

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

Imad Wadi— PETITIONER

vs.

United States of America— RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO UNITED STATES COURT OF
APPEALS FOR THE FIFTH CIRCUIT

APPENDIX

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Attorney for Petitioner

APPENDIX TO THE PETITION FOR A WRIT OF CERTIORARI

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General Docket
United States Court of Appeals for the Fifth Circuit

Court of Appeals Docket #: 24-50160 USA v. Wadi Appeal From: Western District of Texas, San Antonio Fee Status: In Forma Pauperis	Docketed: 03/08/2024 Termed: 08/29/2025
Case Type Information: 1) Criminal (DCRIM) 2) Direct Criminal 3)	
Originating Court Information: District: 0542-5 : 5:21-CR-244-1 Court Reporter: Chris Poage, Court Reporter Originating Judge: Samuel Fred Biery, Jr., U.S. District Judge Date Filed: 06/09/2021 Date NOA Filed: 03/06/2024 Date Rec'd COA: 03/06/2024	
Prior Cases: None	
Current Cases: None	
Panel Assignment: Panel: CES EBC CTW Date of Hearing: 08/06/2025 Date of Decision: 08/29/2025 Date Completed: 08/29/2025	

United States of America Plaintiff - Appellee	Zachary Carl Richter, Assistant U.S. Attorney Direct: 512-370-1254 Email: zachary.c.richter@usdoj.gov [COR LD NTC Government] U.S. Attorney's Office Western District of Texas Suite 334 903 San Jacinto Boulevard Austin, TX 78701
v.	Mark Twain Roomberg, Esq., Assistant U.S. Attorney Direct: 210-384-7179 Email: mark.roomberg@usdoj.gov Fax: 210-384-7031 [COR NTC Government] U.S. Attorney's Office Western District of Texas Suite 600 601 N.W. Loop 410 San Antonio, TX 78216
Imad Eddin Wadi Defendant - Appellant	Charles Davidson Swift, Attorney Direct: 972-914-2507 Email: cswift@clcma.org Fax: 972-692-7454 [COR LD NTC Retained] Muslim Legal Fund of America Suite 1010 100 N. Central Expressway Richardson, TX 75080
	Chelsea Ann Estes Direct: 972-331-9021 Email: chelsea.estes@mlfa.org [COR NTC Retained] Muslim Legal Fund of America

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Richardson, TX 75080

United States of America,

Plaintiff - Appellee

v.

Imad Eddin Wadi,

Defendant - Appellant

- 03/08/2024 1 DIRECT CRIMINAL CASE docketed. NOA filed by Appellant Mr. Imad Eddin Wadi [24-50160] (JJF)
3 pg, 121.3 KB [Entered: 03/08/2024 09:20 AM]
- 03/08/2024 3 JURISDICTIONAL REVIEW COMPLETE. Transcript order due on 03/25/2024 for Appellant Imad Eddin
4 pg, 76.88 KB Wadi [24-50160] (JJF) [Entered: 03/08/2024 09:23 AM]
- 03/15/2024 5 APPEARANCE FORM for the court's review. Lead Counsel? Yes. [24-50160] (Charles Davidson Swift)
1 pg, 753.52 KB [Entered: 03/15/2024 03:07 PM]
- 03/18/2024 6 APPEARANCE FORM FILED by Attorney(s) Charles Davidson Swift for party(s) Appellant Imad Eddin
Wadi, in case 24-50160 [24-50160] (RSM) [Entered: 03/18/2024 01:39 PM]
- 03/22/2024 8 APPEARANCE FORM for the court's review. Lead Counsel? No. [24-50160] (Sufia M. Khalid) [Entered:
1 pg, 78.9 KB 03/22/2024 11:34 AM]
- 03/22/2024 9 ATTORNEY TRANSCRIPT ORDER form filed by Appellant Mr. Imad Eddin Wadifor the Court to process.
2 pg, 85.42 KB Date of service: 03/22/2024 via email - Attorney for Appellants: Franco, Swift; Attorney for Appellee: Gay.
[24-50160] (Charles Davidson Swift) [Entered: 03/22/2024 12:03 PM]
- 03/22/2024 10 APPEARANCE FORM FILED by Attorney(s) Sufia M. Khalid for party(s) Appellant Imad Eddin Wadi, in
case 24-50160 [24-50160] (RSM) [Entered: 03/22/2024 06:08 PM]
- 03/26/2024 12 TRANSCRIPT ORDER received from Appellant Mr. Imad Eddin Wadi advising transcript unnecessary as it
is already filed. Transcript Order ddl satisfied [24-50160] (TNM) [Entered: 03/26/2024 02:53 PM]
- 03/27/2024 15 ATTORNEY TRANSCRIPT ORDER form filed by Appellant Mr. Imad Eddin Wadifor the Court to process.
1 pg, 397.53 KB Date of service: 03/27/2024 via email - Attorney for Appellants: Franco, Khalid, Swift; Attorney for Appellee:
Gay. [24-50160] (Sufia M. Khalid) [Entered: 03/27/2024 10:14 AM]
- 03/28/2024 16 TRANSCRIPT ORDER received from Appellant Mr. Imad Eddin Wadi. DETAILS: Transcript Order: Court
Reporter: Chris Poage. Proceeding Type and Date: Sentencing 02/26/2024. Ct. Reporter Acknowledgment
due on 04/08/2024 for Chris Poage, Court Reporter. Electronic Filing Processed: [15] [24-50160] (AMD)
[Entered: 03/28/2024 02:42 PM]
- 04/05/2024 18 SUFFICIENT MOTION to withdraw as counsel [18] Sufficient Mtn/Resp/Reply due on 04/22/2024..
5 pg, 156.84 KB Document is insufficient for the following reasons: motion must indicate service upon the client, opposing
counsel, and replacement attorney [24-50160]
REVIEWED AND/OR EDITED - The original text prior to review appeared as follows: MOTION filed by
Attorney Ms. Maureen Scott Franco for Appellant Mr. Imad Eddin Wadi to withdraw as counsel [18]. Date of
Service: 04/05/2024 via email - Attorney for Appellants: Franco, Khalid, Swift; Attorney for Appellee: Gay
[24-50160] (Maureen Scott Franco) [Entered: 04/05/2024 03:50 PM]
- 04/14/2024 19 COURT REPORTER ACKNOWLEDGMENT received from Chris Poage. [24-50160] (Chris Poage)
1 pg, 90.85 KB [Entered: 04/14/2024 01:11 PM]
- 04/15/2024 20 The Motion to withdraw as counsel filed by Ms. Maureen Scott Franco in 24-50160 [18] has been made
sufficient. Sufficient Mtn/Resp/Rpl deadline satisfied. [24-50160] (LEF) [Entered: 04/15/2024 02:04 PM]
- 04/15/2024 21 LETTER ISSUED due to Other. Response/Opposition deadline updated to 04/25/2024 [24-50160] (LEF)
1 pg, 49.42 KB [Entered: 04/15/2024 02:08 PM]
- 04/15/2024 22 ACKNOWLEDGMENT Transcript Order: Court Reporter: Chris Poage, Est. Completion Dt: 05/08/2024, Est.
No.of Pgs: 100, Dt. Fin Arrangements Made: 03/28/2024, Dt. Trans. to be Filed: 05/08/2024, Proceeding
Type and Date: Sentencing 02/26/2024. Ct. Reporter Acknowledgment ddl satisfied. Transcript Due/Court
Reporter Discount Date is 05/08/2024 for Chris Poage, Court Reporter [24-50160] (AMD) [Entered:
04/15/2024 02:29 PM]
- 04/23/2024 23 PRO SE RESPONSE filed by Appellant Mr. Imad Eddin Wadi to the Motion to withdraw as counsel filed by
1 pg, 1015.08 KB Ms. Maureen Scott Franco in 24-50160 [18]. [24-50160]
REVIEWED AND/OR EDITED - The original text prior to review appeared as follows: LETTER filed by
Appellant Mr. Imad Eddin Wadi It is in response to Doc. 21.. Date of Service: 04/23/2024 via email -
Attorney for Appellants: Franco, Khalid, Swift; Attorney for Appellee: Gay [24-50160] (Sufia M. Khalid)
[Entered: 04/23/2024 12:26 PM]
- 05/01/2024 24 NOTICE RECEIVED from Chris Poage that the transcript ordered by Appellant Mr. Imad Eddin Wadi is
1 pg, 92.21 KB complete and has been filed in the District Court. [24-50160] (Chris Poage) [Entered: 05/01/2024 01:29
PM]
- 05/01/2024 25 TRANSCRIPT FILED IN DISTRICT COURT Transcript Order: Court Reporter: Chris Poage, Dt. Filed in
Dist. Ct: 05/01/2024 Transcript Due/Court Reporter Discount Date canceled [24-50160] (LEF) [Entered:
05/01/2024 04:17 PM]
- 05/01/2024 27 ELECTRONIC RECORD ON APPEAL REQUESTED from District Court for 5:21-CR-244-1. Electronic ROA
due on 05/16/2024. [24-50160] (LEF) [Entered: 05/01/2024 04:21 PM]

- 05/24/2024 28 ELECTRONIC RECORD ON APPEAL FILED. Admitted Exhibits on File in District Court? No. Video/Audio Exhibits on File in District Court? No Electronic ROA deadline satisfied. [24-50160] (RSM) [Entered: 05/24/2024 07:31 AM]
- 07/01/2024 36
3 pg, 143.03 KB CLERK ORDER granting Motion to withdraw as counsel filed by Ms. Maureen Scott Franco [18] [24-50160] (LEF) [Entered: 07/01/2024 03:22 PM]
- 07/01/2024 40
4 pg, 88.65 KB UPDATED CASE PROCESSING NOTICE sent. [24-50160] (LEF) [Entered: 07/01/2024 03:32 PM]
- 07/09/2024 42
2 pg, 144.42 KB TRANSCRIPT ORDER received from Appellant Mr. Imad Eddin Wadi advising transcript unnecessary as it is already filed. Transcript Order ddl satisfied [24-50160]
REVIEWED AND/OR EDITED - The original text prior to review appeared as follows: TRANSCRIPT ORDER received from Appellant Mr. Imad Eddin Wadi advising transcript unnecessary as it is already filed. Date of Service: 07/09/2024 via email - Attorney for Appellee: Gay; Attorney for Appellants: Khalid, Swift [24-50160] (Sufia M. Khalid) [Entered: 07/09/2024 03:14 PM]
- 07/10/2024 43 SUPPLEMENTAL ELECTRONIC RECORD ON APPEAL REQUESTED from District Court for 5:21-CR-244-1. Electronic ROA due on 07/25/2024. [24-50160] (JJF) [Entered: 07/10/2024 03:07 PM]
- 07/18/2024 44
1 pg, 134.21 KB APPEARANCE FORM for the court's review. Lead Counsel? No. [24-50160] (Mark Twain Roomberg) [Entered: 07/18/2024 10:34 AM]
- 07/19/2024 45 APPEARANCE FORM FILED by Attorney(s) Mark Twain Roomberg for party(s) Appellee USA, in case 24-50160. [24-50160] (RLL) [Entered: 07/19/2024 04:53 PM]
- 08/01/2024 47 SUPPLEMENTAL ELECTRONIC RECORD ON APPEAL FILED. PSI included? No. Electronic ROA deadline satisfied. Admitted Exhibits are on File in District Court? No. Video/Audio Exhibits on file in District Court? No. [24-50160] (DDL) [Entered: 08/01/2024 07:55 AM]
- 08/01/2024 48
5 pg, 93.1 KB BRIEFING NOTICE ISSUED A/Pet's Brief Due on 09/10/2024 for Appellant Imad Eddin Wadi. [24-50160] (DDL) [Entered: 08/01/2024 07:55 AM]
- 08/06/2024 49
3 pg, 88.41 KB UNOPPOSED MOTION filed by Appellant Mr. Imad Eddin Wadi to view and obtain sealed document. Date of service: 08/06/2024 via email - Attorney for Appellees: Gay, Roomberg; Attorney for Appellants: Khalid, Swift [24-50160] (Charles Davidson Swift) [Entered: 08/06/2024 05:08 PM]
- 08/07/2024 51
4 pg, 129.78 KB CLERK ORDER granting Motion to view and obtain sealed document filed by Appellant Mr. Imad Eddin Wadi [49] [24-50160] (LEF) [Entered: 08/07/2024 09:25 AM]
- 09/03/2024 52
1 pg, 201.59 KB UNOPPOSED LEVEL 1 EXTENSION REQUESTED by Appellant Mr. Imad Eddin Wadi for filing Appellant's Opening Brief until 10/10/2024 [24-50160] (Charles Davidson Swift) [Entered: 09/03/2024 04:47 PM]
- 09/04/2024 53 EXTENSION RECEIVED for Appellant Mr. Imad Eddin Wadi. Extension Granted to and including 10/10/2024. A/Pet's Brief deadline updated to 10/10/2024 for Appellant Imad Eddin Wadi [24-50160] (JJF) [Entered: 09/04/2024 02:50 PM]
- 10/03/2024 54
6 pg, 141.83 KB MOTION filed by Appellant Mr. Imad Eddin Wadi to extend time to file brief as appellant until 11/12/2024 [54]. Date of service: 10/03/2024 via email - Attorney for Appellees: Gay, Roomberg; Attorney for Appellants: Khalid, Swift [24-50160] (Sufia M. Khalid) [Entered: 10/03/2024 05:45 PM]
- 10/04/2024 58
1 pg, 48.69 KB CLERK ORDER granting Motion to extend time to file appellant's brief filed by Appellant Mr. Imad Eddin Wadi [54] A/Pet's Brief deadline updated to 11/12/2024 for Appellant Imad Eddin Wadi [24-50160] (LEF) [Entered: 10/04/2024 04:42 PM]
- 11/04/2024 59
6 pg, 108.32 KB UNOPPOSED MOTION filed by Appellant Mr. Imad Eddin Wadi to extend time to file brief as appellant until 12/12/2024 [59]. Date of service: 11/04/2024 [24-50160]
REVIEWED AND/OR EDITED - The original text prior to review appeared as follows: UNOPPOSED MOTION filed by Appellant Mr. Imad Eddin Wadi to extend time to file brief as appellant until 12/12/2024 [59]. Date of service: 11/04/2024 via email - Attorney for Appellees: Gay, Roomberg; Attorney for Appellants: Khalid, Swift [24-50160] (Charles Davidson Swift) [Entered: 11/04/2024 05:37 PM]
- 11/08/2024 67
2 pg, 150.88 KB COURT ORDER granting Motion to extend time to file appellant's brief filed by Appellant Mr. Imad Eddin Wadi [59] A/Pet's Brief deadline updated to 12/12/2024 for Appellant Imad Eddin Wadi [24-50160] (MBC) [Entered: 11/08/2024 03:57 PM]
- 12/04/2024 68
6 pg, 122.1 KB UNOPPOSED MOTION filed by Appellant Mr. Imad Eddin Wadi to extend time to file brief as appellant until 01/13/2025 [68]. Date of service: 12/04/2024 via email - Attorney for Appellees: Gay, Roomberg; Attorney for Appellants: Khalid, Swift [24-50160] (Charles Davidson Swift) [Entered: 12/04/2024 04:35 PM]
- 12/06/2024 73
2 pg, 107.47 KB COURT ORDER granting Motion to extend time to file appellant's brief filed by Appellant Mr. Imad Eddin Wadi [68] A/Pet's Brief deadline updated to 01/13/2025 for Appellant Imad Eddin Wadi [24-50160] (LEF) [Entered: 12/06/2024 11:53 AM]
- 01/06/2025 74
6 pg, 101.66 KB UNOPPOSED MOTION filed by Appellant Mr. Imad Eddin Wadi to extend time to file brief as appellant until 02/12/2025 [74]. Date of service: 01/06/2025 via email - Attorney for Appellees: Gay, Roomberg; Attorney

for Appellants: Khalid, Swift [24-50160] (Sufia M. Khalid) [Entered: 01/06/2025 05:54 PM]

- 01/08/2025 79
2 pg, 107.87 KB COURT ORDER granting Motion to extend time to file appellant's brief filed by Appellant Mr. Imad Eddin Wadi [74] A/Pet's Brief deadline updated to 02/12/2025 for Appellant Imad Eddin Wadi [24-50160] (LEF) [Entered: 01/08/2025 04:07 PM]
- 02/05/2025 80
6 pg, 121.23 KB MOTION filed by Appellant Mr. Imad Eddin Wadi to extend time to file brief as appellant until 03/14/2025 [80]. Date of service: 02/05/2025 via email - Attorney for Appellees: Gay, Roomberg; Attorney for Appellants: Khalid, Swift [24-50160] (Charles Davidson Swift) [Entered: 02/05/2025 09:50 AM]
- 02/10/2025 85
2 pg, 107.47 KB COURT ORDER denying Motion to extend time to file appellant's brief filed by Appellant Mr. Imad Eddin Wadi [80] [24-50160] (LEF) [Entered: 02/10/2025 08:28 AM]
- 02/10/2025 86
9 pg, 133.72 KB MOTION filed by Appellant Mr. Imad Eddin Wadi for reconsideration of the Order dated 02/10/2025 [86]. Date of service: 02/10/2025 via email - Attorney for Appellees: Gay, Roomberg; Attorney for Appellants: Khalid, Swift [24-50160] (Charles Davidson Swift) [Entered: 02/10/2025 02:19 PM]
- 02/12/2025 92
67 pg, 545.43 KB APPELLANT'S BRIEF FILED # of Copies Provided: 0
A/Pet's Brief deadline satisfied. Appellee's Brief due on 03/14/2025 for Appellee United States of America [24-50160]
REVIEWED AND/OR EDITED - The original text prior to review appeared as follows: APPELLANT'S BRIEF FILED by Mr. Imad Eddin Wadi. Date of service: 02/12/2025 via email - Attorney for Appellees: Gay, Roomberg; Attorney for Appellants: Khalid, Swift [24-50160] (Charles Davidson Swift) [Entered: 02/12/2025 11:26 PM]
- 02/13/2025 94
2 pg, 104.9 KB COURT ORDER denying Motion for reconsideration filed by Appellant Mr. Imad Eddin Wadi [86] [24-50160] (LEF) [Entered: 02/13/2025 02:14 PM]
- 02/14/2025 95
112 pg, 4.83 MB RECORD EXCERPTS FILED. # of Copies Provided: 0 [24-50160]
REVIEWED AND/OR EDITED - The original text prior to review appeared as follows: RECORD EXCERPTS FILED by Appellant Mr. Imad Eddin Wadi. Date of service: 02/14/2025 via email - Attorney for Appellees: Gay, Roomberg; Attorney for Appellants: Khalid, Swift [24-50160] (Charles Davidson Swift) [Entered: 02/14/2025 12:45 PM]
- 03/06/2025 96
3 pg, 73.54 KB UNOPPOSED LEVEL 1 EXTENSION REQUESTED by Appellee USA for filing Appellee's Unopposed Motion to Extend Time to File Appellee's Brief until 04/11/2025 [24-50160] (Mark Twain Roomberg) [Entered: 03/06/2025 10:40 AM]
- 03/06/2025 97
EXTENSION RECEIVED for Appellee USA. Extension Granted to and including 04/11/2025. E/Res's Brief deadline updated to 04/11/2025 for Appellee United States of America [24-50160] (LEF) [Entered: 03/06/2025 01:35 PM]
- 04/10/2025 99
4 pg, 84.33 KB UNOPPOSED MOTION filed by Appellee USA to extend time to file brief of appellee until 04/18/2025 [99]. Date of service: 04/10/2025 via email - Attorney for Appellants: Khalid, Swift; Attorney for Appellees: Richter, Roomberg [24-50160] (Mark Twain Roomberg) [Entered: 04/10/2025 08:46 AM]
- 04/11/2025 103
1 pg, 70.04 KB CLERK ORDER granting Motion to extend time to file appellee's brief filed by Appellee USA [99]. Appellee's Brief due on 04/18/2025 for Appellee United States of America [24-50160] (CAG) [Entered: 04/11/2025 11:39 AM]
- 04/14/2025 104
0 pg, 0 KB WITHDRAWN APPELLEE'S BRIEF FILED # of Copies Provided: 0 E/Res's Brief deadline satisfied. Reply Brief due on 05/05/2025 for Appellant Imad Eddin Wadi [24-50160]
REVIEWED AND/OR EDITED - The original text prior to review appeared as follows: APPELLEE'S BRIEF FILED by USA. Date of service: 04/14/2025 via email - Attorney for Appellants: Khalid, Swift; Attorney for Appellees: Richter, Roomberg [24-50160] (Mark Twain Roomberg) [Entered: 04/14/2025 02:54 PM]
- 05/02/2025 113
1 pg, 59.93 KB CASE TENTATIVELY calendared for oral argument for the week of 08/04/2025. [24-50160] (KMP) [Entered: 05/02/2025 02:43 PM]
- 05/02/2025 114
1 pg, 56.54 KB PAPER COPIES REQUESTED for the Appellant Brief filed by Appellant Mr. Imad Eddin Wadi in 24-50160 [92], Record Excerpts filed by Appellant Mr. Imad Eddin Wadi in 24-50160 [95], Appellee Brief filed by Appellee USA in 24-50160 [104]. Paper Copies of Brief due on 05/07/2025 for Appellee United States of America and Appellant Imad Eddin Wadi.. Paper Copies of Record Excerpts due on 05/07/2025 for Appellant Imad Eddin Wadi. [24-50160] (KMP) [Entered: 05/02/2025 02:46 PM]
- 05/05/2025 116
1 pg, 224.12 KB APPEARANCE FORM for the court's review. Lead Counsel? No. [24-50160] (Chelsea Ann Estes) [Entered: 05/05/2025 02:55 PM]
- 05/05/2025 117
APPEARANCE FORM FILED by Attorney(s) Chelsea Ann Estes for party(s) Appellant Imad Eddin Wadi, in case 24-50160 [24-50160] (RSM) [Entered: 05/05/2025 03:13 PM]
- 05/05/2025 118
38 pg, 418.66 KB APPELLANT'S REPLY BRIEF FILED # of Copies Provided: 0
Reply Brief deadline satisfied. Paper Copies of Brief due on 05/12/2025 for Appellant Imad Eddin Wadi. [24-50160]
REVIEWED AND/OR EDITED - The original text prior to review appeared as follows: APPELLANT'S REPLY BRIEF FILED by Mr. Imad Eddin Wadi. Date of service: 05/05/2025 via email - Attorney for

Appellants: Estes, Khalid, Swift; Attorney for Appellees: Richter, Roomberg [24-50160] (Charles Davidson Swift) [Entered: 05/05/2025 08:10 PM]

- 05/07/2025 119 Paper copies of Appellee Brief filed by Appellee USA in 24-50160 received. Paper copies match electronic version of document? Yes # of Copies Provided: 7. Paper Copies of Brief due deadline satisfied. [24-50160] (KMP) [Entered: 05/07/2025 10:23 AM]
- 05/07/2025 120 Paper copies of Appellant Brief filed by Appellant Mr. Imad Eddin Wadi in 24-50160 received. Paper copies match electronic version of document? Yes # of Copies Provided: 7. Paper Copies of Brief due deadline satisfied. [24-50160] (KMP) [Entered: 05/07/2025 03:33 PM]
- 05/07/2025 121 Paper copies of Record Excerpts filed by Appellant Mr. Imad Eddin Wadi in 24-50160 received. Paper copies match electronic version of document? Yes # of Copies Provided: 4. Paper Copies of Record Excerpts due deadline satisfied. [24-50160] (KMP) [Entered: 05/07/2025 03:34 PM]
- 05/08/2025 122
3 pg, 78.48 KB UNOPPOSED MOTION to view and obtain sealed document. [24-50160]
REVIEWED AND/OR EDITED - The original text prior to review appeared as follows: UNOPPOSED MOTION filed by Appellee USA to view and obtain sealed document. Date of service: 05/08/2025 via email - Attorney for Appellants: Estes, Khalid, Swift; Attorney for Appellees: Richter, Roomberg [24-50160] (Mark Twain Roomberg) [Entered: 05/08/2025 09:06 AM]
- 05/13/2025 123 Paper copies of Appellant Reply Brief filed by Appellant Mr. Imad Eddin Wadi in 24-50160 received. Paper copies match electronic version of document? Yes # of Copies Provided: 7. [24-50160] (KMP) [Entered: 05/13/2025 09:08 AM]
- 06/10/2025 125
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- 08/06/2025 144 ORAL ARGUMENT HEARD before Judges Stewart, Clement, Wilson. Arguing Person Information Updated for: Mark Twain Roomberg arguing for Appellee United States of America; Arguing Person Information Updated for: Charles Davidson Swift arguing for Appellant Imad Eddin Wadi [24-50160] (SME) [Entered: 08/06/2025 01:11 PM]
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18 pg, 284.31 KB PUBLISHED OPINION FILED. [24-50160 Affirmed] Judge: CES, Judge: EBC, Judge: CTW. Mandate issue date is 09/19/2025 for Appellant Imad Eddin Wadi. (This opinion includes URL material that is archived by the Fifth Circuit Court of Appeals Library, and made available at <http://www.lb5.uscourts.gov/ArchivedURLS/>.) [24-50160] (RA) [Entered: 08/29/2025 10:39 AM]
- 08/29/2025 148
2 pg, 61.32 KB JUDGMENT ENTERED AND FILED. [24-50160] (RA) [Entered: 08/29/2025 10:41 AM]

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46 pg, 584.92 KB PETITION for rehearing en banc [151] Number of Copies:0. Mandate issue date canceled.. [24-50160]
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Attorney for Appellants: Estes, Khalid, Swift; Attorney for Appellees: Richter, Roomberg [24-50160] (Sufia
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2 pg, 151.47 KB COURT ORDER denying Petition for rehearing en banc filed by Appellant Mr. Imad Eddin Wadi [151]
Without Poll. Mandate issue date is 10/03/2025; denying Petition for rehearing filed by Appellant Mr. Imad
Eddin Wadi [152] Mandate issue date is 10/03/2025 [24-50160] (RSM) [Entered: 09/26/2025 08:59 AM]
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United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

August 29, 2025

Lyle W. Cayce
Clerk

No. 24-50160

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

IMAD EDDIN WADI,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 5:21-CR-244-1

JUDGMENT

Before STEWART, CLEMENT, and WILSON, *Circuit Judges*.

This cause was considered on the record on appeal and was argued by counsel.

IT IS ORDERED and ADJUDGED that the judgment of the District Court is AFFIRMED.

The judgment or mandate of this court shall issue 7 days after the time to file a petition for rehearing expires, or 7 days after entry of an order denying a timely petition for panel rehearing, petition for rehearing en banc, or motion

No. 24-50160

for stay of mandate, whichever is later. See FED. R. APP. P. 41(B). The court may shorten or extend the time by order. See 5TH CIR. R. 41 I.O.P.

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

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Appeal from the United States District Court
for the Western District of Texas
USDC No. 5:21-CR-244-1

Before STEWART, CLEMENT, and WILSON, *Circuit Judges*.

CORY T. WILSON, *Circuit Judge*:

Following a jury trial, Iman Wadi was convicted of conspiracy to murder and maim persons in a foreign country, 18 U.S.C. § 956, conspiracy to provide and attempt to provide material support to a designated foreign terrorist organization, 18 U.S.C. § 2339B, and conspiracy to provide and attempt to provide material support to terrorists, 18 U.S.C. § 2339A. Wadi appeals those convictions, raising six issues. We affirm.

I.

Iman Wadi, a Syrian-born nationalized United States citizen, planned to establish a halal-beef slaughterhouse in Colombia with business partner Ahmed Barodi. They needed around \$13 million in investments to turn their business idea into a reality. Suspicious of their plan, Wadi's friend Hussain Baker (a confidential source for the FBI) reported Wadi and Barodi's plan to his FBI contacts in 2017. At their direction, Baker connected Wadi and Barodi with a "representative" of an FBI-concocted "Kuwaiti Sheikh" who offered to invest in the slaughterhouse.

Through his "representative"—who was really an undercover FBI agent—the Sheikh offered to invest \$9 million in Wadi and Barodi's Colombian enterprise, on one condition: Wadi and Barodi would agree to send at least five percent of that investment to Jabhat al-Nusra (at times known as al-Nusra, Fatah al-Sham, and Tahrir al-Sham) to support al-Nusra's violent campaign to overthrow the Syrian government.¹ At the time, al-Nusra was "the outstanding representative of the Salafi-jihadist opposition to the Syrian government" and was designated by the United States State Department as a foreign terrorist organization. *See* 8 U.S.C. § 1189.²

¹ The Sheikh ostensibly was interested in investing with Wadi and Barodi because Barodi's relatives fought for al-Nusra. The Government presented evidence that Wadi understood Barodi's relatives to have fought for al-Nusra, that Wadi entered the conspiracy on the understanding that the conspirators would be supporting al-Nusra, and that the conspiracy centered around sending money to al-Nusra. There is evidence in the record that Barodi's relatives may actually have fought for Ahrar al-Sham, a distinct organization that has never been designated a foreign terrorist organization by the State Department. Regardless, the Government presented sufficient evidence for a reasonable jury to find that Wadi agreed to finance al-Nusra, rather than Ahrar al-Sham.

² Section 1189 authorizes the Secretary of State "to designate an organization a foreign terrorist organization upon finding that: (1) the organization is a foreign

Wadi and Barodi agreed to the Sheikh's condition without "hesitation or reservation"; indeed, they had provided such funding in the past. Enthusiastic about the opportunity to do so again, Wadi and Barodi promised the Sheikh that they would send at least five percent of the investment to al-Nusra.³ In fact, they attempted to hurry financial support to the Syrian rebels by pressuring the Sheikh to send his investment immediately, concerned more about the rebels' needs than their entrepreneurial venture. Wadi and Barodi were thus fully committed to funding al-Nusra, and they declined to back out of the deal despite being given multiple opportunities to do so by the FBI.

Wadi also understood that his financial support would fund the violence perpetrated by al-Nusra. At trial, the Government presented evidence that Wadi was informed that al-Nusra was "not a group just for conferences," but for "killing" and that "[t]hey killed [] kids . . . [and] women like dogs." The Government also presented evidence that Wadi was aware that al-Nusra was bombing Russian jets and helicopters, blowing up other vehicles, and conducting suicide bombing missions. So Wadi knew that

organization; (2) the organization engages in terrorist activity; and (3) the terrorist activity or terrorism threatens the security of United States nationals or the national security of the United States." *United States v. Fidsse*, 862 F.3d 516, 519 n.1 (5th Cir. 2017). The State Department designated al-Nusra as a foreign terrorist organization on May 15, 2014, but on July 7, 2025, the Secretary of State announced the intent to revoke al-Nusra's designation as a foreign terrorist organization. Press Release, Marco Rubio, Secretary of State, Revoking the Foreign Terrorist Organization Designation of Hay'at Tahrir al Sham (July 7, 2025), <https://www.state.gov/releases/office-of-the-spokesperson/2025/07/revoking-the-foreign-terrorist-organization-designation-of-hayat-tahrir-al-sham/>. That revocation took effect the next day. BUREAU OF COUNTERTERRORISM, *Foreign Terrorist Organizations*, <https://www.state.gov/foreign-terrorist-organizations/> (last visited Aug. 12, 2025).

³ At various points during their discussions with the Sheikh's representative, Wadi and Barodi suggested sending even more than that initial figure, including up to 100% of the expected profits from their slaughterhouse.

his financial support would go towards “weapons, guns, and bombs and stuff like that,” to subsidize assassinations, killings, and bombings in which al-Nusra was involved.

The confederacy to fund al-Nusra’s violent campaign thus hatched, Wadi and Barodi began communicating in code. They established shell businesses through which to wire money, and they opened foreign bank accounts to hide their transfers from American law enforcement. The pair communicated with al-Nusra, informed their contacts that financial support was in the works, and made overtures to Turkish and Ukrainian arms dealers. Wadi and Barodi also pressured the Sheikh to transfer his investment as soon as possible, sending an invoice for \$9 million to the Sheikh and repeatedly relaying concerns that al-Nusra was in desperate need of weapons.

In June 2021, the FBI terminated its undercover operation, and Wadi was arrested and indicted for conspiring to murder and maim individuals in a foreign country and for conspiring to send material support to terrorists and designated foreign terrorist organizations. Wadi proceeded to trial in May 2023, and a jury found him guilty on all three counts. The district court sentenced Wadi to concurrent terms of 160 months’ imprisonment on each count.

II.

Wadi now appeals his convictions. He contends that the district court erred by (A) excluding his son’s testimony; (B) limiting Wadi’s cross-examination of Baker; (C) denying his motion for judgment of acquittal as to conspiracy to murder or maim individuals in a foreign country; (D) refusing Wadi’s request for a combatant-immunity instruction; (E) instructing the jury that al-Nusra was a designated foreign terrorist organization; and (F) refusing to sanction the Government for Baker’s violation of a court preservation order by either dismissing Wadi’s

indictment or giving a spoliation instruction. We address these contentions in turn.

A.

Wadi asserts that the district court erred by excluding his son Amer's testimony. According to Wadi, Amer's testimony was important to demonstrate Wadi's financial struggles, to refute the Government's suggestion "that [Wadi] was a wealthy terrorism financier," and to support an entrapment defense. At trial, the Government objected to Amer's testifying, arguing that his testimony was "irrelevant," "a plea for sympathy," "based mostly on hearsay," and violative of Federal Rule of Evidence 403 because it was "more prejudicial than probative." *See* FED. R. EVID. 403. The district court preliminarily sustained that objection, finding that Amer's proposed testimony was "irrelevant" and "more prejudicial than probative." The district court then reaffirmed that ruling after Wadi proffered Amer's testimony.

Wadi contends that the district court's ruling violated his Sixth Amendment right to present a complete defense. "We review alleged violations of that right *de novo*, subject to review for harmless error." *United States v. Lim*, 897 F.3d 673, 684 (5th Cir. 2018). We review rulings on admissibility of evidence for abuse of discretion. *Id.*

"[T]he Constitution guarantees criminal defendants 'a meaningful opportunity to present a complete defense.'" *Crane v. Kentucky*, 476 U.S. 683, 690 (1986) (quoting *California v. Trombetta*, 467 U.S. 479, 485 (1984)). Still, "[a] defendant's right to present relevant evidence . . . is subject to reasonable restrictions." *United States v. Scheffer*, 523 U.S. 303, 308 (1998). "As a result, state and federal rulemakers have broad latitude under the Constitution to establish rules excluding evidence from criminal trials," and "[s]uch rules do not abridge an accused's right to present a defense so long

as they are not ‘arbitrary’ or ‘disproportionate to the purposes they are designed to serve.’” *Id.* (quoting *Rock v. Arkansas*, 483 U.S. 44, 55 (1987)). Federal Rules of Evidence 401 and 403, which exclude irrelevant evidence and evidence that is more prejudicial than it is probative, serve “legitimate interests in the criminal trial process.” *See id.* at 309. Because those rules are not “arbitrary” or “disproportionate to the purposes they are designed to serve,” they do not run afoul of the Sixth Amendment. *Rock*, 483 U.S. at 55–56.

