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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BEFORE THE HONORABLE EDMUND F. BRENNAN

IN THE MATTER OF THE
EXTRADITION OF
OMAR ABDULSATTAR AMEEN
TO THE REPUBLIC OF IRAQ

Sacramento, California
No. 2:18-MJ-00152
Wednesday, December 4, 2019
10:05 a.m.

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REPORTER'S TRANSCRIPT OF PROCEEDINGS
FURTHER EXTRADITION HEARING
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(Appearances continued on page 2.)

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*Proceedings recorded by mechanical stenography. Transcript
produced by computer-aided transcription.*

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1 SACRAMENTO, CALIFORNIA, WEDNESDAY, DECEMBER 4, 2019, 10:05 AM

2 --oOo--

3 THE CLERK: Calling magistrate case 18-00152-EFB,
4 United States versus Omar Abdulsattar Ameen.

5 Your Honor, we're on calendar today for a further
6 extradition hearing.

7 THE COURT: Appearances, please.

8 MS. HEMESATH: Good morning, your Honor.

9 Audrey Hemesath and Heiko Coppola from the United States
10 Attorney's Office, Christopher Smith and Rebecca Haciski from
11 the Office of International Affairs, all on behalf of the
12 United States in fulfilling its treaty obligations with the
13 Republic of Iraq.

14 THE COURT: Good morning.

15 MR. GALLOWAY: Good morning, your Honor,
16 Benjamin Galloway and Rachelle Barbour from the Federal
17 Defender's Office with Omar Ameen who is present in court in
18 custody being assisted by an Arabic language interpreter.

19 THE COURT: Good morning. All right. Let's have the
20 appearance of the interpreter.

21 INTERPRETER ABDEL FATTAH: Yes, your Honor. This is
22 state certified Arabic court interpreter Nabil Abdelfattah,
23 N-a-b-i-l, A-b-d-e-l-f-a-t-t-a-h, official number 300907,
24 previously sworn.

25 THE COURT: All right. Thank you and good morning.

1 INTERPRETER RILEY-PORTAL: I'm sorry, your Honor.
2 There's a second interpreter.

3 INTERPRETER ELFAR: Good morning, your Honor.
4 Susan Elfar, certified interpreter, oath on file and also
5 previously sworn.

6 THE COURT: Thank you and good morning.

7 All right. Counsel, I have been through the briefs
8 and the exhibits. I have also received the second supplemental
9 packet, the government -- the defense objection to that
10 supplemental packet as well as the defense alternative request
11 for a continuance if I consider the packet.

12 So let's take up the objection and the request for
13 continuance.

14 Mr. Galloway or Ms. Barbour, I'm not sure which of you
15 are going to address this, but my inclination was to,
16 regardless of whether the government supplemented or not, my
17 inclination was to consider the information about the statement
18 made by Person 1, and I was first aware of that statement when
19 I issued the search warrant for the defendant's home and the
20 vehicle. That affidavit that contained that information was
21 important to me when I issued those warrants. I have -- in a
22 side bench in a previous hearing I flagged that for each of
23 you, that that was important information to me.

24 I even did separate independent research prior to
25 receiving the government's supplement to see whether or not I

1 was limited to the four corners of the packet, and I found case
2 law that indicates that I am not and that I am free to consider
3 additional information that's outside the packet and
4 specifically the case that I came across is *U.S. versus*
5 *Amabile*, that's A-m-a-b-i-l-e. It's at 2015 U.S. District
6 Lexis at 96137. It's an Eastern District of New York case from
7 2015. And I would call your attention to the cases that are
8 cited at footnote 6 in that case that indicate that the treaty
9 and the extradition law does not restrict the record in an
10 extradition proceeding to the documentary evidence submitted by
11 the requesting country, and it is entirely appropriate for a
12 judge to consider additional documents.

13 So if you look at that case and the cases that are
14 cited therein, I think that I do have the discretion to
15 consider that search warrant affidavit and the information
16 relative to Person 1's statement, and indeed my inclination was
17 to admit the Defense Exhibit 112 which is precisely that
18 affidavit.

19 Now I understand that the government previously took
20 the position that Exhibit 112 is under seal, and it shouldn't
21 come in. Is that still your position, Ms. Hemesath?

22 MS. HEMESATH: At least in an unredacted form, yes,
23 with limited redactions. I think it's been filed with limited
24 redactions. I'm sorry. Is this the 302?

25 THE COURT: No. It's the affidavit in support of the

1 search warrant for the search of the defendant's home.

2 MS. HEMESATH: Oh, yes. So that is still under seal.
3 Whether the Court admits it as an exhibit, our objection is
4 less strong to that than to the unsealing of it. But I think a
5 lot of the discussion is somewhat moot now because the Republic
6 of Iraq has transmitted essentially the same information
7 through official diplomatic channels, and so admission of that
8 information is nondiscretionary and will be on the public
9 docket.

10 THE COURT: All right. I do intend to overrule the
11 objection to the second supplemental supplement. I'll hear you
12 briefly on argument on that, and then I'll take up your
13 alternative request for continuance.

14 MR. GALLOWAY: Well, as to that objection, your Honor,
15 I would simply point out that if the Court considers either the
16 contents of the search warrant affidavit or -- in the form of
17 the Iraqi packet and/or the redacted 302, we would strongly
18 encourage the Court to admit an unredacted 302 of the statement
19 from which this entire thing comes, the second supplemental
20 packet and the search warrant affidavit, because the redacted
21 form hides a key fact in the name of the witness security.
22 It's identifying information about Person 1.

23 So Person 1 says that as a child he knew Omar Ameen
24 and socialized with him, and that's how he recognized it. In
25 the unredacted form you'll see that Person 1's date of birth

1 puts him at nearly 20 years older than Ameen, therefore making
2 knowing him as a child, when Person 1 was a child, impossible.
3 So if the Court considers any of the second supplemental, it
4 must also consider the unredacted 302 because it shows on its
5 face that Person 1's claim is impossible.

6 THE COURT: I do have the 302 in the record, do I not,
7 Ms. Hemesath?

8 MR. GALLOWAY: No.

9 THE COURT: I do not. All right. What's the
10 government's position?

11 MS. HEMESATH: I thought a redacted version of it was
12 filed amongst the defense exhibits. If it's not, we do not
13 have an objection to a redacted version being filed and then
14 the unredacted version being filed under seal.

15 THE COURT: I would certainly consider the unredacted
16 version as far as what goes on the public docket. I would want
17 it redacted to protect identifying information.

18 MS. HEMESATH: Thank you, your Honor. And just very
19 briefly on the substance, I think that may be a language
20 question, and I think it's just as easily interpreted as
21 meaning the witness knew Omar Ameen when he was a child, not
22 that the witness was a child, but all of these are English
23 versions of a translation occurring overseas and are sort of
24 emblematic of why the best information is what is admitted
25 through the diplomatic channels, the information submitted by

1 the Republic of Iraq in support of its investigation.

2 MR. GALLOWAY: I completely disagree with that, and
3 that flies in the face of the English language, your Honor.

4 THE COURT: Mr. Galloway, what is the exhibit number
5 for that 302?

6 MR. GALLOWAY: We have marked it as 127, but we're not
7 in possession of it. We had to go over to the government's
8 office to review it. So we would ask the government to supply
9 us with an unredacted copy so that we can file it under seal.

10 THE COURT: Ms. Hemesath?

11 MS. HEMESATH: That's fine.

12 THE COURT: All right. Then that will be the order.
13 And I won't consider the unredacted copy that will be admitted
14 as Defense Exhibit 127.

15 (Defendant's Exhibit 127 was admitted into evidence.)

16 THE COURT: All right. Now as to the request for a
17 continuance, Mr. Galloway, is the defense still requesting a
18 continuance?

19 MR. GALLOWAY: Your Honor, we came fully prepared to
20 argue and present on the first two extradition packets, the
21 extradition packet and the first supplement. Two days -- as
22 the Court knows, two days before the hearing we now have a
23 third packet. The government suggests that we've always known
24 about Person 1, but the problem is the government, even when
25 the Court flagged the issue for us at sidebar, said that the

1 Court can't rely on it, that they've discounted this witness as
2 relevant -- as completely irrelevant to the proceedings and
3 that, you know, it can't be considered. So of course we didn't
4 expend the investigation resources, time, energy on a witness
5 who the Court can't consider according to the government.

6 Now two days before the hearing they've switched it
7 from can't consider to must admit and consider. So we need to
8 assess and address that witness whose identity has been
9 revealed for the first time just days ago even though it was by
10 government's accident. That identity is out there. It
11 requires investigation. We know from the statement itself that
12 it's inherently unreliable, clearly impossible statement. So
13 we want to do our job. We have to do our job. And so to go
14 forward today with a brand new witness sprung on us as being
15 not only relevant but enveloped wholesale into Iraq's
16 extradition packet is just impossible.

17 THE COURT: Let's not overlook why the government
18 didn't initially include Person 1 in the packet in the first
19 place. Person 1 had expressed a credible fear for his safety.
20 And if I grant a continuance to do some additional research as
21 to Person 1, I wouldn't have any problem with Internet-type
22 research. But I'm sensitive to the concern the government
23 previously expressed about protecting the identity of Person 1
24 and not to taking steps that would in any way compromise his
25 safety or her safety.

1 MR. GALLOWAY: Your Honor, for a year and a half we
2 have done nothing but that. We have engaged in a professional,
3 careful, thoughtful investigation that jeopardizes no one. No
4 one has been harmed or hurt. And frankly, while there are real
5 concerns in the region for safety, I think there's almost
6 nothing credible about these witnesses' claims including the
7 supposed threats. Certainly they haven't been generated by the
8 defense or people associated with it.

9 We have had cordial repeated interactions with the
10 victim's family, with his widow. They have no concerns about
11 us, about our investigators. We have behaved both in Iraq and
12 in this country with utmost concern and care. We have not
13 revealed the identities of any witnesses. They have been
14 revealed but not by us. So I would say that we are about our
15 business, Judge. Additional time to investigate a patently
16 false claim is the bare minimum of what's required for
17 effective assistance.

18 THE COURT: Ms. Hemesath.

19 MS. HEMESATH: Yes, your Honor. So two things, number
20 one is that nobody disputes the intent of the defense
21 investigation, but the effect of that investigation overseas is
22 what the United States has always been concerned with. And so
23 no one in this courtroom is in a position to assess what the
24 impact of an overseas investigation into these people's
25 personal lives in a place where no one here has any control to

1 enforce their safety, their personal safety. The intention may
2 be well and good, but the Republic of Iraq itself has
3 communicated the danger that these witnesses are in and the
4 fear that they have expressed. There's nothing that the
5 defense can say that would rebut and provide some comfort given
6 the type of on-the-ground investigations they're proposing.

7 Second, the defense has done an on-the-ground
8 investigation already. They've talked to people in Rawah.
9 They've talked to the three witnesses that are -- that were in
10 the original extradition packet. It's hard to imagine that
11 there hasn't been an attempt already to at least attempt to
12 contact this other critical person if they also contacted the
13 individual who's been referred to as TMF-1 in the
14 investigation. If it went that far behind the scenes, it may
15 have already gone to what they're suggesting needs to be done
16 now.

17 And then the last thing would be the goal of the
18 investigation would be to try to generate admissible evidence,
19 but what Mr. Galloway is discussing are credibility-based
20 arguments which, as I think we're going to get to later this
21 morning, are beyond the purview of an extradition hearing.
22 That's a trial issue. The investigation into that witness can
23 happen overseas at the trial.

24 THE COURT: That is a concern I have, Mr. Galloway.
25 It's one thing to do Internet-type research where you might

1 come up with some sort of conclusive proof that Person 1 wasn't
2 there on the day in question which would go to whether or not
3 there really is probable cause. But it's another to try to
4 kick up a lot of dust about Person 1's credibility, and the
5 latter type of evidence just wouldn't be admissible.

6 MR. GALLOWAY: Judge, this is all hypothetical. This
7 witness has been relevant for two days. So we need to do our
8 job. We need to do our investigation. We need to show that
9 what he's saying is not true. I mean, I think the statement
10 itself shows it's not true because it's impossible based on the
11 difference in age, but we need to do our job. Whether it's on
12 the ground or Internet or what have you, we don't know yet
13 because this issue has been an issue for two days. We have not
14 been able to do an investigation on Person 1 because Person 1
15 doesn't mean anything. We don't know who that person is. We
16 didn't until a few days ago.

17 So no, we haven't talked to him. No, we haven't tried
18 to talk to him. I'm not sure that we would. I mean, he's
19 hugely impeached on its face already, but we need at least to
20 be able to take some time, more than two days.

21 THE COURT: All right. What I'm inclined to do is
22 proceed on the packets that we have for now and hear your
23 argument. I will allow a supplemental brief that can be
24 supported by exhibits by the defense relative to Person 1.

25 But as you'll see as we get into this discussion about

1 the credibility evidence as to person 5, Mr. Galloway, I am
2 very aware of the constraints on this proceeding. And it's not
3 to try the case on the merits, and it's not to judge the
4 credibility of the witnesses. It's just to determine whether
5 the government has sufficient evidence to establish probable
6 cause and whether the Iraqi Government has provided the
7 U.S. Government sufficient evidence to establish probable
8 cause.

9 MR. GALLOWAY: Your Honor, we've understood that
10 burden from day one. What we would ask you to do is hear us
11 out today. We think that the evidence that we've presented
12 puts credibility of Person 5 squarely at issue. We'll present
13 that in as concise a way as we can. But that's not the only
14 issue. That's certainly an issue. So if you would hear us out
15 today, then we would be happy to brief the issue with respect
16 to the second supplemental packet on the time line the Court
17 sets.

18 THE COURT: All right. At the end of the hearing
19 remind me and we'll set a schedule for your supplemental brief.

20 All right. That takes us then to the various
21 exhibits. Ms. Hemesath, before I hear your argument, how do
22 you wish to proceed as to your objection to the exhibits? Do
23 you want to just go through them now, or do you want to wait
24 and take them up in the order in which they're discussed?

25 MS. HEMESATH: I appreciate you giving us the option.

1 What I would like to do is formally move into evidence the two
2 supplemental requests from the Republic of Iraq, present the
3 Court with the originals, and then go through a brief
4 presentation on the issue of probable cause and then -- with
5 the clarity that that presentation may provide perhaps from
6 both sides, then take up the question of the exhibits after
7 that.

8 THE COURT: All right. Mr. Galloway, as to the two
9 supplemental objections, I realize that you objected to the
10 second supplemental, and I've indicated my ruling on that. Any
11 objection to the first supplemental?

