no issues with substance abuse or alcohol. No
6 mental health issues. And no prior record. Which I've always
7 argued is a good thing, Your Honor, although today the
8 government is arguing that not having contact is a bad thing.
9 But he does have a very close family.

10 This young man with no criminal history is the man
11 that the FBI, in my opinion, recruited for this conjured-up
12 offense. And I don't say that lightly.

13 Since 2016 the FBI has been communicating with my
14 client and the others. Since 2016 they have been putting ideas
15 in the heads of these -- of my client. Even when -- even when
16 it appeared to my client's father that something was wrong and
17 he took my client's passport, the government still kept -- they
18 were aware of it, but they still kept at my client. Since
19 2016. We're now in January of 2019. And for all that time,
20 even though there were these communications which are not
21 flattering to my client, nevertheless the government saw no --
22 were not concerned enough to make any arrests at that time.
23 Some of these conversations, Facebook posts, are from a number
24 of years back already and yet the government has not seen fit
25 to arrest my client prior to just a few weeks ago.

1 My client has never been accused of having any sort of
2 weapon. In the four years as -- four years -- almost
3 four years since this case has been going on, my client took
4 none of the steps that may have been the topics in some of the
5 Facebook posts, but yet the FBI is cheerleading these guys on.
6 And I think once we do find and have a chance to read all the
7 Facebook posts, we're going to get a better picture of who was
8 suggesting what to whom.

9 And we know that the government was putting thoughts
10 in the heads of my client and the others because for the
11 longest time there was -- the first Muse Facebook account, that
12 was in existence well beyond April of 2016 -- well, before
13 April of 2016 when it first came to the attention of the FBI.
14 When in two thousand -- in June of 2017, when UCE-1 became
15 involved, within a month that is when the Facebook account was
16 suspended. So I think that what that demonstrates is that
17 although there may have been some chatter and some
18 conversations going back and forth about ISIS, it was only
19 after the FBI became involved, until they began to focus those
20 conversations and direct and steer those conversations that
21 Facebook saw a reason to suspend the account. And I think
22 that's very important because I think that demonstrates that
23 the FBI wasn't just a passive listener or a passive reader of
24 Facebook postings. They were putting ideas and putting things
25 in motion until they had enough to charge my client.

1 It almost seems in just listening to the evidence last
2 Friday, in looking at the limited discovery that we have, which
3 consists right now of the exhibits, it almost seems that last
4 November or December the government decided, hey, we have to
5 ratchet things up. We have to get these guys to move because
6 we want to make an arrest after three years or three and a
7 half years. That's really what it seems to me when you look at
8 this.

9 As I said, they were not concerned before that. There
10 were these Facebook postings going on for years and the
11 government took no action to stop them. It was only after --
12 they were only arrested after the government made it possible
13 for an offense to be charged.

14 What I mean by that is take the idea of the passport.
15 My client, as we heard the agent testify last week, they could
16 have -- the FBI could have stopped my client from getting the
17 passport. They didn't. They wanted him to get a passport. In
18 fact, after they learned that his first passport was lost and
19 he had applied for a second one, there was another opportunity,
20 and he was issued that passport within two days.

21 Now, I've had the opportunity to apply for passports
22 in my day because I like to travel, and I've also paid extra to
23 have an expedited passport delivered to me at times. But it's
24 not within two days.

25 The money. My client had no money to take a trip to

1 the east coast let alone halfway across the world. He didn't
2 have the funds. Who supplied the funds? The government did.
3 So it's the government that every step of the way was getting
4 my client deeper and deeper involved in this and actually
5 taking steps until they felt that they had enough to charge my
6 client.

7 So, Your Honor, I think that's very important when you
8 look at this and when you consider whether he's a danger or
9 whether he will appear in court. I do believe that there are
10 conditions that would secure his appearance here in court as
11 well as provide the Court with some understanding that he would
12 not be a -- pose a threat or a danger to the community, and I
13 would suggest curfew or tether. No computer access. My client
14 would gladly turn over his passport.

