

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

-----

United States of America,	)	File No. 22-cr-124
	)	(NEB/DTS)
Plaintiff,	)	
	)	
v.	)	
	)	
Abdiaziz Shafii Farah(1),	)	Courtroom 13W
Mohamed Jama Ismail(2),	)	Minneapolis, Minnesota
Mahad Ibrahim(3),	)	Monday, April 8, 2024
Abdimajid Mohamed Nur(4),	)	1:00 p.m.
Said Shafii Farah(5),	)	
Abdiwahab Maalim Aftin(6),	)	
Mukhtar Mohamed Shariff(7),	)	
Hayat Mohamed Nur(8),	)	
	)	
Defendants.	)	

-----

BEFORE THE HONORABLE NANCY E. BRASEL  
UNITED STATES DISTRICT COURT DISTRICT JUDGE

**FINAL PRETRIAL CONFERENCE**

Court Reporter: RENEE A. ROGGE, RMR-CRR  
United States Courthouse  
300 South Fourth Street, Box 1005  
Minneapolis, Minnesota 55415

\* \* \*

Proceedings recorded by mechanical stenography;  
Transcript produced by computer.

\* \* \*

APPEARANCES:

1  
2 For Plaintiff: UNITED STATES ATTORNEY'S OFFICE  
3 BY: JOSEPH H. THOMPSON  
4 HARRY JACOBS  
5 MATTHEW S. EBERT  
6 CHELSEA A. WALCKER  
7 DANIEL W. BOBIER  
8 600 United States Courthouse  
9 300 South Fourth Street  
10 Minneapolis, Minnesota 55415

11 For Defendant BIRRELL LAW FIRM PLLC  
12 Abdiaziz Shafii BY: ANDREW S. BIRRELL  
13 Farah(1): IAN S. BIRRELL  
14 333 South Seventh Street, #3020  
15 Minneapolis, Minnesota 55402

16 For Defendant SIEBEN & COTTER PLLC  
17 Mohamed Jama BY: PATRICK L. COTTER  
18 Ismail(2): 105 Hardman Court, #110  
19 South St. Paul, Minnesota 55075

20 For Defendant MAUZY LAW OFFICE P.A.  
21 Mahad Ibrahim(3): BY: WILLIAM J. MAUZY  
22 WILLIAM R. DOOLING  
23 650 Third Avenue South, #260  
24 Minneapolis, Minnesota 55402

25 For Defendant SAPONE & PETRILLO LLP  
26 Abdimajid Mohamed BY: EDWARD V. SAPONE  
27 Nur(4): 40 Fulton Street, 17th Floor  
28 New York, New York 10038

29 For Defendant Said MASLON LLP  
30 Shafii Farah(5): BY: STEVEN L. SCHLEICHER  
31 CLAYTON CARLSON  
32 225 South Sixth Street, #2900  
33 Minneapolis, Minnesota 55402

34 For Defendant KOCH & GARVIS  
35 Abdiwahab Maalim BY: ANDREW S. GARVIS  
36 Aftin(6): 3109 Hennepin Avenue South  
37 Minneapolis, Minnesota 55408

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

APPEARANCES (Continued):

For Defendant Mukhtar  
Mohamed Shariff (7):

GOETZ AND ECKLAND P.A.  
BY: FREDERICK J. GOETZ  
KAITLYN C. FALK  
615 First Avenue NE, #425  
Minneapolis, Minnesota 55413

For Defendant Hayat  
Mohamed Nur (8):

BRANDT KETTWICK DEFENSE PLLC  
BY: MICHAEL J. BRANDT  
2150 Third Avenue, #210  
Anoka, Minnesota 55303

\* \* \*



1           Let's begin here, and we'll go by each row. Go  
2 ahead.

3           MR. IAN BIRRELL: Good afternoon, Your Honor. Ian  
4 Birrell, along with Andy Birrell, present on behalf of  
5 Abdiaziz Shafii Farah, who is present before the court.

6           THE COURT: Good afternoon.

7           Good afternoon, sir.

8           MR. ANDREW BIRRELL: Good afternoon, Your Honor.

9           MR. SCHLEICHER: Good afternoon, Your Honor.  
10 Steve Schleicher and Clayton Carlson on behalf of Said  
11 Farah, who is also present in court.

12          THE COURT: Good afternoon to you.

13          MR. COTTER: Good afternoon, Your Honor. Patrick  
14 Cotter here on behalf of Mohamed Jama Ismail, who is present  
15 to my right.

16          THE COURT: Good afternoon.

17          MR. DOOLING: Good afternoon, Your Honor. William  
18 Dooling on behalf of Mahad Ibrahim.

19          MR. MAUZY: And Bill Mauzy. Our client is  
20 present.

21          THE COURT: Good afternoon.

22          Hello, sir.

23          MR. SAPONE: Good afternoon, Your Honor. Edward  
24 Sapone for Mr. Abdimajid Nur, who is seated to my right.

25          THE COURT: Good afternoon.

1 MR. GOETZ: Good afternoon, Your Honor. Frederick  
2 Goetz, G-O-E-T-Z, on behalf of Mukhtar Shariff. And Kaitlyn  
3 Falk is also present on behalf of the defendant Shariff.

4 THE COURT: Good afternoon.

5 MR. GARVIS: Good afternoon, Your Honor. Andrew  
6 Garvis on behalf of Abdiwahab Aftin, who is seated next to  
7 me and present.

8 THE COURT: Good afternoon.

9 MR. BRANDT: And good afternoon, Your Honor.  
10 Michael Brandt on behalf of Hayat Nur, who is present.

11 THE COURT. Thank you and good afternoon.

12 It looks like we have managed to have you all  
13 seated and have chairs for everyone.

14 Does anyone anticipate at trial that you will need  
15 any extra chairs or are we set? All right.

16 MR. THOMPSON: Your Honor, I think we are okay for  
17 the government.

18 THE COURT: Okay. All right. And I'm not --  
19 seeing no hands, you can always raise it with Mr. Wegner  
20 afterwards, if we need to create additional space there, but  
21 I appreciate the advance preparation by both my staff and by  
22 the parties to create a seating chart and get you all  
23 settled.

24 There are a number of issues that I wish to raise  
25 today. I've prepared an agenda for you that should have

1       been emailed to you. I've received all of your witness  
2       lists, your exhibit lists, your proposed voir dire, the  
3       joint proposed jury instructions and the motions in limine.

4               What I would like to do is to start with the  
5       motions in limine, and we'll start with the defendants'  
6       motions in limine.

7               Have you all conferred on how you want to address  
8       the motions in limine?

9               MR. SCHLEICHER: We have, Your Honor.

10              THE COURT: Mr. Schleicher, what is that? How do  
11       you want to address them?

12              MR. SCHLEICHER: Your Honor, we've divided the  
13       motions in limine by the author of the motions. I'll be  
14       addressing specifically Documents 397, 399 and 401.

15              THE COURT: All right. Well, let's just take them  
16       one by one. So let's start then with 388. Mr. Goetz.

17              And then if you have others, you can -- we'll just  
18       go through others that you are responding -- or that you are  
19       bringing.

20              For the government, Mr. Thompson, are you going to  
21       address all of them or have you split them as well?

22              MR. THOMPSON: I will be addressing them, Your  
23       Honor.

24              THE COURT: All right. Thank you.

25              And let me just see how this goes in terms of

1 whether I'm going to call on you at the end of all of this  
2 or whether I want piecemeal responses. Fair?

3 MR. THOMPSON: Yes, Your Honor.

4 THE COURT: All right. Thank you.

5 Mr. Goetz, go ahead.

6 MR. GOETZ: Thank you, Your Honor.

7 And I'll be addressing the first four motions, 388  
8 through 391. Hopefully, that will be efficient.

9 THE COURT: Terrific. Thanks.

10 MR. GOETZ: And I'll try to keep my remarks brief,  
11 Your Honor.

12 I do have more to say about the first motion, 388,  
13 motion to exclude lay opinion about knowledge or intent.

14 The defense agrees with the government's position  
15 that if a witness has sufficient knowledge necessary to  
16 render an opinion, a basis for knowledge, then they can do  
17 that.

18 Our concern and the basis for the motion is that  
19 there are many, we anticipate many instances where  
20 government witnesses will be making broad, sweeping  
21 statements about states of minds of the defendants  
22 collectively without that basis of knowledge.

23 Examples. Hadith Ahmed we believe will give  
24 testimony to the extent that everyone involved in the food  
25 program knew this was a fraud, it was all fake.

1           As to our client Mukhtar Shariff, specifically,  
2 they met on perhaps one occasion and had minimal contact.  
3 So he has absolutely no basis, factual basis to testify as  
4 to Mr. Shariff's state of mind.

5           Another witness, Your Honor, Julius Scarver, has  
6 made similar statements to law enforcement. Everyone in the  
7 food program knew it was a fraud. He never met Mr. Shariff,  
8 not one time, so he has no basis for knowledge.

9           Another area that this might come in is through  
10 officials from the Minnesota Department of Education, again,  
11 to the extent that anybody involved in the food program must  
12 have known it was a fraud.