12 MR. GALLOWAY: No. No, your Honor.

13 THE COURT: All right. Then both supplementals are
14 admitted into evidence.

15 MS. HEMESATH: May I approach?

16 THE COURT: Yes.

17 MS. HEMESATH: Mr. Cannarozzi, do you know which
18 button is this table?

19 THE CLERK: Should be the left.

20 MR. GALLOWAY: Your Honor, I was speaking with
21 Ms. Barbour. What are we proceeding to now?

22 MS. HEMESATH: With the Court's permission, I will do
23 a brief presentation.

24 THE COURT: All right. Well, at some point I want to
25 go through the objections to the exhibit. Will you be using

1 any of the defense exhibits in your presentation?

2 MS. HEMESATH: No.

3 THE COURT: All right. Then at the completion of your
4 presentation, then we'll go through the objections to the
5 defense exhibits.

6 MR. GALLOWAY: Your Honor, I think it might make sense
7 to your presentation as -- in advance of determining relevance
8 to see how it fits.

9 THE COURT: All right. We can take them up in the
10 order in which they come in. That's fine. We can do that.

11 All right. Ms. Hemesath, you can proceed with your
12 presentation.

13 MS. HEMESATH: Thank you, your Honor.

14 So I'd like to begin this second day of the
15 extradition hearing where we left off at the conclusion of the
16 first day which is on the issue, the critical issue, of
17 probable cause. Your Honor is very familiar with the probable
18 cause standard. It's evidence sufficient to cause a person of
19 ordinary prudence and caution to conscientiously entertain a
20 reasonable belief in the accused guilt, so akin to a
21 preliminary hearing here in our system. It's a totality of the
22 circumstances inquiry. It's a common sense inquiry.

23 Here probable cause is transmitted to the Court
24 through the three transmissions that the Republic of Iraq has
25 sent. So the original extradition request, the supplement, and

1 now the second supplement. These are the government's only
2 exhibits in this case, and the admission of them is
3 nondiscretionary pursuant to the statute 3190.

4 The heart of the probable cause in this case is the
5 four witnesses. There is other corroborating evidence in the
6 extradition request that does support the probable cause, but
7 the heart of the probable cause are the statements of the four
8 witnesses.

9 Critical is the testimony of the eye witness referred
10 to in these proceedings as Person 5. And as your Honor now
11 knows from both the original extradition request and the
12 supplement, that's under-oath testimony. Because it is
13 under-oath testimony, it's given a higher level of reliability,
14 and Judge Dihya, the Iraqi judge, has stated the exact oath
15 that was administered to the witness that he personally
16 presided over the proceedings. He checked the identification
17 of the witness as well.

18 There's also the firsthand knowledge of the person
19 referred to as Person 1. This is not under-oath testimony.
20 This is information gleaned from a law enforcement
21 communication to the Republic of Iraq. It was an FBI interview
22 of this individual. So it's not under oath, but it is also
23 based on firsthand knowledge. Specifically, he witnessed a
24 three-vehicle ISIS convoy pass by. He then describes in detail
25 some of the aspects of the convoy, colors of the vehicle, tan,

1 white, ISIS flags, and critically for these proceedings,
2 Omar Ameen was in the passenger seat of the white vehicle and
3 that he describes the clothing that he saw Ameen wearing and
4 noted that he thought Ameen was likely the commander of the
5 convoy. He mentioned some other individuals in the convoy that
6 he also recognized.

7 That information is detailed which is another factor
8 that the Ninth Circuit says is to give weight to the
9 reliability of the information the witness is giving. So the
10 basis of knowledge, very high personal knowledge. Detail, that
11 means it's self-corroborating information.

12 He has additional firsthand knowledge. He sees Ameen
13 as part of the convoy, and then a little bit later on he hears
14 the gunfire, the burst of gunfire.

15 Then there's Witnesses A and B. They are also
16 under-oath testimony. It's the same oath administered by the
17 same investigating judge that's indicated in both the original
18 extradition request and then the supplement sent by
19 Judge Dihya.

20 All three of these witnesses, although the defense
21 would request their motivation for testifying, they are citizen
22 witnesses. They are bystanders to the crime. In the case of
23 Witnesses A and B, they are victims of the crime. That is
24 given a high level of reliability under Ninth Circuit law and
25 Supreme Court law in the Court's assessment of whether the

1 information has a sufficient level of veracity. So that is
2 four citizen witnesses giving an account of this event that
3 they have personal knowledge of.

4 For Witnesses A and B, it's now clear from the
5 supplement from the Republic of Iraq that they don't actually
6 themselves witness Omar Ameen commit the murder, but they learn
7 at the time of the murder from Person 5 that Omar Ameen is the
8 shooter. That is a critical piece of information because it
9 locks in the account of Person 5 at the time of the murder, so
10 before there is any opportunity for prevarication or
11 fabrication. It's close in time. It is akin to what in our
12 system would be a present sense impression or even a prior
13 consistent statement. It has reasons that we should trust the
14 reliability of that statement.

15 And Judge Dihya's communication to this Court that he
16 understood that Witness A and B gained their knowledge that
17 Omar Ameen was the shooter is something that this Court accepts
18 because it's been communicated to the Court through the
19 diplomatic channels from the Republic of Iraq. So
20 understanding the defense may dispute that that's actually the
21 case, this Court takes as true what's given in the extradition
22 request, and any questions about it is for later at trial
23 overseas.

24 Person 1 also has that same kind of close-in-time
25 knowledge that he gained. Now it's not as clear as this

1 Witness A and B, where the judge says they learned it at the
2 time of the murder, but in Person 1's interview he explains
3 that through conversations with family members in the area he
4 learned that Omar Ameen had killed Ihsan in that burst of rifle
5 fire.

6 So that's additional corroboration. It may not meet
7 the requirements that we would have in our system for present
8 sense impression or excited utterance, but it is additional
9 corroboration that he has knowledge. First he saw Ameen
10 en route, and later he learns from others that Ameen had killed
11 Ihsan.

12 And then Witness A and B, in their testimony indicate
13 I want to press charges against the suspect Omar Ameen and then
14 they list other people as well. That goes to a question that
15 has been raised in these proceedings about the voluntariness of
16 Witness A and B's participation. Judge Dihya has affirmed the
17 procedures that he used, the presence of these witnesses before
18 him, the oath that they took, and that what's indicated in
19 their written statements is true. What they say in their
20 written statements is that they want to press charges against
21 Omar Ameen.

22 So combined, these four witnesses, Person 5,
23 Witness A and B -- oh, I'm sorry. Before we combine them with
24 the four, the three witnesses who testified under oath, Judge
25 Dihya has confirmed they all signed and imprinted each document

1 which were reviewed and signed by me. I reviewed the
2 witnesses' statements, and I certify their authenticity. So
3 he's personally involved in these proceedings, and he is
4 confirming what was in the original request I think taking out
5 of any dispute that these witness procedures happened in the
6 way that the Iraqi legal process said that they happened.

7 So what I'm going to do briefly now is present a time
8 line of the short few days around the murder of Ihsan that will
9 show how these pieces of evidence worked together to create
10 overlapping layers of corroborating evidence that more than
11 establishes probable cause in this case.

12 The first event occurs on June 21st, 2014. That's the
13 day ISIS seizes Rawah. And the time of day there, noon, that's
14 an approximation. Nothing in the extradition packet
15 establishes at what time of day Rawah fell, but it is the day
16 before the murder.

17 The victim receives a threatening phone call.
18 Person 5 described this background. And the information coming
19 from Person 5 is represented in blue on this time line.

20 The next thing that happens is the following day when
21 Person 1, the convoy witnesses, sees Ameen in the ISIS convoy.
22 Again, this is firsthand knowledge grounded in the kind of
23 personal observation that allays any concern of casual rumors
24 circulating in the community based merely on the witness's
25 general reputation. He is seeing this.

1 And that's confirmed by the next thing that happened
2 which is that around 7:00 in the evening Person 5 sees the ISIS
3 convoy roll up to the house. The time I had just done on
4 Person 1 before 5:00, that is an approximation. I think the
5 information actually says late in the afternoon. The 7:00 time
6 is from the extradition request.

7 Also at 7:00 in the evening Witnesses A and B say they
8 are inside the house. What happens in the next ten minutes,
9 the times on these is an approximation, but that's about the
10 time that I believe it was indicated that the gun battle lasts.
11 So Person 5 reports/testifies that the victim goes outside,
12 returns fire to the ISIS convoy.

13 Witnesses A and B describe also the arrival at the
14 same time four vehicles, pickups occupied by a large number of
15 ISIS terrorists. That's also firsthand knowledge. They're
16 seeing it.

17 Person 5 goes out, sees the victim on the ground and
18 sees Ameen standing over him holding a gun.

19 Witness A and B: The victim went outside and returned
20 fire. A large number of attackers, intensity of gunfire. They
21 described the intensity of the gunfire. That's corroborating
22 information.

23 Person 5 hears Ameen say you are an agent of the
24 Americans, and you are an apostate. Again, that's the type of
25 detail that the Ninth Circuit has said is self-corroborating.

1 It's based on firsthand knowledge. It's highly reliable.

2 Inside the house Witnesses A and B describe a shooting
3 at the house.

4 And then at the conclusion of the gunfire, Person 5
5 says Ameen fires the gun that kills Ihsan.

6 Person 1, not on the scene of the crime but wherever
7 he is observing hears that burst of gunfire. That's
8 corroborating evidence. Witness A and B -- and I've
9 highlighted this part in a light blue to show that they're
10 gaining that knowledge not from what they personally see but
11 what Person 5 has communicated to them close in time, and
12 that's that they say one member came forward, took the victim's
13 weapon away, and shot him at close range resulting in him being
14 martyred. That person -- and they say a witness -- we've
15 redacted that out. They say who it is. Was able to see the
16 individual who shot Ihsan. He was the terrorist, Omar
17 Abdulsattar Ameen, and he is a prominent member in the ISIS
18 terrorist organization.

19 That means that Person 5 told at least two people at
20 the time of the shooting that Ameen was the shooter. It locks
21 in that account. It's a contemporaneous statement. And it
22 fundamentally transforms the case from a one-witness case to a
23 three-witness case. That alone is ample evidence of probable
24 cause that Omar Ameen committed this murder.

25 What happens next, again this time is an

1 approximation, but Witness A and B transfer Ihsan, the victim,
2 to the hospital.

3 Then there's an ISIS posting about the murder, and
4 again the time is an approximation here. There's the posting.
5 Today is the day to eliminate some rotten heads. It's
6 inscribing now in Rawah the criminal Ihsan has been eliminated
7 at the hands of the Mojahedin. It's a celebration of the
8 murder.

9 The next day Witnesses A and B obtain the death
10 certificate. That's corroborated by the Iraqi investigation.
11 I believe it's Witnesses A and B brought this with them to
12 their testimony before the investigating judge, Judge Dihya.
13 The fact that they brought documents to that proceeding again
14 confirms this was voluntary on their part. They knew what they
15 were there for. They were there to press charges against
16 Omar Ameen, and they brought documents to back up what they
17 were saying, so just as they described verbally.

18 The day after the murder there's a death certificate
19 issued. There's the date of the death certificate right on
20 top, and the cause of death of course gunshot wound to the
21 chest, more corroborating information.

22 Does it corroborate who killed the victim? Not
23 necessarily. But the Ninth Circuit does describe that when you
24 have corroboration around the edges of a witness account like
25 this, it has the effect of causing the reliability of the whole

1 thing to rise. So the more corroboration that there is
2 generally of what's being told, the more reliability the Court
3 can assess the statement to have.

4 Sometime later, I don't know that it's June 23rd, I
5 just put that there so the time line would work, but it's
6 sometime after the murder Person 1 learns from family members
7 that it was Ameen who killed Ihsan. So again, additional
8 corroboration, this time of the identity of Ameen as the
9 shooter, so back into that critical heartland question about
10 probable cause.

11 Then finally again at a different time, sometime later
12 Witnesses A and B obtain the certified copy of the Rawah
13 District Commissioner Police Report. Important here again,
14 it's a certified copy. That means they want this crime
15 investigated and solved. They took the time to get a certified
16 copy and then bring that in to the investigating judge as part
17 of their request that the murderers of the victim be held
18 accountable. There, that's just an excerpt from the certified
19 copy.

20 So that's the chronology of the murder, fairly tight
21 in time, but within that you can see the levels of
22 corroboration of what these four different witnesses are
23 saying. There's nothing inconsistent between their accounts.
24 There is no inconsistency in the four corners of the
25 extradition request. There's no vagueness in the extradition

1 request, and there's nothing implausible about how it all hangs
2 together. The time line works, your Honor, I would submit.

3 In addition to the narrative, the photo
4 identifications form an important part of the Republic of
5 Iraq's probable cause. It is the same question here,
6 reliability. That's the touchstone also for photo
7 identifications. So as indicated in the extradition request,
8 Person 5 is shown several photos of ISIS members. So the Iraqi
9 investigating judge actually took the time to assemble not just
10 other males that may bear some physical resemblance to
11 Omar Ameen but actually people who are known to be ISIS
12 members, so that provides a higher level of reliability in the
13 photo identification procedure that was done.

14 Person 5 identifies Omar Ameen. That's the photo that
15 he identified. The extradition request indicates that Person 5
16 looked at the photos one after another. So that is an
17 indicator of a nonsuggestive photo array, that it's a fair
18 means of testing Person 5's recognition of Ameen among a pool
19 of other potential wrongdoers.

20 We will concede that the photos in the extradition
21 request have a date that's after the testimonial date. It's
22 unknown on this record why that is. We posit some possible
23 reasons why. Ultimately, that's a request for the trial court
24 in Iraq, what could have happened, why those dates might be
25 different. There well could be a very benign explanation for

1 that. But it doesn't undercut what is indicated in both the
2 supplement and the original extradition request, and that is
3 that a photo identification procedure was done live in front of
4 the investigating judge with the witness taking his time to
5 specifically identify Omar Ameen among a pool of photos.

6 And so I would submit to the Court that that has still
7 a high level of reliability even if there is this unanswered
8 question of the dates of the photos that made it into the
9 extradition request.

10 And this is just an excerpt of the portion from the
11 supplement where Judge Dihya confirms in his presence every
12 witness. So Person 5, Witness A, and Witness B were separately
13 shown photograph pictures for men including Abdulsattar Ameen,
14 and all witnesses identified Abdulsattar Ameen as the killer.
15 So that is not just Person 5 doing a photo identification
16 procedure but each witness and also separately is a critical
17 thing that this is not being done in the suggestive manner.

18 And then Witness A and B do say for which the court
19 showed me a picture of him, and I was able to identify him as
20 the one who committed the murder.

