

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

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES of AMERICA,

Plaintiff,

Case No.: 1:19-CR-0025

v

MUSE A. MUSE, MOHAMED S. HAJI,
and MOHAMUD A. MUSE,

Defendants.

-----/

HEARING ON DEFENDANT'S JOINT MOTION TO DETERMINE COUNSEL
BEFORE THE HONORABLE GORDON J. QUIST, FEDERAL JUDGE
Grand Rapids, Michigan - Thursday, February 28, 2019

APPEARANCES:

For the Government: Clay M. West, Esq.
Christopher M. O'Connor, Esq.
Assistant United States Attorney
P.O. Box 208
Grand Rapids, Michigan 49501-0208
(616) 456-2404

For the Defendant Muse A. Muse: Sharon A. Turek, Esq.
(Via Telephonic)
James Stevenson Fisher, Esq.
Federal Public Defenders
50 Louis Street, N.W., #300
Grand Rapids, Michigan 49503
(616) 742-7420

For the Defendant Mohamed S. Haji: Mary Chartier-Mittendorf, Esq.
125 Ottawa Ave, N.W., Suite 265
Grand Rapids, Michigan 49503
(616) 888-6800

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

For the Defendant
Mohamud A. Muse:

Richard Zambon, Esq.
161 Ottawa Ave, N.W. #507
Grand Rapids, Michigan 49503
(616) 456-7831

Reported By:

Annette Blough CRR/CRC/RPR/CSR-5191
Certified Shorthand Reporter
(800) 408-0070

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

I N D E X

EXAMINATIONS

PAGE

(None)

E X H I B I T S

Exhibit No.	Description	Admitted
-------------	-------------	----------

(None)

1 Grand Rapids, Michigan.

2 Thursday, February 28, 2019 - 10:02 a.m.

3 THE CLERK: All rise, please. The United
4 States District Court for the Western District of
5 Michigan is now in session, the Honorable Gordon J.
6 Quist, District Court presiding. The Court is in
7 session.

8 THE COURT: Good morning. Please be seated.

9 MR. ZAMBON: Good morning.

10 MS. CHARTIER-MITTENDORF: Good morning.

11 MR. CHAMPION: Good morning.

12 MS. TUREK: Good morning.

13 MR. WEST: Good morning.

14 THE COURT: Before we start I have a request
15 for everyone, please talk directly into the microphone.
16 I understand that Ms. Turek is going to be available, she
17 can hear, and it will help me to hear as well. So the
18 other tricky thing is if you want to talk to your clients
19 or you want to have a conversation, on the microphone,
20 like you have here, hit the middle button where it says
21 push, take a look at it there, and then right there, and
22 if you want a private conversation, because then it's
23 blocked off for me. But if you whisper to your clients
24 and you don't push that, I could hear some. I'm not sure
25 I could understand it, but I could hear some sound at

1 least.

2 So, with that in mind, we are here in the case
3 of the United States against Muse Muse. If I pronounce
4 these names incorrectly, please excuse me.

5 MR. ZAMBON: Your Honor, the client's last name
6 is pronounced Musa.

7 THE COURT: Musa?

8 MR. ZAMBON: Yes, Your Honor.

9 THE COURT: Okay, thank you.

10 Okay. And then once again, please excuse me,
11 Mohamed Haji is the way I would do it, correct?

12 MS. CHARTIER-MITTENDORF: Correct, Your Honor.

13 THE COURT: And Mohamud A. Muse.

14 MR. ZAMBON: That is correct, Your Honor.

15 Richard Zambon appearing on behalf of Mr. Muse.

16 THE COURT: Talk in the microphone so we can
17 hear you. Go ahead.

18 MR. ZAMBON: Good morning, Your Honor. Richard
19 Zambon on behalf of the Defendant Mohamud Muse.

20 THE COURT: Right now we will go through.
21 Ms. Chartier-Mittendorf will represent Mr. Mohamed Haji
22 and Mr. Zambon right now represents Mohamud Abdikadir
23 Muse and Ms. Turek and Mr. Fisher are here then.

24 MR. FISHER: Yes, Your Honor.

25 THE COURT: And represents Mr. Muse Muse. And

1 Mr. --

2 MS. TUREK: Correct.

3 THE COURT: -- Mr. Champion, who has not filed
4 appearance yet. What status are you in right now,
5 Mr. Champion?

6 MR. CHAMPION: Well, Your Honor, I guess that
7 is going to be determined. I was ordered to appear --

8 THE COURT: Well, you hadn't filed an
9 appearance.

10 MR. CHAMPION: -- and respond. So I haven't
11 filed an appearance because nobody signed a consent
12 substitution of counsel, so I'm kind of in limbo.

13 THE COURT: Okay. For the Government then?

14 MR. WEST: Good morning, Your Honor. Clay West
15 for the United States. With me is Assistant U.S.
16 Attorney Chris O'Connor and the case agent, Paul Dunham.

17 THE COURT: What is the case agent's name?

18 THE WITNESS: Paul Dunham, FBI Special Agent.
19 P-A-U-L, D-U-N-H-A-M.

20 THE COURT: Okay. Let me just go through where
21 I am on it, which might be a little different from where
22 you all are on it. But this is a three-count indictment.

