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BY HAND AND ECF

April 8, 2014

Honorable Judge Cedarbaum
United States District Judge
Southern District of New York
500 Pearl Street
New York, New York 10007

**Re: United States v. Abassi
13 Cr. 304 (MGC)**

Dear Judge Cedarbaum,

We write to update the Court on discovery related issues, in anticipation of the April 10, 2014 status conference. As the Court is aware, discovery is voluminous in this case. The government has taken almost a year to complete their production of classified discovery and was more than a month late in completing production of the non-classified discovery.

This letter does not address any issues surrounding classified discovery, which will be addressed in a separate filing under CIPA. In this letter we focus on the non-classified discovery which is still outstanding. The government has consistently taken the position that their only obligation is to provide us with recordings and translations of only those portions that they intend to use at trial. We have received over a hundred and ten hours of recordings, almost all of which are in Arabic. Repeatedly, the government has described the remaining discovery as "irrelevant," consisting mostly of dinner conversations "about food." See Exhibit A, Transcript of January 30, 2014 Status Conference. That is simply not the case.

There is much more than "dinner talk" that the government has failed to translate. To elucidate, the discovery contains several conversations between the government's undercover agent and an individual named Chiheb Esseghaier. The undercover agent and Mr. Esseghaier share their opinion of the defendant, and discuss how the defendant is not a serious "mujahideen" and therefore cannot be trusted to further the aims of jihad. Although the government has translated some calls, there are dozens that they have not, claiming that they consist of idle chatter.

Additionally, there are calls between the government's undercover agent and Mr. Abassi's wife in Canada as well as his mother and father in Tunisia. These telephone calls are

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initiated by the government agent and consist of the government agent urging Mr. Abassi's family to allow Mr. Abassi to leave Tunisia and travel to the United States. These are not, as the government claims "conversations about food" or idle chatter. These calls would be relevant at trial. The jury has a right to hear the government's undercover taking it upon himself to call and convince a recalcitrant Mr. Abassi to leave Tunisia and come to the United States. It is relevant and important that the jury hear the desperation in the government agent's voice as he cajoles and reassures the defendant's parents that they should let their son travel to New York. A jury has a right to hear the undercover tell Mr. Abassi and his parents that in New York the undercover would give the defendant a place to live and a job in the undercover's company. These calls show the undercover's efforts to convince the Abassi family that it is in their son's best interest to travel to the United States.

Also relevant for the jury to consider would be the steps the undercover took to ingratiate himself within the Abassi family by feigning concern for Mr. Abassi's brother who was hospitalized. The jury should hear the undercover's phone calls to the Abassi family inquiring about their son's health and sending money for his medical care. These calls are not as the government claims, irrelevant or idle "dinner talk."

It is our position that the Court should order the government to either undertake the translations themselves or provide Mr. Abassi with the funds under the Criminal Justice Act so that he can undertake the task.

Respectfully submitted

/s/

Sabrina P. Shroff
Assistant Federal Defender
212-417-8713

cc: Michael Ferrara, John Cronan & Benjamin Naftalis, AUSAs
Mr. Ahmed Abassi, 91995-054, MCC (via legal mail)

EXHIBIT A

Elulabac
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
-----x

UNITED STATES OF AMERICA,

v.

13-CR-304 (MGC)

AHMED ABASSI,

Defendant.

Conference

-----x

New York, N.Y.
January 30, 2014
11:32 a.m.

Before:

HON. MIRIAM GOLDMAN CEDARBAUM,

District Judge

APPEARANCES

PREET BHARARA

United States Attorney for the
Southern District of New York

BY: MICHAEL J. FERRARA, ESQ.

BENJAMIN NAFTALIS, ESQ.

Assistant United States Attorney

FEDERAL DEFENDERS OF NEW YORK INC.

Attorneys for Defendant

BY: SABRINA SHROFF, ESQ.

ALSO PRESENT: MARWAN ABDEL-RAHMAN, Arabic Language Interpreter

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1 (In chambers)

2 THE COURT: Very well. What is the status of this
3 case?

4 MR. FERRARA: Good morning, your Honor. Michael
5 Ferrara and Benjamin Naftalis for the government.

6 At this point, your Honor -- well, I guess over the
7 last several months the government has been collecting and
8 producing discovery. I know your Honor's been apprised of two
9 letters involving discovery that Ms. Shroff sent over to
10 chambers prior to the conference today.