21 Now the FBI was not present for the photo
22 identification procedure for Witnesses A and B, nor for their
23 testimony. They were present for the testimony of Person 5.
24 They've submitted affidavits. The Court can consider those in
25 its discretion or not. They confirm what's in the extradition

1 request, that this occurred as Judge Dihya has described it, at
2 least with regards to Person 5, and it would be a reasonable
3 extension of that to say as it occurred with Person 5 so too it
4 occurred with Witnesses A and B.

5 The FBI was invited to participate in the testimony of
6 Witnesses A and B as observers. For operational reasons, that
7 wasn't possible to accept that invitation. That's what's
8 indicated in the affidavits.

9 But all of those are reasons for the Court to decline
10 to look outside the extradition request, to accept as true what
11 Judge Dihya is communicating, and that is that these photo
12 identification procedures happened in this way which is a
13 method of reliably having a witness identify a subject.

14 In assessing probable cause, the Court looks to
15 veracity, reliability, and the basis of knowledge as we've gone
16 over. Those things exist in abundance here. The veracity for
17 three of the witnesses, it's under-oath testimony. For all of
18 the witnesses, it's at least based on some personal knowledge,
19 and when it's not personal knowledge, highly reliable
20 secondhand knowledge. It is plausible. It is consistent.

21 And I can cover lastly there's some additional
22 corroboration within the extradition request. So that's the
23 aerial sketch of the crime scene. This is an example of the
24 Iraqi investigators I think not overselling. They indicate
25 they went out, but it's years after the crime at this point.

1 They don't find anything additional of investigative value
2 here. But, you know, it still is corroborating. It's got a
3 description of the victim's home there. It's flanked on both
4 sides with vacant land.

5 That probably explains why there are not a number of
6 other witnesses to this crime that would have immediate -- the
7 ability to immediately see what happened on that day. You can
8 picture here with the streets the possible way that the ISIS
9 caravan arrived and departed from the scene. So it's minor
10 additional corroboration, but it is overall corroboration of
11 the account given by Person 5, Witnesses A and B.

12 Same thing, the aerial image that the Republic of Iraq
13 included, that's from *Illinois versus Gates*, corroboration of
14 major portions of the witness statement reduced the chances of
15 a reckless or prevaricating tale and provide a substantial
16 basis for crediting the statement.

17 That's also something that's provided to the Court in
18 the intelligence report submitted by the Republic of Iraq. The
19 high level takeaway from the intelligence report is that indeed
20 the Republic of Iraq separately confirms what the witnesses
21 say, that he is a terrorist and that he is a member of a
22 terrorist organization and that the witnesses' identification
23 of that same fact based on their own observations and their
24 knowledge of him and his family dating into the years previous,
25 it's additional confirming information that supports the

1 probable cause in the extradition request.

2 The Court does not need to assess every factual
3 allegation that's made in the intelligence report. It's an
4 intelligence report. I would submit it's not included for any
5 purpose other than that high level fact that separately the
6 Republic of Iraq intelligence organization, which is the INSS,
7 is communicating to Judge Dihya that based on their database
8 check, their Al-Qaeda ties, and that the brothers are connected
9 to AQI, and then they also confirm Ameen's involvement in the
10 murder. The basis for confirming Ameen's involvement in the
11 murder is not known, but I would submit not something that it
12 certainly makes consistent what is contained in the extradition
13 request overall.

14 And then finally there's the local police report that
15 confirms the murder. It confirms again that it's an ISIS
16 murder. It's an additional way that the evidence hangs
17 together in a way that is the same across all grounds.

18 And then finally, there's a sort of summary statement
19 by the judicial investigator and the description of what caused
20 the Republic of Iraq to decide to issue an arrest warrant.

21 The result of all of that is that cumulatively for the
22 Republic of Iraq certainty they established sufficient evidence
23 to prompt the issuance of a warrant. So that is a finding that
24 establishes the prosecutability of Ameen for this offense.
25 It's, I submit to the Court, the same probable cause standard

1 that is used in these extradition proceedings on the question
2 of whether or not to certify. At the time the judicial -- this
3 is from the original request -- the judicial investigator
4 didn't have the benefit of the statement of Person 1 in making
5 this determination. Now that is additional very powerful
6 evidence of Ameen's commission of this murder.

7 And so those facts, as alleged in this extradition
8 request, the supplement, and the second supplement are
9 sufficient to cause a person of ordinary prudence to entertain
10 a reasonable belief in Ameen's guilt. It's eye witnesses to
11 the murder, one who saw Ameen shoot the victim, give a detailed
12 account of the ISIS caravan and the crime scene, place it in
13 time. Those details are corroborated by the testimony of
14 Witnesses A and B, also present on the scene. They confirmed
15 that the eye witness was on the scene. They corroborate the
16 details of the crime scene, and they were told by Person 5 at
17 the time of the murder that Ameen was the killer.

18 So with also the additional evidence that the Court
19 now has from Person 1 who saw Ameen who heard the gunshots and
20 who was later told by family members that Ameen was the killer,
21 that is, I would submit to the Court, abundant probable cause
22 in favor of certification.

23 None of the evidence that the defense has amassed in
24 the approximately 15 months of investigation is reasonably
25 clear cut or obliterating of probable cause. I would submit

1 it's not even close. It's 125 exhibits more or less of
2 evidence that the Court would have to weigh, would have to draw
3 inferences from, would have to assess against the information
4 that has to be taken as true in the extradition request. It's
5 impossible to do that without these proceedings converting into
6 a dress rehearsal for a trial, and so we will ask the Court to
7 exclude the exhibits that we have done extensively in our
8 briefing and certify this case for extradition.

9 THE COURT: All right. Mr. Galloway.

10 MR. GALLOWAY: Thank you, your Honor.

11 MS. BARBOUR: Your Honor, as clearly shown by the
12 government's PowerPoint, by its original arguments, it wants
13 this Court to only look at the packets, ignore everything. But
14 the Court from the beginning has allowed the defense and has
15 supported the defense in its investigation because if Mr. Ameen
16 was not in Iraq, if Mr. Ameen did not commit this crime, then
17 clearly he can't be extradited.

18 So this is what the government wants you to look at.
19 This is everything that we found. The treaty only applies if
20 Mr. Ameen was in Iraq, and the government thinks that the
21 extradition packet looked at in complete ignorance of
22 everything else that shows he wasn't supports that.

23 But this Court knows that we've made the case over and
24 over again that evidence is admissible to obliterate probable
25 cause. And yes, that's a hard standard. And we think we've

1 met it. We've met it by showing that he was in Turkey,
2 hundreds of miles away at the time of this offense, the week
3 before this offense, the week after this offense, the months
4 surrounding this offense.

5 And you have heard Ms. Hemesath say that he -- these
6 witnesses are saying that he is a head of an ISIS terrorist
7 organization. They want to have the Court look at two days,
8 two days for him to become the head of an ISIS terrorist
9 organization, and that's because they don't want the Court to
10 look at the fact that he's verified to have been in Turkey by
11 the Turkish government the week before. Two days before ISIS
12 entered Rawah, Mr. Ameen was in Mersin signing in with the
13 Mersin Immigration Police. Several days after the murder he
14 was back there.

15 So I want to walk the Court through this because this
16 is not just about two days. Their own extradition packet can't
17 make it about two days. They have the INSS claiming he's a
18 terrorist leader of ISIS, not something back in 2008, of ISIS.
19 He's a terrorist commander. He's driving around Rawah with a
20 caravan. There are dates and especially times in the
21 government's PowerPoint. We don't know where those times come
22 from, but they certainly show a planned execution of Mr. Jasim.

23 And yet Mr. Ameen was in Turkey, and we know that for
24 sure. The Court knows and the government hasn't disputed that
25 he went to Turkey, got there April 1st, 2012, registered very

1 quickly with the UNHCR. I'm not going to go through his whole
2 refugee journey, but what I want to do is explain to the Court
3 the critical times surrounding this case.

4 So here he is from early on. He gets to Mersin. It's
5 a beautiful place. And he takes some pictures. He goes on
6 those little workout things at the beach.

7 And here, the Court's already admitted this exhibit.
8 Mersin's on the left. Rawah's on the right. Between them,
9 Syria in a complete civil war. All these different
10 insurgencies in Syria, terrorists, the Free Syrian Army, it's a
11 madhouse in 2014 especially because what's happening is ISIS is
12 marshalling its forces. It's trying to create a caliphate
13 across both Northern Syria there where that line goes through
14 and into Al Anbar province which is where Rawah is.

15 And the Court's already admitted this. We asked the
16 Court to admit it for the point that it's 600 miles on roads
17 between Mersin and Rawah. And the government's conceded. I
18 mean, certainly Mr. Ameen didn't use his passport. There's
19 nothing indicating officially from the Turks from his passport
20 that he made this journey. But he would have had to go through
21 at least two national borders. And granted it's a time of
22 war, multiple checkpoints. And if he tried to walk it, so do
23 it the unofficial way it's even further, and it's about a
24 180-hour journey if we believe Google. Probably Google is a
25 little underestimating that if you need to stop and rest.

1 So he's in Turkey with his family, his wife Khansaa,
2 their three children. He applies to the UNHCR, and he goes
3 through this process. And the Court has seen these sign-in
4 sheets. And it's really critical and it's very important
5 because when we're talking about --

6 THE COURT: Let me ask you about the sign-in sheets.
7 The government argues that they're undated. I looked. I could
8 not make out a date. Are there dates on them?

9 MS. BARBOUR: There are no dates on them. We provided
10 the affidavit by the investigator who had dealt with the Mersin
11 immigration office. I personally went there and sat in that
12 office for hours while we tried to convince them to give us
13 these sheets because, as the Court could see from the exhibits
14 we filed, they gave us the first set from the Turkish
15 government that certified that Mr. Ameen had signed in as
16 required, and if he hadn't, he would have lost his refugee
17 status and not been able to come to the United States.

18 And then we went back and said we need the sign-in
19 sheets. We need them for June. And they said, oh, it's too
20 much trouble. They're too big. There's all these other
21 people, you know, because it's a big piece of paper. Everyone
22 goes in and signs in.

23 They gave us these. We asked for the four from June.
24 They gave us these. We didn't ask for every single one he ever
25 signed because we couldn't overburden them with that for years

1 that he was in Turkey. So we said, look, we really need the
2 four from June, and they gave us these.

3 And, I mean, those relate to specific dates. He
4 signed them every Thursday. That's amply shown. The Turkish
5 government has certified it. And the Thursday before the
6 murder was June 19th, and the Thursday afterwards was
7 June 26th, and he was there signing in. And as the Court will
8 see, there's additional information that also makes it very
9 clear that he was in Turkey June 26th.

10 Here, you know, just to sort of make it clear for the
11 Court, here is his entry into Turkey April 1st, 2012. You can
12 see that on the right-hand side and his eventual acceptance
13 into Miami. You can see the stamp at the bottom of that page
14 15 of his passport. That's his entry stamp into Miami
15 November 4th, 2014, as a refugee.

16 So I really appreciate the Turkish government or at
17 least the immigration office's willingness to give us this
18 information. They didn't have to. And they have gone above
19 and beyond. They provided the letter telling the Court that he
20 signed in every week, and if not, he would have been kicked
21 out. He would have lost his refugee status. He would not have
22 been allowed to leave for the United States. They gave us what
23 he signed when he got there.

24 This is in Arabic and English. Obviously, your Honor,
25 we're giving you the English copy. You need to give your

1 signature on the day you're instructed to do so. If you leave
2 without permission or you don't post a sign-in, we're going to
3 do legal proceedings against you. And here is his specific
4 signature obligation every Thursday in Mersin.

5 So the refugee process is complicated. We've given
6 the Court the hard documents. Many of them came to us
7 redacted. It was a lot of work, and I really appreciate the
8 Court giving us the subpoena power and the ability to get these
9 documents. And if they hadn't been redacted, we would have
10 certainly contacted witnesses to be able to try to get notes
11 and other information corroborating from their side the
12 contacts that they had with Mr. Ameen.

13 But what's very clear is Mr. Ameen was incredibly
14 diligent about this whole process. He applied to UNHCR as soon
15 as he got to Turkey. He lived where he was supposed to. It's
16 a satellite city, rural. You have to go live there. You have
17 to have an apartment. He did that. He signed in every week.
18 He went and filled out paperwork when they needed him to. He
19 went to Istanbul when they needed him to, and we'll talk about
20 that in a moment. As soon as these agencies called, he picked
21 right up.

22 And as Mr. Hydari, who is an American lawyer who
23 worked in Turkey at the relevant time, he did not work for
24 Mr. Ameen. I don't know the government may be confused about
25 that. We talked to him because we really wanted to know on the

1 ground what the expectations were for an Iraqi refugee in
2 Turkey going through this process. And he looked through all
3 the documents we've compiled and said he could really see that
4 Mr. Ameen was taking it seriously, that he cooperated with the
5 entire resettlement process, and the outcome was, of course,
6 that he got to come to the United States in November of 2014.

7 We looked at Mr. Ameen's Facebook, and we've given the
8 Court the exhibits. Only accessed in Turkey. No Iraqi IP
9 addresses.

10 We talked to his friends. So I went down to Mersin.
11 And there's Mr. Ameen on the left-hand side of this picture.
12 On the right-hand side is Omar Hamid. We'll talk about him in
13 a moment. I think the government knows who he is. In the back
14 with the white shirt with the vest over it is Yacer Ede. He
15 also lived in Mersin. Yacer owns a gym. You can see the
16 workout equipment in the back. This is Yacer's gym.

17 And Omar Hamid provided us this picture of Omar Ameen
18 in Mersin with his friends. And Omar Hamid didn't just give us
19 the picture and sort of tell us it was February 2014. He gave
20 us the metadata. And there you can see it's in German. But
21 it's February 1st, 2014, and that's also in the name of the
22 actual file.

23 So walking through we just see that Mr. Ameen, he's
24 there. He's always there. He's there February 1st. He goes
25 and meets with the ICMC, the International Catholic Migration

1 Commission. He meets with them February 27th. He signs
2 paperwork. That's in his A-File. It's certified by Department
3 of Homeland Security. There's Mr. Ameen's signature which is
4 exactly the same as the signature on the sign-in sheets
5 February 2014 again.

6 And here's a photograph. This is at the beach. You
7 can see the beach behind them. This is Mersin, and it's date
8 stamped 3/23/2014, Mr. Ameen with his family in Mersin. And we
9 keep walking through and we see more and more that he's there.
10 He's there in April. ICMC has to contact him because he has an
11 upcoming interview. He's been picked to interview with a USCIS
12 officer in Istanbul. And to do that, it's not easy. Mersin is
13 a day's journey from Istanbul by bus. He has to get a travel
14 permit. He has to get bus tickets. He has to get a place to
15 stay, and his entire family has to come. So they tell him on
16 April 7th.

17 And then what happens, we know that happened, right?
18 Because then May 22nd, there he is in Istanbul meeting with a
19 refugee officer signing his name again. And there's another
20 example. He signed a release of information on that date for
21 USCIS.