15 And as I've noted, he has a lot of family with whom he
16 could reside during the pendency of this case. But I believe
17 there are those conditions that the Court could impose.
18 Because as I see it, but for the government's involvement, but
19 for the government's prodding of my client, of the FBI
20 cheerleading him on to become more involved in this matter, he
21 would still be working at Meijer's in all likelihood and
22 perhaps looking to take additional classes at Lansing Community
23 College. Thank you.

24 *THE COURT:* Thank you, Ms. Turek.

25 Ms. Chartier.

1 *MS. CHARTIER:* Thank you, Your Honor. Words spoken on
2 a public forum are not a crime, and words spoken to individuals
3 privately are not a crime. Even when they express beliefs that
4 are anti-American and are pro-ISIS. The agent when I asked him
5 questions last week said words are not a crime. If any steps
6 were taken here that the government wants to indicate or craft
7 into a crime, it's because the government urged them to be
8 taken. Even in the limited context that we have of the
9 exhibits. In Exhibit 15 it's the government who asks: "Can
10 you get more people?" It's the government who says "Your
11 situation is holding you back." That's not a government agent
12 who is sitting passively by and waiting for individuals to
13 express their willingness to act. This is the government
14 actively encouraging individuals to participate in what they
15 will later deem to be a crime.

16 In three years there were no steps taken until the
17 government, as Ms. Turek indicates, seems to believe this is
18 taking too long and so instead of just sending money to
19 Mr. Muse, they decide to send a little bit to each individual
20 so that way they can say they put their words and beliefs into
21 action. All because the government decides to send money to a
22 young man who didn't have it himself.

23 Mr. O'Connor said, "Well, Mr. Haji said 'We're the
24 next to step up' in June of 2017." And you know what never
25 happens? Mr. Haji doing anything to step up that's pro-ISIS.

1 He commits no crime at that point. In a year and a half. He
2 is a passenger in a car that takes Mr. Muse Muse to the airport
3 and ostensibly he provides the \$300 that were sent to him by
4 the government to Mr. Muse Muse for his ticket. A roundtrip
5 ticket we learned today. The FBI has provided a limited
6 context for these conversations, but what we do know is that
7 they encouraged these young men to get deeper and deeper. And
8 then now the government wants to say that they are a threat to
9 the community. And Mr. O'Connor says "Well, the next step is
10 driving a car into a crowd." In three years not one of these
11 young men has ever even done anything to indicate that that's
12 what they would actually do.

13 This Court can dislike their words. This Court can
14 dislike their sentiments. This Court can dislike their
15 beliefs. But those are not crimes. And those are not reasons
16 that these young men, and specifically Mr. Haji, should remain
17 in jail.

18 Mr. Haji had a job for approximately five years
19 working day after day after day at the Meijer warehouse.
20 That's not an individual who is doing anything more than being
21 a productive member of the community.

22 His family was here last week. His family is here
23 today. He can stay with his family if this Court releases him.
24 He has a minimal criminal history. And he has, again, a place
25 to live. To fault Mr. Haji for not having more money in the

1 bank or more financial or property ties faults poor people for
2 being poor. You know who has a lot of money in the bank?
3 People who make a lot of money. That's not someone who is
4 working a minimum-wage job at Meijer.

5 Mr. Haji should not be faulted because he does not
6 have more property and financial ties to the community. What
7 he should be applauded for is having a job, having a family.
8 And the only reason that he sits here today is because the
9 government got tired of monitoring conversations and wanted to
10 ratchet things up and bring an end to this investigation.

11 I would ask the Court to consider the full picture of
12 what has occurred in this case. I would ask the Court to not
13 be swayed by sentiments as stated by Mr. O'Connor, that the
14 next step is a vehicle being driven into a crowd, which is
15 purely meant to prey on the emotions of the Court. There's no
16 indication that Mr. Haji would do anything of the sort.
17 Because, again, words are not a crime. And I would ask the
18 Court to consider that there are mechanisms that could be
19 placed into effect to ensure that Mr. Haji is where he needs to
20 be. So, for example, home confinement and a tether that falls
21 short of forcing him to remain in jail until a trial in this
22 case. Thank you.

23 *THE COURT:* Thank you, Ms. Chartier.

