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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

UNITED STATES OF AMERICA,)
)
vs.) 2:18-CR-33
)
SAMANTHA ELHASSANI.)

TRANSCRIPT OF DETENTION HEARING
December 20, 2018
BEFORE THE HONORABLE PHILIP P. SIMON
UNITED STATES DISTRICT JUDGE

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

FOR THE GOVERNMENT:

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FOR THE DEFENDANT:

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ALSO PRESENT: Carolyn Montag, Paralegal

1 (The following proceedings were held in open court
2 beginning at 11:09 a.m., reported as follows:)

3 **DEPUTY CLERK:** All rise.

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

5 Good morning, everyone.

6 So we're on the record in Cause No. 2:18-CR-33. Case is
7 United States versus Samantha Elhassani. Ms. Elhassani is
8 present here with Mr. Durkin and Mr. Herman. Mr. Zanzi and
9 Josh Kolar are here on behalf of the government.

10 So this is a hearing pursuant to the Bail Reform Act; and
11 just to kind of set the history here for the record, back in
12 July, July 25, I believe, the defendant was first brought into
13 court and stipulated to detention but reserved the right to
14 re-visit the issue should something change down the road.

15 We had a hearing, sort of a status hearing, in November
16 where Mr. Durkin told me that in all likelihood he would be
17 moving to re-visit that issue at some point.

18 And then late last week, I believe it was on December 14,
19 in Document No. 49, I received what's called the Defendant's
20 Emergency Motion for Pretrial Release on Conditions and Request
21 for a Hearing.

22 I ordered an expedited response from the government, and I
23 very much appreciate that. I put the government behind the
24 eightball, but they have produced their response, which was
25 filed yesterday -- it is Document No. 53 -- along with some

1 exhibits. I have had a chance to review everything that's been
2 filed up to this point, including the exhibits. I have read
3 the defendant's motion, the government's response, and as I
4 said, the exhibits.

5 Ordinarily, this is a matter that I would just send to the
6 magistrate judge to handle; but since in all likelihood,
7 irrespective of what decision the magistrate would make, the
8 matter would be appealed to the district court, and it is a *de*
9 *novo* hearing. I thought the most facile way to handle this
10 would be for me to just hear the request in the first instance.

11 Does anybody have an objection to us proceeding today
12 given the way I have laid this out?

13 Mr. Zanzi?

14 **MR. ZANZI:** Of course not, Your Honor.

15 **THE COURT:** Mr. Durkin?

16 **MR. DURKIN:** No, we think that makes eminent sense,
17 Judge.

18 **THE COURT:** So I'm kind of viewing this as a *de novo*
19 hearing.

20 Why don't you give me a preview of what you are intending
21 to do today, Mr. Zanzi.

22 And then I will give you a chance to do the same thing,
23 Mr. Durkin.

24 **MR. ZANZI:** Well, Your Honor, we filed our response,
25 which I think we laid out some of the factual history which --

1 Your Honor has commented before you were not really familiar
2 with the facts of the case, so we laid that out.

3 You know, this is defendant's motion; so in terms of -- we
4 have not yet received any proposed conditions. We're not sure
5 exactly where they are headed, and they let us know that as
6 well that they had not -- I don't know if anything has changed
7 as of the last time we spoke.

8 What we are prepared to do today, Your Honor, is to -- we
9 have laid out the factual history in writing. Mr. Kolar has
10 lived with this case a lot longer than I have. He has prepared
11 a PowerPoint which puts it in, sort of, a visual context. I
12 know some of us, myself included, it is helpful to see it in
13 that context.

14 We have submitted those exhibits. I would like to submit,
15 additionally, Government's Exhibit 6, which is -- it is one of
16 the search warrants in this case, Your Honor. It lays out some
17 of the factual history. A lot of the facts in the brief come
18 from the testimony here. Just so you know -- I know that we're
19 planning to proceed by proffer, but this does come from sworn
20 testimony. We didn't provide it yesterday because there is a
21 lot of individual A, B, and C. It gets confusing. We wanted
22 you to see the facts as they were presented here. I have given
23 a copy to defense counsel, Your Honor. I would like to
24 submit -- this is under seal, so we just ask that it remain
25 under seal.

1 **THE COURT:** Yeah. And I won't reference it at all,
2 but I will take it into consideration.

3 I assume you have no objection, Mr. Durkin?

4 **MR. DURKIN:** Could I have a second, Judge?

5 **THE COURT:** Sure.

6 **MR. DURKIN:** My only objection is I don't think
7 there's any need for it to be under seal, so I would move for
8 it to be unsealed.

9 **THE COURT:** Well, I guess I'll take that matter up
10 after I have had a chance to review it.

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

12 **THE COURT:** As far as admitting it for purposes of
13 this hearing, do you have any objection to that?

14 **MR. DURKIN:** No.

15 **THE COURT:** Okay. I mean, it's part of the court
16 record.

17 It will be admitted, Government's Exhibit 6. For now,
18 I'll keep it under seal. If I think for whatever reason
19 there's not good cause to keep it under seal, I will notify the
20 government of that before I do that --

21 **MR. DURKIN:** So you know --

22 **THE COURT:** -- to hear from you.

23 **MR. DURKIN:** So you know, that's one of the documents
24 that we think supports our position too with respect to the
25 lack of evidence or the weakness of the case.

1 **THE COURT:** Fair enough.

2 Let me ask you this, Mr. Zanzi: I know you are going --
3 you've told me you guys are going to proceed by way of proffer.
4 Nothing we're going to talk about today implicates classified
5 information, I assume?

6 **MR. ZANZI:** That's correct, Your Honor. We've been
7 careful not to do that. That's going to be dealt with in
8 subsequent proceedings, and we'll continue to be on guard about
9 that as well, Your Honor.

10 **THE COURT:** Okay. So I view this as -- because it's
11 a *de novo* hearing, even though it's prompted by their -- it's
12 essentially the government asking that she be detained, so I'm
13 going to require the government to go first here as if it was a
14 regular detention hearing.

15 So, Mr. Kolar, I'll turn it over to you.

16 **MR. DURKIN:** Judge, could I be heard first for a
17 second?

18 **THE COURT:** Sure.

19 **MR. DURKIN:** Just to put this in context so nobody
20 thinks I'm crazy asking for an emergency motion.

21 We informed the government that we did this primarily to
22 get treatment, and we told them that -- actually, we asked if
23 they'd be willing to agree just to have her released
24 temporarily, you know, taken out of the jail and brought
25 somewhere to get treatment; that was our first request. The

1 reality is, is that she was so traumatized from what has
2 happened to her that for the longest time she said she felt
3 safer in the jail 'cause it was better than anyplace she had
4 been for years, which is true, and I think we could support
5 that factually.

6 But what is clearly happening is she's beginning to
7 deteriorate. We submitted Exhibit A, which is the report of
8 Dr. Xenakis. I don't think there's any dispute whatsoever that
9 she is suffering from post-traumatic stress disorder, PTSD, as
10 it's commonly known.

11 **THE COURT:** Although that's contrary to what she told
12 the pretrial services officer, right?

13 **MR. DURKIN:** I think she told the pretrial services
14 officer she didn't have any medical -- prior history, but it's
15 not uncommon for someone suffering from PTSD to not necessarily
16 be aware of that.

17 She is receiving medications at the jail, and I'm assuming
18 that was -- and we're told from our doctor that that was
19 medicine that you would use to treat PTSD, so I don't think
20 there's any dispute that she's suffering from PTSD.

21 In fact, we just learned, and I don't know what this is
22 all about at all, that as of last night she was given a
23 different medicine -- I'll let Mr. Herman speak to that because
24 he talked to her about it.

25 **MR. HERMAN:** Your Honor, I learned this morning, when

1 meeting with Ms. Elhassani, that several days ago she was given
2 a new medication called Zyprexa, Z-Y-P-R-E-X-A, and was given
3 that medication for perhaps three nights and felt better than
4 the prior medications, I believe, which were Cymbalta and
5 Trazodone.

6 And as of last night, the Zyprexa was abruptly cut off,
7 and she was told by a contract nurse, or whomever -- and I will
8 say that we've been trying to get releases and obtain records,
9 but it's been difficult. And those would be, obviously,
10 materials that we would like to have right now to supplement
11 our requests here.

12 She was told that the federal government doesn't want her
13 on Zyprexa and is looking to giving her Risperdal, which is a
14 pretty serious drug. And it's an escalation from what she's
15 currently on right now, according to Dr. Xenakis, who I quickly
16 consulted before coming in right now.

17 So that's kind of the background in what we're dealing
18 with in terms of the on and off of these medications, multiple
19 dosages in a day, by mistake on one occasion, but --

20 **THE COURT:** That's kind of a different issue as to
21 whether or not she's a danger to the community or a flight
22 risk, isn't it?

23 **MR. DURKIN:** It's only --

24 **THE COURT:** We're here on a detention hearing.

25 **MR. DURKIN:** Well, no, I understand that.

1 **THE COURT:** Well, so answer my question. Is that not
2 a different issue than whether or not she's a danger to the
3 community or a flight risk?

4 **MR. DURKIN:** Well, of course, it's -- yes, it's a
5 different issue, but I was only putting -- I'm happy to
6 address danger -- I'm willing to go ahead with the hearing.
7 I'm not trying to cut the hearing short. I'm simply telling
8 you why we thought it necessary to come in on an emergency
9 basis and why we don't have all the conditions in place.

10 **THE COURT:** Okay.

11 **MR. DURKIN:** We do have some potential conditions.
12 And our paralegal, Ms. Montag, who is here -- this is
13 Carolyn Montag, Judge. I don't think you've ever met her, but
14 she's a paralegal in our office.

15 And she has been -- we've contacted about 30 different
16 shelters to see if there was one of them which would permit --
17 so that we could propose conditions of release -- as to whether
18 there would be one that would permit electronic monitoring and
19 whether she could then -- somebody could come into the unit and
20 give her treatment or what have you, psychotherapy.

21 We've made progress on one, so we have one potential place
22 such as that that we would be recommending. We also are close
23 to coming to an arrangement with someone in Elkhart that has a
24 spare bedroom that has a telephone line that we would be able
25 to propose electronic monitoring.

1 So we're not prepared to do that today, but we should have
2 that in place if we get that far.

3 **THE COURT:** Okay. I understand. I understand why
4 you brought it as an emergency request.

5 So let's just proceed.

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

7 **THE COURT:** Mr. Kolar.

8 **MR. KOLAR:** Your Honor, if it pleases the Court, I'll
9 proceed just by way of proffer with, as Mr. Zanzi indicated, a
10 brief PowerPoint, and then Mr. Zanzi will handle the argument.

11 **THE COURT:** Sure.

12 **MR. KOLAR:** Your Honor, if called to testify, Special
13 Agent Kevin Kuhn, seated in court, who is currently assigned to
14 the FBI's Joint Terrorism Task Force in Merrillville, Indiana,
15 would indicate that the facts contained in the government's
16 response to the defendant's motion for release came from bank
17 records, flight records, statements from the defendant's
18 friends and family members, and multiple voluntary interviews
19 that the defendant gave to FBI.

20 In those interviews, the defendant admitted, among other
21 things, that she was aware her husband and brother-in-law were
22 becoming extreme and that her husband was relating to ISIS
23 ideology as early as November of 2014, as we'll further discuss
24 and was fleshed out in more detail in the filings.

25 The defendant admitted that she took multiple trips abroad

1 after November of 2014. And as set forth in the government's
2 filings, she took these trips with either one or both of her
3 minor children but without her husband -- her late husband, I
4 should say.

5 During these trips, the defendant prepositioned assets
6 abroad in advance of a final March 22, 2018, trip where she
7 took both of her minor children, and her husband did join them.

8 The one correction Special Agent Kuhn would make to the
9 facts contained in the government's filing is that the date of
10 the defendant's altercation with another inmate referred to on
11 page 12 of the filing is November of 2018, obviously, not
12 November of 2015.

13 Additionally, Special Agent Kuhn would clarify that when
14 the defendant stopped sending minor one to school someone
15 called to indicate that they were moving to Mexico and that
16 when a counselor visited the house, it was a male that
17 indicated minor one was going to be homeschooled.

18 The government is, of course, prepared to answer
19 additional questions either through counsel or additional
20 proffer of Special Agent Kuhn.

21 As Mr. Zanzi indicated, we felt it was most appropriate to
22 put these facts in context with a brief presentation. And
23 we're not trying to go over everything in this case,
24 Your Honor, at this point; and I think it's important to stress
25 that the government took great care in charging this case and

1 deciding when to make certain facts public and in determining
2 the scope of the charges here.

3 So one thing that we want to stress is we are talking
4 about things that go to a danger to the community and flight
5 risk. Some of these things would have occurred after anything
6 that could be relevant at trial. So we don't want to conflate
7 those two things and, you know, obviously, want to remain
8 cognizant that at some point in the future there's going to be
9 a trial where the evidence might be somewhat more limited.

10 So, Your Honor, starting with just a brief overview of
11 some of the trips that the defendant took. And the relevant
12 ones -- these start in January of 2015. And, again, this is
13 after the defendant has already admitted she knew that her
14 husband and brother-in-law were interested in ISIS.

15 So the defendant with both of her minor children at the
16 time travel from Chicago --

17 **MR. DURKIN:** Judge, excuse me. And I know this is a
18 proffer, but if -- there's a very significant difference
19 between knowing that your husband might be interested in a
20 certain ideology and then him being a member of a group, and
21 that's a serious factual question here. So I'd like a little
22 more detail of what this statement supposedly was made, that
23 what she knew about her husband's shift in radicalization or
24 ideology.

25 **THE COURT:** I'm going to let them present to me what

1 they want to present to me, and then I'm going to allow you to
2 present to me what you want to present to me. And I'm going to
3 factor it into one of the four factors under 3142(g), the
4 weight of the evidence that the government has.

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

6 **THE COURT:** So if the weight of the evidence is not
7 particularly weighty, then that's going to be to your benefit.
8 So I'm not going to tell Mr. Kolar how to go about with his
9 proffer.

10 So proceed.

11 **MR. DURKIN:** Maybe I shouldn't either.

12 **MR. KOLAR:** Just for the record, Your Honor, there's
13 essentially two buckets of post-arrest interviews that the
14 defendant has given, right. And that first bucket would be
15 interviews that the FBI took abroad. That second bucket would
16 be a recorded statement after she landed.

17 Defense counsel were given both of those statements, I
18 believe, either at arraignment or within a day or two
19 thereafter. So these statements that the defendant made are
20 all -- they're not subject to the other hearings we've had
21 discussing when we're going to turn over certain things. These
22 are things the defense has had, really, from the beginning of
23 this case from their perspective.

24 **MR. DURKIN:** Which is exactly why I asked the
25 question, but I'll speak to that later.

1 **MR. KOLAR:** And as we'll get to, just -- you know,
2 I'm not trying to get into argument here. That's for
3 Mr. Zanzi.

4 But I would point out, just kind of in response here, that
5 it is a difference between just knowing someone is interested
6 in ISIS. As we're going to get to in this fact pattern, the
7 defendant didn't just happen to know that her husband was
8 interested in ISIS. She bought riflescopes for two individuals
9 she knew were interested in ISIS when they were in Hong Kong on
10 the way to Turkey right next to Syria.

11 So the suggestion that this is cabined to simply knowing
12 that your husband is interested in ISIS, respectfully, I just
13 don't think that's a case that would be brought, and certainly
14 not the facts that we're going to rely upon to detain the
15 defendant at this point.

16 So January 11th through January 13th, the defendant's
17 traveling. They actually don't return from that trip until
18 January 23rd. It's the defendant, both of her minor
19 children; and they travel from Chicago to Turkey, and then they
20 go from Turkey to Morocco. As we'll get into a little bit
21 later, there's even more on this trip and some more statements
22 that we'll talk about.

23 February 10th -- so this is going to be, as we'll get in
24 the timeline later, just a couple -- just a week, seven days,
25 before another trip abroad and after the defendant is aware of

1 her husband's interest in ISIS. She takes minor child one to a
2 gun range; and, again, we'll focus on that in context a little
3 bit later.

4 February 17th through February 19th, she travels this
5 time just with minor child one. They go from Chicago to Tokyo
6 and then Tokyo to Hong Kong. The defendant admits that in some
7 of the trips to Hong Kong she prepositioned assets, actually
8 brought currency and put it in a storage locker or safety
9 deposit-type box.

10 March 15th to 18th, 2015, we have what is,
11 essentially, the third preplanning trip abroad. There,
12 Samantha Elhassani, the defendant, takes minor child one. They
13 travel from Chicago to Beijing. Then they go to Hong Kong.
14 And interesting here -- so they're in Hong Kong with a minor
15 child March 18th, but they go back to Chicago -- go to Tokyo
16 first, then go to Chicago.

17 And then just a few short days later, March 22 and 23,
18 it's the defendant's late husband, Moussa Elhassani, the
19 defendant, and both of her minor children, traveling back.
20 They go through Beijing, and they stop in Hong Kong.

21 And again, as the Court is aware, Your Honor, at this
22 point, you have both image stabilized binoculars and
23 riflescopes that the defendant has admitted she helped procure
24 while traveling with two individuals she understood were
25 interested in ISIS.

1 I'd like to at this point just talk about the return trip.
2 Obviously, it wasn't taken. There was -- March 25, 2015, they
3 had booked travel. So this wasn't a case of a couple
4 defendants going to the airport having a bag of money and
5 saying we want a one-way ticket to Turkey.

6 If you're going to the FBI or -- very good. That's a
7 rather easy investigation. This is one where there was a
8 little bit more preplanning, right? It wasn't people showing
9 up, I want a one-way ticket and I have a bunch of money and I'm
10 clearly permanently relocating to an area right next to
11 ISIS-controlled territory. So that March 25th ticket was
12 booked, but, obviously, unfortunately never used.

13 The defendant, her late husband, and now her
14 brother-in-law, together with the two minor children, then
15 traveled from Hong Kong to Turkey.

16 So in summary -- and, again, Your Honor, we're not trying
17 to go over everything. I know you have read the filings. We
18 provide a little bit more detail there. You have funds taken
19 abroad, both currency and then some gold that was melted down.

20 And then these next slides, Your Honor, we want to be
21 really -- there's a -- there are some troubling pictures and
22 some items that we prefer that the Court can see, that
23 obviously counsel and defense should be able to see, but we
24 don't want to publicly identify minors in court here today. So
25 if we could turn off any public-facing --

1 **THE COURT:** Yeah, I'll go ahead and do that.

2 **MR. ZANZI:** Your Honor, if we can turn these off too.
3 I don't --

4 **THE COURT:** You have to do that yourself.

5 **MR. ZANZI:** Okay.

6 **THE COURT:** Is that right, Noel?

7 **MR. ZANZI:** Yeah, I can do it. Thanks.

8 **MR. KOLAR:** Your Honor, as you've seen in the
9 exhibits that we've tendered and as is discussed in the motion,
10 there's a series of videos -- there's two videos that are very
11 troubling. And, respectfully, they do go to risk of danger
12 here.

13 We're not saying everything that happened or that
14 everything that the defendant has said is true or untrue, but
15 we do know that these videos were made and that the defendant
16 has admitted to making the video that you see on the right
17 here; that in her statement to FBI she not only admitted to
18 making that video but admitted that she never said to her son
19 that what was -- never said to the minor that what was said was
20 wrong.

21 **THE COURT:** Repeat that. I'm not following that. I
22 watched the videos, just to let you know.

23 **MR. KOLAR:** Okay.

24 **THE COURT:** I'm not sure I understood you.

25 **MR. KOLAR:** The video referenced on the right,

1 Your Honor, that video, in the defendant's initial statement to
2 FBI that was taken abroad --

3 **THE COURT:** That's the one dealing with the belt?

4 **MR. KOLAR:** Correct, Your Honor.

5 The defendant admitted to FBI she helped take that video,
6 that she was there and was involved in the production and
7 filming of the video and never indicated to the individual in
8 the video that it was wrong.

