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UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

United States of America,)	
)	File No. 22-cr-124
Plaintiff,)	(NEB/DTS)
)	
v.)	
)	
Abdiaziz Shafii Farah(1),)	Courtroom 13W
Mohamed Jama Ismail(2),)	Minneapolis, Minnesota
Abdimajid Mohamed Nur(4),)	Monday, April 29, 2024
Said Shafii Farah(5),)	9:05 a.m.
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

JURY TRIAL PROCEEDINGS - VOLUME V OF XXX

Court Reporter: RENE E. 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.

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EMILY HONER

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IN OPEN COURT**(JURY PRESENT)**

1 THE COURT: You may all be seated.

2 Good morning again. Before I give you some
3 preliminary instructions that are going to precede the
4 opening statements given by counsel, I'd like to have the
5 parties take this opportunity to introduce their teams to
6 each of you. You didn't get that introduction during voir
7 dire, and I want to make sure that you know who all these
8 folks are.

9 And so I'll begin with the government.

10 Mr. Thompson, would you introduce your team?

11 MR. THOMPSON: Thank you, Your Honor.

12 Good morning, ladies and gentlemen. My name is
13 Joe Thompson. I'm an Assistant United States Attorney here
14 with my colleagues Harry Jacobs, Matt Ebert, Chelsea
15 Walcker, Dan Bobier, are all Assistant United States
16 Attorneys. And FBI Special Agent Jared Kary and forensic
17 accountant Pauline Roase.

18 Thank you.

19 THE COURT: Thank you.

20 And, Mr. Birrell, would you introduce your team,
21 please?

22 MR. ANDREW BIRRELL: Yes, thank you. Good
23 morning, Your Honor.

1 THE COURT: Good morning.

2 MR. ANDREW BIRRELL: My name is Andy Birrell.
3 This is my law partner and son Ian Birrell. And this
4 gentleman here, Abdiaziz Farah, is my client.

5 THE COURT: Thank you.

6 Mr. Cotter.

7 MR. COTTER: Good morning. My name is Patrick
8 Cotter. I represent Mohamed Ismail. I may have another
9 gentleman named Alex stop in from time to time. And I thank
10 you.

11 THE COURT: Mr. Sapone.

12 MR. SAPONE: Yes. Thank you, Your Honor.

13 Good morning, members of the jury. My name is
14 Edward Sapone, and here's my client, Abdimajid Nur. I
15 represent him alone.

16 THE COURT: Thank you. Mr. Schleicher.

17 MR. SCHLEICHER: Thank you, Your Honor.

18 Good morning, ladies and gentlemen. My name is
19 Steve Schleicher. And this is my colleague Clayton Carlson,
20 and together we represent Said Farah, Defendant Number 5.

21 Thank you.

22 THE COURT: Mr. Garvis.

23 MR. GARVIS: Good morning, ladies and gentlemen.

24 My name is Andrew Garvis. I represent Abdiwahab Maalim
25 Aftin. I'm representing him alone.

1 THE COURT: Mr. Goetz.

2 MR. GOETZ: Thank you, Your Honor.

3 Good morning, ladies and gentlemen. My name is
4 Frederick Goetz, and together with Andrew Mohring and
5 Kaitlyn Falk, we represent Mukhtar Shariff.

6 DEFENDANT SHARIFF: Good morning.

7 THE COURT: And Mr. Brandt.

8 MR. BRANDT: Thank you.

9 Good morning, folks. My name is Michael Brandt,
10 and along with my co-counsel Nicole Kettwick, we're
11 representing Hayat Nur.

12 Thank you.

13 THE COURT: Thank you, everyone.

14 I'm going to take a few moments now to give you
15 some initial instructions about this case and about your
16 duties as jurors. At the end of the trial, I'm going to
17 give you further instructions. I may also give you some
18 instructions during trial.

19 Unless I specifically tell you otherwise, all of
20 these instructions, both those I give you now and those I
21 give you later, are equally binding on you and they must be
22 followed.

23 As I've noted for you during voir dire, this is a
24 criminal case brought by the United States against the
25 defendants you just met.

1 The defendants are collectively charged with a
2 number of crimes, including one count of wire fraud, counts
3 of wire fraud -- or one count of wire fraud conspiracy,
4 counts of wire fraud, count of conspiracy to commit federal
5 programs bribery, counts of federal programs bribery, one
6 count of conspiracy to commit money laundering, counts of
7 money laundering and one count of false statement in a
8 passport application.

9 The defendants have pleaded not guilty to these
10 crimes and contend they did not commit any fraud or bribery,
11 did not launder any money and acted in good faith.

12 You should understand that an indictment is simply
13 an accusation. It is not evidence of anything. The
14 defendants have pleaded not guilty and are presumed to be
15 innocent unless and until proved guilty beyond a reasonable
16 doubt.

17 It will be your duty to decide from the evidence
18 whether defendants are guilty or not guilty of the crimes
19 charged. From the evidence you will decide what the facts
20 are.

21 You are entitled to consider that evidence in
22 light of your own observations and experiences in the
23 affairs of life. You may use reason and common sense to
24 draw deductions or conclusions from facts which have been
25 established by the evidence.

1 You will then apply those facts to the law which I
2 give you in these and my other instructions, and in that way
3 reach your verdict. You are the sole judges of the facts,
4 but you must follow my instructions whether you agree with
5 them or not. You have taken an oath to do so.

6 Do not allow sympathy or prejudice to influence
7 you. The law demands of you a just verdict unaffected by
8 anything except the evidence, your common sense and the law
9 as I give it to you.

10 You should not take anything that I say or do
11 during the trial as indicating what I think of the evidence
12 or what I think your verdict should be.

13 And please remember that the defendants and only
14 the defendants, not anyone else, are on trial here and that
15 the defendants are on trial only for the crimes charged and
16 not for anything else.

17 In order to help you follow the evidence, I will
18 now give you a brief summary of the elements of the crimes
19 charged, which the government must prove beyond a reasonable
20 doubt to make its case.

21 The instructions on the elements will be provided
22 to you in writing after trial. They will also be with you
23 after trial in the jury room.

24 As I mentioned, the indictment charges one count
25 of wire fraud conspiracy, a number of counts of wire fraud,

1 one count of conspiracy to commit federal programs bribery,
2 a number of counts of federal programs bribery, one count of
3 conspiracy to commit money laundering and a number of counts
4 of money laundering, and one count of false statement in a
5 passport application.

6 The crime of wire fraud conspiracy as charged in
7 Count 1 of the indictment has four elements.

8 One, two or more people reached an agreement to
9 commit the crime of wire fraud.

10 Two, the defendant voluntarily and intentionally
11 joined in the agreement either at the time it was reached or
12 at some later time when it was still in effect.

13 Three, at the time the defendant joined in the
14 agreement, the defendant knew the purpose of the agreement.

15 Four, while the agreement was in effect, a person
16 or persons who had joined in the agreement knowingly did one
17 or more acts for the purpose of carrying out or
18 forwarding -- carrying forward the agreement. If all of the
19 elements for conspiracy to commit wire fraud for Count 1
20 have been proved beyond a reasonable doubt, then you must
21 find the defendant guilty of the crime charged under that
22 count. Otherwise you must find the defendant not guilty of
23 the crime charged under that count.

24 The crime of wire fraud as charged in Counts 2
25 through 12 of the indictment has three elements.

1 One, the defendant voluntarily and intentionally
2 devised or made up a scheme to defraud, or participated in a
3 scheme to defraud with knowledge of the scheme's fraudulent
4 nature, another out of money or property by means of
5 material false representations or promises.

6 Two, the defendant acted with the intent to
7 defraud.

8 Three, the defendant used or caused to be used an
9 interstate wire communication, that is, an email or a wire
10 transfer of funds, in furtherance of or in attempt to carry
11 out some essential step in the scheme. If all of the
12 elements of wire fraud have been proved beyond a reasonable
13 doubt for the count that you are considering, then you must
14 find the defendant guilty of the crime charged under that
15 count. Otherwise, you must find the defendant not guilty of
16 the crime charged under that count.

17 The crime of conspiracy to commit federal programs
18 bribery has four elements.

19 One, two or more people reached an agreement to
20 commit the crime of federal programs bribery.

21 Two, the defendant voluntarily and intentionally
22 joined in the agreement either at the time it was first
23 reached or at some later time it was still in effect.

24 Three, at the time the defendant joined in the
25 agreement, the defendant knew the purpose of the agreement,

1 and;

2 Four, while the agreement was in effect, a person
3 or persons who had joined in the agreement knowingly did one
4 or more acts for the purpose of carrying out or carrying
5 forward the agreement.

6 If all of the elements for conspiracy to commit
7 federal programs bribery have been proved beyond a
8 reasonable doubt, then you must find the defendant guilty of
9 the crime charged under that count. Otherwise, you must
10 find the defendant not guilty of the crime charged under
11 that count.

12 The crime of federal programs bribery has four
13 elements.

14 One, that the defendants were agents of Feeding
15 Our Future and/or Partners in Nutrition.

16 Two, the defendant corruptly gave, offered or
17 agreed to give something of value to initial individuals or
18 others in connection with Feeding Our Future and/or Partners
19 in Nutrition sponsoring the defendants and the defendants
20 coconspirators fraudulent participation in the Federal Child
21 Nutrition Program.

22 Three, the transaction involved something of value
23 of \$5,000 or more, and;

24 Four, Feeding Our Future and/or Partners in
25 Nutrition and others received benefits in excess of \$10,000

1 in the one-year period beginning on or about February 1,
2 2021, pursuant to the Federal Child Nutrition Program.

3 If all of the elements of federal program bribery
4 have been proved beyond a reasonable doubt, then you must
5 find the defendant guilty of the crime charged under that
6 count. Otherwise, you must find the defendant not guilty of
7 the crime charged under that count.

8 The crime of conspiracy to commit money laundering
9 as charged in the indictment as four elements.

10 One, two or more people reached an agreement to
11 commit the crime of money laundering.

12 Two, the defendant voluntarily and intentionally
13 joined in the agreement either at the time it was first
14 formed or at some later time that it was still in effect.

15 Three, at the time the defendant joined in the
16 agreement, the defendant knew the purpose of the agreement,
17 and;

18 Four, while the agreement was in effect, a person
19 or persons who had joined the agreement knowingly did one or
20 more acts for the purpose of carrying out or carrying
21 forward the agreement.

22 The crime of money laundering has five elements.

23 One, the defendant knowingly engaged in a monetary
24 transaction.

25 Two, that monetary transaction was of property of

1 a value greater than \$10,000 derived from wire fraud.

2 Three, the defendant then knew that the money
3 transaction involved proceeds of a criminal offense.

4 Four, the monetary transaction took place in the
5 United States, and;

6 Five, the monetary transaction in some way or
7 degree affected interstate commerce.

8 If all of the elements for money laundering have
9 been proved beyond a reasonable doubt for the count you are
10 considering, then you must find the defendant guilty of the
11 crime charged under that count. Otherwise, you must find
12 the defendant not guilty of the crime charged under that
13 count.

14 The last crime to consider is false statement in a
15 passport application.

16 The elements of that crime are:

17 One, the defendant submitted a passport
18 application.

19 Two, the defendant willingly and knowingly made in
20 that application a false statement, and;

21 Three, the defendant acted with the intent to
22 induce or secure the issuance of a passport under the
23 authority of the United States either for his own use or the
24 use of another contrary to the laws and/or rules regulating
25 the issuance of passports.

1 If all of the elements of false statement in a
2 passport application for Count 43, is what the count is,
3 have been proved beyond a reasonable doubt, then you must
4 find the defendant guilty of the crime charged under that
5 count. Otherwise, you must find the defendant not guilty of
6 the crime charged under that count.

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

10 You should understand that what I've given you is
11 only a preliminary outline. At the end of the trial I'll
12 give you a final instruction on these matters. If there's
13 any difference between what I just told you and what I tell
14 you in the instructions at the end of trial that you will
15 have in writing back in the jury room, the instructions
16 given at the end of trial must govern you.

17 I've mentioned the word "evidence." I want to go
18 over that word with you. Evidence includes the testimony of
19 witnesses, documents and other things received as exhibits
20 and any facts that have been stipulated, that is, formally
21 agreed to by the parties and any facts that are judicially
22 noticed, that is, facts which I say that you may but are not
23 required to accept as true, even without evidence.

24 There are certain things that are not evidence,
25 and I will list those for you now.

1 Statements, arguments, questions and comments from
2 lawyers representing the parties in this case are not
3 evidence.

4 Objections are not evidence. Lawyers have a right
5 to object when they believe something is improper. You
6 should not be influenced by the objection. If I sustain an
7 objection to a question, you must ignore that question and
8 must try not to guess at what the answer might have been.

9 Testimony that I strike from the record or tell
10 you to disregard is not evidence and it must not be
11 considered.

12 Anything that you see or hear about this case
13 outside this courtroom is not evidence, unless I
14 specifically tell you otherwise during trial.

15 A particular item of evidence is sometimes
16 received for limited purpose only. That is, it can be used
17 by you only for one particular purpose and not another
18 purpose. I will tell you when that occurs and instruct you
19 on the purposes for which the item can and cannot be used.

20 Finally, some of you may have heard the terms
21 "direct evidence" and "circumstantial evidence." You are
22 instructed that you should not be concerned with those
23 terms. The law makes no distinction between direct and
24 circumstantial evidence. You should give the evidence the
25 weight and value you believe it is entitled to receive.

1 In deciding what the facts are, you may have to
2 decide what testimony you believe and what testimony you do
3 not believe. You may believe all of what a witness said or
4 only part of it or none of it.

5 In deciding what testimony of any witness to
6 believe, consider the witness's intelligence, the
7 opportunity the witness had to have seen or heard the things
8 testified about, the witness's memory, the manner of the
9 witness while testifying, whether the witness said something
10 different at an earlier time, the general reasonableness of
11 the testimony, and the extent to which the testimony is
12 consistent with other evidence that you believe.

13 Again, you must avoid bias, conscious or
14 unconscious, based on a witness's race, color, ethnicity,
15 national origin, religion, gender, gender identity, sexual
16 orientation, disability or economic circumstance in your
17 determinations of credibility.

18 At the end of the trial, you must make your
19 decision based on what you recall of the evidence. You will
20 not have a written transcript to consult, and it may not be
21 practical for the court reporter to read back lengthy
22 testimony. So you must pay close attention to the testimony
23 as it is given.

24 If you wish to take notes, you all have notebooks
25 to help you remember what witnesses said. If you do take

1 notes, please keep them to yourself until you and fellow
2 jurors go to the jury room at the end of the trial to decide
3 the case. And do not let note taking distract you so that
4 you do not hear the answer of witnesses.

5 When you leave at night, you will leave your notes
6 and they will be secured and not read by anyone.

7 As you've noticed during the voir dire process,
8 during the trial it may be necessary for me to talk with the
9 lawyers out of the hearing of the jury either through the
10 headset bench conference while the jury is present in the
11 courtroom or I would call a recess.

12 Please understand that while you're waiting, we're
13 working. The purposes of these conferences is to decide how
14 certain evidence is to be treated under the Rules of
15 Evidence and to avoid confusion and error.

16 We will, of course, do what we can to keep these
17 conferences to a minimum.

18 On Thursday I gave you an instruction on the
19 conduct of the jury. All of those rules that I went over
20 with you on Thursday are rules that you must follow
21 throughout the trial, including during any recess. I will
22 not repeat them for you here, and I will likely not repeat
23 them at every recess, but they must be followed. They
24 continue to be binding on you.

25 The fact that one party may call more witnesses

1 and may introduce more evidence than the other does not mean
2 that you should necessarily find the facts in favor of the
3 side offering the most witnesses.

4 By the same token, you do not have to accept the
5 testimony of any witness who you do not find to be credible,
6 even if the witness's testimony has not been contradicted or
7 impeached.

8 You also have to decide which witnesses to believe
9 and which facts are true. To do this you must look at all
10 of the evidence, drawing upon your common sense and personal
11 experience. After examining all of the evidence, you may
12 decide that the party calling the most witnesses has not
13 persuaded you because you do not believe its witnesses or
14 because you do not believe witnesses that may be, but do not
15 have to be, called by the other side.

16 You should keep in mind that the burden of proof
17 is always on the prosecution. The defendants are not
18 required to call any witnesses or offer any evidence since
19 they are presumed to be innocent.

20 As you know, seven defendants are on trial here.
21 Each defendant is entitled to have his case or her case
22 solely decided on the evidence which applies to him or her.

23 Much of the evidence in this case will apply only
24 to one specific defendant at a time. You may not consider
25 that evidence against the other defendants to whom it does

1 not directly apply.

2 The trial will proceed in the following manner;
3 I'll give you an outline.

4 First, the government is going to make an opening
5 statement.

6 Next, the defendants' attorneys may but do not
7 have to make an opening statement.

8 An opening statement is not evidence. It is
9 simply a summary of what the attorney expects the evidence
10 to be.

11 After that, the government will present its
12 evidence, and counsel for the defendants may cross-examine.

13 Following the government's case, the defendants
14 may, but do not have to, present evidence, testify or call
15 other witnesses.

16 If the defendants call witnesses, the government
17 may cross-examine them.

18 After presentation of the evidence is completed,
19 the attorneys will make their closing arguments to summarize
20 and interpret the evidence for you. As with opening
21 statements, closing arguments are not evidence.

22 The court then will instruct you further on the
23 law, and after that you will retire to deliberate on your
24 verdict.

25 At this time the government may make its opening

1 statement.

2 Mr. Ebert, you may proceed.

3 MR. EBERT: Thank you.

4 May it please the court, counsel, members of the
5 jury.

6 It was about this time four years ago that the
7 world changed in an instant. A virus, COVID, spread around
8 the globe and here in Minnesota. The outbreak spread
9 quickly, bringing sickness. And what also spread with the
10 pandemic? Fear, uncertainty, vulnerability. It seemed like
11 life would never be the same. Airports closed, offices went
12 dark, grocery stores and their shelves emptied, elderly
13 grandparents wanted nothing more than to hug their
14 grandkids, but they had to settle for a zoom call instead.

15 We all remember, though we'd all like to forget.

16 And no one, no one was immune to that period of
17 fear and uncertainty and vulnerability. And that was
18 certainly true when it came to our children and education.

19 Once bustling, school buildings fell quiet.
20 Families tried to juggle the new normal of distance learning
21 from home, and for many households something as fundamental
22 as access to food, well, that suddenly seemed uncertain and
23 vulnerable, too.

24 You see, for decades before the pandemic schools
25 and childcare centers throughout the country supplied

1 millions of American households and children with meals,
2 breakfast, lunch, even snacks. Through long-standing
3 government programs, places like schools and childcare
4 centers provided an essential source of food every day for
5 American kids.

6 But that all changed in early 2020 with the
7 pandemic, and so government programs pivoted. They tried to
8 convert and shift their resources. Instead of the school
9 cafeteria, many school districts enlisted their staffs and
10 their fleets of school buses to assemble and deliver food
11 out into the neighborhoods when kids were learning from
12 home.

13 And there were other changes to government food
14 programs. For example, other types of organizations, like
15 restaurants, were allowed during the pandemic to participate
16 in government programs to feed kids.

17 So why make those changes to the food program?
18 Well, to make sure that when schools and day cares and
19 supply chains were all disrupted, that the most vulnerable,
20 our children, would still have access to food.

21 And so an organization like a restaurant could
22 apply to participate in the child food program. And as you
23 will learn, how it worked, it was pretty simple. A
24 participating organization would, one, buy food for
25 children. Provide that food they bought to kids. And

1 afterwards file a claim to the government to get reimbursed
2 for the money they spent.

3 And when done legitimately, participants in the
4 child food program bought real food for real kids, had real
5 paperwork to support their purchases, and then they would
6 submit those truthful claims to get reimbursed. And at the
7 end of that process, the food participants, they did not get
8 rich. No, they got reimbursed.

9 That's how the food program was supposed to work
10 during that time of need, but how things were supposed to
11 work, that's not why we're in this courtroom today.

12 Members of the jury, this case is about an epic
13 outbreak of another sort, about lying, lying to get money,
14 in a word, fraud.

15 These seven defendants, Abdiaziz Farah, Mohamed
16 Ismail, Mukhtar Shariff, Abdiwahab Aftin, Said Farah and
17 Abdimajid and Hayat Nur, all worked together and with their
18 coconspirators to carry out a massive fraud scheme
19 throughout Minnesota to steal more than \$40 million.

20 Their scheme was fueled by deception and
21 corruption. And it all revolved around something so
22 essential to us all, food. And of all things, food for
23 children.

24 This money, more than \$40 million in taxpayer
25 money, was intended to feed children here in Minnesota

1 during a time of crisis. But as you will see and hear in
2 this courtroom throughout this trial, the defendants had a
3 much different plan for these millions of dollars in
4 taxpayer funds meant to feed Minnesota kids.

5 The defendants had a plan to game the system, a
6 plan to line their pockets, a plan to manipulate and exploit
7 a crisis. You see, society's crisis, well, that was the
8 defendants' opportunity. But far more than an opportunity,
9 the pandemic was the defendant's financial windfall.

10 Starting in April 2020, as the pandemic started,
11 some of the defendants opened a small restaurant. They
12 enrolled that small restaurant in the child food program,
13 and soon after they claimed they were providing thousands
14 and thousands of daily meals to Minnesota children. But
15 that was a lie, and that lie you will hear spread. And the
16 amount of stolen money grew and grew.

17 And in those uncertain depths of a pandemic, their
18 fraud went viral. Within months the defendants claimed
19 falsely to have provided more than 18 million, 18 million
20 meals at food distribution locations throughout the state.

21 Now, for a fraudulent scheme to spread like that,
22 so large and to grow so fast, well, it required multiple
23 hands, multiple conspirators. And each of the defendants
24 had a special role to play in that conspiracy. You will
25 hear all about it, but to start here's a brief overview.

1 For the roles in the fraud, you're going to hear
2 that some were food site operators. They had locations
3 where they falsely claimed to feed thousands of children
4 every week month after month.

5 Others pretended to supply mass amounts of food as
6 food suppliers, all to give the appearance that millions of
7 meals were being purchased to feed children. In reality,
8 that was an illusion. It was a smokescreen to make their
9 false reimbursement claims look true.

10 Other defendants created and shared fake
11 documents, like fabricated invoices showing absurd amounts
12 of money supposedly spent on food. In reality, they were
13 just papering the fraud over to make it look legitimate.
14 Some defendants concocted and passed around attendance
15 rosters with the names of hundreds or thousands of names of
16 children to make it look like the defendants had actually
17 fed them. Not so.

18 In reality, those rosters were loaded with fake
19 names, absurd names, like Man Sincere, Good Brown, even the
20 most classic of fake names, John Doe.

21 Other defendants paid out thousands of dollars in
22 bribes and kickbacks to other conspirators. Those payments
23 were designed to buy access, to grow the fraud and to keep
24 the fraud money flowing.

25 Other defendants spent that fraud money, shared it

1 and even moved it all around the world. But no matter their
2 role in this scheme, what the defendants had in common was
3 one thing, a willingness to defraud the child food program
4 in order to line their own pockets. And depending on their
5 role, some of the defendants made thousands of dollars.
6 Others made millions.

7 And so month after month the defendants and their
8 coconspirators submitted reimbursement claims riddled with
9 fraud. And as a result, they shared, received, spent
10 massive payments from the government, taxpayer money for
11 millions in food expenses that they never actually had. No.
12 The defendants simply pocketed the children's lunch money
13 for themselves. And they spent that money, millions of
14 taxpayer dollars, they spent it freely, they spent it
15 quickly.

16 You see, for the defendants, the child food
17 program, it was like a golden ticket. Their own endless
18 ATM. And the defendants, you will learn, spent this food
19 program money on virtually everything other than children's
20 food. NBA courtside seats, the Ritz Carlton in Miami. Some
21 of the defendants took taxpayer money meant to feed
22 Minnesota kids and they transferred it overseas, including
23 millions in child food money to Kenya, the United Arab
24 Emirates and to China.

25 Rather than feeding millions of meals to Minnesota

1 children, the defendants took the money to buy real estate
2 for elaborate homes like this one, a custom, multiple-
3 million dollar lakefront home sitting on two lots on
4 Prior Lake.

5 In addition, they took stolen food money from
6 Minnesota kids and brought it out of state to buy even more
7 properties in places like Kentucky and in Ohio.

8 They even stole nearly a million taxpayer dollars
9 meant to feed Minnesota children and put it toward the
10 construction of this, an apartment building all the way on
11 the other side of the world in Nairobi, Kenya. Child food
12 money, taxpayer money that was supposed to feed Minnesota
13 kids, instead funded other extravagant purchases by the
14 defendants. Almost \$30,000 on fine jewelry in Dubai.
15 Expensive travel all around the world like this, a lavish
16 trip to a private villa nestled here in the Maldives Islands
17 in the middle of the Indian Ocean. On the left is a picture
18 of one of the defendants literally opening a bottle of
19 champagne. The cork you can see flying in the air above the
20 crystal blue tropical waters.

21 Some defendants used child food money funded by
22 taxpayers to purchase luxury vehicles for themselves. A
23 Porsche for about \$80,000, a brand-new Tesla, another
24 \$80,000, all in cash and with no financing, all in child
25 food money and with no shame. The child food program was

1 the defendants' golden ticket. That is what they cynically
2 thought. That is how they brazenly acted.

3 And here are just some of their many private texts
4 to each other while their fraud was underway, when they
5 thought no one else would find out.

6 "In seven months if things stay the same, you are
7 multiple millionaire with zero debt."

8 "Bro, the next multi legit millionaires will be me
9 and you."

10 "This food stuff is kind of a golden ticket."

11 "A golden ticket."

12 Members of the jury, make no mistake, the child
13 food program was meant for one important thing: To make
14 meals, not millionaires. Its obvious purpose was simple, to
15 get reimbursed, not rich, period.

16 Now, the defendants knew all of that, of course;
17 but, you see, they didn't care. Lying was far more
18 lucrative than the truth, millions of times more lucrative.

19 In just months their fraud spread throughout the
20 state exploiting at every time the uncertainty and the
21 vulnerability of that chapter in time. Working together
22 these defendants fraudulently claimed to have fed more than
23 18 million meals to Minnesota children. They pocketed more
24 than \$40 million in taxpayer money as a result.

25 Now, the defendants you will learn were good at

1 covering up their fraud with bogus receipts and paperwork.
2 At times they would buy and serve food, pallets of rice
3 here, gallons of milk there, but you will learn that the
4 defendants actually used just a meager portion of the many
5 millions of dollars they took in, roughly just 10 percent,
6 on actually buying food. That was just another smokescreen
7 to give the appearance of legitimacy.

8 Why? Well, to fool people, to deceive people,
9 people like regulators and inspectors. And ultimately if a
10 day of reckoning like this ever came, to try to fool people
11 like you.

12 But as good as the defendants were at profiting
13 from their concealed lie, eventually they were caught. You
14 will learn that federal agents were on to the defendants.
15 Investigators, including FBI forensic accountants, began to
16 look at the defendants' financial activities and bank
17 records. They dug in. Investigators looked at the
18 defendants' bank account activity, which revealed that they
19 spent hardly anything on food to feed kids. And they
20 compared the defendants' bank records with absurd invoices
21 and receipts where the defendants claimed preposterously to
22 have spent millions buying food for those kids. But those
23 invoices were fake, not worth the paper they were printed
24 on.