11 I'll be quite frank with the court. There have been
12 some complications with the collection and production of the
13 discovery. The unclassified discovery went out relatively
14 smoothly. And just to give -- just to sort of remind your
15 Honor, the allegations in this case arise from in large part
16 Mr. Abassi's stay in the United States for a few weeks in say
17 April of last year. He met with an undercover -- unbeknownst
18 to him, he met with an undercover several days, dozens of days,
19 over the course of that month, and he was recorded in the
20 course of doing so. They primarily -- the undercover and
21 Mr. Abassi primarily spoke to one another in Arabic, and there
22 are often what we call sort of redundancies in the recordings.
23 That is to say, there may be multiple recording devices
24 happening simultaneously in order to ensure that if one
25 malfunctions, others are capturing the conversation.

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1 THE COURT: The undercover was wearing a wire?

2 MR. FERRARA: The undercover was wearing,
3 essentially -- essentially wearing a wire at times. At other
4 times he was speaking into his cellphone, which was recorded at
5 times. Other times he was in a car or in places where other
6 recording devices might have been. And so we --

7 THE COURT: Well, how many different recording devices
8 were used?

9 MR. FERRARA: Well, if your Honor wants a specific
10 answer, then we would have to go into a classified proceeding.
11 I can't answer your Honor's question precisely. But suffice it
12 to say that there were multiple recordings of various
13 conversations. So we produced -- we had been collecting and
14 producing the unclassified recordings. And like I said, we
15 produced -- I don't want to say hundreds of hours, but it may
16 very well be close to that. It may be a hundred or so hours of
17 recordings.

18 THE COURT: Now who classified the documents?

19 MR. FERRARA: Well, we produced unclassified
20 recordings. The classification of some of the other material
21 arose from the nature of how the material was seized and
22 applications were made in order to do that.

23 Oh, I'm sorry. To the extent, your Honor -- it was
24 the FBI that was seeking some of those authorizations, if
25 that's what your Honor's asking. So when it was created, it

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1 was classified at that time. It wasn't later classified. The
2 techniques were classified that were being used. And again, if
3 your Honor wants to sort of at some point have a classified
4 update, we can do that, but I think the point of all this is to
5 say that we have produced dozens and dozens of recordings to
6 the defense. And we produced that both -- and that's audio and
7 video, and we produced the recordings in an unclassified format
8 and we also produced them in a classified format.

9 THE COURT: What is the format that makes them
10 classified?

11 MR. FERRARA: Well, I shouldn't have said -- it's not
12 the format. I just mean to say there were some recordings that
13 were unclassified that we produced, and others that were
14 classified that we produced.

15 Now the primary problem stemmed from -- it took quite
16 longer than we expected -- because of the just sheer amount of
17 the recording, it took longer than we had expected to get
18 authorization to turn some of that material over, so as
19 Ms. Shroff notes, to the extent your Honor had set a September
20 date deadline for discovery, we certainly produced quite a bit
21 of material in advance of that, but I think all of the
22 classified discovery was produced after that date due to the
23 difficulties of obtaining that authorization. After
24 Ms. Shroff --

25 THE COURT: Who gave the authorization?

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1 MR. FERRARA: The FBI. So at that point, after
2 Ms. Shroff had reviewed -- to her credit, I honestly think
3 Ms. Shroff and her team have reviewed every single minute of
4 the discovery because we talked about it at length. Ms. Shroff
5 sent over a letter requesting additional discovery, much of
6 which we do not think she is entitled to. However, it prompted
7 us to look for other things in hopes -- well, it prompted us to
8 look for things that perhaps we had missed. We wanted to, of
9 course, be sure we had given everything over, and it turned out
10 in fact some things had been missed. At that point we asked
11 Ms. Shroff to -- and I believe she has agreed to a CIPA
12 protective order, a classified discovery protective order,
13 which we then forwarded to the court I want to say two days
14 ago. I've also brought a copy today. Once your Honor enters
15 this order, which the parties consent to, we will then produce
16 what we believe is the completion of the classified discovery.
17 And again, we have that ready to go upon the court's entry of
18 that order, and of course your Honor doesn't have to sign that
19 this second, but as soon as the court is able to, we will turn
20 over that additional material.