23 Count One charges Defendants with a conspiracy
24 to provide material support to a designated foreign
25 terrorist organization in violation of 18 United States

1 Code Section 2339A(b).

2 Count Two charges the Defendants with
3 attempting to provide material support to a designated
4 terrorist organization in violation of 18 United States
5 Code Section 2339B(a)(1).

6 Count Three charges Mr. Muse Muse with making a
7 false statement in a passport application in violation of
8 18 United States Code Section 1542.

9 Counts One and Two, according to my notes,
10 carry a penalty each of up to 20 years in prison plus
11 other penalties; for example, fines, supervised release,
12 et cetera.

13 And Count Three carries a penalty of up to ten
14 years in prison plus other penalties as I've already
15 mentioned.

16 The first three lawyers whose names I have
17 read, that would be Mr. Fisher on behalf of the Defendant
18 Muse Muse and Ms. Turek, Ms. Chartier-Mittendorf on
19 behalf of Mr. Haji, and Mr. Zambon on behalf of
20 Mr. Abdikadir, I'm sorry, Muse Muse, were appointed.
21 Ms. Turek is a current Federal Public Defender and the
22 other counsel, Mr. Zambon and/or Ms. Chartier-Mittendorf,
23 are experienced lawyers who are on the Public Defender's
24 role of competent counsel.

25 And then we received a notice or I received a

1 notice from the three appointed lawyers that Mr. Champion
2 wishes to represent all three of the Defendants in the
3 case.

4 Although none of the parties brought it to my
5 attention, but his desire to represent all three
6 Defendants implicates Federal Rule of Criminal Procedure
7 44(c)(2), which reads as follows, which I will read to
8 you because it puts us right to where we are right now,
9 even though I don't have an appearance from Mr. Champion.

10 44(c)(2) reads as follows: Court's
11 responsibilities in cases of joint representation, which
12 Mr. Champion would like to do apparently, unless he has
13 changed his mind or his clients have, then I'm going to
14 read it: The Court must promptly inquire about the
15 propriety of joint representation and must personally
16 advise each Defendant of their right to the effective
17 assistance of Counsel, including separate representation.
18 Unless there is good cause to believe no conflict of
19 interest is likely to arise, the Court must take
20 appropriate measures to protect each Defendant's right to
21 counsel.

22 The Counsel for the Defendants, current Counsel
23 for the Defendants filed a brief which touches on some of
24 these things, including the ruling, that I do not have to
25 allow joint representation of counsel. I can prohibit

1 that. Even though the clients might want it, even though
2 the Defendants might want it, they don't necessarily get
3 their wishes, and so that is the purpose of the hearing
4 that we have right now.

5 Fortunately, for me, the Administrative Office
6 of the United States Courts has a book, a bench book it's
7 called, and Section 1.08 has a subject called Joint
8 Representation of Co-Defendants with a whole list of
9 things that I have to analyze and questions that I have.

10 And let me find out from Mr. Champion to begin
11 with to see how far we have to go on this. Otherwise,
12 I'm just going to go through the questions and then have
13 to make a decision. And the case was brought to my --
14 well, I knew about it before, but the Defendants cite
15 that Supreme Court case, and I do not have to grant the
16 Defendant's wishes if I come to the conclusion that there
17 would be, for example, conflicts of interest or that one
18 Defendant could be treated different from another
19 Defendant based on, for example, sentencing guidelines
20 and things like that.

21 So that's where I am in this whole process.

22 Now, before I go further, now the Defendants
23 might think that Mr. Champion can be the best lawyer for
24 them, and I'm going to want to hear from you in a minute,
25 Mr. Champion. He has been in front of -- not me but in

1 the Western District of Michigan Federal Court five
2 times. He has not tried a case here, but he has
3 represented people who apparently plead guilty and then
4 represented them through the sentencing phase here.

5 The last case was closed in March 2015 when two
6 cases were resolved on the same day.

7 Now, before I get into this whole thing, one of
8 the things that came to my thought processes is -- and,
9 Mr. Champion, you can speak to this perhaps -- is because
10 you might have had conversations. Have you had
11 conversations with these gentlemen?

12 MR. CHAMPION: I did travel out to White Cloud
13 to meet with them on Saturday, February 2nd, to have them
14 sign consent forms for substitution of counsel.

15 THE COURT: All right. Yes, I saw those.
16 Those were furnished to me, I think, in the brief filed
17 by the Court-appointed counsel.

18 One thing that occurred to me, and I might be
19 totally off base, out of range here, and I don't mean to
20 insult anyone, but I've been reading about some of these
21 groups from -- in Africa where women are treated
22 differently. And I wonder if there is anything that you
23 have been able to detect, Mr. Champion, or anybody else,
24 or they want to speak to, that makes it difficult for the
25 Defendants, any of them, to communicate properly with one

1 of their Court-appointed attorneys because they are
2 women?

