

# **EXHIBIT 1**

4/12/12 2:26 PM

i had written a letter over a month and a half ago which i gave to an acquaintance in albania to carry with him and mail once he arrived in the u.s. however, I learned recently that he apparently carried it in a carry-on bag in which he also carried a bottle of homemade raki -- a hard liquor made out of grapes in albania. he may have been drunk too. it is common here for people to get drunk before taking long trips and to carry a bottle of liquor. but that is against travel regulations on planes going to the u.s. the bag was confiscated and thrown in the trash.

here is the story about bahrain: in short, i got into trouble when i printed out a news summary from a daily report. the news summary is just a translation of twitter and a very bland summary usually follows at the end. it is translated from arabic by a Bahraini woman who comes on the base every day. this summary is not a classified part of the daily report, which deals in main with army training missions in the arab countries. the introduction of several of these reports states that it is unclassified, but in the course of events I had no access to the internet to show that statement to them. and the investigating officers simply did not believe me. I was trying to catch up on some of twitter during the lunch break since I did not have a twitter account. i had only 15 minutes to look at the reports and because, even after 8 months, i was not assigned a desk, i printed it out to read later. I told my bosses that I was going to print it out and i even pointed out something interesting the news report to my three supervisors, including the 2 new officers, a sergeant and a captain. Because the news summary is unclassified, i printed it out and put it in my backpack. I was going to read it later. As I put the twitter summary in my backpack, I saw the sergeant whispering to the captain and both were looking my way. I was thinking of leaving the backpack at the office because it was heavy with my 2 dictionaries, but i had no desk of my own and there was no place to store the backpack. I was going to be back in 2 hours, but I was uncomfortable about leaving my expensive dictionaries in the office where I had no assigned desk. when i left the building the new sergeant and captain came out and the sergeant was shouting and making violent gestures at me: He shouted: I saw you take documents which you printed from a classified printer. I never heard of a printer being classified. But I wondered why, if he saw me doing something wrong, he did not say anything then. I was given no opportunity to go back to the previous issues of the summary to point out that the summary was an exception. But the problem was that the summary had 'secret' written (probably mistakenly) in small print at the bottom. My boss was standing at my side telling me to hurry up and get off the computer so he could get back on. I certainly was not hiding anything and if they think that they 'caught' me in an attempt to do something wrong, that simply isn't the case. That day I was wearing pencil sized reading glasses which offered me a view of only one third of a page at a time. I had no idea that the summaries had 'secret' written at the bottom and not only had no time to check, but believed it was not secret since the reports themselves state as much. Secret means that its revelation would have terrible consequences for national security. No one told me anything about that and what 'secret' meant but I learned more later when I did internet searches after I left bahrain., obviously the 'secret' designation is used considerably more freely. We might as well classify this letter as 'secret' but I don't have the federal authority to back it up. The letter of the law states that the wheels of government have to start turning once a perceived violation of handling classified documents begins. When the sergeant came running after me, that started moving the wheels of the very large and rich government agencies in charge of security.

I was forcibly detained for 8 hours and then interrogated by the Naval Criminal Investigative Services till one am. They searched my quarters and were concerned about all the Arabic language materials I had. They also learned that my former boss had excluded me from a going away party and instructed everyone else, including the three other translators, not to let me know about it. This was because I was known not to drink alcohol. I had realized that my bosses were excluding me while favoring the two Sudani arabic translators and, of course, the Sudani translators thought from these actions that they were better. It was a very poisonous work environment which I should have left immediately. But hindsight offers a clearer perspective.

The NCIS asked me in the beginning of each interrogation about what religion I had. i told them that I was not religious. The government officials also asked whether I believed in God. I thought these were strange questions for government officials of the U.S. to be asking, especially since I thought thst the alleged violation was not a religious one. Ignoring what I told them, they accused me of being a Muslim, which I am not. Of course, that was a kind of insult adding to the injury of not being invited to the going away party for the boss I had worked extra hard for over the course of 6 months. I had mainly linguistic materials in my room, but also some boxes of newspapers, because I made a daily press summary on my own time for people at work. Realize that very few people on base speak Arabic and it was something strange for them to find Arabic language materials. These are people who might be afraid of just seeing the Arabic script because they associate anything Arab with terrorism, especially on base regardless of whether i am a translator. One translator warned me of this, but I dismissed it as Arab paranoia and told him that America was not like that. America does not persecute people because of books or newspapers they read. And my bosses told me that they wanted me to witness and report what was going on in Bahrain. The military has never been comfortable with civilian translators, however., the military only has civilians working as translations because it is forced to do so, having failed to train translators of its own despite putting many resources into that effort at its school in Monterey, California.

They also saw that I had 3 computers, an Ipad, an Acer Chromebook and a Samsung netbook which had Arabic characters. They accused me of being a computer whiz, which I am not. They also asked whether I belonged to Shi'i opposition groups in Bahrain....that was both disturbing and funny. Their questions completely discredited them. One of the questioners kept asking whether I gave gifts to Bahraini taxi drivers and I wondered where she got that idea. They are very uncomfortable with Arab culture and the Middle East while quite the opposite is true of me. After all I started studying Arabic together with Russian when I was 16 in high school. It was disturbing to see their fear, ignorance and unease. It seems that they think I was some sort of computer genius and a covert Muslim working undercover with connections to the Bahrain opposition. But these are their procedures and not mine.

