

Appendix

Appendix

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NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

JAN 19 2023

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

ALI F. ELMEZAYEN, AKA Ali F. Elmeza
Yen, AKA Ali Fathelelah Elmezayen, AKA
Ali Fathellah Elmezayen, AKA Ali Sayed,
AKA Ali Fathelelah Sayed,

Defendant-Appellant.

No. 21-50057

D.C. No.
2:18-cr-00809-JFW-1

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
John F. Walter, District Judge, Presiding

Argued and Submitted December 8, 2022
Pasadena, California

Before: BEA, IKUTA, and CHRISTEN, Circuit Judges.

Defendant-Appellant Ali Elmezayen appeals the district court's judgment entered upon a jury verdict that found him guilty of four counts of mail fraud under 18 U.S.C. § 1341, four counts of wire fraud under 18 U.S.C. § 1343, aggravated identity theft under 18 U.S.C. § 1028A(a)(1), and four counts of money laundering

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

under 18 U.S.C. § 1957. The district court sentenced Elmezayen to 212 years in prison. Elmezayen raises five issues on appeal: he alleges that the district court erred (1) when it failed to conduct an adequate voir dire regarding prospective jurors' experiences with autism and domestic violence, (2) when it permitted Detective Cortez to provide impermissible opinion testimony concerning witness credibility, (3) when it excluded hearsay testimony Elmezayen intended to elicit from Dr. Bruno, (4) when it admitted testimony from Sarah Wickes, and (5) when it denied a motion to continue the trial so that Elmezayen could obtain the testimony of his proffered Egyptian witnesses who had been denied visas. Lastly, Elmezayen also contends that the cumulative effect of the errors warrants a reversal.

The parties are familiar with the facts of this case, so we do not recite them here. We have jurisdiction over this appeal pursuant to 28 U.S.C. § 1291. We affirm the conviction.

1. Elmezayen first contends that the juror voir dire did not adequately test the biases of the venirepersons because the district court should have informed the prospective jurors that Elmezayen's sons had autism and should have asked whether a claimed victim of domestic abuse, like Elmezayen's wife, should almost always be believed. We review a district court's voir dire for an abuse of discretion, and we will reverse a conviction only if the judge "fail[s] to ask questions reasonably sufficient to test jurors for bias or partiality." *United States v. Payne*, 944 F.2d 1458,

1474 (9th Cir. 1991). Given this latitude, additional questioning is usually unnecessary. But it may be required if the case’s subject matter involves issues on which the public has “strong feelings” that may “skew deliberations.” *United States v. Jones*, 722 F.2d 528, 530 (9th Cir. 1983) (per curiam). Elmezayen contends that autism and domestic violence are such topics. To date, this Court has expressly recognized the “strong feelings” exception only in matters involving child sexual abuse, narcotics, and the insanity defense. *United States v. Anekwu*, 695 F.3d 967, 980 (9th Cir. 2012); *United States v. Toomey*, 764 F.2d 678, 682 (9th Cir. 1985). The district court here first informed the venire of the accusations that Elmezayen had intentionally killed his sons and had attempted to kill his wife, Ms. Diab, and then expressly questioned the venirepersons about their experiences with both autism and domestic violence. Both lines of questioning elicited responses from venirepersons. Thus, because the district court “asked broader questions [to the venirepersons] which elicited the information sought by the defense,” there is “nothing in the record indicat[ing] that the judge’s failure to honor [Elmezayen]’s requests amounted to an abuse of discretion.” *Payne*, 944 F.2d at 1474–75.

2. Elmezayen next argues that the district court should have excluded as improper opinion testimony Detective Cortez’s statements that he was “looking for truth” and that he assessed whether a suspect was lying by assessing whether the suspect was being “evasive[],” “slouch[ing],” or “rambl[ing].” The district court

clearly erred in overruling Elmezayen’s objection—whether we analyze Detective Cortez’s testimony through the lens of expert opinion testimony or improper lay witness testimony concerning credibility. *United States v. Sanchez-Lima*, 161 F.3d 545, 548 (9th Cir. 1998) (holding that an officer’s “testimony that, *based on his training and experience*, [another] was telling the truth” constituted “opinion evidence regarding . . . credibility [that wa]s inadmissible” (emphasis added)). The failure to exclude opinion testimony is reviewed for an abuse of discretion, *see United States v. Morales*, 108 F.3d 1031, 1035 (9th Cir. 1997), as is a district court’s admission of lay testimony, *United States v. Ortiz*, 776 F.3d 1042, 1044 (9th Cir. 2015). On the one hand, the government admits that Detective Cortez was not qualified as an expert witness. And despite being a lay witness, Detective Cortez testified generally about “all of [his] interviews,” and the patterns and observations he drew therefrom, to compare them to his interview with Elmezayen and to emphasize his belief that Elmezayen was likely lying. Such general opinion testimony that exceeds the scope of a witness’s “personal experience” in relation to a case is the province of experts, not lay witnesses like Detective Cortez. *United States v. Preston*, 873 F.3d 829, 838 (9th Cir. 2017). On the other hand, Detective Cortez’s recitation of his observations of Elmezayen’s demeanor that Detective Cortez then implied evinced Elmezayen’s lack of credibility impermissibly allowed Detective Cortez to substitute his opinion for that of the factfinder’s. *United States*

v. Awkard, 597 F.2d 667, 670–71 (9th Cir. 1979). Viewed either way, Detective Cortez’s testimony was clearly inadmissible. The district court erred in overruling a timely and proper objection.

However, this error was harmless. *See United States v. Lague*, 971 F.3d 1032, 1041 (9th Cir. 2020) (“Reversal is not required if there is a ‘fair assurance’ of harmlessness or, stated otherwise, unless it is more probable than not that the error did not materially affect the verdict.” (internal quotation marks and citation omitted)). Where, as here, an “error is of a nonconstitutional magnitude,” we reverse “unless it is more probable than not that the error did not materially affect the verdict.” *United States v. Bailey*, 696 F.3d 794, 803 (9th Cir. 2012) (cleaned up). Stated another way, we will hold an error harmless if the “properly admitted evidence” elsewhere in the record constitutes “overwhelming evidence of [defendant’s] guilt.” *Lague*, 971 F.3d at 1041; *see also Bailey*, 696 F.3d at 804.

Although Detective Cortez’s assertion that Elmezayen was lying about having life insurance coverage on his children was impermissible, there is other overwhelming admissible evidence of just that fact. In particular, a police report from the accident stated that Elmezayen “failed to tell the police the true number of insurance policies” he held, and the admitted evidence included eight *accidental death* policies, including their coverage amounts, which policies covered his children.

There is also substantial evidence in the record contradicting Elmezayen's description of the accident to Detective Cortez, such as eyewitness testimony that Elmezayen's car accelerated, traveled over 40 feet from the edge of the pier before hitting the water, and drove through the only unobstructed space on the crowded pier. In sum, because the "properly admitted evidence was highly persuasive and overwhelmingly pointed to guilt," any error in admitting Detective Cortez's testimony was harmless. *Bailey*, 696 F.3d at 804; *Lague*, 971 F.3d at 1041.

3. Elmezayen also argues that the district court erred in prohibiting Dr. Bruno from testifying that he had asked her to do all she could to save his son on the night of the accident. This court reviews evidentiary rulings for an abuse of discretion. *United States v. Hayat*, 710 F.3d 875, 893 (9th Cir. 2013). The district court erred in preventing Dr. Bruno from testifying about Elmezayen's request because it was admissible under the state of mind exception to hearsay. Fed. R. Evid. 803(3). Elmezayen's statement spoke to Elmezayen's state of mind in the hospital. The government put Elmezayen's state of mind in the hospital in issue by eliciting testimony from Dr. Bruno that Elmezayen's behavior was highly unusual for a father who was just told that his son was in a critical condition. Cf. *United States v. Hearst*, 563 F.2d 1331, 1341 (9th Cir. 1977) (per curiam). Thus, Elmezayen had the proper foundation for the admission of this statement under the state of mind hearsay exception because he satisfied contemporaneousness, lack of opportunity for

reflection, and relevance. *United States v. Ponticelli*, 622 F.2d 985, 991 (9th Cir. 1980), *overruled on other grounds by United States v. De Bright*, 730 F.2d 1255, 1259 (9th Cir. 1984) (en banc).

The error was harmless, however, because the jury heard Dr. Bruno testify to another statement that Elmezayen wanted Dr. Bruno to keep him updated on his son's condition. *See Lague*, 971 F.3d at 1041.¹

4. Elmezayen next contends that the district court erred by admitting Sarah Wickes's testimony about indications that she considered to be the warning signs of insurance fraud, because it was impermissible criminal profile evidence. Even if the admission of Wickes's testimony was error, we conclude that such error was harmless because there is overwhelming evidence of Elmezayen's insurance fraud: all eight accidental death policies, which covered his sons and ex-wife, were admitted into evidence, Ms. Diab testified that Elmezayen had made a prior attempt on her life, the jury heard phone calls that Elmezayen made before the accident pretending to be Ms. Diab, which revealed his interest in the policies' contestability periods, and the government put on testimony showing that Elmezayen had laundered the insurance proceeds he received. *See Lague*, 971 F.3d at 1041.

