

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION
HONORABLE STEPHEN V. WILSON
UNITED STATES DISTRICT JUDGE PRESIDING

- - -

United States of America,)
PLAINTIFF,)
VS.) NO. CR 20-579 SVW
Richard Ayvazyan, et al.,)
DEFENDANT,)
_____)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

LOS ANGELES, CALIFORNIA
KASTIGAR MOTIONS - DAY ONE
WEDNESDAY, JULY 28, 2021

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<u>EXHIBIT</u>	<u>I.D.</u>	<u>IN EVID.</u>
(None.)		

1 LOS ANGELES, CALIFORNIA; WEDNESDAY, JULY 28, 2021

2 10:24 A.M.

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6 THE CLERK: Item 2, CR 20-579-SVW, United States
7 of America versus Richard Ayvazyan, et al.

8 Counsel, please state your appearances.

9 MR. FENTON: Good morning, your Honor.
10 Christopher Fenton, Niall O'Donnell, Mark Cipoletti,
11 Ranee Katzenstein and Allison Westfahl for the
12 government.

13 MR. JOHNSON: Good morning, your Honor. Peter
14 Johnson on behalf of Vahe Dadyan, who is present and
15 assisted by the court's Armenian-speaking interpreter.

16 MS. WIRSCHING: Good morning, your Honor.
17 Jennifer Wirsching for Mr. Artur Ayvazyan, who is
18 present.

19 MR. MESEREAU: Good morning, your Honor. Thomas
20 Mesereau for Artur Arvazyan.

21 MR. LITTRELL: Good morning, your Honor. John
22 Littrell for Mary Terabelian, who is present.

23 MR. RAM: Good morning, your Honor. Ashwin Ram on
24 behalf of Richard Ayvazyan, along with Michael Keough and
25 Nick Silverman.

1 MR. LITTRELL: Yes. And I also have Ryan Frasier
2 with me for Ms. Terabelian.

3 THE COURT: Okay. This is the time for hearing on
4 the defense motions regarding Kastigar. And let me ask
5 the defense, whoever -- I guess it would be Mr. Ram and
6 Mr. Littrell; correct? Are you going to be the principal
7 participants?

8 MR. LITTRELL: Yes, your Honor, for the Kastigar
9 portion.

10 THE COURT: And is that your co-counsel?

11 MR. LITTRELL: This is Ashwin Ram.

12 THE COURT: Okay. I didn't see you.

13 MR. RAM: Sorry about that.

14 THE COURT: Wearing different glasses today;
15 right?

16 MR. RAM: Yes.

17 THE COURT: In any event, what I want to do in
18 light of the briefing and the government's presentation
19 inquiry as to whether the defense believes there is a
20 credibility issue with regard to any of the government
21 parties who responded with affidavits, I will ask you
22 first, Mr. Littrell; in other words, is anyone lying on
23 these affidavits, and if so can you give me some idea of
24 where they are lying and what you would propose to
25 cross-examine?

1 MR. LITTRELL: I will say for Ms. Terabelian, and
2 I speak only for her, there are portions of the
3 declarations that are inaccurate and I think misleading,
4 and so I do want to cross-examine on those.

5 However, I will say this. I do think that
6 there are enough undisputed facts in the record right now
7 for the Court to rule in the defense's favor.

8 THE COURT: I see. All right. Well, that is part
9 of what I was inquiring about.

10 Let me ask you more specifically before I
11 leave you, Mr. Littrell, which of the lawyers or agents
12 would you want to cross-examine regarding your position
13 that they were inaccurate or misleading?

14 MR. LITTRELL: I would want to preserve the option
15 to cross-examine all the declarants. I think the focus
16 will be on Mr. Fenton, Mr. Paetty, Mr. Palmerton, but I
17 think depending on the answers to their questions I am
18 going to need to follow-up with the rest. So right now I
19 am prepared to cross-examine all of them.

20 THE COURT: I see. And the same questions of you,
21 Mr. Ram.

22 MR. RAM: Yes, your Honor. We believe
23 cross-examination is necessary of both the attorneys and
24 the agents.

25 We do not plan on calling or cross-examining

1 Mr. Julian Andre, who has left the U.S. Attorney's office
2 I believe in February 2021. He submitted a declaration.
3 We do not intend to cross-examine him unless something
4 dramatic --

5 THE COURT: But in your cross-examination, are you
6 going to take the same general position that Mr. Littrell
7 announced? In other words, are you going to
8 cross-examine with the aim of showing that some or all of
9 the witnesses are lying or that their declarations are
10 inaccurate or misleading?

11 MR. RAM: It is certainly not necessary to show
12 that they are lying. There are misleading statements.
13 For example, I didn't directly review -- may I take this
14 off, your Honor?

15 THE COURT: May you take what off?

16 MR. RAM: This plastic thing.

17 THE COURT: No. Keep it.

18 MR. RAM: Okay.

19 THE COURT: All right. I get the point. So let's
20 begin. Please make the examinations pointed. I mean,
21 the Court of course has sifted through these motions, the
22 pretrial motions, and of course paid close attention to
23 the trial. So the Court is familiar with the subject
24 matter.

25 Is there any decision between you as to who

1 would go first?

2 Let me ask, you are the only lawyers
3 representing parties directly concerned; correct? I
4 mean, the only defendants who had standing on this issue
5 or defendant Richard Ayvazyan; correct?

6 MR. RAM: That's correct. The reason we weren't
7 sitting at counsel table is we were under the impression
8 your Honor was going to do the other motions first prior
9 to the Kastigar hearing.

10 THE COURT: No. Of course I have considered the
11 other post trial motions. I didn't think they required
12 any examination. They were based upon the record. The
13 arguments were clear to me.

14 I don't think that I need further argument on
15 those motions unless one of the lawyers feels that there
16 was something in the exchange of briefs that wasn't made
17 clear or wasn't presented properly. And I will hear from
18 that lawyer if that is the basis of argument.

19 Do any of the defense lawyers want to be heard
20 on that basis?

21 MS. WIRSCHING: Your Honor, no. We believe we
22 would submit.

23 THE COURT: I thought that both sides did a very
24 adequate job.

25 MS. WIRSCHING: I think there was nothing new for

1 us. So I would ask the Court since we are not parties
2 for -- since Mr. Artur Ayvazyan is not a party to the
3 Kastigar, I would like to clarify that we are not
4 required to remain for that hearing.

5 THE COURT: Okay.

6 MS. WIRSCHING: Thank you, your Honor.

7 MR. JOHNSON: Peter Johnson on behalf of Vahe
8 Dadyan. I just have brief comments. Two minutes.

9 THE COURT: Go ahead. You can take the lectern if
10 you would like.

11 MR. JOHNSON: Your Honor, this is related to the
12 Rule 29 motion and the motion to related to new trial,
13 Rule 33. I would just like to highlight for the Court
14 that the government started to discuss facts that were in
15 the guilty plea, not during trial, not evidence that was
16 offered during trial.

17 I would like to focus the Court on footnote 3
18 in the government's brief, where the government makes
19 clear that the evidence that it talked about related to
20 Mr. Dadyan's personal benefit, \$75,000, was discussed
21 during the guilty plea phase, where the Court, as the
22 Court knows, rejected that plea, not during trial.

23 In addition to that, the government asked
24 the -- well, the Court asked the government to focus its
25 attention in the brief related to U.S. v. Brown.

1 The government offered four reasons why U.S.
2 v. Brown was distinguishable. They referenced facts that
3 were really not referenced in this particular case. They
4 argued that Mr. Vahe Dadyan had a personal benefit in
5 this case.

6 That evidence was not introduced in this
7 trial. If the Court recalls, the personal benefit that
8 Vahe Dadyan spoke about was \$75,000.

9 That benefit was referenced during the guilty
10 plea, not during the trial. The trial evidence was that
11 the -- I guess an inference that Mr. Dadyan received
12 \$50,000, but there was no evidence of how that money was
13 spent, and no evidence related to the V&D bank records.

14 Brown is applicable, your Honor, and I am
15 asking the Court for the judgment of acquittal or for a
16 new trial. Thank you.

17 MR. FENTON: Briefly, your Honor. What
18 Mr. Johnson said is not correct. Government Exhibit 1-N,
19 as in Nancy, is the bank record documentation featured
20 during the government's closing argument that shows that
21 Mr. Dadyan did receive a personal benefit of at least
22 \$50,000 that was front and center presented to the jury.

23 In addition, government Exhibit No. 10 is a
24 series of text messages also featured during closing and
25 during Special Agent Massino's testimony and extensively

1 covered, during which it was demonstrated that
2 Mr. Dadyan, who took a loan out in the name of Voyage
3 Limo, did not -- he transferred that in a different way
4 and he received it in the name of a different entity that
5 he created called V&D Limo, which is a second separate
6 entity created presumably for the purpose of receiving
7 that money. And it is certainly an inference that the
8 jury could have drawn reasonably based on the evidence
9 presented at trial. But the personal benefit is clearly
10 supported by evidence that was before the jury during the
11 trial.

12 Thank you, your Honor.

13 MR. JOHNSON: Just to respond, your Honor, Exhibit
14 1-N does not contain the bank records of V&D Limo. I
15 would ask the Court to look at that exhibit. What the
16 government did was use Exhibit 115, and if the Court
17 recalls, Exhibit 115 was the bubble diagram that
18 defendant Vahe Dadyan objected to from the beginning of
19 the case at pretrial, objected to it going back to the
20 jury because no witness took the stand and described that
21 exhibit. But what the Court should do is look at that.

22 There is money going over from the one
23 company, \$50,000 to V&D Limo. The government has asked
24 the jury for an inference to say that V&D Limo belonged
25 to Vahe Dadyan.

1 That inference may or may not be acceptable,
2 but there is no evidence that that money was for personal
3 gain. Not in 1-N, not in 115, and no testimony from any
4 witness.

5 MR. FENTON: Your Honor, again, just briefly, what
6 Mr. Johnson just said is not true. The bank records at
7 Exhibit 1-N are for Timeline Transport, the company that
8 belonged to Richard Ayvazyan that made two wire transfers
9 on July 10 and July 15 respectively, each for \$25,000, to
10 V&D Limo.

11 The reason why we know that that was
12 transferred to Vahe Dadyan is because government Exhibit
13 10, which is a series of text messages that discusses in
14 painstaking, detailed efforts to get Mr. Dadyan his cut
15 of the fraudulent stolen proceeds, says in order to pay
16 Mr. Dadyan you need to send the money to V&D Limo.
17 Please pay him. He is driving me crazy, calling me every
18 single morning.

19 It is right before the jury. It is evidence
20 that reasonably supports the inference that he had a
21 personal benefit.

22 In addition I would say, just to repeat, the
23 loan was taken out in the name of Voyage Limo. The money
24 was sent to a separate company called V&D Limo after
25 being routed through a series of fake companies, Runyan

1 Tax Service and Timeline Transport companies, that
2 belonged to the co-conspirators Tamara Dadyan and Richard
3 Ayvazyan, all of which shows that Mr. Dadyan knew that he
4 was participating in a conspiracy, knew that there were
5 players beyond Tamara Dadyan, and knew that he was
6 laundering the funds in addition to the fact that he was
7 taking out fraudulent money that he was using not for the
8 stated purpose but his own personal benefit.

9 THE COURT: Okay. So the parties who made the
10 motions for new trial or directed verdict, they have been
11 heard; correct?

12 MS. WIRSCHING: Yes, your Honor.

13 THE COURT: So they can remain or not depending
14 upon their inclination, but I would suggest that maybe
15 the parties that are not involved in the Kastigar allow
16 the parties who are going to be in the Kastigar to take
17 the counsel table.

18 Thank you.

19 And I have no preference on any order of
20 things. Mr. Littrell, do you want to go forward first?
21 I would suggest you begin with Fenton.

22 MR. LITTRELL: Here is my suggestion. I do have a
23 couple of motions before we begin.

24 THE COURT: Yes.

25 MR. LITTRELL: First I would move to strike

1 portions of the declarations that are hearsay and lack
2 foundation. In particular, the declarations of Julian
3 Andre and Mr. Clark are loaded with hearsay and
4 statements that lack foundation. So I would move to
5 strike those entirely.

6 Second, I would move for production of in
7 camera documents that were submitted only to the Court.
8 I think we have objected to those, but as we prepare to
9 cross-examine witnesses it is vital that we have the
10 documents that they submitted to the Court so we can test
11 their credibility, for example, with the grand jury
12 transcripts, the prosecution memo and other items.

13 Third, depending on the rulings of those, I
14 would ask the Court to rule in the defendants' favor
15 right now just based on the undisputed documents that are
16 in the record.

17 And just to preview where I think we are
18 going, I think the government's declarations potentially
19 confess that they were all exposed to tainted evidence.
20 Nearly all of them used it most directly, some
21 indirectly.

22 The independent sources that they cite for the
23 same evidence either aren't independent because they
24 didn't predate -- they're tainted evidence or they are
25 just not the same type of evidence. I don't think they

1 have met their burden on harmless error either.

2 I think most of the cross-examination today is
3 going to be directed at conclusory statements by them,
4 statements like I didn't develop any leads based on that
5 evidence. My trial strategy was not influenced by that
6 evidence.

7 Those are the types of statements that case
8 law supports the idea that they don't really have any
9 value in a Kastigar analysis. There are self-serving,
10 conclusory, just declarations that they didn't do
11 anything wrong. And the really Court can't rely on
12 those.

13 So the purpose of today's hearing is to test
14 those conclusory allegations, but if the Court excludes
15 those conclusory allegations we win.

16 THE COURT: I am not going to at this time. So
17 let's begin, and I suggest we begin with Mr. Fenton as
18 the first witness.

19 MR. LITTRELL: Just before we do that, I would ask
20 for Jencks material for this witness. That would include
21 any texts or e-mails or other statements he has made that
22 relate to his testimony today, which is a pretty broad
23 category of documents.

24 THE COURT: I don't know of any Jencks material.
25 Let's begin.

1 MR. LITTRELL: And also ask to exclude witnesses,
2 your Honor. Witnesses that may testify after Mr. Fenton.

3 THE COURT: I see. So that would be Agent
4 Palmerton. It could be Clark, Massino and --

5 MR. LITTRELL: Ms. Ahn and Mr. Andre.

6 THE COURT: And Mr. Paetty. And those witnesses
7 can come back as --

8 MR. LITTRELL: And Mr. Faerstein, just to clarify
9 also. Also I believe Ms. Katzenstein, who is at counsel
10 table, she may be a witness in this hearing also,
11 depending on how the testimony from the other witnesses.

12 She was involved in the trial. I think she
13 consulted strategically throughout. So we may want to
14 call her as a witnesses also.

15 THE COURT: But in terms of directing the
16 examination from the defense side of Mr. Fenton, if all
17 the lawyers are gone, who will do that?

18 MR. LITTRELL: I think there is a number of fine
19 lawyers left at the table here.

20 THE COURT: I mean, is that satisfactory? In
21 other words, are the lawyers remaining in a position to
22 ask questions of Fenton if necessary?

23 MS. KATZENSTEIN: Your Honor, Rane Katzenstein
24 speaking. They are, your Honor. We have other lawyers
25 present at counsel table. I would note that there has

1 been no indication to me that I would be called as a
2 witness, and that in correspondence from defendants
3 seeking prior materials, e-mails, et cetera, of
4 individuals involved in this case, a list of individuals
5 was provided.

6 My name was never included in that list, even
7 though my role as the chief of major frauds has been
8 known all along to defense counsel.

9 THE COURT: All right. Let's begin.

10 (The witness was sworn.)

11 THE CLERK: Thank you. Please be seated.

12 State your full name and spell it for the
13 record.

14 THE WITNESS: Christopher Fenton. F, as in fox,
15 E-N-T-O-N.

16

17 DIRECT EXAMINATION

18 BY MR. RAM:

19 Q Good morning, Mr. Fenton. You have been on this
20 case since its inception; is that right?

21 A Yes.

22 Q And that is roughly in June of 2020?

23 A June 12, '20.

24 Q Okay. And in your capacity as actually the only
25 attorney currently on the case from the inception, you

1 have made thousands -- or hundreds of decisions related
2 to the investigation and prosecution of this case; is
3 that true?

4 A I have not quantified the number of decisions that
5 I have made in this case.

6 Q Let's talk about some of the decisions you made.
7 At the start of the case, did you come up with an
8 investigation plan?

9 A Yes.

10 Q Okay. And what did that investigation plan look
11 like?

12 A We initially received a tip from a suspicious
13 activity report that was routed through our consultants
14 and --

15 THE COURT: Why is that relevant? The relevant
16 part of this examination is not how the case began, but
17 how the case may or may not have been influenced by the
18 Kastigar allegation.

19 So I don't know that we ought to -- and it is
20 going to be less productive if we approach things that
21 way. That is why I said to the extent it can be done,
22 the questions ought to be pointed.

23 MR. RAM: Okay.

24 Q Let's break it up this way. So you have made fair
25 to say significant volume of decisions before

1 October 20th in exposure to the Miami phones and
2 information therefrom; true?

3 A I'm sorry?

4 Q Just to divide up -- if you were to break up
5 periods, so let's take the period of the inception.

6 THE COURT: I don't know -- I don't want to
7 interrupt as you begin, but of course he has. I mean,
8 why wouldn't he? He said as much. So how does that help
9 me. I am here to be helped.

10 MR. RAM: Yes, your Honor. It is all for you. I
11 want to highlight that --

12 THE COURT: I know that he was the Department of
13 Justice lawyer. He made a lot of decisions both before
14 and after.

15 MR. RAM: Okay. And that is the question.

16 Q And after October 20th -- October of 2020, there
17 were hundreds of decisions made on this case involving
18 its building a case, its investigation and prosecution;
19 true?

20 A I'm sorry. Can you just repeat the question?

21 Q After October 20th -- you know October 20th. That
22 date is the arrest and the initial information coming
23 from CBP about information on the Miami phones; right?
24 That date October 20th, you understand what that is?

25 A I know that on October 19th the defendants were

1 stopped in Miami, and on October 20th they were arrested
2 and taken into custody. Yes.

3 Q Okay. And after October 20th of 2020, you made
4 several investigative decisions, including issuing
5 subpoenas, interviewing witnesses, reviewing documents;
6 right?

7 A I made decisions after October 20th with respect to
8 the investigation, correct.

9 Q And your investigation continued all the way up
10 through -- frankly, up through the trial; is that right?

11 A We continued to investigate after October 20th.

12 Q And in fact at trial you are aware that one of the
13 agents testified that the investigation is still ongoing
14 now?

15 A My understanding of what the agent was saying was
16 that there were certain -- there was such voluminous
17 amounts of money that the defendants stole in this case
18 that we were not able to trace all of that money.

19 The investigative strategy from the beginning
20 was to follow the money from day one. We followed the
21 money before, we followed the Monday after October 20th.

22 Q Mr. Fenton, did you understand my question? It was
23 simply do you remember at trial Agent Clark testified
24 that the investigation --

25 THE COURT: I remember that. So far you haven't

1 asked a question, Mr. Ram, which is helpful to me trying
2 to make a correct decision here. I am listening closely
3 and you are just -- you know in the stratosphere. Let's
4 get down to the meat of this.

5 MR. RAM: Okay.

6 Q After October 20th, did you institute any type of
7 procedural safeguards to protect against agent or
8 prosecutorial exposure to information from the Miami
9 phones?

10 MR. CIPOLLETTI: Objection. Basis.

11 THE COURT: Overruled.

12 MR. CIPOLLETTI: Objection -- well, first of all,
13 lack of foundation and relevance.

14 THE COURT: Overruled.

15 Q BY MR. RAM: Go ahead, Mr. Fenton.

16 A Can you repeat the question?

17 Q Sure. After October 20th, did you institute or
18 anybody in the prosecution team institute any type of
19 procedural safeguards regarding exposure to information
20 from the Miami phones?

21 A Can you be more specific?

22 Q Sure. Did you, for example, start regulating
23 access to information from the Miami phones after
24 October 20th?

25 A Access to the information was always regulated. We

1 understood this to be an issue where there was Fourth
2 Amendment issue and Miranda issue, and we treated it as
3 such because at the time the defendants had not raised a
4 Kastigar claim, and did not until May.

5 What we tried do with respect to the
6 information was reviewed it but we kept it segregated and
7 we did not rely on it for the purpose of any of the grand
8 jury proceedings or developing investigative strategy or
9 trial strategy with whatever limited exceptions we put
10 into my declaration.

11 Q And then so the obvious question I am asking you is
12 what procedural safeguards did you take. What did you do
13 to segregate it, to track use or access? Did you do
14 anything along those lines?

15 A Mr. Ram, I don't understand. What do you mean by
16 procedural safeguards?

17 Q Sure. Did you track who would access the
18 information and when and what they reviewed?

19 MR. CIPOLLETTI: Objection, your Honor. This
20 assumes facts not in evidence.

21 THE COURT: Overruled.

22 THE WITNESS: So we have a shared space on our
23 Department of Justice fraud section site that shared
24 space. It's only limited to members of the case team.
25 That is where the information resided throughout.

1 So there was limited access to that. We did
2 not log or otherwise record who would access the folder
3 that that information was contained in, no.

4 Q BY MR. RAM: So anyway, there is no access who
5 accessed the Zhadko phone or information on it at any
6 time

7 A Well, the Zhadko phone was not contained on the
8 S drive, or at least not in the S drive in the location
9 where I was aware of it.

10 Q My question is not about the S drive, Mr. Fenton.
11 It's about the Miami phones that have been suppressed.
12 The question is is there any type of log or tracking; who
13 accessed that information and when and for how long, for
14 example?

15 A No. The Cellebrite reports do not have any sort of
16 function that allows us to do that. The Cellebrite
17 reports, the software that was used to open and access
18 that information, as far as I am aware they did not have
19 any feature that allowed you to record whether it was
20 accessed or for how long the program was open.

21 Q Is it your position that the Department of Justice
22 and U.S. Attorney's office do not have access to
23 technology that would allow such tracking of use?

24 MR. CIPOLLETTI: Objection. Foundation.

25 THE COURT: Overruled.

1 THE WITNESS: I don't understand the question. Is
2 it my position --

3 Q BY MR. RAM: Sure. Do you understand that there are
4 mechanisms that could have been instituted to track who
5 is accessing this information and when?

6 A I did not look into whether or not there was a
7 mechanism to track or record access to that because at
8 the time we had no reason to believe that there was a
9 need to do so.

10 Q Okay. And in fact, you had I think you testified
11 earlier you had no idea that the information on the Miami
12 phones was tainted in any way until May; right?

13 A That is not the testimony. That is not my earlier
14 testimony, no. What I said --

15 Q Is that accurate? You had no idea the information
16 on the Miami phones was tainted until at least May of
17 2021; correct?

18 A Defendants did not provide notice of a Kastigar
19 claim until May 7, 2021.

20 Q Okay. I am not asking about the defendants'
21 notice. I am simply asking you did you have any reason
22 to believe -- and I think the answer to this question is
23 no, but so let me ask it again.

24 Did you have any reason to believe that the
25 evidence on the Miami phones was tainted and subject to

1 Kastigar restrictions prior to May?

2 A If by tainted you mean potentially subject to a
3 Kastigar claim, no. It was our understanding that there
4 was not a Kastigar issue, but that this was a Fourth
5 Amendment and Miranda issue.

6 Q So the answer to my question would be no. Prior to
7 May of 2021, you had no understanding whatsoever that the
8 information on the Miami phones would be treated as
9 compelled testimony?

10 MR. CIPOLLETTI: Objection. Asked and answered.

11 THE COURT: Overruled.

12 Q BY MR. RAM: What is the answer?

13 A Can you repeat the question?

14 Q Sure. I will do it again. Prior to May of 2021,
15 did you have any understanding or belief that the
16 information on the Miami phones was tainted and subject
17 to Kastigar protections?

18 A No. We did not believe that there was a Kastigar
19 claim. After the Court --

20 Q Mr. Fenton, it is a very simple question.

21 THE COURT: He answered the question. Move on.

22 MR. RAM: And was the answer no?

23 THE COURT: I understood the answer. If you don't
24 understand it. Then you will have to rethink it. He
25 answered the question.

1 MR. RAM: Okay.

2 Q And you understand in general if information is
3 compelled under the Fifth Amendment then it could --
4 basically it cannot be used against the defendant in any
5 way. You understand that as a basic framework?

6 A Are you asking me for a legal conclusion?

7 Q You are an attorney, aren't you, Mr. Fenton? You
8 are one of the lead attorneys in this case?

9 THE COURT: I don't find that to be a helpful
10 question. So move on to something that hopefully is more
11 helpful.

12 Q BY MR. RAM: Do you understand that there is
13 information on the Miami phones. You can't use that in
14 any way if it is subject to Kastigar protections. Do you
15 understand that?

16 A I understand that there is a -- there is an
17 applicable standard and that that standard prohibits use
18 and that if it is used there are certain other standards
19 that apply to determine whether or not that use harmed
20 the defendants in any way. Yes.

21 Q Okay. Let's walk through your access to what we
22 have been calling the Miami phones. First of all, do you
23 understand what I am referring to when I say the Miami
24 phones as a shorthand?

25 A I think it would be helpful if you could specify it

1 for me.

2 Q Okay. Why don't we pull up our demonstrative.

3 THE COURT: I don't need demonstratives. Just ask
4 questions.

5 Q BY MR. RAM: You understand it is five phones
6 seized from the defendants in Miami, right, Mary
7 Terabelian and Richard Ayvazian?

8 A Yes.

9 Q Now, let's talk about the Cellebrites. You
10 mentioned the word Cellebrites. What does the Cellebrite
11 of one of the Miami phones represent? What is on a
12 Cellebrite?

13 A What do you mean by represent?

14 Q So what is on the Cellebrites for the Miami phones?

15 A What is a Cellebrite report?

16 Q Yes.

17 A So a Cellebrite report, there is software that
18 generates a viewing platform for the user to view the
19 data that is contained on the phone. And the interface
20 divides the data or attempts to divide the data into
21 various different categories, which it does with some
22 success and some lack of success.

23 Q Okay. Let's pull up Kastigar Exhibit 20. When did
24 you first review the phones from the first three phones
25 that Cellebrites were created for for Miami?

1 Do you remember that off the top of your head?

2 A So my recollection is that I reviewed them on or
3 around February 11th, 12th and 19th or thereabouts.

4 And let me just clarify that point. I
5 received access on those particular days and I attempted
6 to review those Cellebrite reports on those particular
7 dates.

8 Q Okay. And the first phone you reviewed on
9 February 11th, you said -- which phone was that?

10 A I am not sure. It is the phone that was released
11 on February 11th.

12 Q I see. And that is the phone for Anton ending in
13 4579?

14 A I don't know where this description came from.

15 Q Okay. Do you have any reason to doubt that it was
16 the phone -- Anton's iPhone that ends in 4579?

17 A I have a reason not to know where that description
18 came from.

19 Q Okay. Well, let's take a look at Exhibit 31 of
20 your declaration, page 7. Okay.

21 Exhibit 31, page 7.

22 Okay. So on page 7 of Exhibit 31 -- first of
23 all, Exhibit 31, for the Court, that is an e-mail chain
24 between you and a Michael Morley and a Annamelda Paul. Do
25 you recognize that from your declaration?

1 A I don't have a copy of Exhibit 31 in front of me.

2 Q Okay. Do you remember what Exhibit 31 is to your
3 declaration?

4 A No.

5 Q Okay. So let me read you an e-mail.

6 A Mr. Ram, if you could provide me a copy I think it
7 would be very helpful.

8 Q I think we are going to put it up on the screen for
9 you.

10 A Okay.

11 Q And while we are doing that, let me just move on
12 here. You mentioned you received Cellebrite reports on
13 February 11th, February 12th and February 19th; is that
14 right? The first three?

15 A Yes.

16 Q Okay. And do you know what phones were represented
17 by those Cellebrite reports?

18 A The phones that were represented by those
19 Cellebrite reports are contained in the exhibit to my
20 declaration, the e-mail correspondence with the members
21 of the filter review team.

22 Q And I will represent to you that on February 11th
23 that phone was 1B4, and on February 12th it was 1B123,
24 which is the Zhadko phone.

25 MR. CIPOLLETTI: Objection, your Honor. That is

1 not even a question.

2 MR. RAM: This is just foundation for the witness.
3 Since the screen is not working, your Honor, I am just
4 letting him know that is in his declaration.

5 MR. CIPOLLETTI: Your Honor, he can show him the
6 declaration and he can show him the exhibit.

7 THE WITNESS: Can I see a copy of the exhibit
8 because I can answer the question very easily if I just
9 have a copy?

10 MR. RAM: Sure.

11 MR. CIPOLLETTI: Your Honor, the government can
12 provide Mr. Ram a copy of the exhibit he wants to show
13 him and to Mr. Fenton. May I approach?

14 THE COURT: Yes.

15 MR. RAM: Your Honor, it looks like the screens
16 aren't working. Can we take a two-minute recess to get
17 them working?

18 THE COURT: No.

19 Q BY MR. RAM: All right. Mr. Fenton, if you turn to
20 page 7 of Exhibit 31. It is actually page 5 of the
21 document in your binder.

22 A Page 5 of the exhibit?

23 Q Yes.

24 A Okay.

25 Q Okay. So you see on February 11th there is an

1 e-mail to you, and with the first Cellebrite. It says,
2 "The first one should be loaded in the folder phones."

3 And you write back two minutes later, it looks
4 like, at 7:34 p.m. -- and ask him, "How do I open this on
5 my computer?" Is that right?

6 A Yes.

7 Q Okay. Now, for the first three phones that we are
8 talking about here, the Zhadko phone, the phone that you
9 received on February 11th and the phone you received on
10 February 19th, did you review those phones -- those
11 Cellebrite reports for those phones?

12 A What do you mean by the Zhadko phone?

13 Q The Zhadko phone is the phone you received the
14 Cellebrite report on February 12th. And we can look at
15 that in the e-mail if you want to see it.

16 It is on page 4 at the bottom. And on top of
17 page 5, "Chris, the next one is loaded," and you can see
18 the 1B number on it. It is 1B123?

19 A Yes.

20 Q And you know from trial that 1B123 is the Zhadko
21 phone; right?

22 A I do not know that from trial, no.

23 Q You are not familiar with the -- not from trial?
24 From this investigation.

25 THE COURT: You know, Mr. Ram, I am trying to give

1 you a full opportunity, but it is very worrying and we
2 are not getting to a point of reference here. You are
3 asking him whether he received the Cellebrite reports for
4 three phones.

5 You didn't make clear until now that on
6 February 12th -- your question is that the Cellebrite
7 report relates to what you call the Zhadko phone. Let's
8 not use those types of terms.

9 Let's just call it something else because that
10 could be an argument one way or the other. Let's
11 identify phones. Some were taken from Mr. Ayvazyan, some
12 from Terabelian; correct?

13 MR. RAM: Yes, your Honor. And I apologize. This
14 would have taken 30 seconds, but the screens aren't
15 working so I can't put up the exhibits.

16 THE COURT: Are they working now?

17 MR. RAM: Can we take just like a two-minute
18 recess to get the screens working, your Honor?

19 THE WITNESS: I think I can --

20 (Clerk and court confer.)

21 THE COURT: Let's keep going. We will get a tech
22 up here and see if we can help it.

23 THE WITNESS: Based on this e-mail -- I'm sorry,
24 Mr. Ram. I'll let you ask.

25 Q BY MR. RAM: Go ahead. The question was on the

1 first three phones, can you identify them for the judge,
2 for your Honor?

3 A So my understanding based on Exhibit 31 is that the
4 phone that was uploaded on February 19th was QLA1B126-RK.

5 Q Okay.

6 A I'm sorry, sir.

7 Q So 1B126, what phone is that?

8 A Well, the number is the number that I just referred
9 to.

10 Q And does that have an owner name associated with
11 the phone that you are aware of?

12 A I am not aware of the owner name based on this
13 e-mail, no.

14 Q Okay. Well, let's look at Exhibit 2 to your reply
15 because it breaks down the different phones and has the
16 names on them. Okay. Well, you know what -- just I want
17 to identify for the record the first three phones.

18 So 1B126, what date did you get that phone,
19 the Cellebrite for that phone from your Exhibit 31 you
20 just read?

21 A What date did I receive -- what date was it
22 released to the filter team?

23 Q Correct.

24 A February 19, 2021.

25 Q So now looking at these first three phones --

1 Cellebrites?

2 A So that is the first phone.

3 Q On February 11th; correct?

4 MR. CIPOLLETTI: Objection. That misstates the
5 testimony.

6 Q BY MR. RAM: When you received the Cellebrite.

7 A I'm sorry, sir, I am not following.

8 THE COURT: I can't follow the questions precisely
9 either. They are very herky-jerky. There shouldn't be
10 any dispute what the records show. Why are we getting
11 into that?

12 The records show on what date Cellebrite's
13 reports were received and what the numbers of the phones
14 were as identified. And there should be some correlation
15 between those numbers and the phones used at trial.

16 MR. RAM: That's right. I think that is clear for
17 the record, your Honor.

18 THE COURT: Why did we spend the last 15 minutes
19 going over that?

20 MR. RAM: Because the screen wasn't working, your
21 Honor. It's an exhibit.

22 THE COURT: All right. Go ahead.

23 Q BY MR. RAM: Okay. So for those first three phones
24 that we have just described, you reviewed those
25 Cellebrite reports?

1 A I don't know what specific phones you are referring
2 to.

3 Q We just established that. So the phones you
4 received -- the Cellebrite reports you received on
5 February 11th, February 12th and February 19th. Those
6 are what I am calling the first three phones you
7 received.

8 A Yes. So the filter team released Cellebrite
9 reports for three telephones, one was February 11th, one
10 was on 12th and one was on 19th. The documentation
11 showing what phones were released on which particular
12 date is reflected in Exhibit 31 to the Fenton
13 declaration.

14 Q Correct.

15 A And that is the first Fenton declaration.

16 Q Correct. And so now my question is focusing on
17 those first three phones -- we're clear what phones we're
18 talking about now -- the Cellebrite reports for those
19 phones, did you review those Cellebrite reports?

