

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

-v-

AREF NAGI,

Defendant,

Case Number:  
06-20465  
MAR 26 P 2:00  
FILED  
U.S. DISTRICT COURT  
DETROIT, MICHIGAN

MOTION FOR REVOCATION OF DETENTION  
BEFORE THE HONORABLE BERNARD A. FRIEDMAN  
UNITED STATES DISTRICT JUDGE  
100 U. S. Courthouse & Federal Building  
231 West Lafayette Boulevard West  
Detroit, Michigan 48226  
MONDAY, FEBRUARY 5<sup>TH</sup>, 2007

APPEARANCES:

For the Plaintiff: Diane Marion, Assistant  
United States Attorney

For the Defendant: James C. Thomas, Esq.

Court Reporter: Joan L. Morgan, CSR  
Official Court Reporter

Proceedings recorded by mechanical stenography.  
Transcript produced by computer-assisted  
transcription.

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Detroit, Michigan  
Monday, February 5<sup>th</sup>, 2007  
(At or about 11:00 a.m.)

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**THE CLERK:** Calling case number 06-20465, United States of America versus Aref Nagi.

**THE COURT:** Let the record reflect that I've had an opportunity to discuss this matter -- oops, they're not here. Here they come.

**MS. MARION:** Good morning.  
Diane Marion, appearing on behalf of the United States.

**MR. THOMAS:** Your Honor, James Thomas, on behalf of the Defendant.

**THE COURT:** Let the record reflect I've had an opportunity to discuss this matter with the attorneys off the record, and I didn't know this was up today very frankly, and I have not had an opportunity to read the submission of the Defense, and we have agreed that what we would do is, we would take the testimony as not to inconvenience the witnesses that are here. And between 4:15 and 4:30 this afternoon, I will have read everything and will have an opportunity to hear argument on both sides.

It's my understanding, Mr. Thomas, that you will

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1 waive your client's appearance here this afternoon. Should  
2 the Marshals be in a position that they have to take him  
3 back before then; however, if they can keep him here, that  
4 will be great, but he would rather remain in Sanilac County  
5 than to remain here and not be transported; is that  
6 correct?

7 **MR. THOMAS:** Your Honor, I have discussed this  
8 with my client. What we are going to do is sort of  
9 bifurcate the hearing. He's going to be present during the  
10 playing of the tapes and the witness' testimony, but for  
11 argument, he's going to waive his appearance, and for the  
12 Judge's decision, he's going to waive his appearance just  
13 so he can get back to Port Huron.

14 **THE COURT:** Okay. If the Marshal hasn't moved  
15 him by 4:15, 4:30, bring him up. The idea was not to delay  
16 the Marshals so -- or him, so he can take advantage. He  
17 would like to be at Sanilac if he can. So, if you're here  
18 -- if someone else is delayed, keep him here. If there's  
19 no delay, take him back.

20 Fair enough?

21 **THE MARSHAL:** Very good. Yes, sir.

22 **THE COURT:** And you may proceed.

23 **MS. MARION:** Thank you, Judge.

24 I just want to supplement the record.

25 As I indicated back in chambers there are some

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1 wiretaps involved in this particular case, but there were  
2 numerous violation calls. I had the agent put together  
3 four or five calls for the Court. I will have the agent  
4 play the calls and give a summary of each call, and then  
5 we'll move on to Mr. Thomas' witnesses.

6 **THE COURT:** Is that acceptable?

7 **MR. THOMAS:** That's correct.

8 Just so the Court is clear, there is a Detention  
9 Hearing dated October 11<sup>th</sup>, 2006. That Detention Hearing  
10 is going to be supplemented. And I understand you'll  
11 probably are going to be proffering that as your proofs  
12 here.

13 **MS. MARION:** Correct, and I believe the Court does  
14 have a copy.

15 **THE COURT:** And you're proffering that as well as  
16 whatever you're supplementing with here --

17 **MS. MARION:** Exactly.

18 **THE COURT:** But you're not going to reopen any of  
19 that which is already --

20 **MS. MARION:** The only other thing that I think the  
21 Court may need in the file, is a copy of the Original  
22 Pretrial Services Report.

23 **THE COURT:** I think somebody stuck in on my desk.

24 **MR. THOMAS:** And, your Honor, I filed a Motion for  
25 Revocation of the Detention Order. Attached to it were

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1 several exhibits. In addition to that, I'm going to  
2 proffer some testimony, but I am going to submit the Motion  
3 for Revocation and the exhibits as my proffer.

4 **THE COURT:** Very well. Okay.

5 **MS. MARION:** One minute, your Honor.

6 Your Honor, I'd like to call Agent to the stand.

7 **THE COURT:** Do you want to raise your right hand?

8 Do you solemnly swear or affirm you'll tell the  
9 truth in the matter now pending before this Court?

10 **MR. BRZEZINSKI:** I do.

11 **THE COURT:** You may be seated.

12 **E D W A R D B R Z E Z I N S K I ,**

13 **BEING DULY SWORN, TESTIFIED AS FOLLOWS:**

14 **DIRECT EXAMINATION**

15 **BY MS. MARION:**

16 Q Please state your name for the record.

17 A Edward Brzezinski.

18 Q Spell your last name.

19 A B-r-z-e-z-I--s-k-I.

20 Q And you're employed; correct?

21 A Yes.

22 Q And that's with the FBI?

23 A That's correct.

24 Q And how long have you been employed there?

25 A Almost six years.

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1 Q In this particular case, just as a little background,  
2 you were the agent who testified at the original Detention  
3 Hearing; correct?

4 A Yes.

5 Q And you understand your testimony this morning is  
6 basically to supplement that testimony?

7 A Yes, it is.

8 Q Okay. And I know during that testimony you had talked  
9 about the wiretaps that were conducted in several of the  
10 calls; correct?

11 A Correct.

12 Q And you have brought several of those calls with you  
13 this morning?

14 A Yes, we have.

15 Q Could you explain the set up on those calls in terms  
16 of how we are presenting them to the Court?

17 A There's three calls. I'm not sure I understand how  
18 the set up --

19 Q The calls themselves, when they are recorded in real  
20 time at your office what are they recorded to?

21 A They're recorded to a computer hard drive at that  
22 point.

23 Q And then how do yo review the calls from the hard  
24 drive?

25 A Our computer guys made a copy of them for us onto an

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1 external hard drive that we can just play off with the  
2 Windows Program in the computer.

3 Q And to your knowledge was the copies of this  
4 particular computer, was it copied accurately?

5 A Correct.

6 Q And you've had the opportunity to review the calls  
7 that are on the computer here?

8 A Yes, I have.

9 Q And to your knowledge, those calls are an accurate  
10 representation of the calls from the original recordings?

11 A Yes, they are.

12 Q Have you reviewed both?

13 A Yes.

14 Q And you have an agent here with you from the FBI;  
15 correct?

16 A Correct.

17 Q And he's going to do the computer stuff?

18 A Yes.

19 **MS. MARION:** If you could, Agent, tell us what  
20 call this is.

21 **SPECIAL AGENT:** This will be call 9,328.

22 **THE COURT:** Is there a date?

23 **SPECIAL AGENT:** December 14<sup>th</sup>, 2005.

24 (Tape played, not transcribed.)

25 **BY MS. MARION:**

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1 Q That concluded the first call. Agent, I know  
2 sometimes it's hard to understand when the people talking  
3 on the phone or talking fast but there were several I guess  
4 phrases or sentences that caught my attention and I believe  
5 that you could point out to the Court, summarize what those  
6 might be.

7 A Yes. Mr. Nagi is talking to Michael Cicchetti on the  
8 phone, and they were talking about --

9 Q Could you please spell Cicchetti for the court  
10 reporter?

11 A I believe it's C-i-c-c-h-e-t-t-I.

12 Q Thank you. Go ahead/

13 A And they were talking about another member of the  
14 Highwaymen, Louis Fitzner which I believe is F-i-t-z-n-e-r.  
15 Called him about an issue that he's having down by the gas  
16 station.