13           So our concern is that the government elicit,  
14 intentionally or unintentionally, from these witnesses these  
15 broad, sweeping statements as the state of mind. They don't  
16 have a basis for it, and it's prohibited under 602 and 701.

17           THE COURT: And that statement can be made as  
18 hyperbole. Right? It is often made, Everyone knows X when  
19 indeed everyone doesn't know X, but it is often made as a  
20 hyperbole.

21           And I'm curious how you would categorize such a  
22 statement that is hyperbole and the witness means it as such  
23 and you could cross-examine on that.

24           Do you want me to try to exclude it all and to  
25 order that no one can say that, or how would you -- what are

1 you specifically asking for from the court?

2 MR. GOETZ: Sure. At this point, Your Honor, I  
3 would ask simply an order from the court that the government  
4 caution its witness against making such broad, sweeping  
5 statements about the defendants' state of mind collectively.

6 As to hyperbole, that may well be, but then you  
7 have significant 403 issues, because what probative value  
8 does a hyperbolic statement like that have and compare that  
9 to the unfair prejudice that would result, particularly if  
10 it's a government official, somebody from the MDE making  
11 these pronouncements.

12 So at this point I would simply ask the government  
13 to caution witnesses, unless they have a specific foundation  
14 under 602 or 701, to not make such broad, sweeping  
15 statements.

16 THE COURT: Thank you.

17 I'm going to ask for Mr. Thompson to respond.

18 MR. THOMPSON: Thank you, Your Honor.

19 I agree with the point that you made, which is  
20 that it seems completely fair for a witness to say that  
21 everyone knew this was fraud. This is part of a massive  
22 fraud scheme.

23 As you know, the COVID, during COVID there was  
24 waivers put in place for this program. A wide swath of  
25 people around the State of Minnesota opened up essentially

1 shell companies, enrolled in the program, and claimed to be  
2 feeding meals to thousands of kids a day at sites all over  
3 the state.

4 When someone like Hadith Ahmed, who has pled  
5 guilty to being part of that conspiracy and as a Feeding Our  
6 Future employee, accepting kickbacks from sites under its  
7 sponsorship, says that it was common knowledge people knew  
8 that this was fraud, essentially everyone involved under the  
9 sponsorship of Feeding Our Future was aware of the fraud,  
10 that seems fine, and I think cross-examination can obviously  
11 pin down the limits of any such testimony. We know the  
12 rules. We're not going to go beyond that.

13 In terms of MDE officials, I do expect MDE  
14 officials will testify about the program, about the waivers  
15 it would put in place, and about the red flags that they saw  
16 early on, as new entities were registered with the Secretary  
17 of State, enrolled in the program under the sponsorship of  
18 Feeding Our Future or Partners in Nutrition, and very  
19 shortly thereafter claimed to be serving meals to hundreds  
20 or even thousands of kids a day every day.

21 The fact that MDE officials will say there  
22 appeared to be fraud and it looked widespread, that seems  
23 totally fair. I don't expect that they're going to be  
24 testifying as to Mukhtar Shariff's individual mindset. I  
25 agree they wouldn't have the basis to do so; and if they

1 did, that would be properly objected to for lack of  
2 foundation.

3 THE COURT: And with respect to Mr. Ahmed, for  
4 example, saying it was common knowledge, what question from  
5 you would elicit such a response?

6 MR. THOMPSON: I don't know that any would, Your  
7 Honor. I'm not going to ask that.

8 THE COURT: Okay.

9 MR. THOMPSON: One of the things from the  
10 government's perspective with motions in limine like this is  
11 witnesses have to be able to testify to their experience of  
12 what happened, what they perceived and what they know about  
13 the program, and to put artificial limits on it in advance  
14 makes it challenging to have a witness testify.

15 Obviously, we know where the rules are and we  
16 don't intend to have people up on the stand speculating as  
17 to an individual defendant's mindset or even that everyone  
18 in the State of Minnesota knew about the fraud. Obviously,  
19 that's not true.

20 THE COURT: All right. Thank you.

21 MR. THOMPSON: Thank you.

22 THE COURT: Come on up, Mr. Goetz.

23 As to that motion, I am going to reserve it for  
24 specific objections at trial. I think it is proper for  
25 cross-examination, but I do not think it is appropriate for

1 me to issue any order precluding a particular question  
2 because I think these are very question-specific.

3 So I'm going to reserve for specific objections at  
4 trial. It can be handled on cross-examination. It is also  
5 true that if a statement is made that is, that the  
6 defendants feel fall in this category that I would issue a  
7 cautionary instruction as appropriate as well.

8 MR. GOETZ: Thank you, Your Honor.

9 The next motions that are on my list I will just  
10 address in a quicker fashion.

11 389, motion to require specificity as to  
12 defendants and charges. That's largely similar to what we  
13 just argued. I would stand on my -- or our written  
14 submissions on 389. I don't know if the court has any  
15 questions. It's 401, 402, 403.

16 THE COURT: And I don't see -- the only question I  
17 had for that is that you have moved to preclude evidence of  
18 other indictments, charges or conduct.

19 And my question for Mr. Thompson is whether there  
20 is an intent to introduce other indictments, charges or  
21 conduct, other than witnesses who have already pled guilty.

22 MR. THOMPSON: Your Honor, we don't obviously  
23 intend to elicit the fact that other indictments were  
24 returned. I don't think that would have any relevance to  
25 this trial.

1           The exception being if someone who pled guilty in  
2 another case was to take the stand, then that would be  
3 obviously fodder for cross-examination that I suspect we  
4 would cover on direct, but, otherwise, we don't intend to  
5 elicit the fact that other people were arrested or charged  
6 in this case.

7           THE COURT: All right. As to this motion, I'm  
8 going to deny the request to label and mark exhibits with  
9 specific defendant's names.

10           And as to every other objection, I will take it up  
11 at trial. That may be true with a number of the motions in  
12 limine that are brought here today.

13           When I defer them to trial and specific  
14 objections, I'm not at all indicating that they are  
15 improperly-brought motions in limine. Instead, I appreciate  
16 the briefing that's been done to put in the work because it  
17 will save us at trial when specific objections are made.

18           MR. GOETZ: As to ECF 390, restrict statements of  
19 alleged coconspirators, this is an issue I'm sure the court  
20 is familiar with.

21           We're asking that foundational requirements be met  
22 before the statements are admitted. The government is  
23 taking a different approach, but I would just stand on our  
24 request.

25           THE COURT: So let me just ask the government how

1 you intend to address the "Bell" question, because I could  
2 require a hearing outside of the presence of the jury. That  
3 isn't typically how I have done it.

4 On the other hand, at some point it would seem  
5 that you have, during the trial, believed that you have  
6 proven the conspiracy itself and that the defendants are --  
7 and each defendant is a member. Those two steps can be  
8 handled in bulk. The steps with regard to each statement  
9 cannot be handled in bulk.

10 So tell me what you propose.

11 MR. THOMPSON: Your Honor, my proposal is that  
12 before we get to this type of admitting coconspirator  
13 statements that we would flag for the defense counsel and  
14 the court sufficiently in advance, whether that's the day  
15 before or a couple days before -- I can't promise any here  
16 today, but I can assure both the court and defense counsel  
17 we will do so sufficiently far in advance that people have  
18 a -- we can come up with a plan for how to do it. And I  
19 think that's the best way to go at this point.

20 THE COURT: And do you anticipate having, when you  
21 flag that such a statement is coming, that you will have at  
22 that point made a sufficient record such that the first two  
23 prongs of the coconspirator statement rule have been proven  
24 by a preponderance of the evidence or you just don't know?

25 MR. THOMPSON: I don't know at this point, Your

1 Honor. Part of it is we're still working with defense  
2 counsel on stipulations, and there may be specifically  
3 emails and how they are going to come in.

4 I can imagine a world in which we have the  
5 foundation laid for them through a stipulation, but we don't  
6 put them in until later, in which case I think we would have  
7 plenty of time to go through them, because it's kind of an  
8 individual email-by-email/exhibit-by-exhibit analysis  
9 potentially.

10 THE COURT: All right.

11 MR. THOMPSON: And a lot of these -- my suspicion,  
12 Your Honor, is a lot of the potential -- a lot of statements  
13 or exhibits that are potentially coconspirator statements  
14 are also admissible under other hearsay exceptions, which  
15 may moot the issue altogether.

16 THE COURT: All right. Thank you.

17 I am not going to require -- I'm going to follow  
18 *Bell*, which is that this be addressed during trial, rather  
19 than a hearing for each statement out of the presence of the  
20 jury. So I'll reserve it for trial.

21 It would be easier if, again, those first two  
22 prongs were to come before any coconspirator statements, but  
23 we will address it as it comes. And as long as there's  
24 sufficient time ahead of time so that we can have a  
25 discussion out of the presence of the jury, then that's what

1 we will do.

2 MR. GOETZ: Lastly, Your Honor, restrict use of  
3 legal conclusion terms. I appreciate that the nature of  
4 this motion is really trial-related in how the language  
5 comes up and what's used.

