

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

UNITED STATES OF AMERICA

v.

CASE NO. 6:17-cr-00018-ORL-40KRS

NOOR ZAHI SALMAN,

Defendant.

DEFENDANT’S *DAUBERT* MOTION TO PRECLUDE EXPERT TESTIMONY OF WILLIAM BRANIFF¹

Defendant, Noor Zahi Salman, moves this Court to preclude or limit the testimony of the Government’s expert, William Braniff, under *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 526 U.S. 579 (1993) and *Kumho Tire Co. v. Carmichael*, 526 U.S. at 152 (1999); and rules 702, 401, 402, and 403 of the Federal Rules of Evidence. Defendant respectfully requests a *Daubert* hearing to determine the admissibility of Mr. Braniff’s testimony.²

Summary of the Argument

The Government bears the burden of establishing the reliability of Mr. Braniff’s testimony. At present, the Government has not met that burden because its expert report does not set forth Mr. Braniff’s particular experience with regards to the subject areas of his testimony and does not contain an explanation of the methodology utilized in developing his testimony. Additionally, the proffered testimony is only marginally, if at all, relevant to Salman’s knowledge of Mateen’s intent to provide material support to ISIS by conducting an attack, or to Salman’s intent to aid and abet Mateen. To the extent his testimony is relevant to Salman’s knowledge or to Mateen’s provision

¹ While this motion requests to exclude Mr. Braniff’s testimony under Rule 403, as well as *Daubert* and Rule 702, the Defense still intends to file an omnibus motion *in limine* before the November 13, 2017 deadline.

² The Defense anticipates this hearing will be no more than two hours.

of material support to ISIS, it is substantially more unfairly prejudicial than probative. Finally, Mr. Braniff's testimony is not strong evidence of Mateen's intent to provide material support and its value is substantially outweighed by the tendency to confuse the jury and its potential for undue prejudice. For these reasons, this Court should preclude Mr. Braniff's testimony under Rules 401, 402, 403, and 702 of the Federal Rules of Evidence.

The Government's Expert Report

The Government's expert disclosure for William Braniff does not state that Mr. Braniff will provide any particular opinion. Instead, Mr. Braniff will "testify as an expert witness regarding certain terrorist organizations and leaders, written and recorded materials from those organizations and leaders, and terminology, as necessary to explain statements by Omar Mateen as well as items found on [Mateen's] electronic devices." Government's Expert Disclosure Letter Excerpts, attached as Ex. 1.³ The Government indicates that Mr. Braniff may also testify about the following topics:

- Organizations: Islamic State of Iraq and the Levant, ISIL, Islamic State, ISIS and associated individuals
- Individuals: Anwar al-Awlaki, Ibn Taymiyyah and Ibn Qayyim, Nidal Hassan, Tsarnaev Brothers, and Moner Abusalha
- Events: the terrorist attacks in Paris, France, on November 13, 2015; and the San Bernardino terrorist attack.

Ex. 1. The Government concludes by saying that these are just "some of the topics that Mr. Braniff may address." Ex. 1.

Mr. Braniff's curriculum vitae indicates that he has training and experience regarding terrorist organizations, in particular al-Qaida. Ex. 1.

³ The Defense has redacted Mr. Braniff's personal information and information about experts not relevant to this motion.

Arguments and Authorities

Under Rule 702 of the Federal Rules of Evidence, “expert testimony must be both reliable and relevant.” *Umana-Fowler v. NCL (Bah.) Ltd.*, 49 F. Supp. 3d 1120, 1121 (S.D. Fla. 2014) (citing *United States v. Frazier*, 387 F.3d 1244, 1260 (11th Cir. 2004)). The party offering the evidence has the burden to show that: 1) the expert is qualified due to having knowledge, skill, experience, training or education in the field of said testimony; 2) such testimony will assist the trier of fact to understand evidence or determine a fact in issue; 3) the testimony is based on sufficient facts or data; 4) the testimony is the product of reliable principles and methods; and, 5) the witness reliably applies the principles and methods to the facts of the case. FED. R. EVID. 702; FED. R. EVID. 104(a); *see also Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579, 588 (1993).

This Court’s “gatekeeping” responsibility under *Daubert* cannot be overstated. *Frazier*, 387 F.3d at 1260. As the Supreme Court framed it in *Kumho Tire*, “[T]he objective of that requirement is to ensure the reliability and relevancy of expert testimony. It is to make certain that an expert, whether basing testimony upon professional studies or personal experience, employs in the courtroom the same level of intellectual rigor that characterizes the practice of an expert in the relevant field.” *Kumho Tire Co. v. Carmichael*, 526 U.S. at 152 (1999). The question of whether an expert’s testimony is reliable depends on the facts and circumstances of the particular case. *Id.* at 158. The party offering the expert testimony bears the burden of establishing reliability and helpfulness. *Frazier*, 387 F.3d at 1260.

Expert testimony “can be both powerful and quite misleading because of the difficulty in evaluating it.” *Daubert*, 509 U.S. at 595 (quoting Jack B. Weinstein, Rule 702 of the Federal Rules of Evidence is Sound; It Should Not Be Amended, 138 F.R.D. 631, 632 (1991)). “Indeed, no other kind of witness is free to opine about a complicated matter without any firsthand knowledge of the

facts in the case, and based upon otherwise inadmissible hearsay if the facts or data are ‘of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject.’” *Frazier*, 387 F.3d at 1260 (citing FED. R. EVID. 703).

An expert opinion should be excluded if it’s not “helpful” to the jury. An opinion is not helpful to the jury if the average layperson is “capable of understanding an issue without the aid of an expert.” *United States v. Navedo-Ramirez*, 781 F.3d 563, 568 (1st Cir. 2015) (citing *United States v. Salimonu*, 182 F.3d 63, 74 (1st Cir. 1999)) (affirming district court’s exclusion of expert testimony regarding battered woman syndrome and duress in part because threats defendant received were such that that “any person could readily appreciate their impact” unaided by expert testimony). “Because of the powerful and potentially misleading effect of expert evidence, . . . sometimes expert opinions that otherwise meet the admissibility requirements may still be excluded by applying Rule 403.” *Frazier*, 387 F.3d at 1263. “The judge in weighing possible prejudice against probative force under Rule 403 . . . exercises more control over experts than over lay witnesses.” *Id.* (internal quotation omitted); *see also United States v. Stevens*, 935 F.2d 1380, 1399 (3d Cir. 1991).

I. This Court should exclude Mr. Braniff’s expert testimony under Rule 702, because the Government has not established that his methodology or experience is reliable to establish his particular opinions.

The Government has not established that Mr. Braniff’s methodology or experience is reliable as applied to his particular opinions in this case. Although his curriculum vitae shows that he has specialized knowledge regarding terrorism in general, the Government does disclose the specific opinions he will give or show how these particular opinions are supported by his experience or methodology.

The Government's expert disclosure states that "[t]he basis for [Mr. Braniff's] testimony will be [his] expertise regarding terrorism as it relates to the global jihadist movement, as evidenced by his curriculum vitae." Ex. 1. Mr. Braniff's curriculum vitae, however is insufficient to establish that he possess particularized knowledge on all the proffered topics. Nor does the curriculum vitae show how his methodology informs his particular opinions in this case. Because the Government's disclosure lists the topics Mr. Braniff will testify about but not his opinions, it is impossible to determine whether his opinions are supported by his methodology.

Based on the Government's expert disclosure, Mr. Braniff's testimony is insufficient under *Daubert* and *Kumho Tire*. As Judge Williams has observed, an "expert cannot rely on 'experience' without explaining in detail how the experience and other materials consulted support the opinion rendered." *Umana-Fowler*, 49 F. Supp. 3d at 1122. "Because the Court's 'gatekeeping function requires more than simply taking the expert's word for it,' the burden is on the party offering the expert testifying based on experience 'to explain how that experience led to the conclusion he reached, why that experience was a sufficient basis for the opinion, and just how that experience was reliably applied to the facts of the case.'" *Id.* (quoting *Frazier*, 387 F.3d at 1261).

The Government has not explained in its expert disclosure how Mr. Braniff's experience led to the conclusions he reached, why his experience was a sufficient basis for these opinions, or how he applied his experience to reach his conclusions. In the absence of a showing of particularized knowledge and a reliable method underlying his testimony, this court should preclude Mr. Braniff's testimony.

II. This Court should exclude or limit Mr. Braniff’s testimony under 401, 402, 403, and 702, because, to the extent it’s relevant at all, it is substantially more unfairly prejudicial than probative.

A. The bulk of Mr. Braniff’s testimony is not relevant to the principle issues at trial, Salman’s knowledge of Mateen’s plans and her intent to aid them.

Evidence must be relevant before it is admissible. *United States v. Gomez*, 763 F.3d 845, 853 (7th Cir. 2014) (“All evidentiary questions begin with Rule 402, which contains the general principle that ‘[r]elevant evidence is admissible’ and ‘[i]rrelevant evidence is not.’”). Relevant evidence, as defined by Rule 401 of the Federal Rules of evidence, is any evidence that “has a tendency to make a fact of consequence more or less probable.” *United States v. Richards*, 719 F.3d 746, 760-761, (7th Cir. 2013); *see also Gomez*, 763 F.3d at 853 (“Rule 401 defines relevant evidence as that which is both probative (having ‘any tendency to make a fact more or less probable than it would be without the evidence’) and material (the fact must be ‘of consequence in determining the action’).”).

Mr. Braniff’s proffered testimony regarding terrorist organizations is not relevant to Salman’s knowledge of Mateen’s plan or to her alleged intent to aid and abet him. The discovery produced by the Government does not show that Salman accessed any extremist content on any of her personal devices. During the California bond hearing, the court asked United States Assistant Attorney General Sara Sweeney: “Is there any evidence the government has that Salman herself . . . has pledged allegiance to the Islamic State or that there’s something . . . more specific about the . . . the situation that poses more specific danger?” Ms. Sweeney responded, “No, Your Honor. . . . Nothing like that.” February 1, 2017, Hearing before Magistrate Judge Donna Ryu, attached as Ex. 2, at 17. Later, Ms. Sweeney alluded to “the fact that Salman is not radical” and stated, “I can’t proffer to [the court] here that [Salman] is an Islamic extremist or anything like that.” *Id.* at 47-48. The California court summarized: “The government conceded that Salman has no connection to

the Islamic State and has not exhibited any extremist views.” March 1, 2017, Hearing before Magistrate Judge Donna Ryu, attached as Ex. 3, at 42. The Government did not object to this characterization.

Discovery produced by the Government goes further, indicating that Salman disapproves of ISIS. On January 10, 2015, she posted on Facebook: “I don’t consider the people that do terrorist attacks muslim ..Islam is a peaceful and beautiful religion if followed right...Sure we have tempers sometimes we are loud, curse or throw a shoe but never has a bomb been dropped in my parents home only the ‘F’ bomb when things got crazy.” Excerpts from Salman’s Facebook, attached as Ex. 4.⁴ On February 4, 2015, Salman commented on a Facebook post apparently about the Jordanian pilot burned to death by ISIS: “i felt so bad for him it pissed me off these isis people aren’t muslim to me!” *Id.* Finally, on February 7, 2015, Salman posted an article on Facebook about Jordan retaliating against ISIS for executing the Jordanian pilot. The article—entitled *Jordan Unleashes Wrath on ISIS: ‘This is Just the Beginning’*—noted that Jordanian Foreign Minister Nasser Judeh “vowed to destroy ISIS.”⁵ Salman commented: “Isis messed with the wrong people i’m proud of jordan they aren’t all talk and pose for pictures unlike some people a leader takes action!!!” Ex. 4. These are the only references to ISIS the Defense has found on Salman’s social media or on her personal devices.

Similarly, Mr. Braniff’s proffered testimony regarding extremist individuals is not relevant to Salman’s knowledge of Mateen’s plan or to her alleged intent to aid and abet him. There is no evidence that Salman knew that Mateen watched Anwar Al-Awlaki, or researched Ibn Taymiyyah, Ibn Qayyim, Nidal Hassan, the Tsarnaev Brothers, Moner Abusalha, or the November 2015 Paris

⁴ Names have been redacted to protect the privacy of individuals not related to this case.

⁵ Greg Botelho & Jomana Karadsheh, *Jordan Unleashes Wrath on ISIS: ‘This is Just the Beginning’*, CNN (Feb. 6, 2015), <https://goo.gl/Ppw6qJ>.

terrorist attacks. There is also no evidence that she saw Mateen looking at anything on his phone or that she saw Mateen's Facebook posts on the night of the attack. Because it is undisputed that Salman is not an Islamic extremist herself and because there is no evidence that she heard Mateen discuss these topics, Mr. Braniff's testimony about these topics is irrelevant to the issue of Salman's knowledge of Mateen's plans or to her intent. Thus, the Court should exclude or limit Mr. Braniff's testimony on the topics. *See Umana-Fowler*, 49 F. Supp. 3d at 1121 (“[E]xpert testimony must be both reliable and **relevant.**”) (emphasis added).

B. Any testimony that could be relevant to Salman's aiding and abetting Mateen's alleged material support of ISIS is substantially more unfairly prejudicial than probative.

Under Rule 403, this Court “may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.” FED. R. EVID. 403. The Advisory Committee Note to Rule 403 explains that “[u]nfair prejudice’ within [this] context means an undue tendency to suggest decision on an improper basis, commonly, though not necessarily, an emotional one.” To determine whether the prejudicial effect of evidence substantially outweighs its probative value, courts conduct a balancing test, weighing the probative value of the evidence against the dangers listed in Rule 403. *Old Chief v. United States*, 519 U.S. 172, 182 (1997). The Fifth Circuit of Appeals has explained in *McRae*:

Relevant evidence is inherently prejudicial; but it is only *unfair* prejudice, *substantially* outweighing probative value, which permits exclusion of relevant matter under Rule 403. Unless trials are to be conducted on scenarios, on unreal facts tailored and sanitized for the occasion, the application of Rule 403 must be cautious and sparing. Its major function is limited to excluding matter of scant or cumulative probative force, dragged in by the heels for the sake of its prejudicial effect. As to such, Rule 403 is meant to relax the iron rule of relevance, to permit the trial judge to preserve the fairness of the proceedings by exclusion despite its relevance. It is not designed to

permit the court to “even out” the weight of the evidence, to mitigate a crime, or to make a contest where there is little or none.

United States v. McRae, 593 F.2d 700, 707 (5th Cir. 1979). This explanation has been cited favorably by the Eleventh Circuit Court of Appeals. *United States v. Meester*, 762 F.2d 867, 875 (11th Cir. 1985) (citing *McRae*, 593 F.2d at 707). The Eleventh Circuit has also observed that expert testimony is especially susceptible to exclusion under Rule 403. *Frazier*, 387 F.3d at 1263.

The probative value of Mr. Braniff’s testimony is limited and the potential for unfair prejudice and confusing the issues is substantial, meeting the narrow exception of *Meester* and *Frazier*. The Government contends Salman stated during FBI questioning that she observed Mateen looking at “jihad” websites and videos; watching ISIS “recruitment videos;” and listening to ISIS music while he was working out. The Government also contended Salman stated that Mateen had expressed anger on the suffering of Muslims in the Middle East and talked about the San Bernardino attack. Although these topics are included within the scope of Mr. Braniff’s intended testimony, they have little probative value because the average layperson is “capable of understanding” the significance of Salman’s alleged observations of Mateen “without the aid of an expert.” *Navedo-Ramirez*, 781 F.3d at 568. The jury is more than capable of determining whether Salman would have been put on notice of Mateen’s plan by his statements and actions. This is particularly true because Salman’s knowledge of ISIS and the San Bernardino attack is derived from media reports, and not from any particularized knowledge an individual would have gained through active involvement in an extremist organization.

Further, Mr. Braniff’s testimony has the potential to confuse the jury. The Eleventh Circuit has explained that “expert testimony may be assigned talismanic significance in the eyes of lay jurors, and, therefore, the district courts must take care to weigh the value of such evidence against its potential to mislead or confuse.” *Frazier*, 387 F.3d at 1263. To the extent that Mr. Braniff’s

testimony informs the jury on terrorist organizations, individuals, and other terrorist attacks to explain Mateen's statements and actions, it will only confuse the jury in this case. The jury will have a natural tendency to impute the knowledge they gain during the course of Mr. Braniff's testimony concerning the significance of Mateen statements and actions to Salman. Therefore, even to the extent that Mr. Braniff's testimony is relevant to Salman's knowledge of Mateen's intent, it should be excluded under Rules 702 and 403.

Finally, Mr. Braniff's testimony concerning unrelated terrorists (Anwar al-Awlaki, Ibn Taymiyyah and Ibn Qayyim, Nidal Hassan, Tsarnaev Brothers, and Moner Abusalha) and terrorist attacks (in Paris, France, on November 13, 2015 and in San Bernardino) is inflammatory and prejudicial. *See United States v. Al-Moayad*, 545 F.3d 139, 166 (2d Cir. 2008) (noting the prejudice to defendants from testimony about unrelated terrorist attacks by organizations they are alleged to have supported). As in *Al-Moayad*, none of these terrorists or terrorist attacks relates to Salman. In fact, the Government has conceded that Salman herself has no connection to the Islamic State and has not exhibited any extremist views. Nonetheless, the Government wants Mr. Braniff to testify about written and recorded materials from terrorist leaders with no predicate that Salman herself understood who these individuals were or approved of these terrorists attacks.

In particular, Mr. Braniff's testimony about the San Bernardino shooting would be especially misleading and unfairly prejudicial, because the San Bernardino shooting involved a husband and a wife carrying out a terrorist attack together. While the Government contends that Ma-

teen talked about the San Bernardino attack with Salman present, media widely reported the attack.⁶ There was a “national conversation” about it.⁷ Mateen’s talking about the San Bernardino attack, by itself, has virtually no probative value regarding Salman’s knowledge of Mateen’s intent, but a jury will have a natural tendency to link the two unrelated attacks and see them as a pattern of husband and wife attacks.

In sum, Mr. Braniff’s testimony is of limited probative value with regards to Salman’s knowledge and intent, has the potential to confuse the jury, and is unduly prejudicial to Salman. Accordingly, it is inadmissible under Rule 702, 401, 402, and 403 to establish Salman’s knowledge or intent to aid and abet Mateen’s material support of terrorism.

C. Mr. Braniff’s testimony has minimal probative regarding Mateen’s alleged material support of ISIS and should be excluded under Rules 702 and 403.

The Defense anticipates the Government will argue that despite the tenuous connection between Salman and Mr. Braniff’s proffered testimony, his testimony is nevertheless relevant to establish Mateen’s intent to provide material support to ISIS in his attack on the Pulse Night Club. This argument fails in light of other less prejudicial and inflammatory evidence available to prove this element.

Courts consider evidentiary alternatives in conducting the balancing test under Rule 403. The Supreme Court has held that “what counts as the Rule 403 ‘probative value’ of an item of evidence . . . may be calculated by comparing evidentiary alternatives.” *Id.* at 184. Under Rule 403, a person’s media consumption has minimal probative value, unless possessing the media is

⁶ Louis Jacobson, *Donald Trump Wrong that Media is Not Reporting on Terrorism Any More*, POLITIFACT (Feb. 6, 2017), <https://goo.gl/6LG2in> (“But recent attacks on U.S. soil—including the 2015 attack in San Bernardino, Calif. . . .—have received heavy media attention, often including live coverage for hours at a time and continuing coverage for days afterward.”).

⁷ Michael Tesauro, *My San Bernardino Was Already in Crisis*, USA TODAY (Dec. 16, 2015), <https://goo.gl/Ds9TKs>.

itself an element of the crime. *United States v. Waters*, 627 F.3d 345, 354 (9th Cir. 2010). In *Waters*, the defendant was accused of conspiring to burn down a building as a member of a radical environmentalist group. *Id.* at 348-49. The government sought to introduce evidence of anarchist literature she had allegedly read. The literature

espoused anarchist political theory, [and] a number [of the articles] advocated violence in no uncertain terms. Many of the articles referred to deriving a disturbing joyfulness from acts of destruction, glorifying actions such as rioting and looting. . . . It suggested that anarchists “choos[e] targets that have the most impact,” such as “symbolic targets that if destroyed would place a major blow to the false reality [of U.S. society].” It concluded: “Think big. Wall Street, the stock market, Statue of Liberty, U.S. Capitol, . . . Disneyland, . . . government agencies Realize the difference between pulling up an acre of [genetically engineered] crops and destroying Monsanto The difference between spray paint and fire.”

Id. at 355-56.

Nevertheless, the court observed “that a defendant’s choice of reading material will rarely have a particularly significant probative value.” *Id.* at 355. The court also considered that the government had other, less prejudicial and more probative, ways of proving its theories. *Id.* at 354. The court concluded that, “even if the record demonstrated an adequate analysis by the district court we would be inclined to hold that admitting them was an abuse of discretion. Their repugnant and self-absorbed embrace of destruction is likely to have swayed jurors’ emotions, leading them to convict Waters not because of the facts before them but because she represented a threat to their own values.” *Id.* at 356.

Mr. Braniff’s testimony is even less probative than the materials at issue in *Waters* because it is essentially expert testimony about a deceased person’s media consumption. Any probative value Mr. Braniff’s testimony may have to show Mateen’s intent is diluted by the fact that the Government has other, more probative, ways to prove Mateen’s intent to materially support ISIS

through his attack on the Pulse Night Club. Specifically, in a Facebook post on the night of the attack, Mateen stated, “I pledge my alliance to abu bakral baghdadi” and “taste the Islamic state vengeance.”⁸ During the attack, he again reasserted his material support in a 911 call, stating, “I pledge my allegiance to Abu Bakr al-Baghdadi . . . on behalf of the Islamic State.”⁹ A jury does not need expert testimony to understand the meaning of these statements. This evidence is far more direct than expert testimony about materials Mateen accessed on his devices.

Mr. Braniff’s testimony compared to the evidentiary alternative of direct statements immediately before and during the attack, makes clear that Mr. Braniff’s testimony is, at best, ancillary to the issue of Mateen’s intent to provide material support to ISIS. When balanced against the prejudicial effect of introducing unrelated terrorist attacks to Salman’s trial, Mr. Braniff’s testimony presents the real danger that the jury will convict Salman not on the evidence, but on a prophylactic desire to prevent further terror attack by holding someone responsible. In sum, the questionable probative value of Mr. Braniff’s testimony is substantially outweighed by “unfair prejudice, confusing the issues, [and] misleading the jury,” and it should be precluded. FED. R. EVID. 403.

D. To the extent Mr. Braniff’s testimony has any probative value, the Defense offers to stipulate that Mateen materially supported ISIS.

To eliminate any possible need for Mr. Braniff’s testimony, the defense is willing to stipulate that Mateen’s attack on the Pulse Night Club provided material support to ISIS. The defense’s willingness to stipulate vitiates any probative value Mr. Braniff’s testimony might have had.

