

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

UNITED STATES OF AMERICA)	
)	No. 3:17-cr-00082-002
v.)	Hon. Thomas A. Varlan, Chief USDJ
)	Hon. C. Clifford Shirley, Jr., Chief USMJ
HEATHER ANN TUCCI-JARRAF)	

NOTICE OF FILING

The Defendant **HEATHER ANN TUCCI-JARRAF** hereby files DULY ACCEPTED EVIDENCE OF SEPARATE ACTS DONE BY FOREIGN AGENTS, PURSUANT TO STANDING PRAECIPES #2 and #3 OF DOC 101, TRANSCRIPT OF REMOVAL HEARING BEFORE DEBORAH A. ROBINSON UNITED STATES DISTRICT MAGISTRATE JUDGE, Friday, August 4, 2017.

Respectfully submitted,

s/ Francis L. Lloyd, Jr.

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CERTIFICATE OF SERVICE

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s/ Francis L. Lloyd, Jr.

1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF COLUMBIA

3
4 UNITED STATES OF AMERICA, :
5 :
6 Plaintiff, : CR NO. 17-531
7 v. :
8 :
9 HEATHER ANN TUCCI-JARRAF, :
10 :
11 Defendant. :
12 -----

13 TRANSCRIPT OF REMOVAL HEARING

14 BEFORE THE HONORABLE DEBORAH A. ROBINSON

15 UNITED STATES DISTRICT MAGISTRATE JUDGE

16 Friday, August 4, 2017

17 APPEARANCES:

18 For the Plaintiff: Lisa N. Walters, Esq.
19 U.S. ATTORNEY'S OFFICE
20 Violent Crimes Narcotics and
21 Trafficking (VCNT)
22 555 Fourth Street, NW
23 Washington, DC 20530

24 For the Defendant: David Walker Bos, Esq.
25 FEDERAL PUBLIC DEFENDER FOR THE
DISTRICT OF COLUMBIA
625 Indiana Avenue, NW
Suite 550
Washington, DC 20004

Proceedings recorded by FTR Gold, transcript produced by
computer-aided transcription.

P R O C E E D I N G S

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

This is an identity hearing on a removal.

MR. BOS: Good morning, Your Honor.

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

MS. WALTERS: Yes, Your Honor.

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

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

MR. BOS: Thank you, Your Honor. Your Honor,
as the Court may recall, the last time we were here I
informed the Court that Ms. Tucci would be seeking to
represent herself in this matter. Since that time I've
had a chance to meet with Ms. Tucci. It is my
understanding that she does still want to go forward
with representing herself in this matter. We had
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 (Defendant sworn)

3 THE DEFENDANT: Withstanding identification
4 correction of being the source of all that is, I swear
5 to state the truth.

6 THE COURT: Thank you. Now, good morning.
7 You have heard Mr. Bos' representations regarding your
8 request. I will hear directly from you at this time.

9 THE DEFENDANT: Thank you, ma'am.

10 THE COURT: Of course.

11 THE DEFENDANT: To be able to answer any
12 questions that you may have, I just wanted to confirm
13 because I have no ability to confirm whether this, the
14 notice of filing, I just wanted to confirm with
15 Your Honor that it is on the record, that Mr. Bos has
16 made.

17 THE COURT: It is.

18 THE DEFENDANT: Okay. I may proceed, please.
19 Ask your questions.

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

23 THE DEFENDANT: Mr. Bos has gone over
24 explicitly with me regarding being represented by an
25 attorney, being represented on behalf of myself as pro

1 se, and I went over the circum, which was representing
2 and presenting as self pro per. It is my choice here
3 today to go forward as self pro per.

4 THE COURT: Do you have an understanding that
5 you have a right to appointed counsel if you are unable
6 to retain counsel?

7 THE DEFENDANT: I'm aware that based on the
8 notice which was a, it was a complimentary repeat notice
9 from four and-a-half years ago that this entire case,
10 the entire representation in this Court, that there is
11 no authority for this particular action, nor the
12 underlying action from Tennessee.

13 As far as the identification, I am here to go
14 ahead and move forward with that identification, again,
15 with the restatement that there is no authority for
16 these proceedings or for the identification hearing.

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

21 THE DEFENDANT: Again, Mr. Bos did explain the
22 process, the limits and parameters that you had
23 expressed to him as well as into the Court the last time
24 we were on record. Again, I state that based on these
25 perfected filings that have been provided to the Court,

1 there is no authority for this Court or for you, ma'am,
2 to proceed forward with any identification hearing
3 inclusive of the underlying cause of action which
4 resulted in us all being here.

5 THE COURT: Whose decision is it for you to
6 represent yourself?

7 THE DEFENDANT: My decision to present and
8 represent self is solely my decision. It is my sole
9 authority and my sole determination.

10 THE COURT: Has anyone forced you to make such
11 a decision?

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

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

24 THE DEFENDANT: Ma'am, my full responsibility,
25 accountability and liability, I am completely aware of

1 the perils of moving forward with a licensed attorney in
2 such a matter. I'm also aware of the ramifications and
3 the consequences of all involved in this process when
4 there is no authority to actually hold these hearings.
5 I'm very conscious and aware of my own responsibility
6 and accountability and liability for every word, thought
7 and action that I take.

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

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

22 So I'm very aware of this. I do not need any
23 more time to be able to speak through the things, we're
24 just repeating ourselves at this point. So I am very
25 aware, I'm conscious and competent to make any

1 declaration and every decision that I am presenting and
2 representing to you as myself.

3 THE COURT: Mr. Bos referred in passing during
4 his comments to issues having to do with literacy. May
5 I ask you to please state for the record your
6 educational level.

7 THE DEFENDANT: I have a JD from Gonzaga
8 School of Law. That is the highest level of degree. I
9 also have a BA in accounting and finance, and my JD
10 emphasis was in litigation, real estate -- excuse me,
11 estate planning and trials.

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

16 MR. BOS: No, Your Honor.

17 THE COURT: Ms. Walters?

18 MS. WALTERS: No, Your Honor.

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

21 The Court finds based upon Ms. Tucci-Jarraf's
22 responses to the Court's questions and her narrative
23 statements that her waiver of counsel is knowing and
24 voluntary and otherwise conforms to the requirements of
25 *Faretta*, and accordingly the Court will note in the

1 record or will include a finding in the record to that
2 effect.

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

5 MR. BOS: May we approach the podium,
6 Your Honor? I believe that now that Court has found
7 that Ms. Tucci is competent to represent herself. She
8 would like to lodge an objection.

