

NO. 22-30015

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

KALEB COLE,

Defendant-Appellant.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF WASHINGTON

The Honorable John C. Coughenour, Judge
D.C. No. 2:20-cr-00032-JCC-2

APPELLANT'S EXCERPTS OF RECORD, VOLUME 1 of 5

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AO245B (Rev. 09/19) Judgment in a Criminal Case
Sheet 1

UNITED STATES DISTRICT COURT
Western District of Washington

UNITED STATES OF AMERICA
v.

KALEB J. COLE

JUDGMENT IN A CRIMINAL CASE

Case Number: 2:20CR00032JCC-002

USM Number: 13964-579

Christopher Black

Defendant's Attorney

THE DEFENDANT:

- pleaded guilty to count(s) _____
- pleaded nolo contendere to count(s) _____
which was accepted by the court.
- was found guilty on count(s) 1, 2, 3, 4, 5 of the Superseding Indictment
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. §§ 371, 876, 2261A and 245	Conspiracy to Mail Threatening Communications, to Commit Cyberstalking, and to Interfere with Federally Protected Activities	1/27/2020	1
18 U.S.C. § 876(c) and 18 U.S.C. § 2261A	Mailing Threatening Communications	1/27/2020	2
18 U.S.C. § 876(c) and 18 U.S.C. § 2261A	Mailing Threatening Communications	1/27/2020	3
18 U.S.C. § 876(c) and 18 U.S.C. § 2261A	Mailing Threatening Communications	1/27/2020	4
18 U.S.C. § 245	Interference with Federally Protected Activity	1/27/2020	5

The defendant is sentenced as provided in pages 2 through 7 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

- The defendant has been found not guilty on count(s) _____
- Count(s) _____ is are dismissed on the motion of the United States.

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

Thomas Woods
Assistant United States Attorney

January 11, 2022
Date of Imposition of Judgment

[Signature]
Signature of Judge

John C. Coughenour, United States District Judge
Name and Title of Judge

January 11, 2022
Date

AO245B (Rev. 09/19) Judgment in a Criminal Case
Sheet 2 — Imprisonment

Judgment — Page 2 of 7

DEFENDANT: **KALEB J. COLE**
CASE NUMBER: 2:20CR00032JCC-002

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of:

84 months

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

Placement at FCI Phoenix

The defendant is remanded to the custody of the United States Marshal.

The defendant shall surrender to the United States Marshal for this district:

at _____ a.m. p.m. on _____ .

as notified by the United States Marshal.

The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

before 2 p.m. on _____ .

as notified by the United States Marshal.

as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

DEFENDANT: **KALEB J. COLE**
CASE NUMBER: 2:20CR00032JCC-002

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of :

3 years

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 - The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any additional conditions on the attached pages.

DEFENDANT: **KALEB J. COLE**
CASE NUMBER: 2:20CR00032JCC-002

STANDARD CONDITIONS OF SUPERVISION

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at www.uscourts.gov.

Defendant's Signature _____

Date _____

DEFENDANT: **KALEB J. COLE**
CASE NUMBER: 2:20CR00032JCC-002

SPECIAL CONDITIONS OF SUPERVISION

1. The defendant shall consent to the U.S. Probation Office conducting ongoing monitoring of his/her computer(s), hardware, and software, and any/and all electronic devices/media. The monitoring may include the installation, at the defendant's expense, of hardware or software systems which allow evaluation of his/her computer use. Monitoring may also include the retrieval and copying of all data from his/her computer(s) or any/and all other electronic devices/media. The defendant shall also comply with the requirements of the U.S. Probation Computer Monitoring Program as directed.
2. The defendant shall participate as directed in the Moral Reconciliation Therapy program approved by the United States Probation and Pretrial Services Office. The defendant must contribute towards the cost of any programs, to the extent the defendant is financially able to do so, as determined by the U.S. Probation Officer.
3. Restitution in the amount of \$_____ is due immediately. Any unpaid amount is to be paid during the period of supervision in monthly installments of not less than 10% of his or her gross monthly household income. Interest on the restitution shall be waived.
4. The defendant shall submit his or her person, property, house, residence, storage unit, vehicle, papers, computers (as defined in 18 U.S.C. §1030(e)(1)), other electronic communications or data storage devices or media, or office, to a search conducted by a United States probation officer, at a reasonable time and in a reasonable manner, based upon reasonable suspicion of contraband or evidence of a violation of a condition of supervision. Failure to submit to a search may be grounds for revocation. The defendant shall warn any other occupants that the premises may be subject to searches pursuant to this condition.
5. The defendant shall have no direct or indirect communication or interaction with someone he knows is or was a member of Atomwaffen Division or any similar group. If the defendant is aware that someone is or was involved with Atomwaffen Division or any similar group, he must not knowingly communicate or interact with that person, directly or indirectly, without first obtaining the permission of the probation officer.

AO245B (Rev. 09/19) Judgment in a Criminal Case
 Sheet 5 — Criminal Monetary Penalties

Judgment — Page 6 of 7

DEFENDANT: **KALEB J. COLE**
 CASE NUMBER: 2:20CR00032JCC-002

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
TOTALS	\$ 500	\$	\$	\$ N/A	\$ N/A

- The determination of restitution is deferred until _____. An Amended Judgment in a Criminal Case (AO 245C) will be entered after such determination.
- The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

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

<u>Name of Payee</u>	<u>Total Loss***</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
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TOTALS	\$ 0.00	\$ 0.00	
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- Restitution amount ordered pursuant to plea agreement \$ _____
- The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).
- The court determined that the defendant does not have the ability to pay interest and it is ordered that:
 - the interest requirement is waived for the fine restitution
 - the interest requirement for the fine restitution is modified as follows:
- The court finds the defendant is financially unable and is unlikely to become able to pay a fine and, accordingly, the imposition of a fine is waived.

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.
 ** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.
 *** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

DEFENDANT: **KALEB J. COLE**
CASE NUMBER: 2:20CR00032JCC-002

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- PAYMENT IS DUE IMMEDIATELY. Any unpaid amount shall be paid to Clerk's Office, United States District Court, 700 Stewart Street, Seattle, WA 98101.
- During the period of imprisonment, no less than 25% of their inmate gross monthly income or \$25.00 per quarter, whichever is greater, to be collected and disbursed in accordance with the Inmate Financial Responsibility Program.
- During the period of supervised release, in monthly installments amounting to not less than 10% of the defendant's gross monthly household income, to commence 30 days after release from imprisonment.
- During the period of probation, in monthly installments amounting to not less than 10% of the defendant's gross monthly household income, to commence 30 days after the date of this judgment.

The payment schedule above is the minimum amount that the defendant is expected to pay towards the monetary penalties imposed by the Court. The defendant shall pay more than the amount established whenever possible. The defendant must notify the Court, the United States Probation Office, and the United States Attorney's Office of any material change in the defendant's financial circumstances that might affect the ability to pay restitution.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program are made to the United States District Court, Western District of Washington. For restitution payments, the Clerk of the Court is to forward money received to the party(ies) designated to receive restitution specified on the Criminal Monetaries (Sheet 5) page.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

- Joint and Several

Case Number Defendant and Co-Defendant Names (including defendant number)	Total Amount	Joint and Several Amount	Corresponding Payee, if appropriate
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- The defendant shall pay the cost of prosecution.
- The defendant shall pay the following court cost(s):
- The defendant shall forfeit the defendant's interest in the following property to the United States:

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVTA Assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

UNITED STATES OF AMERICA,	)	CR20-032-JCC
)	
Plaintiff,	)	SEATTLE, WASHINGTON
)	
v.	)	January 11, 2022
)	
KALEB COLE,	)	9:00 a.m.
)	
Defendant.	)	Sentencing

VERBATIM REPORT OF PROCEEDINGS
BEFORE THE HONORABLE JOHN C. COUGHENOUR
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff: Thomas Woods
Seth Wilkinson
Assistant United States Attorneys
700 Stewart Street
Suite 5220
Seattle, WA 98101

For the Defendant: Christopher Black
Teymur Askerov
Black & Askerov PLLC
705 2nd Avenue
No. 1111
Seattle, WA 98104,

1 THE CLERK: We are here on CR20-32-2JCC, the United
2 States of America versus Kaleb Cole. Counsel, please make
3 your appearances for the record.

4 MR. WOODS: Good morning, Your Honor. Tom Woods,
5 Nicholas Brown and Seth Wilkinson on behalf of the United
6 States. With me at counsel table as well is FBI Special
7 Agent Kibbler (phonetic).

8 MR. BLACK: Good morning, Your Honor. Christopher
9 Black and Tim Askerov appearing on behalf of the defendant,
10 Kaleb Cole.

11 THE COURT: Has he had an opportunity to read and
12 comment on the presentence report?

13 MR. BLACK: He has.

14 THE COURT: All right. Do you wish to speak?

15 MR. BLACK: Thank you.

16 Your Honor, Mr. Cole is a young man. He was even younger
17 when he first got pulled into the kind of thinking associated
18 with the group involved in this case. Mr. Cole, when he was
19 growing up, was isolated, lived in a rural area, didn't have
20 a lot of friends. He was bullied. And he turned to a place
21 for community, where he probably shouldn't have, and ended up
22 associating with people who had ideas that most of society,
23 and I'm sure the court, finds pretty abhorrent.

24 Mr. Cole was brought into this at a young age, and that
25 has led him to where he is today. And that's not an excuse

1 for his actions that he has been convicted of in this case,
2 but it is something that we ask the court to consider in
3 imposing sentence here.

4 Mr. Cole clearly made some serious errors of judgment in
5 this case, and these decisions impacted people in a
6 significant manner. We acknowledge that. And we have never
7 contested that, the defense has never contested that in any
8 proceeding, trial, or anywhere else.

9 We acknowledge also that there are consequences for the
10 actions that Mr. Cole has been convicted of. However, we'd
11 submit that the sentences recommended by the probation office
12 and the government are far greater than necessary, to
13 accomplish the goals of the sentencing statute, when
14 considering all the factors that the court must consider in
15 imposing sentence.

16 First, is Mr. Cole's background. Again, he is a young
17 man. At the time of the offense he was just 24 years old.
18 He has no criminal history. He's always been employed. The
19 government has attempted to portray Mr. Cole as a violent,
20 dangerous person. But this, we'd submit, is a false
21 narrative.

22 It's true that at a time when he was legally permitted to
23 do so, Mr. Cole possessed firearms. It's also true that he
24 was a member of Atomwaffen. But it is not true that he ever
25 engaged in any violent actions, or planned any violent

1 actions. And we know this because the government had an
2 informant embedded in Atomwaffen, during the entire period of
3 Mr. Cole's involvement with that group. That informant
4 testified during trial that during that period the group did
5 not engage or plan any violent actions. Instead what they
6 did is hold conferences, discuss ideologies, create messaging
7 videos that are clearly protected by the First Amendment.

8 Sometimes they got together and shot guns out in the
9 woods. But it was people who were legally permitted to own
10 firearms. And they did that in a way that was completely
11 legal.

12 They were fundamentally not planning any sort of actual
13 violence. And to suggest otherwise, we submit, is unfair and
14 prejudicial to Mr. Cole. The same is true of the discussion
15 of actions committed by members of Atomwaffen in the past.
16 There's not even a suggestion that Mr. Cole had any
17 involvement in any violent actions, committed by anybody who
18 was a current or former member of Atomwaffen, or had anything
19 to do with those people. What's being suggested here is
20 guilt by association, and we'd ask the court not to heed that
21 kind of argument.

22 Instead, we'd ask the court to submit to -- excuse me,
23 we'd ask the court to impose sentence on Mr. Cole for what he
24 was convicted of in this case, which is sending threatening
25 messages. Although there's no indication of any plan to

1 carry out those threats, which there would have been, again,
2 because the government had an informant involved in the group
3 and knew what was going on, and there was also evidence
4 suggesting that Mr. Cole, in particular, didn't want the
5 messages to go too far.

6 Mr. Cole, nonetheless, was convicted, and the jury found
7 that those messages did, in fact, go too far. And that
8 conviction, or those convictions, warrant a sanction, and
9 even a significant sanction. But we'd ask the court to keep
10 in mind the actual conduct that Mr. Cole was convicted of,
11 and not view it as part of some bigger violent plan which did
12 not exist.

13 We'd also ask the court to consider the context in which
14 the posters involved in this case were sent. Again, Mr. Cole
15 is a young man, and he clearly showed some poor judgment in
16 this case. One of those errors was miscomprehending the
17 situation he was in. He was viewing what was going on, and
18 what he was involved in, as some sort of conflict between his
19 group and journalists, and the actions in this case were a
20 way to push back against what he viewed as unfair treatment
21 of him and his group.

22 And what he did not fully consider, as part of the actions
23 here, was the impact that they would have on individual
24 people. And given the procedural posture of the case,
25 Mr. Cole is not currently in a position to make a statement

1 about his actions or his intent. But just because he is
2 remaining silent here doesn't mean that he is necessarily
3 insensitive to the human impact of his actions.

4 I will note that at Mr. Cole's trial the defense presented
5 a case that I'd submit was not inconsistent with
6 acknowledgment of this impact, and we certainly acknowledge
7 that here today.

8 I just want to touch on a couple more points. One is the
9 -- in the guideline analysis, the leadership role, as gone
10 into detail in our brief, we believe that the evidence does
11 not establish that Mr. Cole was a leader under the
12 guidelines. Mr. Shea was the leader. While it's possible to
13 have more than one leader, as the government has noted, we
14 submit the facts don't bear that out here. Mr. Shea was the
15 person who conceived of the plan here. He started the chat
16 group. He invited others to it, including Mr. Cole. There's
17 no indication Mr. Cole had knowledge or involvement before
18 that. Mr. Shea took the lead role in planning. He picked
19 the dates, and disbanded the chat group, and engaged in
20 sending a number of the posters.

21 While Mr. Cole was a participant and he made some
22 suggestions about ways that things could be done, literally
23 everybody in the chat group did the same thing. And the
24 co-defendants, who the court has already sentenced, did the
25 same things as Mr. Cole. The only thing that Mr. Cole did

1 that was different is create the posters. But on the other
2 hand, he was not involved in actually sending or posting
3 them. And the creation of posters does not qualify as an act
4 of leadership, under the guidelines, which require some sort
5 of influence or control over others.

6 And the discussion about Mr. Shea leads me to my last
7 point, which is that we'd submit there's no proper basis to
8 sentence Mr. Cole to something appreciably longer than
9 Mr. Shea, based on their relative culpability. We have
10 submitted that Mr. Shea is more culpable. But even if the
11 court doesn't accept that, it has to be pretty close.

12 Mr. Cole -- excuse me, Mr. Shea was named first in the
13 indictment. While that doesn't technically mean anything, we
14 know that that is a spot reserved for, at least who the
15 government views as the most culpable person in the case.

16 Also Mr. Cole doesn't have any appreciably different
17 social history than Mr. Shea. And we'd submit that they are,
18 therefore, in pretty much the same position in front of the
19 court. The only difference, of course, being that Mr. Cole
20 took the case to trial, while Mr. Shea entered a guilty plea.
21 We'd submit that that is not a proper basis for a longer
22 sentence, and we'd ask the court to not sentence Mr. Cole on
23 that basis.

24 Instead, we ask the court to sentence Mr. Cole to the same
25 sentence as Mr. Shea, a sentence of 36 months, which is a

1 serious sentence, it's a long sentence, it reflects the
2 seriousness of the convicted conduct. It acknowledges that
3 Mr. Cole is a young man, and has no criminal history. He's
4 been incarcerated for now almost two years, during this COVID
5 pandemic, which has included very harsh conditions of
6 confinement. And that is likely to extend for the, at least
7 foreseeable future. And so we'd submit that that is a fair
8 sentence, and we ask the court to impose it.

9 And that's all I have, unless the court has any questions.

10 THE COURT: Regarding the objections to the
11 presentence report, do you wish to have any additional
12 evidence in the record?

13 MR. BLACK: No, Your Honor.

14 THE COURT: Does your client wish to speak?

15 MR. BLACK: No, Your Honor. But I would like to have
16 Mr. Cole's grandmother speak, briefly, if the court will
17 permit that. I don't know if this is the time for that.

18 THE COURT: That's fine. Go ahead.

19 MR. BLACK: Mr. Cole's grandmother is JoAnne Powell.

20 MS. POWELL: Thank you for letting me speak. I'm
21 Kaleb's grandmother, and I'm representing Kaleb's mother, and
22 father, and grandfather. We all love you, Kaleb. And we
23 respectfully request the court's leniency for Kaleb, for
24 several reasons:

25 I guess I never expected to be doing this sort of thing

1 for Kaleb. This is just beyond belief for me. We were here
2 for the court case. And, even so, Kaleb is not the person he
3 was presented to the court to be. He's served almost
4 22 months in detention so far, waited trial for 18 months.
5 And because of the COVID, much of that time was spent in
6 lockup. It was a year before anyone could see him. And then
7 it was only immediate family. And his mother is living in
8 another country, and because of COVID, couldn't be here. So,
9 fortunately, thank you to the prison system for letting us,
10 as his grandparents, to see him. Because we've been very
11 close to Kaleb.

12 Kaleb has always had a strong work ethic and always been a
13 good young man. His -- I know I have a -- I'm sorry -- he's
14 always had a strong work ethic. He supported himself when he
15 moved out on his own, when he turned 18. And he's never been
16 -- he had never been in any trouble before. And I've known
17 Kaleb his whole life.

18 Kaleb wants to resume a normal life and he wants to put
19 this episode behind him. He never dreamed that anything like
20 this would be happening to him.

21 Kaleb's father, and his mother, and ourselves, my husband
22 Ken and I, have maintained a good relationship with Kaleb
23 through this whole thing. And while he's been incarcerated,
24 we've been in touch with him. We've talked to him, and are
25 thankful because we finally got to see him, after a year. We

1 were able to talk to him about this whole situation and
2 what's been going on.

3 And I just want to say that his mother and father and
4 ourselves -- when he is allowed to return to society, we'll
5 support him, both mentally, and financially, and physically,
6 in any way we can to help him start on his way to a normal
7 life.

8 Kaleb has a girlfriend he's had for a long time. And he
9 would like to resume this normal life and get married and
10 have children and move ahead. He never intended to do
11 anything to hurt anyone. Kaleb has never been a violent
12 person. We know this. I've been around Kaleb since he was
13 -- well, since he was born. All of us. And he's never been
14 violent.

15 He would spend summers with us. He developed friendships
16 with the local children that were there, and nice kids. And
17 he had a very good summertime with us. I've never seen him
18 get violent or angry. And you can say whatever you want
19 about him, but I know he's not a violent person. You don't
20 know him. We know him.

21 Did he make some mistakes? Yes, he did, and he realizes
22 that. But there is no purpose in keeping him incarcerated.
23 He's not going to hurt anybody. He's not interested in
24 hurting anybody. He's never wanted to be part of protests,
25 or anything like that. We've talked -- we talked about that

1 in the past. And he says he didn't want to do that, because
2 people get out of control. And he's always been good and
3 helpful to us. He's always been good and helpful to his
4 parents. And he would never have left the state in the first
5 place, if he had not been concerned for the safety of his
6 father and stepmother.

7 And I just beg that you would not look at him through
8 hatred for whatever his political beliefs had been. And I
9 say "had been," because Kaleb is not a violent, mean person.
10 I love Kaleb. He's been so good to all of our family. He
11 cares about his family. And he just wants to be a productive
12 member of society. And isn't that what he's supposed to be
13 learning from this, is not -- not to do the things that got
14 him in trouble?

15 But Kaleb had never been in trouble before this time. So
16 he certainly does not want to do that again. This is already
17 going to affect his life forever, because things that are on
18 the Internet, the news media, the things that they've said;
19 they'll always be there. So he has paid. He has paid big
20 time. And he's paid big time for what is happening in his
21 life.

22 Anyway, imprisoning him will just be a burden on the
23 prison system, that is just not necessary. He can be out
24 there. He can be paying his own way, instead of you all
25 paying for him. So I just ask that you would just consider

1 that.

2 And I don't know if it makes any difference, but I would
3 ask that, if possible, if he has to stay and spend some
4 additional time, that perhaps he could consider requesting
5 that he might be incarcerated in a facility in Arizona, or
6 near there, which is where my husband and I live. That we
7 could be a support and encouragement to him, and certainly
8 when he would be released, we could be there for him and help
9 him get started in his new life.

10 He's not a person that you need to be worried about.
11 Kaleb is a good man, who was a young man who made some poor
12 decisions. But he's not someone that you need to be afraid
13 of. And I just thank you for letting me speak.

14 And love you, Kaleb.

15 THE COURT: All right. Let me hear from the
16 government.

17 MR. WOODS: Your Honor, one of the great harms to
18 emerge from this pandemic is the perpetual state of unease
19 that so many people feel throughout their day. All of the
20 decisions that are intertwined with the question of: Is it
21 safe? Is it safe to go back to commuting on the bus? Is it
22 safe to send my kids to school? Is it safe for me to be at
23 work?

24 What's important to remember is that perpetual state of
25 unease is something that countless Americans have felt before

1 the pandemic, and through today, because of the color of
2 their skin, because of their religion, because of their
3 national origin, because of some other protected class. It
4 is the great tragedy of this country that some 250 years in,
5 so many Americans have that feeling of unease.

6 And if that is the great tragedy of this country, the
7 greatest sin is the people who exploit that, the people who
8 target that, the people who seek to transform that unease
9 into fear and into terror. And that is what Kaleb Cole did
10 in this case. That is who he is. That was his identity, his
11 life's work to this point. Hate. Targeting people to
12 instill terror.

13 And, Your Honor, it worked. That is the tragic thing
14 about this case. It worked. The court heard from the
15 victims in this case, and those stories were hard to hear.
16 Mala Blomquist discovering that poster taped to her
17 daughter's bedroom window. Hilary Bernstein, coming back
18 late at night after visiting her grandchild, the widower who
19 lived alone, finding that message with the swastika and the
20 message, "You are being watched in your home."

21 Chris Ingalls, the steps he took to protect his family.
22 Veronica Cintron, leaving the profession of a journalist, in
23 part because of what happened in this case. Dave Rosenbaum,
24 clutching his daughter -- his daughter -- while making
25 pancakes on that weekend morning, because he saw someone at

1 the front door, who turned out to be a deliveryman. Those
2 wounds are not easy to heal. They are deep. They are a harm
3 that is very hard to quantify. And it is a harm that will
4 extend well past today in this case.

5 You know, the jury heard a sanitized version of this case,
6 but the court has the bigger picture. So when Miri Cypers
7 discovers that poster, and she sees the man in the skull mask
8 holding that Molotov cocktail outside a home, and when she
9 sees her name, her address at the bottom of that poster, and
10 she sees that radiation shield, she knows what that means.
11 She knows, because she's the director of the ADL. Her work,
12 her mission, has been, in part, this group. She knows that
13 group has committed murder. She knows that group embraces,
14 promotes, advocates violence against Jews and people of
15 color. She knows that. And that is what he intended.

16 Your Honor, in fashioning the sentence in this case, I ask
17 you to keep in mind three different things. First, Kaleb
18 Cole is different. He is head and shoulders apart. He is
19 apples and oranges from the other defendants who have
20 appeared before this court. The court saw Cameron Shea. He
21 stood right where I was standing. He was trembling. He was
22 scared. And he looked back into that gallery and he
23 apologized. He accepted responsibility for what he did.
24 Kaleb Cole --

25 THE COURT: I might add that he got a different

1 sentence because of that, than he would have gotten
2 otherwise.

3 MR. WOODS: And Kaleb Cole has not done that. His
4 words -- this case, this trial, having heard those victims on
5 the stand, in tears -- his words: This is a persecution of
6 him.

7 And the second thing that sets him apart from Cameron
8 Shea, that sets him apart from the other defendants, is the
9 specter of violence. Now, Your Honor, I can't tell you with
10 assurance, I can't tell you with assurance that at some point
11 Kaleb Cole was going to hurt somebody physically. But I can
12 tell you this: Number one, he had an arsenal of weapons.
13 And when they were seized from him, he fled. He talked about
14 getting more weapons. Another weapon was found in his house
15 during the search; an assault rifle. And he talked about
16 hiding them from law enforcement.

17 And more importantly, he embraced, as the person partly
18 responsible, largely responsible for the promotional videos,
19 for the brand of Atomwaffen, he embraced the violent messages
20 of this group. The race war now. The images of men in
21 combat training, shooting weapons, screaming racial epithets.
22 That was him. And he embraced that. And he promoted that.
23 And he deserves to be punished for that. Because when Miri
24 Cypers, Hilary Bernstein, Chris Ingalls, when they open those
25 posters, they know, they feel what that group had been

1 responsible for. And that was the intent in this case.

2 The second thing this court should consider is the
3 pernicious harm in targeting people to make them feel unsafe.
4 Your Honor, we stand before you as prosecutors with all sorts
5 of cases, drug cases, fraud cases, where this court gives out
6 sentences greater than the one we are recommending today.
7 And in those cases, although the harms are serious, there is
8 not the intent to make people feel unsafe. The drug dealer
9 doesn't want his customers to die. They might, but that's
10 not what he wants. The fraud defendant doesn't want his
11 victims to go broke, he just wants their money. Kaleb Cole
12 wanted people to feel unsafe, to feel terror. And that is a
13 harm that is, again, difficult to quantify, and should be
14 punished.

15 And the third thing I'd ask this court to consider is the
16 assault on the press. Your Honor, we live in a time where
17 our institutions are under attack, whether it be the criminal
18 justice system, the court, but most importantly the press.
19 And those institutions are not perfect. There is reform to
20 be done. The people in those institutions are not perfect.
21 But when there is an assault on journalists, on advocates who
22 seek to expose the truth, to seek to expose the hate in our
23 society, and when there's an assault on that, that is an
24 assault on the very fabric of our democracy.

25 Your Honor, the last thing I want to say is this: We are

1 here today in this sentencing because of the courage of the
2 victims in this case. It was not easy for them to walk into
3 this courtroom and stand up to this man. It was not easy,
4 and they did it. And their courage, their fortitude and
5 their strength was a reminder to me of why I became a
6 prosecutor.

7 Our recommendation is 87 months.

8 THE COURT: All right. Mr. Wilkinson, what's your
9 role in these proceedings?

10 MR. WILKINSON: Simply to admire Mr. Woods, sir.

11 THE COURT: Well, I want to hear what you have to
12 say.

13 MR. WILKINSON: Your Honor, coming up with a
14 sentencing recommendation is very much a team effort, and I
15 wholeheartedly embrace what Mr. Woods has said. I do believe
16 that this is a case about violence, and it is a case about
17 deliberately terrifying other human beings. And that was
18 this person's stock and trade. That was why Atomwaffen
19 selected him to be their leader. It was because he was good
20 at identifying symbols, whether it's a swastika, whether it's
21 death topics, he knew what buttons to push. That was why he
22 ascended to the top of Atomwaffen, and why he was selected
23 for this mission. And that is what makes him different from
24 every other defendant in this case. And that's the quality
25 that I think requires a sentence consistent with the

1 government's recommendation.

2 THE COURT: All right.

3 Anything else?

4 MR. WOODS: No, Your Honor. Thank you.

5 Actually, Your Honor, I'm sorry, some of the victims would
6 like to address the court.

7 THE COURT: That's fine.

8 MR. ROSENBAUM: Do you mind if I leave my mask on?

9 THE COURT: That's fine.

10 MR. ROSENBAUM: Your Honor, thank you for the
11 opportunity to address the court today. This is now the
12 third time you've heard from me as to how these heinous
13 crimes have impacted my life, and will continue to impact my
14 family long into the future.

15 I will be respectful of the court's time and not go into
16 that all, again. But I want to share a recent example that's
17 illustrative of the impact. The other day I was up early,
18 and one of external security lights, motion detectors was
19 triggered by some motion in the backward. When I took a
20 look, I was relieved to see there was only a family of
21 raccoons tearing up the yard, and not someone sticking a
22 knife through a doll's head and sticking it to a tree. As
23 you remember, Mr. Cole was talking about that act of terror
24 and intimidation with great adoration, not to mention someone
25 standing with a Molotov cocktail ready to throw it into one

1 of my children's bedrooms.

2 Your Honor, when I first appeared before the court for
3 Mr. Shea's sentencing, I believe everyone in the room had
4 some apprehension about the proceedings. It was apparent
5 Mr. Shea recognized what he did was wrong. He felt bad, and
6 clearly regretted his actions. And despite heartfelt empathy
7 for the consequences of his actions, and his plot, which as
8 we know was orchestrated by Mr. Cole, still, actions have
9 consequences, and his sentence was appropriate and necessary.

10 I don't feel any of those mixed emotions today.
11 Throughout these proceedings, and even in the filings before
12 the court today regarding sentencing, the defendant has
13 displayed no regret or empathy, no concern for his victims,
14 no resolve to change his hateful view of the world.

15 Even if the defense's claim that Mr. Cole did not intend
16 to terrorize is true -- sorry, intend to terrorize my family
17 is true, they could have, at minimum, offered some sort of
18 apology, or expressed some sort of remorse, because his
19 actions had unintended consequences. Instead, despite
20 hearing the impact this crime had on his victims, we continue
21 to hear the refrain of: This isn't that big of a deal. At
22 best, it's tone deaf and offensive. At worst, it shows the
23 defendant is proud of his role.

24 Nowhere in any of the filings before you today will you
25 find any indication that Mr. Cole is remotely sorry for the

1 outcome of his actions. But you will see multiple times he
2 has a desire to move on, or put this behind him. I don't
3 believe a lenient sentence is appropriate to his victims who
4 simply won't be able to move on. Our society cannot allow
5 these people to commit these heinous crimes and show no
6 remorse.

7 Fortunately, in our justice system, regardless of the
8 perpetrator's ability to empathize or desire to apologize,
9 actions do have consequences. I respectfully ask that you
10 sentence Mr. Cole to the longest term that you feel is
11 appropriate.

12 THE COURT: All right. Thank you.

13 MS. CYPERS: Good morning. Thank you for the
14 opportunity to address the court today. As you know, my name
15 is Miri Cypers, and I serve as the regional director for the
16 Anti-Defamation League's Pacific Northwest office. I'm here
17 today to share, again, my experience of being targeted by the
18 defendant and his associates, in January 2020.

19 I was with my family and received a call from the FBI
20 asking me to set up a meeting, when I returned to Seattle
21 from vacation. When we met, the FBI informed me that a
22 member of Atomwaffen planned to visit my home to drop off
23 threatening propaganda. As a professional staff member of
24 the ADL, I work to track and expose domestic extremism, and I
25 know that spreading hateful propaganda is a tactic used to

1 target communities vulnerable to hate.

2 I also had heard of the group Atomwaffen before, when
3 colleagues described this group as a violent neo-Nazi
4 organization. I was immediately worried for my safety, and
5 the safety of my family. Without hesitation, my husband and
6 I decided to leave our home the night of the intended visit.
7 And I'll never forget that long Saturday morning, looking out
8 my front window, worried they would arrive, moving my
9 daughter's strollers and toys from our front yard, so they
10 wouldn't know that we had a child. We spent that night at
11 the hotel, and were worried to tell even our closest family
12 members what was taking place, because we didn't want to
13 cause them fear.

14 Although no visit occurred that night, the experience had
15 consequences for me and my family, constantly looking over
16 our shoulders. We also installed a comprehensive home
17 security system.

18 Weeks later, we opened our mail and saw a terrifying image
19 of a skeleton throwing a Molotov cocktail inside my home,
20 with the intent to burn it to the ground. The letter said my
21 first and last name, and said that the sender's patience had
22 had its limits, and I had been visited by my local neo-Nazis.

23 This threatening letter felt deeply personal. As a Jewish
24 leader with family members who survived the Holocaust, I know
25 what it means to be visited by your local Nazis. As a mom

1 with two now young children, I saw this as a death threat.

2 Although this threat instilled fear within me, it will not
3 silence me, and that's why I'm here today, to continue
4 shining a bright light on hate and speaking out against the
5 normalization of threats and violence. Just as Mr. Cole said
6 in his letter to his victims, that actions have consequences,
7 I believe firmly that attempts to threaten and harm
8 individuals in our community must have consequences as well.
9 Thank you so much for your time.

10 THE COURT: Yes.

11 MR. INGALLS: Thank you, Your Honor. Chris Ingalls.

12 You know, Kaleb Cole would tell you that he is a political
13 prisoner. But you're not, Kaleb. You've experienced, in
14 your young life, the full force of American journalism and
15 American criminal justice, and you've done it before a judge
16 that sat on that bench for decades, with the most highest
17 level of prosecution team that we have in the United States
18 of America, and with the A-team of law enforcement, the
19 people who are the best and brightest, and with defense
20 attorneys who have done an extremely capable job in your
21 defense; and this is the verdict that we have today.

22 Your Honor, journalists before me came and reported on
23 Kaleb Cole and Atomwaffen, because they were doing their job
24 of telling readers and viewers what was happening in American
25 society and the alarming rise of hate in this country,

1 outward hate in this country, including through Atomwaffen.
2 And that's what we do.

3 And I would remind the court that I was targeted, because
4 I performed the most basic function of journalism. I went to
5 Kaleb's house, the only place I knew where I could try to
6 reach him, to get his side of the story. He would call his
7 response to that -- harassment is what he would call it.
8 What happened next, which actually stepped into the world of
9 a criminal act, which is what we're here for today. It's
10 journalism, Your Honor. And I ask the court to sentence
11 Kaleb Cole for his attack on journalism.

12 The other thing I want to admit to, Your Honor, is that I
13 was fairly clueless about the extent of the harm that Kaleb
14 Cole did, until we had a trial in this courtroom, and I met
15 some of the victims, and I better understood the depth of
16 what he did to them, which people before me have told you
17 very eloquently.

18 But one thing stands in my mind, Your Honor, that when we
19 sat over there on the last day of trial, and I sat next to a
20 victim who testified, and then came in to hear the jury's
21 verdict, and I fully understood what this crime meant to the
22 Jewish people, and the black and brown people who were
23 victims. She couldn't turn around to this side of the court
24 to face that guy. She didn't want to look this way. And,
25 you know, that's exactly what he wants. He wants us all to

1 fear him. And when he demanded a trial, as was his right,
2 that's exactly what he got all over again.

3 So what I'm asking, Your Honor, is the court sentence
4 Kaleb Cole to the prosecutor's recommendation. Thank you.

5 THE COURT: All right.

6 MS. BERNSTEIN: Your Honor, I'm speaking today as a
7 victim of Kaleb Cole's clear intent and unambiguous actions.
8 I received the ugly and fear-inducing poster, which indicated
9 that the perpetrators, self-identified on the poster as
10 neo-Nazis, are watching you and know where you live. I am
11 Jewish. I am a widow, and I live alone.

12 I am still negatively impacted by the fact that Mr. Cole
13 and his followers know my name and my address. And that
14 cannot be undone. That cannot be undone.

15 But what can be done by the court today is to impose the
16 maximum sentence Mr. Cole can receive, before he returns to
17 society. The maximum length of time before Mr. Cole will
18 again be free to act on hate-filled ideology, and to
19 negatively influence other impressionable people to act as
20 well.

21 Although the defense claims Mr. Cole had no intention of
22 harming anyone, he absolutely knew that he could inflict
23 harm, utilizing the threat of violence, threats which do harm
24 victims. I can attest to that. My sense of safety in my own
25 home has been eroded, as a result of Mr. Cole's intentions

1 and actions. I had to install an expensive security system
2 in order to sleep at night, and to assure my adult children
3 that I am safe in my own home.

4 Mr. Cole claims he is not the leader of Atomwaffen. The
5 facts and his history of behavior as the leader of Atomwaffen
6 over many years indicate otherwise. He has recruited and
7 influenced many others, who followed him both in person and
8 online. He hides behind claims of being young. His age has
9 not prevented him from encouraging violence.

10 Unlike the other co-conspirators who each pled guilty to
11 one count, Mr. Cole was defiant and insisted upon going to
12 trial. The jury unanimously found him guilty of all five
13 counts against him. That was the strongest statement they
14 could make as a jury. Today the court needs to make the
15 strongest case that it can make as well, the strongest
16 statement that it can make as well.

17 Mr. Cole has taken no responsibility for his actions, for
18 his leadership, or for his participation, but instead blames
19 another defendant for this whole situation. The court must
20 demonstrate Mr. Cole's responsibility to him, with a maximum
21 sentence. There is no other way to indicate to him and to
22 others the seriousness of his actions. I ask that you make
23 that statement to him.

24 Thank you.

25 THE COURT: All right.

1 MR. WOODS: Nothing further, Your Honor.

2 THE COURT: One thing that is left unaddressed is
3 restitution. Is there a claim for restitution?

4 MR. WOODS: Although you've heard, Your Honor, that
5 the victims did suffer out-of-pocket losses, we are not
6 seeking restitution. We did confer with them.

7 THE COURT: All right. Okay.

8 Regarding the objections to the presentence report, having
9 presided over the trial and considering the evidence at
10 trial, I find, by a preponderance of the evidence, that the
11 objections must be overruled.

12 I find the total offense level is 27, criminal history
13 category is 1, which gives a guideline range of 70 to
14 87 months.

15 The sentence I'm imposing is based upon the following
16 factors: The defendant's role in the offense, as a co-leader
17 of the conspiracy; the nature and extent of the weapons
18 seized; the defendant's lack of remorse, especially when
19 compared to the remorse shown by Mr. Shea, and the defendant
20 Dieppe, which is a major factor explaining the difference in
21 the sentences I imposed upon those defendants; the
22 defendant's role in the preparation of the offending posters;
23 the defendant's lack of criminal history, and his relative
24 youth; the defendant's glorification of Nazi Germany; and the
25 remaining factors of 18 U.S.C., Section 3553.

1 Mr. Cole's crime is one based on hate, a generalized hate
2 for others, and a particular hate for any who threaten his
3 world view, a view driven by entitlement and the failed
4 notion, or the discredited notion of a superior race.

5 Mr. Cole, who operated free from social consequence, under
6 the cloak of digital anonymity, was indignant that
7 journalists and members of the Jewish community had the
8 audacity to publicly reveal his terroristic activism; so he
9 took great pains to silence them, through threats and
10 intimidation. This is something, as a society, we cannot
11 tolerate, particularly today.

12 Journalists, who shed light on the evils that some would
13 prefer to keep hidden, are the true heroes of our nation and
14 our world. Now, more than ever, for us to function as a
15 democratic society, we need reliable, truthful journalism.
16 And we must do everything in our power to ensure that
17 journalists, and others seeking the truth, can do this work,
18 free from intimidation by hate-filled individuals, and
19 hate-filled organizations, and the false claim of fake news.

20 I find Mr. Cole's clear and unequivocal hate for members
21 of the Jewish community particularly odious. This hatred is
22 incontestably wrong on so many levels.

23 Just picture a world of Mr. Cole's preference, where Nazi
24 Germany did, in fact, attempt to wipe out the Jewish people
25 from this planet. Besides the obvious human toll, imagine

1 the immeasurable devastation to the collective good. This
2 would be a world without contributions of Albert Einstein,
3 Carl Sagan, Ruth Bader Ginsburg, Milton Friedman, Carl
4 Bernstein; and without the works of Steven Spielberg, Paul
5 Newman -- yes, Paul Newman -- Bob Dylan, Barbara Streisand,
6 Stanley Kubrick, Annie Lebowitz and Arthur Miller, to just
7 name a few. We are richer, in the world, because of the
8 contributions from these and many other Jewish Americans.

9 For reasons I truly do not understand, Mr. Cole and other
10 like-minded individuals are threatened by the Jewish
11 community. So in an effort to push back, they attempt to
12 threaten and terrorize prominent Jews, with no concern for
13 the consequences of their actions.

14 Today's hearing establishes just what the consequences are
15 for this type of social behavior.

16 I'm imposing a period of confinement of 84 months, three
17 years of supervised release, subject to standard conditions,
18 together with those additional conditions set forth in the
19 presentence report. I'm waiving a fine, due to the
20 defendant's financial condition. He'll be required to pay
21 the mandatory assessment of \$500.

22 Mr. Cole, you have a right to appeal this sentence. If
23 you wish to file a notice of appeal, it must be filed within
24 14 days of today. If you wish the assistance of an attorney
25 in filing a notice of appeal and cannot afford one, one will

1 be appointed to assist you, if you so request. If you wish
2 the assistance of the clerk in filing a notice of appeal, he
3 will assist you, if you so request.

4 And, counsel, include a recommendation of confinement in
5 Arizona.

6 MR. BLACK: Your Honor, we'd specifically request FCI
7 Phoenix.

8 THE COURT: That's fine.

9 MR. WOODS: Your Honor, may I approach Mr. Black with
10 the judgment?

11 THE COURT: Yes.

12 MR. WOODS: Thank you.

13 MR. BLACK: Your Honor, I've reviewed the proposed
14 judgment and have no objection to the form.

15 MR. WOODS: May I approach?

16 THE COURT: Yes.

17 Thank you, counsel. We'll be in recess.

18 (Adjourned.)

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C E R T I F I C A T E

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

/s/ Debbie Zurn

DEBBIE ZURN
COURT REPORTER

1 to leave it in. All right. Well, it's a few minutes before
2 9:00, so we'll instruct at 9:00. How long is the government
3 going to take to argue?

4 MR. WOODS: I would say it's between 30 and
5 35 minutes, Your Honor.

6 THE COURT: How about you folks?

7 MR. BLACK: Your Honor, I would say probably between
8 20 and 30 minutes.

9 THE COURT: I'm not going to limit you, I just wanted
10 to get a feel for how long it's going to take. All right.
11 We'll take a recess.

12 (Recess.)

13 MR. WOODS: One quick thing. I wondered if I might
14 go and change out the posters during my closing.

15 MR. BLACK: One thing from the defense, we raise a
16 Rule 29 motion.

17 THE COURT: Oh, yes, right. The motion is denied.
18 Bring in the jury.

19 (The following occurred in the presence of the jury.)

20 THE COURT: So, folks, at this time, I'm going to
21 read the court's instructions on the law. Copies of these
22 instructions will be available for each of you in the jury
23 room, so you don't need to take notes. But do pay careful
24 attention to what I say.

25 Members of the jury, now that you've heard all the

FINAL INSTRUCTION NO. 15
CONSPIRACY

1
2
3
4 The defendant is charged in Count 1 of the superseding indictment with
5 Conspiracy to Commit Stalking, to Mail Threatening Communications, and to Interfere
6 with Federally Protected Activities, in violation of Section 371 of Title 18 of the United
7 States Code. In order for the defendant to be found guilty of Conspiracy, the Government
8 must prove each of the following elements beyond a reasonable doubt:

9 *First*, beginning no later than November 2019, and ending on or about February
10 26, 2020, there was an agreement between two or more persons to commit one or more of
11 the following crimes: Stalking, Mailing Threatening Communications, or Interference
12 with Federally-Protected Activities;

13 *Second*, the defendant became a member of the conspiracy knowing of at least one
14 of its objects and intending to help accomplish it; and

15 *Third*, one of the members of the conspiracy performed at least one overt act for
16 the purpose of carrying out the conspiracy.

17 A conspiracy is a kind of criminal partnership—an agreement of two or more
18 persons to commit one or more crimes. The crime of conspiracy is the agreement to do
19 something unlawful; it does not matter whether the crime agreed upon was committed.

20 For a conspiracy to have existed, it is not necessary that the conspirators made a
21 formal agreement or that they agreed on every detail of the conspiracy. It is not enough,
22 however, that they simply met, discussed matters of common interest, acted in similar
23 ways, or perhaps helped one another. You must find that there was a plan to commit at
24 least one of the crimes alleged in the indictment as an object of the conspiracy with all of
25 you agreeing as to the particular crime which the conspirators agreed to commit.

26 One becomes a member of a conspiracy by willfully participating in the unlawful
plan with the intent to advance or further some object or purpose of the conspiracy, even
though the person does not have full knowledge of all the details of the conspiracy.

Furthermore, one who willfully joins an existing conspiracy is as responsible for it as the

1 originators. On the other hand, one who has no knowledge of a conspiracy, but happens
2 to act in a way which furthers some object or purpose of the conspiracy, does not thereby
3 become a conspirator. Similarly, a person does not become a conspirator merely by
4 associating with one or more persons who are conspirators, nor merely by knowing that a
5 conspiracy exists.

6 An overt act does not itself have to be unlawful. A lawful act may be an element
7 of a conspiracy if it was done for the purpose of carrying out the conspiracy. The
8 Government is not required to prove that the defendant personally did one of the overt
9 acts.

FINAL INSTRUCTION NO. 18
STALKING

Count 1 of the Superseding Indictment alleges the defendant conspired to commit the crime of Stalking in violation of Section 2261A of Title 18 of the United States Code, in addition to other crimes. The elements of Stalking are as follows:

First, the defendant used the mail, any interactive computer service or electronic communication system of interstate or foreign commerce, or any other facility of interstate or foreign commerce;

Second, the defendant used the mail, interactive computer service or electronic communication system or other facility of interstate or foreign commerce to engage in a course of conduct undertaken with intent to kill, injure, harass, or intimidate another person by means of a Threat, as defined below in these instructions;

Third, the defendant’s course of conduct placed another person in reasonable fear of death or serious bodily injury, or caused, attempted to cause or would reasonably be expected to cause substantial emotional distress to the other person.

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FINAL INSTRUCTION NO. 20

THREAT

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4 A “Threat,” as used throughout these Instructions, is a serious statement
5 expressing an intention to injure any person, which, when considering all the
6 circumstances, the reasonable observer would interpret as a serious expression of an
7 intention to inflict bodily harm on any person, as distinguished from hyperbole, idle or
8 careless talk, exaggeration, or something said in a joking manner. A Threat can be
9 conditioned on whether the threatened person does or does not take a certain action. The
10 speaker must make the statement with the intent to communicate a Threat.

11 In determining whether the defendant’s statement was made with the intent to
12 communicate a Threat you may consider all the circumstances surrounding the making of
13 the statement.
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1 FINAL INSTRUCTION NO. 21
2 MAILING THREATENING COMMUNICATIONS

3
4 The defendant is charged in Counts 2–4 of the Superseding Indictment with
5 Mailing Threatening Communications in violation of Section 876(c) of Title 18 of the
6 United States Code. In order for the defendant to be found guilty of that charge, the
7 Government must prove each of the following elements beyond a reasonable doubt:

8 *First*, the defendant knowingly mailed or arranged to have mailed by the United
9 States Postal Service a letter or other communication addressed to a natural person
10 containing a Threat, as defined in these Instructions, to injure any person; and

11 *Second*, such letter or other communication was transmitted with the intent to
12 issue a Threat, as defined in these Instructions.

13 The Government need not prove that the defendant intended to carry out the
14 Threat.

FINAL INSTRUCTION NO. 22
INTERFERENCE WITH FEDERALLY-PROTECTED ACTIVITY

The defendant is charged in Count 5 of the Superseding Indictment with Interference with Federally-Protected Activity in violation of Section 245(b) of Title 18 of the United States Code. In order for the defendant to be found guilty of that charge, the Government must prove each of the following elements beyond a reasonable doubt:

First, the defendant acted by force or made a Threat, as defined in these Instructions, of force;

Second, the defendant willfully injured, intimidated, or interfered, or attempted to injure, intimidate, or interfere with, M.C., a Jewish person associated with the Anti-Defamation League;

Third, the defendant acted because of the religion of M.C., that is, because M.C. was Jewish;

Fourth, the defendant intended to interfere with M.C.’s enjoyment of employment or any perquisite thereof by a private employer *and*

Fifth, the defendant threatened to use a dangerous weapon, explosive or fire in connection with the offense.

FINAL INSTRUCTION NO. 26

SUBSTANTIVE OFFENSE COMMITTED BY CO-CONSPIRATOR

Each member of a conspiracy is responsible for the actions of the other conspirators performed during the course and in furtherance of the conspiracy. If one member of a conspiracy commits a crime in furtherance of a conspiracy, the other members have also, under the law, committed that crime.

Therefore, you may find the defendant guilty of Mailing Threatening Communications as charged in Counts 2-4 of the superseding indictment or Interfering with Federally-Protected Activity as charged in Count 5 of the superseding indictment if the Government has proved each of the following elements beyond a reasonable doubt:

First, a person committed the crime of Mailing Threatening Communications as charged in Counts 2-4 of the superseding indictment or Interfering with Federally-Protected Activity as charged in Count 5 of the superseding indictment;

Second, the person who committed the crime was a member of the conspiracy charged in Count 1 of the superseding indictment;

Third, the person committed the crime in furtherance of the conspiracy;

Fourth, the defendant was a member of the same conspiracy at the time the offense charged in Count 2, 3, 4 or 5 was committed; and

Fifth, the offense fell within the scope of the unlawful agreement and could reasonably have been foreseen to be a necessary or natural consequence of the unlawful agreement.

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

KALEB COLE,

Defendant.

CASE NO. CR20-0032-JCC

ORDER

This matter comes before the Court *sua sponte*. Of the prospective jurors who appeared for the *venire* in this case, three reported that they are not vaccinated against COVID-19. In order to protect the health of the jurors, Court staff, counsel, and the parties, and to ensure the jury in this case can effectively deliberate on the evidence put before it, the Court FINDS good cause to excuse those unvaccinated jurors from the jury panel.

DATED this 27th day of September, 2021.



John C. Coughenour
UNITED STATES DISTRICT JUDGE

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

KALEB COLE,

Defendant.

CASE NO. CR20-0032-JCC

ORDER

This matter comes before the Court on Defendant Kaleb Cole’s motion to suppress and for a *Franks*¹ hearing (Dkt. No. 194). Having thoroughly considered the parties’ briefing and the relevant record, the Court finds oral argument unnecessary and hereby DENIES the motion for the reasons explained herein.

I. BACKGROUND

According to the Government, Defendant “is a high-level member and primary recruiter” for the Atomwaffen Division (“AWD”), a neo-Nazi group espousing racial violence against Jews and other minorities. (Dkt. No. 1 at 4–7.) The Government asserts by superseding indictment that, on AWD’s behalf, Defendant coordinated the creation and delivery of threatening communications to “intimidate, harass, and retaliate against” Jewish and other minority

¹ *Franks v. Delaware*, 438 U.S. 154 (1978).

reporters. (Dkt. No. 94 at 3.)

At issue is a warrant authorizing the search and seizure of evidence located in Defendant's home (Dkt. No. 194-1). It was signed by the Honorable Nancy Johnson, United States Magistrate Judge for the Southern District of Texas. (*Id.* at 2.) Defendant argues that FBI Special Agent Casey Villarreal's affidavit supporting the application for the warrant (a) failed to establish probable cause as written and (b) omitted information material to the determination of probable cause. (*See generally* Dkt. No. 194.) As a result, Defendant seeks the exclusion of evidence gathered in his home or, alternatively, a *Franks* hearing on the alleged omission regarding the informant. (*Id.*)

II. DISCUSSION

A. Motion to Suppress

The Fourth Amendment imposes several requirements for a valid search warrant. *United States v. Flores*, 802 F.3d 1028, 1045 (9th Cir. 2015). This includes a magistrate's neutral and independent finding of probable cause. *See Illinois v. Gates*, 462 U.S. 213, 239 (1983). This Court reviews such determinations with "great deference." *United States v. Hill*, 459 F.3d 966, 970 (9th Cir. 2004). So long as a "substantial basis" exists, the Court will not disrupt that determination. *United States v. McQuisten*, 795 F.2d 858, 861 (9th Cir. 1986).

To justify issuing a search warrant for a particular place, the issuing magistrate is expected to make a "practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him . . . there is a fair probability that contraband or evidence of a crime will be found." *Gates*, 462 U.S. at 238. As articulated by the Ninth Circuit: "The magistrate need only conclude that it would be reasonable to seek the evidence in the place indicated in the affidavit." *United States v. Fannin*, 817 F.2d 1379, 1382 (9th Cir. 1987). Probable cause is to be determined under the "totality of the circumstances." *Gates*, 462 U.S. at 238.

Defendant argues that, because Agent Villarreal's application failed to provide a basis

supporting his attribution of the moniker पकजबतचषथबल to Defendant, the affidavit cannot support a probable cause determination. (*Id.*) According to the affidavit, Defendant used this moniker as an alias or screen name when engaging in private chats with codefendants and others regarding AWD's planned intimidation campaign. (*See* Dkt. No. 194-1 at 17–18.)

An affiant's reliance on a nickname or moniker, without attribution, is not fatal to a probable cause determination, so long as the affidavit provides sufficient facts to find, based on the totality of the circumstances, probable cause. *Gates*, 462 U.S. at 238. And that is the case here. Judge Johnson had a substantial basis for her probable cause determination, irrespective of the agent's source for Cole's use of the पकजबतचषथबल moniker. Specifically, the affidavit established that (a) local media described AWD's attempts to organize and identified Defendant as an active AWD member, (*see* Dkt. No. 194-1 at 14–15), (b) Defendant made threatening statements about journalists to AWD members and made anti-media statements to the journalists after the Seattle Police Department served him with an Extreme Risk Protection Order, (*id.* at 15–16), (c) AWD members plotted to intimidate journalists with threatening communications, (*id.* at 17–18), and (d) the plot was actually carried out by AWD members and it targeted local journalists associated with some of the same media outlets who previously reported on Cole's activities, (*id.* at 28–32.)

Accordingly, the Court FINDS Judge Johnson's probable cause determination, based on the totality of the circumstances, has a substantial basis.

B. *Franks* Hearing

Under *Franks v. Delaware*, 438 U.S. 134 (1978), a defendant is entitled to an evidentiary hearing on the validity of a search warrant affidavit if he can make a substantial preliminary showing that (1) the affidavit contains intentionally or recklessly false statements or misleading omissions, and (2) the affidavit cannot support a finding of probable cause without the allegedly false information. *United States v. Reeves*, 210 F.3d 1041, 1044 (9th Cir. 2000). At issue here is

the affidavit's failure to disclose compensation paid to a confidential informant. (*See* Dkt. No. 194 at 8–10 (citing Dkt, No. 194-1 at 15–18).)

But a *Franks* hearing is not necessarily required when the informant's statements are corroborated through independent means. *See United States v. Hannah*, 2021 WL 3173571, slip op. at 17 (C.D. Ill. July 27, 2021) (citing *United States v. Clark*, 935 F.3d 558, 565 (7th Cir. 2019)). This is the case here. According to the affidavit, and as described above, local journalists identified Defendant as a member of AWD; in response, he made threatening comments directly to the local media and their members later received threatening communications from AWD. *See supra* Part II.A. This was all described in the affidavit and is not dependent on the informant's statements. (*See generally* Dkt. No. 194-1.)

Regardless, the FBI's longstanding relationship with the informant and the compensation it paid to him, approximately \$140,000 over a sixteen-year period, (Dkt. Nos. 194 at 2), does not impugn his credibility. If anything, it suggests that he demonstrated reliability in the past. Otherwise, it stands to reason, the FBI would have terminated its relationship. Therefore, the amount paid to the informant is not a material misleading omission. It does not provide a basis for a *Franks* hearing, and Defendant provides no other bases to do so. (*See generally* Dkt. No. 194.)

Accordingly, the Court FINDS that Defendant has not made a substantial preliminary showing that the affidavit contains a misleading omission necessitating a *Franks* hearing.

III. CONCLUSION

For the foregoing reasons, Defendant's motion to suppress and for a *Franks* hearing (Dkt. No. 194) is DENIED.

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DATED this 30th day of August, 2021.

A handwritten signature in black ink, reading "John C. Coughenour", written over a horizontal line.

John C. Coughenour
UNITED STATES DISTRICT JUDGE

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

KALEB COLE,

Defendant.

CASE NO. CR20-0032-JCC

ORDER

This matter comes before the Court on Defendant's motion to dismiss (Dkt. No. 193). Having thoroughly considered the parties' briefing and the relevant record, the Court finds oral argument unnecessary and hereby DENIES the motion for the reasons explained herein.

I. BACKGROUND

Defendant is charged by superseding indictment with one count of Conspiracy to Mail Threatening Communications and to Commit Cyberstalking, three counts of Mailing Threatening Communications, and one count of Interference with Federally Protected Activity. (Dkt. No. 94.) He has been detained pending trial since his February 26, 2020 arrest. (*See* Dkt. Nos. 27, 31.) He was arraigned and had his initial appearance on the original indictment in March 2020 and trial was originally scheduled for April 27, 2020. (*Id.*)

Beginning in March 2020, Chief Judge Martinez issued a series of General Orders suspending criminal jury trials in the Western District of Washington based on local COVID-19

conditions. *See* W.D. Wash. General Order Nos. 01-20, 02-20, 07-20, 08-20, 11-20, 13-20, 15-20, 18-20, 04-21. During this time, the Government twice moved to continue trial, citing the inability of the Court to conduct trial while the pandemic raged. (Dkt. Nos. 48, 118.)¹ The Court granted both motions and continued the trial dates some number of months. (*See* Dkt. Nos. 58, 132.) It did so based upon findings that (a) the inability to obtain an adequate spectrum of jurors representing a fair cross section of the community and (b) the inability of jurors, witnesses, counsel, and court staff to be present, in light of the need to protect the public from the risk of COVID-19 transmission, would result in a miscarriage of justice if trial were to go forward as planned. (*Id.*) The Court also excluded the amount of time through the newly proposed trial dates pursuant to the Speedy Trial Act. (*Id.*)

Based on the expanding availability of COVID-19 vaccines, the courthouse reopened for criminal jury trials in March 2021, but it did so only on a limited basis so as to assure public health. *See* W.D. Wash. General Order No. 04-21 at 2. Given this limitation, the Government again moved to continue the trial scheduled for March 22, 2021, again citing local COVID-19 conditions. (*See* Dkt. No. 154.) The Court granted that request after finding that moving forward with a trial in March 2021 would result in a miscarriage of justice. (*See* Dkt. No. 169.) The Court moved the trial to September 20, 2021 and excluded the time through this new date pursuant to the Speedy Trial Act. (*Id.*)

Defendant believes that the Court's delay in trying his case violated the Speedy Trial Act and his Sixth Amendment right to a speedy trial. (*See* Dkt. No. 193.) He moves for dismissal of the superseding indictment. (*Id.*)

¹ According to the first of the Government's motions to continue, which Defendant lodged no objection to, the pandemic impacted not just courthouse operations. It also impacted defense counsel's ability to confer with his client, fully investigate the matter, and explore all defenses. (*See* Dkt. No. 48 at 2–3.) This would have been an independent basis to find that proceeding to trial as scheduled would result in a miscarriage of justice. *See* 18 U.S.C. § 3161(h)(7).

II. DISCUSSION

A. Speedy Trial Act

The Speedy Trial Act generally requires that a defendant be brought to trial within 70 days of an initial appearance or indictment. *See* 18 U.S.C. §§ 3161(c)(1), (h). However, the Act contains various tolling periods, which include the pendency of certain motions and “any period of delay” when a court finds that the “ends of justice” served by a continuance “outweigh the best interest of the public and the defendant in a speedy trial.” 18 U.S.C. §§ 3161(h)(1), (7).

Here, the Court made contemporaneous findings supporting “ends of justice” continuances based upon the unprecedented challenges brought by the COVID-19 pandemic before a vaccine became widely available. (*See* Dkt. Nos. 58 at 1–2, 132 at 1–2, 169 at 1–2.) Defendant does not provide the Court with a basis to revisit those findings.² Moreover, the factors articulated in *U.S. v. Olsen* do not support Defendant’s position. *See* 995 F.3d 683, 692 (9th Cir. 2021).

While Defendant’s detention pending trial has been significant, he has not consistently invoked his speedy trial rights. In fact, the only time he raised an objection to a continuance was in February 2021, and he did so through the *Government’s* reporting. (*See* Dkt. No. 154 at 3.)³ Nor does Defendant assert that, while detained pending trial, he belonged to a population particularly susceptible to complications if infected with COVID-19. (*See generally* Dkt. No. 193.) In addition, the charges against Defendant are serious—hate crimes targeting Jewish and

² Defendant’s attempt to contrast the state of the COVID-19 pandemic while the courthouse was closed to the current state of the pandemic is not well taken. (*See* Dkt. No. 193 at 7.) Until recently, COVID-19 vaccines were not widely available. *See* W.D. Wash. General Order No. 10-21 at 1 (noting that “a significant majority of adults in this district have now been fully vaccinated against the novel Coronavirus”). Had the Court required prospective jurors to serve before this point, it risked impacting the health of the jurors and the fairness of the trial. While, undoubtedly, health risks associated with the COVID-19 pandemic continue, they are materially different than they were before.

³ Further, the Court notes that, according to the Government’s reporting, Defendant’s counsel indicated that, “even with the exercise of due diligence, [counsel] would not be able to try this case prior to a date in late July.” (Dkt. No. 154 at 3.)

other minority journalists. (*See* Dkt. No. 94.) There is also a reason to suspect recidivism if the indictment were dismissed. According to the affidavit supporting a search warrant, Defendant was subject to an Extreme Risk Protection Order beginning in September 2019, yet he was found riding in a vehicle holding 2,000 rounds of ammunition in November 2019, not long before his arrest on the instant charges. (Dkt. No. 194-1 at 16.) The affidavit also suggests, more generally, Defendant’s leadership in and commitment to Atomwaffen Division, an organization espousing terrorism of Jewish people and other minority groups. (*See generally* Dkt. No. 194-1.) Finally, for the reasons described above, the Court lacked the ability to safely conduct a trial until recently.

Accordingly, Defendant’s motion to dismiss, based on alleged Speedy Trial Act violations, is DENIED.

B. Sixth Amendment

“[I]t will be an unusual case in which the time limits of the Speedy Trial Act have been met but the Sixth Amendment right to a speedy trial has been violated.” *United States v. King*, 483 F.3d 969, 976 (9th Cir. 2007) (quoting *United States v. Nance*, 666 F.2d 353, 360 (9th Cir. 1982)). This is not such an instance.

In determining whether a defendant’s Sixth Amendment right to a speedy trial has been violated, courts generally consider four factors: (1) the length of the delay; (2) the reason for the delay; (3) whether, when, and how a defendant asserted his right to a speedy trial; and (4) whether a defendant was prejudiced by the delay. *Doggett v. United States*, 505 U.S. 647, 651 (1992) (citing *Barker v. Wingo*, 407 U.S. 514 (1972)). This list is not exclusive and none of the factors are controlling. *Barker*, 407 U.S. at 533. The factors are related and must be considered together, along with other relevant circumstances. *Id.*

Turning to the first two factors, the length and reason for the delay—while the delay here has been substantial, approximately 18 months, the Court must balance this factor against the reason for the delay: an unprecedented pandemic affecting public health and, resultingly, the

Court's ability to provide Defendant a fair trial. (*See* Dkt. Nos. 58 at 1–2, 132 at 1–2, 169 at 1–2.) The third factor is, at best, neutral. While Defendant never filed a waiver of his speedy trial rights, as discussed above, he also did not consistently assert those rights. *See supra* Part II.A. Finally, when considering the fourth factor, prejudice, the Court looks to: (1) preventing oppressive pretrial incarceration; (2) minimizing anxiety and concern; and (3) limiting the possibility that delay will impair the defense. *Barker*, 407 U.S. at 532. “Of these, the most serious is the last, because the inability of a defendant adequately to prepare his case skews the fairness of the entire system.” *Id.* This factor is also neutral. Defendant does not speak to any prejudice to his defense resulting from this delay. (*See generally* Dkt. No. 193.) Nor is the Court independently aware of actual prejudice Defendant has suffered. While pretrial incarceration is undeniably less than ideal and anxiety generating, this does not suggest prejudice *to one's defense*. *See Barker*, 407 U.S. at 534 (suggesting examples of prejudice might include the unavailability of a witness or a lapse in a witness's memory due to the delay).

Accordingly, Defendant's motion to dismiss, based on alleged Sixth Amendment violations, is DENIED.

III. CONCLUSION

For the foregoing reasons, the Court DENIES the motion to dismiss (Dkt. No. 193).

DATED this 30th day of August 2021.



John C. Coughenour
UNITED STATES DISTRICT JUDGE

THE HONORABLE JOHN C. COUGHENOUR

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

CAMERON SHEA, *et al.*,

Defendants.

CASE NO. CR20-0032-JCC

ORDER

This matter comes before the Court on the Government’s motion to continue trial (Dkt. No. 154), which the Court understands Defendant Kaleb Cole opposes. Having thoroughly considered the briefing and the relevant record, the Court hereby GRANTS the motion for the reasons explained herein.

Trial in this matter was scheduled for March 22, 2021, (*see* Dkt. No. 132), which the Court vacated, (*see* Dkt. No. 163), based upon the COVID-19 pandemic’s continued impact on the Court’s operations. (*See* Dkt. No. 154 at 1–3; W.D. Wash. General Orders 01-20, 02-20, 07-20, 08-20, 11-20, 13-20, 15-20, 18-20 each of which the Court incorporates by reference.) The Court since learned that the parties are available for a September 20, 2021 trial date. A trial prior to this date would not serve the ends of justice as it is likely to be impacted by the continuing effect of the COVID-19 pandemic. Specifically, the pandemic has made it difficult for the Court to obtain an adequate spectrum of jurors to represent a fair cross section of the community, and

1 public health guidance has impacted the ability of jurors, witnesses, counsel, and Court staff to
2 be present in the courtroom. (*See generally id.*) Moreover, when the Court does resume in-person
3 trials, the Court will be limited by public health measures, such as limits on the number of people
4 in the courthouse and courtrooms, which will limit the Court's ability to try cases as efficiently
5 as it would absent a pandemic. (*See* W.D. Wash. General Order 04-21).

6 Having thoroughly considered the relevant record, the Court FINDS that the ends of
7 justice served by granting a continuance to September 20, 2021 outweigh the best interests of
8 Defendants and the public to a speedy trial. *See* 18 U.S.C. § 3161(h)(7)(A). The reasons for this
9 finding are:

- 10 1. The COVID-19 pandemic has made it difficult for the Court to obtain an adequate
11 spectrum of jurors to represent a fair cross section of the community, which would
12 likely make proceeding on the current case schedule impossible or would result in a
13 miscarriage of justice. *See* 18 U.S.C. § 3161(h)(7)(B)(i).
- 14 2. Public health guidance has impacted the ability of jurors, witnesses, counsel, and
15 Court staff to be present in the courtroom. Therefore, proceeding with the current trial
16 date would likely be impossible or would result in a miscarriage of justice. *See* 18
17 U.S.C. § 3161(h)(7)(B)(i).

18 Accordingly, the Court ORDERS:

- 19 1. The status conference scheduled for March 24, 2021 at 9 a.m. is STRICKEN.
- 20 2. The trial date in this matter is SET to September 20, 2021 at 9:30 a.m.
- 21 3. Pretrial motions are due August 13, 2021.
- 22 4. The period from the date of the prior order striking the trial date and setting the matter
23 for status conference, (Dkt. No. 163), February 16, 2021, through the new trial date,
24 September 20, 2021, is an excludable time period under 18 U.S.C. § 3161(h)(7)(A).

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1 DATED this 24th day of March 2021.

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5 John C. Coughenour
6 UNITED STATES DISTRICT JUDGE
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THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

CAMERON SHEA, *et al.*,

Defendants.

CASE NO. CR20-0032-JCC

ORDER

This matter comes before the Court on the Government's motion to continue trial (Dkt. No. 154). Defendants Kaleb Cole and Cameron Shea are charged by superseding indictment with a variety of crimes stemming from their alleged plot to intimidate journalists, Jewish people, and people of color, as part of their alleged involvement in Atomwaffen. (Dkt. No. 94.) Trial is currently scheduled for March 22, 2021. (Dkt. No. 132.) The Government moves to continue the trial based upon the impact of the ongoing COVID-19 pandemic. (Dkt. No. 154 at 2–3.) Cameron Shea, who does not oppose, has filed a speedy trial waiver through August 31, 2021. (Dkt. No. 162.) Kaleb Cole objects to a continuance. (Dkt. No. 154 at 3.)

The Government seeks a continuance because the COVID-19 pandemic makes it unlikely that it will be possible to proceed with a jury trial on March 22, 2021. (*Id.* at 2–3.) The Government cites findings from General Order 18-20, which are incorporated by reference herein. (*See id.* at 2–3 (citing W.D. Wash., General Order No. 18-20 at 2 (Dec. 30, 2020).) The

Government also notes that multiple witnesses in this matter would need to travel from a variety of states with significant COVID-19 infection rates and that a wider potential jury pool may be required in this matter due to the publicity associated with this case. (*Id.* at 3.)

Having thoroughly considered the motion, the relevant record, and General Orders 01-20, 02-20, 03-20, 04-20, 07-20, 08-20, 13-20, 15-20, and 18-20 of the United States District Court for the Western District of Washington, addressing measures to reduce the spread and health risks from COVID-19, which are incorporated herein by reference, the Court makes the following findings:

1. In light of the recommendations made by the Centers for Disease Control and Prevention (CDC) and Public Health for Seattle and King County regarding social distancing measures required to stop the spread of this disease, it is not possible to proceed with trial on the current case schedule. *See* 18 U.S.C. § 3161(h)(7)(B)(i).
2. Because of the recommendations that the many individuals at higher risk of contracting this disease avoid large groups of people, and because vaccination of those groups is not complete, it would be difficult, if not impossible, on the current case schedule and in the current circumstances to obtain a jury pool that would represent a fair cross section of the community. *See* 18 U.S.C. § 3161(h)(7)(B)(i). Based on the recommendations, it would also be medically inadvisable to do so.
3. As a result, the failure to continue the trial date in this case would likely result in a miscarriage of justice. *See* 18 U.S.C. § 3161(h)(7)(B)(i).
4. The ends of justice served by continuing the trial in this case outweigh the best interest of the public and Defendant in a speedier trial. 18 U.S.C. § 3161(h)(7)(A).

Accordingly, the Court ORDERS:

1. The March 22, 2021 trial date and the February 22, 2021 pretrial motions deadline are hereby STRICKEN;
2. The parties are ORDERED to appear for a remote status conference in this matter on

March 24, 2021 at 9 a.m. to propose a new trial date.

3. The period of time between the date of this Order and the date of the status conference is an excludable time period under 18 U.S.C. § 3161(h)(7)(A).

DATED this 16th day of February 2021.

A handwritten signature in black ink, reading "John C. Coughenour". The signature is written in a cursive style with a horizontal line underneath it.

John C. Coughenour
UNITED STATES DISTRICT JUDGE

THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

CAMERON SHEA, *et al.*,

Defendants.

CASE NO. CR20-0032-JCC

ORDER

This matter comes before the Court on the Government's second motion to continue the trial date (Dkt. No. 118). On August 5, 2020, Defendants were charged by superseding indictment with conspiracy to mail threatening communications and to commit cyberstalking; conspiracy to mail threatening communications, to commit cyberstalking, and to interfere with federally protected activities; mailing threatening communications; and interference with federally protected activity. (Dkt. No. 94.) Trial was scheduled for April 27, 2020. (*See* Dkt. Nos. 23, 27.) As a result of the COVID-19 pandemic's impact in this district, the Government moved to vacate the trial date and set a status conference to determine an appropriate trial date. (Dkt. No. 48.) The Court granted the motion, scheduled a status conference for June 2, 2020, and held that the time between the date of the Court's order and the date of the status conference was an excludable period under the Speedy Trial Act. (Dkt. No. 58.) As a result of the pandemic's continued impact in this district, the Court continued the status conference until October 20,

2020. (Dkt. Nos. 62, 87, 89, 107.)

Over the past six months, the COVID-19 pandemic has significantly impacted the Court's operations. (*See* General Orders 01-20, 02-20, 07-20, 08-20, 11-20, 13-20, 15-20 each of which the Court incorporates by reference.) Specifically, the pandemic has rendered the Court unable to obtain an adequate spectrum of jurors to represent a fair cross section of the community, and public health guidance has impacted the ability of jurors, witnesses, counsel, and Court staff to be present in the courtroom. (*See generally id.*) Recently, conditions have improved such that the Court can resume a limited number of in-person criminal jury trials at the courthouse. Chief Judge Martinez has concluded that:

[F]or the foreseeable future, it will be possible to proceed with only one in-person criminal jury trial at a time at each of the district's two courthouses. The order in which pending criminal cases will proceed to trial will be determined by the Court in consultation with the Federal Public Defender's Office and the United States Attorney's Office.

W.D. Wash. General Order 15-20 (Oct. 2, 2020) at 2. Pursuant to these provisions of General Order 15-20, the Court GRANTS the Government's motion (Dkt. No. 118) and SETS this matter for trial on March 22, 2021. Further, the Court FINDS the ends of justice served by continuing trial to this date outweigh Defendant's and the public's best interests in a speedy trial. *See* 18 U.S.C. § 3161(h)(7)(A). The reasons for this finding are:

1. The COVID-19 pandemic has rendered the Court unable to obtain an adequate spectrum of jurors to represent a fair cross section of the community, which would likely make proceeding with an earlier trial impossible or, at a minimum, would result in a miscarriage of justice. *See* 18 U.S.C. § 3161(h)(7)(B)(i).
2. Public health guidance has impacted the ability of jurors, witnesses, counsel, and Court staff to be present in the courtroom. Therefore, proceeding with an earlier trial would likely be impossible. *See* 18 U.S.C. § 3161(h)(7)(B)(i).