24 Mr. Zambon.

25 *MR. ZAMBON:* Thank you, Your Honor. I adopt the

1 arguments of fellow counsel here. I'll just add a couple of
2 observations.

3 *THE COURT:* Uh-huh.

4 *MR. ZAMBON:* Mr. O'Connor talked about looking at the
5 nature and circumstances of this case. The nature and the
6 circumstance of the case are set forth in the Indictment where
7 the defendants were supposed to provide material support to a
8 terrorist organization. That material support appeared to be
9 only them, that they wished to go to Somalia to either live
10 there or to fight. Was one of the quotes that we heard last
11 week.

12 This is a case of all talk and no action. If they had
13 been accused or there was some evidence of, you know,
14 purchasing firearms or explosives or even an automobile or a
15 truck to run over people, we might have something there. But
16 this is talk between the three of them.

17 As Ms. Chartier says, talk is not a crime. Talk plus
18 something else, perhaps you would have a crime here. I don't
19 believe that the government should view these gentlemen,
20 Mr. Mohamud Muse especially, as any danger to the community.
21 In fact, just the opposite. He has no criminal record. He has
22 no ties to a foreign country. He's been in the United States
23 for 15 years. He's been a citizen of the United States. Was
24 willing to give up the passport. He has a verified residence,
25 a pregnant wife. As the Court notes, family in the courtroom

1 last week and then today.

2 He has been employed at a number of jobs, which I
3 think is very admirable. And as the Pretrial Release Report
4 indicates, it appears that he becomes employed and then changes
5 jobs in order to better himself to get a higher wage. I
6 believe he was last making about -- well, \$11 an hour at
7 WalMart.

8 He has ties to the community. Financial ties. The
9 checking account, savings account. There's no indication
10 whatsoever that he had ever dipped into those accounts to, you
11 know, purchase any kind of physical material in support of
12 ISIS. These were conversations mainly between three young
13 people. We didn't hear about any particular conversations with
14 any other known terrorists or anything like that. No action
15 taken by my client.

16 I think that the Court could safely release
17 Mr. Mohamud Muse back to his family. He could be monitored
18 electronically. He could return to his job. He can be there
19 for the birth of his child here in a month or two. And that
20 there are a number of combinations that the Court can take into
21 account to ensure the safety as well as the appearance.

22 I don't think there's any doubt that he'll appear in
23 court. He has no history of not appearing. In fact, he always
24 appears to go to work. So he does have a history of appearing.
25 Perhaps not in court, which is a good thing, because he has no

1 record. So I think that the Court can safely release
2 Mr. Mohamud to the community under some kind of conditions.
3 Reporting, curfew, electronic monitoring. And perhaps no
4 communication via the internet. Thank you, Your Honor.

5 *THE COURT:* Thank you, Mr. Zambon.

6 This matter is governed by the Bail Reform Act of
7 1984. Pursuant to that statute I must release a defendant on
8 his personal recognizance unless I find that such release will
9 not reasonably assure the appearance of that person as required
10 or will endanger the safety of any other person in the
11 community.

12 The government has the burdens of proof. First of
13 all, preponderate evidence that an individual poses a
14 significant risk of flight that is more likely than not. And
15 by clear and convincing evidence that the individual poses a
16 danger to the safety of other persons in the community.

17 Even if the government meets its burden, that does not
18 result in pretrial detention unless the judicial officer also
19 determines that there is no condition or combination of
20 conditions that will address the issue at hand. The statute
21 includes 13 specific conditions the Court is to consider as
22 well as any other the Court can fashion. And in all cases I
23 consider every one of those.

24 In this case, as I've indicated earlier, the
25 government enjoys a rebuttable presumption under the Bail

1 Reform Act, specifically Section 3142(e)(3)(C) which references
2 eventually to 18 U.S.C. 2339B, the statute that was allegedly
3 violated here.

4 As I've indicated, in United States versus Stone the
5 Sixth Circuit ruled that the presentment of a grand jury
6 Indictment is sufficient to trigger the rebuttable presumption.
7 There's no need for a separate judicial determination of
8 probable cause. But the Sixth Circuit in the Stone case also
9 noted that the rebuttable presumption temporarily shifts the
10 burden of production to the defendant, it does not shift the
11 burden of persuasion. That remains with the government.

