UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS (Boston)

No. 1:25-cv-10685-WGY
Volume 1, Page 1 to 82

AMERICAN ASSOCIATION of UNIVERSITY PROFESSORS, et al,
Plaintiffs

vs.

MARCO RUBIO, in his official capacity as Secretary of State, et al,
Defendants

****

For Bench Trial Before:
Judge William G. Young

United States District Court
District of Massachusetts (Boston.)
One Courthouse Way
Boston, Massachusetts 02210
Tuesday, July 15, 2025

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I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
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E X H I B I T S

(None marked.)

P R O C E E D I N G S

(Begins, 9:00 a.m.)

THE COURT: Good morning. As I've allowed internet access to these proceedings, let me say if you are attending this session of the court via the internet, the rules of court remain in full force and effect, that means there is no taping, streaming, rebroadcast, screen shots, or other transcription of these materials.

It is very important that you keep your microphone muted. If you do not, I shall have to cut off your access.

I believe we're ready to go. The first witness is remote. And if the witness is available, let's swear the witness.

(WILLIAM CROGAN, sworn.)

THE CLERK: And can you please state your full name and spell your last name for the record.

THE WITNESS: My name is William Crogan. My last name is spelled C-R-O-G-A-N.

THE COURT: Thank you.

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WILLIAM CROGAN

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DIRECT EXAMINATION BY MS. SAFAVI: (By Zoom:)

Q. Good afternoon, Mr. Crogan.

(Interruption by Court Reporter.)

THE COURT: Just a moment. The Court Reporter needs you to state your name again. And I'm talking to the attorney, Ms. Safavi.

Would you state your name so the Court Reporter may make a complete record.

MS. SAFAVI: Sure. My name is Nancy Safavi.

THE COURT: And you are an attorney for the government?

MS. SAFAVI: Yes.

THE COURT: And now you may proceed.

MS. SAFAVI: Thank you.

Q. Mr. Crogan, good afternoon. I'd like to ask you some questions about your background and your employment with the U.S. government.

When did you first start working for the government?

A. I began my career with the government in 2004 when I was hired by Homeland Security Investigations.

Q. And why did you decide to enter into a career with the federal government?

A. I wanted to work in public service and work as a

criminal investigator.
Q. And what was your first job with the federal government?
A. As a Special Agent with HSI.
Q. And where were you located?
A. I was assigned to Philadelphia, Pennsylvania.
Q. And what were your day-to-day duties in that position?
A. I worked as a Special Agent and I was assigned to a narcotics investigation group where I investigated narcotics smuggling and other violations related to drug activity.
Q. And how long were you there?
A. I worked in Philadelphia for 12 years where I was also promoted to Supervisory Special Agent where I also investigated financial crimes as well as crimes against children.
Q. Okay. And then what was your next role?
A. I was transferred to headquarters for Homeland Security Investigations in Washington D.C. where I worked in multiple capacities including an Operations Chief for the Northern region of the United States. I worked as a liaison for the U.S. Department of Justice. And I also worked in our International Operations Division.

Q. And, um, how long were you there?
A. I was assigned to Washington D.C headquarters for approximately 4 years.
Q. And then, um, where did you go after that?
A. After my headquarters tour, I was assigned to Homeland Security Investigations in New England where I worked as an Assistant Special Agent in charge, which assigned me responsibility for HSI operations in the states of Vermont, New Hampshire, and Maine.
Q. Okay. And, um, how long were you there?
A. I was assigned in the ASAC role for approximately 5 years.
Q. Okay. And where did you go after that?
A. I recently reported to HSI International Operations and I'm working at the embassy in London in the United Kingdom.
Q. And what is your current title?
A. Attache.
Q. And what are your day-to-day duties as an HSI Attache?
A. I represent HSI's interests, as well as the Department of Homeland Security, here at the embassy with the Department of State, and I work as a liaison with members of the United Kingdom's law-enforcement community.

Q. Okay. So now I'd like to ask you about the training that you've received throughout, um, your service as an agent.

What was the first training that you received when you, um, entered on duty?

A. The first training I received upon duty was attending the Federal Law Enforcement Training Center, where HSI runs its academy, which is approximately 6 months long, and it introduces instruction on constitutional law, criminal justice matters, and instruction on HSI policies and procedures. The goal of the academy is to train future Special Agents to work in the capacity as criminal investigators.

Q. Okay. And after that, um, what other types of training have you received?

A. I've received different types of training throughout my career, and it's maybe prompted by an assignment to a particular investigative group. I've received training in advanced financial crimes and fraud, in asset forfeiture, I've received training in cyber crimes and investigations, as well as national security matters. I've also attended multiple trainings for management and leadership.

Q. So you have been trained in, um, basic law-enforcement techniques and HSI procedures and

protocols?
A. Yes.
Q. And is the training continuous?
A. The training is, um, periodically introduced per policy. So some policies by HSI require maintenance and proficiency on a regular basis to be displayed for the use of firearms. Or there's other regular trainings regarding other policies that occur throughout the career.
Q. So how often would you say that you received training?
A. Regularly.
Q. Okay. And, um, how long were the trainings usually?
A. A training can take many shapes and forms, sometimes it can take place over an hour, and it can be in a classroom environment or online. Or it can take place over a matter of weeks in a more intensive classroom instruction environment as well.
Q. And, um, throughout your 20 years of federal service and receiving, um, these various trainings on, um, protocols and procedures, has anything substantially, um, changed in terms of how to make an arrest?
MS. CONLON: Objection.

THE COURT: No, overruled. We'll let him answer.
A. HSI's practices in terms of affecting arrests have stayed relatively stable throughout my career. The fundamentals of what HSI does to maintain safety and accountability, in my experience, has been very consistent.
Q. Okay. And this would be the case as well as for the past 5 years?
A. Yes.
Q. And what about the past 6 months?
A. Yes.
Q. Okay. So now I'd like to turn to your role at HSI.
Currently as an Attache, um, are you a supervisor?
A. Yes.
Q. So how many individuals do you supervise?
A. I supervise approximately 12 to 14 employees that are based in the UK and, um, other parts of Western Europe.
Q. And when you say "employees," are they all Special Agents?
A. It's a mix of employees. It's mostly Special Agents as well as some locally-employed staff.
Q. Okay. And prior to this when you were an ASAC, did you supervise employees?

A. I did, yes, I supervised approximately 80 employees across the three-state region for which I was responsible for.
Q. Okay. And of those employees, were they all Special Agents?
A. No. The -- similar to by current position, it's a mix of different employees and positions. In the capacity as an ASAC, the majority of the employees were HSI Special Agents, but we also host Task Force Officers, which are police and law-enforcement officers hailing from different police organizations, as well as support staff, which includes Mission Support Specialists, clerical staff, and analysts as well.
Q. So in supervising the Special Agents, both as an ASAC and as an Attache, do all of the Special Agents receive the same training you have on law-enforcement techniques?
A. Yes.
Q. Okay. And you are aware of those, correct?
A. I am.
Q. Okay. And, um, what steps do you take to insure that those protocols and law-enforcement techniques are followed by your Special Agents?
A. It's my responsibility, as a leader and a manager, to review operational planning, to engage in regular

discussions with, um, agents and supervisors under my command as to their activities and what they're planning. So this takes shape in, again, different forms, in regular conversations, but it's also prompted by law enforcement actions that are planned, which require us to, um, make plans, organize, um, manpower to affect operations. So all of these things take place very regularly, almost on a daily basis.

Q. Okay. And in part of those operations you're describing, um, when you were an ASAC and currently as an Attache, um, do any of your Special Agents conduct Title VIII investigations?

A. Yes, as an ASAC, Title VIII investigations were part of our investigative workload.

THE COURT: What's a "Title VIII investigation"?

THE WITNESS: Your Honor, "Title VIII" is a reference, in our vernacular, to the INA. So any, um, either criminal or civil immigration violation.

THE COURT: Thank you.

Q. Okay. And so now I'd like to ask you, um, some specific questions about HSI's policies or protocols for making arrests.

Would you explain, for the Court's benefit, what "operational security" is?

A. Yes, "operational security" can be a broad

concept, but it's essentially the priority to protect the, um, the presence of an operation or an initiative from opponents, or a bad actor. So when HSI talks about "operational security," we talk about discretion, and we talk about, um, keeping or protecting government information. So the presence of an investigation may not be revealed unnecessarily or before the government wants to make an official act. That's what "operational security" means to me.

Q. Okay. And so Agent Crogan, you mentioned a "bad actor." Do -- in terms of operational security, do Special Agents factor into account, um, a subject's history of violence?