⁸ David Smith & Spencer Ackerman, *Orlando Gunman Searched for Facebook Reaction during Pulse Nightclub Attack*, GUARDIAN (June 16, 2016), <https://goo.gl/kW58em>.

⁹ *Read: FBI Releases Unredacted Transcript of Omar Mateen 911 Calls*, HEAVY (June 20, 2016), <https://goo.gl/rYzT9k>.

As a general rule, a party is not required to accept a stipulation and can insist on proving the fact or element of an offense. *United States v. Marroquin-Lopez*, 634 F. App'x 758, 764-65 (11th Cir. 2015) (citing *Parr v. United States*, 255 F.2d 86, 88 (5th Cir. 1958)). This general rule, however, “is qualified by Rule 403 of the Federal Rules of Evidence.” *Id.* (quoting *United States v. O’Shea*, 724 F.2d 1514, 1516 (11th Cir. 1984)).

Courts consider defense stipulations in conducting the Rule 403 balancing test. The Supreme Court has held that “what counts as the Rule 403 ‘probative value’ of an item of evidence . . . may be calculated by comparing evidentiary alternatives.” *Old Chief*, 519 U.S. at 184. Thus, “a party’s concession is pertinent to the court’s discretion to exclude evidence on the point conceded.” *Id.*; see also *United States v. O’Shea*, 724 F.2d 1514, 1516 (11th Cir. 1984) (“An offer to stipulate is one factor that the trial court should consider in making a determination under Rule 403.”). While it’s true that the prosecution “needs evidentiary depth to tell a continuous story,” it cannot avoid Rule 403 entirely in the face of a defense stipulation. *Old Chief*, 519 U.S. at 190; see *Al-Moayad*, 545 F.3d at 161 (holding that “the already questionable probative value of [testimony about Hamas terror attacks] was diluted even further in comparison with its considerable prejudicial effect” when “[t]he defendants offered an adequate evidentiary alternative at trial—to stipulate to their knowledge of Hamas’s terrorist activities.”).

Where the stipulation would deprive the Government of the force and effect of their case, courts have been unwilling to force the Government to accept the stipulation. See *United States v. Grassi*, 602 F.2d 1192, 1195 (5th Cir. 1979), *vacated on unrelated grounds*, 448 U.S. 902 (1980) (holding that the district court did not abuse its discretion in allowing pornographic films to be shown to the jury, even though the defendant offered to stipulate that the films were obscene, because the films were “admittedly the strongest available proof on the obscenity element of the

crime.”). This case is not one where the stipulation will deprive the Government of the force and effect of the charged crime of aiding and abetting the material support of a terrorist organization. The central issue in this case is whether Salman was aware of Mateen’s plan to support ISIS and whether, through her actions, intended to materially aid it. By stipulating that Mateen actually committed the crime of material support, Salman eliminates a collateral issue that is not seriously disputable, while also removing the need for a trial within a trial of Mateen’s guilt and the associated confusion. And the evidence that is most probative of Mateen’s intent—such as his Facebook posts on the night of the attack—is not relevant at all to Salman’s knowledge or intent. Unlike *Grassi*, in which the evidence went to the defendant’s intent, the evidence here goes to the perpetrator’s intent but not to the defendant’s intent.

Instead, the offer to stipulate in this case is analogous to the defense offer to stipulate in *Al-Moayad*. In *Al-Moayad*, the defendant was charged with providing and attempting to provide material support to Al-Qaeda and Hamas. *Al-Moayad*, 545 F.3d at 158. The government introduced testimony at trial about a Tel Aviv bus bombing conducted by Hamas. *Id.* at 159. “The defendants were not charged with planning or carrying out the Tel Aviv bus bombing,” but one of the defendants had mentioned the Tel Aviv bombing during his speech at a wedding. *Id.* The government argued that the evidence was relevant to show the defendants knew that Hamas engaged in terrorist attacks and to demonstrate their predisposition to support Hamas. *Id.* The defendants, though, never “denied knowing about Hamas’s involvement in violent acts and they both offered to stipulate as to that knowledge, essentially eliminating the government’s burden of proof on that element.” *Id.* In light of this stipulation, “the already questionable probative value of [the] testimony was diluted even further in comparison with its considerable prejudicial effect.” *Id.* at 161. Thus, it was error for the court not to exclude this evidence under Rule 403. *Id.* at 166.

Like *Al-Moayad*, the expert testimony in this case explaining unrelated and factually dissimilar terrorists and terrorist attacks has questionable probative value and unquestionable, unfair prejudicial impact. The Defense's stipulation dilutes even further the need for Mr. Braniff's testimony. As such, this Court should preclude Mr. Braniff's testimony under Rule 403.

For the reasons set forth above, the Defendant seeks a hearing pursuant to *Daubert* on the admissibility of Mr. Braniff's testimony and prays that this Court preclude or otherwise limit the testimony of Mr. Braniff.

/s/ Charles D. Swift

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CERTIFICATE OF SERVICE

On October 3, 2017, I electronically filed the forgoing with the clerk of the court by using the CM/ECF system, which will send a notice of electronic filing to all attorneys of record.

/s/ Charles D. Swift

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EXHIBIT 1

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B. **Mr. William Braniff** is the Executive Director of the National Consortium for the Study of Terrorism and Responses to Terrorism at the University of Maryland. Mr. Braniff may be called by the government to testify as an expert witness regarding certain terrorist organizations and leaders, written and recorded materials from those organizations and leaders, and terminology, as necessary to explain statements by Omar Mateen as well as items found on the electronic devices referenced above. The basis for this testimony will be Mr. Braniff's expertise regarding terrorism as it relates to the global jihadist

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movement, as evidenced by his curriculum vitae (attached). The below items are a summary of some of the topics that Mr. Braniff may address during his testimony.

a. Islamic State of Iraq and the Levant; ISIL; Islamic State; ISIS and associated individuals

The Islamic State of Iraq and the Levant is a Foreign Terrorist Organization (FTO), as designated by the U.S. Secretary of State. Aliases for the Islamic State of Iraq and the Levant include the Islamic State of Iraq and al-Sham (ISIS), the Islamic State of Iraq and Syria (ISIS), Islamic State, ISIL, and ISIS, among many others. To date, ISIL remains a designated FTO. One of the leaders of ISIL was known to be Abu Bakr al-Baghdadi during 2015 and 2016.

Abu Muhammad al-Adnani was known to be an official spokesperson of ISIL during 2015 and 2016. In 2015, al-Adnani gave a speech, which was videotaped and distributed via the internet, encouraging ISIL followers to commit violent attacks against non-Muslims. Similarly, in 2016, al-Adnani released a videotaped statement that called on the terrorists' followers to carry out attacks in the US and Europe during the Islamic Ramadan celebrations beginning in early June.

Shaker Wahib al-Fahdawi al-Dulaimi, known as Abu Waheeb, was a leader of ISIL. On May 6, 2016, the Pentagon said Abu Waheeb was killed along with three others in a vehicle by a US-airstrike that targeted ISIS.

b. Individuals

i. Anwar al-Awlaki

Al-Awlaki was an American citizen who many consider to have become the leading English language ideologue for the global jihadist movement.

i. Ibn Taymiyyah and Ibn Qayyim

Sunni theologians who are frequently referenced by individuals who espouse violent extremist ideas and goals.

ii. Nidal Hasan

Hasan conducted a terroristic shooting at Fort Hood on November 5, 2009.

iii. Tsarnev Brothers

Tamerlan and Dzhokhar Tsarnaev conducted the Boston Marathon Bombing terrorist attack on April 15, 2013.

iv. Moner Abusalha

Abusalha is a Florida man who conducted a suicide bombing attack in Syria in May 2014.

c. Events

i. Terrorist Attacks in Paris, France, on November 13, 2015

A series of coordinated terrorist attacks in Paris, France on November 13, 2015, some of which involved explosive materials made with an explosive known as TATP.

Mr. Charles Swift

August 1, 2017

Page 5

ii. San Bernardino Terrorist Attack

A terrorist attack involving a mass shooting and attempted bombing on December 2, 2015, carried out by a husband and wife.

William Braniff

Objective

- Public-service driven thought leader with a history of growing organizations by focusing on four things: strategic vision guided by the goal of optimizing the relevance of every organizational initiative, empowering every member of the team, networking with stake-holders by demonstrating passion and subject matter expertise, and engaging in candid communication both internally and externally.

Education

MASTERS DEGREE | MAY 2006 | JOHNS HOPKINS SCHOOL OF ADVANCED INTERNATIONAL STUDIES

- Major: Strategic Studies
- Minor: International Economics

BACHELORS OF SCIENCE | MAY 1999 | UNITED STATES MILITARY ACADEMY AT WEST POINT

- Major: Arts, Philosophy and Literature
- Minor: Computer Science

Skills & Abilities

LEADERSHIP

RELATIONSHIP BUILDING

TEACHING

DELEGATION

COLLABORATION

PUBLIC SPEAKING

Experience

EXECUTIVE DIRECTOR | PROFESSOR OF THE PRACTICE | NATIONAL CONSORTIUM FOR THE STUDY OF TERRORISM AND RESPONSES TO TERRORISM (START) | FEBRUARY 2012 – CURRENT DAY

- Leads the largest terrorism research, education and training center in the country, comprised of 70 full-time staff, 40 hourly employees, and 100 undergraduate and graduate student interns
- Grew the organization from 22 employees and 18 interns, and an annual budget of \$4.5M to an annual budget of \$12.8 M in four years
- Collaborate with and oversee approximately 50 researchers active in the international research consortium working on multi-year projects related to the human causes and consequences of terrorism and extremist violence
- Serve as the primary liaison to START's government partners, including DHS, DOJ, DOD, DOS, FBI, NCTC
- Architect and prime mover of START's "transition" strategy intended to optimize the relevance of START's research for practitioners and policy-makers through education, training, media and public speaking engagements
- Briefed the President of the United States, the Secretary of Defense, two Secretaries of Homeland Security, testified before Congress on three occasions, and serve as an expert witness in federal terrorism trials
- Teaches two undergraduate courses, including the first course in the country on Countering Violent Extremism, as well as a Massive Open Online Course that has enrolled over 43,000 students globally

**DIRECTOR OF PRACTITIONER EDUCATION | COMBATING TERRORISM CENTER | SEPTEMBER 2007-
FEBRUARY 2012**

- Responsible for the development and execution of a counterterrorism curriculum for multiple government entities engaged in the counterterrorism mission, to include the FBI, CIA, DHS ICE, DoD, and state, local and tribal law enforcement
- Grew the Practitioner Education Program from \$1.1M to \$3.4M per year in four years
- Led the FBI-CTC Collaborative, a multi-million dollar educational initiative delivering 23 semesters of counterterrorism education per fiscal year (900 hours of instruction for over 3000 students at 64 events across the nation) to the FBI along with a text book and additional educational materials
- Managed a team of approximately 25 academicians and retired practitioners
- Served as a West Point Instructor for the Terrorism Minor program in the Department of Social Sciences, as well as one of three primary instructors for the CTC's Practitioner Education Program

**FOREIGN AFFAIRS SPECIALIST | NATIONAL NUCLEAR SECURITY AGENCY | JUNE 2006-SEPTEMBER
2007**

- Foreign Affairs Specialist for the Office of International Nuclear Material Protection and Cooperation
- Responsible for strategic planning and sustainability issues regarding nuclear counter-terrorism programs at nuclear facilities within the Former Soviet Union
- Within 8 months in the office as a Nonproliferation Graduate Program Fellow, promoted to serve as the Special Assistant to the Director and Deputy Director (Senior Executive Service positions)

ARMOR OFFICER | UNITED STATES ARMY | MAY 1999-MAY 2004

- Company Commander: Responsible for the daily operations of and long term planning for an organization of fifty-five military and ten civilian personnel, as well as fifteen rifle and pistol ranges on which my company trained 10,000 initial entry soldiers annually
- Supervised the construction of a multi-million dollar indoor marksmanship training center and developed a plan to implement training at the facility
- Armor Battalion Scout Platoon Leader: Selected over thirty Lieutenants in the battalion to lead a thirty-three person reconnaissance platoon composed of ten combat vehicles and equipment valued at over \$1.5 million; Served as the battalion's expert on reconnaissance and security operations
- Armor Company Executive Officer: Supervised and led a sixty-five person tank company as second-in-command; As the company's logistics expert, was responsible for the maintenance of a combat vehicle fleet valued over \$35 million and including 14 M1A1 Abrams Main Battle Tanks
- Armor Company Platoon Leader: Led a sixteen person tank platoon for six months of training and a six month peacekeeping deployment in Kosovo; Worked independently with international organizations and foreign military units to foster a secure environment in a sector totaling over seventy square kilometers and inhabited by 1500 Albanian and Serbian Kosovars

Selected Publications

Terrorism and Political Islam, eds. William Braniff, Christopher Heffelfinger, and Erich Marquardt, Combating Terrorism Center, 2008.

Terrorism and Political Islam: A Desk-Side Reference for Political, Missionary, and Militant Organizations, eds. William Braniff, Christopher Heffelfinger, and Erich Marquardt, Combating Terrorism Center, 2009.

"Anticipating al-Qa'ida's Next Strategic Evolution" in *Understanding Jihadism: origins, evolution, and future perspectives*, eds. Brynjar Lia and Qandeel Siddique, Norwegian Defense Research Establishment, June 2009.

Bill Braniff, & Assaf Moghadam. "Towards Global Jihadism: Al-Qaeda's Strategic, Ideological and Structural Adaptations since 9/11," in *Perspectives on Terrorism* [Online], 5.2 (2011): 11 June 2012.

Bill Braniff and Assaf Moghadam, "Al Qaeda's Post-9/11 Evolution: An Assessment," in *Terrorism and Counterterrorism: Understanding the New Security Environment, Reading and Interpretations*, eds Russel Howard, Reid Sawyer, and Natasha Bajema, 4th edition, 2011.

William Braniff, "Beyond al-Qa'ida," START Discussion Point, November 2012.

"5 Questions with William Braniff on the State of al-Qaeda," War on the Rocks, February 2014.

William Braniff, "CVE: An Idea Whose Time has Come," START Discussion Point, September 2014.

William Braniff and Ryan Pereira, "A Tale of Two Caliphates," Multi-Method Assessment of ISIL, A Strategic Multilayer Assessment Periodic Publication, December 2014.

William Braniff, "Communities Must Work Together to Combat Extremism," *Room for Debate*, The New York Times, June 2015.

Stevan Weine and William Braniff, "Law Enforcement-Focused Best Practices to Prevent Violent Extremism," Research START Brief, 2015.

Stevan Weine and William Braniff, "Community-Focused Best Practices to Prevent Violent Extremism," Research START Brief, 2015.

Stevan Weine and William Braniff, "Report on the National Summit on Empowering Communities to Prevent Violent Extremism," Office of Community Oriented Policing Services, 2015.

Sheehan Kane and William Braniff, "Taking the Sinai Province of the Islamic State Seriously Without Helping it Destabilize Egypt," START Discussion Point, August 2015.

William Braniff, "Apple, the FBI, Extremists and Strategic Soft Targeting," War on the Rocks, March 30, 2016.

Stevan Weine and William Braniff, "Empowering Communities to Prevent Violent Extremism: A Report on the August 2014 National Summit," *The Handbook of the Criminology of Terrorism*, Wiley Press, November 2016.

Selected Presentations

- Anticipating al-Qa'ida's Next Strategic Evolution," Understanding Jihadism Conference, Oslo, Norway, March 2009.
- "Frameworks for Understanding Domestic Islamist Plots," National Collaboration and Development Course, Pennsylvania, 2010.
- Radicalization in the Salafi-Jihad," National Counterterrorism Center, Virginia, January 2010.
- "Evolution of the Salafi-jihad," World Affairs Council, Norfolk, Virginia, March 2010.
- "Conceptual Frameworks for Understanding al-Qa'ida," Council on Foreign Relations, Atlanta, Georgia, April 2010.
- "Understanding al-Qa'ida," Committee on Foreign Relations, Indianapolis, Indiana, June 2010.
- "Al-Qa'ida In Context," Joint Forces Staff College, Norfolk, VA, July 2010.
- "Understanding the Enemy," National September 11th Museum and Memorial Lecture Series, New York, New York, June 2010.
- "Economic Jihad: Al-Qa'ida's Attrition Strategy," Wal-Mart Home Office, Bentonville, Arkansas, July 2010.
- "Introduction to START Data, Methodology and Finding," National Science and Technology Council's Subcommittee on Human Factors, March 2012.
- Congressional Testimony to House Committee on Homeland Security Subcommittee on Oversight and Management Efficiency, "Why Can't DHS Better Communicate with the American People?" May 2013.
- Congressional Testimony to House Armed Services Committee, "The State of Al-Qaeda, its Affiliates, and Associated Groups: View from Outside Experts," February 2014.
- "Countering Violent Extremism," National Counterterrorism Center, April 2014.
- Congressional Testimony to House Armed Services Committee, "The State Islamic Extremism," February 2015.
- "An Empirical Approach to Countering Violent Extremism," White House Summit on Countering Violent Extremism, February 2015.
- "Radicalization and Foreign Fighters," United Nations Counter Terrorism Executive Directorate, February 2015.
- "How Research can Contribute to Understanding CVE and Foreign Fighters," Global Counterterrorism Forum Foreign Fighter Working Group Meeting, February 2015.
- "CVE: The Ends, Not the Means," International Institute for Counterterrorism, Israel, September 2015.
- "The Dynamic Terrorist Threat: Competition, Innovation and Mobilization," Panel Presentation, Transportation Security Administration Conference, June 2016.
- "U.S. National Security Policy with respect to ISIS," Davidson College Summer in Washington Program, July 2016.

Selected Media Appearances

- "FBI takes counterterrorism classes, National Public Radio, July 2008.
- "Exploring 9/11: The World Before and After," National September 11th Museum and Memorial Webcast on Al-Qa'ida's ideology, 2008, and on the death of Osama bin Laden, 2011.
- "Al-Qaida Media Blitz has Some on Alert," National Public Radio, April 2009.
- "Assessing Somalia's Terror Threat," International Relations and Security Network, December 2009.
- KCUR *Up to Date* interview with Steve Kraske on the threat posed by al-Qaeda, Kansas City, Missouri, April, 2010.
- "In Attack, Al Qaeda-Linked Somali Group Expands Reach," Wall Street Journal, July 2010.
- "Choosing From the Many Lessons of Sept. 11," an expert panel discussion, New York Times, June 4, 2012.
- "Death of al-Libi is a crippling blow," AFP article, June 5, 2012.
- "Drones could destabilize Pakistan," AFP video, June 6, 2012
- Terrorism and Violent Crime," CSPAN's Washington Journal, April 2013.
- "Maryland Voices React to Boston Marathon Bombing," Maryland Morning (NPR WYPR Baltimore), April 2013.
- "Public Safety: The Measures Taken To Keep Crowds Safe," Talk of the Nation (NPR), April 2013.
- "Social Media Shapes Boston Bombings Response," National Geographic, April 2013.
- "Response to Boston Marathon Attack," Fox News, April 2013.
- "Boston attack underscores growing threat of IEDs in America," Fox News, April 2013.
- "ISIS and Religious Justification," CNN, September 2014.
- "Who's Worse? ISIS or al-Qaeda," CNN, September 2014.
- "State Department Uses Islamic State Propaganda to Fight Militants," Voice of America, September 2014.
- "A Deadly Shooting in Tennessee and the Threat of Domestic Terrorism," the Diane Rehm Show (NPR), July 2015.
- "Shootings at a Planned Parenthood Clinic in Colorado," the Diane Rehm Show (NPR), December 2015.
- "ISIS Propaganda department creates new app targeting kids," Sinclair Broadcast Group, May 2016.
- "Orlando rampage reflects the scary convergence between terrorism and mass shootings," The Washington Post, June 2016.
- Interview with Deborah Feyerick, Erin Burnett OutFront (CNN), July 2016.
- Interview with Bill O'Reilly, The O'Reilly Factor (Fox News), July 2016.
- Interview with KCTV News, (CBS), July 2016.

Selected Training Experience

Understanding al-Qa'ida," A Tale of Two Caliphates," Joint Special Operations University, Interagency Collaboration Course and the Combating Terrorist Networks Course, MacDill Air Force Base, various dates, 2009-2016.

"The Strategy of Terrorism," "Evolution of the Global Jihadist Threat," "Radicalization," "Terrorist Use of the Internet," "Understanding Islam," "Islam, Islamism and Violent Jihadism," "Terrorism in East Africa," "Terrorism in Yemen," "Terrorism in South Asia," "Terrorism in South East Asia," "Terrorism in North Africa and the Sahel," "Understanding Hamas," "Understanding Hezbollah," "Countering Violent Extremism," Federal Bureau of Investigation, various dates, 2008-2014.

"Islam in the United States: Culture and Customs," United States Attorneys' Office, various dates 2010-2012.

"Environmental Extremists' use of Arson in the United States," National Fusion Center Fire Services Network, November 2013.

"Extremist Violence by the Numbers," local law enforcement, New York U.S. Attorneys' Office, February 2013.

"Terrorism and Extremist Violence in the United States," National Governors' Association, February 2013-2015.

"A Tale of Two Caliphates," U.S. Army Intelligence and Security Command: Commander's Conference, September 2015.

"Radicalization and CVE," Senior Law Enforcement Training Program, Anti-Defamation League, various dates, 2015-2016.

"Understanding CVE," Foreign Service Institute, Department of State, various dates 2015-2016.

"An Empirical Approach to Evaluating Counterterrorism Effectiveness," International Intelligence Fellows Program, Defense Intelligence Agency, various dates, 2015-2016.

"Conceptual Frameworks for Understanding Global Jihadism," "A Tale of Two Caliphates," "Radicalization and CVE," "Lone Actors and Foreign Fighters," and "Suicide Terrorism," Transportation Security Administration Lecture Series, various dates, 2016.

Awards and Service

Department of the Army Superior Civilian Service Award: Presented by the Superintendent of the United States Military Academy for leading the Combating Terrorism Center's Practitioner Education Program, the largest counterterrorism education program of its kind in the United States Government. This is the third highest award possible for Department of the Army employees.

Selected to facilitate the first and second *National Summit on Empowering Communities to Prevent Violent Extremism* by the Department of Justice and the Federal Emergency Management Agency, 2014 and 2015.

Selected to serve as the Rapporteur to the United Nations Security Council at the UN Counterterrorism Executive Directorate Research Network launch event, February 2015.

Member of the Editorial Board of the International Centre for Counter-Terrorism-The Hague (ICCT).