25 Investigators followed the money trail, dollar by

1 dollar, and revealed the defendants conduct for what it was.
2 A fraud.

3 By January 2022 federal agents carried out
4 simultaneous search warrants at locations across the State
5 of Minnesota, including at the homes and offices of some of
6 the defendants and their conspirators, effectively bringing
7 the fraud scheme to a screeching halt, shutting down their
8 ATM, ripping up their golden ticket.

9 And later that year in September 2022, these
10 defendants were charged in this case. Members of the jury,
11 we are here today because these defendants and their
12 conspirators committed a monumental crime of opportunity.
13 And because of their actions, they are charged in this case
14 with multiple crimes related to defrauding the child food
15 program.

16 All seven defendants are charged with conspiracy,
17 specifically conspiracy to commit wire fraud.

18 You've heard a little about conspiracy this
19 earlier morning, and you're going to learn about it
20 throughout this trial. But let's talk a little about it
21 now.

22 You will learn that conspiracy is not a hard
23 concept. As Judge Brasel has instructed you, all a
24 conspiracy is is an agreement. Here, an agreement to commit
25 a crime. And you will learn that that agreement, it doesn't

1 have to be formal. It doesn't have to be in writing.

2 Instead, a person joins an agreement to commit a crime by
3 voluntarily and intentionally participating in that unlawful
4 plan, and that's it.

5 In addition to conspiracy, some of the defendants
6 are charged individually with wire fraud. You will learn
7 more about this concept as well. But in a nutshell, a wire
8 is a communication, like the sending of an email message,
9 for example. And wire fraud is when that wire
10 communication, like an email, is sent in furtherance of the
11 fraud, fraud meaning lying to get money.

12 Additional charges you will hear about involved
13 bribery, as well as money laundering. How the defendants
14 spent the fraud money, financial transactions, as well as
15 purchases.

16 Finally, one of the defendants is charged with
17 lying in an application to get a passport.

18 So those are the charges that you will hear
19 evidence about throughout this trial, members of the jury.

20 Now, the burden of proof in this case is here. It
21 is on the government. The government bears the burden of
22 proving its case to you beyond a reasonable doubt. That
23 burden is one we embrace; that burden is one we will meet.

24 So, members of the jury, how will you know that
25 the defendants are guilty of these charged crimes?

1 Well, to start, let's talk a little bit about the
2 target of the defendants' fraud, the child food program.

3 You will hear, ladies and gentlemen, that for many
4 years and well prior to the pandemic the federal child food
5 program provided meals to American children, and all of that
6 is taxpayer money.

7 The largest part of that program was the national
8 school lunch program, something many of us are familiar with
9 with our own families or our own time as school children
10 ourselves. Think cafeterias, cartons of milk, rectangle
11 pizza. And that large national school program is all run by
12 the United States Department of Agriculture, the USDA.

13 But as you will also hear, there are two other
14 taxpayer programs to feed kids, and those are also run by
15 the USDA. Those programs are the Summer Food Service
16 Program and the Child and Adult Care Food Program. Those
17 two programs are meant to fill gaps when children are not in
18 school, and it is these two programs, the Child and Adult
19 Care and the Summer Food Program, that this case is all
20 about.

21 A little bit about each.

22 You're going to learn that the Child and Adult
23 Program operates around school hours, like after school or
24 weekends. Where programs like a day care or an after-school
25 program, they may also feed kids and then they get

1 reimbursed through that government program.

2 The summer program, like its name suggests, is
3 meant to ensure that children continue to receive nutritious
4 meals in the summer months when school is not in session.
5 And there, too, participating organizations like a school-
6 related program or a childcare center that buy and serve
7 healthy meals and snacks to children can get reimbursed for
8 the food expenses that they had.

9 Together, these two federal child programs operate
10 throughout the country and including throughout Minnesota.
11 Here is how:

12 The United States Department of Agriculture
13 disburses the federal money and regulates the programs, and
14 they disburse those funds down to the 50 states.

15 Here in Minnesota at the state level, it's the
16 Minnesota Department of Education or MDE that runs and
17 administers these child food programs. And beneath MDE, in
18 the hierarchy of how this works, you will learn that there
19 are a host of nonprofits that play an important role in this
20 process.

21 These nonprofits are called sponsors. The role of
22 these nonprofit sponsors is to oversee all the many
23 participating organizations, like an after-school program or
24 a daycare center that also provide food to kids through
25 these two government programs.

1 And those places, those care centers, after-school
2 programs, they're called sites. Remember that word, members
3 of the jury. It's a word you're going to hear throughout
4 this trial, sites.

5 And as you will learn, sponsors generally monitor
6 and assist the food sites and the food vendors that provide
7 food at the various sites. They verify that the sites buy
8 food. They look at receipts and invoices. Sponsors help
9 the sites submit reimbursement claims to the Minnesota
10 Department of Education.

11 They also look at other records, like meal counts.
12 Well, what's a meal count? Those are records that show how
13 much food was served to kids on a given day at a site.

14 Another record that sponsors are involved with
15 have to do with attendance rosters. Sponsors keep track of
16 those, too. Those show the list of names of kids who
17 receive food at a location.

18 So ladies and gentlemen, in a nutshell, the USDA
19 regulates the food programs, the money trickles down to the
20 state, sponsors help oversee the sites that are handing out
21 the food and paying for food to kids. That's it.

22 Now, others might try to suggest that the child
23 food program was confusing or complicated, but fundamentally
24 it is not. Of course, like any government program, there
25 are rules and there is paperwork.

1 But it comes down to the simple difference between
2 reimbursement claims that are either true or that are false.
3 Something as basic as telling the truth to get reimbursed or
4 telling a lie to get rich. Now, the difference between
5 those two concepts is not complicated and it's not
6 confusing. Even a child would know the difference.

7 So let's turn to what happened here.

8 You will learn that amongst the nonprofit
9 sponsors, there were two in particular called Feeding Our
10 Future and Partners in Quality Care, often known as Partners
11 in Nutrition. You're going to learn all about them in this
12 trial.

13 These two sponsors were supposed to be monitors,
14 but as you will learn in many instances individuals who
15 worked at Feeding Our Future and Partners in Nutrition
16 actually enabled fraud. In other instances, you will learn
17 some people at those two sponsors even participated directly
18 in the fraud itself with the defendants.

19 Now, the pandemic disrupted just about everything,
20 and that included the operation of the child food program.
21 As a result, you will learn that government agencies like
22 the USDA and MDE made changes to the food program to make
23 sure there were no disruptions in kids getting food.

24 One of those changes allowed organizations, like a
25 restaurant, to enroll in the food program and serve food to

1 kids during the pandemic. And this change intended to help
2 feed kids. Well, that change was the defendants' in. That
3 change was their in to commit fraud.

4 This is Empire Market and Cuisine, a small
5 restaurant with only a couple of booths and a little
6 kitchen. Two of the defendants opened up Empire in the
7 spring of 2020. They rented it in a strip mall in Shakopee
8 in the south metro of the Twin Cities. And it is here,
9 members of the jury, in this tiny strip mall cuisine shop
10 that the defendants' massive crime of opportunity began, and
11 it's from here that their fraud grew and spread.

12 How will you know that the defendants are guilty
13 of these charges? This trial is estimated to last for
14 several weeks, and throughout that time you're going to hear
15 testimony from many witnesses and you're going to see all
16 different types of evidence. So let's take some time today
17 and talk a little bit about the types of evidence you're
18 going to hear.

19 To pull off such a massive \$40 million fraud, the
20 defendants used several fraudulent tools. They used food
21 sites, fake records, fake children, bribe/kickback payments
22 and they moved around a whole bunch of fraud money. We're
23 going to address each of these in turn today to give you a
24 sense of their various tools of this fraud.

25 So first let's talk about those food sites. These

1 are the so-called food distribution sites that I mentioned a
2 moment ago. Now, traditionally these have been things like
3 an after-school program or a daycare center.

4 You will learn in this trial that about two weeks
5 after opening Empire Cuisine, that Shakopee strip mall
6 restaurant, some of the defendants began operating a few
7 child food program sites that they enrolled into the child
8 food program.

9 Then during the summer of 2020 those defendants
10 expanded and registered a half dozen food distribution
11 sites. At first, they claimed to be serving a few meals a
12 day, between several hundred kids or so per site.

13 But it turns out feeding meals, it's not so easy.
14 There are massive logistical hurdles. Storing food in bulk,
15 not so hard. Refrigeration of things like milk on a mass
16 scale is challenging. Hiring staff, delivery, none of these
17 are easy things. They take time and planning and they take
18 a lot of people. And they are especially hard for a brand-
19 new small business like Empire Cuisine that was trying to
20 open up at a very time when everything else in the world was
21 shutting down.

22 But what was far easier? Cutting corners,
23 inflating the numbers. Instead of saying you've fed ten
24 kids on any given day, just add a zero. Eventually, slap on
25 another zero. Say you fed 1,000 kids daily per site, in

1 site after site. Sometimes say you fed 2,000 or even 3,500,
2 rain or shine, no exception. In a word, lying.

3 Just like you see on these meal counts here,
4 massive daily numbers. The same impossibly large round
5 numbers every day, week after week, rain or shine.

6 You see, the more the defendants claimed to feed,
7 then the more child food money they could fraudulently
8 pocket. And once the defendants and their conspirators saw
9 the easy profitability of lying, well, that's when their
10 fraud really skyrocketed, more conspirators joined. The
11 lure of fraud money was contagious. Within just months the
12 defendants' conspiracy soon registered more than two-dozen
13 food sites throughout Minnesota.

14 Each black dot on this map represents a location
15 where the defendants had a food distribution site that they
16 registered in the child food program. Magnified on the
17 right is the Twin Cities metro area. And as you can see,
18 the defendants' conspiracy involved sites in big cities,
19 Minneapolis, St. Paul, suburbs like Bloomington, Burnsville,
20 Shakopee and Circle Pines. And in cities and towns outside
21 the metro, like St. Cloud, Willmar, Owatonna and Faribault,
22 to name just a few. 50 food sites in total.

23 And some of these sites were under the sponsorship
24 of those two sponsors I mentioned a moment ago. Some were
25 under Feeding Our Future, some were under Partners in

1 Nutrition. In a matter of months the defendants went from
2 this, a small strip mall restaurant, to this, a sprawling
3 network in furtherance of their fraud scheme.

4 But members of the jury, you will learn that in
5 many instances the defendants' food sites that you see on
6 these dots throughout the state were really just in name
7 only. Sure, they were places on a map. They had an
8 address, like a park or an apartment building. But you will
9 learn that many of these places, the defendants' selected
10 food sites in the food program, they actually had no idea
11 that their addresses and their names of their locations had
12 been placed on paperwork and enrolled in the child food
13 program as supposed food sites by some of the defendants and
14 their conspirators. No idea.

15 Some had never even heard of the defendants.
16 Never observed thousands of meals being distributed to kids
17 at these places on a constant basis, week after week, for
18 months on end.

19 The defendants' fraudulent reimbursement claims
20 for those sites, well, they became more brazen. Thousands
21 of stolen food funds, taxpayer money, well, eventually that
22 turned into millions. The flow of fraudulent child food
23 money became a steadier and steadier stream with each
24 passing month. This trial will reveal to you many examples
25 of fraud when it came to the defendants' fraudulent food

1 sites. But today I want to talk about one single example.

2 Faribault, Minnesota. You see the defendants'
3 fraud spread there, too. You will learn that Faribault was
4 located 50 miles south of the Twin Cities. And throughout
5 2020 and 2021, Faribault had a school-age population of
6 about 4,000 kids. So let's take a look at the -- just one
7 month, just one month, May 2021, as a snapshot in time of
8 the defendants' fraud just in Faribault.

9 This is an overhead map of part of the small town
10 of Faribault. There are four dots that you see. We're
11 going to talk quickly about each of those. Those represent
12 food sites that the defendants registered in the child food
13 program.

14 You will learn that at one supposed food site,
15 Life Style Apartments, the defendants claimed, claimed, to
16 feed 500 daily meal servings and 500 daily snacks to
17 children. Daily servings all throughout the month of May in
18 Faribault.

19 Across the way, literally across the street, at
20 another Faribault apartment called Four Seasons, they
21 claimed to do the same thing, daily servings of 500 meals,
22 500 snacks to kids. Immediately next door, another 500 and
23 another 500 snacks every day, these daily servings to
24 children. They weren't done. Greenwood Place, another
25 supposed site, once again they claimed 500 more meals, 500

1 more snacks.

2 Just up the way, however, at another site, on top
3 of the ones we just looked at, the defendants' fraudulent
4 conspiracy claimed to feed 2,000 daily suppers, 2,000 at
5 just that other site alone you see in the left corner, plus
6 2,000 more snacks. And to truly top it off, just across the
7 way 3,000 daily servings of a meal, plus 3,000 snacks at a
8 sixth site, all located within each other. That is 7,000
9 supposed daily servings that their conspiracy was claiming
10 to feed Faribault children daily, all of that in a town with
11 about 4,000 kids in the district.

12 So what does that mean? What do those absurd
13 claims result in? You will learn in this trial that in just
14 the month of May in that one town, the defendants'
15 conspiracy claimed to serve 426,000 meal servings. As a
16 result, their conspiracy pocketed over a million dollars in
17 fraud money, taxpayer money.

18 Members of the jury, I respectfully will submit to
19 you that you will not need to be expert mathematicians to
20 realize the ridiculous and absurd numbers in the defendants'
21 lies to get money.

22 Here, by way of one example, claiming to provide
23 thousands more meals daily than there are even kids that
24 live in this small town. That is just one more example --
25 that is just one example that you're going to hear about

1 throughout this trial.

2 So fraud involving the sites, that's one tool the
3 defendants used. Let's look at another tool. Fake records.

4 Remember, the defendants needed to bill taxpayers
5 for their fraud. So in order to do that, in order to get
6 reimbursed, they needed to have paperwork like invoices to
7 make their conduct look real.

8 You will hear how the defendants and their
9 conspirators worked together to concoct fake receipts and
10 invoices, and then they passed them around, they shared
11 them, like a mutual protective security blanket in case any
12 one of them got caught. And they texted those fake
13 documents to each other. They emailed them to each other.

14 Those documents and those communications are
15 critical pieces of evidence that you will hear about and you
16 will see throughout this trial. And you will learn that
17 when law enforcement agents executed search warrants during
18 their investigation, that enabled agents to look inside some
19 of the defendants' phones and email accounts in order to
20 provide to you an inside glimpse within their conspiracy,
21 their inside messages to each other.

22 Messages like these, where the defendants casually
23 toss around fake numbers. Here, literally drafting a
24 fraudulent invoice in realtime. "Looks all right. 2,000
25 meals for each site? Just a reminder that May is 31 days."

1 At the bottom, a cool half million dollar bogus number
2 slapped on the bottom. "Looks good, bro."

3 Or here filling out another document. A reminder
4 that MDE requires hours, so then they can fill in whatever
5 number, whatever smokescreen suits their fraudulent purpose.

6 Or documents like these. At the top it says
7 "Empire Cuisine." That's the small Shakopee strip mall
8 restaurant we talked about a moment ago. And this document
9 alone, a barebones invoice without any detail or
10 itemization, purports to show that it served \$1.6 million
11 worth of food on just one invoice. Over \$2 million the
12 following day. Weeks later another invoice, 1.2 million.

13 The defendants papered over the fraud with absurd
14 documents like these, throwing out gigantic numbers, a
15 million, 2 million, all using these same cookie cutter
16 documents devoid of any real information, just window
17 dressing in case they got caught.

18 Here in one message some of the conspirators
19 actually talk about an easy trick, an easy trick for
20 creating some of these fake documents.

21 In another text message, a conspirator talks
22 about, "How do we get an invoice?" The response, "Just make
23 him an invoice for the amounts. He will write you." In
24 other words, fill in the blanks, make your own numbers.

25 These are their inside words, because this is

1 their conspiracy. And it's these inside messages to each
2 other that reveal how they coordinated their lies together
3 to carry out the fraud. And these are just a few examples
4 you will see throughout this trial.

5 One other ingredient to the defendants' fraud, an
6 occasional dash of buying food like sacks of produce here,
7 containers of milk there. You see, the more the defendants
8 had the appearance of a little truth sprinkled within their
9 fundamental lie, well, then the more believable that lie
10 might look, the less likely the defendants might get caught.

11 And keep in mind you will learn that some of the
12 defendants did buy some food, and that's not surprising
13 because some of them actually had restaurants. So entirely
14 separate and apart from the child food program, they had
15 restaurants where they served food to the public. So, of
16 course, some of them bought food for their restaurants, but
17 do not let that confuse you. That is not what this case is
18 about.

19 This case is about all of the child -- children's
20 food that the defendants did not buy. This case is about
21 the defendants lie that they served 18 million meals to
22 Minnesota kids, a lie that was as profitable as it was
23 preposterous.

24 Moving along on these tools of the defendants'
25 fraud, another one, fake children. To keep their fraud

1 going, that's what they needed the appearance of as well,
2 that they were actually feeding kids.

3 You will see and hear how the defendants worked
4 together to come up with names, any names, to trick people
5 into thinking they had fed thousands and thousands of kids
6 at all of those sites.

7 They exchange messages like this. "Bro, we are
8 good to go for Clifton. We need names ASAP." And then
9 attaching a blank roster.

10 Clifton you will learn is one of those 50 sites.

11 In messages just like this one, the defendants say
12 the quiet part out loud. They don't need kids. No, what
13 they want are names of kids, names to trick people into
14 thinking they were actually feeding kids.

15 But it turns out that coming up with thousands of
16 names is hard, especially when you aren't actually feeding
17 thousands and thousands of kids. So what's easier? Well,
18 get names from other sources, try to misappropriate them.
19 Or in other instances, just use made-up names. This is what
20 the evidence will show.

21 And it's these lists of names that the defendants
22 would use in support of their claims for reimbursement,
23 attaching these lengthy Excel spreadsheets with row after
24 row after row, name after name after name, all to give the
25 appearance of legitimacy.

1 But you see, in this trial, you will learn that
2 the detail in some of these lists reveal the fraud. You
3 will see some of the names the defendants came up with.

4 On the screen is just one small example of many
5 that you will hear about in this trial where the defendants
6 used the same names in the same order, row after row after
7 row, claiming they were feeding those children daily at a
8 Minneapolis site in February 2021, for example. But, you
9 see, when you're telling so many lies and creating so many
10 fabrications, it's hard to keep them straight.

11 At the very same time in the middle they were
12 using those same bogus names and saying they were feeding
13 them daily at an Apple Valley site. Not to mention claiming
14 some of them at the very same time in a Bloomington site,
15 month after month. And you can see the sequence of names
16 over and over again.

17 The defendants were lying so much they ran out of
18 names and they just simply recycled them, hoping no one
19 would notice.

20 In other examples within these lengthy
21 spreadsheets of names, the defendants had just nonsensical
22 entries, mistakes, typos. But when you keep using the same
23 phoney rosters over and over again with those same mistakes,
24 well, that is a serious problem.

25 As you can see here, they literally had entries

1 for student names that they supposedly fed like "inactive,"
2 "unique problem," "serious problem."

3 Now, the evidence will show that this same roster
4 with these nonsensical entries about "serious problem,"
5 another instance where that was used at site after site and
6 location after location by the defendants. It's a small
7 taste of the defendants' scheme to defraud the food program
8 that you will learn about throughout this trial.

9 So food sites, fake records, fake kids. Another
10 tool, bribes and kickbacks.

11 The evidence will show that to make sure that
12 spigot of fraudulent money kept flowing, some of the
13 defendants engaged in a corrupt pay-to-play scheme with the
14 sponsors, these sponsors, Feeding Our Future and Partners in
15 Quality Care.

16 They were supposed to be monitoring the
17 defendants, watching their claims, checking the paperwork.
18 Instead, you will learn that some people at those sponsors
19 enabled the fraud, even participated in it at times.

20 The result is that some individuals seeking to
21 operate fraudulent sites under the sponsorship of these two
22 organizations kicked back a portion of their fraudulent
23 proceeds specifically to a Feeding Our Future personnel.
24 And they did so in checks like these. Massive corrupt
25 payments. This one for a cool quarter of a million dollars.

1 Or these. 62,000. Another, 35,000.

2 Some of these checks you will see were disguised
3 with a note on the check's memo lines papered up to make it
4 look like these were consulting payments. Not so.

5 You will learn that there was no consulting
6 whatsoever to justify payments like these. The Feeding Our
7 Future employee who received these checks on the screen, for
8 example, he will testify and he will tell you all about it
9 himself at this trial. He has pled guilty for his role in
10 the scheme; he's cooperated with the investigation.

11 A final tool of the defendants' fraud, the moving
12 and the spending of the money. Now, more than 40 million is
13 a massive amount of money to take in just a matter of
14 months. So what did they do with all that money?

15 Well, for one thing you will learn some of the
16 defendants created shell companies. In other words, set up
17 businesses that were nothing more than an empty vessel, a
18 pass-through. Created one day, and then by the next that
19 empty vessel, that shell company, was the next day already
20 moving in and out massive amounts of money, hundreds of
21 thousands of dollars, even millions of dollars. Why? Why
22 do that?

23 Well, at times you will see they used these shell
24 companies to make it look like they were vendors supplying
25 food for kids, but you will also learn that they used these

1 shell companies as a way to receive, share, move and spend
2 the millions of fraudulently obtained child food money. And
3 as the flow of that fraud money became a gushing torrent,
4 well, the defendants needed more places to park and to move
5 that money. So they just came up with more and more of
6 these shell companies, names you will learn all about.

7 And in conversations like these, which they never
8 thought would be seen outside their conspiracy, the
9 defendants constantly coordinated how to divide up stolen
10 taxpayer money, how to share and spend food funds, often
11 using those shell companies.

12 As you can see here, casual talk of throwing a
13 hundred thousand here, a \$25,000 check to someone else,
14 62,500 for a GMC truck.

15 Or in communications like this, letting them know
16 that reimbursement checks are ready. 170,000 -- 171,000
17 will go to Bushra Wholesale, a name you will learn about in
18 this trial. Who gets a hundred thousand? The Shakopee
19 strip small restaurant, Empire Cuisine.

20 Coordination of where to put the money. In the
21 U.S. Bank account or the Old National Bank account?

22 These messages go on and on and on, day after day.
23 "\$210,000 cashier's check, someone is going to bring it.
24 Give 10,000 to Abdiwahab. 190,000, wire it to Kenya. Oh,
25 and I need an invoice made out to Bushra." All to paper up

1 the fraud.

2 Here they talk about their strategy for having
3 locations for their sites. The child food program, ladies
4 and gentlemen, and they speak in these term. It's a hedge
5 in an oligarchy. "Agreed bro, let's do it. Use DAR profits
6 to fund it." DAR you will learn is a reference to one of
7 their sites in Bloomington.

8 How do they end this conversation? "Capitalism at
9 its finest."

10 This is money meant to feed kids in a pandemic.
11 Their words.

12 Here the defendants, some of them, talk about
13 their cut. Their cut of meals that were supposed to have
14 actually fed kids. "Our cuts are on the total, but you
15 always add some from the Empire pot, which is why that is
16 there."

17 The Empire pot, Empire, the small Shakopee
18 restaurant.

19 Members of the jury, behind closed doors this is
20 how the defendants talked inside their conspiracy, about kid
21 food money as their pot to be shared, as their cut for the
22 taking. 210,000 there, 190,000 to Kenya. Oh, and I need a
23 Bushra Wholesale invoice to paper it up. Their words.
24 Their conspiracy.

25 You will learn that at times the flow of money

1 wasn't nearly as complex as it was in some of those example
2 text conversations you just saw. At times they would funnel
3 it, yes, moving it to multiple accounts, making it harder to
4 track, to be sure. And make no mistake, eventually a team
5 of FBI forensic accountants did untangle the web of
6 fraudulent transactions.

7 But in other instances it wasn't artful. They
8 just simply took the fraud money and spent it, not
9 complicated. They would use it like this. \$65,000 right
10 from a company account to buy a truck.

11 Or like this, over a million dollars, a check to a
12 title company to buy a home.

13 Other times they simply reduced their fraudulent
14 bounty to cash like this exchange, "Can you pick up
15 \$1 million cash? 1 million? Cash?" And above the picture
16 of stacks of hundred dollar bills with the message, "Cash
17 only, bro."

18 Members of the jury, evidence at trial will make
19 clear that this, what you see on the screen, this is exactly
20 what the defendants meant when they used the child food
21 program like their golden ticket.

22 So that last item that we've just talked about,
23 moving the money, sharing it with each other, that was
24 another important tool of the defendants' fraud conspiracy
25 that you will learn all about throughout this trial.

1 So now you know what they generally did using
2 these different types of fraud tools. So who did it? Let's
3 talk a little bit about the conspirators themselves.

4 In this trial you will learn that Hayat Nur, age
5 25 at the time the charges were filed, created and shared
6 fake invoices. Some of those invoices in some messages that
7 she submitted on their face had \$10 million, at least, in
8 bogus food expenses. She shared fake rosters, signed
9 fraudulent meal counts. For her role she pocketed more than
10 \$30,000 in fraud money and bought a car with fraud money as
11 well.

12 Another person you will learn about as part of
13 this conspiracy is a man named Mahad Ibrahim. You will hear
14 how he pocketed more than \$2 million in fraud money. He
15 operated more than two dozen of those food sites that you
16 saw on that map of Minnesota. He did this through two
17 supposed nonprofits, names you will hear about in this
18 trial, ThinkTechAct and Mind Foundry.

19 He also played a role with fake rosters and
20 invoices, created a shell company to receive and spend money
21 that was fraudulent. He also took hundreds of thousands of
22 dollars in fraud money for building a custom home for
23 himself in Ohio.

24 Said Farah you will also learn about. He, the
25 evidence will show, personally pocketed more than a million

1 dollars in fraudulent food money. While the scheme was
2 underway he created a fraudulent food vendor company called
3 Bushra Wholesalers. Once the fraudulent food money got in
4 the hands of some of the defendants like Mr. Farah, well,
5 then the money really began to fly all around the world. He
6 submitted fake invoices, received and laundered more than
7 \$4 million, paid kickbacks in bribes, transferred hundreds
8 of thousands of dollars to China.

9 His co-owner of his fraudulent company was
10 Abdiwahab Aftin. He pocketed, the evidence will show, more
11 than \$400,000 in food money, created fraudulent food
12 invoices, received and laundered millions of dollars, signed
13 bogus meal count sheets to advance the fraud, and
14 transferred hundreds of thousands of dollars, including
15 toward the construction of that apartment building in
16 Nairobi, Kenya.

17 Mukhtar Shariff is another conspirator you will
18 learn about. He pocketed more than \$1.3 million, took a
19 half million dollars of that fraud money and bought
20 cryptocurrency. He was a food site vendor, and you will
21 learn about his company called Afrique Hospitality Group.
22 He also submitted fraudulent attendance rosters and meal
23 counts, paid massive bribe and kickback dollar amounts, and
24 he used hundreds of thousands of dollars in food money,
25 taxpayer money, to design and construct an event center for

1 his business.

2 Mohamed Ismail is another defendant you will learn
3 about. He pocketed more than \$2.2 million. He was the
4 co-owner of the Shakopee strip mall restaurant Empire
5 Cuisine. As a fraudulent operator, he submitted fake meal
6 counts, created a shell company to move the money, and he
7 used thousands of dollars to buy himself a house.