A. Yeah, as law-enforcement officers, when we're conducting an investigation, um, many times a, um, person of interest or the subject of an investigation may already have a criminal history that, um, details crimes of violence. We also investigate people that may have never been arrested or convicted of a crime, but are participating in violence. And whether or not the indication comes from a criminal record or comes from an observation or information we received, one of the factors we, um, prioritize and consider is any and all information we have about someone's indicators for violence, about things they do, or things they may have

said, or planned to do. We're very vigilant for that because then that informs how we would handle a potential interaction with said subject.

Q. So in terms of, um, how you would handle a specific subject, are there variations then based on the specific circumstances?

A. There are, there are many variables, and it can be influenced also by environmental factors. If someone were to be placed under arrest or planned to be placed under arrest, the location is also a critical factor. The number of other subjects or people around or maybe aligned with the person is a factor as well. And these are all things we consider. Because, um, it's a priority for myself and other HSI agents to conduct our business in a safe and accountable manner. No one wants to get hurt.

Q. You mentioned conducting an arrest in a safe and accountable manner.

So what would be the circumstances for an agent to use handcuffs during an arrest?

THE COURT: Well wait a minute.

A. These --

THE COURT: Wait a minute. I'm allowing all of this, but it seems somewhat theoretical, now you're asking subjunctive questions, "What would be the

circumstances?" Let's tie it to something, and then I'll allow you to expand it into these areas.

Go ahead.

MS. SAFAVI: Yes, your Honor.

Q. Agent Crogan, you familiar with Mr. Mahdawi?

A. Yes, I am.

Q. Were you -- did you play a role in his arrest?

A. I was present for Mr. Mahdawi's arrest and I was aware of the investigation of him and the planning for his arrest.

Q. In terms of planning for an arrest with Mr. Mahdawi, um, what factors would an agent consider for using handcuffs?

THE COURT: No, I have a problem with "would." What factors did or were considered? And of course I'll let you have that.

MS. SAFAVI: Okay, thank you, your Honor.

THE COURT: In this case. Do you want to ask it? Let's ask it.

In this case what factors were considered, sir, with respect to the use of handcuffs?

THE WITNESS: Yes, your Honor.

A. The factors that contributed to the use of handcuffs were our training and experience as agents, the policy and practice of HSI to restrain individuals

who were being arrested for violations of law, and the transportation, the movement of the subject from one location to another.

When we arrest somebody, we, um, put them under restraints, typically it's a set of handcuffs, and that subject is patted down. We check a subject to make sure they don't have any dangerous items on their person, that they could use to hurt themselves, or the officers, or a member of the public. And it's also our policy, when a subject who is under arrest is transported, they are restrained, during that transportation, to again protect subjects and the officers.

Q. Okay. What factors did you consider in, um -- actually withdrawn.

How many agents, including yourself, were a part of Mr. Mahdawi's arrest?

A. I don't recall the exact number, but I was certainly present. I would say approximately 10 to 15.

Q. Okay. What factors did you consider in determining the number of agents who would be involved in the arrest?

A. The -- the location of the arrest. And again, as I mentioned earlier, the environment that the arrest is anticipated to take place in is a major factor. And the location was a -- a public, um, building and a CIS

office that, um, had a three-sided parking lot, and, um, it required, um, elements of surveillance, so we could observe the exterior of the building as well as an arrest team that would be located inside the building. So these are all factors that contribute to the approximate number of law enforcement officers that would be present for the -- for the operation.

Q. Is that a typical number for an arrest?

A. It's hard to say what's typical for an arrest, but for one subject and a, um, physical location of that type, in my experience that is consistent, um, that number.

Q. What factors, um, were considered, um, in terms of the agents deciding to wear masks during the arrest of Mr. Mahdawi?

A. The use of masks, um, is a decision that's made by the Special Agent or the officer at -- you know at the time of the planning of the arrest. And this is a more common practice, in my experience it's occurred in the past, that it's not necessarily a new thing in my experience. We've traditionally done this for undercover agents who may be acting or are acting in an undercover capacity and we don't want to betray their true employment as law-enforcement officers, but they also have to go out and help out and perform an arrest

and --

THE COURT: Who makes the decision here?

THE WITNESS: The individual employees, your Honor.

THE COURT: And how was that choice conveyed to them?

THE WITNESS: It was articulated to me, your Honor, by the individual employees because of a concern of their faces being put in the public eye and being victims potentially of doxxing or harassment, because these employees --

THE COURT: How many of them expressed that concern?

THE WITNESS: For this operation? I'd say two or three of the agents expressed that concern to me.

THE COURT: And at the time the operation went down, how many were masked?

THE WITNESS: Two were masked, your Honor, and a third agent, I recall, pulled a baseball cap low over his head and put a hood over his head.

THE COURT: Now you talked about the instance of this in the past and you gave, as an example, people you were using undercover.

When before this -- and I don't need specifics, we're focused on this case, but you were the ASAC there

for a while.

When before this, um, were masks used in an arrest? And we're not going into the subjects, I just want to know when was the last time before this?

THE WITNESS: I recall in, um, years past. So within the 5-year time period, your Honor, as working as an ASAC.

THE COURT: Thank you.

THE WITNESS: Yes, sir. I recall an undercover agent who was under my command.

THE COURT: But that's an undercover agent. Other than undercover agents, when before this?

THE WITNESS: I recall other instances in the more recent past where agents are out in the public eye conducting other operations and media was anticipated and they were masked there. These are multiple occasions since I was an ASAC.

THE COURT: All right. And am I correct in assuming that these were Title VIII investigations, Title VIII arrests?

THE WITNESS: Yes, your Honor, some of these were Title VIII, and some of these were also criminal investigations, like narcotics investigations.

THE COURT: And in narcotics investigations, um -- and again I'm not wanting any specifics, but in

narcotics investigations when you, um, mask-up, um, when was that done, um, other than in undercover situations, in the past 5 years, while you were an ASAC here in New England?

THE WITNESS: I only specifically remember the undercovers, your Honor.

THE COURT: Thank you.

All right, go ahead Ms. Safavi.

MS. SAFAVI: Thank you, your Honor.

Q. During the arrest of Mr. Mahdawi, did the Special Agents wear, um, plain clothes?

A. Yes, the Special Agents wore plain clothes, which is a common and frequent practice for an operation where the individual was going to be observed before the arrest was initiated.

We have some operations, um, for the Court I would explain it as a search warrant or arrest warrant execution of a residence with a warrant in hand, and the agents may not be in plain clothes, they may be donning their garments that are labeled with "Police." But very frequently, and in many different forms of investigations, we don't have the luxury of identifying the target or the subject positively right away, and we have to, um, surreptitiously or discreetly observe from a distance or in plain clothes. And --

THE COURT: I think I understand, and forgive me for the interruption, but you used the word "search warrant."

On those occasions where, um, HSI officers, which you supervise, Special Agents, are executing a search warrant, where does the search warrant come from?

THE WITNESS: A court of law, your Honor.

THE COURT: Yes. All right.

Now when you are, um -- well let's come to Mr. Mahdawi's situation.

When Mr. Mahdawi was taken into, um, custody, what was the authority for taking him into custody?

THE WITNESS: Your Honor, the authority was conducted with an I200 arrest form, which is a civil and administrative arrest form, that, um, was produced after a body of facts were reviewed by the ICE, the Office of Principal Legal Advisor, and --

THE COURT: Yeah, actually, thank you, that answer is very helpful to the Court. Let me, um -- really I just want to repeat it to you and see if I understand it, because I have not understood this.

Because this is a civil proceeding -- though obviously you have the right to detain, deprive someone of their liberty, there's a form, and it's an ICE 200 form?

THE WITNESS: Yes, your Honor.

THE COURT: And that form, um, goes to -- it is reviewed, you said, by an ICE legal officer?

THE WITNESS: Yes, your Honor.

THE COURT: Okay. Now, um -- and -- all right, that's helpful.

Go ahead, Ms. Safavi.

MS. SAFAVI: Okay, thank you, your Honor.

Q. In terms of Mr. Mahdawi's arrest, did the agents use a marked vehicle?

A. No, HSI does not typically have or use marked vehicles, and again akin to the same principle of plain-clothes operations, because criminal investigators are not a uniformed police service who respond to or react to calls for service, whereas it's implied that a law-enforcement officer needs to very clearly and overtly label and present as a law-enforcement officer. We are investigators, and by that nature much of what we do starts out in a discreet and again surreptitious manner. So the vehicles are much of the same.

We do, um, equip our vehicles with lights and sirens that comply with local codes of law, and those are used in enforcement situations when we need to, um, basically identify ourselves in the vehicle as law-enforcement officers.

Q. So in terms of when the Special Agents, um, make an arrest, when would they identify themselves as law enforcement?

THE COURT: Well again I'm having trouble, Ms. Safavi, with the "would." We're focusing on Mr. Mahdawi's arrest, properly, and if he knows, I'd like to know when did they?