As those rules do not violate the Sixth Amendment, we review the district court’s admissibility determinations under them for abuse of discretion. *Lim*, 897 F.3d at 684 (citing *United States v. Skelton*, 514 F.3d 433, 438 (5th Cir. 2008)). By Wadi’s account, the Government presented evidence that he was traveling abroad in numerous countries, procuring lucrative contracts, and carrying a \$16 million letter of credit. So he should have been able to offer Amer’s testimony about Wadi’s weaker financial position to refute the Government’s evidence and support his entrapment defense. In other words, according to Wadi, because Amer’s testimony would refute the Government’s evidence and show that Wadi was more susceptible to the undercover agent’s offer of \$9 million, it was both relevant and probative. *See* FED. R. EVID. 403 (excluding relevant evidence if its “probative value is substantially outweighed by . . . unfair prejudice”).

Even assuming that Amer’s testimony was relevant, FED R. EVID. 401(b), Wadi fails to show how the district court abused its discretion by determining that the probative value of Amer’s testimony was “substantially outweighed by a danger of . . . unfair prejudice, confusing the issues, misleading the jury, . . . or needlessly presenting cumulative evidence,” FED. R. EVID. 403. Indeed, Wadi was permitted to present evidence and make the argument to the jury that his financial hardship and previous business failures made him more likely to fall prey to entrapment. And Wadi

fails to show how Amer's testimony was not merely "a plea for sympathy," as the Government contends. We find no error in the district court's exclusion of Amer's testimony.

B.

Similarly, Wadi contends that the district court erred by limiting his cross-examination of Baker. But Wadi's brief points to no instance in the record where the district court actually limited his questioning of Baker. *See* FED. R. APP. P. 28(a)(8)(A); *see also Arredono v. Univ. of Tex. Med. Branch at Galveston*, 950 F.3d 294, 298 (5th Cir. 2020) ("[C]itations to the record on appeal, as required by the federal appellate rules and our local rules, help us parse out the issues that are actually before us on appeal."). Wadi's failure to do so results in forfeiture of this issue. *See, e.g., United States v. Stalnak*, 571 F.3d 428, 439 & n.9 (5th Cir. 2009) (issues forfeited because brief "d[id] not fully explain them" and "d[id] not cite the record or relevant law"); *see also Murthy v. Missouri*, 603 U.S. 43, 67 n.7 (2024) ("[J]udges are not like pigs, hunting for truffles buried in the record." (quoting *Gross v. Cicero*, 619 F.3d 697, 702 (7th Cir. 2010)) (alteration accepted)). Even if the issue were not forfeited, Wadi fails to demonstrate a violation of his confrontation right because he fails show that "a reasonable jury might have had a significantly different impression of the witness's credibility if defense counsel had been allowed to pursue the questioning" at issue. *United States v. Davis*, 393 F.3d 540, 548 (5th Cir. 2004). This issue thus lacks merit.

C.

Wadi next asserts that the Government presented insufficient evidence to support his conviction under 18 U.S.C. § 956. That statute criminalizes conspiracies to murder, kidnap, or maim persons beyond the

borders of the United States. 18 U.S.C. § 956(a)(1).⁴ To convict under § 956(a)(1),

the Government must prove four elements: “(1) the defendant agreed with at least one person to commit murder[, kidnapping, or maiming]; (2) the defendant willfully joined the agreement with the intent to further its purpose; (3) during the existence of the conspiracy, one of the conspirators committed at least one overt act in furtherance of the object of the conspiracy; and (4) at least one of the conspirators was within the jurisdiction of the United States when the agreement was made.”

United States v. Diaz, 90 F.4th 335, 342 (5th Cir. 2024) (quoting *United States v. Wharton*, 320 F.3d 526, 538 (5th Cir. 2003)). Because a jury convicted Wadi under § 956 for both conspiring to murder *and* conspiring to maim, he must successfully attack both findings to succeed in his sufficiency-of-the-evidence challenge. 18 U.S.C. § 956(a)(1) (providing two independent violations for conspiracy to murder and conspiracy to maim); *United States v. Obregon-Reyes*, 507 F. App’x 413, 421 n.3 (5th Cir. 2013) (per curiam) (“[T]he [G]overnment can satisfy the elements of conspiracy to kill, kidnap, or maim in a foreign country without evidence showing a conspiracy to

⁴ Section 956(a)(1) provides:

Whoever, within the jurisdiction of the United States, conspires with one or more other persons, regardless of where such other person or persons are located, to commit at any place outside the United States an act that would constitute the offense of murder, kidnapping, or maiming if committed in the special maritime and territorial jurisdiction of the United States shall, if any of the conspirators commits an act within the jurisdiction of the United States to effect any object of the conspiracy, be punished as provided in subsection (a)(2).

commit murder—the plain terms of § 956(a) punish conspiracy to commit kidnapping.”).

At the conclusion of the Government’s case-in-chief, Wadi generally moved for acquittal “on all three counts.” But as he pressed that motion in the district court, Wadi neglected his argument that the Government failed to present sufficient evidence to convict him under § 956. Regarding that count, Wadi merely asserted that the Government had not made “a showing of an intent to kill,” without any elaboration. Wadi thus did not articulate in his initial motion for acquittal how the Government’s evidence was insufficient to show “an intent to kill,” and he did not address the Government’s alternative § 956 theory, *i.e.*, that the evidence also showed a conspiracy to *maim*, at all. At the close of evidence, Wadi renewed his motion for acquittal, but he still offered no explanation for how the Government’s evidence was insufficient to sustain a conviction under § 956 either for conspiring to murder, or for conspiring to maim.

Without making any well-articulated argument in the district court, Wadi debuts a new argument on appeal. According to Wadi, the Government’s evidence at best establishes that he and Barodi conspired only to support al-Nusra—not to have al-Nusra commit murder. Wadi contends that any conspiracy to murder was a conspiracy between the members of al-Nusra, not including Wadi or Barodi. Wadi frames his conspiracy as one to finance al-Nusra (it was “simply a weapons deal”); whatever al-Nusra decided to do with the money was a separate conspiracy among its adherents.

“When an insufficiency-of-the-evidence claim of error is properly preserved through a motion for judgment of acquittal at trial, it is reviewed *de novo*.” *United States v. McDowell*, 498 F.3d 308, 312 (5th Cir. 2007). But “[t]o preserve *de novo* review, . . . a defendant must specify at trial the particular basis on which acquittal is sought so that the Government and

district court are provided notice.” *Id.* “[C]laims not specified at trial are reviewed only under the extremely narrow manifest-miscarriage-of-justice standard.” *Id.* at 313. “Such a miscarriage ‘exist[s] only if the record is devoid of evidence pointing to guilt, or . . . because the evidence on a key element of the offense [i]s so tenuous that a conviction would be shocking.’” *Id.* (quoting *United States v. Knezek*, 964 F.2d 394, 400 n.14 (5th Cir. 1992)). “In making this determination, as with the usual sufficiency standard, we consider the evidence ‘in the light most favorable to the [G]overnment, giving the [G]overnment the benefit of all reasonable inferences and credibility choices.’” *Id.* (quoting *Knezek*, 964 F.2d at 400 n.14).

During trial, Wadi did not explain how the Government’s evidence was insufficient to demonstrate “an intent to kill,” and he made no argument at all that the Government presented insufficient evidence to support a conviction for conspiracy to maim. Moreover, Wadi did not raise the argument that he now makes on appeal, *i.e.*, that he lacked the intent to murder and maim because, at most, he merely conspired to support a separate conspiracy. Because Wadi failed to specify any particular basis for his insufficiency-of-the-evidence contention in the district court, much less the one he raises now, we will set the verdict aside only if it would be a manifest miscarriage of justice not to do so. *Id.* at 312.

Wadi makes no attempt to demonstrate how he might prevail under that standard. And even if he did, Wadi could not show that “the record is devoid of evidence pointing to guilt, or . . . [that] the evidence on a key element of the offense [i]s so tenuous that a conviction would be shocking.” *Id.* (quotation marks and citations omitted). Therefore, we find no error in the district court’s denial of Wadi’s motion for acquittal.

D.

Wadi maintains that the district court abused its discretion by refusing to instruct the jury on combatant immunity. Wadi proposed a combatant-immunity instruction before trial, indicating that “[a] separate [m]emorandum of [l]aw w[ould] be provided in support of [that] instruction.” However, no such memorandum justifying the proffered instruction was ever filed. During trial, Wadi submitted additional proposed instructions, including a generic request that the court “give his proposed combatant immunity instruction” and an objection “to the failure to give this instruction” or “to instruct on combatant immunity at all.” At the close of evidence, the parties had a jury-charge conference, during which there was no mention of a combatant-immunity instruction.⁵ Afterwards, Wadi filed a general written objection to the district court’s “refusal to give each and every of Wadi’s proposed instructions.”

On appeal, Wadi contends that he was entitled to a combatant-immunity instruction because al-Nusra was fighting in the Syrian civil war, which Wadi casts as an international conflict, under the direction and control of Turkey. Thus, Wadi maintains that al-Nusra was engaged in lawful warfare and entitled to the protections of the Geneva Convention, which precludes murder convictions based upon killings incident to lawful warfare. *See United States v. Hamidullin*, 888 F.3d 62, 66–67 (4th Cir. 2018).

“We need not resolve whether [Wadi preserved] his argument because it fails even under the more rigorous abuse of discretion standard.”

⁵ At oral argument, Wadi’s counsel represented to this court that there was no jury-instruction conference and that all discussion between the parties and the court regarding jury instructions were conducted via email between the parties and the district court’s law clerk. But the record clearly indicates that the district court held a jury-charge conference at the close of evidence.

United States v. Martinez, 131 F.4th 294, 315 (5th Cir. 2025); *see also United States v. Fuchs*, 467 F.3d 889, 900 (5th Cir. 2006) (holding that, given a proper objection during trial, this court reviews a district court’s refusal to give a jury instruction for abuse of discretion). Wadi’s argument rests upon the premise that the terrorists he conspired to support were engaged in lawful killing as part of legitimate warfare under international law. But there was un rebutted evidence at trial that al-Nusra was committing acts violative of the laws of war. *See* 3 JENS DAVID OHLIN, WHARTON’S CRIMINAL LAW § 47:19 (16th ed. 2024) (“[T]here is no combatant immunity for actions that violate the laws of war, . . . even when performed by privileged belligerents. Therefore, the killing of . . . defenseless, unarmed, and unresisting civilians would constitute murder.”). Most plainly, the Government presented evidence that al-Nusra was slaughtering women and children “like dogs” and that Wadi knew of those murders as he conspired to support al-Nusra’s activities. By contrast, Wadi offered no evidence that those killings were justifiable acts of lawful warfare. Thus, the district court did not abuse its discretion in declining to give Wadi’s requested jury instruction.

E.

Wadi next argues that the district court violated his Fifth and Sixth Amendment rights by erroneously instructing the jury regarding the alleged conspiracy to “provide[] material support” to a “designated terrorist organization.” 18 U.S.C. § 2339B(1).⁶ Specifically, he challenges the court’s

⁶ Section 2339B(1) provides:

Whoever knowingly provides material support or resources to a foreign terrorist organization, or attempts or conspires to do so, shall be fined under this title or imprisoned not more than 20 years, or both, and, if the death of any person results, shall be imprisoned for any term of years or for life. To violate this paragraph, a person must have knowledge that the

instruction on the “designation” element. The district court instructed the jury on the § 2339B count as follows:

For you to find [Wadi] guilty of this crime, you must be convinced that the [G]overnment has proved each of the following beyond a reasonable doubt:

First, that [Wadi] knowingly conspired to provide or attempt to provide material support or resources, including: Currency and monetary instruments (collectively “money”) to purchase property, to include: Rifles, grenades, drones and other military equipment, to al-Nusra . . .; and

Second: That [Wadi] . . . did so knowing that al-Nusra . . . is a designated terrorist organization or has engaged in or engages in terrorist activity.

According to Wadi, “[t]his instruction eliminated the second element by supplying the fact of [al-Nusra]’s designation” and thereby “violated [his] constitutional rights.”

But the district court properly instructed the jury on every element required by § 2339B. The district court’s instruction that al-Nusra had, as a matter of law, been designated a foreign terrorist organization by the Secretary of State did not write that element out of the statute’s requirements. *See supra* note 2. Rather, the district court supplied that fact, which is legal in nature, in accordance with this circuit’s § 2339B pattern jury instruction and relevant provisions of the United States Code. *See* 5TH CIR. PATTERN JURY INSTRUCTION 2.92B; *see also* 18 U.S.C. § 2339B(1)

organization is a designated terrorist organization (as defined in subsection (g)(6)), that the organization has engaged or engages in terrorist activity (as defined in section 212(a)(3)(B) of the Immigration and Nationality Act), or that the organization has engaged or engages in terrorism (as defined in section 140(d)(2) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989).

(including “provid[ing] material support or resources to a foreign terrorist organization” as an element of the offense); 8 U.S.C. § 1189 (defining the criteria for classifying “an organization as a foreign terrorist organization”); *United States v. Ali*, 799 F.3d 1008, 1028–29 (8th Cir. 2015) (fact of an organization’s designation as a foreign terrorist organization is a “statement of the law on which the jury was instructed”). Because the district court’s jury instruction substantively tracked the elements of § 2339B, including that, as a matter of law, al-Nusra was at the time a designated foreign terrorist organization, the court did not err, and Wadi’s contention to the contrary lacks merit.

F.

While he was serving as a confidential informant for the FBI on Wadi’s case, Baker used a personal cellphone. At Wadi’s request, the district court issued a subpoena to Baker on September 28, 2022, requiring Baker to preserve the cellphone and its contents and provide them to Wadi by October 14, 2022. Baker failed to comply, and Wadi filed a motion to compel and for Baker to show cause as to why.

The district court held a show cause hearing in April 2023. At that hearing, Baker agreed to allow a forensic expert to examine his phone but testified that he had gotten a new phone in the interim. According to Baker, “everything should be here [on the new phone]” because the information contained on his old phone “normally . . . moves up to the new phone.” Wadi did not object to examining Baker’s new phone at that time. Nevertheless, at the pretrial conference, Wadi moved to dismiss the indictment and, in the alternative, sought a spoliation instruction due to Baker’s failure to preserve the data on his original phone. The Government countered that any lost information was not deleted intentionally or for a

nefarious purpose—otherwise, Baker “would have bought the new phone, not have [his data] downloaded, and brought in basically an empty phone.”

The district court denied Wadi’s motion to dismiss and did not rule on Wadi’s alternative request for a spoliation instruction. At trial, Wadi never renewed his request for such an instruction.

Wadi now argues that the district court violated his due process rights by denying his motion to sanction the Government by either dismissing his indictment or giving a spoliation instruction. But Wadi’s due process argument lacks merit because he fails to show that the Government acted in bad faith, and “unless a criminal defendant can show bad faith on the part of the police, failure to preserve potentially useful evidence does not constitute a denial of due process of law.” *Arizona v. Youngblood*, 488 U.S. 51, 58 (1988). For similar reasons, Wadi also fails to show that the district court abused its discretion in denying his motion for sanctions.

While this court typically reviews a motion to dismiss an indictment *de novo*, *United States v. Suarez*, 966 F.3d 376, 382 (5th Cir. 2020), Wadi does not allege a legal deficiency with his indictment that requires dismissal. Rather, he contends that dismissal should have occurred as a form of sanction, which results in review for abuse of discretion. *Martinez*, 131 F.4th at 314 (“This court reviews a trial court’s decision on a motion for sanctions for spoliation of evidence or its decision regarding a spoliation instruction for abuse of discretion.”).

“If a party raises a claim of spoliation, ‘a court may give an adverse-inference instruction’ or sanction the party that altered or destroyed evidence upon a showing of bad faith.” *Id.* at 315. “Bad faith, in the context of spoliation, generally means destruction for the purpose of hiding adverse evidence.” *Id.* (quotation marks omitted). In this case, the district court did not abuse its discretion in refusing to sanction the Government for Baker’s

actions with his private cellphone. And even if Wadi had requested a spoliation instruction, the court would have been within its discretion to refuse one, given the lack of evidence of bad faith in general and the lack of any evidence specifically that the Government destroyed data. *See United States v. Wise*, 221 F.3d 140, 156 (5th Cir. 2000). As with Wadi's other arguments on appeal, this issue lacks merit.

III.

Wadi fails to show reversible error in either the district court's rulings related to witness testimony at trial or the court's instructions to the jury. His sufficiency-of-the-evidence claim lacks merit. And the court acted within its discretion by declining to dismiss the indictment or give a spoliation instruction as sanction for a Government witness's violation of a preservation order related to his cellphone.

For the foregoing reasons, Wadi's convictions are

AFFIRMED.

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

August 29, 2025

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW

Regarding: Fifth Circuit Statement on Petitions for Rehearing
or Rehearing En Banc

No. 24-50160 USA v. Wadi
USDC No. 5:21-CR-244-1

Enclosed is a copy of the court's decision. The court has entered judgment under Fed. R. App. P. 36. (However, the opinion may yet contain typographical or printing errors which are subject to correction.)

Fed. R. App. P. 39 through 41, and Fed. R. App. P. 39, 40, and 41 govern costs, rehearings, and mandates. **Fed. R. App. P. 40 require you to attach to your petition for panel rehearing or rehearing en banc an unmarked copy of the court's opinion or order.** Please read carefully the Internal Operating Procedures (IOP's) following Fed. R. App. P. 40 for a discussion of when a rehearing may be appropriate, the legal standards applied and sanctions which may be imposed if you make a nonmeritorious petition for rehearing en banc.

Direct Criminal Appeals. Fed. R. App. P. 41 provides that a motion for a stay of mandate under Fed. R. App. P. 41 will not be granted simply upon request. The petition must set forth good cause for a stay or clearly demonstrate that a substantial question will be presented to the Supreme Court. Otherwise, this court may deny the motion and issue the mandate immediately.

Pro Se Cases. If you were unsuccessful in the district court and/or on appeal, and are considering filing a petition for certiorari in the United States Supreme Court, you do not need to file a motion for stay of mandate under Fed. R. App. P. 41. The issuance of the mandate does not affect the time, or your right, to file with the Supreme Court.

Court Appointed Counsel. Court appointed counsel is responsible for filing petition(s) for rehearing(s) (panel and/or en banc) and writ(s) of certiorari to the U.S. Supreme Court, unless relieved of your obligation by court order. If it is your intention to file a motion to withdraw as counsel, you should notify your client promptly, **and advise them of the time limits for filing for rehearing and certiorari.** Additionally, you MUST confirm that this information was given to your client, within the body of your motion to withdraw as counsel.

Sincerely,

LYLE W. CAYCE, Clerk

By: *Rebecca Andry*
Rebecca Andry, Deputy Clerk

Enclosure(s)

Mrs. Chelsea Ann Estes
Mr. Sufia M. Khalid
Mr. Zachary Carl Richter
Mr. Mark Twain Roomberg
Mr. Charles Davidson Swift

United States Court of Appeals
for the Fifth Circuit

No. 24-50160

United States Court of Appeals
Fifth Circuit

FILED

September 26, 2025

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

IMAD EDDIN WADI,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 5:21-CR-244-1

ON PETITION FOR REHEARING
AND REHEARING EN BANC

Before STEWART, CLEMENT, and WILSON, *Circuit Judges.*

PER CURIAM:

The petition for panel rehearing is DENIED. Because no member of the panel or judge in regular active service requested that the court be polled on rehearing en banc (FED. R. APP. P. 40 and 5TH CIR. R. 40), the petition for rehearing en banc is DENIED.

United States Court of Appeals
FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

TEL. 504-310-7700
600 S. MAESTRI PLACE,
Suite 115
NEW ORLEANS, LA 70130

September 26, 2025

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW:

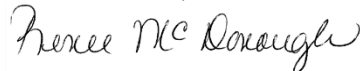
No. 24-50160 USA v. Wadi
USDC No. 5:21-CR-244-1

Enclosed is an order entered in this case.

See FRAP and Local Rules 41 for stay of the mandate.

Sincerely,

LYLE W. CAYCE, Clerk



By: _____
Renee S. McDonough, Deputy Clerk
504-310-7673

Mrs. Chelsea Ann Estes
Mr. Sufia M. Khalid
Mr. Zachary Carl Richter
Mr. Mark Twain Roomberg
Mr. Charles Davidson Swift

No. 24-50160

**IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff – Appellee,

v.

IMAD EDDIN WADI,

Defendant – Appellant.

On Appeal from

United States District Court for the Western District of Texas

5:21-CR-244-1

REPLY BRIEF OF APPELLANT IMAD WADI

SUBMITTED BY:

SUFIA MIRZA KHALID

CHELSEA ANN ESTES

CHARLES DAVIDSON SWIFT

Muslim Legal Fund of America

100 N. Central Expressway

Richardson, TX 75080

ATTORNEYS FOR APPELLANT

VI. The government’s spoliation of evidence required dismissal, or in the alternative, sufficient remedies to afford Wadi a fair trial and meaningful ability to put forward his defense.

A. The government, FBI, and their informant witness (Baker) could only have acted intentionally and/or negligently when failing to preserve the phone for forensic examination, in violation of the court’s order

The government, the FBI, and Baker plainly acted intentionally or negligently in the suppression of years’ worth of critical phone evidence—it was not “lost in good faith,” as required by this Court. *United States v. Ramirez*, 174 F.3d 584, 588-589 (5th Cir. 1999).

At the very least, the government itself was negligent in failing to secure Baker’s iPhone or a forensic image of his phone—so the defense could examine the contents as of the date of the district court’s order to preserve. The government was also negligent in failing to better document the messages it gathered from Baker’s phone. The iPhone was at least in the constructive possession of the government when it or its data were altered—or never properly collected—before the defense could examine the phone and its data. *See Ramirez*, 174 F.3d at 588 (finding—for Jencks purposes—that BOP tapes were in prosecution team’s possession where the BOP employee was very involved in investigation at issue). Additionally, there is an unattributable phone that possibly and even likely included messages with Wadi, the case agent, the informant’s handler, that were not turned over. *See ROA.7724-25*.

The phone at issue contained many communications that were the subject of this case, implicating Jencks. *See* 18 U.S.C. § 3500(e). Further, beyond Jencks statements, the phone contained data relevant to authenticating Baker’s alleged communications with Wadi, as well as those alleged communications themselves, and the standard under *Ramirez* and *Arizona v. Youngblood*, 488 U.S. 51, 58 (1988) (bad faith versus good faith loss or destruction) is very similar if not essentially the same. The government knew of the phone and its importance, the messages and their importance, and the Court’s order to compel—just as Baker did, having taken a photo of the order on his phone.

At the least, the failure to preserve or properly collect this contested evidence amounts to negligence. These were the grounds on which Wadi sought to have the indictment dismissed, or to have evidence of the spoliation produced at trial—including use of forensic expert testimony to explain the lack of preservation and resulting harm—as well as a spoliation instruction. *See Ramirez*, 174 F.3d at 58-89. Instead, where there was clear evidence of intentional and negligent suppression and failure to preserve key evidence, the Court denied Wadi all forms of relief and excluded the forensic phone expert and other evidence of spoliation in error.

B. Because the district court excluded evidence of spoliation by excluding forensic expert testimony of spoliation and evidence of Baker's actions in violating the Court's order, the government erroneously argues that the trial confirmed there was no bad faith on the government's part

The government contends the trial confirmed there was not bad faith on the government's part because FBI Agent Martinez testified that the FBI and Baker recorded all conversations with Wadi, and Baker testified that he gave the FBI everything sent by Wadi via WhatsApp. *See* AOB at 52. In fact, this is evidence that by erroneously excluding evidence of spoliation, excluding the defense forensic digital expert, and limiting cross-examination on spoliation, the district court improperly limited Wadi's ability to put on a defense and created a false impression to the jury of a case without serious issues of spoliation. This was prejudicial because Wadi's defense of entrapment relied on impeaching the credibility of Baker. The government notes that Baker testified "he gave the FBI everything sent by Wadi and Barodi via *WhatsApp*". *See* GB at 52 (citing ROA.1124, ROA.1596.) But the jury never heard that Baker deleted other items on his phone, violated a court order to preserve his phones and their contents, and that the FBI did not preserve the phone evidence or create a forensic copy, as is standard in these cases.

Wadi did not have any of the numerous phone calls between Wadi and Baker over those four years, no way to test if all messages had in fact been turned over, no way to test the authenticity of messages that were provided, no critical evidence of communications prior to the charged period which would have proven a lack of

predisposition, etc. The government actually makes the point here that the trial was so unfair that the jury did not hear evidence of the serious spoliation issues, Baker's role, or expert testimony to support and explain the problems, and Wadi received a remedy to address the harms of the spoliation.

At the pretrial conference, and in his response to the government's motion in limine to exclude the forensic expert, Wadi requested that the district court reconsider its ruling and allow Devlin to give expert opinion testimony. Devlin's testimony would have been highly relevant, was not substantially outweighed by the risk of unfair prejudice, and was exactly the kind of reliable expert testimony the government regularly uses. Wadi argued that exclusion of an important forensic phone expert to provide testimony related to the spoliation violated his constitutional right to present a complete defense. *See* ROA.478-84; *Crane v. Kentucky*, 476 U.S. 683 (1986), *See United States v. McGinnis*, 201 F. App'x 246, 252 (5th Cir. 2006).

C. Wadi requested the spoliation instruction, dismissal, and to admit evidence of spoliation via pre-trial written motion, but even if this Court finds that motion insufficient, failure to give the spoliation instruction was plain error.

This Court reviews denial of a spoliation instruction for abuse of discretion. *See United States v. Valas*, 822 F.3d 228, 239 (5th Cir. 2016). The government argues Wadi did not request a spoliation instruction, that is not true. Wadi requested the instruction with proposed language in a written motion prior to trial. ROA.7719-20. Because the indictment was not dismissed, and evidence of spoliation was not

provided to the jury, a spoliation instruction was the bare minimum remedy available after trial. In Wadi’s case, that instruction would have been critical to support the defense of entrapment and impeachment of the government’s informant.

But, even if this Court finds Wadi did not sufficiently request the spoliation instruction, the district court’s failure to give the instruction here resulted in plain error. *See Puckett v. United States*, 556 U.S. 129, 135 (2009) (outlining test for an instruction: (1) error or defect, (2) “error must be clear or obvious”, (3) “error must have affected appellant’s substantial rights”, and (4) if all conditions are met, the court ought to exercise its discretion to remedy the error if it seriously affects the fairness, integrity, or public reputation of judicial proceedings.) Where critical evidence is not preserved, and disposed of in violation of a court order – by the key government witness where the defendant is putting forward a defense of entrapment— it is obvious error that seriously affected Wadi’s substantial rights, including the right to put on a defense and confront the witnesses against him. Failing to exercise its discretion to remedy the error of the spoliation and omitting evidence of spoliation should have, at a minimum, required the trial court to give the instruction as it seriously affected the fairness and integrity of the trial. Failing to give even the minimal remedy of a spoliation instruction was error too far to instill public trust in the trial, or its fairness.

No. 24-50160

**IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States of America,

Plaintiff - Appellee

v.

Imad Eddin Wadi,

Defendant - Appellant

On Appeal from

United States District Court for the Western District of Texas

5:21-CR-244-1

BRIEF OF APPELLANT IMAD WADI

SUBMITTED BY:

Charles Davidson Swift
Muslim Legal Fund of America
100 N. Central Expressway
Richardson, TX 75080

provide all digital devices with communications or digital evidence related to Mr. Wadi's case?

- **Standard of Review** – This Court reviews a district court's denial of a motion to dismiss an indictment de novo and the underlying factual findings, including a bad faith determination, for clear error. *See United States v. McNealy*, 625 F.3d 858, 868-69 (5th Cir. 2010). Regarding the denial of a spoliation instruction, this Court reviews for abuse of discretion. *See United States v. Valas*, 822 F.3d 228, 239 (5th Cir. 2016).

STATEMENT OF THE CASE

A. Mr. Wadi's original goal, before FBI involvement, was to start a lawful halal beef business with his friend, Daniel Barodi.

Imad Wadi, a naturalized citizen of the United States from Syria, ran a convenience store in San Antonio until he was forced to sell in 2015 because of financial difficulties. ROA.2012-14. To offset the losses, he worked small construction and odd jobs. Around that time, Mr. Wadi's longtime friend, Daniel Barodi, a Syrian citizen living in Colombia, shared an idea to start a halal beef business in Colombia — a place that would be economically advantageous for slaughtering and shipping halal meat. ROA.2014, 1119.

Purchasing a slaughterhouse was necessary at the outset. ROA.1119. Unable to cover the cost, Mr. Wadi approached Hussain Baker, a friend with financial means whom he knew from his local mosque in San Antonio. ROA.1113, 1121. Mr. Wadi described the business plan he was cultivating with Barodi, including the licensing and registration for the slaughterhouse in Colombia, and asked Baker to invest. Unbeknownst to Mr. Wadi, Baker wasn't just a friend from the mosque; he was a confidential human source working for the FBI. ROA.1115.

B. When the FBI learned of Mr. Wadi and Barodi's business plan, it saw an opportunity to initiate a criminal venture.

Baker (informant) feigned interest to gather information. ROA.1119. FBI agents already knew of Mr. Wadi. Before this, Baker informed the FBI that Mr. Wadi had once claimed to help obtain false documents for Barodi, who had been deported to Colombia and could not lawfully return to the United States. ROA.1118. As Baker suspected, the FBI saw the beef business idea as an opportunity to test what Mr. Wadi would be willing to do in exchange for investment money. ROA.1119. Acting as a potential investor, Baker traveled with Mr. Wadi to Colombia to visit Barodi and view the slaughterhouse site. ROA.1121. It became apparent that the business would require millions in investment, which Baker did not have. ROA.1118.

In response to the need for capital, the FBI orchestrated a fake investment scheme. They first created an investor—"the Sheikh"—who Baker introduced to

Mr. Wadi. ROA.1121. Mr. Wadi, Barodi, and Baker communicated with “the Sheikh” through his fake representative, “Taher al-Masri,” who was actually an undercover FBI Agent Steve Abdullah. ROA.1122.

C. After proposing a false source of capital to fund the halal beef business, the FBI emphasized that financially supporting a designated terrorist organization was a prerequisite for the investment.

Over the following three years and three months, from March 2017 to June 2020, FBI actors made clear that the Sheikh was able and willing to provide a multi-million-dollar investment to fund the halal beef business. But there was a catch: as a prerequisite to the Sheikh’s investment, Mr. Wadi must agree to use a portion of the money to support Fateh al-Sham, a designated foreign terrorist organization.

In his early 2017 dealings with Baker, Mr. Wadi expressed his incorrect belief that Barodi’s Syrian relatives were revolutionaries involved with Jabhat Al-Nusrah. ROA.1036. In the same conversation, he also asserted that Barodi’s relatives were part of the Free Syrian Army. Gov. Exhibit 1. A couple of months later, Baker relayed to Mr. Wadi and Barodi that the Sheikh expressed his happiness to work with them because of Barodi’s affiliation with Fateh al-Sham. Gov. Exhibit 3. In a separate conversation with just Mr. Wadi, Baker explained that he and the Sheikh had a history of helping people in Syria, specifically by giving money to Fateh al-Sham. *Id.* Baker emphasized that the Sheikh’s primary

motivation in working with Mr. Wadi and Barodi was Barodi's family's involvement with Fateh al-Sham and his desire to funnel money to the organization. Gov. Exhibit 3; Gov. Exhibit 1.

D. The FBI repeatedly changed the terms of the investment proposition, eventually requiring an arms deal as a condition.

Time passed with no actual transfer of money, and the Sheikh's terms (i.e., the amount of capital and the requirements for Mr. Wadi and Barodi's material support) fluctuated. Between July and August of 2018, all while discussing legitimate business details, Baker continued to reiterate that funding Fateh al-Sham was the Sheikh's prerequisite for investing. Gov. Exhibit 5; ROA.1129, 1036.

A fundamental shift occurred over a year into the scheme when the FBI introduced the prerequisite of an arms purchase in exchange for capital. In ongoing conversations with Baker throughout August 2018, Mr. Wadi again suggested fulfilling the Sheikh's prerequisite by shipping containers of meat to Barodi's relatives. Exhibit 7. But Baker insisted that it must be cash that could then be used to secure weapons. *Id.*

On October 9, 2018, Mr. Wadi revealed to Baker in a recorded conversation that he did not actually know which group Barodi's relatives were associated with. Exhibit 9. Baker and Mr. Wadi called Barodi who clarified that his relatives were in fact associated with Ahrar al-Sham, not Fateh al-Sham — a designated foreign terrorist organization. Gov. Exhibit 9. In this same call, the three men also

discussed details related to the business, such as purchasing cows for slaughter and securing potential contracts. *Id.*

On October 10, 2018, Mr. Wadi told Taher and Baker that he needed \$13 million to purchase a slaughterhouse. Gov. Exhibit 10. Taher responded that the Sheikh would now be willing to give Mr. Wadi and Barodi 9 million dollars, but that 5% of that funding must go to Barodi's relatives for weapons. Gov. Exhibit 10.

On November 8, 2018, Taher and Baker conveyed that the Sheikh would invest 9 million dollars if Mr. Wadi and Barodi agreed to send \$500,000 to Barodi's relatives for weapons. Gov. Exhibit 10; Gov. Exhibit 11. Later that same day, Mr. Wadi, Barodi, Taher, and Baker communicated via a WhatsApp video call with Barodi's relative, Abu Jabbar, in Syria to discuss details. In the video call, Abu Jabbar confirmed that he was affiliated with Ahrar-al Sham (not Fateh al-Sham) and that the organization's most pressing need for humanitarian aid, not weapons.

In January 2019, the Sheikh changed the terms of his offer again and expressed willingness to provide 13 million dollars, if Mr. Wadi and Barodi could assure him that \$500,000 would go to weapons purchases. Gov. Exhibit 13.

On February 13, 2019, Baker asked Mr. Wadi and Barodi for the bank transfer address, which they provided. Mr. Wadi and Barodi sent an invoice. Gov. Exhibit 15.

Over the next approximately four months, between February and June 2019, communication continued between Mr. Wadi, Barodi and Baker. On June 11, 2019, Baker and Mr. Wadi discussed drafting a purchase agreement. They called Barodi to discuss the terms of the deal. During that call, Baker asked Barodi if Ahrar al-Sham and HTS had joined forces, and Barodi answered in the affirmative. Gov. Exhibit 20B.

No further communication regarding advancing the deal occurred for approximately one year. On June 17, 2020, Mr. Wadi and Baker have a phone call in which Mr. Wadi confirms that he and Barodi were not backing out of the deal. Gov. Exhibit 20B; ROA.1389.