After another long interrogation and fingerprinting and eye scanning, I was suddenly taken to my quarters which was turned into a shambles. I was then given 40 minutes the next evening to pack up and shower before being taken to the airport. It was strange that one of the NCIS officers insisted that I shower before leaving "because you won't be able to shower for a while." Of course I was not be able to pack very well and get some of the things I valued. I was leaving a lot of things behind. I had just spent a whole week at a book fair in Bahrain buying books and had packed 20 boxes of books on Arabic dialects, geography and politics. The NCIS promised to return the electronic items it confiscated and the Arabic notebooks I made of the Bahrain dialect. To this date nothing has been received by the Isons although NCIS said that it was done with my computers when I left. I don't have anything else either that I was forced to leave in my quarters although the NCIS said that the base would pack up and send everything back at its expense.

On the way back, I had a very convoluted itinerary beginning at 2 AM taking me to Kuwait, Abu Dhabi and then a direct flight to the U.S. No one asked whether I wanted to go to the U.S. or explained why it was that I was being sent there. But at the airport, they could not get me a seat and I was given a direct flight to Frankfurt. I got off the plane and, since I was tired from the overnight flight and did not want to fly a second night in a row, decided to take a flight at a later date.

Hopefully the FBI is trying to clear up the mess the NCIS made in Bahrain, but if it has gone so far that they are now interviewing you nearly 6 months later, I am not very optimistic. The NCIS must have been very excited that it finally had some work to do in Bahrain and that it might prove the value of its having a big office in Bahrain. These are people that have practically no work but live a comfortable expatriate lifestyle...far better than what I had being in a barracks on base.

Be aware that anything you say goes on the record and that you are liable to go to court to support what you say. See if they will give you a record of the questions in writing or a record of the conversation with you. Get whatever promises are made in writing. But realize too that you are just an individual and that you do not have the resources of the federal government. Chances are that whatever you say will be classified and that even if you wanted a record of your conversation, it will not be given to you for legal / liability reasons. . Remember, when you talk with a government investigator, they usually will begin with some small talk to make you feel at ease and tell you it is all voluntary. However, they quickly go down the road from there. You will probably spend a good two or three hours. It could easily be four or five. You might use the conference room at the township building. Or you might establish parameters of time and state your right to end the meeting if you are getting tired. You might ask whether you could be held legally liable for what you say and whether your statements enjoy any sort of legal protection. Could the government prosecute you for anything you say? See if you get an absolute guarantee. If the questioning lasts longer than you hope, remember that the meeting is voluntary. You might ask whether he is recording you. I know from experience in Bahrain that they will not ask your permission to record or video you. I wonder why the Marquette office being so persistent with you. I had at least as much communication with my neighbors on Gold St. , not to mention other people in Ontonagon. Those neighbors are probably very afraid. I probably sent packages to 15 different addresses in Ontonagon. I wonder what these people who in some cases just had passing contact with me think of signing confidentiality contracts when government agents come to visit them.

ok, this is the best i can do in a hurry. This is not something which you should disseminate or freely bring up with other people in Ontonagon ; it might make them uncomfortable if they have already been approached by federal agents and have signed non-disclosure statements. And of course, i don't think you should give this letter to the government to become an additional record. Be aware that there are problems about submitting items to the court that have been obtained through espionage without search warrants. from the government's point of view, information it obtains legally through old fashioned investigation is better than information it obtains via electronic spying. although congress has not restrained the government's ability to spy electronically, the fruits of such spying are not entirely accepted in the courts. The government does not like to divulge the details of its spying in general. It would have been better for you to get my handwritten letter, but too much time has passed. regards, jim

## **EXHIBIT 2**

UNITED STATES DISTRICT COURT  
DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA, . Case No. 1:12-CR-00231  
 . (RC)  
 Plaintiff, .  
 . Washington, D.C.  
 v. . October 31, 2012  
 .  
 JAMES HITSELBERGER, .  
 .  
 Defendant. .  
 . . . . .

DETENTION HEARING  
BEFORE THE HONORABLE DEBORAH A. ROBINSON  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiff: U.S. Attorney's Office  
By: JAY BRATT, AUSA  
555 Fourth Street, N.W.  
Washington, DC 20530  
  
For the Defendant: Federal Public Defender  
By: CARLOS VANEGAS, ESQ.  
625 Indiana Avenue, N.W.  
Suite 550  
Washington, DC 20004

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1 (Proceedings commenced at 4:11 p.m.)

2 THE CLERK: Criminal Case Number  
3 (unintelligible) 231, United States of America v. James  
4 Hitselberger.

5 U.S. Attorney Jay Bratt, Debra Curtis and  
6 (unintelligible) for the Government.

7 Carlos Vanegas for Mr. Hitselberger.

8 This is scheduled for a detention hearing.

9 THE COURT: Now, good afternoon.

10 COUNSEL: Good afternoon.

11 THE COURT: Mr. Bratt, is the United States  
12 ready to proceed?

13 MR. BRATT: Yes, Your Honor.

14 THE COURT: And you, Mr. Vanegas?

15 MR. VANEGAS: Yes, Your Honor.

16 THE COURT: Very well.

17 I note for the record that the Court received  
18 a document captioned "Government's Memorandum in  
19 Support of Detention", along with accompanying  
20 exhibits.