9 Again, Your Honor, we have some other videos here that are
10 equally as troubling. We are not saying, obviously, that the
11 defendant had a part directly in making these videos like the
12 one we just talked about; but this is one of the images from
13 those other videos. And it's clear what this is, but I think
14 when you put it in context -- and I'm going to end with just a
15 brief timeline where some of these things start to really come
16 together in a very troubling manner.

17 So when we start in January of 2015 on this timeline,
18 backing up even more, again, not to belabor a point, but at
19 this point the defendant has already admitted that she knew of
20 the interest in ISIS. And in that trip that we talked about,
21 one of those first trips abroad after that, when the defendant
22 is abroad, she tells a family member of her late husband's
23 interest in ISIS, and she says she would follow him anywhere.
24 So those two comments together, you know, it's another step,
25 right?

1 As counsel was saying, you know, if all the government has
2 is the defendant's husband was interested in ISIS and she knew
3 it, that's one type of case, right? But when you're talking
4 about risk of harm, when the defendant is saying, you know, "I
5 know my husband is interested in ISIS and I'm willing to follow
6 him anywhere," those two things together I think paint a very
7 different picture.

8 And then in this context, Your Honor, when you've already
9 taken one trip abroad, when you've already said, "My husband's
10 interested in ISIS; I'm going to follow him anywhere," this
11 trip to a gun range where the defendant herself labels this
12 minor the "next American sniper" becomes very troubling.

13 And then when you see that just seven days after that the
14 defendant's back traveling again with a minor taking yet a
15 third trip abroad, prepositioning assets -- and what's not on
16 the timeline, because we're trying to keep this relatively
17 short, Your Honor, and not have, frankly, too crowded of a
18 timeline, is through this period over \$70,000 is depleted from
19 assets in joint bank accounts.

20 So you're taking money from the U.S. You're not doing
21 what we just talked about, about get a one-way ticket to Turkey
22 and take a bag of money. You're taking three trips abroad as
23 those funds are being drawn down here domestically.

24 And on that third trip, you have one of the minors, and
25 you fly all the way back to the U.S.; and then you take a final

1 trip just days later. And during that final trip, as
2 discussed, you admit to picking up riflescopes, picking up
3 image stabilized binoculars.

4 And as we saw from the chronology of the trips, by this
5 time, it's not just the defendant's husband -- late husband but
6 also her defendant -- the defendant's brother-in-law, both of
7 whom she knows are interested in ISIS. And she's precuring
8 tactical gear.

9 **THE COURT:** What has happened to the brother-in-law?
10 Is he deceased as well?

11 **MR. KOLAR:** I don't think I can answer that in this
12 setting, Your Honor.

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

14 **MR. KOLAR:** When you put this in context, when you
15 see when the tactical gear is being procured, when these trips
16 are occurring, how the funds are being drawn down, and while it
17 very well may not and should not be at issue at trial the way
18 this was charged, the very real harm that, you know -- and I'll
19 leave this mostly to Mr. Zanzi's argument -- but we talk about
20 these cases and what material support can do, what providing
21 tactical gear and people to these terrible organizations, why
22 it's a harm to the U.S., and there's perhaps no better evidence
23 of that than what actually happened in this case.

24 So unless the Court has any additional questions, we will
25 leave the factual part of this case behind unless --

1 Any further questions on the factual basis, Your Honor?

2 **THE COURT:** Well, let me ask this: Do you have a
3 theory on what was the purpose of that return trip to Chicago
4 only to turn around and go back? I was murky on that.

5 **MR. KOLAR:** Well, Your Honor, what you do see is you
6 don't see the defendant going abroad by herself, and there is
7 every reason to think that there's going to be less scrutiny
8 when someone is traveling with children. You're not going to
9 assume that these multiple trips abroad are as potentially
10 nefarious as, in fact, we believe they are. So you see each
11 trip abroad where significant amount of funds, we would
12 suggest, are being taken are, you know, being, essentially,
13 secreted out of our country into others, and those are taken
14 with minor children.

15 And then on the final trip you already have one of the
16 minor children abroad in Hong Kong. Instead of just staying
17 there, you go all the way back. And then that final trip,
18 that's really important not to be suspicious on, right, because
19 you're traveling with the future ISIS fighter. And there is a
20 degree of whether or not -- and I won't get into how the
21 government would screen that or whether or not it actually
22 would be less suspicious -- but I think the average person
23 would think it's going to be a little bit easier for the
24 defendant's late husband, who has expressed an interest in
25 ISIS, to get over to Turkey right next to Syria if he takes a

1 circuitous route and is traveling with his family and that
2 traveling party includes children.

3 **THE COURT:** So --

4 **MR. DURKIN:** Judge, I can answer that question for
5 you.

6 **THE COURT:** I'll give you a chance when I talk to
7 you, okay.

8 **MR. DURKIN:** Okay.

9 **THE COURT:** So let me ask you: How many -- she has
10 three children?

11 **MR. KOLAR:** Currently, Your Honor, or at this --

12 **THE COURT:** Well, at the time of the relevant events.

13 **MR. KOLAR:** At this time of all these trips, there
14 was two children.

15 **THE COURT:** So the stepchild from another -- there's
16 a child from a former relationship?

17 **MR. KOLAR:** Right.

18 **THE COURT:** And then there was a second child with
19 the defendant's former husband -- or deceased husband?

20 **MR. KOLAR:** Right, Your Honor.

21 **THE COURT:** And then maybe she had yet another child
22 while she was overseas?

23 **MR. KOLAR:** Multiple, yes, Your Honor.

24 **THE COURT:** Okay.

25 Thank you, Mr. Kolar.

1 **MR. KOLAR:** Thank you, Your Honor.

2 **THE COURT:** Mr. Durkin, you wanted to weigh in on one
3 of the questions I asked before I hear anything that you wish
4 to present.

5 **MR. DURKIN:** I do. And maybe if we could put that
6 timeline back up there.

7 **THE COURT:** You mind putting that back up there?

8 **MR. KOLAR:** Of course, Your Honor.

9 **THE COURT:** Thank you.

10 **MR. DURKIN:** To answer your question about why does
11 somebody like Samantha Elhassani make these trips, go back and
12 forth like that? When you're married to a crazy man who abuses
13 you and terrorizes you, you do what the crazy man tells you to
14 do, and that's why she went back and forth when she did. What
15 she did was under the direction of her husband, who is
16 unquestionably crazy and unquestionably an abuser, and she is a
17 victim of that abuse. And everything she did here has to be
18 looked at through that lens, and the government knows that.
19 That's what's appalling about the presentation of this case and
20 the actual decision to prosecute this case.

21 This woman is a victim of a crazy man, and one might think
22 that in this day and age the Department of Justice National
23 Security Division -- and I'm not laying this off on the U.S.
24 Attorney's Office, because I think they'd have better sense
25 here to bring a case like this if it wasn't coming from

1 Washington, but this case -- everything that you're looking at
2 here has to be viewed through the lens of domestic violence and
3 patriarchal abuse, to use a better term.

4 And there are some other important facts, and the reason I
5 asked to leave the timeline up, is that the government has
6 admitted in their pleading and made public for the first time
7 that in January of 2015 she was a cooperating human source for
8 the FBI. And I think that's a factor that weighs heavily in
9 favor of release.

10 This is a woman who I believe for almost a two-year period
11 cooperated with the FBI, and the government says in its
12 pleading that that cooperation was with an unrelated
13 investigation. I don't know what that means 'cause I don't
14 know what the investigation is, and that's something we hope to
15 get in discovery 'cause I think it's extremely relevant to the
16 defense.

17 What I do know is that it certainly seems to me that the
18 investigation that she was cooperating in was a
19 terrorism-related investigation, because I know what she was
20 doing, which was she was recording serial numbers. She worked
21 in the Elhassani family business in Elkhart, and it was
22 effectively an overseas shipping company, third parties.

23 In other words, you could be -- let's say you made widgets
24 in Elkhart and you needed to ship them from Elkhart to Yemen.
25 You could go through this company, and they would take care of

1 that.

2 And my understanding is one of the things she was doing
3 regularly was providing the FBI with serial numbers of cell
4 phones that were being shipped to Yemen, which I assume is a
5 terrorism-related investigation. And I find it incredibly
6 ironic that somebody who cooperated with the FBI for two years,
7 the FBI took under their wing, and, I assume, believed
8 everything she said, all of a sudden now turns the tables, was
9 now unreliable.

10 **THE COURT:** Was she paid by the FBI?

11 **MR. DURKIN:** Yes.

12 **THE COURT:** Paid informant?

13 **MR. DURKIN:** Yes. Yes, she was paid by the FBI,
14 which I can only assume means that they found that information
15 valuable and found her to be reliable.

16 **THE COURT:** And you're representing to me that this
17 cooperation spanned about a two-year period of time?

18 **MR. DURKIN:** I believe -- yes. And I'm not -- I
19 don't have the exact dates, but that's roughly what
20 Ms. Elhassani recalls.

21 And I think that's incredibly significant. I also think
22 that it may be one of the reasons Washington chose that they
23 had to do something about this.

24 Because one of the things that I find procedurally rather
25 appalling in this case is that she was -- there was a warrant

1 issued off of a criminal complaint that charged her with making
2 a false statement, or perhaps it was an Indictment. I'm sorry.
3 It was the first Indictment that was returned in March. That
4 was a false statement case.

5 And you know when that false statement case was? It was
6 when she was cooperating. And you want to know what the false
7 statement appears to be, even though the Indictment doesn't say
8 it? What the false statement appears to be is that she told
9 them that they were going to Turkey and then on to Morocco or
10 something like that and they'd be back. And she didn't come
11 back.

12 And I'd like to show you a document that's at least --
13 it's a sensitive document. I don't think it's classified.

14 **THE COURT:** Why don't you show it to counsel first.

15 **MR. DURKIN:** I'll tender you a copy of this.

16 **THE COURT:** Sure.

17 **MR. DURKIN:** I'll direct you to the page I'm
18 referring to.

19 **THE COURT:** Can we mark this as Defense Exhibit 1?
20 Is that okay?

21 **MR. DURKIN:** Yes, that's fine.

22 **THE COURT:** Any objection to that?

23 **MR. ZANZI:** No, Your Honor.

24 **THE COURT:** Defense Exhibit 1 will be admitted.

25 **MR. DURKIN:** And what that document shows -- and the

1 government has said I can say this -- certainly that it shows,
2 and you can tell by looking at it, that the government was
3 aware that she was traveling. And that was a lie.

4 One of the issues is in our evidence, which we would
5 present -- or I would proffer to you, is that she believed they
6 were going to Morocco. That's exactly what she thought. And I
7 think our proof on that is a lot better than what she knew
8 about what her husband's plans were, but be that as it may.

9 Could we have the timeline again?

10 And just before we move off of Defendant 1, Judge, I would
11 ask you to read the third paragraph. It's the third paragraph
12 on the page. It's underneath the first large redaction.

13 **THE COURT:** Okay.

14 **MR. DURKIN:** If you will just read that to yourself,
15 I think that kind of confirms what I was saying about her
16 cooperation.

17 **THE COURT:** Okay. Are you saying that that's the
18 paragraph that's the subject of the false statement from the
19 original Indictment?

20 **MR. DURKIN:** No. I don't --

21 **THE COURT:** More relates to the travel?

22 **MR. DURKIN:** I think it's the first paragraph that
23 they're referring to that somehow was false.

24 **THE COURT:** Okay.

25 **MR. DURKIN:** That she expected to be in Morocco --

1 well, I'm sorry.

2 I can say that, right?

3 **MR. ZANZI:** Sure.

4 **MR. DURKIN:** I mean, that statement, I believe, is a
5 correct statement of her mind at the time of this --

6 **THE COURT:** Okay.

7 **MR. DURKIN:** -- document.

8 **THE COURT:** I understand.

9 **MR. DURKIN:** Which has a tremendous amount -- one
10 might think that if you were aiding a terrorist instead of
11 aiding in the investigation of terrorism that you might not
12 want to give the FBI any idea that you were going to sneak out
13 of town, and you wouldn't offer to provide an itinerary or
14 anything else to them and tell them where you'll be or tell
15 them that you'll be reachable by cell phone and everything
16 else.

17 And that speaks to the heart of this case because it
18 demonstrates the control that the husband had over her and over
19 the situation, and that's what we expect our evidence to show
20 considerably.

21 The trips that she was sent on, these suspicious trips,
22 she was ordered to do. She didn't have a choice in that
23 matter, very simply.

24 And they go back -- let's go to their -- this is their
25 whole case. Their whole case, as I read it, at least so far,

1 centers around this late March, early April admitted to picking
2 up riflescopes and admitted to picking up binoculars.

3 The prosecutor said that -- the first thing he said, that
4 she purchased those, and then he stepped back. She didn't
5 purchase these. She simply picked them up, again, for her
6 maniac husband, while she was there. She was under the
7 impression that the binoculars were going to be resold in
8 Morocco. Because all during this time period, she thinks
9 they're going to Morocco.

10 And there's ample reason for her to believe that.
11 Largely, because her husband and the brother are from Morocco.
12 They're from a rather prominent family in Morocco, as I
13 understand it. And that she had spent a considerable amount of
14 time in Morocco and thought they were moving to Morocco.

15 So that's all consistent with everything else she does
16 about the money. The money cuts both ways. She thought this
17 was -- and the selling of everything is totally consistent with
18 her mental concept and lying from her husband that they were
19 going to Morocco.

20 And part of the reason that's credible is -- and, again, I
21 don't have this evidence, so I don't know, but I believe if
22 everything I know is true, that the real radical in this case
23 is the other brother. He was more -- he was much more
24 radicalized than Moussa, the husband; and he was radicalized
25 first, which makes her version totally believable, which is,

1 that they were going to Morocco. And the evidence, I think,
2 will show that it was really not clear whether Moussa was going
3 to join the brother.

4 And, again, they say this is not a proxy prosecution of
5 the husband. I think it is. Everything along here was all
6 done at the direction of the husband, but there's a more
7 significant legal issue that you need to think about vis-a-vis
8 the caliber of this evidence and the strength of it because
9 it's almost laughable.

10 When does somebody become a member of a foreign terrorist
11 organization? And the government -- I don't know what the
12 government's answer to that will be, but I ask you to ask them
13 whether there's any case that's ever been prosecuted in the
14 United States when a wife did something for her husband before
15 he went overseas into ISIS territory, before he entered any
16 oaths of allegiance to ISIS, before he took up a weapon for
17 ISIS?

18 This is material support not to Moussa Elhassani; that's
19 not a crime. You have to supply material support to a
20 designated terrorist organization, and he has to be a member of
21 it. And I'd like to know what the government's theory on that
22 is because I don't know of a case in the country in which a
23 wife, who is -- they claim I made a racial statement or some
24 bad statement about Muslims, which is totally ridiculous. You
25 know me better than that, to begin with.

1 First of all, I simply said: She's not a Muslim because
2 you got to be a Muslim to be a member of ISIS. And that's the
3 only point of raising that. There's not a shred of evidence
4 this woman has ever been radicalized. She's a Baptist. This
5 is insane that somehow she was ideologically driven to do this.

6 And you ask the government if there's another case in the
7 country that's ever been prosecuted for material support where
8 somebody was not, at least, if not a member of ISIS, in
9 sympathy with ISIS, and willing to provide themselves as
10 personnel. They say on the Indictment that it's -- that she --
11 she provided personnel, including funds and tactical gear for
12 personal use. I don't even understand that. She couldn't
13 possibly have provided herself as personnel 'cause there isn't
14 a shred of evidence that she did anything on behalf of ISIS.

15 In fact -- and this is -- you'll have to excuse me for
16 raising my voice because this just offends me -- where they
17 suggest in their pleading that somehow we were
18 mischaracterizing the places she was. What do they say, it was
19 something like it was a -- just a settlement camp or something
20 like that.

21 They say that we mischaracterized this as a prisoner of
22 war camp. It's inaccurate and misleading. And they talk about
23 a camp that -- Kurdish forces known as the YPG. There's no
24 evidence that she received any mistreatment at the IDP camp and
25 on the contrary, blah-blah, blah-blah, blah.

1 Yes, what this fails to tell you -- and you ought to hold
2 this against them. Ask them what they know that happened to
3 her at the Black prison in Raqqa, which was an ISIS prison
4 camp. Ask them how it is that they're prosecuting somebody who
5 was tortured, beaten repeatedly, and raped in an ISIS prison
6 camp if she was really providing material support to ISIS. Ask
7 them that and see if they have an answer, because that's true,
8 and they know it's true. And if they don't know it's true,
9 then we're wasting a lot of billions of dollars on
10 intelligence.

11 They know full-well that she was in an ISIS prison camp
12 and treated as a spy. They thought she was an American --
13 because she was an American, they thought she was a spy. And
14 you know what? You want to know what terrified her the most?
15 She was most terrified that they would discover that she really
16 was an FBI informant. She thought that's why she was being
17 treated like a spy, that perhaps somebody had outed her as a
18 cooperator for the federal government.

19 But, in fact, that's what she was, and that's what was
20 happening to her. And that's a fact. She was beaten,
21 tortured. She was hung like all the prisoners we see in the
22 Black sites; hung by her arms, hung by handcuffs and tortured,
23 because they thought she was a spy, and then raped by a guard.
24 And yet somehow this is the woman who provided material support
25 to ISIS.

1 The other thing that I find horribly offensive by the
2 government's presentation is the suggestion in their pleading
3 that defendant herself engaged in horrifying conduct, including
4 the purchase and supervision of Yazidi slaves. If they have a
5 shred of evidence that she had anything to do with purchasing
6 those slaves, I'd like to see that. They know full-well that
7 that is just the husband, the husband. The big pig of a
8 husband bought the Yazidi slaves and had sex with them in front
9 of her.

10 She had nothing to do with the Yazidi slaves other than to
11 befriend them, and it is absolutely true, as we pled in our
12 pleading, that she saved the Yazidis' lives. And she risked
13 her life posing as -- that's the only time you'll ever see her
14 in the burqa and the clothing. She did that to make sure that
15 the Yazidis would be okay, because if there was an American
16 that was found with the Yazidis, or Yazidis, they would all be
17 killed. So I just don't even understand this case.

18 And if it weren't so serious, it would be laughable. They
19 don't have a case as a matter of fact, and they don't have a
20 case as a matter of law, which then takes us to the issue of
21 are there conditions of release that could be used? And I
22 think that there are. Particularly in light of the fact of
23 what's happened to her.

24 And, you know, I'm not blaming the government, and I'm not
25 praising her. I'm certainly not suggesting -- this would be a

1 nice presentation I suppose if they were the Indiana Department
2 of Children and Services and this was a hearing about whether
3 she was a good mother. I grant them that, and I grant them
4 that there's some ugly stuff here.

5 Oh, and one other fact that can't go uncommented upon.
6 They know full-well in this video that is a ridiculous video --
7 it's absurd, but the whole thing is absurd. This is an absurd
8 story. The simple fact of the matter is, and they know this,
9 is that the video -- the only thing she had to do with the
10 making of the video that's so bad, the one that's ugly, is the
11 husband was dictating that; and the husband was right there.
12 They know that. And this is a woman who was dominated by this
13 man.

14 And there's not a shred of evidence that she had anything
15 to do with the production of those other than to be commanded
16 by him to be filming while the husband is the one doing the
17 talking. And you can hear who is doing the talking to the
18 child, and it's the husband. It's the same person -- it's the
19 husband who brainwashed the child, and he's the same person
20 that dominated her on a different level, both physically and
21 emotionally. And anything she did was at his direction.

22 And, you know, taking him to the gun ranges, the whole
23 family would go to the gun range here in Indiana; and I don't
24 know why people in Indiana like to use guns, but -- you know,
25 in Chicago, they only use them on the south and west sides. We

1 have shooting ranges, but they're out in public.

