

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 13-20364-CR-UNGARO

|   |                           |   |                 |
|---|---------------------------|---|-----------------|
| 4 | UNITED STATES OF AMERICA, | ) |                 |
|   |                           | ) |                 |
| 5 | Plaintiff,                | ) | Miami, Florida  |
|   |                           | ) | August 13, 2013 |
| 6 | v.                        | ) |                 |
|   |                           | ) |                 |
| 7 | GUFRAN AHMED MOHAMMED and | ) | Pages 1 - 62    |
|   | MOHAMMED HUSSEIN SAID,    | ) |                 |
|   |                           | ) |                 |
| 8 | Defendants.               | ) |                 |
|   |                           | ) |                 |

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TRANSCRIPT OF PRETRIAL DETENTION HEARING  
BEFORE THE HONORABLE JOHN J. O'SULLIVAN  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

|    |                    |                               |
|----|--------------------|-------------------------------|
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1 (Thereupon, the following audiotape proceeding was held:)

2 THE COURT: On the calendar, United States versus Gufran  
3 Ahmed Kauser Mohammed. I guess that's how you say it.

4 MR. DEL TORO: Good afternoon, Your Honor. Rick Del Toro  
5 on behalf of the United States.

6 THE COURT: Thank you. How are you doing?

7 MR. DEL TORO: Good, sir. How are you?

8 THE COURT: All right.

9 MR. FARINA: Good afternoon, Your Honor.

10 Vincent Farina, Assistant Federal Public Defender on behalf  
11 of Gufran Ahmed Kauser Mohammed.

12 THE COURT: How are you, Mr. Farina?

13 MR. FARINA: Fine, thank you, Judge.

14 MS. PINERA-VAZQUEZ: Good afternoon, Judge.

15 Silvia Pinera-Vazquez on behalf of Mohammed Hussein Said,  
16 who is present before the Court.

17 THE COURT: And are we going forward with this detention  
18 hearing?

19 MR. FARINA: We are, Judge.

20 MR. DEL TORO: Yes.

21 THE COURT: Let's do the arraignment first, okay, so I  
22 don't forget.

23 MR. FARINA: Your Honor, at this time, we acknowledge the  
24 receipt of the indictment and waive its formal reading, enter a plea  
25 of not guilty, and demand trial by jury, and invoke discovery and

1 ask the Court to sign the standing discovery order.

2 THE COURT: Okay. Miss Pinera.

3 MS. PINERA-VAZQUEZ: Likewise, Your Honor, on behalf of Mr.  
4 Said, we have received a copy of the indictment, waive formal  
5 reading, request a trial by jury, and that the standing discovery  
6 order be entered.

7 THE COURT: Okay. Standing discovery and I accept your  
8 plea of not guilty and the matter will be referred to Judge Ungaro  
9 for a jury trial.

10 All right. The government may proceed by way of proffer.

11 MR. DEL TORO: Thank you, Your Honor.

12 I'll start the proffer by incorporating by reference the  
13 facts in the speaking indictment which are extensive and clearly  
14 detail the overt acts of the overall conspiracy.

15 THE COURT: All right.

16 MR. DEL TORO: The first count of the indictment, Judge,  
17 charges both defendants Gufran Ahmed Kauser Mohammed and Mohammed  
18 Hussein Said with a broad conspiracy to provide materials to ports  
19 to designated foreign terrorist organizations; Al-Qaeda and Iraq,  
20 Al-Nusra Front and Al-Shabaab. Al-Qaeda and Iraq --

21 THE COURT: Let me just interrupt you.

22 Is your proceeding for risk of flight, or danger to the  
23 community, or both?

24 MR. DEL TORO: Yes, Judge, we seek pretrial detention based  
25 on both risk of flight and danger.

1 THE COURT: All right. Go ahead.

2 MR. DEL TORO: As the Court knows, Al-Qaeda is the umbrella  
3 organization of the designated foreign terrorist organizations.

4 Al-Nusra Front is really part of Al-Qaeda in Iraq, which is  
5 an affiliate of Al-Qaeda and is separately designated as well as a  
6 terrorist organization. And Al-Shabaab is another affiliate of  
7 Al-Qaeda which has operated in Somalia.

8 The remaining charges concern wire transfers that defendant  
9 Mohammed sent to an FBI undercover employee with the intent to  
10 support Al-Qaeda -- AQI as I'll refer to Al-Qaeda in Iraq --  
11 Al-Nusra Front and as well as wire transfers that Mohammed sent to  
12 Said, co-defendant Said, to support the Al-Shabaab terrorist  
13 organization.

14 THE COURT: One of these is related to Syria or both of  
15 them?

16 MR. DEL TORO: Al-Nusra Front, Judge, is part of Al-Qaeda  
17 in Iraq and it is related to Syria. It is an organization that is  
18 engaging in fighting against President Assad's government in Syria.  
19 They all are part of Al-Qaeda in Iraq and all sworn allegiance to  
20 the umbrella group of Al-Qaeda.

21 THE COURT: And what about Al-Shabaab?

22 MR. DEL TORO: Al-Shabaab is also a separately designated  
23 foreign terrorist organization, which has also sworn allegiance to  
24 Al-Qaeda and which is part of the umbrella group.

25 THE COURT: What do they want in this organization and

1 where do they operate?

2 MR. DEL TORO: They seek to wage Islamic jihad against  
3 terrorist -- or rather, against western powers. They are operating  
4 currently in Somalia fighting against the government there, the  
5 provisional government.

6 THE COURT: Okay.

7 MR. DEL TORO: The way this investigation began -- I'll  
8 proffer some background about that.

9 An FBI undercover employee was able to develop two  
10 fictitious on-line personas in Internet chat rooms. The U.C. was  
11 posing as a brother and a sister who first made contact with  
12 defendant Mohammed in a chat room on-line.

13 The U.C. acted as, essentially, these two siblings who had  
14 an allegiance to Al-Qaeda and the purported brother claimed to have  
15 fought with Al-Qaeda in Iraq.

16 The purported sister was represented to live in South  
17 Florida where she was willing to receive defendant Mohammed's wire  
18 transfer on behalf of her brother persona.

19 The brother persona claimed an active role in supplying  
20 Al-Nusra Front with both weapons and fighters in their war in Syria.

21 The U.C. female persona first met Mohammed in a chat room  
22 that he managed in 2011. After what she claimed was a broken  
23 engagement around March of 2012 with another participant in the chat  
24 room, she introduced Mohammed to the male U.C. persona. It was the  
25 same undercover employee who was posing as both, but the U.C. male

1 persona was the brother of the first individual and was the more  
2 appropriate person to speak to defendant Mohammed and to ask for  
3 guidance about this broken engagement that the sister claimed to  
4 have had on-line.

5 The ensuing conversations provided them the chance for the  
6 U.C. male persona to hold himself out as an Al-Qaeda supporter who  
7 had been imprisoned and was actually actively assisting Al-Nusra  
8 Front's fight against the government of President Assad in Syria.

9 The defendant Mohammed approved of the male U.C. persona's  
10 purported terrorist activities and wired him funds, thousands of  
11 dollars, for the purpose of supporting Al-Qaeda in Syria and  
12 elsewhere. These funds were actually picked up in Miami, these wire  
13 transfers, by FBI agents.

14 THE COURT: What do you mean? How was the wire transfer  
15 picked up?

16 MR. DEL TORO: There were Western Union wire transfers that  
17 were actually picked up.

18 THE COURT: Where did Mohammed get the money from?

19 MR. DEL TORO: That, Judge, we're not ready to proffer yet.

20 THE COURT: Okay.

21 MR. DEL TORO: The defendant Mohammed also facilitated the  
22 on-line introduction of the U.C. male persona to co-defendant Said  
23 who started working on getting experienced terrorist fighters out of  
24 East Africa and into Syria.

25 The undercover discussions with both defendants Mohammed

1 and Said consisted largely of on-line chat discussions, which have  
2 been preserved as evidence by the FBI.

3           Eventually, around June of 2012, defendant Mohammed  
4 introduced the undercover to Said for the purpose of conspiring  
5 together to support Al-Qaeda, AQI, Al-Nusra, and Al-Shabaab.

6           I'm going to give you the facts, Judge, chronologically  
7 because Counts 2 through 8, which are some of the Western Union wire  
8 transfers between defendant Mohammed and defendant Said, independent  
9 of the U.C., come first chronologically. So I'll start with the  
10 evidence supporting Counts 2 through 8.

11           Approximately in May of 2011, defendants Mohammed and Said  
12 met in Saudi Arabia and had made arrangements to provide materials,  
13 support, and funds to Al-Shabaab in Somalia.

14           This is supported by evidence, including their on-line  
15 chats with the undercover agent, or rather the undercover employee,  
16 as well as travel records and passport records.

17           THE COURT: When you're saying Mohammed, you're referring  
18 to Gufran Ahmed Kauser Mohammed?

19           MR. DEL TORO: Correct, Judge.

20           THE COURT: And when you're saying Said, you're referring  
21 to Mohammed Hussein Said?

22           MR. DEL TORO: Correct, Judge.

23           THE COURT: Okay. Go ahead.

24           MR. DEL TORO: Additional evidence of their conspiracy  
25 included the actual Western Union records that confirmed that from

1 June through September of 2011, these two defendants engaged in this  
2 conspiracy to support Al-Shabaab. Mohammed actually sent to Said  
3 over \$11,000 in at least six wire transfers from Saudi Arabia to  
4 Kenya, which is conduct captured in Counts 2 through 7.