17 Q That's the gas station at Fort and Bayside Inn.

18 A At Fort and Bayside Inn.

19 As Mr. Nagi was trying to explain the location  
20 where -- he was talking about where Mr. Fitzner was at, he  
21 said, you know, right down there were I shot that guy. And  
22 then he kind of laugh and then the conversation continues  
23 where they're talking about Mr. Fitzner had a problem with  
24 is girl friend or a girl he's dating and an Arab guy inside  
25 the store allowed her in.

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1           They were under the impression he got in a fight  
2 with several Black guys and Mr. Nagi and Brian went down to  
3 the area to assist him. And Mr. Nagi said we're all heated  
4 up, we both had two guns on us, and was concerned they may  
5 get in trouble.

6           Q     There was also another remark something to do with  
7 bullet proof glass.

8           A     There was a comment made that Lou Fitzner who was  
9 trying to shoot the Arab behind the bullet proof glass.

10          Q     At first I think you said bullet proof vest and then  
11 changed it to bullet proof glass.

12          A     I believe so, yes.

13          Q     If you could, identify the next call.

14                 It's call 9465 for the record.

15                 **MR. THOMAS:** I didn't hear you.

16                 **MS. MARION:** I'm sorry, 9465.

17                 **THE COURT:** And the date?

18                 **SPECIAL AGENT:** December 15<sup>th</sup>, 2005.

19                 (Tape played, not transcribed.)

20                 **BY MS. MARION:**

21                 **Q**     Again, just to summarize and the phrase that caught my  
22 attention, make sure it's fully loaded?

23                 A     Correct.

24                 Mr. Nagi was talking to his son, Nasser. And  
25 prior to that call he had issues to some other guys that he

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1 was pretty angry with, he called his son -- told him to go  
2 pick up the AK 47 rifle, make sure it was loaded and bring  
3 it to him.

4 Q If we could go to the next tape.

5 **SPECIAL AGENT:** This is 23,430, the call number.

6 **THE COURT:** And the date?

7 **SPECIAL AGENT:** We'll have that in a second,  
8 Judge.

9 **THE COURT:** Okay.

10 **SPECIAL AGENT:** That would be April the 11, 2006.

11 **THE COURT:** Thank you.

12 (Tape played, not transcribed.)

13 **BY MS. MARION:**

14 Q First, Agent, if you could identify who's the  
15 individual Mr. Nagi was talking to?

16 A Gerald Peters.

17 Q And when Mr. Nagi was referring in those phone  
18 calls, he was wearing civilian clothes, what was he talking  
19 about?

20 A He means he wasn't wearing any of his Highwaymen  
21 colors.

22 Q Specifically, jacket, vest?

23 A Jacket, vest, shirt.

24 Q And was that what he was referring to with the person  
25 who came out of the bar, his shirt?

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1 A Correct.

2 Q That would have been a shirt from another club?

3 A From the Liberty Riders, correct.

4 Q And I know you had the benefit of listening to phone  
5 calls before that one and after that one, but I assume  
6 there's some kind of dispute with the Liberty Riders?

7 A They had an issue with the Liberty Riders where the  
8 Highwayman went over to a bar on the eastside of Detroit  
9 and beat up the Liberty Riders. They still were having  
10 issues with them because they -- you know, after that, they  
11 had come down to Detroit, down Michigan Avenue, which the  
12 Highwaymen consider their territory and they caught another  
13 issue after they were discussing, Mr. Peters went and  
14 talked to them about that, and that's the beginning of the  
15 conversation, they were discussing that issue.

16 Q And toward the end of the conversation that's when Mr.  
17 Nagi mentions the bar on Ryan?

18 A Well, Mr. Nagi mentions how the Liberty Riders on the  
19 call, get their asses kicked and I was there. He was  
20 referring to when the Highwaymen beat up the Liberty Riders  
21 at the bar prior to that. And when he said he was at the  
22 bar with Spike, he was referring to a Liberty Rider member  
23 by the name of Spike -- or Spider, I'm sorry, and who is  
24 saying that the Highwaymen could jump down, they  
25 outnumbered them five to one, the Highwaymen to the Liberty

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1 Riders. Mr. Nagi got him to go outside and when he walked  
2 outside, he cracked his head with the bottle. And then he  
3 said he pulled out -- I believe he said pistol, and told  
4 him to give him his shirt and then he pistol whipped him  
5 with his gun.

6 Q And have you ever identified Spider or who Spider  
7 might be?

8 A Not at this point, no.

9 Q I believe there are two additional calls and rather  
10 than playing, both of those calls are about Mr. Nagi in  
11 some type of drug-related transaction?

12 A Correct.

13 Q And what's the significance of those calls?

14 A To show during that time frame that we intercepted  
15 calls where Mr. Nagi was involved in drug trafficking, that  
16 he was on probation with the State of Michigan.

17 Q And do you know when that probation ended?

18 A I'm not positive exactly when it did. I believe it  
19 was shortly after the New Year of '06.

20 **MR. THOMAS:** I didn't get the last part. New  
21 Years of?

22 **THE WITNESS:** '06.

23 **BY MS. MARION:**

24 Q And these calls would have been towards the end of  
25 2005?

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1 A They would have been October, November of '05.

2 Q And just for the Court's benefit, these are two out of  
3 many calls?

4 A That's correct.

5 Q These aren't the only two calls.

6 A Not just those two in October of '05.

7 **MS. MARION:** I have nothing else, your Honor.

8 **THE COURT:** Any questions?

9 **CROSS-EXAMINATION**

10 **BY MR. THOMAS:**

11 Q Agent, you had been the agent who was involved in  
12 monitoring these phone calls; right?

13 A Correct.

14 Q Have you had a chance to listen to all of these phone  
15 calls?

16 A Yes, sir.

17 Q Within those phone calls, have you had an opportunity  
18 to listen to what the people have said and make a  
19 determination as to whether or not there was any  
20 corroboration of what it was they were saying?

21 A Yes.

22 Q Is it fair to say then many of the calls you were able  
23 to find corroboration but then many of the calls also you  
24 were not able to find corroboration?

25 A Not on the phone calls, correct.

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- 1 Q All right. So are you familiar with the term  
2 hyperbole?  
3 A Yes.  
4 Q Many of these phone calls that you listened to were  
5 phone calls late into the evening of the night; correct?  
6 A Some of them were, yes.  
7 Q You were doing a Title III and it was being monitored  
8 24 hours a day.  
9 A That's not correct.  
10 Q It was not.  
11 A No.  
12 Q But they were Title III calls that were being recorded  
13 24 hours a day.  
14 A That's not correct. The only thing that was being  
15 monitored was what was being recorded.  
16 Q And while it was authorized, and while it was being  
17 monitored that was 24 hours a day.  
18 A It may have been authorized 24 hours a day, sir, but  
19 we did not monitor the phone 24 hours a day. If I believe,  
20 I think we ran it about 2:00 o'clock in the morning.  
21 Q Right. Do you remember having a conversation with me  
22 and talking to me about the fact that, you know, at certain  
23 times at the night, Mr. Nagi would stay up late and you  
24 would go home and the next day you would see there was 25  
25 or 30 phone calls?

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- 1 A On the pen register, correct.
- 2 Q Right. As far as the pen register, you were not  
3 listening to those phone calls.
- 4 A If there's nobody in the pen register, they're not  
5 monitored. We're authorized to monitor 24 hours a day, but  
6 our monitoring schedule is not set up for 24 hours a day.
- 7 Q So when you shut down -- let me see if I can get this  
8 correct. When you shut down at 2:00 o'clock in the  
9 morning, the tape recorder is not going.
- 10 A Correct.
- 11 Q And so when -- you discussed with me the fact that it  
12 was a hard time keeping up with these phone calls after you  
13 went home and went to bed, you were talking about the pen  
14 register and not the tapes.
- 15 A No. I personally don't sit on every monitoring shift.  
16 What I was referring to when I told you that, sir, was my  
17 normal work day, I have other duties not associated with  
18 this case, and I would leave the office to go do something  
19 like at 2:00 o'clock in the afternoon, and be out whatever  
20 time. Then when I come in, in the morning, I'd have to  
21 review the calls from the previous day that I had not  
22 reviewed.
- 23 Q This is not your first wiretap case?
- 24 A No.
- 25 Q And in this particular wiretap case, are you familiar

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1 with the term hyperbole?  
2 A You asked that. Yes.  
3 Q And you are.  
4 A Yes.  
5 Q Did you come to the conclusion some people were  
6 exaggerating?  
7 A I'm sure, they may have at some point.  
8 Q So that in this particular first instance when you  
9 were talking about -- the instances where you were talking  
10 about a weapon and a bottle, somebody getting hit over the  
11 head and a guy named Spider --  
12 A Right.  
13 Q You have not been able to determine who Spider is in  
14 the Liberty Riders; correct?  
15 A We have not attempted to at this point.  
16 Q Does that mean yes or no, that you have --  
17 A That I have not at this point.  
18 Q So the fact that you have not chosen to do that, or to  
19 follow up on that lead, do you think that was not an  
20 important thing?  
21 A If we had not done it at this point -- I can explain  
22 why if you would like me to.  
23 Q I just asked you a question and now you give me an  
24 answer, but I want to know the answer to my question. That  
25 is: have you followed up?

