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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,	:	
	:	
Plaintiff,	:	
	:	CR NO. 17-531
v.	:	
	:	
HEATHER ANN TUCCI-JARRAF,	:	
	:	
Defendant.	:	

TRANSCRIPT OF REMOVAL HEARING
 BEFORE THE HONORABLE DEBORAH A. ROBINSON
 UNITED STATES DISTRICT MAGISTRATE JUDGE

Friday, August 4, 2017

APPEARANCES:

For the Plaintiff: Lisa N. Walters, Esq.
 U.S. ATTORNEY'S OFFICE
 Violent Crimes Narcotics and
 Trafficking (VCNT)
 555 Fourth Street, NW
 Washington, DC 20530

For the Defendant: David Walker Bos, Esq.
 FEDERAL PUBLIC DEFENDER FOR THE
 DISTRICT OF COLUMBIA
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Proceedings recorded by FTR Gold, transcript produced by
computer-aided transcription.

P R O C E E D I N G S

1
2 DEPUTY CLERK: This is Criminal Case 17-531,
3 United States of America v. Heather Ann Tucci-Jarraf.
4 Lisa Walters for the government, David Bos for the
5 defendant. Pretrial officer is Andre Sidbury.

6 This is an identity hearing on a removal.

7 MR. BOS: Good morning, Your Honor.

8 THE COURT: Good morning. Is everyone ready
9 to proceed?

10 MS. WALTERS: Yes, Your Honor.

11 MR. BOS: Your Honor, I do have some
12 representations to make before we get started,
13 Your Honor.

14 THE COURT: Let me ask you to come to the
15 podium, please. I can hear you, but we have a more
16 accurate record when counsel speaks from the podium.
17 Thank you.

18 MR. BOS: Thank you, Your Honor. Your Honor,
19 as the Court may recall, the last time we were here I
20 informed the Court that Ms. Tucci would be seeking to
21 represent herself in this matter. Since that time I've
22 had a chance to meet with Ms. Tucci. It is my
23 understanding that she does still want to go forward
24 with representing herself in this matter. We had
25 discussed the *Faretta* case and the inquiry that I

1 understand the Court would probably be asking Ms. Tucci,
2 and she's prepared for that inquiry at this time.

3 THE COURT: Thank you, Mr. Bos. Mr. Bos,
4 while you're at the podium, may I ask you to please
5 articulate your view regarding the nature of the inquiry
6 that the Court must undertake.

7 MR. BOS: Your Honor, it's my understanding
8 what the Court needs to make is a finding that her
9 waiver of counsel is knowing and voluntary; that she's
10 been advised of the dangers of proceeding pro se and
11 that she has, I believe the word in *Faretta* that's used
12 is that she's literate enough to understand the nature
13 of the proceedings. It's quite clear to me that she's
14 going to meet all those requirements should the Court
15 inquire about --

16 THE COURT: May I ask you, please, for your
17 proffer with respect to what you advised
18 Ms. Tucci-Jarraf of the dangers or perils of
19 representing herself. You've indicated that you did
20 advise her, but are you able to be more specific,
21 please, without intruding upon privileged matters.

22 MR. BOS: Yes, Your Honor. I explained to her
23 that obviously any statements that she were to use
24 during the nature of this identity proceeding could, in
25 fact, be used against her in the criminal proceeding

1 that's pending in the state of Tennessee. It also could
2 result in her continued incarceration during the
3 pendency of any continuance of the identification
4 hearing in this case. And that the fact that she is
5 not, although she is a trained attorney, she has not
6 practiced in this courthouse ever before. I think she
7 has a pretty good understanding of the legal system,
8 although she is not obviously a member of the bar of
9 D.C. or in the federal circuit.

10 THE COURT: What is your proffer with respect
11 to the guidance you provided, the assistance you
12 provided Ms. Tucci-Jarraf regarding the parameters of
13 today's hearing?

14 MR. BOS: Your Honor --

15 THE COURT: In other words, that the sole
16 purpose of today's hearing is for the Court to make a
17 determination with regard to whether or not she is the
18 person who is the subject of the arrest warrant and the
19 indictment and perhaps to follow up, that in making such
20 finding the Court cannot entertain any discussion from
21 either the government or of Ms. Tucci-Jarraf regarding
22 the merits? What did you advise Ms. Tucci-Jarraf
23 regarding those matters?

24 MR. BOS: Your Honor, for the record I
25 explained to Ms. Tucci that we would not be able to

1 discuss the merits of the case about whether or not the
2 strength of the government's case concerning the case in
3 Tennessee, whether or not she has any viable defenses at
4 this point, that the only issue for the Court to decide
5 is whether or not she's the entity or individual that
6 the District of Tennessee is seeking and that we would
7 not be able to introduce evidence on any other issue
8 except for the identification issue.

9 THE COURT: What is your proffer with respect
10 to whether Ms. Tucci-Jarraf acknowledged your statement
11 regarding the advice --

12 MR. BOS: She did acknowledge my advice,
13 Your Honor.

14 THE COURT: -- or assistance regarding the
15 purpose of today's hearing?

16 MR. BOS: Yes, she understands that this is an
17 identity hearing today and that this is not a trial on
18 the merits or any pretrial motions in connection with
19 the charges that are pending now in the District of
20 Tennessee.

21 THE COURT: Should the Court grant
22 Ms. Tucci-Jarraf's request or more properly, should the
23 Court accept her waiver of counsel, what will your role
24 be? In other words, will you serve as stand-by counsel,
25 or will it be your request to be permitted to withdraw?

1 MR. BOS: Your Honor, I think that that's a
2 decision that would be best left for Ms. Tucci to make:
3 I am certainly an officer of the Court, and I've been
4 initially assigned to the case by the Court. I am here
5 today. I can be here for the hearing today. If it
6 turns out that she -- well, let me back up.

7 I've explained to her that she certainly has
8 every right to represent herself in this case, but the
9 Court certainly has the right and the authority to
10 appoint stand-by counsel.

11 Now, whether or not one, she accepts that
12 stand-by counsel and two, whether or not she wants to
13 have stand-by counsel to be me, I don't think given my
14 conversations with her that I can tell you what, what my
15 position is. My position is what my client wants me to
16 do. So if it turns out that the Court wants to appoint
17 stand-by counsel but my client wants someone other than
18 me, then I would ask the Court to appoint new counsel
19 for, or new stand-by counsel for Ms. Tucci.

20 If it turns out that Ms. Tucci is satisfied
21 with me as stand-by counsel, I'm ready, willing and able
22 to serve in that capacity.

23 THE COURT: Very well. That was the Court's
24 next question. Are you prepared to serve as stand-by
25 counsel.

1 MR. BOS: Yes, if that is my client's wish.

2 THE COURT: With all the qualifications that
3 you just articulated.

4 MR. BOS: Yes, Your Honor.

5 THE COURT: Very well. Thank you very much,
6 Mr. Bos.

7 Ms. Walters.

8 MS. WALTERS: Good morning, thank you, Your
9 Honor. Your Honor, the government concurs with the
10 defense counsel's request for an inquiry and
11 specifically the specific parameters of what the Court
12 should inquire. And once the Court makes a decision,
13 the government is prepared to turn over *Jencks* as
14 discussed at the last hearing.

15 THE COURT: And are you speaking of *Jencks*
16 with respect to the witness who will be the first
17 witness you call?

18 MS. WALTERS: That's correct, Your Honor. And
19 also the government exhibits for the identity hearing
20 today.

21 THE COURT: Very well. Thank you very much,
22 Ms. Walters.

23 Bear with me, please, while I confer with the
24 deputy clerk.

25 (Discussion held off the record.)

1 THE COURT: It appears that there is no form
2 utilized by this Court for the inquiry of the sort that
3 the parties contemplate. We will take a very brief
4 recess while the Court determines the full extent of
5 what must be memorialized in order to determine that
6 Ms. Tucci-Jarraf's waiver of her right to counsel is a
7 knowing and voluntary waiver and satisfies the
8 constitutional requirements.

9 MR. BOS: That's fine, Your Honor. I have
10 just one scheduling issue. Would it be possible, I have
11 a 10:30 status before Judge Moss that should take no
12 more than five minutes just to set a new date. So
13 perhaps if we can reconvene in say half an hour, that
14 would at least allow me to not hold back from Judge Moss
15 on a relatively short matter.

16 THE COURT: Thank you very much, Mr. Bos.
17 Ms. Walters, do you have other commitments this morning?

18 MS. WALTERS: Other than the 11:00 before Your
19 Honor here, no, Your Honor.

20 THE COURT: Very well. Thank you very much.
21 We will resume no later than 30 minutes from now.
22 Mr. Bos, if you believe your matter will be completed,
23 your matter before Judge Moss will be completed prior to
24 that, please return, please, and reach out to
25 Ms. Walters.

1 MR. BOS: Your Honor, I'll go up there right
2 now. If we can get called more quickly, I'll get back
3 sooner.

4 THE COURT: Very well. And perhaps the deputy
5 clerk here can assist by making a call to her
6 counterpart upstairs.

7 MR. BOS: That's fine, Your Honor.

8 THE COURT: Very well. Thank you. In the
9 meantime, Ms. Tucci-Jarraf, please return with the
10 marshal.

11 (Recess taken)

12 DEPUTY CLERK: Okay. Re-calling criminal case
13 year 2017-531-M. United States versus Heather Ann
14 Tucci-Jarraf.

15 THE COURT: Thank you. Is there anything
16 further, Mr. Bos, before the Court proceeds?

17 MR. BOS: No, Your Honor.

18 THE COURT: Ms. Walters?

19 MS. WALTERS: No, Your Honor.

20 THE COURT: Very well. The Court during the
21 recess had an opportunity to review *Faretta v.*
22 *California*, 422 United States 806 and *McCaskey v.*
23 *Wiggins*, 465 U.S. 168. Having done so, we will proceed
24 with a determination with respect to the extent to which
25 Ms. Tucci-Jarraf's waiver of counsel as described by

1 you, Mr. Bos, is knowing and voluntary.

2 As a preliminary matter, I will ask whether
3 you wish to be heard, Mr. Bos, or you, Ms. Walters,
4 concerning whether you, Ms. Walters, may wish to excuse
5 yourself during any portion of this inquiry if it is the
6 case, Mr. Bos, that you have a concern that privileged
7 information may inadvertently be elicited.