MS. SAFAVI: Okay, so I'll rephrase.

Q. When did they identify themselves as law enforcement?

A. Immediately. I was present for, um, our encounter with Mr. Mahdawi at the conclusion of his interview with CIS and I identified myself as an HSI Special Agent, I presented, um, my credentials, and I was accompanied by three other Special Agents who presented their credentials, and this occurred in a small office inside of the CIS work space.

THE COURT: When you say you "presented your credentials," can you describe what that means? Is that an identification card? Do you have a badge? Both? Don't let me suggest. You tell me what you meant by that.

THE WITNESS: Yes, your Honor. When I refer to "credentials," I refer to my agency-issued ID card and badge that corresponds to my HSI identification number.

THE COURT: Are you able to tell me whether the other Special Agents present had the same identification that you just described you had, and produced it?

THE WITNESS: Um, I don't recall exactly, your Honor, but what I do recall is that it was clear that the other three agents were with me. And, um, because we were in plain clothes, um, sometimes agents wear belt badges, which is essentially a badge affixed to someone's waist.

THE COURT: And these folks who now, in this small office, how many of them, if any, were masked, and were you masked?

THE WITNESS: No, sir, I was not masked.

THE COURT: How about the agents?

THE WITNESS: I recall that, um, 2 of the 4 of us eventually placed masks on. I don't recall exactly when they donned their masks. But, um, they -- I'd presume they placed them on when they were -- between the time when they left the office and when they were outside in a public area where the HSI transport vehicle was waiting.

MS. CONLON: Objection, move to strike the last portion as speculation.

THE COURT: No, I'm going to let it stand.

And proceed, Ms. Safavi.

MS. SAFAVI: Thank you, your Honor.
Q. Mr. Crogan, um, was there -- I'm sorry, Agent Crogan, were there any, um, other things, um, that you, um, participated in in terms of Mr. Mahdawi's arrest?
THE COURT: I don't understand the question? Well evidently he does.
(Laughter.)
THE COURT: Well if you understand it, sir, go ahead and answer.
THE WITNESS: Yes, your Honor.
A. I understand it to be as my involvement was part of the planning and the supervision of the planning for Mr. Mahdawi's investigation, which came first, um, and eventually the arrest, when that was authorized.
Q. And when did you first learn of Mr. Mahdawi, when did he first come to your attention?
A. Um, approximately mid March of 2025.
Q. And, um, did you receive a communication informing you about this subject?
A. Yes, I did. My supervisor communicated to me that the State Department may be providing a finding against Mr. Mahdawi, and then eventually a finding was transmitted to me via e-mail, where I recall there was an attached document, um, produced by the U.S. Department of State, referencing Mr. Mahdawi.

Q. Was there any other communication involving Mr. Mahdawi that you received?
A. Yes, I also, um, engaged with the HSI New York office, um, on Mr. Mahdawi, and the HSI New York office provided information about Mr. Mahdawi's, um, alleged activities and engagement with, um, police and law enforcement in the past. And, um, yeah, I believe that's, you know, most of what I recall.
Q. And after receiving --
THE COURT: Wait a minute.
And how did the New York office communicate this data to you, sir?
THE WITNESS: The New York office provided information, your Honor, regarding, um, Mr. Mahdawi's interactions with the FBI of being --
THE COURT: My question was not for you to characterize it, but how did you get it? E-mail? Snail mail? Telephone call? That type of thing.
THE WITNESS: Yes, your Honor. I received it principally by e-mail and also phone calls.
THE COURT: Thank you.
Q. And after receiving the communications, what did you do next?
A. I ensured that agents at the HSI Vermont office were proceeding with their investigation and following

up with the information that came from New York.
Q. Was Mr. Mahdawi, um -- was there surveillance operations?
A. There were -- inside of that information package, if you will, there were addresses for Mr. Mahdawi in Vermont. I believe that's why we were contacted, because the government records had addressed this for Mr. Mahdawi in New York and in Vermont. And as a matter of routine investigative procedure, agents checked the addresses in Vermont, um, trying to determine if Mr. Mahdawi was present in the district.
Q. And, um, when did you -- what date did you make the arrest?
A. The arrest of Mr. Mahdawi occurred in mid April of 2025, I believe April 14th.
Q. And where did it occur?
A. It occurred at the CIS office in Colchester, Vermont.
Q. Okay. And, um, in terms of Mr. Mahdawi's arrest, um, as the supervisor, was the arrest consistent with HSI's procedures and policies?
A. Yes, it was.
THE COURT: Did I hear an objection? No. Very well.
Proceed.

MS. SAFAVI: Thank you, your Honor.
THE COURT: Go ahead, Ms. Safavi.
MS. SAFAVI: Thank you, your Honor.
Q. And, um, in your oversight of the arrest, um, was there anything inconsistent, um, that the agents did in terms of arresting Mr. Mahdawi?
A. Um, no, not that I recall.
Q. And, um, were you -- did anyone ever communicate to you or ever suggest that Mr. Mahdawi's arrest was because of his pro-Palestinian views?
MS. CONLON: Objection.
THE COURT: No, overruled.
A. No, I don't recall that either. No.
Q. Did anyone ever tell you or suggest that Mr. Mahdawi's arrest was, um, based on his criticisms of Israel?
A. No.
Q. Did anyone ever communicate to you or suggest that Mr. Mahdawi's arrest is based on his political views?
A. No.
MS. CONLON: Objection, asked and answered.
THE COURT: Overruled, and his answer, "No," may stand.
Q. And, um, in terms of, um, after the -- Mr. Mahdawi was arrested, in your role as, um, ASAC, are you

involved with any of the decisions regarding the detention of Mr. Mahdawi?

A. No, HSI relies on other elements of ICE and Homeland Security to maintain custody or detention of someone who's arrested for a civil immigration violation.

THE COURT: Well let me just follow that up because I'm not clear what you know.

So you make the arrest in the little CIS office there in Colchester, Vermont. You, um -- he's handcuffed. You take him out to a -- to an HSI vehicle. A couple agents put masks on because you go into the public area. And then what happens to your --

THE WITNESS: Yes, your Honor.

THE COURT: Wait a minute.

THE WITNESS: Yes, your Honor.

After Mr. Mahdawi is placed, escorted to a vehicle, the vehicle drives to the HSI office and --

THE COURT: Which is where?

THE WITNESS: Which is in South Burlington, Vermont.

THE COURT: Okay. All right.

THE WITNESS: I --

THE COURT: Do you -- all right, keep going.

THE WITNESS: Yes, your Honor.

Eventually I also travel to the South Burlington office, um, and Mr. Mahdawi is presented paperwork, um, to finish essentially what we term as "processing," his paperwork is processed, and he is then transferred to the custody of Enforcement and Removal Operations, commonly referred to as "ERO."

THE COURT: So as -- as HSI is organized here, um, evidently that -- that ends your part of it, and Enforcement and Removal Operations takes over, is that -- do I have it right?

THE WITNESS: Yes, your Honor.

THE COURT: And where did that -- to your knowledge, this is what you personally know. Where did that take place?

THE WITNESS: I did not, um, directly observe Mr. Mahdawi's transfer, um, from HSI to ERO, but it's my understanding it happened at the HSI office in South Burlington.

THE COURT: All right. So -- and do you know where he went from there?

THE WITNESS: Yes, your Honor.

THE COURT: Where?

THE WITNESS: Mr. Mahdawi, it's my understanding, was transported by ERO, from the South Burlington office, to the airport in Burlington, and they attempted

to fly out of the district.

THE COURT: Why?

THE WITNESS: I don't know. I don't have any involvement with custody location or determination.

THE COURT: I see. All right.

Go ahead, Ms. Safavi. Anything else for this witness?

MS. SAFAVI: Your Honor, at this time the defendants pass the witness.

THE COURT: Well I have a question. I don't know -- I'm going to ask it of the defense team generally.

The written records here, the, um, the ICE 200 form, the State Department authorizations, the e-mails from the New York office, have I got all of those? Can anyone answer that? Including Ms. Safavi.

MR. KANELLIS: Your Honor, I'll do my best.

I'm not sure about the latter, the e-mail from the New York office. I don't recall that information being even -- yeah, I don't recall that that information is --

THE COURT: Well he's so testified, and I heard him testify in the plural. So you're not speaking to that.

But the others?

MR. KANELLIS: I believe those are -- those are in

the administrative record. The bases for -- if you're asking what the bases --

THE COURT: Well the documents to which he referred.

MR. KANELLIS: I believe they are.

THE COURT: Thank you.

Ms. Conlon?

Or excuse me?

MR. TREMONTE: I wish I were as good as Ms. Conlon. This is Michael Tremonte, your Honor, for the plaintiffs.

THE COURT: Thank you, Mr. Tremonte, you did just right. I expected her to be standing there. I still can see that far.