Professor of the Practice, Department of Criminology and Criminal Justice, University of Maryland

EXHIBIT 2

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

COPY

Before The Honorable Donna M. Ryu, Magistrate Judge

UNITED STATES OF AMERICA,)	Detention Hearing
)	
Plaintiff,)	
)	
VS.)	NO. CR 17-70058MAG
)	
NOOR ZAHI SALMAN,)	Pages 1 - 51
)	
Defendant.)	Oakland, California
_____)	Wednesday, February 1, 2017

TRANSCRIPT OF ELECTRONICALLY RECORDED PROCEEDINGS

APPEARANCES:

For Plaintiff: Brian J. Stretch, Esq.
United States Attorney
1301 Clay Street, Suite 340S
Oakland, California 94612

BY: JAMES D. MANDOLFO,
SARA SWEENEY,
ASSISTANT UNITED STATES ATTORNEYS

For Defendant: Constitutional Law Center for
Muslims in America
833 E. Arapaho Road, Suite 102
Richardson, Texas 75081

BY: CHARLES D. SWIFT, Attorney at Law

(APPEARANCES CONTINUED NEXT PAGE)

Transcribed By: Raynee H. Mercado

Proceedings electronically recorded by the court;
transcript produced by computer-aided transcription.

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A P P E A R A N C E S (CONT'D.)

For Defendant: Linda Moreno, P.A.
P.O. Box 10985
Tampa, Florida 33679
BY: LINDA MORENO, ATTORNEY AT LAW

Haithan G. Amin, Attorney at Law
75 Broadway Street, Suite 202
San Francisco, California 94111

--o0o--

1 Wednesday, February 1, 2017 9:40 a.m.

2 P R O C E E D I N G S

3 (ELECTRONICALLY RECORDED)

4 **THE CLERK:** Calling 4-17-70058MAG, United States
5 versus Noor Zahi Salman.

6 (Pause in the proceedings.)

7 **THE CLERK:** Please state your appearances, counsel.

8 **MS. SWEENEY:** Good morning, Your Honor. Sara Sweeney
9 and James Mandolfo on behalf of the United States.

10 **THE COURT:** Good morning.

11 **MR. AMIN:** Morning, Judge. Haitham Amin, local
12 counsel for Ms. Salman, accompanied by Ms. Linda Moreno and
13 Charles Davidson (sic)?

14 **MR. SWIFT:** Swift.

15 **MR. AMIN:** Swift. Sorry.

16 **THE COURT:** Good morning, everyone.

17 I also note that Ms. Salman is present and in custody.
18 Good morning.

19 We're here for detention hearing. I'm prepared to hear
20 your proffers.

21 Ms. Sweeney, will you be presenting --

22 **MS. SWEENEY:** Yes, Your Honor.

23 **THE COURT:** -- argument?

24 **MS. SWEENEY:** Yes, Your Honor.

25 **THE COURT:** Please go ahead.

1 **MS. SWEENEY:** All right. Thank you, Your Honor.

2 On June 12, 2016 Omar Mateen killed 49 innocent victims
3 and injured over 50 other people. He prepared and conducted
4 the attack as part of his attempt to provide and his provision
5 of material support to the Islamic State.

6 Prior to the mass murder, he pledged his allegiance to Abu
7 Bakr al-Baghdadi and the Islamic State. Leading up to and
8 while the attack was occurring, Noor Salman aided and abetted
9 her husband, knowing that he was preparing to commit an
10 attack, and she repeatedly lied to law enforcement in an
11 effort to obstruct the FBI's ongoing investigation of the
12 attack.

13 The government is seeking detention pursuant to 18 U.S.C.
14 3142(f)(1)(A) because this case is a qualifying offense
15 that -- for which a sentence of more than ten years is
16 proscribed.

17 There is also a presumption of detention in this case
18 pursuant to 18 U.S.C. 3142(e)(c)(3). This means that there's
19 a presumption both that the defendant is a risk of flight and
20 a danger to the community.

21 And then Your Honor is -- is instructed to review the
22 factors set forth at 3142(g) by the case law. And so to go
23 through those, the nature and circumstances of this offense
24 are very serious. It's a -- the offense is a federal crime of
25 terrorism. And as the defense has acknowledged in their

1 pleading, this factor weighs heavily in favor of detention.

2 In terms of --

3 **THE COURT:** Can I stop you there, Ms. Sweeney?

4 **MS. SWEENEY:** Yes. Yes.

5 **THE COURT:** So they noted that the nature -- so the
6 actual charge is -- is quite serious, but I haven't -- I
7 didn't see any filing by the government and there wasn't
8 anything in the defense papers -- I haven't actually heard
9 anything about the circumstances.

10 So the charge -- it's not just what the charge is but, you
11 know, what is behind that? What is she actually alleged to
12 have done?

13 Is that -- Is there going to be a presentation on the
14 that?

15 **MS. SWEENEY:** Yes, Your Honor.

16 **THE COURT:** Okay.

17 **MS. SWEENEY:** And sorry -- Yes. Absolutely.

18 So to begin with, I think the first point here is to show
19 that Mr. Mateen was, in fact, motivated by ISIS. And
20 essentially as we've already -- as I've already described,
21 prior to entering the Pulse Nightclub, he post to Facebook,
22 and he says, "America and Russia, stop bombing the Islamic
23 State. I pledge my alliance to Abu Bakr al-Baghdadi. May
24 Allah accept me."

25 He also post, "You kill innocent women and children by

1 doing U.S. Air strikes. Now taste the Islamic State
2 vengeance."

3 Ms. Salman was aware of this motivation of Mr. Mateen's,
4 telling the FBI during interviews that Mr. Mateen was upset
5 about the treatment of -- that he was upset about -- sorry --
6 that Mr. Mateen supported ISIS.

7 She also admitted that she knew Mr. Mateen had been
8 watching ISIS videos for the two -- the two years prior to the
9 attack. And she even admitted that Mr. Mateen would watch
10 these videos in front of her young son. With this knowledge,
11 she aided and abetted the defendant. And we'll get to the
12 specifics of that in just a moment.

13 I also want to point out here, though --

14 **THE COURT:** So the awareness -- You said she's aware
15 of his allegiance because he told her that he supported the
16 Islamic State, and she knew that he watched certain kinds of
17 videos --

18 **MS. SWEENEY:** Specifically she said ISIS recruitment
19 videos, Your Honor.

20 **THE COURT:** Okay.

21 **MS. SWEENEY:** She was aware that the defendant had
22 been watching ISIS recruitment videos. And that for at least
23 two years prior, he had been watching what she would describe
24 as Jihad videos.

25 **THE COURT:** Okay.

1 **MS. SWEENEY:** And that he watched these in front of
2 her son, which she said upset her that he was watching it in
3 front of her son.

4 Then, in the same factor, under the nature and
5 circumstances of the offense, I do think it's also important
6 to note that the defendant is also charged with obstructing
7 justice by engaging in misleading conduct towards the FBI.

8 This is also a very serious offense with a maximum penalty
9 of 20 years imprisonment.

10 The next factor is the weight of the evidence against the
11 person, and -- and I do note, as defense counsel did in their
12 filing, that this is the least important of the various
13 factors. But the point here is a focus on whether the
14 defendant will pose a danger if released.

15 The weight of the evidence is very strong. Ms. Salman
16 knew that Mr. Mateen, motivated by his support for ISIS, was
17 planning a terrorist attack, and she aided and abetted him.

18 The evidence that shows that includes, first, Ms. Salman's
19 initial lies to law enforcement and her eventual admission
20 that she was aware of Mateen's planned attack. Her creation
21 of a false cover story for her husband, and her direction to
22 him to lie to his family.

23 **THE COURT:** Ms. Sweeney, I'm going to -- because I
24 don't have any paperwork from the government, which is fine,
25 but could you slow down just a little bit --

1 **MS. SWEENEY:** Sure.

2 **THE COURT:** -- so I can keep up with you.

3 **MS. SWEENEY:** Sorry, Your Honor. Sorry.

4 **THE COURT:** So you started -- you said the evidence
5 is that -- that she knew that he was planning an attack, is
6 that -- the initial lies to law enforcement.

7 **MS. SWEENEY:** Followed by an admission that she was
8 aware that the attack was planned and was pending.

9 **THE COURT:** Okay.

10 **MS. SWEENEY:** Then the evidence that she creates a
11 false cover story for her husband. And her --

12 **THE COURT:** Okay. And what was that?

13 **MS. SWEENEY:** Well, and I'll get -- I can certainly
14 tell you now.

15 So essentially, Your Honor, what Ms. Salman does is she
16 tells her husband to tell his family that he's out to dinner
17 with a friend. She admits ultimately that she knows when he
18 left their apartment on June 11th of 2016 that he was going to
19 commit an attack.

20 The way she knew that when he left -- she tells the FBI
21 eventually -- initially, Ms. Salman is essentially lying to
22 the FBI. She tells them she had no idea that an attack was
23 going to occur, that she believed that her husband had left to
24 have dinner with a friend, and she was simply unaware that
25 anything was going to happen.

1 In later interviews, what Ms. Salman admits is couple of
2 things. First she admits that she was aware that the
3 defendant (sic) left on June 11th with a firearm and with a
4 backpack full of ammunition, so she knew when he left that he
5 had those items.

6 She described him as being pumped up and said that he told
7 her before he left, this is the one day. And so she then,
8 putting all of that together, said I knew when he left that he
9 was going to commit the attack.

10 In addition to --

11 **THE COURT:** She -- She -- The government's saying she
12 made that admission.

13 **MS. SWEENEY:** To the FBI.

14 **THE COURT:** Okay.

15 **MS. SWEENEY:** Yes.

16 **THE COURT:** That she knew that he was going to make
17 the attack.

18 **MS. SWEENEY:** Yes.

19 **THE COURT:** Okay.

20 **MS. SWEENEY:** When he left.

21 In addition to those facts that are from the -- the day of
22 the attack, there were other things that Ms. Salman said in
23 her statement to the FBI made her aware that something was
24 going to happen, that an attack was going to happen.

25 And one of those things was increased spending. The

1 couple's spending skyrocketed in the -- the days leading up to
2 the attack. And I'll get into that in more detail in just a
3 moment.

4 But turning back to what we were discussing, essentially
5 then after he's left, what she does is Salman tells Mateen's
6 family and tells Mateen himself to tell his family that he was
7 out to dinner with a friend. And she -- she says, if your mom
8 calls you, tell her that you are out to dinner with a friend.
9 And this was to help him avoid detection of his attack prior
10 to and during the attack.

11 In addition to that activity, in addition to the false
12 cover story that was -- that Ms. Salman created, Ms. Salman
13 admitted to the FBI that she engaged in casing activity with
14 the defendant on multiple occasions.

15 So there were three different ones that were discussed.
16 The first is one that's -- that is acknowledged and discussed
17 in the defendant's pleading. And that is going to Pulse in
18 Orlando with Mateen.

19 And in the -- in the defendant's motion, she states that
20 on that date, she did not have a driver's license yet and she
21 was a unwitting participant or unwitting passenger at most.

22 But in her statement to the F.B.I., the defendant goes on
23 to discuss two other instances of casing activity. The first
24 is at City Place in West Palm Beach, Florida on June 6th of
25 2016. And The City Place is a -- kind of an entertainment

1 destination with night clubs and restaurants and that kind of
2 thing.

3 And the defendant described going there with Mr. Mateen
4 and saying that Mateen asked her, how bad would it be if a
5 club got attacked. This is all what she admitted to the FBI.

6 She also acknowledged that a few days later, on June 8th,
7 she and her husband and their child went to Orlando and went
8 to Downtown Disney, which is again a -- an open-to-the-public
9 entertainment area associated with Disney obviously and
10 located outside of Orlando, Florida.

11 And when leaving Downtown Disney, Ms. Salman told the FBI
12 that Mateen asked her, what would make people more upset, an
13 attack on Downtown Disney or a club.

14 So there were at least three separate instances in -- in
15 which Ms. Salman was engaged in casing activity with the
16 defendant.

17 In addition to, that as I already mentioned, the couple's
18 spending was exceptionally aberrant in the -- in the period
19 leading up to the attack.

20 Salman told the FBI during their interviews that Mateen
21 bought many items for her recently and had been spending a lot
22 of money in general. And then eventually she admitted that
23 this knowledge was part of her -- I'm sorry -- that the
24 spending contributed to her knowledge that Mr. Mateen was
25 going to commit an attack. And she said that that was in part

1 because of the level of the spending and in part because she
2 was aware that he had purchased a rifle and ammunition.

3 And the rifle she was referring to was a long gun, and
4 that was, in fact, the AR-15 that was used in the attack at
5 the Pulse Nightclub.

6 So Mr. Mateen and Ms. Salman's family salary was
7 approximately \$30,000 a year for a -- a stable period of time
8 leading up to the attack. But between June 1st and June 11th,
9 the couple spent approximately a full year's salary for the
10 family. They spent almost \$30,000, including \$25,000 in
11 credit card charges, and \$5,000 in cash withdrawals.

12 Some of the key purchases were -- were jewelry for
13 Ms. Salman -- multiple purchases of jewelry, including
14 notably, a 1-carat diamond ring and band worth over \$8,000.

15 I note in reviewing the Pretrial Services report that it's
16 referred to that that might be worth about 1500, in that
17 range. It's -- It was purchased for over \$8,000 in June of
18 2016.

19 In addition, another significant purchase was the AR-15
20 rifle used in the attack, which Ms. Salman acknowledged to the
21 FBI that she was aware of.

22 One other fact related to the financial evidence gathered
23 on the couple is that on June 1st of 2016, Salman and Mateen
24 went to the bank, and they added Salman as a payable-on-death
25 beneficiary to Mr. Mateen's account, meaning that she would

1 only have access to the funds in his bank account if
2 Mr. Mateen were to die.

3 Salman and Mateen were told by a clerk at the bank that
4 Salman could only gain access to those accounts if she had
5 Mr. Mateen's death certificate. And then in the days -- in
6 the -- on June 13th, Ms. Salman contacted the bank and
7 attempted to get access to that bank account.

8 In addition, during her interviews with the FBI on
9 June 12th, she repeatedly asked about how she would be able to
10 get a death certificate.

11 So Ms. Salman took the items that she had received, which
12 included jewelry, electronics, and cash from Mr. Mateen to
13 support their child following the attack knowing that
14 Mr. Mateen was likely to die during the course of it and given
15 her lack of employment and little savings.

16 Your Honor, that's the -- that's essentially the -- the --
17 the evidence that we're going to present today about what
18 Ms. Salman did. So the support is the false story, engaging
19 in the spending with Mr. Mateen, and the casing activity.

20 So the next factor the court's directed to consider is the
21 history and characteristics of the person. I think that the
22 evidence here shows that Ms. Salman has -- has shown
23 herself --

24 Yes?

25 **THE COURT:** On the obstruction part of it --

1 **MS. SWEENEY:** Yes.

2 **THE COURT:** What -- What you just laid out, is that
3 also --

4 **MS. SWEENEY:** Yes.

5 **THE COURT:** -- going to the obstruction? The false
6 story part of it?

7 **MS. SWEENEY:** Essentially -- Your Honor, the
8 obstruction portion is after -- So the -- the interview with
9 FBI -- or with law enforcement covers both a time period in
10 which the attack is occurring, and then after it is completed.

11 And -- So during both time periods, Ms. Salman is
12 initially denying all knowledge to the FBI, saying, I knew
13 nothing about an attack. My husband told me he was going out
14 to dinner. And so that is -- there are -- that's essentially
15 the obstructive conduct as well.

16 **THE COURT:** Okay.

17 **MS. SWEENEY:** Thank you.

18 The -- As to the history and characteristics of
19 Ms. Salman, I think that she's shown herself to be a very
20 calculated and callous person. She's lying to the government
21 while the crime's going on. And in the aftermath of the
22 attack, she was concerned primarily about getting access to
23 Mr. Mateen's death certificate to get to his bank account.
24 She's not concerned about any of the other things that might
25 go through someone's head, but that -- that is her primary

1 concern in those moments.

2 I'd also point out that defense counsel cited repeatedly
3 in their filing this *New York Times* article. And you can just
4 tell from the -- even if you haven't read it, you can tell
5 from the headline of the article -- it says, essentially
6 shooter's wife says I was unaware -- that she is -- she's
7 telling the same lie in that situation that she initially told
8 the FBI before ultimately admitting that she was aware of the
9 pending attack.

10 And then the final factor is the nature and seriousness of
11 the danger to any person or the community. Ms. Salman knew
12 that her husband was leaving their residence to commit a
13 violent attack. And she helped him to avoid detection by his
14 family, who would have tried to stop him, and later from law
15 enforcement.

16 Her actions contributed to the deaths of 49 people and
17 over 50 others being injured. This is a level of -- of danger
18 that is very high, that someone would be involved in this and
19 would -- would play a part in that knowingly and
20 intentionally, she poses a very serious danger to the
21 community.

22 **THE COURT:** What is the -- the danger -- I understand
23 your argument that by failing to notify family or the
24 authorities, even though you're saying allegedly she knew
25 about it, that -- put many people in danger, but that factor

1 looks at the danger posed at this point.

2 So what danger is the government concerned about?

3 **MS. SWEENEY:** I think -- Your Honor, I think anyone
4 who engaged in the type -- and -- and I do want to just say
5 one thing. You said, you know, that Ms. Salman concealed.
6 And I just want to be clear. It's not just concealment. It's
7 the active steps that she took to help her husband carry out
8 this crime.

9 And the danger -- the nature of the danger to the
10 community is anyone who would assist knowing that their
11 husband or anyone was about to walk out the door to commit a
12 violent crime -- I mean, he walks out with a gun and a
13 backpack full of ammo. There -- There can't be any doubt in
14 her mind that he is going out to commit a violent attack with
15 firearms.

16 So I think at that point, that person poses a continuing
17 danger to the community even if -- I assume what you're about
18 to ask me is the situation's gone now. Mr. Mateen is dead,
19 and she's not living with him.

20 **THE COURT:** What is the government concerned that she
21 might do? What is the actual danger?

22 **MS. SWEENEY:** A violent act -- An act of violence
23 against the community or anything that would pose a threat to
24 the community. I don't think --

25 **THE COURT:** But that's --

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(Simultaneous colloquy.)

MS. SWEENEY: -- specific -- Sorry.

THE COURT: Well, it -- You're -- You're posing in a very theoretical generalized way.

Is there any evidence the government has that Ms. Salman herself is -- has pledged allegiance to the Islamic State or that there's something specific -- more specific about the -- the situation that poses more specific danger?

MS. SWEENEY: No, Your Honor. Nothing like -- Nothing like that.

THE COURT: Is there anything specific that you have on that point other than that she is a dangerous person for the reasons stated?

MS. SWEENEY: No, Your Honor.

THE COURT: Okay.

MS. SWEENEY: Thank you.

Ultimately, there is clear-and-convincing evidence here that no condition or combination of conditions will reasonably assure the safety of any other person in the community, and that is based on, first, the presumption.

And I point out that this -- this circuit's case law is that the presumption remains. Even if it's rebutted, the presumption remains an evidentiary consideration to be weighed by this court.

Second, Ms. Salman is charged with the federal crime of

1 terrorism, which weighs heavily against her.

2 And third, the weight of the evidence against her is very
3 strong.

4 There's also a preponderance of evidence that no condition
5 will reasonably assure the defendant's appearance. She faces
6 a very substantial sentence up to life imprisonment.

7 While she was aware of the investigation, she was unaware
8 of whether she would be charged or not. And so at that
9 point -- now that she is charged, now that she knows she faces
10 life imprisonment, the risk of flight has increased.

11 In the defense's motion, I note that they argue that --
12 that she would -- she would never leave her son. Even -- Even
13 assuming that that's true, Ms. Salman has -- her actions to
14 date have indicated that she's more than capable of moving
15 around with her son with her. She's -- She's moved several
16 times with him. And she certainly could flee with him as
17 well. That -- That's -- That's not an impossibility with such
18 a young child.

19 So -- In any event, Your Honor, the government believes
20 that there is a preponderance. So for all of these reasons,
21 Your Honor, the government asks that you detain the defendant.

22 **THE COURT:** Yes.

23 **MS. SWEENEY:** Okay.

24 **THE COURT:** Before you sit down, let me just check my
25 notes quickly.

1 **MS. SWEENEY:** Absolutely.

2 (Pause in the proceedings.)

3 **THE COURT:** Ms. Sweeney, you had said that she
4 initially lied to the FBI about her knowledge but she
5 eventually admitted that she knew about the attack before it
6 happened.

7 **MS. SWEENEY:** Yes.

8 **THE COURT:** Can you tell me specifically what she
9 said and to whom.

10 **MS. SWEENEY:** She said -- Well, to an FBI agent, and
11 specifically this would be Special Agent Ricardo Enriquez with
12 the FBI -- she said that she knew -- she knew when he left
13 that he was going to commit an attack.

14 **THE COURT:** Okay.

15 Tell me once more what the false cover story was.

16 **MS. SWEENEY:** Yes. Your Honor, the false cover story
17 was that Mr. Mateen was out to dinner with a friend.

18 **THE COURT:** Who (sic) did she say that to?

19 **MS. SWEENEY:** So she said it to both Mr. Mateen's
20 mother and his sister, and then she said it to the FBI.

21 **THE COURT:** She told Mateen's mother and sister if
22 your -- Well, why don't tell me exactly what it was.

23 **MS. SWEENEY:** Yes, Your Honor.

24 So to them she said -- Mr. Mateen's mother was calling and
25 saying, do the two of you want to go to mosque. It was

1 Ramadan, and she said, do you -- do you want to go to mosque
2 tonight. And Ms. Salman's response to her was no, I don't
3 want to go. And Mr. Mateen is out at dinner with a friend.
4 And then -- Same thing to his sister.

5 Then she also told Mateen to tell his mother the same
6 thing if she should call him, if they should be in contact.
7 In fact, his mother did speak to him and he told her the same
8 thing.

9 **THE COURT:** So that's the evening of June 11th?

10 **MS. SWEENEY:** Yes.

11 **THE COURT:** And where was he?

12 **MS. SWEENEY:** He was -- He was heading towards
13 Orlando, Florida. He was in Orlando, Florida at that time.

14 **THE COURT:** Okay.

15 And your understanding -- Well, did she say that she knew
16 that he -- he was not out to dinner with a friend?

17 **MS. SWEENEY:** She -- So there was -- the interview
18 continued for some time. There were -- Initially, every time,
19 she said he was out to dinner with a friend.

20 In the -- the ultimate statement that was made, she did
21 not mention the friend at all. She simply said, I knew he was
22 leaving to commit an attack. So she -- while she did not
23 specifically say I was lying about the friend, that -- that
24 was not true. He was not with a friend. And the evidence
25 makes clear that she is the one who came up with that story.

1 **THE COURT:** Okay.

2 All right. Thank you.

3 **MS. SWEENEY:** Thank you.

4 **THE COURT:** Mr. Swift?

5 **MR. SWIFT:** Yes, Your Honor. We do have additional
6 evidence to present. I can proffer. I can present the
7 evidence that I have. I have Jacqueline Campbell, who we
8 previously provided an affidavit to this court present in the
9 courtroom.

10 **THE COURT:** Okay.

11 **MR. SWIFT:** I also have our custodians, our potential
12 custodians present in the courtroom.

