

No. 19-50231

---

**In the United States Court of Appeals  
for the Ninth Circuit**

---

UNITED STATES OF AMERICA,  
*Plaintiff-Appellee,*

v.

NIKISHNA POLEQUAPTEWA,  
*Defendant-Appellant.*

---

On Appeal from the United States District Court  
for the Central District of California  
The Honorable Cormac J. Carney, Presiding  
No. CR-16-00036-CJC

---

**Appellant's Excerpts of Record**  
**[Volume 6 of 6]**

---

CUAUHTEMOC ORTEGA  
Interim Federal Public Defender  
JAMES H. LOCKLIN  
Deputy Federal Public Defender  
321 East 2nd Street  
Los Angeles, California 90012  
213-894-2929

*Counsel for Defendant-Appellant*

---

## Table of Contents

### Volume 1

Order Denying Motion to Suppress Evidence .....	1
[Filed May 4, 2018; Docket No. 39]	
Transcript – Retrial – Day 5 – A.M. (Jury Instructions Only) .....	9
[Dated November 13, 2018; Filed January 25, 2019; Docket Nos. 144, 159]	

### Volume 2

Indictment .....	27
[Filed March 24, 2016; Docket No. 1]	
Defendant’s Motion to Suppress Evidence.....	30
[Filed February 2, 2018; Docket No. 33]	
Government’s Opposition to Motion to Suppress Evidence* .....	109
[Filed April 16, 2018; Docket No. 36]	
Defendant’s Reply re Motion to Suppress Evidence .....	191
[Filed April 23, 2018; Docket No. 37]	
Government’s Application re Evidentiary Hearing.....	197
[Filed April 27, 2018; Docket No. 38]	
Transcript – First Trial – Day 5 (Excerpt) .....	203
[Dated June 26, 2018; Filed August 29, 2018; Docket Nos. 82, 104]	
First Superseding Indictment .....	235
[Filed August 29, 2018; Docket No. 106]	
Joint Proposed Jury Instructions (Excerpt).....	240
[Filed October 10, 2018; Docket No. 116]	

---

\* Documents marked with an asterisk have been redacted pursuant to Fed. R. App. P. 25(a)(5) and Fed. R. Crim. P. 49.1(a).

Transcript – Retrial – Day 1 - P.M. (Excerpt) .....	244
[Dated November 6, 2018; Filed January 31, 2020; Docket Nos. 139, 202]	

Volume 3

Transcript – Retrial – Day 2 – A.M. ....	292
[Dated November 7, 2018; Filed January 31, 2020; Docket Nos. 140, 209]	

Transcript – Retrial – Day 2 – P.M. ....	414
[Dated November 7, 2018; Filed January 31, 2020; Docket Nos. 140, 203]	

Volume 4

Transcript – Retrial – Day 3 – A.M. ....	580
[Dated November 8, 2018; Filed June 30, 2019; Docket Nos. 141, 186]	

Transcript – Retrial – Day 3 – P.M. ....	716
[Dated November 8, 2018; Filed June 30, 2019; Docket Nos. 141, 184]	

Volume 5

Transcript – Retrial – Day 4 – A.M. ....	855
[Dated November 9, 2018; Filed January 31, 2020; Docket Nos. 142, 204]	

Transcript – Retrial – Day 4 – P.M. ....	1002
[Dated November 9, 2018; Filed January 31, 2020; Docket Nos. 142, 210]	

Volume 6

Transcript – Retrial – Day 5 – A.M.* .....	1047
[Dated November 13, 2018; Filed January 25, 2019; Docket Nos. 144, 159]	

Transcript – Retrial – Day 5 – P.M. ....	1178
[Dated November 13, 2018; Filed February 7, 2020; Docket Nos. 144, 214]	

Jury Instructions .....	1209
[Filed November 13, 2018; Docket No. 143]	
Selected Trial Exhibits (Nos. 66A, 84, and 98) .....	1237
Jury Note 1 .....	1252
[Filed November 13, 2018; Docket No. 147 (Redacted Version)]	
Response to Jury Note 1 .....	1253
[Filed November 13, 2018; Docket No. 148]	
Jury Note 2 .....	1254
[Filed November 13, 2018; Docket No. 149 (Redacted Version)]	
Verdict .....	1255
[Filed November 13, 2018; Docket No. 151 (Redacted Version)]	
List of Exhibits and Witnesses .....	1258
[Filed November 13, 2018; Docket No. 153]	
Judgment .....	1288
[Filed July 9, 2019; Docket No. 190]	
Notice of Appeal .....	1291
[Filed July 12, 2019; Docket No. 192]	
Docket .....	1298



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

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA - SOUTHERN DIVISION  
HONORABLE CORMAC J. CARNEY, U.S. DISTRICT JUDGE

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	<b><u>CERTIFIED TRANSCRIPT</u></b>
	)	
vs.	)	Case No.
	)	8:16-cr-00036-CJC-1
NIKISHNA POLEQUAPTEWA,	)	
	)	<b>Volume I</b>
Defendant.	)	
	)	

---

REPORTER'S TRANSCRIPT OF PROCEEDINGS  
JURY TRIAL - **DAY 5**  
TUESDAY, NOVEMBER 13, 2018  
8:40 A.M.  
SANTA ANA, CALIFORNIA

---

**DEBBIE HINO-SPAAN, CSR 7953, CRR**  
FEDERAL OFFICIAL COURT REPORTER  
411 WEST FOURTH STREET, ROOM 1-191  
SANTA ANA, CALIFORNIA 92701-4516  
dhinospaan@yahoo.com

**APPEARANCES OF COUNSEL:**

**FOR THE PLAINTIFF:**

NICOLA T. HANNA  
United States Attorney  
BY: VIBHAV MITTAL  
BRADLEY EDWARD MARRETT  
Assistant United States Attorneys  
United States Courthouse  
411 West Fourth Street  
Suite 8000  
Santa Ana, California 92701  
(714) 338-3708

**FOR THE DEFENDANT:**

KHOURI LAW FIRM  
BY: MICHAEL JOHN KHOURI, ESQ.  
24012 Calle de la Plata  
Suite 210  
Laguna Hills, California 92653  
(949) 336-2433

**ALSO PRESENT:**

Todd Munoz, FBI Special Agent

**I N D E X**

<b>WITNESSES</b>	<b>PAGE</b>
<b>YOLANDA POLEQUAPTEWA, CALLED BY THE DEFENSE</b>	
Direct Examination by Mr. Khouri	7
Cross-Examination by Mr. Marrett	39
Redirect Examination by Mr. Khouri	69
Recross-Examination by Mr. Marrett	72
<b>Jury Instructions</b>	75
<b>Closing Argument by the government (Mr. Mittal)</b>	92
<b>Closing Argument by the defense (Mr. Khouri)</b>	119

**EXHIBITS**

(None offered.)

1                   **SANTA ANA, CALIFORNIA; TUESDAY, NOVEMBER 13, 2018**

2                                   **8:40 A.M.**

3                                   - - -

4                   **(In the presence of the jury.)**

08:40AM 5                   THE COURT: Mr. Khouri, looks like you're ready to  
6 give your opening statement.

7                   MR. KHOURI: Ready to go, Your Honor.

8                   THE COURT: Please do so.

9                   MR. KHOURI: Thank you.

08:40AM 10                  Good morning. This is the defense's opening statement.  
11 One witness, because most of the case has already come out on  
12 cross-examination. The witness is Yolanda Polequaptewa,  
13 Nikishna's wife.

14                  She will tell you what happened on the 14th, and she'll  
08:40AM 15 tell you what happened on the 18th. Briefly, on the 14th, she  
16 and Nikishna went back to his office and turned off the  
17 computer. This was after everybody left. And the computer  
18 we're talking about on the 14th is Nikishna's computer in his  
19 office on his desk. She'll also describe to you the items of  
08:41AM 20 personal property that Nikishna had in his office that was  
21 locked up by John Mooers.

22                  The next day Nikishna, Yolanda, and his three daughters  
23 went to Orlando, Florida, on their own money. They took the  
24 daughters to Disney World. And then the following day they  
08:41AM 25 went to the Fort Lauderdale area where they checked into that

1 Residence Inn hotel.

2 Monday, the 17th, nothing really happens.

3 Tuesday, the 18th, the key day. On the 18th, Nikishna  
4 came home to the hotel around 5 o'clock. The kids were hungry.

08:42AM 5 They went out to dinner. They went to Target. It was family  
6 time. Nikishna did not have his laptop.

7 They get back to the hotel around 7:00, 7:30. The kids  
8 are tired because, you know, they had been to Disney World the  
9 day before. They had been out walking around Fort Lauderdale  
08:42AM 10 while Nikishna was at work. They went to bed around 7:30, the  
11 children.

12 Around 8 o'clock -- and this is all an estimate. I don't  
13 know what the witness is going to testify to. But around  
14 8 o'clock, there was loud knocking on the door of the hotel  
08:43AM 15 room. Not gentle knocking, very loud knocking. It was John  
16 Mooers -- I'm sorry, it was Bill Moon outside. And Bill Moon  
17 was absolutely hysterical, yelling, screaming, demanding to  
18 come inside the hotel room.

19 I think Yolanda will actually testify that, once the door  
08:43AM 20 was open but kept closed -- kept from being all the way open by  
21 the latch, that she could actually hear John Mooers' voice on  
22 Bill Moon's cell phone ordering Bill Moon to get that computer.  
23 This time, of course, we're talking about the laptop.

24 They were scared. They didn't know what to do. So  
08:43AM 25 Nikishna called the police. The police came. And that's when

1 things got even worse. The police started knocking very loudly  
2 on the door, demanding to come inside the hotel room. They  
3 essentially told Nikishna and Yolanda that they were going to  
4 come in or else.

08:44AM 5 Well, at this point in time, Nikishna let them inside and  
6 gave them, over his objection, the laptop. This was about  
7 9:00, 9:30 East Coast time, 6:00, 6:30 West Coast time.

8 After that, the police left. Bill Moon left. And  
9 Nikishna and Yolanda sat down, and they're sitting side by  
08:44AM 10 side. And all of a sudden, Nikishna began to notice that his  
11 personal information was being compromised. He was getting  
12 alerts on his phone that his e-mail had been changed. They  
13 tracked the IP address down together to an office in Irvine.  
14 And then when they -- they were somehow, on Google, able to  
08:45AM 15 figure out how the e-mail had been changed and had been changed  
16 to a Hebrew name.

17 So what Nikishna did is he deleted from his phone the Blue  
18 Stone information he had on his phone. No Blue Stone  
19 information on the desktop, just what's on his phone.

08:45AM 20 So let's get started. I'll call a witness. Thank you.

21 THE COURT: Very well. Ready to call the witness.

22 MR. KHOURI: May I get her, Your Honor?

23 THE COURT: You may.

24 MR. KHOURI: Yolanda Polequaptewa.

08:46AM 25 THE COURT: Good morning, ma'am. Could you please

1 come forward, stand right by our court reporter for a moment.  
2 We'll administer an oath and have you take the witness stand.  
3 Right here.

4 **YOLANDA POLEQUAPTEWA, DEFENSE WITNESS, WAS SWORN**

08:46AM 5 THE COURTROOM DEPUTY: Please state your full name  
6 and spell your last name for the record.

7 THE WITNESS: Yolanda Polequaptewa,  
8 P-o-l-e-q-u-a-p-t-e-w-a.

9 MR. KHOURI: May I, Your Honor?

08:47AM 10 THE COURT: Thank you.

11 **DIRECT EXAMINATION**

12 BY MR. KHOURI:

13 Q Good morning.

14 A Good morning.

08:47AM 15 Q Where do you reside, Yolanda?

16 A In Arizona.

17 Q And do you know Nikishna Polequaptewa?

18 A Yes.

19 Q Okay. And how do you know him?

08:47AM 20 A He's my husband.

21 Q How long have you been married?

22 A A little over 12 years.

23 Q And where do you live in Arizona?

24 A We were living on the Hopi reservation and recently moved  
08:47AM 25 down to kind of the Phoenix area, just outside the city limits.

1 Q Are you a Native American?

2 A I am not.

3 Q All right. Is Nikishna?

4 A Yes.

08:47AM 5 Q Does he speak a Native American language?

6 A He does, words and phrases, yeah.

7 Q All right. I want to direct your attention to November

8 of 2014.

9 A Uh-huh.

08:48AM 10 Q Where were you and Nikishna living then?

11 A We were living in Garden Grove, California.

12 Q And on or around the second week of November, where did

13 Nikishna work?

14 A He worked at Blue Stone.

08:48AM 15 Q And where did you work?

16 A At UC Irvine.

17 Q By the way, do you use a computer?

18 A Yes.

19 Q Do you use it regularly at your place of employment?

08:48AM 20 A Uh-huh.

21 Q All right. And how many years have you used a computer?

22 A Since I started working, when I was 18 years old.

23 Q You have degrees in what?

24 A In history with a minor in English and a master's degree

08:48AM 25 in Latin American studies.



1 Q From where?

2 A UCLA.

3 Q And are you familiar, from your work experience, with a

4 Macintosh or an Apple computer?

08:49AM 5 A Uh-huh.

6 Q Is that "yes"?

7 A Yes.

8 Q Both the iPhone and a computer called the Mac Pro?

9 A Yes.

08:49AM 10 Q Okay. Have you used those at work?

11 A Yes.

12 Q How many years have you used those types of computers at

13 work?

14 A Maybe since 2007. So...

08:49AM 15 Q Okay. So I know you're not a computer expert, but are

16 you generally familiar with how those computers work?

17 A Yes.

18 Q All right. I'm going to direct your attention to Friday,

19 November 14th, 2014. Do you remember that day?

08:49AM 20 A Yes.

21 Q Okay. What happened in the afternoon with respect to

22 Nikishna?

23 A So we commuted at the time from Garden Grove, where we

24 lived, to Irvine. One would drop the other off. So I went to

08:50AM 25 pick up Nikishna from Blue Stone, and we started to head home.

1 And as we were heading home --

2 Q Okay. Hold on. I'm sorry.

3 So what time did you pick up Nikishna?

4 A Well, around 5:00 p.m.

08:50AM 5 Q Where did you pick him up from?

6 A From Blue Stone's offices.

7 Q In what city?

8 A In Irvine, California.

9 Q Now, had you been to those offices before?

08:50AM 10 A Yes.

11 Q About how many times?

12 A Well, I went there every day to pick him up and drop him

13 off, but inside the offices, maybe, like, five times, something

14 like that.

08:50AM 15 Q So Blue Stone, their offices were over by Orange County

16 airport?

17 A Uh-huh.

18 Q Is that "yes"?

19 A Yes.

08:50AM 20 Q Okay. And your office was at UC Irvine; right?

21 A Correct.

22 Q Sort of on the other side of the south part of Irvine?

23 A Yes.

24 Q All right. And what time was it that you picked Nikishna

08:50AM 25 up?

1 A Around 5 o'clock, like, after the workday.

2 Q Did you go inside the office to get him, or did he come

3 outside?

4 A I picked him up -- I parked and then picked him up. And

08:51AM 5 then as we were leaving, he was telling me about the --

6 Q Mrs. Polequaptewa --

7 A Uh-huh.

8 Q -- we'll get there.

9 A Okay.

08:51AM 10 Q So you picked him up outside; right?

11 A Uh-huh.

12 Q Did he get in the car?

13 A Yes.

14 Q And who was driving, you or him?

08:51AM 15 A I don't remember who was driving.

16 Q Okay. What happened? Did you guys get on the freeway --

17 A Yes.

18 Q -- to go home?

19 A Uh-huh.

08:51AM 20 Q So you would have gotten on the 405 Freeway north?

21 A I believe so. Whichever one is right there by the

22 airport.

23 Q And you're on your way to Garden Grove; right?

24 A Uh-huh.

08:51AM 25 Q Is that "yes"?

1 A Yes.

2 Q Try to say "yes" or "no" --

3 A Okay.

4 Q -- so the court reporter -- because the court reporter is

08:51AM 5 taking everything down.

6 A Okay. Yes.

7 Q Did you make it to the house?

8 A No.

9 Q Did you turn around?

08:52AM 10 A Yes.

11 Q Why did you turn around?

12 A Because Nikishna was telling me about how there had been

13 this strange occurrence where they had asked him kind of

14 abruptly to give passwords to Eldad, who formerly worked with

08:52AM 15 Blue Stone in some capacity, but he hadn't worked there in

16 several months since an e-mail that Nikishna sent regarding

17 Eldad doing something improper with the building's servers,

18 something to do with another project in the building.

19 MR. MARRETT: Objection. Move to strike,

08:52AM 20 nonresponsive.

21 THE COURT: Overruled.

22 Q BY MR. KHOURI: Did you make a suggestion to turn around

23 to go back to the office?

24 A Yes. So --

08:52AM 25 Q Why did you make that -- what did you say?

1 A He was telling me that he wanted, you know -- we had had  
2 several discussions about, you know, Eldad and the issue with  
3 him kind of -- what had happened in -- sorry. I guess -- let  
4 me go back a couple months.

08:53AM 5 So a couple months earlier when Nikishna first started  
6 working there, he was asked to work on the IT infrastructure.  
7 And there had been some sort of incident where Eldad had  
8 connected to the -- to something in the building where he ended  
9 up tapping into the -- another company that was working in the  
08:53AM 10 building.

11 And so the building -- one of the building managers had  
12 asked Nikishna, you know, not to let Eldad back into the IT  
13 room and that he was not allowed to be there anymore to service  
14 Blue Stone's IT stuff.

08:54AM 15 So Nikishna -- we had talked about it during that time.  
16 And we're, like, "Well, what do we do?" Because John had a  
17 meeting with him and Eldad, and he had asked -- Eldad had asked  
18 him for passwords, and Nikishna thought that Blue Stone had --  
19 that he was meeting with Eldad so that he could give -- so  
08:54AM 20 Eldad could give him information about -- about the IT stuff  
21 that had happened previously to when he had worked there.

22 MR. MARRETT: Your Honor, I'm going to object. Move  
23 to strike as both hearsay and speculation.

24 THE WITNESS: Oh, no, no. We had these  
08:54AM 25 conversations contemporaneously.

1 THE COURT: Ma'am, I need to rule.

2 THE WITNESS: Oh, sure.

3 THE COURT: You don't need to rule on the objection.

4 I assume you're not offering it for the truth?

08:54AM 5 MR. KHOURI: Absolutely not, Your Honor.

6 THE COURT: The objection is overruled.

7 Q BY MR. KHOURI: Okay. And was it your idea to go back to  
8 the office or Nikishna's?

9 A My idea.

08:54AM 10 Q Okay. Why? What were you trying to accomplish by going  
11 back to the office?

12 A Because Nikishna would always leave his -- both at home  
13 and at work, he would always leave his laptop -- or his stuff  
14 on. Like, he always leaves his computer on and he always  
08:55AM 15 leaves everything logged in. So whether it be, like, bank  
16 accounts or e-mails or whatever, like everything's logged in.

17 So I was, like, "If he has all your passwords, maybe you  
18 should at least go back and shut down your computer so he can't  
19 access it or anything like that." So we went back.

08:55AM 20 Q You went -- you went back where?

21 A Back to Blue Stone offices.

22 Q Did you park the car at the office?

23 A Yes.

24 Q Did you all go up to the Blue Stone offices?

08:55AM 25 A Yes.

1 Q Did you go into Nikishna's office?

2 A Yes.

3 Q So you're inside Nikishna's office?

4 A Uh-huh.

08:55AM 5 Q How many times had you been inside Nikishna's office

6 prior to that particular time?

7 A Maybe -- I mean, five, I guess, maybe more.

8 Q So were you generally familiar with what was inside his

9 office?

08:55AM 10 A Yes, generally.

11 Q And what kind of -- was there a computer on his desk?

12 A Yes.

13 Q Is that the only computer that was on his desk?

14 A Yes.

08:56AM 15 Q Was it a Macintosh computer?

16 A Yes.

17 Q It's his desktop; right?

18 A Uh-huh.

19 Q Is that "yes"?

08:56AM 20 A Yes.

21 Q Okay. And what did Nikishna do to his desktop?

22 A He turned it off.

23 Q How do you know he turned it off?

24 A Because he did what you normally do, like, just go to, you

08:56AM 25 know, shut down the computer and click on it, and then this

1 little wheelie thing turns off.

2 Q You saw that?

3 A Yes.

4 Q What happened to the image on the screen of the computer?

08:56AM 5 A It shut off. It's just blank, dark.

6 Q Dark?

7 A Yeah.

8 Q Now, are you generally familiar with the type of personal

9 belongings that Nikishna had in his office at Blue Stone?

08:57AM 10 A Not everything, but generally some of the things I

11 remember that were in there.

12 Q What do you remember?

13 A I immediately remember, like, a Pendleton blanket that he

14 had, just because we got it for our wedding. So he had it up,

08:57AM 15 like, on the wall as a decoration.

16 Q A blanket? How big was it?

17 A It covers a queen-size mattress.

18 Q So a Native American blanket?

19 A Yeah. Yeah. A lot of Native people use them for

08:57AM 20 different honorings or ceremonies, and -- even though they're

21 not made by Native people. But they're pretty expensive, like,

22 200-something dollars for a queen size and like 300 for a king

23 size.

24 Q Had you held the blanket before?

08:57AM 25 A This one or --



1 Q Yeah, this particular one that was on his wall.  
2 A Uh-huh. Yes.  
3 Q You held it?  
4 A Uh-huh.  
08:57AM 5 Q Had you used it as a blanket?  
6 A Yes.  
7 Q Was there anything unusual about it? Just a blanket?  
8 A It was heavy. It's wool, like, thick wool.  
9 Q There weren't any wires or electronic --  
08:58AM 10 A No.  
11 Q -- stuff inside of the blanket?  
12 A No.  
13 Q Just a blanket?  
14 A Yes.  
08:58AM 15 Q Okay. Hanging on the wall?  
16 A Uh-huh.  
17 Q What else was personal in nature in his office?  
18 A Different awards that he had received. He won a Living  
19 our Values award from UC Irvine, so it was, like, a crystal  
08:58AM 20 award.  
21 Q Yeah. You know, I don't mean to interrupt you, but  
22 "awards" is enough.  
23 A Okay.  
24 Q So different awards that he had received.  
08:58AM 25 A Uh-huh.

1 Q All right. How many?

2 A Maybe, like, five or six.

3 Q Okay. And were they -- were they crystal?

4 A Two of them were crystal.

08:58AM 5 Q Crystal, like -- is it Waterford, something like --

6 A I'm not sure what -- they came in a nice, little blue box

7 with velvety stuff inside -- I don't know if it was real

8 crystals -- from UCI.

9 Q Okay. Yeah. And what were the other ones? What did the

08:58AM 10 other ones look like?

11 A One was smaller. It was from the student association at

12 UC Irvine for, I think it was, advisor of the year or something

13 like that.

14 Q Yeah. Again, let's not talk about what it was -- what

08:59AM 15 they were for.

16 A Okay.

17 Q I just want to know were they wood? Were they plastic?

18 Were they glass?

19 A Okay. Well, they were different. There was a few -- two

08:59AM 20 crystal ones; like, a kind of acrylic one; and I forget.

21 Q Had you held them before?

22 A Yes.

23 Q Again, sounds silly, but was -- were there any electronic

24 equipment --

08:59AM 25 A No.

1 Q -- in them or microphones or anything like that?

2 A No.

3 Q What else was personal in nature in his office?

4 A A Native painted horse and some different equipment that  
08:59AM 5 he used for different projects. Because he did some marketing  
6 for Blue Stone, and he did, I don't know, different IT work.  
7 So he had, like, memory -- like, storage devices. I don't know  
8 exactly what each thing is called, but that's what he had in  
9 there.

09:00AM 10 Q Okay. And this horse, was it made out of plastic or  
11 glass or --

12 A No, it was, like, ceramic. They're kind of -- I don't  
13 know. It's, like, this big.

14 Q Okay. An ugly horse --

09:00AM 15 A Decorative.

16 Q Can you think of anything about that horse -- again, it  
17 sounds silly, but it's important. Were there any microphones  
18 in it or electronics or anything like that?

19 A No.

09:00AM 20 Q Okay. How long were you and Nikishna in his office at  
21 Blue Stone that day?

22 A Not very long. Probably just enough time to shut down the  
23 computer. And then I stopped by Janeen's office, but she  
24 wasn't there -- I don't think anybody was there -- because I  
09:00AM 25 used to know Janeen. We worked with her before.

1 Q And this was about what time of the day?

2 A Probably, like, 5:30 or 6:00, I guess, at that point.

3 Q Was Eldad anywhere -- do you know who Eldad Yacobi is?

4 A Yes.

09:01AM 5 Q Had you -- prior to this day, had you ever met Eldad face

6 to face?

7 A I hadn't heard -- or I hadn't met him, but I had heard of

8 him.

9 Q Okay. Was there anybody in the office -- in Nikishna's

09:01AM 10 office other than you two?

11 A No.

12 Q Was there anybody else in the Blue Stone suite other than

13 you two?

14 A No.

09:01AM 15 Q So you -- did you and Nikishna leave?

16 A Yes.

17 Q Get back in the car?

18 A Yes.

19 Q Go home?

09:01AM 20 A Yes.

21 Q All right. What happened the next day, Saturday?

22 A So the next day we were flying out -- we thought that

23 Nikishna was only going to go to Florida for that one week. So

24 he was told that he was going to go to set up the IT

09:01AM 25 infrastructure for the Seminole project. So we figured, you

1 know, since this is the one time we're going to be out here,  
2 we'll go a day early. So we paid for our own hotel room in  
3 Orlando. We were going to go a day early with the whole family  
4 and go to Disney World and then stay until Wednesday and then  
09:02AM 5 head back.  
6 Q So did you all go to Disney World?  
7 A Yes.  
8 Q You, Nikishna, and who else?  
9 A Our three girls.  
09:02AM 10 Q Okay. So eventually, did you travel to the  
11 Fort Lauderdale area?  
12 A Yeah. So we just spent Sunday at Disney World. We went  
13 to the Magic Kingdom, Epcot, had afternoon tea at the Grand  
14 Floridian. And then we drove down that night so he could start  
09:02AM 15 the next day, so Monday morning at 8:00 in the morning, at the  
16 hotel that Blue Stone had booked for him.  
17 Q Okay. So let's fast-forward to Tuesday, the 18th of  
18 November.  
19 A Uh-huh.  
09:02AM 20 Q Did Nikishna go to work that day?  
21 A Yes.  
22 Q You're still -- you're all staying in that hotel room in  
23 Orlando?  
24 A Yes.  
09:02AM 25 Q By the way, was that the Residence Inn by -- I'm sorry.

1 I misspoke.

2 You're all staying at that hotel in Fort Lauderdale?

3 A Yes.

4 Q Outside of Fort Lauderdale. And is that the Residence

09:03AM 5 Inn by Marriott?

6 A Yes.

7 Q Okay. What time did Nikishna leave?

8 A What time did he leave for work?

9 Q For work?

09:03AM 10 A Like, 8:00. I think everybody from Blue Stone left around

11 8:00.

12 Q Now, does he -- on this trip did Nikishna have a laptop?

13 A Yes.

14 Q Is that a -- was it a PC or a Mac?

09:03AM 15 A A Mac.

16 Q Was it a Mac Pro laptop?

17 A Yes.

18 Q Did he have the laptop with him when he went to work at

19 8:00 in the morning on the 18th of November?

09:03AM 20 A I believe that he did.

21 Q What time did Nikishna come back to the hotel room?

22 A Probably around 5:30.

23 Q Okay. Now, is it dark in Florida at that time in

24 November?

09:04AM 25 A Uh-huh. Yeah. It probably was starting to get dark or

1 was already dark.

2 Q What time, if you can remember, did it start to get dark

3 in Florida in November?

4 A 5:30.

09:04AM 5 Q Okay.

6 A Well, yeah, around the same time as right now.

7 Q For clarity, is that 5:30 East Coast time?

8 A East Coast time, correct.

9 Q So 2:30 West Coast time; right?

09:04AM 10 A Correct.

11 Q Okay. And did you all leave the hotel room?

12 A Yeah. We went to get --

13 Q Got to leave the hotel room with three kids in the hotel

14 room.

09:04AM 15 A Yeah. The -- our little one was only, like, a baby at the

16 time, so I was there with the stroller. And we didn't have a

17 car or anything, and there wasn't really anything around there

18 to eat, so he picked us up so we could go get something to eat

19 and get something for the baby at Target really quick.

09:05AM 20 Q Now, when you left the hotel room --

21 A Uh-huh.

22 Q -- did Nikishna bring his laptop?

23 A No.

24 Q Did he have his phone?

09:05AM 25 A He had his phone.

1 Q So you went out to eat; right?

2 A Uh-huh.

3 Q Is that "yes"?

4 A Yes.

09:05AM 5 Q And then you all went to Target to get stuff for the

6 baby; right?

7 A Yes.

8 Q And then did you go back to the hotel room?

9 A Yes.

09:05AM 10 Q And about what time did you all get back to the hotel

11 room?

12 A Well, it didn't take us that long, so I don't know;

13 sometime after that.

14 Q Okay.

09:05AM 15 A However long it takes to eat and --

16 Q Can you estimate?

17 A Maybe, like, 6:30, 7:00.

18 Q So you all were gone about an hour and a half?

19 A Uh-huh.

09:05AM 20 Q Okay.