3 MR. CHAMPION: I've not seen anything like
4 that.

5 THE COURT: You have not seen anything like
6 that?

7 MR. CHAMPION: No.

8 MS. TUREK: Your Honor, this is Sharon Turek.
9 I have not experienced that at all.

10 THE COURT: I'm sorry, what did she say?

11 MS. CHARTIER-MITTENDORF: She has not
12 experienced it.

13 THE COURT: Ms. Chartier-Mittendorf, have you
14 experienced that?

15 MS. CHARTIER-MITTENDORF: No, not at all.
16 Mr. Haji and I have been able to communicate just fine.

17 THE COURT: Okay.

18 MS. CHARTIER-MITTENDORF: We've had no issues
19 in that regard.

20 THE COURT: All right. We are over that, and
21 we don't have to go over that.

22 MS. CHARTIER-MITTENDORF: Correct.

23 THE COURT: All right. This is an important
24 case to all the people involved, so I'm going to ask
25 questions of the Defendants and I want each Defendant to

1 promise to tell me the truth before I ask a question. I
2 want to make sure that each of you is competent to answer
3 the questions, so I'm going to ask you to promise to tell
4 the truth as I said during this hearing. And the truth,
5 I'm not going to get into the facts of the case
6 particularly, but I want to make sure that each person
7 here is competent to proceed.

8 So, Mr. Muse Muse, do you promise to answer the
9 question honestly, sir?

10 MR. MUSE MUSE: Yes.

11 THE COURT: Okay. Mr. Haji, do you promise to
12 answer the questions honestly and truthfully?

13 MR. HAJI: Yes.

14 THE COURT: Thank you.

15 And Mr. Abdikadir -- I'm sorry, too many
16 syllables for my tongue.

17 MR. ZAMBON: Your Honor, his name is Mohamud
18 Muse.

19 THE COURT: Okay. Mohamud Muse, do you promise
20 to answer these questions truthfully?

21 MR. MOHAMUD MUSE: Yes.

22 THE COURT: Thank you.

23 Starting with Mr. Muse Muse, just a minute, I
24 want to write this down, how old are you, sir?

25 MR. MUSE MUSE: I'm 20.

1 THE COURT: Twenty.

2 How far did you go in school?

3 MR. MUSE MUSE: A semester in college.

4 THE COURT: Okay. So you're a high school grad
5 then?

6 MR. MUSE MUSE: Yeah.

7 THE COURT: And you're able to speak English
8 perfectly?

9 MR. MUSE MUSE: Yes.

10 THE COURT: That is pretty obvious.

11 In the past 24 hours, have you taken any pill,
12 drug, medicine of any kind or had any alcoholic beverage?

13 MR. MUSE MUSE: No.

14 THE COURT: Now, when is the last time you
15 talked with him, Mr. Champion?

16 MR. CHAMPION: Saturday, February 2nd, Your
17 Honor.

18 THE COURT: Did he appear competent at that
19 time?

20 MR. CHAMPION: He did.

21 THE COURT: Mr. Fisher, when did you talk to
22 him?

23 MR. FISHER: This morning.

24 THE COURT: Did he appear competent at that
25 time?

1 MR. FISHER: Yes, Your Honor.

2 THE COURT: Does the prosecutor have any
3 question about his competence at this stage? You can
4 just remain seated.

5 MR. WEST: No, Your Honor.

6 THE COURT: Then let's go to Mr. Haji.
7 How old are you, Mr. Haji?

8 MR. HAJI: Twenty-six.

9 THE COURT: How far did you get in your
10 education?

11 MR. HAJI: Some college.

12 THE COURT: So high school diploma?

13 MR. HAJI: Yes.

14 THE COURT: Okay. In the past 24 hours, have
15 you had any drug, medicine, or pill of any kind, or drunk
16 any alcoholic beverages?

17 MR. HAJI: No.

18 THE COURT: Ms. Chartier-Mittendorf, have you
19 been able to talk to him at all recently?

20 MS. CHARTIER-MITTENDORF: We have. We spoke on
21 February 26th and we also spoke this morning. I have no
22 issues or concerns about Mr. Haji's competency.

23 THE COURT: All right. Well, then we have, I
24 want to take Mr. Zambon's advice here, Mr. Mohamud Muse?

25 MR. MOHAMUD MUSE: Yes.

1 THE COURT: And how far did you get in school,
2 sir?

3 MR. MOHAMUD MUSE: Some college.

4 THE COURT: Some college.

5 You are able to understand and speak English,
6 obviously; we were having this conversation now?

7 MR. MOHAMUD MUSE: Yes.

8 THE COURT: Have you taken drug, pill,
9 medicine, or alcoholic beverage in the last 24 hours?

10 MR. MOHAMUD MUSE: None.

11 THE COURT: Did you -- do each of you
12 understand what we're going to do today then? I'm sorry,
13 yes, go ahead, Mr. Muse.

14 MR. MUSE MUSE: Yes.

15 THE COURT: They are all indicating, yes.

16 I find each Defendant as competent to proceed
17 today.

18 I've already explained the seriousness of the
19 charge and the maximum punishment for each count. If at
20 any time one of you does not understand something or have
21 any question, consult your lawyer or ask me any question
22 that you want. I want to make sure that you will
23 understand this.