13 **THE COURT:** That's Mrs. Sal-- -- I'm sorry.
14 Mrs. Salman, Mr. Salman --

15 **MR. SWIFT:** Yes.

16 **THE COURT:** -- and Ms. Adieh?

17 **MR. SWIFT:** Ms. Adieh is in Mississippi.

18 **THE COURT:** Okay.

19 **MR. SWIFT:** I can get additional-- So I had the local
20 custodian --

21 **THE COURT:** Understood.

22 **MR. SWIFT:** -- in this part. And I can also proffer
23 on the evidence right now with respect to the government's
24 argument on strength of evidence. Whatever the court would
25 like me to do.

1 **THE COURT:** Generally, we proceed on proffer,
2 although you -- you know, you have the right to put on
3 witnesses, but typically --

4 **MR. SWIFT:** I understand.

5 **THE COURT:** -- we proceed on proffer. So why don't
6 you start in that manner, and then if there's other things you
7 want to put on, we can talk about it. Okay?

8 **MR. SWIFT:** Yes, Your Honor.

9 Your Honor, I'd like to first start with -- in proffer,
10 I'm going to start -- I agree on the seriousness of the
11 offense. It's a statutory set-out. I agree on the parts --
12 we set that out in the case law.

13 So I'm going to turn to the strength of the evidence. I
14 want to point Your Honor towards several things. First, we
15 will expect the evidence will show, as the government
16 indicated, that this interview that they deemed started when
17 Ms. Salman was ordered out of the house by police, placed in
18 the back of the squad car, and then transported to the FBI's
19 headquarters -- or an FBI office where she was kept for over
20 16 hours.

21 She was eventually let go at about midnight on (sic) the
22 process.

23 During that time, she initially had her son with her.
24 Family members came to -- to the FBI office. In-laws were
25 there. One of the in-laws asked if Noor could come home now,

1 and she -- take the son, and they started to leave, and FBI
2 agent blocked it and said, no, we're just talking. We have to
3 stay and talk.

4 She was held there for over 12 hours after that period of
5 time. She was not provided counsel. She was not provided
6 warnings. She was escorted everywhere she went, to the
7 bathroom, or to any other part over the period of time.

8 She was eventually interrogated in a closed small room
9 and -- file room after they brought in an individual because
10 they said, we're not getting anywhere with her.

11 I would point out to Your Honor that we've already
12 provided evidence that Ms. Salman is (sic) a special education
13 student in this point of time, that Ms. Salman has a -- is a
14 battered spouse throughout her period of time.

15 And in those parts, the government, we proffer, will --
16 the evidence will show led her down a path to confront her
17 with things that he had done that she had been present that
18 she had told all about and said, well, you must have known,
19 you must have known, you must have known.

20 And then apparently obtained some admissions. We've asked
21 for these statements. The government has yet to provide them.
22 We've been representing her for quite some time.

23 What the actual evidence, apart from this interrogation,
24 whose evidentiary value is questionable -- her actions speak
25 dramatically.

1 On the evening, undisputed by the government, is that she
2 went out to dinner with her son. She then went part -- to --
3 shopping and bought him a Father's Day card. Before that
4 period of time, we can present evidence here today that she
5 had called her whole family and said they were coming home;
6 that at the end of the summer, they were going come home for
7 the first visit they would ever have.

8 And what her uncle asked her specifically on this part.
9 He said, Joy (sic), if you're coming alone, then I'll -- you
10 can stay at my house. But if you're coming with your husband,
11 I'll get you all a hotel room because I think that's
12 appropriate. And she said we need a hotel room to him. In
13 her mindset on that night.

14 She then went out and bought a Father's Day card.
15 Father's Day was June 19th. This was June 11. She wrote out
16 the card to him. She bought a "world's greatest dad" T-shirt
17 or shirt for him. And we'll be able to proffer that -- we'll
18 be able to show the receipts on all of that. And then she
19 went to bed.

20 Now, the government would have a part on this that a
21 battered spouse, et cetera, who knows exactly what's going to
22 happen, somehow went to bed -- went to sleep when she was
23 awoken by her mother-in-law who asked her, where is Mateen? I
24 thought he was going to stop by later. And she said, I don't
25 know.

1 And then she texted him, and we have provided to the court
2 a proffer, et cetera, that well -- how the text messages that
3 went back and forth, where are you?

4 All of this cuts against the government's strength on the
5 knowledge element because all of these things occurred over
6 the period of time.

7 The other part is that somehow the special educational --
8 the government formulates that -- came up with a cover story.
9 We believe that this -- what the government is likely
10 referring to is what -- Mateen told her that he was going to
11 go out to dinner with a friend on that evening. The friend
12 apparently was in Baltimore.

13 But we believe the evidence will show that there was no
14 way for Ms. Salman to know that. Ms. Salman is a battered
15 spouse in that part, spent most of her time at home. She
16 didn't get to go out with his friend. She didn't get to have
17 any friends. She was completely isolated. The only people
18 she ever met was his family during these periods of time.

19 And during those periods of time, we'll present that that
20 strength, that somehow this story -- in the court weighing the
21 strength of the evidence needs to look at that this story
22 somehow materially aided him.

23 That would require that the family had a good idea what
24 was happening or that somehow they would spring into action
25 if -- needed to be shielded from him that he was going to join

1 ISIL. None of those things are true, and -- we would proffer
2 to you the court. We think that the court can apply some
3 common sense.

4 We cited mere presence is not sufficient to establish
5 aiding and abetting to this court. And we would proffer that
6 the evidence at most will show mere presence. The evidence
7 will also contradict knowledge.

8 So the strength of the case -- government's case is, as we
9 said, very much questionable. I also agree with government
10 that it's least fact. We're not trying a case here. There is
11 a case to be tried. Make no mistake about that.

12 I now want to turn to the --

13 **THE COURT:** Before you do, I have a question about
14 your proffer on this.

15 Ms. Sweeney talked about a -- a body of evidence that the
16 government will rely on, has to do with admissions of
17 knowledge that the attack was going to happen before it did,
18 casing, expenditures.

19 At least as to the admissions, so statements made to the
20 FBI, was that -- did that all occur in the 16 hours following
21 her being --

22 **MR. SWIFT:** Yes, Your Honor, it did.

23 **THE COURT:** -- picked up by the police --

24 **MR. SWIFT:** Yes, Your Honor, it did.

25 **THE COURT:** -- that night?

1 **MR. SWIFT:** And their supposed admissions are at the
2 very end of that series of interviews or -- where she was held
3 for basically 16 hours, initially in a squad car, then moved
4 to a conference room, and then finally moved to a file room
5 where she supposedly made these admissions.

6 **THE COURT:** Okay. So there've been no further --
7 Have there been interviews since that date?

8 **MR. SWIFT:** No, Your Honor. We proffered, and we
9 said that we would be available for those interviews. The
10 government did not choose to take us up on that.

11 **THE COURT:** Okay.

12 Go ahead.

13 **MR. SWIFT:** The next thought on it is ties to the
14 community. We know on the part that -- Ms. Salman, born here.
15 Her parents and her family support system provide
16 extraordinary ties to the community. This is her home. Apart
17 from being married, it's where she's always lived.

18 I do note that the probation report indicated that some
19 time overseas. By way of explanation to Your Honor, proffer,
20 on two occasions on -- her first marriage was arranged, and
21 during those (sic) period of time, she was taken over by the
22 family to the West Bank to meet the other parent -- family and
23 to go through the marriage parts on that.

24 The couple ultimately lived in Chicago. Ms. Salman, as
25 she told the Probation Officer, did not enjoy her period of

1 time there. She has no ties with that portion of the family.
2 She simply stayed during those periods of time. She hasn't
3 returned.

4 Her family has had residence -- has been in residence
5 here, naturalized citizens, since the '70's. The family has
6 long-standing ties.

7 Think they also -- in looking at those ties in the
8 community, what you can see -- and this is an extraordinary
9 case, Your Honor. Almost every time the court is left with
10 some hypotheticals. Will the custodians actually perform?
11 You know, what is the risk of flight?

12 The government points out that she traveled across the
13 country. The government admits how that happened, that
14 there's proof of flight. First, she didn't travel without the
15 aid of her family. Her family drove her everywhere on the
16 part of this. Their (sic) family also notified the FBI every
17 time they moved. Every time they did anything, they called
18 the FBI. They voluntarily surrendered the passport at the
19 very beginning.

20 This is the unique case where the court has in front of it
21 absolute evidence that certain factors will work. Those -- As
22 part on the -- I would say to the court that the Marshal
23 Service is certainly capable of equally conducting these types
24 of things.

25 But her family, which works as a unit and protects her,

1 sadly in this case was not in Florida. On the part -- that
2 protects her is in -- is available to do that, and they have
3 shown themselves to be completely compliant with this court's
4 orders. They are willing to pledge their property to that
5 compliance on the -- on those parts.

6 Additionally, Your Honor, we -- so I -- the ties to the
7 community are extraordinarily strong.

8 Also Your Honor focused in at the last element. And I
9 think this is really the critical element in all of these --
10 in this case. And that is what danger does she present. And
11 this one is where Your Honor really is on to a point, that we
12 start with the idea of -- particularly with a crime of
13 terrorism, that that's motivated by religious or political
14 beliefs and that those political or religious beliefs are not
15 going to go away. And so that if I release you, you're going
16 to continue to try to engage in these criminal acts.

17 Somebody was trying to supply themselves to ISIS, that if
18 you're released, you're going to continue to surprise (sic)
19 yourself to ISIS. There are presumptions built into the Code
20 on this. And they may be generally true. In fact, the court
21 is to assume them generally true.

22 But in this case, those presumptions do not apply.

23 First off, as we set out, Ms. Salman, while she was born
24 into a Muslim family, is -- apart from that, really has no
25 religious beliefs.

1 She certainly doesn't have extremist beliefs, or not.

2 Any acquisition (sic) which will ultimately determine also
3 has to be tempered against the idea that she was a battered
4 spouse. And this idea in the battered spouse may
5 acquezese (phonetic) because as we've -- I did provide to the
6 court a dangerousness assessment in the affidavit of
7 Dr. Campbell, which we could go on first. She was in a -- in
8 Dr. Campbell's opinion, a 98 percent risk. And that means
9 that she was out -- at that period of her time at extreme risk
10 for death or serious bodily harm. Extreme.

11 Under those parts, when you remove her, any acquisition
12 that may have happened -- and ultimately that's an issue for
13 the court -- you know, for the trial court -- but is removed
14 by his removal from this scene. When he disappeared, she
15 disappeared.

16 With regards to a financial support or some part -- I
17 think it's very clear that the evidence shows that he was
18 preparing to die. I think the evidence is also -- the
19 strength sets out that she was acting in a manner that at
20 least on June 11th did not know that.

21 With regards to financial assets, she does not have the
22 financial assets to flee. With regards to any of the assets
23 they bought, we're happy to surrender them. I have them in my
24 possession. She hasn't tried to liquidate them or should on
25 this, so I have those assets if that's a concern.

1 The -- So in closing, on each one of these parts, we've
2 put -- this is unique cases Your Honor hit on. The actual --
3 The only danger posed is theoretical at best. It's
4 theoretical. The government can't articulate it other than,
5 well, it's a very serious crime.

6 The actual -- And that's -- the reason for that is because
7 the defendant in this case does not pose any actual harm. If
8 we look at the factors that run through, they're not there.

9 The last part -- and I noted it in the part -- and I was
10 going to put on some testimony on this, on Dr. --
11 Dr. Campbell, who is not a forensic psych -- or psychologist
12 or psychiatrist. She works in the field of domestic violence.
13 But she, too, shares significant concerns about Ms. Salman's
14 lack of treatment and what that's going to do to her.

15 And one of my significant concerns weighed against this is
16 because pretrial detainees are held in jail. There are
17 limited treatment, if any, treatment available options
18 normally. There are significant when one moves to prison.

19 But there is limited parts on this. For the last three
20 weeks, since detained -- or two and a half weeks since
21 detained, she was held until last night on suicide watch. She
22 hasn't, however, seen a mental health professional. She was
23 just placed in it.

24 We would propose to the court because we believe that a
25 comprehensive plan does include treatment, and Ms. Salman --

1 on conditions that treatment is essentially.

2 We would propose to the court to have a psychological
3 evaluation. We are prepared to provide that evaluation. If
4 Ms. Salman is -- continues to stay here, we will provide
5 you -- I assist -- I will attempt initially to retain
6 Dr. Emily Carrow, recognized psychiatrist in P.T.S.D. of
7 extraordinary note, if she's available. She does live in this
8 area. I've worked with her in the past. If not, I'd find
9 another one.

10 **THE COURT:** Mr. Swift.

11 **MR. SWIFT:** But that's where I'll start.

12 **THE COURT:** -- did you --

13 Well, I assume, Ms. Sweeney, the government --
14 Ms. Sweeney, Mr. Mandolfo, and the defense table had a chance
15 to look at the Pretrial report and the recommendation.

16 **MR. SWIFT:** Yes.

17 **THE COURT:** So I do at this point -- it's a good
18 place to segue a bit off of what you're noting about treatment
19 about her mental state.

20 Ms. Mendoza, can I ask you to make your appearance,
21 please?

22 **THE PRETRIAL SERVICES OFFICER:** Yes, Your Honor.

23 Would you like me to step in the front or am I --

24 **THE COURT:** Where you are is fine.

25 **THE PRETRIAL SERVICES OFFICER:** Carol Mendoza,

1 Pretrial Services.

2 **THE COURT:** And did -- did you prepare the report and
3 do the interviews?

4 **THE PRETRIAL SERVICES OFFICER:** I did.

5 **THE COURT:** Okay. So the recommendation talks about
6 having Ms. Salman evaluated for -- that's -- well,
7 psychological/psychiatric evaluation and proposed treatment
8 plan.

9 Can you talk a bit about what Pretrial sees as a risk
10 and -- and why this is the recommendation at this point.

11 **THE PRETRIAL SERVICES OFFICER:** Your Honor, it -- it
12 started in the interview, and Ms. Salman's -- she had a very
13 depressed affect. And she did tell us that she was on suicide
14 watch. But I -- The greater concern came from speaking with
15 the family and just their observations of her -- I would say
16 her mental health and just the -- the situation that she is
17 in. And then they did also talk about the -- the domestic
18 violence history.

19 And our experience tells us that that -- that in and of
20 itself can cause a lot of problems for a person's mental
21 health and that if a person is just taken from the situation
22 in addition to having a federal case pending and just placed
23 back into the community, that the problems and the mental
24 health issues are just exacerbated. They're just -- It's
25 just -- It -- It can often become more than the person can

1 deal with.

2 And so our intention -- my intention with this
3 recommendation is to -- if she were to be released, that a
4 treatment plan would be in place that when she got out of
5 custody, that if -- if we were able to have her evaluated,
6 whoever evaluates her would also put a treatment plan in
7 place. And it would just be -- it would be support in
8 addition to her family, who -- her family has been there
9 supporting her. But there are these issues that have been
10 brought up.

11 **THE COURT:** Was there a specific concern about
12 suicidality? So I note that in the recommendation. And can
13 you tell me what that concern is.

14 **THE PRETRIAL SERVICES OFFICER:** Yes. Again, the
15 defendant's very depressed affect and the fact that she said
16 the jail put her on suicide watch. That is, not -- That's not
17 just a commonplace thing that happens when someone goes into
18 the -- into the jail.

19 And then, again, the comments of her family members,
20 that -- that -- the family members that I spoke to talked
21 about that, that that is -- that during her first marriage, it
22 was very real, a very real issue, and that with her second
23 marriage, it was a very real issue.

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

25 So let me --

1 Ms. Sweeney, can I ask you to come back up? And,
2 Mr. Swift, stay where you are. And let's just have a
3 discussion about this.

4 Mr. Swift, what -- what did you think about the
5 recommendation?

6 **MR. SWIFT:** I thought it was a good one, and I desire
7 very much to get her in to a treatment plan. I think that it
8 is part of the conditions. It also gives the court an idea
9 also on a mental health -- the dangerousness present, whether
10 that dangerousness is mitigated, et cetera, by having a
11 forensic psychologist or psychiatrist take a look at her and
12 go through those parts. The family had very little resources.

13 At this point, I can bring some -- through the center some
14 resources to get that -- that evaluation done.

15 **THE COURT:** Well, it would not be through the
16 defense. It would be a court evaluation.

17 (Simultaneous colloquy.)

18 **MR. SWIFT:** -- you would like the court to order
19 it -- and, of course, I'm offering that up. But I understand
20 you may -- Absolutely.

21 **THE COURT:** If I were to follow that recommendation,
22 it would definitely be a court-sponsored evaluation.

23 Ms. Sweeney, what are your views on the recommendation?

24 **MS. SWEENEY:** Your Honor, it's difficult -- I can't
25 comment really on -- on the validity of the recommendation. I

1 trust what Pretrial is saying. You know, I've never spoken to
2 the defendant obviously, and so it's difficult for me to judge
3 her current mental health situation.

4 Certainly, we have no objection to mental health treatment
5 being part of what's available to the defendant during the
6 pretrial period. We would obviously ask for it to be part of
7 what's provided to her while she's detained pending trial.

8 **THE COURT:** Okay.

9 The recommendation is essentially that she get an
10 evaluation so they can get more information, essentially, so
11 that -- that -- that informs the -- a -- 3142(g) factors and
12 informs the court's ultimate decision on both prongs of the
13 decision. And then we go from there.

14 **MS. SWEENEY:** No -- No -- No objection to that, Your
15 Honor, although I don't -- I don't think -- I don't see how
16 that mitigates the -- the presumption and strength of the
17 evidence and the dangerousness.

18 And may I respond just momentari- -- in a moment, may I
19 respond to some of defense counsel's arguments?

20 **THE COURT:** Yes, but I don't -- so some of this is
21 information gathering.

22 **MS. SWEENEY:** Yes.

23 **THE COURT:** And some of it may go to mitigation, but
24 it's really to assess something that -- that the court is --
25 doesn't have adequate information on.

1 And then if there were a release order, and I say "if,"
2 then obviously a treatment plan would be very important to
3 figuring out next steps.

4 So you can proceed. You wanted to offer some rebuttal?

5 **MS. SWEENEY:** Yes.

6 **THE COURT:** Okay.

7 **MS. SWEENEY:** Your Honor, and just to be -- I'm sorry
8 if I wasn't clear before. There's no objection if -- if Your
9 Honor felt that was necessary, for her to be evaluated and
10 then to consider that further. There's -- There's no
11 objection to that from the government, certainly. That --
12 That that would -- that would be within, as you said, 3142.

13 I just wanted to respond to the dangerousness argument.
14 Defense counsel characterized the danger as theoretical and --
15 and that -- I just don't -- I don't think that's correct or
16 fair, that -- 49 people died. No one knew the defendant was
17 going to do what she did here. And no one can predict what
18 her behavior is going to be in the future. And that's --

19 **THE COURT:** Well, he was going -- he was talking
20 about the future. And I asked you very specifically, is there
21 a specific risk that the government is concerned about that
22 you need to tell the court about. And -- In other words,
23 whether that's connections to Islamic State or something
24 concrete.

25 And my understanding, Ms. Sweeney, from your response is

1 that there isn't anything that's specific.

2 **MS. SWEENEY:** Your Honor, there's not in that vein.
3 But this is the reason that a presumption exists, is that the
4 idea that with a crime such as this one, we may not know what
5 the specific risk is. We certainly -- There weren't signs
6 before this that Ms. Salman would have posed a risk, so
7 it's -- it doesn't stand to reason there would necessarily be
8 ones now.

9 And -- But that is, in fact, why there is a presumption
10 with this type of crime.

11 I also want to just -- with the -- the special education
12 student and battered spouse lines of argument, again, just so
13 the record's clear, Ms. Salman has a high school diploma. She
14 has an Associate's Degree. She's held jobs. And she's taken
15 care of her child. These are all things that would indicate
16 that she is a -- a functioning adult in society.

17 And the battered spouse line of questioning, with respect
18 to Mr. Mateen, none of her family members reported having any
19 knowledge that he was battering her. I believe that the
20 Pretrial Services Report refers to reports about the first
21 husband but not Mateen.

22 And, in fact, none of them told the FBI that they were
23 aware of her being abused. And it's only afterwards that
24 Ms. Salman has presented this idea that she was a battered
25 spouse.

1 And then finally, I do want to --

2 Does Your Honor have a copy of the danger assessment form?

3 **THE COURT:** Yes, from -- from --

4 **MS. SWEENEY:** From Dr. --

5 **THE COURT:** -- Dr. Campbell?

6 (Simultaneous colloquy.)

7 **THE COURT:** Yes.

8 **MS. SWEENEY:** And I just want to point out, in
9 looking at the form, which we got this morning before court,
10 the purpose of this form is -- is to advise women who are
11 currently in relationships. It does not test truthfulness in
12 any way. That's not the purpose of it, and that's certainly
13 not Dr. Campbell's expertise.

14 But the other thing I want to point out is in looking at
15 the form at the bottom -- and Dr. Campbell's affidavit says
16 that she scored this assessment for the defendant.

17 The affidavit indicates there are 12 total "yes" answers
18 on the form. In fact, there were only 11. I would also note
19 that the form indicates that a calendar should be used when
20 completing the assessment, and it doesn't appear that was
21 done, as I was not provided a calendar.

22 My point is simply that this is a -- a hastily conducted
23 danger assessment that I don't believe, based on those facts,
24 should carry much weight with this court.

25 **THE COURT:** Okay.

1 Ms. Sweeney, you had mentioned earlier that you believed
2 the pretrial report indicated that the family members were
3 only aware of domestic violence in the first marriage. So I'm
4 looking at page 5 --

5 **MS. SWEENEY:** Page 5.

6 **THE COURT:** -- first sentence in the fourth full
7 paragraph beginning "the defendant's references."

8 **MS. SWEENEY:** I'm sorry, Your Honor. It does say
9 that, but I -- I believe that -- my understanding is when the
10 FBI spoke to some -- at least some of the family members,
11 including her mother, she said that she was not aware of any
12 abuse by Mr. Mateen.

13 **THE COURT:** Okay.

14 **MS. SWEENEY:** And I don't -- I can't tell from this
15 reference either, Your Honor, if that is post- -- post-event
16 or pre-event that they were aware of abuse.

17 **THE COURT:** Okay.

18 Mr. Swift, let me ask you about the special ed -- special
19 education fact. So --

20 **MR. SWIFT:** Yes.

21 **THE COURT:** -- what I saw was in the declaration that
22 you submitted from a former teacher, Ms. Hayden.

23 **MR. SWIFT:** Yes.

24 **THE COURT:** She was a algebra teacher --

25 **MR. SWIFT:** Yes.

1 **THE COURT:** -- when -- when Ms. Salman was in high
2 school. She said she was a special education student.

3 What special education services did she receive and for
4 what reason did she receive them?

5 **MR. SWIFT:** She received learning -- She was
6 considered learning disabled, proffered to the court that she
7 was able to function in the regular high school environment
8 with special services being provided.