E. After getting Mr. Wadi to agree to use a portion of the false capital to support the FBI's proposed arms deal, the government charged him with three counts of conspiracy.

On June 15, 2021, a year after communication regarding the fake deal ended, federal law enforcement arrested Mr. Wadi for alleged violations of 18 U.S.C. §§ 956 and 2339B. ROA.1; ROA.24. Over a year later, on January 19, 2022, the government filed a superseding indictment. ROA.151. The indictment alleged three charges:

- Count 1: Conspiracy to kill, kidnap, maim, or injure persons or damage property in a Foreign Country in violation of 18 U.S.C. § 956
- Count 2: Conspiracy to provide and attempt to provide material support to a designated foreign terrorist organization in violation of 18 U.S.C. § 2339B
- Count 3: Conspiracy to provide and attempt to provide material support to terrorists in violation of 18 U.S.C. § 2339A.

F. At trial on the three conspiracy charges, the district court excluded relevant evidence crucial to Mr. Wadi’s entrapment defense and denied his requests for applicable jury instructions before the jury convicted him on all counts.

On May 15, 2023, a nine-day trial against Mr. Wadi on all three counts began in the district court for the Western District of Texas. The government called four witnesses, including expert David Lesch, CHS Hussain Baker, undercover FBI Agent Steve Abdullah, and FBI Agent Adrian Martinez. The defense attempted to call three witnesses, but the district court only permitted two — experts Eric Devlin and Samer Abboud.

Professor Abboud testified in detail about his expertise in Syrian studies, and specifically his knowledge about Fateh al-Sham and Ahrar al-Sham. ROA.1919. He stated that despite the groups’ presence in Idlib, there was no meaningful cooperation between Ahrar al-Sham and HTS between 2017 and 2020. ROA.1920.

The defense proffered the testimony of Amer Wadi, a percipient fact witness with information crucial to Mr. Wadi’s entrapment defense. The district court

excluded Amer Wadi's testimony entirely as irrelevant and unduly prejudicial.

ROA.2003.

The district court further excluded witness testimony by limiting the defense's cross examination of Baker.

After the evidence concluded, defense counsel proposed certain applicable jury instructions, including specific modifications to the model instructions to address the § 956 charge and the § 2339B charge. The district court disregarded the constitutional concerns raised by defense counsel and failed to give the proposed instructions.

The jury returned guilty verdicts as to all three counts.

G. Mr. Wadi is currently serving a 160-month custodial sentence.

The district court sentenced Mr. Wadi to 160 months on each count, concurrently. According to the Bureau of Prisons website, Mr. Wadi is currently in custody at Beaumont Low FCI, with a release date of September 8, 2034. *See* Bureau of Prisons Inmate Locator (<https://www.bop.gov/inmateloc/>) with Register Number 50497-509.

SUMMARY OF THE ARGUMENT

The district court precluded a percipient fact witness from testifying at Mr. Wadi's trial. The Sixth Amendment guarantees the right to offer witness testimony in presentation of a defense. *Washington v. Texas*, 388 U.S. 14, 19 (1967). The

during a recorded phone call that that Ahrar al-Sham joined forces with HTS in 2019, other evidence at trial contradicted this statement. As explained above, defense expert Dr. Samer Abboud explained to the jury that there was no meaningful cooperation between Ahrar al-Sham and al-Nusra Front, aka Fateh al-Sham, aka Hay'at Tahrir al-Sham between 2017 and 2020. 1141. Accordingly, with the requested instruction, any rational juror could've concluded that Ahrar al-Sham was not acting under the direction and control of a designated foreign terrorist organization. It necessarily follows then that the government failed to prove the designation element under this theory.

VI. Evidence from the government's informant witness, Mr. Baker, was destroyed or lost, to such an extent and in bad faith that it violated Mr. Wadi's due process rights.

- a. Mr. Baker and the government failed to preserve critical evidence for the defense, and Mr. Baker violated a court order requiring him not to destroy or alter his phone before a hearing to provide critical evidence to the defense.**

Prior to trial, the defense filed a motion to dismiss the indictment, or in the alternative to admit the evidence of government spoliation of evidence and to give a spoliation instruction at trial. The district court denied the motion and did not give a spoliation instruction at trial. ROA.742-743, 750.

At the pretrial conference hearing, the parties discussed the failure to properly preserve two types of evidence, as well as the relevance of the defense's proposed forensic testimony to these preservation issues. *See* ROA.743, 740-741.

First, the parties discussed the failure of Hussain Baker—the government's Confidential Human Source (CHS)—to retain and turn over his Apple iPhone for defense examination, in violation of this Court's order. ROA.742. Via subpoena, the Court ordered Baker to produce for defense examination all digital evidence of his communications and association with Wadi and communications with any agent, served on Baker on 2 October 2022. *See* February 2023 Motion to Compel. The Court's Order was issued 28 September 2022, and it required Baker to turn over the relevant material by 14 October 2022. *Id.* Baker failed to comply. *Id.* Wadi moved Baker to comply, citing *Brady*, *Giglio*, and *Jencks*. *Id.* Baker still did not fully comply. *See also* 23 March 2023 Order to Show Cause.

So, on March 23, 2023, this Court issued an Order to Show Cause, requiring that “Baker appear before this court . . . on April 6, 2023, . . . producing all items listed above and to show cause, if any, why he should not be found guilty of and punished for contempt of court for failure to obey the subpoena.” *See* Order to Show Cause. The “items listed above” included the material sought by the original

subpoena. *Id.* And it included an order that Baker produce all digital devices used in the case, as well as an order not to destroy or alter any settings on such devices:

“IT IS FURTHER ORDERED, Mr. Baker bring any cell phone or digital device he has used, including previous digital devices that are not currently in use, that contains communications with Mr. Wadi or any digital evidence related to Mr. Wadi’s case. Mr. Baker is ordered to not alter, tamper, manipulate, destroy, or change any settings on these devices.” *Id.*

Still, Baker failed to comply. The government conceded that, prior to the 6 April show cause hearing, Baker admitted to the government that he got rid of his old phone and got a new phone—on 3 April, *just three* days before the show cause hearing. . ROA.741-742. Mr. Wadi noted the suspicious timing. And the government concedes it was the new phone Baker provided to the defense. ROA.737-738. This was despite the Court’s order that Baker “bring any cell phone or digital device he has used, including previous digital devices that are not currently in use, that contains communications with Mr. Wadi or any digital evidence related to Mr. Wadi’s case”—and that Baker not alter or destroy any settings on such devices. The government further represented that Baker told them he downloaded the contents of his old phone on to his new phone. ROA.736-737. Baker did not provide the defense with the old phone.

Alternatively, the government noted they assumed Baker got the new phone on 3 April, because that was the date the phone was reimaged from the cloud. ROA.1909-1913, 767. This raised the possibility that Baker may have gotten a new

phone earlier and then—again exhibiting suspicious timing—wiped the phone and reimaged it from a different cloud version, just three days before the show cause hearing. ROA.741-742, 767-768, 1637-1641. Even though the Court’s order said: “Mr. Baker is ordered to not alter, tamper, manipulate, destroy, or change any settings on these devices.”

Second, in discovery the government provided copies of messages between Baker and Wadi—from Baker’s phone—including text messages and WhatsApp messages and audio files. *See* PTC 27. The government explained that Baker would meet with the FBI, show them pertinent messages, and the FBI agent would download particular messages. ROA.736. Baker would then, with the FBI’s knowledge, delete the messages at issue. ROA.736. The government admits it did not preserve the contents of Baker’s phone beyond these copies of particular messages ROA.736-738. It didn’t think it had to, since it had no reason to doubt Baker’s credibility. ROA.741, 748-750. Even though Baker’s credibility was for the jury to determine. And even though the government could have made a forensic image of Baker’s phone at any time. ROA.735, 740, 755. And even though the government could’ve preserved the contents of Baker’s WhatsApp account by requesting preservation from WhatsApp. *See* 18 U.S.C. § 2703(f). The government did none of these things.

b. The district court abused its discretion in not dismissing the indictment, or giving a spoliation instruction at trial.

When evidence deemed to be in the possession of the government is destroyed or lost (such that the lost evidence's exculpatory value cannot be precisely evaluated), that violates due process if the government can be said to have acted in bad faith. *See Arizona v. Youngblood*, 488 U.S. 51, 58 (1988). Expanding on this area of law in the context of *Jencks v. United States*, 353 U.S. 657 (1957), the Fifth Circuit held that sanctions should be imposed for lost or destroyed evidence deemed to have been in the government's possession, if the loss or destruction amounted to "bad faith" or "negligent suppression." *United States v. Ramirez*, 174 F.3d 584, 589 (5th Cir. 1999); see also 18 U.S.C. § 3500 (Jencks Act). Remedies include dismissal or exclusion of the evidence at issue. *See California v. Trombetta*, 467 U.S. 479, 487 (1984).

In *Ramirez*, the Fifth Circuit vacated the defendant's trial conviction due to the loss of tapes of prison-recorded conversations between an inmate informant and an officer under Jencks, and it remanded for the district court to hold a hearing on whether the loss of the tapes was intentional or negligent, on the one hand, or done in good faith, on the other hand. *See* 174 F.3d at 588-89. The Fifth Circuit suggested a finding of negligence was warranted due to the likelihood that the government knew about the tapes, and it also opined that the tapes' loss was likely

prejudicial due to their probable impeachment value. See *id.* The Court also stated that the remedy in the case—for negligent or intentional loss—would be dismissal of the indictment. See *id.* at 589. The Supreme Court too has noted that—along with excluding the relevant evidence—barring prosecution is a remedy for lost or altered evidence. See *Trombetta*, 467 U.S. at 487.

This case was similar. Baker was a government agent, and—based on the suspicious timing of the phone reimaging just days before the show cause hearing—he violated this Court’s order by altering or destroying evidence before Wadi could vindicate his constitutional right to present a complete defense by examining that evidence.

i. Failure to provide a spoliation instruction

"A district court has discretion to admit evidence of spoliation and to instruct the jury on adverse inferences." *United States v. Wise*, 221 F.3d 140, 156 (5th Cir. 2000), cert. denied, 532 U.S. 959, 121 S. Ct. 1488, 149 L. Ed. 2d 375 (2001). For a defendant "[t]o receive a spoliation jury instruction" he "must demonstrate bad faith or bad conduct" by the Government. *United States v. Valas*, 822 F.3d 228, 239 (5th Cir. 2016) (citing *Wise*, 221 F.3d at 156 ("An adverse inference drawn from the destruction of records is predicated on bad conduct.")); see *United States v. Glenn*, 935 F.3d 313, 320 (5th Cir. 2019). To show bad faith in the context of

spoliation, even in a criminal case, a defendant must ordinarily demonstrate "that the unavailability of any evidence was because of intentional misconduct instead of oversight, error, ineptitude, or carelessness," or that "items [*7] were deliberately lost, altered, or destroyed for the purpose of hiding adverse evidence or depriving him of its use." *United States v. Thomas*, No. 22-60271, 2023 U.S. App. LEXIS 3519, 2023 WL 1991573, at *1 (5th Cir. Feb. 14, 2023). The district court failed to provide a spoliation instruction thought Mr. Wadi requested in the motion to dismiss before trial and during the pre-trial conference.

For these reasons, this Court should vacate Mr. Wadi's convictions, or in the alternative, vacate and remand with sanctions for spoliation of evidence, allowing the defense's forensic expert to present evidence of the spoliation, and give a spoliation instruction to the jury.

CONCLUSION

For the reasons above, Mr. Wadi requests the following remedies:

As to the witness exclusion and limitation of cross-examination issues, Mr. Wadi requests that this Court vacate his convictions on all counts and remand.

**U.S. District Court [LIVE]
Western District of Texas (San Antonio)
CRIMINAL DOCKET FOR CASE #: 5:21-cr-00244-FB-1**

Case title: USA v. Immad Eddin Wadi

Date Filed: 06/09/2021

Assigned to: Judge Fred Biery

Appeals court case number:
24-50160 (Doc. 218) 5CCA

Defendant (1)

Imad Eddin Wadi

represented by **Angela Saad Lindsey-FPD**

Asst. Federal Public Defender - SEPARATED
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Email: anna_borjon@fd.org
TERMINATED: 07/01/2024

LEAD ATTORNEY

ATTORNEY TO BE NOTICED

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Appointment*

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PRO HAC VICE

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Pending Counts

18:956.F - CONSPIRACY TO
INJURE PROPERTY OF
FOREIGN GOVERNMENT

Conspiracy to kill, kidnap, maim, or
injure persons or damage property in
a Foreign Country

(1s)

18:2339B.F - PROVIDING
MATERIAL SUPPORT OR
RESOURCES TO TERRORISTS

Conspiracy to provide and attempt to
provide material support to
designated foreign terrorist
organization

(2s)

18:2339A.F - PROVIDING
MATERIAL SUPPORT TO
TERRORISTS Conspiracy to
provide and attempt to provide
material support to terrorists

(3s)

Highest Offense Level (Opening)

Felony

Terminated Counts

18:956.F - CONSPIRACY TO
INJURE PROPERTY OF
FOREIGN GOVERNMENT

Conspiracy to kill, kidnap, maim, or
injure persons or damage property in
a Foreign Country

(1)

18:2339B.F - PROVIDING
MATERIAL SUPPORT OR
RESOURCES TO TERRORISTS

Disposition

160 months Imprisonment to be served concurrently
with counts 2s & 3s; Supervised Released for life to be
served concurrently with counts 2s & 3s; S/A \$100;
No Fine

160 months Imprisonment to be served concurrently
with counts 1s & 3s; Supervised Released for life to be
served concurrently with counts 1s & 3s; S/A \$100;
No Fine

160 months Imprisonment to be served concurrently
with counts 1s & 2s; Supervised Released for life to be
served concurrently with counts 1s & 2s; S/A \$100;
No Fine

Disposition

Dismissed by Government's Motion.

Dismissed by Government's Motion.

Conspiracy to provide and attempt to
provide material support to
designated foreign terrorist
organization
(2)

Highest Offense Level
(Terminated)

Felony

Complaints

None

Disposition

Plaintiff

USA

represented by **Eric Fuchs**
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TERMINATED: 05/15/2023
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
06/09/2021	<u>1</u>	MOTION to Seal Indictment by USA as to Imad Eddin Wadi. (rg) (Entered: 06/10/2021)
06/09/2021	<u>2</u>	ORDER GRANTING <u>1</u> Motion to Seal Indictment as to Imad Eddin Wadi (1). Signed by Judge Richard B. Farrer. (rg) (Entered: 06/10/2021)
06/09/2021	<u>3</u>	SEALED INDICTMENT (Redacted Version) filed Unredacted document sealed pursuant to E-Government Act of 2002 as to Imad Eddin Wadi (1) count(s) 1, 2. (rg) (Entered: 06/10/2021)
06/09/2021	<u>4</u>	Personal Data Sheet (SEALED) as to Imad Eddin Wadi. (rg) (Entered: 06/10/2021)
06/09/2021	<u>6</u>	ORDER FOR ISSUANCE OF Bench Warrant as to Imad Eddin Wadi. Signed by Judge Richard B. Farrer. (rg) (Entered: 06/10/2021)
06/09/2021	<u>7</u>	Bench Warrant Issued by Judge Richard B. Farrer as to Imad Eddin Wadi. (rg) (Entered: 06/10/2021)
06/09/2021	<u>8</u>	MOTION to Detain Defendant without Bond by USA as to Imad Eddin Wadi. (rg) (Entered: 06/10/2021)
06/15/2021		Arrest of Imad Eddin Wadi. (rg) (Entered: 06/15/2021)
06/15/2021		INDICTMENT UNSEALED as to Imad Eddin Wadi. (rg) (Entered: 06/15/2021)
06/15/2021	<u>9</u>	Minute Entry for proceedings held before Judge Elizabeth S. Chestney:Initial Appearance as to Imad Eddin Wadi held on 6/15/2021 (Minute entry documents are not available electronically.) (Court Reporter FTR-Gold.) (wg) (Entered: 06/16/2021)
06/15/2021	<u>10</u>	CJA 23 Financial Affidavit by Imad Eddin Wadi (SEALED pursuant to E-Government Act of 2002). (wg) (Entered: 06/16/2021)
06/15/2021	<u>11</u>	ORDER APPOINTING FEDERAL PUBLIC DEFENDER as to Imad Eddin Wadi Duty Pub. Defender-San Antonio for Imad Eddin Wadi appointed.. Signed by Judge Elizabeth S. Chestney. (wg) (Entered: 06/16/2021)
06/15/2021	<u>12</u>	ORDER OF TEMPORARY DETENTION: Bond set to No Bond Pending Hearing as to Imad Eddin Wadi, (District Court Arraignment/ Detention Hearing set for 6/18/2021 10:30 AM before Judge Elizabeth S. Chestney,). Signed by Judge Elizabeth S. Chestney. (wg) (Entered: 06/16/2021)
06/16/2021	<u>13</u>	NOTICE OF ATTORNEY APPEARANCE: Angela Saad Lindsey appearing for Imad Eddin Wadi . Attorney Angela Saad Lindsey added to party Imad Eddin Wadi(pty:dft) (Lindsey, Angela) (Entered: 06/16/2021)

02/22/2024	<u>213</u>	SENTENCING MEMORANDUM by USA as to Imad Eddin Wadi (Roomberg, Mark) (Entered: 02/22/2024)
02/22/2024	<u>214</u>	SEALED DOCUMENT filed (Roomberg, Mark) Modified on 2/23/2024 (wg). (Entered: 02/22/2024)
02/26/2024	<u>215</u>	Minute Entry for proceedings held before Judge Fred Biery: Sentencing held on 2/26/2024 for Imad Eddin Wadi (1), Count(s) 1, 2, Dismissed by Government's Motion.; Count(s) 1s, 160 months Imprisonment to be served concurrently with counts 2s & 3s; Supervised Released for life to be served concurrently with counts 2s & 3s; S/A \$100; No Fine; Count(s) 2s, 160 months Imprisonment to be served concurrently with counts 1s & 3s; Supervised Released for life to be served concurrently with counts 1s & 3s; S/A \$100; No Fine; Count(s) 3s, 160 months Imprisonment to be served concurrently with counts 1s & 2s; Supervised Released for life to be served concurrently with counts 1s & 2s; S/A \$100; No Fine. (Minute entry documents are not available electronically.) (Court Reporter Chris Poage.) (bt) (Entered: 02/26/2024)
02/29/2024	<u>216</u>	JUDGMENT AND COMMITMENT as to Imad Eddin Wadi (1), Count(s) 1, 2, Dismissed by Government's Motion.; Count(s) 1s, 160 months Imprisonment to be served concurrently with counts 2s & 3s; Supervised Released for life to be served concurrently with counts 2s & 3s; S/A \$100; No Fine; Count(s) 2s, 160 months Imprisonment to be served concurrently with counts 1s & 3s; Supervised Released for life to be served concurrently with counts 1s & 3s; S/A \$100; No Fine; Count(s) 3s, 160 months Imprisonment to be served concurrently with counts 1s & 2s; Supervised Released for life to be served concurrently with counts 1s & 2s; S/A \$100; No Fine. Signed by Judge Fred Biery. (bot2) (Entered: 02/29/2024)
02/29/2024	<u>217</u>	Sealed Statement of Reasons as to Imad Eddin Wadi (SOR documents are not available electronically.) (bot2) (Entered: 02/29/2024)
03/06/2024	<u>218</u>	Appeal of Final Judgment by Imad Eddin Wadi. No filing fee submitted (Lindsey, Angela) (Entered: 03/06/2024)
03/06/2024	<u>219</u>	MOTION to Unseal Document by Imad Eddin Wadi. (Lindsey, Angela) (Entered: 03/06/2024)
03/06/2024		NOTICE OF APPEAL following <u>218</u> Notice of Appeal (E-Filed) by Imad Eddin Wadi Per 5th Circuit rules, the appellant has 14 days, from the filing of the Notice of Appeal, to order the transcript. To order a transcript, the appellant should fill out a Transcript Order and follow the instructions set out on the form. If the appellant has a court appointed attorney under CJA, the CJA 24 vouchers must be completed in the E-voucher system. (bt) (Entered: 03/06/2024)
03/07/2024	<u>220</u>	ORDER GRANTING <u>219</u> Motion to Unseal Document , <u>212</u> Sealed Document as to Imad Eddin Wadi (1). Signed by Judge Fred Biery. (bt) (Entered: 03/07/2024)
03/08/2024	<u>221</u>	TRANSCRIPT REQUEST by Imad Eddin Wadi for dates of 02/26/2024 before Judge Fred Biery,. Proceedings Transcribed: Sentencing. Court Reporter: Chris Poage. re Notice of Appeal - Final Judgment,, (Lindsey, Angela) (Entered: 03/08/2024)
03/08/2024	<u>222</u>	COPY of Letter of transmittal from USCA to Ms. Maureen Scott Franco received as to Imad Eddin Wadi in for <u>218</u> Notice of Appeal - Final Judgment, filed by Imad Eddin Wadi.***We have docketed the appeal and ask you to use the case number above in future inquiries.*** (dtg) (Entered: 03/11/2024)

February 29, 2024

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS

BY: Jaemie Herndon
DEPUTY

UNITED STATES OF AMERICA

v.

Case Number: 5:21-CR-00244-FB(1)
USM Number: 50497-509

IMAD EDDIN WADI

Alias(es):

Wadi, Imad E.

Wadi, Imad

Defendant.

JUDGMENT IN A CRIMINAL CASE
(For Offenses Committed on or After November 1, 1987)

The defendant, IMAD EDDIN WADI, was represented by Angela Saad Lindsey, Esq., Charles Davidson Swift, Esq., and Sufia M. Khalid, Esq.

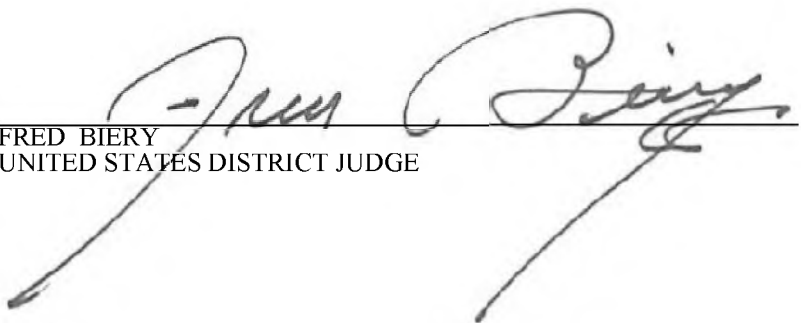
The defendant was found guilty of **Count(s) one (1s), two (2s) and three (3s) of the Superseding Indictment** by jury verdict on May 25, 2023. Accordingly, the defendant is adjudged guilty of such Count(s), involving the following offense(s):

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. § 956(a)(1), 18 U.S.C. § 956(a)(2)(A)	Conspiracy to Kill, Kidnap, Maim, or Injure Persons or Damage Property in a Foreign Country	06/24/2019	One (1s)
18 U.S.C. § 2339B, 18 U.S.C. § 2339B(a)	Conspiracy to Provide and Attempt to Provide Material Support to Designated Foreign Terrorist Organization	06/24/2019	Two (2s)
18 U.S.C. § 2339A, 18 U.S.C. § 2339A(a)	Conspiracy to Provide and Attempt to Provide Material Support to Terrorists	06/17/2020	Three (3s)

As pronounced on February 26, 2024, the defendant is sentenced as provided in pages 2 through 6 of this Judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

It is further ordered that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the Court and United States Attorney of material changes in economic circumstances.

SIGNED this 29th day of February, 2024.


FRED BIERY
UNITED STATES DISTRICT JUDGE

DEFENDANT: IMAD EDDIN WADI
CASE NUMBER: 5:21-CR-00244-FB(1)

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be **imprisoned for a total term of ONE HUNDRED SIXTY (160) months as to count one (1s) ONE HUNDRED SIXTY (160) months as to count two (2s) and ONE HUNDRED SIXTY (160) months as to count three (3s) of the superseding indictment. These terms to run concurrent with credit for time served while in custody for this federal offense pursuant to 18 U.S.C. § 3585(b).**

The defendant shall remain in custody pending service of sentence.

The Court makes the following recommendations to the Bureau of Prisons:

- 1) The defendant shall serve this sentence at a federal medical facility or as close to San Antonio, Texas as possible.
- 2) The defendant shall participate in the Bureau of Prisons' academic programs while incarcerated.
- 3) The defendant shall participate in mental health treatment.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____

at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By
DEPUTY UNITED STATES MARSHAL

AO 245B (Rev. TXW 10/12) Judgment in a Criminal Case

Judgment -- Page 3 of 6

DEFENDANT: IMAD EDDIN WADI
CASE NUMBER: 5:21-CR-00244-FB(1)

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on **supervised release for a term of life as to count one (1s), life as to count two (2s) and life as to count three (3s). These terms to run concurrently.**

While on supervised release, the defendant shall comply with the mandatory and standard conditions that have been adopted by this Court.

DEFENDANT: IMAD EDDIN WADI
CASE NUMBER: 5:21-CR-00244-FB(1)

CONDITIONS OF SUPERVISION

Mandatory Conditions:

- 1) The defendant shall not commit another federal, state, or local crime during the term of supervision.
- 2) The defendant shall not unlawfully possess a controlled substance.
- 3) The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release on probation or supervised release and at least two periodic drug tests thereafter (as determined by the court), but the condition stated in this paragraph may be ameliorated or suspended by the court if the defendant's presentence report or other reliable sentencing information indicates low risk of future substance abuse by the defendant.
- 4) The defendant shall cooperate in the collection of DNA as instructed by the probation officer, if the collection of such a sample is authorized pursuant to section 3 of the DNA Analysis Backlog Elimination Act of 2000 (42 U.S.C. § 14135a).
- 5) If applicable, the defendant shall comply with the requirements of the Sex Offender Registration and Notification Act (42 U.S.C. § 16901, *et. seq.*) as instructed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which the defendant resides, works, is a student, or was convicted of a qualifying offense.
- 6) If convicted of a domestic violence crime as defined in 18 U.S.C. § 3561(b), the defendant shall participate in an approved program for domestic violence.
- 7) If the judgment imposes restitution, the defendant shall pay the ordered restitution in accordance with 18 U.S.C. §§ 2248, 2259, 2264, 2327, 3663, 3663A, and 3664. (*if applicable*)
- 8) The defendant shall pay the assessment imposed in accordance with 18 U.S.C. § 3013.
- 9) If the judgment imposes a fine, it is a condition of supervision that the defendant, pay in accordance with the Schedule of Payments sheet of the judgment.
- 10) The defendant shall notify the court of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay restitution, fines or special assessments.

Standard Conditions:

- 1) The defendant shall report to the probation office in the federal judicial district where he or she is authorized to reside within seventy-two (72) hours of release from imprisonment, unless the probation officer instructs the defendant to report to a different probation office or within a different time frame.
- 2) After initially report to the probation office, the defendant will receive instructions from the court or the probation officer about how and when to report to the probation officer, and the defendant shall report to the probation officer as instructed.
- 3) The defendant shall not knowingly leave the federal judicial district where he or she is authorized to reside without first getting permission from the court or the probation officer.
- 4) The defendant shall answer truthfully the questions asked by the probation officer.
- 5) The defendant shall live at a place approved by the probation officer. If the defendant plans to change where he or she lives or anything about his or her living arrangements (such as the people the defendant lives with), the defendant shall notify the probation officer at least ten (10) days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, the defendant shall notify the probation officer within seventy-two (72) hours of becoming aware of a change or expected change.
- 6) The defendant shall allow the probation officer to visit the defendant at any time at his or her home or elsewhere, and the defendant shall permit the probation officer to take any items prohibited by the conditions of the defendant's supervision that are observed in plain view..

DEFENDANT: IMAD EDDIN WADI
CASE NUMBER: 5:21-CR-00244-FB(1)

- 7) The defendant shall work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses the defendant from doing so. If the defendant does not have full-time employment, he or she shall try to find full-time employment, unless the probation officer excuses the defendant from doing so. If the defendant plans to change where the defendant works or anything about his or her work (such as the position or job responsibilities), the defendant shall notify the probation officer at least ten (10) days before the change. If notifying the probation officer at least ten (10) days in advance is not possible due to unanticipated circumstances, the defendant shall notify the probation officer within seventy-two (72) hours of becoming aware of a change or expected change.
- 8) The defendant shall not communicate or interact with someone the defendant knows is engaged in criminal activity. If the defendant knows someone has been convicted of a felony, the defendant shall not knowingly communicate or interact with that person without first getting the permission of the probation officer.
- 9) If the defendant is arrested or questioned by a law enforcement officer, the defendant shall notify the probation officer within seventy-two (72) hours.
- 10) The defendant shall not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified, for the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
- 11) The defendant shall not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
- 12) If the probation officer determines that the defendant poses a risk to another person (including an organization), the probation officer may require the defendant to notify the person about the risk and the defendant shall comply with that instruction. The probation officer may contact the person and confirm that the defendant has notified the person about the risk.
- 13) The defendant shall follow the instructions of the probation officer related to the conditions of supervision.
- 14) If the judgment imposes other criminal monetary penalties, it is a condition of supervision that the defendant pays such penalties in accordance with the Schedule of Payments sheet of the judgment.
- 15) If the judgment imposes a fine, special assessment, restitution, or other criminal monetary penalties, it is a condition of supervision that the defendant shall provide the probation officer access to any requested financial information.
- 16) If the judgment imposes a fine, special assessment, restitution, or other criminal monetary penalties, it is a condition of supervision that the defendant shall not incur any new credit charges or open additional lines of credit without the approval of the probation officer, unless the defendant is in compliance with the payment schedule.
- 17) If the defendant is excluded, deported, or removed upon release on probation or supervised release, the term of supervision shall be a non-reporting term of probation or supervised release. The defendant shall not illegally re-enter the United States. If the defendant is released from confinement or not deported, or lawfully re-enters the United States during the term of probation or supervised release, the defendant shall immediately report to the nearest U.S. Probation Officer.

DEFENDANT: IMAD EDDIN WADI
CASE NUMBER: 5:21-CR-00244-FB(1)

CRIMINAL MONETARY PENALTIES/SCHEDULE

The defendant shall pay the following total criminal monetary penalties in accordance with the schedule of payments set forth. Unless the Court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. Criminal Monetary Penalties, except those payments made through Federal Bureau of Prisons' Inmate Financial Responsibility Program, shall be paid through the Clerk, United States District Court, Attn: Mail Log, 262 West Nueva Street, San Antonio, TX 78207 or online by Debit (credit cards not accepted) or ACH payment (direct from Checking or Savings Account) through Pay.gov (link accessible on the landing page of the U.S. District Court's Website). **Your mail-in or online payment must include your case number in the exact format of DTXW521CR00244-001 to ensure proper application to your criminal monetary penalty.** The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

	<u>Assessment</u>	<u>Fine</u>	<u>Restitution</u>
TOTALS	\$300.00	\$.00	\$.00

SPECIAL ASSESSMENT

It is ordered that the defendant shall pay to the United States a special assessment of \$100.00 as to each count, one, two and three, for a total of \$300. Payment of this sum shall begin immediately

FINE

The fine is waived because of the defendant's inability to pay.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column above. However, pursuant to 18 U.S.C. § 3664(i), all non-federal victims must be paid before the United States is paid.

If the fine is not paid, the court may sentence the defendant to any sentence which might have been originally imposed. See 18 U.S.C. §3614.

The defendant shall pay interest on any fine or restitution of more than \$2,500.00, unless the fine or restitution is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. §3612(f). All payment options may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. §3612(g).

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) community restitution, (6) fine interest, (7) penalties, and (8) costs, including cost of prosecution and court costs.

Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

UNITED STATES OF AMERICA)	
)	
v.	)	Docket No. 5:21-cr-00244-FB-1
)	
IMAD EDDIN WADI,	)	San Antonio, Texas
	)	May 24, 2023
Defendant.)	
)	

TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE FRED BIERY
UNITED STATES DISTRICT JUDGE
AND A JURY

VOLUME VIII

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Amer Wadi - Direct (Jury Out)

1 deliberate on your verdict.

2 All right. Thank you very much. We're in recess.

3 *(Jury leaves courtroom)*

4 THE COURT: You may be seated.

5 All right. Outside the presence, Ms. Saad, do you wish to
6 call a witness to make a complete record?

7 MS. SAAD LINDSEY: Yes, Your Honor.

8 THE COURT: All right. Go ahead.

9 MS. SAAD LINDSEY: Defense calls Amer Wadi.

10 THE COURT: All right. Mr. Wadi, if you'll come up,
11 please. Raise your right hand.

12 *(The oath was administered)*

13 THE COURT: All right. You may be seated.

14 AMER WADI, DEFENDANT'S WITNESS, SWORN

15 DIRECT EXAMINATION

16 BY MS. SAAD LINDSEY:

17 Q. Please state your name.

18 A. Amer Wadi.

19 Q. Mr. Wadi, what is your relationship to Imad Wadi?

20 A. I am his son.

21 Q. And, Mr. Wadi, if you could explain to the jury how your
22 family moved to San Antonio.

23 A. My family moved to San Antonio in 2013. They moved down
24 here specifically to open up a convenient store. That
25 convenient store was located here in the downtown area, just

Amer Wadi - Direct (Jury Out)

1 off of Commerce Street, down the ways. That convenient store,
2 it failed ultimately due to the fact that we just really
3 couldn't compete here in San Antonio since there were no dry
4 counties at the time.

5 My father, previous to that, in Dallas, had run very
6 successful convenient stores. He had great customer service.
7 People really liked him down there. And the only way we could
8 compete was that we operated in dry counties. We didn't sell
9 alcohol. We didn't sell liquor, you know. So it was, you
10 know, very difficult here in San Antonio to compete with the
11 stores that did sell alcohol.

12 Q. Why didn't you sell alcohol?

13 A. Religiously. It was just something that we did not feel it
14 was -- we had an ethical religious obligation not to sell it.

15 Q. What was the name of the convenient store in Dallas?

16 A. The name of the convenient store in Dallas was MS Express.

17 Q. MS Express was here in San Antonio; is that correct?

18 A. Yes. We maintained the same name in Dallas as well.

19 Q. Oh, okay. Thank you.

20 Did it operate under the name Kidd Jones?

21 A. I'm sorry?

22 Q. Strike that.

23 Who worked in the convenient store here in San Antonio?

24 A. The whole family. My dad, my mom, my sisters, myself, when
25 I was in town, off of active duty. You know, we all -- we all

Amer Wadi - Direct (Jury Out)

1 pitched in to make sure that store was a success. Sadly, it
2 just wasn't. We weren't able to -- we weren't able to maintain
3 it.