12 The Court also held that the burden of production that
13 is shifted to the defendant is not a heavy one, however, the
14 defendant must introduce some evidence to rebut it. It
15 remains, if rebutted, a factor for the Court to consider. And
16 the Sixth Circuit noted in the Stone case that their statutory
17 rebuttable presumption reflects Congress's substantive judgment
18 that particular classes of cases of offenders should be
19 detained prior to trial. And the court also held, and I quote,
20 "To rebut the presumption, therefore, a defendant should
21 present all the special features of his case that take it
22 outside the congressional paradigm." And that is from
23 9 -- 608 F.3d. at 946. The Sixth Circuit in turn quoting
24 United States versus Jessup, a First Circuit case.

25 I also note that I must make an individualized

1 assessment of each of the defendants, and I'm going to do that
2 here.

3 First of all, with respect to the statutory rebuttable
4 presumption as to significant risk of flight, I find that --
5 I'm going to deal with Mr. Muse Muse first. Again keeping in
6 mind the Sixth Circuit's admonition that this burden is not
7 heavy, and in fact I note that that case involved allegations
8 similar to those in this case, and in fact similar to this one
9 the court found that the presumption had been rebutted. I find
10 that Mr. Muse Muse has rebutted the presumption, keeping in
11 mind that burden is not very heavy, through the information
12 that he is a U.S. citizen, he has extended family and family
13 support here, involvement in employment until very recently.
14 That he's been in school. And there's also some information in
15 the Pretrial Services Report that supports that.

16 All right. Now, having made that determination -- and
17 the irony here is that it takes little, relatively, to rebut
18 the presumption, but I still have to determine whether the
19 government has met its burden by a preponderance of the
20 evidence, and the irony is sometimes both apply. And I find
21 here that while Mr. Muse Muse rebutted the presumption, the
22 government has met its burden by a preponderance of the
23 evidence that Mr. Muse Muse does pose a significant risk of
24 flight. He has limited property interests and other interests
25 here, although he does have a family that cares about him.

1 And this will apply to all the defendants. They have
2 demonstrated through the Facebook communications they have a
3 strong interest in leaving this country. They have a strong
4 interest in not returning. They have made oaths to a foreign
5 terrorist organization and committed themselves over and over
6 to leave this country to go and fight for that organization.
7 That's pretty strong incentive to flee. That's certainly
8 preponderance of the evidence.

9 Now let me deal -- turn to Mr. Haji. I'm going to
10 deal with risk of flight before I deal with danger to the
11 community.

12 Mr. Haji also has rebutted the statutory presumption
13 with respect to significant risk of flight through his
14 employment, his extended family, his attempts to purchase
15 property. He's a U.S. citizen. Ms. Chartier has represented
16 to me that his residence has been verified. And I trust all
17 the counsel here implicitly in terms of the representations
18 that they make. That's sufficient to rebut the presumption.
19 However, for the same reasons I cited for Mr. Muse Muse, the
20 government has also met its burden of preponderate evidence
21 that he poses a significant risk of flight.

22 Mr. Mohamud Muse has also rebutted the statutory
23 presumption through the fact that he's a citizen, no
24 significant ties to any foreign country. He is willing to turn
25 his passport over to Pretrial Services. A verified address.

1 He is married and expecting his first child in March of 2019.
2 For the same reasons I articulated for Mr. Muse Muse, the
3 government has met its burden of a preponderance of the
4 evidence that he poses a significant risk of flight.

5 Now I will turn to the issue of danger to the
6 community. I find that none of the defendants have rebutted
7 that presumption, even though the burden is not very great.
8 There is little, if any, evidence here that's been offered to
9 the Court that rebuts -- or addresses I should say much less
10 rebuts the issue of danger to the safety of any other person in
11 the community.

12 Moreover, I find that even if the defendants had
13 rebutted that presumption, the government has met its burden by
14 clear and convincing evidence that each of the defendants pose
15 a danger to others in the community. And I'm going to recount
16 some of the evidence. I'm not going to do it all.

