

APPENDIX

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UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

July 22, 2019

BCO-098

Nos. 17-2025, 18-1302 and 19-1605

UNITED STATES OF AMERICA

v.

YOUNES KABBAJ,
Appellant

(E.D. Pa. No. 2-16-cr-00365-001)

Present: AMBRO, KRAUSE, and PORTER, Circuit Judges

1. Motion filed by Appellee USA for leave to be excused from filing a brief pursuant to LAR 31.2 and for Summary Affirmance.
2. Response filed by Appellant Mr. Younes Kabbaj to Motion for Summary Affirmance, Motion to strike Appellee's Motion for Summary Affirmance

Respectfully,
Clerk/lmr

AMENDED ORDER

The foregoing Motion for leave to be excused from filing a brief pursuant to LAR 31.2 and for Summary Affirmance is granted.

By the Court,

s/ David J. Porter
Circuit Judge

Dated: September 19, 2019
Lmr/cc: Jose R. Arteaga
Younes Kabbaj

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 17-2025, 18-1302 & 19-1605

UNITED STATES OF AMERICA

v.

YOUNES KABBAJ,
Appellant

(E.D. Pa. Civ. No. 2:16-cr-00365)

SUR PETITION FOR REHEARING
(AMENDED)

Present: SMITH, Chief Judge, McKEE, AMBRO, CHAGARES, JORDAN,
HARDIMAN, GREENAWAY, JR., SHWARTZ, KRAUSE, RESTREPO, BIBAS,
PORTER, MATEY and PHIPPS, Circuit Judges

The petition for rehearing filed by **appellant** in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the judges of the

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circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc, is denied.

BY THE COURT,

s/ David J. Porter
Circuit Judge

Date: September 19, 2019
Lmr/cc: Jose R. Arteaga
Younes Kabbaj

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA	:	CRIMINAL ACTION
	:	
v.	:	NO. 16-365
	:	
YOUNES KABBAJ	:	

ORDER-MEMORANDUM

AND NOW, this 31st day of October 2016, upon consideration of Defendant's Motion to dismiss the Indictment for duplicity (ECF Doc. No. 33), Motion to dismiss the Indictment for failure to charge an essential element (ECF Doc. No. 36), and the United States' Opposition (ECF Doc. No. 41), it is **ORDERED** Defendant's Motions (ECF Doc. Nos. 33, 36) are **DENIED**.

Analysis

Younes Kabbaj admits preparing and sending an e-mail on February 18, 2016 to his longstanding litigation adversaries, Director Comey of the Federal Bureau of Investigation and United States Magistrate Judge Mary Pat Thyng stating, among other things:

- it is clear that Detective Egan will not fight me a fair one and will instead seek to shoot me if I attempt to engage a fist fight with him, which will then escalate the situation into a massive terrorist attack that will make 911 look like a picnic in the park.
- Since my religion forbids me to attack/harm a woman, unfortunately I cannot threaten to decapitate Mary Pat Thyng for her attempt to recruit agents in New York to murder me, so I will leave that to the Muslim women to deal with as they will avenge me for what she did.
- I still intend to use my last KRONOS ports to at least be able to incite massive violence against the entire homosexual community.
- My safety cannot be guaranteed by just killing one or two of them here and there as I have come to learn because they are indeed acting as a unit which is united in purpose to kill me, so I must target them as a unit because it is the only way to end these crimes.

- As for Thyng, I will have my female hacker squad to investigate her and decide what the proper punishment is for a female judge that attempts to murder an innocent person... I will leave it up to the Islamic females to thereby deal with the atheist females which have targeted me in this illegal way because I intend to focus my efforts on the males which I deem to be much more dangerous because of their intelligence as there are no females involved with the KRONOS program (even in America) for a reason.

The United States Grand Jury charged him on March 10, 2016 with two crimes. In Count I of the Indictment, the Grand Jury charged Younes Kabbaj with "Threats in Interstate Commerce" under 18 U.S.C. § 875(c) alleging he:

did knowingly transmit in interstate or foreign commerce an email communication from his email address jonahkabbaj@gmail.com to recipients located in several states; and the communication continued a threat to injure United States Chief Magistrate Judge Mary Pat Thyng and other persons; and the communication was made with the purpose of issuing a threat and with knowledge that the communication would be viewed as a threat.¹

18 U.S.C. § 875(c) states a person shall be fined or imprisoned if the person "transmits in interstate or foreign commerce any communication containing any threat to kidnap any person or any threat to injure the person of another."²

Mr. Kabbaj, continuing to reject our offers to appoint qualified counsel because he wishes to proceed *pro se*³, moves to dismiss this Count for failure to charge an essential element of the §875(c) offense by not identifying the type of injury and duplicity for not identifying the "others

¹ ECF Doc. No. 1 (Indictment, Count 1.)

² 18 U.S.C. § 875(c).

³ We deny the United States' request to compel stand-by counsel to serve as Mr. Kabbaj's counsel. Our Court found Mr. Kabbaj competent to represent himself. Mr. Kabbaj has repeatedly refused to accept counsel, including in response to our September 22, 2016 Order (ECF Doc. No. 21).

persons” allegedly threatened.

Our Court of Appeals again last week discussed the elements required for conviction under Section 875(c) in *United States v. Elonis*.⁴ On remand from the Supreme Court, our Court of Appeals addressed several threats made by a former employee at the Dorney Park amusement park in Allentown, Pennsylvania. The defendant issued a series of threats on Facebook including one which does not identify any potential victim but instead describes himself not as a “firecracker” but as a “nuclear bomb” and Dorney Park, with several employees and paying guests, would possibly be at risk.⁵ He later threatened having access to keys for the Dorney Park’s gates and had “sinister plans for all my friends.”⁶ Around the same time, he began posting crude and violent material to his Facebook page about his former wife. He further threatened “And if worse comes to worse I’ve got enough explosives to take care of the state police and Sheriff’s Department.”⁷ He also threatened “I’m checking out and making a name for myself. Enough elementary schools in a ten mile radius to initiate the most heinous school shooting ever imagined And hell hath no fury like a crazy man in a kindergarten class The only question is... which one?”⁸ Other than identifying his estranged wife, defendant’s several threats did not identify another person. Although the jury acquitted Elonis on the 875(c) charge regarding the threats against Dorney Park,

⁴ No. 12-3978, 2016 WL 6310803 (3d Cir. Oct. 28, 2016).

⁵ *Id.* at *1.

⁶ *Id.* at *2.

⁷ *Id.* at *3.

⁸ *Id.*

they convicted him for the threats to the unknown elementary schools and law enforcement officers.

In *Elonis*, our Court of Appeals instructed the United States must prove, beyond a reasonable doubt, both a subjective and objective component for a § 875(c) conviction.⁹ On a subjective level, the United States must prove the defendant transmitted a communication for the purpose of issuing a threat or acknowledged the communication will be viewed as a threat.¹⁰ The United States must also prove the defendant transmitted a communication which a reasonable person would view as a threat.¹¹ This objective component “shields individuals from culpability for communications that are not threatening to a reasonable person, distinguishing true threats from hyperbole, satire or humor.”¹²

Most significant for today’s analysis, our Court of Appeals noted “it may sometimes be difficult to pinpoint the recipient of the communication. This is especially so in the age of social media, where the recipient of the communication may be the defendant’s Facebook followers or even the general public. But Section 875(c) operates the same whether the communication has one recipient or many. For example, if a defendant transmits a communication on Facebook, he violates section 875(c) if the communication is objectively threatening and the defendant

⁹ *Id.* at *5.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.* (citing *Watts v. United States*, 394 U.S. 705, 708 (1969)).

transmitted it for the purpose of issuing a threat or would acknowledge that it would be viewed as a threat by its Facebook followers.”¹³

Nothing in § 875(c), as reviewed by our Court of Appeals last week, requires the identity of the type of injury threatened by Mr. Kabbaj or the “other person” who, in addition to a federal judge or Detective Egan, may be threatened. Mr. Kabbaj admittedly identified one federal judge and individuals adverse to him in civil litigation. His argument concerns the context of his e-mail and whether, under § 875(c)’s subjective and objective components, he transmitted the e-mail for the purpose of issuing a threat or would acknowledge his e-mail would be viewed as a threat and that an objectively reasonable person would view his e-mail as a threat. These are the elements of the offense charged in Count One of the Indictment. They are fact questions in this case.

The Grand Jury did not fail to charge an essential element because the Indictment: (1) contained the elements of the offense intended to be charged and explained what Mr. Kabbaj must be prepared to encounter; and, (2) allowed Kabbaj to “plead an acquittal or conviction in bar of future prosecutions for the same offense.”¹⁴ We apply a two-part test for measuring the sufficiency of an indictment: “(1) contains the elements of the offense intended to be charged and sufficiently apprises the defendant of what he must be prepared to meet and (2) allows him to ‘plead an acquittal or conviction in bar of future prosecutions for the same offense.’” *Id.* (citations omitted). An indictment must include more than the essential elements of the offense, but “no greater specificity than the statutory language is required so long as there is sufficient factual

¹³ *Id.* at *6, n.7.

¹⁴ See *United States v. John-Baptiste*, 747 F.3d 186, 195 (3d Cir. 2014), *cert. denied sub nom. Brooks v. United States*, 134 S. Ct. 2324 (2014), and *cert. denied sub nom. Edwards v. United States*, 134 S. Ct. 2889 (2014).

orientation to permit a defendant to prepare his defense and invoke double jeopardy.”¹⁵

Kabbaj’s argument the Indictment should be dismissed because the United States did not identify the “other persons” and the type of threatened injury fails because these facts are not required to protect Kabbaj from a subsequent charge arising from the conduct alleged in the Indictment. A defendant has sufficient notice to guard against future prosecutions threatening double jeopardy “if an indictment specifies the time frame for the criminal conduct.”¹⁶ In *John-Baptiste*, the defendant moved to dismiss the indictment because the United States did not identify the victims of the alleged crimes by name.¹⁷ Our Court of Appeals held while the indictment could have identified the alleged victims, there was enough specificity about the crimes charged, and the indictment specified the period the alleged crimes occurred.¹⁸ Our Court of Appeals held the United States sufficiently identified facts to protect the defendant from any future attempt to prosecute him for the same crime.¹⁹

The Grand Jury specified Mr. Kabbaj’s conduct occurred “[o]n or about February 18, 2016.” The Indictment arises from an email admittedly drafted and sent by (or intended to be sent by) Mr. Kabbaj to, among others, a federal judge. The February 18, 2016 email specifically identifies several persons, including a federal judge and his litigation adversaries. This information is sufficiently specific to withstand a double jeopardy challenge. The Indictment

¹⁵ *John-Baptiste*, 747 F.3d at 196.

¹⁶ *Id.*


¹⁷ *Id.* at 195.

¹⁸ *Id.* at 196.

¹⁹ *Id.*

contains the mental state element required under 18 U.S.C. § 875(c): “the communication was made with the purpose of issuing a threat and with knowledge that the communication would be viewed as a threat.”²⁰

As the Indictment contains the elements of the §875 (c) offense, we deny Mr. Kabbaj’s motions to dismiss.



KEARNEY, J.

²⁰ ECF Doc. No. 1.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA	:	CRIMINAL ACTION
	:	
v.	:	NO. 16-365
	:	
YOUNES KABBAJ	:	

ORDER-MEMORANDUM

AND NOW, this 24th day of January 2017, upon consideration of the *pro se* Defendant's Motion to dismiss based on selective or vindictive prosecution (ECF Doc. No. 70) and the United States' Opposition (ECF Doc. No. 94), it is **ORDERED** the *pro se* Defendant's Motion (ECF Doc. No. 70) is **DENIED**.

Analysis

Continuing to raise facts supporting his defenses in a rambling 18 page single spaced motion, Mr. Kabbaj most recently argues the United States is selectively prosecuting him for decapitation threats in his February 18, 2016 email directed to a United States Magistrate Judge because he is a Muslim. Mr. Kabbaj claims he is being singled out for prosecution when the United States will not prosecute a non-Muslim homosexual for allegedly similar threats against him. He claims the United States is applying a double standard because he threatened a federal official but will not prosecute a person who did not threaten a federal official. This claim lacks merit. The United States charges Mr. Kabbaj with threats against a United States Judge. His litigation adversaries did not threaten a federal judge. A jury will decide whether Mr. Kabbaj is guilty, but the United States did not selectively prosecute him for acts which he did and others did not.

Mr. Kabbaj also moves to dismiss arguing the United States is vindictively prosecuting

him because of a vast conspiracy to retaliate against him related to his allegedly uncovering facts regarding a United States Ambassador and other federal officials which seek to silence him through this prosecution. This claim lacks any basis.

I. Mr. Kabbaj has not shown selective prosecution.

“[T]he decision whether to prosecute may not be based on ‘an unjustifiable standard such as race, religion, or other arbitrary classification.’”¹ “A defendant may demonstrate that the administration of a criminal law is ‘directed so exclusively against a particular class of persons ... with a mind so unequal and oppressive’ that the system of prosecution amounts to ‘a practical denial’ of equal protection of the law.”² “In order to dispel the presumption that a prosecutor has not violated equal protection, a criminal defendant must present ‘clear evidence to the contrary.’”³ “The claimant must demonstrate that the federal prosecutorial policy had a discriminatory effect and that it was motivated by a discriminatory purpose.”⁴

Mr. Kabbaj argues selective prosecution on the grounds of his Muslim religion and a class-of-one theory.

¹ *United States v. Armstrong*, 517 U.S. 456, 464 (1996) (quoting *Oyler v. Boles*, 368 U.S. 448, 456 (1962)).

² *Armstrong*, 517 U.S. at 464-65 (quoting *Yick Wo v. Hopkins*, 118 U.S. 356, 373 (1886)).

³ *Armstrong*, 517 U.S. at 465 (quoting *United States v. Chemical Foundation, Inc.*, 272 U.S. 1, 14-15 (1926)).

⁴ *Armstrong*, 517 U.S. at 465 (1996) (internal quotations and citations omitted).

a. **Mr. Kabbaj has not shown clear evidence of religious/racial motivation.**

“To establish a discriminatory effect in a race case, the claimant must show that similarly situated individuals of a different race were not prosecuted.”⁵ “The similarly situated requirement does not make a selective-prosecution claim impossible to prove.”⁶ In *Yick Wo v. Hopkins*, the Supreme Court invalidated a San Francisco ordinance prohibiting laundry mats in wooden buildings.⁷ The plaintiff showed the City only applied the ordinance against Chinese nationals.⁸ The City denied two hundred applications to run laundries in wooden shops filed by Chinese nationals but approved 80 applications for similarly situated wooden shops filed by non-Chinese nationals.⁹

To successfully allege selective prosecution under a religion/race theory, Mr. Kabbaj must show persons of other races or religions who issued threats through interstate commerce and threatened federal judges were not similarly treated. He must further show the United States decided to prosecute him based on his race or religion or to prevent his exercise of a fundamental right.¹⁰

Mr. Kabbaj claims the United States overreacted to the references to Islam in his email, namely his female Muslim hacker squad. He contends this indictment is derived from racial bias,

⁵ *Id.*

⁶ *Id.* at 466.

⁷ 118 U.S. 356, 374 (1886).

⁸ *Id.*

⁹ *Id.*

¹⁰ *United States v. Schoolcraft*, 879 F.2d 64, 68 (3d Cir. 1989).

but really is arguing a religious bias. In an earlier motion, which he incorporates by reference, Mr. Kabbaj argues, “It also appears that simply because defendant included the term ‘Muslim’ in his statement to describe the category of woman, that the government is alleging that inclusion of the term ‘Muslim’ made the statement an expression of ‘violence’ Is it just that the racism inherent in the hearts of certain people against Muslims is so extreme, that the term ‘Muslim’ invoked instantaneous fear (or more so hate that is masquerading as fear)?”¹¹

Mr. Kabbaj offers no basis to challenge the United States’ decision to prosecute him for allegedly threatening a federal judge due to his faith or race. The thrust of Mr. Kabbaj’s racial bias argument focuses on motives of Mr. Simpson and his life partner Mr. Albro¹², rather than racial bias on behalf of the prosecutors. Absent clear evidence, we do not dismiss the indictment based on alleged religious and racial based selective prosecution.

b. Class-of-One Theory

Mr. Kabbaj asserts a class-of-one theory without explicitly referencing the doctrine’s name: “class-of-one.” “[T]o state a claim . . . a plaintiff must allege . . . 1) the defendant treated him differently from others similarly situated, (2) the defendant did so intentionally, and (3) there was no rational basis for the difference in treatment.” Mr. Kabbaj’s class-of-one theory is based on belief the people he has threatened (people at the AST, the parties to his civil suit, people in government, etc.) are similarly situated to him because they also threatened him.

His argument is misplaced. Assuming, *arguendo*, the people Mr. Kabbaj has threatened have likewise threatened him, they would still not be similarly situated. To be similarly situated,

¹¹ ECF Doc. No. 53, p. 9.

¹² ECF Doc. No. 70, pp. 10-11.

they would need to have issued a threat to a federal judge through interstate commerce. Mr. Kabbaj would then have to show they were treated differently than he was, the different treatment was intentional, and there is no rational basis for the difference in treatment. If we can theorize any rational basis whatsoever for different treatment, we must deny this motion. Mr. Kabbaj sent the February 18, 2016 email with the threats to a federal judge. The other persons did not. There is no basis for dismissing the indictment under a “class of one” theory.