4 Q. Could you estimate a time frame of when it closed?

5 A. Yes. Late 2015 we gave the keys back to the original store
6 owner, and he turned the store over to a good couple who ended
7 up putting beer in that store. And it's now a successful
8 store.

9 Q. How did the closure of this convenient store affect your
10 father?

11 A. The last six months were extremely stressful for him. You
12 know, the store wasn't turning a profit. We had a loss almost
13 every single month. And to offset the loss, he would take on
14 small construction jobs that he would do usually in the evening
15 time, because he would operate the store during the day, and
16 then at night he would go and do some other odd jobs to kind of
17 offset our losses at the store. Eventually that caught up to
18 us, and we just couldn't -- we just couldn't maintain it.

19 Q. What was your father's decision -- next decision in terms
20 of business to pursue?

21 A. The next decision was to look for the next thing. You
22 know, he had always worked overseas. He had always traveled
23 overseas when we were younger. He had always tried different
24 business ventures that he would try to, you know, enact, work
25 on, get going.

Amer Wadi - Direct (Jury Out)

1 None of them really panned out. We know that. You know,
2 but at the end of the day, he tried. And we could see that he
3 tried. And that's really what mattered most to us, was that at
4 least he was trying. He wasn't stopping. He wasn't trying to
5 not do the right thing.

6 Q. Did you learn about the halal beef business prospect from
7 your father?

8 A. Yes, I did. He was very open about it, talking with the
9 house. He said, hey, look. I have this business plan. I have
10 this idea. This is really viable.

11 The whole reason why we all agreed as a family he should
12 travel in 2016 was because he wanted to pursue this. And we
13 wanted to give him the opportunity to do that.

14 Q. While traveling, did you have to financially support him --

15 A. Yes --

16 Q. -- to travel?

17 A. -- I did. I not only financially supported my father. I
18 paid the rent at the house. I paid the bills. I made sure to
19 take care of what I could at home while he was away, since I
20 was his -- since I'm one of his elder sons.

21 I didn't have a family at the time, like my older brother
22 and sister. So the burden fell on me, with two sisters in
23 college, a mother who works from home, a little brother who was
24 still in middle school, entering high school at the time. It
25 fell on me to kind of take care of most things that were around

Amer Wadi - Direct (Jury Out)

1 the house while my dad was away.

2 Sadly, you know, we had a car repossessed. Our financial
3 situation was not the greatest. My dad was utilizing credit
4 cards to pay for his travel. It was hard. It wasn't easy.

5 Q. How would you describe this period from 2015 and 2016 for
6 your family?

7 A. It was probably some of the worst years for us. You know,
8 from the repossession to just the debilitating state around the
9 house, it was hard. It wasn't easy. We didn't have money. We
10 didn't have anything. But we all knew that my dad wasn't doing
11 this to us on purpose. He did this for a purpose. He said,
12 hey, I have an idea. I really want to go and get this done. I
13 need y'all's help to make sure that I can at least have the
14 ability to.

15 And we provided him that.

16 Q. During this time, was your family friends with Hussein
17 Baker?

18 A. Yes.

19 Q. Did he loan the family money?

20 A. Yes, he did, on two occasions, from what I can recount. I
21 actually went to his house or met him somewhere where he would
22 give me money to help my dad.

23 Q. Was Mr. Baker a guest at your wedding in two thousand --

24 A. Yes, he was.

25 Q. When was that?

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

UNITED STATES OF AMERICA)	
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v.)	Docket No. 5:21-cr-00244-FB-1
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IMAD EDDIN WADI,)	San Antonio, Texas
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TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE FRED BIERY
UNITED STATES DISTRICT JUDGE
AND A JURY

VOLUME VII

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Eric Devlin - Direct

1 A. Yes, ma'am. The records process, just the same. I didn't
2 have any issue with it. And I was able to generate the same
3 sort of records.

4 MS. SAAD LINDSEY: Permission to approach. We've not
5 had this document uploaded.

6 THE COURT: All right. Excuse me.

7 THE WITNESS: Thank you.

8 BY MS. SAAD LINDSEY:

9 Q. Is this the Hawk report you've done in this case?

10 A. Yes, ma'am, it is.

11 MS. SAAD LINDSEY: Your Honor, we'd offer Defense
12 Exhibit 54A.

13 MR. HARRIS: No objection.

14 THE COURT: Admitted.

15 *(Defendant's Exhibit No. 54A admitted)*

16 BY MS. SAAD LINDSEY:

17 Q. I'm showing -- so this document shows how many calls
18 between Mr. Baker and Mr. Wadi?

19 A. A total of 93 calls, with a date range between 6/30/2015
20 through 2/15/2017.

21 Q. So that was a total of 93 calls?

22 A. 93 communications. Yeah.

23 Q. And so that 93 includes the 60 we just referenced?

24 A. That is correct.

25 Q. And this would document the calls for this number,

Eric Devlin - Direct

1 (214)236-3110, correct?

2 A. That is correct.

3 Q. And Mr. Baker's number at that time, the 996-6666?

4 A. Yes, ma'am.

5 Q. Other than what you've received from AT&T, you can't --

6 those are the only known calls that you know of between

7 Mr. Baker and Mr. Wadi from these AT&T returns?

8 A. These are the only records that I have regarding this type

9 of communications. And I ran every call number that it

10 received.

11 Q. Okay. And this -- just like the 54, the 54A doesn't

12 include the WhatsApp communications?

13 A. That's correct.

14 Q. In addition, Mr. Devlin, have you reviewed Mr. Baker's

15 phone?

16 A. Yes, ma'am.

17 MS. SAAD LINDSEY: Okay. If we could show Exhibit 56.

18 And this has not been published. Ms. Herndon, before I put it

19 here, it's not published to the jury?

20 THE CLERK: No, it is not.

21 BY MS. SAAD LINDSEY:

22 Q. Okay. Do you -- Mr. Devlin, do you recognize Defense

23 Exhibit 56?

24 MR. HARRIS: We're not seeing it.

25 There we go.

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

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Direct Examination by Mr. Swift1135

Cross-Examination by Mr. Roomberg1172

Adrian Martinez - Cross

1 recordings state that, then yes.

2 Q. Now, the first time he says it, it's Fateh al-Sham,
3 correct?

4 A. I would have to see again. But, again, if the recording
5 said Fateh al-Sham, then correct.

6 Q. Mr. Wadi gets, if you recall, a phonecall in the middle of
7 all of that?

8 A. I do not recall.

9 Q. Okay. You subpoenaed -- we've talked about the subpoena of
10 the AT&T records. Do you dispute that Mr. Baker and Mr. Wadi
11 had 93 calls together on -- from the AT&T records?

12 A. I can't dispute it because I'm not aware of the specific
13 quantity of calls between them.

14 Q. From the AT&T records, you -- let me -- from the AT&T
15 records that you subpoenaed, did you determine how many
16 phonecalls between Mr. Baker and Mr. Wadi?

17 A. I'm sure it was.

18 Q. Do you dispute 60 from the 2016 period that you requested
19 from AT&T?

20 A. I would have to see it again to be able to confirm that.

21 Q. You didn't count them?

22 A. I do not recall counting them specifically.

23 Q. And you would agree Mr. Baker didn't record those 60 calls?

24 A. I would agree.

25 Q. You have the capability at the FBI to do a forensic image

Adrian Martinez - Cross

1 of electronic devices, correct?

2 A. Yes.

3 Q. And you did that for Wadi's cellphone?

4 A. Correct.

5 Q. And you did that for Mr. Wadi's laptop, correct?

6 A. Correct.

7 Q. You never, even up to trial, did a full forensic image of
8 Mr. Baker's phone?

9 A. Correct.

10 Q. And you're aware that, at defense request, Mr. Baker was
11 ordered to turn over his phone to defense?

12 A. Yes. I'm aware of that.

13 Q. And that was ordered on March 26th?

14 A. I don't remember the specific date, but I wouldn't -- I
15 have no reason to disagree with that.

16 Q. Before that, Mr. Baker was subpoenaed for records, correct?

17 A. Correct.

18 Q. And he didn't initially comply, correct?

19 A. Correct.

20 Q. You had to contact him?

21 A. I did not contact him specifically for the purposes of
22 directing him. I contacted him, asking if he had complied with
23 the order.

24 Q. He did not -- you confirmed he didn't?

25 A. Correct.

Adrian Martinez - Cross

1 Q. You directed him to do that?

2 A. I directed him that he needed to follow a Court's order,
3 yes.

4 Q. After the subpoena, he was then ordered to turn over his
5 phone on March 26?

6 A. Correct.

7 Q. You've been here at those hearings, correct?

8 A. Correct.

9 Q. And he came in on April 6th?

10 A. Correct.

11 Q. And on April 6th you all -- he provided his cellphone?

12 A. Correct.

13 Q. And you agree that the order that he was served on March
14 26th told him to keep all old telephones, to not -- correct?
15 Keep all old telephones?

16 A. Correct.

17 Q. And to not manipulate any of the data on that phone?

18 A. Correct.

19 Q. You've since learned, between those two dates, Mr. Baker
20 got a new phone?

21 A. I have since learned that. Yes.

22 Q. On April 3rd?

23 A. If that was the date that he stated, then yes.

24 Q. You never got an image of that old phone, correct?

25 A. No.

Adrian Martinez - Cross

1 Q. You can't say what all the communications between Mr. Wadi
2 and Mr. Baker were?

3 A. Correct.

4 Q. And so you can't say for certain how much pressure
5 Mr. Baker was putting on Mr. Wadi to get this -- to also get
6 the deal done?

7 A. I'm not aware of any pressure he was putting on Mr. Wadi.

8 Q. Mr. Wadi describes him in the statement on June 15th as
9 being very persistent?

10 A. Yes. Those are his words.

11 Q. You would agree that the phone records from AT&T don't
12 quantify the number of WhatsApp calls that are -- that could be
13 recorded on a phone?

14 A. I would agree. Yes.

15 Q. And you would agree the majority of their communication was
16 via WhatsApp?

17 A. Yes.

18 Q. Mr. Baker talks about his family's safety as being a reason
19 for deleting messages, correct?

20 A. Yes. That's what he talked about, I believe.

21 Q. Mr. Baker was getting paid \$5,000 a month; is that right?

22 A. Yes.

23 Q. And that was cash?

24 A. Yes.

25 Q. Would you give him the cash?

Adrian Martinez - Cross

1 A. On occasion I would give him the cash. On other occasions
2 I would be present on different occasions, if there was another
3 CHS handler. As long as there were always two, then yes, he
4 was paid.

5 Q. That was paid at the FBI office?

6 A. No, ma'am.

7 Q. Where?

8 A. At other predetermined locations.

9 Q. And Mr. Baker's wife never learned he was getting \$5,000
10 cash every month?

11 A. I do not know that.

12 Q. You're aware that his wife works for the Ministry of
13 Defense for the Saudi Arabian government?

14 A. I have -- I'm aware that he has made reference to that,
15 yes.

16 Q. At our local Air Force base?

17 A. Correct.

18 Q. You have the CART team. And part of the CART team is to do
19 forensic analysis of phones, correct?

20 A. Yes.

21 Q. And part of that analysis is to determine -- you can do
22 either -- a keyword search on those phones to determine if
23 there's anything of concern on those phones?

24 A. Yes. I would say that.

25 Q. Okay. You've not presented any evidence about -- from

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

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)	May 18, 2023
Defendant.)	
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TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE FRED BIERY
UNITED STATES DISTRICT JUDGE
AND A JURY

VOLUME IV

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HUSSAIN BAKER

Direct Examination (Continued) by Mr. Harris508

Cross-Examination by Mr. Swift620

1 there?

2 A. Oh, he's talking about Mr. Taher, Abu Sayf.

3 MR. HARRIS: Okay. Let's continue on, please.

4 *(Playing Government's Exhibit Number 22)*

5 BY MR. HARRIS:

6 Q. And when you're saying, "I asked him about the Egyptian,
7 and he told me if I bring the matter up," blah, blah,
8 et cetera, who -- what was this about?

9 A. At the beginning we thought about -- you know, that the
10 Egyptian passed away when he did the surgery. And then we had
11 that he had problems with the Sheikh. That's why the Sheikh
12 kicked him off or whatever.

13 Q. Was that also part of the delaying this for a year?

14 A. Oh, yes, sir.

15 MR. HARRIS: Okay. Let's continue on.

16 *(Playing Government's Exhibit Number 22)*

17 BY MR. HARRIS:

18 Q. To recap, what were you confirming with Mr. Barodi?

19 A. That they are still on and they are still doing the same
20 thing, the same -- the money going to be for the fighters or
21 their groups, and they going to be through Turkey or whatever,
22 so the whole process, just to confirm that they're not backing
23 out.

24 Q. Okay. Let's continue on, please.

25 You and Mr. Wadi continued to talk after the conversation

1 with Mr. Barodi had concluded, correct?

2 A. Yes. Yes.

3 Q. Okay.

4 *(Playing Government's Exhibit Number 22)*

5 BY MR. HARRIS:

6 Q. So what -- so what concern is Mr. Wadi expressing here?

7 A. It's about when we were talking about the Mujahideen. And
8 so, again, he's saying that, again, we supposed not to talk on
9 these on the phone.

10 MR. HARRIS: Okay. Let's continue.

11 *(Playing Government's Exhibit Number 22)*

12 BY MR. HARRIS:

13 Q. "A previous black record and don't want to restart a
14 disarray," what did that mean?

15 A. He was telling us that -- he was talking about Mr. Barodi.

16 Q. His past?

17 A. His past history with the Muslim Brotherhood and all these
18 things.

19 MR. HARRIS: Okay. Let's continue.

20 *(Playing Government's Exhibit Number 22)*

21 BY MR. HARRIS:

22 Q. And I'm going to actually have you read what Mr. Wadi said.

23 A. Okay. "Well, we can talk in codes, it's possible. We can
24 speak in a specific way. We can -- I mean, we talked twice or
25 three times until the Egyptian brother -- here, you know. The

1 Egyptian brother used -- we do not know who is recording and
2 who is doing what, and who is recording the WhatsApp. Do you
3 understand?"

4 Q. And you said, "Yes"?

5 A. Yes.

6 MR. HARRIS: So let's go on and listen, please.

7 *(Playing Government's Exhibit Number 22)*

8 BY MR. HARRIS:

9 Q. Did you -- what did you understand Mr. Wadi to mean when he
10 said, "We can do without a headache. We are not working with
11 terrorism, and we are not working with any damn thing. All
12 there is, like we say, freedom fighters"?

13 A. He's trying to put like a backup line for him. That's, I'm
14 not working with those -- with these groups. You know what I
15 mean? After five years or whatever doing that, now he
16 understand that, I think.

17 Q. Is "freedom fighters" a code term?

18 A. Yes.

19 MR. HARRIS: Okay. Let's go on.

20 *(Playing Government's Exhibit Number 22)*

21 BY MR. HARRIS:

22 Q. And why are you saying that you don't care who is
23 listening?

24 A. Well, I'm trying to show him, you know what I mean, that
25 it's free -- this is a free country. You can say whatever you

1 wanted to.

2 MR. HARRIS: Okay. Let's continue.

3 *(Playing Government's Exhibit Number 22)*

4 BY MR. HARRIS:

5 Q. And let's go back one screen. What did you take Mr. Wadi
6 to mean when he said, "What's right in your opinion, sometimes
7 the opinion of others sometimes would be wrong"?

8 A. Well, that's -- it's just -- I took it as just a sentence.
9 He said it just to show me that, okay. Well, it doesn't matter
10 if you say it or not. Maybe the others will take it as a wrong
11 thing.

12 MR. HARRIS: Okay. Let's go.

13 *(Playing Government's Exhibit Number 22)*

14 BY MR. HARRIS:

15 Q. And let's pause. What did Mr. Wadi say in the middle?

16 I'll ask you to read it.

17 A. It says, "I have my God's law. The law of the
18 United States or any other stupid law, as far as I am
19 concerned, this is the last thing I care about/think about/pay
20 attention to."

21 "Exactly."

22 "Do you understand, brother?"

23 MR. HARRIS: And let's continue on.

24 *(Playing Government's Exhibit Number 22)*

25

1 BY MR. HARRIS:

2 Q. What is Mr. Wadi expressing here, especially at the bottom
3 of the page?

4 A. Well, he's saying that, in spite of all these things, it's
5 better not to say it on the phone.

6 MR. HARRIS: Okay. Let's continue on.

7 *(Playing Government's Exhibit Number 22)*

8 BY MR. HARRIS:

9 Q. After this conversation, did your role playing come to an
10 end?

11 A. I think, yes. That's it.

12 Q. In the course of our transcriptions, we have seen multiple
13 spellings for various names: Muhammad, Omar, Hussain. Unlike
14 maybe like Caitlin in English, for which there are half a dozen
15 spellings, is there only one spelling in Arabic?

16 A. No.

17 Q. No?

18 A. No. It depends on the pronouncing.

19 Q. Okay. Let's talk about your name for a moment. Did
20 something happen to or with your name when you first left to
21 come to America?

22 A. When I came to America over here, my name was Housen
23 Mohammed Baker, or Baker A. Housen.

24 Q. So explain that, please.

25 A. So that's why I said the spelling was H-O-U-S-E-N. And

1 then Mohammed was right, M-O-H-A-M-M-E-D. And Baker,
2 B-A-K-E-R, and then A. Housen, again, H-O-U-S-E-N.

3 So I was a skill director in soccer club. They used to
4 call me sometimes Housen A. Housen, and some people -- they
5 think that I'm a Hispanic. And some people, they used to call
6 me Housen A. Housen. They think I'm a German.

7 And for me, when I did my immigration status, I thought,
8 let me change it to the right spelling, the one I do it. And I
9 went to court and I did it. And it was H-U-S-S-A-I-N, which is
10 the actual saying, and then Mohammed Baker. And I took A.
11 Housen, and I took Housen.

12 Q. In a way, was that just a correction to bring it into
13 accord with the proper Arabic?

14 A. Yes, sir. Yes, sir. And even the court actually, they did
15 all the background check and everything before they approve
16 that.

17 Q. Early in your testimony I was asking you about the money
18 that you were paid for your work as a CHS, confidential human
19 source, with the FBI. Do you recall that?

20 A. I recall it, but I don't know how much is it.

21 Q. And early in your testimony, when we were discussing it, I
22 said that we would get back to that. Do you recall my saying
23 that?

24 A. Yes, sir.

25 Q. Okay. Let's do that now.

1 In what form were you paid by the FBI?

2 A. Cash.

3 Q. What did the FBI tell you about having to report that
4 income?

5 A. I have to report it to any source, like taxes or anywhere.

6 Q. Did you --

7 A. No.

8 Q. -- timely?

9 A. No.

10 Q. Why not?

11 A. I was working with the FBI. And my wife, my house, my kids
12 or whatever, so they were like -- I thought that they going to
13 be in danger if anyone of your community knew that.

14 Second thing, I won't be able to help on whatever they ask
15 me for.

16 So I didn't report it.

17 Q. Were you later told that, notwithstanding that, you got to
18 report it?

19 A. Yes, sir.

20 Q. And what have you or are you currently doing about that?

21 A. April 10th, actually, I went to the IRS, and I asked for
22 amendments. And I took the -- what do you call it? Extension
23 to October so I can correct all that.

24 Q. Now, did there come a point in time during your
25 cooperation, during the time that you were making this money

1 from the FBI -- let me rewind before I get into the question I
2 was about to ask, going back to your not reporting it.

3 Did your relationship with your then accountant play a role
4 in that as well?

5 A. Can you explain, please?

6 Q. Sure. Let me try it this way. You expressed the concern
7 about, you know, the possible impact on your family, the
8 possible impact on going forward as a CHS if it came to be
9 known that you were one.

10 Did your relationship with your then accountant play a role
11 in that as well?

12 A. Yes, sir. We had --

13 Q. Can you tell the jury what?

14 A. We had -- we had, you know, some people that we go to. And
15 I was afraid any one of them might send any information to the
16 community or whatever, because even though that's supposed to
17 be confidential, but my, let's say, fear makes me not to do it.
18 That's -- I didn't do it. That's why.

19 Q. And when you're referring to the community, are you talking
20 about the San Antonio community as a whole or a particular -- a
21 particular subset of the San Antonio community?

22 A. Well, I would say in general, but particular was for the
23 Muslim community.

24 Q. Okay. Now I'll get to the question that I interrupted
25 myself on. During the time of your work with the FBI, did

1 there come a point where you filed for relief in the bankruptcy
2 court?

3 A. Yes, sir.

4 Q. And in connection with the money that you received from the
5 FBI, did you report that money on your bankruptcy schedules?

6 A. No, sir.

7 Q. Same reason?

8 A. Same reason.

9 Q. You are -- are you aware that both the tax forms and the
10 bankruptcy forms that you signed are under the penalties of
11 perjury?

12 A. Yes, sir.

13 MR. HARRIS: May I have a moment, please?

14 THE COURT: All right. Cross.

15 MR. HARRIS: I'm ready to pass the witness.

16 Thank you, Your Honor.

17 THE COURT: Okay. Go ahead, Mr. Swift.

18 MR. SWIFT: Thank you.

19 MR. HARRIS: Get my stuff out of your way, sir, if
20 you'll bear with me a sec.

21 THE COURT: Counsel approach before you start, please.

22 *(At the bench)*

23 THE COURT: Okay. Now that you just asked those
24 questions, what does that do?

25 MR. SWIFT: I'm going to ask a whole bunch of

1 questions still along all those lines.

2 MR. ROOMBERG: It doesn't change our position.

3 THE COURT: Okay. But, in other words, is it -- does
4 his answer, okay, yeah, I'm a perjurer, does that -- does that
5 forestall?

6 MR. ROOMBERG: No. I think they were going to ask
7 that anyway. I think that's what we were expecting.

8 MR. SWIFT: Your Honor, I would hope --

9 THE COURT: I just want to make --

10 MR. HARRIS: I think -- I think what we're going to
11 hear is that all the answers that we discussed before lunch,
12 the questions and answers, that those answers of Mr. Swift's
13 hypotheticals are going to be, yes, yes, yes, and Mr. Swift, to
14 use one of my mother's expressions, wasted a perfectly good
15 worry.

16 MR. SWIFT: Well, we'll see. Just based on his part
17 on it, we'll see.

18 THE CLERK: Your Honor, one of the jurors is
19 requesting a break.

20 THE COURT: Oh, it is time for a break.

21 *(Open court)*

22 THE COURT: All right. 15-minute recess. Thank you.

23 *(Recess at 2:10 p.m. until 2:27 p.m., jury in)*

24 THE COURT: You may be seated.

25 All right. Ladies and gentlemen, we're going to begin the

Hussain Baker - Cross

1 Q. Whenever you need to.

2 Now, in this case you would meet with them periodically,
3 correct?

4 A. Yes.

5 Q. And during this period of time, they were paying you?

6 A. As I said, for that case it was monthly.

7 Q. For this case, for Mr. Wadi's case it was monthly?

8 A. Yes.

9 Q. Okay. For Mr. Wadi's case it was monthly.

10 And every month they would give you how much?

11 A. \$5,000.

12 Q. Now, you've just testified that you don't know how much you
13 ultimately received?

14 A. As a total.

15 Q. Over the course of it?

16 A. Yes.

17 Q. So how are you telling the IRS how much you received?

18 A. I will tell them the years that when I've been working.

19 Q. How will that tell them how much?

20 A. Well, that's what I'm saying. It's going to be from 2007
21 to all over. I'm going to get the report from the FBI how much
22 they pay me, and that's what I'm going to do.

23 Q. Okay. But right now, sitting here, you have no idea how
24 much you were paid?

25 A. No.

Hussain Baker - Cross

1 very specific as to when they could go into prior
2 investigations.

3 THE COURT: But as to credibility generally, can he --

4 MR. ROOMBERG: He can ask that question regarding the
5 beginning of this investigation, the subject of this
6 indictment. But he can't get into other investigative matters,
7 including if Mr. Wadi was involved. That was the Court's order
8 on the motion in limine.

9 THE COURT: Okay. Sustained.

10 MR. SWIFT: Are we -- are we saying here that -- we
11 have the source reports, that they began their investigation in
12 February 2016; that it morphed after he went down on that trip
13 in December to this particular slaughterhouse one. But his
14 original relationship that Mr. Wadi started looking at this in
15 that whole trip to Daniel Barodi was based on the idea that
16 Mr. Wadi was traveling around, and Mr. Barodi, on this meat
17 business. And my gosh, we --

18 THE COURT: When do you all say the investigation
19 began?

20 MR. ROOMBERG: In regard to this particular
21 indictment, December of 2016. And that's when they did take
22 that trip down there. What happened before is not related to
23 this indictment or this investigation, and this is why we
24 oppose getting into this --

25 MS. SAAD LINDSEY: The background information -- we

Hussain Baker - Cross

1 Q. Okay.

2 A. They were paying the expenses for the trip.

3 Q. So you got 5,000 in that month, right?

4 A. Yes. Yes.

5 Q. And then you worked on the case continuously after that?

6 A. Yes, sir.

7 Q. So you received in the next year \$60,000?

8 A. Yes, sir. If you count it that way, then we talking about
9 almost seven years, so about almost around \$350,000.

10 Q. Okay. And you didn't report any of that to the IRS?

11 A. No, sir.

12 Q. Did you fill out tax forms?

13 A. As I said, I did. And I went to the tax office. I did the
14 amendment. And I'm willing with them -- with the extension,
15 whatever, if there is penalties of whatever it is, I'm willing
16 to do it.

17 Q. Okay. So at the time, on those tax forms, did it have a
18 line for cash?

19 A. I would say yes. But, again, I didn't put that. And that
20 was my fear from everybody knows at where I was working with.

21 Q. Everybody would know that if you had \$5,000 cash, it came
22 from the FBI?

23 A. Let me correct that. Everybody knows that I'm working for
24 the FBI.

25 Q. Oh, they already did?

Hussain Baker - Cross

1 A. No.

2 Q. Okay. So if you put \$5,000 cash on your tax return, your
3 fear is that your accountant will go tell the entire community
4 that you're working for the FBI?

5 A. Might be.

6 Q. Might be.

7 Now, you're also -- if you don't put it on, you're going to
8 get the money tax free, right?

9 A. I'm willing to pay it right now.

10 Q. If you don't put it on then, are you going to get it tax
11 free?

12 A. I didn't know.

13 Q. Okay. Didn't the FBI tell you that you had to declare it
14 on your taxes?

15 A. Yes.

16 Q. So you did know?

17 A. I did know that I have to clear it, but I didn't clear it
18 because I didn't know that I -- I don't want if anybody knows
19 that I'm working with the FBI. And that's my reason. And I
20 said that.

21 Q. Okay. So your reason benefited you financially?

22 A. I would say maybe, yes.

23 Q. Yeah.

24 Okay. And you did this each year, right? Each year?

25 2016?

Hussain Baker - Cross

1 A. Yes.

2 Q. 2017? 2018? No money declared?

3 A. Yes.

4 Q. Did you ever go to the FBI and say, hey, look, I'm afraid.
5 What should I do?

6 A. No.

7 Q. Wouldn't they be able to help you?

8 A. I don't think they will interfere these things.

9 Q. You don't think they could help you? You don't think
10 that --

11 A. No.

12 Q. -- Agent Martinez --

13 A. Let me correct my words. I said I don't think. I didn't
14 think by that time they might help me with that.

15 Q. So each year when they tell you, you need to put this on
16 your taxes, you just ignore that?

17 A. Yes.

18 Q. Okay. And so they think you're putting it on your taxes?

19 A. You can ask them.

20 Q. Okay. Well, if they tell you to do it, they'd think you'd
21 do it, right?

22 A. You can ask them.

23 Q. Okay. And you also mentioned that you filed for
24 bankruptcy?

25 A. Yes, sir.

Hussain Baker - Cross

1 Q. And in filing for bankruptcy, you were to list all your
2 income?

3 A. I said that.

4 Q. Yes.

5 A. Yes.

6 Q. And you didn't put it on?

7 A. No. And I said the reason.

8 Q. Yeah.

9 And you signed that form under the penalty of perjury?

10 A. And my attorney asked that. And I said, yes, I did that.

11 Q. Yes.

12 So you committed a crime?

13 A. And I admit it right now.

14 Q. Okay. Now, you swore an oath here?

15 A. I did.

16 Q. Yes.

17 Same oath?

18 A. Not the same oath.

19 Q. Not the same oath? Really? You're not -- the perjury is
20 different in the bankruptcy court than the perjury in the
21 district court. Is that true?

22 A. The thing I did to myself, that's to myself. But the thing
23 I did right now, I did it for this country. If you trying to
24 show that I did it --

25 Q. I asked you a question.

Hussain Baker - Cross

1 Mr. Wadi was having financial difficulties?

2 A. Yes.

3 Q. That he was basically having trouble paying for these
4 trips?

5 A. I don't know about the trips, but I know he had financial
6 because he came and he moved in from Dallas to here. And I
7 said that earlier.

8 Q. So he's having financial difficulties in 2016, correct?

9 A. As I said, I don't know about his financial difficulties.
10 I know that he moved in because he lost his business. That's
11 it.

12 Q. Does he have a lot of money?

13 A. I don't know.

14 Q. Did you report that he'd had his car repossessed? You
15 remember that?

16 A. Oh, I don't know about that.

17 Q. Okay. Did you report that he had trouble paying and had to
18 borrow for these travel that he was on?

19 A. He borrowed from me money.

20 Q. He borrowed from you?

21 A. Yes.

22 Q. Okay. So he doesn't have enough money to pay for his own
23 travel?

24 A. I don't know.

25 Q. Okay. How much did he borrow from you?

Hussain Baker - Cross

1 A. \$4,000.

2 Q. He borrowed \$4,000 from you. So he's pretty short, and
3 he's in debt to you?

4 A. That's different times. One time he was in Emirates, and I
5 took it to his wife. And twice he send his son so he can meet
6 me, and took a thousand, a thousand. And then he took a money,
7 a thousand.

8 Q. Okay. So you're helping him?

9 A. I didn't help him. We were -- I was just giving him the
10 money he was asking for, borrow money.

11 Q. Did he pay it back?

12 A. No, until today.

13 Q. Until today he hasn't been able to pay it back?

14 A. No.

15 Q. You ever ask for it back?

16 A. I never.

17 Q. Okay. So while he's traveling, he had to borrow money from
18 you, is your testimony?

19 A. No. I said -- I said he borrowed money. But I didn't say
20 the time that we traveled, he borrowed money from me.

21 Q. Well, was he there personally to borrow the money? I'm
22 confused, because he sends his wife and his son.

23 A. He didn't send his wife.

24 Q. Okay.

25 A. I went to the wife, to the house, and I knock on the door.

Hussain Baker - Cross

1 Q. Yeah.

2 And you all, when you came back with the FBI, decided to
3 investigate this?

4 A. Okay. When we came with the FBI, the FBI already
5 investigating that.

6 Q. Right.

7 A. And we start looking for the try script so we can start
8 this.

9 Q. So you get writing a script for this?

10 A. I didn't write the script.

11 Q. Okay.

12 A. The FBI wrote the script. I just helped.

13 Q. Okay. So you're down there, and their plan is to buy a
14 used slaughterhouse or a bankrupt slaughterhouse, improve it
15 and ship beef overseas, right?

16 A. That's what the appearance was.

17 Q. That's what they told you?

18 A. That's what I -- that's what I said. That's what the
19 appearance was.

20 Q. Yes.

21 They didn't, in 2016, mention anything about shipping
22 weapons to fighters, did they?

23 A. Well, Mr. Wadi -- not the fighters.

24 Q. Did they?

25 A. No.

Hussain Baker - Cross

1 Q. Yes or no?

2 A. No.

3 Q. Did they say, with all the money we're going to make, we
4 can support the war in Syria?

5 A. No.

6 Q. Did they mention -- did they talk about making a lot of
7 money?

8 A. Also, no.

9 Q. Didn't they say this was going to be an incredibly
10 profitable venture if it got off the ground?

11 A. Yes. They did say that.

12 Q. So they were going to make -- if we could make this
13 business work, they could make a great deal of money, correct?

14 A. That's what they thought.

15 Q. And that's -- so they had this plan. And they were lacking
16 something, weren't they?

17 A. What do you mean by "lacking"?

18 Q. They didn't have any money, did they?

19 A. That's true. They didn't.

20 Q. They desperately needed an investor, didn't they?

21 A. That's what they were looking for.

22 Q. Yeah.

23 And without an investor, this wasn't going to go anywhere.

24 I mean, Mr. Wadi didn't have \$10 million?

25 A. Yes, he doesn't.

Hussain Baker - Cross

1 Q. Mr. Barodi didn't have \$10 million?

2 A. Uh-huh.

3 Q. And all those people you met, none of them had ten million
4 dollars?

5 A. Okay.

6 Q. So there's somewhere you're going to have to get \$10
7 million?

8 MR. HARRIS: I'm going to object. Was that counsel
9 testifying, or was that the witness answering?

10 MR. SWIFT: He answered yes.

11 THE COURT: That's correct. Go ahead.

12 MR. HARRIS: I heard the word "okay."

13 THE WITNESS: I said "okay." I didn't say "yes."
14 There's a difference between "okay" and "yes." I didn't say
15 "yes."

16 THE COURT: Okay. Well, let me -- do you know whether
17 these other people had \$10 million?

18 THE WITNESS: No.

19 THE COURT: Okay. Go ahead.

20 BY MR. SWIFT:

21 Q. So you don't know whether they had \$10 million.

22 Did any of them express that they were investing in the
23 business?

24 A. No.

25 Q. Okay. So they didn't introduce them as one of the

Hussain Baker - Cross

1 investors in it?

2 A. No.

3 Q. Okay. This was their idea for this big business, but you
4 didn't meet any investors?

5 A. No.

6 Q. Mr. Barodi did indicate that he knew people in the cattle
7 business. Getting cattle wouldn't be a problem, right?

8 A. Yes.

9 Q. But, again, they needed an investor. So you came back to
10 San Antonio, correct?

11 A. Yes.

12 Q. Okay. And -- well, I'll backtrack for a moment here. At
13 that time you said that the talks didn't get very far because
14 Mr. Barodi was detained in Venezuela, right?