17 As to Mr. Muse Muse we have a Facebook account. A
18 search warrant was executed -- obtained I should say on
19 March 22nd of this year. The result of which showed multiple
20 communications with Mr. Haji expressing a desire to fight for
21 ISIS. They discuss specific acts of violence. There's a
22 screen capture of the truck attack in New York City which is
23 also demonstrated in the hearing Exhibit Number 4. No evidence
24 of FBI involvement in any of these communications.

25 And let me mention, by the way, I understand where

1 defense counsel is coming from. This is not a criticism in any
2 way, shape, or form. I've heard -- the elephant in the room
3 here is entrapment, all right? That's not an issue that's
4 before me. That's not an issue that I'm supposed to decide nor
5 could I decide it based upon the record that's before me. I
6 suspect that's going to be an issue Judge Quist is going to
7 decide, and he's going to have a much more complete record upon
8 which to decide it. So I don't want anybody to take anything
9 I'm saying here today one way or the other about what I think
10 of that issue. What I'm focused on is it is relevant to my
11 determination whether a government agent is prompting somebody
12 to say something that then in turn is being used as evidence to
13 demonstrate their violent tendencies or their danger. And so I
14 am focused on that aspect to that extent.

15 With respect to -- back to Mr. Muse Muse.
16 February 1st of this year he and Mr. Haji were exchanging
17 messages discussing hijrah. And I also note that there's been
18 contentions about the specific meaning of hijrah and the
19 connotations of that term. I don't think any reasonable
20 impartial person could look at the use of that term in the
21 context of this case and see it as anything other than an
22 interest and intent to fight for ISIS.

23 March 28th, 2018, Mr. Haji sent a dead goat picture to
24 Mr. Muse Muse and he and Mr. Muse Muse discussed jihad with
25 respect to that. I won't recite all the specific comments.

1 March 29th, 2018, Mr. Muse Muse and Mr. Haji exchanged
2 Facebook communications discussing ISIS videos decapitating
3 victims, noting that they wanted to be with ISIS and to join in
4 getting victory. This is not about the First Amendment. This
5 is not about whether words are a crime. They are not. This is
6 about whether someone says or does things that would cause this
7 Court to believe they pose a danger to the community. And over
8 and over again we have a number of comments here. And counsel
9 wants me to treat them as just talk. Well, to do that, I have
10 to assume that they were lying, that they were not telling the
11 truth when they made these statements. I have no evidence to
12 base such a conclusion.

13 July 5th, 2018, Mr. Muse Muse and Mr. Haji were on
14 Facebook sharing a photo of a young martyr and discussing the
15 killing of kuffar, nonbelievers.

16 August 17th, 2018, Mr. Muse Muse and Mr. Haji again on
17 Facebook. Mr. Muse Muse writes, and I quote, "Hijrah is the
18 only thing," spelling incorrect, "that can save us unless we do
19 istishhadi," martyrdom.

20 August 31st, 2018, Mr. Muse Muse and Mr. Haji on
21 Facebook discussing going to Somalia. The fact that law
22 enforcement may be reading their Facebook content. They
23 discussed domestic jihad if placed on the no-fly list. No
24 evidence the FBI put them up to that.

25 Mr. Muse Muse's Facebook was searched by a warrant

1 that was issued on October 17th, 2018, which showed exchanges
2 between Mr. Muse Muse and Mr. Haji between August of 2018 and
3 October of that year, including using a vehicle for an attack.
4 I heard no evidence to suggest the FBI ever suggested to any of
5 the defendants that they use vehicles to attack people.

6 October 18th, 2018, Mr. Muse Muse told Undercover
7 Employee Number 2, "I plan on doing hijrah to Somalia and
8 joining those who are establishing the Sharia of Allah."

9 Now, this was in response to UCE-2's communication
10 regarding the situation in Somalia. The evidence doesn't tell
11 me specifically what that communication was, but I haven't
12 heard any evidence to suggest that the FBI specifically asked
13 them to come to Somalia.