8 Abdimajid Nur, just age 21 when the charges were
9 filed in 2022. He created and shared fake invoices, fake
10 rosters, pocketed just under a million dollars in child food
11 money, oftentimes disguised as a consulting company for his
12 supposed consulting company Nur Consulting, when he was all
13 of just 21, receiving hundreds of thousands of dollars in
14 payments from his coconspirators. He engaged in luxury
15 spending, vehicles and international travel, all using child
16 food money.

17 Finally, defendant Abdiaziz Farah, you will learn,
18 personally pocketed more than \$8 million in child food
19 money. He was the co-owner of the Shakopee restaurant
20 Empire, submitted fake documents, created a shell company,
21 purchased multiple cars and multiple properties here in
22 Minnesota and out of state, including that lakeside
23 property, all with taxpayer dollars meant to feed Minnesota
24 kids.

25 Finally, you will learn that he is charged with

1 false information that he put into a passport application.
2 So he alone is charged, ladies and gentlemen, with passport
3 fraud.

4 So that is a brief overview of the defendants and
5 their roles in this conspiracy that you will learn all
6 about. Some played multiple roles. But no matter their
7 role, each contributed, each contributed to their shared
8 conspiracy. And let's talk a little bit more about that
9 concept, conspiracy. Remember, it's nothing more than an
10 agreement to commit a crime, and here that crime is fraud.

11 And you will learn more about it as you are
12 instructed about what conspiracy means. You will learn that
13 a defendant doesn't have to know all of the details of the
14 plan. In fact, you will learn that some people had
15 different levels of knowledge, depending on their role as
16 you can see on the screen.

17 But no matter their role, you will see from the
18 evidence that all of these defendants knew the purpose of
19 the conspiracy and that all of the defendants joined in the
20 unlawful plan to defraud the food program. That is it.

21 Now, to be guilty you also don't have to know
22 everyone else in the conspiracy, but here you will learn
23 some of them knew each other quite well. Business partners,
24 friends. Some of them were even related to each other.

25 You will also learn that you can be a member of an

1 unlawful conspiracy for a short time or a long time. And in
2 this conspiracy you will learn that some were at it from the
3 beginning, others joined months after it started, but all of
4 these conspirators share one thing. Once they joined, well,
5 they never left. They never walked away. They were
6 carrying out their fraud together right up until the end
7 when they were caught together in January 2022.

8 Ultimately, you will see how the defendants'
9 conspiracy, their shared lie to make money, you will see how
10 it grew and how it spread.

11 Before you is a map of Minnesota. April 2020, the
12 beginning of their scheme. And as you can see, the
13 defendants' fraud took off rapidly. False claim after false
14 claim, month after month, fake invoice after fake invoice,
15 site after site, fake child after fake child and city after
16 city. Members of the jury, in this trial you will see
17 exactly how the defendants' fraud went viral. You will see
18 how more than \$40 million in taxpayer funds to feed kids
19 were instead fraudulently consumed by the defendants.

20 So that's what happened with the defendants'
21 massive crime of opportunity. How are we going to prove it
22 to you? In the coming weeks you will see a lot of evidence
23 and hear from a lot of witnesses. Here's a brief overview.

24 You will hear from personnel with the Minnesota
25 Department of Education, MDE. You will learn about the red

1 flags that MDE saw when the defendants' fraudulent
2 reimbursement claims started rolling in, about the absurd
3 numbers that defied logic, common sense and basic math,
4 where the defendants' food claims far outnumbered the kids
5 who actually lived in a certain district. And in response
6 to those red flags, you will learn about the steps taken
7 within MDE to question the defendants' fraud, to try to stop
8 it and ultimately to tell federal investigators. You will
9 learn all about those warning indicators of the fraud.

10 How else will you know the defendants are guilty?
11 You will hear from a witness who actually worked at Feeding
12 Our Future, one of those two sponsors we've talked about.
13 And that witness will tell you about how he confessed to his
14 own role in the fraud scheme, pled guilty, agreed to tell
15 the truth and cooperate with the government's investigation
16 to help bring down the fraud. And he hopes to receive a
17 reduced sentence, you will learn. And that Feeding Our
18 Future carried out its fraud at times working side by side
19 with some of the defendants.

20 He will testify about the corrupt payments that
21 some defendants paid him, pay-to-play. As one of their
22 coconspirators, he will give you an inside view of their
23 scheme. But members of the jury, make no mistake. The
24 government did not pick their conspirators, no. They are
25 not our friends. They are not our business partners. They

1 are not our coconspirators. They are the defendants. They
2 picked them, they did. And when you hear from those within
3 their own conspiracy, you will know the truth of what
4 happened here.

5 MR. GOETZ: Objection, Your Honor, improper
6 argument.

7 THE COURT: Overruled. You may continue.

8 MR. EBERT: Thank you.

9 How else will you know the defendants are guilty?
10 By the end of this trial you will have heard from
11 Minnesotans throughout the state, people who, unbeknownst to
12 themselves, at the time actually lived or worked at the
13 exact sites where the defendants falsely claimed to be
14 feeding thousands and thousands of meals every week.

15 You will hear from people like public school
16 administrators, people who managed parks and apartment
17 buildings and community centers, neighbors. You will hear
18 about what they saw; you will hear about what they never
19 saw. Ultimately, you will understand how they bear direct
20 witness to the defendants' brazen fraud.

21 How else will you know the defendants are guilty?
22 Special Agents from multiple agencies will testify about the
23 evidence they gathered from their investigation of the
24 defendants. For example, agents gathered school enrollment
25 records from multiple Minnesota school districts. These are

1 some of the districts where the defendants claim to be
2 providing food, and then they were submitting those lengthy
3 lists with names, oftentimes fake names.

4 Well, investigating agents compared many of the
5 defendants' rosters with the school districts actual
6 enrollment records, and you're going to learn all about
7 that. You will learn that there is virtually no overlap
8 between those two universes of names. We looked. We
9 checked. Not even a John Doe. Those records are all more
10 evidence proving the defendants' fraud.

11 You will also see and hear what was revealed when
12 federal agents executed multiple search warrants at some of
13 the defendants' homes and offices. It allowed investigators
14 to gather evidence directly inside the scheme, contents of
15 phones, contents of email accounts.

16 So what did we find? Exactly what you would
17 suspect, thousands of the defendants' text messages and
18 email messages as they carried out their coordinated scheme,
19 their shared plans, all the tools of their fraud, the fake
20 documents, phoney invoices, or all the various things they
21 texted to each other, like this.

22 These are texted pictures found on some of the
23 defendants' phones, pictures showing boxes stuffed with
24 cash, child food money, their cuts of the pot, stacks of
25 taxpayer money. Agents also found stockpiles of more child

1 food money at one defendant's home like this (indicating).

2 Finally, you will hear from FBI forensic
3 accountants who sorted through the defendants' finances
4 dollar by dollar, untangled the web of transactions. And by
5 the end of this trial you will learn all about the
6 defendants' bank account activity, showing exactly what the
7 defendants did together with millions in fraudulent
8 proceeds. Sharing the money. Moving the fraud money
9 overseas. Taking the fraud money to buy jewelry, houses and
10 cars. You will see exactly how the defendants' own bank
11 account records show that they took child food money, not to
12 make millions of meals, but to become millionaires
13 themselves.

14 So let's wrap up.

15 Members of the jury, that is just some of the
16 evidence that you're going to hear throughout this trial,
17 and it will prove the defendants' guilt in this sprawling
18 scheme.

19 In a time of tremendous hardship and in a time of
20 painful loss for so many others, the pandemic, well, during
21 that time the defendants' fraud, it brought them easy luxury
22 all around the world. And to be sure, the pandemic brought
23 with it fear and uncertainty and vulnerability. But this
24 trial will reveal to you that the defendants, well, they fed
25 off of that uncertainty. They fed off of that fear, and

1 they fed off of that vulnerability to the tune of more than
2 \$40 million. They had various roles, but they were all
3 involved. They all committed fraud, and they all profited
4 from their shared lie.

5 And at the end of this trial, we will come back to
6 you and we will ask you to find the only verdict that is
7 consistent with the overwhelming evidence of their scheme,
8 and that is guilty on all charged counts.

9 I thank you for your time today, and I thank you
10 for your service throughout this trial.

11 Thank you.

12 THE COURT: At this time we are going to take our
13 morning break. We will return at 11:00.

14 Thank you.

15 **IN OPEN COURT**

16 **(JURY NOT PRESENT)**

17 THE COURT: We're in recess.

18 (Recess taken 10:42 a.m. till 11:01 a.m.)

19
20 **IN OPEN COURT**

21 **(JURY NOT PRESENT)**

22 THE COURT: You may all be seated.

23 Before the jury comes in, my understanding is
24 that, Mr. Goetz, you have something to place on the record?

25 MR. GOETZ: I do, Your Honor. Thank you.

1 THE COURT: Thank you.

2 MR. GOETZ: Your Honor, I just wanted to flush out
3 the objection during the government's opening.

4 What I heard Mr. Ebert say is something to the
5 effect of "you will know the truth of the evidence." It's
6 my position that that is vouching testimony or vouching
7 argument, which is improper.

8 *U.S. versus Dorsey* is the case, 677 F.3d 944 at
9 953, Ninth Circuit from 2012. But when the government puts
10 its weight behind the truth or gives opinion as to what the
11 truth is in the evidence, that's improper vouching.

12 I know the court overruled the objection, but I
13 wanted to put it on the record now in case it happens again.
14 I think that would compound any error.

15 THE COURT: Thank you.

16 All right. We'll bring the jury in, unless you
17 want to respond, Mr. Ebert. Do you want to respond?

18 MR. EBERT: I do not. I think Your Honor's ruling
19 was well-founded. Thank you.

20 THE COURT: I'll bring the jury in.

21 Mr. Birrell, are you ready to go for your opening?

22 MR. ANDREW BIRRELL: Yes, I am.

23 THE COURT: All right. Thank you.

24 COURTROOM DEPUTY: All rise for the jury.

25

IN OPEN COURT**(JURY PRESENT)**

1 THE COURT: You may all be seated.

2 And, Mr. Birrell, you may proceed with your
3 opening.

4 MR. ANDREW BIRRELL: May it please the court,
5 counsel. Members of the jury.

6 As you learned earlier this morning, my name is
7 Andy Birrell. Together with my co-counsel, I represent
8 Abdiaziz Farah.
9

10 An opening statement properly is a chance for the
11 lawyer to explain what the lawyer expects the evidence will
12 show.
13

14 I expect the evidence in this case will show that
15 Mr. Abdiaziz Farah is not guilty of the crimes with which he
16 is charged.

17 And I'm not going to show you a bunch of texts and
18 pictures taken out of context. I'm not going to call names.
19 What I'm going to do today is I'm going to ask you to listen
20 carefully to what I'm expecting the evidence will show about
21 what really happened in this case.

22 So I agree that in early 2020 the COVID pandemic
23 struck. There were quarantines, schools were closed, people
24 were afraid to go out. And the delivery of essential goods
25 and services was interrupted.

1 A number of food programs handled by the
2 government were in place. These programs at the time relied
3 on the work of nonprofits. But with the changes that were
4 caused by the pandemic, these nonprofits were not able to
5 meet the food needs.

6 So the government decided to use the power of the
7 American free enterprise system to meet these needs. Not
8 only that, the government decided to get the private sector
9 to advance the money to do it.

10 The government wanted to get entrepreneurs into
11 this space via profit margin. So an entrepreneur is a
12 person who organizes and operates a business and takes on
13 greater than normal financial risk to make a profit.

14 So the way the government did this was they
15 enacted changes in the rules for these food delivery
16 programs through what are called waivers. Waivers. You're
17 going to hear a lot about waivers. Essentially waivers are
18 ways to jerry-rig an existing program to fit into a need.

19 In COVID times, you will see there are over
20 hundreds, hundreds of waivers. You're going to hear about a
21 lot of them, and they are very important.

22 Now, these government food programs are very
23 complex. You're going to hear a lot of complicated terms.
24 You're going to see the regulations for these programs are
25 hundreds of pages long. But the essence of these programs

1 is this: Parents would show up, parents would show up to a
2 location and receive food being distributed for free. They
3 wouldn't have to pay for it, they could just pick it up and
4 take it home. Then the government would see how much food
5 was provided at that location and pay a fixed amount for
6 each meal provided. That's the basic idea.

7 So there's three important terms. The first one
8 to understand is site. Site.

9 A site is a location where parents go to pick up
10 food for their children. The site is somewhere public, like
11 the outside of a church, a mosque, a restaurant, a townhouse
12 complex. And at the site there is someone who helps with
13 the food distribution called the site supervisor.

14 The next word is vendor. The vendor is a
15 for-profit company responsible for getting and delivering
16 food to the site. I made the vendor green so you would
17 understand profit.

18 Now, the vendor can't just show up with whatever
19 food it wants. There are rules. The food had to be high
20 quality, had to be divided into meals that met strict
21 government requirements, had to be at the right temperature,
22 had to comply with food safety requirements, had to be
23 delivered to the site at a specific time each week. The
24 vendor -- Abdi is a vendor -- the vendor would do all this,
25 then wait to hopefully be paid for by the government.

1 So a food vendor you're going to hear about in
2 this case is Empire Cuisine & Market. That's one of Abdi's
3 companies. I call him Abdi Farah to make him different from
4 his brother, Said. So I call him Abdi.

5 The third word to understand is sponsor. Unlike
6 vendors, sponsors were nonprofit entities. Entity just
7 means a company or legal thing. Okay?

8 A sponsor, the sponsor was responsible for
9 organizing, managing and monitoring the whole process. They
10 also collected all the documents needed to submit a claim.
11 Sometimes it's called a bill, some people call it an
12 invoice. Invoice, claim, bill, request for payment. They
13 ensured the documents were complete and accurate and passed
14 them along to the government to start the repayment process.

15 And when I say pass them along to the government,
16 I'm talking about MDE, Minnesota Department of Education.

17 Now, the sponsor, the yellow person, doesn't
18 invest any money in the program. But in exchange for their
19 work, they get to keep 10, 15 percent of the money the
20 government distributes. They get paid this money to
21 administer the program. It's a lot of money, and that's
22 what it's for.

23 They then pass the rest of the money to where the
24 contracts tell them to. Mostly the vendors, the for-profit
25 green vendor.

1 So you're going to hear about two sponsors in this
2 case. One is Partners in Nutrition, which I always write
3 P-I-N, PIN. That involves a person named Kara Lomen. Kara
4 Lomen runs PIN. So when you hear PIN, think Kara Lomen.

5 The other one is called Feeding Our Future, FOF.
6 That's run by a person named Aimee Bock. So when you hear
7 Feeding Our Future, you think Aimee Bock.

8 Now, about 95 percent of Abdi's business was
9 through Partners in Nutrition, Kara Lomen. Only a very
10 small percentage of work for Abdi went through Feeding Our
11 Future. And I'll put it in perspective for you. About a
12 million dollars of his business income came from Feeding Our
13 Future, rough numbers, and that is about exactly the same
14 amount of business income on the credit card payments for
15 meals he sold at his restaurant to other people, people that
16 had nothing to do with this -- with this food program
17 business. Okay.

18 Now, the program design gives the sponsors a lot
19 of power. Vendors are responsible -- they're financially
20 beholden to the sponsors, as you will see, and they rely on
21 them in all sorts of ways.

22 Now, you're going to learn that to get to be a
23 sponsor, to get to be a vendor, to open a site, each one has
24 a separate application process. So to become a sponsor, the
25 entity, the nonprofit, had to apply and be approved by MDE.

1 So MDE is approving the sponsor to participate in the food
2 program and administer it.

3 They also have to apply to be a vendor, and they
4 get approved, too. There's contracts that are signed.
5 We're going to talk about them in a minute.

6 So let's start with how is a site created. The
7 site here is what we're going to use to give out food.
8 Foods going to get distributed, given out at a site. So how
9 is a site created? You can't just say I got a site or I'm
10 making that a site. No.

11 The site is created when a -- when the sponsor
12 applies to the Minnesota Department of Education for
13 approval of a location to give out food. So a sponsor is
14 asking MDE, will you approve us giving food out at this
15 site?

16 Only the sponsor can open a site, the vendor
17 cannot. Only the sponsor can open a site, and it can only
18 do that if MDE approves of it.

19 Now, the way this works is interesting. So the
20 way that the sponsor and MDE kind of talk to each other
21 about this food program is through a portal. So a portal is
22 a website that you can hook into other websites, and now you
23 know absolutely everything I know about a portal. But
24 that's what it is.

25 And this portal is called CLiCS, C-L-I-C-S, CLiCS.

1 CLiCS is like super important in this case. But CLiCS is a
2 way that the sponsor and MDE communicate, share information,
3 that sort of thing.

4 One of the interesting things about this CLiCS is
5 this: As to the vendor, CLiCS is a black box. So the
6 vendor can't see into CLiCS, can't get information into
7 CLiCS, it can't put information into CLiCS, it can't change
8 information in CLiCS. This CLiCS is between MDE and the
9 sponsor. Okay? More about that in a minute.

10 So what happens when the -- this CLiCS basically
11 has two jobs. One is that when a sponsor wants to open a
12 site, they apply to do that through CLiCS. Okay?

13 And the other thing that CLiCS does is when the
14 sponsor submits a claim for reimbursement to get paid by
15 MDE, they do it through CLiCS. Okay? So we'll talk about
16 this more, but that's what we're going to look at, is CLiCS.

17 So as we figured out already, I imagine, the
18 government's jerry-rig plan really worked. One result was
19 that the amount of food delivered to children went way up.
20 So did the number of sites, because you need sites to
21 deliver food. And so did the money. Okay? Because we're
22 dealing with more food.

23 So the government's plan was to essentially
24 weaponize these food programs by allowing for-profit vendors
25 to get in the space, and it's working. Okay? So you're

1 going to see, for example, that the money tied to the amount
2 that the nonprofits, the sponsors got, went through the
3 roof.

4 So before the pandemic, Feeding Our Future is
5 running about 3.4 million through it. 2021, 200 million,
6 which means Feeding Our Future, the sponsors rake, fees,
7 administrative fee, like 18 million bucks. Same thing with
8 Partners in Nutrition. Before the pandemic, like
9 5.6 million. 2021, 200 million. So the program is
10 exploding as was designed to do.

11 So because the nonprofits, they're still involved
12 in the program -- they're involved because they're
13 administering it. So the sponsor is an administrator taking
14 care that things are done correctly. That's what
15 administration means. And they're nonprofits, and then
16 we've got the vendors in there who are the profits. Okay.

17 Now, so let's see, how do the vendors and the
18 sponsors work together to ensure quality food goes to the
19 kids? Okay. The sponsor, sponsor, would determine there's
20 a need for food in a particular area. The sponsor's doing
21 that. And then they go find a suitable place, location, to
22 distribute food. And actually, it's not like they just made
23 it up. There's actually a government tool for that, which
24 is called the USDA capacity building tool. So the USDA is
25 the United States -- whatever it is. I can't even remember

1 at this point, I'm sorry. It will come to me. They're the
2 people with the money. All right.

3 So anyways, there's a capacity building tool, and
4 then the sponsor would apply through CLiCS to MDE for a new
5 site. When the sponsor applied for a site through CLiCS,
6 MDE had to approve it and MDE set the site capacity. And
7 what that means is that MDE says, okay, you can use that
8 site and you can deliver up to, let's say, 1500 meals a day.
9 That's the site capacity. You may not deliver any more
10 meals than that. Don't have to do it, that many, but that's
11 all you can do.

12 And it's important to understand that what they're
13 setting for capacity is number of meals, not people. And
14 this is important because with these waivers, a person could
15 come to the site and say, you know, I have five kids. I
16 want seven days worth of meals. And this one person could
17 walk out of there with 70 meals and 35 snacks in one trip,
18 just a point of visit. So MDE is setting the number of
19 meals the site can allowed to do per day.

20 So the design of the program was for the parents
21 to pick up food to take home for the kids to eat at home.
22 Remember, everyone's quarantined. No identification was
23 required to pick up food, and these were all what they call
24 open sites. This is a very important concept.

25 Open sites means anybody can come to the site.

1 It's not limited by geography. It's not limited by the
2 school district. Anybody can show up and pick up food,
3 which is one of the flaws in some of the analysis you're
4 going to hear. Open sites. It was another waiver.

5 So after the site's approved, then the sponsor,
6 the sponsor wants to start using it, they enter into a
7 contract with the vendor. So that's the contract.

8 And this is a contract that's signed by the
9 sponsor, signed by the vendor. It's in a form that the
10 government set up and approved. And if you want to
11 participate in the program, this is the contract.

12 And what kind of contract it is, is it tells them
13 to deliver a specific number of meals, meals, to a specific
14 site at a specific time with specific requirements. It
15 tells them what it is. You can't just show up and say
16 something's a meal. We're going to hear about that in a
17 minute.

18 So this is called a requirements contract,
19 requirements contract. So under the contracts, the sponsor
20 is requiring the vendor to provide a certain number of meals
21 on a certain time, regardless of how many people actually
22 show up to get the food. Because we can't see into the
23 future, we don't know. If we have 100 meals, maybe 50
24 people will show up and maybe 500. But we have 100 meals
25 because that's the site capacity and that's what the sponsor

1 is asking us to bring.

2 So when the vendor gets an order for meals, what
3 it needs to do is it needs to work with the sponsor to
4 develop a meal plan, a menu, to say specifically what food
5 it will deliver. So the sponsor works with the vendor to
6 make a menu for each site that has to comply with the
7 federal government nutrition requirements. And in some
8 cases it actually had to be what they called culturally
9 appropriate food.

10 So how they going to do that? So remember, the
11 menus are tied to the number of meals that are ordered, not
12 the number of people that were supposed to pick them up.

13 So there's another computer tool called the USDA
14 food buying guide. And what that is -- and they have to use
15 it. So what do they do? The vendor uses this, Abdi. Say,
16 well, I'm going to -- this is the menu I want and this is
17 for how many people I want, and then this program comes up
18 with the amount of ingredients that should be needed. You
19 need this many potatoes, you need this many bananas, eggs,
20 whatever. Okay? To correctly assemble these meals.

21 So then what happens is after that gets approved,
22 the vendor goes and gets the food. The vendor does, Abdi
23 does, he goes and gets the food from food wholesalers using
24 his own money or his own credit, not government money. The
25 government did not give the vendors money to go buy food.

1 You've been hearing that and hearing that. That is not what
2 happened.

3 Abdi had to take and go get the food himself. He
4 either wrote them a check, got credit, paid for it. So the
5 vendor gets the food, prepares it for delivery, delivers it
6 to the site in the amount and at the time the sponsor
7 required.

8 You heard about trucks and refrigerator. Well,
9 when the food needs to be stored, it gets stored in a
10 warehouse. The vendor pays for it, Abdi. When it gets
11 delivered by a truck, it's in a truck the vendor pays for.
12 And the truck is driven by people the vendor pays and so on.

13 So under the contract at the time, the contract
14 that was signed between the sponsor and the vendor,
15 government approved contract, when the food is delivered to
16 the site by the vendor, when that happens, the vendor's food
17 delivery contractual obligations are completed.

18 The sponsor is responsible to oversee the site and
19 to ensure meals are given to whoever shows up. One of the
20 ways the sponsor did this was to employ what were called
21 site monitors. A site monitor is a person who goes to the
22 site to make sure everything is going how it's supposed to
23 go.

24 These site monitors conducted announced and
25 unannounced visits to check. After each visit they would

1 write a report. MDE even, MDE even had site monitors who
2 checked.

3 Okay. A number of days after the food delivery,
4 the vendor could send an invoice claim to the sponsor. The
5 way the vendor had to do this is through what is called
6 batch billing. So, in other words, a number of -- batch
7 means you're putting together the site bill for a number of
8 sites and sending it to the vendor in one invoice. That's a
9 batch bill.

10 The vendor sent this claim by email, and I'm
11 pointing out that it's an email to reinforce your
12 understanding that the vendor is not getting into CLiCS
13 here. Okay? So they send them an email with the claim.
14 And they have to have attachments on the claim, have to have
15 bills from the wholesalers where they bought the food, the
16 menus that were used, if there were any substitutions made
17 in the menu. Remember, it's COVID, supply chain issue time.
18 If they made substitutions, they have to declare them, say
19 what they were. Different things. They all go into this
20 email and it goes to the sponsor.

21 Then the sponsor's job is to decide whether to
22 approve the vendor's bill. The sponsor was required by the
23 law to review all submitted documents. It could also, and
24 did, look at other records it gathered independently,
25 including training records, because the people had to be

1 trained. And documentation supporting meal counts, the
2 sponsor's looking at that.

3 If there was anything, questions that the sponsor
4 had or problems, the vendor was supposed to be told about it
5 right then. Okay? Otherwise, the sponsor, he's supposed to
6 either approve or not approve the bill.

7 If the sponsor approved the bill, they would
8 certify it saying the bill should be paid. This was done in
9 the CLiCS. Certify here means the sponsor signs and takes
10 full responsibility for ensuring that the claim of the
11 vendor accurately presents the number of meals served and
12 that records are available to support the claim. And they
13 certify that the claim is in accordance with the contract
14 that we talked about and should be paid.

15 The certification, right there, tells the sponsor,
16 the sponsor, that if it makes a deliberate
17 misrepresentation, the sponsor can be prosecuted under both
18 state and federal law. So the sponsor is certifying the
19 vendor's claim under penalty of law.

20 Okay. Then the sponsor, through the CLiCS system,
21 forwards the certified claim to MDE, who can review it again
22 and ask whatever questions they want.

23 These guys, these vendors, were required to keep
24 their documents for three years. And people, sponsor, MDE,
25 USDA, could come look at them any time they wanted. No one

1 came.

2 So the sponsor forwards the certified claim to
3 MDE. They can review it. And if they approve it, they make
4 a payment to the sponsor. So MDE pays the sponsor.

5 There we go.

6 So the money originally came from USDA, that's
7 that green arrow, the green money arrow. Then MDE has
8 approved the certified bill and sent money to the sponsor.
9 All of Abdi's bills, approved and certified.

10 Now, when this green arrow payment is made, this
11 is the first time government money is involved. It is not
12 money to buy food. It is money the government owes and is
13 paying under the contract it drafted and approved for food
14 that was already delivered. Foods already been bought,
15 delivered to the site and given out to people before one
16 penny of government money is paid.

17 And in this case you will see not a single child
18 missed a single meal due to anything Abdi did. The payment
19 was a reimbursement, pay back, for money already spent.
20 This is why it's called a reimbursement program.

21 All right. Sometimes the sponsor also signs up an
22 educational nonprofit company working on this site where the
23 food is being given out. Okay? So the sponsor and the
24 nonprofit have a contract under which this educational
25 nonprofit's providing services along to the site. So like

1 TTA, you're going to see, ThinkTechAct, that's an example.
2 Okay.

3 So when this happens, the money goes to the
4 sponsor from MDE, and then they take their 10 to 15 percent
5 out. And then they send the money to -- they, the sponsor,
6 sends the money to the educational nonprofit, and they take
7 out 10 to -- 3 to 5 percent, too. Okay.

8 So we start out with the vendor's invoice for
9 100 percent. The sponsor's getting 10 to 15, so say
10 85 percent. And then the nonprofit gets some of the money,
11 too, so they get sent the money first. And then the
12 educational nonprofit sends it to the vendor. Otherwise it
13 would go directly from the sponsor to the vendor.