2 I don't know how anything you've heard today could cause
3 someone to think that there aren't conditions of release that
4 could ensure that she's not a danger. I don't there's any
5 evidence that she's even a danger, but there's certainly -- if
6 she is, I guess the danger might be if she got her hands on her
7 kids or somebody. I don't know what the danger would be.

8 **THE COURT:** Where are these kids presently?

9 **MR. DURKIN:** They're presently in the custody of the
10 Department of Children -- DCS. It's DCFS in Chicago, but it's
11 DCS here, apparently.

12 **THE COURT:** Where is the father of this child? Is he
13 involved in the picture at all?

14 **MR. DURKIN:** The father of that child has filed a
15 petition. He's entered -- I know -- I don't know if he's
16 petitioned for whether he wants full custody or -- I'm not
17 totally familiar with all the proceedings, but I know that he
18 has filed --

19 **THE COURT:** He's still around and active and trying
20 to be involved?

21 **MR. DURKIN:** Yes. He has an interest in the child.
22 My understanding, but I haven't corroborated this recent
23 information. The most recent information I've had is that
24 there is a -- the children -- there's a consideration being
25 made by DCS, and it's being vetted that either three of the

1 children or all four of the children will be put in the
2 temporary custody or guardianship of her parents, her mother
3 and father, that live in Oklahoma. And it is my understanding
4 that Indiana has asked Oklahoma to vet and that it appears to
5 be going well in that regard.

6 Ms. Elhassani has an appointed lawyer that she hasn't been
7 able to speak with, and I'm going to try to reach her this
8 week. She's not sure -- she was under the impression all four
9 children were going to go to Oklahoma and her husband -- and
10 her ex-husband, and the father of the boy, would have some type
11 of custody. But she's not sure now whether or not he's seeking
12 full custody or not, and I don't know the answer to that. But
13 it looks like at least three will be going to Oklahoma.

14 **THE COURT:** Okay.

15 **MR. DURKIN:** She would not -- for what it's worth, I
16 don't think she's going to be permitted, at least now, to have
17 any contact with the children, which is very difficult for her;
18 but she accepts where she's at on that. And she realizes --
19 and that's the other reason we're asking for more treatment,
20 because she realizes that in order for her to ever
21 realistically have a chance with her children, she's going to
22 have to get the treatment that she needs.

23 So there's danger to the community.

24 And the risk of flight I think is the same. Both can be
25 solved by electronic monitoring. There's no way she can go

1 anywhere. She doesn't have a passport. And, frankly, she's
2 not -- I don't believe and I think she understands that she's
3 not medically fit to go anywhere.

4 She's also very frightened -- and I think this is a
5 realistic fear -- that if this case gets more publicity that
6 she could be in danger from ISIS sympathizers. So, I mean,
7 it's a very complicated situation.

8 But I simply don't see on this record why it is -- even if
9 you give them the benefit of their evidence -- why electronic
10 monitoring and how home detention would not be a sufficient
11 combination of conditions to reasonably assure the safety of
12 the community and the -- and that she would appear in court.

13 And I just -- I'm very positive that this evidence will be
14 shown, that whatever she did -- and I don't think it's a crime
15 whatever she did; might be totally stupid, and she certainly
16 wishes in hindsight that she had the wherewithal or the mental
17 reserve to stand up to her husband a long time ago and get out
18 of his clutches, but whatever -- he's gone.

19 And I don't know what the situation is with respect to the
20 brother. I would be anxious to hear. Maybe we'll hear that
21 some other day, but we don't know whether he's dead or alive or
22 whatever. The government seems to know.

23 **THE COURT:** Okay. Thank you, Mr. Durkin.

24 Mr. Kolar, I'll let you respond to any of the factual,
25 what appears to be a dispute here.

1 And then I'll hear from you, Mr. Zanzi, as it relates to
2 the legal issues addressed -- or however you all want to
3 respond.

4 **MR. KOLAR:** Your Honor, there were quite a few, kind
5 of, intermixed argument and facts. Mr. Zanzi and I were kind
6 of talking briefly, and I think he's going to handle the
7 majority of it.

8 I would just indicate that we don't agree with the
9 characterization of facts when counsel has said the government
10 knows X, Y, and Z. That was primarily based on a statement
11 that the defendant made, essentially her version of the events;
12 and we have multiple times that she has, essentially, lied.
13 She lied to the father of her child. She lied to her friends.
14 She lied to the FBI.

15 So I'll let Mr. Zanzi handle it, as we discussed.

16 **THE COURT:** Mr. Zanzi.

17 **MR. ZANZI:** Your Honor, so everything that defense
18 counsel has proffered has come from defendant, okay. What
19 we've laid out here, and tried to lay out here -- this is an
20 unusual case. Why would somebody do this? Well, we can look
21 at the actions, Your Honor. We look at the actions, and we
22 look at the conduct.

23 And she says -- the defendant claims that she was doing
24 this at the direction of her husband, that she has made
25 numerous statements, both to the media and to law enforcement,

1 that are wholly inconsistent. She's put herself out there, and
2 she's trying to lock herself into a story.

3 What we have done for you, Your Honor, is we provided you
4 with facts, and we provided a lot of detail. The reason we
5 provided that detail is because if you take any of those facts
6 in isolation, they can possibly be explained. Then you look at
7 the whole totality of the conduct, the fact that she knew her
8 husband was interested in joining ISIS as early as November of
9 2014; that in a trip to Morocco she was confronted by a family
10 member where she confirmed -- that family member is going to be
11 a witness in this case, Your Honor, someone who did not support
12 this at all, and she admitted that she supported her husband
13 and she would follow him to ISIS. These are all decisions that
14 she made.

15 And now what she wants to do is she wants to point --

16 **MR. DURKIN:** At this point I --

17 **MR. ZANZI:** Your Honor --

18 **THE COURT:** Don't interrupt him. They didn't
19 interrupt you, so please don't do that.

20 Go ahead, Mr. Zanzi.

21 **MR. ZANZI:** What she wants to do is she wants to
22 place all of the blame for every single thing that she's done
23 here, all the facts here, on her husband.

24 Why is this case important, Your Honor? Why does this
25 case matter? If this was a woman of someone who was interested

1 in ISIS, was a woman who was married to someone who was
2 interested in ISIS and went along for the ride but wasn't a
3 fighter herself, maybe that would be a different case,
4 Your Honor.

5 But here we're talking about someone who uprooted her
6 family, ripped her family apart, took them all the way to
7 Syria, took her son out of school and took him on these trips.
8 Why make all these trips without your husband until the last
9 minute? To move money, to avoid suspicion. Took him out of
10 school, took him out of -- this is a parent of a child. She
11 wants to say: Oh, I just did it with my husband. I just did
12 what my husband did. She made these choices. She did these
13 things. She was an adult. She was in her 30s.

14 And very importantly, Your Honor, upon -- now it's very
15 clear to us what the defendant's theory is in this case, that
16 it was all the husband. I just did what my husband did. The
17 problem for defendant with that is she's put her story out
18 there. She put her story out there with *Frontline* and with *CNN*
19 and with all these news media outlets.

20 She even wrote her own diary trying to -- while she was in
21 the IDP camp about -- trying to explain the whole story and
22 what had happened, in which she acknowledges that she knew
23 before they went to Turkey on the last trip that her husband
24 was interested in ISIS.

25 In none of those accounts does she say that her husband

1 was abusive and told her what to do. What she says is after
2 they were in Syria, at some point after they were in Syria, he
3 changed. She describes him as a loving father. You asked
4 about the father, the real father of the son, as what we can --
5 you know, at the risk of divulging too much information about
6 the child, the father was not involved. That father -- the
7 biological father was not heavily involved in the child's life.
8 But what defendant says is that Moussa, her former husband, was
9 a father to this child and treated him like a son.

10 You've seen those videos, Your Honor. There's no fear or
11 coercion. These are like any other home video except for the
12 content is horrific. Horrific, Your Honor. These are not --
13 this is kids reciting prayers. You know how difficult it is
14 for a kid to memorize things like that. This is a kid who
15 appears to be, you know, not doing this out of fear. Saying,
16 "cool," at one point, about what's going on. It's terrifying,
17 Your Honor, what defendant has done here.

18 So that's in response to why did we bring this case, why
19 is it important.

20 Now let's talk about the FBI cooperation. The FBI
21 cooperation is being completely misconstrued here. I will say
22 on the record here, Your Honor, that defendant did not aid in
23 the investigation of terrorism. She did not. She did not
24 provide any cooperation in the investigation of terrorism
25 whatsoever.

1 She was assisting in another investigation; and, frankly,
2 that raises a lot of questions. Here she is, developed a
3 relationship with FBI where she's providing information, much
4 of which was untruthful, also lying about information about her
5 trips. The FBI asked her to be truthful about her trips, where
6 she was going, when she was coming back, and she lied about
7 that, just like she did to everybody else.

8 All of those opportunities -- she had the sophistication
9 and wherewithal and independent judgment to cooperate with law
10 enforcement on an investigation and didn't tell them about any
11 of this? It raises a lot of questions, Your Honor.

12 Your Honor, we ask you to look at the strength of the
13 evidence. We ask you to use your common sense and look at the
14 facts and look at all the little details here about what
15 defendant did throughout this timeline, the lies she told --
16 the fact she was willing to lie to a biological father of a
17 child that they were going on vacation to Paris in order to get
18 an affidavit. These are all choices that she made. And she
19 can say -- at what point does the buck stop with her?

20 Every single thing, every single one of these events --
21 and she now -- is it that she didn't know what she was doing,
22 she didn't know they were going to ISIS, or they knew that they
23 were going to ISIS all along?

24 So did she take all of these trips without knowing that
25 they were going to ISIS and just, oh, my husband tells me to go

1 and to bring money and melted gold and to melt gold and to
2 bring it all the way to Hong Kong once a month for several
3 months and then to pick up riflescopes and to do all of these
4 things. What exactly is defendant's theory, that she didn't
5 know or she was just doing everything blindly? Neither is
6 believable, Your Honor.

7 And going to the 3142(g) factors, Your Honor. We've
8 talked at length about the weight of the evidence of this case.
9 We talked a lot about the nature and circumstances of the
10 offense and why this is an important case, Your Honor.

11 Because, frankly, Your Honor, this is an unusual case. We
12 don't often charge the family members of the people who are
13 seeking to go fight ISIS. It is because of what she did and
14 the length she did to support and bringing her family and
15 getting her family involved. And I know that they completely
16 disagree with that, and we're just going to go back and forth.
17 But this is an important case, Your Honor, because of the
18 choices she made and the consequences that it has had on
19 innocent people.

20 And as to her danger, Your Honor, well, we've gone beyond
21 the scope of the case to -- we focused on -- the charges in
22 this case are based on all of her conduct leading up to what
23 happened in Syria. And a lot of what defense has talked about
24 is what happened in Syria and some of the things that -- the
25 atrocities that happened to her and her child. To be honest,

1 Your Honor, we're not omniscient. We don't know everything
2 that happened here. Everything is coming from defendant. Some
3 of it may be true, some of it may not be true, and some of it
4 she may need mental health for. But that, as Your Honor has
5 recognized, is a separate issue, whether or not the marshals
6 can adequately address her mental health needs. And, frankly,
7 this is not the appropriate hearing for making that
8 determination.

9 We don't deny that there are serious consequences for
10 going into Syria and joining a savage regime like ISIS, just
11 like there are for consequences for joining gangs or for the
12 mob. Terrible things happen. And we're not trying to be glib
13 here or insensitive because she may very well need mental
14 health treatment. And the government is not objecting to the
15 receipt of that.

16 But that is -- if she has mental health needs, that's not
17 an issue or reason for her to be released. Given --

18 **THE COURT:** Can you speak to this one medication she
19 was on, this Zyprexa. Mr. Durkin has represented that somehow
20 the government was involved in ordering or getting her off of
21 that particular medication that they've represented to me was
22 very helpful to her in dealing with her present situation. Do
23 you know anything about that, or can you speak to that at all?
24 Do you know what I'm --

25 **MR. ZANZI:** About the medication itself, Your Honor?

1 **THE COURT:** Well, no, about the -- is any of that
2 true? Did you all intervene in seeing to it that she had that
3 medication taken away from her or anything?

4 **MR. ZANZI:** Of course not, Your Honor.

5 **THE COURT:** Well, that's what they --

6 **MR. ZANZI:** I didn't even think they were suggesting
7 that.

8 **MR. HERMAN:** That was passing on information what the
9 nurse practitioner said, and it was certainly not meant to mean
10 the federal government --

11 **THE COURT:** I'm not saying these two individuals, but
12 was there somebody in the government that --

13 **MR. HERMAN:** U.S. Marshals or somebody who determines
14 what's unformulary or not is the type of --

15 **THE COURT:** Okay.

16 **MR. ZANZI:** As you know, the marshals -- we don't get
17 involved in what they do and their administration of medical
18 care.

19 **THE COURT:** I understand.

20 **MR. ZANZI:** And we have no idea -- frankly, we don't
21 even know what the circumstances of that are.

22 Lastly, Your Honor, I would like to say that she --
23 defendant is the ultimate flight risk. I think her conduct
24 shows that she is very capable of navigating the situations
25 that she did. Her past history of fleeing, taking those

1 multiple trips, using people, using other people, using minor
2 children, she was willing to do that in order to go to other
3 countries and to preplan for this trip. Navigating through a
4 war zone, Your Honor.

5 Frankly, Your Honor, electronic monitoring and a
6 designation at some unknown location which we haven't even
7 been -- hasn't even been established provides the government no
8 comfort.

9 You know, Your Honor, we provided a couple of cases here,
10 Your Honor, and we did so in the context of trying to find some
11 additional research.

12 Did we give the Court some -- the cases, or no? I don't
13 think we did.

14 **THE COURT:** Are they in your brief?

15 **MR. ZANZI:** No, Your Honor. What I'm going to hand
16 you, Your Honor -- I've given a copy to defense counsel -- are
17 two cases.

18 So what these cases are -- address the issue of the
19 presumption, Your Honor, of detention in material support
20 cases. And it's important to note in the statutory presumption
21 here, which we understand is rebuttable, is that defendant --
22 that the -- Congress has determined that the presumption of
23 detention should apply not only to acts of terrorism cases but
24 also material support cases.

25 And the cases here, Your Honor, just to define what --

1 what is material support of resources? It's a broad scope of
2 activity. It's defined in Section 2339A(b)(1) of Title 18,
3 that "any property, tangible or intangible, or service,
4 including currency or money instruments or financial
5 securities, financial services, lodging, training, expert
6 advice or assistance, safe houses, false documentation or
7 identification, communications, equipment, facilities, weapons,
8 lethal substances, explosives, personnel (one or more
9 individuals who may be or include oneself) doesn't have to be,
10 and transportation."

11 So there's a broad range of activity that is included in
12 material support of resources. And Courts have found --
13 amongst the ones that we found, we identified a case in the
14 Northern District of Illinois where a magistrate judge denied a
15 motion for release.

16 And there the defendant was charged with providing money,
17 military uniforms, combat boots, and other supplies to
18 terrorist organizations. And the Court found that the
19 presumption of danger and flight risk was not rebutted.

20 In another case in the Second Circuit, *United States v.*
21 *Khusanov*, which we provided to the Court, affirmed a detention
22 order where the defendant was charged with providing
23 approximately \$2400 to finance a would-be supporter of ISIS's
24 travels.

25 Again, the Court said -- the appellate court said the

1 district court acted well within its discretion and observed
2 that terrorist organizations like the one defendant allegedly
3 supported had a history of particularly violent conduct, and
4 the purpose of defendant's attempted support was to facilitate
5 violence by allowing persons to travel to Syria and wage Jihad
6 against the United States and its allies.

7 Your Honor, let me just confer with --

8 I would also remind the Court that there's nothing in the
9 statute or in the case law that requires defendant herself to
10 be a member of ISIS in order to be guilty of what he or she has
11 been charged as as conspiracy.

12 **THE COURT:** Can you hang on for a second, Mr. Zanzi.

13 All right. Mr. Zanzi.

14 **MR. ZANZI:** So the charges here do not require her to
15 be a member of ISIS. She was charged with aiding and abetting
16 and conspiracy, so we respectfully disagree with the
17 defendant's analysis of the law here and whether or not her
18 conduct, and alleged conduct as charged here, would support a
19 conviction under these statutes.

20 Nothing further, Your Honor.

21 **THE COURT:** I will give you the last word,
22 Mr. Durkin. I have another hearing here, just to let you know.

23 **MR. DURKIN:** That's fine. I have an appointment
24 myself.

25 **THE COURT:** Okay.

1 **MR. DURKIN:** First of all, with respect to the cases
2 they've cited for the proposition that it's difficult in a
3 2339B case to get released, I appreciate that. This is maybe
4 the 11th or 12th case of this material support that I've
5 handled throughout the country. I've never asked for a hearing
6 before. I'm not stupid.

7 Mr. Herman reminds me, we made a motion in one case, but
8 we never had the hearing.

9 But this is not a material support case. Or if it is, it
10 is the weakest one you will ever, ever see. And I believe I
11 just heard Mr. Zanzi, on behalf of the U.S. Attorney's Office,
12 admit that they never charge people like this except for what
13 she did was so horrific, which means by my way of thinking that
14 what she's really being prosecuted for is exactly what I
15 suggested, which is what she did with her children or not doing
16 something else with her children.

17 But that's not a federal crime. Maybe it's a crime
18 somewhere and maybe that's for the state of Indiana. But you
19 cannot provide material support to someone who isn't a member
20 of ISIS, and you can't aid and abet that and you can't conspire
21 with it. And they can't get over that hurdle. They have no
22 proof that she knew he was a member of ISIS because he wasn't a
23 member of ISIS as a matter of fact until he got to Syria. And
24 the rest of it is nonsensical.

25 Yes, every time they say, oh, that he was inclined or he

1 had an interest in, or whatever, that isn't -- doesn't make him
2 a member of ISIS. And he was not a member of ISIS until he
3 went to Syria and took bayat and made an oath to ISIS, and I
4 can bring in a ton of experts who will testify to that. And
5 they'd be all government witnesses anyway because that's what
6 the government always talks about. It's usually the other way
7 around. They make their case about somebody being a member of
8 ISIS because they swore an oath of bayat or allegiance while
9 they are in America.

10 This is an upside down and backwards case. It doesn't
11 fit. It's not material support. Even if it were under these
12 facts, they concede it's probably just aiding and abetting, and
13 that's pretty weak in terms of release.

14 We have an American citizen who is entitled to the
15 presumption of innocence. She's entitled to defend this case.
16 They say that it's all her word. It won't be all her word, I
17 can guarantee you. And she is entitled to the presumption of
18 innocence, and she is entitled to bail under the circumstances
19 of this case because it cannot be said that you can't fashion
20 conditions.

21 Now, I'm not prepared to do that today, so I don't want
22 you to say, sorry, you're a day late and a dollar short. If
23 you tell me that you will consider conditions, we will provide
24 them because I believe we can provide you with some pretty
25 rock-solid assurance, by means of electronic monitoring, that

1 she's not going to be a flight risk or a danger to the
2 community.

3 And I think you can take into account the issue of her
4 need for treatment in light of everything that's happened to
5 her because -- and this is where it fits under the Bail Reform
6 Act. My prediction will be if she's left in the Porter County
7 Jail without any treatment -- and I don't mean just a shot of
8 medicine; I mean without getting some therapy that Dr. Xenakis
9 recommends -- without trying to get through this, she may
10 decompose and not be able to be competent enough to defend
11 herself, to assist in the preparation of the defense. And
12 that's a factor you can take into account under the Bail Reform
13 Act, because you do have the authority under the act to fashion
14 an order that keeps the presumption of innocence alive and also
15 gives her an opportunity to present a defense. And if she
16 doesn't get released to be able to get that kind of treatment,
17 she may decompose and she won't be able to assist in this
18 defense, and that's a factor you can consider under the Bail
19 Reform Act.