9 THE COURT: Very well. I will hear your
10 objection.

11 THE DEFENDANT: Thank you, Your Honor. Again
12 as I restate, this Court does not have the authority to
13 even hold this identification hearing, let alone I'd
14 like to clarify and correct the record that I'm not
15 waiving any rights, that I'm stating that there's no
16 authority to even ask me to waive any rights.

17 As far as Mr. Bos being stand-in, I need no
18 other assistance in presenting or representing as
19 myself.

20 THE COURT: Very well. Thank you, you may
21 have a seat.

22 THE DEFENDANT: Thank you.

23 THE COURT: Perhaps our record has changed.
24 The finding that the Court just articulated was that
25 Ms. Tucci-Jarraf waives counsel. Ms. Tucci-Jarraf has

1 now indicated that she does not waive any right and that
2 being the case, I believe we must proceed with you,
3 Mr. Bos, as counsel and not stand-by counsel.

4 Had there been an objection to your role,
5 Mr. Bos, as stand-by counsel, the Court, as I indicated
6 at the outset reviewed during our recess *McCaskey v.*
7 *Wiggins*, 465 U.S. 168, and notes that at page 184 the
8 Supreme Court held that "A defendant's Sixth Amendment
9 rights are not violated when a trial judge appoints
10 stand-by counsel, even over the defendant's objection to
11 relieve the judge of the need to explain and enforce
12 basic rules of courtroom protocol or to assist the
13 defendant in overcoming routine obstacles that stand in
14 the way of the defendant's achievement of her own
15 clearly indicated goals."

16 So had there been an objection to your role as
17 stand-by counsel, Mr. Bos, the Court would have
18 appointed you to serve in that capacity over objection
19 based upon the authority set forth by the Supreme Court
20 in the *McCaskey* opinion.

21 However, having now heard that
22 Ms. Tucci-Jarraff does not waive any rights, we must
23 proceed. Ms. Walters, you have just one witness? Is
24 that correct?

25 MS. WALTERS: That's correct, Your Honor. And

1 just to clarify, the government will produce *Jencks* and
2 exhibits for the identity hearing.

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

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

6 THE COURT: Thank you. And you may call
7 your -- Mr. Bos --

8 MR. BOS: Your Honor, Ms. Tucci-Jarraf tells
9 me that she's not objecting to the appointment of
10 stand-by counsel. She's objecting to me as stand-by
11 counsel.

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

21 Ms. Tucci-Jarraf has now stated that she does
22 not waive any right. That being the case, I have no
23 basis to relieve you of your appointment or to appoint
24 you to serve as stand-by counsel, since an appointment
25 as stand-by counsel would be operative only if an

1 individual were representing herself.

2 Because the broader objection appears to be
3 one to this Court's determination to proceed with an
4 identity hearing, I believe the record is clear with
5 respect to why we are proceeding with the identity
6 hearing. That is what the Federal Rules of Criminal
7 Procedure provide in a circumstance in which an
8 individual is arrested in this district based upon a
9 charge pending in another district. So the Court has no
10 alternative.

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

21 MR. BOS: Your Honor --

22 THE COURT: The Court also noted that at the
23 time the request was made to continue the hearing from
24 Monday until today, the Court expressed a concern
25 regarding Ms. Tucci-Jarraf's continued detention and

1 pointed out that Monday was the third day. We are now
2 four days removed from that, and I know of no way to
3 ensure that Ms. Tucci-Jarraf's rights are protected,
4 that the Court proceeds with the identity hearing in an
5 orderly process, and that we comply with the applicable
6 rules other than to begin.

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

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

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

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

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

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

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

3 The Court will also note that in the context
4 of an identity hearing, the Court cannot envision any
5 prejudice to Ms. Tucci-Jarraf by proceeding in this
6 fashion.

7 MR. BOS: Your Honor, I guess our concern
8 would be that she has an absolute constitutional right
9 to represent herself, and if she has inadvertently
10 caused the Court to have some concerns about that
11 constitutional right, she should be allowed to clarify
12 that. I don't know what her answer would be, whether or
13 not, given what the Court has just said, she wants to
14 withdraw her --

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

18 MR. BOS: Very well, Your Honor.

19 THE COURT: You may call your witness.

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

23 THE COURT: Yes, of course.

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

1 THE COURT: Very well.

2 MR. BOS: Your Honor, Ms. Tucci has informed
3 me that she does not want me representing her so filing
4 or not filing, I'm moving to withdraw as counsel for
5 Ms. Tucci.

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

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

12 THE COURT: Very well. We will take a brief
13 recess. Ms. Tucci-Jarraff, please return with the
14 marshal. Actually, you may take your seats while the
15 Court takes another matter.

16 (Recess taken)

17 THE COURT: Mr. Bos, in accordance with local
18 Rule 44.4 subsection (d), the Court will deny the
19 motion, finding that the motion would unduly delay the
20 proceedings and otherwise not be in the interest of
21 justice.

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

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

25 THE COURT: Mr. Bos, I believe I have little

1 alternative other than to permit you to be heard. But
2 the Court has already articulated the reasons -- perhaps
3 I should indicate I am incorporating other reasons
4 already set forth on the record as the basis of my
5 determination that granting your request would be
6 unfairly -- I apologize -- would not be in the interest
7 of justice and would unduly delay the proceedings.

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

17 THE COURT: Well, we are going to proceed,
18 Mr. Bos, because the indication that we now have that
19 within the space of a matter of minutes there has been
20 two changes of contention on that issue raises an issue
21 of the extent to which the Court can make the *Faretta*
22 findings.

23 In other words, to be specific, your proffer
24 was that Ms. Tucci-Jarraf's request was to waive her
25 right to counsel. Ms. Tucci-Jarraf stated when I first

1 inquired of her at the end of her narrative that she did
2 not waive any right at all, including her right to be
3 here, to have me proceed with the identity hearing or
4 her continued detention, to name a few.

5 The next matter was that you then moved to
6 withdraw. Now it appears that there is a request to
7 waive counsel. This all undermines the finding that the
8 Court must make consistent with *Faretta* that -- perhaps
9 I should say with respect to Ms. Tucci-Jarraf's
10 understanding of what we are doing here and the issue
11 regarding, for example, voluntariness. I know of no
12 prejudice which would arise to Ms. Tucci-Jarraf from
13 denying both your motion for leave to withdraw and from
14 not undertaking any further inquiry consistent with
15 *Faretta*. And I believe that is clear based upon all
16 that the Court has found thus far, including the nature
17 of this proceeding and the further delay which would be
18 occasioned by granting your motion, undertaking a
19 further inquiry or doing anything other than proceeding.