6 I agree that the government's witnesses should not  
7 be prohibited from using what the government describes as  
8 colorful languages in some instances, but we're concerned it  
9 may cross the line to giving basically opinion testimony as  
10 to legal terms and legal conclusions.

11 So we wanted to flag that issue, but I would just  
12 rest on the written submission.

13 THE COURT: My thought here is that, A, we reserve  
14 it for trial; and, B, I don't think either party mentioned,  
15 but a cautionary instruction could be certainly a cure in  
16 the event that someone uses a technical or a legal term like  
17 "fraud." I could issue a cautionary instruction either  
18 after that witness's testimony or at the end of the case or  
19 both.

20 MR. GOETZ: Thank you, Your Honor. That's  
21 helpful. And that's all I have.

22 THE COURT: All right. Thank you.

23 392. Mr. Birrell.

24 MR. IAN BIRRELL: Thank you, Your Honor.

25 So this 392 was a motion that we filed regarding

1 the exclusion of testimony, of undisclosed expert testimony  
2 or at least testimony that appears to us to be potentially  
3 expert testimony under Rule 701.

4 And I think there are a number of witnesses whose  
5 testimony could span both expert and non-expert matters, and  
6 we identified some of them, so --

7 THE COURT: And do you know for sure -- I mean,  
8 how am I to address this without knowing exactly what their  
9 testimony is?

10 MR. IAN BIRRELL: Well, I agree with you, Your  
11 Honor, that we don't know at this point in time what their  
12 testimony is. And the government said they don't intend to  
13 elicit any of the Rule 701 testimony under these witnesses.

14 THE COURT: And I guess one of my questions is if  
15 the government -- if a forensic accountant takes the stand,  
16 as I'm understanding they will, and goes through a summary  
17 of bank records, et cetera, and attempts to introduce the  
18 summary chart through 1006, I'm assuming, is that going to  
19 draw an objection from you? I mean, you can anticipate that  
20 much. And will that draw an objection from you as to  
21 undisclosed expert testimony?

22 MR. IAN BIRRELL: That probably wouldn't, if it's  
23 looking, you know, we added up these 17 columns and this is  
24 the total number. That's not expert testimony in my eyes,  
25 Your Honor.

1 THE COURT: All right.

2 MR. IAN BIRRELL: But when we're looking at a  
3 director of finance and operations from a school, I'm not  
4 exactly sure what they're going to testify right now, but I  
5 imagine a lot of what they could testify to could be based  
6 on their specialized training and experience.

7 THE COURT: Are there any FBI summaries of witness  
8 testimony that you have received that you think fall in the  
9 expert testimony category, or is this truly a flag for if  
10 this happens?

11 MR. IAN BIRRELL: It's more of a flag as to if  
12 this happens.

13 THE COURT: Okay.

14 MR. IAN BIRRELL: So I think reserving it for  
15 specific objections at trial probably does make sense. And  
16 I think this -- there is a good chance this issue will arise  
17 down the road; but as of right now, I can't point to  
18 specifically these witnesses and say all these witnesses  
19 could testify to would-be expert testimony, so they should  
20 be excluded in limine.

21 So that's, that's kind of my perspective on these  
22 different witnesses.

23 THE COURT: And could you remind me, you have  
24 Jencks or you do not at this point?

25 MR. IAN BIRRELL: We don't have all the Jencks, I

1 believe.

2 MR. THOMPSON: Your Honor, they have -- the vast  
3 majority of it was turned over in the normal course of  
4 discovery starting with the first round.

5 We are making a production today of some interview  
6 reports of interviews that have been conducted in the past  
7 couple weeks, say.

8 THE COURT: Okay.

9 MR. THOMPSON: I think our last round was maybe  
10 two weeks ago, ten days ago.

11 MR. IAN BIRRELL: I think a week from Friday,  
12 yeah.

13 MR. THOMPSON: Yeah.

14 MR. IAN BIRRELL: So we have a great deal of the  
15 material, but not all of it, I would say.

16 THE COURT: All right. Anything else on that  
17 motion?

18 MR. IAN BIRRELL: No thank you, Your Honor.

19 THE COURT: Do you have anything to say besides  
20 what you've said in your briefs, Mr. Thompson?

21 MR. THOMPSON: No, Your Honor.

22 I don't anticipate that the director of  
23 finance-type people that Mr. Birrell identified generally  
24 are going to raise this issue.

25 And the forensic accountants thing, I think we're

1 in agreement they're doing essentially arithmetic, and  
2 that's not expert testimony.

3 THE COURT: All right. So for that issue, the  
4 only request I would make is that if there is Jencks  
5 material that flags this issue or brings it more into focus,  
6 that we have this discussion outside of the presence of the  
7 jury so that -- because this is a tougher one to make on the  
8 fly.

9 MR. THOMPSON: Absolutely, Your Honor.

10 And just so everyone knows, we're doing the sort  
11 of last round of, like I said, the discovery that's been  
12 generated in the past ten days, two weeks, interview  
13 reports, 302s.

14 And after today, our intention is as those  
15 materials are generated to just send them over via email on  
16 an ad hoc basis probably every Friday and then, after this  
17 Friday, probably every day or two as they're generated, to  
18 the extent that material is generated, to get it to the  
19 defense counsel as soon as possible.

20 THE COURT: Thank you.

21 Mr. Birrell.

22 MR. IAN BIRRELL: Nothing further, Your Honor.

23 THE COURT: All right. Thank you.

24 Motion in limine ECF 397. I don't know that this  
25 needs to be addressed, but, Mr. Schleicher, come forward.

1           While he's doing that, I will ask the following:

2           There are a number of motions in limine that were  
3 made as joint motions in limine by the defendants, and each  
4 one was signed I believe by the author, but not by the  
5 remainder of you.

6           I would like to place on the record that all of  
7 the motions that are represented as joint motions -- and  
8 they are as follows: 378, 388 through 392, 397, 399, 401,  
9 411. Are those all joint motions? And I'll just assume  
10 that they are unless I hear a "no" that they are not, for  
11 the record.

12           Okay. So I just wanted to clear up that, as a  
13 housekeeping matter, that they actually are made on behalf  
14 of all defendants. Thank you.

15           Mr. Schleicher, go ahead.

16           MR. SCHLEICHER: Thank you, Your Honor.

17           I will be brief with respect to my request on 397,  
18 understanding that we did have an informal pretrial  
19 conference last week in which the court addressed these  
20 issues.

21           And for the record, on behalf of Mr. Farah, we are  
22 persisting in our initial request that we'd made for the  
23 reasons that we've stated in our filings. We do appreciate  
24 the time and attention that the court has given to this  
25 particular issue in mitigating the government-influenced

1 pretrial publicity that has taken place in this case. I  
2 think that probably is sufficient as to the first three  
3 points.

4           There were two additional points that were raised,  
5 though, and one was the request that there be a court order  
6 that all parties are prohibited from making similar  
7 extra-judicial statements in public during the pendency of  
8 these proceedings. That seems like a fairly modest request  
9 given the importance of the right that the defendants have  
10 to a fair trial here.

11           The other, and related request, was directing the  
12 government to take down the press conference that was and  
13 remains on the DOJ's website that was -- been the source of  
14 some of the motion practice in this case.

15           In its responsive pleading, the government  
16 indicated that it cannot be asked to take that down because  
17 it didn't put it up. The media did. I think that that's  
18 just plain error as a matter of fact.

19           Looking at the DOJ-sponsored website as recently  
20 as today and the DOJ's YouTube channel, both are means of  
21 accessing and replaying the video of the press conference  
22 that was issued on that day.

23           If the court wishes, I took a screen capture that  
24 contains the email address and a link to the video itself;  
25 but all of those links are in the numerous pleadings that we

1 filed in this case, and so it's the court's option. I've  
2 brought a few copies, if you want one.

3 THE COURT: Sure.

4 What is the objectionable portion of the press  
5 conference? In other words, what does it say that goes  
6 beyond, This is what the indictment charges?

7 MR. SCHLEICHER: Most, Your Honor, of the press  
8 conference goes beyond what was charged in the indictment,  
9 but the particularly egregious portion, in my view, is the  
10 portion in which the U.S. Attorney states that no one  
11 involved in this case could have possibly believed that you  
12 could make this sort of money, it's not possible, which is  
13 related to additional relief that I'm requesting in a  
14 related motion and that is a restriction of the willful  
15 blindness instruction, given the priming of the jury pool on  
16 that particular argument.

17 There is no, you know, real contest, and I don't  
18 think anyone has ever meaningfully disputed, that those  
19 comments went beyond what the DOJ states are the required  
20 rules that are in the C.F.R. for press conferences and the  
21 like. It goes beyond the defendants. It goes beyond the  
22 charges. It's statements of opinion. And there are a  
23 number of, I guess, exhibits and things shown such to the  
24 point it really was kind of an opening/closing argument.  
25 That's the portion that we're objecting to. That's the

1 portion that still remains.