20 For all those reasons, I think she should -- we should be
21 given a chance to come up and provide conditions.

22 **THE COURT:** Okay. We'll take about a 10-minute
23 recess, give Stacy a little break here, and we'll pick back up
24 here at a quarter to one.

25 **MR. DURKIN:** Thank you.

1 (A recess was had at 12:33 p.m.)

2 (The following proceedings were held in open court
3 beginning at 12:47 p.m., reported as follows:)

4 **DEPUTY CLERK:** All rise. Court is in session.

5 **THE COURT:** All right. You may be seated.

6 All right. The government seeks the pretrial detention of
7 the defendant, Samantha Elhassani. And the decision is
8 governed by 18 U.S.C. 3142, which is the Bail Reform Act.

9 There are factors that the Court has to take into
10 consideration when it decides if there are any conditions that
11 will reasonably assure the appearance of the person at trial as
12 required and the safety of the person and the community, and
13 those are the standards that govern release or detention.

14 The defendant, first of all, is charged with an offense
15 under Title 18, United States Code, Section 2339B. And in
16 particular, she's charged with providing material support to a
17 terrorist organization or, more specifically, conspiring to do
18 that, as well as aiding and abetting two other people's efforts
19 in that regard.

20 Because of the nature of the charge, that leads to a
21 presumption that there are no conditions of release that can
22 reasonably assure the appearance of the person or the safety of
23 the community because a federal crime of terrorism is one of
24 the listed offenses in the detention statute under 3142(e) that
25 leads to that presumption.

1 So the question is, first, has the defense rebutted the
2 presumption that there are no conditions that would reasonably
3 assure her appearance and the safety of the community; and if
4 they have rebutted that presumption, whether the factors under
5 3142(g) militate in favor of detention or release. I don't
6 think that the defense has rebutted the presumption that has
7 been presented just based upon the nature of the charge.

8 And even if the defendant has rebutted the presumption and
9 I looked at the factors under 3142(g), I believe that the
10 preponderance of those militate in favor of detention, and I'll
11 talk about them in a minute. But my discussion on the record
12 here will be somewhat truncated, and I'll put my reasons in a
13 more fulsome way in writing, as I'm required to do, under the
14 Bail Reform Act.

15 But the first factor is one I've already sort of touched
16 upon, which is the nature and circumstances of the offense,
17 including whether the offense is a crime of violence, a federal
18 crime of terrorism, or -- and then a number of others that
19 aren't pertinent here.

20 And so, of course, the first factor, by the nature of the
21 charge, it is a federal crime of terrorism or terrorism-related
22 activity that does militate in favor of detention.

23 The second factor is the weight of the evidence against
24 the person. And candidly, it's a mixed bag. I've been
25 presented a proffer of evidence from both sides here, and all I

1 can respond to is what has been presented to me. And I think
2 on balance, this factor slightly favors the government, that
3 the weight of the evidence is, I think, strong, but there does
4 appear to be some potential valid defenses. And it sounds to
5 me like we're going to have a really interesting and hotly
6 contested trial, so I'm really at this point only responding to
7 what has been presented to me at this hearing.

8 And based upon the evidence that the government provided,
9 that it appears to be, really, not contested and not likely to
10 be able to be contested that the defendant did, in fact, make
11 multiple trips overseas back and forth several times in a span
12 of three or four months. There does appear to be evidence that
13 the defendant placed her children, or at least one of them for
14 sure, in great risk.

15 Mr. Durkin says that the videos -- he says they're absurd.
16 I think they're very disturbing and very troubling, so that
17 evidence really does not appear to be controverted in any way.
18 It's for the eyes to see, and I have reviewed it in advance of
19 the hearing. And I believe it's very strong evidence in this
20 case.

21 There does appear to be evidence as well that the
22 defendant was involved in the purchase of actual items that
23 were to be used by her then husband for his activities in
24 Syria, in particular, riflescopes, tactical gear, image
25 stabilizer binoculars, if I'm understanding that correctly, and

1 that they were purchased to assist his endeavor. There's lots
2 of money that was transferred out of the United States overseas
3 to further assist in these activities.

4 The defense has proffered to me, frankly, a compelling
5 case, perhaps, that the defendant was operating very much under
6 the thumb of her husband and was coerced, perhaps, into
7 engaging in some of this activity; but I'll also note that much
8 of that appears to be evidence that comes directly from the
9 defendant. And her credibility might well be challenged at the
10 trial with other things that she has said through various media
11 outlets that never at all raised the prospect that she engaged
12 in this activity because she was threatened, coerced, et
13 cetera, by her then husband.

14 So while that may well be the case and that may be her
15 evidence, there will be probably strong evidence contradicting
16 that, so I'm not -- my goal here today is not to decide whether
17 the defendant or whether the government is going to prove its
18 case beyond a reasonable doubt. I'm simply making my best
19 judgment on the weight of the evidence as it was presented to
20 me here in court today, and I do think on balance the
21 government has the stronger of that factor, the weight of the
22 evidence, so I think that militates in favor of the government
23 as well.

24 The third factor under 3142(g) gets to things like --
25 speaking much more broadly, the history and characteristics of

1 the defendant, and it speaks to things such as her personal
2 character, physical and mental condition, family ties,
3 employment, financial resources, length of residence in the
4 community, and other things as well.

5 I think this factor also militates in favor of the
6 government. Ms. Elhassani told the probation office back in
7 July that she has reported no history of mental health issues.
8 They interviewed her sister who said that the defendant has
9 suffered from an eating disorder but has never seen a therapist
10 for any other mental health issues that she is aware of.

11 That's not to say there was some mental health problems
12 that arose as a result of her overseas travel, but she never
13 told probation that, and so I think that's something worth
14 mentioning under the third factor of (g)(3).

15 She also does not have, really, any ties to the community
16 any longer. She appears to be entirely estranged from her
17 family. She has no residence in the community, no community
18 ties. Her children, in all likelihood, are going to be
19 prohibited -- she's going to be prohibited from having any
20 involvement with them, in all likelihood; and so -- she has no
21 property in the community, no employment. And so all of those
22 factors, I think, militate strongly in favor of detention.

23 The prospect of releasing her and placing her in a shelter
24 environment, whatever that may be, is not the kind of community
25 ties that I think 3142(g)(3)(A) are trying to get at when

1 you're trying to make an assessment on the release or detention
2 of a defendant.

3 I'll also note that, and it didn't come up at the hearing
4 today, but it doesn't appear as if the defendant has been a
5 particularly model prisoner out in Porter County. I was
6 presented with a report whereby -- and I watched a video which
7 was offered -- whereby the defendant took a full mug of coffee
8 and threw it at another inmate or offender after a scuffle
9 inside what appeared to be like a day room, which does suggest
10 someone who has a certain level of volatility, which also I
11 think weighs on the issue of dangerousness. But that's sort of
12 a mild point, but it's just, I think, worth making.

13 I will put my reasons, as I said, in a more fulsome way in
14 writing, but just to let you all know where I'm coming from,
15 I'm going to deny the request for the defendant to be released.
16 And she will remain in custody pending the trial of this
17 matter.

18 So anything further from the government?

19 **MR. ZANZI:** No, Your Honor.

20 **MR. KOLAR:** No, Your Honor.

21 **THE COURT:** Mr. Durkin, anything further from the
22 defense?

23 **MR. DURKIN:** No, Judge.

24 **THE COURT:** Okay. Thank you.

25 (A recess was had at 12:59 p.m.)

1 * * *

2 (End of requested transcript.)

3 **CERTIFICATE**

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

7 Date: January 10, 2019

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9 S/STACY L. DROHOSKY
10 Court Reporter
11 U.S. District Court
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MR. HERMAN: [3] 7/24 45/7 45/12
MR. KOLAR: [20] 10/7 10/11 13/11
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administration [1] 45/17
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52/18
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57/3 57/10
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arms [1] 32/22
arose [1] 56/12
around [4] 21/4 29/1 35/19 50/7
arraignment [1] 13/18
arrangement [1] 9/23
arrest [1] 13/13
as [79]
ask [13] 4/24 6/2 21/2 22/9 27/11 30/12 30/12 31/6 32/2 32/4 32/6 42/12 42/13
asked [8] 6/22 13/24 23/3 24/5 36/4 41/3 42/5 49/5
asking [3] 6/12 6/20 36/19
assessment [1] 57/1
assets [4] 11/5 15/7 19/15 19/19
assigned [1] 10/13
assist [4] 51/11 51/17 55/1 55/3
assistance [1] 47/6
assisting [1] 42/1
assume [6] 5/3 6/5 21/9 25/4 25/7 25/14
assuming [1] 7/17
assurance [1] 50/25
assure [4] 37/11 52/11 52/22 53/3
atrocities [1] 43/25
attempted [1] 48/4
Attorney's [3] 1/12 23/24 49/11
authority [1] 51/13
average [1] 21/22
avoid [1] 40/9
aware [6] 7/16 10/21 14/25 15/21 27/3 56/10
away [1] 45/3

B
back [20] 2/11 15/15 15/19 19/14 19/25 21/4 21/4 23/6 23/7 23/11 23/14 26/10 26/11 28/24 29/4 42/6 43/16 51/23 54/11 56/6
background [1] 8/17
backing [1] 18/18
backwards [1] 50/10
bad [2] 30/24 34/10
bag [3] 16/4 19/22 53/24
bail [7] 2/10 50/18 51/5 51/12 51/18 52/8 53/14
balance [2] 54/2 55/20
bank [2] 10/16 19/19
Baptist [1] 31/4
based [4] 38/10 43/22 53/7 54/8
basis [2] 9/9 21/1
bayat [2] 50/3 50/8
be [120]
beaten [2] 32/5 32/20
because [35] 4/20 6/10 7/23 19/16 21/18 23/24 24/19 25/24 28/17 29/8 29/11 30/8 30/22 31/1 31/16 32/7 32/13 32/23 33/15 36/20 39/5 43/11 43/13 43/17 44/13 49/22 50/5 50/8 50/19 50/24 51/5 51/13 52/20 52/23 55/12
become [1] 30/10
becomes [1] 19/12
becoming [1] 10/22
bedroom [1] 9/24
been [18] 3/1 6/6 7/4 8/8 8/9 9/15 30/13 31/4 31/7 36/6 46/7 46/7 48/11 53/7 53/24 54/1 54/7 57/4
before [12] 1/7 4/1 5/20 8/16 14/25 23/3 27/10 30/14 30/15 30/16 40/23 49/6
befriend [1] 33/11
begin [1] 30/25
beginning [4] 2/2 7/6 13/22 52/3
behalf [3] 2/9 31/14 49/11
behind [2] 2/23 20/25
Beijing [2] 15/13 15/20
being [13] 12/20 19/23 20/15 20/16 21/12 21/12 25/4 32/16 35/24 35/25 41/21 49/14 50/7
belabor [1] 18/18
believable [2] 29/25 43/6
believe [15] 2/12 2/18 8/4 13/18 21/10 24/10 25/18 28/4 29/10 29/21 37/2 49/10 50/24 53/9 54/19
believed [2] 25/7 27/5
belt [1] 18/3
benefit [2] 13/7 37/9
best [1] 55/18
better [7] 7/3 8/3 20/22 23/24 24/3 27/7 30/25
between [2] 12/19 14/5
beyond [2] 43/20 55/18
big [1] 33/7
billions [1] 32/9
binoculars [5] 15/22 20/3 29/2 29/7 54/25
biological [2] 41/7 42/16
bit [5] 14/20 15/3 16/8 16/18 21/23
Black [2] 32/3 32/22
blah [5] 31/25 31/25 31/25 31/25 31/25
blah-blah [2] 31/25 31/25
blame [1] 39/22
blaming [1] 33/24
blindly [1] 43/5

booked [2] 16/3 16/12
boots [1] 47/17
both [14] 11/2 11/7 12/15 13/17 14/18 15/19 15/22 16/19 20/6 29/16 34/20 36/24 38/25 53/25
bought [2] 14/8 33/8
Boulevard [1] 1/20
box [1] 15/9
boy [1] 36/10
brainwashed [1] 34/19
break [1] 51/23
brief [6] 4/17 10/10 11/22 12/10 18/15 46/14
briefly [1] 38/6
bring [5] 23/25 41/18 43/1 43/2 50/4
bringing [1] 43/14
broad [2] 47/1 47/11
broadly [1] 55/25
brother [9] 10/21 12/14 16/14 20/6 20/9 29/11 29/23 30/3 37/20
brother-in-law [5] 10/21 12/14 16/14 20/6 20/9
brought [5] 2/12 6/24 10/4 14/13 15/8
buck [1] 42/19
bucket [2] 13/14 13/15
buckets [1] 13/13
bunch [1] 16/9
burqa [1] 33/14
business [1] 24/21

C
cabined [1] 14/11
caliber [1] 30/8
called [4] 2/19 8/2 10/12 11/15
came [1] 10/16
camp [8] 31/19 31/22 31/23 31/24 32/4 32/6 32/11 40/21
can [31] 2/4 16/22 17/2 17/7 20/11 20/20 22/4 25/14 26/19 27/1 27/2 28/2 34/17 36/24 36/25 38/20 39/6 41/4 42/19 44/6 44/18 44/23 48/12 50/4 50/17 50/24 51/3 51/12 51/18 52/21 54/1
can't [5] 34/5 49/20 49/20 49/21 50/19
candidly [1] 53/24
cannot [2] 49/19 50/19
capable [1] 45/24
care [3] 11/25 24/25 45/18
careful [1] 6/7
Carolyn [2] 1/22 9/13
Carolyn Montag [1] 9/13
case [59]
cases [10] 20/20 46/9 46/12 46/17 46/18 46/20 46/23 46/24 46/25 49/1
cause [3] 2/6 5/19 35/2
cell [2] 25/3 28/15
centers [1] 29/1
certain [4] 12/1 12/20 13/21 57/10
certainly [7] 14/13 24/17 27/1 33/25 35/5 37/15 45/9
CERTIFICATE [1] 58/3
certify [1] 58/4
cetera [1] 55/13
challenged [1] 55/9
chance [6] 3/1 3/22 5/10 22/6 36/21 51/21
change [1] 2/14
changed [2] 4/6 41/3
character [1] 56/2
characteristics [1] 55/25

<p>C</p> <p>characterization [1] 38/9 charge [5] 43/2 49/12 52/20 53/7 53/21 charged [9] 20/18 26/1 47/16 47/22 48/11 48/15 48/18 52/14 52/16 charges [3] 12/2 43/21 48/14 charging [1] 11/25 Chicago [11] 1/17 1/20 12/16 14/19 15/5 15/13 15/15 15/16 21/3 34/25 35/10 child [18] 15/1 15/5 15/12 15/15 22/16 22/18 22/21 34/18 34/19 35/12 35/14 35/21 38/13 40/10 41/6 41/9 42/17 43/25 child's [1] 41/7 children [25] 11/3 11/7 12/15 14/19 15/19 16/14 21/8 21/14 21/16 22/2 22/10 22/14 34/2 35/10 35/24 36/1 36/1 36/9 36/17 36/21 46/2 49/15 49/16 54/13 56/18 choice [1] 28/22 choices [3] 40/12 42/18 43/18 chose [1] 25/22 chronology [1] 20/4 Circuit [1] 47/20 circuitous [1] 22/1 circumstances [4] 43/9 45/21 50/18 53/16 cited [1] 49/2 citizen [1] 50/14 claim [1] 30/23 claims [1] 38/23 clarify [1] 11/13 Clark [1] 1/17 classified [2] 6/4 26/13 clear [3] 18/13 30/2 40/15 clearly [2] 7/6 16/10 close [1] 9/22 clothing [1] 33/14 clutches [1] 37/18 CNN [1] 40/18 Code [1] 52/15 coerced [2] 55/6 55/12 coercion [1] 41/11 coffee [1] 57/7 cognizant [1] 12/8 combat [1] 47/17 combination [1] 37/11 come [9] 4/17 4/19 9/8 9/19 18/15 26/10 38/18 51/21 57/3 comes [1] 55/8 comfort [1] 46/8 coming [6] 8/16 9/23 23/25 42/6 44/2 57/14 commanded [1] 34/15 commented [1] 4/1 comments [1] 18/24 common [1] 42/13 commonly [1] 7/10 communications [1] 47/7 community [15] 8/21 9/3 12/4 36/23 37/12 51/2 52/12 52/23 53/3 56/4 56/15 56/17 56/17 56/21 56/24 company [2] 24/22 24/25 compelling [1] 55/4 competent [1] 51/10 complaint [1] 26/1 completely [2] 41/21 43/15 complicated [1] 37/7</p>	<p>concede [1] 50/12 concept [1] 29/18 condition [1] 56/21 conditions [14] 2/20 4/4 9/9 9/11 9/17 33/21 35/3 37/11 50/20 50/23 51/21 52/10 52/21 53/2 conduct [8] 33/3 38/22 39/7 43/22 45/23 48/3 48/18 48/18 confer [1] 48/7 confirmed [1] 39/10 confirms [1] 27/15 conflate [1] 12/6 confronted [1] 39/9 confusing [1] 4/21 Congress [1] 46/22 consequences [3] 43/18 44/9 44/11 consider [2] 50/23 51/18 considerable [1] 29/13 considerably [1] 28/20 consideration [3] 5/2 35/24 52/10 consistent [2] 29/15 29/17 conspiracy [2] 48/11 48/16 conspire [1] 49/20 conspiring [1] 52/17 consulted [1] 8/16 contact [1] 36/17 contacted [1] 9/15 contained [2] 10/15 11/9 content [1] 41/12 contested [3] 54/6 54/9 54/10 context [9] 4/11 4/13 6/19 11/22 15/2 18/14 19/8 20/14 46/10 continue [1] 6/8 contract [1] 8/7 contradicting [1] 55/15 contrary [2] 7/11 31/25 control [1] 28/18 controlled [1] 16/11 controverted [1] 54/17 conviction [1] 48/19 cool [1] 41/16 cooperate [1] 42/9 cooperated [2] 24/11 25/6 cooperating [3] 24/7 24/18 26/6 cooperation [6] 24/12 25/17 27/16 41/20 41/21 41/24 cooperator [1] 32/18 copy [3] 4/23 26/15 46/16 correct [4] 6/6 18/4 28/5 58/5 correction [1] 11/8 correctly [1] 54/25 corroborated [1] 35/22 could [16] 5/4 6/16 7/4 9/17 9/19 9/19 12/6 16/25 23/5 24/23 24/25 27/9 33/21 35/2 35/4 37/6 couldn't [1] 31/12 counsel [9] 4/23 11/19 13/17 16/23 19/1 26/14 38/9 38/18 46/16 counselor [1] 11/16 countries [1] 46/3 country [4] 21/13 30/22 31/7 49/5 County [2] 51/6 57/5 couple [3] 14/24 16/3 46/9 course [6] 3/14 9/4 11/18 23/8 45/4 53/20 court [25] 1/1 2/1 2/13 3/8 5/15 10/8 10/13 15/21 16/22 16/24 20/24 37/12 46/12 47/18 47/21 47/25 47/25 48/1 48/8 52/2 52/4 52/9 55/20 58/9 58/9 Courts [1] 47/12</p>	<p>CR [2] 1/4 2/6 crazy [5] 6/20 23/12 23/13 23/16 23/21 credibility [1] 55/9 credible [1] 29/20 crime [8] 30/19 37/14 49/17 49/17 52/23 53/17 53/18 53/21 criminal [1] 26/1 crowded [1] 19/17 currency [3] 15/8 16/19 47/4 currently [3] 8/15 10/13 22/11 custody [6] 35/9 35/16 36/2 36/11 36/12 57/16 cut [2] 8/6 9/7 cuts [1] 29/16 Cymbalta [1] 8/4</p> <hr/> <p>D</p> <p>danger [14] 8/21 9/2 9/6 12/4 17/11 35/4 35/5 35/6 35/7 36/23 37/6 43/20 47/19 51/1 dangerousness [1] 57/11 date [2] 11/9 58/7 dates [1] 25/19 day [6] 8/19 13/18 23/22 37/21 50/22 57/9 days [5] 8/1 14/24 15/17 19/13 20/1 DCFS [1] 35/10 DCS [3] 35/10 35/11 35/25 de [3] 3/8 3/18 6/11 dead [1] 37/21 dealing [3] 8/17 18/3 44/22 dealt [1] 6/7 deceased [2] 20/10 22/19 December [2] 1/6 2/18 December 14 [1] 2/18 decide [1] 55/16 decides [1] 52/10 deciding [1] 12/1 decision [3] 3/7 23/20 52/7 decisions [1] 39/13 decompose [2] 51/10 51/17 defend [2] 50/15 51/10 defendant [63] defendant's [19] 2/19 3/3 4/3 10/16 10/17 11/10 14/16 15/18 18/1 19/2 19/14 20/5 20/6 21/24 22/19 40/15 43/4 48/4 48/17 defendants [1] 16/4 defense [17] 4/23 13/17 13/22 16/23 24/16 26/19 26/24 38/17 43/23 46/16 51/11 51/15 51/18 53/1 53/6 55/4 57/22 defenses [1] 54/4 define [1] 46/25 define what [1] 46/25 defined [1] 47/2 degree [1] 21/20 demonstrates [1] 28/18 denied [1] 47/14 deny [2] 44/9 57/15 Department [3] 23/22 34/1 35/10 depleted [1] 19/18 deposit [1] 15/9 deposit-type [1] 15/9 describes [1] 41/3 designated [1] 30/20 designation [1] 46/6 detail [5] 10/24 12/22 16/18 39/4 39/5 details [1] 42/14 detain [1] 14/14 detained [1] 6/12</p>
--	---	---