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Accordingly, the Court GRANTS the Government's motion (Dkt. No. 118) and ORDERS:

1. Trial in this matter is scheduled for March 22, 2021.
2. The pretrial motions deadline is February 1, 2021.
3. All pretrial filings—including trial briefs, motions in limine, proposed voir dire, proposed jury instructions, and proposed verdict forms—must be submitted no later than Monday, February 22, 2021.
4. The period from April 15, 2020, when the Court first granted a continuance based on the impact of COVID-19, until March 22, 2021, is an excludable time period under 18 U.S.C. section 3161(h)(7)(A).
5. The status conference scheduled for October 20, 2020 is VACATED.

DATED this 14th day of October 2020.

A handwritten signature in black ink, reading "John C. Coughenour", written over a horizontal line.

John C. Coughenour
UNITED STATES DISTRICT JUDGE

08/20/2020	107	<p>NOTICE OF RESCHEDULED HEARING as to Cameron Brandon Shea, Kaleb J Cole, Taylor Ashley Parker-Dipeppe, Johnny Roman Garza</p> <p>The Court, sua sponte, hereby orders the Status Conference reset from 9/15/2020 at 9:00 AM to 10/20/2020 at 10:00 AM in Courtroom 16206 before U.S. District Judge John C. Coughenour. (cc: USPO, PTS, USMO)(GT) (Entered: 08/20/2020)</p>
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07/31/2020	89	NOTICE OF RESCHEDULED HEARING as to Cameron Brandon Shea, Kaleb J Cole, Taylor Ashley Parker-Dipeppe, Johnny Roman Garza The Court, pursuant to General Order 11-20, hereby orders the Status Conference reset from 8/4/2020 to 9/15/2020 at 9:00 AM in Courtroom 16206 before U.S. District Judge John C. Coughenour. (cc: USPO, PTS, USMO)(GT) (Entered: 07/31/2020)
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05/14/2020	62	NOTICE OF RESCHEDULED STATUS CONFERENCE as to Cameron Brandon Shea, Kaleb J Cole, Taylor Ashley Parker-Dipeppe, Johnny Roman Garza Pursuant to General Order 08-20, the Court hereby orders the Status Conference reset from 6/2/2020 to 8/4/2020 at 09:00 AM in Courtroom 16206 before U.S. District Judge John C. Coughenour. (cc: USPO, PTS, USMO)(GT) (Entered: 05/14/2020)
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THE HONORABLE JOHN C. COUGHENOUR

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

CAMERON SHEA *et al.*,

Defendants.

CASE NO. CR20-0032-JCC

ORDER

This matter comes before the Court on the Government’s motion to vacate the trial date and to set a status conference (Dkt. No. 48). Defendants have not opposed the Government’s motion. On March 17, 2020, the Court issued General Order No. 02-20, which provides that “[a]ll civil and criminal hearings and trial date in [the Seattle and Tacoma] Courthouses scheduled to occur before June 1, 2020, are continued pending further order of the Court” and that:

With regard to criminal matters, due to the Court’s reduced ability to obtain an adequate spectrum of jurors and the effect of the above public health recommendations on the availability of witnesses, counsel and Court staff to be present in the courtroom, the time period of the continuances implemented by this General Order will be excluded under the Speedy Trial Act, as the Court specifically finds that the ends of justice served by ordering the continuances outweigh the best interests of the public and any defendant’s right to a speedy trial, pursuant to 18 U.S.C. § 3161(h)(7)(A). For the same reasons, the Court finds under 18 U.S.C. § 3060(C) extraordinary circumstances exist, and justice requires delay of all criminal preliminary hearings during the time period of the continuances

implemented by this order.

General Order 02-20, March 17, 2020, Sections 2, 4 (In re Court Operations under the Exigent Circumstances Created by COVID-19 and Related Coronavirus).

Having thoroughly considered the Government's motion and the Court's General Order No. 02-20, the Court hereby FINDS as follows:

1. For the reasons set forth in the motion and General Order 02-20, the ends of justice served by granting a continuance outweigh the best interests of the public and Defendants in a speedy trial, 18 U.S.C. § 3161(h)(7)(A); and
2. Failure to grant a continuance would likely make trial impossible, result in a miscarriage of justice, and deny counsel for both parties the reasonable time necessary for effective preparation, taking into account the exercise of due diligence, 18 U.S.C. § 3161(h)(7)(B)(i), (B)(iv).

For the foregoing reasons, the Government's motion to vacate the trial date and to set a status conference (Dkt. No. 48) is GRANTED. It is therefore ORDERED that the trial date of April 27, 2020, is VACATED and a status conference is scheduled for June 2, 2020, at 9:00 a.m. At the status conference, the parties shall propose a new trial date and pretrial motions deadline.

The Court further ORDERS that the time between the date of this order and the status conference is excludable time under the Speedy Trial Act, pursuant to 18 U.S.C. §§ 3161(h)(7)(A), 3161(h)(7)(B)(ii), and 3161(h)(7)(B)(iv).

DATED this 15th day of April 2020.



John C. Coughenour
UNITED STATES DISTRICT JUDGE

NO. 22-30015

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

KALEB COLE,

Defendant-Appellant.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF WASHINGTON

The Honorable John C. Coughenour, Judge
D.C. No. 2:20-cr-00032-JCC-2

APPELLANT'S EXCERPTS OF RECORD, VOLUME 2 of 5

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The Honorable John C. Coughenour

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

KALEB COLE,

Defendant.

No. CR20-032 JCC

DEFENDANT’S SENTENCING
MEMORANDUM

Defendant, Kaleb Cole, by undersigned counsel, submits the following memorandum in advance of his sentencing in this matter, scheduled before this Court for Tuesday, January 11, 2022, at 9 a.m.

I. Introduction

Kaleb Cole is 26 years old. He was 24 at the time of the activities underlying his conviction in this matter. Mr. Cole has no criminal history whatsoever. He grew up in relative isolation in rural parts of Washington State, was picked on and marginalized as a youth, and ultimately found community through the internet as a teen. Unfortunately, but not coincidentally, those people who offered Mr. Cole community also espoused many unpopular and problematic beliefs. Over time, Mr. Cole became indoctrinated into these groups and philosophies. He lacked opposing influences in his life and craved some kind of community. Tied to that community,

1 however, and as a requirement of ongoing acceptance in it, was the malignant weight of socially
2 unacceptable philosophies. It was part of the package, even if Mr. Cole was just looking for
3 friends.

4 Mr. Cole eventually became a member of Atomwaffen Division (AWD). AWD is (or
5 was) a loosely associated group of mostly young men, mostly with similar backgrounds of
6 ostracization. The group was organized around white separatist philosophies. While individual
7 members, or former members, of the group have committed violent acts in their individual
8 capacities in the past, at least during the three-year investigation of Mr. Cole, the group did not
9 plan or engage in any violent actions. Instead, they held conferences and discussed their ideas
10 and philosophies.

11 Mr. Cole and three co-defendants were charged with multiple crimes stemming from their
12 alleged involvement in Operation Erste Saul, which was a plan to send threatening
13 communications to journalists and activists. The indictment positioned Mr. Cole's co-defendant
14 Cameron Shea as the lead defendant. The evidence showed that he instigated the operation and
15 the Court ultimately sentenced him as a leader. Mr. Cole's co-defendants, including Mr. Shea,
16 pleaded guilty and were sentenced by the Court to prison terms ranging from time-served for Mr.
17 Parker-Dipeppe to 36 months for Mr. Shea. Mr. Cole proceeded to trial, where he put the
18 government to its burden but did not present frivolous examination or argument. Mr. Cole did
19 not testify. The jury returned guilty verdicts on all counts.
20

21 Mr. Cole now appears before the Court for sentencing. The probation office has
22 recommended a sentence of 78 months. As set forth in detail below, such a sentence would be
23 far more than necessary to accomplish the goals of sentencing in this case. Most significantly, it
24 would create a significant and unjustified disparity between the sentences imposed on Mr. Cole's
25

1 co-defendants and Mr. Cole. It would be more than double Mr. Shea's sentence. While there
2 may be a few other minor distinctions between Mr. Shea and Mr. Cole, the real difference between
3 them is that Mr. Shea entered a guilty plea while Mr. Cole proceeded to trial. Because that is not
4 an appropriate basis on which to impose a sentence, and because nothing else justifies such a
5 disparate sentence for Mr. Cole, the Court should decline to follow the recommendation of the
6 Probation Office.

7 **II. Defense Sentencing Recommendation**

8 The defense respectfully recommends a sentence of 36 months in custody for Mr. Cole.

9 **III. Basis for Defense Sentencing Recommendation**

10 The defense submits that an analysis of all of the factors outlined in 18 U.S.C. § 3553(a)
11 as they apply to this case supports the defense recommendation.

12 **A. Mr. Cole's background and personal characteristics**

13 Mr. Cole is 26 years old and has no criminal history whatsoever. Mr. Cole was born in
14 Everett, Washington, and grew up mostly in rural parts of Western Washington. Mr. Cole's
15 parents separated when he was young and he has no siblings. Growing up, Mr. Cole moved
16 multiple times, living in Skagit, Snohomish, Whatcom, and Island counties. The constant moving
17 created great instability in his life, as he was required to change schools each time he moved. He
18 spent many summers with his maternal grandparents. He lived with his mother most of the time
19 growing up but moved in with his father in high school. Mr. Cole and his father have a strong
20 relationship and his father continues to support him throughout this process.

21 Growing up, Mr. Cole was regularly bullied and had few friends in school. This caused
22 strong feelings of isolation for Mr. Cole. Mr. Cole never enjoyed school and found himself
23 struggling to keep up with the schoolwork. Once Mr. Cole moved in with his father when he was
24
25

1 16 years old, he started attending school online and graduated in 2014. Since graduating, Mr.
2 Cole has been employed in various jobs. He primarily worked for temporary agencies in
3 Snohomish County. He eventually moved to Texas in 2019, where he worked for a medical
4 supply company prior to his arrest in this matter.

5 Mr. Cole grew up in a Pagan household. In his teens, Mr. Cole began listening to music
6 that advanced nationalistic themes. This led him to read nationalistic literature and attending
7 concerts with people who carried such nationalistic ideals. Mr. Cole was especially able to find
8 a sense of community through online chat groups. Unfortunately, those groups included
9 individuals who held unpopular and problematic opinions. Eventually, Mr. Cole became
10 indoctrinated in these groups as he sought out the continued sense of community he felt while
11 participating. Mr. Cole ultimately became a member of AWD. AWD allowed him to constantly
12 chat with and meet up with individuals across the country and eventually led him to where he is
13 today. At the time of this incident, Mr. Cole was a young 24-year-old who desired to feel a part
14 of a community as an escape from the constant isolation he felt growing up. Unfortunately, the
15 community he joined held extreme problematic views.
16

17 Mr. Cole has many people in his life who have supported him throughout this process.
18 See Exhibit 2 (Letters of Support). He has worked hard to maintain a strong relationship with his
19 father, even though his father did not agree with Mr. Cole's beliefs at the time of the events that
20 led to the charges in this matter. Mr. Cole's maternal grandparents are also incredibly supportive
21 of him. They speak his with him often and even flew to Washington to be present throughout his
22 trial. His grandparents especially worry about Mr. Cole being incarcerated during the COVID-
23 19 pandemic. Mr. Cole actually contracted COVID-19 while incarcerated in December of 2020,
24 and was forced to isolate as a result. Mr. Cole also has a long-time significant other who has
25

1 supported him throughout his incarceration. When released, Mr. Cole hopes to be a productive
2 member of society by starting his own business, possibly in metal working or welding.

3 **B. The nature and circumstances of Mr. Cole's involvement in the offense**

4 The FBI investigated Mr. Cole and AWD for about three years prior to the events of this
5 case. They utilized both a confidential source and undercover agent in this investigation. One or
6 the other or both of them were present during the periodic meetings and conferences that took
7 place during this period. Both testified at trial that they were not aware of AWD either engaging
8 in or planning any violent actions during the entire period of the investigation. Instead, AWD
9 held conferences and camps, where they discussed ideas and philosophies, produced messaging
10 videos, and sometimes shot guns, completely legally. Neither Mr. Cole nor anyone else there was
11 planning anything remotely like the horrific attacks we have seen too frequently in this country,
12 and to raise the specter of those incidents when the government has actual knowledge that Mr.
13 Cole was not involved in anything remotely similar is unfair and prejudicial.
14

15 Similarly, the ongoing focus on Mr. Cole's legal gun ownership prior to his arrest in this
16 matter is something the Court should disregard in imposing sentence. It is true that Mr. Cole
17 owned guns at a time when he was legally permitted to have them. It is also true that he was
18 stripped of his right to possess guns in the state of Washington when an extreme risk protection
19 order (ERPO) issued against him in September, 2019. The King County Superior Court granted
20 this order based on an uncontested petition by a Seattle Police Officer. The petition is based on
21 many of the same generalized allegations about AWD provided as background to the Court in
22 this matter. The petition did not describe even a single violent act committed, or threat made, by
23 Mr. Cole. The petition further acknowledged that Mr. Cole had never been arrested, let alone
24 convicted of a crime. Instead, it set forth activities attributed generally to AWD, and pointed to
25

1 Mr. Cole's alleged association with that group as a basis for the order. Mr. Cole did not appear
2 for the hearing on the petition because he was unable to find a lawyer who could help him and
3 because he was afraid of the media opprobrium that he expected. He was therefore unable to
4 present the truth about his activities or the activities of AWD, and the order issued. After the
5 order issued, Mr. Cole did not possess firearms in violation of its terms. The order is not
6 enforceable outside Washington state. See RCW 9A.04.030.¹ Further, and significantly, there is
7 no indication that Mr. Cole ever used a firearm in Texas in an inappropriate or illegal manner or
8 that he had any plans to do so.

9 What Mr. Cole was charged with is conspiring "to threaten journalists and activists,
10 particularly Jews and other minorities, with the intent to cause fear of bodily harm, harass,
11

12
13 ¹ RCW 9A.04.030 establishes criminal jurisdiction for Washington state and provides:

14 The following persons are liable to punishment:

- 15 (1) A person who commits in the state any crime, in whole or in part.
16 (2) A person who commits out of the state any act which, if committed within it, would
17 be theft and is afterward found in the state with any of the stolen property.
18 (3) A person who being out of the state, counsels, causes, procures, aids, or abets
19 another to commit a crime in this state.
20 (4) A person who, being out of the state, abducts or kidnaps by force or fraud, any
21 person, contrary to the laws of the place where the act is committed, and brings, sends,
22 or conveys such person into this state.
23 (5) A person who commits an act without the state which affects persons or property
24 within the state, which, if committed within the state, would be a crime.
25 (6) A person who, being out of the state, makes a statement, declaration, verification,
or certificate under chapter 5.50 RCW which, if made within the state, would be
perjury.
(7) A person who commits an act onboard a conveyance within the state of Washington,
including the airspace over the state of Washington, that subsequently lands, docks, or
stops within the state which, if committed within the state, would be a crime.

No provision of this statute appears to extend jurisdiction to cover Mr. Cole's alleged possession
of a firearm in Texas after the issuance of the order.

1 intimidate, and retaliate against unfavorable reporting,” and with mailing such threatening
2 communications. See Superseding Indictment, Dkt. # 94. The indictment alleges that the
3 defendants created threatening posters, researched people to target and their contact information,
4 and then both mailed posters and affixed them directly to peoples’ homes. Id. The complaint
5 filed in this matter sets forth details about Mr. Cole’s alleged role in this activity: “Cole had access
6 to the entire target list, helped to develop threatening posters to leave at the victims’ homes, and
7 made suggestions to Operation Erste Saule coconspirators on who to target, how to find people’s
8 home addresses, and, among other things, how to film the Operation when it happened.”
9 Complaint, Dkt. # 1 at 9. The government offered evidence at trial that the jury found supported
10 the allegations. The evidence of Mr. Cole’s involvement consisted almost solely of a chat string
11 and a recording of Mr. Cole made in January of 2019.

12
13 As established by the evidence introduced at trial, Mr. Cole’s intent in regard to the posters
14 was to respond to what he regarded as unfair treatment and exposure of him by journalists and
15 others. He was under the impression that AWD was engaged in some sort of propaganda war
16 with journalists and organizations like the Anti-Defamation League and he wanted to respond in
17 kind. This view was obviously misguided and grandiose. And while Mr. Cole specifically talked
18 about how they should not take it too far and should not actually threaten anyone with physical
19 harm, the jury ultimately found that the messages did in fact go too far. Nevertheless, what was
20 also clear from the evidence at trial is that Mr. Cole had no intention of actually harming anyone.

21 C. Sentencing Guidelines

22 The Court should calculate the sentencing guidelines in the following manner.
23
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25

1 **1. Summary of Guidelines Calculations²**

2 Base Offense Level – U.S.S.G. § 2A6.2: 18

3 Specific Offense Characteristics

4 Victim Related Adjustment – U.S.S.G. § 3A1.1: +3

5 Adjusted Offense Level 21

6 Advisory Range (Offense Level 21, CHC I) 37-46 months

7 **2. Analysis of Guideline Calculations**

8 The probation office has proposed that the Court apply additional guideline
 9 enhancements, including Threatened Use of a Dangerous Weapon³ and Aggravating Role. The
 10 defense respectfully submits that the Court should not apply these two enhancements.

11 The government bears the burden of establishing the applicability of a guideline
 12 enhancement by a preponderance of the evidence. See United States v. Tam, 240 F.3d 797, 803
 13 (9th Cir 2001) (“At sentencing, the government bears the burden of proving factors enhancing a
 14 sentence by a preponderance of the evidence.”). The Ninth Circuit has held that “the district court
 15 may rely on undisputed statements in the PSR at sentencing However, when a defendant
 16 raises an objection to the PSR, the district court is obligated to resolve the factual dispute, and the
 17 government bears the burden of proof The court may not simply rely on the factual statements
 18 in the PSR.” United States v. Ameline, 409 F.3d 1073, 1085-86 (9th Cir. 2005)(en banc). In
 19 making factual determinations, the Court may consider any information, so long as it has
 20
 21

22 ² The defense analyzes the guidelines for the Count Group 1 only and will not analyze the
 23 guidelines pertaining to the groups consisting of Count 2 and Count 4 because, as correctly noted
 24 in the PSR, such groups are disregarded under U.S.S.G. § 3D1.4(c).

25 ³ The defense objected to the enhancement for threat of a dangerous weapon in the attached
 objections to the draft Presentence Report (Exhibit 1). The defense maintains that objection but
 does not present additional argument herein.

1 sufficient indicia of reliability to support its probable accuracy. U.S.S.G. § 6A1.3 (Policy
2 Statement).

3 Aggravating Role (U.S.S.G. § 3B1.1(a))

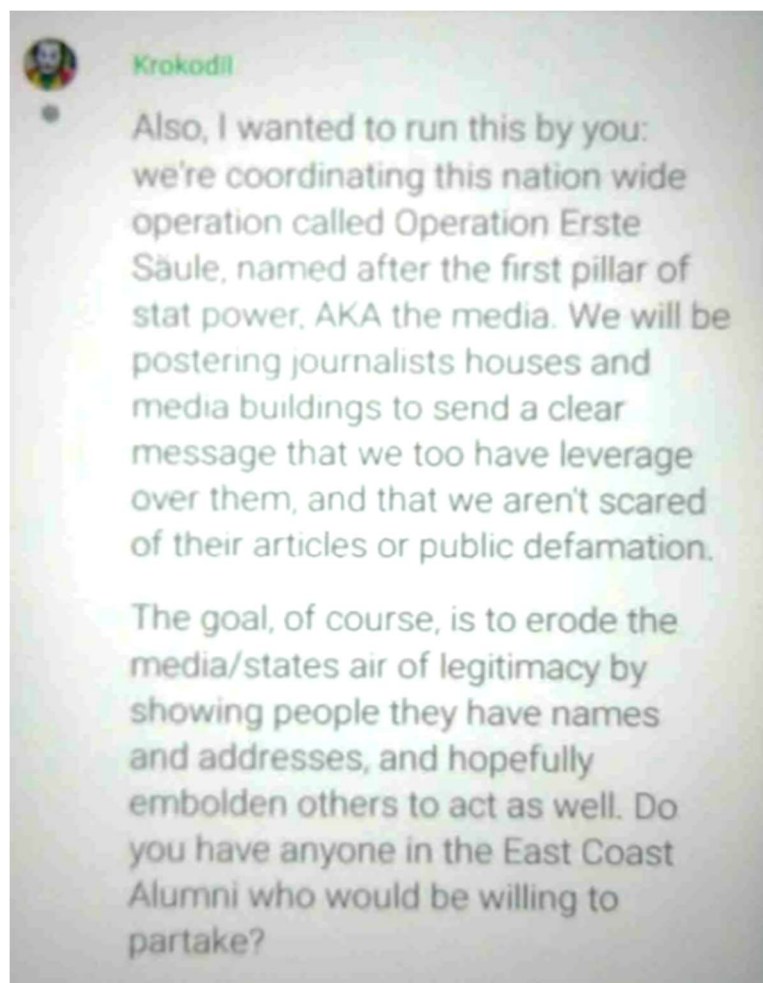
4 The defense objects to the application of the aggravating role enhancement because the
5 facts do not establish that Mr. Cole was an “organizer or leader” of the conduct at issue. The
6 aggravating role adjustment should not apply for two reasons. First, Mr. Shea was the sole leader
7 and organizer of the operation. Second, Mr. Cole merely made suggestions to the group and those
8 suggestions do not amount to leadership or control. Thus, the aggravating role adjustment should
9 not apply.

10 U.S.S.G. § 3B1.1(a) states that the Court should increase the offense by 4 levels if the
11 defendant was an “organizer or leader” of a criminal activity that involved five or more
12 participants. “In order to impose the enhancement, there must be a showing that the defendant
13 had control over other participants or organized other participants for the purpose of carrying out
14 the charged crimes.” United States v. Holden, 908 F.3d 395, 402 (9th Cir. 2018) (internal
15 quotations omitted). A defendant organizes other participants if he has the necessary influence
16 and ability to coordinate their behavior so as to achieve the desired criminal results. Id.; see also
17 United States v. Doe, 778 F.3d 814, 826 (9th Cir. 2015); United States v. Avila, 95 F.3d 887, 890
18 (9th Cir. 1996) (stating that “some degree of control or organizational authority over others is
19 required” in order for a § 3B1.1 enhancement to apply). Holden, 908 F.3d at 402.

21 Further, “a suggestion is not leadership” for purposes of § 3B1.1. United States v. Harris,
22 999 F.3d 1233, 1236 (9th Cir. 2021). The Ninth Circuit has stated that “[t]hrough there may be
23 some direction inherent in a suggestion, the Guidelines are clear that a suggestion is not enough
24 for application of the enhancement.” Id.

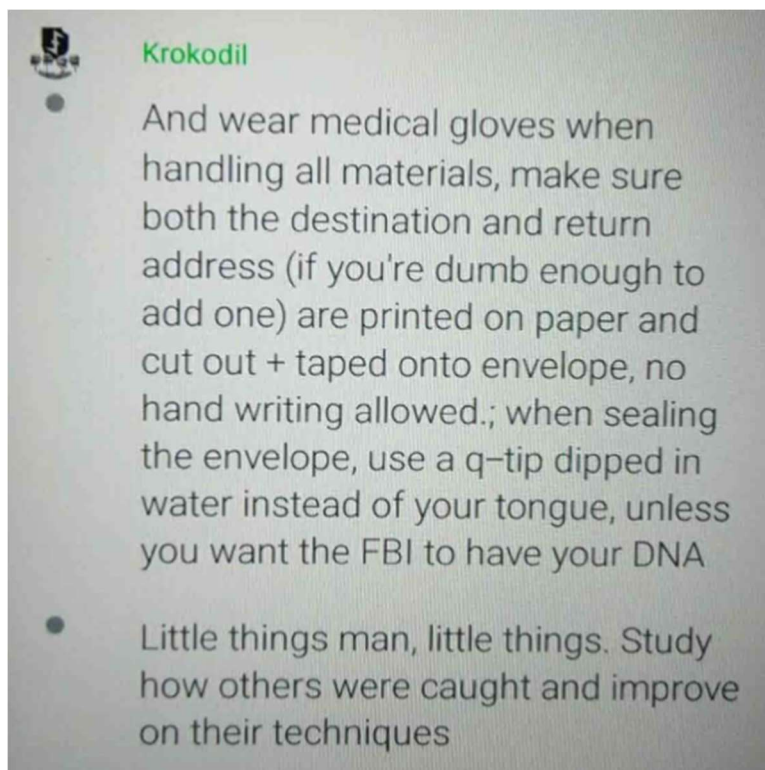
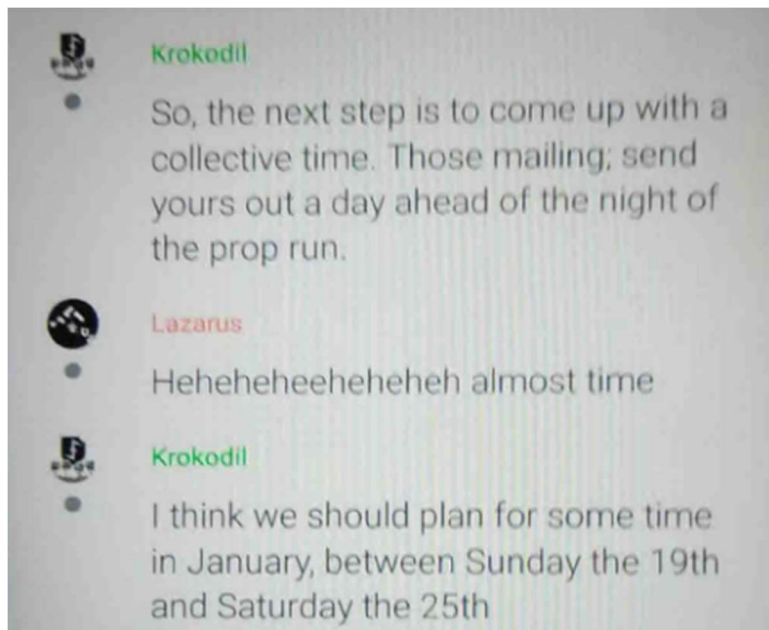
1 The evidence does not establish by a preponderance of the evidence that Mr. Cole was a
2 leader or organizer of the people involved in the criminal activity at issue in this case. Rather,
3 the evidence clearly establishes Mr. Cole's codefendant, Mr. Shea, (known in the chats as
4 "Krokodil") was the sole leader and organizer of the operation.

5 The evidence shows that Mr. Shea singlehandedly started the chat group, "Operation Erste
6 Saule," and invited others, including Mr. Cole to join the chat. Upon creating the group, Mr. Shea
7 alone explained his reasoning for creating the chat, and asked who would be willing to join:



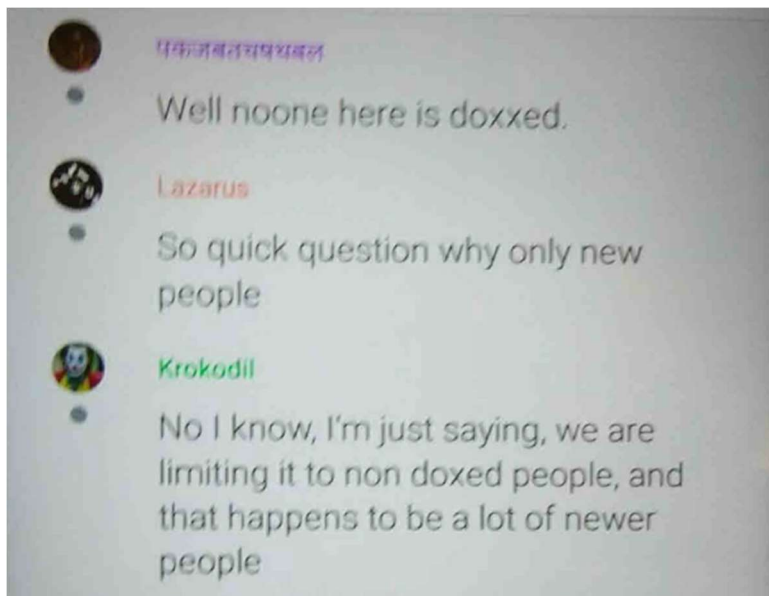
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23 See Gov. Trial Ex. 100. There is no evidence that Mr. Cole assisted Mr. Shea in formulating the
24 plan, creating the chat group, or inviting others to join. In fact, there is no evidence that Mr. Cole
25 even knew about Mr. Shea's plans for Operation Erste Saule until Mr. Shea created the chat group

1 and explained his goals for the group. Mr. Shea continued to lead the group throughout its months
2 of conversation. For example, once others in the group started collecting addresses, Mr. Shea
3 further directed the group as to how to carry out the operation:



See Gov. Trial Ex 104.

1 Mr. Shea also discussed why newer members of the group would distribute the posters:

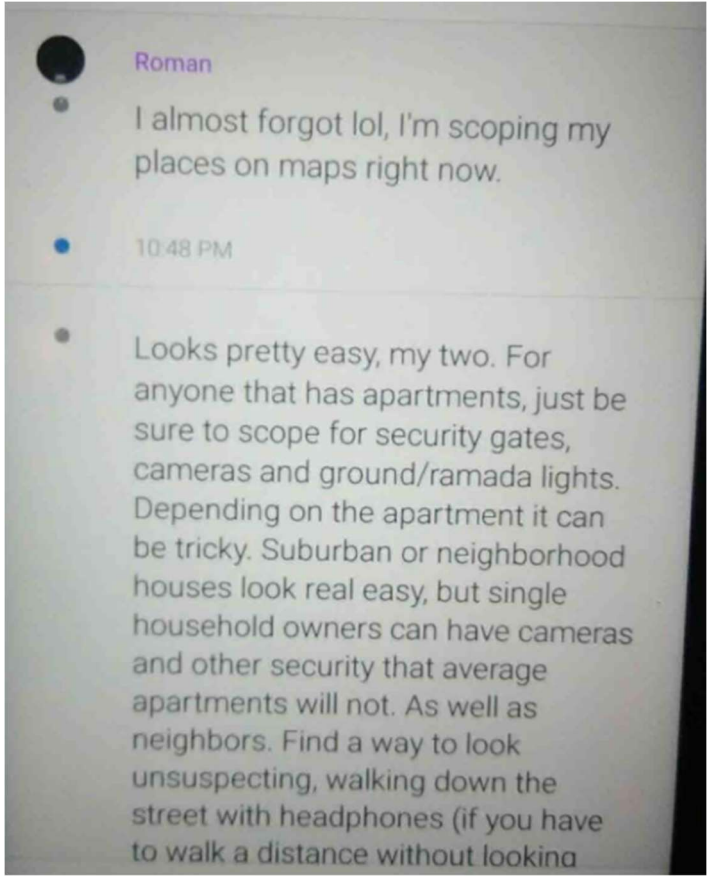


11 Id.

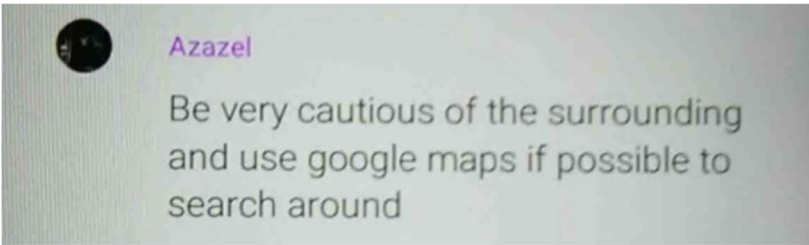
12 As is evident from these messages, the others in the group were under the direction of Mr.
13 Shea. Mr. Shea picked the date of the operation and instructed the other members as to how to
14 avoid detection from law enforcement. Mr. Shea was the sole leader and organizer of Operation
15 Erste Saule.

16 Additionally, the probation office's contention that Mr. Cole was a leader of the operation
17 because he "provided instructions" to others as to how to carry out the plan is not supported by
18 the evidence. Like the others in the group, Mr. Cole made suggestions as to how to undertake
19 certain aspects of the operation. This includes the contributions of codefendants Mr. Parker-
20 Dipeppe (known in the chats as "Azazel") and Mr. Garza (known in the chats as "Roman"). For
21 example, Mr. Garza suggested the individuals do the following while carrying out the operation:
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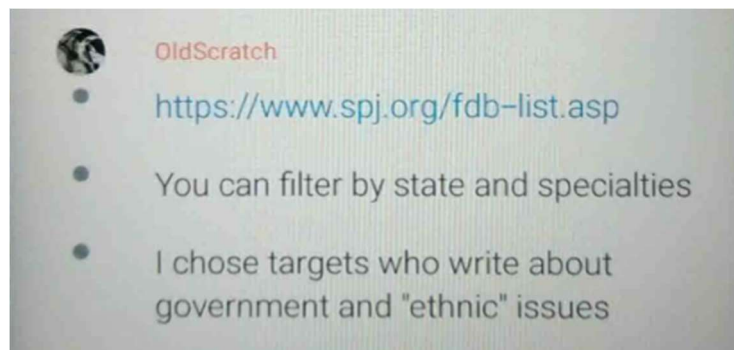
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See Gov. Trial Ex. 107. Mr. Parker-Dipeppe made suggestions as well:



See Gov. Trial Ex. 108. Another member of the group, using the name "OldScratch" provided the group with ways to find the addresses of the intended targets:



6 See Gov. Trial Ex. 101. Similar to these suggestions, Mr. Cole proposed at one point that others
7 in the chat use knives to pin dolls to trees outside reporters' homes (which never happened) and
8 suggested video-recording the activities (which seemingly also did not happen). These chat
9 interactions show that many members of the group made suggestions for how to carry out aspects
10 of the plan, like Mr. Cole, and those suggestions were not instructions to the group. Mr. Cole's
11 contributions to the chats were no different than the contributions made by other members.
12

13 Further, the individuals in the chat each took on different roles in the plan. For example,
14 some members, including Mr. Garza and Mr. Parker-Dipeppe, actively sought out names and
15 addresses of people to target and ultimately delivered the posters to those individuals on January
16 25, 2020. Mr. Shea purchased stamps and packaging tape for the operation and eventually mailed
17 posters to three individuals in Washington State. Mr. Cole created the posters but did not deliver
18 or mail them. In sum, the members of the chat equally participated in carrying out the plan by
19 performing their own specific tasks. Mr. Cole did not direct or control anyone else in the group.
20

21 The indictment itself alleges that all of the co-defendants participated in almost every
22 aspect of the crime. See Dkt. No. 94 at 2-3. It alleges that every co-defendant "conducted research
23 online to identify journalists and advocates to threaten," "compiled the home addresses and other
24 personal information for the above-mentioned journalists and advocates, using online sources,"
25 and "planned and plotted to threaten the above-mentioned journalists and advocates through

1 online communications among themselves and others.” *Id.* The only thing Mr. Cole is alleged
2 to have done that the others did not do is create the posters. But simply creating the posters does
3 not establish leadership because it does not include an element of control or influence over other
4 people. *See Holden*, 908 F.3d at 402.

5 Ultimately, the evidence does not establish that Mr. Cole was a leader of the operation.
6 Mr. Shea organized and coordinated the operation, and the others in the group gave their own
7 ideas as to how to carry out the plan. Each member of the group collectively contributed and
8 made suggestions as to how the operation should unfold. Mr. Cole had no direction or control
9 over the others in the group and participated to the same extent as the others. The government
10 describes Mr. Cole as a leader of AWD but does not indicate what it means to be a leader, or even
11 a member, of this organization, whether there is some formal structure for the organization, or
12 how members of this organization communicate with each other. Further, even if Mr. Cole was
13 a leader of AWD, he was not charged or tried for that role. Thus, because a “suggestion is not
14 leadership” and Mr. Cole was not a leader or organizer of Operation Erste Saule, the aggravating
15 role enhancement should not apply.
16

17 **D. The sentence proposed by the defense avoids unwarranted disparity between**
18 **Mr. Cole and his co-defendants.**

19 18 U.S.C. § 3553(a)(8) directs courts to avoid unwarranted sentence disparities among
20 defendants with similar records who have been found guilty of similar conduct. As described in
21 the preceding sections of this memo, all of the co-defendants in this case engaged in similar,
22 albeit not identical, conduct. While it could reasonably be found that Mr. Garza’s and Mr.
23 Parker-Dipeppe’s participation in the operation, and general level of culpability, were less
24 extensive than Mr. Cole’s, the same cannot be said of Mr. Shea. And because that is the case, it
25

1 would be unjust to impose a sentence on Mr. Cole that is appreciably longer than the Court
2 imposed on Mr. Shea.

3 Mr. Shea was the most culpable of the co-defendants. He formulated the plan to send the
4 posters, created the chat group to plan and discuss the operation, directed most aspects of the
5 operation, carried out significant parts of the operation (including mailing multiple letters
6 himself), and obliterated the chat group in an attempt to cover his tracks. Mr. Cole, on the other
7 hand, participated in chats and made some suggestions about aspects of the operation, just as all
8 the co-defendants (as well as many uncharged individuals) did. Again, the only thing Mr. Cole
9 did that others did not do is create the posters. But, he did not participate in placing or mailing
10 them, which Mr. Shea did do. The defense contends that there is no reasonable way to describe
11 Mr. Cole as being more heavily involved in the crimes in this case than Mr. Shea, which is no
12 doubt why the government positioned Mr. Shea as the lead defendant in the matter.

13
14 It further appears that Mr. Shea and Mr. Cole are not otherwise too dissimilar in terms of
15 background. They are both quite young, and both have no criminal history prior to this case.
16 They both faced some difficult circumstances as youths, but neither suffered from poverty or
17 abuse. Mr. Shea did submit an apology to the court in conjunction with his sentencing, but that
18 was of course an expedient action for him to take. It is not something that justifies a sentence
19 for Mr. Cole more than double Mr. Shea's, especially given the procedural posture of Mr. Cole's
20 case and his potential for appeal, which limits anything that he might be inclined to say. At most,
21 Mr. Shea's apology counterbalances his more extensive role in the offense and puts him and Mr.
22 Cole on equal footing.

23
24 At bottom, it is hard to articulate a reasonable basis for a longer sentence for Mr. Cole
25 than Mr. Shea other than that Mr. Shea entered a guilty plea while Mr. Cole proceeded to trial.

1 This is not a permissible basis for a sentence. The Due Process Clause prohibits “punish[ing] a
2 person because he has done what the law plainly allows him to do.” Bordenkircher v. Hayes, 434
3 U.S. 357, 363 (1978).

4 **E. The sentence proposed by the defense is sufficient, but not greater than
5 necessary, to accomplish the goals set forth in 18 U.S.C. § 3553(a).**

6 “The statute, as modified by Booker, contains an overarching provision instructing district
7 courts to impose a sentence sufficient, but not greater than necessary to accomplish the goals of
8 sentencing, including to reflect the seriousness of the offense, to promote respect for the law, to
9 provide just punishment for the offense, to afford adequate deterrence to criminal conduct, and to
10 protect the public from further crimes of the defendant.” Kimbrough v. United States, 552 U.S.
11 85, 102 (2007)(internal quotations deleted).

12 The sentence proposed by the defense accomplishes these goals. It is a significant
13 sentence that reflects the seriousness of the conduct Mr. Cole was convicted of and provides a
14 significant deterrent effect. 36 months is a long sentence for a young man with no criminal
15 history. This is particularly true given that Mr. Cole has already been incarcerated for almost two
16 years during one of the most difficult times to be held in custody in memory. The COVID
17 pandemic resulted in Mr. Cole: 1) being held in conditions where he was forced to be exposed to
18 COVID-19 and unable to do anything about it, 2) being held repeatedly in lockdown conditions,
19 without being able to see or talk to anyone, and 3) actually contracting COVID.

20
21 Such a sentence also accounts for the fact that Mr. Cole is young and still has a lot of
22 growing up to do. Most people gain wisdom as they grow older. It also takes into account the
23 fact that we live in a deeply divided country where highly impressionable youths, like Mr. Cole,
24 are constantly bombarded with divisive narratives by the media and are all too often exposed to
25 violent and divisive rhetoric espoused by elected leaders at all levels of the government. It is not

difficult to see, given the current state of affairs in our country, how a twenty-something like Mr. Cole in search of community could have been drawn into extremist ways of thinking through internet chat rooms and social media. There is every reason to think that Mr. Cole has learned a great deal from his prosecution, incarceration and conviction, and that those lessons will resonate more and more over time. This is particularly true given that Mr. Cole has never engaged in violent behavior or planned violent behavior. Further, he has family and friends who love him and will support him in living in a pro-social manner upon his release from custody.

IV. Conclusion

The defense respectfully asks the Court to follow its sentencing recommendation, which reflects the seriousness of the convicted conduct, accounts for Mr. Cole’s background, comports with the sentencing guidelines, and compares fairly to the sentences imposed on Mr. Cole’s co-defendants.

Respectfully submitted this 4th day of January, 2022.

BLACK & ASKEROV, PLLC



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The Honorable John C. Coughenour

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

KALEB COLE,

Defendant.

Case No. CR20-032 JCC

DEFENDANT’S OBJECTION TO
COURT’S ORDER REGARDING
UNVACCINATED POTENTIAL
JURORS

Defendant, Kaleb Cole, by undersigned counsel, respectfully submits this written objection to the Court’s decision to exclude potential jurors who had not been vaccinated against COVID-19 from the venire at the trial in this matter. During jury selection, the Court issued an Order excluding three unvaccinated potential jurors from the venire. Dkt. No. 237. The Court and counsel for the government and defense discussed this matter in a conference in chambers prior to the beginning of trial, at which point the defense noted its objection to the Court’s proposal to exclude unvaccinated jurors. Undersigned counsel’s best recollection is that the Court announced on the record its decision to exclude unvaccinated jurors, and noted that it was doing so over defense objection, but cannot recall this to certainty. The Court’s written order does not reflect that it was issued over defense objection. The defense therefore submits this written

1 objection to the Court’s order excluding unvaccinated jurors from the venire to preserve the record
2 for appeal.

3 Respectfully submitted this 30th day of September, 2021.

4
5 BLACK & ASKEROV, PLLC

6 

7
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

UNITED STATES OF AMERICA,	)	CR20-032-JCC
)	
Plaintiff,	)	SEATTLE, WASHINGTON
)	
v.	)	September 28, 2021
)	
KALEB COLE,	)	9:30 a.m.
)	
Defendant.	)	Trial - Day 2

VERBATIM REPORT OF PROCEEDINGS
BEFORE THE HONORABLE JOHN C. COUGHENOUR
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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1	EXAMINATION INDEX	
2	EXAMINATION OF:	PAGE
3	CHRIS LECKINGER	DIRECT EXAMINATION (Cont.) 161
4		BY MR. WOODS
5		CROSS EXAMINATION 164
6		BY MR. BLACK
7		REDIRECT EXAMINATION 171
8		BY MR. WOODS
9	JERROLD DeROCHE	DIRECT EXAMINATION 172
10		BY MR. WILKINSON
11		CROSS EXAMINATION 177
12		BY MR. BLACK
13	STEVE HAUGHTON	DIRECT EXAMINATION 178
14		BY MR. WOODS
15		CROSS EXAMINATION 227
16		BY MR. BLACK
17		REDIRECT EXAMINATION 241
18		BY MR. WOODS
19		JOSHUA SUTTER 242
20		DIRECT EXAMINATION 243
21		BY MR. WILKINSON
22		CROSS EXAMINATION 256
23		BY MR. BLACK
24	JAYME POTEET	DIRECT EXAMINATION 264
25		BY MR. WILKINSON
26		CROSS EXAMINATION 275
27		BY MR. BLACK
28	MALA BLOMQUIST	DIRECT EXAMINATION 277
29		BY MR. WILKINSON
30		CROSS EXAMINATION 284
31		BY MR. ASKEROV
32		REDIRECT EXAMINATION 287
33		BY MR. WILKINSON
34	VERONICA RUDIE	DIRECT EXAMINATION 288
35		BY MR. WILKINSON
36		CROSS EXAMINATION 295
37		BY MR. ASKEROV
38	JOHN POWERS	DIRECT EXAMINATION 300
39		BY MR. WILKINSON
40		CROSS EXAMINATION 317
41		BY MR. ASKEROV

1	HILARY BERNSTEIN	DIRECT EXAMINATION	318
2		BY MR. WILKINSON	
3		CROSS EXAMINATION	324
4		BY MR. ASKEROV	

5
6 EXHIBIT INDEX

7	EXHIBITS ADMITTED	PAGE
8	Exhibit 1	267
9	Exhibits 2 - 23	269
10	Exhibit 24	274
11	Exhibit 25	274
12	Exhibit 26	275
13	Exhibits 100 - 111	181
14	Exhibit 300	278
15	Exhibit 305	281
16	Exhibit 307	280
17	Exhibit 402	292
18	Exhibit 504	321
19	Exhibit 505	322
20	Exhibit 600	176
21	Exhibit 601	175
22	Exhibits 602, 603, and 605	184
23	Exhibit 802	307
24	Exhibit 803	307
25	Exhibit 804	308
	Exhibit 805	315
	Exhibit 807	311

1 THE COURT: Are you ready for the jury?

2 MR. WOODS: We are.

3 THE COURT: All right, bring them in.

4 (The following occurred in the presence of the jury.)

5 THE COURT: Ladies and gentlemen, today is a very
6 important day. Forty years ago today, a very young lawyer
7 was sworn in as a United States district judge on
8 September 28th. The commission was signed by the then
9 President of the United States. And that's when I started my
10 judicial career. It's 40 years today. All right.
11 Mr. Woods.

12 CHRIS LECKINGER

13 Having previously been sworn, testified further as follows:

14 DIRECT EXAMINATION (Cont.)

15 BY MR. WOODS:

16 Q Sir, let's go back to Exhibit 203. And let's just, very
17 briefly, reset the stage. Okay?

18 Who were the four people at this meeting?

19 A Myself, who was recording this video. If you look at the
20 screen, the person closest to me is Cameron Denton. The one
21 next to him is Kaleb Cole, and the informant.

22 Q In terms of the voices, that Male 1, the deep, gravelly
23 voice, is that the informant?

24 A That is the informant, yes.

25 Q Are you Male No. 2?

1 A I believe so, yes, I'd have to --

2 Q We'll play it, and then we'll stop it.

3 A Okay.

4 (Exhibit 203 played)

5 Q That Male 2, that's you?

6 A Yes.

7 (Video continued.)

8 Q You were asked yesterday if there was one spot in the
9 transcript where there was a mistake. Is Mr. Denton in the
10 frame at this point, or is he inside the house?

11 A At this point Mr. Denton left the porch. And that would
12 be me speaking.

13 Q Who says, "You have access to that."

14 A That's correct.

15 Q Are you familiar with an onion? What is an onion?

16 A The onion is a derivative from Tor, which is the onion
17 router, which is essentially a network of computers scattered
18 around the world, so that when you browse the Internet, you
19 can do it anonymously. So you go from hot point to hot
20 point. Not to get too technical, but your signature, as you
21 go, gets obfuscated by the last signature. So it's just a
22 way to browse the Internet anonymously.

23 Q Is it a way to access the dark web?

24 A It is.

25 (Video continued.)

1 MR. WOODS: Your Honor, may I confer with Mr. Black
2 just very briefly?

3 Q Let's turn to a different part of the conversation,
4 Exhibit 202, which was previously admitted.

5 Did the name Chris Ingalls come up during your meeting
6 with Mr. Cole?

7 A Yes.

8 Q Was it in the context of a protection order that had been
9 served upon him and which his guns had been seized?

10 A That's correct.

11 MR. WOODS: Let's play Exhibit 202.

12 (Exhibit 202 played.)

13 MR. BLACK: Your Honor, objection.

14 MR. WOODS: Your Honor, may I have a minute?

15 Your Honor, may I have one minute?

16 MR. BLACK: Objection withdrawn.

17 THE COURT: All right.

18 MR. BLACK: Sorry, Tom.

19 MR. WOODS: No. I understand.

20 Q So we'll resume Exhibit 202.

21 (Video continued.)

22 Q All right. And let's turn to Exhibit 204, which was
23 previously admitted, part of the same meeting.

24 (Exhibit 204 played)

25 Q What was the cover story for the informant when you were

1 meeting about his role in this plot?

2 A So, the informant and myself had our own cell, and he was
3 following along in the sense that he was also going to
4 participate, even though we weren't going to.

5 Q You don't actually have a cell, right?

6 A No. No. It was all notional.

7 (Video continued.)

8 MR. WOODS: Nothing else, Your Honor.

9 THE COURT: All right. Cross?

10 CROSS EXAMINATION

11 BY MR. BLACK:

12 Q Good morning. My name is Chris Black, and I am one of the
13 attorneys representing Mr. Cole in this case.

14 I'm going to first ask you a few questions about the
15 2019 meeting in Las Vegas that you testified about.

16 A Yes.

17 Q You were there for the conference?

18 A I was, yes.

19 Q That lasted a couple of days, I believe?

20 A It did.

21 Q And you indicated that the conference was about sharing
22 ideas; is that correct?

23 A Yes.

24 Q There was a discussion about cyber security?

25 A Offline, as well as some sort of OPSEC-type presentation,

1 yes.

2 Q The topic of the conference was not planning violent
3 attacks, correct?

4 A No.

5 Q Wasn't discussed there?

6 A No.

7 Q Thank you.

8 You indicated that you traveled to Texas in January of
9 2020 for the meeting that we just saw excerpts of; is that
10 correct?

11 A That is correct, yes.

12 Q And you were with the confidential source when you went to
13 that meeting?

14 A I was, yes.

15 Q You met with Mr. Cole and Cameron Denton, correct?

16 A Correct.

17 Q And who else was there?

18 A At that meeting it was the four of us. I don't believe
19 there was anyone else at that meeting, if I remember right.

20 Q There was nobody else in the house during the entire time
21 you were there?

22 A I had visited Cameron Denton's home and Kaleb's residence
23 on two different occasions. At one point Kaleb was not
24 residing there. At another point he was. The first time
25 that I went to Cameron's house, there were other individuals

1 there. The second time, there might have been a roommate
2 that went to work that day, but there wasn't somebody for the
3 duration of the meeting.

4 Q Could that have been Sean Fernandez?

5 A That sounds right, sir.

6 Q So you believe he was there for --

7 A A portion, anyway.

8 Q Do you know if he was living there?

9 A I believe he was living at that residence, yes.

10 Q Do you know if anybody else was living there?

11 A My understanding, it was just the three of them. But I do
12 know there were others going in and out.

13 Q At this meeting, you were obviously undercover?

14 A That's correct, yes.

15 Q And the confidential source was, likewise -- you kept it
16 secret that he was working with the FBI.

17 A Right. He wasn't working under an undercover umbrella,
18 but he was working as a confidential human source, yes.

19 Q Thank you.

20 Mr. Cole, at the time of that meeting, was living in
21 the living room of the house; is that correct?

22 A That was my understanding, yes.

23 Q And that was based on the fact that his belongings were in
24 the living room?

25 A Yes. There was a couch there with a desk. Or, excuse me,

1 like a portable table. And he was showing me some of his
2 items that were in that vicinity, a computer, et cetera. So
3 it was believed to be that was his portion of the home.

4 Q And there were a few computers there; is that correct?

5 A That is correct, yes, sir.

6 Q A couple of laptops as well as a desktop computer?

7 A I believe that's the case. I can't say definitively, but
8 there were a few different types of computers there, yes.

9 Q Thank you. And that was in the living room, that was in
10 the kind of central area of the house that everybody had
11 access to?

12 A Yes. So when you first walked in the door, you are in the
13 living room. And just to the right is sort of that area in
14 which I believe Cole was residing, yes.

15 Q Thank you.

16 During your visit that day, did you actually use one of
17 the computers that was in the living room?

18 A I didn't personally touch any of the computers. But Cole
19 did show us some media on one of the computers, yes.

20 Q Okay. And did you learn, either during that meeting or at
21 any other time, what Cameron Denton's screen name or nickname
22 was?

23 A He went by a variety of different names. "Rape" was the
24 most common one that he used.

25 Q Sorry. Do you know of any others?

1 A I would know them if I heard them. But a lot of times,
2 for operational security purposes, I noticed that the group,
3 in general, would switch monikers, to obfuscate who they
4 were.

5 Q So his was "Rape" and other ones. But you don't remember
6 the specific ones?

7 A Not offhand. No, sir.

8 Q Thank you. When you visited the house on January 9th, you
9 were utilizing recording equipment, correct?

10 A Yes.

11 Q That was both video and audio?

12 A Normally we use a couple different devices. At this
13 meeting here, I did have a key fob that also recorded video,
14 with a short record time. So portions of that were recorded.
15 But it wouldn't have lasted the entire meeting, which is why
16 we had an audio recording of the entire meeting.

17 Q Okay. So the audio recording was running for the entire
18 time that you were there?

19 A Yes.

20 Q And was the undercover -- excuse me, the confidential
21 informant also wearing a recording device?

22 A I don't believe so. I think I had both the recordings on
23 me.

24 Q Were you with the confidential informant the whole time
25 you were there?

1 A Short of a quick bathroom break, yes.

2 Q How long were you there that day?

3 A I would say it was at least a couple hours.

4 Q And you had extensive discussions with Mr. Cole and others
5 while you were there, correct?

6 A We had discussions, yes.

7 Q And during those discussions, Mr. Cole at various points
8 discussed his intent behind the planned postering campaign;
9 is that correct?

10 A Unrelated to the evidence we just viewed?

11 Q No, within that evidence.

12 A Oh, yes. Yes, sir.

13 Q Okay. Thank you.

14 He was talking about things like: Pulling an Antifa
15 thing, and doing to AWD what they were doing to Mr. Cole's
16 group; is that correct?

17 A He was, correct.

18 Q He said that the message is, "Don't fuck with us."

19 A Right.

20 Q He was talking about media coverage and that enhancing
21 their reputation; is that correct?

22 A That is correct.

23 Q He said it was a symbolic gesture?

24 A Um-hum. He did say that, yes.

25 Q He said that the point overall was that they would not be

1 dissuaded by their bullshit?

2 A Yes.

3 Q At one point he was talking about not wanting to overshoot
4 things; is that correct?

5 A He did say that, correct.

6 Q He said: You don't want to go up to somebody's door and
7 say you're going to kill them, right?

8 A Right.

9 Q So he was talking during that meeting about not wanting to
10 take things too far; is that correct?

11 A That's correct, yes.

12 Q And there was no point when Mr. Cole said that his true
13 intent here was to actually make people think that they were
14 coming for them; is that correct?

15 A Not in the course of those conversations, no.

16 Q And, again --

17 MR. BLACK: I'll strike that, Your Honor.

18 Q There was no indication, during any of the time that you
19 were there, that Mr. Cole or Mr. Denton, or anybody else who
20 was there, knew that you were an FBI agent; is that correct?

21 A No. The group, in general, was concerned. They would
22 call it -- the way they termed it was "feds," everyone was a
23 fed. But they had no reason to believe that anybody was a
24 fed, other than the fact that there was a level of paranoia
25 that they had.

1 Q The same is true for the confidential informant. They
2 didn't have any reason to think he was actually working with
3 the FBI; is that correct?

4 A I'm not aware of that, no.

5 MR. BLACK: Nothing further, Your Honor.

6 THE COURT: Redirect?

7 MR. WOODS: Briefly.

8 REDIRECT EXAMINATION

9 BY MR. WOODS:

10 Q You said this meeting occurred on January 9th of 2020?

11 A Yes.

12 Q Do you know one way or the other whether a search warrant
13 was conducted at this residence later?

14 A Post that meeting there was, yes.

15 Q Were you part of that?

16 A I was not. My only role was the undercover.

17 Q So you didn't go into the residence during the search
18 warrant?

19 A No.

20 Q You don't know where Kaleb Cole was living at the time the
21 search warrant was executed?

22 A Not during the search warrant, no, sir.

23 Q You mentioned that people switched their nicknames. And
24 you said, am I correct, for operational reasons?

25 A That's one of the reasons why, to obfuscate who they are.

1 Q And they switched within themselves. In other words, they
2 didn't trade nicknames between themselves?

3 A I'm not aware of any instance where that occurred, no.

4 MR. WOODS: No further questions.

5 MR. BLACK: Nothing further, Your Honor.

6 THE COURT: All right. You may step down.

7 MR. WILKINSON: The United States calls Jerrold
8 DeRoche.

9 JERROLD DeROCHE

10 Having been sworn under oath, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. WILKINSON:

13 Q Good morning.

14 A Good morning.

15 Q Could you please tell the jury your name and what you do
16 for a living?

17 A I'm Jerrold Anthony DeRoche. And I'm a correctional
18 officer over at Bureau of Prisons in Sea-Tac, Washington.

19 Q How long have you worked with the Bureau of Prisons?

20 A A year, as of September 13th.

21 Q And can you describe what the facility is in Sea-Tac,
22 Washington, where you work?

23 A So it's a --

24 MR. BLACK: Objection, relevance.

25 THE COURT: Overruled.

1 A It's an institution for inmates, housing them in and out.
2 And we just provide security and welfare.

3 Q Does it sometimes house people while they're awaiting
4 trial?

5 A Correct.

6 Q Can you describe what your job responsibilities are at
7 Sea-Tac?

8 A So, as a senior correctional officer, I provide the safety
9 and security for the inmates, and welfare for those around me
10 as well.

11 Q Okay. Are you assigned a particular unit?

12 A Depending on the shift and who is in charge that day, or
13 shift, they'll assign me to a unit based on their
14 specifications.

15 Q And you said that you're responsible for safety and
16 welfare. Does that include conducting searches of inmates'
17 cells from time to time?

18 A That is correct. A minimum of five cell searches per
19 shift.

20 Q And under what circumstances do you conduct searches? Are
21 they random?

22 A Random, yes.

23 Q Have you become familiar with Kaleb Cole?

24 A As far as being in the unit, and -- yes.

25 Q He is in one of the units that you have worked with?

1 A That is correct.

2 Q I want to turn to July 9th of 2021. Do you recall
3 performing a search that day?

4 A Yes.

5 Q And was one of the cells that you searched Mr. Cole's
6 cell?

7 A Yes.

8 Q Did you find anything of note in that search?

9 A Yes. So what I found was a journal with symbols and
10 unfamiliar written things in there, that I was unaware of,
11 which was deciphering coding and symbols, that I was unaware
12 of, and brought to my lieutenant's attention.

13 Q Where did you find this journal?

14 A On the top of his bunk, under the right side of the
15 mattress.

16 Q Are there rules that govern where inmates are supposed to
17 keep their papers?

18 A Usually they will have to store their papers in their wall
19 locker, which is on their right-hand side, usually.

20 Q Are papers like this permitted to be stored underneath the
21 mattress?

22 A They can store it. But based on their discretion, but
23 during a cell search, yes.

24 Q Was the notebook visible to you, apart from conducting the
25 search?

1 A From moving up the mattress, yes, it was.

2 Q I want to show you Exhibit 601. Do you recognize that
3 document?

4 A Yes.

5 Q And how do you recognize it?

6 A That was one of the images -- or, excuse me, pages that
7 was in his notebook.

8 Q And is it actually a multipage exhibit that contains
9 various pages from the notebook?

10 A Yes.

11 MR. WILKINSON: United States offers 601.

12 MR. BLACK: Your Honor, we object to the relevance of
13 this exhibit.

14 THE COURT: Overruled. It will be admitted.

15 (Exhibit 601 was admitted.)

16 Q And I think the jury should be able to see this now. I'm
17 circling some characters at the top of the first page. You
18 mentioned a minute ago that the document had various foreign
19 characters. That's an example of some of the characters you
20 were talking about?

21 A Yes. So on looking on these images, I was unaware of the
22 symbols or any of that nature. So once I collected these
23 images in the notebook, I called my higher-ups, my
24 lieutenant, and notified them. Then I confiscated the
25 material and gave it to them.

1 Q Now, I'm showing you Exhibit 602 -- 600, excuse me. I'll
2 find you Exhibit 600. Do you recognize Exhibit 600?

3 A Yes.

4 Q And how do you recognize that?

5 A When I first saw this, it looked to me as an unknown
6 deciphering tool. I was just unaware of the symbols from
7 when I saw the journal.

8 Q Is this another document that you found in Mr. Cole's
9 cell?

10 A Yes.

11 Q Underneath his mattress?

12 A Yes.

13 MR. WILKINSON: The United States offers 600.

14 MR. BLACK: No objection.

15 THE COURT: It will be admitted.

16 (Exhibit 600 was admitted.)

17 Q And, again, are these some of the foreign characters that
18 you described earlier in your testimony?

19 A That is correct.

20 MR. WILKINSON: No further questions for this
21 witness.

22 THE COURT: Cross?

23 MR. BLACK: Thank you, Your Honor. Very briefly.

24

25

1 CROSS EXAMINATION

2 BY MR. BLACK:

3 Q Good morning. I just have a few very brief follow-up
4 questions. I'm one of the attorneys representing Mr. Cole,
5 Chris Black.6 You indicated that the searches at the facility are
7 random?

8 A That is correct.

9 Q And you conduct a certain number of searches every shift?

10 A That is correct.

11 Q Okay. You indicated that you talked to your superior
12 about these items that you found in Mr. Cole's cell, because
13 they looked unusual; is that accurate?14 A Yes. So based on my random cell search and looking at
15 these items that were located under his bed, instead of in
16 his wall locker, I briefly looked at the items, called my
17 lieutenant, my superiors, and they said: We'll take a look
18 at it. And I gave it to them, and there was no further
19 incident from there.20 Q Had you been instructed to look for anything like that in
21 Mr. Cole's cell?

22 A No, I was not.

23 Q Okay. Did anything in those materials seem particularly
24 problematic, for a security reason at the facility, or
25 anything like that?

1 A When I was looking in the journal?

2 Q Yes.

3 A The symbols and the deciphering of -- deciphering, and all
4 that, I at first thought he was deciphering something in the
5 magazines for someone else. And it was unaware, to my
6 attention, and I brought it to my higher-ups.

7 Q Thank you.

8 MR. BLACK: Nothing further, Your Honor.

9 MR. WILKINSON: No, Your Honor.

10 THE COURT: You may step down.

11 MR. WOODS: Your Honor, the government calls FBI
12 Special Agent Steve Haughton to the stand.

13 STEVE HAUGHTON

14 Having been sworn under oath, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. WOODS:

17 Q Sir, who do you work for?

18 A I work for the FBI, as a Special Agent.

19 Q How long have you been a Special Agent with the FBI?

20 A For 13 years.

21 Q Are you one of the agents who was assigned to this case?

22 A Yes.

23 Q Were there other agents assigned to this case as well?

24 A Yes, there was.

25 Q About how many offices in the FBI worked on this case?

1 A At least five offices, probably more.

2 Q Did the FBI capture a series of chats that related to the
3 plot in this case?

4 A Yes, they did.

5 Q What app were members of the plot using to conduct these
6 chats?

7 A Members of the plot were using an encrypted application,
8 an end-to-end encrypted application called Wire.

9 And basically the way that Wire works is the users will
10 download the software to their phone, or a digital device,
11 and that will enable them to communicate over the Internet
12 with other users of the application. Since it's encrypted,
13 it's a Swiss-based company, unlike --

14 MR. BLACK: Your Honor, I'm going to object. This is
15 turning into a narrative.

16 THE COURT: Ask another question.

17 MR. WOODS: Sure, Your Honor.

18 Q Does the end-to-end encryption that you've described that
19 Wire uses, does that pose any challenges for law enforcement
20 investigating a case?

21 A Yes, because the content is not available by a search
22 warrant.

23 Q Could you contrast the use of Wire, with, for example, the
24 use of Gmail? How would those two situations be different
25 for the FBI investigating that case?

1 A Yes. In the situation with a Gmail account, that
2 information is contained on a server that's controlled by
3 Google. Therefore, law enforcement with a search warrant can
4 access the content of the communications.

5 Q Unlike the case of Wire?

6 A Unlike the case of Wire.

7 Q So given that end-to-end encryption, how was law
8 enforcement able to get copies of these chats in this case?

9 A In this case, we had an informant who posed as a member of
10 the group, and he was a party to the communications. So he
11 was able to collect the communications by screenshot or
12 photograph, and then send that to the FBI.

13 Q Did the informant provide these chats to the FBI, on a
14 rolling basis?

15 A That's correct.

16 Q What time period did these chats span?

17 A The chats in question are going to be from late
18 November 2019 to late January 2020.

19 Q Were you reviewing the chats as they were being provided
20 to the FBI?

21 A Yes.

22 Q Are the chats that the informant provided marked as
23 Exhibits 100 to 110?

24 A Yes.

25 Q Did the informant also provide an e-mail attachment that

1 was connected to these chats as well?

2 A Yes.

3 Q Is that in Exhibit 111?

4 A Yes, it is.

5 MR. WOODS: Offer 100 to 111.

6 MR. BLACK: No objection.

7 THE COURT: They'll be admitted.

8 (Exhibits 100 - 111 were admitted.)

9 Q Let's talk about the informant for a minute. Were you
10 directly responsible for the informant in this case?

11 A No, I was not.

12 Q But are you generally aware of the informant's history?

13 A Yes, I was.

14 Q Does the informant have any criminal history?

15 A Yes. My understanding is the informant had a firearms
16 violation arrest from the 2003 time period.

17 Q About how much time did he serve on that?

18 A Approximately 24 months.

19 Q At the time of that conviction back in 2003, did the
20 informant have any connection with the white-supremacist
21 movement?

22 A That's correct. My understanding was that the informant
23 had been a member of the Aryan Nations.

24 Q When he was convicted, did the FBI attempt to recruit him
25 as an informant?

1 A Yes.

2 Q What type of work was he asked to do?

3 A He was asked to maintain the connections that he had made
4 within the white-supremacy networks so that he would have
5 access to potential subjects.

6 Q Was the informant paid for his work?

7 A Yes, he was.

8 Q About how much was he paid, over what general time period?

9 A Um, from the time period that he became a source, I think
10 was close to 2004, until the present, it was between \$100,000
11 and \$150,000.

12 Q Did -- and about how much, do you know, was he paid in
13 connection with his work on Atomwaffen?

14 A That was approximately \$80,000.

15 Q Did you learn recently that the informant had not been
16 paying taxes on the amounts that he was paid by the FBI?

17 A Yes.

18 Q How did you learn that?

19 A We learned that in discussions with the source in
20 preparation for this trial.

21 Q And you say "discussions." Who volunteered that
22 information?

23 A The source provided that information, voluntarily.

24 Q Does the informant have any involvement in a
25 book-publishing business?

1 A Yes. My understanding, going back over the history of
2 this case, was that the source was involved in a satanic
3 bookstore, was my understanding of it.

4 Q What were the general types of books that were published?

5 A I've learned some of these books were, I guess,
6 apocalyptic in nature. So dealing with the apocalypse and
7 satanic cults, and that type of thing, and that type of
8 material.

9 Q Are some of the writings something that most people would
10 find distasteful?

11 A Yes.

12 Q Has he written some of the books himself?

13 A Yes.

14 Q Let's get back to the chats in this case.

15 Did one of the users and participants in this chat, in
16 these chats, use, like, a moniker, or, like, a handle, a user
17 name that had a string of non-English characters?

18 A Yes.

19 Q Before coming today, did you review Exhibits 602, 603 and
20 605?

21 A Yes, I did.

22 Q Are those chats that were either captured by the informant
23 and provided to the FBI, or the informant was part of the
24 chat string?

25 A Yes.

1 MR. WOODS: Offer 602, 603 and 605.

2 MR. BLACK: We just maintain our prior objection,
3 Your Honor.

4 THE COURT: It will be overruled. It will be
5 admitted.

6 (Exhibits 602, 603, and 605 were admitted.)

7 MR. WOODS: And may I publish all these?

8 THE COURT: (Nods head.)

9 MR. WOODS: Thank you, Your Honor.

10 Q Let's start with Exhibit 602. Do you see that string of
11 non-English characters that appears at the top of this chat
12 string?

13 A Yes.

14 Q Did the FBI gather a series of -- and review -- a series
15 of chats where the user of this moniker made statements,
16 shedding light on who the person really was behind the
17 computer screen?

18 A That's correct.

19 Q Let's look at Exhibit 603, and specifically Page 5. This
20 is going to be a two-page exhibit. I want to take it slowly,
21 so let's start with the first page.

22 A Okay. So the first page at the top there's a user using
23 the name "Ryan," at the very top you can see, they're tagging
24 this moniker that we're talking about in here.

25 Q I'm going to stop you right there. Are you familiar with

1 how Wire works, in terms of how the communications come up on
2 the screen?

3 A Yes.

4 Q You just said that they "tagged a user." Take a minute to
5 explain how that works.

6 A Right. Within Wire, they can set up chat channels. And
7 so there could be multiple participants in that chat, and it
8 can be restricted to just those few participants.

9 But the user has the capability to tag somebody in the
10 group, for a specific message. Similar to social media, you
11 know, commonly available social media you might be aware of.

12 Q So let's get back to that top message by Ryan. Who is he
13 tagging?

14 A He's tagging the person that's using that moniker.

15 Q And what is the content that Ryan is flagging for this
16 moniker?

17 A The content is a King 5 article. And the subject of that
18 article is Kaleb Cole.

19 Q Let's stop there for a second.

20 A Okay.

21 Q Now, let's go to the bottom of this page. Okay? And this
22 person, Greg, what is he offering? What is he saying?

23 A He's saying, "If you haven't already, you should consider
24 finding a federal firearms lawyer."

25 Q Let's now look at the very next page of this exhibit. So

1 with the message from Ryan, in which he tags The Moniker, the
2 article about Kaleb Cole and the question or point from Greg
3 about the need to hire a lawyer, what does The Moniker say
4 here?

5 A The person using The Moniker is speaking in the first
6 person saying, "I may not be able -- I may not be getting
7 much. I couldn't really pay them. I am broke. I wouldn't
8 be paid money." And, "I would have to get legal help," down
9 there at the bottom. So speaking in the first person, as the
10 subject of the article.

11 Q In that article that we just saw that Ryan had tagged the
12 user, is that an article that we've already seen in this
13 trial?

14 A Yes.

15 Q All right. Let's look at Exhibit 604, which has been
16 already admitted.

17 Who is this article about?

18 A The article is about Kaleb Cole.

19 Q Who wrote it?

20 A Chris Ingalls.

21 Q Let's turn now to Exhibit 605, which was just admitted.
22 And let's look at The Moniker, the same string of non-English
23 characters. What is he posting to the group?

24 A Right. The Moniker is posting a link to a Seattle Times
25 article that was dated December 2019, and in response -- who

1 the subject of that article is also Kaleb Cole. And The
2 Moniker is responding in the first person, "I'm not
3 returning," in reference to a warrant -- this article about a
4 warrant that had been issued in Washington State, that was
5 non-extraditable.

6 Q At this point, where was Kaleb Cole living?

7 A In Conroe, Texas.

8 Q After he left Washington State?

9 A Yes.

10 Q Let's go back to Exhibit 603, and go to the second page of
11 that exhibit. Let's look at the same moniker. And let's
12 start at the top. What is The Moniker telling the group
13 here?

14 A The Moniker, again, is speaking in the first person about
15 a proceeding that occurred in Canada, which I'm aware Kaleb
16 Cole was a party -- had a proceeding in Canada.

17 Also that, "I describe a blood eagle for every bureaucrat
18 in detail." Which was ascribed, again, to Mr. Cole.

19 Q Okay. Do you remember when the undercover officer was
20 testifying and he talked about the audio clips that had been
21 captured of Kaleb Cole addressing the group. Do you remember
22 that testimony?

23 A Yes.

24 Q Do you remember Exhibits 606 and 607, which were
25 previously admitted but not played to the jury? Do you

1 remember that?

2 A Yes.

3 Q And have you listened to those two exhibits?

4 A That's correct, I have.

5 Q Who is the primary person talking on those recordings?

6 A It's Kaleb Cole.

7 Q So let's play these. These were previously admitted.

8 (Exhibits 606 and 607 were played.)

9 Q Before we get to that, did Kaleb Cole attend that
10 festival?

11 A Yes, he did.

12 Q Let's get to Exhibit 607. And just so we are anchoring
13 this discussion, these exhibits have all been admitted, I'm
14 going to put on the screen Exhibit 603, and this blood eagle
15 for every bureaucrat.

16 Now let's play 607.

17 (Exhibit 607 played.)

18 Q All right. Let's move on from the 603 and the blood eagle
19 for bureaucrat poster, and let's talk about the document we
20 just saw from the last witness. Have you examined that?

21 A Yes.

22 Q And let's pull up Exhibit 600. And have you undertaken to
23 match the symbols found in that document, under Kaleb Cole's
24 mattress, with the symbols that are in this moniker that was
25 used in the chats?

