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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA § CASE NO. 4:15-CR-263
 § HOUSTON, TEXAS
VERSUS § MONDAY,
 § JUNE 1, 2015
ASHER ABID KHAN § 10:08 A.M. TO 11:53 A.M.

ARRAIGNMENT / DETENTION HEARING

BEFORE THE HONORABLE NANCY K. JOHNSON
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

FOR PLAINTIFF/DEFENDANT: SEE NEXT PAGE
COURT RECORDER: PAUL YEBERNETSKY
COURT CLERK: SHANNON JONES

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1 HOUSTON, TEXAS; MONDAY, JUNE 1, 2015; 10:08 A.M.

2 THE COURT: So let me call for -- well, it was
3 going to Probable Cause Hearing in United States versus
4 Asher Khan.

5 Are we ready to do an Arraignment?

6 MS. FERKO: Yes, Your Honor. Carolyn Ferko for
7 the United States.

8 Last week a two-count Indictment was returned.
9 Your Honor, it was sealed, but we ask that it be unsealed
10 upon his arrest or initials, so we just move that it be
11 unsealed.

12 THE COURT: All right.

13 MS. FERKO: I had a copy of it provided to his
14 Counsel.

15 THE COURT: Okay. All right.

16 Mr. Khan, come on up here and let's do the
17 Arraignment.

18 Are you ready?

19 MR. BERG: Let -- I need to read it to him
20 because --

21 THE COURT: Okay.

22 MR. BERG: -- we did just get this a little while
23 ago.

24 THE COURT: Go ahead, take a minute.

25 MS. FERKO: Thank you, Your Honor.

1 THE COURT: And the penalty is --

2 MS. FERKO: 15 years.

3 THE COURT: Fifteen?

4 MS. FERKO: Yes, Your Honor.

5 THE COURT: And 250 part.

6 MS. FERKO: And five years.

7 (Pause in the proceedings.)

8 MR. BERG: We're ready to go forward with the
9 Arraignment, Your Honor.

10 THE COURT: All right. Come on up. All right.
11 Mr. Khan, have you received a copy of the
12 Indictment?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: You're charged in that Indictment in
15 Count One, with the conspiracy to provide material support
16 to a designated terrorist organization; and in Count Two,
17 attempting to provide material support to a designated
18 foreign terrorist organization.

19 Penalty range that you face on both of these
20 counts is up to 15 years in prison; and up to a \$250,000
21 fine.

22 And is it a mandatory five years or up to five
23 years supervised release?

24 MS. FERKO: It's up to five years.

25 THE COURT: Up to five years' supervised release.

1 Do you understand the charge?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: With respect to this charge, you have
4 the right to remain silent and not make any statement. If
5 you choose to make a statement, it can be used against you.

6 Do you understand that?

7 THE DEFENDANT: Yes, ma'am.

8 THE COURT: Have you had enough time to review the
9 charge with your lawyer and are you ready to enter a formal
10 plea?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: Counsel, do you wish to waive formal
13 reading of the charge?

14 MR. BERG: We do and enter a plea of not guilty to
15 both counts.

16 THE COURT: A not guilty plea will be entered.

17 THE CLERK: We're working on a Scheduling Order.

18 THE COURT: We're working on a Scheduling Order
19 right now. We'll have that out for you before we're --

20 MS. FERKO: That's fine.

21 THE COURT: -- done with the detention hearing.

22 Do we know what Judge got the case?

23 MR. BERG: Judge Hughes.

24 THE COURT: Judge Hughes. Okay. There we are.

25 All right.

1 Anything else we need to talk about? If not, have
2 a seat and call your witness.

3 MS. FERKO: Yes, Your Honor.

4 Your Honor, the United States would call Keith
5 Fogg with the FBI.

6 (Court tends to other matters from 10:12 a.m. to
7 10:14 a.m.)

8 THE COURT: And in Asher Khan, I just got a
9 Scheduling Order. Trial is set for August 4th at 9:00.

10 Speedy trial not waived?

11 MR. BERG: Not at this point, Your Honor.

12 THE COURT: And estimated time for trial, what do
13 you think?

14 MS. FERKO: I would say about seven days, Your
15 Honor.

16 THE COURT: Seven days.

17 Do you agree?

18 MR. BERG: I think Judge Hughes will probably
19 question that.

20 THE COURT: Yeah, Judge Hughes is going to squeeze
21 you on that.

22 MR. BERG: Yeah, so it won't be seven days.

23 THE COURT: Okay. I'm going to --

24 MR. BERG: It'll be five.

25 THE COURT: -- seven.

1 MS. FERKO: You know, I was -- I mean for the
2 Government. I see the whole trial being seven days.

3 THE COURT: Okay. Well, I'm going to put --

4 MS. FERKO: I think it would give them time so.

5 THE COURT: -- seven.

6 MR. BERG: Okay.

7 THE COURT: Expect some pushback. That's all I'm
8 going to say.

9 MR. BERG: Right.

10 THE COURT: Shannon, hand these out. Unless he's
11 mellowed out.

12 MS. FERKO: I don't think that.

13 THE COURT: You don't think so?

14 MR. BERG: Yeah.

15 THE COURT: Yeah. All right. Ms. Ferko, call
16 your witness.

17 MS. FERKO: Yes, Your Honor, Agent Fogg.

18 THE COURT: Oh, there you are.

19 THE CLERK: Will you raise your right hand please?

20 (Witness sworn.)

21 THE CLERK: You may be seated.

22 MS. FERKO: May I, Your Honor?

23 THE COURT: You may.

24 MS. FERKO: Thank you.

25 DIRECT EXAMINATION OF KEITH FOGG

1 BY MS. FERKO:

2 Q Agent Fogg, would you please state your full name and
3 spell your last name for the Record?

4 A Keith Fogg, F-O-G-G.

5 Q And how are you employed, sir?

6 A I'm a Special Agent with the FBI.

7 Q And how long have you been with the FBI?

8 A Since June 2010.

9 Q And currently, what is your assignment?

10 A I'm assigned to our CT1 which we investigate terrorism.

11 Q Okay. And that's here in Houston, Texas?

12 A In Houston.

13 Q And I want to begin with: Are you familiar with an
14 individual by the name of Asher Abid Khan?

15 A Yes, I am.

16 Q Okay. And do you see that individual here in the
17 courtroom today?

18 A Yes, I do.

19 Q Can you just identify where he's seated and an article
20 of clothing?

21 A He's sitting next to Defense Counsel in an orange
22 jumpsuit.

23 MS. FERKO: Okay. Your Honor, may the Record
24 reflect the Agent has identified the Defendant.

25 THE COURT: Yes.

1 (Defendant identified.)

2 BY MS. FERKO:

3 Q Agent Fogg, when did the FBI begin an investigation
4 into Mr. Khan and an individual by the -- it was by the
5 initials S.R.G.?

6 A The investigation of S.R.G. began out of our McAllen RA
7 in about March of 2014. Through their investigation, they
8 were able to conduct a series of search warrants which
9 identified Asher Khan.

10 Q Okay. And first when -- in McAllen began to
11 investigate S.R.G., what did -- what were the allegations?
12 What did the investigation tell?

13 A The investigation started based off of his sudden
14 disappearance with suspicion that he had travelled to Turkey
15 and Syria in order to fight with ISIS.

16 Q And for the Record, who is ISIS or also known as ISIL?

17 A It's the Islamic State of Iraq and the Levant with a
18 number of different other names for them.

19 Q Okay. And has that been designated as a foreign
20 terrorist organization?

21 A Yes, it has.

22 Q Okay. And when was designation occurred; do you know?

23 A The original designation was for Al Qaeda in Iraq,
24 which I believe was 2004. And then in 2014, I believe it
25 was, they added the name Islamic State of Iraq and the

1 Levant.

2 Q Okay. And on -- I believe it was May 15th of 2014
3 where they amended that Order and did they also have other
4 aliases added in addition to ISIL?

5 A They had a number of them. I'm included ISIS which is
6 Islamic -- ISIS, Dawla, Daesh and there's a couple other
7 ones.

8 Q Okay. And you said that the McAllen residential office
9 found out or discovered Mr. Khan sometime in October of
10 2014; is that correct?

11 A That's correct.

12 Q Okay. And what happened? When did the Houston office
13 get that information?

14 A It was the beginning of October 2014.

15 Q Okay. And as a result of the information received,
16 what did the Houston begin to do?

17 A We started investigating Asher Khan. Had surveillance
18 on him trying to identify his daily patterns and we
19 conducted a number of search warrants on his Facebook and
20 other accounts as well.

21 Q Okay. At the time of the investigation in October of
22 2014, going back to a year prior, roughly, October 2013, did
23 the FBI determine where Mr. Khan was hiding?

24 A Yes, we did.

25 Q And where was that?

1 A I believe he was in Australia.

2 Q Okay. And as a result of returns you received from
3 Facebook, what did you discover about the relationship
4 between Mr. Khan and S.R.G.?

