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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 TWO
THURSDAY, JULY 29, 2021

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I N D E X

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1 LOS ANGELES, CALIFORNIA; THURSDAY, JULY 29, 2021

2 10:03 A.M.

3 - - - - -

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6
7 THE COURT: We are ready to proceed with the
8 second day of the hearing on the Kastigar motions. The
9 same parties and lawyers who were here yesterday are here
10 today; correct?

11 MR. CIPOLLETTI: Yes, your Honor.

12 THE COURT: Your appearances are noted.

13 We are ready for another witness. Who is
14 that?

15 MR. RAM: Justin Palmerton.

16 (The witness was sworn.)

17 THE CLERK: State your full name, and spell it for
18 the record.

19 THE WITNESS: My name is Justin Palmerton,
20 J-U-S-T-I-N, P-A-L-M-E-R-T-O-N.

21
22 CROSS-EXAMINATION

23 BY MR. RAM:

24 Q Good morning, Agent Palmerton.

25 A Good morning.

1 Q You prepared a declaration in this case?

2 A I did.

3 Q You spent some time drafting it?

4 A I did.

5 Q Did anyone help with you the drafting or review?

6 A No, it was me.

7 Q No one reviewed your draft before it was finalized?

8 A No.

9 Q And what was the process you underwent to prepare
10 your declaration?

11 A I reviewed e-mails, primarily e-mails, grand jury
12 subpoena returns, and then just try to go back in my mind
13 to recreate what my mind or my thought process was at the
14 time.

15 Q Okay. And did you attempt to identify every direct
16 and indirect use of information from the Miami phones you
17 made related to this case?

18 A I tried to, yes, pursuant to the Court's order.

19 Q And you did not include your -- well, before I go
20 there, your declaration doesn't include any testimony you
21 gave at the October 22nd detention hearing in this case;
22 right?

23 A No, it does not.

24 Q And the October 22nd detention hearing, that was
25 within a day or two of the Miami arrest; is that right?

1 A Yes. Yes.

2 Q And that was approximately within two months of the
3 August investigation activity that you did describe in
4 your declaration?

5 A Yes.

6 Q Okay. Part of your testimony at the October 22nd
7 detention hearing was that the -- the information about
8 Iullia Zhadko on the Miami phones confirmed that Richard
9 Ayvazyan was using Iullia Zhadko as an alias; is that
10 true?

11 A I don't think I would use the word confirm.

12 Q Okay. Why don't we look at the statement from your
13 detention hearing including the context. Do you remember
14 the context for a statement about Iullia Zhadko, what you
15 were asked?

16 A Yes. It was a detention hearing and Mr. Trontz, I
17 believe was Ayvazian's attorney at the time, was
18 basically trying to confirm identity. It was essentially
19 an identity question.

20 Q Let's take a look at Kastigar Exhibit 15, pages 23
21 to 24. Let's highlight the question first. So
22 Mr. Trontz at the top of Exhibit 15, top of page 23.

23 First, he asked you, if you remember this from
24 your memory to, you were generally asked how -- these
25 loans were submitted on a computer I think is the word he

1 used?

2 A Yes.

3 Q Right. So he is asking you what evidence do you
4 have linking Richard Ayvazyan and Mary Terabelian to the
5 loans that were actually submitted on those computers;
6 right?

7 A Correct.

8 Q And then let's look at the actual transcript,
9 bottom half, right after he said -- I think you respond
10 or he asked, were these all submitted via computer. You
11 say, yes, to the best of my knowledge yes; right?

12 A Yes.

13 Q Then the question is -- my question, quote, my
14 question is how do you know that Mr. Ayvazian and
15 Ms. Terabelian were the ones who actually filed these
16 applications through the computer.

17 And then you respond, for some of the
18 applications filed under the name Iullia Zhadko, the
19 funds were deposited into a bank account. From there,
20 the funds float into an escrow account, and in reviewing
21 the records from that escrow company, there was an e-mail
22 from a Richard Ayvazyan that appeared to be directing the
23 flow of funds from the bank account. And then, once the
24 CBP stopped for the secondary inspection, we learned that
25 there was a photograph of Iullia Zhadko on the digital

1 device, and we made the connection that Iullia Zhadko was
2 in fact an alias of Richard Ayvazyan.

3 Correct? Did I read that correctly?

4 A Yes.

5 Q And when you say we made the connection that Iullia
6 Zhadko was, in fact, an alias of Richard Ayvazyan, you
7 are saying Richard Ayvazyan was Iullia Zhadko?

8 A That he was using the alias, yes.

9 Q Okay. And then he asked you -- since we are here,
10 why don't we just finish it. So other than the
11 possession of that identification and that e-mail, there
12 is no other connection between my client and the alias
13 that is listed; correct?

14 And you understand he is referring to Richard
15 Ayvazyan as his client?

16 A Yes.

17 Q And then you answer, other connections that I can
18 note are open source research in the case that they had
19 shared. Who. And you answer Richard Ayvazyan and Iullia
20 Zhadko. Sorry. That they had shared addresses.

21 And then he asked you, any other connections
22 between these applications and my clients. And then you
23 refer back again, aside from money transfers -- meaning
24 what you have been calling flow of funds; is that right?

25 A Yes. That is accurate.

1 Q So aside from money transfers into bank accounts
2 owned by Mr. Ayvazian, that is all I have.

3 Do you see that?

4 A Yes.

5 Q And he asked you, and you are the lead investigator
6 in this case. And you said, that's correct; right?

7 A Yes.

8 Q And this testimony, I think I have asked you this
9 is on October 22nd?

10 A Yes.

11 Q And the investigation started June, roughly in June
12 of 2020?

13 A End of June, 2020, yes.

14 Q Okay. And so this would be within roughly three to
15 four months of the start of the investigation?

16 A Yes.

17 Q Okay. Would you agree that part -- sorry. Would
18 you agree that Richard Ayvazyan's possession of the phone
19 registered in the name of Iullia Zhadko and the contents
20 of that phone were powerful evidence that Richard
21 Ayvazyan controlled Iullia Zhadko identity as an alter
22 ego essentially?

23 A I think it was a piece of evidence, relevant
24 evidence. Sure.

25 Q Would you agree that it is powerful evidence?

1 A I mean --

2 MR. O'DONNELL: Objection. Asked and answered,
3 your Honor.

4 THE COURT: Overruled.

5 THE WITNESS: I wouldn't say it was necessarily
6 powerful.

7 Q BY MR. RAM: Okay. And let's talk about the Miami
8 stop and the 65 photographs you took after that stop.

9 A Uh-huh.

10 Q When you learned that Mary Terabelian would be
11 traveling to the United States on October 16th, you asked
12 CBP officers to initiate a secondary inspection; is that
13 right?

14 A I made the request, yes.

15 Q And just a few hours after she, in fact, arrived at
16 Miami, you e-mailed CBP officers in Miami to check in and
17 see how this went; is that right?

18 A I believe it was a few, four or five hours after.

19 Q Okay. But you e-mailed to check in to see how it
20 was going essentially?

21 A I did because I had not heard anything from them.

22 Q Okay. And, after that, you spoke to a CBP officer
23 on the telephone; right?

24 A Yes.

25 Q And at that time, you learned that multiple phones

1 were seized?

2 A Multiple phones and multiple credit cards.

3 Q So the answer to my question would be, yes, you did
4 learn that multiple phones were seized?

5 A I did.

6 Q And you learned that CBP had reviewed those phones
7 in some fashion?

8 A Well, I learned about the credit cards first, and,
9 then, subsequent to that, I learned about the phones,
10 yes.

11 Q So you did, in fact, learn from CBP that they had
12 reviewed the phones?

13 A Yes. That they had I guess looked through them.

14 THE COURT: Keep your voice up, agent. I can't
15 hear you.

16 THE WITNESS: Yes, your Honor.

17 Q BY MR. RAM: And, as part of that review of the
18 phones, you learned that CBP had found at least one image
19 of a driver's license in the name of Iullia Zhadko on one
20 of the Miami phones?

21 A Yes.

22 Q You ultimately memorialized the events of your
23 October 19th interactions with CBP in a Form 302;
24 correct?

25 A I did not. The FBI Miami agents wrote a 302 on the

1 arrest.

2 Q Okay. Why don't we pull up Palmerton Exhibit J
3 from your declaration.

4 Do you see that on the screen there, Agent
5 Palmerton.

6 A I do.

7 Q The date of entry is November 16th, 2020?

8 A Yup.

9 Q And it details -- actually -- sorry. Before we get
10 to this, did you prepare any other 302 related to the
11 interaction at Miami in your conversations with CBP
12 officers?

13 A Not that I recall.

14 Q So your memory of your phone calls and interactions
15 with CBP is really all we have to evaluate what you
16 discussed with the CBP officers at this point?

17 A Yes. That and the complaint. And the complaint
18 was written shortly after those discussions.

19 Q Okay. Now, let's take a look at KX60. This is
20 actually what I meant to pull up earlier?

21 A Okay.

22 Q And this is date of entry November 24th, 2020;
23 right?

24 A Correct.

25 Q And this is roughly a little more than a month

1 after the Miami stop?

2 A Yes.

3 Q And it says on October 19th, 2020, CBP performed a
4 secondary inspection on Marietta Terabelian and Richard
5 Ayvazyan subsequent to their arrival from Turks and
6 Caicos Islands at Miami International Airport?

7 A Yes.

8 Q So this was your documenting the Miami stop on your
9 part?

10 A It was actually just documenting the reports I
11 received from CBP.

12 Q Okay. And those are in the record.

13 A They are.

14 Q But you did not otherwise specify any content of
15 your conversations with CBP or the information you
16 learned on October 19th and October 20th in an FBI 302;
17 correct?

18 A No. Just I believe it was in the complaint.

19 Q But you didn't do it in an FBI 302?

20 A I did not.

21 Q And did you personally draft the complaint?

22 A I did.

23 Q Did you draft it with prosecutors Fenton and Julian
24 Andre?

25 A Yes. With their assistance.

1 Q Is there a document that you solely drafted that
2 reflects the contents of your communications with CBP?

3 A Likely one of the first drafts that we were
4 writing.

5 Q And do you have a first draft of that?

6 A I might. I would have to look. Yes.

7 Q And can you produce that to the defense?

8 A I can. Yes.

9 Q Okay. Thank you. Or I should say will you produce
10 that to the defense?

11 A Yes. Yes, I can?

12 MR. RAM: Your Honor, we make that request for
13 Agent Palmerton's first draft or all drafts of the
14 complaint affidavit in this case.

15 THE COURT: I don't know that that is necessary.

16 MR. RAM: How about the first draft?

17 THE COURT: I said I don't think that is
18 necessary.

19 MR. RAM: Okay.

20 Q BY MR. RAM: All right. Now, let's go to your
21 November 13th review of the Miami phones. First off, you
22 spent about two hours reviewing the Miami phones?

23 A Yes. Approximately.

24 Q And you brought in another agent to assist you?

25 A Yes. FBI Agent Lynne Zellhart.

1 Q And you ultimately took photos from three of those
2 five phones you reviewed; is that right?

3 A Yes, I believe so.

4 Q Did you review all of the photos on the five
5 phones?

6 A No, I don't think so, no.

7 Q How many of the photos did you review?

8 A I couldn't give you a specific figure.

9 Q How did you know that you didn't review all of the
10 photos?

11 A Really because we didn't look at any deleted photos
12 or anything like that. It was strictly going into the
13 images folder and scrolling through. I mean, there was
14 multiple, multiple images on the phones, and, as I
15 detailed in my declaration, I was just looking for PPP
16 applications, driver's licenses, credit card photos,
17 things of that nature.

18 Q All phones(sic) that were available on the main
19 folder; right? Like when you go into a phone, you see --
20 not talking about deleted items, but you see phones when
21 you open up -- you see photos when you open up someone's
22 phone; right?

23 A Yes.

24 Q Did you avert your eyes from any of those photos
25 that would have been in the same main folder you were

1 viewing?

2 A There was a lot of pornographic material that I
3 averted my eyes from.

4 Q But you saw there was some pornographic material?

5 A Yes, I did.

6 Q And then you took some select photos from those,
7 approximately three of the phones; right?

8 A Yes.

9 Q And that was a total of 65 photographs?

10 A Yes.

11 Q Let's take a look at Image 23A from your
12 declaration. I'm sorry. Image 23A from KX1 which is on
13 page 23, Kastigar Exhibit 1.

14 So as part of you taking the 65 photos, you
15 also took a photo of the phone itself that you were --
16 that you took photos from; is that right?

17 A Yes. I think I took three photos.

18 Q And that is how you know that you actually took
19 photos from three phones?

20 A Yes. That was my process of documenting which
21 phone we took the photos from.

22 Q Okay. Is it fair to say that the images you
23 reviewed on the five phones but did not take a picture of
24 aren't addressed in your declaration?

25 A Yes. I believe so.

1 Q Okay. And then let's jump ahead to later in the
2 investigation. Actually, let's look at the next image
3 first. Image 46A which is on page 47 of Kastigar Exhibit
4 1. That is another phone that you photographed; right?

5 A Yes.

6 Q And, then, finally, that is the second phone, and,
7 then, the third phone is Image 66A which is page 60 of
8 this exhibit.

9 Same question, this is the third phone that
10 you photographed?

11 A Yes.

12 Q All right. We can take that down.

13 So now jumping ahead to May 21st or so.

14 A Okay.

15 Q Roughly be -- how many -- how far after
16 November 13th is that?

17 A Seven months approximately.

18 Q Okay. Five or six months, let's say?

19 A Sure.

20 MR. O'DONNELL: Objection.

21 MR. RAM: Sorry. I was just doing math. Sorry.
22 December, January, February, March, April, May. So seven
23 months. You were right.

24 Q Seven months later, May 21 or so, you reviewed a
25 phone that was seized from Weddington which you

1 associated with Tamara Dadyan.

2 A Yes.

3 Q And that phone was seized roughly on November 5?

4 A On November 5th, yes.

5 Q And when you were reviewing that phone, you
6 recognized, to kind of shorthand this, you recognized or
7 connected back some of the images you saw on that phone
8 to the 65 photographs that you took?

9 MR. O'DONNELL: Objection. Form of the question.
10 Recognize or connected back. There is two questions
11 pending.

12 THE COURT: Objection sustained.

13 MR. RAM: Sure. Let me clarify.

14 Q So on May 21st or so, when you are reviewing a
15 phone associated with Tamara Dadyan, you recognized some
16 of the same images that you took photos of back on
17 November 13th; correct?

18 A No, I don't recall specifically.

19 Q Well, let's pull up an example. For example, you
20 recognized a contact for Misak Arakelyan with the e-mail
21 address Misak at NWtradings.com. Do you remember that
22 one?

23 A Yeah. That was a contact not a photo?

24 THE COURT: Not what?

25 THE WITNESS: Not a photo, your Honor.

1 Q BY MR. RAM: Correct. So you recognized that
2 contact, but you had taken photos of information relating
3 to Northwest Tradings; right?

4 A Yes. I believe so. I was confused. I thought you
5 were -- that I saw two of the same photos or that is what
6 I was looking for but --

7 Q So let's do another example. Let's stay with Misak
8 Arkalian. And we can pull it up actually. Why don't we
9 go to Kastigar Exhibit 1, page 70. This is Image 65A of
10 Kastigar Exhibit 1, what are we looking at here?

11 A It looks like an e-mail from Fountainhead which is
12 one of the lenders, and it looks like an e-mail to Misak
13 Arkalian. Two documents were missing from the previous
14 files, the Gusto report, 29 W2s and proof of payroll.
15 Essentially, he is asking what appears to be Misak
16 information for presumably a PPP loan.

17 A Okay.

18 Q And when you reviewed this, you saw the contact,
19 the e-mail address contact name. It is to Misak
20 Arkalian. That is one of the individuals you saw
21 information for on the phones when you took the 65
22 photographs; is that right?

23 A Yes.

24 Q And that was, again, roughly seven months before
25 you saw this image on the phone associated with Tamara

1 Dadyan?

2 A Yes.

3 Q Okay. Let's jump back to February 2nd of 2021 now.

4 That is when you get the 141 photos from CBP?

5 A Yes.

6 Q Okay. And why don't we take a look at one of those
7 141 photos at Kastigar Exhibit 2, page 140 which is Image
8 134B.

9 Is this a text between John Bradford and
10 Richard Ayvazyan?

11 A Yes.

12 Q And it references a loan for CBD?

13 A Yes.

14 Q And Prosecutor Fenton asked you to take a look at
15 the image, didn't he, that we see on the screen here.

16 A I think he asked me to look into the CBD.com loan.
17 I may have looked at the image, but I just don't recall
18 specifically. But I do remember Mr. Fenton asking me to
19 look into John Bradford and this loan.

20 Q Do you remember him asking you to take a look at
21 these text messages and see if we should interview this
22 guy meaning John Bradford?

23 A I mean, yeah, no. We wanted to interview John
24 Bradford, yes.

25 Q And do you remember the premise for that was take a

1 look at these text messages?

2 A It likely was, yes. I just don't recall
3 specifically.

4 Q Okay. And it is in the record so we don't need to
5 go over it here, but, big picture, the question is -- the
6 question for you is after he asked you to do some type of
7 follow-up here whether it is interviewing him or
8 otherwise -- or do you remember that? Did he ask you
9 should we interview this guy?

10 A I think we wanted to serve him with a subpoena and
11 get records for the CBD. I think this text message
12 references CBD and we didn't know if there is a PPP loan
13 or not so we were going to look into whether or not
14 CBD.com had received a PPP loan and what records they
15 had.

16 Q And you, ultimately, the prosecution team drafted a
17 subpoena and served it; is that right?

18 A Yes. After a few different efforts.

19 Q And you eventually got materials in response to
20 that subpoena?

21 A We did.

22 Q And about three months later, after reviewing the
23 141 photos from CBP, so March, April, May, roughly in
24 May, you reviewed a Cellebrite for a phone associated
25 with Richard Ayvazyan that was seized from 4910 Topeka on

1 November 5th?

2 A Yes.

3 Q And on that phone, when you reviewed it, you
4 observed a text message chain between Ayvazian and
5 Bradford; is that right?

6 A Yes.

7 Q And you attached that text message chain as Exhibit
8 N to your declaration; is that right?

9 A I believe so, yes.

10 Q And those text messages we can look at them if we
11 need to, but, big picture, those text messages talked
12 about Ayvazian getting Covid and the 2020 presidential
13 election.

14 A Yes. Yes. From what I recall.

15 Q And they did not cover or talk about CBD or a PPP
16 loan for CBD?

17 A Not that I recall.

18 Q Okay. Let's talk about your review of the
19 Cellebrites in this case.

20 On November 20th of 2020, you submitted a
21 request to CART for forensic review of phones and an iPad
22 seized in Miami; is that right?

23 A Yes.

24 Q And CART's job is to do what with those digital
25 devices?

1 A Take them and make forensic copies of them for
2 either agent review or discovery.

3 Q And how did you communicate with the CART lab in
4 general? Is it in person, on the phone, e-mails?

5 A Sometimes e-mails, but I think generally over the
6 phone if they have questions.

7 Q Okay. And you physically sent the digital devices
8 from Miami to the CART lab?

9 A No. No. They have access to go pick up the
10 devices from our evidence facility.

11 Q Okay. Because CART is part of the FBI?

12 A They are, yes. They are either agents or
13 technicians.

14 Q And after CART processes the phone, at least in
15 this case, they were sent to a filter team; is that
16 right?

17 A Yes. I think we took -- they made forensic copies,
18 and, then, the first copies were sent to defense for
19 discovery. And then we did send them to a filter team
20 for review.

21 Q And, after the filter team gets the forensic
22 copies, what happens next?

23 A The filter team generally goes through it, looks --
24 does searches for words such as attorney, any attorney
25 names that we are aware of. In this instance, it was

1 also marital privilege so communications between married
2 persons, and then they filter all of that out and then
3 generally provide the investigative team with filtered
4 copies of the forensic copies of the digital devices.

5 Q In fact, in this case, the Cellebrite reports from
6 the digital devices for Miami were released to you from
7 the filter team on February 23rd, 2021; is that right?

8 A That is when the paralegal that was helping us
9 upload it into USAFX. So I am not exactly sure when they
10 were released to the investigative team, but that is when
11 I would have first had access to them.

12 Q Okay. And you conducted a review of the
13 Cellebrites?

14 A I did.

15 Q And those Cellebrites contain essentially the
16 forensic image of the digital devices in question?

17 A Yes.

18 Q Fair to say those are large repositories of
19 information?

20 A Yes, there is a lot of data on them.

21 Q Okay. Would you agree that the Cellebrite reports
22 from the Miami phones seized from Miami cover the
23 equivalent of thousands and thousands of pages of
24 information?

25 A Yes, I would say that.

1 Q And between February 24th and April 27th of 2021,
2 you reviewed the Cellebrites less than a dozen times; is
3 that right?

4 A Yes. Yes. To the best of my knowledge.

5 Q When you say less than a dozen times, does that
6 mean -- did you review it ten times, then, for sure?

7 A I couldn't tell you. I just recall it was likely
8 less than a dozen. It wasn't a lot of time.

9 Q A lot of times?

10 A Yes. Yes.

11 Q Even if it was let's say eight times during that
12 time period, that would still average reviewing once per
13 week; is that fair to say?

14 MR. O'DONNELL: Objection. A hypothetical.

15 THE COURT: Overruled.

16 THE WITNESS: Likely. Some of the weeks leading
17 up to March when we effected the March 11th arrest.

18 Q BY MR. RAM: I want to make sure you understood my
19 question. I said even if it was just eight times; right?
20 The relevant time period for your review you said was
21 February 24th and April 27th, in that time period; right?
22 That would average once per week.

23 A Again, that would be the average.

24 Q Okay. And let's talk about what was on the
25 Cellebrites that you reviewed. By the way, is it

1 Cellebrities or Cellebrities?

2 A Cellebrite.

3 Q Okay. And you focused on two devices in
4 particular; is that right?

5 A Yes.

6 Q One was 1B123 which was registered to a Iullia
7 Zhadko?

8 A Yes.

9 Q And the other was 1B126 which was registered to a
10 Victoria Kauichko?

11 A Yes.

12 Q And you took some screen shots of relevant items
13 that you found on these devices; right?

14 A Yes.

15 Q You also -- and we will come back to this word --
16 but exported what you thought were relevant text messages
17 into a PDF format; is that right?

18 A Yes.

19 Q And can you explain to the court what does that
20 entail when you export from the Cellebrite into a PDF?

21 A So, in this instance, we were looking at text
22 messages, and there is different ways to export the text
23 messages. You can do them in -- you can export them in
24 Excel format, or you can export them in PDF format and it
25 essentially takes the text messages from the report, puts

1 it in a multi-page PDF that looks like a smart phone
2 chat.

3 Q A what?

4 A A smart phone, like a chat. Like an iPhone. It
5 just makes it easier to read.

6 Q Okay. All right. Is it fair to say you took some
7 screen shots and exported text messages from the Zhadko
8 phone, but you didn't take screen shots or export text
9 messages from the Kauichko phone?

10 A No. I don't think I exported text messages from
11 Kauichko, the Kauichko phone.

12 Q Okay. And you didn't otherwise take notes of your
13 review, did you?

14 A No. Not while I was reviewing.

15 Q So as you sit here, you would have no way of
16 knowing what you did and didn't look at on the Kauichko
17 phone?

18 A No, I don't think so.

19 Q Now, you found four relevant text message strings
20 on the Zhadko phone; is that right?

21 A Yes. I think that's right.

22 Q And you attached them to your declaration as
23 Exhibit O?

24 A Yes.

25 Q But they were so voluminous you actually had to

1 attach a CD; is that right?

2 A Yes.

3 Q And one of those four text message strings involved
4 test messages with Tamara Dadyan; is that right?

5 A Yes.

6 Q Just so we can see what we are talking about, why
7 don't we pull up Kastigar Exhibit 19 which is your
8 Exhibit O or Exhibit O to your declaration, or part of it
9 I should say.

10 In short, this is the contents it of the CD
11 that you attached to your declaration; correct?

12 A Yes. This looks accurate.

13 Q Like a folder level view?

14 A Yes. Of the images. There is the photos and,
15 then, yeah, the zip file which contained the exported
16 text messages.

17 Q And in that zip file which was the bottom file we
18 see there, that had excerpted PDFs as you described from
19 four different text message strings; correct?

20 A Correct.

21 Q Go to the next page. Go to page 2 of Exhibit 19.
22 Let's go one more page. Sorry. Go back up. So this is
23 the folder structure on the CD just so we can see it;
24 right? So then after you open the zip file folder, it
25 says zhadko.richard phone; right?

1 A Yes.

2 Q Next page. And these are the four subfolders in
3 your Exhibit O?

4 A Yes. The subfolders containing, yeah, the PDF
5 export.

6 Q And can you explain to the court the significance
7 of the folder names, specifically, the numbers before
8 2021?

9 A Those are the dates that they were exported, I
10 believe.

11 Q I'm sorry. Before the date. So where it says 2LA?

12 A Yes. 1B123 is the FBI's evidence number for the
13 digital device.

14 Q Okay. So and that is the phone registered to a
15 Iullia Zhadko; correct?

16 A Yes.

17 Q All right. Scroll down if there is anything else.
18 I don't think there is. One more.

19 Okay. So as you can see from the screen shot,
20 this is when you click on the particular subfolder
21 labeled QLA1232021-04 -- sorry -- 26.15-26-59?

22 A Yes.

23 Q And then, specifically, there is a report, PDF
24 report I think which you described, and this is going to
25 represent the text message exchange between the Iullia

1 Zhadko phone and a phone associated with Tamara Dadyan;
2 is that right?

3 A I don't know. I would have to see that report
4 opened.

5 Q In fact, we can go to Exhibit O I think. We will
6 just go to Exhibit O, and I am going to represent to you
7 that that report here, when you click on it, this is what
8 is in the Exhibit O that we are pulling up.

9 A Okay.

10 Q All right. So do you recognize what this is?

11 A Yes. These are the text messages between Tamara
12 Dadyan and Richard.

13 Q And Richard Ayvazyan?

14 A Yes.

15 Q And, specifically, it is actually from the Iullia
16 Zhadko, the phone registered to Iullia Zhadko?

17 A Yes.

18 Q So when you say it is with Richard Ayvazyan, that
19 is based on your investigation; correct?

20 A Yes. It was from the 1B123 phone.

21 Q Okay. And, at the very top, we see conversation,
22 instant messages, 4,911; is that right?

23 A Yes.

24 Q What does that mean?

25 A I believe that -- I mean, to the best of my

1 knowledge, that is each instance of a chat that occurs in
2 this text string.

3 Q Okay. And the participants of this text string --
4 can we blow up the top part here so there is no doubt. A
5 person labeled as T; right? And with a phone number
6 ending in 5533; is that right?

7 A Yes.

8 Q And that is, as you know from the investigation,
9 from the phone at 1B21?

10 A Yes, I believe so.

11 Q In other words, one of the Tamara Dadyan phones?

12 A I believe so, yes.

13 Q And, again, 4170, that is the Iullia Zhadko phone?

14 A Yes.

15 Q 1B123. The actual Cellebrite from the phone we are
16 actually looking at; right?

17 A Yes.

18 Q I won't have Ms. Romero scroll through, but is it
19 fair to say this excerpted PDF is 918 pages just by
20 itself?

21 A Yeah. I recall it was fairly long.

22 Q Any doubt that it is 918 pages?

23 A No. That seems accurate.

24 Q Okay. Let's just look at three examples of the
25 text messages that you excerpted from the Iullia Zhadko

1 phone, 1B123. Let's start with -- and we will do it
2 right from this PDF. Let's start with page 391. Let's
3 look at the text message on the very top of the page.

4 It says -- and this is from the Zhadko phone;
5 right?

6 A Yes.

7 Q IE4170?

8 A Yes.

9 Q That is the end of the phone number basically?

10 A Yes.

11 Q And it says, Tam, escrow sent two forms, need to be
12 filled out to that Zhadko e-mail you have. Can you
13 forward to me or give me password.