II. Mr. Kabbaj adduces no evidence of vindictive prosecution.

“Legal vindictiveness does not refer to a prosecutor’s generic ill feeling toward, or even his desire to harm, a defendant. Rather, as defined by the Supreme Court, vindictiveness means that a prosecutor has retaliated against a defendant for the exercise of a legal right, denying her due process.”¹³

A defendant must be free to exercise his constitutional or statutory rights to fight charges brought against him “without apprehension that the State will retaliate by substituting a more serious charge for the original one.”¹⁴ The Supreme Court held the Due Process Clause of the Fourteenth Amendment “requires that vindictiveness against a defendant for having successfully attacked his first conviction must play no part in the sentence he receives after a new trial.”¹⁵


Mr. Kabbaj interchangeably uses the terms selective prosecution and vindictive prosecution without adducing facts supporting vindictive prosecution. As shown above, we have

¹³ Doug Lieb, *Vindicating Vindictiveness: Prosecutorial Discretion and Plea Bargaining, Past and Future*, 123 Yale L.J. 1014, 1017 (2014) (citing *Blackledge v. Perry*, 417 U.S. 21, 27-29 (1974)).

¹⁴ *Blackledge v. Perry*, 417 U.S. 21, 28 (1974).

¹⁵ *North Carolina v. Pearce*, 395 U.S. 711, 725 (1969).

no basis to find the indictment is based on anything more than Mr. Kabbaj's February 18, 2016 email allegedly threatening a federal judge. We have no evidence the United States denied Mr. Kabbaj due process. His defenses regarding the purpose and nature of his language are preserved but do not establish the United States is vindictive because it has another point of view concerning threats of decapitation involving a United States Judge.



KEARNEY, J.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA : CRIMINAL ACTION
: 16-CR-365
Plaintiff :
vs. : Philadelphia, Pennsylvania
: January 27, 2017
YOUNES KABBAJ :
Defendant : CHANGE OF PLEA HEARING

BEFORE THE HONORABLE MARK A. KEARNEY
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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service.

(At 11:45 a.m. in Courtroom 9A.)
ESR OPERATOR: All rise.
Court is now in session, the Honorable Mark A. Kearney
presiding.
THE COURT: Good morning.
MR. ARTEAGA: Good morning, your Honor.
THE COURT: Please be seated.
We are here today -- this morning -- in the matter of
the United States of America versus Younes Kabbaj.
If I can have the entry of appearance for the United
States.
MR. ARTEAGA: Jose Arteaga, here on behalf of the
Government.
THE COURT: Thank you, nice to see you, sir.
MR. ARTEAGA: Good morning, your Honor.
THE COURT: And for Mr. Kabbaj -- nice to see you,
sir, this morning.
THE DEFENDANT: Hello, Judge.
THE COURT: And we also have the assistance today of
standby counsel, would you enter your appearance, sir.
MR. IBRAHIM: Good morning, your Honor, Jeremy Ibrahim
on behalf of Mr. Kabbaj as standby counsel.
THE COURT: Thank you, Mr. Ibrahim. Okay.
Today, I have received a notice that we are to
consider an agreement for a pretrial disposition through a

guilty plea.
And if I could kindly ask -- well, let me start with
the United States, have you had an opportunity to notice the
victim of this claim, concerning today's plea?
MR. ARTEAGA: She is aware of it. I confirmed that
with the case agent yesterday, who was not able to be here
today, your Honor, because of the short notice involved, so he
had a conflict with his schedule, but he confirmed with me
yesterday, that he did speak with the Court and notified the
judge of what was happening today -- today -- but she did not
want to appear.
THE COURT: Okay. Thank you.
MR. ARTEAGA: Thank you, your Honor.
THE COURT: All right.
So, Mr. Kabbaj, do you know why you're here today?
THE DEFENDANT: Yes.
THE COURT: And why is that?
THE DEFENDANT: Ah, to -- ah -- pursuant to a guilty
plea agreement.
THE COURT: Okay.
So, over the next few moments, I am going to explain a
number of things to you, answer any questions that you have.
If at any time, you don't understand what I say,
please stop me -- interrupt me -- it's important that you
understand what I am going to say today and what's going to

happen today and what's going to happen after today.
If at any time, you want to take a break and you'd
wish to get any kind of -- not advice in a classic sense -- but
any kind of direction from standby counsel as to what's
happening, you're certainly welcome to do that, do you
understand that, sir?
THE DEFENDANT: Yes, I -- I do.
THE COURT: All right.
Madam Deputy, would you kindly administer the oath for
Mr. Kabbaj?
DEPUTY CLERK: Please rise and raise your right hand.
YOUNES KABBAJ, DEFENDANT, AFFIRMED.
THE DEFENDANT: I affirm.
DEPUTY CLERK: Please state your name for the record.
THE DEFENDANT: Younes Kabbaj.
DEPUTY CLERK: Thank you, you may be seated.
MR. ARTEAGA: Your Honor, I -- I believe that because
of the *pro se* status, it would be --
THE COURT: I'm -- I am going to do that, sir.
MR. ARTEAGA: Thank you, your Honor.
THE COURT: I wanted to get -- I wanted to swear --
describe what was happening.
So, Mr. Kabbaj, you have continued to elect to proceed
pro se and I recognize that and honored that and to this date
and today is another day, that I'd want to just confirm, you

1 remember we were together last Friday and I went through a
 2 series of questions with you, concerning your ability to --
 3 willingness -- to proceed by yourself without representation of
 4 counsel, do you remember that from last Friday, sir?
 5 THE DEFENDANT: Yes, I do.
 6 THE COURT: Okay.
 7 Has anything in your understanding of that changed
 8 since last Friday?
 9 THE DEFENDANT: In terms of proceeding pro se?
 10 THE COURT: You are willing to proceed pro se?
 11 THE DEFENDANT: Correct.
 12 THE COURT: Has anything changed?
 13 THE DEFENDANT: Oh, no.
 14 THE COURT: Okay.
 15 So, I just have to give you a couple -- I don't need
 16 to, I think, to do the entire, what we call, Peppers colloquy,
 17 but I do want to address a couple of issues that are important
 18 for the purposes of today, as I read Peppers.
 19 First, the repre -- the events that have since
 20 occurred last Friday, I think, I just want to address, exactly,
 21 what we're talking about today.
 22 You understand, sir, that you were charged with two
 23 crimes, do you understand that, sir?
 24 THE DEFENDANT: Yes.
 25 THE COURT: Okay.

1 And you understood, there was a Count 1 and a Count 2,
 2 against you, one under 875 and one under 115 of the United
 3 States Code --
 4 THE DEFENDANT: Yes.
 5 THE COURT: -- do you remember that, sir?
 6 THE DEFENDANT: Yes.
 7 THE COURT: Okay.
 8 And do you -- and as we'll talk about today, you
 9 understand that the United States Sentencing Commission has
 10 issued sentencing guidelines, that I will apply -- consider --
 11 in determining your sentence, if you're found guilty, you
 12 understand that?
 13 THE DEFENDANT: Yes.
 14 THE COURT: Okay.
 15 Do you understand, sir, that if you plead guilty --
 16 and I'll do this a little later -- I understand that you're
 17 considering pleading guilty to Count 2 of the indictment, that
 18 that will have certain penalties to it.
 19 And while the United States and you have reached an
 20 agreement as I understand it and we'll talk about it in a few
 21 moments under Federal Rule of Criminal Procedure 11, concerning
 22 the term of that, that it could also be the crime -- I could
 23 also -- or excuse me -- the law allows me such to you -- either
 24 one of you withdrawing the plea -- withdrawing the plea --
 25 allows me to charge some different -- to find some different

1 sentence, do you understand that, sir, do you understand that --
 2 that there could be a much bigger sentence than -- or for the
 3 United States -- a smaller sentence than that agreed to?
 4 THE DEFENDANT: Correct.
 5 THE COURT: Okay.
 6 And you understand that that could be -- as I
 7 understand it -- Mr. Arteaga, again, refresh me on -- on Count
 8 2, what is that sentence, sir, what could it -- what's
 9 congressional mandate?
 10 MR. ARTEAGA: Your Honor, the maximum penalty on Count
 11 2 is, six years imprisonment, there is a maximum of a
 12 \$250,000.00 fine and a \$100.00 special assessment, which is
 13 mandatory.
 14 THE COURT: Okay.
 15 So, for purposes of today, sir, that's what we're
 16 talking about, did you under -- do you understand those terms,
 17 sir, what they mean?
 18 THE DEFENDANT: Yes, I do.
 19 THE COURT: Okay.
 20 THE DEFENDANT: Ah, one thing, your Honor, if I
 21 might --
 22 THE COURT: Certainly.
 23 THE DEFENDANT: -- just interrupt?
 24 I just want to -- ah -- remind the Court, that this
 25 case came about, because of a contract dispute.

1 I signed a contract with an individual named,
 2 Ambassador Edward M. Gabriel, who was claiming to be in some
 3 capacity, working for the U.S. Government.
 4 And that contract, eventually, was breached and the
 5 issue that occurred is that, when there was settlement
 6 negotiations in Magistrate Thyng's chambers as a judge and
 7 entrusting in a judge, she explained to me, her interpretation
 8 of that contract. And I relied upon those interpretations to
 9 sign that contract. And with the -- with the understanding that
 10 those interpretations are how the contract would be applied.
 11 That contract -- those negotiations didn't occur in an
 12 open court, like, we're doing today. And so, after that
 13 happened, then the magistrate did not follow through on those
 14 agreements and I did not know, that I needed to sign a separate
 15 contract with her in terms of how she was interpreting the
 16 contract I signed with Ambassador Gabriel.
 17 And now, that we're having a proceeding in open court,
 18 I just want to make sure, that I can rely upon your
 19 interpretations of the contract as binding and -- and -- you
 20 know, upon the Government. And in any case where it may be your
 21 interpretation of the contract, may contradict some
 22 interpretation that they may have, that your interpretation is
 23 the superceding and controlling authority of the contract, so
 24 that I know that I can trust in what you're telling me and I can
 25 make decisions based on that trust.

1 THE COURT: Well, let me -- let me start with two
2 things, one is, we are in open court, there is a record here
3 today. So, whatever I say and you say is recorded.

4 Secondly, the issues that will be before me at
5 sentencing, do -- will not relate to my interpretation of
6 whatever contract you had with Mr. Gabriel. They will relate --
7 they may relate to some facts, that mitigate the term based on
8 your arguments. But in other words, I won't issue any findings,
9 Mr. Kabbaj, that apply to the civil case at all at sentencing.

10 THE DEFENDANT: And that's another thing, I wanted to
11 bring up, is that I don't --

12 THE COURT: Well, just so -- do you understand that,
13 though?

14 THE DEFENDANT: I understand that.

15 THE COURT: Okay, all right.

16 So, now your question, go ahead.

17 THE DEFENDANT: And the only thing I also wanted to
18 make sure that, nothing that occurs here today would have any
19 impact upon the civil matters, could not be used against me in
20 the civil matters or anything in that regards.

21 THE COURT: Well, sir, I -- I cannot advise you --
22 see, I -- I cannot advise you as an answer to that. I -- I want
23 the record to be clear, I -- I don't know what is going on in
24 the civil matters.

25 But that wouldn't even matter in many ways, because

1 all we're doing today is, possibly, accepting a plea of guilty
2 to one count, that has to do with one e-mail that occurred in
3 February of 2016, that had to do with one judge, that has --
4 that has -- there is nothing being said today, that -- either by
5 you, as I understand it or by me or by the United States,
6 certainly, they're not in that case -- that interprets what that
7 contract means.

8 So, I want the record to be clear, I -- I don't --
9 sir, I can't say, unequivocally, I can't say it would never -- I
10 don't know what would happen in the civil case, but I'm saying
11 for purposes of today, it's not an issue in this proceeding.

12 And I want the record to be clear, I am not making any
13 findings today or, frankly, I don't think at sentencing that
14 will have any effect or any import, whatsoever, in what we call,
15 a conclusion was -- you know --

16 THE DEFENDANT: Okay.

17 THE COURT: -- that would affect what happens in a
18 civil proceeding.

19 THE DEFENDANT: I just wanted to make sure of that.

20 And also, for the record, that you are the Judge
21 assigned to this civil matter as well.

22 THE COURT: Well, accept that, that's correct.

23 THE DEFENDANT: Okay.

24 THE COURT: Let's be careful though, the matter that's
25 on the civil case, I am assigned to, however, that matter is

1 presently on appeal to the United States Court of Appeals.

2 THE DEFENDANT: Correct, exactly.

3 THE COURT: So -- and if the United States Court of
4 Appeals reverses me and sends it back to me, then you're
5 correct.

6 But the only way, sir, that -- the only affect that
7 could possibly happen from a plea, possibly, in all fair warning
8 to you, is it doesn't affect the contract or my interpretation
9 of the contract or anything along those lines, it may affect
10 some --

11 (Pause at 11:55 a.m.)

12 THE COURT: -- let's see, I -- see, I can't even think
13 of how -- what Magistrate Judge Thyng did or didn't do and your
14 e-mail had anything to do with your dispute with Mr. Gabriel,
15 concerning enforcing the settlement agreement.

16 But the only way that it would have anything to do
17 with it, is if somehow, there was an argument that you accepting
18 guilty for sending the e-mail under 18 USC, 115(a) -- let's be
19 careful -- (a)(1)(B) and (B)(4) had some factor -- and I don't
20 see it, sir, I don't see how it all ties in to what the decision
21 as to whether that's your settlement agreement in state -- in
22 front of Judge Thyng, that's currently up on appeal in the
23 Court of Appeals.

24 THE DEFENDANT: Correct.

25 I mean, 'cause I did file a petition for reviewing. I

1 also wanted to reassert that my dispute is not, specifically,
2 with Mr. Gabriel, it's with the corporation --

3 THE COURT: Right.

4 THE DEFENDANT: -- under which authority -- his
5 authority -- he signed the contract with me. And all of those
6 matters are still pending and they'll probably, go to the
7 Supreme Court as well.

8 THE COURT: That may be true.

9 And so, I -- I want the record to be clear, I
10 understand that you are -- that I am the trial judge, if it were
11 to come back to me from the Court of Appeals or the United
12 States Supreme Court, I understand that.

13 Unless, it's re-assigned and I'd have nothing to do
14 with that but right now, I am the trial judge, so anything I do
15 today is -- I am mindful of that -- but I -- I don't see how it
16 ties in at all.

17 THE DEFENDANT: Okay.

18 THE COURT: And -- and we're on the record today and
19 you will have the same ability as the United States, if you wish
20 to order a copy of this transcript at a later time, if you need
21 to order it.

22 THE DEFENDANT: Okay.

23 THE COURT: All right.

24 So, let me just -- there's a couple of other
25 questions, sir, just to understand what the scope of your

1 representation is.

2 So, you understand, sir, that today, you're

3 representing yourself and while I can tell you what I am going

4 to do, what the United States is going to do -- as I just did --

5 I can't advise you as to what to do, I'm not your lawyer, you

6 understand that, sir, right?

7 THE DEFENDANT: I understand that.

8 THE COURT: Okay.

9 And do you understand that even today, there may be --

10 and I am going to go through in connection with our discussion

11 that there may be defenses to the claims. And the United States

12 is going to talk about the claims and the offense and describe

13 them to you, but you understand, you may have defenses to them,

14 that you may not know about as a layperson, do you understand

15 that, sir?

16 THE DEFENDANT: I understand that, your Honor.

17 THE COURT: Okay.

18 Do you understand that a skilled attorney, who is

19 trained in these areas, might know defenses that you do not know

20 and you'd still wish to proceed?

21 THE DEFENDANT: Correct, your Honor.

22 THE COURT: All right.

23 You understand, sir, that I apply the Federal Rules of

24 Evidence and -- do you understand what they -- generally, what

25 they are?

1 THE DEFENDANT: Generally, I haven't --

2 THE COURT: Okay.

3 THE DEFENDANT: -- reviewed them yet, but I

4 understand, generally.

5 THE COURT: Okay.

6 And I'll also apply something called, the Federal

7 Rules of Criminal Procedure, do you understand what they are?

8 THE DEFENDANT: I understand what those rules are,

9 correct.

10 THE COURT: Today, we'll talk about a Federal Rule of

11 Criminal Procedure, 11. I don't know if you've had a chance --

12 have you had a chance to look at Federal Rule Criminal Procedure

13 11?

14 THE DEFENDANT: Yeah, I browsed through it, yes.

15 THE COURT: Okay, all right.

16 Do you understand that these rules govern what I do

17 and you have to follow these rules, even though you're not a

18 lawyer?

19 THE DEFENDANT: Yes.

20 THE COURT: Okay.

21 Do you understand that when we get to sentencing, that

22 you may, if you wish, call witnesses, you may ask them questions

23 and you may, yourself, testify -- as to me -- as to what you'd

24 wish to say regarding sentencing, do you understand that, sir?

25 THE DEFENDANT: Yes.

1 THE COURT: Okay.

2 Do you understand that for purposes of today and/or

3 sentencing, that if you had an outside attorney, he or she could

4 more easily contact any witness you may want, than you can in

5 your present state, do you understand that, sir?

6 THE DEFENDANT: Yes.

7 THE COURT: Okay.

8 Now, I have said from -- since we've first got

9 together, that -- and I think you understand that, it's unwise

10 in our view for you to represent yourself. You are not familiar

11 with the law in the -- in the most extensive sense.

12 You're not familiar with the court procedure, although

13 you do have an understanding of how to file motions and how to

14 answer motions and how to appear in court. And I learned, the

15 other day, how to cross-examine witnesses.

16 But you're not familiar with these Rules of Evidence,

17 the way a lawyer would be. And I've told you and I'd again,

18 urge you not to try to represent yourself.

19 But now that you understand those rules, do you wish

20 to go forward continuing today and represent yourself at this

21 hearing, concerning a plea agreement?

22 THE DEFENDANT: Yes.

23 THE COURT: Okay.

24 And you're making this decision, sir, and no one has

25 made it on your behalf, is that correct?