22 So now we're on May 22nd. Government doesn't dispute
23 any of this. We also have a photograph. This is a Bosphorus
24 cruise in Istanbul. To the right of the picture is Mr. Altaab,
25 who also gave us a statement about meeting Mr. Ameen on this

1 date and certifying that he was in Istanbul on May 2014.

2 To the left, in case the Court is interested, is
3 Omar's brother Bilal. I've got to say, when I look at this
4 picture, I have trouble telling which one is Mr. Ameen. He
5 says it should be easy because Mr. Bilal has much lighter skin
6 than him. However, it's hard to tell. But anyway, that's him,
7 his brother Bilal, and Mr. Altaab.

8 So we wanted to keep focusing in on this time period
9 because it's obviously a critical time period for this case,
10 and the government's trying to make it an incredibly narrow
11 time period for the Court. But it was an incredibly important
12 time period for Mr. Ameen's life. And we're lucky that it was
13 because it means that he was in contact with the U.S. refugee
14 officer. He was, you'll see in July, back in Istanbul.

15 But he was also -- it was a very critical period for
16 Iraq, so he was on the phone a lot. He was talking to friends.
17 He had Ahmed Azzam, who was in Mosul, probably the worst place
18 to be in Iraq when ISIS was coming in, just devastating
19 violence. And Ahmed is saying I need to get out of here, and
20 Omar was saying, what's happening over there? And he could
21 tell from the videos that Omar was in Turkey.

22 Then we're back to Omar Hamid, the gentleman from the
23 picture, the gentleman who sent us the metadata for that
24 picture. This was Omar Ameen's closest companion during this
25 time. Omar Hamid was having a terrible time. He was terrified

1 about his family. He, I think, also is from Mosul. And he saw
2 him nearly every day. And the government's tried to say, oh,
3 okay, well, then I guess maybe this means Omar Ameen could have
4 slipped away on the one day that Omar Hamid didn't see him.
5 And that's obviously impossible. We're already talking about,
6 you know, a two-day period that the government's saying is the
7 critical time in this case. But Omar Hamid also said, look, if
8 I didn't see Omar Ameen, we were on the phone because this was
9 a really hard time. Omar Hamid needed support. Omar Ameen
10 checked in with him. And they both signed in together at the
11 refugee office.

12 Oh, sorry. Before I move on from Omar Hamid, when
13 we're talking about corroboration, and the government's used
14 that term a lot, this is something we definitely have
15 corroboration on because this is the person that the Court has
16 heard about so much who the government allowed us to know they
17 had some kind of independent corroboration on this alibi. They
18 haven't given it to us. The Court hasn't ordered them to. But
19 certainly a prior consistent statement, a later consistent
20 statement is incredible corroboration. So even if what they
21 did was over here, Mr. Hamid saying, oh, that couldn't have
22 happened. Omar Ameen was with me the whole time. That's
23 consistent and supportive of this declaration.

24 This is from Yacer Ede. He is the gym owner. And the
25 Court has already admitted these declarations. He says, I knew

1 Omar Ameen in Mersin. He signed in consistently. He didn't
2 want to miss a sign-in date, remember, because he's so diligent
3 because he was very worried about losing his refugee status.

4 And the time to really to worry about losing your
5 refugee status is days after you've been told that you've got
6 the golden ticket to come to the U.S. because he was told that
7 in June. That's when you absolutely don't want to miss a
8 sign-in date and leave your family out.

9 So we know June 5th, 2014, approved. This is from
10 Mr. Ameen's A-File. This is the stamp, the stamp that let him
11 come to the U.S. June 5th, 2014, USCIS, the Department of
12 Homeland Security decided that Mr. Ameen, his wife, their three
13 very young children, were going to be able to resettle.

14 And the question goes, well, okay. So he must have
15 been told somehow, right? And I really wish that we had better
16 records on this. We've gotten the A-File. We've gotten the
17 USCIS records. We've gotten the state department records. I
18 was hoping we would have a nice registered letter signed off by
19 Omar Ameen sometime. No, they don't have that. I don't know
20 if it ever existed. It's not in the files or at least not in
21 the files we were given.

22 But what we were able to put together was an
23 understanding of how Mr. Ameen was told. So he appears to have
24 been told two different ways in early June. First he's told
25 through the UNHCR. So the way the process goes is the ICMC is

1 told here's the results for this period of time. You can see
2 that there in attachments. Please find the results report.
3 Update your records. All right. And that's June 11th.

4 And at the same time the State Department -- and this
5 is blurry. I'm sorry. This is the way we got it. It's
6 redacted. They redacted it. But the State Department's
7 records, internal records, say that Mr. Ameen was sent the
8 eligibility letter June 12th of 2014. The letter itself does
9 not have a date on it. But we have the copy of that letter in
10 the exhibits, and we have verification from the State
11 Department internally that that was sent by them. By who
12 they've redacted it.

13 So of course Mr. Ameen found out, and when he got
14 permission to go, he was excited about it. And he talked to
15 Mr. Altaab, who he had just seen in Istanbul in May to say,
16 hey, remember how I was there and I needed to interview? I was
17 admitted. I'm going to get to go. And his brother Hudhayfah,
18 an older brother, was in Istanbul for Turkey. And when I
19 talked with him, he realized that he had actually been in
20 Istanbul for business from June 19 to June 27th so really
21 critical week overlapping the crime. He didn't see Omar in
22 Istanbul, but he talked to Omar a lot because they were in the
23 same country.

24 So Hudhayfah got a Turkish SIM card and used it to
25 call Omar's Turkish number. And he's tried to get his records,

1 and we've tried to get Mr. Ameen's records, as the Court knows.
2 We've been unable to get the Turk's cell records. I think I
3 just have to give up on the Turkish government on this one.
4 But Hudhayfah confirms that he was on the phone regularly. He
5 was calling the Turkish number. Everything was relaxed and
6 normal. They would talk about the day, and this was the
7 critical period of time.

8 And if the Court's concerned about, you know, maybe
9 Hudhayfah is making this up, here is a copy of his passport
10 showing the entry of June 19th and the exit on June 28th. The
11 red stamp is the entry. The blue stamp that says "Cikis" is
12 the exit.

13 So all this is happening, and meanwhile June 19th Omar
14 goes in and signs in. And meanwhile ISIS is taking over Rawah.
15 These are actual pictures from a news report that we found on
16 YouTube of ISIS taking over Rawah. And if the Court would like
17 to see the entire clip, we weren't able to figure out how to
18 post it in here, but we're happy to send it to the Court. And
19 look what you see. You see a caravan, an ISIS caravan, two tan
20 cars, one white one, and you see people. And for all we know,
21 this is the exact caravan that people are talking about. We
22 don't know. And there are some of the ISIS folks with their
23 weapons celebrating the takeover.

24 And meanwhile, the Iraqi army, the Iraqi police have
25 moved out. They have massacred quite a number of Sunni

1 prisoners. It is a dangerous, horrible situation that weekend.

2 A lot of people we spoke with were in Rawah
3 experiencing this when ISIS took over, and of course it's
4 incredibly hard to prove a negative. But they say, no, of
5 course not. Omar wasn't there. I remember it distinctly. It
6 was a very dramatic weekend. It's not like asking us where we
7 were June 2014. This was a weekend you will never forget. And
8 they remember smoke in the air, the defense forces leaving.
9 Omar wasn't there, over and over. And the Court's admitted
10 these already. Omar wasn't there. Omar wasn't there. And I
11 didn't put them all in here. The Court has them.

12 So in the evening Mr. Jasim is killed. The government
13 seems to suggest that they know when this was posted, and I
14 don't know. I'll need to talk to them afterwards. The Court
15 has seen this Twitter post that goes with that picture. That
16 picture appears to be the people who are bragging about killing
17 Jasim. That's why we tried to subpoena the picture itself from
18 Twitter. So if the government has more information, I think
19 that would be incredibly exculpatory, even the time that it was
20 posted.

21 But it's clear it was not posted by Omar Ameen. It
22 was posted from an account. The screen name on the account is
23 Abu-Nimer. There's a Gmail account associated with it. When
24 we subpoenaed additional information, there was another account
25 associated with Abu-Nimer. It's an account created June 26th,

1 2014, in Baghdad, and it was last updated two weeks after Ameen
2 was arrested, 9/3 of 2018. So clearly this is not Mr. Ameen's
3 account. Plus the government hasn't found Twitter on any
4 device. He just didn't use it. He actually had very limited
5 computer skills, so he's not the one who sent that tweet.

6 What he did send on the day and, you know, the Court
7 has seen this picture before. We all had a bit of a chuckle
8 when we were looking for the picture beneath it. And what
9 happened on June 22nd, 2014, Omar Ameen liked this post of a
10 soldier with his pants split and his butt hanging out. And the
11 Arabic says words to the effect of we always need to defend the
12 homeland. That's what he's doing. That's not what an ISIS
13 commander is doing on the day of a murder on the day they take
14 over Rawah, and we provided the Court the metadata so the Court
15 can see the date.

16 So that's what's happening the weekend of the murder.
17 And then what's happening in Mr. Ameen's life is the ICMC --
18 I'm going to give the interpreters a moment.

19 (Interpreters changing out.)

20 THE COURT: All right.

21 MS. BARBOUR: Okay. The ICMC realizes that they need
22 to get the Ameen family to Istanbul by July 7th, 2014. That's
23 approximately two weeks. They get notified that there's a
24 required medical exam for the whole family and a cultural
25 orientation. And although they had maybe five or six weeks

1 prior to the May 22nd date to let everyone know, they now have
2 two weeks to make all these arrangements. It's happening fast.

3 So they email the State Department and say, look, are
4 we good? Is this good? We want to let people know.

5 The next day Omar Ameen signs in again, and on that
6 same day, again they're working quickly. ICMC tells the UNHCR
7 tell all the applicants and get their travel requirements
8 because they all need to be there July 7th, 2014, for the
9 medical screening and between the 8th and the 10th of July for
10 the three-day cultural orientation. So they were informed
11 because what we got from UNHCR was an email confirming back.
12 We informed them all, thanks.

13 And these redactions are not us. This is how we
14 received them. Again, if we knew who these people were, we
15 would have contacted them to try to get more information, more
16 notes, phone records. But we're limited because these are
17 redacted, and they came to us this way. But it's very clear
18 they're saying, we informed them all, thanks.

19 And here they are on that list. This is the Ameen
20 family on that list. And we know that this all happened
21 because a couple days later Omar goes to the bus station in
22 Mersin to buy tickets for his whole family, and these are all
23 tickets to Istanbul. Of course the Court doesn't read Turkish.
24 There's some English on here. You can see Mersin up at the top
25 left. You can see it's a domestic lines passenger ticket. The

1 dates are on there. It's a ticket purchased for July 6th,
2 2014, and the purchase date is what I flagged which is the 5th
3 of July. So he's definitely in Mersin that whole time.

4 On the 7th he's in Istanbul in the flesh being seen by
5 an official doctor in support of his medical examination. He
6 meets a new friend who is also there for the same thing, and
7 they continue to hang out in Turkey for the rest of the summer.
8 And he gets a diploma. We have these for the rest of the
9 family too. He gets a diploma that he was there and he did his
10 cultural orientation. And as the Court saw, we even had the
11 hotel records. I didn't want to belabor the point, but it's
12 very, very clear.

13 We have his bank records which shows that as soon as
14 he got back to Mersin he made an ATM withdrawal, probably
15 needed some money after the big trip. In early August he gets
16 a -- now he's good to go. He's been approved. So he gets a
17 call from a new refugee agency, the USCCB. They're here in the
18 United States, and they are the ones who will help him with
19 housing in Salt Lake City where he's being placed. They call
20 him with an interpreter. He picks right up. He says, yes,
21 please help me, and they start their case. That note log shows
22 frequent contact.

23 Ahmed Azzam is terrified to stay in Mosul. He's like,
24 I need to get out of here. He talks to Omar who is still
25 there. Come, you can stay with me. And he joins Omar in the

1 fall. He doesn't stay with him, but he joins him in the fall.
2 So we know that Omar Ameen continues to be there.

3 And again more contacts, more permission letters,
4 contacts with the Turkish government, October, and then they
5 get to travel to the U.S. in November.

6 So the reason that all of this is incredibly
7 important -- well, there's two reasons. One is that this is a
8 crime that requires Mr. Ameen to actually have been with ISIS
9 because he's supposedly a commander according to the
10 extradition packet, according to Person 1, according to the
11 INSS, and yet he's in Turkey the whole time, impossible.

12 And then the Court knows we've talked with Person 5.
13 And I want to move on to Person 5. And Person 5, the reason
14 there's corroboration that Mr. Jasim --

15 THE COURT: Before you leave the time line, you
16 indicate that there was about a one-week -- on Thursday,
17 June 19, according to your arguments, you have Mr. Ameen in
18 Turkey?

19 MS. BARBOUR: Yes.

20 THE COURT: Then Friday, June 20, we don't have
21 anything definitive. Saturday, June 21, nothing definitive.
22 And then June 22, which is the day of the murder, nothing
23 definitive, and then you have him back in Turkey again on
24 June 26th.

25 MS. BARBOUR: That's the immigration records. You're

1 correct.

2 THE COURT: How do I -- the government argues that you
3 have narrowed the window by several weeks. I think under their
4 version he would have had about six weeks of unaccounted for
5 time. Without dates on these sign-ins, what do I look to to
6 determine whether he was in Turkey on June 19?

7 MS. BARBOUR: You look to the entire packet that the
8 Turkish government gave us. So that includes the statement
9 from I believe the head of that office, the signed statement
10 that we had translated for the Court that verified that
11 Mr. Ameen had signed in every week that verified that he needed
12 to sign in on Thursday, the fact that if he didn't sign in he
13 would have been kicked out, and then the fact that we asked for
14 the June ones and were given four. And we were given the June
15 ones. I wish there was a date on that, but we're dealing with
16 another country. And the U.S. Government has argued to the
17 Court that the Court should sort of presume that what other
18 countries do, in their case Iraq, was done correctly.

19 Well, here we have a government agency in Turkey
20 telling you that they did their job correctly. And we just
21 don't have that. We have Omar Hamid and his statement saying I
22 went with him. We signed in together. And we have Omar Hamid
23 saying I saw him nearly every day. So you don't have no idea
24 where he is for that weekend or for that week. You have
25 Omar Hamid saying I was with him nearly every day. And should

1 Omar Hamid have said I was with him for sure every day, well
2 no, not if that's not the truth. We want this to be the truth.
3 We want the Court to understand it and Omar Hamid said, I was
4 with him nearly every day. On the days I wasn't with him, I
5 spoke to him, and that amply covers the period of time that we
6 talk about.