5 A It appeared that they were friends since high school
6 timeframe. Most likely attended school at the same time and
7 they knew each other through the Mosque. They appeared to
8 be close friends.

9 Q Okay. When you say the "Mosque," the Mosque located
10 where?

11 A In Spring Cypress, Champions Mosque.

12 Q Okay. And Khan is how old?

13 A He's 20.

14 Q Currently, correct?

15 A Correct

16 Q And based upon the Facebook returns, when in January
17 did it appear, the first contact occur between S.R.G. and
18 Khan?

19 A Khan reached out to S.R.G. and friend requested him. I
20 -- we believe it was January 6th, 2014

21 Q Okay. And briefly, just what is a "friend request"?

22 A It's just a method on Facebook to connect with other
23 individuals.

24 Q Okay. And using the Facebook communication platform,
25 what did Khan tell S.R.G. on that date?

1 A He informed him that he was in Australia and that he
2 was thinking about travelling to Iraq in order to join ISIS.

3 Q Okay. And when you say ISIS, do you remember -- did he
4 specifically say that in the post?

5 A Yes, he did. He actually -- he also spelled it out to
6 make sure he was very clear that it's the Islamic State of
7 Iraq and, I believe, he said Syria.

8 Q Okay. On or about January 13th, on Facebook, Khan
9 contacted who, based upon the returns that you've reviewed?

10 A Which date was that?

11 Q January 13th, 2014.

12 A I believe he contacted for the first time an individual
13 we've identified as "CC-1."

14 Q Okay. And CC-1, what did Mr. Khan explain to CC-1
15 about himself?

16 A His first contact that he had with him, he simply
17 stated "I'd like to join ISIS, can you help?" And in
18 subsequent conversations with him, he then further
19 identified himself that he was in Australia. He was not
20 happy with his -- where he currently was and would like to
21 join up with ISIS.

22 Q Okay. And did he say anything about being from the
23 west?

24 A Yes.

25 Q In January, based upon his Facebook conversations, Khan

1 also spoke to an individual that was identified in a
2 complaint as "Individual 1." I believe it was around on or
3 about January 24th, 2014. Individual 1 and Khan had a
4 conversation.

5 Could you just briefly describe for the Court what
6 that conversation is about?

7 A Give me just one minute just to make sure that I'm
8 discussing the appropriate conversation. January 24th, you
9 said?

10 Q Yes, that's correct.

11 A That was as discussion that Asher Khan had with
12 Individual 1 where he discussed his desire to go die as a
13 Shahid to join ISIS and to hopefully spread the Islamic
14 talafi.

15 Q What is "die as a Shahid" mean?

16 A A "Shahid" is a martyr of somebody that has died in the
17 name of Islam.

18 Q Okay. And he specifically stated that in his Facebook
19 post to Individual 1; is that correct?

20 A That is correct.

21 Q Okay. Going back -- we're going on to February 4 of
22 2014, I believe Khan had also contacted again the individual
23 that has been identified as "CC-1" by Facebook. They had a
24 conversation.

25 Can you briefly tell the Court what that

1 conversation entailed? It was Khan's conversation over
2 Facebook with CC-1?

3 A In that conversation, Khan and CC-1, they furthered
4 discussed the exact plan of how he was going to get to
5 Turkey. They decided that upon arrival, he would fly into
6 Istanbul. He would then take a bus from Istanbul to Adana
7 and then onto Antakya where CC-1 would meet up with him.

8 Q Okay. And where is Antakya, just so the Court has an
9 understanding of geographical locations?

10 A It's very close to the border of Turkey and Syria.

11 Q On February 11th, 2014, Khan continues having a
12 conversation with S.R.G., again, on Facebook.

13 What does he tell him?

14 A He basically went over the same plan with S.R.G. that
15 he told them the plan is to fly to Istanbul, take the -- a
16 bus to Antakya and then we'll meet up with CC-1.

17 Q And did Khan offer to do anything for S.R.G. at the
18 time?

19 A He offered to pay him -- print the Visa for S.R.G., but
20 he refused.

21 Q Okay. When you say "Visa," what does the FBI believe
22 that's in reference to?

23 A We believe it's a Visa to Turkey.

24 Q Okay. And on or about February 13th, Khan also
25 communicated with S.R.G. on that date, approximately two

1 days later.

2 What did he talk about then?

3 A Khan gave S.R.G. specific instructions on exactly what
4 ticket to purchase from Houston to Istanbul arriving on
5 February 24th.

6 Q Okay. And again, on that same day, was there a
7 conversation with CC-1 and Khan that occurred?

8 A I believe so.

9 Q Okay. And what did he discuss with CC-1?

10 What question did he actually ask CC-1 that he --
11 Khan was apparently concerned about?

12 A Khan was concerned about his appearance so he asked if
13 he should trim his beard which CC-1 advised that he should
14 do so.

15 Q Okay. On February 18th, Khan and CC-1 continue to have
16 another discussion.

17 What did CC-1 tell Khan to do on that date?

18 A He said after he arrives in Turkey, to purchase a
19 turkcell sim card to be able to contact him.

20 Q Okay. And a "turkcell sim card" is a -- enables him to
21 do what once in Turkey?

22 A It enables him to use a cell phone in Turkey to call
23 CC-1.

24 Q Okay. Could Khan have used his -- contact his provider
25 here in the United States and use his cell phone if he had

1 one and also the time he was in Australia?

2 A I believe so, but I don't know specifically the details
3 of his carrier.

4 Q Okay. And February 22nd, there was a conversation
5 between Khan again and S.R.G., what was discussed?

6 A On that date, Khan was reaching out to S.R.G. just to
7 make sure that he had reached Houston safely because, I
8 believe, he was travelling from McAllen at that point in
9 order to come up and take the plane. He asked him to
10 forward his ticket and flight number so he knows
11 specifically what flight he was going to be on.

12 Q Okay. And Most importantly, in that conversation, what
13 did Khan discuss with S.R.G. about any plans?

14 A They also had a discussion about what their cover story
15 would be when they're in Turkey. They decided that they
16 would be portrayed -- portraying themselves as tourists.

17 Q Okay. And if I can direct you to the Complaint, I
18 believe there's a direct quote in Paragraph 23 which you --
19 if you could just read that to the Court, the copy in front
20 of you.

21 A What they -- he stated is: "Have you reached Houston
22 safely and did you get your Visa? Make sure you print your
23 ticket and forward me your ticket as well just so I know
24 your flight numbers." S.R.G. indicated that, "If I could, I
25 would destroy all butterflies in my stomach." And then Khan

1 reminded them of their cover story stating, "Lol, bro, chill
2 and have fun. This is an experience so enjoy and learn from
3 it. You're a tourist and tourist are never nervous, they
4 are curious."

5 Q Okay. And based upon the FBI's investigation, what did
6 the FBI learn from Customs and Border Protection regarding
7 S.R.G.'s travel?

8 A That he traveled from George Bush International Airport
9 to London on his way to Istanbul on or about February 23rd.

10 Q Okay. And what other information based on the
11 investigation did the FBI learn about Khan's travel from
12 Australia?

13 A That he flew from Australia to Malaysia to Istanbul on
14 the same day, arriving on the same day.

15 Q Okay. On or about February 24th, S.R.G. informs Khan
16 that he's in -- arrives in London and what does Khan tell
17 him at that time?

18 A At that point, Khan tells S.R.G. that his parents have
19 found out about his plans and that they're -- his exact
20 terminology is that they are "tipping" but I'm assuming "I'm
21 tripping."

22 Q And when he says that, the FBI just found out -- did
23 they have any other kind of communications other than over
24 Facebook at that time period?

25 A According the Facebook returns, it looks like they had

1 a 166 second telephone call after that initial message.

2 Q Okay. And what did S.R.G. respond, specifically, in --
3 to replay to Khan after that conversation?

4 A Immediately, after that conversation, S.R.G. responded
5 to Khan saying, "Dude, you can't pull shit like that. I
6 didn't come with all that much cash. I have no connections.
7 I've got no clue, WTF."

8 Q Okay. And then what else did S.R.G. cite in the post?

9 A He pleaded with him to not leave him stranded in Turkey
10 where Asher Khan then responded that he's still coming
11 there.

12 Q Okay. On February 26th, 2014, where was the FBI to
13 ascertain Khan to be at that time?

14 A At that point, we believe that he was back in Houston.

15 Q Okay. And what did Khan do while back in Houston
16 according to his Facebook?

17 A According to his Facebook, Khan reached out to CC-1 in
18 order to inform that he had turned around and came back home
19 but his friend was still in Turkey and asked him to help him
20 out and get him into Syria.

21 Q Okay. Did the FBI ascertain based upon Khan's words
22 why he returned? Why he left Turkey and returned back to
23 Houston in the United States?