1 THE DEFENDANT: Yes.

2 THE COURT: Okay, all right.

3 Do you have any questions concerning what I've just

4 asked or anything you'd want me to clarify concerning your

5 ability to represent yourself today?

6 THE DEFENDANT: (No verbal response.)

7 THE COURT: I'll answer any other question, you'd have

8 about the agreement, but anything about your ability to

9 represent yourself?

10 THE DEFENDANT: Not at this moment.

11 THE COURT: All right.

12 So, sir, you are under oath and you've just answered a

13 series of questions, it's fair for me to tell you that, in the

14 event you answer -- if you falsely answer a question today -- or

15 and the United States believes, you've answer it falsely, they

16 could try to prosecute for perjury, which would be an offense

17 separate and apart, just like they could any time you testify.

18 And they could bring those charges separate and apart

19 from the one to which you are pleading guilty today, do you

20 understand that, sir?

21 THE DEFENDANT: I understand that.

22 Ah, if the Government were to provide false testimony

23 or perjury, that testimony -- I believe -- they would be subject

24 to the same type of.

25 THE COURT: Right.

1 So, knowing that, sir, would you describe for me your
 2 full name?
 3 THE DEFENDANT: Younes Ale Kabbaj.
 4 THE COURT: Okay.
 5 Have you ever used any other name?
 6 THE DEFENDANT: Alex.
 7 THE COURT: Okay. As a nickname?
 8 THE DEFENDANT: As a -- ah -- as a -- in terms of my
 9 middle name, being Ali --
 10 THE COURT: Okay.
 11 THE DEFENDANT: -- I would add an x to it.
 12 THE COURT: Okay.
 13 So, has anybody ever referred to your as -- by a
 14 nickname or something like that to where I would see documents
 15 with your name, other than Younes?
 16 THE DEFENDANT: Ah, I've had nicknames, but I don't
 17 think they're referred to in any documents --
 18 THE COURT: Okay.
 19 THE DEFENDANT: -- just personal things, between
 20 friends.
 21 THE COURT: Have you ever any other name for purposes
 22 of obtaining any kind of -- a driver's license -- or any kind of
 23 information, that you would need, have you ever used any other
 24 name?
 25 THE DEFENDANT: No.

1 THE COURT: Okay.
 2 How old are you, sir?
 3 THE DEFENDANT: I'm forty-one.
 4 THE COURT: Okay.
 5 And am I correct, that you attended -- it is, City
 6 College in New York?
 7 THE DEFENDANT: I -- I -- I attended Hofstra and then
 8 graduated from Queens College community.
 9 THE COURT: That's right, thank you, okay.
 10 Sir, you certainly read and you write and you speak
 11 English?
 12 THE DEFENDANT: Yes.
 13 THE COURT: Am I correct that in the past, you --
 14 well, have you ever been treated for an alcohol addiction?
 15 THE DEFENDANT: No.
 16 THE COURT: Okay.
 17 Have you ever been treated for a drug addiction?
 18 THE DEFENDANT: I -- I've attended drug counseling,
 19 but I don't -- I don't believe I had an addiction --
 20 THE COURT: Okay.
 21 THE DEFENDANT: -- and I haven't used drugs --
 22 THE COURT: And that was --
 23 THE DEFENDANT: -- since that --
 24 THE COURT: -- several years ago, right, when you
 25 attended those?

1 THE DEFENDANT: It's been a while -- it's been a
 2 while.
 3 THE COURT: Yeah, okay.
 4 More than -- if I remember --
 5 THE DEFENDANT: It was during the first -- when I --
 6 THE COURT: Right.
 7 THE DEFENDANT: -- had a first conviction --
 8 THE COURT: Right.
 9 THE DEFENDANT: -- it was part of the -- ah -- release
 10 probation, they --
 11 THE COURT: Right.
 12 THE DEFENDANT: -- generally had people involved --
 13 THE COURT: Okay.
 14 THE DEFENDANT: -- in those programs.
 15 THE COURT: Have you ever been treated, that is,
 16 diagnosed and treated for a mental illness?
 17 THE DEFENDANT: Ah, I've been diagnosed, but I don't
 18 have a mental illness --
 19 THE COURT: Okay.
 20 THE DEFENDANT: -- it was a false diagnosis.
 21 THE COURT: Okay.
 22 Because of that -- what you believe to be a false
 23 diagnosis -- were you ever treated, did anybody ever put you on
 24 medicine based upon a false diagnosis?
 25 THE DEFENDANT: Based on a false diagnosis, yes.

1 THE COURT: And when was that, sir?
 2 THE DEFENDANT: Ah, that was when the FBI would grab
 3 me and drag me to a hospital and then, lie about it under oath
 4 as they did at the hearing --
 5 THE COURT: So, give me --
 6 THE DEFENDANT: -- on detention.
 7 THE COURT: -- give me a time frame, generally?
 8 THE DEFENDANT: Ah, the last time, that did that to
 9 me, it was in 2005.
 10 THE COURT: 2005, right, okay. All right.
 11 Sir, have you had an opportunity to review the
 12 indictment, the two-count indictment that was filed against you
 13 in this case?
 14 THE DEFENDANT: Yes.
 15 THE COURT: All right.
 16 Do you have any questions of me, concerning the
 17 indictment or the nature of the charges in the indictment?
 18 THE DEFENDANT: No.
 19 THE COURT: And I have an agreement and I'll talk
 20 about you -- with you -- has anyone forced your or physically
 21 threatened you or otherwise threatened you to sign that
 22 document?
 23 THE DEFENDANT: Ah, to sign the document, no, but I do
 24 believe, you're aware that there are threats and counter-threats
 25 being traded between the parties, which results in this case.

1 THE COURT: Okay.

2 Between the parties -- let's be careful there.

3 Between you --

4 THE DEFENDANT: Myself and the Government.

5 THE COURT: Okay.

6 And you believe, it's the Government, because of Mr.

7 -- Mr. Gabriel's involvement?

8 THE DEFENDANT: Of course.

9 THE COURT: Okay, all right.

10 THE DEFENDANT: And the FBI and the people who have

11 been --

12 THE COURT: Okay.

13 THE DEFENDANT: -- threatening me, including the e-

14 mail you re -- you saw the e-mail from the -- ah -- Department

15 of Homeland Security agent, who had threatened to kill me --

16 THE COURT: Okay.

17 THE DEFENDANT: -- in an e-mail.

18 THE COURT: Has anyone in connection with document --

19 I appreciate what you're talking about before -- leading to this

20 incident -- but has anyone threatened you, physically or

21 otherwise, in connection with the last month, two months in

22 connection with the guilty plea agreement?

23 THE DEFENDANT: Well, just -- I guess -- in connection

24 with the dispute in general, as you're aware, I've -- I've --

25 and I'm incorporating the pleadings that have been filed

1 civilly, I am a witness in a terrorism investigation. I'm

2 pretty much being held hostage by the FBI and by terrorists and

3 I was in the middle of that dispute between them and started

4 being used as a hostage by both sides.

5 THE COURT: Okay.

6 THE DEFENDANT: So, in that regards, it's an ongoing

7 matter, the FBI refuses to question me about any of it directly.

8 I haven't been questioned since 9/11.

9 And I did find evidence to corroborate my claim since

10 that time and I've presented them to the courts.

11 THE COURT: Okay.

12 My question, though, sir, for your purposes, okay,

13 it's really focusing on whether you believe, that -- that

14 someone has forced you today -- in other words, today, this day,

15 January 27th, to come forward and sign this document today --

16 THE DEFENDANT: Nobody has come to me today --

17 THE COURT: -- or forced you to sign this.

18 THE DEFENDANT: -- and --

19 THE COURT: Or -- or to sign this document, did

20 anybody come to you and said, sir, if you don't sign this

21 document something will happen to you?

22 THE DEFENDANT: Well, nobody said those words to me.

23 THE COURT: Okay.

24 So, are you willing to -- you -- you've signed this

25 agreement, is that correct?

1 THE DEFENDANT: I did.

2 THE COURT: Okay.

3 You signed it, knowing what was in it?

4 THE DEFENDANT: I did.

5 THE COURT: Okay.

6 You've read the agreement?

7 THE DEFENDANT: I did.

8 THE COURT: Now, did you have a chance to read it

9 again, this morning?

10 THE DEFENDANT: I did.

11 THE COURT: Okay.

12 You've had a chance, even though he's not,

13 technically, your lawyer, but you've had a chance to speak to

14 standby counsel, regarding what's in the agreement?

15 THE DEFENDANT: Yes.

16 THE COURT: And -- and any questions that there may

17 that be concerning any legal terms that are in there, that you

18 may not be directly familiar with, did you have a chance to talk

19 to him about those?

20 THE DEFENDANT: Yes.

21 THE COURT: Okay, all right.

22 So, sir, in pleading guilty, if you plead guilty today

23 to a felony and I find you guilty of that felony, you could be

24 deprived of valuable civil rights, such -- when -- when you're

25 released -- such as the right to vote, the right to hold a

1 public office, to serve on a jury, to hold a gun or to hold a

2 professional license, do you understand that, sir?

3 THE DEFENDANT: Ah, yes, I do.

4 But I'd like to say something on the record about that

5 if I may?

6 THE COURT: About one of those rights?

7 THE DEFENDANT: About the -- the rights that I'm being

8 deprived of.

9 THE COURT: Okay, yes, sir.

10 THE DEFENDANT: Ah, I did, initially, in this case

11 offer the Government as a solution to this problem, that I would

12 be willing to leave the United States and renounce my

13 citizenship, because I am not receiving the benefits of that

14 and, especially, the First Amendment rights as demonstrated in

15 this case.

16 So, they declined my offer, ah, but in terms of

17 rights, I believe that the more -- the much more substantial

18 rights that I'm being deprived of -- ah -- are -- are -- make

19 these rights that are being denied to me pale in comparison.

20 And I don't believe that I have, really, any

21 constitutional rights as a result of this prosecution.

22 THE COURT: Okay.

23 But you understand that, if you -- that you have --

24 let me back in this way -- those persons, who plead guilty still

25 have First Amendment rights, all right.

25

1 They have -- they have rights to speech, they have
2 rights of assembly, in other words, there is no distinction
3 between whether you plead guilty or not plead guilty as to
4 whether you'd have those rights.

5 But by pleading guilty, sir -- and I'd find you guilty
6 -- if I find you guilty, that means you -- that you would be
7 guilty of a felony, which means, essentially, automatically,
8 you'd lose the right to vote, to hold a gun, to serve on a jury,
9 to hold a public office, to hold a professional license, do you
10 understand that, there's a distinction there, sir, do you
11 understand that?

12 THE DEFENDANT: Right.

13 THE COURT: You'd still have First Amendment rights,
14 after you plead guilty.

15 THE DEFENDANT: But I -- I just would like to say,
16 that up until the date of my arrest, sh, I was informed by
17 Government officials and agents, who were alleging to
18 investigate the language, the First Amendment, so-called,
19 language that was being traded between the parties.

20 And these individuals and officials had stated up
21 until that moment, that the threats being made back and forth
22 between the parties were not of their concern, were not
23 something that they would -- that would rise to the level of
24 being illegal.

25 Upon the arrest, itself, and my prosecution, I had no

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1 more rights in terms of the First Amendment, because my speech
2 is chilled to the point, where I don't know anymore, what could
3 be charged as a threat.

4 And what I'll give you as a good example, it's even
5 having been here in this courtroom at one of these past
6 proceedings, I remember just speaking in my natural tone, I
7 remember stating something to the effect, that I would mop the
8 floor with the prosecutor, if this had ever gone to trial.

9 And then, after saying that I, literally, started fear
10 -- fearing what I had said, because I didn't know if that could
11 be charged as a crime.

12 And so, when it gets to a point where a person has to
13 check their speech to the level that I know we'll have to do as
14 a result of the notification given to me via these charges, it's
15 -- it's chilled, completely --

16 THE COURT: Hm-hmm.

17 THE DEFENDANT: -- and I'm just stating that on the
18 record and -- and that's why --

19 THE COURT: Well, I think, I --

20 THE DEFENDANT: -- I will have to leave and renounce
21 my citizenship, regardless of the fact that the Government
22 didn't accept that offer from me, because I can't speak freely.

23 THE COURT: Okay.

24 I think that it's important for you to understand that
25 in a few moments, the United States is going to describe exactly

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1 -- exactly by elements, what the offenses that you're charged
2 with, so you can understand, exactly, where the rights of free
3 speech are -- the United States Congress has found, the rights
4 of free speech stop, when you do certain types of oral threats.

5 So, let's turn now, if we can, sir, do you have a plea
6 agreement in front of you or -- or Mr. Ibrahim, is there an
7 agreement there in front of the -- Mr. Kabbaj?

8 MR. IBRAHIM: Yes, sir.

9 THE COURT: Okay.

10 I understand, Mr. Arteaga, that we have a signed plea
11 agreement, is that correct?

12 MR. ARTEAGA: Yes, sir.

13 THE COURT: All right.

14 So, Mr. Kabbaj, if you would turn to Page 8 of that
15 document and do you recognize your signature there, sir, dated
16 1/27/17?

17 THE DEFENDANT: Yes.

18 THE COURT: Okay.

19 And if you would turn three pages back to Page 11, do
20 you recognize your signature there as well?

21 THE DEFENDANT: Yes.

22 THE COURT: Okay.

23 And I mentioned a moment ago, you -- you had read
24 these two documents before you signed them?

25 THE DEFENDANT: Yes.

28

1 THE COURT: Okay.

2 I am now going to ask the United States, if they would
3 summarize the essential terms of the plea agreement and
4 including, if you would a description of what the -- in
5 Paragraph 3 -- of what the statutory maximum sentence would be
6 and also, the appellate rights and I'll fill in anything else,
7 sir.

8 MR. ARTEAGA: Yes, sir.

9 Your Honor, would you like me to come up to the
10 lectern or --

11 THE COURT: You can speak from there, it might be
12 easier for -- for Mr. Kabbaj to hear you from there.

13 MR. ARTEAGA: Okay, very good.

14 THE COURT: Just as long as you're near a microphone,
15 so that we can hear you.

16 MR. ARTEAGA: Yes.

17 Your Honor, the terms of the plea agreement in summary
18 are as follows:

19 The defendant agrees to plead guilty to Count 2 of the
20 indictment, charging him with influencing a federal official by
21 a threat in violation of 18 USC, Section 115 lower case (a),
22 (1), upper case (B) and lower case, (b) (4), arising from the
23 defendant's communication of a threat via e-mail to assault the
24 United States Magistrate Judge on or about February 18th, 2016.

25 The defendant further acknowledges, his waiver of

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1 rights as set forth in the attachment to this plea agreement.

2 At the time of sentencing, the Government will make
3 whatever sentencing recommendation as to fines, forfeiture,
4 restitution and other matters, which the Government deems
5 appropriate, provided they are consistent with the terms
6 outlines in Paragraph 3 below.

7 The Government would also comment on the evidence and
8 the circumstances of the case, bring to the Court's attention,
9 all facts relevant to sentencing, including evidence relating to
10 dismissed counts, if any and to the character and any criminal
11 conduct of the defendant.

12 Address the Court regarding the nature and seriousness
13 of the offense, respond factually to questions raised by the
14 Court, correct factual inaccuracies in the presentence report or
15 the sentencing record. And rebut any statement of facts made by
16 or on behalf of the defendant at sentencing.

17 At the time of sentencing, the Government will move to
18 dismiss Count 1 of the indictment, which for the record, charges
19 threats in interstate commerce, in violation of 18 USC, Section
20 875, lower case, ©.

21 The defendant waives the statute of limitations as to
22 all dismissed -- all counts to be dismissed under this
23 agreement. And agrees that if the defendant withdraws from or
24 successfully challenges the guilty plea entered under this
25 agreement or if these counts are otherwise, reinstated under the

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1 terms of this agreement, neither, the statute of limitations nor
2 the double-jeopardy clause will bar a prosecution on any of
3 these dismissed counts.

4 Nothing in this agreement shall limit the Government
5 in its comments in and responses to any post-sentencing matters.
6 The parties agree that this plea agreement is made pursuant to
7 Federal Rule of Criminal Procedure 11, lower case, ©, (a), upper
8 case C.

9 And that a sentence within the following sentencing
10 guideline range is the appropriate disposition in this case,
11 namely, eighteen to twenty-four months imprisonment, up to three
12 years of supervised release, no fine and a \$100.00 special
13 assessment.

14 If the Court does not accept this plea agreement,
15 then, either, the defendant or the Government will have the
16 right to withdraw from the plea agreement and insist that the
17 case proceed to trial.

18 THE COURT: Mr. Kabbaj, you'll have a chance to ask
19 questions when he's done.

20 MR. ARTEAGA: The defendant --

21 THE COURT: I'll talk -- I'll talk to you afterwards
22 when we're done.

23 MR. ARTEAGA: -- the defendant understands, agrees and
24 has had explained to him by counsel -- or I should say, standby
25 counsel -- that the Court may impose the following statutory

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1 maximum sentence on Count -- that should read, Count 2, Judge,
2 not --

3 THE COURT: Yes.

4 MR. ARTEAGA: -- Count 1.

5 -- influencing a federal official by threat, six years
6 imprisonment, a \$250,000.00 fine, up to three years of
7 supervised release and a \$100.00 special assessment.

8 The defendant further understands that supervised
9 release may be revoked, if it is -- if its terms and conditions
10 are violated. When supervised release is revoked, the original
11 term of imprisonment may be increased by up to two years per
12 count of conviction. Thus, a violation of supervised release,
13 increases the possible period of incarceration and make it
14 possible that the defendant will have to serve the original
15 sentence, plus a substantial additional period without credit
16 for time already spent on supervised release.