8 MR. BOS: I do not, Your Honor.

9 THE COURT: You do not have such request? You
10 do not --

11 MR. BOS: We do not believe that privileged
12 information will be revealed at this point. I don't
13 have a request for the government to step outside.

14 THE COURT: Can we agree then that if it
15 appears that that is likely to occur, you will somehow
16 alert us and you, Ms. Walters, will then excuse
17 yourself?

18 MS. WALTERS: Yes, Your Honor.

19 THE COURT: Can we agree on that protocol?

20 MR. BOS: Certainly, Your Honor.

21 THE COURT: Very well.

22 Now, Ms. Tucci-Jarraf, I will ask you and
23 Mr. Bos to come to the podium, please.

24 Now, Ms. Tucci-Jarraf, I will ask you to
25 please face the Deputy Clerk of Court to be sworn, and

1 then we'll proceed.

2 DEPUTY CLERK: Please raise your right hand,
3 ma' am, to be sworn. Do you solemnly swear that the
4 answers you're about to give in the hearing now before
5 the Court will be the truth, the whole truth and nothing
6 but the truth, so help you God?

7 THE DEFENDANT: By sworn declaration.

8 (Brief discussion off the record,
9 unintelligible)

10 THE DEFENDANT: I'm ready to proceed.

11 DEPUTY CLERK: All right. Thank you.

12 THE DEFENDANT: May I swear that again?

13 DEPUTY CLERK: Just say I do, and that'll be
14 fine.

15 THE DEFENDANT: Okay.

16 DEPUTY CLERK: That you're about to give the
17 truth, the whole truth and nothing but the truth to the
18 answers [sic] that the Judge is about to ask you, so
19 help you God.

20 THE DEFENDANT: Withstanding identification
21 correction of being the original source of all that is,
22 (unintelligible, foreign language) I swear to state the
23 truth.

24 THE COURT: Thank you. Now, good morning.
25 You have heard Mr. Bos' representations regarding your

1 request. I will hear directly from you at this time.

2 THE DEFENDANT: Thank you, ma'am.

3 THE COURT: Of course.

4 THE DEFENDANT: To be able to answer any
5 questions that you may have, I just wanted to confirm
6 because I have no ability to confirm whether this, the
7 notice of filing, I just wanted to confirm with
8 Your Honor that it is on the record, that Mr. Bos has
9 made.

10 THE COURT: It is.

11 THE DEFENDANT: Okay. I may proceed, please.
12 Ask your questions.

13 THE COURT: Very well. Mr. Bos stated in your
14 presence that it is your request that you represent
15 yourself. I need to hear that from you, however.

16 THE DEFENDANT: Mr. Bos has gone over
17 explicitly with me regarding being represented by an
18 attorney, being represented on behalf of myself as pro
19 se, and I went over the circum, which was representing
20 and presenting as self pro per. It is my choice here
21 today to go forward as self pro per.

22 THE COURT: Do you have an understanding that
23 you have a right to appointed counsel if you are unable
24 to retain counsel?

25 THE DEFENDANT: I'm aware that based on the

1 notice which was a, it was a complimentary repeat notice
2 from four and-a-half years ago that this entire case,
3 the entire representation in this Court, that there is
4 no authority for this particular action, nor the
5 underlying action from Tennessee.

6 As far as the identification, I am here to go
7 ahead and move forward with that identification, again,
8 with the restatement that there is no authority for
9 these proceedings or for the identification hearing.

10 THE COURT: Did Mr. Bos explain to you that
11 all I can do during the course of this hearing is make a
12 decision about whether you are the person named in the
13 arrest warrant and the indictment?

14 THE DEFENDANT: Again, Mr. Bos did explain the
15 process, the limits and parameters that you had
16 expressed to him as well as into the Court the last time
17 we were on record. Again, I state that based on these
18 perfected filings that have been provided to the Court,
19 there is no authority for this Court or for you, ma'am,
20 to proceed forward with any identification hearing
21 inclusive of the underlying cause of action which
22 resulted in us all being here.

23 THE COURT: Whose decision is it for you to
24 represent yourself?

25 THE DEFENDANT: My decision to present and

1 represent self is solely my decision. It is my sole
2 authority and my sole determination.

3 THE COURT: Has anyone forced you to make such
4 a decision?

5 THE DEFENDANT: I'm not sure where that
6 question is coming from. There's no facts or data
7 entered into any record that I would be forced to move
8 forward as myself. As I stated, these filings here, if
9 you had read them you would see clearly that I am
10 competent and conscious to make these decisions, these
11 determinations and that there is a solid proof of record
12 of my competency to move forward and represent and
13 present solely as self pro per.

14 THE COURT: Did Mr. Bos speak with you
15 concerning the perils that an individual faces by
16 electing to represent herself or himself?

17 THE DEFENDANT: Ma'am, my full responsibility,
18 accountability and liability, I am completely aware of
19 the perils of moving forward with a licensed attorney in
20 such a matter. I'm also aware of the ramifications and
21 the consequences of all involved in this process when
22 there is no authority to actually hold these hearings.
23 I'm very conscious and aware of my own responsibility
24 and accountability and liability for every word, thought
25 and action that I take.

1 THE COURT: Do you need more time to talk to
2 Mr. Bos about your decision to represent yourself?

3 THE DEFENDANT: I believe that Mr. Bos and I
4 have thoroughly exhausted all conversation as to our
5 ideologies, where they do not match and where we
6 different that different applications of law are
7 applicable in this matter. And again, again, the fact
8 that there is documentation that's applied to the Court
9 that there is no authority for them to even hold this
10 hearing, let alone hold me in custody and detention
11 without bail and bond or appearing to hold me at all or
12 to have this matter before the Court, as is the
13 Tennessee matter, the underlying one that Mr. Parker
14 still has instigated and brought before this D.C. Court.

15 So I'm very aware of this. I do not need any
16 more time to be able to speak through the things, we're
17 just repeating ourselves at this point. So I am very
18 aware, I'm conscious and competent to make any
19 declaration and every decision that I am presenting and
20 representing to you as myself.

21 THE COURT: Mr. Bos referred in passing during
22 his comments to issues having to do with literacy. May
23 I ask you to please state for the record your
24 educational level.

25 THE DEFENDANT: I have a JD from Gonzaga

1 School of Law. That is the highest level of degree. I
2 also have a BA in accounting and finance, and my JD
3 emphasis was in litigation, real estate -- excuse me,
4 estate planning and trials.

5 THE COURT: Very well. Thank you. Are there
6 other inquiries that either of you propose in order for
7 the Court to make a determination consistent with
8 *Faretta*? Mr. Bos?

9 MR. BOS: No, Your Honor.

10 THE COURT: Ms. Walters?

11 MS. WALTERS: No, Your Honor.

12 THE COURT: Very well. Thank you very much.
13 Ms. Tucci-Jarraf, thank you, you may be seated.

14 The Court finds based upon Ms. Tucci-Jarraf's
15 responses to the Court's questions and her narrative
16 statements that her waiver of counsel is knowing and
17 voluntary and otherwise conforms to the requirements of
18 *Faretta*, and accordingly the Court will note in the
19 record or will include a finding in the record to that
20 effect.

21 The Court will appoint you, Mr. Bos, to serve
22 as stand-by counsel. Do you wish to be heard, Mr. Bos?

23 MR. BOS: May we approach the podium,
24 Your Honor? I believe that now that Court has found
25 that Ms. Tucci is competent to represent herself. She

1 would like to lodge an objection.

2 THE COURT: Very well. I will hear your
3 objection.

4 THE DEFENDANT: Thank you, Your Honor. Again
5 as I restate, this Court does not have the authority to
6 even hold this identification hearing, let alone I'd
7 like to clarify and correct the record that I'm not
8 waiving any rights, that I'm stating that there's no
9 authority to even ask me to waive any rights.

10 As far as Mr. Bos being stand-in, I need no
11 other assistance in presenting or representing as
12 myself.

13 THE COURT: Very well. Thank you, you may
14 have a seat.

15 THE DEFENDANT: Thank you.

16 THE COURT: Perhaps our record has changed.
17 The finding that the Court just articulated was that
18 Ms. Tucci-Jarraf waives counsel. Ms. Tucci-Jarraf has
19 now indicated that she does not waive any right and that
20 being the case, I believe we must proceed with you,
21 Mr. Bos, as counsel and not stand-by counsel.

22 Had there been an objection to your role,
23 Mr. Bos, as stand-by counsel, the Court, as I indicated
24 at the outset reviewed during our recess *McCaskey v.*
25 *Wiggins*, 465 U.S. 168, and notes that at page 184 the

1 Supreme Court held that "A defendant's Sixth Amendment
2 rights are not violated when a trial judge appoints
3 stand-by counsel, even over the defendant's objection to
4 relieve the judge of the need to explain and enforce
5 basic rules of courtroom protocol or to assist the
6 defendant in overcoming routine obstacles that stand in
7 the way of the defendant's achievement of her own
8 clearly indicated goals."

9 So had there been an objection to your role as
10 stand-by counsel, Mr. Bos, the Court would have
11 appointed you to serve in that capacity over objection
12 based upon the authority set forth by the Supreme Court
13 in the McCaskey opinion.

14 However, having now heard that
15 Ms. Tucci-Jarraf does not waive any rights, we must
16 proceed. Ms. Walters, you have just one witness? Is
17 that correct?

18 MS. WALTERS: That's correct, Your Honor. And
19 just to clarify, the government will produce *Jencks* and
20 exhibits for the identity hearing.

21 THE COURT: Can you do that now, please.

22 MS. WALTERS: Just to be clear, I'm providing
23 them to Mr. Bos.

24 THE COURT: Thank you. And you may call
25 your -- Mr. Bos --

1 MR. BOS: Your Honor, Ms. Tucci-Jarraf tells
2 me that she's not objecting to the appointment of
3 stand-by counsel. She's objecting to me as stand-by
4 counsel.

5 THE COURT: Well, the Court knows of nothing
6 we can do at this point other than to proceed. That is
7 an imprecise way perhaps, and I will endeavor to be more
8 precise, of stating our status. The Court understood
9 the request made by Ms. Tucci-Jarraf to be one to waive
10 her right to counsel, and it was for that reason that
11 during the recess the Court reviewed *Faretta* and
12 *McCaskey* and heard from Ms. Tucci-Jarraf on the record
13 concerning the waiver.