14 October 30th, 2018, Mr. Muse Muse communicated with
15 UCE-2. He wrote he wanted to travel to Somalia to make his
16 bay'a, his oath, allegiance to ISIS, and to fight in the front
17 lines. Mr. Muse Muse stated he would be able to save enough
18 money to join ISIS in six to eight months. The UCE-2 then
19 cautioned Mr. Muse Muse about the steps he needed to take.
20 Now, here, arguably, the FBI is providing information, but
21 there's nothing to suggest or to demonstrate that Mr. Muse Muse
22 was only acting at the direction of any FBI agent.

23 Mr. Muse Muse sent a video on November 7th, 2018, to
24 UCE-2 with his oaths -- with an oath to ISIS. No evidence that
25 the FBI helped to make that video or told him what to say.

1 November 15, 2018, Mr. Muse Muse broached the subject
2 of needing financial support. Now, pursuant to that request it
3 seems to have prompted the FBI to offer money to help them make
4 the trip.

5 November 17th, 2018, Mr. Muse Muse sent two videos to
6 UCE-2 containing Mohamud Muse and Mr. Haji's oath of allegiance
7 to ISIS with Mohamud Muse and Haji's -- Mr. Haji's, excuse
8 me -- contact information.

9 On December 14th of last year Mr. Muse Muse and
10 Mr. Haji met with UCE-3 in Benton Harbor. Both Mr. Muse Muse
11 and Mr. Haji coached UCE-3 through the recitation. Here it
12 looks like Mr. Muse Muse and Mr. Haji are the ones doing the
13 coaching, not the FBI.

14 December 17th, 2018, the State Department received
15 Mr. Muse Muse's passport application. That could be construed
16 as an action to effect the conspiracy.

17 December 18th of last year Mr. Muse Muse went to
18 UCE-3 -- sent to him I should say, or her, a link to flights
19 from Chicago to Mogadishu. So apparently the FBI is not the
20 one finding the flights.

21 December 20th through the 21st of last year
22 Mr. Muse Muse advised UCE-3 that if their passports arrived
23 before January 21st they would leave sooner. That they were
24 booking a flight, that they found a flight at the cost of
25 \$1,799. Mr. Muse Muse stated that the purchase of the tickets

1 will be proof of his sincerity.

2 December 21, 2018, Mr. Muse Muse wrote to UCE-2 and
3 said that he and UCE-3 had found a ticket, gave the dates of
4 travel, and the cost. At that point Mr. Muse Muse requested
5 \$1,200 from who he thought was a representative from ISIS.

6 January 7th of this year Mr. Muse Muse communicated
7 with UCE-2 that he and UCE-3 were planning to buy tickets and
8 would be on a flight.

9 Mr. Muse Muse and Mr. Haji met with UCE-3 at WalMart
10 in Lansing and purchased combat-style boots. They also told
11 UCE-3 at that time that if they failed to join ISIS, they would
12 conduct an attack or martyrdom operation, referencing the Paris
13 attack. No evidence the FBI suggested that.

14 January 21st all three drove to Gerald R. Ford
15 Airport. Mr. Muse Muse obtained a boarding pass and went
16 through TSA before he was arrested. After his arrest in a
17 Mirandized interview he provided a statement saying that he
18 wanted to join ISIS in Somalia so he wouldn't have to do an
19 attack in the United States. That is clear and convincing
20 evidence that Mr. Muse Muse poses a danger to the community.

21 With respect to Mr. Mohamed Haji, prior to
22 the June 21st, 2017, introduction of UCE-1 Mr. Haji was
23 communicating on Mr. Mohamud Muse's Facebook indicating support
24 and an interest in fighting for ISIS.

25 June 15th of 2017 Mr. Haji writes, "I pray Allah gives

1 the mujahideen the victory inshallah. Always victory Ya Allah.
2 And we are next to step up to the battlefield."