21 THE COURT: This is an undisputed matter.

22 MS. SHROFF: Your Honor, we've agreed to it so that --
23 we've been waiting almost a year for the discovery so --

24 THE COURT: I understand. But whatever your motive --

25 MS. SHROFF: Yes, it's undisputed.

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1 THE COURT: -- there's no question it's undisputed.

2 Okay.

3 MR. NAFTALIS: So Ms. Shroff has executed that as
4 well.

5 MS. SHROFF: Yes.

6 MR. FERRARA: So that's the sort of update on the
7 discovery front, your Honor.

8 And then as to plea negotiations --

9 THE COURT: Originally I thought I had been told that
10 Mr. Abassi was going to enter a plea.

11 MR. FERRARA: Well, your Honor mentioned that at the
12 first conference, but that -- I apologize. That should not
13 have been relayed to the court. I don't know how your Honor
14 got that message. That was never the case here, that
15 Mr. Abassi intended to plea. Perhaps -- if that was a
16 miscommunication from the government, then I apologize, but
17 that was not the case and your Honor was wrongly informed of
18 that. But I will say --

19 THE COURT: We're not talking about someone who is
20 cooperating with the government.

21 MR. FERRARA: No, absolutely not. Correct.

22 Right. Mr. Abassi is not cooperating with the
23 government. But we are having, your Honor, what I would
24 call -- and perhaps Ms. Shroff will disagree, but I think we're
25 having productive discussions towards a resolution of this

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1 case. We had made Ms. Shroff an offer, and I won't, of course,
2 involve the court in the details of this, but we had made
3 Ms. Shroff an offer. She -- Mr. Abassi, through Ms. Shroff,
4 rejected that initial offer and came back with certain other
5 ideas, which we are now considering, and we hope to have a -- I
6 guess hers was a counteroffer -- a counter-counter to
7 Ms. Shroff this week or next. So I think, your Honor, quite
8 frankly, that the discussions have been very productive, and
9 I'm relatively -- I'm still hopeful that this case could
10 result -- could be resolved pretrial in a way that both parties
11 find fair.

12 So that's where we're at, your Honor. I think the
13 only thing the government thinks we ought to do -- well, maybe
14 I'll let Ms. Shroff speak and then we can propose --

15 THE COURT: Very well.

16 MR. FERRARA: I'll wait to hear what Ms. Shroff has to
17 say and then --

18 THE COURT: Ms. Shroff?

19 MS. SHROFF: Good morning, your Honor.

20 Your Honor, there are a couple of points with which we
21 disagree, and if I could just tell the court what those are.

22 THE COURT: Yes, please.

23 MS. SHROFF: So the first one is to distinguish
24 between what is produced to us as discovery and what we believe
25 Mr. Abassi's entitled to under Rule 16. So if there is a

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1 conversation on a particular day with, let's say, the
2 government's undercover and it's recorded in three different
3 methods or three different equipments, we're not unreasonable.
4 We're not asking for all three equipments.

5 THE COURT: You'd like one of them.

6 MS. SHROFF: We'd like the one and we would like an
7 affirmation from the government that that one is the most
8 complete so there are no dropped sentences, there are no
9 dropped words. So if they used a cellphone, a body wire, and a
10 home recording device -- and just so the court knows, that
11 could very well be the case here because Mr. Abassi was made to
12 live in the co-op in the undercover's home, and we have good
13 reason to believe that the home was bugged. That would be the
14 best recording to get. So that's the one issue about
15 recordings.

16 But then there's also a secondary issue. The
17 secondary issue is whether or not we have a complete recording
18 and then a complete translation of the recording, which we do
19 not have and the government has refused to give us because
20 their view is, they're not obliged to give it to us and they
21 are not obliged to bear the cost; they only have to give us
22 what they are planning to use at trial. So obviously they're
23 not going to use statements that my client made that would help
24 him. For example, when they ask him to do something heinous,
25 my client says, "No, I'm not going to do it." So if my client

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1 has said that once, the government has translated and given it
2 to me once. But if I'm to represent Mr. Abassi at either plea
3 negotiations or at a trial, the fact that he repeatedly told
4 their undercover officer that no, he would not go and blow up a
5 building and he would not do anything in the present time is
6 very, very important. It's important because it would
7 obviously affect plea, it would affect how a trial proceeds,
8 how a jury's impacted, and god forbid he's convicted, it would
9 certainly impact the court at sentence. So that -- and I'm
10 really -- this is not a forum where I'm trying to say the
11 government's being this or the government's being that.
12 Assuming all good faith to the government, Mr. Abassi still
13 doesn't have all of that information, and that's the
14 nonclassified stuff.

