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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA,) **Case No. 3:17-mj-00171-BK-1**
)
Plaintiff,)
) Dallas, Texas
v.) March 15, 2017
) 2:00 p.m.
SAID AZZAM MOHAMAD RAHIM,)
) DETENTION HEARING
Defendant.)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE RENEE HARRIS TOLIVER,
UNITED STATES MAGISTRATE JUDGE.

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Proceedings recorded by electronic sound recording;
transcript produced by transcription service.

1 DALLAS, TEXAS - MARCH 15, 2017 - 3:07 P.M.

2 THE COURT: So, the Court next calls Case No. 3:17-mj-
3 171-BK, United States of America versus Said Azzam Mohamad
4 Rahim.

5 MS. MARTIN: Errin Martin for the Government, Your
6 Honor.

7 THE COURT: Good afternoon.

8 MR. WHALEN: James Whalen for Mr. Rahim, Your Honor.

9 THE COURT: Good afternoon. Is the Government ready
10 to proceed?

11 MS. MARTIN: Yes, Your Honor.

12 THE COURT: Mr. Whalen, is Mr. Rahim ready to proceed?

13 MR. WHALEN: He is, Your Honor.

14 THE COURT: Ms. Martin, please call your first
15 witness.

16 MS. MARTIN: Yes, Your Honor. The Government calls
17 Special Agent Dan Glick.

18 (The witness is sworn.)

19 THE CLERK: Have a seat, please. State your name and
20 spell it for the record.

21 THE WITNESS: My name is Dan Glick. D-A-N. G-L-I-C-
22 K.

23 THE CLERK: Thank you.

24 MS. MARTIN: Your Honor, before we begin, may I hand
25 up some transcripts the Government intends to go over with this

1 witness?

2 THE COURT: Sure. Is that something you're going to
3 provide to --

4 MS. MARTIN: Your Honor, yes, I've provided them to
5 the defense before this hearing.

6 THE COURT: Okay. I figured.

7 MS. MARTIN: May I proceed, Your Honor?

8 THE COURT: You may.

9 DAN GLICK, GOVERNMENT'S WITNESS, SWORN

10 DIRECT EXAMINATION

11 BY MS. MARTIN:

12 Q Special Agent Glick, where do you work?

13 A I work at the FBI Joint Terrorism Task Force in Dallas,
14 Texas.

15 Q And are you an FBI agent?

16 A No. I'm a special agent with the U.S. Department of State,
17 Bureau of Diplomatic Security. However, I'm assigned as a task
18 force officer with the FBI Joint Terrorism Task Force here in
19 Dallas.

20 Q And in that capacity, are you one of the case agents in the
21 case of the United States of America versus Said Rahim?

22 A Yes.

23 Q When did you become involved in an investigation of Mr.
24 Rahim?

25 A Approximately a year ago, we received information from

1 another law enforcement office, and since that time have been
2 involved with the investigation.

3 Q And was that information about terrorism-related matters?

4 A Yes, it was.

5 Q And did you receive information that Said Rahim was
6 involved in a social media platform that was pro-ISIS?

7 A Yes, that's correct.

8 Q As part of your investigation, did you utilize some other
9 types of law enforcement -- some types of law enforcement type
10 things like pole cam surveillance, grand jury subpoenas?

11 A Yes, that's correct. We used standard surveillance, pole
12 cam, grand jury subpoenas for social media, and other things.

13 Q And ultimately were you able to develop probable cause to
14 obtain a search warrant of that social media platform?

15 A Yes. That is accurate.

16 Q And when you received returns from the search warrant, what
17 type -- what did you receive back from the company? How did
18 the search warrant returns look?

19 A The search warrant returns included user profiles for all
20 of the subscribers to a particular channel. And actually, the
21 channel went through four iterations during the course of our
22 investigation, and so subscriber information for subscribers
23 for all four iterations of the room, as well as logs for all of
24 those rooms, as well as IP logs for each individual user, as
25 well as audio files relating to conversations that were

1 publicly shared for subscribers of this individual, iterations
2 of the channel to review.

3 Q Okay. And so you're saying room, channel. Is this kind of
4 similar, just for everyone's benefit on how it works, like a
5 chat room, like that you're on the Internet and you're typing
6 your message to a group that's all in the same room?

7 A It's similar in some respects. However, it is primarily
8 based on voice. It's similar in the way that an individual
9 person with a user account can establish essentially a channel
10 and people will subscribe to that channel. And they're
11 primarily subscribing to communicate by voice. However, the --
12 through the platform, you can send texts and images as well.

13 Q And you said that someone can begin a channel. Do they
14 have to name the channel?

15 A Yes. Channels have names, yes.

16 Q And in this case, what was the name of the channel that
17 Said Rahim was participating in?

18 A The name of the channel in all four iterations was State of
19 the Islamic Caliphate.

20 Q State of the Islamic Caliphate? Does that have any
21 significance to you as a member of the Joint Terrorism Task
22 Force?

23 A Yes, it does.

24 Q Why?

25 A State of the Islamic Caliphate basically represents the

1 idea furthered by the terrorist organization Islamic State in
2 Iraq and Syria.

3 Q And that's what they're talking about, the Caliphate?

4 A Yes. Exactly. The idea is -- the purpose and mission of
5 the Islamic State group, which goes by several different names,
6 is to establish literally a caliphate state, a physical state,
7 yes.

8 Q And that's what, when we talk about the war in Syria,
9 that's their attempts to establish that physical land?

10 A Yes. That is correct.

11 Q And we'll get back to that in a second, but let's talk more
12 about the channel. Now, you -- I asked you if Said Rahim was a
13 participant in this channel. He was more than just a
14 participant; isn't that correct?

15 A Yes. That's correct.

16 Q Okay. What was he?

17 A Through all four iterations of the room, the evidence that
18 we obtained showed that he was a moderator in that room. And
19 not just any moderator -- there's several moderators -- but one
20 of particular prominence.

21 Q And what access or what privileges does a moderator have
22 that just a member of the room wouldn't -- or channel wouldn't
23 have?

24 A A moderator would generally control the flow of the channel
25 at any given time, who's allowed to speak. They can mute

1 people. They can block people. And basically controls the
2 content and the flow of the content.

3 Q And you mentioned that you received audio files as search
4 warrant returns. Did you -- were you able to get any -- all
5 the audio ever taken or produced from participation in the
6 State of the Islamic Caliphate channels?

7 A No.

8 Q What audio files were you able to obtain?

9 A My understanding from an explanation from the company is
10 the communications that just go back and forth are generally
11 not captured, not saved on their servers. However, a person
12 who has administrator rights or an owner or a moderator has the
13 ability to publicly share audio content, a conversation, for
14 instance, you know, a two-hour block where they had a guest
15 speaker and they want to make that available to anybody who --
16 any new subscriber who happens to log in after the fact. And
17 so that information, once it's shared, becomes saved on the
18 server. So the audio files that we obtained through the search
19 warrant for all four iterations were essentially the shared
20 messages for subscribers through all four iterations.

21 Q And you mentioned a little bit about the State of the
22 Islamic Caliphate and ISIS and ISIL. Can you discuss for the
23 Court the -- when that group was designated as a foreign
24 terrorist organization?

25 A Yes. Originally known as Al Qaeda in Iraq, which was just

1 one of the affiliates of Al Qaeda, Al Qaeda in Iraq was
2 designated in 2004 by the U.S. Department of State as a foreign
3 terrorist organization. Over the next -- over several years
4 after that, they evolved and transformed into what became known
5 as Islamic State under several names: the Islamic State in
6 Syria and Iraq, Islamic State in Syria and the Levant, the
7 Islamic State in Syria and al-Sham. It goes by the acronym
8 DAISH or ISIL or ISIS.

9 Q Okay.

10 A That organization that goes by all those names is one
11 single organization that was designated by the U.S. Department
12 of State as a terrorist organization in 2014.

13 Q And that includes -- today we'll refer to it as ISIS, but
14 when we say ISIS we are referring to all the different
15 variations of that name?

16 A Yes, that's correct.

17 Q Okay. Now, when you reviewed these search warrant returns
18 that involved Said Rahim, did there come a time that you
19 reviewed -- well, let me ask you this. They were audio
20 content. Were they in English?

21 A No. It was all in Arabic.

22 Q Okay. And so they had to be translated?

23 A Yes, that's correct.

24 Q And so some of those take the form of verbatim
25 translations; others are summaries at this point?

1 A Yes, that's correct.

2 Q Now, you're aware that on July 14, 2016, an attacker drove
3 a 19-ton cargo truck into a crowd of people celebrating
4 Bastille Day in France?

5 A Yes, that's --

6 Q What happened?

7 A An individual identifying with Islamic State took a very
8 large truck and drove down an avenue, killing I believe 86
9 people and injuring another 434 in the name of the Islamic
10 State.