20 MR. BOS: Your Honor --

21 THE COURT: The record reflects that the Court
22 has already expressed a concern that the hearing should
23 have been conducted on no later than the third day,
24 which was Monday. Counsel for the government was ready
25 to proceed on Monday. The Court was prepared to proceed

1 on Monday. It was with great reluctance that the Court
2 granted the request to continue the matter until today.
3 We are all ready to proceed at this time. The witness
4 is here, the *Jencks* material has been provided. The
5 Giglio material has been provided. The exhibits have
6 been provided. And we must proceed.

7 MR. BOS: Your Honor, the question is not
8 whether or not we proceed today. The question is
9 whether or not Ms. Tucci can exercise her constitutional
10 right to represent herself in this matter. This is
11 exactly what happened in *Faretta* where the Court over
12 the defendant's objection required the defendant to
13 accept a Court-appointed counsel.

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

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

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

1 And as I indicated for reasons including
2 Ms. Tucci-Jarraf's response to the Court's inquiry, the
3 Court must now question whether the finding -- the Court
4 made the finding at the time, I'm speaking of events
5 that have transpired since then, the Court must take
6 those issues into account in determining whether any
7 statement at this time that she waives her rights is one
8 as to which the Court could make the requisite finding.
9 So we must go forward. Your objection is noted.

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

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

14 THE COURT: That may be the case. That does
15 not mean that the Court can make the finding, that the
16 Court can ignore all of what has occurred in the
17 courtroom and make a finding regarding an individual's
18 understanding of the proceeding, which to some extent
19 the Court must now question in view of what has happened
20 since I heard from Ms. Tucci-Jarraf.

21 So we must proceed.

22 MR. BOS: For the record, Your Honor, we would
23 ask the Court to take five minutes to do an inquiry of
24 Ms. Tucci-Jarraf since she decided to change her
25 position that she stated about 45 minutes ago and

1 whether or not she would like to proceed.

2 THE COURT: The Court cannot do so.

3 MR. BOS: Very well, Your Honor.

4 THE COURT: Now, Ms. Walters, you may call
5 your witness.

6 MS. WALTERS: Thank you, Your Honor.

7 Your Honor, at this point the government would seek to
8 admit and publish to the Court a certified copy of the
9 indictment in this matter and also a copy of the arrest
10 warrant as Government Exhibits 1 -- actually as jointly
11 government Exhibit 1 for the purpose of the identity
12 hearing. And these documents have been provided to
13 Mr. Bos.

14 MR. BOS: Objection, Your Honor.

15 THE COURT: On what grounds? All of the
16 grounds previously noted?

17 MR. BOS: Yes, Your Honor.

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

21 MS. WALTERS: Yes, Your Honor. And at this
22 time, Your Honor, the government calls Special Agent
23 Parker Steill to the stand.

24 THE COURT: For the record, Government
25 Exhibit 1 and Government Exhibit 2 will be admitted over

1 objection. The Court notes that the exhibits are
2 identical to the ones, except that they bear the exhibit
3 sticker and the certification seal that are filed in the
4 record.

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

7 THE COURT: I apologize.

8 MS. WALTERS: Thank you, Your Honor.

9 (Government's Exhibit Number 1 admitted
10 into evidence.)

11 MR. BOS: Your Honor.

12 THE COURT: Mr. Bos.

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

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

18 *****

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

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

23 DIRECT EXAMINATION

24 BY MS. WALTERS:

25 Q. Good morning.

1 A. Good morning, ma'am.

2 Q. Please state your name and spell it for
3 the record.

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

6 Q. And where are you employed?

7 A. Currently employed by the Federal Bureau
8 of Investigation, Knoxville division.

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

11 A. Approximately five years.

12 Q. And what, if any, specializations do you
13 have?

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

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

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

1 Q. Did there come a time when you
2 investigated a wire fraud and money laundering
3 conspiracy that occurred during the early year part of
4 July of 2017 in the state of Tennessee?

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

6 Q. Can you explain to us what your role was
7 in that investigation?

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

14 Q. And so you developed suspects in that
15 particular matter?

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

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

19 A. Yes, ma'am. Initially we developed
20 Mr. Randall Bean as a suspect in that matter. Later we
21 also developed Ms. Heather Ann Tucci-Jarraf as a subject
22 in that matter.

23 Q. And can you tell us specifically how you
24 developed Heather Ann Tucci-Jarraf as a suspect in that
25 matter?

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

5 Subsequent to the arrest, we obtained video and
6 audio evidence that indicated Ms. Tucci-Jarraf had a
7 role in this matter, including evidence showing that she
8 was involved in a call to a RV dealership and a
9 subsequent video and audio evidence where she identifies
10 the scheme online.

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

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

16 Q. And did you review any other information
17 from criminal databases in determining or identifying
18 Heather Ann Tucci-Jarraf?

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

22 MS. WALTERS: Permission to approach the
23 witness, Your Honor.

24 THE COURT: You may.
25

1 BY MS. WALTERS:

2 Q. I'm showing you what's been marked as
3 Government Exhibit No. 2 and has been previously
4 provided to defense counsel. Do you recognize
5 Government Exhibit No. 2 .

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

7 Q. What is Government Exhibit No. 2?

8 A. This is what, in the course of an
9 investigation this is what we normally do. This is,
10 this document provides driver's license information as
11 well as again what we refer to as an NCIC check on an
12 individual.

13 Q. And who was the target of that
14 specifically NCIC check?

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

17 Q. And is that the name contained
18 specifically on Government Exhibit No. 2?

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

21 Q. Can you also tell me what the date of
22 birth is?

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

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

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

6 Q. And other than the main date of birth and
7 address, is there anything else contained in Government
8 Exhibit No. 2 that assisted you in your investigation as
9 to Heather Ann Tucci-Jarraf?

10 A. Yes, ma'am. There is two photographs
11 here of Ms. Tucci-Jarraf that are contained. There's
12 also other information here, Social Security number,
13 height, gender, what we would call just regular
14 identifiers.

15 Q. And is Government Exhibit No. 2 a fair
16 and accurate copy of the printout that you generated
17 during the course of your investigation of this wire
18 fraud/bank fraud matter?

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

22 MS. WALTERS: At this time, Your Honor, the
23 government seeks to admit and publish to the Court
24 Government Exhibit No. 2.

25 MR. BOS: Objection, Your Honor.

1 THE COURT: The Court will admit Government
2 Exhibit 2 over objection, bearing in mind that the
3 objections are those which have previously been
4 addressed.

5 (Government's Exhibit Number 2 admitted
6 into evidence.)