3 November 1st, 2017, Mr. Muse Muse sent Mr. Haji a
4 screen shot of the truck attack I referenced earlier, which is
5 Exhibit 4. Mr. Haji stated, and I quote, "Real civil war."
6 Mr. Muse Muse stated, "If this don't wake up the people,
7 nothing will." Mr. Haji responded, "Yeah, I'm ready
8 inshallah." God willing. Mr. Haji then added, "This is a call
9 for hijrah." There was no FBI involvement that I could glean
10 from any of that interaction.

11 February 1st, 2018, Mr. Muse Muse and Mr. Haji
12 exchanged messages discussing hijrah and Dawla, which is ISIS.

13 On March 28th, 2018, Mr. Haji sent a dead goat picture
14 as I indicated earlier. Mr. Muse Muse and Mr. Haji discussed
15 jihad. Mr. Haji writes -- wrote, and I quote, "Yeah, next time
16 I want to catch kuffar and do my jihad training on them."

17 April 29th, 2018, Mr. Muse Muse and Mr. Haji exchanged
18 communications on Facebook discussing ISIS videos decapitating
19 victims, noting that they wanted to be with ISIS and join in
20 getting the victory.

21 Please note I'm not repeating the comments about
22 whether -- how they felt about that. Ms. Chartier, I think, is
23 the one who made this point. She's right. This Court should
24 not be making decisions of this nature based on any sort of
25 emotion. It's not. This is based upon Mr. Haji's and

1 Mr. Muse Muse's statements indicating that they had an interest
2 in being involved in such activity.

3 July 5th, 2018, Mr. Muse Muse and Mr. Haji were on
4 Facebook sharing a photo of a young martyr as I said before,
5 and both of them discussing killing kuffar, nonbelievers.

6 August 31st of last year, Mr. Muse Muse and Mr. Haji
7 were on Facebook discussing going to Somalia. Again discussing
8 the fact that law enforcement reads Facebook contact -- content
9 and their intention to engage in domestic jihad.

10 And Mr. Haji wrote, and I quote, "I just want to
11 dispatch them to the hellfire." People can have whatever
12 religious or other beliefs they want, but when they express an
13 interest in killing people, that's an interest to this Court.

14 Mr. Haji's Facebook was searched pursuant to a warrant
15 issued on August 28th of last year. It showed communications
16 between June and August of 2018, communications with
17 Mr. Muse Muse regarding a desire to fight for ISIS. Mr. Haji
18 wrote on one occasion, "Kuffar, I want to kill one. My days
19 are coming. I want a lot of this kuffar dead." No FBI
20 involvement in that.

21 October of 2018 UCE-3 introduced to the investigation.
22 Between October 18 and December of 2018 Mr. Haji communicated
23 with UCE-3 about his desire to make hijrah and jihad.

24 On November 15 of last year Mr. Muse Muse sent a video
25 to UCE-3 containing Mr. Haji's oath of allegiance to ISIS. And

1 sometime between December 6th and 7th of last year Mr. Haji
2 asked UCE-3 for a face-to-face meeting. Mr. Haji sent UCE-3 a
3 written ISIS oath and audio of his recitation of the ISIS
4 pledge.

5 On December 14th of last year Mr. Haji and
6 Mr. Muse Muse met with UCE-3 in Benton Harbor. They coached
7 him through the recitation of the oath and Mr. Haji recorded
8 it.

9 December 17th of last year Mr. Haji contacted UCE-2
10 asking for financial assistance to travel. For Muse Muse to
11 travel.

12 January 7th Mr. Haji communicated with UCE-2 and
13 stated, "I will find it and work hard for it. Will be coming
14 with Muse at the same time or not too long inshallah." God
15 willing.

16 January 15th of this year Mr. Haji and Mr. Muse Muse
17 met with UCE-3 at the WalMart, were buying boots and discussing
18 domestic jihad. And all three of them drove to the
19 Grand Rapids airport on the 21st. That is clear and convincing
20 evidence that Mr. Haji poses a danger to others in the
21 community.

22 As to Mr. Mohamud Abdikadir Muse -- Muse, excuse me --
23 there's a Facebook account of his from June of 2017 referenced
24 in the Complaint. Mohamud -- Mr. Mohamud Muse told UCE-1 he
25 wanted to join ISIS in Syria and was saving for a trip to

1 Syria. He had a valid passport. That he planned to die with a
2 gun in his hand.

3 I reviewed all of these exhibits very carefully again,
4 and I could find nothing to suggest that the interest in going
5 to Syria was prompted by an FBI agent.