¹ Elmezayen's rule of completeness argument is meritless: the rule of completeness does not apply here because the jury heard no excerpts of Dr. Bruno's testimony, which excerpts themselves were claimed to be misleading. *See United States v. Vallejos*, 742 F.3d 902, 905 (9th Cir. 2014).

5. Finally, Elmezayen challenges the district court’s denial of his oral motion to continue the trial so that he could obtain the testimony of four proffered Egyptian witnesses. The denial of a continuance is reviewed for an abuse of discretion and involves our assessing whether the denial was “arbitrary or unreasonable,” which assessment depends on a defendant’s “diligence,” whether a continuance would meet his asserted “need,” the delay’s inconvenience, and the prejudice caused by the denial. *United States v. Flynt*, 756 F.2d 1352, 1358–59 (9th Cir. 1985). When a continuance is requested to obtain a witness’s testimony, this Court assesses prejudice by reviewing the defendant’s proffer, the testimony’s relevance, and the likelihood that the testimony could be obtained in a timely fashion. *United States v. Sterling*, 742 F.2d 521, 527 (9th Cir. 1984).

The denial of a continuance here was not an abuse of the court’s discretion. *Flynt*, 756 F.2d at 1359. Elmezayen was certainly not diligent: the witnesses were Elmezayen’s family members, defense counsel was made aware of them nearly a year earlier when he began representing Elmezayen, Elmezayen had over three months to obtain visas from the date the trial was set, and Elmezayen requested the continuance a week after he knew that the visas were denied—in the middle of trial. The delay would have inconvenienced the court and the jury given the request was made *after* the government had rested. *United States v. Fowlie*, 24 F.3d 1059, 1069–70 (9th Cir. 1994). And because the continuance requested was indefinite, it was

reasonable to conclude that Elmezayen would be unable to obtain the testimony in a timely fashion. *United States v. Crawford*, 142 F. App'x 295, 296 (9th Cir. 2005). Thus, the decision not to continue the trial was not an abuse of the court's discretion.

Elmezayen also argues that the district court incorrectly concluded that he did not establish that "exceptional circumstances" existed for taking these Egyptian witnesses' depositions under Rule 15 of the Federal Rules of Criminal Procedure. The district court did not abuse its discretion in denying Elmezayen's request for depositions: his formal motion to take depositions was made after the government rested and was therefore late, the witnesses were known family members and so the district court was permitted to deem the delayed request untimely, *cf. United States v. Zuno-Arce*, 44 F.3d 1420, 1424–25 (9th Cir. 1995), and his proffer of the witnesses implied that some of the witnesses' testimony would be inadmissible impeachment evidence, *United States v. Hernandez-Escarsega*, 886 F.2d 1560, 1570 (9th Cir. 1989).

6. Finally, Elmezayen contends that even if none of his challenges individually warrants a reversal, his conviction cannot stand because of the cumulative effect of the errors. We reject this argument. Although the analysis above shows that the trial was not free of error, the record contains overwhelming, untainted evidence of Elmezayen's guilt, and thus provides more than "fair assurance that the jury was not substantially swayed by the errors" in reaching its

verdict. *United States v. Lloyd*, 807 F.3d 1128, 1170 (9th Cir. 2015) (cleaned up).

Reversal is not required.

AFFIRMED

1 UNITED STATES DISTRICT COURT

2 CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION

3 HONORABLE JOHN F. WALTER, U.S. DISTRICT JUDGE

4

5 UNITED STATES OF AMERICA,)
6)
7 PLAINTIFF,) CASE NO.
8)
9 vs.) CR 18-809 (A) -JFW
10)
11 ALI F. ELMEZAYEN,)
12) PAGES 1 TO 233
13 DEFENDANT.)
14)
15)
16)
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19)
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13 REPORTER'S TRANSCRIPT OF

14 TRIAL DAY 1

15 WEDNESDAY, OCTOBER 16, 2019

8:37 A.M.

16 LOS ANGELES, CALIFORNIA

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22

23

24 MIRANDA ALGORRI, CSR 12743, RPR, CRR

25 FEDERAL OFFICIAL COURT REPORTER

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LOS ANGELES, CALIFORNIA 90012

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UNITED STATES DISTRICT COURT

1 this.

2 With regard to Juror No. 1, I wasn't clear at
3 least to me whether she worked with any special ed children in
4 her capacity as an LAUSD employee.

5 MS. O'CONNOR: And on that topic, Your Honor, we
6 would request that any of these jurors who work with either
7 children or people with special needs, if the Court would
8 inquire whether their contact with those populations would
9 cause them any particular emotional reaction when they hear the
10 charges in this case, that is, that Mr. Elmezayen murdered his
11 children because, in part, they're autistic.

12 THE COURT: Well, I was thinking about asking
13 that follow-up question, but I don't think it's really an
14 appropriate question. I think, once they have disclosed or, in
15 response to the question, indicated that they have worked with
16 children, I think that's sufficient for counsel to be able to
17 exercise your peremptory challenges. So I'm going to deny that
18 request.

19 MS. O'CONNOR: Thank you, Your Honor. Just to be
20 clear, that was so we could use our -- make cause strikes based
21 on their replies to those.

22 THE COURT: All right.

23 MS. O'CONNOR: But I understand it's probably the
24 same answer.

25 Also, in response to Mr. Silva's question, we

1 would renew our request to inquire as to follow-up with the
2 jury members here today, not just whether they associate
3 Muslims with acts of terror such as 9/11, but whether they feel
4 that people who are Muslims are more inclined to commit any
5 acts of violence because it seemed to me that's what Mr. Silva
6 was saying. I would just ask that question be aimed to the
7 entire venire.

8 THE COURT: That was the problem I had with the
9 question that we discussed on Thursday in terms of their views
10 because the defendant is a Muslim. I just don't think that's
11 appropriate in this case, and I added the Islam religion
12 question because of the experts. I was actually surprised that
13 Mr. Silva -- he's the one that actually expressed initially
14 that he had some concern about the religion.

15 But I'm not going to ask questions of the entire
16 panel as to whether or not -- basically what you're asking me
17 is to ask them whether or not they're biased or prejudiced
18 because the defendant is a Muslim. I have already determined
19 that is not an appropriate question. All right.

20 MR. ORTEGA: As to follow-up questions,
21 Your Honor, Juror No. 1, Ms. Burgoin, and Juror No. 3,
22 Ms. Dunn, stated that they were victims of domestic violence or
23 in an abusive relationship. We would ask that the Court make
24 further inquiry about how that might affect them when they hear
25 evidence about Mr. Elmezayen --

1 THE COURT: Well, I don't think that's an
2 appropriate question either. I think you will exercise a
3 peremptory challenge. The fact they have been victims of
4 domestic violence -- obviously it wasn't a pleasant experience.
5 They indicated they severed the relationship. So that to me is
6 enough information for you to intelligently exercise a
7 peremptory challenge.

8 MR. ORTEGA: Your Honor, and with regard to
9 follow-up as well, for the witnesses who have indicated -- for
10 the jurors who have indicated they have experience with
11 insurance --

12 THE COURT: Insurance with what?

13 MR. ORTEGA: Insurance.

14 THE COURT: Yes.

15 MR. ORTEGA: If the Court can inquire whether
16 they're familiar with the insurance companies that are at issue
17 in this case.

1 something that's at issue in this case.

2 MR. ORTEGA: Thank you, Your Honor.

3 And also for Juror No. 9, Ismael Ruelassoto,
4 whether the Court can inquire as to the nature of his wife's
5 employment. He mentioned that she's a special ed teacher, but
6 if the Court could ask questions, that would give us more
7 information about what that means.

8 THE COURT: Well, special ed teacher is a
9 special ed teacher. It's not rocket science. Deals with
10 children who have special education.

11 MR. ORTEGA: In particular, if she works with
12 children who have autism or similar disorders.

13 THE COURT: All of those requests are denied.

14 Do you have any challenges for cause?

15 MS. O'CONNOR: I have one more follow-up request,
16 Your Honor, with respect to Juror No. 5, Ms. Allen Alex. She
17 indicated she has an autistic stepson. So I would ask the
18 Court to follow up and inquire about her -- the nature of her
19 experience with her stepson and whether that would cause her to
20 have any problems with being fair or impartial in this case
21 involving allegations that Mr. Elmezayen murdered the children
22 because they were autistic.

23 THE COURT: That request is denied.

24 Any challenge for cause?

25 MR. ORTEGA: Yes, Your Honor. Juror No. 1.

1 THE COURT: Okay.

2 MR. ORTEGA: Challenge for cause because we don't
3 have information regarding whether she can be fair and
4 impartial in this case given that she works with DCFS. There
5 will be Department of Children & Family Services witnesses in
6 this case. She's a victim of domestic violence. We don't have
7 information how that would effect her receipt of evidence
8 regarding domestic violence.