5 Count 8 captures the comment of defendant Mohammed's actual  
6 delivery of 14,000 Saudi Arabian riyals to an FBI undercover.

7 THE COURT: What is that worth?

8 MR. DEL TORO: Say that again?

9 THE COURT: What is that in U.S. dollars?

10 MR. DEL TORO: That is approximately \$3,700 or \$3,800.

11 THE COURT: That occurs in Saudi Arabia?

12 MR. DEL TORO: It occurs in a foreign country, Judge.

13 THE COURT: Okay.

14 MR. DEL TORO: Corroboration that these wire transfers  
15 existed between Mohammed and Said includes first the fact that  
16 Defendant Said and his wife personally received the wire transfers  
17 in their own real names, according to the wire transfer records that  
18 the FBI obtained.

19 Second, Defendant Said admitted to the undercover in an  
20 on-line chat that Mohammed sent the wire transfers through  
21 intermediaries.

22 Third, upon a search of Mohammed's mobile phone contained  
23 the telephone numbers of the two people, unindicted co-conspirators  
24 Maurya and Boraie, who actually sent the wire transfers on behalf of  
25 Mohammed to defendant Said.



1 Fourth, Mohammed admitted in a surreptitiously recorded  
2 conversation between him and Said, after their arrest when they were  
3 placed in a police car that had been wired, that the FBI now knows  
4 about the wire transfers because it's from a search, alluding again,  
5 to the border search where his phone was searched and the phone  
6 numbers of his unindicted co-conspirators were found.

7 Now, corroboration for the actual purpose of these wire  
8 transfers, that the purpose was for Said and Mohammed to materially  
9 support the Al-Shabaab terrorist organization, includes the  
10 following evidence:

11 First, in a meeting between an FBI U.C. and Mohammed in  
12 December of 2012, in a foreign country, Mohammed said that he had a  
13 brother -- meaning a fellow Islamic terrorist -- in Kenya who was  
14 working with Al-Shabaab referring to Said;

15 Second, in July and August of 2012, Said provided in  
16 on-line discussions to the U.C. -- or rather in on-line transactions  
17 to the U.C. -- copies of actual passports, the front pages of  
18 passports, for three terrorists whom Said told the U.C., we're  
19 willing and available to be transported in order for them to go to  
20 Syria and fight on behalf of Al-Qaeda and Iraq and Al-Nusra.

21 According to Said, one of the three terrorists, Shabbaan  
22 Namukenda Makose, participated in a grenade attack on the Villa  
23 Vista Bar in Kenya in May of 2012;

24 Third, Said also provided contact information for a fourth  
25 terrorist, Salmin Khamis who, according to open source information,

1 was associated with an Al-Qaeda plot to bomb the U.S. Embassy in  
2 Nairobi Kenya in 2002.

3           Having gone through the material support counts,  
4 substantive Counts 2 through 8 and the initial Al-Shabaab  
5 conspiracy, I'm going to turn now to the broader conspiracy  
6 including Al-Nusra.

7           In April of 2012, the U.C. and Mohammed engaged in an  
8 on-line chat in which they began to talk about their shared, or  
9 purported shared, Islamic beliefs. In it, Mohammed praised Anwar  
10 Al-Awlaki, the radical Al-Qaeda cleric and propagandist, who was  
11 killed in a U.S. missile strike in Yemen. Mohammed stated that he  
12 wished Allah destroy the dogs who killed Al-Awlaki.

13           Also, in April of 2012, Mohammed told the U.C., in an  
14 Internet discussion, that he wanted to send money for weapons and  
15 support to fighters from Iraq who were operating in Syria.

16           In another on-line discussion about a bombing of a building  
17 in Hama Syria during the Syrian war, Mohammed makes clear that he  
18 wants to support Al-Qaeda and AQI and Al-Nusra Front, as opposed to  
19 the non terrorist faction of the free Syrian army. How does he do  
20 that? He refers to the U.C's associates in Syria as, quote, the  
21 terrorists.

22           Now, the government will present evidence in trial from  
23 experts who will testify that AQI and Al-Nusra Front had been  
24 engaging in terrorist attacks and suicide bombings throughout the  
25 war in Syria.

1 In on-line chats, Mohammed also provided the moderate pro  
2 democracy Sunnis that live in Lebanon by saying, may Allah replace  
3 them.

4 Then, on May 18th of 2012, the undercover employee  
5 expressly told Mohammed in an on-line chat that his fighters in  
6 Syria, for whom Mohammed offered support and for whom Said offered  
7 support are, quote, Al-Qaeda.

8 In other chats, Mohammed and Said told the U.C. that they  
9 reached an agreement to support Al-Qaeda, Al-Nusra Front and  
10 Al-Shabaab, around June of 2012 when Mohammed told the U.C. that he  
11 had spoken to Said about joining the U.C.'s efforts to support  
12 Al-Nusra Front in Syria.

13 As mentioned previously, Said had earlier worked with  
14 Mohammed to support Al-Shabaab, another affiliate of Al-Qaeda in  
15 Somalia. From the U.C.'s on-line conversations, Said showed that he  
16 had remained involved in the support of Al-Shabaab in those earlier  
17 efforts that are corroborated through the independent evidence that  
18 was discussed earlier.

19 But then, in the June 3rd, 2012 conversation began a series  
20 of discussions between the U.C. and Mohammed and Said about  
21 purchasing weapons, about supporting Al-Qaeda operations, and moving  
22 personnel to Al-Nusra Front in Syria for the purpose of fighting  
23 jihad.

24 Mohammed, then, began to send funds to the U.C. through  
25 Western Union and to the U.C.'s purported sister in a series of wire

1 transfers, which were received in Miami for those purposes.

2 THE COURT: What does that --

3 MR. DEL TORO: That conduct, Judge, is captured in Counts 9  
4 through 15.

5 THE COURT: What's the --

6 MR. DEL TORO: The total amount is \$9,000 in cash in six  
7 Western Union wire transfers, as well as the delivery of 14,000  
8 Saudi riyals. So just short of \$4,000 to purchase weapons and  
9 ammunitions.

10 The evidence that establishes Mohammed and Said's  
11 conspiracy to support Al-Qaeda through Al-Nusra Front is established  
12 in at least four independent ways:

13 First, Said offered recruits to the U.C., who in turn  
14 claimed to be supporting Al-Nusra Front, which experts will say is  
15 allied and is part of Al-Qaeda in Syria;

16 Two, the fighters involved in these recruiting efforts are  
17 themselves Al-Qaeda fighters or Al-Shabaab fighters. And Al-Shabaab  
18 is the Al-Qaeda affiliate in East Africa. So supporting either of  
19 these is supporting Al-Qaeda;

20 Three, Mohammed sent money to the U.C., who in turn claimed  
21 to be funding Al-Qaeda operations in Syria through Al-Nusra;

22 Four, Mohammed and Said both told the U.C. on-line that  
23 they would support the U.C. in efforts to fund and support terrorist  
24 attacks in the west and in the U.S.

25 From June to November of 2012, Mohammed sent the U.C. --

1 I'm going to get into specifics now as to some of these actual facts  
2 now, going from the general to the specific.

3 From June to November of 2012, Mohammed sent the U.C. these  
4 six wire transfers, which I mentioned to the Judge.

5 Second, in Internet chats, Mohammed authorized the U.C. to  
6 actually take this money and pool it with other resources to fund an  
7 Al-Qaeda attack on an unidentified American or United Nations  
8 target.

9 Mohammed and Said also told the U.C. in other conversations  
10 that Mohammed had raised funds for Al-Nusra Front and that Mohammed  
11 had contacted a Libyan woman, while Said contacted a Bosnian  
12 jihadist for additional money and recruits to help the U.C. in  
13 support of Al-Nusra Front and Al-Qaeda in Syria.

14 Said also identified, in on-line discussions with the  
15 undercover, four specific terrorist recruits selected to go fight  
16 with Al-Nusra Front, all Kenyans, each with individual past Al-Qaeda  
17 or Al-Shabaab affiliations.

18 I'll tell you who those specific persons were: Salman  
19 Khamis, who is associated with Al-Qaeda in East Africa; Shabaan  
20 Makose, who was involved in the grenade attack on the Villa Vista  
21 sports bar in Mombassa Kenya in May of 2012; Salim Omar, who has had  
22 military training and fought for two years with Al-Shabaab in  
23 Somalia; and Muner Nasir, who has had military training and fought  
24 with Al-Shabaab in Somalia.

25 Said also told the U.C. that he was working on recruiting

1 several other unidentified individuals, including a man of Yemeni or  
2 Arab descent, who is wanted in Kenya and could be sent in a second  
3 waive of recruits via boats from the Somali coast boat ports to join  
4 the fight in Syria.

5 Said also told the U.C. that he would work on sending more  
6 recruits, which did not have the Al-Shabaab training, but who had  
7 good western passports and used the term, in order to use them for  
8 Al-Qaeda attacks in their respective homelands since it would be  
9 easier for them to re-enter their homelands in the west.

10 At one point during the chat, Said told the U.C. that  
11 westerners are, quote, simply scared of their own terrorists.

12 In additional communications with the U.C., Said told the  
13 U.C. around February of 2013 that he had a recruit ready who was  
14 ready to conduct a martyrdom operation in the U.S. to be like one of  
15 the 19; referring to the 19 9/11 hijackers.