20 A So yes. Yes. I reviewed portions. I reviewed
21 portions of those -- I reviewed some of the data that was
22 on each of those three phones.

23 Q So in plain English, you reviewed portions of those
24 Cellebrite reports?

25 THE COURT: Why do you repeat his answer? Don't

1 you think I am listening to his answer?

2 MR. RAM: Okay.

3 THE COURT: He said he reviewed certain parts of
4 those Cellebrite reports.

5 Q BY MR. RAM: okay. And as you sit here today, do
6 you remember which portions or messages you reviewed on
7 those first three Cellebrite reports?

8 A So based on my recollection and my review of
9 documentation in preparation for my testimony --

10 THE COURT: You are awful wordy.

11 THE WITNESS: I'm sorry, your Honor.

12 THE COURT: You don't have to give us a windup.
13 He asked whether you remember what portions of the
14 Cellebrite reports you reviewed. And you first can
15 answer yes or no.

16 THE WITNESS: Yes.

17 THE COURT: And then depending on your answer he
18 can ask another question and we can get into more detail.

19 MR. RAM: Yes, your Honor.

20 Q Is the answer yes to that question?

21 A Can you repeat the question?

22 Q Sure. Did you review -- well, the first question
23 was did you review those first three Cellebrites. I
24 believe you answered yes. The second question was do you
25 remember, as you sit here today, what portions of those

1 three Cellebrites that you reviewed?

2 A Yes.

3 Q What portions did you review?

4 A So in particular I have a memory of reviewing an
5 e-mail correspondence between somebody using the
6 Victoria Kauichko e-mail and Greystar, which is the
7 leasing management company for the apartment Unit 337 at
8 6150 Canoga Avenue.

9 Q Okay. And apart from that example, do you
10 specifically recall reviewing any other -- any of the
11 other text messages or e-mails or information on the
12 first three Cellebrites that you reviewed?

13 A No.

14 Q Let's talk about how you reviewed the phones. The
15 Cellebrites are large documents; right? I mean it's a
16 large document with multiple pages?

17 A No. I would not agree with that characterization.

18 Q How would you describe the Cellebrite?

19 A So the Cellebrite report, as I said earlier, is a
20 viewing platform. It's a platform for viewing data. And
21 when did you onto the platform, you are able to -- it is
22 an interface, and you are able to view certain data based
23 on choices that you make.

24 So it is not, for example, like a 1,000-page
25 document. The Cellebrite report is an interface where

1 the user can choose different data to look at or not
2 choose.

3 Q And what you did is you used search terms when you
4 were on the Cellebrite interface to review the phones?

5 A Yes.

6 Q And some of the search terms you used included
7 names and telephone numbers of known subjects and
8 aliases; right?

9 A Well, definitely names. Yes.

10 Q As opposed to?

11 A As opposed to -- what were the other types of -- if
12 we break it down and take it piece by piece, yes, I
13 looked for names that I knew.

14 So, for example, I put in the name Victoria
15 Kauichko and I looked to see -- I searched the Cellebrite
16 report to see if there are so.

17 Q And did you search for the defendants' names in the
18 case?

19 A I believe that I probably did. Yes.

20 Q Okay. So that would include, for example, Tammy
21 Dadyan. Did you search for her name?

22 MR. CIPOLLETTI: Objection to the relevance.

23 THE COURT: Overruled.

24 THE WITNESS: Yes. Yes, I likely would have. I
25 don't have a specific recollection, but based on my

1 general recollection, that is exactly what I did. Yes.

2 Q BY MR. RAM: Okay. And if you ran that name Tammy
3 Dadyan, it would come back with results basically using
4 the Cellebrite interface; is that right?

5 A No. Not necessarily. So it depends on whether or
6 not there are results hit for those search terms. So if
7 I put in the name Tammy Dadyan and there was no data that
8 used the phrase "Tamara Dadyan," then I would not get a
9 hit. That's how the Cellebrite works.

10 Q And did you search for the name Tammy as well?

11 A I don't recall. I don't recall.

12 Q Is that something you would have done knowing she
13 is referred to as Tammy?

14 A Well, I don't necessarily know that she is referred
15 to as Tammy.

16 Q You don't know that from this investigation?

17 A I don't know if I knew that at the time.

18 Q And at the time we are talking is February of 2021;
19 correct?

20 A At the time that I first received a copy of the
21 phones?

22 Q Yes.

23 A Yes. It was February 11th, February 12th and
24 February 19th, 2021.

25 Q Okay. And your testimony is that your

1 investigation had not revealed at that point that Tamara
2 Dadyan went by the name Tammy?

3 A No, sir. That is not my testimony.

4 Q So you were familiar that she used the name Tammy
5 then?

6 A That's also not my testimony. I don't recall
7 either way if I knew that she used the name Tammy. I
8 don't have a specific recollection of searching for that
9 nickname. What I can say is I definitely searched for
10 names, and other information that I had relating to the
11 targets of the investigation. Yes.

12 Q Okay. But your demurrer you stated that regardless
13 of what you may have reviewed on the Cellebrites, you
14 believed everything you saw as a result of the search
15 terms was cumulative to evidence you already had or knew?

16 A Yes.

17 Q And what does cumulative mean in that context?

18 A Redundant.

19 Q So nothing new?

20 A Nothing new in a substance, correct.

21 Q So if you did enter Tamara Dadyan or Tamara's name
22 or her phone that you may have known from her from
23 subscriber records, you would have seen text messages
24 talking about PPP fraud; right?

25 A I don't know that to be the case.

1 Q So as you sit here today, you have never -- even in
2 preparation for this Kastigar hearing you have never
3 queried a Cellebrite report for any of those first three
4 phones and searched for Tammy? Is that what you are
5 saying or you just don't remember doing that?

6 A I don't understand the specific question you are
7 asking me. You are asking me a couple -- several
8 questions at one time.

9 THE COURT: And the timing should be made clear.
10 What he did now and what he did in February.

11 Q BY MR. RAM: Okay. So let's focus on February 1st.
12 You testified a moment ago that anything you found, you
13 believed it was cumulative to what you already knew;
14 right?

15 A Yes. And the reason why was because at that
16 point --

17 THE COURT: Don't answer the reason why. Let him
18 ask a question.

19 Q BY MR. RAM: So my question to you was if you
20 searched for Tamara Dadyan or Tammy because you knew her
21 last name that is something -- you may have seen messages
22 relating to her then; right?

23 MR. CIPOLLETTI: Objection. Speculation. He just
24 said he doesn't remember doing it.

25 THE COURT: Well, I mean, that is a proper

1 objection. He doesn't remember.

2 MR. RAM: That is fair, your Honor. I can move
3 on.

4 THE COURT: Let's move on.

5 Q BY MR. RAM: Did the information you reviewed on
6 those first three Cellebrite reports expand your
7 knowledge of the case in any way?

8 A No. Not materially.

9 Q So your testimony is it did not add any information
10 to the investigatory basis?

11 A Not in any material sense, no.

12 Q Let's look at a few examples from the February --
13 the Cellebrite report you received on February 12th, and
14 just so we can clearly talk about the same phone, can we
15 pull up Kastigar Exhibit 20?

16 So the Cellebrite report you received on
17 February 12th is here. It is 1B123, is that right? And
18 that is consistent with your Exhibit 31 that you just
19 reviewed a few moments ago?

20 A I am not familiar.

21 MR. CIPOLLETTI: I am going to -- obviously I
22 don't think I have ever even seen this document or the --

23 Q BY MR. RAM: There are exhibits cited to the
24 declaration here, Mr. Fenton, if you want to look at the
25 screen.

1 A I am not familiar with this document. I think this
2 document is difficult to follow. If you want to go back
3 to Exhibit 31 I can certainly take a look and try to
4 answer.

5 Q So I am going to represent you to that you told us
6 earlier the February 12th Cellebrite that you received
7 was 1B123; right?

8 A I don't believe that I testified to that earlier,
9 no.

10 Q Do you want to go back to Exhibit 31 and confirm
11 that?

12 A I am just trying to be precise, Mr. Ram. I really
13 -- I don' --

14 THE COURT: Why all these questions about which
15 phone relates to what date? I mean, that should be a
16 matter that's in the record. Why are we falling on that.

17 As I understand it, you are now questioning
18 what parts of the report relating to those three phones
19 he remembers looking at. Isn't that where we are?

20 MR. RAM: Yes, your Honor.

21 THE COURT: So let's keep on track with that.

22 Q BY MR. RAM: All right. Why don't we look at a few
23 examples of information that is on 1B123 and I am going
24 to ask you some questions about it. So let's look first
25 at what has been marked as Kastigar Exhibit 22.

1 This is an excerpt from 1B123. My question to
2 you is did you come across this image in your review of
3 the Zhadko phone?

4 A No. I am not familiar with this document.

5 Q Okay. Well, the document I am representing to you
6 is from what we are calling the Zhadko phone, 1B123.
7 What I'm asking you is, when you reviewed -- this is
8 extracted from the Cellebrite, to be clear for the
9 record. So my question --

10 THE COURT: Why do you keep calling it the Zhadko
11 phone?

12 MR. RAM: Sorry, the 1B123 phone, which was
13 registered to Iulia Zhadko. Is that a better way of
14 saying it, your Honor?

15 THE COURT: All right.

16 Q BY MR. RAM: So to be clear, I am representing to
17 you that this comes from the Iulia Zhadko Cellebrite that
18 you received on February 12th.

19 So my simple question to you right now is only
20 do you remember as you sit here today reviewing this
21 image on the Zhadko cell phone, on the Cellebrite for the
22 Iulia Zhadko cell phone?

23 A I'm sorry. Can you repeat the question?

24 Q Sure. When you were reviewing 1B123, which was
25 registered to Iulia Zhadko -- you are familiar with that

1 phone from your participation in this case; right?

2 MR. CIPOLLETTI: Your Honor, I really don't
3 understand the multiple questions being asked or the
4 relevance of any of this.

5 THE COURT: All right. Try to understand it
6 better. Objection is overruled.

7 Q BY MR. RAM: Okay. So let me ask you the basic
8 question again. So you are familiar with the phone
9 registered to Iulia Zhadko that was labeled 1B123 as part
10 of the investigation; right?

11 A Yes, I am familiar with a phone that was labeled
12 1B123; correct.

13 Q Okay. And you are familiar that there was a
14 Cellebrite, which you just testified you reviewed from
15 that phone, that was given to you on February 12th of
16 2021; correct?

17 A The Cellebrite, yes.

18 Q So now we are moving to the next point. I am
19 representing to you that this image marked as Kastigar
20 Exhibit 22 is from that Cellebrite report. And my
21 question was did you see this when you reviewed the
22 Cellebrite report for the Iulia Zhadko phone?

23 A No.

24 Q Okay. Now, would you agree with me that this image
25 supports your trial narrative of an assembly line of

1 fraud?

2 A Sir, I have never seen this document before. I
3 don't -- I mean, I don't know what those attachments are.

4 Q So you don't recognize -- how about this
5 projecttype30@yahoo.com. Do you recognize that e-mail
6 address?

7 A Yes.

8 Q Okay. And what is the significance of that e-mail
9 address?

10 A At this point in time, it is cumulative information
11 I already if knew. We saw that e-mail address multiple
12 times.

13 Q And what is it. What does that address represent?

14 A It is an e-mail address that defendant Richard
15 Ayvazyan used in furtherance of the fraud.

16 Q And this message was sent to
17 Tamaradadyan@hotmail.com; right?

18 A That is what this document purports to show, yes.

19 Q And your testimony is you don't recall seeing this
20 when you did a search of the Iulia Zhadko Cellebrite
21 report; correct?

22 A My testimony is that I do not recall seeing this
23 document when I did -- when I reviewed this particular
24 Cellebrite report.

25 THE COURT: Now, we are in the timeframe of

1 February 12th; correct?

2 THE WITNESS: Yes. Yes, your Honor. As of
3 February 12th we were familiar with this Tamara Dadyan
4 Hotmail account so this information was known to us.

5 Q BY MR. RAM: And did you know that there were
6 e-mail exchanges between Iulia Zhadko from that e-mail
7 address and from Tammy Dadyan at that e-mail address
8 concerning Gusto employee reports?

9 A It was our assumption that that was the case. That
10 is what we put into our search warrant affidavits back in
11 November.

12 Q Maybe I wasn't clear with the question. Did you
13 know that there was e-mails -- not your assumption. Did
14 you know this e-mail existed when you prepared your
15 search warrant?

16 A I never seen this e-mail before.

17 Q Okay. And you don't know whether you saw this
18 image because as you testified a moment ago your only
19 specific recollection that stands out to you is the --
20 was one example. What was that? What's the one, just
21 remind me, the one specific image you remember from
22 reviewing the Cellebrite reports?

23 A I'm sorry, I am having a difficult time following
24 the question. What question are you asking me in
25 particular?

1 Q So you said you reviewed the first three Cellebrite
2 reports, but only one document or image stood out to you
3 that you specifically recollect today. And what was
4 that?

5 A So the one piece of data that I do recall seeing
6 was a communication from the Victoria Kauichko e-mail to
7 Greystar, which is a lease management company for the
8 apartment rented at Canoga, Unit 337 at 6154 Canoga
9 Avenue.

10 Q Okay. And as you sit here today, you don't know
11 whether you saw this image or not when you reviewed the
12 Cellebrite report for the Iulia Zhadko phone, correct?

13 A I believe I told you I did not see this image.

14 Q Well, look, do you remember not seeing it or do you
15 not remember?

16 A Sir, you asked me if I saw this image and my
17 response was no.

18 Q So your declaration states you only have a specific
19 recollection of seeing the Victoria Kauichko lease image
20 that you just referred to. Are you saying you don't --
21 you know that you didn't see any other images on the
22 Cellebrites or are you just saying that you don't
23 remember seeing any other images on the Cellebrites?

24 A I am trying to be very precise here. I know this
25 is important here. I don't understand the question.

1 Q So let me turn to your declaration, page 29,
2 paragraph 47.

3 A Do you have a copy for my reference?

4 Q We are going to put it up on the screen for you.

5 Okay, so now we are on -- it is coming up on
6 the screen.

7 Before we do that, why don't we go to the
8 Kastigar exhibit.

9 MR. CIPOLLETTI: Your Honor, if it is easier the
10 government can provide Mr. Fenton a copy of his
11 declaration.

12 THE COURT: All right.

13 THE WITNESS: Thank you. All right. I believe I
14 have a copy of the declaration. This is the first Fenton
15 declaration; correct?

16 Q BY MR. RAM: Correct.

17 A Which paragraph are you referring to?

18 Q Paragraph 50?

19 A 5-0?

20 Q Yes. You say, "I have a recollection of accessing
21 and reviewing the first three filtered Cellebrite reports
22 that the independent filter team released to me.
23 However, aside from the example I provided" -- and I
24 think you were referring to the Kauichko leasing image --
25 "I do not have a specific recollection of the information

1 that I saw."

2 Do you see that?

3 A Yes.

4 Q "I do not have a recollection as to whether I
5 accessed or reviewed the last two filtered Cellebrites."

6 So before we go there, when you say I do not
7 have a specific recollection of the information that I
8 saw, that means that as you sit here today or when you
9 prepared this declaration, you don't remember the other
10 images you saw; right?

11 You are not suggesting in your declaration
12 that you didn't see any other images on these three
13 Cellebrites?

14 A Was the timeframe you are inquiring about?

15 Q February through May.

16 A Are you inquiring about as I sit here today or are
17 you inquiring about when I prepared this declaration?

18 Q Great question. So in your declaration you say I
19 do not have a recollection as to whether I accessed or
20 reviewed -- sorry. Strike that.

21 The sentence before that, where you say you
22 only have a specific recollection of the Kauichko leasing
23 image; right?

24 A I don't believe that is the text in my declaration,
25 no.

1 Q I'm sorry. What?

2 A What you are reading is not what I wrote.

3 Q Okay. So put aside the declaration for a second.

4 I am saying when you say -- or let me just quote it. You
5 reference "specific recollection." Do you see that word?

6 A Mr. Ram, I don't know what you are specifically
7 asking me about. If you point me in the declaration and
8 read it to me I can answer the question.

9 Q Okay. Paragraph 50, lines 15 and 16, where you say
10 I do not have a specific recollection of the information
11 that I saw, and then you are referring to the three
12 Celebrities. And my question to you is you are not
13 suggesting that you didn't review any other documents or
14 images on those three Celebrities. You are just saying
15 as you sat here at the time you wrote this declaration
16 you don't remember the other images and documents you
17 saw; correct?

18 A Well, yes. I think the declaration speaks for
19 itself. On July 11th, 2021, I wrote, "I have a
20 recollection of accessing and reviewing the first three
21 filter Celebrite reports that the independent filter
22 team released to me and the other members of the
23 investigative team. However, aside from the example I
24 provided above, I do not have a specific recollection of
25 the information that I saw."

1 And that was accurate at the time that I wrote
2 it.

3 Q Correct. And now, let me restate my question so it
4 is clear. You are not saying what that sentencing you
5 didn't review any other images or documents on the
6 Cellebrite; correct? You are just saying that the only
7 image or document that you recall at this time when you
8 wrote the declaration?

9 A What I -- I'm sorry. Can you -- can you repeat it
10 again because here it says -- the first part I think
11 says --

12 Q I'm not asking you --

13 A Let me answer the question. The first part says,
14 "I have a recollection of accessing and reviewing the
15 first three filtered Cellebrite reports that the
16 independent filter team released."

17 Q Let me just make it simple. Did you only review a
18 single image on or document on those three Cellebrites?

19 A No.

20 Q So you reviewed more images and documents, but you
21 just don't specifically recall them; is that fair to say?

22 A Yes.

23 Q Okay. All right. So now let's go back to Kastigar
24 I think we were at Kastigar Exhibit 22. Let's look at
25 Kastigar Exhibit 23.

1 Okay. If we can blow up 251.

2 Based on your earlier testimony, you don't
3 recall seeing this image on the Iulia Zhadko phone;
4 correct?

5 A I'm sorry, are you asking me if I recall -- are you
6 asking me if this is familiar to me?

7 Q No. I am asking you when you reviewed the
8 Cellebrite for Iulia Zhadko, as you sit here now, you
9 don't recall seeing this image because you just testified
10 you only recall seeing a single image?

11 THE COURT: Why do you add your conclusion to a
12 question? That makes things less clear. Just ask the
13 question. You do that with some frequency and it doesn't
14 help.

15 MR. RAM: Understood, your Honor.

16 Q So the question to you is when you reviewed the
17 Iulia Zhadko Cellebrite, did you see this image or do you
18 recall seeing this image?

19 A When you say Iulia Zhadko Cellebrite, are you
20 referring to 1B123?

21 Q Yes.

22 A I have no recollection. I have never seen this
23 image before.

24 Q As you sit here now, do you recognize what it is?

25 A Sir, you I just told you I have never seen this

1 image before. I have no idea what this is.

2 THE COURT: Let me just -- see if I can direct the
3 questions as I understand them. The questions seem to be
4 regarding what you said in your declaration about having
5 a specific recollection about this, what was it,
6 Greystone [sic]?

7 THE WITNESS: Yes, your Honor. Greystar.

8 THE COURT: And the questions are along the lines
9 of when you talk about Graystone, is that the only image
10 you specifically remember now or do you just not have a
11 recollection of what you did see on the phone in
12 February?

13 THE WITNESS: I don't have a recollection of what
14 I saw on the phone in February other than the Greystar
15 e-mail.

16 THE COURT: Then with regard to this Exhibit 23 in
17 particular, you said you have never seen that before,
18 that image?

19 THE WITNESS: That's correct, your Honor. I have
20 never seen this image.

21 THE COURT: So when you say that it doesn't sound
22 like you don't have a -- it doesn't sound like it is a
23 recollection problem. You are saying categorically you
24 did not see that image before.

25 THE WITNESS: Yes, your Honor. And this does not

1 refresh my recollection.

2 THE COURT: Are you saying that this image that's
3 being shown to you now on Exhibit 23, you never saw
4 before today?

5 THE WITNESS: That's correct, your Honor.

6 THE COURT: And what the question seemed to be is
7 that there may be some contradiction between your having
8 a specific recollection about Greystone and not a clear
9 recollection about other things.

10 Notwithstanding those types of questions, are
11 you saying that the image on Exhibit 23 you have never
12 seen before?

13 THE WITNESS: That's correct, your Honor.

14 THE COURT: That is not something you don't
15 remember or do remember -- I mean, that is something you
16 clearly remember not seeing?

17 THE WITNESS: That's correct, your Honor. And can
18 I explain?

19 THE COURT: Yes.

20 THE WITNESS: So when I look at this image, the
21 images that are on the Cellebrite reports can be
22 presented in various formats. This format in particular,
23 this is a file name that's original to an MP4 and there
24 is a picture there to the right.

25 I just -- I don't recall ever seeing anything

1 like this. And I don't have a recollection of seeing
2 that photograph of Richard Ayvazyan's face.

3 MR. RAM: So, your Honor asked the exact question
4 I was going to.

5 Q Just to be clear, as you sit here now you do
6 recognize that to be Richard Ayvazyan's face?

7 A Yes.

8 Q Okay. And if you had seen this -- scratch that.

9 This would have evidentiary significance to
10 you if there is a selfie of someone on the Iulia Zhadko
11 phone; yes?

12 A Evidentiary significance meaning what exactly?

13 Q It was important to your investigation?

14 A That there is a picture of him on the phone? The
15 phone was found in his possession.

16 Q Correct. And now do you know what a selfie is?

17 THE COURT: Everybody knows. Even I know what
18 that is. And I don't know much about any of this stuff.

19 THE WITNESS: I don't know that this is a selfie.
20 I don't know what this is.

21 Q BY MR. RAM: Okay. Why don't we look at Kastigar
22 Exhibit 24. In fact, given the witness' last comment,
23 let's pull it up at Palmerton Exhibit O.

24 Have you read Agent Palmerton's declaration
25 submitted in connection with this hearing?

1 A Yes.

2 Q So you know Exhibit O -- do you know what Exhibit O
3 is to his declaration?

4 A I wouldn't know it until you show it to me but --

5 Q Take a look at the scene?

6 A Yes.

7 Q Okay. Is this the extract that Agent Palmerton
8 referred to in his declaration that he pulled from the
9 Iulia Zhadko phone?

10 A If you are representing to me that is what this is,
11 then I will accept that representation.

12 Q It is also Exhibit O to his declaration, to be
13 clear.

14 A Now I am confused.

15 Q I am showing you who is Exhibit O to Palmerton's
16 declaration.

17 A Yes, and I am saying I will accept that
18 representation.

19 Q And you understand Exhibit O is the excerpts that
20 Agent Palmerton talked about in his declaration that he
21 pulled of text messages from the Iulia Zhadko phone;
22 correct?

23 A I understand that these are text messages from one
24 of the three phones, yes. I don't know if they are
25 excerpts and I don't know which particular phone this

1 came from.

2 Q Okay.

3 A But it could be -- it's from one of those three
4 phones. It could be 1B123, yes.

5 Q Why don't we look at page 601 as an example. And
6 by the way, did you receive this, what is reflected in
7 Exhibit O from Agent Palmerton at some point?

8 A Yes.

9 Q When did you receive it from Agent Palmerton?

10 A I believe I received it on April 27th at -- I think
11 it was in the early to midafternoon Eastern.

12 Q And just to it is clear for the Court, Agent
13 Palmerton extracted the text messages at Exhibit O from
14 the Cellebrite of one of the first three phones that you
15 reviewed; correct?

16 MR. CIPOLLETTI: Objection?

17 THE COURT: Overruled.

18 THE WITNESS: I don't know. He represented to me
19 that these were text messages from one of the three
20 phones, yes.

21 Q BY MR. RAM: Okay. So now let's look at the text
22 message appearing on page 601 of this 918-page PDF
23 document.

24 And again, you are clear that this is from one
25 of the three Cellebrites that you reviewed. You do know

1 that; right? Exhibit 0 is derived from one of the three
2 Celebrities that you reviewed?

3 A Yes.

4 MR. CIPOLLETTI: Objection, your Honor. These are
5 compound questions.

6 THE COURT: Overruled.

7 THE WITNESS: Yes. I think I testified earlier my
8 understanding was -- and I think your representation was
9 these were text messages that was taken from one of those
10 three phones.

11 Q BY MR. RAM: Correct. So let's blow up the top half
12 of page 601 of Exhibit 0. Okay. Do you recognize the
13 phone number ending in 5533 labeled T?

14 A Yes.

15 Q What is that?

16 A Tamara Dadyan.

17 Q Okay. And the subject -- or the text of the text
18 says, "Rich for Vahe, we are going to send his part
19 here," and there is an image of a check attached to that
20 text message; correct?

21 A That is not what the text message but -- it says,
22 "Rich for Vahe, we going to send his part here," yes.

23 Q Okay. And you see that there is an image of the
24 check as well?

25 A I can't see the image but I believe it is a check,

1 yes.

2 Q Let's look at page 432 of Exhibit O.

3 Oh, I'm sorry. And Vahe, do you know a Vahe
4 in this case?

5 A I'm sorry, sir?

6 Q Is there a Vahe Dadyan as one of the defendants in
7 this case; is that right?

8 A Yes. He has been convicted.

9 Q Okay. Which means he is also a defendant in the
10 case; right?

11 A Mr. Ram, yes, he went to trial. He was convicted
12 by a jury on all counts.

13 Q So let's look at page 432.

14 Let's look at the top half of this. And then
15 we will scroll down in a second. So at the top here, the
16 phone number ends in 4170; correct?

17 A Yes.

18 Q And that is the Iulia Zhadko phone we have been
19 referring to?

20 A That phone number is associated with Iulia Zhadko;
21 correct.

22 Q I apologize. That is a better way of stating it.
23 And the message -- go ahead and read that text message.

24 A You want me to read the text message out loud?

25 Q Yes.

1 A "Tam, I just got response on one. They are asking
2 for payroll register for the full 2019 year, payroll
3 register for all available months in 2020. You think
4 Nvard can do the calculations?"

5 Q Let's scroll down on the same page. Okay. And
6 then the Iulia Zhadko -- I'm sorry. The Tamara Dadyan
7 phone is saying, "Send me the Fiber One Media WIN
8 number," and then she corrects, EIN number; is that
9 right?

10 A Yes.

11 Q And Fiber One Media is one of the companies that
12 you investigated in this case; correct?

13 A One of the fake companies. Yes.

14 Q And if you saw this image when you reviewed the
15 Iulia Zhadko's phone, this would have evidentiary value,
16 or value to your investigation. Would you agree with
17 that?

18 A I don't -- so I didn't see this image, and we knew
19 well in advance of this that Fiber One Media was a
20 company that was being used by the defendants in
21 furtherance of the fraud.

22 Q Well, you don't know if you saw this image, do you?
23 You don't recall seeing this image one way or the other.
24 Or are you saying you definitively did not see any text
25 messages from Tammy Dadyan's phone to Iulia Zhadko's

1 phone?

2 A You are showing me page 432 of 918 of a text
3 message that was sent to me on April 27th in the middle
4 of the afternoon. I don't have an independent
5 recollection of looking at page 432 of 918 on that
6 particular day or before or afterwards.

7 Q And I am asking you a different question. When you
8 reviewed the Iulia Zhadko Cellebrite where this was
9 extracted from?

10 A Yes.

11 THE COURT: Now you are going back to February.

12 MR. RAM: Yes. Yes, your Honor.

13 THE COURT: Let's keep the chronology and the
14 timeframes clear.

15 MR. RAM: Yes, your Honor.

16 Q So in the February of 2021 timeframe, when you
17 reviewed the Iulia Zhadko Cellebrite, as you sit here you
18 don't specifically recall seeing any text messages from
19 Tamara Dadyan -- between Tamara Dadyan and the Iulia
20 Zhadko phone; correct

21 A That's correct. I don't have a specific
22 recollection of that. It is possible, but I don't have a
23 specific recollection of that.

24 Q And my question to you was this would have had
25 value to your investigation, period; right? This text

1 message was valuable to your investigation?

2 A Value meaning what exactly? Because I really think
3 it depends. I am just trying to be helpful, but I just
4 don't understand your question. Value meaning what. For
5 what purpose.

6 Q To further your investigation into Fiber One Media,
7 into Tamara Dadyan, into Iulia Zhadko or Richard
8 Ayvazyan.

9 A So at this point in the investigation, I was aware
10 that Fiber One Media was being used by the defendants in
11 furtherance of the fraud and I think we in fact traced
12 payments back and forth to them.

13 THE COURT: I can't understand what you are
14 saying.

15 THE WITNESS: We were aware of this company, your
16 Honor, and we were tracing, you know, money to and from
17 this company, and we had run searches with this company's
18 name back in I think August or September to identify
19 whether or not it had taken out PPP or EIDL loans.

20 We learned at that time that they had. And
21 then we ran a bunch of searches. We served subpoenas
22 looking for these bank records, I believe, and trying to
23 find this money. And that all happened before we got
24 this phone.

25 THE COURT: But the question was framed in terms

1 of valuable. And you answered that valuable is too
2 general a term.

3 THE WITNESS: Right.

4 THE COURT: And I agreed. So valuable is not the
5 term we should use. Was it new information? Did it lead
6 to new information? Did it effect some strategy? Those
7 things would be more on point.

8 MR. RAM: Correct.

9 Q And so would the fact that the person you believed
10 to be Richard Ayvazyan using the Iulia Zhadko phone,
11 would him texting Tamara Dadyan about Fiber One Media
12 under investigation assist or further your investigation
13 in any way?

14 A This is something that if it had not been
15 suppressed we might consider using something like this as
16 evidence at a trial.

17 Q Okay. Would it surprise you if some of these same
18 text messages were in fact used at trial?

19 A No.

20 Q And they were used at trial because they are
21 valuable or had significant value in helping prove your
22 case against Richard Ayvazyan and Tamara Dadyan?

23 A So the reason -- and I just explained this. The
24 reason why they would have been used as evidence at trial
25 was because they had a use as evidence at trial to help

1 prove our case; that is correct.

2 Q And typically as a prosecutor you use evidence that
3 helps prove your case; right?

4 A Always.

5 Q Why don't we take a look at one more example on
6 page 561 of Exhibit O.

7 All right. So this is this again is
8 conversation with the Iulia Zhadko phone you recognized,
9 and it is with Tamara Dadyan, correct, the Tammy Dadyan
10 phone?

11 A I'm sorry, can you repeat the first part of that
12 question?

13 Q Sure. The first image you see -- you understand
14 Exhibit O is a text message from Iulia Zhadko's phone,
15 just like the other examples we saw?

16 A Iulia Zhadko is defendant Richard Ayvazyan.

17 Q So the Iulia Zhadko phone, the phone registered to
18 Iulia Zhadko?

19 A 1B123?

20 Q Ye.

21 A You are representing it me that this is a text
22 message that was taken from that phone. I have told you
23 before I am accepting that representation.

24 Q And if you had seen this text message --

25 A But I don't have independent knowledge of that. I

1 am accepting that representation.

2 Q Okay. Did you -- but you also received this
3 Exhibit O from Agent Palmerton; right?

4 A Yes. And I believe I testified to that.

5 Q Okay. So you have no reason to dispute that this
6 is a text message excerpted from Iulia Zhadko's phone;
7 right?

8 A No.

9 Q Now, if you look at the message here, it is talking
10 about --

11 A Well, Iulia Zhadko is not a person. So I mean,
12 that is the issue that I am having. So this is from
13 1B123. If that is in fact your representation, yes.

14 Q Correct. And it is the phone registered to Iulia
15 Zhadko as the owner; correct?

16 A I don't know.

17 Q You don't know that this phone was registered to
18 Iulia Zhadko?

19 A It is my understanding there is data that goes with
20 this phone. I don't have that data in front of me.

21 Q Okay.

22 A If you are representing to me that that is what
23 that says, that is fine, but you keep asking me about
24 Iulia Zhadko's phone. Iulia Zhadko is defendant Richard
25 Ayvazyan.

1 Q Okay. And this text message on the screen, would
2 you agree talking about -- it is a conversation -- under
3 your own testimony just now, it is from Richard Ayvazyan
4 to Tamara Dadyan; correct? That is your understanding of
5 this?

6 A That is my understanding. Yes.

7 Q And they are talking about if any funding places
8 are still accepting applications?

9 A Yes.

10 Q All right. So the fact that there is text messages
11 talking about seeking or submitting applications would be
12 helpful to your investigation, correct, especially if you
13 knew that Tamara Dadyan and Richard Ayvazyan were
14 e-mailing or text messaging about PPP loan applications
15 in February of 2021?

16 A We already knew that. The value of this --

17 Q Well, let me pause you. You said we already knew
18 that. My specific question is did you know that Richard
19 Ayvazyan and Tamara Dadyan were testing about PPP loan
20 applications and submitting them fraudulently under your
21 view of the case in February of 2021?

22 A I don't understand the question.

23 Q Sure. The question is did you know in February,
24 2021 that Richard Ayvazyan and Tamara Dadyan were sending
25 text messages back and forth to each other about

1 committing PPP loan fraud under your theory of the case?

2 A No. We believed that they were submitting the
3 fraudulent applications and we believed --

4 Q I'm sorry, my question is really simple.

5 A Sir --

6 Q When you say no, what are you saying no to?

7 A I am trying to answer your question.

8 Q So did you know they were sending text messages
9 back and forth or not. That is really the question.

10 A Who.

11 Q Did you -- Richard Ayvazyan.

12 THE COURT: Let's get through this. The questions
13 are you are looking at the phone that has been
14 identified -- identifying it as the February 12th phone.
15 And you are being shown some excerpts of what appear to
16 be e-mail or text exchanges between defendant Richard
17 Ayvazyan and defendant Tamara Dadyan.

18 And the question is before receiving this
19 Cellebrite report, understanding that you don't have a
20 complete recollection of what you looked at or not, but
21 assuming that you did look at this excerpt that he is now
22 referencing, is that something that you learned for the
23 first time? And let me make this a little more
24 straightforward.