24 A It was because his family told him that his mother was
25 sick and in the hospital.

1 Q Okay. Was it specifically in ICU he was told?

2 A I believe so. When he actually reached out to CC-1,
3 that's what he told CC-1.

4 Q Okay. Per a review of the Facebook, it's also showed
5 that Khan on February 14th, again, prior to returning or
6 prior to even going to Turkey, had a conversation with
7 Individual 1.

8 And can you just describe to the Court what that
9 conversation entailed on doing?

10 A There's a number of conversations if you give me a
11 minute just to make sure. February 14th?

12 Q That's correct.

13 A On February 14th, Khan provided Individual 1 a YouTube
14 video link about Anwar Awlaki.

15 Q Okay. The YouTube about Anwar Awlaki, can you just
16 describe for the Court who Anwar Awlaki is?

17 A Awlaki is an American born Imam. He was an Imam in
18 Virginia where three of the 911 terrorist prayed. He left
19 the U.S., travelled to Yemen where he became a figurehead in
20 AQAP.

21 Q Okay. And did Anwar Awlaki during the time he was in
22 Yemen, did he have any conversations with an individual that
23 Texas is familiar with by the name of Nidal Hasan, the Fort
24 Hood shooter?

25 A Yes, he is.

1 Q Okay.

2 A He was -- there was a number --

3 Q Okay.

4 A -- of connections between Nidal Hasan and Anwar Awlaki.

5 Q Okay. And was there any connection that the FBI
6 generally was able to determine between the individual in
7 2009 that would be "underwear bomber."

8 A Yes.

9 Q Okay. And as far as Anwar Awlaki is concerned, what
10 happened to him in September 30th, 2011?

11 A The U.S. authorized the drone strike.

12 Q Okay. So was he deemed --

13 A Yes, he was killed in the drone strike.

14 Q Okay. So I want to reference you to Paragraph 40 in
15 the Complaint. That YouTube link is sent to Individual 1
16 who I believe replies since I never heard any of his
17 lectures, could you read after that, what did Khan write in
18 his Facebook about Anwar Awlaki?

19 A He wrote, "He was man killed for is knowledge,
20 literally. He has the best lectures and American born,
21 perfect English like us. I wish I could inject everything I
22 know about him into you and create the same love I have for
23 him and you and every other Muslim."

24 Q On February 20th, 2104, Khan sent a message to
25 Individual 1 and again, in this message what did Khan

1 instruct Individual 1 what he was going to do?

2 A I believe that was the message where he was preparing
3 to go overseas or going to Turkey, I should say, and said if
4 "You receive a message from me and it's a salam with two
5 "Ms," you can respond, if not, do not respond to it."

6 Q Okay. And on February 26th when Khan got back to the
7 United States, what did he inform Individual 1 -- what
8 information did he give to Individual 1 about S.R.G.?

9 A He said that S.R.G. found the guy.

10 Q Okay.

11 A Referencing CC-1.

12 Q And so that implies that Individual 1 knew about --
13 something about CC-1; is that correct?

14 A Correct.

15 Q As far as S.R.G. is concerned, when -- did you speak
16 with any of S.R.G's family in the course of the
17 investigation?

18 A Yes, I did.

19 Q Okay. When was the last time that S.R.G's family had
20 any contact from him or from him to your knowledge? What
21 they told you?

22 A It was mid-September 2014 -- 2014, yes.

23 Q Okay. And in mid-September 2014, they cite as the last
24 contact from him.

25 Did they receive contact from anyone through

1 S.R.G.'s Facebook account?

2 A Yes, they did. On December 25th, 2014, on Christmas
3 day, somebody took possession of S.R.G.'s Facebook account
4 and reached out to certain family members to inform him --
5 to inform them that S.R.G. had died.

6 Q Okay. And going on about S.R.G. and the fact that his
7 family hadn't seen him, Khan's conversations from his
8 Facebook account, when was his last conversation with
9 S.R.G.?

10 A I believe it was -- I believe October. I can find out
11 if you give me one second.

12 Q Okay.

13 A Actually, I believe it was August 2014.

14 Q Okay. Before we get to that, in July of 2014 through
15 July 15th, of 2014, Khan had several Facebook conversations
16 with S.R.G.; is that correct?

17 A Yes.

18 Q Okay. And did Khan receive any photographs or posts
19 from S.R.G. on -- in that timeframe?

20 A Yes, he did.

21 MS. FERKO: Your Honor, I'd just like to mark,
22 specifically, as Exhibit 1 and 2 and I have a copy for Your
23 Honor. A copy has been forwarded to Counsel and I believe,
24 Counsel, it's the last two photographs in the packet that
25 I've handed you --

1 MR. BALLI: Okay.

2 MS. FERKO: -- just so you know.

3 Your Honor, may I approach?

4 THE COURT: You may.

5 MS. FERKO: And if I may copy here so. And I'll
6 hand a copy to the witness.

7 BY MS. FERKO:

8 Q Agent Fogg, can you describe what's in -- what's been
9 marked as Government's Exhibit 1?

10 A Exhibit 1 is a picture of a person's legs in camouflage
11 clothing with appears to be an AK-47 lying across his lap.

12 Q Okay. And in looking at that document, it says
13 "Recipient," from the Facebook records.

14 Who is listed as Recipient?

15 A Asher Khan.

16 Q Okay. And the center is the date of the -- I'm sorry,
17 the upload that was sent is when --

18 A It was --

19 Q -- according to the document?

20 A -- sent 4/11/2014.

21 Q Okay. And the -- of the following second photo that's
22 described as "Exhibit Number 1," can you please tell the
23 Court what that is?

24 A It's a picture of S.R.G. holding up what appears again
25 to be an AK-47 in his left hand and what appears to be the

1 Koran in his right hand.

2 Q Okay. And on August 11th, what did S.R.G. inform Khan
3 about in their Facebook conversation?

4 A The last conversation that they had or one of the last
5 conversations was him informing that he was with ISIS and he
6 wanted to be with them in the first place.

7 Q Okay. And did Khan have any response to that?

8 A Khan responded by instructing S.R.G. to make sure
9 "they" which we presume to be S.R.G. and his other fighters,
10 are doing everything according to Islam, you know, not
11 killing innocent people and all that.

12 Q Okay. And as far as the other review of S.R.G.'s
13 Facebook account from the return the FBI received, was it
14 clear to the FBI who helped them get S.R.G. to ISIS?

15 A Yes, it was --

16 Q And who was that?

17 A -- the individual identified as "CC-1."

18 Q Okay. Based upon your review of Facebook, Facebook has
19 something called "photo uploads"; is that correct?

20 A Correct.

21 Q Okay. Looking at the uploads, prior to Khan leaving
22 for the -- leaving Australia for Turkey -- marked as
23 "Government's Exhibit 3," -- and a copy of Government's
24 Exhibit 3. The upload which is -- what date is this
25 uploaded on?

1 A January 1st, 2014.

2 Q Okay. And were there more than one uploads that fall
3 into this category that Mr. Khan posted on his Facebook
4 account?

5 A Yes, not necessarily on that date but throughout the
6 returns, yes.

7 Q Okay. And can you describe what Exhibit 3 is?

8 A It's a picture of an individual in a mask holding,
9 again, what appears to be an AK-47 with the words at the
10 top, "The best of the Shahada are those who fight in the
11 front lines and do not turn away their faces until they are
12 killed." And it's from The Victorious party in the Land of
13 Ash-Sham

14 Q Okay. And can you just talk briefly about The
15 Victorious party of the Land of Ash-Sham.

16 What is that?

17 What does the FBI ascertain that to be?

18 A We don't know what Khan reached out to The Victorious
19 Party. We do not know exactly who that person is, but it's
20 very clear from their postings that they support ISIS.

21 Q Okay. And you say when he "reached out" on Facebook,
22 did they have -- are they the remain? Do they have a page?
23 How does that work as you just stated?

24 A Like many of these accounts, they actually change the
25 accounts on a number of times. They either get deleted or

1 changed. He reached out to an account with a similar name
2 to that.

3 Q Looking what's been marked as "Government's Exhibit 4,"
4 can you state the date of this photo upload?

5 A March 6th, 2014.

6 Q Okay. And what is that of?

7 A It's a quote by Anwar Awlaki.

8 Q Okay. And what does the quote say?

9 A It says, "We do no custom make Islam to serve us. We
10 change ourselves to fit in Islam."

11 Q Okay. And can you actually look at what's been marked
12 as "Government's Exhibit 5"?

13 What is that photo upload of?

14 A It's an image saying, "Now that's evolution."

15 Q Okay. And the date of that upload?

16 A March 1st, 2014.

17 Q And March 1st, 2014 would be the date that Khan was
18 ascertained to be back in the Houston, Texas area; is that
19 correct?

20 A Well, he was back as of that date, correct.

21 Q Okay. I'm going to mark as "Government's Exhibit 6" --
22 it's technically two postings, but it's a continued copy.

23 If you can describe for the Court what is
24 Exhibit 6?

25 A Exhibit 6 is a post by an individual named Muhammad

1 Sabir (phonetic) where it's the scholars who have given
2 their allegiance to the Islamic state and then it lists out
3 all of those scholars.