2 And when we'd made the request that such comments  
3 cease, I think it really is the functional equivalent of  
4 holding this same press conference every day when the  
5 conference in its entirety remains posted on the DOJ's  
6 website.

7 I know that the government has no control over  
8 what could be on other media outlets, but at the very least  
9 it should be held to stop republishing the particular press  
10 conference on those outlets it does control.

11 THE COURT: All right. Thank you.

12 Mr. Thompson, I would like a response.

13 MR. THOMPSON: Your Honor, there was nothing wrong  
14 with the government's press conference. It's a typical  
15 thing that happens in big high-profile cases. There's no  
16 reason to believe that the jurors are going to be going on  
17 YouTube and looking for that press conference.

18 To the extent they did, it's posted on numerous  
19 news or YouTube pages, including high-profile news outlets,  
20 that are followed by many millions of people and far more  
21 than follow the DOJ's YouTube page.

22 So I don't think an order taking it down is  
23 necessary. I don't think it has any impact on this case.  
24 The jurors are going to be presumed to follow your  
25 instructions not to look online. I see no reason to think

1 that they would.

2 And I know a lot of the defendants' motions are  
3 premised on this idea that there's been unprecedented  
4 publicity in this case and that it's generated by the  
5 government. It's just not true.

6 The Derek Chauvin trial was tried a couple years  
7 ago just a block down the street. There was -- that was in  
8 the media. That was televised. There were reporters  
9 packing the courtroom for that every time there was a court  
10 hearing or a court filing. There was news coverage  
11 generated. There was excitement that built on Court TV,  
12 national television, local television and the run-up to  
13 trial.

14 There's been no such press coverage of this trial.  
15 We filed our trial brief ten days ago that laid out some of  
16 the government's case. There wasn't any press coverage of  
17 that. We've had court hearings leading up to this. There  
18 hasn't been any press coverage.

19 I think there's a couple reporters in the  
20 courtroom. We'll see whether there's any press coverage of  
21 this.

22 But there's been no press coverage that I've seen  
23 that has talked about the Feeding Our Future -- the first  
24 Feeding Our Future-related trial is scheduled for two weeks  
25 from now, here's what's to come. I haven't seen that

1 anywhere.

2           So it's just not true in my mind that there's been  
3 this unprecedented and overwhelming amount of press coverage  
4 in this case. Certainly more than some cases, but I'm not  
5 even sure it's gotten as much as the Lazzaro case just a  
6 year ago. That certainly seemed to have more in the run-up  
7 to trial, and that had daily trial coverage. We'll see  
8 whether this case has that. It's a financial case, so I  
9 suspect people will lose interest, but that's just not  
10 there.

11           With respect to the gag order, obviously, there's  
12 whole First Amendment implications to issuing a gag order.  
13 I don't think the court needs to grapple with those because  
14 I think it's unnecessary. The government does not intend to  
15 hold press conferences during the trial or to speak to the  
16 press during the trial. We don't do that. I assume defense  
17 counsel won't. We'll see. And I think if people do, then  
18 Your Honor can take that up.

19           THE COURT: Thank you.

20           Just a few things on the motion contained in ECF  
21 Number 397.

22           First, there was a request for attorney voir dire,  
23 and I think there's a separate motion on that as well. I'm  
24 denying attorney voir dire and, instead, allowing the  
25 attorneys to request that I follow up with particular

1 potential jurors with questions. I'll give you great  
2 latitude to ask questions of me that come out of my mouth to  
3 ask potential jurors, but I'm denying attorney-led voir  
4 dire.

5 As to the peremptory strikes, I've determined that  
6 the defendants will share 18 peremptory strikes and the  
7 government will have 6 peremptory strikes. I believe you  
8 all have a strike sheet as to how those are to be utilized.  
9 And, again, defendants will share strikes.

10 As to jury sequestration from the media, it will  
11 be covered extensively in my instructions. It has also  
12 already been covered in the individuals who have been  
13 summoned to the courthouse. I have written each potential  
14 juror a letter asking them from this day forward not to read  
15 or intentionally view anything about this case, do not do  
16 any investigation or research; and if a news article or  
17 program airs information regarding this case or related  
18 cases, I've asked them not to read, listen and then to  
19 disregard. That was a letter dated February 21st of this  
20 year.

21 And so all of the people who have been summoned  
22 for jury service for this case have been appropriately  
23 warned, and I presume they will follow the court's  
24 instructions. That has been my experience with juries.

25 And so as to jury sequestration from the media, I

1 am determining that my instructions will cover that issue.

2 I'm also determining that a gag order is  
3 unnecessary. That request is denied.

4 As to the request for the government to take down  
5 its press conference from its own website and from the  
6 YouTube website, I have viewed that press conference. I do  
7 not view it to be constitutionally impermissible, and  
8 therefore I am not going to grant that request. It's  
9 denied.

10 The next motion in limine is ECF Number 399, which  
11 is comparing program sites to school enrollment rosters.  
12 And my understanding is that this is under 401 and 403.

13 MR. SCHLEICHER: That's correct, Your Honor.

14 THE COURT: What are you concerned about with  
15 regard to comparing a school enrollment roster with a meal  
16 roster?

17 MR. SCHLEICHER: It invites, Your Honor, an  
18 apple-and-oranges comparison that bears no relevance on the  
19 case, when you consider that there was no geographic  
20 restriction on the food program. In other words, there's no  
21 requirement that if someone was going to take advantage of  
22 the food program that they be enrolled in a particular  
23 school district.

24 So having someone just compare a list of names  
25 that may or may not be at all related to those who show up

1 at a particular food site, it bears -- it has no relevance  
2 on the case.

3 And to the extent there was any minimal probative  
4 value, it's outweighed by the danger of unfair prejudice  
5 under 403, because the jury may be led to believe somehow  
6 these two rosters should match. There's nothing that should  
7 indicate that those two rosters should in fact match.

8 THE COURT: And why isn't that covered by able  
9 cross-examination?

10 MR. SCHLEICHER: Well, Your Honor, fair enough  
11 with respect to cross-examination, and you can expect a full  
12 cross-examination on all, but that's not a remedy for the  
13 admission of what would be and should be inadmissible  
14 evidence in the first place.

15 And our position is the, the meal rosters, the  
16 food rosters and the attendance or enrollment sheets of the  
17 school are so unrelated that they should just simply not be  
18 introduced into evidence in the first place.

19 Cross-examination is not the proposed or  
20 prescribed or preferred remedy for inadmissible evidence,  
21 and an additional 403 ground on that basis would be a waste  
22 of time. This is going to be a very long trial in the first  
23 place.

24 And so at least as a gatekeeping function, we ask  
25 that the court exclude evidence that on its face is

1 inadmissible.

2 THE COURT: Mr. Thompson, do you have those  
3 exhibits available to the court that you wish to argue now  
4 or --

5 MR. THOMPSON: I don't have them with me right  
6 now, but I certainly can explain them for Your Honor.

7 THE COURT: Go ahead.

8 MR. THOMPSON: They're not analytically  
9 challenging.

10 Your Honor, the defendants submitted, along with  
11 their fake claims, rosters purporting to list the names and  
12 ages of the kids that they served meals to at their sites.  
13 Those rosters are fake. The names on them are fake.

14 And one of the ways we know that, and there's  
15 several, is that we took the rosters, some of them had 2,000  
16 names on them, and we compared them to the rosters of the  
17 entire population in the local school district and none of  
18 the names matched.

19 THE COURT: And so how do you respond to the  
20 argument that they don't necessarily need to match because  
21 there was no restriction on the meal program such that a kid  
22 needed to be in school?

23 MR. THOMPSON: Your Honor, these aren't lists of  
24 names of kids that don't attend public school or that came  
25 from some different area. They are fake names. Anyone that

1 looks at the rosters will understand they are fake names.

2 THE COURT: Then why do you need the school  
3 district roster?

4 MR. THOMPSON: It's incredibly compelling. It's  
5 how they would know. It shows that they did it. And it's  
6 another piece of evidence that -- it's actually incredibly  
7 powerful evidence. What could be more relevant in a charge  
8 of fraud than showing that the defendants prepared and  
9 submitted fake records in support of their fake claims?

10 THE COURT: Okay.

11 MR. THOMPSON: It's incredibly probative.

12 THE COURT: Thank you.

13 Subject to reintroducing this issue during trial,  
14 I'm going to deny the motion in limine.

15 However, I do have a concern about the fact that  
16 these are minors' names and that this is a public trial.  
17 And I want to -- we don't have to do it now, but I want to  
18 have some discussion about minors' names and how we address  
19 that, particularly if you are going to highlight one as an  
20 example.

21 Go ahead.

22 MR. THOMPSON: Very well, Your Honor. I think we  
23 can certainly take that up at the time.

24 I would say that the lists, the names on the  
25 defendants' rosters themselves are fake. They are not real

1 children. So that's not a concern.

2 Obviously, the lists, the rosters from the public  
3 school districts do contain the names of real kids, but I  
4 suspect there's ways we can get around that, and we'll think  
5 about it and confer with defense and the court before we do  
6 it.