25 You seem to be answering that you knew by the

1 time you got the Cellebrite report in February that there
2 were fraudulent loans, that Tamara Dadyan and Richard
3 Ayvazyan were very involved in fraudulent activity, but
4 the question specifically is did you know that in
5 connection with their fraud they were texting each other
6 and discussing the fraud?

7 THE WITNESS: No.

8 MR. RAM: Okay. Thank you, your Honor.

9 Q And moving on now -- we can take this exhibit down.
10 Is it fair to say you were eager to get the Cellebrites
11 from the Miami phones to review them as part of your
12 investigation and to build your case?

13 A So we were eager to get the phones so we could
14 potentially use the Cellebrite reports for evidence at
15 trial. And we were eager to get them produced to defense
16 counsel as soon as possible. But the eagerness was with
17 respect to potential trial evidence. At this point, the
18 investigation was basically done.

19 Q And you said that the investigation was basically
20 done. That is not true, though, and you have never said
21 that in any of your briefing until your reply brief
22 yesterday is the first time you said the investigation
23 was done.

24 So your testimony under oath today is that
25 your investigation concluded in February of 2021?

1 A That is not what I said, sir.

2 Q So your investigation did not conclude in February
3 of 2021; correct?

4 A No I said the investigation. It was basically at
5 the end at that point.

6 Q And what do you mean by at the end?

7 A We were preparing to supersede and then we were
8 preparing to go to trial.

9 Q So your investigation could not be at the end if
10 you hadn't even superseded yet; correct?

11 A That is incorrect.

12 Q You had a superseding indictment that came out in
13 March 9th of 2021; correct?

14 A Right.

15 THE COURT: We are getting nowhere with this. I
16 mean, what he is saying is that the investigation was
17 essentially complete before February 11, 12, 19. And you
18 are saying it wasn't.

19 MR. RAM: That was a bad question.

20 THE COURT: So if it wasn't complete, what was the
21 additional evidence between February 11th, February 10th,
22 let's say, and the date of the superseding indictment,
23 which was what, March?

24 MR. RAM: March 9th.

25 Q Well, frankly, you continued -- let's talk about

1 interviews. Let's just take an example from your Honor's
2 question. How many interviews did you conduct before
3 February 11th of 2021?

4 A How many interviews did I personally conduct?

5 Q The prosecution team.

6 A I don't have a recollection.

7 Q Do you have a recollection of conducting interviews
8 in February of 2021?

9 A I don't recall the dates. I don't recall the
10 specific dates that we conducted any particular
11 interviews, but I know that all this information is
12 documented in the MOI's and the 302's, the documents that
13 we produced to the defense, and also in the indexes that
14 we produced. So if I could see that I could refresh my
15 recollection.

16 Q So let me ask, is there any question in your mind
17 that you continued interviewing witnesses all the way up
18 through, frankly, April or May of 2021, a month before
19 trial?

20 A Are you asking me did we?

21 THE COURT: You are jumping around. You started
22 out by referencing the superseding indictment. That was
23 March 9th. Let's get through that before we go to a
24 different timeframe.

25 Q BY MR. RAM: Actually, the original question was

1 you were eager to review the Cellebrite reports to build
2 your case; is that true or not?

3 MR. CIPOLLETTI: Objection. Asked and answered.

4 THE COURT: Overruled.

5 THE WITNESS: We were eager to get the Cellebrite
6 reports for two primary purposes. One, to find evidence
7 that we could potentially use at trial. Two, to produce
8 them to counsel for the defendants.

9 Q BY MR. RAM: Okay. So fair to say the Cellebrite
10 reports were important to you in your investigation?

11 A Yes.

12 Q All right. In fact, as a fraud prosecutor you know
13 that some of the best evidence of intent and fraud comes
14 from targets and defendants' phones; right?

15 A Yes. There is a belief that some -- good evidence
16 can come from phones. That is why we invest the time to
17 try to get the team search warrants and review that
18 evidence. Yes.

19 Q Okay. Now, let's go to the next series of --
20 actually let me just skip ahead here in the essence of
21 time.

22 The one exception you mentioned that you
23 remember -- you specifically recall from the Cellebrite
24 review that you did was about the Victoria Kauichko and
25 her taking over the lease at Canoga; right?

1 A Yes.

2 Q All right. Why don't we look at Kastigar Exhibit
3 21.

4 A Okay. Can we blow up the top half?

5 Q All right. Can you look really closely at your
6 screen? In sum and substance, is this the message or
7 e-mail that you remember from your Cellebrite review
8 relating to Kauichko and taking over the lease at Canoga?

9 A Yes. This either is the e-mail or is very similar
10 to the e-mail that I recall. And I believe there was
11 additional correspondence as well.

12 THE COURT: Is this different than Greystone?

13 MR. FENTON: It is difficult for me to see what
14 this is -- no, it says Greystar here. So if you look at
15 the point EMGR@Greystar.com, the point at Warner Center,
16 and Warner Center I believe, your Honor, is the building
17 where the apartment was.

18 Q BY MR. RAM: Okay.

19 A So yes, this is it, I believe, or similar to the
20 correspondence.

21 Q Okay. And you specifically saw that on the -- do
22 you remember which phone?

23 A No.

24 Q Okay. And you noted in your declaration that this
25 e-mail was just cumulative of the lease application you

1 received from the lease company; is that right?

2 A Yes.

3 Q And let's pull up the lease application that you
4 actually received from the management company. That is
5 at government Exhibit 42-99. Page 99.

6 This is part of the subpoenaed materials you
7 received from the leasing management company; right?

8 A I believe so, yes.

9 Q Okay. And why don't we just do a comparison. We
10 can put it side-by-side. What we have up now government,
11 Exhibit 42-99, side-by-side with the Kauichko image from
12 the Cellebrite report, which is Kastigar Exhibit 21,
13 which we just saw.

14 Well, we can't get it side-by-side, but is it
15 fair to say that the lease application letter that you
16 see on your screen does not highlight, unlike Kastigar
17 Exhibit 21, which we just saw, Richard Ayvazyan's role in
18 the transfer of the lease to Kauichko?

19 A You are asking me about this page out of -- I guess
20 I don't understand the question.

21 Q Sure. And we can put it back up for you, but on
22 the screen a second ago was Exhibit 42. That is a
23 government exhibit; right?

24 A Are you asking me why I believed it was cumulative?

25 Q I didn't ask you that question but we are getting

1 there. So what I am specifically asking you is the
2 materials you got from the leasing office don't reference
3 Richard Ayvazyan at all; correct?

4 A I don't -- I haven't reviewed 160 pages. I don't
5 believe they do. I don't believe they mention his name,
6 no.

7 Q In any way they don't expect to Richard Ayvazyan?

8 A That is not correct, no. That is incorrect.

9 Q Okay. The actual text of the information you
10 received from the leasing management office references
11 Richard Ayvazyan in some way?

12 A That is a different question.

13 Q And the answer to that question is no; right?

14 A I don't know which question you are asking me.

15 Q That wasn't my question.

16 A No, that was.

17 Q Just to be clear, you said the leasing office
18 information was cumulative of the image -- let's go ahead
19 and pull it up.

20 A The answer --

21 Q Hang on one second.

22 A Would you like me to explain why it's cumulative?

23 Q I'm going to pull up Kastigar Exhibit 21 first and
24 let me ask you this. If we could blow up the top half.
25 See if it blows up now.

1 Okay. This Cellebrite is for a phone that was
2 found in Richard Ayvazyan's possession at the Miami
3 airport in October of 20; correct?

4 A That is what you have represented.

5 Q Well, actually this is the image you remember
6 reviewing from the Cellebrite, so is that what you are
7 representing?

8 A This is an image from one of the phones that was
9 seized in Miami.

10 Q Correct. And it was found in connection with
11 Richard Ayvazyan; yes?

12 A What do you mean, in connection with?

13 Q He possessed it?

14 A Yes.

15 Q Okay. Now, the management documents we just saw at
16 government Exhibit 42, you did not find that information
17 on Richard Ayvazyan's -- in his possession throughout the
18 course of your investigation; correct?

19 A Did we find the leasing file for this apartment in
20 Richard Ayvazyan's possession?

21 Q Correct.

22 A We did not.

23 Q Okay. So in other words, you had a search warrant
24 at 4910 Topeka, his residence. There wasn't there, was
25 it, government Exhibit 42?

1 A I don't believe so. If it was there, it was not
2 seized.

3 Q Okay. So, in that sense, the fact that government
4 Exhibit 21 -- actually, let me scratch that.

5 You know from trial that one of the defense
6 arguments in this case was that Manuk Grigoryan
7 independently ran and controlled the Canoga apartment to
8 get PPP loans in a separate conspiracy or scheme
9 independent of Richard Ayvazyan and Mary. You understand
10 that was one of the defenses in fact?

11 A I understand that that is an argument that you made
12 at trial. Yes.

13 Q Okay. And this e-mail that comes from the
14 Cellebrite at Kastigar Exhibit 21, that directly connects
15 Richard Ayvazyan to the Canoga apartment lease; true?

16 A Yes.

17 Q Okay. Did you uncover any other document that
18 specifically connects Richard Ayvazyan to the Canoga
19 apartment lease?

20 A Multiple.

21 Q There is a --

22 A Mean.

23 Q You found a document in Richard Ayvazyan's
24 possession that showed a link between Ayvazyan and the
25 lease?

1 A That is a separate question.

2 Q Okay.

3 A Did I find it in his possession?

4 Q Yes. In the way that the phone was in his
5 possession; right?

6 A I am not following.

7 Q Which part do you not follow?

8 A Any of it.

9 Q The phone -- the Cellebrite is a depiction of the
10 phone, one of the three phones seized from Richard
11 Ayvazyan, right, that was in his possession?

12 A Yes.

13 Q Step one. Step two, the image you recall seeing on
14 a Cellebrite from one of those phones was this image
15 regarding the Kauichko lease at Greystar, Greystone,
16 whatever it is called?

17 A Yes. Greystar.

18 Q And you said that the management company subpoena
19 returned to you conveyed the same information; right? It
20 was cumulative is what you said.

21 A Yes. And I can explain why if you let me.

22 Q Well, my question is very specific. But you did
23 not find any document in Richard Ayvazyan's possession
24 that directly connects him to this Canoga apartment
25 lease; correct?

1 A I wouldn't agree with that. What do you mean by
2 possession. I guess I don't understand the concept that
3 you are asking.

4 Q Okay. Well, I think that answers it then. If you
5 don't understand the concept of possession, I will move
6 on.

7 Let's go to -- well actually before we close
8 off on this point, this was a significant issue in the
9 investigation, right, whether Richard Ayvazyan possessed
10 or controlled the Canoga -- control is a better word --
11 Canoga apartment at all; right? That was a real issue
12 that underlined your investigation?

13 A I don't understand that question.

14 Q Sure. Whether or not Richard Ayvazyan controlled
15 the Canoga apartment.

16 A Yes.

17 Q That was a significant issue in the case and in
18 your investigation to prove; right?

19 A Yes, and we know that he did.

20 Q But my question to you was --

21 A Because --

22 THE COURT: Don't do that, Mr. Fenton. Just let
23 the questions come, answer them, and if you need to
24 explain, you will have that opportunity.

25 Q BY MR. RAM: The only question was that was a

1 significant fact in the case; correct?

2 A Yes.

3 Q Okay. In fact, if we pull up docket 4613, which is
4 Manuk Grigoryan's plea agreement. Okay?

5 THE COURT: He said it was significant. What more
6 do you need?

7 MR. RAM: Okay.

8 Q Let's go to your declaration at page 31,
9 paragraph 52.

10 A Which paragraph?

11 Q Page 31, paragraph 52 -- sorry, it's page 29,
12 paragraph 52. The Kauichko lease e-mail was important
13 enough that you actually identified it in your
14 prosecution memo for the first superseding indictment;
15 true?

16 A Yes. We identified it in the prosecution memo.

17 Q Okay. And that was the question. So the answer is
18 yes, you did?

19 A Yes, we identified.

20 THE COURT: The answer is yes. Just say yes or
21 no. Some of the questions are straightforward. Some are
22 convoluted, but when they are straightforward answer yes
23 or no. The answer is yes.

24 Q BY MR. RAM: Okay. And your declaration says that
25 the grand jury exhibits did not include any evidence from

1 the phone seized in Miami; true?

2 A Correct. Yes. Correct.

3 Q But these statements in your declaration, they
4 don't address potential indirect or derivative use of
5 information from the Miami phones; right?

6 A No. You are wrong. That is not correct.

7 Q So, for example, the 151 loans, there is
8 information?

9 THE COURT: One minute. You say declaration.
10 What declaration are you talking about?

11 MR. RAM: It is on the screen, your Honor
12 paragraph 52.

13 THE COURT: You mean the declaration of this
14 witness in connection with this hearing?

15 MR. RAM: Yes. Yes, your Honor. Let me highlight
16 it.

17 THE COURT: And is that the reply declaration or
18 the opposition declaration?

19 MR. RAM: It is the opening declaration.

20 THE COURT: All right. Go ahead.

21 Q BY MR. RAM: And just so it's clear, I underlined it
22 on the screen so you can see it. The first statement is,
23 "The prosecution memo did not reference any information
24 seized in Miami." Do you see that?

25 A Yes. It says aside from the single piece of

1 cumulative evidence mentioned above, yes, the prosecution
2 memo did not reference any information from in Miami.

3 Q And just below that, it says, "I did not include a
4 reference to any information found on the phones in the
5 grand jury."

6 A Yes.

7 Q Okay. And my question to you is that that
8 declarative statement does not account for derivative
9 information that may have come from the Miami phones;
10 true?

11 A Not true.

12 Q Okay. So, for example, if you look at the 151
13 loans that are referenced -- just as an example -- we
14 will come back to this in a little bit, but there is 151
15 loans referenced in the indictment the grand jury
16 returned; correct?

17 A The number 151, yes, is referenced in the grand
18 jury.

19 Q And some of those 151 loans, evidence for them came
20 from the Miami phones?

21 A So, we explained this in the declaration.

22 THE COURT: First of all, the question was calling
23 for a yes-or-no answer. So if you can answer -- if you
24 can answer yes-or-no, answer yes or no, and then if you
25 want to explain you can explain.

1 Let's get your answer to the question. Then I
2 will give you the opportunity to explain your answer.

3 THE WITNESS: Yes, your Honor.

4 THE COURT: Go ahead. What is your answer?

5 THE WITNESS: Can you repeat the question?

6 Q BY MR. RAM: You know what I will do. I am going
7 to come back to this segment on 151 loans and we can talk
8 about it in detail. Let me just close out this segment.
9 It is really the last question I have about the
10 Cellebrities, I think.

11 You know you received and had access to the
12 other two Cellebrities; right? There were five
13 Cellebrities from the Miami phones total. And we talked
14 about the first three just now.

15 Is it fair to say that you had access to and
16 received the other two Cellebrities for the remaining two
17 Miami phones?

18 A Yes. At some point.

19 Q Okay. And specifically, one of those you received
20 on March 19th, 2021; right?

21 A That sounds correct. Yes.

22 Q And that was, for the record, 1B124. And you
23 received the fifth Cellebrite on April 8th, 2021.

24 THE COURT: The record shows these things. Let's
25 assume they are correct, and I will give the government

1 an opportunity if any of these references are
2 questionable to bring that to the Court's attention.

3 Let's assume that you are referencing accurate
4 exhibits.

5 MR. RAM: Okay.

6 Q On the three Cellebrites you did review, is it fair
7 to say you reviewed them multiple times?

8 A I definitely tried to access them multiple times.
9 The difficulty was trying to get them open. So there
10 were definitely many times I tried to get them open and
11 it often took several hours, but I may have reviewed
12 them -- yes, I think I reviewed them more than once.
13 Some of them, not all of them.

14 Q There is three. Is there one in particular did you
15 not review multiple times?

16 A I really don't recall.

17 Q You don't recall?

18 A I remember trying to open them multiple times and
19 they crashed my computer and it would take sometimes
20 hours to get them open.

21 Q Okay. And you didn't track or -- the prosecution
22 team or the government didn't track your access to those
23 three Cellebrite reports?

24 A That is not correct.

25 Q So there is a -- is there a log of when you

1 accessed the Cellebrite reports?

2 A No. There was e-mail correspondence that was
3 submitted in my exhibit -- my declaration as an exhibit
4 that shows when I received and tried to access the
5 reports.

6 Q And does it show each time of the multiple times --

7 A No.

8 Q Let me just finish the question for the record.

9 What you just referred to, does it show each time that
10 you accessed those three Cellebrite reports and the days
11 you reviewed them?

12 A No.

13 Q Does it show what you reviewed on the Cellebrite
14 reports?

15 A No.

16 Q Okay. Was there any other record other than
17 Exhibit 31, which we talked about, that shows when you
18 accessed or reviewed information on the Cellebrite
19 reports that you reviewed?

20 A No. I don't believe so.

21 Q Okay. And the Cellebrite reports wasn't the first
22 time that you reviewed the contents of the Miami phones;
23 is that right?

24 A Can you just be more specific?

25 Q Sure. We have just been talking about the

1 Cellebrite reports from the period of February 11th.

2 THE COURT: Why don't you just ask him -- are you
3 referring to this, I think it was a telephone
4 communication or some communication where the contents of
5 the phone was generally described.

6 MR. RAM: Yes, your Honor. Exactly where I was
7 going.

8 THE COURT: Why don't you just go for it? Why all
9 of this shadow boxing?

10 MR. RAM: All right. I just want to be clear.

11 THE COURT: I listen to all of this, you know,
12 closely. There is no jury here. And I am thoroughly
13 prepared based upon the pleadings. So you can get to the
14 point.

15 MR. RAM: Yes, your Honor.

16 Q Let's just get to it. So the October 20th --
17 19/20th Miami airport stop. You received information at
18 approximately October 20th about some of the contents on
19 the Miami phones orally; correct?

20 A Yes.

21 Q Okay. And did you request that -- how did it come
22 about that Richard Ayvazyan and Marietta Terabelian were
23 stopped at the Miami airport?

24 A My understanding is Special Agent Palmerton put up
25 a text hit to track whether or not --

1 THE COURT: That is beyond the scope of this
2 hearing.

3 MR. RAM: It is really just going to be the
4 motive. Why were they stopped.

5 THE COURT: That is beyond the scope of the
6 hearing.

7 MR. RAM: Okay.

8 Q Do you know if part of the reason Agent Palmerton
9 or you wanted to stop Richard or Mary was to get their
10 cell phones?

11 MR. CIPOLLETTI: Objection as to what Agent
12 Palmerton thought.

13 THE COURT: Well, I mean the purpose of the
14 hearing is not to revisit the motions that were made with
15 regard to suppression. The purpose of the hearing is now
16 that we know they have the phones, what use, if any, was
17 made of them. So I am not going to revisit that
18 suppression hearing.

19 MR. RAM: That is not my goal, your Honor.

20 THE COURT: As the fact finder, what is on phones
21 is generally something that is relevant to any
22 investigator, especially these days.

23 So move on from there.

24 Q BY MR. RAM: Okay. The CBP, the Customs and Border
25 Protection, they were exposed to information on the Miami

1 phones; yes?

2 A Yes.

3 Q And some of the information they were exposed to
4 they orally shared with members of the prosecution team?

5 A Yes.

6 Q Who did they share that information with?

7 A My understanding was that they shared it with
8 Special Agent Palmerton, who then shared it with AUSA
9 Julian Andre and myself.

10 Q Okay. And how was that information shared both to
11 Agent Palmerton and then to you and Mr. Andre?

12 A By telephone.

13 Q Okay. And when was it shared?

14 A I believe it was shared on October 20th after
15 midnight.

16 Q October 20th after midnight?

17 A So my recollection is that we got that information
18 after midnight Eastern time. I was on the East coast,
19 and I believe I was on the telephone after midnight
20 talking to folks. And that information was at that time
21 conveyed to me. I don't know when it was conveyed by CBP
22 to Special Agent Palmerton, but I would imagine sometime
23 around then.

24 Q And three pieces or categories of information was
25 shared orally?

1 A At that time I think it was to two or three, yes.

2 Q Okay. One is that there were photos of a
3 California driver's license for Iulia Zhadko on the Miami
4 phones?

5 A That there was at least one. Yes.

6 Q Okay. And that there were texts on the Miami
7 phones in which it appeared that Marietta Terabelian
8 appeared to be using Kauichko's identity to communicate
9 with others?

10 A Yes.

11 Q And third, that there were digital photos of credit
12 cards and driver's license in other people's names on the
13 Miami phones?

14 A Yes.

15 Q Okay. And that was -- that was the information
16 conveyed to you around midnight on October 20th?

17 A Yes.

18 Q All right. Let's take a look at the complaint,
19 which is docket 1. Okay. We don't even need to pull it
20 up. I think this is high-level enough. Let's keep it
21 streamlined.

22 In the complaint, do you remember -- did you
23 draft the complaint?

24 A Yes. With assistance from other members of the
25 team.

1 Q And who would that be?

2 THE COURT: Are you talking about the criminal
3 complaint?

4 MR. RAM: Yes, your Honor.

5 THE COURT: I mean, that related to the arrest in
6 Miami?

7 MR. RAM: Yes, your Honor.

8 THE COURT: All right. Well, make it clear.

9 MR. RAM: Yes, your Honor.

10 THE WITNESS: Your Honor, may I just ask may I
11 just get some water. Would it be possible. I just have
12 a bottle of water that's on counsel table. Would it be
13 possible for me to get some water?

14 THE COURT: What time is it now, Paul?

15 THE CLERK: 12:30.

16 THE COURT: What we will do is we will take 45
17 minutes for lunch and come back at 1:15.

18 (Luncheon recess from 12:28 p.m. to 1:16 p.m.)

19 THE COURT: Let's continue.

20 MR. RAM: Your Honor, for the record as the
21 witness is seating we just wanted to note that we joined
22 all of Mr. Littrell's prehearing requests.

23 THE COURT: Okay.

24 MR. RAM: Thank you.

25 Q Mr. Fenton, before we return to the complaint, I

1 want to just flip back to the Cellebrite discussion we
2 had.

3 During the time period you were reviewing the
4 Cellebrites, roughly in February of 2021 onwards, did you
5 compare notes, so to speak, with Agent Palmerton based on
6 what he was reviewing on those same Cellebrites?

7 A It is possible, but I don't have a specific
8 recollection.

9 Q Okay. Do you have a recollection of Agent
10 Palmerton discussing anything he was finding on the phone
11 on the Cellebrites of particular interest?

12 A I don't have a -- I don't, no.

13 Q How about generally. Do you remember him saying,
14 hey, I found something on the Cellebrites. You should
15 look at this?

16 A He may have. I just don't have a specific
17 recollection. At some point he did call my attention to
18 the text messages, and I do have a recollection of
19 learning about them generally at some point. And then on
20 April 27th he actually sent them to me, and I believe
21 that that is what you showed me earlier.

22 Q Okay. And before April 27th, when he generally
23 called your attention to the text messages, what did he
24 say to you?

25 A So on April 27th he didn't generally call my

1 attention to the text messages. On April 27th he sent me
2 a copy of the text messages.

3 Q Understood. So my question was before April 27.
4 So back in February, March timeframe, did he call your
5 attention to the text messages?

6 A I believe he may have mentioned that and mentioned
7 that they existed. Yes.

8 Q Okay. Anything else you recall from that
9 conversation with Agent Palmerton?

10 A Not anything specific, no.

11 Q All right. Back to the complaint. Last question I
12 think we were on is is it fair to say that the
13 information that was orally conveyed from CBP ended up in
14 the complaint?

15 A I believe the document speaks for itself. Yes, I
16 believe there is a reference in that document to that
17 information.

18 Q Okay. And if you look at -- there is a portion of
19 the complaint that says something to the effect that
20 Palmerton had multiple discussions with CBP officers and
21 other law enforcement agents. Do you recall that
22 paragraph or should I pull it up on the screen for you?

23 A It would be helpful if you could show it to me.

24 Q Of course. If we could take a look, and this is
25 the complaint, which is docket 1, at page 17, paragraph

1 41.

2 Okay. And this is the affidavit of Agent
3 Palmerton; is that right? Looking at page 15 on the
4 screen specifically.

5 A Yes. It appears to be.

6 Q Okay. And I stand corrected. Paragraph 41 is on
7 page 15. It says, "Based on my discussions with CBP
8 officers and other federal law enforcement agents in
9 Miami, Florida," and then it goes onto detail some
10 information there in paragraph 41.

11 Do you see that?

12 A I do.

13 Q Okay. Did Agent Palmerton, to your knowledge,
14 reduce to writing any of his conversations that he
15 contemporaneously had with CBP officials and other law
16 enforcement agents?

17 A No.

18 Q Did you instruct Agent Palmerton to avoid any
19 written communications on those topics?

20 A No.

21 Q Did you instruct him not to memorialize what he was
22 told about the Miami phones?

23 A No.

24 Q Any idea why he didn't memorialize those
25 conversations?

1 A No.

2 Q Let's look at the search warrants. Very quickly,
3 the search warrants have the same Miami phone-related
4 information in the affidavits as the complaint did; is
5 that generally accurate?

6 A I don't know, and I don't believe so. I can take a
7 look at the copy of the affidavit.

8 Q Okay. Just to be clear, you don't believe
9 specifically that the search warrant affidavits
10 referenced that the Miami phone has a digital photograph
11 of Iulia Zhadko's California driver's license?

12 A That is not my testimony.

13 Q Okay. So let me ask it that way. Are you aware
14 that the search warrant affidavits include a reference to
15 that information?

16 A I believe that they do.

17 Q Okay. And the second category as well about the
18 Miami phones had text message exchanges that made it
19 appear that Mary Tarabelian was taking the identity of
20 Victoria Kauichko?

21 A I don't recall, but if you show me a copy of the
22 affidavit I would be happy to take a look at it.

23 Q If we could pull up -- well, it is in the record
24 anyway, but to be clear, your testimony is as you sit
25 here right now, you don't know whether the search warrant

1 affidavits reference that information from Miami?

2 A Mr. Ram, the search warrant affidavit incorporates
3 by reference a copy of the complaint and all the
4 allegations set forth therein. I don't recall what
5 specific allegations are re-alleged, but I do recall that
6 there is at least one with respect to the digital
7 photograph of Mr. Zhadko's license.

8 I think it is possible that he also references
9 the text messagings, but I don't specifically know. And
10 if I could see a copy of the affidavit it would refresh
11 my recollection.

12 Q Understood. And my question now is what you
13 remember as you sit here right now. So the answer to
14 that question is you don't know for sure whether the
15 search warrant affidavit includes references to Mary
16 Terabelian assuming the identity of Victoria Kauichko; is
17 that right?

18 A I believe that it does, but I would like to see a
19 copy of it to refresh my recollection for certain.

20 Q Okay. Let's move on to November 2020 and the Agent
21 Palmerton 65 photos. Do you know what I am referring to
22 when I say the 65 photos?

23 A No.

24 Q You are not familiar with Agent Palmerton taking 65
25 photos after his review of the Miami phones?

1 A I am not familiar with him doing that on
2 November 20th.

3 Q I'm sorry, in November of 2020.

4 A Okay. What is the question?

5 Q Are you familiar with Agent Palmerton taking 65
6 photos from the Miami phones, in general?

7 A Yes. My understanding is that he took pictures of
8 informations on those phones or of those phones.

9 Q Specifically on November 13th of 2020, you are
10 aware Agent Palmerton reviewed the Miami phones with
11 another agent assisting him; right?

12 A Yes.

13 Q And he took photographs of what he thought were the
14 most relevant materials from those phones?

15 MR. CIPOLLETTI: Objection. Found.

16 THE COURT: Overruled.

17 THE WITNESS: I don't know that Agent Palmerton
18 took the photos of what he believes to be the best pieces
19 of information from that phone. I know that he took 65
20 photos and that he thought that those photos -- my
21 understanding is that they were relevant in some respect.

22 Q Relevant meaning useful to the investigation?

23 A Potentially. Potentially relevant. Yes.

24 Q Okay. And the grand jury indictment was four days
25 after that, right, on November 17th?

1 A Yes.

2 Q Four days after Agent Palmerton takes the 65
3 photos?

4 A It was on November 17th. Yes.

5 Q And the photos that were taken on November 13th
6 were immediately shared with the prosecution team;
7 correct?

8 A Yes.

9 Q In fact, Agent Palmerton e-mailed you and the rest
10 of the prosecution team saying please take a look through
11 the photos I uploaded into USAFX; correct?

12 A Yes.

13 Q And what is USAFX?

14 A It is a share file that's used by the Department of
15 Justice so that the Department of Justice can share
16 information internally and sometimes with external
17 parties as well.

18 Q And does USAFX have the ability to log when someone
19 accesses a particular record on the system?

20 A I do not.

21 Q Did you inquire as part of the Kastigar hearing?

22 A No.

23 Q Did anybody else in the prosecution team, to your
24 knowledge, inquire into the logging and tracking
25 capabilities of USAFX?

1 A I wouldn't know. I didn't ask.

2 Q You didn't ask anyone; right?

3 A Didn't ask anyone what?

4 Q About the tracking and logging capabilities of
5 USAFX?

6 A No.

7 Q Okay. Moments after Agent Palmerton shared the 65
8 photos with the prosecution team, there was immediate
9 investigative activity that occurred in relation to those
10 photos; true?

11 A Moments? What time --

12 Q On the same day.

13 A I believe so, yes, but it was not by me.

14 Q Correct. Let's take a look at Exhibit 18. If we
15 could pull it up. Let's go to the last page of the
16 exhibit and we will work our way back to the front.

17 Let's go to page 203.

18 So Agent Palmerton sends the 65 photos to you,
19 Mr. Julian Andre, Mr. Jeffrey Clark, and Agent Tim
20 Massino, is that right, based on this record at
21 4:05 p.m.?

22 A Yes.

23 Q Okay. We can scroll up. All right. And the same
24 day -- it looks like a little before midnight -- Tim
25 Massino writes back in response to Agent Palmerton's

1 e-mail; correct?

2 A Yes.

3 Q All right. We can zoom out of that. And
4 specifically Agent Palmerton -- I'm sorry, Agent Massino
5 says, "I ran all the unfamiliar names and entities,
6 Social Security numbers ad/addresses observed in the
7 photos and identified the following additional loan
8 applications, ten total." Do you see that?

9 A Yes.

10 Q And you understand the reference to observed in the
11 photos to be a reference to the 65 photos Agent Palmerton
12 had shared in the e-mail chain right below that?

13 A Yes.

14 Q And the ten different entities' names, personal
15 identifiers, that is list the here in the e-mail 1
16 through, if we can scroll down to page 2, 7; correct?

17 A No.

18 Q It is not listed there at 1 through 7?

19 A No. Not that information you just described. That
20 is not listed. There are ten loans that are listed here,
21 yes.

22 Q Correct. Okay. All right. And there was some
23 follow-up based on Agent Massino's e-mail as well; right?

24 A Can you be more specific?

25 Q Sure. For example, after Agent Massino shared this

1 e-mail, you took some investigative activity as well;
2 right?

3 A Yes.

4 Q For one, you reviewed the 65 photos that Agent
5 Palmerton shared?

6 A Yes.

7 Q You then had some follow-up based on those 65
8 totals that you wanted to conduct related to the
9 investigation; correct?

10 A Yes.

11 Q So as a result of Agent Palmerton's sending those
12 65 photos to the prosecution team in Exhibit 18, page
13 1 -- if you could scroll up to page 1, very top.

14 That is an e-mail from you to Annamelda Paul.
15 Who is Annamelda Paul?

16 A Annamelda Paul is the paralegal/law clerk who is a
17 member of our team.

18 Q Is she a lawyer?

19 A She actually is.

20 Q Okay.

21 A In the sense that she is -- she has gone to law
22 school. I believe that there is a member of the bar.
23 Her position at Department of Justice is not a
24 position -- it is not a position where she is a
25 practicing lawyer. She is not practicing law.

1 Q Understood. And you asked on November 15th,
2 Sunday, in the same e-mail chain from Agent Palmerton, 65
3 photos, you ask Annamelda, "Here are new loans tied to
4 our ring." What are you referring to there, new loans
5 tied to our ring?

6 A The Richard Ayvazyan, PPP/EIDL loan fraud ring.

7 Q And you identified that these loans in Agent
8 Massino's e-mail were tied to the ring. That is what you
9 wrote there; right?

10 A Yes.

11 Q And how did you conclude they were tied to the
12 ring?

13 A Because they were loans that were taken out in
14 names of people other than Mr. Richard Ayvazyan.

15 Q And they were found on a phone in the possession of
16 Mr. Ayvazyan; right?

17 A Yes.

18 Q And you say, "Please add these two other chart."
19 Do you see that?

20 A Yes.

21 Q What chart are you referring to?

22 A So for the purpose of tracking the particular
23 subjects that we were following, we maintained a chart.
24 It was used for deconfliction purposes to make sure that
25 other law enforcement agencies weren't investigating the

1 ring at the same time that we were to avoid other law
2 enforcement agencies stepping on our toes.

3 Q So is it a chart that tracks the loans that are
4 relevant to your investigation?

5 A Yes. And just to be clear, there are two charts.
6 So this -- the chart that I just described is the chart
7 that is used for internal purposes, for deconfliction
8 purposes, and that is a chart that was included --
9 versions of it were attached to my declaration, the first
10 Fenton declaration. I believe it was Exhibit 7A and 7B.

11 There is an additional chart that we
12 maintained internally that tracked the various loans that
13 we were investigating that we initially started, and then
14 that was later maintained and updated by contractors.

15 Q Okay. And that is the chart that has 51 loans on
16 it? I believe was one of your exhibits.

17 A No.

18 Q 22, is it?

19 A It is not Exhibit 22.

20 Q Okay. What is Exhibit 22 to your declaration?

21 A So I would have to see a copy of it. Do you have a
22 copy of it?

23 Q And we can get there. I just didn't know if it was
24 the same thing.

25 A It is not.

1 Q And then next you tell her, "Prepare subpoenas for
2 loan files to" -- and then you identify the four
3 different banks. Do you see that?