1 A Yes.

2 Q And how -- let's start with the first symbol. How do they
3 match?

4 A They match up with the symbols that are used in The
5 Moniker.

6 Q Is that the second?

7 A Correct. It matches. That one matches. That one
8 matches. That one matches. That one matches. That one
9 matches. That one matches. That one matches.

10 Q So in light of this cipher, the various articles, the
11 blood eagle for bureaucrat, and the articles using the first
12 person, what was your conclusion about who the person was who
13 was using this moniker?

14 MR. BLACK: Objection, Your Honor. Calls for an
15 opinion.

16 THE COURT: Overruled.

17 A Yeah, the conclusion I drew was that Kaleb Cole was using
18 this moniker.

19 MR. WOODS: Your Honor, do you want me to proceed to
20 a different topic?

21 THE COURT: Let's take the morning recess for
22 15 minutes.

23 (Recess.)

24 THE COURT: Are you ready for the jury?

25 MR. WOODS: Yes.

1 THE COURT: Bring them in.

2 (The following occurred in the presence of the jury.)

3 Q Special Agent Haughton, we ended with your conclusion
4 about this moniker being Cole. Let's move to the chats
5 themselves. And let's start with Exhibit 100, and the first
6 page of that exhibit.

7 So let's start with this. What is this person,
8 Krokodil, telling -- first of all, who is he communicating
9 with?

10 A The person using the moniker Krokodil, is communicating
11 with the informant.

12 Q What is Krokodil telling the informant?

13 A Krokodil is inviting the informant to participate in an
14 operation that's called Erste Saule, where: We will be
15 postering journalists' houses and media buildings to send a
16 clear message that we, too, have leverage over them, and that
17 we aren't scared of their articles or public defamation. The
18 goal, of course, is to erode the media state's air of
19 legitimacy by showing people they have names and addresses,
20 and hopefully embolden others to act as well. Do you have
21 anyone in the East Coast alumni who would be willing to
22 partake?

23 Q On the next page, what does the informant write back?

24 A The informant says to add him to the group. He'll filter
25 the information down to his guys, appropriately.

1 Q And does the informant, in fact, have a cell?

2 A No, he does not.

3 Q That's his cover story?

4 A It was fictitious.

5 Q Let's turn to the fourth page of Exhibit 100. Further
6 along in the discussion, what does the informant write,
7 Krokodil?

8 A The informant is asking for an update, because the
9 informant has not been in the Wire communication very long.
10 And you can see with this dot over on the left, this gray
11 dot, these particular chats were set up to auto delete after
12 24 hours. So if they were not online for a period of time,
13 participants would ask for updates that they missed, to get
14 filled in on any chats that had potentially disappeared since
15 the last time they were logged into the system.

16 Q Let's look at Krokodil's response. What does he tell the
17 informant?

18 A Krokodil's updating the informant that: The Florida cell
19 has acquired five targets, including home addresses.
20 California has acquired four targets, including addresses.
21 And Oregon has acquired three targets, including a cultural
22 center, media building.

23 Then at the bottom Krokodil says, "Khim is developing a
24 number of posters that are threatening, but not explicitly.
25 In 24 hours I'll follow-up with everyone regarding their

1 progress on finding their targets."

2 Q Do you remember the undercover's testimony about the
3 nickname that Kaleb Cole used in this Las Vegas Nuclear
4 Congress?

5 A Yes. That nickname was Khimaere.

6 Q Let's look at the next page. How did the informant
7 respond?

8 A The informant responded, "Outstanding. Thank you,
9 comrade."

10 Q Let's look now at Exhibit 101, on the first page. And if
11 you look at the bottom of the page, just so we're on the same
12 page, what is The Moniker we're seeing at the bottom?

13 A The Moniker down at the bottom is the one that we talked
14 about before that's attributed to Kaleb Cole.

15 Q Let's look at the next page of Exhibit 101. What was the
16 title of this chat group that had been started?

17 A Right. So the title of this chat group was Operation
18 Erste Saule, which is reference to the operation that was
19 propositioned to the informant. You can see that "Krokodil
20 added you," which is the informant, was added to this chat
21 group. And Krokodil is announcing, "Another ranking
22 gentleman added to the mix."

23 Q If we go to the next page of this Exhibit 101, what does
24 the informant write to the group?

25 A The informant is trying to find out what the timeline for

1 the operation is, and that he's filtering information down to
2 some of his guys. He'll be in the vicinity of some major
3 news hub storefronts in short order, but wanted to make sure
4 everything coincides.

5 Q The next page of Exhibit 101, what does Krokodil tell the
6 group?

7 A Krokodil explains that, "The timeline is organic, we're
8 breaking this down step-by-step, so everyone's on the same
9 page. Currently we're each to find out the names of local
10 journalists and news stations, information gathering, and the
11 deadline to have info gathered is in 24 hours. Then after
12 that, we will commission custom posters for the more
13 prominent figures, and then we will prepare the materials,
14 and then we will decide on a night to launch the operation."

15 Q Next page, Page 5 of Exhibit 101. What does Lazarus tell
16 the group?

17 A Lazarus tells the group, "All right. We have four
18 targets."

19 Q Next page, Exhibit 101, Page 6. So let's work through
20 this section here.

21 Let's start with Krokodil, then the person you believe
22 to be Cole. What are they both saying here?

23 A So Krokodil is saying, "We have some posters in the making
24 we think you will like, rest assured." And Cole is saying,
25 "No, because they'll take a DNA sample."

1 Q If you look at the top, does it look like that's -- the
2 informant has just started using?

3 A Right. So this was one of these scenarios that I talked
4 about before, where they would get back into the system, and
5 the informant apparently doesn't have the message that
6 precedes this one from Cole responding about the DNA.

7 Q All right. But let's look at the bottom right, after the
8 DNA sample, what does the person you believe to be Cole say
9 here?

10 A He's again tagging Lazarus. So this is in reference to a
11 communication with Lazarus. "Don't worry, we're working on
12 the posters. Here's a sample."

13 Q Let's look, then, at the very next page. Do you recognize
14 this image?

15 A Yes, I do.

16 Q Was this one of the posters used in the operation?

17 A Yes, it was.

18 Q If we look at the very bottom right, below the poster,
19 what does Cole write here?

20 A "There will be more."

21 Q Let's go to Page 10 of this exhibit. What does Krokodil
22 say?

23 A Krokodil says, "Good morning, gentlemen. I hope you all
24 had a good Thanksgiving. What are all your status on the
25 data collection?" Which was -- and that's in reference to

1 the targets, the information they were collecting about the
2 targets.

3 Q Let's look further down the page.

4 MR. BLACK: Objection to the commentary.

5 THE COURT: The last portion of the answer will be
6 stricken.

7 Q Let's look at the bottom portion of this page. What does
8 Lazarus say?

9 A "I have three people written down. I'll figure out the
10 addresses, if possible."

11 Q What about Azazel -- I'm sorry, let's start with Lazarus.

12 A Okay. So Lazarus starts with, "Two to three journalists
13 with addresses found. The other two we just have names, but
14 I'm sure we can find addresses soon for them."

15 Q Let's look at the next page, Page 11 of this exhibit.
16 What are the two people here reporting?

17 A This moniker is reporting, "I'm complete." And the
18 informant is reporting, "Same."

19 Q The next page, Page 12, what does Krokodil say? Then
20 what's the response?

21 A Krokodil is tagging these other monikers, and he's asking
22 for status on your info collection. One of them responds to
23 Krokodil, "Things are well. I'm taking a more unorthodox
24 approach, but all the locations are in order. There are lots
25 of un surveilled mailboxes in my area, which I'm going to

1 incorporate into this. Much wider breadth."

2 Q Let's look at the next page, Page 13. What does this
3 member say in response?

4 A This member in response says, "Got three targets here
5 lined up, working on the plan to hit them now. Shouldn't be
6 too difficult. Main thing is distance, but that can be
7 worked around."

8 Q Page 15. What does Krokodil now tell the group?

9 A He tells the group, "Good morning, ladies. We are now
10 going to begin the second step of our operation, which is the
11 commissioning of custom posters for our targets. Please
12 e-mail all the information you collected to your" --
13 collected of your targets, to this secmail.pro e-mail
14 address. Please have the subject of the e-mail be 'mailing
15 list.' Please do this within the next 24 hours, so we can
16 begin making these posters as soon as possible. Thank you."

17 Q Are you familiar with this secpro e-mail service?

18 A Yes. I understand that to be a dark web e-mail service.

19 Q Let's look further down the page, Page 15. What does
20 Krokodil say, then, the responses?

21 A Krokodil says, "Please do this within the next 24 hours,
22 so we can begin making these posters as soon as possible.
23 Thank you."

24 Azazel responds, "Yes, sir." This other moniker, "Will
25 do."

1 Q Let's go to Page 20 of this exhibit, and walk us through
2 what's happening here.

3 A You have the person using the moniker "Old Scratch" says,
4 "Sent." Cole responds, "Okay." Old Scratch responds,
5 "Sadly, I couldn't get the address on the fourth guy, who was
6 a Jew." Cole responds, "Tis all good."

7 Q Let's look at that next page, so just continuing this
8 string here. "Tis all good." What does Old Scratch write
9 and what does Cole respond?

10 A Old Scratch, in his own words, "Those white cucks should
11 be enough, so LMAO. Plenty of articles on fag rights and
12 whatnot." Cole responds, "Oh, indeed."

13 Q Further down this same page in the string. "And so we're
14 clear, who is writing?" What does Cole recommend?

15 A "If I had to make a suggestion for the Ohio boys, and
16 there's a Twitter.com Egavactip."

17 Q Have you visited that Twitter page?

18 A You know, I don't remember visiting that one.

19 Q Do you know who the person is?

20 A Oh, no. No, I did. I do remember this. That was an ADL
21 official. A Twitter page for an ADL official, I'm sorry.

22 Q Let's go to the next page. Tell us what's happening here
23 with this person, Roman.

24 A Okay. Krokodil, "Another guy on deck. And, no, this
25 isn't the Base Roman LOL." And, again, that's a reference to

1 another neo-Nazi group called the Base.

2 Q What does Cole say?

3 A "Yup he's a new initiate."

4 Q Let's look at the next page, Page 23 of this exhibit.

5 What does Roman tell the group?

6 A Roman tells the group. "Thanks Krokodil. Krokodil, happy
7 to be a part. Hope I can help. Has anyone already devised
8 an easy way to find these journalists? I'm literally going
9 to a local news outlet, scouring for any names tacked on to
10 political or opinion pieces, that are directly attacking what
11 we represent."

12 Q If we look further on Page 24. What's the exchange with
13 Lazarus and then Cole?

14 A The exchange with Cole, and it looks like he's responding
15 to Roman, "Often addresses will be listed on websites, such
16 as White Pages, or other websites like White Pages."

17 Q Let's look at the next page, Page 25. And this
18 continuation of this discussion. What does Cole say to
19 Roman?

20 A "This is still in somewhat earlier stages at this time.
21 So far we are manifesting this op organically."

22 Q Page 26. What's the exchange between Roman and Cole?

23 A Roman says, "All right. I've gotcha." And Cole responds,
24 "At this time, it's mostly newer initiates that will be doing
25 this."

1 Q What does Krokodil say?

2 A Krokodil says, "And me, because I'm not doxed yet."

3 Q Let's look at Page 31 of Exhibit 101. Walk us through
4 this exchange.

5 A Okay. So this moniker at the top is responding to
6 Krokodil. "List sent. Three Jews."

7 Q What does Cole say?

8 A Cole says, "Hold up, I'll check the e-mail." 14ALG88
9 says, "Including the lead director of several local stations,
10 and a member of the Jewish Community Center, who is a writer
11 for the Jewish Journal."

12 Q What does Cole say?

13 A Cole says, "Nice work."

14 Q Let's look at the next page, Page 32 of Exhibit 101.
15 Following this exchange, what does that other user, ALG,
16 offer?

17 A ALG offers, "Thank you. You can use Trustoria to get a
18 complete list of literally every journalist in your area, and
19 then you just put their name into White Pages."

20 Q What is Trustoria?

21 A Trustoria is a publicly available online database of
22 professionals, to include journalists.

23 Q If we look at the next page, how did Cole respond?

24 A "Really?"

25 Q And if we continue down the same page, this is Page 33.

1 What's the exchange here?

2 A 14ALG88 then cross-referenced the White Pages information
3 for accuracy. "Yes." Cole says, "Interesting."

4 Q Let's go to Page 36. What does Roman tell the group?

5 A Roman tells the group, "Very nice. I found a leader of
6 the Association of Black Journalists here in my state."

7 Krokodil responds, "Excellent work."

8 Q And let's look at Page 41, later in the chat. What does
9 Lazarus say and how does Cole respond?

10 A Lazarus says, "Sounds like you've been a bit busy. I have
11 my boys looking for local journalists in their area. Do we
12 need to learn any personal information about the journalists
13 we are targeting?" Cole responds, "If possible, home
14 addresses." Lazarus responded, "Got it."

15 Q And the next page, Page 42. What is the exchange here
16 between Krokodil and Lazarus?

17 A Krokodil and Lazarus. "If there are local journalists who
18 are up our ass, prioritize them. If none of your local
19 journalists are up our ass, hit them anyway." Lazarus says,
20 "Got it. We've got three guys, and one of them is a Jewish
21 journalist." Krokodil responded, "Outstanding, Laz. Make
22 note, and tomorrow we can move on to the next step."

23 Q Let's go to Exhibit 102, and the first page of that
24 exhibit. What does Cole tell the group?

25 A Cole tells the group, "Okay. So far I have addresses and

1 such from guys in Oregon, Florida, California and Ohio."

2 Somebody responds, "Beautiful." Lazarus, "Oh, we are ready
3 to get shit done here soon."

4 Q Let's look at Page 2 of this string. What does Cole say
5 here?

6 A Cole says, "It seems we have some more work to do on the
7 fronts of other cells in this chat. There are still a few
8 more addresses some of us need to get. For instance, our
9 Washington guys need a bit more time." Lazarus responded,
10 "Ah, all right. We'll wait then."

11 Q Let's skip to Page 7 of this string. What does Krokodil
12 write and how does Cole respond?

13 A Krokodil writes, "Wire has been down for me for the last
14 72 hours. If anyone has messaged me in that timeframe,
15 please resend. This app is fucked. So have I missed
16 anything related to the operations?" And Cole responded,
17 "Not at this time."

18 Q Page 8 of Exhibit 102. What does Cole write to the group?

19 A "So when you guys film clips for this project, be sure to
20 film your clips horizontally, landscape, not vertically,
21 portrait."

22 Q Okay. If we go to Page 10 of Exhibit 102, what does
23 Krokodil say here?

24 A "I also want to add, I think we should do this project on
25 the same night. All of us. For two important reasons. If

1 some journos get hit before others, they will perhaps see it
2 coming and prepare. It would be a good show of force
3 demonstrating we are capable of massive coordination."

4 Lazarus says, "Sounds fun."

5 Q Look at the next page, Page 11 of Exhibit 102. What does,
6 in particular, Roman say here?

7 A Roman says, "I believe that as well. Knowing what day,
8 beforehand, would help to us. They wake up on a certain day
9 and find themselves terrorized all at once, with targeted
10 propaganda."

11 Q Let's go to Page 14 of this exhibit. What does Cole write
12 to this person?

13 A Cole, to this person, "Once we compile the information, we
14 will figure that out soon. If I had to make suggestions for
15 some here, if some of these reporters have houses, some
16 should get Dollar store rag dolls and knife them to a tree
17 outside their houses, knife through the head of the doll."

18 Q Do you remember Exhibit 203, the video that was taken by
19 the undercover officer of Cole?

20 A Yes.

21 Q Let's just play a very brief snippet of that.

22 (Exhibit 203 played.)

23 Q All right. Let's go to Exhibit 103. What does Cole write
24 to the group?

25 A "Just to check in, how is everyone doing?" Azazel says,

1 "Pretty good, brother." Cole goes on to say, "Now we are
2 still working on some more people getting addresses, and
3 we're working on some more posters, and such. We want this
4 to be a real good campaign. In the meantime, those that have
5 their targets already, feel free to do recon, even over
6 Google Maps, with the proper electronic opsec measures of the
7 addresses. If you" --

8 Q We'll get to that part in a second.

9 In your training and experience, are you familiar with
10 what that word "opsec" refers to?

11 A Right. The word "opsec" refers to taking measures so that
12 you don't create information about what you're doing on the
13 Internet.

14 Q If you look at the continuation of this, so we can fill
15 out the page here. Then what does Azazel say?

16 A "Yes, sir."

17 Q Let's go to the next page, Page 3. What does Cole say
18 here?

19 A Cole says, "We have addresses from Washington, Oregon,
20 California and Ohio. Did you guys send yours yet, @Azazel?"

21 Q And what is the exchange in particular? What does Cole
22 say at the bottom?

23 A In particular, Lazarus says, "I think we did." Azazel
24 responded, "Yes." And Cole says, "Let me check that e-mail
25 real quick."

1 Q Page 4 of this exhibit. Let's finish this continuation
2 here. What does Cole say?

3 A Cole asks, "Which e-mail you have on file? Sorry, I lose
4 track of these things occasionally." Lazarus responded, "If
5 we sent them, it would have been from Azazel, @Azazel." Cole
6 responded, "Never mind, I found it. I do not have an e-mail
7 from you guys." And he provides the secmail.pro e-mail
8 account.

9 Q The dark web e-mail account?

10 A Yes.

11 Q Let's look at Exhibit 104. What does Cole write here?

12 A "All right. We have addresses from Washington, Oregon,
13 California, Ohio, and Florida, and one from Arizona." And
14 then he's asking if Napalmson has any addresses.

15 Q If you look at the next page of this exhibit. What's the
16 exchange here between the user of 14AL, and then Cole?

17 A Okay. So 14ALG88 is saying, "Everything I print at the
18 library shows up on the clerk's monitor. I tested it with
19 printing out a resume. I'm not sure how I'm gonna get prop.
20 I might just have to improvise. The messages will get
21 across." Cole responds, "You can also go on Craigslist.
22 People sell printers on there for cheap. I definitely
23 wouldn't use the library. You could also go to a spot like
24 Kinkos, or something, depending on the surveillance around
25 the place."

1 Q Look at the next page, continuation of this string.
2 What's some of the advice that Roman and this other ALG
3 person offer?

4 A Roman offered, "To distract the clerk with a rock." ALG,
5 "I could have my GF walk up and talk to her."

6 Q GF, is that an expression you're commonly familiar with?

7 A I'm familiar with that as "girlfriend."

8 Q What does Cole say in response to those suggestions?

9 A Cole says, "I wouldn't even do that."

10 Q What does ALG then say?

11 A ALG says, "It's probably archived."

12 Q And if we look at the next page, how does Cole pick up on
13 that comment, that it could be archived?

14 A Cole picks up on it, "Exactly. It may be archived. Not
15 the best idea. As I said, oftentimes there will be printers
16 on Craigslist for like 20 bucks that people don't use
17 anymore."

18 Q Let's go to Page 6 of this exhibit. What does he tell the
19 group?

20 A There is also the printer/copier places that you can go
21 for -- avoid Office Depot, because of their cameras and such.
22 And be sure to only print in black and white.

23 Q Page 7, does he explain why you should only print in black
24 and white?

25 A "A printer/copier spot that's a little more low key is not

1 a bad bet. Just make sure everything is printed in black and
2 white, so no metadata won't show up, the tiny yellow dots
3 that indicate information about the printer."

4 Q Are you familiar with what metadata is?

5 A Yes. Metadata is, again, talking back to operational
6 security, is information that would be inadvertently left
7 behind that could attribute the activity to you.

8 Q Page 9 of Exhibit 104, what does Krokodil say? Then
9 what's the response from ALG?

10 A Krokodil says, "Canon Pixma MG3620 is \$39.99. Canon Pixma
11 TS3122 is \$19. And if you don't have \$20 steal some baby
12 formula and sell it on eBay to make that quick buck. Joking
13 of course." ALG says, "Oh, I'd never do anything illegal."
14 Krokodil says, "I know you wouldn't, brother. None of us
15 would."

16 Q Next page, Page 10. What does Cole write Old Scratch?

17 A He writes, "Hey, man, what website did you recommend
18 previously in regards to getting journalists' home addresses?
19 Just so I can forward it to another crew getting in on this."

20 Q Next page, Page 11. How does Old Scratch respond?

21 A He responded with this URL.

22 Q And what is he -- again, his words?

23 A "You can filter by state and specialties. I chose targets
24 who write about government and ethnic issues. You can also
25 view examples of their work and see the kind of" -- in his

1 words -- "faggotry they write about. Some have addresses and
2 some don't. But useful either way."

3 Q Let's look further down that page. How does Cole respond?

4 A "Aye, indeed."

5 Q Let's go to Page 15 of this exhibit. What does Krokodil
6 tell the group?

7 A Krokodil tells the group, "Once we decide on a unanimous
8 night for the boots-on-the-ground operation, you gentlemen
9 utilizing mail should mail a day or two earlier than the
10 boots-on-the-ground operation, depending on how fast domestic
11 in-state mail rates are." Old Scratch says, "True. True."
12 And Krokodil says, "And, remember, buy your stamps in another
13 town, with cash, while wearing a disguise. Laughing out
14 loud. And utilize a mailbox with no cameras nearby. Post
15 office equals big no-no."

16 Q Next page, Page 16.

17 A Old Scratch says, "Definitely." Krokodil says, "And wear
18 medical gloves when handling all materials. Make sure both
19 the destination and return addresses, if you're dumb enough
20 to add one, are printed on the paper and cut out and taped
21 onto the envelope. No handwriting allowed. When sealing the
22 envelope, use a Q-tip dipped in water, instead of your
23 tongue, unless you want the FBI to have your DNA. Little
24 things, man. Little things. Study how others were caught,
25 and improve on their techniques."

1 Q Page 18. What does Cole tell the group?

2 A Cole tells the group, "So I have three designs ready for
3 the doorsteps. I may make another one as well. If you're
4 doing spots that are news stations or anything else, our
5 standard selection of posters will work for those."

6 Q Page 19. What's the exchange here between Krokodil, Cole
7 and the informant?

8 A Right. Krokodil is reaching out to the informant asking,
9 "Got anything on your end, East Coast alumni?" Cole likewise
10 is reaching out to the informant. "Will you have your guys
11 participating in the fun? You beat me to it, Swiss."

12 Q Page 21. What does Cole tell the group?

13 A Cole tells the group, "I've held off on some of the
14 specific posters, as I wanted to do them all in bulk."

15 Q What does Krokodil say?

16 A "I understand 100 percent. Do what you need to do. The
17 timeline is still organic."

18 Q Further down that same page, Page 21. How does the
19 informant jump in here?

20 A Right. He says, "I'll be sending out some night stalkers.
21 Isn't there one poster that's more general with a blank part
22 for personalized messages?"

23 Q Next page, Page 22. How does Cole respond to the
24 informant?

25 A "Yes. I left it blank mostly, for input of addresses.

1 But you can make it personalized messages, too, I suppose."

2 Q Next page, Page 23. What's the exchange here between
3 Roman and Cole?

4 A Roman says, "This is pretty legit. I haven't seen decent
5 coordination executed so well. Glad to be a part, even if I
6 have quite a bit to learn. I feel like I could have done
7 more, though, is there time to add another address." Cole
8 says, "Feel free." Krokodil says, "48 hours, my friend."
9 And Cole reiterates, "And the schedule is organic."

10 Q Exhibit 105. What does Cole tell the group?

11 A Cole tells the group, "I should finish up the posters here
12 sometime tomorrow. I have a lot of work I am doing. And if
13 anyone has another address, feel free to let me know."

14 Q Next page of this exhibit.

15 How did Roman respond to what we just saw, then what
16 does Cole say?

17 A Roman says, "Just sent you an e-mail." And Cole
18 responded, "Roger Dodger."

19 Q Next page, Page 3. What does Cole say here?

20 A Lazarus says, "Also just sent." Cole is saying, "Okay, I
21 have most of the e-mails, now I just need one from @14ALG88."
22 Then he asks, "Hey, @Lazarus do you have an e-mail for
23 Rabbit? And if so, can you tell them I'm about to send him
24 posters. I just need one of" -- "I just need one from him,
25 then I will be sending all of them in one session." Lazarus

1 says, "Let me text him off something other than Wire really
2 quick. Hold on."

3 Q Next page, Page 4 of this exhibit. What's the exchange?
4 What does Cole respond?

5 A Lazarus says, "Let me text him off something other than
6 Wire real quick. Hold on." Cole responded, "I will send the
7 e-mails tomorrow. I have to reinstall my Linux
8 distribution." Lazarus responded, "All right."

9 Q Next page, Page 5. What did Cole tell the group?

10 A Cole tells the group, "Hey, guys, sorry to get here so
11 late. So I just wanted you to all know that I sent the
12 posters out to all of the e-mails. Subject line should be
13 'prop-run,' and I've been using guerrillamail. I have been
14 having problems with my Linux machine, hence why I haven't
15 been around for the last couple days."

16 Q Are you familiar with guerrillamail?

17 A Yes.

18 Q What is it?

19 A It's randomly generated e-mail addresses that are not
20 password protected. And anybody can visit that guerrillamail
21 e-mail address, and have access to the contents of that
22 account.

23 Q Next page, Page 6. What does Cole tell the group?

24 A "Okay, guys, I've finished the bulk of address posters.
25 If anyone has additional addresses for me, DM me. Cell

1 leaders, be sure to DM some appropriate e-mails for me to
2 send these to you as well."

3 Q Go ahead.

4 A Lazarus, "MI will need to make an encrypted e-mail, then."

5 Q Page 8 of Exhibit 105. What's the exchange here between
6 the informant and Cole?

7 A The informant asked Cole, "Be sure to send me untimed
8 templates when you get a chance." And Cole says, "Sure."
9 And the informant thanks him.

10 Q We previously admitted Exhibit 111. Is that the e-mail
11 that the informant sent to the FBI containing posters?

12 A Yes.

13 Q Let's look at that. What was the title of the attachment
14 of the posters?

15 A It's "prop-stuff" and it's a zip file.

16 Q To be clear, this is from the informant to the FBI?

17 A Yes.

18 Q Let's look at the posters, the attachments. Have we seen
19 this before?

20 A Yes.

21 Q What is it? Is this one of the posters that some of the
22 recipients got?

23 A Right. Yes.

24 Q We'll go through these one by one. Did someone testify in
25 this trial about getting this poster?

1 A Yes.

2 Q Who was that?

3 A It was Chris Ingalls. This is the one he got.

4 Q Did someone testify about this poster?

5 A This one was sent to Miri Cypers.

6 Q Let's look at the other posters that were part of this.

7 We'll go through these one by one.

8 Okay. Exhibit 106, Page 2. What does Krokodil say
9 here?

10 A Krokodil says, "So the next step is to come up with a
11 collective time. Those mailing, send yours out a day ahead
12 of the night of the prop run."

13 Q Is there a discussion of dates?

14 A Yes, discussion of dates. Krokodil goes on, down at the
15 bottom, "Plan for sometime in January between Sunday the 19th
16 and Saturday the 25th."

17 Q Let's look at Page 4 of Exhibit 106. What does Cole write
18 the group?

19 A Asks if everyone got the e-mails. Azazel responded,
20 "Nope, we're missing them." Cole responded, "Wait, really?
21 God fucking dammit. All right. I am having issues with my
22 Linux machine, so I haven't been able" --

23 Q We'll finish on the next page. What is that, to finish
24 what he said here?

25 A -- "to be on here as actively."

1 Q Let's look at Page 6 of this exhibit. What does Cole tell
2 the group?

3 A Cole tells the group, "But was it entitled 'prop run; and
4 did you get the picture? Guerrillamail will send it as a
5 weird 'from;' e-mail." Azazel, "He can't even get into it."
6 Cole, "That's fine. I'll send to you." Azazel, "Thank you."
7 Cole, "But you got yours, the posters and all?"

8 Q Next page. Let's finish this string here.

9 A Azazel says, "Laz and I are the same cell. I never got an
10 e-mail because I didn't have one at the time." Cole says,
11 "Oh, right, sorry. I keep forgetting. I haven't slept much
12 last night. All right. What is the e-mail you want sent to,
13 the one above?" Azazel says, "Yes, sir." Cole provides this
14 e-mail address. "Okay, I'm going to do that right now."

15 Q Page 10 of this exhibit, what does Cole say here?

16 So is there a discussion about timeframes, about when
17 this operation will occur?

18 A Right. They're talking about the timeframes.

19 Q What does Cole say?

20 A Cole says, "Of course when we decide on a time, it should
21 be at least two weeks ahead of time."

22 Q And let's look at Exhibit 107. Is there more discussion
23 about timing?

24 A Krokodil says, "So in that week of Sunday the 19th and
25 Saturday the 25th, does anyone have any days that would work?"

1 Personally, Friday the 24th would work best for me. Friday
2 night, that is."

3 Q Okay. Look at Page 5 of this exhibit. Is there further
4 discussion about what date this is going to happen?

5 A Right. Further discussion of what date it would happen.
6 "If the majority prefers Saturday, I can do Saturday, too.
7 Saturday the 25th, that is."

8 Q Next page. What does Cole remind the group?

9 A Cole reminds the group, "Don't forget, guys, take video
10 clips, and filming horizontally, landscape not vertically,
11 portrait."

12 Q Next page, Page 7. What does Roman tell the group?

13 A Roman talks about how he is scoping his places on maps
14 right now. That it looks pretty easy for his two. He says,
15 "For anyone that has apartments, just be sure to scope for
16 security gates, cameras, and ground lights. Depending on the
17 apartment, it can be tricky. Suburban or neighborhood houses
18 look really easy, but single household owners can have
19 cameras and other security that average apartments will not.
20 As well as neighbors. Find a way to look unsuspecting, walk
21 down the street with headphones, if you have to walk a
22 distance, without looking."

23 Q We'll continue the next slide here. What does Roman say?

24 A "Even if there are cameras around the gates, they don't
25 have them everywhere. The apartment I have looks pretty

1 accessible, even with the security car motion gate, all I got
2 to do is hop a short adjacent wall with nothing facing it.
3 Two funny ideas my cell had was in the daytime, dressing in
4 construction gear, orange shirt, whatever makes you
5 believable. And the other was driving right up with an empty
6 Amazon box, look like a mail deliverer. But clearly it's
7 safer and more practical to move in in the dead of night and
8 drop the props."

9 Q Page 11. What's the exchange here?

10 A Old Scratch, "Hell, yeah. That's a piece of cake, then.
11 And, yo, I'll probably go at night, just in case."

12 Q You said, "Yo." It's, "yeah."

13 A Right. "Yeah, I'll probably go at night, just in case."

14 Q What does Roman say?

15 A "Whatever the case, I wish everyone the best of luck in
16 execution, whenever that day comes. But I believe that if we
17 smash this, we can reap the reward of a nationwide scare.
18 And it's all just step one."

19 Q All right. Next page, Page 12. What does Krokodil say?

20 A Krokodil says, "So I have a bike in the back of my truck
21 and I'll park at an area where there aren't any cameras, and
22 a comfortable distance away from the target house. What I'm
23 going to do is wear a helmet and lower face wrap. It's cold
24 out here, wouldn't arouse suspicion, while biking to my
25 designations from my truck, as to avoid license plate

1 captures." Roman says, "Aye, of course, that too. Always
2 keep a distance from target house. I've already spotted
3 where I can park. It will be night, but everywhere I will
4 park I will also obscure my license plate."

5 Q The next page, 13, what does Krokodil say?

6 A Krokodil says, "I may do it during the daytime under the
7 guise of a mail carrier, less suspicious? Well, evening
8 time...we will see."

9 Q What does Roman say?

10 A Roman says, "I thought about that. Saturday nights can be
11 late and slightly busy after the evenings, but I'm too
12 committed to the night-stalker strategy, I suppose. Laughing
13 out loud. My targets live 15 minutes from each other,
14 laughing out loud. Great cover."

15 Q Exhibit 108, Page 3. What does Krokodil tell folks?

16 A "Also something we need to talk about urgently, cameras.
17 Most houses now have cameras affixed to their doorbells. The
18 devices are called Ring. And your target doesn't even need
19 to have one, necessarily. If their neighbor or someone down
20 the street has one, it can capture an image of your car that
21 police can use. Intersection cameras can also pick up your
22 vehicle, and such."

23 Q Page 5 of this exhibit, what does Azazel say and how does
24 Lazarus respond?

25 A Azazel says, "Be very cautious of the surrounding and use

1 Google Maps, if possible, to search around." Lazarus, "We
2 will be sure to be wearing masks and make sure no visible
3 tattoos or marks are showing that could be led back to us."

4 Q Next, Page 6 of this exhibit. What does Lazarus say?

5 A "Also, do it at a time where you know they will be asleep,
6 because either way, the flash would have given them away,
7 wrong house or not."

8 Roman, "I mentioned cameras last time, but a big one would
9 be the Ring-type cameras. I'm with the idea that this
10 endeavor should have no holes. I'm not even going to use
11 flash."

12 Q Page 8 of this exhibit. What does Cole say?

13 A Cole says, "I think I fixed my issue with my Linux
14 machine. What did I miss over the past few days, gents?"
15 Lazarus says, "None, really. Just the wait for the day of
16 the posters." Cole asks, "Perhaps in a couple weeks or so?
17 You guys said Friday would be better, yes?"

18 Q Next page. What's the exchange here?

19 A Lazarus says, "I think we said a Saturday. I think we
20 agreed the 25th." Cole responds, "Or a Saturday, sorry, I
21 got mixed up over here. Oh, okay. That sounds good to me."

22 Q Page 11 of Exhibit 108, what does Krokodil say?

23 A Krokodil says, "Roger dodger. I'm considering having this
24 operation's official strategy being that of mailing the
25 posters instead of boots-on-the-grounds. Thoughts?"

1 Objections? Seconds to the motion?" Lazarus responds, "Hmm.
2 Well, it's less threatening if we just mail them." Azazel,
3 "Honestly, not a bad idea, but I like the dangerous side
4 more." Lazarus, "But I do see the whole safety thing."

5 Q Next, Page 12.

6 A Lazarus goes on to say, "I say the night of the posters,
7 before we put up any, we check the house for security, and et
8 cetera. If the house has too much security, we mail them.
9 But if it doesn't have a lot, and we can get by with our
10 masks, then we put the posters up." And he's responding to
11 Krokodil.

12 Krokodil says, "What I don't want happening is one of you
13 boys being caught. That's my main concern."

14 Q Next page, Page 13.

15 A Lazarus says, "We know, but you also have to understand we
16 all know what we signed up for. So I say we go through with
17 the plan, but if a house has too much security, we mail that
18 poster to that house." Azazel says, "It will look
19 suspicious, especially on me and Laz, driving with a New
20 Jersey plated car and parking somewhere random. However,
21 we've gotten away with it in the past, too."

22 Q Page 15 of Exhibit 108. And let's see what Lazarus says
23 here.

24 A Lazarus says, "Not if we are in and out quickly, without
25 making any mistakes. Worst case, we mail the poster. My

1 point is, if we want to send a message, it would look better
2 if we put that poster up. Mailing them, yes, seems effective
3 enough, but it doesn't send a bigger and greater message than
4 actually putting up a poster at someone's house."

5 Q Page 18 of this exhibit. What does Roman say?

6 A Roman says, "It's not like they're expecting us in person.
7 If they all receive some shit in the mail consecutively, it
8 will draw the same stir. Maybe not as novel as a physical
9 visit with a poster on their front window, but in the scare
10 range, just the same."

11 Q Page 20. What does Krokodil say?

12 A "I'd Google house security camera systems, what they look
13 like. Look at reviews of the product for potential
14 weaknesses, et cetera. Most are motion activated." Lazarus
15 says, "And wear no clothing that you wear all the time."

16 Q Page 22.

17 A Azazel, "Best idea I got for us, Laz. We hit up a thrift
18 store beforehand, wear those close, then burn them. And make
19 sure you wear something big, so they don't know your body
20 shape."

21 Q Page 26 of Exhibit 108?

22 A Azazel, "There has to be a way for us to check how often
23 cops are out on certain days." Roman, "Best I could think is
24 just having a police scanner in the vehicle."

25 Q Page 29?

1 A Krokodil responded, "If we are arrested later in
2 connection to the operation, but they can't prove we
3 specifically did it, Fedwaffen's open sourcing of the AW
4 brand name gives us plausible deniability."

5 Q Are you familiar with what Fedwaffen is?

6 A Yes. This was a rogue group that was utilizing the
7 Atomwaffen brand and putting out their propaganda videos.

8 Q So with that in mind, read, again, what Krokodil is saying
9 here.

10 A "If we are arrested later to the connection to the
11 operation, but they can't prove we specifically did it,
12 Fedwaffen's open sourcing of the AW brand name gives us
13 plausible deniability."

14 Q So somebody else that was using the Atomwaffen brand?

15 A Yes.

16 Q What does Krokodil say?

17 A "If there are mass arrests following this operation, the
18 operation is already compromised, and it can't get any worse,
19 right? Might as well pawn it off on the Ukrainians, while
20 taking personal satisfaction that we got away with it."

21 Q Further down this page. So what you just said, "Personal
22 satisfaction, we got away with it." What does Azazel say,
23 and then what does Cole say?

24 A Azazel says, "Fair point." Cole says, "The only ones that
25 have anything to worry about, if anyone at all, are marked

1 men."

2 Q Page 32, what is a continuation of this.

3 A Krokodil, "I know, but it's good to have a fallback plan
4 for every scenario. The scenarios we don't plan for are the
5 scenarios that catch us off guard. And being caught off
6 guard leads to fear-based decisionmaking." And Cole
7 responded, "But, of course."

8 Q Page 33. What does Cole continue to say here?

9 A "All one has to say is, 'I know nothing and have nothing
10 to say,' more or less." Krokodil says, "To the authorities,
11 yes. But this would be something to tell your defense
12 lawyer." Cole responded, "Oh, okay."

13 Q Okay. Exhibit 109, Page 2. What does Cole say?

14 A Cole says, "Don't expect a bunch of media coverage. This
15 is simply to send a message which will stir whispers."
16 Krokodil responded, "The question is, do we want media
17 coverage or not? Personally, I think there will be. The
18 journos themselves who are targeted will probably broadcast
19 it on their own."

20 Q Page 7 of Exhibit 109, what does Cole say?

21 A "The point overall is to send a message and stir whispers,
22 and a wee bit of frenzy. If there isn't any coverage, it's
23 because they don't want to bring more heat upon themselves,
24 or fellow journos, adding to their fear of us."

25 Q Let's continue, it cuts off. Same part of this page, what

1 does he say?

2 A "They don't want to bring more heat upon themselves or
3 fellow journos, adding to their fear of us. If there is
4 coverage, it would be like the coverage of the Base's little
5 stunt recently, except done correctly. And, again, sending a
6 message that stirs them up and we intimidate them further."

7 Q Exhibit 110. What does Cole say?

8 A "For every individual you attempt to neutralize, there are
9 50 more of us that are left untouched. This will be the
10 narrative of another poster I'll make soon. How is everyone
11 doing today? Everyone pumped for the op?" Lazarus says,
12 "Oh, yeah, baby, next weekend." Roman, "A little bit. I
13 just can't wait to see what the fallout will be like."

14 Q Page 2, what does Roman and Cole say here?

15 A Cole responded, "Altogether it's about sending a message.
16 Whether there is press coverage or not, there will be
17 whispers stirring."

18 Q Page 9 of this exhibit. Is this the end of this chat
19 string?

20 A Yes. So this would have been late January 2020.

21 Q What does Krokodil tell the group?

22 A "All right, gentlemen. As a reminder, the operation shall
23 be undertaken on the night of Saturday the 25th, in four
24 days. Please take the necessary precautions to avoid leaving
25 evidence, both forensic and physical. If you are caught,

1 remember, say nothing at all. Plead the 5th Amendment.
2 Don't talk to the police about anything. Let your lawyer do
3 the talking. Because of Fedwaffen's attempted open sourcing
4 of the AWD brand, we have plausible deniability. I'm looking
5 forward to seeing all your guys' work. I have total faith in
6 all of you, which is why you were all selected for this
7 historic operation. Sieg heil, gentlemen. Good luck out
8 there."

9 Q And the last page of this exhibit, is Krokodil in the chat
10 group?

11 A Krokodil is removing all the members in the Erste Saule
12 group out of there.

13 THE COURT: Let's break for lunch and start up again
14 at 1 o'clock. We'll be in recess.

15 (Recess.)

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AFTERNOON SESSION

THE COURT: Ready for the jury?

MR. WOODS: Yes.

(The following occurred in the presence of the jury.)

Q Special Agent Haughton, let's leave the chats and go to 2018.

Did the informant in this case capture a recording of Kaleb Cole addressing Atomwaffen members?

A Yes.

Q Is that Exhibit 701?

A Yes.

Q Have you listened to it?

A Yes, I have.

Q Do you recognize the voice on it?

A Yes, I do.

Q Who is the voice?

A It's Kaleb Cole.

MR. WOODS: Offer 701.

MR. BLACK: We object on the basis of lack of personal knowledge.

THE COURT: It's a statement of the defendant, counsel.

MR. BLACK: As to the source of the recording, Your Honor.

THE COURT: Overruled.

1 MR. WOODS: May I publish it?

2 THE COURT: Yes.

3 Q Prior to coming to court today, did you review the
4 transcript that accompanies the recording?

5 A Yes, I did.

6 Q And is the transcript true and accurate?

7 A It is.

8 (Exhibit 701 played.)

9 Q Is A.C. Thompson someone who has reported on Atomwaffen?

10 A Yes. He's a journalist for ProPublica.

11 Q Let's switch topics and look at Exhibit 501, which was
12 previously admitted. Remind us, this is the poster Chris
13 Ingalls got?

14 A Right. This is the poster that Chris Ingalls received by
15 mail.

16 Q Do you see the phrase that's written in the top, "Death to
17 pigs"?

18 A Yes.

19 Q Do you recall the news story that Chris Ingalls did, or
20 one of the news stories that he did on Kaleb Cole, in which
21 Charles Manson came up?

22 A Yes.

23 Q This phrase, "Death to pigs," is there any connection that
24 you're aware of between that phrase and Charles Manson?

25 A Right. In the late 1960s, the Manson family killed Leno

1 and Rosemary LaBianca, in their home. It was a home
2 invasion. They stabbed the victims to death, then they wrote
3 this on the wall in their blood.

4 Q If you are to -- have you Googled this phrase, "Death to
5 pigs," with Charles Manson?

6 A Yes.

7 Q Is there a common image that comes up from the crime
8 scene?

9 A Yes. The crime scene photo where this was written on the
10 wall is commonly -- is openly available on the Internet.

11 Q Is that Exhibit 706?

12 A Yes.

13 Q And how does the writing on the wall, not just the words,
14 but the writing on the wall compare to the writing in the
15 poster?

16 A It looks the same. It looks like "death" was repositioned
17 next to -- from "to pigs" from the original photo. But the
18 lettering is the same.

19 MR. WOODS: Offer 706.

20 MR. BLACK: Objection. Lack of foundation as to the
21 basis of the photo.

22 THE COURT: Sustained. It's cumulative, counsel.
23 The evidence is in already. Move on.

24 MR. WOODS: Okay. Your Honor, I have no further
25 questions.

1 THE COURT: All right. Counsel.

2 CROSS EXAMINATION

3 BY MR. BLACK:

4 Q Good afternoon, Special Agent Haughton. You've been
5 involved in the investigation into Atomwaffen for some time;
6 is that correct?

7 A Yes. Since approximately September 2018.

8 Q And that includes investigation into Kaleb Cole?

9 A Yes.

10 Q For most of that time?

11 A Yes.

12 Q Mr. Cole has never been involved in any actual violent
13 actions against anybody during that time; is that correct?

14 A I mean, by violent action, do you mean physical violence?

15 Q Yes.

16 A No.

17 Q Do you know if he's planned any physically violent
18 actions?

19 A No.

20 Q There are a number of electronic chat messages that have
21 been entered into evidence in this case that we just
22 reviewed, correct?

23 A Yes.

24 Q And those include messages attributed to Mr. Cole, as well
25 as many other members of the organization, correct?

1 A That's correct.

2 Q And these are from a variety of chats over the years,
3 right?

4 A Yes. I think we focused on strictly for this case.

5 Q But from 2019 and '20?

6 A Correct. We've provided those.

7 Q And the chats provided include those obviously from the
8 Erste Saule string, which is what we reviewed in the, I
9 believe it's the 100 series that occurred over December 2019
10 to January 2020, correct?

11 A It started late November, and then was late January. So
12 late November 2019 to late January 2020.

13 Q And the string of messages in basically chronological
14 order that we reviewed this morning, all comes from the Erste
15 Saule string, correct?

16 A Most of it does. The initial solicitation was a direct
17 communication between Krokodil and the informant, inviting
18 the informant into the scheme.

19 Q Okay. So there was that one, and then all the other ones
20 were from the Erste Saule string?

21 A Right. Where you see the list of participants, the
22 monikers for all the chat participants, that was taken from
23 the Erste Saule chat. There's a bubble that they can click
24 and see who the chat participants are. And so that's what
25 that was. And then Krokodil announcing that the informant

1 had been added to the group, he was another ranking
2 gentleman, I believe is what Krokodil said.

3 Q Okay. So the one from Krokodil to the informant, as well
4 as the Erste Saule chat string, that's the entire sum of
5 chats regarding this postering campaign; is that correct?

6 A Yes.

7 Q That are in the government's possession, I should say.

8 A Right.

9 Q Are you aware of any chats that weren't provided to the
10 government?

11 A I mean, I can see from the very first solicitation, I
12 think this one that's on the screen right now, there
13 obviously was some communications between Krokodil and
14 Mr. Cole that led up to that, that the informant was not a
15 party to. So I know there was -- Mr. Cole was probably
16 involved in those other chats, but we didn't get to see
17 those.

18 Q Let me rephrase, perhaps. Are you aware of any chats that
19 the informant received regarding this postering campaign,
20 that were not provided to the FBI?

21 A No.

22 Q The messages, the chat messages included statements about
23 a lot of things, correct?

24 A Yes.

25 Q The chats included statements -- the purpose of the

1 posting campaign, made by numerous people; is that correct?

2 A Yes.

3 Q One of those people was Krokodil, correct?

4 A Yes.

5 Q I'd ask you to look, please, at your screen. That is
6 Exhibit 100, which has been identified.

7 Krokodil there talks about eroding the media's and
8 state's air of legitimacy, correct?

9 A Yes.

10 Q And in doing that, by showing people that they have names
11 and addresses?

12 A Yes.

13 Q Correct?

14 It does not discuss the intent to do violence; is that
15 correct?

16 A Um, I think later on it says that they're going to have
17 threatening messages.

18 Q This message here doesn't discuss the intent to do
19 violence, correct?

20 A This one, no.

21 Q Okay. Not physical violence, correct?

22 A Right, physical violence.

23 Q And this chat message also does not discuss the intent to
24 make people believe that physical violence was planned; is
25 that correct?

1 A No.

2 Q Thank you.

3 If you could take a look at the exhibit before you,
4 that's what's been marked as 109(2), which has been admitted.
5 That's also one of the chat messages from the string that we
6 discussed this morning, correct?

7 A Yes.

8 Q And as you've testified, the purple symbol string moniker
9 is attributed to Mr. Cole, correct?

10 A Yes.

11 Q And what he says here is to -- is that this is to simply
12 send a message which will stir whispers, correct?

13 A Yes.

14 Q This also doesn't discuss planning physical violence,
15 correct?

16 A Not this one statement by itself.

17 Q Thank you.

18 MR. BLACK: Sorry, Your Honor. We're pulling up an
19 exhibit.

20 Q And here, again, at Exhibit 109, Page 7, again, we have
21 the purple symbol moniker indicating that the point overall
22 is to send a message and stir whispers, and a wee bit of
23 frenzy, correct?

24 A Yes.

25 Q And, again, doesn't discuss a plan for violence, correct?

1 A Not that one by itself, no.

2 Q Thank you.

3 Could we go to Exhibit 110, Page 2, please?

4 A I will say on that last one -- I don't know if I can point
5 out something -- this message did go on to say something
6 else.

7 Q Go ahead.

8 A It says, "Aiding to their fear of us." If you read the
9 message.

10 Q Sure. It says, "I assume, adding to their fear of us."
11 And, again, then at the bottom, "sending a message," correct?

12 A Right. "And we intimidate them further."

13 Q Yes.

14 A I'm sorry, go ahead.

15 Q I'm sorry. This does discuss both fear and intimidation,
16 correct?

17 A Yes.

18 Q But it doesn't discuss a plan for physical violence,
19 correct?

20 A No, this does not.

21 Q And the discussion of fear and intimidation is in the
22 context of press coverage; is that correct?

23 A I think it's in the context of the communications that
24 were sent out.

25 Q It says, "If there isn't any coverage," and then continues

1 from there.

2 A That's based on the messages actually being delivered.
3 That's my understanding from this, in the context of it. So
4 they're talking about what is going to happen when they do
5 this.

6 Q But the coverage discussed is press coverage, correct?

7 A Right. They're trying to figure out, are there going to
8 be -- is there going to be fear and intimidation. This is
9 what they're discussing.

10 Q If there's press coverage, correct?

11 A I think they're looking at the press coverage as some
12 feedback to them.

13 Q Thank you.

14 Again -- strike that. You have all the chats that were
15 provided; none of them indicate that Mr. Cole said anywhere
16 that his true intent was to make people believe that AWD was
17 actually going to harm them; is that correct?

18 A I guess I don't really agree with that. I mean, the
19 statements in their context is fear, intimidate, those kind
20 of words. Intimidation is bodily harm, fear of bodily harm.
21 I guess what maybe you're asking is, was there a plan for
22 them to go operational right then and there and commit an
23 assault, a physical assault? No, I never saw anything like
24 that.

25 Q You never saw a statement where Mr. Cole said: I want

1 these people to believe that we are coming for them; is that
2 correct?

3 A I don't think he said it that way.

4 Q Thank you.

5 You went through a lot of statements in the chats this
6 morning. And for many of those it appeared there were long
7 stretches where The Moniker, attributed to Mr. Cole, was not
8 involved in the chats; is that correct?

9 A I don't know if I would describe it as a long stretch.
10 There was a period there where he talks about his Linux
11 machine, his computer, being down. And that was creating
12 some kind of delay. And he was asking for an update, at one
13 point.

14 Q There were stretches where Azazel and Lazarus and Krokodil
15 were having back and forth, and there was no interjection by
16 the symbol string, for pages, correct?

17 A I mean, I guess it could have been a few days without --
18 you know, because the timeframe we're looking at is
19 approximately 60 days, I guess, November through -- late
20 November through late January.

21 Q There are no timestamps on those messages, correct?

22 A No.

23 Q And you're not aware of exactly when any of those messages
24 were sent; is that correct?

25 A No. They're ballpark. My understanding is that those

1 were being provided almost, I won't say instantly, but in
2 very close proximity to when they were occurring. And that
3 was being forwarded to the handling agent, and then they
4 would be available for me to review.

5 So I was able to see, like, ballpark, like if it was
6 mid-December, late November. Clearly, January 25th when they
7 sign off of the chat, that's clearly right on the eve of the
8 attack.

9 Q Right. Those messages, many of them were set to
10 self-destruct, or whatever you want to call it, after a time
11 period, correct?

12 A Yes.

13 Q How long was that time period, do you know?

14 A It was 24 hours.

15 Q Okay. So there could easily have been stretches where
16 messages were exchanged that the symbol moniker never
17 received, correct?

18 A It's possible. I noticed at one point, I think he asked
19 for an update, and he was given an update by, I believe,
20 Azazel.

21 Q Sure. But you don't know --

22 A Right.

23 Q -- when the messages were sent, they self destruct after
24 24 hours, so you can't say that the symbol string person saw
25 them, unless there are interjecting messages; is that

1 correct?

2 A Correct.

3 Q Thank you.

4 And, again, the chats that were introduced as evidence
5 were just screenshots, correct?

6 A Yes.

7 Q They weren't associated with a particular IP address?

8 A No. They probably were, but we didn't have access to
9 those records. Like I mentioned before, because they were
10 using this Swiss-based service, they don't keep those
11 records.

12 Q Right. So you don't have those records?

13 A No.

14 Q And they didn't come off of a device?

15 A No.

16 Q Correct?

17 As the FBI was monitoring this chat conversation, you
18 came to the conclusion that the time of the postering
19 campaign was approaching in late January, correct?

20 A That's correct.

21 Q Of 2020?

22 A Yes.

23 Q And you -- the FBI reached out to a number of people who
24 appeared to be the planned recipients of these messages?

25 A Yes.

1 Q And you informed them about what was happening?

2 A Yes. One of the goals that we had, obviously as part of
3 this investigation, was to find out really what was going on.
4 And so part of that was who the potential victims were, and
5 so we wanted to warn them.

6 Q And who did you reach out to?

7 A I remember the victims that you spoke to today. There was
8 one in Florida that you haven't spoke to yet. I'm sorry, not
9 today -- that previously testified already. We spoke to
10 those victims. The ones that we were able to identify. So
11 part of the challenge was, they were talking about going to
12 the people's doorsteps, and obviously, you know, even though
13 there was no overt plan of physical violence, the concern was
14 that there was a risk of some kind of possible violence,
15 either somebody being spooked that somebody is on their
16 doorstep, or something like that. So to the extent possible,
17 we wanted to warn the victims that we could identify, but we
18 weren't able to identify all the victims.

19 Q And I believe you just indicated that you informed them
20 that there was no overt risk of physical violence?

21 A Right.

22 Q Thank you.

23 A I guess --

24 THE COURT: You've answered the question.

25 Q I've asked my partner to pull up an exhibit here. One

1 moment.

2 This is what's been introduced as Exhibit 111. This is
3 a copy of the e-mail, with posters attached, that the
4 confidential source received on, I believe it was January 11,
5 2020?

6 A No. It's January 7th. And, I'm sorry, this was received
7 by the agent, from the informant.

8 Q It contains materials from the informant that were sent to
9 the agent though, correct?

10 A Yes.

11 Q And these are the posters that were sent to the informant
12 in conjunction with this operation, correct?

13 A Yes. These were the blank templates.

14 Q I'm just going to ask to page through a few. If we could
15 go to here.

16 So this one, at Page 5 of the exhibit, is not one of
17 the posters that were used in the campaign at issue here,
18 correct?

19 A That's correct, as far as I know. These were provided as
20 miscellaneous. So they could have been used and just not
21 reported to law enforcement, for whatever reason.

22 Q Thank you. Well, do you know where these kind of posters
23 are used?

24 A These would be -- by this particular group, they like to
25 go to campuses, periodically, Capitol Hill neighborhood, they

1 like that area, to put these kind of stickers up.

2 Q Put up flyers, just out in the world?

3 A Right.

4 Q This poster, for example, contains some of the same images
5 that are included in the other posters, correct?

6 A Right. The context is different in this poster, just
7 because this looks like it's a solicitation to join the
8 group.

9 Q Right. But there's the radiation shield, and there's what
10 looks to be Molotov cocktails and a swastika?

11 A Right.

12 Q All included.

13 Those are similar to the other posters?

14 A I mean, I don't think they're similar, the way they're
15 arranged. The Molotov, to me, is still indicating violence.
16 But this is more like an asking. This is more of a
17 recruitment, versus a statement.

18 Q It's the same images, correct?

19 A I mean, there are images of Molotovs and swastikas. The
20 shield is the same.

21 Q Which is on the other posters as well, correct?

22 A I think the shield is the same. I'd have to look at the
23 other posters to see if the skull is the same.

24 On the one poster, the swastika is different.

25 Q But there are swastikas on both?

1 A Yes.

2 Q And Molotov cocktails on both?

3 A Yes.

4 Q Okay. Thank you.

5 Can we go to the next page. Similarly here, there's
6 somebody carrying what looks like a gun?

7 A Yes.

8 Q And, again, swastikas and a skull mask?

9 A Yes.

10 Q And these are also similar images to what was included in
11 the posters involved in the campaign?

12 A I mean, similar in that there's neo-Nazi imagery and
13 violent imagery, but it's not arranged the same way.

14 Q The skull mask is the same, correct?

15 A It's similar.

16 Q And the swastika is not the same, though?

17 A Some of them probably are.

18 Q But they're swastikas?

19 A Right.

20 Q Thank you.

21 Again, in this one, the skull mask, which is similar?

22 A Yes.

23 Q Here somebody in a skull mask carrying a gun?

24 A Yes.

25 MR. BLACK: Nothing further, Your Honor.

1 THE COURT: Redirect?

2 MR. WOODS: Briefly.

3 THE COURT: That is a word I wish lawyers would ban
4 from their vocabulary.

5 MR. WOODS: We don't always live up to it either.

6 REDIRECT EXAMINATION

7 BY MR. WOODS:

8 Q Special Agent Haughton, you were asked about threats of
9 violence in these chats. Let's look at the posters we were
10 just looking at.

11 You see the reporter in the middle of the screen?

12 A Yes.

13 Q What's pointed at his head?

14 A It's a -- it looks like a firearm. A sniper.

15 Q Let's look at the next page. What's that person in a
16 skull mask holding?

17 A That's a Molotov cocktail.

18 Q In front of a?

19 A In front of a residence.

20 Q And what are the lines that are right here on the poster?

21 A "We know where you live."

22 Q Counsel showed you the series of posters, those first
23 three, and then the remaining ones. What was different about
24 the first three posters?

25 A The first three were designed to communicate a threat.

1 Q Well, I'll withdraw that.

2 MR. BLACK: Objection, move to strike.

3 MR. WOODS: Yeah.

4 THE COURT: The answer will be stricken.

5 Q If you look at the screen, let's focus on the posters.
6 What's different in the first three posters, versus all the
7 remaining posters in that set?

8 A It has this block that says, "You've been visited by your
9 local Nazis," which is where the address of the intended
10 recipients received it.

11 Q If we look at Exhibit 104, what does Cole say about --
12 what does he say here?

13 A "So I have three designs ready for doorsteps. I may make
14 another one as well. If you're doing spots that are news
15 station, or anything else, our standard selection of posters
16 will work for those."

17 MR. WOODS: No further questions.

18 THE COURT: All right. Any recross?

19 MR. BLACK: No. Thank you, Your Honor.

20 THE COURT: All right. You may step down.

21 MR. WILKINSON: The United States calls Josh Sutter.

22 JOSHUA SUTTER

23 Having been sworn under oath, testified as follows:

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DIRECT EXAMINATION

BY MR. WILKINSON:

Q And you may remove your mask, sir.

Good afternoon.

A Hello.

Q Could you tell the jury your name, please?

A Joshua Sutter.

Q What city do you currently live in?

A Lexington.

Q What state is that in?

A South Carolina.

Q Will you just give us a brief pause after I ask a question, so we don't talk over each other? That will help the court reporter.

So, you live in Lexington, South Carolina?

A That's correct.

Q Are you married?

A Yes.

Q What do you currently do for a living?

A Publishing.

Q Publishing?

A Correct.

Q Have you also worked as an FBI informant?

A That's correct.

Q Is it true that you have been involved in

1 white-supremacist groups in the past?

2 A That's correct.

3 Q And which particular white-supremacist group were you a
4 member of?

5 A Several. But Aryan Nations, Church of the Sons of Yaweh.

6 Q And over what time period were you a member of those
7 groups?

8 A Late '90s up to 2003.

9 Q And what happened in your life in 2003?

10 A I was arrested in 2003.

11 Q What charges were you arrested on?

12 A Possession of a Glock .40 caliber with an obliterated
13 serial number, and possession of a silencer unregistered to
14 me personally.

15 Q Were you convicted?

16 A I was.

17 Q Did you serve time in jail?

18 A I did.

19 Q How long?

20 A Two years.

21 Q Two years?

22 A Yes, sir.

23 Q During that period of time, were you approached by the
24 FBI?

25 A I was.

1 Q Did they make a proposal to you?

2 A Yes. I was contacted through my lawyer, soon after my
3 arrest.

4 Q Okay. And can you explain what the proposal was?

5 A According to my lawyer, after my release I would be -- it
6 was proposed that I could act in a deep-cover capacity. And
7 I was instructed to continue the relationships that I had in
8 the right wing.

9 Q Is that another way of saying that you would work as an
10 informant?

11 A Correct.

12 Q Okay. And did you agree to do that?

13 A Yes, sir.

14 Q Why did you agree to do that?

15 A I found it an interesting proposal. And at that point,
16 since I had talked amicably with the FBI, I no longer had any
17 invested reason not to, really.

18 Q Okay. Can you explain, just very generally, what types of
19 things you did in your work as an informant for the FBI?

20 A Certainly. I've engaged in travel for person-to-person
21 meetings with targeted individuals and target organizations.
22 Surveillance. Use of surveillance equipment. Things of
23 those natures.

24 Q Okay. And did you say you were released from prison in
25 2004?

1 A That's correct.

2 Q And so how long after that did you start working as an
3 informant?

4 A Immediately thereafter.

5 Q Okay. And did you work more or less continuously as an
6 informant since that time?

7 A That's correct.

8 Q Okay. How much money have you been paid over the period
9 2004 through the present?

10 A Over \$100,000.

11 Q Have you been charged with any other crimes since that
12 2003 conviction?

13 A I have not.

14 Q Are you familiar with an organization called Atomwaffen?

15 A I am.

16 Q And how did you first come into contact with Atomwaffen?

17 A I was contacted by one of their members.

18 Q And do you know who the member was that contacted you?

19 A Yes. Cameron Denton.

20 Q How did he contact you?

21 A By social media, a message.

22 Q And did you have an understanding of why they were
23 interested in you?

24 A I had a reputation in the right wing, and some ties to
25 cultism. So my name was out there. I was approachable.

1 Q And when you were contacted by Mr. Denton, did you report
2 that to the FBI?

3 A I did.

4 Q Did they give you any instructions on how you should
5 respond?

6 A They did.

7 Q What did they tell you to do?

8 A Well, I informed them that I had been contacted. And then
9 soon thereafter, the events in Tampa occurred. And then I
10 was formally -- I was formally invited to join. And I shot
11 that to my handler, and then was told to join.

12 Q Okay. And by your "handler," that's the FBI agent who you
13 directly worked with?

14 A That's correct.

15 Q So he instructed you that you should go ahead and join the
16 Atomwaffen group?

17 A That's correct.

18 Q Okay. How did you initially communicate with other
19 members of the Atomwaffen group?

20 A The initial -- I was vetted on a phone interview, and then
21 thereafter utilizing Discord, which is an electronic
22 communications means, and also Wire, which is an encrypted
23 messaging service.

24 Q And when members of Atomwaffen communicated over Discord
25 or Wire, did they use their real names?

1 A No, sir.

2 Q Okay. Did they use nicknames instead --

3 A Correct.

4 Q -- or an alias?

5 Did you have an alias?

6 A Correct.

7 Q What was your alias?

8 A Swisdiscipline.

9 Q Swisdiscipline?

10 A Correct.

11 Q Did you develop an understanding of who the leaders of the
12 group were, through your participation in these
13 communications?

14 A Yeah, that's correct.

15 Q And what were the nicknames of the primary leaders of the
16 group?

17 A Primary leaders were Rape and Khimaere.

18 Q And you mentioned Khimaere. Did he send out regular
19 communications to the Automwaffen group?

20 A Yes, that's correct.

21 Q Could you describe the nature of the communications he
22 would send out, or what his role seemed to be in this?

23 A General nature of communications, propaganda development,
24 recruitment, operational details.

25 Q Okay. Did he post recordings online of himself speaking?

1 A Yes, that's correct.

2 Q I want to turn to 2018. Did you participate in an
3 in-person event in Death Valley, California?

4 A That's correct.

5 Q Was the person that you had come to know as Khimaere
6 present at that event?

7 A Yes.

8 Q Do you see the person you had understood to be Khimaere in
9 court today?

10 A Yes, that's correct.

11 Q And can you describe him by what he's wearing?

12 A Individual to the right. White mask.

13 MR. WILKINSON: Could the record reflect he's
14 identified the defendant?

15 THE COURT: Yes.

16 Q What was the event in Death Valley, California?

17 A Death Valley hate camp.

18 Q What is a hate camp?

19 A It's usually a meeting in a rural area, consisting of
20 weapons training, ideological discussion, in-person
21 discussions, that wouldn't be held otherwise. Propaganda
22 development.

23 Q Was there, in fact, weapons training at this hate camp?

24 A There were weapons, but no weapon training, per se.

25 Q Okay. What was Mr. Cole's role at the hate camp?

1 A He was the organizer of the camp.

2 Q Did you also travel to an in-person meeting in Washington
3 State?

4 A That's correct.

5 Q And what event was that?

6 A That was an unnamed hate camp.

7 Q Another hate camp?

8 A Correct.

9 Q Where, approximately, did that take place?

10 A Greenwater.

11 Q Is that near Mount Rainier?

12 A That's correct.

13 Q Was the defendant present at that hate camp as well?

14 A That's correct.

15 Q What occurred at that hate camp, just generally?

16 A There was some weapons training, firearms, hand-to-hand
17 combat training. Propaganda videos. Still shots.

18 Q Okay. And, again, what was the defendant's role at the
19 hate camp in Washington State?

20 A Primary organizer.

21 Q Did you develop an understanding of where the defendant
22 was from?

23 A That's correct.

24 Q Where was he from?

25 A Washington.

1 Q Okay. As you attended these various events, did you keep
2 the FBI updated on what you were doing?

3 A Absolutely.

4 Q Would you get permission before you would go?

5 A Yes.

6 Q Did they pay your expenses?

7 A Yes.

8 Q And did you provide them reports on what happened?

9 A That's correct.

10 Q You mentioned a minute ago that you understood, when you
11 met Mr. Cole, that he was living in Washington State. Did
12 you understand later in time that he moved somewhere else?

13 A That's correct.

14 Q Where did he move to?

15 A Conroe, Texas.

16 Q And moving into 2019. Do you remember being contacted by
17 a member of the group named Krokodil?

18 A That's correct.

19 Q Who is Krokodil? And by that I mean, what was his role in
20 the organization?

21 A He was a recruiter.

22 Q Okay. And did he make a proposal to you?

23 A That's correct.

24 Q What did he propose?

25 A He informed me that there was an operation called

1 Operation Erste Saule. The gist of it was to send
2 threatening communications to journalists, ADL personnel,
3 civil rights type personnel, in retaliation for media
4 coverage.

5 Q How did he contact you?

6 A Wire.

7 Q Okay. Now, the jury has already seen these chats and
8 we're not going to go back through them. But I do want to
9 ask you just a couple questions about how you captured them.
10 I'm showing you Exhibit 100. Is this the communication where
11 Krokodil reached out to you?

12 A That's correct.

13 Q And did you do anything to preserve this communication?

14 A That's correct.

15 Q What did you do?

16 A Photocopied -- not photocopied. Photographed.

17 Q And did that involve literally just using another phone to
18 take a picture --

19 A Yes.

20 Q -- of this?

21 And did you attempt to capture each message that you
22 received in this chain of communications?

23 A That's correct.

24 Q And how frequently did you capture them?

25 A In this particular conversation?

1 Q Yeah.

2 A I mean, it would be ongoing.

3 Q As they came in?

4 A That's correct.

5 Q Then what would you do with them after you captured them?

6 A Forward them to the FBI.

7 Q So I think you mentioned this is a chat just between you
8 and Krokodil?

9 A That's correct.

10 Q And were you then added to a chat group that was used to
11 plan the operation?

12 A That's correct.

13 Q I'm showing you Exhibit 101 now, the second page. Is this
14 image the picture of you being added to that group?

15 A That's correct.

16 Q And it says, "Another ranking gentleman added to the mix."
17 Do you have an understanding of what that meant?

18 A At that point I was a trusted upper-echelon member.

19 Q That was referring to you?

20 A Correct.

21 Q And as you received these chat messages, under the
22 Operation Erste Saule group, did you also capture those in
23 the same way that you captured Exhibit 100?

24 A Correct.

25 Q Did you regularly capture them as they came in?

1 A That's correct.

2 Q What did you do with those once you received them?

3 A Forwarded them to the FBI.

4 Q I want to show you exhibit -- actually, let me just ask
5 you. Did you review, before coming to court today, Exhibits
6 102 through 110?

7 A Yes, sir.

8 Q And are those accurate copies of the chats that you
9 collected and sent on to the FBI?

10 A Yes, sir.

11 Q Is the same also true of Exhibits 602, 603, 605 and 700?

12 A Correct.

13 Q And those all accurately depict the chats that you
14 received?

15 A Correct.

16 Q Showing you Exhibit 111. This is an e-mail -- and we've
17 redacted the sender and recipient information -- but is this
18 an e-mail that you sent to your handler at the FBI?

19 A Correct.

20 Q And there's a file there. Can you tell us what that file
21 is?

22 A The name of the file?

23 Q Yeah.

24 A Attachments-prop-stuff.zip.

25 Q Where did you get that zip file?

1 A That was sent to me by Khimaere.

2 Q And before Khimaere sent it to you, had you asked Khimaere
3 for anything? Had you asked him to send you any literature?

4 A That's correct.

5 Q What did you ask him to send you?

6 A I asked him to send me the propaganda posters that were
7 designed for the operation.

8 Q Okay. And after you asked him to send them, what
9 happened? What kind of notification did you receive?

10 A They were forwarded to me.

11 Q And just scrolling through Exhibit 111, are these the
12 posters that were contained in the file?

13 A Correct.

14 Q After you got them, did you forward them on to the FBI?

15 A That's correct.

16 Q We mentioned -- you mentioned earlier that sometimes
17 Khimaere would post recordings online in which he gave
18 speeches or instructions to other members of Atomwaffen.

19 A Correct.

20 Q And did you review, before coming to court today,
21 Exhibit 701, which is a recording of one of those?

22 A Yes, sir.

23 Q Was that an authentic recording that you received online?

24 A Yes, sir.

25 Q Did you recognize the voice on that recording?

1 A Yes, sir.

2 Q And who was it?

3 A Khimaere.

4 MR. WILKINSON: No further questions.

5 MR. BLACK: Thank you, Your Honor.

6 CROSS EXAMINATION

7 BY MR. BLACK:

8 Q Good afternoon, Mr. Sutter, I'm Chris Black. I'm one of
9 the lawyers representing Mr. Cole in this case. You
10 testified that you joined Atomwaffen at Cameron Denton's
11 invitation; is that correct?

12 A That's correct.

13 Q That was in 2017?

14 A That's correct.

15 Q Do you know how old Mr. Denton was at the time?

16 A I'm not aware.

17 Q Approximately?

18 A Early twenties.

19 Q And you did all of that under FBI supervision, correct?

20 A That's correct.

21 Q You were reporting back to the FBI the whole time, from
22 then on, everything that you did in regard to Atomwaffen?

23 A That's correct.

24 Q Do you remember when you first met Mr. Cole?

25 A Yes.

1 Q When was that?

2 A It would have been in Las Vegas, in early 2018.

3 Q Do you know how old Mr. Cole was at the time?

4 A Early-to-mid twenties.

5 Q And during the course of your participation in the
6 investigation into Atomwaffen, you provided all the
7 information that you got about Atomwaffen to the FBI,
8 correct?

9 A That's correct.

10 Q And who was your supervising agent?

11 A My handler, or my --

12 Q Your handler?

13 A Bill Moser.

14 Q Was that the entire time? The entire time that you were
15 working for the FBI in the Atomwaffen --

16 A There's been various special agents involved.

17 Q Did you have a handler during the investigation into
18 Atomwaffen, starting in 2017?

19 A Correct.

20 Q Was it one person, or more than one person?

21 A There were multiple people.

22 Q Who were they?

23 A In the context of the Atomwaffen investigation
24 specifically?

25 Q Correct.

1 A Bill Moser is my primary handler. Steve -- I don't know
2 his last name.

3 Q Okay. But to those two, then, you provided all the
4 information that you got?

5 A That's correct.

6 Q So you were involved with Atomwaffen over the next several
7 years, correct?

8 A That's correct.

9 Q Until at least the arrest of Mr. Cole in this case,
10 correct?

11 A Correct.

12 Q In 2020?

13 A Correct.

14 Q And your participation in Atomwaffen included things like
15 online chats, correct?

16 A That's correct.

17 Q In-person meetings, some of which you've discussed?

18 A Correct.

19 Q Anything else?

20 A Say again.

21 Q Anything else?

22 A I think that's an appropriate summary.

23 Q In the online chats and the meetings, the members of
24 Atomwaffen discussed their philosophy, correct?

25 A Correct.

1 Q And their ideologies?

2 A Correct.

3 Q They discussed plans that they had?

4 A Correct.

5 Q If they had been planning a violent operation, you would
6 have certainly reported that to the FBI, correct?

7 A Certainly.

8 Q You indicated that Mr. Cole's role in Atomwaffen was to
9 create propaganda; is that correct?

10 A Correct.

11 Q And he was involved in planning what's been described as
12 hate camps?

13 A Correct.

14 Q And at these camps -- well, these camps took place in the
15 wilderness, basically, right?

16 A Correct.

17 Q Over the course of a few days?

18 A Correct.

19 Q And there were people shooting guns there?

20 A Correct.

21 Q These were people who were legally permitted to possess
22 firearms, to your knowledge?

23 A I would assume.

24 Q Except for you, correct?

25 A Correct.

1 Q And there were ideological discussions at these camps?

2 A That's right.

3 Q And filmed -- propaganda videos were filmed there?

4 A Correct.

5 Q Were any plans for any violent attacks discussed at these
6 camps?

7 A If they were, I would have forwarded them to the FBI.

8 Q So, no?

9 A Not specifically, no.

10 Q Briefly, you provided all of the chats that you were
11 engaged in, in relation to Atomwaffen, to the FBI?

12 A That's correct.

13 Q That you ever received, correct?

14 A That's correct.

15 Q There were none that you kept to yourself and didn't
16 provide?

17 A Not to my knowledge.

18 Q You were present at a meeting on January 9, 2020, at the
19 home in Conroe, Texas, correct?

20 A Yes, sir.

21 Q And Mr. Cole and Mr. Denton were there, correct?

22 A That's correct.

23 Q You were there in an undercover capacity, correct?

24 A Correct.

25 Q And you're aware that the meeting that you had at that

1 house that day was recorded?