7 THE COURT: All right. Thank you.

8 The willful blindness instruction I don't intend  
9 to give at the preliminary, during the preliminary  
10 instructions. And so whether it is a proper instruction or  
11 not is argued during -- will be argued during the jury  
12 instruction conference, should the government request it.

13 Is there anything else that we need to address on  
14 401? That's ECF 401. Mr. Schleicher?

15 MR. SCHLEICHER: No, Your Honor.

16 THE COURT: All right. Thank you.

17 And Number 414, which is brought only by one  
18 defendant.

19 Mr. Cotter.

20 MR. COTTER: Thank you, judge.

21 I'll make this very brief. This was with regard  
22 to Mr. Ismail's conviction related to the passport, where he  
23 pled and served his sentence.

24 I acknowledge the government's response. I  
25 acknowledge the connection to potential state of mind.

1 I would reserve the ability to object based on my  
2 403 arguments. If this becomes a trial within a trial about  
3 all the facts related to that offense, there's prejudicial,  
4 unnecessary and confusing.

5 Other than that, I'd rest. Thank you.

6 THE COURT: Thank you.

7 I'll deny it as stated, but reserve.

8 And any objections, just due to the nature of  
9 motions in limine themselves, are reserved for trial.

10 The motion as to Exhibit P-18 appears to be  
11 unopposed, and so I'll grant that as unopposed.

12 And the Gateway Academy motion. Mr. Cotter, did  
13 you want to -- who wants to address the Gateway Academy  
14 motion? Mr. Birrell.

15 MR. IAN BIRRELL: Yes, Your Honor. And for the  
16 record, that's motion ECF 431.

17 THE COURT: Thank you.

18 MR. IAN BIRRELL: And it was jointly filed by  
19 Mr. Abdiaziz Farah, Mr. Mukhtar Shariff and Mr. Mahad  
20 Ibrahim, and I can represent that all three join in that  
21 motion.

22 THE COURT: Okay. So that's on behalf of three.  
23 Thank you.

24 MR. IAN BIRRELL: And, Your Honor, I think given  
25 the nature of this motion this court should have the 404(b)

1 notice in the record. It's not particularly long. I can  
2 read it into the record, at least as to this 404(b). There  
3 are three items under 404(b) that the government sought to  
4 introduce.

5 THE COURT: Go ahead.

6 MR. IAN BIRRELL: And so this is --

7 "3. The United States may seek to admit evidence  
8 that Abdiaziz Farah improperly sent approximately \$300,000  
9 from a public charter school he founded, Gateway STEM  
10 Academy, to businesses controlled by himself and his  
11 coconspirators, Mahad Ibrahim and Mukhtar Shariff. The  
12 defendants then converted this money for their own use.

13 "Abdiaziz Farah founded Gateway STEM Academy and  
14 served as its director. Mahad Ibrahim and Mukhtar Shariff  
15 served on the school's board of directors.

16 "From October 2021 through January 2022, Abdiaziz  
17 Farah paid approximately \$117,000 from Gateway STEM Academy  
18 to A&E Logistics, a company that Mukhtar Shariff and Mahad  
19 Ibrahim registered in April 2021. A&E Logistics was one of  
20 the companies that the defendants used to receive and  
21 launder proceeds of their fraud scheme.

22 "Abdiaziz Farah also caused Gateway STEM Academy  
23 to pay approximately \$175,000 to Mind Foundry Learning, the  
24 entity created by Mahad Ibrahim and used to open Federal  
25 Child Nutrition Program sites all over the State of

1 Minnesota.

2 "This evidence is admissible under Rule 404(b) in  
3 order to show that their participation in the charged fraud  
4 scheme was not a mistake or accident, but rather that they  
5 acted with knowledge and fraudulent intent and as part of a  
6 plan to use their companies to fraudulently obtain money and  
7 convert it to their own use." And that's the end of the  
8 quote.

9 Earlier in the 404(b) notice, the government said  
10 that they intended to use the other two items as intrinsic  
11 evidence, but there wasn't a suggestion that Number 3 was  
12 offered as intrinsic evidence. And we objected, as Your  
13 Honor knows, alleging that this is both prejudicial and  
14 would bloat the trial.

15 And as I read their response, it's that they don't  
16 intend to go very deep into it, but they do intend to offer  
17 it for a limited purpose; and they allege that it is now  
18 intrinsic to the offense, that they basically intend to show  
19 the jury these transactions, show they're from the school  
20 and show Mr. Farah founded and controlled the school.

21 And, Your Honor, as I read their response, it's a  
22 cure that is worse than the problem, it makes the problem  
23 worse, not better, because, first, it leaves the jury with  
24 the impression, the taint that there is this plan, there is  
25 this fraudulent intent, and there is this common scheme,

1 that it is truly 404(b) evidence, and that's it's not really  
2 explained.

3 And then we still have the bloat problem because  
4 we are going to have to get up there and explain what were  
5 these transactions, what are these parties' relationship  
6 with the school, what are the school's oversight practices,  
7 what are the school's accounting practices, who else on the  
8 school was involved in these decisions, what are the  
9 applicable regulations.

10 And, Your Honor, if it isn't intrinsic to the  
11 offense, and I don't think it is, then it provides very  
12 little probative value to the jury, aside from that taint.

13 So I think the court is properly able to exclude  
14 it, and I think it's able to make that ruling at this time  
15 rather than defer until trial when this matter comes up with  
16 essentially the same argument and analysis that is before it  
17 now.

18 THE COURT: And the government has responded by  
19 saying that all it intends to introduce is the transfers  
20 from the companies, which A&E and Mind Foundry are alleged  
21 to be part of the scheme -- so the transfers from Gateway to  
22 A&E and Mind -- and that Gateway was an entity founded and  
23 controlled by Farah. That's my understanding of what the  
24 government -- the limit of what the government is intending.

25 Is that objectionable?

1 MR. IAN BIRRELL: That is, Your Honor.

2 That is my understanding of what they're offering.  
3 And I think that is both them offering essentially that  
4 these three companies were involved in this scheme that they  
5 are on trial for now and also that there's this other fraud  
6 scheme that they are not on trial for and that's not even  
7 really going to be explained to the jury by the government.  
8 They're just going to say this money was going -- it was  
9 being funneled by an entity founded and controlled by  
10 Mr. Farah to these people. And they're just going to leave  
11 it at that for the jury, when it requires much more  
12 explanation.

13 THE COURT: All right. Let me hear from the  
14 government.

15 MR. THOMPSON: Thank you, Your Honor.

16 Your Honor, it's a little complicated here insofar  
17 as we can't just set it aside. The defendants used Mind  
18 Foundry and A&E Logistics as entities involved in the fraud  
19 scheme.

20 So when you look at their bank records,  
21 essentially all the money in those accounts comes from food  
22 money or they're directly from Partners in Nutrition or  
23 Feeding Our Future or more likely indirect -- more often  
24 indirectly from other entities involved in the scheme, such  
25 as Empire Cuisine & Market and others. And so the money

1 goes into those accounts, A&E Logistics, which is founded by  
2 some of the defendants, Mind Foundry. And when you look at  
3 it, it's all food money, except for this little bit or  
4 somewhat significant amount from Gateway STEM academy.

5 And then we show how the proceeds were spent,  
6 namely, it wasn't spent to feed kids, when you look at the  
7 A&E Logistics account, which was used to purchase some  
8 trucks, and the Mind Foundry account, where the money was  
9 sent to where it goes.

10 What we're proposing at this point is we have to  
11 have some explanation. When we see that line on there, for  
12 example, you know, \$117,000 from Gateway STEM Academy,  
13 that's another entity controlled by Abdiaziz Farah and then  
14 move on. That doesn't seem like it -- it doesn't suggest  
15 anything nefarious. It suggests that there's another  
16 entity; and that when we say this is a shell company, that's  
17 what it is.

18 THE COURT: That makes sense to me, but it's still  
19 included in your 404(b) notice. So I'm trying to square  
20 those two.

21 MR. THOMPSON: Well, we noticed it in an abundance  
22 of caution.

23 And certainly, look, the State of Minnesota took  
24 to the position that those were fraudulent transfers. We  
25 have records related to that, but we don't want to prove

1 that up or we don't intend to, we don't need to. We thought  
2 about it a few weeks ago when the 404(b) notices -- and they  
3 are due in advance of trial, so we're still working through  
4 our theory. At that point we thought about it, but we don't  
5 intend to now.

6 And I think we can get through this issue in terms  
7 of actually not talk about Gateway STEM Academy at all.  
8 There will at least have to be some explanation for that  
9 money into both the A&E Logistics account and the Mind  
10 Foundry account, but I think we can do it just briefly  
11 through a question and move on.

12 THE COURT: All right. I'm going to reserve  
13 ruling on this issue in some hope that you all will come to  
14 a narrow -- either a narrowing of it or an agreement.