21 A Correct. Yes.

22 Q Okay. Now, during that hour and a half, did Nikishna use

23 his phone at all?

24 A No, not really. He was telling me about how he had quit

09:06AM 25 Blue Stone.



1 Q Okay. Did you notice him doing anything on his phone  
2 during that hour and a half?

3 A No. Because he's, more so, trying to spend some time with  
4 us. We had kind of been in the hotel by ourselves during those  
09:06AM 5 last two days and just going in the pool and hanging around the  
6 area.

7 Q Now, when you got back around 7 o'clock, were the kids  
8 tired?

9 A Yeah. I mean, like I said, they had gone in the pool the  
09:06AM 10 last two days, and they had gone to Disney World the day  
11 before. So they went to bed pretty early. Usually they go to  
12 bed at 8:00. But probably, like, 7:30, they were already out.

13 Q Okay. And did they, basically, just conk out?

14 A Yes.

09:06AM 15 Q Went to bed?

16 A Uh-huh.

17 Q To sleep?

18 A Yeah.

19 Q So after the kids are asleep and -- who's in the hotel  
09:07AM 20 room at that time besides the children?

21 A Besides the children, just myself and Nikishna.

22 Q Did anything unusual happen?

23 A Yes.

24 Q Before you describe what happened, how long -- from the  
09:07AM 25 time that the kids went to bed around 7:00 how long was it till

1 the time that something weird happened?

2 A Like, an hour, hour and a half.

3 Q Okay. So we're 8:00, 8:30?

4 A Uh-huh.

09:07AM 5 Q 8:30 at the latest?

6 A Yes.

7 Q 8:00 p.m. at the earliest?

8 A Yes.

9 Q All right. East Coast time?

09:07AM 10 A East Coast time, yes.

11 Q What happened?

12 A There was a loud pounding on the door and --

13 Q Okay. Now, let me -- let me stop you there.

14 A Uh-huh.

09:08AM 15 Q How loud?

16 A Pretty loud.

17 Q Can you demonstrate.

18 A Like, (indicating).

19 Q Okay. Louder than that, do you think?

09:08AM 20 A Oh, louder than that.

21 Q Okay.

22 A Mine wasn't that loud.

23 Q And what happened?

24 A You could hear Bill Moon outside calling for Nikishna. I

09:08AM 25 couldn't quite tell what he was saying. But we opened the

1 door --

2 Q Hold on. Who's Bill Moon?

3 A Bill Moon is someone who previously worked for Blue Stone.

4 Q Did you recognize Mr. Moon's voice?

09:08AM 5 A Yes.

6 Q Had you met Mr. Moon before?

7 A Yes.

8 Q How many times?

9 A Maybe, like, three times.

09:08AM 10 Q And had you talked to him face to face before?

11 A I hadn't talked to him face to face, but I had been around

12 where he was. Maybe I was introduced to him once.

13 Q Was there something distinctive about his voice? Did he

14 have an accent?

09:09AM 15 A Yes.

16 Q What kind of accent?

17 A A Korean accent.

18 Q Okay. And so is there any doubt in your mind that the

19 person on the other side of the door was Bill Moon?

09:09AM 20 A No, no doubt. It was definitely him.

21 Q Was he yelling?

22 A Yes.

23 Q Was he screaming?

24 A Yeah. He sounded pretty angry.

09:09AM 25 Q Okay. Would you describe him as being very angry?

1 A Yeah.

2 Q Hysterical?

3 A Almost hysterical, but he did get hysterical later.

4 Q Okay. So pounding on the door, yelling Nikishna's name.

09:09AM 5 What happened next?

6 A He left. And then he came back and started pounding on

7 the door again. And then I was, like, "Okay. This is getting

8 crazy, so we should probably call the police or something." So

9 I have --

09:09AM 10 Q He left. How long was he -- did he leave before he

11 came --

12 A Not that long. Just a couple minutes or something.

13 Q Now, at this time, what's Nikishna doing?

14 A He's the one that called the police.

09:10AM 15 Q Okay. Well, what I'm getting at, was he on his laptop or

16 on his phone?

17 A No.

18 Q So Nikishna calls the police; is that true?

19 A Yes.

09:10AM 20 Q Do the police come?

21 A Yes.

22 Q Now, is Bill Moon still knocking on the door and yelling

23 and screaming?

24 A Yes, with the police now.

09:10AM 25 Q Okay. Why did you call the police? Well, why -- did you

1 suggest to Nikishna that he call the police?

2 A Yeah. I told him we should probably call the police.

3 Q And why?

4 A Just because he was very -- being very irate and loud and  
09:10AM 5 pounding on the door all hard. And, like, obviously, you know,  
6 he went away because we didn't open it. So it was, like, you  
7 know, "Just calm down, guy." I don't know. But I have family  
8 that's in law enforcement, and they're supposed to be trained  
9 to kind of, you know, de-escalate situations. So I was, like,  
09:11AM 10 "Okay. We need kind of a neutral party here."

11 MR. MARRETT: Objection. Move to strike,  
12 nonresponsive.

13 THE COURT: Overruled.

14 Why don't you get a question in there.

09:11AM 15 MR. KHOURI: Thank you, Your Honor.

16 Q And what was -- when Bill Moon came back the second time,  
17 what was he saying?

18 A Basically, that Nikishna needed to give them the laptop  
19 because it was Blue Stone's.

09:11AM 20 Q Did the police arrive?

21 A Yes.

22 Q What did the police do?

23 A The police was pounding on the door. And eventually  
24 they --

09:11AM 25 Q And how -- how loudly were the police pounding on the

1 door?

2 A Very loudly.

3 Q Louder than Bill Moon?

4 A Yeah.

09:11AM 5 Q And what were the police saying?

6 A They're saying to "open up," to "give back the laptop,"

7 like, if he didn't open up, that they were going to break down

8 the door or open the door or get in.

9 Q Did the door open?

09:12AM 10 A Yes, a little bit. The latch was on. So the police

11 opened it, I imagine, with a key from the hotel or something.

12 But the latch was on.

13 Q And when the door opened, what did the police say?

14 MR. MARRETT: Objection. Calls for hearsay.

09:12AM 15 THE COURT: Overruled.

16 THE WITNESS: The police was telling him to "Open

17 the door" and to "hand over the laptop."

18 Bill Moon was there. So Nikishna was saying that the

19 laptop wasn't theirs. He was saying that it was, that it

09:12AM 20 belonged to Blue Stone.

21 Q BY MR. KHOURI: Now, at this time did you hear any other

22 voice, another voice?

23 A Did I --

24 Q On Mr. Moon's phone?

09:12AM 25 A Oh, yes. Well, Nikishna -- when they opened the door and

1 it opened a little bit, Nikishna invoked his Fourth Amendment  
2 rights. But they're just, like, "Oh, Fourth Amendment," you  
3 know, "Mr. Smarty-Pants," or something like that.

4 Q I'm sorry. So what did Nikishna actually say?

09:13AM 5 A He said --

6 MR. MARRETT: Objection. Calls for hearsay.

7 THE COURT: Assuming you're not --

8 THE WITNESS: I was there.

9 THE COURT: Wait a minute --

09:13AM 10 Not offering any of this for the truth?

11 MR. KHOURI: That's correct, state of mind.

12 THE COURT: So you have a continuing objection.

13 MR. MARRETT: And also relevance and 403,

14 Your Honor.

09:13AM 15 THE COURT: Those objections are overruled.

16 Q BY MR. KHOURI: What did Nikishna say?

17 A He invoked his Fourth Amendment rights.

18 Q And what did the police say?

19 A Police said, "Fourth Amendment, Schmourth Amendment,

09:13AM 20 Mr. Smarty-Pants."

21 Q And what happened next? Did you hear some other voice?

22 A Yes. So Bill Moon was on his phone with John Mooers. And

23 he put the phone on speakerphone. And it was obviously John's

24 voice, and he was yelling at him, saying it was Blue Stone's

09:14AM 25 laptop and that, you know, he needed to hand it over. So

1 basically, you know, John was pressuring Bill, and Bill was  
2 pressuring the police, although he didn't need to because it  
3 was on speakerphone, so they could hear.

4 Q Did Mr. Mooers tell Mr. Moon to get the computer?

09:14AM 5 A Yes.

6 Q What happened after the police called Nikishna  
7 Mr. Smarty-Pants?

8 A Basically, they said they were going to open the door  
9 either way, so he needed to, you know, open it and give them  
09:14AM 10 the laptop. I went into the room at that time, so I don't -- I  
11 didn't see when they actually came in. But they -- some  
12 officers did come in. And they were, at first, all crazy, but  
13 I think, you know, they kind of calmed down after a while.

14 And then they -- they were talking to Nikishna, and they  
09:14AM 15 were telling him, like, that they weren't going to leave that  
16 hotel room without the laptop. So they told him, you know,  
17 "Whatever you need to do, put a password on it, encrypt it, but  
18 we're not leaving here without that laptop," and, you know,  
19 "You can get it after the fact."

09:15AM 20 Q Did you ever see a search warrant or an arrest warrant?

21 A No. And Nikishna asked them for one.

22 Q Did Nikishna give the laptop to the police?

23 A I didn't see that because I wasn't -- there's, like, a  
24 room where the entrance is, and then there's a bedroom. So I  
09:15AM 25 was in the bedroom at the time, and I didn't want to come out



1 because I didn't want to startle the police.

2 Q It was a Residence Inn-type suite where there's --

3 A Yes.

4 Q -- like, a little living room and kitchenette and a

09:15AM 5 bedroom?

6 A Yes.

7 Q When you came out, were the police gone?

8 A Yes.

9 Q Was the laptop gone?

09:15AM 10 A Yes.

11 Q What happened next? Oh, and when -- very important,

12 almost forgot.

13 When you turned -- when you came out --

14 A Uh-huh.

09:15AM 15 Q -- and the laptop's gone --

16 A Yes.

17 Q -- about what time was that?

18 A Maybe 8:30 or 9:00.

19 Q 8:30 at the earliest, 9:00 at the latest?

09:16AM 20 A Yes, I would say so.

21 Q East Coast time?

22 A Yes. It wasn't that late.

23 Q Okay. And what happened after that?

24 Oh, before we get there, while all this was going on, did

09:16AM 25 Nikishna access his laptop?

1 A Did he access it?

2 Q Did he get on the laptop?

3 A He tried -- the police told him if he could prove that it

4 was his or if he had the receipt for it, that he could keep it,

09:16AM 5 right? -- that they wouldn't take it. So he tried to access

6 it, but he couldn't get into his e-mail. That was the only

7 time that he used it during that time.

8 Q How do you know that?

9 A Huh?

09:17AM 10 Q Did you see that?

11 A I saw that.

12 Q What did you see?

13 A I just saw him at the -- at the laptop, but I couldn't see

14 the screen or anything because I was, like, here, and they were

09:17AM 15 there.

16 Q Your understanding was he tried to get into his e-mail

17 and he couldn't?

18 A Uh-huh.

19 Q Is that "yes"?

09:17AM 20 A Yes.

21 Q Okay. And what time was that? Same thing, 8:30, 9:00?

22 A Yes, probably around that same time.

23 Q And I'm not trying to suggest anything to you. I'm just

24 trying to move it along. Around 8:30 to 9:00 --

09:17AM 25 A Yes.

1 Q -- same time?

2 A Yes.

3 Q Okay. So the police leave. The laptop's gone. It's

4 8:30 to 9:00 East Coast time. What happens after that?

09:17AM 5 A So Nikishna told me that, when he had tried to look for

6 the receipt, that he couldn't access his e-mail. And then he

7 realized that he couldn't access a number of his personal

8 accounts, he had received an alert from his bank, and he

9 couldn't access his Apple ID.

09:18AM 10 Q And are you two sitting side by side now?

11 A Yeah, basically.

12 Q And are you -- do you actually see this on his phone?

13 A Yeah. I can see that he no longer has access to his

14 e-mail. Like, when you're logged in but then your password has

09:18AM 15 changed, like, it tells you, like, you know, that you need to

16 enter the password as if you had logged out.

17 Q So was there an alert that his password had been changed?

18 A There wasn't an alert that his password had been changed

19 because --

09:18AM 20 Q But he couldn't get into his e-mail?

21 A He couldn't get in.

22 Q Okay. So what did you guys do?

23 A We ended up having to do, like, all these different

24 things. Because even -- so there's, like, several steps that

09:18AM 25 the Gmail and other e-mail providers have set up so you can,

1 like, try to have an e-mail sent to the secondary password, but  
2 that didn't work. We had -- we ended up, like -- you know, we  
3 had to search how you could access it -- access your account if  
4 you had lost the access, if you didn't have the password  
09:19AM 5 anymore. Right?

6 But somebody else was logged in. So we had to go through,  
7 like, several steps of, like, when he opened the account, you  
8 know, all kinds of different personal questions that they ask  
9 to make sure that it's you.

09:19AM 10 Q Did you go through that process?

11 A Yes.

12 Q And were you able to trace back through Google who had  
13 accessed his e-mail?

14 A It didn't say a name, but you can look and see when the  
09:19AM 15 e-mail was accessed and kind of where. So it had -- it was  
16 accessed at Irvine, California. And the new number that was  
17 put on there was a 949 area code. And there was a new e-mail  
18 that was set up as a secondary e-mail.

19 Q Do you remember the name of that e-mail?

09:19AM 20 A I don't remember specifically, but we did search for it,  
21 and it was a Hebrew word.

22 Q You got that off the Internet?

23 A Yeah. Yeah.

24 Q And so what happened after all that?

09:20AM 25 A After all that -- so we're trying to get access to his

1 stuff again. I ended up putting my personal e-mail as the  
2 secondary e-mail for his account, and then -- so at the time,  
3 the two-step verification process for Gmail would be a phone  
4 call. So you get a phone call, and they give you the pass  
09:20AM 5 code -- right? -- from a Washington, D.C. number. So I kept  
6 getting the phone call to my phone, like, call after call after  
7 call, somebody trying to access it, but they didn't have, like,  
8 the correct number. Right? I had the number.  
9 Q During all this time, the kids are asleep?  
09:20AM 10 A Yes, amazingly. But they had spent the last two days in  
11 the pool. So that's not uncommon.  
12 Q Now, after you started getting alerts, did you sit next  
13 to Nikishna and did Nikishna do something with his phone?  
14 A Yeah. So he was --  
09:21AM 15 Q Did Nikishna say he wanted to totally disassociate  
16 himself from Blue Stone?  
17 A Oh, definitely. He -- you know, we just -- we knew for a  
18 while that he wanted to leave Blue Stone. I think there was  
19 the idea that -- you know, we had heard about Blue Stone, they  
09:21AM 20 kind of had a negative reputation in the community.  
21 Q Mrs. Polequaptewa --  
22 A Uh-huh.  
23 Q -- what did Nikishna do with his phone?  
24 A He took the -- Blue Stone's files off his phone so that  
09:21AM 25 he --

1 Q Go ahead.

2 A Okay. So that he wouldn't have them anymore.

3 Q Are you sure in your mind that he was only taking Blue

4 Stone files off his phone?

09:22AM 5 A Yes.

6 Q And he couldn't access his office account; right?

7 A No. And I don't believe he was an administrator at that

8 time.

9 Q So when he's taking the Blue Stone information off his

09:22AM 10 phone --

11 A Uh-huh.

12 Q -- about what time is this?

13 A It was still pretty early because we went to sleep early

14 that day. We had a flight the next morning, and we had to

09:22AM 15 leave at 4:00 in the morning. So kind of --

16 Q Well, first of all, was it on November the 18th?

17 A Yes. Evening, like, 10:30 maybe.

18 Q 10:00, 10:30-ish?

19 A Yes.

09:22AM 20 Q East Coast time?

21 A East Coast time, yes.

22 Q You're sure about that?

23 A Yes.

24 Q Okay. Let me show you something.

09:23AM 25 Your Honor, I'm going to publish Page 1 of Exhibit 23, if

1 I may. Thank you.

2 So this is an exhibit, Mrs. Polequaptewa, that has been  
3 admitted into evidence. And that exhibit shows that on  
4 November 18th, 2014, at 9:50 p.m., that's West Coast time, so  
09:24AM 5 it's really November 19, 2015 [sic], at 50 minutes after  
6 midnight East Coast time. Understand?

7 A Yes.

8 Q -- that a wipe command was initiated on -- to Nikishna's  
9 desktop. Where were you and Nikishna on November 19, 2014, at  
09:24AM 10 50 minutes after midnight?

11 A Probably asleep.

12 Q Okay. Where were you asleep?

13 A At the hotel.

14 Q Okay. And I presume you're sleeping in the same bed?

09:24AM 15 A Yes.

16 Q Okay. And where was Nikishna's phone?

17 A Probably plugged in on the charger.

18 Q Okay. All right. Thank you very much.

19 Thank you, Your Honor.

09:25AM 20 THE COURT: Mr. Marrett?

21 MR. MARRETT: May I proceed, Your Honor?

22 THE COURT: You may.

23 **CROSS-EXAMINATION**

24 BY MR. MARRETT:

09:26AM 25 Q Good morning, ma'am.

1 A Good morning.

2 Q I want to start by going over some of the timeline that  
3 you were talking about. You said that you were back in the  
4 hotel room with your children -- did you say at 7:30 p.m.?

09:26AM 5 A Probably about that time. I know we left around 5:30.

6 Q And then you said that the police came and there was  
7 knocking on the door and Bill Moon was there. Do you remember  
8 that testimony?

9 A Yes.

09:26AM 10 Q And I believe you said Bill Moon came first and knocked  
11 on the door; is that right?

12 A Yes.

13 Q And then he left; is that right?

14 A Yes.

09:26AM 15 Q And then he came back. And then at that point you or  
16 your husband called the police; is that right?

17 A He did. He called the police.

18 Q Your husband called the police?

19 A Correct.

09:27AM 20 Q And then there must have been some time that passed, and  
21 then the police arrived; right?

22 A The police were there instantaneously because Bill Moon  
23 had called the police as well. So there was some police  
24 officers that came first, and then there was the police  
09:27AM 25 officers that came later, that we had called.



1 Q Okay. But there was some time until the second officers  
2 arrived; is that right?

3 A Correct.

4 Q And then there was some time where your husband was  
09:27AM 5 having a discussion with the police about coming into the hotel  
6 room; is that right?

7 A Correct. And, actually, I don't know if the --

8 Q Ma'am, just "yes" or "no" answers, and we'll move along.  
9 And if Mr. Khouri has additional questions for you, he can ask  
09:27AM 10 you. Okay?

11 After the police opened the door and there was a  
12 discussion with your husband, then at some point your husband  
13 gives back the computer; is that right?

14 A No. He didn't give it back.

09:27AM 15 Q Well, the police got the computer?

16 A The police got the computer.

17 Q Okay. And I believe you said on direct that that was  
18 around 8:30, ma'am?

19 A Yes, it was approximately 8:30.

09:28AM 20 Q So all of this is going on in the course of an hour. Is  
21 that what you're saying?

22 A Yes.

23 Q Okay. Are you sure it's not later in the evening? Are  
24 you sure it's not closer to 11:30 p.m. between the police  
09:28AM 25 coming and all the people knocking on the door?

1 A I don't know.

2 Q Okay. So it's possible that it could have been later in  
3 the evening around 11:30; right?

4 A I'm just going by about, like, what we did, kind of one  
09:28AM 5 thing after the other.

6 Q Okay. And, ma'am, you didn't -- you haven't met with the  
7 government before today's testimony, have you?

8 A No, I have not.

9 Q But did you meet with Mr. Khouri, the defense attorney?

09:28AM 10 A I briefly spoke with Mr. Khouri.

11 Q And he went over the questions that he was going to ask  
12 you today?

13 A No. He just asked me what my testimony was going to be.

14 Q Okay. And, now, when the police came -- there was a  
09:29AM 15 peephole in the hotel door, isn't there? Like all hotel rooms,  
16 there's a little peephole that you can see who's on the other  
17 side of the door; is that right?

18 A I don't know if there was a peephole or not. I don't  
19 remember that.

09:29AM 20 Q Okay. But you remember the police came, and they were in  
21 uniform; is that right?

22 A Yes.

23 Q And the hotel staff was there too; is that right?

24 A I don't recall seeing the hotel staff.

09:29AM 25 Q Okay. Now, you called the police at some point -- right?

1 -- or your husband did? You called a set of officers to come?  
2 A My husband called the police, correct.  
3 Q And then the police arrived at your hotel room after you  
4 called them, but you don't open the door to tell them what's  
09:29AM 5 going on?  
6 A So I believe that the police that we called thought that,  
7 you know, he was being smart -- right? -- because they said,  
8 you know, "Fourth Amendment, Schmourth Amendment,  
9 Mr. Smarty-Pants, by calling the police on the police. Right?  
09:30AM 10 Q Ma'am, did -- when the police arrived at the hotel, you  
11 were expecting them to come to the door; right? You called  
12 them.  
13 A We were expecting them to help us.  
14 Q So when the police arrived to, as you said, help you,  
09:30AM 15 wouldn't the natural thing to do be to open the door, talk to  
16 the police?  
17 A The natural thing for the police to do is not to bang on  
18 the door very loudly, saying that they are going to get in one  
19 way or another.  
09:30AM 20 Q Ma'am, you had called the police, and you were expecting  
21 them to come; right? Is that a "yes"?  
22 A I was expecting them to come and --  
23 Q And when they were --  
24 A -- act in a professional manner, as I know law enforcement  
09:30AM 25 can.

1 Q And, ma'am --

2 A Not like much of the law enforcement in this case that has

3 not acted unprofessionally.

4 Q Ma'am, when the police came -- when the police came, you

09:30AM 5 didn't talk to them; right? You didn't personally --

6 A I did not personally speak to the police, no.

7 Q Now, you said that your husband was telling the police

8 that the laptop didn't belong to Blue Stone; is that right?

9 A Correct. Because it didn't.

09:31AM 10 Q And you knew that it didn't belong to Blue Stone?

11 A Correct.

12 Q Now, ma'am, I believe you testified that you worked for

13 UCI at some point?

14 A Correct.

09:31AM 15 Q And when you worked at UCI, UCI issued a computer to you;

16 is that right?

17 A Correct.

18 Q And then at some point you left your employment at UCI;

19 right?

09:31AM 20 A Yes.

21 Q And when you left your employment, you returned your

22 computer to UCI; right?

23 A When I left my employment, I was given a list of things to

24 return, and I returned those things, and then they signed off

09:31AM 25 on it.

1 Q And one of the things that you returned was your laptop  
2 computer that UCI issued to you; right?

3 A Correct.

4 Q And you knew that the computer your husband had didn't  
09:31AM 5 belong to Blue Stone because you knew it belonged to UCI;  
6 right?

7 A Yes and no. When he left UCI, he, too, was given a  
8 list --

9 MR. MARRETT: Your Honor, move to strike as  
09:32AM 10 nonresponsive.

11 THE COURT: You answered the question, ma'am.  
12 Mr. Khouri will follow up if he wants to.

13 THE WITNESS: Okay. So he was also given a list --

14 Q BY MR. MARRETT: Ma'am, there hasn't -- there's not a  
09:32AM 15 question.

16 A Okay.

17 Q Now, you testified that, when you went back to Blue  
18 Stone's offices on the 14th, prior to that you knew that your  
19 husband always left his computer on; right?

09:32AM 20 A Yes.

21 Q And you know that, from using computers and Macintosh  
22 computers, that you don't always need a password to log on to a  
23 computer; right? You can set it up so you don't need a  
24 password. That's possible; right, ma'am?

09:32AM 25 A You can. But I believe most --

1 MR. MARRETT: Your Honor, move to strike. After  
2 "You can" is nonresponsive.  
3 THE COURT: Overruled.  
4 THE WITNESS: The default is that the password  
09:32AM 5 setting is on.  
6 Q BY MR. MARRETT: But you know it's possible, ma'am, that  
7 you can --  
8 A The default is that the password setting is on.  
9 Q And you know it's possible that you can set up a computer  
09:32AM 10 so that it doesn't need a password; right?  
11 A The default is that the password setting is on.  
12 Q Now, I'm going to put up Exhibit 23, which is in  
13 evidence.  
14 Now, at the bottom line here on this Exhibit 23, you see  
09:33AM 15 the date 11/18/14 at 9:50 p.m. Do you see that there, this  
16 line?  
17 A Yes, I see it.  
18 Q And you see the text here that says "User  
19 Nikishna@Yahoo.com initiated a wipe on a device, Nikishna's  
09:34AM 20 Mac Pro, at TUE NOV 18 21:50:06 PST 2014 from 50.205.50.98."  
21 Do you see that there?  
22 A Yes, I see that.  
23 Q And then the line above it is 11/18/14, 9:52 p.m. So  
24 this is two minutes after the bottom line. Do you see that  
09:34AM 25 there?

1 A Yes.

2 Q And this line says:

3 "User Nikishna@Yahoo.com initiated a wipe on

4 a device, Nikishna's MacBook Pro Retina (4), at TUE

09:34AM 5 NOV18 21.52.30 PST 2014 from 50.205.50.98."

6 Do you see that there?

7 A Yes.

8 Q Let's go to the top line on this exhibit, and it says

9 11/20/14, 10:19 a.m. Do you see that there, that line?

09:34AM 10 A Yes.

11 Q And that says:

12 "User Nikishna@Yahoo.com initiated a lock on

13 a device, Nikishna's Mac Mini Server, at THU NOV20

14 10:19:18 PST 2014 from 174.251.209.131."

09:35AM 15 Do you see that there?

16 A Yes.

17 Q And that username, Nikishna@Yahoo.com, that's your

18 husband's Apple ID username?

19 A I don't know.

09:35AM 20 Q I'm going to put up just for a moment Exhibit 22. You

21 see the Apple ID here from this Apple record that says

22 Nikishna@Yahoo.com?

23 A Yes.

24 Q The first name, Nikishna; last name, Polequaptewa. Do

09:36AM 25 you see that?

1 A Yes.

2 Q You see there's an address here, [REDACTED], Garden  
3 Grove, California?

4 A Yes.

09:36AM 5 Q And that was your address at the time; right?

6 A Correct.

7 Q And so on this Exhibit 23, that user, Nikishna@Yahoo.com,  
8 that's your husband's user -- Apple ID username; right?

9 A It is his -- I don't know if it's his Apple ID username.

09:36AM 10 But there's a lot of things here that you're presenting to be  
11 one thing; right? If it says Nikishna@Yahoo or  
12 Nikishna@BlueStone, that does not mean that Nikishna took this  
13 action; right? But I think that you're presenting it to mean  
14 that.

09:36AM 15 Q Ma'am --

16 A What it is, is that --

17 Q Ma'am --

18 A -- whatever --

19 Q Ma'am --

09:37AM 20 A -- e-mail this is took that action.

21 Q And, ma'am --

22 A Whatever login this is took that action. You  
23 continuously --

24 MR. MARRETT: Your Honor, move to strike.

09:37AM 25 THE WITNESS: -- in the last trial and this one, you



1     tried to --

2                   THE COURT: Ma'am, ma'am, please. Please just

3     answer his questions. Mr. Khouri will follow up and ask you

4     any questions.

09:37AM 5            So ask your question.

6            If you can answer it "yes" or "no," please do so. If you

7     can't, just tell him you can't answer it "yes" or "no." We'll

8     get through this process. And it's not productive for either

9     of you to be arguing with one another.

09:37AM 10           Please ask your next question.

11    Q     BY MR. MARRETT: So ma'am, this user, Nikishna@Yahoo.com,

12    that was your husband's Apple ID username; yes?

13    A     I don't know.

14    Q     Okay. And Nikishna --

09:37AM 15    A     It's not his Apple ID username now.

16    Q     This Nikishna's Mac mini server, that was a personal

17    computer that your husband had?

18    A     I don't know.

19    Q     Now, I want to move a little further in time.

09:38AM 20    November 19, 2014, that's the day that you flew back from

21    Florida to California; is that right?

22    A     Correct.

23    Q     And you know that your husband went back to Blue Stone's

24    offices that day; right?

09:38AM 25    A     Yes.

1 Q And you know that your husband admitted to Blue Stone's  
2 chairman that he deleted Blue Stone stuff that day?

3 A I've seen the video that you're all referring to in this  
4 case, that edited video that Mr. Munoz here wouldn't admit was  
09:39AM 5 edited for the longest time in the last trial.

6 MR. MARRETT: Your Honor, move to strike.

7 THE COURT: Ma'am, you've really got to answer his  
8 questions, please. Mr. Khouri will follow up and ask you a few  
9 questions.

09:39AM 10 MR. MARRETT: Your Honor, move to strike after the  
11 beginning of the answer.

12 THE COURT: It will be stricken.

13 MR. KHOURI: Your Honor --

14 THE COURT: Mr. Khouri, do you want to say  
09:39AM 15 something?

16 MR. KHOURI: Would it be beneficial if we took a  
17 short break?

18 THE COURT: Yeah, it probably would be.

19 Ladies and gentlemen, why don't we take a about 10- or  
09:39AM 20 15-minute break.

21 THE COURTROOM DEPUTY: All rise.

22 **(Out of the presence of the jury.)**

23 THE COURT: Please be seated.

24 Ma'am, I can appreciate and understand that, you know,  
09:40AM 25 you're nervous, you're angry. But the process is question and

1 answer. And you really have to answer his questions. When you  
2 argue with him, you say things -- the jury isn't even supposed  
3 to know that there was another trial. And if you do this,  
4 you're really not helping your husband. I'm going to have to  
09:40AM 5 declare a mistrial. I'm going to have to start all over again.  
6 And I know you don't want that.