16 Around July of 2012, Mohammed told the U.C. in on-line  
17 communications that he wanted the money that he sent to be pooled  
18 again with other resources to conduct attacks on the U.S. or U.N.  
19 targets.

20 After their arrest, Mr. Said made some spontaneous comments  
21 to the FBI agents. He told one of the agents in a spontaneous  
22 comment that he was only trying to dupe co-defendant Mohammed in  
23 order to defraud him into sending Said money and that he lied to  
24 Mohammed just to get --

25 THE COURT: I'm sorry. Say that again.

1 MR. DEL TORO: Defendant Said told an FBI agent in  
2 spontaneous statements that he was only trying to dupe Mohammed and  
3 that he was only lying to him in order to get money from him.

4 THE COURT: What does that mean?

5 MR. DEL TORO: Just proffering his own exculpatory  
6 statements, Judge, as to what his defense is going to be. And I'm  
7 going to go into why this evidence disproves his allegation to the  
8 agent that he didn't have the intent to support terrorism.

9 After their arrest, the defendants were placed in a marked  
10 police car and their conversation was recorded, as I mentioned  
11 earlier. During that conversation, Mohammed told Said that they  
12 needed to say to the FBI, or needed to say to authorities, that the  
13 money that Mohammed sent to Said was partially for a loan and  
14 partially for the needy. So Mr. Mohammed tried to get their story  
15 straight while they are being recorded in the car.

16 Defendant Said told Mohammed that he had told the FBI that  
17 he had lied to Mohammed. Later during the conversation, Mohammed  
18 indicated or told Said that he thought that they were being recorded  
19 in the police car.

20 And at that point, Said told Mohammed that he had, in fact,  
21 lied to him about the money transfers and that he really used it for  
22 his own personal use.

23 Now, the evidence disproves Mr. Said's purported defense  
24 and I want to share, with the Court, a summary of what that evidence  
25 is.

1 Said shared with the undercover employee a number of facts  
2 about his modus operandi with Mohammed in their work to support  
3 Al-Shabaab where he provided important details, including the  
4 involvement of his Bosnian wife and the use of a cipher code to  
5 communicate.

6 These claims are, in fact, confirmed through independent  
7 evidence, including the Western Union records showing that Said's  
8 wife picked up the wire transfers from Mohammed. And the U.C.  
9 employee actually reviewed the cipher code that Said used on-line  
10 pursuant to his instructions.

11 Some of the most powerful evidence corroborating Said's  
12 actual material support efforts are the fact that in July and August  
13 of 2012, he sent to the U.C. copies of the passports for three  
14 terrorists who Said offered to the U.C. for transport in order to  
15 support Al-Nusra Front in Syria.

16 I've mentioned those; Makose -- including Shabaan Makose --  
17 who actually participated in a real grenade attack in the Villa  
18 Vista bar in Kenya.

19 Aside from his actual support efforts, Said admitted to the  
20 U.C. on-line that he had participated in a suicide bombing plot that  
21 ended with the arrest of Jermaine John Grant, a British terrorist  
22 suspect;

23 Second, Said told the U.C. that he had met Musa Deere, an  
24 Al-Qaeda operative killed with Hazun Fazul, who was the top  
25 Al-Shabaab and Al-Qaeda commander in East Africa;



1 Third, Said told the U.C. that he trained with another  
2 Al-Qaeda soldier who had protected Saleh Nabhan, an Al-Qaeda leader  
3 who was later killed in an American raid;

4 And fourth, Said told the U.C. that he knew Abdul Ghani,  
5 who had recruited several Minneapolis residents to join Al-Shabaab.

6 So Said's extensive knowledge of the most intricate details  
7 of Al-Shabaab operations, and the most significant players in some  
8 of those terrorist operations in Al-Shabaab and Al-Qaeda, show that  
9 he was connected to and active with the leadership of Al-Shabaab and  
10 Al-Qaeda in East Africa, contrary to what he told the FBI agent in  
11 his statements in the car.

12 I want to talk to the Court briefly about the defendants'  
13 identities. Mohammed and Said used fictitious usernames in their  
14 on-line chats with the U.C. However, their identities as the  
15 terrorist financier that Mohammed was, and the logistician that Said  
16 was, or is, who conspired together and communicated with the U.C.  
17 will be easily proved. Because, ultimately, Mohammed met with an  
18 FBI U.C. in person in a third country after agreeing on-line to meet  
19 him to provide funds for Al-Nusra Front.

20 Likewise, Said's identity as the person who communicated  
21 with the U.C. will be proved because Said traveled from Kenya to a  
22 third country to meet with Mohammed after agreeing to do so on-line  
23 in a ruse where an FBI U.C. agent pretended to be Mohammed and asked  
24 Said to meet him in a third country.

25 Said and Mohammed was, then, illegally expelled from the

1 third country and turned over to the FBI pursuant to an Interpol Red  
2 Notice.

3 Judge, that concludes my proffer. I don't know whether you  
4 want to go forward with cross-examination of the agent. Special  
5 Agent Wesley Madhere of the FBI is available to testify.

6 THE COURT: All right.

7 All right. How do you want to proceed, Mr. Farina?

8 MR. FARINA: Yes, we would like an opportunity to  
9 cross-examine the agent.

10 (Witness sworn.)

11 THE WITNESS: My name is Wesley Madhere; last name is  
12 spelled M-A-D-H-E-R-E.

13 THE COURT: Go ahead, Counsel.

14 MR. FARINA: Thank you.

15 DIRECT EXAMINATION

16 BY MR. FARINA:

17 Q. Good afternoon, Agent.

18 A. Good afternoon.

19 Q. Are you the lead agent in this case?

20 A. I am not.

21 Q. You heard the proffer by Mr. Del Toro?

22 A. Yes, I did.

23 Q. Okay. Is everything that he proffered accurate, to the best of  
24 your knowledge?

25 A. To the best of my knowledge.

1 Q. This investigation was initiated by an American law  
2 enforcement, the FBI?

3 A. Yes, this investigation was.

4 Q. Okay. It wasn't initiated by the Saudis?

5 A. No, it was not.

6 Q. You're aware that my client was detained by the Saudi  
7 government in their law enforcement in January of 2013?

8 A. I am aware.

9 Q. Okay. And was that done at the request of the FBI or any  
10 United States law enforcement agency?

11 A. I do not know the answer to that question. I am simply aware  
12 of the detainment.

13 Q. And you're not aware of whether the FBI or anyone else  
14 requested that of the Saudi government?

15 A. I'm not aware.

16 Q. And you haven't learned that since this investigation is  
17 completed?

18 A. I have not.

19 MR. FARINA: Judge, I want to proffer to the Court that,  
20 based on my understanding, he was not detained pursuant to an  
21 American request.

22 THE COURT: All right.

23 BY MR. FARINA:

24 Q. He was released in July of 2013; is that accurate?

25 A. Yes, that's accurate.

1 Q. After about six months in their custody?

2 A. That's correct.

3 Q. Now, my client gave some statements to the Saudi people that

4 detained him. Are you aware of that?

5 A. I'm aware of that. I'm not privileged to that information, no.

6 Q. But that material has been memorialized?

7 A. I don't know.

8 Q. His statements?

9 A. Yes, his statements have.

10 Q. And does the FBI have them?

11 A. I am not aware of those statements.

12 Q. Have any of those statements been used in the preparation of

13 this indictment?

14 A. Not that I know of.

15 Q. After he was released he remained in Saudi Arabia, is that

16 accurate, my client?

17 A. That is accurate.

18 Q. With his family?

19 A. I'm not sure if he was with his family. I know he remained in

20 Saudi Arabia.

21 Q. And then, he, again, was taken into custody by the Saudis in

22 August, right?

23 A. He was detained based on an Interpol Red Notice and turned over

24 to FBI custody.

25 Q. At what is that, what you just described, a red notice?

1 A. It's an Interpol Red Notice based on the fact that there was an  
2 indictment existing here in the United States. He was detained and  
3 turned over to U.S. custody.

4 Q. And to the best of your knowledge, none of the information that  
5 was gained from my client being detained by the Saudis was used in  
6 the preparation of this indictment?

7 A. I am not aware of how any statements made by your client were  
8 used.

9 Q. Now, is it accurate that the Saudi government officials, their  
10 law enforcement, confiscated and obtained a computer that was at my  
11 client's residence in Saudi Arabia?

12 MR. DEL TORO: Judge, at this point, I'm going to object to  
13 going beyond the scope of the PTD hearing and the strength of the  
14 government's case.

15 THE COURT: Okay. How is that relevant?

16 MR. FARINA: Your Honor, they're talking about a computer  
17 that was being used by my -- allegedly by my client.

18 If this was seized, this is part of the evidence in the  
19 case that they're using to link my client to the chat rooms and to  
20 contacts with the OCE and all this recruitment conversation that I  
21 think it's important.

22 Especially, if the Saudis have it. Do they have the hard  
23 drive? Do they have this material, or did they turn it over to the  
24 FBI?

25 THE COURT: What does that have to do with whether he

1 should be detained? That might be important and maybe you're  
2 entitled to it in discovery, but what does that have to do with  
3 whether or not he's a danger or a risk of flight?

4 MR. FARINA: Well, Your Honor, the government just gave you  
5 about a 15-minute resuscitation of computer contacts and computer  
6 conversations, and other evidence that they're putting forth.

7 And I think that the fact that this computer has been  
8 turned over to the FBI and what has it shown? Has it shown that my  
9 client has been using it, or someone else in the family? The home  
10 is occupied by other individuals and not just my client.