15 A. Yes.

16 Q. Okay. And while you were down there, did you even -- did
17 you know why he didn't show back up?

18 A. What do you mean "show up"?

19 Q. Well, he left -- he left to go to Venezuela, and then you
20 didn't hear from him.

21 A. Yeah. But I knew that he is in jail.

22 Q. How did you know that?

23 A. By Mr. Wadi.

24 Q. Mr. Wadi told you? He got in touch with him that same day?

25 A. I think, yes, the same day.

Hussain Baker - Cross

1 Q. Okay. He called him from Venezuela and said he'd been
2 detained?

3 A. No. He called, I think, Melak, his wife.

4 Q. Oh. And Mr. Wadi learned it from her?

5 A. Yes.

6 Q. Okay. And so you come back here to Dallas, and you all --

7 A. Not to Dallas. San Antonio.

8 Q. Excuse me. You're right. I live in Dallas, and I can get
9 confused where I'm at, at any given day, Your Honor.

10 You came back here to San Antonio?

11 A. Yes, sir.

12 Q. And you and the FBI wrote a new script?

13 A. They wrote the script, and we just together correct some
14 stuff.

15 Q. Okay. So now you're going to create an investor for them?

16 A. Yes, sir.

17 Q. And who was that investor?

18 A. I gave him the name, actually.

19 Q. Yes.

20 A. And that was the Sheikh.

21 Q. What was the name?

22 A. Sheikh Abu Sabah.

23 Q. Who is --

24 A. Sheikh Sabah Nasser in Kuwait, one of -- one of the royal
25 family.

Hussain Baker - Cross

1 Q. Okay. Yes.

2 Let's see. Can we bring up and show to the witness Exhibit
3 42, Defense Exhibit 42.

4 Do you recognize that picture?

5 A. He's just a Kuwaiti guy.

6 Q. Do you know who -- do you recognize that person as Sheikh
7 Abu Nasser?

8 A. No.

9 Q. Okay. Now, you mentioned -- and we'll get -- have somebody
10 else who knows who he is. You didn't look him up before you
11 suggested the name?

12 A. I mention name.

13 Q. Okay.

14 A. We just create. We just picked a name.

15 Q. You picked the name?

16 A. -- real, yes.

17 Q. Now --

18 A. That Mr. Wadi was supposed to check. Not me.

19 Q. Okay. Sheikh Nasser, you said he's a member of the royal
20 family?

21 A. He is.

22 Q. Did you know that he was also the Minister of Defense?

23 A. No.

24 Q. Did you know that he met and received medals from the
25 Presidents of the United States?

Hussain Baker - Cross

1 A. By that time, maybe he wasn't --

2 Q. You didn't -- by that --

3 THE COURT: Did you know?

4 THE WITNESS: No.

5 BY MR. SWIFT:

6 Q. Did you know that he was the second most powerful person in
7 all of Kuwait?

8 A. No.

9 Q. How did you pick the name then?

10 A. Just a name, because we have Sabah Al-Ahmad, which is was
11 the President by that time. And then I know his name is
12 Nasser, the son. So we picked up the name.

13 Q. You knew the -- you picked the son of the President of
14 Kuwait?

15 A. By that time, yes.

16 Q. Yes.

17 So you picked a very, very important person?

18 A. I picked just a name.

19 Q. Well, was the name that you picked a very important person?

20 A. That's what I said. I picked just the name. It was just a
21 name, so it is real. If he checked it, whatever, if Mr. Wadi
22 checked it, he'll know that this is from Kuwait. He's real.

23 Q. Right.

24 A. It's not just a fake name. That's why.

25 Q. So to know that it's not a fake name, you have to look it

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

UNITED STATES OF AMERICA)	
)	
v.	)	Docket No. 5:21-cr-00244-FB-1
)	
IMAD EDDIN WADI,	)	San Antonio, Texas
	)	May 19, 2023
Defendant.)	
)	

TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE FRED BIERY
UNITED STATES DISTRICT JUDGE
AND A JURY

VOLUME V

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PAGE

HUSSAIN BAKER

Cross-Examination (Continued) by Mr. Swift676

Hussain Baker - Cross

1 A. Correct.

2 Q. Your family friends?

3 A. Correct.

4 Q. My wife knows your wife?

5 A. As I said in my testimony before, I said, the wives, they
6 know each other, but they not too close friends.

7 Q. Okay.

8 A. But me and him, yes.

9 Q. You and him are very close friends?

10 A. We were for that situation. Yes.

11 Q. Okay. You've loaned him money?

12 A. Yes.

13 Q. Now, as friends, I've got something to tell you, as a
14 friend. Right? As a friend?

15 A. You telling me?

16 Q. Is that true or not?

17 A. No.

18 Q. Okay. So it's not as a friend. "I've known you now for
19 four years."

20 A. Okay.

21 Q. Okay. Let's go down. Okay. Take out the enhancement.

22 And you have -- the next part, you tell him --

23 Let's enhance "for the first time" through "I swear."

24 "For the first time, I'm going to tell you a secret. But I
25 would like you to swear on the Quran and the Lord of Worlds."

Hussain Baker - Cross

1 anything with Fateh al-Sham?

2 A. No.

3 Q. That's -- so no, that's not true?

4 A. No. That's not true.

5 Q. So he does have to do something for Fateh al-Sham, to get
6 the money?

7 A. Yes -- Fateh al-Sham, yes.

8 Q. Yes. But --

9 A. So he can get the money for that. Because we said that
10 even on later on or in any conversation, that part of the
11 Sheikh's deal, if they will not help those groups, they won't
12 get it.

13 Q. They won't get it. They won't get their 13 million?

14 A. That's true. Nine million.

15 Q. Nine million. Well, it's 13 million right now, right?

16 A. I would say yes.

17 Q. Right.

18 A. By this time.

19 Q. It's going to change several times, right? The script
20 changes?

21 A. Yeah.

22 Q. Okay. I'd like to go to 12:08, please. 12:08.

23 Okay. Now, it shows Daniel Barodi in this. But at this
24 point in the conversation we're not talking to him anymore, are
25 we?

Hussain Baker - Cross

1 A. It was me and Mr. Wadi --

2 Q. Wadi. Yeah.

3 A. -- this one.

4 Q. Okay. About midline you say, "I would like if we could
5 remove one of those tiles."

6 A. Okay.

7 Q. He was at your house, right?

8 A. Yes.

9 Q. And Mr. Wadi was actually doing work for you at your house?

10 A. He didn't do the work. He will do the work.

11 Q. "He will do the work"?

12 A. Yes.

13 Q. So he's going to do some tiling for you?

14 A. Yes. Not tiling. It was just four pieces he's going to
15 take and remove them and fix them.

16 Q. And fix them and --

17 A. He's a handyman.

18 Q. He's a handyman. So you have him working around your
19 house?

20 A. That's true.

21 Q. And you have him fixing your garage?

22 A. Yes.

23 Q. And fixing your plumbing?

24 A. That's correct.

25 Q. Okay.

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

UNITED STATES OF AMERICA)	
)	
v.	)	Docket No. 5:21-cr-00244-FB-1
)	
IMAD EDDIN WADI,	)	San Antonio, Texas
	)	May 22, 2023
Defendant.)	
)	

TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE FRED BIERY
UNITED STATES DISTRICT JUDGE
AND A JURY

VOLUME VI

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Hussain Baker - Cross

1 I want to start on this part. You've never been clear how much
2 money you were paid. Do you know how much you were paid?

3 A. I said that.

4 Q. How much?

5 A. I said 5,000 a month.

6 Q. How much total?

7 A. I think it was 300-. We said -- we just do some
8 calculation, and we said it's about 350-. But I think what
9 they were announcing, 335- or something like this.

10 Q. Does 338,000 sound right?

11 A. Yes. Could be.

12 Q. Okay. Now, you said -- you admitted at the beginning that
13 you hadn't paid that in taxes, correct?

14 A. Correct.

15 Q. Okay. And that you made an appointment or you went to the
16 IRS to correct that?

17 A. On April 10th. Yes, sir.

18 Q. Of this year; is that correct?

19 A. Yes, sir. Yes, sir.

20 Q. Before you made that appointment, were your taxes
21 subpoenaed by the defense?

22 A. What do you mean "subpoenaed"?

23 Q. You were served a subpoena by the defense, correct?

24 A. Yeah. They gave me that.

25 Q. Yes.

Hussain Baker - Cross

1 Q. It's got to be done.

2 Well, let's talk about the other one, in the part on this,
3 is your bankruptcy filing.

4 A. Okay.

5 Q. Did you put the income for the IRS on your bankruptcy
6 filing?

7 A. Again, I said the same thing. I said I did not.

8 Q. Okay. Have you gone to the bankruptcy court and amended
9 your filings?

10 A. I call them on this Friday to ask -- this Friday to ask. I
11 said, well, this is the situation when I found out. And I
12 don't know the answer so far.

13 Q. Okay. So what you're telling us is that when you got asked
14 about it in court -- right?

15 A. Uh-huh.

16 Q. By me?

17 A. Not by you. It's by the U.S.

18 Q. Okay.

19 A. They asked me for that, too. They were asking me the
20 questions.

21 Q. Didn't I ask you questions about your bankruptcy?

22 A. Well, you came in after them.

23 Q. Okay. So on Friday you called the bankruptcy court for the
24 first time?

25 A. I was asking the situation on that, how I can solve the

Hussain Baker - Cross

1 problem.

2 Q. Is the bankruptcy closed?

3 A. Saturday, Sunday, yes.

4 Q. No. Has your bankruptcy case ended?

5 A. Oh, it's dismissed.

6 Q. Okay.

7 A. It's discharged or whatever they call it.

8 Q. So all of your creditors have been discharged?

9 A. That's what they were saying. Yes.

10 Q. Okay. So it's closed. So your creditors aren't going to
11 see any of this money?

12 A. You are asking me about something I don't have no idea, no
13 answer for that, except I did my part by going over there and
14 telling them. If they want to reopen it, if they going to give
15 back to the creditors, that's fine. If they said, well, no,
16 this is -- it's done, it's closed, also, that's fine.

17 Q. And, again, you only did that after it had come up in this
18 court?

19 A. After all San Antonio knew that I'm the one who is in this
20 case.

21 Q. Up until that point it was okay to hide your income from
22 creditors?

23 A. I took that chance.

24 Q. The creditors lost. True?

25 A. I took that chance.

Hussain Baker - Cross

1 Q. You took that chance.

2 A. That's for this -- for the fear I got for my life, for
3 everybody, I took that chance. And I was willing any time,
4 this is going to be discovered, that I will do that.

5 Q. Now --

6 A. I'm not running away.

7 Q. You're not running away from it now.

8 A. No.

9 Q. Nah.

10 A. No.

11 Q. Now that it's come out in open court that you hadn't paid
12 these things, you'll pay them?

13 A. Of course, because everybody now knows who's me.

14 Q. So next one on this --

15 A. Uh-huh.

16 Q. -- while this case was pending, you were sued, weren't you?

17 A. Which case?

18 Q. Or while your investigation was pending.

19 A. Which investigation?

20 Q. The investigation with Mr. Wadi.

21 A. Okay. I've been sued?

22 Q. Yes.

23 A. Okay. A civil one?

24 Q. Yes.

25 A. Okay.

Hussain Baker - Cross

1 Q. Do you remember Mr. Alawisi? Alawisi, A-L-A-W-I-S-I?

2 A. Alawisi. Alawisi.

3 Q. Alawisi?

4 A. Yes.

5 Q. Mr. Al Shimari?

6 A. Yes.

7 Q. And Mr. Al Ghamdi or -- I butchered that. A-L G-H-A-M-D-I.

8 Do you remember him?

9 A. Al Ghamdi.

10 Q. Yes. You remember those people?

11 A. All of them -- all of them in the same case.

12 Q. Yes.

13 A. Yes.

14 Q. And you have a car dealership, right?

15 A. Yes.

16 Q. And you had that car dealership during the pendency of
17 this, during the pendency of the investigation of Mr. Wadi?

18 A. Yes.

19 Q. And now, at that time same time, they allege that in
20 December of 2016 -- that's when this investigation started,
21 right?

22 A. Okay.

23 Q. That Mr. Alawisi met you.

24 A. Okay.

25 Q. Is that true? Did he meet you?

Hussain Baker - Cross

1 A. I don't -- I don't recall when, but yes.

2 Q. Did you tell him that you could get him a car at auction?

3 A. No.

4 Q. Okay. You didn't tell him that?

5 A. No.

6 Q. Did he transfer money to you?

7 A. Yes.

8 Q. How much did he give you?

9 A. I think 20,000 or 21,000, something like this.

10 Q. Did you buy a car for him?

11 A. No.

12 Q. Did you give him his money back?

13 A. Yes.

14 Q. You did?

15 A. Yes.

16 Q. When?

17 A. Well, he took it cash, the same when he came back to the
18 United States. But unfortunately, when this case happens, he
19 did not admit that, and he said he didn't get it. And that
20 was --

21 Q. So Mr. Alawisi says that he didn't get paid?

22 A. That's what he said.

23 Q. And you say, I paid him?

24 A. Yes.

25 Q. You have any proof of that?

Hussain Baker - Cross

1 yes, they told me to give my phone, and I gave it to them right
2 away.

3 Q. Well, you'd received a document in advance, hadn't you?

4 A. We came back to the same situation. As I said, the first
5 one, we were me and them, came to my house. They were coming.
6 They didn't even tell me that they came in for a subpoena.
7 They were asking me question actually. Ms. Angela was trying
8 to see if I'm working with the FBI, whatever, from that moment.

9 So I said, well, I'll see you in court.

10 Q. They gave you documents --

11 A. And that's what I -- they gave me the document --

12 Q. Did you read them?

13 A. No.

14 Q. Why not?

15 A. Because, as I said, I told them, I'll meet you in court.

16 So I didn't even pay attention.

17 But after a while, the FBI came in and told me that, you
18 did not send the documents to them. And I did. I did my part
19 by that time.

20 Q. Well, after that, you received a second document, a show
21 cause hearing, didn't you?

22 A. That's that hearing. Yes.

23 Q. Yes.

24 And in that document -- did you read that document?

25 A. When the -- when I had the hearing, yes, I did.

Hussain Baker - Cross

1 Q. In that document you were ordered to bring your cellphone
2 and digital devices.

3 A. I did.

4 Q. Correct?

5 A. I did.

6 Q. Including any previous digital devices.

7 A. Exactly.

8 Q. Yes.

9 That are not currently in use.

10 A. Well, all what I did, as I said, I gave it --

11 Q. No. I'm asking you what you were ordered to do.

12 A. That's what they told me. Yes.

13 Q. Okay. So -- and you came to court, and you brought a
14 phone?

15 A. I brought my phone.

16 Q. Yes.

17 Now, you -- that document was issued on, I believe, March
18 23rd.

19 A. Okay.

20 Q. And you came to court in, I believe, April 3rd; is that
21 right?

22 A. I'm not recalling the date.

23 Q. And when you came to court -- on April 6th, right?

24 A. Okay.

25 Q. And when you came to court, you had a new phone?

Hussain Baker - Cross

1 A. iPhone 14 Plus, yes.

2 Q. When did you buy that phone or get that phone?

3 A. Maybe ten days or 15 days prior to the April 6th or
4 whatever.

5 Q. Prior to April 6th. Did you get it after March 23rd?

6 A. I don't know.

7 Q. Okay.

8 A. I don't recall the date, actually.

9 Q. Okay. And when you brought that phone -- when you got the
10 new phone, you went where? Where did you get the new phone
11 from?

12 A. I was watching soccer at my house.

13 Q. Where did you get the new phone from?

14 A. Oh, from T-Mobile. Sorry.

15 Q. From T-Mobile?

16 A. Yes.

17 Q. You went to the T-Mobile store?

18 A. Yes.

19 Q. And you gave them your old phone?

20 A. Yes.

21 Q. And you traded it in?

22 A. Yes, sir.

23 Q. And they then backed up the phone or transferred the data?

24 A. That's exactly the procedure. They will take your phone,
25 and they will put the other phones next to it. And it moves

Hussain Baker - Cross

1 everything from here to there, even the way you have set up
2 your icons or whatever. That's what I did.

3 Q. That's what you did?

4 A. Uh-huh.

5 Q. And then you gave them your phone?

6 A. And I gave them the trade phone. Yes.

7 Q. Okay. And did you reset that phone ever again?

8 A. The new one?

9 Q. Yeah.

10 A. No.

11 Q. Okay. So whatever date it shows starting from, that's the
12 date you got it on?

13 A. From whatever I have on my iCloud, it's in there.

14 Q. Okay. If it's not on your iCloud but was on your phone,
15 it's not in there?

16 A. I don't have no idea.

17 Q. Okay.

18 A. Everybody in San Antonio almost, in my community, knows how
19 good I am in technology, I mean, of course, in a sarcastic way.

20 Q. So what you're -- is the court order told you to bring your
21 phone in and any old phone.

22 A. The judge -- the court order? Yes.

23 Q. Yes.

24 And you didn't follow that, did you?

25 A. I did.

Hussain Baker - Cross

1 Q. You did?

2 A. Yes.

3 Q. You brought in your old phones?

4 A. Yes. I brought my phone, the one I have, I'm using, which
5 is whatever have from the old phones, it goes in that phone.
6 So I brought my phone, and the iCloud will be handling.

7 Q. So, again, these are the -- you know, if you're close, it's
8 good enough?

9 MR. HARRIS: Objection, argumentative.

10 THE COURT: Sustained.

11 BY MR. SWIFT:

12 Q. Isn't it true that you went -- after you received an order
13 to bring your phone and any old phone, you went to T-Mobile,
14 got a new phone, traded in your old phones and then turned that
15 in? Isn't that what happened?

16 A. No.

17 Q. Okay.

18 A. Because -- well, I'll leave it for my attorney.

19 Q. They're your attorneys?

20 A. No.

21 Q. Who's your attorney?

22 A. They're U.S. --

23 Q. They're the --

24 A. I would say the U.S.

25 Q. They're the U.S.?

Hussain Baker - Redirect

1 A. Yes.

2 Q. And the U.S. is your attorneys?

3 A. No. That's my -- it's a mistake word.

4 *(Discussion off the record)*

5 MR. SWIFT: Your Honor, we'd enter the show cause
6 order into evidence. That's Defense Exhibit 62B.

7 MR. HARRIS: Objection.

8 THE COURT: Sustained.

9 MR. SWIFT: He testified to having received it and --

10 THE COURT: Correct.

11 MR. SWIFT: Okay.

12 THE COURT: We're not going to -- we're going to focus
13 on this -- what we're here about, not what has preceded it.

14 Redirect.

15 Mr. Swift, I assume you're passing the witness?

16 MR. SWIFT: I'm passing the witness.

17 THE COURT: Okay.

18 REDIRECT EXAMINATION

19 BY MR. HARRIS:

20 Q. Good morning, Mr. Baker.

21 A. Good morning, sir.

22 Q. Did anything that we covered -- that Mr. Swift covered with
23 you on redirect in any way change what Mr. Wadi and Mr. Barodi
24 said in the recordings that we heard?

25 A. As I said before, the FBI were very fair with that case by

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

UNITED STATES OF AMERICA)	
)	
v.	)	Docket No. 5:21-cr-00244-FB-1
)	
IMAD EDDIN WADI,	)	San Antonio, Texas
	)	May 16, 2023
Defendant.)	
)	

TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE FRED BIERY
UNITED STATES DISTRICT JUDGE
AND A JURY

VOLUME II

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HUSSAIN BAKER

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Hussain Baker - Direct

1 A. Arabic.

2 Q. And when and how did you learn English?

3 A. Well, I learned some in Kuwait. And when I came over here,
4 of course, it helps me improve that.

5 Q. And have you -- consider yourself fluent in both written
6 and spoken Arabic and English?

7 A. I would say yes.

8 Q. What is your citizenship?

9 A. A U.S. citizen.

10 Q. And when did you naturalize? When did you become a U.S.
11 citizen?

12 A. 2013.

13 Q. What line of business are you in?

14 A. I used to be used car business, buying and selling cars.

15 Q. Do you know the defendant Imad Wadi?

16 A. Yes, I do.

17 Q. Can you tell us when, where, how the two of you met?

18 A. Well, the beginning, it's in our community. And he and his
19 family, they used to do catering, and we used to order some
20 from them. And after that, I see him in the mosque when we go
21 for our prayers. And from there, we start our relation.

22 Q. Did that relationship become a friendship between his wife
23 and your wife, you and he?

24 A. Well, I would say yes, between the wives, yes, and between
25 me and him, became very good relation.

Hussain Baker - Direct

1 Q. Now, speaking of relationships, do you also have a
2 relationship or did you have a relationship with the FBI?

3 A. Yes.

4 Q. What is the nature of that relationship?

5 A. I was helping them? If there is anything I see or
6 whatever, I just tell them about it.

7 Q. Is that what's known as a confidential human source?

8 A. Yes.

9 Q. When did you start speaking with the FBI about things that
10 concerned you?

11 A. I would say I started at 2007, 2006, between that time.

12 Q. And why did you do that?

13 A. It's actually -- if you allow me to explain that.

14 Q. Sure.

15 A. It's kind of -- kind of appreciation for this country, for
16 what I got from them. I lived in Kuwait since I born until 34
17 years. And I was a non-Kuwaiti citizen. I didn't even get
18 their citizenship.

19 Q. And why is that?

20 A. It's -- I born in there. My dad didn't put me in the file
21 for the citizenship or whatever. So they did not gave me a
22 citizenship. So I lived as a -- as a non-Kuwaiti resident.

23 When I came into this country, I did my application status,
24 and they gave me the citizenship for me, my wife, my kids. And
25 from there, I became more -- I would say more power. I can

Hussain Baker - Direct

1 travel freely. I can go freely. I can do anything freely when
2 I visit, of course, legally.

3 So I swear by that time, which is -- that's one of the
4 things in the application. If anything happens to this
5 country, I will defend that. And I promise that to my kids, to
6 my family and to myself, that I will do that. And that's how I
7 started helping them.

8 Q. In that help, did there come a point where the FBI started
9 paying you money for serving as a confidential human source?

10 A. Yes, sir.

11 Q. Between 2007 and, let's say, 2020, 2021, do you know how
12 much in total you were paid?

13 A. No.

14 Q. Could it have been as much as \$400,000?

15 A. Probably.

16 Q. Do you know how much you were paid specifically in
17 connection with your work as a CHS in the matters that we're
18 about to get into, the matters involving Mr. Wadi and
19 Mr. Barodi?

20 A. As I said, the total amount, I don't have no idea.

21 Q. Could it have been as much as \$338,000?

22 A. It could be.

23 Q. Okay. We'll come back to that.

24 Speaking of Daniel Ahmed Barodi, do you know him?

25 A. Yes.

Hussain Baker - Direct

1 Q. Please tell the jury when, where and how you met him?

2 A. Well, I did -- I know Ahmed Barodi by Mr. Wadi. When he
3 starts talking, when we became a friendship, then he starts
4 telling me about him and his partner. And that's when I start
5 knowing Barodi.

6 Now, I start knowing him personally when I visited with
7 Wadi, Mr. Wadi, the Colombia. And then I start knowing
8 Mr. Barodi. And after that, this is the connections.

9 Q. So if I'm following you correctly, you first knew of
10 Mr. Barodi from what Mr. Wadi told you about him?

11 A. Yes, sir.

12 Q. And then, as we'll get into in connection with what was
13 going on here, there came a point where you met him in person
14 in Colombia?

15 A. Yes, sir.

16 Q. Okay. The latter, did that come about as part of you
17 working as a CHS, as a confidential human source, for the FBI?

18 A. Yes.

19 Q. So what information had you provided to the FBI in
20 connection with Mr. Wadi and Mr. Barodi about what they were
21 doing, that concerned you, that led to the FBI saying, okay.
22 Go be a confidential human source. Go to Colombia?

23 A. When me and Mr. Wadi, we start becoming more friends, he
24 start telling me about why he moved in from Dallas to
25 San Antonio and what happened with him situation-wise with the

Hussain Baker - Direct

1 FBI and IRS, that they confiscated his stores or whatever. And
2 he start talking about, that he knows Wadi and he helped him --

3 Q. You mean Barodi.

4 A. I mean -- I'm sorry. Mr. Daniel Barodi. And he helped him
5 in -- you know, in the jail, when they got Barodi in jail. And
6 he helped him by getting him out and make him fly to Colombia.

7 Q. We're going to hear some of this in recordings, in exhibits
8 that have been admitted. But to kind of clarify for the jury,
9 did Mr. Wadi tell you that in the course of businesses he
10 owned, at one point he employed Mr. Barodi as a young immigrant
11 to the United States?

12 A. Yes. He actually -- he helped Mr. Barodi at '89, when
13 Barodi comes into the U.S. with false documents, passports or
14 whatever it is. And he told that he was from Muslim
15 Brotherhood or whatever it is. And that's when he made him
16 work with him for a while, for six months. Then Barodi went on
17 his own, and then they became partners together. So this is
18 the relation. Yes, he told me that.

19 Q. And you mentioned jail. There came a point where
20 immigration officials picked up Mr. Barodi?

21 A. Yes.

22 Q. And Mr. Barodi was subsequently deported to Colombia, where
23 he remained, as far as we know, to this day?

24 A. He was in jail. And my understanding with Mr. Wadi, that
25 he is the one who helped him through a Colombian guy in jail,

Hussain Baker - Direct

1 to run him from here --

2 Q. To Colombia?

3 A. -- to Colombia.

4 Q. Okay. We'll be hearing the detail on that.

5 But to bring it back, what specifically was it that

6 Mr. Wadi told you about what he was doing with Mr. Barodi that

7 led you to say, I need to tell the FBI about this?

8 A. Well, as I said, he was explaining the relation between him

9 and Mr. Barodi, that Mr. Barodi came into the U.S. He

10 announced that he is a Muslim Brotherhood, and he run away from

11 Syria. And, you know, they were -- they were together.

12 And Mr. Wadi, of course, he was telling me about the story

13 about the fraud -- about the false -- the false documents that

14 he did for Barodi. So I thought that this information, I need

15 to tell him to the FBI. And that's what I did.

16 Q. Okay. And to your -- you mentioned that Mr. Barodi had

17 come to the United States from Syria. To your knowledge did

18 Mr. Wadi also come to the United States from Syria?

19 A. Well, I know that he's from Syria, and I know he's from

20 Damascus. So he came into the U.S. over here. But, also, he

21 was trying to revenge for -- he has a revenge between him and

22 Assad or whatever it is. I know that.

23 Q. Which also comes up in the recordings, correct?

24 A. Yeah.

25 Q. And to your knowledge, at some point did Mr. Wadi become a

Hussain Baker - Direct

1 naturalized United States citizen?

2 A. My understanding, yes. And I know that.

3 Q. In the course of your discussions with Mr. Wadi and what
4 you're relaying to FBI, did there come a point where a scenario
5 came up about raising money to invest in a business using some
6 of the upfront money to buy weapons, to get into Syria upfront,
7 and then, as things went on, using profits from that
8 business to --

9 MR. SWIFT: Objection, leading. I mean, a little
10 entry part but --

11 THE COURT: Sustained.

12 BY MR. HARRIS:

13 Q. Can you tell the jury about the whole halal beef, buy arms,
14 get them into Syria scenario and how it came about?

15 MR. SWIFT: Objection, compound question, leading.

16 THE COURT: Overruled.

17 BY MR. HARRIS:

18 Q. You can answer that.

19 A. Okay. Mr. Wadi was telling me that him and Mr. Barodi,
20 they work in meat business, and in Colombia, buying cows, all
21 stuff like that. And he was, I would say, looking for
22 investor. So -- and then we found out that this scenario will
23 be good. I mean -- when I say "we," by the FBI information,
24 that it's going to be a good scenario to start a business with
25 him, and then we will find out more about what he's planning to

Hussain Baker - Direct

1 do with all that.

2 Q. Had there already been some indications about getting
3 weapons to Syria?

4 A. At the beginning -- at the beginning, no. At the
5 beginning, I mean, it wasn't -- it wasn't that. It was just to
6 find the investor. And then from there, they will try to help
7 the -- he was -- he was saying at the beginning as orphans, all
8 these people, can it be part of what they're doing, is sending
9 them there.

10 Q. But when we talk about orphans, as we'll hear in the tapes
11 later, was that a code term?

12 A. Later on, yes. We found out that this is was just
13 appearance.

14 Q. Okay. So as the scenario developed, can you tell the jury
15 what the scenario -- the plan became between Mr. Wadi,
16 Mr. Barodi on the one hand and you and the FBI, ultimately to
17 include an FBI employee who was going to role play, what it
18 became?

19 A. That was -- the plan with the FBI is we going to find that
20 investor. As I said at the beginning, they thought -- or they
21 want me to be the investor. So I was going with that with
22 them. I went to the first trip to see the -- what they have in
23 there, you know, try to see Mr. Barodi, what is their plans,
24 all these type. So we did the first trip there, to go in
25 there.

Hussain Baker - Direct

1 Q. But even before that -- forgive the interrupt. Even before
2 that, was there, you know, a proposal to the effect that
3 involved needing millions and millions and millions of dollars?

4 A. That's what I was -- I was trying to say next, is the
5 investor they wants is to buy a slaughterhouse with a lot of
6 money, like millions. And from there, we had to go trip over
7 there to see on the -- on the fields what he have, what they
8 wanties, all these plans. And then, from there, we'll go to
9 the second step, is with the -- what we will do later with any
10 person we can create there.

11 Q. Now, in the course of your relationship, your personal
12 relationship with Mr. Wadi through the years, before this
13 scenario came up, were you each familiar with the other's
14 business activities?

15 A. Oh, yes.

16 Q. In your mind at least, the notion of you personally being
17 an investor, were you capable of coming up with the millions
18 and millions needed to help purchase the slaughterhouse?

19 A. Me personally? No.

20 Q. So did that lead to the notion of injecting an outside
21 investor?

22 A. Yes.

23 Q. And who came up with the name of the outside investor, to
24 be named the Sheikh?

25 A. I gave the name to the -- to the FBI.

Hussain Baker - Direct

1 Q. How did you pick that name?

2 A. Well, I've been in Kuwait. So I know the royal family over
3 there or the highnesses over there. So I've had to get more
4 convinced with a -- with a good name, especially he had some
5 background or whatever, even if they want to check on.

6 Q. Now, of course, this Kuwaiti sheikh was never going to be
7 involved, right?

8 A. No.

9 Q. So you had -- take us to the involvement of the FBI
10 undercover employee and a fellow that we're going to be
11 referring to as Taher?

12 A. Okay. As I said, the scenario was, is to find that person,
13 which is we got the name and everything. We gave him the name.
14 They were convinced with the name, and they were okay with that
15 name. And that's when they started, you know, more negotiation
16 or pressure or whatever on that.

17 And then we don't want to be -- involve the Sheikh or
18 whatever that person is in the middle because he's not a real
19 person. I mean, a real person means the person that's going to
20 come or whatever. So we came with a scenario that we needed a
21 representative for that person to be involved in that. And
22 that's what we had the undercover to be in.

23 Q. So the undercover FBI employee is being represented as the
24 Sheikh's representative?

25 A. Yes.

Hussain Baker - Direct

1 Q. Did all this then lead to you doing recordings of your
2 various conversations with Mr. Wadi and with Mr. Barodi?

3 A. Yes, sir.

4 Q. And how were those managed? I mean, you know, did you like
5 turn on "record" on your cellphone, or what?

6 A. No, sir. It was the FBI actually plan. They used to give
7 me a device, and I go through that device, all the steps,
8 putting it on and -- on the recording. And when it's finished,
9 then we just turn it off and just give it to them.

10 Q. And return it to the FBI?

11 A. Yes.

12 Q. Did you also find yourself at times exchanging text
13 messages, WhatsApp messages and the like with Mr. Wadi and/or
14 Mr. Barodi?

15 A. Yes, we did.

16 Q. And what did you do with those as you received them?

17 A. I turn all these to the FBI.

18 Q. And then did you keep them as you went, or did you delete
19 them from your phone as you went?

20 A. No. I deleted them from my phones with the knowledge with
21 FBI, I was telling them, because that was danger on my life.

22 Q. And why did you delete them from your phone? Why did you
23 not want to keep this on your phone?

24 A. As I said, it's -- for any reason, my sons, my daughter, my
25 wife, any from the community, by the -- you know, playing on

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

UNITED STATES OF AMERICA)
)
v.) Docket No. 5:21-cr-00244-FB-1
)
IMAD EDDIN WADI,) San Antonio, Texas
) May 18, 2023
Defendant.)
)

TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE FRED BIERY
UNITED STATES DISTRICT JUDGE
AND A JURY

VOLUME IV

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1 BY MR. HARRIS:

2 Q. I think that one spoke for itself, right?

3 A. Yes.

4 MR. HARRIS: Yeah. Okay. Let's move on.

5 *(Playing Government's Exhibit Number 22)*

6 BY MR. HARRIS:

7 Q. The ex-wife that you guys are talking about, can you tell
8 us whether that's the one with whom Mr. Wadi formed South
9 American Exports and Imports, or are we talking about someone
10 else?

11 A. Okay. It's the -- he had three companies. One of them was
12 with Melak. They made it in Colombia.

13 Q. And Melak is the woman that's --

14 A. Melak is the ex-wife of Mr. Barodi. And I don't know if
15 they close it or not, but this is was one of them.

16 MR. HARRIS: Okay. Let's continue on.

17 *(Playing Government's Exhibit Number 22)*

18 BY MR. HARRIS:

19 Q. Who is "our friend" who you say called?

20 A. We talking about the Sheikh.

21 MR. HARRIS: Okay. Let's continue on, please.

22 *(Playing Government's Exhibit Number 22)*

23 BY MR. HARRIS:

24 Q. And before we get to the end of this page, who is the
25 Egyptian brother who passed away? Who's being referred to

1 there?

2 A. Oh, he's talking about Mr. Taher, Abu Sayf.

3 MR. HARRIS: Okay. Let's continue on, please.

4 *(Playing Government's Exhibit Number 22)*

5 BY MR. HARRIS:

6 Q. And when you're saying, "I asked him about the Egyptian,
7 and he told me if I bring the matter up," blah, blah,
8 et cetera, who -- what was this about?

9 A. At the beginning we thought about -- you know, that the
10 Egyptian passed away when he did the surgery. And then we had
11 that he had problems with the Sheikh. That's why the Sheikh
12 kicked him off or whatever.

13 Q. Was that also part of the delaying this for a year?

14 A. Oh, yes, sir.

15 MR. HARRIS: Okay. Let's continue on.

16 *(Playing Government's Exhibit Number 22)*

17 BY MR. HARRIS:

18 Q. To recap, what were you confirming with Mr. Barodi?

19 A. That they are still on and they are still doing the same
20 thing, the same -- the money going to be for the fighters or
21 their groups, and they going to be through Turkey or whatever,
22 so the whole process, just to confirm that they're not backing
23 out.

24 Q. Okay. Let's continue on, please.

25 You and Mr. Wadi continued to talk after the conversation

1 with Mr. Barodi had concluded, correct?

2 A. Yes. Yes.

3 Q. Okay.

4 *(Playing Government's Exhibit Number 22)*

5 BY MR. HARRIS:

6 Q. So what -- so what concern is Mr. Wadi expressing here?

7 A. It's about when we were talking about the Mujahideen. And
8 so, again, he's saying that, again, we supposed not to talk on
9 these on the phone.