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- 1 A Not at this point, no.
- 2 Q And you do not think it important enough to do this up  
3 until this point.
- 4 A I believe it's important, but --
- 5 A But you have not done it.
- 6 A No.
- 7 Q You have not.
- 8 A Not at this point.
- 9 Q And this motion has been pending now -- he's been in  
10 jail now for how many months?
- 11 A Since October.
- 12 Q And since October you have not done anything further  
13 to verify who Spider is.
- 14 A No.
- 15 Q Verify whether or not Spider was hit over the head  
16 with a bottle?
- 17 A No.
- 18 Q Verify whether or not a gun was drawn on Spider.
- 19 A No.
- 20 Q No criminal charges were ever brought as a result of  
21 this allegation.
- 22 A Not at this point, no.
- 23 Q So when I asked you to consider, sir, whether or not  
24 what is it you heard was actually truthful or hyperbole --
- 25 A I believe it's truthful.

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1 Q But you never got anything to base that on except for  
2 what you're saying here today. You're putting your  
3 statement in without any further investigation; isn't that  
4 correct?

5 A It's based on my overall investigation with all the  
6 calls that I have listened to and the type of person I  
7 believe he is, yes, I believe it was a true statement.

8 Q I asked you about hyperbole.

9 **THE COURT:** Let's move on. This is a bond  
10 hearing.

11 **MR. THOMAS:** All right.

12 **BY MR. THOMAS:**

13 Q Suffice it to say, without any further corroboration  
14 of this instance with Mr. Spider whether he does or doesn't  
15 exist, what about with Michael Cicchetti, and what happened  
16 at the gas station. Did you have an opportunity to look at  
17 investigative reports as it relates to that?

18 A No.

19 Q Do you know whether or not that case is a case in  
20 which there was a consideration of charges brought and  
21 there was another charge because of issue of self-defense?

22 A No.

23 Q You did not know that?

24 A No.

25 Q You know that the defendant is a person who is

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1 employed; correct?

2 A No.

3 Q You don't.

4 Did you know he had two restaurants, one in  
5 Dearborn and one in Sterling Heights?

6 A Yes, I know he owns them, yes.

7 Q And in those 30,000 phone calls, did you hear any  
8 conversations about, you know, things that would  
9 corroborate the fact that he was the owner of the  
10 restaurants?

11 A I'm aware he was the owner of the restaurants.

12 Q Okay. So when I asked you the question about whether  
13 or not he was employed, you hesitated. Do you mean now  
14 because he's in jail?

15 A I wasn't sure what you meant by employed. I knew he  
16 owned the restaurants.

17 Q You knew he owned a bar as well.

18 A Yes.

19 Q All right. And that bar is in Dearborn -- in Detroit,  
20 I'm sorry.

21 A Yes.

22 Q Active businesses that were employing people.

23 A Yes.

24 Q All right. As a result of his arrest in this case,  
25 did you confiscate his passport?

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1 A I personally didn't. I don't know if --

2 Q Were you aware of whether it was confiscated by your  
3 agency?

4 A I'm not aware if it was or not.

5 Q You testified in the original Detention Hearing about  
6 a series of weapons that he had at the time he was  
7 arrested.

8 A Correct.

9 Q Have you had an opportunity to review the  
10 registrations that were provided to you as a result of the  
11 Detention Hearing?

12 A Some of them.

13 Q Were you able to determine that these were weapons  
14 that were actually registered?

15 A Some of them were registered to Mr. Nagi.

16 Q Did you take the time to match the weapons to the  
17 registrations that were provided?

18 A I had the weapons. I got the information. We got the  
19 registration. If that's matching up, yeah.

20 Q You mentioned an AK-47.

21 A Correct.

22 Q An A-47 is a weapon that you and I can go buy at a gun  
23 show; could we not?

24 A Yes.

25 Q And the fact that a person has possession of an AK-47

1 in and of itself is not illegal.  
2 A No.  
3 Q All right. You were aware that Mr. Nagi at relevant  
4 times during your investigation had a CW permit.  
5 A Yes.  
6 Q And, certainly within a person's home or business that  
7 would be proper, entirely proper for a person to have a  
8 weapon in his home or in his business with or without a  
9 permit.  
10 A Correct.  
11 Q And it would be entirely proper, would it not, for a  
12 -- well, as it relates to this transfer of this weapon, the  
13 AK-47, fully loaded, make sure it's loaded, that  
14 conversation, did you have any surveillance the fact that  
15 his son brought the gun to him?  
16 A No.  
17 Q Were you able to find a weapon at any time, in any  
18 place, to corroborate the fact that it was delivered to him  
19 at that time?  
20 A No.  
21 Q Were you ever able to corroborate the statement that  
22 that gun was received?  
23 A No.  
24 Q Did you consider the fact that a person asking for  
25 something might be in a moment of heat of passion, may have

1 been tempered and may not have been followed up on?

2 A No.

3 Q Because you didn't consider that hyperbole?

4 A Not -- because there were other calls on there where

5 he explained the breaking down, hiding it in the back of

6 the trunk and bring it down to him.

7 Q "Breaking down" meaning disassemble?

8 A Breaking the gun down to him, to bring the gun to Mr.

9 Nagi to wherever he was at. If he had other phones -- the

10 confirmation of that may have been on a different phone

11 line. It wasn't on the ones we intercepted.

12 Q You mentioned the fact that there were several times

13 when you had heard conversations where Mr. Nagi was talking

14 about either the delivery or receipt of drugs; is that

15 correct?

16 A That's correct.

17 Q And in those conversations there are in your

18 applications for the Title III and extensions reference to

19 Scooby Side.

20 A Scooby Snacks.

21 Q Scooby Snacks. Okay.

22 Is it your opinion that based on hearing that

23 that Scooby Snacks is anything other than delivery of

24 cocaine for personal use?

25 A It's cocaine.

1 Q It may be, but cocaine for personal use as a snack as

2 opposed to, for example, some other colloquial term you

3 might consider as cocaine?

4 A I'm not sure I understand your question.

5 Q Well, you heard the reference to kilos I'm sure in

6 your experience; have you not?

7 A Correct.

8 Q Have you ever heard any terms that are referred to as

9 kilos that you can give the judge as an example?

10 A I'm telling you that the Scooby Snacks, you asked me

11 would I know what that is, it's a user amount of cocaine.

12 That's the definition.

13 Q A user amount.

14 A A user amount of cocaine.

15 MR. THOMAS: All right. Nothing further.

16 THE COURT: You may step down.

17 MS. MARION: I have a couple, your Honor.

18 THE COURT: Oh, go on. I'm sorry.

19 REDIRECT EXAMINATION

20 BY MS. MARION:

21 Q I want to follow up on one thing you weren't able to

22 fully answer, specifically to ID Spider or some other

23 individuals at this time, can you explain to the Court why

24 that's not been done yet?

25 A Well, those calls that we played weren't part of the

1 original charges and up until recently when we gave the

2 discovery over, those Title III calls weren't known. We

3 didn't want to disclose or jeopardize any of our

4 investigation by going forward with trying to identify

5 people.