14 Ms. Tucci-Jarraf has now stated that she does
15 not waive any right. That being the case, I have no
16 basis to relieve you of your appointment or to appoint
17 you to serve as stand-by counsel, since an appointment
18 as stand-by counsel would be operative only if an
19 individual were representing herself.

20 Because the broader objection appears to be
21 one to this Court's determination to proceed with an
22 identity hearing, I believe the record is clear with
23 respect to why we are proceeding with the identity
24 hearing. That is what the Federal Rules of Criminal
25 Procedure provide in a circumstance in which an

1 individual is arrested in this district based upon a
2 charge pending in another district. So the Court has no
3 alternative.

4 To the extent that Ms. Tucci-Jarraf's
5 objection is also to her continued detention, I have no
6 means to address that either other than by continuing
7 with the identity hearing. Indeed, it may be the case
8 that the government is unable to carry its burden to
9 prove that Ms. Tucci-Jarraf is the individual named, in
10 which case the Court would have no alternative other
11 than to release Ms. Tucci-Jarraf. But I cannot get to
12 that point if we do not have the hearing. So we must
13 proceed.

14 MR. BOS: Your Honor --

15 THE COURT: The Court also noted that at the
16 time the request was made to continue the hearing from
17 Monday until today, the Court expressed a concern
18 regarding Ms. Tucci-Jarraf's continued detention and
19 pointed out that Monday was the third day. We are now
20 four days removed from that, and I know of no way to
21 ensure that Ms. Tucci-Jarraf's rights are protected,
22 that the Court proceeds with the identity hearing in an
23 orderly process, and that we comply with the applicable
24 rules other than to begin.

25 MR. BOS: Your Honor, I understand that.

1 THE COURT: The record will reflect that we
2 are proceeding over Ms. Tucci-Jarraf's objection.

3 MR. BOS: Your Honor, I'd just like to have
4 just 30 seconds so I can see whether or not she might
5 want to withdraw that objection. It's my understanding
6 that Ms. Tucci would like to represent herself in this
7 matter.

8 THE COURT: That is not what Ms. Tucci-Jarraf
9 said. I do not question at all your proffer with regard
10 to the discussion that you had, but Ms. Tucci-Jarraf had
11 said that she didn't waive any rights at all. So we
12 must proceed.

13 MR. BOS: Well, but she may change her mind if
14 she realizes the consequences of that decision.

15 THE COURT: That would raise another question
16 concerning the extent to which the waiver represents an
17 understanding of what we are doing here. And that word
18 comes directly from *Faretta*. So we must proceed. .

19 Ms. Walters has given you the *Jencks* material.
20 The witness is ready to testify, and we will proceed.

21 The Court will also note that in the context
22 of an identity hearing, the Court cannot envision any
23 prejudice to Ms. Tucci-Jarraf by proceeding in this
24 fashion.

25 MR. BOS: Your Honor, I guess our concern

1 would be that she has an absolute constitutional right
2 to represent herself, and if she has inadvertently
3 caused the Court to have some concerns about that
4 constitutional right, she should be allowed to clarify
5 that. I don't know what her answer would be, whether or
6 not, given what the Court has just said, she wants to
7 withdraw her --

8 THE COURT: I must be bound by the last thing
9 Ms. Tucci-Jarraf said, which is, "I do not waive any
10 rights." So you may have a seat and we will proceed.

11 MR. BOS: Very well, Your Honor.

12 THE COURT: You may call your witness.

13 MS. WALTERS: Your Honor, may the government
14 just have a brief minute to provide some *Giglio*
15 information to Mr. Bos as well?

16 THE COURT: Yes, of course.

17 MR. BOS: Your Honor, we are making a standing
18 objection to my appointment.

19 THE COURT: Very well.

20 MR. BOS: Your Honor, Ms. Tucci has informed
21 me that she does not want me representing her so filing
22 or not filing, I'm moving to withdraw as counsel for
23 Ms. Tucci.

24 THE COURT: Mr. Bos, is it your understanding
25 that other counsel is entering an appearance?

1 MR. BOS: Your Honor, I'm not aware of any
2 other counsel that would be entering their appearance.
3 So therefore, I would ask the Court to appoint new
4 counsel for Ms. Tucci.

5 THE COURT: Very well. We will take a brief
6 recess. Ms. Tucci-Jarraf, please return with the
7 marshal. Actually, you may take your seats while the
8 Court takes another matter.

9 (Recess taken)

10 THE COURT: Mr. Bos, in accordance with local
11 Rule 44.4 subsection (d), the Court will deny the
12 motion, finding that the motion would unduly delay the
13 proceedings and otherwise not be in the interest of
14 justice.

15 Now, Ms. Walters, you may call your witness.

16 MR. BOS: Your Honor, may I just be heard on
17 that briefly?

18 THE COURT: Mr. Bos, I believe I have little
19 alternative other than to permit you to be heard. But
20 the Court has already articulated the reasons -- perhaps
21 I should indicate I am incorporating other reasons
22 already set forth on the record as the basis of my
23 determination that granting your request would be
24 unfairly -- I apologize -- would not be in the interest
25 of justice and would unduly delay the proceedings.

1 MR. BOS: Your Honor, it's my understanding
2 Ms. Tucci is not seeking a delay in the proceedings.
3 And during the intervening break I had a chance to speak
4 with Ms. Tucci, and she explained to me that she was
5 unclear of the Court's question, and if she were asked
6 again today or right now if she is willing to waive her
7 right to counsel with the understanding that the Court
8 received a notice of filing, she is willing to waive her
9 right to counsel.

10 THE COURT: Well, we are going to proceed,
11 Mr. Bos, because the indication that we now have that
12 within the space of a matter of minutes there has been
13 two changes of contention on that issue raises an issue
14 of the extent to which the Court can make the *Faretta*
15 findings.

16 In other words, to be specific, your proffer
17 was that Ms. Tucci-Jarraf's request was to waive her
18 right to counsel. Ms. Tucci-Jarraf stated when I first
19 inquired of her at the end of her narrative that she did
20 not waive any right at all, including her right to be
21 here, to have me proceed with the identity hearing or
22 her continued detention, to name a few.

23 The next matter was that you then moved to
24 withdraw. Now it appears that there is a request to
25 waive counsel. This all undermines the finding that the

1 Court must make consistent with *Faretta* that -- perhaps
2 I should say with respect to Ms. Tucci-Jarraf's
3 understanding of what we are doing here and the issue
4 regarding, for example, voluntariness. I know of no
5 prejudice which would arise to Ms. Tucci-Jarraf from
6 denying both your motion for leave to withdraw and from
7 not undertaking any further inquiry consistent with
8 *Faretta*. And I believe that is clear based upon all
9 that the Court has found thus far, including the nature
10 of this proceeding and the further delay which would be
11 occasioned by granting your motion, undertaking a
12 further inquiry or doing anything other than proceeding.

13 MR. BOS: Your Honor --

14 THE COURT: The record reflects that the Court
15 has already expressed a concern that the hearing should
16 have been conducted on no later than the third day,
17 which was Monday. Counsel for the government was ready
18 to proceed on Monday. The Court was prepared to proceed
19 on Monday. It was with great reluctance that the Court
20 granted the request to continue the matter until today.
21 We are all ready to proceed at this time. The witness
22 is here, the *Jencks* material has been provided. The
23 Giglio material has been provided. The exhibits have
24 been provided. And we must proceed.

25 MR. BOS: Your Honor, the question is not

1 whether or not we proceed today. The question is
2 whether or not Ms. Tucci can exercise her constitutional
3 right to represent herself in this matter. This is
4 exactly what happened in *Faretta* where the Court over
5 the defendant's objection required the defendant to
6 accept a Court-appointed counsel.

7 THE COURT: Was *Faretta* a trial, Mr. Bos?

8 MR. BOS: It was a trial, Your Honor.

9 THE COURT: Very well. This is an identity
10 hearing; any issues regarding Ms. Tucci-Jarraf's
11 representation of herself with regard to the merits
12 should the Court make a finding that would lead to a
13 commitment to the requesting district can be addressed
14 by the requesting district. As you have noted, this is
15 not the trial. The Court reads *Faretta* to stand for the
16 proposition that there is an entirely -- there is a
17 heightened concern regarding that issue with respect to
18 a trial.

19 And as I indicated for reasons including
20 Ms. Tucci-Jarraf's response to the Court's inquiry, the
21 Court must now question whether the finding -- the Court
22 made the finding at the time, I'm speaking of events
23 that have transpired since then, the Court must take
24 those issues into account in determining whether any
25 statement at this time that she waives her rights is one

1 as to which the Court could make the requisite finding.

2 So we must go forward. Your objection is noted.

3 Ms. Tucci-Jarraf's objection is noted.

4 MR. BOS: Your Honor, and our position further
5 is that a defendant at any time can elect to proceed to
6 represent themselves.

7 THE COURT: That may be the case. That does
8 not mean that the Court can make the finding, that the
9 Court can ignore all of what has occurred in the
10 courtroom and make a finding regarding an individual's
11 understanding of the proceeding, which to some extent
12 the Court must now question in view of what has happened
13 since I heard from Ms. Tucci-Jarraf.

14 So we must proceed.

15 MR. BOS: For the record, Your Honor, we would
16 ask the Court to take five minutes to do an inquiry of
17 Ms. Tucci-Jarraf since she decided to change her
18 position that she stated about 45 minutes ago and
19 whether or not she would like to proceed.

20 THE COURT: The Court cannot do so.

21 MR. BOS: Very well, Your Honor.

22 THE COURT: Now, Ms. Walters, you may call
23 your witness.

24 MS. WALTERS: Thank you, Your Honor.

25 Your Honor, at this point the government would seek to

1 admit and publish to the Court a certified copy of the
2 indictment in this matter and also a copy of the arrest
3 warrant as Government Exhibits 1 -- actually as jointly
4 government Exhibit 1 for the purpose of the identity
5 hearing. And these documents have been provided to
6 Mr. Bos.

7 MR. BOS: Objection, Your Honor.

8 THE COURT: On what grounds? All of the
9 grounds previously noted?

10 MR. BOS: Yes, Your Honor.

11 THE COURT: Very well. The exhibits -- may I
12 ask you to hand the Court's copy to the deputy clerk,
13 please.

14 MS. WALTERS: Yes, Your Honor. And at this
15 time, Your Honor, the government calls Special Agent
16 Parker Steill to the stand.