11 THE COURT: Do you want to respond to that?

12 MR. DEL TORO: Yes, Judge.

13 I did not proffer that any computer has been seized from  
14 Defendant Mohammed. And I didn't hear the agent say anything to  
15 that effect.

16 My objection is it's going beyond the scope of the PTD  
17 hearing because you can engage in on-line chats from Internet cafe,  
18 mobile phones, multiple computers.

19 And whether the Saudis do or do not have a computer  
20 belonging to the defendant does not effect the strength of the  
21 government's evidence in this case.

22 THE COURT: The objection is overruled.

23 You can answer the question. I find that it's relevant to  
24 the government's evidence that they've provided regarding the use of  
25 a computer to make contact between the defendants, as well as with

1 the FBI undercover.

2           Go ahead. What's the question? Ask it again if you want  
3 to.

4           MR. FARINA: Sure.

5 BY MR. FARINA:

6 Q. The Saudis seized my client's computer, or a computer at the  
7 house where he was arrested; is that accurate?

8 A. I'm not aware if the Saudis have seized any computers. I'm not  
9 aware of the location of your client's computer at this time.

10          I am aware that the evidence presented here is based on  
11 conversations between the defendant and the OC.

12 Q. So what you're saying, you don't know if the computer or the  
13 hard drive is in FBI custody at this time?

14 A. I personally do not know.

15 Q. Okay. Now, regarding the conversations that were had between  
16 the OCE in this chat room, who were they initiated by?

17 A. The evidence reflects communications that were initiated by the  
18 defendant.

19 Q. And the OCE posing either as a brother or a sister responded,  
20 is that what --

21 A. That is correct.

22 Q. That's what you understand?

23 A. Yes.

24 Q. Now, have all those communications, back and forth, been  
25 preserved?

1 A. As far as I know, they have been preserved.

2 Q. Have you had an opportunity, as one of the agents investigating  
3 this case, to review any of those?

4 A. I have had an opportunity to review some of those  
5 communications. Not all.

6 Q. Did my client -- the money that was sent via wire, it was sent  
7 from my client through a Western Union and to the United States?

8 A. That's correct.

9 Q. But not in all the cases, is it; isn't that accurate?

10 A. We have at least -- at least seven Western Union wire transfers  
11 from your client to the United States. We believe more, but we have  
12 at least seven.

13 I'm not aware of any of those wire transfers going anywhere  
14 other than the United States and for the wire transfers from the  
15 defendant to the OC.

16 Q. Now, the OCE was located at all times in the United States?

17 A. Yes.

18 Q. We heard the name of some individuals that were allegedly being  
19 recruited for jihad; is that accurate?

20 A. Yes, we have.

21 Q. Okay. Now, in the indictment there's the initials S.K., right?

22 A. Correct.

23 Q. A.B., S.M., and M.N., correct?

24 A. Correct.

25 Q. All right. Have those people been identified?



1 A. Yes. Those individuals have been identified and I believe they  
2 were presented during the proffer.

3 Q. Are they in custody?

4 A. They are unindicted co-conspirators, as far as I'm concerned,  
5 but I'm not aware of them being in custody.

6 Q. They're not in the custody of the Saudi government?

7 A. I'm not aware of this.

8 Q. How about the United States Government?

9 A. I'm not aware of this.

10 Q. But you know the locations of them and their identities; is  
11 that accurate?

12 A. I know of their identities.

13 Q. But not where they're at now?

14 A. I don't know where they are.

15 Q. Well, how about the FBI and the other investigative --

16 MR. DEL TORO: Objection.

17 BY MR. FARINA:

18 Q. -- branches, they don't know?

19 MR. DEL TORO: Objection as to personal knowledge. The  
20 witness testified that he doesn't know.

21 BY MR. FARINA:

22 Q. Now, does this investigation involve classified information?

23 MR. DEL TORO: Judge, I'm going to object.

24 It's beyond the scope. And as the Court knows, there's a  
25 CIPA procedure to discuss this.

1 MR. FARINA: Well, I'm just asking if it was yes or no,  
2 Judge, that's so I don't touch it.

3 THE COURT: I don't know what would prevent him from saying  
4 yes or no.

5 MR. DEL TORO: Judge, I mean, at this time, I think it goes  
6 far beyond the PTD hearing and the scope of it and the strength of  
7 the government's case.

8 THE COURT: Overruled.

9 BY MR. FARINA:

10 Q. You can answer.

11 A. Yes.

12 Q. Okay. Was a FISA warrant obtained?

13 MR. DEL TORO: Objection, Judge.

14 THE COURT: Sustained.

15 BY MR. FARINA:

16 Q. Does the government, or law enforcement, or the FBI plan on  
17 using evidence derived from any of these FISA warrants?

18 MR. DEL TORO: Objection, Judge.

19 MR. FARINA: I think if they're going to use the evidence,  
20 Judge, I am entitled to notice.

21 THE COURT: Well, you are entitled to notice if they are  
22 going to use the evidence, but not at a bond hearing. So I will  
23 sustain the objection.

24 I mean, I believe you're entitled to notice is my  
25 understanding, but I don't think you're entitled to notice now.

1 BY MR. FARINA:

2 Q. There was a matter of testimony regarding a police car and  
3 conversations in a police car. Where did that occur at?

4 A. The conversations that were recorded in a marked unit were here  
5 in the Southern District of Florida.

6 Q. In the Southern District?

7 A. Yes.

8 THE COURT: How were they in a police car in the Southern  
9 District of Florida? Weren't they brought in here from a foreign  
10 country?

11 THE WITNESS: Yes, Your Honor.

12 THE COURT: How did they end up in a police car together?

13 THE WITNESS: As far as I'm aware, Your Honor, once they  
14 returned here to the United States, they were both placed in a  
15 marked unit.

16 THE COURT: They came into the United States together?

17 THE WITNESS: As far as I'm aware. Yes, Your Honor.

18 THE COURT: Okay.

19 BY MR. FARINA:

20 Q. And in fact, Agent, they run a small aircraft from Saudi,  
21 correct, into the United States?

22 MR. DEL TORO: I'm going to object, Judge. Again, outside  
23 the scope.

24 THE COURT: Overruled.

25 I don't know the answer to that. Is that correct? Were

1 they transported here together?

2 THE WITNESS: Your Honor, yes, they were transported here  
3 together.

4 THE COURT: Okay.

5 BY MR. FARINA:

6 Q. Yes, right?

7 A. Yes.

8 Q. And the FBI took these men into custody in Saudi Arabia from  
9 the Saudis; is that accurate?

10 MR. DEL TORO: Objection, again, as to the scope, Judge.

11 THE COURT: Overruled.

12 BY MR. FARINA:

13 Q. Is that accurate?

14 A. The defendants were turned over to the custody of the FBI based  
15 on the Interpol Red Notice.

16 Q. In Saudi Arabia and then transported to the United States?

17 A. Yes.

18 Q. Are all the Western Union wire transfers, are they all  
19 documented? Have there been proof of those wire transfers?

20 THE WITNESS: Your Honor, may I ask that he be more  
21 specific as to which Western Union transfers?

22 BY MR. FARINA:

23 Q. Well, how many were there?

24 A. We have at least seven Western Union transfers from the  
25 defendant Mohammed to the OCE and we have at least six wire

1 transfers from -- I'm sorry. We have at least seven wire transfer  
2 from the Defendant Said -- Gufran Mohammed to the Defendant Said.  
3 We have at least six wire transfers from the Defendant Mohammed to  
4 the OCE.

5 Q. Okay. Now, these wire transfers were done by means of Western  
6 Union; is that accurate?

7 A. That is correct.

8 Q. Have you obtained any of the videos or photographs of the  
9 person obtaining those Western Union transfers and forwarding them?

10 A. No, no video.

11 Q. All right. And no photographs of the man or person that may  
12 have forwarded -- obtained the Western Union transfers at the  
13 Western Union location and then forwarded it? You don't have any  
14 photographs of that person?

15 A. We don't have any photographs, but we do have communications  
16 between both defendants and the OCE that they used a third party to  
17 send those wire transfers.

18 Q. Have you identified the third party?

19 A. We have the name of the individual senders on the wire  
20 transfers.

21 Q. Are they in custody?

22 A. Not that I'm aware of.

23 Q. Do you know their locations?

24 A. I do not.

25 Q. Now, the total amount of money involved that was sent was about

1 \$25,000; is that accurate? When you include the \$14,000 of Saudi  
2 money?

3 A. To be specific, we have over \$11,000 of Western Union wire  
4 transfers from Mohammed to Said. And then, we have a total of -- a  
5 little over \$9,000, I believe, from Mohammed to the OCE. And 14,400  
6 riyals is the amount that was given to the undercover by Mohammed.

7 Q. Now, the OCE in this case was posing as a fundraiser, or a  
8 recruiter, or a supplier; is that accurate?

9 A. That is correct.

10 Q. Did Mr. Mohammed introduce the OCE to any other people?

11 A. Yes. Mohammed introduced the OCE to at least two other  
12 individuals, who he claimed to be affiliated with the mojahedin,  
13 which is violent jihadist, the fighter/terrorists.

14 Q. Did they meet with the OCE?

15 A. No, they did not.

16 Q. All right. So there was no physical meeting between these two  
17 other people?

18 A. No, there was not.

19 Q. With the OCE?

20 A. No.

21 Q. How did this introduction occur, then?

22 A. This is an introduction -- introductions on-line.

23 And if I may add, there was also the introduction of the OCE to  
24 the defendant Said by Mohammed.

25 Q. Now, all the OCE initiated contacts, I take it, they have been

1 preserved, recorded, and documented; is that accurate?