9 She's an LAUSD employee. We don't have
10 information regarding -- sufficient information regarding her
11 experience with children who have special needs. We would also
12 note that, when she was addressing the domestic violence
13 question, her voice appeared to be cracking. That suggested to
14 us that maybe she was on the verge of tears.

15 THE COURT: All right. That motion or challenge
16 for cause will be denied.

24 MS. O'CONNOR: If I could follow up on that,
25 Your Honor, the jury doesn't know anything about this case. In

1 fact, they don't know that Ms. Diab is going to get up there
2 and testify that our client has a history of committing
3 domestic abuse against her. And there's a very real danger
4 that anybody who has been a victim of domestic violence
5 themselves would have a hard time of assessing the credibility
6 of another women who is making the same allegations.

7 THE COURT: My response is the same. Question
8 No. 15 covers that.

9 Any other challenges for cause?

10 MS. O'CONNOR: Will the Court inform the entire
11 venire that there will be domestic violence allegations in this
12 case, Your Honor? Because I don't think they can accurately
13 answer question 15 with respect to that.

14 THE COURT: What is the Government's position on
15 that?

16 MR. RYAN: The summary of the Indictment alleges
17 that he attempted to kill his wife and killed his children.

18 THE COURT: I remember that. That request will
19 be denied. All right.

20 MR. ORTEGA: No. 3, Your Honor, the same grounds
21 regarding the stated domestic violence experience.

22 THE COURT: All right. Does the Government have
23 any challenges for cause?

24 MR. WYMAN: No, Your Honor.

25 THE COURT: So the first peremptory is with the

1 THE COURT: All right. Thank you very much.

2 Counsel pass for cause?

3 MR. RYAN: Yes, Your Honor.

4 MR. ORTEGA: We would request sidebar,
5 Your Honor.

6 THE COURT: Sure.

7 (The following proceedings were held at sidebar:)

8 MS. O'CONNOR: Your Honor, Mr. Glynn gave two
9 answers that we would like a follow-up to. He said that,
10 during the course of his sheriff -- his job being a sheriff
11 officer, he investigated domestic violence claims. We would
12 like follow-up as to whether what he saw when he investigated
13 those claims he's likely to have seen women who were beaten,
14 women who have suffered violence at the hands of men, and
15 whether seeing that in person during the course of his job and
16 being the person charged with arresting the alleged abusers and
17 probably even testifying against them sometimes, whether that
18 would affect his ability to be fair here.

19 And we would also request that he be informed
20 more about the nature of the evidence that's going to come in
21 against Mr. Elmezayen with respect to the domestic violence
22 allegations that Ms. Diab will bring against him.

23 THE COURT: All right. I will ask one follow-up
24 question, but other than that, is there a challenge for cause?

25 MR. ORTEGA: One other follow-up area,

1 Your Honor. If the Court can inquire if in his official
2 capacity he participated with the DCFS in any investigations.
3 He mentioned DCFS but then segwayed into the fact he is an
4 adoptive parent. We wanted to see if, in his capacity as a
5 sheriff officer, he worked with DCFS in conducting
6 investigations.

7 THE COURT: What difference does it make? What
8 difference does it make? He has a child that he's been
9 adopted. He knows the process of the Department of family --
10 Child and Family Services. He has had no negative experiences
11 with them. I'm not going to ask that question.

12 Anything else?

13 MS. O'CONNOR: Not at this time.

14 (The following proceedings were held in
15 open court in the presence of the jury:)

16 THE COURT: All right. Mr. Glynn, let me ask one
17 follow-up question. Obviously you have long experience with --
18 in law enforcement. I'm sure that you have been called upon to
19 investigate many different types of crimes. The question that
20 I have for you, is there anything about any of the
21 investigations that you participated in or your law enforcement
22 background that you believe would prevent you from being a fair
23 and impartial juror in this case?

24 PROSPECTIVE JUROR GLYNN: I do not believe so,
25 Your Honor.

1 THE COURT: All right. Thank you very much.

2 The next peremptory is with the defense.

3 MS. O'CONNOR: May we have a sidebar, Your Honor?

4 THE COURT: No. The next peremptory is with the
5 defense.

6 MR. ORTEGA: Thank you, Your Honor. We would
7 thank and excuse Juror No. 3.

8 THE COURT: Let's pick a new Juror No. 3.

9 THE CLERK: Tia Allen, A-l-l-e-n, please take
10 seat No. 3.

11 THE COURT: Good morning.

12 PROSPECTIVE JUROR ALLEN: Good morning.

13 THE COURT: If you will take a moment and look at
14 the background information questionnaire and provide us your
15 background information, I would appreciate it.

16 PROSPECTIVE JUROR ALLEN: My name is Tia Allen.
17 I live in Boyle Heights. I have graduated from
18 DePaul University with a degree in digital cinema. I'm
19 currently freelance. I have not served in the military. I'm
20 single. I live with roommates. We're all adults. No
21 children. This is my first jury. No plaintiff or defendant.

22 THE COURT: All right. And how long have you
23 worked in the -- in your current capacity?

24 PROSPECTIVE JUROR ALLEN: I have been freelance
25 for about six months. Before that I worked at a production

1 THE COURT: All right. I will hear you at
2 sidebar.

3 (The following proceedings were held at sidebar:)

4 MS. O'CONNOR: Ms. Allen indicated that she has
5 been a victim of a domestic violence at the hands of her
6 parent.

7 THE COURT: Her mother.

8 MS. O'CONNOR: Her mother. Correct. And that
9 she, despite being the victim of this domestic violence, she
10 did not report it to the police officer. It was handled
11 internally. There is a lot of resemblance to the allegations
12 here in this case.

13 Ms. Diab and Elhussein Elmezayen are going to
14 testify that they were victims of domestic violence at the
15 hands of Mr. Elmezayen. One way we hope to impeach them is
16 they did not report it to police. We believe this juror's
17 experience with being a victim of domestic violence and not
18 reporting it to police, that there's a lot of factual
19 similarity in the allegations here.

20 We would like follow-up questions. We would like
21 her to be informed of the specifics -- some more specifics
22 here.

23 | THE COURT: All right. Hold on.

24 Shannon, would you ask Juror No. 3 to come over
25 here.

1 MS. O'CONNOR: The other thing is, Your Honor,
2 while we're up here, is we would move to strike Mr. Glynn for
3 cause because, in the absence of the follow-up questions, we
4 would request -- we don't have any information to believe he
5 can be fair and impartial.

6 THE COURT: What more information do you want?
7 He's a sheriff. He's investigated.

8 Hi. Come forward. This is a microphone right
9 here, so if you try to keep your voice up a little bit.

10 I wanted to ask you some questions, and I didn't
11 want to do it in front of all the jurors in the courtroom about
12 the domestic violence that you were involved in --

13 PROSPECTIVE JUROR ALLEN: Okay.

14 THE COURT: -- that involved your mother and you.

15 PROSPECTIVE JUROR ALLEN: Correct.

16 THE COURT: How long ago was that?

17 PROSPECTIVE JUROR ALLEN: Ten plus years ago.

18 THE COURT: How many?

19 PROSPECTIVE JUROR ALLEN: Ten plus years ago.

20 THE COURT: And you said that you had handled it
21 internally and law enforcement was not involved. What did you
22 mean by handling it internally?

23 PROSPECTIVE JUROR ALLEN: So no police was ever
24 called, but the school was aware. One of my classmates like
25 noticed bruises. They told the teacher, and then we all had

1 like a meeting. No law enforcement was ever dealt with.

2 THE COURT: So it was -- I take it your mother
3 was striking you.

4 PROSPECTIVE JUROR ALLEN: Correct.

5 THE COURT: Did anybody make a determination that
6 that was not -- that was not appropriate or that it was wrong?

7 PROSPECTIVE JUROR ALLEN: Yeah. Definitely.

8 THE COURT: And the school district did that?

9 PROSPECTIVE JUROR ALLEN: Well, I guess. I don't
10 really know the conversations that my parents had along with
11 the school. It didn't really happen after that.

12 THE COURT: Okay. So it stopped?

13 PROSPECTIVE JUROR ALLEN: Yes.

14 THE COURT: Is there anything about that
15 experience that would prevent you from being fair and impartial
16 in this case?

17 PROSPECTIVE JUROR ALLEN: I don't believe so.

18 THE COURT: Thank you very much.

19 PROSPECTIVE JUROR ALLEN: Thank you.

20 THE COURT: Any challenge for cause?

21 MS. O'CONNOR: Yes, Your Honor. We would
22 challenge her for cause. We think that question 15 in general
23 doesn't mean much if they don't know more about this case
24 across the board.

25 THE COURT: Well, I just asked her if she could

1 be fair and impartial notwithstanding that. That request is
2 denied.