14 This is interesting because you will see that Abdi
15 waited sometimes months to get paid. So he's out all this
16 money, waiting months to get paid. And under the contract,
17 the vendor, Abdi, had to -- had to actually guarantee the
18 sponsor's fee, whether he got it or not. He was on the hook
19 for it. And so that's one of the business risks Abdi took
20 as an entrepreneur.

21 So the vendor, Abdi, puts up all the money to buy
22 the food, assemble the food, deliver it, which includes
23 taking huge financial risks, providing warehouse space,
24 trucks, truck drivers, refrigeration units, food storage
25 places, other people working, all the things that are needed

1 to run a business. He puts up all the money for that. And
2 only after the food is delivered and it has -- he has
3 submitted the bills in the required form, with all the
4 attachments, the bills have been reviewed and certified by
5 the sponsor, and the vendor's work and records have been
6 reviewed by MDE, if they want to, does the vendor get paid a
7 penny.

8 So that's how it worked.

9 And when they got their money, it was theirs. It
10 wasn't food money, it wasn't money for kids, it was their
11 money. After they pay their bills, it's called profit.
12 That's how we do things in America. That's exactly what the
13 design of the program was, was to get people in this space
14 to put their money up and do the work with the promise they
15 can make a profit.

16 There were not any rules about not making profit
17 or how much profit you could make. There were guidelines
18 within the program. We talked about the food and what it
19 needed to be, and we will pay this much money for a meal.
20 That's it. You get it there, you figure it out, you buy it,
21 you can make a good deal buying it, you make your money.
22 But that's what you're getting -- getting hired to do here.

23 He made a fair profit margin. He did make a lot
24 of money. And the reason he made a lot of money is he
25 provided a lot of meals. You will learn he spent millions

1 and millions of dollars on food and the other business
2 expenses and undertook enormous financial risk by
3 participating in this program.

4 So how does Abdi fit in here? Well, you're going
5 to see from his background he could never have been anything
6 but an entrepreneur. Just couldn't happen. He was born in
7 Mogadishu, Somali. He's 34 years old. Two years after he
8 was born, a deadly civil war broke out, things were really
9 bad. His mom was killed by a bomb blast when she went to
10 the market one day to shop for the family. So his father
11 took Abdi and his eight siblings and fled to Kenya, where
12 they lived in a refugee camp that was harsh and difficult.
13 Slept on mats on the floor of tents. They often didn't have
14 enough to eat. And Abdi stayed in that camp for years until
15 2005 when his family was approved for asylum and the family
16 moved to Minnesota. He was 15 years old.

17 And while he was in the camp, Abdi worked hard.
18 Abdi had worked hard to learn English. When he got here, he
19 enrolled in Roosevelt High School, he graduated on time.
20 Think of that. Comes here from a camp at 15 and graduates
21 on time. That kid worked hard.

22 I went on to the University of Minnesota and
23 graduated in 2013 with a business degree.

24 In 2014 and '15 he was able to use his savings to
25 purchase an old gas station and food market in Shakopee. He

1 then renovated it, turned it into a full-fledged gas
2 station, convenience store, international food market and
3 halal meat market.

4 So I didn't know the word "halal." Halal means
5 permitted. H-A-L-A-L. It means it's food people are
6 allowed to eat under their religion, that's what a halal
7 meat market is.

8 This business is called Empire Gas & Groceries.
9 You're going to hear more about this business in the case.

10 Also beginning in 2013 Abdi started -- or 2019,
11 sorry -- Abdi started looking for a second new restaurant
12 and food market to cater to the growing immigrant and other
13 diverse community members in Shakopee, Chaska, Savage,
14 Prior Lake.

15 His business Empire Gas & Cuisine was doing well,
16 but he wanted to expand as an entrepreneur. He searched for
17 months and finally found a retail space to lease. He signed
18 a lease and started getting the permits right away. A month
19 later the Subway next door closed, so he expanded, he took
20 their space. Then he bought an old saloon space next door,
21 started working with a contractor. Pretty soon when he was
22 completed, Empire Cuisine & Market was open for business.
23 You will hear more about that business later in the case,
24 too.

25 So Empire Cuisine at this time is selling unique

1 food. Demand is high. He's cornered the market sort of.
2 Sales for the market and the restaurant averaged more than
3 5,000 bucks a day.

4 So as we talked about, the pandemic hit,
5 March 2020. The mandates by Governor Walz were in full
6 force. Empire Cuisine was doing only takeout and on limited
7 hours, but their daily sales were not hurt because they were
8 the only business of their type doing takeout. Abdi was
9 making money and doing fine.

10 One afternoon in March 2020 something happened
11 that changed Abdi's life and began the journey that brings
12 him here today. Abdi ran into a close family friend, a
13 fellow restaurant owner, who told him about a food program
14 he was involved in. This fellow's restaurant in Burnsville
15 was participating in a state and federal food program.
16 Abdi's friend told him it was a reimbursement program and
17 generally described how it worked. He told him it was a
18 cash-intensive program, and you have to wait 45 to 60 days
19 to get paid after you deliver the food.

20 So Abdi was interested. His friend gave him a
21 contact, gave him the contact information for Kara Lomen,
22 Partners in Nutrition, who was the executive director of
23 Partners in Nutrition, the main sponsor that worked with
24 Abdi.

25 Kara Lomen is an important person for a lot of

1 reasons. One reason was she was the executive director of
2 PIN, and she was a person he could turn to for help
3 understanding the program, just as the program design
4 intended. She reviewed every single thing Abdi submitted.

5 Abdi ended up calling Kara Lomen that same day.
6 The call lasted about two hours. She learned about his
7 business and agreed to meet with him. Abdi was excited
8 about the prospect of participating in the food program
9 because it was a chance to expand his business and a chance
10 to support the community.

11 After meeting -- after the meeting, Abdi completed
12 an application to participate in the program. He already
13 had many of the things he needed, a State of Minnesota food
14 license, a food manager license, retail food handling
15 license, enough staff and equipment to deliver food, and a
16 current inspection report from the Department of Health.

17 He was open to get the required pre-approval and
18 inspection and start as soon as he could. He was soon
19 approved as a vendor, and his participation in the food
20 program began. This case will be about his participation in
21 the program.

22 The evidence will show Abdi became very successful
23 because he worked very hard, he followed the contracts, and
24 he took enormous financial risks to be part of the food
25 program. You will see Abdi carefully and faithfully

1 followed the rules as he understood them and as Kara Lomen
2 and others explained them to him. And in the end, the
3 evidence will show he is not guilty of the crimes charged.

4 Thank you for your attention.

5 THE COURT: Mr. Cotter, any opening? You may
6 proceed, Mr. Cotter.

7 MR. COTTER: Good morning. I'm Patrick Cotter. I
8 represent Mohamed Ismail, proudly.

9 The case that the government will present in this
10 case will not prove beyond a reasonable doubt that Mohamed
11 Ismail committed the crimes he's charged with, but I want to
12 be a little bit more specific.

13 The case that you will hear against Mohamed Ismail
14 will not prove that he voluntarily and intentionally devised
15 or made up a scheme to defraud the government, nor did he
16 participate in a scheme knowing the purpose was to
17 fraudulently defraud the government. The evidence will
18 further establish Mr. Ismail did not act with an intent and
19 purpose to defraud the government.

20 And lastly, Mr. Ismail acted in good faith on what
21 he understood the government food program allowed and
22 required of a for-profit business participating in the
23 distribution of meals during the unprecedented COVID-19
24 pandemic.

25 Much like the previous presentation, Mr. Ismail

1 came from a village one day the civil war came crashing
2 down. He was alone, separated from his family. Traveled
3 hundreds of miles, ended up in a refugee camp in Kenya.
4 Nearly died of hepatitis and hunger. Made his way into a
5 missionary school, eventually to Nairobi, Kenya, and
6 eventually to the United States and to Minnesota in 1998.

7 But it wasn't long before he found himself a job
8 at a place called Polar Industries in Bloomington, made
9 computer boards. Ladies and gentlemen, he stayed at that
10 job for 18 years and he worked faithfully at that job. He
11 worked hard at that job. But he had a goal and a dream to
12 start a market and cuisine for people from Somalia, from
13 East Africa, to serve that population in their traditional
14 foods, goods. And also provide an opportunity to transfer
15 money back home. Because unlike Western Union here in the
16 United States, there's a different money transferring system
17 called hawala that is used to get money to places like
18 Somalia where they don't have a traditional banking system.

19 So while he was working and doing overtime for
20 18 years at the same job, he had a dream to be an
21 entrepreneur, to start a business. He met his wife, and in
22 the year 2014 he bought his first home. It's a townhome,
23 13825 Edgewood in Savage. He got a traditional mortgage
24 with an international bank, U.S. Bank, to purchase that
25 home. He paid his mortgage. He worked his job at Polar

1 Industries.

2 And then he finally had the ability to pursue his
3 dream of starting an entrepreneurial market. He looked
4 diligently for the right place. He found partners. He used
5 his own funds from the 18 years that he had worked at Polar
6 Industries to start the business. And it wasn't Empire
7 Cuisine & Market, it's one of the many cute but misleading
8 things, it was a company called Empire Gas & Grocery at
9 first. And it was in 2018 that Mr. Ismail opened Empire Gas
10 & Grocery, 232 Marschall Road on the main drag in Shakopee.

11 Well, what else happened around that time? Not
12 long after that Amazon moved in with a big distributing
13 center not too far from that location.

14 And the market was to sell traditional halal
15 meats, spices, coffees, food, and to transfer money through
16 this hawala system through his community. And you may
17 wonder what's this all leading up to?

18 Well, this was started two years before there was
19 a pandemic. This was his dream, and it was successful on
20 one side of it; the market side and the hawala money
21 transfer was successful. He didn't understand gas. The gas
22 side of it wasn't working. And so right about the time --
23 and, again, we didn't know the pandemic was going to hit,
24 folks, if you might remember. We started to hear things
25 about it. And it just so happened that right at the same

1 time that the pandemic was about to come crashing down here
2 in Minnesota, they were -- he was transferring Empire Gas &
3 Grocery into Empire Cuisine & Market.

4 Ladies and gentlemen, it's the same business.
5 They just got out of the gas side of the business and moved
6 into the cuisine side of the business, in addition to the
7 market and the hawala money transferring, because the market
8 and the hawala was very successful, the gas wasn't.

9 Well, guess what happened? Within a couple weeks
10 of them registering the change of the name to Empire Cuisine
11 & Market, at the same location that you just saw the picture
12 of, the pandemic hit and it hit hard, real hard.

13 But what else happened during the time that things
14 were shut down? There was stay-at-home. There was real
15 concern about life or death in the beginning. People still
16 needed to eat. Grocery stores were being cleaned out. And
17 it wasn't long, many of us went about taking takeout dining.
18 Takeout dining was a big deal during the pandemic.

19 And lo and behold, that little storefront that you
20 saw with just a couple of booths, that's because it wasn't
21 made for an in-house dining operation, but it was very well
22 suited for a takeout dining operation. And it had a niche
23 in the market, because it served ethnic food for a
24 particular population of people.

25 The other place that didn't shut down real long

1 during the pandemic was the Amazon distribution center,
2 because that's how we were all getting our goods. And so a
3 lot of workers still had to eat, and that meant they took
4 takeout food on their way to and from.

5 Why is this important? Again, before there's any
6 food program or food program money, you heard that that
7 restaurant was doing \$5,000 a day in business, at least.
8 Start doing the math on just the numbers. That's not food
9 money from the federal government, that's money from the
10 business that was being run. And that's the business that
11 Mr. Ismail spent the vast majority of his time on throughout
12 this entire thing.

13 But the opportunity to also distribute meals
14 through the federal food programs came along. And from the
15 beginning, what he understood and what the actual rule said,
16 was that for-profit businesses were invited to participate
17 to get food into the community, and that's what he
18 understood.

19 He did not understand it that it was a nonprofit.
20 He was running a business out of Empire Cuisine & Market.
21 He had an opportunity to also distribute meals.

22 Now, the slides that you saw in the government's
23 opening statement, while cute, were misleading in the sense
24 that all of the operation of distributing food happened from
25 this little market, that's not how it worked. Certainly not

1 from the portion of this that Mr. Ismail had any knowledge
2 or understanding of.

3 So first and foremost, I'm going to say it again
4 because it's critically important, the evidence will show
5 that it was a for-profit enterprise, and that was designed
6 by the rules and that's how it was interpreted by
7 Mr. Ismail.

8 Number two, it was a reimbursement program that's
9 just been described to you in some detail. That meant an
10 enormous amount of investment had to go in prior to
11 receiving a dime. That, of course, is what we call a
12 business in the United States of America. An investment, a
13 risk taking. Mr. Ismail had his restaurant. There was now
14 an opportunity to distribute meals. And they already had
15 knowledge. He had some relationship with wholesale food
16 vendors that would sell them the goods. It's a
17 reimbursement program.

18 Another critically important concept that I'm
19 going to state again, it was an open-site program as it
20 related to anything that Mr. Ismail knew about or
21 understood. It was not connected to a specific school
22 district, it was not connected to a specific school. It was
23 not even connected to a specific area, as designed by the
24 rules. And the rules were complex, and they were changing.
25 It was over 113 -- or 100 something what we call waivers

1 that were difficult for most everybody within the system to
2 fully comprehend at the time, let alone Mr. Ismail who is
3 running a restaurant down on 232 Marschall Road. He was
4 doing what he understood the rules allowed him to do. And
5 frankly, with the combination of the waivers, what it did
6 allow them to do.

7 Another important concept will be the definition
8 of a meal. We talked about feeding kids meals, and we think
9 of a packaged lunch or a hot meal like the little, you know,
10 pizza squares and the lunch, carton of milk that we all
11 remember. That is not how it was defined during this
12 specific unique time. The meals were served as bulk goods.

13 So it didn't need to be a specific location that
14 had a kitchen and a -- you know, spot where people would
15 come and congregate or even necessarily have a big parking
16 lot to park and so on and so forth. No. What it was, was a
17 site was a location where a truck could pull up that had
18 massive amounts of prepackaged bulk goods that were then
19 distributed to the adults who were legally and lawfully
20 allowed to come and pick it up.

21 In addition to that, another one of the changes in
22 the rules was there wasn't a specific rule about eligibility
23 checks and check in right at the point of sale. They took
24 away the point of sale. And it was essentially you showed
25 up and you advised the number of meals that you were asking

1 for and you were provided bulk goods on a weekly or biweekly
2 basis.

3 So when it said daily, that was misleading. It
4 wasn't every day that thousands of people were showing up at
5 the sites to pick up -- it was maybe weekly or biweekly,
6 depending on the location -- bulk meals, dry goods, fruits,
7 vegetables, onions, potatoes, rice, so on, that could then
8 be prepared and served to the families during this time when
9 there was a significant amount of food insecurity.

10 And this has been laid out nicely, but the
11 final -- I talked about for-profit, reimbursement program,
12 open sites, bulk meals. It was the Minnesota Department of
13 Education and the sponsors that were responsible for the
14 administration oversight of these programs.

15 So we're back to Mr. Ismail working at Empire
16 Cuisine & Market. His involvement in the food programs
17 primarily throughout this entire time frame, he worked and
18 ran the restaurant and the market and the hawala business,
19 right there, and that was his primary responsibility.

20 He also was involved in the logistics, because as
21 you've learned, there was a substantial amount of logistics
22 in getting the food transferred, warehoused, packaged and
23 delivered. So he also assisted at a number of locations
24 with that type of aspect of delivery of meals throughout
25 this entire time.

1 He had virtually no involvement in the submission
2 of any type of claims or transferring of the actual money
3 from bank account to bank account, except for what he
4 received as profit, as he understood to be profit from the
5 business. In addition to the profit that the market and
6 cuisine takeout business was generating. So his involvement
7 was in the logistics of the packaging and delivery of meals,
8 and then primarily running the restaurant. And yes, sharing
9 in the profits.

10 I'd submit to you the evidence is going to show
11 that the government's administration of the food program
12 lacked clear guidance, clear understanding during the
13 pandemic. The government's narrative that Mr. Ismail took
14 advantage of this, I would submit to you through all of this
15 is a false narrative. What Mr. Ismail contends is that he
16 did not devise this scheme or plan with that purpose. What
17 he understood is that he was running a business, feeding
18 people in the community and, yes, making a profit. That's
19 what he understood.

20 There's also discussions of shell companies. Now,
21 I'm going to turn my attention for a minute to the money
22 laundering counts, because, again, there's some misleading
23 things that have been presented.

24 I believe it was specifically said a shell company
25 is something to the extent of an empty vessel by Mr. Ebert.

1 Ladies and gentlemen, all of the money and profits that
2 transferred through to Mr. Ismail transferred through that
3 same business down on 232 Marschall Road that had been in
4 existence since 2018. It started out as Empire Gas &
5 Grocery, Empire Cuisine & Market, and then the name was
6 changed to MZ Market LLC. And that was because they had to
7 separate the market and the restaurant side for other
8 business purposes.

9 Again, the money transferred from -- into a
10 business, an existing business. And frankly, folks, honest
11 to God, you can go there today, it's running right now, MZ
12 Market LLC on the same location. It looks almost exactly
13 like that picture that was just put up that I believe might
14 be Exhibit 1. That is not an empty vessel. That is
15 misleading. That's a mischaracterization of what the facts
16 will show.

17 All of the money that transferred -- and guess
18 what, that hundred thousand that you saw when you saw the
19 slide of Ismail's role, essentially 137,000, that went to
20 pay off the mortgage. Remember the house he bought in 2014?
21 So, yes, he took the profits and he paid off his mortgage
22 through his bank account, bank that he had had. All that
23 time he had been paying a mortgage. He had his profits from
24 his entrepreneurial effort, he funneled the money not
25 through some sort of hidden or disguised bank account, not

1 through some fake partnership, not through an empty vessel,
2 but through a functioning business at an international bank
3 to pay off a mortgage that he had had since six years before
4 the pandemic. And they want to call that money laundering.
5 I'll submit to you that it's not.

6 Folks, all I can do is tell you this. As I was
7 preparing my opening statement, I'll end with this. My dad
8 was a lawyer. He'd tell me, Patrick, if the other side is
9 painting their case with too broad of a brush, be very
10 skeptical. There's a huge broad brush with big numbers and
11 splashy homes and things of that to make it look like this
12 was a big fraud. But I'll submit to you when you dig down
13 and understand the intent of my client, that it wasn't.
14 Please simply look at the evidence in light of that time
15 frame, not in hindsight, not in the rear view, where it's
16 easy to look at all the mistakes that were made, but what
17 was going on in that time.

18 Number two, please honor your commitment to
19 presume Mr. Ismail innocent all the way through to
20 deliberations.

21 And number three, please keep an open mind until
22 the end of the case. That's all I can ask of you. Thank
23 you very much.

24 THE COURT: Mr. Sapone.

25 MR. SAPONE: Yes, thank you, Your Honor.

1 May it please Your Honor, the government, defense
2 counsel, members of the community.

3 Folks, this case is about food, not fraud. Food,
4 not fraud. And not just food, but millions of dollars of
5 food purchased and millions of meals distributed to people
6 who needed it during the pandemic.

7 Good morning. My name is Edward Sapone, and I
8 also represent an Abdi. My colleague stole my line. A
9 different Abdi. We'll call him Little Abdi, Abdi Nur is my
10 client. I don't have a fancy PowerPoint, I don't have lots
11 of people on my payroll, it's just Abdi and me here today.
12 And it's my honor to represent that young man.

13 The issues in this case involve whether or not the
14 government is going to meet its burden to prove beyond a
15 reasonable doubt the conspiracy that they charged and the
16 substantive federal crimes that they charged.

17 The evidence is going to show that there were no
18 crimes here, so they won't meet the burden. Not their
19 fault. And that Abdi Nur acted in good faith at all times
20 during the 10 months that he worked in this business.

21 What's important to know about young Abdi is that
22 he was hired for a certain reason and was hired with certain
23 experiences and lacked certain experiences. He actually
24 submitted a resume, and so the things on the resume and the
25 things that were considered when he was hired are going to

1 be very important in this case.

2 His whole life he worked hard, and I'm not going
3 to go back in time to the time he was 10 where he literally
4 picked rocks out of crops. We won't start there. But we
5 will start in high school, because this young man's life
6 from the time he was in high school here in Minnesota
7 included 14-hour days, whether he was getting up 3:30 in the
8 morning to prepare as a track star that he was, to then go
9 to school to make his parents proud, to then go after school
10 and work at night in a Dairy Queen. He worked 14 hours a
11 day throughout his high school education.

12 And that's going to be important as to why he was
13 trusted to work in this case. In other words, the events
14 that bring us here together. It wasn't just that a
15 20-year-old was hired. It was a certain kind of 20-year-old
16 who had certain life experience, and you will see lacked
17 certain experience, which hindsight is also what? 20/20.

18 And so when he's in the middle of his high school
19 career, he wants to do something for this country because,
20 you see, he had come here when he was a little boy with his
21 parents and his older siblings, his two brothers, older
22 brothers and his sisters here in court sitting in the
23 corner. He wanted to give back to these great
24 United States, and so he became enlisted in the United
25 States Army. He was a kid, 16, 17 years of age, and he

1 enlisted in the Army.

2 And then at a certain point while he's still in
3 school he goes to South Carolina, Fort Jackson, and he
4 begins his service. During that time -- I was bragging
5 about him that he was a track star, right? And he's
6 juggling all these things. He actually was number 1 in his
7 high school, and he was picked to go to Australia to go to a
8 big track meet and compete against Australia's best and the
9 best from around the world. He didn't make number 1 like he
10 did here in Minnesota, but he made number 2. And that
11 wasn't because he was so naturally talented, no offense, but
12 because he worked hard. He worked hard then, and he worked
13 hard in the 10 months that he engaged in the conduct that
14 brings him here.

15 So he comes back from Australia. He's working at
16 night at the Dairy Queen, going to high school during the
17 day, goes to the Army, comes back. And when he comes back
18 in his final year of high school, he is still in the Army.
19 He had done his basic training in Fort Jackson. He's back
20 here in Minnesota. And it's not enough that he's in the
21 Army and it's not enough that he's in high school all day
22 and he's trying to make his parents proud, but he's working
23 at night at Walmart.

24 That's the kind of man that the government is
25 claiming committed fraud in connection with this case. This

1 20-year-old kid, who saw fit to make his parents and his
2 family proud, all day work and all night work. When he got
3 the job here, it was his dream job.

4 He comes back from the Army, he's working at
5 Walmart at night and he wants a career, folks. So he
6 applies for the position. And central in the decision to
7 hire him was how hard working he was and how responsible he
8 was with the military training and the sports training
9 especially. And in fact, it was his big chance. And he was
10 up before the sun would come up every day eager to work, not
11 to steal, eager to work, and that's what he did for 10
12 months. He worked 14-hour days for 10 months. He worked
13 six to seven days a week for 10 months helping to deliver
14 lots of food, not participating in fraud.

15 Now, there's a structure related to the food
16 programs, and I want to just run through it quickly because
17 I know it was said before. At the top you have the USDA,
18 and the USDA authorized the MDE, the Minnesota Department of
19 Education, to spend money during the pandemic on these food
20 programs.

21 Under the MDE were these sponsors such as Feeding
22 Our Future and Partners in Nutrition.

23 Then you have the nonprofits, and then you have
24 the vendors which were for-profit. And no one is disputing
25 that in this country folks are allowed to work and allowed

1 to make as much money as they can within the bounds of the
2 law. And that's what he did, and he will never apologize
3 for that. That's what he did.

4 And under the vendors are folks like Abdi Nur,
5 where they had LLCs, because that was the requirement. And
6 then they would assist lots and lots of people in a large
7 operation during the pandemic to do what? Deliver food to
8 parents and guardians so that their children could eat, or
9 at least have a nice meal, and they would pick up
10 sometimes -- most times seven at a time, because it was
11 allowed. Because Abdi Nur didn't make the rules, he played
12 by them, which is what he had always done.

13 There was money paid to a lot of people, a large
14 sprawling operation. Not the picture you saw on the fancy
15 screen and the TV sets where it looks like a rinky-dink
16 little restaurant. It was much larger than that. And the
17 evidence will show it.

18 Food was bought, food was delivered. Abdi made a
19 lot of money, especially for a 20-year-old. He was so proud
20 of himself. He was so proud to be looked upon by his family
21 as the star of the family, no offense, but he was and he
22 earned it. He worked hard and he earned it. The right way,
23 the evidence will show.

24 He was a site supervisor in all of this.

25 Now hindsight is what? It's always 20/20. And

1 when the smoke clears, he may have been over his head -- in
2 over his head, because he had never been a site supervisor
3 anywhere else. But as long as he woke up early and was on
4 time and went to the sites he was told to go to and
5 recovered the -- and obtained the information that was given
6 and sent it along, it was organizational. And he was
7 responsible, and he was hard working, and he could do those
8 things just as well as anyone. It was his big chance; it
9 was his dream job.

10 He did lots of things and learned lots of things
11 right off the bat, so quickly. He learned them and he
12 taught them to others like he was supposed to do.

13 Civil rights training, check that box, he did it.

14 How to package the food. He never knew how to do
15 that before because he never did it. He was always
16 community minded and would help people to get meals and eat
17 with local organizations, but he wasn't a boss. So he
18 learns through instructional videos and other material
19 actually there's a way to package. He learns it, he teaches
20 it, it's what was done.

21 How to take attendance, and there's been talk
22 about the attendance. What was required was the child's
23 first name and last name and age. No ID. And that's not
24 because Abdi Nur didn't want to take ID. He didn't make the
25 rules, he just played by them.

1 Training video after training video, he watched
2 it, he learned it, he taught it. Presentation after
3 presentation after presentation, he did it. He learned it
4 and he taught it.

5 The government said one thing in its opening
6 statement that we can all agree with, and there's no doubt
7 about this. Quote, this time four years ago the world
8 changed. It seemed like life would never be the same. And
9 I remember those times in March of 2020, watching those news
10 channels and the different sites outside different
11 hospitals. We didn't know what the future would be, what it
12 would hold.

13 And I say whether you're in your 20s or 30s or
14 you're in your 40s or 50s or 60s and 70s, life was chaotic,
15 life was uncertain, and we did the best we could. I think
16 we can all agree with that.

17 Navigating the things that we knew was nearly
18 impossible. During that time navigating the things we
19 weren't so good at or didn't know so well, new things, was
20 even more impossible. But he did the best he could, and he
21 actually did a good job. And the evidence will show it. He
22 certainly did his best.

23 The MDE implemented waivers that relaxed the
24 rules. And then when things got a little better during the
25 pandemic and people started to learn maybe more things about

1 it, what it was, maybe what it wasn't so much of, and
2 different things were happening in society and the smoke
3 cleared a little bit, then there's some Monday morning
4 quarterbacking, which is so easy, right? The game happens
5 on Sunday. We're not even in the game. And then we're
6 watching the clips on Monday morning, and now we're saying
7 why did you throw that pass, why didn't you hand it off, and
8 you stink because you fumbled the football. Easy sitting on
9 the couch and flipping through the flipper, right? And
10 that's why we're here. We're here because of Monday morning
11 quarterbacking during a very difficult game. And certainly
12 for a 20-year-old working 14 hours a day.

13 We're going to get to the waivers in a moment, but
14 he followed those rules, too. There was a lack of clear
15 guidance. There was a lack of clear understanding. And I'm
16 not talking about Abdi Nur, I'm talking about the folks
17 above him, above these men. Very difficult times.