9 Her transcript, which we can provide, was always low
10 performing and that she needed additional tutelage. Her
11 teachers have described her as not being able to think
12 abstractly, that her difficulty is she can be fairly concrete.
13 You give her A, you give her B, you give her C, and she can
14 understand that. But when you say, what does all that mean,
15 she has significant difficulties with abstract thinking, which
16 started in high school where that requirement starts to put
17 into place when you're supposed to draw conclusions from the
18 knowledge.

19 And I'm not a special education teacher. I've interviewed
20 a couple in this case, but I would proffer to you that they
21 indicated that she had difficulties doing this even though
22 she -- that she was very diligent in her school work.

23 In other words, she tried. She worked hard on the part on
24 that. And we offer it at the point on this -- at this point
25 for the court to consider again on her dangerousness of flight

1 that her ability to come up with a plan or part on that is
2 somewhat limited.

3 What her work history and her life history shows that she
4 is totally dependent on her family, whoever that family is,
5 whether that was her family here, whether that was her family
6 when she was married, which placed her in a very dangerous set
7 (sic) for abuse.

8 The government seems to question that she was battered
9 and -- and does not accept that as a fact. I am prepared to
10 call the doctor, if the court wants that, on the idea of
11 battered.

12 I would also proffer to the court that Mr. Mateen's first
13 spouse -- she was not his first -- has reported that she was
14 battered extensively. And I would proffer to the court that
15 the psychological body and weight of the evidence goes that
16 absent treatment, batterers continue to batter.

17 I would also point out to the court that this batterer was
18 in a (sic) even heightened state because of prolonged abusive
19 steroid use, which during the course of their marriage, he
20 literally gained 60 pounds. He became the Incredible Hulk
21 during the course of this marriage.

22 Proffer to the court that those factors are all in. And I
23 understand the government is going to take with skepticism the
24 idea of battering. I don't think this court should, in the
25 part on it that the evidence -- if you need additional

1 evidence, then I can get that to you.

2 I would also proffer to the court that domestic violence
3 studies and whatnot -- and I can bring up our expert on
4 that -- that studies often -- and many of the studies show
5 that domestic violence is tremendously underreported, not only
6 to the police but to the family because of embarrassment,
7 isolation, et cetera, in those parts, and that it is a
8 tremendously underreported crime initially.

9 The -- The government's stance is on these -- their
10 argument's that, well, if you didn't report it, it didn't
11 happen, which seems to be the implication in the government's
12 argument, is quite -- is unfortunate.

13 So we can provide additional information if the court
14 deems that relevant to the decision.

15 Our point on this is when you remove the batterer,
16 whether -- not to the case that we have. That will be tried
17 in Florida. But when you remove the batterer, you remove the
18 risk and the risk to society and the risk of part on it -- in
19 this. It is, as we said, Mateen who did all of the actions.

20 The idea that this attack would have taken place -- If
21 Mateen did not exist, and I would ask the court to think about
22 it in this way on future risk and all -- if Mateen did not
23 exist, would have Noor Salman found somebody else to recruit
24 for ISIS so that she could -- this attack would occur? No.
25 There's no evidence to that part.

1 The entire part on this is that one person committed this
2 offense, and the part -- and that person is dead. That person
3 has no ability to continue any actions at this point.

4 And so the threat posed is not the same in any part. If
5 this person had been joined in the same ideological -- or
6 joined in some other way other than she was married to him,
7 than that threat, quite rightly, continue. It does not
8 continue here.

9 We do believe and we agree that a evaluation should be
10 conducted because we can't have it both ways. She was
11 battered very badly in our petition, et cetera, and there were
12 tremendous effects from being in this, being under this, all
13 of those parts. And those need to be understood by the court
14 in making this decision. And I agree with that.

15 And so I would submit that the court should take
16 additional information on that. If the court would like
17 additional information regarding the battery claim, if that is
18 at issue, I can provide it, but --

19 **THE COURT:** Let -- Let me go back for just a moment
20 to -- on the special education piece.

21 **MR. SWIFT:** Yes.

22 **THE COURT:** Did Ms. Salman receive services from the
23 school district, so --

24 **MR. SWIFT:** Yes.

25 **THE COURT:** -- generally speaking a -- a student who

1 needs disability services may be placed on a Individual
2 Education Plan.

3 **MR. SWIFT:** Yes.

4 **THE COURT:** Or I.E.P. Was she on an I.E.P.?

5 **MR. SWIFT:** I -- I do not know the answer to that
6 question, Your Honor. I would point that it was 15 years ago,
7 though I used to work -- I used to be married to a special
8 education teacher, and she did them back then.

9 I will seek to find that information. I'm not going to
10 proffer what I don't know.

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

12 And on the domestic violence issue, I think what you said,
13 Mr. Swift is that you would offer that on two points. One
14 having to do with conditions of release and looking at
15 treatment plan as part of mitigation or -- or need if she's
16 released, correct?

17 **MR. SWIFT:** Yes.

18 **THE COURT:** And the other was on 3142(g) having to do
19 with whether or not she presents a danger to any person or the
20 community --

21 **MR. SWIFT:** Yes.

22 **THE COURT:** -- and your point is for domestic
23 violence victims, if you remove the -- the abuser, then
24 there's no risk. Is that -- Am I understanding that?

25 **MR. SWIFT:** That's -- That's the point --

1 **THE COURT:** Are there --

2 **MR. SWIFT:** -- is that --

3 **THE COURT:** Are there other reasons you're proffering
4 that information?

5 **MR. SWIFT:** I would also proffer the portion on the
6 domestic violence. It goes back to that mental health because
7 I think that the court should consider also in all of that
8 whether there are any special needs of the -- of the person
9 that can't be met in prison or are best met through those
10 parts on it. And so I would offer it on all three points.

11 I don't -- I know it's a factor. I just don't have the
12 number.

13 **THE COURT:** Okay.

14 And is Dr. Campbell in a position to provide further
15 information -- expert information essentially on whether
16 there's a risk if you remove the -- the abuser?

17 Or is that just your argument on that?

18 I'm not following that completely.

19 **MR. SWIFT:** That's -- That's my argument on that.

20 **THE COURT:** Okay.

21 **MR. SWIFT:** I was going to have her talk about the
22 risk that was presented to him, the characteristics of these
23 women, you know, in more -- a more general fashion.

24 **THE COURT:** Okay.

25 **MR. SWIFT:** And have her discuss -- and I -- if the

1 court is well aware, I don't want to take your time -- and
2 have her discuss for the court, you know, what the treatment
3 type things that they're going to need, what her needs are,
4 and the risks to her presented by incarceration, and those
5 sorts of things.

6 **THE COURT:** I see.

7 **MR. SWIFT:** And that may be better done, quite
8 frankly, after we have a psychological evaluation.

9 **THE COURT:** Okay. I see.

10 Ms. Sweeney, anything further from the government?

11 **MS. SWEENEY:** Your Honor, just -- just in response to
12 what -- to what Mr. Swift just proffered, just two additional
13 points.

14 One, just because -- the argument from the government
15 about Ms. Salman and the -- the spousal abuse is simply that
16 there -- it's -- it's very convenient that -- for Ms. Salman
17 to now allege that she was a victim of abuse.

18 And while Mr. Swift, no doubt, is right, that domestic
19 violence is -- is underreported, you know, perhaps
20 dramatically, there are few women who are in -- that have
21 the -- the motivation that Ms. Salman does to be -- to have a
22 story like that come out only after she's been federally
23 indicted, charged, under investigation by the FBI. That's the
24 point.

25 The second thing is the -- the fact that Ms. Salman is not

1 radical, that I can't proffer to you here that she is an
2 Islamic extremist or anything like that, it means only that
3 that is not the danger. It doesn't mean that there's no
4 danger. That doesn't remove all danger.

5 Anyone, any person who was in a situation like this and
6 aided and abetted someone going to commit this attack, whether
7 radical or not, poses a danger. And the presumption is part
8 of the way that this court is to consider that.

9 Thank you, Your Honor.

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

11 Mr. Swift, anything further from the defense?

12 **MR. SWIFT:** Only one other point. I would just say
13 that as to the motivational part, the fact of Noor Salman's
14 domestic violence came out months before the indictment, Your
15 Honor -- citing to and being reported at points -- it was not
16 reported in the last few days.

17 Thank you, Your Honor.

18 **MS. SWEENEY:** But while she was under investigation,
19 while she knew she was under investigation by the FBI
20 certainly, Your Honor, 'cause she's known that since
21 June 11 -- I'm sorry -- since June 12.

22 **THE COURT:** Okay.

23 **MS. SWEENEY:** Thank you.

24 **THE COURT:** So here's what I think makes sense. I am
25 going to order that Ms. Salman undergo further psych- --

1 psychological, slash, psychiatrist evaluation, including
2 suicidality evaluation while in custody. We'll get that
3 arranged through the court. That -- That report will be for
4 the court's use only in detention and -- to -- to evaluate the
5 kinds of things that I talked about.

6 We'll reconvene after that point when we have a little bit
7 more information on those matters.

8 My suggestion moving forward, Mr. Swift, is that I -- I
9 don't know -- you know, you've given me both a lot of
10 information to digest. I'll take a look at this.

11 In looking forward, if it turns out that she's releasable
12 on conditions, if -- if that's the case, then the court would
13 look to secured bond.

14 I haven't had a chance to talk to the proposed sureties or
15 custodians, but that can take some time. So two things. One,
16 generally speaking, if property is -- has to secure it, then
17 it takes a couple weeks to post it, to get an appraisal, to
18 get the paperwork done for that.

19 Those are all things that you can undertake, Mr. Swift,
20 but you'd have to do it without knowing how I'm going to rule,
21 but it would perhaps cut down on time.

22 **MR. SWIFT:** Yes.

23 **THE COURT:** That's one.

24 **MR. SWIFT:** Your Honor, I have actually already
25 begun.

1 **THE COURT:** Okay.

2 **MR. SWIFT:** I would anticipate all of those would be
3 done and prepared by the time of the next hearing.

4 **THE COURT:** Okay.

5 The other thing is I noted in the -- in the detention --
6 the -- sorry -- the bail study that Ms. Salman's mother is not
7 a native English speaker. Ms. Salman herself and her uncle
8 both told Pretrial she can't really speak English very well.
9 Don't talk to her directly. Okay?

10 So we reached out to counsel yesterday to say, well, do we
11 need an interpreter? And defense counsel said something like,
12 well, we'll just have the uncle explain any words she doesn't
13 understand.

14 That's not going to be sufficient. If we go further into
15 an inquiry about proposed sureties or custodians, the court
16 needs to be absolutely sure that anybody who's being
17 questioned or signing on that capacity understands everything
18 completely. So I would need to have a certified court
19 interpreter here.

20 I don't know Mrs. Salman's native language, so what is it?

21 **MR. SWIFT:** Arabic.

22 **THE COURT:** Okay.

23 **MR. SWIFT:** And we will do so.

24 Your Honor, just a proffer -- part of the --

25 **THE COURT:** So that is something the court provides.

1 Okay? So we need to get an Arabic translator in place.

2 Is there anyone else who would need translation?

3 **MR. SWIFT:** No, Your Honor.

4 **THE COURT:** Okay.

5 Go ahead.

6 **MR. SWIFT:** I was going to say, my experience with
7 Noor's mother is that she's much better in person. I think we
8 would need to have an interpreter for finer points,
9 understanding Your Honor's -- that they must absolutely
10 understand all parts. My experience is that I've had a little
11 bit of difficulty on the telephone. That's the hardest thing
12 in language. One on one, I've done quite well with her.

13 Nevertheless, I do believe it is appropriate. I hadn't
14 thought of it at the time because I thought of her speaking,
15 but I will request for the next hearing to have an Arabic
16 translator.

17 **THE COURT:** Okay.

18 All right. Anything further?

19 **MS. SWEENEY:** No. Thank you, Your Honor.

20 **MR. SWIFT:** No, thank you.

21 **THE COURT:** All right. Then we're concluded.

22 Thank you.

23 (Proceedings were concluded at 10:45 A.M.)

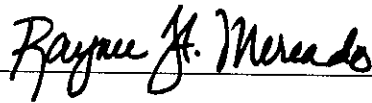
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CERTIFICATE OF TRANSCRIPTION OF ELECTRONIC RECORDING

I, RAYNEE H. MERCADO, hereby certify that the foregoing is a true and correct transcription to the best of my ability, of the above pages, of the official electronic sound recording provided to me by the U.S. District Court, Northern District of California, of the proceedings taken on the date and time previously stated in the above matter.



Raynee H. Mercado

Monday, February 20, 2017

EXHIBIT 3

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

COPY

Before The Honorable Donna M. Ryu, Magistrate Judge

UNITED STATES OF AMERICA,)	Detention Hearing
)	
Plaintiff,)	
)	
VS.)	NO. CR 17-70058MAG
)	
Noor Zahi Salman,)	Pages 1 - 63
)	
Defendant.)	Oakland, California
_____)	Wednesday, March 1, 2017

TRANSCRIPT OF ELECTRONICALLY RECORDED PROCEEDINGS

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(Appearances continued next page)

Transcribed By: Raynee H. Mercado

Proceedings electronically recorded by the court;
transcript produced by computer-aided transcription.

A P P E A R A N C E S (CONT'D.)

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--o0o--

1 Wednesday, March 1, 2017

10:21 a.m.

2 P R O C E E D I N G S

3 (Electronically recorded.)

4 **THE CLERK:** Calling 4-17-70058MAG, United States
5 versus Noor Zahi Salman.

6 Please state your appearances, counsel.

7 **MS. BAZU:** Good morning, Your Honor. Michelle Bazu
8 for the United States appearing as local counsel with my
9 colleagues Sara Sweeney and James Mandolfo from Orlando,
10 Florida.

11 **THE COURT:** Good morning.

12 **UNIDENTIFIED SPEAKER:** Good morning.

13 **MR. MANDOLFO:** Morning.

14 **UNIDENTIFIED SPEAKER:** Morning, Your Honor.

15 **MR. SWIFT:** Good morning, Your Honor. Charles Swift
16 along with my colleague Linda Moreno appearing on behalf of
17 the defendant.

18 **THE COURT:** Good morning.

19 **MS. MORENO:** Good morning, Your Honor.

20 **MR. AMIN:** Morning, Judge. Haitham Amin, general
21 counsel. Local counsel. Excuse me.

22 **THE COURT:** Good morning.

23 Do we also have the Arabic interpreter here?

24 (Off-the-record discussion.)

25 **THE COURT:** Ms. Garcia, has he been sworn?

1 **THE CLERK:** Yes, Your Honor.

2 **THE COURT:** Okay. My apologies to everyone for the
3 delay. We'd set this for 9:30. Our interpreter was not
4 available at that time and didn't -- just -- just showed up so
5 I determined that we couldn't go forward without having the
6 interpreter in place, so apologies for the delay.

7 These are the continued detention hearing proceedings.
8 First of all, I -- I want to make sure that counsel was able
9 to review the 15-page evaluation that was prepared by the
10 court-appointed psychiatrist. I ordered that Pretrial release
11 it to counsel solely for use in the courtroom, so you can't
12 have copies of it. And only to counsel. And solely for the
13 purposes of the bail proceedings.

14 Ms. Sweeney, did your side receive it?

15 **MS. SWEENEY:** Yes, Your Honor. And Ms. Mendoza
16 wanted to us to inquire of you, Your Honor -- I -- I took a
17 half a page of notes, just some points that I wanted to
18 remember. I think Mr. Mandolfo did. I would not be surprised
19 if opposing counsel did as well.

20 But Ms. Mendoza wanted us to ask you if that was
21 acceptable to you or if you would prefer for us not to do
22 that.

23 **THE COURT:** It's fine if you took some notes. I'm
24 not surprised by that, but the notes are confidential. They
25 can't be disclosed to other people, and they should only be

1 used for purposes of this bail proceeding, so they cannot be
2 used for other purposes in the case.

3 **MS. SWEENEY:** Understood.

4 **THE COURT:** Is that understood?

5 **MS. SWEENEY:** Yes, Your Honor.

6 **THE COURT:** Mr. Swift, is that understood?

7 **MR. SWIFT:** Understood, Your Honor.

8 **THE COURT:** Okay. And did both of you get a chance
9 to review it?

10 **MR. SWIFT:** We did, Your Honor.

11 **THE COURT:** Did both of you get a chance to review
12 the addendum to the bail study prepared on February 28th,
13 2017?

14 Ms. Sweeney?

15 **MS. SWEENEY:** Yes, Your Honor.

16 **THE COURT:** Mr. Swift?

17 **MR. SWIFT:** Yes, Your Honor.

18 **THE COURT:** Okay.

19 I would like to go forward with a brief voir dire of
20 Ms. Salman's uncle and mother based on the information
21 provided in the two bail studies.

22 **MR. SWIFT:** Yes, Your Honor.

23 **THE COURT:** And then I'll take some further proffers.
24 Okay?

25 **MR. SWIFT:** Yes, Your Honor.

1 **THE COURT:** So may I please hear from Ms. Ekbal
2 Salman and Abdallah Salman.

3 **MR. SWIFT:** Abdallah Salman and Ekbal Salman are
4 present in the courtroom and coming forward, Your Honor.

5 **THE COURT:** Okay. I also will need the assistance of
6 the Arabic language interpreter.

7 **MR. SWIFT:** He's coming forward.

8 **THE COURT:** My understanding is that Ms. Salman
9 requires Arabic interpretation.

10 **UNIDENTIFIED SPEAKER:** Is Ms. Salman also required to
11 go forward, Your Honor?

12 **MR. SWIFT:** Yes.

13 **THE COURT:** Yes, please.

14 **THE INTERPRETER:** And, Your Honor, if -- may it
15 please the court, may I offer my apologies for my oversight
16 that inconvenienced the court this morning.

17 **THE COURT:** Okay. Apologies accepted. Please come
18 forward to the microphone.

19 I am recording all of these proceedings, so I'd ask that
20 you speak directly into the microphone so we can have a clear
21 recording. Okay?

22 Thank you for being here. May I please ask Ms. Salman --
23 Mr. Salman -- I'm sorry -- to state your name.

24 **MR. ABDALLAH SALMAN:** Abdallah Salman. Abdallah,
25 A-b-d-a-l-l-a-h, Salman, S-a-l-m-a-n.

1 **THE COURT:** I note that the defendant Noor Salman is
2 present and in custody in the courtroom.

3 Are you the uncle of Noor Salman?

4 **MR. ABDALLAH SALMAN:** Yes, I am.

5 **THE COURT:** Okay.

6 Now, Ms. Salman, could you please state your name.

7 **MS. EKBAL SALMAN:** Ekbal Zahi (phonetic) Salman.

8 (Through the interpreter) Ekbal Zahi Salman.

9 **THE COURT:** And, Ms. Salman, are you the mother of
10 Noor Salman?

11 **MS. EKBAL SALMAN:** Yes.

12 (Through the interpreter) yes.

13 **THE COURT:** I note that both of you were actually --
14 Sorry.

15 Mr. Salman, you were interviewed by Pretrial Services.

16 **MR. ABDALLAH SALMAN:** Yes.

17 **THE COURT:** Ms. Salman, you were not interviewed by
18 them because there was a concern that you required some help
19 with interpretation. So let me start with Mr. Salman.

20 I'm going to go over some of the information that I
21 received from Pretrial Services.

22 Mr. Swift, I'm going to ask for your help because for some
23 of this in order to protect his privacy, I'm going to just
24 have you point to portions of the bail study and have him
25 confirm whether or not it's accurate. Okay?

1 Mr. Salman, my understanding is that you live in Rodeo,
2 California.

3 Is that correct?

4 **MR. ABDALLAH SALMAN:** That's correct.

5 **THE COURT:** Mr. Salman, Mr. Swift is going to point
6 to your address. Can you just confirm that that is correct.
7 I'm looking at page 3 of the bail study.

8 (Pause in the proceedings.)

9 **UNIDENTIFIED SPEAKER:** Okay.

10 **MR. ABDALLAH SALMAN:** Yes.

11 **THE COURT:** That is your correct address?

12 **MR. ABDALLAH SALMAN:** That's correct.

13 **THE COURT:** Do you own a home?

14 **MR. ABDALLAH SALMAN:** Yes, I do.

15 **THE COURT:** Do you own it with anyone else?

16 **MR. ABDALLAH SALMAN:** What?

17 **THE COURT:** Do you own it with anyone else?

18 **MR. ABDALLAH SALMAN:** And my wife.

19 **THE COURT:** Is she present?

20 **MR. ABDALLAH SALMAN:** Yes, she is.

21 **THE COURT:** Okay.

22 There's some information about the value of equity in the
23 property --

24 Let me ask, Mr. Swift. I know last time you said you were
25 engaged in the process of getting the home assessed.

1 Do you actually have that information?

2 MR. SWIFT: It has been assessed, and we have a title
3 search.

4 THE COURT: Okay.

5 MR. SWIFT: And the actual -- we have proffered to
6 the court the value of the home is \$775,000 as assessed --

7 THE COURT: How much is owed on the property?

8 MR. SWIFT: None is owed on it. It is owned free and
9 clear.

10 (Off-the-record discussion.)

11 MR. SWIFT: Oh, I take that back. 200,000 --

12 MR. ABDALLAH SALMAN: 200,000.

13 MR. SWIFT: 200,000 is owed on it.

14 MR. ABDALLAH SALMAN: Yeah, first and second.

15 MR. SWIFT: First and second. I take that back. The
16 other one is free and clear.

17 THE COURT: There's other property?

18 (Simultaneous colloquy.)

19 THE COURT: Understood.

20 Okay. Mr. Salman has one piece of property. You've told
21 me that it's been assessed at \$775,000, and there is \$200,000
22 of mortgage that's owed on it on a first and second, correct?

23 MR. ABDALLAH SALMAN: That's right.

24 THE COURT: Okay.

25 Are you a U.S. citizen?

1 **MR. ABDALLAH SALMAN:** Yes, I am.

2 **THE COURT:** You told Pretrial Services that you are
3 employed full-time as a safety manager for a particular
4 employer and that you earn a certain amount. I'm going to
5 have Mr. Swift point you to your employer's name and your
6 yearly salary.

7 Please confirm whether or not that's correct.

8 **MR. ABDALLAH SALMAN:** That's correct.

9 **THE COURT:** Both of those pieces --

10 **MR. ABDALLAH SALMAN:** That's right.

11 **THE COURT:** -- of information are correct?

12 **MR. ABDALLAH SALMAN:** That's right, ma'am.

13 **THE COURT:** Okay.

14 Who lives in your home with you?

15 **MR. ABDALLAH SALMAN:** My wife, my son, and my
16 daughter-in-law.

17 **THE COURT:** How old is your son?

18 **MR. ABDALLAH SALMAN:** He's 41 years old.

19 **THE COURT:** Your daughter-in-law is married to your
20 son?

21 **MR. ABDALLAH SALMAN:** That's right.