7 BY MS. WALTERS:

8 Q. You mentioned that you obtained videos of
9 Heather Ann Tucci-Jarraf. And specifically can you tell
10 us when you obtained those videos?

11 A. Yes, ma'am. When there are videos that
12 were obtained -- there was one video that was obtained
13 for the indictment and subsequent videos after the
14 indictment.

15 Q. Can you tell us about the video that was
16 obtained after the indictment?

17 A. In one particular video, ma'am, the --
18 again, there were multiple that were obtained after the
19 indictment, this video depicts a, the arrest of
20 Mr. Randall Bean and Ms. Tucci-Jarraf is on the
21 telephone. And when we were able to do that, obviously
22 the arrest is not on this video, but we can hear her
23 conversation and also another FBI agent who was at the
24 scene was referenced.

25 Q. And in the video that you're referring

1 to, can you actually see the face and likeness of the
2 defendant?

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

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

7 MS. WALTERS: And for the record, Government
8 Exhibit No. 3 was provided to defense counsel last week
9 by email link and also provided to defense counsel today
10 in Court, Your Honor.

11 THE COURT: Thank you.

12 BY MS. WALTERS:

13 Q. Do you recognize Government Exhibit
14 No. 3?

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

16 Q. What is Government Exhibit No. 3?

17 A. Government Exhibit 3 is a CD, and it is
18 both signed and, signed by me and dated by me for
19 8/4/2017.

20 Q. When was the last time that you reviewed
21 Government Exhibit No. 3?

22 A. This morning at your office we looked at
23 it.

24 Q. And does Government Exhibit No. 3
25 represent a fair and accurate depiction of the video

1 that you discovered in the course of your investigation
2 of this matter?

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

5 Q. But you have personally reviewed it?

6 A. I've viewed the relevant parts, yes,
7 ma'am.

8 MS. WALTERS: At this time, Your Honor,
9 personal personally the government wishes to admit
10 Government Exhibit No. 3 and also publish it to the
11 Court.

12 MR. BOS: Objection, Your Honor.

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

15 MR. BOS: Yes, Your Honor.

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

18 MS. WALTERS: Thank you, Your Honor.

19 (Government's Exhibit Number 3 admitted
20 into evidence.)

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

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

24 THE COURT: Thank you.

25 (Videotape played)

1 BY MS. WALTERS:

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

5 A. Yes, ma'am.

6 Q. -- with respect to this defendant. And
7 based on your review of the NCIC report, other videos
8 and this one, does the person depicted in Government
9 Exhibits No. 2 and 3 match?

10 A. Yes, ma'am.

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

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

15 Q. And when did you testify in the, before
16 the grand jury?

17 A. July 18, 2017.

18 Q. And with respect to the identity of the
19 suspects charged in the indictment, specifically Heather
20 Ann Tucci-Jarraf, do you recall what specific
21 information you presented to the grand jury at that
22 time?

23 A. Yes, ma'am. In that I discussed the
24 evidence presently in the possession, and that being an
25 audio recording, a video recording that I previously

1 referenced in this hearing today where Ms. Heather Ann
2 Tucci-Jarraf's initials were on that screen. And also
3 in our possession we have the NCIC report, the driver's
4 license and the information that we previously discussed
5 here today.

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

8 A. Yes, ma'am, I had an audio recording that
9 took place in the RV dealership.

10 Q. And to be specific with respect to the
11 video evidence that you presented to the grand jury,
12 could you clearly see the defendant in that particular
13 item?

14 A. Yes, ma'am.

15 Q. That you presented to the grand jury?

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

18 Q. So based on your investigation, your
19 review of Ms. Tucci-Jarraf's videos, arrest photographs
20 and other information obtained from criminal databases,
21 can you tell me whether you see the person named in the
22 indictment and who you investigated here in the
23 courtroom today?

24 A. Yes, ma'am, I can. I can, from my
25 vantage point right here I can clearly identify

1 Ms. Heather Ann Tucci-Jarraf. She is currently in an
2 orange, has an orange shirt with an apparent white
3 undershirt sitting next to counsel to my left and to the
4 Court's left.

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

8 MR. BOS: Objection, Your Honor.

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

10 MR. BOS: Objection.

11 THE COURT: Are your objections the same as
12 those previously voiced?

13 MR. BOS: Yes, Your Honor.

14 THE COURT: The record will reflect Agent
15 Steill's in-court identification of the defendant over
16 objection.

17 BY MS. WALTERS:

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

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

22 Q. And during the course of your
23 investigation, how did you learn of the defendant's
24 whereabouts?

25 A. She was -- we did not know the exact

1 whereabouts, but she was entered into NCIC, and then I
2 received a call from the United States Secret Service
3 actually late at night, approximately 11:30 to
4 11:45 regarding positive contact with Ms. Heather Ann
5 Tucci-Jarraf.

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

8 A. That is when we have an arrest warrant
9 for an individual, we don't, we put them into NCIC for
10 both, for officers' safety, that if she were to be
11 stopped or the individual were to be stopped, they would
12 know that there is an arrest warrant for that individual
13 and also simply just to have them picked up.

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

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

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

23 A. The Secret Service provided me hotel
24 information and room number information that we
25 immediately, that following the next morning I

1 immediately provided to our Washington field office who
2 subsequently made an arrest.

3 Q. And were you personally involved in the
4 arrest of the defendant?

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

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

7 A. I learned of the actual arrest from our
8 field office, they provided the information to myself
9 and -- once the other agents, the information came back
10 to us in Knoxville, then an arrest had been taken place
11 without incident.

12 Q. And were you advised of the details of
13 the arrest?

14 A. Yes, ma'am. We did receive some details
15 of the arrest. It's my understanding from the
16 information that we received from the Washington field
17 office that Mr. Reef, Ms. Tucci-Jarraff and would other
18 individuals were staying in room 601. At the time the
19 agents approached that room, Ms. Tucci-Jarraff was
20 outside. One or more of the individuals was able to
21 identify her from the window. Agents then radioed down
22 to other agents task force officers and Metropolitan
23 Police that were on the ground and an arrest was
24 effectuated.

25 Q. Other than your review of the criminal

1 databases, your review of videos of the defendant, what
2 else did you do to verify that the person arrested here
3 in the District of Columbia was the same person that was
4 arrested pursuant -- or the same person named in the
5 indictment and the arrest warrant that was issued?

6 A. Well, I think we really, you know, we've
7 continued to continue to conduct course of interviews.
8 We've continued investigation. We've continued to
9 review video and we've also continued, so that's kind of
10 our normal course. We've continued an effort to ensure
11 that we've talked to everyone involved and have all the
12 facts.