14 And then there is a response to that text
15 message; right? From the 5533 Dadyan phone which is at
16 1B21?

17 A Yes.

18 Q And she says, send me; right?

19 A Yes.

20 Q Okay. Let's zoom out. Now, let's go to, actually,
21 before we do that, can we blow up the text messages right
22 below it, two text messages.

23 And the next text message says, what is the
24 password for forwardtoprojecthype30@yahoo.com; right?

25 A Yes.

1 Q And the Dadyan phone responds, I will forward you
2 now, I send to your project e-mail; right?

3 A Yes.

4 Q Let's take a look at page 474 of the same exhibit.
5 Okay. In the middle of the page, it says, I did seven
6 apps last night, and four of them got e-mail that it is
7 funded. Do you see that?

8 A Yes.

9 Q And you reviewed this text message?

10 A I reviewed it. I couldn't recall every little text
11 message.

12 Q Of course. Do you understand that they are talking
13 about -- what are they talking about here?

14 A To me it appears that they are talking about at
15 least from the investigation PPP or EIDL applications.

16 Q And let's go to one last example, page 561?

17 THE COURT: What is the point of all this? I
18 remember these text messages from the trial. It seems
19 undisputed that the agent did look at this Cellebrite
20 report. Why are you reviewing certain communications or
21 exchanges in the report?

22 MR. RAM: Two reasons, your Honor. One, I was
23 just doing these three examples. I don't want to waste
24 the court's time.

25 THE COURT: But I remember -- the seven app thing

1 I remember distinctly. He said something, I was up all
2 night or something, working hard with that.

3 I have a memory of all of these things. So I
4 don't want to restrict you but I don't see the point to
5 this.

6 MR. RAM: Just to highlight these were reviewed
7 back --

8 THE COURT: Well, I know that.

9 MR. RAM: And they were particularly powerful --

10 THE COURT: That is your view. I know the factual
11 backdrop.

12 MR. RAM: Okay. I don't need to show the last
13 example, then.

14 Q Is it fair to say that you exported these 119 pages
15 because you thought they were relevant to your
16 investigation?

17 A Yes.

18 Q And you are aware that a subset of these text
19 messages in some form or the other were used at trial as
20 part of Government Exhibit 10 as the court just pointed
21 out, I think.

22 A When you say -- can you clarify when you say
23 subset?

24 Q You are familiar with Government Exhibit 10?

25 A Yes, but that was from a separate phone.

1 Q Correct. But that separate phone reflected the
2 other side of the conversations that I just showed you.

3 Do you see that?

4 A Yes, I did. I just wanted to clarify that it
5 wasn't these text messages that were shown at trial.

6 Q Right. Because these text messages were on the
7 Zhadko phone which was suppressed; right?

8 A Correct.

9 Q Who else reviewed the text messages you exported
10 from the Zhadko phone, from the Zhadko Cellebrite?

11 A I don't know.

12 Q Well, who else did you send it to?

13 A I don't recall specifically. I possibly uploaded
14 this to USAFX which is our share file for the
15 investigative team to review, but I don't recall
16 specifically. And, as you noted, it is a large file so I
17 don't think I would have e-mailed it.

18 Q Okay. And who had access to the USAFX platform
19 that you loaded these text messages to?

20 A At that time, it would have been myself, IRS Agent
21 Clark, SBA OIG Agent Tim Massino, Christopher Fenton,
22 Brian Faerstein, Catherine Ahn and the paralegals as
23 well.

24 Q And did you discuss the text messages we just saw,
25 excerpted Exhibit O, with anybody else on the prosecution

1 team?

2 A Like via e-mail or just in general?

3 Q In any way. Did you have any communications with
4 the prosecution team? Let me just take a step back.

5 These are obviously relevant text messages to your
6 investigation. I think you said that; right?

7 A Yes.

8 Q Did you discuss these relevant text messagings with
9 others on the prosecution team?

10 A Yes, we did.

11 Q And do you remember who you discussed them with on
12 the prosecution team?

13 A I think with Mr. Fenton, Mr. Clark, I mean, maybe
14 some of the others, but not in substance. I just
15 recall -- the majority of my conversations would have
16 been with Mr. Fenton or Mr. Clark surrounding these
17 message.

18 Q And that was roughly in your review timeframe of
19 February to March of 2021?

20 A Yes. I exported these at end of April. So I think
21 likely, yeah, it would have been some time in April, mid
22 April maybe.

23 Q Exhibit O, you exported in April? You sure about
24 that?

25 A It was April 26, I think was the date.

1 Q When you sent them to attorney Fenton?

2 A I couldn't tell you when I uploaded them, no.

3 Q Okay. But you reviewed the Cellebrites back in
4 February, in March of 2021; right? I guess, so there is
5 no confusion. As part of your review -- I think your
6 declaration says, to make it easier to review, you
7 created an excerpt, a PDF excerpt of some of the relevant
8 text messages; right?

9 A Yes. But I don't know if that was in February,
10 March or April. I couldn't tell you the timeline, but
11 just based on those folders we were going through, it has
12 the date of April 26 that is reflecting the export date.

13 Q I see. So you don't know when you reviewed the
14 excerpted PDF specifically, the Exhibit O PDF?

15 A Yes. I likely reviewed the text messages, but,
16 then, they were exported on April 26 and 27th, I think
17 were the dates.

18 Q Correct. And then the next day, actually, on
19 April 27th, you send Exhibit O, the excerpted PTF's to
20 Mr. Fenton; right?

21 A I don't recall.

22 Q You don't recall sending Exhibit O to attorney
23 Fenton?

24 A Sorry. On April 27?

25 Q On April 27th.

1 A I don't recall.

2 Q Okay. Should we take a look at your declaration on
3 page -- And have you reviewed any other witness'
4 declarations in this case, Agent Palmerton?

5 A No.

6 Q Okay. Let's take a look at page -- internal page
7 21 of 22, Paragraph 27. If we can just blow it up.

8 And when did you prepare this declaration,
9 sir?

10 A This would have been on July 7th.

11 Q Okay. So it says on the morning of April 27, 2021,
12 I sent the Gentleman Timepieces and Tamara Dadyan text
13 messages referenced above to Mr. Fenton.

14 A Okay. Yes. So I guess I did. There must have
15 been an e-mail that I sent that I reviewed.

16 Q And, as you pointed out, the folders looked like
17 they were created April 26 from the stamp; right?

18 A Uh-huh.

19 Q Did you create these folders to send to Mr. Fenton?

20 A No. I don't recall. I think I just -- like I said
21 in my declaration, I was unfamiliar with Cellebrite so I
22 was -- I don't want to say playing around, but learning
23 how to use the export functions, exporting them to PDF on
24 this date and, then, yeah, I guess I sent it to
25 Mr. Fenton because I did they were relevant. I just

1 don't recall specifically like this day.

2 Q And how did you send it to Mr. Fenton?

3 A It was -- it must have been either e-mail or I
4 uploaded it to USAFX and then noted in an e-mail that I
5 had uploaded it.

6 Q And did you attach that e-mail to your declaration?

7 A I did not.

8 Q Do you remember that there is an e-mail?

9 A I don't, but there must be based on my declaration.

10 MR. RAM: Your Honor, may we get a copy of that
11 e-mail?

12 THE COURT: No. It is not sufficiently relevant.

13 MR. RAM: The timing of it, your Honor?

14 THE COURT: I gave you my ruling.

15 Q BY MR. RAM: The prosecution was actively
16 investigating and prepping the first superseding
17 indictment around the same time you were reviewing the
18 information on the Miami Celebrities; correct?

19 MR. O'DONNELL: Objection. Assumes facts not
20 testified to by this witness.

21 THE COURT: He has asked the question. He can
22 answer if he knows.

23 Q BY MR. RAM: Let me ask you one predicate question.
24 You are part of the prosecution team; right?

25 A Yeah. The investigative team?

1 Q Sure.

2 A Yes.

3 Q And the question is was the prosecution team which
4 includes the investigative team and the prosecutors in
5 case it wasn't clear, were they actively investigating
6 and prepping to present a first superseding indictment at
7 the same time, around the same time you were reviewing
8 and exporting the -- or reviewing the messages on the
9 Miami Celebrities?

10 A No. Because, like I said in my declaration, I
11 didn't have a lot of time. I don't even think I reviewed
12 it prior to us going to grand jury, or, if I did, it was
13 very brief.

14 Q So your testimony is you received the Celebrities
15 on February 24th, but you didn't review them until after
16 March?

17 A No. I think I said I had access to the Celebrite
18 reports when they were uploaded. I just can't recall
19 specifically when I would have looked at them, but, in my
20 declaration, I note that we were preparing for the first
21 superseding indictment and I did not have a lot of time
22 to open up the Celebrite reports. And, again, I was
23 unfamiliar with them.

24 Q Let's go to your declaration, paragraph 25. Okay.
25 First sentence, from February 24th, 2021 to April 27th,

1 2021, I recall accessing the Cellebrite reports less than
2 a dozen times. Do you see that?

3 A Uh-huh.

4 Q And, separately, you point out that you were busy
5 with preparing for the first superseding indictment;
6 right?

7 A Yes.

8 Q And my question to you was you were reviewing the
9 Cellebrites for Miami around the same time that the
10 prosecution team was preparing the first superseding
11 indictment. The answer to that question is "yes" or
12 "no"?

13 A Well, I had reviewed them, but I was not actively
14 reviewing them. As I noted, I just -- I didn't have a
15 lot of time.

16 Q When you say you had reviewed them --

17 A I possibly opened them up. So, earlier, when you
18 mentioned that if I had reviewed it eight times, the
19 average was once a week, it was more like back loaded
20 after the indictment and we effected the arrest, I had
21 more time to review the Cellebrite reports. So more of
22 my time would have been spent after the indictment.

23 Q Is your testimony that you did not review the
24 Cellebrites before the March 9th first superseding
25 indictment?

1 A I did review them, yes, but not in detail.

2 Q Understood. So very simple question. So if you
3 reviewed the Cellebrites before March 9th, you knew the
4 information from the Cellebrites leading up to the
5 March 9th first superseding indictment; yes?

6 A When you say knew the information?

7 Q You had this information in your mind?

8 A I had some information. Yes.

9 Q Okay. Your declaration mentioned several
10 communications with the prosecution team but doesn't
11 attach them. And I want to highlight a couple and
12 maybe -- well, let's start with your declaration,
13 paragraph 26.

14 You say you sent an e-mail to AUSA Faerstein
15 that contained a summary of loans related to Redline Auto
16 Collision, Edward Paronyan.

17 Did you attach that e-mail to your
18 declaration?

19 A I did not.

20 Q Why not?

21 A It was I think it was a very minor reference to the
22 phone. It did not seem relevant to attach, and, from
23 what I recall reading the summary, it wasn't even clear
24 that the information came from the phone. But I included
25 this just to make sure I was including as much as I

1 could.

2 Q Because it may have come from the phones?

3 A Yes. Possibly.

4 Q You just don't know, do you?

5 A From that reference not particularly, but it was
6 possible, yes.

7 MR. RAM: Your Honor, we would request a copy of
8 that e-mail as well.

9 THE COURT: I don't think it is sufficiently
10 relevant under the circumstances of this hearing.

11 MR. RAM: Can we request it under Jencks, your
12 Honor?

13 THE COURT: No. I mean, you can, but I don't
14 think it is necessary either.

15 MR. RAM: Okay.

16 THE COURT: I think you are getting answers to
17 questions as this witness remembers them, and some of the
18 questions in my view aren't that relevant to the ultimate
19 issues.

20 Q BY MR. RAM: To be clear, this paragraph 26 in the
21 e-mail relates to whether or not information from the
22 Miami phones was used and shared with the prosecutors;
23 right?

24 A Yes.

25 Q Okay. Let's look at Paragraph 27 of your

1 declaration. You didn't include this e-mail either from
2 the relating to the Dadyan and Gentleman Timepieces text
3 messages; correct?

4 A No.

5 MR. RAM: We make that same request, your Honor.
6 We understand the court's ruling.

7 THE COURT: He said he didn't do it, and I don't
8 see that to be a point of particular importance in
9 assessing this motion.

10 Q BY MR. RAM: Why were these -- I'm sorry. So let's
11 go to -- did you review Mr. Fenton's second declaration
12 related to this case, to the Kastigar hearing?

13 A I didn't review any other declarations related to
14 the Kastigar hearing.

15 Q Okay. Now, focusing back in on the April 27th
16 transfer of Exhibit O to Mr. Fenton which I believe you
17 were refreshed by your declaration?

18 A Yes.

19 Q Did Mr. Fenton ask you to send him those text
20 messages?

21 A I don't recall.

22 Q Did you have a conversation with Mr. Fenton on
23 April 26th or April 27th about the text messages?

24 A We likely did. I just -- I don't recall.

25 Q And this is approximately two months ago?

1 A Yes.

2 Q Or three.

3 A Three, yeah.

4 Q And did you send all 100 -- I'm sorry -- all 918
5 pages of Exhibit O to Mr. Fenton?

6 A Again, I would have to look at the e-mail. It
7 could have been excerpts, but it was possible I sent just
8 the PDF as opposed to that entire folder.

9 Q And when you say you have to look at the e-mail,
10 that is the one you didn't attach to your declaration;
11 correct?

12 A Yes.

13 Q Lastly, let's talk about any procedural safeguards
14 or mechanisms put in place about reviewing Miami phone
15 information. I believe you said your investigation
16 started late June of 2020; correct?

17 A Yes.

18 Q In October of 2020, when the Miami phones were
19 seized, were there any type of additional or new
20 restrictions or tracking of access put on any of the
21 files or information in this case?

22 A No. Aside from just our chain of custody.

23 Q And that is routine chain of custody in every case;
24 correct?

25 A Yes.

1 Q But any mechanisms to track, for example, when
2 someone accesses Cellebrite for one of the phones or
3 anything along those lines, any type of protocols
4 instituted that you were aware of?

5 A No.

6 MR. RAM: Okay. No further questions.

7

8 CROSS-EXAMINATION

9 BY MR. FRASER:

10 Q Agent Palmerton, do you have a copy of your
11 declaration available to you there?

12 A Not in front of me, no.

13 Q Okay.

14 MR. FRASER: With leave of the court, I will give
15 a copy to Agent Palmerton.

16 MR. FRASER: Your Honor, may I approach Agent
17 Palmerton?

18 THE COURT: Yes.

19 MR. FRASER: Thank you.

20 Q Good morning, Agent Palmerton.

21 A Good morning.

22 Q Since 10:00 a.m. yesterday, have you spoken with
23 anyone about this case whether in person or via phone or
24 e-mail, through any medium?

25 A Can you clarify?

1 Q I intended it to be to be a broad question. Have
2 you spoken with anyone about this case?

3 THE COURT: And that would include his wife or?

4 MR. FRASER: Okay.

5 Q Anyone who works for the United States government?

6 A Yes, we did talk about the case, but nothing
7 substantive.

8 Q Okay. Who are the people who work for the
9 government that you have spoken with about the case since
10 yesterday at 10:00 a.m.?

11 MR. O'DONNELL: Objection as to relevance, your
12 Honor, as well as any intrusion into privileged
13 communications.

14 THE COURT: He didn't ask for what was said. He
15 asked for whether he spoke to other people.

16 MR. O'DONNELL: Understood, your Honor.

17 THE COURT: Credibility may be an issue. So I
18 will allow the question.

19 THE WITNESS: Yes, we did speak about the case.

20 Q BY MR. FRASER: So with whom did you speak?

21 A As we were in the back with some of the other
22 witnesses, Niall, Mr. Cipolletti and Mr. Fenton.

23 Q Okay. You spoke to Mr. Fenton about yesterday's
24 proceedings?

25 A Yes, but nothing substantive, nothing related to

1 his testimony.

2 Q Did you discuss with Mr. Fenton the events with CBP
3 on October 19th through 20th, 2020?

4 A Yes.

5 Q What did you all talk about in that regard?

6 A We talked about the timeline of what had happened.

7 Q And you talked about -- you were in communication
8 with Mr. Fenton on the night of October 19th into 20th,
9 2020; correct?

10 A Yes.

11 Q And, yesterday, you and Mr. Fenton talked about
12 those communications?

13 A No. It was this morning.

14 Q Okay. And you also talked with Mr. Fenton since
15 yesterday morning about the order in which CBP found
16 evidence; correct?

17 A He asked me.

18 Q And you answered, of course.

19 A Yes. What my recollection was.

20 Q Okay. And that includes the sequence of CBP
21 finding credit cards versus CBP's review of the phones;
22 correct?

23 A Yes.

24 Q So tell me about that conversation you had with
25 Mr. Fenton I guess it was this morning?

1 A He asked what my recollection was of that day, and
2 I said basically what the timeline was. And it was -- it
3 was a hectic day, and it was some time in the evening
4 receiving a call from CBP letting me know that they had
5 stopped Ms. Terabelian and Mr. Ayvazian, found credit
6 cards, and then we had a subsequent call where they
7 discussed the phones. He was just asking what my
8 recollection was of the timeline.

9 Q And, in the answer you just gave, you are
10 describing communication you had with Mr. Fenton this
11 morning; is that right?

12 Q Did you also have communication with Mr. Fenton
13 yesterday?

14 A Yes, but not regarding the case.

15 Q Okay. So returning to the conversation you had
16 with Mr. Fenton this morning, how did that conversation
17 begin?

18 A I think he asked me, he was like when we -- we were
19 discussing when we did the stop, what was the timeline,
20 what do you recall from that day? Like, when did they
21 discuss the credit cards versus the phones?

22 Q And did he talk about why he was asking you that?

23 A I think he said that there was like a concern about
24 what the timeline of evidence was.

25 Q Thank you. Agent Fenton(sic), how many years have

1 you been an FBI agent?

2 A Agent Palmerton.

3 Q Excuse me. Agent Palmerton?

4 A Approximately three-and-a-half years.

5 Q And your job is to investigate cases?

6 A Primarily white collar cases, yes.

7 Q And you want to build the strongest case you can
8 against each suspect?

9 A Yes. I want to investigate all the facts.

10 Q You don't stop when you have probable cause against
11 a particular suspect?

12 A No. No. We try not to.

13 Q You continue investigating the case until you are
14 told not to?

15 A No. I think we keep doing what we do per FBI
16 policy, just keep collecting facts.

17 Q Okay. You just keep collecting facts to build as
18 much information as you can?

19 A Yes.

20 Q And as you are doing that, things that you find
21 help explain things that you found earlier in your
22 investigation; correct?

23 A Yes.

24 Q And sometimes, the meaning of something that you
25 found becomes clear only later when you find other

1 evidence; correct?

2 A Yes.

3 Q You also have training on the constitution?

4 A Yes.

5 MR. O'DONNELL: Objection. This is argument, your
6 Honor.

7 THE COURT: Sustained.

8 Q BY MR. FRASER: Okay. Before your work on this
9 case, had you ever heard of Kastigar?

10 A I had not.

11 Q And you never had to trace taint through an
12 investigation before this case; correct?

13 A Define taint.

14 Q You never had to trace the use of particular items
15 of evidence through the course of investigation before
16 this case, did you?

17 THE COURT: Items that were suppressed.

18 Q BY MR. FRASER: Items that were suppressed.

19 A In this instance, are you referring to the phones?

20 THE COURT: Just generally. I mean, did you ever
21 have an investigation where you had to avoid some
22 evidence because the evidence was suppressed?

23 THE WITNESS: Not that it was suppressed. I'm
24 just thinking of --

25 THE COURT: Well, that is the question.

1 THE WITNESS: No.

2 Q BY MR. FRASER: Okay. And have you ever traced the
3 use of compelled testimony?

4 A No.

5 Q Okay. And so, in June of 2020, you had no
6 knowledge of what Kastigar is?

7 THE COURT: He said that.

8 MR. FRASER: Okay. Thank you.

9 Q When did you first become aware of the Kastigar
10 issue?

11 A I don't recall specifically. Sometime in April or
12 May possibly.

13 Q Okay. And in preparation for today's hearings, you
14 mentioned you prepared a declaration?

15 A Yes.

16 Q And the purpose of the declaration was to follow
17 the court's order for this Kastigar hearing; correct?

18 A Yes.

19 Q And you understood that to mean showing the
20 evidence that the government had at various times in the
21 investigation; correct?

22 A Yes. Related to the two phones.

23 Q Yes. And so you were as thorough as possible in
24 preparing that declaration; correct?

25 A Yes, I tried to be.

1 Q And you reviewed it after you wrote it before
2 signing it; correct?

3 A Yes.

4 Q And, again, did you review it in preparation for
5 your testimony today?

6 A I did.

7 Q Did you leave anything significant out of your
8 declaration?

9 A No, not that I recall.

10 Q Please take as much time as you need to review it
11 and let me know if there is anything significant that you
12 left out?

13 THE COURT: That is such a broad question that you
14 will have to address that more specifically.

15 Q BY MR. FRASER: Of course, the phone evidence in
16 Miami has evidence related to Marietta Terabelian.

17 You would agree with that; correct?

18 A The phone, yes. The Victoria Kauichko phone I
19 believe.

20 Q And does your declaration thoroughly document what
21 you knew of Marietta Terabelian as of October 19th?

22 A Hang on. Let me --

23 THE COURT: What he knew as of October 19th. Do
24 you mean before the search or after the search?

25 MR. FRASER: As of Ms. Terabelian's arrival at the

1 Miami airport.

2 THE COURT: Well, then, that is before the search.

3 MR. FRASER: Yes.

4 THE COURT: Why don't ask you it that way and be
5 clearer.

6 MR. FRASER: My apologies.

7 THE COURT: You are asking him what he knew about
8 his investigation regarding the PPP fraud and any
9 connection to Marietta Terabelian. That is the question.

10 MR. FRASER: Yes.

11 THE COURT: Then answer.

12 THE WITNESS: Yes. No. I mean, there were items
13 left off about the investigation, but --

14 THE COURT: Well, that is not the question now.
15 He wants to know what you knew before the search about
16 any evidence that would relate to Mary Terabelian's role
17 if any in your investigation.

18 THE WITNESS: Correct. I suppose looking at this
19 now I talked about the flow of funds from the Iullia
20 Zhadko bank account into the escrow account, but I don't
21 talk about the flow of funds from Marietta Terabelian's
22 bank account into the escrow account for the purchase of
23 the 4910 Topeka property.

24 Q BY MR. FRASER: Okay. So as far as the evidence
25 that you had before the Miami search about Marietta

1 Terabelian's role, you had, for one thing, you had the
2 flow of funds; correct?

3 A Yes. And, then, I think later I mentioned that
4 Gohar Terabelian was living at the 1834 Calle La
5 Primavera property.

6 Q Yes. And your declaration states that you learned
7 subsequently that that was Marietta Terabelian's sister?

8 A Correct.

9 Q Subsequently means after the stop; correct?

10 A Correct.

11 Q And that is part of what was referred to in CBP's
12 report of interviewing Ms. Terabelian, isn't it?

13 A Yes.

14 Q Okay. And you also knew that Marietta Terabelian
15 was married to Richard Ayvazyan before the Miami search;
16 correct?

17 A Yes.

18 Q And, now, we have covered what you knew about
19 Marietta Terabelian as of the Miami searches, everything;
20 correct?

21 A Yes. In addition to I think that we knew that she
22 had been previously convicted for mortgage fraud.

23 Q Okay. Thank you. And the Victoria Kauichko
24 identity was not involved in the 2012 conviction;
25 correct?

1 A No, it was not.

2 Q And so on October 16th, 2020, you learned that
3 Ms. Terabelian would be traveling to the United States on
4 the 19th?

5 A Yes.

6 Q And how did you learn that?

7 A That was through the detect system which is the
8 system that notifies law enforcement when people that are
9 placed in the system are traveling over the borders.

10 Q And you had set up text alerts for Ms. Terabelian?

11 A Ms. Terabelian and Mr. Ayvazyan and numerous other
12 individuals, yes.

13 Q And so you instructed the officers to stop --

14 THE COURT: You know, you are going over territory
15 that was thoroughly explored at the motion to suppress,
16 and these things are not disputed. So let's get to
17 things that are important. You are taking up unnecessary
18 time.

19 Q BY MR. FRASER: Agent Palmerton, the government
20 argued that Ms. Terabelian was guilty because in part
21 that she assumed the identity of Victoria Kauichko. You
22 are aware of that; correct?

23 A Yes.

24 Q So evidence of her doing that was important in your
25 investigation; correct?

1 A Yes.

2 Q Evidence of her doing that from her phones could be
3 powerful evidence in the case against her; correct?

4 A It would be relevant evidence.

5 Q And certainly not evidence you would want to miss;
6 isn't that right?

7 A Yes.

8 Q Okay. So you knew that a credit card -- actually,
9 it was a debit card -- in the name of Victoria Kauichko
10 was found with Ms. Terabelian at the Miami airport?

11 A Yes. I believe it was found in her purse.

12 Q Okay. She denied that she had put it there;
13 correct?

14 A I think that is from the CBP statement or report;
15 yeah.

16 Q Okay. And she disclaimed knowledge of that card;
17 correct?

18 MR. O'DONNELL: Objection as to argumentative,
19 cumulative, your Honor.

20 THE COURT: I don't see the point to that. That
21 was an issue that the jury had to consider, and she
22 denied it.

23 What is your view of the evidence that if she
24 denied it that the custom should accept it?

25 MR. FRASER: Quite the opposite.

1 Q It is that because she denied it, Agent Palmerton,
2 you would want to be in a position to disprove that;
3 correct?

4 THE COURT: Well, I don't know where this is
5 going. I mean, that is what happened. She was found
6 with a credit card on her person at the same time six
7 other cards or some other number were found in the
8 luggage of her husband. That is what the record shows.
9 So, when she was found with the card, she denied it.
10 That is well established. Let's go to something that
11 helps me more than that.

12 Q BY MR. FRASER: You understand how people use smart
13 phones. You are trained on that; correct?

14 A Yes.

15 Q And you understood that the contents of the phone
16 could help refute her denial of responsibility for the
17 card; correct?

18 A Possibly.

19 Q And, in fact, the contents of her phone did just
20 that?

21 A I believe there were text messages where it was her
22 representing to be Victoria Kauichko, and that is based
23 on my review of the complaint.

24 Q Okay. You discussed with Mr. Fenton on
25 February 2nd this set of 141 photos that CBP had taken

1 from the phones in Miami; correct?

2 A Can you clarify?

3 THE COURT: What is unclear about that question?

4 THE WITNESS: I guess --

5 THE COURT: He asked you whether you discussed on
6 February 2nd the 141 phones that were found on the
7 phones?

8 THE WITNESS: I believe we did. We likely did,
9 yes, discuss the images.

10 THE COURT: So why were you hesitant to answer?

11 THE WITNESS: I guess I wasn't sure if it was on
12 that date or not.

13 Q BY MR. FRASER: Okay. Would reviewing your
14 declaration refresh your memory?

15 THE COURT: Why is that date important? It was
16 February 2nd.

17 MR. FRASER: It is not critical.

18 THE COURT: So why are we doing it?

19 MR. FRASER: Okay. I will move on.

20 Q But I would like to review those images with you,
21 Agent Fenton -- Agent Palmerton, excuse me.

22 For the record this is Exhibit 1 to the
23 declaration of Scott Paetty.

24 MR. O'DONNELL: Yes. Scott Paetty. Or are you
25 trying to show him the Palmerton declaration?

1 MR. FRASER: No. That was not an instance of
2 dispute.

3 Q Okay. I am just going to flip through some of
4 those photographs. You recognize these as being CBP
5 photographs of the Miami phones; correct?

6 A They appear to be, yes.

7 Q Okay. And do you recall that the set of
8 photographs is bookended with images that indicate which
9 phone we are looking at? Do you recall that?

10 A Yes.

11 Q So, here, for instance, this is the first
12 photograph in the set. We are looking at a screen that
13 says Apple ID, and, underneath that, it shows an e-mail
14 address; correct?