2 A. As far as I know.

3 Q. And on May 18th of 2012, the government mentioned that the OCE  
4 was told by the defendant directly about -- or he told the defendant  
5 Mohammed about his affiliation with Al-Qaeda and other groups, true?  
6 Is that accurate?

7 A. I'm sorry. Would you repeat the question?

8 Q. Sure. On May 18th, Mohammed and the OCE had a conversation.  
9 Do you recall that?

10 A. Yes. In May of that year, Mohammed and the OCE had several  
11 conversations during the --

12 Q. During one of these conversations, the OCE allegedly told Mr.  
13 Mohammed about him, the OCE, being directly involved with Al-Qaeda,  
14 correct?

15 A. That is correct.

16 Q. And has that conversation been preserved?

17 A. It has.

18 Q. And was there a response that you recall from my client?

19 A. Yes. Over the time frame of that month of May, there was  
20 confirmation that the OCE was affiliated with Al-Qaeda or Al-Qaeda  
21 in Iraq and/or I'm not sure -- the defendant Mohammed stated that he  
22 was interested in supporting those mojahedin fighters associated  
23 with Iraq.

24 Q. And those conversations and responses from my client were  
25 recorded and documented?

1 A. They have been documented.

2 Q. Now, did my client make any statements to the FBI during his  
3 plane trip from Saudi Arabia to the United States?

4 A. Yes.

5 Q. Have you seen them?

6 A. I have not.

7 Q. Do you know the substance of those statements?

8 A. Vaguely.

9 Q. Please, inform us. Did he admit this?

10 A. No, he did not.

11 Q. In fact, he was blindfolded during the trip, wasn't he?

12 A. I am not aware of that.

13 Q. Are you aware that the Saudi government and their personnel,  
14 during the time he was detained or in custody from January to July  
15 of 2013, was tortured?

16 MR. DEL TORO: Objection. Judge, again, we're going  
17 outside of the scope here.

18 THE COURT: Sustained.

19 You need to wrap it up here in the next few minutes.

20 MR. FARINA: I have one more question, Judge.

21 THE COURT: Okay.

22 BY MR. FARINA:

23 Q. Also there has been -- the government has proffered that there  
24 would be funds that would -- some of these funds would be used to  
25 attack U.S. assets, or targets, or U.N. targets.



1 Are you familiar with that?

2 A. I'm familiar with the statements, those statements that  
3 Mohammed made to the OC.

4 Q. And when was that done?

5 A. In the summer of 2012, the defendant Mohammed made statements  
6 to the OCE that he was interested in the money he sent through the  
7 wire transfers to be pooled with other resources to support attacks  
8 against U.S. and U.N. targets.

9 After, in September of 2012, the defendant Mohammed made  
10 comments that he was interested in funds he had just sent, also to  
11 be used in support of attacks against the U.S. or U.N. targets,  
12 similar to those of the attacks on Benghazi.

13 Q. And you have heard -- or listened or heard -- these  
14 communications?

15 A. No, I have not heard or listened to.

16 Q. Where are you getting your information, reading reports?

17 A. Yes. Those conversations were documented and I read that  
18 report.

19 Q. Did you read a transcript of the conversation?

20 A. Yes.

21 Q. So it's been recorded and memorialized?

22 A. That's correct.

23 Q. And whatever the recording device, that has been saved also?

24 A. Yes.

25 Q. These -- I received some discovery or Jencks material regarding

1 some of the monies that you have received via Western Union from Mr.  
2 Mohammed.

3 Do you remember those; how many there were?

4 A. Yes. Again, there were at least six wire transfers.

5 Q. And with those wire transfers, did you have any Internet or  
6 chat room conversation with Mr. Mohammed?

7 A. I did not.

8 Q. Yourself?

9 A. I did not.

10 MR. FARINA: Thank you, Judge. Nothing further.

11 THE COURT: Okay. Miss Pinera-Vazquez, any cross?

12 MS. PINERA-VAZQUEZ: Yes.

13 CROSS EXAMINATION

14 BY MS. PINERA-VAZQUEZ:

15 Q. Agent Madhere, is that how you pronounce it?

16 A. Madhere.

17 Q. Madhere. Now, you're not the lead agent on this case?

18 A. No, I am not.

19 Q. Who's the lead agent?

20 A. The lead agent is Special Agent Justin Acres.

21 Q. And what was your role in this investigation?

22 A. I played a supporting role. I was a co-case agent assigned to  
23 the undercover operation associated with this particular  
24 investigation.

25 Q. Did you participate in any undercover operations in this

1 investigation aside from just monitoring?

2 A. Yes.

3 Q. And what was that?

4 A. I accompanied the OCE on receiving the wire transfers from  
5 defendant Mohammed. And I accompanied the team associated with any  
6 operations of the undercover nature.

7 So any on-line operations, I helped the OCE to facilitate that  
8 from a technical standpoint, but not involved in the conversations.

9 Q. Is the OCE a local agent?

10 MR. DEL TORO: Objection.

11 THE COURT: Sustained.

12 BY MS. PINERA-VAZQUEZ:

13 Q. Did you travel to Saudi Arabia to pick up the defendants?

14 A. No, I did not.

15 Q. So as part -- you said that you accompanied the OC as part of  
16 your undercover duties to pick up monies sent from Mohammed,  
17 correct?

18 A. That's correct.

19 Q. You never received any monies from my client, Mr. Said,  
20 correct?

21 A. I did not.

22 Q. And as far as you know, he never wired any money to the United  
23 States, correct?

24 A. I am only aware of the money that he received from Mohammed.

25 Q. Right. But my question is, you're not aware of any money that

1 he wired to the United States, correct?

2 A. That's correct.

3 Q. In fact, let's talk about Mr. Said's ties to the United States.

4 As far as you know, he's not a U.S. citizen, correct?

5 A. That is correct.

6 Q. He's not a permanent resident either?

7 A. He is not, as far as I know.

8 Q. In fact, as far as you know, he has never set foot in the

9 United States before this time, correct?

10 A. As far as I know.

11 Q. Do you have his passport?

12 A. I do not.

13 Q. Do you have any information from any other source that he had

14 ever been in the United States before?

15 A. I do not.

16 Q. In fact, as far as you know, Mr. Said has lived in Kenya all of

17 his life?

18 A. Correct.

19 Q. He has lived in a small town about four hundred kilometers far

20 away from Nairobi called Mombassa, correct?

21 A. I'm aware that the defendant has resided in both Nairobi and

22 Mombassa.

23 Q. And his family is still in Mombassa, correct?

24 A. I am unaware of this.

25 Q. Let's discuss the chat rooms.

1 I believe that Mr. Del Toro said that this case was initiated  
2 in the chats rooms; is that correct?

3 A. That's correct.

4 Q. And about when was that time wise?

5 A. In the fall of 2011 or the initial contacts between Mohammed  
6 and the OCE.

7 Q. And who initiated that contact? Did the OCE initiate the  
8 contact or did Mohammed initiate the contact?

9 MR. DEL TORO: I would object to asked and answered and  
10 scope, Judge.

11 THE COURT: Overruled.

12 THE WITNESS: During the initial contact, in the fall of  
13 2011, I believe that the OCE initiated the contact.

14 BY MS. PINERA-VAZQUEZ:

15 Q. And that chat room was controlled by the OCE; is that correct?

16 THE WITNESS: Your Honor, could we define controlled by?

17 THE COURT: Well, go ahead and define.

18 MS. PINERA-VAZQUEZ: I guess he wants me to define control.

19 BY MS. PINERA-VAZQUEZ:

20 Q. Did the OCE set up the chat room?

21 A. No.

22 Q. Do you know who did?

23 A. I do not.

24 Q. Did the Government of the United States set up the chat room?

25 A. No.

1 Q. Okay. So the chat room is open to the entire world on the  
2 Internet, correct?

3 A. Yes.

4 Q. Now, certainly that initiation by the OC -- by the way, the OC  
5 is a government agent; is that correct?

6 A. That's correct.

7 Q. The Government of the United States initiated contact with  
8 Mohammed, correct?

9 A. Correct.

10 Q. The Government of the United States did not initiate any  
11 contact with my client, Mr. Said, at that time, correct?

12 A. In the fall of 2011?

13 Q. Yes.

14 A. Correct.

15 Q. So when did they first initiate contact with Mr. Said, if at  
16 all?

17 A. Yes. I believe it was the summer of 2012, in which Mohammed  
18 introduced the OCE to Said.

19 Q. Now, that introduction was via the chat room, right?

20 A. That's correct.

21 Q. Because in the amorphous world of the Internet and chat rooms  
22 there are no personal introductions, right? There's no  
23 face-to-face?

24 A. There's no face-to-face.

25 Q. So when you say introduced, you said really the OCE introduced

1 or Mohammed introduced the OCE to my client and my client's Internet  
2 profile. Is that what you're saying?

3 A. That is correct.

4 Q. Because there was no face-to-face introduction, correct?

5 A. At that time, correct.

6 Q. Right. We're talking about that time?

7 A. Yes.

8 Q. And in fact -- or maybe I should ask you, do you know who was  
9 on the other side of the computer saying they were Mohammed Hussein  
10 Said?

11 A. What we do know is based on later communications early this  
12 year between Said and the OCE, who at the time Said believed to be  
13 Mohammed.

