

**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.

**MOTION FOR LEAVE TO FILE SUPPLEMENTAL
BRIEFING REGARDING WITNESS INVOCATION OF FIFTH AMENDMENT**

Comes now the undersigned attorney who respectfully moves this honorable Court to authorize leave to file supplemental briefing regarding the potential invocation of the Fifth Amendment by “Nemo”.¹

As the court is aware, in its Omnibus Motion in Limine, the defense requested admission, under Fed. R. Evid. 404 (b), of Nemo’s testimony concerning Mateen’s prior statement admitting he (Mateen) had deceived Ms. Salman, and other family members, by telling them that he was going to see Nemo. This evidence is relevant to rebut the Government’s allegation that Ms. Salman aided and abetted Mateen’s attack by fabricating a cover story for Mateen, that he was going to see Nemo on the night of the attack, and that she later lied to law enforcement by telling them Mateen had told her he was going out with Nemo.² The defense requested submission of

¹ This motion uses only Nemo’s nickname to protect his privacy.

² The Government contends that, after speaking to her mother-in-law, Salman aided and abetted the attack by sending two text messages. At 5:55 P.M, Ms. Salman texted, “If ur mom calls say nimo invited you out and noor wants to stay home.” A second text added, “She asked where you were xoxo. Love you.” The Defense contends that Ms. Salman simply told Mateen to let his mother know where Salman believed he

this testimony based on the FBI's video-taped interview of Nemo shortly after the Pulse night club attack. Nemo's testimony is material to the defense.

The defense was notified by the Government on January 10, 2018, that Nemo intends to invoke the Fifth Amendment if called to the stand during trial. On January 12, 2018, co-counsel, Ms. Linda Moreno, made contact with Nemo's counsel, Daniel Onorato, to verify that Nemo would in fact be invoking the Fifth Amendment, and to determine as to the basis of the invocation. Mr. Onorato affirmed that Nemo intended to invoke the Fifth Amendment should he be called to testify, but declined to explain the basis.

Nemo's intent to invoke the Fifth Amendment was unknown to the defense at the time of its initial submission to this Court. Defense requests leave to provide supplemental briefing to the Court regarding the issue of Nemo's invocation of the Fifth Amendment, and requests a hearing with Nemo present so that the Court may determine whether Nemo may invoke the Fifth regarding his previously proffered testimony.³ The defense anticipates that the hearing will not take more than two hours. The government does not oppose the defendant's request to file supplemental briefing on this issue, so long as the defendant will not oppose a request by the government to reply should that be necessary, and the government takes no position on the request for a hearing until such time as the government can evaluate the legal basis for the request.

For the reasons set forth above, the defense requests leave to file supplemental briefing regarding witness invocation of his Fifth Amendment right.

was—having dinner with Nemo. Nemo's testimony that Mateen regularly told Salman that he was meeting Nemo when he was actually going to meet other women is relevant to the Defense's contention.

³ Nemo's counsel, Daniel Onorato, indicated he is currently checking with his client whether his client is amenable to subpoena by service to Mr. Onorato. In the event that Mr. Onorato declines service, counsel requests the assistance of this court in subpoenaing Nemo for his attendance.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the Defendant's Motion for Leave to File Supplemental Briefing Regarding Invocation of Fifth Amendment by "Nemo", was sent by CM/ECF on January 16, 2018 to all counsel or parties of record on the service list.

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