6 Q In terms of jeopardizing the investigation or not

7 wanting to jeopardize individuals, you may not have

8 corroborated information from a phone call, but you've

9 corroborated information through other means; correct?

10 A Correct.

11 Q And what would some of those other means be?

12 A Confidential informants who cooperate.

13 Q And then I believe the only other question I have was

14 that some of these drugs and guns conversations that

15 occurred, I know you said that a couple of the drug

16 conversations occurred while Mr. Nagi was on state

17 probation, were any of those calls relating to guns while

18 he was on state probation?

19 A Absolutely.

20 MS. MARION: I have nothing further, your Honor.

21 Thank you.

22 THE COURT: Thank you. You may step down.

23 MR. THOMAS: Judge?

24 THE COURT: Oh, go on.

25 MR. THOMAS: May I ask questions that relate to

1 this?

2 THE COURT: Of course.

3 RE CROSS EXAMINATION

4 BY MR. THOMAS:

5 Q This motion was filed on December 29<sup>th</sup> of 2006, when

6 did you first learn we were moving to revoke the detention

7 order?

8 A When did I first learn? Last week.

9 Q So that --

10 A When you mentioned to me the discovery that you can

11 use in the detention hearing, it was after I dropped it off

12 to you, Diane left me a message saying there was a

13 detention hearing this week.

14 Q You were in court when we had the original proceeding

15 back in October; right?

16 A Yes.

17 Q You were aware of the fact that we were requesting

18 that your discovery that you had provided two weeks ago was

19 going to be provided and it would be provided within the

20 next two, three weeks?

21 A I don't know about the time frame.

22 Q You knew the tapes were going to be disclosed to us.

23 A I knew the tapes -- yes, as soon as you guys provided

24 a hard drive to us, correct.

25 Q And you knew before that, you were at the hearing, you

1 knew there was a promise that discovery would be given to

2 us promptly.

3 A And as soon as you gave us a hard drive, it was

4 promptly given to you, correct.

5 Q No, no, that's an answer, but answer my question. You

6 knew back in October --

7 MS. MARION: Your Honor, I'm going to object --

8 excuse me, Mr. Thomas, I'm going to object to this. First

9 of all, any discovery is my purview not the agent's --

10 MR. THOMAS: No, no. That's not what I'm talking

11 about.

12 THE COURT: Your question is when did he find out

13 about it? He said he found out about it last week.

14 MS. MARION: And --

15 THE COURT: I don't know where you're going.

16 MR. THOMAS: Where I'm going, Judge, is this, just

17 so you understand, all right. I'm going to the fact that

18 these tapes and the information that are contained in these

19 tapes are supposedly secret. These were promised to us

20 back three weeks -- after the detention hearing. And so

21 they're not secret. There's nothing in them secret, and

22 that's what I'm attempting to bring out with him. He's

23 saying there's some security interest that's involved.

24 THE COURT: You can ask him but I think what he

25 said was there was security interest while the

1 investigation was going on, he didn't want to contact

2 witnesses and so forth because he was not investigating

3 that, he was investigating something else. Isn't that what

4 you said? I think that's what you said.

5 MR. THOMAS: That's true, that's true.

6 THE COURT: Go on.

7 MR. THOMAS: But then the question --

8 THE COURT: Let me hear your question.

9 BY MR. THOMAS:

10 Q The question about Spider, Spider is mentioned in

11 these tapes; right?

12 A Correct.

13 Q You knew these tapes were going to be delivered to us

14 the date of the detention hearing, you knew they were going

15 to be delivered to us soon; right?

16 A I knew they would eventually be delivered to you. I

17 assume in a timely manner.

18 Q You were the guy that was going to do it.

19 A And I gave them to you as soon as you got a hold of me

20 and gave me the hard drive. So I'm not sure I understand

21 your question, sir.

22 Q Well, the question is then: You know that Spider was

23 going to be a person that was going to be disclosed in the

24 information you were going to be giving to me promptly --

25 MS. MARION: Your Honor, Spider will be

1 investigated at some point. We haven't investigated him  
 2 yet. There are thousand of phone calls --  
 3 **MR. THOMAS:** Well, now is she testifying, Judge?  
 4 **THE COURT:** I don't know where you're going.  
 5 He's already testified-- ask him a question. He's already  
 6 testified he has not investigated Spider. So what else do  
 7 you want him to say?  
 8 **BY MR. THOMAS:**  
 9 **Q** You had a chance to do that. You knew it was going to  
 10 be an issue.  
 11 **A** I did not know it was going to be an issue at the  
 12 detention hearing today, sir, because to be honest with you  
 13 there are so many calls, there are so many violation calls  
 14 in there, that I picked those calls out at 7:30 this  
 15 morning when I got into the office.  
 16 **Q** When did you first find out Spider was going to be an  
 17 issue?  
 18 **A** The date of the call. When I listened to that. I  
 19 don't recall the date off the top of my head.  
 20 **Q** Were you listening to phone calls as they were being  
 21 made back in December of '05?  
 22 **A** Some of them, not all of them. I couldn't review  
 23 every single call.  
 24 **Q** Did you review the Spider call?  
 25 **A** Yes.

**MOTION FOR REVOCATION OF DETENTION  
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Q Back in December of '05?

A If that's the date, yes, I did.

**THE COURT:** Anything else?

**MR. THOMAS:** No, Judge.

**THE COURT:** You may step down. Thank you.

(Witness excused.)

**THE COURT:** It's taken a little bit longer than

we anticipated which is fine, and I know Mr. Thomas you

have some witnesses and I don't want to rush you, but as I

told you I've got a 12:30 Judge's Meeting that I have to be

at. I can do one of three things to accommodate everybody.

This is nobody's fault except my own and I apologize.

Number one, we can do it this afternoon along

with your witnesses and that would probably be fine with

me; however, there's a good chance your client won't be

here, and certainly he may want to listen to witnesses as

oppose to just arguments.

Number two, I am well aware that you have a

pretty tight schedule. I'd be more than happy to fit it

into your schedule if you want to call your office again

and also the witnesses' schedule any other time this week.

I'm going to start a trial tomorrow morning, but I'd be

more than happy to do it on my lunch hour. I'd be more

than happy to do it after my trial tomorrow, late in the

afternoon. I'd be more than happy to do the same all week

1 because I'm in trial all week, but I will accommodate

2 everybody else's schedule so it's really up to you, or I

3 would be more than happy to do it tonight and work into the

4 evening to do it --

5 MR. THOMAS: May I consult the witnesses, Judge?

6 THE COURT: Absolutely.

7 MS. MARION: Your Honor, just so the Court knows,

8 tomorrow after work, at five, I have an appointment with an

9 orthopedic surgeon which I set up months ago --

10 THE COURT: No problem. I'll try to accommodate

11 everybody's schedule.

12 MS. MARION: Other than that, I am free all week.

13 THE COURT: Maybe we could even get it done

14 tonight. He's got witnesses, too, I don't want to

15 inconvenience his witnesses any more than we have to.

16 MR. THOMAS: Judge, can we do it later today?

17 THE COURT: Absolutely.

18 MR. THOMAS: Thank you.

19 Mr. Nagi, do you understand you have a right to

20 be here and hear these witnesses testify, do you waive your

21 appearance?

22 DEFENDANT NAGI: Yes.

23 THE COURT: Did you say yes?

24 DEFENDANT NAGI: Yes.

25 THE COURT: The answer is yes?

DEFENDANT NAGI: Yes.

THE COURT: And do you understand you would have

the right to be here and it's not your attorney's fault or

the government's, it's really my fault. I didn't realize

the scheduling today. If you wanted to, I'd be more than

happy to schedule it another day when you can be here, or

the Marshals could keep you here, but you wouldn't make it

back to Sanilac and you would end up at some other place.

DEFENDANT NAGI: That's okay, your Honor.

THE COURT: Do you waive your right?

DEFENDANT NAGI: I waive my right.

THE COURT: Okay. Why don't we say just so that

we don't tie anybody up, say 4:30, quarter to five, and

we'll work until we finish.

MR. THOMAS: Judge, we'll be here at 4:30 and

ready to convene whenever you're ready.

THE COURT: Okay, and I will have read all this

before then, and I will be in a position to also listen to

the witnesses and arguments by then also.