4 A Yes.

5 Q And again, all of this follow-up investigative
6 activity is related to the 65 photos that Agent Palmerton
7 shared with the prosecution team?

8 A Yes.

9 Q And you will say "We should try to get the
10 subpoenas out to CDCA." That this district here; right?

11 A Right.

12 Q On Monday, which is the next day, November 16th.

13 A That's correct.

14 Q Why should we try to get those out by Monday?

15 A Because I like to move my cases quickly. So we
16 were pursuing leads as we got them.

17 Q And this was an important lead to pursue in your
18 mind at the time?

19 A No.

20 Q It wasn't?

21 A No.

22 Q But you still asked for subpoenas to these banks
23 and to add this to the loan ring and to add this to the
24 other chart that you just described?

25 A That's correct.

1 Q Okay.

2 A In my particular view, this was ancillary. We were
3 looking to try to ascertain how big the loan fraud ring
4 was because it was our understanding that Mr. Ayvazyan,
5 Tamara Dadyan and Mary Terabelian and the other members
6 of the loan ring had taken out, you know, hundreds of
7 loans.

8 Q What question do you think you are responding to
9 right now?

10 A The question as to whether or not I thought that it
11 was important to pursue this.

12 Q So your testimony under oath is you did not think
13 it was important to your investigation to follow up on
14 these loans identified by Agent Palmerton from the Miami
15 phones?

16 A I thought that it was relevant. You are ascribing
17 a level of significance that I would not ascribe. I
18 thought it was relevant, and we issued these subpoenas so
19 that we could see if there were additional loans. But
20 the purpose was not to ascertain whether they were guilty
21 or innocent of the crimes that we anticipated that we
22 would charge them with. It was to see how big the fraud
23 ring was.

24 Q Mr. Fenton, I asked you a simple question. The
25 answer is -- you didn't think they were important is the

1 answer?

2 A The answer is I am not ascribing the significance
3 to them that I think you are trying to describe to them.

4 Q At the time did you ascribe any significance to
5 them?

6 A Yes.

7 THE COURT: He said they were relevant.

8 MR. RAM: Okay.

9 THE COURT: And relevant means it had some
10 significance. I mean, that is almost definitional.

11 Q BY MR. RAM: Okay. And after you sent this
12 instruction to Annamelda, were in fact grand jury
13 subpoenas issued to the identified banks?

14 A Yes.

15 Q And were those subpoenaed returned to the grand
16 jury as part of this investigation?

17 A My recollection is that they were.

18 Q Okay. Is it fair to say you knew that the 65
19 photos were hand picked by Agent Palmerton during his
20 review of the Miami phones?

21 A Yes.

22 Q And would you agree that these 65 totals advanced
23 your investigation?

24 A In what respect?

25 Q Moving it forward, so you helped identify issues of

1 interest in the investigation, additional loans, building
2 up to 151 loans, et cetera?

3 A They provided some information. I think that
4 largely the information that was contained in the 65
5 photos was cumulative of information that we already
6 knew.

7 Q Cumulative again meaning you didn't believe it
8 added to the mix of information available to the
9 investigation?

10 A Cumulative meaning that it was redundant. We
11 already knew the substance of the information. And this
12 information was more of the same.

13 Q So your testimony is you already knew -- for
14 example, let's pull up Kastigar Exhibit 1, page 30.

15 MR. RAM: Can we share with you? Kastigar Exhibit
16 1 to our submission that was filed.

17 Q So now the time period we are talking about is
18 November 13th, and your e-mail was on November 15th.
19 That is the time period for these questions. And I asked
20 you if those photos added to the investigatory mix, and
21 you said they were cumulative. It didn't add new
22 information; correct?

23 A That's right. I think there was an independent
24 source for that information which was listed in this
25 chart.

1 Q That wasn't my question, though. So my question is
2 prior to November 15th, had you seen this image of what
3 appears -- image 30A, so page 30 of Exhibit Kastigar
4 Exhibit 1?

5 A Yes.

6 Q And when had you seen this image prior to
7 November 15th?

8 A So we had seen this driver's license in PPP loan
9 files.

10 Q No, no. My question is this exact image. Let's
11 back up one step. You understand that image -- and this
12 is from your own chart -- image 30A is one of the 65
13 photographs that Agent Palmerton took a picture of when
14 he was reviewing the Miami films; correct?

15 A Yes.

16 Q So you understood that is a photo of a Iulia Zhadko
17 California driver's license with a certain photo, like a
18 picture of it?

19 A Right.

20 Q This is actually a picture of the Miami phone that
21 Agent Palmerton took, yes?

22 A Yes.

23 Q And you understand that this phone and hence the
24 image on it was in Richard Ayvazyan's possession in the
25 Miami airport, yes?

1 A Yes.

2 Q Now, if we scroll ahead two pages, to page 32,
3 image 32A -- we want 32A. Okay. So image 32A is another
4 California driver's license for Iulia Zhadko, but this
5 time with a different picture with it; right?

6 A Yes.

7 Q Okay. And again you received this image as one of
8 the 65 photos from Agent Palmerton?

9 A Yes.

10 Q So is this the first time that you saw two
11 different driver's licenses for Iulia Zhadko on a phone
12 that was in the possession of Richard Ayvazyan?

13 A Yes.

14 Q Would you agree with me as a prosecutor that has
15 significant value to your investigation in terms of
16 identifying potential fraudulent use of these driver's
17 licenses and the person who is controlling them?

18 A I think it is no doubt relevant. I think we looked
19 to it relative to the other information. And we already
20 knew that Mr. Ayvazian was controlling this identity. So
21 this was cumulative of evidence that we already had, but
22 it is no doubt relevant information for sure.

23 Q You thought it was a particularly important fact;
24 right?

25 A Yes. I think that this is important evidence, but

1 it is cumulative of other better evidence that we had.

2 Q Okay. Your testimony is you already had -- well,
3 you are not testifying that you already had this phone
4 with the driver's licenses on it?

5 A No. Right.

6 Q This is the first time you were seeing that;
7 correct?

8 A Yes.

9 Q Okay. Now, let's go to page 37. Kastigar Exhibit
10 37. Okay. And here, again, this is one of the 65 photos
11 taken by Agent Palmerton. It concerns a Olaf Landsgaard
12 and his obituary; correct?

13 A Yes.

14 Q And this would be evidence that whoever possessed
15 this phone and took this photo knows that Olaf Landsgaard
16 is deceased?

17 A Yes.

18 Q And at this time, when you are reviewing this on
19 November 13th or the 15th of November, were you aware
20 that Richard Ayvazyan or anyone who possessed this phone
21 had information that Olaf Landsgaard, was dead?

22 A I'm sorry. Can you repeat the question?

23 Q Yes. So prior to seeing this photo, were you able
24 to attribute knowledge to the possessor of this phone,
25 Richard Ayvazyan, based on your evidence that he knew

1 that Olaf Landsgaard was dead?

2 A I understand that question less than the first
3 question.

4 Q So one of the things that you would have to prove
5 to show fraud is that in your case you proved that
6 this -- this was an attorney that had died, but that was
7 how purported to be connected to closing for mortgages,
8 right, for real estate deals, Olaf Landsgaard?

9 A That is not how I would put it, no.

10 Q How would you put it?

11 A So defendant Richard Ayvazyan was using the name
12 Olaf Landsgaard in real estate transactions, and Olaf
13 Landsgaard was not his name. It was somebody else's
14 name.

15 Q Correct. And this image is evidence that Richard
16 Ayvazyan, under your theory, knows Olaf Landsgaard is
17 dead?

18 A Yes.

19 Q Did you have any proof prior to this November 15th
20 date or 13th date when you reviewed this image that
21 Richard Ayvazyan knew that Olaf Landsgaard was dead?

22 A No. But I knew that Richard Ayvazyan knew that
23 Olaf Landsgaard was not his name.

24 THE COURT: Don't say, but just answer the
25 question. You didn't know?

1 THE WITNESS: No.

2 Q BY MR. RAM: Great. Let's look at page 40 now, at
3 image 39A. Okay. Prior to your review of these 65
4 photos on November 13th, did you know that Richard
5 Ayvazyan possessed on image of the Social Security
6 card -- a Social Security card for Iulia Zhadko?

7 A No.

8 Q Okay. Let's go to image 50. I'm sorry, 49A on
9 page 50. This appears to be some account information
10 relating to Kauichko, Victoria Kauichko; is that right?

11 A That is what it appears -- yes that is what it
12 appears to be.

13 Q Is it fair to say prior to your review of these 65
14 photos on November 13th or 15th you were not aware that
15 Richard Ayvazyan possessed this document with handwritten
16 notes relating to accounts regarding Victoria Kauichko?

17 A That's correct.

18 Q All right. Now let's look at page 61, image 57A.
19 This is a Social Security card for a Camilo Amaya. Do
20 you see that?

21 A Yes.

22 Q You actually didn't know anything about Camilo
23 Amaya?

24 A That's correct.

25 Q More generally speaking, the images that we just

1 covered in the 65 phones is it fair to say that part of
2 their significance to your investigation is that it
3 connects a loan to the specific conspiracy or scheme that
4 you were investigating?

5 A Yes.

6 Q Now, let's look at -- let's go to the grand jury.
7 On Tuesday, November 17th, correct, in when you -- were
8 you in the grand jury presenting?

9 A No.

10 Q Who was presenting to the grand jury on Tuesday,
11 November 17th?

12 A AUSA Julian Andre.

13 Q Was there any other AUSA with him?

14 A No. Not to my knowledge.

15 Q And who was the agent in the grand jury?

16 A Special Agent Justin Palmerton.

17 Q Were there any other agents that testified to the
18 grand jury?

19 A No.

20 Q And who prepared the prosecution memo, or you might
21 call it indictment memo, related to the indictment that
22 took place on November 17th?

23 A It was prepared by myself and AUSA Julian Andre.

24 Q Who reviewed that prosecution memo?

25 A For what purpose?

1 Q As part of your supervisory chain, or frankly
2 anybody who came into contact with the prosecution memos
3 is the question. But the most immediate question would
4 be who reviewed it to approve it?

5 A Can you just ask me the specific question you would
6 like me to answer.

7 Q Sure. Start with the general. Who reviewed the
8 prosecution memo, to your knowledge?

9 A So the only people that I can speak to are the
10 people from Department of Justice Criminal Division Fraud
11 Section. Ryan Kidd, who was the chief of my unit, the
12 market integrity and major fraud unit at the Fraud
13 Section. Henry Van Dyke, who was the principal deputy
14 chief. Rush Atkinson, who was an assistant chief. His
15 real first name is Lawrence. William Johnson, who is an
16 assistant chief in my unit.

17 Q Anyone else?

18 A I circulated it to other assistant chiefs,
19 including, I believe, Mark Cipolletti, Anna Kaminska,
20 Kaitlin Cunningham. And I think that that is it, though
21 it is possible that there was another person included on
22 that distribution.

23 Q Okay. And is it fair to say your prosecution memo
24 for at least the original indictment included references
25 to information found on the Miami phones?

1 A I believe that it includes some references, yes.

2 Q Okay. And specifically one that there was a
3 digital photograph of a fake Iulia Zhadko license; right?
4 That is one of the things?

5 A I believe so, yes.

6 Q And that there were Victoria Kauichko text messages
7 on one of the Miami phones that appeared that Mary
8 Terabelian was assuming the identity of Victoria
9 Kauichko?

10 A Yes.

11 Q Okay. So you would agree that that information was
12 important enough to share with your supervisors?

13 A Yes. To represent a complete picture of the
14 evidence.

15 Q And part of that complete picture was information
16 from the Miami phones; correct?

17 A Part of that complete picture was the information
18 you just described.

19 Q And that is information from the Miami phones; yes?

20 A Yes.

21 Q All right. You say in your declaration that you
22 didn't have access to the seized phones when drafting the
23 indictment. Do you remember that?

24 A Yes.

25 Q But Agent Palmerton had already told you that the

1 seized phones had some of that same categories of
2 information that we talked about, the three categories;
3 the fake Zhadko driver's license image, the Terabelian
4 phone text messages and other people's licenses and
5 credit cards; correct?

6 A Those three specific pieces of information, yes.
7 They were conveyed to us on October 20th after midnight.

8 Q And you discussed those pieces of evidence with
9 Agent Palmerton, didn't you?

10 A He conveyed them to us.

11 Q Were you speaking when he was conveying information
12 to you?

13 A I was listening.

14 Q Okay. And that information was in your head
15 basically when you were preparing the indictment memo; is
16 that fair to say? You knew that at the time?

17 A I would say I knew it, yes.

18 Q Okay. Would you agree that you had been exposed to
19 information from the Miami phones even by October 20th,
20 then?

21 A What do you mean by exposed? I knew the three
22 pieces of information that you just said.

23 Q Right. And that was information from Miami phones;
24 yes?

25 A Yes.

1 Q All right. And you received the tainted 65 notes
2 from Palmerton's review on -- roughly four days before
3 the grand jury presentation, I believe; right?

4 A We did not believe them to be tainted, but we
5 received the 65 photos that we just discussed on
6 November 13th.

7 Q And you spent the weekend reviewing those photos?

8 A No.

9 Q You didn't review those photos over the weekend?

10 A No, I did. But I did in the spend the entire
11 weekend reviewing the photos.

12 Q How long did it take to you review the photos?

13 A 20 minutes.

14 Q The 65 photos in 20 minutes?

15 A Yes.

16 Q Did you take notes about your review?

17 A No.

18 Q Did you memorialize your review in any way?

19 A No. And it is about 20 minutes. I don't remember
20 the exact period of time. I flipped through the photos,
21 I looked at them and then I moved on with the rest of my
22 week end.

23 Q Do you remember any of the photos standing out to
24 you in particular?

25 A I do remember seeing the California driver's

1 license, the fake driver's license of Iulia Zhadko. I
2 remember seeing -- well, the two different versions.
3 Those stood out. The other photos, I don't have any
4 specific recollection of them standing out, but I do
5 recall reviewing all 65.

6 Q And you mentioned you and Mr. Andre prepared for
7 the grand jury?

8 A I did not mention that, no.

9 Q Okay. Let me ask it. Did you and Mr. Andre
10 prepare for the grand jury presentation together?

11 A No. So Mr. Andre --

12 THE COURT: The answer is no; right? You started
13 to say no, then you said yes.

14 THE WITNESS: I'm sorry, your Honor. I am trying
15 to be specific. We discussed it, but he prepared it. He
16 prepared the presentation and he gave the presentation.

17 Q BY MR. RAM: Okay. And when you discussed it, did
18 you discuss a script that Mr. Andrew would use before the
19 grand jury?

20 A I don't have a recollection of discussing or
21 reviewing a script. Though it is possible that we did.

22 Q And both you and Mr. Andrew had reviewed these 65
23 photos in connection with any script that would have been
24 prepared by Mr. Andre; is that fair to say?

25 A I don't know that that is fair to say, no. I don't

1 know that it was in connection with, no.

2 Q At the same time?

3 A No. I don't know when Mr. Andrew prepared his
4 script.

5 Q I see.

6 A Because he prepared it.

7 Q So he didn't share it with you, I guess is a better
8 question. Did he share the grand jury script with you?

9 A I don't have a recollection of him sharing the
10 script with me, and I don't have a recollection of him
11 discussing it with me in detail. Agent Andre is an
12 experienced --

13 THE COURT: Cut it. Next question.

14 Q BY MR. RAM: The next question. In paragraph 12 of
15 your declaration state something to the effect you --
16 even without the digital photograph or the Kauichko text
17 messages that were conveyed to you from the Miami phones,
18 you still would have charged the defendants with the same
19 crimes at the same time essentially. Is that an accurate
20 statement?

21 A Yes.

22 Q And you are familiar with the justice manual
23 general requirement for prosecutors, that an attorney for
24 the government should commence or recommend federal
25 prosecution if he or she believes that the person's

1 conduct constitutes a federal offense and that the
2 admissible evidence will probably be sufficient to obtain
3 conviction. You are familiar with that general
4 requirement, yes? Or not. Yes or no?

5 A I don't know what you are quoting from.

6 Q Okay. You are aware that generally that --

7 THE COURT: What is the point of all this? It
8 seems so far afield. Of course a prosecutor regardless
9 of what is in a manual or not has to be assured that
10 there is a basis for conviction before indicting someone.

11 MR. RAM: And the question is going to be that --

12 THE COURT: So why get into all this unnecessary
13 gibberish? Get to your point.

14 MR. RAM: Yes, your Honor.

15 Q When you filed the -- when you were preparing the
16 indictment, you believed you would be able to use the
17 phone seized in Miami as evidence in your case; yes?

18 A No.

19 Q You did not believe you would be able to use the
20 evidence on the phone seized in Miami?

21 A We did not know.

22 Q Okay. Did you think it was more likely than not
23 you would be able to use the evidence?

24 A We didn't know.

25 Q Did you assume it would be suppressed?

1 A No. So we -- your Honor, if I may.

2 THE COURT: All right. Briefly.

3 THE WITNESS: We understood that you were going to
4 make a motion to suppress. And we believed that that
5 motion would be made under the Fourth Amendment and
6 Miranda. We took note of that litigation risk and we
7 acted accordingly, but we did not count on using that
8 evidence at trial.

9 Q Are you aware that the motion that was ultimately
10 made specifically referenced Kastigar and cited to it?

11 A It is my understanding it did not.

12 Q So you are not --

13 THE COURT: Are you referring to the motion to
14 suppress?

15 MR. RAM: Yes, your Honor.

16 THE COURT: All right.

17 MR. RAM: We can move on. That was just in
18 response to the last answer.

19 THE WITNESS: My recollection is it did not. I
20 think there was a case cite in the reply brief but that
21 the basis -- my understanding was that the basis of that
22 motion was the Fourth Amendment and Miranda, and not
23 Kastigar.

24 Q BY MR. RAM: Lets get back to the focus on the
25 indictment. Is it fair to say you believed you would be

1 able to use the digital devices you obtained from the
2 November 5th search warrants when you indicted the case?

3 A Yes.

4 Q Okay. And but ultimately the phones from Miami
5 were suppressed and you were only able to use a fraction
6 of the 49 digital devices or so seized from the
7 November 5 search warrants; is that true?

8 A No.

9 Q What is not true about that statement?

10 A I was able to use all 49 if I chose to.

11 Q Well, they weren't ready in time for trial, were
12 they?

13 A The ones that I chose could have been. We made
14 decisions about which ones to use. I could have chosen
15 any number of them.

16 Q So your testimony under oath --

17 THE COURT: Why do you keep saying under oath. Is
18 he not under oath now?

19 MR. RAM: It is a fair point.

20 THE COURT: What is the point? I mean, is that
21 implying that he is not telling the truth? Maybe that's
22 the point, but I know he is under oath. Everybody in
23 this courtroom knows he is under oath.

24 MR. RAM: Understood.

25 Q There was over 50 digital devices seized in the

1 November search warrants; correct?

2 A Yes.

3 Q And as of May of 2021, or the month before trial,
4 only -- not including the Miami phones, only four digital
5 devices were filtered, reviewed and presented to you for
6 use as trial evidence out of the 50 plus devices;
7 correct?

8 A Can you repeat that question.

9 Q Sure.

10 THE COURT: Why can't you understand the question?
11 He says there were 50 phones.

12 MR. RAM: You got it, your Honor. That's all that
13 matters. I can move on.

14 THE COURT: Well, no, let's not move on. You said
15 there were 50 phones seized.

16 MR. RAM: Correct. So there were over 50
17 phones -- let's break it up.

18 THE COURT: Not just phones from the Miami search
19 but from everything.

20 MR. RAM: Correct, so independent of the Miami
21 search.

22 THE COURT: So why are you bringing up the 50
23 phones?

24 MR. RAM: Just in response to his last answer that
25 he could have had all the digital devices ready for trial

1 in June.

2 THE COURT: But I am understanding that that
3 couldn't be because they had to make decisions as to
4 which phones they would filter and which they wouldn't,
5 and they didn't have enough time to do all 50.

6 MR. RAM: Correct. And that was my question.

7 THE COURT: So what is the point?

8 Q BY MR. RAM: They didn't have enough time; correct?

9 THE WITNESS: Your Honor, the point is that there
10 weren't 50 phones. And so that is why I'm trying to
11 track what Mr. Ram was asking. There weren't 50 phones.

12 Q BY MR. RAM: Digital devices.

13 A And that is a significant different. So over 50
14 digital devices, yes. And the point that I was making
15 was we had to make decisions about which ones we wanted
16 to pursue before trial. We had the option to pursue any
17 of those 50. I could have made that decision to choose
18 only one.

19 THE COURT: I understand.

20 THE WITNESS: That is my point.

21 THE COURT: All right.

22 Q BY MR. RAM: Okay. Your investigation continued
23 even postexposure to the Miami phones; true?

24 A Yes.

25 Q And you didn't limit the investigating team, so any

1 of the agents or even the other prosecutors, from
2 investigating after the exposure to the Miami phones?

3 A I don't understand the question.

4 THE COURT: Make your questions more clear. Are
5 you saying there was no instruction to the agents in the
6 course of their investigation to not follow leads from
7 Miami phones?

8 MR. RAM: Correct, or at all. There were no
9 restrictions on the investigation related to Miami
10 phones.

11 THE COURT: That is not what my question is. He
12 may have made an instruction or not, I don't know. What
13 is the answer?

14 THE WITNESS: I did not direct the agents to not
15 pursue leads from the Miami phones.

16 THE COURT: All right. That is the answer.

17 MR. RAM: Okay.

18 Q And independent of the Miami phones, at least
19 not -- well, let me strike that question. Let's take a
20 look at docket 278-9. Page 9. So 278-9.

21 And for the record this is the government's
22 opposition to a motion to dismiss or enforce the
23 discovery deadline.

24 Did I write this opposition, Mr. Fenton?

25 A Yes, I did.

1 Q Okay. And on page 9 -- I am just going to read it
2 as we get there -- you write, "The government continued
3 its investigation." Do you see that sentence?

4 A I do not. Can you direct me to it?

5 Q It is 9 of the PDF?

6 A I see page 9.

7 Q I'm sorry, it's 9 of the access, so it's not
8 actually page 9, I think.

9 Okay. Well, I am going to read it to you and
10 tell me if this sounds familiar. It is something you
11 wrote?

12 A Sir, if you could just direct me to the line. So,
13 okay, PDF page 9, which line?

14 Q Page 4.

15 A Okay.

16 Q Line 4, I'm sorry, on page 9.

17 A Line 4. Yes. "The government continues its
18 investigation into the pandemic fraud ring, which proved
19 to be massive."

20 Q "The government identified hundreds of additional
21 fraudulent loans and new members potentially associated
22 with the ring. The government also learned that while on
23 release -- pretrial release defendant violated his
24 conditions and committed new crimes. The government
25 continued its investigation even as grand juries were

1 suspended in this district."

2 A Yes.

3 Q And this was a filing you made on April 12th
4 describing the first superseding indictment which
5 occurred on March 9th; is that right?

6 A It describes the investigation that preceded the
7 first superseding indictment.

8 Q Okay. And why don't we take a look at docket 307,
9 page 14. Okay. And in fact we don't need to read it
10 again. Fine. Let's go to the next topic.

11 How many subpoenas did the government issue
12 after October 19th, 2020?

13 A I don't know. Hundreds.

14 Q Okay. And those subpoenas were issued to witnesses
15 and financial institutions and others. Yes?

16 A Yes.

17 Q Okay. Part of the subpoenas were to identify
18 evidence for trial?

19 A Yes.

20 Q Do you know -- could you put a number on exactly
21 how many subpoenas were issued after October 19th, 2020?

22 A I could.

23 Q How would you do that?

24 A If I were to have the subpoena log, I would be able
25 to look at it and basically count them up.

1 Q And where is the subpoena log?

2 A Exhibit 2. It was submitted in camera to the
3 Court.

4 Q Okay. So the defense doesn't have that subpoena
5 log?

6 A It was submitted in camera to the court.

7 Q And it wasn't otherwise produced in discovery.

8 A No. We did not produce the subpoena log to the
9 defendants.

10 Q Are you willing to produce the subpoena log now to
11 the defendants?

12 A It is secret grand jury material.

13 Q With a court order would you be willing to produce
14 it?

15 A I will always comply with a court order.

16 Q Would you support a court order to produce that
17 information to the defense?

18 A No because it is secret grand jury material.

19 Q Okay. How many witnesses did you interview after
20 October 19th, 2020?

21 A I believe earlier I testified that I do not recall.

22 Q Has your investigation concluded as to Mr. Ayvazian
23 and Mary Terabelian?

24 A I would say yes.

25 Q Your investigation has concluded as to them, but

1 you wouldn't be willing to share grand jury information
2 related to their case?

3 A The investigation is ongoing with respect to other
4 individuals.

5 Q Have you shared grand jury information as part of
6 an investigation with the court authorization before?

7 MR. CIPOLLETTI: Objection, your Honor, to the
8 relevance of this.

9 MR. RAM: I will move on.

10 Q My last question is how many people did you
11 interview after October 19th. Did you have a ballpark
12 for that number?

13 A I don't. I think that we can figure it out if we
14 looked at the MOI's that we produced.

15 THE COURT: What is MOI?

16 THE WITNESS: Memorandum of interviews or 302
17 reports. All of that information has been produced to
18 the defense.

19 Q BY MR. RAM: And you produced it; right?

20 A My team. The government, yes.

21 Q Do you have a sense of how many interviews took
22 place over the course of the case, ballpark?

23 THE COURT: If you received all those 302's or
24 MOI's, as he called them, why can't you count them up?

25 MR. RAM: Well, that is part of the problem, your

1 Honor. I don't think we've received all the interview
2 summaries in this case. There's interviews and
3 conversations that have taken place that either aren't
4 memorialized or weren't shared with the defense.

5 THE COURT: I don't know that to be the case. I
6 mean, the 302's produced were for witnesses testifying at
7 trial or any person interviewed.

8 THE WITNESS: Yes, your Honor. The government
9 produced all the 302's and MOI's.

10 THE COURT: Does that mean for the witnesses who
11 testified at the trial, or were there 302's and MOI's
12 that were produced or made that were for witnesses who
13 weren't called at trial?

14 THE WITNESS: We produced everything.

15 THE COURT: In other words, all the 302's for
16 anyone who was interviewed?

17 THE WITNESS: Yes. In connection with this case,
18 yes.

19 THE COURT: When you say in connection with this
20 case, what is the qualifying word?

21 THE WITNESS: We produced all of the interview
22 reports for this case to the defendants.

23 THE COURT: Well, why did you say in this case?
24 What other case is there?

25 THE WITNESS: I'm sorry. I am saying we produced

1 everything. We produced everything to the defendants.

2 THE COURT: So every interview that was conducted
3 by the government was produced to the defendant?

4 THE WITNESS: Yes.

5 THE COURT: And do you know of any interviews that
6 were conducted for which there wasn't a 302 or
7 memorandum?

8 THE WITNESS: No.

9 Q BY MR. RAM: In fact you do. There is one cited in
10 the declaration of Mr. Faerstein, isn't there?

11 A No, sir, I don't believe that there is.

12 Q There isn't a writeup. Your Honor just asked you
13 are you aware of any interview or discussion with the
14 witness that was not memorialized. And you said, no, you
15 are not. But in fact you are.

16 Do you want to go through an example?

17 A Mr. Ram, I do not know what you are talking about.

18 Q Do you know who owns Piccadilly Jewelers?

19 A I do.

20 Q What is his name?

21 A I don't know his name. I think he is referred to
22 as B-E-R-J, Berj?

23 Q Berj?

24 A Yes.

25 Q You had a conversation with Mr. Berj, with frankly

1 Mr. Faerstein participating on the line, and you
2 specifically were seeking enforcement of one of your
3 grand jury subpoenas. Do you remember that conversation?

4 A That conversation never took place.

5 Q So you are saying Mr. Faerstein was lying about it
6 in his declaration?

7 A Mr. Faerstein was -- Mr. Berj was represented by
8 James Spertas. He was represented by counsel. My
9 understanding was that Mr. Ayvazian was paying for
10 Mr. Spertas to represent Berj. We asked if Mr. Spertas
11 would make Berj available for an interview. And I was
12 told by Mr. Spertas that he would if we were willing to
13 grant Mr. Berj immunity, which we were not willing to do.

14 I have never spoken to Berj directly. I have
15 only spoken to his counsel, who I understand Mr. Richard
16 Ayvazyan paid for.

17 Q And that is relevant to what?

18 A I'm sorry, sir?

19 Q You said that Mr. Ayvazian paid for counsel,
20 Mr. Spertas. What is that relevant to?

21 A I am just answering your question.

22 Q So your testimony is you never had a conversation
23 with Mr. Berj?

24 THE COURT: He said that. Why do you keep getting
25 back to it?

1 Q BY MR. RAM: Did you have a conversation with his
2 attorney where you specifically highlighted evidence from
3 the Miami phones and said text messages exist? You
4 haven't produced them, you are not in compliance. We are
5 going to call you to testify at trial?

6 A No.

7 Q That conversation never happened is your testimony?

8 A Your characterization of the conversation never
9 happened. So the conversation that I had with
10 Mr. Spertas as I asked him whether or not his --

11 Q When was that? Which conversation are you
12 referring to? There were many; right? Did you only have
13 up with conversation with Mr. Spertas?

14 A I am trying to answer your question. You're not
15 giving me the opportunity to answer.

16 Q I apologize. I'm just clarifying for the record.
17 Which timeframe or conversation are you referring to?

18 A I don't recall specifically when we had this
19 conversation. So Mr. Spertas produced information on
20 behalf of his client. I had a telephone call with him
21 following up, asking him if there was any additional
22 information. He said that there was not. I asked him if
23 there were any text messages.

24 He said that he did not believe that there
25 were. I told him that I found that difficult to believe

1 because they were transacting business, you know, during
2 the pandemic and I thought that they would have had
3 communications as well.

4 THE COURT: Let's get back to the thrust of the
5 initial question. The point was that the witness,
6 according to the question, did not memorialize all the
7 interviews, and now you are bringing up the subject of
8 whether he memorialized this conversation he is
9 discussing with this lawyer Spertas.

10 And if your question is did he memorialize
11 that. I will ask that. Did you or not?

12 THE WITNESS: No.

13 THE COURT: So that is the record. Okay?

14 Q BY MR. RAM: And that is just one example. There
15 were additional conversations like that that were never
16 memorialized; correct?

17 THE COURT: Conversations with counsel, with other
18 lawyers?

19 MR. RAM: Excuse me?

20 THE COURT: With other lawyers?

21 MR. RAM: Sure. With other lawyers, witnesses.

22 THE COURT: Well, there are differences. If the
23 prosecutor, in my mind, is talking to a lawyer the
24 conversation would not necessarily be memorialized, but
25 if there is discussion with a witness, in most instances

1 it would be memorialized unless it was for something not
2 significant. So you can't lump them together.

3 Q BY MR. KIM: Let's break that down. So with
4 respect to John Bradford, have you ever spoken to
5 Mr. Bradford?

6 A No.

7 Q You spoke to his attorney, though; right?

8 A Yes.

9 Q And you spoke to his attorney about potentially Mr.
10 Bradford being a trial witness?

11 A Yes.

12 Q Did you memorialize your conversation?

13 THE COURT: Is this the same thing as this Berz?

14 MR. RAM: No. Completely different, your Honor.

15 THE COURT: Okay. Then get to it.

16 Q BY MR. RAM: Who is Mr. Bradford? John Bradford.

17 A Who is John Bradford?

18 Q Correct.

19 A My understanding is that John Bradford is an
20 associate of defendant Richard Ayvazyan who owns a
21 company named CBD COM, LLC.

22 Q And when you spoke to his attorney, was that
23 conversation memorialized in any way?

24 A No.

25 Q And the purpose of his call was to seek his

1 presence at a trial witness, true?

2 A No. The purpose of the call was to discuss the
3 document production --

4 THE COURT: I am finding this not to be terribly
5 helpful.

6 MR. RAM: Let me move on, then, your Honor.

7 THE COURT: So what is at stake here? So get on
8 to something that will may help me further.

9 MR. RAM: Yes. Thank you, your Honor.

10 Q As the investigation continued into December of
11 2020, both agents and prosecutors continued to use
12 information from the Miami phones; is that true?

13 A I don't know what you are referring to.

14 Q You are familiar with the Miami phones, yes? What
15 I am referring to when you say the Miami phones?

16 A I am.

17 Q So the question was -- we were talking about
18 November. So now moving into December, did agents and
19 prosecutors continue to use information from the Miami
20 phones?

21 A I can only speak to myself -- I can only speak for
22 myself. I do not have a recollection of using that
23 information in December.

24 Q Okay. Let's take a look at Exhibit 20 to your
25 original declaration. Let's go one more page. It is a

1 two-page e-mail. Start with the last page and work our
2 way forward.

3 This is an e-mail from Tim Massino, right, to
4 you -- we'll go back to page 1. Pause there.

5 Go down a little bit.

6 It is an e-mail from Tim Massino to Mr. Andre,
7 you and Agent Palmerton and IRS Agent Anton Chu and Jeff
8 Clark; is that right?

9 A Yes.

10 Q These are all people part of the prosecution team,
11 yes?

12 A Yes.

13 THE COURT: You are wasting time. Why did you --
14 I don't want to harp on this but, you know, this is not
15 the second trial.

16 MR. RAM: That's right, your Honor.

17 THE COURT: This is supposed to be an evidentiary
18 hearing to probe a specific questions. And at this pace
19 it will be a second trial. You are asking him whether
20 his colleagues were part of the prosecution team. That
21 is wasteful.

22 MR. RAM: I apologize, your Honor. Let me get to
23 the point.

24 Q So this is another example in this e-mail of
25 December 3rd, 2020, of the prosecution team using

1 information from the Miami phones; yes?

2 A No. This is a continuation of the e-mail exchange
3 from November 13th. So what had happened was
4 Mr. Massino --

5 THE COURT: Answer -- let him ask more questions,
6 and then if it becomes necessary to provide an
7 explanation, you can do that.