14 The OCE was able to, one, confirm the identity of Said, and  
15 two, based on arrangements for Said to travel to meet Mohammed, your  
16 client is the one who traveled to meet Mohammed.

17 Q. Okay. Let me just break that down a little bit.

18 A. Okay.

19 Q. You're saying that this year the government posed as Mohammed  
20 on the Internet, correct?

21 A. Correct.

22 Q. And they were in contact with whom they thought was the person  
23 named Mohammed Hussein Said?

24 THE COURT: Let's just call your client Said.

25 MS. PINERA-VAZQUEZ: Sorry. Said.

1 THE WITNESS: Yes.

2 BY MS. PINERA-VAZQUEZ:

3 Q. But you have no confirmation that that was the actual person

4 that's standing in this courtroom today; am I right?

5 A. Well, again, what we know is based on those communications with

6 that particular individual on-line, in which they made arrangements

7 for Said to travel to meet Mohammed. It's your client who actually

8 traveled to meet him.

9 Q. But okay. And that happened subsequently to that -- well, when

10 did that conversation occur?

11 A. I would have to reference the indictment for the specific time

12 frame.

13 MS. PINERA-VAZQUEZ: Yes, thank you.

14 BY MS. PINERA-VAZQUEZ:

15 Q. Yes, did that refresh your recollection?

16 A. Yes. I believe according to the indictment that confirmation

17 was made by Said to travel in December of 2012.

18 Q. And where did Mr. Said travel to?

19 MR. DEL TORO: Objection, Judge, to relevance and scope.

20 MS. PINERA-VAZQUEZ: Judge, I'm trying to --

21 THE COURT: Overruled.

22 MS. PINERA-VAZQUEZ: Thank you.

23 MS. PINERA-VAZQUEZ:

24 Q. You can answer.

25 A. Said traveled to meet Mohammed in Saudi Arabia.



1 Q. And did he -- to meet Mohammed, you mean the co-defendant?

2 A. Correct.

3 Q. And did Mohammed and the co-defendant actually meet?

4 A. I'm not aware of whether or not the two defendants met on the  
5 ground.

6 However, I know that they traveled together back to the United  
7 States and had subsequent communications once they were here  
8 recorded in the marked vehicle.

9 Q. Okay. But let's not mix it up. We're talking about December  
10 2012. You're saying that the government came up with this plan for  
11 Mr. Said to travel to Saudi Arabia and meet Mohammed. And you're  
12 talking, now, six months later or seven months later what happened a  
13 couple of days ago.

14 So what I wanted to focus on is his identity.

15 Did he meet with Mohammed or not, is my first question, back in  
16 December of 2012?

17 A. No. Back in December 2012, my statement was that they made  
18 confirmations to travel on-line, that Said stated that he would be  
19 ready to travel to meet Mohammed.

20 Q. And do you have any information that he actually physically  
21 traveled to Saudi Arabia?

22 A. Yes.

23 Q. And how do you know that?

24 A. I know this from reports.

25 Q. And those reports said that someone physically saw Mr. Said in

1 Saudi Arabia, right? Is that what you're telling me?

2 A. Yes.

3 THE COURT: December when?

4 BY MS. PINERA-VAZQUEZ:

5 Q. When? When did he travel?

6 A. In August of 2013.

7 Q. No. We're getting confused. I want you to focus on December  
8 2012. Okay. My questions are just going to be directed -- and then  
9 we'll deal with August, but right now we're just focusing on  
10 December 2012.

11 A. Okay. There was no travel in December of 2012. There was  
12 confirmation on-line.

13 Q. Okay. So the next question is: So nobody from the U.S.  
14 Government or, any other government, saw my client, Mr. Said,  
15 actually travel to Saudi Arabia; is that correct?

16 THE COURT: In 2012?

17 MS. PINERA-VAZQUEZ: In 2012.

18 BY MS. PINERA-VAZQUEZ:

19 Q. In December 2012?

20 A. In December 2012, correct.

21 Q. So again, the confirmation that you're saying is based on  
22 Internet chat rooms in the amorphous world where there is no  
23 face-to-face, correct?

24 A. This is correct.

25 Q. In fact, the first time that the government had seen Mr. Said

1 was when he was arrested in Saudi Arabia in August 25th of 2013,  
2 correct?

3 A. Correct. Between that time there were additional  
4 communications between Said and the OCE.

5 Q. And when you say communications, again, you're not talking  
6 about face-to-face communications, right?

7 A. No. I'm referring to on-line communications between Said and  
8 the OCE.

9 Q. So what information do you have that the person identifying  
10 themselves as Said was, in fact, the person that's in court today?  
11 What evidence do you have?

12 A. Again, based on the communications that Said had with the OC  
13 under that on-line username, the defendant is the one who actually  
14 traveled to meet with Mohammed based on the arrangements that they  
15 made.

16 Q. When was that?

17 MR. DEL TORO: Objection, asked and answered.

18 MS. PINERA-VAZQUEZ: Well, Judge --

19 THE COURT: I'm trying to figure out, is that in August of  
20 2013? When did he travel to meet with Mohammed?

21 THE WITNESS: In August of 2013.

22 THE COURT: Okay.

23 BY MS. PINERA-VAZQUEZ:

24 Q. So there were arrangements to travel with Mohammed in August of  
25 2013. Is that what you're telling us?

1 A. I'm sorry?

2 Q. There was a confirmation -- there were arrangements with  
3 Mohammed to meet in Saudi Arabia this month. Is that what you're  
4 telling the Court?

5 A. As far as I know, yes.

6 Q. And aside from that one -- in other words, his arrest a week  
7 ago, was there any other physical sighting of a person identifying  
8 himself in the Internet chat rooms as Said?

9 A. Again, one more time, please.

10 Q. Aside from a week ago when Mr. Said was arrested, what other  
11 evidence do you have that the person identifying themselves as Said  
12 in the chat rooms was actually the person in court today?

13 A. I'm not aware of the additional evidence.

14 THE COURT: You have five minutes to wrap up.

15 MS. PINERA-VAZQUEZ: Yes, Judge.

16 BY MS. PINERA-VAZQUEZ:

17 Q. All right. Part of the -- I believe the indictment states that  
18 there were -- that Mr. Said was involved in what is labeled as  
19 recruiting for Al-Nusra; is that correct?

20 A. Al-Nusra Front, correct.

21 Q. I'm sorry?

22 A. Al-Nusra Front.

23 Q. Al-Nusra. I'm sorry. I could never say that.

24 And in the indictment and by proffer, Mr. Del Toro mentioned  
25 four or five names that were all previous Al-Qaeda operatives; is

1 that right?

2 A. Al Qaeda, or Al-Shabaab, or Al-Qaeda in Iraq.

3 Q. Why would these individuals who were already involved in

4 Al-Qaeda and Al-Shabaab be recruiting?

5 A. I am not aware of that.

6 Q. They're already part of the organization, right?

7 A. I --

8 Q. And do you have any evidence that Mr. Said actually met with

9 any of these alleged recruits?

10 A. What we have is Said presenting actual copies of the passports

11 of these individuals and providing those to the OC.

12 Q. Well, let me correct that.

13 What you have is an Internet address that says they're Said

14 sending passport pictures, correct?

15 A. Correct.

16 Q. Because you don't know who actually, physically sent those

17 passport pictures, correct? I mean, if you know, let us know. Do

18 you know?

19 A. Again, we have an individual who has conversations and

20 communications on-line with the OC. That individual made travel

21 arrangements with meeting Mohammed. That individual who traveled to

22 meet Mohammed is the individual standing here today.

23 That individual presented copies of passports of the mentioned

24 terrorists to the OC. Not passport photos, but the actual passports

25 of the --

1 Q. And you --

2 A. -- first pages.

3 Q. Sorry.

4 And you have pictures of Mr. Said sitting at his computer desk  
5 actually sending the passport pictures?

6 A. I do not.

7 Q. So you're assuming that it was the case because in August of  
8 2013, he traveled to Saudi Arabia; am I correct?

9 Okay. Do you want to answer that?

10 A. Yes, correct.

11 Q. The indictment charges seven counts of wire transfers. These  
12 wire transfers were not sent to the United States; is that correct?

13 A. That's correct.

14 Q. And out of these seven counts, six of them are sent to an  
15 individual by the name of Salma Ahmic. Are you aware of that?

16 A. Yes.

17 Q. Okay. That's not my client, Said, correct?

18 A. Correct.

19 Q. In other words, Said did not bring to your indictment, receive  
20 the funds, correct?

21 A. I'm aware of that recipient being the wife of your client.

22 Q. All right. And the wife is not here today, correct?

23 A. That's correct.

24 Q. Certainly Said did not receive it. According to your own  
25 indictment his wife received it, right?

1 A. Yes. And we, additionally, have communications between Said  
2 and the OC making arrangements for the wife to receive -- I'm sorry  
3 -- between Mohammed and the -- between communications --

4 MR. DEL TORO: I'm going to object, Judge, outside the  
5 scope and getting far field.

6 MS. PINERA-VAZQUEZ: I'm referring to the indictment,  
7 Judge.

8 THE COURT: He's asking where, you know, how the money went  
9 to the wife, is what I think the point is made by --

10 MR. DEL TORO: And Judge, I think that the question has  
11 been answered. He testified that money went to Said's wife and that  
12 Said's received it.