15 A Yes.

16 Q And that is mary.abelian@yahoo.com?

17 A Yes.

18 Q So this image would help show that Ms. Terabelian
19 was the user of this phone; correct?

20 A I mean, yes. Yes.

21 Q And, now, we are moving on to the second image here
22 which shows the model of phone; correct?

23 A Yes.

24 Q And there is another image which has here in the
25 middle an IMEI number. Do you see that?

1 A Yes.

2 Q And that is the number that you use in identifying
3 the smart phones; correct?

4 A Yes. One of them, yes.

5 Q So it is a unique number for a particular cell
6 phone; correct?

7 A Yes, I believe so.

8 Q And, now, we are looking at an image from the Miami
9 phone, and it says at the top Susanna Mkrtchyan. See
10 that?

11 A Yes.

12 Q That name had significance in your investigation;
13 correct?

14 A It did, yes. And that is a name that a vehicle was
15 registered in that you came to know of in your
16 investigation; correct?

17 A Yes.

18 Q Associated with the residences that you believe
19 were purchased with fraudulently obtained disaster relief
20 loan funds?

21 A Yes.

22 Q And it has apparent personal identifying
23 information written on it by hand; correct?

24 A It does.

25 Q And an e-mail address?

1 A Yes.

2 Q And not only that, it has right here, Fiber One
3 Media?

4 A Yes.

5 Q That name has significance in your investigation
6 too; correct?

7 A Yes.

8 Q When you had CBP stop Ms. Terabelian, you e-mailed
9 them giving them some information about information you
10 were looking for; correct? You suspected Ms. Terabelian
11 of involvement in a fraud scheme that involved the use of
12 fake ID's; correct?

13 A Yes.

14 Q Synthetic ID's?

15 A Yes.

16 Q Fake businesses?

17 A Yes.

18 Q And, here, we have an image of a driver's license.
19 Do you see that?

20 A Yes.

21 Q And whose name is on that driver's license?

22 A Norayr Vardanian.

23 Q Not Marietta Terabelian, of course?

24 A No.

25 Q This is the kind of thing you told CBP you were

1 looking for; right?

2 A I would have to look at the e-mails specifically,
3 but I think I said that she could be traveling with --

4 THE COURT: I can't hear what you are saying. Why
5 can't you speak more clearly. I have asked you that
6 three or four more times, and, during the trial, it was
7 the same thing.

8 THE WITNESS: Yes. I'm sorry, your Honor.

9 THE COURT: You mumble.

10 THE WITNESS: Sorry, your Honor.

11 I don't recall specifically what I asked. I
12 would have to look at the e-mail, but I did ask them, I
13 believe, that she might have been traveling with fake
14 stolen synthetic identities and cash, gold. I believe
15 that was the substance of my e-mail.

16 Q BY MR. FRASER: And you are right about that. Your
17 memory is correct so I won't take the court's time with
18 showing that e-mail. Let's go to the next image.

19 Here is a picture of that driver's license;
20 correct?

21 A Yes.

22 Q And here is the next image this one is interesting,
23 isn't it?

24 A Yes.

25 Q Whose name is at the top of that image?

1 A Victoria Kauichko.

2 Q Okay. And whose name is at the top of the screen
3 indicating that it is the contact that this came from?

4 A Rich.

5 Q And that is the first name of Ms. Terabelian's
6 husband; correct?

7 A Yes.

8 Q Defendant 1 in this indictment?

9 A Yes.

10 Q And what do you see underneath the name Victoria
11 Kauichko?

12 A It looks like a Social Security number, a date of
13 birth, an address, phone number and then a house address
14 and then some notes on what appear to be calling about
15 utilities.

16 Q Not just any house address; right?

17 A Yes. The 74203 Anastasia Lane.

18 Q That is one of the subject properties in this case;
19 correct?

20 A Yes.

21 Q And you also did investigation on that 6150 Canoga
22 Avenue address; correct?

23 A Yes. We executed a search warrant.

24 Q And this wasn't just sent to Ms. Terabelian's
25 phone, was it? She responded; correct?

1 A Yes.

2 Q She responded not a minute after receiving it.

3 Do you see that?

4 A Yes.

5 Q This is powerful evidence, wouldn't you agree?

6 MR. O'DONNELL: Objection as to argument, your
7 Honor.

8 THE COURT: I mean, I am the fact finder here,
9 and, as I said yesterday, the label on the evidence and
10 its significance, my view is that all these things on the
11 phone are certainly relevant and so I am accepting that.
12 I am not questioning that for the moment.

13 Whether it was powerful, confirming,
14 cumulative or whatever, those are other questions, but it
15 certainly is relevant. And any investigator would want
16 to know about these things. So to the extent that you
17 think I am not perceiving that, I perceive that.

18 MR. FRASER: Yes, your Honor.

19 Q And, more to the point, you were not asking CBP
20 before Ms. Terabelian got to the airport for evidence by
21 her of use of the Victoria Kauichko identity
22 specifically, were you?

23 A Not specifically, no.

24 Q That is a theory that was adopted based on the
25 Miami airport evidence; correct?

1 A Yes. The credit card and the phone.

2 MR. FRASER: No further questions. Thank you.

3 THE COURT: Thank you.

4 THE WITNESS: Thank you, your Honor.

5 MR. SILVERMAN: We call Ms. Catherine Ahn next.

6 (The witness was sworn.)

7 THE CLERK: State your full name, and spell it for
8 the record.

9 THE WITNESS: Catherine Ahn. C-A-T-H-E-R-I-N-E,
10 A-H-N.

11

12 CROSS-EXAMINATION

13 BY MR. SILVERMAN:

14 Q Good morning, Ms. Ahn.

15 A Good morning.

16 Q You were assigned the case on May 7th, 2021?

17 A Yes.

18 Q And trial was scheduled at that time for June 15th;
19 correct?

20 A Yes. That is correct. 2021.

21 Q And you had to get up to speed quickly?

22 A Yes. Yes.

23 Q Do you recall what sort of background materials you
24 read to get up to speed?

25 A I read the first superseding indictment. I read

1 the prosecution memo. I read portions of the grand jury
2 transcripts. I spoke with trial attorney Fenton and AUSA
3 Paetty. I mean, those were the basics.

4 Q Would it be fair to say that trial attorney Fenton
5 and the investigating agents on the case had more
6 experience with the case than you did at that time?

7 A Yes. They were on the case before I joined the
8 case.

9 Q And would it be fair to say that you had to lean on
10 their understanding of the case?

11 A I am not sure what you mean by lean. Do you mind
12 clarifying.

13 Q When you had questions about evidence or
14 interpreting documents, did you ever turn to them?

15 A So I did ask questions about, for example -- it is
16 a pretty broad question so I am trying to be specific.

17 Do you mind narrowing it down a little so I
18 make sure to answer your question?

19 Q Sure. I am going to change directions slightly.
20 In addition to the materials that you mentioned, did you
21 review any internal work product, written work product?

22 A The prosecution memo.

23 Q And did you review additional materials that have
24 been up loaded to the USAFX?

25 A Yes. So there was a key for the first superseding

1 indictment. So, like, what is lender A. The indictment
2 doesn't say. So I looked for a key that had what lender
3 A was.

4 Q Did you review any text messages that had been
5 uploaded to USAFX?

6 A Do you mean as part of work product, like attorney
7 text messages or messages that were obtained as evidence
8 as a result of, for example, the residential search
9 warrant?

10 Q Did you review any text messages between Tamara
11 Dadyan and the 1B123 phone that had been uploaded to
12 USAFX?

13 A I don't know what the 1B123 phone is.

14 Q I will represent to you that the 1B123 phone is
15 registered in Iullia Zhadko's name and was one of the
16 phones suppressed in late April.

17 Did you review any text messages between
18 Tamara Dadyan and that phone that had been uploaded to
19 USAFX?

20 A So I reviewed messages from Tamara Dadyan's phone
21 1B21, and I understand that 1B21 contained text messages
22 between that phone and a 4170 phone number. I do not
23 recall ever reviewing a 1B123 phone.

24 Q And have you read the submissions to this court
25 including the declarations from other witnesses?

1 A I very briefly scanned the filings to look for
2 sensitive personal or financial information that could be
3 the basis for a sealing request. I didn't review them in
4 detail or try and digest the content of what happened.
5 It was a review for sealing purposes only.

6 Q And, specifically, Agent Palmerton's Exhibit O that
7 was filed on a disk, did you review that in preparation
8 for this hearing?

9 A I looked at Exhibit O, and I saw that it could not
10 be turned into a PDF because it appeared to contain a
11 Cellebrite report. I didn't try to open the Cellebrite
12 report. I didn't try to open it. I just saw that it was
13 something that could not be submitted through a normal
14 paper filing, and so I, then, took steps to submit it as
15 a disk, as a manually lodged disk.

16 Q And the last question about what you reviewed,
17 before trial, was there any time when you reviewed a set
18 of text messages between Tamara Dadyan and Richard
19 Ayvazyan that had been selected by Agent Palmerton?

20 A The 1B21 text messages were selected by Agent
21 Palmerton, yes. Well, I should clarify that. The 1B21
22 text messages had been uploaded to USAFX, I don't know if
23 Agent Palmerton actually extracted only selected messages
24 that he selected. My impression is that he uploaded what
25 he understood or what he had access to as the text

1 message conversation between those two phone numbers.

2 However, the stuff that we received had already been
3 filtered for privilege.

4 Q And when you say that he uploaded the text messages
5 between those two phone numbers, which two phone numbers
6 are you referencing here?

7 A The 1B21 Tamara Dadyan phone that was found at
8 Weddington and the 4170 phone number with the contact
9 identified as Rich New.

10 MR. SILVERMAN: Can we please pull up Ms. Ahn's
11 Exhibit B as in boy, and if we could go to page 3.

12 Q Ms. Ahn, I am showing you what you attached to your
13 declaration. Is this an e-mail from Mr. Paetty on your
14 first day on the case?

15 A Yes.

16 Q And does this e-mail assign you some level of
17 responsibility over certain categories?

18 A We were trying to figure out trial exhibits, and
19 AUSA Paetty mentioned that we were asked that he and I
20 should be looking at categories 2 and 4 I believe which
21 are identified in the exhibit.

22 Q And, specifically, under category 4, one of the
23 subcategories is phones; correct?

24 A Yes, that's correct.

25 Q It was one way in which you intended to prove

1 linkage.

2 A Yes. Like linking the defendants to the
3 applications.

4 Q And would that also include linking the defendants
5 to the overall conspiracy?

6 A Yes. The applications were charged as part of the
7 bank and wire fraud conspiracy.

8 Q And Mr. Paetty's e-mail in the second paragraph
9 states that the agents would be pulling docs over the
10 weekend and uploading to USAFX; correct?

11 A Yes, that's correct.

12 Q And were those the documents that were pulled by
13 Agent Palmerton and uploaded to USAFX?

14 A Yes.

15 Q Specifically, he pulled documents from the phones
16 and uploaded them for your review?

17 A Not just for my review, but for potential use as
18 trial exhibits at trial.

19 Q And so, on Monday, May 10th, you began reviewing
20 the documents he had uploaded; correct?

21 A Sometime around then. Probably May 10th. I can't
22 recall specifically. Definitely, yeah, I think it is
23 likely Monday, May 10th because we later had an e-mail
24 conversation on May 11th, and I recalled reviewing the
25 text messages almost all night. So it would have been

1 May 10th.

2 Q Do you know if Agent Palmerton had uploaded all of
3 the text messages that were on the 1B21 phone
4 specifically?

5 A Like every single text message found on the phone?

6 Q Correct.

7 A I don't know what he did. I did not see something
8 that would look like every single text message on the
9 phone.

10 Q Do you remember approximately how many files you
11 did see?

12 A Files is a pretty, like -- so, for example, just
13 the text message, even the exhibit, Government Exhibit 10
14 has, like, a large number of files because of the
15 attachments, et cetera. So I really can't give you a
16 good faith number.

17 Q I can rephrase to get at what I am trying to get
18 at.

19 Do you remember approximately how many text
20 messages or pages worth of text messages, either of
21 those, that you did see?

22 A I can tell you that the initial text message
23 conversation between Tammy and Rich New was almost a
24 thousand pages. I think it was 941 pages, and it
25 contained a broad range. So it was like, I think, late

1 2019 through October, 2020.

2 Q And had Agent Palmerton uploaded additional text
3 message conversations from 1B21 other than the
4 conversation you just referenced?

5 A I don't remember. It is possible, but I just don't
6 remember.

7 Q So it is possible that the only text message
8 conversation that had been uploaded was between Tammy and
9 Rich New?

10 A I honestly don't remember. I do remember seeing
11 specifically the text message conversation between Tammy
12 and Rich New, and I focused on that. I just -- I don't
13 recall whether or not there were other text messages.

14 Q The text message conversation between Tammy and
15 Rich New, was it in a PDF format?

16 A The actual messages themselves like the literal
17 text was in PDF format, but there were attachments like
18 images and files I think they sent to each other, and
19 those were in a variety of formats, you know, JPEG, PDF,
20 whatever format it was sent in.

21 Q Fair to say that you did not now how Agent
22 Palmerton selected these text messages?

23 A I don't know if that's correct. My understanding
24 is he took them from the Cellebrite report.

25 Q And do you know what criteria he used to select

1 these specifically from the Cellebrite report as opposed
2 to other text messages on the Cellebrite report?

3 A Well, the contact name was Rich New. I mean, I
4 didn't speak with him, you know, why did you select this
5 one versus the other one. It was sort of self evident
6 that this was between Tamara Dadyan and Rich because of
7 the contact name. But I didn't have a specific
8 conversation interrogate him about it. It seemed pretty
9 obvious to me why it would be important.

10 Q Around that time, you also spoke with Mr. Fenton
11 about the cell phones; correct?

12 A Yes. Yes.

13 Q And did he suggest which phones you might want to
14 start with in your review?

15 A No.

16 Q What did he say about the cell phones?

17 A I remember there was a discussion, hey, there is --
18 they are uploading stuff to USAFX. I remember him saying
19 don't look at 1B85 yet, we are going to make sure that it
20 doesn't have any stuff on it, stuff being potentially
21 privileged things. And so I did not look at 1B85.

22 Q And 1B85 is Richard Ayvazyan's phone?

23 A Yes. Yes. It was one of the phones found at the
24 Topeka residence in November, 2020.

25 Q Did he comment upon or relay the contents -- I'm

1 sorry. Strike that. Did he comment upon the contents of
2 any of the phones in your recollection?

3 A The things that I recall specifically is him
4 telling me not to look at 1B85.

5 Q So you referenced that on approximately -- on or
6 about Tuesday, May 11th, you sent an e-mail updating
7 people about your review; correct?

8 A Are you referring to Exhibit --

9 Q Exhibit A to your declaration?

10 A Exhibit A. Oh. Yes. I don't know if that was an
11 update about my review. It was a response to an e-mail
12 sent by trial attorney Fenton about loans.

13 MR. SILVERMAN: Could we please pull up Exhibit A,
14 Ms. Romero.

15 Q And so your e-mail is the bottom one here?

16 A Oh. Yes. Sorry. I was confusing this with I
17 think Exhibit E. So thank you.

18 Q I apologize. I didn't mean it to be a pop quiz?

19 A No. I appreciate you showing it to me.

20 Q So you had begun reviewing phone 1B21 at this
21 point; correct.

22 A Yes, that is correct. Well, to be clear, I started
23 reviewing the text messages that I understood to be
24 obtained from 1B21.

25 Q Correct. And the subject line is Tamara and

1 Richard text messages, part 2; correct?

2 A Yes.

3 Q And can you tell me what part 2 means?

4 A So there were two sets of text messages, both
5 between Tamara Dadyan and what we understood to be
6 Richard Ayvazyan. There was one that was just a -- I
7 don't remember exactly the filing, but it didn't have a
8 part 2 like, Tamara and Richard --

9 THE COURT: I didn't hear a word of what you just
10 said.

11 THE WITNESS: My apologies.

12 So there were two sets of text messages
13 between Tamara Dadyan and we assumed to be Richard
14 Ayvazyan. One set, I don't specifically recall the file
15 names associated with it, but it did not have like a part
16 1 or anything like that. It just, you know, Tamara and
17 Richard text messages, for example, and there was a
18 second one that said part 2 on it.

19 I looked at the one that didn't have part 2 on
20 it, and it was a smaller, smaller file. The PDF of the
21 actual text messages was a smaller file. I then looked
22 at part 2 and recognized that the first set was actually
23 a subset of part 2, and you can kind of see that I am
24 referencing that in my last sentence of my first
25 paragraph which says text chain is here, it is labeled as

1 part 2 but basically has all of the other text chain
2 between the two of them found and more. And so, then,
3 because I realized that part 2 is actually the larger
4 set, I worked off of part 2.

5 Q Now, fair to say that you recognized the relevance
6 and persuasive value of the text messages selected by
7 Agent Palmerton?

8 A I recognized the relevance and persuasive value of
9 the text messages. Again, I am not -- it is not my
10 understanding that he sent out select individual messages
11 for my review. It is my understanding that this was the
12 text message conversation, but, again, I didn't have a
13 specific conversation with him about it.

14 Q But there were some things where you still needed
15 help understanding the text messages that had been
16 uploaded; correct?

17 A Yes. Yes.

18 Q And, specifically, you thought that Agent Massino
19 might be able to help; correct?

20 A Yes. Because he was familiar with the
21 applications.

22 Q And do you recall whether you did reach out to
23 Agent Massino for help understanding or interpreting the
24 text messages?

25 A I remember telling him over the phone that I would

1 give him a call to follow up with questions about the
2 applications, but I ended up getting so busy that I
3 didn't. And it wasn't until later when we were thinking
4 about the witness list that it -- I thought that he would
5 be a good witness to present whatever would end up as the
6 trial exhibit related to the text messages which ended up
7 becoming Government Exhibit 10.

8 And, at that point, I reached out to him to
9 start looking through and help me essentially create
10 Government Exhibit 10 out of the much more extensive text
11 message conversation that we originally had. So that was
12 my conversation with Agent Massino as to the text
13 messages.

14 THE COURT: How much longer do you expect to go?

15 MR. SILVERMAN: 10 to 15 minutes at most, your
16 Honor.

17 THE COURT: I have another matter now, and it is
18 approaching the noon hour. So let's take the recess, and
19 come back at a quarter to 1:00.

20 (Luncheon recess from 11:48 a.m. to 12:45 p.m.)

21 THE COURT: We are going to finish up with
22 Ms. Ahn; right?

23 MR. SILVERMAN: Yes, your Honor.

24 Q Good afternoon, Ms. Ahn.

25 A Good afternoon.

1 Q On May 7th, you received, the trial team received a
2 letter regarding exposure to tainted evidence; correct?

3 A We received a letter from I believe your firm
4 regarding -- two letters, a discovery letter and a letter
5 describing tainted evidence.

6 Q And the letter flagged as what we consider to be
7 tainted evidence, information about Iullia Zhadko, Nazar
8 Terabelian, Olaf Lansgaard, Mary Smbatian, Picadilly
9 Jewelers and others; correct?

10 A Yes. I think it was ECF 338, Exhibit A.

11 Q And did the trial team enact any prophylactic
12 measures in response to this letter?

13 A What do you mean by prophylactic measures?

14 Q Did the trial team engage in a review of where
15 their evidence regarding each of those topics had come
16 from.

17 A Like the entirety of Iullia Zhadko? The entirety
18 of Nazar Terabelian? Is that your question?

19 Q Correct.

20 A My understanding is -- I wouldn't say it is as a
21 response to the letter. There was a discussion after --
22 as far as I know, that I participated in, after May 13th
23 which I describe in my declaration about the potential
24 Kastigar issue, but I wouldn't say there was a flurry of
25 activity as a result of the letter.

1 Q And so there was no sort of systematic examination
2 of where evidence regarding each of those topics had come
3 from; correct.

4 Q At that time?

5 A Not that I participated in. I can't speak to
6 others. I know that, for example, I am aware that after
7 May 13th because I participated in those discussions,
8 that there was an analysis, a pretty systematic analysis
9 regarding the potential scope of the Kastigar issue, its
10 potential impact on trial evidence, et cetera, and trial
11 attorney Fenton was from my observation pretty deeply
12 engaged in that. I did not participate in that analysis.

13 Q Now --

14 A Well, I didn't directly participate in the
15 analysis. Obviously, I was part of those conversations.

16 Q Up until this point, Mary Simbatyan had previously
17 been a potential witness for the government; is that
18 correct?

19 A Which point?

20 Q Up until May 7th, 2001, mary Simbatyan had been
21 listed as a potential witness for the government;
22 correct?

23 A Listed where? Was there a list? I am not aware of
24 a witness list that was created with Mary Simbatyan's
25 name on it.

1 Q When you came on to the case, did you receive any
2 communications or work product regarding potential
3 witnesses?

4 A We had a discussion, I remember, about evidence,
5 and trial attorney Fenton mentioned Ms. Simbatyan as a
6 potential witness.

7 Q And was the argument that she had been selected
8 based on tainted information a contributing factor to the
9 decision not to call Ms. Simbatyan?

10 A I can only speak to what I participated in, like
11 the conversations that I participated in, and I actually
12 discouraged calling her as a witness because I was
13 concerned the defense theory of the case would be
14 extracted from her through her testimony on
15 cross-examination. It was more of a trial strategy
16 issue. I wasn't really -- Kastigar was not something on
17 my mind when I made that recommendation.

18 Q After this May 7th letter, there was a May 13th
19 telephone call between the defense counsel for
20 Mr. Ayvazian and the trial team; correct?

21 A Yes.

22 Q And you attended that phone call?

23 A Yes. I was a participant.

24 Q And you mentioned some May 13th telephone calls
25 involving you, Mr. Paetty and Mr. Fenton. Was that in

1 response to the call or as a result of the call with
2 defense counsel?

3 A Yes. That's correct.

4 Q On the call with defense counsel, defense counsel
5 broached the subject of a possible plea bargain; correct?

6 A Yes.

7 Q And was the possibility of a plea bargain discussed
8 in any telephone calls that occurred on May 13th
9 involving you, Mr. Paetty and Mr. Fenton?

10 A I think it was -- it is not so much -- I am trying
11 to answer your question. If your question is did we
12 discuss the proposal that was raised by Mr. Ram, yes, we
13 did discuss that proposal.

14 Q And on those same telephone calls you also
15 discussed at least in general terms the evidence seized
16 at the Miami stop; correct?

17 A Yes. Because there was a question as to the
18 likelihood of the Kastigar motion prevailing, and what
19 exposure if any we had with respect to the trial evidence
20 that was being discussed, and my recollection is that
21 there was no exposure.

22 Q In addition to Mr. Paetty and Mr. Fenton, did you
23 speak with anybody else regarding the proposed plea
24 bargain offer?

25 A Yes. So I wanted a better understanding of the

1 likelihood --

2 THE COURT: Who did you speak to? That was the
3 question.

4 THE WITNESS: Yes. Bram Alden, the appeals chief,
5 Brian Young who I understand handled fraud related
6 appeals at main DOJ. I think -- I think likely also
7 Cathy Ostiller. Although, I think -- it is not a
8 concrete recollection, but she was part of some of the
9 thornier issues that were being discussed. So it was
10 likely she was invited to the conversation.

11 Q In relation to the conversations that you do have a
12 concrete recollection of, were the Kastigar issues
13 referenced in those discussions?

14 A Yes. Yes. That was the purpose of the calls, and
15 also Ms. Katzenstein.

16 Q And were the contents of the Miami phones discussed
17 in general or specific terms during those calls?

18 A Only in very general terms.

19 Q And can you give me an idea of what you mean by
20 very general terms?

21 A For example -- and I am raising a hypothetical
22 question, I don't specifically recall the question being
23 asked in this specific way, but I recall a general
24 question being asked are we using any of the evidence
25 from the Miami cell phones at trial, and the answer was

1 no. Did we use the evidence from Miami cell phones in
2 grand jury for the first superseding indictment. The
3 answer was no. Like those types of -- that level of
4 generality.

5 Q So there was no reference to the fact that the
6 Miami cell phones contained information tying one of the
7 defendants to one of the synthetic identities in the
8 case?

9 A There was a discussion about that Nazar Terabelian.
10 I recall there was something found related to
11 Ms. Terabelian, related to that Nazar Terabelian. I
12 don't specifically recall what the evidence was. I
13 remember there was something there. I don't know if that
14 came up in the context of the Kastigar discussion after
15 May 13th or some other discussion, but I do remember that
16 being noted.

17 Q And, ultimately, the government decided not to
18 proceed any further with discussions about a potential
19 plea bargain with Mr. Ayvazyan; correct?

20 A Mr. Richard Ayvazyan?

21 Q Correct.

22 A Yes. We declined to engage in further discussions
23 amongst other reasons besides the Kastigar issue, there
24 is a general policy in our office not to engage in plea
25 discussions when there is pending misconduct motions.

1 Q And around this same time your team was engaged in
2 discussions for counsel for Ms. Tamara Dadyan; correct?

3 MS. WESTFAHL KONG: Objection. Relevance.

4 THE COURT: I don't know where this -- let's say
5 they were, what is the import? I am trying to gather
6 what is significant to my decision.

7 MR. SILVERMAN: Yes, your Honor.

8 THE COURT: What should I take away from the fact
9 that there may have been discussions with Tamara Dadyan
10 about pleas while a motion was pending and her answer
11 that they -- that one of the reasons they didn't continue
12 the plea negotiations for Richard Ayvazyan was because of
13 a policy.

14 MR. SILVERMAN: It is actually in response to
15 another reason that the government has argued which is
16 that the evidence against Mr. Richard Ayvazyan was
17 overwhelming and therefore they did not wish to engage in
18 plea discussions.

19 I believe that Ms. Ahn is likely to agree that
20 the evidence against Ms. Dadyan was overwhelming, but at
21 the same time they were engaged in plea negotiations with
22 Ms. Dadyan.

23 THE COURT: So what should I take from that in
24 terms of deciding the issue favorably to your motion?

25 MR. SILVERMAN: That the decision to engage in --

1 or not to engage in plea negotiations with Mr. Ayvazyan
2 was based at least in part on exposure to tainted
3 evidence and not to the belief that the evidence against
4 him was overwhelming.

5 THE COURT: I see. Okay. Thank you.

6 MR. SILVERMAN: And I believe I have already sort
7 of foreshadowed each of my questions so that will be it.

8 Q Around this time, was the government engaged in
9 plea negotiations with counsel for Ms. Dadyan?

10 A Her counsel reached out and asked if we would be
11 willing to provide a reverse proffer. This was separate
12 from any Kastigar-related discussion. It was just a
13 separate conversation. I spoke about it with trial
14 attorney Fenton and AUSA Paetty. I suggested that we do
15 so.

16 They agreed to go along with my suggestion,
17 and I started preparing information for the reverse
18 proffer. Then, Mr. Minasian, her counsel, joined in I
19 forget which one of the motions but one of the motions
20 that alleged in the substance some misconduct on behalf
21 of the government. And then we stopped the discussion
22 because of the policy.

23 Q So up until the motion to exclude digital devices
24 perhaps, the government was intending to meet with
25 counsel for Tamara Dadyan at least to engage in a reverse

1 proffer; correct?

2 A I don't remember if it was that specific motion.
3 It may have been. There were a lot of motions being
4 filed around that time, but it was because of a motion
5 that alleged some government misconduct in the substance.
6 And so we reached out to counsel and let them know that
7 per the policy we were unable to continue our
8 conversation.

9 Q And would you agree that the evidence against
10 Ms. Dadyan was overwhelming?

11 A Yes. Yes.

12 MR. SILVERMAN: No further questions.

13 MR. LITTRELL: Just a few, your Honor.

14 THE COURT: Yes.

15

16 CROSS-EXAMINATION

17 BY MR. LITTRELL:

18 Q Ms. Ahn, you joined the prosecution team in May,
19 2020 -- I'm sorry -- 2021; correct?

20 A Yes.

21 Q And that was right around the same time that the
22 Kastigar issue had been raised; right?

23 A It was May 7th, and then the call was May 13th.
24 Yes. So around that time.

25 Q So, at that point when you joined the prosecution

1 team, you had not been exposed to any tainted evidence?