22 **THE COURT:** Are there any other people in your home?

23 **MR. ABDALLAH SALMAN:** No.

24 **THE COURT:** Are you willing to have Noor Salman live
25 with you?

1 **MR. ABDALLAH SALMAN:** Absolutely.

2 **THE COURT:** Are you willing to serve as her
3 custodian?

4 **MR. ABDALLAH SALMAN:** Absolutely.

5 **THE COURT:** I'm going to explain to you what a
6 custodian is because it's a very important obligation --

7 **MR. ABDALLAH SALMAN:** Yes.

8 **THE COURT:** -- that -- that if I were to release
9 Ms. Salman I'd ask you to take on.

10 The custodian acts as a monitor for the court to make sure
11 that a person who's released on conditions follows all of the
12 conditions.

13 **MR. ABDALLAH SALMAN:** Yeah.

14 **THE COURT:** So you would be responsible as a
15 custodian --

16 **MR. ABDALLAH SALMAN:** That's true. That's right.

17 **THE COURT:** -- for making sure that Noor Salman
18 followed the conditions of release.

19 **MR. ABDALLAH SALMAN:** Absolutely.

20 **THE COURT:** If you knew she wasn't compliant and you
21 did not notify Pretrial Services or the court, you could be
22 prosecuted for contempt of court.

23 Do you understand that?

24 **MR. ABDALLAH SALMAN:** Yes, I do.

25 **THE COURT:** It's a very serious obligation.

1 **MR. ABDALLAH SALMAN:** Yes, it is.

2 **THE COURT:** It's also a voluntary obligation. You
3 shouldn't say "yes" unless you really feel comfortable taking
4 on that --

5 **MR. ABDALLAH SALMAN:** I feel comfortable.

6 **THE COURT:** Okay. Similarly, if I were to release
7 Noor Salman, it would be pursuant to a bond that was secured
8 in part by your property that you own with your wife.

9 **MR. ABDALLAH SALMAN:** Yes.

10 **THE COURT:** Would you be willing to post your
11 property to support her release?

12 **MR. ABDALLAH SALMAN:** Yes, I am.

13 **THE COURT:** Do you understand that that's a voluntary
14 act?

15 **MR. ABDALLAH SALMAN:** That's right.

16 **THE COURT:** I would like to have your wife step
17 forward since she's the co-owner.

18 (Pause in the proceedings.)

19 **THE INTERPRETER:** Your Honor, does Mrs. Salman
20 require an interpreter as well?

21 **THE COURT:** I don't know yet.

22 Okay. Good morning. Could you please state your name?

23 **MS. HALA SALMAN:** Hala Salman.

24 (Through the Interpreter) Hala Salman.

25 **THE COURT:** And are you married to Abdallah Salman?

1 MS. HALA SALMAN: Yes, I am.

2 THE COURT: Were you at the prior proceedings? Last
3 time we were here in court, were you also present?

4 MS. HALA SALMAN: Yes.

5 THE COURT: Okay. Do you understand what's going on
6 here today?

7 MS. HALA SALMAN: Yes, I do.

8 THE COURT: It's my job to decide whether or not Noor
9 Salman can be released on conditions while her case is being
10 prosecuted.

11 MS. HALA SALMAN: Yes, Your Honor. I understand.

12 THE COURT: I understand that you own a home along
13 with your husband --

14 MS. HALA SALMAN: Yes, I do.

15 THE COURT: -- that's just been described.

16 Okay. And -- And I need to decide whether to release her.
17 If I do, it would be pursuant to a secured bond that would be
18 secured in part by posting of property, including the property
19 that you and your husband own together.

20 Do you understand that?

21 MS. HALA SALMAN: Yes, I understand.

22 THE COURT: So the way this works is that if I
23 released her and she violated a condition of release, then the
24 government could get a judgment against anyone who signs on
25 the bond for up to the amount of the bond.

1 MS. HALA SALMAN: Yes.

2 THE COURT: And the property would secure that bond,
3 so the government could easily take your house --

4 MS. HALA SALMAN: Take the house.

5 THE COURT: -- because that's where the equity is.
6 Do you understand that that's a --

7 MS. HALA SALMAN: Yes, I do.

8 THE COURT: -- consequence?

9 MS. HALA SALMAN: Yes, I do.

10 THE COURT: Is it something that you were willing to
11 do as a voluntary act; in other words, post the property that
12 you co-own to support her release?

13 MS. HALA SALMAN: Anything I can do?

14 THE INTERPRETER: Can I --

15 (Simultaneous colloquy.)

16 THE INTERPRETER: Are you willing to do that?

17 MS. HALA SALMAN: Yes, I will.

18 THE COURT: Okay. Do you have questions for me about
19 what I'm asking you to do?

20 MS. HALA SALMAN: No, I don't.

21 THE COURT: Okay.

22 It's just that Mr. Abdallah Salman does not own the home
23 alone.

24 MS. HALA SALMAN: Yes.

25 THE COURT: He's told me that he's willing to post

1 the property, but you co-own it. You also have an interest in
2 it, so for that property to be posted, you also have to
3 indicate that you're willing to post it.

4 **MS. HALA SALMAN:** Yes, I will.

5 **THE COURT:** And I want to make sure that you
6 understand the consequences of posting it.

7 **MS. HALA SALMAN:** Yes, Your Honor, I do.

8 **THE COURT:** Do either of you have any questions for
9 me about what it means to post your property to secure the
10 bond?

11 **MS. HALA SALMAN:** No, I don't.

12 **THE COURT:** Mr. Salman, do you have any --

13 **MR. ABDALLAH SALMAN:** I don't have any questions.

14 **THE COURT:** Okay.

15 Ms. Sweeney, can I ask you to come to the microphone.

16 Before I turn to questions for Ms. Salman, I'm wondering
17 whether there are any questions that you would like for me to
18 ask of Abdallah Salman.

19 **MS. SWEENEY:** My only proposed area of questioning,
20 Your Honor, would be just to inquire if there are any foreign
21 assets that are owned by Mr. Salman or -- or Ms. Salman, if
22 there's any other property that they own overseas.

23 **THE COURT:** Okay. Any objection, Mr. Swift?

24 **MR. SWIFT:** I don't understand the relevance, but --

25 **THE COURT:** Do you want to explain the relevance?

1 **MS. SWEENEY:** Your Honor, if -- if they are posting
2 their property and that's considered to be something that
3 would keep the defendant from fleeing, if there are other
4 assets that are available overseas, we'd like to know about
5 that to -- to be able to argue to Your Honor if this isn't
6 sufficient to reduce the risk of flight, and that was not
7 inquired about as part of the Pretrial Services report.

8 **THE COURT:** Mr. Swift?

9 **MR. SWIFT:** If the court desires to ask the
10 question --

11 **THE COURT:** Okay.

12 Mr. Salman, do you or your wife own any property outside
13 of the United States?

14 **MR. ABDALLAH SALMAN:** I do.

15 **THE COURT:** What do you own?

16 **MR. ABDALLAH SALMAN:** I own a commercial property
17 overseas.

18 **THE COURT:** Where?

19 **MR. ABDALLAH SALMAN:** It's in West Bank of Jordan.
20 West Bank of Israel, which is Palestinian territory. It's a
21 commercial shops.

22 **THE COURT:** Shops?

23 **MR. ABDALLAH SALMAN:** Yeah. It's -- Yes, shops like
24 storage (sic).

25 **THE COURT:** How long have you owned it?

1 MR. ABDALLAH SALMAN: Less than ten years.

2 MR. SWIFT: What'd you pay for it?

3 MR. ABDALLAH SALMAN: Huh?

4 MR. SWIFT: What'd you pay for it?

5 MR. ABDALLAH SALMAN: How much I pay for it?

6 \$200,000.

7 THE COURT: You paid \$200,000 for it?

8 MR. ABDALLAH SALMAN: Yeah, around 200.

9 THE COURT: Do you co-own it with anyone?

10 MR. ABDALLAH SALMAN: No, just me.

11 THE COURT: Do you go back to check on the
12 property --

13 MR. ABDALLAH SALMAN: I have a mother. After she
14 retired from here, they move up there. She's 94 years old.
15 Once a year, I go visit my mom for about two weeks because --
16 you know, that's -- as a visit. That's why I can -- and
17 that's seeing my wife (sic) and -- my mother, and I check on
18 the tenant from there.

19 THE COURT: Okay. So you check on the property about
20 once a year --

21 MR. ABDALLAH SALMAN: Yeah.

22 THE COURT: -- when you are visiting your elderly
23 mother, who lives in Palestine.

24 MR. ABDALLAH SALMAN: Yes. Yeah.

25 THE COURT: Okay.

1 Do you have any other property outside of the United
2 States?

3 **MR. ABDALLAH SALMAN:** Outside United -- no.

4 **THE COURT:** How about your wife?

5 Do you own any property outside of the United States?

6 **MS. HALA SALMAN:** No, I don't.

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

8 Any other questions for Mr. Salman?

9 **MS. SWEENEY:** The last question, Your Honor, would be
10 if he has an estimate of how much the property is currently
11 worth.

12 **MR. ABDALLAH SALMAN:** It's hard to appraise it, but
13 probably it's worth, to me, 500,000. But I want you to
14 understand if it's all have a tenant up there and when you
15 have a tenant, the law up there, you cannot increase the rent
16 and they been there for a lot -- before I purchase the
17 property, so they paying less than what I'm paying on taxes on
18 this property.

19 **THE COURT:** Okay. So you think that the value of the
20 property has increased significantly --

21 **MR. ABDALLAH SALMAN:** Yes, I'm sure it did.

22 **THE COURT:** But -- But you're also saying that due to
23 landlord/tenant laws in Palestine, there are some issues about
24 how to value -- properly value --

25 **MR. ABDALLAH SALMAN:** Right.

1 **THE COURT:** Okay.

2 Anything further, Ms. Sweeney?

3 **MS. SWEENEY:** No, thank you, Your Honor.

4 **THE COURT:** All right.

5 Please stay up here just in case --

6 **MR. ABDALLAH SALMAN:** Sure.

7 **THE COURT:** -- I need to ask you other things.

8 And I'm sorry. I did not write down Mrs. Salman's first
9 name. Could you please tell me what it is again.

10 **MS. HALA SALMAN:** Hala.

11 (Through the Interpreter) Hala.

12 (In English) H-a-l-a.

13 **THE COURT:** Thank you.

14 I now have some questions for Mrs. Salman. My
15 understanding is that you live in Rodeo. I'm going to ask
16 Mr. Swift to show you your address that you gave to -- to
17 Pretrial Services so you can confirm whether or not it's
18 correct.

19 (Pause in the proceedings.)

20 **THE CLERK:** Your Honor, can you be clear on the
21 record which Mrs. Salman you're referring to?

22 **MS. EKBAL SALMAN:** Yes.

23 (Through the interpreter) Yes.

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

25 I'm going to refer to you as "Ekbal Salman" just because

1 we have other -- a Hala Salman here as well. Okay?

2 **MS. EKBAL SALMAN:** Oh, okay.

3 (Through the interpreter) Okay.

4 **THE COURT:** Mr. Swift, did you get some more
5 information about the property owned by Ekbal Salman?

6 **MR. SWIFT:** I did.

7 (Pause in the proceedings.)

8 **MR. SWIFT:** Yes, we had an appraisal report prepared
9 on Ekbal Salman's house. And it has a value of \$525,000. We
10 also had a title report prepared on it, and it is not subject
11 to any liens that we have found.

12 **THE COURT:** So it's a \$525,000 currently appraised --

13 **MR. SWIFT:** Value of the -- of the property.

14 (Simultaneous colloquy.)

15 **MR. SWIFT:** Not subject to any liens.

16 **THE COURT:** That's owned free and clear.

17 **MR. SWIFT:** That's owned free and clear, yes.

18 **THE COURT:** Okay.

19 Ekbal Salman, are you a United States citizen?

20 **MS. EKBAL SALMAN:** Yes, I am.

21 (Through the interpreter) Yes, I am.

22 **THE COURT:** Do you have any criminal history?

23 **MS. EKBAL SALMAN:** No.

24 (Through the interpreter) No. Thank God, no.

25 **THE COURT:** Okay. And I'll just note for the record

1 that Ekbal Salman and Abdallah Salman both had their records
2 run by Pretrial Services, and Pretrial Services has confirmed
3 that neither of those individuals have a criminal record.

4 Ekbal Salman, I believe that you've been present for all
5 of the proceedings the last time your daughter was here in
6 court and also today, of course.

7 **MS. EKBAL SALMAN:** (Through the interpreter) Yes.

8 **THE COURT:** Do you understand the nature of these
9 proceedings?

10 **MS. EKBAL SALMAN:** (Through the interpreter) Yes.

11 **THE COURT:** Do you understand that I have to decide
12 whether or not your daughter should be released on conditions
13 while her case is being prosecuted or whether she should stay
14 in custody?

15 **MS. EKBAL SALMAN:** (Through the interpreter) Yes.

16 **THE COURT:** Okay.

17 In determining whether she should be released, one thing
18 I'm considering would be what level of family support she has
19 and what level of financial resources the family can provide.

20 You have indicated that you're willing to post your
21 property to support her release.

22 Is that true?

23 **MS. EKBAL SALMAN:** (Through the interpreter) Yes.

24 **THE COURT:** Do you understand that if you post your
25 property, you're putting that property at risk?

1 **MS. EKBAL SALMAN:** (Through the Interpreter) Yes.

2 **THE COURT:** So in other words, if I release your
3 daughter subject to a bond of a certain amount, and that bond
4 is secured by your property as well as Abdallah Salman's
5 property, if Noor Salman violates the conditions of her
6 release, the government could get a money judgment against
7 anyone who signed the bond and could collect it. Obviously
8 the easiest way to collect it would be to get the equity in --
9 in either or both of the properties.

10 So you could lose your home if she violates the bond,
11 which, of course, is very serious.

12 Do you understand that?

13 **MS. EKBAL SALMAN:** (Through the Interpreter) I
14 understand.

15 **THE COURT:** Do you understand that posting your home
16 to support her release is a voluntary act; it's not anything
17 you have to do?

18 **MS. EKBAL SALMAN:** (Through the Interpreter) I -- I
19 agree to it.

20 **THE COURT:** Okay. It's something -- Do you
21 understand that it's voluntary; you don't have to do it?

22 **MS. EKBAL SALMAN:** No, no. I will.

23 (Through the Interpreter) But I will.

24 **THE COURT:** Okay. But that's not my question. I
25 want to make sure that you understand, you don't have to --

1 MS. EKBAL SALMAN: Yeah, I understand.

2 (Simultaneous colloquy.)

3 MS. EKBAL SALMAN: (Through the interpreter) I
4 understand.

5 THE COURT: But it's something you're willing to do?

6 MS. EKBAL SALMAN: Yes.

7 (Through the Interpreter) Yes.

8 THE COURT: Do you have any questions for me about
9 how the bond works or anything that I've just explained?

10 MS. EKBAL SALMAN: (Through the Interpreter) I don't
11 have questions.

12 (In English) Because he explained to me everything.

13 (Through the Interpreter) Because he --

14 (In English) Lawyer explained --

15 THE COURT: Okay.

16 MS. HALA SALMAN: (Through the Interpreter) Lawyer
17 explained everything to me.

18 THE COURT: Okay.

19 I know that you're speaking in part in English to respond
20 to me, but I'm also aware that you feel more comfortable in
21 your native language, which is why we have an interpreter,
22 because I need to make sure that you understand everything
23 'cause this is a very serious proceeding.

24 MS. EKBAL SALMAN: (Through the Interpreter) Yes.

25 THE COURT: Okay.

1 Do you own any property outside of the United States?

2 MS. EKBAL SALMAN: (Through the Interpreter) Yes.

3 THE COURT: What property do you own?

4 MS. EKBAL SALMAN: (Through the Interpreter) In
5 Ramallah, Palestine.

6 THE COURT: What do you own?

7 MS. EKBAL SALMAN: (Through the Interpreter) An
8 apartment.

9 THE COURT: How long have you owned the apartment?

10 MS. EKBAL SALMAN: (Through the Interpreter) Let's
11 say about ten years.

12 THE COURT: Do you own it with anyone else?

13 MS. EKBAL SALMAN: No. No.

14 (Through the Interpreter) No.

15 THE COURT: How much did you pay for it?

16 MS. EKBAL SALMAN: One hundred.

17 (Through the Interpreter) One hundred.

18 THE COURT: Is that \$100,000 U.S.?

19 MS. EKBAL SALMAN: (Through the Interpreter) A
20 hundred thousand dollars.

21 THE COURT: How much is it currently worth?

22 MS. EKBAL SALMAN: (Through the Interpreter) A
23 hundred fifty.

24 THE COURT: Do you have tenants there?

25 MS. EKBAL SALMAN: (Through the Interpreter) No.

1 **THE COURT:** No one is living there?

2 **MS. EKBAL SALMAN:** (Through the Interpreter) No.

3 **THE COURT:** Why do you have the apartment?

4 **MS. EKBAL SALMAN:** (Through the Interpreter) Because
5 I -- I go back to Palestine to visit my family, and -- and
6 then I -- I stay in it.

7 **THE COURT:** So it's just for your own use?

8 **MS. EKBAL SALMAN:** (Through the Interpreter) And for
9 my kids, my daughters.

10 **THE COURT:** Okay.

11 How often does your family go back to stay in that
12 apartment?

13 **MS. EKBAL SALMAN:** (Through the Interpreter) Once
14 every four or five months, we go and stay --

15 **MR. ABDALLAH SALMAN:** "Years."

16 **MS. EKBAL SALMAN:** (Through the Interpreter) -- about
17 three months --

18 **MR. ABDALLAH SALMAN:** "Years."

19 **MS. EKBAL SALMAN:** (Through the Interpreter) -- over
20 there, and then we come back.

21 **MR. SWIFT:** -- whether it's months or years?

22 **MR. ABDALLAH SALMAN:** She said "four or five years,"
23 not "four or five months."

24 **THE COURT:** Okay. Just a moment. Let's clarify.

25 Mr. Salman, I have to ask you not to interrupt.

1 **MR. ABDALLAH SALMAN:** I'm sorry.

2 **THE COURT:** Okay?

3 How many times a year do you go back to visit Palestine?

4 **MS. EKBAL SALMAN:** Three month only.

5 (Through the Interpreter) We stay three months every year
6 during the summer.

7 **THE COURT:** When was the last time --

8 **MS. EKBAL SALMAN:** 2014.

9 (Through the Interpreter) 2014.

10 **THE COURT:** Were you there in 2015?

11 **MS. EKBAL SALMAN:** No.

12 (Through the Interpreter) No.

13 **THE COURT:** Were you there in 2016?

14 **MS. EKBAL SALMAN:** No.

15 (Through the Interpreter) No.

16 **THE COURT:** Have you been there this year?

17 **MS. EKBAL SALMAN:** (Through the Interpreter) No.

18 **THE COURT:** Before 2014, when was your last visit?

19 **MS. EKBAL SALMAN:** (Through the Interpreter) 2008.

20 **THE COURT:** Did you visit there at all between 2008
21 and 2014?

22 **MS. EKBAL SALMAN:** No.

23 (Through the Interpreter) No.

24 **THE COURT:** Okay.

25 Ms. Sweeney, any other questions you'd like me to ask

1 Ekbal Salman?

2 **MS. SWEENEY:** Your Honor, I believe that she said the
3 word "we," that "we visited Palestine." If we could clarify
4 who that is.

5 **THE COURT:** All right.

6 Ms. Ekbal Salman, when -- do you always go by yourself?

7 **MS. EKBAL SALMAN:** (Through the Interpreter) No.
8 Myself and Baraa.

9 **THE COURT:** Who is Baraa?

10 **MS. EKBAL SALMAN:** (Through the Interpreter) My
11 daughter. She's 15 years old.

12 **THE COURT:** Okay.

13 When you went in 2014, did you go with Baraa?

14 **MS. EKBAL SALMAN:** (Through the Interpreter) Yes,
15 myself and Baraa. That's it.

16 **THE COURT:** No one else? How about in 20 --

17 **MS. EKBAL SALMAN:** (Through the Interpreter) No.

18 **THE COURT:** How about in 2008, did you go with
19 anyone?

20 **MS. EKBAL SALMAN:** (Through the Interpreter) My two
21 daughters because it was her wedding in 2000 -- in 2008.

22 **THE COURT:** So you went with Baraa and Noor?

23 **MS. EKBAL SALMAN:** (Through the Interpreter) No. I
24 went to -- I went with my three daughters before their
25 marriage, Safa, Sharooq, and Baraa.

1 (In English) Baraa.

2 **THE COURT:** Okay. I don't know who Safa is.

3 **MS. EKBAL SALMAN:** (Through the Interpreter) My
4 daughter in Florida. She lives in there. But since 2008 when
5 she got married, she -- she hasn't been back home to
6 Palestine.

7 **THE COURT:** I thought you only have three daughters.

8 **MS. EKBAL SALMAN:** (Through the Interpreter) I have
9 four.

10 **THE COURT:** You have four. Okay. Thank you.

11 Have any of your daughters been to Palestine --

12 **MR. SWIFT:** To clarify, Your Honor, Noor went in 2006
13 with her.

14 **THE COURT:** Okay.

15 **MR. SWIFT:** I know the history --

16 **THE COURT:** Okay. And that was for her wedding?

17 **MS. EKBAL SALMAN:** (Through the Interpreter) Yes.

18 And after that, she did not go at all.

19 **THE COURT:** Do -- Do any of your daughters or other
20 family members stay in Palestine without you?

21 So do they -- they ever go to visit when you're not there?

22 **MS. EKBAL SALMAN:** (Through the Interpreter) No. I
23 have the key right here.

24 **THE COURT:** Okay.

25 So you told me about visits in 2014, 2008, and 2006.

1 Right?

2 **MS. EKBAL SALMAN:** (Through the Interpreter) He (sic)
3 said -- Yes. Do you want prior to that as well?

4 **THE COURT:** No, no. That's fine.

5 And on those three visits, you took some of your
6 daughters, right?

7 **MS. EKBAL SALMAN:** (Through the Interpreter) Yes.

8 **THE COURT:** Other than those three visits, have any
9 of your daughters or other family members stayed in -- in your
10 Palestine apartment?

11 **MS. EKBAL SALMAN:** (Through the Interpreter) No.

12 **THE COURT:** Okay.

13 Ms. Sweeney, anything further?

14 **MS. SWEENEY:** Thank you, Your Honor.

15 **THE COURT:** Okay.

16 (Pause in the proceedings.)

17 **THE COURT:** Ms. Sweeney, I have completed the voir
18 dire of Noor Salman's uncle and mother. Do you have any
19 further proffer based on that or based on the new information
20 in the amended bail study or the psychiatric evaluation?

21 **MS. SWEENEY:** In general about detention, Your Honor?

22 **THE COURT:** Yes.

23 **MS. SWEENEY:** Okay.