11 Q And some of those victims were U.S. citizens; is that
12 correct?

13 A Yes. That is correct.

14 Q In fact, from Texas, the North Texas area?

15 A I believe so.

16 Q And the very next day, did you review audio or transcripts
17 of audio where Said Rahim spoke about that attack?

18 A Yes, I did.

19 Q And did he say, "Peace be upon you. I renew my welcome to
20 you, brothers, and may you have a great morning. France will
21 wake up to a beep-ing tragedy, a catastrophe" -- and he laughs
22 -- "and a mass massacre, and a massacre, and a great killing
23 implemented by a lion, one of God's lions, against those
24 infidel French"? Do you recall reviewing that?

25 A Yes, I do.

1 Q What is the significance of the lion, that animal, with
2 respect to ISIS?

3 A The Islamic State views the lion with particular reverence
4 as an animal of great stoicism and pride and power and
5 strength. And it tends to be a common image in Islamic State
6 propaganda and just in general their image. They identify
7 closely with that.

8 Q So when he calls the person who committed those murders a
9 lion, he's praising his act?

10 A Yes.

11 Q Later in the summer of 2016, on August 17th, did you review
12 a transcript where Rahim is crediting the social media
13 application for putting supporters of ISIS together?

14 A Yes.

15 Q In fact, he says, "Yes, how many brothers were here, talked
16 to each other by voice and then met in the land of jihad,
17 unique brothers from many, many countries. We beseech almighty
18 God to send us to the land of jihad. The other issue,
19 honorable brothers, is do not, I mean, underestimate these
20 program, programs, on which we are talking right now."

21 And what do you believe he's referring to when he's talking
22 about "these program, programs, on which we are talking right
23 now"?

24 A He's referring to social media platforms such as the one in
25 which he's speaking.

1 Q And he's saying, "Don't take them for granted. How many
2 persons mobilize because of similar applications? Or, I swear,
3 if you use these sites for what pleases God, they will be
4 extremely useful." Is that correct?

5 A Yes, it is.

6 Q And does he go on to say they're useful to incite others
7 for jihad?

8 A Yes.

9 Q And then later, in August of 2016, did you review a
10 transcript of a conversation between several people, including
11 Said Rahim, where one user, we'll call User 1, was asking if it
12 was permissible to -- saying that he resided in Manchester,
13 Britain, and asking if it was permissible to kill foreigners in
14 Manchester, Britain. And he specifically addressed it to
15 another user, not Rahim, and said, "I don't want to interrupt,
16 but with your permission, Sheik, I reside in Manchester,
17 Britain and work with persons who are all foreigners. Is
18 killing them permissible? Is killing them permissible or not,
19 or bombing them or anything else? I want to, to understand
20 this matter from the sheiks of the State. Is killing any
21 person permissible?"

22 First of all, what does sheiks and sheiks of the State
23 mean?

24 A Somebody referred to as a sheik would be somebody who is
25 held in particular high esteem within a group of people. And I

1 presume that sheiks of the State, in a conversation in a
2 platform called State of the Islamic Caliphate, would be people
3 held in high esteem within the structure of that --

4 Q Of the ISIS --

5 A -- social media platform.

6 Q I'm sorry. Of the ISIS support group?

7 A Yes.

8 Q And that person answered, User 2 answered by saying, "Fight
9 the pagans altogether." And he explained that it didn't matter
10 if User 1 went to Europe to work for money, but God has given
11 him everything and he does not owe the foreigners anything. Is
12 that what you reviewed from User 2 --

13 A Yes.

14 Q -- in response to that question?

15 A Yes.

16 Q And then Said Rahim also contributed to User 1's question;
17 is that correct?

18 A Yes.

19 Q And he said, "Okay. May God bless you. I was going to
20 grab the microphone so I would tell him, the one in
21 Manchester." And when he says "grab the microphone," does that
22 mean take control of the audio or the talk?

23 A Yes. That's exactly what it means.

24 Q "Okay. Kill. And do not consult anyone or seek the
25 opinion of others. Kill. Kill them and do not show them mercy

1 or compassion, for neither the civilian clothes protect them
2 nor the military uniform sanctions the shedding of their blood.
3 They are all the same in their unbelief. Kill them, I mean.
4 Don't even consult with anyone. Go and kill. If you have the
5 ability to go and kill, poison them, throw a rock, push down a
6 building, do whatever you do. The important thing is that you
7 kill. Kill with the intention of waging jihad for the sake of
8 Allah and the intention that your banner is clear, the banner
9 of there is no god but Allah and Mohammed is the messenger of
10 Allah. Kill them, I mean, with the intention of jihad, with
11 the intention of you being a mujahedeen for the sake of God.
12 Maybe this act, I mean, forgives your past and future
13 transgressions. Rely on God. Kill if you have a chance. To
14 hell with those Englishmen. The killer of an infidel will not
15 go to hell. It is well known that shedding of the blood of the
16 infidel is lawful. Shedding the blood of the infidel is
17 lawful. But if they say you do -- if they say to you in this
18 case that he was a safeguarded Allah, then where is the Islamic
19 State that this infidel lives and to be considered an ally and
20 a free non-Muslim under Muslim rule? Does he pay tax? Does
21 he? Does he? Does he? No. So kill. Kill. If you ask the
22 scholars of the tyrants, they will tell you not to kill him,
23 but kill him. Rely on Allah and kill them. Think of a way to
24 kill the biggest number possible of those. May Allah's curse
25 fall on them."

1 Is that a statement made by Said Rahim?

2 A Yes, it is.

3 Q And I believe I counted at least 15 times he said to kill
4 other people in that statement. Is that correct?

5 A I believe that's about accurate.

6 Q Okay. Later, in December of 2016, does Said Rahim talk
7 about how people in Turkey should be -- also be killed?

8 A Yes.

9 Q Does he get on the channel and say they should attack
10 people in Turkey, they should attack government, its offices,
11 its police, its citizens, truest location, courts, not clubs,
12 and anything that is Turkish should become a target?

13 A Yes, that's right.

14 Q And that was mid-December of 2016, correct?

15 A Yes.

16 Q Okay. A couple weeks later, on New Year's Eve, did
17 something actually happen in Turkey?

18 A Yes, it did.

19 Q And what was that?

20 A On New Year's Eve, at a nightclub, I believe the name is
21 Reina, a nightclub, an individual identifying with Islamic
22 State entered the club and commenced to attacking the people
23 who were there, I believe killing 39 individuals.

24 Q And a little over a day later, on January 2nd, did Said
25 Rahim speak about that --

1 A Yes.

2 Q -- attack?

3 A Yes.

4 Q And did he refer to that Turkish nightclub attack as a
5 continuation of ISIS' work?

6 A Yes, he did.

7 Q And did he praise the mission?

8 A Yes, he did.

9 Q And then did he again reiterate that kill and do not
10 consult anyone?

11 A Yes, he did.

12 Q And what's the significance of that repeated -- how he's
13 continuing to say, kill, do not consult, kill, kill, don't ask?

14 A The official spokesperson for the Islamic State, a man that
15 goes by the name Sheik al-Adnani, before Ramadan approximately
16 a little less than two years ago presented basically an edict,
17 an order, an instruction just before Ramadan that for all of
18 the followers of the Islamic State around the world who
19 couldn't travel to join the fight there in the Caliphate, that
20 they should commit violent acts and that they need not ask for
21 permission or seek approval, just to go do it.

22 Q And to do it wherever they were, correct?

23 A And to do it wherever they happened to be, yes.

24 Q And al-Adnani was high up in the structure of ISIS; is that
25 correct?

1 A Yes.

2 Q And he is no longer living; is that correct?

3 A Correct. He was one of the most senior members and I
4 believe was targeted maybe about four or five months ago and is
5 deceased.

6 Q Now, as your investigation continued, did you monitor with
7 frequent checks of Mr. Rahim's anticipated travel outside the
8 country? I mean, did you make sure he wasn't traveling?

9 A Yes. Many times in the evidence, there was a suggestion of
10 possibly an intent to travel, so that was something that we
11 did, yes.

12 Q And did you become aware that he intended to travel on
13 March 5, 2017?

14 A We -- a couple of days beforehand, but yes, that he had a
15 plan, a reservation to travel on the 5th, yes.

16 Q And did you and another agent with the FBI encounter Said
17 Rahim at the airport after he had gotten through security?