6 September 13th, 2017, search warrant of
7 Mr. Mohamud Muse's Facebook, communications between
8 January 2017 and June of that year between Mr. Mohamud Muse and
9 Mr. Haji again expressing support for and interest in fighting
10 for ISIS. And Mr. Mohamud Muse asked for more ISIS videos.

11 February 8th of 2018, a search warrant obtained on
12 Mr. Mohamud Muse's Facebook account. A look found messages
13 between August and October of 2017 between Mr. Mohamud Muse and
14 Mr. Muse Muse discussing support for ISIS.

15 Sometime prior to November 17th of last year
16 Mr. Mohamud Muse made a video making an oath of allegiance to
17 ISIS which Mr. Muse Muse sent to UCE-2.

18 On December 11th or 12th of last year Mr. Mohamud Muse
19 communicated with UCE-2 stating, "I was supporting Dawla in my
20 family before anyone did." He also wrote that he was saving
21 money for hijrah soon. And he stated, "Brother, I just want
22 Islam to win. I want to kill kuffar."

23 December 17th, 2018, Mr. Mohamud Muse communicated
24 with UCE-2 that he would travel to Somalia to join ISIS soon
25 after the birth of his child.

1 January 7th of this year he advised UCE-2 that -- and
2 I quote -- that "Haji, my brother-in-law, and, yes, we talked,
3 we agree to leave together," and he joined the others in a trip
4 to the Grand Rapids airport resulting in his arrest. That is
5 clear and convincing evidence that Mr. Mohamud Muse poses a
6 danger to the community.

7 Even crediting the defense argument concerning the FBI
8 role here, it seems to me the defendants needed little
9 encouragement. They discussed committing domestic terrorism if
10 they were unable to fight for ISIS. There's no evidence
11 anybody from the FBI suggested that. And they expressed not
12 only an interest in killing for ISIS but a willingness to die
13 for the cause. To be martyrs for the cause.

14 Given such extremism, there is no reason to believe
15 that anyone with those opinions and views would be dissuaded by
16 any term or condition of bond that this Court could set.
17 Accordingly, I am issuing an order remanding Mr. Muse Muse,
18 Mr. Mohamud Muse, and Mr. Mohamed Haji to the custody of the
19 United States Marshal pending further proceedings in this case.

20 Mr. O'Connor, is there anything else we need to take
21 up at this time?

22 *MR. O'CONNOR:* No, Your Honor. Thank you.

23 *THE COURT:* All right. Mr. Zambon?

24 *MR. ZAMBON:* Only with regard to the passport,
25 Your Honor. I'll return that to the family. I don't think

1 there's any need for the pretrial release people to keep that.

2 *THE COURT:* I agree with you, and I know of no legal
3 basis by which he's required to surrender it at this time.

4 *MR. ZAMBON:* Thank you.

5 *THE COURT:* Ms. Chartier.

6 *MS. CHARTIER:* Nothing else. Thank you, Your Honor.

7 *THE COURT:* All right. Ms. Turek.

8 *MS. TUREK:* Nothing. Thank you, Your Honor.

9 *THE COURT:* I want to thank all three counsel for
10 their work on this case. I know if I were charged with a
11 federal crime, I would want somebody just like one of you
12 representing me, and I appreciate your advocacy on the part of
13 your clients.

14 *MR. ZAMBON:* Thank you, Your Honor.

15 *MS. CHARTIER:* Thank you.

16 *MS. TUREK:* Thank you.

17 *(Proceeding concluded at 4:31 p.m.)*

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CERTIFICATE

I certify that the foregoing is a transcript from the Liberty Court Recording System digital recording of the proceedings in the above-entitled matter, transcribed to the best of my ability.

I further certify that the transcript fees and format comply with those prescribed by the court and the Judicial Conference of the United States.

May 14, 2019

/s/ Glenda Trexler
Glenda Trexler, CSR-1436, RPR, CRR

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