7 I know from where you're sitting, it must be easy for --  
8 you're saying, "Well, you don't know what it's like to have  
9 your husband facing these charges." And then you might have  
09:40AM 10 strong feelings about the way the government's treated the  
11 case. I get that.

12 And I'm willing to give you leeway, but you really have to  
13 answer his questions and not answer another question or try to  
14 argue with him. We won't get through this. And the last thing  
09:41AM 15 I want to do is have to strike your testimony.

16 Mr. Khouri, do you have any comments?

17 MR. KHOURI: I agree with what the Court has said.  
18 I have to take some personal responsibility. Since she wasn't  
19 a witness last time, I neglected to tell her not to say  
09:41AM 20 anything about her prior proceeding and trial. And that's why  
21 I asked the Court to take a break, because I think she needs to  
22 be told not to mention the prior trial, and I didn't. I  
23 usually don't prepare witnesses with questions and answers. I  
24 just kind of meet with them and have them talk to me. But I  
09:41AM 25 agree with everything the Court said.

1 THE COURT: All right. Well, that's enough said.

2 Do you have any questions for me?

3 THE WITNESS: No. I just -- I don't know. I  
4 mean -- no, I guess not.

09:42AM 5 THE COURT: I do understand. You're in a very  
6 difficult situation. I do get that. But we got to get through  
7 the process. And you got to, I guess, have trust in Mr. Khouri  
8 that he'll get out the information that you want to get out,  
9 and he'll make the arguments. You can't do it from the witness  
09:42AM 10 stand, and you can't do it in response to the government's  
11 questions.

12 THE WITNESS: Okay.

13 THE COURT: All right? Okay.

14 Mr. Marrett, do you have anything further?

09:42AM 15 MR. MARRETT: Your Honor, there was one motion  
16 to strike that I'm not sure if the Court ruled on when  
17 Ms. Polequaptewa referred to the last trial. I believe I moved  
18 to strike as nonresponsive, and I wasn't sure if the Court had  
19 ruled on that motion.

09:43AM 20 THE COURT: I'm trying to pull it up.

21 MR. MARRETT: I think I made two motions to strike  
22 right near the end before we took a break; and the second one,  
23 the Court granted, and I wasn't sure of the Court's ruling on  
24 the first one.

09:43AM 25 THE COURT: First one is -- because I think I was

1 engaging with the witness. You know, Mr. Marrett, my gut is it  
2 would be better to leave it the way it is because if I tried to  
3 do something now, I'm going to have to say the witness referred  
4 to the trial. So I'm highlighting it.

09:43AM 5 MR. MARRETT: I wasn't sure if the Court had ruled  
6 on it or not or what the Court's ruling was. That was my --

7 THE COURT: Well, obviously, given what I ruled  
8 secondly and then what -- when I had my dialogue with her, you  
9 made a motion to strike, and I said:

09:37AM 10 "Ma'am, ma'am, please. Please just answer  
11 his questions. Mr. Khouri will follow up and ask  
12 you any questions.

13 "So ask your question.

14 "If you can answer it 'yes' or 'no,' please  
09:37AM 15 do so. If you can't, just tell him you can't  
16 answer it 'yes' or 'no.' We'll get through this  
17 process. And it's not productive for either of you  
18 to be arguing with one another.

19 "Please ask your next question."

09:44AM 20 So I think it's pretty obvious that I wasn't happy with  
21 that answer. For me now to go back, I'm going to have to say  
22 "the trial," I think you're making -- I think that's more  
23 prejudicial for both sides.

24 MR. MARRETT: I think I agree, Your Honor, that we  
09:44AM 25 don't need to highlight it for the jury. I spoke with counsel,

1 and I believe we have a stipulation that that part of the  
2 testimony would be stricken.

3 THE COURT: I guess I'm not understanding why that's  
4 important to you. Striking is important so the jury are told  
09:45AM 5 that's -- "You are to disregard that." So what are you saying?  
6 Are you saying that you want to bring the jury back, and you're  
7 going to say there's a stipulation that you're going to strike  
8 the word "trial"? I'm not following.

9 MR. MARRETT: No, Your Honor. Just -- it's for the  
09:45AM 10 record so that it won't be referred to in closing argument  
11 because it's not part of the evidence that we've agreed upon.

12 THE COURT: Well, that will be stricken.

13 And, Mr. Khouri, I assume you agree you will not refer to  
14 the prior trial.

09:45AM 15 MR. KHOURI: Yes, Your Honor.

16 THE COURT: Okay. All right. So --

17 MR. KHOURI: I value my pocketbook.

18 THE COURT: How much longer do you anticipate your  
19 cross-examination, Mr. Marrett?

09:45AM 20 MR. MARRETT: I'm hoping ten minutes.

21 THE COURT: Okay. And, Mr. Khouri, I assume the  
22 redirect is going to be very short?

23 MR. KHOURI: So far, one question. And I also --  
24 excuse me. I'm so sorry -- conferred with Mr. Mittal. If the  
09:46AM 25 government wants an instruction to the jury that they should

1 disregard any testimony about a prior trial, I have no  
2 objection if the government wants to ask for that.

3 THE COURT: The only concern I have on that is,  
4 again, you're highlighting the word "trial." I'm not sure the  
09:46AM 5 government wants that. But then there's also been testimony on  
6 both sides about a prior legal proceeding.

7 And I don't think you have to be a rocket scientist to  
8 understand that what's being referred to is the prior trial.  
9 And then if I tell them to disregard that, I'm worried they're  
09:46AM 10 going to disregard the evidence and testimony that came in.  
11 That's the problem.

12 MR. KHOURI: That is the problem, Your Honor. I  
13 hadn't -- I hadn't foreseen that. But now that you pointed it  
14 out to me, I think the Court is correct.

09:46AM 15 THE COURT: That's why we need to make sure we don't  
16 refer to the prior trial. Okay?

17 MR. MITTAL: We'll defer to the Court on that issue.

18 THE COURT: All right. So we got to give Debbie a  
19 break, and then we'll pick back up.

09:47AM 20 **(Recess from 9:47 a.m. to 9:56 a.m.)**

21 THE COURT: Mr. Marrett, please proceed, sir.

22 MR. MARRETT: Thank you, Your Honor.

23 Q Ma'am, in November of 2014, your husband told you -- or  
24 talked to you about his work at Blue Stone; is that right?

09:56AM 25 A Correct. Well, we talked about it all the time.

1 Q And so your husband told you that he was falling behind  
2 on his projects at work?

3 A No. He had a lot of different projects at work --

4 MR. MARRETT: Your Honor, move to strike as  
09:56AM 5 nonresponsive.

6 THE COURT: Sustained. It will be granted. The  
7 comment will be stricken.

8 Ask your question, please.

9 MR. MARRETT: Thank you, Your Honor.

09:56AM 10 Q Ma'am, I'm showing you Exhibit 107 that's in evidence.  
11 And this is an e-mail from your husband to Bill Moon and Amy  
12 Watson on Thursday, October 16, at 4:32 a.m. And it says, this  
13 last paragraph on the page, "I'm very tired now from staying up  
14 late the night before for Lummi, traveling back, and then going  
09:57AM 15 right into the website finalization and e-blast setup.

16 Therefore, I will not be coming in until the afternoon."

17 Ma'am, you knew that your husband was falling behind on  
18 his project work in October of 2014; right?

19 A No. He wasn't falling behind. He had a number of  
09:57AM 20 projects that he was responsible --

21 MR. MARRETT: Your Honor, move to strike as  
22 nonresponsive.

23 THE COURT: Just if you can answer it "yes" or "no."  
24 And Mr. Khouri will follow up with further questions if he  
09:57AM 25 thinks an explanation would be appropriate, or Mr. Marrett



1 might ask you for an explanation. But if you could just answer  
2 his question "yes" or "no." If you can't answer it "yes" or  
3 "no," please tell him. I don't want you to feel you have to  
4 answer any question or adopt any characterization in any  
09:58AM 5 question.

6 THE WITNESS: Okay.

7 Q BY MR. MARRETT: So ma'am, this e-mail was sent at  
8 4:32 a.m. Your husband often stayed up late, working on  
9 projects; right?

09:58AM 10 A Yes. He had a lot of projects that he was working on.

11 Q And you would have been asleep at the time that he was  
12 working on these projects? You weren't up with him at 4:30 in  
13 the morning; right?

14 A No.

09:58AM 15 Q I'm putting back up Exhibit 23. And looking at the last  
16 two lines on November 18, 2014, it says 9:50 p.m. and  
17 9:52 p.m., but those were Pacific time. This would have been  
18 12:15 and 12:50 a.m. Eastern time; is that right?

19 A If you say so.

09:59AM 20 Q And you said on direct that you were asleep at that time  
21 on November -- it would be November 19 at 12:50 a.m.; right?

22 A Yeah. We had a 4:00 a.m. -- we had to leave at 4:00 a.m.  
23 for our flight the next morning.

24 Q So you wouldn't know, ma'am, if your husband got up and  
09:59AM 25 initiated these wipe commands from his Apple ID, right? --

1 because you were asleep?

2 A We both washed up and went to bed at the same time.

3 Q And you would -- you would have been asleep at

4 12:50 a.m., so you just don't know one way or the other whether

09:59AM 5 your husband was up at that time; is that right?

6 A Correct.

7 Q Now, I believe you said that the -- that your husband had

8 told you that he was going to do IT setup in Florida. Is that

9 what you had testified to?

09:59AM 10 A Yes. So they told him that he was going there for one

11 week.

12 MR. MARRETT: Your Honor, move to strike as

13 nonresponsive.

14 THE COURT: You answered his question, ma'am.

10:00AM 15 Q BY MR. MARRETT: Now, ma'am, you also knew that your --

16 that your husband had a meeting with Blue Stone on November 14;

17 right?

18 A Yes.

19 Q And you knew at that meeting that your husband's IT

10:00AM 20 duties had been reassigned to Eldad Yacobi; is that right?

21 A No, they were not.

22 Q Okay. You knew that there was -- I believe you testified

23 on direct that your husband was frustrated because there was a

24 changeover for some passwords from your husband to Eldad

10:00AM 25 Yacobi; right?

1 A Not frustrated. He wasn't sure what was happening.  
2 Because, on the one hand, they're telling him to do the IT in  
3 Florida. On the other hand, they're telling him that he should  
4 give passwords over to Eldad so that Eldad can take care of the  
10:00AM 5 IT while he's gone.  
6 Q And your husband didn't agree with giving Eldad the  
7 passwords; right?  
8 A I don't know. He did give him the passwords. He was  
9 uncomfortable doing so because of what previously happened --  
10:01AM 10 Q He was uncomfortable --  
11 A -- with Mr. Yacobi.  
12 Q -- giving the passwords to Eldad; is that what you're  
13 saying?  
14 A Because of what previously had happened, that Mr. Eldad  
10:01AM 15 had tapped into Crestline Funding's system.  
16 Q Ma'am, I'm showing you Exhibit 50, which was been  
17 admitted into evidence. And so you see at the bottom here,  
18 this is an e-mail from your husband to Amy Watson on November  
19 18, 2014. And it says "I am requesting to be restored as a  
10:01AM 20 Google Apps admin at least until we get back to California so  
21 that we can keep things moving over here."  
22 Do you see that there?  
23 A Yes, I see that.  
24 Q Now, there was something that I wasn't sure about in your  
10:02AM 25 direct exam. When the police came to the room at the hotel,

1 you said initially you were in the room with your husband where  
2 the door was, in that part of the room?

3 A Correct.

4 Q And then you said that, when the police actually came and  
10:02AM 5 opened the door, you went to -- there was another room in that  
6 same hotel suite?

7 A Before they came in, I had gone into the room.

8 Q Okay. You had gone into this other room?

9 A Yes.

10:02AM 10 Q Okay. And then you said that, when they came in, though,  
11 that you saw the police with your husband in the room?

12 A I heard the police.

13 Q Okay. So you didn't actually see your husband with the  
14 police and with the computer; right?

10:02AM 15 A I could just see, like, a little bit. So the doorway is  
16 here. I could look at -- they were in the kitchen area, which  
17 is over here. The living room is, like -- or the couch and  
18 everything where my kids were sleeping is right here. So I  
19 could see some of it, like, the counter of the kitchen.

10:02AM 20 Q But you couldn't see what was going on with the computer;  
21 right?

22 A Not everything. When my husband set it down on the  
23 counter --

24 MR. MARRETT: Your Honor, move to strike as  
10:03AM 25 nonresponsive.

1 THE COURT: You answered his question.  
2 Why don't you give another question.  
3 Q BY MR. MARRETT: Now, ma'am, you did hear the police tell  
4 your husband to put a lock on the device or a password to  
10:03AM 5 encrypt it? You heard that; right?  
6 A Yeah. Basically, they were saying, you know --  
7 MR. MARRETT: Your Honor, move to strike as  
8 nonresponsive after "Yeah."  
9 THE COURT: She answered it.  
10:03AM 10 Q BY MR. MARRETT: Now, you were aware that, in addition to  
11 the wipe command, there were other deletions that happened  
12 while you were in Florida on November 17, 2014, and November  
13 18, 2014; right?  
14 A I was aware because of the -- all this.  
10:03AM 15 Q Now, I'm going to put up Exhibit 33, which is in  
16 evidence. And you see down here on Lines -- or it's No. 6 at  
17 the bottom. Do you see where I'm at?  
18 A Yes.  
19 Q Okay. And you see the date stamp here, 11/18/2014 at  
10:04AM 20 1348, and that's in GMT, so that's 8:48 a.m. Eastern. Do you  
21 see that?  
22 A I see that.  
23 Q And you see the search, "How to reset a Synology  
24 DiskStation"?  
10:04AM 25 A Yes, I see that.

1 Q And you were with your husband at the hotel on the  
2 morning of November 18, 2014; right?

3 A Yes, in the morning before he left.

4 Q I'm putting up Exhibit 34. And this is another exhibit  
10:04AM 5 of a file from the Mac Pro laptop computer. And you see here  
6 at Line 5, there's a string for how to delete all files on a  
7 Synology DiskStation Google search.

8 Do you see that there?

9 A I see that.

10:05AM 10 Q Let me go back to Exhibit 33. Do you see the first line  
11 here, it's numbered zero. There's a search for Cox Business,  
12 and that's on 11/19/2014 at 2:51:52 GMT, which is 9:51 p.m.  
13 Eastern, on November 18, 2014. Do you see that search there?

14 A Yes, I see that.

10:06AM 15 Q And you were with your husband in the hotel on  
16 November 18 at 9:50 p.m. Eastern; right?

17 A Correct.

18 Q And that was after your husband had returned to the hotel  
19 from resigning from Blue Stone?

10:06AM 20 A Yes.

21 Q Now, on November 17 and 18, you weren't with your husband  
22 all day, both those days; right? He was at work sometimes?

23 A Yes. On the 17th and 18th, he went -- he was, basically,  
24 at work the whole day, and we were at the hotel the whole day.

10:06AM 25 Q So you didn't see what he was doing on his computer when

1 he was at work; right?

2 A No. He was with the Blue Stone staff during that time.

3 Q And when you were at the hotel, you were also watching

4 your kids; right?

10:07AM 5 A Correct.

6 Q So your husband could have been on the computer, and you

7 wouldn't have necessarily seen what he was doing; right?

8 A He was with the Blue Stone staff.

9 Q I'm talking about when he was back at the hotel with you,

10:07AM 10 though.

11 A When he was back at the hotel?

12 Q Either in the morning or in the evening, you're both

13 there, you're with the kids. You're not seeing what he's doing

14 on his computer constantly; right?

10:07AM 15 A No. He's very attentive. So you know, he was trying to

16 spend time with us before and after. He wasn't really on his

17 computer at all when he was with us.

18 Q So let's go to --

19 A He knew we were bored all day.

10:07AM 20 Q Let's go to Exhibit 52. We were just looking at

21 Exhibit 33 where there was a search for Cox Business. This is

22 Exhibit 52, which is an e-mail recovered from your husband's

23 computer. And the e-mail is from myaccount@coxbusiness.com to

24 Nikishna@bluestonestrategy.com. And the date is Friday,

10:08AM 25 November 14, 2014.

1 Do you see that there?

2 A Yes, I see it.

3 Q And do you see where it says "Your password has been

4 reset"? Do you see that there?

10:08AM 5 A Yes.

6 Q When you went back to Blue Stone's offices with your

7 husband on the 14th, did your husband tell you that he had

8 reset the Cox password?

9 A No.

10:08AM 10 Q I'm going to put up Page 4 of Exhibit 148, which is in

11 evidence. And this was a document from Mozy, which was the Cox

12 Business backup service at the time. And do you see here the

13 name column says "Nikishna Polequaptewa"? Do you see that

14 there?

10:09AM 15 A It's blurry. Oh, yes, I see that.

16 Q And then you see the next column -- or excuse me. Over

17 on the right there's a name, Blue Stone Strategy Group. Do you

18 see that there?

19 A Yes, I see that.

10:09AM 20 Q And you see there is -- under the column "Deleted Time,"

21 it's November 18, 2014, at 20:16:43 Mountain time. Do you see

22 that?

23 A Yes.

24 Q And so that would be 10:16 Eastern time. Do you see that

10:09AM 25 time there?



1 A Yes.

2 Q So your husband had changed the Cox account password on  
3 November 14. And then on November 18 at 9:50 p.m. he searched  
4 for Cox Business on his computer and then a few minutes later  
10:10AM 5 deletes the Cox backup; is that right?

6 A That seems to be what you've put there on your little  
7 Excel sheets.

8 Q All right. Let's go to Exhibit 40. So this is another  
9 e-mail that was recovered from your husband's computer. And  
10:10AM 10 you see that the e-mail is from Mailchimp Account Services to  
11 Nikishna@bluestonestrategy.com. The subject is Mailchimp list  
12 export complete. And the date sent is Monday, November 17,  
13 2014.

14 Do you see that?

10:10AM 15 A Yes.

16 Q And this time here is 1537, and that's UTC time. So that  
17 would be 10:37 a.m. Eastern time. You weren't with your  
18 husband at 10:37 a.m. Eastern on November 17; right?

19 A Correct.

10:11AM 20 Q And you see down here where it says this was exported by  
21 Nikishna Polequaptewa, and then there's an IP address of  
22 198.72.7.23, and it has a location here of Okeechobee,  
23 O-k-e-e-c-h-o-b-e-e, Florida.

24 Do you see that?

10:11AM 25 A Again, I must repeat. If I get into your e-mail and I

1 do --

2 Q Ma'am --

3 A -- X, Y, and Z with your e-mail, it doesn't mean that you

4 did it.

10:11AM 5 THE COURT: Ma'am, you need to answer the question.

6 If you can answer it "yes" or "no," please do so.

7 THE WITNESS: Okay. Yes, I see that on the paper.

8 Q BY MR. MARRETT: And now I'm now going to put up

9 Exhibit 58, which is in evidence. And this is a record from

10:12AM 10 Mailchimp. And you see about the fourth line from the bottom,

11 the third and fourth line from the bottom, there's the date of

12 Monday, November 17, 2014, at 15:36:55 and the first line says

13 "List export Blue Stone newsletter, 3,515 members," and then

14 there's an IP address, 198.72.7.23.

10:12AM 15 Do you see that?

16 A Yes, I see that.

17 Q And that was the same IP address that was in the

18 Exhibit 40 e-mail that we just looked at; is that right?

19 A I don't remember the IP address.

10:12AM 20 Q I'll show it to you again. This is Exhibit 40. You see

21 it's 198.72.7.23. Do you see that?

22 A Yes. I also know an IP address doesn't refer to a

23 specific device.

24 MR. MARRETT: Your Honor, move to strike as

10:13AM 25 nonresponsive.

1 THE COURT: The problem, Mr. Marrett, is you're  
2 asking her about documents that she has no knowledge about,  
3 wasn't involved in the preparation or understanding. That's  
4 why we're having this disconnect and you're starting to argue  
10:13AM 5 with one another.

6 MR. MARRETT: Okay. I'll move on to the next  
7 question, Your Honor.

8 Q Down at the bottom here there's -- the last two lines are  
9 Tuesday, November 18, 2014, at 18:53:56. And the last two  
10:13AM 10 lines both say "delete list." Then there's an IP address of  
11 50.205.50.98.

12 Do you see that there?

13 A Yes, I see that.

14 Q And were you with your husband when he was deleting the  
10:13AM 15 Mailchimp list?

16 A He was not deleting the Mailchimp list.

17 Q Were you with your husband at 1:53 p.m. Eastern time on  
18 November 18?

19 A November 18, no, I was not with him at that time.

10:14AM 20 Q Okay. So you don't know what your husband was doing with  
21 his computer at 1:53 p.m. Eastern time on November 18; right?

22 A I believe he was working with the other Blue Stone staff  
23 people in a conference room all together --

24 Q Now --

10:14AM 25 A -- so you could have asked them.

1 Q Now, during direct exam, you testified about your husband  
2 deleting Google files from his phone; is that right?  
3 A Correct. The folder that pertained to him.  
4 Q And your testimony was that that happened at about  
10:14AM 5 10:30 p.m. Eastern; is that correct?  
6 A Approximately.  
7 Q I'm going to show you Exhibit 68, which has been admitted  
8 into evidence. At the top of Exhibit 68, you see the name  
9 "Nikishna" there?  
10:15AM 10 A Yes.  
11 Q And you see down here it says you moved 77 items to the  
12 trash Tuesday at 4:33 p.m.? Do you see that there?  
13 A Yes, I see that.  
14 Q So isn't it true, ma'am, that your husband was deleting  
10:15AM 15 files from Google before 10:30 p.m. on November 18?  
16 MR. KHOURI: Lack of foundation, Your Honor.  
17 THE COURT: Sustained.  
18 Q BY MR. MARRETT: Ma'am, you testified about alerts that  
19 you had been receiving on your phone -- or you saw your husband  
10:15AM 20 receiving; is that right?  
21 A Right.  
22 Q Did you review any records or documents about those  
23 alerts before testifying today?  
24 A Review documents about the alerts?  
10:15AM 25 Q Right. Did you review any before testifying today?

1 A No. I just heard them and saw them.

2 MR. MARRETT: Just one moment, Your Honor.

3 **(Counsel conferred off the record.)**

4 MR. MARRETT: No further questions, Your Honor.

10:16AM 5 THE COURT: Very well.

6 Mr. Khouri?

7 MR. KHOURI: Thank you, Your Honor.

8 **REDIRECT EXAMINATION**

9 BY MR. KHOURI:

10:16AM 10 Q Do you believe your husband deleted anything from the

11 Blue Stone computers?

12 MR. MARRETT: Objection. Calls for speculation.

13 Lacks foundation.

14 THE COURT: As framed, sustained.

10:16AM 15 Q BY MR. KHOURI: Do you believe your husband deleted

16 anything with respect to the documents that were shown to you

17 by counsel?

18 MR. MARRETT: Same objection, Your Honor.

19 THE COURT: As framed, sustained.

10:16AM 20 Q BY MR. KHOURI: Have you been with your husband on other

21 business trips?

22 A Not Blue Stone business trips.

23 Q Okay. Do you know if your husband's laptop is linked to

24 his desktop?

10:17AM 25 A Yes, it is.

1 Q How do you know that?

2 A Because the devices are all linked through the Apple ID.

3 Q When somebody is, if you know, on his computer, his

4 desktop, does it show up on his laptop?

10:17AM 5 A Yes.

6 MR. MARRETT: Objection. Lacks foundation.

7 THE COURT: Overruled.

8 If you know.

9 THE WITNESS: Yes.

10:17AM 10 Q BY MR. KHOURI: And how do you know that? Have you seen

11 that happen?

12 A Yeah. Well, it's, like -- I mean, you can even see it,

13 like, on your phone, if you have, like, you know, somebody else

14 that you're sharing the ID with, you can, like, scroll down and

10:17AM 15 see, like, all of the tabs that they have opened.

16 Q You talked about -- you said something on -- like, "yes

17 and no" as to the ownership of Nikishna's laptop. What did you

18 mean by that?

19 A When he left UCI, they gave him a list of items to return,

10:18AM 20 and then he returned them, and they signed off on it. The

21 laptop was not on that list.

22 Q Did UCI sign off on that list?

23 A Yes.

24 Q Okay. Now, when you woke up on the morning of the 19th,

10:18AM 25 did -- was the phone in the same place as it was when you went

1 to bed the night before, Nikishna's phone?

2 A Yeah, still plugged in.

3 Q Could -- did it look like it had been moved or used at

4 all?

10:18AM 5 A No.

6 Q Do you usually wake up if Nikishna gets out of bed?

7 A I have before.

8 Q Okay. Do you believe he got up at all that night?

9 A We left very early in the morning. He's not an early

10:19AM 10 riser. So I don't think that he got up just based on the fact

11 that he was able to get up to be out the door at 4:00 in the

12 morning.

13 Q Do you have any knowledge at all of whether he deleted

14 anything from Blue Stone?

10:19AM 15 MR. MARRETT: Objection. Calls for speculation.

16 Lacks foundation.

17 THE COURT: Overruled.

18 THE WITNESS: What I saw was the folder that he took

19 off of his phone.

10:19AM 20 Q BY MR. KHOURI: And that's it?

21 A Yes.

22 Q Okay. Had you ever seen any of those documents that

23 counsel was showing you when he cross-examined you?

24 A Aside from the thing I'm not supposed to mention? No.

10:19AM 25 THE COURT: Let me give the jury instruction.

1 (Reading:)

2 "Ladies and gentlemen, you heard the witness

3 refer to a prior trial. Whether there was a prior

4 trial is irrelevant to this case and your

10:20AM 5 deliberations. Please do not discuss or consider

6 the reference or the issue during your

7 deliberations."

8 Everybody understand? Everybody's shaking their head in

9 the affirmative.

10:20AM 10 Do you have another question?

11 MR. KHOURI: Yes. Actually, Your Honor, I think I'm

12 done, if I just may have a moment.

13 Nothing further, Your Honor. Thank you.

14 THE COURT: Very well.

10:20AM 15 Mr. Marrett?

16 **RECROSS-EXAMINATION**

17 BY MR. MARRETT:

18 Q Ma'am, did you know that the FBI's forensic analysis

19 showed that your husband's Mac Pro laptop computer had remote

10:20AM 20 access disabled in November of 2014?

21 A I did not know. I know there was --

22 MR. MARRETT: Your Honor, move to strike as

23 nonresponsive after "I did not know."

24 THE WITNESS: No. No. No. It's because -- I only

10:21AM 25 know because of --



1 THE COURT: You don't have to give an explanation.  
2 You said, I -- "don't know."  
3 Q BY MR. MARRETT: Now, ma'am, you testified about this  
4 list -- or request from UCI to give back property. And you  
10:21AM 5 said that the laptop wasn't on that list of information?  
6 A Correct. It was not on that list.  
7 Q Can you look at Exhibit 7 in the black binder in front of  
8 you.  
9 A Okay. There's no Exhibit 7. It goes from 5 to 13 -- or  
10:22AM 10 5, 6, and then 13.  
11 Q Let me ask you the question, ma'am. Isn't it true that  
12 you did receive a letter from UCI asking for the laptop back?  
13 A After this trial and everything -- or after, like, all of  
14 this stuff, I believe the FBI was trying to get permission --  
10:22AM 15 MR. MARRETT: Your Honor, move to strike.  
16 THE COURT: I think she's trying to answer your  
17 question.  
18 THE WITNESS: Yes.  
19 Q BY MR. MARRETT: You received a request --  
10:22AM 20 MR. KHOURI: Did she answer the question,  
21 Your Honor?  
22 THE COURT: She is answering the question.  
23 MR. KHOURI: Thank you.  
24 THE WITNESS: After -- after all this happened, then  
10:22AM 25 somebody went to UCI to ask them, you know, did they own that

1 laptop, and then I received a letter.

2 Q BY MR. MARRETT: So you received a request from UCI in

3 writing for that laptop computer; is that right?

4 A I received it.

10:23AM 5 Q Okay.

6 A To return my laptop.

7 Q And you had already returned your laptop when you left

8 your employment at UCI; right?

9 A No. I hadn't left my employment. I was working at UCI.

10:23AM 10 But that laptop was purchased through a grant. So I was still

11 working at UCI, but the -- I was no longer part of the grant.

12 So that's when I was asked to return the laptop associated with

13 that grant.

14 MR. KHOURI: Your Honor, I interpose an objection

10:23AM 15 under 403 as to this line as well as beyond the scope of cross.

16 THE COURT: The latter objection is overruled, but

17 the former is sustained.

18 I'm not sure where we're going with this. She indicated

19 that she received the letter after the fact. Can we move on.

10:24AM 20 MR. MARRETT: I have no further questions,

21 Your Honor.

22 THE COURT: All right. Ma'am, you can step down.

23 You're excused.

24 THE WITNESS: Thank you.

10:24AM 25 THE COURT: Mr. Khouri?

1 MR. KHOURI: Your Honor, the defense rests.

2 THE COURT: Very well. Anything further from the  
3 government?

4 MR. MITTAL: No, Your Honor.

10:24AM 5 THE COURT: All right. Ladies and gentlemen, I  
6 think what makes sense is, then, why don't we go right into  
7 jury instructions.