8 Q BY MR. RAM: So just looking at the screen, this is
9 nine loan files that Agent Massino uploaded and shared
10 with the prosecution; yes?

11 THE COURT: Is there a date on this?

12 Q BY MR RAM: December 3rd, 2020; correct?

13 THE COURT: Okay. So what is the question?

14 Q BY MR. RAM: And you understand that these nine
15 loans were derived from the Miami phones; correct?

16 A No.

17 Q That is not your understanding?

18 A The nine loans were not all derived from Miami
19 phones.

20 Q No. This information here that Agent Massino is
21 sharing from the prosecution team. You don't understand
22 that --

23 THE COURT: The information here. What does that
24 mean?

25 MR. RAM: Let me block it out to you.

1 Q I received -- on the screen, I received and
2 uploaded the files for the following EIDL's.

3 A Yes.

4 Q That is a type of loan; right?

5 THE COURT: We know that.

6 MR. RAM: Yes.

7 Q So he is sharing these nine loan files; correct?

8 A He is saying I have obtained a copy of these nine
9 EIDL loan filings, yes.

10 Q Okay. And if you look at page 2, he says, "These
11 entities' loans were identified based on my review of the
12 phone photos." Do you see that?

13 A I do.

14 Q Okay. And he says that Justin had uploaded on
15 November 13th, 2020?

16 A Yes.

17 Q Those were the Miami -- the Miami 65 photos;
18 correct?

19 A I mean, that is not -- yes, there were 65 photos
20 that Special Agent Palmerton took from the Miami phones.

21 Q Correct. So he is saying they were identified
22 based on those 65 photos?

23 THE COURT: Let me ask it this way. You intend to
24 call Massino; correct?

25 MR. RAM: Yes, we are calling Massino.

1 THE COURT: Why don't you ask him those questions?
2 You are arguing your case through this witness, and that
3 is not helpful to me because I have all the pleadings and
4 the exhibits, and that is what --

5 MR. RAM: Understood, your Honor.

6 THE COURT: Now, if you are asking him to show me
7 that he is not credible because of this document -- is
8 that your point?

9 MR. RAM: It is part of it. He is having a hard
10 time admitting this was derived from the 65 photos, so I
11 do want you to see that, your Honor.

12 THE WITNESS: Your Honor, can I just explain?

13 THE COURT: Yes.

14 THE WITNESS: I am having difficulty with
15 Mr. Ram's questions because of the way they are phrased.
16 The nine loans -- and I can't move this document, but
17 these nine loans were not derived from the Miami phones.

18 Seven of the loans were. Two of the loans --
19 and I can tell you which ones they are. Well, actually
20 six were, but not all nine.

21 THE COURT: You are saying that some of them were
22 derived, some of them weren't?

23 THE WITNESS: Right. And Mr. Ram is grouping them
24 together and saying they were all derived from the
25 phones. And I'm saying only six were and three were not.

1 THE COURT: All right. I have that answer. Let's
2 move on.

3 MR. RAM: Thank you for that clarification.

4 Q So let's go back up to the top of the page and just
5 focus on the --

6 A The difficulty, your Honor, is I'm not -- I can't
7 clarify --

8 THE COURT: I am not interested in the difficulty.

9 Q BY MR. RAM: Thank you, Mr. Fenton. So now I am
10 looking at the top e-mail on Exhibit 20. This is a
11 Friday, December 4th e-mail from Mr. Andre to you. There
12 are no other agents on this e-mail; correct?

13 A There are no agents on this e-mail.

14 Q Correct. All right. So I want to focus in on two
15 pieces of this. Mr. Andre reviewed New World Trading,
16 Long Canyon Nursery, Lilia Turkan, Camille Amaya, Amara
17 and Annandale Nursery, and as a result of this he said,
18 quote, "We definitely need to subpoena all of the
19 relevant bank records for these ASAP."

20 Did the prosecution team end up subpoenaing
21 bank records based on this information?

22 A Yes, I believe so.

23 Q And then next, in bullet two Mr. Andre says, "We
24 should contact and interview the actual owner." And he
25 is referring to Long Canyon Nursery. You assigned that

1 to Massino and then that interview took place?

2 A I'm sorry, are you asking if I assigned that to
3 Special Agent Massino?

4 Q No, no. Based on your role in the prosecution
5 team, are you aware if that interview happened?

6 A Yes. My understanding is Mr. Kelly reported fraud
7 and we followed up on it.

8 Q And then lastly in bullet three, and I want to
9 focus on this, Mr. Andre says, "We should look into Lilia
10 Turkan soon. Her information was found in multiple
11 locations and RA had a photo of an ID in her name." Do
12 you see that?

13 A I do.

14 Q So Turkan, if we could pull up Kastigar Exhibit 1,
15 page 62, we have seen her ID today, I believe. That's
16 image 68A. Actually, to save time I will just tell you
17 that's her Social Security card that was on one of the 65
18 totals that Agent Palmerton took.

19 Do you remember that -- I will just pull it
20 up. Lilia Turkan. There you go.

21 You have reviewed this image before, yes?

22 A Yes.

23 Q Okay. And you list as an independent source in
24 your chart here the EIDL application discovered at
25 Weddington Street and a November 5th request for

1 information. Do you see that?

2 A Yes.

3 Q Okay. But let's go back to bullet three in the
4 e-mail, which is Exhibit 20. Exhibit 20 from Fenton's
5 declaration.

6 But Mr. Andre is suggesting additional
7 investigation here. He is suggesting the additional
8 investigation based in part on taking information from
9 one of the Miami phones, yes?

10 MR. CIPOLLETTI: I am objecting to what Mr. Andre
11 was suggesting. He is available as a witness.

12 THE COURT: Well, I mean, are you asking the
13 witness to interpret a memo that Andre sent? You can
14 call Andre.

15 Q BY MR. RAM: Well, let me ask it this way. What did
16 you understand when you said --

17 THE COURT: What he understood I don't think is
18 that important.

19 MR. RAM: Your Honor, I would rather not have to
20 call Mr. Andre just for this one point.

21 THE COURT: All right. You have been at this
22 almost four hours now. How much longer do you expect to
23 go?

24 MR. RAM: I have just three pages of the outline.
25 Four, sorry.

1 Q Okay. So the big picture question is did you
2 understand RA had a photo to mean the photo on a Miami
3 phone?

4 A I don't know what I understood. He says her
5 information was found in multiple locations and RA had a
6 photo of an ID in her name. So I think that you could
7 infer that, yes, he had a photo, but what I think he is
8 saying here too is that that photo or that information
9 from Lilia Turkan was also found in other places.

10 One of the places, I believe, is the
11 Weddington house that we searched on November 5th.

12 Q Correct. And it's the fact that it is found in
13 multiple locations plus the RA phone is part of the
14 reason he is saying we should focus on that. It is in
15 multiple cases?

16 MR. CIPOLLETTI: Objection to what Mr. Andre
17 meant. Mr. Andre is available as a witness. You can
18 call him.

19 Q BY MR. KIM: What did you understand?

20 MR. CIPOLLETTI: Objection, your Honor. You
21 literally just ruled on that.

22 THE COURT: You don't have to remind me about
23 that. Do you think I forgot?

24 MR. CIPOLLETTI: No, the basis of the objection
25 was that it was already sustained.

1 THE COURT: All right.

2 MR. RAM: I will move on, your Honor.

3 Q Okay. Some of the loans were shared with -- sorry,
4 when I say some of the loans, I am referring to the
5 loans -- if you scroll down here. These EIDL loans, the
6 nine different loan applications that were uploaded by
7 Agent Massino. Some of these same loans were shared with
8 summary trial witness Marylee Robinson; is that correct?

9 THE COURT: Some of what loans?

10 Q BY MR. RAM: The loans that we see on the screen
11 here, Proactive Home Health Services, New World Trading,
12 Long Canyon Nursery, Lilia Turkan, and they are
13 identified by loan number there.

14 THE COURT: So your point is that some of those
15 loans, are those the nine loans? Eight. Is that the
16 group of loans that you said some were from the phone and
17 some are not?

18 THE WITNESS: Yes, your Honor. And I can tell you
19 which ones were and which ones weren't.

20 THE COURT: I understand some were and weren't.
21 But didn't you say seven of them were from the phones, or
22 most of them?

23 THE WITNESS: No. So five of them were identified
24 as a result of the phone and three of them were
25 identified through other sources.

1 THE COURT: But the question is were these loans
2 part of what the summary witness received to make her
3 analysis?

4 THE WITNESS: No. Not to my knowledge. These
5 were not shared with Marylee Robinson. I do believe they
6 were shared from with members of the Stout Team who were
7 performing the clerical functioning, the administrative
8 work of compiling the chart that we had requested.

9 Q BY MR. RAM: Okay. And so the Stout firm is where
10 Marylee Robinson works, though; right?

11 A Right. And I am saying that this information was
12 provided to other members of that team for a very
13 discrete project and the specific information that we
14 provided to Marylee Robinson for the tracing exercise
15 that resulted in summary chart exhibits. She did not
16 receive these files as part of that work.

17 So I don't know that Marylee Robinson received
18 copies of these or ever reviewed them.

19 Q Well, you actually don't know that, do you? So
20 this information, five of these loans you said are from
21 the Miami phones. So those loans were sent to the Stout
22 law firm, where Marylee Robinson works; correct?

23 A Stout is not a law firm.

24 Q I'm sorry, the Stout accounting firm or consulting
25 firm.

1 A It wasn't sent to the firm. It was sent to
2 specific people for a specific purpose. And the
3 instruction was not to share that information with
4 Ms. Robinson. She had a very discrete role.

5 Q Oh, so you restricted the members of the Stout law
6 firm -- or sorry, the Stout firm that received this
7 information from sharing it with Ms. Robinson?

8 A We tried to give Ms. Robinson the information that
9 was relevant to the task at hand because she was going to
10 prepare a certain set of summary charts.

11 So we only gave her the information that was
12 relevant to that effort. We did not share with her the
13 hundreds of loan files or hundreds of bank records
14 outside of that because it wasn't pertinent to the work
15 that she was doing.

16 Her firm was doing many different things, but
17 she was only focused on a discrete set of tasks.

18 Q So your testimony is you don't know whether or not
19 Mrs. Robinson ever received information from about these
20 loans that you sent to the Stout firm?

21 A That is not my testimony.

22 Q Is that accurate, you don't know whether
23 Ms. Robinson ever received the information that you sent
24 to the Stout firm?

25 A My testimony is that I never sent it to her.

1 Q Correct. And my question now is you have now
2 testified that you did send this information?

3 THE COURT: We are getting nowhere here. His
4 answer is he doesn't know -- he can't know anything more
5 than what he sent to her and what he sent to the firm,
6 the Stout firm. And he is saying that they were discrete
7 tasks. Whether there was some overlap, he doesn't know.

8 Q BY MR. RAM: Let's do it this way

9 THE COURT: No. That is enough of this.

10 Q BY MR. RAM: Okay. Can we look at defense Exhibit
11 28-6 which was displayed at trial. Trial Exhibit DX28,
12 page 6. I want to focus about a third of the way down.

13 It is already in the record, but this is an
14 e-mail exchange shared between a member of the Stout firm
15 and Marylee Robinson, this entire packet.

16 And now we are going to focus on page 6.

17 I think is it 28 or 29? 29, I apologize.

18 DX29.

19 And it's also KX29.

20 A third of the way down on KX29, it is page 6.

21 You see some of those same loans that we just
22 discussed Ms. -- doing business as New World Trading. Do
23 you see that?

24 A These are bank records. Yeah. I don't know why --
25 can I see the e-mail up on top?

1 Q Yes. Of course. Can we go to the first page,
2 please.

3 A Can we just start at the bottom?

4 Q Actually you can go to the very top.

5 You can see who is receiving this.

6 A Right. But if we start at the bottom it is
7 chronologically accurate.

8 Q Okay. Right there. First of all, Marylee Robinson
9 is all over this e-mail chain; correct? Every single one
10 of these chains?

11 A I have not yet had an opportunity to review the
12 exhibit.

13 Q All right. Let's do it together. So on page 2 of
14 Exhibit 29, Tom Landwermeier, who is that?

15 A Tom Landwermeier works at Stout.

16 Q And he is sending this document KX29/DX28 to
17 Marylee Robinson; yes?

18 A I am trying to read the e-mails. I just haven't
19 had an opportunity to do that. Can you just give me a
20 moment to review the exhibit before I answer questions
21 about it?

22 Q Sure. And I only have one, which is Marylee
23 received this?

24 A Then the answer is yes.

25 Q Okay. Let's move on. Go back to Exhibit 20 to the

1 Fenton declaration.

2 Okay. These same, I guess we're calling them
3 eight or nine -- I didn't count them properly. I think
4 there is nine here because it says nine, but it could be
5 eight. So referring to the loans on Exhibit 20, page 1,
6 and 2 -- oh, there is one on the next page. That is why.

7 These same nine loans were included in your
8 151 loan chart; is that correct?

9 A I cannot be certain. I think that they probably
10 were.

11 Q Okay.

12 A But I am not sure.

13 Q Let's do it really quickly. Just pick a couple of
14 names. Maybe Lilia Turkan.

15 Let's go to Exhibit 22 of the Fenton
16 declaration.

17 And while she is doing that, as part of your
18 declaration did you review the list of 151 loans at
19 Exhibit 22?

20 A Yes.

21 Q Did you review -- well, before we move on I just
22 wanted you to confirm -- if we can show him the chart --
23 any one of those names from Exhibit 21 appear here?

24 A I'm sorry, sir. What is the question?

25 Q Do any of the nine loans from Exhibit 20 appear in

1 your chart of 151?

2 A Certainly.

3 Q All of them do, in fact; right?

4 A That I do not know. And that is why I said I don't
5 know.

6 Q Okay.

7 A All of those ones. Some of those loans -- several
8 of them were identified as a result of looking at the
9 phones. Some of them were not. And I think it is likely
10 that those were on the chart, but I don't know if all of
11 them are. Some of them definitely are.

12 Q Now, focusing still on this chart, Exhibit 22 here,
13 you reviewed both the company and application columns of
14 this chart; correct?

15 A You are asking if I personally reviewed this?

16 Q Yes. Like you looked at it and you read it?

17 A Yes. Yes.

18 Q Did you check how many of the 151 loans have either
19 a company or an applicant referenced in the photographs
20 taken from the Miami phones?

21 A No. I looked to see how many of the new names that
22 were on that list that Special Agent Massino had
23 compiled -- I looked to see how many of those were on
24 this chart.

25 Q Okay. So good point. So to clarify the timeframe,

1 back in December, when you are communicating with Massino
2 and others on that chain, you looked here to see how many
3 of those loans were on the 151 chart?

4 A This chart did not exist at that time.

5 Q Okay. So what time period are you referring to?

6 A So there was some point in time after you sent out
7 your letter on May 7th and after you sought the Kastigar
8 motion where we went to look and see if any of the loans
9 that were on this list were also the loans that Special
10 Agent Massino had followed up on as a result of the
11 photos.

12 When we undertook that comparison, we noted
13 that there were a very small number. And I don't
14 remember what it is, but I think it is ten or less than
15 ten.

16 Q Great point. There is actually two different photo
17 sets, though. There is the 65 up photos and then there
18 is 141 photos from CBP that came in February 2nd.

19 A Right.

20 Q Did you do that exercise with respect to all 206
21 photos or just with respect to the ones you received from
22 Palmerton?

23 A I did it with respect to neither. So my testimony
24 is that I only looked -- so Special Agent Massino said
25 here are the names that I am unfamiliar with, based on my

1 review of the photos. I am following up on these names.

2 He looked at the unfamiliar names, identified
3 some additional loans, and that is memorialized in that
4 e-mail correspondence. I took the names that he followed
5 up on and the loans he identified -- I think he
6 identified ten total -- and I looked to see if any of
7 those ten loans were on this list of 151. And I
8 determined that ten or less than ten of those loans were.

9 Q Okay. And you reviewed -- you mentioned a May
10 filing from the defense. You also reviewed the motion to
11 disqualify or dismiss based upon Kastigar violations.
12 Just by way of background, you reviewed that document?

13 A Is that the document that the defense filed on
14 May 17th?

15 Q I believe so.

16 A If it's the May 17th motion, I reviewed the
17 May 17th motion, yes.

18 Q Okay. Let's just pull it up. Document 381, page
19 10, dash 10.

20 I will represent to you that the motion
21 highlights that 83 loans, and it breaks down the names of
22 the companies and individuals, were linked to 58
23 different entities and individuals who are referenced in
24 the Miami phones.

25 Did you follow up and inquire as to which --

1 as to those 83 loans?

2 A At what point in time?

3 Q Anytime since we followed, I guess.

4 A No, because a majority of those names were not --
5 anything but the ones that Massino identified as
6 unfamiliar were already familiar to us, as far as I
7 understand.

8 Q So the answer to my question is, no, you didn't
9 look to cross-reference whether the 83 loans that we
10 identified as linked to 58 different people and entities
11 were on the photos from Palmerton and from CBP?

12 MR. CIPOLLETTI: Objection, your Honor. The
13 answer speaks for itself.

14 THE COURT: Overruled. You can answer.

15 THE WITNESS: Can you repeat the question?

16 Q BY MR. KIM: Sure. The answer to the question is
17 no, then -- I was just clarifying -- that you did not do
18 the exercise of looking at the 83 loans that were
19 identified in that filing to be linked to 58 different
20 people and entities?

21 A Did I look at the 83 loans that were linked to the
22 53 [sic] different entities and do what?

23 Q So 58 different people, entities to identify
24 whether they actually appear in the 141 CBP photos and
25 the 65 Palmerton photos.

1 A You said that they appeared in those photos.

2 Q Correct. The question is did you do that exercise?

3 A Did I look to verify if your representation was
4 accurate?

5 Q Correct.

6 A No.

7 Q Similarly, did you do any exercise where not just
8 the 206 photos we have been referring to, but any
9 information on the Cellebrite -- as part of your Kastigar
10 preparation, did you check the Cellebrites to see
11 whether, for example, all 151 loans are referenced on the
12 Cellebrites?

13 A So, no. What did I was -- no.

14 Q So the answer is no? I can move on if the answer
15 is no.

16 A I guess I don't understand the question.

17 Q Sure. So in the government's possession right now,
18 you have access to the five Cellebrites from the Miami
19 phones, yes? Well, you physically have access to them,
20 yes?

21 A I personally do not have access, but -- no, I
22 personally do not have access to the Cellebrite reports I
23 do not believe at this time.

24 Q When did you lose access?

25 A I didn't lose anything.

1 THE COURT: We are going to have to wrap this up.
2 I am giving you quite a bit of an opportunity, but you
3 have got to bring this to a head.

4 MR. RAM: I will wrap it up in the next ten
5 minutes, your Honor.

6 Q Let's jump to another use of information from the
7 Miami phone. And that is Kastigar Exhibit 1 at page 36.

8 And while we are pulling that up, that is a
9 profile from Ray Deboise (ph.), a notary. Are you
10 familiar with this image?

11 A Yes.

12 Q Okay. This image from the 65 photos that Agent
13 Palmerton took was showed to a witness that was
14 interviewed in this case; true?

15 A That is my understanding.

16 Q The actual image from the phone, not from some
17 other source?

18 A Yes. My understanding is this photo was showed to
19 Ray Deboise.

20 Q Okay. Let's jump ahead. And we referenced the CBP
21 141 photos. You received those photos and the
22 prosecution team received them on February 2nd of 2021;
23 correct?

24 A Yes.

25 Q And you immediately reviewed those photos?

1 A I don't know if I immediately did. I believe I
2 looked at them. Yes, I believe I looked at them soon
3 after I received them.

4 Q Okay. And in fact you had a follow-up for John
5 Bradford from those 141 totals the very next day, by
6 February 3rd, yes?

7 A Yes, I believe so.

8 Q Okay. And you used the 141 CBP photos to develop
9 at least that investigatory lead with respect to John
10 Bradford, yes?

11 A Yes.

12 Q You even suggested that Agent Palmerton should
13 interview John Bradford based on the photo you saw in the
14 141 photos related to Bradford?

15 A Yes.

16 Q And specifically you saw some text messages, yes?

17 A Text messages with whom?

18 Q Between Bradford and Richard Ayvazyan.

19 A Yes.

20 Q And you thought that was "great evidence," closed
21 quote?

22 A I said something along those lines to somebody else
23 at some later point in time, yes, when we were trying to
24 consider what evidence to introduce at trial if that
25 evidence was not suppressed. And this was prior to

1 April 27th, when the Court entered the order. I said if
2 this is not suppressed it is evidence we could
3 potentially use.

4 Q Yes. The answer is, yes, you called it great
5 evidence?

6 A It don't remember if it's the exact quote, but it
7 was -- definitely I used the word great, yes.

8 Q Okay. Let's jump ahead. As you prepared your
9 declaration, you did not specifically recall using any of
10 the other 140 photos from CBP in your investigation; is
11 that true?

12 A That's right. And I reviewed my e-mails in
13 preparation of the declaration. I went through, I
14 reviewed e-mails, documents and correspondence, and I did
15 not find any other evidence of me personally going
16 through using this information to develop investigatory
17 leads.

18 Q Okay. Finally, let's talk about the selection
19 of -- let's talk about the Dadyan phone, Tamara Dadyan's
20 phone.

21 A Which phone is that?

22 Q It is going to be 1B21.

23 A Okay.

24 Q You were responsible for coordinating with the
25 filter team?

1 A Yes.

2 Q And when did that coordination start?

3 A Well, from the beginning of the case.

4 Q Okay. So roughly June 2020?

5 A No. I think that they were -- I don't recall
6 specifically when they were added. I think that it was
7 after -- I think it was after we arrested the defendants.

8 Q Correct. I'm sorry, so you started coordinating
9 with the filter team in November of 2020 or later;
10 correct?

11 A I believe that that's correct, yes.

12 Q All right. And how did you communicate with the
13 filter team?

14 A Via e-mail and over telephone.

15 Q Okay. Any in-person meetings?

16 A No.

17 Q Did Agent Palmerton participate in some of these
18 communications you had with the filter team?

19 A I believe that he may have in very limited
20 instances.

21 Q Okay. So, for example, an April 18th meeting
22 request -- April 8th, sorry, meeting request, which is in
23 your declaration, Exhibit 10, page 11, if you want to
24 pull it up. You were inviting Palmerton to join you in a
25 meeting with the filter team agents. Would that surprise

1 you?

2 A I would not be surprised.

3 Q Okay. And did you memorialize all your
4 communications with the filter team?

5 A No.

6 Q Okay. And to the extent you have any memorialized
7 communications with the filter team, did you produce all
8 of those to the defense?

9 A No.

10 Q Are you planning on producing all of those
11 communications with the filter team?

12 A To you?

13 Q To the defense, yes.

14 A No.

15 Q You understand you have a Jencks obligation as
16 well?

17 Okay. We will come back to that. All right.

18 Let's look at what was the filter team's job?

19 A To conduct a filter to -- a filter review to
20 identify the potentially privileged communications and
21 basically set that aside so that that potentially
22 privileged communications did not go to the prosecution
23 team.

24 Potentially privileged includes spousal
25 privilege as well as attorney-client privilege or

1 attorney work product.

2 Q So fast forward a little bit. Is it fair it say in
3 April of 2020 there were too many digital devices and too
4 little time to review them all for purposes of trial so
5 you had to coordinate with the filter team to establish
6 priorities?

7 A Yes.

8 Q Okay. One of the priorities is you identified four
9 digital devices that you wanted to use that were obtained
10 from the November 5 search warrants; yes?

11 A That depends on the period of time that you are
12 talking about.

13 Q Sure, in April of 2020.

14 A And it depends on what point in April. So I
15 identified devices that I asked the filter team to
16 prioritize.

17 The number of devices and the devices that I
18 identified changed over time.

19 Q Okay. And --

20 A If I could provide some additional explanation.

21 Q Just to keep this streamlined, I am going to try to
22 ask you quick questions if I can.

23 A Sure.

24 Q You kept -- two Dadyan phones were on that priority
25 list of four depending on the time period in April of

1 2020, yes?

2 A Yes. We identified two phones that were directly
3 tied to Tamara Dadyan.

4 Q Okay.

5 A Those were the only phones tied to her in her name.

6 Q And between those two Dadyan phones, you initially
7 prioritized 1B130?

8 A That's correct.

9 Q And the Zhadko phone that we talked about, the
10 Iulia Zhadko phone was 1B21; correct? I'm sorry. The
11 other Tamara Dadyan phone was 1B121, yes?

12 A Yes.

13 Q And you were aware in April of 2020 that the Iulia
14 Zhadko phone that we have been addressing is 1B123 -- had
15 text messages with the 1B21 Tamara Dadyan phone; right?

16 A No. I said I was not aware of that fact.

17 Q You weren't aware in April of 2020?

18 A I didn't know which phone 1B123 had communicated
19 with.

20 Q Did you learn that fact from your review of the
21 Zhadko Cellebrite back in February of 2021?

22 A No.

23 Q And you testified you don't even recall if you saw
24 any text messages back in February of 2021 on the Zhadko
25 phone; right?

1 A Correct. I saw the text messages on April 27th,
2 when Special Agent Palmerton sent them to me.

3 Q But you do remember learning that 1B21 was the
4 Dadyan phone on the other side of the message with
5 messages with the Zhadko phone around the time of your
6 April prioritization request for 1B130?

7 A No.

8 Q Let's take a look at your second declaration.

9 Page 6, paragraph 18.

10 Page 6. Sorry, scroll down, scroll down.

11 Sorry, paragraph 18.

12 Yes. Second declaration.

13 Paragraph 18. Stop there.

14 Oh, is this the second declaration? Second
15 declaration.

16 This is actually the last main point. It is
17 pretty important.

18 Specifically there is a paragraph that says,
19 "While around this time, I became generally aware" -- do
20 you see that?

21 A Would it be possible to get a copy of my
22 declaration?

23 Q Okay. We will just give you a clean paper copy.

24 It is up. Okay?

25 Paragraph 18, all right.

1 The previous paragraph says, "On April 21st,
2 2020" -- scroll down -- "I sent an e-mail to the filter
3 team requesting they prioritize filter review of 1B17,
4 1B21 and 1B30, beginning with 1B30."

5 We just covered that.

6 And then beginning on paragraph 18, you say,
7 "While around this time I became generally aware that the
8 text messages between Ayvazian and Dadyan had been found
9 on the Zhadko phone, I did not use that information to
10 identify which of the November 5 phones to prioritize."
11 Do you see that?

12 A Yes.

13 Q Okay. It is fair to say at this time, prior to
14 April 27th, the Zhadko phone, which we have identified as
15 1B123, was still in evidence. For all purposes, you
16 could use it for trial?

17 A Yes.

18 Q Okay. So frankly, as a prosecutor it makes sense
19 to prioritize 1B130 because that is a different phone.
20 You already had the other side of the Dadyan's
21 conversations from 1B123; right?

22 A No.

23 Q As a matter of logic.

24 A That is not my logic.

25 Q Okay. Let's move on.

1 MR. RAM: What is your answer?

2 THE WITNESS: So I didn't know what the telephone
3 number was for the phone that was used. And I didn't use
4 that telephone to identify the --

5 THE COURT: What phone?

6 THE WITNESS: -- the Dadyan phone.

7 THE COURT: Are you talking about 121?

8 THE WITNESS: Yes, I didn't know whether 1B21 or
9 1B130 was the phone that had communicated with 1B123, and
10 the decision I made was to prioritize 1B130 because I
11 believed that that phone was a newer model and I thought
12 that it would have better information.

13 THE COURT: That is in your declaration.

14 THE WITNESS: Yes. But I didn't look to try to
15 find the mirror image.

16 THE COURT: Last question.

17 Q BY MR. RAM: So if I heard you correctly, you said
18 at this time, so April 21st, when you prioritized those
19 phones, 1B17, 1B21 and 1B30. you didn't know which
20 Dadyan phone was which, meaning which one communicated
21 with the Zhadko phone. You didn't know that?

22 A That's correct.

23 Q Okay. Take a look at page 12 of Exhibit 31.

24 THE COURT: The court reporter needs to break so
25 you have to bring this to a head.

1 MR. RAM: We are on the final topic, your Honor.
2 Should we just take a break?

3 THE COURT: Let's take a break for 10 minutes and
4 then come back.

5 (Recess from 2:52 p.m. to 3:11 p.m.)

6 MR. RAM: May I proceed, your Honor?

7 THE COURT: Yes.

8 Q BY MR. RAM: On April 27, the Zhadko phone was
9 suppressed, Mr. Fenton?

10 A B123?

11 Q Yes.

12 A Yes.

13 Q And that same day Agent Palmerton sent you the 918
14 pages of text excerpts that we saw at Palmerton
15 Exhibit O?

16 A Yes. He had sent it prior to the time the court
17 issued the order.

18 Q And you know from the time stamp of his e-mail?

19 A Yes.

20 Q And did you produce that e-mail to the defense?

21 A I don't know if that e-mail was produced. I think
22 that Agent Palmerton had attached it to his declaration
23 as Exhibit O, I believe you said.

24 Q And do you know if there is an e-mail in the record
25 anywhere that shows when that was sent to you?

1 A I do not.

2 Q Okay. Do you have that e-mail?

3 A Yes.

4 Q The very next morning, on April 28th, you set up a
5 call with the filter team, yes?

6 A Yes.

7 Q And you asked them to identify the text messages
8 between Tamara Dadyan and Richard Ayvazyan?

9 A Yes.

10 Q And you made this request using the information
11 from Palmerton's Exhibit O?

12 A Not exactly, no. So we -- I knew that there were
13 text messages at that point, and I wanted to make sure
14 that I asked them whether or not they had found text
15 messages on the Tamara Dadyan phone that they had
16 filtered.

17 And I asked them -- because it was going to
18 take them some time to complete that filter review, and I
19 believe that those text messages between Mr. Ayvazyan and
20 Ms. Dadyan were not privileged and I knew the defense
21 would want to see them immediately, I asked them to
22 prioritize the release of those particular text messages.

23 So I said if there are any text messages
24 between those two individuals, please prioritize them for
25 release so we can get them to defense counsel right away.

1 The defense counsel will want to know about those.

2 Q Did you ever make a production to the defense of
3 any follow-up that you got from the filter team with
4 respect to a usable text from Dadyan and Ayvazyan?

5 A I definitely produced the Cellebrite report.

6 Q And that was produced to the defense even before;
7 right?

8 A We produced a forensic image of that phone back in
9 December. I believe it is December. But we produced the
10 Cellebrite report as soon as it became available.

11 Q Correct. But I am saying on April 28th you
12 followed up to get a usable text form of the Dadyan
13 Ayvazyan text messages; right?

14 A I asked the filter team to do that, yes. I don't
15 recall whether or not they actually did. But I also
16 asked them to prioritize 1B130 and they didn't. They
17 prioritized 1B21.

18 Q On April 28? Or were you talking about in the
19 past?

20 A I am talking about from the week prior.

21 Q Right. Okay. But on April 28th, with Fenton's
22 Exhibit O in your hand, right, you reach out to the
23 filter team and say I need useable text of the Dadyan
24 Ayvazyan text chain, in substance?

25 A No, that is not what I said.

1 Q Not what you said to the filter team?

2 A That is not what I said. The filter team is also
3 not my testimony.

4 Q Did you ask the filter team for useable text
5 between Dadyan and Ayvazyan?

6 A I asked the filter team to prioritize the release
7 of any text messages that they found to Richard Ayvazyan
8 and Tamara Dadyan from whatever phone they had they were
9 filtering at that time. It turned out to be 1B121.

10 And the reason why was so that can he could
11 produce it to the defense so that you would be aware that
12 even those text messages had been suppressed that there
13 were additional text messages as well.

14 Q But in fact nothing was produced to the defense
15 following that request?

16 A That is not a fact.

17 Q With respect to the Dadyan Ayvazyan text, there was
18 an additional production?

19 A The Cellebrite report for that phone 1B121 was
20 produced.

21 Q And it was produced prior to that time as well,
22 right, the Cellebrite for 1B21?

23 A I don't recall. It is possible. But we produced
24 it timely.

25 Q And then this was after you received Exhibit O from

1 Palmerton?

2 A No -- now, I don't follow.

3 Q April 28th is when he you made make the request to
4 the filter team?

5 A Yes.

6 Q You had received Exhibit O from Palmerton on
7 April 27.

8 A Yes.

9 MR. RAM: No further questions.

10 THE COURT: All right. Mr. Littrell, I can't
11 allow you to go through this same turf. I want to direct
12 you to ask questions that are most pertinent to your
13 client.

14 MR. LITTRELL: That is my intention, your Honor.

15 THE COURT: And hopefully you will be to the
16 point.

17 MR. LITTRELL: That is also my intention, your
18 Honor.

19

20 CROSS-EXAMINATION

21 BY MR. LITTRELL:

22 Q Good afternoon, Mr. Fenton.

23 A Good afternoon.

24 Q You have been on this case since June 12, 2020; is
25 that correct?

1 A Yes.

2 Q And you are the lead prosecutor; correct?

3 A One of the lead prosecutors, yes.

4 Q And your job was to identify evidence that would
5 support a conviction of guilty in this case; right?

6 A Yes.

7 Q And you weren't looking for just sufficient
8 evidence for a guilty verdict. You were looking for all
9 relevant evidence; right?

10 A We were looking for evidence that would prove guilt
11 beyond a reasonable doubt.

12 Q Right. Which is more than just sufficiency; right?

13 A Yes.

14 Q So once you had sufficient evidence to convict, you
15 didn't just stop there; right?

16 A That's correct.

17 Q And the way an investigation works is often the
18 meaning of a piece of evidence isn't clear until you put
19 it together with later evidence that you find; right?

20 A That is right.

21 Q And that was true in this case; correct?

22 A In some respects. It really depends on the piece
23 of evidence that you are talking about.

24 Q Now, your theory of this case with respect to Ms.
25 Terabelian specifically was that she assumed the identity

1 of a Victoria Kauichko; right?