18 A Yes.

19 Q And do you see that person you encountered in the room
20 today?

21 A Yes, I do.

22 Q Would you point to him and indicate what he's wearing?

23 A That's Said Rahim right here in the orange jumpsuit.

24 MS. MARTIN: Your Honor, would the record reflect that
25 he's identified the Defendant, Said Rahim?

1 THE COURT: The record will so reflect.

2 BY MS. MARTIN:

3 Q Does he look different on Sunday and today than he had
4 during your investigation?

5 A Yes.

6 Q What was different?

7 A Throughout the almost-year of the investigation, Said Rahim
8 had a beard, a particular style that is common for followers of
9 Salafism, essentially. A belief within Sunni Islam, and it's
10 also -- it's very common for followers of the Islamic State, of
11 which Islamic State is -- follows the Salafi belief.

12 Q So he shaved his beard and went to the airport?

13 A Yes. Shaved his beard and went to the airport.

14 Q But when you confronted him or encountered him at the
15 airport, he voluntarily agreed to go with you and Special Agent
16 Golum (phonetic) for an interview?

17 A Yes. That's correct.

18 Q And before the interview, you told him that you were agents
19 on the Joint Terrorism Task Force that was housed at the FBI
20 and that you investigate acts of terrorism?

21 A Yes. It was our understanding he had some trouble checking
22 in and we exactly asked if he'd be willing to talk to us,
23 identified ourselves and our purpose for being there, and that
24 if he was willing to talk to us, maybe we could help figure out
25 what the issues were.

1 Q And did Agent Golum specifically say, I am a federal agent,
2 it's a crime to lie to us?

3 A Yes, he did.

4 Q Okay. And during that interview, did you ask Said Rahim,
5 have you ever promoted violence on behalf of the Islamic State,
6 ISIS, ISIL, or DAISH?

7 A Yes.

8 Q And what did he respond?

9 A He responded no.

10 Q All right. Based on those transcripts that we've gone
11 over, do you believe that was a false statement?

12 A Yes, I do.

13 Q Did you also ask Rahim, do you know anyone who has ever
14 promoted an act of terrorism?

15 A Yes.

16 Q And based on your review of the evidence and those
17 transcripts -- well, let me -- first, what did he respond?

18 A He responded no.

19 Q And based on your review of the transcripts and the
20 evidence, was that a false statement?

21 A Yes, it was.

22 Q And finally, did Mr. Rahim note -- acknowledge that he'd
23 heard about that attack on the nightclub in Turkey on December
24 31, 2016?

25 A Yes.

1 Q He said he'd heard about it in the news?

2 A Yes.

3 Q And did you -- and did Special Agent Golum ask Rahim, have
4 you ever praised the attack in Turkey?

5 A Yes.

6 Q And what did Rahim respond?

7 A He responded no.

8 Q And based on your view of those transcripts, was that a
9 false statement?

10 A Yes, it was.

11 Q Now, the criminal complaint in this case charged three
12 different lies that Said Rahim told to you. How many lies --
13 were those the only lies he told during that interview?

14 A No, it wasn't.

15 Q Did he tell multiple lies?

16 A Yes, he did.

17 Q More than ten?

18 A More than ten, yes.

19 Q More than 20?

20 A More than 20, yes.

21 Q Okay. So pretty much all lies?

22 A Yes.

23 Q Now, you're at the airport. And what country was he
24 traveling -- attempting to travel to?

25 A His booked travel was connecting through Frankfurt, Germany

1 en route to Amman, Jordan.

2 Q And what is the significance of, geographically, of Jordan?

3 A Jordan shares a border with the areas in dispute or
4 controlled by the Islamic State.

5 Q So, Jordan borders Syria?

6 A Yes.

7 Q Now, summaries of some of the translations have been done,
8 and not verbatims, but is there -- have you reviewed one
9 summary where Said Rahim is telling members of the channel that
10 if you're not able to go to Syria, you should travel to Libya
11 or the Philippines, Nigeria, or Yemen? Whatever's the easiest,
12 you should go for it?

13 A Yes.

14 Q And has he also made declarations asking for strength from
15 God to be able to travel for jihad?

16 A Yes.

17 Q Okay. And also, speaking in the chat room, did he ever
18 speak in the chat room, in the transcripts you reviewed, to
19 someone who claimed he had just returned from a mission in
20 Syria, including Aleppo?

21 A Yes.

22 Q And that person went on to commend people who choose to
23 perform jihad; is that correct?

24 A That's correct.

25 Q And Said Rahim expressed a willingness and a hope to join

1 them, "God willing, but I've got to have something in mind, and
2 since I'm going anyway, then I'll do the something, may the
3 Lord of the two worlds wills?"

4 So, he's asking for strength from God from something he has
5 in mind to travel to commit jihad in that conversation; is that
6 correct?

7 A That's my understanding, yes.

8 Q Okay. Now, after Mr. -- or, after Said Rahim was arrested,
9 did you read him his Miranda rights?

10 A That day, we did not. We did not question him further
11 after the arrest that day.

12 Q What happened the next day?

13 A The following day, while being processed in over at FBI, I
14 did read him his Miranda rights.

15 Q And did he waive his right to speak with an attorney and
16 agree to talk to you again?

17 A Yes. In writing.

18 Q And during that conversation, did he indicate that if he
19 had anything to hide he would just get out of the country?

20 A If my memory serves, I reminded him that the reason that he
21 had been arrested was making false statements based on the
22 questioning the day before, and what does he think he's here
23 for, and his response was something to the effect of, I have
24 nothing to hide. If I had something -- if I had something to
25 hide, then I could just -- I would just leave the country.

1 Q And in fact, when he was at the airport trying to leave the
2 country, he had seven or a little less than \$7,000 in cash?

3 A Yes. Correct.

4 Q Okay. Now, with respect to whether or not Said Rahim poses
5 a danger to the community, we've already discussed some of the
6 things he's talking about. Jihad. Well, and is jihad, in the
7 context of what you're reading, a violent act?

8 A Yes. It's mobilizing for the purpose of fighting against
9 the infidel.

10 Q Okay. Now, --

11 MS. MARTIN: And Your Honor, I'm referring to the
12 first transcript in the batch. The first highlighted portion.

13 BY MS. MARTIN:

14 Q Did -- and I'm going to read this to you, Special Agent
15 Glick, where Said Rahim says, "But we" -- well, let me start
16 out. There was an attack in Orlando; is that correct?

17 A Yes, that's correct.

18 Q Orlando, Florida? And can you briefly discuss what
19 happened in Orlando?

20 A An individual identifying with Islamic State and later
21 connected directly to Islamic State entered into that nightclub
22 and committed an attack.

23 Q Okay. And he -- and Said Rahim says, "But we rejoice for
24 this attack which took place in America, in Orlando. Glory to
25 the almighty God. Glory to the almighty God. I swear this

1 attack shook them violently. Pictures of the attack are here.
2 There is a picture of the guy who did it. Glory to God
3 almighty. Bless God almighty. It is imperative to pass the
4 word to all the mosques, especially in America, to publicize,
5 to publicize this attack. Oh, boy. Thanks be to God. Thanks,
6 God, the lord of the two worlds, and thanks be to the lord of
7 the two worlds. He is a lion. A lion. We do not know his
8 fate. Was he arrested or martyred or..."

9 And then later in that conversation, he continues. "I
10 mean, this is a message we send to the agents of the
11 intelligence, at the FBI and CIA, to tell their bosses.
12 Enough, America. Stop and remove your tarnished hands from
13 Muslims. Pull back and do not interfere."

14 And then at the end of the page he says, "But to America,
15 as you kill, you will be killed. The equation changed now.
16 Now, now, in the past, it was yes, they killed us, tread on us,
17 and no one did anything. But thanks be to God, the lord of the
18 two worlds, now things change, as favor from God almighty.
19 Now, all because of God, things have changed, the equation
20 changed, and State of the Islamic Caliphate is now a power to
21 reckon with."

22 Did you review that transcript?

23 A Yes, I did.

24 Q And do you believe him to be praising violent acts and
25 encouraging others to commit violent acts?

1 A Yes.

2 Q And then later in that conversation Said Rahim says, "To
3 acquire a weapon is very, very, very easy. Just about any
4 person can have a weapon. I mean, most everyone is armed.
5 Everyone is armed. They have weapons. It is not hard to get a
6 weapon. You can go anywhere carrying a weapon. And you can go
7 to the airport carrying arms, because no one checks or
8 anything. Nothing. Clubs, restaurants, anywhere. No weapons
9 are there. No weapons. These are the elements which help
10 these things. Even if they become strict, it will not work,
11 because it isn't the country."

12 Now, he's talking about in the U.S. it's easy to get a
13 weapon, everyone is armed; is that correct?

14 A Yes. This is entirely in the context of the Orlando
15 attack.

16 Q Okay. And you actually asked him in the interview whether
17 he -- or Agent Golum asked him if he had access to a weapon or
18 if he had a weapon; is that correct?

19 A Yes.

20 Q And what did he say?

21 A He said he did not.

22 Q Okay. And was that true?

23 A It was not true.

24 Q In fact, while you were talking to Said Rahim, a search
25 warrant was being executed at his business; is that correct?