(Laughter.)

THE COURT: Mr. Tremonte.

MR. TREMONTE: Thank you, your Honor.

So at least 2, if not 3 of the 4 depositions, we specifically requested the production of the documents that your Honor is focused on, in addition to other documents that these witnesses have mentioned in connection with their sworn testimony. Some of the -- a very small subset I believe we have, the rest we do not. And if it would help the Court, we would be pleased to prepare a list before the end of the day of the

documents that we have requested but still have not received.

THE COURT: All right.

MR. TREMONTE: And to be clear, we requested them before testimony today and we did not receive them.

THE COURT: Well prepare such a list.

Very well. And it's your witness.

Who's going to -- yes, Ms. Conlon.

MS. CONLON: Yes. And, your Honor, I'll question from here since the witness is --

THE COURT: Of course you may.

MS. CONLON: Okay.

CROSS-EXAMINATION BY MS. CONLON.

Q. Good morning, Mr. Crogan.

A. Good morning.

Q. Okay. So going back for a moment.

You were just asked by the Court about, um, what happened to Mr. Mahdawi after you tendered him to ERO and indicated that he was going to be flown out of the district.

He was going to be flown, so far as you know, to Louisiana, right?

MS. SAFAVI: Objection.

THE COURT: No, overruled.

A. Yes, I recall one of the documents I was shown yesterday, that there was an address in Louisiana on custody-type paperwork for Mr. Mahdawi.

Q. Okay. Now going back to your learning about Mr. Mahdawi.

When you learned of Mr. Mahdawi, you were told to prioritize his investigation, right?

A. Yes, I think that's fair to say.

Q. You were told that by people senior to you in HSI, correct?

A. That was my understanding from my supervisor.

Q. Right, the supervising agent or the Special Agent in charge, is that right, that's who supervised you at the time?

A. Yes.

Q. And you had multiple follow-up conversations about the status of that investigation with your Special Agent in charge, right?

A. Yes.

Q. And it was your understanding that the order to prioritize Mr. Mahdawi came from above the Special Agent in charge, from someone senior to him, correct?

A. That's the impression I was working under, yes.

Q. Okay. Now the decision to arrest Mr. Mahdawi at his citizenship interview was made in coordination with

HSI New York, right?

MS. SAFAVI: Objection.

THE COURT: Overruled.

A. I recall that the HSI New York office made us aware, they shared information about Mr. Mahdawi's appointment they learned from their communications with CIS.

Q. In other words, HSI New York had looked for him, had not found him, and then let you know that he was going to have an interview at a CIS office in Vermont, correct?

MS. SAFAVI: Objection.

THE COURT: Well I do -- that assumes a lot.

Is that what the New York office told you?

THE WITNESS: No, your Honor. Um, what I characterize it as the HSI office in New York, and HSI collectively in the New England area, shared information about Mr. Mahdawi as routine practices, and they made me aware of his possible presence at this appointment in Vermont with CIS. I -- I haven't observed myself, but it's my understanding that, like surveillance and address checks that we performed in the District of Vermont, I also understand it that HSI New York also did address checks for Mr. Mahdawi in their AOR as well.

THE COURT: Thank you.

Go ahead, Ms. Conlon.
Q. So you said you learned about his possible presence at the CIS interview. You say "possible presence" because that was a voluntary decision for Mr. Mahdawi, correct?
A. I don't know what the decision was for Mr. Mahdawi. I don't know what he decided.
Q. It's your understanding that he was invited to attend an interview at the CIS building in Vermont, right, for his citizenship?
A. I know he had an appointment with CIS that had to do with his immigration process.
Q. He wasn't brought there in handcuffs, right?
MS. SAFAVI: Objection.
THE COURT: Well I really don't know where this is going, it's undisputed that he went there for a naturalization interview or as part of the potential naturalization process. Now I guess that I get that from, um, the newspapers, but that's what I understand. And that was the -- so he came there voluntarily. Unless that's disputed, and I don't think anyone does dispute it, I accept it and as a basis for going forward.
MS. CONLON: Okay, then I can move on from that.
Q. Now Mr. Mahdawi entered the CIS building through

the metal detector and security procedures they have in the lobby of that building, right?
A. Yes.
Q. In other words, he was processed like any person would be in that building to make sure that he had no weapons on his person?
A. Yes.
Q. And Mr. Mahdawi was there with his lawyer, right?
A. Yes.
Q. Now after Mr. Mahdawi had gone through security, he and his lawyer were alone in a room with a CIS officer doing the interview, right?
A. Yes.
Q. There were no special security precautions taken about Mr. Mahdawi being alone in this room with the CIS agent, right?
A. No, it's my understanding that it was a routine entry into the states, like you mentioned, anyone else, and he proceeded with his scheduled interviewer meeting.
Q. And in fact you waited to arrest him until he had done his entire interview to become a citizen, right?
A. Yes. We also learned that it was -- he was positively identified by the CIS employee, um, as a matter of the interview. When they proceed with the interview, the CIS employee checks the identity of the

subject who appears. So we also knew that by waiting.
Q. Now to be clear, this arrest was not a criminal violation arrest, right?
A. No, this arrest was based on the A4(c) citation that came from the Department of State.
Q. And speaking of that determination, in your 20 years of law enforcement, you have never seen a determination under 4(c) of the INA before, isn't that right?
A. Yes, I believe so. Yes.
Q. You have never seen a memo like the one you received about Mr. Mahdawi from the Secretary of State's Office before, have you?
A. No.
Q. You have never seen a removal from the United States based on similar facts to those alleged about Mr. Mahdawi, correct?
A. I -- I don't recall others.
Q. Thank you.
MS. CONLON: Nothing further.
THE COURT: Nothing further, Ms. Safavi?
MS. SAFAVI: Um, no, your Honor.
THE COURT: Very well.
Thank you, Mr. Crogan. And you are excused.
And the government may call its next witness.

Yes?

MS. SANTORA: Your Honor, the defendants call Special Agent Patrick Cunningham.

THE COURT: He may be called.

(Witness takes the stand.)

(PATRICK CUNNINGHAM, sworn.)

THE CLERK: Can you please state your full name and spell your last name.

THE WITNESS: My name is Patrick Cunningham, my last name is C-U-N-N-I-N-G-H-A-M.

THE CLERK: Thank you.

THE COURT: Ms. Santora, you may proceed.

****

PATRICK CUNNINGHAM

****

DIRECT EXAMINATION BY MS. SANTORA:

Q. Good morning, Special Agent Cunningham. Thank you for being here today.

A. Good morning.

Q. Where do you currently work?

A. I'm currently an Assistant Special Agent in charge with HSI Homeland Security investigations here in Boston.

Q. And how long have you held that role?
A. About one year.
Q. What are your responsibilities?
A. I oversee three investigative groups. Within those groups there's first-line supervisors and then Field Special Agents as well as Intel Analysts and Task Force Officers.
Q. When did you begin working for the United States government?
A. I started as an student intern in 2006 and I became a Special Agent in 2008.
Q. And you were an intern of HSI?
A. Correct. At the time it was "ICE Investigations," but we rebranded to "HSI."
Q. And where was your first job after you were an intern with HSI?
A. I was a Special Agent in our San Diego field office.
Q. What were your responsibilities in that job?
A. Mainly narcotics investigations.
Q. Did you receive training before entering into that job?
A. I did.
Q. And where did you receive that training?
A. At the Federal Law Enforcement Training Center in

Brunswick, Georgia.
Q. And what type of training did you receive there?
A. All types of training pertinent to the job. Everything from basic investigative techniques to, um, entry tactics, arrest tactics, handcuffing, um, driving, Things of that nature. Firearms.
Q. You testified that after that training you worked as a Special Agent in San Diego. How long did you work there?
A. I was there from December of 2008 until February of 2018.
Q. And in 2018, what was your next job?
A. I transferred here to Boston.
Q. And what was your role there?
A. Um, first, it was a Special Agent.
Q. And following your role as a Special Agent in Boston?
A. So I was a Special Agent in our drug smuggling group, or strike force, and about 6 months later I became the acting group supervisor of that group.
Q. And following that, what was your next role at HSI?
A. I became the full-time group supervisor of that group, um, and then I spent some time as a, um, acting Assistant Special Agent in charge.

Q. And you were acting in a supervisory capacity in that role?
A. I was.
Q. What did you do after acting as an ASAC?
A. I became the group supervisor of our Cyber Crimes Group here in Boston.
Q. And following that?
A. Following that, in November of '22, I took a headquarters assignment in Sterling, Virginia.
Q. And what was that assignment?
THE COURT: A headquarters assignment in?
THE WITNESS: Sterling, Virginia.
THE COURT: Thank you.
A. That assignment I was assigned to the National Targeting Center Investigations, um, working mainly as a liaison to Customs and Borders Protection, as well as providing assistance to HSI agents in the field.
Q. And following your role in Sterling, Virginia, what did you do after that?
A. I came back here as an Assistant Special Agent in Charge.
Q. And that's your current role?
A. Correct.
Q. All right. Does your office do work involved in enforcing criminal laws?