2 A That she -- yes, that she used that identity. Yes.

3 Q And just as you sit here today, how can you explain
4 how they actually used Victoria Kauichko's identify?

5 What did she do?

6 A Are you asking me what evidence led us to believe
7 that she was using Victoria Kauichko's identity?

8 Q Yes.

9 A Yes. I can explain that. So we became aware of
10 Iulia Zhadko on June 12, 2020. We traced the money and
11 realized that Richard Ayvazyan had used the stolen PPP
12 funds to buy a house in the name of him and his wife.

13 We continued to follow the money. And this is
14 really a key point for us. And what we realized was that
15 the money was being funneled through Richard's account at
16 Inception Ventures, in the name of Inception Ventures,
17 and also Marietta Terabelian's personal bank account at
18 Bank of America as well.

19 We continued to follow the money, and we
20 learned that additional money was being -- that
21 additional loans were being taken out in the names of
22 family members, like, for example Nazar Terabelian.

23 We followed that money and saw that it was
24 being used by the family to make purchases, including
25 purchases that would be traditionally associated with a

1 woman, like jewelry or furniture. We also --

2 Q Let me stop you there. I want to be efficient. And
3 we will get to the rest because I do want you to explain.

4 Your focus was tracing the money; right?

5 A Yes.

6 Q But you also traced at that money to purchases;
7 right?

8 A Yes.

9 Q And those purchases you just said were purchased
10 that would be associated with a woman?

11 A Yes.

12 Q What do you mean by that?

13 A Furniture, jewelry, things of that nature that
14 would typically be associated be somebody, you know who
15 is female.

16 Q Why do you say that would be typically associated
17 with somebody who is female?

18 A Well, in this instance we understood that Marietta
19 Terabelian did not work outside the home, that she was --

20 Q How did you learn that?

21 A That was our understanding.

22 Q And where did that understanding come from?

23 A She didn't have a job.

24 Q How did you know?

25 A Background reports. Things of that nature.

1 Q When did you get a background report that said that
2 she didn't have a job?

3 A We didn't have any reason to believe she worked
4 outside the home.

5 Q So you assumed, because you didn't know, that she
6 didn't work outside the home?

7 A I'm sorry?

8 Q You assumed she didn't work outside the home but
9 you didn't have any evidence of that. I am talking about
10 prior to the Miami stop.

11 A We had no reason to believe that she had a job.

12 Q But you didn't have any reason to believe that she
13 didn't have a job?

14 A That is not true. When we looked at her bank
15 records, typically what we would see if somebody is
16 employed is that they would receive a pay stub, that they
17 would receive checks from ADP or other payroll
18 processers.

19 We saw no evidence of that. All we saw was
20 money coming in from illegitimate sources and being spent
21 on -- you know, spent in and around where she lived.

22 Q I want to stop you here and I want to ask you about
23 what you did and what you know. You looked at her bank
24 account yourself?

25 A Yes.

1 Q When did do you that?

2 A I don't recall, but it was early on.

3 Q It was prior to October 20th of 2020?

4 A Yes.

5 Q And you looked at her bank account and from that
6 bank account you concluded she didn't have a job?

7 A Yes.

8 Q And why was that important to you?

9 A Because I wanted to know if she was gainfully
10 employed. I wanted to know what she did.

11 Q Why did that matter to you?

12 A Because we try to learn information from our
13 subjects that is potentially relevant to the
14 investigation. She lives in a 3.25 million mansion. She
15 is buying all these things. We want to understand who
16 she is. And whether or not she is gainfully employed is
17 relevant. Looking to see if she has a paycheck matters
18 and where she gets that paycheck from.

19 So that is something at that we learned. But
20 we also were able to trace -- we saw that stolen PPP
21 funds went into bank accounts -- a bank account in
22 Richard Ayvazyan's name and that he was transferring that
23 money out to Terabelian. There are many transfers to
24 Terabelian, payments on Nazar Terabelian's credit cards.

25 We then looked at her criminal history --

1 Q I want to make sure the record is clear. So let me
2 just stop you and ask you some questions to try to focus
3 this. Okay. I want to ask but what you knew prior to
4 October 20th, 2020.

5 A And everything I just said stuff that we knew prior
6 to October 20th.

7 Q I understand that. And you have a lot to say and I
8 want you to have a chance to say it, but I need to ask
9 you some questions to focus you. Okay. Is that okay?

10 A I hadn't finished my answer to the previous
11 question, but if you want to move to the next one.

12 Q Why don't we do this? We have limited time. I
13 want you to just tell me everything you have to say right
14 now and then I'll start asking questions. So go ahead.

15 A So at that point we then looked at the criminal
16 history for Mr. Ayvazyan and Ms. Terabelian, and what we
17 realized is that they have a pattern a history back in
18 2012 of working together to commit loan fraud.

19 So that was something else that was relevant
20 to us as well.

21 So we continued to follow the money and we
22 continued to look to see who was taking out those loans
23 and how the money was spent and where it was funneled and
24 what names and identities were being used.

25 The two names and identities that seemed to be

1 used quite frequently were Victoria Kauichko and Iulia
2 Zhadko. We assumed that they were male and female
3 identities that were --

4 Q Let me stop you there. Why did you assume that
5 they were male and female?

6 MR. CIPOLLETTI: Objection, your Honor. Could the
7 witness just finish his answer?

8 THE COURT: No. He can answer the question.

9 THE WITNESS: So we saw the licenses. Iulia, we
10 understood, could be a female as well. But we saw the
11 licenses in the loan files that had pictures of men.
12 Victoria Kauichko, we thought that Victoria was a female
13 name and then when we saw an actual license in one of the
14 loan files we saw that she was indeed a woman.

15 Q So you had made the assumption that therefore the
16 person using that identity was a woman because the ID had
17 a woman on it?

18 A That is not the assumption that we made.

19 Q So you understood -- you got to let me ask
20 questions here, and I promise I will give you a chance.
21 Your conclusion was that it was a woman?

22 A No. My conclusion was that Richard Ayvazyan and
23 his wife were working together to commit the same type of
24 fraud that they had committed together back in 2012.

25 Q So this was based on an assumption because of their

1 prior conviction?

2 A It was based on the prior conviction, following the
3 money, and all the things that I just described; how the
4 money is being spent, who was using it, the different
5 identities. And then eventually we find out October 19
6 that they were in possession of physical credit cards,
7 you know, in these different identities.

8 Q Okay. Let me see if I have this right then. Prior
9 to October 20th, 2020, you traced the money to properties
10 owned jointly by Richard Ayvazyan and Marietta
11 Terabelian; right?

12 A One property owned by them jointly, yes.

13 Q You traced also that money to properties that were
14 purchased by Richard Ayvazyan, at least so you believed?

15 A Using aliases, yes.

16 THE COURT: Using what?

17 THE WITNESS: Aliases.

18 Q BY MR. LITRELL: And the property that was
19 purchased jointly by Richard Ayvazyan and Marietta
20 Terabelian, you saw some e-mails related to that
21 purchase; right?

22 A Yes. The investigative team did, yes.

23 Q But there were no e-mails by Marietta Terabelian
24 related to that purchase right?

25 A Not as far as I am aware.

1 Q So you traced the money to properties owned jointly
2 by Marietta Terabelian and Richard Ayvazyan; right?

3 A Property, yes.

4 Q You looked at Marietta Terabelian's bank account
5 and inferred that she didn't have a job; right?

6 A And that her personal account was being used to
7 funnel stolen PPP loan funds to pay for that house.

8 Q Okay. So you traced the money. You saw her bank
9 account. You saw that money flowed through her bank
10 accounts to a house that she jointly owned with Richard
11 Ayvazyan?

12 A Yes.

13 Q And from that evidence alone you concluded that she
14 was taking on the identity of Victoria Kauichko?

15 A No. There was additional evidence as well.

16 Q What other evidence was there prior to October
17 20th, 2020, that Marietta Terabelian assumed the identity
18 of Victoria Kauichko?

19 A There was the additional evidence of our
20 participation in the scheme and the fact that there were
21 two identities --

22 Q I mean specifically, what actual facts.

23 A The actual fact that she was funneling and received
24 and spending stolen PPP and EIDL loan money.

25 Q I mean specific facts tying her to the identity of

1 Victoria Kauichko.

2 A The use of her father's name, the fact that that
3 money would then be funneled to --

4 Q What evidence did you have that she was using her
5 father's name? What evidence did you have?

6 THE COURT: The question is very specific. What
7 evidence did you have prior to October 20th that
8 Terabelian was using the name Kauichko. You are
9 describing what you believe to be her involvement in a
10 fraudulent PPP scheme. But the question is more
11 specific. Is that right, Mr.Littrell?

12 MR. LITTRELL: That is exactly right.

13 THE WITNESS: The criminal history is coupled with
14 the bank records.

15 Q BY MR. LITTRELL: Let me stop you. What about her
16 criminal history tied her to the identity of Victoria
17 Kauichko?

18 A The fact that her and her husband had previously
19 been -- previously plead guilty to working together to
20 commit loan fraud.

21 Q Okay. Does the name Victoria Kauichko appear
22 anywhere in the records related to her prior conviction?

23 A From 2012, no.

24 Q It was related in any way to that prior conviction
25 in 2012.

1 A No.

2 Q Did the name Victoria Kauichko appear anywhere in
3 her bank records?

4 A No. They were her bank records in her name.

5 Q That's right. And so you had no evidence prior to
6 October 20th, 2020 that Marietta Terabelian was use the
7 identity of Victoria Kauichko, did you?

8 A That is not correct.

9 Q Okay. What did you know. Tell me. Facts?

10 A The money. We followed the money.

11 Q What about the money tied Marietta Terabelian to
12 Victoria Kauichko?

13 A The fact that the Iulia Zhadko and Victoria
14 Kauichko funds are being used for the benefit of her and
15 her family.

16 Q Is that it?

17 THE COURT: Describe that answer a little more
18 fully. I didn't understand your answer completely.

19 THE WITNESS: We see loan money being taken out in
20 the name of Nazar Terabelian and being transferred to --

21 THE COURT: Loan money from where?

22 THE WITNESS: PPP and EIDL loan money that was
23 coming from -- that is being put into these bank
24 accounts, taken out in the name of Victoria Kauichko or
25 taken out in the name of Iulia Zhadko, and then used for

1 the benefit of defendant Richard Ayvazyan.

2 THE COURT: You say that you saw PPP loans taken
3 out in the name of Kauichko -- and what is the other
4 guy's name?

5 THE WITNESS: Zhadko.

6 THE COURT: Zhadko. And that the proceeds of
7 those loans went into the bank account of Terabelian?

8 THE WITNESS: Stolen, no. The money is going and
9 being used by Victoria Kauichko identity for various
10 purchases that go back to the family for the benefit of
11 of the Ayvazyan family or the Terabelian family.

12 THE COURT: When you say for for the benefit of
13 the family, can you give me an example?

14 THE WITNESS: Sure. If you look at the -- you
15 know, we see the money from Runyan Tax Service, for
16 example, so a PPP loan will be taken out by Victoria
17 Kauichko, Runyan Tax Service, and then the money will be
18 used to pay for Marietta Terabelian's father's funeral.

19 THE COURT: From what account?

20 THE WITNESS: From the Runyan Tax Service account,
21 where Victoria Kauichko is the cosigner. That is one
22 example.

23 THE COURT: So in other words, you are saying that
24 loan proceeds, PPP loan proceeds went into the Runyan
25 account. Of course I remember that from the trial.

1 THE WITNESS: Right.

2 THE COURT: And then the examining that account,
3 monies from the Runyan account were used to pay for
4 things that were associated with the name Kauichko?

5 THE WITNESS: Yes.

6 THE COURT: But how did you at that point know
7 that Kauichko was Terabelian?

8 THE WITNESS: Because we are seeing the way that
9 this money is being used.

10 THE COURT: In other words, it was being used like
11 for funeral of Terabelian's father?

12 THE WITNESS: Right. Or to buy furniture.

13 THE COURT: So your thinking was that Runyan Tax
14 account, business account is being used to pay for
15 Terabelian's father's funeral, and that is an indication
16 that Kauichko is Terabelian?

17 THE WITNESS: Yes. That is an example.

18 Q BY MR. LITRELL: Is there anything else?

19 A Other thans to types of examples? No. I think
20 that those are -- those are -- I think that that is the
21 best evidence at that time. And then --

22 Q And you assumed that the person that used the
23 Victoria Kauichko identity was a woman; right?

24 A Right. We think --

25 Q You said right; right? And so that means you ruled

1 out Richard Ayvazyan as being the one that paid for that
2 funeral, for example?

3 A No. And the next thing I was going to say, I mean,
4 we understood that it was being used by them, we thought
5 together.

6 Q What do you mean, used together?

7 A That they were working together to perpetuate this
8 fraud, that there were a team.

9 Q Did you have any evidence that they were working
10 together prior to October 20th, 2020?

11 A Just the way they were handling the money and the
12 way that the money -- it's going through her account.

13 Q It is the same evidence you just referred to?

14 A Yes. It is being spend by her. It is the criminal
15 history plus the bank records plus her possession of the
16 credit card, the physical credit card.

17 Q And based on that, and that alone, you were
18 convinced at that point that defendant Mary Terabelian
19 had assumed the identity of Victoria Kauichko to apply
20 for many loans and moved and spent the criminal proceeds?

21 A Yes.

22 Q What evidence did you have prior to October 20th,
23 2020 that Mary Terabelian assumed the identity of
24 Victoria Kauichko to apply for a loan?

25 A As I said before, it is following the money.

1 Q But Mary Terabelian never applied for a loan;
2 right?

3 A In her own name?

4 Q What evidence was there that she used the Victoria
5 Kauichko identity to apply for a loan?

6 A We thought that there was ample evidence.

7 Q I am not asking what you thought. I am asking what
8 evidence did you actually know of prior to October 20th,
9 2020?

10 A The bank records and the application.

11 Q And that was it?

12 A Yes.

13 Q Okay. So you would have actually indicted Mary
14 Terabelian based on that evidence alone as being someone
15 who actually assumed the identity of Victoria Kauichko;
16 is that true?

17 A Yes, and we also have had the physical credit card
18 as well. Her possession of the physical credit card that
19 was seized from her person or from her luggage on
20 October 19th.

21 Q Now, prior to October 20th of 2020, you also had
22 evidence indicating that other people were using and
23 assuming the identity of Victoria Kauichko; right?

24 A You mean in addition to Richard Ayvazyan?

25 Q Well, including him. Well, one of them was Richard

1 Ayvazyan; right?

2 A Yes.

3 Q But also you had evidence that Manuk Grigoryan was
4 using that identity prior to October 20, 2020; right?

5 A We believed that he was a co-conspirator, yes. He
6 was identified as a subject at that point.

7 Q But you had ruled out the possibility that Manuk
8 Grigoryan had assumed the identity of Victoria Kauichko?

9 A We thought that he was playing -- no, we had not
10 ruled out the possibility that he was also playing -- a
11 conspiracy.

12 Q Did you rule out the possibility that Richard
13 Ayvazyan had assumed the identity of Victoria Kauichko?

14 A No. We thought that he was using the identity as
15 well.

16 Q Okay. So you thought she was one of many people
17 that had assumed the identity of Victoria Kauichko?

18 A We thought she was one of several people working
19 together using that identity, yes.

20 Q What do you think now?

21 A I think that's right.

22 Q So October 20th you were informed -- so okay. Let
23 me see. So October 20th, 2020, that is when you learned
24 that the CBP officers had stopped Ms. Terabelian at the
25 Miami airport; right?

1 A Right after -- well, yes. We learned on
2 October 19. We learned on October 19.

3 Q In October 20th -- and just past midnight on
4 October 20th?

5 A Yes.

6 Q That is when you received a call from CBP officers?

7 A Yes.

8 Q And they were calling to tell you what they found
9 on Ms. Terabelian's phone at the airport; right?

10 A Just as a point of clarification. That is when
11 Special Agent Palmerton received that telephone call from
12 the CBP, but yes, that is when we found out the
13 information that CBP had learned.

14 Q And one of the reasons for having the airport stop
15 was to gather evidence to prove or to establish that Mary
16 Terabelian and Richard Ayvazyan were responsible for the
17 loan fraud; right?

18 A I think it was an investigative step. It wasn't
19 for that specific purpose. It was an investigative step.

20 Q It was for the purpose of gathering evidence?

21 A It was an investigative step. Yes. It was to
22 investigate the crime including to potentially gather
23 evidence.

24 Q Right. And the evidence you hoped to gather were
25 going to be based on an interview of Richard Ayvazyan,

1 and Mary Terabelian; right?

2 A There could be a variety of different types of
3 information that we could learn that could potentially
4 have been, you know, relevant to the investigation.

5 Q But you certainly knew prior to that stop that it
6 was likely they would be carrying cell phones with them;
7 right?

8 A I did not know -- I did not know what they would be
9 carrying.

10 Q You certainly hoped they would be carrying a cell
11 phone; right?

12 A It was not something that was really planned by the
13 investigative team.

14 THE COURT: The point of this is they did get the
15 credit card on her person on that day, and I am losing
16 track of where you are going. Are you referencing what
17 he included in the criminal complaint?

18 MR. LITTRELL: The point I am after is the
19 intention in having the stop done was to get evidence
20 most likely from their phones.

21 THE COURT: I mean, so what in terms of this
22 hearing.

23 MR. LITTRELL: Well, that make it is much more
24 likely that when he did get that evidence he looked at it
25 very carefully.

1 THE COURT: So you are saying that when the
2 witness testified before that he didn't get the phone
3 information until it was relayed to him by -- was it the
4 FBI agent? Is that how you got it?

5 THE WITNESS: Yes.

6 THE COURT: And in terms of the timeframe, was
7 that November sometime?

8 THE WITNESS: So -- yes. Special Agent
9 Palmerton --

10 THE COURT: What date was that?

11 THE WITNESS: November 13.

12 THE COURT: And at that point, just to put the
13 chronology straight for me, Palmerton had taken 65 photos
14 from that phone?

15 THE WITNESS: Yes.

16 MR. LITTRELL: We are not there yet, though.

17 THE COURT: I know. I am just trying to get the
18 chronology straight. And then when he phoned you, your
19 testimony is that he generally described what was on the
20 phone or specifically?

21 THE WITNESS: Generally.

22 THE COURT: The answer is generally.

23 THE WITNESS: Yes. Generally.

24 THE COURT: Now, the questions are designed to
25 show that that is not true?

1 MR. LITTRELL: He has minimized the importance of
2 the information from the phones.

3 THE COURT: But this is what he said, and the
4 purpose of the hearing, in part, is to see whether the
5 witnesses are credible. And what you are implying is
6 that it didn't happen that way, that as soon as the
7 phones were seized -- and we know the customs agent did
8 some kind of looking at them -- the implication is that
9 that was shared immediately with this witness.

10 MR. LITTRELL: Exactly.

11 THE COURT: That is what I am understanding the
12 import of your question is. And he is saying that that
13 didn't happen, that -- let me just get one fact straight.
14 Did you know -- when was the first time you knew that the
15 phones were seized after the October 19th search?

16 THE WITNESS: After midnight on October 20th.

17 THE COURT: And you say that was communicated not
18 to you, but to Palmerton?

19 THE WITNESS: I believe it was communicated to
20 Palmerton, who communicated it to me.

21 THE COURT: And we don't know at this point what
22 Palmerton received, but what did he tell you about what
23 he heard from the customs agent?

24 THE WITNESS: So we heard three pieces of
25 information. One was that there was a California

1 driver's license in the name of Iulia Zhadko.

2 Second, that there were text messages that
3 suggested that Marietta Terabelian had -- was using the
4 identity of Victoria Kauichko.

5 And third, that there appeared to be other
6 driver's licenses and credit cards in the names of people
7 other than the defendants.

8 THE COURT: All right. Then you can pick up from
9 there.

10 Q BY MR. LITTRELL: You learned this from Special
11 Agent Palmerton; correct?

12 A I believe so yes.

13 Q But you also learned this directly from CBP
14 officers; right?

15 A I don't recall them being on the phone at the time,
16 but it was possible they were on the phone at the time as
17 well, but I don't think so.

18 Q And this was after midnight on October 20th?

19 A Yes.

20 Q And you wanted to take that call because you didn't
21 think it could wait until the next day?

22 A No, sir. What happened was we didn't plan this
23 operation.

24 THE COURT: Wait a second. Answer the question.
25 The question was you took that call at a late hour

1 because you were very anxious to find out who was on the
2 phone. And you can answer that yes or no.

3 THE WITNESS: No. The answer is no.

4 THE COURT: The answer is no. Let him ask another
5 question. That is the way it goes.

6 THE WITNESS: I'm sorry, your Honor.

7 Q BY MR. LITTRELL: So why couldn't it wait until the
8 next day? Why did you pick up the phone after midnight?

9 A Because we were going to arrest them.

10 Q And why were you going to arrest them?

11 A For committing PPP loan fraud.

12 Q And that was based on evidence that had nothing do
13 with what CBP found at the airport?

14 A We were planning to charge them. And then once we
15 learned that they were found with the credit cards which
16 I believe we learned on the 19th, like later that
17 evening, we started talking about doing probable cause
18 arrests.

19 Q So let's back up for a minute. So you learned
20 about the fact that they were caught with the credit
21 cards at the same time that you learned that Mary
22 Terabelian had texts on her phone suggesting that she was
23 using the identity of Victoria Kauichko?

24 A Yes.

25 Q So it's the same exact time?

1 A I don't know if it is the same minute, but it was
2 the same --

3 Q Same conversation?

4 A The same evening, yes.

5 Q And you were not previously planning to do a
6 probable cause arrest just based on the fact that they
7 might be encountered at the airport?

8 A No. We were not planning to arrest them at the
9 airport.

10 Q So the decision to arrest was based on information
11 learned during the airport stop?

12 A It was based on the fact that they possessed those
13 credit cards.

14 Q Now, you -- three things?

15 A We didn't know what was on the phone at that time.

16 Q Well, one thing that was communicated to you that
17 you just acknowledged is that on the phone possessed by
18 Mary Terabelian were text messages suggesting that she
19 was using the identity of Victoria Kauichko?

20 A Yes.

21 Q And after you learned that, you decided to do a
22 probable cause arrest?

23 A That is not my testimony.

24 Q The decision to make the probable cause arrest
25 happened after you learned --

1 A No. No.

2 Q Let's back up.

3 THE COURT: Don't.

4 THE WITNESS: I'm sorry, your Honor.

5 THE COURT: Let him ask the question and answer
6 the question. And if your answer requires some
7 explanation we will consider it.

8 Q BY MR. LITTRELL: What was the point in time where
9 you decided do a probable cause arrest?

10 A I don't remember the specific point in time. I
11 remember that this was unfolding over the course of an
12 evening.

13 Q You just said it did not happen after you found out
14 that she had the Victoria Kauichko texts. So either you
15 know are or you don't know.

16 A So what I am saying is that this unfolded over the
17 course of the evening. And we were in touch with our
18 supervisors about doing this arrest. And as we were
19 having these discussions, additional information was
20 coming in.

21 Q And the additional information was those three
22 things you just told us; right?

23 A Yes.

24 Q Based on those three bits of informations, that is
25 why you did the probable cause arrest?

1 A No. I started calling people about doing a
2 potential probable cause arrest around 10:00 p.m. I
3 called three individuals, Brian Kidd, Henry van Dyke,
4 Rush Atkinson.

5 To my chagrin no one answered the telephone.
6 I was surprised because it was only 10:00 p.m. Typically
7 people are available at that time of the evening.

8 I continued to call to try to get in touch
9 with them because we thought that we were going to do
10 this arrest.

11 Q Why did you think you were going to do the arrest?

12 A Because they showed up at the airport and they had
13 these credit cards in the names of the people --

14 Q You didn't know that.

15 A My understanding we did know that.

16 Q What did you know before they showed up to the
17 airport about their possession of credit cards?

18 A No, we knew -- no, until that happened. So they
19 initially did their interviews. My understanding is that
20 they started doing their interviews around 4 or 5:00 p.m.
21 And then the first time that I learned about it was after
22 dinner because I was trying to prepare dinner and then
23 trying to clean up the dishes and I had gotten a phone
24 call and it was Special Agent Palmerton.

25 And it was dark out, and I remember having

1 this conversation with him -- I mean, I remember as clear
2 as day having this conversation with him and learning
3 these things were unfolding.

4 Q So it wasn't just the text messages found on Mary
5 Terabelian's phone. It was other things you learned
6 during that day; right?

7 A It was primarily the credit -- the credit cards.
8 Because they had these credit cards and we had been
9 doing -- conducting this investigation. We had followed
10 the money. We were a starting to prepare charges,
11 starting to prepare search warrants. And then they show
12 up at the airport and they had these physical credit
13 cards in the names of these individuals who submitted
14 these loan applications.

15 And at that point we felt like we needed to
16 make a probable cause arrest so that they did not flee
17 the country. We were concerned about flight.

18 Q So it was in that that period of time after you
19 learned about the credit cards in their possession but
20 before you learned about the text messages, that is the
21 moment where you made the decision that you were going to
22 seek a probable cause arrest?

23 A I am saying that this was unfolding over the course
24 of the evening. So I --

25 Q If you don't know, you don't know.

1 A What I am telling you, Mr. Littrell, is that I was
2 trying to get in touch with my supervisors because we had
3 made a decision, Mr. Andre and I, that we wanted to do a
4 probable cause arrest, which is something that we don't
5 typically do in the fraud section.

6 THE COURT: Was this decision made before you
7 learned that Terabelian was found with the Kauichko
8 credit card on her person or after?

9 THE WITNESS: I believe it was after we learned
10 about that, the possession of the card.

11 THE COURT: And it was after you learned that
12 there were some text messages on the phone?

13 THE WITNESS: No, we didn't learn about the text
14 messages I believe until later because it took some time
15 for CBP to open those phones and look at them. I believe
16 it took several hours for them to do that, which is why
17 they were working late into the evening.

18 THE COURT: So are you testifying that the -- that
19 when you learned that the Kauichko credit card was on
20 this person, that is what triggered the probable cause
21 arrest?

22 THE WITNESS: That is the point at which we felt
23 we needed to make a probable cause arrest.

24 THE COURT: But before you seemed to indicate that
25 in the course of events you didn't know which came first,

1 the credit card on her possession or the text messages.

2 THE WITNESS: No, I believe that the credit card
3 was learned first because that was something that they
4 found during a physical search and they were able to
5 convey sooner rather than later.

6 And they were doing the search on the phone,
7 the manual search, which took time, and recording the
8 information. And then we had been told at some point
9 that the information had been conveyed.

10 Q BY MR. LITTRELL: So you and Mr. Andre were
11 communicating regularly that evening about the decision
12 to make a probable cause arrest?

13 A We had several phone calls.

14 Q And did you text or e-mail each other about that
15 decision?

16 A No.

17 Q You had phone calls?

18 A We had telephone calls, yes.

19 Q No e-mails or other written communications?

20 A We had e-mailed. We had sent some e-mails.

21 Q About this decision to make a probable cause
22 arrest?

23 A They were e-mails to -- we were just trying to get
24 in touch with our supervisors. We were e-mailing about
25 that.

1 Q And have you produced those to the defense?

2 A No.

3 Q Okay. Would you produce them?

4 MR. LITTRELL: I would the Court to order that the
5 witness produce these e-mails related to this decision.

6 THE COURT: Have they been produced to the court
7 in camera?

8 THE WITNESS: No, your Honor.

9 THE COURT: Then produce them to the Court in
10 camera first.

11 THE WITNESS: Now, just so I understand the scope
12 of production, you want all communications between AUSA
13 Andre and I from that evening?

14 THE COURT: The question related to the e-mails on
15 that evening that you sent to your supervisors to seek
16 approval for a probable cause arrest.

17 THE WITNESS: I will look. I don't know that
18 there are e-mails. I believe that those conversations
19 happened by telephone.

20 THE COURT: Maybe e-mails between and you Andre.

21 Q BY MR. LITTRELL: I believe you just testified
22 there were e-mails. Is that not true?

23 A So what I testified was that e-mails were sent. I
24 believe that the e-mails were nonsubstantive in nature.

25 Q I am asking for e-mails both substantive and

1 nonsubstantive that happened on October 19th and 20th
2 related to the decision to make a probable cause arrest.

3 Now, another thing that you learned from the
4 airport stop is that Ms. Terabelian had made statements;
5 right?

6 A Yes.

7 Q And they conveyed the substance of those statements
8 to you; right?

9 A Yes. I believe so.

10 Q And some of the statements that she made were about
11 her family; right?

12 A Yes.

13 Q For example, she admitted to CBP Nazar Terabelian
14 was her father; correct?

15 A I believe that she provided basic biographical
16 information, but we already knew that.

17 Q And she also told CBP that he had died recently?

18 A That is something I don't know.

19 Q Well, would it refresh your recollection if I
20 showed you a copy of the CBP report?

21 A Yes. We received that on October 23rd.

22 Q So this is actually -- I believe this is Exhibit 13
23 to your declaration. And this is a report that you
24 received; correct?

25 A On October 23rd.

1 Q But this information had been conveyed to you by
2 CBP as it happened?

3 A No. I do not recall that.

4 Q So on the 23rd October, you received a report that
5 not only she admitted her father was Nazar Terabelian but
6 that he had recently passed away?

7 A I received this report on that date.

8 Q You didn't know that he had died prior to getting
9 this report?

10 A No. I knew that he was her father. I did not know
11 that he was deceased.

12 Q And that was important to your investigation?

13 A Well, hold on a second.

14 Q You charged Ms. Terabelian with aggravated identity
15 theft for using her dead father's ID; right?

16 A Yes.

17 Q And you didn't know prior to getting this report on
18 October 23rd that her father had died?

19 A I believe that we learned the fact that he had died
20 on October 22nd, and I don't believe it was from this
21 report.

22 Q So that is a crazy coincidence. The day before you
23 got this report, that is the day you learn that her
24 father died?

25 A That is based on my review of e-mails.

1 Q Have you produced those e-mails to the defense?

2 A I'm sorry?

3 Q Have you produced those e-mails to the defense?

4 A We have not produced that e-mail to the defense.

5 MR. LITTRELL: I would ask the Court order that
6 Mr. Fenton produce e-mails indicating --

7 THE COURT: Let me see those e-mails also.

8 THE WITNESS: Yes, your Honor.

9 Q BY MR.LITTRELL: But it was the day before you got
10 this report from CBP?

11 A I believe so. Yes.

12 Q And this factor was not communicated to you or to
13 Mr. Andre or to Mr. Palmerton during the events of
14 October 19th or 20th?

15 A No, I don't believe so it was.

16 Q You don't believe so or it definitely was not?

17 A I do not have a recollection of the fact being
18 discussed.

19 Q She also told CBFP that Gohar Terabelian was her
20 sister; right?

21 A That is written in the report, yes.

22 Q And that is a report that was sent to you on
23 October 23rd?

24 A Yes.

25 Q And you didn't know that before?

1 A I don't know if that is something that we knew
2 before.

3 No, actually I believe that we did know that
4 before, because we understood that Gohar had been married
5 to somebody named Arthur Penmegyian (ph.), who had an
6 association with an organized criminal group. And I
7 believe that surveillance had been done on one of the
8 houses and found that a car registered in his name was at
9 one of the houses that we were --

10 Q And you knew that was her sister?

11 A Well, we tried to determine what the relation --

12 Q I am just asking, did you know it was her sister
13 before you got this report?

14 A I think we may have, yes.

15 Q But you don't know?

16 A I don't have a specific recollection, but I think
17 we may have.

18 Q I want you to take a look at what has been marked
19 as Mr. Wong's declaration, Exhibit KX2. Do you see that
20 on your screen?

21 A Yes.

22 Q Now, this is a compilation of 141 photographs that
23 you received on or about February 2nd, 2021; correct?

24 A Yes.

25 Q And these photographs were taken from the Miami

1 phones; correct?

2 A Yes.

3 Q And when you received these photographs on
4 February 2nd, 2021, you looked at them; right?

5 A Yes. I don't know if I looked at them
6 February 2nd, but I looked at them shortly thereafter.

7 Q And you looked at all 141 of them?

8 A Yes.

9 Q Now, the Court indicated that some of the best
10 evidence comes from cell phones. Is that your
11 understanding also in fraud cases?

12 A Yes. I think that good evidence can come from cell
13 phones, yes.

14 Q So when you received these 141 digital photographs
15 you knew they had been taken by the CBP from the cell
16 phones that were seized from Mary Terabelian and Richard
17 Ayvazyan; right?

18 A Yes.

19 Q So they were of interest to you?

20 A Yes. They are they were of interest.

21 Q They were a priority for you?

22 A I wanted to review them.

23 Q And you did?

24 A And I did, yes.

25 Q And one of the things you saw, just starting

1 from -- this particular image helps you identify the
2 phone seized from Mary Terabelian because it was one that
3 actually belonged to her; right?

4 A Yes. Because her e-mail address is there.

5 Q Same for this image here too?

6 A That I don't know.

7 Q Skipping to what has been marked as image 4B.

8 You recognize that image; right?

9 A Yes.

10 Q That was actually one of your trial exhibits?

11 A Yes.

12 Q And that was found on Mary Terabelian's phone
13 produced to you on November 22nd, 2021?

14 A Yes.

15 Q And that immediately piqued your interest; right?

16 A I don't think that this particular piece of
17 evidence immediately piqued my interest but --

18 Q Well, you testified earlier that she had already
19 been investigating Fiber One Media.

20 A Yes. Yes, that's right.

21 Q And you see where it says Fiber One Media down at
22 the bottom here; right?

23 A Yes.

24 Q And these are handwritten notes with names and
25 identifying information on them; right?

1 A Yes.

2 Q So that did not immediately pique your interest?

3 A This is evidence of her link to Fiber One Media.

4 Q That's right. And you got it from her tainted
5 phone from Miami?

6 THE COURT: Will you keep your voice up a little
7 bit, Mr. Littrell?

8 MR. LITTRELL: I will just try to speak up, your
9 Honor.

10 Q So this evidence that piqued your interest came
11 from Mary Terabelian's phone that was seized from her in
12 Miami; right?