4 Q Okay. And what is the date of that screenshot photo
5 upload? If you can look at -- I believe there's two dates
6 that I think that they exist.

7 A October 17th, 2014 and I believe this one is the same.
8 They're both the same.

9 Q Okay. And who was it uploaded by?

10 A It was uploaded by Asher Khan.

11 Q Okay. Based upon the FBI's again review of Asher
12 Khan's Facebook account, on approximately September 17th,
13 2014, did Asher Khan have a conversation with a friend of
14 his -- and I'm going to use the initials H.T. -- did he have
15 a conversation with him about an event regarding ISIS?

16 A Yes, he did.

17 Q Okay. Can you just tell the Court about what that --
18 what happened in that conversation on Facebook?

19 A Asher Khan realized that H.T. was most likely going to
20 an event where they're going to discuss ISIS and he asked
21 H.T. in order to -- told him to keep an open mind about
22 ISIS, don't go in there with negative thoughts about them.

23 Q Okay. And the event H.T. was going to was described as
24 what generally?

25 A We haven't determined exactly what it was, but we

1 believe it was an event held in or around Texas A&M, just a
2 discussion about ISIS.

3 Q Okay. You've reviewed the Facebook friends and
4 contacts or Facebook connections, what Facebook calls
5 "connections" on Asher Khan's account; is that correct?

6 A That is correct.

7 Q Okay. As today's -- or as of the most recent date of
8 return, which I believe is sometime in May of 2015, is CC-1
9 still a friend of Mr. Khan?

10 A Yes, he is.

11 Q Okay. And as a friend of Mr. Khan, what can --

12 A Well, let me clarify. He's listed as, I believe, a
13 "connection" of Mr. Khan.

14 Q I'm going to have you review quickly --

15 A I may be mistaken about that.

16 Q If you can direct -- I'm going to direct your attention
17 to the "friend" pages. It's in -- marked as "Government's
18 Exhibit 7." It begins on -- or for Facebook business
19 record, Page 128, and I'm going to hand a copy up for the
20 Court. It goes to Page 137. And I would direct your
21 attention to Page 132. It's kind of toward the middle.

22 Do you recognize anyone there who's been
23 identified as CC-1, without referring to the name?

24 A Page 132 you said?

25 Q Yes.

1 A Yes, I do.

2 Q Okay. So as a friend, what can Mr. Khan see or what
3 can he do as a Facebook friend versus a non-friend?

4 A As a friend, you're able to communicate privately.

5 Q Okay. And "communicate privately" means that the
6 public cannot see it?

7 A That's correct.

8 Q Okay. And if I'm not your friend on Facebook, does
9 that mean I cannot see everything that you do?

10 A Depending on your security settings, that's correct.

11 Q Okay. And the security settings, prior to getting the
12 Search Warrants for Mr. Khan's account, how are these set
13 up?

14 A They were -- the communications were private. He had
15 his wall open so that people could see it, but he didn't
16 typically post anything on his wall.

17 Q Okay. So the only changes in Mr. Khan's account was --
18 would that be profile pictures you could tell?

19 A Correct.

20 Q Okay.

21 A And anything that he would post.

22 Q Okay. But you could not see any postings on his wall
23 publicly regarding those photo uploads that we --

24 A That is correct.

25 Q -- shared with the Court today; is that correct?

1 A That is correct.

2 Q That would be private. Okay.

3 Agent Fogg, based upon your review of all the
4 Facebook records and just so the Court understands, there
5 were two warrants executed to get Facebook records for
6 Mr. Khan; is that correct?

7 A That's correct.

8 Q Okay. So in the first set of Facebook records, upon
9 your review, could you see when Mr. Khan, if at any time,
10 deleted a message or deleted a friend or unfriended somebody
11 on the account?

12 A Yes, that's correct.

13 Q Okay. When you received the Facebook returns for the
14 second account, which -- and again, the first account's
15 request went up to approximately what date?

16 A I believe it was around November of 2014.

17 Q Okay. So during the time of up to November 2014,
18 hypothetically, Mr. Khan had been back in the United States
19 from February through November at that time; is that
20 correct?

21 A That's correct.

22 Q Okay. And in the second return, the Facebook went from
23 November 2014 through --

24 A When it was --

25 Q -- when it was returned so --

1 A Correct.

2 Q -- sometime end of April, early May; is that correct?

3 A Correct.

4 Q Okay. Looking at those -- that part of the return, can
5 you describe what the difference was in the accounts as far
6 as messaging, as far as conversations, as far as what you
7 could see?

8 A In regards to -- I don't know if there is a specific
9 change in the security settings, if that's what you're
10 referring to?

11 Q Okay. Was there anything notably different as far as
12 his conversations with specific people he had earlier on and
13 then when we received the returns the final time?

14 A There were some conversations that had been deleted.

15 Q Okay. And so they're conversations of -- and would you
16 say those conversations were important, related to his --
17 the charges at hand?

18 A They may be. Without reviewing them, I would not be
19 able to say for sure.

20 Q Okay. After Mr. Khan's arrest, multiple associates or
21 friends of Mr. Khan were interviewed; is that correct?

22 A That's correct.

23 Q Okay. An individual -- or I'm just going to call them
24 "Person 1" -- was -- talked to Mr. Khan once he returned
25 from Turkey and prior to going to Turkey, he was asked by

1 the FBI that what was his impression or understanding about
2 Asher Khan and what did that Person 1 state regarding his
3 life and what he felt for the religion?

4 A Which initials are you referring to?

5 Q The first one, I believe, A. --

6 A A.K.?

7 Q Correct.

8 A Okay. He discusses Asher Khan wanting to die for
9 Islam.

10 Q Okay. And so did he talked about -- he meant Jihad in
11 a fighting sense; is that correct?

12 A That's correct.

13 Q Individual --

14 MR. BERG: Judge, I object to leading. That's --

15 THE COURT: Sustained.

16 MR. BERG: -- constant.

17 BY MS. FERKO:

18 Q The individual known as Individual -- we'll call him
19 "M" -- what did Asher Khan specifically tell that individual
20 he wanted to do prior to going to Turkey?

21 A Let me check my notes to make sure we're discussing the
22 same person.

23 Individual M, you said?

24 Q M, yes.

25 A He discussed his desire that he wanted to die as a

1 martyr.

2 Q Okay. And did he also discuss about what he wanted to
3 do with the specific organization?

4 A He had extensive Facebook conversations with
5 Individual M.

6 Q And what did he say?

7 A Individual M, he had discussed with her her ability to
8 get him to Iraq in order to join up with ISIS.

9 Q Okay. And ultimately, he chose not to go that route;
10 is that correct?

11 A That's correct.

12 Q Okay. But he clearly discussed wanting to join ISIS;
13 is that correct?

14 A That's correct.

15 Q An individual known as "D" spoke with the FBI after
16 Mr. Khan's arrest and D informed the FBI that Khan had told
17 that Agent --

18 MR. BERG: Objection. This is clearly leading.
19 She's reading to him.

20 THE COURT: Sustained.

21 BY MS. FERKO:

22 Q What did that individual tell him about the time he was
23 in Australia?

24 A They discussed exactly the group that Asher Khan
25 joined. It's called "HT." I believe it's pronounced

1 Hizb ut-Tahrir.

2 Q Okay. And can you spell that for the stenographer?

3 A I believe it's H-I-Z-B, space, U-T, space, T-A-H-R-I-R.

4 Q Okay. And that is not a designated terrorist group; is
5 that correct?

6 A That is correct.

7 Q Okay. And what is -- what does that group stand for,
8 what's the philosophy of that group, from the FBI's
9 understanding and your understanding?

10 A It's a political party that desires to create an
11 Islamic talafi.

12 Q Okay. Also, talking with Individual D, back in 2011,
13 what did he inform the FBI Mr. Khan wanted to do?

14 A He had informed the FBI that he was contemplating
15 suicide because of a woman.

16 Q Because of a woman?

17 A Correct.

18 Q Okay. And the day of Mr. Khan's arrest, did the FBI
19 receive a complaint from members of the mosque that Mr. Khan
20 currently attends?

21 A That's correct.

22 Q And what did the -- what did those members state?

23 A Approximately, the week before his arrest, the
24 Wednesday before his arrest, is when it first started being
25 discussed. Asher Khan was wanting to teach a class during

1 this Ramadan and through kind of the vetting process of who
2 they're going to allow to do that, there were complaints
3 brought forth. And what they're saying about him is that
4 there was rumors that he had went to Syria, that he was
5 supportive of ISIS and their ideology and that he believed
6 that America was the dajjal.