A. Yes.
Q. Does HSI's work also involve enforcing Title VIII?
A. Yes.
Q. What is Title VIII?
A. Title VIII is immigration law.
Q. In the time that you have worked for HSI, has HSI always had the authority to enforce Title VIII?
A. Yes.
Q. In you time working at HSI, have you made arrests?
A. Yes.
Q. Have you supervised people who have made arrests?
A. Yes.
Q. And do the agencies supervised to make arrests receive the same training that you describe receiving at --
A. Yes.
Q. Are you familiar with HSI arrests, protocols, and procedures?
A. I am.
Q. Where are those found?
A. Um, they're in the Special Agent manual. There's also a manual, "Specifics for Arrests, Calls, and Procedures."
Q. Are you agents that you supervise familiar with HSI arrest protocols and procedures?

A. They would be trained on those, yes.
Q. Have arrests -- HSI's arrests, protocols, and procedures, changed since you received, um, the training that you described receiving on arrests when you first started as an agent?
A. Protocols and procedures not so much. Maybe techniques have changed in the ways that, you know, people are, you know, reapplying handcuffs, or things of that nature, there's been ways that's evolved. But in terms of procedures and stuff like that, they're, um, mostly the same.
THE COURT: How has applying handcuffs evolved?
THE WITNESS: So basically the way that we would be instructed to put a -- a target in a position of disadvantage has changed. So when I came on the job, we learned to like have their hands out like an airplane and apply a cuff and then bring the cuff to the lower back. But now we're trained to put the hands behind the head in some cases or -- and sometimes in the field it comes down to just the most effective way to apply the handcuffs. But the way that, you know, it's trained in training that we're drilled on --
THE COURT: You're just pointing out that that's --
THE WITNESS: -- a technique that --

THE COURT: You're answering as to -- and the idea is to protect the safety of the officers and effectuate the restraint?

THE WITNESS: Correct. Correct.

THE COURT: Go ahead, Ms. Santora.

Q. All right. I'd like to talk to you about a particular arrest.

Were you involved in the arrest of Rumeysa Ozturk?

A. I was involved and aware of it, yes.

Q. What was your role in that arrest?

A. So I received the information from headquarters, um, passed down to the chain of command, um, that Ms. Ozturk had had her Visa revoked by the State Department. And from there my role is mainly to apply resources and, you know, delegate agents on the street and -- and help to delegate agents on the street to locate Ms. Ozturk and effectuate her arrest.

Q. Um --

THE COURT: Well let me pause there.

Everyone who has a Visa revoked is not taken into custody, are they?

THE WITNESS: Everyone? I'm not sure.

THE COURT: All right, that's your answer.

But that was the cause that you had been given to take her into physical custody, because she had lost her

Visa?

THE WITNESS: Correct. Right, we received information that her Visa had been revoked by the State Department and that was the cause that we went with to take her into custody.

THE COURT: I understand.

Q. Generally speaking, when HSI is informed -- well withdrawn.

You said his HSI enforces Title VIII, correct?

A. Correct.

Q. And if someone's Visa has been revoked, are they in violation of Title VIII?

A. Yes.

Q. So if you are informed that a Visa has been revoked, would HSI have the authority to arrest that person?

A. If it meets the legal --

MR. TREMONTE: Objection.

THE COURT: Well, that's the problem, if it meets the legal standards. Here's what I understand. If he's got to the knowledge to correct anything, let me know.

My understanding is that not everyone who has their Visa revoked is arrested. Now if they don't leave or if there are other reasons, it appears they are subject to arrest and detention and removal. That's

where I'm starting from, but I have to reflect on that.

Go from there, Ms. Santora.

(Silence.)

THE COURT: And to come to this case, um, I don't think it's an issue whether the -- there was legal authority to take Ms. Ozturk into custody. The question is a broader question as to the reasons for all that.

But you go ahead.

Q. I want to ask you some specifics about Ms. Ozturk's arrest.

First of all, did you act as the supervisor for her arrest?

A. So, as I mentioned last week, there are -- there were a lot of hands in the fish bowl. I was a supervisor. And so, um, at the time, you know, we received the information, I was in a position to delegate that information down to the field, um, and also to, um, socialize what information we knew to be able to effectively put agents on the street and try and locate her.

Q. Okay. Stepping back for a second.

So does HSI -- does HSI receive information, um, that Visas have been revoked, generally speaking?

MR. TREMONTE: Objection.

THE COURT: No, if he knows.

A. Generally speaking? I know we received the information in this case. Generally speaking, I can't answer that.

Q. Does HSI receive information that people are out of immigration status?

MR. TREMONTE: The same objection.

THE COURT: Well we'll see what he knows.

Are you able to answer that?

THE WITNESS: Well what we'll do is we conduct investigations, HSI's an investigative agency. So if during the course of that investigation you might learn that someone is out of status as far as immigration goes, that might be something that we would look into further -- into potentially enforcing those violations.

MR. TREMONTE: Objection. And I'm going to move to strike. He's speculating.

THE COURT: No, we'll let that stand.

Q. Going back to Ms. Ozturk's arrest.

Were you physically present at the arrest?

A. No.

Q. Um, when was she -- do you know when she was arrested?

A. She was arrested on, I believe, um, it was March 25th, 2025.

Q. And do you know if agents handcuffed her when she

was arrested?
A. I believe that they did.
Q. Do you know why?
A. Um, per our policy, you know, anyone -- per HIS's policy, anyone that is going to be arrested, whether it be a criminal violation or an administrative violation, would be restrained in handcuffs.
Q. So everyone that HSI arrests is handcuffed?
MR. TREMONTE: Objection. Mischaracterizes it.
THE COURT: No, it may stand.
A. It's HSI's policy to handcuff those that we arrest, yes.
Q. And why is that HSI's policy?
A. Um, officer safety is the main concern really. As I alluded to earlier, in training we're taught that an individual's hands are dangerous. Basically it's just to ensure the safety of those involved.
Q. Were agents present at Ms. Ozturk's arrest wearing masks?
A. As far as I know, yes.
Q. Does your office have a policy on agents masking?
A. There's no policy I'm aware of.
Q. Are agents allowed to wear masks?
A. Yes.
Q. Why are they allowed to do that?

A. Various reasons. Um, it's up to the personal, you know, um, choice of the agent really. But, um, they might wear them because they want to protect their identity. You know HSI's in a position now where we're on the street quite often working not just Title VIII cases, but, um, really any case. In the age of camera phones and the ability of people to identify, you know, those agents, that people would want to protect themselves if they're members of this community, or they live here, have families here, that sort of thing.

Another reason might be, um, if agents are working undercover -- in an undercover capacity in another case, they might want to protect their identify for that reason. Or if simply they're working that area and they want to, you know, not have their identity revealed to the general public to know that they were in this area and are working as an HSI agent.

Q. Do you know how many HSI agents participated in Ms. Ozturk's arrest?

A. The exact number? I don't know.

Q. Was there more than one?

A. I believe -- I know of at least two or three people that were out there, yes.

Q. Does HSI have a policy on the number of agents that should conduct an arrest?

A. So a minimum number of agents to conduct an arrest, per policy, is 2. However, that will fluctuate on a case-by-case basis.
Q. Are there commonly more than two agents to make an arrest?
A. Yes.
Q. Why is that?
A. It all goes back to officer safety.
Q. If HSI is arresting someone with a criminal history, does that factor into how the arrest is done?
A. That's one of the factors.
Q. Even if HSI is arresting someone who does not have a criminal history, is it necessary to take any precautions with respect to an arrest?
A. Yes, I mean you always take precautions with respect to an arrest.
Q. Why is that?
A. You just don't know what type of situation you're going to encounter, you don't know who might be in the area, you don't know who else might be involved. It's just really to make sure -- to ensure the safety of everyone, including the general public, including the people we're arresting.
Q. Did the agents who arrested Ms. Ozturk wear uniforms?

A. I don't believe. No.
Q. Why not?
A. We don't have a uniform with HSI.
Q. So were they wearing plain clothes?
A. Yes.
Q. And do you know if the agents identified themselves as agents when they made Ms. Ozturk's arrest?
A. I mean again I was not there. I -- I have seen video of Ms. Ozturk's arrest, but I don't know what was said to her, I don't know -- I mean it would be common practice for agents to identify themselves.
Q. So it's the common practice of your office to identify -- for agents to identify themselves before making an arrest?
A. Yes.
Q. And, um, do you have any information that that did not happen to Ms. Ozturk's arrest?
A. I do not.
Q. Did HSI transport Ms. Ozturk following her arrest?
A. Yes.
Q. And in what vehicle did they transport her?
A. It would have been a government vehicle. I'm not sure which.
Q. Would it have been a marked vehicle?
A. No.