24 And the proceedings can be continued to another
25 day if you wish to consult with another lawyer as well.

1 The United States Constitution, gentlemen,
2 gives every Defendant the right to effective assistance
3 of Counsel. When one lawyer represents two or more
4 Defendants in a case, the lawyer may have trouble
5 representing all of the Defendants with the same
6 fairness. This is a conflict of interest that denies the
7 Defendant the right to effective assistance of Counsel.
8 Such conflicts are always a potential problem because
9 different Defendants may have different degrees of
10 involvement or culpability. Each Defendant has a right
11 to a lawyer who represents only him or her.

12 So, Mr. Muse, do you understand that?

13 MR. MUSE MUSE: Yes.

14 THE COURT: Mr. Haji, do you understand that,
15 sir?

16 MR. HAJI: Yes.

17 THE COURT: And, Mr. Mohamud Muse, do you
18 understand that?

19 MR. MOHAMUD MUSE: Yes.

20 THE COURT: I'm going to point out now various
21 ways in which dual representation, or you might say
22 triple representation here, might work to a Defendant's
23 disadvantage.

24 Listen carefully to what I'm saying now,
25 gentlemen.

1 This may be done by giving the Defendant a form
2 to read or by advising the Defendant in the following
3 way, and I'm going to now advise you: First, dual
4 representation or triple representation may inhibit or
5 prevent Counsel from conducting an independent
6 investigation in support of each Defendant's case.

7 For example, the attorney-client privilege may
8 prevent your lawyer from communicating to you information
9 gathered from another Defendant.

10 Do you understand that, each of you?

11 MR. MUSE MUSE: Yes.

12 MR. HAJI: Yes.

13 MR. MOHAMUD MUSE: Yes.

14 THE COURT: The Government may offer immunity
15 or offer to recommend a lesser sentence to one Defendant
16 for cooperating with the Government. Should you receive
17 such an offer, your lawyer ought to advise you whether or
18 not to accept it; but if your lawyer advises you to
19 accept the offer, it may harm the cases of the other
20 Defendants represented by that same lawyer.

21 Do you understand that, Mr. Muse Muse?

22 MR. MUSE MUSE: Yes.

23 THE COURT: And, Mr. Haji?

24 MR. HAJI: Yes.

25 THE COURT: And Mr. Mohamud Muse?

1 MR. MOHAMUD MUSE: Yes.

2 THE COURT: In addition, the Government may let
3 a Defendant who is not as involved as other Defendants
4 plead guilty to lesser charges than the other Defendants
5 -- after the guilty plea, the other charges than the
6 other Defendants.

7 After the guilty plea, however, the Government
8 may require the Defendant to testify. A lawyer who
9 represents more than one Defendant might recommend that
10 the first Defendant not plead guilty in order to protect
11 the other Defendants that the lawyer represents.

12 On the other hand, the lawyer might recommend
13 that the first Defendant plead guilty, which might harm
14 the cases of the other Defendants.

15 Are you following me, Mr. Muse Muse? Do you
16 understand that?

17 MR. MUSE MUSE: Yes.

18 THE COURT: And what about you, Mr. Haji?

19 MR. HAJI: Yes.

20 THE COURT: And, Mr. Mohamud Muse?

21 MR. MOHAMUD MUSE: Yes.

22 THE COURT: Triple representation or dual
23 representation may affect how your lawyer exercises
24 preemptory challenges or challenges for cause during jury
25 selection.

1 Potential jurors who may be perceived as
2 favorable to you may be perceived as harmful to the other
3 Defendant or Defendants or jurors who may be perceived as
4 favorable to other Defendants maybe harmful to you. In
5 other words, another conflict. They balance off one
6 Defendant against another.

7 Mr. Muse Muse, do you understand that?

8 MR. MUSE MUSE: Yes.

9 THE COURT: Mr. Haji?

10 MR. HAJI: Yes.

11 THE COURT: And, Mr. Mohamud Muse?

12 MR. MOHAMUD MUSE: Yes.

13 THE COURT: Don't just say, yes. I mean, if
14 you don't understand it, listen, this stuff is not easy.
15 Just don't -- you know, think about it. And I'm going to
16 give you an opportunity, I'm not going to make a decision
17 today, because I'm going to give you an opportunity to
18 think about all these things; but it's very important
19 that you think about them because, you know, this is your
20 future. It's not mine. It's your future. And my job is
21 to make sure not only that you have a fair trial but that
22 you know that you've had a fair trial. My job is to do
23 that, do the best I can to give you guys a fair trial
24 with all your constitutional rights.

25 Sometimes one of the Defendants represented by

1 a lawyer will take the stand to testify in his or her own
2 behalf. In order to represent the other Defendants
3 fairly, the lawyer should question the Defendant on the
4 stand as completely as possible.

5 However, the lawyer may not be able to do that
6 because he or she cannot ask the Defendant as a witness
7 about anything that the Defendant has told the lawyer in
8 confidence.

9 In other words, if one of you says something in
10 confidence to Mr. Champion, he can't use that necessarily
11 to either help another client if it hurts his client.