17 The defendant agrees to pay the special victims
18 witness assessment in the amount of \$100.00 at such time as
19 directed by the Court.

20 The parties agree and stipulate that as of the date of
21 this agreement, the defendant has demonstrated acceptance of
22 responsibility for offense, making the defendant eligible for a
23 two-level downward adjustment under the guidelines.

24 The parties agree and stipulate that as of the date of
25 this agreement, the defendant has assisted authorities in the

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1 investigation or prosecution of his own misconduct by timely
2 notifying the Government of his intent to plead guilty, thereby,
3 permitting the Government to avoid preparing for a trial and
4 permitting the Government and the Court to allocate their
5 resources efficiently, resulting in a one-level downward
6 adjustment under the guidelines.

7 If the Court accepts the recommendation of the parties
8 and imposes the sentence stated in Paragraph 3 of this
9 agreement, the parties agree that neither will file any appeal
10 of the conviction and sentence in this case.

11 Further, the defendant agrees that if the Court
12 imposes the recommended sentence, he voluntarily and expressly
13 waives all right to collaterally attack the defendant's
14 conviction, sentence or any other matter relating to this
15 prosecution.

16 However, the defendant retains the right to file a
17 claim, if otherwise allowed by law, that an attorney who
18 represented the defendant during the course of this criminal
19 case, provided constitutionally-ineffective assistance.

20 If the Court does not accept the recommendation of the
21 parties to impose the sentence stated in Paragraph 3 of this
22 agreement and the defendant, nevertheless, decides to enter a
23 guilty plea without objection by the Government, then the
24 defendant voluntarily and expressly waives all rights to appeal
25 or collaterally attack the defendant's conviction, sentence or

1 any other matter related to this prosecution, whether such a
2 right to appeal or collaterally attack arises under 18 USC,
3 Section 3742, Title 18 USC, Section 1291, Title 28 USC, Section
4 2255 or any other provision of law.

5 Notwithstanding the waiver provision of above, if the
6 Government appeals from the sentence, then the defendant may
7 file a direct appeal of his sentence. If the Government does
8 not appeal, then notwithstanding the waiver provision set forth
9 in this paragraph, the defendant may file a direct appeal or a
10 petition for collateral relief, but may raise only a claim if
11 otherwise permitted by law in such a proceeding:

12 One, that the defendant's sentence on any count of
13 conviction exceeds the statutory maximum for that count as set
14 forth in Paragraph 3 above.

15 Two, challenging a decision by the sentencing judge to
16 impose an upward departure, pursuant to the sentencing
17 guidelines.

18 Three, challenging a decision by the sentencing judge
19 to impose an upward variance above the final sentencing
20 guideline range determined by the Court.

21 And four, that an attorney, who represented the
22 defendant during the course of this criminal case, provided
23 constitutionally-ineffective assistance of counsel.

24 If the defendant does -- does appeal -- or seeks
25 collateral relief pursuant to this subparagraph, no issue may be

1 presented by the defendant in such a proceeding, other than
2 those described in this subparagraph.

3 The defendant acknowledges, that filing an appeal or
4 any collateral attack, waived in the preceding paragraph, may
5 constitute a breach of this plea agreement.

6 The Government promises that it will not declare a
7 breach of the plea agreement on this basis, based on the mere
8 filing of a notice of appeal, but may do so, only, after the
9 defendant or his counsel, thereby, states either orally or in
10 writing, a determination to proceed with an appeal or a
11 collateral attack, raising an issue the Government deems barred
12 by the waiver.

13 The parties acknowledge that the filing and pursuit of
14 an appeal constitutes a breach, only if a court determines that
15 the appeal does not present an issue that a judge may reasonably
16 conclude is permitted by an exception to the waiver stated in
17 the preceding paragraph or constitutes a miscarriage of justice
18 as that term is defined in applicable law.

19 If the defendant commits any federal, state or local
20 crime between the date of this agreement and his sentencing or
21 otherwise violates any other provision of this agreement, the
22 Government may declare a breach of the agreement and may at its
23 option, A, prosecute the defendant for any federal crime,
24 including but not limited to perjury, obstruction of justice and
25 the substantive offense arising from this investigation based on

1 and using any information provided the defendant during the
2 investigation and prosecution of the criminal case.

3 B, upon the Government motion reinstate and try the
4 defendant on any counts, which were to be or which had been
5 dismissed on the basis of this agreement.

6 C, be relieved of any obligations under this agreement
7 regarding recommendations as to sentence.

8 And D, be relieved of any stipulations under the
9 sentencing guidelines.

10 Moreover, the defendant's previously-entered guilty
11 plea will stand and cannot be withdrawn by him. The decision
12 shall be in the sole discretion of the Government whether --
13 both whether to declare a breach and regarding the remedy or
14 remedies to seek.

15 The defendant understands and agrees, that the fact
16 that the Government has not asserted a breach of this agreement
17 or enforced a remedy under this agreement, will not bar the
18 Government from raising that breach or enforcing a remedy at a
19 later time.

20 The defendant waives all rights, whether asserted
21 directly or by a representative to request or receive from any
22 department or agency of the United States, any records
23 pertaining to the investigation or prosecution of this case,
24 including without limitation, any records that may be sought
25 under the Freedom of Information Act.

1 The defendant and his court-appointed standby counsel
2 have fully discussed this plea agreement and the defendant is
3 agreeing to plead guilty, because the defendant admits that he
4 is guilty.

5 It is agreed that the parties guilty plea agreement
6 contains no additional promises, agreements or understandings,
7 other than those set forth in this written guilty plea agreement
8 and that no promises, agreements or understanding will be
9 entered -- will be entered into -- unless in writing and signed
10 by all parties.

11 THE COURT: Thank you, Mr. Arteaga, there was one
12 condition that I -- I have noted before I asked Mr. Kabbaj and
13 that is, that Mr. Kabbaj's agreement that he will not have any
14 contact in any form directly or indirectly or through third-
15 parties, with the victim. And will not travel to the District
16 of Delaware without prior notification to and approval of the
17 Probation office and that's --

18 MR. ARTEAGA: Yes, that's correct.

19 It is reflected in the -- in the plea agreement, I
20 just can't seem to find it.

21 THE COURT: Paragraph 14, sir.

22 MR. ARTEAGA: 14.

23 (Pause at 12:23 p.m.)

24 THE COURT: Of Page 7.

25 MR. ARTEAGA: Yes, your Honor.

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1 If I can read that in to the record?

2 THE COURT: Certainly.

3 MR. ARTEAGA: The defendant agrees and stipulates that

4 he will not have any contact in any form, directly or indirectly

5 through third parties with the victim. And that the defendant

6 will not travel to the District of Delaware without prior

7 notification to and approval of the U.S. Probation office.

8 And that before granting any approval of a request by

9 the defendant to travel to the District of Delaware, the U.S.

10 Probation office shall consult with the U.S. Attorney's office.

11 THE COURT: Thank you, sir.

12 MR. ARTEAGA: Thank you, your Honor.

13 THE COURT: All right.

14 So, Mr. Kabbaj, has anyone promised you or offered you

15 anything, other than what's in this written plea agreement and

16 as described by the United States?

17 THE DEFENDANT: Well, if -- are we allowed -- we're

18 going through this, right, I just wanted to clarify certain

19 things?

20 THE COURT: Well, you can ask -- yeah -- but, okay, so

21 let's start with any -- is there anything else that you were

22 promised that's not in here?

23 Let's start with that, then we'll talk about what is

24 in here.

25 THE DEFENDANT: Ah, yeah, they said that they would

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1 not oppose me leaving the country.

2 THE COURT: Okay.

3 Mr. Arteaga, I need you --

4 MR. ARTEAGA: Ah --

5 THE COURT: -- I need you to answer that.

6 MR. ARTEAGA: -- your honor, the --

7 THE COURT: Not oppose a -- a -- or the part -- you

8 mean, post supervision --

9 MR. ARTEAGA: Ah --

10 THE COURT: -- not -- not oppose him leaving the

11 country, I don't -- is that -- is that --

12 MR. ARTEAGA: Once the defendant is on supervised

13 release, what I have communicated to standby counsel, was that

14 if the defendant desires to travel overseas, that he has to seek

15 the approval and --

16 THE COURT: Right.

17 MR. ARTEAGA: -- permission of the U.S. Probation

18 office, which, typically, will contact your Honor --

19 THE COURT: Right.

20 MR. ARTEAGA: -- to get your Honor's input and

21 ultimately, it's the Court's call, it's not my call.

22 THE COURT: Right.

23 But the United States will -- has the United States --

24 has the United States agreed not to oppose that request?

25 MR. ARTEAGA: We will not oppose it, provided he is in

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1 compliance, obviously --

2 THE COURT: Okay.

3 MR. ARTEAGA: -- with the terms and conditions of his

4 supervised release.

5 THE COURT: All right.

6 So, that -- that condition, I understand, Mr. Kabbaj,

7 what that means is, the United States can't really -- I have to

8 allow you to -- to -- if you're on super -- while you're on

9 supervised release, which is the period of time after you get

10 out, one of the conditions is, you have to stay in the United

11 States, because we'd have to supervise you for a period of time.

12 And during that period of time, if you wish to leave,

13 you talk to the Probation office and they'd file a motion with

14 me for a modification of supervised release with the United --

15 the United States has agreed as long as you're compliant,

16 they're not going to oppose that -- compliant with the

17 conditions -- they're going to oppose it.

18 But it's up to me, though, whether you'd leave the

19 United States, the United States doesn't have any position on

20 that.

21 THE DEFENDANT: My understanding was, that -- you know

22 -- once I'm released from prison, that I can go back to living

23 in the Middle East.

24 THE COURT: To living -- living where?

25 THE DEFENDANT: In the Middle East.

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1 THE COURT: Well, you -- once -- you can once you're

2 -- so what happens here, sir, you know -- I was going to ask you

3 this, do you understand what the term, supervised release means,

4 that means, you're not in prison, but you're still under the

5 custody of the United States Probation office, you -- you can go

6 to Florida, you can go to Virginia.

7 THE DEFENDANT: Right.

8 But I don't want to stay in the United States, if it's

9 legal for people to --

10 THE COURT: Well --

11 THE DEFENDANT: -- threaten me.

12 THE COURT: Well, you have to stay --

13 THE DEFENDANT: And so, I'd like to go to the Middle

14 East and live --

15 THE COURT: Then -- then, sir --

16 THE DEFENDANT: -- that's what I want to do.

17 THE COURT: -- here's what happens, when you get to

18 that stage, all right, and you -- as long as you're compliant

19 with the other conditions of supervised release, you can ask the

20 United States Probation and they will file an application with

21 me and we'll have some type of hearing like this, where I'll

22 hear from you as to why at that stage you'd want to leave.

23 But that -- that's -- the United States can't -- all

24 they're promising, is as long as their -- as you're compliant,

25 they're not going to oppose that request, they're not going to

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1 say, no.

2 But that's still my decision whether you'd go or not,
3 I can't -- I can't give you an answer to that today, I don't
4 know what it's going to be at the time you're on supervised
5 release.

6 THE DEFENDANT: Yeah.

7 But the -- the problem is that, for as long as I am
8 stuck in the United States, I cannot seek employment, because
9 the person, who are defaming me and threatening me, are going to
10 interfere with my employment and -- and conduct operations
11 against potential employers.

12 And so, what I was gonna do was, basically, just
13 gather whatever -- you know -- basically, just all my ducks in a
14 row and leave, immediately, so that I didn't have to be
15 subjected to being stuck here, just waiting for a term of
16 supervised release to expire before I could work and get back to
17 my life and have a life. And -- and not be subjected to illegal
18 speech.

19 THE COURT: Sir, you -- you may very well, that -- you
20 may persuade me at the time period when you get off supervised
21 release but I -- but that is not a promise that anybody can make
22 today.

23 I can't promise you I'll let -- the minute you get off
24 supervised release, I'll let you leave the United States, I
25 don't know that today, that's an entirely different test, I'll

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1 have to apply at that time.

2 So, it's -- the condition today is that the United
3 States will not oppose your request to leave as long as you're
4 compliant.

5 They still have -- the Probation office could still
6 come to me for -- at your request -- for a modification of
7 supervised release to let you leave the United States, okay.

8 And we'll have a hearing and we'll decide that.

9 THE DEFENDANT: Okay.

10 But just -- ah -- as far as --

11 THE COURT: But I can't promise you, what I'll do.

12 THE DEFENDANT: I -- I understand that.

13 But the only issue that is -- 'cause I -- I had
14 supervised release once before and I know that a condition of
15 supervised release was you must be employed. And I -- I cannot
16 obtain employment --

17 THE COURT: No, I would make -- you -- I don't think
18 that would necess -- we'll talk about that at sentencing, but
19 that doesn't, necessarily, have to be a condition of supervised
20 release.

21 The more important part of supervised release, it
22 usually is that we know where you are, that you're in a place
23 that we can -- that the Probation officer can find you and it's
24 not -- I mean, we can -- we could talk about that at sentencing,
25 but that doesn't -- being employed doesn't, necessarily, mean

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1 that that would have to be the first thing we'd talk about on
2 supervised release.

3 That may have been true in state court, but that's not
4 necessarily true with our -- I can waive that provision and we
5 can talk -- I am not saying, I am -- but we can certainly talk
6 about that at sentencing, understand? I understand your issue,
7 you can't get a job, so what do I do, Judge? I've got it, we'll
8 talk about that at sentencing, but I can't deal with that,
9 that's not a promise that anybody can make today.

10 (Pause at 12:30 p.m.)

11 THE COURT: Okay. So, I understand your argument.

12 So, so, that was the one thing you said that is not
13 there. Is there anything else you can think about that's not in
14 the agreement that you've talked about?

15 THE DEFENDANT: Ah, yeah, I brought it up with my
16 attorney, because as -- as you're well aware, this was a speech
17 dispute.

18 And up until the date of my arrest, I understood that
19 there was a standard of speech that was being allowed. Now, I'm
20 being told, otherwise.

21 And, you know, I'd brought it up to my attorney, I
22 said, well, what if they try to do more scams on me and I'd
23 plead guilty here.

24 And then, they'd try to pluck an e-mail out from the
25 past and say we're gonna re-indict you here and there, because I

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1 don't want anything occurring in these proceedings to be
2 construed as my accepting their reversal in interpretation of
3 speech, generally.

4 I don't want to be -- basically, what I'm saying, is
5 that I -- I don't -- I don't want -- if they're gonna go back
6 and start going back to communications and e-mails that occurred
7 prior to the date of arrest and start trying to -- ah -- re-
8 indict me for those, I would want to withdraw my plea and
9 everything, 'cause I would want to go to trial on everything.

10 THE COURT: Well, all you're here today -- and this is
11 a little bit of a preview, but in a couple of moments, the
12 United States Attorney is going to describe for us, exactly, the
13 charge today, which relates to a February 18th, 2016 e-mail,
14 that's all that's here today.

15 And -- and the -- and frankly, the only reason that's
16 here today, as I understand it, is because it involves a threat
17 to a United States judge, a federal official.

18 I -- I -- whether there are e-mails that are out there
19 that are threatening other United States officials, I have no
20 idea, but that's not before me today. And that's not the charge
21 before me today.

22 And so, are you saying, the United States promised you
23 that that would not -- that they would not pursue any of those
24 e-mails?

25 THE DEFENDANT: Well, I only discussed it with my

1 attorney, he said -- you know -- they're not looking to do stuff
2 like that, you know, they're just not --

3 THE COURT: Well, I -- this is not a civil --

4 THE DEFENDANT: -- I don't know what's their position.

5 THE COURT: No. No, I'm sorry, I -- I get your
6 confusion.

7 This is not a -- it's a fair question -- this is not,
8 like, a civil remedy, where you were in front of Judge Thyng, e,
9 where we're negotiating.

10 All the United States is charging you with is one --
11 one issue having to do with the February 18th, 2016 e-mail, that
12 had do with a threat -- what they believe was a threat -- and
13 that you're pleading guilty, that -- that was perceived to be a
14 threat via e-mail to assault the United States Magistrate judge,
15 that's it.

16 If there are -- if at some point, they find another e-
17 mail -- well, let me go to Mr. Arteaga, am I correct, you're not
18 -- you -- you didn't agree to waive anything else, did you, sir,
19 about any -- if you find another e-mail from 2016 that threatens
20 another federal Judge or another --

21 MR. ARTEAGA: Your Honor --

22 THE COURT: -- federal official?

23 MR. ARTEAGA: -- your Honor, first, I just want to
24 correct the record. He keeps referring to Mr. Ibrahim as his
25 attorney, it's -- it's not his attorney --

1 THE COURT: That's right, standby counsel.

2 MR. ARTEAGA: -- it's standby counsel, that's number
3 one.

4 Number two, we are not aware of any e-mail threats to
5 any other federal official, whether that would be an Assistant
6 U.S. Attorney, a U.S. Attorney or a -- a U.S. District Court
7 judge or a U.S. Magistrate Court judge.

8 We are here before this Court this morning, because
9 the defendant was indicted in the District of Delaware, that
10 District Court recused itself and, therefore, the venue of that
11 case is now transferred here.

12 We don't have venue for any e-mail threats in this
13 district for something, he may have done in Delaware or Maryland
14 or Florida.

15 But as far as the Eastern District of Pennsylvania is,
16 I -- I don't know exactly what he's talking about, because we
17 have not --

18 THE COURT: Yes.

19 MR. ARTEAGA: -- uncovered any of that evidence.

20 THE COURT: So -- so, that -- the answer to my
21 question is, there's certainly no agreement that you're not --
22 that -- that you're aware of, that the United States in your --
23 in your office -- the United States District Court -- the United
24 States Attorney's office for the Eastern District of
25 Pennsylvania, has agreed to, is anything other than the

1 agreement that's referenced in this agreement, which is the
2 February 18th, 2016 e-mail.