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

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

17 Q. And to your knowledge, what agency
18 conducted the fingerprint analysis?

19 A. That would be the FBI, CJIS.

20 Q. What does CJIS stand for?

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

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

1 A. Yes, ma'am, there was a report authored
2 at my request.

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

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

7 Q. And what is it specifically?

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

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

23 A. I'll draw attention to page 5 where it
24 says, "Result of examination. The fingerprints present
25 on the standards referenced above is S-1 and S-2."

1 That's what I previously discussed are the fingerprints
2 of one and the same individual. And also noted on here,
3 Mr. Cutler notes that as a quality assurance measure a
4 second fingerprint examiner conducted an independent
5 examination and reached the same conclusion.

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

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

16 Q. And can you tell us what the date of
17 birth is that is listed on that particular portion of
18 the exhibit?

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

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

25 A. Yes. S-2 is prints that were provided to

1 us by the authorities in Washington State, and this
2 again, you see two names on this. You see Heather Ann
3 Tucci and then Heather Ann Tucci-Jarraf, also date of
4 birth 7/30/1972 is also referenced on this document.
5 You'll see right there state identification code on
6 there as well.

7 Q. And is Government Exhibit No. 4 a fair
8 and accurate copy of the report you received from the
9 FBI on or about July 28, 2017, in relation to your
10 request for fingerprint analysis?

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

12 MS. WALTERS: At this time the government
13 wishes to admit and publish Government Exhibit No. 4 to
14 the Court.

15 MR. BOS: Objection, Your Honor.

16 THE COURT: Mr. Bos, are your objections the
17 same?

18 MR. BOS: Yes.

19 THE COURT: Government Exhibit 4 will be
20 admitted over objection.

21 (Government's Exhibit Number 4 admitted
22 into evidence.)

23 MS. WALTERS: Thank you, Your Honor. No
24 further questions for the witness from the government,
25 Your Honor.

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

3 MR. BOS: May I ask for permission to speak
4 with Ms. Tucci.

5 THE COURT: Bear with me, please, while I
6 confer with the deputy clerk.

7 (Discussion held off the record.)

8 THE COURT: We will recess this matter briefly
9 and take another matter that will give you an
10 opportunity to confer, Mr. Bos, and prepare for
11 cross-examination. Ms. Tucci-Jarraf, please return with
12 the marshal.

13 (Discussion held off the record.)

14 THE COURT: Agent Steill, you may step down,
15 sir, thank you.

16 (Recess taken)

17 THE COURT: Mr. Bos, do you need additional
18 time?

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

20 THE COURT: Agent Steill, thank you, please
21 take your seat.

22 (Witness resumes witness stand.)

23 DEPUTY CLERK: Re-calling Criminal Case,
24 17-531, United States of America v. Heather Ann
25 Tucci-Jarraf.

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

3 MR. BOS: Yes, Your Honor.

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

8 MR. BOS: Your Honor, I believe that my
9 examination will be relatively short.

10 THE COURT: Very well.

11 CROSS-EXAMINATION

12 BY MR. BOS:

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

15 A. Approximately five, sir. Sorry, sir,
16 came in as a new agent in 2012.

17 Q. How many investigations have you been
18 involved with during that time period?

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

22 Q. Okay. Would it be fair to say that
23 you're the lead investigator in connection with this
24 case?

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

1 Q. Okay. Now, you testified that you had
2 reviewed some social media videos that purportedly show
3 Ms. Tucci; is that correct?

4 A. That's correct, sir.

5 Q. And prior to the events that gave rise to
6 the indictment, had you had any contact with Ms. Tucci
7 before then?

8 A. Yes, sir, I had.

9 Q. When did you have your prior contact with
10 Ms. Tucci?

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

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

21 A. That's correct, sir.

22 Q. You spoke to an individual on the other
23 line of the phone that you assumed was Ms. Tucci; is
24 that correct?

25 A. Yes, sir. Right. I did not have visual

1 contact with her, yes, sir.

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

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

8 Q. Okay. And the codefendant's case,
9 Mr. Bean, were you present at the time of his arrest?

10 A. I was, sir.

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

12 A. No, sir, she was not present at that
13 scene.

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

16 You were not present when Ms. Tucci was
17 arrested in this case?

18 A. No, sir, I was not.

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

22 A. That is absolutely true, sir.

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

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

5 Q. Of this week, correct?

6 A. That's correct, sir.

7 Q. Now, you testified that you saw some
8 videos that purportedly show Ms. Tucci. Do you remember
9 that testimony?

10 A. I do.

11 Q. Were you present when those -- how many
12 videos did you see?

13 A. There's numerous videos, sir. I just
14 want you to know I don't want to speculate, and I'm
15 going to say at this point maybe I've seen four,
16 approximately four videos.

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

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

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

23 A. No, sir. And again, that's an
24 approximate number.

25 Q. And you can't even tell us when those

1 videos were made; is that correct?

2 A. Sir, there is some information, the dates
3 are put online and then they say July 10 call or
4 something like that. So to my understanding based on
5 that representation I can tell when the calls were made.
6 And also we conducted interviews on the other side of
7 those calls.

8 Q. Let me rephrase the question. You were
9 not present at the time that the videos were made; is
10 that correct?

11 A. That's correct, sir.

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

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

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

22 A. I would not, no, sir, I wouldn't be privy
23 to that.

24 Q. Okay. And were those individuals
25 actually put into the grand jury?

1 A. No, sir.

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

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

8 Q. Prior to that you were in one of the
9 service branches, is that correct?

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

11 Q. Did you do work in the capacity of
12 military intelligence?

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

15 Q. For the record, could you tell us what
16 JAG means?

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

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

21 A. Oh, absolutely, yes, sir.

22 Q. And an attorney for the army, is that
23 correct?

24 A. You can get kind of the legal context.
25 I'm not on active duty right now. When I'm a drill

1 status or on orders, I would be an army attorney, yes,
2 sir.

3 Q. Okay.

4 MR. BOS: Brief indulgence, Your Honor.

5 THE COURT: Of course.

6 (Pause)

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

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

9 Ms. Walters, do you have redirect?

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

12 THE COURT: Thank you, Ms. Walters. Agent
13 Steill, thank you, you may step down.

14 THE WITNESS: Thank you, Your Honor.

15 (Witness excused.)

16 THE COURT: Ms. Walters, does the United
17 States have other evidence?

18 MS. WALTERS: No further witnesses for the
19 government, Your Honor.

20 THE COURT: Are there other exhibits that the
21 government intends to introduce?

22 MS. WALTERS: The government is going to
23 introduce the Pretrial Services Agency report as
24 Government Exhibit No. 5.