2 A Yes, sir.

3 Q Have you ever reviewed those recordings?

4 A I have.

5 Q Do they appear to be an accurate representation of the
6 conversation that was had that day?

7 A Correct.

8 Q To your knowledge, are there any statements that Mr. Cole
9 made that day that weren't recorded?

10 A Not to my knowledge.

11 Q And if he would have said something relating to planning a
12 violent action, even if it weren't recorded, you would have
13 reported that, correct?

14 A That's correct.

15 Q And that didn't happen?

16 A Well, there was a discussion regarding the operation,
17 which involved threatening actions against certain targets,
18 so that's --

19 Q The one that was recorded, correct?

20 A Correct.

21 Q And that was the discussion about sending the posters,
22 correct?

23 A That's correct.

24 Q Do you remember being involved in a discussion with
25 Mr. Cole that day, during that meeting, where you were

1 talking with him about not wanting to overshoot or undershoot
2 anything?

3 A Sure.

4 Q And that was about not wanting to take it too far,
5 correct?

6 A Well, I -- there were statements by me. I was asking them
7 to see -- to gain a litmus of what they were doing. In other
8 words, I was saying: I don't want to undershoot or
9 overshoot, so explain to me what you're doing.

10 Q And Mr. Cole did do that, correct?

11 A I believe so, yes.

12 Q And he said you don't want to overshoot it, correct?

13 A I think he said that we shouldn't overshoot it or
14 undershoot it.

15 Q Okay. Thank you, sir.

16 There was no indication to you, during that meeting
17 that day, that Mr. Cole had any idea that you were working
18 with the FBI; is that correct?

19 A Correct.

20 Q He had no indication -- there was no indication to you
21 that he was aware that an FBI agent was present?

22 A No, sir.

23 Q No reason that you know of that he would have been careful
24 with his true thoughts; is that correct?

25 A Correct.

1 Q He thought that he was among friends?

2 A Sure.

3 Q And that you were all involved in planning this thing?

4 A Sure.

5 Q He didn't appear to be choosing his words carefully; is
6 that correct?

7 A Say again.

8 Q He didn't appear to be choosing his words carefully?

9 A I mean, it was a serious conversation. So not any more
10 than usual, I would assume.

11 Q He was drinking alcohol, correct?

12 A Sure.

13 Q You and the FBI agent brought that, correct?

14 A We brought some beer.

15 Q And you shared that with Mr. Cole?

16 A Sure.

17 Q You indicated that you've been paid over \$100,000 working
18 with the FBI; is that correct?

19 A Correct.

20 Q Have you paid taxes on that?

21 A No.

22 Q Did you tell the FBI that?

23 A No.

24 Q You didn't tell the FBI that you weren't paying taxes?

25 A No.

1 Q Did you tell them, at some point prior to this trial, in
2 the last few weeks, perhaps?

3 A Correct.

4 Q Sir, is that a "yes"?

5 A Correct.

6 Q Is there any indication that you're likely to be charged
7 with tax evasion for that?

8 A I --

9 MR. WILKINSON: Objection, relevance.

10 THE COURT: Sustained.

11 MR. BLACK: Nothing further, Your Honor.

12 THE COURT: Redirect?

13 MR. WILKINSON: No redirect, Your Honor.

14 THE COURT: You can step down. Put your mask back
15 on.

16 MR. WILKINSON: United States calls Special Agent
17 Jayme Poteet.

18 JAYME POTEET

19 Having been sworn under oath, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. WILKINSON:

22 Q Good afternoon. And you can remove your mask.

23 A Okay.

24 Q Could you tell the jury your name, and what you do for a
25 living?

1 A My name is Jayme Poteet, and I'm a Special Agent with the
2 FBI in Houston, Texas.

3 Q How long have you been with the FBI?

4 A Or over 21 years.

5 Q And do you have any particular specific assignment with
6 the FBI?

7 A Yes. I'm the evidence response team coordinator.

8 Q What does that mean?

9 A The evidence response team is a group of agents in the
10 division that are specially trained to collect forensic
11 evidence and conduct complex searches. And I'm the
12 coordinator for that. So other times we're called the senior
13 team leaders. So I do all the administrative duties, the
14 training, the purchasing, and I go to crime scenes and
15 searches as a leader, whenever I'm available.

16 Q So is it common for you, when a search warrant is
17 executed, for you to go out and participate in the collection
18 of evidence?

19 A Yes.

20 Q And have you received training in the collection and
21 inventorying of evidence?

22 A Yes, I have.

23 Q Does that include the collection of forensic evidence,
24 like computers?

25 A Yes, it does.

1 Q I want to turn to February 26th of 2020. Did you
2 participate in the execution of a search warrant that day?

3 A Yes, I did.

4 Q And where, generally, was the site of the warrant?

5 A It was at a residence at 1218 Ox0n Run, in Montgomery
6 Texas.

7 Q I'm going to show you Exhibit 2. Was that the residence
8 where you participated in the search warrant execution?

9 A Yes, it is.

10 Q And what was your role in that search?

11 A I was the search team leader.

12 Q What time of day, roughly, was the search warrant
13 executed?

14 A When I arrived on scene, it was approximately 5:40 a.m. in
15 the morning.

16 Q Did the FBI also have arrest warrants that day?

17 A Yes, they did.

18 Q Did that include one for the defendant, Kaleb Cole?

19 A Yes, it did.

20 Q And was Mr. Cole present in the house when the warrant was
21 executed, when the search warrants were executed?

22 A I don't believe so, no.

23 Q Was he arrested that day?

24 A Yes, he was.

25 Q I'm going to show you Exhibit 1. Do you recognize

1 Exhibit 1?

2 A Yes, I do.

3 Q Is that a diagram of the house and the items that were
4 found in the house?

5 A Yes, it is.

6 Q Does it accurately depict them?

7 A Yes, it does.

8 MR. WILKINSON: United States offers Exhibit 1.

9 MR. BLACK: No objection.

10 THE COURT: Admitted.

11 (Exhibit 1 was admitted.)

12 Q Okay. Actually, let me back out of this a little bit.

13 So is this a floor plan of the house?

14 A It's a sketch that I made that would resemble a floor
15 plan.

16 Q And it looks like there are blue boxes. Can you tell us
17 what those blue boxes are?

18 A Right. It's our procedure, when we conduct a search of a
19 residence or business where they have multiple rooms, we
20 designate a room label to each room that we're searching.

21 Q Is that used in part of the inventorying process for those
22 search items?

23 A Yes.

24 Q What are the yellow bubbles?

25 A The yellow bubbles are the approximate location of where

1 the items we recovered were found.

2 Q Okay. And I'm drawing an arrow on the exhibit. Is that
3 the front door there?

4 A Yes, it is.

5 Q And what do you see, what do you enter into when you cross
6 through the front door?

7 A When you enter into the front door, you enter into what we
8 labeled Room A, which was a living room. And then kind of an
9 adjoining dining area.

10 Q Have you reviewed Exhibits 2 through 23? And there's a
11 notebook there if you just want to double-check. Did you
12 review those before coming to court today?

13 A Yes, I believe I did.

14 Q And are those photographs that were taken during the
15 search?

16 A Yes, they are.

17 Q And do the pictures adequately -- accurately depict the
18 house and the items in the house at the time of the search?

19 A Yes, they do.

20 MR. WILKINSON: The United States offers 2 through
21 23.

22 MR. BLACK: Your Honor, we maintain our objection to
23 some of these prior exhibits, as per the written motion. But
24 I have no additional objection.

25 THE COURT: The objection will be overruled.

1 (Exhibits 2 - 23 were admitted.)

2 Q So we just looked at the entrance of the front door of the
3 house. I'm now showing you Exhibit 3. Can you tell us what
4 that is?

5 A So that is a photograph from the front entrance looking
6 into Room A.

7 Q Okay. So is this like just as you're walking through the
8 front door?

9 A Yes.

10 Q And I want to ask you now, in particular, about the items
11 in the room that's circled on the screen on Exhibit 1 here.
12 What was that room labeled?

13 A It was labeled Room N, as in November.

14 Q Then there's also a Room O, that looks like it's part of
15 that room. What is Room O?

16 A Room O was a closet that was part of Room N.

17 Q Can you describe generally what Room N was?

18 A It was a bedroom.

19 Q Showing you Exhibit 21. Is this a picture of that
20 bedroom?

21 A Yes, it is.

22 Q Can you just describe the orientation here, what we're
23 looking at?

24 A So you're looking at the door that's the entrance to the
25 room. There was a table set up as sort of a desk with a

1 computer. And the picture has kind of been taken from
2 standing in center of the room looking back towards the
3 entrance to that room.

4 Q That's how it looked when you all arrived?

5 A Yes.

6 Q And it looks like there's a closet off here on the left.
7 Is that what you described as Room 0 a minute ago?

8 A Yes, I did.

9 Q Now I'm circling an item on the desk here. Can you tell
10 us what that is?

11 A It appears to be a wallet.

12 Q And how is a wallet significant to you in executing a
13 search warrant?

14 A Well, a lot of times it indicates who has dominion and
15 control of that area.

16 Q Is dominion and control just another way of saying who is
17 living there?

18 A Exactly.

19 Q Showing you Exhibit 14. Is that a picture of the contents
20 of the wallet?

21 A Yes, it is.

22 Q And those were laid out, taken out of the wallet and laid
23 out to be photographed?

24 A Yes.

25 Q And I'm zooming in a little bit now, actually it's

1 Exhibit 15, which is a closer picture. What are we seeing?

2 What are the items in there?

3 A You see a couple of cards, debit cards, credit cards that
4 are issued in the name of Kaleb Cole. And there's also a few
5 prepaid cards that don't have a name associated with them.

6 Q So, for example, I'm showing you -- I'm putting an arrow
7 to an item in the top middle. What is that?

8 A It's a card that says, "State of Washington address
9 confidentiality program."

10 Q And the name underneath?

11 A It's Kaleb James Cole.

12 Q What's the item I'm pointing to now?

13 A It's a AAA card.

14 Q In what name?

15 A Kaleb Cole.

16 Q What about the credit or debit card that I'm drawing an
17 arrow to?

18 A It's a MasterCard in the name of Kaleb Cole.

19 Q And the next place I'm drawing an arrow to?

20 A Visa card with the name Kaleb Cole.

21 Q Showing you Exhibit 16. Are these more items that were in
22 the wallet?

23 A Yes.

24 Q And working from left to right, starting with the driver's
25 license, can you tell us what they are?

1 A There is a Washington driver's license issued in the name
2 of Kaleb James Cole. There's a card that says, "I'm a Texas
3 patriot," and some other words on it. Then a Social Security
4 card in the name of Kaleb James Cole.

5 Q Some item I'm circling here on the windowsill, maybe I'll
6 blow that up a little bit, on Exhibit 12. Can you tell us
7 what that is?

8 A Appears to be a passport.

9 Q And I'm showing you Exhibit 17. Is that the cover of the
10 passport?

11 A Yes, it is.

12 Q And what is Exhibit 18?

13 A It's the interior of the passport.

14 Q And in whose name is the passport issued?

15 A Kaleb James Cole.

16 Q Looking now at Exhibit 111, is there a computer on the
17 desk there?

18 A Yes.

19 THE COURT: You said 111. Did you mean 11?

20 MR. WILKINSON: Excuse me, Your Honor. Yes, 11.

21 Q Was the computer on, when it was executed?

22 A Yes.

23 Q Was that a Dell desktop computer?

24 A Yes, it was.

25 Q How was the computer handled?

1 A We had another search team member who was a, what you call
2 a member of the regional computer forensic lab that's based
3 in the Houston division. He came out to the search, and I
4 believe he's the one who shut down the computer.

5 Q And was that taken into evidence?

6 A Yes, it was.

7 Q Showing you Exhibit 12. Can you tell us what the item is
8 on the chair?

9 A Yes. It's an HP laptop.

10 Q And going back to Exhibit 1, can you tell us where that HP
11 laptop was located?

12 A When I came into the room, it was located on the chair.

13 Q Okay. And where was it marked as being located?

14 A On the chair, 241.

15 Q 241, okay.

16 Let me ask you one more question about that computer.
17 Was that computer taken into evidence in a similar way as the
18 Dell desktop computer we talked about a minute ago?

19 A Yes, it was.

20 Q I'm showing you Exhibit 6 now. Is that another picture
21 that was taken in the room?

22 A Yes, it was Room N.

23 Q Okay. And Exhibit 22. Can you tell us what that is?

24 A Yes. That's part of Room N, looking into the closet,
25 which we designated as Room 0.

1 Q Okay. And is Exhibit 23 a close-up of some of the items
2 in the closet?

3 A Yes, it is.

4 Q Did you also execute a search warrant on a car that day?

5 A Yes.

6 Q Showing you Exhibit 24. Is that the car?

7 A Yes, it is.

8 MR. WILKINSON: The United States offers 24.

9 MR. BLACK: No objection.

10 THE COURT: Admitted.

11 (Exhibit 24 was admitted.)

12 Q And so you conducted a search of the car?

13 A Yes, we did.

14 Q And I'm going to show you Exhibit 25. Is that a piece of
15 paper you found in the car?

16 A Yes, it was.

17 MR. WILKINSON: United States offers 25.

18 MR. BLACK: No objection.

19 THE COURT: Admitted.

20 (Exhibit 25 was admitted.)

21 Q What is 25?

22 A It's a registration certificate for a vehicle.

23 Q So what does the certificate tell us about who owned the
24 car?

25 A It says the registered owner is Kaleb J. Cole.

1 Q Is Exhibit 26 a photograph of two of the items that were
2 found in the car?

3 A Yes, it is.

4 MR. WILKINSON: The United States offers 26.

5 MR. BLACK: No objection.

6 THE COURT: Admitted.

7 (Exhibit 26 was admitted.)

8 Q And do those appear to be two masks?

9 A Yes.

10 Q I asked you earlier whether Mr. Cole was in the house at
11 the time that the warrant was executed in the morning. And
12 you said you didn't think he was. Are you sure one way or
13 the other about that?

14 A Well, there were other members of the Houston division
15 that effected the arrest warrant before I got on scene to
16 conduct the search. So I'm not sure if he was still in the
17 house or just outside. My recollection, he might have been
18 outside, being interviewed in a vehicle, at the time that we
19 started the search warrant.

20 Q Okay. Understood. No further questions.

21 THE COURT: Cross.

22 MR. BLACK: Thank you, Your Honor.

23 CROSS EXAMINATION

24 BY MR. BLACK:

25 Q Good afternoon, Agent Poteet.

1 A Good afternoon.

2 Q Your role in this case was basically just to perform the
3 search, and log all the evidence on the day of the search and
4 the few days thereafter; is that correct?

5 A That's correct.

6 Q You didn't have any role in the investigation otherwise?

7 A That is correct, I did not.

8 Q And you're obviously not aware if the materials that you
9 seized on -- at the end of February of 2020, were in the same
10 place that they were in January of 2020; is that correct?

11 A So you're asking me if the items we seized on February 26,
12 2020, if I could know if they were in the same location as
13 in -- as they were in January?

14 Q Correct.

15 A There's no way I could know that.

16 Q Thank you. Nothing further.

17 MR. WILKINSON: No redirect, Your Honor.

18 THE COURT: You may step down. I'm sorry you have to
19 go back to Texas.

20 THE WITNESS: It is a lot cooler here.

21 MR. WOODS: Can I confer with Mr. Black for just one
22 minute?

23 THE COURT: Sure.

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MALA BLOMQUIST

Having been sworn under oath, testified as follows:

DIRECT EXAMINATION

BY MR. WILKINSON:

Q Good afternoon. Could you begin by telling the jury your name and what you do for a living?

A My name is Mala Blomquist, and I'm the editor for Oregon Jewish Life magazine and Arizona Jewish Life magazine.

Q Where do you live?

A Phoenix, Arizona.

Q What types of things do Oregon Jewish Life magazine and Arizona Jewish Life magazine cover?

A We're a lifestyle publication. So we have columns for seniors, and kids and teens, and food, things like that.

Q And what do you, yourself, do for them?

A I'm the editor-in-chief of both of the publications.

Q So what responsibilities does that include?

A I write. I edit freelance articles. I compile. I work with the art director to create the magazine each month.

Q Are you, yourself, Jewish?

A No, I am not.

Q Does the magazine, itself, the two magazines have a brick-and-mortar location?

A No, we don't.

Q Why is that?

1 A For basically for safety reasons. Most of our staff, we
2 have a small staff of people who are full time, and they're
3 female. And so we worked in an office, but the security
4 wasn't -- we didn't feel as safe as we could with things. So
5 we were going to go into the Jewish Community Center to have
6 our office. But those plans fell through, so we just don't
7 have a location at this time.

8 Q Okay. And can you tell us, just generally, what type of
9 neighborhood you live in?

10 A It's an older neighborhood. Most of the people are
11 original owners. The houses were built in 1978.

12 Q Okay. I'm showing you Exhibit 300. Is that a picture of
13 your home?

14 A Yes it is.

15 MR. WILKINSON: The United States offers 300.

16 MR. ASKEROV: No objection, Your Honor.

17 THE COURT: Admitted.

18 (Exhibit 300 was admitted.)

19 Q How long have you lived in this home?

20 A 21 years.

21 Q And who else lives there?

22 A My husband.

23 Q Do you have children?

24 A I do. I have two grown daughters.

25 Q Okay. They no longer live in the home?

1 A No. At the time, I had one who was in college. And
2 sometimes she would come home for a weekend, or spring break.
3 But, no, right now they are not.

4 Q I would like to turn to February 5th of 2020. Were you
5 visited by federal agents that day?

6 A Yes.

7 Q Can you describe that experience, what was the
8 conversation?

9 A Well, originally they came to the door and rang the
10 doorbell. So I was home alone. And when I looked out and
11 saw two gentlemen at the door, I didn't answer it, because I
12 didn't know who it was. So I saw them, like, looking through
13 the window and other things. So it made me kind of nervous.

14 So when they left, I looked out the bedroom window, and
15 that's when I saw the back of the poster that had been glued
16 on my home. So I went outside to the front to see what was
17 on it. And when I realized what it was, I tried to remove
18 it. And it was actually adhered -- it was adhesive sprayed
19 on and glued to my window, so I couldn't take it off. So
20 then I went back inside.

21 Q Let me just stop you right there, because I just want to
22 unpack a little bit of what you're saying.

23 A Oh, okay.

24 Q Thank you.

25 So you said that the first thing was you looked out a

1 bedroom window?

2 A Right.

3 Q And you saw the back of the poster?

4 A Right.

5 Q Was that your bedroom window?

6 A No, it was one of my daughters'.

7 Q So I want to show you now Exhibit 307. Is that a picture
8 of the bedroom?

9 A Yes.

10 MR. WILKINSON: The United States offers 307.

11 MR. ASKEROV: No objection, Your Honor.

12 THE COURT: Admitted.

13 (Exhibit 307 was admitted.)

14 Q So this is your daughter's bedroom?

15 A Yes.

16 Q And I take it that's her bedroom window?

17 A Right. Yes.

18 Q And what is the item that I'm circling here in the
19 picture?

20 A That's the poster.

21 Q Okay. So you looked out, you saw the back of the poster?

22 A Right.

23 Q Then it sounds like you went outside of the house and
24 walked around and looked at it?

25 A Right. I went out to the front of the house and I saw

1 what it said, and I tried to take it off.

2 Q So I want to show you Exhibit 305 now. Is that a picture
3 of the poster --

4 A Yes, it is.

5 Q -- glued to the window?

6 MR. WILKINSON: The United States offers 305.

7 MR. ASKEROV: No objection.

8 THE COURT: Admitted.

9 (Exhibit 305 was admitted.)

10 Q What was your reaction when you saw this picture?

11 A Um, I was petrified, because the main thing I focused on
12 was, "You have been visited by your local Nazis." So -- and
13 then, besides the other, "Your actions have consequences.
14 Our patience has its limits." I couldn't figure out what I
15 had done to deserve this poster being put on my home.

16 Q Is that your name on the bottom of the poster?

17 A Yeah. It was my name and my address, that's been blocked
18 out.

19 Q And is that the correct address?

20 A Yes, it was.

21 Q Okay. And so you said you were petrified. Can you
22 describe what you were feeling in your body when that
23 happened?

24 A Well, I was just -- I saw it, and I ran in the house. And
25 actually I immediately called the police, because I didn't

1 know if the gentlemen that had been to the door before were
2 affiliated with what happened with the poster or not.

3 Q And what happened next?

4 A The FBI agents came back. And so they rang the doorbell
5 again. And I wasn't sure, again, if it was something to do
6 with this or not, so I didn't answer the door. And so I
7 actually called my neighbor across the street, who is a very
8 large man, and I asked him to come across the street and talk
9 to the gentlemen who were at my door. Then he told me it was
10 okay to come out, that they were FBI agents.

11 Q Okay. Did you discuss this poster with your husband?

12 A Yes.

13 Q What did you tell him?

14 A Well, actually he was on his way home, he was working and
15 on his way home. So he hadn't answered his phone. So he
16 didn't know about it until he came home.

17 Q What did you say?

18 A I told him, I said, "We've been the victim of a hate
19 crime." And I had him, "Come and look at the poster."
20 Because at that time they hadn't removed it yet.

21 Q How did he react?

22 A He was stunned.

23 Q Did you, at some point, learn what group was behind this?

24 A Yeah. Actually, I didn't recognize the symbol on the
25 poster, but my daughter's boyfriend had looked it up. And he

1 discovered who it was. And I had never heard of them prior
2 to that.

3 Q Did you learn anything about them?

4 A Yeah, that --

5 MR. ASKEROV: Objection, hearsay.

6 THE COURT: Sustained.

7 Q How did what you learned about the group affect your
8 feelings about receiving the poster?

9 A Um, well, with the past history of violence, it was --

10 MR. ASKEROV: Objection, Your Honor. Ask to strike.

11 THE COURT: Overruled. It's not being accepted for
12 the truth of the contents.

13 Q I'm sorry, I think I had asked you how what you learned
14 affected your feelings about receiving the poster, and you
15 said, "With the history of violence..."

16 A Right. It made us more cautious. And, you know, I was
17 just always looking over my shoulder whenever I went out of
18 the house. And my husband wouldn't let me leave alone.

19 Q Did you purchase anything, or do anything to your house to
20 ensure your security?

21 A Yeah. The very next day we bought a whole security system
22 and installed it, with cameras that go directly to your
23 phone, and everything like that.

24 Q Did it have -- did going through this experience have any
25 effect on the way that you checked your mail?

1 A Yeah. We have a box at the end of our driveway. So I
2 wasn't sure if there was going to be -- I've heard of mail
3 bombs, and things like that. So I opened my mailbox with a
4 stick for -- and then also my daughter had left her car at
5 our home, because she was traveling. And before she came
6 home, I drove her car first to make sure that it hadn't been
7 tampered with.

8 Q And by "tampered with," what did you mean?

9 A I didn't know if they could do something to the brakes, or
10 put an explosive device -- I just didn't know what anybody
11 would do.

12 MR. WILKINSON: No further questions for this
13 witness.

14 THE COURT: Cross.

15 CROSS EXAMINATION

16 BY MR. ASKEROV:

17 Q Good afternoon, Ms. Blomquist. I'm Tim Askerov. I
18 represent Mr. Cole.

19 You just testified that you actually noticed the poster
20 at the time that you were contacted by the FBI. Was that the
21 same day?

22 A Yeah.

23 Q So before the FBI came, you didn't even know -- well, I
24 guess you only learned that the poster was there on the same
25 day that the FBI came to your house?

1 A Right. Right.

2 Q And it's possible that the poster had been there for days,
3 and you've just didn't notice it?

4 A Right. Because the way we leave our house, we go out the
5 garage. So we don't often go where the poster was. And
6 there's shrubbery there, too. So it's kind of hard to see
7 the windows from the street.

8 Q And you testified that your daughters are adults now and
9 out of the house?

10 A Um-hum.

11 Q And so when this happened, your daughters weren't actually
12 physically in the house at that time?

13 A No.

14 Q Do you recall, during your conversation with the FBI, did
15 they tell you whether there was a threat of, or any evidence
16 of a plan to do violence to you or to your family?

17 A Well, they were warning me about something happening. And
18 then this was -- you know, they couldn't reassure me that
19 nothing more would happen. But they said that this was --
20 they believed this was what they were intercepting, the
21 chatter online, and things like that.

22 Q So they told you what they suspected would happen is that
23 a poster would be delivered by mail or in person, is that
24 generally what you were informed?

25 A Yeah.

1 Q Okay. And so they didn't tell you about evidence of any
2 violent threats on your family, or property, or anything like
3 that?

4 A They couldn't confirm or deny that. Because I had told
5 them I was concerned with the image of the Molotov cocktail,
6 that a Molotov cocktail was a threat being thrown into our
7 home, or something like that. And they couldn't say anything
8 about it one way or the other.

9 Q But all they told you was that they knew that a poster was
10 -- that you were going -- you were targeted to receive a
11 poster?

12 A Yeah. They said I was on a target list, and they -- that
13 was -- I'm assuming what the target was.

14 Q So the poster that was delivered to your house, that's on
15 the screen now?

16 A Um-hum.

17 Q And you'll note that your address and your name are on the
18 bottom there?

19 A Yeah.

20 Q Did you notice that when you first saw the poster?

21 A Absolutely, yes.

22 Q And when looking at this, did you have concerns that
23 somebody had your information and they could publicly
24 disseminate it?

25 A That wasn't on my mind. It was mostly just they had my

1 name there to say, "We know where you live," for the threat.

2 Q And so you didn't have concerns about your information
3 being distributed?

4 A In this day and age, I think you can pretty much Google
5 anybody's name and find their name and address very easily.
6 So, no. So I didn't think about that.

7 Q And you continued living at the same residence, since?

8 A Yes.

9 Q You never received any materials from Atomwaffen or AWD
10 before?

11 A No.

12 Q And you haven't received anything since?

13 A No.

14 MR. ASKEROV: No further questions. Thank you.

15 REDIRECT EXAMINATION

16 BY MR. WILKINSON:

17 Q Just one point of clarification. You just described some
18 conversations you had with the FBI about what to expect in
19 terms of a poster. When did you have those conversations,
20 compared to when you discovered the poster?

21 A Well, when we were talking out in my -- you know, the FBI
22 agents, we went outside, after I realized who they were. And
23 we talked about the poster and things like that. And they
24 said there had been chatter online, and different journalists
25 were being targeted across the country. But they didn't get

1 into a lot of details about things. But they were under the
2 impression that this was the threat.

3 Q Okay. And so this happened after -- this conversation
4 with the FBI happened after you discovered the poster?

5 A Yeah. Because I think they were coming to warn me before,
6 but I never answered the door, when I saw them before.

7 Q I see. No further questions.

8 MR. ASKEROV: No redirect, Your Honor -- or recross.

9 MR. WILKINSON: United States calls Veronica Rudie.

10 VERONICA RUDIE

11 Having been sworn under oath, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. WILKINSON:

14 Q Good afternoon.

15 A Good afternoon.

16 Q And you can remove your mask.

17 A Thank you.

18 Q Could you please tell the jury your name?

19 A Veronica Rudie.

20 Q And can you tell us where you were born?

21 A San Juan, Puerto Rico.

22 Q Where do you live now? In what city do you live now?

23 A Tampa, Florida.

24 Q When did you move from Puerto Rico to Florida?

25 A I moved to Tampa actually to go to college at the

1 University of South Florida. So soon after graduating high
2 school.

3 Q What made you make the decision to move to the mainland,
4 to Florida?

5 A I always dreamed of being a broadcast journalist, and I
6 knew I wanted to do it in the United States.

7 Q And did you, in fact, become a broadcast journalist?

8 A I did.

9 Q And I want to turn to January of 2020. Were you a
10 broadcast journalist at that time?

11 A Yes. I was an evening news anchor at Bay News 9.

12 Q Bay News 9?

13 A (Nods head.)

14 Q What kind of station is that?

15 A Bay News 9 is owned by Spectrum Networks Charter
16 Communication. It's a 24-hour station in Tampa Bay.

17 Q What kind of things do they cover?

18 A We cover everything. The big timely news of the day, just
19 like any other local stations you watch at home. Your
20 5 o'clock, 10 o'clock newscasts. Tragedies, fires, crimes.
21 The cost of living, health, anything.

22 Q Over time, has your network covered acts of anti-Semitism
23 or hate crimes?

24 A Yes.

25 Q Can you give us some examples?

1 A So there have been many over the ten years I've worked at
2 Bay News 9. We have cases like the synagogue shooting in
3 Philadelphia, the shooting at the Orlando nightclub. We, of
4 course, have Charlottesville. I mean, there are so many,
5 unfortunately.

6 Q Are those things the network covered while you were
7 serving as the anchor?

8 A Absolutely. Any time there would be a big development in
9 a story like that. And, of course, being a 24-hour news
10 station, we have the ability of updating content on the hour,
11 all day. So if there would be a big development in a case,
12 an arrest, victims sharing their experiences, you name it, we
13 would cover it.

14 Q I want to turn to January of 2020. Did you become aware
15 at some point of a threat against you?

16 A Yes.

17 Q How did you become aware of it?

18 A I was reporting to my shift, I was a night anchor, so I
19 start typically at about 2:30 in the afternoon. And I was in
20 the makeup room getting ready to start my shift that day. So
21 I get a called from Homeland Security. At the time, I was
22 participating in the U.S. Homeland Security Investigations
23 citizens academy. And one of the individuals in that office,
24 the Tampa office for HSI called me to say that I would be
25 getting a call from the FBI, and they were working a case

1 where my name came up, and I was a victim. And they couldn't
2 state too much beyond that, but to stay tuned for that call.

3 Q How did you feel when you learned that first information
4 from HSI?

5 A I mean, I was stunned. And it's a mix of emotions.
6 Because there is that moment, I'm thinking in a matter of an
7 hour or so I need to go in and start doing these broadcasts.
8 Why am I getting a call from HSI about a situation, a crime
9 involving my name? Is it against me? Is it against my
10 family? Should I call the FBI and not wait for this call?
11 It was terrifying. And, honestly, like, you just -- very,
12 very concerned. I was freaking out.

13 Q Did you end up speaking with the FBI?

14 A So soon after, I did get that call from the FBI. And it
15 was, what I recall, not a long call at all. In fact, I
16 remember my frustration at not getting enough information,
17 because I was so terrified. The FBI said that for them to
18 give me any more details about this threat that has been made
19 against me, that I would have to give testimony, some victim
20 statement, and they would have to take it in person. And so
21 you can imagine, I was at work in a makeup room, now having
22 to process this. And not really understanding what the scope
23 of that threat was.

24 Q Did you end up meeting with the FBI?

25 A I did. They came to my house.

1 Q Was that the same day, or the next day?

2 A It was within the 48 hours following that call, I believe.
3 So they came that morning, either the following morning or
4 the day after. I knew that I shared with them I wanted to do
5 this as soon as possible. And, in fact, I even invited them
6 to the station that night. And they couldn't make that
7 happen. I just wanted to know what was going on.

8 Q And when you were finally able to meet with them, did they
9 tell you what was going on?

10 A Yes.

11 Q What did you learn?

12 A My husband and I were in the living room, and the agents
13 came in and they had a flyer with them. And they shared that
14 this flyer has my name on it. They showed me the flyer. And
15 they asked me, do I recognize the address on that flyer.

16 Q Let me just stop you right there. I'm showing you
17 Exhibit 402. Is that the flyer they showed you?

18 A Yes.

19 MR. WILKINSON: United States offers 402.

20 MR. ASKEROV: No objection, Your Honor.

21 THE COURT: Admitted.

22 (Exhibit 402 was admitted.)

23 Q How did you feel when you first saw this flyer?

24 A It was horrific. And I've seen a lot of stuff, being a
25 news anchor. This was horrific, that somebody would go as

1 far to create this content, have it printed, drop it off
2 where they did, thinking that was my house, to terrorize me
3 and my family. It's something I'll never forget. It's
4 something that marked me forever. And even seeing this flyer
5 again is just awful.

6 Q Can you tell us what about the flyer was most terrifying
7 to you?

8 A Well, the swastikas all over the place, is one thing. The
9 fact that it says here, somebody is watching me. I have a
10 little daughter. I have a husband. I work -- at the time, I
11 worked late at night. I wasn't getting home until after
12 midnight. That was part of my shift. So driving alone to my
13 house 40 minutes, not knowing if somebody would be waiting
14 for me in the parking lot. Where would they show up? They
15 went as far as putting this thing together. They made the
16 conscious decision to spread it out. And to me, that is a
17 major horrific way. It's an invasion of my privacy. It's an
18 attack on me. They don't know me. It's evidently racist.
19 "We know where you live." Okay. So what's next, are you
20 going to show up to my house and do what? "Do not fuck with
21 us." What did I ever do?

22 MR. ASKEROV: Objection, Your Honor. The witness is
23 testifying in a narrative.

24 THE COURT: Overruled.

25 Q You can continue.

1 A This is a threat, that could have taken all kinds of forms
2 and shapes. So what do you do with that? Do I pack up and
3 leave, disappear? Go find somewhere else to live, so these
4 people actually don't know where I live? Why do they hate me
5 so much to do this? It's awful.

6 Q Did you come to learn, following this, what group was
7 behind this?

8 A I did. The moment I learned from the FBI the name of the
9 group, I immediately started researching.

10 Q And without going into what exactly you found, how did you
11 feel when you found out who was behind this?

12 A Even more terrified than before, when I learned that this
13 is a group that has killed people in other places.

14 MR. ASKEROV: Objection, Your Honor. Hearsay.

15 THE COURT: Overruled. It's not being accepted for
16 the truth of the contents. It's being accepted for the
17 witness's state of mind.

18 Q Now, that's -- there's an address on the bottom of the
19 flyer. Is that -- it's been redacted here, but was that your
20 real address?

21 A Thank God it wasn't.

22 Q Do you know anything about that address, or why that
23 address was connected with you somehow?

24 A I have no idea. It was part of what the FBI was asking me
25 in my house, do I know this address? Have I ever been there?

1 It happened to be a district that I have frequented, just as
2 a visitor. Go to a restaurant, or go, you know, shop, you
3 know, like anybody else. But I have never lived there. I
4 don't know anybody on that street. No.

5 Q Did it make it less scary to you that they got the wrong
6 address?

7 A No.

8 Q Now, it says, "Veronica Cintron" on there. I think you
9 originally introduced yourself as Veronica Rudie. What is
10 Veronica Cintron?

11 A That's my maiden name.

12 Q Is that the name that you use in your reporting on
13 television?

14 A Yes.

15 Q Did this incident have any effect on your professional
16 career?

17 A Yes. It's one of the reasons I ended up changing careers.

18 Q So you no longer work in journalism?

19 A No. I left television news soon after these arrests.

20 Q Thank you. No further questions.

21 THE COURT: Cross.

22 CROSS EXAMINATION

23 BY MR. ASKEROV:

24 Q Good afternoon, Ms. Rudie.

25 A Good afternoon.

1 Q My name is Tim Askerov. I represent Mr. Cole.

2 You testified that at the time of these events, you
3 were employed as a news anchor?

4 A Yes.

5 Q And you also testified that you had reported on issues
6 regarding white supremacy and neo-Nazis in your area; is that
7 accurate?

8 A Yes, generally. And usually national news. But also some
9 local cases.

10 Q The poster that was intended for you, was not delivered to
11 your actual residence?

12 A No.

13 Q You said that after -- well, the FBI notified you by phone
14 first, correct?

15 A HSI called me first. Then I got the call from the FBI,
16 correct.

17 Q And then you went to meet with them in person?

18 A They came to my house, the FBI agents did.

19 Q And when they met with you, did they tell you anything
20 along the lines of, there was no evidence to suggest that
21 there was an actual plot to do violence against you?

22 A They mentioned this was a threat, and they showed me the
23 flyer.

24 Q They showed you the flyer, and said the flyer itself was a
25 threat?

1 A Yeah. In fact, the calls that I had with HSI and the FBI,
2 both indicated there was a threat against me.

3 Q Did they tell you that there was any evidence of anything
4 else happening, other than the delivery of the flyer?

5 A No. They said they were investigating.

6 Q After receiving this poster, did you have concerns about
7 your information being publicly leaked, your personal
8 information?

9 A What kind of information?

10 Q Your address, your personal telephone number, did you have
11 concerns about that being disseminated on the Internet, or in
12 other media?

13 A I did have concerns, because at the time, even though it
14 wasn't my address, the fact that they were putting it on a
15 piece of paper, indicated to me, or at least implied that
16 they were going to continue to search.

17 Q Just a couple follow-ups. You have never received -- you
18 had never received anything from AWD before, anything from
19 Atomwaffen before?

20 A Before this? No.

21 Q You haven't received anything after?

22 A No, thank God.

23 Q You have no personal knowledge of anything Atomwaffen or
24 AWD has done?

25 A To me?

1 Q Generally.

2 A Generally, I know what a researcher would know.

3 MR. ASKEROV: Objection.

4 Q You have not seen personally -- you have not been there to
5 witness anything that Atomwaffen has done. So you don't --
6 let me rephrase that. I apologize.

7 Other than what you've read in the media, you have no
8 personal knowledge of Atomwaffen's activities; is that
9 correct?

10 A Beyond what I have read, eventually also reported in a
11 case with Tampa Tides --

12 Q That's the only question.

13 Other than what you've read in the media and on the
14 Internet, that's all you know about them, correct?

15 A I hear where you're going, but I'm just saying it's not
16 just what I've read, I've reported on even an Atomwaffen
17 member who killed a person in Tampa.

18 MR. ASKEROV: Objection. Objection.

19 THE COURT: No. You asked the question, counsel.

20 A There was a case in Tampa Bay. So you asked about what do
21 I know about Atomwaffen. There was a member in Tampa Bay who
22 killed his roommates. And so that is not something I read,
23 that is something that, as part of my work, I had to work and
24 tell the story.

25 Q Okay. And isn't it true that that individual had actually

1 converted to Islam?

2 A Correct.

3 Q Is that correct?

4 A Yes.

5 Q And he killed his roommates because they were -- or
6 professed neo-Nazi beliefs; is that correct?

7 A I don't remember exactly at this point, it's been a number
8 of years, if that was part of the case. But I know that he
9 had converted to Islam, correct.

10 Q And he espoused jihadist ideology?

11 A I don't recall exactly. But, sure, if you know this, I
12 trust that you remember it correctly.

13 MR. ASKEROV: Nothing further.

14 MR. WILKINSON: No redirect, Your Honor.

15 THE COURT: You may step down. Please put your mask
16 back on. We'll take a 15-minute recess, folks.

17 (Recess.)

18 THE COURT: Ready for the jury?

19 MR. WILKINSON: Yes.

20 (The following occurred in the presence of the jury.)

21 MR. WILKINSON: United States calls John Powers.
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JOHN POWERS

Having been sworn under oath, testified as follows:

DIRECT EXAMINATION

BY MR. WILKINSON:

Q You can be seated and take your mask off. Could you begin by telling the jury your name and what you do for a living?

A My name is John Powers. I'm a forensic examiner for the FBI.

Q And how long have you been with the FBI?

A Almost ten years.

Q Can you tell us about your educational background?

A I have a bachelor's of science in computer and information technology from Purdue University. After joining the Bureau, I went through their computer forensics training program. I'm certified to examine Windows, Macintosh, Linux, and mobile devices.

I've taken various other training classes from the Bureau and outside vendors on general forensics and specific tools. And I'm also a certified senior forensic examiner.

Q Okay. Have you taught or lectured on computer forensics?

A I have. Just last week, in fact, I was teaching a beginning course on computer forensics to FBI personnel.

Q Can you describe, just very generally, what your job responsibilities are?

A In general terms, my responsibilities are to collect,

1 preserve, analyze and explain the results of digital
2 evidence.

3 Q And you say "digital evidence," does that include
4 computers?

5 A It does.

6 Q And can you explain for the jury what it means to image a
7 computer?

8 A I can. First, I want to apologize, here in Seattle, for
9 all I know, half of you have worked for Microsoft for decades
10 and you know the technology more than I do. But I have to
11 assume some of you don't even like technology. So my answers
12 are going to be geared more for that. I'm not trying to
13 insult or belittle anybody's technical expertise or not
14 respect that you know what you're doing in your jobs.

15 So by imaging, we don't like to work on original evidence,
16 we want the original evidence to be as untouched as possible.
17 So whenever we can, we make a copy of that evidence. So, for
18 instance, with a computer, we'll take the hard drive out of
19 the computer, we'll attach it to something called a right
20 blocker. The right blocker will allow the hard drive to talk
21 to something else, but will only let data come out. It will
22 not let the command "write to the hard drive" go through. So
23 we hook that up to try to keep the original evidence as
24 pristine as possible, and when we pull the data out of the
25 hard drive, in this example.

1 This data is then collected into what we call an image
2 file, which is basically a file like any other computer file.
3 But this file contains the contents of, in this case, the
4 hard drive, or whatever other device we're imaging. That
5 image file is then what we do our exam on, because it has all
6 the original evidence, but doesn't touch the original
7 evidence.

8 Q And is that imaging process designed to create an exact
9 replica of the evidence on the original computer?

10 A It is.

11 Q And do you have measures in place to make sure that once
12 you create the new, image that the material on the new image,
13 is not altered?

14 A We do. There's something called a "hash," which has many
15 uses in computer science. But this hash you can think of as
16 a fingerprint. And if you change anything on the original
17 evidence, it will totally change the hash. So if I hash my
18 original evidence, and I hash the image I made, and those two
19 hashes are the same, I can be confident that all the data
20 transferred correctly.

21 Q Okay. So now, say, we've taken a computer, we've created
22 an exact image of it that can't be altered, can you describe,
23 very generally, how you or the FBI then goes about searching
24 that image?

25 A Right. So we have various forensic software programs.

1 And what they typically do is they go through that image and
2 they just look to see what's there. And they'll say, okay,
3 here's a Word document, and here's a picture. And some of
4 them will create an index like you see in the back of a book,
5 so you can look stuff up.

6 And once the forensic software figures out what's what,
7 then you can go through and say, I want to look at all the
8 Excel spreadsheets, or I want to look for the word Oreo,
9 because I like cookies, whatever you're looking for. The
10 forensic software is there to make it easier to find it. As
11 opposed to manually looking through the entire computer.

12 Q I think you touched on this a minute ago when you
13 mentioned the word "Oreo." But this software allows you to
14 search for terms on the computer?

15 A It does.

16 Q And in the case where a file has been deleted or removed
17 from the computer, are you sometimes able to find fragments
18 or traces of the file?

19 A Yes.

20 Q And can you explain, generally, what portions of the
21 computer or the names of the portions of the computer you can
22 find those on?

23 A So, the hard drive is basically there to store things,
24 right? You can think of it as a box or file cabinet. And
25 the parts of your box or your file cabinet that have things

1 you care about, files, is called allocated space, because we
2 have allocated it to these files we care about.

3 Then the rest of it is called unallocated space. The
4 reason we can see deleted files is because the computer is --
5 you can call them lazy, but they don't do work they don't
6 have to do. So, imagine we've got this file cabinet that's
7 our hard drive, we also have a clipboard that says what's in
8 each drawer. So when I delete a file, what really is
9 happening with the computer is, I just cross out that name on
10 the clipboard. But the actual file is still physically
11 sitting in the file cabinet, until I actually need the space.
12 Only then do I actually physically pull the file out and toss
13 it out.

14 Q So is this unallocated space a place where you can
15 sometimes find fragments of old files?

16 A It is.

17 Q Can you explain what the term "slack space" is and how
18 that relates to unallocated space?

19 A It's a similar concept, works a little bit differently.
20 The computer writes in certain size chunks. It won't write
21 exactly 13 characters. It will -- or whatever. There's
22 certain size chunks it will write to. And so say you have a
23 big file, that means eight chunks. And then you delete it,
24 so it's gone. Or it's deleted on our clipboard, but still
25 physically sitting in our file cabinet.

1 And then eventually the computer wants to put something
2 else there, but it doesn't need all eight chunks, it just
3 needs six chunks. So it writes to those six chunks. But the
4 last two chunks still have the old data on them. Those two
5 chunks that were part of some old file, but are not part of
6 the new one, that's really sitting in that area is called
7 slack space.

8 Q Can you sometimes, if you're running one of these term
9 searches, let's say the word "Oreo" was sitting in that
10 two-chunk space, would your term search find the word "Oreo,"
11 even though it had been deleted from the computer?

12 A Yes.

13 Q I'm going to show you -- let me ask you, first, did you
14 perform forensic imaging in connection with this case?

15 A I did.

16 Q And I'm showing you Exhibit 11. Do you recognize the Dell
17 laptop there?

18 A I do.

19 Q Is that one of the computers that you imaged in this case?

20 A It was.

21 Q And did you apply the imaging procedures that you talked
22 about a minute ago?

23 A I did.

24 Q And then did you put it into a software that would allow
25 it to be searched?

1 A I did.

2 Q And can we just refer to that document or that computer as
3 the Dell laptop as we go forward?

4 A As a Dell laptop.

5 Q Excuse me, Dell desktop, as we go forward?

6 A Yes. We can call that the Dell desktop.

7 Q Then I'm showing you Exhibit 12. And there is a laptop
8 sitting on a chair there? What kind of computer is that?

9 A I believe it's an HP laptop computer. I don't remember
10 the exact model number.

11 Q Did you apply the imaging techniques to that computer as
12 well?

13 A I did.

14 Q And did you apply the search software that you -- of the
15 type you described earlier?

16 A I did.

17 Q And we'll call that the "HP laptop." Can we call that
18 computer the "HP laptop"?

19 A Sure.

20 Q Okay. All right. I want to show you -- excuse me, that
21 was unpublished the whole time, wasn't it?

22 So why don't we go back. So we're looking at
23 Exhibit 12, that's the HP laptop we just referenced.

24 A Yes.

25 Q And Exhibit 11 was the desktop?

1 A Yes.

2 Q Okay. So I'm going to show you Exhibit 802. That's one
3 of the -- do you recognize that image?

4 A I do.

5 Q Is it one of the files that was found on the HP laptop?

6 A It was.

7 MR. WILKINSON: United States offers 802.

8 MR. ASKEROV: No objection.

9 THE COURT: Admitted.

10 (Exhibit 802 was admitted.)

11 Q Does that appear to be a photograph of a person?

12 A It does.

13 Q Or two people. Okay.

14 I'm showing you 803. Is that another file that you
15 found on the HP laptop?

16 A It was, or it is.

17 MR. WILKINSON: I'm offering 803.

18 MR. ASKEROV: No objection.

19 THE COURT: Admitted.

20 (Exhibit 803 was admitted.)

21 Q Now, how does that picture compare to the Exhibit 802 we
22 just looked at a minute ago?

23 A It looks like it's probably a cropped version of the
24 previous one.

25 Q Okay.

1 And did you review the file name of that picture?

2 A I did.

3 Q And is the file name of the photo copied onto this exhibit
4 here?

5 A It is.

6 Q What was the file name?

7 A "Myself," and I'm suspecting this is a misspelling of and
8 "Kan."

9 Q And there's a dot PNG. What does that mean?

10 A PNG is a type of picture file.

11 Q Showing you Exhibit 804. Is that another image file that
12 you found on the HP laptop?

13 A It is.

14 MR. WILKINSON: United States offers 804.

15 MR. ASKEROV: No objection.

16 THE COURT: Admitted.

17 (Exhibit 804 was admitted.)

18 Q So just to be clear, this image was found on the same
19 computer as the picture we just looked at a minute ago, that
20 the man -- that was titled, "Myself" and "Kan"; is that
21 right?

22 A That is correct.

23 Q And I want to put this picture, Exhibit 804, next to
24 Exhibit 602. Do those two pictures appear to resemble one
25 another?

1 A The one on the right appears to have a little circular
2 part cut out of the one on the left.

3 Q So the item on the left, the picture on the left, is that
4 Exhibit 804?

5 A Yes.

6 Q Okay. And that's the one that you found on the HP laptop?

7 A Correct.

8 Q And how does -- and just because the jury couldn't see 24
9 when I asked this question a minute ago, how does the picture
10 that you found on the HP laptop compare to Exhibit 602, the
11 picture on the right?

12 A The picture on the right seems to be a portion of the
13 picture on the left. Looks like they took a circular part
14 out of the middle.

15 Q I want to show you some of the posters that are at issue
16 in this case.

17 I'm showing you Exhibit 305. To your knowledge, was an
18 image of this actual poster found on either of the computers
19 that we talked about today?

20 A Not to my knowledge.

21 Q What about the name "Mala Blomquist," was the name Mala
22 Blomquist found anywhere on those computers?

23 A It was.

24 Q Where was it found?

25 A It was in that space we were talking about earlier. It's

1 not part of an allocated file, it's just sitting on the
2 drive.

3 Q Slack space?

4 A Yep.

5 Q And I'm showing you Exhibit 501. Was that poster itself
6 or an image of it found anywhere on either of those
7 computers?

8 A Not to my knowledge.

9 Q What about the name "Veronica Cintron," did you find that
10 on one of the computers?

11 A It was found there, yes.

12 Q And, again, was that in the slack space or unallocated
13 space?

14 A It was.

15 Q And I'm showing you Exhibit 501. Was an image of this
16 actual poster found on either of the computers?

17 A Not to my knowledge.

18 Q What about the name "Chris Ingalls." Did you find that on
19 the computers?

20 A It was.

21 Q What about there's two phone numbers at the bottom, an
22 office number and a cell number. Were those found on the
23 slack space as well?

24 A They were.

25 Q Okay. I'm showing you Exhibit 807, or at least the first

1 page of it. Have you reviewed -- this is a several-page
2 exhibit. Have you reviewed all the pages of it?

3 A I have.

4 Q And is it a summary of some of the data that was found in
5 the slack space?

6 A It is.

7 Q Now, if you were to take all the slack space on both those
8 computers, is it fair to say that would be a voluminous
9 amount of data?

10 A Yes, fair to say.

11 Q It would be difficult to examine here in court?

12 A We'd be sitting here for quite a while.

13 Q Would it be easier to examine the summary of the data that
14 you've created here?

15 A Much easier.

16 Q And does the summary of the data here accurately summarize
17 some of the data that you found in the slack space on the
18 computers?

19 A It does.

20 MR. WILKINSON: The United States offers 807.

21 MR. ASKEROV: No objection.

22 THE COURT: Admitted.

23 (Exhibit 807 was admitted.)

24 Q We're looking now at the first page of 807. So what do we
25 see here? What are those three items listed there?

1 A We have three names: Chris Ingalls, Veronica Cintron and
2 Mala Blomquist.

3 Q All three of those found in the slack space?

4 A They were.

5 Q And we're going now to the third page. Yes, the third
6 page -- second page of Exhibit 807. What are we looking at
7 here?

8 A This is some of the data, the text readable data that was
9 in that space. We have the phone numbers from the poster,
10 and we have Chris Ingalls' name, and this data.

11 Q Is this what slack space data looks like when you look at
12 it through your search tool?

13 A This is reasonably representative.

14 Q And it says "Dell desktop," in the lower right-hand
15 corner. Is that because this was found in the slack space
16 for the Dell desktop?

17 A That is correct.

18 Q So I'm putting 807, Page 2 next to 501. Are the two phone
19 numbers that are highlighted on the top, the same phone
20 numbers that are on the bottom of Exhibit 501?

21 A They are.

22 Q Turning to Page 4. What are we looking at here?

23 A This is some more slack space from the Dell desktop
24 computer. This has Veronica Cintron's name in it.

25 Q It says, "Veronica Cintron dot LNK." What do you make of

1 the dot LNK as a forensic examiner?

2 A Dot LNK usually is referring to a link file.

3 Q What is a link file?

4 A A link file has a number of uses. The one you're probably
5 most familiar with is when you create a shortcut on your
6 desktop, or whatever, that points to something deep in your
7 file structure, that magic is accomplished with a link file.

8 Q So we've got Page 4 of 807 on the left, then 402 on the
9 right. Is it the same name, Veronica Cintron?

10 A It is.

11 Q Then what is the highlighted language at the bottom of
12 Exhibit 804, Page 4?

13 A "We are everywhere" dot LNK dot L.

14 Q And did that appear within the slack space just right
15 below that, many lines below the words "Veronica Cintron"?

16 A Yes.

17 Q And also a link file?

18 A Yes.

19 Q We're looking at Page 5 of 807. What do we see here?

20 A We have more slack space data. This one contained Mala
21 Blomquist's name.

22 Q This is actual data from the slack space, again?

23 A Yes.

24 Q Is this from the HP laptop?

25 A It is.

1 Q So now we're putting that next to Page 305. Is the name
2 in the slack space the same as the name, minus the middle
3 name --

4 A It is.

5 Q -- on 305?

6 And then what's the second highlighted portion on the
7 left, what's that word?

8 A "Consequences."

9 Q What's the dot PSD indicate to you?

10 A Dot PSD is the file extension for a Photoshop, actually
11 stands for a Photoshop document. So it's a file that
12 Photoshop uses to do its stuff.

13 Q Does that suggest there was a Photoshop file with the name
14 "consequences"?

15 A It does.

16 Q And does the poster on the right, Exhibit 305, have the
17 word "consequences" in it?

18 A It does.

19 Q And what about the next set of highlighted data? Can you
20 tell us, generally, what that is discussing, or what word
21 repeats there?

22 A The word "mask" comes up numerous times, and with the dot
23 PNG, which is suggestive of a graphics file.

24 Q The dot PNG suggests a graphics file?

25 A Correct.

1 Q Would that be consistent with having a graphics picture of
2 the mask?

3 A Assuming you're naming your file after what's in the
4 picture, yes.

5 Q And I'm drawing a circle on Exhibit 305. Does that appear
6 to be a mask of some type?

7 A It could be. It's more of an illustration.

8 Q Showing you Exhibit 26. Does that appear to be a mask
9 with a skeleton on it?

10 A It does.

11 Q I want to show you one more exhibit. Is that another
12 selection of data from one of the -- from the slack space of
13 one of the computers?

14 A This is actually unallocated space. But it is.

15 Q Okay.

16 MR. WILKINSON: The United States offers 805.

17 MR. ASKEROV: No objection.

18 THE COURT: Admitted.

19 (Exhibit 805 was admitted.)

20 Q And so what are we looking at here? Can you just explain
21 what this exhibit is, because it's a little funny looking?

22 A So there is a ton of data in any given chunk of
23 unallocated space that we just don't care about. So what's
24 happened here is we've snipped out some, and there are
25 certain terms that were of interest.

1 Q Okay. And so can you read for us the highlighted language
2 that I'm pointing to?

3 A [HTTPS://app.Wire.com/pound/conversation](https://app.wire.com/pound/conversation).

4 Q Do you know what Wire is?

5 A It's a communications app. It comes out of Switzerland.
6 It advertises end-to-end encryption.

7 Q And what does the fact that this text appears in the slack
8 space -- excuse me, unallocated space, tell you as a forensic
9 examiner about whether this computer was used to access Wire?

10 A It's very difficult to come up with any kind of firm
11 conclusion with anything in slack or unallocated space. But
12 what we have here is a web address for the app.Wire.com so
13 that would be consistent with it.

14 Q And can you tell us what word we see or what series of
15 words is in the next highlighted language?

16 A Krokodil Wire MOC dot ERIW dot PPA.

17 Q Does the fact that the word "Krokodil" appears one line
18 down from the app.Wire suggest that there may be a
19 relationship between the computer accessing Wire and the name
20 Krokodil?

21 A It's certainly within the realm of possibility, especially
22 when you keep on going to the left of Krokodil, we have
23 another reference to the app.Wire.com. And then this could
24 all be part of a term that was sent over the Internet.
25 Again, it's hard to know exactly what's going on in the

1 context of unallocated space. But what's now highlighted
2 could all be -- could all be one thing.

3 MR. WILKINSON: Thank you. No further questions.

4 THE COURT: Cross.

5 CROSS EXAMINATION

6 BY MR. ASKEROV:

7 Q Good afternoon, Mr. Powers.

8 A Good afternoon.

9 Q My name is Tim Askerov. I represent Mr. Cole.

10 If several different people are using the same machine,
11 is it possible to determine who created the materials that
12 you found in the unallocated space, or the slack space?

13 A The IT answer number one is, it depends. But it could be
14 very difficult, depending on our circumstances.

15 Q In this particular case, were you able to determine who
16 the specific individual was who created those materials?

17 A I do not have enough information at my disposal to tell
18 you that.

19 Q So we don't know exactly who searched for the terms that
20 we were just looking at on the screen, like the names
21 Veronica Cintron, Chris Ingalls?

22 A I don't know.

23 MR. ASKEROV: I have nothing further. Thank you.

24 MR. WILKINSON: No redirect.

25 THE COURT: All right. Thank you. You may step

1 down. Put your mask back on, please.

2 THE WITNESS: Yes, sir.

3 MR. WILKINSON: The United States calls Hilary
4 Bernstein.

5 HILARY BERNSTEIN

6 Having been sworn under oath, testified as follows:

7 THE COURT: Go ahead and be seated.

8 DIRECT EXAMINATION

9 BY MR. WILKINSON:

10 Q Good afternoon.

11 A Hello.

12 Q Could you begin by telling the jury your name?

13 A My name is Hilary Bernstein.

14 Q What city do you live in?

15 A I live in Seattle, Washington.

16 Q What's your current occupation?

17 A I'm semi-retired. But I work as an education consultant
18 and I create and lead workshops to help people overcome bias,
19 and learn how to be allies for each other in the workplace,
20 and in their communities.

21 Q You said that you're semi-retired. How long have you been
22 semi-retired?

23 A Since June of -- July of 2019.

24 Q And what did you do for a career, prior to July of 2019?

25 A Well, for 14 years I was working with the Anti-Defamation

1 League in the Pacific Northwest.

2 Q What was your final position with the Anti-Defamation
3 League?

4 A For over ten years, of those 14 years, I was regional
5 director. Then the last year and a half, I served as
6 education director.

7 Q And the jury heard from Miri Cypers yesterday. How does
8 your -- did your position relate to hers?

9 A She was my successor.

10 Q Okay. So she took over after you retired?

11 A Well, when I stepped back to be education director.

12 Q Understood. What kind of things did you do as regional
13 director for the Anti-Defamation League?

14 A I'm smiling, because I wore a lot of hats. I served as
15 representative. As you know, the Anti-Defamation League is a
16 national organization. And so this regional office covers
17 five states. I worked to help respond to bias incidents and
18 hate crimes. I worked with law enforcement to keep them
19 apprised of information in that regard. I worked with the
20 legislature to help strengthen civil rights laws,
21 particularly against hate crimes.

22 And last, but not least, I worked in schools to help young
23 people recognize the pitfalls of stereotypes and prejudice,
24 and learn to respect people.

25 Q Can you tell us what your faith is?

1 A I'm Jewish.

2 Q Are you currently married?

3 A My husband passed away several years ago, so I am a widow.

4 Q Okay. Do you live with others, or on your own?

5 A I live by myself.

6 Q I'd like to turn to February 4th of 2020. Had you been
7 away from your house for a period of time?

8 A I had. I had been gone for a couple of weeks. I traveled
9 to Chicago to celebrate the first birthday of my grandson.

10 Q And did you then return on February 4th?

11 A I did. I flew back kind of late at night. I think I
12 landed in Sea-Tac probably around 10 o'clock or 10:30,
13 something like that, at night.

14 Q So did you arrive home late at night?

15 A Yes. It was close to midnight.

16 Q Did you get your mail when you came home?

17 A I did. I have a mail slot in my home, so I didn't have to
18 stop the mail, it was -- there was a big pile waiting for me,
19 of course.

20 Q And among that big pile of mail, was there anything that
21 got your attention?

22 A Yes. After I had separated out the catalogs and junk
23 mail, and looked for bills, there was an envelope that caught
24 my attention, a business-sized envelope. And it was
25 addressed to me, but my name was misspelled. And there was

1 another thing that caught my attention, and that was that in
2 the "from" section of the envelope, it had my name also;
3 misspelled. So it looked like it was to me and had come from
4 me. And I hadn't created anything like that.

5 Q I'm showing you Exhibit 504. Is that the envelope that
6 you received that night?

7 A It is.

8 MR. WILKINSON: The United States offers 504.

9 MR. ASKEROV: No objection.

10 THE COURT: Admitted.

11 (Exhibit 504 was admitted.)

12 Q So when you say that your name was misspelled, in what way
13 was it misspelled?

14 A My first name, Hilary, is spelled with one L.

15 Q And what did you notice about how the address, name and
16 address were affixed to the envelope?

17 A Oh, it was covered with clear tape. And so was the "from"
18 section was covered with clear tape.

19 Q Did you open the envelope?

20 A I did.

21 Q I'm going to show you Exhibit 505. Do you recognize
22 Exhibit 505?

23 A Yes. That is what was inside the envelope.

24 MR. WILKINSON: The United States offers 505.

25 MR. ASKEROV: No objection.

1 THE COURT: Admitted.

2 (Exhibit 505 was admitted.)

3 Q What did you notice about this message, when you opened
4 it?

5 A Well, um, a lot of things. I noticed what was written, of
6 course. I noticed the font. It was like kind of -- kind of
7 an ugly font, and kind of angry looking. There were
8 swastikas. And my name and address were part of the flyer.
9 It wasn't, like, taped on, or anything, it was part of the
10 flyer. And I also noticed the language, of course.

11 Q Was it significant to you that your name and address were
12 typed onto that flyer?

13 A Yes.

14 Q Why?

15 A Well, I had seen ugly flyers before, you know, as part of
16 the work that I did for a long time. But I had never seen
17 one where someone's name and address, their personal
18 information was part of the flyer. It was sent specifically
19 to me. It was directed to me. And I felt that -- I felt
20 really violated, actually.

21 Q Can you please read the words that were written under your
22 name and address?

23 A "You have been visited by your local Nazis."

24 Q How does it feel, as a Jewish person, to receive a message
25 saying that you've been visited by your local Nazis?

1 A I'm not sure I can really describe all of the emotions. I
2 mean, just looking at it now, it's a specific message. It's
3 a specific threat, is how it feels. It would maybe be
4 similar if a person of color was shown a noose, you know, an
5 image of a noose, or the image of a burning cross or
6 something. Those images are not just random, they mean
7 something. And those words mean something. Being visited by
8 your local Nazi means something to a person who is Jewish.

9 Q What did you do after you read this message?

10 A Um, I tried not to cry, actually. And I -- it was really
11 late at night, it was past midnight at this point. And I --
12 I think I was probably just feeling, you know, some sort of
13 shock or something. It was totally unexpected. I was really
14 exhausted. I put it down and I thought, you know, I've got
15 to call law enforcement, I've got to -- I knew this was
16 serious. But it was 12:30, whatever time, 1 o'clock, or
17 something. I thought, I'll try to go to sleep and I'll call
18 them in the morning.

19 I didn't sleep. But, yeah.

20 Q Did receiving this envelope and message cause you to worry
21 that you could be in physical danger?

22 A Absolutely. This says, "We know where you are." And,
23 "We're watching you. We know where you live." And, "Don't
24 mess with us."

25 Q Did you take any steps after that to ensure your security?

1 A Um, do you mean that night?

2 Q No, in the following weeks or months.

3 A Yes. I contracted with a company to have security
4 cameras, a pretty extensive system installed around my home.
5 Cameras. Yeah. You know, not like you get at Home Depot or
6 something, but a serious, sophisticated system. I was really
7 scared.

8 Q And how did living with this, having received this message
9 affect you in the weeks and months after this?

10 A Well, we didn't know, on February 4th when I got this, but
11 we were about to be ordered to stay at home, stay safe, stay
12 home, because COVID hit. And I had to stay home. And I
13 didn't go anywhere except my backyard to garden, or
14 something. But I was home all the time.

15 Q How did this affect your feeling of safety in your home?

16 A It really shattered that feeling of safety.

17 MR. WILKINSON: No further questions.

18 THE COURT: Cross.

19 CROSS EXAMINATION

20 BY MR. ASKEROV:

21 Q Good afternoon, Ms. Bernstein.

22 A Hello.

23 Q My name is Tim Askerov. I represent Kaleb Cole.

24 Isn't it true that when you talked to the FBI about
25 receiving this poster, you indicated that based on your

1 professional experience and training, you felt like you were
2 not in immediate danger at the moment?

3 A Yes. At midnight on February 4th, that's correct.

4 Q And you testified that you previously were employed as the
5 regional director of ADL?

6 A Yes.

7 Q And ADL had previously published information on Atomwaffen
8 or AWD; is that correct?

9 A That's correct.

10 Q Your home address and your name are listed at the bottom
11 of the poster?

12 A Correct.

13 Q After seeing that, did you have concerns about your
14 private information being disseminated online by AWD?

15 A It certainly was a possibility.

16 Q Prior to receiving this mailing, had you ever received
17 anything else from AWD?

18 A No.

19 Q Have you received anything after from AWD?

20 A No.

21 MR. ASKEROV: Nothing further. Thank you.

22 MR. WILKINSON: No redirect, Your Honor.

23 THE COURT: All right. You may step down.

24 THE WITNESS: Thank you, Your Honor.

25 THE COURT: Please put your mask back on.

1 MR. WILKINSON: United States rests.

2 MR. BLACK: Your Honor, we'd make a Rule 29 motion.

3 THE COURT: We'll do that tomorrow morning. But
4 other than that?

5 MR. BLACK: Rest.

6 THE COURT: All right. Ladies and gentlemen, I'm
7 going to release you, then, for the evening. Please remember
8 the court's admonitions. They still remain in effect. You
9 still must not discuss the case with anyone, not even among
10 yourselves. Don't read, listen or watch anything about the
11 case. Don't attempt to do any investigation on your own.
12 Don't permit anybody to talk to you about the case. We'll
13 see you tomorrow morning. I'm going to ask you, would it be
14 inconvenient for you to be here by 9 o'clock tomorrow? Is
15 that a problem for anybody? Okay. We'll do it at 9:30,
16 then.

17 A MEMBER OF THE JURY PANEL: 9:00 is good.

18 THE COURT: Is 9 o'clock okay for everybody? All
19 right. We'll start at 9 o'clock, then. All right, we'll be
20 in recess.

21 (Adjourned.)

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

UNITED STATES OF AMERICA,	)	CR20-032-JCC
)	
Plaintiff,	)	SEATTLE, WASHINGTON
)	
v.	)	September 29, 2021
)	
KALEB COLE,	)	8:45 a.m.
)	
Defendant.	)	Trial - Day 3

VERBATIM REPORT OF PROCEEDINGS
BEFORE THE HONORABLE JOHN C. COUGHENOUR
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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1 THE COURT: Counsel, take a look at Instruction
2 No. 14, which Richard tagged for you. Neither he nor I could
3 remember whether there were charts or summaries that were
4 shown to the jury, but were not admitted into evidence.

5 MR. WILKINSON: There were not. The only summary was
6 admitted, Your Honor.

7 THE COURT: Do you agree with that?

8 MR. BLACK: Yes, Your Honor.

9 THE COURT: All right. We'll pull No. 14.

10 So does the government have any other problems with the
11 instructions?

12 MR. WILKINSON: We have no exceptions, Your Honor.

13 THE COURT: Mr. Black?

14 MR. BLACK: Thank you, Your Honor. We take exception
15 to the court's failure to include defense supplemental
16 Instruction No. 1. And we take exception to currently Final
17 Instruction No. 20, for which we proposed an alternate
18 instruction.

19 THE COURT: All right. I understand the exceptions.
20 Anything else?

21 MR. BLACK: Yes, one final, which is Final
22 Instruction No. 26. We objected to that earlier, on the
23 basis that we believe it's not necessary. So we take
24 exception to that as well.

25 THE COURT: No. I think it's necessary. I'm going

1 to leave it in. All right. Well, it's a few minutes before
2 9:00, so we'll instruct at 9:00. How long is the government
3 going to take to argue?

4 MR. WOODS: I would say it's between 30 and
5 35 minutes, Your Honor.

6 THE COURT: How about you folks?

7 MR. BLACK: Your Honor, I would say probably between
8 20 and 30 minutes.

9 THE COURT: I'm not going to limit you, I just wanted
10 to get a feel for how long it's going to take. All right.
11 We'll take a recess.

12 (Recess.)

13 MR. WOODS: One quick thing. I wondered if I might
14 go and change out the posters during my closing.

15 MR. BLACK: One thing from the defense, we raise a
16 Rule 29 motion.

17 THE COURT: Oh, yes, right. The motion is denied.
18 Bring in the jury.

19 (The following occurred in the presence of the jury.)

20 THE COURT: So, folks, at this time, I'm going to
21 read the court's instructions on the law. Copies of these
22 instructions will be available for each of you in the jury
23 room, so you don't need to take notes. But do pay careful
24 attention to what I say.

25 Members of the jury, now that you've heard all the

1 evidence, it is my duty to instruct you on the law that
2 applies to this case. Copies of these instructions will be
3 available in the jury room for you to consult.

4 It is your duty to weigh and to evaluate all the evidence
5 received in the case, and in that process to decide the
6 facts. It is also your duty to apply the law as I give it to
7 you, to the facts as you find them, whether you agree with
8 the law or not.

9 You must decide the case solely on the evidence and the
10 law. Do not allow personal likes or dislikes, sympathy,
11 prejudice, fear or public opinion to influence you. You
12 should also not be influenced by any person's race, color
13 religious beliefs, national ancestry, sexual orientation,
14 gender identity, gender, or economic circumstances.

15 Also, do not allow yourself to be influenced by personal
16 likes or dislikes, sympathy, prejudice, fear, public opinion
17 or biases, including unconscious biases. Unconscious biases
18 are stereotypes, attitudes or preferences that people may
19 consciously reject, but may be expressed without conscious
20 awareness, control or intention. You will recall that you
21 took an oath promising to do so at the beginning of the case.

22 You must follow all of these instructions and not single
23 out some and ignore others. They are all important. Please
24 do not read into these instructions, or anything I may have
25 said or done, any suggestion as to what verdict you should

1 return. That is a matter entirely up to you.

2 The superseding indictment in the case is not evidence.
3 The defendant has pleaded not guilty to the charges. The
4 defendant is presumed to be innocent, unless and until the
5 government proves the defendant guilty, beyond a reasonable
6 doubt. In addition, the defendant does not have to testify
7 or present any evidence. The defendant does not have to
8 prove innocence. The government has the burden of proving
9 every element of the charges, beyond a reasonable doubt.

10 A defendant in a criminal case has a constitutional right
11 not to testify. In arrival at your verdict, the law
12 prohibits you from considering, in any manner, that the
13 defendant did not testify. Proof beyond a reasonable doubt
14 is proof that leaves you firmly convinced the defendant is
15 guilty. It is not required that the government prove guilt
16 beyond all possible doubt.

17 A reasonable doubt is a doubt based upon reason and common
18 sense, and is not based purely on speculation. It may arise
19 from a careful and impartial consideration of all the
20 evidence, or from lack of evidence. If, after a careful and
21 impartial consideration of all the evidence, you are not
22 convinced beyond a reasonable doubt that the defendant is
23 guilty, it is your duty to find the defendant not guilty.

24 On the other hand, if after a careful and impartial
25 consideration of all the evidence you are convinced beyond a

1 reasonable doubt that the defendant is guilty, it is your
2 duty to find the defendant guilty.

3 The evidence you are to consider in deciding what the
4 facts are, consists of the sworn testimony of any witness,
5 the exhibits received into evidence, and any facts to which
6 the parties have agreed. In reaching your verdict, you may
7 consider only the testimony and exhibits received in
8 evidence. The following things are not evidence, and you may
9 not consider them in deciding what the facts are.

10 Questions, statements, objections and arguments by the
11 lawyers are not evidence. The lawyers are not witnesses.
12 Although you must consider a lawyer's questions to understand
13 the answers of a witness, the lawyers' questions are not
14 evidence.