3 MR. ARTEAGA: Correct.

4 THE COURT: All right.

5 So, Mr. Kabaj, the point is that the only charge
6 you're here on and the only one that you've signed an agreement
7 to, is a February 18th, 2016 e-mail, that mentioned a -- a
8 communication of a threat via e-mail to assault a United States
9 Magistrate Judge, that's it.

10 Whether there -- whether -- and I -- I could only --
11 Mr. Kabaj -- Mr. Ibrahim is not your attorney and neither am I,
12 but if there are other things out there that are floating around
13 in Maryland or Florida or Delaware or somewhere else, we have no
14 idea of it and they're not before me today.

15 And so -- and you're not being -- there's not a civil
16 release, you're not being released from any and all claims that
17 are ever against you in the rest of your life. This is simply a
18 plea to this February 18th, 2016 e-mail.

19 THE DEFENDANT: I understand that, your Honor, but
20 just for the record, I do wish to -- ah -- state that by signing
21 this plea, I'm -- my mind -- attempting to end this speech
22 experiment.

23 And if there are things that they are aware of that
24 communications that I could have prior and all of the sudden --
25 they told me before, just like they told me in this matter, that

1 the things I'm saying are not illegal and then, they changed
2 their testimony to charge me.

3 What I've found -- and it's been consistent with the
4 Government -- is they always change, they say, yes, we'll do a
5 deal with you. Then, we don't change this term, then we're
6 gonna do that. And oh, okay, you know, we'll -- we'll sign an
7 agreement with you here and then, all of the sudden -- you know,
8 I don't -- I don't have any trust in the Government let's just
9 put it like that. I have zero confidence and trust in the
10 Government.

11 And because now, the judiciary is involved, I don't
12 have that protection of an impartial judiciary to protect me
13 against this behemoth that's sitting on the left of me.

14 And so, what I'm trying to say is, you know, just as I
15 stand here trying to defend myself, I want to make sure that the
16 Court is aware, that I would not enter into a guilty plea
17 agreement with the Government, if I felt that -- or if they --
18 if they were -- had any intention to try to charge me with other
19 speech crimes, 'cause then, I would want to go to trial on all
20 these matters and have them adjudicated, that's the only thing
21 that I'm concerned about.

22 THE COURT: Let -- you just heard the United States
23 Attorney for the Eastern District --

24 THE DEFENDANT: Yeah.

25 THE COURT: -- of Pennsylvania talk --

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1 THE DEFENDANT: Well, I hear what --
 2 THE COURT: -- about what he knows.
 3 The United States District -- the United States
 4 Attorney for the Eastern District of Pennsylvania, if there is
 5 some kind of e-mail that threatens a person in Georgia, for
 6 example, a federal official, that would not be within his
 7 jurisdiction. He would have no knowledge of that.
 8 But he has made a representation to us today, that he
 9 didn't need to make, frankly, but he made a representation to us
 10 today, that he is not aware -- the United States Attorney for
 11 the Eastern District of Pennsylvania -- because this is a
 12 Delaware case and he's here, because it's transferred here --
 13 but he is not aware of any other threat to a federal official
 14 that comes within the scope of his jurisdiction.
 15 THE DEFENDANT: Okay.
 16 But the only thing is that, if there was such a --
 17 even if it was in an alternate jurisdiction -- the FBI has a
 18 database where --
 19 THE COURT: That --
 20 THE DEFENDANT: -- they share that information, ACS
 21 was the old name of it, I don't know what they're calling it
 22 these days.
 23 THE COURT: Ah --
 24 THE DEFENDANT: And so, they -- they -- the agent
 25 that's his consultant on this case, would know if anything is in

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1 the FBI files and what not.
 2 And they did provide in some discovery, they made
 3 statements, that I had sent inappropriate e-mails and I don't
 4 know what the word, inappropriate means. So, I mean, that was
 5 in their discovery and I don't really know.
 6 THE COURT: Sir, neither do I --
 7 THE DEFENDANT: Yeah.
 8 THE COURT: -- neither do I, but we can't -- I have
 9 counseled you only under the Fifth Amendment, your right for
 10 self-incrimination, that to the extent you think, you may have
 11 sent other communications, that --
 12 THE DEFENDANT: Except that I can't interpret speech
 13 any more, it's -- it's --
 14 THE COURT: Well, what I am saying to you is, that --
 15 THE DEFENDANT: -- at their discretion.
 16 THE COURT: -- sir, I have an obligation to do this.
 17 THE DEFENDANT: Yeah.
 18 THE COURT: That you have -- that you are -- that you
 19 do not need to speak to me or to the United States or to anybody
 20 about those communications.
 21 What I am saying today is, for purposes of the -- for
 22 purposes of this case, this indictment, which is a February
 23 18th, 2016 e-mail and the language in that e-mail, this would re
 24 -- upon sentencing -- this would resolve everything having to do
 25 with that e-mail in the -- in the criminal court and I don't

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1 know how it will apply in civil court as I mentioned earlier.
 2 But in the criminal court, it would certainly resolve anything
 3 that had to do with that e-mail in this -- in the United States
 4 Courts from -- from a criminal perspective.
 5 Do you understand that?
 6 THE DEFENDANT: I -- I understand that, but I -- I
 7 would just wish to reassert any of the objections that I've
 8 previously raised, that's all.
 9 THE COURT: All right. I -- I do understand that.
 10 So, sir, do you -- I mean, have you had a chance to
 11 speak -- well, I've talked about what's not in there.
 12 Was there anything in here that was read that you
 13 think is inaccurate?
 14 THE DEFENDANT: Ah, I -- well, maybe, it just needs to
 15 be further clarified, okay.
 16 Like for example, Paragraph 17, obviously, ah,
 17 anything that's occurring in this proceeding, I would like to
 18 incorporate -- incorporate via reference as if written in the
 19 agreement in terms of any -- ah -- interpretations that you make
 20 of the contract.
 21 And then, in -- in Paragraph 15, ah --
 22 THE COURT: Well, sir, hold on. Let's go to that one.
 23 This plea agreement has nothing to do with me, okay,
 24 nothing to do with me. This is -- all I am doing is accepting
 25 the agreement.

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1 What we've talked about when we started this
 2 proceeding was whether what I say -- if I were to say something
 3 about the civil contract -- which I can't imagine I will -- if I
 4 were, what -- what effect that would have. I said, I have no
 5 idea what the effect is.
 6 But this agreement does not incorporate me, I'm not a
 7 party to this agreement, judges aren't parties to agreements.
 8 So, let's clarify that, so that you understand, I am
 9 not a party to this agreement. And what I say is not a part of
 10 this agreement. In fact --
 11 THE DEFENDANT: I under --
 12 THE COURT: -- it says, the opposite.
 13 THE DEFENDANT: -- I under -- well, I understand that.
 14 But what -- that's why I brought up the original
 15 incident, where I was subjected to that a little judicial
 16 sleight of hand by Magistrate Thyng, that I am relying on your
 17 interpretations of what's being read, when I asked you a
 18 question and you explained to me something. And you tell me
 19 that, this is how you see the agreement as being interpreted.
 20 So, I -- I -- I can -- I want to be able to count on that --
 21 THE COURT: Sir --
 22 THE DEFENDANT: -- that's all I'm saying.
 23 THE COURT: Okay.
 24 You can count on everything I say --
 25 THE DEFENDANT: Okay.

1 THE COURT: -- but I assure you, I am not going to
 2 interpret the agreement. It has nothing to do with what I am
 3 doing here today or -- or likely at sentencing, I don't know
 4 what's going to happen at sentence. But -- but it certainly has
 5 nothing to do with what I am doing here today.
 6 You're talking about the agreement with -- the
 7 settlement agreement with Magistrate Thyng?
 8 THE DEFENDANT: No, I'm talking about this -- every --
 9 THE COURT: Oh, oh, this agreement?
 10 THE DEFENDANT: -- every contract is a contract and
 11 this is --
 12 THE COURT: Oh.
 13 THE DEFENDANT: -- allegedly, a contract and so, I --
 14 I'm sitting here in front of you, you're reading it and when you
 15 tell me, yes, this is what this means --
 16 THE COURT: Oh, okay.
 17 THE DEFENDANT: -- do you understand?
 18 THE COURT: All right.
 19 THE DEFENDANT: Yeah.
 20 THE COURT: Well, yes, I'm sorry.
 21 THE DEFENDANT: I'm not an attorney so --
 22 THE COURT: Yes. I'm --
 23 THE DEFENDANT: -- and I've been alleged to be
 24 incompetent --
 25 THE COURT: -- I'm not ex --

1 THE DEFENDANT: -- by the Government at least, three
 2 times in these -- in this case alone, so.
 3 THE COURT: I misunderstood, I thought you were
 4 talking about Magistrate Judge Thyng --
 5 THE DEFENDANT: No.
 6 THE COURT: -- the settlement agreement, that's up in
 7 the Court of Appeals.
 8 THE DEFENDANT: No, no, no, I'm talking about,
 9 specifically, just this agreement.
 10 THE COURT: Okay.
 11 Well, as I described these terms, yes, you can rely
 12 upon what I am saying.
 13 THE DEFENDANT: Thank you very much.
 14 THE COURT: And you can rely upon, you know, to that
 15 extent, the United States is describing it, but -- but yes, I am
 16 telling you what this agreement means.
 17 THE DEFENDANT: Okay.
 18 And the only other thing is, ah, for example, okay, in
 19 Paragraph 15 and I spoke to this -- about this with my standby
 20 counsel -- or with my counsel.
 21 The -- the Privacy Act it says, pertaining to the
 22 investigation and prosecution for this case and I just wanted --
 23 because I just didn't want it to be broad, I wanted to make sure
 24 that the Government is aware, this case started approximately,
 25 upon the filing of the complaint by Magistrate Thyng with the

1 FBI.
 2 And I -- I believe, it ends upon the -- ah -- the
 3 signing of the plea today for the sentencing.
 4 And so, ah, in terms of, at least, giving a date range
 5 to the investigation, I want to make sure that that was the
 6 case.
 7 THE COURT: Well, I think it's clear, it's the
 8 investigation and prosecution of this case --
 9 THE DEFENDANT: Okay, great.
 10 THE COURT: -- which will -- whenever that
 11 investigation began, I --
 12 THE DEFENDANT: Ah -- okay.
 13 THE COURT: -- think -- I think it is correct that
 14 it's at or around the time of the reference to the Federal
 15 Bureau of Investigation --
 16 THE DEFENDANT: Correct.
 17 There was -- there was another para --
 18 THE COURT: -- or the Washington, I don't know, but to
 19 a prosecutor --
 20 THE DEFENDANT: Okay.
 21 There was another paragraph that --
 22 THE COURT: -- or investigator, I'm sorry.
 23 THE COURT: -- which was a little confusing to both
 24 myself and my -- my counsel here.
 25 He said, that --

1 THE COURT: Your standby counsel.
 2 THE DEFENDANT: -- standby counsel or counsel, ah, I
 3 understand that there's another thing, I've just been -- being
 4 brought up a lot in terms of stand -- I -- I see him as my
 5 attorney, even though I'm proceeding *pro se*, but I understand
 6 what you mean.
 7 It says here, if the Court and -- in Paragraph 11, it
 8 says here, if the Court does not accept the recommendation of
 9 the parties and imposes a sentence stated Paragraph B of the
 10 agreement and the defendant, nevertheless, decides to enter a
 11 guilty plea, ah, that I wouldn't be able to appeal under the
 12 statutes.
 13 But my understanding is that this agreement is binding
 14 upon the agreed-upon sentence being imposed, if that sentence,
 15 as agreed upon by me and the Government is not imposed, I'm --
 16 I'm allowed to fully withdraw this agreement --
 17 THE COURT: Yes.
 18 THE DEFENDANT: -- and -- ah --
 19 THE COURT: That's -- that is correct.
 20 THE DEFENDANT: Yes.
 21 And the -- and if after that period of time, I would
 22 decide to plead guilty again, I wouldn't be -- the open or
 23 conditional plea, I wouldn't be bound by these provisions,
 24 correct?
 25 THE COURT: No. Hold on.

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1 So, let's take that, you're going pretty quick here.

2 THE DEFENDANT: 'Cause I think this --

3 THE COURT: Hold on.

4 Let's take it a step at a time.

5 THE DEFENDANT: Yeah.

6 THE COURT: If I were to sentence you outside the

7 scope of your agreement -- and I can do that -- and you were to

8 say, no, I don't want to do that, I don't want -- I don't want

9 to do what Judge Kearney sentenced me to, it was outside the

10 scope of my agreement under Federal Rules of Criminal Procedure

11 110.

12 Then, you would be able to proceed -- all of the

13 charges would come back -- and you'd be able to proceed to

14 trial.

15 However, if you decided that, okay, I -- even though I

16 don't like or I -- or whatever, I'm going to do -- I -- I am

17 going to still accept Judge Kearney's sentence and even though

18 it's not within the scope of the agreement and you,

19 nevertheless, decide to enter a guilty plea, then at that stage,

20 you would have voluntarily and expressly waived all rights to

21 appeal.

22 So, that is -- yes, that's subsequent --

23 THE DEFENDANT: Well --

24 THE COURT: -- that's the second time -- Mr. Arteaga,

25 do you want to address that, specifically, so he knows the

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1 United States position on that?

2 MR. ARTEAGA: Yes, your Honor.

3 If -- your Honor, if the Court accepts the

4 recommendation of the parties and obviously, that's the simplest

5 scenario. If the Court does not accept the recommendation of

6 the parties, either one of us can withdraw from the plea

7 agreement and elect to proceed to trial on both counts of the

8 indictment.

9 However, if the Court says, that it does not want to

10 accept the recommendation of the parties, but the defendant

11 says, you know what, Judge, I don't care, I still want to accept

12 whatever sentence you'd give me and enter into the guilty plea

13 agreement, then the waiver would still apply to the appellate

14 rights, as reflected in Paragraph 11.

15 THE COURT: So, Mr. -- Mr. Ibrahim, do you have

16 anything to comment on that?

17 MR. IBRAHIM: Well, I -- I do with the consent of Mr.

18 Kabbaj, he's asked to explain to the Court what we've discussed.

19 THE COURT: Okay.

20 MR. IBRAHIM: The opinion I've provided to him and

21 just so, it's clear, throughout my entire representation, I have

22 been providing opinions in accordance with McCaso v. Williams,

23 it's the U.S. Supreme Court case on standby counsel and the ABA

24 Criminal Justice Standard 4-3.9, so they're opinions.

25 I advised him that in the event that at sentencing the

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1 Court issued a sentence, whether it was too high or too low

2 outside the range, that Mr. Kabbaj would then have the ability

3 to withdraw the plea. So, the plea would be withdrawn. We

4 would then get a trial date.

5 If at some point, he decided, well, I would prefer

6 just to plead open, he is able to plead open and the terms of

7 the appellate waiver and other issues, would not be binding.

8 THE COURT: Oh, at a later -- a later point.

9 MR. IBRAHIM: At a later date.

10 THE COURT: Yes.

11 MR. IBRAHIM: You know, I also give him the opinion

12 that if at -- on the day of his sentencing, for example, your

13 Honor gave a sentence that was outside of the terms, either, too

14 high or too low, that Mr. Kabbaj at that point, could say, well,

15 Judge, I'll go ahead with your sentence, that if he did that as

16 -- when we discussed it -- as -- ah -- logical as that may or

17 may not seem, that at that point, then, the terms would still

18 apply.

19 THE COURT: Right.

20 I agree with that, do you understand that, Mr. Kabbaj?

21 THE DEFENDANT: Yeah, I -- I --

22 THE COURT: Do you understand what Mr. Ibrahim has

23 just explained to me?

24 THE DEFENDANT: -- I -- I kind of understand it.

25 But I want to restate it, I guess, is -- you know --

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1 THE COURT: All right.

2 THE DEFENDANT:

3 -- because we both agreed, that there is pretty much no

4 scenario where a defendant would bind himself to a plea

5 agreement that he doesn't get the benefit of.

6 And I don't see how, if the Judge decides not to

7 follow a plea agreement, that an open -- that they would still

8 waive appellate rights, it doesn't make any sense, nobody would

9 ever do that, it wouldn't make any sense.

10 THE COURT: I --

11 THE DEFENDANT: And for a lawyer to recommend that, it

12 would probably be unethical to even do that, because, you

13 know --

14 THE COURT: Now, you're -- see, you're going a little

15 bit too far.

16 Mr. Ibrahim, would you explain again?

17 MR. IBRAHIM: Yes.

18 The situation is such as it applies to in Mr. Kabbaj's

19 case, his guidelines.

20 However, hypothetically, there could be a situation

21 where with his exact same plea agreement, a defendant could be

22 facing a ten-year mandatory minimum. And at sentencing, the

23 Judge says, well, I know you have this term in the C plea from

24 eighteen to twenty-four. But in light of your ten-year

25 mandatory, I'm going to sentence you to forty-eight months.

1 So, a defendant in that circumstance may say, well,
 2 I'm not getting the benefit of the generous C plea, that the
 3 Government agreed to, however, I am exposed to a hundred and
 4 twenty months, since the Judge is going to give me forty-eight
 5 months today, I'll take those forty-eight months. Okay.
 6 THE COURT: Do you understand that, sir, you are -- I
 7 appreciate your distrust, but I think -- I want you to
 8 understand the hypothetical here, you -- you are -- what counsel
 9 is just pointing out, is where it comes in to play --
 10 THE DEFENDANT: Okay. But that --
 11 THE COURT: -- but that's not really here.
 12 THE DEFENDANT: -- but he never -- if he would have
 13 said that to me, I would have immediately said it --
 14 THE COURT: So, do you understand how --
 15 THE DEFENDANT: -- recognized that scenario.
 16 What I am saying is, that -- ah -- and I've made it
 17 clear, that I'm only entering into a plea agreement, because I'm
 18 -- ah -- I'm expecting a sentence, specifically, within this
 19 exact range --
 20 THE COURT: I see.
 21 THE DEFENDANT: -- and this agreement is not gonna
 22 bind me, unless I receive a sentence within that range, is that
 23 correct, yes?
 24 THE COURT: Yes.
 25 THE DEFENDANT: Okay.