15 And, you know, we've e-mailed the government several
16 times. We're very cognizant that they have a workload, they
17 have only so many Arabic interpreters, there are three other
18 cases before other judges going to trial. Mr. Abassi's sitting
19 in jail. It's tough on him is an understatement. And if we
20 could, we would like this over. So we most respectfully ask
21 that the court set a firm deadline by which the government must
22 comply regardless of the cost, at least as to giving us all of
23 the unclassified discovery in a way that the defense can
24 properly use because, you know, there are two Supreme Court
25 cases that say now that we have an obligation not just to be

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1 effective at trial but to be effective at plea. To be
2 effective at plea, I need all the information. That's
3 information that even the government's conceding I'm entitled
4 to.

5 Then there is now --

6 THE COURT: Wait just one moment. Do I understand the
7 government argues that Mr. Abassi is not entitled to a
8 recording of all of his statements, there are only certain
9 statements he's entitled to?

10 MR. FERRARA: Absolutely not. That is not our --

11 MS. SHROFF: The transcription, your Honor.

12 MR. FERRARA: Just to be clear, we have given
13 Ms. Shroff all of the recordings that we have, save this latest
14 classified discovery that we have to produce upon entry of this
15 order. We've given her all of the recordings we have. If
16 there's multiple recordings, we've given her the multiple
17 recordings of the different ways so she can hear it herself.
18 We have given -- for each recording, we have given a running
19 summary that was created by interpreters as they heard it, as
20 it was actually happening. We've also given summaries of the
21 calls, of the recordings themselves. Detailed summaries.

22 Now we have, since we first saw the court, been asking
23 Arabic interpreters to transcribe verbatim certain portions of
24 those calls. Now I don't speak Arabic. What we've asked, what
25 we've asked is for the agents to review, using the summaries.

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1 and their memories of the events, to review portions of the
2 calls that would be useful either to the defense or to the
3 government and we then had those farmed out for verbatim
4 transcription, which we provided to Ms. Shroff on a rolling
5 basis, and I think she's gotten about a dozen of those or so.
6 And they're only portions, that's true, but your Honor, there
7 are literally just -- Mr. Abassi was in New York City for maybe
8 a little under a month. He met with the undercover almost
9 every day. They met for multiple hours in the day. It would
10 be overwhelming to ask for each of those meetings to be
11 transcribed in full when much of their discussions are
12 irrelevant. Sometimes they go out to dinner and they talk
13 about the food. There's nothing in the law that says that we
14 have to produce verbatim transcriptions of every recording.
15 The defense can do that. They can apply for funds to the
16 court. If she has -- and I've offered Ms. Shroff, I've said to
17 Ms. Shroff, based on the summaries, or based on conversations
18 with your client, if you'd like me to have this part or this
19 part transcribed, I'm happy to farm out some other portion, but
20 we are not going to ask -- we do not have the resources to have
21 every second of dozens of hours, hundreds, potentially, of
22 hours of recordings farmed out when much of the information is
23 apropos of nothing. But Ms. Shroff has all of it and of course
24 can have certain things transcribed if she'd like, or if she
25 wants to target limited things, we would be happy to farm out

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those portions for her.

MS. SHROFF: The reason my client talked ad nauseam to the undercover is because they had the undercover talking ad nauseam to my client. That is how the government chose to set up this case. If they chose to set it up this way, the least you can do to a defendant being hauled into a federal court in the United States of America is give him that discovery. If you didn't want to set it up that way, you didn't want to produce it that way, you shouldn't have talked to him about dinner. But that's the whole crux of the case. Their crux of the case is that this is a man who came here only for a specific purpose and we're telling you, no, that's not why he came here at all, and all of these other conversations that he has, when he has conversations with the undercover saying, "Listen, I'd really like to go back to my wife, my wife and I are wanting to have children, I'd like to get a job, I'd like to apply for a job, I'd like to go back to Canada, will you help me get to Canada," all of those things may not certainly be the crux of their case, but they certainly go to show that he does not have the mind-set that they want him to have. If the government's not going to produce it, at the end of the day, if the court's not going to order that, which ruling we would obviously respect, our office will have to find a way to fund that. But the problem so far has been that I do not believe we still have all of the calls in all of the --

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1 THE COURT: That's the first question.