12 And, Mr. Champion, you're going to have to
13 answer these questions, too.

14 MR. CHAMPION: Yes.

15 THE COURT: I don't know if you have thought
16 about them.

17 MR. CHAMPION: I have.

18 THE COURT: Okay. But do you understand that,
19 Mr. Muse?

20 MR. MUSE MUSE: Yes.

21 THE COURT: And, Mr. Haji?

22 MR. HAJI: Yes.

23 THE COURT: And, Mr. Mohamud Muse?

24 MR. MOHAMUD MUSE: Yes.

25 THE COURT: Each one has answered yes.

1 The best defense for a single Defendant often
2 is the argument that while the other Defendants may be
3 guilty he or she is not.

4 A lawyer representing two or more Defendants
5 cannot effectively make such an argument because it hurts
6 one of his clients. It helps one, hurts the other, so he
7 can't ask it, so you're all in the same boat. One of
8 you, two of you, or three of you might have been able to
9 get out.

10 Do you understand that, Mr. Muse Muse?

11 MR. MUSE MUSE: Yes.

12 THE COURT: And what about you, Mr. Haji?

13 MR. HAJI: Yes.

14 THE COURT: And what about you, Mr. Mohamud
15 Muse?

16 MR. MOHAMUD MUSE: Yes, sir, I'm listening.

17 THE COURT: Thank you.

18 MR. MOHAMUD MUSE: I understand.

19 THE COURT: Evidence that helps one Defendant
20 might harm another Defendant's case. When one lawyer
21 represents two or more Defendants, the lawyer might offer
22 or object to evidence that could help one of his clients,
23 one Defendant, but harm another.

24 In other words, who is there at a particular
25 time, one Defendant might say I was and the other

1 Defendant might say, well, I was, so it's a conflict and
2 how is the lawyer going to handle that? It's not easy.

3 Do you understand that, Mr. Muse Muse?

4 MR. MUSE MUSE: Yes.

5 THE COURT: And, Mr. Haji?

6 MR. HAJI: Yes.

7 THE COURT: And, Mr. Mohamud Muse?

8 MR. MOHAMUD MUSE: Yes.

9 THE COURT: Regarding sentencing, dual
10 representation would prohibit the lawyer from engaging in
11 post-trial negotiations with the Government as to full
12 disclosure by one Defendant against the other. It would
13 also prohibit the lawyer from arguing a relative
14 culpability of the Defendants to the sentencing Judge.

15 In many sentencings where we have joint
16 Defendants, particularly in drug cases, a lawyer will
17 argue on behalf of his client, well, my guy just
18 followed, you know, the lead of somebody else. He's not
19 the main guy here. The main guy is Mr. Muse Muse. I'm
20 just picking names. I don't mean that. The main guy is
21 Mr. Muse Muse, not me. Well, you can't make that
22 argument if he represents Mr. Muse and another Defendant.
23 You can't make that argument. He's really stuck.

24 So a minor participant might not be able to
25 make the argument that he is a minor participant, which

1 would be a lower sentence, as distinguished from the
2 leader. The leader would be the person that organized
3 this, got other people involved in this, thought it was a
4 good idea and sold it to others. The argument can't be
5 made, my guy was sort of tagging along here.

6 Do you understand that, Mr. Muse?

7 MR. MUSE MUSE: Yes.

8 THE COURT: And, Mr. Haji?

9 MR. HAJI: Yes.

10 THE COURT: And, Mr. Mohamud Muse?

11 MR. MOHAMUD MUSE: Yes, sir.

12 THE COURT: Now, Mr. Champion, the next thing
13 applies to you. And then I'm just going to read this to
14 you here.

15 An attorney proposing to represent
16 Co-Defendants should be required to assure the Court that
17 there will be no conflict that could result in a lack of
18 effective assistance of counsel or other prejudice to any
19 Defendant.

20 If you're not prepared to answer that question
21 now, I'll give you more time. But that is an important
22 question. In other words, I have already heard from the
23 brief filed by the other Counsel that there is a
24 conflict. And have you perceived a conflict?

25 MR. CHAMPION: There is always a potential for

1 conflict, Your Honor; but I don't believe there is an
2 actual conflict as evidenced by the fact that the U.S.
3 Attorney's Office has taken no position in this matter.
4 If they felt there was an actual conflict, I would expect
5 that they would object.

6 THE COURT: Well, they are going to say there
7 is a conflict the first time they talk to somebody with a
8 lawyer being present. That's the problem. They are
9 going to say, Mr. Muse Muse, you know, we are going to --
10 this is speculation, I know, but it's based on
11 experience, and you are smiling so you know what I'm
12 talking about, Mr. Muse Muse, you know, you're not a real
13 bad guy. You are, you know, just sort of tagalong here
14 and we can cut a deal with you but the deal requires you
15 to tell us the involvement of Mr. Haji, for example. And
16 it requires you to tell us the involvement of Mr. Mohamud
17 Muse. And you do that and you are looking now at, you
18 know, three counts, we will drop the first two counts and
19 make it the third count, the third count being lying on
20 their passport, maximum of ten years instead of a maximum
21 of 20, the guidelines are a lot lower, what a deal. You
22 got to go for it. And Mr. Champion is going to say?

23 MR. CHAMPION: Your Honor, in 2003 I had
24 multiple co-defendants, three of them, in front of Judge
25 Lamb in Circuit Court in Kalamazoo. The prosecutor

1 objected, saying Mr. Champion can't effectively sell my
2 deal to each one of these co-defendants and Judge Lamb
3 said Mr. Champion is not your salesman, that would be my
4 response.