15 Similarly, what the lawyers have said in their opening
16 statements, will say in their closing arguments, and at other
17 times, is intended to help you interpret the evidence, but it
18 is not evidence. If the facts as you remember them differ
19 from the way the lawyers state them, your memory of them
20 controls. Any testimony that I excluded or struck or
21 instructed you to disregard, is not evidence. In addition,
22 some evidence may have been received only for a limited
23 purpose. When I have instructed you to consider certain
24 evidence in a limited way, you must do so. Anything you may
25 have seen or heard when the court was not in session, is not

1 evidence. You are to decide the case solely on the evidence
2 received at the trial.

3 Evidence may be direct or circumstantial. Direct evidence
4 is direct proof of a fact, such as testimony by a witness
5 about what that witness personally saw, or heard, or did.
6 Circumstantial evidence is indirect evidence. That is, it is
7 proof of one or more facts from which you can find another
8 fact. You are to consider both direct and circumstantial
9 evidence. Either can be used to prove any fact. The law
10 makes no distinction between the weight to be given to either
11 direct or circumstantial evidence. It is for you to decide
12 how much weight to give to any evidence.

13 In deciding the facts in this case, you may have to decide
14 which testimony to believe, and which testimony not to
15 believe. You may believe everything a witness says, or part
16 of it, or none of it. In considering the testimony of any
17 witness, you may take into account the opportunity and
18 ability of the witness to see, or hear, or know the things
19 testified to; the witness's memory; the witness's manner
20 while testifying; the witness's interest in the outcome of
21 the case, if any; the witness's bias or prejudice, if any;
22 whether other evidence contradicted the witness's testimony;
23 the reasonableness of the witness's testimony, in light of
24 all the evidence; and any other factors that bear on
25 believability.

1 Sometimes a witness may say something that is not
2 consistent with something else he or she said. Sometimes
3 different witnesses will give different versions of what
4 happened. People often forget things or make mistakes in
5 what they remember. Also, two people may see the same event
6 but remember it differently. You may consider these
7 differences, but do not decide that the testimony is untrue,
8 just because it differs from other testimony.

9 However, if you decide that a witness has deliberately
10 testified untruthfully about something important, you may
11 choose not to believe anything that witness said. On the
12 other hand, if you think the witness testified untruthfully
13 about some things, but told the truth about others, you may
14 accept the part you think is true and ignore the rest.

15 The weight of the evidence as to a fact does not
16 necessarily depend on the number of witnesses who testify.
17 What is important is how believable the witnesses were and
18 how much weight you think their testimony deserves.

19 You are here only to determine whether the defendant is
20 guilty or not guilty of the charges in the indictment. The
21 defendant is not on trial for any conduct or offense not
22 charged in the indictment.

23 A separate crime is charged against the defendant in each
24 count. You must decide each count separately. Your verdict
25 on one count should not control your verdict on any other

1 count.

2 The superseding indictment charges the offenses charged in
3 Counts 1 through 5 were committed on or about a certain date.
4 Although it is necessary for the government to prove, beyond
5 a reasonable doubt, that the offense was committed on a date
6 reasonably near the date alleged in the superseding
7 indictment, it is not necessary for the government to prove
8 that the offense was committed precisely on the date charged.

9 You have heard testimony from an informant who received
10 compensation from the government in connection with this
11 case. For this reason, in evaluating the testimony of the
12 informant, you should consider the extent to which his
13 testimony may have been influenced by this factor. In
14 addition, you should examine the testimony of the informant
15 with greater caution than that of other witnesses.

16 You have heard testimony from an undercover agent and an
17 informant who were involved in the government's investigation
18 in this case. Law enforcement officials may engage in
19 stealth and deception, such as the use of informants and
20 undercover agents, in order to investigate criminal
21 activities. Undercover agents and informants may use false
22 names and appearances, and assume the roles of members in
23 criminal organizations.

24 Certain charts and summaries have been admitted into
25 evidence. Charts and summaries are only as good as the

1 underlying supporting material. You should therefore give
2 them only such weight as you think the underlying material
3 deserves.

4 The defendant is charged in Count 1 of the superseding
5 indictment with conspiracy to commit stalking, to mailing
6 threatening communications, and to interfere with federally
7 protected activities, in violation of Section 371 of Title 18
8 of the United States Code.

9 In order for the defendant to be found guilty of
10 conspiracy, the government must prove each of the following
11 elements beyond a reasonable doubt: First, beginning no
12 later than November 2019 and ending on or about February 26,
13 2020, there was an agreement between two or more persons to
14 commit one or more of the following crimes: Stalking,
15 mailing threatening communications, or interference with
16 federally protected activities.

17 Second, the defendant became a member of the conspiracy,
18 knowing of at least one of its objects and intending to help
19 accomplish it.

20 And third, one of the members of the conspiracy performed
21 at least one overt act, for the purpose of carrying out the
22 conspiracy.

23 A conspiracy is a kind of criminal partnership, an
24 agreement of two or more persons to commit one or more
25 crimes. The crime of conspiracy is the agreement to do

1 something unlawful; it does not matter whether the crime
2 agreed upon was committed.

3 For a conspiracy to have existed, it is not necessary that
4 the conspirators made a formal agreement, or that they agreed
5 on every detail of the conspiracy. It is not enough,
6 however, that they simply met, discussed matters of common
7 interest, acted in similar ways, or perhaps helped one
8 another. You must find that there was a plan to commit at
9 least one of the crimes alleged in the indictment, as an
10 object of the conspiracy, with all of you agreeing as to the
11 particular crime which the conspirators agreed to commit.

12 One becomes a member of a conspiracy by willfully
13 participating in the unlawful plan with the intent to advance
14 or further some object or purpose of the conspiracy, even
15 though the person does not have full knowledge of all the
16 details of the conspiracy. Furthermore, one who willfully
17 joins an existing conspiracy is as responsible for it as the
18 originators. On the other hand, one who has no knowledge of
19 a conspiracy, but happens to act in a way which furthers some
20 object or purpose of the conspiracy, does not thereby become
21 a conspirator.

22 Similarly, a person does not become a conspirator merely
23 by associating with one or more persons who are conspirators,
24 nor merely by knowing that a conspiracy exists.

25 An overt act does not, itself, have to be unlawful. A

1 lawful act may be an element of a conspiracy, if it was done
2 for the purpose of carrying out the conspiracy. The
3 government is not required to prove that the defendant
4 personally did one of the overt acts.

5 A conspiracy may continue for a long period of time, and
6 may include the performance of many transactions. It is not
7 necessary that all members of the conspiracy join it at the
8 same time. And one may become a member of a conspiracy
9 without full knowledge of all the details of the unlawful
10 scheme, or the names, identities or locations of all of the
11 other members.

12 Even though a defendant did not directly conspire with
13 other conspirators in the overall scheme, the defendant has,
14 in effect, agreed to participate in the conspiracy if the
15 government proves each of the following beyond a reasonable
16 doubt:

17 First, that the defendant directly conspired with one or
18 more conspirators to carry out at least one of the objects of
19 the conspiracy.

20 Second, that the defendant knew or had reason to know that
21 other conspirators were involved with those with whom the
22 defendant directly conspired.

23 And third, that the defendant had reason to believe that
24 whatever benefits the defendant might get from the
25 conspiracy, were probably dependent upon the success of the

1 entire venture.

2 It is not a defense that a person's participation in a
3 conspiracy was minor, or for a short period of time.

4 Before being convicted of a conspiracy, an individual must
5 conspire with at least one co-conspirator. There can be no
6 conspiracy when the only person with whom the defendant
7 allegedly conspired was a government agent or informant, who
8 secretly intended to frustrate the conspiracy.

9 Count 1 of the superseding indictment alleges that the
10 defendant conspired to commit the crime of stalking, in
11 violation of Section 2261(a) of Title 18 of the United States
12 Code, in addition to other crimes.

13 The elements of stalking are as follows: First, the
14 defendant used the mail, any interactive computer service, or
15 electronic communication system of interstate or foreign
16 commerce, or any other facility of interstate or foreign
17 commerce.

18 Second, the defendant used the mail, interactive computer
19 service, or electronic communication system, or other
20 facility of interstate or foreign commerce, to engage in a
21 course of conduct undertaken with intent to kill, injure,
22 harass, or intimidate another person, by means of a threat,
23 as defined below in these instructions.

24 Third, the defendant's course of conduct placed another
25 person in reasonable fear of death or serious bodily injury,

1 or caused, or attempted to cause, or would reasonably be
2 expected to cause, substantial emotional distress to the
3 other person.

4 Course of conduct is an element of the crime of stalking
5 under 2261A(a) of Title 18. The phrase "course of conduct" is
6 defined as a pattern of conduct composed of two or more acts,
7 evidencing a continuity of purpose.

8 A threat, as used throughout these instructions, is a
9 serious statement expressing an intention to injure any
10 person, which when considered -- considering all the
11 circumstances, the reasonable observer would interpret as a
12 serious expression of an intention to inflict bodily harm on
13 any person, as distinguished from hyperbole, idle or careless
14 talk, exaggeration, or something said in a joking manner. A
15 threat can be conditioned on whether the threatened person
16 does or does not take a certain action. The speaker must
17 make the statement with the intent to communicate a threat.

18 In determining whether the defendant's statement was made
19 with the intent to communicate a threat, you may consider all
20 the circumstances surrounding the making of the statement.

21 The defendant is charged in Counts 2 through 4 of the
22 superseding indictment with mailing threatening
23 communications, in violation of Section 876(c) of Title 18 of
24 the United States Code.

25 In order for the defendant to be found guilty of that

1 charge, the government must prove each of the following
2 elements beyond a reasonable doubt: First, the defendant
3 knowingly mailed or arranged to have mailed by the United
4 States Postal Service, a letter or other communication,
5 addressed to a natural person containing a threat, as defined
6 in these instructions, to injure any person. And second,
7 such letter or other communication was transmitted with the
8 intent to issue a threat, as defined in these instructions.
9 The government need not prove that the defendant intended to
10 carry out the threat.

11 The defendant is charged in Count 5 of the superseding
12 indictment with interference with federally protected
13 activity, in violation of Section 245(b) of Title 18 of the
14 United States Code. In order for the defendant to be found
15 guilty of that charge, the government must prove each of the
16 following elements beyond a reasonable doubt.

17 First, the defendant acted by force, or made a threat, as
18 defined in these instructions of force.

19 Second, the defendant willfully injured, intimidated, or
20 interfered, or attempted to injure, intimidate or interfere
21 with M.C. -- and, counsel, in your final argument, you will
22 identify the initials -- with M.C., a Jewish person
23 associated with the Anti-Defamation League.

24 Third the defendant acted because of the religion of M.C.;
25 that is, because M.C. was Jewish.

1 Fourth, the defendant intended to interfere with M.C.'s
2 enjoyment of employment, or any prerequisite thereof by a
3 private employer.

4 And fifth, the defendant threatened to use a dangerous
5 weapon, explosive, or fire, in connection with the offense.

6 An act is done knowingly if the defendant is aware of the
7 act, and does not act through ignorance, mistake, or
8 accident. The government is not required to prove that the
9 defendant knew that his acts were unlawful. You may consider
10 evidence of the defendant's words, acts, or omissions, along
11 with all the other evidence, in deciding whether the
12 defendant acted knowingly.

13 A defendant may be found guilty of the crime of mailing
14 threatening communications, or interference with a federally
15 protected activity, even if the defendant personally did not
16 commit the act or acts constituting the crime, but aided and
17 abetted in its commission. To aid and abet means to
18 intentionally to help someone else commit a crime.

19 To prove a defendant guilty of mailing threatening
20 communications or interference with a federally protected
21 activity by aiding and abetting, the government must prove
22 each of the following beyond a reasonable doubt: First,
23 someone else committed the crime of mailing threatening
24 communications, or interference with a federally protected
25 activity.

1 Second, the defendant aided, counseled, commanded, induced
2 or procured that person with respect to at least one element
3 of the crime of mailing threatening communications, or
4 interference with a federally protected activity.

5 Third, the defendant acted with intent to facilitate the
6 crime of mailing threatening communications, or interference
7 with a federally protected activity.

8 And fourth, the defendant acted before the crime was
9 completed.

10 It is not enough that the defendant merely associated with
11 the person committing the crime or unknowingly or
12 unintentionally did things that were helpful to that person,
13 or was present at the scene of the crime. The evidence must
14 show, beyond a reasonable doubt, that the defendant acted
15 with the knowledge and intention of helping that person
16 commit mailing threatening communications, or interference
17 with a federally protected activity.

18 A defendant acts with intent to facilitate the crime when
19 the defendant actively participates in a criminal venture,
20 with advance knowledge of the crime, and having acquired that
21 knowledge when the defendant still had a realistic
22 opportunity to withdraw from the crime.

23 The government is not required to prove precisely which
24 defendant actually committed the crime and which defendant
25 aided and abetted. A defendant may be found guilty of the

1 crimes charged, even if the defendant did not personally
2 commit the acts constituting the crime, if the defendant
3 willfully caused an act to be done that, if directly
4 performed by him, would be an offense against the United
5 States.

6 A defendant who puts in motion or causes the commission of
7 an indispensable element of the offense, may be found guilty
8 as if he had committed this element himself.

9 Each member of a conspiracy is responsible for the actions
10 of the other conspirators, performed during the course and in
11 furtherance of the conspiracy. If one member of a conspiracy
12 commits a crime in furtherance of a conspiracy, the other
13 members have also, under the law, committed that crime.

14 Therefore, you may find the defendant guilty of mailing
15 threatening communications as charged in Counts 2 through 4
16 of the superseding indictment, or interfering with federally
17 protected activity, as charged in Count 5 of the superseding
18 indictment, if the government has proved each of the
19 following elements beyond a reasonable doubt:

20 First, a person committed the crime of mailing threatening
21 communications as charged in Counts 2 through 4 of the
22 superseding indictment, or interfering with federally
23 protected activity as charged in Count 5 of the superseding
24 indictment.

25 Second, and there's a typo right there --

1 THE LAW CLERK: Okay.

2 THE COURT: Second, the person who committed the
3 crime was a member of the conspiracy charged in Count 1 of
4 the superseding indictment.

5 Third, the person committed the crime in furtherance of
6 the conspiracy.

7 Fourth, the defendant was a member of the same conspiracy
8 at the time the offense charged in Counts 2, 3, 4 or 5 was
9 committed.

10 And fifth, the offense fell within the scope of the
11 unlawful agreement, and could reasonably have been foreseen
12 to be a necessary or natural consequence of the unlawful
13 agreement.

14 When you begin your deliberations, elect one member of the
15 jury as your foreperson, who will preside over the
16 deliberations and speak for you here in court. You will then
17 discuss the case with your fellow jurors to reach agreement,
18 if you can do so. Your verdict, whether guilty or not
19 guilty, must be unanimous. Each of you must decide the case
20 for yourself. But you should do so only after you have
21 considered all the evidence, discussed it fully with the
22 other jurors, and listened to the views of your fellow
23 jurors. Do not be afraid to change your opinion, if the
24 discussion persuades you that you should. But do not come to
25 a decision, simply because other jurors think it is right.

1 It is important that you attempt to reach a unanimous
2 verdict, but, of course, only if each of you can do so after
3 having made your conscientious decision.

4 Do not change an honest belief about the weight and effect
5 of the evidence, simply to reach a verdict. Perform these
6 duties faithfully, fairly, and impartially.

7 Do not allow personal likes, dislikes, sympathy,
8 prejudice, fear or public opinion to influence you. You
9 should also not be influenced by any person's race, color,
10 religious beliefs, national ancestry, sexual orientation,
11 gender identity, gender, or economic circumstances.

12 Also, do not allow yourself to be influenced by personal
13 likes or dislikes, sympathy, prejudice, fear, public opinion,
14 or biases, including unconscious biases. Unconscious biases
15 are stereotypes, attitudes or preferences that people may
16 consciously reject, but may be expressed without conscious
17 awareness, control or intention.

18 It is your duty, as jurors, to consult with one another
19 and to deliberate with one another with a view towards
20 reaching agreement, if you can do so.

21 During your deliberations, you should not hesitate to
22 reexamine your own views and change your opinion, if you
23 become persuaded that it is wrong.

24 Because you must base your verdict only on the evidence
25 received in the case and these instructions, I remind you,

1 you must not be exposed to any other information about the
2 case, or to the issues it involves. Except for discussing
3 the case with your fellow jurors during your deliberations,
4 do not communicate with anyone, in any way, and do not let
5 anyone else communicate with you in any way about the merits
6 of the case, or anything to do with it.

7 This instruction includes discussing the case in person,
8 in writing, by phone, tablet, computer, or any other means,
9 via e-mail, text messaging, or Internet chat room, blog,
10 website, or any other forms of social media. This
11 restriction applies to communicating with your family
12 members, your employer, the media or press, and the people
13 involved in the trial. If you are asked or approached in any
14 way about your jury service, or anything about this case, you
15 must respond that you have been ordered not to discuss the
16 matter, and to report the contact to the court.

17 Do not read, watch, or listen to any news or media
18 accounts or commentary about the case, or anything to do with
19 it. Do not do any research, such as consulting dictionaries,
20 searching the Internet, or using other reference materials.
21 And do not make any investigation, or in any other way try to
22 learn about the case on your own.

23 The law requires these restrictions to ensure the parties
24 have a fair trial, based on the same evidence that each party
25 has had an opportunity to address. A juror who violates

1 these restrictions jeopardizes the fairness of these
2 proceedings, and a mistrial could result, that would require
3 the entire trial process to start over. If any juror is
4 exposed to any outside information, please notify the court
5 immediately.

6 Some of you have taken notes during the trial. Whether or
7 not you took notes, you should rely on your own memory of
8 what was said. Notes are only to assist your memory. You
9 should not be overly influenced by your notes or those of
10 your fellow jurors.

11 The punishment provided by law for this crime is for the
12 court to decide. You may not consider punishment in deciding
13 whether the government has proved its case against the
14 defendant beyond a reasonable doubt. A verdict form has been
15 prepared for you. After you have reached a unanimous
16 agreement on a verdict, your foreperson should complete the
17 verdict form according to your deliberations, sign and date
18 it, and advise the clerk that you are ready to return to the
19 courtroom.

20 If it becomes necessary during your deliberations to
21 communicate with me, you may send a note through the clerk,
22 signed by any one or more of you. No member of the jury
23 should ever attempt to communicate with me, except by a
24 signed writing. And I will respond to the jury concerning
25 the case, only in writing, or here in open court.

1 If you send out a question, I will need to consult with
2 the lawyers before answering it, which may take some time.
3 You may continue your deliberations while waiting for the
4 answer to any question. Remember that you're not to tell
5 anyone, including me, how the jury stands, numerically or
6 otherwise, on any question submitted to you, including the
7 question of the guilt of the defendant, until after you have
8 reached a unanimous verdict or have been discharged.

9 All right. The government's final argument.

10 MR. WOODS: Thank you, Your Honor.

11 Ladies and gentlemen of the jury, in January of 2020, the
12 defendant sat safe in his home, plotting to make others feel
13 unsafe in theirs, to make them feel terror. And the sad
14 thing about this case, the tragic thing, the thing that is
15 difficult to acknowledge, is that the defendant succeeded.
16 His plot worked.

17 You heard from the victims in this case, Miri Cypers,
18 pulling her stroller from outside the house to hide that a
19 child was living there. Dave Rosenbaum, clutching his
20 daughter while making pancakes when that man appeared at the
21 front door. Chris Ingalls, buying a gun. Mala Blomquist,
22 using a stick to open her mailbox, because she was worried
23 about what was inside. Veronica Cintron, leaving the
24 profession of a journalist. And Hilary Bernstein, the widow,
25 alone in her house, feeling fear and terror. Those stories,

1 those accounts, they were hard to hear.

2 But if that is the tragedy of this case, the silver
3 lining, if we can call it that, is that this man was caught
4 red-handed. And in his own words, in the words he used on
5 one of the posters, "Actions have consequences." Actions
6 have consequences. And the consequences of what Kaleb Cole
7 did, is that he is guilty of five crimes.

8 And let's start by talking about the law surrounding those
9 five crimes. The first count, Count 1 charges conspiracy.
10 And conspiracy has three elements.

11 First, there was an agreement between two or more people
12 to commit a crime. We'll talk about that crime in a minute.
13 And here, it's not in dispute, that there were multiple
14 members of this conspiracy. You saw the chats.

15 Second, the defendant joined this conspiracy knowing of
16 its object and helping to attend to accomplish it. And we'll
17 talk about that in a minute.

18 And third, that at least one of the members of the
19 conspiracy committed an overt act, some action, something to
20 put the conspiracy into effect. And here, that's also not
21 seriously in dispute. You saw that the conspiracy happened.
22 The victims got their posters.

23 Now, the conspiracy in this case was to commit three
24 separate crimes. You only need to agree as to one of the
25 crimes. But, in fact, the defendant, and this conspiracy,

1 involved three crimes.

2 First, mailing threatening communications. And that has
3 two elements.

4 First, the defendant knowingly mailed, or arranged to have
5 mailed by the postal service, a communication addressed to a
6 person containing a threat.

7 And second, this was done for the purpose of transmitting
8 a threat.

9 And here you heard that the Seattle-based victims got
10 their posters in the mail, the United States Postal Service.
11 That's not in dispute. And we're going to talk in a minute
12 about why these posters were threats. So that's crime one.

13 Crime two, interference with federally protected activity.
14 First, the defendant acted by force, or in this case made a
15 threat. Second, the defendant either injured or in this case
16 intimidated, interfered, or attempted to do that, with
17 respect to Miri Cypers, the first witness you heard from in
18 this trial, a Jewish person associated with the
19 Anti-Defamation League.

20 Third, the defendant acted, because of the religion of
21 Ms. Cypers, and that's because she is Jewish. And that's not
22 seriously in dispute. You heard the fact that she is Jewish,
23 working for a Jewish organization.

24 Fourth, the defendant intended to interfere with her
25 employment. And here, if you remember, the poster for Miri

1 Cypers, it's right there, doesn't just have her name, it's
2 got her organization. And you saw the chats where he was
3 intending to target the ADL, that Jewish organization.
4 That's not seriously in dispute.

5 And fifth, the defendant threatened to use, in this case
6 explosives or fire. That's a picture of a Molotov cocktail.
7 An explosive or fire. That's not seriously in dispute
8 either.

9 That third object of the conspiracy, stalking. First, the
10 defendant used the mail. Any interactive computer service.
11 The Wire chats that you saw.

12 Second, the defendant used these services to engage in a
13 course of conduct undertaken with the intent to kill, injure,
14 harass or intimidate another person by means of a threat.
15 And we'll talk about those threats in a minute.

16 And third, that course of conduct placed another person in
17 reasonable fear of death or serious bodily injury. And you
18 saw and heard from each of those victims that that is
19 precisely what they felt. So that's Count 1, conspiracy.

20 Counts 2, 3, and 4 charge the substantive crimes. So not
21 simply the conspiracy, the agreement to do the crime, but the
22 actual crimes of mailing threatening communications.
23 Count 2, the poster that was sent to Chris Ingalls. Count 3,
24 the poster that was sent to Miri Cypers. And Count 4, the
25 poster that was sent to Hilary Bernstein.

1 And, finally, Count 5 charges a substantive crime, not
2 simply the conspiracy, the substantive crime of interfering
3 with federally protected activity; the poster that was sent
4 to Miri Cypers.

5 Now, some of you, as we heard the instructions, may have
6 wondered, well, does it matter whether the defendant himself
7 stuffed those envelopes? Does that make a difference? It
8 doesn't. It doesn't. For two reasons. What the law says in
9 this aiding and abetting instruction the court gave you, is
10 that if you aid, counsel, command, with respect to someone
11 else committing the crime, you are guilty of that crime.

12 So look at the elements. First, someone else committed
13 the crime. Second, the defendant aided, counseled,
14 commanded, induced or procured that person, with respect to
15 at least one element of that crime. Third, the defendant
16 acted with the intent to facilitate, to make that crime
17 happen. And fourth, the defendant acted before the crime was
18 completed.

19 Here, you saw the defendant created those posters, the
20 posters that went to each of the victims that were charged in
21 Counts 2, 3, 4 and 5.

22 And second, for the totally independent reason, it does
23 not matter whether the defendant stuffed those envelopes.
24 Because what the law says is that -- and we're going to go
25 over the elements -- but when you commit a crime, when a

1 crime is committed as part of a conspiracy, the other
2 co-conspirators who directly do that action, they're
3 responsible as long as the conduct was a consequence -- could
4 reasonably have been foreseen to be a necessary or natural
5 consequence of the conspiracy. So here, first a person
6 committed a crime. Second, the person who committed the
7 crime was a member of the conspiracy. Third, that was in
8 furtherance of the conspiracy. Fourth, the defendant, the
9 defendant was a member of the same conspiracy at the time the
10 offense was committed. And this offense fell within the
11 scope of the unlawful agreement, one could reasonably have
12 been foreseen to be a necessary or natural consequence of the
13 agreement.

14 So if you have a conspiracy, as we had here, whether the
15 defendant himself stuffed the envelope or one of the
16 co-conspirators did that, he is responsible.

17 Now, ladies and gentlemen, I want to be perfectly clear
18 about something. The government bears the burden of proving
19 each of the elements of these crimes, beyond a reasonable
20 doubt. But I submit to you that after listening to the
21 opening statements, and the questions that were asked in this
22 case, there really are two questions you're going to have to
23 answer in that jury room.

24 First, was the defendant part of this conspiracy? Second,
25 did this conspiracy involve a threat? And the answer to both

1 of those questions is a resounding, yes.

2 So Question 1. Was the defendant part of this conspiracy?
3 And ladies and gentlemen, let us count the ways. His own
4 words.

5 (Audio played.)

6 MR. WOODS: His own words.

7 (Audio resumed.)

8 MR. WOODS: And what was found on Kaleb Cole's
9 computer, in his house down in Houston, Texas? Chris
10 Ingalls. Not just his name, his office number, his cell
11 number, the very things that appeared on the poster that he
12 received. Veronica Cintron, a Tampa reporter. Her name
13 found all the way across the country on his computer, in his
14 room in Houston. And Mala Blomquist, an Arizona reporter,
15 her name on his computer. The masks found in his car used as
16 a model for one of the posters.

17 And, ladies and gentlemen, let's make sure we're on the
18 same page. You saw all of those chats during the course of
19 this trial, that moniker, the string of characters, that's
20 Kaleb Cole. All right? And let's just briefly review the
21 many reasons you know that to be the case. Here's an article
22 tagging The Moniker and The Moniker replies, "I" -- first
23 person, "I." And what's that article about? Kaleb Cole.
24 Another example, The Moniker, sending an article about Kaleb
25 Cole. And what does The Moniker say? "I" -- first person --

1 "I." That's him.

2 Remember his discussion about trials in Canada? There's
3 The Moniker. And this blood eagle for every bureaucrat
4 poster. Well, you heard the recording, Kaleb Cole was in
5 trial in Canada, and presented with, "Blood eagle for
6 bureaucrat poster" as evidence. That's him.

7 And what was hidden in Kaleb Cole's jail cell? What was
8 underneath his mattress? The same characters that appear in
9 this moniker. This moniker is Kaleb Cole.

10 And so what do we see in the chats? Kaleb Cole
11 circulating one of the posters. It's right there. He's
12 talking about the three designs for doorsteps. Three
13 posters. Three designs in this case. Right there in the
14 chats. Talking about gathering the addresses for the
15 victims. Applauding the efforts to identify Jewish victims.
16 Ladies and gentlemen, the answer to that first question,
17 Kaleb Cole was part of this conspiracy. The answer to that
18 question is yes.

19 So that leaves the second question. Did this conspiracy
20 involve a threat? And let's look at the court's instruction
21 of what a threat is. A threat is a serious statement
22 expressing an intention to injure any person, which, when
23 considering all the circumstances, a reasonable observer
24 would interpret as a serious expression of an intent to
25 inflict bodily harm on any person. That's distinguished from

1 hyperbole or idle or careless talk, exaggeration, something
2 that's a joke, in a joking manner. And a threat can be
3 conditioned. "I will hurt you unless you stop." Whether the
4 threatened person does or does not take a certain action.
5 And the speaker must make the statement with the intent to
6 communicate a threat. And you can consider all of the
7 circumstances in making this determination.

8 Now, ladies and gentlemen, in order to answer that
9 question, was a threat made in this conspiracy, you need only
10 do one thing. Apply your common sense and look at these
11 posters. That's all you need to do. And let's start with
12 the poster that was sent to Chris Ingalls. Okay?

13 There was a picture of a reporter, who's got the press
14 badge on. There's a man pointing a gun at the reporter's
15 head. There are men in skull masks in the back, holding
16 guns. And what is the statement? What is the statement that
17 Kaleb Cole chose for this poster? "Death. Death to pigs."
18 And did Kaleb Cole just come up with this? Did he pull it
19 out of thin air? He didn't. He chose that message for a
20 reason. He chose it because he knew Chris Ingalls would get
21 the message. Because Chris Ingalls had just done a news
22 story in which he linked Atomwaffen to Charles Manson.
23 "Death to pigs" was the statement that was written in blood
24 when a family was murdered, slaughtered in their home. And
25 what is on that address? Chris Ingalls' home address. That

1 poster is a threat.

2 Then there's the poster that is sent to Miri Cypers and
3 Mala Blomquist. A man with a Molotov cocktail standing in
4 front of a house, with the victim's home address at the
5 bottom of the poster. What is the message Kaleb Cole wanted
6 to send to his victims? It's obvious. The message is: Is
7 tonight the night? Is tonight the night that somebody shows
8 up at my house? Is tonight the night that I hear glass
9 breaking? Is tonight the night that my house fills with
10 smoke and fire? Is tonight the night that I hear my children
11 screaming? Is tonight the night we die? That is the message
12 of this poster. That poster is a threat.

13 And then there's the poster that was also sent to Veronica
14 Cintron, Veronica Rudie, and Hilary Bernstein. "We are
15 watching. We know where you live." And their home address
16 at the bottom. And who is one of the two victims in this
17 case? Hilary Bernstein, a Jewish woman. A Jewish woman.
18 When you send a poster with a swastika and it says, "We know
19 where you live. Don't fuck with us." And when you include a
20 swastika and a statement, "You have been visited by your
21 local Nazis," and you send that to a Jewish woman, you are
22 not simply sending a statement of hate, you are sending a
23 statement of terror.

24 Ladies and gentlemen, all you need to do is apply your
25 common sense. But, of course, because of the recordings in

1 this case, because of the chats that were captured, you also
2 had a front-row image, a view into the defendant's
3 threatening and hatred. You saw it. You saw how he planned
4 and executed this operation.

5 Right there. "Wanting to create frenzy. Adding to their
6 fear of us, so we can intimidate them further. Targeting
7 home addresses." It's not enough to send a poster to Chris
8 Ingalls at King 5's corporate headquarters, or to the ADL's
9 general office. No, to send that message of fear and terror,
10 you send it to their home. And his words.

11 (Audio played.)

12 MR. WOODS: That's exactly what he suggested to his
13 followers. Take a knife and stab it through a doll right
14 outside their homes. His words again.

15 (Video resumed.)

16 MR. WOODS: But we can, right?

17 And one thing I want to make clear, when you look at the
18 instructions, there's no requirement to prove that Kaleb Cole
19 knew he was violating the law. If we had some crazy scenario
20 where Kaleb Cole honestly thought he was complying with the
21 law, but nonetheless intended to make a threat, he is still
22 guilty. But that isn't our scenario, because he knew exactly
23 what he was doing. He knew precisely that what he was doing
24 was wrong.

25 That's why he said: Hey, don't use the library, because

1 of surveillance. You do that because you're plotting a
2 crime. Watch out for metadata, the electronic fingerprints
3 associated with a printer. You say that because you're
4 committing a crime. I know nothing. Discuss about what to
5 tell your defense attorney. When you start talking about
6 what to tell your defense attorney when the cops show up,
7 you're probably engaged in a crime. And that's exactly what
8 happened here.

9 You know, ladies and gentlemen, I said at the outset that
10 the great tragedy here is that these victims were terrified
11 and that the silver lining was that this defendant was caught
12 red-handed. But there's a second silver lining as well. The
13 defendant set about to terrorize these victims, to silence
14 them, to keep them quiet. And although he instilled terror,
15 he did not keep them quiet. He failed.

16 Miri Cypers, Dave Rosenbaum, Chris Ingalls, Mala
17 Blomquist, Veronica Cintron, Hilary Bernstein, they came into
18 this court and they told you their story. And because of
19 that, Kaleb Cole's day of judgment is here. Actions have
20 consequences. And ladies and gentlemen, I ask you to please
21 hold the defendant responsible for his crimes and find him
22 guilty on all five counts.

23 Thank you.

24 THE COURT: All right, folks, if you'd like to stand
25 up and stretch while counsel is getting set up.

1 MR. BLACK: Your Honor?

2 THE COURT: Yes.

3 MR. BLACK: May it please the court, ladies and
4 gentlemen of the jury, as my co-counsel indicated at the
5 outset of this case, what this case comes down to is really
6 one question, which is what was Mr. Cole's intent in sending
7 those posters? And more particularly, did the government
8 prove beyond a reasonable doubt that his intent, his purpose
9 in sending the posters was to communicate a serious
10 expression of intent to inflict bodily harm on some person;
11 in other words, to send a true threat?

12 It is not enough for the government to prove that people
13 felt threatened. It is not enough for the government to
14 prove that Mr. Cole should have known that they would feel
15 threatened. It's not enough for the government to prove that
16 he actually knew they would feel threatened. The government
17 has to prove that his purpose in sending the posters was to
18 make people believe that he or his alleged co-conspirators
19 actually intended to physically harm these people.

20 This is a high burden. It's a high burden for a reason,
21 which is that the First Amendment protects speech in this
22 country. This is one of the most important rights guaranteed
23 to us all by the Bill of Rights. Speech is protected and can
24 only be criminalized in very narrow circumstances. The
25 reason for this protection is to check the government's

1 ability to bring down its massive power on people with
2 unpopular ideas, or even people with ideas that you may find
3 abhorrent. This is one of the bedrock principles of American
4 law. And it's one of the prices we pay for the freedoms we
5 have.

6 We discussed these issues during the voir dire process,
7 and all of you agreed that you would follow the law as
8 presented to you by the court, regardless of personal
9 feelings that you may have about the subject matter of this
10 case. And under the law, the government has failed to
11 establish that Mr. Cole communicated a true threat in this
12 case.

13 And to explain why that's the case, I first want to
14 clarify why Mr. Cole's intent is the relevant question here.
15 The answer comes from the instructions that the court read to
16 you, copies of which you'll have, and I encourage you to read
17 them very carefully, because they set forth the precise
18 standards that you must judge this case under.

19 The first instruction that I want to touch on is a general
20 concept that is part of every criminal case, which is that
21 the government has the burden to prove every element of every
22 charge beyond a reasonable doubt. All the charges in this
23 case have multiple elements, as the court read, as the
24 government reviewed in their argument. But in order to
25 convict Mr. Cole, the government must prove each element of

1 every charge beyond a reasonable doubt.

2 And what a reasonable doubt is, is something that leaves
3 you firmly convinced that the government has met its burden
4 as to that element. It's not enough to just think that the
5 defendant probably took actions he's charged with, or that he
6 probably had the intent to commit a crime. The standard is
7 higher. You must be firmly convinced that he had that
8 intent. And, again, that standard applies to every element
9 of the crimes, including particularly intent here, which as
10 I've said is the relevant issue in this case.

11 The first charge is conspiracy. There are a number of
12 instructions to finding a conspiracy and setting forth the
13 elements of a conspiracy and how a person can become part of
14 a conspiracy. It can sound pretty broad, and it can sound
15 like the kind of thing it might be easy to become a part of,
16 but there are some crucial things that the government needs
17 to prove in order to establish that Mr. Cole was part of a
18 conspiracy.

19 A primary component is that he agreed to commit a crime.
20 And you would all have to agree on the same crime that he
21 agreed to commit. In this case, all of the charged crimes
22 involved threats. And threats have a very particular
23 meaning, which the government discussed, which I'll get into
24 more in a minute. But what this means is that in order to
25 convict Mr. Cole of any of these charges, the government must

1 prove that he made true threats.

2 The instructions also discuss aiding and abetting as a
3 basis to find Mr. Cole guilty. Finding Mr. Cole guilty under
4 that theory would also require that he intended the posters
5 as true threats. This is laid out in the jury instructions
6 as well. So what this all means is that to convict Mr. Cole
7 of conspiracy, to convict him of the substantive counts, to
8 convict him of aiding and abetting, you have to find that he
9 intended the posters to be true threats.

10 The definition of a true threat is set forth in the
11 court's instructions. It's in front of you now. There's a
12 few parts that we've highlighted here. The first is that a
13 true threat must be a serious statement expressing an
14 intention to injure any person. It's not an intent to scare
15 them, it's an intent to injure them. It cannot be hyperbole.
16 And at the bottom, the most important element of this
17 definition, in our view, is that the speaker must make the
18 statement with the intent to communicate a threat.

19 Again, it's not enough for the government to prove that
20 people felt threatened, or that Mr. Cole should have known
21 that they would feel threatened, or that Mr. Cole actually
22 knew that they would feel threatened. The government has to
23 prove that that was Mr. Cole's intent in sending the posters
24 was to make people believe that he or his co-conspirators
25 actually intended to communicate a true threat, which, again,

1 is defined as a serious expression of intent to inflict
2 bodily harm on any person.

3 And not only has the government failed to meet that
4 burden, the available evidence clearly shows that this was
5 not Mr. Cole's purpose. And how do we know this? Because of
6 Mr. Cole's and his alleged co-conspirators' own statements.
7 These statements included things that appeared on the chats
8 between the people involved in the postering campaign.

9 This is the first one. It's sent by Krokodil to the
10 confidential informant, to announce the plan to him and to
11 tell him what the whole idea is behind it. And the purpose
12 is set forth right there. It's to dox people. It's not to
13 make people think that AWD is actually going to harm them.

14 And Mr. Cole himself also sent messages in the chat room
15 that communicated his personal intent about the campaign.
16 "The point of the campaign is to send a message, stir
17 whispers." There's nothing about making people think that
18 they are actually in danger. And he reiterated this a number
19 of times. "The point overall is to send a message and stir
20 whispers and a wee bit of frenzy." It's about sending a
21 message, getting press coverage. Again, "stirring whispers."

22 And Mr. Cole also made statements that were secretly
23 recorded during the meeting on January 9th at his home. He
24 talks about doing to ADL what they did to him. And what that
25 is, is expose him and expose his information.

1 He talked about sending a message. Again, he's talking
2 about whispers and trying to enhance their reputation,
3 getting media attention. He says it's a symbolic gesture.
4 And he specifically talks about not wanting to overshoot the
5 mark, not wanting actually to go to somebody's doorstep and
6 say, "We're going to kill you." That's what he says he does
7 not want to do. He never, in any of these chats or recorded
8 statements, indicated that he had an actual plan to hurt
9 anyone, let alone saying that he actually did want to hurt
10 anybody, which he never did.

11 And these statements are reliable expressions of
12 Mr. Cole's true thoughts. They were made in a context where
13 he thought he was among friends and colleagues. It was on
14 the chat string, and in the secretly recorded meeting. He
15 had no idea that the FBI was part of it, that an undercover
16 -- that a confidential informant was part of it. He had
17 every reason in the world to be completely candid, in that
18 context. And he was. He said exactly what his intent was,
19 on numerous occasions. He was consistent about it. He never
20 said that his intent was to communicate a serious expression
21 of an intent to inflict bodily harm. In fact, he said
22 explicitly: You don't want to do that.

23 There was some talk at one point about pinning a rag doll
24 to a tree with a knife, in the context of discussing actions
25 taken by another group. But nobody ever did that. And

1 Mr. Cole never told anybody to do that.

2 We also know that Mr. Cole did not intend these
3 communications to be true threats, because of the content of
4 the posters, things like, "Two can play at this game," which
5 infers that there's some kind of back and forth happening.
6 "These people have names and addresses." Talking about
7 exposing information. He's talking about doxing people, he's
8 talking about when Mr. Ingalls went to his dad's house and
9 showed it on TV. He's talking about the ADL publishing
10 information about him and his group, and multiple witnesses,
11 including Ms. Cypers and Mr. Ingalls, acknowledged that they
12 understood the messages in the posters to be about doxing.

13 You've heard that Mr. Cole is young and part of a group of
14 other young men. You've seen and heard him talking, without
15 much perspective on the world. He has grown up in a
16 polarized nation, a nation where even the President of the
17 United States labeled the media as the "enemy of the people."
18 Mr. Cole has been inundated with toxic slogans, that most of
19 you have probably all heard in political and social
20 movements, such as: Lock her up. Beat the bitch. All cops
21 are bastards.

22 And the memes and the political videos that you've no
23 doubt seen that have inundated our culture, have influenced
24 people. And that's -- that kind of exposure obviously
25 doesn't lead necessarily into white supremacy, or neo-Nazism,

1 or anything like that. But it does help explain the sort of
2 "us against them" view that Mr. Cole and his companions
3 clearly had. And this is what they were acting on.

4 They believe that they were engaged in a struggle
5 regarding public opinion and doxing. It was misguided. It
6 was grandiose. It was based on views that I strongly suspect
7 that you don't agree with, in the slightest. But it was the
8 genuine purpose of their campaign. And this was stated
9 repeatedly and consistently by Mr. Cole.

10 And this purpose is consistent with what we know about
11 Atomwaffen and Mr. Cole's history. There have been allusions
12 during this trial that Atomwaffen is a violent organization,
13 and some of its members may have done violent things in the
14 past. But you heard that in the three years that the FBI has
15 been investigating Mr. Cole, he has never engaged in any
16 violent actions, and that he has never planned any violent
17 actions. You heard this from the FBI agent who has been
18 investigating him for years. And the FBI would know, because
19 they have an informant who was embedded in Atomwaffen that
20 entire time. And he also testified there were no such plans
21 for violence ever made.

22 Instead, they held conferences, and shot guns in the
23 woods, and -- all legally, talked about their ideas and
24 philosophies. But they did not plan violent actions. They
25 did not engage in violent actions. And any allusions to the

1 contrary, are simply not supported by the evidence.

2 In the end, what we have here are a group of disillusioned
3 young men who want to believe that they are engaged in some
4 sort of propaganda war with journalists, and organizations
5 like the ADL. But they never actually engaged in violence.
6 They never planned violence. And most importantly, they
7 never intended to communicate an actual threat to commit
8 violence. And it is for this reason that we ask you to find
9 that the government has not met its heavy burden to
10 establish, beyond a reasonable doubt, that Mr. Cole's intent
11 was to commit a crime in this case.

12 And this brings me to one last instruction from the court,
13 which is that it is your duty to return a not guilty verdict,
14 if you do not find that all of the elements of the charges
15 have been proven beyond a reasonable doubt. This is your
16 duty, even if you disagree with your whole heart about the
17 philosophy underlying Mr. Cole's actions. This is your duty,
18 even if you find those posters to be despicable. This is
19 your duty, even if you acknowledge the genuine distress of
20 the people who received those posters. Because that is not
21 enough for Mr. Cole to be guilty of a crime. And by
22 returning a not guilty verdict, it would represent no more
23 than a technical finding, under the precise definition of the
24 crimes charged in this case.

25 This is something that we discussed during voir dire, and

1 is crucially important in this case. It's something you all
2 agreed to do. And it's something that the evidence in this
3 case supports. For all these reasons, we ask that you find
4 Kaleb Cole not guilty of all the charges against him. And
5 before I sit down, I just want to say one final thing,
6 because this is the last time you'll hear from the defense in
7 this trial, the government will be able to present a rebuttal
8 argument, and I just ask that you keep these principles that
9 I have discussed in mind as you listen to the government's
10 argument. Thank you.

11 THE COURT: All right. You folks can stand up and
12 stretch while counsel is getting set up.

13 MR. WILKINSON: Members of the jury, Mr. Black
14 acknowledges that we're to a point, after seeing all this
15 evidence, that there is only one issue in dispute in this
16 case, and that is because the evidence has made crystal clear
17 exactly what happened. And what happened was, the defendant,
18 Kaleb Cole, created these hateful posters, he entered
19 people's names on those posters, so that they would know that
20 he knows who they are. He entered their addresses on those
21 posters, to make clear that he knew where they lived. And he
22 sent those posters out to his cells across the country, to
23 have them mailed to people and glued to people's houses, to
24 terrify them. That happened. There's no dispute about that
25 at this point.

1 So the only question that you have to decide, when you go
2 back to the jury room, is this: Did the defendant intend
3 those posters as threats? How do you answer that question?
4 Well, I'll suggest to you that the first place you should
5 look is the instructions, what is a threat, in deciding
6 whether he intended to send a threat.

7 And the instruction tells you that it is a serious
8 statement expressing an intent to injure any person. And
9 importantly, as Mr. Woods noted, it can be conditional. It
10 can be, if you continue doing what you're doing, there will
11 be consequences. And this instruction is particularly
12 important, because -- and useful, because it also tells you
13 what is not a threat. It's not a threat if it's hyperbole,
14 idle, or careless talk, exaggeration, or something said in a
15 joking manner.

16 So that is your task when you go back to the jury room.
17 Ask yourself, did Kaleb Cole intend to send a serious
18 statement about an intent to injure, or was it merely
19 hyperbole, idle or careless talk? That is the question you
20 need to answer.

21 And when you're answering that question, keep one other
22 thing in mind. Don't lose sight of this: The government
23 does not need to prove that what Cole was doing -- that Cole
24 knew what he was doing was illegal. Okay? That's the second
25 sentence there. The government is not required to prove the

1 defendant knew his acts were unlawful. All he had to know
2 was that he was intending to send a serious statement about a
3 risk of injury.

4 And in making that assessment of what was in his mind, of
5 his intent, I'll offer to you there are three places you
6 should look. The first is the posters themselves. A lot has
7 been said about them over these last few days, and I'm not
8 going to go over it all. But ask yourself, the fundamental
9 question for you. Are these serious? Or are these idle or
10 careless talk? Remember the imagery: Guns, blood, Molotov
11 cocktails. Remember the words, "Your actions have
12 consequences. Don't fuck with us. You've been visited by
13 your local Nazis." And please, in particular, consider
14 defendant's decision to put people's names and addresses on
15 those posters.

16 Remember the testimony of Hilary Bernstein, who spent her
17 career at the ADL. And she told you she had seen a lot of
18 hateful propaganda in her career. But what this -- what made
19 this different was not simply that it was something that was
20 personal to her, but it was the fact that this had someone's
21 name and address on it. It was delivered to their home. And
22 it told them, "You have been visited by your local Nazis."

23 Now, what about this argument that these posters weren't
24 threatening injury, that these posters are actually just
25 threatening to put your name on the Internet? Ask yourself,

1 if that's what Kaleb Cole intended to threaten, what would
2 these posters look like? Do these posters have a picture of
3 Miri Cypers' name posted on the Internet? Does it have an
4 Atomwaffen member sitting at a computer? No. These posters
5 have a picture of a man preparing to firebomb her house.

6 Or the Chris Ingalls' poster, when it says, "Two can play
7 at this game." Is Kaleb Cole saying: Oh, I'm going to run a
8 news story about you. But what would a news story about
9 Chris Ingalls even look like? No. The poster has a picture
10 of a blindfolded journalist, with a gun pointed at his head,
11 with the words "Death to pigs," intentionally handpicked by
12 Kaleb Cole, to invoke an incident of a home invasion, where
13 people were slaughtered in their home, and these words were
14 written on their wall in their own blood. All of this was
15 handpicked, each of these images and words was handpicked by
16 Kaleb Cole to send one message, and that was: We can get you
17 in your home.

18 So look at the posters. You can look at Cole's words that
19 you heard outside of the posters, that he wanted to approach
20 journalists with pure aggression. You heard that in his own
21 voice. Pure aggression, not pure hyperbole and idle talk.
22 Pure aggression. He wanted to intimidate them, to create a
23 frenzy. And please, when you're thinking about his intent,
24 remember that moment where he's talking about the rag doll,
25 where he's telling his followers to go out -- at the same

1 time they stick these posters on people's houses, he says,
2 "At the same time you do that, take a rag doll and stick a
3 knife through its head on their house." And that tells you
4 everything about the defendant's intent. He wanted to
5 terrify them with threats of physical harm.

6 The third place to look to understand Cole's intent when
7 he was sending these posters, to determine whether they were
8 just a joke, idle words, or whether they were serious, is the
9 words of the people who -- the words that you heard from the
10 people who actually received them, from his targets. How
11 were these things actually interpreted? All six of the
12 people that we know of who received posters like this came
13 into court and told you how they felt when they received
14 this.

15 How many of them told you they took this as idle or
16 careless talk? Zero. Every single one of them told you that
17 they were terrified, petrified. And that was because Kaleb
18 Cole succeeded in his effort to handpick words and images
19 that would carry people's -- that would prey on people's fear
20 of physical danger. Some of them may have had some concern
21 about their name being posted for other extremists. But
22 every single one told you their primary concern, by far, was
23 for their physical safety.

24 That's why Mala Blomquist tested her daughter's car, to
25 make sure there wasn't a bomb in it, or the brakes were

1 tampered with. That's why they installed security systems in
2 their houses. Moved out of their houses for a time.

3 Members of the jury, I want to close by reminding you of
4 one particular instruction that Mr. Woods also mentioned, and
5 it's Instruction 4. And it's Instruction 4 that says that
6 you are entitled and required to use your common sense in
7 making your determination here. When you go back to the jury
8 room, use your common sense in looking at these posters, and
9 answer the question: Did Kaleb Cole intend these as idle.

10 Talk, careless words, or did he intend them as serious
11 statements of intent to injure people? And if you apply your
12 common sense, I'm confident you will conclude that these were
13 threats, these were hateful words, done deliberately to
14 terrorize human beings in their homes. And you will return
15 guilty verdicts on all counts. Thank you very much for your
16 attention.

17 THE COURT: All right, ladies and gentlemen. If
18 you'll retire to the jury room. You can commence your
19 deliberations. Probably start by selecting your foreperson.
20 The court's instructions and the exhibits will be delivered
21 to you in a few minutes. And your lunch will be brought in
22 around noon. All right?

23 (The following occurred outside the presence of the jury.)

24 THE COURT: Go ahead and be seated.

25 All right, counsel, if you will work with Gabe to make

1 sure he has correctly gathered the exhibits to be sent to the
2 jury room. If there is no statement otherwise, it will be
3 taken as your concurrence on the current set of exhibits to
4 be sent to the jury room. Remain in close quarters to the
5 court, no more than 15 minutes away, in case we have
6 questions from the jury, or a verdict. We'll be in recess.

7 (Adjourned.)

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12:11 p.m.

THE COURT: Counsel, they indicate they have a verdict. Are you ready for the jury?

MR. WOODS: Yes.

MR. BLACK: Yes, Your Honor.

THE COURT: All right. Bring them in.

(The following occurred in the presence of the jury.)

THE COURT: Will the foreperson of the jury please rise? Has the jury reached a verdict?

JUROR NO. 1: Yes, Your Honor.

THE COURT: Would you give it to the clerk, please?

You can be seated.

The verdict is proper in form. Will the defendant please rise and face the jury? And the clerk will read the verdict.

THE CLERK: United States District Court for the Western District of Washington at Seattle. United States of America, plaintiff, versus Kaleb Cole, defendant, Case No. CR20-32-JCC. Verdict form.

Count 1. Conspiracy. As to the offense of conspiracy as charged in Count 1, we, the jury, unanimously find the defendant guilty.

Count 2. Mailing threatening communications. As to the offense of mailing threatening communications with respect to CI, as charged in Count 2, we, the jury, unanimously find the defendant guilty.

1 Count 3. Mailing threatening communications. As to the
2 offense of mailing threatening communications, with respect
3 to MC, as charged in Count 3, we the jury, unanimously find
4 the defendant guilty.

5 Count 4. Mailing threatening communications. As to the
6 offense of mailing threatening communications with respect to
7 HB, as charged in Count 4, we the jury, unanimously find the
8 defendant guilty.

9 Count 5. Interference with federally protected activity.
10 As to the offense of interference with federally protected
11 activity with respect to MC, as charged in Count 5, we the
12 jury, unanimously find the defendant guilty.

13 Dated this 29th day of September, 2021. Signed by the
14 foreperson of the jury.

15 THE COURT: Counsel, do either of you wish to have
16 the jury polled?

17 MR. BLACK: No, Your Honor.

18 MR. WOODS: No, Your Honor.

19 THE COURT: All right. Ladies and gentlemen, first
20 of all, let me ask the clerk to give us a sentencing date and
21 time.

22 THE CLERK: Your Honor, this can be set January 11th
23 of 2022 at 9:00 a.m.

24 THE COURT: Does that work for you?

25 MR. BLACK: Yes, Your Honor.

1 MR. WOODS: It does.

2 THE COURT: And, folks, if you tell the clerk and
3 want to know what the sentence is, we will mail a copy of the
4 sentencing document to you, if you ask. If you don't want
5 it, I understand.

6 And this will conclude your service on this term of
7 federal court. And you're excused to report to the jury
8 clerk on the first floor.

9 If you want, I'm happy to invite you back into chambers
10 for a short conversation. But you're not required to come
11 back. Okay? We'll be in recess.

12 (Adjourned.)

13

14 C E R T I F I C A T E

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

19

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21

22 /s/ Debbie Zurn

23 DEBBIE ZURN
24 COURT REPORTER

24

25

NO. 22-30015

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

KALEB COLE,

Defendant-Appellant.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF WASHINGTON

The Honorable John C. Coughenour, Judge
D.C. No. 2:20-cr-00032-JCC-2

APPELLANT'S EXCERPTS OF RECORD, VOLUME 3 of 5

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THE HONORABLE JOHN C. COUGHENOUR

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

KALEB COLE,

Defendant.

CASE NO. CR20-0032-JCC

VERDICT FORM

**COUNT 1
CONSPIRACY**

As to the offense of Conspiracy, as charged in Count 1, we, the jury, unanimously find the defendant:

NOT GUILTY _____

GUILTY _____

**COUNT 2
MAILING THREATENING COMMUNICATIONS**

As to the offense of Mailing Threatening Communications, with respect to C.I, as charged in Count 2, we, the jury, unanimously find the defendant:

NOT GUILTY _____

GUILTY _____

COUNT 3

MAILING THREATENING COMMUNICATIONS

As to the offense of Mailing Threatening Communications, with respect to M.C., as charged in Count 3, we, the jury, unanimously find the defendant:

NOT GUILTY _____

GUILTY ✓

COUNT 4

MAILING THREATENING COMMUNICATIONS

As to the offense of Mailing Threatening Communications, with respect to H.B., as charged in Count 4, we, the jury, unanimously find the defendant:

NOT GUILTY _____

GUILTY ✓

COUNT 5

INTERFERENCE WITH FEDERALLY-PROTECTED ACTIVITY

As to the offense of Interference with Federally-Protected Activity, with respect to M.C., as charged in Count 5, we, the jury, unanimously find the defendant:

NOT GUILTY _____

GUILTY ✓

DATED this 29 day of June, 2021.



Foreperson of the Jury

The Honorable John C. Coughenour

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

KALEB COLE,

Defendant.

No. CR20-032 JCC

DEFENDANT’S SUPPLEMENTAL
PROPOSED JURY INSTRUCTIONS
(CITED)

Defendant, Kaleb Cole, by undersigned counsel, respectfully submits the following proposed jury instructions to supplement the agreed instructions submitted by the parties.

Respectfully submitted this 17th day of September, 2021.

BLACK & ASKEROV, PLLC



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s/ Teymur Askerov

Teymur Askerov, WSBA No. 45391
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Phone: 206.623.1604
Fax: 206.658.2401

REQUESTED SUPPLEMENTAL INSTRUCTION NO.1

INSTRUCTION NO. ____

To convict the defendant of conspiracy you must find that the object of the conspiracy involved an agreement to transmit a Threat or Threats as defined below in these instructions.

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Fifth Circuit Pattern Instruction 2.40; *United States v. Sutcliffe*, 505 F.3d 944, 961 (9th Cir. 2007); *United States v. Dillard*, 795 F.3d 1191, 1200 (10th Cir. 2015); Eighth Circuit Pattern Instruction 6.18.875C.

REQUESTED SUPPLEMENTAL INSTRUCTION NO. 2

INSTRUCTION NO. ____

“Course of conduct” is an element of the crime of Stalking under 2261A of Title 18. The phrase “course of conduct” is defined as a pattern of conduct composed of two or more acts, evidencing a continuity of purpose. The acts that make up the course of conduct must be directed at the same specific person.

18 U.S.C. 2266(2); United States v. Bell, 303 F.3d 1187 (9th Cir. 2002); United States v. Osinger, 753 F.3d 939 (9th Cir. 2014).

The Honorable John C. Coughenour

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

KALEB COLE,

Defendant.

No. CR20-032 JCC

DEFENDANT’S TRIAL BRIEF

Trial Date: September 27, 2021

Defendant, Kaleb Cole, by undersigned counsel, respectfully submits the following trial brief in advance of the trial in this matter, scheduled for September 27, 2021.

1. Exhibits and Witnesses

The defense does not plan to introduce exhibits or call any witnesses (other than potentially Mr. Cole) and is therefore not filing exhibit or witness lists. Whether Mr. Cole will testify is undecided at this juncture. Should the defense present a case counsel anticipates it will take no more than one day of trial time.

2. Voir Dire

The defense, in conjunction with the filing of its trial brief, has submitted numerous proposed voir dire questions for the Court to present to the prospective jurors. In addition to requesting that the Court ask the proposed questions, the defense hereby requests that the Court

1 permit extensive individual questioning by counsel due to the nature of this case. This request
2 has been included in the trial brief rather than styled as a motion *in limine* because the government
3 has indicated that it does not oppose the request. The basis for the request follows.

4 The Sixth Amendment of the Constitution guarantees the right to a trial by an impartial
5 jury. The voir dire process plays a critical role in securing the right to an impartial jury in criminal
6 trials. The principal purpose of voir dire is “to probe each prospective juror’s state of mind to
7 enable the trial judge to determine actual bias and to allow counsel to assess suspected bias or
8 prejudice.” Darbin v. Nourse, 664 F.2d 1109 (9th Cir. 1981).

9 The nature of the allegations against Mr. Cole increases the likelihood of eliciting strong
10 opinions from prospective jurors. Over the past two years, numerous national and local news
11 outlets published articles making allegations about the character of Mr. Cole.¹ In addition to
12 media surrounding Mr. Cole individually, there has also been significant publicity surrounding
13 Mr. Cole’s alleged coconspirators. The publicity paints Mr. Cole in an extremely negative light.
14 Among the many publications are several images that are likely to be used as evidence in this
15 trial, including posters containing images containing white-supremacist symbols. Because such
16 publications have reached a wide audience, spanning nationwide, it is very likely that many
17 prospective jurors for this case have seen, heard, or read about Mr. Cole prior to his trial. In
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20 ¹ Ali Winston, *Atomwaffen Division’s Washington State Cell Leader Stripped of Arsenal in U.S., Banned from Canada*, Daily Beast (Oct. 19, 2019); Phil Helsel, *Guns seized from Washington Man Said to be Neo-Nazi Leader Prepping for “Race War,”* NBC News (Oct. 18, 2019); Brad Burt, *Driver in 2019 neo-Nazi stop arrested among group of “violent extremists”* KCBF (Feb. 26, 2020); Mike Carter, *Purported Leader of neo-Nazi group Atomwaffen wants out of detention in SeaTac; feds oppose release*, Seattle Times (May 22, 2020); Kirsten Geddes, *Alleged Neo-Nazi group member arrested in Texas*, NewsWest9; Asia Fields, *Neo-Nazi suspect, tied to Arlington, charged with gun crime*, HeraldNet (Dec. 18, 2019); Alexander Mallin & Luke Barr, *Justice Department announces nationwide arrests of members of neo-Nazi Atomwaffen group*, abcnews (Feb. 26, 2020). This is just a small sample of the many national and local news articles discussing Mr. Cole.

1 addition to the publicity this case has received, the emotionally charged nature of the allegations
2 against Mr. Cole are likely to inspire significant and potentially prejudicial reactions from the
3 prospective jurors. Because of the nature of the charges and the publicity surrounding the
4 allegations, extensive voir dire procedures are needed to protect Mr. Cole's Sixth Amendment
5 right to a fair trial.

6 **A. The nature of the allegations against Mr. Cole requires the Court to conduct a
7 more extensive voir dire.**

8 Trial judges have discretion in deciding the scope of voir dire questioning. United States
9 v. Chenaar, 552 F.2d 294 (9th Cir. 1977). However, the scope of voir dire depends on the
10 circumstances of the case. Acosta v. Hill, 504 F.3d 1323, 1324 (9th Cir. 2009).

11 In some lawsuits the nature of the case itself suggests that a more specific inquiry is
12 required with respect to particular matters. The nature of the controversy or the
13 relationship and identity of the parties may involve matters on which a number of citizens
14 may be expected to have biases or strong inclinations.

15 Darbin v. Nourse, 644 F.2d 1109, 1113 (9th Cir. 1981). A trial judge may not limit the scope of
16 voir dire in a manner that fails to create reasonable assurances that prejudice will be discovered.

17 United States v. Patterson, 648 F.2d 625 (9th Cir. 1981). A real possibility of prejudice exists
18 where "the local community or the population at large is commonly known to harbor strong
19 feelings" that can skew deliberations in fact. United States v. Jones, 722 F.2d 528, 529 (9th Cir.
20 1983).

21 Additionally, cases with extensive pretrial publicity create a significant possibility of juror
22 exposure to prejudicial material about the defendant. United States v. Tsarnaev, 968 F.3d 24 (1st
23 Cir. 2020). Such cases where the defendant has endured a great deal of public scrutiny require
24 the judge to elicit the "kind and degree" of each prospective juror's exposure to the case or the
25 parties. Id. In these types of cases, general questioning of the potential jurors' biases is not

1 enough. Silverthorne v. United States, 400 F.2d 627, 639-40 (9th Cir. 1968). Rather, content-
2 specific questioning that probes each potential juror’s particular exposure to publicity about the
3 case is necessary for the parties to adequately determine whether a potential juror is biased or
4 prejudiced. United States v. Polizzi, 500 F.2d 856, 879 (9th Cir. 1974).

5 Recently, the First Circuit discussed the voir dire implications of a case with extremely
6 high publicity—the prosecution of one of the participants in the “Boston Marathon Bombings.”
7 See Tsarnaev, 968 F.3d at 24. Due to the immense amount of highly prejudicial publicity the
8 case had received since the bombing occurred, the First Circuit, on review, held a trial judge must
9 ascertain “the kind and degree of [] exposure” the jurors had to the case or to the parties. Id. at
10 62. The trial judge’s asking general questions of the jurors prevented the parties from adequately
11 assessing the jurors’ biases. Id. at 58. When voir dire does not adequately assess jurors’ biases,
12 the defendant’s right to a fair trial is destroyed.

13
14 The Ninth Circuit has also examined voir dire in cases with significant pretrial publicity
15 as well. In Polizzi, the Court stated that an “accused has an unquestioned right to have jurors
16 decide his guilt or innocence who are not biased by what has appeared in the media.” Id. at 879.
17 Specifically, the Court held that in cases of substantial pretrial publicity, the voir dire cannot
18 simply call for jurors to question their own impartiality. Instead, “the judge must exercise
19 correspondingly great care in all aspects of the case.” Silverthorne, 400 F.2d at 637. The
20 defendant in Silverthorne sustained significant publicity after being indicted on counts of
21 misapplying bank funds and make false entries in bank records while president of a large bank in
22 San Francisco. Because of the immense publicity the case received, the Ninth Circuit held that
23 voir dire was inadequate when the Court only asked general questions that were subjective in
24 nature because jurors cannot be called upon to assess their own impartiality. Id.
25

1 The circumstances surrounding the allegations against Mr. Cole warrant extensive voir
2 dire procedures. Mr. Cole's alleged political ideologies are likely to invoke very strong opinions
3 from prospective jurors. Because the allegations against Mr. Cole are likely to "harbor strong
4 feelings," an adequate voir dire process is needed to ensure that the parties can adequately assess
5 the jurors' prejudices.

6 Additionally, the pervasive, highly prejudicial, and inflammatory publicity surrounding
7 Mr. Cole creates a significant possibility that the prospective jurors will be biased in this case
8 based on information they have seen, read, or heard. Because news of the allegations against Mr.
9 Cole is so widespread, there is a strong likelihood that many of the prospective jurors have been
10 exposed the allegations in this case prior to serving as a prospective juror. Exposure to news
11 stories prior to an individual's trial is detrimental to a defendant's right to an impartial jury
12 because it allows prospective jurors to form preconceived beliefs about the defendant's guilt prior
13 to hearing the evidence at trial. Therefore, extensive voir dire procedures are necessary in this
14 case.
15

16 **B. The Court should allow thorough individual questioning of jurors to preserve**
17 **Mr. Cole's Sixth Amendment right to an impartial jury.**

18 The defense anticipates that some jurors' responses to the general questions will create a
19 need to ask additional questions to further examine potential biases and prejudices. A cursory voir
20 dire process without the ability of counsel to follow up with appropriate questions will not allow
21 Mr. Cole to adequately discern the biases and prejudices of the prospective jurors. A more
22 extensive voir dire, where jurors are asked specific questions and attorneys may ask follow-up
23 questions is necessary due to the nature of this case. Such questioning is necessary to preserve
24 Mr. Cole's Sixth Amendment right to a fair trial by an impartial jury.
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1 For example, in-depth individual questioning is necessary if jurors have been exposed to
2 pretrial publicity about Mr. Cole or the allegations. Ninth Circuit precedent requires jurors be
3 asked questions about the particular contents of any publicity they have seen, heard, or read
4 regarding Mr. Cole or the allegations at issue. Silverthorne, 400 F.2d at 637. Once a juror
5 identifies the contents of their exposure to Mr. Cole, they should further be individually
6 questioned about any impact the publicity has had on their view of Mr. Cole, and whether their
7 views are immutable or subject to change. Furthermore, if a juror expresses some disdain when
8 asked about their views on white-supremacy, additional questioning is needed to further examine
9 whether the juror can be impartial. Such specific inquiries are necessary for Mr. Cole's Sixth
10 Amendment right to an impartial jury to remain intact. Therefore, the Court should allow for
11 thorough individual questioning of prospective jurors.

12 For these reasons, the defense respectfully requests that the Court both ask the prospective
13 jurors the questions outlined in the defense proposed voir dire and grants the defense sufficient
14 time to ask follow-up questions of individual jurors about their potential prejudices.²

16 **3. Evidentiary Issues**

17 The defense has submitted a motion *in limine* regarding exclusion of evidence under Fed.
18 R. Evid. 404(b).

19 **4. Jury Instructions**

20 The government and defense have conferred regarding proposed jury instructions and
21 anticipate jointly proposing many agreed instructions. A few disagreements remain for the Court
22 to resolve.

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24
25 ² The defense understands that the Court would likely grant equal time to the government.

1 Respectfully submitted this 17th day of September, 2021.

2 BLACK & ASKEROV, PLLC

3 

4 _____
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The Honorable John C. Coughenour

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

KALEB COLE,

Defendant.

No. CR20-032 JCC

DEFENDANT’S REPLY TO
GOVERNMENT’S RESPONSE TO
MOTION TO SUPPRESS EVIDENCE

I. INTRODUCTION

Defendant, Kaleb Cole, by his undersigned attorneys, files the following reply to the Government’s response, (Dkt. No. 200) to his motion to suppress evidence seized from Mr. Cole’s alleged residence located at 1218 Oxon Run, Montgomery, Texas, pursuant to the search warrant issued in this case. Dkt. No. 194.

II. ARGUMENT

A. The Search Warrant Affidavit Does Not Establish Probable Cause to Search Mr. Cole’s Home, Especially with the Information Provided by the Confidential Informant Stricken from the Affidavit.

The government argues in response to Mr. Cole’s motion to suppress that even without the information provided by the confidential informant (“CI”), the search warrant affidavit contained enough information tying Mr. Cole to the alleged Atomwaffen plot to intimidate journalists to

1 establish probable cause to search his home. The defense maintains that because there was no
2 information connecting Mr. Cole to the moniker on the Wire chat string attributed to Mr. Cole in the
3 affidavit, the affidavit submitted in support of the search warrant application for the search of Mr.
4 Cole's alleged residence fails to establish probable cause as written. But when the information
5 provided to law enforcement is stricken, as required under Franks, it becomes especially clear that
6 probable cause to search the residence was lacking.

7 First, the government asserts that the chat string provided to law enforcement by the CI,
8 portions of which are included in the warrant affidavit, established the existence of a plot to
9 intimidate journalists by Mr. Cole's alleged co-conspirators. The government asserts that this chat
10 string served as independent evidence that a crime was being planned. The government's analysis
11 glosses over the importance of the fact that the chat string was provided to the government by a
12 confidential informant and thus, the chat string, along with the CI's representations about its contents
13 and context was all information that came directly from the informant and was dependent on the
14 informant's credibility. In other words, the chat string does not constitute independent corroborating
15 evidence, but is itself information obtained from an informant. Notably missing from the affidavit
16 is information about how the informant obtained the screen shots of the chat string, information about
17 how and the form in which the screen shots were provided to law enforcement, and information
18 about how law enforcement determined the chat string's authenticity.

19
20 Second, the government contends that evidence of Mr. Cole's involvement in the alleged
21 plot could be established by information in the government's possession that was independent of the
22 chat string provided by the CI. The government points to a recording from 2018 containing what is
23 described as Mr. Cole's voice calling on Atomwaffen supporters to "approach them [journalists]
24 with nothing but pure aggression." Again, the government overlooks the importance of the fact that
25

1 the recording was provided to law enforcement by the same informant who provided law
2 enforcement with the chat string, and based on that fact the accuracy of the recording is dependent
3 on the credibility of the government's informant. It is not unfathomable for example that the
4 informant who provided the recording to the government misrepresented the nature of the recording
5 or manipulated the recording. Additionally, while the government asserts in its response that law
6 enforcement had listened to the recording and recognized Mr. Cole's voice, this information is not
7 included in the affidavit and as discussed in more detail below is therefore irrelevant to the probable
8 cause determination. All the affidavit states is that the CI had told law enforcement about the
9 recording in question. See Affidavit at ¶15. More generally, it requires a tremendous logical leap to
10 argue that vague comments about responding aggressively to reporters that Mr. Cole allegedly made
11 back in 2018 establish probable cause that Mr. Cole was involved in an alleged plot to intimidate
12 journalists in 2020.

13
14 The government also argues that the fact that Mr. Cole was previously personally identified
15 by the press in news articles, and made statements to the FBI in July, 2019 about the media targeting
16 him and sensationalizing Atomwaffen, provides additional independent evidence of Mr. Cole's
17 involvement in the alleged plot. But surely, without specific information tying Mr. Cole to the
18 alleged plot, Mr. Cole's prior mentions in the news reports, alleged affiliation with members of
19 Atomwaffen, and criticism of the media, is not enough to establish probable cause. See e.g., United
20 States v. Huguez-Ibarra, 954 F.2d 546, 551 – 52 (9th Cir. 1992) (association with persons involved
21 in win crime is insufficient to establish probable cause). It bears noting that around the time of Mr.
22 Cole's alleged statements the President of the United States himself had regularly and vigorously
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1 criticized the mainstream media, going as far as to call the mainstream media the “ENEMY OF THE
2 PEOPLE” in a tweet.¹

3 Third, the government states that several messages on the chat string provided by the CI to
4 law enforcement establish by their content that Mr. Cole used the moniker पकजबतचषथबल in the
5 message thread and was involved in organizing the alleged plot. These messages consist primarily
6 of the responses that the user of पकजबतचषथबल made within the chat string during discussions
7 about news articles pertaining to Mr. Cole. However, the photographs of the messages allegedly
8 posted in response to the articles in question by पकजबतचषथबल were not included in the
9 warrant affidavit, and in reviewing a warrant affidavit, the Court is limited to information in the
10 four corners of the affidavit when making a probable cause determination. As such, the messages
11 and all other information that was not included in the warrant affidavit are immaterial. A probable
12 cause determination is based only on what is included in the affidavit not on what the affiant may
13 have known but failed to include in the affidavit. See United States v. Luong, 470 F.3d 898, 904
14 (9th Cir. 2006); United States v. Gourde, 440 F.3d 1065, 1067 (9th Cir. 2006); United States v.
15 Loughton, 409 F.3d 744, 752 (6th Cir. 2005).

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18 Finally, the government cites a number of cases asserting that they stand for the
19 proposition that where a law enforcement officer makes a conclusory assertion that a suspect
20 uses a particular moniker or nickname, a court may rely on the officer’s assertion for the purpose
21 of its probable cause determination without looking into the factual basis for the officer’s
22 assertion. However, the cases cited by the government simply do not support that proposition.
23

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25 ¹ “Trump ramps up rhetoric on media, calls press ‘the enemy of the people.’” Brett Samuels, *The Hill*, April 25, 2019, <https://thehill.com/homenews/administration/437610-trump-calls-press-the-enemy-of-the-people>.