15 Mr. Dooling or Mr. Mauzy, there's a motion for --  
16 under spending and personal financing, Number 434.

17 MR. SAPONE: Yes, Your Honor.

18 THE COURT: Thank you. Yes. Whoops. That's  
19 not -- I'm sorry. That's not Mr. Dooling or Mr. Mauzy.

20 That's you, Mr. Sapone. I'm sorry.

21 MR. SAPONE: Yes. Thank you, Your Honor. That's  
22 okay.

23 So, Your Honor, I would like to start with  
24 PayMeToDoYourHomework.com, which was some sort of service  
25 that was used to, let's say, advance college course work or

1 do homework. We're talking about \$5,000, plus \$6,000. It's  
2 \$11,000 that was paid for that.

3 And so even though I think the government's  
4 argument is that that money was earned in connection with  
5 the alleged scheme, I think that the danger here under 403  
6 is great, because if the jury hears that Mr. Nur had spent  
7 \$11,000 to have some, you know, service do his homework or  
8 take a college course, it's really a propensity argument too  
9 that they could figure, well, if he was dishonest enough to  
10 do that then, then he must have been dishonest enough to do  
11 this now. And so I think that -- and that, of course, is  
12 very dangerous.

13 So if this were like, you know, hundreds of  
14 thousands of dollars on something, then I would say there's  
15 more probative value, but because of the small amount of  
16 money, Your Honor, and really what's at stake, the  
17 government has plenty of other evidence. I don't think they  
18 need this little slice of evidence, which would  
19 substantially prejudice Mr. Nur, and so I'm asking you to  
20 keep that out.

21 And then the other issues, Your Honor, are  
22 basically spending, which we're seeing more and more in  
23 these financial crimes cases, quote/unquote, lavish  
24 spending, but the spending here is not lavish. So, for  
25 example, it's Timberwolves basketball games. Putting aside

1       how well the team does, the price for the tickets is like  
2       \$1500 a year. I think the total was \$4,000 for the  
3       basketball tickets.

4               THE COURT: And you want to argue to a jury that  
5       that's not lavish?

6               MR. SAPONE: I want to argue that lots of people  
7       go to see the Timberwolves. And so I don't think that's the  
8       sort of level of spending that we see in other cases. For  
9       example, the Menendez case is going on in the Southern  
10       District of New York right now. There are gold bars at  
11       issue that the defense is arguing to try to keep out under  
12       403, which are very valuable.

13              And so I'm not trying to, you know, making the  
14       arguments that \$1500 is nothing, because it is certainly,  
15       you know, it's money, but it's not the type of money that I  
16       think that would justify it to make it that probative.

17              Travel for a honeymoon. People get married. They  
18       go on honeymoons.

19              THE COURT: Isn't the point of this that it wasn't  
20       used for the purpose that it was intended?

21              MR. SAPONE: I don't think so, Your Honor. I  
22       think that they're allowed to make a profit. And so I think  
23       that even though the money may be in the LLC's bank account,  
24       not all of that is earmarked to pay for expenses or overhead  
25       in connection with the case, with the food program. We have

1 a couple of vehicles here.

2 You know, so I think that in cases where there is  
3 a disparity in what someone like Mr. Nur, you know, could  
4 spend money on, you know, and what was spent, then that's  
5 one thing. I guess it would add to probative value. But  
6 the danger of unfair prejudice here is great, and I would  
7 even argue that it barely meets the 404(b) test. In other  
8 words, what does buying some basketball tickets show  
9 relative to motive, knowledge or intent to commit the  
10 alleged instant offense?

11 So for those reasons, I'm asking that the court  
12 keep it out. The government has plenty of other evidence it  
13 could rely on.

14 THE COURT: All right. Thank you.

15 Mr. Thompson, does this fall under 404(b)?

16 MR. THOMPSON: No. It's intrinsic. We noticed it  
17 as intrinsic, but we flagged it as potential 404(b) in case  
18 the defendants wanted to argue that that's what it was.

19 This is how Mr. Nur spent his money. He was  
20 19 years old when this crime started. He spent \$4500 on  
21 tickets to the Timberwolves. He spent \$12,000 for an online  
22 website, PayMeToDoYourHomework.com, to take his college  
23 courses for him. He was a full-time student, Your Honor.  
24 They were taking all of his courses.

25 THE COURT: So there's two parts to that, and I

1 just want to understand.

2 The PayMeToDoYourHomework.com, are you looking to  
3 introduce evidence that that is in fact having someone take  
4 a college course or, rather, that it went to that website  
5 and say no more about the website?

6 MR. THOMPSON: I think both, Your Honor. We will  
7 see when the trial comes, but I think we're entitled to do  
8 both. We're entitled to show how he spent the money and  
9 what it was for. It wasn't food money. The fact that his  
10 spending was arguably offensive isn't our fault; it's his.

11 THE COURT: I mean, I just can't tell from -- I  
12 understand what the title of the website is, but I don't  
13 want a mini-trial on what that website does or doesn't and  
14 whether it's legal or not.

15 MR. THOMPSON: Your Honor, we don't intend to drag  
16 out this trial. And obviously when we get to that point of  
17 the trial, I'm sure we'll be talking and they'll raise the  
18 issue the night before with Your Honor and with us and we'll  
19 talk about it.

20 I just want to address, the honeymoon, Your Honor,  
21 was to the Maldives. And it was in one of those ocean,  
22 above-the-ocean villas that Mr. Nur, who was then 19 years  
23 old, stayed at. So this is not normal spending. And it's  
24 indicative of the fraud, and obviously it wasn't involved in  
25 the food program.

1           And I think one other thing I would address is the  
2 argument that the defendants were entitled to obtain a  
3 profit in the program. I know that's one of the defense  
4 themes. We've seen it in the filings. Maybe so, Your  
5 Honor. But the fact that the profit was so lavish that they  
6 were taking trips to the Maldives, spending \$30,000 at a  
7 jewelry store in Dubai, buying houses for \$2 million in  
8 cash, that really significantly undercuts the argument that  
9 "I just made a profit here. This was fine."

10           THE COURT: All right. Thank you.

11           The law is clear here that evidence of personal  
12 spending is admissible to show motive, and I'm going to  
13 allow evidence of personal spending. I'm not going to allow  
14 mini-trials into what that spending is and whether or not it  
15 was legal, and that's my concern with the website.

16           So I will reserve the -- I'll deny the motion, but  
17 reserve particular objections for trial.

18           There's two other motions by the defendants,  
19 378 -- I've already addressed these, but 378 was for a jury  
20 questionnaire.

21           In lieu of a jury questionnaire, I have created  
22 from your proposed questions a list of questions that will  
23 be asked of each potential juror. We can go through that  
24 when we go through voir dire.

25           And so I'm denying that motion at 378, and I'm

1 denying, again, the motion at 411 for attorney voir dire.

2 Let's move to the government's motions in limine,  
3 unless I missed any of the defendants.

4 No. Okay.

5 The government's motion in limine is one on the  
6 advice of counsel and mistake of law defense. I'm not  
7 hearing that those are going to be relied on by any of the  
8 defendants.

9 MR. GARVIS: That's correct, Your Honor.

10 THE COURT: Do you still wish to persist in the  
11 motion, Mr. Thompson?

12 MR. THOMPSON: No, Your Honor. That's fine.

13 THE COURT: All right. So I'll deny that as moot.

14 MR. ANDREW BIRRELL: What number was that, Your  
15 Honor?

16 THE COURT: 404.

17 MR. ANDREW BIRRELL: Thank you.

18 THE COURT: And then 405 is to preclude argument  
19 or evidence designed to elicit jury nullification.

20 Typically, I would deny as moot when I have no  
21 reason to believe that that will occur; and if there are any  
22 such arguments, we can address it at the time.

23 But the government did state in its motion at 405  
24 that it has reason to believe that the defendants may  
25 attempt to put the government on trial by introducing

1 evidence and arguments concerning the government's  
2 motivation for the investigation.

3 Mr. Thompson, what is your reason, what is your  
4 reason to believe based on?

5 MR. THOMPSON: Your Honor, based on the responses,  
6 I think we're fine just denying as moot.

7 THE COURT: All right. I will deny as moot and,  
8 again, reserve objections for trial.

9 The next one is 406. And I need to understand  
10 what the government is concerned about here, which is to  
11 preclude evidence and argument of lawful behavior.

12 I would be inclined to take each objection at  
13 trial, but I'm not clear if we need a specific focus here.

14 MR. THOMPSON: Your Honor, I think we can deny  
15 this one as moot as well.

16 THE COURT: All right. And the next, which is to,  
17 407, to preclude reference to punishment or sentencing.

18 I'm assuming that's not going to happen. Right?

19 MR. IAN BIRRELL: Correct, Your Honor.

20 THE COURT: I'll deny as moot.

21 To the government's charging decisions. Is there  
22 anybody who intends to raise arguments as to the charging  
23 decisions, or can I deny as moot?

24 MR. COTTER: Deny as moot.

25 THE COURT: Thank you.

1 Mr. Thompson? Yes?

2 MR. THOMPSON: Yes, Your Honor.

3 THE COURT: All right. Okay. Sequestration of  
4 witnesses. So this falls under -- it is ECF Number 409. It  
5 falls under Federal Rule of Evidence 615.