5 THE COURT: Well, I'm not asking you to be a
6 salesman. I'm asking you to make -- you would be in
7 my -- and what Judge was that?

8 MR. CHAMPION: That was Judge Richard Lamb.

9 THE COURT: Where is he a Judge?

10 MR. CHAMPION: Kalamazoo. I believe he is
11 retired now.

12 THE COURT: He is not a Federal Judge, but a
13 State Judge.

14 MR. CHAMPION: No.

15 THE COURT: Well, I'm just reading what I've
16 got here. And I'm talking about, you know, 25 years as a
17 lawyer, and way much longer than I ever thought I would
18 be here, 20 some or 5, 6, 7 years as a Federal Judge.
19 It's typical in our Federal System that something like
20 this occurs. And it's not a matter of selling anything.
21 It's not a matter of selling anything. It's a matter of
22 giving effective representation, effective individualized
23 representation to each one of your clients. And I don't
24 know how you can do that if one client is offered a
25 ten-year deal with a guideline range, let's say, of three

1 years as distinguished from a 20-year charge with a
2 guideline range that will be substantially higher.

3 MR. CHAMPION: I understand, Your Honor. The
4 day before I was -- before I met them in White Cloud, I
5 was hired by the family. They expressed to me an
6 interest in having one attorney represent all of their
7 boys. They were concerned that perhaps multiple
8 attorneys might have an interest in turning them against
9 one another and they didn't want to see that.

10 THE COURT: Yeah. Now, that comes from one of
11 the families as I understand it. Am I correct?

12 MR. CHAMPION: No. That's -- these three
13 gentlemen belong to two families.

14 THE COURT: Yeah, okay, I'm saying but that
15 comes from one of the families?

16 MR. CHAMPION: No, Your Honor. They are all
17 here, Your Honor.

18 THE COURT: I see them. So --

19 MR. CHAMPION: Unless somebody changed their
20 mind.

21 THE COURT: Well, that is another point. I
22 mean, have you talked to each one of them? Have you
23 talked to them specifically about what I'm talking to you
24 right now?

25 MR. CHAMPION: Honestly not in as much depth as

1 we have already gotten into, but I did express to them
2 that if at any time there was an actual conflict, as
3 opposed to a potential one, if one of them started
4 pointing a finger at the other one or asked for a better
5 deal than somebody else, then I would have an actual
6 conflict and I would have to possibly withdraw from one
7 or more of their representation.

8 THE COURT: They would have to start over
9 again.

10 Okay. Now, in the brief filed by current
11 counsel, and I don't know which lawyer it was,
12 Mr. Zambon, you said that there is already conflicts.
13 Let's hear about that.

14 MR. ZAMBON: Thank you, Your Honor. Counsel --
15 appointed counsel had the benefit of the almost six-hour
16 detention hearing as well as --

17 THE COURT: Can you bring that closer to you,
18 Mr. Zambon? Just move your paper there and you can move
19 the mic forward.

20 MR. ZAMBON: Thank you, Your Honor. The
21 detention hearing took place over two days. The first
22 day we went from 2:00-5:00 on January 25. It was three
23 hours of testimony by Agent Dunham and introduction of
24 numerous exhibits.

25 We followed that up the following Thursday, the

1 31st of January. Defense originally came in on a
2 complaint in between the two detention hearings, the
3 Grand Jury indicted. So we continued the detention
4 hearing after the arraignment on the indictment, the
5 initial pretrial conference, and we have had the benefit
6 of the Government's case being brought out during the
7 detention hearing, not only mentioning or reviewing the
8 12-page complaint but initial pretrial conference, and
9 since then we have had some initial discovery.

10 Some of the things that we have found either
11 through the detention hearing and initial pretrial
12 conference is that one of the Defendants consented to a
13 four-hour post-Miranda interview. Now, that is being
14 transcribed. There are some transcription problems, but
15 we have some concerns about that because during the
16 four-hour interview on a conspiracy case my guess would
17 be that there were some statements made which could lead
18 to Brutten problems, which could implicate the other
19 Defendants.

20 I don't have that information, but I bet that
21 would be my guess based on my experience.

22 We also know that one of the Defendants
23 endorsed a statement that was written by Agent Dunham,
24 and the statement was inculpatory, and the Defendant
25 signed it that this is an accurate -- what you wrote,

1 Mr. Dunham, is what I told you, so we have a problem
2 there.

3 We also know that this conspiracy took place
4 over a number of years and that there is pre-conspiracy
5 transcripts, texts, What's App, Facebook, that there's
6 thousands and thousands of pages of documents which need
7 to be reviewed, which are between the Defendants. And,
8 again, with this being a conspiracy case, we think that
9 there is a conflict there. And that's what we wrote to
10 Mr. Champion and said we think there is a conflict and
11 the ball is in your Court, and that's my quote. You take
12 action out and then file something, which I would think
13 would be the normal course of procedure, that he should
14 have filed something.