Q. Does HSI have marked vehicles?
A. We have a marked Special Response Team vehicle, it's a large, um, armored vehicle. That's the only one that I know of that's marked. Otherwise agents are assigned vehicles that do not have markings.
Q. Why do the HSI vehicles not have markings?
A. Um, we're investigators, so I mean over the course of an investigation you're not trying to give up your, um, you know your cause or your reason for being out on the street, you don't want to necessarily identify yourself as police until it's time. And, um, those are the reasons why we wouldn't have police markings.
Q. Does that relate to officer safety?
A. It relates to officer safety, it also relates to protecting the integrity of investigations.
Q. Where did HSI transport Ms. Ozturk?
A. She was transported to Vermont.
Q. And what happened when she got to Vermont?
A. My understanding, um, was that after she was in Vermont -- the transport was out of my purview, but she was processed and detained in Vermont.
THE COURT: Why was she transported from Somerville to Vermont?
THE WITNESS: So the way it was explained to us -- and this is from ICE Enforcement and Removal Operations,

they determine, um, where, um, detainees are housed, my understanding at the time was that there was no bed space for her in Massachusetts.

THE COURT: When did you get that understanding?

THE WITNESS: Um, the night -- the -- I'm trying to remember exactly. I believe it was the night that she was taken into custody. It might have been before, when we knew that -- well when the plane was in place to arrest her and we were making a plan to arrest her, I think it was socialized that we were going to take her to Vermont.

THE COURT: When you say it was "socialized," you mean it was discussed with the appropriate authority?

THE WITNESS: Correct.

THE COURT: That's fine to use the word, I just want to be clear what you mean.

So as part of those discussions, so she's arrested, um, you understood they don't have a bed for her here in Massachusetts, so they drive her up to Vermont?

THE WITNESS: Correct.

Q. And you said that was a determination of Enforcement and Removal Operations, that they did not have a bed for Ms. Ozturk?

A. Yes.

MR. TREMONTE: Objection, hearsay.

THE COURT: Well I'm not going to admit it for the truth, but the facts of what was being discussed, I think are relevant and I'm allowing it, as limited.

A. Can you repeat the question, please?

Q. Yes. The determination that there was no bed space for Ms. Ozturk in Massachusetts was made by ICE Enforcement and Removal Operations?

A. Correct, they explained to me the day after -- the morning after actually, the specific reasons why. But, um, the decision was impressed upon us by them to transport her to Vermont.

Q. And at what point was HSI no longer in custody of Ms. Ozturk?

A. It would have been after she was processed in the Vermont AOI, I don't know exactly at what point.

Q. Okay. Were you ever told that Ms. Ozturk was being arrested because of her support of Palestine?

A. I was always -- I was understanding that the cause for her arrest was the revocation of her Visa, that she no longer had status.

Q. Were you ever told that Ms. Ozturk was being arrested because of her criticism of Israel?

A. Again the basis of her arrest was the revocation of her Visa by the State Department. The reason for the

revocation, um, that's the State Department. I mean we were given, you know, the kind of the causes behind that, and I don't know if I had all of them, but I understood, you know, she was arrested -- in what our plan in place was, from my level, was that the legal ground we had to stand on was that, um, she had her Visa revoked.

Q. Thank you.

MS. SANTORA: No further questions.

THE COURT: Now before we go any further, um, I have the, um, the Form 200 with respect to her, and I have various documents with respect to her arrest, some of which, um, the attorney-client privilege is asserted, and which include attorney comments and advice, and I have a couple of documents that share information among the, um, parties.

But other than the, um, Form 200, which appears to bear, in its completed form, his, um, name as the, um, authorized immigration officer, none of them appear to involve him. So, um, does the -- having overruled the attorney-client privilege, it would seem to me that I should show them to the plaintiffs.

What does the defense say, Ms. Santora, or whoever?

MS. SANTORA: Your Honor, to be clear, these

documents are an arrest warrant. Can you repeat what the other documents are?

THE COURT: (Laughs.) These are the documents you gave me.

MS. SANTORA: I'm sorry. We've given you a lot of documents.

THE COURT: Yes, you have, all in undifferentiated form, and I have criticized you. Now I have this extensive privilege log in a font too hard to read.

But other than that, these are documents that pertain to her arrest. Some of them, um, if this were pretrial and it had been timely asserted, um, they have attorney comments, they have the name of someone called a "deportation officer, Fugitive Operations." The documents discuss the basis for her arrest. But only, um -- there's a gentleman, "Assistant Chief Counsel, Office of the Principal Legal Advisor, Boston." But only the Form 200 has Mr. Cunningham's name on it, as best I can, um, ascertain.

MR. KANTER: Your Honor?

THE COURT: Yes?

MR. KANTER: I think we are -- we are all, um, searching our recollection as to comparing what you are describing against the --

These documents were submitted in-camera to your

Honor, correct?

THE COURT: That's correct.

MR. KANTER: Okay.

THE COURT: That's how they came into my hands.

MR. KANTER: The arrest warrants for each of the five noncitizens, um, are in the certified administrative record. What your Honor is describing as e-mails and communications --

THE COURT: In other words, that's this Form 200, it's --

MR. KANTER: Yes.

THE COURT: -- its title is "Warrant for Arrest of Aliens"?

MR. KANTER: Yes.

THE COURT: And they have those, the plaintiffs?

MR. KANTER: Yes, they are in the certified administrative record.

I recall that we filed part of the record under seal. Whether there's a portion of those arrest warrants that was the subject of sealing, I don't recall.

THE COURT: Okay, Ms. Conlon can answer.

Do you have these or not?

MS. CONLON: My understanding is that we have the I200s with redactions. I suspect what the Court has is

unredacted. And that may be the reason for the difference, why you received them in-camera.

THE COURT: Yeah, thank you.

MR. KANTER: And I will inquire on the reason -- the particular reason for the redaction.

THE COURT: That's actually helpful, because I -- I propose the following.

Because -- again I'm in the middle here, since these documents have all been dumped on me. I did take the precaution of reordering them, so I have a little file on things that I think pertain to Ms. Ozturk.

Now I see what witness is called. I don't see what he can add. Counsel might think there's something to be added, but I don't see what he can add to these documents. But whether you get to see them before closing argument or not, that is an issue.

And also the stay is still in effect, I granted that that seemed to apply to Mr. Watson and to Mr. Armstrong, but among the report that I made with the Court of Appeals, again because we're doing things in the middle here, I said, because I believed, that no further production was contemplated. Well now I'm contemplating one.

I've overruled the attorney-client privilege. I just don't see what additional cross-examination can be

garnered if I do the documents now. But of course I'm not -- I'm no longer an advocate.

Mr. Tremonte?

MR. TREMONTE: Your Honor, I of course don't know what your Honor has --

THE COURT: It always makes it sound like a smoking gun, since I'm sitting here with a file folder.

MR. TREMONTE: But as to the question, your Honor, of whether or not this witness can add to the Court's understanding of relevant documents, may I conduct the briefest of voir dires to figure out whether or not no such document is in their possession.

THE COURT: They were done. They were done and I am going to give you cross-examination, that's in essence why I spoke now, I invite you to do so. It's within, I think, appropriate examination, cross-examination of this witness. But I'm not passing the documents out --

MR. TREMONTE: Understood.

THE COURT: -- in part because I want to scrupulously honor the stay and, um, Mr. Kanter is reflecting, and appropriately so, because we may reach some sort of agreement.

MR. TREMONTE: May I just ask a handful of questions, then I think my purpose will become clear.

THE COURT: You go ahead with your questions, we'll see if they do.

MR. TREMONTE: Thank you.

Mr. Cunningham, we met at your deposition, correct?

THE WITNESS: We did.

MR. TREMONTE: Okay. And at your deposition -- strike that.

In advance of the arrest of Ms. Ozturk, you received an e-mail communication from somebody named Eulia Garolini, correct?

THE WITNESS: Correct, she was involved in the e-mail traffic. I can't recall -- I know I said it was from her. Her name stands out to me, because I've known her for over a decade. But I can't recall if it was directly from her to me or if it was through my chain of command.

MR. TREMONTE: But you do remember receiving the e-mail?

THE WITNESS: Yes.

MR. TREMONTE: And Mr. Garolini, at the time, was the Desk Officer for Domestic Operations at HSI headquarters?

THE WITNESS: So to clarify that, she oversaw the Desk Officer. The Desk Officer is someone that we, um,

that works at a headquarters' capacity, that represents our office at headquarters. There's an Op-Chief that supervises them. My understanding is that was her position.