1 In the cases cited by the government, law enforcement confirmed the suspects' nicknames through
2 independent investigation and there were facts about the investigation before the court. See e.g.,
3 United States v. Angulo-Lopez, 8 F.3d 30 (9th Cir. 1993) (unpublished) ("There was unrefuted
4 testimony by the arresting agent that he did not arrest [defendant] until he confirmed that
5 [defendant's] nickname was "Jesse"); United States v. Rios-Lopez, 2011 U.S. Dist. Lexis 161777
6 (2011) (officers had investigated suspect for a number of years and knew of the suspects nickname
7 through that investigation). Here, other than stating that the members of the chat string were
8 identified through Confidential Human Source reporting, the affidavit says nothing about how
9 law enforcement came to believe that Mr. Cole used the moniker पकजबतचषथबल. It is black
10 letter law that an officer's conclusory statements should not be assigned any weight in the
11 probable cause where they are unsupported by facts. See United States v. Cervantes, 703 F.3d
12 1135, 1139 (9th Cir. 2012) ("But in the absence of any underlying facts as to why Hankel
13 suspected the house was a "stash house," this statement is entitled to little, if any, weight in the
14 probable cause analysis."). The affiant's bare assertion that Mr. Cole was पकजबतचषथबल
15 could not support a probable cause finding without any facts included in the affidavit to support
16 the affiant's conclusion.

17
18 **B. The Government's Briefing Ignores Binding Ninth Circuit Precedent on**
19 **Confidential Informants in Favor of Out-of-Circuit Precedent.**

20 The government cites a Seventh Circuit case, asserting that a Franks hearing "is not required
21 every time some substantial adverse information about an informant's credibility is omitted from a
22 probable cause affidavit." See United State v. Clark, 935 F.3d 558, 565 (7th Cir. 2019). The
23 government's reliance on out-of-circuit precedent appears to be an attempt to sidestep binding Ninth
24 Circuit precedent on the issue. See Carillo v. County of Los Angeles, 798 F.3d 1210, 1223 (9th Cir.
25

1 2015) (“Only in the absence of binding precedent do we consider other sources of decisional law
2 such as out-of-circuit cases.”). As discussed at length in Mr. Cole’s motion, in the Ninth Circuit, a
3 law enforcement officer is always required to disclose when a confidential source has an ulterior
4 motive for providing information and failure to disclose such information is always considered a
5 material omission for purposes of Franks analysis. See United States v. Martinez-Garcia, 397 F.3d
6 1205, 1216 (9th Cir. 2005) (holding that knowingly omitting information that incentives had been
7 provided to the CI satisfies the first prong of the Franks test); United States v. Meling, 47 F.3d 1546,
8 1553 (9th Cir. 1995). Here, the government concedes that the informant in question was paid
9 substantial amounts of money for his involvement in the investigation and that this information was
10 omitted from the affidavit. This omission was clearly material for Franks purposes under well-
11 established Ninth Circuit precedent.

12 The government further contends that the omission of the information pertaining to the
13 substantial benefits that the informant received was neither intentional nor reckless because the
14 affiant could not have appreciated the importance of the informant’s credibility to the probable cause
15 inquiry. First, it is simply not credible that the affiant did not believe that the credibility of the
16 informant would be material to the probable cause determination where virtually all the information
17 connecting Mr. Cole to the alleged plot came directly from the informant. This includes the chat
18 string provided to the government about the alleged plot, the recording of Mr. Cole allegedly calling
19 for aggression against reporters, and information about Mr. Cole’s alleged role in the organization
20 and past activities.

21
22 Second, Ninth Circuit precedent is clear that where it comes to the credibility of informants,
23 the omission of information bearing on an informant’s credibility is considered intentional or
24 reckless for purposes of Franks analysis. See Frimmel Management, LLC v. United States, 897 F.3d
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1 1045, 1052 (9th Cir. 2018) (holding that omissions regarding credibility of informants must have
2 been intentional or reckless given their significance). Here, the failure to include information about
3 the benefits provided to the CI in exchange for his cooperation with law enforcement cannot be
4 dismissed as a mere oversight. This is especially so given the fact that CI is a known white
5 supremacist and propagandist who was paid tens of thousands of dollars by the FBI for providing
6 information during the course of the law enforcement investigation of Atomwaffen.

7 Further, because the failure to include information relevant to the CI's credibility amounted
8 to a Franks violation, the Government cannot rely on the good faith exception to save the fruits of
9 the unlawful search of Mr. Cole's home. See United States v. Leon, 468 U.S. 897, 923 (1994). The
10 defense also maintains the Government cannot rely on the good faith exception in this case because
11 even aside from the Franks violation, the warrant was so lacking in indicia of probable cause,
12 specifically facts establishing a link between Mr. Cole and the moniker पकजबतचषथबल, that there
13 were no reasonable grounds to believe the warrant was properly issued. Id. at 922 – 23.

15 III. CONCLUSION

16 For the foregoing reasons and the reasons previously submitted, the defense respectfully
17 requests that the Court grant its motion to suppress all evidence seized during the unlawful search
18 of Mr. Cole's alleged residence located at 1218 Oxon Run, Montgomery, Texas, in this matter.
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1 Respectfully submitted this 27th day of August, 2021.

2 BLACK & ASKEROV, PLLC

3 

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The Honorable John C. Coughenour

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

KALEB COLE,

Defendant.

No. CR20-032 JCC

MOTION TO SUPPRESS EVIDENCE

Evidentiary Hearing Requested

Oral Argument Requested

Note on Motion Calendar:
August 27, 2021

I. RELIEF REQUESTED

Defendant, Kaleb Cole, by his undersigned attorney, moves this Court to suppress at trial, pursuant to the Fourth Amendment to the United States Constitution and Franks v. Delaware, 438 U.S. 154 (1978), all items of evidence seized by law enforcement pursuant to a search of Mr. Cole’s alleged residence located at 1218 Oxon Run, Montgomery, Texas. The Court should suppress this evidence because the affidavit for the warrant authorizing the search 1) at least recklessly omitted information material to the determination of probable cause, which rendered the affidavit insufficient to support probable cause to search the home and 2) even as written failed to establish probable cause to search the home.

II. FACTS

1
2 For a number of years prior to the institution of charges in the case the Federal Bureau of
3 Investigation (“FBI”) investigated an organization called Atomwaffen, of which Mr. Cole is an
4 alleged member. They employed a confidential informant (“CI”) as part of the investigation and
5 paid him handsomely. The government has informed defense counsel that the CI in this case has
6 worked as an informant for the FBI for approximately the past sixteen years. Since 2003, he has
7 been paid over \$140,000 for this work. More importantly, the CI has been paid \$78,133.20 plus
8 an expense advance of \$4,378.60, since February 7, 2018, which almost entirely coincides with
9 his work on the investigation into Mr. Cole and Atomwaffen.

10 The CI is a convicted felon and currently owns and operates a publishing company that
11 distributes white supremacist writings. The CI began his long career as a professional informant
12 in exchange for consideration regarding his sentence on a federal conviction for possession of a
13 firearm with an obliterated serial number and an unregistered silencer. He has continued this
14 work for pay.

15 This informant was the source of almost all of the information implicating Mr. Cole in the
16 alleged criminal activities underlying this case. On February 24, 2020, FBI Special Agent Casey
17 Villareal submitted an application for a warrant to search Mr. Cole’s alleged residence in
18 Montgomery, Texas. See Exhibit 1 (application, affidavit and warrant). The affidavit in support
19 of the application described a plot to create and send threatening posters to Jewish people and
20 people belonging to racial minority groups. The bulk of the application, as it pertained to Mr.
21 Cole’s alleged involvement in criminal activity, described communications over an app called
22 Wire between a group of alleged co-conspirators. See Exhibit 1 at 17 – 28. The affiant asserted
23 that Mr. Cole was a member of this group and that he used a moniker consisting of a string of
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1 symbols to communicate within the app. *Id.* at 18. The affidavit does not explicitly state that this
2 information came from the CI but defense counsel, on information and belief, believes that there
3 is no other potential source. The affidavit does not contain information specifically implicating
4 Mr. Cole in the alleged plot other than the information provided by the CI.

5 The affidavit refers to the existence of the CI by noting in a couple of places that
6 information came from “confidential human source (CHS) reporting.” See Exhibit 1 at 15, 17.
7 The affidavit does not provide any details about how the CI came to possess the information
8 included in the affidavit. It likewise does not include any information about the scope of the CI’s
9 current or prior work as an FBI informant or track record in this capacity. The affidavit is
10 essentially silent regarding the CI other than noting generally that he provided some information
11 regarding the investigation. It certainly does not acknowledge, or even allude to, the fact that the
12 CI is a paid informant and convicted felon.

13
14 The magistrate who reviewed the warrant application was unaware of the source of the
15 incriminating information contained within the document, the relevant missing facts that were not
16 included in the document, or the magnitude of the affiant’s failure to establish the CI’s credibility,
17 and therefore issued the warrant as requested. The search of the home conducted pursuant to the
18 warrant uncovered potentially incriminating evidence.

19 **III. SUMMARY OF ARGUMENT**

20 The Court should suppress on two separate bases all evidence seized from the residence
21 during the execution of the search warrant.

22 First, the search of the residence was unlawful because the affidavit submitted in support
23 of the warrant depended entirely on a conclusion of the affiant that was not supported by
24 underlying facts, and as such failed to establish probable cause for the warrant to issue. In
25

1 particular, the warrant affidavit described a multitude of actions taken, and statements made, by
2 someone in Wire chats employing a user-name consisting of a string of symbols. The affidavit
3 simply identified Mr. Cole as the user of this moniker without providing any basis for the affiant's
4 conclusion that the user was Mr. Cole, which is far from self-evident as described below. And,
5 other than statements associated with the person using the symbol string moniker, the affidavit
6 contained almost no information associating Mr. Cole with criminal activity. Because the
7 affidavit did not contain sufficient information to establish probable cause to search Mr. Cole's
8 alleged residence absent the unsupported conclusion, the search based on the warrant supported
9 by the faulty affidavit was illegal, and the fruits thereof should be suppressed.

10 Second, even if the Court finds that the warrant affidavit as written provided probable
11 cause for the search, the Court should nonetheless suppress the fruits of the search because the
12 warrant affiant recklessly omitted information necessary to the probable cause determination, in
13 violation of Franks v. Delaware. Specifically, the affiant completely failed to include any
14 information supporting the credibility of the confidential informant ("CI") in this case or put the
15 issuing magistrate on notice of the existence of issues that reflect negatively on the CI. This type
16 of failure constitutes a material omission in in the warrant affidavit. And, in this case, because
17 essentially all of the information supporting probable cause for the warrant to issue came from
18 the CI, when that information is removed from consideration as part of this Court's evaluation of
19 the validity of the warrant, as it must be under Franks, insufficient information remains to support
20 a finding of probable cause. The Court should suppress the fruits of the warrant on this basis as
21 well.
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1 IV. ARGUMENT

2 A. The search warrant application failed to establish probable cause that evidence 3 of a crime would be found in the residence.

4 The Court should suppress the fruits of the search of the residence because the affidavit
5 submitted in support of the warrant depended entirely on a conclusion of the affiant that was not
6 supported by underlying facts and therefore failed to establish probable cause.

7 The Fourth Amendment generally requires that police officers obtain a warrant based on
8 probable cause to justify a seizure and search. Terry v. Ohio, 392 U.S. 1, 20 (1968). In order to
9 establish probable cause, an affidavit must establish that there is a fair probability that contraband
10 or evidence of a crime will be found in a particular place. Illinois v. Gates, 462 U.S. 213, 238
11 (1983). Probable cause determinations are to be made by viewing the “totality of the
12 circumstances” set forth in the affidavit. Id. In reviewing the validity of a search warrant, a court
13 is limited to the information and circumstances contained within the four corners of the underlying
14 affidavit. United States v. Stanert, 762 F.2d 775, 778, amended by, 769 F.2d 1410 (9th Cir. 1985).

15 “Conclusions of the affiant unsupported by underlying facts cannot be used to establish
16 probable cause.” United States v. Underwood, 725 F.3d 1076, 1081 (9th Cir. 2013)(citing United
17 States v. Cervantes, 703 F.3d 1135, 1139-40 (9th Cir. 2012) (affording little if any weight to
18 detective’s conclusory statement that, based on his training and experience, the box in defendant’s
19 possession came from a suspected narcotics stash house)).

20 In the instant case, while the warrant affidavit provides details about the activities of
21 someone who was alleged to be Mr. Cole, it does not provide any detailed information allowing
22 the magistrate to make an independent determination that the person who made the
23 communications in question was in fact Mr. Cole. The affidavit simply stated, without support,
24 that the user of the symbol string moniker was Mr. Cole. See Exhibit 1 at 18. And this is
25

1 something that may not have stood out to the magistrate who issued the warrant, as the magistrate
2 may well have thought that such a conclusion was clear and was based on evidence in the
3 government's possession, such that it did not rise to the level of importance that a detailed
4 description of the underlying data was necessary. But this was not the case.

5 It is not entirely clear even to this day what the government's basis is for attributing this
6 moniker to Mr. Cole. The government has not obtained any subscriber information regarding the
7 moniker, or information connected to IP addresses using the moniker, or digital devices connected
8 to both the moniker and Mr. Cole. It appears that the source of the government's belief may be
9 the CI. See Exhibit 1 at 17. If this is the case, the affidavit nonetheless fails to provide any detail
10 about the source of the information other than "CHS reporting." Id. This is not the kind of
11 detailed information that allows a magistrate to make an independent determination about
12 whether the facts in the affidavit are sufficient to provide probable cause for a search. See
13 Underwood, 725 F.3d at 1081.

14
15 The affidavit contains nothing particular about why or how the CI identified Mr. Cole as
16 the user of the symbol string moniker. And that was a fact crucial that was crucial to the probable
17 cause determination in this case. Without that fact, although the affidavit establishes probable
18 cause that **someone** committed a crime, it fails to establish probable cause that **Kaleb Cole** did
19 so. The search warrant which was issued in reliance on this premise therefore did not comport
20 with the requirements of the Fourth Amendment.

21 Where evidence is obtained in violation of the Fourth Amendment, the remedy is
22 suppression of the fruits of the unlawful search. See Wong Sun v. United States, 371 U.S. 471,
23 484 – 85 (1963). Consequently, because the warrant affidavit issued in this case was unsupported
24 by probable cause the fruits of the unlawful search of the residence should be suppressed.
25

1 **B. The Court should suppress the fruits of the search under *Franks v. Delaware*.**

2 The Court should suppress the fruits the search on an alternative basis as well- that the
3 affidavit for the warrant at least recklessly omitted information material to the determination of
4 probable cause, in violation of Franks v. Delaware, 438 U.S. 154 (1978).

5 In Franks, the Supreme Court held that a defendant has a constitutional right, after the *ex*
6 *parte* issuance of a warrant, to challenge the truthfulness of statements made in the search warrant
7 affidavit. Material omissions as well as false statements are subject to challenge. United States
8 v. Stanert, 762 F.2d 775, 781, amended by 769 F.2d 1410 (9th Cir. 1985). When a defendant
9 makes a preliminary showing that (1) the affidavit contains intentionally or recklessly false
10 statements or omissions and (2) the affidavit cannot support a finding of probable cause without
11 the allegedly false information, then s/he is entitled to a hearing to determine the validity of the
12 warrant. Franks, 438 U.S. at 171-72. The defendant need not present clear proof that
13 misrepresentations were deliberate or reckless in order to obtain a Franks hearing; all that is
14 needed is a substantial showing. United States v. Gonzalez, Inc., 412 F.3d 1102, 1111 (9th Cir.
15 2005).¹ The fact that probable cause existed and could have been established in a truthful affidavit
16 will not cure a Franks error. Baldwin v. Placer County, 418 F.3d 966, 971 (9th Cir. 2005) (citing
17 United States v. Davis, 714 F.2d 896, 899 (9th Cir. 1983) (under Franks, “the fact that probable
18 cause did exist and could have been established by a truthful affidavit does not cure the error.”)).
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25 ¹ At the hearing, the defendant must show, by a preponderance of the evidence, that the statements
or omissions were made either deliberately or with reckless disregard for the truth. United States
v. Davis, 663 F.2d 824, 831 (9th Cir. 1981).

1 **1. The warrant affidavit contains material omissions that can only be characterized as**
2 **deliberate or reckless.**

3 In order to establish meet the requirements of the first prong of the Franks test, the defense
4 must show that 1) the affiant for the warrant made either a material false statement or a material
5 omission in the warrant affidavit, and 2) the statement or omission was made intentionally or
6 recklessly. The defense can make both showings by establishing that that FBI SA Villareal
7 omitted from the affidavit the fact that the CI was receiving significant consideration from the
8 FBI in exchange for his cooperation against Mr. Cole.

9 The Ninth Circuit has made clear that law enforcement officers must always disclose in a
10 warrant affidavit whether an informant has an ulterior motive for providing information for a
11 search warrant affidavit. See United States v. Martinez-Garcia, 397 F.3d 1205, 1216 (9th Cir.
12 2005); United States v. Meling, 47 F.3d 1546, 1553 (9th Cir. 1995). In Martinez-Garcia, the
13 search warrant affidavit failed to disclose that the informant had a pending federal charge and that
14 a deal was made with him to make a favorable recommendation to prosecutors in exchange for
15 his cooperation. Martinez-Garcia, 397 F.3d at 1216. The Ninth Circuit held that “knowingly
16 omit[ting] from the affidavit information related to incentives he provided to [the CI]” satisfied
17 the first prong of the Franks test, i.e. that the defendant made a substantial showing that that law
18 enforcement knowingly omitted material information from the search warrant affidavit. Id.

19 It is beyond dispute that the affiant failed to include material information in the warrant
20 affidavit. The government has informed defense counsel that the CI in this case has worked for
21 the FBI for approximately the past sixteen years. He began this work in exchange for
22 consideration regarding his sentence on a federal conviction for possession of a firearm with an
23 obliterated serial number and an unregistered silencer. He has continued this work for pay. Since
24 2003, the CI has been paid over \$140,000 for his work with the FBI. More importantly, the CI
25

1 has been paid \$78,133.20 plus an expense advance of \$4,378.60 in conjunction with his
2 participation in the investigation in this case. None of this was disclosed in the warrant
3 application, which does no more than generally refer to “confidential human source (CHS)
4 reporting.” See Exhibit 1 at 15, 17. This omission was material. See Martinez-Garcia, 397 F.3d
5 at 1216; Meling, 47 F.3d at 1553.

6 The failure to disclose the benefits offered to the CI cannot be characterized as anything
7 other than intentional or reckless. The affiant provided his bona fides as part of the application,
8 which provides in relevant part:

9 I am a Special Agent SA with the Federal Bureau of Investigation (FBI) and have
10 been so employed since April 2008. I am currently assigned to investigate domestic
11 terrorism in the Houston Field Office. My experience as an FBI Agent includes the
12 investigation of terrorism cases where individuals frequently utilize computers and
13 the Internet to coordinate and facilitate various crimes. I have received training and
14 gained experience in interviewing and interrogation techniques, arrest procedures,
15 search warrant applications, the execution of searches and seizures, computer
16 evidence identification, computer evidence seizure and processing, and various
17 other criminal laws and procedures.

18 Exhibit 1 at 9-10. It is simply not reasonable to believe that a trained FBI agent with over ten
19 years of experience would fail to recognize the importance of information that bears on a CI’s
20 incentives to cooperate when submitting an affidavit for a search warrant based almost
21 exclusively on information provided by the CI.

22 It is common knowledge that criminal informants are, rightly, viewed with suspicion.
23 Criminal informants are, by definition, “cut from untrustworthy cloth and must be managed and
24 carefully watched by the government and the courts to prevent them from falsely accusing the
25 innocent, from manufacturing evidence against those under suspicion of crime, and from lying
under oath in the courtroom.” United States v. Bernal-Obeso, 989 F.2d 331, 333 (9th Cir. 1993)
(evidence that informant attempted to conceal his felony criminal record is exculpatory and thus

1 discoverable under Brady). The use of such informants by the government thus “may raise serious
2 questions of credibility.” Id. (quoting On Lee v. United States, 343 U.S. 747, 757 (1952)).
3 Because informants “will stop at nothing to maneuver themselves into a position where they have
4 something to sell, [i]t is no accident that some federal jury instructions regarding an immunized
5 witness warn jurors that such a witness ‘has a motive to falsify.’” United States v. Hernandez-
6 Escarsega, 886 F.2d 1560, 1574-1575 (9th Cir.1989). Again, SA Villareal is without doubt well
7 aware of these principles.

8 The failure to include the information about the CI’s incentives is made more egregious
9 by the fact that the warrant application incriminated Mr. Cole based almost solely on the alleged
10 observations of the CI. And it is further compounded by the fact that the affidavit is misleading
11 in regard to the fact that the source of all of the incriminating information regarding Mr. Cole is
12 in fact the CI. While the affidavit did not explicitly state that all of the information regarding
13 Mr. Cole’s statements in the Wire communications (see Exhibit 1 at 17 – 28) came from the CI,
14 it is counsel’s understanding that the CI is in fact the source. This is not immediately apparent
15 from the affidavit, which likely served to obscure this red flag from the magistrate who issued the
16 warrant.
17

18 The materiality and nature of the omissions from the search warrant affidavit about the
19 CI’s motives for providing the information included in the affidavit cannot be classified as mere
20 oversights. See Frimmel Management, LLC v. United States, 897 F.3d 1045, 1052 (9th Cir. 2018)
21 (finding that omissions regarding credibility of informants must have been intentional or reckless
22 given their significance). The defense has shown a reckless material omission in this case.
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1 **2. The warrant affidavit does not survive the redaction of the information from the CI.**

2 Upon the defense making a showing as to the first part of the test (here: showing a reckless
3 omission), the Court then turns to whether the affidavit establishes still establishes probable cause
4 as it should have read. In this case, because the affidavit relied almost solely on the allegations
5 of a confidential informant to provide probable cause that Mr. Cole committed a crime, and
6 because the affidavit provided no information whatsoever establishing the credibility of the
7 informant or information corroborating the informant's claims that Mr. Cole was the person using
8 the symbol string moniker, the affidavit does not overcome the material omissions about the
9 informant's credibility.

10 In assessing whether information from an informant is sufficient to support a finding of
11 probable cause, courts must evaluate the totality of the circumstances with consideration of the
12 informant's veracity, reliability and basis of knowledge. Illinois v. Gates, 462 U.S. 213, 238
13 (1983). "To credit a confidential source's information in making a probable cause determination,
14 the affidavit should support an inference that the source was trustworthy and that the source's
15 accusation of criminal activity was made on the basis of information obtained in a reliable way."
16 Frimmel Management, 897 F.3d at 1052 (quoting United States v. Landis, 726 F.2d 540, 543 (9th
17 Cir. 1984)). Courts look to several factors to determine the reliability of information from an
18 informant, including whether the informant has a history of providing reliable information in
19 previous investigations and any prior criminal convictions for crimes of dishonesty. Martinez-
20 Garcia, 397 F.3d at 1216. Courts must also examine whether the informant's information was
21 bolstered by independent police investigation of the tip or corroboration by other confidential
22 informants. Id.

1 A comparison of this case to Martinez-Garcia demonstrates why the facts of this case
2 warrant suppression. While the Ninth Circuit did not ultimately find suppression the appropriate
3 remedy in Martinez-Garcia, the factors the court cited as supporting probable cause for the search,
4 despite the reckless omission of information about consideration provided to the CI, illustrate
5 why suppression is called for in this case, as essentially none of those factors are present here.
6 These factors include: the CI had a track record of providing reliable information and had been
7 polygraphed successfully; police surveilled the CI attending a meeting for a planned drug deal;
8 the CI successfully completed a controlled buy of meth from the target of the warrant at another
9 location; other confidential informants confirmed information in the affidavit; DMV records
10 showed that the target lived at the residence; and “insofar as the affidavit indicated that [the CI]
11 had provided information for monetary consideration, it did not characterize his motives as
12 altogether pure.” Martinez-Garcia at 1216-17.

13
14 In this case, the affidavit established essentially none of the additional facts necessary to
15 overcome the failure to disclose the CI’s incentives. First and foremost, the affidavit failed to set
16 forth whether the CI had any track record at all, let alone whether it was a positive record. It
17 further failed to describe how the CI came to possess the information that was included in the
18 affidavit. These are the two key components required for a court to evaluate an informant’s
19 credibility. Additionally, no other informants provided any corroboration of the CI’s
20 identification of Mr. Cole as the user of the symbol-string moniker, and the government did not
21 independently corroborate this proposition. Essentially, with the CI’s credibility eradicated, there
22 is nothing left to support a finding of probable cause for the warrant.

23
24 The lack of additional information supporting probable cause dooms the warrant, as
25 failure to disclose in a warrant application the fact that a confidential informant is receiving

1 benefits in exchange for information will invalidate the prior probable cause finding unless there
2 is sufficient additional information in the affidavit to overcome the failure. See Martinez-Garcia,
3 397 F.3d at 1216-17; Meling, 47 F.3d at 1554-55. For this reason, the Court should hold an
4 evidentiary hearing as a precursor to suppression.

5 **3. The Court should ultimately suppress the fruits of the search.**

6 After the hearing, suppression should result if, after including the including the omitted
7 information in the warrant affidavit, probable cause is lacking. See Franks, 438 U.S. at 171-72.
8 For all the reasons outlined above, after the hearing the defense will ask that the Court suppress
9 all evidence uncovered pursuant to the warrant and any derivative evidence.

10 **C. The good faith exception to the warrant requirement does not apply in this case.**

11 The good faith exception cannot save the warrant issued in this case for two reasons: 1)
12 because the warrant was so lacking in indicia of probable cause that reliance on the warrant was
13 objectively unreasonable, and 2) because the exception does not apply in cases where the
14 magistrate in issuing a warrant was misled by information in the affidavit.

15 In United States v. Leon, 468 U.S. 897 (1984), the Supreme Court announced a “good
16 faith” exception to the application of the exclusionary rule. Id. at 922–23. This exception provides
17 that the exclusionary rule should not bar the government’s introduction of evidence obtained by
18 officers acting in objectively reasonable reliance on a search warrant that is subsequently
19 invalidated. Id. at 918–21. The good faith test is an objective one, and turns on whether a
20 reasonably well trained officer would have known that the search was illegal despite the
21 magistrate’s authorization. Id. at 922, United States v. Luong, 470 F.3d 898, 902 (9th Cir. 2006).
22 There are at least four situations in which reliance on a warrant cannot be considered objectively
23 reasonable, and for which the good faith exception therefore cannot apply: (1) when the affiant
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1 knowingly or recklessly misleads the judge with false information; (2) when the judge wholly
2 abandons his or her neutral role; (3) when the affidavit is so lacking in indicia of probable cause
3 that official belief in its existence is objectively unreasonable; and (4) when the warrant is so
4 facially deficient that executing officers cannot reasonably presume it to be valid. Luong, 470
5 F.3d at 902.

6 The warrant in this case fails in regard to the first and third tests: the affiant knowingly
7 misled the magistrate who issued the warrant, and the affidavit is so lacking in indicia of probable
8 cause that official belief in its existence is objectively unreasonable. These will be addressed in
9 reverse order.

10 **1. The affidavit is so lacking in indicia of probable cause that official belief in its**
11 **existence is objectively unreasonable.**

12 The test for reasonable reliance is whether the information contained in the affidavit is
13 sufficient to “create disagreement among thoughtful and competent judges as to the existence of
14 probable cause.” Leon, 468 U.S. at 926.

15 In United States v. Underwood, 725 F.3d 1076 (2013), the Ninth Circuit found the good
16 faith exception inapplicable because the warrant affidavit was so lacking in indicia of probable
17 cause that belief in its existence was unreasonable. The only fact supporting the probable cause
18 finding was an observation that the defendant delivered two wooden crates to two co-conspirators
19 in the parking lot of a hardware store. Id. at 1078. There were no other accompanying facts in
20 the affidavit to support an inference that the crates contained drugs or that the defendant knew (or
21 should have known) the crates contained drugs. The affidavit contained an assertion that a DEA
22 agent believed that the crates contained drugs, but did not provide underlying facts that could be
23 used to judge the reasonableness of such belief. Id. at 1086. The court explained that “the
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1 affidavit fails to set forth a sufficient factual basis for the conclusion that Underwood was a
2 courier for an ecstasy trafficking organization” and suppressed the evidence.

3 Under this precedent, the good-faith exception should not be applied to Mr. Cole’s case.
4 As discussed above, just as in Underwood, no facts in the warrant affidavit supported a finding
5 of probable cause to believe that Mr. Cole was the person who had committed the crimes
6 discussed in the affidavit. The affidavit contained only an unsupported conclusion that the person
7 discussed in the affidavit was in fact Mr. Cole and did not contain any details on which the
8 magistrate could independently evaluate this assertion. This level of detail is so grossly
9 insufficient to probable cause that reliance on the warrant that issued based on the affidavit was
10 unreasonable. Consequently, the good faith exception cannot save the warrant issued in this case.

11 **2. The exception does not apply in this case because the magistrate was misled by**
12 **information in the warrant affidavit.**

13 The warrant affidavit in this case contained a material omission regarding the provision
14 of benefits to the CI in exchange for his cooperation with the government’s investigation. As
15 such, the Court should reject any argument that the good faith exception applies here. As noted
16 above, in Leon itself the Supreme Court expressly held that the good faith exception does not
17 apply to motions to suppress brought under Franks where the judge was misled by a false or
18 misleading statement. See United States v. Leon, 468 U.S. 897, 923 (1994) (“Suppression
19 therefore remains an appropriate remedy if the magistrate or judge in issuing a warrant was misled
20 by information in an affidavit that the affiant knew was false or would have known was false
21 except for his reckless disregard for the truth.”). Thus, it does not apply here.
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V. CONCLUSION

For the foregoing reasons, the defense respectfully requests that the Court grant its motion to suppress all evidence seized during the unlawful search of Mr. Cole’s alleged residence located at 1218 Oxon Run, Montgomery, Texas, in this matter.

Respectfully submitted this 13th day of August, 2021.

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Exhibit 1

AO 93 (Rev. 11/13) Search and Seizure Warrant

Sealed
Public and unofficial staff access
to this instrument are
prohibited by court order.

UNITED STATES DISTRICT COURT

for the
Southern District of Texas

In the Matter of the Search of)
(Briefly describe the property to be searched)
or identify the person by name and address))

Case No. **H20-0391M**

1218 OXON RUN, MONTGOMERY, TEXAS AND)
A 2000 FORD FOCUS, WASHINGTON STATE)
LICENSE PLATE BJJ6073 VIN #1FAPP3637YW420460)

SEALED TRUE COPY I CERTIFY
ATTEST:
DAVID J. BRADLEY, Clerk of Court
By Kathleen Murphy
Deputy Clerk

SEARCH AND SEIZURE WARRANT

To: Any authorized law enforcement officer

An application by a federal law enforcement officer or an attorney for the government requests the search of the following person or property located in the Southern District of Texas
(identify the person or describe the property to be searched and give its location):

1218 Oxon Run, Montgomery, Texas and a 2000 Ford Focus, Washington state license plate BJJ6073 VIN #1FAPP3637YW420460

In searching these properties, law enforcement officers shall not have to knock and announce their presence before entry into the properties.

I find that the affidavit(s), or any recorded testimony, establish probable cause to search and seize the person or property described above, and that such search will reveal (identify the person or describe the property to be seized):

Evidence of the crimes 82261A (Stalking), 844(e) (Mailing Threatening Communications), and 371 (Conspiracy). Evidence to be seized include, but not limited to, all electronics and digital evidence, records of victims and co-conspirators, passwords, and financial records.

See Attachment B.

YOU ARE COMMANDED to execute this warrant on or before March 10, 20 (not to exceed 14 days)
 in the daytime 6:00 a.m. to 10:00 p.m. at any time in the day or night because good cause has been established.

Unless delayed notice is authorized below, you must give a copy of the warrant and a receipt for the property taken to the person from whom, or from whose premises, the property was taken, or leave the copy and receipt at the place where the property was taken.

The officer executing this warrant, or an officer present during the execution of the warrant, must prepare an inventory as required by law and promptly return this warrant and inventory to (any)
(United States Magistrate Judge)

Pursuant to 18 U.S.C. § 3103a(b), I find that immediate notification may have an adverse result listed in 18 U.S.C. § 2705 (except for delay of trial), and authorize the officer executing this warrant to delay notice to the person who, or whose property, will be searched or seized (check the appropriate box)

for days (not to exceed 30) until, the facts justifying, the later specific date of

Date and time issued: 2-24-20 @ 11:45 am

[Signature]
Judge's signature
Hon. Nancy K. Johnson, U.S. Magistrate Judge
Printed name and title

City and state: Houston, Texas

AO 93 (Rev. 11/13) Search and Seizure Warrant (Page 2)

Return

Case No: **H20-0391M**

Date and time warrant executed:

Copy of warrant and inventory left with:

Inventory made in the presence of :

Inventory of the property taken and name of any person(s) seized:

Certification

I declare under penalty of perjury that this inventory is correct and was returned along with the original warrant to the designated judge.

Date: _____

Executing officer's signature

Printed name and title

Sealed
Public and unofficial staff access
to this instrument are
prohibited by court order.

ATTACHMENT A

Property to be searched

The property to be searched is 1218 Oxon Run, Montgomery, TX, 77316, further described as a single-family home with brown siding, white trim, and a white front door.



The property to be searched is the 2000 Blue Ford Focus, Washington State License Plate Number BJG6073, VIN #1FAFP3637YW420460.

ATTACHMENT B

Property to be Seized

Documents (in whatever form) relating to violations of Title 18, United States Code, Sections 2261A (Stalking); 876(c) (Mailing Threatening Communications); 245 (Federally Protected Activities); and 371 (Conspiracy), that is,

1. All documents relating to attempts to locate the home addresses of any members of the media, the Anti-Defamation League, persons who identify as Jewish, or ethnic minorities.

2. All documents relating to the Atomwaffen Division, including members of the group;

3. All documents containing swastikas, other Nazi symbols, or other symbology related to white-supremacist violent extremism.

4. All stamps, packaging tape, and blank envelopes.

5. All receipts reflecting purchases of stamps, packaging tape, or blank envelopes in January 2020;

6. All documents containing the monikers "Krokodil," "Lazarus," "14ALG88," "Azazel," "Roman," "Swissdiscipline," "OldScratch," or "पकजबतचषथबल"

7. Digital devices or other electronic storage media and/or their components, which include:

- a. Any digital device or other electronic storage media capable of being used to commit, further, or store evidence of the offenses listed above;
- b. Any digital devices or other electronic storage media used to facilitate the transmission, creation, display, encoding or storage of data, including word processing equipment, modems, docking stations, monitors, cameras, printers, plotters, encryption devices, optical scanners, desktop computer, laptops computers, tablets and mobile phones;
- c. Any magnetic, electronic or optical storage device capable of storing data, such as floppy disks, hard disks, tapes, CD-ROMs, CD-R, CD-RWs, DVDs,

optical disks, printer or memory buffers, smart cards, PC cards, memory calculators, electronic dialers, electronic notebooks, and personal digital assistants;

- d. Any documentation, operating logs and reference manuals regarding the operation of the digital device or other electronic storage media or software;
- e. Any applications, utility programs, compilers, interpreters, and other software used to facilitate direct or indirect communication with the computer hardware, storage devices, or data to be searched;
- f. Any physical keys, encryption devices, dongles and similar physical items that are necessary to gain access to the computer equipment, storage devices or data; and
- g. Any passwords, password files, test keys, encryption codes or other information necessary to access the computer equipment, storage devices or data.

8. For any digital device or other electronic storage media upon which electronically stored information that is called for by this warrant may be contained, or that may contain things otherwise called for by this warrant:

- a. evidence of who used, owned, or controlled the digital device or other electronic storage media at the time the things described in this warrant were created, edited, or deleted, such as logs, registry entries, configuration files, saved usernames and passwords, documents, browsing history, user profiles, email, email contacts, "chat," instant messaging logs, photographs, and correspondence;
- b. evidence of software that would allow others to control the digital device or other electronic storage media, such as viruses, Trojan horses, and other forms of malicious software, as well as evidence of the presence or absence of security software designed to detect malicious software;
- c. evidence of the lack of such malicious software;

- d. evidence of the attachment to the digital device of other storage devices or similar containers for electronic evidence;
- e. evidence of counter-forensic programs (and associated data) that are designed to eliminate data from the digital device or other electronic storage media;
- f. evidence of the times the digital device or other electronic storage media was used;
- g. passwords, encryption keys, and other access devices that may be necessary to access the digital device or other electronic storage media;
- h. documentation and manuals that may be necessary to access the digital device or other electronic storage media or to conduct a forensic examination of the digital device or other electronic storage media;
- i. contextual information necessary to understand the evidence described in this attachment.

THE SEIZURE OF DIGITAL DEVICES OR OTHER ELECTRONIC STORAGE MEDIA AND/OR THEIR COMPONENTS AS SET FORTH HEREIN IS SPECIFICALLY AUTHORIZED BY THIS SEARCH WARRANT, NOT ONLY TO THE EXTENT THAT SUCH DIGITAL DEVICES OR OTHER ELECTRONIC STORAGE MEDIA CONSTITUTE INSTRUMENTALITIES OF THE CRIMINAL ACTIVITY DESCRIBED ABOVE, BUT ALSO FOR THE PURPOSE OF THE CONDUCTING OFF-SITE EXAMINATIONS OF THEIR CONTENTS FOR EVIDENCE, INSTRUMENTALITIES, OR FRUITS OF THE AFOREMENTIONED CRIMES.

AO 106 (Rev. 04/10) Application for a Search Warrant

United States Courts
Southern District of Texas
FILED

UNITED STATES DISTRICT COURT

FEB 24 2020

for the
Southern District of Texas

David J. Bradley, Clerk of Court

Sealed
Public and unofficial staff access
to this instrument are
prohibited by court order.

In the Matter of the Search of
(Briefly describe the property to be searched
or identify the person by name and address)

1218 OXON RUN, MONTGOMERY, TEXAS AND
A 2000 FORD FOCUS, WASHINGTON STATE
LICENSE PLATE BJG6073 VIN #1FAFP3637YW420460

Case No.

H20-0391M

SEALED

APPLICATION FOR A SEARCH WARRANT

I, a federal law enforcement officer or an attorney for the government, request a search warrant and state under penalty of perjury that I have reason to believe that on the following person or property (identify the person or describe the property to be searched and give its location):
1218 OXON RUN, MONTGOMERY, TEXAS AND A 2000 FORD FOCUS, WASHINGTON STATE LICENSE PLATE BJG6073 VIN #1FAFP3637YW420460. See Attachent A.

located in the Southern District of Texas, there is now concealed (identify the person or describe the property to be seized):
See Attachent B.

The basis for the search under Fed. R. Crim. P. 41(c) is (check one or more):

- evidence of a crime;
- contraband, fruits of crime, or other items illegally possessed;
- property designed for use, intended for use, or used in committing a crime;
- a person to be arrested or a person who is unlawfully restrained.

TRUE COPY I CERTIFY
ATTEST:
DAVID J. BRADLEY, Clerk of Court
By Kathleen Murphy
Deputy Clerk

The search is related to a violation of:

<i>Code Section</i>	<i>Offense Description</i>
2261A, 844(e), and 371	Stalking, mailing threatening communications, and conspiracy

The application is based on these facts:
See Attached Affidavit.

- Continued on the attached sheet.
- Delayed notice of _____ days (give exact ending date if more than 30 days: _____) is requested under 18 U.S.C. § 3103a, the basis of which is set forth on the attached sheet.


Applicant's signature
Casey M. Villarreal, Special Agent, FBI
Printed name and title

Sworn to before me and signed in my presence.

Date: 02/24/2020


Judge's signature
Hon. Nancy K. Johnson, U.S. Magistrate Judge
Printed name and title

City and state: Houston, Texas

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN THE MATTER OF THE SEARCH OF:
1218 OXON RUN, MONTGOMERY, TEXAS
AND
A 2000 FORD FOCUS, WASHINGTON
STATE LICENSE PLATE BJJ6073
VIN #1FAFP3637YW420460

Case No. _____

**AFFIDAVIT IN SUPPORT OF AN
APPLICATION UNDER RULE 41 FOR A
WARRANT TO SEARCH AND SEIZE**

I, Casey M. Villarreal, being first duly sworn, hereby depose and state as follows:

INTRODUCTION AND AGENT BACKGROUND

1. I make this affidavit in support of an application under Rule 41 of the Federal Rules of Criminal Procedure for a warrant to search the following:

- a. Premises known as 1218 Oxon Run, Montgomery, Texas 77316, hereinafter "PREMISES," further described in Attachment A-1, for the things described in Attachment B-1.
- b. 2000 Ford Focus, Washington State License Plate BJJ6073, hereinafter "VEHICLE," further described in Attachment A-2, for the things described in Attachment B-2.

2. I am a Special Agent (SA) with the Federal Bureau of Investigation (FBI) and have been so employed since April 2008. I am currently assigned to investigate domestic terrorism in the Houston Field Office. My experience as an FBI Agent includes

the investigation of terrorism cases where individuals frequently utilize computers and the Internet to coordinate and facilitate various crimes. I have received training and gained experience in interviewing and interrogation techniques, arrest procedures, search warrant applications, the execution of searches and seizures, computer evidence identification, computer evidence seizure and processing, and various other criminal laws and procedures.

3. The facts set forth in this Affidavit are based on my own personal knowledge; knowledge obtained from other individuals during my participation in this investigation, including other law enforcement personnel; review of documents and records related to this investigation; communications with others who have personal knowledge of the events and circumstances described herein; and information gained through my training and experience. Because this Affidavit is submitted for the limited purpose of establishing probable cause in support of the application for a search warrant, it does not set forth each and every fact that I or others have learned during the course of this investigation.

4. Based on my training and experience and the facts as set forth in this affidavit, there is probable cause to believe that violations of Title 18, United States Code, Sections 2261A (Stalking); 876(c) (Mailing Threatening Communications); and 371 (Conspiracy) have been committed by known and unknown persons. There is also probable cause to search the PREMISES and VEHICLE described in Attachment A for evidence, instrumentalities, contraband, and fruits of these crimes, as described in Attachment B.

APPLICABLE LAW

5. Title 18, United States Code, Section 2261A provides for criminal penalties for whoever:

with the intent to kill, injure, harass, intimidate, or place under surveillance with intent to kill, injure, harass, or intimidate another person, uses the mail, any interactive computer service or electronic communication service or electronic communication system of interstate commerce, or any other facility of interstate or foreign commerce to engage in a course of conduct that—

(A) places that person in reasonable fear of the death of or serious bodily injury to a person, . . . described in clause (i), (ii), (iii), or (iv) of paragraph (1)(A); or

(B) causes, attempts to cause, or would be reasonably expected to cause substantial emotional distress to a person described in clause (i), (ii), or (iii) of paragraph (1)(A).

6. The persons described “in clause (i), (ii), (iii), or (iv) of paragraph (1)(A)” are:

- (i) that person;
- (ii) an immediate family member (as defined in section 115) of that person;
- (iii) a spouse or intimate partner of that person; or

(iv) the pet, service animal, emotional support animal, or horse of that person.

7. Title 18, United States Code, Section 876(c), provides for criminal penalties for:

Whoever knowingly so deposits or causes to be delivered as aforesaid, any communication with or without a name or designating mark subscribed thereto, addressed to any other person and containing any threat to kidnap any person or any threat to injure the person of the addressee or of another

8. Title 18, United States Code, Section 371 prohibits conspiring to commit a federal offense, and taking an overt act in furtherance of the conspiracy.

SUMMARY OF PROBABLE CAUSE

A. Overview

9. The FBI is conducting an investigation into Kaleb James Cole, an individual living in Montgomery, Texas. Cole is a high-level member and primary producer of propaganda for the Atomwaffen Division (AWD). AWD came to the attention of law enforcement on or about May 12, 2017 when Devon Arthurs was arrested for murdering two of his roommates near Tampa, Florida. Arthurs had been a member of AWD, as were his roommates. After his arrest, Arthurs admitted to the murders of his two roommates and told investigators he had committed the murders after he had converted to Islam and that the murders were his attempt at keeping the members of AWD from committing planned

acts of terror related to the group's ideology. Arthurs claimed AWD had plans to use explosives to damage infrastructure and to use firearms to commit acts of violence.

10. After Arthurs' arrest, another roommate, Brandon Russell, who was the leader of AWD, was encountered by law enforcement at the residence unharmed. In the residence, law enforcement found bomb-making precursor chemicals and hexamethylene triperoxide diamine, a high explosive chemical. Russell admitted the chemicals were his and, on or about May 20, 2017, Russell was charged in a federal criminal complaint in Florida with a violation of Title 26, United States Code, Section 5861(d) (possession of an unregistered destructive device) and Title 18, United States Code, Section 842(j)(unlawful storage of explosive material). In addition to the explosive material inside the residence, law enforcement discovered Nazi paraphernalia and a framed image on the wall in honor of Oklahoma City bomber, Timothy McVeigh.

11. Following the arrest of Russell, AWD selected John Denton, a resident of Houston, Texas, and Kaleb J. Cole, aka "Khimaere" or "Khim," a resident of Arlington, Washington, to co-lead AWD in Russell's absence. Members of AWD also formed a relationship with Denver, Colorado resident, James Mason, who is the writer of the book, "Siege," which serves as the basis for AWD ideology. The book, which is a collection of neo-Nazi newsletters authored by Mason, advocates the leaderless resistance and lone offender strategies as a viable means to accelerate the collapse of the system which members of AWD believe to be controlled by Jews.

12. On January 25, 2018, AWD hosted a “Death Valley Hate Camp” in Las Vegas, Nevada, where members trained in hand-to-hand combat, firearms, and created neo-Nazi propaganda videos and pictures of themselves posing with weapons. **Cole** coordinated the camp, beginning planning in early October 2017. **Cole** traveled from Washington State to Las Vegas for the hate camp with another Washington State AWD member, Aidan Bruce-Umbaugh. The two possessed concealed pistol licenses and transported numerous firearms and cases of ammunition to the event. California AWD member Samuel Woodward was expected to be at this hate camp, but could not attend due to being arrested for the murder of Blaze Bernstein, an openly gay Jewish college student.

13. Prior to YouTube removing their pages, AWD posted propaganda videos on two channels called “AWDTV” and “Atomwaffen Division.” One of those videos titled “Zealous Operation,” depicts a hate camp at Devil’s Tower, an abandoned cement factory in Concrete, Washington. Approximately half a dozen AWD members can be seen wearing military style clothing, face masks, and carrying an assortment of long guns, while conducting paramilitary style training and shooting at a gravel pit attached to Devil’s Tower. At the beginning of the video, participants state, “*GAS THE KIKES! RACE WAR NOW!*” while the statement is spelled out at the bottom of the screen.

14. On February 23, 2018, *The Seattle Times* published an article discussing AWD, and identifying several of its members nationwide, to include some in Washington State. Photographs, along with personally identifiable information, including home and

work addresses, were included in the article. The article also discussed the application Discord that members used to facilitate communication. According to the article, several thousand pages of Discord chat logs between members were hacked and leaked to the public. After having been identified, several of the AWD members, to include those in leadership positions, deleted their online profiles, quit their jobs, changed residences, and moved to the Swiss-based, encrypted electronic communication service Wire, in an attempt to go dark and avoid detection by law enforcement. **Cole** was one of the AWD members identified in this article.

15. Based on confidential human source (CHS) reporting, on or about September 16, 2018, **Cole** posted a recorded leadership message to AWD members via Wire. In the recording, **Cole** said, *“The matter of these nosy reporters coming into our daily lives, where we work, where we live, where we go in our spare time. We must simply approach them with nothing but pure aggression. We cannot let them think that they can just... that that it’s safe for them to just come up to us, and fuck with us. We cannot let them think they are safe in our very presence alone...”* The statement was in response to an incident where journalist AC Thompson confronted Denton at a music festival in Texas for the *“Documenting Hate”* news series.

16. On July 9, 2019, **Cole** was interviewed by the FBI when he was deported from Canada to the United States. During the interview, **Cole** blamed the media for sensationalizing information about AWD and expressed dismay as to why he was targeted

by the media in their stories, and how he was never approached in an attempt to collect accurate information. **Cole** felt the media's reporting of AWD being a threat to the public was "*internet nonsense.*"

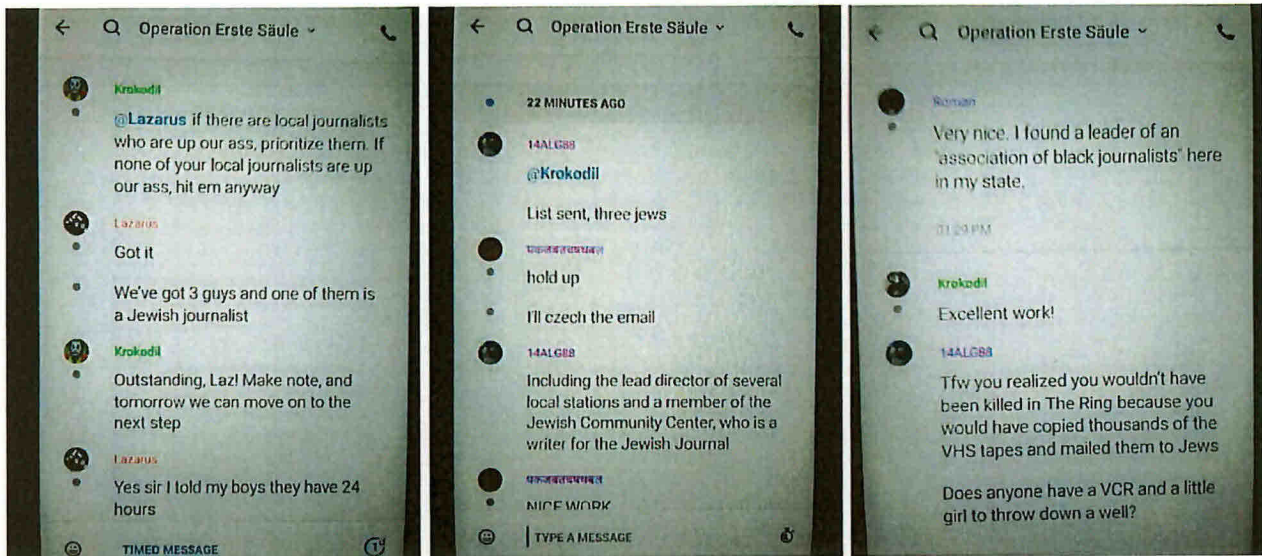
17. In August of 2019, leadership members of AWD attended a "Nuclear Congress" in Las Vegas, Nevada, where members gave presentations, discussed recent events, challenges, plans going forward, and operational security. AWD member Cameron Brandon Shea discussed the importance of keeping identity protected, and how the media continues to be a challenge to AWD.

18. On September 26, 2019, **Cole** was served with an Extreme Risk Protection Order (ERPO) by the Seattle Police Department (SPD). SPD and Arlington Police Department (APD) officers seized nine firearms in **Cole's** possession, as well as a number of milled lower rifle receivers. In the wake of the ERPO service, several news outlets nationwide covered the event. CHS reporting covered Shea, **Cole**, and other AWD members discussing and disparaging the media coverage of the event, with one member suggesting to "*hit back... embarrass the enemy on their own front.*"

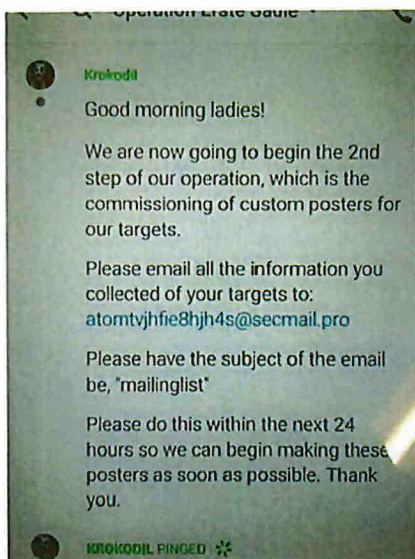
19. On November 4, 2019, **Cole** and Bruce-Umbaugh were stopped by law enforcement for speeding in Post, Texas while on their way to meet with Denton, near Houston, Texas. Bruce-Umbaugh was subsequently arrested for 18 USC 922(g)(3) (Possession of a Firearm by an Unlawful User of a Controlled Substance). Law

enforcement seized four firearms and approximately 2000 rounds of ammunition. Cole continued to the Houston area to meet with Denton.

20. Per CHS reporting, in or about November 2019, Shea, using the moniker Krokodil, established a private Wire chat group titled, Operation Erste Saul. Shea invited co-conspirators "Lazarus," "14ALG88," "Azazel," "Roman," "Swissdiscipline," "OldScratch," and "पकजबतचषथबल" to this chat group to collaborate on an effort to target journalists' homes and media buildings. According to Shea, the purpose of the operation was to "*send a clear message that we [AWD] to have leverage over them... The goal of course, is to erode the media/states air of legitimacy by showing people they have names and addresses and hopefully embolden others to act as well.*" Other participants in the chat group included Cole, Alexander Gosch, using the handle "14ALG88," a minor using "Lazarus," Johnny Roman Garza using Roman, and others. Shea directed each participant to identify, research, and locate journalists in their area. "Lazarus," reported that his cell had three targets, and one was Jewish. Gosch advised his cell was targeting three Jews. Roman said he found a leader of an association of black journalists in his state. Shea stated that the identification of these targets was "*Excellent work!*" and "*Outstanding.*" Shea wrote that the AWD cells in Florida, California, and Oregon had already acquired approximately 12 targets including home addresses, and that one of the targets was a "*cultural center.*" Shea went on to state that "Khim," [Cole] was, "*developing a number of posters that are threatening but not explicitly.*"

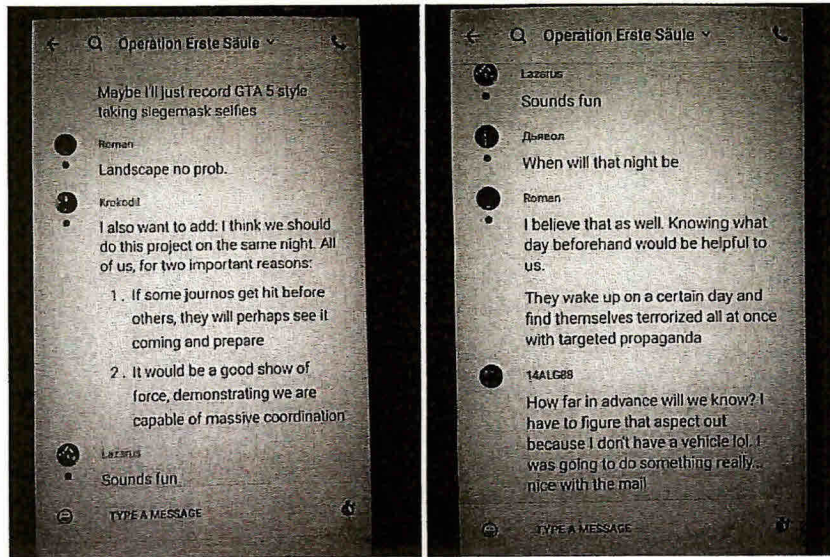


21. During this same discussion, Shea requested that co-conspirators email information about the targets to him within 24 hours at the email address atomtvjhfi8hjh4s[[@](mailto:atomtvjhfi8hjh4s@secmail.pro)]secmail.pro. Secmail.pro is a Finnish based company known for its privacy and security centric email service. Shea further explained that the information would be placed into custom posters for the targets. Cole, using the moniker “पकजबतचषथबल,” stated that newer AWD initiates whose identity was not known to the public would carry out “Operation Erste Saule.” Shea indicated that he too would participate in carrying out the operation because his identity was not known to the public.



22. On or about December 11, 2019, during a continued discussion to coordinate “Operation Erste Saule,” Shea explained that he wanted to coordinate the operation on the same night so journalists would be caught off guard, and to accomplish an effective “*show of force, demonstrating we are capable of massive coordination.*” Roman discussed the intended impact of the coordinated plan was to “*have them all wake up one morning and*

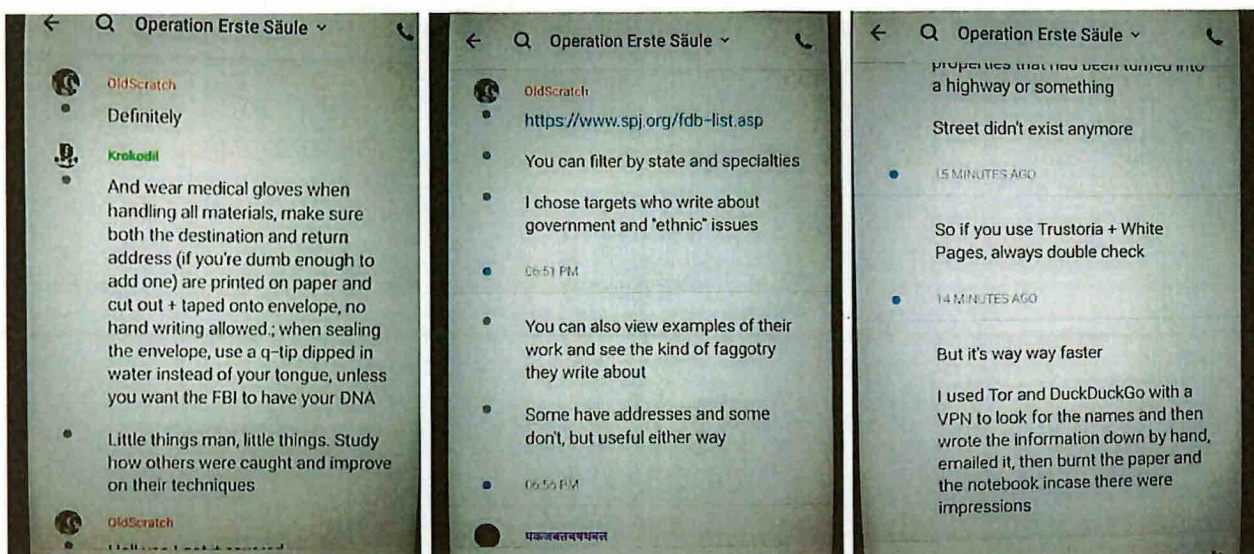
find themselves terrorized by targeted propaganda.” Cole also suggested buying rag dolls and knives, so one could leave a doll knifed through the head, at their target location.



23. On or about December 11, 2019, during a Wire discussion to coordinate “Operation Erste Saule,” Cole told his co-conspirators that the group was working on getting more addresses, and the posters. Cole suggested that his co-conspirators conduct reconnaissance of their victims’ addresses and suggested searching their addresses in Google maps. Cole told his co-conspirators to use, “*proper electronic opsec measures,*” which I believe describes an intent to anonymize or privatize their actions to avoid law enforcement and obfuscate any activity.

24. On or about December 18, 2019, during a Wire discussion to coordinate “Operation Erste Saule,” Cole explained that he had addresses from Washington, Oregon, California, Ohio, and Florida. Shea wanted everyone to respond within 48 hours before

moving on to the next stage. Co-conspirators discussed how to print propaganda posters. Shea discussed operational security in terms of buying stamps in another town with cash while wearing a disguise. Shea also recommended using a mailbox with no cameras and to wear medical gloves to avoid prints or DNA. Another AWD member, “OldScratch,” recommended using the website [<https://www.spj.org/fdb-list.asp>], to acquire victim addresses. This URL contains a list of journalists and their contact information for the SOCIETY OF PROFESSIONAL JOURNALISTS. “OldScratch,” stated he used this method and “*chose targets who write about government and ‘ethnic’ issues.*”



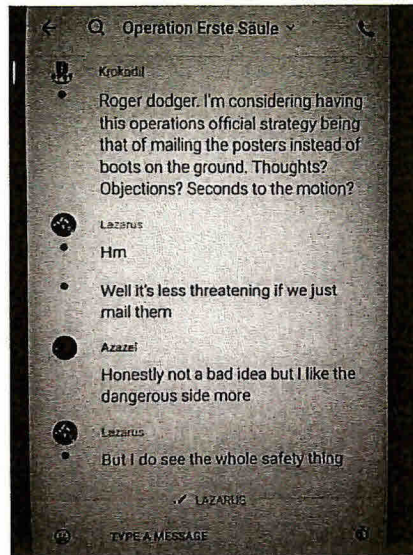
25. On or about December 25, 2019, during a Wire discussion to coordinate “Operation Erste Saule,” Cole explained that he was going to distribute the posters via “Guerrilla Mail” with the subject line, “*prop-run.*” Guerrilla Mail is an electronic

communication service that offers temporary, disposable email accounts. On or about December 26, 2019, during a Wire discussion to coordinate “Operation Erste Saule,” Cole confirmed that everyone in the group had received their propaganda poster. Taylor Ashley Parker-Dipeppe using the moniker “Azazel,” provided his email address as xogofi1993[*@*]mailart.top, and confirmed he was in the same cell as “Lazarus.” “Azazel,” and “Lazarus,” are members of a Florida chapter of AWD. Garza using the moniker Roman asked when they were going to execute the operation. Shea, Cole, and “Azazel,” continued discussion to coordinate a date to execute “Operation Erste Saule.”

26. On or about December 27, 2019, during the Wire discussion to coordinate “Operation Erste Saule,” Shea and the group decided to execute the operation on January 25, 2020. Cole wanted AWD members to take video of their activities. Roman said “*scoping my places on maps right now.*” “OldScratch,” indicated one of his targets was in a gated community. Roman then discussed using a disguise such as wearing construction gear to blend in, or to execute the operation at night. Shea discussed using his bicycle to avert being detected by license plate readers. Roman stated how the operation was going to deliver a “*nationwide scare.*”

27. On or about January 6, 2020, during a Wire discussion to coordinate “Operation Erste Saule,” Shea stated his cell was, “*air tight... ready to go...*” Members again discussed the coordination of the operation and opinions on conducting the operation entirely via the mail. “Lazarus,” stated “*it is less threatening if we just mail them.*”

“14ALG88,” had previously stated *“I plan on doing something really nice with the mail.”* Shea and others ultimately decided to stay with *“boots on the ground”* at some locations and mailing them to the riskier target locations. Shea emphasized operational security, stressing the importance of not getting caught and remaining invisible to law enforcement.



28. Cole referenced multiple times in the chat group that he was the individual designing and creating the posters. On or about December 26, 2019, Cole stated he *“sent the posters out”* and that he had been *“having issues with my linux machine.”* Based on my training and experience, I understand a “linux machine” to be a personal computer utilizing the linux operating system. The posters sent to the group were directed to be mailed or posted to the home addresses of targeted journalists. All three of the posters contain threatening statements and insinuations, indicating the targets are under surveillance and

at risk from AWD and contain a blank area at the bottom designated for placement of the specific target address.

29. Based upon the group's own statements, **Cole's** prior statements about media intimidation, and the nature of the "Operation Erste Saule" as explained by Shea, I believe **Cole**, Shea, and co-conspirators intend for the following posters, produced by **Cole**, to intimidate their respective targets, and given the nature of the prospective targets and the circumstances of "Operation Erste Saule" as outlined by Shea, these posters would cause fear, intimidation, and substantial emotional stress of their respective targets. The posters are attached hereto and made a part hereof by this reference.

**YOUR ACTIONS
HAVE CONSEQUENCES**



**OUR PATIENCE
HAS ITS LIMITS**



YOU HAVE BEEN VISITED BY YOUR LOCAL NAZIS



TWO CAN PLAY AT THIS GAME



THESE PEOPLE HAVE NAMES AND ADDRESSES



YOU HAVE BEEN VISITED BY YOUR LOCAL NAZIS

30. On or about January 7, 2020, Shea stated to his co-conspirators: *"If we are arrested later in connection to the operation, but they can't prove we specifically did it, fedwaffen's open sourcing of the AW brand name gives us plausible deniability...And since we have JM's [Mason] disavowal of fedwaffen on the website, saying we disavow illegal action, that further helps our point that fedwaffen was behind this."* It is known to investigators that "fedwaffen" is a reference to a faction of unknown individuals who have in recent months, posted AWD videos and propaganda online, claiming to be AWD. However, this new unsanctioned faction and all its communications were disavowed by Mason and members of the real AWD.

31. On or about January 22, 2020, Shea informed all participants the chat group was going to be dissolved shortly. Cole stated *"All I can say is get a few good video clips if you can."* Shea then reminded everyone to not get caught, and if they do, plead the 5th amendment and remind their lawyers of the "fedwaffen" defense enumerated above. The Wire chat group was subsequently closed.

B. The Events of January 25, 2020 and Following Days

1. Washington State

32. On January 25, 2020, law enforcement conducted surveillance of Shea and observed him driving his vehicle to Redmond, Washington, and park in a Target parking lot. Shea then changed into a grey hoodie, stocking cap, and a surgical facemask. Shea proceeded to walk across the street into a Fred Meyer store where he purchased a book of

Santa Claus stamps and packaging tape with cash. Based on my training, experience, and knowledge of the investigation, I believe Shea was obfuscating his appearance, consistent with the operational security measures mentioned above.

33. On January 29, 2020, the FBI was contacted by C.I., a Seattle reporter who has reported on AWD, and M.C., the director of the Anti-Defamation League's Pacific Northwest Regional Office.¹ Both had received posters in the mail. C.I. received the poster that is titled, "Two Can Play At This Game," and included C.I.'s name, his home address, and his cell phone number. M.C. received a poster titled, "Your Actions Have Consequences," and included M.C.'s home address. The envelopes in which the posters arrived were both addressed by affixing cut-out, printed addresses with packaging tape, akin to the procedure Shea described in above in paragraph 26. The envelopes also both included Santa Claus stamps.

34. On February 5, 2020, the Seattle Police Department was contacted by H.B., who was formerly employed as the director of the Anti-Defamation League's Pacific Northwest Regional Office. H.B. had recently returned from vacation when she opened her mail, and received the poster titled, "We Are Watching" which included M.B.'s name and address at the bottom. The envelope the poster arrived in was postmarked January 27, 2020, and was mailed with a Santa Clause stamp.

¹ The Anti-Defamation League's mission is to combat anti-Semitism and other forms of hatred and bigotry.

2. Florida

35. On January 24, 2020, law enforcement conducted surveillance of Taylor Ashley Parker-Dipeppe, who agents had previously identified as being “Azazel.” Agents observed Parker-Dipeppe leave his residence, 12171 Cavern Rd, Springhill, Florida 34609 (“hereinafter FLORIDA RESIDENCE”) in a white 2014 Hyundai Accent, bearing New Jersey license plate number D76HYX and Vehicle Identification Number KMHCT5AE6EU193326 (hereafter “FLORIDA VEHICLE”). Parker-Dipeppe traveled with a female and was wearing a black t-shirt, jeans, and boots.

36. The two arrived at a Goodwill Springhill Super Store in Spring Hill, Florida. They purchased a tan baseball hat, a hooded sweatshirt, yellow in color with what appeared to be black lettering on the front, and a pair of black sunglasses. The two then visited the Spring Hill Walmart. They purchased a pack of Gorilla Tape mounting tape squares. Parker-Dipeppe paid for both transactions using a debit card ending in 9799.

37. On January 25, 2020, Parker-Dipeppe and the female were observed leaving the FLORIDA RESIDENCE at approximately 8:30 p.m. The FLORIDA VEHICLE traveled towards Tampa and arrived at an apartment complex in Tampa. Parker-Dipeppe dropped off the female and picked up a male in Saint Petersburg, Florida.

38. Agents observed Parker-Dipeppe and the male entering a Saint Petersburg Walmart late in the evening. The male purchased a TT sweater and black Avia pants. Both Parker-Dipeppe and the male exited the Walmart and then drove back to Tampa.

39. Agents then observed Parker-Dieppe and the male drive to a Tampa residence. The two affixed a poster to the front of the residence, immediately below a bedroom window. The two then ran back to the FLORIDA VEHICLE and drove away. The poster had been affixed using mounting tape squares, *i.e.*, the same type of tape that Parker-Dieppe had purchased at Walmart.

40. The poster was the “We Are Watching” poster that is identified above. The poster included the name and home address of V.C., a Florida news reporter who was born and raised in Puerto Rico.

41. V.C. did not live at the residence. It appears that Parker-Dieppe and the male had the wrong address. L.H., who is of African descent, lived at the residence with her father and minor child. L.H. saw the poster.

3. Arizona

42. On January 25, 2020, law enforcement conducted surveillance of Johnny Roman Garza, also known as Roman, in the Queen Creek, Arizona area. Garza was picked up by Patrick Kraft in a maroon Ford Taurus, bearing Arizona license plate 851TLX (hereafter “KRAFT ARIZONA VEHICLE”). Shortly after midnight, the KRAFT ARIZONA VEHICLE was parked near an apartment complex in Phoenix, Arizona where the leader of the Arizona Association of Black Journalists resided. At least one of the vehicle occupants exited the vehicle. The occupant returned to the vehicle, and the vehicle proceeded to the residence of M.B., who is the Editor in Chief of Arizona Jewish Life

Magazine. Both Garza and Kraft were observed fleeing from the direction of M.B.'s residence to the vehicle. The two left the scene, and Kraft dropped Garza off at his residence.

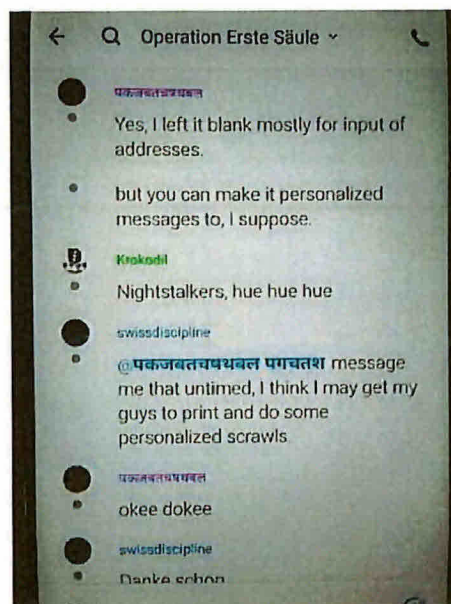
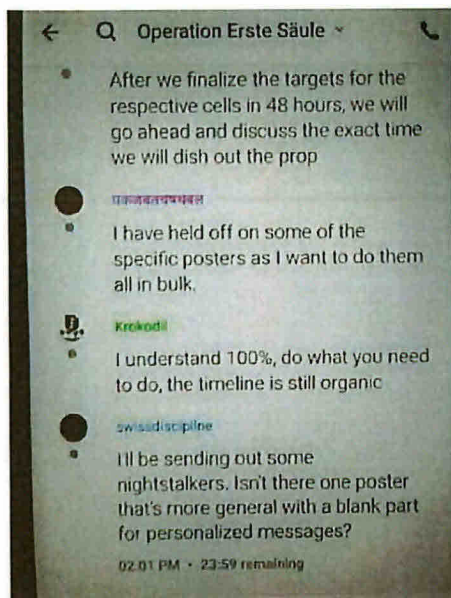
43. M.B. found a poster titled, "Your Actions Have Consequences" that included M.B.'s name and home address at the bottom. The poster was glued to a bedroom window, on the North side of M.B.'s home.

C. Cole's Involvement and Use of the PREMISES and VEHICLE

44. As discussed herein, the FBI, through its investigation, has identified numerous members of Atomwaffen Division, including **Cole**, who have planned and conspired to implement a targeted campaign with the goal of terrorizing journalists with threatening propaganda.

45. On or about December 4, 2019, Shea, using his online moniker "Krokodil," created the "Operation Erste Saule" private chat group in the WIRE application. Shea then invited **Cole**, along with several other AWD affiliates into the private group. The chat group was established and utilized for the planning and coordination of executing the targeted propaganda campaign.

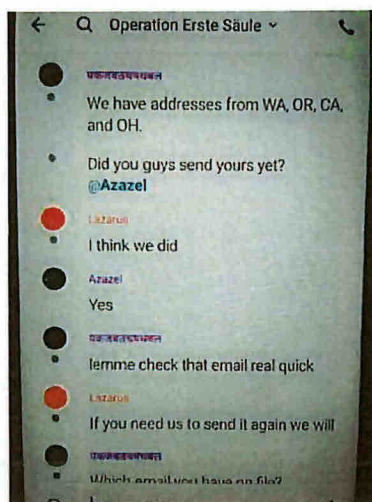
46. A main element of the operation was the production of the threatening propaganda. Cole referenced multiple times in the chat group that he was the individual designing and creating the posters. On or about December 26, 2019, Cole stated he “sent the posters out” and that he had been “having issues with my linux machine.” Based on my training and experience, I understand a “linux machine” to be a personal computer utilizing the linux operating system. Additionally, on or about December 18, 2019, Cole answered a question regarding a poster design by stating, “I left it blank mostly for input of addresses.” Based on my training and experience, individuals designing digital posters, would utilize a personal computer equipped with a software program designed to aid in the production of graphic material. The posters sent to the group via the internet, were directed



to be mailed or posted to the victims' home addresses. All three of the posters contain

threatening statements and insinuations, indicating the targets are under surveillance and at risk from AWD and contain a blank area at the bottom designated for placement of the specific target address.