7 Q Okay. When you say people believe America as a dajjal,
8 what does "dajjal" mean?

9 A Dajjal was the antichrist.

10 Q Okay. So did S.R.G. ever, according to the FBI's
11 investigation, did it ever make it to ISIL?

12 A Yes.

13 Q Okay. What is the FBI's understanding of S.R.G. status
14 currently?

15 A We believe he's dead.

16 Q Okay. And as far as ISIL is concerned and public
17 information that is about ISIL, what has the group done in
18 the last two years as far as the FBI's --

19 A ISIL is ISIS, the group that everybody hears about on
20 the news, where they're using violence to spread Islam
21 through public decapitations, murdering of innocent
22 individuals.

23 Q Okay. Do they also publish a publication?

24 A Yes, they do, called *Dabiq*.

25 Q Okay. And that -- is that in Arabic, is that in

1 English?

2 A To my knowledge, all of them have been in English.

3 Q Okay. And currently, what is the call for the last --
4 back up.

5 What is essentially -- what is *Dabiq*, what does it
6 say inside it?

7 A *Dabiq* is a large newsletter that they put out talking
8 about a number of things about ISIS, their progress that
9 they're making in putting out their statements.

10 Q Okay. And in the issue that was released online
11 approximately a week before Mr. Khan's arrest, what was the
12 Forward of that issue, what was stated in that issue?

13 A

14 Q The Forward part of it discussed the attacks in
15 Garland, Texas praising them for standing up for Islam, and
16 then also making a call to other individuals that believe
17 the same way to -- instead of traveling to us, that they can
18 follow in their footsteps.

19 A And does the FBI believe that's a real threat here to
20 the Homeland?

21 Q Yes, we do.

22 MS. FERKO: At this time, I have no further
23 questions for this witness, Your Honor.

24 THE COURT: Mr. Berg?

25 CROSS-EXAMINATION OF ASHER ABID KHAN

1 BY MR. BERG:

2 Q What again were the dates when Mr. Khan traveled to
3 Istanbul?

4 A February 24th.

5 Q And he returned to the United States immediately
6 thereafter?

7 A That's correct.

8 Q And he has not gone anywhere since?

9 A Not to my knowledge, no.

10 Q Okay. And how long has the FBI been conducting
11 surveillance on him?

12 A We've had surveillance since we first opened the
13 investigation or roughly October of 2014.

14 Q Okay. And has it been pretty consistent surveillance?

15 A For the most part, yes.

16 Q Okay. Since his return to the United States, does the
17 FBI have any information that he has recruited individuals
18 to go to Syria or Iraq?

19 A No, we do not, since his return.

20 Q Since his return.

21 Since his return, has the FBI seen any information
22 that suggests that he's had a change of heart about what
23 ISIS is doing and how it's going about doing it?

24 A Not that I am aware of, no.

25 Q Have you read these text messages between him and the

1 person at H.T., Hakim Tai.

2 A Yes, I have.

3 Q Okay. Do you remember Mr. Khan telling Mr. Tai:

4 "Personally, I'm not completely sure what their goals
5 are. They might be great, but they are going about
6 accomplishing them is disgusting"?

7 Do you remember reading that or would you like me
8 to show it to you?

9 THE COURT: What exhibit is that, Mr. Berg?

10 MS. FERKO: I believe it wasn't in an exhibit,
11 Your Honor. I was referring --

12 THE COURT: Okay. It's not an exhibit.

13 MS. FERKO: -- to the person by initials.

14 THE COURT: All right.

15 MR. BERG: It's the Facebook business record.

16 THE WITNESS: Where are you referring?

17 MR. BERG: Right there.

18 THE WITNESS: That is Hakim Tai, the author --

19 MR. BERG: Okay.

20 THE WITNESS: -- to Asher Khan. That is not
21 Asher Khan's statements.

22 MR. BERG: Okay.

23 THE WITNESS: Hakim Tai, clearly from this
24 conversation, he did not agree with Asher Khan and --

25 MR. BERG: Okay.

1 THE WITNESS: -- Asher Khan was trying to convince
2 him that he needs to go into this conversation -- or this
3 meeting with an open mind.

4 MR. BERG: Okay.

5 BY MR. BERG:

6 Q What was --

7 A If you look at -- the author is who is actually saying
8 it, so those are statements by Hakeem refuting what
9 Asher Khan had said.

10 Q Okay. All right.

11 A So up here, if you read --

12 Q Okay.

13 And who is Hakim Tai?

14 A A friend of Asher Khan.

15 Q Okay. And is Hakim Tai a college student?

16 A We believe so, yes.

17 Q Okay. Asher Khan is a college student, right?

18 A That is correct.

19 Q Where's he enrolled in school?

20 A I believe he's currently at the University of Houston.

21 Q Now, you've testified that about four years ago,
22 Mr. Khan made some statement about wanting to commit
23 suicide?

24 A That is correct.

25 Q Over a woman?

1 A That is correct.

2 Q He would have been what, 16 years' old then?

3 A That would be correct.

4 Q Okay. So this was some girlfriend problem.

5 Do you know what the details are?

6 A I don't know the specifics of what girl it was about.

7 This is from an interview that an Agent that works with me
8 did.

9 Q Okay. And who did the Agent have that interview with?

10 A I would have to look that up.

11 Q Okay. Have you been able to tie that statement about
12 killing himself over a girl or a woman to anything relevant
13 in this case?

14 A As far as what?

15 Q Exactly. As far as is there any relevance to the fact
16 that he had --

17 A Well, if the FBI --

18 Q -- ideas of suicide because of a woman with this case?

19 A What the FBI is concerned about is that through that
20 statement, it showed another desire of his to die. He has
21 also expressed a number of concerns -- or a number of -- to
22 a number of other people about dying as a shahid. So
23 anytime that somebody is wanting to die is what we're
24 concerned about --

25 Q Okay.

1 A -- dying as a shahid.

2 Q You don't distinguish between being upset over a woman
3 and wanting to be a martyr?

4 MS. FERKO: Your Honor, objection. He's arguing
5 this.

6 THE COURT: Overruled.

7 THE WITNESS: I'm sorry, can you --

8 BY MR. BERG:

9 Q You don't distinguish between being upset over a woman
10 four years ago and wanting to be a martyr.

11 A There could be a difference, yes.

12 Q Okay. Now, according to your testimony, Mr. Khan came
13 back because he learned that his mother was ill?

14 A That's correct.

15 Q In the Complaint, it suggests he was tricked into
16 coming back.

17 A Tricked by his family.

18 Q Oh, his family was unhappy with him going?

19 A That's correct.

20 Q And so they told him that his mother was ill about it?

21 A That's -- well, told her -- told him that she was in
22 the ICU.

23 Q Okay. And he immediately came back.

24 A That's correct. Well, not immediately. He had a
25 number of discussions with people about whether or not he

1 should get back -- come back and then he decided -- he was
2 convinced that he needs to come back for his mother.

3 Q Needed to come back for his mother.

4 So his commitment to his mother was stronger than
5 his commitment to go to Syria even though he was already in
6 Turkey.

7 A To a certain degree, yes.

8 Q Okay.

9 A However, he also has stated in the past that the reason
10 he wanted to die as a shahid is to save his family.

11 Q So he came back from Turkey?

12 A That is correct.

13 Q Okay. And he's been with his family ever since?

14 A As far as I know, yes.

15 Q And he's made no further efforts to go join ISIS?

16 A In, I believe, October of 2014, he did apply for an
17 Australian visa to go back to Australia.

18 Q Okay. Well, is that an attempt to go to ISIS or is
19 that an attempt to visit his family?

20 He's got an uncle in Australia, right?

21 A Yes.

22 Q And he'd gone there for school for a while.

23 A That is correct.

24 Q But that's before he enrolled at the University of
25 Houston.

1 A That's correct.

2 Q Okay. So in answer to my question:

3 Has he made any further attempt to go to Syria?

4 A Not that we know of.

5 Q Not that you know of. Okay.

6 THE COURT: Who paid for his plan ticket to
7 Turkey?

8 THE WITNESS: From Australia?

9 THE COURT: Uh-huh.

10 THE WITNESS: I believe he paid for it himself.

11 BY MR. BERG:

12 Q If he had simply been returning from Australia to the
13 United States, would that flight have stopped in Istanbul on
14 the way?

15 A I'm sorry, what?

16 Q If he had simply been returning from his uncle in
17 Australia back to the United States, would it have -- would
18 that flight have stopped in Istanbul anywhere?

19 A I'm not capable of testifying to all the flights that
20 are available.

21 Q Okay. Evidently, there was some coordination between
22 this person that you call "S.R.G." and Mr. Khan that would
23 have led to them meeting in Turkey, right?

24 A That's correct.

25 Q And who is this person CC-1?

1 A CC-1 is a 24-year-old individual that we believe is
2 currently residing in Turkey. He travels between Turkey and
3 Syria in order to help smuggle people in.