18 This case is about food, not fraud, and lots of
19 food. And you're going to see lots of evidence of that.

20 Abdi 's intent was to work with a group of people
21 sitting at these tables here delivering millions of meals to
22 people. His intent was to work hard. The evidence is going
23 to show all of that. He joined a real company with lots of
24 real children who were fed, where meals were delivered to
25 the parent and the guardian, and they would go and feed the

1 kids. Lots of employees, lots of work, all real. Different
2 cars to get to the different sites and locations, boxed
3 trucks delivering food. Equipment. Everything you'd expect
4 to see in a real organization.

5 A massive warehouse to store what? To store food,
6 because the food was real and it was really delivered.
7 You're going to see proof of so much food, food that was
8 packaged and ready to be delivered. Truck rentals for extra
9 trucks to deliver extra food. Proof of the deliveries,
10 proof of the pickups. Lines, you're going to see
11 photographs and videos of lines and lines of cars and other
12 automobiles waiting to pick up what? Food. Food and more
13 food.

14 The people couldn't get enough of it. There was
15 so much of it at so many locations, whether it's Shakopee,
16 Bloomington, Minneapolis and various sites within and so
17 many more. You are going to see all that.

18 Millions of dollars, many companies from which the
19 food was bought. To name a few that you might know, Sam's
20 Club, Restaurant Depot, Jetro, Sysco. You see the trucks
21 all over the place. The Minnesota Food Grocery. Real
22 places that sold real food to these real people, and it was
23 really delivered.

24 They delivered food to people who didn't like the
25 food they were delivering and complained about it and asked

1 if they could have a special kind of food. And you're going
2 to see evidence that the folks from Central America, the
3 Latino community, who wanted their food, what they were
4 accustomed to what their parents and grandparents had made,
5 and that that was added to the menu. And you're going to
6 see that that food was part of the cache of food, too,
7 because they cared, because they were servicing the
8 community and feeding the children, and in many instances
9 went out above and beyond and got the food the kids wanted,
10 not the food they were delivering.

11 The food was bought, it was warehoused, it was
12 packaged, it was transported, it was delivered, it was
13 picked up. The only thing I can't tell you is whether they
14 would eat the whole sandwich or not. We weren't there.
15 Because you're going to see that one of the waivers was they
16 could take the food and go away, but lots of times they
17 didn't wait.

18 The Monday morning quarterbacking is unfortunate,
19 especially given the waivers, the waivers by the MDE itself,
20 the ones who are going to come in here and complain.

21 Here's a couple of examples. The non-congregate
22 feeding waiver, which allows for the food to be consumed off
23 site. Because prior to the pandemic and prior to the point
24 at which the waiver was implemented, the food had to be
25 eaten right then and there. Perhaps not a bad idea, but why

1 do you think that waiver was implemented? We didn't want to
2 stay within seven feet of each other. If this were a year
3 and a half ago, I would be up here with a mask, you wouldn't
4 be able to hear me, and you'd all have masks on. You
5 remember that time. And so to combat that -- I'm not
6 blaming the MDE -- they put in a food -- a waiver so that
7 the parents and guardians could take the food and go.
8 Consume it off site.

9 The parent/guardian meal pickup waiver in
10 conjunction with the one I just read is -- the first one is
11 you can eat it off site. The second one that I'm now
12 describing is they can pick up the meals and take them away.
13 So in conjunction, it's what I'm saying, eat off site
14 because you took it off site.

15 The meal times waiver was implemented. Food could
16 be served outside traditional times, and that's to maximize
17 the flexibility for pickup, to make it easier for parents
18 and guardians to pick up food because maybe the times that
19 were allotted weren't convenient. So now it's at different
20 times, which before it never could be. So there's another
21 waiver.

22 The meal pattern flexibility waiver allowed for
23 modifications when certain foods were not available. Prior
24 to that you had to buy and deliver a certain food, but at
25 that point you could go and get replacements, which meant

1 that it didn't stop. The food purchasing and the food
2 delivering and the food consumption didn't stop.

3 Abdi Nur worked hard and followed the rules, and
4 the waivers weren't his fault. He didn't make the rules, he
5 just did his best to abide by them.

6 The government is going to call cooperating
7 witnesses in this case, and those are individuals whom
8 federal agents had approached. One of them was a very close
9 friend of Abdi Nur's, and you're going to learn that this
10 individual and Abdi actually had worshipped together,
11 practiced religion together. They were very close. He
12 would come to Abdi's family home. He knew Abdi's mother, he
13 knew Abdi's father, his sister and his two older brothers.
14 He would eat meals at the Nur household. Abdi Nur was
15 always there to help this guy with his problems, with his
16 fears, he always helped him.

17 But then it all changed because, you see, that
18 individual was approached by case agents investigating, and
19 there was going to be a future fraud case brought. Here we
20 are today. And it all changed when those agents approached
21 that young man, because in an instant he made a decision,
22 knowing what he was facing in terms of years in prison, and
23 he made a decision to talk about and say things about, all
24 lies, Abdi Nur. Because you see, he knew he had three
25 choices. He could either fight what was going to definitely

1 be a case against him, that was clear, and wind up one day
2 at a trial like this one. He didn't like that choice. He
3 could just accept responsibility for anything he had done.
4 He didn't like that, and the reason is he didn't want to go
5 to prison for years and years and years if convicted.

6 So he chose what was behind Curtain Number 3,
7 which is to plead guilty and say whatever he said and
8 cooperate against others. And the reason you will learn
9 he's doing that is he wants what's called a United States
10 Sentencing Guidelines Section 5K1.1 letter. And that's a
11 government motion at the time of his sentencing, at the time
12 of sentencing, that tells the court all the cooperation that
13 was done and all the things that were said to assist team
14 U.S.A. and a downward departure is appropriate from the
15 applicable -- otherwise applicable sentencing guidelines.
16 That young man is hoping that that 5K1 letter is his
17 get-out-of-jail free card, because he's hoping that with
18 that motion that he's expecting will be made, he won't go to
19 jail for one day. And I'm going to have a lot to ask him
20 when he takes the witness stand about that. I suspect he
21 will admit it. We'll see.

22 There's another cooperating witness, and what's
23 most important about that one is what -- not only what she
24 said when first approached by agents but what she didn't
25 say. What she didn't say when everything was fresh in her

1 mind, when it was close in time to the events that she was
2 discussing.

3 She said lots of things that day. She admitted to
4 being the executive director of TTA, the only executive
5 director of the food program. She explained the structure
6 of things, various people, what she managed. She managed
7 site monitors, certain folks that went to the sites to
8 monitor. And what she didn't say was a lick about Abdi Nur.
9 Yet, she will come in here in this trial and say lots about
10 Abdi Nur and others.

11 What explains this? I thought of a phrase that
12 you might remember, if you're not with us, you're against
13 us. She picked the team, team U.S.A., she did not pick the
14 team at these tables. You could be the judge of that.

15 Something else that doesn't apply to those tables
16 is the burden of proof in this case, which Her Honor will
17 explain to you. She's already mentioned it. But it's fair
18 for me to just mention quickly that the only burden in this
19 courtroom amongst all these lawyers sits at this table and
20 this table alone, and that is proof beyond a reasonable
21 doubt as to each element of each crime charged.

22 The folks at that -- those tables have nothing to
23 prove because they are, what? Her Honor said it many times.
24 Presumed innocent.

25 So I ask you as you receive the evidence and the

1 lack of evidence, to keep those two instructions in mind.
2 This is not a time to jump to conclusions. This is going to
3 be a long process. More of a marathon and not a sprint.
4 Abdi knows about that, he was a master at the 800. But I
5 ask you to not think about the 800 or the 100, but think of
6 a marathon, because that's what this is. Take it all in
7 first.

8 You saw that the government had put up on the
9 screen certain text messages and certain photographs. I'm
10 not going to go tit for tat and go into all that, but I will
11 tell you one thing, the evidence will show that what you saw
12 was taken out of context and that there was more to it that
13 was not put up on the screen. And we'll be reminding you of
14 that.

15 For example, this bit about the million dollars in
16 cash, you're going to learn that that was a joke. It wasn't
17 true. It never happened. There will be zero evidence to
18 support it. But it's nice to put that on the screen, I
19 understand.

20 Folks, not one email and not one text message
21 obviously at a time where folks are not thinking they're
22 being monitored will speak to fraud as it relates to Abdi
23 Nur. Not one of them will say it, because it didn't happen,
24 the evidence will show.

25 20 years old, 10 months, 14-hour days, millions of

1 dollars spent on food, millions of meals delivered, and you
2 have the power to hold the government to its burden.

3 There's an old joke in our business which is that
4 the seats in which you sit will never be shown in
5 Architectural Digest. They're not the prettiest, they're
6 not the most comfortable, but make no mistake about it,
7 they're the most important because it's from those seats --
8 and this is not corny, it's true -- from those seats is
9 where justice is done. It's not done anywhere else.

10 We are so happy to have you here. We are so
11 blessed to have you here. Thank you for being our jury.
12 You're going to get a verdict sheet at the end of the case.
13 It's going to have a lot of information on it. I'm asking
14 you to do your jobs to the best of your ability and mark the
15 spaces for "not guilty" as to each and every crime as they
16 relate to Abdi Nur, because the evidence will show exactly
17 that, he's not guilty.

18 Thank you.

19 THE COURT: Thank you, counsel.

20 We will resume opening statements after our lunch,
21 and we're going to take that now and come back at 1:45. So
22 back at 1:45.

23 All rise for the jury.

24 **IN OPEN COURT**

25 **(JURY NOT PRESENT)**

1 THE COURT: 1:45, everyone.

2 Mr. Schleicher, will you or Mr. Carlson be
3 opening?

4 MR. SCHLEICHER: I will, Your Honor.

5 THE COURT: And, Mr. Goetz, for your team, who's
6 opening?

7 MR. GOETZ: Yes, Your Honor.

8 THE COURT: You are?

9 MR. GOETZ: Yes.

10 THE COURT: All right. Thank you.

11 1:45. We're in recess.

12 (Recess taken at 12:38 p.m. till 1:45 p.m.)

13

14

IN OPEN COURT

15

(JURY PRESENT)

16

THE COURT: You may all be seated.

17

Mr. Schleicher, you may proceed.

18

MR. SCHLEICHER: Thank you, Your Honor.

19

May it please the court, counsel, counsel.

20

Members of the jury, welcome back. My name is

21

Steve Schleicher, and together with my associate Clayton

22

Carlson, we represent Said Shafii Farah.

23

And, Mr. Farah, if you would please stand up

24

briefly, just so you can be recognized again. Thank you so

25

much. You may be seated again.

1 Mr. Farah, Mr. Said Farah, is defendant Number 5.
2 There's more than one Mr. Farah in this case. You heard the
3 opening statement of his brother's counsel, Abdiaziz Farah.
4 So saying Mr. Farah in this case is not going to be an
5 option. I'll either call him Said Farah or Said.

6 So about Said Farah. Said Farah was in the
7 grocery business. He was not a sponsor. He did not run a
8 site. He did not take attendance. He did not prepare
9 rosters. None of these things were his responsibility. He
10 did not take counts. He did not have a contract with the
11 government. And the evidence will show that he never
12 submitted, not one single claim to any state, federal or
13 local branch of government, not the Minnesota Department of
14 Education, not the United States Department of Agriculture,
15 nobody.

16 Said Farah was in the grocery business. He filled
17 orders for food. He received orders from customers. He
18 bought food from other vendors and wholesalers. He
19 transported food. He stored food in his warehouse. And
20 from there he distributed it through his company Bushra
21 Wholesalers and the employees who worked there.

22 Said Farah transported food, purchased food,
23 stored food and had food delivered where it was needed, when
24 it was needed and that is it.

25 Now, the government has charged Said Farah in

1 connection with the federal food program claiming fraud.
2 And some of the attorneys in this case have already
3 explained to you that the government's evidence will not
4 prove fraud beyond a reasonable doubt. There's some
5 significant problems with the government's evidence, as you
6 will learn.

7 The inflated attendance numbers, for example, you
8 will learn that the government is not able to prove with
9 anyone who has knowledge that any of those numbers were
10 inflated at all; or if they were, who inflated them.

11 For example, you heard testimony these were open
12 food sites -- I'm sorry, you heard in openings these were
13 open food sites and people could go wherever and to whatever
14 site they wanted and without documentation claim any number
15 of children. And you saw the map that was shown in the
16 government's opening of Faribault, for example. A number of
17 sites right next to each other. Not hard to imagine that it
18 would be pretty easy for someone during a pandemic, not
19 knowing where the next food was coming, to hit every single
20 site in town, claiming any number of children. The point
21 is, because of the lack of oversight and supervision by
22 design, by the Minnesota Department of Agriculture -- you
23 won't hear FBI agents surveying the place -- they just
24 cannot say that people were not showing up to pick up food.
25 They can't.

1 And their entire fraud claim is premised on false
2 numbers, but they can't prove. But the government must do
3 more than just simply prove that a fraud of some sort
4 occurred between some people. Again, as you heard the court
5 instruct you, you are going to need to hold the government
6 to its standard of proof beyond a reasonable doubt as to
7 each defendant individually, each element of each charge
8 beyond a reasonable doubt.

9 They must prove beyond a reasonable doubt,
10 therefore, that Said Farah knowingly participated in some
11 sort of a crime. You heard the court instruct you as to all
12 of the different charges here. And as to each charge, you
13 heard the word "knowing," "knowingly." The government must
14 prove that the defendants knowingly participated, committed
15 a crime.

16 Said Farah was in the grocery business. Think of
17 a grocery store. Somebody comes into the grocery store with
18 a stolen credit card, buys a cart load of groceries and pays
19 with that stolen credit card. Has the clerk committed
20 theft? No. They haven't agreed to be a part of a
21 conspiracy to commit theft, not unless they knew that the
22 credit card was stolen at the time. You can't accidentally
23 become involved or unknowingly become involved in a
24 conspiracy. So the store clerk is not guilty, unless the
25 government were to somehow prove beyond a reasonable doubt

1 that they were -- that they were in on it.

2 And the evidence will not establish that Said
3 Farah knowingly engaged in fraud or money laundering or
4 bribery or anything else that the court is accusing him of.
5 What the evidence will show is that Said Farah was in the
6 grocery business and he was just selling food.

7 And it will also show that he is more than just
8 defendant Number 5. Now, there are a lot of people here,
9 and we got to figure out some way to keep track of
10 everybody. It's tough sometimes when you're not familiar
11 with people, not familiar with names. Have you ever gone to
12 a spouse's high school reunion when you weren't in the
13 class? It's tough kind of sorting all these things out. So
14 I understand people have to have numbers. Said Farah is
15 defendant Number 5, and I want you to remember that,
16 because, again, you need to consider the evidence as to Said
17 Farah individually.

18 But he's more than that, he's more than a number.
19 Said Farah is a father, he is a husband, and he is a hard
20 working, self-made businessman who has overcome the
21 unfathomable to be here where he is.

22 Said is 41 years old. He is a citizen of the
23 United States. He is a resident of the City of Minneapolis.
24 He lives in Minneapolis with his family in a nice but modest
25 home. He has a couple of vehicles, a 2016 Toyota Highlander

1 and a 2016 Toyota sedan. The family uses the Highlander to
2 cart the kids around, haul them around from place to place.
3 Said brings his 2016 sedan to go back and forth to work.
4 And he goes back and forth to work a lot. That's about all
5 he does.

6 Now, Said did not start out in Minneapolis. He
7 was born half way across the world in Mogadishu in Somalia.
8 He was born on June 19, 1982, in Mogadishu. His family, he
9 has five brothers, he has a sister. One of his brothers is
10 here, as you know. And his mother and father took care of
11 their family as best they could at that time. Back in the
12 1980s there was a terrible war that raged throughout Somalia
13 when Said was a boy.

14 And it was in 1988 when Said was only six years
15 old that his world was turned upside down and changed
16 forever, and that was the day his mother was killed in that
17 terrible war. And Said was left without a mother. He had
18 the rest of his family, but they just weren't safe. The war
19 was raging all around them. They had to get out of
20 Mogadishu, and so they took refuge in a refugee camp in
21 Kenya. And that's where Said was raised from the age of six
22 until 2005, in that refugee camp in Kenya. Raised by family
23 members, including his father, eventually a stepmother. And
24 they stayed in that refugee camp, again, until 2005 when
25 Said Farah was finally able to get out and follow some other

1 family members and people from the community who were able
2 to leave and come to the United States.

3 And he came to the United States, and he joined up
4 with his family members and he joined with other individuals
5 from the community and he settled here in Minnesota.
6 There's a large Somali community here in Minnesota. And
7 when Said Farah came here, he had nothing, absolutely
8 nothing. No money, no job, no formal education, no degree.
9 But when he came here to this place in Minnesota, he found a
10 community of people who were kind and who were good and who
11 were generous, both inside and outside of the Somali
12 community. That they would take him into their homes, they
13 would share their time, their money, their meals, their
14 friendship.

15 Now, the evidence will show that the Somali
16 community here in the Twin Cities, it's a very close group.
17 Like so many of the immigrant communities who have come
18 before them, they have a shared history and a shared
19 culture, and they tend to live in the same neighborhoods and
20 they tend to do some of the same things and eat some of the
21 same foods, and even go into the same businesses like so
22 many of the communities that have come before in wave after
23 wave of what makes this country such a wonderful and
24 interesting place.

25 And the community, they try to take care of each

1 other. They do. Because they have this shared experience
2 of coming from a war-torn, unstable region with no stable
3 banking system or government or rules or any expectation
4 that things are going to continue beyond the day in front of
5 them. They take care of each other because they have been
6 through it and they understand.

7 So when Said got here in 2005, he was determined.
8 He was determined to work, to work hard, and he did. Any
9 job he could find. He worked on assembly lines. He sold
10 phone cards. His father was able to own a grocery store,
11 and Said worked at that grocery store. He worked so many
12 hours and watched his father run that store, and that became
13 a dream. And Said eventually was able to start his very own
14 business of grocery store like his father. It was called
15 Brookdale Market; it was located in Brooklyn Center. And
16 through a lot of hard work and a little bit of luck, it
17 eventually was successful enough that he was able to open
18 another store, another grocery store on Lake Street in
19 Minneapolis.

20 But it wasn't all work, there's some other joyful
21 things that happened, too. Said Farah became -- got married
22 in 2011 to his wife Ayan. And while he continued to work
23 hard, Said and Ayan bought a house. Amazing, they bought a
24 house in 2011. This is Said's house. And they started a
25 family, they have a family. They have five children that

1 they're raising between the ages of 6 and 16, two are
2 stepchildren, three biological.

3 Said's firstborn daughter name is Bushra Shafii,
4 and he has named two of his businesses in her honor, Bushra
5 Properties and Bushra Wholesalers.

6 So, a family, a successful business, a house, a
7 home. Said Farah was living the American dream. Who could
8 have ever thought it could be this good, especially when you
9 consider where he came from, where he started. This really
10 truly was a miracle. He became a citizen of the
11 United States on September 16, 2011, and has sort of settled
12 in like so many of us. Said's life is centered around his
13 family, his work, his faith -- he's a devout Muslim -- and
14 his community of friends, the people who took care of him
15 when he got here, who he feels he needs to take care of,
16 too.

17 But members of the jury, everything changed on
18 January 20, 2022. It was a Thursday in the winter, a school
19 day. 7:00 in the morning is a pretty busy time in a
20 household with five children, trying to herd them around,
21 get them where they're supposed to be, get them dressed, get
22 them ready to go off on their day. But that is the day and
23 the time when the federal agents came to Said's home. There
24 were 10 of them, and they came with a search warrant. They
25 were looking for evidence in connection with a fraud in a

1 federal food program, and they came into Said's home.

2 Said was there, Said's family was there, and they
3 detained each and every person in the house. And they went
4 anywhere they wanted to go in the house and looked anywhere
5 that they wanted to look and took whatever they thought to
6 be evidence involving a federal food program. They looked
7 around. They took Said's wallet, his phone, his watch.
8 They took his wife's phone. Said's wife had recently just
9 purchased a new Apple Watch and, you know what, they took
10 that too. Possible electronic evidence, the Apple Watch.

11 I didn't -- you know, they still have it. I
12 didn't see a picture of it when the prosecution was giving
13 their opening statement. They didn't show you that. I
14 believe the evidence will show they have never so much as
15 even looked at it for electronic evidence.

16 Said's family was there. You see the young lady
17 sitting on the couch, on the cushion looking down, that's
18 Bushra, that's Said's daughter.

19 The agents photographed every single inch of
20 Said's home looking for evidence of a food fraud program.
21 They looked in Bushra's room, they looked on Bushra's bed.
22 They even looked in Bushra's closet for evidence of fraud in
23 connection with the federal food program. Bushra was nine
24 years old at the time. And they searched her room and they
25 found nothing and they left.

1 Said's American dream became a nightmare on that
2 day, and since then he's been branded a thief, accused of
3 crimes, indicted by the federal government, and is sitting
4 here in this courtroom facing charges, facing accusations
5 brought by the federal government. And the evidence will
6 show that Said Farah is not guilty of what he's been accused
7 of. He is presumed innocent of each and every one of these
8 allegations, and the government's case will fail. They will
9 not meet their burden of proof because it is premised on
10 nothing but suspicion, supposition and raw speculation, not
11 evidence.

12 Now, the government, they talked about houses and
13 cars and things in their opening statement, you remember
14 that, and you saw the pictures. As if anything that the
15 defendants own is somehow suspect. Well, the evidence will
16 show that Said Farah bought his home in Minneapolis in 2011,
17 nine years before the alleged conspiracy was supposed to
18 have even started. He bought a rental property. He bought
19 a rental property. After working hard, he was able to put
20 together the money to buy a rental property in 2014,
21 six years before the alleged conspiracy. He bought a
22 commercial building in 2018. It's called Lafey Plaza. It
23 rents space to other businesses. He bought that on a
24 contract for deed in 2018, two years before the government
25 alleges that this conspiracy took place. He was able to do

1 this because he had previously started another business, a
2 childcare business, called the Family Resources and
3 Childcare Center over in Hopkins. He sold it in 2018 and he
4 used the money to put towards Lafey Plaza. All of this
5 happened before anything close to what the government
6 alleges was fraud.

7 Now, you also heard the government make reference
8 to shell companies. Shell companies. The government calls
9 Said's businesses shell companies set up to launder fraud
10 proceeds. Well, the evidence will show that Bushra
11 Properties was formed, again, in 2014. It's a limited
12 liability company, LLC, that was formed for the sole purpose
13 of holding that rental property, not an uncommon practice.
14 It holds -- it holds an asset, an asset, the real estate.
15 That's not a shell company. Lafey Plaza was formed 2018 to
16 hold the commercial property on Lake Street, well before the
17 day of the alleged conspiracy. Not a shell company. It
18 holds an asset, the commercial building.

19 You heard the government talk about -- about
20 transfers and transactions that they think are suspicious,
21 suspicious, money between different entities in support of
22 their conspiracy and money laundering claims. Well, some of
23 you may be familiar with business transactions and business
24 entities like limited liability companies or S corps or C
25 corps or any of the corps. You may or may not. Or business

1 financing. The government claims that some of the financial
2 transactions in this case between entities are unusual and,
3 therefore, money laundering.

4 Well, during this trial you're going to learn
5 about how businesses operate in the tight-knit Somali
6 community. I will submit to you that finding something
7 unusual is a far cry from evidence, and suspicion is a far
8 cry from proof beyond a reasonable doubt.

9 But you will hear from an expert in this case, a
10 man named Paul Vaaler. Paul Vaaler is a law professor over
11 at the University of Minnesota. He's also a professor at
12 the prestigious Carlson School of Management over at the U.
13 He's a Rhodes Scholar, holds a degree from Harvard. And he
14 has extensively studied business, business transactions in
15 displaced communities, like the Somali community here.

16 And in the Somali community, as you will learn,
17 people informally lend each other money all of the time as
18 they are able. As Muslims they don't believe in interest,
19 so they do tend to avoid some of the traditional banks. But
20 also many don't have credit histories. They wouldn't be
21 able to secure that loan. But still have this burning
22 desire to be entrepreneurs and own business and participate
23 in that American dream. And so they crowd source. They
24 lend each other money. And it flows sort of, you know,
25 loosely between entities.

1 Now, one person you may have borrowed money from
2 five years ago tells you you need to pay it back to some
3 other person, because now the person who borrowed you, lent
4 you the money, they owe somebody else. Or maybe you have to
5 pay the cousin's sister of the person who lent you the
6 money, because they want to start a business. And that's
7 just the way it works, this kind of informal system that
8 goes back and forth among community members. It sounds
9 complicated. It might not be any more complicated than
10 trying to figure out who actually owns your mortgage or your
11 servicing your student loan. Right? We're just not used to
12 seeing it in this way.

13 But it's a real system, it's a real transaction.
14 Transactions in the community do not necessarily follow neat
15 structural lines, and it just might not make sense to
16 someone who is from the outside and isn't familiar. But
17 that doesn't make it a crime. It doesn't make it money
18 laundering. The court already told you what money
19 laundering is. Listen to her. She'll give you the
20 instructions.

21 And you heard her this morning say that money
22 laundering requires knowledge of the person that they're
23 actually conducting a transaction with illegal proceeds.
24 They have to know that. That's evidence that the government
25 must prove, not just that someone finds the transaction

1 suspicious or confusing. So.

2 But let's talk about Bushra Wholesalers. Bushra
3 Wholesalers was, the government claims, was also a shell
4 company. Well, what the evidence will show about Bushra
5 Wholesalers is that in 2020 Said became involved in his
6 brother's very successful wholesaling business and got
7 involved by using some money from other businesses that he
8 was able to put together from his brother as well to start
9 his own wholesaling business, kind of like what he saw with
10 his father, getting into the grocery business. You see
11 somebody who is successful, you want to emulate that. And
12 he was able to do that.

13 In 2021 Said registered Bushra Wholesalers. His
14 brother gave Said some wholesaling business to get the
15 business off the ground. Said rented a warehouse space, a
16 warehouse space. This is a brick and mortar building
17 located at 3004 Pillsbury Avenue South in Minneapolis, and
18 used that building as a distribution center. Said got a
19 contract to deliver food to the Somali Community
20 Resettlement Services, and from there Said's new wholesaling
21 business just took off.

22 And when food was needed, he got it. When it
23 needed to be shipped, he shipped it. When it needed to be
24 delivered, he had it delivered. He did it for himself --
25 sorry, he did it through his business, and he did it through

1 employees. And when a bill came in, he paid it. Whether
2 that bill was for food or transportation or services, the
3 wages, or to repay a debt, because, remember, this was a
4 reimbursement program. Said Farah had to go out of pocket
5 to get the food. So when he got a bill, he paid it, whether
6 it was for services or a debt. But in any event, food was
7 bought, it was stored, it was transported, it was delivered.
8 This was not a shell company. Shell companies don't have
9 warehouses, they don't have employees, and they don't have
10 food distribution operations.

11 You're going to hear testimony from one of Said's
12 employees, a man named Idriss Omar. He was primarily
13 responsible for coordinating things. As you heard, Said
14 Farah himself had a lot of different businesses going, and
15 Idriss was his faithful employee. He picked up food,
16 arranged to have it delivered to other sites. And when
17 doing this he occasionally took pictures that he would be
18 able to send back to confirm that the delivery had been
19 made, pictures of food in realtime. Text messages sent by
20 Idriss Omar in realtime discussing food deliveries to
21 different sites. He frequently contacted food suppliers,
22 even other employees. Idriss Omar's testimony will show
23 that Bushra Wholesalers was not a shell company.