47. Another element of “Operation Erste Saule” is the utilization of email to compile names and addresses of individuals the operation intends to target. On or about December 11, 2019, **Cole** responded to messages referring to addresses by stating, “*lemme check that email real quick.*” Based on my training and experience, individuals check email



through an internet connection on electronic devices, such as personal computers.

48. Based on observations during surveillance, Agents observed **Cole** consistently residing at the PREMISES. On December 23, 2019, CHS reporting indicates **Cole** applied for work at an office in Conroe, TX. Conroe, TX is approximately 20 minutes by vehicle from the PREMISES. On January 9, 2020, an undercover employee (UCE) met with **Cole** and Denton at the PREMISES. The UCE was greeted by Denton in a Ku Klux

Klan robe. Both **Cole** and Denton were observed later wearing Ku Klux Klan robes. Based on the UCE's observations, **Cole** is residing on the couch in the living room of the PREMISES. A folding table is set up next to the couch, holding many of **Cole's** belongings, including two laptop computers, and a large television being used as a monitor connected to a desktop computer.



49. On January 25, 2020, a court-authorized electronic tracking device was affixed to **Cole's** VEHICLE. Based on a review of the location data collected by the device, the VEHICLE is regularly parked in front of the PREMISES overnight and on weekends. The VEHICLE leaves the PREMISES on weekdays at approximately 5:15AM CST, and travels to **Cole's** known place of employment, Medivators, 3150 Pollok Drive,

Conroe, Texas 77303. **Cole** leaves work at approximately 2:00PM CST. Surveillance last observed **Cole** on February 14, 2020, leaving work at 2:00PM CST, eventually returning to the PREMISES.

COMPUTERS, ELECTRONIC STORAGE, AND FORENSIC ANALYSIS

50. As described above and in Attachment B, this application seeks permission to search for records that might be found on the PREMISES or in the VEHICLE, in whatever form they are found. One form in which the records might be found is data stored on a computer's hard drive or other storage media. Thus, the warrant applied for would authorize the seizure of electronic storage media or, potentially, the copying of electronically stored information, all under Rule 41(e)(2)(B).

51. *Probable cause.* I submit that if a computer or storage medium is found on the PREMISES or in the VEHICLE, there is probable cause to believe those records will be stored on that computer or storage medium, for at least the following reasons:

- a. Based on my knowledge, training, and experience, I know that computer files or remnants of such files can be recovered months or even years after they have been downloaded onto a storage medium, deleted, or viewed via the Internet. Electronic files downloaded to a storage medium can be stored for years at little or no cost. Even when files have been deleted, they can be recovered months or years later using forensic tools. This is so because when a person "deletes" a file on a computer, the data contained in the file does not

actually disappear; rather, that data remains on the storage medium until it is overwritten by new data.

- b. Therefore, deleted files, or remnants of deleted files, may reside in free space or slack space—that is, in space on the storage medium that is not currently being used by an active file—for long periods of time before they are overwritten. In addition, a computer’s operating system may also keep a record of deleted data in a “swap” or “recovery” file.
- c. Wholly apart from user-generated files, computer storage media—in particular, computers’ internal hard drives—contain electronic evidence of how a computer has been used, what it has been used for, and who has used it. To give a few examples, this forensic evidence can take the form of operating system configurations, artifacts from operating system or application operation, file system data structures, and virtual memory “swap” or paging files. Computer users typically do not erase or delete this evidence, because special software is typically required for that task. However, it is technically possible to delete this information.
- d. Similarly, files that have been viewed via the Internet are sometimes automatically downloaded into a temporary Internet directory or “cache.”

52. *Forensic evidence.* As further described in Attachment B, this application seeks permission to locate not only computer files that might serve as direct evidence of

the crimes described on the warrant, but also for forensic electronic evidence that establishes how computers were used, the purpose of their use, who used them, and when. There is probable cause to believe that this forensic electronic evidence will be on any storage medium in the PREMISES or in the VEHICLE because:

- a. Data on the storage medium can provide evidence of a file that was once on the storage medium but has since been deleted or edited, or of a deleted portion of a file (such as a paragraph that has been deleted from a word processing file). Virtual memory paging systems can leave traces of information on the storage medium that show what tasks and processes were recently active. Web browsers, e-mail programs, and chat programs store configuration information on the storage medium that can reveal information such as online nicknames and passwords. Operating systems can record additional information, such as the attachment of peripherals, the attachment of USB flash storage devices or other external storage media, and the times the computer was in use. Computer file systems can record information about the dates files were created and the sequence in which they were created, although this information can later be falsified.
- b. As explained herein, information stored within a computer and other electronic storage media may provide crucial evidence of the “who, what, why, when, where, and how” of the criminal conduct under investigation,

thus enabling the United States to establish and prove each element or alternatively, to exclude the innocent from further suspicion. In my training and experience, information stored within a computer or storage media (e.g., registry information, communications, images and movies, transactional information, records of session times and durations, internet history, and anti-virus, spyware, and malware detection programs) can indicate who has used or controlled the computer or storage media. This “user attribution” evidence is analogous to the search for “indicia of occupancy” while executing a search warrant at a residence. The existence or absence of anti-virus, spyware, and malware detection programs may indicate whether the computer was remotely accessed, thus inculcating or exculpating the computer owner. Further, computer and storage media activity can indicate how and when the computer or storage media was accessed or used. For example, as described herein, computers typically contain information that log: computer user account session times and durations, computer activity associated with user accounts, electronic storage media that connected with the computer, and the IP addresses through which the computer accessed networks and the internet. Such information allows investigators to understand the chronological context of computer or electronic storage media access, use, and events relating to the crime under investigation.

Additionally, some information stored within a computer or electronic storage media may provide crucial evidence relating to the physical location of other evidence and the suspect. For example, images stored on a computer may both show a particular location and have geolocation information incorporated into its file data. Such file data typically also contains information indicating when the file or image was created. The existence of such image files, along with external device connection logs, may also indicate the presence of additional electronic storage media (e.g., a digital camera or cellular phone with an incorporated camera). The geographic and timeline information described herein may either inculcate or exculpate the computer user. Last, information stored within a computer may provide relevant insight into the computer user's state of mind as it relates to the offense under investigation. For example, information within the computer may indicate the owner's motive and intent to commit a crime (e.g., internet searches indicating criminal planning), or consciousness of guilt (e.g., running a "wiping" program to destroy evidence on the computer or password protecting/encrypting such evidence in an effort to conceal it from law enforcement).

- c. A person with appropriate familiarity with how a computer works can, after examining this forensic evidence in its proper context, draw conclusions

about how computers were used, the purpose of their use, who used them, and when.

- d. The process of identifying the exact files, blocks, registry entries, logs, or other forms of forensic evidence on a storage medium that are necessary to draw an accurate conclusion is a dynamic process. While it is possible to specify in advance the records to be sought, computer evidence is not always data that can be merely reviewed by a review team and passed along to investigators. Whether data stored on a computer is evidence may depend on other information stored on the computer and the application of knowledge about how a computer behaves. Therefore, contextual information necessary to understand other evidence also falls within the scope of the warrant.
- e. Further, in finding evidence of how a computer was used, the purpose of its use, who used it, and when, sometimes it is necessary to establish that a particular thing is not present on a storage medium. For example, the presence or absence of counter-forensic programs or anti-virus programs (and associated data) may be relevant to establishing the user's intent.
- f. I know that when an individual uses a computer to commit stalking over the Internet, the individual's computer will generally serve both as an instrumentality for committing the crime, and also as a storage medium for

evidence of the crime. The computer is an instrumentality of the crime because it is used as a means of committing the criminal offense. The computer is also likely to be a storage medium for evidence of crime. From my training and experience, I believe that a computer used to commit a crime of this type may contain: data that is evidence of how the computer was used; data that was sent or received; notes as to how the criminal conduct was achieved; records of Internet discussions about the crime; and other records that indicate the nature of the offense.

53. *Necessity of seizing or copying entire computers or storage media.* In most cases, a thorough search of a premises for information that might be stored on storage media often requires the seizure of the physical storage media and later off-site review consistent with the warrant. In lieu of removing storage media from the premises, it is sometimes possible to make an image copy of storage media. Generally speaking, imaging is the taking of a complete electronic picture of the computer's data, including all hidden sectors and deleted files. Either seizure or imaging is often necessary to ensure the accuracy and completeness of data recorded on the storage media, and to prevent the loss of the data either from accidental or intentional destruction. This is true because of the following:

- a. The time required for an examination. As noted above, not all evidence takes the form of documents and files that can be easily viewed on site. Analyzing

evidence of how a computer has been used, what it has been used for, and who has used it requires considerable time, and taking that much time on premises could be unreasonable. As explained above, because the warrant calls for forensic electronic evidence, it is exceedingly likely that it will be necessary to thoroughly examine storage media to obtain evidence. Storage media can store a large volume of information. Reviewing that information for things described in the warrant can take weeks or months, depending on the volume of data stored, and would be impractical and invasive to attempt on-site.

- b. Technical requirements. Computers can be configured in several different ways, featuring a variety of different operating systems, application software, and configurations. Therefore, searching them sometimes requires tools or knowledge that might not be present on the search site. The vast array of computer hardware and software available makes it difficult to know before a search what tools or knowledge will be required to analyze the system and its data on the Premises. However, taking the storage media off-site and reviewing it in a controlled environment will allow its examination with the proper tools and knowledge.

- c. Variety of forms of electronic media. Records sought under this warrant could be stored in a variety of storage media formats that may require off-site reviewing with specialized forensic tools.

54. *Nature of examination.* Based on the foregoing, and consistent with Rule 41(e)(2)(B), the warrant I am applying for would permit seizing, imaging, or otherwise copying storage media that reasonably appear to contain some or all of the evidence described in the warrant, and would authorize a later review of the media or information consistent with the warrant. The later review may require techniques, including but not limited to computer-assisted scans of the entire medium, that might expose many parts of a hard drive to human inspection in order to determine whether it is evidence described by the warrant.

55. Because several people share the PREMISES as a residence, it is possible that the PREMISES will contain storage media that are predominantly used, and perhaps owned, by persons who are not suspected of a crime. If it is nonetheless determined that it is possible that the things described in this warrant could be found on any of those computers or storage media, the warrant applied for would permit the seizure and review of those items as well.

AFTERHOURS AND NO KNOCK WARRANT

56. A CHS was at the PREMISES in June 2019, and at that time observed an AK style rifle, two AR style rifles, a 12 gauge shotgun and two other rifles (type unknown). On February 17, 2020, Cole and Denton left the PREMISES in Cole's vehicle and drove to Academy Sports

and Outdoors in Conroe, Texas. Surveillance video observed **Cole** and Denton walking to the firearms section of the store and selecting multiple items for purchase. **Cole** purchased gun cleaner and a tactical rifle sling such as is commonly used on an AK or AR rifle. Denton purchased gun cleaner, gun oil, a Sig compact red dot scope, an angle mount for the scope, an AR gun cleaning kit and six 20-count boxes of 5.56 mm ammunition. Based on my training and experience, I know 5.56 mm ammunition can be used in a variety of firearms, including AK and AR style rifles. The same rifles previously observed in the PREMISES by the CHS.

57. Given the violent nature espoused by the Atomwaffen Division, the paramilitary training and large caches of explosives found at the search of the Florida Atomwaffen residence, and the firearms and ammunition known to be in Denton's residence, the Affiant is concerned for the safety of law enforcement members executing the search warrant. Additionally, there are two other individuals at this residence, one of who will be arrested on a criminal complaint from the Eastern District of Virginia. Additionally, **Cole** will be arrested on a criminal complaint out of the Western District of Washington. The Affiant wants to ensure all occupants of the residence are at the PREMISES when the search warrant is executed so that none will remain fugitives. The Affiant therefore requests that this warrant be allowed to be executed at any hour of the day and that the agents be able to serve the warrant without first announcing their presence.

CONCLUSION

58. I submit that this affidavit supports probable cause for a warrant to search the PREMISES and VEHICLE described in Attachment A and seize the items described in Attachment B.

REQUEST FOR SEALING

59. It is respectfully requested that this Court issue an order sealing, until further order of the Court, all papers submitted in support of this application, including the application and search warrant. I believe that sealing this document is necessary because the items and information to be seized are relevant to an ongoing investigation. Based upon my training and experience, I have learned that online criminals actively search for criminal affidavits and search warrants via the Internet and disseminate them to other online criminals as they deem appropriate, i.e., post them publicly online through the carding forums. Premature disclosure of the contents of this affidavit and related documents may have a significant and negative impact on the continuing investigation and may severely jeopardize its effectiveness.

Respectfully submitted,



Casey M. Villarreal
Special Agent
Federal Bureau of Investigation

Subscribed and sworn to before me on February 24, 2020:



Hon. Nancy K. Johnson
UNITED STATES MAGISTRATE JUDGE

ATTACHMENT A

Property to be searched

The property to be searched is 1218 Oxon Run, Montgomery, TX, 77316, further described as a single-family home with brown siding, white trim, and a white front door.



The property to be searched is the 2000 Blue Ford Focus, Washington State License Plate Number BJK6073, VIN #1FAFP3637YW420460.

ATTACHMENT B

Property to be Seized

Documents (in whatever form) relating to violations of Title 18, United States Code, Sections 2261A (Stalking); 876(c) (Mailing Threatening Communications); 245 (Federally Protected Activities); and 371 (Conspiracy), that is,

1. All documents relating to attempts to locate the home addresses of any members of the media, the Anti-Defamation League, persons who identify as Jewish, or ethnic minorities.

2. All documents relating to the Atomwaffen Division, including members of the group;

3. All documents containing swastikas, other Nazi symbols, or other symbology related to white-supremacist violent extremism.

4. All stamps, packaging tape, and blank envelopes.

5. All receipts reflecting purchases of stamps, packaging tape, or blank envelopes in January 2020;

6. All documents containing the monikers "Krokodil," "Lazarus," "14ALG88," "Azazel," "Roman," "Swissdiscipline," "OldScratch," or "पकजबतचषथबल"

7. Digital devices or other electronic storage media and/or their components, which include:

- a. Any digital device or other electronic storage media capable of being used to commit, further, or store evidence of the offenses listed above;
- b. Any digital devices or other electronic storage media used to facilitate the transmission, creation, display, encoding or storage of data, including word processing equipment, modems, docking stations, monitors, cameras, printers, plotters, encryption devices, optical scanners, desktop computer, laptops computers, tablets and mobile phones;
- c. Any magnetic, electronic or optical storage device capable of storing data, such as floppy disks, hard disks, tapes, CD-ROMs, CD-R, CD-RWs, DVDs,

optical disks, printer or memory buffers, smart cards, PC cards, memory calculators, electronic dialers, electronic notebooks, and personal digital assistants;

- d. Any documentation, operating logs and reference manuals regarding the operation of the digital device or other electronic storage media or software;
- e. Any applications, utility programs, compilers, interpreters, and other software used to facilitate direct or indirect communication with the computer hardware, storage devices, or data to be searched;
- f. Any physical keys, encryption devices, dongles and similar physical items that are necessary to gain access to the computer equipment, storage devices or data; and
- g. Any passwords, password files, test keys, encryption codes or other information necessary to access the computer equipment, storage devices or data.

8. For any digital device or other electronic storage media upon which electronically stored information that is called for by this warrant may be contained, or that may contain things otherwise called for by this warrant:

- a. evidence of who used, owned, or controlled the digital device or other electronic storage media at the time the things described in this warrant were created, edited, or deleted, such as logs, registry entries, configuration files, saved usernames and passwords, documents, browsing history, user profiles, email, email contacts, "chat," instant messaging logs, photographs, and correspondence;
- b. evidence of software that would allow others to control the digital device or other electronic storage media, such as viruses, Trojan horses, and other forms of malicious software, as well as evidence of the presence or absence of security software designed to detect malicious software;
- c. evidence of the lack of such malicious software;

- d. evidence of the attachment to the digital device of other storage devices or similar containers for electronic evidence;
- e. evidence of counter-forensic programs (and associated data) that are designed to eliminate data from the digital device or other electronic storage media;
- f. evidence of the times the digital device or other electronic storage media was used;
- g. passwords, encryption keys, and other access devices that may be necessary to access the digital device or other electronic storage media;
- h. documentation and manuals that may be necessary to access the digital device or other electronic storage media or to conduct a forensic examination of the digital device or other electronic storage media;
- i. contextual information necessary to understand the evidence described in this attachment.

THE SEIZURE OF DIGITAL DEVICES OR OTHER ELECTRONIC STORAGE MEDIA AND/OR THEIR COMPONENTS AS SET FORTH HEREIN IS SPECIFICALLY AUTHORIZED BY THIS SEARCH WARRANT, NOT ONLY TO THE EXTENT THAT SUCH DIGITAL DEVICES OR OTHER ELECTRONIC STORAGE MEDIA CONSTITUTE INSTRUMENTALITIES OF THE CRIMINAL ACTIVITY DESCRIBED ABOVE, BUT ALSO FOR THE PURPOSE OF THE CONDUCTING OFF-SITE EXAMINATIONS OF THEIR CONTENTS FOR EVIDENCE, INSTRUMENTALITIES, OR FRUITS OF THE AFOREMENTIONED CRIMES.

Sealed
Public and unofficial staff access
to this instrument are
prohibited by court order.

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

United States Courts
Southern District of Texas
FILED

FEB 24 2020

David J. Bradley, Clerk of Court

IN THE MATTER OF

**SEARCH WARRANT FOR
1218 OXON RUN, MONTGOMERY,
TEXAS AND
A 2000 FORD FOCUS, WASHINGTON
STATE LICENSE PLATE BJK6073
VIN #1FAFP3637YW420460**

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CASE NO.

SEALED

H20-0391M

MOTION TO SEAL SEARCH WARRANT APPLICATION AND AFFIDAVIT

The United States of America hereby moves this Court for an order permitting it to application, affidavit, attachments, and motion to seal in the above-captioned proceedings for 180 days. For cause the Government is concerned that that disclosure of the affidavit at this time could potentially result in endangering life or physical safety of individual, flight from prosecution, evidence destruction and tampering, witness intimidation otherwise seriously jeopardizing investigation or unduly delaying trial.

Respectfully submitted,

**RYAN PATRICK
UNITED STATES ATTORNEY**



STEVEN T. SCHAMMEL
Assistant United States Attorney
United States Attorney's Office
Southern District of Texas
1000 Louisiana St., Ste. 2300
Houston, Texas 77002
Phone: (713) 567-9325

Sealed
Public and unofficial staff access
to this instrument are
prohibited by court order.

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

IN THE MATTER OF

SEARCH WARRANT FOR
1218 OXON RUN, MONTGOMERY,
TEXAS AND
A 2000 FORD FOCUS, WASHINGTON
STATE LICENSE PLATE BJK6073
VIN #1FAFP3637YW420460

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CASE NO.

SEALED

H20-0391M

ORDER TO SEAL SEARCH WARRANT APPLICATION AND AFFIDAVIT

The United States having moved this Court, for an order to seal the application and affidavit,

IT IS ORDERED, that the search warrant application, affidavit, attachments, and motion to seal in the above-entitled proceedings, shall be under seal and shall not be disclosed for 180 days from the entry of this date.

Signed on this 24th day of Feb, 2020, at Houston, Texas.



Nancy K. Johnson
U.S. Magistrate Judge
Southern District of Texas

The Honorable John C. Coughenour

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

KALEB COLE,

Defendant.

No. CR20-032 JCC

MOTION TO DISMISS INDICTMENT
FOR VIOLATION OF SPEEDY TRIAL
RIGHTS

Note on Motion Calendar:
August 27, 2021

I. RELIEF REQUESTED

Defendant, Kaleb Cole, by his undersigned attorney, moves this Court for an order dismissing the indictment against him with prejudice pursuant to the United States Constitution, amendment VI, and 18 U.S.C. § 3161 and 3162, on the basis that his case has not been brought to trial in a timely manner.

II. FACTS

The government filed a complaint against Mr. Cole on February 25, 2020, charging a single count of conspiracy to mail threatening communications and commit cyberstalking. Dkt. # 1. Mr. Cole was arrested in the Southern District of Texas the next day. Dkt. # 12. On March 2, 2020 he waived his right to an identity hearing and to a detention hearing in the district of his arrest and was transferred to the Western District of Washington. Dkt. # 13.

1 The grand jury returned a four-count indictment on March 4, 2020 which charged Mr.
2 Cole with one count of conspiracy to mail threatening communications and commit cyberstalking
3 and three counts of mailing threatening communications.¹ Dkt. # 16. Mr. Cole appeared in the
4 Western District of Washington on March 13, 2020, and was arraigned that day. Dkt. # 27. He
5 stipulated to detention and was ordered detained. Id. Mr. Cole moved to reopen his detention
6 hearing on May 15, 2020. After briefing and a hearing, Magistrate Judge McCandlis ordered that
7 Mr. Cole remain in custody. Dkt. # 80. Mr. Cole has been held at FDC SeaTac awaiting trial
8 ever since. In all, he has been in custody for 534 days (just short of a year and a half) as of the
9 date of filing this motion.

10 At Mr. Cole's arraignment on March 13, 2020, the Court set a trial date of April 27, 2020.
11 Dkt. # 27. On March 17, 2020, Chief Judge Martinez issued General Order No. 02-20 relating to
12 changes in court procedures related to COVID-19. On March 30, 2020 the government moved
13 to continue Mr. Cole's trial date, citing the general order as well as numerous alleged impacts of
14 COVID-19 on defense counsel's ability to prepare for trial. Dkt, # 48. Mr. Cole did not object
15 to the continuance but he neither joined the motion nor filed a waiver of his right to a speedy trial.
16 The court granted the motion on April 15, 2020, striking the trial date and setting a status
17 conference on June 2, 2020. Dkt. # 58. The Court excluded time under the Speedy Trial Act
18 pursuant to 18 U.S.C. § 3161(h)(7). Id.

19 On May 14, 2020, the Court issued a minute order resetting the status conference from
20 June 2, 2020 to August 4, 2020. Dkt. # 62. The Court neither sought nor received input from the
21 parties on this additional continuance. The Court issued additional minute orders *sua sponte*
22
23
24

25 ¹ The grand jury later returned a superseding indictment that added a count of interference with
federally protected activities. Dkt. # 94.

1 rescheduling the status conference, first from August 4, 2020 to September 15, 2020, and then
2 from September 15, 2020 to October 20, 2020. Dkt # 89, 107.

3 Prior to the October 20, 2020 status conference the government filed a motion requesting
4 that the Court 1) issue an order excluding the time between June 2, 2020 and October 20, 2020
5 from speedy trial calculations, and 2) set a trial date at the status conference. Dkt. # 118. In
6 response, the Court issued an order vacating the status conference, continuing trial to March 22,
7 2021, and excluding all time for speedy trial purposes from April 15, 2020 to March 22, 2021.
8 Dkt. # 131. Mr. Cole was not given an opportunity to object to this additional continuance prior
9 to the Court issuing its order and did not waive his speedy trial rights in conjunction with this
10 continuance.

11 On February 1, 2021 the government again moved to continue the trial date, based largely
12 on the continuing general orders related to COVID-19. Dkt. # 154. The government's motion
13 noted Mr. Cole's objection to the requested continuance. Mr. Cole did not waive his right to a
14 speedy trial. The Court continued trial to the present date of September 20, 2021, and excluded
15 time under 18 U.S.C. section 3161(h)(7)(A). Dkt. # 169.

17 **III. ARGUMENT**

18 **A. The Court should dismiss the indictment pursuant to the Speedy Trial Act**

19 The Speedy Trial Act requires that a defendant's trial begin within 70 days of the filing of
20 the indictment or the defendant's initial court appearance, whichever is later. 18 U.S.C. §
21 3161(c)(1). The Act does recognize, however, that legitimate needs of the government and of a
22 criminal defendant may cause permissible delays. United States v. Daychild, 357 F.3d 1082,
23 1090 (9th Cir. 2004). These "permissible delays" have been codified in the Speedy Trial Act,
24 which articulates bases justifying exclusion of time, such as: a period of mental or physical
25

1 incompetence of a defendant to stand trial, the unavailability of the defendant or an essential
2 witness, or the pendency of pretrial motions. See 18 U.S.C. § 3161(h)(1) – (6). In addition to the
3 specific bases for excluding time, there is also a general category at subsection 3161(h)(7) that
4 allows for the exclusion of time where a judge finds “that the ends of justice served by taking
5 such action outweigh the best interest of the public and the defendant in a speedy trial.” 18 U.S.C.
6 § 3162(h)(7)(A).

7 The Speedy Trial Act mandates that if trial does not commence within 70 days –
8 subtracting any valid exclusions of time – the accused may move to dismiss the charges against
9 him at any time before the commencement of trial or the entry of a guilty plea. If the accused
10 establishes a Speedy Trial Act violation, he is entitled to a dismissal of the charges. “If a
11 defendant is not brought to trial within the time limit required by §3161(c) as extended by
12 §3161(h), the information or indictment shall be dismissed on motion of the defendant.” 18 U.S.C.
13 §3162(a)(2). The strictness of this remedy highlights the importance of the rights it protects. See
14 United States v. Lloyd, 125 F.3d 1263, 1268 (9th Cir. 1997) (“Congress designed the Speedy
15 Trial Act in part to protect the public’s interest in the speedy administration of justice, and it
16 imposed the sanction of dismissal under § 3162 to compel courts and prosecutors to work in
17 furtherance of that goal.”).

18
19 The Court should dismiss the indictment because Mr. Cole’s trial did not commence
20 within 70 days of his arraignment and the delays do not rise to the level of good cause that justifies
21 the exclusion of time for the speedy trial calculation.

22 1. The time within which the government may bring Mr. Cole to trial expired long ago.

23 Mr. Cole was arraigned on March 13, 2020, and his trial is currently scheduled for
24 September 27, 2021. Over 18 months will have passed between his arraignment and his trial.
25

1 Other than a few periods where pretrial motions were pending, the “speedy trial clock” was
2 ticking in this matter but for the Court’s finding that the ends of justice were served by continuing
3 trial. As such, whether the government may still bring Mr. Cole to trial depends on the validity
4 of the Court’s findings under the “ends of justice” provision, § 3161(h)(7)(A).

5 That provision is to be “rarely used.” See United States v. Nance, 666 F.2d 353, 355 (9th
6 Cir. 1982). Subsection (h)(7)(A) allows courts some flexibility to accommodate “unusual,
7 complex, and difficult cases,” but Congress was wary of the danger that “ends of justice”
8 exclusions would “get out of hand” and swallow the Speedy Trial Act’s detailed scheme. Zedner
9 v. United States, 547 U.S. 489, 507, 509 (2006). The Speedy Trial Act attempted to thwart such
10 misuse by “counteract[ing] substantive open-endedness with procedural strictness.” Id.; and see
11 United States v. Clymer, 25 F.3d 824, 829 (9th Cir. 1994) (“[T]he ‘ends of justice’ exclusion . . .
12 may not be invoked in such a way as to circumvent the time limitations set forth in the Act”).
13 “Realizing that broad discretion would undermine the mandatory time limits of the Act, Congress
14 intended that the ends of justice continuance be rarely used.” United States v. Perez-Reveles, 715
15 F.2d at 1351 (internal citations and quotations marks omitted).

16 To keep a tight rein on the “ends of justice” exclusions of time, any such exclusions
17 require case-specific findings:
18

19 No such period of delay resulting from a continuance granted by the court in
20 accordance with this paragraph shall be excludable under this subsection unless the
21 court sets forth, in the record of the case, either orally or in writing, its reasons for
22 finding that the ends of justice served by the granting of such continuance outweigh
23 the best interests of the public and the defendant in a speedy trial.

24 18 U.S.C. § 3161(h)(7)(A).

25 Put another way, an “‘ends of justice’ exclusion must be (1) specifically limited in time
and (2) justified with reference to the facts as of the time the delay is ordered.” United States v.

1 Ramirez-Cortez, 213 F.3d 1149, 1154 (9th Cir. 2000) (internal citations and quotation marks
2 omitted). The narrow discretion granted to the trial court to enter an exclusion under the “ends of
3 justice” provision is expressed by the particular factors set forth at subsection 3161(h)(7)(B):

4 (i) “whether the failure to grant such a continuance in the proceeding would be
5 likely to make a continuation of such proceeding impossible, or result in a
6 miscarriage of justice;”

7 (ii) whether the unusual nature or complexity of the case makes it “unreasonable to
8 expect adequate preparation” within the time limits established by the Act;

9 (iii) relating to Speedy Trial delays based on delay in the filing of the indictment;
or

10 (iv) whether the denial of the continuance would “deny the defendant reasonable
11 time to obtain counsel,” deny the defendant or government continuity of counsel or
12 deny either party “reasonable time necessary for effective preparation” accounting
13 for due diligence.

14 18 U.S.C. § 3161(h)(7)(B).

15 The defense submits that the circumstances that have been cited in order to justify the
16 repeated continuances in this matter do not pass muster under the parameters set forth in the
17 Speedy Trial Act (although we recognize that the Court has already found otherwise). All of the
18 continuances in this case were granted based on circumstances associated with the COVID-19
19 pandemic. The defense takes the position that these circumstances do not in fact justify the
20 lengthy delay of Mr. Cole’s case.

21 While the defense of course recognizes that the pandemic has had a significant impact on
22 the world in many ways, it does not necessarily follow that with some reasonable
23 accommodations Mr. Cole’s trial could not have occurred earlier than it is scheduled. During the
24 year and a half that Mr. Cole has been waiting in jail, procedures could have been developed in
25 order to safely conduct trials. The general orders rest on the premise that existing infrastructure
could not accommodate trials. They do not allow for the possibility that with some changes or
non-traditional ideas, trials could have actually been conducted.

1 The defense additionally notes that developments since the general orders were issued
2 support the proposition that a jury trial can be safely conducted despite the fact of the COVID-19
3 pandemic. The pandemic is again surging, and new infections are occurring at a rate far greater
4 right now than when the general order shutting down trials was initially issued. The seven-day
5 average of new cases in Washington state on March 17, 2020, the day the order issued, was **90**.
6 As of yesterday, August 12, 2021, it was **2545**.
7 <https://www.nytimes.com/interactive/2021/us/washington-covid-cases.html>. While the numbers
8 fluctuated in the intervening period, we are currently near the high-water mark of **3411** new
9 infections per day, from December 13, 2020. *Id.* Courts in the Western District of Washington
10 are currently moving forward with trials despite these numbers, which suggests that it could have
11 done so earlier.

12 None of this argument should be taken to suggest that the defense is minimizing the impact
13 of the pandemic. Rather, we are acknowledging that other very important interests are at stake,
14 and that there could have been a better way to address all these interests rather than simply
15 shutting down jury trials for over a year. And, given the potential alternatives, the pandemic does
16 not serve to justify the suspension of Mr. Cole's right to a speedy trial for over a year.

17
18 2. The indictment should be dismissed with prejudice.

19 The Court should dismiss the indictment with prejudice. "In determining whether to
20 dismiss the case with or without prejudice, the court shall consider, among others, each of the
21 following factors: [(1)] the seriousness of the offense; [(2)] the facts and circumstances of the
22 case which led to the dismissal; and [(3)] the impact of a reprosecution on the administration of
23 [the Speedy Trial Act] and on the administration of justice." 18 U.S.C. § 3162(a)(2). The Court
24 may also consider the prejudice to the defendant, which is a relevant but not a dispositive factor.
25

1 See United States v. Taylor, 487 U.S. 326, 334 (1988). These factors weigh against permitting
2 the government to seek a new indictment this case.

3 While the offense in this case is serious, that is not determinative. Indeed, in United States
4 v. Clymer, 25 F.3d 824, 831 (9th Cir. 1994), the court affirmed the dismissal with prejudice of an
5 indictment charging an even more serious offense--conspiracy to distribute methamphetamine
6 and aiding and abetting manufacture of methamphetamine with a potential mandatory minimum
7 sentence of 20 years. Unlike in Clymer, Mr. Cole does not face a mandatory minimum sentence.
8 Furthermore, he is not charged with a crime of violence. And finally, while every defendant is of
9 course different, it is instructive that the Court has already sentenced two of Mr. Cole's alleged
10 co-conspirators, who received sentences of sixteen months and time served, relatively short
11 sentences in federal criminal cases

12 The second factor weighs in favor of dismissal with prejudice because it was the Court
13 that was responsible for the delay, rather than Mr. Cole. See United States v. Ramirez, 973 F.2d
14 36, 39 (1st Cir. 1992) ("When a STA violation is caused by the court of the prosecutor, it weighs
15 in favor of granting a dismissal with prejudice."). The delays in this case resulted from the general
16 orders that halted trials for over a year. Mr. Cole did not contribute, or assent, to the delay. As
17 described above, the issues related to the COVID-19 pandemic, while significant, were not of
18 such a character to justify the drastic result of completely halting criminal jury trials. There is
19 no denying that these are unusual times, but logistical concerns cannot outweigh statutory rights
20 that flow from fundamental Constitutional protections. See id. (affirming the dismissal with
21 prejudice and concluding that even though the violation stemmed from an oversight and not
22 malice, that is "no excuse for a STA violation").
23
24
25

1 Furthermore, “the length of the delay standing alone is a significant ‘measure of the
2 seriousness of the speedy trial violation.’” Clymer, 25 F.2d at 832 (quoting Taylor, 487 U.S. at
3 340)). By the time of his trial, Mr. Cole will have waited for more than a year and a half since
4 his arraignment. He has been incarcerated the entire time and has never waived his right to a
5 speedy trial. And this incarceration has been an excruciating experience. Mr. Cole has been
6 incarcerated through one of the most difficult times to be held in custody in memory. The COVID
7 pandemic resulted in Mr. Cole: 1) being held in conditions where he was forced to be exposed to
8 COVID-19 and unable to do anything about it, 2) being held repeatedly in lockdown conditions,
9 without being able to see or talk to anyone, and 3) actually contracting COVID. An 18-month
10 delay is significant in almost any context; to Mr. Cole it has been interminable. And it seems
11 eminently fair that the Court should consider the impacts of the pandemic on Mr. Cole’s
12 incarceration as it considers whether the pandemic justified the trial shutdown which inevitably
13 resulted in this kind of impact on Mr. Cole (and of course many others).

14
15 The third factor also weighs in favor of dismissal because re-prosecution will undermine
16 the purpose of the STA and compromise the administration of justice. “Congress designed the
17 Speedy Trial Act in part to protect the public’s interest in the speedy administration of justice,
18 and it imposed the sanction of dismissal under § 3162 to compel courts and prosecutors to work
19 in furtherance of that goal.” United States v. Lloyd, 125 F.3d 1263, 1268 (9th Cir. 1997). And,
20 this is not “an isolated unwitting violation.” Taylor, 487 U.S. at 339. Rather, many defendants in
21 this district are undoubtedly faced with the same set of circumstances as is Mr. Cole. A significant
22 sanction is necessary to curtail the disregard for the duty to bring criminal cases to trial
23 expeditiously. Id. at 342 (“It is self-evident that dismissal with prejudice always sends a stronger
24 message than dismissal without prejudice, and is more likely to induce salutary changes in
25

1 procedures, reducing pretrial delays.”).

2 Because analysis of each relevant statutory factor weighs in favor of a dismissal with
3 prejudice, the Court should enter an order prohibiting the government from seeking a new
4 indictment on these charges.

5 **B. The Court should dismiss the indictment based on violation of Mr. Cole’s Sixth
6 Amendment Speedy Trial Right.**

7 The indictment should also be dismissed for the independent violation of Mr. Cole’s
8 constitutional right to a speedy trial.

9 “The Sixth Amendment guarantees that criminal defendants ‘shall enjoy the right to a
10 speedy and public trial’” United States v. Mendoza, 530 F.3d 758, 762 (9th Cir. 2008) (citing
11 U.S. Const. amend. VI). The Sixth Amendment provides that “[i]n all criminal prosecutions, the
12 accused shall enjoy the right to a speedy and public trial, by an impartial jury.” U.S. Const. amend.
13 VI. The Supreme Court has held that the right to a speedy trial is “one of the most basic rights
14 preserved by our Constitution.” Klopfert v. North Carolina, 386 U.S. 213, 223, 226 (1967). The
15 right to a speedy trial attaches at the initiation of judicial proceedings. United States v. Gouveia,
16 467 U.S. 180, 185-86 (1984); United States v. Mills, 810 F.2d 907, 909 (9th Cir. 1987).

17 The Supreme Court has rejected inflexible approaches to determining whether a
18 constitutional speedy trial violation has occurred. See Barker v. Wingo, 407 U.S. 514, 529 (1972).
19 Relying on Barker, the Ninth Circuit’s balancing test examines the conduct of the parties and the
20 impact of the delay on the defendant as well as the public, which shares in the right to a speedy
21 trial. United States v. Myers, 930 F.3d 1113, 1119 (9th Cir. 2019). Myers requires an examination
22 of four, non-exhaustive factors: i) the length of the delay, ii) the reason for the delay, iii) the
23 defendant’s assertion of his right to a speedy trial, and iv) whether there is prejudice to the
24 defendant. Myers, 930 F.3d at 1119. These factors are balanced against each other on a case-by-
25

1 case basis. Id. No one factor is necessary or sufficient; rather, they must be considered together,
2 along with any other relevant circumstances to the inquiry. Id.

3 These factors all favor dismissal. First, as described above, a delay of 18 months is quite
4 lengthy for an incarcerated person in any case, but in this case it has been horrific. Second, also
5 as discussed above, the delay in this matter is due to the Court's refusal to implement protocols
6 for jury trials. Though was of course done without malice, this fact should be considered since
7 the ultimately responsibility for such circumstances must rest with the Court rather than the
8 defendant. Third, Mr. Cole has never waived his right to a speedy trial, and other than the very
9 first continuance either has not been given an opportunity to object to continuances or has asserted
10 an objection. In any event, the idea that the failure of the defendant to demand a trial gives rise
11 to a finding of waiver has been rejected. Barker, 407 U.S. at 530.

12 Finally, the prejudice to Mr. Cole from the delay in this matter is hard to overstate. In
13 considering this factor, the Supreme Court held that a court should evaluate the three interests the
14 speedy trial right was designed to protect: (1) to prevent oppressive pretrial incarceration; (2) to
15 minimize anxiety and concern of the accused; and (3) to limit the possibility that the defense will
16 be impaired. Barker v. Wingo, 407 U.S. at 532.

17 Throughout the case, Mr. Cole has been in pretrial incarceration. The speedy trial right
18 "was designed to protect," first, "oppressive pretrial incarceration." A period of 18 months of
19 incarceration is far greater than the 70 day limit to be brought to trial; it is also far greater than
20 the 90 days by which a defendant must be tried or released. See 18 U.S.C. § 3164(b). The
21 statutory measure of the constitutional right, therefore, would clearly deem the length of time in
22 which Mr. Cole has been in pretrial incarceration "oppressive." The Supreme Court in Barker v.
23 Wingo stated:
24
25

1 We have discussed previously the societal disadvantages of lengthy pretrial
2 incarceration, but obviously the disadvantages for the accused who cannot obtain
3 his release are even more serious. The time spent in jail awaiting trial has a
4 detrimental impact on the individual. It often means loss of a job; it disrupts family
5 life; and it enforces idleness. Most jails offer little or no recreational or rehabilitative
6 programs. The time spent in jail is simply dead time.

7 Barker v. Wingo, 407 U.S. at 532 – 533.

8 The “anxiety and concern of the accused” has been greatly affected as well: Mr. Cole has
9 faced heightened risk of contagion because of the nature of carceral settings, he has in fact
10 contracted COVID-19 during an outbreak of the virus at FDC SeaTac, and he has lived with an
11 awareness of the persistent closure of the federal courthouse, and the attendant uncertainty, for
12 almost the entire 18-month period of his incarceration.

13 A court balances all four of these factors in a practical, case-by-case analysis and none of
14 the four factors is “either a necessary or sufficient condition to the finding of a deprivation of the
15 right of speedy trial. Rather, they are related factors and must be considered together with such
16 other circumstances as may be relevant.” Barker v. Wingo, *supra*, at 533. Mr. Cole has been
17 sitting in custody for 18 months following the indictment in this case and he has never waived his
18 right to a speedy trial. Whether or not this Court finds that the delay is based on the COVID-19
19 pandemic, as opposed to any failure by the Court to adequately safeguard Mr. Cole’s statutory
20 rights under the Speedy Trial Act, it is clear that the Barker v. Wingo factors are relatively
21 unaffected by whose fault the delay is. A violation of Mr. Cole’s rights in this case amounts to a
22 constitutional violation under the governing case law.
23
24
25

V. CONCLUSION

For the foregoing reasons, the Court should dismiss the indictment with prejudice.

Respectfully submitted this 13th day of August, 2021.

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The Honorable John C. Coughenour

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

CAMERON SHEA, *et al.*

Defendants.

NO. CR20-032JCC

GOVERNMENT'S MOTION
REQUESTING CONTINUANCE OF
TRIAL DATE

NOTE ON MOTION CALENDAR:
February 12, 2021

The United States of America, by and through Brian T. Moran, United States Attorney for the Western District of Washington, and Thomas M. Woods, Assistant United States Attorney for said District, respectfully submits this motion to continue trial.

In this case, Kaleb Cole and Cameron Shea are charged with a variety of crimes stemming from their alleged plot to intimidate journalists, Jewish people, and people of color, as part of their alleged involvement in Atomwaffen.¹ Trial is currently scheduled for March 22, 2021.

On December 30, 2020, the Court ordered that all trials scheduled to occur before March 31, 2020 were continued pending further order of the Court. The Court found:

¹ Two other defendants were charged, but have since pleaded guilty, with one already having been sentenced.

1 In the last three months, the daily number of positive cases, hospitalizations,
2 and deaths have significantly increased in the Western District of Washington.
3 This has foreclosed the possibility of further increasing the number and type of
4 in-court proceedings. A statewide vaccination effort has begun, with the first
5 doses going to “Phase 1A” groups, which include frontline health workers and
6 long-term care residents and staff. The distribution of the vaccine to other
7 members of the general public is anticipated to proceed in phases through the
8 coming months. At this time, it appears likely that the majority of individuals
9 with business in the Courthouses, including potential jurors, will not be fully
10 vaccinated before March 31, 2021. Limiting the size and frequency of
11 gatherings remain critical to preventing serious injury and death from COVID-
12 19.

13 General Order 18-20 at 1-2.

14 Since the Order was issued, COVID-19 rates in this community remain high, and
15 there is a new concern over potential variants that appear to make the virus more easily
16 transmittable.

17 This case presents unique challenges, given the COVID-19 pandemic. First, a trial in
18 this case likely would extend into a second week of Court time. Second, there are expected
19 to be multiple witnesses from a variety of states, to include Florida, Arizona, and Texas, all
20 states with significant COVID-19 rates. Third, it is possible that a wider potential jury pool
21 will be required because this matter was the subject of a fair amount of publicity.

22 //

23 //

24 //

Presented to the Court by the foreman of the Grand Jury in open Court, in the presence of the Grand Jury and FILED in the U.S. DISTRICT COURT at Seattle, Washington August 5, 2020

The Honorable John C. Coughenour

WILLIAM M. McCOOL, Clerk

By  Deputy

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE

UNITED STATES OF AMERICA, Plaintiff,

NO. CR20-032JCC

SUPERSEDING INDICTMENT

v.

CAMERON BRANDON SHEA, KALEB J. COLE, TAYLOR ASHLEY PARKER-DIPEPPE, JOHNNY ROMAN GARZA, Defendants.

The Grand Jury charges that:

COUNT 1

(Conspiracy to Mail Threatening Communications, to Commit Stalking, and to Interfere with Federally Protected Activities)

Beginning at a time unknown, but not later than November 2019, and continuing until on or about February 26, 2020, at King County, within the Western District of Washington, and elsewhere, CAMERON BRANDON SHEA, KALEB J. COLE, TAYLOR ASHLEY PARKER-DIPEPPE, and JOHNNY ROMAN GARZA, along with others known and unknown, did knowingly and willfully conspire, combine, confederate, and agree to commit offenses against the United States, to wit: Mailing Threatening

1 | Communications, in violation of Title 18, United States Code, Section 876(c); Stalking,
2 | in violation of Title 18, United States Code, Section 2261A; and Interfering with
3 | Federally Protected Activities, in violation of Title 18, United States Code, Section 245.

4 | **A. Object of the Conspiracy**

5 | 1. The object of the conspiracy was for CAMERON BRANDON SHEA,
6 | KALEB J. COLE, TAYLOR ASHLEY PARKER-DIPEPPE, and JOHNNY ROMAN
7 | GARZA to threaten journalists and advocates who have worked to expose anti-Semitism,
8 | particularly Jews and other minorities, with the intent to cause fear of bodily harm,
9 | harass, intimidate, and retaliate against reporting unfavorable to the Atomwaffen
10 | Division, a neo-Nazi group.

11 | **B. Manner and Means of the Conspiracy**

12 | 2. It was part of the conspiracy that KALEB J. COLE and CAMERON
13 | BRANDON SHEA helped to create threatening posters, which included a poster of a
14 | person in a skull mask holding a Molotov cocktail in front of a house, another depicting
15 | people in skull masks holding guns with the messages "These People Have Names and
16 | Addresses" and "Death to Pigs," and another littered with swastikas with the message,
17 | "We Know Where You Live." All three posters contained a place for the recipient's
18 | personal information, including their home address, and warned "You Have Been Visited
19 | By Your Local Nazis."

20 | 3. It was part of the conspiracy that CAMERON BRANDON SHEA, KALEB
21 | J. COLE, TAYLOR ASHLEY PARKER-DIPEPPE, and JOHNNY ROMAN GARZA
22 | conducted research online to identify journalists and advocates to threaten, specifically
23 | targeting Jews and other minorities.

24 | 4. It was part of the conspiracy that CAMERON BRANDON SHEA, KALEB
25 | J. COLE, TAYLOR ASHLEY PARKER-DIPEPPE, and JOHNNY ROMAN GARZA
26 | compiled the home addresses and other personal information for the above-mentioned
27 | journalists and advocates, using online sources.

1 5. It was part of the conspiracy that CAMERON BRANDON SHEA, KALEB
2 J. COLE, TAYLOR ASHLEY PARKER-DIPEPPE, and JOHNNY ROMAN GARZA
3 planned and plotted to threaten the above-mentioned journalists and advocates through
4 online communications among themselves and others.

5 6. It was part of the conspiracy that CAMERON BRANDON SHEA, KALEB
6 J. COLE, TAYLOR ASHLEY PARKER-DIPEPPE, and JOHNNY ROMAN GARZA
7 agreed to mail the threatening posters to the journalists and advocates, and to affix the
8 posters on their residences.

9 7. It was part of the conspiracy that CAMERON BRANDON SHEA, KALEB
10 J. COLE, TAYLOR ASHLEY PARKER-DIPEPPE, and JOHNNY ROMAN GARZA
11 took steps to hide and conceal their actions, including using an encrypted chat service and
12 wearing disguises during the operation.

13 **C. Overt Acts**

14 8. During and in furtherance of the conspiracy, at King County, within the
15 Western District of Washington, and elsewhere, one or more of the conspirators
16 committed one or more of the following overt acts, among others:

17 a. In December 2019, KALEB J. COLE helped create a collection of
18 threatening posters that were designed to threaten bodily harm, intimidate, harass, and
19 retaliate against reporters and advocates, particularly Jews and other minorities.

20 b. On or about January 25, 2020, CAMERON BRANDON SHEA
21 purchased stamps and packaging tape, and mailed threatening posters to a reporter and
22 two individuals associated with the Anti-Defamation League.

23 c. On or about January 25, 2020, TAYLOR ASHLEY PARKER-
24 DIPEPPE affixed a threatening poster on a residence that he believed belonged to a
25 journalist.

26 d. On or about January 25, 2020, JOHNNY ROMAN GARZA and
27 another individual affixed a threatening poster on the home of an editor of a local Jewish
28 publication.

1 All in violation of Title 18, United States Code, Section 371.

2 **COUNT 2**

3 **(Mailing Threatening Communications)**

4 On or about January 25, 2020, at King County, within the Western District of
5 Washington, and elsewhere, CAMERON BRANDON SHEA, KALEB J. COLE,
6 TAYLOR ASHLEY PARKER-DIPEPPE, and JOHNNY ROMAN GARZA knowingly
7 and willfully did deposit in an authorized depository for mail matter, to be sent and
8 delivered by the Postal Service, and knowingly caused to be delivered by the Postal
9 Service according to the directions thereon, a communication, addressed to Victim #1, a
10 news reporter, and containing a threat to injure Victim #1.

11 The Grand Jury further alleges that this offense was committed during and in
12 furtherance of the conspiracy charged in Count 1, above.

13 All in violation of Title 18, United States Code, Section 876(c).

14 **COUNT 3**

15 **(Mailing Threatening Communications)**

16 On or about January 25, 2020, at King County, within the Western District of
17 Washington, and elsewhere, CAMERON BRANDON SHEA, KALEB J. COLE,
18 TAYLOR ASHLEY PARKER-DIPEPPE, and JOHNNY ROMAN GARZA knowingly
19 and willfully did deposit in an authorized depository for mail matter, to be sent and
20 delivered by the Postal Service, and knowingly caused to be delivered by the Postal
21 Service according to the directions thereon, a communication, addressed to Victim #2, a
22 person associated with the Anti-Defamation League, and containing a threat to injure
23 Victim #2.

24 The Grand Jury further alleges that this offense was committed during and in
25 furtherance of the conspiracy charged in Count 1, above.

26 All in violation of Title 18, United States Code, Section 876(c).

COUNT 4
(Mailing Threatening Communications)

On or about January 25, 2020, at King County, within the Western District of Washington, and elsewhere, CAMERON BRANDON SHEA, KALEB J. COLE, TAYLOR ASHLEY PARKER-DIPEPPE, and JOHNNY ROMAN GARZA knowingly and willfully did deposit in an authorized depository for mail matter, to be sent and delivered by the Postal Service, and knowingly caused to be delivered by the Postal Service according to the directions thereon, a communication, addressed to Victim #3, a person associated with the Anti-Defamation League, and containing a threat to injure Victim #3.

The Grand Jury further alleges that this offense was committed during and in furtherance of the conspiracy charged in Count 1, above.

All in violation of Title 18, United States Code, Section 876(c).

COUNT 5
(Interference with Federally Protected Activity)

On or about January 25, 2020, at King County, within the Western District of Washington, and elsewhere, CAMERON BRANDON SHEA, KALEB J. COLE, TAYLOR ASHLEY PARKER-DIPEPPE, and JOHNNY ROMAN GARZA, by threat of force, willfully intimidated and interfered with, and attempted to intimidate and interfere with, Victim #2, a Jewish woman associated with the Anti-Defamation League, because of Victim #2's religion and because she was and had been enjoying employment, and the perquisites thereof, by a private employer.

The Grand Jury further alleges that the offense involved the threatened use of a dangerous weapon, explosives, and fire.

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1 The Grand Jury further alleges that this offense was committed during and in
2 furtherance of the conspiracy charged in Count 1, above.

3 All in violation of Title 18, United States Code, Section 245.
4


5 A TRUE BILL:

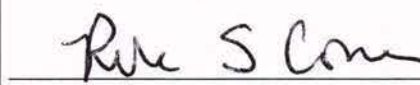
6 DATED: 8/5/2020
7

8 (Signature of Foreperson redacted pursuant to
9 the policy of the Judicial Conference of the
10 United States)

11 FOREPERSON

12 
13 _____
14 BRIAN T. MORAN
15 United States Attorney

16 
17 _____
18 TODD GREENBERG
19 Assistant United States Attorney

20 
21 _____
22 THOMAS M. WOODS
23 Assistant United States Attorney
24
25
26
27
28



UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,	)	NO. CR20-032 JCC
)	
Plaintiff,)	
	)	USAO NO. 2018R00225
vs.)	
)	
KALEB COLE,)	
)	
Defendant.)	

TRANSCRIPT OF SOUND CLIP 203-0109-002

PRODUCED AS WORK PRODUCT FOR:

22 journalist thing. Right?

23 MALE #1: Right. Right.

24 MR. COLE: Oh, yeah. So basically, yeah,

25 we're having a bunch of the guys around the country,

Header/Footer Line 3 of 7

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1 um, well, find the -- film the -- film the addresses

2 of some of the journalists all over the place.

3 MALE 2: Like the Thayers and shit?

4 MR. COLE: Huh?

5 MR. DENTON: Like the Thayers and all of

6 that?

7 MALE #1: He lives -- he lives in the

8 dumpster. No, we're not going to.

9 MR. DENTON: Well, Thayer is like dumpster
10 diving. Like we're talking bigger.Okay.

11
12 MR. COLE: Oh, yeah, like, you know, actual
13 anchors and shit. And, you know, just admittedly kind
14 of pulling -- pulling a little bit of the Antifa thing
15 in that where, you know, it's just like, hey, we know
16 where you live. Don't fuck with us.

17 MALE 2: Just a reminder?

18 MALE #1: Yeah.

19 MR. COLE: Just a little, a little friendly
20 reminder, right on their doorstep.

21 MR. DENTON: Basically what they're doing
22 to us exactly.

23 MR. COLE: Yeah.

24 MALE #1: Is it -- is it like people who
25 have specifically reported on AWD or just general?

Header/Footer Line 3 of 7

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1 Like what's -- what's the finder?

2 MR. COLE: Well, at least -- at least as
3 far as our crew up in Washington, yes.

4 MALE #1: Oh, okay. All right.

5 MR. DENTON: I would say that, I would say
6 that --

7 MR. COLE: And a few extras.

8 MALE #1: Right. Right.

9 MR. DENTON: I would say that like
10 Washington would be like the primary sort of thing for
11 that, just considering how hard they fucking came down
12 on you and stuff like that.

13 MALE #2: Right.

14 MR. COLE: Yep.

15 MR. DENTON: You know what I'm saying?

16 MR. COLE: Oh, yeah.

17 MALE #1: So what's-his-face with the
18 business card definitely?

19 MR. COLE: Oh, the business card
20 (inaudible).

21 MALE #1: Yeah, I saw the business card.
22 Yeah, I saw the business card, so yeah.

23 MR. COLE: I -- I have -- I have both of
24 them up here.

25 MR. DENTON: Oh, the guy that dropped it

Header/Footer Line 3 of 7

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1 off here to --

2 MR. COLE: Oh, yeah. I -- I have both his
3 cell and office number, and now we have his address,
4 or possible address.

5 MR. DENTON: Oh, we should -- we should --
6 we should get someone in Denver, because remember that
7 reporter that was fucking with us?

8 MR. COLE: But the problem, though, with --
9 with Colorado is, um -- and I do not want to -- I do
10 not ever want to fucking see this again. And this was
11 something that I was a little bit pissed off at Ryan

12 about when it came to his info sec, because of, you
13 know, mentioning, oh, yeah, well, you know, blah,
14 blah, blah, we're the only two in, you know, fucking
15 this part of Colorado. And then, you know, they both
16 get doxed.

17 MALE 2: Right. Shocking.

18 MR. COLE: And then you have Antifa being
19 like, oh, wow, the whole -- the whole, uh -- this
20 whole chapter? I'm sorry, this whole cell is doxxed. I
21 don't want to see that again.

22 MALE 2: Right. Right. Exactly.

23 MR. COLE: At all. And, I mean, while,
24 yes, there are some -- some initiates there, at the
25 same time, as far as -- as far as the public is

Header/Footer Line 3 of 7

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1 concerned, the whole thing is dust, so it can kinda
2 compromise them a little bit, but I don't know, it
3 kinda -- you -- you would have to -- it's a little
4 more delicate there, it seems.

5 MR. DENTON: I -- I guess, but like --

6 MR. COLE: But then -- then again, but --

7 MR. DENTON: -- you would have to play it

8 by thumb, though, like considering.

9 MR. COLE: But then again, if you were to
10 have it like all over the fucking place, then it can
11 seem bigger. You know?

12 MR. DENTON: I mean, I guess. But, I mean,
13 that's more of what I was thinking of, what you just
14 said.

15 MR. COLE: Bigger or just -- just generally
16 more nebulous as say, well --

17 MR. DENTON: To where it's like Ryan --

18 MR. COLE: To where, okay, it very well may
19 be.

20 MR. DENTON: Ryan and James Mason aren't
21 the only ones that are there sort of thing.

22 MR. COLE: Oh, no, I was talking about
23 Dancer Viking and what they're doxed into.

24 MR. DENTON: Oh, yeah. Yeah, that's true.
25 Well, Dancer Viking isn't really even around any more.

Header/Footer Line 3 of 7

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1 MR. COLE: Hum um. Nonetheless, they think
2 he is.

3 MALE #1: I saw he went in and removed
4 himself. I saw when he was active on the groups.

5 MR. COLE: Oh, yeah.

6 MALE #1: I'd go in and like dink in to
7 make sure he was -- he was off.

8 MR. COLE: Yeah.

9 MALE #1: So he was -- he was from
10 Colorado? I thought he was from Washington. No.

11 MR. COLE: No, no, no, he's Colorado.

12 MALE #1: Where was that tree he was
13 sitting in?

14 MR. DENTON: Wasn't he in Colorado Springs
15 or something like that?

16 MR. COLE: No.

17 MALE #1: Or am I thinking about
18 somebody different?

19 MR. COLE: That was -- that was -- I
20 thought that was Oregon or something, but that was an
21 old picture when he was doing the, I guess the Earth
22 First stuff or whatever he was doing.

23 MALE #1: Oh, okay.

24 MR. COLE: I believe that was Oregon.
25 And, um, yeah. Um, so, I mean, if they were to do

Header/Footer Line 3 of 7

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1 anything in Colorado, they have to make any actions
2 that they do look a lot more nebulous-looking.

3 MALE 2: Right.

4 MR. COLE: For all we know, it could be
5 supporters.

6 MR. DENTON: Yeah.

7 MR. COLE: For all we know, it could be a
8 rogue cell

9 MALE #1: Sure.

10 MR. COLE: Or new guys.

11 MR. DENTON: Just as long as it's not
12 attributed for you, right.

13 MALE #1: Who's -- who's -- who's --
14 who's Florida going after, just out of interest?

15 MR. COLE: To be honest, in most cases it's
16 a little more random.

17 MALE #1: Ah.

18 MR. COLE: But -- but, you know, there's
19 some focus, some general focus on, okay, say somebody
20 who's focused on, you know, racial relations or
21 something.

22 MALE #1: Um hum.

23 MR. COLE: Like one of our extras in
24 Washington is the Director of the Seattle ADL.

25 MR. DENTON: Oh, there you go.

Header/Footer Line 3 of 7

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1 MALE #1: Oh, okay. Yeah. Yeah. I've
2 harassed ADL in my time. S-H-H-H-H. S-H-H-H-H.

3 MR. COLE: But, yeah, see, you have the
4 thing with the whole bullshit with the Base recently.

5 MALE #1: Um hum.

6 MR. COLE: Where, you know, doing it wrong.
7 And then, in this case, doing it a little more right.

8 MALE #1: Yeah.

9 MR. COLE: Because what they did, and I
10 don't know if you heard about this, but what the guys
11 on the Base ended up doing is -- is they ended up
12 getting the identifying information of a -- some
13 Antifa --

14 MR. DENTON: It was the I don't speak
15 German podcast.

16 MR. COLE: Yeah. Yeah, some podcaster,
17 really somebody not relevant. And -- and they found
18 the place that he used to live, but -- and this is the
19 most ironic part -- somebody with the same name ends
20 up fucking going in, splitting up that property after
21 he's long gone.

22 MR. DENTON: Um hum.

23 MR. COLE: And then they go to the house
24 and then they shine a bunch of lights around and shit,
25 but there's a couple of them and -- and, uh, you know,

Header/Footer Line 3 of 7

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1 this totally unrelated family is living there.

2 MALE #1: Yeah. There was like -- there
3 was like a mother with her kid --

4 MR. COLE: And then the guy --

5 MALE #1: -- in the fucking living room
6 and there's these two guys in skull masks and body
7 armor with Base symbols on their porch.

8 MR. COLE: Yeah. Yeah. Yeah, full-on
9 plate carrier with the mags in there. And then, you
10 know, one guy is standing right in front of the door
11 taking, you know, posing for a picture and the other
12 guy is taking it and then they're just standing there
13 for a few minutes and then they leave.

14 Meanwhile, in this case, there's like an
15 okay, slap that shit on the door and wait until they
16 see it.

17 And, uh, see, this is -- this is one thing
18 that I did like about Lanzer was his -- his creativity

19 in this aspect.

20 MR. DENTON: Oh.

21 MR. COLE: And this is the very first thing
22 that he did, when he did the flier and shit. He went
23 to a -- a synagogue, whatever, but -- but this is the
24 detail that I liked, not the flyering, no. He took
25 one of those old rag dolls.

Header/Footer Line 3 of 7

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1 MR. DENTON: Um hum.

2 MR. COLE: And then he took a kitchen knife
3 and stuck it to a fucking tree nearby.

4 MALE 2: They got the message.

5 MR. COLE: That stuff -- that stuff made
6 the news.

7 MR. DENTON: Yeah, right.

8 MR. COLE: It was just like, okay, let's
9 recreate that a little bit maybe.

10 MALE 2: It's just like the shit we
11 used to do. Remember, back in the like early -- in
12 the late nineties? Fucking, I mean, we used to do
13 some of that shit too. At the end of the day, at
14 least they're aware of what's happening, you know?

15 MR. COLE: Yeah.

16 MR. DENTON: We watch you, you watch us.

17 MR. COLE: And on -- on the legal level,
18 it's not a threat, man.

19 MALE #1: Do you remember when I used to
20 do flyerings out of -- out of my house in the suburbs?
21 I'd be at work. Right? So I had -- I had another guy
22 that worked with me, so I had two skinheads living at
23 my house. And then we had a crew of about maybe five
24 other people. So it was a decent little, for a -- for
25 a local, local whatever.

Header/Footer Line 3 of 7

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1 MR. COLE: Ain't not too bad.

2 MALE #1: I'd -- I'd get home from work
3 and we'd go out with like 500 fucking flyers.

4 MR. COLE: Um hum.

5 MALE #1: And we'd just get on the road
6 north to the suburbs to Philadelphia and we hit a
7 neighborhood. Like if we were going to hit a house,
8 we'd put like, okay, there's -- there's like six
9 flyers in your mailbox, flyers on each vehicle, go
10 around the side, stuffing flyers in the fucking fire
11 escapes. I mean, it was like, you know.

12 MR. DENTON: Shawn -- Shawn actually had
13 the brilliant idea of, uh, you know, like -- like the
14 whole Boomer thing that's going on?

15 MR. COLE: Sure.

16 MR. DENTON: Like Shawn had the brilliant
17 idea of, uh, like going to like a fucking Wal-Mart or
18 something like that and finding, like -- like just
19 kinda like standing there for like an hour looking at
20 who's getting out of their vehicles, whether they're
21 Boomers or not, get spray adhesive if they're fucking
22 Boomers, because they're the most likely to bitch
23 about something like this. Right?

24 MR. COLE: Yeah, right.

25 MR. DENTON: So -- so like just go to their

Header/Footer Line 3 of 7

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1 fucking vehicles when they go inside of the store --

2 MR. COLE: Spray that shit.

3 MR. DENTON: And just, you know, right
4 there on their fucking -- like right there, like on
5 the fucking front window to where they have to tear it
6 off. And then it's already stuck on there, so they
7 have to get repairs. And then just fucking pile out
8 of there, you know?

9 MALE #1: Jesus.

10 MR. COLE: How much you want to bet that
11 they won't realize they can go right back into the
12 Wal-Mart and get the adhesive remover?

13 MR. DENTON: Or Goo-Off or some sort of
14 shit, you know?

15 MALE #1: Yeah.

16 MR. COLE: The -- it's like this orange
17 stuff that you can get in particular that works really
18 well on that stuff, yeah, because, uh --

19 MR. DENTON: Well, the reason --

20 MR. COLE: -- my last really, really steady
21 job I worked on refurbishing Coin Star machines.

22 MR. DENTON: Oh, yeah?

23 MR. COLE: Yeah.

24 MR. DENTON: No shit?

25 MR. COLE: And -- and oftentimes you were

Header/Footer Line 3 of 7

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1 working with a spray adhesive, and that was ironically
2 -- ironically the same, exact stuff that we'd use on
3 universities up north.

4 MALE #2: Oh, okay.

5 MR. COLE: And, yeah, there was all kinds
6 of nice things about that job.

7 MALE #1: Sure.

8 MR. DENTON: (Inaudible.)

9 MR. COLE: Oh, yeah. Basically the same
10 thing as your desktop but, you know, that big bulky
11 machine and other things that are sometimes left
12 there, but it's been a while.

13 MALE 2: So are we using -- are they
14 doing the same flyer? Is everybody just using the
15 same flyer? What are they doing? Or they just all
16 different?

17 MR. COLE: So more or less -- well, most of
18 this shit is on the onion site. There's -- there's
19 --

20 MR. DENTON: You have access to that?

21 MALE #1: Yeah. Yeah.

22 MR. COLE: Yeah, there's a few that are not
23 on there, yet anyway.

24 MR. DENTON: Yeah.

25 MR. COLE: But once we get a good -- a

Header/Footer Line 3 of 7

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1 good, you know, bunch together, then we'll just upload

2 it all at once.

3 MR. DENTON: Yeah.

4 MR. COLE: And, yeah, but -- well, we've
5 still got a little ways to go.

6 MALE #1: Do we already have the
7 personalized ones? Do people already have the
8 personalized ones for the people?

9 MR. COLE: Yeah, I've already sent those
10 out. Yeah, basically there's a few that I made.
11 Well, there's three or four of them. One of them is
12 just kinda basic. Well, these personal ones,
13 personalized ones don't actually have the onion
14 address on there, because just -- just for, you
15 know -- I mean, it just has the radiation shield on
16 it.

17 MALE #1: Um hum.

18 MR. COLE: It's just like well, those who
19 figure it out --

20 MALE #1: Sure. Sure.

21 MR. COLE: -- figure it out, but at the
22 same time --

23 MR. DENTON: It's recognizable at this
24 point, right?

25 MR. COLE: It's recognizable, but it can't

Header/Footer Line 3 of 7

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1 necessarily specifically be attributed -- attributed
2 to us to where it could be construed -- construed as a
3 threat on the legal scale.

4 MALE 2: So its not gonna say Attomwaffen then

5 MR. COLE: Yeah.

6 MALE 2: Okay.

7 MR. COLE: And, uh, yeah, just -- just the
8 shield.

9 MALE 2: Yeah.

10 MR. COLE: Because, hey, you know, for all
11 anybody knows, it's supporters and stuff and --

12 MALE 2: Yeah.

13 MR. COLE: And I was originally wanting to
14 make kind of a compilation piece out of it. I mean,
15 I'll still probably do that. It's just for some
16 general flyering and then some -- a little bit of a
17 news coverage stuff. And then that thing with the
18 Pickalinny out of Congress --

19 MALE #1: Um hum.

20 MR. COLE: -- when the -- I don't know if
21 you saw that at all.

22 MR. DENTON: Which one?

23 MR. COLE: Where they're talking about
24 White -- White, uh, Supremacists.

25 MR. DENTON: It was basically a giant -- it

Header/Footer Line 3 of 7

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1 was basically a giant hearing where they were trying
2 to present white nationalism as being like a
3 legitimate like sort of domestic threat sort of a
4 thing and, um ...

5 MALE #1: Um hum.

6 MR. COLE: And it was funny. There was
7 this one lady. She was talking about -- she was
8 talking about specifically about Atomwaffen and the
9 base and stuff like that. And then -- it was like
10 what are the names of some of these group? And she's like, you know, I'm
11 willing to speak about that on the record, but -- but
12 I don't want to talk -- I don't want to say that right
13 now.

14 MR. DENTON: I don't want to dignify them
15 with a response.

16 MR. COLE: Hold on. Hold on. Not only
17 that, she said because they're going to use this in a
18 -- in a promotional video or something like that.

19 MALE 2: You're like yep.

20 MR. COLE: And then -- and then Pickalunny,
21 you know, a couple of minutes later name-drops us.
22 And then -- and then she and the other guy sitting
23 next to her are just looking at her like Goddamn it.
24 MALE #1: Yeah, yeah, that was
25 hilarious.

Header/Footer Line 3 of 7

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1 MR. COLE: And then as soon as -- as soon
2 as I saw that I'm like, well, that -- that settles it.
3 MALE #1: Seriously?
4 MR. COLE: Thank you. This -- you're
5 getting exactly what you said. That's happening.
6 And, uh, yeah, it's happening.
7 MALE #2: Is anybody hitting her?
8 MR. COLE: Huh?
9 MALE #2: Is anybody hitting her?
10 MR. COLE: Oh, no, not to my knowledge. I
11 mean, I might have to look it up, but if they're in
12 D.C. or something, well, that might be challenging.
13 MR. DENTON: Dude, you know what would be
14 fucking hilarious?
15 MR. COLE: Huh?
16 MR. DENTON: You know what would be fucking

17 hilarious? You know how Andy Ngo is supposedly
18 supplying us with hit lists and shit like that?

19 MALE #1: Oh, God. Oh, Jesus.

20 MR. DENTON: What if we fucking hit him?
21 That would settle the fucking argument right there.

22 MR. COLE: Yeah. Yeah, 'cuz -- 'cuz it's
23 kind of getting irritating seeing all of that on
24 Twitter.

25 MR. DENTON: Well, what's annoying, what's

Header/Footer Line 3 of 7

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1 really annoying is that these people who make --

2 MR. COLE: They keep saying the same
3 Goddamn thing.

4 MR. DENTON: What's -- what -- what gets
5 annoying, especially to me, like whenever I'm trying
6 to look for news about us and stuff like that, is that
7 it's just kind of like --

8 MR. COLE: All you ever see is Andy Ngo.

9 MALE #1: My God! And it's like -- like
10 it's weird. It's damn weird, you know?

11 MR. DENTON: And they're -- they're --

12 MR. COLE: They're projecting it on the

13 sides of (inaudible) and shit.

14 MALE #1: Seriously. Yeah, I saw that.

15 MR. COLE: And I'm like, oh, damn.

16 MR. DENTON: Well, what would be more
17 hilarious is that if he got hit. But they're
18 -- they're even going to the extent of like -- of like
19 blaming like -- like if somebody on Twitter says like,
20 "Oh, you're a retard. Why do you think that they're"
21 -- like Andy Ngo not doing this. He'll start fucking
22 saying that he's providing kill lists for (inaudible)
23 and that sort of thing.

24 MALE #1: Sure. Sure.

25 MR. DENTON: And it's just kinda like that

Header/Footer Line 3 of 7

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1 would be fucking hilarious if somebody were to hit
2 him. I mean --

3 MR. COLE: Well, I mean -- well, I could --
4 I could talk to the --

5 MR. DENTON: You're -- you're on the list.

6 MR. COLE: I could talk to one of the
7 Oregon guys.

8 MR. DENTON: You're -- you're on the list,
9 Andy.

10 MALE #1: So Washington you've got --
11 you've got the T.V. anchor. Right?
12 MR. COLE: Yeah, the T.V. anchor.
13 MALE #1: The T.V. anchor?
14 MR. COLE: The ADL Director. And the
15 -- oh, oh, Seattle Times.
16 MALE #1: Seattle Times?
17 MR. COLE: A couple of them from the
18 Seattle Times.
19 MALE #1: Uh-huh. Uh-huh.
20 MR. COLE: Because of talking about me.
21 MALE #1: Sure. Sure.
22 MR. COLE: Those are the main ones I
23 remember off the top of my head. There might be one
24 or two more, but --
25 MALE #1: And who is Florida? Florida

Header/Footer Line 3 of 7



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1 was doing what? They're doing?
2 MR. COLE: Oh, shit, they have like five or
3 six different people.
4 MALE #1: Really?
5 MR. COLE: Oh, yeah. Same thing with Ohio,

6 I think, but basically, if you want to be technical,
7 they're basically the same large crew because you know
8 Rabbit?

9 MALE #1: Oh, yeah. So they're
10 conjoined. Yeah.

11 MR. COLE: Because Rabbit moved on.

12 MR DENTON: Who is Rabbit again?

13 MR. COLE: Rabbit was one of the guys that
14 was originally part of the Florida crew, but because
15 of Devin's bullshit, he fucking took a distance.

16 MR. DENTON: So he's original, but he's
17 come back?

18 MR. COLE: Yeah.

19 MR. DENTON: Okay.

20 MR. COLE: So, yeah, he's an original that
21 came back. And, uh, he moved to Ohio and started a
22 new crew.

23 MALE #1: Hmm...

24 MR. COLE: You know, like fucking five or
25 six guys he has. And then his brother, Lazarus, is

Header/Footer Line 3 of 7

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1 running things in Florida now.