8 Melissa, do you have copies of all the jury instructions?

9 THE COURTROOM DEPUTY: I have to get them in  
10:24AM 10 chambers.

11 THE COURT: All right. Why don't we just take an  
12 in-place break, ladies and gentlemen. Please stand and  
13 stretch. We have those jury instructions in chambers. Melissa  
14 will go get them for us.

10:24AM 15 **(Brief pause.)**

16 THE COURT: We'll go back on the record. Melissa is  
17 now distributing the jury instructions.

18 Ladies and gentlemen, please get comfortable. The law  
19 requires that I read these instructions to you. You've been  
10:26AM 20 each given a copy. And it is your copy that you can take back  
21 to your deliberations. Please feel free to write on it if you  
22 want. It's, again, your copy. (Reading:)

23 **(Jury Instructions)**

24 "Members of the jury, now that you have heard  
10:27AM 25 all the evidence, it is my duty to instruct you on

1 the law that applies to this case. A copy of these  
2 instructions will be available in the jury room for  
3 you to consult.

4 "It is your duty to weigh and to evaluate all  
10:27AM 5 the evidence received in the case and, in that  
6 process, to decide the facts. It is also your duty  
7 to apply the law as I give it to you to the facts  
8 as you find them, whether you agree with the law or  
9 not.

10:27AM 10 "You must decide the case solely on the  
11 evidence and the law and must not be influenced by  
12 any personal likes or dislikes, opinions,  
13 prejudices, or sympathy. You should also not be  
14 influenced by any person's race, color, religion,  
10:27AM 15 national ancestry, or gender. You will recall that  
16 you took an oath promising to do so at the  
17 beginning of the case.

18 "You must follow all these instructions and  
19 do not single out some and ignore others. They are  
10:27AM 20 all important. Please do not read into these  
21 instructions or into anything I may have said or  
22 done any suggestion as to what verdict you should  
23 return. That is a matter entirely up to you.

24 "The First Superseding Indictment is not  
10:28AM 25 evidence. The defendant has pleaded not guilty to

1 the charge. The defendant is presumed to be  
2 innocent unless and until the government proves the  
3 defendant guilty beyond a reasonable doubt.

4 "In addition, the defendant does not have to  
10:28AM 5 testify or present any evidence. The defendant  
6 does not have to prove innocence. The government  
7 has the burden of proving every element of the  
8 charge beyond a reasonable doubt. A defendant in a  
9 criminal case has a constitutional right not to  
10:28AM 10 testify. In arriving at your verdict, the law  
11 prohibits you from considering in any manner that  
12 the defendant did not testify.

13 "Proof beyond a reasonable doubt is proof  
14 that leaves you firmly convinced the defendant is  
10:28AM 15 guilty. It is not required that the government  
16 prove guilt beyond all possible doubt.

17 "A reasonable doubt is a doubt based upon  
18 reason and common sense and is not based purely on  
19 speculation. It may arise from a careful and  
10:29AM 20 impartial consideration of all the evidence or from  
21 lack of evidence.

22 "If, after a careful and partial  
23 consideration of all the evidence, you are not  
24 convinced beyond a reasonable doubt that the  
10:29AM 25 defendant is guilty, it is your duty to find the

1 defendant not guilty. On the other hand, if, after  
2 a careful and impartial consideration of all the  
3 evidence, you are convinced beyond a reasonable  
4 doubt that the defendant is guilty, it is your duty  
10:29AM 5 to find the defendant guilty.

6 "The evidence you are to consider in deciding  
7 what the facts are consists of, one, the sworn  
8 testimony of any witness; two, the exhibits  
9 received in evidence; and, three, any facts to  
10:29AM 10 which the parties have agreed.

11 "In reaching your verdict, you may consider  
12 only the testimony and exhibits received in  
13 evidence. The following things are not evidence,  
14 and you may not consider them in deciding what the  
10:29AM 15 facts are:

16 "One, questions, statements, objections, and  
17 arguments by the lawyers are not evidence. The  
18 lawyers are not witnesses. Although you must  
19 consider a lawyer's questions to understand the  
10:30AM 20 answers of a witness, the lawyers' questions are  
21 not evidence.

22 "Similarly, what the lawyers have said in  
23 their opening statements, will say in their closing  
24 arguments and at other times is intended to help  
10:30AM 25 you interpret the evidence, but it is not evidence.

1 If the facts, as you remember them, differ from the  
2 way the lawyers state them, your memory of them  
3 controls.

4 "Two, any testimony that I have excluded,  
10:30AM 5 stricken, or instructed you to disregard is not  
6 evidence.

7 "Three, anything you may have seen or heard  
8 when the Court was not in session is not evidence.  
9 You are to decide the case solely on the evidence  
10:30AM 10 received at the trial.

11 "Certain charts and summaries have been  
12 admitted into evidence. Charts and summaries are  
13 only as good as the underlying supporting material.  
14 You should, therefore, give them only such weight  
10:30AM 15 as you think the underlying material deserves.

16 "The parties have agreed to certain facts  
17 that have been stated to you. Those facts are now  
18 conclusively established.

19 "Evidence may be direct or circumstantial.  
10:31AM 20 Direct evidence is direct proof of a fact, such as  
21 testimony by a witness about what that witness  
22 personally saw or heard or did. Circumstantial  
23 evidence is indirect evidence. That is, it is  
24 proof of one or more facts from which you can find  
10:31AM 25 another fact.

1 "You are to consider both direct and  
2 circumstantial evidence. Either can be used to  
3 prove any fact. The law makes no distinction  
4 between the weight to be given to either direct or  
10:31AM 5 circumstantial evidence. It is for you to decide  
6 how much weight to give to any evidence.

7 "In deciding the facts in this case, you may  
8 have to decide which testimony to believe and which  
9 testimony not to believe. You may believe  
10:31AM 10 everything a witness says or part of it or none of  
11 it.

12 "In considering the testimony of any witness,  
13 you may take into account:

14 "No. 1, the opportunity and ability of the  
10:31AM 15 witness to see or hear or know the things testified  
16 to;

17 "No. 2, the witness's memory;

18 "No. 3, the witness's manner while  
19 testifying;

10:32AM 20 "No. 4, the witness's interest in the outcome  
21 of the case, if any;

22 "No. 5, the witness's bias or prejudice, if  
23 any;

24 "6, whether other evidence contradicted the  
10:32AM 25 witness's testimony;



1 "7, the reasonableness of the witness's  
2 testimony in light of all the evidence;

3 "and, 8, any other factors that bear on  
4 believability.

10:32AM 5 "Sometimes a witness may say something that  
6 is not consistent with something else he or she  
7 said. Sometimes different witnesses will give  
8 different versions of what happened. People often  
9 forget things or make mistakes in what they  
10:32AM 10 remember. Also, two people may see the same event  
11 but remember it differently. You may consider  
12 these differences, but do not decide that testimony  
13 is untrue just because it differs from other  
14 testimony.

10:32AM 15 "However, if you decide that a witness has  
16 deliberately testified untruthfully about something  
17 important, you may choose not to believe anything  
18 that witness said. On the other hand, if you think  
19 the witness testified untruthfully about some  
10:33AM 20 things but told the truth about others, you may  
21 accept the part you think is true and ignore the  
22 rest.

23 "The weight of the evidence as to a fact does  
24 not necessarily depend on the number of witnesses  
10:33AM 25 who testify. What is important is how believable

1 the witnesses were and how much weight you think  
2 their testimony deserves.

3 "You've heard testimony that the defendant  
4 made a statement. It is for you to decide whether  
10:33AM 5 the defendant made the statement and, if so, how  
6 much weight to give to it. In making those  
7 decisions, you should consider all the evidence  
8 about the statement including the circumstances  
9 under which the defendant may have made it.

10:33AM 10 "You have heard testimony from persons who,  
11 because of education or experience, were permitted  
12 to state opinions and the reasons for their  
13 opinions. Such opinion testimony should be judged  
14 like any other testimony. You may accept it or  
10:33AM 15 reject it and give it as much weight as you think  
16 it deserves considering the witness's education and  
17 experience, the reasons given for the opinion, and  
18 all of the other evidence in the case.

19 "You are here only to determine whether the  
10:34AM 20 defendant is guilty or not guilty of the charge in  
21 the First Superseding Indictment. The defendant is  
22 not on trial for any conduct or offense not charged  
23 in the First Superseding Indictment.

24 "The First Superseding Indictment charges  
10:34AM 25 that the offense alleged in Count One was committed

1 on or about a certain date. Although it is  
2 necessary for the government to prove beyond a  
3 reasonable doubt that the offense was committed on  
4 a date reasonably near the date alleged in Count  
10:34AM 5 One of the First Superseding Indictment, it is not  
6 necessary for the government to prove that the  
7 offense was committed precisely on the date  
8 charged.

9 "The defendant is charged in the single-count  
10:34AM 10 First Superseding Indictment with intentional  
11 damage, without authorization to a protected  
12 computer in violation of Section 1030(a)(5)(A) of  
13 Title 18 of the United States Code. In order for  
14 the defendant to be found guilty of that charge,  
10:35AM 15 the government must prove each of the following  
16 elements beyond a reasonable doubt:

17 "First, the defendant knowingly caused the  
18 transmission of a program, a code, a command, or  
19 information to Blue Stone Strategy Group's Mac Pro  
10:35AM 20 desktop computer bearing Serial No. F5KMF03YF693;

21 "Second, as a result of the transmission, the  
22 defendant intentionally impaired, without  
23 authorization, the integrity or availability of  
24 data, a program, a system, or information;

10:35AM 25 "And, third, Blue Stone Strategy Group's

1 Mac Pro desktop computer bearing Serial No.  
2 F5KMF03YF693 was used in or affected interstate or  
3 foreign commerce or communication.  
4 "The term 'computer' means electronic,  
10:36AM 5 magnetic, optical, electrochemical, or other  
6 high-speed data processing device performing  
7 logical, arithmetic, or storage functions and  
8 includes any data storage facility or  
9 communications facility directly related to or  
10:36AM 10 operating in conjunction with such device. But  
11 such term does not include an automated typewriter  
12 or typesetter, a portable handheld calculator, or  
13 other similar device.  
14 "An act is done knowingly if the defendant is  
10:36AM 15 aware of the act and does not act or fails to act  
16 through ignorance, mistake, or accident. The  
17 government is not required to prove that the  
18 defendant knew that his acts or omissions were  
19 unlawful. You may consider evidence of the  
10:37AM 20 defendant's words, acts, or omissions along with  
21 all the other evidence in deciding whether the  
22 defendant acted knowingly.  
23 "A person acts without authorization with  
24 respect to the integrity or availability of data, a  
10:37AM 25 program, a system, or information on a computer

1 when the person has not received permission from  
2 the owner, person who, or entity which controls  
3 that right of access to the computer to impair the  
4 integrity or availability of data, a program, a  
10:37AM 5 system, or information on the computer or when the  
6 owner, person who, or entity which controls the  
7 right of access to the computer has withdrawn or  
8 rescinded permission to impair the integrity or  
9 availability of data, a program, a system, or  
10:37AM 10 information on the computer and the person impairs  
11 the integrity or availability of data, a program, a  
12 system, or information on the computer anyway.

13 "If you find the defendant guilty of the  
14 charge in Count One of the First Superseding  
10:38AM 15 Indictment, you are then to determine whether the  
16 government proved beyond a reasonable doubt that,  
17 as a result of such conduct, in a related course of  
18 conduct affecting one or more other computers used  
19 in or affecting interstate or foreign commerce or  
10:38AM 20 communication, the defendant caused 'loss' to Blue  
21 Stone Strategy Group during any one-year period of  
22 an aggregate value of \$5,000 or more.

23 "The term loss means any reasonable cost to  
24 Blue Stone Strategy Group including the cost of  
10:38AM 25 responding to an offense, conducting a damage

1 assessment, and restoring the data, program,  
2 system, or information to its condition prior to  
3 the offense and any revenue loss, cost incurred, or  
4 other consequential damages incurred because of  
10:38AM 5 interruption of service. Your decision as to  
6 whether the loss was \$5,000 or more must be  
7 unanimous.

8 "When you begin your deliberations, elect one  
9 member of the jury as your foreperson who will  
10:39AM 10 preside over the deliberations and speak for you  
11 here in court. You will then discuss the case with  
12 your fellow jurors to reach agreement if you can do  
13 so.

14 "Your verdict, whether guilty or not guilty,  
10:39AM 15 must be unanimous. Each of you must decide the  
16 case for yourself, but you should do so only after  
17 you have considered all the evidence, discussed it  
18 fully with the other jurors, and listened to the  
19 views of your fellow jurors.

10:39AM 20 "Do not be afraid to change your opinion if  
21 the discussion persuades you that you should. But  
22 do not come to a decision simply because other  
23 jurors think it is right. It is important that you  
24 attempt to reach a unanimous verdict, but, of  
10:39AM 25 course, only if each of you can do so after having

1           made your own conscientious decision. Do not  
2           change an honest belief about the weight and effect  
3           of the evidence simply to reach a verdict.  
4           "Because you must base your verdict only on  
10:40AM 5           the evidence received in the case and on these  
6           instructions, I remind you that you must not be  
7           exposed to any other information about the case or  
8           to the issues it involves. Except for discussing  
9           the case with your fellow jurors during your  
10:40AM 10           deliberations, do not communicate with anyone in  
11           any way and do not let anyone else communicate with  
12           you in any way about the merits of the case or  
13           anything to do with it.  
14           "This includes discussing the case in person,  
10:40AM 15           in writing, by phone, or electronic means via  
16           e-mail, text messaging, or any Internet chat room,  
17           blog, website, or other feature. This applies to  
18           communicating with your fellow members, your  
19           employer, the media or press, and the people  
10:40AM 20           involved in the trial.  
21           "If you are asked or approached in any way  
22           about your jury service or anything about this  
23           case, you must respond that you have been ordered  
24           not to discuss the matter and to report the contact  
10:40AM 25           to the Court.

1 "Do not read, watch, or listen to any news or  
2 media accounts or commentary about the case or  
3 anything to do with it. Do not do any research,  
4 such as consulting dictionaries, searching the  
10:41AM 5 Internet, or using other reference materials. And  
6 do not make any investigation or in any other way  
7 try to learn about the case on your own.

8 "The law requires these instructions to  
9 ensure the parties have a fair trial based on the  
10:41AM 10 same evidence that each party has had an  
11 opportunity to discuss. A juror who violates these  
12 restrictions jeopardizes the fairness of these  
13 proceedings, and a mistrial could result that would  
14 require the entire trial process to start over. If  
10:41AM 15 any juror is exposed to any outside information,  
16 please notify the Court immediately.

17 "Some of you have taken notes during the  
18 trial. Whether or not you took notes, you should  
19 rely on your own memory of what was said. Notes  
10:41AM 20 are only to assist your memory. You should not be  
21 overly influenced by your notes or those of your  
22 fellow jurors.

23 "The punishment provided by law for this  
24 crime is for the Court to decide. You may not  
10:41AM 25 consider punishment in deciding whether the



1 government has proved its case against the  
2 defendant beyond a reasonable doubt.

3 "A verdict form has been prepared for you.  
4 After you have reached a unanimous agreement on a  
10:42AM 5 verdict, your foreperson should complete the  
6 verdict form according to your deliberations, sign  
7 and date it, and advise the bailiff that you are  
8 ready to return to the courtroom.

9 "If it becomes necessary during your  
10:42AM 10 deliberations to communicate with me, you may send  
11 a note through the bailiff signed by any one or  
12 more of you. No member of the jury should ever  
13 attempt to communicate with me except by a signed  
14 writing, and I will respond to the jury concerning  
10:42AM 15 the case only in writing or here in open court.

16 "If you send out a question, I will consult  
17 with the lawyers before answering it, which may  
18 take some time. You may continue your  
19 deliberations while waiting for the answer to any  
10:42AM 20 question. Remember that you are not to tell  
21 anyone, including me, how the jury stands,  
22 numerically or otherwise, on any question submitted  
23 to you, including the question of the guilt of the  
24 defendant, until after you have reached a unanimous  
10:43AM 25 verdict or have been discharged."

1 All right, ladies and gentlemen. Those are the jury  
2 instructions. As I indicated, we do have a verdict form we  
3 prepared for you. I'm going to walk you through it. I'm  
4 hoping it's pretty simple and straightforward.

10:43AM 5 There's really only two questions that are on the form.  
6 And how you answer the first question will depend if you even  
7 have to answer the second question.

8 The first question is:

9 "We, the jury in the above-captioned case,  
10:43AM 10 unanimously find the defendant, Nikishna  
11 Polequaptewa," and then you have to indicate and  
12 check either "not guilty" or "guilty," "of  
13 intentionally causing damage, without  
14 authorization, to a protected computer in violation  
10:43AM 15 of 18 U.S.C., Section 1030(a)(5)(A) as charged in  
16 Count One of the First Superseding Indictment."  
17 So that's the first question.

18 And then the next paragraph, which I won't read, says  
19 exactly what I told you. If you answer not guilty, then the  
10:44AM 20 foreperson will just date and sign the verdict form. If you  
21 unanimously agree that the government has met its burden and  
22 find the defendant guilty, then you need to answer the second  
23 question on the next page, which asks:

24 "We, the jury, in the above-captioned case,  
10:44AM 25 having found the defendant guilty of the offense

1 charged in Count One of the First Superseding  
2 Indictment, further unanimously find that the  
3 government" -- and then you need to say "did not"  
4 or "did" -- "prove beyond a reasonable doubt that,  
10:44AM 5 as a result of such conduct, in a related course of  
6 conduct, affecting one or more other computers used  
7 in or affecting interstate or foreign commerce or  
8 communication, the defendant caused loss to Blue  
9 Stone Strategy Group during any one period of an  
10:45AM 10 aggregate value of \$5,000 or more."

11 All right, ladies and gentlemen. That is the verdict  
12 form. It is a quarter till. I suggest we get into closing  
13 arguments.

14 Mr. Mittal, are you going to be giving the initial  
10:45AM 15 closing?

16 MR. MITTAL: Yes, Your Honor.

17 THE COURT: Do you need a couple minutes to set up?

18 MR. MITTAL: Yes. We need to go into the well and  
19 the computer.

10:45AM 20 THE COURT: Okay. While they're setting up, ladies  
21 and gentlemen, if you'd like to stand and stretch, please do  
22 so.

23 MR. MITTAL: Your Honor, may I proceed?

24 THE COURT: Please do so.

10:46AM 25 ///

1 (Government's closing argument.)

2 (Videotape was played, not reported.)

3 MR. MITTAL: That was the defendant the day after he  
4 resigned, on November 19, 2014. That day, the defendant had no  
10:47AM 5 remorse for his actions. He had attacked the infrastructure of  
6 the Blue Stone IT system both before and after he had resigned.

7 And when the chairman of Blue Stone asked him, "We want to  
8 make sure we get all of our stuff," he was asking him, "Where  
9 are the deleted files?"

10:47AM 10 The defendant's response, "What stuff? I deleted it."  
11 That's the point. He walked outside of the office and told the  
12 chairman, "I did it. It's done."

13 His deletions were intentional. That day he didn't say  
14 everything was backed up or "Somebody was accessing my personal  
10:48AM 15 information." He gave no explanation or justification. His,  
16 quote/unquote, "point" was to delete files.

17 He was upset that Blue Stone had tried to take away the  
18 keys to his kingdom. He didn't simply resign when they put him  
19 on a project in Florida. He decided to take down the kingdom  
10:48AM 20 he had built.

21 He knew the systems of Blue Stone better than anyone else.  
22 He was the one who had set them all up. While Blue Stone had  
23 tried to execute a smooth transition on Friday, November 14,  
24 defendant wouldn't let that transition be so smooth.

10:48AM 25 From Florida, he executed a calculated plan to take down

1 Blue Stone's IT infrastructure. He did it all the way out.  
2 And Blue Stone didn't realize what had hit them until it was  
3 too late.

4 He deleted their website, putting the company back months  
10:49AM 5 in development. He deleted their marketing campaigns and  
6 e-mail lists, deleting eight years of content and contact  
7 information. Blue Stone was forced to rebuild from incomplete  
8 lists and campaigns, setting back all of their work.

9 With a click on his phone, he deleted all of the Google  
10:49AM 10 drives, everything. Client information, work product, he  
11 didn't discriminate. Thankfully, Google was able to restore  
12 that data.

13 And then he went to the heart of the IT infrastructure  
14 system. He took out the backups. Any sort of backstop that  
10:49AM 15 Blue Stone put in place was gone. He went to the Cox service  
16 that they had and made sure, after he left, that none of that  
17 was there.

18 And his final act was that Mac Pro desktop. He had a  
19 computer sitting back in Irvine, and he pulled up that Find My  
10:50AM 20 iPhone application and erased it. He made that computer a  
21 brick with the click of an iPhone.

22 These deletions cost Blue Stone over \$50,000. You heard  
23 about the personnel that were tasked to respond to figure out  
24 first what had happened and then also try to rebuild  
10:50AM 25 everything. Just in Blue Stone, employees spent about \$50,000.

1 And then we heard from some of the outside services;  
2 RunnerBoys, which was Eldad Yacobi's company, and Whole Product  
3 Marketing, Robert Mooers', they spent over \$4,000.

4 During closing argument I'm going to review the elements  
10:50AM 5 of the charge. And I'm briefly going to go over the verdict  
6 form. I think the Court's done that. I'm going to summarize  
7 the evidence. And, finally, I'm going to show you how the  
8 government has proven each element of the crime beyond a  
9 reasonable doubt.

10:51AM 10 So there's a single count here. And the first part of the  
11 count is you have to decide whether the defendant, without  
12 authorization, impaired the victim's Mac Pro computer and then  
13 whether the loss was \$5,000 or more, and that's for the loss  
14 related to both the Mac Pro computer as well as all the other  
10:51AM 15 deletions that we've been discussing.

16 So that's what the first page of the verdict form is  
17 whether he impaired that Mac Pro computer. And then if you  
18 find him guilty of that, the next page will be the loss.

19 But let's first talk about the elements of Count One.  
10:51AM 20 There's three. So this is in Court Instruction No. 15. And  
21 I'm giving you these through a PowerPoint. You won't have this  
22 PowerPoint with you. If there's anything you want to take  
23 down, feel free to do so. You'll have the instructions and all  
24 the exhibits with you during your deliberations.

10:52AM 25 So the first element of the crime is the defendant

1 knowingly caused the transmission of a program, a code, a  
2 command, or information to Blue Stone Strategy Group's Mac Pro  
3 desktop computer, and then it gives you the serial number  
4 there.

10:52AM 5 The second, as a result of the transmission, the defendant  
6 intentionally impaired, without authorization, the integrity or  
7 availability of data, a program, a system, or information.

8 And then the final thing that has to be proven is that  
9 that Mac Pro desktop computer was used in or affected  
10:52AM 10 interstate or foreign commerce or communication.

11 And, as I mentioned, on the second page, you're going to  
12 go and make a determination on whether the loss for all of the  
13 deletions that are at issue was \$5,000 or more. And that's  
14 going to include loss from both the Mac Pro computer but also  
10:53AM 15 for all the other deletions from the marketing campaigns, the  
16 website materials, and everything else that we've discussed.

17 MR. KHOURI: Your Honor, objection. That misstates  
18 the law, contrary to the jury instructions.

19 THE COURT: That is overruled.

10:53AM 20 Ladies and gentlemen, as I gave you in the instructions,  
21 arguments by counsel is not evidence. If the evidence is  
22 different than what you remember it, your memory obviously  
23 controls.

24 And, similarly, I've given you the instructions on the  
10:53AM 25 law. It is your duty and your duty alone to apply that law to

1 the facts of the case.

2 MR. MITTAL: I'm just summarizing the instructions  
3 as they're written here. You'll have them with you as you make  
4 your determinations here.

10:53AM 5 Let's talk about Blue Stone first. So we heard about  
6 Jamie Fullmer. He was the majority owner. He was our first  
7 witness in this case. He talked about how Blue Stone started.  
8 He's the chairman of the Yavapai Apache Nation. He's the  
9 majority owner. So him and John Mooers, they have the business  
10:54AM 10 together. And Jamie Fullmer owns about 51 percent. He  
11 mentioned he was the president of Intertribal Council of  
12 Arizona as well as Arizona State University, part of the  
13 American Indian Policy Institute.

14 You also heard from John Mooers, the minority owner of the  
10:54AM 15 business, 49 percent. He had a career in consulting, prior to  
16 joining Blue Stone and founding it with Mr. Fullmer at Merrill  
17 Lynch and referred him tribal clients. And so he started  
18 becoming engaged with all these governments that needed help  
19 with their businesses and running their governments. And  
10:54AM 20 before joining Blue Stone, he had successful projects with  
21 San Manuel and the Morongo tribes.

22 And this business was a small business. It started in  
23 2007 just down in Irvine, California. In 2014 it had about ten  
24 employees on payroll as well as some independent contractors.  
10:55AM 25 And they, basically, did two to three different things. They



1 worked with tribal governments across the United States, and  
2 their aim was to help the governments with efficiency within  
3 their governments but also helping them run their businesses.  
4 They were going to give them expertise so that they knew how to  
10:55AM 5 efficiently manage their governments and their businesses.

6 You saw Exhibit 86. You saw kind of the revenue from 2012  
7 to 2017 for Blue Stone. It was roughly 2.2 million from '12 to  
8 '14. And then after '14, it took a big drop. It went down  
9 almost in half.

10:55AM 10 Defendant joins the business in April of '14. So this  
11 business is running about seven years before the defendant  
12 joins. We saw evidence of that in Exhibits 5 and 6. Those are  
13 his NDA and his employment agreement. All the NDA was, was  
14 kind of a placeholder while they were negotiating on his  
10:55AM 15 employment. And then he joins the business on April 16 of '14.

16 He was joined as a senior strategist. You heard a lot  
17 about what a senior strategist does. They were essentially  
18 consultants for Blue Stone. They would go out to the tribes  
19 and do the work that Blue Stone was paid to do. And his  
10:56AM 20 starting salary was \$80,000 per year.

21 But soon after he joined in April of 2014, the defendant  
22 used his know-how in computer science to start helping out in  
23 IT and marketing. He thought he had some expertise there, so  
24 he wanted to assist in those functions.

10:56AM 25 And we saw a variety of e-mails. I'm just going to

1 highlight a few of them. But we saw one like this in  
2 Exhibit 101. It was an e-mail from June 13, 2014, where the  
3 defendant is documenting his IT plans. He's getting Internet  
4 set up. He's doing the Google Apps. He is essentially  
10:56AM 5 expanding all of the IT systems that they had.

6 When the defendant joined, you heard about how it was very  
7 simplistic. They had their own laptops. E-mails were kind of  
8 all over the place. He was trying to streamline things and set  
9 it up in a more kind of cohesive fashion.

10:56AM 10 We heard about all the marketing work in addition to the  
11 IT he did where he was involved in the website and kind of  
12 helping them grow their business. And then in Exhibit 102, we  
13 saw how he initiated the Cox service that we've been talking  
14 about. There was one for the Internet but two for the backups.

10:57AM 15 We also started to see evidence in June of the defendant's  
16 possessive nature of this work. In Exhibit 117, you saw this  
17 e-mail where he sends it to John Mooers and Amy Watson. And in  
18 there he says "There was also some conversation about regular  
19 meetings as well as the potential for Eldad to provide  
10:57AM 20 technical support moving forward." And he highlights in bold  
21 "This is of grave concern for me."

22 And then he goes on to discuss "The building IT manager  
23 kicked us off the Internet because Eldad illegally connected  
24 Blue Stone onto the Crestline Funding system with the wrong  
10:57AM 25 settings, which created a security breach for them." We heard

1 from Crestline. We heard from Mike Lee. That was false. He  
2 wanted to keep this IT work and was willing to say anything  
3 about Mr. Yacobi to keep it.

4 We heard in Exhibit 103 about these spreadsheets. He  
10:58AM 5 documented all these different things he was working on from  
6 Google Apps, to CRM, to Mailchimp, all the different services  
7 that the defendant was working on and the one with knowledge  
8 about how to work.

9 And, again, in 105, we saw him working on Mailchimp and  
10:58AM 10 the CRM, and he was doing all of the marketing-related  
11 activities related to that. He was running the show there.

12 In August of 2014, in Exhibit 13, we saw his  
13 self-appraisal. He thought he was doing a great job with the  
14 IT. He asked for a \$5,000 raise. And he wanted to be known as  
10:58AM 15 the chief technology officer. He was asking for a promotion  
16 because he thought he was really good at this.

17 But Bill Moon gets involved. He's hired in August of  
18 2014. So now the defendant has more supervision, and this is  
19 from someone who has an expertise in consulting. You heard  
10:59AM 20 about his MBA from Northwestern. He was part of McKinsey. He  
21 worked with Fortune 500 companies. He was the expert Blue  
22 Stone was bringing in to help them grow their business. He had  
23 20 years of management consulting experience. He was filling a  
24 gap within Blue Stone that they didn't have the expertise.

10:59AM 25 He started to see e-mails like this in October of 2014,

1 like 107. "I'm very tired now from staying up late the night  
2 before for Lummi, traveling back, and then going right into the  
3 website finalization. Therefore, I will not be coming in until  
4 the afternoon." He was overloaded. He couldn't focus on his  
10:59AM 5 primary job function, which was a senior strategist. That's  
6 what he was hired to do. And Mr. Moon noticed this.