24 Let's go back to the date of January 20, 2022, all
25 right, the date of the search warrant, the day when federal

1 agents came into Said's home in search of evidence of fraud
2 in a federal food program. The evidence will show that the
3 agents never searched here, the warehouse. It's about a
4 15-minute drive from Said's home. It's where Said kept the
5 food. He shipped it there, stored it there, ran operations
6 there. Ten federal agents at Said's home, but nobody looked
7 for evidence of food in the warehouse where the food was.
8 They didn't even have to go inside during the investigation.
9 If any of them had just even driven by the warehouse for
10 Bushra Wholesalers, they might have seen pallets of rice
11 like are stacked up here right outside Bushra warehouse,
12 right in broad daylight, openly. The evidence will show
13 that the signs of a food distribution operation were
14 obvious, open, but they weren't looking there.

15 Now, in addition to your job of evaluating the
16 credibility of an investigation that prioritizes searching
17 the bedroom closet of a nine-year-old for food fraud
18 evidence over searching the warehouse where the food was
19 kept, you're going to need to evaluate the credibility of
20 the government's witnesses.

21 I won't go through everyone on the list. You
22 heard some of them referenced as informants. I'll mention
23 that person's name. The name is Hadith Ahmed. And just as
24 an aside, you notice how quickly the government was to say,
25 And he's not our friend, he's not our friend. Never seen

1 anyone distance themselves so quickly from someone. He's
2 not our friend. He's not of the defendant Said Farah's
3 friend either, by the way, but he is the government's
4 witness. He is who they hitched their star to, Hadith
5 Ahmed.

6 So you will learn about Hadith Ahmed. Hadith
7 Ahmed worked at Feeding Our Future, a sponsor. Hadith
8 Ahmed, by his own admission, created fake meal sites and
9 submitted false claims to the government, a lot of false
10 claims, thousands of false claims. Every single one of
11 those false claims that he submitted was a lie. And the
12 reason Hadith Ahmed submitted those false claims and told
13 those lies was to get a benefit, because he wanted a
14 benefit. And that benefit was money. And the more lies
15 Hadith Ahmed told, the more money he would get.

16 And when he got caught, he simply took his
17 business model and shifted it. And he went from Feeding Our
18 Future to feeding our feds. And what he was feeding them
19 was additional claims, a different kind of claim, a claim
20 about people. Again, in hopes of receiving a benefit. And
21 the government, they gave him a deal, they gave him a deal.
22 He has not been charged with money laundering. He has not
23 been charged with bribery. He pleaded guilty to one count
24 in a plea bargain on reduced charges in exchange for claims
25 that he's making to the feds. And the evidence will show

1 that when he started talking about Said Farah, what he was
2 feeding them was fiction.

3 Hadith Ahmed will get here, will testify here in
4 court, and he will take that witness stand and he will admit
5 that he is hoping to get an even better deal, to get
6 consideration from the government, to get a favorable
7 sentencing recommendation for additional time off his
8 sentence. That's right, he is hoping that his deal gets
9 even better. And you're going to have to decide after
10 taking his motivations and his conduct into account, you're
11 going to have to decide for yourself whether or not his
12 testimony is worthy of belief, if it constitutes evidence
13 and proof beyond a reasonable doubt.

14 Now, ladies and gentlemen, you heard the
15 prosecution say that very little money was spent on food.
16 Became a little bit confusing. At first there was a little
17 bit of money spent on food, and then it's, well, you can
18 tell there's evidence they didn't spend any money on food
19 because they bought food and that's a cover story. In any
20 event, the evidence will speak for itself, and the evidence
21 will show that Said Farah spent a lot of money on food. And
22 that even some of the government's evidence is expected to
23 show this; but, of course, that's not the whole story. As
24 anyone in business would tell you, there's more to it than
25 just food.

1 He also hired employees who he paid. He had to
2 pay his overhead. He rented trucks. And, yes, some of the
3 money was used to buy things, some business, some personal.
4 Some of the business transactions looked unconventional,
5 but, again, this was a reimbursement program. And he had
6 bills to pay. He had to go out of pocket for food. He'd
7 have to replenish the funds, people who he owed money. But
8 as for personal expenses, Said Farah did not operate a
9 nonprofit business. This was a for-profit limited liability
10 company. It was a grocery wholesaler. He was allowed to
11 make a profit and to spend the profit as he deemed fit, just
12 like any other store owner does.

13 And his transactions, the transactions with Said,
14 they weren't between Said and the federal government or the
15 state government, the Department of Education, the
16 Department of Agriculture, anybody else. Those transactions
17 were between his customers and Said. Because, again, he was
18 not at the sites, he was not monitoring the sites, he was
19 not responsible for taking attendance, and he never
20 submitted one single claim, one single claim to the
21 government. Said Farah was in the food business. He was in
22 the grocery business. He just got food.

23 And the evidence will not show that Said knowingly
24 engaged in fraud or conducted a transaction with fraud
25 proceeds knowingly or that he bribed anyone. The evidence

1 in the government's case against Said is based simply on
2 suspicion, supposition and raw speculation, and that is just
3 not proof beyond a reasonable doubt. Even with the
4 testimony of a witness who has repeatedly lied and lied and
5 lied again to get benefits from the government to avoid
6 consequences for his own conduct at the expense of others.

7 Ladies and gentlemen, Said Farah, defendant
8 Number 5, stands before you presumed innocent. The
9 government will not meet its burden of proof on any of the
10 accusations that Said Farah knowingly participated in any
11 crime. But what the evidence will show is that Said Farah
12 was in the grocery business, and through his company he
13 bought, shipped, transported and delivered food.

14 And at the close of this case, I'll have an
15 opportunity to talk to you again, and I'm going to ask you
16 to find Said Farah, defendant Number 5, not guilty of all
17 counts.

18 Thank you.

19 THE COURT: Thank you, counsel.

20 Mr. Garvis.

21 MR. GARVIS: Your Honor, counsel, ladies and
22 gentlemen of the jury.

23 Again, my name is Andrew Garvis, and I represent
24 Abdiwahab Maalim Aftin, who is seated right there, and he is
25 innocent of these charges.

1 Now, obviously you've sat here all morning and
2 you're sitting here this afternoon and you're listening to
3 every single one of the defendant's lawyers and the
4 government give you what they think this case is about. And
5 as pointed out by Mr. Schleicher and the court, it's
6 important that you understand in this case that each and
7 every one of these defendants deserves individualized
8 attention.

9 The government's made an effort to throw out big
10 giant conspiracy allegations, including everybody in it, but
11 we're not individually just stepping up and arguing for
12 everybody sitting at the tables over here. It is the
13 United States of America versus Abdiwahab Maalim Aftin, and
14 I need you to understand that because the length of this
15 trial, it's going to require to you compartmentalize
16 specific evidence.

17 As you clearly can see, there are different roles
18 and different jobs that individuals were engaged in over
19 here. They weren't all part of the same thing. And there's
20 going to be times in this case, a lot of times potentially,
21 that I don't have questions for certain witnesses. It's not
22 because I'm not a lawyer and I don't like to hear myself
23 talk, because I do, but it's the reality that the evidence
24 that's going to come in might not have anything to do with
25 my client. There will be other times that I might not have

1 questions, but that's only because one of these great
2 lawyers over here has already thought of it and already
3 asked it. And you will thank me after the length of this
4 trial that I don't get up and ask it again.

5 Now, obviously the government gave you a version
6 of events. It's their version. And you know as you sit
7 here right now that neither of those nonprofits are sitting
8 over here, neither Feeding Our Future nor Partners in
9 Nutrition. These are all for-profit businesses.

10 Mr. Birrell gave you the list of sort of how it
11 came down from the Department of -- you know, the money, how
12 it came down and how vendors were used and so forth. And I
13 want you to keep in mind two things in this case, context
14 and conduct.

15 Now, the context is broken into two parts. One
16 aspect we've talked about repeatedly, and that's COVID-19
17 and what happened as of March 20th -- or March of 2020 or
18 what took place. This is something that we all understood
19 and understand, what took place during that time frame.
20 Government shut down, forced stay-at-home orders, businesses
21 being shut down, restrictions on travel, schools were shut
22 down, schools went to distance learning. And in particular,
23 this case, the food program.

24 Now, there's been discussions about what the
25 program was before. Don't bite into the red herring. What

1 happened as of when the pandemic hit and when the Department
2 of Agriculture passed the waivers, they eliminated certain
3 requirements. You heard from Mr. Sapone about some of those
4 already. Food no longer had to be in an educational
5 setting, it didn't have to be in a congregate setting,
6 individuals could pick up multiple meals, multiple packs,
7 and we could do it at sites, sites that the government says
8 seemed fishy but sites that were approved, as was explained
9 by Mr. Birrell, by the Minnesota Department of Education.
10 And, yes, they were apartment buildings; yes, they were
11 parking lots, because the idea was you drive in and you get
12 your stuff and you leave.

13 Now, the second context that I want you to
14 understand is what sort of Mr. Schleicher was just talking
15 about as it related to Dr. Vaaler and the aspect of business
16 that might be done in a migrant community. And you are
17 going to hear from Dr. Vaaler, and he is an expert as it
18 relates to actual business practices from East African
19 countries. And you're going to learn from him how aspects
20 of that religion of Islam that these individuals practice,
21 impacts it. Mr. Schleicher hit on a little bit of it. They
22 don't believe in aspects of interest. It's riba, R-I-B-A.
23 You're going to learn about it. They engage in hawala,
24 H-A-W-A-L-A, which is how they transfer money.

25 And the idea is that you're going to learn about

1 the fact that individuals, as often is in a migrant
2 community, do business together. They come here from
3 another country, as my client came from another country. He
4 came from Kenya. And, yes, there will be evidence that he
5 was sponsored when he came here by Mr. Abdiaziz and Said
6 Farah. And that they started -- they actually started
7 another business together. The entrepreneurial spirit will
8 be explained by these individuals of coming here and trying
9 to make something of your life, coming from somewhere that
10 isn't as prestigious and/or open as the United States. And
11 Dr. Vaaler is going to tell you about that. He's going to
12 give you testimony about this is nothing more than the same
13 immigrant experience that every one of us in our families
14 did when we came here. You come here, you start a business,
15 you start a family, you send -- and then you send money back
16 home. That's what it's about.

17 And it's this lens that I want you to look at this
18 case. The government wants you to look at it through their
19 lens, and we're going to give you a different lens. And
20 that is what the lens I want you to look at when we look at
21 the conduct.

22 Now, it has been expressed by just about every
23 single defendant on this side over here that they did
24 nothing but earnestly try to provide food during the
25 pandemic. No different for Mr. Aftin. He was part owner of

1 Bushra.

2 You heard from Mr. Schleicher about Bushra. It
3 was basically a grocery store. It was created by Said Farah
4 and Mr. Aftin to help coordinate the food distribution at
5 various sites.

6 Now, I mean, on paper it was obviously created by
7 them. As it turns out, the evidence is going to show that
8 actually my client was actually at home in Kenya visiting
9 his family when Bushra was actually created. And when he
10 came back to the United States, Bushra was up and running.
11 And he borrowed money and he invested in it.

12 There will be evidence that he had invested in
13 other businesses with Mr. Said Farah. You're going to hear
14 that he ran other businesses. You're going to hear that he
15 actually did other work at other businesses, at other
16 places.

17 As pointed out by Mr. Schleicher and others, food
18 was bought, food was then delivered and food was given.

19 Now, other individuals talked about search
20 warrants at their places. The government never executed a
21 search warrant on my client's one-bedroom apartment. They
22 didn't seize anything from him because he didn't buy
23 anything.

24 And you already found out that the government
25 never actually went to the actual physical location of where

1 the business was. I mean, the evidence is going to show
2 that Mr. Aftin did nothing more than help make sure that
3 product got, in essence, to trucks to certain locations.

4 And, yes, the government's going to present
5 evidence that money was sent overseas, but it was money
6 earned by Bushra. And we've heard all sorts of evidence so
7 far about concepts related to the law, about whether or not
8 there's fraud and money laundering and so forth. And the
9 court's going to give you those instructions at the end of
10 this case. But the reality is, if you -- if you do run a
11 business and you do make money at it, you get to do with it
12 what you want. And that's the reality.

13 Evidence is going to show that actually in
14 September of 2021 my client signed over Bushra completely to
15 Said Farah, and from that point forward he did nothing more
16 than just help coordinate delivery of food at certain sites.

17 Government's told you that they're going to
18 provide evidence to you that demonstrates that at certain
19 sites there, you know, food -- no food was there and, you
20 know, people don't remember seeing anything, neighbors and
21 so forth. Well, you're going to hear evidence in this case
22 from the defendants of actual people who actually got the
23 food at the sites. You're going to see videos. You're
24 going to see pictures that you already saw some of.
25 Throughout this entire interaction for my client, he

1 arguably did nothing but act in good faith in trying to make
2 sure that literally food was bought and delivered to where
3 he was supposed to do it. That's all he did.

4 There won't be any evidence that he knew of some
5 conspiracy and that he intentionally joined it. There won't
6 be any evidence that he somehow tried to conceal and launder
7 monies.

8 When all this evidence is in and you hear
9 everything -- and I need you to understand that you got to
10 hear the entire case, it's not just the government gets to
11 present their case and then everybody sits down. You need
12 to hear all of it, both -- all sides and take it all in and
13 then judge it as it relates to each and every defendant
14 individually. And when you do so, the only -- the only
15 verdict that you can come up with justly is that Mr. Aftin
16 is not guilty of these charges.

17 Thank you.

18 THE COURT: Mr. Goetz.

19 MR. GOETZ: Thank you, Your Honor.

20 Ladies and gentlemen, this is Mukhtar, Mukhtar
21 Shariff. And he's not guilty. He's not guilty because he
22 never defrauded anybody, he never bribed anyone, and he
23 never laundered any proceeds of any crime alone or as any
24 part of any conspiracy.

25 What he did is pursued a dream, and there is

1 nothing, nothing unlawful about that. His dream was to
2 build a cultural event center, a cultural campus, the
3 largest East African cultural campus of its kind in the
4 country. Minnesota, as you will hear, has the largest
5 Somali population in the United States. It is the heart of
6 the Somali diaspora. That cultural campus was going to be,
7 and in fact now is, a place where East African and Somali
8 community members can meet, celebrate life's most important
9 events and build togetherness.

10 That dream had and has a name, Afrique Hospitality
11 Group.

12 As much of a nefarious attribution the government
13 wants to attribute to that, this is a very real and a very
14 positive entity for that community. And you will see,
15 ladies and gentlemen, over the next few weeks, the time
16 period that we're going to be focusing on here, 2020, 2021,
17 a little bit into 2022. What Mukhtar did day in and day out
18 was try to build that dream into a reality. He worked and
19 worked and worked to bring that cultural campus into
20 fruition. And all the time he acted in good faith.

21 What he did is not a crime and he is not guilty.

22 Now, the government, the prosecution, has brought
23 a number of charges here against Mukhtar Shariff. There are
24 six counts against him in total. Wire fraud conspiracy and
25 then a substantive count of wire fraud, bribery conspiracy

1 and then one substantive count of bribery, money laundering
2 conspiracy and then one money laundering -- one substantive
3 count.

4 And as we heard from the court this morning,
5 Judge Brasel, all of these charges have parts and elements.
6 And the prosecution must convince you that each and every
7 element of the charge has been proven beyond all reasonable
8 doubt in order for you to find Mr. Shariff guilty of that
9 charge. And when we consider at the end of this case,
10 ladies and gentlemen, the evidence, that evidence, that
11 proof will not be there to any count, not one count against
12 Mr. Shariff.

13 Now, in a moment, I want to give you an overview
14 of what I expect some of the evidence will be that relates
15 to Mr. Shariff. But before I do that, at the beginning of
16 this case I want to also thank you for your service. This
17 is your duty. I understand this is not something you
18 necessarily wanted to do, but you've stepped up and you have
19 done your duty, and I ask that you continue to do the duty
20 for the next few weeks that we'll be here. And that is to
21 be vigilant, by vigilant in evaluating Mr. Shariff's case
22 and challenging the government's case.

23 Mr. Shariff is one of seven defendants, but
24 Mr. Shariff is entitled to be judged as an individual, as
25 are all the defendants. Now, the government, the

1 prosecutor, would lump everybody together, defendants,
2 defendants, defendants, but judge everybody as an
3 individual.

4 This is a long trial with a great deal of
5 evidence, but when you evaluate the evidence and sort it
6 out, look at Mr. Shariff as an individual and judge him as
7 an individual. And please, I ask each and every one of you
8 to wait, wait until you've heard all of the evidence before
9 you begin to make up your minds.

10 Now, next I want to tell you a little bit about
11 some of that evidence that relates to Mukhtar.

12 First, his background. It's important that you
13 get a sense of who these individuals are that the government
14 has accused of being these fraudsters, these mastermind
15 criminals.

16 Mr. Shariff is not from Minnesota. He, like many
17 of the defendants, was born in Africa. He is one of eight
18 children whose parents immigrated to the United States from
19 a refugee camp in Kenya. His parents came here with
20 nothing, little to no education and little to no assets.

21 Mr. Shariff's family, you will hear, grew up and
22 they settled initially on the East Coast, and then they
23 moved to the west coast.

24 And Mr. Shariff's parents worked hard to give
25 their kids a better life. Take the opportunity that this

1 country had given them, and through their children further
2 the lives of their family. And they had great success,
3 great success.

4 You will hear that Mr. Shariff's brothers went on
5 to -- all went on to advanced education, doctors and
6 engineers and teachers. With one exception, and that's
7 Mukhtar.

8 His gifts were in a different area. He was the
9 only one of the kids not to complete college, but what he
10 did have is an entrepreneurial gift, a gift to make things
11 happen. And he pursued that. He pursued that in Seattle.
12 He had a number of business ventures. He worked for a large
13 software company, tech firm, but he also had a lot of
14 business ventures on his own in Seattle. He had a
15 restaurant business, and he had a consulting business. He
16 had experience with digital media and branding, all in the
17 Seattle area.

18 And while there, he also started podcasts. He
19 would do podcasts specifically for the Somali East African
20 community that became very popular and gave him some renown
21 throughout the Somali community, throughout the country and
22 particularly here in Minnesota.

23 And his work as a consultant continued for the
24 Somali diaspora and even the Somali government, long before
25 he moved to Minnesota, before he met anyone who was later

1 involved in the food program.

2 Now, as I said, Minnesota is home to the largest
3 Somali population in the United States. And Mr. Shariff
4 also has family here. So when it came to trying to be part
5 of a bigger community, a bigger project, he moved to
6 Minnesota to be part of that community in October of 2020,
7 which we all know was in the middle of the pandemic. He
8 wanted to be part of something bigger, a project, to build
9 the largest cultural event center, cultural campus for the
10 Somali diaspora in the United States.

11 He was devoted and is devoted not only to his
12 community but also to his faith. And he found a spiritual
13 home at the Dar Al-Farooq mosque. That's in Bloomington,
14 Minnesota, and I'll talk more about that.

15 The Dar Al-Farooq mosque has been at its present
16 location on Park Avenue since about 2014. And one thing to
17 understand about the Dar Al-Farooq mosque is it's a very --
18 it's one of the largest, if not the largest, mosque in the
19 state.

20 Its congregants come from all over the Twin
21 Cities, all over, not just Bloomington. Some of you may be
22 familiar with, for example, the Basilica of Saint Mary
23 that's down on Hennepin Avenue or Mount Olivet Church, a
24 Lutheran church down on 50th. These are churches that draw
25 not just from their community right around where their

1 physical building is but from all over the Twin Cities.
2 That Basilica parish draws in folks from all over, and
3 that's what Dar Al-Farooq is.

4 So what the government will try to say, well, you
5 got to look at the people of Bloomington and the kids in the
6 Bloomington School District. That is a false comparison.
7 It is a false and misleading comparison.

8 Mr. Shariff, though he was relatively young, 29
9 when he moved to Minnesota, as I indicated, he had some
10 notoriety and positive renown within the Somali community.
11 So he was looked on with respect and became very involved
12 with that mosque and the community there, very respected
13 member of that congregation.

14 And it was there working with people at the mosque
15 that he met some older men, older Somali men that he looked
16 up to. Men with an advanced degrees, PhDs, men of
17 accomplishment. And they shared the idea of a Somali
18 cultural campus, an event space, a people where -- a place
19 where people from the Somali East African community could
20 gather. There would be a cafe, like a Starbucks or Chipolte
21 or something like that, but it's focusing on Somali food and
22 Somali cultural products. There would be an event space
23 where people could have weddings, meetings, these important
24 events. And this would all be in one place.

25 And they recruited Mukhtar Shariff to help bring

1 that plan, that idea, into a reality. And that's exactly
2 what he did. It became his dream, it became his focus.

3 Afrique Hospitality Group is absolutely,
4 positively not a shell company. This is very real. It
5 started to come together as a concept, you will hear, in
6 about December of 2020. By January of 2021 Afrique had
7 investors and the corporation was formed. Some of the
8 investors, you will hear, had involvement to varying degrees
9 in the food program, but not all. And that's important.

10 The government's going to try -- well, Afrique, it
11 was just a shell to dump all this food program money into
12 it, but that's not the way it was. From the beginning a
13 substantial amount of money that was invested into Afrique
14 to bring it into reality was not food -- food program money.

15 The mission of Afrique Hospitality Group, the
16 dream of Afrique Hospitality Group, has nothing to do with
17 the food program.

18 Back in January 2021, that dream was still a long
19 way from becoming a reality. So just think about it, ladies
20 and gentlemen. You have an idea, right? We're going to
21 build this cultural campus. What would you have to do?

22 Well, the first thing that Mr. Shariff had to do
23 was find a space. Where are we going to have this place?
24 And they found that space at 1701 American Boulevard in
25 Bloomington, not far from the Mall of America. It had the

1 square footage that they needed, but it was rough space. It
2 required a lot of work to build it out to the place that
3 they wanted it to be.

4 And you will hear about all the work that Mukhtar
5 Shariff did to make that happen. First, you got this rough
6 space, what do you do? You got to hire an architect to
7 bring that vision into at least a blueprint, a drawing.
8 Hire an architect, hire a design team, work with the
9 landlord to get credits. If any of you have ever been in
10 commercial property or done any kind of build-out, the
11 landlords will put in money, and that's what happened here,
12 to make that space useable and rentable. Hire a contractor.
13 That's exactly what Mr. Shariff did. Work with the title
14 company to make disbursements as the project progressed.
15 That's what happened. Hire a prominent Twin Cities law firm
16 to work with the City of Bloomington to actually change the
17 zoning and licensing requirements so you can make your
18 cultural campus a reality. And in fact, you will hear that
19 that firm, Larkin Hoffman down in Bloomington, was
20 successful in creating a new zoning code in the City of
21 Bloomington cultural campus.

22 Does that sound like a shell company?

23 You will hear evidence that the Afrique
24 Hospitality Group project was absolutely real, very real.
25 And in fact it is up and running at this time, right now,

1 under the name Zawadi Restaurant and Event Center at that
2 address, 1701 American Boulevard.

3 Now, if any of you have ever built a home or done
4 a major remodel, you will know on a small level the kind of
5 work that's involved, and that's exactly what Mukhtar
6 Shariff has been doing or did over the course of time that
7 we're talking about here. That was his focus. That was
8 Afrique's focus.

9 So why is he here? Because Afrique Hospitality
10 Group, while it had this space, a proposal was made to it.
11 Well, you have this space, why don't you help us with the
12 food program. You can help with some of the logistics, the
13 distribution. You've got the space, you've got the
14 logistics, because there's going to be a cafe. That's how
15 Mr. Shariff and Afrique became involved in the food program.
16 It is by no means the focus of Afrique. It was always
17 something on the side to earn money, to generate revenue, to
18 use that dead space, if you will, until the event center
19 came up and running.

20 So Mr. Shariff's involvement in the food program
21 was largely the logistics. Get the food from major
22 wholesalers, get volunteers and staff to assemble that food
23 according to the menus that he was given, how much rice, how
24 much fruits and vegetables, and then assemble that food into
25 bags, multiple meal bags to be distributed as part of the

1 food program primarily at the mosque, the Dar Al-Farooq
2 site. And I'll talk more about that site in particular in a
3 second.

4 But you will hear, ladies and gentlemen, and you
5 will see that Mukhtar Shariff through Afrique Hospitality
6 Group delivered real food to real people for very large
7 numbers of meals, thousands and thousands and thousands of
8 meals.

9 Afrique Hospitality Group, you will hear, on its
10 own purchased at least nearly \$1 million worth of food from
11 one major vendor, Sysco Corporation, S-Y-S-C-O. There's
12 been mention of Sysco already, and you all might be familiar
13 with that company. Their trucks are all over the place, on
14 the freeways, on the highways, on the streets. They're all
15 over the country.

16 Mukhtar Shariff through Afrique purchased food
17 from Sysco from the later part of January 2021 through
18 early -- or early February 2021, up through the end of that
19 year, actually over into 2022. But nearly \$1 million worth
20 of food, if not more.

21 Together with the food that Afrique purchased from
22 other vendors, because Sysco wasn't the only vendor that
23 they purchased food from, the staff at Afrique would put
24 together meal packs consisting of dry goods and milk that
25 were assembled and then distributed.

1 And there's been comment about this in a -- I'll
2 emphasize it. There's this word "bundling," "bundled," and
3 this was permissible under the waivers that you've heard in
4 2021 at the time that Mr. Shariff was involved with this.
5 We're not talking about precooked meals in the case of
6 Afrique. We're talking about ingredients for ultimate meals
7 that are put in a bag, seven days worth of food in a bag.
8 Meals for multiple people for the entire week were in a
9 single bag. And this was absolutely permissible under USDA
10 waivers.

11 Now, the prosecution this morning stood in front
12 of you, said this is all just for an appearance of
13 legitimacy, a pallet of rice here, gallons of milk there,
14 all to pull the wool over your eyes. That's what they said.
15 And think about that, ladies and gentlemen. They want you
16 to believe that Mukhtar Shariff in February of 2021 was
17 buying all this food and assembling all these bags and
18 taking photographs, because, well, maybe three years from
19 now I'll be in front of a jury and I'll have to pull the
20 wool over their eyes. That's ridiculous.

21 Use your common sense. This will be demonstrably
22 false. There were thousands and thousands and thousands of
23 meals produced by Mukhtar Shariff and Afrique alone.

24 But his involvement in the food program was more
25 than logistics. Mostly logistics, but he did on four

1 occasions send meal claims to an email address that he was
2 given. You don't have to write this down, but it's
3 claims@feedingourfutureMN.com. That's how it worked. The
4 claims would be submitted, as Mr. Birrell indicated, very,
5 very clearly to the sponsor, that would then do their
6 verification, do their due diligence and then pass those on
7 to the USDA.

8 So Mr. -- or, I'm sorry, to the MDE.

9 Mr. Shariff sent four emails August 4, 2021,
10 September 14, 2021, there's a follow-up September 15, 2021,
11 and October 21 of 2021. He was given information to pass on
12 to Feeding Our Future, and that's what he did.

13 He had absolutely no reason to believe that the
14 information he provided about the meals claimed related to
15 the Dar Al-Farooq site were false. And the evidence will
16 show, ladies and gentlemen, that those claims were not
17 fraudulent.