2 A You mean at literally the moment I was assigned the
3 case?

4 Q That's right?

5 A I had no exposure to the case.

6 Q But you knew Kastigar was an issue at that point?

7 A Not --

8 MS. WESTFAHL KONG: Objection. Misstates the
9 testimony.

10 THE WITNESS: No. It didn't really actually -- I
11 didn't realize that Kastigar would be an issue until the
12 May 13th call. I recognize having rereviewed the taint
13 letter that was attached as 338, Exhibit A, that it cites
14 Kastigar, but I only reviewed it very briefly in and
15 around May 7th. And I didn't catch that as an issue.

16 I was trying to catch up to speed on the case.
17 There was a lot of information being thrown my way, and
18 it didn't really crystallize in my mind as an issue until
19 May 13th with the phone call.

20 Q That was shortly after you joined the prosecution
21 team?

22 A Yes.

23 Q And you engaged in discussions with supervisors and
24 appellate people about what to do about it; right?

25 A About -- about the potential merits and likelihood

1 of success and appellate risk related to the Kastigar
2 issue.

3 Q And I believe you testified that the conclusion was
4 that there was no exposure?

5 A I mean in very general terms. So if you were
6 looking at, like, what are you planning to present at
7 trial, are you planning on presenting information from
8 Miami cell phones at trial, no. That has been
9 suppressed. Did you rely upon it for the grand jury
10 indictment, did you present evidence from the Miami cell
11 phones to the grand jury, no.

12 I mean, those were the types of conversations
13 to determine whether or not, for example, we needed the
14 suppressed evidence to proceed at trial, but, obviously,
15 at that point it had already been suppressed so we
16 weren't going to use it anyway.

17 Q And who was asking those questions?

18 A My understanding is -- I don't specifically
19 remember who it was. It wasn't me. I believe it may
20 have included Mr. Young. I mean, it probably included
21 Mr. Young, but I don't specifically recall.

22 Q And based on the responses to those questions,
23 somebody concluded that there was no exposure?

24 MS. WESTFAHL KONG: Objection. Vague as to
25 exposure, whether it is exposure to evidence, appellate

1 exposure.

2 THE COURT: Okay. The objection is correct. I
3 mean, I don't know what exposure means.

4 MR. LITTRELL: Okay. Maybe I will probe that.

5 Q In your testimony, you said the conclusion was
6 that, quote, there was no exposure?

7 A Uh-huh.

8 Q What did you mean by that?

9 A We didn't -- well, we didn't think that the trial
10 evidence would rely upon the evidence that was
11 suppressed.

12 Q And that is based on the questions that you just
13 recited?

14 A Yes.

15 Q Was there any discussion about derivative use of
16 evidence from the tainted phones and whether that should
17 be considered in determining whether there was exposure?

18 A Can you clarify what you mean by derivative use?

19 Q For example, did anyone ask whether you or anyone
20 on the team had used evidence from the tainted phones to
21 formulate trial strategy?

22 A That question wasn't asked. I don't remember that
23 question being asked. I remember there being a
24 discussion as to when we received access to the phones.

25 Q But nobody asked whether tainted evidence from the

1 phones was used to develop trial strategy?

2 A My recollection of the conversation is it didn't
3 reach that point because other questions were asked that
4 obviated the need for that question, but, again, that is
5 my recollection. I am not the questioner so I can't be
6 in the mind of the questioner.

7 Q Nobody asked whether tainted evidence from the
8 Miami phones was used to develop leads for further
9 investigation?

10 A Again, my recollection is it was obviated by a
11 different part of the discussion.

12 Q Okay. And nobody asked whether evidence from the
13 tainted phones was used to determine which witnesses to
14 call?

15 A No. Again, because it was obviated by a different
16 part of the discussion where it was informed that we
17 really didn't have access to the phones until quite late.

18 Q And no one asked whether information from the
19 tainted phones was used to corroborate evidence that you
20 already had?

21 A I don't recall that question. And just to be
22 clear, when I say we, I mean the government. I never
23 accessed the phones.

24 Q In those discussions, did anyone suggest the
25 possibility that you as a new prosecutor could take over

1 the prosecution and that you could recuse Mr. Fenton and
2 others who had greater exposure to the tainted phones?

3 A That was never raised, no.

4 Q It was never raised to you or it was never raised
5 by anybody?

6 A It was never raised to me.

7 MR. LITTRELL: No further questions.

8 THE COURT: All right. Call the next witness.

9 Thank you, Ms. Ahn.

10 MR. KEOUGH: Your Honor, we we are going to call
11 Agent Massino, next.

12 THE COURT: Okay.

13 (The witness was sworn.)

14 THE CLERK: Please take a seat. State your full
15 name and spell it for the record.

16 THE WITNESS: Timothy Massino, T-I-M-O-T-H-Y,
17 M-A-S-S-I-N-O.

18

19 CROSS-EXAMINATION

20 BY MR. KEOUGH:

21 Q Good afternoon, Agent Massino.

22 A Good afternoon, sir.

23 Q You would agree that in any big case like this one,
24 you would have lots of potential leads that you might
25 want to follow?

1 A I would agree with that statement.

2 Q And you would also agree that part of your job is
3 being able to focus your investigation on the leads that
4 are most relevant?

5 A Yes.

6 Q Okay. Let's pull up what has been marked Kastigar
7 Exhibit 13.

8 Okay. Now, Agent Massino, I am showing you an
9 e-mail that you sent. You can see on the top
10 October 8th, 2020. Do you recognize this e-mail?

11 A I do.

12 Q And you see that you sent it to Kenneth Welch.

13 Can you tell us who he is?

14 A He is an investigative analyst that works for my
15 agency.

16 Q And the subject of the e-mail is Jobe assist,
17 narrowing the scope; correct?

18 THE COURT: What is that?

19 Q BY MR. KEOUGH: The subject line of the e-mail reads
20 Jobe assist, narrowing the scope; is that correct? We
21 can highlight it there at the top.

22 A Yes.

23 Q And you recall you testified at trial that Jobe
24 Construction was an early name in the investigation that
25 lead to the case that we are all talking about right now?

1 A That's correct.

2 Q And in the e-mail you say, hey, Ken, before you
3 delve into Jobe too much, I wanted to advise you to just
4 focus on the following three items. And you list three
5 SBA loan numbers there. Do you see that?

6 A Yes, I do.

7 Q And the second line after the three loans, you say
8 so we don't want you to get bogged down with the list I
9 sent you earlier. Some of those may be connected, but
10 let's not concern ourselves with that unless you uncover
11 the connections through your EIDL database searches,
12 slash, queries. Do you see that there?

13 A I do.

14 Q So, on October 8th, it is fair to say you had
15 several leads and Kenneth Welch was going to hopefully
16 help you narrow the scope as to which leads you were
17 going to follow?

18 A We had a lot of leads. There were a number of
19 loans involved in this investigation. And naming Jobe,
20 that was a loan. It was a company, or, rather, at least,
21 it was an application. It was a company. And Ken serves
22 all SBA OIG agents in the Western Region which is
23 basically anything west of Denver. He was extremely
24 business as the rest of our agency was during this time
25 and still are. So this was my way of letting him know

1 that this is what we wanted -- that I needed him to
2 immediately focus on these. I believe I had tasked him
3 or had asked him for assistance looking at some other
4 information that I had received from the investigative
5 team members, but this, on this date, this is what I
6 wanted to get to the bottom of.

7 Q So fair to say that you had a number of leads and
8 you asked for help with these three specific ones from
9 Ken Welch?

10 A I am pretty sure I asked for help on others at
11 other times.

12 Q And in this e-mail, though, we have got three leads
13 here?

14 A That's correct.

15 Q And if that work, say, had led to a connection to
16 Richard Ayvazyan or Mary Terabelian, that would be a
17 relevant information for your investigation that you were
18 conducting?

19 A Did you say relevant or irrelevant?

20 Q Relevant.

21 A Yes.

22 Q Now, this e-mail was sent on October 8th, narrowing
23 the scope, and you would agree that 11 days after this
24 e-mail is when the Miami border stop occurred that is at
25 issue today?

1 A Yes.

2 Q And, after that stop, you learned via phone from
3 Special Agent Palmerton that the stop had taken place?

4 A That's correct.

5 Q And that phones had been discovered on the persons
6 of defendants in this case?

7 A That is correct.

8 Q And, later, you then reviewed those phones, at
9 least 65 images from those phones that you had received
10 from Special Agent Palmerton?

11 A On November 13th.

12 Q Correct. And you reviewed those images?

13 A I did look at them.

14 Q And you identified, I believe you said in your
15 declaration 10 loans that you were previously unaware of,
16 at least, previously didn't know there was a connection
17 to this investigation based on the review of those
18 photos?

19 A That's correct. That is what I recall.

20 Q And, with those ten loans, there were a couple of
21 things you used it for; correct?

22 A I requested loan files, and I subsequently did
23 interview one individual that we believed -- that we had
24 determined was the victim of identity theft.

25 Q So you requested loan files you said, you conducted

1 an interview; correct?

2 A Correct.

3 Q And you shared some of this information with
4 prosecutors in the case; correct?

5 A Yes.

6 Q If we could pull up Massino Exhibit C, and if we
7 could scroll down to page 3.

8 So there was an e-mail that you attached to
9 your exhibit. Do you agree that you recognize this
10 e-mail?

11 A Yes.

12 Q And there in the e-mail that you sent to members of
13 the prosecution team, you listed a number of loans, and
14 you said that these were the ones identified based on my
15 review of the phone photos that Justin had uploaded;
16 correct? That is what the e-mail says?

17 A That is what the e-mail says, but it wasn't
18 accurate.

19 Q And that was my next question. So you later
20 realized and you note in your declaration that a couple
21 of these loans were not ones that you investigated
22 because of the 65 photos from the Miami phones; correct?

23 A That's correct.

24 Q And do you recall which ones those were?

25 A I believe they are Byraya, Byraya Management and

1 Proactive Home Health Services. It is in another e-mail,
2 or actually they are listed in the declaration.

3 Q So you may have listed the loans for the Miami
4 phones. You included those, but they weren't actually
5 from those phones?

6 A That's correct.

7 Q You would agree there were a lot of loans that were
8 a part of this investigation; correct?

9 A Yes.

10 Q And as we see here, sometimes it was hard to keep
11 them all straight as to which ones came from where?

12 MR. O'DONNELL: Objection as argumentative and
13 relevance.

14 THE COURT: Well, I don't know. I mean, he can
15 answer if he can. If he doesn't have an answer --

16 THE WITNESS: My answer to that question would be
17 that is precisely why it is good to have e-mails like
18 this. Based on reviewing this e-mail, it was pretty
19 clear to me what had occurred.

20 Q BY MR. KEOUGH: And so the answer to my question is
21 yes, though, that it was hard to keep them straight. You
22 looked at the e-mail and you realized that you had
23 included ones that weren't supposed to be on the list?

24 A They were supposed to be on the list. My job was
25 to provide information that I obtained based on leads

1 from the team. The simple mistake of not distinguishing
2 the three down at the bottom or, rather, the Byraya
3 Management, the Byraya and the Proactive Home Health
4 Services, I didn't view that as very relevant at the time
5 at all.

6 They simply came in a different e-mail, or,
7 rather, the information came in a different e-mail. I
8 combined it with my request to SBA's Office of Disaster
9 Assistance for the loan files that I had identified based
10 on the review of the phones, and I received them all on
11 the same date.

12 Q So to ask the question a different way, you
13 describe these loans in this list as coming from the
14 phone photos. Upon reviewing it later, you realized they
15 had actually come from somewhere else?

16 A Three of them came in a different e-mail than I
17 received from Special Agent Palmerton.

18 Q So the answer is, yes, those three loans did not
19 come from the Miami phones?

20 A I believe that is correct. Yes.

21 Q Okay. And you said that they had come from a
22 separate e-mail from Special Agent Palmerton. If we can
23 pull up Massino Exhibit E and just scroll down to the
24 third page there.

25 And this is that e-mail; right? The

1 attachment to your declaration is Exhibit E. You
2 recognize it?

3 A Yes. That is one of them. I believe there were
4 two.

5 Q Is one of the other uses of that information from
6 the ten loans, are you aware if any of that was used to
7 obtain evidence that was used at trial?

8 A I'm sorry. That was difficult for me to follow.
9 Could you repeat that.

10 Q Sure. I will ask it again. So you have discussed
11 that you reviewed the 65 photos, you identified those ten
12 loans; correct?

13 A Correct.

14 Q And are you aware if evidence related to those ten
15 loans was used as part of the trial in this case?

16 A I don't know the answer. I don't believe so, but I
17 do not know the answer.

18 Q Okay. Do you recall as part of your investigation
19 reviewing the responses to requests from the Internal
20 Revenue Service?

21 A Could you clarify?

22 Q Sure. Do you recall reviewing -- do you recall
23 asking the IRS for any records as part of this case?

24 A I don't believe I did personally, no.

25 Q Did the investigation team ask the IRS for records?

1 A Yes.

2 Q And do you recall if any were received?

3 A I believe they were.

4 Q Let's bring up what was marked at trial as
5 Government Exhibit 48.

6 And while we are loading that, do you recall
7 that one of the ten loans that you identified based on
8 the 65 photos was for a company called Annandale Nursery.

9 Does that sound familiar?

10 A Yes.

11 Q And if we go to page 5 of 16 of this exhibit --
12 actually, stay on the first page for a second. So this
13 was Government Exhibit 48 at trial.

14 Do you recognize the document?

15 A I don't recognize the document.

16 Q But I will represent to you this was part of the
17 government's trial evidence, and, now, go to page 5 if we
18 can. Okay. And if we can just zoom in on the bottom six
19 lines or so. Yes. That is good enough.

20 Okay. So we are on page 5 of this records
21 request from the IRS, and my only question for you is do
22 you see that Annandale Nursery appears on a line there
23 about halfway down the page?

24 A I do.

25 Q We can go ahead and take that down.

1 Now, Agent Massino, in your declaration, you
2 discuss the Cellebrite reports for the cell phones that
3 were seized in Miami.

4 Do you recall that?

5 A No.

6 Q Maybe I should ask it a different way. You
7 discussed the fact that you didn't review the Cellebrites
8 from the phones that were seized in Miami?

9 A I don't believe I said that. I believe I stated
10 very clearly that I viewed photos that were derived in a
11 sense from the phones seized in Miami. I never saw a
12 Cellebrite report to my knowledge.

13 Q Okay. Thank you. And do you know if you discussed
14 the Cellebrite reports with anybody who might have
15 reviewed them?

16 A I do not recall ever having a discussion about
17 Cellebrite reports regarding the Miami phones.

18 Q And as part of the investigation in the case, after
19 February, 2020, when somebody shared a piece of evidence
20 with you, do you ever recall somebody saying, by the way,
21 this is from the Cellebrite for the Miami phone?

22 A I don't recall.

23 Q So fair to say, if they did share something with
24 you from the Miami Cellebrite, they didn't tell you about
25 it?

1 MR. O'DONNELL: Assumes facts not in evidence.
2 Speculation. Argumentative.

3 THE COURT: Sustained.

4 MR. KEOUGH: No further questions.

5 THE COURT: Okay. Anything else?

6 MR. LITTRELL: No, your Honor.

7 THE COURT: Thank you, sir.

8 Call the next witness.

9 MR. SILVERMAN: We would like to call Mr.
10 Faerstein.

11 THE CLERK: Please be seated.

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

14 THE WITNESS: Should I remove my mask, your Honor?

15 THE COURT: Yes. Are you vaccinated?

16 THE DEFENDANT: Yes, your Honor.

17 Brian Faerstein, B-R-I-A-N, F-A-E-R-S-T-E-I-N.

18 MR. SILVERMAN: May I proceed, your Honor?

19 THE COURT: Yes.
20

21 CROSS-EXAMINATION

22 BY MR. SILVERMAN:

23 Q Good afternoon, Mr. Faerstein.

24 A Good afternoon.

25 Q You were assigned to this case on February 9th,

1 2021; is that correct?

2 A That's correct.

3 Q And you were one of two AUSA's assigned to make up
4 for the loss of AUSA Andre; correct?

5 A I was one of two AUSAs assigned.

6 Q And you reviewed a number of materials in getting
7 up to speed on the case; right?

8 A That's right.

9 Q And one of these materials was a set of 141
10 photographs from Customs and Border Patrol; right?

11 A As I stated in my declaration, I scanned those
12 photographs.

13 Q And that was at the same time you were getting up
14 to speed on the case; right?

15 A That's correct.

16 Q And specifically the first time you reviewed those
17 photographs was your very first week on the case; right?

18 A I don't know if that is -- I don't know if that is
19 accurate.

20 Q If we could bring up Mr. Faerstein's declaration
21 and go to paragraph 5, please. I'm sorry.

22 If not in the first week in or about mid
23 February?

24 A That's correct.

25 Q And you joined the case on February 9th?

1 A That's correct.

2 Q And in those photographs, did you see any
3 information that ultimately was related to the topics in
4 the first superseding indictment?

5 A I don't know.

6 Q Was one of the topics in the first superseding
7 indictment Turing Info Solutions?

8 A That was a company described in the first
9 superseding indictment.

10 Q And the first superseding indictment alleged in
11 part that Mr. Ayvazian was responsible for using the
12 Iullia Zhadko identify to obtain loans in Turing Info
13 Solutions' name; correct?

14 A I believe in the money laundering counts 28 through
15 32, that was an allegation.

16 Q And he used Turing Info Solutions to transfer that
17 money in December of 2020; correct?

18 A That -- that's correct.

19 Q And if we could please bring up KX2 or -- actually,
20 we don't need testimony on that. We have the record
21 already made.

22 About a week or two later on or about
23 February 24th, you reviewed the phones again; correct?
24 Or, excuse me, the photographs, not the phones.

25 A It was either the 24th or the 25th.

1 Q And what was the event that led to you reviewing
2 the phones again?

3 A Can I just clarify real quick?

4 Q Absolutely.

5 A When you say the photographs, I am referring
6 specifically to the CBP photographs of one or more of the
7 Miami cell phones.

8 Q Correct. And you have never reviewed the set of 65
9 photographs taken by Agent Palmerton; right?

10 A That is not correct. I said in my declaration, to
11 the best of my recollection, I did not review all of
12 those. However, there were nine that were sent to me
13 that is described in my declaration.

14 Q So on or about February 24th, you reviewed the 141
15 CBP photographs; correct?

16 A I wouldn't characterize it as having reviewed the
17 141 CBP photographs. As I stated in my declaration, I
18 was looking for specific text message exchanges that were
19 described in my declaration.

20 Q What led you to look for those text message
21 exchanges?

22 A A phone call that I participated in with attorney
23 Fenton and counsel to Picadilly Jewelers.

24 Q And to the best of your recollection, what
25 transpired in that phone call?

1 A I do not have a clear recollection of everything we
2 discussed. What I do recall is that during the phone
3 call, attorney Fenton was asking counsel to Picadilly
4 Jewelers to make sure there were no additional documents
5 that were responsive to a subpoena that had been issued
6 to that company.

7 Q How did that lead you to review the CBP
8 photographs?

9 A During the call, attorney Fenton indicated to
10 counsel to Picadilly Jewelers that he had seen text
11 message exchanges between the owner of Picadilly Jewelers
12 and defendants in this case. I took that to mean that
13 there was evidence of text messages, and I thought to
14 myself, I believe -- this is to the best of my
15 recollection -- I thought to myself, well, maybe I should
16 look in these CBP photographs.

17 Q So did you ask Mr. Fenton whether those were the
18 text message conversations he was referencing?

19 A When?

20 Q On or about February 24th, did you ask him whether
21 the text message conversations he just referenced came
22 from the 141 CBP photographs?

23 A I do not recall whether I asked him or I did not
24 ask him.

25 Q Around that time, the government was receiving

1 production of Cellebrites as well; correct?

2 A I -- that is -- I believe that is accurate. I
3 believe it could have been the first two phones, but I
4 don't recall specifically the dates.

5 Q So is it possible that Mr. Fenton was referencing
6 information he reviewed in the Cellebrite reports as
7 opposed to the 141 CBP photographs?

8 MS. WESTFAHL KONG: Objection. Calls for
9 speculation.

10 THE COURT: Sustained. I lost some frame of
11 reference here. When did you -- when were you assigned
12 the case?

13 THE WITNESS: February 9th, your Honor.

14 THE COURT: I see. Okay. Go ahead.

15 Q BY MR. SILVERMAN: Now, in reviewing the CBP
16 photographs regarding Picadilly Jewelers, did you see a
17 check that was made -- that was made out to Picadilly
18 Jewelers?

19 A I don't know what you mean by a check made out to
20 Picadilly Jewelers.

21 Q Did you see a check with Picadilly Jewelers'
22 account information on it?

23 A I believe so. I believe that is attached. I
24 believe a screen shot of that text message is attached to
25 my declaration.

1 Q And do you know whether the government subpoenaed
2 the bank records for that account?

3 A I believe we did, but that was before I joined the
4 case.

5 Q That wasn't the last time -- there is a third time
6 that you also reviewed the CBP photographs or some subset
7 thereof; correct?

8 A Some subset thereof, correct.

9 Q And, specifically, about two weeks later around
10 March 11th, 2021, you reviewed the photographs again;
11 correct?

12 A No. That is not accurate. In my declaration on
13 March 11th, I received an e-mail from AUSA Paetty that
14 described certain photographs from the CBP photographs,
15 but I did not review them at that time.

16 Q Was there some time that you reviewed them in
17 preparation for the motion to suppress?

18 A In connection with the motion to suppress, AUSA
19 Paetty submitted a declaration to which he attached a
20 subset of photographs from the CBP photographs. And I
21 believe I reviewed that subset in connection with
22 reviewing the filing.

23 Q And in your declaration you refer to these as
24 primary reviews; correct? These three reviews?

25 A I don't believe I described it as that.

1 Q Were there any other times that you may have
2 accessed the CBP photos for less intensive review?

3 A To the best of my recollection, I don't recall
4 those other times. Is it possible? I suppose, but I do
5 not recall.

6 Q Now, you printed a binder for organizational
7 purposes on April 24th; right?

8 A I printed out the CBP photographs on April 24th,
9 and put them in a binder.

10 Q And what was -- what happened to that binder next?

11 A What happened to it?

12 Q Where did it end up?

13 A In my office.

14 Q And is it possible that anybody else could have had
15 access to it thereafter?

16 A Probably not. No.

17 Q Now, how did you know that it was April 24th?

18 A Because in the folder on our internal system that
19 has the CBP photographs, there is a combined PDF document
20 that combined all of the JPEG images that were the CBP
21 photographs into one large PDF, and that is date stamped
22 April 24th which leads me to believe that I created that
23 and printed it out on April 24th.

24 Q Now, around this time, your primary or one of your
25 primary responsibilities was the superseding indictment;

1 correct?

2 A When I first joined the case in mid February, one
3 of my primary focuses was the first superseding
4 indictment and, in particular, potential additional
5 defendants.

6 Q And were you or case agents participating in
7 investigatory activities at the time?

8 A Can you describe -- what do you mean by
9 investigatory activities?

10 Q Were you interviewing witnesses?

11 A Was I personally interviewing witnesses?

12 Q I apologize. I will rephrase. Were you or case
13 agents interviewing witnesses?

14 A I believe case agents may have been interviewing
15 witnesses at the time, but I can't tell you with any
16 certainty right now.

17 Q Did they discuss with you who they would interview?

18 A I don't recall.

19 Q So case agents, in general on this case, case
20 agents would go out and do interviews without discussing
21 it with the attorneys at times?

22 A I didn't say that.

23 Q But you don't recall whether or not they ever
24 discussed interviewing witnesses with you?

25 A You asked me in -- when we were preparing the first

1 superseding indictment whether case agents were
2 conducting interviews and asking and talking to me about
3 those interviews, and I said I do not recall that.

4 Q Mr. Faerstein, have you reviewed the discovery
5 correspondence in this case?

6 A What discovery correspondence?

7 Q Have you reviewed the production letters in this
8 case?

9 A Yes. Generally.

10 Q And is it accurate to say that a substantial
11 portion of the witness interviews took place in 2021?

12 A I don't know the answer to that sitting here right
13 now.

14 MR. SILVERMAN: Can we please put up KX30.

15 MS. WESTFAHL KONG: Objection. Improper
16 refreshment of recollection.

17 THE COURT: I don't know. Let's see it.

18 Q BY MR. SILVERMAN: Mr. Faerstein, does the column
19 labeled description look like the descriptions that the
20 case team used in their production letters in this case?

21 A Generally, yes.

22 Q And I will go ahead and represent to you that this
23 is pasted straight from the production letters. Looking
24 through that column, can we go to the next page as well,
25 please, and scroll through. And scroll through.

1 Is it fair to say that more than half of the
2 witness interviews that were produced to the defense have
3 dates beginning with 2021?

4 A I can't say that. I noticed on the first page and
5 the second page many interviews that were conducted
6 before I was even on this case in mid February.

7 Q Right. There are 125 interviews that were produced
8 to the defense; right? And 13 of them took place in
9 2020?

10 A You are scrolling through very quickly. I don't
11 know the answer to that.

12 Q We will submit this with the declaration and make
13 the record that way.

14 So for the first superseding indictment, you
15 helped prepare the prosecution memorandum; right?

16 A Correct.

17 Q And you worked with case agents to synthesize large
18 amounts of evidence obtained during the course of the
19 investigation?

20 A Correct.

21 Q Which agents did you work with?

22 A FBI Special Agent Justin Palmerton, IRS Criminal
23 Investigation Special Agent Geffrey Clark. Those were
24 the primary two agents I was working with.

25 THE COURT: What was the date of the prosecution

1 memo?

2 MR. SILVERMAN: I don't know the answer to that.

3 Q What was the date of the prosecution memo for the
4 superseding indictment?

5 A It would have been in early March, 2021, your
6 Honor.

7 THE COURT: Okay.

8 Q BY MR. SILVERMAN: And at that point, you didn't ask
9 them whether any of their synthesized facts were based on
10 tainted evidence; correct?

11 A I did not -- first of all, what do you mean by
12 tainted evidence?

13 Q You didn't ask them whether any of their
14 synthesized facts were based on the Miami phones in
15 particular; right?

16 A I -- I don't recall asking them that specific
17 question.

18 Q And did you ask about how their investigation had
19 unfolded and ask them to trace back each piece of
20 evidence that they were sharing with you?

21 A No, I did not ask them to do that.

22 Q Besides the CBP photographs and the summaries you
23 received from case agents, what other sources of evidence
24 did you review for the prosecution memorandum?

25 A Could you repeat that question?

1 Q Besides the CBP photographs and the case agent
2 summaries, what other sources of evidence did you review
3 when preparing to draft the prosecution memorandum?

4 A I reviewed significant additional sources of
5 information. I reviewed the loan files, the payroll
6 reports, the Gusto payroll reports, the Form 940s and
7 other tax forms. I reviewed bank records including both
8 the records reflecting the way the money was spent and
9 bank opening account information, public filings, IRS
10 fact of filing letters, EDD letters reflecting the
11 nonexistence of synthetic identities that were used in
12 this case, Secretary of State filings. That is what I
13 can remember right now, but I know there was more as
14 well.

15 Q Who compiled those materials for you?

16 A Who compiled them where?

17 Q Who directed you to those materials?

18 A So I worked with the agents or the agents, one of
19 the things they were doing, is compiling this information
20 in folders that I would have access to.

21 Q So, specifically, the agents, Agent Clark and Agent
22 Palmerton were the two you mentioned, or was it Agent
23 Clark and Agent Massino?

24 A No. I mentioned Special Agent Palmerton and
25 Special Agent Clark.

1 Q So they were the ones who compiled it in folders
2 that you would have access to?

3 A That is -- that is correct.

4 Q Now, the draft prosecution memo contained a
5 reference to information from the Miami phones; correct?

6 A That is correct.

7 Q Now, specifically, information regarding a Canoga
8 apartment?

9 A Yes. It is stated in my declaration.

10 Q And that was not the only reference to tainted
11 information -- correct -- or to information from the
12 Miami phones; correct?