D
detention [16] 1/6 2/13 6/14 8/24 37/10
40/19 46/23 47/21 52/6 52/13 52/24
53/5 53/10 53/22 56/22 57/1
deteriorate [1] 7/7
determination [1] 44/8
determined [1] 46/22
determines [1] 45/13
determining [1] 12/1
developed [1] 42/2
diary [1] 40/20
dictating [1] 34/11
did [35] 6/21 11/7 23/14 23/15 23/17
30/14 31/14 33/14 34/21 37/14 37/15
39/11 40/11 40/11 40/12 40/12 40/16
40/16 41/18 41/22 41/23 41/23 42/7
42/15 42/24 43/13 43/14 45/2 45/25
46/10 46/12 46/13 49/13 49/15 54/10
didn't [13] 4/20 7/14 14/7 26/10 28/22
29/4 39/18 42/10 42/21 42/22 43/4 45/6
57/3
difference [2] 12/18 14/5
different [8] 7/23 8/20 9/2 9/5 9/15 19/7
34/20 40/3
difficult [4] 8/9 36/17 41/13 49/2
direct [1] 26/17
direction [4] 23/15 30/6 34/21 38/24
directly [2] 18/11 55/8
disagree [2] 43/16 48/16
discover [1] 32/15
discovery [1] 24/15
discretion [1] 48/1
discuss [1] 10/23
discussed [3] 17/9 20/2 38/15
discussing [1] 13/21
discussion [1] 53/11
disorder [2] 7/9 56/9
dispute [3] 7/8 7/20 37/25
district [7] 1/1 1/1 1/7 3/8 47/14 48/1
58/9
disturbing [1] 54/16
DIVISION [2] 1/2 23/23
divulging [1] 41/5
do [44] 3/21 3/22 4/8 5/13 5/20 6/7 9/11
10/1 17/1 17/4 17/7 17/11 17/15 20/20
21/2 21/5 23/5 23/13 23/14 24/17 25/23
28/22 31/5 31/18 33/5 33/10 34/9 34/15
38/20 39/15 39/19 39/21 41/1 43/3
44/22 44/24 45/17 46/2 48/14 50/21
51/13 52/17 53/13 55/20
doctor [1] 7/18
document [6] 2/19 2/25 26/12 26/13
26/25 28/7
documentation [1] 47/6
documents [1] 5/23
does [15] 3/11 4/19 23/10 29/15 30/10
39/24 40/25 42/19 53/22 54/3 54/12
54/17 54/21 56/15 57/9
doesn't [8] 8/12 26/7 37/1 47/9 50/1
50/10 51/16 57/4
doing [10] 19/20 24/20 25/2 34/16
34/17 38/23 41/15 42/21 43/5 49/15
dollar [1] 50/22
dollars [1] 32/9
domestic [1] 24/2
domestically [1] 19/23
dominated [2] 34/12 34/20
don't [54] 3/20 4/6 5/6 7/8 7/19 7/21 9/9
9/13 12/6 14/13 14/17 16/24 17/3 20/11
21/6 24/13 24/13 25/19 26/13 26/14

27/20 29/21 29/21 30/11 30/22 31/12
32/8 33/17 33/19 33/19 34/23 35/2 35/4
35/7 35/15 36/12 36/16 37/2 37/8 37/14
37/19 37/21 38/8 39/18 39/19 43/12
44/1 44/9 45/16 45/20 46/12 50/21 51/7
53/5
done [4] 30/6 39/3 39/22 41/17
dosages [1] 8/19
doubt [1] 55/18
down [5] 2/14 16/19 19/23 20/16 50/10
Dr [1] 7/8
Dr. [2] 8/15 51/8
Dr. Xenakis [2] 8/15 51/8
drawn [2] 19/23 20/16
driven [1] 31/5
Drohosky [3] 58/4 58/8 58/8
drug [1] 8/14
during [3] 11/5 20/1 29/8
DURKIN [13] 1/16 1/16 2/8 2/16 3/15
3/23 5/3 23/2 37/23 44/19 48/22 54/15
57/21

E
each [1] 21/10
early [3] 10/23 29/1 39/8
easier [1] 21/23
easy [1] 16/7
eating [1] 56/9
effectively [1] 24/22
efforts [1] 52/18
eightball [1] 2/24
either [5] 11/2 11/19 13/11 13/18 35/25
electronic [6] 9/18 9/25 36/25 37/9 46/5
50/25
ELHASSANI [13] 1/5 2/7 2/7 8/1 15/12
15/18 23/11 24/21 25/20 30/18 36/6
52/7 56/6
Elkhart [4] 9/23 24/21 24/24 24/24
else [5] 28/14 28/16 29/15 42/7 49/16
emergency [4] 2/20 6/20 9/8 10/4
eminent [1] 3/16
emotionally [1] 34/21
employment [2] 56/3 56/21
end [2] 18/14 58/2
endeavor [1] 55/1
enforcement [2] 38/25 42/10
engaged [2] 33/3 55/11
engaging [1] 55/7
enough [3] 6/1 20/13 51/10
ensure [1] 35/4
entered [2] 30/15 35/15
entirely [1] 56/16
entitled [5] 50/14 50/15 50/17 50/18
58/6
environment [1] 56/24
equally [1] 18/10
equipment [1] 47/7
escalation [1] 8/14
essentially [6] 6/12 13/13 15/11 21/12
38/11 38/12
established [1] 46/7
estranged [1] 56/16
et [1] 55/12
even [15] 6/11 14/21 18/18 26/7 31/12
33/17 35/5 37/8 40/20 45/6 45/21 46/6
46/7 50/11 53/8
events [3] 22/12 38/11 42/20
ever [8] 9/13 30/13 31/4 31/7 33/13
36/20 49/10 49/10
every [5] 21/7 39/22 42/20 42/20 49/25

everybody [1] 42/7
everyone [1] 2/5
everything [8] 3/1 11/23 16/17 17/13
17/14 23/17 24/1 25/8 28/15 29/15
29/17 29/22 30/5 38/17 43/5 44/1 44/2
51/4
evidence [33] 5/25 12/9 13/4 13/6
20/22 27/4 28/19 29/21 30/1 30/8 31/3
31/14 31/24 33/5 34/14 35/5 37/9 37/13
42/13 43/8 53/23 53/25 54/3 54/8 54/12
54/17 54/19 54/21 55/8 55/15 55/15
55/19 55/22
ex [1] 36/10
ex-husband [1] 36/10
exact [1] 25/19
exactly [5] 4/5 13/24 27/6 43/4 49/14
except [2] 41/11 49/12
excuse [2] 12/17 31/15
Exhibit [5] 4/15 5/17 7/7 26/19 26/24
Exhibit 1 [2] 26/19 26/24
Exhibit 6 [2] 4/15 5/17
exhibits [5] 3/1 3/2 3/4 4/14 17/9
expect [1] 28/19
expected [1] 27/25
expedited [1] 2/22
expert [1] 47/5
experts [1] 50/4
explain [1] 40/21
explained [1] 39/6
explosives [1] 47/8
expressed [1] 21/24
extreme [1] 10/22
extremely [1] 24/15
eyes [1] 54/18

F
facile [1] 3/9
facilitate [1] 48/4
facilities [1] 47/7
facing [1] 16/25
fact [14] 7/21 14/6 21/10 31/15 32/19
32/20 33/19 33/22 34/5 34/8 39/7 42/16
49/23 54/10
factor [12] 13/3 24/8 51/12 51/18 53/15
53/20 53/23 54/2 55/21 55/24 56/5
56/14
factors [6] 13/3 43/7 52/9 53/4 53/9
56/22
facts [16] 4/2 4/17 4/22 10/15 11/9
11/22 12/1 14/14 24/4 38/5 38/9 39/4
39/5 39/23 42/14 50/12
factual [7] 3/25 4/9 4/17 12/21 20/25
21/1 37/24
factually [1] 7/5
fails [1] 32/1
Fair [2] 6/1 20/13
false [8] 26/2 26/4 26/5 26/6 26/8 27/18
27/23 47/6
familiar [2] 4/1 35/17
family [15] 10/18 18/22 22/1 24/21
29/12 34/23 39/9 39/10 40/6 40/6 43/12
43/14 43/15 56/2 56/17
far [3] 5/12 10/2 28/25
fashion [2] 50/9 51/13
father [13] 35/12 35/14 36/3 36/10
38/13 41/3 41/4 41/4 41/6 41/6 41/7
41/9 42/16
favor [7] 24/9 53/5 53/10 53/22 55/22
56/5 56/22
favors [1] 54/2

FBI [20] 10/19 13/15 16/6 17/17 18/2
 19/5 24/8 24/11 25/5 25/6 25/7 25/10
 25/13 28/12 32/16 38/14 41/20 41/20
 42/3 42/5
 FBI's [1] 10/14
 fear [3] 37/5 41/10 41/15
 February [3] 14/23 15/4 15/4
 February 10th [1] 14/23
 February 17th [1] 15/4
 February 19th [1] 15/4
 federal [8] 1/12 8/12 32/18 45/10 49/17
 52/23 53/17 53/21
 felt [3] 7/2 8/3 11/21
 few [2] 15/17 38/4
 fight [1] 43/13
 fighter [2] 21/19 40/3
 filed [5] 2/25 3/2 3/24 35/14 35/18
 filing [2] 11/9 11/11
 filings [3] 10/24 11/2 16/17
 filming [2] 18/7 34/16
 final [5] 11/6 19/25 20/1 21/15 21/17
 finance [1] 47/23
 financial [3] 47/4 47/5 56/3
 find [4] 25/5 25/24 33/1 46/10
 fine [5] 5/11 10/6 13/5 26/21 48/23
 first [21] 2/12 3/10 6/13 6/16 6/25 13/14
 15/16 18/21 24/6 26/3 26/14 27/12
 27/22 29/3 29/25 31/1 49/1 52/14 53/1
 53/15 53/20
 fit [2] 37/3 50/11
 fits [1] 51/5
 fleeing [1] 45/25
 fleshed [1] 10/24
 flight [8] 8/21 9/3 10/17 12/4 36/24
 45/23 47/19 51/1
 fly [1] 19/25
 focus [1] 15/2
 focused [1] 43/21
 follow [4] 18/23 19/5 19/10 39/13
 following [3] 2/1 17/21 52/2
 follows [2] 2/2 52/3
 Force [1] 10/14
 forces [1] 31/23
 foregoing [1] 58/4
 foreign [1] 30/10
 former [3] 22/16 22/19 41/8
 forth [5] 11/1 23/12 23/14 43/16 54/11
 found [6] 25/14 25/15 33/16 47/12
 47/13 47/18
 four [4] 13/3 36/1 36/8 54/12
 frankly [8] 19/17 37/1 42/1 43/11 44/6
 45/20 46/5 55/4
 friends [2] 10/18 38/13
 frightened [1] 37/4
 from Chicago [1] 12/16
 front [1] 33/8
 Frontline [1] 40/18
 full [6] 32/11 33/6 34/6 35/16 36/12
 57/7
 full-well [3] 32/11 33/6 34/6
 fulsome [2] 53/13 57/13
 funds [5] 16/18 19/23 20/16 21/11
 31/11
 further [6] 10/23 21/1 48/20 55/3 57/18
 57/21
 future [2] 12/8 21/19

G
 gangs [1] 44/11

gave [1] 10/19
 gear [5] 20/8 20/15 20/21 31/11 54/24
 get [23] 6/23 6/25 8/8 10/2 14/6 14/2
 14/6 14/20 14/23 19/21 21/20 21/25
 24/15 36/22 37/17 42/17 45/16 49/3
 49/21 51/9 51/16 51/16 56/25
 gets [3] 4/21 37/5 55/24
 getting [3] 43/15 44/20 51/8
 give [9] 3/20 3/22 9/20 22/6 28/12 37/9
 46/12 48/21 51/23
 given [10] 3/12 4/22 7/22 8/1 8/2 13/14
 13/17 44/17 46/16 51/21
 gives [1] 51/15
 giving [1] 8/13
 glib [1] 44/12
 go [31] 6/13 9/6 11/23 12/4 13/8 14/20
 15/5 15/13 15/15 15/15 15/16 15/20
 16/17 17/1 17/11 21/4 21/17 23/11
 24/25 28/24 28/24 34/5 34/23 36/9
 36/25 37/3 39/20 42/25 43/13 43/16
 46/2
 goal [1] 55/16
 going [56] 6/2 6/3 6/4 6/7 6/13 11/17
 12/8 12/25 13/1 13/2 13/7 13/8 13/21
 14/6 14/14 14/23 16/4 16/6 18/14 19/10
 21/6 21/7 21/8 21/23 26/9 27/6 28/12
 29/7 29/9 29/19 30/1 30/2 36/5 36/7
 36/9 36/13 36/16 36/21 38/6 39/10
 41/16 42/6 42/17 42/22 42/23 42/25
 43/7 43/16 44/10 46/15 51/1 54/5 55/17
 56/18 56/19 57/15
 gold [3] 16/19 43/1 43/1
 gone [2] 37/18 43/20
 good [4] 2/5 5/19 16/6 34/3
 got [3] 31/2 35/6 49/23
 govern [1] 52/13
 governed [1] 52/8
 government [40] 1/10 2/9 2/22 2/23
 5/20 6/12 6/13 6/21 8/12 11/18 11/25
 13/4 19/1 21/21 23/18 24/5 24/11 27/1
 27/2 30/11 31/6 32/18 33/24 37/22 38/9
 44/14 44/20 45/10 45/12 46/7 50/5 50/6
 52/6 54/2 54/8 55/17 55/21 55/22 56/6
 57/18
 government that [1] 45/12
 government's [9] 3/3 4/15 5/17 10/15
 11/1 11/9 30/12 30/21 33/2
 grant [2] 34/3 34/3
 great [2] 11/25 54/14
 group [1] 12/20
 guarantee [1] 50/17
 guard [2] 6/8 32/23
 guardianship [1] 36/2
 guess [2] 5/9 35/6
 guilty [1] 48/10
 gun [4] 15/2 19/11 34/22 34/23
 guns [1] 34/24
 guys [1] 6/3

H
 had [30] 2/15 3/1 4/6 5/10 7/3 13/20
 13/22 16/3 18/11 22/21 25/23 28/18
 29/13 32/17 33/5 33/8 33/10 34/9 34/14
 35/23 37/16 40/22 42/8 43/18 45/2 48/3
 49/8 50/1 52/1 57/25
 HAMMOND [2] 1/2 1/13
 hand [1] 46/15
 handcuffs [1] 32/22
 handle [5] 3/6 3/9 10/10 38/6 38/15
 handled [1] 49/5

hands [1] 35/6
 hang [1] 48/12
 happen [2] 14/7 44/12
 happened [12] 7/2 17/13 20/9 20/23
 32/2 33/23 40/22 43/23 43/24 43/25
 44/2 51/4
 happening [2] 7/6 32/20
 happy [1] 9/5
 harm [3] 19/4 20/18 20/22
 has [63]
 hasn't [2] 36/6 46/7
 have [66]
 haven't [2] 35/22 46/6
 having [2] 16/4 56/19
 he [28] 2/16 4/10 7/24 20/10 21/25 29/3
 29/4 29/23 29/23 29/24 30/15 30/15
 30/16 30/20 35/12 35/16 35/17 35/21
 41/2 48/10 49/22 49/22 49/23 49/25
 49/25 50/2 50/2 54/15
 he's [8] 34/19 35/15 35/15 35/19 36/11
 37/18 37/21 38/6
 headed [1] 4/5
 health [7] 44/4 44/6 44/14 44/16 56/7
 56/10 56/11
 hear [7] 3/10 5/22 23/3 34/17 37/20
 37/20 38/1
 heard [3] 6/16 35/2 49/11
 hearing [21] 1/6 2/10 2/15 2/15 2/21 3/9
 3/19 5/13 6/11 6/14 8/24 9/6 9/7 34/2
 44/7 48/22 49/5 49/8 54/7 54/19 57/3
 hearings [1] 13/20
 heart [1] 28/17
 heavily [2] 24/8 41/7
 held [2] 2/1 52/2
 helped [2] 15/23 18/5
 helpful [2] 4/12 44/22
 her [122]
 here [53] 2/8 2/9 2/11 4/18 4/22 6/13
 8/11 8/24 9/12 12/2 12/21 14/2 14/4
 15/14 16/24 17/12 17/17 18/9 19/23
 23/17 23/25 24/2 30/5 34/4 34/23 35/11
 37/25 38/19 38/19 39/23 39/23 40/5
 41/17 41/21 41/22 42/2 42/14 44/2
 44/13 46/9 46/21 46/25 48/14 48/17
 48/18 48/22 51/23 51/24 53/12 53/19
 53/25 55/16 55/20
 HERMAN [5] 1/19 1/19 2/8 7/23 49/7
 herself [9] 19/11 21/6 31/13 33/3 39/1
 39/2 40/3 48/9 51/11
 him [14] 12/20 18/23 19/6 19/10 34/16
 34/22 39/13 39/18 40/7 40/9 40/10 41/3
 41/9 50/1
 hindsight [1] 37/16
 his [6] 13/8 22/1 34/21 37/18 54/23
 55/1
 history [9] 2/11 3/25 4/9 4/17 7/14
 45/25 48/3 55/25 56/7
 hold [1] 32/1
 home [2] 37/10 41/11
 homeschooled [1] 11/17
 honest [1] 43/25
 Hong [9] 14/9 15/6 15/7 15/13 15/14
 15/20 16/15 21/16 43/2
 Honor [71]
 HONORABLE [1] 1/7
 hope [1] 24/14
 horribly [1] 33/1
 horrific [3] 41/12 41/12 49/13
 horrifying [1] 33/3
 hotly [1] 54/5

H
house [1] 11/16
houses [1] 4/16
how [8] 13/8 20/16 21/20 22/9 32/4
35/2 37/10 41/13
however [1] 38/2
human [1] 24/7
hung [3] 32/21 32/22 32/22
hurdle [1] 49/21
husband [54] 10/21 10/22 11/3 11/3
11/7 12/14 12/19 14/7 14/12 15/18
16/13 19/2 19/5 20/5 20/5 21/24 22/19
22/19 23/15 28/18 29/6 29/11 29/18
29/24 30/5 30/6 30/14 33/7 33/7 33/8
34/11 34/11 34/16 34/18 34/19 36/9
36/10 37/17 38/24 39/8 39/12 39/23
40/8 40/11 40/12 40/16 40/16 40/23
40/25 41/8 42/25 54/23 55/6 55/13
husband's [5] 12/23 15/1 18/22 19/9
27/8