4 Q Okay. So he's sort of the facilitator that gets people
5 into Syria and in touch with the people --

6 A That's correct.

7 Q -- in ISIS? He's sort of the coordinator; is that
8 right?

9 A He is the person that Asher Khan reached out to in
10 order to get them to ISIS.

11 Q Okay. And who put Asher Khan in touch with him?

12 A Asher Khan reached out directly to him. The first time
13 Asher Khan reached to him, he asked, "I want to join ISIS,
14 can you help?"

15 Q Okay.

16 A That was his first statement to him.

17 Q And how did Asher Khan know about him?

18 A We believe that a friend of his in Australia connected
19 the two of them together.

20 Q Okay. At the time that Asher Khan communicated with
21 S.R.G. and they made the arrangements to go to Turkey, had
22 the organizations that they were in touch with been
23 designated as foreign terrorist organizations?

24 A Yes, they were.

25 Q Which ones had been designated specifically at that

1 point?

2 A Al Qaeda and Iraq.

3 Q What did Mr. Khan specifically say about Al Qaeda in
4 Iraq?

5 A I don't believe he ever used the terminology "Al Qaeda
6 in Iraq."

7 Q Did he ever communicate with anybody knowing that they
8 were Al Qaeda in Iraq?

9 A Not to my knowledge.

10 Q Now, Al Qaeda in Iraq was established around 2004,
11 wasn't it?

12 A I believe that's when it was designated a terrorist
13 organization, but it was created well before then.

14 Q Okay. Well, it arose in response to the U.S. invasion
15 of Iraq; is that right?

16 A I believe so. I'm not an expert on Al Qaeda in Iraq.

17 Q Okay. And it was run by a guy named al-Zakari (sic);
18 is that right, do you know?

19 A It's al-Zawahiri, I believe.

20 Q Okay. Who is associated with Bin Laden?

21 A Correct.

22 Q And its function in Iraq was to resist the American
23 invasion, in general terms, right?

24 A I believe so. That was part of their goal.

25 Q Okay. And it was a Sunni organization; is that right?

1 A Yes.

2 Q Now, the FBI's understanding of, I guess, the evolution
3 of other organizations in the region over the last decade is
4 that some membership of Al Qaeda in Iraq survived to form
5 other organizations?

6 A I believe that's correct.

7 Q And al-Zawahiri, for example, is dead, right?

8 A I believe so, but I'm not 100 percent sure of that.

9 Q And the organizations that we now call "ISIS" came into
10 being in resistance to the Government of al-Assad in Syria,
11 right?

12 A That's part of their goals, yes.

13 Q Okay. And there were a number of organizations that
14 were in conflict with the central government in Syria.

15 A Correct.

16 Q And the United States supported a number of those and
17 continues to support a number of those organizations in the
18 conflict.

19 MS. FERKO: Your Honor, objection, as far as
20 relevance to the hearing. I don't know what the
21 Government -- the United States supports in Syria, I don't
22 know.

23 THE COURT: Where are we going relative to
24 detention?

25 MR. BERG: Relative to detention.

1 BY MR. BERG:

2 Q The reason for joining these organizations in the
3 conflict in Syria was to fight against the Syrian
4 government, correct?

5 A Well, I can't say the specific reasons that somebody
6 would want to join ISIS.

7 Q Okay. The idea that Mr. Khan expressed before going
8 involved his concerns about his brothers and sisters being
9 killed there, right?

10 A That was part of his concerns.

11 Q Okay. And those were the actions of the government of
12 Syria.

13 A I don't believe he specifically stated whether it was
14 the government of Syria.

15 Q It was not Mr. Khan's intent by traveling there to
16 fight the United States, did he -- is that correct?

17 A It may have been. According to the Complaint that we
18 received from the mosque, he believes America is the dajjal,
19 the antichrist, which would mean he would want to fight
20 against us.

21 Q Well, that's your interpretation, right?

22 MS. FERKO: Your Honor, objection against the
23 statement.

24 THE COURT: What do you mean "interpretation"?

25 MR. BERG: When he says his interpretation of --

1 if a person says he believes America is the antichrist, then
2 his interpretation is it means he wants to fight against us.
3 That's the Agent's interpretation.

4 THE COURT: Oh, as far as the fighting goes?

5 MR. BERG: Right.

6 BY MR. BERG:

7 Q That's what you interpret it to be; is that right?

8 A Correct.

9 THE COURT: All right.

10 Q Okay. Mr. Khan did -- has not expressed through his
11 communications an expressed desire to harm the United States
12 in any way.

13 A He has expressed his opinions about the United States
14 and --

15 Q Okay.

16 A -- how he hated democracy.

17 Q Okay.

18 A And hates pretty much what we stand for.

19 Q What does he state in school?

20 A I don't believe -- I have not received the information
21 from the University of Houston yet. I cannot tell you.

22 Q Does he have any kind of criminal record?

23 A No.

24 Q Do you know of him to have ever been in possession of
25 any weapons, firearms, explosive devices?

1 A Yes, I do.

2 Q What is that?

3 A He has access to a shotgun. In his recent Facebook
4 returns, he was at a range using a shotgun.

5 Q Okay. Beyond that one event, what do you have?

6 A I don't believe he possessed any firearms.

7 Q Okay. Did you conduct a search of his house when he
8 was arrested?

9 A Yes, we did.

10 Q Did I find anything?

11 A We did not find any firearms, if that's what you're
12 asking.

13 Q That's what I'm talking about.

14 No firearms?

15 A No.

16 Q Okay. Was he cooperative when he was arrested?

17 A Yes, he was.

18 Q Did he resist in any way?

19 A No, he did not.

20 Q Do you know whether he was questioned at the time he
21 was taken into custody?

22 A After he was processed, we talked to him. He decided
23 that he wanted a lawyer so we brought him to the Federal
24 Detention Center.

25 Q Okay. As far as you know, the only existing

1 designation of a foreign terrorist organization at the time
2 that he did his traveling was Al Qaeda in Iraq?

3 A Well, I would have to check the specific designation
4 how it's written.

5 Q Okay. What evidence do you have that Mr. Khan knew
6 that that organization or any organization had actually been
7 designated a foreign terrorist organization?

8 A He knew by joining this organization, he expressed
9 concerns that he would never be able to return to Australia
10 or the United States because he'd be acting against our
11 troops and our agenda.

12 Q Where did he state that?

13 A I don't -- I'd have to double-check, but I believe that
14 was with Individual 1.

15 Q What's Individual 1?

16 A Individual 1 is an associate of his.

17 Q Okay. And what was the specific attempt, if you know,
18 between January 5th, 2014 and February 25th, 2014 to provide
19 material support?

20 A He --

21 MS. FERKO: Your Honor, objection. Calls for --
22 it's a legal conclusion.

23 THE COURT: Well, restrict it to factual.

24 THE WITNESS: An attempt to -- can you repeat the
25 question please?

1 MR. BERG: Sure.

2 BY MR. BERG:

3 Q The second count says he attempted to provide material
4 support to a designated foreign terrorist organization
5 sometime between January 5th, 2014 until February 25th, 2014
6 here in the Southern District of Texas and elsewhere.

7 What is it he did?

8 A He attempted to provide himself and his friend, S.R.G.,
9 to fight with ISIS.

10 Q Okay. So your theory is that by his attempting to
11 travel there?

12 A Attempting to join.

13 Q Okay. It was an attempt to join by traveling there
14 during that period?

15 A That's correct.

16 MR. BERG: I pass the witness, Your Honor.

17 THE COURT: Ms. Ferko?

18 MS. FERKO: I don't anything further for this
19 witness, Your Honor.

20 THE COURT: All right. You may stand down,
21 Agent Fogg.

22 THE WITNESS: Thank you.

23 (Witness steps down.)

24 THE COURT: Anything else, Ms. Ferko?

25 MS. FERKO: Nothing, Your Honor, just argument.

1 THE COURT: Are you offering these exhibits in
2 evidence?

3 MS. FERKO: Your Honor, I can, if it's necessary.

4 THE COURT: Well, do you want me to consider them
5 or not?

6 MS. FERKO: I do want you to consider them,
7 Your Honor, so we --

8 THE COURT: Then they need to be admitted.

9 MS. FERKO: Thank you, Your Honor.

10 THE COURT: Any objection?

11 (Pause in the proceedings.)

12 MR. BERG: I do because I don't think we've got
13 enough context and I'm not sure what the numbering is, but
14 for these images that were apparently taken from the
15 Facebook page, the one uploaded January 1st, 2014, the first
16 one; the second one, March 6th, 2014; the third one,
17 March 1st, 2014.

18 MS. FERKO: Your Honor, I believe the Agent
19 testified these are all from the Facebook returns that he
20 received and then we went specifically through what was
21 specifically uploaded on certain dates.

22 MR. BERG: And then the two photographs of -- with
23 Mr. Garcia here or what appears to be Mr. Garcia, or S.R.G.,
24 that were sent by Mr. Garcia, or Mr. S.R.G. I don't think
25 there's sufficient context to show that they're relevant to

1 the issues here.