1 A Yes, it is.

2 Q What was located?

3 A The agents searching the business found a .357 caliber
4 handgun.

5 Q And in fact, in earlier surveillance, had he been captured
6 waving or brandishing that, or at least a handgun that would
7 have been consistent with that caliber?

8 A Yes. Pole cam coverage, there was an incident there
9 several months back and captured him walked through the parking
10 lot brandishing a fire -- a pistol.

11 Q And did you also find other ammunition in the search of
12 that business?

13 A The agents that searched it found, yes, ammunition.

14 Q And what did they find?

15 A They found a bag. I believe it contained 120-something
16 rounds of .22 ammunition located in a -- I think in a desk
17 drawer. Additional ammunition of a small quantity to go along
18 with the .357 handgun that was found. And then in a -- they
19 also found a magazine, I believe it was an Armalite magazine
20 that only goes to one weapon system, which is an AR-10 rifle,
21 and that was a high-capacity magazine filled with .308
22 ammunition.

23 Q Okay. Now, did you review transcripts where Said Rahim was
24 talking about the necessity of performing jihad?

25 A Yes.

1 Q Okay.

2 MS. MARTIN: And Your Honor, that's the next
3 transcript.

4 BY MS. MARTIN:

5 Q On Page 2, Said Rahim says, "In order for you to prove, er,
6 that you are a true believer, you have to do jihad for the
7 cause of God, faithfully, er, and be sure that you do this act
8 to please God. Glory to him almighty and get closer to him
9 without pleading your own case and without selfishness. I call
10 upon myself and you to have a pure intention so that God will
11 facilitate for us to do jihad for his cause and to be among
12 those whom God loves to send them off and not the opposite.
13 Thanks be to God."

14 Did you review that transcript?

15 A Yes.

16 Q And do you believe he is encouraging and saying he needs to
17 commit jihad?

18 A Yes.

19 Q And do you believe that to be a violent act?

20 A Yes.

21 Q Okay. Now, when we were talking about probable cause in
22 the complaint, we went over that text or the transcript from
23 the individual asking if it was okay to kill people in
24 Manchester. And again, over 15 times he says, Kill them, kill
25 them, kill them. However you can, kill them. Is that correct?

1 A Yes.

2 Q And did you actually listen to that audiotape in Arabic?

3 A Yes.

4 Q And what is your impression of his cadence or the way he
5 was talking?

6 A I obviously don't speak Arabic, but if you listen to the
7 audio cut as a whole, there's a normal baseline tone, and then
8 when that answer commences, it's much more fiery and passionate
9 and loud.

10 Q So, really, a very strong belief --

11 A Yes.

12 Q -- to kill other people?

13 A That was the impression I got, yes.

14 Q Okay. And on --

15 MS. MARTIN: And Your Honor, moving past that
16 Manchester transcript.

17 BY MS. MARTIN:

18 Q Did you also review a transcript in which Said Rahim said,
19 "No. Terrorism's religion is Islam." And then he laughs.
20 "Terrorism's religion is Islam. And the Koran confirmed it
21 when it said, And to strike terror into the hearts of the
22 enemies of Allah and your enemies." And then it cites the
23 verse. "Yes, terrorism is Muslim." And he laughs. "Terrorism
24 is Muslim. It does have a religion. It does have a religion.
25 Thanks to God and thank you to the terrorists. Thank you, oh

1 terrorists." Is that correct?

2 A Yes, it is.

3 Q And terrorism -- did you actually define terrorism with
4 Said Rahim during your interview?

5 A Yes, we did.

6 Q And did you define it as a violent act on behalf of a
7 religious group or political group?

8 A Yes.

9 Q I mean, it's paraphrasing, but essentially --

10 A Essentially, --

11 Q -- committing violence?

12 A Yes. Essentially, violence on behalf of a group to
13 terrorize and to put fear, I guess.

14 Q Now, we already talked a little bit about the attack in
15 France on Bastille Day; is that correct?

16 A Yes.

17 Q And we talked about one of the transcripts where he --
18 where Said Rahim addresses this. But did -- was there another
19 transcript where Said Rahim says, "Okay, uh, uh, what did al-
20 Adnani say? His word had -- his words had a huge impact by
21 God's favor and a very, very, very good effect. Every
22 monotheist Muslim who kills those infidels is uh, uh, a good
23 deed, according to our sheik, al-Adnani. And more, call it
24 whatever you want from God, may he be exalted, because we
25 remember the article. Kill and do not consult anyone and don't

1 ask for any legal opinion. Uh, kill him by any means. Smash
2 his head on the wall. Spit in his face. Burn. Plant. I
3 mean, anything. Anything. Poison. Anything. Praise God, the
4 lord of the world, this person who carried out this operation,
5 I mean, this is a truck, a truck." And he laughs. "The truck
6 is not -- not a car. The truck, our brothers, is very huge.
7 It weighs tons. It weighs hundreds of tons. Uh. And it was
8 on a specific speed, high speed. Then Glory to God, this one.
9 Glory to God. God blessed this operation."

10 Do you remember reviewing that?

11 A Yes, I do.

12 Q And is he again praising using just whatever you have to
13 kill people?

14 A Yes.

15 Q Okay. And does Said Rahim frequently also acknowledge the
16 power of his words to incite others to violence?

17 A He has, yes.

18 Q And in fact, in that last transcript, Your Honor, does Said
19 Rahim say, "Some of the brothers mobilize from this channel.
20 They were amongst us. They mobilized for jihad, for the cause
21 of Allah, and now we communicate with them"? Is he
22 acknowledging that people are on this channel and then they go
23 commit jihad?

24 A Yes.

25 Q Okay. We talked a little bit about the guns, the gun in

1 his shop and how easy it is, he believes, for people to get
2 guns wherever they are in the U.S. Were there other weapons
3 that you have known Said Rahim to have?

4 A A large -- there was a large knife that was located also
5 just inside the entrance during the search warrant of the
6 store.

7 Q And he admitted in your interview that he did have a knife?

8 A Yes, he did.

9 Q Okay. But in an additional transcript related to what
10 happened in France, or the French, did Said Rahim repeatedly
11 talk about attacking the French with knives?

12 A It was referenced, yes.

13 Q And based on all this, on his statements, on his actually
14 having weapons and the lies he told to you, do you believe that
15 Said Rahim poses a danger to the community?

16 A Yes, I do.

17 Q And based on the booked travel to Jordan, which borders
18 Syria, his ties outside of the country -- and I don't know if I
19 asked you about that. Do you understand that he has family in
20 Jordan?

21 A Yes. He has a daughter.

22 Q Okay. Based on that and -- those ties, the fact that he
23 was traveling with \$7,000 cash and leaving the country, do you
24 believe he is a flight risk if released pending indictment and
25 trial in this case?

1 A Yes.

2 MS. MARTIN: Pass the witness, Your Honor.

3 THE COURT: Mr. Whalen?

4 CROSS-EXAMINATION

5 BY MR. WHALEN:

6 Q Agent Glick, as it relates to the social media platform,
7 what's the name of the social media platform?

8 A It was Zello.

9 Q And who's the host? What's the company that --

10 A Zello, Inc.

11 Q Where are they located?

12 A Austin, Texas.

13 Q And when did you get the search warrants for Zello?

14 A I believe the search warrants were -- I believe in January.

15 Q Of 2016 --

16 A Yes.

17 Q -- or 2017?

18 A Of 2017.

19 Q 2017?

20 A I might have a copy of it, actually. Yeah. No, I don't.

21 Q Okay. So you're saying you got the search warrants this
22 year?

23 A Yes.

24 Q Of January 2017?

25 A I believe so. I believe so, yes.

1 Q For Zello?

2 A For Zello, yes.

3 Q Okay. And you testified at the beginning of the hearing
4 that, based on your reviewing those search warrants, that you
5 then identified Mr. Rahim as one of the participants in that
6 social media platform; is that correct?

7 A No, that's not correct.

8 Q Okay. So how did you identify Mr. Rahim as a user of that
9 social media platform?

10 A There were several grand jury subpoenas issued to Zello
11 throughout the year-long investigation prior to the search
12 warrant.

13 Q Okay. And so you got some grand jury subpoenas. So then,
14 through the grand jury subpoenas, how did you identify that Mr.
15 Rahim was a user or a participant in the social media platform?

16 A Subscriber information.

17 Q Okay. Well, tell me about what subscriber information did
18 you rely on to identify Mr. Rahim.

19 A Email address.

20 Q Okay. And what was the email address?

21 A I believe it was OmarShishani1976@gmail.com.

22 Q Okay. Did you get a --

23 A There were --

24 Q And then how do you know that belongs to Mr. Rahim?

25 A It was associated with other social media accounts for

1 which we also had obtained grand jury subpoenas.