3 (The following proceedings were held in
4 open court in the presence of the jury:)

5 THE COURT: I have the next peremptory with the
6 Government.

7 MR. RYAN: The Government would pass, Your Honor.

8 THE COURT: All right. The next peremptory is
9 with the defense.

10 MR. ORTEGA: Thank you, Your Honor. We would
11 thank and excuse Juror No. 1.

12 THE COURT: All right. Thank you very much for
13 your service.

14 Let's call another juror to take seat No. 1.

15 THE CLERK: Vilma Vardanyan, V-a-r-d-a-n-y-a-n,
16 please take seat No. 1.

17 THE COURT: Good morning. When you get set up
18 there, if you would provide us with your background
19 information, please.

20 PROSPECTIVE JUROR VARDANYAN: Yes. My name is
21 Vilma Vardanyan. I reside in Hollywood. I attended nursing
22 school. I have a BA for nursing. I'm a registered nurse at
23 Children's Hospital of Los Angeles. I am single. I live with
24 my mother. I don't have any children. I am 27. I have prior
25 jury experience. It was a civil trial, but it was dismissed.

1 PROSPECTIVE JUROR HERNANDEZ: I don't think so,
2 no.

3 THE COURT: You have to be -- you can't be
4 equivocal. You have to guarantee that -- we can't start the
5 trial and in the middle of the trial have you say, guess what,
6 I can't be fair and impartial because of your responses to this
7 question. So you have to make that determination now and tell
8 us whether or not you can be fair and impartial.

9 PROSPECTIVE JUROR HERNANDEZ: I believe I can be
10 fair and impartial.

11 THE COURT: Believe, again, is --

12 PROSPECTIVE JUROR HERNANDEZ: Yes, I can be.

13 THE COURT: You can look these lawyers in the eye
14 and tell them you can give all their clients a fair trial?

15 PROSPECTIVE JUROR HERNANDEZ: Yes.

16 THE COURT: All right. Thank you very much.

17 MS. O'CONNOR: Requesting the same clarification
18 and also requesting, with respect to all the jurors, that, once
19 they learn more about the facts of this case, that the
20 allegation is he murdered these children because they were
21 autistic, if it comes to pass that they then believe they can't
22 be fair and impartial, that they're allowed to express that to
23 the Court.

24 THE COURT: The problem with your question is
25 it's very argumentative and it's not a -- it's not a true

1 question designed to determine bias or prejudice. So I'm not
2 going to allow the question and deny your challenge for cause.

3 MS. O'CONNOR: May the jurors be instructed, if
4 something arises during trial which -- because what I heard the
5 Court say is you either say it now or you don't say it ever.
6 So I would like --

7 THE COURT: Well, of course. That's the way that
8 we make them determine whether or not they can be fair and
9 impartial. How else can you ask the question? It's denied.

10 (The following proceedings were held in
11 open court in the presence of the jury:)

12 THE COURT: The Government has the next
13 peremptory.

14 MR. RYAN: Thank you, Your Honor. The Government
15 will pass.

16 THE COURT: The final peremptory is with the
17 defense.

18 MR. ORTEGA: Your Honor, we would thank and
19 excuse Alternate Juror No. 4.

20 THE COURT: All right. Let's call another juror
21 to take number -- seat No. 4.

22 THE CLERK: Anthony Rodriguez Santos, please take
23 seat No. 4.

24 THE COURT: All right. Good afternoon.

25 PROSPECTIVE JUROR SANTOS: Good afternoon. My

1 THE COURT: This was still --

2 PROSPECTIVE JUROR SANTOS: San Pedro.

3 THE COURT: Okay.

4 PROSPECTIVE JUROR SANTOS: That's why I moved
5 out. That's why I live in Lakewood now.

6 THE COURT: So I just want to confirm that you
7 can be fair and impartial in this case, and when law
8 enforcement testifies, you can judge their credibility just
9 like any other officer?

10 PROSPECTIVE JUROR SANTOS: Yes, sir.

11 THE COURT: Any other questions?

12 PROSPECTIVE JUROR SANTOS: The only other thing,
13 I have -- 12.

14 THE COURT: Okay.

15 PROSPECTIVE JUROR SANTOS: As a child, my mother
16 was beat on quite a few times.

17 THE COURT: I take it that was your father?

18 PROSPECTIVE JUROR SANTOS: Stepfather.

19 THE COURT: Stepfather. That was as you were
20 growing up?

21 PROSPECTIVE JUROR SANTOS: Yeah.

22 THE COURT: Did your mother sever her
23 relationship with the stepfather?

24 PROSPECTIVE JUROR SANTOS: He died in a car
25 accident. He was an alcoholic.

1 THE COURT: Okay. How long ago did those events
2 occur?

3 PROSPECTIVE JUROR SANTOS: 48, 49 years ago.

4 THE COURT: Is there anything about those events
5 that are going to prevent you from being fair and impartial in
6 this case?

7 PROSPECTIVE JUROR SANTOS: No. That's why I've
8 been married 38 years.

9 THE COURT: Anything else?

10 PROSPECTIVE JUROR SANTOS: Not unless -- I did
11 have a question on one thing. I wasn't sure about 1 because,
12 doing the type of work I do, I'm constantly going through
13 background checks. I don't know if that -- trying to be --

14 THE COURT: Those are just security clearances?

15 PROSPECTIVE JUROR SANTOS: I go through that to
16 be in the airport, to work in the refineries.

17 THE COURT: No.

18 PROSPECTIVE JUROR SANTOS: They're all
19 government -- I go through background checks constantly.

20 THE COURT: You're squeaky clean.

21 PROSPECTIVE JUROR SANTOS: Well, I used to work
22 top secret equipment.

23 THE COURT: IBEW. My dad was an electrician. He
24 was a member of the IBEW.

25 Anything else?

1 MR. ORTEGA: Follow up, Your Honor.

2 THE COURT: What?

3 Just step back.

4 MR. ORTEGA: Regarding the fact that, when he
5 hears that Mr. Elmezayen specifically engaged in domestic
6 violence against the main witness in this case, his wife,
7 whether that would bring back these old memories and cause him
8 to not be able to be fair and impartial.

9 THE COURT: No. Challenge for cause?

10 MR. ORTEGA: Yes, Your Honor. On that basis.

11 THE COURT: Okay. Any challenge for cause?

12 MR. WYMAN: Your Honor, we do have a concern
13 because the only police officer who is going to be testifying
14 is specifically with the LAPD Harbor Division,
15 Detective Cortez. He said that he had that bad experience and
16 then moved to Lakewood to get out of San Pedro. I understood
17 it to mean because of the police in San Pedro.

18 THE COURT: Right.

19 MR. WYMAN: I think we would challenge for cause
20 on that basis.

21 THE COURT: That cause is denied too.

22 All right. No more challenges; correct?

23 MR. ORTEGA: Correct.

24 MR. RYAN: Procedure, my understanding is that,
25 if we had passed, then we could ask for leave to challenge a

Juror Information Sheet and Questionnaire

United States District Judge John F. Walter

You have been selected as a potential juror in a criminal case to be tried before the Hon. John F. Walter, United States District Judge. Jury service is often inconvenient to those who are asked to participate; the Court is well aware that you are all "draftees" and not volunteers. However, jury service is a responsibility of citizenship, and inconvenience to the prospective juror, or to his or her employer, is not grounds for requesting to be excused from service. A juror may be excused from jury service **only upon showing of specific facts which constitute an undue hardship for the juror**, and not the juror's employer.

Undue hardship includes the following:

1. The prospective juror's services are immediately needed to protect public health or safety and alternative arrangements are not available;
2. The prospective juror has a personal obligation to care for sick, aged, or infirm dependents, or to care for children where no comparable substitute care is either available or practical without imposing an undue financial hardship on the prospective juror or person cared for.
3. The prospective juror has a physical or mental disability or impairment - not affecting the person's ability to serve on a jury - but that would expose the juror to undue risk of mental or physical harm.
4. The prospective juror's service would create a situation that would expose the juror to undue risk of destruction of the juror's property.
5. Participation in the trial would expose the prospective juror to extreme financial burden taking into account the following factors: the length of the trial; whether the prospective juror is the sole support for his or her family; availability of employer reimbursement from the employer.

Please keep in mind that jury service is not only a duty and responsibility but is also a right that our forefathers fought to secure because of its importance in the governing of a democratic society. As a society, we have given to the People the power to decide disputes between their fellow citizens in civil cases,

and the power to make the ultimate determination of whether or not to deprive a fellow citizen of life, liberty or property in criminal cases. Jury service is a duty that is not to be shirked and a right that should not be lightly relinquished.

For those reasons, the Court's presumption is that everyone who is called should serve, and that only upon the most compelling excuse will the Court grant a request to be excused from jury service.