MR. THOMAS: Thanks, Judge.

MS. MARION: Thank you.

THE COURT: Thank you and, again, I apologize.

See you then.

THE CLERK: All rise.

(Court recessed, 12:30 p.m.)

1 (Court reconvened, 4:30 p.m.)

2 **THE COURT:** The Court has had an opportunity to

3 read the transcript. I have had an opportunity to read the

4 motion. I've had a chance to read the brief that goes with

5 the motion, and also all the attachments including A

6 through H of the exhibits and also Magistrate Judge Sheer's

7 opinion in this matter. So I apologize again.

8 Any other witnesses that the Government has?

9 **MS. MARION:** No, your Honor.

10 **THE COURT:** Okay.

11 Defense?

12 **MR. THOMAS:** Your Honor, I'd like to, first of

13 all, stand up while addressing you.

14 **THE COURT:** Whatever.

15 **MR. THOMAS:** I'd like to address an issue in the

16 following way. I talked the Prosecutor and she's indicated

17 that she willing --

18 **THE COURT:** You can move that around --

19 **MR. THOMAS:** -- to proceed by way of a proffer.

20 **THE COURT:** Okay.

21 **MR. THOMAS:** All right.

22 There was an order of detention pending trial.

23 The findings of fact were probable cause to believe the

24 defendant had committed an offense, and the defendant has

25 not rebutted the presumption that no condition or

1 combination of conditions would reasonably assure the

2 appearance of the defendant as required and the safety of

3 the community. So the prosecution has made a determination

4 that he should be held and that his detention should

5 continue both based on safety of the community standards as

6 well as on risk of flight.

7 Now, I'll address the risk of flight first. It

8 seems to me that the premise for the risk of flight was

9 mainly based upon the fact that the defendant has a brother

10 who is in Yemen and who has been sought for federal

11 charges.

12 At the break what I did is I interviewed several

13 witnesses, family members and friends who were aware of the

14 circumstances of the defendant's travel to Yemen, and the

15 conditions that exist for him in Yemen. So it will be my

16 intention to rebut the presumption and rebut the facts

17 relating to Yemen with these proffers.

18 **THE COURT:** Let me just mention one thing -- I

19 want to hear the proffers -- but my understanding from

20 reading the transcript and also reading Magistrate Judge

21 Sheer's opinion in this matter, that there was one other

22 factor in terms of risk of flight and that other factor was

23 the information that was received by the FBI from the

24 Detroit Police Department.

25 **MR. THOMAS:** And the information from the police

26 -- at the Detroit Police --

1 THE COURT: I'm not saying it's right or wrong.

2 I'm just saying if you're going to address it, I think

3 there were two issues in terms of flight. One was contact

4 in the country and number two was -- anyhow, I'm not

5 suggesting you have to address it or not, but I'm

6 suggesting if I'm wrong let me know, but I think there was

7 a combination of reasons.

8 MR. THOMAS: Well, we have -- obviously there's

9 allegations by the government. Those allegations are very

10 serious allegations but they have yet to be proven.

11 THE COURT: I understand that, and your client is

12 presumed innocent. All I'm saying is by reading this, I

13 didn't want you to think that the reason -- was just one.

14 I way I read it was at least two.

15 MR. THOMAS: No, and we attempted to give the

16 Court information at the time of this detention hearing

17 about the defendant's relationship with various police

18 agencies, his voluntary contributions, his fund-raising

19 efforts, and all those things of a positive nature which he

20 has in his resume with respect to police agencies and

21 contacts of a positive nature. So --

22 THE COURT: I agree.

23 MR. THOMAS: Yes, there was that issue as well.

24 THE COURT: Okay.

25 MR. THOMAS: In addition to that, there is the

1 second prong which is the fact that he is a danger to the  
2 community. That, we attempted to address in our cross-  
3 examination relating to Mr. Nagi and the fact that there  
4 are these tapes, and on these tapes he's obviously having  
5 these discussions and the discussions are on their face,  
6 discussions of interest but that there is no corroboration  
7 or other proof.  
8 This case is one which was investigated in the  
9 year 2004 - 2005. Contrary to Agent Brzezinski's  
10 allegations, I believe these conversations were being  
11 monitored, and that there were reports that were being made  
12 to the Court in support of these extensions -- first of  
13 all, in support of the original Title III. And, secondly,  
14 in support of extensions to the Title III.  
15 In those reports there are very specific  
16 conversations relating to what it is that they believe that  
17 they have found. Now, it's not like they look at an  
18 investigation with tapes in a vacuum. And you are very  
19 well aware of it, more than most on what happens when a  
20 wiretap occurs. You are privy to the conversations that  
21 are on these tape recordings. And so are the agents  
22 because they are trying to support the extension of their  
23 Title IIIs.  
24 So it's not like Special Agent Brzezinski just  
25 found out about what it was that was alleged to have

1 occurred at the restaurant where somebody was apparently  
2 assaulted by Mr. Nagi or somebody with Mr. Nagi.  
3 The fact that there is no corroboration is  
4 something that this Court should look at as to the quality  
5 of the proof that the Government has proffered with respect  
6 to that particular incident.  
7 And what I'm suggesting to the Court is based on  
8 what I gathered from these other witnesses which I'm going  
9 to go into and which will be the second part of my argument  
10 is that that did not occur in the fashion in which the  
11 Government contends to have occurred, and that there was  
12 not either a shooting or a stabbing or somebody having been  
13 injured. And that the failure of the Government to come  
14 forward with corroboration to those events is evidence of  
15 the fact that it didn't exist.  
16 And so towards that end, Judge, we have  
17 interviewed Jehad Nagi who is here now in court. If he was  
18 going to testify he would state that he's 34 years old.  
19 He's the nephew of Aref Nagi, the defendant in this case --  
20 **THE COURT:** You said 34?  
21 **MR. THOMAS:** Thirty-four. That he is the son of  
22 Mohammad who is here in court as well. That is the  
23 defendant's brother. That he's earned a bachelor's degree  
24 from the University of Michigan Dearborn, a master of  
25 science in taxation from Wayne State University, and he's

1 employed as a CPA for Daimler Chrysler for the past eleven  
2 and a half years as an international accounting analyst.

3 Jehad knows Aref Nagi. He knows that Aref owns

4 two Pancho Villa restaurants. These are ongoing concerns.

5 One is in Dearborn. They are Mexican restaurants. One is

6 in Sterling Heights. He also knows that he has a liquor

7 license for the Sterling Heights restaurant and also for a

8 bar which is in Detroit which at this point is not

9 operating because the defendant has not been present.

10 Jehad has not traveled with his family to Yemen

11 when his grandfather had died. That's Aref Nagi's father.

12 His father passed away in July of 2004. The

13 defendant had several opportunities to go to Yemen before

14 that time and frankly because of his medical condition and

15 the fact that he wasn't interested in going to Yemen when

16 his father was ill, he did not go. But he did go in July

17 of 2004.

18 Jehad was made aware of problems that arose in

19 Yemen when Mr. Nagi traveled to that country after his

20 father's passing away. Jehad understood that there was a

21 general who was in Yemen who was a distant cousin of the

22 defendant, who was incensed about the defendant's

23 apparently his adulterous behavior as it related to a

24 subject who lived here in Michigan -- not Michigan, but

25 here in the United States, and he had ordered the defendant

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1 to be arrested,

2 Now this general was seeking medical treatment I

3 think in Jordan. When he found out the defendant, Mr.

4 Nagi, was present in the country he cut short his medical

5 visit to come and attend to the arrest of the defendant.

6 Now this is the defendant's cousin who shares many

7 relatives in common including the defendant's father who is

8 also his cousin.

9 Family members were able to intercede for Mr.

10 Nagi and persuaded the general that coming to visit his

11 father on his death bed was a righteous cause and that he

12 should not be arrested and he should be allowed to leave.

13 And it was through family intervention only that he was not

14 detained in Yemen. And he's certain if he does go back to

15 Yemen that he would be detained.

16 So this concept of his ability to go --

17 THE COURT: I don't get why would he be detained

18 there?