I
I have [1] 3/1
I'd [5] 12/21 16/1 26/12 30/21 33/6
I'll [18] 5/9 5/18 6/15 7/23 10/8 13/25
17/1 20/18 22/6 26/15 26/17 37/24 38/1
38/15 53/10 53/12 55/7 57/3
I'm [42] 3/18 6/12 6/20 7/17 9/5 9/6 9/7
9/7 12/25 13/1 13/2 13/8 14/2 16/9
17/21 17/24 18/14 19/5 19/10 23/23
25/18 26/2 26/17 28/1 33/24 33/24
33/25 35/16 36/7 37/13 44/24 45/11
46/15 49/6 50/21 53/13 54/6 54/25
55/16 55/18 57/14 57/15
I've [6] 35/23 46/16 49/4 49/5 53/15
53/24
idea [2] 28/12 45/20
identification [1] 47/7
identified [1] 47/13
identify [1] 16/24
ideologically [1] 31/5
ideology [3] 10/23 12/20 12/24
IDP [2] 31/24 40/21
Illinois [3] 1/17 1/20 47/14
image [3] 15/22 20/3 54/24
images [1] 18/12
implicates [1] 6/4
important [8] 11/24 21/18 24/4 39/24
41/19 43/10 43/17 46/20
importantly [1] 40/14
impression [2] 29/7 36/8
inaccurate [1] 31/22
inclined [1] 49/25
include [1] 47/9
included [2] 4/12 47/11
includes [1] 22/2
including [5] 3/2 31/11 33/3 47/4 53/17
inconsistent [1] 39/1
incredibly [2] 25/5 25/21
independent [1] 42/9
INDIANA [8] 1/1 1/13 10/14 34/1 34/23
34/24 36/4 49/18
indicate [3] 10/15 11/15 38/8
indicated [4] 10/9 11/17 11/21 18/7
Indictment [5] 26/2 26/3 26/7 27/19
31/10
individual [2] 4/21 18/7
individuals [4] 14/8 15/24 45/11 47/9
informant [2] 25/12 32/16
information [8] 6/5 25/14 35/23 35/23

41/5 42/3 42/4 45/8
informed [1] 6/21
inmate [2] 11/10 57/8
innocence [3] 50/15 50/18 51/14
innocent [1] 43/19
insane [1] 31/5
insensitive [1] 44/13
inside [1] 57/9
instance [1] 3/10
instead [2] 21/16 28/10
instruments [1] 47/4
intangible [1] 47/3
intelligence [1] 32/10
intending [1] 3/20
interest [6] 15/1 18/20 18/23 21/24
35/21 50/1
interested [15] 12/14 12/19 14/5 14/8
14/9 14/12 15/25 19/2 19/5 19/10 20/7
39/8 39/25 40/2 40/24
interesting [2] 15/14 54/5
intermixed [1] 38/5
interrupt [2] 39/18 39/19
intervene [1] 45/2
interviewed [1] 56/8
interviews [4] 10/18 10/20 13/13 13/15
investigation [11] 16/7 24/13 24/14
24/18 24/19 25/5 28/11 41/23 41/24
42/1 42/10
involved [9] 18/6 35/13 35/20 41/6 41/7
43/15 44/20 45/17 54/22
involvement [1] 56/20
ironic [1] 25/6
irrespective [1] 3/7
is [189]
ISIS [49] 10/22 12/14 14/6 14/8 14/9
14/12 15/1 15/25 16/11 18/20 18/23
19/2 19/5 19/10 20/7 21/19 21/25 30/15
30/16 30/17 31/2 31/8 31/9 31/14 32/3
32/5 32/6 32/11 32/25 37/6 39/8 39/13
40/1 40/2 40/24 42/22 42/23 42/25
43/13 44/10 48/10 48/15 49/20 49/22
49/23 50/2 50/2 50/3 50/8
ISIS's [1] 47/23
ISIS-controlled [1] 16/11
isn't [4] 8/22 31/13 49/19 50/1
isolation [1] 39/6
issue [13] 2/14 2/17 8/20 9/2 9/5 20/17
30/7 33/20 44/5 44/17 46/18 51/3 57/11
issued [1] 26/1
issues [4] 27/4 38/2 56/7 56/10
it [107]
it with [1] 40/11
it's [55] 5/15 6/10 6/11 6/11 7/10 7/14
8/9 8/14 8/23 9/4 9/4 11/24 14/18 15/18
18/13 18/24 20/5 20/22 21/23 24/15
26/13 26/13 27/11 27/12 27/22 30/9
31/10 31/22 32/8 32/8 34/7 34/18 34/18
34/18 35/10 35/10 35/25 36/15 37/7
37/14 40/14 41/16 46/20 47/1 47/2 49/2
49/17 50/6 50/11 50/12 50/16 53/24
54/18 54/19 57/12
items [2] 16/22 54/22
itinerary [1] 28/13
its [4] 24/11 48/1 48/6 55/17
itself [1] 44/25

J
Jackson [1] 1/20
jail [4] 6/24 7/3 7/17 51/7

January [7] 12/12 14/16 14/16 14/18
18/17 24/7 58/7
January 11th [1] 14/16
January 13th [1] 14/16
January 23rd [1] 14/18
Jihad [1] 48/5
join [2] 11/7 30/3
joining [3] 39/8 44/10 44/11
joint [2] 10/14 19/19
Josh [1] 2/9
Josh Kolar [1] 2/9
JOSHUA [3] 1/11 1/19 1/19
judge [11] 1/7 3/6 3/17 5/4 6/16 9/13
12/17 22/4 27/10 47/14 57/23
judgment [2] 42/9 55/19
July [3] 2/12 2/12 56/7
July 25 [1] 2/12
just [55] 2/11 3/5 3/10 4/18 4/24 6/19
6/23 7/21 10/5 10/9 12/10 13/12 14/1
14/4 14/5 14/7 14/12 14/24 14/24 15/5
15/17 16/1 17/22 18/12 18/14 19/13
19/21 20/1 20/5 21/16 27/10 27/14
31/16 31/19 33/7 33/17 37/13 38/8
40/11 40/11 40/16 42/7 42/25 43/5
43/16 44/10 46/25 48/7 48/22 49/11
50/12 51/7 53/7 57/12 57/14
Justice [1] 23/22

K
keep [3] 5/18 5/19 19/16
keeps [1] 51/14
Kevin [1] 10/13
Khusanov [1] 47/21
kid [2] 41/14 41/14
kids [3] 35/7 35/8 41/13
killed [1] 33/17
kind [10] 2/11 3/18 8/17 8/20 14/4
27/15 38/4 38/5 51/16 56/24
knew [10] 12/13 12/23 14/9 18/19 19/2
27/7 39/7 40/22 42/22 49/22
know [74]
knowing [4] 12/19 14/5 14/11 42/24
known [2] 7/10 31/23
knows [3] 20/7 23/18 38/10
KOLAR [8] 1/11 2/9 4/9 6/15 10/7 13/8
22/25 37/24
Kong [9] 14/9 15/6 15/7 15/13 15/14
15/20 16/15 21/16 43/2
Kuhn [4] 10/13 11/8 11/13 11/20
Kurdish [1] 31/23

L
labels [1] 19/11
lack [1] 5/25
laid [5] 3/12 3/25 4/2 4/9 38/19
landed [1] 13/16
large [1] 27/12
Largely [1] 29/11
last [7] 2/18 4/7 7/22 8/6 40/8 40/23
48/21
Lastly [1] 45/22
late [9] 2/18 11/3 15/18 16/13 18/22
20/5 21/24 29/1 50/22
later [6] 13/25 14/21 14/24 15/3 15/17
20/1
laughable [2] 30/9 33/18
law [11] 1/19 10/21 12/14 16/14 20/6
20/9 33/20 38/25 42/9 48/9 48/17
lawyer [1] 36/6
lay [1] 38/19

L
laving [1] 23/23
lays [1] 4/6
leading [1] 43/22
leads [2] 52/20 52/25
learned [2] 7/21 7/25
least [6] 26/12 28/25 31/8 36/13 36/16
54/13
leave [3] 20/19 20/25 24/5
left [1] 51/6
legal [2] 30/7 38/2
length [3] 43/8 43/14 56/3
lens [2] 23/18 24/2
less [2] 21/7 21/22
let [12] 4/5 6/2 7/23 12/25 17/22 21/2
22/9 37/24 38/15 48/7 48/22 57/14
let's [4] 10/5 24/23 28/24 41/20
lethal [1] 47/8
level [2] 34/20 57/10
lie [2] 27/3 42/16
lied [5] 38/12 38/13 38/13 38/14 42/6
lies [1] 42/15
life [2] 33/13 41/7
light [2] 33/22 51/4
like [31] 4/14 4/23 8/10 12/21 16/1
18/11 23/11 23/12 23/25 26/10 26/12
30/21 31/19 31/20 32/17 32/21 33/6
34/24 36/13 41/9 41/11 41/14 42/7
44/10 44/11 45/22 48/2 49/12 54/5
55/24 57/9
likelihood [4] 2/16 3/6 56/18 56/20
likely [1] 54/9
limited [1] 12/9
line [1] 9/24
listed [1] 52/24
little [8] 12/21 14/20 15/2 16/8 16/18
21/23 42/14 51/23
live [1] 36/3
lived [1] 4/10
lives [1] 33/12
location [1] 46/6
lock [1] 39/2
locker [1] 15/8
lodging [1] 47/5
long [1] 37/17
longer [2] 4/10 56/16
longest [1] 7/2
look [7] 38/20 38/21 38/22 39/6 42/12
42/13 42/14
looked [2] 23/18 53/9
looking [3] 8/13 24/1 27/2
looks [1] 36/13
lot [10] 4/10 4/17 4/21 27/7 32/9 39/4
42/2 42/11 43/9 43/23
lots [1] 55/1
loving [1] 41/3
lying [2] 29/18 42/4

M
made [16] 9/21 12/22 13/19 17/15 24/6
24/23 30/23 35/25 38/11 38/24 39/14
40/12 42/18 43/18 49/7 50/3
magistrate [3] 3/6 3/7 47/14
majority [1] 38/7
make [10] 3/7 11/8 12/1 23/11 33/14
40/8 50/1 50/7 54/10 57/1
makes [2] 3/16 29/25
making [8] 17/16 17/18 18/11 26/1
34/10 44/7 55/18 57/12
male [1] 11/16

man [4] 23/12 23/13 23/21 34/13
maniac [1] 29/6
manner [1] 18/16
many [1] 22/9
March [8] 11/6 15/10 15/15 15/17 16/2
16/11 26/3 29/1
March 15th [1] 15/10
March 18th [1] 15/15
March 22 [2] 11/6 15/17
March 25 [1] 16/2
March 25th [1] 16/11
mark [1] 26/19
married [2] 23/12 40/1
marshals [3] 44/5 45/13 45/16
material [15] 20/20 30/18 30/19 31/7
32/6 32/24 46/19 46/24 47/1 47/12 49/4
49/9 49/19 50/11 52/16
materials [1] 8/10
matter [11] 3/5 3/8 5/9 28/23 33/19
33/20 34/8 39/25 49/23 57/17 58/6
may [14] 20/17 25/22 27/8 44/3 44/3
44/4 44/13 47/9 51/9 51/17 52/5 55/14
55/14 56/24
maybe [8] 13/11 22/21 23/5 37/20 40/3
49/3 49/17 49/18
me [27] 2/16 3/10 3/20 6/2 6/3 12/17
12/25 13/1 13/2 13/2 21/2 22/9 24/17
25/16 30/25 31/15 31/16 42/25 44/21
48/7 49/7 50/23 54/1 54/5 54/7 55/4
55/20
mean [6] 5/15 28/4 37/6 45/9 51/7 51/8
means [4] 24/13 25/14 49/13 50/25
meant [1] 45/9
media [3] 38/25 40/19 55/10
medical [2] 7/14 45/17
medically [1] 37/3
medication [6] 8/2 8/3 44/18 44/21
44/25 45/3
medications [3] 7/17 8/4 8/18
medicine [3] 7/19 7/23 51/8
meeting [1] 8/1
melt [1] 43/1
melted [2] 16/19 43/1
member [16] 12/20 18/22 30/10 30/20
31/2 31/8 39/10 39/10 48/10 48/15
49/19 49/22 49/23 50/2 50/2 50/7
members [2] 10/18 43/12
memorize [1] 41/14
mental [10] 29/18 37/16 44/4 44/6
44/13 44/16 56/2 56/7 56/10 56/11
mentioning [1] 56/14
Merrillville [1] 10/14
met [1] 9/13
Mexico [1] 11/15
might [8] 12/9 12/19 23/21 28/10 28/11
35/6 37/15 55/9
mild [1] 57/12
military [1] 47/17
militate [4] 53/5 53/10 53/22 56/22
militates [2] 55/22 56/5
mind [2] 23/7 28/5
minor [18] 11/3 11/7 11/14 11/17 12/15
14/18 15/1 15/5 15/12 15/14 15/19
16/14 17/19 19/12 19/14 21/14 21/16
46/1
minors [2] 16/24 19/24
minute [3] 40/9 51/22 53/11
mischaracterized [1] 31/21
mischaracterizing [1] 31/18
misconstrued [1] 41/21

misleading [1] 31/22
mistake [1] 8/19
mistreatment [1] 31/24
mixed [1] 53/24
mob [1] 44/12
model [1] 57/5
money [11] 16/4 16/9 19/20 19/22
29/16 29/16 40/9 43/1 47/4 47/16 55/2
monitoring [6] 9/18 9/25 36/25 37/10
46/5 50/25
Montag [3] 1/22 9/12 9/13
month [1] 43/2
months [2] 43/3 54/12
more [19] 10/24 12/9 12/22 14/21
14/21 16/8 16/18 18/18 27/21 29/23
29/23 30/6 36/19 37/5 47/8 52/17 53/13
55/25 57/13
morning [2] 2/5 7/25
Morocco [13] 14/20 26/9 27/6 27/25
29/8 29/9 29/11 29/12 29/14 29/14
29/19 30/1 39/9
most [5] 3/9 11/21 32/14 32/15 35/23
mostly [1] 20/19
mother [2] 34/3 36/2
motion [8] 2/20 3/3 4/3 6/20 10/16 17/9
47/15 49/7
Moussa [5] 15/18 29/24 30/2 30/18
41/8
move [3] 5/7 27/10 40/9
moving [3] 2/17 11/15 29/14
Mr [1] 48/12
Mr. [36] 2/8 2/8 2/8 2/16 3/13 3/15 3/21
3/23 4/9 5/3 6/2 6/15 7/23 10/7 10/9
10/10 11/21 13/8 14/3 20/19 22/25 23/2
37/23 37/24 38/1 38/5 38/15 38/16
39/20 44/19 48/13 48/22 49/7 49/11
54/15 57/21
Mr. Durkin [11] 2/8 2/16 3/15 3/23 5/3
23/2 37/23 44/19 48/22 54/15 57/21
Mr. Herman [3] 2/8 7/23 49/7
Mr. Kolar [6] 4/9 6/15 10/7 13/8 22/25
37/24
Mr. Zanzi [15] 2/8 3/13 3/21 6/2 10/9
10/10 11/21 14/3 38/1 38/5 38/15 38/16
39/20 48/13 49/11
Mr. Zanzi's [1] 20/19
Ms. [6] 2/7 8/1 9/12 25/20 36/6 56/6
Ms. Elhassani [5] 2/7 8/1 25/20 36/6
56/6
Ms. Montag [1] 9/12
much [7] 2/23 29/23 41/5 42/3 55/5
55/7 55/25
mug [1] 57/7
multiple [8] 8/18 10/18 10/25 21/9
22/23 38/12 46/1 54/11
murky [1] 21/4
Muslim [2] 31/1 31/2
Muslims [1] 30/24
my [19] 5/6 9/1 19/5 19/9 25/2 31/16
35/22 36/3 40/11 40/12 40/16 42/25
49/13 51/6 53/11 53/12 55/16 55/18
57/13
myself [2] 4/12 48/24

N
National [1] 23/22
nature [5] 43/9 52/20 53/7 53/16 53/20
navigating [2] 45/24 46/3
necessarily [1] 7/15
necessary [1] 9/8

N
need [5] 5/7 30/7 44/4 44/13 51/4
needed [1] 24/24
needs [3] 36/22 44/6 44/16
nefarious [1] 21/10
Neither [1] 43/5
never [10] 16/12 17/18 17/19 18/7 49/5
49/8 49/12 55/11 56/9 56/12
new [1] 8/2
news [1] 40/19
next [5] 14/10 16/10 16/20 19/12 21/25
nice [1] 34/1
night [2] 7/22 8/6
nights [1] 8/3
no [28] 2/19 2/25 3/16 5/3 5/14 8/25
20/22 26/23 27/20 31/23 36/25 41/10
45/1 45/20 46/7 46/12 46/15 49/21
52/21 53/2 56/7 56/17 56/17 56/20
56/21 57/19 57/20 57/23
No. [1] 2/6
No. 2:18-CR-33 [1] 2/6
nobody [1] 6/19
Noel [1] 17/6
none [1] 40/25
nonsensical [1] 49/24
NORTHERN [2] 1/1 47/14
not [103]
not omniscient [1] 44/1
note [3] 46/20 55/7 57/3
nothing [4] 6/4 33/10 48/8 48/20
notify [1] 5/19
November [6] 2/15 10/23 11/1 11/11
11/12 39/8
novo [3] 3/9 3/18 6/11
now [14] 5/17 8/10 8/15 8/16 16/13
25/8 25/9 36/11 36/16 39/15 40/14
41/20 42/21 50/21
number [1] 53/18
numbers [2] 24/20 25/3
numerous [1] 38/25
nurse [2] 8/7 45/9

O
oath [2] 50/3 50/8
oaths [1] 30/16
objecting [1] 44/14
objection [5] 3/11 5/3 5/6 5/13 26/22
observed [1] 48/1
obtain [1] 8/8
obviously [7] 8/9 11/11 12/7 16/2 16/12
16/23 18/10
occasion [1] 8/19
occurred [1] 12/5
occurring [1] 20/16
of Children [1] 35/10
off [8] 8/6 8/18 16/25 17/2 23/23 26/1
27/10 44/20
offender [1] 57/8
offends [1] 31/16
offense [4] 43/10 52/14 53/16 53/17
offenses [1] 52/24
offensive [1] 33/1
offer [1] 28/13
offered [1] 57/7
office [6] 1/12 1/19 9/14 23/24 49/11
56/6
officer [2] 7/12 7/14
often [1] 43/12
oh [4] 34/5 40/11 42/25 49/25
okay [23] 5/15 6/10 9/10 10/3 17/5