For its part, the Court pledges to do its very best to insure that the trial proceeds expeditiously and that your time is put to good use. To minimize trial disruptions and conserve jury time, the Court has issued detailed guidelines to counsel concerning the procedures to be followed in conducting trials in this Court. However, even with all that, trials contain an element of the unpredictable which may result in disruptions of the proceedings from time to time. Please keep in mind that the Court is ever mindful of your presence and the inconvenience connected with jury service, and will do everything in its power to keep those disruptions to a minimum. Likewise, in any situation where the Court must choose between two courses of action, one of which will inconvenience counsel and the other of which will inconvenience the jury, the Court will choose the course that will create the least inconvenience for the jury.

Thank you for your participation in this endeavor. Please proceed to the next section of this document which contains questions that you will be expected to answer during the process of jury selection in this case.

Juror Questions — Criminal Case

To All Prospective Jurors: Please read the following questions carefully to determine whether you would answer [Yes] to any of them. If you are questioned during the process of jury selection, the District Judge will ask you to identify any questions to which you would answer "Yes," and will follow up to determine the factual basis for your affirmative response. Please keep in mind that, in responding to these and all other questions during jury selection, you are under oath and are subject to penalties for perjury.

1. Have you ever been investigated, arrested, charged with, or convicted of any criminal offense?
2. Has any member of your immediate family ever been investigated, arrested, charged with, or convicted of any criminal offense?
3. Have you, or any member of your immediate family, ever had any negative experience with a police officer or any other participant in the law enforcement system including, but not limited to: prosecutors, defense attorneys, and judges?
4. Have you ever been a victim of a crime of any type, or a witness in a criminal case of any sort?
5. Have you, or any member of your immediate family, ever had any law enforcement training or experience or been a member of or employed by any law enforcement agency?
6. Is there anything in your personal experience that has caused you to develop strong feelings — **either positive or negative** — regarding people who are employed or involved in the criminal justice system?
7. Would you have any difficulty in applying the same credibility test to the testimony of a law enforcement officer that you would apply to any other witness?
8. Have you, or any member of your immediate family, ever received any legal training of any sort?
9. Have you, or any member of your immediate family, ever received any training in the field of Psychology, Psychiatry or Mental Health?
10. Have you, or any member of your immediate family, ever had any experience with the Department of Children and Family Services or any other agency or organization concerned with protecting children?

11. Have you, or any member of your immediate family, ever had any experience with Autism Spectrum Disorder, Attention-Deficit/Hyperactivity Disorder or Generalized Anxiety Disorder?
12. Have you, or any member of your immediate family, been involved in or witnessed an incident of domestic violence or family abuse?
13. Do you know anything about, or have any opinions about the teachings or doctrines of Islam?
14. **It is the duty of the court to instruct the jury on the law that applies to this case, and it is the duty of the jurors to follow those instructions whether or not they agree with them, or approve or disapprove of them. You may not substitute your own idea of what you think the law ought to be.**

Will you have any difficulty in following my instructions and applying the law to this case without any reservation, whether you approve or disapprove of the legal principles stated in those instructions?

15. Do you know of any reason at all why you cannot be a completely fair and impartial juror in this case?

1 AMY KARLIN (Bar No. 150016)
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3 CUAUHTEMOC ORTEGA (Bar No. 257443)
4 Chief Deputy Federal Public Defender
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13 Attorneys for Defendant
14 ALI F. ELMEZAYEN

15 **UNITED STATES DISTRICT COURT**
16 **CENTRAL DISTRICT OF CALIFORNIA**
17 **WESTERN DIVISION**

18 UNITED STATES,
19 Plaintiff,
20 v.
21 ALI F. ELMEZAYEN,
22 Defendant.

23 CR 18-809-JFW

24 DEFENDANT'S PROPOSED VOIR DIRE
25 QUESTIONS, REQUEST FOR ATTORNEY-
CONDUCTED VOIR DIRE, AND/OR
REQUEST FOR JURY QUESTIONNAIRE;
EXHIBITS A-B

26 TRIAL DATE: OCTOBER 16, 2019

27 Defendant Ali F. Elmezayen, through his attorneys of record, hereby respectfully
28 requests that the Court include the questions contained herein in its voir dire of
prospective jurors or employ the attached jury questionnaire, and additionally, that the
Court permit attorney-conducted voir dire.

29 //

30 //

1 Defendant's position is based on the attached Memorandum Re: Defense
2 Proposed Voir Dire.

Respectfully submitted,

AMY KARLIN
Interim Federal Public Defender

6 DATED: October 4, 2019

By Cuauhtemoc Ortega & Christy O'Connor

CUAUHTEMOC ORTEGA
CHRISTY O'CONNOR
Deputy Federal Public Defenders
Attorneys for Ali F. Elmezayen

MEMORANDUM RE: DEFENSE PROPOSED VOIR DIRE

I. REQUEST FOR ATTORNEY-CONDUCTED VOIR DIRE

This is a unique case. It involves allegations of child killing, attempted spousal murder, and domestic violence by an Egyptian Muslim immigrant who will be using an Arabic language interpreter during trial. It is critical that the jury selection process is as thorough and detailed as possible to ensure Mr. Elmezayen receives a fair trial. To help ensure this, Mr. Elmezayen requests that the Court allow attorney voir dire of prospective jurors.

Under Federal Rule of Criminal Procedure 24(a)(1), the Court has discretion to permit attorneys for the parties in a criminal case to examine prospective jurors. The Ninth Circuit Judicial Council has adopted recommendations that in addition to Court-directed voir dire, attorneys for the parties should be permitted to conduct supplemental voir dire. *See Exhibit A* (Ninth Circuit Jury Trial Improvement Committee, Second Report: Recommendations and Suggested Best Practices, Adopted October 2006, at pages 8-9). This is because “[a]ttorneys have an increased familiarity with the facts of the case and may become aware of important questions that should be asked.” *Id.* Thus, it is recommended that “[a]ttorney-conducted voir dire should be allowed for a predetermined, limited time or for clearly defined and explained purposes.” *Id.*

II. DEFENSE'S PROPOSED VOIR DIRE QUESTIONS/QUESTIONNAIRE

In addition to permitting attorney-conducted voir dire, the defense proposes that the Court employ the attached jury questionnaire prior to the start of jury selection.¹ The defense proposes that the questionnaire be distributed to prospective jurors,

¹ The proposed questionnaire is attached as Exhibit B. The government has informed the defense counsel that its position is the following: "While the government does not object to the use of a questionnaire as a general matter, the government opposes defendant's proposed questionnaire on the basis that several of the questions appear to highlight defense theories, and several questions, in particular questions 35-54, appear to focus the jury on issues that will not arise as significant issues in this case."

1 collected by the Court, and provided to both parties prior to the start of trial on October
2 16, 2019, so that the parties may have a chance to review their contents before jury
3 selection. In the alternative, the defense requests that the Court conduct an oral voir
4 dire regarding the following topics, which are substantially the same as those addressed
5 by the proposed questionnaire:

6

7 **BIOGRAPHICAL INFORMATION**

8 1. The defense requests that the prospective juror be asked to identify:

9 a. Age

10 b. Gender

11 c. Place of birth

12 d. Place where the juror was raised, if different.

13 e. Racial/ethnic background

14 f. Whether English is the prospective juror's native language.

15 g. Whether the prospective juror speaks, reads, and/or writes Arabic, or

16 has familiarity with the Arabic language.

17 h. Whether the prospective juror speaks, reads, and/or writes in any

18 language other than English and Arabic.

19 i. City of current residence/length of time live at current residence.

20 i. The last two cities/states the prospective juror lived in prior to

21 their current residence, and the duration of time at those

22 residences.

23 j. Type of employment (or if retired, type of prior employment).

24 k. Educational background and special training

25 i. Degrees, licenses and certifications.

26 l. Marital status

27 i. Single and never married?

28 ii. Currently married (state duration of marriage).

- iii. Divorced or separated, but previously married (state duration of previous marriage).
- iv. Currently living with a partner (state duration of partnership)
- v. Widowed (state duration of marriage).
- vi. If married, employment and educational background of spouse/partner.

m. Children, Stepchildren, Foster Children, Grandchildren

- i. Ages, type of employment, educational background.

n. Past Jury Service

- i. Type of case (civil or criminal), nature of case, whether verdict reached.
- ii. Were you the foreperson?
- iii. If you served as a juror in a criminal trial, did the accused take the stand in his own defense?

FAMILIARITY WITH CHARGES HERE

2. Have you read or heard anything about this case from any of the following sources?
 - a. Television
 - b. Newspapers
 - c. Radio
 - d. Internet/Social Media
 - e. Personal Knowledge or Conversations
3. Have you discussed this case or heard anyone else talk about this case?
4. What was your reaction when you learned the subject matter of this case?
5. Is there anything about the nature of this case or is there any experience that you, a family member, or a close friend have had which may affect your

ability, or cause you to have any concern about your ability, to serve fairly as a juror in a case such as this?