25 THE COURT: Would you mark that, please.

1 MS. WALTERS: Yes, and I'll provide it to the
2 Court. It's the same Pretrial Services Agency report
3 that was provided to the parties at the initial
4 appearance and to the Court as well from Pretrial
5 Services.

6 THE COURT: Thank you. Do you still have
7 that, Mr. Bos?

8 MR. BOS: I do, Your Honor. And in addition
9 to our standing objection, I believe that there's
10 actually a code provision that says that the Court is
11 not allowed to receive that evidence. I was not
12 prepared that the government was going to be seeking to
13 introduce what's already part of the court record. But
14 we would object as well.

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

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

22 THE COURT: Very well.

23 MS. WALTERS: And for the record, the
24 government had provided that as an exhibit to the
25 defense previously.

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

4 MS. WALTERS: Very well, Your Honor.

5 THE COURT: Does that complete the
6 government's presentation?

7 MS. WALTERS: The government does have
8 argument, Your Honor. Maybe Your Honor wishes us to do
9 it after the break.

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

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

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

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

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

23 MR. BOS: Yes.

24 THE COURT: Very well. Having considered
25 those grounds thoroughly, the Court will deny the motion

1 to strike Agent Steill's testimony.

2 MR. BOS: Thank you, Your Honor. Your Honor,
3 we will be seeking to introduce the escort notice, we
4 had a notice of filing yesterday, some documents that
5 we're seeking to introduce at this time. That would be
6 the only exhibit that we would be introducing.
7 Otherwise we would be prepared to proceed to argument at
8 this point. So --

9 THE COURT: If there is a volume of exhibits
10 that were included with the notice of filing, I believe
11 it is more appropriate that you identify one by one what
12 it is that you wish to offer so that I can hear from
13 Ms. Walters. And perhaps you can use the time during
14 the recess to confer and we can proceed in a more
15 expeditious fashion when we return.

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

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

19 (Recess taken)

20 DEPUTY CLERK: Re-calling Criminal Case Year
21 2017-531-M, United States v. Heather Ann Tucci-Jarraf.
22 Lisa Walters for the government, David Bos for the
23 defendant. Pretrial officer is Andre Sidbury. This is
24 an identity hearing on a removal.

25 THE COURT: Now, Mr. Bos, are you ready to

1 resume?

2 MR. BOS: Yes, Your Honor.

3 THE COURT: Very well. Before the recess you
4 indicated that you completed your cross-examination of
5 Agent Steill and that you may wish to move into evidence
6 certain exhibits.

7 MR. BOS: That's correct, Your Honor.
8 Your Honor, as the Court knows, yesterday and we filed a
9 notice of filing with the Court and attached to that
10 notice of file was a 286-page document which contained
11 4040 UCC filings identified as Exhibits 1 through 40.
12 At this time -- and the first, the original due
13 declaration and notice of factualized trust. Number two
14 is an original due declaration of issue by original
15 repository. Annex 3 through Annex 40 are UCC filings
16 and they've been filed over the years by Ms. Tucci. We
17 would be seeking to introduce that as Defense Exhibit
18 No. 1, as it's our position it goes directly to the
19 identification issue that the Court has to address.

20 THE COURT: What is your argument, Mr. Bos,
21 concerning how those exhibits in your words go to the
22 identification issue?

23 MR. BOS: Your Honor, the only issue that the
24 Court has to decide today is whether or not
25 Ms. Tucci-Jarraf is the person who's been indicted in

1 the Eastern District -- excuse me, in the District of
2 Tennessee. It's our position that the annex been has
3 shown that she's, in fact, not the person who was
4 indicted in Tennessee.

5 THE COURT: May I ask you to further
6 articulate your argument, please, regarding the
7 statement that you just made?

8 MR. BOS: I'm not sure what more I can give to
9 the Court at this point, but it is our position that
10 they do refute the identification issue.

11 THE COURT: How do the documents refute the
12 testimony of the officer, of the agent, excuse me, of
13 Special Agent Steill?

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

25 And our position is that the contents of

1 Defense Exhibit No. 1 would undercut the reliability of
2 that identification. That's all I have, Your Honor.

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

6 MR. BOS: Yes, Your Honor, and just the record
7 is clear, these are the exact same documents that were
8 filed --

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

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

16 THE COURT: That was my understanding. I
17 simply want to determine that your reference to
18 Defendant's Exhibit 1 is to both components, both
19 portions.

20 MR. BOS: Yes, Your Honor.

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

23 MS. WALTERS: Thank you, Your Honor.
24 Your Honor, the government does oppose the admission of
25 Defendant's Exhibit No. 1. The government did have the

1 opportunity to receive the document through ECF, but
2 it's the government's position that the document, the
3 exhibit and the documents that make up the exhibit do
4 not go in any way to the issue of identity which is
5 before the Court. The government believes that the
6 documents supported defendant's ideology, but it does
7 not support or present any facts and, in fact, is
8 incomprehensible that would support or refute or in any
9 way present evidence that undercuts the government's
10 testimony and evidence thus far with respect to her
11 identity. So on those bases the government does oppose
12 the admission of Defendant's Exhibit No. 1.

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

15 MR. BOS: No, Your Honor.

16 THE COURT: Are you able, using a single one
17 of the multiple documents that comprise Defendant's
18 Exhibit 1, to proffer how any such exhibit is at all
19 relevant to the determination that this Court must make
20 this afternoon?

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

25 THE COURT: Very well. Thank you very much,

1 Mr. Bos.

2 The record makes clear that the exhibits were
3 first brought to the Court's attention by the Clerk's
4 Office after the documents were delivered to the Clerk's
5 Office. Because the -- because Ms. Tucci-Jarraf was
6 represented by counsel, the Court's action with respect
7 to the documents, as is clear from ECF, was to enter an
8 order making them available to you, Mr. Bos, so that you
9 can determine what action you believe should be taken
10 with respect to those documents. You did, of course,
11 review the documents and ultimately filed them through
12 ECF.

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

17 The mere fact that the documents are a part of
18 the ECF record does not render them admissible at this
19 hearing, however. And the Court must undertake -- the
20 Court believe it was incumbent upon the Court to
21 undertake an examination of the documents, which the
22 Court did do in order to determine the question of
23 admissibility. The Court finds, having done so, that
24 the documents are not relevant to the issue before me.
25 They may well be relevant to some other proceedings.