1 THE COURT: Or you -- afterwards -- agree as -- as
 2 standby counsel just said -- yes, is the first answer, yes.
 3 Unless if -- for some reason -- I were to say -- and
 4 I'm not saying this -- if for some reason, I were to say, thirty
 5 months, okay?
 6 And you were to say to yourself, well, you know what,
 7 it could be even higher than thirty months, if I'd go to trial
 8 and lose and, therefore I am going to take Judge Kearney's
 9 thirty months, that's what we're talking about. That's the --
 10 that's the wrinkle here.
 11 So, yes, the 11@ will be reviewed and analyzed by me
 12 and if appropriate, I will sentence within the -- within the
 13 months that you've agreed to, all right.
 14 And I may sentence below as counsel pointed out or I
 15 may sentence above. And either side, would then have the
 16 opportunity to walk away.
 17 But if -- if you decided, you didn't want to walk away
 18 from my sentence and agreed to it, this is what that's
 19 addressing, do you understand?
 20 THE DEFENDANT: (No verbal response.)
 21 THE COURT: The example -- the example of ten years to
 22 forty-eight months is really an extreme example and it's really,
 23 where it comes in to play, which is why this language is here.
 24 THE DEFENDANT: Okay. But --
 25 THE COURT: But you'd have to understand, how it

1 applies -- it could apply to you.
 2 THE DEFENDANT: Okay.
 3 But what I -- but what I would say right now on the
 4 record, is that I will withdraw this plea --
 5 THE COURT: Okay.
 6 THE DEFENDANT: -- if it's not within that range --
 7 THE COURT: I understand.
 8 THE DEFENDANT: -- no matter what, so the Court should
 9 understand that now --
 10 THE COURT: I -- sir, you understand, too --
 11 THE DEFENDANT: -- and be aware of that now.
 12 THE COURT: -- that nothing we do here today -- and
 13 I'll get to this in a minute -- no agreement, nothing binds me,
 14 you understand that, sir?
 15 THE DEFENDANT: Yeah, I understand that.
 16 THE COURT: Okay.
 17 THE COURT: But -- but that's another question I had
 18 is, ah -- the --
 19 THE COURT: Well, the United States Congress's penalty
 20 somewhat binds us, the statutory maximum, but yes, sir, go
 21 ahead.
 22 THE DEFENDANT: Ah, and -- when would a defendant find
 23 out, if an agreement that they're signing is actually, an actual
 24 agreement?
 25 THE COURT: At the sentencing, sir.

1 THE DEFENDANT: Isn't that a little bit putting the
 2 cart before the horse, though?
 3 THE COURT: No, you -- you agree and a judge decides
 4 whether it's reasonable.
 5 THE DEFENDANT: Well, isn't there -- isn't it -- ah --
 6 a Fifth Amendment violation to as a defendant to go through --
 7 THE COURT: No.
 8 THE DEFENDANT: -- a pre-colloquy, if the Judge
 9 already has in their mind, that they're not going to do that?
 10 THE COURT: I assure you a judge -- no judge, I know
 11 -- or certainly not, this Judge -- ever has it in their mind
 12 before they hear all of the evidence and apply it at the
 13 sentencing, okay.
 14 It is a -- it is a hearing, I hear from you, I hear
 15 from any witnesses and I apply a bunch -- I'll talk about it in
 16 a couple of minutes -- I apply a bunch -- I apply to the some
 17 factors, that help me to understand what an appropriate sentence
 18 would be.
 19 And I will also consider and apply, the agreement that
 20 has been reached by counsel. And -- and if I find it
 21 appropriate -- you and counsel -- and if I find it appropriate,
 22 yes, courts -- judges will enforce those agreements. Okay.
 23 But but it's not a Fifth Amendment violation,
 24 because the judge -- and only the judge -- is bound by the
 25 United States Constitution to find a reasonable sentence -- a

1 reasonable -- a sentence that is sufficient but no greater than
 2 necessary.
 3 THE DEFENDANT: Well, the only reason I say that is,
 4 because -- ah -- as the Government mentioned many times, the --
 5 the facts of this case are fairly simple.
 6 The -- the -- and you're aware of all of the facts now
 7 and even in terms of a presentence investigation, I believe,
 8 there is a rule that allows me to waive that and I -- I don't
 9 particularly feel any -- I don't have any reason to benefit from
 10 a presentence investigation, because the guideline range is --
 11 THE COURT: Yeah, unfortunately, sir, for you it's not
 12 -- a presentence investigation report is for the benefit of me,
 13 okay.
 14 And I -- I am hesitant in this case because, sir, and
 15 I'll -- and it's important -- I want to get to one question
 16 before that and I'll explain these presentence investigation
 17 reports.
 18 But is there any other questions you'd have about the
 19 paragraphs in the plea agreement, sir?
 20 I want -- I want to complete that analysis and then, I
 21 want to talk about the sentencing guidelines. Then, I'll talk
 22 about this presentence investigation report.
 23 THE DEFENDANT: Ah, not at the moment, but if I think
 24 of any, I'll --
 25 THE COURT: Okay. All right.

1 So, sir, I know I've -- Mr. Ibrahim, yes.
 2 MR. IBRAHIM: I'm sorry, Judge.
 3 The only thing that I just wanted to point out and
 4 just so it's clear, the preamble paragraph, indicates that it is
 5 an agreement between the Government and the defendant and the
 6 defendant's counsel.
 7 Certainly, the relationship I've had with Mr. Kabbaj
 8 is, I've provided him opinions whenever he's needed. He's
 9 expressed through his own mouth, what the relationship is like.
 10 But I think for the plea agreement, it should be
 11 clear, this is an agreement between the Government and Mr.
 12 Kabbaj. I have endeavored to provide -- ah -- legal opinions
 13 and assist in the way that I'm suppose to throughout this case.
 14 THE COURT: Thank you, sir, and I --
 15 MR. IBRAHIM: Thank you.
 16 THE COURT: -- I overstate when I state, counsel and I
 17 appreciate you reminding me.
 18 Counsel negotiated, counsel agreed, that's not
 19 accurate, it's Mr. Kabbaj and the United States and the Court
 20 continues to appreciate, we have standby counsel compliant with
 21 federal law.
 22 THE DEFENDANT: And just for the record as well, I
 23 also do depend upon some of the advice that he does give me.
 24 THE COURT: Well, I -- and I -- I don't -- I think,
 25 the term is information, that Mr. Ibrahim provides you, I -- but

1 let me ask you this.
 2 Mr. Kabbaj, have you had a chance to speak, either to
 3 Mr. Ibrahim or to anyone else or yourself, reviewed what these
 4 sentencing guidelines are, so you have an understanding what the
 5 sentencing guidelines are?
 6 THE DEFENDANT: Yes, your Honor.
 7 THE COURT: Okay.
 8 And do you understand how they might affect your case,
 9 do you understand, in other words, what your sentencing
 10 guideline range is?
 11 THE DEFENDANT: Ah, I understand that, if -- if I did
 12 not sign a C plea, the sentencing guidelines would be the
 13 controlling factor in this -- in the sentencing --
 14 THE COURT: Okay.
 15 THE DEFENDANT: -- consideration by the Judge.
 16 THE COURT: Let me address that to you.
 17 So, the sentencing guidelines don't control, really,
 18 anything, they're not mandatory on me, regardless of a C plea,
 19 an 110 plea.
 20 The sentencing guidelines at one time were mandatory
 21 quite a few years ago now, well over -- well over twenty years
 22 ago.
 23 But now, they're not -- excuse me, I'm sorry, that's
 24 what I -- but they were several years ago but now they are only
 25 advisory upon me. All right.

1 And so, what happens at sentencing, Mr. Kabbaj, is I
 2 am going to listen to your evidence. I am going to hear from
 3 the United States and I am going to consider the sentencing
 4 guidelines. And I am going to determine what the applicable or
 5 arguably applicable guidelines range is. And we're going to
 6 talk about that at sentencing, which is why we have the benefit
 7 of a presentence investigation report and consider the
 8 applicable policy statements.
 9 And when I do that and you give me facts, I then hear
 10 the facts from you and the facts from the United States, that
 11 are appropriate for imposing, either, a sentence that's a
 12 guidelines sentence or a non-guidelines sentence, whatever is
 13 reasonable.
 14 And then, after that I could impose a term of
 15 supervised release -- as you just heard -- up to three years.
 16 The guidelines only address the terms of incarceration for these
 17 purposes, okay.
 18 So, I could determine -- I could impose a term of
 19 supervised release upon you, that when you're released from
 20 prison. And when you're on supervised release, you're under the
 21 supervision of the Probation office and you must abide by their
 22 terms and conditions.
 23 And if you violate any of the terms and conditions of
 24 supervised release, I could revoke your supervised release and
 25 you could be returned to prison for violating your supervised

1 release.

2 So, in that event, you will have served both your --

3 your sentence for this -- this charge and you will have served

4 -- you will have served the second sentence for violating your

5 supervised release.

6 So, do you understand that, sir, the supervised

7 release is something separate and apart from what's happening

8 here today, do you understand that?

9 THE DEFENDANT: Yes.

10 THE COURT: Okay. All right.

11 So -- and this is important -- when you come out of

12 here, I am going to require a presentence investigation report.

13 The reason is, because there are so many facts in this case,

14 that -- well I'm going to -- regardless of your waiver of them,

15 I am going to require it, because I think, the Court needs to

16 understand the facts that are so disputed in this case.

17 Let me turn first to the United States, though, and

18 ask this, do you know, sir, whether a defendant's waiver of a

19 presentence investigation report, is binding on the Court, that

20 is, in other words, the Court must accept the waiver?

21 MR. ARTEAGA: You don't have to accept that, ah --

22 THE COURT: Right.

23 My -- my understanding was, I -- if I'd have a

24 question of fact, it's to my discretion to ask for a presentence

25 investigation report?

1 MR. ARTEAGA: Correct.

2 And -- and I would also point out to the Court, that

3 that document -- the presentence investigation report -- is a

4 document that is actually used by the prisons and it informs

5 their decision as to where to classify this particular

6 defendant.

7 THE COURT: Yes, that's what -- what's the second

8 point.

9 This document, sir -- this document is a very

10 important document, okay, this presentence investigation report,

11 it's not something you may be familiar with. We had talked at

12 an earlier hearing about you possibly have a -- an abbreviated

13 presentence investigation report.

14 These are -- these are documents that follow you and

15 -- and help the people, who are going to both -- the people

16 where you are currently incarcerated and -- and where you may

17 complete your incarceration and while you're on supervised

18 release.

19 And so, you want to look at that report, you want this

20 -- I know, you will, I know how diligent you are, assiduous you

21 are and I understand that you will review that report.

22 And you can ask the Probation officer to change it

23 before I even see it. Even after I see it, you can come to me

24 and you can ask me to order the Probation officer to change it,

25 'cause you believe there's something inaccurate in it.

1 For instance, there are going to be facts in there,

2 sir, you're going to want to make sure those facts are -- you

3 might want add in a lot of things, that don't make -- that don't

4 add much to our analysis. But the most important thing is, you

5 want to do, you want to make sure the facts that are in there

6 are accurate, 'cause this is a document that is going to follow

7 you.

8 And then, if I -- then, if I believe, you are correct,

9 I'll order the Probation officer to change the report to reflect

10 the accurate facts.

11 But even if I don't order the Probation officer to

12 change the report, all right, and I accept it the way it is and

13 the facts that are in it and I find it's correct.

14 And then, I sentence you within the agreement that

15 you've reached with the United States under a Federal Rule of

16 criminal 110, you still cannot withdraw your guilty plea. In

17 other words, you can't withdraw your guilty plea, simply because

18 you disagree with a fact in the presentence investigation

19 report, do you understand that, sir?

20 THE DEFENDANT: Ah, well, the only thing is that --

21 this is what I wanted to ask about, though, it says here in

22 Federal Rule of Criminal Procedure 310 (1)(a) that it may not

23 even be required, ah --

24 THE COURT: That's correct.

25 THE DEFENDANT: -- the --

1 THE COURT: In many cases, I have waived it.

2 THE DEFENDANT: -- yeah, and the -- and the reason why

3 I don't really, see the need for -- a recent need to participate

4 in that procedure, is that I -- I would prefer to have -- retain

5 as much of my privacy as I can --

6 THE COURT: Hm-hmm.

7 THE DEFENDANT: -- I don't wish to engage in any

8 intrusive interviews at this juncture.

9 I believe, the -- the most important facts or -- ah --

10 the facts related to this case are already known to the Court

11 and the Government, there is nothing new that's gonna pop out of

12 the woodwork. They know what my criminal history category is --

13 THE COURT: They do --

14 THE DEFENDANT: -- they know --

15 THE COURT: -- they're not going to matter any more --

16 THE DEFENDANT: And --

17 THE COURT: -- I need to know.

18 THE DEFENDANT: -- I understand that.

19 But what's gonna end up happening is, what -- what

20 they could do, I guess, what they would do is give the Probation

21 officer --

22 THE COURT: No.

23 THE DEFENDANT: -- their -- their facts and then, the

24 Probation office can --

25 THE COURT: No.

1 THE DEFENDANT: -- write a report, then --

2 THE COURT: No, they don't -- they don't -- the

3 Probation officer doesn't work for the U.S. Attorney's, the

4 Probation officer works for us, it works for judges.

5 THE DEFENDANT: Right.

6 But what I'm saying is, that in terms of interviewing

7 me directly, I don't see why they would need to interview me

8 directly.

9 THE COURT: Well, sir, you can decline. I mean, I

10 would certainly talk to standby counsel about the importance of

11 this, okay. You can decline an interview, all right. But you'd

12 do that in all fair warning at your own risk, okay?

13 Because, sir, I know very little about you, all right.

14 I do know, you have taught me a lot about you, well,

15 particularly, over the fifteen years or so. I know a lot about

16 -- but what I know, Mr. Kabbaj, frankly, is stuff that the

17 United States has accused you of. I know nothing else about

18 you.

19 So, what I'm going to -- what happens at sentencing, I

20 apply a lot of factors and one of the factors I apply, is not

21 only the nature and circumstances of the offense, which is what

22 I know a lot about. But I -- I don't know a whole lot about

23 your characteristics and your background and what happened here,

24 about you.

25 I know, for example, you have mom, I know you have a

1 brother in Dallas, I know at some point, you had a fiancé

2 somewhere, I knew that and that's, essentially -- and I know,

3 you went to college and I know you've spent time in New York and

4 Florida and Virginia. And frankly, sir, I don't know if I know

5 much else. And it's up to you whether you do not wish to -- if

6 you wish not to interview, that's up to you.

7 But I am just -- I am going to order it, if you

8 decline to interview, the Probation officer will tell me that in

9 her report, the defendant declined to be interviewed, I've seen

10 that before and that's fine. But I'd still need to get the

11 recitation of the facts from the -- from the Probation officer.

12 THE DEFENDANT: I -- but I would -- I'm not precluded

13 from being able to tell you about me --

14 THE COURT: Oh, I know.

15 THE DEFENDANT: -- at the sentencing.

16 THE COURT: No, I know, you're not at all.

17 THE DEFENDANT: Right. And --

18 THE COURT: No, but that's not the issue, sir.

19 THE DEFENDANT: -- I could call my family to testify

20 at the sentencing --

21 THE COURT: Sure, absolutely.

22 THE DEFENDANT: -- correct?

23 THE DEFENDANT: And -- and things of that nature

24 and --

25 THE COURT: Yes, you are.

1 The problem though is, you have to get this -- this --

2 as the United States properly points out, this document is a

3 document that then follows, you know, the Bureau of Prisons get

4 this document and your -- the supervising Probation officer gets

5 this document when you're -- when you're on supervised release.

6 So, it's a document that follows you and you're going to want to

7 make sure it's accurate.

8 If you don't want to interview, that's fine.

9 THE DEFENDANT: Well, no, the only issue --

10 THE COURT: Hold on.

11 If you don't want to do that, that's fine, I'm just

12 saying, just make sure it's accurate.

13 THE DEFENDANT: Well, this -- this is the problem, you

14 see, if I was free, I would engage in an interview with the

15 Probation officer, but I would record it.

16 And the reason I have an issue with these kind of

17 interviews, which are occurring in an incarcerated setting, is

18 that a lot of time, like, what happened in the competency

19 evaluation, the -- there were inaccurate facts in there.

20 And a -- a documented interview better affords me the

21 ability to say, well, I didn't say that and maybe, they put this

22 in there. They just said, well --

23 (Discussion held off the record at 1:03 p.m.)

24 THE DEFENDANT: Right, I could do that, yeah, I --

25 actually, as suggested by counsel, what would probably work to

1 keep the record accurate and not allow for any inconsistencies

2 to creep in, is maybe, they can just give me the written

3 questions, they'd want me to answer and I can answer them and --

4 THE COURT: I'm fine by that, I'm just --

5 THE DEFENDANT: -- by myself.

6 THE COURT: -- that's fine, whatever you'd wish to do,

7 sir.

8 But the point is, I want to make sure that the report

9 before it gets to me, you've had a chance to read it and talk to

10 them and say, I think this is inaccurate. And if you have

11 dispute, I'll resolve it. But I want you to make sure it's

12 accurate, do you understand?