13 A I believe that was the only specific reference or
14 the only reference, direct reference, I should say, to
15 Miami, to information from a Miami phone.

16 Q There was a reference to Mr. Ayvazyan's control
17 over his alias Iullia Zhadko being established by, among
18 other things, a search of his mobile devices; correct?

19 A I don't know where you are getting that from. Are
20 you quoting something?

21 Q I am attempting to quote paragraph 31 of your
22 declaration.

23 A I would have to see that.

24 Q Can we bring up his declaration, go to
25 paragraph 31. Make sure I am quoting it correctly?

1 MS. WESTFAHL KONG: Your Honor, may I pass up a
2 copy of the declaration?

3 THE COURT: Yes.

4 MR. SILVERMAN: Thank you.

5 THE WITNESS: Is there a question?

6 Q BY MR. SILVERMAN: So there is a reference to Iullia
7 Zhadko and, specifically, the search of Mr. Ayvazian's
8 mobile devices; correct?

9 A Yes. It says a search of his mobile devices.

10 Q And in your declaration you note that other --
11 another cell phone had been seized from Mr. Ayvazyan on
12 November 5th; correct?

13 A That's correct.

14 Q Do you know whether that other cell phone had been
15 searched when this prosecution memorandum was written?

16 A I recall that on November 5th, agents had done a,
17 as I understood it, a cursory review of the phone not for
18 information that would potentially be privileged but
19 photographs I believe.

20 Q And had that information been produced to you by
21 that point?

22 A What do you mean produced?

23 Q Had those photographs been produced to you?

24 A I don't know at that time whether they had been
25 produced, but I believe I knew -- through conversation,

1 but I can't recall specifically that there was other
2 evidence from the phone from November 5th.

3 Q And you believe that you knew that by the time of
4 the initial prosecution memorandum?

5 A I can't say that sitting here right now.

6 Q Now, in your declaration, you talk about the
7 recitation of evidence; correct?

8 A Where specifically?

9 Q If we could go to paragraph 27, lines 26 through
10 the next page.

11 A Yes.

12 Q And I want to clarify this because I think that we
13 have misunderstood it. This is referring to the
14 prosecution memorandum; correct?

15 A It is not.

16 Q What is it referring to?

17 A It is referring to factual summaries that, written
18 factual summaries regarding Redline Auto Collision, and
19 that is defendant Edward Paronyan and, separately,
20 defendant Arman Hayrapetyan and Hart Construction, Sabala
21 Construction.

22 Q And for whom were those written factual summaries
23 provided?

24 A To whom were they provided?

25 Q To whom.

1 A I received them.

2 Q For what purpose?

3 A For purposes of preparing, understanding the
4 evidence and preparing superseding charges against these
5 additional defendants.

6 Q And how did you use this information?

7 A I read it, and some of it was significant enough
8 that I put it into -- put in the prosecution memo as part
9 of our supporting evidence.

10 Q And these two particular lines were provided to you
11 but were not included in the prosecution memo, fair to
12 say?

13 A The information in these lines -- and let me just
14 be specific. When you are referring to these two lines,
15 what specifically are you referring to?

16 Q These two references were not included in the
17 prosecution memorandum?

18 A I just want to make sure the record is clear what
19 references are you referring to?

20 Q The reference to photographs on Richard Ayvazyan's
21 phone containing a photo of Arman Injijian's California
22 driver's license and photographs on Richard Ayvazyan's
23 cell phone containing PII associated with Anton Kudamov?

24 A I did not add those, and those were not in the
25 prosecution memo, that information.

1 Q And there was also a reference to two different
2 photographs belonging to -- excuse me -- two different
3 photos of the California driver's license C8924483;
4 correct?

5 A That was in the summary regarding Hart Construction
6 and Arman Harapetyan; that's correct.

7 Q And that is a reference to Iullia Zhadko's license;
8 correct?

9 A What you just quoted was a reference to Iullia
10 Zhadko's license on one of the Miami phones.

11 Q And you used this particular piece of information;
12 correct?

13 A No. I don't think that that's correct.

14 Q You didn't quote this piece of information in a
15 hearing in this case?

16 A I don't think I quoted this particular piece of
17 information.

18 Q Well, at the April 2nd hearing, you stated that
19 there were -- I'm sorry. Let me make sure I get the
20 exact language. That there were licenses belonging to
21 Iullia Zhadko found on Richard Ayvazyan's phone; correct?

22 A I know what you are referring to. It would be
23 helpful to see the transcript to make sure that you are
24 stating my words accurately.

25 Q If we could go to docket 299 and go to page 10.

1 Can you see at the bottom of the page you were
2 asked for the evidence that there was that they are not
3 real, and do you recall that the "they" in that sentence
4 is Iullia Zhadko and Victoria Kauichko.

5 A Yes, that's correct.

6 Q And the evidence that you say, among other things,
7 is Iullia Zhadko and the driver's licenses, plural, that
8 were on defendant Ayvazyan's -- and if we can scroll down
9 to the next page -- phone; correct?

10 A I said that. Yes.

11 Q And this was a reference to the multiple driver's
12 licenses that you had received in that internal fact
13 summary; correct?

14 THE COURT: The last part of your sentences trail
15 off. I remember that from the trial.

16 MR. SILVERMAN: Yes, your Honor. I will continue
17 to try to get better at that.

18 THE COURT: The words seem to get grounded
19 somewhere in your throat. I don't know where, but they
20 are not coming out as clearly as they should.

21 MR. SILVERMAN: Yes, your Honor.

22 Q This reference to multiple Iullia Zhadko licenses
23 was taken from the information you were given in that
24 internal fact summary; right?

25 A No. The reference to the Iullia Zhadko licenses

1 was taken from the fact that, yes, there were Iullia
2 Zhadko driver's licenses on the phones which was set
3 forth in other sources as well.

4 Q And the CBP photographs that you looked at, there
5 was only one Iullia Zhadko license; right?

6 A I don't recall that.

7 Q So fair to say that there was so much tainted
8 information flowing around that you did not know --

9 MS. WESTFAHL KONG: Objection. Argumentative.

10 THE COURT: He can answer the question. Go ahead.

11 THE WITNESS: So, in connection with this hearing,
12 this hearing was on the modified protective order. We
13 filed an ex parte application to modify the protective
14 order. I filed a declaration in support of that ex parte
15 application to which we attached two photographs of
16 Iullia Zhadko driver's licenses. My understanding is
17 those photographs were from the FBI photographs which
18 attorney Fenton sent to me prior to the hearing, prior to
19 us filing that ex parte application.

20 Q BY MR. SILVERMAN: This case is not your first
21 experience with a Kastigar-related issue; correct?

22 MS. WESTFAHL KONG: Objection. Relevance.

23 THE COURT: I don't know where it is going. I
24 will allow you a couple of questions to see if it becomes
25 relevant.

1 THE WITNESS: What do you mean by Kastigar-related
2 issue?

3 Q BY MR. SILVERMAN: You were brought in as counsel on
4 Benson after trial counsel was disqualified; correct?

5 A That's correct. When I was an AUSA at the Northern
6 District of California US Attorney's Office.

7 Q During your time on this case, did anybody suggest
8 the possibility of recusing or replacing counsel who had
9 been exposed to tainted information?

10 A What timeframe are you talking about?

11 Q At any point prior to trial, did anybody discuss
12 that possibility?

13 A First of all, as I mentioned in my declaration, I
14 was not -- I was on leave in May prior to trial. In
15 terms of whether I was involved in a conversation where
16 we discussed recusing the prosecution team, I don't
17 recall that.

18 MR. SILVERMAN: Thank you. No further questions.

19 THE COURT: Anything further?

20 MR. LITTRELL: No, your Honor.

21 THE COURT: All right. Thank you, Mr. Faerstein.

22 Who is the next?

23 MR. KEOUGH: Your Honor, I believe Agent Clark is
24 the last witness.

25 (Recess from 1:53 to 2:09 p.m.)

1 (The witness was sworn.)

2 THE CLERK: Please be seated.

3 State your full name and spell it for the
4 record.

5 THE WITNESS: Geffrey Clark, G-E-F-F-R-E-Y,
6 C-L-A-R-K.

7

8 CROSS-EXAMINATION

9 BY MR. KEOUGH:

10 Q Good afternoon, Agent Clark.

11 A Good afternoon.

12 Q Since 10:00 a.m. yesterday, have you spoken with
13 anyone on the prosecution team about this case?

14 A Yes.

15 Q And who have you spoken with?

16 A Probably everybody.

17 Q Who is that?

18 A Everybody at the table and agents sitting in the
19 back.

20 Q Let's go ahead and name them all for the record so
21 that we have them all down. Tell us each person that you
22 spoke with on the prosecution about the case since
23 10:00 a.m. yesterday?

24 A Chris Fenton, a gentleman Niall, I don't know his
25 last name, Rane Katzenstein, Allison, Mark Cipoletti. I

1 don't know the gentlemen's name here. Agent Justin
2 Palmerton, Agent Timothy Massino, Agent Faerstein, I
3 mean, AUSA Faerstein and AUSA Catherine Ahn.

4 Q Okay. And let's take those one at a time. What
5 did you discuss about the case with Mr. Fenton since
6 10:00 a.m. yesterday?

7 A Nothing specific.

8 Q But you did discuss the case with him; correct?

9 A Just in a general sense.

10 Q And what, in a general sense, did you discuss?

11 A I don't recall. Everything was so general.

12 Q Did you discuss the Miami phones with Mr. Fenton?

13 A Say that -- I didn't hear.

14 Q Did you discuss anything related to the Miami
15 phones with Mr. Fenton?

16 A The what phones?

17 Q The Miami phones, the phones that were seized in
18 Miami during the stop that I am sure you are aware of?

19 A I don't recall, no.

20 Q You don't recall, or you didn't discuss them?

21 A I don't recall discussing anything about the phones
22 with them.

23 Q Did you discuss this investigation generally?

24 A Yeah.

25 Q And what did you discuss about it?

1 A We discussed what happened in trial, humorous
2 things that happened in trial.

3 Q What were the things that happened in trial that
4 you discussed?

5 MR. O'DONNELL: Objection. Relevance?

6 THE COURT: Sustained.

7 Q BY MR. KEOUGH: Did you discuss your testimony today
8 with Mr. Fenton?

9 A No.

10 Q Did you discuss Mr. Fenton's testimony that he gave
11 yesterday?

12 A No.

13 Q With Ms. Katzenstein, did you discuss this case
14 since 10:00 a.m. yesterday?

15 A The case was discussed in general.

16 Q And I appreciate that you are trying to describe it
17 generally, but, specifically, what did you talk about
18 related to this case?

19 A I don't recall specifics.

20 Q But you did discuss the case?

21 A Yes.

22 Q And do you recall whether you discussed the phones
23 that were seized in Miami?

24 A No, we didn't.

25 Q And did you discuss any other part of the

1 investigation?

2 A Not that I recall.

3 Q Did you discuss the substance of the testimony that
4 you were to give today? No?

5 A Just to be clear and audible.

6 Q And what did you understand that was meant by to be
7 clear?

8 A Short, distinct answers.

9 Q And did you discuss any of the testimony with
10 Ms. Katzenstein that was given yesterday at the hearing?

11 A No.

12 Q And have you discussed with anyone any testimony
13 that was given during the morning session today?

14 A No.

15 Q Did you talk with anybody at the lunch break about
16 this case?

17 A Did I talk? No.

18 Q Did you have lunch with anybody on the prosecution
19 team during the lunch break today?

20 MR. O'DONNELL: Objection. Relevance.

21 THE COURT: You can ask.

22 THE DEFENDANT: Yes, I had lunch.

23 Q BY MR. KEOUGH: But you didn't discuss the case?

24 A Not in specifics, general terms.

25 Q And what did you talk about?

1 A I don't recall. I had a bunch of personal calls I
2 was taking during the lunch break.

3 Q So returning to the list of people that you have
4 discussed this case with since 10:00 a.m. yesterday, you
5 mentioned Mr. Cipolletti. What did you discuss about the
6 case with him?

7 A Nothing.

8 Q But you did discuss the case with him, you said?

9 A He was in the room. I don't recall actually having
10 a conversation directly with him.

11 Q Did you discuss the Miami phones with him?

12 A No.

13 Q Did you discuss any of the testimony that had been
14 given at this hearing with him?

15 A No.

16 Q Same question for Mr. Faerstein. You said you
17 discussed the case with him. What did you talk about?

18 You can answer.

19 A Okay. I was waiting. We discussed like what
20 happened in trial.

21 Q And what specifically about the trial did you
22 discuss with Mr. Faerstein?

23 THE COURT: When you mean the trial, do you mean
24 this hearing or the trial that occurred a month ago?

25 THE WITNESS: A month ago.

1 THE COURT: Oh. I see.

2 Q BY MR. KEOUGH: And what specifiably about that
3 trial a month ago did you discuss with Mr. Faerstein?

4 A I don't remember specifics just like general stuff.
5 We didn't talk about the phones or anything like that.

6 Q And these were all, just to be clear, these were
7 all discussions that have happened since yesterday;
8 correct?

9 A Yeah.

10 Q That you can't recall what was discussed as we sit
11 here today.

12 A Just general.

13 Q And how about Agent Massino, do you recall what you
14 discussed about the case with him?

15 A We discussed things that were humorous about the
16 trial.

17 Q And what was humorous about the trial if you could
18 share with us?

19 MR. O'DONNELL: Objection as to relevance, your
20 Honor.

21 THE COURT: I mean, I don't think things that are
22 humorous is sufficiently relevant unless you can relate
23 it to something that is germane to the hearing.

24 Q BY MR. KEOUGH: Yes, your Honor. I will ask it a
25 different way. Did the humorous things about the trial

1 you discussed relate to the Miami phones?

2 A No.

3 Q Did the humorous things you discussed relate to the
4 investigation generally?

5 A No.

6 Q Did they relate to defendant Richard Ayvazyan?

7 A No.

8 Q How about defendant Marietta Terabelian?

9 A No.

10 Q Did they relate to any of the testimony that was
11 given yesterday at this hearing?

12 A No.

13 Q Or any of the testimony given earlier today before
14 you came into the courtroom?

15 A No.

16 Q Last person on your list was Catherine Ahn. Do you
17 recall discussing the case with her since 10:00 a.m.
18 yesterday?

19 A In general sense, yes, we spoke.

20 Q And what did you speak about with regards to this
21 case?

22 A I don't recall the specifics. About the trial and
23 what occurred and humorous things that happened during
24 the trial.

25 Q And did you discuss the Miami phones with Ms. Ahn?

1 A No.

2 Q Did you discuss any part of this investigation with
3 Ms. Ahn?

4 A I am sure I talked about the investigation with
5 her.

6 Q With any of the people on your list that you named
7 that you discussed this case with since 10:00 a.m.
8 yesterday, did you discuss the substance of your
9 testimony?

10 A No.

11 Q Did you discuss the testimony of any other witness
12 who has testified in this hearing?

13 A No.

14 Q Agent Clark, you recall submitting a declaration as
15 part of this hearing; correct?

16 A Yes.

17 Q And you recall stating that you reviewed 65 images
18 from Agent Palmerton that you received on or around
19 November 13th, 2020; correct?

20 A Yes.

21 Q And you recall you said you reviewed the set of
22 images approximately five times?

23 A Yes. That was a total approximation. I don't know
24 how many times. It was very few.

25 Q But it was approximately five?

1 A That is what I said in the declaration.

2 Q And you would agree that those images were taken
3 from cell phones seized from the defendants in Miami.

4 A That is what I was told.

5 Q And, in your declaration, you also mentioned that
6 you interviewed a notary by the name of DuBos in
7 January 2021. Do you recall that?

8 A Debois, yes.

9 Q Debois. Thank you. And you interviewed him in
10 January, 2021?

11 A Yes. Mid January.

12 Q So let's pull up Kastigar Exhibit 4.

13 2021; correct?

14 Agent Clark, you interviewed Mr. Debois in
15 January of 2021; correct?

16 A Yes.

17 Q And I have put here in front of what you has been
18 marked as Kastigar Exhibit 4 which was part of a
19 submission that the defendants made in this case, and do
20 you recognize this document?

21 A Yes, I do.

22 Q And it is a memorandum of interview that describes
23 your meeting with Mr. Debois; correct?

24 A Correct.

25 Q And if we could scroll down one more page, one more

1 page, and here is an image you showed of Mr. Debois with
2 his notary Rotary profile; correct?

3 A I showed him this image, and he later verified that
4 it was his.

5 Q And would you agree this image was one of the 65
6 that you reviewed -- that you reviewed as part of that
7 set that Special Agent Palmerton provided you; correct?

8 A I believe that is where I got it from, yes.

9 Q You can take it down. Actually, leave it there.
10 Scroll up to the first page.

11 Now, the investigation name you see there at
12 the top says Artur Ayvazian. Do you see that?

13 A Yes.

14 Q When was the investigation first titled Artur
15 Ayvazian?

16 A I don't know because that case number is under
17 another agent's name.

18 Q Okay. We can take that down. Now, let's pull up
19 what has been marked as Kastigar Exhibit 8.

20 A Now, what you see here, as you can see from the
21 top, is an e-mail. It was sent by you. Do you see that?

22 A Yes.

23 Q And it was sent to members of this investigation
24 team including Mr. Fenton, Mr. Faerstein, Mr. Paetty and
25 others; correct?

1 A Yes.

2 Q And if we start with the bottom e-mail which is
3 from Mr. Fenton to you and those same people, the subject
4 is, you see is witnesses, and it says here is a list of
5 potential witnesses we are planning to subpoena for
6 trial, please let us know if there is anyone else you
7 think we should add to the list so we can get subpoenas
8 out next week. Do you see that?

9 A Yes.

10 Q And you responded to this e-mail at the top;
11 correct?

12 A Yes. That would be my general response.

13 Q And you said, just thinking, and then you say,
14 United Wholesale Mortgage. And then you say, notaries
15 for mortgage documents, stamps and pictures on phones.
16 Did I read that accurately?

17 A Yes.

18 Q And the pictures on phones is a reference to the
19 phones that were seized in Miami; correct?

20 A I don't know if I am referencing those phones that
21 are in Miami.

22 Q What phones could you have referenced, pictures on
23 phones could you have referenced on April 27th?

24 A Well, there was other phones seized.

25 Q Are you aware of whether or not you had been

1 provided information from those phones from the filter
2 team by April 27th?

3 A The filter team, I never spoke with the filter
4 team.

5 Q Did anybody provide with you information from other
6 phones beside the Miami phones prior to April 27th?

7 A I am sure there was conversations among the
8 investigative team about what they had reviewed on the
9 phone.

10 Q I will ask the question a different way. Did you
11 review information from a phone as part of this case
12 besides the 65 photographs prior to April 27th, 2021?

13 A Which phone are you referring to?

14 Q Pick any phone in the case. Had you reviewed them
15 prior to April 27th, 2021, other than the Miami phones?

16 A Other than -- I don't know when we had access to
17 the other phones, but I know that I reviewed Tamara
18 Dadyan phone.

19 Q And you are referring to the Tamara Dadyan phone
20 that was seized from the search of the Weddington
21 residence; right?

22 A Yes.

23 Q And are you aware that as of April 26 that phone
24 had not been released from the filter team to the
25 government team?

1 A I don't know when those phones were released.

2 Q But fair to say that prior to April 27, you had
3 received phones from Special Agent Palmerton; correct?

4 A The 65.

5 Q Go ahead and take that down.

6 In your declaration, you mentioned on the
7 second page in a footnote that you provided the
8 prosecutors with a summary that referenced a loan for
9 Hart Construction. Do you recall that?

10 A Yes.

11 Q Okay. And let's go ahead and put the declaration
12 up just so that you don't have to guess, we can show it
13 to you. Let's put the Clark declaration up. Let's go to
14 page 2 of the declaration. Scroll down one more. Okay.
15 And if we can just blow up the footnote so that we can
16 all see it.

17 Now, in the footnote, you say that in
18 February, late February, 2021, a summary related to
19 Celtic Bank issued to Hart Construction was provided to
20 the prosecutors. Do you see that there?

21 A Yes.

22 Q And you prepared that summary?

23 A Yes.

24 Q And you also mentioned the footnote that among
25 other sources of evidence, the summary makes reference to

1 two different photos of a California's driver's license
2 ending in 83 observed on Richard Ayvazyan's phone during
3 the CBP stop. Do you see that?

4 A Yes.

5 Q Now, you are aware that Hart Construction was
6 mentioned several times at trial; correct?

7 A Yes.

8 Q And if we could pull up -- so just to go back to
9 the reference to the photos, sorry, observed on Richard
10 Ayvazyan's phone. If we could pull up KX1, and let's go
11 to page 30.

12 So on the left-hand side, I will represent to
13 you are the 65 photos that appear in this exhibit that
14 Agent Palmerton provided. Again, do you recognize this
15 photo?

16 A Yes. That is one of the phones in one of the loan
17 documents.

18 Q And is this, the photograph here, is that one of
19 the driver's licenses you were referencing in the
20 footnote when you said two that were taken from the phone
21 in Miami?

22 A Yes.

23 Q Now, if we can go to page 32 which is two pages
24 down, and here is a picture from the 65 of a second
25 driver's license which you see is in the name Iullia

1 Zhadko; correct?

2 A Yes.

3 Q And is this the other driver's license that you
4 referenced when you prepared that summary about Hart
5 Construction?

6 A Yes.

7 Q And if we return now two pages up to the first
8 photo. You would agree that, first of all, this driver's
9 license also has the name Iullia Zhadko on it?

10 A Yeah. I ran them. They are fake.

11 Q My question was simply is the name Iullia Zhadko on
12 the driver's license?

13 A Yes.

14 Q Thank you. And you would agree that the two
15 driver's licenses that we just looked at from the photos
16 that Agent Palmerton gave you, the two licenses that you
17 referenced in the Hart Construction summary, they have
18 different pictures of the people; correct?

19 A Yes.

20 Q And was the fact that the two driver's licenses
21 with the same name having two different pictures on them,
22 was that fact part of that summary that you provided?

23 A I don't recall the summary. Do you have the
24 summary? Can you show me the summary?

25 Q Well, would you be able to produce it to the

1 defense? We haven't seen it. I would be happy to show
2 it to you if you provided us with a copy?

3 A I haven't looked at those summaries since I
4 submitted them. I don't know how I referenced them in
5 the summary.

6 Q Do you agree that seeing the summary would be
7 helpful to you to answer this question?

8 A Yes.

9 MR. KEOUGH: Your Honor, we would ask that a copy
10 be produced, or, if the government has a copy with them
11 now, we can provide it to the witness.

12 THE COURT: What is the significance?

13 MR. KEOUGH: The significance, your Honor, is that
14 the declaration states that the two licenses were
15 mentioned in the summary or the fact that there were two
16 copies of a license in the summary were mentioned, and we
17 would like to establish that, in fact, they bore two
18 different pictures which was one of the most powerful
19 piece of evidence that was seized from the phone,
20 something that is omitted from the declaration.

21 THE COURT: You already know that two likenesses
22 of the same person were found?

23 MR. KEOUGH: Yes, your Honor. But the question
24 that we have asked is whether or not the fact that the
25 pictures are different, if that was part of the summary

1 that was prepared, beyond just the fact that there were
2 two licenses.

3 THE COURT: But if he -- do you know the answer to
4 that?

5 THE WITNESS: I think I can recall. I just note
6 that there were the two licenses on the phone. I don't
7 think I describe anything about the licenses.

8 THE COURT: Do you have the summary here? What
9 does it say?

10 MS. WESTFAHL KONG: Could AUSA Faerstein approach
11 to help us find it?

12 MR. KEOUGH: Just for the record, attorneys for
13 government at the table I believe were trying to figure
14 out what this summary is so that we can show it to the
15 witness.

16 I think that is what they are trying to figure
17 out. And, your Honor, we request a copy of the document
18 that the government is reviewing now.

19 THE COURT: I would like to see it first.

20 MR. O'DONNELL: Sorry, your Honor. I can't hear
21 you?

22 THE COURT: I would like to see it first.

23 MR. O'DONNELL: Yes, your Honor.

24 THE COURT: Hand it up. While you are at it, I
25 would also like to see that exhibit that was mentioned

1 this morning. I think it was the e-mail in the Palmerton
2 affidavit.

3 MR. KEOUGH: Is your Honor referring to the cover
4 e-mail to exhibit O?

5 THE COURT: What?

6 MR. KEOUGH: The April 27th e-mail with the text
7 messages?

8 THE COURT: I am referring to what was referenced
9 this morning which was part of -- it was Exhibit -- I
10 think it was an e-mail in Palmerton's affidavit that was
11 referenced, Paragraph 21, was it. Maybe 26. Maybe
12 paragraph 26.

13 MR. KEOUGH: Yes, your Honor. I see what you are
14 saying here.

15 THE COURT: Okay. Just let me see it.

16 MR. O'DONNELL: Your Honor, we don't have that
17 e-mail now. We will look for it and try to get a copy
18 for the court, but we have a copy of the summary that we
19 discussed. We have highlighted the portion.

20 THE COURT: Yes.

21 MR. O'DONNELL: May I approach?

22 THE COURT: And get me the other thing quickly.

23 MR. KEOUGH: And, your Honor, we request that a
24 copy of this also be provided to the defense.

25 THE COURT: I have handed up to me what is called

1 "Working Draft for Superseding Indictment."

2 Is this what you prepared?

3 THE WITNESS: If it is -- if it says Hart
4 Construction on top, yes. The format looks familiar.

5 THE COURT: Why is it undated? Does not have a
6 date on it. There is no date on this. How does this
7 relate to the prosecution memo that was submitted? What
8 is this document?

9 MR. O'DONNELL: AUSA Faerstein testified that this
10 was a summary that was provided to him when he joined the
11 case by the agents summarizing evidence. It is not the
12 actual working draft of the superseding indictment. That
13 is a little misleading. What it is meant to suggest is
14 this is a summary to be used to help prepare the working
15 draft for the superseding indictment. So this is a
16 summary of facts provided by agents.

17 THE COURT: How does this compare to the actual
18 prosecution memo?

19 MR. O'DONNELL: It is a completely different
20 document. This was prepared at the request of the AUSA
21 from the agents.

22 THE COURT: I am going to mark this as whatever
23 the court's number is, Exhibit 1, I guess. And the
24 government has already tabbed for you the part that you
25 may think relevant.

1 MR. KEOUGH: May I approach, your Honor?

2 MR. CIPOLLETTI: Your Honor, Mr. Faerstein is
3 going to attempt to connect his computer to the Internet
4 downstairs and get a copy of the e-mail.

5 MR. O'DONNELL: Your Honor, I just want to lodge
6 an objection based on work product. This was prepared at
7 the direction of attorneys.

8 THE COURT: I am just -- I don't think there is a
9 work product issue here. We are in a different format.
10 But, in any event, look at that part that was highlighted
11 by the government.

12 MR. KEOUGH: Your Honor, could I just have a
13 second to confer with my co-counsel?

14 THE COURT: Yes.

15 (Counsel confer.)

16 THE COURT: The part that is relevant, I gave you.
17 Don't look through the rest of it, and return it to
18 the -- that part of it can be marked as an exhibit. The
19 rest of it should be returned to the government.

20 MR. KEOUGH: With your Honor's permission just
21 because there is only one copy, if I could just put it on
22 the Elmo.

23 THE COURT: Read it to him. Why does everybody
24 have to see things? Can't people understand a sentence?
25 There is only a couple of sentences.

1 MR. KEOUGH: Yes, your Honor.

2 Q So, Agent Clark, I have what is in front of me that
3 has been marked Court's Exhibit 1, a document that the
4 government handed up just now, and the title says
5 "Working Draft for Superseding Indictment, Heart
6 Construction, PPP loan, Celtic Bank, 4363847301."

7 Does that sound familiar?

8 THE COURT: How can that sound familiar to him? I
9 mean, come on. You don't want to ask a question like
10 that.

11 MR. KEOUGH: I apologize, your Honor. That was a
12 bad question.

13 Q Agent Clark, the Court showed you this document.

14 THE COURT: He knows it. He saw it. He says that
15 is the one he prepared. So let's turn to what you think
16 is relevant.