10 MR. HARRIS: Okay. Let's continue.

11 *(Playing Government's Exhibit Number 22)*

12 BY MR. HARRIS:

13 Q. "A previous black record and don't want to restart a
14 disarray," what did that mean?

15 A. He was telling us that -- he was talking about Mr. Barodi.

16 Q. His past?

17 A. His past history with the Muslim Brotherhood and all these
18 things.

19 MR. HARRIS: Okay. Let's continue.

20 *(Playing Government's Exhibit Number 22)*

21 BY MR. HARRIS:

22 Q. And I'm going to actually have you read what Mr. Wadi said.

23 A. Okay. "Well, we can talk in codes, it's possible. We can
24 speak in a specific way. We can -- I mean, we talked twice or
25 three times until the Egyptian brother -- here, you know. The

1 Egyptian brother used -- we do not know who is recording and
2 who is doing what, and who is recording the WhatsApp. Do you
3 understand?"

4 Q. And you said, "Yes"?

5 A. Yes.

6 MR. HARRIS: So let's go on and listen, please.

7 *(Playing Government's Exhibit Number 22)*

8 BY MR. HARRIS:

9 Q. Did you -- what did you understand Mr. Wadi to mean when he
10 said, "We can do without a headache. We are not working with
11 terrorism, and we are not working with any damn thing. All
12 there is, like we say, freedom fighters"?

13 A. He's trying to put like a backup line for him. That's, I'm
14 not working with those -- with these groups. You know what I
15 mean? After five years or whatever doing that, now he
16 understand that, I think.

17 Q. Is "freedom fighters" a code term?

18 A. Yes.

19 MR. HARRIS: Okay. Let's go on.

20 *(Playing Government's Exhibit Number 22)*

21 BY MR. HARRIS:

22 Q. And why are you saying that you don't care who is
23 listening?

24 A. Well, I'm trying to show him, you know what I mean, that
25 it's free -- this is a free country. You can say whatever you

1 wanted to.

2 MR. HARRIS: Okay. Let's continue.

3 *(Playing Government's Exhibit Number 22)*

4 BY MR. HARRIS:

5 Q. And let's go back one screen. What did you take Mr. Wadi
6 to mean when he said, "What's right in your opinion, sometimes
7 the opinion of others sometimes would be wrong"?

8 A. Well, that's -- it's just -- I took it as just a sentence.
9 He said it just to show me that, okay. Well, it doesn't matter
10 if you say it or not. Maybe the others will take it as a wrong
11 thing.

12 MR. HARRIS: Okay. Let's go.

13 *(Playing Government's Exhibit Number 22)*

14 BY MR. HARRIS:

15 Q. And let's pause. What did Mr. Wadi say in the middle?

16 I'll ask you to read it.

17 A. It says, "I have my God's law. The law of the
18 United States or any other stupid law, as far as I am
19 concerned, this is the last thing I care about/think about/pay
20 attention to."

21 "Exactly."

22 "Do you understand, brother?"

23 MR. HARRIS: And let's continue on.

24 *(Playing Government's Exhibit Number 22)*

25

1 BY MR. HARRIS:

2 Q. What is Mr. Wadi expressing here, especially at the bottom
3 of the page?

4 A. Well, he's saying that, in spite of all these things, it's
5 better not to say it on the phone.

6 MR. HARRIS: Okay. Let's continue on.

7 *(Playing Government's Exhibit Number 22)*

8 BY MR. HARRIS:

9 Q. After this conversation, did your role playing come to an
10 end?

11 A. I think, yes. That's it.

12 Q. In the course of our transcriptions, we have seen multiple
13 spellings for various names: Muhammad, Omar, Hussain. Unlike
14 maybe like Caitlin in English, for which there are half a dozen
15 spellings, is there only one spelling in Arabic?

16 A. No.

17 Q. No?

18 A. No. It depends on the pronouncing.

19 Q. Okay. Let's talk about your name for a moment. Did
20 something happen to or with your name when you first left to
21 come to America?

22 A. When I came to America over here, my name was Housen
23 Mohammed Baker, or Baker A. Housen.

24 Q. So explain that, please.

25 A. So that's why I said the spelling was H-O-U-S-E-N. And

1 then Mohammed was right, M-O-H-A-M-M-E-D. And Baker,
2 B-A-K-E-R, and then A. Housen, again, H-O-U-S-E-N.

3 So I was a skill director in soccer club. They used to
4 call me sometimes Housen A. Housen, and some people -- they
5 think that I'm a Hispanic. And some people, they used to call
6 me Housen A. Housen. They think I'm a German.

7 And for me, when I did my immigration status, I thought,
8 let me change it to the right spelling, the one I do it. And I
9 went to court and I did it. And it was H-U-S-S-A-I-N, which is
10 the actual saying, and then Mohammed Baker. And I took A.
11 Housen, and I took Housen.

12 Q. In a way, was that just a correction to bring it into
13 accord with the proper Arabic?

14 A. Yes, sir. Yes, sir. And even the court actually, they did
15 all the background check and everything before they approve
16 that.

17 Q. Early in your testimony I was asking you about the money
18 that you were paid for your work as a CHS, confidential human
19 source, with the FBI. Do you recall that?

20 A. I recall it, but I don't know how much is it.

21 Q. And early in your testimony, when we were discussing it, I
22 said that we would get back to that. Do you recall my saying
23 that?

24 A. Yes, sir.

25 Q. Okay. Let's do that now.

1 In what form were you paid by the FBI?

2 A. Cash.

3 Q. What did the FBI tell you about having to report that
4 income?

5 A. I have to report it to any source, like taxes or anywhere.

6 Q. Did you --

7 A. No.

8 Q. -- timely?

9 A. No.

10 Q. Why not?

11 A. I was working with the FBI. And my wife, my house, my kids
12 or whatever, so they were like -- I thought that they going to
13 be in danger if anyone of your community knew that.

14 Second thing, I won't be able to help on whatever they ask
15 me for.

16 So I didn't report it.

17 Q. Were you later told that, notwithstanding that, you got to
18 report it?

19 A. Yes, sir.

20 Q. And what have you or are you currently doing about that?

21 A. April 10th, actually, I went to the IRS, and I asked for
22 amendments. And I took the -- what do you call it? Extension
23 to October so I can correct all that.

24 Q. Now, did there come a point in time during your
25 cooperation, during the time that you were making this money

1 from the FBI -- let me rewind before I get into the question I
2 was about to ask, going back to your not reporting it.

3 Did your relationship with your then accountant play a role
4 in that as well?

5 A. Can you explain, please?

6 Q. Sure. Let me try it this way. You expressed the concern
7 about, you know, the possible impact on your family, the
8 possible impact on going forward as a CHS if it came to be
9 known that you were one.

10 Did your relationship with your then accountant play a role
11 in that as well?

12 A. Yes, sir. We had --

13 Q. Can you tell the jury what?

14 A. We had -- we had, you know, some people that we go to. And
15 I was afraid any one of them might send any information to the
16 community or whatever, because even though that's supposed to
17 be confidential, but my, let's say, fear makes me not to do it.
18 That's -- I didn't do it. That's why.

19 Q. And when you're referring to the community, are you talking
20 about the San Antonio community as a whole or a particular -- a
21 particular subset of the San Antonio community?

22 A. Well, I would say in general, but particular was for the
23 Muslim community.

24 Q. Okay. Now I'll get to the question that I interrupted
25 myself on. During the time of your work with the FBI, did

1 there come a point where you filed for relief in the bankruptcy
2 court?

3 A. Yes, sir.

4 Q. And in connection with the money that you received from the
5 FBI, did you report that money on your bankruptcy schedules?

6 A. No, sir.

7 Q. Same reason?

8 A. Same reason.

9 Q. You are -- are you aware that both the tax forms and the
10 bankruptcy forms that you signed are under the penalties of
11 perjury?

12 A. Yes, sir.

13 MR. HARRIS: May I have a moment, please?

14 THE COURT: All right. Cross.

15 MR. HARRIS: I'm ready to pass the witness.

16 Thank you, Your Honor.

17 THE COURT: Okay. Go ahead, Mr. Swift.

18 MR. SWIFT: Thank you.

19 MR. HARRIS: Get my stuff out of your way, sir, if
20 you'll bear with me a sec.

21 THE COURT: Counsel approach before you start, please.

22 *(At the bench)*

23 THE COURT: Okay. Now that you just asked those
24 questions, what does that do?

25 MR. SWIFT: I'm going to ask a whole bunch of

1 questions still along all those lines.

2 MR. ROOMBERG: It doesn't change our position.

3 THE COURT: Okay. But, in other words, is it -- does
4 his answer, okay, yeah, I'm a perjurer, does that -- does that
5 forestall?

6 MR. ROOMBERG: No. I think they were going to ask
7 that anyway. I think that's what we were expecting.

8 MR. SWIFT: Your Honor, I would hope --

9 THE COURT: I just want to make --

10 MR. HARRIS: I think -- I think what we're going to
11 hear is that all the answers that we discussed before lunch,
12 the questions and answers, that those answers of Mr. Swift's
13 hypotheticals are going to be, yes, yes, yes, and Mr. Swift, to
14 use one of my mother's expressions, wasted a perfectly good
15 worry.

16 MR. SWIFT: Well, we'll see. Just based on his part
17 on it, we'll see.

18 THE CLERK: Your Honor, one of the jurors is
19 requesting a break.

20 THE COURT: Oh, it is time for a break.

21 *(Open court)*

22 THE COURT: All right. 15-minute recess. Thank you.

23 *(Recess at 2:10 p.m. until 2:27 p.m., jury in)*

24 THE COURT: You may be seated.

25 All right. Ladies and gentlemen, we're going to begin the

155a
FILED

MAY 15 2023

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY  DEPUTY CLERK

UNITED STATES OF AMERICA,)
)
v.) CRIMINAL NO. SA-21-CR-244-FB
)
IMAD EDDIN WADI)

ORDER

The Court having considered the Government’s Motion In Limine to Exclude Expert Witness Testimony of Eric Devlin, the Defendant’s Response, and arguments of counsel, finds and rules as follows:

I. Background

Defendant filed a Notice of Expert, naming Eric Devlin of Lone Star Forensic Group. The Notice summarizes Mr. Devlin’s position and background. The Notice states that Mr. Devlin will provide testimony and render opinions on seven enumerated subjects, set forth in footnotes below. In both the written Motion In Limine and oral argument, the Government objects to and seeks to exclude Mr. Devlin’s testimony. In argument, the Government stated that Mr. Devlin could properly testify to the processes he utilized in forensically examining devices, and to authenticate proffered exhibits he obtained thereby. Defendant responded and argued that Mr. Devlin should be allowed to testify in full as proposed including the stated opinions.

II. Findings and Orders

The Court finds and Orders as follows:

The Court finds Defendant has generally failed to comply with F.R.Crim.P. Rule 16(b)(1)(C) and this Court’s order that there be such compliance “not later than 30 days after the date of arraignment” Rule 16(b)(1)(C) sets forth what a proper expert notice should

contain. Critically here, the Notice and reports lack “a complete statement of all opinions that the defendant will elicit from the witness in the defendant’s case-in-chief; [and] the bases and reasons for them.” The filed Notice is void of such contents and bases for the stated opinions. The Reports provided to the Government only discuss the iPad obtained from Defendant Wadi and the iPhone obtained from Hussain Baker; there being no mention whatsoever therein of “Mr. Wadi’s digital devices that were seized by the FBI” nor “the source reports that document and discuss digital evidence seized by the Government” as stated in enumerated item one.¹

IT IS THEREFORE ORDERED THAT Mr. Devlin may testify as to his expertise in analyzing data using the platforms listed in enumerated item 3.² He may testify to the processes he used in examining Mr. Wadi’s iPad and Mr. Baker’s iPhone as further identified in his reports as stated in enumerated item one.³ Mr. Devlin may authenticate any items of proffered exhibits he obtained from either of those two devices, including “the reliability of this evidence” as stated in enumerated item two.⁴ He may not opine on the reliability or lack thereof of other evidence. Mr. Devlin may not testify to the matters stated in enumerated items four,⁵ five⁶ (other than reciting his training in law enforcement to run searches), and seven.⁷ The Court specifically finds that in

¹ Which states: “Discuss the devices and digital data that [Mr. Devlin] reviewed in this case. This will include Mr. Wadi’s digital devices that were seized by the FBI; Mr. Wadi’s iPad; Mr. Hussain Baker’s cell phone; and the source reports that document and discuss digital evidence seized by the Government.”

² Which states: “Mr. Devlin will discuss his expertise on analyzing this data using platforms such as Axiom, Cellebrite, and others. Mr. Devlin will testify the data that he was able to collect from the phone.”

³ See footnote 1, *supra*.

⁴ Which states: “Mr. Devlin will testify about the forensic digital images he obtained of any digital devices and the reliability of this evidence following the procedures to accurately obtain a forensic image of digital devices.”

⁵ Which states: “Mr. Devlin will discuss the problem with the Government’s evidence when it lacks native data, which is data that is retained on the device where it was created and not modified in any way by saving or transferring the data. Mr. Devlin will discuss the data you lose when native data is not retained and is modified by capturing the information in a report, saving it in a different format, etc.”

⁶ Which states: “Mr. Devlin will testify about his training in law enforcement to run searches on devices with search-term databases that can identify whether an individual is possibly related or associated with a type of crime, such as child exploitation, or extremism. Mr. Devlin will testify about his database for extremism and how he collected these search terms in his work and training experiences. He will testify about the results of his searches on Mr. Wadi’s devices and Mr. Baker’s device.”

⁷ Which states: “Mr. Devlin will discuss best practices when capturing digital evidence by law enforcement. MR. Devlin will discuss the importance of obtaining a digital forensic image from a confidential informant to capture the

addition with the failure to comply with F.R.Crim.P. Rule 16(b)(1)(C), this is not proper opinion testimony under F.R.Evid. Rule 702, and that any probative value is substantially outweighed by risk of unfair prejudice, confusion of the issues, or misleading the jury. Finally, as to enumerated item 6,⁸ Mr. Devlin may authenticate items he obtained from either the iPad obtained from Defendant Wadi and the iPhone obtained from Hussain Baker, subject to the search term limitation previously ordered by the Court as to the latter, and may testify to the lack of items, but may not opine as to reasons for any such lack.

SO ORDERED THIS 15th day of May 2023.



FRED BIERY
UNITED STATES DISTRICT JUDGE

data accurately.

⁸ Which states: “Mr. Devlin will discuss the data that he produced running different searches related to Mr. Wadi’s business ventures, Mr. Wadi’s contacts with Hussain Baker and the UCE, Mr. Wadi’s lack of digital history related to terrorism groups in Syria, particularly Fatah Al-Sham, Al-Nusrah Front, etc.”

158a

May 15, 2023

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

BY: Jaemie Herndon
DEPUTY

UNITED STATES OF AMERICA

V.

IMAD EDDIN WADI

§
§
§
§
§
§

CAUSE NO. SA-21-CR-244-FB

ORDER

Defendant Imad Wadi's motion to reconsider and to dismiss is DENIED.

SO ORDERED on this the 15 day of May, 2023.



FRED BIERY
United States District Judge

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

UNITED STATES OF AMERICA)	
)	
v.	)	Docket No. 5:21-cr-00244-FB-1
)	
IMAD EDDIN WADI,	)	San Antonio, Texas
	)	May 15, 2023
Defendant.)	
)	

TRANSCRIPT OF TRIAL
BEFORE THE HONORABLE FRED BIERY
UNITED STATES DISTRICT JUDGE
AND A JURY

VOLUME I

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Opening Statement by Ms. Saad Lindsey181

1 (8:37 a.m.)

2 THE COURT: You may be seated.

3 Good morning. We have several things to take up here.

4 MS. SAAD LINDSEY: Your Honor, Mr. Wadi I believe is
5 walking up. May I just step outside and -- I've confirmed he
6 was parking just a while ago.

7 THE COURT: Sure. That's fine.

8 *(Defendant enters courtroom)*

9 THE COURT: Okay. The first thing we'll take up was
10 the order that was -- or proposed findings and conclusions and
11 order filed yesterday, I think, or submitted. It has not yet
12 been filed -- although, Ms. Herndon, I think it has been now.

13 THE CLERK: Yes, Your Honor.

14 THE COURT: At any rate, the Court grants that.

15 And, Mr. Rojas, would you give the defense and the
16 government one of those? And --

17 Yes, ma'am.

18 MS. SAAD LINDSEY: Your Honor, in terms of that order,
19 I read that to still permit us to just ask the factual
20 questions about Mr. Baker's phone, in terms of --

21 THE COURT: The order says what it says.

22 MS. SAAD LINDSEY: Yes, Your Honor.

23 THE COURT: Okay. Now, I'm specifically instructing
24 the defense that Mr. Devlin, when he gets on the stand and
25 outside the presence, I'm going to ask him if he has read this

1 order and that he understands what he can and cannot testify
2 to. So, of course, obviously, you all will be asking the
3 questions.

4 All right. That takes care of that for now.

5 Next, defendant's written motion to dismiss, which was
6 filed yesterday, Mr. Roomberg or Mr. Harris, do you all want to
7 respond to that?

8 MR. HARRIS: Yes, Your Honor, very briefly. We
9 basically stand on every --

10 THE COURT: That's all right.

11 MR. HARRIS: Thank you, Your Honor. The outdoor voice
12 isn't what it used to be.

13 We pretty much stand on everything that we previously
14 argued on this. I do want to state for the record, if we turn
15 to the Exhibit 1, which supported this motion, I believe that
16 the defense very reasonably read the reference to an
17 unattributable cellular telephone, for which I'll use the
18 common term "burner." Reading this would appear that it was
19 the CHS communicating to FBI using a burner, and as the basis
20 largely for the motion, at least above and beyond what we had
21 previously discussed.

22 It was the recipient. It was the recipient agent that was
23 using a burner. CHS was using his regular phone, as we've
24 proffered, you know, before, and then deleting as he went.

25 But beyond that, beyond that factual reasonableness

1 understanding, we still state that the defendant is at best
2 speculating about spoliation, *Jencks*, et cetera. FBI preserved
3 everything that it received, and FBI -- excuse me. And the
4 U.S. Attorney has provided everything that FBI received.

5 You know, the defense has never provided either the
6 United States, nor even this Court, an information technology
7 account for the so-called missing data file to the defendant's
8 phone. So, you know, again, we're arguing over the fact that
9 they're seeking to dismiss this indictment over matters that do
10 not exist.

11 THE COURT: Right. Trying to prove a negative?

12 MR. HARRIS: Exactly.

13 THE COURT: Okay. Ms. Saad, any -- I've read this.
14 Any oral response?

15 MS. SAAD LINDSEY: Your Honor, other than what we
16 argued previously, all we would add at this stage is what the
17 government -- how it is now stated is the FBI has -- agents
18 used a phone to accept communications from our client. We
19 don't have any of that information. That's *Jencks* material.
20 That's information that we should have and that that is exactly
21 the case here. We should -- that this case should be dismissed
22 for the grounds stated in the motion, *United States v. Ramirez*
23 cited in the motion.

24 So it's either Mr. Baker had a phone, a new phone that
25 they've never turned over or provided communications or, in the

1 alternative, the FBI agents had a phone that we don't have any
2 of the information, and that phone is what was used to
3 communicate with our client, with the agents and the
4 government. That is *Jencks*, and that is exactly the heart of
5 this issue, is how this electronic data went from Mr. Baker to
6 the FBI --

7 THE COURT: Okay.

8 MS. SAAD LINDSEY: -- and the reliability of that
9 evidence.

10 THE COURT: Okay. Mr. Harris, response.

11 MR. HARRIS: And from the phone, uploaded to the FBI
12 system, to the source reports, all of which have been provided.

13 THE COURT: Okay. And we're talking about this -- the
14 last two pages of -- the source ID is blacked out. The case
15 agent name, Mark Waggoner, July 19, 2017, that's what we're
16 talking about, correct, Ms. --

17 MS. SAAD LINDSEY: Yes, Your Honor. That's the one
18 report we have that acknowledges a new phone in this chain of
19 custody of evidence.

20 THE COURT: Okay.

21 MS. SAAD LINDSEY: And so -- which is new information
22 to us and is nowhere acknowledged how this digital process
23 happened in this case.

24 THE COURT: Well, Mr. Harris, as an officer of the
25 Court, just represented that whatever was on that phone got

1 uploaded and provided. So unless -- I don't know how else we
2 can go.

3 MS. SAAD LINDSEY: And, Your Honor, as defense, we
4 work with the unknown. We don't know and we still today don't
5 know the entire digital process. And so that is our concern
6 and the reliability of that evidence.

7 THE COURT: Well, okay. Well, there's -- this Court
8 has never had any evidence of this U.S. Attorney's office doing
9 anything they should not have done or not providing following
10 *Jencks* and *Giglio* and so forth. So the -- go ahead. The
11 motion to dismiss is denied.

12 All right. The next -- let me see if -- all right. Now,
13 I'm looking at Document 163 and accompanying documents. The
14 motion for order to show cause that was filed May the 12th
15 regarding Hussain Baker.

16 Mr. Roomberg or Mr. Harris, have we already dealt with
17 that? I thought.

18 MR. ROOMBERG: No. I don't think we've dealt with it,
19 Judge, because it's a --

20 THE COURT: Okay.

21 MR. ROOMBERG: It appears to me from that motion that
22 Ms. Saad is asking the Court to do a show cause order to
23 Mr. Baker for taking his phone in and getting a new phone and
24 having it all copied over. So we don't believe it has any
25 basis.

1 But I'm sure if the Court wants to question Mr. Baker
2 outside the presence of the jury, the Court certainly can do
3 that. I think, again, Mr. Baker has already told the Court, he
4 got a phone. He got a new phone. He was told everything
5 was -- would be copied to it. It was. And what wasn't copied
6 and what defense complains about is some artifacts that no
7 layperson, no one other than someone experienced in computer
8 forensics, would even know was on the phone.

9 So he believed he got an exact copy of what he turned in
10 and just got a new phone. He's already told that to the Court.
11 But if the Court wants to question him further, the Court
12 certainly can. But I don't think there's any basis for a show
13 cause order on Mr. Baker.

14 THE COURT: Well, but all of that can be inquired on
15 cross-examination to the extent of, did you have a phone? All
16 that sort of thing.

17 Yes, sir, Mr. Swift.

18 MR. SWIFT: Our point on show cause is this Court made
19 a very specific order. The order was, bring your phone, bring
20 any old phones, bring your phone.

21 And instead of complying with that order, three days before
22 he was going to bring the phone, the representation is he went
23 to a phone store, got a new phone, turned in his old phone, so
24 he couldn't bring any old phones, and brought his new phone.

25 The government says that's not harmful. We say it is. But

1 what we -- cannot be debated is it is not in compliance with
2 the order. If I sat -- if you told me, Mr. Swift, turn over
3 your phone to me, and I said, wait a second, Your Honor, ran
4 and got a new phone, here, Your Honor. Now, they say I said I
5 got a new phone. He wasn't specific that he got a new phone
6 after receiving this order.

7 THE COURT: Okay. Well, I do remember now. I said we
8 would take this up --

9 MR. SWIFT: Afterwards.

10 THE COURT: -- after the trial.

11 MR. SWIFT: Yes.

12 THE COURT: So that's fine.

13 MR. SWIFT: Yes.

14 THE COURT: And if the jury acquits, then it's a moot
15 point.

16 All right. So, Ms. Herndon, remind me of that if we need
17 to.

18 THE CLERK: Yes, sir.

19 THE COURT: Next is Document 165, defendant's notice
20 of intent to use evidence of other crimes. Mr. Harris or
21 Mr. Roomberg, response.

22 MR. ROOMBERG: Your Honor, this would fall within our
23 motion in limine. These are just new last-minute things that
24 defense has dropped on us after two years, and not getting any
25 reciprocal discovery. Just like that other long list that the

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

UNITED STATES OF AMERICA

V.

IMAD EDDIN WADI

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CAUSE NO. SA-21-CR-244-FB

**DEFENDANT’S RESPONSE TO GOVERNMENT’S MOTION IN LIMINE TO
EXCLUDE EXPERT TESTIMONY OF ERIC DEVLIN**

TO THE HONORABLE FRED BIERY, UNITED STATES DISTRICT JUDGE:

Defendant Imad Wadi provided notice of expert witness Eric Devlin, a forensic computer examiner. *See* Doc. 144. The government then filed a motion to exclude Devlin’s testimony in its entirety. *See* Doc. 149. The government mainly takes issue with relevance (under Rules 701, 704, 401, and 402) and prejudice (under Rule 403), opining that Devlin drew purported legal conclusions in his expert report. The government is wrong in its claim that the Court should exclude Devlin’s testimony. And even assuming Devlin drew some legal conclusions, exclusion of the entirety of his testimony is an impermissibly broad remedy.

BACKGROUND

Eric Devlin is an experienced digital forensic examiner, with an impressive background in technology-based law enforcement. *See* Doc. 144 at 1-2. He has testified as a digital forensic expert in federal and state court, including in the Western District of Texas. *See id.* at 2. Devlin will explain to the jury the basics of digital forensic examination and which items of digital evidence he examined in this case. *See id.* at 2-3.

Specifically (and what the government’s response focuses on), Devlin’s expert report indicates (accurately) that he was aware a subpoena—for the examination of Confidential Human Source (CHS) Hussain Baker’s Apple iPhone—was served on Baker in late March of 2023. *See* Doc. 144-1 at 115-16. Devlin did examine the iPhone. According to the Apple Mobilebackup.plist (a log file for the Apple iOS), the contents of Baker’s iPhone were restored from an Apple iTunes Backup on 4/3/2023 at 5:58:14P.M.—*before* the phone was made available for Devlin’s court-ordered examination. *Id.* Based upon Devlin’s training and experience, this indicates that the device was either a new Apple iPhone that was being set up by restoring content from an Apple iTunes Backup, or it was a previously initiated phone that was wiped, reset, and restored from an existing Apple iTunes Backup. Devlin then draws inferences from these facts, which are mainly what the government objects to: “The result of this type of activity is a thwarting of the recovery of deleted Artifacts,” and “[t]he activity’s date on this phone indicates manipulation of the data available for recovery despite court orders to the contrary.” *Id.* at 116.

ARGUMENT

Federal Rule of Evidence 702 sets the gatekeeping framework for when a district court should allow an expert witness to testify, and the current text reads:

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

- (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
- (b) the testimony is based on sufficient facts or data;
- (c) the testimony is the product of reliable principles and methods; and
- (d) the expert has reliably applied the principles and methods to the facts of the case.

Fed. R. Evid. 702.¹ The requirements of Rule 702 can thus be broken down into (1) relevance and (2) reliability. *See Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, 589 (1993). Here, Devlin’s testimony is relevant and reliable—and exclusion of the testimony would violate Wadi’s right to present a complete defense and his due process rights.

1) Devlin’s testimony is very relevant under Rules 702, 401, and 402, and that high relevance is not outweighed by any concerns in Rule 403.

For expert testimony, relevance is required by Rule 702(a): the testimony must “help the trier of fact to understand the evidence or to determine a fact in issue.” Rule 402 likewise states relevant evidence is generally admissible. And Rule 401 defines relevant evidence:

Evidence is relevant if:

- (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and
- (b) the fact is of consequence in determining the action.

Relevance is a “low bar.” *Novick v. Shipcom Wireless, Inc.*, 946 F.3d 735, 741 (5th Cir. 2020).

The government claims Devlin’s findings are not relevant. *See* Doc. 149 at 2, 5. But Devlin’s findings clear the “low bar” of relevance with room to spare. Devlin found that—just

¹ Rule 702 has been amended by 2023 US ORDER 0030 (C.O. 0030), to take effect on 1 December 2023:

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the proponent demonstrates to the court that it is more likely than not that:

- (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
- (b) the testimony is based on sufficient facts or data;
- (c) the testimony is the product of reliable principles and methods; and
- (d) the expert's opinion reflects a reliable application of the principles and methods to the facts of the case.

2023 US ORDER 0030 (C.O. 0030).

after receiving the subpoena for defense examination of his iPhone—the CHS (or *someone*) either (1) set up a new Apple iPhone by restoring content from an Apple iTunes Backup or (2) wiped, reset, and restored a previously initiated phone from an existing Apple iTunes Backup. This suggested to Devlin that the CHS thwarted recovery of deleted artifacts and/or manipulated data available for recovery despite a court order to the contrary. This is highly relevant to impeach the CHS’s credibility—and undercut the reliability of any evidence from this iPhone that the government may use. *See* Fed. R. Evid. 607 (“Any party . . . may attack [a] witness’s credibility”). Devlin’s inferences are fair, and the jury is free to draw the inferences or not.

For the same reason, the testimony—important to impeach a key government witness and undercut key government evidence—is admissible under Rule 403. The probative value is very high. And that high probative value is not “*substantially* outweighed” by any “*unfair* prejudice” or any other concerns in the rule. Fed. R. Evid. 403 (emphases added).

The government mainly claims that experts cannot testify to “conclusions of law” under Federal Rule of Evidence 704, and Devlin’s findings involve what it characterizes as conclusions of law. *See* Doc. 149 at 5; *United States v. Oti*, 872 F.3d 678, 691 (5th Cir. 2017). The Court should not exclude Devlin’s testimony on this ground either. Rule 704 relates to “ultimate issues,” and it just says experts in criminal cases cannot “state an opinion about whether the defendant did or did not have a mental state or condition that constitutes an element of the crime charged or of a defense.” As an initial matter, some of Devlin’s key findings are clearly not conclusions of law: Devlin found that—just after receiving the subpoena for defense examination of his iPhone—the CHS (or *someone*) either (1) set up a new Apple iPhone by restoring content from an Apple iTunes Backup or (2) wiped, reset, and restored a previously initiated phone from an existing Apple iTunes Backup. These are classic expert opinions on facts relevant to the CHS’s impeachment. They do

not tell the jury to reach any conclusions of law or to decide any ultimate issue of fact any which way.

The second part of Devlin’s contested testimony involves the following opinions: that the CHS thwarted recovery of deleted artifacts and/or manipulated data available for recovery despite court orders to the contrary. Even assuming for the sake of argument that these statements are properly classified as “legal conclusions,” there is a simple solution: the Court can just permit Devlin to testify that iPhone evidence suggests to him that the CHS engaged in actions *consistent with* thwarting recovery of deleted artifacts and/or manipulating data available for recovery despite court orders to the contrary. This does not tell the factfinder what conclusion of law to reach. *See United States v. \$9,041,598.68*, 163 F.3d 238, 254–55 (5th Cir. 1998) (no error to allow expert to testify—over a legal-conclusion objection—that party’s behavior was “consistent with” money laundering), *superseded by statute on other grounds as stated in United States v. Melrose E. Subdivision*, 357 F.3d 493, 501–02 (5th Cir. 2004). And not only is Devlin a digital forensics expert—he is also an experienced prosecutor of computer crimes. If law enforcement officers can be deemed experts that can testify that an individual used terminology consistent with drug trafficking vernacular, it would seem to twist reason to say Devlin cannot simply testify to the fact that this witness appeared to modify his phone to thwart discovery or with the effect of thwarting discovery. *See, e.g., United States v. Haines*, 803 F.3d 713, 728–29 (5th Cir. 2015) (allowing drug vernacular testimony).

Finally, even if Devlin is not allowed to testify to the above—that iPhone evidence suggests to him that the CHS engaged in actions consistent with thwarting recovery of deleted artifacts and/or manipulating data available for recovery despite court orders to the contrary—there is yet another solution, though it is admittedly a last resort for Wadi. The Court can simply bar Devlin

from testifying about his opinions that the CHS thwarted recovery of deleted artifacts and/or manipulated data available for recovery despite court orders. There is no need to exclude the rest of his testimony. The jury's knowledge of the subpoena² and Devlin's clearly factual opinions—that the CHS set up a new Apple iPhone by restoring content from an Apple iTunes Backup or wiped, reset, and restored a previously initiated phone from an existing Apple iTunes Backup just after getting the subpoena—will enable counsel to argue Devlin's conclusions (about thwarting the court's order and likely manipulation of evidence) to the jury. Excluding the entirety of Devlin's testimony would be erroneous overkill.

Devlin's contested testimony just impeaches the credibility of a government witness and undercuts the reliability of some of their potential evidence, and the jury (as the fact finder) is free to disregard the testimony and find the witness and any iPhone evidence credible and reliable. It is not improper. It does not ask the jury to draw unwarranted inferences. It does not address an ultimate issue or state opinions on Wadi's mental state under Rule 704. His testimony is admissible under Rules 401, 402, 403, 702, 704, and the remainder of the rules of evidence.

2) Devlin's testimony is reliable.

The government does not really contest Devlin's expert reliability or qualifications. *See generally* Doc. 149. Nor could it fairly do so. As the Court is well aware, the government itself admits—and courts allow—digital forensic expert testimony in trials all the time. So this type of

² The fact of the subpoena—and the subpoena itself—are non-hearsay and thus admissible to show the CHS (the listener) was put on notice of the pending phone inspection before the phone or its data were altered. *See United States v. Dupree*, 706 F.3d 131, 137–38 (2d Cir. 2013) (court order—offered to prove listener had notice and then acted contrary to that notice—was not offered for truth and thus not hearsay); *United States v. Graham*, 477 F. App'x 818, 823 (2d Cir. 2012) (testimony about facts that subpoena was served and not fully complied with were not offered for truth and were thus not hearsay). And regardless, the subpoena is a public record under Rule 803(8). *See United States v. Carthen*, 681 F.3d 94, 100 (2d Cir. 2012) (stating that court order is public record). Whether Devlin or the CHS or another witness testifies about the subpoena, the fact of the subpoena—and the subpoena itself, if needed—are admissible. The same analysis as made throughout this response also shows that such evidence of the subpoena is highly relevant and admissible under Rules 401, 402, and 403—and under Wadi's constitutional rights.

expert testimony has long been held reliable and admissible. *See, e.g., United States v. Wyss*, 542 F. App'x 401, 406–07 (5th Cir. 2013) (allowing government's computer forensic expert to testify); *United States v. Pincombe*, 817 F. App'x 453, 454–55 (9th Cir. 2020) (allowing admission of detective's expert testimony on computer forensics relevant to case). Tellingly, the government does not even request a *Daubert* hearing. The Court should find Devlin qualified and his testimony sufficiently reliable for the jury to hear it and give it its due. It is up to the jury (and the crucible of direct- and cross-examination) to decide what weight to give Devlin's testimony.

3) Barring Devlin's testimony would violate Wadi's right to present a complete defense—a right the government does not itself have.