2 MR. FERRARA: As I mentioned, your Honor, the defense
3 does not as of now, but once your Honor orders this protective
4 order, then we will be in a position to say that all the calls
5 that we know exist, all the recordings that we know exist have
6 been produced, upon --

7 THE COURT: That you will immediately produce
8 everything.

9 MR. FERRARA: The rest.

10 MR. NAFTALIS: They're ready. We have it already on
11 CDs. It's ready to turn over as soon as the order is entered.

12 THE COURT: You agree to this order.

13 MS. SHROFF: I've agreed to the order, your Honor.

14 THE COURT: So you have no objection to that being
15 done.

16 MS. SHROFF: No. I would like it to be done. In
17 their response to me, number 28, as Ms. --

18 UNIDENTIFIED SPEAKER: That's our letter. Sorry.

19 MS. SHROFF: According to our review of the discovery,
20 and we informed the government on December 10th, we have 48
21 phone calls for which we have recordings but no translations or
22 summaries; nothing at all.

23 THE COURT: And that's what you're interested in.

24 MS. SHROFF: That is the one thing I'm interested in.

25 The other thing I'm interested in is making sure that

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1 the government has given us all of the recordings which -- and
2 some of them I still think they haven't given to us because
3 those recordings keep coming up during conversations, and I
4 think at the end of the day Mr. Ferrara would acknowledge he
5 hasn't -- the government hasn't yet given those to us. That is
6 putting aside the whole issue of classified discovery. That is
7 not classified. This is unclassified stuff.

8 And then there are several other discovery-related
9 requests that we have made, which may or may not technically
10 fall within Rule 16, but if the case is this serious, many a
11 judge has ordered the government to produce it or at least
12 produce it before it would normally be produced so that the
13 defendant is properly represented during plea negotiations. So
14 far we seem to be in agreement on only one issue. The only
15 thing they have agreed to produce to us so far is the phone
16 calls which they haven't yet produced to us -- am I wrong or --

17 MR. FERRARA: I'm sorry. I missed the last part.

18 THE COURT: The phone calls which you have not yet
19 produced.

20 MS. SHROFF: And 48 phone calls for which you've given
21 us no transcription.

22 MR. FERRARA: Your Honor, again, we are not required
23 under the law to provide them with transcriptions of the calls.
24 We have done so for most of the calls because we are attempting
25 to help however we can, and if Ms. Shroff has portions of the

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1 calls that she would like transcribed, we're happy to do so.
2 She has all -- she has almost all of the calls, with a very
3 small exception of a few classified calls that we will produce
4 promptly upon the entry of that order, and then we would
5 represent to the court at that point that all of the calls that
6 we know of have been turned over.

7 And when I say calls, I shouldn't say calls. All the
8 recordings, because many of the conversations -- most of the
9 conversations were in person.

10 And your Honor, I worry that the parties are wasting
11 your Honor's time a little bit here. Ms. Shroff has provided
12 us a detailed letter. We have responded point by point. We
13 don't think she's entitled to much of it. If she wants to make
14 a motion, we're happy to respond to that.

15 THE COURT: But I thought you just told me that if I
16 sign this order, you will produce all of them.

17 MR. FERRARA: Well, not all of the things in
18 Ms. Shroff's letter. Ms. Shroff asked for things that in the
19 government's view are clearly not embraced by Rule 16, Brady,
20 Giglio, or any other theory of discovery. She's asking for
21 things in here that are outside the bounds of discovery that we
22 do not intend to produce.

23 THE COURT: The defendant is not entitled to all his
24 prior statements?

25 MR. FERRARA: We have produced all his prior

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1 statements or upon the entry of this, we will have produced.
2 I'm talking about other things, your Honor, things that are
3 not --

4 MS. SHROFF: I don't agree. I don't think the
5 government has produced all of the defendant's postarrest
6 statements. I think the government has produced the one single
7 version of all the defendant's postarrest statements, so if the
8 defendant's postarrest statements, for example, were quoted in
9 a memo to the head of the FBI, the government has chosen not to
10 produce that document to us, which we've specifically asked for
11 but the government has chosen not to give us.