17 THE COURT: For the record, Government
18 Exhibit 1 and Government Exhibit 2 will be admitted over
19 objection. The Court notes that the exhibits are
20 identical to the ones, except that they bear the exhibit
21 sticker and the certification seal that are filed in the
22 record.

23 MS. WALTERS: Just for the record, Your Honor,
24 they are jointly Government Exhibit 1.

25 THE COURT: I apologize.

1 MS. WALTERS: Thank you, Your Honor.

2 (Government's Exhibit Number 1 admitted
3 into evidence.)

4 MR. BOS: Your Honor.

5 THE COURT: Mr. Bos.

6 MR. BOS: I'm making a standing objection to
7 the introduction of any evidence in connection with --

8 THE COURT: The Court is aware that there is a
9 standing objection. I believe that was, that should be
10 clear for the record. Very well, thank you.

11 *****

12 P A R K E R S T E I L L,

13 Having been called as a witness on behalf of the
14 Government and having been first duly sworn by the
15 Deputy Clerk, was examined and testified as follows:

16 DIRECT EXAMINATION

17 BY MS. WALTERS:

18 Q. Good morning.

19 A. Good morning, ma'am.

20 Q. Please state your name and spell it for
21 the record.

22 A. Parker Steill. First name P-a-r-k-e-r,
23 last name S-t-e-i-l-l.

24 Q. And where are you employed?

25 A. Currently employed by the Federal Bureau

1 of Investigation, Knoxville division.

2 Q. And how long have you been employed with
3 the FBI's Knoxville office?

4 A. Approximately five years.

5 Q. And what, if any, specializations do you
6 have?

7 A. Currently worked and have worked since I
8 started in Knoxville on the white-collar crimes squad.

9 Q. And where were you employed before your
10 employment with the FBI in Knoxville?

11 A. Yes, ma'am. Before the FBI in Knoxville
12 I was, I was a practicing attorney for approximately
13 seven and a half years. During that time I did both
14 prosecution and defense work. Also served as a short
15 time as a pro tem municipal court judge as well as I
16 have a, I'm a graduate of the JAG school, served
17 overseas in Afghanistan as part of Operation Enduring
18 Freedom as chief legal assistant in Kandahar Airfield.

19 Q. Did there come a time when you
20 investigated a wire fraud and money laundering
21 conspiracy that occurred during the early year part of
22 July of 2017 in the state of Tennessee?

23 A. Yes, ma'am, I did.

24 Q. Can you explain to us what your role was
25 in that investigation?

1 A. Yes, ma'am, I'm happy to. So we received
2 information from USAA about a fraud that had occurred.
3 And my role in that investigation was one of the
4 investigators who looked into it and did interviews and
5 we ultimately made an arrest of Mr. Randall K. Bean, a
6 codefendant in this matter.

7 Q. And so you developed suspects in that
8 particular matter?

9 A. Yes, ma'am, we did.

10 Q. And can you tell us specifically who were
11 developed as suspects in that particular matter?

12 A. Yes, ma'am. Initially we developed
13 Mr. Randall Bean as a suspect in that matter. Later we
14 also developed Ms. Heather Ann Tucci-Jarraf as a subject
15 in that matter.

16 Q. And can you tell us specifically how you
17 developed Heather Ann Tucci-Jarraf as a suspect in that
18 matter?

19 A. Yes, ma'am. We had made an arrest of
20 Mr. Randall Bean, and at the scene there were two other
21 individuals, and they gave me a piece of paper with the
22 phone number and a name Heather on it.

23 Subsequent to the arrest, we obtained video and
24 audio evidence that indicated Ms. Tucci-Jarraf had a
25 role in this matter, including evidence showing that she

1 was involved in a call to a RV dealership and a
2 subsequent video and audio evidence where she identifies
3 the scheme online.

4 Q. And in those particular videos, can you
5 actually see the defendant, Heather Ann Tucci-Jarraf?

6 A. In one of the two I'm referencing, yes,
7 ma'am, I was able to see her with initials at the bottom
8 of the screen.

9 Q. And did you review any other information
10 from criminal databases in determining or identifying
11 Heather Ann Tucci-Jarraf?

12 A. Sure, yes, ma'am. As a normal part of
13 the investigation we do a driver's license check and
14 what we refer to commonly as the NCIC database.

15 MS. WALTERS: Permission to approach the
16 witness, Your Honor.

17 THE COURT: You may.

18 BY MS. WALTERS:

19 Q. I'm showing you what's been marked as
20 Government Exhibit No. 2 and has been previously
21 provided to defense counsel. Do you recognize
22 Government Exhibit No. 2 .

23 A. Yes, ma'am, I do.

24 Q. What is Government Exhibit No. 2?

25 A. This is what, in the course of an

1 investigation this is what we normally do. This is,
2 this document provides driver's license information as
3 well as again what we refer to as an NCIC check on an
4 individual.

5 Q. And who was the target of that
6 specifically NCIC check?

7 A. This one specifically, ma'am, as
8 identified on the document is Heather Ann Tucci-Jarraf.

9 Q. And is that the name contained
10 specifically on Government Exhibit No. 2?

11 A. Yes, ma'am, I'm looking at Exhibit No. 2,
12 and the name there is precisely that.

13 Q. Can you also tell me what the date of
14 birth is?

15 A. Yes, ma'am. The date of birth the way
16 these documents read, 1972-07-30, so that would be
17 July 30, 1972.

18 Q. Is there also an address noted on
19 Government Exhibit No. 2?

20 A. Yes, ma'am there is an address. There
21 the says primary contact address, 29 Western Avenue,
22 Llanon, MA for Massachusetts, 01904.

23 Q. And other than the main date of birth and
24 address, is there anything else contained in Government
25 Exhibit No. 2 that assisted you in your investigation as

1 to Heather Ann Tucci-Jarraf?

2 A. Yes, ma'am. There is two photographs
3 here of Ms. Tucci-Jarraf that are contained. There's
4 also other information here, Social Security number,
5 height, gender, what we would call just regular
6 identifiers.

7 Q. And is Government Exhibit No. 2 a fair
8 and accurate copy of the printout that you generated
9 during the course of your investigation of this wire
10 fraud/bank fraud matter?

11 A. Yes, ma'am, this is a fair and accurate
12 representation. This document would have been provided
13 by me by our NCIC people at the office.

14 MS. WALTERS: At this time, Your Honor, the
15 government seeks to admit and publish to the Court
16 Government Exhibit No. 2.

17 MR. BOS: Objection, Your Honor.

18 THE COURT: The Court will admit Government
19 Exhibit 2 over objection, bearing in mind that the
20 objections are those which have previously been
21 addressed.

22 (Government's Exhibit Number 2 admitted
23 into evidence.)

24 BY MS. WALTERS:

25 Q. You mentioned that you obtained videos of

1 Heather Ann Tucci-Jarraf. And specifically can you tell
2 us when you obtained those videos?

3 A. Yes, ma'am. When there are videos that
4 were obtained -- there was one video that was obtained
5 for the indictment and subsequent videos after the
6 indictment.

7 Q. Can you tell us about the video that was
8 obtained after the indictment?

9 A. In one particular video, ma'am, the --
10 again, there were multiple that were obtained after the
11 indictment, this video depicts a, the arrest of
12 Mr. Randall Bean and Ms. Tucci-Jarraf is on the
13 telephone. And when we were able to do that, obviously
14 the arrest is not on this video, but we can hear her
15 conversation and also another FBI agent who was at the
16 scene was referenced.

17 Q. And in the video that you're referring
18 to, can you actually see the face and likeness of the
19 defendant?

20 A. Yes, ma'am. In this video you can see
21 Ms. Heather Ann Tucci-Jarraf.

22 Q. And so I'm going to show you what's been
23 marked as Government Exhibit No. 3.

24 MS. WALTERS: And for the record, Government
25 Exhibit No. 3 was provided to defense counsel last week

1 by email link and also provided to defense counsel today
2 in Court, Your Honor.

3 THE COURT: Thank you.

4 BY MS. WALTERS:

5 Q. Do you recognize Government Exhibit
6 No. 3?

7 A. I do, yes, ma'am.

8 Q. What is Government Exhibit No. 3?

9 A. Government Exhibit 3 is a CD, and it is
10 both signed and, signed by me and dated by me for
11 8/4/2017.

12 Q. When was the last time that you reviewed
13 Government Exhibit No. 3?

14 A. This morning at your office we looked at
15 it.

16 Q. And does Government Exhibit No. 3
17 represent a fair and accurate depiction of the video
18 that you discovered in the course of your investigation
19 of this matter?

20 A. Yes, ma'am. It would be me or another
21 investigator discovered it. But yes, ma'am.

22 Q. But you have personally reviewed it?

23 A. I've viewed the relevant parts, yes,
24 ma'am.

25 MS. WALTERS: At this time, Your Honor,

1 personal personally the government wishes to admit
2 Government Exhibit No. 3 and also publish it to the
3 Court.

4 MR. BOS: Objection, Your Honor.

5 THE COURT: Are your objections the same,
6 Mr. Bos, as those previously articulated?

7 MR. BOS: Yes, Your Honor.

8 THE COURT: Very well. Thank you. The Court
9 will admit Government Exhibit 3 over objection.

10 MS. WALTERS: Thank you, Your Honor.

11 (Government's Exhibit Number 3 admitted
12 into evidence.)

13 THE COURT: Mr. Bos, will you confirm please,
14 whether the monitor on your table is on.

15 MR. BOS: It's on, Your Honor.

16 THE COURT: Thank you.

17 (Videotape played)

18 BY MS. WALTERS:

19 Q. Is Government's Exhibit No. 3 as I played
20 it what you recall being on the video that you
21 observed --

22 A. Yes, ma'am.

23 Q. -- with respect to this defendant. And
24 based on your review of the NCIC report, other videos
25 and this one, does the person depicted in Government

1 Exhibits No. 2 and 3 match?

2 A. Yes, ma'am.

3 Q. Now, Agent Steill, did you testify in the
4 grand jury for the purpose of obtaining the indictment
5 which is the subject of this removal hearing today?

6 A. Yes, ma'am, I did.

7 Q. And when did you testify in the, before
8 the grand jury?

9 A. July 18, 2017.

10 Q. And with respect to the identity of the
11 suspects charged in the indictment, specifically Heather
12 Ann Tucci-Jarraf, do you recall what specific
13 information you presented to the grand jury at that
14 time?