Exclusion of Devlin's testimony would also violate Wadi's constitutional right to present a complete defense. *See United States v. McGinnis*, 201 F. App'x 246, 252 (5th Cir. 2006) (addressing similar claim). As shown above, Devlin's testimony is vital to the defense's ability to properly impeach and undercut the government's evidence, and it would assist the jury in judging the credibility and reliability of the government's evidence. So the exclusion of the evidence deprives Wadi of his right to present a complete defense. *See generally Crane v. Kentucky*, 476 U.S. 683 (1986). And this fact—that exclusion would violate Wadi's constitutional rights—means the Court should read Rules 401, 402, 403, 702, and 704 in favor of admitting Devlin's testimony, under the canon of constitutional avoidance. *See Clark v. Martinez*, 543 U.S. 371, 380–81 (2005) (when choosing between plausible interpretations, the canon of avoidance instructs courts to avoid a constitutionally problematic interpretation). And the rule of lenity also favors reading the rules to allow the testimony. *See Cargill v. Garland*, 57 F.4th 447, 469–71 (5th Cir. 2023) (en banc) (applying lenity to favor the petitioner). The Court should admit Devlin's testimony.

4) The government claims Wadi's expert disclosure is deficient, by citing provisions in the Federal Rules of Civil Procedure. The disclosure is not deficient.

The government claims Wadi's expert disclosure is deficient under what it frames as Federal Rule of *Criminal* Procedure 26(a)(2)(B), for leaving out two pieces of information: (iii) any exhibits that will be used to summarize or support the expert's opinions; and (vi) a statement of the compensation to be paid for the study and testimony in the case. *See* Doc. 149 at 4. But these requirements are found in Federal Rule of *Civil* Procedure 26(a)(2)(B). The rule governing expert disclosures by criminal defendants— Federal Rule of *Criminal* Procedure 16(b)(1)(C)(iii)— includes no such requirements. Wadi's *criminal case* disclosure is not deficient, and the government makes no contrary claim. Nor does the government request a specific remedy for this supposedly deficient notice, instead confining its requested relief to its argument that the substance of Devlin's testimony is irrelevant and unfairly prejudicial. *See* Doc. 149 at 5. The *criminal case* expert disclosure provides no basis to exclude Devlin's testimony—and the government has not even attempted to argue otherwise.

CONCLUSION

For these reasons, Wadi asks the Court (1) to deny the government's motion to exclude and (2) to allow Devlin's expert testimony. At most, the Court could limit Devlin's testimony to opinions that are not legal conclusions.

May 11, 2023

Respectfully submitted.

MAUREEN SCOTT FRANCO
Federal Public Defender

//s/ ANGELA SAAD LINDSEY
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CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of May 2023, I electronically filed the foregoing Defendant's Motion In Limine with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

Mark Roomberg
Bill Harris
601 N. W. Loop 410, Suite 600
San Antonio, Texas 78216

/s/ ANGELA SAAD LINDSEY
Attorney for Defendant

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

UNITED STATES OF AMERICA

V.

IMAD EDDIN WADI

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CAUSE NO. SA-21-CR-244-FB

ORDER

The government’s motion in limine to exclude Eric Devlin’s expert testimony is **DENIED**. Eric Devlin is hereby **ALLOWED** to testify as an expert witness for Defendant Imad Wadi.

SO ORDERED on this the _____ day of _____, 2023.

FRED BIERY
United States District Judge

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

UNITED STATES OF AMERICA)	
)	
v.	)	Docket No. 5:21-cr-00244-FB-1
)	
IMAD EDDIN WADI,	)	San Antonio, Texas
	)	May 12, 2023
Defendant.)	
)	

TRANSCRIPT OF PRETRIAL CONFERENCE
BEFORE THE HONORABLE FRED BIERY
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

FOR THE GOVERNMENT:

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Proceedings reported by stenotype. Transcript produced by
computer-aided transcription.

Pretrial Conference - May 12, 2023

1 something to the phone. He either got a new phone or he did a
2 wipe of the phone. I'm unclear if the government conceded that
3 he purchased a phone on April 3rd.

4 If we could get clarification on that.

5 MR. HARRIS: That's our understanding.

6 MR. ROOMBERG: Your Honor, if I can address that. He
7 came in court. He told the Court, I got a new phone. They
8 downloaded everything. It's all there.

9 That's what he told the Court. So I don't think there's
10 any doubt about that. And he believed everything was on it.

11 MS. SAAD LINDSEY: Your Honor, the Court -- what he
12 was served with on -- and I can confirm the date. But the week
13 prior, at least -- was a document that says, bring in all prior
14 phones. Don't manipulate any of the data.

15 And now we've confirmed that he not only turned in his old
16 phone and then got a new phone. When you get a new phone, you
17 can choose what you download onto the phone. So, first of all,
18 I would -- at this point, knowing that he has a new phone, Your
19 Honor, I think we would move, based on *Ramirez -- United States*
20 *v. Ramirez*, it specifically addresses that the government's
21 agent deleted or took a phone -- evidence away. *Jencks*
22 material could have been there, communications he had with
23 Agent Martinez, his handler, Agent Wagoner, and that spoliation
24 of evidence.

25 He was under court order, with this Court. And we would

180a
FILED

April 20, 2023

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

BY: Jaemie Herndon
DEPUTY

UNITED STATES OF AMERICA

V.

IMAD EDDIN WADI

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CAUSE NO. SA-21-CR-244

ORDER

On this day, the Court considered Defendant's Motion to Dismiss (dkt #126). The Court having considered the Motion to Dismiss and the response of the Government addressed at the Pretrial Conference held on April 20, 2023, is of the opinion the Motion should be DENIED.

SO ORDERED on this, the 20th day of April, 2023.


FRED BIERY

United States District Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

UNITED STATES OF AMERICA

V.

IMAD EDDIN WADI

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CAUSE NO. SA-21-CR-244

MOTION TO DISMISS

TO THE HONORABLE FRED BIERY, UNITED STATES DISTRICT JUDGE FOR THE WESTERN DISTRICT OF TEXAS:

Imad Eddin Wadi, defendant, moves this Court to dismiss Count Two and Count Three or, in the alternative, to require the Government to elect to proceed upon one of the two offenses charged therein, because both Count Two and Count Three charge two separate and distinct offenses—conspiracy and attempt—and is therefore impermissibly duplicitous.

I. Discussion

An indictment is duplicitous if “it joins in a single count two or more distinct offenses.” *United States v. Baytank*, 934 F.2d 599, 608 (5th Cir. 1991). If an indictment is duplicitous and prejudice results, the conviction may be subject to reversal. A duplicitous count burdens the defendant's Fifth and Sixth Amendment rights by failing to adequately inform the defendant of the charges against him, failing to ensure unanimous verdicts, prejudicing the defendant on evidentiary rulings, failing to protect against double jeopardy, and creating uncertainty that can lead to sentencing and appellate review problems. *See e.g. United States v. Sharpe*, 193 F.3d 852, 870 (5th Cir.1999); *United States v. Lang*, No. 06-30124, 2007 WL 1725548, at *7 (5th Cir. June 14, 2007); *United States v. Starks*, 515 F.2d 112, 116 (3d Cir. 1975).

When an indictment contains a duplicitous count, one possible remedy is to dismiss the count or require the United States to elect which offense it desires to pursue.” *United States v. Jackson*, 926 F. Supp. 2d 691, 705 (E.D.N.C. 2013); *see also United States v. Bachman*, 164 F. Supp. 898, 900 (D.D.C. 1958) (“[I]f there are two or more separate and distinct offenses charged in one count, the indictment becomes subject to a motion to dismiss[.]”).

II. Argument

A. Count Two – Conspiring or Attempting to provide material support to a federal terrorist organization.

Count Two alleges the crime of providing material support to a federal terrorist organization. The statute reads:

Whoever knowingly provides material support or resources to a foreign terrorist organization, or attempts or conspires to do so, shall be fined under this title or imprisoned not more than 20 years, or both, and, if the death of any person results, shall be imprisoned for any term of years or for life. To violate this paragraph, a person must have knowledge that the organization is a designated terrorist organization (as defined in subsection (g)(6)), that the organization has engaged or engages in terrorist activity (as defined in section 212(a)(3)(B) of the Immigration and Nationality Act), or that the organization has engaged or engages in terrorism (as defined in section 140(d)(2) of the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989).

18 U.S.C. 2339B (emphasis added). This statute alleges two different offenses. This distinct offense is also recognized by the Fifth Circuit Pattern Jury Instructions. The relevant portion of the instruction for this offense reads:

“*First*: That the defendant knowingly provided [attempted] [conspired] to provide material support or resources to an organization;”

5th Cir. Criminal Pattern Jury Instructions 2.92B. The elements of the offense require different elements of attempt or conspire to commit the crime.

The superseding indictment in this case alleges both conspiracy and attempt to provide material support, stating “knowingly and willfully combine, conspire, confederate and agree with

each other, to provide and attempt to provide material support.” (Doc. 54). The crime of attempt and the crime of conspiracy are two distinct offenses with different legal requirements.

B. Count Three – Conspiring or Attempting to provide material support to terrorist.

Count Three alleges the crime of conspiring or attempting to provide material support to terrorists and preparing and carrying out such violations. The statute reads:

Whoever provides material support or resources or conceals or disguises the nature, location, source, or ownership of material support or resources, knowing or intending that they are to be used in preparation for, or in carrying out, a violation of section 32, 37, 81, 175, 229, 351, 831, 842(m) or (n), 844(f) or (i), 930(c), 956, 1091, 1114, 1116, 1203, 1361, 1362, 1363, 1366, 1751, 1992, 2155, 2156, 2280, 2281, 2332, 2332a, 2332b, 2332f, 2340A, or 2442 of this title, section 236 of the Atomic Energy Act of 1954 (42 U.S.C. 2284), section 46502 or 60123(b) of title 49, or any offense listed in section 2332b(g)(5)(B) (except for sections 2339A and 2339B) or in preparation for, or in carrying out, the concealment of an escape from the commission of any such violation, or attempts or conspires to do such an act....

18 U.S.C. 2339A (emphasis added). This statute alleges two different offenses. This distinct offense is also recognized by the Fifth Circuit Pattern Jury Instructions. The relevant portion of the instruction for this offense reads:

First: That the defendant provided material support or resources to [attempted to provide material support or resources to] [conspired to provide material support or resources to] _____ (describe person(s) or organization(s) described in the indictment);

Second: That the defendant did so knowing or intending that the material support or resources were to be used to prepare for [carry out] a violation of _____ (describe federal terrorism offense).

5th Cir. Criminal Pattern Jury Instructions 2.92B. The elements of the offense require different legal standards for attempt or conspire to commit the crime. The elements also require different legal standards for prepare for or carry out.

The superseding indictment in this case alleges both conspiracy and attempt to provide material support, stating “knowingly combine, conspire, confederate and agree with each other, to

provide and attempt to provide material support” and “were to be used in preparation for, and in carrying out.” (Doc. 54). The crime of attempt and the crime of conspiracy are two distinct offenses as are prepare and carry out with different legal requirements.

C. Government’s Proposed Jury Instructions

The government, in their proposed jury instructions, elect conspiracy, as opposed to attempt, for Counts Two and Three. Mr. Wadi moves to dismiss the attempt crime or formally request the government make an election on this matter so it is clear to the jury the elements of the offense and unanimity of the their verdict.

The government does not elect in their proposed jury instructions between “used in preparation for” and “carry out.” Their instructions cite both options and use and “or” to link them. This is duplicitous. Defense counsel requests an election on this element as well.

Respectfully submitted.

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Attorney for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of April, 2023, I electronically filed the foregoing Defendant's Motion to Dismiss with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

Mark Roomberg
Bill Harris
Assistant United States Attorney
601 N. W. Loop 410, Suite 600
San Antonio, Texas 78216

/s/ ANGELA SAAD LINDSEY

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

UNITED STATES OF AMERICA

V.

IMAD EDDIN WADI

§
§
§
§
§
§

CAUSE NO. SA-21-CR-244

ORDER

On this day, the Court considered Defendant’s Motion to Dismiss. The Court having considered the same, is of the opinion the Motion should be **GRANTED**.

It is **ORDERED** as follows:

_____ Counts Two and Three are dismissed as prejudicially duplicitous.

_____ The Government must elect the crime they will proceed with for
Counts Two and Three

SO ORDERED on this, the _____ day of _____, 2023.

FRED BIERY
United States District Judge

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

UNITED STATES OF AMERICA)	
)	
v.	)	Docket No. 5:21-cr-00244-FB-1
)	
IMAD EDDIN WADI,	)	San Antonio, Texas
	)	April 6, 2023
Defendant.)	
)	

TRANSCRIPT OF SHOW CAUSE HEARING
BEFORE THE HONORABLE FRED BIERY
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

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Proceedings reported by stenotype. Transcript produced by
computer-aided transcription.

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1 well, everything I have will be in the court.

2 THE COURT: Okay.

3 MR. BAKER: I didn't read what they gave me by that
4 time. So that was a misunderstanding from my side. Then, when
5 I got the other one, I send them all the papers, what I got.

6 THE COURT: Okay. So you have sent them papers?

7 MR. BAKER: Yes.

8 THE COURT: All right. And it appears that the
9 significant issue is this telephone, for the expert to be
10 able -- subject to those limited subjects, to be able to
11 determine if there's anything on the phone that is relevant to
12 the prosecution of Mr. Wadi and his defense.

13 You understand that?

14 MR. BAKER: Yes, sir.

15 THE COURT: You have any objection to turning that
16 phone over?

17 MR. BAKER: No, Your Honor.

18 THE COURT: Okay. And for the record, you are here by
19 yourself without an attorney; is that correct?

20 MR. BAKER: Yes. Yes, Your Honor.

21 THE COURT: And is there -- to your recollection is
22 there anything on that phone that could be communications
23 between you and a lawyer representing you, that we need to be
24 very careful not to impose upon?

25 MR. BAKER: Beside the personal things, no, Your

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1 Honor.

2 THE COURT: Okay. All right. And do you understand
3 that the Fifth Amendment of the Constitution allows you to
4 invoke the Fifth Amendment, to remain silent and not provide
5 the information which is being sought if you feel it might
6 incriminate you?

7 MR. BAKER: Yes, Your Honor.

8 THE COURT: Okay. And then, Ms. Saad, now that we're
9 at this point, how long will it take to do what your expert
10 needs to do?

11 MS. SAAD LINDSEY: Our expert needs to know what type
12 of phone it is and --

13 THE COURT: Okay.

14 MS. SAAD LINDSEY: -- and be able to view it to
15 determine how long it would take.

16 THE COURT: Okay. What kind of phone is it?

17 MR. BAKER: It's iPhone 14 Pro Max.

18 THE COURT: Okay. I-14 Pro Max.

19 MS. SAAD LINDSEY: Okay. Your Honor, our expert is
20 indicating that has only been out for a few months. But we
21 would like to inquire of Mr. Baker if he has any prior phones
22 he's used for communications with Mr. Wadi or any other types
23 of digital devices used in communication with Mr. Wadi.

24 THE COURT: Okay. Are there other phones or --

25 MR. BAKER: Your Honor, when I got this one, I traded

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1 the old one and then got this one, which is -- normally,
2 whatever you have on your phone, it moves up to the new phone
3 with iCloud or whatever.

4 THE COURT: Okay.

5 MR. BAKER: So everything should be here.

6 THE COURT: All right. Any other devices, like an
7 iPad or anything that would have any possible communications
8 relevant to this?

9 MR. BAKER: I don't. Besides this one, I don't have.

10 THE COURT: Okay. All right. And then, Ms. Saad,
11 what other -- well, let me ask Mr. Baker first.

12 What documents have you brought with you today?

13 MR. BAKER: I didn't bring anything. I send
14 everything I have to the attorney.

15 THE COURT: Okay.

16 MR. BAKER: And that's what I have. The rest,
17 actually, I gave it to the FBI, you know what I mean,
18 everything. So --

19 THE COURT: So you've given some documents to the FBI?

20 MR. BAKER: Not right now. I mean, when we were on
21 the process with Mr. Wadi.

22 THE COURT: Right. Okay.

23 MR. BAKER: Yeah. That's it. Everything was going to
24 them directly.

25 THE COURT: Mr. Roomberg.

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1 MR. ROOMBERG: It's our understanding, Your Honor,
2 that when Mr. Baker produced to Ms. Saad, that he gave us a
3 copy of what he produced to Ms. Saad.

4 THE COURT: I see.

5 MR. BAKER: Yeah.

6 THE COURT: Okay. All right. Ms. Saad, are we ready
7 to proceed with the telephone technical aspects?

8 MS. SAAD LINDSEY: Yes. And I'd like to proceed with
9 that as quickly as possible to ensure we can do that --

10 THE COURT: Right.

11 MS. SAAD LINDSEY: -- as fast.

12 But I do have additional matters for Mr. Baker that I'd
13 like to put on the record.

14 THE COURT: Okay. So can we do the phone now?

15 MS. SAAD LINDSEY: Yes.

16 THE COURT: And then, Mr. Baker, at least my
17 understanding of personal use is you have to have some way to
18 get into the phone?

19 MR. BAKER: Yeah. It's a password or whatever.

20 THE COURT: Okay.

21 MR. BAKER: I can --

22 THE COURT: Are you willing --

23 MR. BAKER: With face ID or a password.

24 THE COURT: Okay.

25 MR. BAKER: And whatever they want, I have it.

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1 THE COURT: Okay. All right. So let's get that
2 process started.

3 MS. SAAD LINDSEY: I have a paper. He can write it
4 down for our expert. I have a paper. He could write down the
5 passcode for our expert.

6 THE COURT: Right. Why don't you -- why don't you
7 just write it down so it's not orally on the record.

8 MR. BAKER: Okay.

9 THE COURT: Okay. All right. And then if you'll give
10 the phone then to Ms. Saad, and we'll get that process started.

11 And your equipment's all set up, correct?

12 MR. DEVLIN: It's all right here, Judge. It only
13 takes a moment to set up.

14 THE COURT: What's your best time estimate?

15 MR. DEVLIN: It depends very much on the storage size
16 of the phone, how large the hard drive is of the phone and how
17 full it is. So it could be as short as an hour or two. Could
18 be -- could be --

19 THE COURT: Okay. All right. A range. Well, that's
20 fine. All right. Thank you, sir.

21 MR. DEVLIN: Yes, sir.

22 THE COURT: All right. Ms. Saad, what else did you
23 want to bring up?

24 Well, first of all, before we go any further, I want to
25 make sure Mr. Baker is comfortable that he is protected

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1 vis-a-vis this protective order. So I want to get that signed
2 and filed before we move on.

3 MS. SAAD LINDSEY: Yes, Your Honor.

4 THE COURT: So where are you?

5 Mr. Baker, why don't you have a seat over here until we can
6 get you protected properly.

7 MR. BAKER: Thank you.

8 THE COURT: And then we'll move along.

9 All right. Go ahead. In fact, why don't you come to the
10 lectern --

11 MS. SAAD LINDSEY: Yes, Your Honor.

12 THE COURT: -- Ms. Saad.

13 MS. SAAD LINDSEY: Your Honor, I think the proposed
14 protective order addresses the concerns and your admonitions
15 today address the concerns that Mr. Roomberg, in his academic
16 capacity, has brought forward to the Court.

17 THE COURT: Okay. So is this ready to be signed?

18 MS. SAAD LINDSEY: Yes, Your Honor.

19 THE COURT: Mr. Roomberg?

20 MR. ROOMBERG: Your Honor, I have no problem following
21 that protective order. We have another protective order in
22 place, but I think that will specifically protect the
23 information that Mr. Baker's providing.

24 THE COURT: Okay. All right. So I did have one
25 question on Page 3, paragraph 4. First of all, I think this is

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1 just a typo. But the sentence I'm looking at is the third line
2 down on paragraph 4, "defense's experts." Just for
3 clarification, should that be defendant's experts?

4 MR. SWIFT: It should, Your Honor.

5 MS. SAAD LINDSEY: Yes.

6 THE COURT: Okay. Well, that's fine. I assumed that.

7 "But may also search these devices for documents and images
8 related to interaction with Mr. Wadi, separately subpoenaed by
9 Mr. Baker." That sounds like Mr. Baker issued a subpoena.

10 MR. SWIFT: It is -- I apologize, Your Honor. I'm the
11 author on that.

12 THE COURT: So is that -- that's on you, Mr. Swift?

13 MR. SWIFT: It sure is.

14 THE COURT: So even famous Supreme Court lawyers --

15 MR. SWIFT: Make typos.

16 THE COURT: By the way, I'm obviously -- well, I'm
17 serious, but I also do this because sometimes I think lawyers
18 think that I don't read this stuff. But I do.

19 MR. SWIFT: It should be "separately subpoenaed by
20 Mr. Wadi."

21 THE COURT: "Separately subpoenaed by Mr. Wadi"?

22 MR. SWIFT: Right.

23 THE COURT: All right.

24 MR. SWIFT: The intent of the sentence was to make
25 clear -- was that the search on the devices was only for the

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1 types of documents that we had subpoenaed originally --

2 THE COURT: Right.

3 MR. SWIFT: -- and not to expand that beyond the
4 original documents and conversations that we had subpoenaed.

5 THE COURT: Okay. All right. Well, that's cleared
6 up.

7 And so, for the record, Mr. Baker, I'm now signing this
8 protective order on the 6th of April. All right. Very well.
9 So now -- I'm going to keep it just in case I need to refer to
10 it. But remind me, and I'll give it to you to be filed.

11 Ms. Saad, now, what else do we need to do other than wait
12 for the technical process?

13 MS. SAAD LINDSEY: Yes, Your Honor. And just to --
14 for further assurances, when the protective order is filed, I
15 will also provide our expert with the signed protective order,
16 so he's aware of his parameters as well.

17 THE COURT: Okay.

18 MS. SAAD LINDSEY: In terms of the subpoena, what we
19 would like to do is make sure Mr. Baker understands that he's
20 under an ongoing duty to produce those documents prior to
21 trial.

22 I understand he filed a tax return in 2019 and 2020. We
23 would be seeking a copy of those tax returns.

24 I understand there's a deposition from a medical
25 malpractice suit, where he filed a medical malpractice suit in

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1 Bexar County district court. We have located it. His civil
2 attorney is ready to disclose it, with Mr. Baker's permission.
3 And so given that he's under subpoena to produce prior
4 testimony, we would ask for him to be compelled to either give
5 his civil attorney permission to give that record of the
6 deposition, or we could get an order to provide to his civil
7 attorney to produce it.

8 THE COURT: An order from this Court?

9 MS. SAAD LINDSEY: That would be the last case
10 scenario. But I believe that Mr. Baker's under order to
11 produce prior depositions. It would be at no cost to him.
12 We've located it. We just need to --

13 THE COURT: Okay.

14 MS. SAAD LINDSEY: And so -- and the remaining items
15 of the subpoena would still be in effect.

16 We want confirmation of any names Mr. Baker has used. I
17 understand he has used the name Housin, Housin (phonetic). I'm
18 not exactly sure the pronunciation. I don't know if he's used
19 any other names. And anything else that is compliant to those
20 six items we've requested in the subpoena.

21 THE COURT: Okay. All right. Very well.

22 Mr. Baker, if you'll come back up, please.

23 MR. BAKER: Yes, Your Honor.

24 THE COURT: Who was your lawyer in the state court
25 case?

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1 MR. BAKER: Mr. Jahn (phonetic). He is from Phoenix.

2 THE COURT: From Phoenix?

3 MR. BAKER: Yes.

4 THE COURT: Arizona?

5 MR. BAKER: And I got the message, actually, Friday.

6 So I'm intending to send him authorization to give them any
7 papers they want. That's no problem with me.

8 THE COURT: Okay. Do you have an estimate -- or have
9 you been in contact with your lawyer to say that?

10 MR. BAKER: No, sir. No, Your Honor.

11 THE COURT: When will you do that?

12 MR. BAKER: I was intending to do it today. But
13 because we have the court. So after the court I will send him
14 permission to give them any papers they want from him.

15 THE COURT: Okay. All right. And if there's -- as
16 Ms. Saad --

17 What is it? Anything else?

18 Okay. As Ms. Saad pointed out, you have a continuing
19 obligation, for any of these items that were requested, that
20 you -- you know, you should find them in a closet and you
21 forgot they were there, whatever, then that obligation
22 continues. Do you understand that?

23 MR. BAKER: Yes, Your Honor.

24 THE COURT: And then as soon as you contact your
25 lawyer, if you would keep -- I guess you've had communication

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1 with Ms. Saad, correct?

2 MR. BAKER: No, Your Honor. Just by the time they
3 came in to me. That's it.

4 THE COURT: Okay. Well, if you will keep the Court
5 informed through Ms. Herndon. When we finish here, if you
6 don't have that, she'll give you that. But so that we know the
7 subpoena is being complied with in regard to the civil state
8 court case, and then -- because this matter is getting ready
9 and closer for trial.

10 MR. BAKER: Yes, Your Honor.

11 THE COURT: So everybody needs to get prepared for
12 each side.

13 All right. And then your 2019 and 2020 tax returns, those
14 have been filed?

15 MR. BAKER: I have an appointment with the tax office
16 on the 10th, which is next Monday, at 12:30. And I sent,
17 actually, the information to Ms. Saad. And once I get it, I
18 will send it to them.

19 THE COURT: Okay. And your appointment is with
20 Internal Revenue or a tax preparer?

21 MR. BAKER: Yes. With the -- with the IRS.

22 THE COURT: Okay. All right. And other than the name
23 that Ms. Saad was having difficulty pronouncing, have you
24 been -- have you used any other names?

25 MR. BAKER: No, Your Honor.

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1 THE COURT: Okay. Ms. Saad, anything else?

2 MS. SAAD LINDSEY: No, Your Honor. That's all.

3 THE COURT: Okay. Very well.

4 Mr. Baker, then we'll be at ease.

5 Yes, ma'am.

6 MS. SAAD LINDSEY: Your Honor, we've addressed the tax
7 returns. I don't know if Mr. Baker has -- I don't know how FBI
8 pays Mr. Baker. But if there are any documents when he
9 receives a receipt or any paper document he receives in
10 addition to the money, how -- you know, whether it's a cash
11 payment or whether it's a check, we would request those
12 documents as well.

13 THE COURT: Okay. All right. Well, I think --
14 Now, Mr. Baker, you can have a seat there.

15 MR. BAKER: Yes, Your Honor.

16 THE COURT: I think now, Ms. Saad, that question
17 brings Mr. Roomberg into play.

18 So, Mr. Roomberg, if you'll come to the lectern.
19 Anything -- and I think some of these, if not all, have been
20 addressed in terms of whatever the government has that relates
21 to this issue of payment, you all have turned over or not?

22 MR. ROOMBERG: Your Honor, what -- and if you'll
23 excuse the cough drop.

24 What we have turned over are the amounts, the amounts
25 total, both payment for services and payment for expenses, and

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1 also broken down for since the case with Mr. Wadi, payment for
2 services, payment for expenses.

3 Mr. Baker doesn't get any paper receipts from the FBI. FBI
4 keeps those records. Those records, we would -- we believe are
5 also covered by our CIPA motion, that you'll be reviewing next
6 week.

7 THE COURT: Okay. Well, it would appear so. All
8 right. I think that addresses that issue.

9 And while you're at the lectern, Mr. Roomberg, anything
10 else that you think the Court should take up right now?

11 MR. ROOMBERG: Just for the record, on that point,
12 Your Honor, we believe that we have met our *Giglio* obligations
13 by providing the amounts. And the documents themselves don't
14 add anything. We've put in there that -- in our *Giglio* letter
15 that Mr. Baker was admonished both at the time of payment and
16 annually that he was to report his income to the tax
17 authorities, and Mr. Baker initialed the paper upon payment.
18 But we put that in our letter as well. So we believe the
19 *Giglio* information has been provided.

20 THE COURT: All right. Very well.

21 And I think all of us who do this understand this, but the
22 burden of proof, of course, is on the government beyond a
23 reasonable doubt to the jury, but also to comply with all of
24 the standard obligations that the government has to help the
25 Court ensure that Mr. Wadi has a fair trial.

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1 And if at some later date it is found that those
2 obligations are not met, then the government has expended
3 enormous amounts of resources, to no avail, that will lead --
4 if there was anything not done properly by any of us, that will
5 lead to having to do this all over again. So one would think
6 that is not only an ethical and professional obligation, but
7 just as a practical matter, clear motivation to get this done
8 correctly the first time.

9 All right. Ms. Saad, anything else you wish to bring up?

10 MS. SAAD LINDSEY: Your Honor, it seems as if the
11 Court will be reviewing documents, that we do believe are *Brady*
12 and *Giglio*, next week. We would just like to point out that
13 the timing and the amount of this \$338,000 matters and the
14 ability to cross-examine Mr. Baker with documentation to show
15 the timing and amount matters for purposes of having a fair
16 trial for Mr. Wadi.

17 And so when reviewing those documents, we'd ask the Court
18 to consider that, because it's our understanding the government
19 does not believe it falls -- it falls under their *Brady* and
20 *Giglio* obligations.

21 THE COURT: Okay. Hold on. Let me make a note of
22 that.

23 Okay. All right. Anything else, Ms. Saad, right now?

24 MS. SAAD LINDSEY: Not at this time, Your Honor.

25 THE COURT: Okay. All right. Well, Mr. Baker, the

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1 Court will be meeting next Wednesday about what we've been
2 talking about, among other things. But in the meantime, when
3 you are up here at trial, you can expect that defense counsel
4 will be asking you, well, we have this X amount of money, and
5 they will be asking you when and how many -- you know, what
6 kind of payments and so forth.

7 So be prepared -- and you'll be under oath, of course -- to
8 search your memory bank and be able to answer those questions
9 fully and truthfully about when the payments came. And, now,
10 whether or not the Court is going to allow the documents from
11 the government to be turned over, that's still an open
12 question. But, certainly, you will be probably asked those
13 questions and need to think about -- and make a timeline
14 yourself to refresh your recollection and so forth.

15 Mr. Baker, do you have any questions at this time?

16 MR. BAKER: No, Your Honor.

17 THE COURT: All right. Mr. Roomberg, anything
18 further?

19 MR. ROOMBERG: No, Your Honor.

20 THE COURT: All right. We'll be in recess then until
21 the forensic examination is completed, and the staff will let
22 me know. Thank you.

23 *(Recess at 11:36 a.m. until 1:56 p.m.)*

24 THE COURT: You may be seated. Thank you.

25 All right. Ms. Saad, if you'll bring us up to date on

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1 where we are and --

2 MS. SAAD LINDSEY: Yes, Your Honor. The phone has
3 been imaged by our expert. And so we are ready to turn the
4 phone back over to Mr. Baker.

5 THE COURT: All right. If you'll do that, please.

6 MS. SAAD LINDSEY: So Mr. Devlin's giving Mr. Baker
7 his phone.

8 THE COURT: Okay. All right. Well, thank you,
9 Mr. Devlin, for getting us this far.

10 Our Clerk of Court is also a Devlin.

11 MR. SWIFT: Wonderful name. Got to love it.

12 THE COURT: All right. Ms. Saad, so I think we're --
13 for today, do we need to do anything else?

14 MS. SAAD LINDSEY: No, Your Honor. I'm understanding
15 that Mr. Baker has Ms. Herndon's information and will update
16 the Court accordingly based on the subpoena obligations.

17 THE COURT: Yes. I'm glad you mentioned that.

18 For the record, the motion to show cause is declared to be
19 moot because the Court finds that Mr. Baker has complied thus
20 far to the best of his ability. The phone has been used for
21 the purposes for the defense.

22 And, Mr. Baker, you are reminded, once again, that you have
23 a continuing obligation to provide any information relevant to
24 this case.

25 All right. Very well. We are in recess. Thank you.

Show Cause Hearing - April 6, 2023

1 * * *

2 (1:57 p.m.)

3

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-oOo-

5

I certify that the foregoing is a correct transcript from
6 the record of proceedings in the above-entitled matter.

7

8

Date: 4/24/2023

/s/ Chris Poage
United States Court Reporter
262 West Nueva Street, Rm. 1-426
San Antonio, TX 78207
Telephone: (210) 244-5036

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

UNITED STATES OF AMERICA)	
)	
v.	)	Docket No. 5:21-cr-00244-FB-1
)	
IMAD EDDIN WADI,	)	San Antonio, Texas
	)	June 28, 2021
Defendant.)	
)	

TRANSCRIPT OF ARRAIGNMENT AND DETENTION HEARING
BEFORE THE HONORABLE HENRY J. BEMPORAD
UNITED STATES MAGISTRATE JUDGE

A P P E A R A N C E S:

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COURT RECORDER: FTR Gold

Proceedings reported by electronic sound recording. Transcript produced by computer-aided transcription.

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1 home country could result in his death because that is a
2 war-torn country.

3 His entire family is here today. All of his children are
4 here, I think, besides the minor child.

5 THE COURT: Tamur (phonetic).

6 MS. SAAD LINDSEY: Tamur. Many people from the
7 community are willing to put money on the line for Mr. Wadi.
8 His own imam, spiritual leader, is here and also willing to do
9 that.

10 Mr. Wadi has no criminal history, no history of alcohol or
11 drug use, no history of mental illness that raises any
12 additional concerns for the Court.

13 Mr. Wadi -- in terms of penalties, I'd like to just point
14 out, there's absolutely no question this is a very serious
15 charge. Mr. Wadi is facing life. But so are many of our drug
16 clients, ten to life charges. Yes, there is an additional
17 mandatory minimum in this case. But I do believe that the
18 strength of the case is a strong counterbalance in a
19 consideration of the -- of those type of penalties.

20 Mr. Wadi -- we are proposing the Court to consider multiple
21 factors of release. And I don't think that they're all
22 required, but would like to offer all of the different types
23 that the family and Mr. Wadi would be happy to accept to avoid
24 detention. Home detention, a curfew, GPS monitoring, removing
25 any internet-accessible device from whatever home he is to live

1 in.

2 There are three different homes he could live in, with his
3 daughter, Randa, in Dallas; his home where he lives now with
4 his wife and three children, two daughters and a son; and,
5 lastly, his son, Amer -- to live with Amer and Alyssa just down
6 the road from their home. All three are suitable residences
7 that he could reside in. All willing to sign bail bonds for
8 him and be third party custodians.

9 Your Honor, I can't imagine a better rebuttal to this
10 presumption in terms of the community support, the ties to the
11 community.

12 And Mr. Wadi looks forward to the opportunity to listen to
13 these recordings. And I think these recordings will show
14 additional facts that weigh against the government's claim of
15 dangerousness. But we do believe there are conditions that
16 could be set in this case, and we'd ask you to set those, Your
17 Honor.