7 So the next week he writes an extensive memo to Mr. Mooers  
8 and Mr. Fullmer documenting his concerns. He's seeing his work  
9 progress and seeing how this is not working. "He can't handle  
11:00AM 10 all three balls. He can't be IT, marketing, and consultant.  
11 We need to focus him." And he documents it in great detail of  
12 all the reasons he thinks the defendant is falling behind.

13 Then Mr. Mooers and Mr. Fullmer make a decision. They're  
14 going to help the defendant focus, get him back to being senior  
11:00AM 15 strategist. So they have a meeting on November 14, 2014. And  
16 it was a clear delineation. The defendant was going to be a  
17 senior strategist. He was going to go to Florida on this  
18 important project with the Seminole Tribe. Eldad Yacobi would  
19 handle IT. And Robert Mooers of Whole Product Marketing would  
11:00AM 20 do the marketing and web.

21 You heard about the defendant's attitude during this  
22 meeting. You heard from Mr. Yacobi who showed how the  
23 defendant was reluctant. He wouldn't give all the passwords.  
24 He gave some. He gave wrong ones. Mr. Yacobi had to get  
11:00AM 25 Mr. Mooers and Mrs. Watson involved.

1           We heard about, in Exhibit 98, the IT setup. So we heard  
2 about what Mr. Yacobi was learning. And this kind of --  
3 Exhibit 98 summarizes for you what the setup was, what the  
4 defendant had created during his time at Blue Stone. He had  
11:01AM 5 added the Synology DiskStation server. It was a file-saving  
6 thing so they could save files among different employees. They  
7 also kept website files there. You heard about the Apple Mac  
8 Pro desktop that the defendant used and how he moved everyone  
9 to Apple computers.

11:01AM 10           Then you heard about other third-party providers they  
11 used. They used Bluehost. They used Google for their file  
12 sharing, which included client information and work product.  
13 They used the Cox Communication account to back up items and  
14 Mailchimp for their campaigns and e-mail list.

11:02AM 15           You heard about, during that meeting on Friday,  
16 November 14, the defendant gave some but not everything. The  
17 Synology server, Mr. Yacobi was the admin. But an hour before  
18 that meeting, the defendant had put a back door in. He made  
19 Janeen Goodman an admin. So he still was trying to maintain  
11:02AM 20 some control over the Synology server. Mr. Yacobi didn't  
21 realize that he had added him until after that meeting.

22           And the defendant still maintained control over his  
23 Mac Pro computer. He had the iCloud account that was connected  
24 to it. He used his personal e-mail, Nikishna@Yahoo.com, to  
11:02AM 25 control that Mac Pro computer. And the Google drive was one

1 place where the defendant actually handed it off. That was the  
2 one place where the defendant said, "Here you go," to  
3 Mr. Yacobi. Mailchimp, the defendant still had an admin login.  
4 And Cox, he did as well. He claimed he was still doing some  
11:02AM 5 backup functions.

6 And this wasn't, like, a layoff or something where they  
7 were demoting him. They were just getting him back to doing  
8 the job. There was no reason to question why the defendant  
9 still wanted to work on some of these things. He was  
11:03AM 10 purportedly, or they thought, trying to help out and finish out  
11 some of the work he had done. And, again, he was no longer the  
12 admin for Synology and Google.

13 And then after that, on November 15, we heard about how  
14 Blue Stone made a decision. They were going to reassign  
11:03AM 15 everyone's password for Google except the defendant's. They  
16 wanted to start a clean slate for all their e-mail accounts.

17 And you saw Exhibit 129. You saw this text message that  
18 Ms. Watson had sent out informing everyone, on the evening of  
19 November 14, that this was your new password. Because they  
11:03AM 20 were making sure that everyone got a new password and then  
21 would change it on their own.

22 But during the time, the defendant still had access to  
23 some of the admin logins and to his own account, so he still  
24 had access to a lot of the Blue Stone systems.

11:04AM 25 And we saw a lot about IP addresses. And there's three

1 that I'm actually going to focus on. There's Exhibit 21, which  
2 is the one that starts with 50; that's the one that goes back  
3 to the Residence Inn. There's the 198 IP address; that's the  
4 Seminole Tribe. And then we saw the 174, and that's the  
11:04AM 5 defendant's cell phone when he was using Verizon. So these pop  
6 up over and over again in different records.

7 By the time the defendant gets to Florida and realizes  
8 that this thing is real, he's really being reassigned, he's not  
9 going to do the IT work, he's upset. You saw these e-mails,  
11:04AM 10 and this is one of them, Exhibit 36. 6:30 in the morning  
11 Pacific Standard Time, Mr. Yacobi writes the defendant, as well  
12 as Mr. Mooers and Ms. Watson:

13 "I'm following up with you on our  
14 conversation earlier today. You told me some users  
11:04AM 15 can't log in to their e-mails, but you didn't  
16 recall their names. I would appreciate it if you  
17 could find out who those people were to e-mail me  
18 ASAP their names so we can take care of them at the  
19 earliest convenience."

11:05AM 20 Again, he was reluctant. He wouldn't even given him their  
21 names. How was Mr. Yacobi supposed to help when he didn't even  
22 know who had the problem.

23 And then on November 17, in Exhibit 111, this is when the  
24 defendant realized his back door had been shut. You see on  
11:05AM 25 November 14 at about 10:50 a.m., the defendant logs in and adds

1 Ms. Goodman to the administrator account. But on the 16th,  
2 Mr. Yacobi realizes and removed Mrs. Goodman, essentially  
3 disabling the defendant's back door.

4 And then on the 17th, the defendant logs in, he accesses  
11:05AM 5 this e-mail in Exhibit 35. He still had Mrs. Goodman's  
6 e-mail -- or her password. And so he was able to try to log  
7 in, and he realizes she's no longer an admin. You saw the  
8 timeline. So 7:31 a.m. on November 17, "admin failed login."  
9 That was the defendant.

11:06AM 10 And then nine seconds later he logs in from Florida at the  
11 Seminole Tribe, gets in using his account, and 30 seconds later  
12 he tried to use the back door and realizes she's no longer the  
13 admin he had set up.

14 And, again, you saw these e-mails over and over again on  
11:06AM 15 the 17th and 18th. This is Exhibit 48 where he's telling  
16 people their e-mail accounts aren't working. That's because  
17 they had been reset. So some people were having trouble just  
18 resetting their passwords.

19 And then, again, on Exhibit 49, he expresses frustration.  
11:06AM 20 "Therefore, once again, I suppose I'll need to request access  
21 to that as well." He was unhappy that he has had to hand over  
22 some of the control to the IT system.

23 Exhibit 50, this is an e-mail from the defendant to  
24 Mrs. Watson and Mr. Mooers. "There are glitches that continue  
11:06AM 25 to arise that I could/can easily fix, but I have no ability to



1 do so since I have been removed as an admin for Google Apps.  
2 Therefore, I'm requesting to be restored as a Google Apps  
3 admin, at least until we get back to CA, so that we can keep  
4 things moving over here."

11:07AM 5 He was trying to get back control. He was trying to show  
6 Mrs. Watson and Mr. Mooers, "Mr. Yacobi is not your man. I'm  
7 the one who can fix this. Give me those responsibilities  
8 back." And, tellingly, he didn't include Mr. Yacobi on this  
9 e-mail because he wanted to get that control.

11:07AM 10 And, again, he sends Mrs. Watson only an e-mail, giving  
11 her vague accounts of what the problems were. "There are a  
12 slew of items with people not being able to access their  
13 accounts, file sharing issues, Google Drive local accounts not  
14 being synced, et cetera." And Mrs. Watson is trying to  
11:07AM 15 understand what is the problem. But the defendant is not  
16 giving that information because he doesn't want someone else to  
17 know how to fix these issues.

18 But Blue Stone got signals that the defendant was  
19 frustrated. It didn't realize until too late that his  
11:08AM 20 frustration had become destruction. He was not just someone  
21 disgruntled and unhappy with Blue Stone. He was attacking the  
22 company on his way out.

23 We saw this on Exhibit 114 with various -- some of the  
24 Mailchimp records. We saw on November 18 on his own accord, in  
11:08AM 25 the bottom there, you see Nikishna logged in from the 50 IP

1 address and revoked Janeen Goodman as an admin. He didn't  
2 touch the owner account because that was, you know, below his  
3 account, but he was trying to, like, pull people out of the  
4 system.

11:08AM 5 And then we saw Exhibit 58, and we saw some of the records  
6 showing the exports and deletions. And these were records from  
7 Mailchimp. These were records that Mailchimp had provided the  
8 government during its investigation.

9 And then we saw 57. This was a long log. And we heard  
11:08AM 10 from Mr. Surber from Mailchimp, and he described how these  
11 lists were exported. And then on the defendant's laptop, we  
12 saw the same evidence. And we saw that he had exported it, and  
13 these e-mails were on his Mac Pro laptop that the government  
14 seized later. And the e-mails even warned him at the bottom  
11:09AM 15 "Exports are not available after lists are deleted." This is  
16 Exhibit 40. So he knew the day before, on the 17th, when he  
17 was exporting lists and material that, "If I delete these  
18 things, they're gone."

19 And then on the 18th, the deletions start. This is just  
11:09AM 20 before he resigns. So at 1:53 p.m. Eastern, he's starting to  
21 delete materials. He's already starting his campaign of  
22 deletions before he's resigned from the company.

23 He deletes the e-mail list, their campaigns. And he even  
24 checks a couple minutes later to make sure. "Mailchimp, what  
11:09AM 25 if I accidentally delete my list?" He was making sure he knew

1 what the effect was when he deleted these. And you heard about  
2 how the company tried to get these back and they couldn't.  
3 They were gone, the contact list and the marketing campaigns.

4 Immediately after his resignation, we saw the Google Drive  
11:10AM 5 materials all deleted. And there was -- I'm not going to go  
6 through all of the exhibits, but it was pages and pages and  
7 pages of the defendant deleting materials. He was no longer  
8 the admin, but he still had access to the entire Blue Stone  
9 Strategy Group accounts.

11:10AM 10 And Exhibit 87 summarized. Mrs. Janeen Goodman, she  
11 talked about this. She showed you how she was sitting there  
12 and she realized things were being deleted. She saw it on her  
13 face [sic] when she was working. And she was just, like,  
14 "What's going on?" Nikishna popped up, and all of a sudden  
11:10AM 15 files are being deleted. That's when the company first  
16 realized there was a problem. Something was going on with the  
17 defendant.

18 And then we heard evidence about the website and the other  
19 files related to the website. We saw Bill Moon's file being  
11:11AM 20 accessed at 4:12 a.m. He testified and told you he was not  
21 logging in that early in the morning from the hotel. And  
22 Mr. Yacobi told you about how he went to that folder and, by  
23 the time they learned of his resignation, it was empty.

24 Perhaps the Google searches and other searches on his  
11:11AM 25 computer were most telling about his website intent. Between

1 5:48 p.m. -- sorry -- 5:48 a.m. Pacific and 2:33 p.m. Pacific,  
2 Exhibit 33, you saw the defendant researching and planning how  
3 to attack the Synology DiskStation server. He searched for  
4 things like "How to reset the Synology DiskStation." "How to  
11:11AM 5 reformat Synology DiskStation," "Synology," "How to access PHP  
6 in my admin remotely."

7 He was figuring it out, how to get rid of everything on  
8 the Synology systems to really attack Blue Stone's IT  
9 infrastructure. And, again, we saw that on 34, "How to delete  
11:12AM 10 all files on a Synology DiskStation." All of these items were  
11 recovered from the defendant's laptop.

12 You also saw in Exhibits 41 through 43 that the defendant  
13 deleted website admin accounts. So he was going to every  
14 single place that the website was stored and was deleting them.  
11:12AM 15 Again, this was an item that was recovered from the defendant's  
16 laptop.

17 And then we saw records in 71 that show the defendant  
18 actually accessing the website folder called "Web." Mr. Yacobi  
19 told you that folder was empty by the time he had resigned.  
11:12AM 20 All this material that was supposed to be on the Synology  
21 DiskStation server -- the CRM data, backups, the website, file  
22 sharing -- Mr. Yacobi talked about all that stuff was gone and  
23 how the log showed the defendant was deleting these materials.

24 Then we heard about Bluehost. Bluehost is where they kept  
11:13AM 25 some backup materials. And even then we saw in his laptop,

1 Exhibit 44, the defendant accessing that Bluehost account, and  
2 those items were also deleted.

3 And then at 4:25 p.m. -- so these -- all these deletions  
4 we've been talking about, these have been happening even before  
11:13AM 5 his resignation. But at 4:25 p.m. Pacific, he resigned. He  
6 resigns suddenly. This wasn't your normal, run-of-the-mill  
7 resignation. People resign all the time. There's nothing  
8 wrong with that. People get unhappy, they decide to move on,  
9 whatever their reason may be. He stands up in front of a new  
11:13AM 10 important client and says, "I'm going."

11 You can imagine -- you saw Ms. Secakuku's reaction. And  
12 Mr. Moon, he had never seen anything like that in the 20 years  
13 of his management consulting experience. The reason he  
14 resigned that way, he was trying to embarrass Blue Stone. It  
11:13AM 15 was one little thing he could do to just say to Blue Stone he  
16 was going to do this.

17 That's when they start to realize something was wrong.  
18 That is not the normal way for someone to resign. He could  
19 have pulled Mr. Moon aside. He could have pulled Ms. Secakuku  
11:14AM 20 aside. He could have told Mr. Mooers in a text message. But,  
21 no, he wanted to make sure he did it in a very public  
22 embarrassing way.

23 After that, the deletions continue. You saw that on  
24 Exhibits 45 and 46. It's 6:30 at night. He's deleting files.  
11:14AM 25 He's covering up evidence from his laptop. He's taking things

1 that were on his laptop that he's downloaded and moving them to  
2 the trash. You're seeing these SQL files. This is what  
3 Agent Munoz had talked about. These are website files from  
4 Blue Stone that he's deleting on his laptop.

11:14AM 5 And then, finally, he realized there's one place where  
6 they still have some materials, their backups. And he still  
7 had access to the Cox backup system. He hadn't handed over the  
8 admin login to that.

9 And you saw this e-mail from the defendant to Mr. Robert  
11:15AM 10 Mooers. And he said on the 14th that he was restoring things  
11 from backup and "Everything is going to be great." But then on  
12 the 18th -- so this is in Exhibit 33 -- he searches for Cox  
13 Business at 6:51 p.m., so about an hour and a half after he  
14 resigned. And he retrieves the password -- he had reset the  
11:15AM 15 password without telling anyone -- and at 7:00 p.m., you see  
16 him accessing this e-mail with the default password that Cox  
17 had provided.

18 And then we saw this record from Mozy, which is the Cox  
19 service that does the backups. And you see that they created  
11:15AM 20 the account in June of 2014, and the last backup was in  
21 November 2014. And the defendant had changed the username to  
22 his personal one. He was taking over this account. He didn't  
23 even bother to keep the names with the Blue Stone accounts. He  
24 wanted to put it on to his personal account, and then he  
11:15AM 25 deletes it.

1 And this is uncontroverted evidence from Mozy, not from  
2 anyone from Blue Stone or anywhere else. This is Mozy's record  
3 showing the defendant deleting the backup files.

4 Then you heard about the hotel room. So the defendant is  
11:16AM 5 staying in the Residence Inn. Mr. Moon doesn't know what's  
6 going on, tries to reach out. No response. No response on the  
7 phone, no response in the hotel room. They're seeing deletions  
8 back in Irvine. They don't know what's going. All they can  
9 see is everything is pointing to one person, the defendant.

11:16AM 10 Mr. Moon goes to the hotel room and eventually gets the  
11 laptop. And you heard about the forensic evidence. You heard  
12 from Special Agents Beverly Mayo and Todd Munoz. And the  
13 MacBook Pro is never used. They forensically investigated it.  
14 It was never used after 8:43 p.m. on November 18, 2014. It was  
11:16AM 15 sent to Irvine, and the FBI later did a search warrant and  
16 searched for those materials.

17 And this was the defendant's laptop. There's no doubt  
18 about it. You saw the receipt -- the defendant had purchased  
19 this while working for UCI -- Exhibit 20. You saw that his  
11:17AM 20 password -- his profile was password protected. And it's  
21 undisputed, he had changed his password that night too. The  
22 officers told him, "If you're concerned about the material on  
23 here, put another password on it." And the defendant certainly  
24 wasn't going to tell anyone that password. No one can use it  
11:17AM 25 except for the FBI when they searched it.

1 And we saw Exhibits 134 and 141. They show the last  
2 person to log in to that computer was the defendant.

3 We saw him use it for various personal items, like an  
4 airline ticket, Netflix, Ustream, which is a website-related  
11:17AM 5 account. This was the defendant's laptop that he used for  
6 personal and, apparently, work purposes.

7 And there was no remote access. We went through that in  
8 great detail. We saw Exhibit 147. Agent Mayo told you how she  
9 searched and looked to see if there was any possibility if  
11:18AM 10 someone else was remotely accessing that laptop. And there was  
11 no evidence of anyone able to do that. It was the defendant  
12 and only the defendant using that MacBook Pro.

13 And then that night you heard about the response. The  
14 company was literally freaked out. They didn't know what was  
11:18AM 15 going on. And Mr. Yacobi worked ten hours that night. And  
16 they were trying to stop the damage but also stop the  
17 defendant. So whatever they could do to knock him out of the  
18 systems, they were doing that.

19 One thing they didn't realize was that the defendant still  
11:18AM 20 had access to his Mac Pro. This was the final piece of what he  
21 had been doing. And you saw -- we heard from the Apple genius.  
22 He described how easy it is to basically erase a device from  
23 anywhere in the world. As long as you have the Internet,  
24 you're good.

11:19AM 25 And we heard in Exhibit 100 how you can do this to a



1 Mac Pro. And we saw records. We saw Exhibit 23. And it's  
2 documented how the defendant, after handing over his laptop,  
3 decided to go back and erase the Mac Pro. So first at  
4 9:50 p.m. Pacific, so this is -- we heard about the laptop last  
11:19AM 5 being used at 8:43. So about 45 minutes after he hands it  
6 over -- sorry. About an hour after, he initiates a wipe. He  
7 wipes that Mac Pro, sitting in Irvine, from the Residence Inn.  
8 And then he tries to wipe the MacBook Pro, that he handed  
9 over to the officers, as well two minutes later. It was never  
11:19AM 10 turned on again. Because if it had been, it would have wiped,  
11 and there would be nothing on it. If it ever connected to the  
12 Internet, you heard from Apple, there would have been nothing  
13 on it.  
14 But the next day Mr. Yacobi did turn on the Mac Pro, and  
11:19AM 15 the wipe command was acknowledged. The defendant got an e-mail  
16 at Nikishna@Yahoo.com, and the wipe happened. You heard about  
17 Exhibit 90. This was a task force officer who came in and  
18 described the search he did on the Mac Pro desktop.  
19 You heard from Mar-Sean Michael. He described how on the  
11:20AM 20 left side of Exhibit 90 is what the Mac Pro's file structure  
21 looks like. It was eliminated. On the right is what a  
22 Macintosh hard drive would look like if it had things you'd  
23 expect, applications, profile information, all of that. But  
24 that was all deleted and destroyed.  
11:20AM 25 You saw Exhibits 16 and 93. These were things that

1 Agent Munoz was able to get doing a carve. So he used  
2 sophisticated forensic tools to see what was on that Mac Pro,  
3 and he found literally hundreds of items that were related to  
4 Blue Stone because it was a Blue Stone computer that the  
11:20AM 5 defendant had deleted. So everything on there -- marketing,  
6 client project files, CRM data, website materials -- was all  
7 deleted.

8 Are so we'll talk about the charges now that we've kind of  
9 gone through some of the evidence in this case. There's three  
11:21AM 10 elements to that first charge, and the first element is that he  
11 knowingly caused the transmission of a program, a code, a  
12 command, or information to the Mac Pro desktop.

13 And you're going to have Instruction 17, and it gives you  
14 the definition of what knowingly is. It's where the  
11:21AM 15 defendant's aware of the act. He does not act or fails to act  
16 through ignorance, mistake, or accident.

17 And we heard from Apple. This is not something that you  
18 can do by accident, like you click the button by mistake. You  
19 had to select the Mac Pro. You had to have been signed in  
11:21AM 20 using your iCloud account. You had to acknowledge it. You  
21 were actually warned before you did it. You had to put your  
22 password in again. So when you do these wipes, you know what  
23 you're doing. And this was the Apple record that showed that  
24 that wipe actually happened.

11:22AM 25 The second element of the charge is whether, as a result

1 of the transmission, the defendant intentionally impaired,  
2 without authorization, the integrity or availability of data, a  
3 program, a system, or information. And that's precisely what  
4 he did. The hard drive was wiped. There's nothing you could  
11:22AM 5 do with this the way it was. It was a completely deleted  
6 Mac Pro device.

7 And you're going to have this instruction about "without  
8 authorization." It may seem obvious to anyone who works for a  
9 company, when you resign, you don't go back and delete things.  
11:22AM 10 That's just how businesses function. But here's an instruction  
11 that tells you what that is.

12 A person acts without authorization when the person has  
13 not received permission from the owner, person who, or entity  
14 which controls that right of access to the computer to impair  
11:22AM 15 the integrity or availability of data, a program, a system, or  
16 information on the computer.

17 He didn't have any permission to do this. You heard that  
18 over and over again. No one would have authorized him to send  
19 these wipe commands. No one would have authorized the deletion  
11:23AM 20 of the Mailchimp materials. No one authorized the website  
21 files, the CRM data, or Bill Moon's files. No one authorized  
22 him to delete the backup files held by Cox. And no one  
23 authorized him to delete everything on their Google Drive  
24 account.

11:23AM 25 And the final thing was that the computer was used in or

1 affected interstate or foreign commerce. We heard over and  
2 over again how all these servers and the Mac Pro, you can  
3 basically use them anywhere in the world. They're clearly used  
4 in and affecting interstate and foreign commerce.

11:23AM 5 So now that we've talked about that first part of the  
6 charge, the impairment of the Mac Pro, the second thing you're  
7 going to be asked in the verdict form is whether the loss as a  
8 result of what happened to the Mac Pro but also the related  
9 course of conduct was a loss of \$5,000 or more.

11:24AM 10 And so that's where we get back to some of the other  
11 systems we've talked about. And we heard about Blue Stone's  
12 efforts to restore data. We saw Exhibit 143. This was from a  
13 record obtained from Cox showing that on that day on  
14 November 18 they were calling in, saying there was a breach.

11:24AM 15 "What do we do? How do we get back into this account?" They  
16 didn't realize the defendant changed their password, made it  
17 his personal account. They couldn't even see if the backups  
18 were there. And then, when they finally did get in, they  
19 realized, Mozy said, "You're out of luck."

11:24AM 20 And the people -- you can use your common sense here.  
21 People have had those experiences -- right? -- where you lose  
22 something. You think maybe there's a backup out there. Maybe  
23 someone can get it back for you. But the company just tells  
24 you there's nothing there.

11:24AM 25 And we heard about the money. That's the important point.

1 We heard about how they spent over \$50,000, well over that  
2 \$5,000 minimum. We saw Exhibits 84 and 113. Those were the  
3 expenses that Blue Stone paid. We heard from RunnerBoys and  
4 Whole Product Marketing, how they charged over \$4,000.  
11:25AM 5 Mr. Yacobi told you he cut them a break because he felt bad for  
6 them. But this is well over that \$5,000 threshold. And this  
7 is a portion of Exhibit 184.

8 I want to talk to you briefly about Mrs. Polequaptewa's  
9 testimony. You're going to have Instruction 10. It talks  
11:25AM 10 about evaluating the credibility of witnesses. And she's a  
11 witness just like anybody else, like all the government  
12 witnesses. But there was some material inconsistencies in her  
13 testimony that I'm going to point out for you.

14 Her timeline. On direct examination, her timeline was one  
11:25AM 15 thing, and then on cross it changed. When she was being  
16 questioned by Mr. Khouri, it was 7:30 to 8:30 they were there.  
17 And then on cross, she was asked if she knew when the laptop  
18 was taken and if it was 11:30, and she said, "I don't know."  
19 All of a sudden her questions just shifted.

11:26AM 20 And she didn't know if the wipes happened. She was  
21 asleep. She wasn't even awake at the time that the Mac Pro  
22 wipe happened. It was inconsistent, and it was simply -- did  
23 not help prove anything whether she was aware of it.

24 We saw the forensic evidence that she was certainly  
11:26AM 25 unaware of because she wasn't with him during the times he was

1 doing these deletions. He was working with Blue Stone. She  
2 was out with the kids in Florida.

3 Some of the things to keep in mind is all the evidence  
4 that contradicts the defendant's wife's suggestion that he  
11:26AM 5 didn't do these deletions. And, obviously, she has an interest  
6 in this case. That goes without saying. Put simply, there's  
7 no records to support her suggestions. We heard over and over  
8 again how the forensic evidence from the laptops and all the  
9 records from the third parties showed one thing, the defendant  
11:26AM 10 was deleting Blue Stone files.

11 Defendant was the most technically savvy person at Blue  
12 Stone in November of 2014. He thought he could do it all, IT,  
13 marketing, consulting. Blue Stone made a business decision and  
14 felt differently. They felt he was falling behind and needed  
11:27AM 15 to focus on his primary job function, being a consultant. And  
16 they put him on an important project at the Seminole Tribe in  
17 Florida.

18 Certainly defendant could have resigned. That was his  
19 right. No one's arguing that. But he didn't just resign;  
11:27AM 20 he started deleting files. That's not how someone resigns.  
21 That's an act against the business. He caused a loss of  
22 \$50,000 for this small business in Irvine, something they had  
23 never experienced. They didn't know what hit them.

24 The person they entrusted with all their IT know-how had  
11:28AM 25 decided to tear the house down on his way out. He deleted

1 eight years of marketing material on Mailchimp. He deleted  
2 website files, setting the company back months. He wiped a  
3 Mac Pro computer, making it a brick; a \$4,000 computer, useless  
4 to the company. He deleted files on the Google Drive. He  
11:28AM 5 deleted the backup files, ensuring that anything that -- any  
6 chance they had of restoring these files was gone.

7 After Mr. Khouri speaks to you again, I'll speak to you  
8 again and ask you to return the verdict that is consistent with  
9 the evidence and the law, the defendant is guilty as charged.

11:28AM 10 THE COURT: Ladies and gentlemen, the lunch is going  
11 to be here at 12 o'clock. It's 11:30 now. So what I propose  
12 is we take no longer than a ten-minute break.

13 And then, Mr. Khouri, if you could start your closing  
14 argument, and then we'll pick back up when we return from lunch  
11:29AM 15 at 1 o'clock.

16 MR. KHOURI: Of course, Your Honor. Thank you.

17 THE COURT: Okay. So let's take a 10-minute break,  
18 and then Mr. Khouri will start.

19 THE COURTROOM DEPUTY: All rise.

11:29AM 20 **(Recess from 11:29 a.m. to 11:38 a.m.)**

21 THE COURT: Mr. Khouri, your closing argument.

22 **(Plaintiff's closing argument.)**

23 MR. KHOURI: Good morning again, ladies and  
24 gentlemen. This is the last time that I have to speak to you  
11:38AM 25 all. I wish it could be more of a discussion where you all are

1 asking questions and I'm trying to answer them. But I'm going  
2 to kind of imagine what you're thinking about this case.

3 And, by the way, before I get started, thank you very much  
4 for being Nikishna's jury. You know, sometimes -- I'll tell  
11:39AM 5 you a little story. You represent innocent clients as a  
6 criminal defense lawyer, like Nikishna, and sometimes you  
7 represent guilty ones. It's just the nature of the job.

8 And when you're talking to the guilty ones about pleading  
9 guilty, you tell them, "You're not going to be able to vote."

11:39AM 10 And they go, "Uhh."

11 Mostly in Texas, you tell them, "You're not going to be  
12 going hunting anymore because you've got to give up your  
13 rifle."

14 They go, "Uhh."

11:39AM 15 MR. MITTAL: Your Honor, objection.

16 THE COURT: Grounds?

17 MR. MITTAL: Discussion of effects.

18 THE COURT: Why don't we move on, Mr. Khouri.

19 MR. KHOURI: All right. If I may, Your Honor.

11:39AM 20 Then you tell them, "You can't serve on a jury," and they  
21 go, "Yay." So I know how difficult it is to take your time,  
22 and I appreciate it. So let's just get right at it.

23 When you're back in the jury room, it's just going to be  
24 the 12 of you, and you're going to be mixing it up. And it's  
11:40AM 25 going to be the jury instructions. And, like I said at the



1 beginning of the case, the jury instructions are kind of, like,  
2 our civic scripture. You've got to follow them. And I want to  
3 highlight three of the jury instructions that -- no jury  
4 instruction is more important than the other one, but there are  
11:40AM 5 three of them that I think are important to highlight.

6 One is Instruction No. 13. And that says:

7 "You're here only to determine whether the  
8 defendant is guilty or not guilty of the charge in  
9 the First Superseding Indictment. The defendant is  
11:41AM 10 not on trial for any conduct or offense not charged  
11 in the First Superseding Indictment."

12 And what you'll see is the only thing the defendant is  
13 charged with is allegedly getting into that desktop. All this  
14 stuff about the Synology server, all this stuff about  
11:41AM 15 Mailchimp, all this stuff about the Google Drive, he's not  
16 charged with any of that. None of it. Just that desktop.