18 This brings me to the Dar Al-Farooq site. I want
19 to talk about that a little bit. One thing that's important
20 to understand is there's one site but two locations. The
21 Dar Al-Farooq site consisted of food distribution at the
22 mosque itself and also food distribution at a middle school
23 not far away, also in Bloomington. The food would be
24 distributed on Saturdays. And remember, I talked about the
25 meal bags.

1 The Oak Grove middle school would be in the
2 morning, and then when the meal bags were distributed there,
3 they moved to the mosque and distribute late morning, early
4 afternoon. And that food was distributed week after week
5 after week, month after month after month, during the entire
6 period that the government claims there was some big fraud,
7 food fraud conspiracy.

8 3,500 meals. The numbers vary a little bit. You
9 saw them flash through pretty quickly on Mr. Ebert's
10 presentation this morning, but there were about 3,500 meals
11 every day. But think about it, why is that number so
12 consistent, 3,500 meals every day? Well, because the bags
13 were given out once a week. And if you have seven days
14 worth of meals in a bag, that number is going to be the same
15 when it comes to submitting the claim.

16 Another important thing that we'll learn about
17 Dar Al-Farooq site, when you get to that 3,500 number, you
18 will see that that number is less than the number approved
19 for that site by the Minnesota Department of Education.

20 There will be witnesses from the Dar Al-Farooq
21 site who will tell you what was happening there, different
22 witnesses from different aspects of the mosque who were
23 there at different times, but they will tell you the
24 reality. The government, I expect, is going to present a
25 different type of witness with respect to the Dar Al-Farooq

1 site.

2 Last week we talked about implicit bias, if you
3 remember that. And the reality in our country is that
4 people have biases and feelings to various degrees. Some
5 people are outright prejudice. That's a reality.

6 And you will hear that there are a group of
7 witnesses, neighbors, people who live in the area of that
8 mosque, who have been openly hostile to that mosque since it
9 took over from I think it was a Lutheran school before that.
10 Since 2014 to varying degrees they have been openly hostile
11 to having that immigrant community, that Muslim community in
12 their neighborhood, to the point where -- well, we'll save
13 that for the trial. But you will see, ladies and gentlemen,
14 that those neighbors who claim -- I don't know exactly what
15 they're going to say. There are no meals, there were some
16 meals or whatever they're going to say, is not going to give
17 you a false accurate picture. They're biased, and they've
18 been against the mosque from the start. And anything they
19 can do to taint that mosque, to go after that mosque, that's
20 what they're going to try to do.

21 Another group of witnesses that you will hear
22 from, and the government alluded to this and there have been
23 some talk about that, is witnesses from the Minnesota
24 Department of Education. And I ask you to carefully
25 consider their testimony. I suspect what you will see when

1 you listen to them and you consider the totality of what
2 they've got to say, there's bias, they're bitter and there's
3 blame shifting.

4 A prime example I think is the first witness we
5 may hear from in this case, a woman by the name of Emily
6 Honer. I think she'll be up there, if not later today,
7 tomorrow.

8 She and other MDE witnesses will likely try to
9 paint a picture of the MDE as a government agency with
10 strict and clear rules that were clearly communicated to
11 those under its jurisdiction. The reality, ladies and
12 gentlemen, of what was happening with the MDE and this
13 entire food program through the years 2020, 2021 is anything
14 but. The MDE and those under its jurisdiction related to
15 the food program was a wash in confusion, lack of
16 communication, lack of clear communication and conflict
17 during the pandemic.

18 There was confusion and conflict with MDE, within
19 MDE, about how to carry out its core mission for the food
20 program and for communicating the rules and regulations to
21 the sponsors and then give guidance to and monitor the
22 compliance of the sites.

23 There was confusion and conflict within the
24 sponsors whose job it was to communicate these very same
25 rules and regulations that they received from MDE to the

1 sites and the vendors and give them guidance to monitor --
2 give them guidance in terms of how to monitor the sites
3 under their sponsorship.

4 And there was conflict between MDE and the
5 sponsors themselves, conflict all the way to a lawsuit that
6 only added to the complete break down of communication and
7 guidance.

8 What's the result of all of this lack of
9 communication, lack of guidance and confusion? The people
10 at the bottom of this food program distribution pyramid,
11 people like Mukhtar Shariff, they were tasked with actually
12 getting the food to the children and families, could only do
13 the best they reasonably could to distribute the food and
14 seek reimbursement as they understood the rules to be.

15 And if you're awash in confusion and there's no
16 guidance coming from MDE, and the buck stops with them when
17 it comes to guidance and training, they're the agency
18 responsible, and if they don't make sure the word gets down
19 to the people who are supposed to do the distribution, how
20 can you blame the folks now, well, they didn't do everything
21 according to how it should be. Any discrepancy between how
22 the MDE witnesses, including Ms. Horner, may tell you things
23 should have been done and how they actually were done is in
24 no way evidence of fraud but is simply indicative of the
25 extent to that this whole thing was awash in confusion from

1 the beginning.

2 And you will see, ladies and gentlemen, talking
3 about some paper evidence now, document evidence, you will
4 see that there are sales and money transfers between
5 entities and individuals in this case, including Mukhtar
6 Shariff. And there's, you will see, bank records and other
7 kinds of documents. And there's no dispute that transfers
8 in some instances and the billing records in some instances
9 were not buttoned down to the extent that in other business
10 practices, other cultural business practices, you might want
11 them to be. And Mr. Ebert said, well, look at this, look at
12 this invoice. It doesn't have any kind of detail on it.
13 But that is not evidence of fraud or money laundering.

14 In order to understand the acts and the conducts
15 of Mukhtar Shariff in this case, including the financial
16 transactions, you have to place them in the cultural
17 conduct, context in which they occurred. You can't take the
18 conduct out of that cultural context. And the culture of
19 people from East Africa, Somalia, is very different than
20 here in Minnesota and the United States. Even if you grew
21 up in this country.

22 Now, there have been discussion before about
23 Dr. Paul Vaalar. Other people have said Vaaler, I think he
24 pronounces it Vaalar. But Dr. Vaaler is someone that many
25 of you may have heard of. He was on WCCO radio for some

1 years ago and when Dave Lee was the morning presenter.
2 Dr. Vaaler is from Minnesota. He grew up in the Twin City
3 area and graduated from Carleton College down in Northfield,
4 Minnesota. From there he went to Oxford University in
5 England on a Rhodes Scholarship. From there he went to
6 Harvard Law School. And after practicing for a short time
7 as a lawyer in the Twin Cities, realized that his interest
8 was in academia and some of these intellectual pursuits.
9 And his focus for many years has been on East African
10 business practices.

11 He is on the faculty of the law school at the
12 University of Minnesota and the Carlson School of Business.
13 And how business practices in East Africa are different from
14 those in the United States is something that Dr. Vaaler is
15 an expert in, and he will tell us about it.

16 You will hear that many in the Somalia diaspora,
17 things they do, practices that they have, may appear to be
18 irregular to different cultures. They're legitimate,
19 accepted and common for East African immigrants.

20 As a culture, that diaspora prefers what's called
21 transactional informality, and you will hear about that.
22 But if you think of the invoices that the government flashed
23 up, oh, where are the details, put that in the context of
24 this transactional informality. Business transactions, the
25 reality is, may be simply, and are, less well documented

1 compared to transactions from those outside that community.

2 Another thing that Dr. Vaaler with will tell us
3 about is how people in the Somalia diaspora where in the
4 United States have to straddle both cultures. So -- and
5 this case is a prime example of how that can lead to
6 confusion, misperception, labeling things as fraud when
7 they're not. Because on the one hand you have to try to
8 adopt to the regulations that are imposed by an American
9 system. The United States Government down to the Minnesota
10 Department of Education and the requirements that they have.
11 But on the other hand, the people who are getting the food,
12 the people who are in need, the people who are doing the
13 distribution, are in an entirely different culture. And
14 that straddling of the two cultures, the two business
15 cultures, is at the heart of this case.

16 Another thing Dr. Vaalar will tell us that's very
17 important to understand is that when people come to the
18 United States as immigrants, you have limited -- you have
19 limited options. You don't have the same options for those
20 of us who are born here. Migrants on the whole start
21 businesses in the host countries at significantly higher
22 rates than native born residents. That's the reality. You
23 have to make your own way.

24 So when the government says, well, look at all
25 these companies, they made this company, they set up that

1 company, that's how you make it. It is not unusual at all
2 for a business formed for one purpose to actually be used
3 for another. Business accounts may be used as conduits for
4 money that are not strictly tied to the purpose of that
5 company. These are all things that you will hear about,
6 will know about, and that's the truth of the reality that
7 Mukhtar Shariff and these other men, the other men were
8 working in.

9 Another important thing to understand is these
10 business transactions and relationships are based on trust
11 and kinships, not documents and receipts. If I know you, if
12 I trust you, I will help you work and I will work with you.
13 You need something from me, you need some help for your
14 business, I will help you. And that's based on you giving
15 your word and your trust.

16 And a case in point is what the government claims
17 to be a \$250,000 bribe from Mukhtar Shariff to Ikram
18 Mohamed. You remember that whopper of a check that the
19 government showed us this morning, the 250,000, quarter
20 million I think Mr. Ebert said? That was June of 2021.
21 That was not a bribe. You will hear, ladies and gentlemen,
22 that's not any kind of kickback in a pay-to-play scheme.
23 That was Mr. Shariff giving Ikram Mohamed, a person from the
24 same culture, an opportunity, a loan. He knew that Ikram
25 Mohamed needed help with a business venture of starting

1 childcare, a childcare center, an indoor playground, both at
2 Afrique as part of that cultural campus and elsewhere.

3 He was helping her with that -- Afrique, as an
4 entity, was helping her with that opportunity. A simple
5 contract was prepared. This was an investment in a project.
6 If the project did not happen, the money needs to be paid
7 back. But otherwise it was a way for Afrique to invest in
8 this childcare that was going to be part of that center.

9 And as other people have mentioned, charging
10 interest is haram, H-A-R-A-M. It's forbidden in the Islamic
11 culture. So you can't, like, invest in a 5.2 percent CD or
12 anything like that, that's forbidden. So how you -- if
13 you're going to earn money, if you're going to make money,
14 you invest in people, you invest in their projects, and
15 that's what happened with that \$250,000 check. It's not a
16 bribe.

17 So, ladies and gentlemen, I appreciate your time
18 today listening to all of these statements. I know it has
19 been a long day. But I'd ask that you remember this:
20 Mukhtar Shariff is not involved in any fraud, he's not
21 involved in any bribery, and he's not involved in any money
22 laundering.

23 So when we're done with this case, when we've
24 heard all the evidence, our team, Andrew Mohring, Kaitlyn
25 Falk, our team will come back and ask that you find Mukhtar

1 Shariff not guilty of all charges against him.

2 Thank you.

3 THE COURT: Mr. Brandt, you do not wish to make an
4 opening at this time; is that correct?

5 MR. BRANDT: Thank you, Your Honor. On behalf of
6 Ms. Hayat Nur, my co-counsel Nicole Kettwick and I will
7 reserve our opening.

8 THE COURT: Thank you.

9 We're going to take an afternoon break. We will
10 return at 3:30.

11 THE CLERK: All rise.

12 **IN OPEN COURT**

13 **(JURY NOT PRESENT)**

14 THE COURT: Mr. Birrell.

15 We're out of the presence of the hearing.

16 Mr. Birrell wants to raise an issue. I presume it has to do
17 with this next witness.

18 MR. IAN BIRRELL: It does, Your Honor. It relates
19 to our previous motion in limine about excluding expert
20 testimony from lay witnesses, as none was disclosed.

21 We were reviewing the trial prep 302 disclosed for
22 this witness, which came in last week. And it appears to us
23 as though there's a mix of expert and lay testimony within
24 that, and I wanted to raise this issue for the court before
25 the jury got involved and kind of give the court the heads

1 up of how we see this issue.

2 So this next witness, who is the -- my
3 understanding is the director of nutrition program services
4 at MDE, brought in some opinions about the intricacies of
5 the Federal Child Nutrition Program regulations, such as
6 that funds from the program could not be used for
7 construction or building purposes. They had to come from
8 the general funds of the organization, not from meal program
9 funds. And all programs have to have sequestered
10 educational operating accounts and funding that pays for
11 those expenses. That sponsors in their sites can decide to
12 contract with the vendor, but there are strict regulations
13 related to the contracts that can be entered and how they
14 are procured. The contracts are like government contracts
15 that need to be bid on. And she talked about some, I'll
16 say, research projects that she conducted, pulling up
17 information relating to census data, comparing them to the
18 total universe of billings and some discussion about the
19 business environment during COVID. So how there were supply
20 chain issues that other companies couldn't meet. Large
21 established companies that provided food and understood the
22 regulations at issue, source and the appropriate menu,
23 ingredients and items.

24 And in particular, I think the intricacies of the
25 Federal Child Nutrition Program regulations are expert

1 testimony under Rule 701, which says that nonexpert
2 witnesses may not present opinions based on scientific,
3 technical or other specialized knowledge.

4 The commentary to Rule 701 seems to contemplate
5 situations just like this. It talks about how the intent of
6 the rule is to eliminate that the reliability requirements
7 and disclosure requirements in Rule 702 will be evaded
8 through the simple expedient of proffering the expert and
9 lay witness testimony. It incorporates *State v Brown*, which
10 is a Tennessee Supreme Court case, 836 S.W.2nd 530, which
11 says that results from a process of reasoning familiar and
12 everyday life is lay testimony. Expert testimony results
13 from process of reasoning which can be mastered only by
14 specialists in the field. And they give an example of,
15 "that liquid appears to be blood" versus -- which is lay
16 testimony, versus "bruising around the eyes is indicative of
17 skull trauma."

18 And there are a couple cases that elucidate this.
19 I think the most helpful is *U.S. v Vega*, which is V-E-G-A, a
20 First Circuit case, 2016. The cite is 813 F.3d 386. And in
21 there the First Circuit says -- it ultimately says it's
22 harmless error, but two witnesses improperly provided expert
23 testimony without prior qualification. One was a U.S.
24 secret service agent, the other was a manager at the U.S.
25 Department of Health and Human Services who talked about

1 what Medicare laws and regulations allowed and forbade. And
2 the First Circuit there said, expert testimony, where the
3 witness could form their opinion only by understanding
4 technical Medicare laws and regulations and acquiring
5 knowledge through their occupation, does not convert that
6 into personal knowledge, qualifying as lay expertise under
7 Rule 702.

8 And the parallels there seem pretty strong to me.
9 A manager at the U.S. Department of Health and Human
10 Services talking about Medicare laws and what that forbid
11 versus a manager at the U.S. -- or at the Minnesota
12 Department of Education talking about the Federal Child
13 Nutrition Program and what it forbade.

14 This testimony that -- well, some of the testimony
15 she -- I should say, some of the information in her 302, I
16 don't know whether the government plans to elicit this or
17 not, seems to me not "this liquid appears to be blood," or
18 in the context of our earlier discussions in the pretrial
19 proceedings, "it's like adding up numbers in a chart for
20 financial expert," but real, specialized knowledge that she
21 acquired through her job.

22 And it seems more dangerous to me for her in
23 particular because she's -- she's cloaked as an expert, she
24 presents herself with a lot of knowledge, she's a manager at
25 the Minnesota Department of Education. She's given

1 statements to -- representing MDE on appeal panels. And it
2 seems to be expert testimony, and I'm worried that it would
3 seem to the jury to be expert testimony. So I just wanted
4 to apprise the court of that.

5 THE COURT: Counsel for the government?

6 Mr. Thompson.

7 MR. THOMPSON: Thank you, Your Honor.

8 As the court and everyone here is about to hear,
9 Emily Honer was all too involved in the facts of this case.
10 She was an MDE employee who was the supervisor of this
11 program. She was one of the people who early on saw red
12 flags. She was one of the people that received the request
13 for entities like Empire to run for-profit distribution
14 sites. She was involved in the decision in October of 2020
15 to halt that program and to declare that only nonprofits
16 could be involved in the program. And then she was involved
17 in seeing that how entities like Empire then pivoted to
18 become vendors supporting nonprofits like ThinkTechAct and
19 Mind Foundry as they opened dozens and dozens of sites all
20 around the State of Minnesota.

21 Emily Honer tried to stop. She saw the fraud.
22 She -- what she perceived as fraud, red flags. She will
23 talk about what she saw, the implementation of the COVID
24 waivers by her and her colleagues at MDE, which is facts of
25 what she did during this case. She will talk about the

1 claims that they received and how they dealt with them, her
2 and her colleagues at MDE. She will talk about the steps
3 they took to scrutinize them and to slow the perceived
4 fraud.

5 She will talk about the stop pay that MDE
6 implemented in the spring of 2021 saying that -- that
7 sites -- well, in the past there's been a program where you
8 submit your claims and the sponsor has to keep the
9 supporting documentation, meal counts, rosters, invoices.
10 That starting in the spring they said you have to submit
11 those upfront or we won't pay you off.

12 And she was involved in the litigation. In fact,
13 she was deposed. She was so involved by the -- in this that
14 she was deposed by Feeding Our Future in its lawsuit against
15 the Department of Education.

16 She's not called as a witness to pontificate about
17 the Federal Child Nutrition Program. She's called as a
18 witness to talk about what happened in Minnesota during
19 COVID and the fraud scheme that's charged in this case. And
20 I can cite case law if Your Honor wants about how that sort
21 of thing is not testimony. And I have a First Circuit case,
22 *United States versus Muñoz-Franco*, 487 F.3d 25, it's a 2007
23 case, about under 701 courts have allowed lay witnesses to
24 express opinions about a business based on the witness's own
25 perceptions and knowledge and participation in the

1 day-to-day affairs of the business, and there's a bunch of
2 cites, cased cited for that proposition.

3 Here, Your Honor, certainly MDE -- she worked for
4 MDE. She was the person that conducts audits and reviews
5 the claims under this program. When she saw things, and she
6 talks about the claims she saw, the problems she saw with
7 them and what she tried to do, that's -- that's fact
8 testimony here, Your Honor. And the fact that she has
9 knowledge doesn't make her someone -- doesn't make her an
10 expert, no more so than if a stockbroker tested -- testified
11 in an insider trading case, that he would suddenly be an
12 expert.

13 THE COURT: What about testifying as to badges of
14 fraud? So her testimony is presumably going to say this is
15 what I saw, I believed it was wrong under the regulations,
16 which then requires some interpretation maybe of the
17 regulation. I think that's what I'm hearing. And how do
18 you categorize that?

19 MR. THOMPSON: I think she's going to testify what
20 she saw at the time and what she did. And she'll talk about
21 the COVID waivers that she -- she personally and her
22 colleagues implemented these COVID waivers, and she'll talk
23 about what the programs were and what the requirements were
24 generally, how they worked, which is fact. She was very
25 involved in this on a day-to-day basis as an employee at

1 MDE. And then during COVID with the changes in the world,
2 the waivers that they implemented coming down from USDA.
3 And then she'll go on to talk about what claims that she
4 saw, and in realtime, to the extent she had concerns, what
5 those were and what she and her colleagues did, which is
6 what triggered a bunch of litigation that ultimately led MDE
7 to call the FBI and report suspicions of fraud.

8 THE COURT: All right.

9 Thank you for the background.

10 I will take each objection as it comes, which I
11 think is what you anticipated, and we will start at 3:45.

12 We're going to go to 4:30 today. I've got a civil
13 motion hearing that I need to hear. I'm going to hear that
14 at 4:30. So I'll tell them not to disturb the things on
15 your table, but try to clean up your table the best that you
16 can for those folks.

17 Thank you. We're in recess. 3:45 everyone.

18 THE CLERK: All rise.

19 (Recess taken 3:25 p.m. till 3:44 p.m.)

20
21 **IN OPEN COURT**

22 **(JURY PRESENT)**

23 THE COURT: You may all be seated.

24 The government may call its first witness.

25 MR. THOMPSON: Thank you, Your Honor. The

1 government calls Emily Honer.

2 THE COURT: I'm going to have you come all the way
3 up to the witness stand here. And I'll have you remain
4 standing to take the oath.

5 EMILY HONER,
6 called on behalf of the government, was duly sworn, was
7 examined and testified as follows:

8 THE WITNESS: Yes.

9 THE COURT: Thank you. You may be seated.
10 And I'll have you speak directly into that
11 microphone there. Could you please state and spell both
12 your first and last name for the record?

13 THE WITNESS: My name is Emily Honer. First name
14 E-M-I-L-Y. Last name H-O-N-E-R.

15 THE COURT: You may proceed, Mr. Thompson.

16 MR. THOMPSON: Thank you, Your Honor.

17 DIRECT EXAMINATION

18 BY MR. THOMPSON:

19 Q. Good afternoon, Ms. Honer.

20 A. Good afternoon.

21 Q. How are you?

22 A. I am good.

23 Q. I'm going to start up with the basics. Where are you
24 from?

25 A. So I am originally from Wisconsin in a small town way up

1 north by Lake Superior.

2 Q. And what town?

3 A. It was or is Port Wing, Wisconsin.

4 Q. Okay. Can you tell us about your educational
5 background?

6 A. Sure. So after graduating high school I went on to the
7 University of Wisconsin-Stout, and I graduated with my
8 bachelor's in service management, a minor in human
9 development and family studies and a specialization in
10 gerontology. Then later on in my career I went on to get my
11 MBA, master's of business administration, from Southern New
12 Hampshire University.

13 Q. Ms. Honer, after you graduated from University of
14 Wisconsin-Stout in 2011, what did you did for work?

15 A. Sure. After graduation I moved back to Port Wing,
16 Wisconsin, and I began working for the Bayfield County
17 Department of Human Services.

18 Q. What did you do for Bayfield County?

19 A. I was a coordinator for their aging and disability
20 services section, so I was a specialist in those services.

21 Q. What kind of services?

22 A. So the services, there was a couple different sections.
23 One was, the main section, was the long-term care waiver
24 program. So I helped to enroll elderly adults and adults
25 with disabilities in both physical and developmental into

1 the long-term care program.

2 And then I also coordinated a number of
3 county-specific programs, including the home delivery meal
4 program and the congregate dining program.

5 Q. That was up in Bayfield, Wisconsin?

6 A. Bayfield County. So I coordinated those services for
7 the whole county.

8 Q. And did you have some other jobs earlier in your career
9 in Wisconsin?

10 A. I did. So I also had always kept in the restaurant and
11 bar industry, and I still do to this day. But after I left
12 Bayfield County Department of Human Services, I then went to
13 the Bad River Tribe, so the reservation there. And I worked
14 in the health and wellness center where we operated not only
15 the clinic but also we operated like a health department.

16 Q. And where is the Bad River Tribe?

17 A. The Bad River Tribe is in Odanah, Wisconsin, but most
18 commonly known is next to Ashland, Wisconsin.

19 Q. And what did you do up there?

20 A. So I was the assistant clinic administrator for the Bad
21 River Tribe. Again, our health and wellness center, we
22 operated both clinic services and as a health department.

23 Q. Okay. At some point did you move to Minnesota?

24 A. I did. I moved to Minnesota in 2017.

25 Q. Why did you move to Minnesota?

1 A. I moved to Minnesota for my husband.

2 Q. Okay. When you moved to Minnesota, what did you do for
3 a living?

4 A. So when I moved to Minnesota in 2017, I took a job with
5 an assisted-care living facility, and it's a corporation
6 based out of the Twin Cities here.

7 Q. And what did you did for them?

8 A. For them I was the business operations manager for their
9 Oakdale location, but I also served as the business
10 operations manager interim for their Rochester and
11 White Bear Lake locations.

12 Q. At some point did you get a job with the Minnesota
13 Department of Education?

14 A. I did. In May of 2019 I started with the Minnesota
15 Department of Education.

16 Q. And let's start at the top. What is the Minnesota
17 Department of Education?

18 A. Sure. So the Minnesota Department of Education is a
19 state agency here in Minnesota and tasked with providing
20 high quality education to all of the students in Minnesota.

21 Q. And what's the scope of the Department of Education's
22 responsibilities?

23 A. So there's multiple different divisions out of the
24 Department of Education, including, you know, providing the
25 educational oversight to schools in Minnesota, but also we

1 oversee, you know, programs such as special education,
2 charter, workforce development and, of course, nutrition
3 program services.

4 Q. Okay. And which part of the Department of Education --
5 or MDE, is that what people call it?

6 A. MDE, yes.

7 Q. What part of MDE did you work in?

8 A. So in May of 2019 I started with nutrition program
9 services, and I've remained in that division ever since.

10 Q. Okay. What was your job title when you were hired in
11 May of 2019?

12 A. So I was hired on as the business operations and support
13 services supervisor.

14 Q. What did you do as the business operations and support
15 services supervisor?

16 A. So that position at that time worked to oversee the
17 applications, the claims, the internal financial operations
18 and the external financial operations for our entire
19 division. And our division operates or administers the
20 United States Department of Agriculture child nutrition
21 programs.

22 Q. All right. So let's start with that program. What is
23 the USDA's Federal Child Nutrition Program?

24 A. Yeah. So the USDA's Child Nutrition Programs, there's
25 actually 16 federal programs, and the Minnesota Department

1 of Education does not administer all of them.

2 But the ones that we administer, I think most
3 people know of the school nutrition programs, the Child and
4 Adult Care Food Programs and the Summer Food Service
5 Programs.

6 Q. Okay. Let's start with the first one, the national
7 student nutrition program.

8 A. Yeah. So the school nutrition program, most of us
9 commonly know that as the school breakfast program and the
10 national school lunch program, and that operates in schools
11 for school-aged children.

12 Q. And this is the traditional school lunch that we're all
13 familiar with, all of us who went to public school; is that
14 right?

15 A. Yeah, that's correct.

16 Q. And so what does the national -- the school lunch
17 program do, what does it provide to students?

18 A. Yeah. So the national school lunch program, and, again,
19 as you mentioned, we all are pretty commonly aware of this,
20 but it operates to provide healthy, nutritious, well-
21 balanced meals to children in school.

22 Q. All right. And this is a federal program you said?

23 A. This is a federal program.

24 Q. What federal agency runs this program?

25 A. The federal agency that operates or runs the national

1 school lunch program is the United States Department of
2 Agriculture.

3 Q. And how do they go about running this program?

4 A. Sure. So how these programs operate is the
5 United States Department of Agriculture administers these
6 programs, and they partner with state agencies to then
7 administer the programs in those states. And then state
8 agencies partner with eligible sponsors, and in this case of
9 school nutrition would be schools, so eligible schools are
10 then partnering with state agencies to operate this program.

11 Q. So the USDA fund -- provides the funding?

12 A. The USDA provides most of the funding, and then it is up
13 to the state, each independent state, to then provide
14 additional funding as needed or as seen.

15 Q. And then that money flows down to the individual school
16 districts?

17 A. Correct.

18 Q. Who actually serve the meals?

19 A. Correct.

20 Q. And the national school lunch program, that operates
21 when? Is that year-round, or is there only a certain period
22 of the year?

23 A. Yeah. So the national school lunch program and school
24 breakfast program, they operate during the school year. So
25 that's typically during the months of September through May.

1 There are some situations in which a school might operate
2 year-round, and so the program has a program year, but
3 typically September through May.

4 Q. September to May. And then time wise, is it limited to
5 the school day or is it outside of school hours?

6 A. So those programs are not only limited to the school
7 day, but they are also limited to mealtimes. So school
8 breakfast must be served during a typical breakfast hour or
9 range, and lunch must be served during a typical lunch
10 range.