13 THE DEFENDANT: (No verbal response.)

14 THE COURT: Whether you've answered written questions

15 or whether you interview, whether you don't interview, just make

16 sure that information there is accurate, that's all, all right?

17 And -- and it doesn't have to -- it's not going to

18 include your whole life, it's not going to include everything

19 that ever happened to you.

20 But it's going to include enough, so we know enough

21 about you, so I can a fair value at sentencing -- a fair idea at

22 sentencing of what to do. Do you understand, sir?

23 THE DEFENDANT: (No verbal response.)

24 THE COURT: So, this presentence investigation report

25 is an important document.

1 And I -- the question I asked you, I didn't get a yes
2 or not to, was do you understand that if I sentence you within
3 the range of -- to which you and the United States have agreed
4 under Federal Rule of Criminal Procedure 11© and even if -- and
5 there's still a fact that you believe is inaccurate in the
6 presentence investigation report, you cannot withdraw your
7 guilty plea, do you understand that?

8 THE DEFENDANT: I -- I understand that I -- if you
9 sentence --

10 THE COURT: Okay.

11 THE DEFENDANT: -- within that range, I cannot
12 withdraw my guilty plea.

13 THE COURT: Okay, okay.

14 THE DEFENDANT: But what I'm saying is that, you know,
15 ah, I just -- I'm not understanding how -- ah -- we kind of
16 have, like, an agreement not to agree and we're just waiting
17 until at some later point, you decide whether you want to
18 implement the agreement.

19 THE COURT: Oh, I'm not -- I'm not in the agreement,
20 sir.

21 THE DEFENDANT: No.

22 THE COURT: Let's be very careful here.

23 The United States and you have reached an agreement.
24 Every guilty plea is subject to a judge deciding whether it's
25 reasonable, okay. And whether it's sufficient and no greater

1 than necessary under the -- under the sentencing guidelines and
2 under the United States Congress's mandate, that -- you have an
3 agreement that, what you've agreed to is, we won't challenge it
4 as long as the judge -- we're going to recommend and we wouldn't
5 challenge anything as long as it falls within this range.

6 But a judge -- no judge -- is bound by a Rule 11©
7 agreement, anywhere.

8 So, we take it -- we take them very seriously, we look
9 at them very closely and we consider them as part of the facts
10 that we consider in connection with all of the factors we apply.
11 But it doesn't mean we're bound -- we're not a party to that
12 agreement. I'm not the United States at all.

13 THE DEFENDANT: I respect that, your Honor, but just
14 for the record, I'm hoping that you wouldn't be calling these
15 types of proceedings and engaging in all of these issues, if you
16 didn't have a general idea of where we're at in the case.

17 And that -- you know -- what the facts are and that --
18 unless some substantially different or very monumental, earth-
19 shaking event should occur or some facts were to come out
20 between now and sentencing that would just alter your
21 understanding of this case.

22 You know, I -- I'm relying upon the fact that you've
23 seen what the offer is and you know what we're --

24 THE COURT: Sir, I -- I've seen the offer. I cannot
25 comment on it. I cannot make any finding about it. I -- I

1 assure you, though, that I will consider it seriously in
2 connection with the sentence.

3 I have not -- I can't -- this is true with every
4 defendant, everywhere, makes these agreements that they don't
5 have any understanding as to whether a judge is going to accept
6 it. All I can tell you, is I'll seriously consider it. As I
7 will all of the facts in the presentence investigation report.

8 Sir --

9 THE DEFENDANT: And -- well, then, what -- because the
10 only thing, I guess, that you're awaiting is the presentence
11 investigation report.

12 Isn't it better to defer the plea colloquy until the
13 presentence investigation report --

14 THE COURT: No, no, see that's not a --

15 THE DEFENDANT: -- is completed?

16 THE COURT: -- yeah, well, that would be fine, but
17 that's not the way it works, there's no -- we don't do
18 presentence investigation reports till we find you guilty.

19 So, today, if you plead guilty, I am going to find you
20 guilty and the Constitution works guilt, then sentence. I've
21 got to find you guilty first, before I can talk about the
22 sentence.

23 THE DEFENDANT: Okay.

24 But just for the record, it is possible to do a
25 presentence investigation report pre-colloquy.

1 THE COURT: We, no -- it's not possible at all.

2 What I could have done is order some kind of abstract
3 on -- for you --

4 THE DEFENDANT: Yes.

5 THE COURT: -- and we didn't do that. We talked about
6 that some time in the last month and we decided not to do that.

7 But -- but in any event --

8 THE DEFENDANT: Well, I -- I decided not to do it,
9 only because we agreed there would be a stipulation to the range
10 and the --

11 THE COURT: Sir, I can't get into that --

12 THE DEFENDANT: No?

13 THE COURT: -- you saw my order, I -- I'm not allowed
14 to get involved in the negotiations with what you and the United
15 States said to each other. I understand what your agreement is
16 today. Okay, that's where I am, all right?

17 THE DEFENDANT: (No verbal response.)

18 THE COURT: So, let's find out, you don't have -- you
19 don't have presentence investigation reports until you have a
20 finding of guilt, I have not found you guilty yet.

21 THE DEFENDANT: Okay.

22 I'd just wish to keep it on the record, all of my
23 objections on the record then.

24 THE COURT: Your -- any objection that you've made and
25 certainly from day one has been recognized.

1 Let me tell you, sir, though, that in pleading guilty
2 to this charge, this one count of the indictment, which is Count
3 2 -- correct, Count 2 -- of the indictment that you are -- and
4 you've identified them in your acknowledgment of rights, you are
5 waiving certain constitutional rights that come with a trial.

6 So, in other words, if I -- if you plead guilty and I
7 find you guilty, all that means in some sense, is that you don't
8 have a trial, you go right to sentencing, okay.

9 Now, first, you are presumed innocent today and the
10 United States would be required to prove you guilty beyond a
11 reasonable doubt before -- before you could be found guilty by a
12 jury.

13 You have the right to the assistance of a lawyer at
14 every stage of the proceedings, including before a trial, during
15 a trial and after a trial and for any appeals to any higher
16 courts. And if you cannot afford a lawyer, we would appoint one
17 for you free of charge.

18 You would have the right to challenge before a trial,
19 the manner in which the United States obtained evidence against
20 you. If we rule that you'd illegally obtained evidence, the
21 Court -- Government -- the Government illegally obtained
22 evidence -- that evidence could not be used against you at
23 trial. All of these -- all of these rights, sir, you signed in
24 the acknowledgment of rights.

25 You would have the right to plead not guilty -- as

1 you've done thus far -- and have your case tried by a jury of
2 twelve people.

3 You have a right to have a jury of your peers drawn
4 from Philadelphia and the eight surrounding counties of the
5 district of this Court. And you would get to help -- you would
6 get to be part and participate in selecting who is on that jury.

7 To find you guilty, the verdict of that jury must be
8 unanimous, that means all twelve people must find that the
9 United States proved you guilty beyond a reasonable doubt on
10 both counts.

11 At a trial, the United States would have to present
12 witnesses in court and they would have to testify in your
13 presence, they would come before you. You would have the right
14 to confront them and cross-examine them, that is, you'd have the
15 right to face them and see them and hear them and question them.

16 You would have the right to present your own
17 witnesses, including character witnesses, whose testimony alone
18 can often or sometimes, raise a reasonable doubt about your
19 guilt. You could obtain a subpoena from me or a court order to
20 make witnesses come to court and testify during a trial.

21 You would have the right to testify at a trial, if you
22 wanted to but at a trial in a criminal proceeding, you do not
23 have to testify or take the witness stand. Again, this is in
24 your acknowledgment of rights. No one can force you to do that.

25 If you elect or decide not to take the witness stand,

1 neither, the Assistant United States Attorney nor I can comment
2 on or make reference to your failure to testify. The jury is
3 only told by me, that no inference or suggestion of guilt could
4 be drawn from the fact that you do not testify.

5 If you're found guilty, you could appeal such a
6 finding of guilt to a higher court, which could set aside or
7 modify the finding of guilt or give you a new trial.

8 They are the rights, sir, that you have at trial.

9 Did you understand those rights as you signed the
10 acknowledgment of rights as to what they are when you'd go to
11 trial, do you understand the words I just said?

12 THE DEFENDANT: Yes.

13 THE COURT: Okay.

14 Do you have any questions about any of those rights,
15 that you would be giving up by pleading guilty?

16 THE DEFENDANT: Can I just have one second?

17 THE COURT: Sure.

18 (Pause and whispering held off the record at 1:12
19 p.m.)

20 THE DEFENDANT: Okay.

21 Just -- the only thing is for all these rights -- ah
22 -- ah, I am not giving them up, if I withdraw the -- the plea
23 pursuant to you not sentencing me within the eighteen to twenty-
24 four months, correct?

25 THE COURT: Correct, sir.

1 You'd have a right to go to trial at that stage.

2 THE DEFENDANT: Okay.

3 So, I -- I have not waived those rights until and
4 unless, there is a sentence within the range, correct?

5 THE COURT: You -- you -- you give up those rights,
6 conditioned on a sentence in that range.

7 THE DEFENDANT: Yes. Thank you.

8 THE COURT: Okay.

9 So, knowing those rights and do you still wish to
10 proceed and plead guilty to Count 2 of the indictment?

11 THE DEFENDANT: Yes.

12 THE COURT: The counsel read through your appellate
13 waiver, we've talked about that at length, what you could appeal
14 from, I am not going to repeat that.

15 It is important though that we understand the elements
16 of the offense to which you are pleading guilty. I am going to
17 ask the United States now to describe just the elements of the
18 offense to which you are pleading guilty.

19 MR. ARTEAGA: Your Honor, the elements are as follows:
20 The Government must prove the following elements of
21 the crime beyond a reasonable doubt.

22 First, the defendant threatened to kidnap -- assault,
23 kidnap or murder the victim.

24 And two, that the defendant did so with the intent to
25 impede, intimidate or interfere with such official, while the

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1 official was engaged in the performance of official duties or
2 with intent to retaliate against such official on account of the
3 performance of official duties.

4 THE COURT: Thank you.

5 Mr. Kabbaj, do you have any questions to me of the
6 -- of any of the elements of those -- of that charge against you
7 to which you are considering pleading guilty?

8 THE DEFENDANT: Ah, no, I'm just affirming that the --
9 the indictment states that I threatened to assault the judge.

10 THE COURT: The plea, yes.

11 THE DEFENDANT: Ah, the indictment and the indictment
12 both.

13 MR. IBRAHIM: Both.

14 THE COURT: Okay. Both, okay.

15 THE DEFENDANT: The only other language, I can't
16 stipulate to what she was engaged in doing, specifically, at the
17 time that she received that e-mail, but --

18 THE COURT: Right, all -- you can only agree as to
19 what you did.

20 THE COURT: -- what I'm gonna -- what I'm gonna do is,
21 I'm gonna -- I am -- I am gonna stipulate to with intent to
22 retaliate. But I don't -- I don't know what she was doing when
23 she was engaged and I don't -- I don't agree that I would have
24 known that or that I agree to knowing that --

25 THE COURT: All right.

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1 THE DEFENDANT: -- or anything like that.

2 THE COURT: But you -- do you know what those words
3 mean, though?

4 THE DEFENDANT: Yeah, I know what the words mean.

5 THE COURT: Okay. All right.

6 I am now going to ask the United States to recite the
7 facts that we -- that we have discussed in this case many times
8 and that it contends, that it would prove beyond a reasonable
9 doubt on this charge and what they believe, they would prove
10 beyond a reasonable doubt, if you were to go to trial.

11 I want you to listen carefully, because when he is
12 finished, I am going to ask you if that's -- if that's what
13 happened as to you, okay, not as to the -- not the Magistrate
14 Judge, but as to you and if you -- if you did what the United
15 States says, you did. Mr. Arteaga.

16 MR. ARTEAGA: Yes, sir.

17 Younes Kabbaj is a former employee of the American
18 School of Tangier, where he worked from 2007 through February of
19 2009, when he accused the head master, Mark Simpson of
20 possessing child pornography. Mr. Kabbaj was terminated shortly
21 thereafter.

22 Younes Kabbaj, ultimately, sued the school in the
23 District of Delaware alleging -- alleging employment
24 discrimination and breach of contract. The parties were ordered
25 to mediation before Chief U.S. Magistrate Judge Mary Pat Thyng.

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1 The parties entered a settlement in 2012 and another
2 one in 2013, despite these settlements, however, Mr. Kabbaj's
3 attempts to expand and extend the litigation continued.

4 As Mr. Kabbaj moved to file more litigation against
5 various defendants, both Judge Thyng and Judge Andrews issued
6 opinions and orders on various legal and procedural questions.

7 In 2014, defendant Kabbaj moved to recuse Judge Thyng
8 and Judge Andrews from his case due to their involvement in the
9 -- quote -- homosexual lobby and their bias with respect to his
10 case against the American School of Tangier.

11 On November 5th, 2015, Judge Thyng granted an order
12 dismissing a variety of complaint filed in the preceding months
13 due to lack of jurisdiction.

14 Mr. Kabbaj moved to stay that order, nothing that --
15 quote -- the only way his safety or, at least, that of his
16 family can be achieved, is to incite violence against the entire
17 homosexual community to try and get them all holocausted -- h-o-
18 l-o-c-a-u-s-t-e-d in one shot.

19 On February 18th, 2016 at approximately 4:10 in the
20 afternoon, Mr. Kabbaj sent an e-mail to the following recipients
21 from his Jonahkabbaj@gmail.com account. He sent e-mails to the
22 following:

23 Account wahwahquash@yahoo.co.uk, Larry R. Segal in
24 Baltimore, Maryland, Judge Mary Pat Thyng in the District of
25 Delaware, Ed Gabriel@gabrielco.com, Perry Cuggi@ic.fbi.gov,

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1 James.Commi@ic.fbi.gov and AMRMoroccooffice@gmail.com.

2 Due to the misspelling, the e-mail did not reach
3 Magistrate Judge Thyng. The e-mail sent by Mr. Kabbaj stated
4 in pertinent part, the following:

5 So, I am sending you this e-mail to inform you
6 of what I intent to do to resolve this matter and
7 achieve equality, because I do not do sneak attacks
8 like you people did to me. Although, clearly, I will
9 not tell you when how I will accomplish these things,
10 which affirm, I will engage against you people, I still
11 honor my Islamic obligation to fully inform you as to
12 exactly what you should expect before I do it, because
13 I am religiously affirmative of the notion of a fair
14 fight and that you should always warn your opponent of
15 consequences of their illegal aggression before you
16 engage them.

17 Since my religion forbids me to attack
18 slash harm a woman, unfortunately, I cannot threaten
19 to decapitate Mary Pat Thyng for her attempt to
20 recruit against in NY to murder me, so I will leave
21 that to the Muslim women to deal with as they avenge
22 for what she did.

23 As you can see, I have started he procedure
24 to withdraw my case against the NYPD, because Magistrate
25 Thyng affirms that she will blocking the case from

proceeding, even if she purports to grant permission.
Thus, the problem is that, I do not affirm her interpretation of the contract as valid and lawful, so unfortunately, I must veto Magistrate Thyng and still place one of you in the hospital. So, yes, you guys, can go ahead and start to walk around with guns, if you want, but again, if you attempt to draw it, you will end up dead, anyway.

On February 29th, 2016, Mr. KabbaJ hand-delivered a brief to the Supreme Court, which again referenced Judge Thyng and other members of the quote, homosexual conspiracy, for example, in the brief Mr. KabbaJ said the following:

Petitioner thereby requests recusal of District Magistrate Mary Pat Thyng, Judge Richard G. Andrews and Judge Sue L. Robinson from this litigation, because this valid claim will not be allowed to proceed, due to the fact these Delaware judges believe it is their religious duty to ensure that they'd continue to control the terrorism aspects of this matter to thereby, try and direct violence that is due to them directly to instead be directed against petitioner. Petitioner also wishes to inform the Supreme Court, that the actions of the respondents mandate that petition take direct steps to termination this illegal conspiracy with extreme prejudice, such steps are sure to result in the global

holocaust of the entire assembled homosexual community.

This evidence thereby proves that the threats e-mailed by Defendant KabbaJ on February 18th, 2016 were made with the intent to impede, intimidate or interfere with Chief Magistrate Judge Mary Pat Thyng, while she was engaged in the performance of her office duties and with the intent to retaliate against Judge Thyng on account of the performance of her official duties.

THE COURT: Mr. KabbaJ, other than what Ms. Mary Pat Thyng -- Judge Mary Pat Thyng was doing, whether she was acting in the scope of her official duties, other than that fact, because that is not something that you did, that was something she did -- do you agree -- in other words, you didn't -- you weren't doing her duties -- do you -- do you agree with what the United States says, you did in that factual recitation?

THE DEFENDANT: Ah, it's riddle with -- with false statements. Ah, what I'd like to do is, ah, read the e-mail.

THE COURT: So, you -- you don't agree, you don't agree with the fact the United States just put forward?

THE DEFENDANT: They -- yeah, they put a lot of false statements in there, correct.

THE COURT: Okay.

So, I cannot accept your plea, sir.

We will proceed --

THE DEFENDANT: You did not see what the false

statements were.

THE COURT: Sir, the -- this is the facts that the United States says, they are going to prove a trial.

The question is, did you hear those facts?

THE DEFENDANT: Right.

And I'd like to state on --

THE COURT: And do you -- and hold.

And do you agree, that you committed -- that you did those facts?

THE DEFENDANT: Your Honor, the facts that they stated that I accused the head master of possessing child pornography, I'm not on trial for that and that's a false statement.

THE COURT: The --

THE DEFENDANT: I can continue.