MR. TREMONTE: Okay. And the e-mail that you received from Ms. Garolini included attachments, correct?

THE WITNESS: Correct.

MR. TREMONTE: And those attachments, um, were first a memo from someone at the State Department, correct?

THE WITNESS: One of the attachments was a memo from the State Department.

MR. TREMONTE: And second was the Op-Ed that Ms. -- was an Op-Ed that Ms. Ozturk had authored?

THE WITNESS: The Op-Ed was included in the attachments.

MR. TREMONTE: Thank you.

Your Honor, I ask those questions because I think it may assist the Court in determining whether or not it has documents in its file folder that this witness may be in a position to shed light on.

THE COURT: I fully understand that and it doesn't look like these documents are those.

Any other questions for this witness?

MR. TREMONTE: I do, your Honor.
THE COURT: And of course you may proceed.
MR. TREMONTE: Thank you.

CROSS-EXAMINATION BY MR. TREMONTE:
Q. So you were asked on direct examination, um, whether or not HSI has always had the authority to enforce Title VIII violations, correct?
A. I was asked that question.
Q. Okay. I'd like to get some precision on the particulars of your expertise and responsibilities, because HSI is a very broad term in that question, you would agree?
A. I would agree with that.
Q. Okay. In fact, it is generally the remit of ERO to effectuate arrests for Title VIII violations, correct?
A. So ERO, that's their primary responsibility, yes. HSI has those authorities.
Q. Okay. And you are not now and have not been a member of ERO, correct?
A. I am not now and have never been a member of ERO.
Q. Okay. And at the time of Ms. Ozturk's arrest, you were not a member of ERO?
A. I was not a member of ERO at the time of

Ms. Ozturk's arrest.

Q. You were involved with HSI, correct?

A. That's correct.

Q. And HSI's scope of responsibility has to do with criminal investigations, right?

A. Correct, however, you know, we do enforce Title VIII violations as well.

Q. I understand that you're eager to correct me that there is some role for Title VIII enforcement, but that is really a very limited component of what HSI does, correct?

A. Well, um, prior to this administration I would say it was a -- it was a component that, you know, was part of our portfolio. But I'd say in the last 6 or 7 months we've been prioritizing Title VIII more than we had since I can remember in my 17 years on the job.

Q. Right, and when you say "we," you specifically mean HSI, correct?

A. I mean HSI, yes.

Q. You are an ASAC in HSI, right?

A. I am an ASAC with HSI.

Q. Okay. And what was unusual about the new focus since the inauguration is that HSI has so much work relating to Title VIII, correct?

MS. SANTORA: Objection.

THE COURT: Overruled.

A. So the -- let me understand your question. Can you please ask it one more time? I'm sorry.

THE COURT: Here's what he's getting at.

He's saying now, in the last 6 months, HSI has a lot more work as to Title VIII in addition to the work it's always done?

A. Correct, yeah, I mean we've always had the authority, um, but the prioritization of that work has certainly increased.

Q. And you were asked questions about how HSI generally plans for arrests, correct?

A. In general?

Q. Yeah, you were asked questions about that on direct, right?

A. I was.

Q. And you gave answers at a general level, correct?

A. (Silence.)

Q. But isn't it -- strike that.

Isn't it true that until very recently you had no familiarity with how ERO plans for and conducts administrative Title VIII arrests because you'd never done one, correct?

MS. SANTORA: Objection.

THE COURT: Overruled.

A. I've -- I've -- um, I've been wracking my brain over the years about the Title VIII enforcement that I --

Q. And you have to really wrack your brain because you really haven't done any, correct?

MS. SANTORA: Objection.

THE COURT: No, no, he may inquire and he may do it in that form.

Is that why you have to wrack your brain?

A. Yeah, I mean most of my career as an agent, as a supervisor, has been in the enforcement of drug laws, drug smuggling, money laundering, that sort of thing.

Q. Right, drugs and financial crimes, right?

A. Well, yeah. Partially, yes.

Q. And crimes, as opposed to civil violations with the immigration laws, correct?

A. Correct. But that's changed recently. But, yes.

Q. Okay. And with the shift that resulted after the inauguration, meant that your group at HSI has been prioritizing immigration-related cases and arrests, right?

A. Immigration enforcement, yes.

Q. Okay. And that wasn't your idea, correct?

A. No, it was not.

MS. SANTORA: Objection.

THE COURT: Overruled. I understand the question was those were instructions, is that correct?

THE WITNESS: That's correct.

Q. Right, the new focus on immigration cases came from above your level in the chain of command, right?

A. That's correct.

Q. In fact it was the Special Agent in charge of HSI who told you about this new focus, right?

A. Yes, the information usually comes from his level and is delegated down.

Q. And when you say "his," you mean specifically Mike Krol, he's the one, your SAC, who told you you were going to prioritize Title VIII immigrations enforcement?

A. Yes, we had a meeting shortly after the inauguration, um, maybe several meetings actually, that impressed upon us that Title VIII enforcement was going to be prioritized.

Q. Okay. And, um, you characterized that work, since the inauguration, this new focus, as a "surge" of effort directed on immigration cases, right?

A. Well I think the "surge" is specific to, um, an enforcement action that we were doing in the midst of receiving the information from Ms. Ozturk. What I would describe as the time prior to that surge operation would be just the reprioritization to Title VIII enforcement.

Q. You said at the time of the arrest of Ms. Ozturk, correct?
A. At the time I received the information regarding Ms. Ozturk.
Q. Okay. But the arrest of Ms. Ozturk on March 25th, 2025, the instructions with respect to Ms. Ozturk came from headquarters, right?
A. That's correct.
Q. And that was separate from the surge operation, correct?
A. That's correct.
Q. Okay. So I just want to be crystal clear about that.
THE COURT: I'm sure he does.
But how is headquarters different than Mr. Krol, um, your SAC?
THE WITNESS: So headquarters oversees all federal domestic field offices. Our Special Agent in Charge would have a first-line supervisor who sits at HSI headquarters.
THE COURT: And headquarters is in Washington or Sterling, Virginia?
THE WITNESS: Washington D.C. My job at headquarters was at Sterling, but, um --
THE COURT: So headquarters is Washington?

THE WITNESS: Yes, correct.
THE COURT: So is ours.
All right.
Q. And so the instructions with respect to Ms. Ozturk, which were separate and apart from anything else, as we discussed, you learned about initially in this e-mail from Ms. Garolini, correct?
A. That's correct.
Q. Okay. And as you testified earlier, that e-mail included a communication from the State Department, right?
A. That's correct.
Q. Okay. And it included the Op-Ed or an Op-Ed that Ms. Ozturk had written, correct?
A. It included the Op-Ed.
Q. And you read those attachments, right?
A. I read, um -- I opened the attachments. I read through them. I didn't study them. But I did read through them.
Q. You familiarized yourself with them?
A. I sure did.
Q. Okay. Because obviously it was part of your responsibility as a supervising agent to understand the communication to you on this matter of importance to headquarters, right?

A. Correct. And you also want to ensure that, you know, if I'm the one that's pushing the information out to the field, that, um, they have the information that's relevant to what they need to know.

Q. And this matter had special sensitivity, didn't it, because you've never received a communication like this before?

MS. SANTORA: Objection.

THE COURT: Overruled.

A. Um, I can't recall receiving a communication like this.

Q. (Pause.) And the instruction that you gave, in response to this unique directive, was to find a good address for Ms. Ozturk, correct?

A. Well that was part of the -- that was part of what we needed to do. If we were going to prioritize the arrest, we would first need to locate where she was.

Q. Okay, well since I haven't seen the e-mail communication from Ms. Garolini yet, um, was the instruction to find an address for and arrest Ms. Ozturk contained in that communication?

A. I don't believe that it was, I believe that would have been an intelligence workup. That at the time last week when we first discussed it, I didn't recall actually all the information detailed within those

attachments. I did see, um, a document yesterday, when I was preparing for trial, that refreshed my memory on that information.

Q. Okay, what was that document?

A. That was an analysis report that included -- it also included the Op-Ed, and it included, um, certain information like most recent known addresses, um, her criminal history, or lack thereof, I should say, and, um, additional information that may help locate Ms. Ozturk.

Q. Okay.

MR. TREMONTE: As I don't have the deposition, I'm going to make a request of the defense that we receive a copy of that document, um, before this examination is done.

MS. SANTORA: Your Honor, we believe that plaintiffs have that document.

THE COURT: I assume -- I assume that that is in the materials that the Court ordered disclosed as the ROA.

Can you confirm that?

MS. SANTORA: Yes, we can confirm that that is the document.

THE COURT: All right. Thank you.

Q. Some of the communications that you -- so the

e-mail from Ms. Garolini, just referring back to that.