21 I assume you received your copy, as well, Mr.  
22 Vanegas?

23 MR. VANEGAS: Yes, I (inaudible).

24 THE COURT: And did -- I simply want to be  
25 certain that we have not overlooked any filing.

1                   Was anything filed on behalf of Mr.  
2     Hitselberger?

3                   MR. VANEGAS: No, Your Honor.

4                   THE COURT: Very well. Thank you very much,  
5     Mr. Vanegas.

6                   Now, Mr. Bratt.

7                   MR. BRATT: Yes, Your Honor. Thank you.

8                   THE COURT: You may proceed.

9                   MR. BRATT: Back on April 12th, Mr.  
10     Hitselberger made a fateful decision that really is  
11     determinative, in terms of assessing his risk and in  
12     terms of detention, and that decision was that he fled.

13                   Mr. Hitselberger knew that he was in trouble  
14     at the time. He had undergone two lengthy -- Well,  
15     first he had been caught with classified information in  
16     his backpack, he's -- another classified document or an  
17     altered classified document was found in his quarters.

18                   He knew that his quarters had been searched  
19     extensively by agents from the Naval Criminal  
20     Investigative Service. He had undergone two lengthy,  
21     albeit voluntary, Mirandized interrogations by NCIS,  
22     and as a result of those violations, he was being sent  
23     out of the country, back to the United States.

24                   And when his plane -- or when he was  
25     transiting in Frankfurt, Germany, he intentionally got

1 off the plane, left the airport, and then spent the  
2 last eight months in Europe, and he traveled from  
3 country to country to country to country to country,  
4 traveled from Germany to Sweden, to Malta, to Bulgaria,  
5 to Albania, and back to Bulgaria, and the only way we  
6 were able to catch him was that he traveled to Kuwait  
7 in order to get his belongings back from his employer.

8 And one point I didn't make in our detention  
9 memorandum, and a question the Court might have, is  
10 that if we knew where Mr. Hitselberger generally was,  
11 if we were aware of his travels and motions in Europe,  
12 why was it that we did not ask any of these countries  
13 to arrest him and to extradite him, and the answer is  
14 that this offense with which he is charged is called  
15 "The Espionage Act."

16 This is not really classic espionage that  
17 he's been charged with, but other countries view it as  
18 a political offense and it's not extraditable under any  
19 of the extradition treaties. So Mr. Hitselberger was  
20 not extradited here.

21 His passport was revoked by the State  
22 Department because there was an outstanding warrant,  
23 and the government of Kuwait refused him entry and  
24 turned him over to the United States custody, and he  
25 was then expelled from Kuwait. That is how he got

1 here.

2 While Mr. Hitselberger was in Europe, he's  
3 been able to support himself, even though he did not  
4 have a regular income.

5 Just last week he gave a Mirandized interview  
6 to the agents after he arrived at Dulles Airport, and  
7 among the things that he told them was that during the  
8 course of his travels he purchased a small property in  
9 Michigan. Now, by our standards it's not a lot of  
10 money, it's \$19,000 I believe, but again, for somebody  
11 who's not earning income, for somebody who is outside  
12 the country, that's significant.

13 In addition, in the course of the Government's  
14 investigation it had a cooperating source, or met a  
15 cooperating individual who had met Mr. Hitselberger in  
16 Europe and to whom Mr. Hitselberger had entrusted some  
17 items to send back to the United States. This  
18 individual looked at them. The individual's wife got  
19 nervous when she read some of the stuff that was there,  
20 but among those documents which, one, -- in one of the  
21 letters that was given to this person by Mr.  
22 Hitselberger, acknowledged that he was aware of the  
23 FBI's investigation that has gone beyond just NCIS, but  
24 that the FBI was looking at him, and that the FBI had  
25 conducted searches in the town where he had property in

1 Michigan, but in addition, there was a check to a  
2 person in Michigan for \$4,000, again, a sizable amount  
3 of money for somebody who's not earning income, for  
4 somebody who's overseas.

5 Mr. Hitselberger has extensive experience  
6 living overseas. He has language capabilities. He  
7 knows people overseas. It is easy for him to live  
8 there, as proved by the fact that he was doing it quite  
9 readily for eight months.

10 Looking at the other 3142(g) factors, the  
11 Government's case here is very strong. This is a very  
12 serious offense. He was compromising sensitive  
13 classified information. I don't know if the Court's  
14 had an opportunity to look at the documents. They're  
15 redacted but, in particular, in the two situations --

16 THE COURT: The Court did read the entire  
17 memorandum and the exhibits accompanying the  
18 memorandum.

19 MR. BRATT: And in the portions that are  
20 redacted, particularly in the situation reports, the  
21 SITREPS, it is very sensitive information about where  
22 troops were engaged in activities in the Middle East,  
23 where the commander, a commander at the Naval Support  
24 Activity, Bahrain was traveling to various countries in  
25 the Middle East, and with whom he was meeting, all very

1 sensitive information.

2 If this had been a situation, Your Honor,  
3 where all that Mr. Hitselberger had done, the only  
4 thing that we had was just he took these two documents  
5 from the restricted access area on April 11th, we might  
6 view it differently, but there was more than that.

7 What really shows his intent here is his  
8 activities over the last couple of years, and the way  
9 that he has taken for himself, and decided to  
10 disseminate to others, classified information.