12 THE INTERPRETER: Your Honor, I cannot keep up with
13 this speed.

14 MS. SHROFF: Sorry. So technically the government has
15 complied with his postarrest statements, right?

16 THE COURT: You're being asked if you have produced
17 all of the defendant's statements after his arrest.

18 MR. FERRARA: Yes, your Honor, we have. What
19 Ms. Shroff is suggesting is that she is somehow entitled to us
20 quoting from reports when we discuss the case internally. She
21 is not entitled to that. We have produced to her reports and
22 notes of that post -- of the postarrest statement. Absolutely,
23 yes.

24 MS. SHROFF: We don't have reports and notes. We do
25 not have the handwritten notes of any of Mr. Abassi's

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1 postarrest statements. We've asked for them. We weren't given
2 them. Those notes are absolutely not produced to us. We
3 specifically asked for them. We don't have them.

4 The other thing, for example, we've asked for is,
5 during Mr. Abassi's questioning, the FBI agents allowed
6 Mr. Abassi to make phone calls to his wife and only allowed him
7 to talk to his wife for as long as he would then compensate
8 them by talking to them further. We've asked for those phone
9 logs. We haven't gotten them. We have asked for those
10 recordings. We haven't gotten them. This is all discovery.
11 We're entitled to this discovery. And even if we're not
12 entitled to it technically under Rule 16, this is a serious
13 matter and we should be able to have this information to
14 properly come up with a plea offer.

15 MR. FERRARA: Your Honor, if I'm mistaken -- I've made
16 a note to myself -- I will of course make sure to produce those
17 notes. And if I'm in error, we will correct that immediately.

18 THE COURT: All right. They will produce them.

19 MR. FERRARA: And if those calls between Mr. Abassi
20 and his wife were recorded, we'll produce those as well.

21 MS. SHROFF: We'd like the phone logs, your Honor.

22 MR. FERRARA: I don't know if those were recorded,
23 your Honor.

24 MS. SHROFF: That may be, but there are phone logs
25 that show, in the interrogation room where Mr. Abassi was being

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1 held for seven days in a row, he was made to call his wife and
2 then the FBI would cut off the calls. We would like the phone
3 log for those calls. We'd like the phone -- the phone -- yeah,
4 the recording -- the log. Just the plain old log. You know --

5 MR. FERRARA: I'm happy to discuss this.

6 THE COURT: These are matters on which you should be
7 able to agree.

8 MR. NAFTALIS: Your Honor, some of these are the first
9 time we're hearing these, and we will look into it. If there
10 are phone logs, if there are recordings and if they exist,
11 we'll produce them.

12 THE COURT: Fine. Very well. That's not in dispute.

13 MS. SHROFF: Okay.

14 MR. FERRARA: But again, just --

15 THE COURT: Always quit when you're ahead.

16 (Defendant and his counsel conferring)

17 MS. SHROFF: Your Honor --

18 THE COURT: Mr. Abassi says that he made many more
19 calls than what was produced.

20 MR. FERRARA: Two responses to that, your Honor.
21 Some, as -- three responses.

22 First, we either have or will within two days have
23 produced all of the calls that we have, number one.

24 Number two. I have as a courtesy attempted to produce
25 all of the unclassified material directly to Mr. Abassi at his

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1 facility. We have sent over hard drives and discs. I hope he
2 has received all of that and I have -- and I know there has
3 been some problems, but if he has not received some of that, of
4 course we will endeavor to get it to him.

5 Number three. There is classified discovery that
6 Mr. Abassi is not entitled to review at the prison, which is
7 all I can say about that right now.

8 MS. SHROFF: Okay. So in two days, your Honor, we
9 should have 200 phone calls, one way or another. By "we," I
10 mean counsel, cleared counsel. And if not, we'll come back to
11 the court on that particular issue.

12 THE COURT: Very well. I certainly can't decide what
13 you have or haven't done. Well, if that's the stumbling block,
14 you're quite right and we should go forward and see what
15 happens, what you receive. There's no purpose served in
16 discussing what may be resolved.

17 MS. SHROFF: That's correct, your Honor.

18 MR. FERRARA: If your Honor wants to set another
19 conference date for 30 or 45 days just to take this back up, at
20 that point Ms. Shroff will have had a chance to review what we
21 produce either today, tomorrow, or Monday.