19 MR. THOMAS: Because of the fact that his distant

20 relative is incensed with him --

21 THE COURT: Because --

22 MR. THOMAS: -- because he has rejected the

23 customs of his country --

24 THE COURT: I see.

25 MR. THOMAS: -- which is an offense there and for

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1 which he can be held for adulterous behavior as you know in  
 2 Arabic countries there is sharia and because of sharia it's  
 3 different than here.  
 4 **THE COURT:** I understand.  
 5 **MR. THOMAS:** If you commit a sin you can be  
 6 adjudged, you might be mutilated, you might even be killed.  
 7 But -- and the defendant certainly faces that and  
 8 his cousin would support that.  
 9 It was through the intervention of family that he  
 10 was able to get back to this country. He has no interest  
 11 in going back to Yemen. So the risk of flight, the fact  
 12 that he has traveled to Yemen or that he has a brother in  
 13 Yemen that in our view is an issue that we can rebut and do  
 14 rebut as a proffer of Mr. Nagi.  
 15 Mohammad Nagi, his father, is here in court as  
 16 well. Mohammad Nagi is 54 years old. I said father, this  
 17 is his brother. Mohammad Nagi was in Yemen at the time  
 18 this occurred. It was through Mohammad Nagi's intervention  
 19 with family members that they had in common with the  
 20 general that he was able to get the general to concede that  
 21 he would allow Mr. Aref Nagi to leave the country. But  
 22 this is a fact that is well known to the defendant. It's  
 23 well known to his family members. And it's well known to  
 24 this Court through the proffers of these witnesses.  
 25 Going back to Yemen, the potential for

1 persecution there because of an alleged infraction of what  
 2 is believed to be a custom for a religious transgression is  
 3 one in which he most surely faces there as long as the  
 4 country is under the control of the people who are there,  
 5 and certainly as long as this general is alive.  
 6 It was alleged that the actions of the defendant  
 7 were with the general's daughter. So he has a vested  
 8 interest in pursuing this in the event that he does come  
 9 back.  
 10 Magadah Saleh, M-a-g-a-d-a-h, S-a-l-e-h, is the  
 11 defendant's sister. If she were called to testify she  
 12 would --  
 13 THE COURT: How old is she?  
 14 MR. THOMAS: Thirty-nine years old.  
 15 THE COURT: Okay. Go on.  
 16 MR. THOMAS: She is his sister, a registered  
 17 nurse. She's now attending a nurse anesthetist course at  
 18 Oakland University and she will be a nurse anesthetist in  
 19 the next year or so. She's currently interning at William  
 20 Beaumont. Magadah said that Aref had been to Yemen twice  
 21 before, once to obtain immigration paperwork and the second  
 22 time to bring his father back when he was ill. Magadah  
 23 said that Aref did not want to go back to Yemen but was  
 24 persuaded to do so in 2004 when his father was dying.  
 25 Incidentally, Judge, as the family was on their way

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1 over, Mohammed had already been there, that is the oldest  
2 brother, and his father passed away while everyone was on  
3 their way there to attend to him while he was dying. It  
4 was unfortunate, but in any event, she confirmed that the  
5 general, Nagi Elmadrahi, N-a-h-g-I, E-l-m-a-d-r-a-h-I,  
6 wanted to arrest Aref Nagi if he came back to Yemen because  
7 he rejected the culture and the religion by having tattoos  
8 and by engaging in adultery with the general's daughter.  
9 Aref Nagi learned about the general's issue with  
10 him through a close family member, and while he was in  
11 Yemen, Aref was told that the general was on his way back  
12 from Jordan so that he could personally arrest Mr. Nagi at  
13 the airport.  
14 Mr. Nagi has told his sister that he hated being  
15 there, hated the fact that there was no running water or  
16 medical car, and that Magadah is aware that Aref had his  
17 spleen removed as a result of a snowmobile accident and is  
18 required to take medication which made it impossible for  
19 him to stay in Yemen without medical treatment.  
20 After their father was put to rest, Magadah left  
21 the country with Aref's wife and children separately so  
22 that they would not be detained and now Aref is left in the  
23 country separately.  
24 If called to testify, Adam Winkler, would be  
25 called --

1 THE COURT: One more time, the name?

2 MR. THOMAS: Adam Winkler, W-I--k--l--e--r.

3 Mr. Winkler is the manager of the Pancho Villa

4 restaurant in Dearborn. He's an engineering student at

5 Macomb County Community College and he's been employed by

6 AREF Nagi for two years. Mr. Winkler says that the

7 business started to experience a decline in May of 2006,

8 most likely due to the poor economy, but it has declined

9 even further since the defendant has been arrested due to

10 the publicity involved in this case.

11 He stated that any allegations about Mr. Nagi

12 assaulting and throwing a man into a dumpster are false.

13 He did describe one incident where a cook in the restaurant

14 a man by the name of Miguel had molested one of the

15 waitresses and that when he saw that, that had occurred,

16 the waitress was disheveled in her clothing, and was

17 obviously distraught as a result of that confrontation,

18 that he brought it to the attention of the defendant.

19 The waitress told Mr. Winkler about the incident.

20 The cook was confronted, he made a denial. Mr. Winkler

21 then called Mr. Nagi to tell him what had happened. Mr.

22 Nagi later arrived that day with a friend and he was

23 forcibly evicted from the restaurant.

24 Now, Mr. Nagi did not physically attack the cook,

25 the person that was with Mr. Nagi did, but there was no

stabbing, no bleeding, no one was hit over the head with a  
 1 bottle, and certainly nobody was thrown into the dumpster.  
 2  
 3 Now, Mr. Winkler would testify about contact from  
 4 FBI agents as it relates to this case, and he has felt an  
 5 intimidation factor by the federal agents. He was  
 6 threatened that he would receive prison time if he didn't  
 7 answer the agents' questions. He has been at all time  
 8 cooperative with the agents, but as it relates to this  
 9 allegation he has facts that are different than their  
 10 version. He has first-hand facts that are different than  
 11 their version.  
 12 I ask the Court to consider the defendant's  
 13 statements on the phone and the fact that they may be an  
 14 exaggeration. If the Government had corroboration as many  
 15 times happens with Title III wiretaps, to the extent that  
 16 maybe they might have witnessed something, or that they had  
 17 a witness who came forward and said something specific  
 18 other than saying, well, you know, Judge, we've got a  
 19 confidential informant. Or if they had surveillance that  
 20 confirmed what it was that was said on the phone call,  
 21 these are the operative facts that you as a judge would  
 22 look at in determining whether or not to continue a wiretap  
 23 and certainly those would be factors that would -- you  
 24 would look at to determine whether or not there was  
 25 probable cause to believe that something had occurred.

1 The standard here is higher than probable cause.  
2 The standard in this particular case should require the  
3 Government to come back with more than just, okay, he said  
4 it and so, therefore, must be true especially in the light  
5 of the nature of a wiretap, the nature of the clients'  
6 conversations on these wiretaps, and the fact that they  
7 extended over such a long period of time.  
8 So I ask the Court to consider and the defendant  
9 has agreed to a GPS tether which would allow the Government  
10 to know where he is at all times, real time, and we have  
11 that ability to do that here in this court, and we can do  
12 it at the defendant's expense which I think is probably  
13 going to run as I saw in the terrorists case, you know,  
14 five hundred, six hundred bucks a month. He could be  
15 restricted to a home that is owned by his daughter, that is  
16 in Dearborn, that is identifiable, and where he can reside  
17 under a curfew in which they will know 24/7 where he's at,  
18 either during the day when he's at work. He could be  
19 limited to where he goes, what regions of Detroit he goes,  
20 whether or not he should go anywhere within three blocks of  
21 the tunnel or a bridge. The Government has his passport so  
22 he had no ability to travel. He does not have a secondary  
23 passport.  
24 And so, there are conditions that this Court can  
25 set that could assure his attendance at trial, and would