11 The fact that in his bedroom there was the  
12 first page of a classified document, and it wasn't --  
13 but it had been altered, and it was -- the top part -- I  
14 don't know if the Court printed this out in color or  
15 not, if the Court used a color printer, but in order to  
16 alter what's Government's Exhibit 11, I can just hold  
17 it up, you can even see from the distance that we're  
18 at, about eight, nine feet, that "Secret" is in bold  
19 and in red, and that's what Mr. Hitselberger cut off  
20 from these documents, showing his intent, that he knew  
21 that it was classified, that he knew it was improper  
22 for him to maintain these documents somewhere where he  
23 was not authorized to have them.

24 And then we find that over the years he has  
25 sent classified documents to Stanford, again showing

1 his intent, that he is unlawfully retaining this  
2 information.

3 THE COURT: What is your proffer with -- What  
4 is the Government's proffer with respect to the number  
5 of times documents were sent to Stanford, --

6 MR. BRATT: Stanford?

7 THE COURT: -- and during what period of  
8 time?

9 MR. BRATT: There was one classified document  
10 that was sent in February of this year, February of  
11 012.

12 There were three classified documents --  
13 three or four classified documents that were sent  
14 around 2005. Whether they were sent all at once or  
15 whether they were sent in separate instances, the  
16 Government can't tell.

17 There was one of these classified documents  
18 that was in the public area of the Hoover Institution  
19 archives, and there were two or three of them, I think  
20 just two, that were in a vault area that's not  
21 accessible to the public.

22 So, on at least -- Well, we know that in  
23 Bahrain there is -- the incident on April 11th, when he  
24 was removing classified information, we know that he  
25 had the document from March 8th, the document that he

1 altered, so that's the second instance. We know that  
2 in February he had sent some documents to Stanford, and  
3 we do have the correspondence. It was part of a batch  
4 of materials that he was sending to Stanford, and there  
5 was this classified document among the materials. So  
6 that's three instances there, and there are at least,  
7 at least one more from 2005, and potentially others,  
8 other times when he sent three or four other documents  
9 to Stanford.

10 THE COURT: You may continue, Mr. Bratt.

11 MR. BRATT: It is true Mr. Hitselberger is a  
12 citizen. It is true that his passport has been  
13 revoked, though now that the warrant is gone, I'm not  
14 sure whether or not he can get a new passport. I've  
15 made some inquiries but did not get answers in time for  
16 today's hearing, but he has fled before and he could  
17 still flee, and it's sort of ironic, or perhaps  
18 fortuitous, that the Court has just spent almost two  
19 hours dealing with a fraudulent document ring, with  
20 fraudulent identity documents. They weren't passports,  
21 but fraudulent documents are available.

22 My section, as you know, does prosecute fraud  
23 -- passport fraud cases. They're out there. Mr.  
24 Hitselberger has a strong incentive to flee, and again,  
25 as Judge Facciola said in the opinion that I cited to

1 the Court, "The past is prologue," and here the past is  
2 flight, and it's flight that was very difficult for the  
3 Government to overcome, and really, but for the  
4 fortuity that he went back to Kuwait and we learned  
5 about that, we may never have caught him at this time.

6 THE COURT: Thank you very much, Mr. Bratt.

7 MR. VANEGAS: Good afternoon, Your Honor.

8 THE COURT: Now, Mr. Vanegas, good afternoon.

9 MR. VANEGAS: Your Honor, my request is for  
10 the Court to release Mr. Hitselberger for the following  
11 reasons.

12 The Government starts its argument by stating  
13 that on page 1 of their memorandum, and basically it's  
14 been emphasized here, at the second paragraph,  
15 Hitselberger's employer ordered him home, and there's  
16 nothing that's been presented before, that has been  
17 submitted either orally here, or also in the exhibits,  
18 to show that Mr. Hitselberger received an order from  
19 his employer saying, "Not only have we terminated or  
20 replaced you, but based on the contract that we have  
21 you under, that we have the right to order you home."  
22 And so, it doesn't seem that Mr. Hitselberger was under  
23 any type of authority, or anyone's jurisdiction, that  
24 it can take the action to say, "You have to come home."

25 The fact that his employer may have --

1 THE COURT: You may continue.

2 MR. VANEGAS: The fact that his employer may  
3 have provided him with a ticket to return to the United  
4 States, that does not encumber Mr. Hitselberger to  
5 return home, and the Government wants to impute  
6 essentially some type of authority and obligation over  
7 Mr. Hitselberger, that at the time that he was  
8 terminated or replaced from his employment, he had to  
9 come to the United States.

10 THE COURT: Is it your contention, Mr.  
11 Vanegas, that Mr. Hitselberger should not be  
12 characterized as a fugitive?

13 MR. VANEGAS: Yes, Your Honor, because  
14 additionally, although at that time that he's  
15 interviewed by NCIS agents, the interview there is  
16 voluntary. He's not in custody. They read him his  
17 Miranda Rights, but certainly those officers do not  
18 impart to Mr. Hitselberger, that he has to return home,  
19 that what he's done is a grave violation.

20 They basically ask him to be interviewed. He  
21 agreed to it. They conducted two series, I believe,  
22 very long interviews that were tape recorded. At the  
23 termination of those interviews, he's not told that he  
24 should return to the United States and that he's under  
25 some serious investigation.

1           If we fast-forward, if the FBI is  
2     investigating him, the fact that he may know that  
3     there's some investigation taking place doesn't mean  
4     that Mr. Hitselberger has to remain home. I mean, just  
5     because a citizen is -- becomes aware they're being  
6     investigated, that does not obligate the citizen to  
7     stand still, basically that they are not allowed to do  
8     anything.