2 Q Okay. Does you have an IP address?

3 A Yes.

4 Q Okay.

5 A Well, yes, we do. For -- for the other grand jury
6 subpoenas for the other social media.

7 Q And what other social media grand jury subpoenas did you
8 get?

9 A I would have to go back and review. It was, certainly,
10 Paltalk, Yahoo!, Google and Gmail.

11 Q Okay. And so then you said you had a pole cam. How did
12 you determine to put the pole cam up at his store in Dallas?

13 MS. MARTIN: Your Honor, I think this goes beyond the
14 scope of probable cause and a detention issue at this point.

15 MR. WHALEN: Your Honor, I think it goes to how they
16 have generally just conclusory said that's Mr. Rahim is the one
17 who's been making these chats, and I'm trying to determine how
18 they determined whether or not he is in fact the same person,
19 which goes to probable cause, Your Honor.

20 THE COURT: It was a little light on identity, so I'm
21 going to give a little leeway as to the identity issue, but not
22 much.

23 BY MR. WHALEN:

24 Q So how did you make the determination that the person who
25 you claim is Mr. Rahim was in fact the one who was speaking on

1 the social media platform?

2 A When we compared the OmarShishani1976@gmail.com address
3 which is associated with one of the Zello accounts to other
4 accounts, it came back to an IP address. We served a subpoena
5 on Time Warner Cable that came back to the residence where he
6 resides.

7 Q Okay. What's the address of that residence?

8 A I believe 3814 Barrington Drive in Richardson, Texas, if my
9 memory serves.

10 Q Okay. And what was the name of the -- was the name of the
11 account -- well, strike that. Whose name was the account in
12 for Time Warner?

13 A I don't recall.

14 Q Was it Mr. Rahim?

15 A It was not.

16 Q So, then, once you got the IP address and came back to Time
17 Warner, then how'd you identify it was Mr. Rahim talking on the
18 chat room?

19 A Well, the content and the different connections within the
20 grand jury subpoenas led us to that. Statements that were made
21 in some of the social media platforms. Images that were
22 obtained through some of the social media -- I'm sorry, the
23 grand jury subpoenas for other social media.

24 Q Okay. When you say images, are you saying pictures of Mr.
25 Rahim?

1 A I believe so, yes.

2 Q And when did you make this determination, that it was Mr.
3 -- that you believed it to be Mr. Rahim?

4 A Early on in the investigation.

5 Q Okay. And when you say you identified it was Mr. Rahim
6 early on in the investigation, is it fair to say that you had
7 concluded and had -- and everybody else -- confidence that it
8 was Mr. Rahim, correct?

9 A Yes. Correct.

10 Q And there was no question in your mind it was Mr. Rahim?

11 A There's no question.

12 Q Okay. So the first thing that you mentioned as a false
13 statement was as it related to the Nice incident, correct?

14 A The --

15 Q The France incident.

16 A That was asked about? Yes.

17 Q That, yeah, that he said -- you asked him about that you
18 said was a false statement. Is that correct?

19 A Yes.

20 Q Okay. Let me ask you this question. Have -- based on any
21 of his statements, have you connected any person who was in
22 that social media chat room to any act of violence in Syria, in
23 the United States, around the world?

24 A Not at this time.

25 Q Okay. And his comments about France were after the fact,

1 correct?

2 A I don't understand your question.

3 Q Well, when you -- when -- the -- I think in your affidavit
4 or in the complaint that you -- did you help draft the
5 complaint?

6 A It was sworn to by Special Agent Golum.

7 Q Okay. The incident happened on July 14th in France,
8 correct?

9 A I believe so, yes.

10 Q Okay. And then his comments were on July 15th, which was
11 after the fact, correct?

12 A That's correct.

13 Q And when you talk about the Manchester incident between
14 User 1 and User 2, did you ever identify who User 1 and User 2
15 was?

16 MS. MARTIN: Objection, Your Honor. That's not
17 relevant to the determinations today.

18 THE COURT: What is the relevance, Mr. Whalen?

19 MR. WHALEN: Well, I think that they have made -- in
20 the complaint, they say it's their assessment that User 2 was
21 informing User 1 of killing non-Muslims. I'm trying to see
22 whether or not they --

23 THE COURT: But what's the relevance of the identity?

24 MR. WHALEN: Well, the -- well, it doesn't go to
25 identity. I think it goes to probable cause, as to whether or

1 not the statements that they're asking about are material.

2 THE COURT: I'm going to sustain that objection.

3 BY MR. WHALEN:

4 Q All right. So you mentioned the statement he made on July
5 15, 2016, correct?

6 A Uh-huh.

7 Q Okay. Is the investigation ongoing at this point?

8 A Yes.

9 Q Okay. And then are you actively monitoring the social
10 media platform?

11 A No.

12 Q Okay. And then on August 17, 2016, the investigation is
13 ongoing at this point, correct?

14 A Yes.

15 Q And are -- and the statements that you attribute to him on
16 August 17th about Manchester, when did you learn that -- or
17 determine he made those statements?

18 A After the search warrant returns came in and we evaluated
19 and organized the information that we obtained.

20 Q Okay. So is it fair to say that not until you did the
21 search warrants in January of 2017, okay, that you determined
22 that -- attributed all these statements to him. Is that
23 correct?

24 A The audio statements?

25 Q Yes.

1 A Yes, that's correct.

2 Q Okay.

3 A The audio statements in the search warrant, yes.

4 Q Okay. But are you getting -- are you learning about these
5 statements in real time, as that he made another statement in
6 December of --

7 MS. MARTIN: Your Honor, I'm going to object again.
8 This is going beyond the determinations of probable cause and
9 detention.

10 MR. WHALEN: No, I think it does go to detention, go
11 to the issue of detention as it relates to whether he's a
12 danger to the community.

13 THE COURT: Does it relate -- restate your question.

14 MR. WHALEN: I'm asking, are they learning of these
15 statements in real time? Are -- like if -- they've claimed he
16 made the statement on August 17th of 2016. Did they learn
17 about it on August 17th of 2016? And I think it's relevant
18 because it goes to the issue of detention as to whether he's a
19 danger. Because if they're aware of these statements as
20 they're going on in real time and don't take any action until
21 March, then I think it shows that he's not a danger to the
22 community because they're not doing anything to thwart whatever
23 they think he's doing.

24 MS. MARTIN: Your Honor, may I respond?

25 THE COURT: Yes.

1 MS. MARTIN: I think Mr. Whalen has in fact
2 established that they've had the search warrant return since
3 January and nothing was done until he actually traveled. So
4 the Government stipulates to that, that those were returned in
5 January, they didn't do anything until the travel reservations
6 were made. So I don't -- I think that --

7 THE COURT: What your response is, is that the offense
8 that's alleged wasn't committed until the false statements were
9 made? So, Mr. Whalen, I'm not understanding your question, I
10 guess, and how it relates to detention, I guess.

11 MR. WHALEN: Well, what I -- I think it's relevant in
12 that if they're aware -- they're now claiming that he's a
13 danger to the community.

14 THE COURT: Right.

15 MR. WHALEN: That's his opinion. And so if his
16 opinion that he was a danger to the community, well, if they
17 knew about these statements when they were occurring, they
18 didn't feel that way back then, and so I think it --

19 THE COURT: So you think they should have just gone
20 and locked up a citizen based on the fact that they knew of the
21 statements?

22 MR. WHALEN: Well, they could have went and asked him
23 about them at that point.

24 THE COURT: Okay. I'm going to sustain the objection.

25 MR. WHALEN: Okay.

1 BY MR. WHALEN:

2 Q So let's fast-forward to March 5th. You learn that he's
3 got a plane ticket to go to Jordan. Correct?

4 A A couple days beforehand, yes.

5 Q Okay. And you -- when do you learn that he has a wife and
6 daughter in Jordan?

7 A When did I learn he had -- he -- it was one of the first
8 things he said, he was going to visit. When did I first --
9 when did I first -- I was aware, I think, that he had some
10 family. I didn't know the details --

11 Q Okay.

12 A -- until he mentioned, I mean, that he was going to visit
13 his daughter.

14 Q Okay. So when did you learn that he may have family in
15 Jordan?

16 A I -- I don't remember. I don't recall.

17 Q Okay. And you indicated that he was having trouble getting
18 through security; is that correct?

19 A Yes.

20 Q What type of trouble was he having?

21 A Not getting through security. My understanding was that he
22 was not getting a boarding pass from Lufthansa Airlines.

23 Q Okay. And was that by design?

24 A No, it was not.

25 Q Okay. And so you said you approached him with Agent Golum

1 to say, can we help you? Is that correct?