7 And it would be very nice at this point to be able to
8 talk about whatever the government has that they know confirms
9 this. And I can't because I haven't been given it. The Court
10 hasn't been given it. But we know there's something out there
11 that confirms what Omar Hamid said. And it may not be what we
12 hoped it was back in January where we thought, oh, great, maybe
13 the government has a picture of them together on a beach in
14 June. No, the government said we don't have that. But they
15 have some kind of confirmation of his statement.

16 So that confirms both the sign-in sheets. It confirms
17 the sign-ins on those dates, and it gets you an understanding
18 of what was happening on that weekend. And I would submit to
19 the Court it's impossible to sign in on Thursday and get to
20 Rawah by the morning of Saturday to, you know, come in with
21 ISIS as a commander.

22 And this is not -- the Court's allowed to look at
23 common sense. The Court's allowed to make inferences. The
24 Court's allowed to consider the way that this evidence all fits
25 together. The government's certainly asking you to make

1 inferences, but they're just asking you to only look at an
2 incredibly selective piece of information. Piece of
3 information that has some problems with it and doesn't exactly
4 hang together either.

5 So we're trying to provide the Court the truth of what
6 happened, the truth of what happened in Turkey, the truth of
7 what happened in Rawah. We basically have been trying to
8 investigate the murder to try to figure out what happened.

9 THE COURT: All right. You were about to move on to
10 Person 5.

11 MS. BARBOUR: Yes. Thank you. So perfect segue, your
12 Honor. So Person 5, until Monday, the sole eye witness
13 certainly. The government keeps trying to do this thing where
14 they say that there's really three witnesses, but he's the eye
15 witness. But then these other people, somehow Witnesses A and
16 B should be counted the same because supposedly he told them.
17 Well, first of all, there's nothing in the original extradition
18 packet that supports this idea that Person 5 told them right
19 away, nothing, not in their statements, not in his statement.
20 That is absolutely something that was created in the second
21 extradition packet.

22 And the Court does not have to presume that it's all
23 truthful or that it's all correct or that it's all reliable.
24 Case after case says this Court has to decide competency,
25 reliability. The government wants you to just assume it's all

1 true. It's not even all consistent within it, and the Supreme
2 Court says, when there are inconsistencies, we get to talk
3 about them. We get to try to explain them, and that's what
4 we're doing.

5 So Person 5 told the defense -- and this actually
6 helps Person 5's statement make a little more sense, not with
7 his identification with Omar but with his sense that like he
8 knew who this person was, the murderer. Because he says that
9 the murderer, this ISIS commander, was in Rawah up until two
10 months before ISIS came in, so through April probably late
11 April, and then very critically stayed for six months
12 afterwards.

13 And he told us that time line, and that makes sense
14 because that would explain why he would understand that this is
15 an ISIS commander. But he also told the FBI, and he told the
16 FBI very distinctly, oh, I saw Omar Ameen in Rawah after the
17 murder. I saw him in July or August 2014. And he didn't just
18 see him. He supposedly saw him hanging out with Baghdadi,
19 okay, the most wanted man on the planet at the time. We'll
20 talk about that a little more.

21 So I'll just go through this. We wrote this up before
22 we got the second supplemental. The second supplemental has a
23 lot of problems with it, and I really appreciate the Court
24 giving us a chance to brief it. And I hope that the Court will
25 give us a chance to argue it. We are not able to go forward

1 because we just got it on Monday.

2 So for the purposes without that, Person 5's claim is
3 standing alone. It was uncorroborated. And we're talking
4 about the claim. We're talking about the only claim that
5 matters. And other courts have seen this issue before too.
6 We're talking about the claim that it was Omar that did this.
7 Nothing else matters. I mean, obviously it matters to Jasim's
8 family, but in this court, the only thing that matters is
9 whether Omar did this.

10 Everyone in the world can agree. We agree that
11 Mr. Jasim was killed by an ISIS squad. His family says that.
12 His widow says that. That doesn't corroborate the critical
13 thing for this Court which is who did it and is it Mr. Ameen.

14 The extradition packet, I'm not going to go over this
15 extensively because the Court has seen this before, but the
16 extradition packet has this very concerning aspect to it. This
17 is from the identification proceeding. This is from something
18 that Person 5 allegedly signed, even though that signature
19 doesn't match any other signature, and in it he identifies
20 Mr. Ameen as someone who killed the victim and kidnapped the
21 victim's three brothers.

22 Elsewhere in the packet it's very clear that the
23 kidnapping happened in 2016, years after Mr. Ameen left the
24 Middle East. That's in the packet. That's in the packet that
25 the government wants you to look at so closely to find

1 corroboration for, and it is a glaring issue with respect to
2 identification.

3 And then we turn to the signatures. And so the Court
4 is of course aware there were -- there was an earlier attempt
5 by the person we're calling TMF-1 to provide statements that
6 would inculcate Mr. Ameen and to provide them directly to the
7 FBI, and these are statements supposedly by Person 5. That's
8 the signature on that statement. And by Witness A, the mother,
9 that's the signature on that statement.

10 As the Court, I'm sure, saw when we first submitted
11 these back in May, as the government has pretty much conceded,
12 you don't need a degree to know that these look the same
13 because they're similar in style, construction. I mean,
14 they're really, really similar. And our expert agreed as well.
15 And then those are the known signatures. And there's no doubt
16 that unless the government knows something that this is
17 Person 5's known signature. In fact, the one on the left was
18 on the statement that Person 5 gave the government accusing the
19 defense of trying to bribe him. So we know this is his
20 signature. We obtained these other two for confirmation. This
21 is his signature. Not the same, not close to the same.

22 And Witness A's signature is even more different.
23 Here's her real signature given in front of the lawyer in Iraq,
24 given in front of our investigator. Not the same. She
25 obviously did not sign that first statement. And when we asked

1 her about it, she made it very clear she did not sign.

2 And the Court should be concerned about this because
3 it shows an attempt by people who have power in Iraq. TMF-1 is
4 a colonel in a militia that's part of the Iraqi Government to
5 set up a case against Mr. Ameen from the beginning. As far as
6 we know, that's the first time anyone brings this murder and
7 Omar's name together is in those statements. And they're
8 forged.

9 And your Honor, Person 1 there's a Person 1 statement
10 on that date too. We haven't had time to look into it because
11 we didn't know until Monday that Person 1 was going to matter.

12 So the signatures are weird in the extradition packet
13 as well. Again, they don't match the known signatures. This
14 one with the big loop on the right is that identification
15 signature, and I know that the government will say that the law
16 enforcement agents were there, and they saw Person 5 sign
17 something. They didn't get a copy of it. We don't know what
18 it is. We don't know if there were three pages.

19 THE COURT: But what about the substance of what was
20 said? The FBI agents that witnessed the interviews also
21 recount the content of the statements.

22 MS. BARBOUR: So I'm very happy that you brought that
23 up, your Honor. I believe the FBI agent who was there said
24 that he had a functional use of Arabic, had some trouble with
25 the Iraqi dialect, and believed that what Person 5 said was

1 consistent with what Person 5 said to the FBI. And that's
2 incredibly critical because, as the Court knows, what Person 5
3 said to the FBI was not I saw Omar Ameen kill. It was, I heard
4 shooting. I came out. My family member had been shot, and I
5 saw Omar Ameen. Incredible difference.

6 And the government says that you should not consider
7 that, right? Because they're trying to really shoehorn just
8 the evidence that helps them into this case. And they can't
9 even do that a hundred percent because there's lots in the
10 packets that has problems with it. But if we get into whether,
11 you know, what was actually said and what the FBI agent heard,
12 what he heard was something consistent, and certainly I heard
13 shooting and came out and saw that my family member was shot is
14 incredibly different than I saw. I'm an eye witness, and I saw
15 Omar Ameen do this.

16 So just to go back to the signatures unless you have
17 any other questions.

18 THE COURT: Yes. No. You can proceed.

19 MS. BARBOUR: Okay. So really very hard to accept
20 that these signatures match. And the government says, oh,
21 well, this is a young person. Maybe he's kind of working at
22 his signature. I have teenagers. I get that. They do go
23 through their stages of working out their signatures. He's
24 figured it out now, but it still really shows that that first
25 2017 signature was not by him, and therefore, it shows that the

1 Iraqi -- a member of the Iraqi Government was forging evidence
2 against Mr. Ameen to give to the FBI.

3 Same thing with Witness A. These are her signatures
4 in the packet. That's her signature supposedly from September
5 2017. Here's her real signature.

6 And Person 5 has shown us so many ways that he is not
7 reliable. He's shown us that within the packet by saying
8 Omar Ameen committed a kidnapping that happened two years after
9 Omar Ameen left the Middle East for the United States.
10 Impossible. That alone should undermine all probable cause.

11 But then when he tells his earlier statement to the
12 FBI -- and the government has argued earlier statements are
13 more reliable -- he says Omar Ameen has a brother Wasam.
14 Omar Ameen does not have a brother Wasam. The Court has in the
15 packet Omar's entire family, no brother Wasam.

16 He repeatedly says it's June 25th. Okay. Well, maybe
17 that's just a mistake, but it's the same mistake he made to the
18 defense when he started talking about that day. He again said
19 June 25th. Then he sort of, oh, no, no, no. Okay, no, the
20 22nd. Unusual.

21 And then the critical thing, and this is why when we
22 get to exhibits we're asking that the government file, at least
23 for the Court's view, even if we can't see it, an unredacted
24 copy of Person 5's 302. And if there's some reason we can't
25 see it, the Court can let us know, but it's really critical for

1 the Court to see behind those redactions because behind one of
2 those redactions is the part that says that Person 5 told the
3 FBI they were working on the generator. ISIS came. The victim
4 said go get some tools, maybe to protect Person 5, who knows.
5 Person 5 went inside, then heard gunshots, then came back.
6 Victim was already shot. He didn't see the shooting. Really
7 critical information.

8 And then of course he also tells the FBI that he
9 continues to see Omar Ameen in Rawah when we know that could
10 not have happened. And he gives a description. And the
11 government has gone over a lot of the factors about
12 reliability. They've missed the factor that said that the
13 description given should actually match the person it's being
14 given about. That's a really critical factor for eye witness
15 identification. If you witness something and you tell the law
16 enforcement a completely different description and then you
17 pick out someone different, that dooms you.

18 So he says to the FBI -- and they noted all this --
19 that Omar had shoulder length hair and a beard. The Court -- I
20 mean, Omar's picture is in the extradition packet. It
21 certainty doesn't match that description. And I know that
22 there's been, you know, a question about whether showing Omar's
23 real picture from outside the packet is explanatory or not. We
24 believe it is explanatory. It helps explain that the picture
25 that Person 5 picked out is what Omar looks like all the time.

1 That's a true picture of Omar and that Person 5 gave the FBI a
2 completely different description.

3 Why? Because he's not describing Omar. If he saw
4 this, he's describing someone who belongs to ISIS, is a
5 commander, was in Rawah until two months before, stayed in
6 Rawah, and then left in December 2014. Fair enough. We know
7 this crime happened, and it happened by people who took over
8 Rawah in June. But it wasn't Omar.

9 This is Omar. Every picture you will ever see of Omar
10 he has what you see now right down almost to the scalp. In
11 fact, the picture at the bottom, that's in March of 2014. The
12 picture in the middle from the boat, that's in May. You can't
13 grow shoulder length hair in that amount of time.

14 So his statement to the defense just obliterates any
15 reliability. He is mentally ill, and I say that with respect
16 for everything that he's gone through. He wanted to talk about
17 it to us a lot. He got a shock. He calls it a shock, a
18 psychological condition. He lost his memory after this event.
19 Then it starts to come back to him. But when he remembers it,
20 he gets a psychological condition. And he used this term I
21 think because, you know, he hasn't really received much care
22 because we know that the care that his family gave him was to
23 lock him in the house after this happened because he would be
24 hitting things when he went out in the street. Very dangerous
25 scenario to have a 15-year-old going out in the grip of a

1 mental illness hitting things. So they locked him in so he
2 wouldn't go out.

3 And one day he broke out. This is after the crime of
4 course. He got out, and that was the day that he says with his
5 own eyes he saw Abu Bakr al-Baghdadi, the most wanted man on
6 the planet who had just announced the caliphate for ISIS, and
7 he saw him supposedly there with Omar. And he says he saw Omar
8 twice in the six months after the event because he was locked
9 up the rest of the time. But he was also looking for him. I
10 don't remember when I reported it. The condition comes back to
11 me. My body shivers. My body shivers and shakes. I get
12 irritable. I start hitting things. I hit people.

13 He imagines things. This is trauma. He imagines that
14 they, ISIS, are coming and carrying out the same things, the
15 way the cars came that day. No wonder he told, whoever, the
16 Iraqis, that he felt like he was under attack. This is trauma.

17 And he was very clear I saw Omar up until two months
18 before the crime. As soon as ISIS came in, he came with them.
19 How long did he stay? Ah, that is the best question you had
20 asked me. He stayed for about six months afterwards. Yes. He
21 saw al-Baghdadi. They had lunch together. And he was there
22 until the end of the 12th month 2014, December 2014. He saw
23 the murderer until December 2014. Omar was in Salt Lake City
24 starting November 5th of 2014.

25 And we've provided the Court now the statement by the

1 widow, and I didn't see that the government did anything
2 responding to our argument that the Court really needs to
3 consider that, and we raised the Crime Victims Rights Act as
4 part of the reason. And I didn't see that the government
5 addressed it at all. She is the widow of the crime victim in
6 this case. This is a court proceeding involving that crime.
7 She should be heard. And yet the government's argued that the
8 Court should exclude her statement. And her statement matters.
9 She was there.

10 She lives in Erbil. She's outside the control of the
11 Iraqi forces, and she says that the crime happened. She ran
12 outside. Muhammad, the victim's brother, held the victim in
13 his arms. The victim died. She removed his shirt to see what
14 was happening. They took him to the hospital. That's
15 Exhibit 84.

16 And this is important because the Court I think
17 realizes what Person 5 told us in the most recent version of
18 his story of this case. So remember the first story is I was
19 fixing the generator with the victim. I went inside. I heard
20 shooting. I came out. He had been shot. Omar was there.

21 The second version is I saw it. I saw Omar Ameen
22 shoot him. That's the version the Court -- the government
23 wants this Court to look at, put blinders on, only look at
24 that.

25 And the third version, ISIS came. I went and got next

1 to the victim while they were striking him. He fell in my
2 arms. Omar Ameen walked up to him, shot the victim twice in
3 the chest while he was in my arms. But we know from the widow
4 that didn't happen. We know that the person who had Ihsan in
5 his arms was Ihsan's brother. And we also know that can't
6 happen. It is absolutely not believable that you could be
7 holding someone. They get shot twice in the heart while you're
8 holding them by terrorists, and you live to tell the tale.