15 A. Yes, ma'am. In that I discussed the
16 evidence presently in the possession, and that being an
17 audio recording, a video recording that I previously
18 referenced in this hearing today where Ms. Heather Ann
19 Tucci-Jarraf's initials were on that screen. And also
20 in our possession we have the NCIC report, the driver's
21 license and the information that we previously discussed
22 here today.

23 Q. And did you have any audio evidence with
24 respect to Heather Ann Tucci-Jarraf?

25 A. Yes, ma'am, I had an audio recording that

1 took place in the RV dealership.

2 Q. And to be specific with respect to the
3 video evidence that you presented to the grand jury,
4 could you clearly see the defendant in that particular
5 item?

6 A. Yes, ma'am.

7 Q. That you presented to the grand jury?

8 A. And also the initials on the screen as
9 well that I discussed with the grand jury.

10 Q. So based on your investigation, your
11 review of Ms. Tucci-Jarraf's videos, arrest photographs
12 and other information obtained from criminal databases,
13 can you tell me whether you see the person named in the
14 indictment and who you investigated here in the
15 courtroom today?

16 A. Yes, ma'am, I can. I can, from my
17 vantage point right here I can clearly identify
18 Ms. Heather Ann Tucci-Jarraf. She is currently in an
19 orange, has an orange shirt with an apparent white
20 undershirt sitting next to counsel to my left and to the
21 Court's left.

22 MS. WALTERS: And at this time, Your Honor,
23 the government would request that the record reflect an
24 in-court identification of the defendant.

25 MR. BOS: Objection, Your Honor.

1 THE COURT: Thank you, Ms. Walters. Mr. Bos.

2 MR. BOS: Objection.

3 THE COURT: Are your objections the same as
4 those previously voiced?

5 MR. BOS: Yes, Your Honor.

6 THE COURT: The record will reflect Agent
7 Steill's in-court identification of the defendant over
8 objection.

9 BY MS. WALTERS:

10 Q. Agent Steill, post-indictment did an
11 arrest warrant issue for Heather Ann Tucci-Jarraf?

12 A. Yes, ma'am, an arrest warrant did out of
13 the Eastern District of Tennessee, Knoxville division.

14 Q. And during the course of your
15 investigation, how did you learn of the defendant's
16 whereabouts?

17 A. She was -- we did not know the exact
18 whereabouts, but she was entered into NCIC, and then I
19 received a call from the United States Secret Service
20 actually late at night, approximately 11:30 to
21 11:45 regarding positive contact with Ms. Heather Ann
22 Tucci-Jarraf.

23 Q. When you say that she was entered in
24 NCIC, what does that mean specifically?

25 A. That is when we have an arrest warrant

1 for an individual, we don't, we put them into NCIC for
2 both, for officers' safety, that if she were to be
3 stopped or the individual were to be stopped, they would
4 know that there is an arrest warrant for that individual
5 and also simply just to have them picked up.

6 Q. And is that what precipitated the call
7 from the United States Secret Service to you?

8 A. Yes, ma'am. The United States Secret
9 Service had come into contact with her and two other
10 individuals when they showed up in Washington, D.C.
11 It's my understanding in a request to meet with
12 President Trump.

13 Q. And what else did the Secret Service
14 advise you as to the defendant's whereabouts?

15 A. The Secret Service provided me hotel
16 information and room number information that we
17 immediately, that following the next morning I
18 immediately provided to our Washington field office who
19 subsequently made an arrest.

20 Q. And were you personally involved in the
21 arrest of the defendant?

22 A. No, ma'am, I was not personally involved.

23 Q. How did you learn of the actual arrest?

24 A. I learned of the actual arrest from our
25 field office, they provided the information to myself

1 and -- once the other agents, the information came back
2 to us in Knoxville, then an arrest had been taken place
3 without incident.

4 Q. And were you advised of the details of
5 the arrest?

6 A. Yes, ma'am. We did receive some details
7 of the arrest. It's my understanding from the
8 information that we received from the Washington field
9 office that Mr. Reef, Ms. Tucci-Jarraf and would other
10 individuals were staying in room 601. At the time the
11 agents approached that room, Ms. Tucci-Jarraf was
12 outside. One or more of the individuals was able to
13 identify her from the window. Agents then radioed down
14 to other agents task force officers and Metropolitan
15 Police that were on the ground and an arrest was
16 effectuated.

17 Q. Other than your review of the criminal
18 databases, your review of videos of the defendant, what
19 else did you do to verify that the person arrested here
20 in the District of Columbia was the same person that was
21 arrested pursuant -- or the same person named in the
22 indictment and the arrest warrant that was issued?

23 A. Well, I think we really, you know, we've
24 continued to continue to conduct course of interviews.
25 We've continued investigation. We've continued to

1 review video and we've also continued, so that's kind of
2 our normal course. We've continued an effort to ensure
3 that we've talked to everyone involved and have all the
4 facts.

5 Q. And did there come a time where you
6 requested fingerprint analysis for the defendant?

7 A. Yes, ma'am. There was a time when I did
8 request that, absolutely.

9 Q. And to your knowledge, what agency
10 conducted the fingerprint analysis?

11 A. That would be the FBI, CJIS.

12 Q. What does CJIS stand for?

13 A. I think it's the Criminal Justice
14 Information System, ma'am, and we just commonly refer it
15 as CJIS located in West Virginia.

16 Q. And to your knowledge, based on your
17 request for fingerprint analysis, was a report authored?

18 A. Yes, ma'am, there was a report authored
19 at my request.

20 Q. I'm showing you Government Exhibit No. 4,
21 which also has been previously provided to the
22 defendant. Do you recognize it?

23 A. Yes, ma'am, I do recognize this report.

24 Q. And what is it specifically?

25 A. Well, as you note on here, it says,

1 "Request procedure, Special Agent, Parker H. Steill
2 dated 7/27/2017." This is what I would refer to as like
3 a biometric report and a fingerprint report that we
4 request one of our biometric individuals at CJIS perform
5 a fingerprint check. So what we have from a prior
6 arrest of Ms. Tucci-Jarraf, and we look at those
7 fingerprints and in the prints that were most recently
8 obtained when she was arrested and the subject of this
9 proceeding here today. It's simply a comparison.
10 You've got two sets of fingerprints. And now they're
11 going to do an analysis in order to determine that this
12 is one and the same individual.

13 Q. And what specifically was the conclusion
14 in the report which is Government Exhibit No. 4?

15 A. I'll draw attention to page 5 where it
16 says, "Result of examination. The fingerprints present
17 on the standards referenced above is S-1 and S-2."
18 That's what I previously discussed are the fingerprints
19 of one and the same individual. And also noted on here,
20 Mr. Cutler notes that as a quality assurance measure a
21 second fingerprint examiner conducted an independent
22 examination and reached the same conclusion.

23 Q. And so that particular line references
24 S-1 and S-2. Can you tell us what S-1 and S-2 are and
25 who they relate to?

1 A. Yes, ma'am. I just go right to S-1. As
2 you will note on here, you see the last name Heather Ann
3 Tucci-Jarraf. You have a date of birth on there. And
4 this one would be from the Metropolitan Police
5 Department is actually referenced on the bottom right,
6 it says D.C. Metro Police, 7/27/2017, 9:40,
7 approximately 9:40.

8 Q. And can you tell us what the date of
9 birth is that is listed on that particular portion of
10 the exhibit?

11 A. Yes, ma'am. This references date of
12 birth as 7/30/1972, and also an identifying Social
13 Security number is also in here.

14 Q. And you mentioned S-2 as also a part of
15 the exhibit. Can you explain to us what is contained in
16 that exhibit?

17 A. Yes. S-2 is prints that were provided to
18 us by the authorities in Washington State, and this
19 again, you see two names on this. You see Heather Ann
20 Tucci and then Heather Ann Tucci-Jarraf, also date of
21 birth 7/30/1972 is also referenced on this document.
22 You'll see right there state identification code on
23 there as well.

24 Q. And is Government Exhibit No. 4 a fair
25 and accurate copy of the report you received from the

1 FBI on or about July 28, 2017, in relation to your
2 request for fingerprint analysis?

3 A. Yes, ma'am, that's correct.

4 MS. WALTERS: At this time the government
5 wishes to admit and publish Government Exhibit No. 4 to
6 the Court.

7 MR. BOS: Objection, Your Honor.

8 THE COURT: Mr. Bos, are your objections the
9 same?

10 MR. BOS: Yes.

11 THE COURT: Government Exhibit 4 will be
12 admitted over objection.

13 (Government's Exhibit Number 4 admitted
14 into evidence.)

15 MS. WALTERS: Thank you, Your Honor. No
16 further questions for the witness from the government,
17 Your Honor.

18 THE COURT: Thank you very much, Ms. Walters.
19 Mr. Bos, you may cross-examine.

20 MR. BOS: May I ask for permission to speak
21 with Ms. Tucci.

22 THE COURT: Bear with me, please, while I
23 confer with the deputy clerk.

24 (Discussion held off the record.)

25 THE COURT: We will recess this matter briefly

1 and take another matter that will give you an
2 opportunity to confer, Mr. Bos, and prepare for
3 cross-examination. Ms. Tucci-Jarraf, please return with
4 the marshal.

5 (Discussion held off the record.)

6 THE COURT: Agent Steill, you may step down,
7 sir, thank you.

8 (Recess taken)

9 THE COURT: Mr. Bos, do you need additional
10 time?

11 MR. BOS: No, we're ready, Your Honor.

12 THE COURT: Agent Steill, thank you, please
13 take your seat.

14 (Witness resumes witness stand.)

15 DEPUTY CLERK: Re-calling Criminal Case,
16 17-531, United States of America v. Heather Ann
17 Tucci-Jarraf.

18 THE COURT: Now, Mr. Bos I understand that you
19 are ready to proceed.

20 MR. BOS: Yes, Your Honor.

21 THE COURT: Very well. I note that it is now
22 approximately five minutes after 12. We will proceed
23 for 15 minutes or so and then recess for lunch and
24 resume at 1:30.

25 MR. BOS: Your Honor, I believe that my

1 examination will be relatively short.

2 THE COURT: Very well.

3 CROSS-EXAMINATION

4 BY MR. BOS:

5 Q. Agent Steill, you testified that you've
6 been an FBI agent for how many years?

7 A. Approximately five, sir. Sorry, sir,
8 came in as a new agent in 2012.

9 Q. How many investigations have you been
10 involved with during that time period?

11 A. It's hard to say, sir. Approximately ten
12 and maybe more. We have a small office, and we assist
13 each other in a lot of different investigations.