17 Q BY MR. KEOUGH: On page 5 of the document, I will
18 read it to you so you can hear what it says. It says,
19 "during a CBP stop in Miami Florida, four Florida debit
20 cards in the name of Iullia Zhadko which included one in
21 the name of Top Quality Contracting in the possession of
22 Richard Ayvazyan, two different photos of a California
23 driver's license, C8924483 was observed on Richard
24 Ayvazyan's phone. DL C8924483 does not exist in
25 California DMV records."

1 And my question for you, Agent Clark, is the
2 reference to two different photos of the driver's license
3 that I just read to you from this document, are those the
4 two photos that we saw here from the 65 provided to you
5 by Agent Palmerton?

6 A Yes.

7 MR. KEOUGH: Okay. Thank you. And, your Honor,
8 you would like us to return this to the government.

9 THE COURT: Yes.

10 MR. KEOUGH: Thank you.

11 Q Okay. Now, returning to the 65 photos that we just
12 discussed, two of those photos also included references
13 to someone named Olaf Lansgaard.

14 Do you recall that?

15 A The photo of Olaf Lansgaard, no, I don't.

16 Q So we are here in KX1 which is the 65 photos, and
17 if we can go to PDF, page 37. And you see image 37A
18 which is depicted here which was part of the set of 65
19 photos from the Miami phones is a picture of what appears
20 to be a website or web search and the first entry there
21 says Olaf Lansgaard obituary.

22 Do you see that?

23 A Yes.

24 Q And Olaf Lansgaard, you recall was an attorney who
25 we will say whose name was involved in some of the real

1 estate transactions in this case; correct?

2 A Yes. He is on the e-mail indicating he is the
3 attorney for the purchase of the property.

4 Q And do you recall which property specifically?

5 A I think, well, there is the Calle La Primavera.
6 There is the Anastasia and the Imperial.

7 Q And fair to say that Mr. Lansgaard died in 2019;
8 correct?

9 A April 23rd, I believe, 2019.

10 Q And if we look closely here at image 37A, we can
11 actually see that here on that first line. It says
12 May 2nd, 2019, Olaf Lansgaard of Rosamond, CA, passed
13 away on April 23rd, 2019.

14 A Yes.

15 Q And fair to say that the person that had this phone
16 whoever completed this web search also had that
17 information in front of them too?

18 A I don't know who had the phone.

19 Q But whoever had this phone and did this web search
20 would have seen this; right? That is what the photo
21 shows?

22 A Is there a question?

23 Q You would agree with that; right? That whoever had
24 this phone and performed that web search, they saw that
25 Olaf Lansgaard was dead.

1 A It is a photo of that web search.

2 Q Including an obituary for Olaf Lansgaard --
3 correct -- as one of the first hits?

4 A I don't know if that is an obituary that is from
5 some other website.

6 Q The fact that he passed away on April 23rd, 2019,
7 is right there in the photo; correct?

8 THE COURT: Why are you asking him whether someone
9 who saw this would have noticed it?

10 MR. KEOUGH: The question is whether or not seeing
11 these photos informed Agent Clark that the person who
12 possessed the phone which, here, is the defendant had
13 this information about Olaf Lansgaard's death in front of
14 them.

15 THE COURT: Whether Richard Ayvazyan had the
16 information in front of him?

17 MR. KEOUGH: Correct, your Honor.

18 THE COURT: So you are asking did he make that
19 connection when he saw what you are referencing and
20 Richard Ayvazyan?

21 MR. KEOUGH: Yes, your Honor. Or if he would
22 agree with me that Olaf Lansgaard's death is noted here
23 in the image.

24 THE COURT: Well, I mean, it is. Isn't it there?

25 MR. KEOUGH: That is the question, your Honor. If

1 the witness would answer, I think we can move on to the
2 next.

3 THE COURT: It is there right? It is on the
4 screen. Is that what you saw?

5 THE WITNESS: I don't recall seeing that.

6 THE COURT: I see. So what exactly, again, are
7 you referencing? What is this?

8 Q BY MR. KEOUGH: Agent Clark, you did review the 65
9 photographs from Agent Palmerton?

10 A Yes.

11 THE COURT: Is this one of the 65 photographs?

12 MR. KEOUGH: Yes, your Honor. This screen shot of
13 a web search for the obituary.

14 THE COURT: That is on the 65 photos?

15 MR. KEOUGH: Correct, your Honor.

16 THE COURT: Well, if he reviewed them, then he
17 probably saw it. Whether he remembers it or not is
18 another question. But if he says he saw them, and it is
19 there, he saw them.

20 MR. KEOUGH: Thank you, your Honor.

21 Q As part of your investigation, you reviewed escrow
22 files; correct?

23 A Correct.

24 Q And as you testified just now you recall reviewing
25 escrow files that had Olaf Lansgaard's name on them?

1 A Correct.

2 Q And did the escrow files themselves indicate
3 whether or not Olaf Lansgaard was alive or dead?

4 A Not that I recall.

5 Q And if we could pull up KX28.

6 A Could I correct that, your Honor?

7 THE COURT: All right. What were you going to
8 say?

9 THE WITNESS: The author of the e-mails indicated
10 Olaf Lansgaard was basically alive, that he is my
11 attorney and he will be reviewing these documents.

12 THE COURT: That was in the escrow?

13 THE WITNESS: Yes. Several.

14 Q BY MR. KEOUGH: But, fair to say, that escrow
15 records didn't inform you that he was dead?

16 A They didn't say he was dead.

17 Q And if the escrow records didn't do that, how did
18 you learn that Olaf Lansgaard had died?

19 A I had done some investigative steps. I know I
20 talked to his legal assistant.

21 Q And so your testimony is that not before you talked
22 to the legal assistant, you would have learned that he
23 had passed away?

24 A I believe I learned that he had passed away before
25 that. I just don't know how.

1 Q Did you learn from the 65 photographs that Olaf
2 Lansgaard had died?

3 A I don't recall that from that, that he had died.

4 Q Or did somebody else who had reviewed the 65
5 photographs tell you that Olaf Lansgaard was dead?

6 A I don't recall somebody telling me that he died.

7 Q So what we have here is KX28 which do you recognize
8 this as a memorandum of interview that you conducted?

9 A Yes.

10 Q And this is the legal assistant to Olaf Lansgaard
11 the one you just referenced; correct?

12 A Yes.

13 Q Interview took place in February, 2021?

14 A Yes.

15 Q And in the memorandum of interview, it says let me
16 just blow up that first paragraph so you can see it
17 clearly. It says that Gamero, the legal assistant,
18 acknowledged that she had received a call from Cecilia
19 Fisher, Olaf Lansgaard's sister, requesting her to
20 contact Special Agent Clark -- that is you -- about her
21 employment with Lansgaard; correct?

22 A Yes.

23 Q So, based on this, is it fair to say that you
24 reached out to his sister first and then learned the
25 identity of his legal assistant?

1 A I don't recall how I learned, but I reached out to
2 his sister who was a trustee for him.

3 Q And, then, it looks like the sister asked the legal
4 assistant to contact you so that you could speak to her?

5 MR. O'DONNELL: Objection as to asking about what
6 appears to be from the interview report. He can ask the
7 witness what he recalls.

8 THE COURT: All right. Ask it in that form.

9 MR. KEOUGH: Sure.

10 Q So do you recall whether or not when you reached
11 out to Olaf Langsgaard's sister she said that she would
12 call or ask the legal assistant to call you?

13 A Yes.

14 Q And I take it that the legal assistant did call
15 you?

16 A No, she did not.

17 Q How did this interview then come about?

18 A I performed some investigative steps and determined
19 who the legal assistant was.

20 Q After you had spoken to the sister?

21 A Correct.

22 Q And then, as a result, this interview occurred?

23 A Correct.

24 Q If we could just pull up your declaration, and if
25 we could go to the third page. So if we could just blow

1 up paragraph 16. And I won't go through all of this with
2 you because it is here in your declaration. I just have
3 one question.

4 So paragraph 16, as you can see here,
5 describes at least your attempts to review a Cellebrite
6 for a phone 1B123. And from the investigation you are
7 aware that 1B123 is the phone that was registered to
8 Iullia Zhadko?

9 A Yes.

10 Q And towards the bottom, four lines from the bottom,
11 it says I also recall a video of Richard Ayvazyan's face.

12 You see that there?

13 A Yes.

14 Q So, first of all, you recall the video that you saw
15 on the phone that you released from the Cellebrite
16 report?

17 A Yeah, it was --

18 Q And do you recall whether or not you shared the
19 fact that that video was on the phone with any other
20 member of the investigation team?

21 A I am sure I shared it with somebody. I am sure I
22 shared it with somebody, yes.

23 Q Specifically, do you recall if you shared it with,
24 say, Agent Massino?

25 A No.

1 Q No, you didn't share, or, no, you don't recall?

2 A I don't recall.

3 Q Do you recall if you shared it with Mr. Fenton?

4 A I don't recall.

5 Q If we could go back up to the first page. So the
6 first page you say that you based the declaration on your
7 personal investigative actions related to two phones
8 1B123 which we just talked about and 1B126.

9 You see that?

10 A Yes.

11 Q And you would agree 1B126 is the phone that was
12 registered to Victoria Kauichko, one of the Miami phones?

13 A That is my understanding.

14 Q Now, I just want to ask you about the other three
15 phones that were seized in Miami which weren't mentioned
16 in your declaration, and I just want to know if you
17 reviewed the Cellebrites and you can tell me "yes" or
18 "no".

19 So the first phone is 1B4 which is a phone
20 associated with an account for Anton Kudamov.

21 Do you recall reviewing the Cellebrite for
22 that phone?

23 A That file was -- I couldn't download it.

24 Q And so you personally didn't review that
25 Cellebrite?

1 A Correct.

2 Q Okay. Do you know if anybody on the investigation
3 team shared information from that Cellebrite phone, 1B4,
4 with you?

5 A No.

6 Q No, they didn't share, or, no, you don't know?

7 A I don't know if any information from that phone was
8 shared with me.

9 Q Okay. The next phone is 1B124 which is the phone
10 associated with Mary Terabelian that was seized in Miami.
11 Same question, did you review the Cellebrite for 1B124?

12 A No.

13 Q Do you recall whether anyone on the investigation
14 team shared information from 1B124 with you?

15 A No.

16 Q No, you don't recall?

17 A I don't know. No, I do not.

18 Q Okay. And the last phone is 1B125 which was a
19 phone associated with Richard Ayvazyan that was seized in
20 Miami. Did you review the Cellebrite for that phone?

21 A No.

22 Q And fair to say that you can't recall if anybody
23 shared information from that phone's Cellebrite with you?

24 A Correct.

25 MR. KEOUGH: No further questions, your Honor.

1 THE COURT: Anything else?

2 MR. LITTRELL: No, your Honor.

3 THE COURT: Thank you, sir. Step down. Okay.

4 What time is it now?

5 THE CLERK: 2:53.

6 THE COURT: Let's take a short recess, and here is
7 what I would like to hear. We have already had well over
8 a hundred pages of briefs, and the court is very familiar
9 with the evidence in the case and the arguments. But I
10 would like to hear briefly, and I mean very briefly, from
11 the parties regarding the bullet points.

12 What is the -- what is the takeaway from this
13 hearing, and I guess, more pointedly, what was developed
14 at the hearing that modifies or is different than what
15 was argued in the pleadings. In other words, what
16 different view of the case should the court consider in
17 light of what was presented today beyond that which was
18 argued in extensive briefing. And when I say summary, I
19 mean summary.

20 And don't engage in hyperbole. It won't be
21 helpful. I am trying to take a very analytical approach
22 to this issue as I should, and, especially in the
23 defendant's briefs, they spent an awful lot of time
24 engaging in hyperbole. It is not that the arguments are
25 not clear, but it isn't helpful.

1 So this is your opportunity to to make your
2 most important points and don't dwell on something less
3 important or what is understood. Okay. I will give you
4 a little time to think about that.

5 MR. RAM: Your Honor, the defense was planning on
6 submitting post hearing briefing.

7 THE COURT: I don't want post hearing briefs. I
8 feel I am adequately prepared, and this is an opportunity
9 to do what I just said. So I will give you some time to
10 think about it, and then we will hear argument.

11 (Recess from 2:57 to 3:25 p.m.)

12 THE COURT: Okay. I will first hear from the
13 defendants.

14 MR. LITTRELL: Thank you, your Honor.

15 I intend to tailor my remarks to the court's
16 admonition you want to hear the bullet points and the
17 take aways.

18 THE COURT: Yes.

19 MR. LITTRELL: Here is the takeaway, and this is
20 with respect to Mary Terabelian. Prior to October 20th,
21 2020, the government knew very little about her. The
22 investigation up to that point was focused on the flow of
23 funds, tracing funds from loans to bank accounts to real
24 estate. It is true that some of that money flowed
25 through Mary Terabelian's bank account, but it was only

1 momentarily and it was clearly at the direction of her
2 husband and not her.

3 She had a prior conviction with her husband in
4 2012, but that had nothing do with this case and had
5 nothing to do with Victoria Kauichko which is the
6 identity they were later going to say she used and
7 controlled.

8 That was essentially the sum total of what
9 they knew about Mary Terabelian. After October 20th,
10 2020, they were exposed to a tremendous and powerful
11 source of information about who she was, what her role
12 was, and it was evidence that was far more compelling
13 than anything that they had before that.

14 That exposure came in at least four ways:
15 First, it came when the CBP orally conveyed to most of
16 the important players from the prosecution that Mary
17 Terabelian possessed a phone in which she appeared to be
18 using and controlling the identity of Victoria Kauichko.
19 Now, note, that this was an identity, a synthetic
20 identity that the government knew about, but they did not
21 know who controlled it.

22 And, in fact, if there was any evidence about
23 who controlled it, it pointed elsewhere not to Mary
24 Terabelian, but when they got that call from CBP and they
25 learned that Mary Terabelian had text messages in which

1 she was using and controlling that identity, that pretty
2 decisively pinned that synthetic identity to her.

3 That was followed by a couple of more sources.
4 Photographs taken from the actual phone, and the ones
5 that I focus on and I think are most important here are
6 the 141 photographs taken by CBP. That was revealed to
7 the prosecution team on or about February 2nd, 2021 which
8 was months before trial and with plenty of time to make
9 use of that information. Just about every member of the
10 prosecution team has admitted that they saw those
11 photographs, that they looked at them carefully.

12 Those photographs not only -- the text message
13 on the phone not only showed that she was using that
14 identity, but that she was communicating with her husband
15 Rich Ayvazian about it. It also showed that she was
16 making purchases from Picadilly Jewelers. It also showed
17 that she had the personal identifying information for
18 Victoria Kauichko including her Social Security number,
19 her address and other information. And, in fact, it
20 showed that she was, in fact, using that identity which
21 was the government's theory of the case.

22 Every witness in this case essentially
23 confirmed that the government saw and relied on that
24 information. And, in fact, Justin Palmerton was candid,
25 and what he said was the government's theory that Mary

1 Terabelian was using and controlling the idea of Victoria
2 Kauichko was formed based on the messages that they saw
3 on that tainted phone.

4 The only witness that refused to acknowledge
5 that was Chris Fenton, and I want to talk about his
6 testimony in a moment.

7 We know that every member of the prosecution
8 team saw these text messages and photographs. We know
9 that they used them. It was their burden to establish
10 that these images which as I said far more important and
11 powerful than anything the government had prior to that
12 point affected no part of their trial preparation, no
13 part of their investigative strategy, did not inform any
14 leads, the questioning of any witnesses and the formation
15 of arguments in closing.

16 We saw at least a couple of examples just
17 right here in the last two days of them doing that. For
18 example, when Mr. Fenton reached out to the owner of
19 Picadilly Jewelers after having subpoenaed him for
20 records he was able to determine that that response was
21 incomplete because he had already seen communications
22 between Mary Terabelian and the owner of Picadilly
23 Jewelers. And that is what allowed him to follow up and
24 specifically refer to the tainted messages on the phone
25 in pressuring them to give him more. That is a use.

1 That is a direct use of the tainted information.

2 We also know that after the government found
3 pictures of Nazar Terabelian's credit card on Mary
4 Terabelian's phone, they then added a charge of
5 aggravated identity theft against Mary Terabelian which
6 did not appear in the indictment that preceded that.

7 We also know that when we approached the
8 government to discuss a plea, they specifically repeated
9 back information they could only have gotten from that
10 tainted phone, information that she and Richard were,
11 quote, like Bonnie and Clyde, two peas in a pod. There
12 was no evidence to support that theory prior to that.
13 All Christopher Fenton says is that Ms. Terabelian is
14 actually going around spending money as Victoria
15 Kauichko. Again, no evidence for that position other
16 than what is in the phone.

17 So it is really crystal clear that this -- the
18 contents of that phone affected every stage of their
19 preparation, both the decisions they made about witnesses
20 to interview, how they interviewed those witnesses, what
21 arguments to make, the refusal to plea bargain with us,
22 it was very clear that it was based on the contents of
23 that phone.

24 Now, it is their burden to establish that that
25 is not true, and their burden is by a preponderance of

1 the evidence. But they have to establish that for every
2 use of that evidence that followed their exposure. Any
3 ambiguity in this respect has to be interpreted in favor
4 of the defense and against the government.

5 So the very fact that it took well over a
6 hundred pages of briefing to discuss this issue is pretty
7 strong evidence that it is a burden they can't overcome.
8 The fact that we were here for two days talking about use
9 after use, derivative use after derivative use is pretty
10 strong evidence that they cannot overcome that burden,
11 but, again, it is their burden.

12 But I think a clue to what they fail is they
13 don't really acknowledge that they have the burden. You
14 heard Catherine Ahn testify that when they all got
15 together to discuss what they were going to do about this
16 issue, the only questions they asked were did you use
17 this information in front of the grand jury and did you
18 use this information at trial. And once they answered
19 those questions in the negative, they decided that they
20 didn't really have to do anything more.

21 So, now, here we are two months later and they
22 are attempting to reverse engineer the situation and now
23 say that they can recall not using this evidence to
24 develop leads or interview witnesses, and it is just not
25 credible.

1 And so I think the easiest and the best way
2 for the court to decide this is to decide it based on the
3 declarations. They have admitted that they were all
4 exposed extensively. They have admitted that they all
5 used the information at various stages of the trial. I
6 think the most powerful evidence is that Mr. Fenton who
7 was the lead prosecutor from the beginning used this
8 since the very beginning.

9 So, really, the only reason for a hearing is
10 to challenge their generalized denials, and, if you look
11 in the case law, the cases are pretty clear that making a
12 generic denial along the lines of we didn't develop any
13 leads based on that evidence, that doesn't really count
14 for anything at all. The whole purpose of this hearing,
15 however, was to refute their claims, their generic claims
16 that they didn't develop any leads.

17 And I want to say most of the witnesses that
18 testified were largely credible, and they are advocates
19 and they want to win but they were pretty straight with
20 the Court. Mr. Fenton was an exception. He was from the
21 beginning of his testimony evasive, defensive, not
22 credible. He refused to accept propositions of fact that
23 were plain to everybody else in the room. He refused to
24 accept that, as a fraud prosecutor, that it would be
25 important to him to find text messages between his two

1 main subjects talking about the subject of the fraud.

2 And, remember, this is a case in which prior
3 to that, there was no evidence tying Mary Terabelian to
4 Victoria Kauichko other than the flow of funds. If you
5 recall when I tried to ask Mr. Fenton what the government
6 knew prior to to October 20th, he went on a long
7 discussion about all of his thoughts and theories and
8 suppositions about what he thought might be there, but
9 his testimony in the end was no different from
10 Palmerton's in substance. They really didn't have
11 anything other than the flow of funds and the prior
12 conviction.

13 You can hold it against the government and you
14 should that Mr. Fenton refused to acknowledge the
15 importance of these text messages, refused and persisted
16 in an incredible position that these were cumulative to
17 what he already had. Anybody who is a prosecutor or
18 investigator or really with common sense knows that that
19 is not true. Now, he is an advocate, and the government
20 worked very, very hard to bring this case and it was an
21 important case. And they have every right to take
22 aggressive positions as advocates, but it is different
23 when you get on the stand as a witness and you take an
24 oath to tell the truth. And that is not what Mr. Fenton
25 did.

1 This case is going to turn on what is the
2 standard of proof, and the parties have very different
3 versions of what that should be. But there is no
4 standard of proof that you can meet if you can't tell the
5 truth in a federal court.

6 So I would submit that this court should
7 decide this on the pleadings which I think are decisive
8 in the favor of the defense. But to the extent that
9 there is any debate about what the standard is or whether
10 it has been met, the government loses by default because
11 its lead prosecutor didn't tell the Court the truth.

12 THE COURT: Thank you, Mr. Littrell.

13 The way I want to do this is get a response
14 from the government with each argument. That way I can
15 process it better.

16 MR. FENTON: Thank you, your Honor.

17 At the start of the hearing, the Court asked
18 the parties to focus on credibility, and, largely, the
19 parties did not. They did not develop any evidence on
20 cross undermining the credibility of any of the
21 witnesses. The only witness that Mr. Littrell challenges
22 the credibility of is myself.

23 And I would contend two things that are
24 extremely important to evaluating my personal
25 credibility. One would be the corroborating evidence

1 that is submitted in connection with my declaration
2 which, after review of my e-mails and a refreshing of my
3 recollection, tracks, traces in painstaking detail the
4 chronology of the investigation up to and including
5 October 19th and 20th and then beyond to show how we
6 developed evidence for the trial.

7 And, in a moment, I will go through some of
8 the specific evidence that I think showed that we
9 believed that Mary Terabelian was involved, that she
10 should be charged, all before the border stop and
11 additional evidence that showed that she specifically
12 used the Victoria Kauichko identity.

13 But the second thing I will say is that
14 Mr. Littrell made some very serious allegations with
15 respect to matters about which he does not know. Some of
16 the things that he challenged me on credibility grounds
17 are things that the Court requested that the government
18 submit evidence in camera to support. There are
19 specifically two things that Mr. Littrell found to be
20 incredible. One --

21 THE COURT: One minute. Are you now referring to
22 things that were submitted in camera?

23 RIGHT1: Yes, your Honor, but I am not going to
24 refer specifically to the --

25 THE COURT: Well, should the Court unseal those

1 now?

2 MR. FENTON: Your Honor, the government would have
3 no objection to the Court unsealing that evidence.

4 THE COURT: Well, I mean in light of what has
5 developed, it seems fairness would dictate that that be
6 done. So turn those documents over to the defense, and I
7 will allow Mr. Littrell to make an additional argument
8 once he has seen it.

9 Identify what we are turning over now. What
10 are we turning over for the record?

11 MR. FENTON: So we are turning over two sets of
12 documents, the first set of documents are documents that
13 relate to when the government discovered that Nazar
14 Terabelian, Marietta Terabelian's father, was deceased.
15 The government, I testified on the witness stand that I
16 learned on October 22nd. Mr. Littrell deemed that a
17 coincidence, quote, unquote, challenging my credibility
18 and suggesting that, in reality, I learned when I
19 received a copy of CBP reports on October 23rd. The
20 evidence submitted to the Court demonstrates that my
21 representation to the court was 100 percent truthful and
22 accurate.

23 THE COURT: Well, what document that was in camera
24 has now been unsealed and turned over to Mr. Littrell?

25 MR. FENTON: So we have turned over three e-mails.

1 THE COURT: I mean, were they identified in the in
2 camera submission? Maybe that is the best way.

3 MR. FENTON: So there are three e-mails identified
4 in the in camera submission on pages 63, 64 and 65.

5 THE COURT: Of the in camera submission?

6 MR. FENTON: That's right.

7 THE COURT: What date was that in camera
8 submission?

9 MR. FENTON: It was yesterday evening in response
10 to the Court's order yesterday afternoon, the government
11 compiled the material requested and submitted it in
12 camera.

13 THE COURT: I see.

14 MR. FENTON: So there are three e-mails that
15 specifically corroborate my testimony to the court.

16 THE COURT: They corroborate that you knew about
17 Terabelian's father passing away on October 22nd not
18 23rd.

19 RIGHT1: That's correct, your Honor.

20 THE COURT: And what is it in those documents that
21 makes your point?

22 MR. FENTON: So if you look at the documents,
23 there is an e-mail from agent Palmerton.

24 THE COURT: Do this slowly because I don't have it
25 before me.

1 MR. FENTON: I can hand a copy up, your Honor.

2 THE COURT: Hand a copy up.

3 Page 64, you said.

4 MR. FENTON: It is on page 63 out of 65.

5 THE COURT: Just give me a minute to read it.

6 MR. FENTON: Yes, your Honor.

7 (Pause in proceedings.)

8 THE COURT: Mr. Littrell, if you wish to argue
9 further in light of that document, I will allow you to
10 briefly do so, and then I will turn it over to Mr. Fenton
11 to continue his argument.

12 MR. LITTRELL: Sure.

13 THE COURT: You can sit down for a minute,
14 Mr. Fenton.

15 MR. LITTRELL: Just to be clear, I think his
16 testimony was incredible in a number of respects not just
17 this one, but I will say this: I haven't had a chance to
18 look at these e-mails so I don't really know. What I do
19 see is an e-mail that he apparently received from
20 Palmerton talking about -- he asks the question on
21 October 22nd when did Nazar die. I think that still begs
22 the question of how did he learn that Nazar died which I
23 think the only real explanation is he got it from the
24 phone. So he still hasn't explained how he learned it.

25 THE COURT: I want to hear your explanation, and

1 your colleague has just stood up. He must have something
2 to say to you.

3 MR. LITTRELL: He makes a good point that the
4 purpose of the e-mails was to prove that Mr. Fenton
5 learned via e-mail, and they certainly don't prove that.
6 In fact, the first e-mail is a question when did Nazar
7 die from Mr. Fenton suggesting he learned it some other
8 way other than by e-mail. I see him nodding his head. I
9 think he learned it from Mr. Palmerton who learned it
10 from tainted evidence.

11 THE COURT: I wanted to give you an opportunity to
12 make your comment about it because you didn't have it
13 when you argued. Now, I am going to turn back to
14 Mr. Fenton.

15 MR. FENTON: Your Honor, the e-mails that we
16 present are in chronological order. There are three.
17 The first is from Agent Palmerton and Agent Massino
18 copying me. It is at 7:42 p.m., Eastern time. In that
19 e-mail, it is noted that Nazar Terabelian is one of the
20 individuals who was related to Marietta Terabelian, and
21 we were concerned, we were looking at this for the
22 purpose of detention to determine who might post bond.

23 In that e-mail, it is noted that Marietta's
24 father is deceased, and that is right at line 5 on that
25 e-mail. The e-mail that Mr. Littrell refers to where I

1 say when did Nazar Terabelian die was then sent
2 three-and-a-half or three hours and 45 minutes later at
3 10:59 p.m., Eastern time, which means that the question
4 that I was asking was in response to information that I
5 had received hours earlier from the agents. These three
6 e-mails definitively respond to the question and the
7 credibility challenge made by Mr. Littrell.

8 THE COURT: Mr. Littrell says that it may respond
9 to one instance of his position, but there are others so
10 this is your opportunity to argue the response to what
11 Mr. Littrell argued.

12 MR. FENTON: Yes, your Honor. And I think the
13 second challenge that Mr. Littrell makes is really based
14 around my account of the events on the evening of
15 October 19th and into the morning of October 20th when we
16 were making the decision as to whether or not to effect a
17 probable cause arrest on Marietta Terabelian based on the
18 evidence known to us at that time.

19 Mr. Littrell makes the argument that my
20 testimony is incredible because what it shows is that at
21 the time that we made the arrest, I made it based on
22 information learned from the phone, not specific
23 information but generalized accounts presented by CBP
24 officials that there were text messages on the phone
25 suggesting that Ms. Terabelian was using the identity of

1 Victoria Kauichko.

2 In my view, at the time when I made the
3 decision to request permission and authority from my
4 supervisors to effect the probable cause arrest, it was
5 the fact that she was in physical possession of a credit
6 card in the name of Victoria Kauichko which, coupled with
7 all of the evidence that we had learned in the four
8 months prior to that, showed to me that there was more
9 than probable cause that she was part of the conspiracy,
10 period, working with her husband as she had back in 2012
11 to commit loan fraud and, second, that she was using
12 specifically that identity.