15 And also there was no waiver of any conflict
16 that accompanied the proposed consent order. I think we
17 would all have felt better if we had seen something like
18 that, but there has been no communication from
19 Mr. Champion. And that's why we felt compelled we had to
20 bring this before the Court.

21 Also, we felt as there is two things here, one
22 is as Officers of the Court and we have to let the Court
23 know of these potential issues so that the Court can
24 anticipate the problems and deal with them. We can't
25 anticipate a problem unless you know about it, so we

1 brought that issue to the Court.

2 THE COURT: Well, what is -- I forget the name
3 of the case, but the case talks about exactly that, we
4 can't anticipate everything.

5 MR. ZAMBON: Right.

6 THE COURT: Wee against the United States.

7 MR. ZAMBON: The Wee Case or the United States
8 versus William, which adopted the language from the Wee
9 Case.

10 And also the Court cited Federal Rule Criminal
11 Procedure 44C, which is basically an adoption of the
12 Michigan Rules of Professional Conduct, which we are all
13 obliged to stand by. And that rule deals with conflicts
14 of interest, and it does not prohibit conflicts of
15 interest, but requires counsel to first state that he
16 reasonably believes representation will not be adversely
17 affected and after client consultation explaining all of
18 the potential conflicts as the Court went through with
19 our clients. And the commentary to that rule --

20 THE COURT: The Michigan rule you're talking
21 about?

22 MR. ZAMBON: Criminal Act, yes, Your Honor.
23 1.7 Commissary says that the potential for conflict of
24 interest in representing multiple Defendants in a
25 criminal case is so grave that ordinarily a lawyer should

1 decline to represent more than one co-defendant. On the
2 other hand, common representation of persons having
3 similar interests is proper if the risk of adverse
4 effects is minimal and requirements of Paragraph B, the
5 disclosure paragraph, are met, end quote.

6 We know it's not our job to determine if there
7 is a conflict, that is up to the Court. We also know
8 that we had to bring it before the Court at this point,
9 early on, rather than at some point down the road.

10 THE COURT: Well, I'm required to do it as soon
11 as possible. I mean, the Rule 44 talks about that and it
12 specifically says it, that's why we are here.

13 MR. ZAMBON: That is correct, Your Honor; and
14 why we brought this before the Court. We did not want
15 this happening six months or a year down the road, or
16 whenever. So, again, and we all know that the clients
17 have a right to representation of counsel. And usually
18 it's with their counsel of their choice, but it's not an
19 unfettered right. And I think we have all explained that
20 to our clients and we are leaving it up to the Court to
21 make its decision.

22 THE COURT: All right, Ms. Chartier-Mittendorf,
23 anything?

24 MS. CHARTIER-MITTENDORF: Thank you. I concur
25 with Mr. Zambon. The reason the motion was brought was

1 no motion was brought by Mr. Champion to represent the
2 clients, yet we continued to hear that Mr. Champion was
3 representing them. And so, in consultation, Mr. Fisher,
4 Ms. Turek, Mr. Zambon, and I wanted to get the issue in
5 front of the Court.

6 As long as I represent Mr. Haji, I need to make
7 sure that his rights are protected and that I do
8 everything that is in his best interest. I have very
9 serious concerns about actual conflicts. That doesn't
10 mean that these three young men will split apart from
11 each other and that the lawyers would not work together.
12 But based on what we have seen so far, as well as the
13 302s, in my opinion this is not a potential conflict,
14 it's an actual conflict.

15 If the Court determines otherwise, of course,
16 we would transfer any file over to Mr. Champion if that
17 is Mr. Haji's wish.

18 THE COURT: Well, I haven't seen the documents
19 you are talking about, and I don't know if Mr. Champion
20 has.

21 MS. CHARTIER-MITTENDORF: That is our concern.
22 We have the benefit of having worked on the case for
23 roughly a month where Mr. Champion does not. And so the
24 concern is to articulate that there is a waivable
25 conflict, or there is a potential conflict, I don't think

1 reflects what we have seen so far.

2 THE COURT: Mr. Fisher, anything?

3 MR. FISHER: Yeah. I suggest you ask
4 Ms. Turek. She is the prime attorney on this.

5 THE COURT: Ms. Turek?

6 MS. TUREK: Your Honor, I would agree with what
7 Mr. Zambon and Ms. Chartier-Mittendorf has just stated.
8 We are just beginning to receive the discovery and
9 already I'm seeing a lot of red flags. And actually, you
10 know, when each of us received an e-mail from
11 Mr. Champion indicating that he wanted us to sign up or
12 consent to substitute of counsel, that in and of itself,
13 I mean, occasionally a client does want to retain an
14 attorney and there's no issue.

15 The issue came when we e-mailed one another and
16 learned that Mr. Champion was trying to represent all
17 three. And, clearly, based on just a preliminary review
18 of, you know, just one tenth of what we expect the
19 discovery will be, I think that the potential for
20 actual -- and actually there are some actual conflicts I
21 believe at this point given some statements that have
22 been made. So I want to make sure that Mr. Muse Muse's
23 rights are protected and that he receives a fair trial,
24 and I just don't think one attorney is going to be able
25 to look after all three Defendants.