14 Q. Okay. Would it be fair to say that
15 you're the lead investigator in connection with this
16 case?

17 A. I think I am, yes, sir.

18 Q. Okay. Now, you testified that you had
19 reviewed some social media videos that purportedly show
20 Ms. Tucci; is that correct?

21 A. That's correct, sir.

22 Q. And prior to the events that gave rise to
23 the indictment, had you had any contact with Ms. Tucci
24 before then?

25 A. Yes, sir, I had.

1 Q. When did you have your prior contact with
2 Ms. Tucci?

3 A. It was, I recall it as a Friday night. I
4 apologize that I don't recall the exact date. I'm going
5 to guess approximately July 14, 15, I believe that's
6 provided in the 302 of the exact date, sir, where myself
7 and another agent attempted to call Ms. Tucci-Jarraf on
8 a phone number that was provided to us at the arrest
9 scene with a piece of paper that said Heather and
10 provided a 253 area code, I believe, sir.

11 Q. So the contact that you had wasn't visual
12 contact; is that correct?

13 A. That's correct, sir.

14 Q. You spoke to an individual on the other
15 line of the phone that you assumed was Ms. Tucci; is
16 that correct?

17 A. Yes, sir. Right. I did not have visual
18 contact with her, yes, sir.

19 Q. And prior to that phone call, you had no
20 contact whatsoever with Ms. Tucci; is that correct?

21 A. That's correct, sir. Just to clarify for
22 the record, at the scene, at the arrest scene they
23 referenced a lady by the name of Heather on the
24 telephone, but I had no contact with her at the scene.

25 Q. Okay. And the codefendant's case,

1 Mr. Bean, were you present at the time of his arrest?

2 A. I was, sir.

3 Q. And Ms. Tucci wasn't there, correct?

4 A. No, sir, she was not present at that
5 scene.

6 Q. Now, you testified that you received
7 notification of Ms. Tucci's arrest -- strike that.

8 You were not present when Ms. Tucci was
9 arrested in this case?

10 A. No, sir, I was not.

11 Q. In fact, isn't it true that Ms. Tucci was
12 arrested in Washington, D.C. and you were in Knoxville
13 at the time that the arrest occurred; is that correct?

14 A. That is absolutely true, sir.

15 Q. In fact, isn't it true that the very
16 first time that you ever saw Ms. Tucci was in this
17 courtroom; is that correct?

18 A. Well, I would just say, sir, I saw her by
19 the evidence that I already looked at, I seen her on
20 video, I've seen photographs of her. The first time I
21 saw her in person was on Monday.

22 Q. Of this week, correct?

23 A. That's correct, sir.

24 Q. Now, you testified that you saw some
25 videos that purportedly show Ms. Tucci. Do you remember

1 that testimony?

2 A. I do.

3 Q. Were you present when those -- how many
4 videos did you see?

5 A. There's numerous videos, sir. I just
6 want you to know I don't want to speculate, and I'm
7 going to say at this point maybe I've seen four,
8 approximately four videos.

9 Q. Okay. And those videos, were you present
10 when the first video was made?

11 A. No, sir, I was not present when any of
12 those videos were made.

13 Q. You anticipated my next question. So the
14 second, third and fourth you were not present; correct?

15 A. No, sir. And again, that's an
16 approximate number.

17 Q. And you can't even tell us when those
18 videos were made; is that correct?

19 A. Sir, there is some information, the dates
20 are put online and then they say July 10 call or
21 something like that. So to my understanding based on
22 that representation I can tell when the calls were made.
23 And also we conducted interviews on the other side of
24 those calls.

25 Q. Let me rephrase the question. You were

1 not present at the time that the videos were made; is
2 that correct?

3 A. That's correct, sir.

4 Q. And that's the best you have is either
5 what the content of the videos say or the date that the
6 video was uploaded; is that correct?

7 A. I would also rely on the interviews that
8 we've conducted on the individuals that were present,
9 for instance, on one of those phone calls.

10 Q. And those individuals without identifying
11 them here in court today, you don't know what, if any,
12 potential animus or willing to curry favor with
13 Ms. Tucci those individuals would have; correct?

14 A. I would not, no, sir, I wouldn't be privy
15 to that.

16 Q. Okay. And were those individuals
17 actually put into the grand jury?

18 A. No, sir.

19 Q. Okay. Now, you testified that prior to,
20 during the FBI you had also worked as a defense lawyer
21 and a prosecutor; is that correct?

22 A. Yes, sir. I practiced law, small town,
23 for approximately seven and a half years. We did a
24 little bit of everything down there.

25 Q. Prior to that you were in one of the

1 service branches, is that correct?

2 A. I remained, sir, in the army.

3 Q. Did you do work in the capacity of
4 military intelligence?

5 A. No, sir, no, sir. I'm straight up JAG.
6 I'm only certified as a 27 Alpha.

7 Q. For the record, could you tell us what
8 JAG means?

9 A. Yes, it's a Judge Advocate General. I've
10 been trained at Charlottesville, Virginia, for Army JAG.
11 I'm currently in the National Guard on a reserve basis.

12 Q. So you're an attorney; correct?

13 A. Oh, absolutely, yes, sir.

14 Q. And an attorney for the army, is that
15 correct?

16 A. You can get kind of the legal context.
17 I'm not on active duty right now. When I'm a drill
18 status or on orders, I would be an army attorney, yes,
19 sir.

20 Q. Okay.

21 MR. BOS: Brief indulgence, Your Honor.

22 THE COURT: Of course.

23 (Pause)

24 MR. BOS: No further questions, Your Honor.

25 THE COURT: Thank you very much, Mr. Bos.

1 Ms. Walters, do you have redirect?

2 MS. WALTERS: The government does not have
3 redirect based on that, Your Honor.

4 THE COURT: Thank you, Ms. Walters. Agent
5 Steill, thank you, you may step down.

6 THE WITNESS: Thank you, Your Honor.

7 (Witness excused.)

8 THE COURT: Ms. Walters, does the United
9 States have other evidence?

10 MS. WALTERS: No further witnesses for the
11 government, Your Honor.

12 THE COURT: Are there other exhibits that the
13 government intends to introduce?

14 MS. WALTERS: The government is going to
15 introduce the Pretrial Services Agency report as
16 Government Exhibit No. 5.

17 THE COURT: Would you mark that, please.

18 MS. WALTERS: Yes, and I'll provide it to the
19 Court. It's the same Pretrial Services Agency report
20 that was provided to the parties at the initial
21 appearance and to the Court as well from Pretrial
22 Services.

23 THE COURT: Thank you. Do you still have
24 that, Mr. Bos?

25 MR. BOS: I do, Your Honor. And in addition

1 to our standing objection, I believe that there's
2 actually a code provision that says that the Court is
3 not allowed to receive that evidence. I was not
4 prepared that the government was going to be seeking to
5 introduce what's already part of the court record. But
6 we would object as well.

7 THE COURT: Thank you, Mr. Bos. I will
8 suggest the following: The Court will not admit
9 Exhibit 5. The Court has already received Exhibit 5, as
10 all of us did, at the time of Ms. Tucci-Jarraf's initial
11 appearance. Indeed, Ms. Walters, you may wish to
12 withdraw Exhibit 5 so that we have a clear record.

13 MS. WALTERS: Yes, that's fine, Your Honor.

14 THE COURT: Very well.

15 MS. WALTERS: And for the record, the
16 government had provided that as an exhibit to the
17 defense previously.

18 THE COURT: Very well. As I indicated, the
19 Court has received it, as all of us did, on July 26, but
20 it will not be admitted as an exhibit.

21 MS. WALTERS: Very well, Your Honor.

22 THE COURT: Does that complete the
23 government's presentation?

24 MS. WALTERS: The government does have
25 argument, Your Honor. Maybe Your Honor wishes us to do

1 it after the break.

2 THE COURT: Thank you, Ms. Walters. Mr. Bos,
3 is there evidence you will offer? If so, it may be that
4 we will take our break now and resume after the recess.

5 MR. BOS: Your Honor, I think --

6 THE COURT: If you only wish argument then, I
7 believe we can hear the parties' arguments now.

8 MR. BOS: Your Honor, we will be -- well,
9 first of all, we move to strike Agent Steill's testimony
10 and all the exhibits that were entered through him
11 again.

12 THE COURT: May I ask, just so we have a clear
13 record, whether the ground of your motion, grounds are
14 the same grounds that you have offered previously?

15 MR. BOS: Yes.

16 THE COURT: Very well. Having considered
17 those grounds thoroughly, the Court will deny the motion
18 to strike Agent Steill's testimony.

19 MR. BOS: Thank you, Your Honor. Your Honor,
20 we will be seeking to introduce the escort notice, we
21 had a notice of filing yesterday, some documents that
22 we're seeking to introduce at this time. That would be
23 the only exhibit that we would be introducing.
24 Otherwise we would be prepared to proceed to argument at
25 this point. So --

1 THE COURT: If there is a volume of exhibits
2 that were included with the notice of filing, I believe
3 it is more appropriate that you identify one by one what
4 it is that you wish to offer so that I can hear from
5 Ms. Walters. And perhaps you can use the time during
6 the recess to confer and we can proceed in a more
7 expeditious fashion when we return.

8 MR. BOS: That's fine, Your Honor.

9 THE COURT: Very well. Thank you very much.
10 Ms. Tucci-Jarraf, please return with the marshal.

11 (Recess taken)

12 DEPUTY CLERK: Re-calling Criminal Case Year
13 2017-531-M, United States v. Heather Ann Tucci-Jarraf.
14 Lisa Walters for the government, David Bos for the
15 defendant. Pretrial officer is Andre Sidbury. This is
16 an identity hearing on a removal.

17 THE COURT: Now, Mr. Bos, are you ready to
18 resume?

19 MR. BOS: Yes, Your Honor.

20 THE COURT: Very well. Before the recess you
21 indicated that you completed your cross-examination of
22 Agent Steill and that you may wish to move into evidence
23 certain exhibits.