22 (Defendant and counsel conferring)

23 MS. SHROFF: I'm sorry. Go ahead.

24 MR. FERRARA: I just proposed possibly a conference to
25 see if these issues have been resolved after the next

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1 production.

2 MS. SHROFF: That's fine, your Honor. We can come
3 back whenever the court would like us back.

4 THE COURT: I need my calendar.

5 THE CLERK: Yes, Judge.

6 THE COURT: How long is it going to take to check on
7 that you have produced or not produced --

8 MR. FERRARA: Well, things like notes, your Honor,
9 will take me a matter of hours, but what I think is -- what we
10 want to be at least -- what I think we want to know most
11 importantly for the next conference is, is there still a
12 dispute about calls that have been produced or not produced or
13 other potential discovery that has or has not been produced in
14 this next batch, so -- which will take Ms. Shroff a little bit
15 of time to review. It's not going to be an insubstantial
16 amount of material that she's going to receive, and so it would
17 just be -- we sort of defer to Ms. Shroff on how she wants to
18 do that, whether --

19 THE COURT: Very well.

20 MR. FERRARA: I think it should be less than maybe 30
21 days, but I defer to Ms. Shroff.

22 MR. NAFTALIS: Ms. Shroff, it's about 15 DVDs' worth
23 of material.

24 MS. SHROFF: Okay.

25 MR. NAFTALIS: Just for your timing.

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1 THE COURT: What is your estimate of how long it will
2 take you to review this?

3 MS. SHROFF: 30 days? We may need more, your Honor,
4 so should I give an outer date or it would be better if I asked
5 for an adjournment?

6 THE COURT: Well, let's try to be reasonable, yes.
7 It's to your advantage to resolve this matter as quickly as you
8 can.

9 MS. SHROFF: Yes, your Honor, that's true.
10 (Defendant and his counsel conferring)

11 THE COURT: Shall we set February 27?

12 MS. SHROFF: That's fine, your Honor.

13 THE COURT: Which will give you almost a month.

14 MS. SHROFF: That's fine.

15 MR. NAFTALIS: Your Honor, what time on the 27th?

16 THE COURT: At 11 a.m.

17 MS. SHROFF: Your Honor, before we adjourn today, I
18 just want to give the court some sense that we believe we are
19 missing calls, not just transcripts but actual calls for the
20 dates March 29th, 30th, 31st, April 2nd, and
21 April 17th.

22 THE COURT: All right. That's certainly a help if you
23 identify that.

24 MR. FERRARA: By the next conference, your Honor, we
25 hope to either have produced those calls or to have told

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1 Ms. Shroff in no uncertain terms that we do not believe they
2 exist.

3 THE COURT: Very well. Then this matter is adjourned.

4 MR. FERRARA: Your Honor, the government moves
5 pursuant to 18 U.S.C. Section 3161(h)(7)(A) to exclude the time
6 between now and February 27th from the operation of the
7 speedy trial clock. As your Honor's heard, there's a massive
8 amount of discovery in this case, largely in Arabic, recordings
9 and --

10 THE COURT: And I have no reason to think that the
11 defendant doesn't agree that the time should be excluded.

12 MS. SHROFF: Your Honor, we don't challenge the speedy
13 trial clock.

14 THE COURT: No, but I want to be sure that Mr. Abassi
15 understands that what's being asked is that the trial be put
16 over for a longer period in order to get this material, that
17 the need for that material, the time required for it,
18 outweighs, in the interests of justice, a speedier trial. Do
19 you agree with that?

20 THE DEFENDANT: Yes.

21 THE COURT: Very well. Then I will adopt that and
22 exclude the time between now and Thursday, February 27th, 11
23 in the morning.

24 MR. FERRARA: Nothing further from the government,
25 your Honor.

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1 MS. SHROFF: Your Honor, given the government's
2 insistence that they will not translate all of the calls in
3 their entirety, the defense will submit a letter to the court
4 seeking additional funds to allow that to happen. We'll set
5 forth our request in as much detail as we can.

6 THE COURT: Good.

7 MS. SHROFF: Thank you, your Honor.

8 THE COURT: Very well. Good luck to everybody.

9 MR. FERRARA: You too, your Honor. Good to see you.

10 MR. NAFTALIS: Good to see you.

11 THE COURT: Thank you.

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