9 But this is an example of Person 5. This is probably
10 his mental illness. This is some of the other personality
11 traits the family has told us about. He has moved himself to
12 the center of this. Maybe he feels guilt for surviving. Maybe
13 he feels guilt for being inside the house when this happened,
14 but by the end of the day, the story he tells, absolutely
15 unbelievable.

16 So there's several other things that make him
17 absolutely unreliable. One thing is, as we've provided the
18 Court, he first accused falsely the defense of bribing him and
19 then surprisingly a week or two later solicited bribes from us.
20 Called -- I mean, texted and said can you send me money. I'm
21 taking care of a child with cancer.

22 THE COURT: Was he the first to raise the idea of
23 money? I recall looking through the statements, and I thought
24 that it was the interpreter who first introduced that idea.

25 MS. BARBOUR: No. Person 5 raised it several times.

1 It was pushed away. It came back. And what's incredibly
2 clear, and there's no doubt about it, is that he came right
3 back afterwards and said, you know, again and again and again,
4 the Court has the texts, give me money. I have a child with
5 cancer. I have nothing else. I need help. Just something for
6 the Court to consider what his motives are.

7 MR. GALLOWAY: Your Honor, if I may clarify. It was
8 not the interpreter who was having the conversation with
9 Person 5. It was our Arabic-speaking investigator.

10 THE COURT: All right. You may proceed.

11 MS. BARBOUR: And it's also clear -- I mean, these are
12 all just -- I think the Court has plenty to be concerned about,
13 but Person 5's father is serving a 20-year prison sentence in
14 Iraq for supporting ISIS. We know this from the family. We
15 know this from Person 5 himself. Person 5 believes his father
16 was railroaded, was not part of ISIS, that this is all a setup,
17 and that if he can get money together, he can get his father
18 out.

19 So just I'm nearing the end, and your Honor, one thing
20 I do want to make clear, we've -- in recent filings, we've
21 taken any discussion of person four out of our filings, and I
22 don't want the Court to be confused. TMF-1 is the person, the
23 fixer, the facilitator, as the government calls him, who
24 brought these witness into the FBI. He's the person that
25 brought the handwritten statements in in September of 2017.

1 That is not person 4. The government's made that clear. We
2 want to make that clear too.

3 THE COURT: I see you now agree with the government
4 they're two different people.

5 MS. BARBOUR: Yes. And the reason that we made this
6 mistake is that identities have been shielded from us this
7 whole time. So we knew who TMF-1 was, and we were trying to
8 match up a lot of critical facts. We believed that that was
9 Person 4. We thought we had made a connection. It is not
10 Person 4. So I just want to make that super clear to the
11 Court. I've changed it on our exhibit list.

12 But that doesn't change the concerns about TMF-1, the
13 fixer, the facilitator, the person who has brought all these
14 people in but for some reason was not himself considered a
15 witness by the FBI. He arranged for the handwritten
16 statements. He got four different witnesses, actually
17 physically brought them to the FBI. And in fact, on the day he
18 brought Person 5, it was TMF-1, Person 5, Person 6 and 7, we
19 don't know their identities, who came up together. We know he
20 had multiple contacts with the FBI agents including a contact
21 to set up Person 1's statement in January of 2018.

22 And the government has talked quite a bit about
23 identification. TMF-1 provided those pictures. Person 1 was
24 asked to bring out his cell phone, flip through it, show
25 Person 5 pictures, and I'm talking about at the FBI interview

1 in October 2017. And Person 5 had already seen those pictures
2 we don't know anything about whether that so-called photo array
3 was suggestive. Certainly seems suggestive when you've already
4 seen the pictures and the guy who's bringing you in to give a
5 statement is showing pictures on his cell phone, the guy who
6 already forged or provided forged handwritten statements.

7 Person 5 then arranged to have Person -- sorry. TMF-1
8 then arranged to have Person 5 go to the INSS. He took
9 Person 5 to the Iraqi court. And while all of this was
10 happening, including when they were both meeting with the FBI,
11 he's providing Person 5 full living expenses. Person 5 is
12 living with him, a job, a firearm, shelter. And Person 5 says
13 to the defense, TMF-1, he's like my father. I would do
14 anything for him.

15 And this is really important because very early in
16 this case, in fact in May we provided the Court the statement
17 of Omar's brother Quetaiba, and we didn't know at the time that
18 the person that Quetaiba was providing the statement about was
19 actually TMF-1 who was centrally involved in this case. But he
20 was. So if you go back and look at that statement, and it will
21 take me a moment to figure out which one it is. Maybe you can
22 figure it out. It explains the longstanding issues that TMF-1
23 has had, family issues, tribal issues with the Ameen family.
24 And it helps us understand why someone who was in Turkey at the
25 time is being accused of this.

1 And this all culminates in TMF-1 making a statement
2 that is chilling, saying hand Omar over to me. Hand him over
3 to me. I will get reprisal from him. Hand him over to me. I
4 will execute him. I have proof and evidence. I'll bring
5 witnesses to get him, and we'll do a tribal thing; and we'll
6 execute. Terrifying. And this is the person who fixed this
7 all up. This is the person who, as the government says,
8 facilitated this, brought these witnesses together. And TMF-1
9 has a direct connection to Person 1 as shown in the
10 government's exhibit.

11 TMF-1, he's called TMF-1 in part because TMF stands
12 for tribal mobilization forces. It was the government that
13 gave him that moniker, and TMF-1 is a colonel in the TMF, in
14 the tribal mobilization forces in Iraq. It's a militia, and
15 it's considered part of the Iraqi armed forces. And Person 1,
16 apparently, the government says that he is also a colonel in
17 the tribal mobilization forces. They work together.

18 So we've very quickly wanted the Court to hear some
19 issues with the second supplemental packet. And there are not
20 just the factual issues that Mr. Galloway pointed out. There
21 are legal issues too, and we appreciate the time to brief it
22 and hope we have time and the opportunity to argue it to you.

23 When we deal with exhibits, the government's already
24 indicated it's going to allow the Court -- the defense to file
25 the unredacted statement of Person 1, and we anticipate that

1 that will be Exhibit 127. And I really wanted to insist that
2 the Court get to see the unredacted version, and this way the
3 Court can verify what we're saying.

4 The version in the second supplemental packet of
5 Person 1's statement, it appears to have been translated into
6 Arabic and then translated back to English. I mean, it is
7 almost word for word what the FBI 302 says with the exception
8 of one very important fact. And the Court can read that, and I
9 have a feeling we're going to go down some road where we're
10 arguing with grammar, so I'm glad the kids are gone because it
11 would bore them, but it's very clear, it's very clear from the
12 way the FBI agent wrote it that Person 1 is saying, as a child,
13 I knew Omar Ameen. It goes through his biography. It says I
14 was sometimes in Rawah as a child. It says, as a child, I knew
15 Omar Ameen. I interacted socially with him. As an adult --
16 and then goes through his work history. Worked for the Iraqi
17 army, joined the TMF, things like that. It is not at all the
18 flip-flop that the government is trying to give you.

19 So as a child Person 1 says he knew Omar Ameen. When
20 was Person 1 born? 1956. He was almost 18 years old when Omar
21 was born in 1973. He did not know as a child Omar Ameen. He
22 did not. He could not. They're almost a generation apart. I
23 don't know who he's talking about, just like we don't know who
24 Person 5 is talking about.

25 Well, once again, it's not Omar Ameen. Is it someone

1 a generation older than him that Person 1 is getting him
2 confused with? Is Person 1 looking at pictures and just kind
3 of saying years later, sure, that must be the guy. We don't
4 know. But we know this hard fact and it's in the packet.

5 Omar's birth date is in the packet a dozen times.
6 Absolutely undeniable. It's in the Iraqi packet. The Iraqi
7 court has it. He was born December 1973, and Person 1 was born
8 in March 1956. They could not have known each other when
9 Person 1 was a child.

10 So the government wants you to focus on the packets.
11 And it's understandable. It's a very smart legal argument, and
12 it takes advantage of a lot of case law that's out there. But
13 there's a lot of case law out there that's all over the place
14 in extradition cases, and the Court has seen this. You can
15 find a case that says -- you know, usually an older case that
16 says you should only really look at the packet, and then you
17 find cases that say you should be looking at everything and
18 weighing it. And, you know, if the issue is should it come in
19 or not, well, you've already let in most of our alibi evidence.
20 And you said you were going to weigh it. And that's exactly
21 what this Court should do.

22 In the end, there are such extreme inconsistencies in
23 the packet. There is such firm proof that Omar was in Turkey
24 that it's clear that we've obliterated probable cause. And all
25 of this has to go together. It's not does the alibi obliterate

1 probable cause, and then separately does everything else about
2 Rawah obliterate probable cause. No. It should all come
3 together, and all together you have the whole. You have Omar
4 in Turkey, and you have a non-Omar in Rawah hanging out
5 throughout most of 2014 becoming an ISIS commander, planning a
6 takeover, planning a murder, getting a gang together, getting
7 weapons, getting a convoy together, giving poor Mr. Jasim a
8 call.

9 And that leads me to our last exhibit or actually the
10 last one that I filed on Monday, 125. The last one that we
11 thought would matter up until we heard about Person 1. We have
12 Mr. Jasim's cell phone, and we're still trying to understand.
13 It's in Arabic, of course. And we just got it. It took a
14 while to try to get into it. But there is an absolutely
15 chilling text message on the day of his murder. And I'm sure
16 that we will try to provide the Court with more information
17 from the cell phone. I think there is more information,
18 especially with regard to the phone call.

19 But the text message is from a few hours before the
20 murder. I think, if I remember right, it's about 4:30 in the
21 afternoon. And it's a list of names from the victim to TMF-1,
22 ironically, and it's a list of names including two of the names
23 of ISIS people whose names have sort of been brought in and out
24 of the case depending who is telling the story of this case,
25 but they're in the extradition packet. And it mentions them,

1 and it says who the driver is; and it says who is manning the
2 large machine gun. And he's clearly giving information to
3 someone else who is on the side of law enforcement about ISIS
4 people, maybe the very ISIS convoy that the family says was
5 casing his home earlier.

6 And Omar Ameen's name is not on that list, absolutely
7 not. He knew Mr. Jasim. They were friends. They were
8 neighbors. And then Omar left and started a new life. And
9 Mr. Jasim was trapped in Rawah crying for help, sending out a
10 list of names to TMF-1 of the people who are going to come back
11 and kill him. And Omar's not on there.

12 So thank you, your Honor. I would be happy to answer
13 any specific questions, and I also hope to be able to respond
14 to some of the issues with the evidence.

15 THE COURT: We're right at the noon hour.
16 Ms. Hemesath, I'll hear your rebuttal argument this afternoon.

17 MS. HEMESATH: I appreciate that, your Honor. Just
18 for planning sake for this afternoon, we're prepared to submit
19 on the briefing on the question of the admissibility of each
20 individual exhibit rather than try to go through all of them.

21 THE COURT: All right. I do have extensive notes on
22 the exhibits and the various objections, but I don't think we
23 need to go through each of them. When I issue my written
24 ruling, I'll expand on the admissibility and the reasons why I
25 admit or do not admit each of the exhibits. I think it's been

1 helpful though to hear them discussed in the context of the
2 arguments.

3 How much time do you anticipate for your rebuttal?

4 MS. HEMESATH: No more than 20 minutes.

5 THE COURT: All right. We'll resume at 1:30.

6 MS. HEMESATH: Thank you, your Honor.

7 MS. BARBOUR: Thank you, your Honor.

8 (The luncheon recess was taken 12:02 p.m. to
9 1:34 p.m.)

10 THE COURT: All right. The record will reflect we are
11 again convened. All counsel are present, and the defendant is
12 present.

13 Ms. Hemesath, are you ready to proceed?

14 MS. HEMESATH: Yes, your Honor. Thank you very much.
15 As a starting point, I want to let the Court know we disagree
16 with multiple factual and legal assertions that the defense has
17 made. I'm only going to hit the high points of those. But if
18 the Court has any questions about anything I don't cover, we're
19 happy to respond to that as well.

20 THE COURT: All right.

21 MS. HEMESATH: So I think the most important thing
22 that was discussed is something your Honor already asked a
23 question about, and that's the sign-in logs in Turkey because
24 that's really what the defense is relying on to shrink the time
25 line in this case significantly from about a six-week time line

1 down to about a one-week time line.

2 And the argument is that Turkey has these rules about
3 immigration law, and Ameen would have followed those rules
4 about immigration law. And the government fundamentally
5 rejects that premise. Turkey may have rules about immigration,
6 but Omar Ameen has lied under oath on his immigration forms
7 filed with the USCIS and filed with the UNHCR. He is not a
8 trustworthy person when it comes to immigration laws, and so
9 that he would have followed whatever rules Turkey laid out
10 about signing in, when to do it, who to have it done, it's just
11 not something that this Court should rely upon at all, let
12 alone arising to the evidence of obliterating probable cause or
13 even shrinking the time line down to a one-week time line.

14 So what's left are these two dates, May 22nd, 2014,
15 and July 27th, 2014. Those are the dates the government
16 doesn't dispute he's in Turkey on those days. In between those
17 days is a gap, and it's a gap that's existed since this case
18 was first brought to your Honor's attention. It was discussed
19 in the bail memorandum that the United States filed, and that
20 gap remains now after 15 months of defense investigation.
21 There's nothing that concretely shrinks that gap down from that
22 six-week time period despite extensive looking. There's no
23 document.

24 The other dates that the defense was floating about
25 the date USCIS stamped a document or the date that an email was

1 sent to Ameen, those don't prove that Ameen was in Turkey on
2 that day. Those are just other days that exist to blur the
3 fact that between May 22nd and July 7th there's nothing
4 concrete.

5 What his friends might say about where he was is not
6 tethered to anything that can be corroborated. There's no
7 photograph. There's no document. There's nothing that would
8 give -- that ought to give any weight to those statements. So
9 ultimately it comes down to credibility, what the witnesses in
10 Iraq said and what these acquaintances of Ameen in Turkey were
11 willing to say, this sort of vague he was in Turkey.

12 So that's one. That's the major point is that that
13 gap exists there. The subpoint to that would be even if we
14 assume that the gap is shrunk to the one-week time frame, none
15 of the defense demonstrates the impossibility of this murder.

16 By the defense's own evidence, it would be a 13-hour
17 drive. It's certainly possible to do 13-hour drives in a
18 one-week time period. And where the defense was saying there
19 were checkpoints. There were roadblocks. The allegation is
20 that Omar Ameen is a member of ISIS, and those would be ISIS
21 checkpoints. He would be able to go faster through those
22 checkpoints rather than be slowed by that. So there's nothing
23 that obliterates probable cause even on the one-week time frame
24 that the defense wants the Court to buy into.