1 And I think the real harm here, too, is if we
2 proceed four, five, six, months down the road and then
3 Mr. Champion were to want to withdraw from one or more of
4 the cases, we would all be starting over and I think that
5 would be harmful to some of the Defendants.

6 THE COURT: All right. I'll skip you,
7 Mr. Champion, because I've come up to a conclusion, I
8 think.

9 Mr. West, anything?

10 MR. WEST: Thank you, Your Honor. Just a few
11 quick points if I may.

12 First off, the Government took no position on
13 the defense's motion simply because it had enough
14 insufficient information on how the joint representation
15 came about, who the Defendants wanted or the arrangements
16 with the family, et cetera. So I just want to clarify
17 the origin of our no position on that.

18 Certainly, at the time the motion was filed, I
19 had not been in contact or had no contact with
20 Mr. Champion and simply I did not have the information to
21 take a position on this issue.

22 And the Court has certainly raised in its dual
23 representation inquiries of potential conflict issues.
24 And I do agree with the Court that potential conflict
25 issues as noted do exist, but I'll stop there as to

1 whether those may develop down the road, in different
2 directions.

3 THE COURT: What I'm going to do is not make a
4 decision today primarily because Mr. Champion hasn't had
5 an opportunity to speak with these other lawyers and see
6 where the -- you know, the possible conflicts arise.

7 And, you know, Mr. Champion as far as I know
8 is, you know, an upstanding lawyer, you know, follows the
9 Rules of Conduct for Michigan and the Federal Court,
10 which basically adopts those rules. But he might not be
11 up to date on what's going on and what, you know, the
12 future holds; and, therefore, I'm just going to postpone
13 it for seven days and ask the parties to file a written
14 response and ask the parties -- I mean, I'll have an
15 order on this, so you will all have it, to give me what
16 your positions are regarding representation after a
17 conference. And then I'm asking the lawyers here, to the
18 extent that it doesn't violate any conflict that you
19 might have, to share with Mr. Champion the possible
20 conflicts here.

21 For example, he might end up representing one
22 of the Defendants. I don't know. Or all three or none
23 at all. And so the extent that you can do this without
24 violating the relationship that you have with your
25 particular lawyers now and to point out to Mr. Champion

1 possible problems.

2 Now, Mr. Champion is frowning for the first
3 time here today. How does that hit you, sir?

4 MR. CHAMPION: That seems fair to me. I was
5 just wondering if the Court anticipated next Thursday,
6 the same time?

7 THE COURT: I don't think I have to have
8 another hearing unless one of the parties wants it. In
9 other words, tell me there is a conflict or, you know,
10 irreconcilable conflict or there isn't by next Thursday.
11 If there is, if you all agree, then that makes it easier
12 for me, then you might represent one or none; or if you
13 don't agree then I will make a ruling, okay?

14 MR. CHAMPION: Okay.

15 THE COURT: Okay, next Thursday then in
16 writing, all right.

17 Anything further from the Government?

18 MR. WEST: No, Your Honor. Thank you.

19 THE COURT: Anything from any Defendant or any
20 Counsel?

21 MR. FISHER: No, Your Honor.

22 MS. CHARTIER-MITTENDORF: No, Your Honor.

23 MR. ZAMBON: No, Your Honor. Thank you.

24 THE COURT: All right. We are adjourned then.
25 Thank you.

1 MR. CHAMPION: Would the Court prefer that I
2 file an appearance now or wait?

3 THE COURT: Yeah, file it now so we know we are
4 talking to a real lawyer in this case.

5 Thank you, Mr. Champion.

6 Okay. You are free to go.

7 MS. TUREK: Thank you, Your Honor.

8 THE COURT: And let me just say one thing to
9 the Defendants. Mr. Zambon, Ms. Chartier-Mittendorf, let
10 me say one thing to the Defendants.

11 MS. CHARTIER-MITTENDORF: Yes, Your Honor.

12 THE COURT: Gentlemen, you are all high school
13 grads, you all went to college, think about what I told
14 you. Think seriously about what I told you. My job is
15 to give you a fair trial under the rules and the
16 Constitution of the United States of America. And I'm
17 going to do that to the best of my ability.

18 You guys talk about it. Okay. Thank you.

19 MS. CHARTIER-MITTENDORF: Thank you, Your
20 Honor.

21 MR. ZAMBON: Thank you.

22 MS. TUREK: Thank you, Your Honor.

23 (Proceedings conclude at 10:49 a.m.)

24

25

1 STATE OF MICHIGAN)

2) ss

3 COUNTY OF KENT)

4 I, Annette R. Blough, CRC/CRR/RPR/CSR-5191,
5 do hereby certify that I reported the foregoing
6 proceedings before the HONORABLE GORDON J. QUIST, Judge
7 of the United States District Court, Western District of
8 Michigan, Grand Rapids, Michigan; that the same was
9 reduced to typewritten form, and that the attached 38
10 pages constitute a full, true and accurate transcript.

11 IN WITNESS WHEREOF, I have hereunto set my
12 hand this 13th day of March, 2019.

13

14

15 _____
16 Annette R. Blough, CRC/CRR/RPR/CSR-5191 and Notary
Public acting in Kent County, Michigan.
My Commission expires 1-17-2020

17

18

19

20

21

22

23

24

25