Some of the communications you received at that time about Ms. Ozturk were e-mail-forwards, correct?

A. I believe so.

Q. Okay. All right. And, um, after you received this, um, set of instructions and these materials, um, a decision was made to effectuate an arrest of Ms. Ozturk, is that right?

A. A decision was made to try and locate her, and, you know, we were then, um --

Q. Whose decision was that?

A. So as I mentioned that surge operation, we were -- it was a pure coincidence that Ms. Ozturk's information came in at that same time we were doing that. I was in a room with my Special Agent in Charge and other senior officials from other agencies. So we were all talking. And it was like, "Okay, go" --

Q. So you just happened to be with all these other officials at the time when the direction from headquarters came in?

A. That's correct.

Q. Okay. And was it a group decision to effectuate the arrest?

A. I mean the decision ultimately lies with the Special Agent in Charge to impress upon us to go out and

effectuate the arrest.
Q. So we have clarity, was it the Special Agent in Charge who directed you to arrange for the surveillance and arrest of Ms. Ozturk?
A. It was his direction to prioritize it and, yes, to, you know, put resources towards Ms. Ozturk.
Q. Okay. And at some point after that instruction was given to you, you separately consulted with one of HSI's lawyers in your office, didn't you?
A. I did.
Q. And you did that to make sure that the arrests that you have been instructed to make was legally appropriate, correct?
A. As I mentioned last week --
MS. SANTORA: Objection, this is attorney-client privileged, your Honor.
THE COURT: It is. I sustain it.
MR. TREMONTE: I'm not asking for the contents of the communication, your Honor.
THE COURT: Well, you're asking as to why.
MR. TREMONTE: Yes.
THE COURT: Of course. So the privilege covers both the request for legal advice and the legal advice that is, um, given. And it's -- I sustain the privilege.

Of course there may be a cost for that, but that can be briefed, in the sense of an adverse inference. I don't say I'm drawing one, and that's only the Commonwealth of Massachusetts, but I do mention it.

Go ahead.

Q. Mr. Cunningham, at your deposition you testified that the reason why you consulted with a lawyer was to ensure that the arrest that you'd been instructed to make was legal and appropriate, didn't you?

A. I testified to that. I did also testify to the fact that, you know, when you receive information from headquarters, at this level, top down, um, it -- you make the assumption that it's legally sufficient. But I did contact our legal counsel to ensure that we were on solid legal ground.

Q. Right, because for whatever reason, under these unique circumstances with which you had no prior experience, you thought it was important --

MS. SANTORA: Objection.

Q. -- to have a lawyer weigh in, even though you'd been given a direct demand by your headquarters?

MS. SANTORA: Objection, mischaracterizes --

THE COURT: Sustained, but not on that ground. Sustained, because it goes beyond what he testified as to the reasons for consulting the lawyer.

Who's the lawyer here?

THE WITNESS: It was a lawyer from the Office of the Principal Legal Advisor.

THE COURT: And what's his or her name?

THE WITNESS: His name is Lincoln Jalalian.

THE COURT: Thank you.

Q. And absent consulting with a lawyer, you were not in a position to make an independent judgment about the lawfulness of the arrest, correct?

A. No, with my basis of knowledge in, you know, immigration law, I would defer to legal counsel before taking any action. And the same thing with criminal law.

Q. And again, an administrative civil arrest based on a Visa revocation was not within the heartland of your experience as an agent, correct?

A. It was not something that I had, um, much experience with, no, if any.

Q. Right. And all you knew was that Ms. Ozturk's Visa had been revoked, correct?

A. I knew that her Visa had been revoked, um, and also the contents of the e-mail, the additional information. But the most important portion of it was that her Visa was revoked and that was the grounds for, you know, the apprehension.

Q. Okay, you knew her Visa had been revoked, you knew that she authored this Op-Ed, correct?
A. I did.
Q. And you knew that in the State Department memo there was a reference to "Ongoing ICE operation security, as a result of which the revocation would be silent," correct?
A. That's what the memo states. I don't have the memo in front of me, but I remember reading that.
Q. And you understand that as a consequence of that information, you could not reveal to Ms. Ozturk in advance that her Visa had been revoked, correct?
A. I don't know that I can say it could not be, um, I never -- I don't recall receiving instructions saying she could not be, but it was a determination made that she would not be.
Q. Your determination?
A. I mean that was also -- again we were in a room with a Special Agent in Charge. The operation kind of developed pretty quickly where it was just, "Okay, what's the" -- "pull resources to find her." I don't remember having a discussion like that to talk about notifying her or anything like that.
Q. Okay, there was a decision made to keep that information secret from Ms. Ozturk, that her Visa had

been revoked, correct?
A. We did not plan on alerting her to the fact that her Visa had been revoked.
Q. So I take that as a "Yes"?
A. Yes.
Q. Okay. To your understanding the State Department memo did not establish that Ms. Ozturk had committed a criminal offense?
MS. SANTORA: Objection.
THE COURT: Well I think we're talking about the same memo and it speaks for itself, and I've read it.
Q. To your knowledge there is no basis for concluding Ms. Ozturk had committed any criminal offense?
MS. SANTORA: Objection.
THE COURT: No, he may be asked that, that's not conclusive on the issue of whether she's deportable lawfully.
Did you have any knowledge of a criminal offense that she had committed?
THE WITNESS: I had not.
Q. And in fact you did not independently develop any evidence, any information at all to indicate that she had committed a crime?
A. No, the only information was that her Visa had been revoked and she was now subject to apprehension,

she no longer had status in the United States.
Q. And then, um, turning now to the Op-Ed.
You said you read it and you saw nothing in the Op-Ed suggesting that Ms. Ozturk had committed a crime, correct?
A. I didn't see anything in the Op-Ed that suggested she committed a crime.
Q. And in fact, you did not believe, based on anything in the Op-Ed, that Ms. Ozturk posed a national security risk, correct?
MS. SANTORA: Objection.
THE COURT: Well I'm going to sustain that, that's not -- and I have great respect for all witnesses, but he's not asked that question. So sustained.
(Pause.)
Q. You weren't asked to sign an arrest warrant for Ms. Ozturk's, um, being taken into custody, were you not?
A. So the arrest warrant was forwarded to me as a Supervisory Agent at the scene and I -- I, um, I signed that arrest warrant.
THE COURT: And so I'm clear, because we're talking about it, this is this ICE 200 form?
THE WITNESS: That's the I200, correct.
THE COURT: All right.

Q. And you understood it was urgent, it was a matter of urgency to find Ms. Ozturk, correct?

MS. SANTORA: Objection.

THE COURT: Overruled.

A. A matter of urgency in what sense?

Q. That your supervisors wanted it.

A. Yeah, the supervisors were -- headquarters was inquiring about it, um, asking questions, and we were, um, then putting resources towards that.

Q. And, um, you prioritized the arrest of Ms. Ozturk because of the headquarter's oversight, in fact, right?

A. We did, we prioritized it. You know headquarters, like I said, I can't recall a time that it's come top-down like this with a Visa revocation, um, under my purview anyway. And so with the superiors that were, you know, inquiring about this, it made it a priority, because we worked for them.

Q. And I'll take that also as a "Yes."

A. That's a "Yes," yeah.

Q. Okay. And finally you were asked on direct about the reasons why your office took Ms. Ozturk into custody, correct?

A. I was.

Q. And you testified about "officer safety," correct?

A. I did.

Q. And you testified that with respect to an individual's hands, they are often "dangerous," correct?
A. That -- well we're trained that an individual's hands, that makes them -- whatever item can be accessible is accessible. You want to control the hands.
Q. In this matter you did not completely abdicate your responsibilities as an investigative agent, did you?
MS. SANTORA: Objection.
THE COURT: No, on this foundation I'm going to sustain that.
Q. You had developed no evidence whatsoever to suggest that Ms. Ozturk, a graduate student who had written an Op-Ed, would be dangerous to your agents with her hands, did you?
MS. SANTORA: Objection.
THE COURT: I'm going to sustain that.
MR. TREMONTE: No further questions.
THE COURT: Very well.
Nothing further for this witness?
MS. SANTORA: Nothing further.
THE COURT: You may step down and thank you.
(Witness steps down.)
THE COURT: All right, we're going to take the

morning recess. It's a good time, there are four such witnesses, we have done two. Each one is going, I hope, faster than the last. And we'll resume at 11:15.

We'll recess.

(Recess, 10:45 a.m.)

C E R T I F I C A T E

I, RICHARD H. ROMANOW, OFFICIAL COURT REPORTER, do hereby certify that the forgoing transcript of the record is a true and accurate transcription of my stenographic notes, before Judge William G. Young, on Tuesday, July 15, 2025, to the best of my skill and ability.

/s/ Richard H. Romanow 07-15-25
_____
RICHARD H. ROMANOW Date