17 Now, that becomes clear when you look at the Court's  
18 Instruction 15. And that says, "In order for the defendant to  
19 be found guilty, the government must prove the following  
11:42AM 20 elements: No. 1, the defendant knowingly caused a transmission  
21 of a program to Blue Stone Strategy Group's Mac Pro desktop  
22 computer."

23 That's all he's charged with. Nothing else.

24 So let's switch to Exhibit 23. When did that crime occur?  
11:43AM 25 That crime occurred right here: November 18, 2014, 9:50 p.m.

1 Pacific time. That's when it happened. That's November 19,  
2 2014, at 50 minutes after midnight Florida time. That's the  
3 case. That's the case. All this other evidence about the  
4 Synology server, about Mailchimp, about Bluehost has absolutely  
11:44AM 5 nothing to do with the charge.

6 So the question becomes, "Who did that?" And has -- and  
7 "Has the government carried their burden of proof beyond a  
8 reasonable doubt?" Well, as I remember the evidence, that wipe  
9 command came from the laptop, not Nikishna's phone. And I'm  
11:44AM 10 going to be discussing the evidence, but I think that's what  
11 Agent Mayo said.

12 Remember that discussion I had with Agent Mayo about who  
13 had the laptop? Well, under any interpretation of the  
14 evidence, any interpretation of the evidence, Nikishna did not  
11:45AM 15 have that laptop at 50 minutes after midnight on November 19.  
16 That laptop was in the possession of Bill Moon because Nikishna  
17 had given it to the police.

18 Now, Mrs. Polequaptewa says that computer got turned over  
19 about 8:30, 9 o'clock Florida time. The government says no, it  
11:45AM 20 was more like 11:45 Florida time. Well, it doesn't make any  
21 difference. What makes a difference is who had that laptop at  
22 50 minutes after midnight on November 19. Not Nikishna.

23 Now, the government's fallback position is, well, what  
24 about the phone? It would have been so easy for Nikishna to  
11:46AM 25 delete something from his phone. Well, first of all,

1 Exhibit 69, he's locked out. Eldad locked him out. And that  
2 is on the 18th. He can't get in because Eldad changed his  
3 password.

4 But, better yet, you have to ask yourself this question:  
11:47AM 5 Did anybody ever examine Nikishna's iPhone? Nobody did. No  
6 government witness ever examined Nikishna's iPhone to prove  
7 beyond a reasonable doubt that the iPhone was used to delete  
8 the desktop.

9 You have to wonder, why didn't they get a search warrant  
11:47AM 10 for the iPhone? They got a search warrant for the laptop. Why  
11 didn't they get a search warrant for the iPhone? That's  
12 reasonable doubt.

13 And you've heard reasonable doubt over and over and over  
14 again. And the government has failed to prove beyond a  
11:48AM 15 reasonable doubt that Nikishna's iPhone was used for anything.  
16 It was never examined. It was never seized. It was never  
17 searched. It was never presented as evidence at all. That's  
18 reasonable doubt. That's a lack of proof. That's a real  
19 failure.

11:48AM 20 Why didn't the FBI -- a very competent, intelligent FBI  
21 agent -- right here we had -- what? -- two or three other FBI  
22 agents testify, the computer experts -- why didn't somebody get  
23 a warrant for his phone? And the reason why they didn't is not  
24 because they're incompetent, ladies and gentlemen. They're  
11:49AM 25 very competent people. This is the FBI.

1           It's because it's consistent with the testimony that the  
2       wipe came from the laptop, not the phone. And who had the  
3       laptop at 50 minutes after midnight on December -- I'm sorry --  
4       November the 19th? Not Nikishna. Bill Moon. Bill Moon did  
11:49AM 5       it, along with Eldad. And I'm going to get to that.

6           The first issue in analyzing the statute, though, is  
7       something that I don't think anybody thought of, but me last  
8       night. And in order for this crime to be a crime, we have  
9       to -- you have to find beyond a reasonable doubt that that  
11:50AM 10       desktop -- remember, that's what he's charged with, he's not  
11       charged with anything else -- is a computer under the  
12       definition of the statute.

13           And the statute says:

14                   "...electronic, magnetic, other high-speed  
11:50AM 15       data processing device performing logical,  
16       arithmetic, or storage functions," and then it  
17       kind of goes on.

18           That desktop, just because it's plugged in, is not a  
19       computer. It may look like a computer. It may have the little  
11:51AM 20       Apple logo. It may have a keyboard and a mouse. But it's not  
21       a computer as defined by the statute. And there's a reasonable  
22       doubt whether it is a computer that fits into the statute, and  
23       the government has failed their burden of proof.

24           Look at it this way: If everything you plugged in was a  
11:51AM 25       computer, then your toaster would be a computer even though the

1 toaster remembers how long your bread has been in the toaster  
2 and it pops up. My toast usually pops up, falls on the kitchen  
3 floor.

4 When you watch TV, you're not watching a computer just  
11:52AM 5 because it's plugged in. If you're watching sports or you're  
6 listening to music, to country music videos, watching country  
7 music videos like I do, the singers and the players, they're  
8 not inside the TV; right? You all know that.

9 I remember those TVs that turn on and stay dark and then  
11:52AM 10 the little light in the middle would get bigger and bigger.  
11 Nikishna's desktop was a TV. It wasn't a computer. And the  
12 reason is that the -- nothing is stored on the computer,  
13 according to the testimony. It's all on the server. You  
14 unplug that router and you disconnect the server, there is no  
11:53AM 15 information on that computer. That was the point of all that  
16 questioning. There might be some personal information on the  
17 computer, but, you know, Nikishna owns that.

18 So my -- one of our positions is that the government  
19 failed to prove beyond a reasonable doubt that the desktop is a  
11:54AM 20 computer as defined by Instruction No. 16. Based upon the  
21 testimony, there is a reasonable doubt whether that desktop  
22 qualifies. Mailchimp qualifies, Bluehost qualifies, Google  
23 qualifies, the Synology server qualifies, but not the desktop.  
24 And it's the desktop that he's charged with, nothing else.

11:55AM 25 Let's talk about the evidence. I'd like to discuss with

1 you briefly how I see the evidence. Forget about the jury  
2 instructions for a second. Just Mike Khouri's rules, liars  
3 should always lose. Bad people who do bad things should always  
4 lose too.

11:55AM 5 Jeremy Fullmer. He gets on the stand, and he answers a  
6 question from the government. And he says that the civil case,  
7 there was an offer to settle it. And then on  
8 cross-examination, what does he say? He says, "Oh, there was  
9 no offer to settle the case." He lied. He lied on that stand.

11:55AM 10 John Mooers. Would you want John Mooers to be your boss?  
11 Would you want Bill Moon to be your boss? John Mooers got up  
12 on that stand. He talked about this confidentiality agreement.  
13 That's what this is all about. They're afraid that Nikishna is  
14 going to compete against them, and they want to destroy him.

11:56AM 15 And they have this confidentiality agreement that they  
16 say, "Well, he's blowing the whistle on us, but he's violating  
17 the confidentiality agreement." That's not a confidentiality  
18 agreement. That's a cover-up agreement. That's what he wants  
19 to do; he wants to cover up Blue Stone's illegalities on the  
11:56AM 20 basis of the confidentiality agreement.

21 Now, that's going to be an issue in the civil case, but I  
22 think you can apply your common sense and come to a conclusion  
23 about whether it's a confidentiality agreement or a cover-up  
24 agreement. If somebody's committing tax fraud, can they avoid  
11:57AM 25 having someone blow the whistle on them because they have their

1 employee sign a confidentiality agreement? Of course not.

2 John Mooers is a thief. He took Nikishna's personal items  
3 and held on to them. And I asked Mrs. Polequaptewa questions  
4 about, "Well, does this rug have anything to do with the  
11:57AM 5 computers? Does it have any wires in it? Does it have any  
6 microphones in it? Do his awards have any microphones in it or  
7 have any wires in it? Does the horse have anything to do with  
8 what -- with electronics?"

9 "No. No. No. No. No."

11:58AM 10 That's the reason for those questions. How can he stand  
11 up in front of you and say that he was keeping it because he  
12 thought it was evidence of a criminal investigation? That's  
13 absurd. It wasn't until we sued them for that that he got his  
14 stuff back. What kind of person is that?

11:58AM 15 Ms. Goodman, she said that she saw Nikishna's name -- and  
16 this is really important -- coming up on the screen and --  
17 while files were being deleted. The task force officer, his  
18 name was Michael. Remember him? He said that that's  
19 impossible. If somebody accesses a computer, their name isn't  
11:59AM 20 going to show up.

21 And at the very beginning -- in the middle of the trial, I  
22 thought to myself, "Well, she lied." And she was a very nice  
23 woman. Went to UCI. I live right up the street from UCI. A  
24 lot of affection for UCI. Never went there. But she seemed  
11:59AM 25 like such a nice woman. And it was so disappointing to me that

1 she lied.

2 But you know what? I don't think she did because it was  
3 possible. It was possible because Eldad Yacobi was the only  
4 one who used something called TeamViewer. Remember that? I  
11:59AM 5 asked Eldad -- I said, "Is it possible to remotely access a  
6 computer and have your name flash up?"

7 And he said, "No. Unless you have TeamViewer. And nobody  
8 else at Blue Stone had ever used TeamViewer." It was Eldad.

9 Because, otherwise, you'd have to conclude that Janeen  
12:00PM 10 lied to you. Because the task force officer -- remember the  
11 guy, LAPD, working with the FBI, computer credentials as long  
12 as my arm -- said it was impossible. And I don't think Janeen  
13 lied. She was too nice to lie. And I feel much better now  
14 because I was feeling guilty. So that's Eldad.

12:01PM 15 While we're on the topic of Eldad, he said that the  
16 computer was on when he left -- or when he got there on Monday.  
17 It was not on. It was off. Mrs. Polequaptewa told you that it  
18 was off.

19 Now, the government says, "Well, she's interested in the  
12:01PM 20 case. She's his wife." What they're really saying is, "He  
21 shouldn't have any witnesses." His wife was with him. His  
22 wife was with him the following week. Would it make the  
23 government feel better if he was with another woman? Of course  
24 not. What the government's really saying is he should have no  
12:02PM 25 witness; can't have another woman, can't have his wife. That



1 leaves him with nobody. That leaves him with nobody.

2 THE COURT: About ready for our lunch break,

3 Mr. Khouri? It's a little after noon.

4 MR. KHOURI: Oh, okay. All right, Your Honor.

12:02PM 5 THE COURT: Okay. Ladies and gentlemen, we're going

6 to go ahead and take our lunch break. You have not started

7 deliberations yet, so please don't discuss the case with

8 anybody, including among yourselves. Don't do any research or

9 investigation. And please keep an open mind until you've heard

12:02PM 10 all the arguments and you've started discussing the case with

11 your fellow jurors.

12 I see we have a very fine court security officer in the

13 back of the courtroom. Melissa, are you going to swear him in

14 to take care of the jury during the lunch?

12:02PM 15 THE CLERK: Please raise your right hand. State

16 your name for the record and spell your last name.

17 THE WITNESS: Doug Butsko, B-u-t-s-k-o.

18 **(The bailiff was sworn.)**

19 THE COURTROOM DEPUTY: All rise.

12:04PM 20 **(Out of the presence of the jury.)**

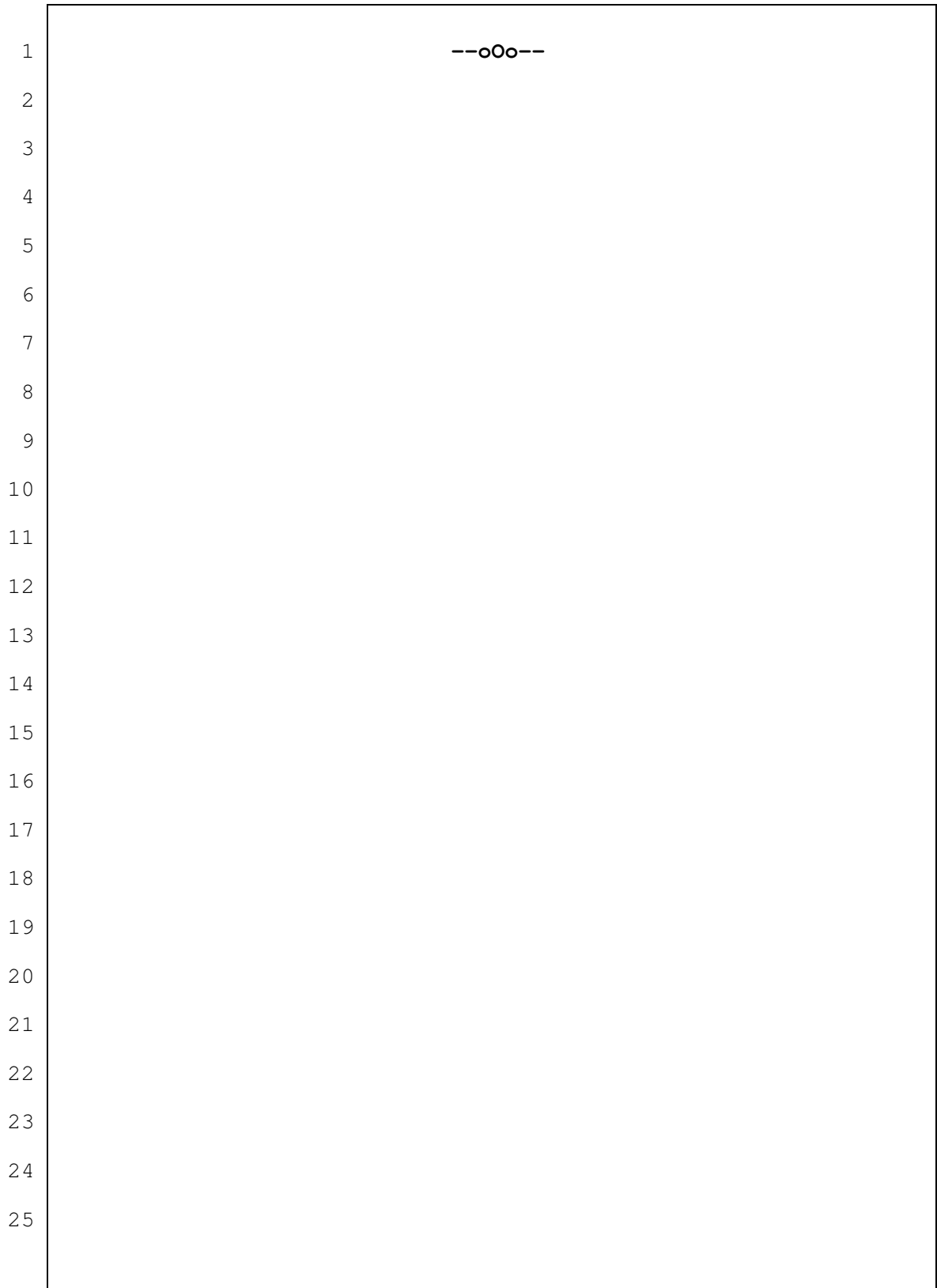
21 THE COURT: Anything we need to discuss? No? Okay.

22 Have a good lunch.

23 I'd like to start no later than 1:00. So if you'd get

24 here about 10 till.

12:04PM 25 **(Morning session concluded at 12:04 p.m.)**





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

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA - SOUTHERN DIVISION  
HONORABLE CORMAC J. CARNEY, U.S. DISTRICT JUDGE

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	<b><u>CERTIFIED TRANSCRIPT</u></b>
	)	
vs.	)	Case No.
	)	8:16-cr-00036-CJC-1
NIKISHNA POLEQUAPTEWA,	)	
	)	<b>Volume II</b>
Defendant.	)	
	)	

---

REPORTER'S TRANSCRIPT OF  
JURY TRIAL - **DAY 5**  
TUESDAY, NOVEMBER 13, 2018  
1:02 P.M.  
LOS ANGELES, CALIFORNIA

---

**DEBBIE HINO-SPAAN, CSR 7953, CRR**  
FEDERAL OFFICIAL COURT REPORTER  
411 WEST FOURTH STREET, ROOM 1-191  
SANTA ANA, CALIFORNIA 92701-4516  
dhinospaan@yahoo.com

**APPEARANCES OF COUNSEL:**

**FOR THE PLAINTIFF:**

NICOLA T. HANNA  
United States Attorney  
BY: VIBHAV MITTAL  
BRADLEY EDWARD MARRETT  
Assistant United States Attorneys  
United States Courthouse  
411 West Fourth Street  
Suite 8000  
Santa Ana, California 92701  
(714) 338-3708

**FOR THE DEFENDANT:**

KHOURI LAW FIRM  
BY: MICHAEL JOHN KHOURI, ESQ.  
24012 Calle de la Plata  
Suite 210  
Laguna Hills, California 92653  
(949) 336-2433

**ALSO PRESENT:**

Todd Munoz, FBI Special Agent

**I N D E X**

**PAGE**

Continued closing argument by the defense (Mr. Khouri)	4
Rebuttal argument by the government (Mr. Mittal)	13
Jury Note Number 1	23
Verdict	25

1                   **LOS ANGELES, CALIFORNIA; TUESDAY, NOVEMBER 13, 2018**

2                                   **1:02 P.M.**

3                                   - - -

4                   **(In the presence of the jury.)**

01:02PM 5                   THE COURT: Please proceed, Mr. Khouri, when you're  
6 ready.

7                   MR. KHOURI: Thank you, Your Honor.

8                   **(Defense closing argument resumed)**

9                   MR. KHOURI: So we were talking about Eldad Yacobi.  
01:02PM 10 And Eldad Yacobi had said that the computer was on when he got  
11 to the office on the 17th. The computer was off. We heard  
12 Mrs. Polequaptewa tell you that they turned the computer off.  
13 And you have to wonder why did Eldad go to the office that  
14 Monday? Nobody asked him to go to the office on that Monday.

01:02PM 15 He just went. He says because he had suspected that something  
16 bad was going to happen. But there really wasn't any  
17 indication that Nikishna was going to do anything to the  
18 computers. They -- Eldad and Nikishna weren't getting along.

19                   I want to be completely candid and honest with you.  
01:03PM 20 I hope you've seen the defense is completely candid and honest.  
21 We gave an opening statement and proved everything we said we  
22 were going to prove. But the fact of the matter is that Eldad  
23 Yacobi went without being asked. And the reason he went is  
24 because that's when he began the process of masking himself as  
01:03PM 25 Nikishna Polequaptewa. It didn't make any difference whether

1 the remote access function on that computer was off or on.

2 Because as agent Mayo said, you can mask yourself as somebody  
3 else. And teenagers do it. Teenagers.

4 Agent Mayo also said that Eldad was wrong when Eldad  
01:04PM 5 said that the clock on these logs are somehow hooked --  
6 connected to some kind of Internet master clock and it can't be  
7 changed. Agent Mayo said no, that clock can be changed on the  
8 server based upon the computer that's sending the message.

9 So Eldad, looking back and saying, "I went there  
01:04PM 10 because I thought something was going to happen" is a cover-up,  
11 just like the confidentiality agreement is a cover-up. That  
12 confidentiality agreement that John Mooers talks about is a  
13 cover-up agreement to cover up what Nikishna is blowing the  
14 whistle about in the civil case.

01:04PM 15 But getting back to Eldad, so he was wrong when he  
16 said that that Internet clock could not be changed. There is  
17 no Internet clock. It's the clock on the computer. And he was  
18 wrong when he said that Nikishna's computer was off -- I mean  
19 on. It was actually off.

01:05PM 20 Bill Moon. Who would like Bill Moon as their boss?  
21 How can somebody go to the hotel staff? We've all stayed in  
22 hotels. And demand to get into somebody's room? How can that  
23 happen? But it happened. Mike Khouri's rules: You do bad  
24 things, you lose. He had so much influence on that hotel staff  
01:05PM 25 that he got that hotel manager to go to Nikishna's room and



1 open the door.

2           The hotel manager never said, "Hey, Nikishna,  
3 there's a guy -- crazy guy out here that wants to get inside  
4 your room. Is it okay if we come over and open up the door to  
01:06PM 5 your room?" He never did that. How can that happen? That --  
6 this is the type of thing that's either going to make you feel  
7 sick inside. You should really throw it up. It should make  
8 you sick that that happened. Or it's the type of thing that's  
9 not and there's nothing I can say about it.

01:06PM 10           But we have certain fundamental values in our  
11 society. This is what happens in certain foreign countries.  
12 This is why people come to the United States to avoid this type  
13 of thing. So -- and the way this thing gets rolling is not  
14 only did Bill Moon have that type of influence on the hotel  
01:07PM 15 manager, he has that type of influence on the police. The  
16 police come. And what do they do? They break into a hotel  
17 room using the threat of force. Bill Moon lied to you when he  
18 said, "Well, the police didn't use police force."

19           You heard Mrs. Polequaptewa. Not only did you hear  
01:07PM 20 Mrs. Polequaptewa, but you heard Bill Moon testify through that  
21 transcript, he said exactly the opposite in the prior  
22 proceeding. Now, after he's had time to think about it, he  
23 changes his story. He's a liar.

24           So the police come out and they take sides. At the  
01:08PM 25 beginning of the trial the Court went over some fundamental

1 basic principles of our country -- the presumption of  
2 innocence, reasonable doubt -- things like that. Well, the  
3 police violated those principles. They came out and they took  
4 sides. They took sides of the corporation, Blue Stone, of Bill  
01:08PM 5 Moon. They took sides of the powerful. And the underlying  
6 fundamental theme of this case is the powerful against the  
7 powerless. It's David against Goliath.

8           Somebody said that when they were setting odds in  
9 Las Vegas about David versus Goliath, David was a 40-point  
01:09PM 10 underdog. And that exhibit that I showed you all, that says  
11 that that desktop was hacked into at 50 minutes after midnight  
12 on the 19th when Nikishna did not have his laptop and Bill Moon  
13 had it, is the sling shot that David kills Goliath.

14           So the police took sides and they break into a man's  
01:09PM 15 hotel room with his wife and children inside. And they take  
16 the laptop without a warrant.

17           Now, this FBI agent sitting behind me knew enough to  
18 get a warrant before looking at that computer, but those police  
19 didn't. And as the Court said -- one of the most important  
01:10PM 20 things the Court said, you probably heard it a million times,  
21 but it really means something here inside this courtroom, the  
22 United States is really a great country. Because the Court  
23 points out there are good cops and there are bad cops. There  
24 are good bosses and there are bad bosses. There are good  
01:10PM 25 lawyers and there are bad lawyers. I hope you all think all

1 the lawyers in this case are good lawyers. But these cops were  
2 bad, bad, bad.

3 And I'm embarrassed to say it. I'm embarrassed to  
4 say it, because just last week, just last week up in

01:11PM 5 Thousand Oaks, a police officer was killed defending kids.

6 MR. MITTAL: I'm going to object, Your Honor.

7 THE COURT: Sustained.

8 MR. KHOURI: So those cops -- those police officers  
9 went into that hotel room and stole that computer. And this is  
01:11PM 10 how things get started. It's like a little snowball that

11 becomes a big snowball. Then they call -- they send the  
12 computer, they don't call Nikishna and interview them, do they?  
13 No, they call them fancy, smarty pants. Fourth Amendment,  
14 Shmorth [sic] Amendment. You should thump those cops because  
01:12PM 15 you have the power to do so.

16 They sent the computer back to Blue Stone -- to Blue  
17 Stone's lawyer. They chose sides. That's why my parents left  
18 the country they left, because the police choose the side of  
19 the powerful. And then that lawyer gives the computer to the  
01:12PM 20 Irvine police.

21 The Irvine police, they don't call Nikishna up and  
22 say, "Hey, we got this computer. What do you have to say about  
23 it?" The Irvine police, they don't -- they don't ask any  
24 questions. They just say, "Well, this comes from the police in  
01:12PM 25 Florida, and it comes from a lawyer who represents a big

1 company." And they take sides. Because that presumption of  
2 innocence that you heard in the jury instructions applies back  
3 there in the jury room. It doesn't apply to the police.  
4 And the last thing that the Irvine Police  
01:13PM 5 Department -- and I live in Irvine. They're wonderful. But  
6 the last thing that the Irvine Police Department's going to do  
7 is question the judgment of another agency, the Florida police.  
8 And the last thing the Irvine Police Department is going to do  
9 is even consider that Nikishna Polequaptewa is innocent.  
01:13PM 10 Forget about reasonable doubt. We've proven he's innocent.  
11 So then the Irvine police gives the computer to the  
12 FBI. The FBI gets a search warrant. That's how this little  
13 tiny snowball becomes a big pain right here in this courtroom,  
14 because nobody asked the question of Nikishna.  
01:14PM 15 Agent Mayo, she was a very good witness for us. She  
16 said that that clock can be manipulated by the computer that's  
17 sending the message. She said those logs, the timing can be  
18 manipulated. And she said that any teenager can pretend to be  
19 somebody else by sending a message on any computer. That's  
01:15PM 20 reasonable doubt right there.  
21 You know, this case involves some behavior that is  
22 completely out of bounds. Bill Moon and those police officers  
23 in Florida, completely out of bounds. And the only proof --  
24 I'm sorry, the government calls it proof. These pieces of  
01:15PM 25 paper, nobody saw Nikishna do anything but his wife. And what

1 his wife saw him do is get rid of Blue Stone files on his phone  
2 only, which is what he was obligated to do by the terms of his  
3 employment agreement with Blue Stone.

4           Technically it says you got to give things back, but  
01:16PM 5 he's not going to give back his phone. So he does the next  
6 best thing, which is delete all the Blue Stone information on  
7 the phone. And even if he had made a mistake, what would he  
8 have done according to Mr. Genius -- and I don't mean that in a  
9 sarcastic way, from Apple. I just can't remember his name --  
01:16PM 10 he would have hit "erase and restore," which would have erased  
11 what's on his desktop, but not touched what's on his server.  
12 That's the only software available.

13           And it's not proof -- see, the government's  
14 saying -- the government stands up in front of you and says --  
01:17PM 15 they're asking you to speculate. That's what we lawyers call  
16 it. They're saying, "We're the government. We know you didn't  
17 have the Mac -- the laptop at 50 minutes after midnight." We  
18 know that for sure. Our witnesses say that the so-called wipe  
19 command is really not a wipe command, it's erase and restore.  
01:17PM 20 Went from the laptop. But the defense has disproven that.

21           So he could have done it from his phone. Well,  
22 could have done it, would have done it, should have done it is  
23 not proof at all. That's why I was asking you those questions  
24 about fingerprints and DNA. That's not proof. That's the  
01:17PM 25 government standing up and saying, "Believe us because we're

1 the government." The government is taking sides too. And it  
2 all started from those bad cops in Florida.

3 Now, Mrs. Polequaptewa is really clear. She's in  
4 the hotel room. Mr. Moon is going nuts. The police are way  
01:18PM 5 out of bounds. They break into the hotel room. They take his  
6 computer and then she sees what happens. He deletes  
7 information from his phone. And, you know, I invite you to  
8 look at that video again because the reasonable interpretation  
9 of the conversation that occurred between Mr. Fullmer --

01:18PM 10 remember the one who lied about a settlement offer? And the  
11 defendant was -- Mr. Fullmer said, "We want our stuff back."

12 And Nikishna said, "I can't give you your stuff  
13 because I deleted it," the stuff on the phone.

14 The government says, "Well, he didn't say only the  
01:19PM 15 phone." Well, yeah, but he didn't also say, "I deleted the  
16 Synology information. I deleted the Bluehost information. I  
17 deleted the MailChimp information." So there's great  
18 reasonable doubt.

19 I want to conclude, and I just want to go back to  
01:19PM 20 this construction. Your verdict should be not guilty. And I'm  
21 not telling you all what to do. That's up to you. That's  
22 beyond -- that's beyond me. But I think it really should be  
23 not guilty because there's no evidence that he sent any command  
24 to that desktop. It couldn't have come from the laptop. He  
01:20PM 25 didn't have it. And there's no evidence he sent it from the

1 phone. The government just made that up during this trial when  
2 they realized what had happened in evidence. And it's proven  
3 that he didn't have the laptop.

4           There's reasonable doubt because you all should read  
01:20PM 5 that instruction about what's a computer. That desktop is not  
6 a computer, it's a TV. You know that. That's what everybody  
7 said. Everything -- Robert Mooers, everything goes through the  
8 server. In order to get to MailChimp, you got to go through  
9 the Internet. The computer is set up so that it doesn't have  
01:20PM 10 any information on it. It's a TV.

11           And finally, your verdict should be not guilty  
12 because the government has failed in its burden of proof to  
13 showing that that desktop is in interstate commerce. It's not.  
14 If it's going to send an e-mail, it goes through the Internet,  
01:21PM 15 the Gmail system. Gmail is an interstate commerce. MailChimp  
16 is interstate commerce. They got to go through the Internet to  
17 get to MailChimp. There's absolutely no function that that  
18 desktop serves that is either in interstate commerce or is a  
19 computer, because the whole system was set up to be connected  
01:21PM 20 to a server through a router.

21           By the way, Eldad Yacobi denied ever setting up the  
22 server at -- in that building owned by Crestline. And the  
23 government says to you -- the government can't have it both  
24 ways. They say, "You heard from Mike Lee. He said that never  
01:22PM 25 happened." Believe not Mike Lee. But Mike Lee said he was

1 with Eldad Yacobi, remember, in the server room saying, "Eldad,  
2 this is space you can have."