13 THE COURT: Okay.

14 MR. DEL TORO: As to 3 through 8, Count 2 has actually  
15 Said's name.

16 THE COURT: Well, we're not doing argument now. That  
17 sounds like a speaking objection.

18 MR. DEL TORO: She's asked him the question and he answered  
19 the question, you know. It didn't go to him, then. The wire  
20 transfers --

21 THE COURT: Hold on. What is the pending question?

22 MS. PINERA-VAZQUEZ: I forget, Judge. Let me think about  
23 it.

24 THE COURT: I mean, this is stuff for a jury more than for  
25 me because it went to the wife.

1 MR. DEL TORO: And that's my objection, Judge.

2 MS. PINERA-VAZQUEZ: It didn't go to him and do they have  
3 any information that it went to him? I think he said it was  
4 communication.

5 THE COURT: Okay. Do you have any information that it went  
6 from his wife from to this fellow that's named Said, who is here  
7 today?

8 THE WITNESS: No, Your Honor.

9 THE COURT: Okay.

10 BY MS. PINERA-VAZQUEZ:

11 Q. And the communication that you mentioned before, again, was  
12 Internet communications and not face-to-face communications?

13 A. Correct.

14 MS. PINERA-VAZQUEZ: So I want to wrap it up, Judge.

15 THE COURT: Okay.

16 BY MS. PINERA-VAZQUEZ:

17 Q. The one face-to-face that you have testified to today that Mr.  
18 Said was somehow involved in all these allegations of the indictment  
19 is because in August of this year, he traveled to Saudi Arabia and  
20 the FBI picked him up; am I right?

21 A. That is the information that I have.

22 Q. That's the only face-to-face?

23 A. That I am aware of.

24 Q. And by the way, sorry -- he was arrested in Saudi Arabia. Can  
25 you tell us a little bit about that? What do you know about that?



1 MR. DEL TORO: Objection, Judge.

2 Again, we've already gone over this and it's outside the  
3 scope of the PTD hearing.

4 THE COURT: Sustained.

5 MS. PINERA-VAZQUEZ: Oh, I know what I had.

6 BY MS. PINERA-VAZQUEZ:

7 Q. In the police car, what statements are you aware of that my  
8 client, Mr. Said, made in the police car?

9 A. What I am aware of is that defendant Said stated to Mohammed  
10 that he told the FBI that he had -- he had lied to Mohammed.

11 Afterwards, Mohammed stated that he believed that the  
12 conversation was being recorded. And then, at that point, Said  
13 stated that -- corrected his statement -- and stated that he had  
14 lied to Mohammed.

15 Q. And that's it, there are no other conversations that you're  
16 aware of?

17 A. There are additional conversations. I'm not aware of them.

18 Q. And general conversations in the United States in a taped  
19 vehicle, in a car that had a recorder in it. Is that what you're  
20 saying?

21 A. I am not aware of the full extent of the conversation.

22 Q. You're only aware of a portion of it?

23 A. That portion, correct.

24 THE COURT: It's time to wrap it up.

25 MS. PINERA-VAZQUEZ: Last question.

1 BY MS. PINERA-VAZQUEZ:

2 Q. Are you aware of whether or not the government of Saudi Arabia  
3 was cooperating with the United States in --

4 MR. DEL TORO: Objection, again, as to the scope and  
5 relevance.

6 THE COURT: Sustained.

7 MS. PINERA-VAZQUEZ: Okay. No further questions at this  
8 time.

9 THE COURT: Okay. Do you have any questions?

10 MR. DEL TORO: I know I should have started my proffer of  
11 the facts which I think --

12 THE COURT: Let's make this brief. All right. It has been  
13 going on way too long.

14 MR. DEL TORO: But there's one fact that I need to proffer  
15 to clear up one question, Judge, which is how the FBI knew that Said  
16 was, in fact, the person who engaged with the OCE in those on-line  
17 chat conversations.

18 THE COURT: You can make that in an argument. Do you have  
19 any questions of this gentleman?

20 MR. DEL TORO: No further questions, Judge.

21 THE COURT: Okay. All right. Do the defendants have any  
22 kind of evidence?

23 MR. FARINA: Nothing, just argument, Judge.

24 THE COURT: Okay. Let me hear from you first.

25 MR. FARINA: Yes, Judge.

1 My client is an American citizen. While he was born in  
2 India, he entered the United States in 2003 and became a naturalized  
3 citizen in about 2010/2011.

4 His passport has been seized by the agents and his  
5 cancelled Indian passport is located in his home in Saudi Arabia.  
6 So he does not have access to that.

7 Now, while it is accurate that his wife is in Saudi Arabia,  
8 he does have two brothers in the United States. One who lives in  
9 California and works and goes to school and another one works in  
10 Houston as a software engineer.

11 I have spoken to both of these gentlemen. And they have  
12 advised that should he get a bond and be able to make it, he would  
13 be able to reside with either one of them either here in Texas or in  
14 California. His parents reside in Rancho Cucamonga in California,  
15 but at the present time they are in Saudi Arabia.

16 Now, the family does have some funds and I would ask the  
17 Court to consider to look -- among other things -- look at the  
18 completeness of the information that he gave Pretrial Services.  
19 This report is very, very thorough. And he did not, by any means,  
20 try to avoid any of the questions. He answered them all. He talked  
21 about his wife and his family.

22 He discussed that he had obtained a Bachelor's Degree in  
23 Computer Science in India. He has had a Master's Degree in Computer  
24 Science while he attended California State University in Los  
25 Angeles. He has been employed in 2010. He was employed in a

1 medical research software company in San Bernardino, and he earned a  
2 significant amount of money.

3 He has never been arrested prior to this incident. The  
4 amount of money, his net worth, is not significant, but his family  
5 can post a bond.

6 I would ask the Court to consider a bond for this United  
7 States citizen of \$500,000 corporate surety bond with a Nebbia  
8 condition that would be cosigned by his brothers and his parents,  
9 who I'm sure will be coming into the United States.

10 The Court can impose electronic monitoring, a curfew, home  
11 confinement. I mean, this prosecution is going to be a long  
12 prosecution of this man. And it is helpful to the defense if he is  
13 out on bond, even if the curfew is 24 hours and under electronic  
14 monitoring. That way he will have access to his attorneys and his  
15 attorneys to him to be able to conduct a defense.

16 There are many questions how this case came about. Some of  
17 them have caused some question about how this investigation occurred  
18 and what happened to him while he was taken into custody and then  
19 released by the Saudis, under whose authority, and the way he was  
20 treated there.

21 So I would ask the Court to consider a \$500,000 corporate  
22 surety bond with a Nebbia condition and with other factors, or other  
23 conditions to be imposed at another time.

24 THE COURT: Okay.

25 MR. FARINA: Thank you.

1 THE COURT: What do you say Miss Pinera?

2 MS. PINERA-VAZQUEZ: We're in a little bit of a different  
3 situation, since my client has never been in the United States and  
4 has no family or ties to the United States. He's married. He's 25  
5 years old. He has a one-year-old daughter and a seven-month-old on  
6 the way.

7 So as far as ties to the United States, quite frankly, he  
8 has none. In fact, he thought he was -- when I spoke to him  
9 yesterday in Miami -- California -- he had no idea where he was at.

10 As far as the evidence in the case, Judge, which is  
11 something that the Court has to consider, even though in fashioning  
12 some sort of bond, I think I tried to point out that there was no  
13 face-to-face. And there could be a huge identity issue in this case  
14 because the first time they actually lay eyes upon my client is a  
15 week ago. Before that, as far as the agent testified, nobody had  
16 physically seen my client.

17 It's all based on Internet communications in chat rooms.  
18 And as the Court is well aware, and as the government has proven in  
19 this case, you can assume identities and trick people into thinking  
20 you are who you're not.

21 So aside from that, Judge, I don't know what else to say.  
22 I'm not sure what kind of bond the Court can fashion since he does  
23 not have any ties here.

24 THE COURT: Does the government have any rebuttal?

25 MR. DEL TORO: Yes, Judge.

1           Let me just proffer one fact, Judge, which I should have  
2 started initially with Mr. Said. In addition, to the fact that he  
3 traveled in response to arrangements with an OCE to travel to Saudi  
4 Arabia and is, in fact, the person who showed up, defendant Said  
5 also, in fact, provided to the OCE on-line a copy of his own  
6 passport with his own picture and name during their on-line chats,  
7 as well as the picture and passport of his wife. So his identity is  
8 beyond question.

9           The strength of the government's case against Mr. Said is  
10 overwhelming. It includes specific details about the most intricate  
11 details about terrorist operations of Al-Shabaab and Al-Qaeda in  
12 East Africa that only an insider could know, including the actual  
13 passport pictures and identifying passport pages of three known  
14 terrorists. So the case against Mr. Said is overwhelmingly strong.

15           In addition, we have the Western Union records showing that  
16 he was involved in receiving money from another confirmed terrorist  
17 Gufran Mohammed, the co-defendant, who was involved in clear on-line  
18 chats in which he admits that he wants to fund, not Al-Nusra  
19 terrorist operations, but actual Al-Qaeda terrorist attacks against  
20 U.S. citizens and U.N. targets in the west involving various  
21 individuals.

22           So the evidence against these defendants is overwhelming.  
23 Let's look at the --

24           THE COURT: Let's do this in a summary fashion. I've  
25 already got most of the evidence the first time around. So I don't

1 want to go through it all again. It is just to rebut anything  
2 specifically of the defense attorney's argument.