6 The number of case agents that the government is  
7 requesting be present during the entire trial is unusually  
8 high, and I would need some showing that they are necessary.

9 So can you narrow this for me, Mr. Thompson?

10 MR. THOMPSON: Yes, Your Honor.

11 The government would request permission to allow  
12 three agents to be in the courtroom, in light of the size  
13 and length of the trial, and that would be Special Agents  
14 Jared Kary and Travis Wilmer from the FBI, who are seated at  
15 counsel table right now, and Pauline Roase, who is a  
16 forensic accountant at FBI, who is sitting in the gallery.  
17 She was actually in many ways the original case agent on  
18 this case back in the summer of -- I guess it would be 2021  
19 when this investigation began.

20 THE COURT: And can you tell me the necessity for  
21 the two FBI case agents?

22 MR. THOMPSON: Your Honor, this is a large case.  
23 There are going to be a large number of witnesses for the  
24 government and a lot of logistics and being able to have a  
25 second person, second agent come and go. I imagine there

1 might be days when one of them might not be here or have to  
2 step out and get a witness, and I think that will allow us  
3 to try this case efficiently.

4 THE COURT: And both have been case agents on the  
5 case since the beginning or close to the beginning?

6 MR. THOMPSON: Well, since before the search  
7 warrants in January of 2022. In fact, Special Agent Wilmer  
8 was the affiant on all the search warrants, including the  
9 original ones.

10 THE COURT: Thank you.

11 Who is addressing this from the defense?

12 Mr. Goetz.

13 MR. GOETZ: I will, Your Honor.

14 Your Honor, the defense asks that the court starts  
15 analysis with the plain language of the rule, which in 2023  
16 was amended, 615(a)(2), to say they get one. And that's  
17 specifically in the rule. They get one witness -- one  
18 representative at counsel table.

19 THE COURT: Do you think the agent falls within  
20 the (a)(2) or (a)(3)?

21 MR. GOETZ: (a)(2), Your Honor. And I think if  
22 you look at the *Engelmann* case and the *Sykes* case, that's  
23 both where that analysis has failed, under (a)(2).

24 The comments to the rule do -- this is in the  
25 discretion of the court -- do talk about under (a)(3)

1 expanding it, but the requirement there is essential.

2 And I've heard nothing from the government today,  
3 nor did I see anything in writing, that shows that any of  
4 the -- that all of these three, certainly the seven that  
5 they initially asked for, but even the pared-down three, are  
6 essential to the presentation of the case. Would it make  
7 life easier for them? Yes. Would it be simpler? Yes. But  
8 is it essential? No.

9 Regarding case agents having different schedules,  
10 some can be here or not, the rules do contemplate that you  
11 can alternate your one representative. So if Agent Wilmer  
12 is here one day, but he can't be here on Tuesday, and Agent  
13 Kary needs to take his place, that's permissible, but they  
14 get one.

15 That's the language of the rule, and it was  
16 specifically amended I think, Your Honor, with this  
17 circumstance in mind. So the government can pick and choose  
18 which one they want on a given date, but they get one.

19 THE COURT: And for the defendants, I just want to  
20 make sure, the defense experts are three? I mean, you are  
21 asking for your experts to be excluded. Am I right? And I  
22 know that's a different section of the rule and a different  
23 issue, but I want to make sure that we cover all of the --

24 MR. GOETZ: It is. I think we have one, what I'll  
25 call an omnibus expert or cultural expert that applies to

1 all of the defendants. For Mr. Shariff, we have one  
2 accounting expert. We will not be asking that that person  
3 sit through the whole trial. If anything, it would be just  
4 the one omnibus expert.

5 THE COURT: Okay. Thank you.

6 MR. GOETZ: But that's only for the perspective of  
7 Shariff. Other defendants may have different views as to  
8 their experts.

9 THE COURT: Okay. If there is a request for an  
10 exemption from the sequestration order for an expert, I'll  
11 need to know that before the trial.

12 MR. IAN BIRRELL: Your Honor, we have two  
13 financial experts who we have disclosed, and we would  
14 request they be exempt from sequestration.

15 THE COURT: All right. Thank you.

16 Do you have any objection to the exemptions for  
17 experts?

18 MR. THOMPSON: No, Your Honor.

19 THE COURT: Can you respond to the argument about  
20 *Engelmann* and *Sykes*?

21 MR. THOMPSON: Your Honor, courts in this  
22 district, as you know, routinely allow more than one case  
23 agent in the normal case. And this is far from the normal  
24 case. I look out at a sea of people on the defense side of  
25 the courtroom. Allowing the government to have three agents

1 sit in the courtroom to help us try this case in an  
2 efficient manner seems necessary, frankly, but certainly  
3 allowable under the rules and allowable by district  
4 practice.

5 THE COURT: All right. Thank you.

6 MR. GOETZ: Your Honor, can I just add one thing  
7 in light of that?

8 THE COURT: You may.

9 MR. GOETZ: If we're talking anecdotal experience  
10 in this district, Your Honor, I can tell the court that  
11 cases that I've been involved in of equal complexity, equal  
12 length, the most -- and this was before the 2023  
13 amendment -- has been two. The most has been two. And I  
14 think the magazine case in front of Judge Tunheim they had  
15 two.

16 THE COURT: Can you help me understand what the  
17 concern is? Is your concern that these two are going to  
18 hear things and be able to tailor their testimony, or do you  
19 have a different concern than that?

20 MR. GOETZ: Well, the government's asking for  
21 three. So it would be, yes, exactly that.

22 THE COURT: I put the accountant in a -- I mean,  
23 frankly, I'm going to allow at least a case agent and an  
24 accountant, because I think they are in different categories  
25 and it makes sense to me that both would be essential. So

1 I'll just say that.

2 But as to the two who are case agents, who are FBI  
3 agents, not accountants.

4 MR. GOETZ: Your Honor, it's the purpose of 615,  
5 which is to sequester witnesses. You can't mold your  
6 testimony because you've heard other agents or other  
7 witnesses, particularly if we have multiple summary  
8 witnesses. At the end of the case they're going to say,  
9 well, I heard this witness, I heard that witness, rather  
10 than just giving, you know, their independent testimony.

11 So it's the very purpose of 615 I think would be  
12 defeated if, certainly, if they have three. And I  
13 understand perhaps what the difference between three and  
14 two, and I understand how the court has divided it.

15 One of the difficulties, though, is that the  
16 government, on the one hand, claims these forensic  
17 accountants are not experts, but then they kind of want to  
18 shoehorn one in there as an expert.

19 So at any rate, Your Honor, I think the rule is  
20 clear they have one. Certainly, in the history of this  
21 district, I can't think of a case where they've had more  
22 than two.

23 THE COURT: All right. Thank you.

24 I'm going to take that issue under advisement.

25 ECF Number 388, which is excluding -- oh, sorry.

1 We already did that. I think we're done.

2 Did I cover them all?

3 Did I cover them all for the government?

4 MR. THOMPSON: Yes, Your Honor. Thank you.

5 THE COURT: I did. I just flipped the page and  
6 went straight to the defendants again.

7 All right. I will issue a written order that is  
8 consistent with my rulings here today and has covered things  
9 that I haven't yet ruled on.

10 As to Agenda Item Number 2, which is the summary  
11 of indictment as included in the court's voir dire and  
12 preliminary instructions, I often in the court's voir dire  
13 and preliminary instructions will give a narrative that the  
14 parties agree to as to what the jury should know.

15 In this case I don't think an extensive narrative  
16 is warranted, and so I am proposing simply to list the  
17 charges as is indicated on your agenda and was indicated to  
18 you in the voir dire that I sent out.

19 Is there any objection from any of the defendants?

20 MR. GOETZ: Only a proposed amendment, Your Honor?

21 THE COURT: Yes.

22 MR. GOETZ: Defendants requested that along with  
23 the summary of indictment the court add a one-sentence  
24 summary of the defenses. And I have proposed language here.  
25 I've already shared that with counsel.

1           If I may tender that to the court?

2           THE COURT:  Yes, you may.

3           And typically I would say, Defendants deny all  
4 charges.

5           Defendants pleaded not guilty to these crimes and  
6 contend they did not commit any fraud or bribery, did not  
7 launder any money and acted in good faith.

8           Any objection to that, Mr. Thompson?

9           MR. THOMPSON:  No, Your Honor.

10          THE COURT:  All right.  Then I'll include it.

11          MR. GOETZ:  Thank you.

12          THE COURT:  Thank you.

13          As to voir dire, to place on the record what our  
14 informal conference led to last week, the court will bring  
15 in batches of potential jurors that will be by number.  
16 We'll read the proposed voir dire instructions to those  
17 folks and then excuse them for individual questioning.  The  
18 individual questioning will be from the criminal trial jury  
19 questionnaire that you have been handed.