2 THE COURT: All right. That's overruled.

3 All right. Mr. Berg, do you have any witnesses?

4 MR. BERG: Not at this time, Your Honor.

5 THE COURT: All right. Argument?

6 MS. FERKO: Well, Your Honor, there's a
7 presumption for detention in this matter. I would cite the
8 Pretrial Services Report which notes that Mr. Khan has
9 limited ties to the community as far as any employment,
10 property or financial. He has ties to multiple foreign
11 countries. He has family in Pakistan and in Australia. The
12 nature of the offense charged involves a national threat to
13 the security of the United States. There's prior foreign
14 travel and possession of a passport I think would -- and the
15 Pretrial Services Report says the father has it. I'm not
16 sure if we seized it, Your Honor, so I'm not exactly sure
17 where the passport it.

18 The United States would argue, Your Honor, that
19 Mr. Khan -- there's no condition or combination of
20 conditions that would keep the safety of the community and I
21 would argue he is a risk of flight. As you know, we border
22 Mexico. It's not difficult and he could fly on any passport
23 out of Mexico to wherever he wanted to go. There are no
24 conditions such as a GPS monitor or anything to ensure the
25 safety.

1 As testified to by Agent Fogg, will Mr. Berg
2 seemed to make light of it, that he wanted to commit suicide
3 back in 2011, according to his friend, and, you know, his
4 multiple statements in his Facebook prior to leaving to
5 Turkey from Australia saying he wants to did a shahid, he
6 wants to be a martyr. And, Your Honor, the call from ISIS,
7 this group that he still espouses, you know, as late as the
8 week before his arrest saying, "You can't go -- you can't
9 come here. Do it there." You know, the FBI has limited
10 resources. I think that's been discussed publicly by the
11 director and at this time, Your Honor, we would ask that Mr.
12 Khan be detained. Again, there are no conditions the
13 Government foresees that would enable the safety of the
14 Homeland.

15 THE COURT: Mr. Berg?

16 MR. BERG: He's a lifelong resident of the Houston
17 area. His parents are here, brothers here, the rest of his
18 family is here. He traveled to Australia a couple years ago
19 because he had an uncle there, to go to school. I don't
20 think there's anything significant about the fact that he
21 went there.

22 The Agents did not seize his passport at the
23 house. His father would produce that, he has it, bring it
24 to the Court an surrender it. You need the passport to get
25 back into the United States when you're able to leave the

1 United States. Certainly that can be surrendered.

2 He's a student. They've established that. This
3 is what you'd expect a 20-year-old to be. And he teaches
4 Sunday School at his mosque.

5 I don't see any of these factors cited by the
6 Pretrial Services Report as compelling. We all have ties
7 with another country. So they've not gone into what were
8 unexplained assets. The prior foreign travel was explained
9 because he went to school in Australia with an uncle before
10 enrolling here at the University of Houston.

11 Possession of a U.S. passport is not a risk of
12 nonappearance. It's something our Government requires us to
13 have if we want to go anywhere.

14 And the last thing that the Government talked
15 about that there's -- apparently, ISIS has asked in general
16 terms for all Muslims to wage war where they are rather than
17 come to Syria. There's no evidence that Mr. Khan received
18 that message or that he was receptive to that message or
19 that he would act on that message. That argument could
20 argue for the locking up of every Muslim in the United
21 States led to its logical extension, but it doesn't make any
22 sense in the context of this case because since he came
23 back, he's done nothing in all practical terms.

24 So I would argue that under these circumstances,
25 this Court could release him on GPS monitoring to live at

1 home with his parents, go no further than his school that
2 he's enrolled, and his mosque and stay home till we figure
3 this case out.

4 Mostly what the Government's talked about are
5 ideas, not actions, and at some point, it's a First
6 Amendment case rather than a material support case at least
7 as of the effective date of the designation because their
8 theory is that Al Qaeda in Iraq is the same thing in 2004 as
9 these organizations now, but I don't think that's true.

10 THE COURT: All right. Thank you.

11 Ms. Ferko, what was the price of that airline
12 ticket; do you know?

13 MS. FERKO: Your Honor, at this time, I don't have
14 that information, but I know it was bought the day he flew
15 back -- I mean, the date -- he purchased the ticket in
16 Turkey to come back to Houston, so it was purchased, I
17 believe, on the -- what would have been the 24th in Turkey.

18 THE COURT: I meant the ticket from Australia to
19 Turkey, how much was that, because you said he paid for that
20 himself, right?

21 MS. FERKO: I believe he did, Your Honor. We have
22 the Malaysia tickets. I think it was eight or \$900 but I'd
23 have to inquire, Your Honor.

24 THE COURT: Okay.

25 MS. FERKO: I don't know the exact price.

1 THE COURT: And you mentioned in your testimony --
2 in the Agent's testimony that there was a publication called
3 "Dabiq"?

4 MS. FERKO: *Dabiq*, Your Honor?

5 THE COURT: *Dabiq*.

6 MS. FERKO: D-A-B-I-Q.

7 THE COURT: And is that an online document?

8 MS. FERKO: Yes, it is, Your Honor.

9 THE COURT: And so how do you know that -- I mean,
10 it was on his computer?

11 MS. FERKO: Your Honor, that was released online a
12 week prior to his arrest. It's --

13 THE COURT: What do you mean "released online," by
14 the publisher of the --

15 MS. FERKO: It's an ISIS publication.

16 THE COURT: Okay. But you don't know if he saw
17 it.

18 MS. FERKO: I do not, no, Your Honor.

19 And, Your Honor, to answer your question about the
20 Malaysia airline tickets that he purchased, it was over
21 \$1,000 and he paid in cash, and that's the records from
22 Malaysia.

23 THE COURT: Okay. So your evidence -- once he
24 came back, that he's still supporting ISIS is his
25 conversation with H.T. --

1 MS. FERKO: Well, that was one conversation,
2 Your Honor.

3 THE COURT: -- to keep an open mind about ISIS?

4 MS. FERKO: That's correct, his continued
5 conversations with S.R.G., Your Honor, that was testified to
6 in -- he testified in July and August of 2014, that he spoke
7 with S.R.G. and S.R.G. sent him the postings of the gun and
8 him holding the Koran, the AK-47. And again, Mr. Khan, you
9 know, at no point divulge to anyone what he was -- what that
10 other individual was doing or what Mr. Khan had done to any
11 law enforcement group.

12 MR. BERG: But my recollection of that
13 conversation was that Mr. Khan was telling S.R.G. to be sure
14 not to kill innocents.

15 MS. FERKO: That was the last ones he said he went
16 to ISIS, that's correct, Your Honor.

17 THE COURT: Uh-huh.

18 MS. FERKO: And I question what Mr. Khan called --
19 considers "innocent people" in light of statements made by
20 the mosque and what he considers America.

21 THE COURT: In that statement that the U.S. is
22 dajjal?

23 MS. FERKO: I think it's dajjal, Your Honor.

24 THE COURT: Dajjal?

25 MS. FERKO: Dajjal, Your Honor.

1 THE COURT: And that was made when?

2 MS. FERKO: That was -- the FBI was informed from
3 members of the mosque. The day of his arrest, they received
4 information that this was -- that that was his belief, that
5 he had stated that, and the FBI was told that by individuals
6 from the mosque. As I said, there were multiple interviews
7 going on that day reaching out to associates of Mr. Khan.
8 He was -- or be in his Facebook. And then other individuals
9 reached out to the FBI.

10 THE COURT: All right. Let me take a minute.
11 Cynthia, I need to talk to you.

12 THE CLERK: Okay.

13 (Recess was taken from 11:29 a.m. to 11:37 a.m.)

14 THE COURT: Just give me a minute.

15 (Pause in the proceedings.)

16 THE COURT: All right. I find that there are
17 conditions that can be set to address the risk of flight and
18 danger to the community; therefore, I'm setting bond.

19 Mr. Khan, come on up. All right. Mr. Khan,
20 you're going to be on a leash about this long, so listen
21 very carefully while I set for you conditions:

22 Number one, you must not violate any federal,
23 state or local law while on release;

24 You must not intimate or attempt to intimidate any
25 witness, juror or officer of the Court;

1 Obstruct a criminal investigation;

2 Or tamper with or retaliate against a witness,
3 victim or informant;

4 You must immediately advise the Court, your
5 attorney, and the Pretrial Services Agency in writing before
6 you change your address or telephone number;

7 You must appear in Court as required;

8 And you must surrender for service of any sentence
9 imposed.

10 You will execute an unsecured bond binding you to
11 pay the United States a sum of \$150,000. In the event of a
12 failure to appear or failure to surrender for service of any
13 sentence imposed, that bond will be co-signed by your
14 parents.

15 I'm also placing you in the custody of your
16 parents. They must agree to supervise you and can -- in
17 accordance with all conditions of release. They must use
18 every effort to assure your appearance at all scheduled
19 court proceedings and will notify the court immediately if
20 you violate any condition of release or if you disappear.