EXPERIENCE WITH AUTOMOBILES

6. Have you ever worked as an automobile mechanic?
7. Do you have any specialized training or expertise working on automobiles?
8. Do you collect automobiles or have a hobby that involves automobiles?
9. Do you know anyone who is an automobile mechanic, who has training/expertise in automobiles, or who collects or has a hobby that involves automobiles?

LAW ENFORCEMENT AND MILITARY

10. Have you, any members of your family or close friends, ever worked in law enforcement? (This includes police, Highway Patrol, Sheriff's department, FBI, Drug Enforcement Administration, District Attorney, State Attorney General, U.S. Attorneys, state prisons or jails, immigration, TSA, etc.)
 - a. If yes, please explain who worked in law enforcement and describe their job duties.
11. Would you be more likely to believe the testimony of a law enforcement officer simply because he/she is a law enforcement officer? If so, why?
12. Have you, or any members of your family or close friends, served in the military? If so, please describe the branch of service, the dates served, and the location of any deployments.

EXPERIENCE WITH THE CRIMINAL JUSTICE SYSTEM

13. Have you or anyone close to you ever been the victim of any kind of crime (including burglary, robbery, assault, murder, sexual molestation, or domestic

1 violence, regardless of whether this was reported to law enforcement
2 authorities or not)?

3 a. Do you feel the justice system worked properly in regard to the above
4 case(s)?

5 14. Have you, any family member, or anyone close to you ever been arrested,
6 accused, charged with a crime (even if the case was dismissed), or involved in
7 a criminal matter as either a suspect or a defendant?

8 a. If Yes, please provide more details about the circumstances and how
9 they might affect your ability to sit on the jury in this case.

10 15. Do you agree strongly, agree somewhat, disagree somewhat, or disagree
11 strongly that regardless of what the law says, a defendant in a criminal trial
12 should be required to prove his or her innocence?

13 16. Do you agree strongly, agree somewhat, disagree somewhat, or disagree
14 strongly that the criminal justice system makes it too hard for prosecutors to
15 convict people accused of crimes?

16 17. Do you agree strongly, agree somewhat, disagree somewhat, or disagree
17 strongly that the rights of persons accused of crimes are better protected than
18 the rights of victims?

19 18. Do you agree strongly, agree somewhat, disagree somewhat, or disagree
20 strongly that regardless of what the law says, persons charged with serious
21 crimes should testify in their own defense?

22
23 **CASES INVOLVING CHILDREN**

24 19. What is your reaction when you hear about an allegation of killing of a child?

25 20. How would you like to see the legal system treat people who are guilty of
26 killing children?

27 21. In a case involving allegations of killing a child, how are your feelings likely
28 to affect you as a juror?

1 22. Have you or someone close to you - a friend or relative - experienced the
2 death of a child?

3 23. Have you ever experienced the sudden loss of a loved one?

4

5 **PSYCHOLOGY, PSYCHIATRY AND MENTAL HEALTH**

6 24. Do you have any training or expertise in the field of Psychology, Psychiatry
7 or Mental Health?

8 25. Do you know anyone who suffers from or has been diagnosed with Autism
9 Spectrum Disorder or Asperger's Syndrome?

10 26. Do you know anyone who suffers from or has been diagnosed with
11 Attention-Deficit/Hyperactivity Disorder or Generalized Anxiety Disorder?

12 27. Do you feel that psychological, psychiatric and/or sociological evaluations
13 can be valuable in understanding human behavior?

14

15 **ISLAM, VIOLENCE, AND GENDER EQUALITY**

16 28. How much contact do you have socially with people of different races,
17 ethnicities, or religions outside of work?

18 a. In particular, do you have contact socially with people who practice the
19 religion of Islam?

20 29. Do you believe that Muslim people are more likely than others to commit
21 acts of violence?

22 30. Do you feel that the religion of Islam permits, sanctions, or encourages
23 violence against others? Please describe why you feel this way.

24 31. How serious a problem do you think gender inequality is among Muslims?

25 32. Do you have any opinion about polygamy (the practice of a man having more
26 than one wife)? If so, what is your opinion?

27 33. When you hear the term "traditional Muslim man," do you have any negative
28 reactions, or does anything negative come to mind?

1 34. Do you have any views about race, ethnicity, or religion which you think
2 could have a bearing on your ability to judge the facts of a criminal case?

3

4 **IMMIGRATION**

5 35. How much contact do you have socially with people who are immigrants to
6 this country?

7 36. If you do have contact with immigrants, about how many of them are
8 undocumented?

9 37. How serious a problem is illegal immigration?

10 38. How serious a problem is immigration fraud?

11 39. Do you think that people who immigrate illegally or commit immigration
12 fraud are more likely to commit other, non-immigration-related crimes?

13 40. How important do you think it is for immigrants to adopt this country's
14 beliefs, values, and social norms?

15

16 **DOMESTIC VIOLENCE**

17 41. Do you know anyone who was harmed by or afraid they might be harmed in
18 any way by a family member, spouse, friend or boyfriend/girlfriend?

19 42. Have you or anyone you know ever called the police because of a family
20 dispute, child abuse or other problem within the household, involving
21 neighbors or anyone else?

22 a. If yes, please provide more details about the circumstances and how
23 they might affect your ability to sit on the jury in this case.

24 43. Have you, a relative, or friend ever been involved in or witnessed an
25 incidence of domestic or family violence (including spousal or partner abuse,
26 child abuse, parent or elder abuse, etc.)?

27 a. If yes, please provide more details about the circumstances and how
28 they might affect your ability to sit on the jury in this case.

1 44. Have you, or a relative or friend, ever worked with the Department of
2 Children and Family Services, or any other agency or organization concerned
3 with protecting children from abuse, maltreatment or neglect, including
4 malnourishment, or generally with regard to their care and safety?

5 45. Have you, or anyone you know, ever been investigated for suspicion of or
6 allegations of, child abuse, maltreatment, neglect or any other offense
7 involving children?

8 46. When a woman makes an allegation of domestic violence, should she be
9 believed always, almost always, or depending on the circumstances?

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EXHIBIT B

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

UNITED STATES,

Plaintiff,

v.

ALI F. ELMEZAYEN,

Defendant.

CR 18-809-JFW

JURY QUESTIONNAIRE

INSTRUCTIONS TO PROSPECTIVE JURORS

Dear Prospective Juror:

You have been summoned by this Court for jury selection in a criminal case entitled *United States v. Ali F. Elmezayen*.

This questionnaire is part of the jury selection process. Each of you must complete it. The questions on the form are asked to assist the Court and attorneys in the jury selection process for this trial. Its use will avoid the necessity of asking each prospective juror every one of these questions in open Court.

The integrity of our legal system depends upon the fairness and impartiality of jurors. This questionnaire has been prepared to assist the Court and the parties in determining whether or not you may have had personal experiences, knowledge, feelings or beliefs about any of the issues to be decided by the jury in this case. Acquaintance with any of the parties, the lawyers or potential witnesses will also be asked to be disclosed.

Please answer the questions honestly, completely and with great care. Your full and complete answers are desired. This questionnaire has been specifically designed for this case. While some of the questions may seem very personal, the court has carefully reviewed them and determined that they are relevant to the specific issues in this case. The questions are not meant to invade your privacy but to help select a fair and impartial jury for this case.

Please note there are no right or wrong answers to any question. If there is sensitive personal information which you wish not to disclose, please indicate that in your response by writing "private." You will be provided an opportunity to speak with the judge and the attorneys outside the presence of other jurors regarding these matters.

Please answer each question as fully as you can. Your complete honesty is essential. Do not leave questions blank. If a question does not apply to you in any way, write "N/A" (for "not applicable"), rather than leaving the form blank. If you do not understand the question, please write "do not understand" in the space provided for the answer.

If you need more space for your response, or wish to make further comments about any question, please use the extra sheets at the end of the questionnaire making sure to identify your response by question number. DO NOT WRITE ON THE BACK OF ANY PAGE.

You are instructed not to discuss this case or questionnaire with anyone, including your family and fellow jurors. Do not engage in any research such as searching for information on the internet that may be related to the case, parties, attorneys, judge or court in any way.

Please fill out the questionnaire completely in black ink and write or print clearly.

You are expected to sign the questionnaire, and your answers will be given the same effect as a statement given to the Court under oath.

Please place your juror number in the space provided on the top right of each page of your questionnaire including the extra sheets provided at the end.

Thank you for carefully completing this questionnaire.

Honorable John F. Walter
United States District Judge

I, _____, declare under penalty of perjury under the laws of the United States of America, that the answers given in this questionnaire are complete, true and correct.

Date: _____

(Signature) _____

Juror badge number: _____

JURY QUESTIONNAIRE

1. Age: _____ Gender: Male Female Place of Birth: _____
2. What is your racial/ethnic background? (Please check all that apply.)
 Caucasian Spanish/Latino Black, African American Asian
 Native American/American Indian Other (specify) _____
3. a. What city or town do you live in? _____ For how long: _____
b. Do you own or rent your home? Own Rent Other _____
4. a. Is English your native language? Yes No
b. Do you speak, understand, read, or write Arabic? Yes No
5. Where were the last two places you lived before your current address, including city/town or area, state, and length of time?
 - a. _____
 - b. _____
 - c. Where were you born?