1 By stating that, I do not mean to suggest that
2 they are or that I have a view of whether they will be.
3 They are not relevant to any matter concerning the
4 identity of the person before me as the person named in
5 the indictment and the arrest warrant. And because that
6 is the full extent of what I am able to do in the course
7 of this proceeding, the motions -- the motion for the
8 admission of Defendant's Exhibit No. 1 into evidence is
9 denied.

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

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

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

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

20 THE COURT: The Court does not believe there
21 is a ground upon which judicial notice can be taken. It
22 is a matter that was filed that is largely because you
23 did file it on ECF, as you were permitted to do as
24 counsel. I believe we all recognize that the mere fact
25 that a document is filed does not render it a matter as

1 to which the Court could take judicial notice.

2 MR. BOS: Your Honor --

3 THE COURT: I will also note that even if the
4 Court's ruling regarding the admission were otherwise,
5 the Court's finding would likely be the same. And that
6 is that the exhibits are not relevant to the issue that
7 I must determine this afternoon.

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

9 THE COURT: Put another way, whether the Court
10 admitted them or not, the evaluation would still be the
11 same.

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

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

19 Are you ready to proceed with your argument,
20 Ms. Walters?

21 MS. WALTERS: Yes, Your Honor.

22 THE COURT: Very well. We'll hear your
23 argument.

24 MS. WALTERS: So first, Your Honor, the
25 government would ask that the Court take notice that at

1 the initial appearance and, in fact, throughout the
2 other appearances by the defendant she has also, always
3 responded and noted that her name is, in fact, Heather
4 Ann Tucci-Jarraf, which the government would note is a
5 fairly distinct name.

6 The government would ask that the Court credit
7 the testimony of Special Agent Steill. He testified
8 that he is one of the lead agents on the subject of the
9 removal matter, that is the indictment out of Knoxville,
10 Tennessee. He also testified that he testified before
11 the grand jury as to the entire matter and specifically
12 this defendant's identity as a suspect after which the
13 indictment issued.

14 Special Agent Steill testified that he
15 reviewed videos of the defendant stating her name and
16 also indicating her involvement in the matter that is
17 the subject of the indictment. He reviewed photographs
18 and other demographic information in relation to Heather
19 Ann Tucci-Jarraf.

20 He also testified that there was a separate
21 civilian witness who identified this defendant as
22 Heather Ann Tucci-Jarraf on the date that she was
23 arrested here in the District of Columbia pursuant to a
24 call to Special Agent Steill by the U.S. Secret Service.
25 For his part, he did say he was not present at the

1 arrest but received information from other law
2 enforcement agents who advised that she was identified
3 by a separate civilian witness as a defendant, at which
4 time the arrest was effectuated.

5 Finally, Your Honor heard in court today
6 Special Agent Steill point out the defendant and
7 specifically identify her as the person for whom an
8 arrest warrant issued pursuant to the indictment sitting
9 here in court today.

10 The government would ask that the Court credit
11 other competent evidence that has been presented, most
12 importantly the fingerprint analysis that was conducted
13 by the FBI, which concluded that this defendant is
14 Heather Ann Tucci-Jarraf with a date of birth of July
15 30, 1972, a Social Security number ending in 1682; and
16 also the government would note that those identifiers
17 correspond with the name appearing on the indictment and
18 the name and date of birth appearing on the warrant that
19 is before Your Honor, and also the name and date of
20 birth appearing on the Pretrial Services Agency report,
21 which was provided to the Court and the parties at the
22 initial appearance in this matter on July 26, 2017.

23 And finally the government would note that
24 Ms. Heather Ann Tucci-Jarraf has been in custody since
25 July 26, 2017, since her arrest here in D.C., so there

1 is no question that the person who was arrested on that
2 date and the person who is sitting before the Court
3 today is, in fact, the same person. So the government
4 would rest and submit to the Court that we have met our
5 burden of proving that the defendant is, in fact, the
6 person named in the indictment and the warrant that is
7 the subject of this removal matter.

8 THE COURT: Thank you very much, Ms. Walters.
9 Mr. Bos.

10 MR. BOS: Thank you, Your Honor.

11 THE COURT: I will hear your response.

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

1 to be unbelievably unreliable.

2 And what's most concerning to us is the
3 fingerprint report that the government introduced as
4 Exhibit No. 4. There was no indication at all about
5 what, if any, proficiency testing the examiner had done
6 to see whether or not the test was, in fact, accurate.
7 Although they said that there was a second level of
8 identification, the person who did the identification
9 was never identified in the report. So we can't
10 certainly rely on that report. And of course, that's
11 the report that's generated by the government. We have
12 not had a chance to fully confront the accuracy of that
13 report.

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

17 MR. BOS: Yes, Your Honor, I did ask him a few
18 questions about that. And again, the evidence that the
19 Court has, though, it is the report, he was reading from
20 a report that he did not prepare by an individual that
21 there's no indication that he had any direct contact
22 with that individual. We don't know what the
23 qualifications of that individual was. We don't know
24 what the education level was, what type of certification
25 that individual possessed at the time he made --

1 THE COURT: My question is do you acknowledge
2 that you had an opportunity to ask Agent Steill those
3 questions but did not?

4 MR. BOS: Right, because it's the government's
5 burden to prove that those reports are reliable. We
6 couldn't stop them from coming in, but we can certainly
7 attack them now at the time for the argument stage here.
8 And we're pointing out to the Court that there are deep
9 flaws in that particular report, which I think the
10 government would maintain is their strongest piece of
11 evidence. We not do know where the fingerprints came
12 from, whether or not those, other than what's in the
13 report.

14 And again, without knowing more about the
15 author of the report, the Court should not be able to
16 make the finding that that report is sufficiently
17 reliable to support an identification finding by this
18 Court, especially when you have a situation where you
19 have not the arresting officer, not the officer that was
20 present who spoke to the complainants at the time that
21 they made the complaint to law enforcement, and he only
22 makes this identification of the individual who is
23 sitting right here in court, and just so the record is
24 clear, Ms. Tucci is the only person who is sitting at
25 counsel table wearing an orange jumpsuit. That's a

1 pretty suggestive identification procedure that was done
2 here in court, so I don't think that the Court should
3 give it that much weight.

4 So when you have a situation where you have a
5 report that we don't know anything about the authorship
6 as far as fingerprints coupled with an identification
7 that we believe is not sufficient to make an
8 identification that the Court should deny the
9 government's request for, we would submit that the
10 government hasn't met its burden in this identification
11 proceeding.

12 THE COURT: Mr. Bos, this is a question I will
13 ask you, I will ask you as well, Ms. Walters. I
14 neglected to do that earlier in the proceeding. What is
15 your contention, Mr. Bos, regarding the applicable
16 standard of proof?