3 Well, what's the government supposed to say now?  
4 Don't believe Mike Lee? Bill Moon, Eldad, Mr. Fullmer are  
01:22PM 5 liars. John Mooers is a thief. Powerful against the  
6 powerless. You all need to go back there and let the  
7 government know that it can't treat people like this, that our  
8 country is greater than this, that that's the reason why people  
9 fight to get into this country.

01:23PM 10 MR. MITTAL: Objection, Your Honor.

11 THE COURT: Overruled.

12 MR. KHOURI: I'm going to ask you to vote not  
13 guilty. It's the right thing to do and it's supported by the  
14 evidence. Thank you very much.

01:23PM 15 Thank you, Your Honor.

16 **(Rebuttal argument by the government)**

17 MR. MITTAL: Ladies and gentlemen, I wanted to start  
18 by getting a chance to thank you for your time and attention.  
19 I know sitting in a courtroom from 8:00 to 5:00, time can stand  
01:24PM 20 still. You look at that clock and it's, like, is it moving?  
21 Is it moving? I promise, we're almost there. So I appreciate  
22 your attention, and I'm going to try to be brief.

23 I have a lot of papers here because there's a lot of  
24 things that you were told about that frankly is not true.  
01:25PM 25 There's a lot of evidence that you heard that counsel just kind



1 of made up out of thin air. And I'm going to try to break some  
2 of that down for you. Let's talk about the computer.

3 I kind of think of that as the toaster defense.

4 It's creative. I wouldn't have thought of it because it

01:25PM 5 doesn't make any sense. When you guys came in here, you guys  
6 have common sense. And just because you get legal  
7 instructions, you hear about the law, it doesn't mean you guys  
8 still don't have your common sense.

9 Let's look at that instruction on computers.

01:25PM 10 Instruction Number 16. It's a long instruction, but really  
11 there's a couple terms that you need to focus on. What is a  
12 computer? It's an electronic device or other high-speed data  
13 processing device that performs logical arithmetic or storage  
14 functions.

01:26PM 15 We heard evidence about how the Mac Pro is a  
16 computer over and over and over again. We heard it from people  
17 in the computer industry. We heard it from Adam Shaw, from  
18 Apple, who talked about what Mac Pros can do. We heard from  
19 Mr. Yacobi explicitly describing how a Mac Pro was used. But  
01:26PM 20 more than that, you saw how this Mac Pro was used.

21 You saw Exhibit 23. You saw the wipe command that  
22 the defendant executed. And I want to clear up some point of  
23 confusion about this laptop being used to do the wipe command.  
24 We agree on one thing, the laptop wasn't used to send a wipe  
01:27PM 25 command. That makes no sense with the evidence. What

1 counsel's suggesting is that at 9:50, the desktop is wiped from  
2 Florida by the defendant, and two minutes later the defendant  
3 is wiping his open laptop with the laptop. That makes no  
4 sense. Think about it. It's like sitting at a computer  
01:27PM 5 telling it to wipe itself. The minute that wipe command goes,  
6 it's going to wipe the laptop. That's not possible.

7 But in addition, the Mac Pro is a computer because  
8 we saw what was on there. Before the defendant deleted it, we  
9 saw all the data it had. It had storage function. It seems  
01:27PM 10 obvious it's a Mac Pro computer. Whether a toaster oven is a  
11 computer, I don't know. Do I care? No.

12 We also saw Exhibit 93. These are some of the items  
13 that the agent sees in the carved space. So had the defendant  
14 not deleted the Mac Pro computer, these are some of the files  
01:28PM 15 that would have been on there.

16 We also saw the Cox record, Exhibit 148. And this  
17 is not a record from Blue Stone or anyone interested in this.  
18 This is Mozy. This is a company based out in Utah. And what  
19 does it show? Again, defendant's Mac Pro, this record shows he  
01:28PM 20 set it up on June 14, he did a backup that Friday. And then,  
21 of course, the most important point, he changed the account to  
22 his personal name. And then on the 18th he deleted the backup.  
23 The Mac Pro is a computer. A toaster oven, I'll leave it to  
24 you to decide on your free time whether that's a computer.

01:28PM 25 Again, some things were just simply not true. Let's

1 talk about Exhibit 69. It's a little grainy, but this is one  
2 of the things that counsel points to at the start of his  
3 closing argument before lunch. And he said that the defendant  
4 was locked out of the iCloud account. That's just a  
01:29PM 5 misrepresentation of the evidence. This is his Google account.  
6 This has nothing to do with his iCloud account. Use your  
7 common sense. You're being bamboozled here. He was locked out  
8 that evening, so when he was trying to get back in at  
9 6:32 p.m., Eldad Yacobi had already locked him out because he  
01:29PM 10 resigned at about 4:25 p.m. So once they got the resignation,  
11 Eldad went in and kicked him off of Google. This has nothing  
12 to do with the iCloud account.

13 And you heard counsel talk about the defendant's  
14 wife's testimony, and now the government is saying he can't  
01:29PM 15 have any witness because she's interested? No. We're pointing  
16 out what you have to consider. It's his wife. She has an  
17 interest in the outcome. And frankly, more importantly, her  
18 testimony was utterly inconsistent with the evidence in this  
19 case. I'm just going to point out one example of that  
01:30PM 20 inconsistency.

21 During her testimony she stated that after the  
22 officers had obtained the laptop, she saw the defendant on his  
23 phone at about 10:30 p.m. Eastern deleting files. That's  
24 inconsistent. He had already done all the deletions by then.  
01:30PM 25 Apparently she was referring to the Google deletions. The

1 Google records, and I'm publishing 68, he had done the  
2 deletions just eight minutes after his resignation, 4:33 p.m.  
3 He was wrong. He was making things up.

4 Counsel was talking about the Blue Stone witnesses.  
01:31PM 5 And they have an interest in this case too. Every victim in  
6 every criminal case has an interest. They're upset. They're  
7 angry. This was their life's work and they felt that the  
8 defendant attacked them. Certainly they have an interest. But  
9 their testimony wasn't presented alone. We didn't put up a  
01:31PM 10 Blue Stone witness who just said he did it, that's it.  
11 Everything they said was corroborated by independent evidence.

12 You heard about the evidence that the FBI gathered  
13 in this case. We saw e-mail over e-mail that talked about the  
14 defendant's frustration and he was falling behind. We saw an  
01:32PM 15 internal memo explicitly documenting his failures at work. And  
16 then we saw record after record from third parties, from Mozy.  
17 We saw records from Cox communications, from Google, the  
18 Synology server logs and, of course, his MacBook Pro. The one  
19 thing that counsel is trying to get you to look away from. He  
01:32PM 20 doesn't want you to look at it. Why doesn't he want you to  
21 look at that laptop? Because it's super incriminating.  
22 There's nothing good about it for the defendant. He was  
23 searching about deletions and he was executing them using that.

24 And he talked about this idea of a good guys versus  
01:32PM 25 bad guys. And he's talking about the cops and how you need to

1 stick it to the officers in Florida. You need to look at the  
2 evidence and follow the law. Don't be misguided. This is not  
3 about Thousand Oaks, this is about the evidence. You took an  
4 oath to follow the evidence in this case, wherever that may  
01:33PM 5 lead you. This is not about the United States or coming to  
6 this country, that's just a distraction. Look at the evidence,  
7 follow the law in the case.

8 The laptop. And I'm going to address the "someone  
9 else did it" defense, the conspiracy theory that the defense is  
01:33PM 10 putting out there. There's nothing to substantiate this.  
11 During the closing argument, counsel didn't put up one thing  
12 from that laptop to support his claim because it's all  
13 incriminating. It all supports one conclusion. The defendant  
14 did those deletions.

01:33PM 15 And let's talk about the good witness, agent Mayo,  
16 the witness that was good for the defense. What did she prove?  
17 She proved that in Exhibit 41 -- this was one of those system  
18 logs -- this proved two things. Only the defendant had access  
19 to that computer on November 18th at 8:43 p.m. No one else  
01:34PM 20 touched his computer after that. No one could. He had his own  
21 password on there.

22 In that hotel room the officers told him "change  
23 your password." He wasn't telling Blue Stone his personal  
24 passwords on his UCI MacBook Pro. There's no evidence to  
01:34PM 25 support that.

1 She also showed you this, 147. It was a remote  
2 access setting. They were all turned off. There's no one --  
3 there was no way for anybody to access this laptop remotely.  
4 Not Eldad Yacobi, not Bill Moon.

01:35PM 5 And the clocks. Agent Mayo was abundantly clear.  
6 She checked the clock on the MacBook Pro. It was four minutes  
7 off. There was no manipulation of the clock. The government  
8 is not asking you to speculate. Our argument is grounded in  
9 evidence. If anyone is asking you to speculate, it's the  
01:35PM 10 defense.

11 I want to talk to you about what the defendant is  
12 charged with. There was some argument about what the defendant  
13 is charged with and what he's not.

14 This is Instruction 15. Again, counsel doesn't want  
01:36PM 15 you to consider all the deletions in this case. He's trying to  
16 focus you on the Mac Pro and confuse you. Because the other  
17 evidence is so damning, it is so incriminating of him, he's  
18 hoping maybe he can get some confusion. Don't let him confuse  
19 you. The only person who had access to the defendant's iCloud  
01:36PM 20 account was the defendant. It was his Yahoo e-mail address.  
21 He had never given that to anybody.

22 You even heard from his wife. She didn't even know  
23 how to get into the iCloud account. He kept control of that.  
24 He barely handed over the admin passwords to Eldad. He wasn't  
01:36PM 25 handing over his iCloud account to anybody. And he's charged

1 with more than just wiping the Apple Mac Pro. Certainly you  
2 must find that he made -- he caused the transmission and, as a  
3 result, intentionally impaired it. That's here. That's  
4 part -- that's two of the elements in Instruction 15.

01:37PM 5 And the argument that there's no interstate commerce  
6 is laughable. The wipe command showed it went from Florida to  
7 Irvine. That's interstate communication. It was used or  
8 affected interstate and foreign commerce and communication.  
9 The IP address showed you it was going from the residence in  
01:37PM 10 Florida to the Mac Pro that sat in Irvine. That's interstate  
11 commerce and communication.

12 Instruction 19, you'll have this in the verdict form  
13 too. After you find the defendant guilty of Count One, those  
14 three elements, you also have to make a determination as to  
01:38PM 15 loss. And this is why he's also charged with not just wiping  
16 the Mac Pro, but a related course of conduct. You're going to  
17 see this language in the verdict form in your instructions.

18 The government has proven beyond a reasonable doubt  
19 that as a result of such conduct and related course of conduct  
01:38PM 20 affecting one or more other computers used in or affecting  
21 interstate and foreign commerce and communication, that that  
22 caused the loss of \$5,000 or more. He's charged with all of it  
23 for the loss purposes.

24 First, did he wipe the Mac Pro? Yes. Did he cause  
01:38PM 25 a loss of \$5,000 more? Certainly. Because he deleted

1 everything. At some point there was a suggestion that we have  
2 pieces of paper. That's evidence. Exhibits are the evidence.  
3 That's the hard evidence, the undisputable evidence in this  
4 case gotten from forensic examinations and from an FBI  
01:39PM 5 investigation. He wasn't just deleting things off his phone,  
6 he was the IT administrator. He knew he could have signed out  
7 of that Google drive. He was just making it as part of his  
8 course of conduct in this case.

9 And I'm not going to play this video again. You've  
01:39PM 10 seen it enough. But I do want to talk about who was powerful  
11 and who was powerless in this situation. I also want to talk  
12 about what was said here. I think counsel suggested at some  
13 point he -- defendant said during this portion of the video "I  
14 can't give you your stuff because I delete it." And he said  
01:39PM 15 something about deleting it on his phone. You've listened to  
16 this video multiple times. There's no such statement. He was  
17 just making that up.

18 The person who was powerful in this situation was  
19 the defendant. He was the IT administrator for seven months.  
01:40PM 20 He knew how everything worked. He was able to delete the  
21 MailChimp records. He was able to delete the Synology server  
22 files, the Google drive, to wipe a computer sitting in Irvine  
23 from Florida. He did this all with a click of a mouse or  
24 sometimes his phone. He was the powerful one. Blue Stone was  
01:40PM 25 the victim who lost their data.



1                   And you saw his attitude in this video. It wasn't  
2 someone of remorse or mistake. It wasn't like he was, like,  
3 "Oh, yeah, I was just deleting my Google drive to take it off  
4 my phone to comply with the employment agreement." The  
01:41PM 5 employment agreement? That's what this case is about? No.  
6 It's what stuff I deleted it, that's the point. He walks  
7 outside. "I did it. It's done." That's what he told the  
8 chairman. He did it on purpose. He's guilty.

9                   THE COURT: All right, ladies and gentlemen, I see  
01:41PM 10 our fine court security officer in the audience. You want to  
11 come forward, sir, and take the jury. It's time for them to  
12 deliberate.

13                   If everybody could go with the court security  
14 officer except Ms. De La Rosa, if you could stay back, ma'am.  
01:42PM 15                   **(Out of the presence of the jury.)**

16                   THE COURT: Ms. De La Rosa, we still need you,  
17 ma'am. So I still need to have you subject to all those  
18 admonitions: Don't talk to anybody about the case, don't do  
19 any research, and don't even think about forming any type of  
01:42PM 20 opinion unless you're called for service and then go into the  
21 jury room and deliberate.

22                   Tell me, what is your preference? Would you like to  
23 go home now, or would you like to just hang around the  
24 courthouse? I'm not trying to put any pressure on you. What  
01:42PM 25 would you prefer to do?

1 THE ALTERNATE JUROR: So if I would be -- if I were  
2 to be called back, I have to drive back from home?

3 THE COURT: Yes.

4 THE ALTERNATE JUROR: I'll stay.

01:43PM 5 THE COURT: Okay. All right. And so don't talk to  
6 anybody about the case. You don't have to stay in the  
7 courtroom. You don't have to even stay in the courthouse. But  
8 if we do need you, we need to get you here right away. So if  
9 you could stay where we can get ahold of you and then you can  
01:43PM 10 get here in, like, 15 minutes, that would be great.

11 Do you have any questions about anything?

12 THE ALTERNATE JUROR: Some of my personal belongings  
13 are in the deliberation room.

14 THE COURT: Okay. Why don't we have Melissa go with  
01:43PM 15 you and then we'll have the court security officer help you get  
16 that.

17 **(The alternate juror left the courtroom.)**

18 THE COURT: All right. Melissa has your numbers so  
19 she can get ahold of you if there's any question.

01:44PM 20 **(Jury commences deliberations.)**

21 **(Jury Note 1)**

22 THE COURT: Counsel, we got a note. They want a  
23 ledger. They call it a ledger, but I think what they want is a  
24 list of the admitted exhibits.

02:30PM 25 What is the defense's position, Mr. Khouri?

1 MR. KHOURI: That they should receive nothing. They  
2 get the jury instructions, the exhibits, and any readback, if  
3 they want it, but that's it.

4 THE COURT: Okay. Government's position?

02:30PM 5 MR. MITTAL: We defer to the Court, Your Honor.

6 THE COURT: All right. I think out of an abundance  
7 of caution, I'm just going to tell them I'm not going to give  
8 them the ledger. Even though I think if we deleted all the  
9 references to the exhibits that were not admitted, it would  
02:31PM 10 maybe ease their reference in their communication. But again,  
11 out of an abundance of caution, I won't give it to them.

12 So I'll just say -- just give me a moment. It's  
13 very short, but I do -- I don't want to be too curt. I said:

14 "I cannot create a ledger as it would  
02:33PM 15 organize the evidence. You, and you alone, must  
16 organize, weigh and evaluate the evidence."

17 MR. KHOURI: I believe that's appropriate,  
18 Your Honor.

19 THE COURT: Okay.

02:33PM 20 MR. MITTAL: No objection, Your Honor.

21 THE COURT: All right. So Melissa, do you want me  
22 to read it to you again?

23 THE COURTROOM DEPUTY: Sure.

24 THE COURT: (Reading:)

02:33PM 25 "I cannot create a ledger as it would

1 organize the evidence. You, and you alone, must  
2 organize, weigh and evaluate the evidence."

3 If you can let me see that and then show it to the  
4 parties and give it to the bailiff. Show the parties. And  
02:35PM 5 assuming they sign off, you can give it to the bailiff.

6 Thank you, Counsel.

7 **(Recess from 2:34 p.m. to 3:40 p.m.)**

8 **(Out of the presence of the jury.)**

9 THE COURT: I understand we have a verdict. So  
03:40PM 10 Melissa will bring the jury in.

11 **(In the presence of the jury.)**

12 THE COURT: Mr. Aguilera, I understand you're our  
13 foreperson, sir?

14 THE FOREPERSON: Yes.

03:40PM 15 THE COURT: Would you be kind enough to hand the  
16 verdict form to the court security officer there.

17 Madam deputy, would you please read the verdict.

18 **(Verdict)**

19 THE COURTROOM DEPUTY: Yes, Your Honor. (Reading:)

03:40PM 20 "United States District Court, Central  
21 District of California, *United States of America*  
22 *versus Nikishna Polequaptewa*, Case Number  
23 SACR 16-36 verdict form.

24 "We, the jury in the above-captioned case,  
03:40PM 25 unanimously find the defendant, Nikishna

1 Polequaptewa, guilty of intentionally causing  
2 damage without authorization to a protected  
3 computer in violation of 18 U.S.C., Section  
4 1030(a)(5)(A), as charged in Count One of the first  
03:40PM 5 superseding indictment.

6 "We, the jury, having found the defendant  
7 guilty of the offense charged in Count One of the  
8 first superseding indictment, further unanimously  
9 find that the government did prove beyond a  
03:40PM 10 reasonable doubt that as a result of such conduct  
11 and a related course of conduct affecting one or  
12 more other computers used in or affecting  
13 interstate or foreign commerce or communication,  
14 the defendant caused loss to Blue Stone Strategy  
03:40PM 15 Group during any one-year period of an aggregate  
16 value of \$5,000 or more."

17 This verdict is signed by the jury foreperson dated  
18 November 13, 2018, at Los Angeles, California.

19 THE COURT: Would either side like the jury polled?

03:40PM 20 MR. KHOURI: Yes, Your Honor.

21 THE COURT: Very well.

22 THE COURTROOM DEPUTY: Ladies and gentlemen of the  
23 jury, as I call your number, if this is your verdict, please  
24 answer "yes."

03:40PM 25 Juror Number 1, is the verdict as presented and read

1 your verdict?

2 JUROR NUMBER 1: Yes.

3 THE COURTROOM DEPUTY: Juror Number 2, is the  
4 verdict as presented and read your verdict?

03:40PM 5 JUROR NUMBER 2: Yes.

6 THE COURTROOM DEPUTY: Juror Number 3, is the  
7 verdict as presented and read your verdict?

8 JUROR NUMBER 3: Yes.

9 THE COURTROOM DEPUTY: Juror Number 4, is the  
03:40PM 10 verdict as presented and read your verdict?

11 JUROR NUMBER 4: Yes.

12 THE COURTROOM DEPUTY: Juror Number 5, is the  
13 verdict as presented and read your verdict?

14 JUROR NUMBER 5: Yes.

03:40PM 15 THE COURTROOM DEPUTY: Juror Number 6, is the  
16 verdict as presented and read your verdict?

17 JUROR NUMBER 6: Yes.

18 THE COURTROOM DEPUTY: Juror Number 7, is the  
19 verdict as presented and read your verdict?

03:40PM 20 JUROR NUMBER 7: Yes.

21 THE COURTROOM DEPUTY: Juror Number 8, is the  
22 verdict as presented and read your verdict?

23 JUROR NUMBER 8: Yes.

24 THE COURTROOM DEPUTY: Juror Number 9, is the  
03:40PM 25 verdict as presented and read your verdict?

1 JUROR NUMBER 9: Yes.

2 THE COURTROOM DEPUTY: Juror Number 10, is the

3 verdict as presented and read your verdict?

4 JUROR NUMBER 10: Yes.

03:40PM 5 THE COURTROOM DEPUTY: Juror Number 11, is the

6 verdict as presented and read your verdict?

7 JUROR NUMBER 11: Yes.

8 THE COURTROOM DEPUTY: Juror Number 12, is the

9 verdict as presented and read your verdict?

03:40PM 10 JUROR NUMBER 12: Yes.

11 THE COURT: Very well, ladies and gentlemen. This

12 is going to complete your service on this case. I gave you

13 admonitions that you couldn't talk to anybody about the case,

14 couldn't do certain other things. I now release you from all

03:40PM 15 those admonitions. So you're free to talk to anybody about the

16 case if you want to. If you don't want to talk to anybody, you

17 don't have to.

18 I said at the outset how much I appreciated your

19 service, and I want to reiterate how much I appreciate your

03:40PM 20 service and diligence on this case. You are hereby discharged.

21 THE COURTROOM DEPUTY: All rise.

22 **(Out of the presence of the jury.)**

23 THE COURT: I'm sure the parties are anxious to get

24 out in the hallway, see if you can talk to some of the jurors,

03:40PM 25 but we'll need to set a date for sentencing.

1 Melissa, do you have a proposed date?

2 THE COURTROOM DEPUTY: The Court is available on  
3 February 25th, 2019, at 10:00 a.m.

4 THE COURT: Does that date work for the defense?

03:40PM 5 MR. KHOURI: I know I start trial in San Mateo  
6 County on February 11, but I'll try to make it work.

7 THE COURT: All right. And if you're engaged in  
8 trial, we can always push it back.

9 MR. KHOURI: All right. Thank you, Your Honor.

03:40PM 10 THE COURT: Does that date work for the government?

11 MR. MITTAL: Yes, Your Honor.

12 THE COURT: That will be the date and time for  
13 sentencing. I'll have the Probation Department prepare a  
14 Presentence Investigation Report. I don't want to assume  
03:40PM 15 anything.

16 Is the government objecting to Mr. Polequaptewa  
17 remaining out on bond pending sentencing?

18 MR. MITTAL: No, Your Honor.

19 THE COURT: All right. Sir, you're going to need to  
03:40PM 20 comply with all the terms and conditions of your bond, sir.

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Is there anything further we need to  
23 discuss this afternoon?

24 MR. MITTAL: I don't believe so, Your Honor.

03:40PM 25 MR. KHOURI: No, Your Honor.



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

THE COURT: Thank you.

**(Proceedings concluded at 3:40 p.m.)**

--oOo--





UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
v.  
  
NIKISHNA POLEQUAPTEWA,  
  
Defendant.

No. SA CR 16-00036-CJC

JURY INSTRUCTIONS

**COURT'S INSTRUCTION NO. 1**

Members of the jury, now that you have heard all the evidence, it is my duty to instruct you on the law that applies to this case. A copy of these instructions will be available in the jury room for you to consult.

It is your duty to weigh and to evaluate all the evidence received in the case and, in that process, to decide the facts. It is also your duty to apply the law as I give it to you to the facts as you find them, whether you agree with the law or not. You must decide the case solely on the evidence and the law and must not be influenced by any personal likes or dislikes, opinions, prejudices, or sympathy. You should also not be influenced by any person's race, color, religion, national ancestry, or gender. You will recall that you took an oath promising to do so at the beginning of the case.

You must follow all these instructions and not single out some and ignore others; they are all important. Please do not read into these instructions, or into anything I may have said or done any suggestion as to what verdict you should return – that is a matter entirely up to you.

**COURT'S INSTRUCTION NO. 2**

The first superseding indictment is not evidence. The defendant has pleaded not guilty to the charge. The defendant is presumed to be innocent unless and until the government proves the defendant guilty beyond a reasonable doubt. In addition, the defendant does not have to testify or present any evidence. The defendant does not have to prove innocence; the government has the burden of proving every element of the charge beyond a reasonable doubt.

**COURT'S INSTRUCTION NO. 3**

A defendant in a criminal case has a constitutional right not to testify. In arriving at your verdict, the law prohibits you from considering in any manner that the defendant did not testify.

**COURT'S INSTRUCTION NO. 4**

Proof beyond a reasonable doubt is proof that leaves you firmly convinced the defendant is guilty. It is not required that the government prove guilt beyond all possible doubt.

A reasonable doubt is a doubt based upon reason and common sense and is not based purely on speculation. It may arise from a careful and impartial consideration of all the evidence, or from lack of evidence.

If after a careful and impartial consideration of all the evidence, you are not convinced beyond a reasonable doubt that the defendant is guilty, it is your duty to find the defendant not guilty. On the other hand, if after a careful and impartial consideration of all the evidence, you are convinced beyond a reasonable doubt that the defendant is guilty, it is your duty to find the defendant guilty.

**COURT'S INSTRUCTION NO. 5**

The evidence you are to consider in deciding what the facts are consists of:

- (1) the sworn testimony of any witness;
- (2) the exhibits received in evidence; and
- (3) any facts to which the parties have agreed.



**COURT'S INSTRUCTION NO. 6**

In reaching your verdict you may consider only the testimony and exhibits received in evidence. The following things are not evidence and you may not consider them in deciding what the facts are:

1. Questions, statements, objections, and arguments by the lawyers are not evidence. The lawyers are not witnesses. Although you must consider a lawyer's questions to understand the answers of a witness, the lawyer's questions are not evidence. Similarly, what the lawyers have said in their opening statements, will say in their closing arguments, and at other times is intended to help you interpret the evidence, but it is not evidence. If the facts as you remember them differ from the way the lawyers state them, your memory of them controls.

2. Any testimony that I have excluded, stricken, or instructed you to disregard is not evidence.

3. Anything you may have seen or heard when the court was not in session is not evidence. You are to decide the case solely on the evidence received at the trial.

**COURT'S INSTRUCTION NO. 7**

Certain charts and summaries have been admitted in evidence. Charts and summaries are only as good as the underlying supporting material. You should, therefore, give them only such weight as you think the underlying material deserves.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**COURT'S INSTRUCTION NO. 8**

The parties have agreed to certain facts that have been stated to you. Those facts are now conclusively established.

**COURT'S INSTRUCTION NO. 9**

Evidence may be direct or circumstantial. Direct evidence is direct proof of a fact, such as testimony by a witness about what that witness personally saw or heard or did. Circumstantial evidence is indirect evidence, that is, it is proof of one or more facts from which you can find another fact.

You are to consider both direct and circumstantial evidence. Either can be used to prove any fact. The law makes no distinction between the weight to be given to either direct or circumstantial evidence. It is for you to decide how much weight to give to any evidence.

**COURT'S INSTRUCTION NO. 10**

In deciding the facts in this case, you may have to decide which testimony to believe and which testimony not to believe. You may believe everything a witness says, or part of it, or none of it.

In considering the testimony of any witness, you may take into account:

- (1) the opportunity and ability of the witness to see or hear or know the things testified to;
- (2) the witness's memory;
- (3) the witness's manner while testifying;
- (4) the witness's interest in the outcome of the case, if any;
- (5) the witness's bias or prejudice, if any;
- (6) whether other evidence contradicted the witness's testimony;
- (7) the reasonableness of the witness's testimony in light of all the evidence; and
- (8) any other factors that bear on believability.

Sometimes a witness may say something that is not consistent with something else he or she said. Sometimes different witnesses will give different versions of what happened. People often forget things or make mistakes in what they remember. Also, two people may see the same event but remember it differently. You may consider these differences, but do not decide that testimony is untrue just because it differs from other testimony.

1           However, if you decide that a witness has deliberately  
2 testified untruthfully about something important, you may choose not  
3 to believe anything that witness said. On the other hand, if you  
4 think the witness testified untruthfully about some things but told  
5 the truth about others, you may accept the part you think is true  
6 and ignore the rest.

7  
8           The weight of the evidence as to a fact does not necessarily  
9 depend on the number of witnesses who testify. What is important is  
10 how believable the witnesses were, and how much weight you think  
11 their testimony deserves.

**COURT'S INSTRUCTION NO. 11**

You have heard testimony that the defendant made a statement. It is for you to decide (1) whether the defendant made the statement, and (2) if so, how much weight to give to it. In making those decisions, you should consider all the evidence about the statement, including the circumstances under which the defendant may have made it.

**COURT'S INSTRUCTION NO. 12**

You have heard testimony from persons who, because of education or experience, were permitted to state opinions and the reasons for their opinions.

Such opinion testimony should be judged like any other testimony. You may accept it or reject it, and give it as much weight as you think it deserves, considering the witness's education and experience, the reasons given for the opinion, and all the other evidence in the case.



**COURT'S INSTRUCTION NO. 13**

You are here only to determine whether the defendant is guilty or not guilty of the charge in the first superseding indictment. The defendant is not on trial for any conduct or offense not charged in the first superseding indictment.

**COURT'S INSTRUCTION NO. 14**

The first superseding indictment charges that the offense alleged in Count One was committed "on or about" a certain date.

Although it is necessary for the government to prove beyond a reasonable doubt that the offense was committed on a date reasonably near the date alleged in Count One of the first superseding indictment, it is not necessary for the government to prove that the offense was committed precisely on the date charged.

**COURT'S INSTRUCTION NO. 15**

The defendant is charged in the single-count first superseding indictment with Intentional Damage Without Authorization to a Protected Computer, in violation of Section 1030(a)(5)(A) of Title 18 of the United States Code. In order for the defendant to be found guilty of that charge, the government must prove each of the following elements beyond a reasonable doubt:

First, the defendant knowingly caused the transmission of a program, a code, a command, or information to Blue Stone Strategy Group's Mac Pro desktop computer, bearing serial number F5KMF03YF693;

Second, as a result of the transmission, the defendant intentionally impaired without authorization the integrity or availability of data, a program, a system, or information; and

Third, Blue Stone Strategy Group's Mac Pro desktop computer, bearing serial number F5KMF03YF693, was used in or affected interstate or foreign commerce or communication.