 - d. Where did you grow up? _____
6. What is your current job status? (Please check all that apply.)
 Working full-time Homemaker Unemployed
 Working part-time Full-time student Retired. When? _____
7. Occupation: _____ For how long? _____
8. a. Employer? (prior employer if retired) _____
b. What do you do at work? _____
c. Do you have management or supervisory responsibilities? Yes No
d. Have you ever had the authority to hire/fire others? Yes No
9. Over the period of your working life, what are the typical jobs you have had?

10. What is your education?
a. Please list degrees you have, if any, schools and colleges attended, and your major areas of study:

b. What special training or skills do you have? _____

11. Have you ever worked as an auto mechanic? Yes No
12. Do you have any specialized expertise working on automobiles? Yes No
13. Do you collect automobiles or have a hobby that involves automobiles? Yes No

14. What is your marital status?

Single and never married
 Currently married and have been for _____ years
 Divorced/Separated, but married in the past for _____ years
 Currently living with partner for _____ years
 Widowed/ widower, married in the past for _____ years
 Other _____

Any prior marriages? _____ If Yes, how many? _____

15. Is your spouse/partner employed? Yes No
- a. If Yes, what does he/she do and where is he/she employed?

b. If No, what work outside the home had he/she ever done?

c. What is the educational background of your spouse or partner?

16. If you have children, stepchildren or foster children please state:

Name and Gender	Live w/you	Age	Education	Occupation	Employer
-----------------	------------	-----	-----------	------------	----------

17. Have you, any members of your family or close friends, ever worked in law enforcement? (this includes police, Highway Patrol, Sheriff's department, FBI, Drug Enforcement Administration, District Attorney, State Attorney General, U.S. Attorneys, state prisons or jails, immigration, TSA, etc.) Yes No
If Yes, please explain who worked in law enforcement and what his or her job was:

18. Would you be more likely to believe the testimony of a law enforcement officer simply because he/she is a law enforcement officer? Yes No. If so, why?

JURY SERVICE

19. Have you served as a juror in the past? Yes No

a. If Yes, please state:

When	Where	Civil or Criminal?	Nature of Case	Reach a Verdict?

b. Were you ever the foreperson? Yes No If Yes, which case: _____

c. If you served on any criminal trials, did the accused take the stand and testify in his/her own defense?
 Yes No

20. Do you know anyone else who has been called to jury duty on the current case today?

Yes No If so, please state person's name(s) and how you know him/her/them:

EXPERIENCE WITH CRIMINAL JUSTICE SYSTEM

21. Have you or anyone close to you ever been the victim of any kind of crime (including burglary, robbery, assault, murder, sexual molestation, or domestic violence, regardless of whether this was reported to law enforcement authorities or not)? Yes No If Yes, please provide details:

a. Do you feel the justice system worked properly in regard to the above case(s)?
 Yes No Unsure

22. Have you, any family member, or anyone close to you ever been arrested, accused, charged with a crime (even if the case was dismissed), or involved in a criminal matter as either a suspect or a defendant?
 Yes No If Yes, please provide more details about the circumstances and how they might affect your ability to sit on the jury in this case.

23. What is your reaction when you hear about an allegation of killing of a child?

24. How would you like to see the legal system treat people who are guilty of killing children?

25. How do you think your feelings about child abuse are likely to affect you as a juror in a case involving allegations of killing a child?

26. Have you or someone close to you - a friend or relative - experienced the death of a child?
 Yes No If Yes, please explain:

27. Have you ever experienced the sudden loss of a loved one? Yes No If Yes, please explain:

28. For each of the following statements, please rate how much you agree or disagree with each:

- a. Regardless of what the law says, a defendant in a criminal trial should be required to prove his or her innocence.
 Agree strongly Agree somewhat Disagree somewhat Disagree strongly
- b. The criminal justice system makes it too hard for prosecutors to convict people accused of crimes.
 Agree strongly Agree somewhat Disagree somewhat Disagree strongly
- c. The rights of persons charged with crimes are better protected than the rights of victims.
 Agree strongly Agree somewhat Disagree somewhat Disagree strongly
- d. Regardless of what the law says, persons charged with serious crimes should testify in his own defense.
 Agree strongly Agree somewhat Disagree somewhat Disagree strongly

29. The court will instruct the jury that in a criminal case the burden of proof is on the prosecution. In order for the jury to return a verdict of guilty, the prosecution must prove beyond a reasonable doubt that a defendant is guilty. A person charged with a crime has absolutely no burden to prove that he or she is not guilty. Would you find it hard to accept and apply this rule? Yes No If Yes, please explain:

THE CHARGES HERE

In this trial, Ali Elmezayen is accused of driving his car off the wharf at the Port of Los Angeles, and intentionally causing the death of his two sons, who suffered from severe Autism, and attempting to cause the death of his wife. Mr. Elmezayen is alleged to have purchased a number of life insurance policies on his children, his wife and himself. Mr. Elmezayen is alleged to have made material false and fraudulent representations in connection with the claims he submitted against the policies following the deaths of his sons. This case has received some media attention.

30. Have you read or heard anything about this case from any of the following sources? (Check all that apply)

- Television
- Newspapers
- Radio
- Internet/web/blogs/Twitter

- Personal knowledge or conversations
- Conversations with others at the court house
- Overheard conversations of others about the case

If Yes to any of the above, please describe what you have read or heard about the case and any opinions you have heard anyone express about this case:

31. Have you discussed this case or heard anyone else talk about this case? Yes No If Yes, please describe the circumstances of your knowledge:

32. What was your reaction when you learned the subject matter of this case?

33. Is there anything about the nature of this case or is there any experience that you, a family member, or a close friend have had which may affect your ability, or cause you to have any concern about your ability, to serve fairly as juror in a case such as this? Yes No If Yes, please explain:

34. Would you expect the defendant, Ali Elmezayen, to testify in his own defense?
 Yes No Don't know

Please explain why you would or would not expect him to testify:

PSYCHOLOGY, PSYCHIATRY, AND MENTAL HEALTH

35. Do you have any training or expertise in the field of Psychology, Psychiatry or Mental Health?
 Yes No Don't know

Please explain: _____

36. Do you know anyone who suffers from or has been diagnosed with Autism Spectrum Disorder or Asperger's Syndrome?
 Yes No Don't know

Please explain: _____

37. Do you know anyone who suffers from or has been diagnosed with Attention-Deficit/Hyperactivity Disorder or Generalized Anxiety Disorder?
 Yes No Don't know

Please explain: _____

38. Do you feel that psychological, psychiatric and/or sociological evaluations can be valuable in understanding human behavior? Yes No Please explain:

ISLAM, VIOLENCE, AND GENDER EQUALITY

39. a. How much contact do you have socially with people of different races, ethnicities, or religions outside of work?
 A lot Some Hardly any None
b. In particular, do you have contact socially with people who practice the religion of Islam?
 A lot Some Hardly any None

40. Do you believe that Muslim people are more likely than others to commit acts of violence?
 Far More Likely Somewhat More Likely
 Equally Likely Less Likely

Please describe why you feel this way: _____

41. Do you feel that the religion of Islam permits, sanctions, or encourages violence against others? Please describe why you feel this way:

42. How serious a problem do you think gender inequality is among Muslims?

43. Do you have any opinion about polygamy (the practice of a man having more than one wife)?

When you hear the term "traditional Muslim man," do you have any negative reactions, or does anything negative come to mind?

44. Do you have any views about race, ethnicity, or religion which you think could have a bearing on your ability to judge the facts of a criminal case?
 Yes No If Yes, please explain: _____

IMMIGRATION

45. a. How much contact do you have socially with people who are immigrants to this country?
 A lot Some Hardly any None

b. If you do have contact with immigrants, about how many of them are undocumented?

A lot Some Hardly any None I prefer not to answer.

46. How serious a problem do you think illegal immigration is? What about immigration fraud?

A very serious problem A somewhat serious problem

Not too serious Not at all serious

Please explain:

47. Do you think that people who immigrate illegally or commit immigration fraud are more likely to commit other, non-immigration-related crimes?