17 MR. BOS: Your Honor, it is my understanding
18 that probable cause is the standard of proof in identity
19 proceedings.

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

23 MS. WALTERS: Yes, Your Honor. The
24 government, that is the one thing that the government
25 and the defense agree on, and the government takes that

1 information from the *United States v. Perkins*,
2 433 F.2d 1182, which is a case from 1970, which
3 indicates that probable cause is the applicable
4 standard.

5 THE COURT: Very well. That has been the
6 Court's assumption. I simply wanted to determine
7 whether counsel are in agreement that that is the
8 standard.

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

21 So any claim that there's a chain of custody
22 at issue or the origin of the report is somehow skewed
23 or stained, the government would strenuously oppose
24 given the documents that have been entered in evidence
25 and given the documents that have been previously

1 provided to the defense as to that fingerprint report.

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

5 Additionally, the government would note that
6 the Special Agent Steill's ability to identify the
7 defendant is clear based on his review of videos of the
8 defendant, based on his review of criminal database
9 information populated with respect to prior arrests of
10 this defendant, including photographic evidence, date of
11 birth, all of these things that were elicited on direct
12 examination of the agent. So there was in no way any
13 suggestivity in his identification of Ms. Heather Ann
14 Tucci-Jarraf in court today, because he had a very firm
15 basis of what she looked like and the government would
16 argue what she sounded like when he attempted or had a
17 short phone call conversation with her prior to coming
18 into court today.

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

24 The government would note thirdly and lastly
25 that as the government stated in its argument just a

1 short while ago, Ms. Heather Ann Tucci-Jarraf was also
2 identified by an independent civilian witness prior to
3 her arrest. And that evidence is in the record as well.
4 Special Agent Steill testified that he received a call
5 from the United States Secret Service who had been
6 alerted to the defendant and was aware of the warrant
7 and notified Special Agent Steill upon which a law
8 enforcement team encountered her at this hotel. They
9 inquired where she was and a separate civilian witness
10 said that she wasn't in the room but she was in the area
11 and then pointed her out.

12 So there is very firm basis upon which Special
13 Agent Steill could identify this defendant that is in
14 the record before the Court. And so the Court, the
15 government would ask that the Court find that the
16 government has, in fact, met its burden of probable
17 cause in this matter of identifying Ms. Heather Ann
18 Tucci-Jarraf as the person named in the warrant and also
19 the indictment.

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

21 Mr. Bos, sorry. I saw you rising, is there
22 something further?

23 MR. BOS: Well, Your Honor, I just want to
24 make sure that the Court understands our argument. The
25 argument is not whether or not that this evidence was --

1 well, the Court made a ruling that the Court is going to
2 accept the exhibits that the government, specifically of
3 Exhibit No. 4 which is fingerprint evidence. That
4 doesn't necessarily mean that the Court makes a finding
5 that it's, in fact, reliable enough to meet the
6 government's burden and identity hearing. So
7 admissibility does not equate to reliability.

8 And our position is that notwithstanding our
9 objection which we not only have, do we have a standing
10 objection to the exhibit coming in, we lost that
11 objection; we still maintain it. The Court still has to
12 make a further finding whether or not the report is, in
13 fact, reliable and that's where our arguments are going
14 towards.

15 THE COURT: Very well. Thank you very much,
16 Mr. Bos.

17 Having considered the full extent of the
18 evidence offered during the course of this proceeding
19 and the arguments of counsel, the Court finds that the
20 United States Attorney has offered abundant credible,
21 reliable evidence taken as a whole to compel the finding
22 that the individual now before the Court is the same
23 individual named in the warrant and the indictment filed
24 in the court in the Eastern District of Tennessee. The
25 Court's finding is made by the standard that counsel

1 agrees is the applicable standard, that is the probable
2 cause standard.

3 The Court has fully considered the arguments
4 made on behalf of counsel for Ms. Tucci-Jarraf and finds
5 that the evidence have offered simply does not support
6 the arguments. In other words, there is no factual
7 basis for any of them.

8 Accordingly, the Court will sign the order of
9 commitment of Ms. Tucci-Jarraf to the Eastern District
10 of Tennessee for proceedings in that district and will
11 order that Ms. Tucci-Jarraf be held without bond pending
12 her appearance in that district.

13 Mr. Bos --

14 MR. BOS: Your Honor, we are requesting that
15 the Court order that we will be done on an expedited
16 basis. As the Court knows, Ms. Tucci has been in
17 custody in this matter for almost -- longer than a week
18 at this point. So to the extent that she can get to
19 Tennessee as quickly as possible where hopefully she'll
20 be able to revisit her bail determination, we make that
21 request.

22 THE COURT: We will note forthwith on the
23 commitment. However, I believe it is important for the
24 record to reflect in response to your concern about the
25 period of time that Ms. Tucci-Jarraf has been held, the

1 reason for the period of detention for the last four
2 days was, of course, that the Court granted
3 Ms. Tucci-Jarraf's request for a continuance.

4 The government was ready to proceed on Monday,
5 which the Court noted was the third day, would have been
6 the third day of Ms. Tucci-Jarraf's detention. We all
7 assumed that that would be her reasonable maximum period
8 for such a time of detention. Counsel for the
9 government was prepared to proceed. The witness was
10 present, and indeed the Court offered the opportunity to
11 at least begin the proceeding while other matters were
12 being addressed.

13 The Court did not begin the proceeding solely
14 because of your objection on behalf of Ms. Tucci-Jarraf
15 to doing so. So the record should reflect that any
16 delay beyond Monday, July 31, was occasioned by
17 Ms. Tucci-Jarraf.

18 MR. BOS: Well, I guess our response to that
19 is because Ms. Tucci-Jarraf had the Hobson's choice of
20 going forward with a lawyer that she felt she was not
21 comfortable with or whether or not she was going to hire
22 a lawyer or be pro se. So it does suggest that she
23 actually voluntarily, but there was that issue that had
24 to get resolved for Ms. Tucci-Jarraf.

25 THE COURT: Very well. Thank you, Mr. Bos.

1 Is there anything further on behalf of the United
2 States, Ms. Walters?

3 MS. WALTERS: No, Your Honor.

4 THE COURT: Very well. Thank you very much,
5 counsel. Ms. Tucci-Jarraf, please return with the
6 marshal.

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

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9 CERTIFICATE OF OFFICIAL COURT REPORTER

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

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19 8-8-17

20 SIGNATURE OF COURT REPORTER

21 DATE