25 The next point that we would make is that the

1 immigration attorney who gives the declaration that they say
2 supports those sign-in logs is careful to say he doesn't know
3 anything about Ameen's particular case. He doesn't have any
4 knowledge of Ameen's own sign-ins. He's talking about general
5 procedures that were generally followed. But that raises more
6 questions. Were those procedures followed in this case? Did
7 Ameen get around the rules somehow by signing in? Is that
8 Ameen's signature on the sign-in logs at all? Are those even
9 sign-in logs I think is still a fair question. As the record
10 stands before this Court, they're just clips of something in a
11 foreign language with numbers that we don't know what they
12 correspond to, so its hard to give the evidentiary weight to
13 those that --

14 THE COURT: One of the questions I have, and I suppose
15 this is a question I should direct towards defense counsel, but
16 I won't do that now but make a note of it. I'm curious are
17 there any other exhibits that describe the procedure? I've
18 looked at Exhibit 11, and I think it's 11-T, and then T-5 in
19 particular is the declaration, but I'm curious whether there is
20 any other documentary evidence in the record that describes the
21 process.

22 MS. HEMESATH: I don't think there's any other
23 documentary. I think they have other people, acquaintances of
24 Ameen that talk about their own experiences with signing in.
25 Even if those were to be fully credited, they have no personal

1 knowledge of Ameen's sign-in activity on the Thursday before
2 and after June 22nd, 2014. It's more either it was my own
3 practice to do it this way, or maybe even most generously it
4 was Ameen's practice to sign in. But nothing that would say I
5 have a concrete memory of this sign-in. This is how I know he
6 was there on those days with me.

7 And even if those things all existed, the purpose of
8 introducing that evidence is to contradict the statements of
9 the eye witnesses in Iraq. That's an impermissible purpose.
10 It creates a conflict of credibility that this Court -- is
11 beyond the purview of this Court in an extradition proceeding.

12 The defense spent some time discussing a witness named
13 Omar Hamid who gave a sort of generalized broad statement that
14 Ameen was with him everyday in Turkey. Of course even that is
15 hard to take on face value because Ameen was not always in
16 Mersin. He was I think in Istanbul. So it's hard to know what
17 he really meant every day that he was traveling with the Ameen
18 family as it made its various appointments. It's also another
19 example of something that creates a conflict of credibility
20 that would require trial to sort that statement versus what the
21 eye witnesses in the extradition requests say.

22 I think the impression of the defense presentation was
23 to leave -- was that the United States is obscuring exculpatory
24 evidence that would obliterate probable cause. As your Honor
25 is very familiar, that issue has been exhaustively briefed.

1 Your Honor is well aware that argument has no merit. We've
2 spent a lot of time on that in this case, and I don't want to
3 believe the misimpression that there is something out there
4 that the defense was implying. And then ultimately again it's
5 contradictory evidence, the Omar Hamid piece of evidence.

6 The defense spent some time discussing -- also
7 creating the impression that Person 1 was unknown to them until
8 Monday. It was actually on November 26th that the
9 United States filed the advanced copy of the second
10 supplemental information from the Republic of Iraq, so that's
11 at least last week. But Person 1 has been a point of defense
12 focus in this case far preceding that, and I would specifically
13 direct you to the phone conversation that the defense had with
14 TMF-1 in which Person 1 is discussed. So I think that it's a
15 fair inference from that that the defense was investigating
16 Person 1 as part of its broad investigation into this case.

17 On October 7th when Person 1 was discussed, I think
18 all parties were on -- in this courtroom. I think all parties
19 were on notice that Person 1 was an important piece of
20 information in this case. And that hasn't changed. They've
21 had the 302 since the inception of this case. They've had the
22 handwritten statement by Person 1. He's mentioned in the
23 affidavit of the FBI special agents, and so I think I've
24 covered that.

25 On the question of the relative ages of Person 1 and

1 Omar Ameen, whether one was a child or the other was a child, I
2 can proffer we did have the opportunity to consult with the FBI
3 special agent who was present for the FBI interview of
4 Person 1. He was able to provide clarity that it was his
5 understanding that Omar Ameen was the child. Person 1 was
6 older, knew Omar Ameen from when Omar Ameen was a child. And
7 that makes sense because Person 1 was there in person for that
8 interview, and the agent could observe he was an older
9 gentleman; and the agent knew what Ameen looked like. Indeed
10 he had a photograph of Ameen that he showed to Person 1 which
11 Person 1 positively identified as Omar Ameen. So this isn't a
12 case of mistaken identity. It may be an imperfectly written
13 302. It may be a translation issue. But that's the
14 clarification I wanted to offer to the Court.

15 It ultimately doesn't change the content of what
16 Person 1 said, which is that he saw this caravan go by. That's
17 evidence corroborated by other evidence in the extradition
18 request.

19 I'm going to briefly hit on the phone call that the
20 defense had with Person 5, so the eye witness. The Court asked
21 about who offered money first, who brought up money first in
22 that phone call. It's exhibit -- it's at 90, thank you, page 8
23 in the transcript of that call, and this is the defense
24 transcript of the call. So one thing that's possible is that
25 there are parts of this call that we don't have. But according

1 to this transcript, the subject of money comes up on page 8.
2 So toward the middle of that page in the middle there's
3 Person 5, and he says: (Reading) "Who will compensate me? Who
4 will compensate me? I implored the Americans. I implored the
5 United States, and they did nothing for me. I didn't leave
6 anyone without imploring them."

7 So to me, your Honor, that's past tense. He's saying
8 this was something he may have been interested in, but it
9 didn't happen for him.

10 And then the defense investigator, the former FBI
11 agent says, (Reading) "I swear by God I." Person 5 cuts him
12 off and says, "Till now I can't." And then it's the defense
13 investigator who affirmatively offers, (Reading) "I will talk
14 to people and tell them that you are in need of assistance, and
15 God will present what is beneficial. God willing. Okay. And
16 that is a promise from me to you that I will talk to people."
17 And the effect of that on Person 5 is that he starts crying.

18 So going back to where we sort of started in this
19 proceeding, there's one question of what does the defense
20 intend to happen with their investigation, but there's the
21 other reality of how it's perceived by the people that they're
22 interacting with. I submit that Person 5 perceives this as
23 that he is being offered money, and he is so relieved that he
24 bursts into tears.

25 So it may be a minor point, but it goes to the broader

1 question of how is this Court to assess what the defense is
2 making are serious allegations about the credibility of
3 Person 5. If this is a basis of saying that he fabricated this
4 testimony, I submit it doesn't hold up, at least not on the
5 basis of this transcript, that he was motivated by money at
6 all.

7 Even if he did want money though, and we covered this
8 extensively in our briefs, having that desire is not
9 inconsistent with giving truthful testimony, not at all.
10 That's *Illinois versus Gates*, basic probable assessment. It
11 may be a factor that the Court would consider, but it can be
12 absolutely true that he wanted compensation and that he
13 personally observed Omar Ameen shoot the victim.

14 Also in the phone call the defense now extensively
15 discusses the mental health of Person 5. A reasonable reading
16 of this transcript and consistent with what one would normally
17 expect in the common sense evaluation is that when someone like
18 Person 5 is a witness to, is a percipient witness to such a
19 traumatic event as a murder that he is there for, that will
20 cause the mental health trauma that the defense extensively
21 discussed.

22 And when that happens, what is reliable is what
23 happens in the moments immediately after the murder before any
24 of that trauma sets in. And what happens in the moments
25 immediately after this murder is Person 5 tells Witnesses A and

1 B, Omar Ameen shot Ihsan. That has the indicia of reliability,
2 and any mental health issues that may have developed after
3 there may be something that the trial court in Iraq will go on
4 to explore but are not indicated anywhere in the extradition
5 request.

6 The testimony of Person 5 is easy to comprehend. It
7 hangs together with the testimony of the other witnesses, so
8 it's corroborated, and it's consistent with all the accounts
9 that Person 5 has given of this murder in the sense that this
10 extensive transcript, the FBI 302, the testimony under oath,
11 they all are Person 5, personally present on the scene, witness
12 to the ISIS caravan and witness to Omar Ameen participating in
13 the murder. That's what's consistent. And so the smaller
14 details around that are just not relevant in these extradition
15 proceedings even though they may be a basis for
16 cross-examination or further probing in the trial overseas.

17 Very briefly on the question of forgery, your Honor
18 noted the FBI special agent was present or the ALAT actually
19 was present when Person 5 gave his in-court testimony and that
20 the ALAT has at least a conversational understanding of Arabic.
21 I just want to note also not only is he present and observing
22 and hearing the content, but also with him is an FBI
23 linguistics specialist fluent in both Arabic and English,
24 bilingual, who is also hearing the content. So that's two more
25 points of confirmation that what is said at the hearing under

1 oath is consistent with what's been said throughout all of the
2 documents in this case.

3 The only piece of evidence or the only defense exhibit
4 that we haven't briefed because it came in late is defense
5 Exhibit 125. That's the text message that the defense ended
6 on. I just want to say very briefly nothing in that exhibit on
7 its own or in conjunction with any other piece of evidence
8 comes close to obliterating probable cause. It describes
9 people in the vehicles. Notably it doesn't describe who is in
10 the passenger seat of the vehicle which is exactly where
11 Person 1 placed Omar Ameen.

12 So it could be that the victim, who was the observer
13 in that case, could be that he didn't have a view of that
14 convoy. It could be that he's seeing a different convoy come
15 in. It could be that he didn't have time to type out all of
16 the names that he saw. It's another example that raises more
17 questions than answers.

18 THE COURT: That text message was from the victim to
19 TMF-1 that the defense describes as a colonel?

20 MS. HEMESATH: That's what the defense says the text
21 message is. We don't have the phone. I would submit maybe the
22 answer is to send the phone to the Court in the Republic of
23 Iraq where they are capable of analyzing the phone, seeing what
24 else is on the phone, but that's what the defense proffer is is
25 that it's a text from the deceased to TMF-1.

1 THE COURT: And that was about two hours before the
2 murder?

3 MS. HEMESATH: I believe so, yes, yes. What we know
4 is the murder is at 7:00 because that's what the extradition
5 request says.

6 So, your Honor, even putting aside the legal standards
7 for a moment of admissibility of evidence and burden of proof,
8 one of two things is true. Either the events occurred as the
9 witnesses describe at the time -- at a time that no one can
10 prove that Omar Ameen was in Turkey, i.e., as stated in the
11 extradition request, or Omar Ameen is the victim of a sweeping
12 conspiracy involving multiple actors who planned so well in
13 advance of this moment right now that they gave contemporaneous
14 statements at the time of the murder, that multiple sworn
15 statements were given after that fact, and that they happened
16 to fall upon a time when no one can prove that Omar Ameen is
17 anywhere other than Rawah, Iraq. It's just not plausible, your
18 Honor.

19 We maintain our objections to the defense exhibits as
20 briefed. But even assuming for the purpose of argument that
21 your Honor admits every single one of the defense exhibits and
22 accepts every single one of the defense arguments about
23 inferences from those exhibits, there is still abundant
24 probable cause in this record that Omar Ameen committed the
25 murder of Ihsan.

1 Regardless of whether the Court gives weight to the
2 statements of Person 1, our answer is the same. There is
3 abundant probable cause in the original extradition request and
4 the supplement. And should the Court choose to do so, the
5 Court could certify Ameen today on this record. Thank you very
6 much.

7 THE COURT: All right. Ms. Barbour, do you want to
8 address my question about whether there's any other exhibits
9 that describes the procedure, the sign-in procedure?

10 MS. BARBOUR: Yes, your Honor. And when we requested
11 permission from the Court to do the letters rogatory, the
12 subpoenas to the various refugee agencies, we described that in
13 detail and referred to various regulations, judicially
14 noticeable procedures. And what we did then in the extradition
15 brief was provide you an expert in the form of Mr. Hydari to
16 walk you through them.

17 So if the Court wants us to rebrief whether Mr. Hydari
18 is correctly explaining the procedures, we can easily do that.
19 The procedures are U.S. procedures. They're online. They are
20 State Department procedures, Department of Homeland Security
21 procedures, and then in fact the Turkish procedures are in the
22 exhibit.

23 THE COURT: Well, the declaration states that when
24 your investigator requested the sign-ins, he asked for the --
25 specifically for the Thursday before and the Thursday after,

1 but it doesn't explain why the focus is on Thursday. Is that
2 the standard procedure?

3 MS. BARBOUR: No. We already knew that it was
4 Thursday because, if the Court turns to 11-E, and I want to
5 ensure that the Court's looking at the correct version of this.
6 This is one of the two packets we got from the Turks. So this
7 is a 30-page document. It's document 219-2, if you want to
8 find it in ECF.

9 THE COURT: You said Exhibit 11?

10 MS. BARBOUR: Exhibit 11-E. When I looked at the ECF
11 exhibits, some of the pages were missing, so I refiled it. The
12 correct exhibit is document 219-2, and that lays out in detail
13 from the gentleman who is the head of that office, and the
14 English translation is at pages 3 and 4. He's the assistant
15 manager of the Province Directorate of Immigration
16 Administration. And he said that Mr. Ameen had to sign in
17 every week. And I think, yes, this is what we put in our
18 PowerPoint. If you look at page 3 of that, he was subjected to
19 signature obligation every Thursday in Mersin.

20 So when we went to Mersin and asked specifically for
21 the sign-in sheets, having already been told he was on -- that
22 Mr. Ameen was on Thursday sign-in duty, we of course said he
23 has to sign in Thursdays, give us all the Thursdays from June.
24 Specifically, if you don't want to give us all of them, give us
25 the Thursday before June 22nd and the Thursday after June 22nd,

1 and they gave us those four sheets that the Court has.

2 THE COURT: All right. I would also like you to
3 address the extradition standard in that context as well. I
4 understand your point that the more difficult it becomes
5 geographically and physically for the defendant to have
6 traveled from Mersin to Rawah to actually sign in the Thursday
7 before and arrive there in time to have committed the murder
8 and then to travel back again and get back to Mersin on the
9 Thursday after, the more difficult that becomes, the more faith
10 one has to have in the credibility of the people who say they
11 saw him in Rawah. But when I get into that question about
12 credibility, I run into the credibility rule that it's not up
13 to the extradition court to decide credibility. It's up to the
14 trial court to decide that. How do I deal with that?

15 MS. BARBOUR: Well, the government has done nothing to
16 attack these witnesses on their face. I mean, they really
17 haven't. They haven't shown other than that they're people who
18 submitted declarations to the Court that there's anything about
19 them that's not trustworthy, and that's particularly true with
20 Omar Hamid. And again, I hate to circle back to that, but
21 there's some kind of corroboration out there. And I know
22 Ms. Hemesath strongly disagrees with that, but it's in
23 Exhibit 114.