24 **THE COURT:** In other words, we had an hour-and-a-half
25 proceeding before. We now have some new information. I want

1 to make sure that you have an opportunity to make any comments
2 based on that new information.

3 **MS. SWEENEY:** Thank you, Your Honor.

4 And I -- I agree with I think the point that you were just
5 implying, which is that there's no need to repeat everything
6 that was discussed before.

7 As to the information provided by the family, obviously,
8 there are assets. There are significant assets that are
9 available. And although they are not the defendant's,
10 obviously, they -- they, you know, increase the risk of flight
11 that exists.

12 Then as to the -- the report from Dr. Chamberlain, the --
13 the thing that I -- I -- I guess there were two things that I
14 would like to note for the court. The first is I -- he
15 proposes a treatment plan, and he notes that he believes it
16 would be effective both in a custodial setting and not in a
17 custodial setting.

18 And although he doesn't address the question of which
19 would be better, I think it's clear from what he suggests that
20 a custodial setting would, in fact, be better. And that's in
21 part based on the fact that he discusses on the -- the very
22 bottom of page 2, he discusses that observation in social
23 settings, e.g., on a housing unit, would be -- be helpful.
24 Obviously, those types of observations are much easier in a
25 custodial setting.

1 And then the only thing -- other thing I wanted to point
2 out with respect to this report is it -- it contains a lot of
3 kind of differing -- really just differing pieces of
4 information about whether the defendant was abused in her
5 first marriage.

6 Obviously, her family all believed that she was. And if
7 you look at page 5 of Dr. Chamberlain's report, he references
8 in -- in the paragraph that's numbered six about mid- -- a
9 little more than midway through that she indicated that she
10 had been a victim of domestic violence in both of her
11 marriages, and that was noted in the first Pretrial Services
12 report.

13 But then if you -- you look at pages 8 and 10, beginning
14 on page 8, she -- she says -- the defendant tells
15 Dr. Chamberlain that there was -- there was no sexual abuse in
16 her first marriage. Her husband had not drugged her. She
17 notes that he one time threw an ashtray at a wall, and one
18 time pulled her hair, so that's what she notes on that page in
19 that portion of the conversation.

20 And then on page 10 of Dr. Chamberlin's report in the
21 third full paragraph, again, a little more than midway
22 through, she indicates that her first husband was not violent.
23 Although they did argue and didn't get along, he wasn't
24 violent.

25 But this seems to be markedly different than some of the

1 things that she's discussed with her family members. So to
2 the extent that, you know, abuse is a backdrop to all of this
3 as we discussed the last time, I think that that information
4 is important to note for the court.

5 I don't have anything else additional besides those two
6 points.

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

8 **MS. SWEENEY:** Thank you.

9 **THE COURT:** Mr. Swift, I'll give you the same
10 opportunity --

11 **MR. SWIFT:** Thank you, Your Honor.

12 Couple of things on the part is with regards to the
13 recommendations and treatment, I think treatment's very
14 important. I think that the treatment will be provided in
15 custody is speculative at best. It will be provided out and
16 will be a condition of probation, can't be condition onto the
17 custody part, so it's speculative at best.

18 It certainly can be provided. She's eligible, and we'll
19 arrange the treatment as part of it.

20 Secondly, I think the determinative part is this is
21 someone who suffers from a P.T.S.D. I think they'll be better
22 in a home for -- in -- in that type of an environment, a
23 family environment without question like all medical diagnosis
24 is, in fact, one that's exactly -- consisted in everything,
25 it's generally a little suspect on my part because the human

1 mind -- the human personality isn't absolutely consistent down
2 the line.

3 This was a thorough-and-comprehensive exam, is what I see
4 on the part -- thorough and comprehensive recommendations that
5 can be conducted. I think that we've presented to the court
6 here -- meeting these people in person -- custodians who will
7 more than make up for the fact that -- and I would not to
8 reargue the point, but they've also been demonstrating that
9 they can do it. And they been doing it for a very long time
10 already. And those are present. And those are my only
11 further comments.

12 Thank you, Your Honor.

13 **THE COURT:** Okay.

14 Is the matter submitted?

15 **MS. SWEENEY:** Yes, Your Honor.

16 **MR. SWIFT:** Pardon?

17 **THE COURT:** Is the matter submitted?

18 **MR. SWIFT:** The matter is submitted.

19 **THE COURT:** Okay.

20 Here is my ruling: So Ms. Salman is charged with a
21 violation of 18 United States Code Section 2339(B)(a)(1) and
22 (2), which is aiding and abetting the attempted provision and
23 provision of material support to a terrorist organization.

24 She's also charged with 18 United States Code Section
25 1512(b)(3), which is obstruction of justice.

1 The government moved for Ms. Salman's detention pursuant
2 to 18 United States Code Section 3142, arguing that she
3 presents both a serious risk of flight and a serious danger to
4 the community.

5 Pursuant to 18 United States Code Section 3142(e)(2) and
6 (3), the government is entitled to a rebuttable presumption
7 that no condition or condition -- sorry -- or combination of
8 conditions will reasonably assure the safety of any other
9 person in the community and the appearance of Ms. Salman as
10 required.

11 In determining whether Ms. Salman should be detained or
12 released, I must consider the factors set forth in Section
13 3142(g). I'm going to go through those factors, but let me
14 just tell you now instead of being suspenseful that having
15 considered those factors, I agree with the Pretrial Service
16 recommendation and find that Ms. Salman has rebutted the
17 presumptions of both risk and flight -- risk of flight and
18 danger to the community, and that she can and should be
19 released pursuant to strict conditions that will reasonably
20 mitigate those risks.

21 Here's my evaluation of the 3142(g) factors. The first
22 requires me to look at the nature and the circumstances of the
23 offenses charged. As to the nature of the charged offenses,
24 the parties both agree that one of the charges against
25 Ms. Salman is very serious as it involves a federal crime of

1 terrorism.

2 The government argues that the obstruction of justice
3 charge is also serious; however, that charge by itself does
4 not carry a presumption of detention.

5 The parties' proffers focused primarily on the aiding and
6 abetting charge, and I will do the same in my analysis.

7 Turning now to the circumstances of the aiding and
8 abetting charge, the government identifies the following acts
9 as supporting that charge.

10 First, it asserts that Ms. Salman knew that Mr. Mateen had
11 pledged his allegiance to the Islamic State and that she aided
12 and abetted his deadly attack at the Pulse Nightclub by casing
13 three locations with him in advance of the attack.

14 As to this allegation, the government says that the casing
15 consisted of being in the car with Mateen on three separate
16 loca- -- three separate occasions when they drove by the Pulse
17 Nightclub, CityPlace, and Downtown Disney, and that he asked
18 her on at least two of those occasions, how bad it would be if
19 the club was attacked or what would upset people more, an
20 attack on the club or Downtown Disney.

21 The government also asserts that she aided and abetted
22 Mateen's acts by creating a cover story for him by telling
23 Mateen's family and instructing Mateen himself to tell his
24 family on the night of the attack that he was going out to
25 dinner with a friend.

1 The government asserts that various facts point to the
2 conclusion that Ms. Salman knew that Mateen was going to
3 commit the attack when he left the house to do so.

4 And they also assert that Ms. Salman admitted to an FBI
5 agent that she knew when he left the house that night that he
6 was going to commit the attack.

7 As to the obstruction of justice charge, the government
8 alleges that Ms. Salman obstructed justice by first denying
9 knowledge of the facts of the events but later admitting her
10 knowledge.

11 The circumstances of the charged offenses are very
12 serious; however, for purposes of assessing the risks of
13 danger and flight under the Bail Reform Act, I note that these
14 are aiding and abetting allegations. In other words, the
15 government has charged Ms. Salman with helping her then
16 husband Mateen, who, in turn, provided material support to a
17 terrorist organization. She herself is not charged with
18 providing material support to a terrorist organization or
19 being part of a conspiracy to do so.

20 I'm turning now to the second factor, which is the weight
21 of the evidence. The law directs that I must consider the
22 weight of the evidence, but it also directs that it is the
23 least important of the 3142(g) factors. And that's because a
24 proceeding under the Bail Reform Act is not and should not
25 become a trial on the merits.

1 The government asserts that the weight of the evidence is
2 very strong. I find that at this time, the weight of the
3 evidence is debatable.

4 The government made its presentation through a proffer.
5 It did -- which is its -- its right. It did not offer a video
6 or a transcript or other support for -- for the information
7 that it provided to the court. Therefore, the court is not in
8 a position to evaluate the strength of the information,
9 especially the alleged admissions made by Ms. Salman.

10 Based on the defense proffer --

11 First of all, the -- the bulk of the government's case
12 rests on alleged admissions by Ms. Salman. And the defense
13 proffered and the government did not contradict that all of
14 Ms. Salman's alleged admissions about fabricating a cover
15 story and about advanced knowledge that the attack would take
16 place were made toward the end of an interrogation that took
17 place during a 16-hour detention that started on the night of
18 the attack, during which time Ms. Salman did not have counsel.

19 The defense has proffered that Ms. Salman is a victim of
20 domestic violence. The government disputes this. And the
21 defense has proffered, and there's some support for this in
22 the psychiatric evaluation, that Ms. Salman has some cognitive
23 deficits that impair her ability to engage in abstract
24 thinking.

25 For these reasons, the alleged admissions may be

1 vulnerable to constitutional attack and/or may not be
2 construed as admissions by a finder of fact.

3 The strength of the government's proffered evidence that
4 goes beyond her admissions is also debatable at this time.

5 The government proffered facts about the family's greatly
6 increased spending in the days leading up to the attack and
7 the fact that Ms. Salman knew that Mateen purchased a long gun
8 and ammunition in the days leading up to the attack.

9 The defense responds that the increased spending was the
10 act of a man who had complete control over the family's
11 spending and that the spending reflects the behavior of a man
12 who was preparing to die.

13 The defense asserts that evidence of Ms. Salman's behavior
14 will demonstrate that she did not have advanced knowledge of
15 the attack and, in fact, took actions that demonstrate the
16 opposite.

17 The defense proffered that she purchased a Father's Day
18 card and a present for Father's Day which would occur in the
19 days following the attack and that she also made plans for a
20 family vacation that included Mr. Mateen to take place at the
21 end of the summer of 2016.

22 The defense also proffered that Ms. Salman did not
23 fabricate a cover story and that she believed that Mateen
24 actually was going out to dinner with a friend on the night of
25 the attack.

1 In other words, all of the information provided by the --
2 the government is hotly debated.

3 Turning to the third 3142(g) factor, this goes to the
4 nature and characteristics of the defendant. They're as
5 follows: She's 30 years old. She has a four-year-old son for
6 whom she is the primary caregiver. Ms. Salman was born in the
7 United States. She was raised primarily in the East Bay,
8 although more recently, she's lived in Florida with Mateen.

9 Her parents are from Palestine but they -- they became
10 naturalized U.S. citizens in the 1970's.

11 Ms. Salman has strong family support, including her mother
12 and sisters and uncle and an aunt. Her mother and uncle and
13 aunt were all willing to post property and all willing to
14 serve as third-party custodians.

15 As to the property, her mother Ekbal Salman is a U.S.
16 citizen with no criminal record, and she owns her home out
17 right. The home has equity in the amount of \$525,000 as
18 confirmed by a current assessment, appraisal, and title run.

19 Her uncle and aunt Abdallah Salman and Hala Salman also
20 own a home with significant equity, recently appraised --
21 think it was at \$715,000 --

22 **MR. SWIFT:** 75, Your Honor. 770 --

23 **THE COURT:** -- \$775,000, for which they owe \$200,000,
24 leaving equity of \$575,000 on that property.

25 Abdallah Salman is willing to serve as a custodian. He's

1 a U.S. citizen without a criminal history.

2 Although I did not question her aunt Emtiyaz Adieh,
3 Ms. Adieh did tell Pretrial Services that she also owns
4 property with significant equity value and is a U.S. citizen
5 and is willing to post her property and serve as custodian.

6 Ms. Salman has no prior criminal history of any kind. She
7 has no known history of alcohol or substance abuse. She's had
8 no employment since 2010 when she married Mateen. And since
9 that time she's relied upon her family for financial support.
10 Her family appears to be well resourced and able to provide
11 for her.

12 There's evidence that Ms. Salman graduated from high
13 school. There's evidence that she attended school to obtain
14 an Associate's Degree, but it's unclear from the proffers made
15 to the court whether she ultimately obtained one.

16 There's evidence that Ms. Salman has a learning disability
17 for which she received Special Education Services during high
18 school and that she struggles with abstract thinking.

19 The defense proffered that she was a victim of domestic
20 violence in both of her marriages. The government disputes
21 that. The court does not need to determine whether she was a
22 victim of domestic violence. I will note that at the court's
23 order, a psychiatrist performed a thorough psychiatric
24 evaluation and opined that Ms. Salman suffers from
25 Post-Traumatic Stress Disorder.

1 The evaluating psychiatrist has opined that Ms. Salman
2 would benefit from a treatment regimen of medication,
3 psychiatric oversight, and regular behavioral therapy
4 sessions.

5 The court directed the evaluating psychiatrist to also
6 perform suicidal -- a suicidality assessment based on
7 statements made by individuals to Pretrial Services and also
8 on the fact that Ms. Noor Salman was put on a suicide watch in
9 jail. The psychiatrist has opined that Ms. Salman presents a
10 low acute risk of suicide either in custody or out of custody.

11 Since the 2016 attack, Ms. Salman moved from Orlando back
12 to the Bay Area. It is undisputed that during that time
13 and -- and in that journey, she and her family regularly
14 reported her whereabouts to law enforcement and cooperated
15 with all law enforcement requests.

16 The government has -- initially did not identify any
17 concern about Ms. Salman having ties overseas that would
18 present a specific risk of non-appearance. They -- They now
19 point to the fact that Ms. Salman's mother and uncle own
20 property in Palestine; however, that does not necessarily
21 create a specific risk of flight that cannot be managed
22 through strict conditions.

23 The fourth factor under Section 3142(g) is the nature and
24 seriousness of the danger to any person or to the community
25 that would be posed by the person's release.

1 Here, the government did not identify any concrete danger
2 posed by Ms. Salman to the community.

3 The government conceded that Ms. Salman has no connection
4 to the Islamic State and has not exhibited any extremist
5 views. When asked about the nature of the danger she
6 presents, the government points only to the events at issue in
7 this case and generally responded that anyone who would assist
8 another person such as Mateen presents a continuing danger to
9 the community.

10 Other than the proffers made by the government regarding
11 the allegations against Ms. Salman in this case, there's
12 nothing in the record before me that suggests Ms. Salman is
13 violent or dangerous.

14 As previously stated, Ms. Salman has no prior criminal
15 history. The defense filed several declarations from two
16 long-time friends, a former teacher, and cousin, all of whom
17 state that Ms. Salman is a peaceful and non-violent person.

18 Taking all of the above into account, including the
19 evidentiary fact that this is a presumption case with respect
20 to both danger and risk of flight, I find that Ms. Salman has
21 rebutted the presumptions of flight and danger.

22 I find that the government has not established by
23 clear-and-convincing evidence that Ms. Salman presents a
24 danger to the community that cannot reasonably be mitigated
25 with conditions of release.

1 And I also find that the government has not established by
2 a preponderance of the evidence that she presents a serious
3 risk of flight that cannot reasonably be mitigated.

4 I find that the following conditions would reasonably
5 mitigate the risks of non-appearance and danger to the
6 community.

7 And here, before I launch into these, I ask that the
8 following people come forward.

9 Mr. Swift, could you please come with your client, Noor
10 Salman. I'd also like to have Ekbal Salman come forward with
11 the interpreter, as well as Abdallah Salman, and also Hala
12 Salman.

13 (Pause in the proceedings.)

14 **THE COURT:** I would like to have you here while I
15 read you the conditions of release because I want to make sure
16 that you understand what those conditions are because all of
17 you have agreed to take on responsibilities with respect to
18 those conditions.

19 For Abdallah and Hala Salman and Ekbal Salman, I told you
20 that signing on the bond and securing it with property, and,
21 Mr. Abdallah Salman, in your case, also acting as custodian,
22 those are all voluntary acts --

23 **MR. ABDALLAH SALMAN:** Yes.

24 **THE COURT:** -- that you should not take on unless you
25 feel like it's a risk that you're comfortable taking.

1 I want all of you, all three of you, to know that --
2 because, Hala Salman, you will not be signing on the bond, but
3 you will be securing the bond with your property, so I want
4 the three of you to know that as this case goes -- goes
5 forward, if you sign on the bond, you're obligated in the
6 manner that I told you about.

7 But if you change your mind at some point, you can be
8 released from the obligation, but you have to notify the court
9 so that I can have a formal proceeding to do that.

10 If you withdraw your support, it is possible that Noor
11 Salman will go back into custody, but it's not a guarantee.
12 At that moment, I would just need to reassess everything and
13 see where the balance falls. But mostly I need to notify you
14 that once you sign you're obligated.

15 **MR. ABDALLAH SALMAN:** Yes.

16 **THE COURT:** But you can change your mind through a
17 formal proceeding.

18 Do each of you understand that?

19 **MR. ABDALLAH SALMAN:** Yes, I am (sic).

20 **THE COURT:** Abdallah Salman?

21 **MR. ABDALLAH SALMAN:** Yes, I am (sic).

22 **THE COURT:** Hala Salman, do you understand?

23 **MS. HALA SALMAN:** Yes, I --

24 **THE COURT:** And, Ekbal Salman, do you understand
25 that?

1 **MS. EKBAL SALMAN:** (Through the Interpreter) Yes.

2 **THE COURT:** Okay.

3 Now, I'm going to go through the conditions of release.
4 Ms. Sweeney, can I ask you to come forward just in case
5 there's any questions that come up.

6 Noor Salman and Abdallah Salman, I want you to pay
7 particular attention because, Noor Salman, these are
8 conditions that you must abide by, and, Abdallah Salman,
9 you're agreeing to be custodian so these are conditions that
10 you're agreeing to monitor. Okay?

11 But for all of you who are at the podium, if you have any
12 questions, I want you to make sure that you ask me. I'm happy
13 to answer any questions that you have.

14 **MS. EKBAL SALMAN:** (Through the interpreter) Thank
15 you, Your Honor.

16 **THE COURT:** Here are the conditions that I would
17 order for the release of Noor Salman. I will release her
18 pursuant to a \$500,000 secured bond, secured by the property
19 owned by Abdallah and Hala Salman and by Ekbal Salman, so both
20 houses, which is -- which represent over a million dollars in
21 equity.

22 Ms. Salman shall appear at all proceedings as ordered by
23 the court and shall surrender for service of any sentence
24 imposed.

25 She shall not commit any federal, state, or local crime.

1 She shall not harass, threaten, intimidate, injure, tamper
2 with, or retaliate against any witness, victim, informant,
3 juror, or officer of the court or obstruct any criminal
4 investigation.

5 Ms. Salman, you are not allowed to travel outside of the
6 Northern District of California, which is where we are now,
7 and the Middle District of Florida where you need to go to
8 face the charges in this case.

9 You can travel between those two districts in order to get
10 back and forth, but your travel and your itinerary needs to be
11 approved in advance by Pretrial.

12 You will be reporting to Pretrial Services here in
13 Oakland, who will be supervising you. My understanding is
14 that you -- you had an expired passport that was turned over
15 to the government. You cannot apply for a passport or any
16 travel documents such as visas while your case is being
17 prosecuted.

18 Mr. Abdallah Salman, do you have any firearms or other
19 weapons in the home?

20 **MR. ABDALLAH SALMAN:** No, I --

21 **THE COURT:** No? Okay.

22 **MR. ABDALLAH SALMAN:** No.

23 **THE COURT:** Ms. Salman, you may not possess any
24 firearm, destructive device, or other dangerous weapon, and
25 nor can one be in the home where you're living.

1 Is that understood?

2 MR. ABDALLAH SALMAN: Yes, ma'am.

3 THE COURT: Okay.

4 Ms. Noor Salman shall remain in the custody of custodian
5 Abdallah Salman at the -- at his residence. And in order to
6 preserve your privacy, I'm not going to name that -- that
7 residence out loud. It will be part of the paperwork.

8 MR. ABDALLAH SALMAN: Yes.

9 THE COURT: Mr. Abdallah Salman agrees to supervise
10 Noor Salman and to report any violation of the release
11 condition to Pretrial Services. He understands that if he
12 fails to do so, he can be prosecuted for contempt.

13 MR. ABDALLAH SALMAN: Yes.

14 UNIDENTIFIED SPEAKER: Say "yes."

15 MR. ABDALLAH SALMAN: Yes. Yes, ma'am.

16 THE COURT: Ms. Noor Salman shall participate in
17 mental health counseling as directed by Pretrial Services and
18 shall contribute to the cost of treatment as deemed
19 appropriate by Pretrial Services.

20 MR. ABDALLAH SALMAN: Yes.

21 THE COURT: Ms. Salman cannot change residence
22 without prior approval of Pretrial Services.

23 And, Ms. Salman, you will be on location monitoring.

24 You'll be on electronic monitoring.

25 Mr. Abdallah Salman, do you have a hard line in your home?

1 (Off-the-record discussion.)

2 MR. ABDALLAH SALMAN: Yes, we will. Yes.

3 THE COURT: It's hard-wired --

4 MR. ABDALLAH SALMAN: Yes.

5 THE COURT: -- rather than cellular?

6 Okay. So Pretrial Services is going to set up an
7 electronic --

8 MR. ABDALLAH SALMAN: Okay.

9 THE COURT: -- monitoring unit.

10 Noor Salman, you'll be subject to electronic monitoring,
11 and you will essentially be on kind of a house arrest for now.
12 That means that you must stay in your uncle's home, except
13 that you can leave for court, to come to Pretrial Services, to
14 meet with your attorneys, to -- to tend you and your son's
15 medical needs and for mental health treatment. But,
16 otherwise, you have to stay in your home, so for -- your
17 uncle's home.

18 So for example, at this point, you cannot go grocery
19 shopping or -- or, you know, anything else, other than what
20 I'm allowing you to come out for.

21 I will say that you may revisit the conditions of your
22 electronic monitoring after establishing a record of
23 compliance. So if things go well, then it may be that you can
24 ask to have those conditions loosened somewhat. Okay? But at
25 this point, you would be essentially in home lockdown except

1 for the reasons that I've just stated.

2 Those are the conditions that I would be looking to impose
3 in this case.

4 Ms. Sweeney, let me take any comments or argument at
5 this -- from you.

6 **MS. SWEENEY:** Thank you, Your Honor.

7 We would ask that that monitoring be GPS monitoring rather
8 than the hard-line monitoring. Obviously, that tells you if a
9 defendant has left a residence but it doesn't tell you where
10 someone went if they were to leave without permission. So we
11 would request GPS.

12 **THE COURT:** Just one moment, Ms. Sweeney.

13 Ms. Mendoza, can you please make your appearance.

14 **MS. MENDOZA:** Yes. Carol Mendoza, Pretrial Services.