21 You will report to the Pretrial Services Agency.
22 I'm requiring that you report weekly.

23 You will post with the court the sum of \$25,000 to
24 further secure your appearance. That sum will be returned
25 to the person who deposits it upon the Court's determination

1 that you have met all conditions of your release.

2 I am not going to require that you work, in fact,
3 as we'll discuss later, you're not going to be allowed to
4 work.

5 You will surrender your passport to Pretrial
6 Services and obtain no other passport or travel document
7 while on bond because your travel is restricted to Harris
8 County, Texas so you are local.

9 You will avoid all contact, direct or indirect,
10 with any person who is a victim of this offense or a
11 potential witness.

12 You will not possess a firearm, destructive
13 device, or other dangerous weapon. I understand that there
14 were no weapons in the home, but just in case there were,
15 and or they were not in the house when the Agents came in,
16 you cannot have any weapons in your home or in your vehicle
17 because not only may you not physically possess a firearm,
18 you may not be in the constructive possession of a firearm.
19 And Mr. Berg can talk to your family about that.

20 He will not excessively use alcohol and he will
21 not have any use of unlawful possession of a narcotic drug
22 or other controlled substance, except as prescribed by a
23 licensed physician.

24 You will participate in a location monitoring
25 program, specifically home incarceration. You're restricted

1 to your residence at all time except for we said, Cynthia,
2 school and medical?

3 PRETRIAL OFFICER MORENO: Yes, ma'am.

4 (Voices off the Record.)

5 THE COURT: Yes. How often would that be?

6 THE DEFENDANT: We're required every Friday and
7 also Ramadan is coming.

8 THE COURT: Okay.

9 MS. FERKO: And, Your Honor, we'd object to any --
10 I mean, he can pray at home. He does not have to go to a
11 mosque. Not have to go to a building. He --

12 THE DEFENDANT: We are required.

13 MS. FERKO: -- he is not required --

14 THE COURT: All right. Don't --

15 MS. FERKO: -- under Islamic religion, Your Honor.
16 You can pray anytime, anywhere.

17 THE COURT: I get it, but I'm not --

18 MS. FERKO: Your Honor, the Government would also
19 ask that part of your conditions that you're making there be
20 no computer or Internet access.

21 THE COURT: We're getting to that. We're getting
22 to that.

23 You will be on the monitor -- your compliance with
24 this home incarceration, you will be on a location
25 monitoring program, in other words, an ankle monitor. You

1 will pay all or part of that cost based on your ability to
2 pay as determined by Pretrial Services. And that will be
3 GPS.

4 Is that passive or active?

5 PRETRIAL OFFICER MORENO: Active.

6 THE COURT: Active. Now, you will have no access
7 to the Internet, no access to a computer or a smart phone.
8 You can have a flip phone that -- that's it. No wi-fi
9 access. You will through this. Okay? We all grew up
10 without having smart phones. It's possible.

11 You also will report all contact with law
12 enforcement to Pretrial Services.

13 Violation of any of the foregoing conditions of
14 release may result in the immediately issuance of a warrant
15 for your arrest, the revocation of this Order of Release, an
16 Order of Detention and possible prosecution for contempt of
17 court which may result in imprisonment or a fine.

18 If you commit any offense while on bond, upon
19 conviction to that offense, you may be subject to an
20 additional term of years of up to 10 years if you are
21 convicted of a felony. One if you're convicted of a
22 misdemeanor.

23 It's also criminal offense to intimidate or
24 attempt to intimidate any witness, juror or officer of the
25 Court, to obstruct a criminal investigation or to tamper

1 with or retaliate against a witness, witness, or informant.

2 It's also a crime to knowingly fail to appear and in
3 your case, that carries with it a possibility of up to 10
4 years in prison or \$250,000 fine or both. That term for
5 failing to appear will have to be stacked on top of any
6 sentence you receive for this pending charge. In addition,
7 the Government will forfeit that \$25,000 deposit and collect
8 the balance from yourself and your parents.

9 Do you have any questions about these conditions?

10 THE DEFENDANT: Can I talk to my lawyer?

11 THE COURT: Talk to your lawyer.

12 MS. FERKO: Your Honor, may I ask: this mentions
13 school, can he attend school? I don't know if he's enrolled
14 at this time but we're asking that he does not because
15 that's going to mean he has Internet access. Problem with
16 the school, he can borrow cell phone, laptop --

17 MR. BERG: I can't -- I couldn't hear what you're
18 saying because I was consorting with my client. If you
19 could start over.

20 THE COURT: She's --

21 MS. FERKO: I'm sorry, sure --

22 THE COURT: -- opposed to school.

23 MS. FERKO: I was asking about -- inquiring about
24 the school conditions.

25 MR. BERG: Oh.

1 MS. FERKO: And if he could -- if she -- if the
2 Judge said he could attend school and I said I -- the
3 Government has concerns about school since he could
4 acquire -- he has -- I'm sure he has -- I know he has a
5 school account for Internet access.

6 MR. BERG: The -- that is --

7 MS. FERKO: He can get friend laptop --

8 MR. BERG: -- exactly what we were --

9 MS. FERKO: -- or friend --

10 MR. BERG: -- he was discussing with me. He's
11 enrolled in some online courses and I explained to him, you
12 can't be enrolled in online courses right now. They're
13 going to have to be brick and mortar courses. Under these
14 circumstances at this time --

15 THE COURT: Again, brick and mortar will work.

16 THE DEFENDANT: Thank you.

17 THE COURT: Talk to Mr. Berg.

18 (Court confers with Pretrial Services.)

19 MR. BERG: It's -- I mean, the way they do school
20 now, even if they're doing research at school in your
21 classes, the school, they do stuff Internet-wise, but I've
22 explained to him, no Internet means no Internet at anytime.

23 THE COURT: No Internet -- you know, school may
24 have to wait, because I think --

25 MR. BERG: That would --

1 THE COURT: -- that that's -- the danger that I'm
2 trying to address here was all online with you. And so
3 that's what it is. So that means if you're not enrolled in
4 school, then you're not enrolled in school.

5 MR. BERG: Then he has --

6 THE DEFENDANT: Books.

7 MR. BERG: He has to buy books.

8 THE COURT: Books, oh my God, books, yeah.

9 MR. BERG: Books are great. Books are great.

10 THE COURT: Yeah, books are good. All right.

11 MR. BERG: I'm trying to remember if you said that
12 he had -- he was able to come see me under those conditions.

13 THE COURT: Court appearances, lawyer, yes. All
14 right.

15 Now, the question becomes then: How quickly can
16 you make that \$25,000 deposit because we will need to bring
17 you -- if you can't make it today, then we'll need to bring
18 you back when you -- when it's made so.

19 MR. BERG: I probably need to discuss that with
20 his parents and they need to return home to get a passport
21 to bring in.

22 MS. FERKO: And, Your Honor, the Government is
23 going to be asking for a stay in this matter.

24 THE COURT: All right. Jan, you need to sign it.
25 For how long?

1 MS. FERKO: A stay?

2 THE COURT: A stay, yeah.

3 MS. FERKO: Your Honor, I believe we can get the
4 appeal filed today. I don't know then how long further.

5 MR. BERG: Well, then we'll continue working on
6 getting these conditions, while they take this to Judge
7 Hughes. I'm sure we can resolve --

8 THE COURT: Is he --

9 MR. BERG: -- it very quickly.

10 THE COURT: -- yeah.

11 MR. BERG: Did you need?

12 THE COURT: Well, I mean --

13 MR. BERG: Well, that's Judge Hughes.

14 THE COURT: It's Judge Hughes, if it's Judge
15 Hughes' case. I mean, that's who you'd file it with because
16 you're appealing my bond conditions.

17 MS. FERKO: That's correct.

18 THE COURT: That's fine so --

19 MS. FERKO: I don't know, Your Honor, I mean, I --

20 THE COURT: It would be Judge Hughes, so.

21 MS. FERKO: Okay. No, no, I just meant he's
22 available this court, since he's --

23 MR. BERG: Yes, I would agree with that.

24 THE COURT: Well, I will give you a one-day stay
25 to get it on file.

1 MS. FERKO: Thank you, Your Honor.

2 THE COURT: Anything after that, Judge Hughes is
3 going to have to give you.

4 MS. FERKO: Thank you, Your Honor. That's fair.

5 (Pause in the proceedings.)

6 (Defendant sworn to document.)

7 THE COURT: Shannon, I'm going to scoot. I'll be
8 back at -- by 3:00.

9 THE CLERK: Okay.

10 THE COURT: Okay?

11 THE MARSHAL: All rise.

12 (Proceedings adjourned at 11:51 a.m.)

13 * * * * *

14 *I do hereby certify that the foregoing transcript*
15 *was produced from an electronic sound recording and this is*
16 *as accurate a transcript, as best as is possible due to*
17 *conditions of the recording.*

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