Yes No If Yes, please explain: _____

48. How important do you think it is for immigrants to adopt this country's beliefs, values, and social norms?

Very important Somewhat important Not important at all

Please explain:

DOMESTIC VIOLENCE AND ABUSE IN THE FAMILY

49. Do you know anyone who was harmed by or afraid they might be harmed in any way by a family member, spouse, friend or boyfriend/girlfriend? Yes No If Yes, please explain:

50. Have you or anyone you know ever called the police because of a family dispute, child abuse or other problem within the household, involving neighbors or anyone else? Yes No If Yes, please provide more details about the circumstances and how they might affect your ability to sit on the jury in this case.:

51. Have you, a relative, or friend ever been involved in or witnessed an incidence of domestic or family violence (including spousal or partner abuse, child abuse, parent or elder abuse, etc.)? Yes No If Yes, please provide more details about the circumstances and how they might affect your ability to sit on the jury in this case.:

52. Have you, or a relative or friend, ever worked with Child Protective Services, or any other agency or organization concerned with protecting children from abuse, maltreatment or neglect, including

malnourishment, or generally with regard to their care and safety? Yes No If Yes, please explain who worked for Child Protective Services and what his or her job was:

53. Have you, or anyone you know, ever been investigated for suspicion of or allegations of, child abuse, maltreatment, neglect or any other offense involving children? Yes No If Yes, please explain:

54. When a woman makes an allegation of domestic violence, she should be believed:

Always Almost Always Depending on the circumstances

Please explain your answer:

WITNESS LIST

55. The following is a list of POTENTIAL witnesses (witnesses who may be called to testify) for this trial. Please look over the list and CIRCLE any name you know personally or of whom you might have heard. Next to the witness' name, please indicate your relationship and what you have heard.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION

HONORABLE JOHN F. WALTER, U.S. DISTRICT JUDGE

UNITED STATES OF AMERICA,

1

PLAINTIFF,

CASE NO.

vs.

CR 18-809 (A) - JFW

ALI F. ELMEZAYEN,

1

DEFENDANT .

1

ALI F. ELMEZAYEN,)
)
)
 DEFENDANT.)
)

REPORTER'S TRANSCRIPT OF
FINAL STATUS CONFERENCE
THURSDAY, OCTOBER 10, 2019
9:01 A.M.
LOS ANGELES, CALIFORNIA

MIRANDA ALGORRI, CSR 12743, RPR, CRR

FEDERAL OFFICIAL COURT REPORTER

350 WEST 1ST STREET, SUITE 4455

LOS ANGELES, CALIFORNIA 90012

MIRANDAALGORRI@GMAIL.COM

UNITED STATES DISTRICT COURT

1 disclose to opposing counsel by October 14th anything that they
2 intend to use with opening -- in their respective opening
3 statements. If anybody has any objections, they can file those
4 objections on October 15th, and I will rule on the morning of
5 trial.

6 All right. The final area relates to the jury
7 selection. I have reviewed the voir dire questions that -- and
8 questionnaire that had been provided by counsel. The defense
9 in their filings had made a request to conduct the voir dire of
10 the -- attorney conduct the voir dire of the jury. As I read
11 the argument made by the defendant, the principal argument
12 appears to be that a -- if an issue comes up during the course
13 of the voir dire, that the Court may not understand the nature
14 of the issue in order to ask appropriate follow-up questions.

15 Based upon my intimate familiarity with the
16 evidence in this case as a result of the pretrial motion
17 practice including the motion to suppress, motions in limine,
18 as well as my review of all of the pretrial filings as well as
19 the trial exhibit, I conclude that I will be fully prepared to
20 address any issue that may arise during the course of jury
21 selection. And to the extent that I'm unfamiliar with an
22 issue, I certainly would have -- will consult with counsel. So
23 the request for attorney-conducted voir dire is denied.

24 The jury selection is going to take place in the
25 ceremonial courtroom on the second floor because that has a

1 larger capacity than this courtroom. So however many days it
2 takes to select a jury, we're going to be in that courtroom.
3 And then once we have a jury empaneled, we will come back to
4 this courtroom, and the trial will be conducted in this
5 courtroom.

6 So I don't know if any of you have been in that
7 courtroom before. I actually for the first time went over
8 there yesterday. It brought back a lot of memories seeing the
9 portraits of all of the chief judges, many of whom I had the
10 privilege of trying cases in front of.

11 In any event, I am still preparing -- what I have
12 are two questionnaires that I use with the jury. The first
13 questionnaire is a short-form questionnaire which gives us the
14 background information with respect to the juror. The second
15 is a longer questionnaire which has specific questions. I'm
16 still in the process of preparing the longer questionnaire, but
17 I wanted -- there were two areas that I wanted to discuss with
18 counsel in terms of the long-form questionnaire. This is for
19 both the Government and the defense.

20 The questions relate -- there's proposed
21 questions -- I believe it was proposed by the Government to
22 have questions about the prospective jurors' familiarity, and I
23 think the question was raised something to the extent do you
24 know of anyone who has suffered from or been diagnosed with
25 autism or the other two disorders.

1 What's the Government's position on that?

2 MR. WYMAN: Your Honor, did you mean proposed by
3 the defense? I'm sorry. I thought you meant our proposal.

4 THE COURT: Isn't it in the Government's interest
5 also to have some information with respect to whether or not
6 any of the prospective jurors or members of their immediate
7 family have been diagnosed with one or more of these disorders?

8 MR. WYMAN: I suppose it is, Your Honor. I don't
9 think we have an objection to a question about that. I think
10 the objection noted in the defense's filing was that the
11 questionnaire sort of -- that they proposed sort of went at
12 great length to explore --

13 THE COURT: I'm not going to do that. I'm
14 thinking more of a question such -- I haven't framed it yet,
15 but have you or any member of your immediate family ever
16 suffered from or been diagnosed with any of the three
17 disorders. And then once we get an affirmative response, then
18 I can ask further questions.

19 I'm a little bit -- I'm hesitant to get into the
20 medical condition of any member of the jury, but I think it's
21 important, if they answer "yes," then I can ask the follow-up
22 question, which member of your family? And I'm not sure how
23 much more I need to go into that. At least then counsel know
24 that this particular juror has some knowledge of one or more of
25 those disorders.

1 MR. WYMAN: We wouldn't object to that line of
2 questioning.

3 THE COURT: And the second issue that I was
4 struggling with in terms of trying to frame a question is
5 the -- whether or not any of the prospective jurors -- and this
6 relates to either practicing or participating -- I don't know
7 how to phrase it -- but in the religion of Islam if I'm saying
8 that right. I think there was a question -- a whole series of
9 questions by the defense.

10 It seems to me that that may be helpful to both
11 sides to have knowledge of whether or not anybody has any
12 involvement in the Islamic religion. Is that a religion? Is
13 Islam a religion?

14 MS. O'CONNOR: Yes, Your Honor.

15 MR. WYMAN: Again, we wouldn't object to that
16 simple question.

21 In any event, I will try to frame a question, and
22 it will probably be similar to one of the disorders, have you
23 or any member of your immediate family ever practiced or been
24 involved in the religion of Islam? And then I think that's all
25 counsel really need to know.

1 MS. O'CONNOR: Would the Court be inclined, given
2 kind of the state of the post-911 world, to add one question
3 maybe about negative views of Muslims?

4 THE COURT: Well, I had actually -- in one of my
5 earlier drafts, I had actually included it, but I didn't -- let
6 me see if I can find it. I had a question that was drafted,
7 but I'm glad you raised that. I took it out of the most recent
8 draft. Would the fact that the defendant is a Muslim affect
9 your ability to be a fair and impartial juror in this case?

10 MS. O'CONNOR: I like that question. Thank you.

11 And I would also ask for one probing into any
12 juror's attitude about Muslim people being more engaged in
13 violence.

14 THE COURT: Those series of questions I'm not
15 going to give -- what's the Government's view on this?

16 MR. WYMAN: I'm not sure the additional question
17 is necessary.

18 THE COURT: I'm not going to do the additional
19 question. But the question that I asked, would the fact that
20 the defendant is a Muslim affect your ability to be a fair and
21 impartial juror in this case?

22 MR. WYMAN: I don't see the defendant's religion
23 in this case being any more relevant than the defendant's
24 religion in any other criminal cases. This is not a case about
25 him being Muslim. We don't see that as necessary, Your Honor.

1 THE COURT: Okay. I actually had taken it out,
2 but let me -- in light of what the defense has requested, let
3 me take another look at it.

4 MS. O'CONNOR: Your Honor, I understand the
5 Court's ruling. Just for the record, given the kind of
6 plethora of inflammatory issues in this case, we would just
7 preserve our objections to the Court's decision not to submit
8 this jury questionnaire to the venire or ask the remainder of
9 the questions of the jurors.

10 THE COURT: All right. That objection is
11 overruled.

12 I think that's all that I had. The only other
13 question that I had -- and I will be interested in your views.
14 I was definitely going to select four alternates, and I was
15 thinking maybe we should have six.

16 MR. WYMAN: That's fine with the Government,
17 Your Honor.

18 MS. O'CONNOR: We agree with that, Your Honor.

19 THE COURT: Okay. Does anybody have any other
20 questions? Since we're probably not going to be meeting again
21 until the morning of trial, are there any questions that I can
22 answer for counsel?

23 MR. WYMAN: Yes, Your Honor. We have a few. The
24 first is, as I mentioned earlier, we have made a few changes to
25 the witness list. We have taken out a few witnesses. We have