There is several false statements in here, am I --

MR. ARTEAGA: Your Honor --

THE DEFENDANT: -- am I being charged with those --

THE COURT: Did I hear --

THE DEFENDANT: -- is there a crime --

THE COURT: Go ahead, Mr. -- United States --

THE DEFENDANT: -- related to that?

THE COURT: -- did I -- is that part of a crime here?

MR. ARTEAGA: No, your Honor.

The reason that's included in the change of plea memorandum is --

THE COURT: Right.

MR. ARTEAGA: -- is for the background of how we came to where we are.

THE COURT: And I don't remember those facts just being recited to me here today. Today, I started with the fact, he's in school and the idea of his relation -- so, I -- I think, sir, I want you to be careful here, what the United States has said, it would prove at trial.

Now, those facts, even if they did say those things, it doesn't -- do not relate to a conviction or a charge of guilty on this charge. This charge is based on a February 18th, 2016 e-mail.

THE DEFENDANT: What --

MR. ARTEAGA: And I quoted right from the defendant's email, itself, so.

THE COURT: And that's right.

Do you agree with what's written in the February -- in the February 18th, 2016 e-mail, I --

THE DEFENDANT: Your Honor, this is -- they have given their statement, this is -- I can read the e-mail and I can --

THE COURT: Sir --

THE DEFENDANT: -- what I stated.

THE COURT: Sir, did the United States read your e-mail cor -- there's more to it, I know --

THE DEFENDANT: Yes, that's why I'd like to --

1 THE COURT: -- but did you --

2 THE DEFENDANT: -- I'd like to also have an

3 opportunity to read it into the record.

4 THE COURT: Let me ask you, you --

5 THE COURT: -- because I -- I believe that they

6 selectively quoted it, but what I would say --

7 MR. ARTEAGA: Your Honor --

8 THE DEFENDANT: -- is this, it doesn't state --

9 THE COURT: Go ahead, Mr. Arteaga.

10 MR. ARTEAGA: Maybe, if I can simplify this.

11 THE COURT: Go ahead.

12 MR. ARTEAGA: If the defendant is willing to admit to

13 what is contained in the e-mail that he sent in February of

14 2016, we will stipulate to the entire thing, if that's what he

15 wants.

16 THE COURT: That's what I was going to say.

17 What I was going to say is, Mr. Kabbaj, if you're

18 willing to agree, you sent that entire e-mail, then I will

19 incorporate the entire e-mail into the record today.

20 THE DEFENDANT: And that's what I'm --

21 THE COURT: -- without -- and I don't need you to read

22 it.

23 THE DEFENDANT: Okay.

24 I sent this entire e-mail and what I -- my

25 understanding of the indictment, it's stating that -- ah -- ah

1 -- first of all, as there is -- there were two charges, one was

2 dropped, correct?

3 THE COURT: Not yet --

4 THE DEFENDANT: I mean, not yet --

5 THE COURT: -- that will be dropped at sentencing.

6 THE COURT: -- as -- it would be at the moment of your

7 imposition of the sentence within that range.

8 THE COURT: Right.

9 THE DEFENDANT: Ah, but the indictment states, ah --

10 ah, threat to assault. The indictment doesn't have the intent

11 element that's in Count 1.

12 And -- ah, I've stipulated to sending this e-mail with

13 intent to retaliate against the judge.

14 THE COURT: Okay.

15 So, the facts that the United States said, about

16 sending the e-mail, you agree with and I'll just --

17 THE DEFENDANT: Yeah.

18 THE COURT: -- incorporate -- I'll just incorporate

19 the entire e-mail into the record.

20 THE DEFENDANT: Absolutely.

21 THE COURT: Okay.

22 THE DEFENDANT: But I don't -- I don't stipulate to

23 anything else, that they've stated here, because there is a lot

24 of -- of non-factual statements.

25 THE COURT: Okay.

1 So, but just lastly, you agree that you -- you sent it

2 to --

3 THE DEFENDANT: Yeah, I --

4 THE COURT: -- among other people, Mary -- Judge Mary

5 Pat Thyng?

6 THE DEFENDANT: I didn't send it to her directly.

7 THE COURT: Well, you intended to send it to her,

8 correct, you just mistyped her address --

9 THE DEFENDANT: I --

10 THE COURT: -- is that right?

11 THE DEFENDANT: -- her address was mistyped, correct

12 and --

13 THE COURT: But you intended to send it to her,

14 correct?

15 THE DEFENDANT: I -- I knew she would find out about

16 it, but I did not intend --

17 THE COURT: Okay.

18 THE DEFENDANT: -- to send it to her.

19 THE COURT: Okay.

20 THE DEFENDANT: I knew, she would likely find out

21 about it, but via filing in direct court, not an ex parte

22 communication, where a lot of things happened that I don't know

23 about and I'm not able to find out about.

24 THE COURT: Okay.

25 THE DEFENDANT: But other than that, you know, I -- I

1 -- and I've stated on this offense.

2 And I'm -- I'm relaying on the Court's interpretation

3 of the statutes and I'm acknowledging that that's what -- you

4 know -- that's what it is.

5 THE COURT: All right.

6 So, let me -- let me turn then to -- having accepted

7 defendant agrees that the fact relating to the February 18th,

8 2016 e-mail intended to be sent or to be given to Judge Thyng

9 and that -- and disputing the remaining facts -- but concerning

10 the facts that would satisfy the elements of the charge being

11 pled to, let me first ask the United States, if you're satisfied

12 there is a factual basis for this plea?

13 MR. ARTEAGA: Yes, your Honor.

14 THE COURT: Are you satisfied, that the defendant is

15 competent today to enter a plea?

16 MR. ARTEAGA: Yes, your Honor.

17 THE COURT: Are you satisfied that Mr. Kabbaj's

18 willingness to plead guilty today to this charge, is voluntary?

19 MR. ARTEAGA: Yes, your Honor.

20 THE COURT: Are you satisfied that his guilty plea is

21 not based on any plea agreement or promises, other than that

22 contained in this plea agreement?

23 MR. ARTEAGA: Correct, your Honor.

24 THE COURT: I do want to change the record, if you --

25 if you would initial, Paragraph 4 of the plea agreement, it

1 should say, Count 2 rather than Count 1.

2 MR. ARTEAGA: Yes.

3 I know standby counsel and I have initialed it --

4 THE COURT: Fine.

5 MR. ARTEAGA: -- I don't know if the defendant has.

6 THE COURT: I just want to make sure that count -- the

7 complete agreement refers to the correct count.

8 MR. ARTEAGA: Yes.

9 THE COURT: Okay.

10 And -- and, United States, you're satisfied that this

11 plea by Mr. Kabbaj is being made with a full understanding by

12 him, of the nature of the charge, the penalty given by the

13 United States -- the possible penalty given by the United States

14 Congress as described by you up to six years and the defendant's

15 legal rights to contest the charge?

16 MR. ARTEAGA: Ah, I do, your Honor.

17 And have one other matter I'll bring to the Court's

18 attention when you have time.

19 THE COURT: Okay. Yes, Mr. Kabbaj.

20 THE DEFENDANT: Yeah.

21 And what I wanted was -- what I was trying to also

22 find out is, if you do not sentence me within that range and a

23 plea was withdrawn, then how -- how does that affect -- ah --

24 the statements that I've made here today now, because I --

25 MR. ARTEAGA: It can't be used against him.

1 THE COURT: Yes.

2 I don't know what they would be, the statements made

3 here today can't be used against you in any sense, but -- yes.

4 THE DEFENDANT: So -- so, my admission of guilt is

5 provisional upon you're -- you're accepting a sentence of the

6 range --

7 THE COURT: Your admission of guilt is only for

8 purposes of the guilty plea agreement, sir.

9 THE DEFENDANT: -- but for -- yeah, it's provisional

10 upon the sentence that you im -- impose, correct --

11 THE COURT: If you -- if you --

12 THE DEFENDANT: -- the eighteen to twenty-four months?

13 THE COURT: Let -- let be very clear.

14 Upon you accepting the sentence that I impose to --

15 THE DEFENDANT: Thank you.

16 THE COURT: -- to be precise.

17 THE DEFENDANT: All right.

18 THE COURT: Okay.

19 So, Counsel, did you have another condition, you were

20 concerned about for the -- and for my colloquy, concerning the

21 -- Mr. Kabbaj's ability.

22 MR. ARTEAGA: You know, your Honor, when the Court,

23 initially did a ~~Peppers~~ colloquy with the defendants, this

24 morning, I -- I don't believe the Court made a specific finding

25 on the record, that you find that he knowingly and voluntarily

1 waived --

2 THE COURT: Okay.

3 MR. ARTEAGA: -- his right to counsel.

4 I just wanted to make sure, it gets on the record.

5 THE COURT: Okay.

6 I -- I -- you're correct, because I moved right to the

7 -- I moved right to the plea.

8 And I -- I do make a specific finding that Mr. Kabbaj,

9 again, as he has every time he's been in my presence, has -- has

10 made a knowing and voluntarily waiver of his right to counsel.

11 So, I do find that his guilty plea today as -- as described is

12 -- follows that colloquy under ~~Peppers~~.

13 Having evaluated and listened to Mr. Kabbaj and his

14 arguments today, I find that he is fully alert and competent and

15 capable of entering an informed plea.

16 I find that his plea today is knowing and voluntary

17 and is not the result of force or threats or any promise apart

18 from the plea agreement, which was described today in open

19 court.

20 I find that his plea is supported by an independent

21 basis in fact as he agreed to, which contains each of the

22 essential elements relating to the February 18th, 2016 e-mail

23 and the offense to which he is pleading guilty.

24 And I find that Mr. Kabbaj understands this charge, he

25 understands his legal rights and he understands the possible

1 penalty that could be imposed upon him, through both an

2 agreement and otherwise. And his rights to be able to withdraw

3 from the plea based on his plea agreement.

4 And I find that Mr. Kabbaj understands that he is

5 giving up his right to a trial based upon a plea agreement,

6 again, subject to him -- subject to being sentenced within the

7 terms of his agreement or his consent to the sentence.

8 Mr. Kabbaj, having made those findings -- and I find

9 further that Mr. Kabbaj has, again, knowingly and voluntarily

10 waived his right to have independent counsel assist him as his

11 counsel.

12 Mr. Kabbaj, do you now wish to change the plea you've

13 entered and plead guilty to Count 2 of the indictment?

14 THE DEFENDANT: Yes.

15 THE COURT: All right.

16 Madam Deputy, will you kindly take the plea?

17 DEPUTY CLERK: Please rise.

18 Younes Kabbaj, you have been charged in Indictment No.

19 16-365, Defendant 1, charging you with influencing a federal

20 official by threat in violation of 18 USC, Section 115(a) (1) (B)

21 and (b) (4) as to Count 2, how do you plead guilty or not guilty?

22 THE DEFENDANT: I -- I plead guilty, conditioned upon

23 the sentence of agreed upon being imposed.

24 DEPUTY CLERK: Thank you, you may be seated.

25 THE COURT: Mr. Kabbaj, when you -- when you plead

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1 guilty, you plead guilty -- it's understood that, we -- we
 2 understand that the guilty plea is, of course, conditional upon
 3 you accepting the sentence and the terms that you've agreed to
 4 or otherwise, you -- you understand that? I mean, I just want
 5 you to understand, you -- you don't condition it.
 6 In other words, you say, I don't -- I don't accept the
 7 sentence, if it's -- if it's outside the scope of the agreement
 8 and you still accept it, we'd go forward, do you understand
 9 that?
 10 THE DEFENDANT: That's if I still accept it --
 11 THE COURT: That's right.
 12 THE DEFENDANT: -- but if I do not, then it's -- ah --
 13 that's what I'm trying to say --
 14 THE COURT: Well --
 15 THE DEFENDANT: -- conditional upon a sentence within
 16 that range being imposed.
 17 THE COURT: Or otherwise, accepted.
 18 THE DEFENDANT: Or otherwise, accepted.
 19 THE COURT: For example, sir, if I gave you two
 20 months, would you say, the plea is over?
 21 THE DEFENDANT: I've already done the time, your
 22 Honor --
 23 THE COURT: That's right.
 24 THE DEFENDANT: -- so, I --
 25 THE COURT: So, would you say, it's over -- would you

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1 say, we'd go to trial?
 2 THE DEFENDANT: (No verbal response.)
 3 THE COURT: No, right?
 4 THE DEFENDANT: Your Honor, I wouldn't accept a
 5 sentence even below the range, I'm accepting a sentence between
 6 eighteen to twenty-four months.
 7 THE COURT: Okay.
 8 THE DEFENDANT: I've already done the time.
 9 THE COURT: Okay.
 10 Sir, was everything you've told me today, the truth?
 11 THE DEFENDANT: Yes.
 12 THE COURT: Okay.
 13 I accept the defendant's plea of guilty to Count 2 of
 14 the indictment. And I find and adjudge the defendant, Younes
 15 Kabbaj, guilty of the offense charged in Count 2 of the
 16 indictment.
 17 Sentencing is set for May 1, 2017 --
 18 THE DEFENDANT: Ah, just one thing.
 19 THE COURT: -- at --
 20 THE DEFENDANT: I'm sorry, your Honor.
 21 THE COURT: -- at 11:30 a.m. and we will have a -- in
 22 a courtroom to get announced.
 23 Anything further for the United States?
 24 The defendant, of course, shall remain in custody
 25 pending sentencing. Anything further from the United States?

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1 MR. ARTEAGA: No, your Honor --
 2 THE DEFENDANT: I --
 3 MR. ARTEAGA: -- we did make the corrections on the
 4 original plea agreement, we're effecting the initials and then,
 5 if we can just -- standby counsel and I have a copy.
 6 THE COURT: Please. Thank you.
 7 Mr. Kabbaj, anything further from you, sir?
 8 THE DEFENDANT: Yes.
 9 The -- the only thing is, they've crossed here, and
 10 defendant's counsel, I'd like it to say, and defendant's standby
 11 counsel.
 12 THE COURT: On which document is that?
 13 MR. IBRAHIM: Your Honor, it's myself on the preamble
 14 to the guilty plea agreement, it states:
 15 Under Rule 11 of the Federal Rules of Criminal
 16 Procedure, the Government, comma, the defendant and
 17 defendant's counsel entered the following guilty plea.
 18 I've corrected that as I did on the record, but it
 19 should say:
 20 Under Rule 11 of the Federal Rules of Criminal
 21 Procedure, the Government and the defendant.
 22 THE COURT: Yes.
 23 MR. IBRAHIM: I -- I have no role.
 24 THE COURT: Standby counsel doesn't enter the
 25 agreement.

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1 THE DEFENDANT: Right, but at -- and the -- and to the
 2 extent that he signed it and was my advisor in terms of my
 3 questions that I was asking, that's --
 4 THE COURT: You --
 5 THE DEFENDANT: -- it could say, standby counsel.
 6 THE COURT: No, it can't, because he's not entering --
 7 all he is doing is -- is representing you as standby counsel for
 8 the purposes of today. He is not entering the agreement.
 9 THE DEFENDANT: He's signing it under standby Counsel.
 10 THE COURT: That -- no, that doesn't mean he's
 11 entering -- that's exactly the point.
 12 THE DEFENDANT: Okay, all right.
 13 THE COURT: He's not entering the agreement --
 14 THE DEFENDANT: Okay, I just --
 15 THE COURT: -- you are entering the agreement.
 16 THE DEFENDANT: All right.
 17 Well, I understand it, but I'll still reserve my
 18 objections on anything --
 19 THE COURT: That's fine.
 20 THE DEFENDANT: -- anything else.
 21 THE COURT: Your objection to --
 22 THE DEFENDANT: And one last question, your Honor,
 23 I --
 24 THE COURT: Yes, sir.
 25 THE DEFENDANT: -- I'm still -- I'm renewing my motion

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1 for release pending any further proceedings.
2 THE COURT: I appreciate that, sir.
3 And that -- under -- that is brought under a different
4 section of the Code, that's brought under 3143.
5 I have reviewed 3143 and I deny that motion for
6 release pending sentencing and I incorporate my findings as made
7 in my September 12, 2016 findings of fact and statement of
8 reasons to retain the defendant pending trial.
9 And I find no grounds to change that view because it's
10 post -- because it's a guilty plea.
11 THE DEFENDANT: Okay.
12 I'd just renew my objection to that --
13 THE COURT: Fine.
14 THE DEFENDANT: -- but I think it was un -- I -- I
15 believe it should be under 3142, but I don't know --
16 THE COURT: No, 3143, is the post guilty plea, sir.
17 THE DEFENDANT: Okay.
18 I -- I object to that, but I -- I understand.
19 THE COURT: Okay.
20 Anything further from the United States?
21 MR. ARTEAGA: No, sir.
22 THE COURT: All right.
23 I'll get a copy of the guilty plea.
24 THE DEFENDANT: Okay.
25 THE COURT: And we'll have it for the -- for the file.

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1 And we'll have this order ready for you for the
2 sentencing scheduled for May 1 as well.
3 (Pause and whispering held off the record at 1:35
4 p.m.)
5 THE COURT: All right.
6 Thank you, United States. Mr. Kabbaj, thank you very
7 much.
8 THE DEFENDANT: Thank you, your Honor.
9 THE COURT: I -- I will see you on May 1st.
10 MR. IBRAHIM: Thank you, your Honor.
11 THE COURT: Thank you very much.
12 DEPUTY CLERK: All rise.
13 (Adjourned in this matter at 1:36 p.m.)
14 * * *

C E R T I F I C A T E

____ I do hereby certify that the foregoing is a correct
transcript of the electronic-sound recording of the
proceeding in the above-entitled matter.

Gail Drummond
28 8th Avenue
Haddon Heights, New Jersey 08035
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Date: February 6, 2017