15 **THE COURT:** Ms. Mendoza, is that something you can
16 do?

17 **MS. MENDOZA:** Yes.

18 **MR. SWIFT:** Without objection, Your Honor. Actually
19 because there's going to be travel, I would concur with the
20 recommendation of GPS.

21 **THE COURT:** Okay. So it will be GPS electronic
22 monitoring.

23 Ms. Sweeney, anything further?

24 **MS. SWEENEY:** Your Honor, on that same condition,
25 just a point of clarification. Meetings with attorneys -- I

1 note that some of Ms. Salman's counsel -- indeed, the only two
2 I believe who have made a general appearance, are not
3 located -- their offices are not in the Northern District of
4 California.

5 And I just wanted to inquire to -- to make sure that that
6 condition is clear, that it's limited to meetings with
7 attorneys in either the Northern District of California or the
8 Middle District of Florida without pre-approval essentially.

9 **MR. SWIFT:** Without objection, Your Honor. We come
10 to the client. It's easier.

11 **THE COURT:** Okay.

12 So --

13 **MR. SWIFT:** And just to -- we're a non-profit. We
14 can't give her money to travel. But we can of course have our
15 own money to travel, so --

16 **THE COURT:** So that condition is clarified so that
17 Noor Salman can leave the home to meet with counsel in either
18 the Northern District of California or the Middle District of
19 Florida and that's it unless you obtain prior approval of
20 Pretrial Services.

21 Okay? So if, for example, for some reason you decide to
22 meet in I think Texas --

23 **MR. SWIFT:** Dallas, yes, Your Honor.

24 **THE COURT:** Okay. That has to be with pre-approval.

25 Okay?

1 **MR. SWIFT:** Without objection, Your Honor.

2 **THE COURT:** All right. Anything further,
3 Ms. Sweeney?

4 **MS. SWEENEY:** One further thing, Your Honor.

5 There's been discussion I believe both in court and in a
6 filing about the -- the ring, this valuable diamond ring. And
7 counsel has offered to either place it in the court's custody,
8 place it in the government's custody.

9 We would ask that you order one of those two things to
10 happen, for that ring to either be placed in the custody of
11 the court pending termination of the case or provided to the
12 government, again, for safekeeping pending the conclusion of
13 the case.

14 **THE COURT:** Is it subject to forfeiture --

15 **MS. SWEENEY:** Well, there's two reasons, Your Honor.

16 Yes, first of all, there is a forfeiture money judgment
17 that's alleged in this case, and that could be used to satisfy
18 it. But secondly, it's an asset that could be used to flee,
19 so in any event, rather than it being returned to anyone in
20 particular, at this point, it should be maintained -- not --
21 rather than it being returned to the defendant, it should be
22 maintained outside of her custody.

23 **THE COURT:** Mr. Swift?

24 **MR. SWIFT:** I will represent to the court that I have
25 it. It is not in her custody. It is in the custody -- it's

1 currently at my offices in Dallas, Texas.

2 I'm going either to send it to the court, but -- because
3 it's not in the forfeiture, not evidence, I suggest to the
4 court that as an officer of the court, I will agree to the
5 court that I will hold it and will not return it to the
6 defendant or to any person until these proceedings are over
7 unless so authorized to do so by the court or unless it is
8 necessary as evidence in a -- as evidence in a future
9 proceeding.

10 **THE COURT:** Ms. Sweeney, is that acceptable?

11 **MS. SWEENEY:** Yes, Your Honor.

12 **THE COURT:** Okay. Thank you. 'Cause I didn't want
13 to hold on to it.

14 **MR. SWIFT:** I didn't think you did, Your Honor.

15 **THE COURT:** I think that's a good solution.

16 Okay. Anything further, Ms. Sweeney?

17 **MS. SWEENEY:** Your Honor, the government seeks a stay
18 of your order of release. We would like to seek review by
19 the -- by the court with original jurisdiction under 18 U.S.C.
20 3145(a)(1). We would ask for a 48-hour stay to be entered by
21 this court.

22 **THE COURT:** So let's see. That puts us into Friday
23 morning?

24 **MS. SWEENEY:** Yes, Your Honor.

25 **THE COURT:** Any objection?

1 **MR. SWIFT:** I would like my client to go home, but I
2 understand the rules of the court.

3 **THE COURT:** I'm willing to impose a stay of my order,
4 so in other words, I'm ordering release on the conditions that
5 I stated, but Ms. Sweeney has a right to seek a different
6 outcome in Florida. And so I'm going to hold my order for 48
7 hours so that Ms. Sweeney can pursue that avenue of relief.

8 Okay?

9 **MS. SWEENEY:** Thank you, Your Honor.

10 **THE COURT:** Anything further, Ms. Sweeney?

11 **MS. SWEENEY:** So, Your Honor, besides detention --
12 because we do still have removal and identity just to formally
13 deal with.

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

15 **MR. SWIFT:** We would like to wait on removal and
16 identity until we -- the end of the bond issue. Once we have
17 the bond issue, which she has to be entitled to -- to
18 understand procedurally, she has the right -- they have the
19 right to go to Florida, but we would like to have that bond --
20 the bond issue finally determined prior to moving to removal
21 and identity.

22 **THE COURT:** Okay. When you say "the bond issue," are
23 you saying that you would want to have the detention issue --

24 **MR. SWIFT:** Detention issue, yes.

25 **THE COURT:** -- fully adjudicated before you make a

1 decision whether you want to waive the right to an ID hearing?

2 **MR. SWIFT:** That's correct, Your Honor.

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

4 **MS. SWEENEY:** Your Honor, I do object because
5 procedurally, I don't see how we have proceeded with the
6 discussions that we have without there being an admission that
7 the defendant is the person named in the indictment.

8 And with -- that's the only determination that's --
9 that -- the factual determination that there is to be made for
10 Your Honor to then determine that removal is appropriate.

11 I'm not asking for her to move, you know, without a
12 further court order before the detention issue is finally
13 determined. But I -- I think that to come back again to have
14 a removal hearing when there is, in fact, no factual issue
15 left to be determined, I -- I object to that.

16 **THE COURT:** The government has a right to -- sorry.

17 The defense has a right to insist on a hearing. I'm not
18 going to make them waive that hearing at this time. I don't
19 see a reason to force that decision at this point. And I'm
20 not entirely clear on the -- the reason for the objection.

21 Is it that you'd have to come back out for a proceeding
22 or --

23 **MS. SWEENEY:** No, Your Honor. It's simply that issue
24 is -- is moot. I mean, the way that we had talked about
25 the -- the factual issue is moot, because the way that both

1 sides have discussed the defendant, the testimony that we
2 heard from the defense witnesses today -- or not defense but
3 the -- the surety witnesses today have established that, you
4 know, Noor Salman is the person sitting here and that that is
5 the person named in the indictment.

6 I understand Your -- Your Honor's ruling.

7 **THE COURT:** Nevertheless, the law gives the right for
8 an identification hearing, also for them to challenge whether
9 or not this is a true and correct indictment.

10 So, Mr. Swift, what do you suggest? That once Florida
11 fully adjudicates --

12 **MR. SWIFT:** Fully adjudicates that -- we probably
13 will waive at that point, but I want to make sure that she
14 stays here while we have that issue set out.

15 And also I'm just -- I do have some questions on the
16 obstruction charge, on whether that charge is -- a removal is
17 properly located in the Middle District of Florida, whether
18 that can be -- on the secondary charge. That hasn't been a
19 focus, but I do want to take -- do a little research on it.

20 **THE COURT:** Okay. Well, given that pending question,
21 I'm not going to force the issue, and we will let the
22 detention question play out. And at that point, I'll need to
23 have an answer on ID and removal.

24 Okay. Mr. Swift, were there any questions from you on the
25 conditions of release?

1 **MR. SWIFT:** There are no questions, Your Honor.

2 **THE COURT:** Okay.

3 Ms. Salman -- Ms. Noor Salman, did you fully understand
4 the conditions of your release?

5 **THE DEFENDANT:** Yes, Your Honor.

6 **THE COURT:** Do you have any questions for me about
7 them?

8 **THE DEFENDANT:** No.

9 **THE COURT:** Okay. I need to have you answer "yes" or
10 "no" instead of shaking your head because I'm recording your
11 answers.

12 (Off-the-record discussion.)

13 **MR. SWIFT:** Her question, Your Honor, is if she
14 follows the rules religiously, et cetera, can she put in a
15 waiver sometime down the road to be able to go to her mother's
16 house, which is very close, to visit with her mother on
17 occasion.

18 **THE COURT:** Yes, if everything goes well, as I said,
19 your -- your lawyer can talk to the government and talk to
20 Pretrial Services to see whether it's appropriate to loosen
21 the -- the restraints on your ability to leave your uncle's
22 house.

23 If you can't agree on it, then that would come back to me
24 to decide. Okay?

25 But yes, it is -- it is possible for you to ask for that

1 additional freedom down the road. But I'm not going to allow
2 that at this time.

3 And just to be clear, I'm issuing this order, but I'm
4 staying it because the Florida court has the right to come to
5 a different decision. Okay?

6 Do you have any further questions about the order that I
7 would be prepared to issue? You understand everything?

8 I need to have you answer "yes" or "no."

9 **THE DEFENDANT:** Yes, Your Honor.

10 **THE COURT:** Okay.

11 Mr. Abdallah Salman, do you have any questions for me?

12 **MR. ABDALLAH SALMAN:** No, ma'am.

13 **THE COURT:** Do you understand all the conditions you
14 will be --

15 **MR. ABDALLAH SALMAN:** Yes, I --

16 **THE COURT:** -- monitoring?

17 **MR. ABDALLAH SALMAN:** Yeah.

18 **THE COURT:** Okay. Ms. Hala Salman, do you have any
19 questions?

20 **MS. HALA SALMAN:** No. Thank you, Your Honor.

21 **THE COURT:** Okay.

22 And how about for you -- sorry -- Ms. Ekbal Salman?

23 **MS. EKBAL SALMAN:** (Through the Interpreter) I do
24 have questions.

25 I -- I understand the -- I understand that the -- the

1 court's ruling, and all the counsel arguments, but she has a
2 four-year-old boy, and that boy has been moving from place to
3 place.

4 I wish that the court would accept that the mother would
5 be allowed to care for her boy in her own room and -- their
6 own room at her mother's house and still under the
7 guardianship and custodialship (phonetic) of her uncle.

8 Because I'm also ill.

9 **THE COURT:** Mr. Swift, were you going to say
10 something?

11 **MR. SWIFT:** Yeah. We're going to put in -- after a
12 period of time -- we understand the court's ruling and why.
13 And we'll explain to her that they have -- the anticipated is
14 that the boy will stay at the uncle's house as well. With it,
15 he has younger -- there are younger siblings or others for him
16 to play with and more care from another daughter at this
17 house.

18 But we thought we'd comply with everything and then down
19 the road come back to you after we had a record.

20 **THE COURT:** Ms. Ekbal Salman, it's my ruling that she
21 should be in her uncle's home under his custodianship. Noor
22 Salman's son can also live with her. I have no problem with
23 that. She will not be living under your roof at this time.

24 Okay? Do you have any other questions for me?

25 **MS. EKBAL SALMAN:** No.

1 (Through the Interpreter) No.

2 (Through the Interpreter) No.

3 **THE COURT:** Now, Mr. Swift, are the properties
4 prepared to post?

5 **MR. SWIFT:** Yes. Everything is prepared, Your Honor.
6 We will --

7 **THE COURT:** Has the government seen the paperwork?

8 **MR. SWIFT:** We can provide it to them. I have extra
9 copies.

10 **THE COURT:** Okay. That's great, 'cause they will
11 need to weigh in on that. Might as well do that pending
12 whatever happens in Florida just --

13 Is that okay, Ms. Sweeney?

14 **MS. SWEENEY:** Absolutely.

15 **THE COURT:** Okay.

16 So I'm going to ask Ms. Garcia to now take care of the
17 paperwork 'cause we'll need to have some signatures. I'm not
18 going to sign the bond because I'm staying my order. I'll
19 wait 48 hours, so -- until 11:00 o'clock on Friday morning
20 Pacific time, but we'll get everything else in place so that
21 if it goes forward, we don't have to have another proceeding.

22 Okay?

23 **MR. SWIFT:** I think the liens I have on the
24 property -- what I have right now, I have not yet recorded
25 the -- because you have to accept it. I was not going to

1 record it until you accepted it.

2 I have the title reports. I have the certified appraisal
3 from a certified appraiser. I have the forms from the court's
4 website completed up to the point I needed to know what the
5 court was going to order. We will complete that section, and
6 I have three copies of each.

7 Is that sufficient?

8 **THE COURT:** That's sufficient.

9 What I'd like you to do is provide a copy to Ms. Sweeney.
10 If Ms. Sweeney approves it, it will not be construed as some
11 waiver of her argument. I just really want to make sure she
12 has a chance to see it and weigh in on it in case the outcome
13 is that she's released on those bonds. Okay?

14 **MR. SWIFT:** Okay.

15 **THE CLERK:** I need driver's license.

16 (Off-the-record discussion.)

17 **MR. SWIFT:** After? Right now?

18 (Pause in the proceedings.)

19 **THE COURT:** So ms. Garcia is getting some of your
20 information -- This will not be in the microphones. She's
21 just getting basic information and having you sign the papers.

22 (Pause in the proceedings.)

23 **THE COURT:** Counsel, let me get your suggestions
24 about next steps because we're not going to know until Friday
25 what's happening on the detention question. We still have

1 removal and ID. Should we set this for a control date back
2 here?

3 **MS. SWEENEY:** That would be -- That should be fine,
4 Your Honor.

5 **MR. SWIFT:** That should be fine, too, Your Honor.

6 **THE COURT:** Well, let's see. How would this work?
7 If -- If she is detained in Florida, we still have the removal
8 and ID question here, and you'd have to --

9 **MR. SWIFT:** Right.

10 **THE COURT:** You could either make an appearance or
11 you could --

12 **MR. SWIFT:** Waive.

13 **THE COURT:** -- have a stipulation or written
14 waiver --

15 **MR. SWIFT:** Yes.

16 **THE COURT:** -- and that would work.

17 If she's not detained in Florida, then we still need the
18 answer on that and -- and there may be some logistics to work
19 out on release here --

20 **MR. SWIFT:** Yes.

21 **THE COURT:** -- so what do you suggest for a control
22 date? I guess early next week?

23 **MS. SWEENEY:** That should be fine, Your Honor. And
24 then, you know, if events over take that, obviously, then --
25 then we can move it.

1 **THE COURT:** Just let me know.

2 **MS. SWEENEY:** Yeah.

3 **THE COURT:** That sounds fine.

4 (Pause in the proceedings.)

5 **MR. SWIFT:** Could I suggest to the court March 9th?

6 Is that an available date for the court? 'Cause I have
7 hearings in DC on the 7th, and March 8th, a hearing in
8 Chicago, but I could certainly be here the day after that.

9 Or Friday.

10 **THE COURT:** Ms. Sweeney, how does 9:00 or 9:30 on the
11 9th work for you?

12 **MS. SWEENEY:** I'm sorry. I don't have a calendar in
13 front of me. Is that Friday?

14 **THE COURT:** It's a Thursday.

15 **MS. SWEENEY:** Thursday. That would be fine, Your
16 Honor.

17 **THE COURT:** 9:30?

18 **MR. SWIFT:** That works, Your Honor.

19 **THE COURT:** Okay.

20 So, Noor Salman, I'm setting another court date for -- I
21 guess that's next Thursday, March 9th at 9:30 for bail review
22 and status on ID and -- and removal.

23 That will be your next court date unless you hear from
24 your lawyer otherwise, okay?

25 (Translation by the interpreter.)

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THE DEFENDANT: (No audible response.)

THE CLERK: Counsel?

(Off-the-record discussion.)

(Pause in the proceedings.)

THE COURT: Okay. Is there anything further?

MS. SWEENEY: No, Your Honor. Thank you.

MR. SWIFT: No, Your Honor.

THE COURT: All right. Thank you.

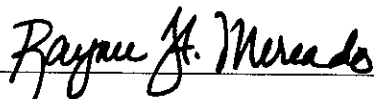
And thank you for being here.

(Proceedings were concluded at 11:38 A.M.)

--o0o--

CERTIFICATE OF TRANSCRIPTION OF ELECTRONIC RECORDING

I, RAYNEE H. MERCADO, hereby certify that the foregoing is a true and correct transcription to the best of my ability, of the above pages, of the official electronic sound recording provided to me by the U.S. District Court, Northern District of California, of the proceedings taken on the date and time previously stated in the above matter.



Raynee H. Mercado

Thursday, March 23, 2017

EXHIBIT 4

Object Id

S:_I100002129029689:837195003028126:5

Time 2015-02-07 18:17:55 UTC**Type** Search**Summary** You searched for "bi"**Object Id** S:_I100002129029689:837195003028126:4**Time** 2015-02-07 18:15:15 UTC**Type** Comments**Summary** Noor Zahi commented on a post from February 7, 2015. `i love that she's giving him a chance for a good life.`**Object Id** S:_I100002129029689:836971083050518:4**Time** 2015-02-07 18:14:41 UTC**Type** Likes**Summary** Noor Zahi liked this post from February 2015.**Object Id** S:_I100002129029689:835229226558037:76**Time** 2015-02-07 18:13:22 UTC**Type** Status Update**Summary** <http://www.cnn.com/2015/02/05/world/isis-jordan/> Isis messed with the wrong people i'm proud of jordan they aren't all talk and pose for pictures unlike some people a leader takes action!!**Object Id** S:_I100002129029689:837207966360163**Time** 2015-02-07 17:46:24 UTC**Type** Likes**Summary** Noor Zahi liked this post from February 2015.**Object Id** S:_I100002129029689:835229226558037:75**Time** 2015-02-07 17:46:04 UTC**Type** Comments**Summary** Noor Zahi commented on a post from February 7, 2015. `xan you do that on my husband because he was sleeping while i was in pain!`**Object Id** S:_I100002129029689:836971083050518:3**Time** 2015-02-07 17:45:11 UTC**Type** Likes**Summary** Noor Zahi liked this post from February 2015.**Object Id** S:_I100002129029689:835229226558037:74**Time** 2015-02-07 17:44:34 UTC**Type** Likes**Summary** Noor Zahi liked this post from February 2015.**Object Id** S:_I100002129029689:835229226558037:73**Time** 2015-02-07 17:44:15 UTC**Type** Comments**Summary** Noor Zahi commented on a post from February 7, 2015. `Mashallah beautiful`**Object Id** S:_I100002129029689:836971083050518:2**Time** 2015-02-07 17:44:06 UTC**Type** Likes**Summary** Noor Zahi liked this post from February 2015.**Object Id** S:_I100002129029689:835229226558037:72**Time** 2015-02-07 17:41:51 UTC**Type** Search

Time 2015-02-04 05:52:20 UTC
Type Likes
Summary Noor Zahi liked this post from February 2015.
Object Id S:_I100002129029689:835229226558037:4

Time 2015-02-04 05:05:05 UTC
Type Comments
Summary Noor Zahi commented on a post from February 3, 2014. `really? who wouldn't vaccinate their child? i'm sending my son to a school where children are required to be vaccinated! !`
Object Id S:_I100002129029689:835229323224694:2

Time 2015-02-04 02:33:31 UTC
Type Status Update
Summary Noor Zahi added 4 new photos. Skateboard day!
Object Id S:_I100002129029689:835235236557436

Time 2015-02-04 02:29:15 UTC
Type Likes
Summary Noor Zahi liked this post from February 2015.
Object Id S:_I100002129029689:835229226558037:2

Time 2015-02-04 02:24:22 UTC
Type Comments
Summary Noor Zahi commented on a post from February 3, 2015. `i felt so bad for him it pissed me off these isis people aren't muslim to me !`
Object Id S:_I100002129029689:835229323224694:1

Time 2015-02-04 02:23:30 UTC
Type Likes
Summary Noor Zahi liked this post from February 2015.
Object Id S:_I100002129029689:835229226558037:1

Time 2015-02-03 23:59:00 UTC
Type Search
Summary You searched for
Object Id S:_I100002129029689:830890776991882:5

Time 2015-02-02 23:57:19 UTC
Type Likes
Summary Noor Zahi liked this post from February 2015.
Object Id S:_I100002129029689:830568063690820:127

Time 2015-02-02 23:55:28 UTC
Type Likes
Summary Noor Zahi liked this post from February 2015.
Object Id S:_I100002129029689:830568063690820:126

Time 2015-02-02 23:50:15 UTC
Type Likes
Summary Noor Zahi liked this post from February 2015.
Object Id S:_I100002129029689:830568063690820:125

Time 2015-02-02 23:48:53 UTC
Type Likes
Summary Noor Zahi liked this post from February 2015.
Object Id S:_I100002129029689:830568063690820:124

Object Id

S:_I100002129029689:815892481825045:55

Time 2015-01-11 03:27:17 UTC**Type** Likes**Summary** Noor Zahi liked this post from January 2015.**Object Id** S:_I100002129029689:815892481825045:54**Time** 2015-01-11 03:27:11 UTC**Type** Likes**Summary** Noor Zahi liked this post from January 2015.**Object Id** S:_I100002129029689:815892481825045:53**Time** 2015-01-10 22:25:18 UTC**Type** Likes**Summary** Noor Zahi liked this post from September 2014.**Object Id** S:_I100002129029689:815892481825045:52**Time** 2015-01-10 22:18:15 UTC**Type** Likes**Summary** Noor Zahi liked this post from January 2015.**Object Id** S:_I100002129029689:815892481825045:51**Time** 2015-01-10 22:17:48 UTC**Type** Likes**Summary** Noor Zahi liked this post from January 2015.**Object Id** S:_I100002129029689:815892481825045:50**Time** 2015-01-10 20:50:00 UTC**Type** Likes**Summary** Noor Zahi liked this post from January 2015.**Object Id** S:_I100002129029689:815892481825045:49**Time** 2015-01-10 20:49:40 UTC**Type** Likes**Summary** Noor Zahi liked this post from January 2015.**Object Id** S:_I100002129029689:815892481825045:48**Time** 2015-01-10 20:41:18 UTC**Type** Likes**Summary** Noor Zahi liked this post from January 2015.**Object Id** S:_I100002129029689:815892481825045:47**Time** 2015-01-10 19:28:55 UTC**Type** Status Update**Summary** I don't consider the people that do terrorist attacks muslim ..Islam is a peaceful and beautiful religion if followed right...Sure we have tempers sometimes we are loud, curse or throw a shoe but never has a bomb been dropped in my parents home only the "F" bomb when things got crazy.**Object Id** S:_I100002129029689:816345271779766**Time** 2015-01-10 19:16:43 UTC**Type** Likes**Summary** Noor Zahi liked this post from January 2015.**Object Id** S:_I100002129029689:815892481825045:46**Time** 2015-01-10 19:00:42 UTC**Type** Likes**Summary** Noor Zahi liked this post from October 2014.