20          I have made the amendments that, Mr. Goetz, you  
21 requested in your weekend filing.

22          Is there any objection to those from the  
23 government?

24          MR. THOMPSON:  No, Your Honor.

25          THE COURT:  All right.  And so -- or any

1 defendants?

2 MR. IAN BIRRELL: No, Your Honor.

3 THE COURT: No.

4 MR. GARVIS: Whoop, Your Honor. Apologize.

5 THE COURT: That's all right. Mr. Garvis.

6 MR. GARVIS: As it relates to the amendment that  
7 Mr. Goetz put forward, is there a way that -- I think it  
8 related to Question 24(b).

9 THE COURT: Yes.

10 MR. GARVIS: I apologize.

11 Your Honor, it says, Because people involved in  
12 this case are from different racial or ethnic backgrounds or  
13 practice a different religion than yourself, can you commit  
14 yourself to carefully evaluating the evidence and resisting  
15 any urge to reach a verdict influenced by or hidden by  
16 unconscious bias?

17 Your Honor, is there a chance that we could change  
18 that first word to potentially "if," instead of "because,"  
19 because I think it takes a giant assumption that everybody  
20 in the jury might be of a different racial or ethnic  
21 background when they might not be.

22 THE COURT: Fair enough. Changed.

23 All right. And so the criminal jury trial  
24 questionnaire will be given to potential jurors during the  
25 process of orientation. They will then bring that up to the

1 witness stand. I will have each potential juror go through  
2 these questions.

3 I'm going to place them on the record at the  
4 beginning and then I will refer to them by number, so that  
5 that's clear and so that we're not repeating the questioning  
6 for every juror. I'm trying to make this process as  
7 efficient as possible.

8 So you all know for the defendants, during the  
9 voir dire process, if you have family members or other folks  
10 who are coming to the trial, there will likely, there will  
11 likely not be room for them in the courtroom itself during  
12 voir dire, and they will be placed in an overflow.

13 So for each day of trial, we will have an overflow  
14 courtroom, but particularly during voir dire. Because the  
15 jurors all have to come in and fill up that back room for  
16 part of the voir dire, I'll be placing all folks in the  
17 overflow courtroom for the voir dire process. So I wanted  
18 you all to know that for anyone who is coming to watch on  
19 your behalf.

20 I think that's all I needed to place on the record  
21 for the voir dire process.

22 Does anyone have any questions about that?

23 Mr. Birrell.

24 MR. ANDREW BIRRELL: Where will the potential  
25 juror be?

1 THE COURT: In the witness box.

2 MR. ANDREW BIRRELL: In the witness box?

3 THE COURT: Mm-hmm.

4 MR. ANDREW BIRRELL: Thank you.

5 THE COURT: And then I will have them all come  
6 back in, once we have hit the number we need to hit, I'll  
7 have them all come back in and take their, take places by  
8 number. We'll figure out a process so that you can all see  
9 them when you are exercising your peremptory strikes.

10 The preliminary instructions I have not  
11 distributed yet. I will distribute my proposed preliminary  
12 instructions. They will, just to shortcut, they will have  
13 the elements of each offense.

14 And the defendants for the jury instructions for  
15 elements have set forth pretty lengthy defenses. I am not  
16 inclined to put forth your lengthy defenses in the  
17 preliminary instructions.

18 My preliminary instructions on elements are simply  
19 to give the jury an idea of what elements the government  
20 must prove and to, frankly, emphasize that it is the  
21 government's burden. And so I'm not putting forth any  
22 theories of defense. I am happy, however, to include the  
23 statement that Mr. Goetz just handed up.

24 Does anyone want to try to talk me out of that, to  
25 discuss in the preliminary instructions why a defendant's

1 particular theory of defense should be included before  
2 trial? Okay.

3 So seeing no hands, I am going to distribute to  
4 you all this week the proposed preliminary instructions.  
5 And you will have the opportunity to object to those, if you  
6 disagree with them, or to address any modifications that you  
7 request.

8 The presumptive -- okay. So moving to opening  
9 statements, the presumptive order of opening statements is 1  
10 through 8 for the defendants. And I anticipate keeping you  
11 to an hour, hopefully less.

12 Have the defendants determined whether there's a  
13 different order that you want to go in?

14 MR. ANDREW BIRRELL: No. That's the order.

15 THE COURT: That's the order. All right. Fair  
16 enough.

17 If you use exhibits in your opening, consult with  
18 opposing counsel, obviously, so that we can determine  
19 whether there's an objection.

20 MR. SCHLEICHER: Your Honor, if I might inquire as  
21 to that?

22 THE COURT: Yes.

23 MR. SCHLEICHER: Are you talking about an exchange  
24 of any demonstratives? Do we have to exchange our entire  
25 slide deck? Or are you limiting your ruling to just purely

1 exhibits that could be offered?

2 THE COURT: Purely exhibits that could be offered.  
3 I don't expect you to exchange PowerPoints with each other.

4 The witness lists. Those, again, will be  
5 available.

6 I know that -- I think I've ordered the -- maybe  
7 this is at the end, but I've ordered the government to  
8 provide a joint alphabetized witness/attorney/staff list to  
9 the court by April 15th -- I said parties, but I think the  
10 government volunteered -- so that I can have that for jury  
11 orientation. We will have a few copies in the courtroom as  
12 well for potential jurors to look through. It's simply much  
13 easier to do that than to try to read that entire list.

14 I'll expect you all to have witnesses that are --  
15 make available to make use of the entire trial day. I have  
16 that in my every agenda in honor of Judge Kyle, who yelled  
17 at me at 4:50 one time during trial because I did not have a  
18 witness prepared, and I was not sufficiently sophisticated  
19 to stretch out my witness. So in honor of Judge Kyle,  
20 please have them all here.

21 You've already talked about giving each other  
22 notice about what witnesses are coming up. I appreciate  
23 that.

24 And the only other, on exhibits, I'll expect you  
25 all to use -- most of this I think is paper, and so I'll

1 expect you to have it all on computers, rather than in  
2 paper. And if there's any physical evidence, I want it in a  
3 plastic sleeve.

4 As to the trial schedule, Ms. Wegner --

5 Let's go off for a moment.

6 **(Off the record)**

7 THE COURT: I'll send that out to you this week.  
8 It will just include a few times that there are gaps. I'm  
9 hoping not many.

10 And to that end, if you all have requests, you  
11 certainly may make them. I understand this is a long trial,  
12 and I understand that things happen, and so you may make  
13 requests if you wish.

14 We're going to question from that podium. You  
15 will stay at that podium.

16 I will have for openings a small podium that more  
17 directly faces the jury, because this podium does not tilt.  
18 And so if you wish to use the smaller podium that directly  
19 faces the jury, it just -- I don't know where it is right  
20 now, but it comes over here, and you can use that one for  
21 your opening. Either one is fine.

22 That's all I have on my agenda.

23 Ms. Wegner, do I have anything else on my agenda?

24 COURTROOM DEPUTY: No.

25 THE COURT: Ms. Rogge, did you want to meet with

1 the parties briefly?

2 COURT REPORTER: Yes, please.

3 THE COURT: Mr. Rogge would like to meet with you  
4 briefly to make sure that she can do her job efficiently.  
5 And she has my permission always to jump in if she needs to,  
6 if you all are going too quickly.

7 That's all I have for the agenda.

8 Is there anything further that the government  
9 wants to cover? Mr. Thompson?

10 MR. THOMPSON: No, Your Honor. Thank you.

11 THE COURT: Thank you.

12 Anything further from the defendants?

13 MR. IAN BIRRELL: No, Your Honor.

14 THE COURT: All right. One thing we do, I guess,  
15 need to address, and I'll ask the defendants just to think  
16 about this. Eight defendants is unprecedented in this  
17 district, as far as I can tell. You are all sophisticated  
18 counsel, and there's apparently room for all of you, but I  
19 do --

20 And I know the Eighth Circuit needs an objection  
21 from each of you, if there is an objection. It would seem  
22 to me that a standing objection -- if one of you makes one,  
23 the rest join in -- would be appropriate, but I'm not going  
24 to give you legal advice on that. I haven't done the  
25 research.

1 I would like you all to consider it so that if  
2 there is a -- we could have a standing understanding or a  
3 standing objection, if one objects, the rest -- it's  
4 preserved for the rest, that would be helpful for both trial  
5 and for Ms. Rogge's purposes as well.

6 If you do not feel that's appropriate, and, again,  
7 I'm not giving you legal advice, I just want you to think  
8 about it, if you would, so that we can move the trial the  
9 best that we can.

10 Let's go off the record.

11 **(Off the record)**

12 THE COURT: All right. Thanks, everybody. We're  
13 adjourned.

14 THE CLERK: All rise. The court is in recess.

15 (Court adjourned at 2:18 p.m., 04-08-2024.)

16 \* \* \*

17 I, Renee A. Rogge, certify that the foregoing is a  
18 correct transcript from the record of proceedings in the  
19 above-entitled matter.

20 Certified by: /s/Renee A. Rogge  
21 Renee A. Rogge, RMR-CRR

22

23

24

25