18 THE COURT: All right. Very well. Thank you.

19 MS. SAAD LINDSEY: Not to mention the collateral, Your
20 Honor. I did want to highlight that.

21 THE COURT: Yes. Yes, ma'am. Thank you.

22 MS. SAAD LINDSEY: Thank you.

23 THE COURT: All right. Mr. Wadi, you've heard what
24 the attorneys are talking about. My job in these cases is to
25 decide whether there are conditions I can set which will

Government Exhibit 22 – June 17, 2020

Transcript of Recorded Audio on
June 17, 2020 at 17:29:45

CHS: Confidential Human Source
Wadi: Imad Wadi

Abbreviations:

[UI] Unintelligible
[PH] Phonetic
LC Letter of Credit



Imad Wadi



Confidential Human Source

SPEAKER TRANSCRIPTION

Wadi: Brother, our situation did not change.
CHS: Just so you know most importantly, he wants to know if you are still with the guys over there –
Wadi: We still are.
CHS: --Or everything have changed.
Wadi: Everything is still as it was, but we...the situation with them is weary because...
CHS: Of course, because of the delay and because of these matters.



Imad Wadi



Confidential Human Source

Wadi: The think we are receiving aids and we are holding it [UI], on the contrary, of course we, because of the Corona [UI]. From our end, we want to help, but things [UI], the whole world stopped, it stopped drastically meaning. We hope with the grace of God almighty, that things will change.

CHS: Say, Oh God.

Wadi: God is generous.

CHS: God willing, for us now; what should I inform him?

Wadi: My problem is the LC.

CHS: We will talk later about the LC.

Government Exhibit 20b - June 11, 2019

Transcript of Recorded Audio on
June 11, 2019 at 13:06:18

CHS: Confidential Human Source

Wadi: Imad Wadi

Abbreviations:

[OV] Overlapping voices



Imad Wadi



Confidential Human Source

SPEAKER TRANSCRIPTION

CHS: God bless you, no. Are you going to speak with Barodi or shall we just chat with each other?

Wadi: Before that, just tell me about you and your news.

CHS: By God, I hope all will be well. [Squeaking noise] I talked to him yesterday, God willing all the matters are good. He will return to Kuwait after two weeks, either he will give it to Al-Abrar, or he will transfer it to us. I do not like him to – uh – transfer money here and then we would have to transfer it over there.



Imad Wadi



Confidential Human Source

Wadi: It may be better sent directly to Columbia [OV]
CHS: [OV] Can he do it that way?
Wadi: [OV] ah – we are now ready to receive any amount of money now. Thank God, our account is now well established and –
CHS: [OV] that is the same account you provided me with – is it the same account?
Wadi: Yes, yes, yes. Our situation with the bank is 100% and everything is perfect!
CHS: [OV] The account that deals with vehicles?
Wadi: Yes, yes.
CHS: That is the same account?
Wadi: The same account.



Imad Wadi



Confidential Human Source

Wadi: It may be better sent directly to Columbia [OV]
CHS: [OV] Can he do it that way?
Wadi: [OV] ah – we are now ready to receive any amount of money now. Thank God, our account is now well established and –
CHS: [OV] that is the same account you provided me with – is it the same account?
Wadi: Yes, yes, yes. Our situation with the bank is 100% and everything is perfect!
CHS: [OV] The account that deals with vehicles?
Wadi: Yes, yes.
CHS: That is the same account?
Wadi: The same account.



Imad Wadi



Confidential Human Source

CHS: The one that Abu-Sayf had initially?
Wadi: The same account – that is the same account.
CHS: Excellent -- that is that – everything is set then. Can he transfer money directly then?
Wadi: He can transfer direct...
CHS: We do not want his name to be there as an intermediary.
Wadi: But I have, I told him. He wants to be able to purchase meat, beef, or coffee or sugar. Whatever he wants, it is available.
CHS: I proposed to him the issue of Al-Abrar and he does not have a problem, I mean.
Wadi: M-Hmmm Al-Abrar, Al-Abrar cannot be used to hide this amount. You cannot hide an amount of 8 or 9 million!
CHS: Nine.



Imad Wadi



Confidential Human Source

Wadi: Yes. No, if one is transferring this amount, you should stay away from that organization. The money is transferred to us with the “intention” of it being for investment. He can earmark it for investment, he can label it as investment, he can label it as money for a purchase contract of beef --

CHS: [OV] this means, this means...

Wadi: [OV] – he can label it as “purchase agreement”—this means that, uh – what is that called – for example; we can draft a purchase agreement for meats, for beef, for sugar, or to purchase coffee.

CHS: Okay.

Wadi: Any, any, anything he has an interest in we can make a purchase agreement based on that.



Imad Wadi



Confidential Human Source

CHS: I think it would be best that he would use another person's name to do this – so should he use another person's name?

Wadi: For sure, it would be best to send it via someone else.

CHS: Via another person.

Wadi: A money exchange establishment.

CHS: Exactly. It is not necessary to have an exchange place handle – so he would know how to proceed.

Wadi: M-mmm

CHS: but ...ah –

Wadi: There is no problem.



Imad Wadi



Confidential Human Source

CHS: -- he is ready and everything is set and well – thank God.
That is it. There is no problem.

Wadi: By God –

CHS: [OV] he was very happy to see the photos, for this reason
I told you to speak to al-Barodi.

Wadi: [OV] you will not believe the total need for a
slaughterhouse. One is really badly needed. I will go
down to Egypt to sign the agreement. It is necessary to
have the slaughterhouse already set-up before that.

CHS: When will you go to Egypt?

Wadi: By God, I was supposed to be there on the first of last
month to tell you the truth.

CHS: Is that so?



Imad Wadi

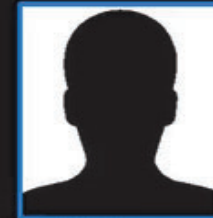


Confidential Human Source

Wadi: Oh, yes! I have been delaying and postponing –
CHS: You should have told me so I can go with you!
Wadi: -- our situation has not –
CHS: Seriously, I have no problem going down to Egypt. On
the contrary – I have lived in Egypt for three years.
Wadi: [OV] I am ready. Now I have to take two trips, one to
China and one to Egypt, frankly.
CHS: Nice.
Wadi: Both trips are only for the purpose of signing agreements.
CHS: Wow! God bless. When is it supposed to uh--



Imad Wadi



Confidential Human Source

Wadi: We are waiting for uh –
CHS: To have the slaughterhouse set-up first.
Wadi: It is preferable to have a slaughterhouse all set-up because if we do not have a slaughterhouse, our profits would be secondary. However, if we do have a slaughterhouse, of course the profits will grow. This is the difference.

Government Exhibit 14 – February 13, 2019

Transcript of Recorded Video on February 13, 2019 at 01:01:17

CHS: Confidential Human Source
UCE: Undercover Law Enforcement Employee
Wadi: Imad Wadi
Barodi Daniel Barodi

Abbreviations:

[UI] Unintelligible
[OV] Overlapping voices
[PH] Phonetic

**Transcript of Recorded Video on
February 13, 2019 at 1:17:28**

CHS: Confidential Human Source
UCE: Undercover Law Enforcement Employee
Wadi: Imad Wadi
Barodi: Daniel Barodi

Abbreviations:

[UI] Unintelligible
[OV] Overlapping Voices
[PH] Phonetic
[MC] Multiple Conversations

Barodi: Yes. With regards to the – the – the – They need to be two payments just like the invoice that I gave to the bank.

UCE: With Allah's permission.

Barodi: The 250 and the other one. With his majesty's permission. Out of the 250, 100 is going directly to them.

UCE: With Allah's permission.

Barodi: If it is not 100 to be exact, almost 82,000 exactly.

UCE: Alright. 82,000.

Barodi: Yeah. Yes. I have invoices for those 82,000.

UCE: Alright and - - -

Barodi: Those will directly – those – those – directly [sic] and, Allah willing we will close on eh . . .



UCE: Well, what will those 82,000 [OV] be able to bring - bring? [OV] Those 82,000.

Barodi: ... the slaughterhouse. [OV]

CHS: [Multiple speakers] They will bring them [UI]

UCE: What will they bring? [OV] I mean what is it? So that I can - - -

Barodi: By Allah, by Allah, at the moment, the things that are needed by the people who are staying in the mountains currently - at the moment.

UCE: Yeah.

Barodi: At the least so they can eat and drink now, at the least food and drink



UCE: It -- it [OV] - - -

Wadi: There will be food, drink, and things going in the container [OV] [U]

UCE: Yeah. Well, the food container is appreciated; the food and drink. However, I want - - -

Barodi: No. No. No. No. That is not for food and drink. That is for other things over there.

UCE: Yeah.

Barodi: For other things.

UCE: Alright.

Barodi: Yeah. Yes. I mean they brought [PH] them. [*sic*] Those will go directly.



UCE: That means will they bring things directly from Ukraine that they can use and we might [OV] then hear something soon, Allah willing? [OV] Which is that – that – that – that something good, with Allah's permission – something good.

CHS: [MC] that you spend [UI].

Barodi: [MC] [UI] Allah willing, you will see - Allah willing, you will hear and see good things, Allah willing. With his Almighty's permission.

CHS: [Clears throat.]

UCE: That means you could send, for example – such as – [MC] for example, he could send, for example - such as – for example – eh – [MC] a short video or something to let him view. Because, you know, seeing is believing.



Wadi: [Background conversation. Low voice.]
[REDACTED TEXT]

CHS: [Background conversation. Low voice.] [UI]
Direct?

UCE: Or is it not possible?

Barodi: It is possible. Why not? Allah bless you.
Whatever you want.

←UCE: No – I know [OV]. I just also want to be – I mean
eh... I mean we want to also be reasonable. [MC]

Wadi: [MC] If you want [UI] now [UI] buy with them [UI]
the payment will be a second payment. We will
send them the amount [MC]

Barodi: [MC] Allah willing. Allah willing. [Stutters]

CHS: [MC] Why don't you send the full amount.



Barodi: [MC] [UI] will reach you, Allah willing. We will send the news that we get to you directly.

Wadi: [MC] Huh?

CHS: [MC] Why not the full amount. Why only 82? Why not the full amount?

Wadi: [MC] [UI] the slaughterhouse [UI] the slaughterhouse down payment.

UCE: [MC] Fine. And the weapons [Stutters] - - If he asks me, for example, about the issue of eh... The weapons – is it going to be Russian weapons that will go there? What is it exactly?

CHS: [MC] [UI]

Wadi: I do not have a problem



Government Exhibit 13a – January 17, 2019

Transcript of Recorded Audio on
January 17, 2019 at 14:12:48

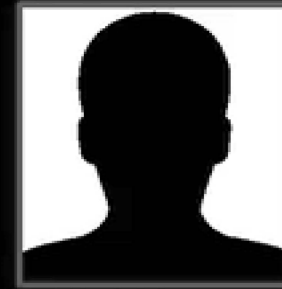
CHS: Confidential Human Source
Wadi: Imad Wadi

Abbreviations:

[OV] Overlapping voices
[UI] Unintelligible
[PH] Phonetic



Imad Wadi



Confidential Human Source

CHS: Good? So I told him, "By Allah, I do not - - to be frank, I mean, I was not totally sure " [OV] - - -

Wadi: You – you – you sat down and talked with the guy on the front line... In Idlib. They are now all grouped up in Idlib. All the fighting is in Idlib now. There is none - - there is none in the rest of Syria. There is nowhere other than Idlib. All of the - - - [SC]

CHS: There is what?

Wadi: - - - All of the – the – the fighting between the government and the Free Army and the Jabhat Al – the men's group, Fatah Al-Sham and the other one, all of it is in Idlib. Because they have gathered them all up in Idlib.



Imad Wadi



Confidential Human Source

CHS: OK.

Wadi: Idlib and - - I mean between Idlib, Lattakia, Aleppo, and the northern Hama.

CHS: Nice!

Wadi: That is the area where they [UI]

CHS: Nice!

Wadi: Our guys

CHS: Let me – let me continue something, I – I - I am glad that you - - I want to tell you something, because what I have now is from him... is an open book. So, I want us to be open, because I will report ... this discussion to him such that he will take action. You understand? So, go ahead.



Imad Wadi



Confidential Human Source

Wadi: Fine. In other words, are we going to buy the slaughterhouse, or not?

CHS: OK. We go at it again. The man will pay the amount that you asked - - -

Wadi: Yes.

CHS: - - - and more.

Wadi: The additional amount will go the group.

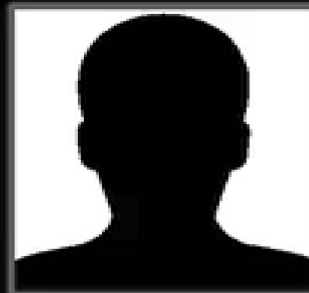
CHS: No. Not just those. The additional amount is even in investing - - -

Wadi: Yes.

CHS: - - - but it is not his business. He told me. "I do not care. I don't care if you buy all of Colombia and not only a slaughterhouse."



Imad Wadi



Confidential Human Source

Wadi: Yes.

CHS: "I do not care. Neither do I- - -" [OV] He tells me – he tells me – he tells me [OV]

Wadi: [OV] The revenue- the revenue - the revenue goes to help the group.

CHS: Not only helping the groups. He wants validate that this - - I mean when we told him, "They will go - - there is aid that will go to the – the - the –

Wadi: Orphans.

CHS: - the orphans and so on. He told me, "Son, I am paying. I – you do not know me. I have whole charity institutions that are delivering things that you cannot imagine. However, I have come to hate this..."



Imad Wadi



Confidential Human Source

Wadi:

The dog.

CHS:

“The dog that is there. Hence, I want to make sure that what goes over there, goes to the - - -”

Wadi:

Mujahidin.

CHS:

- - - “Mujahidin.” You understand? He liked - - So that I – I – so that I give it to you from the beginning. I am talking to you now because I got from him - - I told him, “[REDACTED TEXT] [PH], I want...”

Wadi:

Move forward.



Imad Wadi



Confidential Human Source

CHS: Not only move forward. "I want to know from the folks whether it is a "Yes" or a "No". Because they are tired. They got tired and I got tired." He told me, "Son, I want the people that fight – that defend. Now, what money?! I can give you whatever you want." He tells me, "I – my interest in Barodi was for a very simple reason. When you told me that he has family over there and so on and so forth.

Wadi: [Moans]

CHS: You understand? So, what I want from you now is to talk. Because we even need to talk to Barodi. But what I want from you now is to tell me - - The money will be coming your way.



Imad Wadi



Confidential Human Source

Wadi: Fine. This is Barodi. Talk to him directly. He can give you the numbers if you want. You can talk to the front lines. You can talk to the group directly.

CHS: Excellent.

Wadi: You do not have any problem.

CHS: Excellent. Abu Omar, have you understood what I mean now? [OV]

Wadi: No problem. There is no problem.

CHS: I mean the money that he is giving is not intended to buy a slaughterhouse. I hope that you even buy... [OV] all Colombia's sheep.

Wadi: [OV] it's alright [UI].

CHS: As you can imagine, this money is at your disposal as an investment. Anything that even – even the money that will come, he does not want to - - -

Government Exhibit 11 – November 8, 2018

Transcript of Recorded Conversation
on November 08, 2018 at 9:58

Barodi: Daniel Barodi
UCE: Undercover Law Enforcement Agent
CHS: Confidential Human Source
Wadi: Imad Wadi
UM: Unknown Male

Abbreviations:

[UI] Unintelligible
[OV] Overlapping voices
[MC] Multiple conversations
[PH] Phonetic

Transcript of Recorded Conversation
on November 08, 2018 at 21:18

Barodi: Daniel Barodi

UCE: Undercover Law Enforcement Agent

CHS: Confidential Human Source

Wadi: Imad Wadi

UM: Unknown Male

Abbreviations:

[UI] Unintelligible

[OV] Overlapping voices

[MC] Multiple conversations

[PH] Phonetic

SPEAKER TRANSCRIPTION

- CHS: OK. We go back again to where we were. [UI] Oh yeah... Explain it to me.
- Barodi: We export to a Turkish company - - -
- CHS: [OV] you will send coffee... sugar...
- Barodi: - - - Coffee and sugar. [UI]
- CHS: The sugar that you have told me about?
- Barodi: Yeah. Yes.
- CHS: From Brazil?
- Barodi: [OV] From Brazil. We buy cheap sugar from Brazil. - - -
- CHS: [OV] OK.
- Barodi: - - - for \$220 a ton.
- UCE: The ton is for \$220?
- Barodi: \$220 in Brazil. A monthly contract [UI] we buy it for 220. [UI] of course more expensive. For those guys, we sell it for 220.
- CHS: To Turkey. [Noise] [UI] in Mersin.

- Barodi: In Mersin, we write the invoice for 200- - -
CHS: [OV] for 220. [UI]
Barodi: Yes. 220. However, in reality the guys over there will take the rest of the profit. It will be in the form of a bank credit, SBNC [PH] that is open between Brazil and the company over there.- - -
UCE: [OV] they will send you a- - they will send you a bill [*sic*].
Barodi: - - - [Stutters] No. I am not [Noise] [UI]... they will work with each other.
CHS: OK. The ones in Mersin are the ones that will deal with his nephews and with- - -
Barodi: [OV] Yes. Yes. Yeah. Yes. They will deal with them directly. Yeah. Yes. Dealing is mostly with him. I mean our people with those.
CHS: Now, your people, the folks that are there... It's alright, I am asking. You know as I have told you that I am asking for the purpose of clarifying the picture. So the young men that are in control over there are your brother - - -

Barodi: Part of the ones who are in control over area in Sarmadah [PH]. Yeah. Yeas.

CHS: - - - [OV] Sarmadah?

Barodi: The city of Sarmada, Al Mu'arra... This area in Idlib. They are the ones that are in charge.

Wadi: [OV] [UI] Sarmada all of this - - - [OV]

Barodi: [OV] Villages.

Wadi: - - - in the Idlib region, region. They are all Idlib regions [UI] [OV]

Barodi: These Hama's groups.

CHS: OK...

Barodi: Because they were among the first people and they liberated those areas and they are still in those areas [OV] by the grace of Allah almighty!

CHS: [OV] May Allah give them strength. May Allah give them strength. Fine. They will receive based on that...

Barodi: They will receive over there, and take action.

CHS: They will receive cash.

Barodi: Cash. Yeah. Yes.
CHS: OK.
Barodi: They will tell you how they spend the cash. A 100%
where it was spent.
CHS: We do not want to know. What is important is that we
know that they receive [*sic*]. - - -
UCE: [OV] Wait. [UI] How long will it take for the money to
arrive?
Barodi: Here?
CHS: There.
UCE: Over there. Over there... the money arrives. [UI] - - -
CHS: [OV] [MC] [UI] I mean [UI] the money.
Barodi: If we ship today...
UCE: Yeah... Today you have the money - - -
Barodi: I have the money today.
Wadi: [OV] Within 2 weeks.
Barodi: I export within a week from here. I export... It can reach
there [Noise] within 22 – 23 days.
CHS: Nice!
Barodi: 27 days at most if there [UI] the Mediterranean Sea. The
money will be at their location after [UI].

CHS: well, how do they bring it in [UI]? - - -
Wadi: [OV] It takes a month for [UI] - - -
Barodi: [OV] We [UI] week, week, week, week
UCE: [OV] Week?
Wadi: [OV] that means between one month and two months, it
will be - - They will receive it, a month from now.
UCE: That means [UI] finish?
Wadi: [OV] 4 - -
UCE: 400,000?
Wadi: 400,000 monthly.
Barodi: Monthly. [Pause] We will ship a container every week,
every week a container, every week a container.
CHS: Now, will you buy again using the money that will come
from him?
Wadi: Of course.

Government Exhibit 10 – October 10, 2018

**Transcript of Recorded Video on
October 10, 2018 at 12:12:29**

CHS: Confidential Human Source

UCE: Undercover Law Enforcement Employee

Wadi: Imad Wadi

Abbreviations:

[UI] Unintelligible

[OV] Overlapping voices

[PH] Phonetic

LNU Last name unknown

Wadi: [OV] Oh yes, of course yeah. Brother, because, I mean, we have big plans. We have--- I told you, farms and etc. We have a big plan, Allah willing, If Allah facilitate for us. At the beginning, the slaughterhouse---

[Throat clearing]

--- the slaughterhouse by itself is a great investment.

UCE: Ok. Of course we are talking frankly, so let me tell you, uh- what I can---

Wadi: Okay.

UCE: ---get you...Nine.

Wadi: Nine million?

CHS: Is this going to be the first one so we can we can see how it goes?



UCE: Investment, I can put nine million.
Wadi: Nine million.
UCE: I know you said, uh, that we really need---[OV]
Wadi: [OV] We have to work with them--- [OV]
CHS: Do you mean nine million including the portion that [OV] you are going to send---
UCE: Five percent, 450, 450, 5%---
CHS: The portion that will be taken out. Eight and a half is the amount that will be for you.
Wadi: Honestly, we will have talk to Abu Muhammad.
[Throat clearing]
We have to present it to these people and we have to work the million in payment for them.



UCE: I am not-[OV]

Wadi: No, No, I am telling---[OV]

UCE: That is a lot of money.

Wadi: Yes, yes, yes, yes.

UCE: For me it is. [OV][UI]

Wadi: For everyone. [OV]

UCE: Yeah, I mean---

Wadi: Anybody.

UCE: Nine, nine is going to be like nine and a half. No, exactly, it is going to be eight- --

CHS: Eight and a half.

UCE: Eight and a half, eight---

CHS: Eight and five hundred and fifty.



UCE: ---and fifty and 450 uh---[OV]

Wadi: We just have to work the balance with them in payments. And I think the--- [OV][UI]

UCE: [OV][UI] That is what you need.[OV]

CHS: [OV] And after that---[OV]

Wadi: [OV][UI] it will be workable.

CHS: --- Is, is this going to be the first step?

UCE: With Allah's permission. [Car horn]

CHS: And after that, we will assess how the business is doing and there could be a continuance and investment. [OV]

UCE: I hope, as we always say Allah willing and with Allah's permission, I understand and the first quarter is going to be difficult. We have good hope and good intentions.



CHS: [Throat clearing]

UCE: The overhead, doing what--- and the shift, and others things--- I, I understand.

Wadi: Yes, Yes.

UCE: But, also in a way, I am not- I am not expert and if I were to tell you I am an expert in these things I will be lying to you. No, I am not.

Wadi: No.

UCE: I will leave to you all the logistics. You do what --
-

CHS: [OV][UI]

UCE: ---[OV] [UI] an advice-[OV][UI]

CHS: An investment, to him he is investing the money.

Wadi: Yes.



UCE: That is exactly what it is. [OV] Putting money
[OV][UI]

Wadi [OV] There is no problem what so ever. The only
thing is how are we over there – how we are
going to be able to do on the ground with the
owner [*sic*]. But, let me---

UCE: How much is owner asking?

Wadi: The owner? Ten million dollars.

UCE: Is the owner one owner?

Wadi; Ten million. A family.

UCE: One, a family, one owner.

Wadi: Yes.

CHS: Ten million and three million for improvements.



Wadi: By the way, if you want to build something like this right now, it costs you about twenty two, twenty three million dollars minimum, minimum; if you want build something like this.

UCE: [UI] I want to tell you. I want to ask a question, please do not be upset with me, just a question. Why, why not other people are [sic] buying it since..? [OV]

Wadi: There are now-That is what we are telling you. We are pushing for time. Because now there is somebody, Olympica [PH] wants to buy it.

UCE: So what can you see---[OV]

Wadi: The firms that are currently receiving from the slaughterhouse 400 to 500 cows [OV]---

UCE: [OV][UI] to know---



Wadi: ---those are our competition right now.

UCE: Okay. With eight and a half, what can you do?

Wadi: Now, the only thing we have to negotiate with them. I mean we have to negotiate with them, uh, get down on the table and see what we can do and workout, uh, if they can come down would be great if they don't we just have to [Background noise] take a payment for the balance. We have to take payments. [OV]

UCE: I am not going to tell you okay and then later, uh, uh, I am telling you this that is what I can do and of course I do not want anything to be tied to the Shayikh everything is going to be in my name.

Wadi: There is no problem.



UCE: So -

CHS: Now, now: is it possible that this is the first step?
What I mean if they made the payment and so forth, and after a period you see the results. Is it possible that we can invest another amount?

UCE: Everything is with Allah's permission---[OV]

CHS: Good.

UCE: I cannot send you---. [OV]

CHS: Yeah, yeah, yeah. [OV]

Wadi: [OV] I understand. Not a problem.

UCE: --- [OV] Because I, because I, who knows what can happen. So we will leave it to our Lord and to Allah---

Wadi: No allah other than Allah.



Government Exhibit 9 – October 9, 2018

Transcript of Recorded Audio on
October 9, 2018 at 21:25:01

CHS: Confidential Human Source

WADI: Imad Wadi

< Abbreviations:

[UI] Unintelligible

[OV] Overlapping voices

[IA] Inaudible



Imad Wadi



Daniel Barodi



Confidential Human Source

Wadi: Through the Turkish Government, or through people in Turkey?

Barodi: By-by way of people in Turkey. But they are authorized by the Turkish Government

Wadi: They are licensed by the Turkish Government

CHS: Okay, and will it encompass getting in money, weapons to them?

Barodi: No, no, no [UI] we'll get in food-assistance.

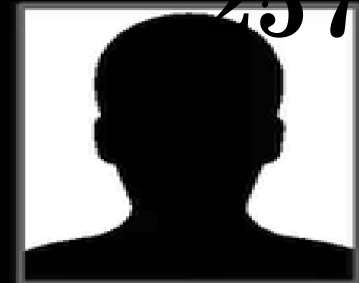
CHS: Ah, okay.

Barodi: Yeah, yes. We will bring through food aid [UI]

CHS: Nice.

Barodi --dates, [UI], meat, we'll get in rice. These materials can all be brought in.

CHS: How will they benefit from it, by selling it, you mean?



Imad Wadi

Daniel Barodi

Confidential Human Source

Barodi: By selling it. Because the Turkish government will give them weapons. [UI] We [UI]- - -

CHS: [OV] Okay.

Barodi: - - sending them food, only.

CHS: Okay.

Barodi: Yes. Food. Food. Clothes, things like that, in other words.

Wadi: That means we are helping by providing humanitarian assistance behind the scenes.

Barodi: It's the same thing. The same thing. It is humanitarian of course, because we are delivering medicine, [UI]-

Wadi: [OV] -No one would dare to obstruct - - -

CHS: So we will continue doing what is being done currently; or what you are doing. I have not participated yet. This is my first participation.

Barodi: Allah willing!



Imad Wadi



Daniel Barodi



Confidential Human Source

Wadi: Through the Turkish Government, or through people in Turkey?

Barodi: By-by way of people in Turkey. But they are authorized by the Turkish Government

Wadi: They are licensed by the Turkish Government

CHS: Okay, and will it encompass getting in money, weapons to them?

Barodi: No, no, no [UI] we'll get in food-assistance.

CHS: Ah, okay.

Barodi: Yeah, yes. We will bring through food aid [UI]

CHS: Nice.

Barodi --dates, [UI], meat, we'll get in rice. These materials can all be brought in.

CHS: How will they benefit from it, by selling it, you mean?

Transcript of Recorded Audio on
August 29, 2018 at 17:16:23

CHS: Confidential Human Source

Wadi: Imad Wadi

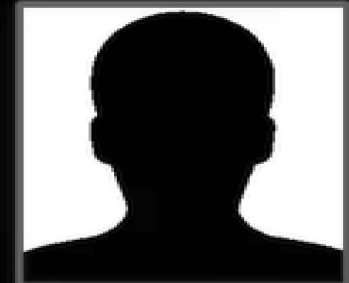
Abbreviations:

[OV] Overlapping voices

[UI] Unintelligible



Imad Wadi



Confidential Human Source

SPEAKER TRANSCRIPTION

CHS: The important thing for me, out of all of this, is that we do what he wants.

Wadi: [UI]

CHS: Do you understand me? I mean, the most important point is that he takes what he wants. Those sheikhs--

Wadi: [OV] The first, the first thing we'll do, as I'm telling you, we'll send the meat containers at the amount of money that he wants, the amount of money that he tells us--

CHS: [OV] Ex-Exactly

Wadi: --we will stuff it with meat, you know?

CHS: [OV] you'll send, you'll send it to where? To Turkey?



Imad Wadi



Confidential Human Source

Wadi: To Turkey and from Turkey they'll get it through for him.
CHS: They'll get the money in?
Wadi: Whether they get in money or meat, what's the problem?
CHS: Uh, I-I mean, at the end, those guys,--
Wadi: [OV] Yeah.
CHS: --Fatah al-Sham and this group will get it, they'll get th-th-
the amount of money.
Wadi: If they take the container of meat and sell it and take the
money and solve their problems with it, or if they take the
meat and eat it, what more do you want than this?

Government Exhibit 6 – August 29, 2018

Transcript of Recorded Video on August 29, 2018 at 12:13:22

CHS: Confidential Human Source

UCE: Undercover Law Enforcement Employee

WADI: Imad Wadi

Abbreviations:

[UI] Unintelligible

[OV] Overlapping voices

Transcript of Recorded Video on August 29, 2018 at 15:27:09

CHS: Confidential Human Source

UCE: Undercover Law Enforcement Employee

WADI: Imad Wadi

Abbreviations:

[UI] Unintelligible

[OV] Overlapping voices

UCE: The most important thing is, as I have been saying to you, that nothing [donation to Syria] can be traced back....

CHS: No, no... it's anonymous UI

Wadi: No, no, no, no, no

UCE: If I gave you an amount, an investment, what percentage of it will go to... to the brothers?

Wadi: We frankly

CHS: You define that

Wadi: The percentage that you define, we [UI] because we are from the same nature, same blood, and same [UI]

UCE: Because in his view - - - [OV]

Wadi: [UI]

UCE: and in my view, the percentage is important



Wadi: you understand me, meaning we have suffered, and we are from the people who suffered, and from the people who [UI]

UCE: [UI]

Wadi: And we still

UCE: And we still, yes

Wadi: Meaning, our God Almighty, and meaning at any time we can reduce from the refugees or the displaced ones or the conditions of the Mujahedeen that [UI]

UCE: [UI]

Wadi: Allah willing

UCE: The percentage, he is going to define it, [UI] so for example if I tell you we need 5 or 10% there will be no problem. Because it will get to them - -



Wadi: You put any number you want - - - [OV]

UCE: No. Allah willing - -

Wadi: Allah willing, meaning when I was partner with him in the truck stops [UI], with Abu Muhammad; the number one rule was

UCE: [UI]

Wadi: When there was a need for donation for a mosque, or as you know for things like to people who are in need; there was no need for me to ask him, and he would not have to ask me

UCE: Alright

CHS: Aaah, but, pay attention

Wadi: [UI]

CHS: This is not a donation

Wadi: [UI]



CHS: This is going to be, one of his priority

Wadi: [UI] One of the priorities yes, yes

CHS: That 5 to 10%

Wadi: [UI]

CHS: Is going to go to the Mujahedeen over there

UCE: What I say, I am not going to tell you 5 to 10%,
and it may be a percentage

CHS: [OV] 15 possibly 20

UCE: [UI] it depends on

CHS: Possibly 30

Wadi: [UI]

UCE: No, because so you

Wadi: [UI]

UCE: [UI], I'll get back with you [UI], and I am going to
tell you something



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Transcript of Recorded Video on August 29, 2018 at 15:30:02

CHS: Confidential Human Source

UCE: Undercover Law Enforcement Employee

WADI: Imad Wadi

Abbreviations:

[UI] Unintelligible

[OV] Overlapping voices

Wadi: ...for this project, I am going to show you the proposal that we have sent to them

CHS: but let us finish one item at a time

Wadi: [UI]

CHS: The amount of money that Abu Omar is going to contribute

Wadi: Yes

CHS: This is so you know, and you relay this to Barodi. The amount that he is going to invest, there is a percentage he will tell you about - - - [OV]

UCE: [UI]

CHS: That amount of money you [Wadi and Barodi] will be responsible for—it is from, from the principal amount, and not from the profit - - - [OV]

UCE: in other words, it will be later, and God willing [UI]



CHS: it is from the investment - - - [OV]

UCE: [UI] Allah willing, afterwards, and Allah willing,
God [UI] [OV]

Wadi: yes, yes!

CHS: in other words, for example, if he gives you 15
million [UI]

Wadi: Yes

CHS: he will tell you, the percentage is this much, and
you [Wadi and Barodi] will be responsible to
deliver it, and manage it.

UCE: with Allah's permission!

Wadi: [UI]

UCE: uhhhh....alright, I'll tell you something - - - [OV]

CHS: so who do you have over there to handle the
matter?



Wadi: They are available, available...all of them [UI]

CHS: relatives--Barodi's relatives?

Wadi: [OV] [UI] Barodi, yes

UCE: you will need a letter from the bank...

Wadi: [UI]

UCE: for Credit, and you need uhhhh- - cash?

Wadi: this cash is for... the slaughter house. The other project, I will explain to you [banging noise in the background] in detail. Of course these are the farms for it, but I will show you the...the uhh...the uhh [UI] slides, an overview [UI]



UCE: I want to tell you, as well, to be uhh...to be honest [UI] that uhhh... I think that if the sheikh wants to participate in something, he is not, he is not going uhhhh... to start with a slaughter house... I am not going to sucker you, and tell you that he will [OV] [UI]

CHS: [interjecting] he will start [UI]

UCE: I will be frank with you [UI] he is going to - - - [OV] [UI]

CHS: [explaining] in other words, he will start the project the [UI] [OV]

UCE: [OV] the first project is this investment project, and he wants to see what the results are, and uhhhh naturally, he will give it time and [UI] [OV]

CHS: [UI]



Wadi: [UI]

UCE: [UI] [OV] and when he sees results ...right after that, we uhhh...we establish a new agreement, or... or he may just tell you-- this is what I want, and it is done; and –in other words uhhh...so uhhh...I, I don't want to, I don't want to tell you like uhhhh... what the Egyptians say “the sea is tahini,” and after that, no. I will tell you, frankly, and I'm uhhh... I am going to tell you exactly ...what... he was looking for. Yes. He was talking about the uhhh...the slaughter houses, and uhhh... in other words, I don't know what to tell him... but the profit between 2 and 2.5 million a month [between \$2000 000 and 2500 000 in monthly profit].



Transcript of Recorded Audio on
July 24, 2018 at 13:59:22

CHS: Confidential Human Source

WADI: Imad Wadi

Abbreviations:

[UI] Unintelligible

[OV] Overlapping voices

Transcript of Recorded Audio on
July 24, 2018 at 15:07:34

CHS: Confidential Human Source

WADI: Imad Wadi

Abbreviations:

[UI] Unintelligible

[OV] Overlapping voices



Imad Wadi



Confidential Human Source

SPEAKER TRANSCRIPTION

CHS: So, we have personalities such as this [OV] ---

WADI: Yes, yes, yes [UI]

CHS: ---That likes the whatchamacallit. So, when I told him that the people are with Fath al-Sham, with such, and they send donations and they do that. He... believe me - believe me, and I know him personally, I mean.

WADI: Yes.

CHS: The money is not the - the---

WADI: I [UI]

CHS: ---That was his prerequisite.

WADI: Yes, yes, yes.