24 MR. BOS: That's correct, Your Honor.
25 Your Honor, as the Court knows, yesterday and we filed a

1 notice of filing with the Court and attached to that
2 notice of file was a 286-page document which contained
3 4040 UCC filings identified as Exhibits 1 through 40.
4 At this time -- and the first, the original due
5 declaration and notice of factualized trust. Number two
6 is an original due declaration of issue by original
7 repository. Annex 3 through Annex 40 are UCC filings
8 and they've been filed over the years by Ms. Tucci. We
9 would be seeking to introduce that as Defense Exhibit
10 No. 1, as it's our position it goes directly to the
11 identification issue that the Court has to address.

12 THE COURT: What is your argument, Mr. Bos,
13 concerning how those exhibits in your words go to the
14 identification issue?

15 MR. BOS: Your Honor, the only issue that the
16 Court has to decide today is whether or not
17 Ms. Tucci-Jarraf is the person who's been indicted in
18 the Eastern District -- excuse me, in the District of
19 Tennessee. It's our position that the annex been has
20 shown that she's, in fact, not the person who was
21 indicted in Tennessee.

22 THE COURT: May I ask you to further
23 articulate your argument, please, regarding the
24 statement that you just made?

25 MR. BOS: I'm not sure what more I can give to

1 the Court at this point, but it is our position that
2 they do refute the identification issue.

3 THE COURT: How do the documents refute the
4 testimony of the officer, of the agent, excuse me, of
5 Special Agent Steill?

6 MR. BOS: As the Court knows, it doesn't have
7 to refute the testimony. It can certainly undercut the
8 government's case as far as the identity. The Court
9 could receive his testimony and also accept our exhibit
10 and find that the exhibit trumps the testimony that was
11 given by Agent Steill, and that's especially the case
12 where we have an individual who testified under oath
13 about instances that he was not personally involved
14 with, an individual who had never even met the person
15 who he claimed to make the identification for until
16 Monday of this week.

17 And our position is that the contents of
18 Defense Exhibit No. 1 would undercut the reliability of
19 that identification. That's all I have, Your Honor.

20 THE COURT: Very well. Thank you very much,
21 Mr. Bos. Am I correct that you are calling the entire
22 series of documents Defendant's Exhibit 1?

23 MR. BOS: Yes, Your Honor, and just the record
24 is clear, these are the exact same documents that were
25 filed --

1 THE COURT: Very well. On ECF, as I'm sure
2 you noted, they are separated, I believe, solely for
3 filing purposes into two subsets.

4 MR. BOS: That's correct, Your Honor. The
5 reason for that was that we could not actually PDF a
6 document quite this large, and so one document is 156
7 pages and the other one is 150.

8 THE COURT: That was my understanding. I
9 simply want to determine that your reference to
10 Defendant's Exhibit 1 is to both components, both
11 portions.

12 MR. BOS: Yes, Your Honor.

13 THE COURT: Very well. Thank you very much.
14 Now, Ms. Walters.

15 MS. WALTERS: Thank you, Your Honor.
16 Your Honor, the government does oppose the admission of
17 Defendant's Exhibit No. 1. The government did have the
18 opportunity to receive the document through ECF, but
19 it's the government's position that the document, the
20 exhibit and the documents that make up the exhibit do
21 not go in any way to the issue of identity which is
22 before the Court. The government believes that the
23 documents supported defendant's ideology, but it does
24 not support or present any facts and, in fact, is
25 incomprehensible that would support or refute or in any

1 way present evidence that undercuts the government's
2 testimony and evidence thus far with respect to her
3 identity. So on those bases the government does oppose
4 the admission of Defendant's Exhibit No. 1.

5 THE COURT: Thank you very much, Ms. Walters.
6 Mr. Bos, do you wish to respond?

7 MR. BOS: No, Your Honor.

8 THE COURT: Are you able, using a single one
9 of the multiple documents that comprise Defendant's
10 Exhibit 1, to proffer how any such exhibit is at all
11 relevant to the determination that this Court must make
12 this afternoon?

13 MR. BOS: Your Honor, we believe it's directly
14 relevant and we'll make those arguments at the time that
15 we have to convince the Court that the government hasn't
16 met its burden.

17 THE COURT: Very well. Thank you very much,
18 Mr. Bos.

19 The record makes clear that the exhibits were
20 first brought to the Court's attention by the Clerk's
21 Office after the documents were delivered to the Clerk's
22 Office. Because the -- because Ms. Tucci-Jarraf was
23 represented by counsel, the Court's action with respect
24 to the documents, as is clear from ECF, was to enter an
25 order making them available to you, Mr. Bos, so that you

1 can determine what action you believe should be taken
2 with respect to those documents. You did, of course,
3 review the documents and ultimately filed them through
4 ECF.

5 The Court did not seek to intervene in the
6 issue of whether or not those documents would be filed.
7 They were filed by you and they do appear on ECF as
8 document No. 2 in 2 parts.

9 The mere fact that the documents are a part of
10 the ECF record does not render them admissible at this
11 hearing, however. And the Court must undertake -- the
12 Court believe it was incumbent upon the Court to
13 undertake an examination of the documents, which the
14 Court did do in order to determine the question of
15 admissibility. The Court finds, having done so, that
16 the documents are not relevant to the issue before me.
17 They may well be relevant to some other proceedings.

18 By stating that, I do not mean to suggest that
19 they are or that I have a view of whether they will be.
20 They are not relevant to any matter concerning the
21 identity of the person before me as the person named in
22 the indictment and the arrest warrant. And because that
23 is the full extent of what I am able to do in the course
24 of this proceeding, the motions -- the motion for the
25 admission of Defendant's Exhibit No. 1 into evidence is

1 denied.

2 Now, do you have other evidence, Mr. Bos?

3 MR. BOS: Well, first of all, Your Honor, I'd
4 like to note our objection to the Court's ruling.

5 THE COURT: Very well. I believe it is noted,
6 as is your continuing objection for the grounds, on the
7 grounds that you proffered this morning.

8 MR. BOS: And, Your Honor, we would therefore
9 as the Court just said, that it is part of the case file
10 in this case, and we would ask the Court to take
11 judicial notice of this filing at this time.

12 THE COURT: The Court does not believe there
13 is a ground upon which judicial notice can be taken. It
14 is a matter that was filed that is largely because you
15 did file it on ECF, as you were permitted to do as
16 counsel. I believe we all recognize that the mere fact
17 that a document is filed does not render it a matter as
18 to which the Court could take judicial notice.

19 MR. BOS: Your Honor --

20 THE COURT: I will also note that even if the
21 Court's ruling regarding the admission were otherwise,
22 the Court's finding would likely be the same. And that
23 is that the exhibits are not relevant to the issue that
24 I must determine this afternoon.

25 MR. BOS: Your Honor, we just --

1 THE COURT: Put another way, whether the Court
2 admitted them or not, the evaluation would still be the
3 same.

4 MR. BOS: We would just ask the Court to note
5 our objection. We have no additional evidence that we
6 intend to offer at this time. We believe it's the
7 government's burden to prove identity, and so we'll wait
8 to hear their argument and intend to respond.

9 THE COURT: Very well. Thank you very much,
10 Mr. Bos.

11 Are you ready to proceed with your argument,
12 Ms. Walters?

13 MS. WALTERS: Yes, Your Honor.

14 THE COURT: Very well. We'll hear your
15 argument.

16 MS. WALTERS: So first, Your Honor, the
17 government would ask that the Court take notice that at
18 the initial appearance and, in fact, throughout the
19 other appearances by the defendant she has also, always
20 responded and noted that her name is, in fact, Heather
21 Ann Tucci-Jarraf, which the government would note is a
22 fairly distinct name.

23 The government would ask that the Court credit
24 the testimony of Special Agent Steill. He testified
25 that he is one of the lead agents on the subject of the

1 removal matter, that is the indictment out of Knoxville,
2 Tennessee. He also testified that he testified before
3 the grand jury as to the entire matter and specifically
4 this defendant's identity as a suspect after which the
5 indictment issued.

6 Special Agent Steill testified that he
7 reviewed videos of the defendant stating her name and
8 also indicating her involvement in the matter that is
9 the subject of the indictment. He reviewed photographs
10 and other demographic information in relation to Heather
11 Ann Tucci-Jarraf.

12 He also testified that there was a separate
13 civilian witness who identified this defendant as
14 Heather Ann Tucci-Jarraf on the date that she was
15 arrested here in the District of Columbia pursuant to a
16 call to Special Agent Steill by the U.S. Secret Service.
17 For his part, he did say he was not present at the
18 arrest but received information from other law
19 enforcement agents who advised that she was identified
20 by a separate civilian witness as a defendant, at which
21 time the arrest was effectuated.

22 Finally, Your Honor heard in court today
23 Special Agent Steill point out the defendant and
24 specifically identify her as the person for whom an
25 arrest warrant issued pursuant to the indictment sitting

1 here in court today.

2 The government would ask that the Court credit
3 other competent evidence that has been presented, most
4 importantly the fingerprint analysis that was conducted
5 by the FBI, which concluded that this defendant is
6 Heather Ann Tucci-Jarraf with a date of birth of July
7 30, 1972, a Social Security number ending in 1682; and
8 also the government would note that those identifiers
9 correspond with the name appearing on the indictment and
10 the name and date of birth appearing on the warrant that
11 is before Your Honor, and also the name and date of
12 birth appearing on the Pretrial Services Agency report,
13 which was provided to the Court and the parties at the
14 initial appearance in this matter on July 26, 2017.

15 And finally the government would note that
16 Ms. Heather Ann Tucci-Jarraf has been in custody since
17 July 26, 2017, since her arrest here in D.C., so there
18 is no question that the person who was arrested on that
19 date and the person who is sitting before the Court
20 today is, in fact, the same person. So the government
21 would rest and submit to the Court that we have met our
22 burden of proving that the defendant is, in fact, the
23 person named in the indictment and the warrant that is
24 the subject of this removal matter.

25 THE COURT: Thank you very much, Ms. Walters.

1 Mr. Bos.

2 MR. BOS: Thank you, Your Honor.

3 THE COURT: I will hear your response.

4 MR. BOS: Your Honor, we will submit that the
5 government hasn't met its burden on the identity issue
6 in this case. That's all that they've presented was
7 Agent Steill's testimony, which was third-hand as far as
8 the identification procedures are concerned. Agent
9 Steill testified that he had not even seen the
10 individual that's here in court today until Monday and
11 that the, he wasn't present at the time of the arrest.
12 He wasn't present at the time that the alleged crime on
13 which the indictment was based, so there's no
14 identification that was made by any of the victims
15 alleged in the indictment. In fact, all that we have is
16 a, and I understand that hearsay is admissible in this
17 proceeding, but it is hearsay nonetheless. It's going
18 to be unbelievably unreliable.