17/23 20/13 22/7 22/8 22/24 26/20
27/13 27/17 27/24 28/6 33/15 36/14
37/23 38/18 45/15 48/25 51/22 57/24
Oklahoma [4] 36/3 36/4 36/9 36/13
omniscient [1] 44/1
once [1] 43/2
one [49] 4/15 5/23 8/19 9/16 9/18 9/21
9/21 11/2 11/8 11/14 11/17 12/3 13/3
15/1 15/5 15/12 16/5 16/7 16/9 18/3
18/12 18/12 18/21 19/3 19/9 19/21
19/24 21/15 23/2 23/21 25/2 25/22
25/24 27/4 28/9 34/5 34/10 34/16 41/16
42/20 44/18 47/8 48/2 49/7 49/10 51/24
52/23 53/15 54/13
one-way [3] 16/5 16/9 19/21
ones [2] 12/12 47/13
oneself [1] 47/9
only [12] 5/6 8/23 9/5 17/17 21/4 25/14
31/3 33/13 34/9 34/25 46/23 54/6
open [2] 2/1 52/2
operating [1] 55/5
opportunities [1] 42/8
opportunity [1] 51/15
or at [1] 22/11
or terrorism-related [1] 53/21
order [6] 36/20 42/17 46/2 47/22 48/10
51/14
ordered [2] 2/22 28/22
ordering [1] 44/20
Ordinarily [1] 3/5
organization [3] 30/11 30/20 52/17
organizations [3] 20/21 47/18 48/2
original [1] 27/19
other [22] 10/20 13/20 18/9 18/13 24/4
24/23 29/23 33/1 33/10 34/5 34/15
36/19 37/21 41/11 46/1 46/2 47/17 50/6
52/18 55/10 56/4 56/10
others [2] 21/13 53/18
ought [1] 32/1
our [12] 3/24 5/24 6/25 7/18 8/11 9/12
9/14 21/13 27/4 27/7 28/19 33/11
out [23] 3/12 3/25 4/2 4/9 4/16 6/24
10/24 14/4 21/13 28/12 35/1 37/17
38/19 38/19 39/1 40/7 40/9 40/10 40/17
40/18 41/15 55/2 57/5
outed [1] 32/17
outlets [2] 40/19 55/11
over [9] 6/15 11/23 13/21 16/17 19/18
21/25 28/18 28/18 49/21
overseas [6] 22/22 24/22 30/15 54/11
55/2 56/12
overview [1] 12/10
own [1] 40/20

P
p.m [3] 52/1 52/3 57/25
page [3] 11/11 26/17 27/12
page 12 [1] 11/11
paid [3] 25/10 25/12 25/13
paint [1] 19/6
paragraph [4] 27/11 27/11 27/18 27/22
paralegal [3] 1/22 9/12 9/14
parent [1] 40/10
parents [1] 36/2
Paris [1] 42/17
part [4] 5/15 18/11 20/25 29/20
particular [3] 44/21 52/16 54/24
particularly [4] 13/7 33/22 48/3 57/5
parties [1] 24/22
party [1] 22/2

passing [1] 45/8
passport [1] 37/1
past [1] 45/25
patriarchal [1] 24/3
pattern [1] 14/6
pending [1] 57/16
people [8] 16/8 20/21 34/24 43/12
43/19 46/1 46/1 49/12
people's [1] 52/18
perhaps [6] 8/3 20/22 26/2 32/17 55/5
55/6
period [4] 19/18 24/10 25/17 29/8
permanently [1] 16/10
permit [2] 9/16 9/18
permitted [1] 36/16
person [7] 21/22 34/18 34/19 52/11
52/12 52/22 53/24
personal [2] 31/12 56/1
personnel [4] 31/10 31/11 31/13 47/8
persons [1] 48/5
perspective [1] 13/23
pertinent [1] 53/19
petition [1] 35/15
petitioned [1] 35/16
PHILIP [1] 1/7
phone [1] 28/15
phones [1] 25/4
physical [1] 56/2
physically [1] 34/20
pick [2] 43/3 51/23
picked [1] 29/5
picking [4] 20/2 20/2 29/1 29/2
picture [2] 19/7 35/13
pictures [1] 16/21
pig [1] 33/7
place [4] 9/9 9/21 10/2 39/22
placed [1] 54/13
places [1] 31/18
placing [1] 56/23
planning [1] 4/19
plans [1] 27/8
Plaza [1] 1/12
pleading [5] 24/6 24/12 31/17 33/2
33/12
please [1] 39/19
pleases [1] 10/8
pled [1] 33/11
point [18] 2/17 3/2 11/24 12/8 14/4
14/15 15/22 16/1 18/18 18/19 31/3
39/15 39/16 41/2 41/16 42/19 54/6
57/12
Porter [2] 51/6 57/5
posing [1] 33/13
position [1] 5/24
positive [1] 37/13
possibly [2] 31/13 39/6
post [2] 7/9 13/13
post-arrest [1] 13/13
post-traumatic [1] 7/9
potential [3] 9/11 9/21 54/4
potentially [1] 21/9
PowerPoint [2] 4/11 10/10
practitioner [1] 45/9
praising [1] 33/25
prayers [1] 41/13
precurring [1] 20/7
prediction [1] 51/6
prefer [1] 16/22
preparation [1] 51/11
prepared [5] 4/8 4/10 10/1 11/18 50/21

<p>P</p> <p>preplan [1] 46/3 preplanning [2] 15/11 16/8 preponderance [1] 53/10 prepositioned [2] 11/5 15/7 prepositioning [1] 19/15 present [10] 1/22 2/8 12/25 13/1 13/2 13/2 23/4 27/5 44/22 51/15 presentation [4] 11/22 23/19 33/2 34/1 presented [7] 4/22 53/7 53/25 54/1 54/7 55/19 57/6 presently [2] 35/8 35/9 presumption [13] 46/19 46/20 46/22 47/19 50/15 50/17 51/14 52/21 52/25 53/2 53/4 53/6 53/8 pretrial [4] 2/20 7/12 7/13 52/6 pretty [3] 8/14 50/13 50/24 preview [1] 3/20 primarily [2] 6/21 38/10 prior [2] 7/14 8/4 prison [4] 32/3 32/3 32/5 32/11 prisoner [2] 31/21 57/5 prisoners [1] 32/21 probably [2] 50/12 55/15 probation [2] 56/6 56/13 problem [1] 40/17 problems [1] 56/11 procedurally [1] 25/24 proceed [5] 4/19 6/3 10/5 10/9 13/10 proceeding [1] 3/11 proceedings [5] 2/1 6/8 35/17 52/2 58/5 procure [1] 15/23 procured [1] 20/15 produced [1] 2/24 production [2] 18/6 34/15 proffer [8] 4/19 6/3 10/9 11/20 12/18 13/9 27/5 53/25 proffered [2] 38/18 55/4 progress [1] 9/21 prohibited [2] 56/19 56/19 prominent [1] 29/12 prompted [1] 6/11 proof [2] 27/7 49/22 property [2] 47/3 56/21 propose [2] 9/17 9/25 proposed [1] 4/4 proposition [1] 49/2 prosecute [1] 23/20 prosecuted [3] 30/13 31/7 49/14 prosecuting [1] 32/4 prosecution [1] 30/4 prosecutor [1] 29/3 prospect [2] 55/11 56/23 prove [1] 55/17 provide [9] 4/20 16/18 28/13 31/9 41/24 49/19 50/23 50/24 51/21 provided [9] 31/11 31/13 32/24 39/3 39/4 39/5 46/9 47/21 54/8 provides [1] 46/7 providing [7] 20/20 25/3 32/6 42/3 47/16 47/22 52/16 proxy [1] 30/4 psychotherapy [1] 9/20 PTSD [4] 7/9 7/15 7/19 7/20 public [4] 12/1 16/25 24/6 35/1 public-facing [1] 16/25 publicity [1] 37/5 publicly [1] 16/24 purchase [3] 29/5 33/4 54/22 purchased [2] 29/4 55/1</p>	<p>purchasing [1] 33/5 purpose [2] 21/3 48/4 purposes [1] 5/12 pursuant [1] 2/10 put [13] 2/23 6/19 11/22 15/8 18/14 20/14 23/5 36/1 39/1 40/17 40/18 53/12 57/13 puts [1] 4/11 putting [2] 9/5 23/7</p> <p>Q</p> <p>quarter [1] 51/24 question [6] 9/1 12/21 13/25 22/4 23/10 53/1 questions [6] 11/19 20/24 21/1 23/3 42/2 42/11 quickly [1] 8/15 quite [1] 38/4</p> <p>R</p> <p>racial [1] 30/23 radical [1] 29/22 radicalization [1] 12/23 radicalized [3] 29/24 29/24 31/4 raised [1] 55/11 raises [2] 42/2 42/11 raising [2] 31/3 31/16 range [4] 15/2 19/11 34/23 47/11 ranges [2] 34/22 35/1 raped [2] 32/5 32/23 Raqqa [1] 32/3 rather [3] 16/7 25/24 29/12 re [2] 2/14 2/17 re-visit [2] 2/14 2/17 reach [1] 36/7 reachable [1] 28/15 read [5] 3/2 16/17 27/11 27/14 28/25 real [3] 20/18 29/22 41/4 realistic [1] 37/5 realistically [1] 36/21 reality [1] 7/1 realizes [2] 36/18 36/20 really [14] 4/1 13/22 16/21 18/15 21/18 30/2 32/6 32/15 49/14 54/5 54/6 54/9 54/17 56/15 reason [8] 5/18 21/7 24/4 29/10 29/20 36/19 39/4 44/17 reasonable [1] 55/18 reasonably [4] 37/11 52/11 52/22 53/2 reasons [4] 25/22 51/20 53/12 57/13 rebuttable [1] 46/21 rebutted [5] 47/19 53/1 53/4 53/6 53/8 recalls [1] 25/20 receipt [1] 44/15 received [3] 2/19 4/4 31/24 receiving [1] 7/17 recent [2] 35/22 35/23 recess [3] 51/23 52/1 57/25 reciting [1] 41/13 recognized [1] 44/5 recommending [1] 9/22 recommends [1] 51/9 record [8] 2/6 2/11 5/16 13/12 37/8 41/22 53/11 58/5 recorded [1] 13/16 recording [1] 24/20 records [3] 8/8 10/17 10/17 redaction [1] 27/12 reference [1] 5/1 referenced [1] 17/25</p>	<p>referred [1] 11/10 referring [2] 26/18 27/23 Reform [6] 2/19 51/5 51/12 51/19 52/8 53/14 regard [2] 36/5 52/19 regime [1] 44/10 regular [1] 6/14 regularly [1] 25/3 related [3] 24/19 25/5 53/21 relates [2] 27/21 38/1 relating [1] 10/22 relationship [2] 22/16 42/3 relatively [1] 19/16 release [12] 2/20 9/17 10/16 24/9 33/21 35/3 47/15 50/13 52/13 52/21 53/5 57/1 released [5] 6/23 44/17 49/3 51/16 57/15 releases [1] 8/8 releasing [1] 56/23 relevant [4] 12/6 12/11 22/12 24/15 reliable [1] 25/15 relocating [1] 16/10 rely [1] 14/14 remain [3] 4/24 12/7 57/16 remind [1] 48/8 reminds [1] 49/7 Repeat [1] 17/21 repeatedly [1] 32/5 report [2] 7/7 57/6 reported [3] 2/2 52/3 56/7 Reporter [1] 58/9 represented [2] 44/19 44/21 representing [1] 25/16 request [5] 2/20 3/10 6/25 10/4 57/15 requested [1] 58/2 requests [1] 8/11 require [2] 6/13 48/14 required [2] 52/12 53/13 requires [1] 48/9 research [1] 46/11 reserve [1] 37/17 reserved [1] 2/13 residence [2] 56/3 56/17 resold [1] 29/7 resources [3] 47/1 47/12 56/3 respect [3] 5/24 37/19 49/1 respectfully [3] 14/12 17/11 48/16 respond [3] 37/24 38/3 54/1 responding [1] 54/6 response [7] 2/22 2/24 3/3 3/24 10/16 14/4 41/18 rest [1] 49/24 result [1] 56/12 return [3] 14/17 16/1 21/3 returned [1] 26/3 review [2] 3/1 5/10 reviewed [1] 54/18 ride [1] 40/2 ridiculous [2] 30/24 34/6 riflescopes [6] 14/8 15/23 20/2 29/2 43/3 54/24 right [24] 2/4 2/13 7/12 8/10 8/15 8/16 13/14 14/10 16/8 16/10 17/6 17/16 17/25 18/25 19/3 21/18 21/25 22/17 22/20 28/2 34/11 48/13 52/5 52/6 ripped [1] 40/6 rise [2] 2/3 52/4 risk [11] 8/22 9/3 12/5 17/11 19/4 36/24 41/5 45/23 47/19 51/1 54/14 risked [1] 33/12</p>
---	--	---

R
Risperdal [1] 8/13
road [1] 2/14
Roberts [1] 1/16
rock [1] 50/25
rock-solid [1] 50/25
room [1] 57/9
roughly [1] 25/19
route [1] 22/1

S
S/Stacy [2] 58/8 58/8
safe [1] 47/6
safer [1] 7/3
safety [5] 15/8 37/11 52/12 52/22 53/3
said [20] 3/4 7/2 17/14 17/18 17/19
17/19 19/9 25/8 27/1 29/3 29/3 31/1
38/9 45/9 47/25 47/25 50/19 55/10 56/8
57/13
SAMANTHA [5] 1/5 2/7 15/12 23/11
52/7
Samantha Elhassani [4] 2/7 15/12
23/11 52/7
same [4] 3/22 34/18 34/19 36/24
savage [1] 44/10
saved [1] 33/12
saw [1] 20/4
say [19] 8/8 11/4 24/23 26/7 27/1 28/2
30/4 31/10 31/18 31/21 40/11 40/25
41/21 42/19 45/22 49/25 50/16 50/22
56/11
saying [9] 16/5 17/13 18/10 19/1 19/4
27/15 27/17 41/15 45/11
says [7] 18/23 24/11 38/23 41/1 41/8
54/15 54/15
school [3] 11/14 40/7 40/10
scope [3] 12/2 43/21 47/1
screen [1] 21/21
scrutiny [1] 21/7
scuffle [1] 57/8
seal [5] 4/24 4/25 5/7 5/18 5/19
search [1] 4/16
seated [3] 2/4 10/13 52/5
second [7] 5/4 6/17 13/15 22/18 47/20
48/12 53/23
secreted [1] 21/13
Section [2] 47/2 52/15
Section 2339A [1] 47/2
securities [1] 47/5
Security [1] 23/23
see [18] 4/12 4/22 9/16 16/22 16/23
17/16 19/13 20/15 21/5 21/6 21/10 32/7
32/21 33/6 33/13 37/8 49/10 54/18
seeing [1] 45/2
seeking [2] 36/11 43/13
seeks [1] 52/6
seems [2] 24/17 37/22
seen [3] 17/8 41/10 56/9
selling [1] 29/17
send [1] 3/5
sending [1] 11/14
sense [3] 3/16 23/24 42/13
sensitive [1] 26/13
sent [1] 28/21
separate [1] 44/5
serial [2] 24/20 25/3
series [1] 17/10
serious [4] 8/14 12/21 33/18 44/9
service [1] 47/3
services [4] 7/12 7/13 34/2 47/5

session [1] 52/4
set [2] 2/11 11/1
settings [1] 20/12
settlement [1] 31/19
seven [2] 14/24 19/13
several [3] 8/1 43/2 54/11
sex [1] 33/8
she [211]
she's [30] 7/6 7/20 8/14 8/21 9/2 9/14
20/7 31/1 31/4 35/4 35/5 36/8 36/11
36/16 36/18 36/21 37/1 37/2 37/4 39/1
39/2 39/22 40/17 42/3 49/14 50/15 51/1
51/6 52/16 56/19
shelter [1] 56/23
shelters [1] 9/16
shift [1] 12/23
ship [1] 24/24
shipped [1] 25/4
shipping [1] 24/22
shooting [1] 35/1
short [4] 9/7 15/17 19/17 50/22
shot [1] 51/7
should [8] 2/14 10/1 11/4 16/23 20/17
46/23 51/20 51/20
shouldn't [1] 13/11
show [4] 26/12 26/14 28/19 30/2
showing [1] 16/8
shown [1] 37/14
shows [3] 26/25 27/1 45/24
shred [4] 31/3 31/14 33/5 34/14
sides [2] 34/25 53/25
significant [4] 12/18 21/11 25/21 30/7
SIMON [1] 1/7
simple [1] 34/8
simply [7] 9/7 14/11 28/23 29/5 31/1
37/8 55/18
since [1] 3/6
single [3] 39/22 42/20 42/20
sister [1] 56/8
sites [1] 32/22
situation [4] 28/19 37/7 37/19 44/22
situations [1] 45/24
slaves [4] 33/4 33/6 33/8 33/10
slides [1] 16/20
slightly [1] 54/2
sneak [1] 28/12
sniper [1] 19/12
so [78]
solid [1] 50/25
solved [1] 36/25
some [34] 2/17 2/25 3/25 4/12 4/16
9/11 12/5 12/8 12/11 14/21 15/6 16/19
16/21 16/22 18/9 18/15 24/4 30/23 34/4
36/10 37/21 41/2 43/24 44/2 44/3 44/3
46/6 46/10 46/12 50/24 51/8 54/4 55/7
56/11
somebody [12] 9/19 23/11 25/6 30/10
31/8 32/4 32/17 35/7 38/20 45/12 45/13
50/7
somehow [5] 27/23 31/5 31/17 32/24
44/19
someone [12] 7/15 9/23 11/14 14/5
21/8 35/3 39/11 39/25 40/1 40/5 49/19
57/10
something [9] 2/14 24/14 25/23 26/10
30/14 31/19 31/19 49/16 56/13
somewhat [2] 12/9 53/12
somewhere [2] 6/25 49/18
son [4] 17/18 40/7 41/4 41/9
sophistication [1] 42/8

sorry [3] 26/2 28/1 50/22
sort [4] 2/15 4/11 53/15 57/11
sounds [1] 54/4
source [1] 24/7
south [1] 34/25
span [1] 54/11
spanned [1] 25/17
spare [1] 9/24
speak [5] 7/23 13/25 36/7 44/18 44/23
speaking [1] 55/25
speaks [2] 28/17 56/1
Special [4] 10/12 11/8 11/13 11/20
specifically [1] 52/17
spent [1] 29/13
spoke [1] 4/7
spy [4] 32/12 32/13 32/17 32/23
stabilized [2] 15/22 20/3
stabilizer [1] 54/25
Stacy [4] 51/23 58/4 58/8 58/8
stand [1] 37/17
standards [1] 52/13
start [3] 12/12 18/15 18/17
starting [1] 12/10
state [1] 49/18
statement [15] 12/22 13/16 17/17 18/1
26/2 26/4 26/5 26/7 26/8 27/18 28/4
28/5 30/23 30/24 38/10
statements [5] 10/17 13/17 13/19 14/21
38/25
STATES [9] 1/1 1/3 1/7 2/7 30/14 47/20
48/6 52/15 55/2
status [1] 2/15
statute [2] 48/9 52/24
statutes [1] 48/19
statutory [1] 46/20
staying [1] 21/16
step [1] 18/24
stepchild [1] 22/15
stepped [1] 29/4
still [1] 35/19
stipulated [1] 2/13
stop [2] 15/20 42/19
stopped [1] 11/14
storage [1] 15/8
story [5] 34/8 39/2 40/17 40/18 40/21
Street [1] 1/17
strength [2] 30/8 42/12
stress [3] 7/9 11/24 12/3
strong [3] 54/3 54/19 55/15
stronger [1] 55/21
strongly [1] 56/22
stuff [1] 34/4
stupid [2] 37/15 49/6
subject [2] 13/20 27/18
submit [2] 4/14 4/24
submitted [2] 4/14 7/7
subsequent [1] 6/8
substances [1] 47/8
such [2] 9/22 56/1
sudden [1] 25/8
suffered [1] 56/9
suffering [3] 7/9 7/15 7/20
sufficient [1] 37/10
suggest [3] 21/12 31/17 57/9
suggested [1] 49/15
suggesting [2] 33/25 45/6
suggestion [2] 14/11 33/2
Suite [2] 1/12 1/20
summary [1] 16/16
supervision [1] 33/4