1 limit whatever danger is perceived to the community.  
 2 So I ask the Court to consider that in light of  
 3 all that I've indicated.  
 4 There are arguments that I've made that were in  
 5 my Motion for Renovation of Detention Order specifically  
 6 relating to the Government's indication about weapons and  
 7 how these weapons were illegal or how these weapons weren't  
 8 with permission.  
 9 I think with the documents that you have seen,  
 10 you can see that he did have a concealed weapons permit,  
 11 that he did have weapons that were registered and that  
 12 those rifles that were alleged to be in his possession were  
 13 rifles that did not require registration. So, therefore,  
 14 they were not illegal. He's not a convicted felon so he  
 15 had at the time the right to have those weapons, a  
 16 constitutional right.  
 17 We used to have a constitutional right to keep  
 18 and bear arms. We used to have a right to remain silent,  
 19 We used to have a right against unreasonable searches and  
 20 seizures. I think we still do but the way we interpret  
 21 them is different. But the one thing that's for sure is  
 22 that as it relates to the Second Amendment you do still  
 23 have a right to keep and bear arms.  
 24 So I ask the Court to consider my arguments that  
 25 I've made in the written motion as well as these

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1 supplemental arguments in my proffer in terms of  
2 determining that the defendant should be given a bond in  
3 this case.  
4 We have very -- we have very many family and  
5 friends who are willing here to stand up to assure the  
6 Court, law-abiding, educated family members who have  
7 families of their own, that work hard, that are willing to  
8 stand up and vouch for Mr. Nagi.  
9 Would you please do that?  
10 (Friends and family members stood.)  
11 **THE COURT:** I appreciate it.  
12 Thank you.  
13 **MR. THOMAS:** Thank you, Judge.  
14 **THE COURT:** Government?  
15 **MS. MARION:** Your Honor, I would argue somewhat  
16 brief as you have had a chance to read the detention  
17 transcript.  
18 I would point out first of all, that as when we  
19 started this detention request it is a presumption case  
20 which does mean there is a presumption, that there are no  
21 conditions that be set.  
22 I would note that Pretrial Services recommended  
23 detention. They are a neutral arm of the Court, they  
24 don't favor either side.  
25 I would also just point out that Magistrate Sheer

1 also found that there were no combination -- no conditions  
 2 or combination.  
 3 And then I would just like to address briefly  
 4 each one and reasons for our belief in that. First of all,  
 5 in terms of the risk of flight, not only do you have the  
 6 phone pickups that were done by the wiretaps that related  
 7 to Yemen, you have also the death of his mother who owns  
 8 property in Yemen. You have the Detroit Police incident.  
 9 You have the fact that he has a brother who actually is a  
 10 fugitive from this court on very similar charges years ago  
 11 who fled to Yemen and has never been seen since.  
 12 More importantly, I think there are two things  
 13 that were not mentioned today. One of them is the length  
 14 of the sentence that Mr. Nagi can be looking at which is  
 15 tremendous. And, secondly, the fact that from the very  
 16 beginning all of the defendants in this case knew that the  
 17 initial indictments were just that, initial indictments,  
 18 and these were going to be superseding indictments with  
 19 RICO charges and other more serious offenses delineated in  
 20 them. So that in and of itself even if you separate Yemen  
 21 out, it does present a substantial risk to an individual  
 22 who basically has nothing to lose, that do flee the  
 23 jurisdiction.  
 24 In terms of the tether, I'm sure this Court is  
 25 aware of numerous instances where somebody on a tether to

1 this Court has filed. Even with a tether on, we cannot  
2 react -- a tether may record in real time, we can't react  
3 in real time because we don't find out about in real time.  
4 In terms of the danger to the community, there  
5 are several things that you have, the fact that the  
6 defendant is clearly, clearly connected to the Highwaymen  
7 who are known as a violent outlaw motorcycle organization.  
8 He is a member of that. He wears colors, he talks about  
9 dressing in civilian clothes as opposed to his colors or  
10 his patches. You have that factor.  
11 There are countless conversations on the wiretap  
12 that relate to guns, and violence, and drugs, and,  
13 although, Spider may not have been corroborated by the  
14 agent as of today the fact is the agent did say that a lot  
15 of these phone calls were corroborated by corroborating  
16 defendants and informants who were involved in this.  
17 I would also note that this investigation was not  
18 2004 and 2005, it was 2005 to 2006 for the wiretaps for the  
19 first indictment. The investigation is continuing and will  
20 continue probably up until trial.  
21 In terms of the legality of having the guns,  
22 perhaps if he had not been on state probation at the time,  
23 it might have been legal, but he was on state probation.  
24 The possession of them might have been legal if they  
25 weren't being used to pistol whip people. They might have

1 been legal if some of them weren't stolen as some of them  
2 were that were found in his house during the search  
3 warrant. Other than that, I have no problem with  
4 somebody's Second Amendment Right to bear arms.  
5 In terms of the acts of violence, as I said,  
6 there are numerous instances in the wiretaps in which the  
7 acts of violence are delineated. The ones that were  
8 presented today were a very small number. And the incident  
9 I believe that this did come up at the first detention  
10 hearing, I may be wrong, but I think it did, there were two  
11 separate incidents. Putting somebody in a dumpster and the  
12 restaurant worker at Pancho Villas were two separate  
13 things.  
14 In regard to the restaurant itself and his  
15 community efforts, we've never disputed that. We didn't  
16 dispute it at the first hearing.  
17 Family support, it's a wonderful thing. It is a  
18 rare circumstance when you have these many family members  
19 come to court and support somebody. Typically, in my  
20 cases, there's no support for a defendant which is usually  
21 a tip off as to why they ended up where they are. But in  
22 this case, I think that the family support is commendable.  
23 I don't like to see the families put through this. I don't  
24 like to see the defendants put through this, but the bottom  
25 line is I don't think anything has changed since our first

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1 detention hearing. If anything, I think the stakes for Mr. Nagi are as high now as they -- if not more now since some discovery has been done.

2 Thank you.

3 **THE COURT:** Mr. Thomas, you have the last word.

4 **MR. THOMAS:** Briefly, Judge.

5 The difficulty with the Government's argument is, trust me, Judge, we have the evidence, you should believe me we have the evidence. All we heard from the tapes were things that I'm trying to attempt to show the Court aren't exactly what they say that they are. I'll give you an example.

6 There was supposedly a shooting in which Mr. Nagi was involved. Mr. Nagi was involved in a shooting. It was ruled justifiable, in self-defense. He cooperated fully with the Wayne County Prosecutor's Office. He testified as a witness for the Wayne County Prosecutor's Office. He was not charged, and he was a victim in that case.

7 The Troy police officer, I've attempted to try to let you know what family members say about his ability to go back to Yemen. It's easy to say, well, we have an officer who says he'll flee back to Yemen, and that he said so. But the truth of the matter is that he can't go back to Yemen because if he does go back to Yemen he surely will be detained and he surely will be facing whatever the

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1 allegations are that this general has against him.

2 So the risk of flight is an illusory risk. He's

3 not ever not shown up for any court date that he's ever had

4 in the past.

5 He has corroborated with the Prosecutor's Office

6 in the most recent event where the Wayne County

7 Prosecutor's Office was involved.

8 So I ask the Court to take into consideration the

9 weight and the quality of the government's evidence and

10 make a determination that there are conditions based on

11 what I've indicated wherein the defendant can be released,

12 not be a danger to the community and not be a risk of

13 flight.

14 Oh, Judge, Mr. Elder was the attorney who was

15 with the defendant in that case in Wayne County, and --

16 THE COURT: Which case?

17 MR. THOMAS: Where he was a witness.

18 Have I misrepresented anything, Mr. Elder?

19 MR. ELDER: Just the fact that it was the

20 Attorney General Office, your Honor.

21 MR. THOMAS: The Attorney General's Office, not

22 the Wayne County Office.