13 It was the physical possession of that credit
14 card. Yesterday evening, we submitted 63 pages of
15 e-mails that walk through in painstaking detail the
16 events of that evening and my correspondence both with my
17 colleague AUSA Julian Andre, my supervisors Brian Kidd,
18 Rush Atkinson, Henry Van Dyke and others, Julian Andre's
19 communications with his supervisor and our communications
20 with the local AUSAs in the Southern District of Florida
21 who asked us to, among other things, articulate the basis
22 for probable cause to support the arrests because they
23 were going to have to get authorization in the middle of
24 the night effectively.

25 If you look at page 45 of 65, there is an

1 e-mail from me to Kirin Bhat, B-H-A-T. Kirin Bhat is an
2 AUSA in the Southern District of Florida. That e-mail
3 was sent by me at 12:23 a.m., 23 minutes after midnight
4 on October 20th. In that e-mail, I explain that one of
5 the reasons that -- I articulate the basis for probable
6 cause so we can obtain authorization from that AUSA to
7 effect the probable cause arrest in his district, and I
8 explained that Terabelian was found to be in possession
9 of contraband including credit cards in the name of
10 Victoria Kauichko. There is no mention with respect to
11 the phones belonging to Marietta Terabelian.

12 And as I explain when I was on the witness
13 stand, my understanding at the time, my recollection of
14 that evening was that the first piece of information that
15 was learned was that they were in physical possession of
16 these credit cards, number one, and, number two, that
17 they were doing, they were conducting manual searches of
18 these phones. And there were many phones as your Honor
19 recalls. There were five.

20 And they were working through those phones,
21 and, at this point in time when I wrote this e-mail, my
22 focus was on the physical possession of the credit card
23 that was in the name of Victoria Kauichko that was on
24 Marietta Terabelian's person.

25 This corroborates my testimony as does the

1 testimony that Special Agent Palmerton provided earlier
2 this morning. So I think, for all of these reasons,
3 there is no reason to question my credibility.

4 What the issue that Mr. Littrell effectively
5 has is one of argument, not credibility but of argument.
6 What matters more to a fraud prosecutor: The physical
7 possession of a credit card in the name of another
8 individual who has taken out fraudulent loans and then
9 used that money to buy things for themselves including a
10 home that they live in.

11 THE COURT: Just one minute. You said an
12 individual who is in possession of a credit card in the
13 name of someone who took out fraudulent loans, in other
14 words, the person who took out the fraudulent loans was
15 Kauichko; correct?

16 MR. FENTON: The alias Victoria Kauichko.
17 Correct.

18 THE COURT: So that was the borrower, and, but, go
19 on. You are saying you found the identity of Kauichko on
20 her person.

21 MR. FENTON: Right. So the question, your Honor,
22 is a debate between myself and Mr. Littrell as to what
23 matters more, the physical possession of the credit card
24 or the digital photographs that were on the phone. That
25 is essentially the issue. And what I said when I was on

1 the stand was that they are both good pieces of evidence.
2 They are both great pieces of evidence.

3 But, at the end of the day in my mind, what I
4 learned first and what I still believe is better evidence
5 is the evidence of the physical possession of the credit
6 card.

7 THE COURT: Remind me, who drafted the criminal
8 complaints for the Florida arrest?

9 MR. FENTON: Those complaints were drafted by
10 Special Agent Palmerton and myself and AUSA Julian Andre.

11 THE COURT: Because I did notice in those criminal
12 complaints that in the criminal complaint for Terabelian,
13 there was no mention of the phone recordings, phone
14 e-mails or whatever, but there was mention of the credit
15 card found on her person. With regard to defendant
16 Richard Ayvazyan, the criminal complaint mentioned both
17 the credit cards found and the texts on the phone.

18 MR. FENTON: Your Honor, I do not have a copy of
19 the complaint up here with me. I do believe, your Honor,
20 that it does refer to the text messages that were found,
21 the general allegation about the text messages found on
22 Marietta Terabelian's phone.

23 THE COURT: So on the the criminal complaint, in
24 the criminal complaint, you are saying that Mary
25 Terabelian, you did mention the text messages?

1 MR. FENTON: Yes, your Honor.

2 THE COURT: I must have missed that.

3 MR. FENTON: Yes. And the time table for that was
4 we made the decision to effect the probable cause arrest
5 around 9:30 or 10:00 p.m., Eastern, and then sought
6 authorization from our supervisors and then began
7 drafting the complaint to swear out in the Central
8 District of California around 12:30 or perhaps 1:00 in
9 the morning and then worked through the evening.

10 What we did was we had learned additional
11 information by that time as I had testified on the
12 witness stand, and we included that additional
13 information in the complaint after we learned it.

14 Both pieces of evidence are no doubt good
15 pieces of evidence, even great pieces of evidence, but,
16 in my view, once we had Marietta Terabelian in physical
17 possession of that credit card, we could not allow her to
18 leave without arresting her, and the reason why is
19 two-fold: One, we were afraid of risk of flight; two, we
20 were concerned that she would walk out that door and
21 throw those credit cards in the garbage and we would
22 never see them again and take whatever phone she had and
23 toss them into a river, flush them down a toilet, they
24 would be gone. And then she would go back home and take
25 all the evidence in her house and destroy it. And once

1 she got to jail and made those jail calls, we heard what
2 Marietta Terabelian wanted to do. She did want to have
3 those evidence, the evidence cleaned.

4 THE COURT: All right. Let's just stay with the
5 argument of Mr. Littrell.

6 MR. FENTON: Right. But the point, though, is,
7 your Honor, to the extent that my credibility is in
8 question everything that we produced to the Court last
9 night in camera and Special Agent Palmerton's testimony
10 corroborates everything that I said on the stand, and I
11 think that that is important. That is Mr. Littrell's
12 challenge, and that is the reason why this Kastigar claim
13 should succeed and he has failed.

14 THE COURT: All right.

15 MR. FENTON: In addition to that, I think it is
16 also just important to note that the standard in these
17 cases -- one other point I want to make. The defendants
18 had previously in prior filings weighed the relative
19 value of the possession of a physical credit card versus
20 digital photographs that are on the phone, and, back
21 then, when the defendants were filing these briefs, they
22 were claiming that the physical possession of these
23 credit cards is better evidence than the digital
24 photographs.

25 And they were downplaying the evidence of the

1 digital photographs in a number of different ways
2 including distancing themselves from them and claiming
3 that just because somebody has a phone that contains one
4 or several images amongst thousands that that is not good
5 evidence. So, today, they are telling your Honor that
6 this is it is the best evidence.

7 But when they file ECF No. 329, they told your
8 Honor that that evidence was worse than the physical
9 possession of the credit cards, that that was not good
10 evidence. So I think that that is something that is
11 extremely important when judging the credibility of the
12 position that is taken by the defendants.

13 As a general matter, the question that is
14 before the Court is not whether the government was
15 exposed to this information on the phones. It is whether
16 the government used that information to build the case.

17 And what we have shown through our nine
18 declarations and our two submissions is that the
19 government had substantially completed its investigation
20 by October 19th and that the government had, as early as
21 August, had identified the subjects of the investigation,
22 the defendants, they had identified connections between
23 Richard Ayvazyan and Iullia Zhadko. They followed the
24 money. This has always been a case about following the
25 money and piecing together the bank records, and we did

1 that. And the bank records lead directly to Marietta
2 Terabelian.

3 Setting aside for the moment the idea that
4 Victoria Kauichko is critical, we see money going through
5 fraudulently obtained PPP and EIDL loan money going
6 through her personal bank accounts being used to buy a
7 \$3.25 million mansion on Topeka Drive, and then she buys
8 that house and then she moves into it with her family.
9 That is powerful evidence. She is the sole signatory on
10 that account. That is powerful evidence.

11 THE COURT: Is it powerful evidence that she was
12 part of the loan fraud or powerful evidence that she was
13 Kauichko?

14 MR. FENTON: I think it is powerful evidence that
15 she is part of the conspiracy.

16 THE COURT: Well, what the argument from the
17 defense is is that it is evidence of perhaps her
18 participation in the fraud, but it doesn't show that she
19 is Kauichko. So, and I appreciate your argument about
20 finding the credit card, but that is where things stand.

21 What are you showing me now?

22 MR. FENTON: Well, your Honor, there are two
23 additional things that I would like to direct your
24 Honor's attention to that do prove that link, that
25 further prove that link.

1 THE COURT: What link?

2 MR. FENTON: The link between Marietta Terabelian
3 and Victoria Kauichko.

4 THE COURT: This is prior to October 19th?

5 MR. FENTON: This is prior to October 19th.

6 The first is Government Exhibit 115 that we
7 presented at trial. This shows the flow of funds to the
8 La Calle Primavera home. This is an excerpt from -- this
9 is an excerpt from that exhibit that shows that the
10 Victoria Kauichko money, that Victoria Kauichko is -- the
11 Victoria Kauichko name is being used.

12 THE COURT: It is blurred on my screen. I can't
13 see it. It is not clear.

14 So walk me through this again.

15 MR. FENTON: So, your Honor, this is an example,
16 an excerpt from Government Exhibit 115 at trial that
17 shows the tracing of the fraudulently obtained PPP loan
18 money.

19 Here, and this is just deemphasized for the
20 purpose of this particular version of this excerpt, but I
21 will show you. Here is the PPP loan that was taken out.

22 THE COURT: I see what you are saying. It was
23 walked through Runyan Tax Service, and you have her name
24 under the Runyan Tax Service. And then it goes through
25 part of an escrow at the home, a home that she lived in.

1 So why is her name under the Runyan Tax Service again?

2 MR. FENTON: Because Victoria Kauichko is the sole
3 signatory on this bank account. The money is then -- and
4 if your Honor will indulge me for a moment. The money is
5 then used to purchase this house that is in the name of
6 Iullia Zhadko which is her husband's alias.

7 And this is the Calle La Primavera property,
8 and, in our opening submission at page 6, we explain that
9 on September 15, 2020, Special Agent Palmerton had
10 conducted surveillance on that house. And he realized --
11 he observed a certain vehicle bearing a certain license
12 plate, and he had found by tracking down that license
13 plate that it belonged to Marietta Terabelian's sister,
14 her husband, her ex-husband, and that that car was then
15 driven by her sister.

16 And he also found out on October 7th that
17 Gohar Terabelian was receiving mail at that particular
18 address, and he found that information out from the US
19 Postal Service which shows that she is using -- she is
20 applying for these loans using the Victoria Kauichko
21 money. She is then using it to purchase homes that her
22 family members live in.

23 These are not distant family members. This is
24 her sister. And we have evidence prior to the
25 October 19th stop that money that is being taken out by

1 Victoria Kauichko is being used to purchase things for
2 her sister.

3 THE COURT: Are there other situations like this?

4 MR. FENTON: Yes, your Honor.

5 THE COURT: Just show them to me so I can consider
6 them.

7 MR. FENTON: The second example, and I don't have
8 a demonstrative to put up, but I can briefly explain it
9 to your Honor. The second example is that there is a
10 Bank of America bank records for an account in the name
11 of Runyan Tax Services shows that she was using the
12 fraudulently obtained PPP money to pay for funeral
13 services for that Nazar Terabelian. And these are
14 records that we received on September 30th, 2020,
15 approximately three weeks --

16 THE COURT: And what evidence was there that Nazar
17 Terabelian was her father at that point?

18 MR. FENTON: We knew that he was her father before
19 she stopped at the border. The evidence showing that is
20 the very first e-mail that we submitted to your Honor in
21 the in camera submission last night which lists as one of
22 her known associates, her father.

23 And on the check from the Runyan Tax Service
24 account for which Victoria Kauichko is sole signatory, it
25 says in the memo line Nazar Terabelian. So we have

1 Victoria Kauichko who is the sole signatory using stolen
2 PPP money to purchase things both with respect to her
3 sister, Gohar Terabelian, and her father, Nazar
4 Terabelian.

5 THE COURT: Are there other examples?

6 MR. FENTON: These, your Honor, these are the two
7 examples.

8 THE COURT: Then, you can conclude, or if you have
9 something else to say I will give you the opportunity.

10 MR. FENTON: Yes, your Honor.

11 So I think the five pieces of evidence I think
12 that are really key here that establish the link are the
13 physical possession of the credit card in the name of
14 Victoria Kauichko on October 19th. I think it is the
15 fact that the Victoria Kauichko name is being used to
16 take out stolen PPP loans in the name of Runyan Tax
17 Service and then used to purchase a house for her sister.

18 I think it is the fact that that same money is
19 being used to purchase things in the name of her father.
20 And then also the fact that her personal bank accounts
21 are being used also to launder and spend money, stolen
22 PPP funds to buy herself a mansion along with her
23 husband. That coupled with her 2012 conviction for
24 conspiring with her husband to commit loan fraud is the
25 evidence that we suggest establishes more than sufficient

1 for probable cause to effect that arrest.

2 THE COURT: Very, very briefly.

3 MR. LITTRELL: Yes, your Honor, very brief.

4 THE COURT: Because this could go on, you know,
5 forever. And just I am getting a good review here. So
6 unless there is something that you think is important.

7 MR. LITTRELL: I just want to respond very briefly
8 to the point that he made. First of all, it is easy on
9 the issue of credibility. When I say there is
10 credibility problems with Mr. Fenton, it is not simply
11 because of a couple of isolated incidents. It is his
12 demeanor, his refusal to acknowledge obvious facts. And
13 what he has done is he submitted e-mails to the Court
14 which I had never seen to challenge two discrete
15 challenges to his credibility. Note how when I argued to
16 the Court that he wasn't credible --

17 THE COURT: You have now seen them.

18 MR. LITTRELL: I have actually not had a chance.
19 It is 65 pages. The point is this --

20 THE COURT: I read them. They were only a line,
21 page 63, -4 and -5.

22 MR. LITTRELL: I did read that one line, but it is
23 hard to figure out the import of it.

24 THE COURT: Why is it hard? It is one sentence in
25 an e-mail. I don't understand that, Mr. Littrell.

1 MR. LITTRELL: The court may well be right. My
2 point is this: I challenged him on a number of points.
3 I found some of his answers not persuasive. It is
4 entirely possible I am wrong. That is what
5 cross-examination is all about. It is entirely possible
6 those e-mails will show that some of my challenges were
7 misdirected. However, the overall refusal to acknowledge
8 what he was planning and argued in his answers goes to
9 his credibility and that stands.

10 Now, what he said was -- and I also would say
11 that if he was so confident in his recollection, why did
12 he talk to Special Agent Palmerton before his testimony
13 to get their stories straight?

14 THE COURT: What point are you referring to?

15 MR. LITTRELL: Special Agent Palmerton mentioned
16 that Mr. Fenton actually reached out to him to see what
17 Mr. Palmerton's recollection of the sequence of events.

18 THE COURT: For this hearing?

19 MR. LITTRELL: Yes. Just before his testimony.
20 But I will say this: Without access to e-mails, I can't
21 affect cross-examine. So that requires us to take some
22 risk. We don't know if we are right. So the fact that
23 Mr. Fenton can defend two discrete pieces of his
24 testimony confidently based on e-mails that he has
25 reviewed and I have not does not mean that his testimony

1 overall is credible. But I will set that aside for a
2 moment because I don't think his credibility matters for
3 the outcome, but I do think it is in question.

4 What I said was this is a debate between what
5 matters more. He acknowledged that the evidence found in
6 Ms. Terabelian's cell phone in one of the images I am
7 showing to the court was great. That is something he
8 refused to admit on the stand. On the stand, he actually
9 downplayed it, said it was cumulative, wouldn't even
10 acknowledge that it corroborated his theory of the case.
11 And, in fact, he claimed contrary to Special Agent
12 Palmerton that that theory was formed prior to seeing
13 what was on the phone. That is not credible.

14 But here is the important thing. This is not
15 a contest about what evidence is great or good or more
16 important. If this evidence is meaningful in any way,
17 and it guided their investigation, then it is tainted and
18 they have to explain every decision thereafter. So I
19 don't want the court to lose site of what the question
20 is. The fact that he acknowledges that it is great, it
21 doesn't matter that there may be another piece of
22 evidence that is also great.

23 THE COURT: All right. Thank you.

24 MR. FENTON: Your Honor, could I just briefly
25 respond?

1 THE COURT: 20 seconds.

2 MR. FENTON: Special Agent Palmerton. The
3 conversation that we had this morning, Special Agent
4 Palmerton and I, was limited to this: I said to him you
5 may be asked about the events of October 19th and 20th
6 and you should give some thought in advance of that
7 testimony as to the events that happened that night and
8 how things unfolded, and then I asked him a couple of
9 questions and that was it.

10 THE COURT: All right.

11 MR. FENTON: I never suggested to him -- and I
12 think this is consistent with his testimony. I never
13 suggested to him that there was a correct version of
14 events. I only asked him some questions so that he gave
15 it some thought before he took the witness stand.

16 THE COURT: All right.

17 MR. LITTRELL: I would ask if the Court is going
18 to consider that, I would ask that Mr. Fenton be sworn in
19 again. Otherwise, I think the Court should disregard
20 that.

21 THE COURT: All right. I will disregard it.
22 Okay. Let's hear from defendant Ayvazian.

23 And, again, no personal criticism intended,
24 but, Mr. Ram, you tend to be somewhat lengthy in your
25 approaches to arguments. So my instruction was to just

1 hit me with the bullet points.

2 MR. RAM: That's correct. I am going to surprise
3 you here, your Honor. I am going to be very short.

4 And the fact is I agree with one thing
5 Mr. Fenton just shared with you. The question is whether
6 the government can prove it didn't use tainted evident.

7 That is the Kastigar question, and that is --
8 I agree. And there is a simple frame work with which the
9 Court can evaluate the evidence you heard both from the
10 government's submission and the witnesses that were on
11 the stand.

12 At this point, as Mr. Littrell has pointed out
13 and, frankly, the government has conceded, exposure is
14 not in dispute. We know several individuals were exposed
15 at various times to various sources including the 65
16 photos from Agent Palmerton starting October 20th with
17 information conveyed from CBP. We don't know the
18 specifics of it because it wasn't documented.

19 Then we know about the 65 photos, your Honor,
20 in November 13th. Then, 141 photos, February 2nd. And
21 then critically I think, frankly, this resolves the
22 issue. On February 11th, 12th and 19th, the Cellebrities
23 from three key Miami phones including the Zhadko phone,
24 the Kauichko phone. Right. Those are released. Those
25 are released.

1 And we know starting in February the
2 government accessed and reviewed those Celebrities. And
3 the key point, what the government can't show. Right.
4 And I can break this down as simply Government Exhibit 17
5 and 28. What the government did in 17 is part of what it
6 has do in a Kastigar burden. It said here is an image or
7 document on something we had access to. Here is why we
8 have a -- their claim on why they have an independent
9 source. We obviously disagree with them across the
10 board. We submitted rebuttals, but put that aside for a
11 moment.

12 Same thing with Government Exhibit 28. They
13 went through the 141 photos and said at least here is our
14 position, our claim; right. And we know in camera and
15 under seal they looked at -- I don't know because I
16 haven't seen it, but it sounds like they went through
17 their trial evidence and said here is how we can
18 independently source it. Right. That is what it sounds
19 like they submitted.

20 But they didn't do in Exhibit 17 or 28 for the
21 Celebrities and that is critical in this case because, as
22 the government admitted to you, it is their burden to
23 show they didn't use tainted evidence. It is undisputed
24 that those three Celebrities that were dropped in
25 February on the government contained volumes and volumes

1 of tainted evidence, thousands and thousands of pages,
2 roughly 400,000 equivalent pages, and we know the
3 government had access and reviewed them.

4 In particular, Agent Palmerton and Mr. Fenton,
5 and we don't need to even make this about a credibility
6 battle at this moment. There are credibility issues, but
7 we know need to make it about that. We know they had
8 access and reviewed. And the other thing you heard on
9 the stand, Mr. Fenton didn't tag or take notes or
10 document, frankly, in any way what he was reviewing and
11 when. Didn't do it. And in a case -- period.

12 Agent Palmerton, same story. At least Agent
13 Palmerton, for one part of his review, created Exhibit O,
14 so we know for a fact he had access and likely reviewed
15 over 918 pages of text messages on the Zhadko phone.

16 And I will come back to that in two minutes
17 because I promised you I would be short. But, to me,
18 that resolves the case, your Honor.

19 THE COURT: Why do you always come back to things.
20 Stay with what you are doing. You do that frequently,
21 you sort of give someone a taste, then you say I am going
22 to get back to that and that distracts the listener. In
23 other words, when you say something, the listener is
24 focused on what you just said. So if you say I will get
25 back to that, it distracts me. So talk about -- discuss

1 what you said you will get back to now.

2 Now, you can't even remember what you will get
3 back to.

4 MR. RAM: No, I do remember it. It is a very key
5 point, but it deals with why any uses is not harmless
6 here. If you don't mind, I just want to finish --

7 THE COURT: Don't say I will get back to it. Just
8 get to it because turns me off from even listening. Go
9 ahead.

10 MR. RAM: So the Cellebrite images are completely
11 unaccounted for by the government. And the testimony you
12 heard on the stand, the most common words were I don't
13 recall, I don't remember, and the reason they don't
14 recall or remember, it honestly makes sense because they
15 had at the time no appreciation that the evidence was
16 tainted. Right.

17 In October, in February, when the Cellebrites
18 are being reviewed, in March, in April, there is zero
19 appreciation of any type of Kastigar taint. That is a
20 fact you heard from every witness. This is a line in the
21 line of cases like Martinez which was cited where the
22 government was exposed to tainted evidence with no
23 appreciation of its taint. That is when it is frankly
24 the most robust showing has to happen from the government
25 because how can they otherwise do what Mr. Fenton told

1 you. How can they prove by any standard, let alone a
2 preponderance, that they didn't use tainted evidence if
3 they can't even sit here on the stand and in their
4 declarations and tell you which images they reviewed.

5 Let me be specific. Mr. Fenton in his
6 declaration and his testimony on the stand said I don't
7 even remember reviewing, frankly, a single image from the
8 Celebrities. That is the only thing I can specifically
9 recall. He kept using that word. Specifically recall.

10 And that was the Victoria Kauichko lease, swap
11 with Manuk Grigoryan, but we know he reviewed Celebrities
12 for hours and hours and hours. And he didn't review one
13 image on what I think everybody would concede is very
14 strong evidence of fraud, highly relevant evidence that
15 he was -- if you look at Government Exhibit 31 --
16 clamoring to get from the filter team to review; right.

17 There is no question that he had access, and,
18 frankly, the defense doesn't even have to show that he
19 reviewed a single image. He has to prove he didn't use a
20 single one in any stage in any way. That means nothing
21 in the decision to arrest, nothing in the decision to
22 indict, no investigatory uses, nothing that led to trial,
23 nothing to confirm evidence. Right. These are standards
24 that the Ninth Circuit has adopted for MacDaniels, an
25 Eighth Circuit case, that lays out very clearly all the

1 potential uses that the government cannot make.

2 And the government cannot meet that burden,
3 frankly, because they don't have an Exhibit 17 or 28 for
4 the Cellebrites. It doesn't exist. And given the nature
5 of the taint and exposure which is very robust here, your
6 Honor, I think under any description, without being
7 overly rhetorical, it is a burden they cannot meet here.
8 And for that reason, that would be the simplest path to
9 dismissing the indictment in this case.

10 But, beyond that, we don't need to rely on
11 that fact. Beyond that, your Honor, there is actual use.
12 Throughout the course of the hearing, my associates have
13 made a list of various uses, and I am happy to pass this
14 up as an exhibit and share it with the government. But I
15 see over 26 actual uses. So, to be clear, not that there
16 is an independent source, none of that. We don't get to
17 independent source if there is actual use.

18 And there was over two dozen actual uses that
19 we have seen either through the declarations or on the
20 witness stand. And what we know even more powerfully,
21 even beyond the quote, unquote, admitted used, there were
22 undisclosed uses made. And I just want to spend a moment
23 here highlighting some of the undisclosed uses.

24 And, actually, I want to highlight the
25 categories in which those undisclosed uses hit. First,

1 there was trial strategy. Specifically, you saw from
2 Kastigar Exhibit 8 when the prosecution team was talking
3 about witnesses for trial, and I believe that is either
4 in April or May e-mail, April e-mail, who are going to be
5 our trial witnesses, Agent Clark responds and says, among
6 other comments, we need witnesses to cover the pics on
7 the phones. And you heard that cross-examination today,
8 and I won't belabor it.

9 At that time, April whatever it was, sometime
10 in April 20th, end of April, the government didn't have
11 access to the Cellebrites or the feedback from any of the
12 phones seized in the case, the search warrant phones.
13 They only had the Miami phones, period. That is trial
14 strategy use.

15 Second, there is trial exhibit evidence, and I
16 made the mistake you asked me not to do. I don't want to
17 address that one yet because it is the biggest one. We
18 have trial witness exposure. Okay. You saw from the,
19 quote, unquote, 10 tainted loans, the investigation from
20 the 65 photos sent to Massino. Agent Massino runs those
21 names. They get subpoenas. They did follow-up. They
22 interview people.

23 We know that that information that was derived
24 from that work product was sent to Marylee Robinson's
25 firm, Stout, and we know that Stout shared that

1 information with her. She is on those e-mail chains. It
2 is the only question I asked about the Stout law firm.
3 That is trial witness exposure. And there is more than
4 that, and then there is also the use to interpret other
5 evidence. This is a key one because even if the
6 government has independent sources for some evidence.
7 Right. If they are using undisputably, actually using
8 tainted evidence to interpret that untainted evidence,
9 that is a Kastigar violation. Okay.

10 And if you look at Fenton Exhibit 20, I don't
11 think the government realized they were disclosing this.
12 It is just by accident we got this exhibit e-mail chain,
13 and if you look at the top of that e-mail chain,
14 Mr. Andre who didn't testify sends an e-mail to
15 Mr. Fenton. Okay. And Mr. Andre is analyzing the case,
16 and he says we should do this follow-up. A lot of it had
17 to do with the ten tainted phones.

18 But the reason I highlight this point is one
19 of the comments probably like four or five bullet points
20 down from the top of that Exhibit 20, he says with
21 respect to Turcan, one of the loan applicants because
22 information on Turcan was found in multiple sources, a
23 number of them untainted sources, and because that
24 evidence was on the Richard Ayvazyan phone, again, one of
25 the Miami phones, because of that, we should do

1 investigatory activity X, like follow-up, do whatever he
2 said. So that is an example of interpreting other
3 evidence with tainted evidence which is prohibited under
4 Kastigar.

5 Now, let me come to one of the single biggest
6 uses of tainted evidence in this case, and that is
7 Government Exhibit 10. Okay. Government Exhibit 10,
8 according to e-mail I think we received from Ms. Ahn in
9 connection with her declaration is the star witness, star
10 witness of the case. We agree with her. Government
11 Exhibit 10 is the star witness. Your Honor sat here
12 through trial. I won't belabor the point.

13 But the point is how did the government get
14 Government Exhibit 10 in that form and present it to the
15 jury, and the answer is Agent Palmerton. We heard on the
16 stand this wasn't in any declaration or anywhere else.
17 Agent Palmerton provided the precursor to Government
18 Exhibit 10 to Ms. Ahn who then took that information from
19 Agent Palmerton and created Government Exhibit 10.

20 So Agent Palmerton sent her information he
21 extracted from the Tamara Dadyan phone. Okay. And Agent
22 Palmerton when he was extracting information from the
23 Tamara Dadyan phone, you already heard on the stand today
24 he told you that he had already reviewed the Zhadko phone
25 and the mirror image of many of those text messages on

1 the Zhadko phone.