13 A This piece of evidence is from that phone. Yes.

14 Q And it later became a trial exhibit for you; right?

15 A Yes.

16 Q And the way it became a trial exhibit is that you
17 got it from a different phone; right?

18 A That's correct.

19 Q So you did a search warrant for 4910 Topeka; right?

20 A Yes.

21 Q And you seized a phone that was also associated
22 with Mary Terabelian; right?

23 A Right.

24 Q And that phone had over 44,000 images on it.

25 Remember?

1 A I don't know if it had over 44,000. I know it had
2 44,000 -- I don't know if they were user-generated
3 images.

4 Q Good point.

5 A Right. so a lot of that could have been like images
6 from the Internet or from applications, things of that
7 nature, that would be -- on anybody's phone.

8 Q Sure.

9 A But there were a lot of photos.

10 Q And yet you were able to identify this exact one
11 from that new phone?

12 A Yes.

13 Q How did you do that?

14 A So when we review the cell phones we look for a
15 couple of different things. One is driver's licenses,
16 Social Security cards, things that are identification
17 documents.

18 We also looked for PPP and EIDL loan
19 applications. And then we also look for handwritten
20 documents. And this was one of the handwritten documents
21 that we found -- one of the few that we found on her
22 phone.

23 Q And when you saw it, you immediately recognized it
24 from one that you had seen before from the Miami phone?

25 A I was not the person who conducted the review of

1 the phone to select that.

2 Q I am not asking about the selection. I am saying
3 when you saw it you recognized it as the same picture
4 that was previously on the Miami phone?

5 A I did not look at this and compare it back to that
6 phone, but it looks familiar. It looks like something
7 similar to what we had seen before.

8 Q Is this the first time you have actually compared
9 this image and drawn the connection to the image found
10 on --

11 A I don't know. We may have done that before.

12 Q Now, you also found -- and you knew when you were
13 doing your closing argument that you had first seen this
14 image on Ms. Terabelian's Miami phone; right?

15 A No.

16 Q You did not?

17 A No.

18 Q I am going to direct your attention to a portion of
19 your closing argument. So in front of the jury you said,
20 "On a phone that was seized elsewhere, not at the airport
21 but someone else, at her home on November 5th, there was
22 an image that was discovered on Marietta Terabelian's
23 phone of Fiber One Media with the name Susanna
24 Mrkrtyan. Do you see that?

25 A Yes.

1 Q That is what you said to the jury?

2 A Yes.

3 Q Why did you specify to the jury that this was not
4 found at the airport but somewhere else?

5 A It was reflex to just ensure that I was being clear
6 where the phone was being seized because I didn't want
7 there to be an issue down the road when we got to this
8 hearing that I had suggested that this phone had been --
9 that this information came from a phone that had been
10 seized at the airport.

11 Q So as you were arguing to the jury, you were
12 thinking about the fact that you had first seen this
13 image on a phone that was seized at the Miami airport?

14 A No. I was thinking about the fact that I wanted to
15 be clear that this information came from a phone that was
16 seized from her home, and that it did not come from a
17 phone that was seized from the airport.

18 But I don't know -- I mean, I didn't recall
19 that this particular image was on that phone. It was a
20 general precaution.

21 Q Why would you need to take a precaution?

22 A Mr. Littrell, we have been subject to several
23 motions alleging prosecutorial misconduct based on
24 statements that had been made that Mr. Ram alleged were
25 false and misleading because we failed to draw specific

1 distinctions between digital photographs and
2 identification documents and credit cards and physical
3 possession of credit cards.

4 So we were being extra careful to make sure
5 that there was no doubt where this information came from.

6 Q But in fact it would have been true to say that
7 this was seized at the airport?

8 A In hindsight, yes.

9 Q Well, that is what you were thinking about when you
10 were arguing to the jury?

11 A No.

12 Q No. You just decided when you got to this image
13 that you wanted to specify that it was not found at the
14 airport?

15 A I wanted to be clear for the record that this was
16 something that came from their house and not from the
17 airport because I didn't want to have this come up with
18 in a post trial motion and be accused of basically making
19 some sort of false and misleading statement.

20 Q Let me be really clear what I am saying. I am
21 saying you were thinking about it, and maybe that's what
22 you should have done, but had you recused yourself from
23 this case, you never would have had to try to --

24 MR. CIPOLLETTI: Objection. Argumentative.

25 THE COURT: Sustained.

1 Q BY MR. LITTRELL: Now, so you are trying to
2 compartmentalize the information in your head based on
3 what you knew before October 20th and what you knew
4 after, even as you argued it to the jury?

5 A No. That is not -- that is absolutely not what
6 happened.

7 Q Okay. Going back to your declaration -- I'm sorry.

8 Okay. Moving through these messages.

9 You looked at all 141 of these images after
10 you received them on February 2nd, 2021; right?

11 A Yes.

12 Q Now, this image right here, you had drawn the
13 conclusion that Mary Terabelian had assumed the identity
14 of Victoria Kauichko even before she was stopped at the
15 airport; right?

16 A Yes.

17 Q And that was just based on the bank records and the
18 fact that money was purchased for things that might
19 interest a woman?

20 A No.

21 Q Okay. You didn't have any actual evidence prior to
22 looking at these photographs that Mary Terabelian
23 actually had a telephone with Victoria Kauichko's name,
24 Social Security number and address on it; right?

25 A That's correct.

1 Q This was far more powerful than any evidence that
2 you had before for the proposition that Mary Terabelian
3 was actually using the Victoria Kauichko identity; right?

4 A Yes. There are certainly links here. I don't
5 think it is far more powerful than the physical credit
6 cards.

7 Q Looking at page --

8 A And, Mr. Littrell, just to be clear it did not
9 change our decision. We had planned to charge her
10 before.

11 Q I am not asking about your decision to charge. I
12 am asking about what you were thinking about and whether
13 you developed leads or theories of the case or
14 corroborated other evidence that you already had.

15 A This didn't change the way they were thinking about
16 Marietta Terabelian or her role in the conspiracy.

17 Q So for you as a fraud investigator, the fact that
18 she had text messages on her phone and Victoria
19 Kauichko's name, Social Security and address on her phone
20 was no more relevant or probative than any of the
21 evidence that you already had on that point?

22 A What I am saying is we were going to charge her
23 before.

24 Q I'm not asking --

25 A Not that this was good evidence that we could

1 use --

2 THE COURT: Answer the question. He asked you a
3 question. You can answer.

4 THE WITNESS: Yes. Yes. This information is --
5 these -- this photo that you just showed, that is a photo
6 that had in information not been suppressed it could have
7 been an exhibit used during the trial.

8 THE COURT: That is not the question. The
9 question was looking at the information that had her name
10 and her credit card and other information, was that more
11 probative of the fact that she was -- Terabelian was
12 Kauichko than the circumstantial evidence that you
13 described before.

14 THE WITNESS: Setting aside the physical credit
15 card.

16 THE COURT: What?

17 THE WITNESS: You are saying the bank records and
18 the other --

19 THE COURT: I said looking aside from the
20 circumstantial evidence that you described about how the
21 bank accounts were used or where the money went and the
22 Runyan account and all of that, is the fact that you got
23 this information from the phone, was that more telling or
24 convincing that Terabelian was using the name Kauichko
25 than the previous information you had that led you to

1 also think that?

2 THE WITNESS: Yes.

3 THE COURT: All right. The answer is yes.

4 Q BY MR. LITTRELL: And you mentioned that she was
5 found with a credit card in the name of Victoria Kauichko
6 at the airport; right?

7 A Yes. A physical credit card.

8 Q But she denied that that was her credit card;
9 right?

10 A That is my understanding.

11 Q And she said her husband put it in her luggage;
12 right?

13 A Yes.

14 Q And you didn't believe that?

15 A No.

16 Q But she didn't have any evidence to disprove it?

17 A I think that the 2012 conviction and all the bank
18 records show that they were working together.

19 THE COURT: You know something, I am the fact
20 finder here, so my memory is that credit cards were found
21 in Richard Ayvazyan's luggage and there was this credit
22 card found in her person, and to my way of thinking, a
23 reasonable person could certainly reach the conclusion
24 that she had the credit card in her person because she
25 was identified with that credit card.

1 Q BY MR. LITTRELL: Is that your understanding,
2 Mr. Fenton?

3 A Yes.

4 Q On her phone, however, you found more direct
5 evidence that she was using that card; right?

6 A Not more direct than the card.

7 Q Really? I'm showing you what has been marked, what
8 is I guess image 9B, and that is a text message string
9 between Mary Terabelian and someone named rich; right?

10 A Yes.

11 Q And that says, "If you need to pay anything, use
12 that Wells card you have"; right?

13 A I don't -- oh. Yes, I see him saying that.

14 Q And that is not more persuasive than the fact that
15 it is actually just found in the luggage and she denied
16 that she put it there?

17 A I don't know what this -- what card this is in
18 reference to.

19 Q Well, the Victoria Kauichko credit card found in
20 Ms. Terabelian's possession was a Wells Fargo credit
21 card; right?

22 A Yes.

23 Q So now you have a text message between her and her
24 husband who you believe were working together where he
25 tells her if you need to pay anything use that Wells card

1 you have?

2 A I don't know if that Wells card you have is the
3 card that you are referring to.

4 Q Is this persuasive to you at all as a fraud
5 prosecutor on the subject that she was actually using the
6 Wells Fargo card that was found in her possession?

7 A No. I looked at the bank records.

8 Q This is not meaningful to you?

9 A I didn't associate this with that card. I still
10 don't know if this is associated with that card.

11 Q So you would not have put this in front of a jury
12 as contemporaneous evidence that she was using the Wells
13 Fargo credit card despite her claim that she didn't know
14 that it was there? You wouldn't have used this as
15 evidence?

16 A I don't know that this is associated with that. I
17 don't know that this refers to that card.

18 Q Okay. So do you think it would have been
19 admissible to prove that point?

20 A I don't know if this has anything do with the card
21 that was seized from her.

22 Q I understand you don't know -- yeah. What other
23 Wells Fargo cards did she have?

24 A I don't know if she had other -- you mean in her
25 possession?

1 Q Yes.

2 A I don't know what other cards she had in her
3 possession in her own name.

4 Q Okay. You are a fraud prosecutor and you are
5 trying to build a case that Mary Terabelian is working
6 with her husband to perpetuate a massive fraud; right?

7 A Right.

8 Q And you believe that she is using the identity of
9 Victoria Kauichko; right?

10 A Yes.

11 Q And you find a credit card in her carry-on luggage
12 that says Victoria Kauichko on it?

13 A Right.

14 Q And she is also carrying a cell phone in which she
15 is testing with her husband, Rich, and he says if you
16 need to pay anything use that Wells card you have. You
17 don't think that's relevant?

18 A I don't know if this is a reference to that card.
19 If it were a reference to that card, then it would be
20 relevant. I didn't look to see whether or not it would
21 be. But if it was, it would be relevant. Yes.

22 Q So without making that connection, it is not
23 relevant to you?

24 A He could be referring to a Wells Fargo card that
25 she had in her own name. I have no idea. I didn't look

1 into this particular digital -- and the reason why was we
2 had mountains of evidence and this was not one of the
3 ones that stood out.

4 Q Did you have any evidence of Mary Terabelian
5 actually texting with her husband about PPP loan fraud?

6 A No.

7 Q So now you have evidence from a phone found on her
8 possession of her texting with her husband about the use
9 of a Wells Fargo card and you think that the evidence you
10 had prior to that is more persuasive than this?

11 A I don't know that that has anything do with the PPP
12 fraud or with the card that was found.

13 Q And you don't think that you could argue to the
14 jury or draw a conclusion as a fraud prosecutor -- you
15 don't have enough information?

16 A I don't know if it is related to the Wells Fargo
17 card that was found on her person. I just don't.

18 Q Moving on to image 10B, this is also found in Mary
19 Terabelian's phone; right?

20 A Yes.

21 Q And that is a credit card in the name of Nazar
22 Terabelian; right?

23 A Yes.

24 Q And your theory of the case was that Mary
25 Terabelian actually used and possessed the identity of

1 Nazar Terabelian commit PPP loan fraud; right?

2 You have no evidence that Mary Terabelian
3 applied for a loan on behalf of Nazar Terabelian; right?

4 A I'm sorry. We don't have evidence that she --

5 Q Applied for for a loan on behalf of Nazar
6 Terabelian?

7 A That she was actually the person who submitted it?

8 Q Right.

9 A No.

10 Q What other evidence do you have that she actually
11 possessed or used his identity other than this?

12 A The use of Nazar Terabelian -- there were PPP loan
13 funds that were going to Nazar Terabelian accounts that
14 were then being transferred out to Victoria Kauichko and
15 other individuals and being spent on various things that
16 went back to her house.

17 THE COURT: I think it is this glass thing.

18 THE WITNESS: I'm sorry, your Honor.

19 THE COURT: Give your answer again, the last
20 answer.

21 THE WITNESS: Sure. So the evidence was in the
22 use of the PPP funds and her relationship to Nazar
23 Terabelian.

24 Q BY MR. LITRELL: So the fact that it is her father
25 and the fact that the money from the Nazar Terabelian

1 loans ultimately went to purposes that benefited her.

2 That is what you knew before; right?

3 A It is the fact -- yes, as soon as he dies they used
4 his name to apply for these loans.

5 Q When you saw say they, who did that?

6 A The theory of the case was that Richard Ayvazyan
7 and Marietta Terabelian did, and then the money, the
8 fraudulent funds went into the Nazar Terabelian bank
9 account that was opened and then they went out to
10 Victoria Kauichko and then got spent on furniture,
11 jewelry, gold coins that we found at their house, things
12 of that nature.

13 Q Right. And that was your evidence. In the first
14 indictment, did you not charge Mary Terabelian with
15 aggravated identity theft in relation to the use or
16 possession of Nazar Terabelian's identity; right?

17 A That is correct. We only charged one individual
18 with aggravated identify theft.

19 Q And it was not Mary Terabelian.

20 A It was Richard Ayvazyan.

21 Q But the second superceding indictment added a count
22 of aggravated identity theft against Mary Terabelian for
23 using and possessing her father's identify documents;
24 right?

25 A Right.

1 Q And that happened after you saw this image of the
2 credit card belonging to Nazar Terabelian on Mary
3 Terabelian's phone; right?

4 A Are you just asking --

5 Q Just asking did it happened afterward.

6 A Chronologically, yes.

7 Q Turning to page 18. This was an image found in
8 Mary Terabelian's phone at the Miami airport; right?

9 A Yes.

10 Q And it was a list of entities. And it says,
11 Belgium, LLC and Piccadilly; right?

12 A Right.

13 Q You also saw text messages between that person that
14 you refer to as Berj Jeweler.

15 THE COURT: When you say he saw these messages on
16 the phone, what timeframe are we talking about?

17 Q BY MR. LITTRELL: Well he saw them shortly after
18 February 12th, 2021?

19 A February 2nd.

20 Q Sorry, February 2nd, 2021?

21 A That's right. So that we had subpoenaed this
22 information back in December. So three months before I
23 saw this photograph, we had already subpoenaed
24 information from these retailers.

25 Q And one of these retailers was Piccadilly Jewelers,

1 right?

2 A Yes.

3 Q So you had subpoenaed information from them, but
4 you thought their production to you was incomplete?

5 A Yes.

6 Q And it was incomplete because it didn't include
7 text messages; right?

8 A We thought there would be communications.

9 Q And you thought there would be communications
10 because you actually saw those communications on Marietta
11 Terabelian's phone that was seized at the Miami airport;
12 right?

13 A That was one of the reasons. Yes. But --

14 Q What other evidence did you have of communications
15 between Mary Terabelian and Piccadilly Jewelers?

16 A We thought that they were --

17 Q I am not asking what you thought. I am asking what
18 evidence you had.

19 A There was no other evidence. The reason why we
20 asked for those communications was because they were
21 transacting business during the pandemic and we thought
22 that they were probably not transacting business in
23 person but by via e-mail or text message or telephone.
24 So we thought it look likely that there would be some
25 sort of record to go along with these purchases.

1 Q And you were surprised when Mr. Spertas didn't
2 provide any text messages to you; right?

3 A Yes. I was surprised.

4 Q It wasn't just because you thought they might have
5 exchanged text messages. In fact you knew that; right?

6 A Yes.

7 Q Which is why when you called Mr. Spertas you
8 actually referred to the specific text messages that you
9 got from Ms. Terabelian's phone; right?

10 A I don't know if I referred to them specifically,
11 but I definitely had them in my mind at the time.

12 Q And that is how you knew that his production was
13 incomplete?

14 A That is one of the reasons I believed it was
15 incomplete. Yes. But we never got text messages and we
16 never interviewed Mr. Berj.

17 Q And yet you still argued to the jury that purchases
18 from Piccadilly Jewelers were made by any Mary
19 Terabelian.

20 A Right, because the receipts were all to Victoria
21 Kauichko and then the proceeds were found in her house.

22 Q But this corroborated your theory of the case, did
23 it not?

24 A I think it is cumulative evidence.

25 Q I didn't ask you if it is cumulative. It

1 corroborated your theory of the case?

2 A I viewed it as cumulative.

3 Q Again, did it corroborate your theory of the case
4 or not?

5 MR. CIPOLLETTI: Objection. Asked and answered.

6 THE COURT: You are debating cumulative versus
7 corroborative. I mean, it depends upon how you define
8 the term. They can be overlapping. I mean, something is
9 cumulative. If it is relevant, it is always
10 corroborative. So I don't know how else I can understand
11 the difference.

12 MR. LITTRELL: Well, if it is cumulative, it adds
13 no value.

14 THE COURT: It doesn't mean it has no value.
15 Cumulative is just a description to describe additional
16 evidence. Corroborative I guess just means that without
17 this evidence the point would not be proven. Is that
18 what you are getting at?

19 MR. LITTRELL: No, what I am getting at is it is a
20 much stronger point and it would embolden someone to make
21 that argument. But I think the Court can draw its own
22 conclusion about that.

23 Q Now, turning to your declaration, Mr. Fenton, at
24 paragraph 50. Let's see if I can get it up here.

25 A Is this the first declaration?

1 Q Yes.

2 A Paragraph 50?

3 Q Yes. Regarding the review of the Cellebrites. You
4 recall accessing and reviewing the first three filtered
5 Cellebrite reports, but you do not have a specific
6 recollection of the information that you saw; is that
7 true?

8 A With the exception of the example that I identify
9 above, that is correct.

10 Q And you don't recall at all whether you accessed or
11 reviewed the last two filtered Cellebrite reports?

12 A Yes, that's right.

13 Q However, you still believe that the review of those
14 reports was cumulative.

15 A The information that I saw was cumulative.

16 Q How can you say that the information is cumulative
17 if you don't even recall looking at it?

18 A Well, I explained it in the declaration. I was
19 running search terms for things that I was already aware
20 of. And one of the examples I gave was like Victoria
21 Kauichko.

22 So there is a search function which to the
23 extent that Cellebrite is useful and it's not, the search
24 function is the most useful thing. So I would put in
25 like Kauichko and then run a search and then I would put

1 in Zhadko and run a search and I would see whatever hit.

2 Q But you don't recall doing any of that for the
3 second two Cellebrites?

4 A For the last two?

5 Q Right.

6 A No. Because at that point we had so much
7 difficulty and frustration opening these things and using
8 them they crashed the computer.

9 THE COURT: You say the first two and the last
10 two. Are you talking about February 12th and 19th?

11 MR. LITTRELL: I am referring to the last two --

12 THE COURT: Oh, no. March 19th and April 8th?

13 THE WITNESS: Exactly. Yes.

14 Q BY MR. LITTRELL: Those are the ones you testified
15 you have no recollection of whether you looked at them at
16 all?

17 A Right. Right. At that point we were focused on
18 other things. And they were extremely difficult to open
19 and navigate and use and they kept crashing my computer.
20 So we were, you know, spending our limited time on other
21 case demands on other projects.

22 Q And part of the reason you could do that is because
23 you had already seen photographs from the Miami phones so
24 you could predict what would be on the later phones;
25 right?

1 A No.

2 Q Now, looking at your declaration at paragraph 51,
3 you and Mr. Faerstein decided in the first superseding
4 indictment that would you not reference any of the
5 information found on the phones seized in Miami in the
6 first superseding indictment or the presentation to the
7 grand jury; right?

8 A That's correct.

9 Q Why did you decide that?

10 A Because we didn't need to and because we thought
11 that you know, we didn't want to present any issues down
12 the road.

13 Q What kind of issues?

14 A We saw this as being a potential Fourth Amendment
15 issue and Miranda issue and we just didn't want to -- we
16 didn't need to put that into the indictment or the
17 presentation because we had mountains of other evidence.

18 And this is a case about following the money,
19 so we just made an affirmative decision do not put that
20 information there because it's not -- you know, we don't
21 need to.

22 Q But even if it had been suppressed later, it
23 wouldn't have caused any problem for your indictment;
24 right. You can present evidence that's seized illegally
25 to the grand jury, can't you?

1 A At that time, I think that is correct. But it just
2 want worth any -- you know, any litigation risk because
3 it was totally unnecessary risk.

4 Q Okay. Understand. Now, you recall we had some
5 plea discussions; correct?

6 A Yes. Very preliminary. Yes.

7 Q And when we discussed a potential plea, I indicated
8 to you -- let me actually see if I can get this. I
9 indicated to you that I was looking for an opportunity to
10 somehow make a deal with you to keep Mary Terabelian out
11 of jail; right?

12 A Yes.

13 Q That was my goal; right?

14 A Yes.

15 Q And you objected to that; right?

16 A I did.

17 Q And the reason you objected to that is because of
18 this theory that Mary Terabelian and her husband were
19 working together and they were peas in a pod; right?

20 A That's correct.

21 Q And you have reviewed the declaration of Ryan
22 Fraser submitted as part of our joint submission;
23 correct?

24 A Yes, I did.

25 Q Are any of the facts in that declaration incorrect?

1 A I don't agree with the characterization.

2 Let me take a moment to look at it again.

3 Okay. Can you turn to the next page, please?

4 All right. Can you turn the page?

5 Based on my recollection I think that is
6 generally accurate. Yes.

7 Q Now, when you first learned that there was going to
8 be a Kastigar hearing in this case, you spoke with your
9 supervisors about it; right?

10 A Yes. We spoke to a supervisor, yes.

11 Q And you spoke to your co-counsel about it; right?

12 A To Ms. Ahn and Mr. Paetty?

13 Q Yes.

14 A About the fact that there might be a Kastigar
15 hearing?

16 Q The fact that there was in fact going to be a
17 Kastigar hearing.

18 A Yes.

19 Q And you discussed the possibility that one or more
20 of you might have to recuse yourselves; right?

21 A No.

22 Q It never occurred to you to discuss that
23 possibility?

24 A I don't think that we thought there was a risk that
25 we were going to have to recuse ourselves, no. I don't

1 recall discussing recusal.

2 Q At any point. Have you discussed it with your
3 colleagues between then and now?

4 A As a broad concept that that is one of the things
5 that might happen in a Kastigar setting, yes. But I
6 don't have any recollection specifically of discussing
7 who would be recused or why or anything like.

8 Q But did you at least consider the possibility that
9 you might avoid some of these problems if you recused
10 yourself prior to trial?

11 THE COURT: What problems?

12 MR. LITTRELL: A Kastigar hearing and the fact
13 that he would have to explain and reconstruct hundreds of
14 decisions.

15 THE COURT: I don't understand the relationship
16 between recusal and a Kastigar hearing.

17 MR. LITTRELL: Well, the case law essentially says
18 that when the government knows there is a Kastigar
19 problem, the proper course of action is to identify
20 prosecutors who are tainted or been exposed to tainted
21 information.

22 They can recuse themselves, summarize the
23 information they had up to that point, and if necessary
24 start over. That way you don't have a situation where
25 you have to retrospectively explain every decision you

1 made and affirmatively prove that it is not based on
2 tainted information.

3 THE COURT: I follow what you are saying. Go
4 ahead.

5 Q BY MR. LITTRELL: So you never considered doing
6 that?

7 A Absolutely not. No.

8 Q And I guess looking back now, is there anything you
9 would have done differently?

10 MR. CIPOLLETTI: Objection. Calls for
11 speculation.

12 THE COURT: I think that is too open-ended a
13 question. So thank you, Mr. Littrell.

14 All right. You can step down.

15 THE WITNESS: Thank you, your Honor.

16 THE COURT: Now, is Palmerton here?

17 Is he the next person?

18 MR. RAM: We were going to call Paetty because he
19 has a trial he is preparing for so he asked us if he
20 could go next.

21 THE COURT: All right. Paetty.

22 The questions should be more pointed as we
23 progress with these other witnesses because we have the
24 broad outline. That is why I wanted Fenton to be the
25 first witness.

1 Unless it becomes important, let's be a little
2 more laser-like with these other witnesses.

3 MR. KEOUGH: Yes, your Honor. I think everything
4 I am going to cover is specific to Mr. Paetty, and not
5 repetitive of what we just did with Mr. Fenton.

6 THE COURT: All right. That will be good. Thank
7 you.

8 THE CLERK: The witness will please step forward
9 and stand behind the court reporter.

10 (The witness was sworn.)

11 THE CLERK: Please be seated.

12 THE COURT: Who is coughing there? Who is
13 coughing?

14 MR. RAM: I did.

15 (Discussion off the record.)

16 THE CLERK: State your name for the record.

17 THE WITNESS: Scott Paetty, S-C-O-T-T,
18 P-A-E-T-T-Y.

19 CROSS-EXAMINATION

20 BY MR. KEOUGH:

21 Q Good afternoon, Mr. Paetty.

22 A Good afternoon.

23 Q You were assigned to this case on February 10th,
24 2021; correct?

25 A Yes.

1 Q And when you joined the team were you given any
2 background materials to review?

3 A At the time I joined, no. I was shortly thereafter
4 given access to a share drive folder that contained the
5 prosecution materials and various other things related to
6 the investigation.

7 Q And can you give us a summary as best you can of
8 what was on that share drive when you joined the team and
9 you were given access to it?

10 A From my memory, there were quite a few folders on
11 it, populated with loan files, I think, populated with
12 documents related to the original indictment in the case.
13 There were some charging instruments in there.

14 I think there were information related to the
15 complaint. I think there were several -- a couple of
16 complaints in this case for defendants. And then search
17 warrant information. There were search warrants that
18 were executed prior to me joining the case. And there
19 was those materials on there as well.

20 Q And in addition to that share drive, did you meet
21 with anybody for, say, a download about what had happened
22 on the case up to the point when you joined?

23 A I had phone calls with various members. I had
24 phone calls with the prior prosecutor on the case, prior
25 AUSA on the case, Julian Andre. I spoke to supervisors

1 who were checking in with me regarding scheduling
2 concerns about the case and other projects I was working
3 on and whether this was a case that scheduling -- that my
4 schedule would permit me to join.

5 Q And at the time that you had access to the share
6 drive or had those phone calls to discuss with the
7 prosecutors who were there before you, were you aware at
8 the time that any of them had reviewed information that
9 related to the phones that were seized in Miami?

10 A Was I -- repeat that question?

11 Q Sure. So you joined the case. You have those
12 phone calls. You have access to the share drive. And at
13 any point during those communications were you aware at
14 the time that any of those people had had access to
15 information from the Miami phones?

16 A Not that I recall.

17 Q And as part of the phone calls or as part of
18 explaining the share drive to you, did anybody identify
19 to you any information that might have been related to or
20 seized or derived from or related to in any way the Miami
21 phones?

22 A On the share drive?

23 Q On the share drive or as part of those phone calls.

24 A On the share drive, no. It was made clear to me
25 that there was a border search and that I would be

1 joining the team, and that part of what my
2 responsibilities would be is addressing what was imagined
3 to be -- in fact it wasn't imagined to be -- my
4 understanding is that through conversations with counsel
5 for Mr. Ayvazian, your colleague Mr. Ram had made it
6 clear to the prosecutors that a motion to suppress was
7 forthcoming related to searches at the border.

8 Q And we will get to the motion to suppress in just a
9 second. But just thinking about when you joined the
10 case, you looked at the share drive, you had those phone
11 calls. And if I were to ask you today to tell me if any
12 of that stuff wasn't formed by other prosecutors having
13 access to the Miami phones, you wouldn't be able to tell
14 me because at the time you just didn't know?

15 A Correct.

16 Q Now, as you just said, you joined the team. Your
17 first role was to respond to motions to suppress?

18 A Correct.

19 Q And that was your primary focus on the team from
20 about February 10th until March 15th?

21 A Correct.

22 Q And to prepare for the responses to those motions
23 to suppress, you reviewed CBP reports that were prepared
24 as part of the stop in Miami?

25 A Correct.

1 Q CBP reports contained approximately eight pages of
2 statements and other evidence related to stop of
3 Mr. Ayvazyan and Ms. Terabelian?

4 A As far as the page number goes, I don't recall
5 exactly, but I remember there were two sets of reports,
6 one for Mr. Ayvazian and one for Ms. Terabelian.

7 Q And we are just going to look at that report real
8 quick here. It is Fenton Exhibit 13.

9 Okay. If we could, let's go to page 5 of the
10 PDF.

11 Actually, let's start on page 2.

12 Okay. So, Mr. Paetty, you recognize this as
13 the CBP report that you reviewed as part of your work
14 responding to those suppression motions?

15 A It appears to be.

16 Q Okay. Now let's go to page 5.

17 When you reviewed this report, as part of that
18 work you saw the statement there where it reads,
19 "Information revealed during the basic electronic media
20 inspection confirmed that the subject was taken on the
21 identity of Victoria Kauichko. This was evident via
22 messages where the subject was referred to as Victoria
23 Kauichko."

24 A That is what this states. Which report is this
25 again?

1 Q This is one of the two CBP reports that were
2 provided after the Miami stops that were attached as the
3 Exhibit 13 in the Fenton declaration.

4 A Is this related to Ms. Terabelian?

5 Q Yes. And you recall that you reviewed this report
6 as part of your work preparing for those motions?

7 A Correct.

8 Q Now, if we could go to page 8 of the PDF.

9 So now this is the -- as you mentioned, there
10 are two reports, right, one about Terabelian, one about
11 Ayvazian. This is the Ayvazian report. And you see
12 there midway through the page where it says, "Examination
13 of phone revealed a California identification card with
14 the name Iulia Zhadko with a picture of a male and
15 Ayvazian home address on it. In addition conversations
16 regarding possible fraud were also discovered." Do you
17 see that?

18 A Can you point me to where that is, please?

19 Q Yeah. Let's find it together.

20 It is in the bottom paragraph.

21 There it is. Okay. Fourth line from the
22 bottom if you want to highlight it there. Okay.

23 So the line begins on the left side
24 approximately -- there we go.

25 "Examination of the phone revealed a

1 California identification card with the name Iulia Zhadko
2 with a picture of a male and Ayvazian home address on it.
3 In addition conversations involving possible fraud were
4 also discovered." Do you see that there?

5 A Yes.

6 Q And do you recall reviewing this report?

7 A I do.

8 Q Do you recall that section of the report?

9 A I do.

10 Q Now, when you reviewed these reports -- go ahead
11 and take that down. When you reviewed these reports, I
12 believe in your declaration you said it was
13 February 16th, so you had been on the case for less than
14 a week?

15 A Correct.

16 Q And did seeing those statements about assuming or
17 taking on the identity of Victoria Kauichko and finding a
18 California identification card with the name Iulia Zhadko
19 on a phone in Richard Ayvazyan's possession, did those
20 references affect your opinion about the case at that
21 early stage?

22 A I am not sure what you mean.

23 Q Did it change the way that you thought about how --
24 for example, how persuasive the evidence was against
25 these two defendants?

1 A I mean at that stage, I really didn't know anything
2 about the case. I was learning as I went, so I am not
3 sure I would think of it in those terms.

4 Q How would you think of it?

5 A As information that I am gathering in getting up to
6 speed on the case.

7 Q And certainly based on the time you reviewed it,
8 this was early information you received; that is fair to
9 say?

10 A Correct.

11 Q Now, if we could pull up what was marked Kastigar
12 Exhibit 2 attached to the defendant's submission. And
13 let's go to PDF page 109.

14 So you reviewed the CBP report that referenced
15 California identification cards and then two days later
16 you received access to 141 photographs that had been
17 taken of the phones by the CBP officers in Miami. Do you
18 recall that?

19 A Yes.

20 Q And you reviewed those photographs?

21 A Yes, I did.

22 Q And you saw as one of those photographs that is
23 here in exhibit KX2 -- this is image 107B, which is a
24 California identification in the name of Iulia Zhadko;
25 correct?

1 A That is what appears here; correct.

2 Q And if we go to two pages down, page 111 of the
3 PDF, this is image 108B, and again, in that second
4 review, we have got another identification of Iulia
5 Zhadko, a California driver's license that is here on the
6 phone; correct?

7 A That is what appears here; correct.

8 Q And then let's go one more, to page PDF page 127.
9 And here is one more, image 123B. It is a California
10 identification in the name of Iulia Zhadko found on that
11 same phone from Miami; correct?

12 A It is. I am not sure if those are the same photos
13 or not. It is -- this is another identification card
14 similar to the other one.

15 Q And these images were in the set of 141 photos
16 right? That is not in dispute?

17 A I can't recall whether there were three separate
18 photos in there. I know I have seen this before, and I
19 know it was on the phone, but I don't know if it was
20 three times or one time. I can't recall.

21 Q But you reviewed it and you do recall seeing an
22 identification even if you don't remember all three of
23 these admittedly similar pictures?

24 A That's correct.

25 Q So now let's bring up the trial transcript from

1 June 24th, and let's go to page 136. Okay.

2 And if you could just do the zoom thing on the
3 top paragraph and in that first small line right there.

4 So, Mr. Paetty, you recall that you gave the
5 rebuttal summation as part of the government's case at
6 trial?

7 A Yes.

8 Q And this is a transcript of that rebuttal
9 summation. And you see here where you said on line 3,
10 "In fact, the only sloppiness in this investigation, the
11 only sloppiness here is Richard Ayvazyan when he got
12 caught carrying those IDs. We will talk about it in a
13 minute. He got caught with his hand in the cookie jar in
14 Miami."