9           The Government wants to basically give this  
10    impression and draw the inference that he's a fugitive,  
11    but he's not a fugitive from justice. There was no  
12    court order for him to go anywhere. There was no law  
13    enforcement officer who gave him some notice that he  
14    had to report.

15          For example, if we look at the way the U.S.  
16    Attorney sometimes sends out target letters to  
17    individuals, they say, "We want to interview you  
18    because there's an allegation" or "there's information  
19    that you have violated the following statute and we  
20    would like to speak to you." There was none of that.  
21    And so without any type of direct notice that he should  
22    report somewhere, Mr. Hitselberger was not under any  
23    obligation to go anywhere.

24          When the Government says that "The past is  
25    prologue," well, that's actually an interesting case --

1 interesting way of looking at this because if the past  
2 is prologue, then what they have is if Mr. Hitselberger  
3 has committed some infraction previously, what he has  
4 done with these classified documents, is send them to  
5 the Hoover Institution, but the way the Government  
6 presents its motion to the Government, it says, "Well,  
7 Mr. Hitselberger was in an area in which the United  
8 States has four enemies, it has -- says that Iran, Al  
9 Qaeda of Iraq, Al Qaeda of Mesopotamia, and Hezbollah.

10 Well, Mr. Hitselberger did not send any of  
11 those documents to any of those entities, and there's  
12 no Al Qaeda of Stanford University, the Hoover  
13 Institution. So I think that argument can be just  
14 rejected outright.

15 The fact that Mr. Hitselberger is traveling in  
16 various countries, the Government can look into his  
17 finances; that is, if they can obtain pen register,  
18 they can find out how much money he has in his bank  
19 account, and whether he's withdrawing money in order to  
20 sustain that -- sustain his livelihood abroad.

21 The Government always knew where he was, and  
22 when the Government says that there is a potential for  
23 him to misuse or take this information and give it to  
24 authorities that would harm the United States, if we  
25 look at Exhibit A, Your Honor, at the bottom it says

1     that based on the information that's herein, that  
2     there's no evidence that there's any threat to the  
3     United States or any Western countries, and so at least  
4     it seems to me that half the documents that are at  
5     issue do not at all represent a threat to the United  
6     States.

7             So when the Government says, "Yes, the United  
8     States has these threats by these four entities," well,  
9     one thing is that we know that Mr. Hitselberger has  
10    never disclosed any of these documents to a threatening  
11    entity; and then two, has disclosed them to the Hoover  
12    Institution; three, the documents were actually  
13    retrieved by NCIS, and Mr. Hitselberger has never shown  
14    that he has either traded, sold or somehow compromised  
15    the security of the United States abroad or the  
16    mainland, such that this requires pretrial detention.

17            THE COURT: Well, Mr. Vanegas, you said, in  
18    response to my question, that you dispute the  
19    characterization of Mr. Hitselberger as a "fugitive."

20            What are the inferences that you would have  
21    the Court draw from the evidence proffered by Mr.  
22    Bratt; that is, from April 2012 through the time of his  
23    arrest, Mr. Hitselberger traveled to and among, I'm  
24    going to estimate, five European countries, --

25            MR. VANEGAS: Well, --

1           THE COURT: -- having departed the flight  
2       which was scheduled, or which -- as to which there was  
3       a layover -- during which there was a layover in  
4       Germany, never to re-board?

5           So what inferences do you wish the Court to  
6       draw from that evidence, if it is not that Mr.  
7       Hitselberger was a fugitive during that period?

8           MR. VANEGAS: If he has no reason to return  
9       to the United States, and if he's lived abroad as an  
10      interpreter, both in Iraq, if he studied in Egypt and  
11      he's been in Iraq, he's been someone who's been  
12      traveling throughout the world throughout his life.

13          I mean, in order to make the inference of him  
14      being a fugitive, I think there's an added element that  
15      we have to -- that the Court would have to impute upon  
16      him, notice that, in fact, he was aware of a pending  
17      investigation and they were closing in on him, or that  
18      they wanted him, and without that, I don't think the  
19      inference can be made.

20          The fact that he did not -- And then that he  
21      returns to the Middle East, I mean, it doesn't seem  
22      like -- He's returning to a country where the United  
23      States military has a wide presence there, throughout  
24      the Middle East, whether Bahrain or Egypt or something,  
25      Israel, and then in Kuwait, and so he's not -- The

1 other thing is that he had contact with his former  
2 employer about returning his -- about trying to get  
3 back his property, and the reason that he goes back to  
4 Kuwait is after contacting his former employer, this is  
5 my understanding, and that he's giving notice, "Well,  
6 I'm going back to Kuwait to get my property."

7 I mean, when somebody basically publicly  
8 announced that, "This is what I'm doing", then I think  
9 that undermines a notion that he's being a fugitive.

10 And the Government points out, both in its  
11 memorandum, and it quotes freely from Judge Friedman's  
12 opinion in the detention memorandum of Anderson, which  
13 is a 2005 case, and then it tries to circle around it  
14 and use the case that was before Your Honor today, and  
15 that is that there is the presence of people  
16 manufacturing false identification passports, and so  
17 forth.

18 There's never been an allegation that Mr.  
19 Hitselberger has even used an alias, that he's ever  
20 carried false identifications, or that he's ever  
21 procured a passport with someone else's name, and those  
22 are elements in which -- or those are facts in which  
23 Judge Friedman used in order to say that Walter  
24 Anderson, back in 2005, should not be released.