2 A Essentially, yeah.

3 Q Okay. And what were you going to do to help him?

4 A We were aware that he was -- had booked a ticket to travel

5 --

6 Q Uh-huh.

7 A -- and were hoping to take the opportunity to get a
8 voluntary interview with him. And when we learned of the fact
9 that he did not have -- get a boarding pass, for reasons that
10 are Lufthansa's reasons, when we interacted with him initially
11 we had asked him if he'd be willing to speak with us
12 voluntarily about what it is that maybe is causing Lufthansa
13 not to issue the boarding pass.

14 Q But that's not why you wanted to talk to him. Is that
15 fair?

16 A That's --

17 Q Is that fair?

18 A I think it's related, but --

19 Q How so?

20 A I don't know why Lufthansa didn't give him a boarding pass,
21 but yes, we had -- like I -- what we state, we wanted to take
22 advantage of the opportunity while he was up there to ask him
23 to submit to a voluntary interview.

24 Q Okay. So when you went to ask him, hey, can we help you,
25 your purpose was really to interview him. Is that fair?

1 A That's fair.

2 Q Okay. So you identify yourself as agents of the FBI?

3 A As an agent of the U.S. State Department, and Special Agent
4 Golum with the FBI, yes.

5 Q Okay. And did you tell him the purpose of the interview?

6 A Yes.

7 Q Okay. What did you tell him?

8 A We told him that we worked for the Joint Terrorism Task
9 Force and our job and responsibility is to investigate all
10 threats of terrorism.

11 Q And at this point, when you go to interview him, is there
12 any doubt in your mind or any other agent's mind that he's the
13 one who made these statements?

14 A No doubt.

15 Q Okay. And so what time did the interview start?

16 A I'm not exactly sure. 3:00 -- after 3:00 o'clock, I
17 believe.

18 Q Okay. And it was recorded?

19 A Yes, it was.

20 Q Okay. In what room were you in?

21 A We were just in the gate entryway for the gate right there
22 adjacent to his gate.

23 Q Okay. And just so I'm clear, because -- so you have the
24 gate to go down the ramp to the plane?

25 A Right. Just inside that door.

1 Q Okay. And is the door open or closed?

2 A The door was closed.

3 Q Okay. And are you able to open the door to get out?

4 A Yes.

5 Q Back into the airport?

6 A Yes. Correct.

7 Q Okay. And did you tell him he was free to go?

8 A Yes. The whole context of asking for his voluntary
9 cooperation was that we needed to ask him some questions and it
10 might be more -- that might, you know, effectively help uncover
11 the reason he didn't get a boarding pass, but it might be more
12 appropriate -- at that time, his gate which we were standing at
13 was full of people, and so we suggested it might be more
14 appropriate to go in there, and framed it in the sense that we
15 had a short amount of time before the flight was going to be
16 boarding.

17 Q Okay. How much time did you have before the flight
18 boarded?

19 A I believe 50 minutes.

20 Q Fifty minutes?

21 A Five-zero.

22 Q And how was it recorded?

23 A How was what recorded?

24 Q The interview.

25 A Oh, the interview was recorded, it was a camera in a coffee

1 mug.

2 Q So was that already set up before you got in there?

3 A Yes, it was.

4 Q So when you --

5 A There was additional -- an additional audio recording
6 device as well.

7 Q So, has he committed a crime at this point?

8 A At what point?

9 Q At the time you asked to voluntarily interview him.

10 MS. MARTIN: Objection, Your Honor. This doesn't go
11 to the probable cause for the charges he's under -- he's here
12 for today or detention.

13 MR. WHALEN: Goes to materiality of the false
14 statement. The statement, the false statement has to be
15 material.

16 THE COURT: Any response to that?

17 MS. MARTIN: Your Honor, the law in the Fifth Circuit
18 is that agents don't have to know at the time -- whether or not
19 they know his statements are false at the time is irrelevant if
20 the statement itself --

21 THE COURT: Whether or not who knows?

22 MS. MARTIN: The law enforcement agents. They can
23 know it's a lie when he tells them. It does not affect
24 materiality. That's not the law in the Fifth Circuit.

25 THE COURT: Say that one more time. They can know,

1 the agents can know --

2 MS. MARTIN: That whatever he says is not true at the
3 very time.

4 THE COURT: Okay.

5 MS. MARTIN: And it's still material. It's just,
6 would it tend to influence or tend to affect an investigation?
7 That's the law of the Fifth Circuit. So the charge here was
8 tend to influence or affect an investigation. It doesn't have
9 to in actuality under the law in the Fifth Circuit. Only has
10 to tend to influence.

11 THE COURT: Is that something different than what you
12 show, Mr. Whalen? I don't know.

13 MR. WHALEN: Well, I would simply quote -- and maybe,
14 you know, of course, I'm going to read it differently than
15 maybe the Government does, but under *U.S. v. Elashyi*, 554 F.3d
16 480, it basically says the false statement need only have the
17 capacity to impair or pervert the functioning of a governmental
18 agency.

19 THE COURT: But that's not inconsistent with what she
20 said, though.

21 MR. WHALEN: No, I'm not saying it's inconsistent.
22 I'm just saying, I don't think the facts give -- but it goes to
23 materiality of whether or not he's committed a crime or he's
24 impairing the function of the governmental agency.

25 THE COURT: Well, but impairing the function, though,

1 doesn't seem to be the standard based on what you read.

2 MR. WHALEN: It has to have the capacity. And I'll
3 argue it later, Judge. I --

4 THE COURT: Okay.

5 MR. WHALEN: We'll get to it. But I think it --

6 THE COURT: All right.

7 MR. WHALEN: All right.

8 THE COURT: Well, then I'm going to sustain the
9 objection because I'm sort of sensing that there may be a
10 bigger picture here.

11 BY MR. WHALEN:

12 Q And so when he -- when he made the first -- what you claim
13 to be the first false statement, did you confront him on that
14 and say, we know that not to be true?

15 A No.

16 Q Okay. Did you ever confront him and say, we know you're
17 lying to us?

18 A During the interview? No.

19 Q Okay. Him admitting that he made those statements, would
20 that have changed your opinion that he's the one who made those
21 statements?

22 A Would that have changed my opinion? No.

23 Q Okay. Let's talk about this firearm issue. You said you
24 have video of him waving a handgun. Is that what you've
25 testified to?

1 A I don't believe I used the word waving, but with a firearm
2 in his hand, walking through the parking lot, yes.

3 Q Okay. And where is the store located?

4 A 640 East Colorado Boulevard in Dallas.

5 Q A high-crime area?

6 A Moderate -- I believe it's a moderate crime area, yes.

7 Q Okay. Are you aware or do you know, did an adjacent store
8 get robbed and the clerk get killed or shot or anything like
9 that? Are you aware of that?

10 A I don't know anything about a robbery.

11 Q Okay. Did you check or look into it?

12 A Into a robbery of the clerk next door?

13 Q Yes.

14 A No, I did not.

15 Q Would it be reasonable for somebody to be a store owner to
16 possess a firearm to protect their property?

17 A Yes.

18 Q He's not a prohibited person from possessing a firearm; is
19 that correct?

20 A That's correct.

21 Q Okay. When you -- did you seize his luggage at the
22 airport?

23 A Did we -- did we seize his luggage?

24 Q Uh-huh.

25 A Post-arrest?

1 Q Yes.

2 A Yes.

3 Q Did you search it?

4 A Yes.

5 Q Did you find anything related to firearms or ammunition in
6 his luggage?

7 A No.

8 Q So there's nothing -- there was nothing illegal about him
9 having a gun, correct?

10 A Not as far as I'm aware, no.

11 Q Okay. And his statements about it's easy to get a firearm
12 in the United States, that's a pretty accurate statement, don't
13 you think?

14 A Yes.

15 Q Okay. You can buy a gun anywhere in this country. True?
16 Flea market? On the corner? Craigslist? I mean, you can buy
17 a gun. Is that true?

18 A It's true that it's not that hard to buy a gun.

19 Q And you seized his passport; is that correct?

20 A Yes. I believe so, yes.

21 Q And he's a U.S. citizen, correct?

22 A Correct.

23 Q And without his passport, he can't travel internationally,
24 correct?

25 A Not legally.

1 Q And he wasn't trying to do anything illegal to get out of
2 the country; is that correct?

3 A That's correct.

4 Q Now, you said he made some post-arrest statements that you
5 Mirandized him; is that correct?

6 A Yes.

7 Q Were those recorded?

8 A Yes.

9 Q And you said he waived his right -- what did he exactly say
10 again? That you -- that went to the issue of detention or
11 flight risk?

12 A I asked him if he knew why he was there and he said he
13 didn't have anything to hide; if he had something to hide, he
14 would leave the country.