15 That was something you said to the jury during
16 the trial; correct?

17 A That is what appears on these transcript.

18 Q And no reason to believe that this is an inaccurate
19 transcript of what you said?

20 A Doesn't appear to be.

21 Q And as we just saw you reviewed a CBP report that
22 mentioned finding a California identification on the
23 phone in Richard Ayvazyan's possession; correct? You
24 reviewed that CBP report as part of your work in this
25 case?

1 A Yes, I did.

2 Q And we saw that as part of those 141 images you
3 reviewed at least one -- potentially three pictures -- of
4 California identifications found on Richard Ayvazyan's
5 phone in his possession; correct?

6 A I did. I don't think those are what I am talking
7 about here, but yes, I did see those and that is not what
8 I am talking about here.

9 Q What other IDs was Richard Ayvazyan carrying?

10 A He was carrying credit cards.

11 Q Why didn't you say credit cards?

12 A I'm not sure, but I'm sure if we go down and say to
13 we'll talk about it in a minute I am referring to the
14 credit cards.

15 Q But you didn't say credit cards; right? You said
16 IDs?

17 A I said IDs.

18 Q We can go ahead and take that down. So you were
19 notified on February 23rd, 2021 that two Cellebrite
20 reports had been uploaded to USAFX; correct?

21 A Repeat that.

22 Q In your declaration you said that you were notified
23 on February 23rd, 2021 that two Cellebrite reports had
24 been uploaded to USAFX?

25 A Correct.

1 Q And USAFX is a system that lets people at the
2 Department of Justice share files?

3 A Correct.

4 Q And in your declaration you wrote that you did not
5 access those Cellebrite reports?

6 A I did not.

7 Q And do you recall why you did not try to access
8 them?

9 A Why I did try to access them? It was my
10 understanding at the time there were technical issues
11 with it. They were large files that were not easy to
12 access. They were jamming up computers, et cetera. And
13 I was busy working on other things. So it wasn't worth
14 my time.

15 Q Other people on the team, though, you understand
16 did look at the Cellebrites?

17 A I'm not sure if they looked at them. I don't know
18 the answer to that. I know that there was people who
19 were trying to either transfer them or perform some sort
20 of a technical something on them. And it was not
21 working.

22 Q Are you aware if anybody on the team was able to
23 review Cellebrite reports or information from Cellebrite
24 reports for the phones that were seized in Miami?

25 A I don't recall.

1 Q So also fair to say then that you can't tell us
2 whether or not a particular piece of information that
3 those people who, if they did review the Cellebrite,
4 shared with, you wouldn't know if it was from the Miami
5 phone because you are not sure if they reviewed it?

6 A That is a confusing question.

7 Q Let me ask it a different way. You can't tell us
8 whether or not anybody reviewed the Cellebrite; correct?

9 A Yeah. I don't know whether they did or didn't.

10 Q Because you personally didn't review it?

11 A That's correct.

12 Q And you are not sure if anybody else did?

13 A That's correct.

14 Q But if people did review the Cellebrite and perhaps
15 developed a lead or shared a piece of information for
16 you, unless they directly told you that it was from the
17 Miami phone Cellebrite, because you yourself didn't
18 review it, you wouldn't really know whether or not --

19 MS. WESTFAHL KONG: Objection. Calls for
20 speculation.

21 THE COURT: It is a long question. Can you
22 shorten it up?

23 MR. KEOUGH: Sure.

24 Q Let me ask it this way. Are you aware whether or
25 not any information from the Miami Cellebrite reports

1 reviewed by anyone was shared with you?

2 A I couldn't -- again, I can't guess as to that.

3 Q You also stated in your declaration that you
4 reviewed the prosecution memorandum prior to the
5 superseding indictment; correct?

6 A Yes.

7 Q And that contained a reference to information from
8 one of the Miami phones; correct?

9 A It did.

10 Q You mentioned an example of evidence of Richard
11 Ayvazyan's ties to the Canoga Avenue apartment as
12 something that was in the prosecution memo that you saw
13 when you reviewed it?

14 A It was in a footnote, as I recall.

15 Q But it was in the prosecution memo?

16 A Correct.

17 Q And there was another reference in there as well,
18 correct, to Ayvazyan's control over his alias Iulia
19 Zhadko, that was established by, among other things, the
20 search of the Miami phones?

21 A I don't have a recollection of that.

22 Q Okay. Let's pull up the Faerstein declaration.

23 MS. WESTFAHL KONG: Objection. Foundation. I
24 don't think this witness has reviewed the Faerstein
25 declaration.

1 THE COURT: He can be asked about it now, if he
2 did or not. Maybe you should ask whether he ever
3 reviewed this declaration.

4 MR. KEOUGH: So, your Honor, the question is -- it
5 is not about whether he reviewed the declaration. It is
6 to see if it refreshes his memory of another reference in
7 the prosecution memo, which he has testified he reviewed.

8 THE COURT: I don't understand the point. I mean,
9 you are attempting to show that through looking at a
10 memo -- did you see this memo before?

11 THE WITNESS: No, your Honor.

12 THE COURT: A memo that he never saw before, that
13 that will refresh his memory as to something in the
14 prosecution memo?

15 MR. KEOUGH: So I think the witness has testified
16 he saw the prosecution memo. This declaration contains a
17 statement about another piece of information included in
18 that memo, and I want to know if he recalls whether or
19 not that same piece of information was in the memo that
20 he reviewed. They are both looking at the same document.

21 THE COURT: In other words, your question is
22 whether the prosecution memo included information that
23 was in the Faerstein report?

24 MR. KEOUGH: A little bit different, your Honor.

25 THE COURT: Who authored the prosecution memo?

1 MR. KEOUGH: Well, my understanding is that it was
2 the prosecutors on this case.

3 THE COURT: I mean, did you author it?

4 THE WITNESS: No, your Honor.

5 THE COURT: Do you know who did?

6 MR. KEOUGH: I --

7 THE COURT: I'm asking him.

8 THE WITNESS: Your Honor, I am not sure who the
9 principal author was.

10 THE COURT: So, I am not seeing the point here. I
11 don't understand how his reviewing the prosecution memo
12 would be influenced by showing him a document he never
13 saw. I mean, I don't see the connection.

14 MR. KEOUGH: Let me try asking it a different way.

15 Q Do you recall whether or not there was a reference
16 to Ayvazian's control over his alias Iulia Zhadko in the
17 prosecution memo that you reviewed?

18 A I don't recall.

19 Q And if you saw a summary of that memo written by
20 the person who did author it, would that refresh your
21 recollection?

22 A I am not sure. I mean, I don't know who -- that is
23 asking me to speculate on a document that I have never
24 seen and information that I am not exactly sure about.

25 Q Well, let's show it to you. It is the Faerstein

1 declaration.

2 MS. WESTFAHL KONG: Objection. Improper
3 refreshing. He hasn't said it would refresh his
4 recollection.

5 THE COURT: Well, I mean, the examiner is allowed
6 to make an effort to refresh his memory, and the law is
7 kind of liberal on what can or can't be used to refresh
8 your memory, but let him look at it.

9 Q BY MR. KEOUGH: So let's put -- back up. We just
10 had up -- there it is. The Faerstein declaration,
11 paragraph 31.

12 Take a second and read it and let us know when
13 you are ready.

14 A Okay.

15 Q Now, do you recall whether the prosecution memo
16 included a sentence saying that Ayvazian's control over
17 his alias Iulia Zhadko was established by, among other
18 things, a search of his mobile devices?

19 A I don't recall seeing that.

20 Q We can go ahead and take it down.

21 In your declaration you said that there were
22 conversations in advance of the grand jury presentation
23 about avoiding using evidence from the Miami cell phones.
24 Do you recall that?

25 A Yes.

1 Q Now, as part of those conversations did you recall
2 anyone saying that you shouldn't include loans that were
3 investigated as a result of information from the Miami
4 cell phones?

5 A Repeat that.

6 Q As part of those conversations about avoiding using
7 evidence from Miami in the grand jury presentation or the
8 superseding indictment, do you recall anybody saying in
9 part of those conversations we shouldn't include loans
10 that were investigated as a result of the information you
11 found on the Miami phones? Did anybody say anything like
12 that during those conversations?

13 A I recall having conversations about not including
14 loans. And I think it was about ten of them.

15 I can't recall when that took place. I can't
16 recall exactly whether it was in relation to grand jury
17 or trial, but I recall that conversation being had.

18 Q Do you recall who was part of that conversation?

19 A I can't recall specifically by but you I know
20 members of the prosecution team, the trial team.

21 Q Do you recall whether it was agents, prosecutors,
22 mix of both?

23 A It may have been a mix of both. I can't recall
24 specifically.

25 Q And do you recall what was the reasoning behind, as

1 I think you just described, not using those ten loans
2 that may have been related to evidence from Miami?

3 A That was the reason.

4 Q That -- sorry, say that again?

5 A The question that you just asked was whether that
6 information was potentially related to the cell phones in
7 Miami.

8 Q Sorry. The question was what was the discussion
9 around that? What was the reason why they didn't want to
10 use that information?

11 A Well, at the time it was -- and again, I am not
12 sure when that conversation took place. If it would have
13 taken place at the time of the superseding indictment,
14 there was pending litigation. If it would have taken
15 place later, after the Court's ruling, which I believe
16 was in late April on the motions to suppress, we knew
17 that that evidence was -- had been suppressed.

18 So we were not going to use it.

19 Q But you are not sure whether or not -- I guess you
20 are saying it could have taken place one of those two
21 times. You are not quite sure which one.

22 A Correct.

23 Q Okay. And do you recall what was the resolution
24 that was reached at the end of this discussion?

25 A We weren't going to use anything related to those

1 ten loans.

2 Q As part of now thinking back to the discussions
3 around the grand jury presentation in the superceding
4 indictment, do you recall anybody saying that you
5 shouldn't use evidence that was based on an investigation
6 from either a lead or a case theory or something else
7 that came from the Miami phones? Was that part of the
8 discussion?

9 A That is a compound question. Can you break it up,
10 please.

11 Q Sure. Let's start with leads. Did anybody say as
12 part of that discussion we shouldn't use any evidence
13 that came from a lead that we got from the Miami phone.
14 Was that part of the discussion?

15 A Prior to the indictment -- again, that discussion I
16 can't place in time. So I think the way you frame that
17 question is related to the superseding indictment. I
18 can't place that conversation at that time.

19 So if the question is related to that, I can't
20 answer -- I can't answer it related to a timeframe. I
21 can answer it more generally.

22 Q So then, let's talk about, then, the conversation
23 that you describe about the ten loans, the one that you
24 are not quite sure when it took place in time, but as
25 part of that conversation did anybody say we shouldn't

1 use any evidence related to case lead that we got from
2 the Miami phone?

3 A They didn't put it in those terms, but that is what
4 was understood by me to be the result of that
5 conversation.

6 Q And was there any discussion about whether or not
7 they should use case theories or a formulation of the
8 case related to those loans?

9 A I am not sure what that means.

10 Q I will strike the question. Thinking back to the
11 grand jury, even though you can't place that
12 conversation, you would agree that the government
13 obtained a name of a potential witness from the Miami
14 cell phones that you didn't realize at the time?

15 A Repeat that.

16 Q So thinking back before the grand jury for the
17 superseding indictment right to February, you said in
18 your declaration that the government obtained a potential
19 witness' name from the Miami cell phones and you didn't
20 realize it at the time.

21 A Are you talking about John Bradford.

22 Q Is that the witness that was taken from the Miami
23 cell phones?

24 A I know that John Bradford's name was on the cell
25 phones. And that I can -- that is my answer, is that

1 that name, John Bradford, was on the cell phone.

2 Q And you were part of the discussion with
3 Mr. Bradford's counsel?

4 A Correct.

5 Q Okay. And you learned after that discussion that
6 John Bradford and that lead had been developed from
7 evidence that was taken from the Miami phones?

8 A That's correct.

9 Q But nobody told you that ahead of time?

10 A Correct.

11 Q So there were leads that other people developed on
12 the case, and it wasn't necessarily shared with you that
13 that was from the Miami cell phone, and this is an
14 example of that?

15 A Yeah. I am not sure I think of it -- I am not sure
16 I would say it that way. You know, John Bradford's name
17 was on the cell phones. Took a meeting with John
18 Bradford's attorneys, I had a conversation with him on
19 the phone, and then subsequently decided that we were not
20 going to go any further with that because it was related
21 to the cell phones.

22 Q Something you found out after the fact, after you
23 participated in a call with Mr. Bradford's attorney?

24 A You know, I can't recall the timing of that.

25 Q So let's pull up Mr. Paetty's declaration. And it

1 is paragraph 14. I am not sure what page of the PDF.

2 Is if we zoom in on lines 16 to 20.

3 So this is from the declaration you submitted
4 in this case, and you said, "At the time I reviewed the
5 e-mail chain between Mr. Bradford and defendant Ayvazian
6 and attended the telephonic meeting with Mr. Bradford's
7 counsel, I was unaware that the government had obtained
8 John Bradford's name from the Miami cell phones."

9 Do you recall writing that in your
10 declaration?

11 A Yes.

12 Q And that is accurate?

13 A Yes.

14 Q So you learned at some point later because you
15 wrote it in this declaration that indeed John Bradford's
16 name was found on the Miami cell phones?

17 A Correct.

18 Q But at the time you took those steps, reviewing the
19 e-mail chain, having this telephonic meeting, you didn't
20 actually know that somebody else had taken that lead from
21 the Miami evidence and then cautioned you to take those
22 actions?

23 A Correct.

24 MR. KEOUGH: Do have no further questions?

25 THE COURT: Anything from you, Mr. Littrell.

1 Let's try and complete this witness this
2 afternoon if we can.

3

4 CROSS-EXAMINATION

5 BY MR. FRASER

6 Q Mr. Paetty, the sentencing in this case of Richard
7 Ayvazyan and Marietta Terabelian has been scheduled by
8 the Court. You are aware of that; correct?

9 A Yes.

10 Q Scheduled for September 13th?

11 A I think that's right.

12 Q And in preparation for sentencing, as a prosecutor
13 you routinely provide information to the United States
14 probation office; correct?

15 A Correct.

16 Q And has probation reached out to the U.S.
17 Attorney's office in this case?

18 A Yes.

19 Q Have you provided information to the United States
20 probation?

21 A I have not personally but our office has. Yes.

22 Q Okay. And you understand that you can't use the
23 information from the Miami phones in sentencing; correct?

24 A My understanding is I am not using anything from
25 the Miami phones.

1 Q Okay. And if the government did use information
2 from the Miami phones in sentencing, that would be
3 illegal; correct?

4 MS. WESTFAHL KONG: Objection. Argumentative.

5 THE COURT: I don't know. Answer the question.

6 THE WITNESS: Illegal, I am not sure. Illegal?

7 THE COURT: You are asking a legal question
8 whether evidence that has been suppressed can be
9 considered at sentencing. I mean, I don't know why you
10 are asking this witness that question. That is a legal
11 matter.

12 MR. FRASER: Yes, your Honor. And whether
13 Mr. Paetty can remain on the case for sentencing should
14 depend on his understanding of his obligations under
15 Kastigar. So it is pertinent what he understands as he
16 sits here today what he can and cannot do with regard to
17 sentencing and information from the Miami phones.

18 THE COURT: All right. Go ahead.

19 Q BY MR. FRASER: So you understand that you can't use
20 any information from the Miami phones at sentencing;
21 correct?

22 A It is -- since the information from the Miami
23 phones has been suppressed, I am not using it, and I am
24 not aware of its se.

25 Q Could you use it?

1 A I will not use it.

2 Q Could you legally use it?

3 A That was not part --

4 MS. WESTFAHL KONG: Objection. Calls for a legal
5 conclusion.

6 THE COURT: You can answer.

7 THE WITNESS: I'm sorry. I didn't --

8 Q BY MR. FRASER: Could you use information from the
9 Miami phones at sentencing?

10 A I am not aware of whether I could or couldn't.

11 Q BY MR. FRASER: Thank you. You are aware of the
12 Department of Justice Criminal Resource Manual; correct?

13 A Off the top of my head, I am not sure.

14 Q Have you heard of the Criminal Justice Resource
15 Manual?

16 A If you show me a copy of the face page, I can tell
17 you.

18 Q I am displaying a page from the DOJ archives. Are
19 you able to see that?

20 A Can you blow it up a little, please?

21 Q I have zoomed in. For the record, this is an
22 exhibit to the declaration of Mr. Ram. Are you able to
23 see the document now?

24 A Yes.

25 Q And do you see that it represents the Criminal

1 Resource Manual of the Department of Justice?

2 A That is what it says.

3 Q And underneath that there is a heading that has
4 "Steps to Avoid Taint." Do you see that?

5 A That is what it says.

6 Q Okay. So you acknowledge that the Department of
7 Justice has promulgated guidance to prosecutors on how to
8 avoid using tainted evidence?

9 MS. WESTFAHL KONG: Objection. Mischaracterizes
10 the document.

11 MR. FRASER: I am asking whether he acknowledges
12 that DOJ has done that.

13 THE COURT: He can answer the question.

14 THE WITNESS: I have never seen this document so I
15 am not sure.

16 Q BY MR. FRASER: So you have not in fact reviewed the
17 DOJ criminal manual's steps to avoid taint?

18 A Correct.

19 Q Thank you. Did you review the government's reply
20 brief that was submitted yesterday?

21 A No.

22 Q Okay. Would it surprise you to know that the
23 government asserted that it first became aware of
24 Kastigar issues in May?

25 A I haven't seen it, so I don't know.

1 Q Would that -- if that is true, would you be
2 surprised?

3 MS. WESTFAHL KONG: Objection. Relevance.

4 THE COURT: Well, surprised is not relevant.

5 MR. FRASER: I can ask it in many other ways.

6 THE COURT: IT doesn't come into the picture. If
7 you want to ask another question, you can.

8 MR. FRASER: Sure. Thank you.

9 Q And let's just back up. It may take a few more
10 questions but I think it will be quick. You of course
11 came onto the case in February?

12 A Yes.

13 Q Discuss it with the other prosecutors in the case
14 at that time.

15 A I've discussed it. What do you mean?

16 Q The case?

17 A Yes.

18 Q Legal issues?

19 A Yes.

20 Q Evidence?

21 A Yes.

22 Q Theories of prosecution?

23 A I am not sure what you mean by theories of
24 prosecution.

25 Q Okay. In any event, in February you and your team

1 were not discussing Kastigar issues; is that correct?

2 A Correct.

3 Q Not in March either?

4 A Correct.

5 Q Not in April either?

6 A I don't think so. Yeah, correct. I think the
7 first time Kastigar came across my radar was a filing by
8 defense. I am not sure when that was but it was after
9 the motions to suppress.

10 Q Okay. And in fact you were tasked with preparing
11 the government's opposition to the motions to suppress
12 the evidence from the Miami stop; correct?

13 A Correct.

14 Q And so you reviewed all the briefing pertinent to
15 that motion; correct?

16 A Correct.

17 Q When you first came on the case, let's be specific
18 about the prosecutors you were speaking with about the
19 case. Those would be at first, for one, Julian Andre?

20 A Briefly, yes, until he left the office.

21 Q Right. In fact, that is why you were brought on to
22 the case; right?

23 A Correct.

24 Q And you discussed the case with Brian Faerstein?

25 A Correct.

1 Q Christopher Fenton?

2 A Correct.

3 Q And you discussed the case with Justin Palmerton?

4 A Yes.

5 Q Jeffrey Clark?

6 A Yes.

7 Q Other agents as well?

8 A Yes.

9 Q Okay. In February, did you ever -- who would be
10 your most direct supervisor?

11 A At that time, when I joined the case, my deputy
12 chief in major frauds was Poonan Kumar. It changed
13 shortly thereafter -- I can't remember the time -- to
14 Kristin Williams.

15 Q Ranee Katzenstein, she ranks above Mr. Kumar and
16 Ms. Williams; is that correct?

17 A It is Ms. Kumar and Ms. Williams, and, yes, she
18 does.

19 Q Okay. Did you speak with any of the three of them
20 in February about this case?

21 A Yes.

22 Q What was the nature of those discussions?

23 A It was describing in general terms the case, what
24 the case was, where it was procedurally and my scheduling
25 regarding the ability to join the prosecution team.

1 Q Did you discuss suppression issues with them in
2 February?

3 A The issue was raised to me, as I stated before,
4 that based on conversations with counsel for Mr. Ayvazian
5 that certain motions to suppress would likely be filed.

6 Q Okay. Did you discuss Kastigar with any of the
7 three supervisors that we have mentioned in February?

8 A No.

9 Q In March?

10 A No.

11 Q In April?

12 A No.

13 Q In May?

14 A I am not sure about May. I am not sure when the
15 first issue was raised regarding Kastigar by the defense.
16 And at that point it would have been part of -- it would
17 have come onto my radar.

18 Q But at some point you did discuss Kastigar issues
19 with the supervisor?

20 A At some point I discussed it with the trial team,
21 and I am not -- I can't recall when supervisors were
22 looped into that conversation.

23 Q Okay. I am asking do you know as you sit here
24 today whether you ever discussed Kastigar issues with the
25 supervisor; not the trial team, a supervisor?

1 A Yes.

2 Q And you did?

3 A Yes.

4 Q And it was after April; correct?

5 A It would have been after the first time it was
6 raised in a filing by the defense.

7 Q And your position is that that was in May; correct?

8 A I am not sure exactly when that was. I don't know
9 off the top of my head when that was.

10 Q Could it have been in March?

11 A I don't think so because I think that that was
12 predicated on the court's order regarding motions to
13 suppress.

14 Q Okay. So as far as -- you reviewed the filings in
15 March and you don't remember Kastigar being raised then;
16 is that correct?

17 A That's correct.

18 Q But at some later time you saw it raised in a
19 filing by the defendants and followed up with a
20 supervisor; correct?

21 A I can't recall the exact --

22 Q Did you follow up with a supervisor?

23 A We discussed it amongst team, and then at certain
24 points supervisors were also involved in that discussion.

25 Q So that is a yes; correct?

1 A Could you repeat your question?

2 Q Did you discuss --

3 THE COURT: His answer is what he said. It is not
4 a yes or no. He answered the question completely.

5 Q BY MR. FRASER: Okay. Is it possible that the first
6 time you discussed Kastigar with a supervisory prosecutor
7 was in June, 2021?

8 A I don't recall.

9 Q Did any of the supervisors you spoke with refer to
10 the DOJ Criminal Resource Manual?

11 A Are you asking me if any of the supervisors
12 referred me to the page that you are showing me that is
13 on the screen right now?

14 Q No.

15 A Okay. Could you repeat your question, please.

16 Q Did any of the supervisors refer to the Criminal
17 Resource Manual in your discussions with them?

18 A I did not hear the phrase Criminal Resource Manual
19 raised in a discussion with anyone that I can recall.

20 THE COURT: Are you aware of something called a
21 Criminal Resource Manual before today?

22 THE WITNESS: No, your Honor.

23 Q BY MR. FRASER: Did it seem like the supervisors
24 knew what to do with the Kastigar situation?

25 THE COURT: I don't know what that question means.

1 MR. FRASER: I will rephrase my question.

2 Q When you spoke to the supervisors, did they
3 recommend that you take any particular course of action?

4 A I am not sure how to answer that.

5 Q Did they say I don't care what do you with about
6 Kastigar?

7 A No.

8 Q Did they tell you to do anything Kastigar?

9 A That is very broad. Tell me to do anything
10 Kastigar? I am just -- I'm not sure.

11 MS. WESTFAHL KONG: Objection. Vague.

12 THE COURT: About what?

13 Q BY MR. FRASER: Yeah. Did your supervisors
14 recommend that you take some action to teal deal with the
15 Kastigar issue?

16 THE COURT: What is "some action"?

17 MR. FRASER: Any action.

18 THE COURT: There was a motion pending at the
19 time, and obviously the government responded, so what is
20 the nature of the question? There was action taken. The
21 government responded to the Kastigar motion.

22 Q BY MR. FRASER: Okay. Did the government ever
23 prepare any log of access to the Miami phones?

24 A A log of access. What are you referring to?

25 Q Keeping track of who accessed information about the

1 Miami phones. Did the government do that?

2 A In what form?

3 Q Any. Can you name anything that the government did
4 to track who accessed information about the Miami phones
5 and when?

6 A I am only aware of myself.

7 Q Please go ahead and name actions that the
8 government took to track access to the Miami phones.

9 MS. WESTFAHL KONG: Objection. Foundation as to
10 what the government did.

11 THE COURT: He can answer what he did, and he can
12 answer if he knows what other people did, but that is the
13 way the question should be phrased.

14 Q BY MR. FRASER: So what did you do?

15 A I laid that out in my declaration as to what my
16 interaction with that evidence with the material from the
17 cell phones was and what I did in response to it.

18 Q Everything that you did to track your access to the
19 Miami phones you included in your declaration; correct?

20 A To the best of my knowledge, I included what was
21 relevant and material to my interaction with that
22 evidence. Yes.

23 Q Okay. And you didn't include information about
24 anything anyone else did to track access to the Miami
25 phones?

1 A I am not sure what anyone else did.

2 Q Okay. So in your declaration you referenced not
3 recalling, seeing or relying on tainted Miami evidence
4 other than as described in your declaration; correct?

5 A I would have to look and see how I worded it.

6 Q Okay. Showing you paragraph 17 from your
7 declaration: "Other than the instances described above,
8 I do not recall seeing and reviewing the evidence seized
9 from the Miami cell phones or relying on such evidence in
10 preparation for trial, including in connection with
11 preparing witnesses or exhibits, drafting direct or
12 cross-examinations or outlining arguments, including
13 rebuttal, except to make the conscious choice not to use
14 that evidence at trial and not to pursue exhibits or
15 testimony at trial that was derived from that evidence."

16 In other words, your declaration covered
17 everything; correct?

18 A Correct.

19 Q Okay. And as you indicated in this paragraph, you
20 were relying on your memory; correct?

21 A I also did a review of e-mails and other -- but the
22 motions to suppress, that I was involved in.

23 Q Okay. But you didn't keep a document in which you
24 logged each time that you viewed evidence from the Miami
25 phones, did you?

1 A No.

2 Q Let's talk about your exposure to the tainted
3 evidence from the Miami phones. You were exposed to the
4 statements that were made at the Miami airport and the
5 cell phone contents already in February when you first
6 came on the case; correct?

7 A Would you repeat that, please?

8 Q Within a week of joining this case, you received
9 reports of interviews on Richard Ayvazyan and Marietta
10 Terabelian; correct?

11 A At the border, correct.

12 Q And also within a week of joining the case, you
13 reviewed descriptions of information that CBP had
14 reviewed while searching the phones; correct?

15 A I reviewed the reports.

16 Q And you knew that the Terabelian phone in CBP's
17 words, quote, "confirmed that the subject was taking on
18 the identity of Victoria Kauichko," unquote; correct.

19 A I recall, I think that was in a report.

20 Q And in fact, that is an exhibit to your declaration
21 from your March filing; correct?

22 A I would have to look at it again, but I believe
23 that was. I think the report -- the entire report was an
24 exhibit.

25 Q Yes, it was. Okay. And you personally selected

1 images from the phones for use in opposing suppression
2 back in March; correct?

3 A Yes. The team reviewed the filing, but I proposed
4 the exhibits; correct.

5 Q Okay. And these were from among the images in
6 Exhibit 1 to your declaration in opposition to the -- in
7 the Kastigar briefing; correct?

8 A Yes.

9 Q And the Exhibit 1 contains those 141 photographs
10 that have been in the briefing; correct?

11 A Yes.

12 Q Okay. That evidence, you recognized it to be
13 helpful to the government in this case; correct?

14 A I needed to look at that evidence to respond to the
15 motion.

16 Q And it was if not suppressed, it would have been
17 helpful evidence to the government; correct?

18 A If not suppressed, it was evidence, yes. I mean,
19 it was evidence that was found on phones that were
20 possessed by Richard Ayvazyan and Marietta Terabelian.

21 Q It might have been central to the government's
22 case --

23 THE COURT: I am allowing the questions, but I am
24 really interested at the hearing in hearing something
25 more than what is obvious. So many of the questions are

1 obvious from reports or records, and it almost seems like
2 the questions are more designed to argue than anything
3 else.

4 I mean, I am trying to think of what new
5 information I am getting from the hearing that I didn't
6 already know. Is there something about this witness that
7 you think is not truthful? Is he lying in some way?

8 MR. FRASER: I don't believe that he is lying, but
9 I think that the declaration, as my colleague pointed
10 out, there are certain things that it deemphasizes that
11 actually are essentially.

12 THE COURT: I get the point you are making that
13 the messages on the phone and the other things on the
14 phone could have been used by the government had they not
15 been suppressed, and they would have been helpful. I
16 mean, that is what I am getting from hours and hours of
17 this. And so what other point has to be made?

18 MR. FRASER: I think that is the central point.
19 If I may --

20 THE COURT: Then let's end this now. It is 20
21 after 5. We have been at this for almost six-and-a-half
22 hours, unless there is something important that you
23 haven't gone through.

24 MR. FRASER: I think there is a point that
25 Mr. Paetty is unlikely to dispute but should be brought

1 to the Court's attention.

2 THE COURT: Well, go ahead and ask.

3 MR. FRASER: Okay.

4 Q Just going straight to that, when you were
5 selecting the images, many of them came from the
6 Terabelian Miami phone; correct?

7 MS. WESTFAHL KONG: Objection. Vague as to what
8 images he is selecting and what context this is.

9 THE COURT: Well, the images that came from the
10 Terabelian phone ceased at the airport?

11 MR. FRASER: Correct. And I am referring to the
12 images that Mr. Paetty selected in opposing the motions
13 to suppress the Miami evidence.

14 THE COURT: You can answer if you know.

15 THE WITNESS: I am not sure whose phone it came
16 from. I know it came from the phones in Miami.

17 Q BY MR. FRASER: Okay. But you were keen to know
18 whose phone each image came from?

19 A Yes.

20 Q You asked about that repeatedly in e-mails with
21 your colleagues?

22 A I am not sure about repeatedly.

23 Q Do you want me to show you?

24 A I -- if you want.

25 Q Okay. And I noticed that you didn't attach all of

1 these to your declaration, so I will have to show you
2 from Mr. Faerstein's declaration. It is Exhibit 2 here.

3 Okay. This is an e-mail looking at the screen
4 from Exhibit 2 to Faerstein's declaration. It's an
5 e-mail that you sent on March 11th at 9:09 a.m. Do you
6 recognize that as the e-mail you sent?

7 A Yes.

8 Q Okay. And let me ask a question. It is the last
9 sentence that is in blue text. Is there a way to
10 determine whose phone the images came from?

11 A Yes.

12 Q And then below that we have separate paragraphs
13 that you have kind of made a list with capital letters.
14 Do you see that?

15 A Yes.

16 Q Okay. And just as an example, on point K it says,
17 "Whose phone," in all capitals; correct?

18 A Yes.

19 Q And point N, all capitals, it says, "Whose phone";
20 correct?

21 A Yes.

22 Q Okay. And after your 9:09 a.m. e-mail,
23 Mr. Faerstein sent you a response e-mail at 9:22 a.m. Do
24 you see that?

25 A Yes.

1 Q And then in your next e-mail at 9:33 a.m., you say
2 "It will be helpful going forward. Let's see whether
3 Annamelda or maybe Justin can assist in determining whose
4 phone the images came from."

5 A Yes.

6 Q Okay.

7 MR. FRASER: Thank you. No further questions.

8 THE COURT: All right. Thank you, sir.

9 MS. WESTFAHL KONG: Your Honor, may I ask one
10 thing?

11 THE COURT: You want to ask me one thing?

12 MS. WESTFAHL KONG: May I ask the witness one
13 question?

14 THE COURT: All right. Go ahead, one question.

15

16 CROSS-EXAMINATION

17 BY MS. WESTFAHL KONG

18 Q You were asked about the Criminal Resource Manual,
19 but do you understand that that is part of the Justice
20 Manual?

21 A I am not sure where that came from. I really don't
22 know where that -- the Criminal Resource Manual is
23 located.

24 Q Are you generally familiar with the Justice Manual?

25 THE COURT: That was one question.

1 Thank you.

2 THE WITNESS: Thank you, your Honor.

3 THE COURT: We are going to end now. It is almost
4 5:30. And I want to finish this tomorrow. We have
5 Palmerton and Massino. Those are the two that are seem
6 most prominent. What are you intending to ask Palmerton
7 that hasn't already been asked? Is it a long answer?

8 MR. LITTRELL: Your Honor, I want to review the
9 answers we got today and then determine how we can cut it
10 down, but we do have questions for them.

11 THE COURT: All right. Let's leave it at that.
12 We will pick up tomorrow at 10:00 o'clock.

13 MR. LITTRELL: Your Honor, I do want to raise an
14 issue. Sentencing is scheduled pretty quickly and the
15 probation officer wants to interview our clients. I am
16 going to propose continuing sentencing, at least giving
17 the Court time some time to rule on this motion. I can
18 propose some dates.

19 THE COURT: What is the date for sentencing now?

20 MR. LITTRELL: I think it is in September.

21 THE COURT: September is a long way off. I am not
22 going to postpone it now.

23 MS. KATZENSTEIN: Your Honor, Mr. Andre was
24 present here today. Both Mr. Littrell and Mr. Ram had
25 have said they do not want to cross-examine him.

1 THE COURT: Then he doesn't have to be here.

2 MS. KATZENSTEIN: We just wanted to ensure that
3 the Court didn't have questions for him.

4 Thank you.

5 (Proceedings concluded.)

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CERTIFICATE

I hereby certify that pursuant to Section 753, Title 28,
United States Code, the foregoing is a true and correct
transcript of the stenographically reported proceedings held
in the above-entitled matter and that the transcript page
format is in conformance with the regulations of the
Judicial Conference of the United States.

Date: August 1, 2021

/s/ Katie Thibodeaux, CSR No. 9858, RPR, CRR

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