25 Additionally, Walter Anderson was almost a

1     billionaire. He owed over \$220 million in taxes. Mr.  
2     Hitselberger comes nowhere near. As the Court has  
3     heard, he sent someone \$19,000. He may have property  
4     that's valued over -- around \$60,000, but that's about  
5     it. This is not a man who has the means by which to  
6     travel the world endlessly without using the limited  
7     income that he has, and at the time that he needed to  
8     get --

9             THE COURT: Then what is your proffer -- I  
10    apologize. I did not mean to interrupt. Please  
11    continue.

12            MR. VANEGAS: Only that he does not have the  
13    means to just travel around, and that he does not have  
14    personal business contacts, as the Government indicates  
15    in its motion, and they can't point to that. All  
16    they're doing is just making that up because he -- his  
17    means of supporting himself is based on his savings,  
18    and I think that if they have this information about  
19    him, they can proffer that, or else they would say  
20    these are his business and personal interests that he  
21    has abroad, which allows him to sustain himself.

22            THE COURT: What, then, is your proffer, if  
23    you care to make one, regarding -- What is the basis of  
24    your proffer -- Perhaps I will rephrase my own  
25    question.

1           What is the basis of your proffer that Mr.  
2     Hitselberger is without resources to sustain himself  
3     abroad since, according to the Government's proffer,  
4     Mr. Hitselberger did sustain himself abroad from April  
5     through October, April being the time, if I read the  
6     inferences from these -- if I correctly infer facts  
7     from these documents, the time that he was terminated  
8     from his employment?

9           MR. VANEGAS: My proffer would be just based  
10    on my understanding of the limited savings that he has,  
11    that he spent, of the months of being outside the  
12    United States, that three of those months were spent in  
13    Albania, where the cost of living is very -- it's very  
14    low. He doesn't -- didn't require that much money, and  
15    that all the money that he was using was just based on  
16    savings account that -- what he has as far as  
17    retirement accounts is very modest, and that he  
18    basically just lives off what he earned working as an  
19    interpreter, and that when he worked for Global  
20    Linguistic Solutions, he was making around -- about  
21    \$6,000 a month, and that he saved his money.

22           He has -- He lives a very frugal, thrifty  
23    life, and that he doesn't -- he's not a spendthrift you  
24    can -- one can also make those inferences by where he  
25    was living previously in Michigan, trying to rent out

1 property, and that that did not go well for him, but  
2 he's someone who has always lived very modestly, and  
3 that he doesn't -- he's not a wealthy man, that that  
4 will never be proven, and my proffer is based on an  
5 understanding of what he has done throughout his career  
6 as an interpreter, also trying to rent out properties,  
7 and that he doesn't have much money.

8 THE COURT: You may continue, Mr. Vanegas.  
9 Thank you.

10 MR. VANEGAS: Finally, Your Honor, in order  
11 to hold Mr. -- to reach the requests of the Government,  
12 I believe that the standard should be clear and  
13 convincing evidence that there's no condition or  
14 combination of conditions of release that would  
15 guarantee that he would not return to court.

16 What I've been able to bring to the Court, as  
17 far as where he can live, because he does have some  
18 contact in the communities, that he has an aunt who's  
19 been living in D.C. consistently since 1979. Her name  
20 is Dorothy Funkhouser. She's in the court. She has  
21 spoken to Pretrial Services and she indicated that Mr.  
22 -- her nephew, Mr. Hitselberger, can live with her,  
23 that she has a land line, and that he can be placed  
24 under electronic home monitoring.

25 Mr. Hitselberger, it -- can be ordered by the

1 Court not to get another passport, and I believe that  
2 is the condition that Courts routinely demand of  
3 defendants, if their passport has been surrendered or  
4 seized, that they not do that.

5 That requirement -- That order can be put in  
6 place here. Where Ms. Funkhouser lives is in  
7 Arlington, Virginia, so it's nearby. It's within a 50  
8 mile radius of Washington, D.C., and Pretrial Services  
9 is able to monitor him through an -- ankle bracelets.

10 Without a passport, Mr. Hitselberger will be  
11 unable to go anywhere, in the absence of no prior  
12 history of being able to access any type of false  
13 documentations, or any history of using aliases.

14 So, based on those considerations, Your Honor,  
15 I'd ask for the Court to release Mr. Hitselberger to  
16 the custody of his aunt, who is present in court.

17 THE COURT: Thank you very much, Mr. Vanegas.

18 Mr. Bratt, I will hear your reply, and I  
19 would appreciate it if you would address the proffers  
20 made by Mr. Vanegas, including the proffers with  
21 respect to the absence of any allegation that Mr.  
22 Hitselberger possessed or used any false or fraudulent  
23 identification documents, such as a passport, in a name  
24 other than his own name, and that he is without  
25 resources to sustain himself --

1 MR. BRATT: Well, --

2 THE COURT: -- outside the United States.

3 MR. BRATT: Yes, Your Honor.

4 First, as we say in our memorandum, we're not  
5 saying that he ever has used aliases or that he has  
6 ever used false documents, and we also, in our  
7 (unintelligible) memorandum, that this case -- there  
8 are distinctions between this case and Anderson. He  
9 does not have the wealth of Mr. Anderson. He does not  
10 have the interest that Mr. Anderson had in developing a  
11 fake identity for itself.