23 THE COURT: Okay. Thank you.

24 This is a tough case and the Court has had an

25 opportunity to review the transcript. I've listened to the

1 limited amount of testimony that was presented live today  
2 and listened to the offer of proof that was given and  
3 accept all of those.  
4 In this matter, this is a case under -- by  
5 statute, that there is a presumption that there is no  
6 condition or combination of conditions which will  
7 reasonably assure the appearance of the defendant as  
8 required and also the safety of the community. However, it  
9 is a rebuttal presumption by all means. And the Court  
10 hears de novo from the magistrate judge, and the Court has  
11 had an opportunity to review the total in this matter as  
12 I've indicated before and what I have reviewed.  
13 The Court believes that there are two issues that  
14 each side has argued. Number one, we have the issue of  
15 flight. I think the strongest argument for believing that  
16 the rebuttal presumption is not going to rebut it as to  
17 flight I think is the nature of the charges and the long  
18 period of time that the defendant is facing being  
19 incarcerated. This not a case where perhaps he'd be facing  
20 five years or something of that nature.  
21 He does have lots of family here and I appreciate  
22 the family coming in. He's got very strong family in the  
23 community. He's got ten or eleven siblings, I forgot the  
24 number, nine or ten siblings I think. He was born here and  
25 the risk of flight, the Court believes the primary risk the

1 Court believes is the substantial amount of time that he's  
 2 facing. The secondary may be his connections. The fact  
 3 that his brother fled I don't think can be held against  
 4 him. We are not our brother's keepers by any means. But  
 5 the fact that he does have connections to other communities  
 6 and also I think the interest in -- his life style I think  
 7 also would tend to -- though he has connections in terms of  
 8 this community, in terms of family, and at least two viable  
 9 businesses at this point, the third one that could be  
 10 viable I suspect if he were here.  
 11 He also shows some degree of lack of civility in  
 12 relation to where he lives. He's got a home and family in  
 13 Sterling Heights. He's got a home in some relationships in  
 14 Dearborn, and other kinds of allegations, but at least  
 15 those two are the two substantial ones that show at least  
 16 his life style would be that of much different than  
 17 somebody that would have one residence and one family, one  
 18 place to call home so to speak. So the Court does believe  
 19 that the presumption has not been rebutted as to the risk  
 20 of flight.  
 21 The danger to the community is interesting  
 22 because counsel for the defense argues a couple of things.  
 23 Number one, I think the best argument is he's presumed  
 24 innocent, and I think he's deserving of that presumption.  
 25 So we have to go from the presumption of innocence and work

1 from there. Because he is presumed innocent we have to  
 2 look at why he would be a danger to the community and I  
 3 think the standard is much higher than that of flight. I  
 4 think the standard is more clear and convincing evidence as  
 5 oppose to a preponderance of the evidence.  
 6 And the Court believes what we have here is that  
 7 even though he's presumed innocent there's also a  
 8 presumption that he's credible. There's nothing on this  
 9 record that would indicate, the Government certainly hasn't  
 10 promulgated, if anything, the defense had promulgated the  
 11 credibility of at least his family, friends and people that  
 12 he associates with, have very strong credibility. But he's  
 13 also presumed to have credibility and him having  
 14 credibility, you know, I don't think -- I think we can --  
 15 we don't need corroboration of what he, himself says,  
 16 because he's credible. And I think if we believe what he  
 17 said on these tapes, or these wiretaps or however  
 18 mechanism, I think they are on a hard drive and so, he,  
 19 himself, talks about how he could be a danger to the  
 20 community.  
 21 He talks about bringing over of weapons. He  
 22 talks about somebody who was shot by him and so forth. So  
 23 I think that the mere fact that he's talking about these  
 24 things, there is a presumption he's credible I think the  
 25 Court can't say well, we don't believe and, therefore, we

1 need more communication. I say we have to believe him  
 2 because who else are we going to believe if it isn't him.  
 3 So for those reasons -- and the Court has had an  
 4 opportunity to read the detention order by the magistrate  
 5 judge and I believe the magistrate judge also has reached  
 6 the correct conclusion and has made certain findings and  
 7 the Court agrees those findings are certainly consistent  
 8 with those that I just made on the record.  
 9 For those reasons, the Court believes that the  
 10 order of detention should be affirmed and will affirm the  
 11 order of detention. However, that doesn't mean that -- I  
 12 certainly will listen to any further argument as the case  
 13 progresses should there be further argument which has not  
 14 been argued at this point, the Court would certainly at any  
 15 time because I suspect that he's been in since October that  
 16 maybe things may arise now.  
 17 I understand just from listening to the  
 18 discussion of the attorneys today that you're in the stage  
 19 where you're still exchanging evidence and so forth.  
 20 Should there come a time when facts change, I would be more  
 21 than happy to look at those.  
 22 With that said, the Court will enter an order  
 23 affirming the detention hearing.  
 24 Anything else that we should talk about?  
 25 How about scheduling, have we done scheduling on

1 this case?

2 MR. THOMAS: Well, Judge, that's an interesting

3 issue. Ms. Marion has indicated that she's going to merge

4 this case with others. I don't know if that's still going

5 to be true. We thought we would get the discovery earlier

6 than this, we have not. I talked with Agent Brzezinski and

7 he's indicated that he'll at least disclose to me which

8 calls were the predicates for the indictment. But -- I

9 received thirty thousand phone calls on hard drive, and so

10 far I only had two of my co-counsel request copies which is

11 a very bad sign. It could be a sign that they're not

12 paying attention or they're now working with the

13 Government.

14 THE COURT: How many defendants are there?

15 MS. MARION: We have a total, your Honor, between

16 all of the indictments, twenty-nine.

17 THE COURT: And is it your intention to -- I see

18 the indictment now.

19 MS. MARION: Yes.

20 THE COURT: There's seventeen here on this

21 indictment.

22 MS. MARION: Right.

23 THE COURT: Do you intend to merge --

24 MS. MARION: We intend to merge the indictments

25 and we do have the date in April. However, that was just a

1 target date to keep it on track for Speedy Trial purposes.

2 I think everybody knew the discovery in this case, it was  
3 going to require considerable time. I'm a little

4 disappointed that nobody -- given my experience in another  
5 twenty-nine defendant case, I'm not surprised --

6 **THE COURT:** What do you think about twenty-nine  
7 defendants? Is there really a reason to merge them?

8 **MS. MARION:** Well, the reason to merge them is for  
9 purposes of a charging matter. However, I do believe that

10 by the time we actually get to any trial down the road  
11 there's going to be substantially less.

12 **THE COURT:** Are there other people who are now  
13 incarcerated on this indictment?

14 **MR. THOMAS:** Judge, there is only one -- there's  
15 none in this indictment, but there's one in the other in

16 this particular case.  
17 **THE COURT:** Your client is the only one --

18 **MR. THOMAS:** He's the only one in the indictment  
19 that you have in front of you --

20 **THE COURT:** Are all the rest of them on bonds?  
21 **MS. MARION:** Erick Manners is detained, your

22 Honor. He's also in this indictment.  
23 **THE COURT:** Okay, that's one.

24 **MR. THOMAS:** There's only one; right?  
25 **THE COURT:** Okay.

1 MR. THOMAS: And we've got people that have got

2 citizenship in other countries.

3 THE COURT: My question wasn't in relation to

4 review this matter today. My question was: that I don't

5 want to keep your client detained any longer than we have

6 to so I want to move this case as quickly as we can for the

7 same reason I indicated before, he still is presumed

8 innocent.

9 MR. THOMAS: I'm all in favor of Speedy Trial. We

10 had that issue in the beginning of this year, you and I and

11 Mr. Corbett, but in this instance now, I've got thirty

12 thousand tapes and I've got to catch up with what the

13 Government's been doing for two years.

14 THE COURT: Okay. I want to move this as quickly

15 as we can but being fair to both sides also.

16 MR. THOMAS: May we approach?

17 THE COURT: Yes.

18 (Sidebar Conference, not on record.)

19 (Proceedings concluded, 5:15 p.m.)

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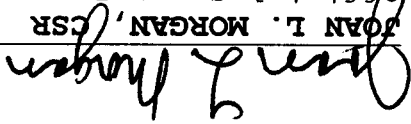
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Date:

March 1, 2007

Official Court Reporter  
Detroit, Michigan 48226

JOAN L. MORGAN, CSR



I, JOAN L. MORGAN, Official Court Reporter for the United States District Court for the Eastern District of Michigan, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing proceedings were had in the within entitled and number cause of the date hereinbefore set forth, and I do hereby certify that the foregoing transcript has been prepared by me or under my direction.

CERTIFICATE

MOTION FOR REVOCATION OF DETENTION  
MONDAY, FEBRUARY 5<sup>TH</sup>, 2007