<p>S</p> <p>supplement [1] 8/10 supplies [1] 47/10 supply [1] 30/19 support [20] 7/4 20/20 30/18 30/19 31/7 32/6 32/24 39/11 43/14 46/19 46/24 47/1 47/12 48/4 48/18 49/4 49/9 49/19 50/11 52/16 supported [2] 39/12 48/3 supporter [1] 47/23 supports [1] 5/24 suppose [1] 34/1 supposedly [1] 12/22 sure [11] 4/4 5/5 6/18 10/11 17/24 26/16 28/3 33/14 36/8 36/11 54/14 suspicion [1] 40/9 suspicious [3] 21/18 21/22 28/21 swore [1] 50/8 sworn [1] 4/19 sympathizers [1] 37/6 sympathy [1] 31/9 Syria [12] 14/10 21/25 40/7 41/2 41/2 43/23 43/24 44/10 48/5 49/23 50/3 54/24</p>	<p>29/24 30/25 33/10 34/15 Thank [6] 22/25 23/1 23/9 37/23 51/25 57/24 Thanks [1] 17/7 that [416] that's [59] their [13] 2/24 6/11 13/23 24/6 25/7 28/24 28/24 28/25 31/17 33/2 37/9 45/17 50/7 them [27] 6/22 9/16 11/7 12/25 24/24 26/9 28/14 28/14 28/15 29/5 30/12 32/2 32/2 32/4 32/7 33/8 33/11 34/3 34/3 34/25 37/9 40/6 42/10 50/24 53/11 54/13 56/20 themselves [1] 31/9 then [33] 2/18 3/22 9/19 10/10 12/20 13/1 13/7 14/19 15/6 15/13 15/16 15/17 16/14 16/19 16/20 19/8 19/13 19/25 21/15 21/17 22/18 22/21 26/9 29/4 32/9 32/23 33/20 38/1 39/6 43/3 53/18 54/23 55/13 theory [4] 21/3 30/21 40/15 43/4 therapist [1] 56/9 therapy [1] 51/8 there [43] 4/20 9/16 9/18 15/11 16/2 16/7 16/18 16/21 18/6 21/6 21/17 21/19 22/13 22/18 23/6 23/7 24/4 25/25 29/6 31/13 33/15 33/21 33/22 34/11 35/3 35/24 38/4 39/1 40/18 40/18 44/9 44/11 45/12 47/16 52/9 52/10 52/21 53/2 54/3 54/12 54/21 55/15 56/11 there's [31] 5/7 5/19 7/8 7/20 12/8 12/18 13/12 14/21 16/21 17/10 17/10 20/22 21/7 22/15 29/10 30/6 30/13 31/3 31/6 31/23 34/4 34/14 35/4 35/5 35/24 36/23 36/25 41/10 47/11 48/8 55/1 thereafter [1] 13/19 these [39] 8/18 11/2 11/5 11/22 12/5 12/12 13/19 13/21 16/20 17/2 17/15 18/11 18/15 20/15 20/20 20/21 21/9 22/13 23/11 28/21 29/5 35/8 39/13 40/7 40/8 40/12 40/12 40/19 41/11 41/12 42/18 42/20 42/24 43/3 45/11 46/18 48/19 50/11 55/3 they [82] they'd [4] 6/23 23/24 26/10 50/5 they're [10] 13/20 15/14 27/23 29/9 29/12 32/4 35/1 35/9 54/15 54/16 they've [2] 44/21 49/2 thing [8] 3/22 12/3 29/3 33/1 34/7 34/9 39/22 42/20 things [19] 10/21 12/4 12/5 12/7 13/21 13/22 18/15 19/6 25/2 25/24 40/13 41/14 43/4 43/24 44/12 55/10 55/24 56/1 56/4 think [57] 3/16 3/25 5/6 5/18 5/24 7/4 7/8 7/13 7/19 9/13 11/24 14/13 18/13 19/6 20/11 21/7 21/22 21/23 23/21 23/24 24/8 24/15 25/21 25/21 26/13 27/7 27/15 27/22 28/10 30/1 30/5 30/7 33/22 35/3 36/16 36/24 37/2 37/4 37/14 38/6 45/6 45/23 46/13 51/3 51/20 53/6 54/1 54/3 54/16 55/20 55/22 56/5 56/13 56/22 56/25 57/11 57/12 thinking [1] 49/13 thinks [2] 6/20 29/8 third [8] 15/11 19/15 19/24 24/22 27/11 27/11 55/24 56/14 this [150] THOMAS [1] 1/16</p>	<p>those [23] 4/14 8/9 10/20 12/7 13/17 18/13 18/21 18/24 19/6 19/23 21/13 29/4 33/6 34/15 39/5 40/25 47/10 42/8 45/25 51/20 52/13 53/10 56/21 though [2] 6/11 26/7 thought [9] 3/9 9/8 27/6 29/14 29/16 32/12 32/13 32/16 32/23 threatened [1] 55/12 three [6] 8/3 19/22 22/10 35/25 36/13 54/12 threw [1] 57/8 through [11] 11/19 14/16 15/4 15/20 19/18 23/18 24/2 24/25 46/3 51/9 55/10 throughout [2] 42/15 49/5 thumb [1] 55/6 ticket [4] 16/5 16/9 16/11 19/21 ties [4] 56/2 56/15 56/18 56/25 time [15] 4/7 7/2 12/16 15/5 20/5 22/12 22/13 24/6 25/17 28/5 29/8 29/14 33/13 37/17 49/25 timeline [9] 14/24 18/15 18/17 19/16 19/18 23/6 24/5 27/9 42/15 times [2] 38/12 54/11 Title [2] 47/2 52/15 today [11] 3/11 3/21 4/8 6/4 10/1 16/24 35/2 50/21 55/16 55/20 57/4 together [4] 16/14 18/16 18/24 19/6 Tokyo [3] 15/5 15/6 15/15 told [13] 2/16 6/3 6/22 7/11 7/13 7/18 8/7 8/12 26/8 41/1 42/15 56/6 56/13 ton [1] 50/4 too [4] 5/24 17/2 19/17 41/5 took [15] 10/25 11/2 11/7 11/25 12/11 13/15 25/7 30/16 40/6 40/7 40/7 40/9 40/10 50/3 57/7 tortured [3] 32/5 32/21 32/22 totality [1] 39/7 totally [5] 29/17 29/25 30/24 35/17 37/15 touched [1] 53/15 town [1] 28/13 training [1] 47/5 transcript [3] 1/6 58/2 58/5 transferred [1] 55/2 transportation [1] 47/10 traumatic [1] 7/9 traumatized [1] 7/1 travel [7] 12/16 14/19 15/13 16/3 27/21 48/5 56/12 traveled [1] 16/15 traveling [9] 14/17 15/19 15/24 19/14 21/8 21/19 22/1 22/2 27/3 travels [2] 15/4 47/24 Trazodone [1] 8/5 treat [1] 7/19 treated [3] 32/12 32/17 41/9 treatment [9] 6/22 6/25 9/20 36/19 36/22 44/14 51/4 51/7 51/16 tremendous [1] 28/9 trial [7] 12/6 12/9 20/17 52/11 54/6 55/10 57/16 tried [1] 38/19 trip [20] 11/6 14/17 14/21 14/25 15/11 16/1 18/20 19/9 19/11 19/15 19/24 20/1 20/1 21/3 21/11 21/15 21/17 39/9 40/23 46/3 trips [21] 10/25 11/2 11/5 12/11 15/7 18/21 19/22 20/4 20/15 21/9 22/13 23/11 28/21 28/21 40/7 40/8 42/5 42/5 42/24 46/1 54/11</p>
<p>T</p> <p>tables [1] 25/8 tactical [5] 20/8 20/15 20/21 31/11 54/24 take [12] 5/2 5/9 18/5 19/22 19/25 24/25 39/5 42/24 51/3 51/12 51/22 52/9 taken [8] 6/24 16/2 16/18 18/2 19/9 21/12 21/13 45/3 takes [4] 15/1 15/12 21/25 33/20 taking [5] 19/14 19/20 19/22 34/22 45/25 talk [8] 6/4 14/22 16/1 20/19 22/6 31/22 41/20 53/11 talked [7] 7/24 18/12 18/20 19/21 43/8 43/9 43/23 talking [6] 12/3 19/3 34/17 34/17 38/6 40/5 talks [1] 50/6 tangible [1] 47/3 Task [1] 10/14 telephone [1] 9/24 tell [7] 13/8 27/2 28/14 28/14 32/1 42/10 50/23 telling [1] 9/7 tells [3] 18/22 23/13 42/25 temporarily [1] 6/24 temporary [1] 36/2 tender [1] 26/15 tendered [1] 17/9 term [1] 24/3 terms [3] 4/3 8/18 50/13 terrible [2] 20/21 44/12 terrified [2] 32/14 32/15 terrifying [1] 41/16 territory [2] 16/11 30/15 terrorism [11] 10/14 24/19 25/5 28/11 41/23 41/24 46/23 52/23 53/18 53/21 53/21 terrorism-related [2] 24/19 25/5 terrorist [6] 28/10 30/10 30/20 47/18 48/2 52/17 terrorizes [1] 23/13 testify [2] 10/12 50/4 testimony [2] 4/18 4/20 than [10] 4/10 7/3 8/3 9/2 20/23 27/7</p>		

T
troubling [6] 16/21 17/11 18/10 18/16
19/12 54/16
true [11] 7/4 17/14 29/22 32/7 32/8
32/8 33/11 44/3 44/3 45/2 58/4
truncated [1] 53/12
truthful [1] 42/5
try [1] 36/7
trying [15] 8/8 9/7 11/23 14/2 16/16
19/16 35/19 39/2 40/20 40/21 44/12
46/10 51/9 56/25 57/1
Turkey [9] 14/10 14/19 14/20 16/5
16/15 19/21 21/25 26/9 40/23
turn [5] 6/15 13/21 16/25 17/2 21/4
turns [1] 25/8
two [16] 12/7 13/13 13/18 14/8 15/24
16/14 17/10 18/24 19/6 22/14 24/10
25/6 25/17 45/11 46/17 52/18
two-year [2] 24/10 25/17
type [4] 15/9 19/3 36/10 45/14

U
U.S [8] 1/12 19/20 19/25 20/22 23/23
45/13 49/11 58/9
U.S.C [1] 52/8
ugly [2] 34/4 34/10
ultimate [1] 45/23
uncommented [1] 34/5
uncommon [1] 7/15
under [25] 4/24 4/25 5/7 5/18 5/19 13/3
23/15 25/7 29/6 36/8 48/19 50/11 50/18
51/5 51/12 51/13 51/18 52/15 52/24
53/4 53/9 53/13 55/5 55/24 56/14
underneath [1] 27/12
understand [9] 8/25 10/3 10/3 28/8
29/13 31/12 33/17 45/19 46/21
understanding [4] 25/2 35/22 36/3
54/25
understands [1] 37/2
understood [2] 15/24 17/24
unformulary [1] 45/14
unfortunately [1] 16/12
uniforms [1] 47/17
unit [1] 9/19
UNITED [9] 1/1 1/3 1/7 2/7 30/14 47/20
48/6 52/15 55/2
unknown [1] 46/6
unless [2] 20/24 20/25
unquestionably [2] 23/16 23/16
unrelated [1] 24/12
unreliable [1] 25/9
unsealed [1] 5/8
until [4] 14/17 40/8 49/23 50/2
untrue [1] 17/14
untruthful [1] 42/4
unusual [2] 38/20 43/11
up [19] 3/2 5/9 16/9 18/18 20/2 20/2
23/6 23/7 24/5 29/2 29/2 29/5 30/16
37/17 43/3 43/22 51/21 51/23 57/3
upon [6] 14/14 34/5 40/14 53/7 53/16
54/8
uprooted [1] 40/5
upside [1] 50/10
us [5] 3/11 4/5 4/12 33/20 40/15
use [6] 7/19 24/3 31/12 34/24 34/25
42/13
used [3] 16/12 33/21 54/23
using [3] 46/1 46/1 46/1
usually [1] 50/6

V
vacation [1] 42/17
valid [1] 57/4
valuable [1] 25/15
various [1] 55/10
version [2] 29/25 38/11
versus [1] 2/7
very [23] 2/23 12/18 16/6 17/10 18/16
19/6 19/12 20/17 20/18 28/23 36/17
37/4 37/7 37/13 40/14 40/14 44/13
44/22 45/24 54/16 54/16 54/19 55/5
vet [1] 36/4
vetted [1] 35/25
victim [2] 23/17 23/21
video [13] 17/16 17/18 17/25 18/1 18/5
18/7 18/8 34/6 34/6 34/9 34/10 41/11
57/6
videos [9] 17/10 17/10 17/15 17/22
18/9 18/11 18/13 41/10 54/15
view [1] 6/10
viewed [1] 24/2
viewing [1] 3/18
violence [3] 24/2 48/5 53/17
violent [1] 48/3
vis [2] 30/7 30/7
vis-a-vis [1] 30/7
visit [2] 2/14 2/17
visited [1] 11/16
visual [1] 4/11
voice [1] 31/16
volatility [1] 57/10
voluntary [1] 10/18

W
wage [1] 48/5
want [15] 8/12 12/3 12/6 12/7 13/1 13/2
16/5 16/9 16/20 16/24 26/6 28/12 32/14
38/2 50/21
wanted [2] 4/21 23/2
wants [6] 35/16 39/15 39/15 39/21
39/21 40/11
war [2] 31/22 46/4
warrant [1] 25/25
warrants [1] 4/16
was [164]
Washington [2] 24/1 25/22
wasn't [6] 16/2 16/3 16/8 23/25 40/2
49/22
wasting [1] 32/9
watched [2] 17/22 57/6
way [19] 3/9 3/12 6/3 10/9 14/10 16/5
16/9 19/21 19/25 20/17 21/17 36/25
40/6 43/2 49/13 50/6 53/13 54/17 57/13
ways [1] 29/16
we [107]
we'll [10] 6/8 10/23 14/1 14/20 14/22
14/23 15/2 37/20 51/22 51/23
we're [22] 2/6 4/4 4/18 6/4 7/18 8/17
8/24 10/1 11/23 13/21 14/6 14/14 16/16
17/13 19/16 32/9 36/19 40/5 43/16 44/1
44/12 54/5
we've [9] 6/6 8/8 9/15 9/21 13/20 17/9
38/19 43/7 43/20
weak [1] 50/13
weakest [1] 49/10
weakness [1] 5/25
weapon [1] 30/16
weapons [1] 47/7
week [3] 2/18 14/24 36/8
weigh [1] 23/2

weighs [2] 24/8 57/11
weight [7] 13/4 13/6 43/8 53/23 54/3
55/19 55/21
weighty [1] 13/7
well [29] 3/24 4/6 5/9 6/9 8/25 9/1 9/4
20/10 20/17 21/2 21/5 22/12 28/1 32/11
33/6 34/6 36/5 38/20 43/20 44/13 45/1
45/5 48/1 52/18 54/21 55/9 55/14 55/23
56/4
went [5] 23/14 30/15 40/2 40/23 50/3
were [38] 2/1 4/1 4/22 8/4 10/21 11/15
12/14 13/17 14/9 14/9 15/24 17/15 25/4
26/9 27/6 27/8 28/10 28/12 29/7 29/14
29/18 30/1 31/17 34/1 36/9 38/4 38/5
41/2 41/2 42/17 42/22 42/23 42/25 45/6
50/11 52/2 54/23 55/1
weren't [1] 33/18
west [1] 34/25
what [92]
what's [6] 2/19 19/15 23/19 33/23 41/16
45/14
whatever [7] 5/18 37/14 37/15 37/18
37/22 50/1 56/24
whatsoever [2] 7/8 41/25
when [30] 7/25 11/13 11/16 12/1 13/21
14/9 18/14 18/17 18/21 19/3 19/4 19/8
19/9 19/13 20/14 20/14 20/15 20/15
21/8 22/6 23/12 23/14 26/5 26/6 30/10
30/14 38/9 42/6 52/10 56/25
where [21] 2/16 4/5 11/6 12/9 16/7
18/15 19/11 21/11 28/14 31/7 31/16
35/8 35/12 36/18 39/10 42/3 42/5 47/14
47/22 51/5 57/14
whereby [2] 57/6 57/7
wherewithal [2] 37/16 42/9
whether [18] 8/21 9/2 9/17 9/19 21/20
21/21 30/2 30/13 34/2 35/16 36/11
37/21 44/5 48/17 53/4 53/17 55/16
55/17
which [35] 2/24 3/25 3/25 4/11 4/15 7/4
7/7 8/4 8/13 9/16 13/24 24/20 25/4
25/14 27/4 28/9 29/25 29/25 30/22
30/24 32/3 33/20 36/17 40/22 42/4 46/6
46/21 47/21 49/13 49/15 52/8 53/16
57/6 57/9 57/10
while [8] 15/24 20/16 22/22 29/6 34/16
40/20 50/8 55/14
who [28] 8/15 9/12 10/13 21/24 23/12
23/15 24/10 25/6 30/23 32/4 32/24
34/12 34/17 34/19 39/11 39/25 40/1
40/1 40/5 41/14 43/12 45/13 47/9 49/19
50/4 50/14 56/8 57/10
whole [6] 28/25 28/25 34/7 34/22 39/7
40/21
wholly [1] 39/1
whom [1] 20/7
whomever [1] 8/7
why [20] 3/20 9/8 9/9 10/3 13/24 20/21
23/10 23/14 26/14 32/16 34/24 37/8
37/9 38/20 39/24 39/24 40/8 41/18
41/18 43/10
widgets [1] 24/23
wife [2] 30/14 30/23
will [26] 3/22 5/2 5/17 5/19 8/7 10/10
20/24 26/24 27/14 30/2 30/12 36/1
36/13 37/13 41/21 48/21 49/10 50/4
50/23 50/23 51/6 52/11 53/12 55/15
57/13 57/16
willing [6] 6/23 9/6 19/5 31/9 42/16 46/2
wing [1] 25/7

W

wish [1] 23/3
wishes [1] 37/16
within [2] 13/18 48/1
without [6] 11/3 40/8 42/24 51/7 51/8
51/9
witness [1] 39/11
witnesses [1] 50/5
woman [7] 23/21 24/10 31/4 32/24
34/12 39/25 40/1
won't [4] 5/1 21/20 50/16 51/17
word [3] 48/21 50/16 50/16
words [1] 24/23
worked [1] 24/20
worth [3] 36/15 56/13 57/12
would [54] 2/16 3/5 3/7 3/8 3/10 4/14
4/23 5/7 7/19 8/9 8/10 9/16 9/18 9/18
9/22 9/24 10/15 11/8 11/13 12/5 13/14
13/15 14/4 14/13 18/23 21/11 21/21
21/22 21/23 24/25 27/4 27/5 27/10
32/15 33/15 33/16 33/18 33/25 34/23
35/7 36/10 36/15 37/10 37/12 37/20
38/8 38/20 39/13 40/3 45/22 47/23 48/8
48/18 53/2
would-be [1] 47/23
wouldn't [1] 28/13
writing [3] 4/9 53/13 57/14
wrong [2] 17/20 18/8
wrote [1] 40/20

X

Xenakis [3] 7/8 8/15 51/8

Y

Yazidi [3] 33/4 33/8 33/10
Yazidis [3] 33/15 33/16 33/16
Yazidis' [1] 33/12
Yeah [3] 5/1 17/1 17/7
year [2] 24/10 25/17
years [2] 7/4 25/6
Yemen [2] 24/24 25/4
yes [10] 9/4 22/23 25/11 25/13 25/13
25/18 26/21 32/1 35/21 49/25
yesterday [2] 2/25 4/20
yet [4] 4/4 19/14 22/21 32/24
you [144]
you'll [4] 28/14 28/15 31/15 33/13
you're [12] 16/6 19/3 19/20 19/20 19/22
21/8 21/19 23/12 24/1 25/16 50/22 57/1
you've [7] 6/3 9/13 17/8 19/8 19/9 35/2
41/10
your [78]
Your Honor [61]
yourself [2] 17/4 27/14
YPG [1] 31/23

Z

Z-Y-P-R-E-X-A [1] 8/2
ZANZI [17] 1/11 2/8 3/13 3/21 6/2 10/9
10/10 11/21 14/3 38/1 38/5 38/15 38/16
39/20 48/12 48/13 49/11
Zanzi's [1] 20/19
zone [1] 46/4
Zyprexa [4] 8/2 8/6 8/13 44/19