12 In Anderson, they actually found literature  
13 in his apartment, or in his home, about how to get a  
14 fake identity. Those facts are not present here, and  
15 the Government is up front about that.

16 However, what Anderson does say and what  
17 Anderson -- were Anderson is applicable, is that there  
18 are factors that were present in Anderson that are also  
19 present here. The ability to live -- The fact that the  
20 Defendant, like Mr. Anderson, has lived abroad for  
21 extended periods of time, the ability to live abroad  
22 for extended periods of time, and knowing people  
23 abroad.

24 With respect --

25 THE COURT: What is the basis of your proffer

1     regarding the ability to live abroad and "knowing"  
2     people abroad?

3             MR. BRATT: We have seen some of Mr.  
4     Hitselberger's communications. While he was in Europe,  
5     for some of the time he was staying with friends. For  
6     some of the time he was renting inexpensive properties  
7     where -- to live.

8             He had a friend in Kuwait waiting to pick him  
9     up at the airport.

10            So he does have a lot of contacts overseas.  
11     He didn't -- He wasn't always staying with friends, but  
12     he was in contact with friends when he was overseas.

13            In terms of his resources, first of all,  
14     \$6,000 a month comes out to \$72,000 a year. That  
15     income is tax free for American expatriates living  
16     overseas. All income up to \$80,000, for an American  
17     expatriate who earned that money overseas, is tax free  
18     and, in fact, in one of the communications that we have  
19     from Mr. Hitselberger, he was saying that he was  
20     approaching the point where he would not have to pay  
21     income on his -- income taxes on that income.

22            Also, you know, the fact that he was living  
23     and Albania for three months, and you can find places  
24     that are cheap, that really proves our point, that he  
25     doesn't need an have extensive resources to do what he

1 has been doing. In fact, he was able to live. You  
2 look at him, he looks healthy. He was able to live and  
3 support himself and feed himself for eight months while  
4 he was traveling about in Europe.

5 To go back to what Mr. Vanegas said at the  
6 outset, that he wasn't -- that we haven't proffered  
7 that he was asked to go home, I would just point to  
8 page 9 of our memorandum where we state, and this is  
9 our proffer, and we could bring in evidence of this,  
10 that, "As a result of Hitselberger's removal of two  
11 classified documents from the RAA (phonetic), and  
12 discovery of a portion of the third classified document  
13 in his room, JSOTF," the Joint Special Operations Task  
14 Force, "requested that GLS replace Hitselberger and  
15 send him home."

16 GLS, Global Linguistics Solutions, paid for  
17 his ticket.

18 As also we point out in our memorandum, he  
19 had a reservation to return in May and he opted not to  
20 use that reservation.

21 He had a reservation to return in August and  
22 we were tracking that, and it looked as if he was going  
23 to use it. At the last minute he did not get on that  
24 flight to return to the United States. Both of those  
25 were flights were heading into Dallas, Texas, and those

1 reservations were put off until 2013.

2 It's also, I think --

3 THE COURT: What's your response to Mr.

4 Vanegas' contention that the failure of Mr.

5 Hitselberger to maintain those flight schedules does

6 not warrant the inference that he was a fugitive?

7 MR. BRATT: Well, excuse me, Your Honor.

8 I mean, our argument is that we know he knew

9 he was under investigation. He knew the moment he left

10 Bahrain, and he learned through acquaintances, that the

11 FBI was looking at him while he was in Europe. He was

12 aware of that. We have that in his communications, and

13 he intentionally stays.

14 I think it's also important to note, Your

15 Honor, that when he was in Germany he was, at least for

16 the first week or so, in frequent contact with his

17 employer, and according to our proffer and according to

18 what the employer's security person would say, Mr.

19 Hitselberger was cagey about where he was. He was not

20 forthcoming about he was -- about where he was, and he

21 told a completely ridiculous story to them. He said

22 that the reason that the -- One, was going to stop

23 traveling, and the reason he was gonna stop traveling

24 is that he was feeling a stroke coming on.

25 Well, we know of no medical emergency that

1 Mr. Hitselberger had, and we knew -- we do know that he  
2 did not stop traveling, and that, in fact, he kept on  
3 traveling.

4 He knew that he faced a possible situation if  
5 he came to the United States, and he did not return.  
6 He intentionally did not return.

7 I just want to make one last comment also on  
8 the materials that Mr. Hitselberger had. Mr. Vanegas  
9 says, "Well, he didn't pass them to a foreign power."  
10 No, we're not arguing that, and he would have been  
11 charged with a more serious offense had he done that,  
12 but there's a reason that classified materials are  
13 stored in something called a "restricted access area."  
14 They're protected there. His room is not a protected  
15 place.

16 The packages, the mail that he used to send  
17 these materials back to Stanford were not protected.  
18 They could fall into the wrong hands. That's the whole  
19 reason that they are literally kept under, not just  
20 lock and key, but heavy lock and heavy key in a  
21 reinforced, protected environment, because they are  
22 that sensitive, and he intentionally took these  
23 materials out.

24 Thank you, Your Honor.

25 THE COURT: Thank you very much, Mr. Bratt.

1 Oh, Mr. Bratt, I apologize. Mr. Vanegas,  
2 during his proffer, also observed that the Government  
3 has made no proffer with respect to resources available  
4 to Mr. Hitselberger.