11 Q. Okay. So that's the traditional school lunch program
12 we're all familiar with?

13 A. Correct.

14 Q. Lunch and breakfast during the school year during the
15 school day?

16 A. Correct.

17 Q. Does the USDA, they have supplemental programs in
18 addition to that; is that correct?

19 A. Yes.

20 Q. And you mentioned two of them, I believe. One of them
21 was the Child and Adult Care Food Program; is that right?

22 A. Mm-hmm, that's correct.

23 Q. Can you tell us what the Child and Adult Food Care
24 Program is?

25 A. Yeah. So the Child and Adult Care Food Program

1 operates, again, as a supplement to school nutrition.
2 Again, all of the USDA programs are really centered around
3 school nutrition. But the Child and Adult Care Food Program
4 operates in a couple of different ways.

5 So, first, they operate with licensed child cares,
6 so this could be childcare centers or family daycare homes.
7 And that is for children before they're school-aged ready.

8 And then there is the section of the Child and
9 Adult Care Food Program that operates after school hours.
10 And so with that it could be -- or it's usually school-aged
11 children, but, again, after the school day. However, still
12 operating just during the school year.

13 Q. Okay. So this provides meals after school --

14 A. Correct.

15 Q. -- is over; is that right?

16 A. Correct, yeah.

17 Q. What's the purpose of that program?

18 A. The purpose of that program, the after-school program,
19 is to target children in those after-school activities that
20 may not get a snack or a super until they leave those
21 activities, which could be late at night. But, again,
22 providing a well-balanced, nutritious meal to children.

23 Q. And are these subsidized?

24 A. Yes. So the meals themselves, the United States
25 Department of Agriculture provides reimbursement rates for

1 all of the programs. And there is different tiering, and so
2 different reimbursement rates for different types of
3 programs.

4 Q. Okay. The Child and Adult Care Food Program, that
5 operates after school hours you said.

6 A. Yes.

7 Q. Is it limited -- what kind of organizations participate
8 in the Child and Adult Care Food Program?

9 A. Yeah. So in the Child and Adult Care Food Program, the
10 portion of that that operates after-school/at-risk
11 programming, this can be school organizations that are
12 operating at-risk programming at their school locations. It
13 can be nongovernmental organizations, such as the YMCA, the
14 Boys and Girls Club. It can also be nonprofit community
15 organizations operating after-school childcare programs.

16 Q. So these are all in the context of formal, educational
17 or enrichment programs; is that right?

18 A. Yes, there must be an enrichment program component to
19 the CACFP at-risk program, and the program must operate that
20 the childcare component is the core program.

21 Q. What do you mean by that?

22 A. So any after-school/at-risk programming or any
23 programming that's on this program, there has to be that
24 childcare component, and the childcare component has to be
25 the main reason for existence of the program.

1 Q. So it's a childcare program that provides meals, not a
2 meal program that provides childcare?

3 A. Correct.

4 Q. Okay. You mentioned nonprofits and organizations that
5 participate in this.

6 A. Mm-hmm.

7 Q. Can you give some examples of ones that are prominent or
8 were prominent?

9 A. Sure. So of nonprofit organizations that operated the
10 CACFP at-risk program, we have some that still do,
11 Youthprise, Loaves and Fishes. We also had Feeding our
12 Future and Partners in Nutrition.

13 Q. We'll get to them in a second, I think.

14 You talked about it's a reimbursement program; is
15 that right?

16 A. That's correct.

17 Q. What do you mean by that?

18 A. So the USDA operates these programs on a reimbursement
19 basis, meaning that the organization, the
20 after-school/at-risk program, must provide the meal, and
21 then after the month ends, they can file for reimbursement.

22 Q. And those reimbursements, what are they based on?

23 A. So the reimbursements are based on meal counts for
24 reimbursable meals that meet the meal pattern and the
25 standards of the program.

1 Q. Okay. A lot going on in that answer there.

2 You said based on meal counts that meet a meal
3 pattern.

4 A. Mm-hmm.

5 Q. What's a meal count?

6 A. So a meal count is how many children received one full
7 meal of the program.

8 Q. And that's submitted how?

9 A. Sure. So this is submitted -- the site is the location
10 that meal operations are taking place, and the sponsor is
11 the organization that is partnering with the state agency or
12 has an agreement. And so how that works is the site submits
13 their claims to their sponsor, and then their sponsor
14 submits their claims through the Department of Education's
15 technology system.

16 Q. I was going to get to this later, but let's do it now.
17 These definitions, there's sites and there's sponsors; is
18 that right?

19 A. That's correct.

20 Q. So what's a site? What do you mean when you say "site"?

21 A. So a site is defined by latitude and longitude. It's a
22 place on the ground that we can pinpoint on a map. And,
23 again, it's where meals are served.

24 Q. Okay. And so you said generally these are -- in the
25 Child and Adult Care Food Program, these sites are places

1 where the educational enrichment activity is going on; is
2 that correct?

3 A. That's correct.

4 Q. And you said that has to be the primary purpose?

5 A. That's correct.

6 Q. So a daycare, Boys and Girls Club, after-school program?

7 A. Yeah. Any program that operates that after-school
8 component, it could be on a school site, it could be, again,
9 at the YMCA, yes.

10 Q. So if I ran some sort of after-school program, it would
11 be a nonprofit, and I had kids and I wanted to make sure
12 that they got meals, and I want to create a site, how would
13 I go about doing that?

14 A. Sure. Well, the first step would be to determine if
15 that is something that you as the site wants you take on
16 yourself or if you want to work with a sponsor, and then to
17 either reach out to the sponsor or sponsors that are
18 operating in Minnesota, or to reach out to the state agency,
19 Department of Education, and then we would assist.

20 Q. Okay. So you say reach out to a sponsor. What's a
21 sponsor?

22 A. So a sponsor is an organization that is administering
23 the operations of these programs, the child nutrition
24 programs, in the State of Minnesota.

25 Q. And what's the role of the sponsor?

1 A. So the role of the sponsor is to take on the
2 administrative duties of these programs. So sponsors take
3 on the training requirements, they help sites with
4 recordkeeping. A lot of times there's -- there's power in
5 numbers, and so a sponsor can be more efficient in taking on
6 the cost of the technology and so on to operate these
7 programs.

8 Q. Do all sites have sponsors?

9 A. Yes.

10 Q. Okay. Are they allowed to self sponsor?

11 A. Yes.

12 Q. Okay. Can you describe the difference?

13 A. Yeah. So there has to be a sponsor because the sponsor
14 is the organization that signs the agreement with the state
15 agency. So every site needs to have a sponsor.

16 Now, you could have, let's say, a YMCA site and
17 that site is, again, that place on the ground, but the
18 sponsor could be the YMCA as a whole.

19 Q. Okay. And so the YMCA can sponsor their own sites?

20 A. They can, yes.

21 Q. Because it's a large organization and has lots of
22 after-school program and a lot of expertise?

23 A. Correct.

24 Q. Smaller sites though essentially outsource; is that
25 right?

1 A. That's correct.

2 Q. How does that work?

3 A. So for smaller sites that they're their only one
4 independent site, they would typically be able to work with
5 a sponsor who is a sponsor of unaffiliated sites. And so a
6 sponsor of unaffiliated sites has no legal affiliation with
7 those sites. That sponsor is entering into a contract with
8 those sites and then agreeing to provide certain
9 administrative duties, while the site is agreeing to perform
10 the requirements of the program.

11 Q. So the site serves the food, submits the paperwork to
12 the sponsor?

13 A. Mm-hmm, that's correct.

14 Q. Who submits it to MDE?

15 A. That's correct.

16 Q. And you said unaffiliated sites, it makes sense for them
17 to use a sponsor like this?

18 A. Yes. So these programs have a large number of
19 requirements and administrative duties. And so it is very
20 helpful, especially for small sites who may not be able to
21 take all of that on themselves, to have a sponsor that is
22 there to help them.

23 Q. If you have an after-school program, you want your
24 teachers to be teaching, not filling out paperwork?

25 A. Correct.

1 MR. SCHLEICHER: Objection, leading.

2 THE COURT: Overruled.

3 BY MR. THOMPSON:

4 Q. Okay. Let's go back to the reimbursements as part of
5 the child and after-school -- after-school -- Child and
6 Adult Care Program.

7 A. Sure.

8 Q. This is the after-school program essentially, right?

9 A. Yes.

10 Q. Okay. You said these are reimbursements based -- what
11 are the reimbursements based on?

12 A. Sure. So in the after-school component of the Child and
13 Adult Food Program, it's going to be based on area
14 eligibility. And so with the CACFP or Child and Adult Care
15 Food Program At-Risk component, all of the meals are going
16 to be reimbursed at the same level because the site has to
17 be located in an area-eligible area.

18 Q. What is an eligible area?

19 A. For the Child and Adult Care Food Program At-Risk
20 component, it uses school based data, and it's looking at
21 the percentage of free and reduced eligible students in that
22 school.

23 Q. And are only certain areas eligible based on that data?

24 A. That's correct.

25 Q. Could you explain that?

1 A. Yes. So what Minnesota Department of Education does
2 each year is we take the counts of free and reduced
3 populations in the various schools or school areas, and then
4 we upload that data to our mapping system and so each year
5 we know where the eligible areas are for this program.

6 Q. Why do you do that? Why are you focused on eligible
7 areas?

8 A. Well, first, it's the USDA requirements. And the USDA
9 is looking to provide these healthy, nutritious meals in
10 areas that children may need it the most.

11 Q. Okay. And those are the areas with relatively high
12 percentages of children who receive free and reduced school
13 lunch?

14 MR. SCHLEICHER: Objection, leading.

15 THE COURT: Sustained. Rephrase.

16 BY MR. THOMPSON:

17 Q. What areas are those?

18 A. So those are the areas that the USDA has identified as
19 the most high risk, which is based on school data.

20 Q. Okay. When a site submits its reimbursements, what
21 information -- to their sponsor, what information do they
22 provide?

23 A. So sites are required to submit, of course, their meal
24 counts, which is how many meals of meal types were served.
25 So how many lunches, how many breakfasts, snacks, suppers.

1 And then in the Child and Adult Food Program At-Risk,
2 there's also an attendance factor. And so the enrollment of
3 children is also to be submitted to the sponsor. Menus to
4 make sure that the menu met the Child and Adult Care Food
5 Program meal requirements. The site is also required to
6 save invoices from their vendors or wherever they purchased
7 their food from.

8 Q. Okay. There's several things there. So the meal counts
9 you said, what's a meal count?

10 A. So a meal count, again, is by meal type, which would be
11 breakfast, lunch, snack, supper, those are meal types. And
12 it would be how many of those meal types each.

13 Q. So just a number?

14 A. It's a number, yes.

15 Q. You said attendance.

16 A. Yes.

17 Q. A site has to give attendance to the sponsor.

18 A. Yes. In the Child and Adult Care Food Program,
19 attendance is part of that program.

20 Q. And what is attendance?

21 A. So those are the -- the names of the children who are
22 enrolled in that after-school program.

23 Q. Okay. And then the other -- one of the other
24 requirements that a site has to give supporting its claims
25 are invoices?

1 A. That's correct.

2 Q. What kind of invoices?

3 A. So invoices can look different depending on the site.
4 If the site is purchasing their meals through a caterer or
5 vendor, then those invoices are simply going to be the
6 invoice from the caterer. But if the site is preparing the
7 meals on site with their own staff, then the invoices are
8 going to be as simple as the invoice that came from, let's
9 say, a Sam's Club or a Costco where the food was purchased.

10 Q. And the reimbursement rates are on a per meal claim; is
11 that correct?

12 A. That's correct.

13 Q. Not based on actual expenses?

14 A. It is not based on actual expenses, no.

15 Q. Does that mean that a site participating can turn a
16 profit?

17 A. Absolutely not.

18 Q. Would you explain that?

19 A. Yes. So in the United States Department of Agriculture
20 Child Nutrition Programs, in all of the programs that we
21 operate here in Minnesota, it is specified that the
22 nonprofit food service account must be kept separate from
23 all the other accounts, and that the reimbursements must be
24 used for the -- for the benefit of the meal program.

25 MR. COTTER: Your Honor, Patrick Cotter. I move

1 to strike that that is 701 opinion testimony.

2 THE COURT: Where are you getting your
3 information?

4 THE WITNESS: This is from the USDA guidance, and
5 it's also the guidance that MDE provides in all of the
6 trainings that we do.

7 THE COURT: And do you use that information in
8 your job?

9 THE WITNESS: Yes.

10 THE COURT: And is that how you know it, or do you
11 know it for this trial?

12 THE WITNESS: That is how I know it because of my
13 job.

14 THE COURT: Overruled. The answer will stand.

15 BY MR. THOMPSON:

16 Q. And to be clear, Ms. Honer, your job -- this is your
17 job, correct?

18 A. That is correct.

19 Q. You review these things?

20 A. Yes. So when I was in the position of business
21 operations and support services supervisor, my team not only
22 did applications and claims, but we also did the financial
23 reviews of all of the programs. And so we would look at
24 this as part of my work.

25 Q. What's a financial review?

1 A. So the financial review is the review of the nonprofit
2 food service account that the sponsors keep.

3 Q. So tell us how a review works. How do you conduct one
4 when you conduct one?

5 A. Sure. So within our team, when we -- what we do is we
6 partner with the compliance team. And so when there's an
7 administrative review, which is a separate part of the
8 review that comes up, we partner and we schedule our
9 financial reviews along with that. And what we do is we
10 take a sampling, typically a sample month, and we look at
11 the claims. And then we look at all of the financial
12 information to support those claims, as well as the
13 nonprofit food service account.

14 Q. So what kind of information -- you said the financial
15 information that supports those claims. What information do
16 you look at when you do a review?

17 A. Yeah. So we are then looking at that documentation that
18 a site would have given to their sponsor. We're looking at
19 meal counts, we're looking at invoices, we are looking at
20 the attendance, in part. And then we are looking at the
21 actual accounting structure of that organization to see how
22 the -- those invoices and those bills were paid.

23 Q. Could you explain that more? When you're looking at how
24 the invoices and bills are paid, what are you looking for?

25 A. We are looking for allowable and reasonable expenses.

1 So we're taking a look -- again, it's not just the invoices
2 on a financial review, that's just part that we look at.
3 But we're looking at the staff, how the staff are paid from
4 the sponsor. We are looking at any other expenses that can
5 be connected to this program or that were paid with these
6 program funds.

7 Q. Why do you look at those expenses and payments?

8 A. Well, again, we look at it to ensure that it's
9 reasonable and allowable and in line with the program
10 regulations. But we're also looking at it because, again,
11 the United States Department of Agriculture requires that
12 these funds are kept in a nonprofit food service account.
13 So we are looking to make sure that that is retained in that
14 way.

15 Q. And how do you do that? What are you looking for,
16 and -- in a good way, and what are you looking for that
17 could be problematic?

18 A. Sure. So in general we are looking for the majority of
19 the funds to be sent -- be spent on the food service. We
20 are looking to ensure that high quality foods were purchased
21 and high quality meals are provided to the children and that
22 the only expenses that we are seeing are for the benefit of
23 this program in the operation of this program.

24 Q. What happens if you do review and you conclude that
25 that's not the case?

1 A. Yeah. So what happens when we find either an
2 unallowable or unreasonable expenses is we make the
3 organization reimburse back the nonprofit food service
4 account.

5 Q. What if an organization is just good at finding deals on
6 food and so they're -- they've driven their expenses down?
7 If that's what you find, what do you do?

8 A. Sure. So what we do in the case of a sponsor that may
9 be really efficient, and that's how me and my team refer to
10 that, is then we work with the sponsor, we provide technical
11 assistance to work with them and say, What can you do to
12 increase the quality of these meals even more? How can you
13 take this money and put it back into the meals?

14 Q. And why is that important to MDE?

15 A. That's important to MDE because we are looking to
16 provide high quality, nutritious meals to students, and we
17 do that through these food programs.

18 Q. That's the purpose of this money?

19 A. Absolutely.

20 Q. And that's the purpose of these programs?

21 A. It is.

22 Q. Okay. Prior to COVID, and I know things changed in
23 COVID and we're going to talk about that shortly here, but
24 before COVID, what kind of entities were involved in the
25 after-school program?

1 A. Sure. So in the after-school program there was a lot of
2 schools that were involved in that program. Again, your
3 typical YMCAs and your Boys and Girls Clubs. We didn't have
4 a lot of sport activities because there are certain
5 restrictions around that. So it was definitely enrichment
6 activities that were primarily organized with the school in
7 some way.

8 Q. You talked about the fact that if there's an efficient,
9 quote, unquote, efficient program that's driven the cost of
10 their food down, when you find that you will work to maybe
11 use some of those funds to increase the quality of the food.

12 A. Mm-hmm.

13 Q. You've mentioned vendors and caterers.

14 A. Yes.

15 Q. Can you tell us a little bit about vendors and caterers
16 and how that works?

17 A. Sure. So in the USDA Child Nutrition Programs, I'll
18 just kind of like give a stat for the school nutrition
19 programs, I think there's about 30 percent of our schools
20 that use vendors. And what that is is for a school or a
21 site that is really small, they may not have the capacity or
22 the resources to provide a full self-preparation meal. So
23 then they work with a vendor or caterer, which would be more
24 cost efficient.

25 Q. Okay. And the vendors and caterers, is there a

1 nonprofit requirement for them?

2 A. There is not a nonprofit requirement for the vendors and
3 caterers. But with that, how they are procured by --

4 MR. GOETZ: Objection, Your Honor, beyond the
5 scope.

6 THE COURT: Overruled. You may go on.

7 THE WITNESS: So in how those contracts are
8 procured, the site or the sponsor must make sure that they
9 are reasonable.

10 BY MR. THOMPSON:

11 Q. What do you mean by that?

12 A. So the site or the sponsor who is taking on the bidding
13 process of that contract must make sure that there is open
14 and competitive -- that it's fair, open and competitive, and
15 so they're looking for the lowest cost of those -- of those
16 catering contracts.

17 Q. And why does MDE look for that?

18 A. Because it is the best use of these funds from these
19 Child Nutrition Programs from the USDA.

20 Q. Okay. And before I move on to the next program, I just
21 want to make clear, what kind of meals are reimbursed by the
22 after-school program?

23 A. Primarily snacks and suppers.

24 Q. Okay. And so what's a snack?

25 A. So a snack is not going to meet all five components

1 of -- of meal. So a meal needs to have vegetable, fruit,
2 whole grain, meat and dairy, where a snack will serve a
3 portion of those items.

4 Q. Okay. So the supper has, you said, five components?

5 A. Correct, five components.

6 Q. Can you run through them again?

7 A. Sure. So the five components are fruit, vegetable, meat
8 or meat alternative, whole grain and dairy. And the dairy
9 is the milk.

10 Q. Okay. And those are USDA requirements?

11 A. That is correct.

12 Q. And does MDE -- when you were at MDE, you are at MDE,
13 when you do a review, are you looking to make sure that the
14 meals contain those components?

15 A. Yes, we are.

16 Q. Are there other rules about the food that you look to or
17 you look to at MDE?

18 A. Yes, there are. So the program regulations require us
19 when we are going out and doing a review, we are looking
20 for -- so like our nutritionist will look for the
21 nutritional values of those foods to make sure that it meets
22 requirements. But then on the financial review side, we are
23 also making sure that buy American clauses are met, because
24 these are agriculture programs and that's required. And
25 then we are also making sure that, again, any foods that are

1 bought meet procurement standards.

2 Q. Okay. I want to go back. You said a buy American --

3 A. Correct.

4 Q. -- clause. What does that mean?

5 A. Sure. So the United States Department of Agriculture,
6 these Child Nutrition Programs stemming from the USDA, is
7 also to support local agriculture. And so the USDA requires
8 that foods are bought in the United States of America.

9 Q. And that's something that you and MDE look to when you
10 do the review process?

11 A. That is correct.

12 Q. I've heard the phrase unitized?

13 A. Yes.

14 Q. Yes. What does "unitized" mean?

15 A. Yes. So unitized means -- and I like to refer to
16 unitize or with the example of like a TV dinner tray. And
17 so you would have a tray, you would have your entrée in one
18 compartment, you would have your fruit and vegetable in
19 another, your whole grain in another. So it's unitized in
20 that the exact appropriate amount of each of those food
21 items are in a tray and are served to the child in that way.

22 Q. All five components?

23 A. All five components.

24 Q. Ready to eat for the kid?

25 A. Correct.

1 Q. And is that part of it important?

2 A. Absolutely.

3 Q. How so?

4 A. Well, it's important because a child is not expected to
5 know how much is supposed to go into each meal or meal type.
6 And so to have that unitization provides the child that meal
7 with knowing that it's well-balanced with the dietary
8 guidelines.

9 Q. Are there -- are there requirements about where the
10 kid -- where the meals are consumed by the children in the
11 At-Risk program?

12 A. Yes. So in the At-Risk program, as well as all of the
13 other Child Nutrition Programs that we administer, the meals
14 must be eaten in a congregate setting, meaning that the
15 children must eat those meals together.

16 Q. Why is that?

17 A. While the USDA sees, of course, the social benefits with
18 that, we see this is good for children's development. But
19 also we then know that those children are eating that meal
20 and are having that mealtime.

21 Q. Why is that important?

22 A. It's important because then we know how many meals were
23 served, we know how many children came, and we can actually
24 see that meal operation taking place.

25 Q. The reimbursements, are they based on -- what are they

1 based on? The number of meals prepared, or the number of
2 meals actually served to children?

3 A. The meal counts that are allowed to be claimed for
4 reimbursement is based on how many meals were actually
5 served to children.

6 Q. So if a site prepared more meals than it ended up
7 serving on any given Tuesday, kids were sick that day, what
8 happens?

9 A. The additional meals that were not served to children
10 are not to be reimbursed. And this is another component of
11 all of the Child Nutrition Programs.

12 Q. Okay. That's the Child and Adult Care, that At-Risk
13 program, the after-school program; is that right?

14 A. Correct.

15 Q. There's another supplemental program; is that right?

16 A. Yes. So the Summer Food Service Program -- and just to
17 kind of take it back on how these programs work together.
18 So the school nutrition program --

19 MR. GOETZ: Objection, Your Honor, nonresponsive.

20 THE COURT: Sustained. That will be stricken.

21 You may ask a question.

22 BY MR. THOMPSON:

23 Q. What is the Summer Food Service Program?

24 A. So the Summer Food Service Program operates when school
25 is not in session during the summer months, and to provide

1 students -- or students or children healthy, nutritious
2 meals.

3 Q. These are designed to serve the same children that were
4 getting, say, free and reduced school lunch during the
5 school year; is that correct?

6 MR. COTTER: Objection, leading.

7 THE COURT: Overruled. You may answer.

8 BY MR. THOMPSON:

9 Q. Does MDE administer the Summer Food Service Program as
10 well?

11 A. Yes, we do.

12 Q. And how is it funded?

13 A. So the Summer Food Service Program is funded by the USDA
14 as well.

15 Q. Does it operate similar to the after-school program?

16 A. The Summer Food Service Program operates similar in that
17 there's area eligibility components.

18 Q. And remind us again what an area eligibility component
19 is.

20 A. So the Summer Food Service Program is slightly different
21 than the CACFP program in terms of area eligibility. The
22 Summer Food Service Program also looks to school data for
23 the free and reduced percentages, but the Summer Food
24 Service Program also includes census data that is provided
25 to us from the USDA.

1 Q. How is that significant?

2 A. I think it's significant because it adds additional
3 area -- eligible areas to this program.

4 Q. So it has a wider, broader scope?

5 A. Correct.

6 Q. Serves more children?

7 A. Correct.

8 Q. Okay. And does the Summer Food Service Program operate
9 on a similar site-sponsor model?

10 A. That is correct, yes.

11 Q. If a -- what kind of sites -- prior to COVID again, what
12 kind of sites tended to be enrolled in the Summer Food
13 Service Program?

14 A. In the Summer Food Service Program prior to COVID, the
15 majority of sites and sponsors were schools.

16 Q. And were there -- so when you say schools, what do you
17 mean?

18 A. Sure. So a lot of schools that are in area eligible
19 areas would continue on with some sort of summer meal
20 service, and they would choose possibly a portion of their
21 sites. So, for example, elementary or the middle school.

22 Q. So the schools that were enrolled in the school lunch
23 program --

24 A. Correct.

25 Q. -- would continue in the summer?

1 A. Correct.

2 Q. And how would they go about doing that? Would it be
3 kids coming there or food being distributed?

4 A. So pre-COVID the Summer Food Service Program also
5 operated in a congregate setting. That was a requirement.
6 So children would have to come to the school site to receive
7 their meal and eat their meal with all of the other
8 children.

9 Q. And which meals were served or are reimbursed as part of
10 the Summer Food Service Program?

11 A. So the Summer Food Service Program, to my recollection,
12 has all four meal types of breakfast, lunch, snack and
13 supper.

14 Q. Does it have similar requirement in terms of the
15 components of the meal?

16 A. As far as the components, it's again requiring all five
17 components. There are -- again, so it's whole grain, meat
18 or meat alternative, fruit, vegetable and milk.

19 Q. And did -- in the Summer Food Service Program, are the
20 meals unitized like they are in the after-school program?

21 A. Yes. Yes. Meals must be unitized in the Summer Food
22 Service Program.

23 Q. Meaning -- again, remind the jury what unitized means.

24 A. So unitized, again, means that the components of the
25 meal are there and they're in the proper serving size.

1 Q. So ready to eat, essentially?

2 A. Ready to eat, yes.

3 Q. Okay. You mentioned that the Summer Food Service
4 Program prior to COVID was generally utilized by school
5 districts.

6 A. Mm-hmm.

7 Q. Typical public schools?

8 A. Yes, typical public schools. We might see a couple of
9 charter schools in there as well.

10 Q. Were there non-school sites involved in the Summer Food
11 Service Program prior to COVID?

12 A. Yes. So we would see similar to the CACFP At-Risk
13 programs, so we could see the YMCA, the Boys and Girls
14 Clubs, so your nongovernmental or nonprofit community
15 organizations as well.

16 Q. Were there smaller sites that weren't part of a larger
17 organization?

18 A. No. And I -- I say that because with the Summer Food
19 Service Program, it was typically sites that were already
20 operating, for example, CACFP At-Risk. And so they would
21 continue on just for those additional three months.

22 Q. How about for the after-school program? Were there kind
23 of one-off sites that weren't part of a larger organization?

24 A. Sure. Yep, yes, there was. It wasn't the majority
25 though.

1 Q. Prior to COVID, how many?

2 A. I don't have that number off the top of my head.

3 Q. Okay. Okay.

4 THE COURT: Mr. Thompson, I'll have you come to a
5 stopping place when you're ready.

6 MR. THOMPSON: This is fine, Your Honor.

7 THE COURT: All right. Thank you.

8 We're going to adjourn for the day. I'll have you
9 come back tomorrow morning, and we'll be back at 9:00
10 tomorrow morning.

11 All rise for the jury.

12 **IN OPEN COURT**

13 **(JURY NOT PRESENT)**

14 THE COURT: All right. Thank you, everyone.
15 We'll see you at 9:00. We're off the record.

16 **(Off the record)**

17 (Court adjourned at 4:28 p.m., 04-29-2024.)

18 * * *

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

22 Certified by: /s/Renee A. Rogge
23 Renee A. Rogge, RMR-CRR

24

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