2 And this is the inherent endemic of the
3 government's burden in this Kastigar setting. It is
4 impossible for Agent Palmerton, especially in a time
5 crunch, you know, less than seven weeks before trial, six
6 weeks before trial, to compartmentalize the information
7 he learned from his review of the Zhadko phone and
8 others. I think he said less than 12 times -- right --
9 between February and May before he ever touches the
10 Dadyan phone. He sees the mirror image.

11 So there is arguments, your Honor, related to
12 this Government Exhibit 10. I would say there is two or
13 three different arguments. One, the fact that Agent
14 Palmerton identified the excerpts and text messages he
15 sent to Ms. Ahn, that is tainted. It is impossible to
16 compartmentalize the knowledge he had. It was disclosed
17 in Mr. Fenton's second declaration but not his first is
18 that on April 27th, Agent Palmerton sent him the tainted
19 Exhibit O. So not the 918 pages from the Dadyan phone,
20 but 918 pages of text messages excerpted from the Iullia
21 Zhadko phone with Tamara Dadyan, i.e., all the mirror
22 image texts that ultimately were distilled down to 40 or
23 50 pages and were presented at trial to the jury as
24 Government Exhibit 10. That is a big deal. That is
25 significant, your Honor.

1 And I submit to you the government cannot meet
2 their burden to do what Mr. Fenton told you they had to
3 do, and that is they can not prove by any standard that
4 they didn't use tainted evident.

5 THE COURT: All right. Thank you.

6 MR. FENTON: Your Honor, Mr. Ram's articulation of
7 the applicable standard in these cases is completely
8 wrong. The focus of the inquiry under Kastigar is not
9 whether the prosecutor was aware of the contents of
10 immunized testimony but whether he used the testimony in
11 any way to build the case against the defendants. That
12 is United States versus Crawson, Ninth Circuit in 1987.
13 It is also well established the government is not
14 required to negate all abstract possibility of taint.
15 Rather, the government need only show by a preponderance,
16 by a preponderance of the evidence that, in fact, the
17 evidence was used, that was used was derived from
18 legitimate independent sources. That is United States
19 versus Bird, Eleventh Circuit case cited with approval by
20 Crawson.

21 The strongest evidence of that is the evidence
22 that the government had before the taint. That is the
23 Second Circuit's decision in Nanni which we also cite in
24 our brief. The government goes into painstaking detail,
25 step by step, throughout its investigation and explains

1 exactly when we made the links between the defendants and
2 the aliases that they were using to perpetrate the loan
3 fraud crime.

4 And when I say we go through in painstaking
5 detail, I mean we go through, in some instances, day by
6 day, and the way that this investigation progressed --

7 MR. RAM: Your Honor, we don't have that.

8 MR. FENTON: It is in our opening submission. It
9 is in our reply brief. It is in the declarations.

10 THE COURT: What don't you have.

11 MR. RAM: We don't have the Exhibit 34 that lays
12 out step by step.

13 MR. FENTON: That is not Exhibit 34.

14 THE COURT: Don't debate each other.

15 What don't you have that Mr. Fenton is
16 discussing? He is talking, as I understand it, about his
17 declaration that was served on you you along with the
18 exhibits to the declaration.

19 MR. RAM: We have his declaration. We don't have
20 the exhibit.

21 THE COURT: You have the exhibits that related to
22 his declaration; correct?

23 MR. RAM: We don't. We don't have Exhibit 34
24 cited in his declaration.

25 THE COURT: He is saying 34 is not part of the

1 argument; is that right?

2 MR. FENTON: I am saying that what I am referring
3 to at this moment, this detailed chronology, is not
4 Exhibit 34. It is in our submissions.

5 THE COURT: Everything you are now saying is in
6 your brief or in exhibit appended to the brief?

7 MR. FENTON: Yes, your Honor.

8 THE COURT: Go ahead.

9 MR. FENTON: And I am not going to walk through in
10 detail all of the arguments all the events here. We
11 start with August 4th where we have a possible subject
12 identification. We know the subject is Iullia Zhadko on
13 August 4, and we determine that is likely Richard
14 Ayvazyan by following the money.

15 In the submission we walk through August 5th,
16 August 11th, August 19th, August 26th, August 26,
17 September 25th, October, October 5th, we go through every
18 single week virtually for that three-month time period,
19 and we even show when the agents change their file names
20 from Iullia Zhadko to the two defendants' names, Richard
21 Ayvazyan and Marietta Terabelian.

22 On October 5th, Special Agent Clark who
23 testified said in his declaration that the lead subjects
24 of the investigation were Richard Ayvazyan and Marietta
25 Terabelian based on following the money. October 5th,

1 three weeks, two-and-a-half weeks before they are stopped
2 at the border.

3 THE COURT: Clarify what you just said about the
4 internal records demonstrating that the government had
5 internally viewed Terabelian as Kauichko and Ayvazian as
6 Zhadko.

7 MR. FENTON: You are saying with respect to
8 Special Agent Clark?

9 THE COURT: I mean, I thought you said there was
10 something internally where the government designated
11 those defendants as having pseudonyms, Kauichko and
12 Zhadko.

13 MR. FENTON: No. I was saying that Special Agent
14 Clark had changed the file name on his -- so for his
15 investigatory file, when he has his internal records
16 showing who the subjects of the investigation are, when
17 he opened the investigation in June, 2020, Iullia Zhadko
18 was the subject of that information.

19 When -- once we followed the funds and
20 realized that Richard Ayvazyan and Marietta Terabelian
21 were lead defendants in this case, Special Agent Clark
22 changed -- he opened the matter under a new name on
23 October 5th, and that name was Richard Ayvazyan and
24 Marietta Terabelian. And that is set forth in his
25 declaration.

1 THE COURT: But did he, in his internal
2 designation, refer to them as Zhadko and Kauichko?

3 MR. FENTON: That I don't know, your Honor. That
4 is not included in the declaration, and the defendants
5 did not ask about that at the hearing.

6 THE COURT: All right. Go ahead.

7 MR. FENTON: But my point is that we show that we
8 can meet the standard set forth in Crowson because we
9 show that we have built our case and that it was
10 substantially complete, the investigation, by
11 October 19th.

12 Now, what this ultimately comes down to I
13 think for Mr. Ram is just these Cellebrite reports. That
14 seems to be the focus of his argument, and these
15 Cellebrite reports come at a time when the investigation
16 is all but finished. We have already complained them.
17 We have already indicted them. We are now doing our
18 paperwork to finalize this first superseding indictment,
19 and we do not obtain access to these phones until
20 February 11th, February 12th, February 19th, March 19th
21 or thereabouts and April 8th. That is extremely late in
22 the case. Given where we were at that point in time, the
23 information that we were obtaining from these phones, it
24 was not information --

25 THE COURT: When was the first date or first

1 document which shows that the government was considering
2 a superseding indictment?

3 MR. FENTON: When were we considering a
4 superseding indictment?

5 THE COURT: What document, internal document shows
6 your earliest point at which the government was
7 considering a superseding indictment.

8 MR. FENTON: We did not include any documents to
9 that effect. If your Honor would like, we could submit
10 something to the Court in camera. We can go back and
11 look.

12 THE COURT: There was testimony; correct?

13 MR. FENTON: Yes, your Honor.

14 THE COURT: But I don't recall a specific
15 timeframe.

16 MR. FENTON: That's right, your Honor. I can tell
17 your Honor that in various court filings, the government
18 has represented, and this is accurate that following the
19 first indictment, the government was continuing its
20 investigation focused on adding additional defendants who
21 were also part of the conspiracy, specifically the four
22 defendants.

23 THE COURT: You are going too fast. I missed what
24 you just said.

25 MR. FENTON: So, in the first -- so there is a

1 document in the record. I apologize, your Honor.

2 If you look at Government Exhibit 15 which is
3 the indictment memorandum for the first indictment, we
4 actually say at the end of that document that part of the
5 follow-up investigation that we are going to complete is
6 complete the investigation of other co-conspirators in
7 preparation for the superseding indictment. So that is
8 evidence that shows that the government was working
9 towards a superseding indictment as soon as it got its
10 initial indictment.

11 Now, what we established in our opening
12 submission is that we have already identified the
13 subjects of that superseding -- the first superseding
14 indictment before the border stop. And we articulate and
15 lay out the evidence that shows that we had actually
16 identified the individuals who we were going to add in
17 the superseding indictment as well as the companies.

18 Some of the documentation that we actually
19 point to are internal records that I prepared for
20 deconfliction purposes where I would on a given date
21 which is listed on the document list out the companies
22 that we were then investigating, and these are the
23 companies that eventually became the basis of the overt
24 acts allegations both in the indictment and then later in
25 the first superseding indictment.

1 Fenton declaration Exhibits 7A and 7B contain
2 the detailed list in August, at the end of August 27th
3 and in September as well showing that we were already
4 onto and already had the investigative leads that we were
5 going to pursue not just with respect to the indictment
6 but with respect to the first superseding indictment as
7 well.

8 So our investigation was substantially
9 complete by that point, and at the point in time in
10 February when we first get access to these phones, we are
11 all but done. We were doing paperwork at that point to
12 paper up the first superseding indictment, and then we
13 are getting ready to prepare for trial. And that is what
14 we were doing at that point.

15 So when your Honor is evaluating whether or
16 not access to these phones is harmless --

17 THE COURT: The first superseding indictment was
18 returned in March; correct?

19 MR. FENTON: That's right, your Honor.

20 THE COURT: So why the lag between the additional
21 indictment and the first superseding indictment?

22 MR. FENTON: In large part, it was due to the fact
23 that the grand jury had been suspended.

24 THE COURT: Because of Covid?

25 MR. FENTON: Because of Covid-19. And, once the

1 grand jury was reinstated, certain cases would obtain
2 priority, and we had to get in line which we did. And we
3 moved quickly to try to obtain the first superseding
4 indictment as soon as practical. And I think that we did
5 that, but the entire time we were completing our
6 investigation. So by the time we get to these phones in
7 February, March, April, we have already done the work.

8 We have been done with some of that work for
9 months and we are preparing the paperwork, and none of
10 the evidence as your Honor sees from the documents we
11 submitted in camera, none of that evidence, none of those
12 allegations, none of the evidence presented to the grand
13 jury is from these phones. It is completely independent.

14 THE COURT: When did the Court first set a trial
15 date in this case? With regard to the additional
16 indictment, correct, what date was that trial date? Was
17 it the trial date we actually had?

18 MR. FENTON: I don't have a specific recollection.
19 I believe it was in December 20th or thereabouts.

20 MR. SILVERMAN: Your Honor, the first trial date
21 was January 4th, I believe. And, I'm sorry,
22 January 12th, then May 4th, then June 15th.

23 THE COURT: And when was it continued to May 4th?

24 MR. SILVERMAN: It was continued to May 4th
25 shortly before the January 12th date. I don't remember

1 that, but I remember we moved for discovery when it was
2 still January 12th, and we moved for discovery on
3 approximately December 7th or so. So it would have been
4 mid to late December unless the government thinks that
5 sounds wrong.

6 MR. FENTON: So, your Honor, at the point where we
7 get access to these phones, the investigation is
8 substantially complete. And, at that point, we are doing
9 the paperwork for the first superseding indictment. We
10 are preparing for trial. That is what we are doing at
11 that point.

12 The question becomes, yes, we had access to
13 these phones, though the testimony, the credible
14 testimony has established that only three members of the
15 government team ever accessed these phones, the
16 Cellebrite reports, and all three encountered significant
17 technical difficulties that made it very frustrating to
18 actually work with these phones.

19 So the amount of time that was spent on the
20 phones was extremely limited and, because of the
21 competing demands, our attention was elsewhere. Yes, we
22 wanted to get this evidence from the phones if it was
23 possible. But at the same time, we had other things that
24 we had to do and, quite frankly, your Honor, we had a
25 mountain of evidence. There was never a doubt in the

1 government's mind that we had more than enough in part
2 because of the physical possession of the credit cards,
3 in part because the bank records so clearly demarcated
4 the trail between the stolen PPP funds and the mansion
5 that the defendants purchased for themselves.

6 All the property that they bought with the
7 stolen money and brought to their houses that we seized
8 on November 5th. We had all of that evidence at the
9 point where we looked at these phones in February. So
10 the phones were not that much of a consideration to us.
11 If we could get access to them, great, they probably
12 would have been very good evidence. But, if we didn't,
13 so be it.

14 So, at that point, the question to determine I
15 think whether or not it is harmless is not -- we didn't
16 use it for the grand jury. We didn't use it to file a
17 complaint. We didn't use it to obtain a search warrant
18 at that point in time in February, March or April. The
19 only way this evidence could have been harmful at that
20 point is if we used it to pursue investigative leads but
21 the investigation was basically done or if we used it at
22 trial.

23 And the government demonstrates beyond a
24 reasonable doubt, with a preponderance, by at least a
25 preponderance that we did not use this evidence at trial.

1 There is two components: Number one, witnesses. We
2 identify, in our submissions, the specific evidence that
3 we use to identify our witnesses and as your Honor may
4 recall, we had about 23 witnesses, 16 of those 23
5 witnesses or thereabouts were either state or federal
6 employees or contractors.

7 So we didn't determine, we didn't identify
8 them as a result of the investigation. We identified
9 them because they worked for a state agency or a federal
10 agency, or they were a contractor like Marylee Robinson
11 who we hired.

12 The remaining seven witnesses, we go through
13 in our submission and we point to the specific
14 information that we use to identify those individuals,
15 and, in most instances, we identify them as a result of
16 loan files that we obtained early in the investigation or
17 bank records or escrow records because the escrow records
18 are so critical here because the houses play such an
19 important role in this investigation.

20 Amira Halum, we identify her as a result of
21 the escrow records. Same thing they talk about Mary
22 Sambatyan, a witness who was never called, we identify
23 her as a result of the escrow records. We talked about
24 Olaf Langgaard, a witness who could not be called because
25 he is deceased.

1 The escrow records were key. We had them even
2 before the border stop, and that is how we identified a
3 large number of these witnesses. The rest were victims
4 who we identified through loan applications who they
5 never submitted but their names were stolen and used.

6 The other way that this information could have
7 been used for trial evidence is as exhibits, and it is
8 not. And Exhibit 34 explains piece of evidence by piece
9 of evidence how we obtained it. Most of the evidence or
10 a lot of the evidence was obtained from the --

11 MR. SILVERMAN: Your Honor, that is the exhibit
12 that has not been turned over to the defense that is now
13 being argued about.

14 THE COURT: What exhibit is that?

15 MR. SILVERMAN: 34 I believe.

16 MR. FENTON: Your Honor, it is Exhibit 34, and it
17 was submitted to the court in camera.

18 THE COURT: What is it? Refresh my memory.

19 MR. FENTON: So it is a copy of the trial exhibit
20 list which the defendants have received, but this
21 particular version contains the dates that we requested
22 the information that ultimately yielded the exhibit.

23 THE COURT: Can I see that exhibit?

24 MR. FENTON: Yes, your Honor.

25 Though I will admit that the print is a little

1 small.

2 THE COURT: That is all right.

3 MR. FRASER: Your Honor, both defendants object to
4 the fact that this hasn't been provided to them.

5 THE COURT: Just one moment.

6 All these dates precede February 11th?

7 MR. FENTON: Almost all of them do, your Honor,
8 and the few that don't, if you look at them, they tie
9 back to things that are just not related to the phones,
10 but we wanted to --

11 THE COURT: And who prepared this document?

12 MR. FENTON: So this was prepared by Annamelda
13 Paul who is the law clerk who worked with our team
14 through trial.

15 (Recess from 4:46 to 5:05.)

16 THE COURT: Okay. Mr. Fenton, you were in your
17 argument.

18 As I said, this was sort of the opportunity
19 for highlights. So do you have any more highlights?

20 MR. FENTON: I just have a few, your Honor. I
21 promise I will wrap up if you give me five more minutes,
22 and I will conclude.

23 THE COURT: I want to give Mr. Ram a chance to
24 respond because I did give Mr. Littrell a chance.

25 MR. FENTON: Understood, your Honor.

1 THE COURT: Go ahead.

2 MR. FENTON: So where we left off, we were talking
3 about whether or not the phones were harmless, and I
4 believe the government's submissions which were
5 substantial demonstrate beyond a reasonable doubt that
6 any information that would have been viewed on the
7 Cellebrite reports from February, March and April are
8 harmless. And the reason why is because that information
9 could only have been used for trial evidence at that
10 point. And it was not used for trial evidence as
11 demonstrated by the trial evidence.

12 And Exhibit 34 and what we submitted and that
13 evidence all ties back to information that was prior to
14 that time, prior to the time when there were -- when
15 those phones were looked at.

16 But Mr. Ram -- and this is a critical point
17 that I want to address and the final point that I want to
18 address. Mr. Ram makes the argument that Government
19 Exhibit 10 is somehow the fruits of something that was
20 tainted.

21 THE COURT: Exhibit 10 was the text exchange
22 between Tamara Dadyan and Richard Ayvazyan.

23 MR. FENTON: That's correct, your Honor.

24 THE COURT: The Rich New text exchange.

25 MR. FENTON: That's correct, your Honor.

1 Government Exhibit 10 was taken from a phone that
2 belonged to Tamara Dadyan that was seized on November 5th
3 pursuant to a valid search warrant that your Honor deemed
4 had probable cause even if you were to remove all the
5 evidence of the --

6 THE COURT: I know that.

7 MR. FENTON: That is where that phone came from.
8 That is the source.

9 I submitted an affidavit that explained how we
10 selected that phone and then also explained what we did
11 once we selected that phone. And, as an initial matter,
12 we would have selected a phone from each of the
13 defendants no matter what because we wanted to filter it
14 and review it for evidence for use at trial, and the two
15 defendants who we wanted phones for were Tamara Dadyan
16 and Artur Ayvazian.

17 And when I went through that process and I
18 explained it in detail in my affidavit, I actually told
19 the filter team there were two phones that belonged to
20 Tamara Dadyan. I told them to prioritize one.

21 THE COURT: When you say -- you are arguing and
22 you should refer to what your testimony was and not
23 something you are saying now because you can't wear two
24 hats.

25 MR. FENTON: I understand, your Honor. So I am

1 referring to my -- the second Fenton declaration where I
2 lay out in detail how I came to choose to prioritize one
3 phone over the other. And what actually happened, and
4 this is articulated in the sworn declaration is I chose
5 the wrong phone, and the filter team --

6 THE COURT: I know. That you chose phone 30 and
7 the right one was 21.

8 MR. FENTON: That's correct, your Honor, which
9 shows that the decisions that I made with respect to what
10 trial evidence to use at trial was not the result of any
11 sort of mirror image. It is not the result of any sort
12 of matching, and it demonstrates that this was harmless.

13 THE COURT: I understand your argument.

14 Let me give Mr. Ram a chance to respond.

15 MR. RAM: Thank you, your Honor.

16 Your Honor, we do have one big credibility
17 issue, and that is this notion of the investigation was
18 substantially completed when we arrested them in Miami,
19 or that, now, it was substantially completed in February
20 when we got the Celebrities. That does not comport with
21 the realities of this case at all. From day one, and
22 your Honor has this all in the docket, the government --
23 and, frankly, the government hasn't been ready for trial
24 and it asked for continuances three times, three times.

25 And if you look at when they say our

1 investigation was substantially complete which by the way
2 came up for the first time in the reply brief to Kastigar
3 in Mr. Fenton's second declaration that the investigation
4 was substantially complete, here is why that cannot be
5 true. It cannot be true.

6 If you look at interviews which are the bread
7 and butter of prosecutions. It is interviews of
8 potential witnesses, interviews of people to develop
9 other evidence. And that is at Kastigar Exhibit 30.
10 This is just the defense's summary of MOIs and 302s and
11 other interview reports that were received from the
12 government.

13 We know that there are more interviews, but,
14 if you just look at the ones produced in written form,
15 here is the facts. Can't be disputed. In 2020 which
16 includes October, 2020, there were less than 15
17 subpoenas, less than 15 interviews in this entire case.
18 From June to December. And, again, this is based on
19 written interviews that were produced to the defense.

20 Then, compare that 15 to 2021, and we have
21 only had six months of 2021 so far. There is more than a
22 hundred interviews done, 110. And I have just asked my
23 associate to do a quick count, and he told me that after
24 the Cellebrite -- after February, the Cellebrite drop in
25 February, more than half of those interviews occurred,

1 more than half of the total interviews. So rough math,
2 that is more than 50 interviews that are happening, at
3 least, the ones that are documented.

4 THE COURT: That means that 50 happened before.

5 MR. RAM: Before the February Cellebrities. But
6 only 14 in 2020 at the time of the Miami arrest. Depends
7 which version if you look at their briefs, their
8 investigation was completed in October of 2020. It
9 wasn't.

10 And the interviews are one piece of that
11 evidence. If you look at the subpoenas in this case, we
12 don't have the subpoena log. You do, your Honor. That
13 wasn't produced to us. You are going to see the majority
14 of the subpoenas or a substantial number of the subpoenas
15 we suspect were issued in 2021 after the Miami stop. We
16 also know from the references in discovery that we do
17 have that there were subpoenas issued as late as April of
18 2020 for this trial.

19 And, next, look at the search warrant
20 evidence. Any prosecutor who is prosecuting a case knows
21 that search warrant evidence can be critical because it
22 reveals, for example, digital devices, domicile and
23 control. Right. Things that are critical to
24 investigations. We know for a fact putting aside the
25 Miami phones that none, none of the 50-plus digital

1 devices that the government seized in this case from
2 however many search warrant locations were processed and
3 ready for the government to review until May of 2021.
4 May.

5 And if you recall, your Honor --

6 THE COURT: I know that also. I mean, that is not
7 new information.

8 MR. RAM: Okay. But it is directly contrary to
9 the claim that the investigation was substantially
10 completed, and that is the three big picture points
11 there, your Honor.

12 Second, the government has talked about, now,
13 we have talked about Exhibit 34 again. We haven't seen
14 it, but we understand that it catalogs the trial exhibits
15 and shows an independent source for those exhibits.

16 THE COURT: It shows a subpoena.

17 MR. RAM: Okay. Okay. And the big picture here
18 is that is not how it works. We know from the trial
19 evidence here, the hearing evidence, your Honor, that the
20 government reverse engineered their trial exhibits after
21 the Kastigar violation was pointed out to them. So, in
22 May, and we heard this from the stand. It is in some of
23 the declarations. It is undisputed fact.

24 In May of 2021, the government which has been
25 exposed to Kastigar taint since October 20th, since

1 November 13th, 65 photos, since February 2nd, 141 photos,
2 and since February, March Cellebrites, they have been
3 exposed to taint and were building an investigation. And
4 you heard about some of the two dozen uses and some of
5 the indirect uses that the government didn't point out to
6 you.

7 And we know there is more, and the point is
8 the government can't prove that they didn't build their
9 case. They didn't follow up on leads. They didn't focus
10 their investigation. They can't prove that they didn't
11 rely on the Cellebrites or the 206 photos from the phones
12 or the oral information provided by CBP. They simply
13 cannot do that, meet their standard here.

14 And that is the big picture point, and they
15 are reverse engineering of trial exhibits doesn't wipe
16 away taint. They still learned information they can
17 never forget, particularly Agent Palmerton and
18 Mr. Fenton, who reviewed the Cellebrites and the rest of
19 the team, I think everyone as Mr. Littrell said reviewed
20 the 141 photos and knew what CBP conveyed orally. All of
21 them did.

22 It is impossible to not use that information
23 in interpreting evidence. We pointed out some examples
24 though the cross-examination, and I know your Honor
25 doesn't like this one. But one of them is we argued

1 there was multiple conspiracies, and the key to the
2 multiple conspiracies argument, frankly, was the Canoga
3 apartment. Right. The fact that Manuk Grigoryan
4 controlled indepently the Canoga apartment.

5 What the government had on tainted evidence
6 the entire time was evidence that suggests, and I concede
7 it, but suggests that Mr. Ayvazyan was, in fact,
8 controlling Canoga apartment.

9 THE COURT: One moment.

10 Okay.

11 MR. RAM: And they made arguments to the Court
12 against the multiple conspiracies and schemes knowing of
13 that evidence from day one. Okay. And the big picture
14 point here is you can't reverse engineer just from policy
15 and common sense if you are exposed to tainted evidence,
16 you build a case based on tainted evidence, and then you
17 filter out the taint for clean evidence at trial, that
18 doesn't meet the Kastigar burden. That is why non
19 evidentiary use, pretrial strategy, all of that matters.

20 THE COURT: I get the argument.

21 MR. RAM: And the final point here is the
22 government cited some case law to your Honor. There is a
23 fundamental misunderstanding of Kastigar standards that
24 the government has advanced to this Court in their
25 briefing. The primary focus is on the Crowson case in

1 the Ninth Circuit. It is a 1987 decision. And the issue
2 in that case, it is not analogous to this case in any
3 way. It was about the authentication of some documents.

4 It is more of the line of cases your Honor
5 sees where there is cannon done and then active
6 production immunities issued, and then there is ancillary
7 grand jury testimony about the authentication of
8 documents. That is what Crowson is in line with. The
9 government is comparing the taint in this case to a case
10 that was essentially completed, was entirely completed
11 the investigation but they were authenticating documents.
12 That is not this case. This case is Hampton, Eleventh
13 Circuit, Martinez, Tenth Circuit, and, by the way, I
14 missed one cite. Mapelli, I think is very important to
15 this court because you have heard.

16 THE COURT: What is that?

17 MR. RAM: Mapelli. It is a Ninth Circuit case as
18 well. The reason I point that out here is I cited to the
19 government's admission, frankly, that they reverse
20 engineered evidence for trial. Right. Mapelli has an
21 interesting line or quote in there, and they say
22 Mrs. Mapelli testified. The government didn't
23 cross-examine her. It was a tax case, your Honor, tax
24 and fraud case in the Ninth Circuit. And the Ninth
25 Circuit suggested the fact that the government didn't

1 cross-examine Mrs. Mapelli was because they had tainted
2 evidence in their minds, and it would have been revealed
3 to the jury had they cross-examined her.

4 So in the Ninth Circuit's terms that was a
5 trial strategy, pretrial strategy decision not to
6 cross-examine Mrs. Mapelli. So the government's own
7 confession of its reverse engineering of trial exhibits
8 so they could hand you Exhibit 34, whatever it says, that
9 doesn't -- that is Kastigar violation in and of itself.

10 THE COURT: You know, we have got to wrap this up.
11 I have -- I think I have your main points.

12 MR. RAM: Okay, your Honor. And we are happy to
13 submit a post trial, a post hearing briefing.

14 THE COURT: Thank you.

15 MR. RAM: Thanks.

16 THE COURT: I want Fenton to just comment briefly,
17 and I mean briefly, in a minute or less, well, maybe more
18 than a minute, the number of interviews that argument,
19 and their timing, and that would be it.

20 MR. FENTON: Yes, your Honor. The number of
21 interviews that the government conducted in the lead up
22 to trial is a direct result of the fact that we were
23 leading up to trial and preparing for trial as Mr. Ram
24 had asked the court to do to chose the first available
25 trial date. We prepared for trial.

1 And as the pandemic started to subside and
2 people were able to begin to travel and do some more
3 face-to-face interviews and whatnot, we took advantage of
4 that and started to do those things. That was the
5 purpose, and that is what you see when you look at what
6 we were doing there. We were revving up for trial, to
7 get ready to try the case. And that is what we did.

8 And the suggestion that the government was
9 somehow not ready is, as we have stated in our briefs, a
10 fictionalized account. Everything that we were doing at
11 that point was to get ready to try this case which we
12 did.

13 THE COURT: All right. The minute is up. Okay.

14 The matter will stand submitted, and I will
15 try to get through this as efficiently as I can. It may
16 take a little while, but I will get through it.

17 MR. LITTRELL: Your Honor, with that in mind, I
18 would just reiterate our request to continue sentencing
19 so that we are not all getting ready for sentencing while
20 we are preparing for this ruling to come out. I just
21 request a short continuance about November or December.

22 THE COURT: I will put it off by -- put the
23 sentencings off till beginning of October, Paul.

24 THE CLERK: Yes, your Honor.

25 (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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