5 Is that something you --

6 MR. BRATT: Well, I think we have made  
7 something of a proffer.

8 THE COURT: -- intend to address?

9 MR. BRATT: I mentioned -- Well, one, there's  
10 just the inference to be drawn from his ability to  
11 support himself for eight months, with no discernible  
12 income, but there's the fact that he told the agents  
13 that he purchased a \$19,000 piece of property in  
14 Michigan within the last few months.

15 There's the fact that we found, in this mail  
16 matter that was given by this cooperating individual, a  
17 check to a person in Michigan, for \$4,000. He has  
18 funds at his disposal. We've discovered some of his  
19 bank accounts and we've been able see where some of his  
20 money is. I don't think there's any one account that  
21 had more than about \$30,000 in it.

22 Again, we're not saying that he --

23 THE COURT: Is that something you intend to  
24 rely on for purposes of this hearing, in response to  
25 Mr. Vanegas' proffer?

1 MR. BRATT: It is an added factor, Your  
2 Honor.

3 We're not contending that Mr. Hitselberger is  
4 an exceptionally wealthy person, we're not saying that,  
5 but we are saying that there is unexplained income that  
6 he drew upon in order to survive while he was gone;  
7 that he was not, to our knowledge, near coming back;  
8 and there are indications that he had sufficient excess  
9 funds to purchase property in Michigan, and to send a  
10 multi-thousand or \$4,000 check to an acquaintance in  
11 Michigan to cover some of the properties.

12 THE COURT: Very well. Thank you very much,  
13 Mr. Bratt.

14 Is there anything further, Mr. Vanegas?

15 MR. VANEGAS: Very briefly, Your Honor, and  
16 that is that it's clear that Mr. Hitselberger has  
17 modest means and income, and somehow he's able to  
18 support himself.

19 However, when the Government submits in its  
20 motion, as support, the case of Walter Anderson, it's  
21 one that -- where they want to make him as someone with  
22 extensive resources, but then through their own  
23 investigation they know he has modest means.

24 And then they use the fact that he's able to  
25 live cheaply as a way by which he can further his

1 fugitivity, and I think the Government wants to have it  
2 both ways. I mean, one, it's pointed out like he  
3 doesn't have those limited resources, that he can live  
4 abroad in such a way that's modest, and then he's  
5 sending -- sent over \$19,000. Well, that is a  
6 reduction of his net income of what the Government is  
7 saying that he has total, and so it clearly shows that  
8 he's not someone who has the means to sustain himself  
9 ad infinitum, and that's what I believe they're getting  
10 at when they use the Walter Anderson case.

11 That's all, Your Honor.

12 THE COURT: Thank you very much, Mr. Vanegas.

13 MR. BRATT: I just have one brief -- very  
14 brief response, Your Honor.

15 THE COURT: Yes?

16 MR. BRATT: And that is that Mr. Hitselberger  
17 has a readily saleable skill as an interpreter, and  
18 that's something he can use anywhere in the world and  
19 draw income from, by using that skill.

20 THE COURT: Thank you, Mr. Bratt.

21 The Court has very carefully considered the  
22 proffers and arguments of counsel and, having done so,  
23 finds that the Government has shown by a preponderance  
24 of the evidence, that no condition or combination of  
25 conditions of release would reasonably assure Mr.

1     Hitselberger's appearance.

2             For these reasons, as well as the further  
3     reasons to be set forth in the Court's written  
4     findings, the Court will order Mr. Hitselberger held  
5     without bond pending trial.

6             The Court will note preliminarily, that the  
7     Court bases this finding on a -- determinations  
8     specific to Mr. Hitselberger, and the facts proffered,  
9     and in no respect has the Court considered proceedings  
10    earlier this afternoon, or indeed the underlying facts  
11    of the case cited by counsel for the Government in  
12    reaching a decision regarding Mr. Hitselberger's  
13    detention.

14            The findings with respect to Mr. Hitselberger  
15    are based solely on the evidence proffered, and while  
16    the Court has considered the availability of Mr.  
17    Hitselberger's aunt, who is present, to serve as  
18    third-party custodian, and has also considered the  
19    proffer made by Mr. Hitselberger's counsel regarding  
20    the lack of any evidence of any relatively significant  
21    wealth by Mr. Hitselberger, it remains the case that  
22    the evidence shows that Mr. Hitselberger, from April  
23    until this arrest in October, did indeed not only  
24    reside abroad, but relocate in a manner which bespeaks  
25    an effort to remain undetectable.

1           For these reasons and, as I indicated, the  
2 further reasons to be set forth in writing, the Court  
3 will order Mr. Hitselberger detained.

4           MR. BRATT: Your Honor, I guess (inaudible)  
5 previously told us that Judge Contreras had set one for  
6 November 8th at 10:00 o'clock.

7           THE COURT: Very well. Thank you very much.  
8 You did make note of that; did you not, Mr.  
9 Vanegas?

10          MR. VANEGAS: Yes, Your Honor.

11          THE COURT: Very well. Thank you very much.  
12 Now, is there anything further with respect  
13 to this matter at this time, Mr. Bratt?

14          MR. BRATT: Not for the Government, Your  
15 Honor.

16          THE COURT: Mr. Vanegas?

17          MR. VANEGAS: No, Your Honor.

18          THE COURT: Thank you very much, Counsel.  
19 Mr. Hitselberger, please return with the  
20 marshal, sir.

21               (Proceedings concluded at 4:48 p.m.)  
22  
23  
24  
25

C E R T I F I C A T E

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

/s/ \_\_\_\_\_

December 2, 2012

STEPHEN C. BOWLES