15 Q Okay.

16 A He said something to that effect.

17 Q Okay. And did he make any admissions -- did he retract his
18 false statements and say, no, I lied to you and here's what I
19 should have said, or anything of that nature?

20 A He did not retract anything, no.

21 Q So is it your opinion that he's a --

22 A I'm sorry. Actually, there was one thing that he -- that
23 really amounts to a retraction, yes.

24 Q Okay. What did he say?

25 A I presented him with the information that -- some of which

1 was read here today about Zello. And when I initially asked
2 him if he knew what Zello was or had an account, he had told me
3 that he did not, during that custodial interview. After I
4 presented him with his own words and told him the name of the
5 channel and that he was a moderator, he acknowledged that, yes,
6 actually, he did have an account and was a moderator. In that
7 particular channel.

8 Q And just so we're clear, there's nobody from -- that you've
9 been able to determine from the chat room, based on the things
10 that he said, have committed any acts of violence; is that
11 true? Is that correct?

12 A I'm not aware at this time of actual acts that have
13 happened, no.

14 Q Okay. And is it your opinion that he's a danger to the
15 community because he was going to travel to Jordan and see his
16 daughter?

17 A The daughter and/or any travel to go see the daughter has
18 no part of that judgment of him being a danger.

19 Q Okay. So is it your opinion that because he was traveling
20 to Jordan?

21 A The travel is also -- the travel in general is irrelevant
22 to my opinion of him being a danger based on the evidence that
23 was presented today.

24 Q Okay. All right.

25 MR. WHALEN: I'll pass the witness, Your Honor.

1 THE COURT: Any redirect?

2 MS. MARTIN: Yes, Your Honor.

3 REDIRECT EXAMINATION

4 BY MS. MARTIN:

5 Q Special Agent Glick, I think you've covered one of my
6 questions, but I just want to make sure. Ultimately, Said
7 Rahim did admit he had a Zello account and he had made those
8 statements; is that correct?

9 A He -- I didn't ask him specifically about the statements.
10 He acknowledged that he did have a Zello account. He
11 acknowledged that he was a subscriber to the room, the State of
12 the Islamic Caliphate, and he acknowledged that he was a
13 moderator.

14 Q And when you began your interview with him, he didn't just
15 answer no to the three questions, correct, that we went over
16 today in the complaint; is that correct?

17 A I'm sorry?

18 Q He didn't -- so, we talked about the three false statements
19 charged in the complaint.

20 A Correct.

21 Q And again, those are not the only false statements he made?

22 A They are not.

23 Q And those were very pointed about promoting violence or
24 promoting an act of terrorism; is that correct?

25 A Yes.

1 Q But in fact, when you asked him -- started asking him about
2 foreign terrorist organizations, didn't he tell you that he
3 didn't know anything about any of that, all he ever did was
4 watch soccer?

5 A Yes. That's what he said, yes.

6 Q So he denied any knowledge of even foreign terrorist
7 organizations at all?

8 A Yes, that's correct. And in fact, when shown an image of
9 the al-Shishani of which the OmarShishani email account was
10 named after, he purposefully said it in a way to act like he
11 didn't really -- like he was kind of familiar but didn't really
12 know the name, but it's actually a name that he uses quite
13 regularly.

14 Q Okay. And who was al-Shishani?

15 A Omar al-Shishani was a Chechen who moved over to fight with
16 the Islamic State and became a senior military commander for
17 Islamic State.

18 Q Okay. And during your investigation, you did actively --
19 you didn't just start the investigation and end it? You
20 continued to update your subpoenas and learn more information
21 to get subscriber information and follow leads as they came; is
22 that correct?

23 A That's correct.

24 Q And you always meant to interview him? Whether or not he
25 had trouble with a boarding pass at the airport or not, your

1 intent, --

2 A Yes.

3 Q -- you were there to interview Said Rahim?

4 A Yes, that's correct.

5 Q And I think Mr. Whalen asked you if the door was closed.

6 But my recollection is there actually was no door on the room

7 you were in when you were interviewing him.

8 A So, there's the door to the actual -- it's the gate, the

9 actual gate that they open to go down the ramp for the plane,

10 which you can walk out -- from inside, you could walk out at

11 any time. And so we were -- there's a large open area, and

12 then to the left, a room, and the door there. And that room

13 was where we utilized, just, you know, ten feet from the other

14 door. And that -- and the door into that second area was open

15 the whole time.

16 Q So the door to the gate was closed, but the room you were

17 in, there was not even a door on that room?

18 A I don't -- I don't recall if there was or wasn't, but it

19 was never closed, correct.

20 Q And during your interview, did he, when he was telling you

21 how he was proud to be an American, did he also say that he was

22 offered Palestinian citizenship, that he could be a citizen of

23 both countries?

24 A I believe he might have. I'm not -- I don't actually

25 exactly recall what he said.

1 MS. MARTIN: Okay. I'll pass the witness, Your Honor.

2 THE COURT: Mr. Whalen?

3 RECCROSS-EXAMINATION

4 BY MR. WHALEN:

5 Q Back to the room at the airport, there was no -- there was
6 no door on the room, you say. Was his back to that opening or
7 were your -- was your back to that opening?

8 A He was situated where the opening was at a cant, so he was
9 -- I mean, if he'd put his right arm out, half his arm would be
10 through the -- through the door, through that entryway. And we
11 were further inside the room, looking towards the --

12 Q And how many of you were there?

13 A Two.

14 MR. WHALEN: That's all I have, Your Honor.

15 MS. MARTIN: No more questions, Your Honor.

16 THE COURT: You may step down.

17 (The witness steps down.)

18 THE COURT: Ms. Martin, you may call your next
19 witness.

20 MS. MARTIN: Your Honor, the Government has no more
21 witnesses.

22 THE COURT: All right. Mr. Whalen?

23 MR. WHALEN: Can I just have one minute, Your Honor?

24 THE COURT: You may, of course.

25 (Pause, 4:11 p.m. to 4:12 p.m.)

1 MR. WHALEN: I have a proffer.

2 THE COURT: Okay.

3 MR. WHALEN: Your Honor, by way of proffer, his
4 brother, Mohamad Musleh (phonetic), is present in the
5 courtroom. And if he were called to testify, he would testify
6 that he'd be willing to be a third-party custodian, that he
7 resides at the location in Richardson, along with his mother,
8 his other brother and sister-in-law. They are all citizens of
9 the United States. And that would be -- and what he verified
10 in the Pretrial Services report, he would testify to the same
11 thing. And that he would also testify he didn't believe his
12 brother is a flight risk or a danger to the community, Your
13 Honor.

14 And that's all I have, Your Honor.

15 THE COURT: Does either party wish to be heard in
16 argument?

17 MS. MARTIN: Yes, Your Honor.

18 MR. WHALEN: Yes, Your Honor.

19 THE COURT: Go right ahead. If the Government wants
20 to go first.

21 MS. MARTIN: Your Honor, I believe the testimony of
22 Special Agent Glick was sufficient to establish that the three
23 statements in the complaint were made, they were false, they
24 were material because promotion of terrorists and violence is
25 material -- would be material to an investigation or tend to

1 influence one. And he was, in fact, notified that it was crime
2 to lie before he even started the interview. So I believe
3 probable cause is met.

4 THE COURT: Let me ask you a question about that. It
5 mentions a matter within the jurisdiction of the FBI.

6 MS. MARTIN: Yes, Your Honor.

7 THE COURT: And I assume these were?

8 MS. MARTIN: Yes, Your Honor. And I believe that they
9 instructed Said Rahim that the matters they were interviewing
10 -- questions they were asking him about involved terrorism and
11 that they investigated terrorism.

12 With respect to detention, I think the travel itself that
13 was booked to Jordan demonstrates a flight risk. He was
14 traveling with \$7,000 in cash. Whatever the purpose of the
15 travel, demonstrates that he is a risk of flight. He has
16 family in a foreign country. He also made statements, after
17 receiving his Miranda rights, that if he had anything to hide,
18 that he would get out of the country. And I think certainly he
19 was hiding something.

20 Additionally, he is a danger. He denied the weapons. He
21 is not a felon. It's not against the law for him to have
22 weapons. Why is he lying about them? He has a handgun that
23 he's brandished before, whether or not he was in a violent
24 neighborhood. That's not really the question. It's that he
25 has the firearms, that he lied about the firearms, and that

1 there was also ammunition for a high-capacity AR-10 found. No
2 other -- we haven't found any other long guns, but certainly
3 there's ammunition for one found in that business that was his.

4 And just his -- the violent nature of his speech. Now that
5 he's not going to travel for jihad, I think there is a --
6 certainly clear and convincing evidence that he's a risk of
7 committing a violent act here, now that he's been stopped.