19 And what's most concerning to us is the
20 fingerprint report that the government introduced as
21 Exhibit No. 4. There was no indication at all about
22 what, if any, proficiency testing the examiner had done
23 to see whether or not the test was, in fact, accurate.
24 Although they said that there was a second level of
25 identification, the person who did the identification

1 was never identified in the report. So we can't
2 certainly rely on that report. And of course, that's
3 the report that's generated by the government. We have
4 not had a chance to fully confront the accuracy of that
5 report.

6 THE COURT: Do you acknowledge that during
7 your cross-examination of the agent you asked him no
8 questions concerning any of those matters?

9 MR. BOS: Yes, Your Honor, I did ask him a few
10 questions about that. And again, the evidence that the
11 Court has, though, it is the report, he was reading from
12 a report that he did not prepare by an individual that
13 there's no indication that he had any direct contact
14 with that individual. We don't know what the
15 qualifications of that individual was. We don't know
16 what the education level was, what type of certification
17 that individual possessed at the time he made --

18 THE COURT: My question is do you acknowledge
19 that you had an opportunity to ask Agent Steill those
20 questions but did not?

21 MR. BOS: Right, because it's the government's
22 burden to prove that those reports are reliable. We
23 couldn't stop them from coming in, but we can certainly
24 attack them now at the time for the argument stage here.
25 And we're pointing out to the Court that there are deep

1 flaws in that particular report, which I think the
2 government would maintain is their strongest piece of
3 evidence. We not do know where the fingerprints came
4 from, whether or not those, other than what's in the
5 report.

6 And again, without knowing more about the
7 author of the report, the Court should not be able to
8 make the finding that that report is sufficiently
9 reliable to support an identification finding by this
10 Court, especially when you have a situation where you
11 have not the arresting officer, not the officer that was
12 present who spoke to the complainants at the time that
13 they made the complaint to law enforcement, and he only
14 makes this identification of the individual who is
15 sitting right here in court, and just so the record is
16 clear, Ms. Tucci is the only person who is sitting at
17 counsel table wearing an orange jumpsuit. That's a
18 pretty suggestive identification procedure that was done
19 here in court, so I don't think that the Court should
20 give it that much weight.

21 So when you have a situation where you have a
22 report that we don't know anything about the authorship
23 as far as fingerprints coupled with an identification
24 that we believe is not sufficient to make an
25 identification that the Court should deny the

1 government's request for, we would submit that the
2 government hasn't met its burden in this identification
3 proceeding.

4 THE COURT: Mr. Bos, this is a question I will
5 ask you, I will ask you as well, Ms. Walters. I
6 neglected to do that earlier in the proceeding. What is
7 your contention, Mr. Bos, regarding the applicable
8 standard of proof?

9 MR. BOS: Your Honor, it is my understanding
10 that probable cause is the standard of proof in identity
11 proceedings.

12 THE COURT: Very well. Ms. Walters, I will
13 hear your reply. First may I ask whether you are in
14 agreement that the standard of proof is probable cause?

15 MS. WALTERS: Yes, Your Honor. The
16 government, that is the one thing that the government
17 and the defense agree on, and the government takes that
18 information from the *United States v. Perkins*,
19 433 F.2d 1182, which is a case from 1970, which
20 indicates that probable cause is the applicable
21 standard.

22 THE COURT: Very well. That has been the
23 Court's assumption. I simply wanted to determine
24 whether counsel are in agreement that that is the
25 standard.

1 MS. WALTERS: Yes, Your Honor. However, with
2 respect to the competency of the government's evidence,
3 the government would first note that there were no
4 questions asked of Special Agent Steill with respect to
5 the FBI fingerprint report. And as Agent Steill
6 testified, that report was authored at his request, and
7 there was lengthy questions on direct as to the fact
8 that there was specific items used to reach the
9 conclusion in that particular report, including
10 fingerprints obtained from the defendant on two
11 different dates of arrest. Those exhibits are, in fact,
12 part of the government's exhibit.

13 So any claim that there's a chain of custody
14 at issue or the origin of the report is somehow skewed
15 or stained, the government would strenuously oppose
16 given the documents that have been entered in evidence
17 and given the documents that have been previously
18 provided to the defense as to that fingerprint report.

19 So there's no basis to question that that is a
20 fabricated report or that the items used to reach the
21 conclusions in that report are somehow faulty.

22 Additionally, the government would note that
23 the Special Agent Steill's ability to identify the
24 defendant is clear based on his review of videos of the
25 defendant, based on his review of criminal database

1 information populated with respect to prior arrests of
2 this defendant, including photographic evidence, date of
3 birth, all of these things that were elicited on direct
4 examination of the agent. So there was in no way any
5 suggestivity in his identification of Ms. Heather Ann
6 Tucci-Jarraf in court today, because he had a very firm
7 basis of what she looked like and the government would
8 argue what she sounded like when he attempted or had a
9 short phone call conversation with her prior to coming
10 into court today.

11 And the government would note that he
12 previously provided that information to the grand jury
13 on July 18, 2017 and they issued an indictment. So I
14 believe Special Agent Steill's ability to identify this
15 defendant based on his investigation is also clear.

16 The government would note thirdly and lastly
17 that as the government stated in its argument just a
18 short while ago, Ms. Heather Ann Tucci-Jarraf was also
19 identified by an independent civilian witness prior to
20 her arrest. And that evidence is in the record as well.
21 Special Agent Steill testified that he received a call
22 from the United States Secret Service who had been
23 alerted to the defendant and was aware of the warrant
24 and notified Special Agent Steill upon which a law
25 enforcement team encountered her at this hotel. They

1 inquired where she was and a separate civilian witness
2 said that she wasn't in the room but she was in the area
3 and then pointed her out.

4 So there is very firm basis upon which Special
5 Agent Steill could identify this defendant that is in
6 the record before the Court. And so the Court, the
7 government would ask that the Court find that the
8 government has, in fact, met its burden of probable
9 cause in this matter of identifying Ms. Heather Ann
10 Tucci-Jarraf as the person named in the warrant and also
11 the indictment.

12 THE COURT: Thank you very much, Ms. Walters.

13 Mr. Bos, sorry. I saw you rising, is there
14 something further?

15 MR. BOS: Well, Your Honor, I just want to
16 make sure that the Court understands our argument. The
17 argument is not whether or not that this evidence was --
18 well, the Court made a ruling that the Court is going to
19 accept the exhibits that the government, specifically of
20 Exhibit No. 4 which is fingerprint evidence. That
21 doesn't necessarily mean that the Court makes a finding
22 that it's, in fact, reliable enough to meet the
23 government's burden and identity hearing. So
24 admissibility does not equate to reliability.

25 And our position is that notwithstanding our

1 objection which we not only have, do we have a standing
2 objection to the exhibit coming in, we lost that
3 objection; we still maintain it. The Court still has to
4 make a further finding whether or not the report is, in
5 fact, reliable and that's where our arguments are going
6 towards.

7 THE COURT: Very well. Thank you very much,
8 Mr. Bos.

9 Having considered the full extent of the
10 evidence offered during the course of this proceeding
11 and the arguments of counsel, the Court finds that the
12 United States Attorney has offered abundant credible,
13 reliable evidence taken as a whole to compel the finding
14 that the individual now before the Court is the same
15 individual named in the warrant and the indictment filed
16 in the court in the Eastern District of Tennessee. The
17 Court's finding is made by the standard that counsel
18 agrees is the applicable standard, that is the probable
19 cause standard.

20 The Court has fully considered the arguments
21 made on behalf of counsel for Ms. Tucci-Jarraf and finds
22 that the evidence have offered simply does not support
23 the arguments. In other words, there is no factual
24 basis for any of them.

25 Accordingly, the Court will sign the order of

1 commitment of Ms. Tucci-Jarraf to the Eastern District
2 of Tennessee for proceedings in that district and will
3 order that Ms. Tucci-Jarraf be held without bond pending
4 her appearance in that district.

5 Mr. Bos --

6 MR. BOS: Your Honor, we are requesting that
7 the Court order that we will be done on an expedited
8 basis. As the Court knows, Ms. Tucci has been in
9 custody in this matter for almost -- longer than a week
10 at this point. So to the extent that she can get to
11 Tennessee as quickly as possible where hopefully she'll
12 be able to revisit her bail determination, we make that
13 request.

14 THE COURT: We will note forthwith on the
15 commitment. However, I believe it is important for the
16 record to reflect in response to your concern about the
17 period of time that Ms. Tucci-Jarraf has been held, the
18 reason for the period of detention for the last four
19 days was, of course, that the Court granted
20 Ms. Tucci-Jarraf's request for a continuance.

21 The government was ready to proceed on Monday,
22 which the Court noted was the third day, would have been
23 the third day of Ms. Tucci-Jarraf's detention. We all
24 assumed that that would be her reasonable maximum period
25 for such a time of detention. Counsel for the

1 government was prepared to proceed. The witness was
2 present, and indeed the Court offered the opportunity to
3 at least begin the proceeding while other matters were
4 being addressed.

5 The Court did not begin the proceeding solely
6 because of your objection on behalf of Ms. Tucci-Jarraf
7 to doing so. So the record should reflect that any
8 delay beyond Monday, July 31, was occasioned by
9 Ms. Tucci-Jarraf.

10 MR. BOS: Well, I guess our response to that
11 is because Ms. Tucci-Jarraf had the Hobson's choice of
12 going forward with a lawyer that she felt she was not
13 comfortable with or whether or not she was going to hire
14 a lawyer or be pro se. So it does suggest that she
15 actually voluntarily, but there was that issue that had
16 to get resolved for Ms. Tucci-Jarraf.

17 THE COURT: Very well. Thank you, Mr. Bos.
18 Is there anything further on behalf of the United
19 States, Ms. Walters?

20 MS. WALTERS: No, Your Honor.

21 THE COURT: Very well. Thank you very much,
22 counsel. Ms. Tucci-Jarraf, please return with the
23 marshal.


24 (Proceedings adjourned at 2:24 p.m.)

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CERTIFICATE OF OFFICIAL COURT REPORTER

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I, Barbara DeVico, certify that the foregoing is a correct transcript from the recording of proceedings in the above-entitled matter.



8-8-17

SIGNATURE OF COURT REPORTER

DATE