3 MR. DEL TORO: I'm done with the facts.

4 Now the question is risk of flight. Mr. Said is a foreign  
5 national. He does have a foreign residence in Kenya and has zero  
6 ties to this community, as Miss Pinero admitted.

7 Mr. Mohammed may be a U.S. citizen, but he became a U.S.  
8 citizen in 2010/2011, according to the Pretrial Services Report.  
9 And guess when he left to Saudi Arabia to move to Saudi Arabia?  
10 March 2011.

11 So he became a U.S. citizen after living here for  
12 approximately ten years and immediately headed out to Saudi Arabia  
13 to work as a financier for terrorist organizations. I think his  
14 U.S. citizenship can be discounted as really part of his overall  
15 plan to support terrorist organizations.

16 Second, he has zero ties to this specific community. While  
17 he may have relatives in other states, as the Court knows, the  
18 question is whether he has ties to this community and he has none.  
19 That makes him a risk of flight in addition to all those other  
20 factors that I mentioned as to risk of flight.

21 THE COURT: I'm not so sure I agree with that. I know  
22 there was a case. And I think it was Judge Highsmith who said that  
23 it's the ties to Miami, but I think you can consider the ties to  
24 maybe Miami first, and then, South Florida, and then, Florida, and  
25 then, the United States, but anyhow, go ahead.

1 MR. DEL TORO: As the Court knows, people can easily flee  
2 and hide in Hialeah for many, many years. I would suggest to the  
3 Court that --

4 THE COURT: You can hide in the basement of the courthouse.

5 MR. DEL TORO: I agree, Judge.

6 I would suggest to the Court that, you know, allowing  
7 somebody to actually live in Houston or California makes it that  
8 much easier to catch a flight.

9 Then, let's turn to danger. We have overwhelming evidence  
10 in this case that both of these defendants didn't just talk about  
11 supporting Al-Qaeda, Al-Shabaab and Al-Nusra Front, but they  
12 actually engaged in actual conspiratorial acts, and actually sent  
13 money across the world for that purpose, and actually had the most  
14 inside access to all of the most significant members of some of  
15 these terrorist organizations.

16 And finally, I'm just going to rely on the obvious, Judge,  
17 a rebuttable presumption under 18 U.S.C. 3142(e)3(c) which states  
18 that if there's probable cause to believe the defendant committed a  
19 federal crime of terrorism as that's defined in 2332(b), then the  
20 Court will presume that the person is a risk of flight and a danger.

21 Obviously, material support of a terrorist organization is  
22 a designated federal crime of terrorism. And I think that,  
23 obviously probable cause has been determined by the grand jury, but  
24 having heard the proffer, and the facts, and the testimony it is  
25 clear, Judge, that these two individuals should be detained.



1           There is no reasonable combination of any bond that could  
2 assure their appearance or that could protect this community or the  
3 United States.

4           MR. FARINA: Your Honor, just a brief response.

5           THE COURT: What is that?

6           MR. FARINA: It's interesting that my client has not been  
7 involved in any other conversations, or chat rooms, or picked up by  
8 any other government surveillance, NSA surveillance, that we all  
9 know that all our communications are being monitored until the FBI  
10 contacted him in this chat room.

11           I think that's important to note that prior to this, there  
12 are no conversations, nothing whatsoever by him, recorded or  
13 presented by the government until the United States agents, the OCE,  
14 began this conversation with him.

15           THE COURT: Okay.

16           MR. FARINA: And initially, the agent said that my client  
17 started the conversation, but under cross-examination of defense  
18 counsel, he changed his mind and said, no, the FBI initiated the  
19 conversation. And I think that is important for the Court to note.  
20 Thank you.

21           THE COURT: Okay. I find this offense carries a penalty in  
22 excess of ten years and involves terrorism. And therefore, a  
23 presumption arises both as to risk of flight and danger to the  
24 community.

25           The weight of the evidence against the defendants is

1 substantial. There is documentary evidence, as well as  
2 communications between the defendants and undercover FBI during this  
3 regarding, Mohammed specifically, sending money to Said to support  
4 Al-Shabaab.

5 And then, subsequently, conversations amongst them between  
6 Mohammed and the OCE, and also Said and the OCE, in regards to the  
7 sending of additional money to support the Al-Qaeda in Iraq, which I  
8 guess is Al-Nusra Front, and a substantial amount of money was sent  
9 by Western Union to support those terrorist organizations.

10 In addition, Mohammed made statements that he would support  
11 the terrorist actions against the United States, as well as U.N.  
12 installations of properties.

13 I also find by clear and convincing evidence there is no  
14 condition or combination of conditions to reasonably assure the  
15 appearance of defendants as required of future proceedings.

16 Mr. Said, as counsel indicated, has no ties at all to the  
17 United States. And in fact, this is his first trip here and he is  
18 from Kenya and he was born there and he has lived there his entire  
19 life and his entire family resides there as well.

20 So I find based on that that he has no ties to the United  
21 States and would not likely remain in the United States if released  
22 on bond.

23 Mr. Mohammed does have some ties to the United States and  
24 he received his United States citizenship some time in 2010 or 2011,  
25 but shortly thereafter, he left the United States and went to Saudi

1 Arabia where he participated in the conduct, which is described in  
2 the indictment in this case.

3 He does have two brothers who live here, apparently one in  
4 Texas and one in California, who have indicated he could reside with  
5 them if released on bond, but I find that the charges that have been  
6 brought are very serious charges that could result, if convicted, in  
7 a long incarceration period for this defendant.

8 And I note that his child and wife are in Saudi Arabia and  
9 not in the United States. He has no assets here in the United  
10 States. And I find that he would be likely to leave if released on  
11 bond.

12 In addition, I find by clear and convincing evidence that  
13 no condition or combination of conditions would reasonably assure  
14 the safety of the community.

15 There is overwhelming evidence that each of these  
16 defendants participated in securing money and assets for terrorist  
17 organizations overseas, as well as Mr. Mohammed in suggesting that  
18 he would support terrorist action against the United States and the  
19 United Nations.

20 I find that if he was released on bond, he would be likely  
21 to continue in these activities and be a danger to the community.

22 So based on all of that, I'm going to order that they be  
23 detained pending trial in this matter.

24 All right. Anything else from either of these gentlemen?

25 MR. FARINA: Nothing.

1 THE COURT: No?

2 MS. PINERA-VAZQUEZ: I have one issue, Judge.

3 THE COURT: Yes.

4 MS. PINERA-VAZQUEZ: If I could just raise it real quick?

5 THE COURT: Okay.

6 MS. PINERA-VAZQUEZ: Yesterday when I went to see my client  
7 they're both in the SHU --

8 THE COURT: Yes.

9 MS. PINERA-VAZQUEZ: I noticed that there were two cameras  
10 in the detention room, one to my left and one to my right. And I  
11 have to speak through the telephone and I'm concerned that my  
12 conversations with my client are being overheard by somebody.

13 And I would like -- and I don't know if this the right  
14 forum, but to get an opportunity to meet with him face-to-face so I  
15 don't have to speak with him over the phone. And certainly, I don't  
16 want to be recorded either by video or audio.

17 So I don't know how -- and I'm asking the Court for some  
18 sort of assistance.

19 THE COURT: Well, why would you not want to be -- I could  
20 see that they would want to record you by video to make sure that  
21 nothing is happening.

22 MS. PINERA-VAZQUEZ: Well, there's a wall and there's a  
23 glass and there's no way to transfer information. And more  
24 importantly, I want to be able to have attorney/client privilege  
25 with my client so.

1 THE COURT: I understand that, but why could you not do  
2 that if there's a video of you conversing with your client?

3 MS. PINERA-VAZQUEZ: Because I have to do it over a  
4 telephone and I don't know if that telephone is being recorded,  
5 quite frankly.

6 So I would like some assurance that that conversation is  
7 not being recorded because at this juncture hearing things on the  
8 telephone. He was on the other side of the wall. He's on the  
9 telephone and I'm on the other side and between that and the two  
10 cameras, I just -- I didn't feel that we were able to have a  
11 privileged conversation.

12 THE COURT: Do you know if the conversations are being  
13 recorded between the defense attorney and client?

14 MR. FARINA: I have no indication that Mr. Said or Mr.  
15 Mohammed are being treated any differently than any other inmates at  
16 the FDC. So I guess that's a question, I think, for the BOP.

17 THE COURT: Okay. I'm going to instruct the government to  
18 inquire of the BOP whether or not they're recording the defendants'  
19 conversations with their lawyers and you're to notify both defense  
20 counsel in this matter within 48 hours.

21 MR. DEL TORO: We'll do, Judge.

22 MS. PINERA-VAZQUEZ: Thank you, Your Honor.

23 THE COURT: Okay. And if you find something you can file a  
24 motion with Judge Ungaro.

25 MS. PINERA-VAZQUEZ: Yes.

1 THE COURT: I mean, I don't see a problem with video and I  
2 don't want to get into their security procedures, but I think if  
3 they're recording conversations there could be a serious issue  
4 there.

5 MS. PINERA-VAZQUEZ: But then, they can read lips, Judge,  
6 you know, on the video.

7 THE COURT: Just make sure your lips are facing the other  
8 way.

9 Okay. Anything else I can help anybody with?

10 MR. DEL TORO: Nothing, Judge.

11 THE COURT: Okay.

12 (Thereupon, the audiotape proceeding concluded.)  
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CERTIFICATE

I hereby certify that the foregoing transcript is an accurate transcript of the audiotape proceedings in the above-entitled matter.

08/24/13

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