2 And -- and the funny thing is too, is I

3 think part -- this is part of why they've been so
4 effective is they're more or less second generation.
5 They've been raised in this shit, because I guess
6 their -- their parents have been involved with, you
7 know, a bunch of the skinheads shit and stuff in the
8 past.

9 MR. DENTON: Um hum.

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Header/Footer Line 3 of 7



UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,	)	NO. CR20-032 JCC
)	
Plaintiff,)	
	)	USAO NO. 2018R00225
vs.)	
)	
KALEB COLE,)	
)	
Defendant.)	

TRANSCRIPT OF SOUND CLIP 204-0109-002

PRODUCED AS WORK PRODUCT FOR:

Transcript of Government Exhibit 204

452

USA-00031370

SETH WILKINSON, AUSA

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1 MALE #1: So I have a -- I have a -- I
2 have a question for you, related, but unrelated,
3 because I'm -- I'm trying to -- I'm trying to, uh --
4 uh, with -- this is the first time I've seen everybody
5 since -- since Congress and everything that's gone on
6 under the bridge. And, uh, uh --

7 MR. DENTON: Oh, Dalton and his dad feel
8 the exact same way that I do, by the way.

9 MALE #1: Yeah, good.

10 MR. DENTON: They're totally fucking
11 strawcerous (phonetic), they really are.

12 MALE #1: What do you think -- what's
13 -- what's the -- the -- the thoughts on -- how do you
14 think the blow-back from this -- this little operation
15 will go in terms of media? Like what is the ideal
16 response, if any?

17 MR. COLE: Well, as far as that goes,
18 honestly, it's going to feel open-ended, because
19 -- because overall the general message we want to send
20 is, you know, hey, don't fuck with us.

21 If they don't -- it's kind of double-edged

22 here, because if they don't report on it, well, okay,
23 well, yeah, some little whispers will be around about
24 that here and there.

25 MALE #1: Right.

Header/Footer Line 3 of 7

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1 MR. COLE: Lending to a more notorious
2 reputation on our part that, hey, we can find where
3 these people live, if we want. And then, if there's a
4 little bit of media attention, same thing.

5 Um, as far as anything coming back on me,
6 well, as far as anybody is concerned, I -- I don't
7 know anything. I'm -- I'm outside of Washington, for
8 example.

9 MALE 2: Right.

10 MR. COLE: So I -- you can't prove that I
11 said to do anything.

12 MALE #1: So is it -- is it pretty much
13 right now in terms of it's -- it's -- it's -- it's --
14 it's residential and business strictly or not
15 necessarily?

16 MR. COLE: Um, primarily.

17 MALE 2: Um hum.

18 MR. COLE: I mean, depending how creative

19 one wants to be with it. Um, I mean, you know, you
20 can be -- you can bend the rules a little bit.

21 MALE #1: Right. Right.

22 MR. COLE: That's just a general guideline.

23 MALE #1: Right. I'm just trying to get
24 like a litmus point so like, whatever I do, I don't
25 overshoot or undershoot. Does that make sense?

Header/Footer Line 3 of 7

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4

1 MALE #1: Is there -- are our other guys
2 doing something or the other guys in our group?

3 MALE #1: Oh, yeah. Oh, yeah.

4 MR. DENTON: They are too?

5 MALE #1: Oh, yeah.

6 MR. DENTON: Because, see, like -- well, I
7 had to take myself off the list just talking about
8 this.

9 MR. COLE: Basically the whole -- the whole
10 idea --

11 MR. DENTON: What's that?

12 MR. COLE: Huh?

13 MR. DENTON: I'll wait for you to finish.

14 MR. COLE: The whole thing, when it comes

15 to this, is especially after my, uh, deal.

16 MR. DENTON: Actually, I have to go pee.

17 MR. COLE: Was overall to show them, hey,
18 we will not be dissuaded by your bullshit here.

19 MR. DENTON: Um hum.

20 MR. COLE: Fuck off. Rather than doing,
21 you know, nothing about it. Um, because, you know, I
22 mean, yeah, I mean, hey, you don't want to overshoot
23 it.

24 MALE #1: Sure. Sure.

25 MR. COLE: And you don't want to undershoot

Header/Footer Line 3 of 7

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5

1 it.

2 MALE #1: Right.

3 MR. COLE: You don't want to fucking go --
4 go, you know, to their doorstep in a skull mask
5 -- skull mask and be like, "We're going to kill you".

6 MALE #1: Right. Right.

7 MR. COLE: Or, you know, fucking, um --

8 MALE #2:: So you're going to couple ADL
9 with the media too?

10 MR. COLE: Um, in a few cases, yes.

11 MALE #2: To send that message?

12 MR. COLE: Yeah.

13 MALE #1: Because -- because -- because
14 the ADL are kind of like proxy reporters in their own
15 way. I mean, they're --

16 MR. COLE: Yeah, exactly.

17 MR. DENTON: That's true. Well, the ADL
18 doesn't actually fucking really report on anything.
19 They just more or less like take like what other
20 people are saying.

21 MR. COLE: Right.

22 MR. DENTON: And then -- and then make like
23 their own journalization or consensus of like what's
24 actually going on, which -- which it's kinda funny how
25 like the SPLC, for example, it's just like so keen on

Header/Footer Line 3 of 7

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6

1 all of these Nazi groups, but all of their dirt on
2 these Nazi groups is what the media is already
3 reporting anyways, although theirs is more, you know,
4 they have more slanderous material in their fucking
5 report.

6 MALE #1: If -- if --

7 MR. COLE: But when it comes to them or the

8 ADL, though, it's the -- the symbolic gesture, if you

9 -

10 MALE #1: So if --

11 MR. COLE: If want to say one other

12 director's homes and --

13 MALE #1: If we were going to go from

14 like --

15 MR. DENTON: Right. Yeah.

16 MALE #1: If we were going to go from

17 like the highest profile target down, like what would

18 it look like in terms of like, you know, I mean, like

19 it's something like, you know -- I'm just saying,

20 because you're talking about like anchors and whatnot.

21 I mean, like how big or how little, you know?

22 MR. COLE: Honestly, where I -- I was at

23 with that is whatever you can get.

24 MALE #1: Right. Right. That makes

25 sense.

Header/Footer Line 3 of 7

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7

1 MR. DENTON: See, like I was --

2 MR. COLE: And, I mean -- and, I mean,

3 trying the best that one can to get it to someone

4 that's related to say reporting on racism.

5 MALE #1: Sure.

6 MR. COLE: Or institutional racism.

7 MALE #1: Topical, yeah.

8 MR. COLE: Yeah. Yeah, somewhat topical,
9 but if you can't, well, get as close as you can --

10 MR. DENTON: Um hum.

11 MR. COLE: -- I guess.

12 MR. DENTON: Well, I would say that like
13 most reporters know who we are anyways, whether they
14 report on the news or not.

15 MR. COLE: Um hum.

16 MR. DENTON: Because people discuss this
17 stuff around the office sort of thing.

18 MR. COLE: Of course.

19 MR. DENTON: They all -- they all work in
20 the same basic office. They're like --

21 MR. COLE: Do you know how many times I'm
22 sneezing a day? I mean, you know, they're talking
23 about me a lot.

24 MR. DENTON: Right. To where -- to where
25 it's just like -- to where it's just like even if you

Header/Footer Line 3 of 7

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1 were to hit like a -- if you were to hit like a news,
2 like a newsroom, period, whether or not --

3 MR. COLE: (Clapping.)

4 MR. DENTON: Like whether or not like they
5 have the -- the -- you know, like the sports broadcast
6 or the weather broadcast or, you know, the -- or
7 whatever fucking broadcast.

8 MALE #1: Um hum.

9 MR. COLE: It will stir them up.

10 MR. DENTON: They're all in the same
11 fucking office anyway.

12 MALE #1: Um hum.

13 MR. DENTON: So, you know, even if they
14 can't find a home address, they could still hit the
15 office.

16 MR. COLE: If it's the office, it's going
17 -- it's going to get concern.

18 MR. DENTON: Yeah. They're going to know.
19 They're going to know is what I'm saying.

20 MR. COLE: Oh, yeah.

21 MR. DENTON: But I was going to say
22 earlier, like I -- well, my -- my phone is on fucking
23 lockdown. My roommate moved out of the room anyways.
24 You know, we've swatted like a lot of fucking
25 journalists that report on us.

Header/Footer Line 3 of 7

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9

1 MR. COLE: Um hum.

2 MR. DENTON: We swatted a lot of them. And
3 like even you have to like watch it on like street
4 cameras and stuff.

5 MALE #2: Are you serious?

6 MR. DENTON: Yeah. Yeah.

7 MALE #1: Oh, I'd love to see it.

8 MR. DENTON: Yeah, we -- we swatted them.

9 But we got the entire Pro Publica fucking building
10 evacuated and then we --

11 MALE #1: Oh, Jesus.

12 MR. DENTON: And then we swatted A C -- and
13 then we swatted A C Thompson's house while his --

14 MR. COLE: Yeah. But he wasn't there,
15 though, was he?

16 MR. DENTON: He wasn't there, but his wife
17 was there.

18 MALE #1: Oh, Jesus.

19 MR. COLE: Have you got video of that?

20 MR. DENTON: I -- I didn't --

21 MR. COLE: If only.

22 MALE #2: Oh, that would have been so

23 hilarious.

24 MR. DENTON: If my opsec was tighter at the
25 time, I would have recorded it.

Header/Footer Line 3 of 7

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10

1 MALE #2: Yeah.

2 MR. DENTON: But, uh, we -- we did all of
3 this shit. But, anyhow, the reason why I bring this
4 up -- the reason why I bring this up is because you
5 said that like maybe they might not report on it or
6 something like that. I am not expecting them to
7 report on anything that we do to them as far as
8 posterage. They're -- I mean, maybe they might do it
9 for a publicity sort of thing.

10 MR. COLE: Um hum.

11 MR. DENTON: But keep in mind too that
12 whenever we swatted them, we swatted them not as
13 Atomwaffen, but as Nazis.

14 MR. COLE: Yeah, um hum.

15 MR. DENTON: Like whenever -- whenever we
16 made the call, it was, you know, I'm so-and-so and I
17 believe in this and that, and these people are
18 attacking my people sort of thing, you know, Heil

19 Hitler --

20 MALE #1: Sorry.

21 MR. DENTON: -- sort of a thing, blah,

22 blah, blah sort of a thing.

23 MR. COLE: Um hum. They never fucking

24 report on it.

25 MALE #2: They never -- they never said

Header/Footer Line 3 of 7

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11

1 anything?

2 MR. DENTON: Oh, no. No.

3 MALE #2: Really.

4 MR. DENTON: They never said -- they never

5 said anything. And I -- I --

6 MALE #2: They probably didn't want to

7 instigate it, though. You know? Maybe they were

8 afraid of what else you'd do.

9 MR. DENTON: They were afraid of -- like --

10 like that and they were also speculating that they

11 were kind of afraid of like what followers, you know,

12 would do.

13 MALE #1: So like copycats, yeah.

14 MALE #2: Yeah. They didn't want to

15 inspire that sort of a thing to where it's just kinda

16 like --

17 MR. COLE: Because if they report on it,
18 the thing is, is well, the more information they give
19 about it, well, the more they leave the door open for
20 anybody else to do that. And, well, show -- show the
21 world that -- well, I mean, we're making a bigger
22 difference than everybody previously thought.

23 MALE #1: Right.

24 MR. DENTON: I mean, I'm not --

25 MR. COLE: So -- so it's really delicate

Header/Footer Line 3 of 7

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12

1 for them.

2 MR. DENTON: I'm not saying --

3 MR. COLE: Or else, I would think.

4 MR. DENTON: I'm not saying at all that
5 people shouldn't do the journalist postering thing,
6 but what I am saying is I would not ex -- I would not
7 go into that with high expectations is what I'm
8 saying.

9 MR. COLE: Yeah.

10 MR. DENTON: Just because we did -- like --
11 like, hell, like I kinda got my -- I kinda got my --

12 MR. COLE: At least not do it with the
13 expectation to see a bunch of headlines about it, so
14 much --

15 MR. DENTON: Yeah. Yeah, exactly.
16 Exactly.

17 MR. COLE: So much as just to put that
18 message out there. If there is a few things that come
19 out, whatever, cool.

20 MR. DENTON: See, like whenever I started
21 working with Dead and that, my foot in the door was
22 swatting somebody else. Granted, I had a voice
23 changer and stuff, but like my -- like we kind of got
24 on a little voice chat and I put my thing on and then
25 I just turned my microphone on, and it went to fucking

Header/Footer Line 3 of 7

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13

1 silence, and then I was -- and then, you know, I was
2 just cutting into my thing.

3 And then -- and then, when we swatted A C
4 Thompson, it was the funniest fucking shit ever,
5 because Zero, Zero was like -- he was like -- he said
6 that he had planted a bomb inside of his house and
7 that he was holding like the kids hostage.

8 MALE #1: Jesus.

9 MR. COLE: Wow, that's crazy.
10 MALE #1: Jesus Christ!
11 MR. DENTON: And all of this shit. And so
12 all of the cops are outside of his house. Right?
13 They're like all out there. There's like police cars,
14 sirens fucking everywhere. There's even a fucking
15 like a fire truck and shit there. And then, uh -- and
16 then -- and Zero would just go (making smacking
17 sounds) over the phone. Like he's like, "Sir? Like,
18 sir, what are you doing?"
19 "I swallowed the bomb."
20 "I mean, do you want to come out?"
21 "No. I'm eating the baby right now."
22 MALE #1: Jesus Christ! Jesus!
23 MALE #2: Fucking crazy.
24 MR. DENTON: Yeah, but, uh, what I'm saying
25 --

Header/Footer Line 3 of 7

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14

1 MR. COLE: And they eat it up.
2 MR. DENTON: What I'm saying, though, is
3 that -- is that as far as -- as far as like a real
4 direct threat, like I really do feel that the

5 Atomwaffen image is becoming oversaturated because --
6 not because of the posers. I mean, the posers are one
7 that -- we've had posers since Atomwaffen's fucking
8 inception. Right?

9 MR. COLE: Oh, yeah, right. So Goddamn
10 many.

11 MR. DENTON: But it's more so that like the
12 media now has like a gimmick that they can work with
13 --

14 MR. COLE: Yeah.

15 MR. DENTON: -- to where they can just kind
16 of identify threats for the sake of peep -- of cheap
17 publicity. Right?

18 MR. COLE: Yep.

19 MR. DENTON: Like some kid tells a nigger
20 joke on fucking Twitter.

21 MALE #2: Right.

22 MR. COLE: He's a member of Atomwaffen.

23 MR. DENTON: And then -- and then -- and
24 then he tells some guy how to make a pipe bomb and he
25 goes to prison and, therefore --

Header/Footer Line 3 of 7

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1 MALE #2: Easy (inaudible).

2 MR. DENTON: Therefore, Atomwaffen. Like
3 it's becoming like sorta cheap to where it's just I
4 don't --

5 MR. COLE: And there's -- there's this one
6 guy who was, uh, vaguely associated with, um, one of
7 our former members who -- who ended up more recently
8 going, you know, fucking going and getting arrested
9 for a federal firearms charge. And he was vaguely
10 associated with him. And he was -- he was a guy who
11 actually -- he had a colorful history.

12 He and another friend of his ended up going
13 over to Ukraine and fighting in the -- um, not the
14 Azov or anything, but in the Georgian Battalion and as
15 foreign volunteers. And they came back to the States
16 and -- oh, yeah, they were also former U. S. Military
17 and shit. And they were -- they were looking for, you
18 know, all kinds of conflicts to participate in. They
19 wanted to go down to Venezuela and help them along
20 with a bunch of that shit.

21 MALE #1: Wow.

22 MR. COLE: But that never actually
23 happened. And then -- and I guess at one point along
24 the way, these two guys, uh, what was it an arms list deal
25 or something, they ended up fucking making a post for

Header/Footer Line 3 of 7

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16

1 selling a few guns or something. And then -- and then
2 um, you know, they met this -- this Mexican guy, his
3 wife or something. And then, uh, they went there,
4 gunned them down, took the money and left. And -- and
5 then one -- one of them was arrested for I'm sure
6 probably a bogus CP charge. And the other guy ended
7 up somehow making it back to Ukraine. But somewhere
8 along the line, he -- he crossed one of the borders to
9 Ukraine and then he was detained and taken back to
10 Ukraine. And now, to this day, they're still trying
11 to figure out whether or not they can extradite him to
12 the States for these murder charges.

13 MALE #2: Really?

14 MALE #1: So he -- so he was former AWD
15 or an associate?

16 MR. COLE: No.

17 MALE #2: No.

18 MR. COLE: He was an associate --

19 MALE #1: But a --

20 MR. COLE: -- of a former member.

21 MALE #1: Oh, okay. Okay.

22 MALE #2: Oh, gotcha.

23 MR. COLE: And then he's said to be a
24 member.

25 MALE #2:: That happened to us. So you

Header/Footer Line 3 of 7

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17

1 guys are Anonymous. Like ten years ago I rolled with
2 a few of those guys, but as soon as you put the mask
3 on, you're now Anonymous. Like the guys I was with
4 were total anarchists.

5 MR. COLE: Um hum.

6 MALE #2: Like everything we did was
7 total anarchy. But then all of these other guys
8 jumped in. Every hack that ever happened was
9 anonymous. And now we all got coupled as being
10 anonymous. And I'm like no, we actually have a group
11 that are anarchists with a clear, distinct purpose.

12 MR. COLE: Yeah.

13 MALE #2: But everybody joining in.

14 MR. DENTON: When you say "Anonymous," you
15 mean like the fringe sort of hacker Anonymous?

16 MALE #2: Yeah. And then it splintered
17 off into all of these other smaller groups.

18 MR. DENTON: Yeah, right.

19 MALE #2: But so I used to roll with a

20 lot of those guys. But my side was the anarchy. I
21 love these anarchist guys because they had a clear
22 mission. Right? But that's what ended up happening;
23 the whole brand got diluted.

24 MR. COLE: Yeah.

25 MALE #2: It's just like you're a hacker

Header/Footer Line 3 of 7

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18

1 anonymous. What's going to happen here is you're an
2 NS, you're a White Supremacist, you're AWD. Right?
3 As soon as you put the fucking mask on, now you're
4 AWD.

5 MR. DENTON: See, I always -- I always
6 found the -- I always found that sort of blanket sort
7 of statement stuff is so like -- like as everyone
8 knows, I bitch a lot about it in the fucking chats.
9 Granted, I'm drunk half the time, but that's neither
10 here nor there.

11 But the thing of it is that's it's just
12 kinda like a -- it's sort of a double-edged sword.
13 Where I want AWD to be like be the prime, sort of like
14 premiere like -- like you can't be AWD unless you're
15 the best of the best sort of a thing. But then, the

16 other side of me is just like well, it's great that
17 everyone thinks that AWD is doing all of this stuff.

18 MALE #1: Yeah.

19 MR. DENTON: But my main issue is that it's
20 just kinda like whenever somebody gets busted as AWD,
21 it's always over just something so dumb that like --

22 MR. COLE: Yep.

23 MR. DENTON: -- anyone with a brain could
24 like, you know, prevent that sort of a thing.

25 MR. COLE: It's a double-edged sword.

Header/Footer Line 3 of 7

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1 MALE #1: Right.

2 MR. DENTON: It really is. And it's just
3 like -- and it's just like let's just say tomorrow I
4 got raided because I swatted Pro Publica outright.

5 MR. COLE: Yeah.

6 MR. DENTON: That would be good for AWD,
7 because like I'm not -- I'm not saying that I want to
8 go to prison, I'm not saying any of that.

9 MALE #1: Yeah. Right.

10 MR. DENTON: I'm not -- I'm not saying that
11 like, you know, like another AWD member being caught
12 would be a good thing, but being caught for what?

13 MALE #1: Right. What's the reason?

14 MR. DENTON: Like posting a nigger Meme on
15 fucking Twitter is like a really dumb thing to get
16 arrested for.

17 MALE #2: Yeah.

18 MR. DENTON: To where it's kinda like -- I
19 guess what I'm saying here is that like as far as
20 getting arrested goes, I just wish that people were
21 getting arrested over more top tier sort of crimes
22 than --

23 MR. COLE: That's actually a little more,
24 you know, worthwhile.

25 MALE#2: Yeah, right. Yeah.

Header/Footer Line 3 of 7

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1 MR. DENTON: But, anyhow, like -- but what
2 I want to say was just kinda like as far as the, you
3 know, like the journalists, you know, stuff goes, like
4 I really wouldn't expect anything out of that, just
5 considering the shit that me and Zero were doing.

6 And on top of it too, like I was doing it
7 in my fucking bedroom in my pajamas with a fucking
8 Rolling Rock in my hand, you know.

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(End of excerpt.)

Header/Footer Line 3 of 7

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The Honorable John C. Coughenour

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

KALEB COLE,

Defendant.

No. CR20-032 JCC

NOTICE OF APPEAL

Defendant, Kaleb Cole, by undersigned counsel, hereby appeals the Court’s Judgment as to Kaleb Cole, Dkt. No. 266, dated January 11, 2022, to the United States Court of Appeals for the Ninth Circuit.

Undersigned counsel represents Mr. Cole pursuant to the Criminal Justice Act; the filing and docketing fees therefore do not accompany this notice.

Respectfully submitted this 24th day of January, 2022.

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APPEAL,CLOSED

U.S. District Court
United States District Court for the Western District of Washington (Seattle)
CRIMINAL DOCKET FOR CASE #: 2:20-cr-00032-JCC-2

Case title: USA v. Shea et al

Date Filed: 03/04/2020

Magistrate judge case number: 2:20-mj-00088-MAT

Date Terminated: 01/11/2022

Assigned to: U.S. District Judge John C
Coughenour

Appeals court case number: 22-30015 9th
Circuit Court of Appeals

Defendant (2)

Kaleb J Cole

TERMINATED: 01/11/2022

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Pending Counts

Conspiracy to Mail Threatening
Communications and to Commit

Disposition

Dismissed pursuant to Government motion

Cyberstalking - 18:371

(1)

Conspiracy to Mail Threatening Communications, to Commit Stalking, and to Interfere with Federally Protected Activities - 18:371

(1s)

Mailing Threatening Communications - 18:876(c)

(2-4)

Mailing Threatening Communications - 18:876(c)

(2s-4s)

Interference with Federally Protected Activity - 18:245

(5s)

84 months in the custody of the Bureau of Prisons with a recommendation for placement at FCI Phoenix; 36 months of Supervised Release with Mandatory, Standard and Special Conditions as set forth in the Judgment; Fine waived and \$100.00 Special Assessment per count of conviction

Dismissed pursuant to Government motion

84 months in the custody of the Bureau of Prisons with a recommendation for placement at FCI Phoenix; 36 months of Supervised Release with Mandatory, Standard and Special Conditions as set forth in the Judgment; Fine waived and \$100.00 Special Assessment per count of conviction

84 months in the custody of the Bureau of Prisons with a recommendation for placement at FCI Phoenix; 36 months of Supervised Release with Mandatory, Standard and Special Conditions as set forth in the Judgment; Fine waived and \$100.00 Special Assessment per count of conviction

Highest Offense Level (Opening)

Felony

Terminated Counts

None

Highest Offense Level (Terminated)

None

Complaints

Conspiracy to Mail Threatening Communications and Commit Cyberstalking - 18:371

Disposition

Disposition

Plaintiff

USA

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ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
02/25/2020	<u>1</u>	COMPLAINT as to Cameron Brandon Shea (1), Kaleb J Cole (2), Taylor Ashley Parker-Dipeppe (3), Johnny Roman Garza (4). (AQ) [2:20-mj-00088-MAT] (Entered: 02/25/2020)
02/26/2020		Case unsealed as to Cameron Brandon Shea, Kaleb J Cole, Taylor Ashley Parker-Dipeppe, Johnny Roman Garza (SNP) [2:20-mj-00088-MAT] (Entered: 02/26/2020)
02/26/2020		Arrest on 2/26/2020 of Kaleb J Cole in the Southern District of Texas - Houston. (SNP) [2:20-mj-00088-MAT] (Entered: 03/05/2020)
03/02/2020	<u>13</u>	Rule 5(c)(3) Documents Received as to Kaleb J Cole (Attachments: # <u>1</u> Docket, # <u>2</u> Rule 5 Waiver, # <u>3</u> Order of Detention)(SNP) (Additional attachment(s) added on 3/5/2020: SEALED # <u>4</u> Financial Affidavit) (SNP). [2:20-mj-00088-MAT] (Entered: 03/05/2020)
03/04/2020	<u>16</u>	INDICTMENT as to Cameron Brandon Shea (1) counts 1, 2-4, Kaleb J Cole (2) counts 1, 2-4, Taylor Ashley Parker-Dipeppe (3) counts 1, 2-4, Johnny Roman Garza (4) counts 1, 2-4. (Attachments: # <u>1</u> Status Sheets) (AQ) (Entered: 03/05/2020)
03/04/2020	<u>17</u>	SEALED Signature Page to <u>16</u> Indictment as to Cameron Brandon Shea, Kaleb J Cole, Taylor Ashley Parker-Dipeppe, Johnny Roman Garza. (AQ) (Entered: 03/05/2020)
03/04/2020	<u>19</u>	ORDER CONTINUING TEMPORARY DETENTION as to Kaleb J Cole by Hon. Brian A Tsuchida. cc: USMO; (AQ) (Entered: 03/05/2020)
03/09/2020	<u>31</u>	Arrest Warrant Returned Executed on 2/26/2020 in case as to Kaleb J Cole. (SNP) (Entered: 03/20/2020)
03/13/2020		Arrest of Kaleb J Cole on 3/13/2020. (SNP) (Entered: 03/13/2020)
03/13/2020	26	CJA 20 Appointment as to Kaleb J Cole (<i>No.pdf image attached</i>):Appointment of Attorney Michele Shaw for Kaleb J Cole, Approved by Hon. Paula L McCandlis. (SNP) (Entered: 03/13/2020)
03/13/2020	27	Minute Entry for proceedings held before Hon. Paula L McCandlis- CRD: <i>S. Prather</i> ; AUSA: <i>Jim Osterle for Tom Woods</i> ; Def Cnsl: <i>Michelle Shaw</i> ; PTS: <i>Lorraine Bolle</i> ; Court Reporter: <i>Digital Recording</i> ; Time of Hearing: <i>2:00PM</i> ; Courtroom: <i>12B</i> ; ARRAIGNMENT AND DETENTION HEARING as to Kaleb J Cole (2) Count 1,2-4 held on 3/13/2020. Defendant present in custody. Defendant advised of rights. Financial Affidavit reviewed; Counsel appointed. Defendant advised of charges and penalties. Defendant pleads NOT GUILTY to all charges. Defense Counsel requests discovery

		<p>pursuant to Local Rule. Government moves for detention. Defendant stipulates to detention. Defendant ORDERED detained and remanded to custody.</p> <p>Motions due by 4/3/2020. Jury Trial is set for 4/27/2020 at 09:30 AM in Courtroom 16206 before U.S. District Judge John C Coughenour. <i>Proposed Trial Exhibits Due By: 4/27/2020.</i> (SNP) (Entered: 03/13/2020)</p>
03/13/2020	<u>28</u>	MOTION for Detention by USA as to Kaleb J Cole (SNP) (Entered: 03/13/2020)
03/13/2020	<u>29</u>	DETENTION ORDER as to Kaleb J Cole re document <u>28</u> MOTION for Detention by Hon. Paula L McCandlis. (cc: PTS, USMO) (SNP) (Entered: 03/13/2020)
03/23/2020	<u>34</u>	MOTION FOR PROTECTIVE ORDER REGARDING DISCOVERY MATERIALS by USA as to Cameron Brandon Shea, Kaleb J Cole (Attachments: # <u>1</u> Proposed Order) (Woods, Thomas) (Entered: 03/23/2020)
03/25/2020	<u>35</u>	ORDER granting government's <u>34</u> Motion for Protective Order signed by U.S. District Judge John C Coughenour. (TH) (Entered: 03/25/2020)
03/30/2020	<u>48</u>	MOTION to Continue Trial by USA as to Cameron Brandon Shea, Kaleb J Cole, Taylor Ashley Parker-Dipeppe, Johnny Roman Garza (Attachments: # <u>1</u> Proposed Order) Noting Date 4/10/2020, (Woods, Thomas) (Entered: 03/30/2020)
04/03/2020	<u>52</u>	<p>ORDER re 51 Application for Leave to Appear Pro Hac Vice. The Court ADMITS Attorney Seth Apfel for Defendant Johnny Roman Garza by Clerk William M McCool. No document associated with this docket entry, text only.</p> <p><i>NOTE TO COUNSEL: Local counsel agrees to sign all filings and to be prepared to handle the matter, including the trial thereof, in the event the applicant is unable to be present on any date scheduled by the court, pursuant to LCR 83.1(d).</i> (DS) (Entered: 04/03/2020)</p>
04/15/2020	<u>58</u>	ORDER granting the Government's <u>48</u> Motion to vacate the trial date and to set a status conference. It is therefore ORDERED that the trial date of April 27, 2020, is VACATED and a status conference is scheduled for June 2, 2020, at 9:00 a.m. At the status conference, the parties shall propose a new trial date and pretrial motions deadline. Signed by U.S. District Judge John C Coughenour. (TH) (Entered: 04/15/2020)
04/22/2020	<u>59</u>	NOTICE of Unavailability of attorney Michele Shaw from August 6-17, 2020. (Shaw, Michele) (Entered: 04/22/2020)
04/28/2020	<u>60</u>	MOTION to Substitute Attorney by Kaleb J Cole. (Attachments: # <u>1</u> Proposed Order) Noting Date 5/8/2020, (Black, Christopher) (Entered: 04/28/2020)
05/12/2020	<u>61</u>	MINUTE ORDER granting Defendant Kaleb Cole's <u>60</u> Motion to Substitute Attorney. The Court ORDERS that Michele Shaw and the law firm Law Offices of Michelle Shaw is hereby withdrawn as counsel of record in this matter and Christopher R. Black of the law firm Black Law, PLLC is substituted as counsel of record for Defendant Cole. All future pleadings should be served on Mr. Black. Authorized by U.S. District Judge John C Coughenour. (TH) (Entered: 05/12/2020)
05/14/2020	<u>62</u>	NOTICE OF RESCHEDULED STATUS CONFERENCE as to Cameron Brandon Shea, Kaleb J Cole, Taylor Ashley Parker-Dipeppe, Johnny Roman Garza Pursuant to General Order 08-20, the Court hereby orders the Status Conference reset from 6/2/2020 to 8/4/2020 at 09:00 AM in Courtroom 16206 before U.S. District Judge John C. Coughenour. (cc: USPO, PTS, USMO)(GT) (Entered: 05/14/2020)
05/15/2020	<u>63</u>	MOTION TO REOPEN DETENTION HEARING AND FOR RELEASE by Kaleb J Cole. Oral Argument Requested. (Attachments: # <u>1</u> Exhibit 1-4) Noting Date 5/29/2020,

		(Black, Christopher) (Entered: 05/15/2020)
05/18/2020		Upon the direction of U.S. District Judge John C. Coughenour, <u>63</u> MOTION TO REOPEN DETENTION HEARING AND FOR RELEASE is referred to Judge Paula L McCandlis (GT) (Entered: 05/18/2020)
05/22/2020	<u>64</u>	Unopposed MOTION for Leave to File Over-length Motions and Briefs by USA as to Kaleb J Cole (Attachments: # <u>1</u> Proposed Order) Noting Date 5/22/2020, (Woods, Thomas) (Entered: 05/22/2020)
05/22/2020	<u>65</u>	RESPONSE, by USA as to Kaleb J Cole, to <u>63</u> MOTION TO REOPEN DETENTION HEARING AND FOR RELEASE . (Attachments: # <u>1</u> Proposed Order)(Woods, Thomas) (Entered: 05/22/2020)
05/22/2020	<u>66</u>	NOTICE of Filing Video Exhibits A and B in Paper or Physical form with the Clerk's Office inre <u>65</u> Response to Motion. (Woods, Thomas) (Entered: 05/22/2020)
05/22/2020	<u>67</u>	MOTION to Seal Document (<i>Exhibit C of <u>65</u> Government's Response to Motion</i>) by USA as to Kaleb J Cole (Attachments: # <u>1</u> Proposed Order) Noting Date 6/5/2020, (Woods, Thomas) (Entered: 05/22/2020)
05/22/2020	<u>68</u>	SEALED DOCUMENT by USA as to Kaleb J Cole, re <u>67</u> MOTION to Seal Document (<i>Exhibit C of <u>65</u> Government's Response to Motion</i>). (Woods, Thomas) (Entered: 05/22/2020)
05/26/2020	<u>69</u>	LETTER from the Court as to defendant Cameron Brandon Shea, Kaleb J Cole, Taylor Ashley Parker-Dipeppe, and Johnny Roman Garza. (GT) (Entered: 05/26/2020)
05/29/2020	70	NOTICE OF HEARING ON MOTION as to Kaleb J Cole re <u>63</u> MOTION TO REOPEN DETENTION HEARING AND FOR RELEASE: Motion Hearing set for 6/5/2020 at 08:30 AM before Hon. Paula L McCandlis via Webex video conference. (KMP) (Entered: 05/29/2020)
05/29/2020	<u>71</u>	REPLY, by Kaleb J Cole, TO RESPONSE to <u>63</u> MOTION TO REOPEN DETENTION HEARING AND FOR RELEASE (Black, Christopher) (Entered: 05/29/2020)
06/04/2020	<u>72</u>	SUPPLEMENT (<i>VICTIM IMPACT STATEMENT</i>) by USA as to Kaleb J Cole re <u>65</u> Response to Motion (Woods, Thomas) (Entered: 06/04/2020)
06/04/2020	<u>73</u>	MOTION to Seal Document (<i>Supplemental Victim Impact Statement</i>) by USA as to Kaleb J Cole (Attachments: # <u>1</u> Proposed Order) Noting Date 6/5/2020, (Woods, Thomas) (Entered: 06/04/2020)
06/04/2020	<u>74</u>	SEALED DOCUMENT by USA as to Kaleb J Cole, re <u>73</u> MOTION to Seal Document (<i>Supplemental Victim Impact Statement</i>). (Woods, Thomas) (Entered: 06/04/2020)
06/05/2020	<u>76</u>	ORDER granting <u>64</u> Unopposed Motion for Leave to File Over-length Motions and Briefs as to Kaleb J Cole (2) signed by Hon. Paula L McCandlis. (KMP) (Entered: 06/05/2020)
06/05/2020	<u>77</u>	ORDER granting <u>67</u> Motion to Seal Document (Exhibit C); as to Kaleb J Cole (2) signed by Hon. Paula L McCandlis. (KMP) (Entered: 06/05/2020)
06/05/2020	<u>78</u>	ORDER granting <u>73</u> Motion to Seal Document (Supplemental Victim Impact Statement); as to Kaleb J Cole (2) signed by Hon. Paula L McCandlis. (KMP) (Entered: 06/05/2020)
06/05/2020	79	Minute Entry for proceedings held before Hon. Paula L McCandlis via Webex video conference pursuant to General Order 04-20 - CRD: <i>K. Peter (via telephone)</i> ; AUSA: <i>Thomas Woods (via video)</i> ; Def Cnsl: <i>Christopher Black (via video)</i> ; PTS: <i>Lorraine Bolle (via telephone)</i> ; Court Reporter: <i>Andrea Ramirez (via telephone)</i> ; Time of Hearing:

		8:30am; MOTION/DETENTION REVIEW HEARING as to Kaleb J Cole held on 6/5/2020 re <u>63</u> MOTION TO REOPEN DETENTION HEARING AND FOR RELEASE filed by Kaleb J Cole. Defendant present in custody via video. Defense argues to release defendant. Government argues for defendant's continued detention. Court reviewed record and for reasons stated on the record, Court DENIES defendant's motion for release. Order to follow. Defendant remains in custody. (KMP) (Entered: 06/05/2020)
06/09/2020	<u>80</u>	ORDER DENYING <u>63</u> DEFENDANT'S MOTION TO REOPEN DETENTION HEARING AND FOR RELEASE as to Kaleb J Cole (2) signed by Hon. Paula L McCandlis. (KMP) (Entered: 06/09/2020)
07/07/2020	<u>85</u>	MOTION Protective Order by USA as to Kaleb J Cole (Attachments: # <u>1</u> Proposed Order) Noting Date 7/17/2020, (Woods, Thomas) (Entered: 07/07/2020)
07/07/2020	<u>86</u>	RESPONSE, by Kaleb J Cole, to <u>85</u> MOTION Protective Order . (Black, Christopher) (Entered: 07/07/2020)
07/08/2020	<u>87</u>	NOTICE OF RESCHEDULED HEARING TIME as to Cameron Brandon Shea, Kaleb J Cole, Taylor Ashley Parker-Dipeppe, Johnny Roman Garza The Hearing time has been changed: Status Conference reset from 9:00 AM to 10:00 AM on 8/4/2020 in Courtroom 16206 before U.S. District Judge John C. Coughenour. (cc: USPO, PTS, USMO)(GT) (Entered: 07/08/2020)
07/21/2020	<u>88</u>	ORDER granting the Government's <u>85</u> Motion for a discovery protective order as to Kaleb J Cole (2). Signed by U.S. District Judge John C Coughenour. (LH) (Entered: 07/21/2020)
07/31/2020	<u>89</u>	NOTICE OF RESCHEDULED HEARING as to Cameron Brandon Shea, Kaleb J Cole, Taylor Ashley Parker-Dipeppe, Johnny Roman Garza The Court, pursuant to General Order 11-20, hereby orders the Status Conference reset from 8/4/2020 to 9/15/2020 at 9:00 AM in Courtroom 16206 before U.S. District Judge John C. Coughenour. (cc: USPO, PTS, USMO)(GT) (Entered: 07/31/2020)
08/05/2020	<u>94</u>	SUPERSEDING INDICTMENT as to Cameron Brandon Shea (1) count(s) 1s, 2s-4s, 5s, Kaleb J Cole (2) count(s) 1s, 2s-4s, 5s, Taylor Ashley Parker-Dipeppe (3) count(s) 1s, 2s-4s, 5s, Johnny Roman Garza (4) count(s) 1s, 2s-4s, 5s. (Attachments: # <u>1</u> Status Sheets) (KMP) (Entered: 08/07/2020)
08/05/2020	<u>95</u>	SEALED Signature Page to <u>94</u> Superseding Indictment, as to Cameron Brandon Shea, Kaleb J Cole, Taylor Ashley Parker-Dipeppe, Johnny Roman Garza. (KMP) (Entered: 08/07/2020)
08/05/2020	<u>97</u>	ORDER CONTINUING DETENTION, SUPERSEDING INDICTMENT as to Kaleb J Cole by Hon. Mary Alice Theiler. (KMP) (Entered: 08/07/2020)
08/07/2020	<u>90</u>	Letter scheduling arraignment for defendant Kaleb J Cole. Arraignment set for 8/13/2020 at 09:00 AM in Courtroom 12B before Hon. Paula L McCandlis. (Woods, Thomas) (Entered: 08/07/2020)
08/13/2020	<u>104</u>	Minute Entry for proceedings held before Hon. Paula L McCandlis- CRD: <i>A. Quach</i> ; AUSA: <i>Casey Conzatti (via video)</i> ; Def Cnsl: <i>Christopher Black (via video)</i> ; Court Reporter: <i>Nickie Drury (via audio)</i> ; Time of Hearing: <i>9:00am</i> ; Courtroom: <i>WebEx</i> ; ARRAIGNMENT as to Kaleb J Cole (2) Counts 1s,2s-4s,5s held on 8/13/2020. Defendant present in custody and appearing via video. Court addresses the need for a video conference hearing. Defendant DOES NOT consent to proceed via video conference and declines to waive in-person appearance. Defendant advised of charges and penalties. Court accepts pleas of NOT GUILTY to all charges on behalf of defendant. Defense Counsel requests discovery pursuant to Local Rule. Defendant remanded to

		custody. Status Conference remains set for 9/15/2020 at 9:00am before U.S. District Judge John C. Coughenour. (AQ) (Entered: 08/14/2020)
08/20/2020	<u>107</u>	NOTICE OF RESCHEDULED HEARING as to Cameron Brandon Shea, Kaleb J Cole, Taylor Ashley Parker-Dipeppe, Johnny Roman Garza The Court, sua sponte, hereby orders the Status Conference reset from 9/15/2020 at 9:00 AM to 10/20/2020 at 10:00 AM in Courtroom 16206 before U.S. District Judge John C. Coughenour. (cc: USPO, PTS, USMO)(GT) (Entered: 08/20/2020)
09/08/2020	<u>118</u>	Second MOTION to Continue Trial <i>Date</i> by USA as to Cameron Brandon Shea, Kaleb J Cole, Taylor Ashley Parker-Dipeppe, Johnny Roman Garza (Attachments: # <u>1</u> Proposed Order) Noting Date 9/25/2020, (Woods, Thomas) Modified on 10/15/2020 to strike through defendant Garza's name. Mr. Garza plead guilty on 9/8/2020 thus this motion does not apply to him (PM). (Entered: 09/08/2020)
10/14/2020	<u>132</u>	ORDER CONTINUING TRIAL DATE as to Kaleb J Cole re Government's <u>118</u> Second MOTION to Continue Trial. Jury Trial is CONTINUED to 3/22/2021 at 09:30 AM before U.S. District Judge John C Coughenour. The pretrial motions deadline is February 1, 2021. All pretrial filings-including trial briefs, motions in limine, proposed voir dire, proposed jury instructions, and proposed verdict forms-must be submitted no later than Monday, February 22, 2021. The status conference scheduled for October 20, 2020 is VACATED. Signed by U.S. District Judge John C Coughenour. Clerk reposted 131 Order to associate with Defendant Kaleb J Cole. (PM) (Entered: 10/15/2020)
10/20/2020	<u>135</u>	RECEIPT of DVD (Video Exhibits A & B) re: <u>65</u> Response to <u>63</u> Motion, filed by USA as to Kaleb J Cole re <u>66</u> Notice of Filing Paper or Physical Materials. Documents originally emailed to chambers at the time of filing on 5/22/2020. (Placed on Clerk's Office Shelf in expando folder) (PM) (Entered: 10/20/2020)
02/01/2021	<u>154</u>	Third MOTION to Continue Trial by USA as to Cameron Brandon Shea, Kaleb J Cole (Attachments: # <u>1</u> Proposed Order) Noting Date 2/12/2021, (Woods, Thomas) (Entered: 02/01/2021)
02/04/2021	<u>155</u>	SENTENCING MEMORANDUM by Taylor Ashley Parker-Dipeppe as to Cameron Brandon Shea, Kaleb J Cole, Taylor Ashley Parker-Dipeppe, Johnny Roman Garza (Mazzone, Peter) (Entered: 02/04/2021)
02/16/2021	<u>163</u>	ORDER: The March 22, 2021 trial date and the February 22, 2021 pretrial motions deadline are hereby STRICKEN; The parties are ORDERED to appear for a remote status conference in this matter on March 24, 2021 at 9 a.m. to propose a new trial date. Signed by U.S. District Judge John C. Coughenour. (LH) (Entered: 02/16/2021)
03/24/2021	<u>169</u>	ORDER as to Cameron Brandon Shea, Kaleb J Cole: The Government's motion to continue trial (Dkt. No. <u>154</u>) is granted. The status conference scheduled for March 24, 2021 at 9 a.m. is STRICKEN. The trial date in this matter is SET to September 20, 2021 at 9:30 a.m. Pretrial motions are due August 13, 2021. Signed by U.S. District Judge John C. Coughenour. (MW) (cc: PTS/USPO, USMO) Modified on 3/25/2021 to bold trial date(GT). (Entered: 03/24/2021)
07/08/2021	<u>187</u>	NOTICE OF ATTORNEY APPEARANCE C Seth Wilkinson appearing for USA. (Wilkinson, C) (Entered: 07/08/2021)
08/13/2021	<u>192</u>	MINUTE ORDER as to Kaleb J Cole. This matter comes before the Court <i>sua sponte</i> . Jury Trial is CONTINUED to 9/27/2021 at 09:30 AM before U.S. District Judge John C. Coughenour The parties are DIRECTED to submit motions in limine, if any, along with proposed joint jury instructions and a proposed joint verdict form, by September 17,

		2021. Responses to motions in limine, if any, shall be filed no later than September 21, 2021. The Court will provide oral rulings on the motions in limine the morning of trial. If a pretrial conference is necessary, it will occur at 8:30 a.m. the morning of trial. The parties are further DIRECTED to submit two sets of course-of-trial and end- of-trial jury instructions and a verdict form. Authorized by U.S. District Judge John C. Coughenour. (SR) (cc: USPO) (Entered: 08/13/2021)
08/13/2021	<u>193</u>	MOTION to Dismiss for Speedy Trial Violation by Kaleb J Cole. Noting Date 8/27/2021, (Black, Christopher) (Entered: 08/13/2021)
08/13/2021	<u>194</u>	MOTION to Suppress by Kaleb J Cole. Oral Argument Requested. (Attachments: # <u>1</u> Exhibit 1) Noting Date 8/27/2021, (Black, Christopher) (Entered: 08/13/2021)
08/20/2021	<u>197</u>	Unopposed MOTION for Leave to File Over-length Motions and Briefs by USA as to Kaleb J Cole (Attachments: # <u>1</u> Proposed Order) Noting Date 8/20/2021, (Woods, Thomas) (Entered: 08/20/2021)
08/20/2021	<u>198</u>	RESPONSE, by USA as to Kaleb J Cole, to <u>193</u> MOTION to Dismiss for Speedy Trial Violation . (Wilkinson, C) (Entered: 08/20/2021)
08/20/2021	<u>199</u>	ORDER granting Government's <u>197</u> Unopposed Motion to File an Overlength Brief in Opposition to the Motion to Suppress as to Kaleb J Cole. Signed by U.S. District Judge John C. Coughenour. (SR) (Entered: 08/20/2021)
08/20/2021	<u>200</u>	RESPONSE, by USA as to Kaleb J Cole, to <u>194</u> MOTION to Suppress . (Woods, Thomas) (Entered: 08/20/2021)
08/23/2021	<u>202</u>	Unopposed MOTION for Leave to File Over-length Motions and Briefs <i>re Motion to Suppress</i> by Kaleb J Cole. (Attachments: # <u>1</u> Proposed Order) Noting Date 9/3/2021, (Black, Christopher) (Entered: 08/23/2021)
08/26/2021	<u>205</u>	ORDER as to Kaleb J Cole granting Defendant's <u>202</u> Unopposed Motion for Leave to File Over-length Motions and Briefs <i>re Motion to Suppress</i> . Signed by U.S. District Judge John C. Coughenour. (LH) (Entered: 08/26/2021)
08/26/2021	<u>206</u>	SEALED MOTION to Convert Retained Counsel to CJA Appointment; by Kaleb J Cole. (Attachments: # <u>1</u> Proposed CJA 20 Appointment and Authority to Pay Court-Appointed Counsel)(GT) (Entered: 08/26/2021)
08/26/2021		MOTIONS REFERRED: At the direction of U.S. District Judge John C. Coughenour, <u>206</u> SEALED MOTION to Convert Retained Counsel to CJA Appointment as to Kaleb J Cole is referred to Judge Michelle L. Peterson. (GT) (Entered: 08/26/2021)
08/26/2021		Motion No Longer Referred Judge Michelle L. Peterson, <u>206</u> is hereby referred to Judge Brian A. Tsuchida. (GT) (Entered: 08/26/2021)
08/27/2021	<u>207</u>	ORDER GRANTING MOTION TO APPOINT COUNSEL AT PUBLIC EXPENSE signed by Hon. Brian A Tsuchida, re <u>206</u> Sealed Motion to Convert Retained Counsel to CJA Appointment as to Kaleb J Cole (2). (AQ) (Entered: 08/27/2021)
08/27/2021	<u>208</u>	CJA 20 Appointment as to Kaleb J Cole: Appointment of Attorney Christopher R Black for Kaleb J Cole. Approved by Hon. Brian A Tsuchida. (AQ) (Entered: 08/27/2021)
08/27/2021	<u>209</u>	REPLY, by Kaleb J Cole, TO RESPONSE to <u>194</u> MOTION to Suppress (Black, Christopher) (Entered: 08/27/2021)
08/27/2021		NOTICE re: <u>209</u> Reply. The appearance of attorney Teymur Askerov is not proper, and notices of electronic filing will not be sent until corrected. Signatures must be in

		accordance with FRCP 11 and LCR 83.2(a) and must comply with <u>ECF Filing Procedures</u> . (PM) cc: Teymur Askerov via ECF ad hoc (Entered: 08/27/2021)
08/30/2021	<u>210</u>	ORDER denying Defendant's <u>193</u> Motion to Dismiss for Speedy Trial Violation as to Kaleb J Cole. Signed by U.S. District Judge John C. Coughenour. (SR) (Entered: 08/30/2021)
08/30/2021	<u>211</u>	ORDER denying Defendant's <u>194</u> Motion to Suppress and for a <i>Franks</i> hearing as to Kaleb J Cole. Signed by U.S. District Judge John C. Coughenour. (SR) (Entered: 08/30/2021)
09/13/2021	<u>212</u>	TRIAL BRIEF by USA as to Kaleb J Cole (Woods, Thomas) (Entered: 09/13/2021)
09/13/2021	<u>213</u>	EXHIBIT LIST by USA as to Kaleb J Cole (Woods, Thomas) (Entered: 09/13/2021)
09/15/2021	<u>214</u>	PROPOSED JURY VERDICT FORM by USA as to Kaleb J Cole (Wilkinson, C) (Entered: 09/15/2021)
09/17/2021	<u>215</u>	Proposed Voir Dire by USA as to Kaleb J Cole (Wilkinson, C) (Entered: 09/17/2021)
09/17/2021	<u>216</u>	MOTION in Limine <i>to Permit the Undercover Officer to Testify Under a Pseudonym</i> by USA as to Kaleb J Cole (Attachments: # <u>1</u> Proposed Order) Noting Date 9/27/2021, (Woods, Thomas) (Entered: 09/17/2021)
09/17/2021	<u>217</u>	Proposed Jury Instructions by USA as to Cameron Brandon Shea, Kaleb J Cole, Taylor Ashley Parker-Dipeppe, Johnny Roman Garza (<i>Supplement to Agreed Instructions</i>) (Wilkinson, C) (Entered: 09/17/2021)
09/17/2021	<u>218</u>	NOTICE of Association of Attorney by Teymur Askerov on behalf of Kaleb J Cole. (Askerov, Teymur) (Entered: 09/17/2021)
09/17/2021	<u>219</u>	TRIAL BRIEF by Kaleb J Cole (Black, Christopher) (Entered: 09/17/2021)
09/17/2021	<u>220</u>	MOTION in Limine <i>to Exclude 404(b) Evidence</i> by Kaleb J Cole. Noting Date 9/27/2021, (Black, Christopher) (Entered: 09/17/2021)
09/17/2021	<u>221</u>	Proposed Voir Dire by Kaleb J Cole (Black, Christopher) (Entered: 09/17/2021)
09/17/2021	<u>222</u>	Proposed Jury Instructions by USA as to Cameron Brandon Shea, Kaleb J Cole, Taylor Ashley Parker-Dipeppe, Johnny Roman Garza (<i>Agreed Instructions</i>) (Wilkinson, C) (Entered: 09/17/2021)
09/17/2021	<u>223</u>	Proposed Jury Instructions by Kaleb J Cole (Askerov, Teymur) (Entered: 09/17/2021)
09/20/2021	<u>224</u>	MEMORANDUM <i>Regarding the Disputed Jury Instructions</i> by USA as to Kaleb J Cole (Woods, Thomas) (Entered: 09/20/2021)
09/21/2021	<u>225</u>	RESPONSE, by USA as to Kaleb J Cole, to <u>220</u> MOTION in Limine <i>to Exclude 404(b) Evidence</i> . (Woods, Thomas) (Entered: 09/21/2021)
09/21/2021	<u>226</u>	RESPONSE, by Kaleb J Cole, to <u>216</u> MOTION in Limine <i>to Permit the Undercover Officer to Testify Under a Pseudonym</i> . (Black, Christopher) (Entered: 09/21/2021)
09/23/2021	<u>227</u>	MEMORANDUM <i>Disputed Jury Instructions</i> by Kaleb J Cole re <u>224</u> Memorandum filed by USA (Askerov, Teymur) (Entered: 09/23/2021)
09/23/2021	<u>228</u>	EXHIBIT LIST (<i>First Amended</i>) by USA as to Kaleb J Cole (Wilkinson, C) (Entered: 09/23/2021)
09/24/2021	<u>229</u>	Proposed Voir Dire by USA as to Kaleb J Cole (Attachments: # <u>1</u> Proposed Questionnaire)(Wilkinson, C) (Entered: 09/24/2021)

09/24/2021	<u>230</u>	Proposed Jury Instructions by Kaleb J Cole <i>Amended Instructions 20 and 21 (Agreed)</i> (Black, Christopher) (Entered: 09/24/2021)
09/26/2021	<u>231</u>	Objection to <i>Government's Proposed Sound Clip Exhibits</i> by Kaleb J Cole (Black, Christopher) (Entered: 09/26/2021)
09/26/2021	<u>232</u>	MOTION to Seal Document <i>Exhibits to Objection</i> by Kaleb J Cole. (Attachments: # <u>1</u> Proposed Order) Noting Date 10/8/2021, (Black, Christopher) (Entered: 09/26/2021)
09/26/2021	<u>233</u>	SEALED DOCUMENT by Kaleb J Cole, re <u>232</u> MOTION to Seal Document <i>Exhibits to Objection</i> , <u>231</u> Objection. (Attachments: # <u>1</u> Transcript of Ex. 201, # <u>2</u> Transcript of Ex. 202, # <u>3</u> Transcript of Ex. 606, # <u>4</u> Transcript of Ex. 607, # <u>5</u> Transcript of Ex. 701) (Black, Christopher) (Entered: 09/26/2021)
09/26/2021	<u>234</u>	RESPONSE to <i>Defense Objections to Exhibits</i> by USA as to Kaleb J Cole (Woods, Thomas) (Entered: 09/26/2021)
09/27/2021	<u>235</u>	SEALED DOCUMENT PLAINTIFF'S PROPOSED TRIAL EXHIBITS by USA as to Kaleb J Cole. (Attachments: # <u>1</u> Exhibit 1-26, 100-111, 200-208, 300-307, # <u>2</u> Exhibit 400-403, 500-505, 600-607, 700-706, 800-808)(Woods, Thomas) (Entered: 09/27/2021)
09/27/2021	<u>236</u>	ORDER as to Kaleb J Cole re Defendant's <u>231</u> <i>Objection to Government's Proposed Sound Clip Exhibits</i> . Defendant's motion is GRANTED with respect to Exhibits 201 and 202. Defendant's motion is DENIED with respect to Exhibits 606, 607, and 701. Signed by U.S. District Judge John C. Coughenour. (SR) (Entered: 09/27/2021)
09/27/2021	<u>237</u>	ORDER as to Kaleb J Cole. This matter comes before the Court sua sponte. The Court FINDS good cause to excuse the unvaccinated jurors from the jury panel. Signed by U.S. District Judge John C. Coughenour. (SR) (Entered: 09/27/2021)
09/27/2021	238	Minute Entry for proceedings held before U.S. District Judge John C. Coughenour- CRD: <i>Gabriel Traber</i> ; AUSA: <i>C Seth Wilkinson and Thomas Woods</i> ; Def Cnsl: <i>Christopher Black and Teymur Askerov</i> ; Court Reporter: <i>Debbie Zurn</i> ; Time of Hearing: <i>9:30 AM</i> ; Courtroom: <i>16206</i> ; JURY TRIAL Day 1 as to Kaleb J Cole held on 9/27/2021. Jury empanelled. Plas Witnesses: Miri Cypers, David Rosenbaum, Christopher Ingalls, and FBI Undercover Officer. Exhibits admitted. Defendant remanded to custody. Jury Trial is set for 9/28/2021 at 9:30 AM in Courtroom 16206 before U.S. District Judge John C. Coughenour. (GT) (Entered: 09/27/2021)
09/27/2021	<u>239</u>	Defense's Peremptory Challenges (This filing includes sealed documents) (GT) (Entered: 09/27/2021)
09/27/2021	<u>240</u>	Redacted Defense Peremptory Challenges (GT) (Entered: 09/27/2021)
09/27/2021	<u>241</u>	Government's Peremptory Challenges (This filing includes sealed documents) (GT) (Entered: 09/27/2021)
09/27/2021	<u>242</u>	Government's Peremptory Challenges (GT) (Entered: 09/27/2021)
09/27/2021	<u>243</u>	MINUTE ORDER as to Kaleb J Cole. The Court directs Courthouse Security to allow the litigants and jury in the above-captioned case to bring food and drink into the courthouse for the duration of the trial, which began today. Signed by U.S. District Judge John C. Coughenour. (SR)(cc: USMO, USPO) (Main Document 243 replaced on 9/27/2021 to correct date signed by the Judge, NEF regenerated) (SR). (Entered: 09/27/2021)
09/28/2021	244	Minute Entry for proceedings held before U.S. District Judge John C. Coughenour- CRD: <i>Gabriel Traber</i> ; AUSA: <i><o>C Seth Wilkinson and Thomas Woods</i> ; Def Cnsl: <i>Christopher Black and Teymur Askerov</i> ; Court Reporter: <i>Debbie Zurn</i> ; Time of Hearing: <i>9:30 AM</i> ; Courtroom: <i>16206</i> ; JURY TRIAL Day 2 as to Kaleb J Cole held on 9/28/2021.

		Plas Witnesses: FBI Undercover Officer, Jerrold DeRoche, Steven Haughton, Confidential Human Source, Jayme Poteet, Mala Blomquist, Veronica Rudie, John Powers, and Hilary Bernstein. Exhibits admitted. Defendant remanded to custody. Jury Trial is set for 9/29/2021 at 8:45 AM in Courtroom 16206 before U.S. District Judge John C. Coughenour. (GT) (Entered: 09/28/2021)
09/28/2021	<u>245</u>	Right to Testify Form as to Kaleb J Cole. (GT) (Entered: 09/28/2021)
09/28/2021	<u>246</u>	EXHIBIT LIST for the trial of Kaleb J Cole (GT) (Entered: 09/29/2021)
09/28/2021	<u>247</u>	WITNESS LIST for the trial of Kaleb J Cole (GT) (Entered: 09/29/2021)
09/29/2021	<u>248</u>	JURY INSTRUCTIONS as to Kaleb J Cole. Signed by U.S. District Judge John C. Coughenour. (SR) (Entered: 09/29/2021)
09/29/2021	<u>249</u>	ORDER as to Kaleb J Cole. The Court ORDERS that the jury be committed to the custody of a duly sworn bailiff and that the Clerk pay for the meals of the jurors at the expense of the United States Courts. Signed by U.S. District Judge John C. Coughenour. (SR) (Entered: 09/29/2021)
09/29/2021	250	Minute Entry for proceedings held before U.S. District Judge John C. Coughenour- CRD: <i>Gabriel Traber</i> ; AUSA: <o>C Seth Wilkinson and Thomas Woods; Def Cnsl: <i>Christopher Black and Teymur Askerov</i> ; Court Reporter: <i>Debbie Zurn</i> ; Time of Hearing: <i>8:45 AM</i> ; Courtroom: <i>16206</i> ; JURY TRIAL Day 3 as to Kaleb J Cole held on 9/29/2021. The Court and Counsel finalize jury instructions. The Court instructs the Jury. Counsel present their closing arguments. Jury retires to deliberate. After inspection by counsel, all admitted exhibits are provided to the jury. Jury returns with a verdict of Guilty on all counts of the superseding indictment. Trial exhibits returned to the Government. Sentencing hearing set for 1/11/2022 at 9:00 AM in Courtroom 16206 before U.S. District Judge John C. Coughenour. United States Probation and Pretrial Services Office to prepare a presentence investigation and report. Defendant remanded to custody. (GT) (Entered: 09/29/2021)
09/29/2021	<u>251</u>	JURY VERDICT as to Kaleb J Cole: Guilty on counts 1s to 5s. (This filing includes sealed documents) (cc: USPO, PTS) (GT) (Entered: 09/29/2021)
09/29/2021	<u>252</u>	JURY VERDICT as to Kaleb J Cole: Guilty on counts 1s to 5s. (cc: USPO, PTS) (GT) (Entered: 09/29/2021)
09/29/2021		The verdict form, Docket Numbers <u>251</u> and <u>252</u> , contains a scrivener's error. The jury rendered its verdict on September 29, 2021 not June 29, 2021(GT) (Entered: 09/29/2021)
09/30/2021	<u>253</u>	Objection to <i>Exclusion of Unvaccinated Jurors</i> by Kaleb J Cole re <u>237</u> Order (Askerov, Teymur) (Entered: 09/30/2021)
10/01/2021	<u>254</u>	SEALED ADMITTED TRIAL EXHIBITS by USA as to Kaleb J Cole, re 250 Jury Trial-Finding of Guilty,, (Attachments: # <u>1</u> Exhibit 100, # <u>2</u> Exhibit 101, # <u>3</u> Exhibit 102, # <u>4</u> Exhibit 103, # <u>5</u> Exhibit 104, # <u>6</u> Exhibit 105, # <u>7</u> Exhibit 106, # <u>8</u> Exhibit 107, # <u>9</u> Exhibit 108, # <u>10</u> Exhibit 109, # <u>11</u> Exhibit 110, # <u>12</u> Exhibit 111)(Woods, Thomas) (Entered: 10/01/2021)
10/06/2021	<u>255</u>	MOTION to Partially Seal Certain Trial Exhibits and Substitute Redacted Copies in Place Thereof by USA as to Kaleb J Cole (Attachments: # <u>1</u> Proposed Order) Noting Date 10/15/2021, (Woods, Thomas) (Entered: 10/06/2021)
10/15/2021	<u>256</u>	ORDER granting Defendant's <u>232</u> Motion to Seal Document <i>Exhibits to Objection</i> ; as to Kaleb J Cole. It is ORDERED that the exhibits (Dkt. No. <u>233</u>) be allowed to remain under seal due to the nature of their contents. Signed by U.S. District Judge John C. Coughenour. (SR) (Entered: 10/15/2021)

10/15/2021	<u>257</u>	ORDER granting Government's <u>255</u> Motion to Partially Seal Certain Trial Exhibits and Substitute Redacted Copies in Place Thereof as to Kaleb J Cole. Signed by U.S. District Judge John C. Coughenour. (SR) (Entered: 10/15/2021)
01/04/2022	<u>261</u>	SENTENCING MEMORANDUM by USA as to Kaleb J Cole (Woods, Thomas) (Entered: 01/04/2022)
01/04/2022	<u>262</u>	SENTENCING MEMORANDUM by Kaleb J Cole (Attachments: # <u>1</u> Exhibit 1 (Objections to Draft Presentence Report), # <u>2</u> Exhibit 2 (Letters of Support))(Black, Christopher) (Entered: 01/04/2022)
01/10/2022	<u>264</u>	ORDER as to Kaleb J Cole. This matter comes before the Court <i>sua sponte</i> . The Court FINDS good cause to allow twelve observers in the gallery for this proceeding. Any persons arriving at the courthouse who cannot be accommodated in Courtroom 16206 will be directed to an overflow courtroom. Unvaccinated persons wishing to observe are encouraged to do so telephonically, through the Court's teleconference line. Signed by U.S. District Judge John C. Coughenour. (SR)(cc: USMO) (Entered: 01/10/2022)
01/11/2022	265	Minute Entry for proceedings held before U.S. District Judge John C. Coughenour- CRD: <i>Gabriel Traber</i> ; AUSA: <i>Thomas Woods and C Seth Wilkinson</i> ; Def Cnsl: <i>Christopher Black and Teymur Askerov</i> ; USPO: <i>Amelia Whaley</i> ; Court Reporter: <i>Debbie Zurn</i> ; Time of Hearing: <i>9:00 AM</i> ; Courtroom: <i>16206</i> ; SENTENCING held on 1/11/2022 for Kaleb J Cole (2). Counts 1-4 Dismissed pursuant to Government motion. The Court imposes on Counts 1s-5s: 84 months in the custody of the Bureau of Prisons with a recommendation for placement at FCI Phoenix; 36 months of Supervised Release with Mandatory, Standard and Special Conditions as set forth in the Judgment; Fine waived and \$100.00 Special Assessment per count of conviction. Defendant remanded to custody. (GT) (Entered: 01/11/2022)
01/11/2022	<u>266</u>	JUDGMENT as to Kaleb J Cole by U.S. District Judge John C. Coughenour. (cc: USPO, PTS, FLU, Fin., USMO, Sea Tac Det) (GT) (Entered: 01/11/2022)
01/24/2022	<u>267</u>	NOTICE OF APPEAL by Kaleb J Cole re <u>266</u> Judgment. Filing Fee:. (cc: USCA) (Askerov, Teymur) (Entered: 01/24/2022)
01/24/2022	<u>268</u>	ERRATA- NOTICE OF APPEAL (22-30015) re <u>267</u> Notice of Appeal <i>Corrected Notice of Appeal</i> by Defendant Kaleb J Cole (Askerov, Teymur) Modified on 1/25/2022 to edit document title and to add the CCA#. (RE) (Entered: 01/24/2022)
01/24/2022	<u>269</u>	TIME SCHEDULE ORDER/ USCA CASE NUMBER (22-30015) as to <u>268</u> Notice of Appeal filed by Kaleb J Cole. (RE) (Entered: 01/25/2022)
02/03/2022	<u>270</u>	TRANSCRIPT REQUEST by Plaintiff USA for proceedings held on 01/11/2022 re 265 Sentencing,,,. Requesting Attorney: Thomas M Woods. Posting of this Transcript Order form does not constitute an official request for transcript(s). If you have not already done so, you MUST contact the individual court reporter(s), Debbie Zurn (debbie_zurn@wawd.uscourts.gov, 206-370-8504) to make payment arrangements and secure your desired delivery time. (Woods, Thomas) (Entered: 02/03/2022)
02/11/2022	<u>271</u>	TRANSCRIPT REQUEST (#22-30015) by Defendant Kaleb J Cole for proceedings held on 09/27/2021, 9/28/2021, 9/29/2021, 01/11/2022 re 244 Jury Trial-Ongoing,, 265 Sentencing,, 250 Jury Trial-Finding of Guilty,, 238 Jury Trial Day 1-Voir Dire/Jury Selection,,. Requesting Attorney: Teymur Askerov. Posting of this Transcript Order form does not constitute an official request for transcript(s). If you have not already done so, you MUST contact the individual court

		reporter(s), Debbie Zurn (debbie_zurn@wawd.uscourts.gov, 206-370-8504) to make payment arrangements and secure your desired delivery time. (Askerov, Teymur) (Entered: 02/11/2022)
02/16/2022	<u>272</u>	<p>NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Sentencing Hearing held on 1/11/2022 before Judge John C. Coughenour.</p> <p>Parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.</p> <p>Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Information regarding the policy can be found on the court's website at www.wawd.uscourts.gov.</p> <p>To purchase a copy of the transcript, contact court reporter Debbie Zurn, debbie_zurn@wawd.uscourts.gov, 206-370-8504.</p> <p>Release of Transcript Restriction set for 5/17/2022, (DZ) (Entered: 02/16/2022)</p>
02/24/2022	<u>273</u>	<p>NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Trial - Day 1 (jury selection redacted) held on 9/27/2021 before Judge John C. Coughenour.</p> <p>Parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.</p> <p>Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Information regarding the policy can be found on the court's website at www.wawd.uscourts.gov.</p> <p>To purchase a copy of the transcript, contact court reporter Debbie Zurn, debbie_zurn@wawd.uscourts.gov, 206-370-8504.</p> <p>Release of Transcript Restriction set for 5/25/2022, (DZ) (Entered: 02/24/2022)</p>
02/24/2022	<u>274</u>	<p>NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Trial - Day 2 held on 9/28/2021 before Judge John C. Coughenour.</p> <p>Parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.</p> <p>Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Information regarding the policy can be found on the court's website at www.wawd.uscourts.gov.</p> <p>To purchase a copy of the transcript, contact court reporter Debbie Zurn, debbie_zurn@wawd.uscourts.gov, 206-370-8504.</p> <p>Release of Transcript Restriction set for 5/25/2022, (DZ) (Entered: 02/24/2022)</p>

02/24/2022	<u>275</u>	<p>NOTICE OF FILING OF OFFICIAL TRANSCRIPT of Trial - Day 3 and Verdict held on 9/29/2021 before Judge John C. Coughenour.</p> <p>Parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days.</p> <p>Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Information regarding the policy can be found on the court's website at www.wawd.uscourts.gov.</p> <p>To purchase a copy of the transcript, contact court reporter Debbie Zurn, debbie_zurn@wawd.uscourts.gov, 206-370-8504.</p> <p>Release of Transcript Restriction set for 5/25/2022, (DZ) (Entered: 02/24/2022)</p>
02/24/2022	<u>276</u>	<p>SEALED DOCUMENT Transcript of Trial - Day 1 Hearing held on 9/27/2021 before the Honorable John C. Coughenour re <u>273</u> Notice of Filing of Official Transcript for Kaleb J Cole. (RE) (Entered: 02/24/2022)</p>

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NO. 22-30015

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

KALEB COLE,

Defendant-Appellant.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF WASHINGTON

The Honorable John C. Coughenour, Judge
D.C. No. 2:20-cr-00032-JCC-2

APPELLANT'S EXCERPTS OF RECORD
INDEX VOLUME

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INDEX TO EXCERPTS OF RECORD

	Volume 1	District Court Docket #	Page(s)
I.	Judgment.....	266.....	2-8
II.	Sentencing Transcript.....	272.....	9-38
III.	Ruling on Rule 29 Motion.....	274.....	39
IV.	To Convict Instructions.....	248.....	40-46
V.	Order Excluding Unvaccinated Jurors.....	237.....	47
VI.	Order Denying Motion to Dismiss.....	210.....	53-57
VII.	Order on Motion to Continue 03/24/21.....	169.....	58-60
VIII.	Order on Motion to Continue 02/16/21.....	163.....	61-63
IX.	Order on Motion to Continue 10/13/20.....	132.....	64-66
X.	Minute Order 8/20/20.....	107.....	67
XI.	Minute Order 7/31/20.....	89.....	68
XII.	Minute Order 5/14/20.....	62.....	69
XIII.	Order on Motion to Continue 04/15/20.....	58.....	70-71
Volume 2			
XIV.	Defendant's Sentencing Memorandum.....	262.....	73-92
XV.	Defendant's Objection Exclusion of Jurors.....	253.....	91-93
XVI.	Trial Transcript Day 2.....	274.....	93-261
XVII.	Trial Transcript Day 3.....	275.....	262-314
Volume 3			
XVIII.	Verdict Form.....	252.....	316-317
XIX.	Defendant's Proposed Jury Instructions.....	223.....	318-320
XX.	Defendant's Trial Brief.....	219.....	321-327
XXI.	Reply Suppression Motion.....	209.....	328-335
XXII.	Motion to Suppress.....	194.....	336-351
XXIII.	Exhibit 1 to Motion to Suppress.....	194-1....	352-404
XXIV.	Motion to Dismiss.....	193.....	405-417
XXV.	Government's Motion to Continue.....	154.....	418-420
XXVI.	Superseding Indictment.....	94.....	421-426
XXVII.	Exhibit 203 Transcript.....	N/A.....	427-451
XXVIII.	Exhibit 204 Transcript.....	N/A.....	452-474
XXIX.	Defendant's Trial Brief.....	48.....	258-266

		District Court Docket #	Page(s)
Volume 3			
XXX.	Notice of Appeal.....	268.....	475-476
XXXI.	Indictment.....	14.....	281-287
XXXII.	District Court Docket.....	N/A.....	477-490
Volume 4 (Sealed)			
XXXIII.	Transcript Trial Day 1.....	273.....	492-648
Volume 5 (Sealed)			
XXXIV.	Trial Exhibit 100.....	254.....	651
XXXV.	Trial Exhibit 101-027.....	254.....	652
XXXVI.	Trial Exhibit 104-011.....	254.....	653
XXXVII.	Trial Exhibit 107-007.....	254.....	654
XXXVIII.	Trial Exhibit 108-005.....	254.....	655
XXXIX.	Trial Exhibit 109-002.....	254.....	656
XL.	Trial Exhibit 109-007.....	254.....	657
XLI.	Trial Exhibit 110-002.....	254.....	658
XLII.	Trial Exhibit 102-104.....	254.....	659
XLIII.	Trial Exhibit 110-008.....	254.....	660
XLIV.	Trial Exhibit 104-017.....	254.....	661
XLV.	Trial Exhibit 106-002.....	254.....	662
XLVI.	Trial Exhibits 111-02 – 111-11.....	254.....	672