8 And additionally, I would just point out that Mr. Whalen
9 proffered Mohamed Musleh, who in fact has a criminal history.
10 He was not called up to the stand, but -- no convictions, but
11 felony arrests and misdemeanor arrests for drug, drug offenses.
12 And so we would point that out to the Court.

13 THE COURT: Mr. Whalen?

14 MR. WHALEN: Your Honor, as it relates to probable
15 cause, we are of the opinion that they haven't met probable
16 cause because the threshold test, that he has to make a
17 materially -- he has -- if he makes a false statement, it has
18 to be material. And it has to, as what they've stated in
19 *Elashyi*, does it impair -- and they use the word -- or pervert
20 the functioning of a governmental agency? And when you look at
21 the law, I mean, it was clear that they have determined that he
22 made these statements. So him denying them, how in and of
23 itself impairs any type of governmental functional agency?
24 That he hadn't committed a crime of any kind at that point.
25 They're investigating, I guess, terrorism generally, but

1 they're not saying he's committed any crime, and so he makes a
2 false statement to them: how did that impair their
3 investigation? And I think that's the threshold question this
4 Court has to determine as it relates to probable cause. And I
5 don't think he --

6 THE COURT: Well, doesn't that require me -- because
7 there all kinds of false statements under 1001. Doesn't that
8 always require, then, that there have to be some extra step,
9 the agency, the Legislature or somebody have to be intending to
10 act on it? And that never is the case. I mean, why would that
11 be the requirement here? It never is the case. I mean, there
12 is the false statement, and it's material to something that's
13 going on, usually an investigation. Why would this one require
14 -- this case require more than what it usually does for a false
15 statement under 1001?

16 MR. WHALEN: Well, I'm not -- I don't think I'm
17 suggesting it's going to require more, but what I'm suggesting
18 to the --

19 THE COURT: Sounds like that's what you're saying.

20 MR. WHALEN: Well, what I'm trying to say to the Court
21 is -- here's why I am confused. Here's what I'm confused
22 about.

23 THE COURT: Okay.

24 MR. WHALEN: Is that if it has to impair an
25 investigation, okay, what's the investigation -- what is the

1 investigation in the sense of what did he -- what is he accused
2 of and what did he do wrong and how did his fact denying that
3 he made those statements or supported that group in and of
4 itself --

5 THE COURT: Inciting terrorism?

6 MR. WHALEN: Well, the question is, did he? Because
7 the testimony is --

8 THE COURT: That was the question, right?

9 MR. WHALEN: Right. And he denied it. So, but is
10 that --

11 THE COURT: Which was a false statement.

12 MR. WHALEN: Is that material? Is what he said
13 material to what they already knew at the time when they asked
14 him that? And so that's the point I'd ask the Court to look
15 at.

16 THE COURT: All right.

17 MR. WHALEN: Because I think that's where we get lost
18 in this argument. But maybe I'm slicing it a little thin, but
19 I think it matters.

20 But then as far as whether or not he's a flight risk or a
21 danger to the community, he's a U.S. citizen. He had a
22 passport, which has been confiscated, so he has no way to leave
23 the jurisdiction without any legal international travel
24 documents. And so I don't think he's a flight risk, especially
25 when the fact that, according to Pretrial Services and the fact

1 that his brother is here, that he has other brothers here, his
2 mom is here. His dad is deceased, but his mother is here. His
3 sisters are all. They all reside in this area. And so his
4 family, other than his daughter being in Jordan, the majority
5 of his family reside here in the Northern District of Texas.
6 So he does have ties to the community.

7 And then whether or not he's a danger to the community by
8 clear and convincing evidence, I don't think they've shown
9 that. Just because he's made -- allegedly made statements that
10 may be violent in nature or supportive of things that may be
11 distasteful as far as praising events after the fact, that in
12 and of itself, how have they shown that he's a danger to the
13 community at this time when he's made these statements over a
14 period of months but no action has been taken, and when he's
15 leaving to go to the country, it's to see his daughter?

16 So I think the evidence could be -- has not risen to clear
17 and convincing that he's a danger to the community. And then
18 the question is, how do you define community? Is it here in
19 the Northern District? Is it here in the United States or the
20 international community? But I don't think they've risen by
21 clear and convincing.

22 And then the question becomes the Court has to consider, is
23 there a condition or combination of conditions that the Court
24 can fashion to assure his appearance in court and that he's not
25 a danger to the community? And the Court can do that. There's

1 lots of tools the Court has available to it. So, one, third-
2 party custodian. Okay? You could do that with his brother,
3 who's willing to do that. They all reside in the same house.
4 You could put an ankle monitor on him with GPS locating to know
5 where he is at all times and put limits on it. There's not an
6 issue of mental health. There's not an issue of substance
7 abuse.

8 So there are conditions that this Court can fashion for him
9 to guarantee his appearance and that he's not a danger to the
10 community. And while we may find that the subject matter of
11 the false statements is concerning, it doesn't mean that
12 automatically that he's a flight risk or a danger to the
13 community. And I think the evidence supports that there are a
14 combination of conditions this Court can fashion to release Mr.
15 Rahim pending the outcome of this case at this time.

16 And I'd also mention, too, a false statement in and of
17 itself only carries a punishment of less than -- no more than
18 five years. And so the punishment that he's facing currently
19 is limited as well, and I think that's a factor, Your Honor.

20 Thank you.

21 THE COURT: Thank you, sir.

22 MS. MARTIN: Your Honor, may I respond just to give
23 the Court some case law with respect to materiality?

24 THE COURT: That's not necessary.

25 MS. MARTIN: Okay.

1 THE COURT: Okay. And I know Mr. Whalen is able and
2 he's going to be able to make those arguments on down the road,
3 and he may have some success with them, but he's not going to
4 have success with them today, because I do find, based on the
5 evidence I heard here, that there's probable cause to believe,
6 Mr. Rahim, that you committed the offense alleged in the
7 complaint. And I do -- I'm not simply just saying it. Mr.
8 Whalen is a very able attorney and this isn't a very easy
9 decision for me.

10 I take into consideration, sir, that you are a United
11 States citizen. At this point, you've not been convicted of
12 anything. And one of the things that the United States
13 Constitution guarantees us is the right, the freedom to say
14 whatever we want to say. And I respect that, and I appreciate
15 that above all.

16 But I know, too, that there is some speech that goes beyond
17 that and is threatening. And sometimes it's threatening to the
18 point that we have to take some action. And in the context of
19 the offense that's been alleged against you, I cannot ignore
20 some of the speech that's been attributed to you. I will say
21 that I was on the fence about whether it should be attributed
22 to you until I heard the testimony that basically you admitted
23 that you were a moderator of this channel. And it was clear to
24 me then that this speech is most likely speech that should be
25 attributable to you.

1 I appreciate that you have strong ties to this community,
2 but I also know that you have strong ties outside of this
3 country. And when you say things like, if there is something
4 to hide, you'd just leave the country, and I know you had the
5 ability to do it, then it factors into my decision about
6 whether or not you pose a flight risk, and I have to think that
7 there is evidence that you do.

8 And I have to look at things like, in this speech on this
9 channel, when Mr. Whalen argues, well, you know, there is no
10 evidence that no one on this channel has committed any of these
11 kind of atrocities that we hear about and call terrorism, but
12 that you were saying that some of these brothers are mobilized
13 from this channel, this very channel, they were amongst us,
14 then that says to me that even if that's not true, you believe
15 that you're speaking to these people and you're mobilizing
16 them. That's dangerous. That's dangerous to the community.

17 And you know, then Mr. Whalen very ably argues, though, I
18 could put on you a monitor, I could make your family third-
19 party custodians for you. But I can't keep out of your hand
20 every tool that you could possibly do violence to the community
21 with. And you say yourself, anything, anything, poison, a
22 truck, a car, anything could be used. And I can't just clear
23 that out of my head because these are your own words and these
24 are things that I have to consider in determining what is a
25 possible danger to the community, and I can't ignore it.

1 They're your own words, sir. They're your own words.

2 Based on the facts that you do have strong ties outside of
3 the country, the fact that based on the nature of the offense,
4 based on the circumstances of this offense, that you pose a
5 danger to the community and other people, I have to -- and a
6 risk of nonappearance, I have to grant the Government's motion
7 for detention in this case. And so I am going to order that
8 you be detained. I'm going to order that you be detained. So
9 that's the order of the Court, and you are remanded to the
10 custody of the U.S. Marshal.

11 MR. WHALEN: If I may be excused, Your Honor?

12 THE COURT: Yes, sir. Thank you.

13 (Proceedings concluded at 4:26 p.m.)

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CERTIFICATE

22 I certify that the foregoing is a correct transcript from
23 the digital sound recording of the proceedings in the above-
entitled matter.

24 **/s/ Kathy Rehling**

03/26/2017

25

Kathy Rehling, CETD-444
Certified Electronic Court Transcriber

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