24 And he's honestly the most critical one, but we didn't
25 just pick one or go talk to one or go talk to that one person

1 that the government had corroboration for. We talked to
2 everyone we could find. And they were consistent. So that
3 consistency is helpful to the Court, the way that that
4 consistency is supported by what was going on in Mr. Ameen's
5 refugee journey, the fact that he had been told that he was
6 going to get to come to the U.S. and he had told other people
7 that, that adds support.

8 Now the issue -- first of all, they haven't touched on
9 these people's credibility at all, at all and certainly not on
10 the hard documents that we've provided the Court. But there
11 are plenty of extradition cases, and we've cited them, where
12 courts look and say this is obliterated. This takes us outside
13 this sort of he said, she said. This just absolutely
14 obliterates.

15 And the Ninth Circuit has said that's acceptable.
16 Other courts have said that's acceptable. It's not -- believe
17 me, when we first realized we had to obliterate probable cause,
18 we didn't exactly embrace it. It seems unfair. It seems
19 almost impossible. But it's not impossible because we're here,
20 and everything together obliterates their probable cause.

21 MS. HEMESATH: Your Honor, I can respond to that
22 briefly.

23 THE COURT: Are you finished?

24 MS. BARBOUR: Your Honor, Mr. Galloway just reminded
25 me, you know, part of the issue came up when we were here in

1 May, and the Court was very concerned that this was a single
2 witness case and that this was relying on Person 5 who is not
3 corroborated, and we had to look into his veracity. And I
4 think what's very clear is he's not corroborated, and he lacks
5 veracity.

6 The government has made a huge amount of this
7 statement in the first supplemental packet written by the head
8 of the Iraqi Judicial Council, not written by the trial judge.
9 They've brought it to you as if the trial judge wrote it. It's
10 not signed by the trial judge. It's not written by the trial
11 judge. And they're going to say, Judge, it's hearsay. You can
12 accept it. But the fact is they want you to follow this chain
13 of thought that says, oh, the trial judge is the best source of
14 information about what happened in court, or the FBI agent is
15 the best source. Except when those things contradict each
16 other, then they just kind of go, Judge, you need to accept it
17 all.

18 So where this whole idea of somehow Person 5 saying
19 this to the parents at the time of the murder, it's not -- it's
20 nowhere in the original extradition packet. It's frankly
21 nowhere in Person 5's original statement to the FBI. That was
22 advanced by I guess the head of the judicial council, maybe the
23 trial judge. If that was so important, it would have made it
24 into the statements the original statements in the extradition
25 packet. That's not corroboration.

1 And Ms. Hemesath got into whether this is a
2 conspiracy. What we do know is that this is incredibly
3 important to the Iraqi Government. This is a showcase for
4 them, and they believe that the strength of their judicial
5 system and the recognition of that is incredibly important.
6 One of the FBI agents noted that in their affidavit. And the
7 government raised that as if that's something positive. That
8 is something scary.

9 The Court has already seen cases like *Demjanjuk*.
10 There's *In Re Moghadam*, *France versus Moghadam*, from the
11 Northern District of California where the interest in an
12 extradition became political, where the interests in an
13 extradition were no longer about did a crime happen and who did
14 it. And those are dangerous circumstances. And both of those
15 cases, *Demjanjuk* was a huge loss for the government ultimately
16 after Mr. *Demjanjuk* was sent to Israel, and the Israelis
17 realized he was not the person they thought he was. And
18 *Moghadam* certification was denied.

19 So to turn back to this issue of is there a
20 conspiracy, we know that Mr. Ameen was in Mersin, and yet this
21 is happening. So enough people are involved, especially
22 through the involvement of TMF-1, that we've gotten to this
23 point. So I don't think that's at all unbelievable. It's
24 exactly what's happening.

25 THE COURT: Ms. Hemesath, you wanted to respond.

1 MS. HEMESATH: Just very briefly and that your Honor
2 already understands that the government's under no obligation
3 to attack the credibility of the defense witnesses. That would
4 be the definition of turning this proceeding into a dress
5 rehearsal trial. So the time and place for the defense to
6 bring those witnesses and the time and place or the entity
7 responsible for looking at the credibility of those witnesses
8 would be the Republic of Iraq at a trial.

9 And there is nothing contradictory about what
10 Judge Dihya indicates occurred in the proceedings that happened
11 before him personally, and the supplement is written in the
12 first person, so that's Judge Dihya speaking and then
13 Judge Zeidan putting the imprimatur of the Iraqi legal system
14 on top of it. There's nothing inconsistent about what he says
15 happened at the proceedings and what the ALAT who witnessed the
16 proceeding from the FBI observed occurring. They are
17 corroborating each other fully.

18 And then finally, as to why it's not in the first
19 extradition request, I submit it actually is where it's
20 Witnesses A and B giving the name of Omar Ameen as the person
21 who committed the murder. The Court then asked for
22 clarification because it's ambiguous the source of their
23 knowledge for that accusation. The supplement clarifies that.
24 That's a perfectly acceptable use of the diplomatic channels.
25 That's what the Ninth Circuit said to do in *Santos* in case

1 there's a question of ambiguity within the extradition request,
2 and the requesting country is not obligated, all the cases say
3 is not obligated to submit all of its evidence when requesting
4 extradition.

5 So the Court now has three submissions from the
6 Republic of Iraq before it all establishing ample probable
7 cause. Thank you.

8 THE COURT: All right. The government is going to
9 file the exhibit we discussed at the beginning of the hearing.
10 You can submit the unredacted form under seal, and I think the
11 redacted form is already on the record; is that correct?

12 MS. BARBOUR: I don't think it is actually, your
13 Honor, because we didn't know that Person 1 was at issue.

14 THE COURT: All right. Submit it both ways. Publicly
15 file a redacted version of it, and then file the unredacted
16 under seal.

17 MS. BARBOUR: And with the government's permission, we
18 will go ahead and file the redacted one they provided to us.

19 MS. HEMESATH: That's fine. We have them with us, and
20 the defense has given us the exhibit numbers that they wanted
21 on it. So I may just hand it -- since the Court has already
22 ruled on the sealing, with the Court's permission, I may just
23 hand it to the courtroom deputy at the conclusion today.

24 THE COURT: I also want to quickly go through the
25 exhibits where there's any outstanding question about sealing.

1 MS. BARBOUR: Your Honor, before we move on from your
2 exhibits, I spoke with Ms. Hemesath over the break. So I just
3 want to clarify there will be three new exhibits. One will be
4 the unredacted 302 FBI report of Person 1 which she has. We've
5 put an exhibit stamp on that. I think it's 127. And then one
6 will be the unredacted -- we have not seen it -- FBI report of
7 Person 5 filed right now for the Court's eyes only under seal.
8 So those two will be under seal, and then we'll file the
9 redacted one that the government just gave us permission for as
10 129.

11 MS. HEMESATH: Agreed.

12 MS. BARBOUR: Okay. Thank you.

13 THE COURT: All right. Now as to the other documents,
14 42.1, 43.1, 106, 107, and 108, as I understand it, were culled
15 from documents that were previously ordered sealed; is that
16 correct?

17 MS. BARBOUR: I think they are all from the Arabic
18 language extradition packet that was never redacted by the
19 government. So it's never been able to be filed in the record.
20 That does not mean that everything in the extradition packet
21 deserves sealing. It's that the government has said that it
22 does not have the capabilities to redact it in a way that will
23 allow it to be sealed on the record.

24 THE COURT: All right. So it's the government's
25 position that those should remain under seal?

1 MS. HEMESATH: I'm going to let Mr. Coppola handle
2 this.

3 MR. COPPOLA: Yes.

4 THE COURT: All right. Then that will be the order.
5 42, 43, 87, 88, and 124 all have signatures or handwriting that
6 with prior knowledge could be used to identify the witnesses,
7 so I'm inclined to order those sealed. I'll hear your
8 respective positions.

9 MR. COPPOLA: That's the government's position, your
10 Honor. I don't have anything to add beyond what's in our
11 papers.

12 MS. BARBOUR: Your Honor, we continue to oppose it.
13 The Court has seen our PowerPoint. These signatures are
14 important. They do not -- our whole point is they do not --

15 THE COURT: That's true. The actual signatures have
16 been shown here in the courtroom, but I don't want them where
17 they could be accessed electronically. So perhaps we could
18 handle it that way, where they don't have to actually be
19 sealed, but they would have to come to the Court to actually
20 view them.

21 MS. BARBOUR: I would really push back against the
22 government's argument that every signature now needs sealing
23 because every signature can be used to identify people. Your
24 signature is in the docket. When my client signs a financial
25 affidavit or a pretrial report --

1 THE COURT: I understand that. I don't think that we
2 have the same needs for protection of identity, however. I'll
3 make them available to the public docket if they're viewed here
4 at the courthouse, but I don't want them where they can be
5 viewed electronically.

6 MS. BARBOUR: Okay.

7 THE COURT: Accessed electronically.

8 All right. Now these alternative translations, 106
9 through 108.

10 MS. BARBOUR: We don't oppose sealing.

11 THE COURT: All right. At least they should have the
12 same redactions as what the original translations had.

13 MS. BARBOUR: They include the Arabic copies as well,
14 and because they're word for word, having to redact them would
15 actually sort of lose the whole point of having word-for-word
16 page-for-page translation, so we don't oppose the government's
17 request to seal them.

18 THE COURT: All right. Then that will be the order.

19 All right. Is there anything else that we need to
20 cover?

21 MR. COPPOLA: Did the Court make a ruling as to
22 Defense Exhibit 112 which was the search warrant affidavits in
23 this case? That was also --

24 THE COURT: Oh, yes. As to 112, I'm inclined to admit
25 that. I understand the government's position is that it's

1 currently a sealed affidavit in support of a search warrant.
2 I'm inclined to unseal at least paragraph I think it was 65.
3 Let me look at my notes.

4 MS. HEMESATH: Is that about Person 1, your Honor?

5 THE COURT: Yes. Actually, there were -- let me see
6 if I can find it here. What was the number again on the
7 defense exhibit?

8 MR. COPPOLA: 112, your Honor.

9 MS. BARBOUR: Your Honor, we had submitted this
10 exhibit because it had information about Person 4 in it, and we
11 believe that Person 4 was TMF-1. And it turns out that's not
12 the case. So we're happy to withdraw this exhibit. We'd move
13 to do that.

14 THE COURT: All right. Counsel, my inclination was to
15 consider and rely on paragraphs 61, 62, 63, 64, 65, 66, 67, and
16 68 of the affidavit.

17 MS. HEMESATH: We do not object to that, only to note
18 that the information in paragraph 65 about Person 1 is now
19 duplicative of what's been transmitted in the second
20 supplement.

21 THE COURT: All right.

22 MS. BARBOUR: Your Honor, we object to that
23 completely. Number one, it's the government's recitation in
24 support of a search warrant. It does not include all the
25 information in the 302s which the Court now has unredacted.

1 THE COURT: Right. I will be considering the 302 as
2 well.

3 MS. BARBOUR: It actually includes, for example,
4 Person 7 as an ostensible witness when the FBI has said, no,
5 Person 7 didn't give us any information about the murder, and
6 that's in the affidavits. We object to it. We move to
7 withdraw this exhibit.

8 We provided it to the Court because of the benefits
9 that it disclosed regarding Person 4. Those are no longer
10 relevant. And we ask that the Court allow us to withdraw this
11 exhibit. There's no need for it, and the Court has a second
12 supplemental packet which we want to be heard on and hope to
13 brief to the Court.

14 THE COURT: And I will allow you to do that, to do a
15 supplemental brief that addresses your concerns about Person 1.
16 Let's talk about the schedule for that.

17 MS. BARBOUR: Thank you, your Honor.

18 THE COURT: And then you can further address the
19 information that's in this affidavit as well in that
20 supplemental brief.

21 MS. BARBOUR: Yes. Thank you, your Honor.

22 THE COURT: Do you have a time frame in mind for your
23 supplemental brief as to Person 1?

24 MR. GALLOWAY: Your Honor, we're proposing
25 January 29th. We obviously lose significant time due to the

1 holidays, and the remaining weeks will enable us to get our
2 opening brief on file on that date. I believe that's a
3 Wednesday, keeping consistent.

4 THE COURT: All right. And then Ms. Hemesath, I'll
5 allow the government to respond. How many weeks do you think
6 you'll need to respond?

7 MS. HEMESATH: So I think, your Honor, we would waive
8 response unless the Court has any need for additional input
9 from the government.

10 THE COURT: Well, let's build in a date so that it's
11 there, and then if you feel that there's no need to, you can
12 simply file a notice of that.

13 MS. HEMESATH: Okay.

14 THE COURT: Let's give you two weeks then.

15 MS. HEMESATH: I'm sorry. I missed when the defense
16 brief was.

17 MS. BARBOUR: That would be February 12th, your Honor,
18 for the government.

19 THE COURT: Is that correct, February 12 would be two
20 weeks later?

21 THE CLERK: Yes, sir.

22 THE COURT: All right. Ms. Hemesath, does that work
23 for the government, your optional response would be due
24 February 12?

25 MS. HEMESATH: It does. I would say the whole thing,

1 it's not a lot what Person 1 adds, and it's not new and
2 different. It seems like a lot of time to address information
3 that has been kicking around this court for 15 months. So to
4 the extent there's any room to compress that schedule, I do
5 understand it's over the holidays, but we've already addressed
6 extensively the legal standards about evidence, so now it's
7 just a question of what additional they want to say about this
8 one witness.

9 THE COURT: All right. That will be the order. The
10 supplemental brief by the defense addressing Person 1 will be
11 due January 29. The government's response will be optional.
12 If anything is filed, it's due February 12th.

13 All right. Anything further from the defense?

14 MS. BARBOUR: No, your Honor.

15 THE COURT: All right. Thank you, counsel.

16 MS. HEMESATH: Oh, your Honor had begun by discussing
17 that in the defense investigation of Person 1 it was going to
18 be Internet only. That was the request that the Republic of
19 Iraq made highlighting the witness safety concerns, and so we
20 would reiterate that request on their behalf.

21 THE COURT: That is my intent. If there are any
22 discovery requests that come in, I'll consider the briefing on
23 it. But I -- and there's only so much I can control. I can
24 control what happens in this court. I can't control what
25 happens in Iraq.

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All right. Thank you, counsel.

MS. HEMESATH: Thank you, your Honor.

MS. BARBOUR: Thank you.

(The proceedings adjourned at 2:17 p.m.)

--oOo--

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

/s/ Kacy Parker Barajas

KACY PARKER BARAJAS
CSR No. 10915, RMR, CRR, CRC