**COURT'S INSTRUCTION NO. 16**

The term "computer" means an electronic, magnetic, optical, electrochemical, or other high speed data processing device performing logical, arithmetic, or storage functions, and includes any data storage facility or communications facility directly related to or operating in conjunction with such device, but such term does not include an automated typewriter or typesetter, a portable hand held calculator, or other similar device.

**COURT'S INSTRUCTION NO. 17**

An act is done knowingly if the defendant is aware of the act and does not act or fails to act through ignorance, mistake, or accident. The government is not required to prove that the defendant knew that his acts or omissions were unlawful. You may consider evidence of the defendant's words, acts, or omissions, along with all the other evidence, in deciding whether the defendant acted knowingly.

**COURT'S INSTRUCTION NO. 18**

A person acts "without authorization" with respect to the integrity or availability of data, a program, a system, or information on a computer when the person has not received permission from the owner, person who, or entity which controls that right of access to the computer to impair the integrity or availability of data, a program, a system, or information on the computer, or when the owner, person who, or entity which controls the right of access to the computer has withdrawn or rescinded permission to impair the integrity or availability of data, a program, a system, or information on the computer and the person impairs the integrity or availability of data, a program, a system or information on the computer anyway.

**COURT'S INSTRUCTION NO. 19**

If you find the defendant guilty of the charge in Count One of the first superseding indictment, you are then to determine whether the government proved beyond a reasonable doubt that as a result of such conduct and a related course of conduct affecting one or more other computers used in or affecting interstate or foreign commerce or communication, the defendant caused loss to Blue Stone Strategy Group during any one-year period of an aggregate value of \$5,000 or more.

The term "loss" means any reasonable cost to Blue Stone Strategy Group, including the cost of responding to an offense, conducting a damage assessment, and restoring the data, program, system, or information to its condition prior to the offense, and any revenue lost, cost incurred, or other consequential damages incurred because of interruption of service.

Your decision as to whether the loss was \$5,000 or more must be unanimous.

**COURT'S INSTRUCTION NO. 20**

When you begin your deliberations, elect one member of the jury as your foreperson who will preside over the deliberations and speak for you here in court.

You will then discuss the case with your fellow jurors to reach agreement if you can do so. Your verdict, whether guilty or not guilty, must be unanimous.

Each of you must decide the case for yourself, but you should do so only after you have considered all the evidence, discussed it fully with the other jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your opinion if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right.

It is important that you attempt to reach a unanimous verdict but, of course, only if each of you can do so after having made your own conscientious decision. Do not change an honest belief about the weight and effect of the evidence simply to reach a verdict.



**COURT'S INSTRUCTION NO. 21**

Because you must base your verdict only on the evidence received in the case and on these instructions, I remind you that you must not be exposed to any other information about the case or to the issues it involves. Except for discussing the case with your fellow jurors during your deliberations:

Do not communicate with anyone in any way and do not let anyone else communicate with you in any way about the merits of the case or anything to do with it. This includes discussing the case in person, in writing, by phone or electronic means, via email, text messaging, or any Internet chat room, blog, website or other feature. This applies to communicating with your family members, your employer, the media or press, and the people involved in the trial. If you are asked or approached in any way about your jury service or anything about this case, you must respond that you have been ordered not to discuss the matter and to report the contact to the court.

Do not read, watch, or listen to any news or media accounts or commentary about the case or anything to do with it; do not do any research, such as consulting dictionaries, searching the Internet or using other reference materials; and do not make any investigation or in any other way try to learn about the case on your own.

1       The law requires these restrictions to ensure the parties have  
2 a fair trial based on the same evidence that each party has had an  
3 opportunity to address. A juror who violates these restrictions  
4 jeopardizes the fairness of these proceedings, and a mistrial could  
5 result that would require the entire trial process to start over.  
6 If any juror is exposed to any outside information, please notify  
7 the court immediately.

**COURT'S INSTRUCTION NO. 22**

Some of you have taken notes during the trial. Whether or not you took notes, you should rely on your own memory of what was said. Notes are only to assist your memory. You should not be overly influenced by your notes or those of your fellow jurors.

**COURT'S INSTRUCTION NO. 23**

The punishment provided by law for this crime is for the court to decide. You may not consider punishment in deciding whether the government has proved its case against the defendant beyond a reasonable doubt.

**COURT'S INSTRUCTION NO. 24**

A verdict form has been prepared for you. After you have reached unanimous agreement on a verdict, your foreperson should complete the verdict form according to your deliberations, sign and date it, and advise the bailiff that you are ready to return to the courtroom.

**COURT'S INSTRUCTION NO. 25**

If it becomes necessary during your deliberations to communicate with me, you may send a note through the bailiff, signed by any one or more of you. No member of the jury should ever attempt to communicate with me except by a signed writing, and I will respond to the jury concerning the case only in writing or here in open court. If you send out a question, I will consult with the lawyers before answering it, which may take some time. You may continue your deliberations while waiting for the answer to any question. Remember that you are not to tell anyone – including me – how the jury stands, numerically or otherwise, on any question submitted to you, including the question of the guilt of the defendant, until after you have reached a unanimous verdict or have been discharged.

United States v. Nikishna Polequaptewa, Case No. SA CR 16-36-CJC

Participants

D: Defendant Nikishna Polequaptewa  
JM: John Mooers  
JF: Jamie Fullmer  
UM: Unidentified Male  
UP: Unidentified Person

Abbreviations

UI: Unintelligible  
IA: Inaudible

QJ

AW

E.Y.

for

November 19, 2014

D: Is this Nancy? Hey.

JM: Excuse me, Nikishna, I'm standing here. Nikishna--don't pull me.

JF: Nikishna, we've asked you--

D: What's that sir?

JM: Multiple times.

JF: Nikishna.

UP: [IA]

D: Yes, please come. I really appreciate--I--I also spoke with Officer Ricky earlier.

JM: Yeah.

D: And, let them know that I was coming to pick up my personal belongings and he was fine with that.

JM: No, he wasn't.

D: Thank you very much.

UP: [IA].



D: Thank you, bye. So, my personal artifacts here and also, uh, my equipment here that you guys took. So, where is it? You need to produce it.

JM: As soon as the police get here, we can discuss this. You can wait downstairs.

D: No, I think I'm gonna get my stuff, and I have a legal right to get it. So-

UM: No, uh--

JM: Excuse me.

UM: You, uh--

JM: Excuse me, you're not allowed--he's not allowed--

D: No, I am allowed to get my [UI]-

JM: You're not allowed in this office. Excuse me.

D: You're blocking my, my way.

JM: You're not allowed in this office.

D: Yes, I am. I'm allowed to get my personal artifacts.

JM: Mm-mm, you're not allowed in this office.

D: I am.

JM: No, you're not.

D: Yes, I am.

JM: No, you're not.

D: I quit, and I am allowed to get my particular--

JM: As soon as the--as soon as the police get here, then you can go ahead [UI].

D: Yes, I am the one that called them.

JM: Good.

D: Specifically. So again, you're blocking my entrance to be able to pick up my personal artifacts.

JM: [UI].

JF: Nikishna? You?

D: I quit.

JF: You quit?

D: Yes.

JF: Right.

D: So, let me get my stuff.

JF: We'll let you get your stuff.

JM: But we [UI]--

JF: We want to make sure that we get all of our stuff as well.

D: What stuff? I deleted it. That's the point.

JM: There's a process you go--[Laughs]. Thank you. There's a process you go through, and, uh, we'll have your final check prepared and your final--

D: Of course, you'll have my final check prepared--

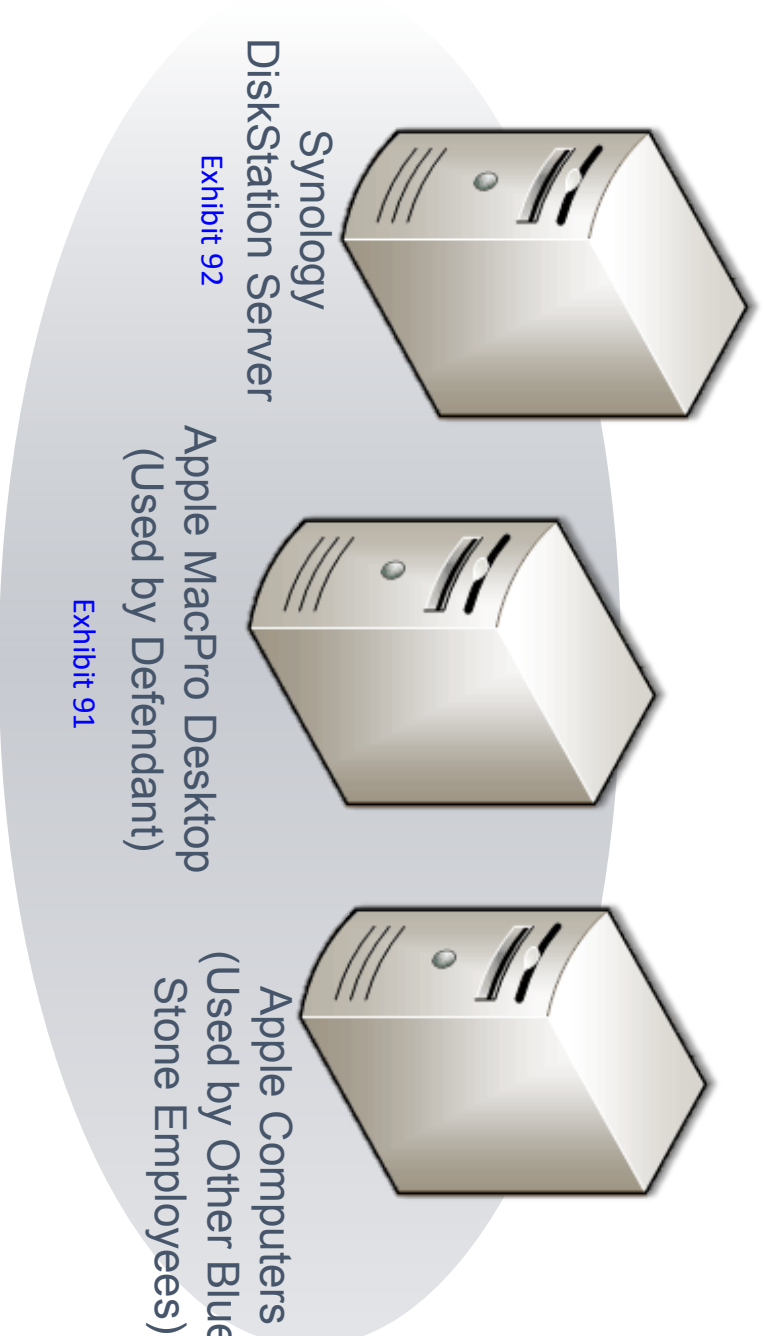
JM: --and you'll have here to come here--

D: --because it's your legal obligation to get my final check as well as my vacation accrual and any of my personal artifacts.

<b>Payroll Employees as of 11/2014</b>	<b>Tasks Performed Related to Responding to Loss of Blue Stone Data</b>	<b>Hours</b>	<b>Hourly Rate</b>	<b>TOTAL</b>	<b>28% Overhead</b>	<b>TOTAL</b>
<b>Jamie Fullermer</b>	<ul style="list-style-type: none"> <li>• Project Management</li> <li>• Website Re-creation</li> <li>• Document Re-creation Oversight</li> </ul>	80	\$96.15	\$7,692.00	\$2,153.76	\$9,845.76
<b>John Mooers</b>	<ul style="list-style-type: none"> <li>• Project Management</li> <li>• Website Re-creation</li> <li>• CRM System Investigation</li> <li>• Document Re-creation Oversight</li> <li>• Database(s) Re-creation Oversight</li> </ul>	110	\$192.30	\$21,153.00	\$5,922.84	\$27,075.84
<b>Amy Watson</b>	<ul style="list-style-type: none"> <li>• Data Loss/Recovery Attempts</li> <li>• Website Re-creation Support</li> <li>• Re-create MailChimp Account</li> </ul>	95	\$29.80	\$2,831.00	\$792.68	\$3,623.68
<b>Janeen Goodman</b>	<ul style="list-style-type: none"> <li>• Data Loss/Recovery Attempts</li> <li>• Document Re-creation</li> <li>• Website Re-creation Support</li> <li>• Marketing Support</li> <li>• Database(s) Re-creation</li> </ul>	80	\$24.03	\$1,922.40	\$538.27	\$2,460.67
<b>Vida Monjezi</b>	<ul style="list-style-type: none"> <li>• Document and Website Proofing</li> <li>• Document Re-creation</li> <li>• Website Re-creation</li> </ul>	25	\$20.00	\$500.00	\$140.00	\$640.00

<b>Payroll Employees as of 11/2014</b>	<b>Tasks Performed Related to Responding to Loss of Blue Stone Data</b>	<b>Hours</b>	<b>Hourly Rate</b>	<b>TOTAL</b>	<b>28% Overhead</b>	<b>TOTAL</b>
<b>Hermينيا Frias</b>	<ul style="list-style-type: none"> <li>• Marketing Re-creation</li> <li>• Document Re-creation</li> <li>• Website Re-creation Support</li> </ul>	35	\$36.05	\$1,261.75	\$353.29	\$1,615.04
<b>Rochelle Tuttle</b>	<ul style="list-style-type: none"> <li>• Marketing Re-creation</li> <li>• Website Re-creation</li> <li>• CRM System Investigation</li> <li>• Database(s) Re-creation</li> </ul>	65	\$18.00	\$1,170.00	\$327.60	\$1,497.60
<b>Ashlyn Mooers</b>	<ul style="list-style-type: none"> <li>• Data Recovery</li> <li>• CRM System Investigation</li> <li>• Database(s) Re-creation</li> <li>• Document Re-creation</li> </ul>	70	\$20.00	\$1,400.00	\$392.00	\$1,792.00
	<b>TOTAL</b>	<b>560</b>				<b>\$48,550.60</b>

## BLUE STONE COMPUTERS IN IRVINE, CA



## BLUE STONE COMPUTERS IN IRVINE, CA



Synology

DiskStation Server

Exhibit 92

- Client Relationship Management ("CRM") Data
- Backup of CRM Data
- Website ("Word Press")
- File Server

Exhibit 98

2 of 8

Polequaptewa ER 1245

## BLUE STONE COMPUTERS IN IRVINE, CA



Apple MacPro Desktop  
(Used by Defendant)

[Exhibit 91](#)

- Marketing
- Client Project Files
- CRM Data
- Website (“Word Press”)

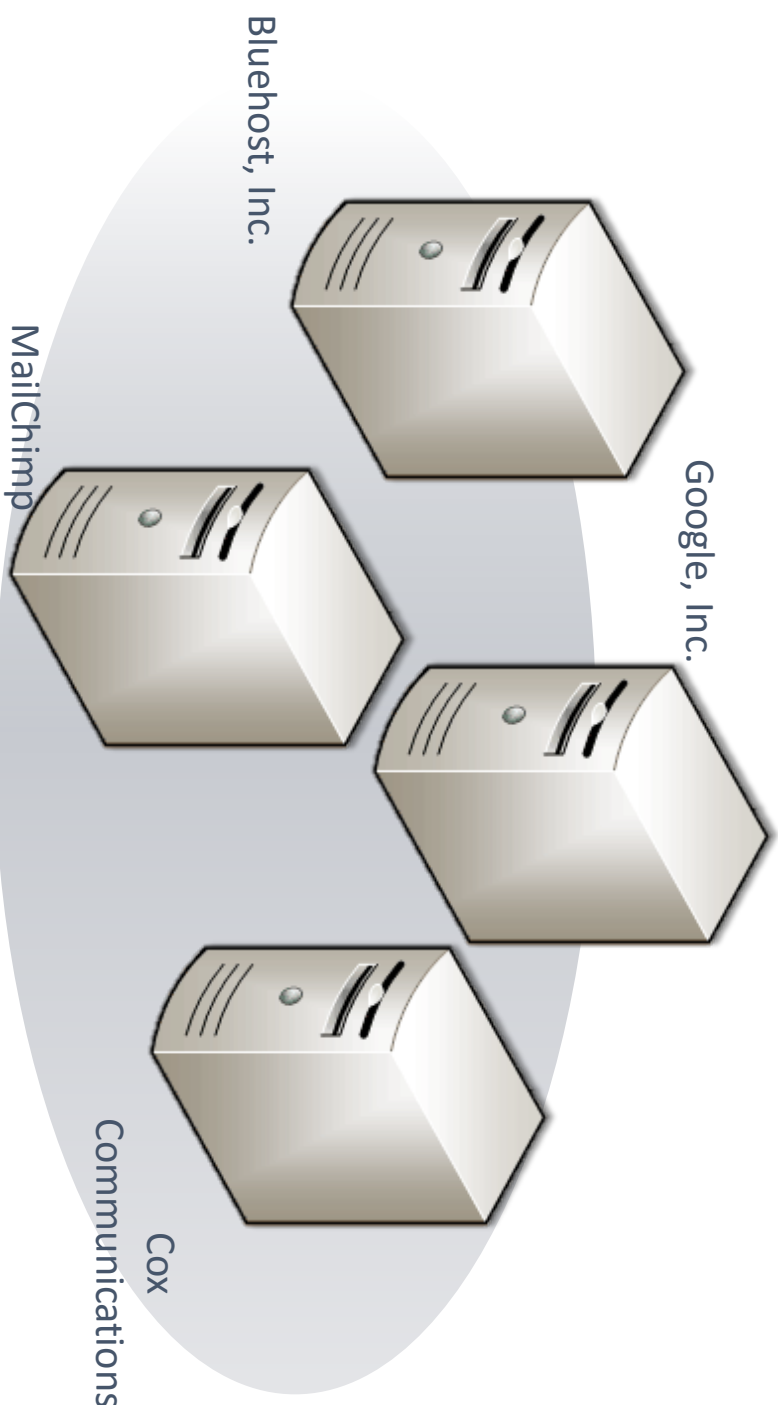
Exhibit 98

3 of 8

Polequaptewa ER 1246



## BLUE STONE'S REMOTE ACCOUNTS WITH THIRD-PARTY PROVIDERS



## BLUE STONE'S REMOTE ACCOUNTS WITH THIRD-PARTY PROVIDERS



Bluehost, Inc.

- Website (“Word Press”)

## BLUE STONE'S REMOTE ACCOUNTS WITH THIRD-PARTY PROVIDERS



MailChimp

- eBlast Contact Lists
- Marketing Campaigns

## BLUE STONE'S REMOTE ACCOUNTS WITH THIRD-PARTY PROVIDERS



Google, Inc.

- Client Project Files
- Bluestonestrategy.com Email Accounts

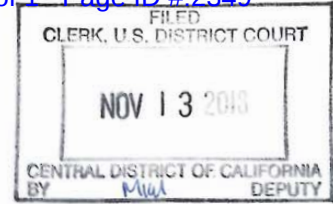
## BLUE STONE'S REMOTE ACCOUNTS WITH THIRD-PARTY PROVIDERS



Cox  
Communications

- Backup for Company Files

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA



Date: 11/13/18

Time: 2:15

Case No.: SACR 16-00036-CJC

Case Title: United States of America v. Nikishna Polequaptewa

JURY NOTE NUMBER 1 REDACTED

THE JURY HAS REACHED A UNANIMOUS VERDICT

X

THE JURY REQUESTS THE FOLLOWING:

Jury would like a ledger  
of the evidence exhibits to help  
with finding necessary evidence  
for review.

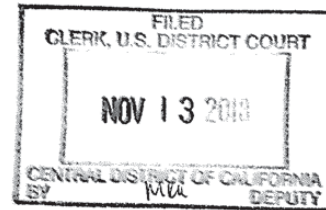
This will be beneficial for  
time management

DATE:

11/13/18

SIGNED:

FOREPERSON OF THE JURY



Case No. SACR 16-00036-CJC

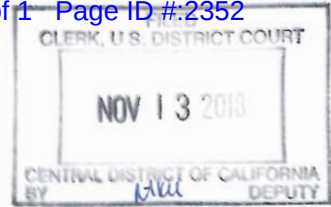
Case Title: U.S.A. v. Nikishna Polequaptewa

Date: November 13, 2018

**RESPONSE TO JUROR NOTE # 1**

I cannot create a ledger as it would organize the evidence. You, and you alone, must organize, weigh, and evaluate the evidence.

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA



Date: 11/13/18  
Time: 3:10

Case No.: SACR 16-00036-CJC

Case Title: United States of America v. Nikishna Polequaptewa

JURY NOTE NUMBER 2

REDACTED

THE JURY HAS REACHED A UNANIMOUS VERDICT

X

THE JURY REQUESTS THE FOLLOWING:

We have a verdict

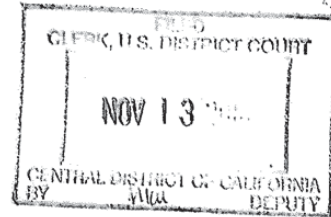
DATE:

11/13/18

SIGNED:

FOREPERSON OF THE JURY





UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,  
Plaintiff,  
v.  
NIKISHNA POLEQUAPTEWA,  
Defendant.

No. SA CR 16-00036-CJC

VERDICT FORM REDACTED

1 We, the jury in the above-captioned case, unanimously find the  
2 defendant NIKISHNA POLEQUAPTEWA:

3            NOT GUILTY

4     ✓     GUILTY

5 of intentionally causing damage without authorization to a protected  
6 computer in violation of 18 U.S.C. § 1030(a)(5)(A), as charged in  
7 Count One of the first superseding indictment.  
8


9 If your answer is guilty, consider the paragraph on the next  
10 page regarding loss. If your answer is not guilty, do not consider  
11 the paragraph on the next page regarding loss. Regardless, please  
12 sign and date the verdict form at the bottom of the next page.  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 We, the Jury, having found the defendant guilty of the offense  
2 charged in Count One of the first superseding indictment, further  
3 unanimously find that the government:

4            DID NOT

5   ✓   DID

6 prove beyond a reasonable doubt that as a result of such conduct and  
7 a related course of conduct affecting one or more other computers  
8 used in or affecting interstate or foreign commerce or  
9 communication, the defendant caused loss to Blue Stone Strategy  
10 Group during any one-year period of an aggregate value of \$5,000 or  
11 more.

24   
25  
26 FOREPERSON OF THE JURY

27  
28 DATED: 11/13/ 2018 at Los Angeles, California.

## LIST OF EXHIBITS AND WITNESSES

[illegible]

MICHAEL J. KHOURI, ESQ. [SBN 97654]  
JENNIFER W. GATEWOOD, ESQ. [SBN 225066]  
KHOURI LAW FIRM, APC  
24012 Calle De La Plata, Suite 210  
Laguna Hills, California 92653  
Telephone: (949) 336-2433  
Fax: (949) 387-0044  
E-mail: mkhouri@khourilaw.com

Attorney for defendant, NIKISHNA POLEQUAPTEWA

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

NIKISHNA POLEQUAPTEWA,  
Defendant.

No. SA-CR 16-36-CJC  
Assigned to the Hon. Cormac J.  
Carney

**DEFENDANT'S EXHIBIT LIST**

Trial Date: November 6, 2018  
Trial Time: 8:30 a.m.  
Courtroom: 7C

Defendant NIKISHNA POLEQUAPTEWA ("Defendant") by and through  
his counsel of record, The Khouri Law Firm, APC, by Michael J. Khouri, submits  
the attached Exhibit List for use at trial, scheduled to begin November 6, 2018.

Defendant reserves the right to supplement or otherwise amend this Exhibit  
List to introduce other exhibits not listed here if such additional exhibits appear  
relevant to the issues raised prior to and/or during trial.

DATED: October \_\_, 2018 Respectfully submitted,

KHOURI LAW FIRM, APC

By: /s/ Michael J. Khouri  
MICHAEL J. KHOURI  
Attorney for Defendant,  
NIKISHNA POLEQUAPTEWA

DEFENDANT'S EXHIBIT LIST

Case 8:16-cr-00036-CJC Document 153 Filed 11/13/18 Page 3 of 27 Page ID #:2362

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
UNITED STATES V. POLEQUAPTEWA

DOCKET NO. SA-CR 36-CJC

## DEFENDANT'S LIST OF EXHIBITS

EXH.	WITNESS	DESCRIPTION	ID.	EVID.
1	Defendant/J. Mooers	Complaint filed in <i>Blue Stone Strategy Group, LLC v. Polequaptewa</i> , USDC Case No. 8:14-cv-01888-CJC-DFM	11/7/18	
2	Defendant	Defendant's First Amended Counterclaims filed in <i>Blue Stone Strategy Group, LLC v. Polequaptewa</i> , USDC Case No. 8:14-cv-01888-CJC-DFM	11/7/18	
3	Defendant	Employment Agreement with Blue Stone Strategy Group		
4	Defendant	6/26/14 email from Defendant to J. Mooers and A. Watson re: meeting on 6/26/14 re: Blue Stone's information technology plans with respect to Eldad Yacobi		
5	Defendant	11/3/14 text from Defendant to K. Secakuku informing her that M. Palmer, project manager, had deleted entire Seminole folder from Blue Stone's google drive		
6	Defendant	Blue Stone organization chart received by Defendant in November 2014		
7	Defendant	11/10/14 text from Defendant to B. Moon confirming tribal advisor T. Sanchez has been removed from Blue Stone website		
8	Defendant	Email confirmation from J. Mooers to Defendant re: meeting on 11/14/14		
9	Defendant	11/15/14 email from M. Palmer to Defendant re: password change with txt.file attachment from M. Palmer re: communication from A. Watson		
10	Defendant	11/15/14 email from M. Palmer to Defendants re: password change		
11	Defendant	11/17/14 email from C. Irwin to Defendant re: inability to access Blue Stone email account		
12	Defendant	11/17/14 email from E. Yacobi to Defendant re: IT issues at Blue Stone		

1

DEFENDANT'S EXHIBIT LIST

Case 8:16-cr-00036-CJC Document 153 Filed 11/13/18 Page 4 of 27 Page ID #:2363

1	13	Defendant	11/18/14 email from Defendant to A. Watson and J. Mooers re: IT issues at Blue Stone		
2					
3	14	Defendant	11/18/14 email from A. Watson to Defendatn re: IT issues at Blue Stone		
4					
5	15	Defendant	11/17/14 text from Defednant to A. Watson re: IT issues at Blue Stone and A. Watson's response		
6					
7	16	Defendant	11/18/14 text from Defendant to J. Mooers to discuss IT administrator issues		
8					
9	17	Defendant	11/18/14 email from Google Account Recovery to Defendant re: password reset process		
10					
11	18	Defendant	11/18/14 email from Google re: recovery phone number change		
12					
13	19	Defendant	11/18/14 text notification from Google to Defendant re: change of password to personal gmail account		
14					
15	20	Defendant	Personal gmail account activity – unauthorized access from computer in California (IP address 108.13.189.165)		
16					
17	21	Defendant	Second personal gmail account activity – unauthorized access from computer in California (IP address 2606:6000:f4d0:5600:3c77:dfff8:8aaa:16f9)		
18					
19	22	Defendant	Gmail account settings: recovery email on Defendant's personal email account changed without authority		
20					
21	23	Defendant	Apple account settings: recovery phone number on Defendant's personal email account changed without authority to number at Blue Stone's corporate office		
22					
23	24	Defendant	11/21/14 text from R. Mooers to Defendant advising that Blue Stone's servers were backed up		
24					
25	25	Defendant	7/25/18 email notification from Google to Defendant's personal gmail account notifying of access from Defendant's former Blue Stone email account		
26					
27					
28					

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

I here by certify that on November 13, 18, I caused the foregoing document to be electronically filed with the Clerk of the Court through the CM/ECF system, which will send a notice of electronic filing to all parties of record.

/s/ Michael J. Khouri  
MICHAEL J. KHOURI, ESQ.  
Attorney for the Defendant  
NIKISHNA POLEQUAPTEWA



Case 8:16-cr-00036-CJC Document 153 Filed 11/13/18 Page 6 of 27 Page ID #:2365

MICHAEL J. KHOURI, ESQ. [SBN 97654]  
JENNIFER W. GATEWOOD, ESQ. [SBN 225066]  
KHOURI LAW FIRM, APC  
24012 Calle De La Plata, Suite 210  
Laguna Hills, California 92653  
Telephone: (949) 336-2433  
Fax: (949) 387-0044  
E-mail: mkhourilaw.com

Attorney for defendant, NIKISHNA POLEQUAPTEWA

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

NIKISHNA POLEQUAPTEWA,

Defendant.

No. SA-CR 16-36-CJC  
Assigned to the Hon. Cormac J.  
Carney

**DEFENDANT'S WITNESS LIST**

Trial Date: November 6, 2018  
Trial Time: 8:30 a.m.  
Courtroom: 7C

Defendant NIKISHNA POLEQUAPTEWA ("Defendant") by and through his counsel of record, The Khouri Law Firm, APC, by Michael J. Khouri, submits the attached Witness List for use at trial, scheduled to begin November 6, 2018.

Defendant reserves the right to supplement or otherwise amend this Witness List to call additional witnesses not listed here who are able to provide relevant testimony or remove witnesses from this Witness List at trial.

DATED: October \_\_, 2018 Respectfully submitted,

KHOURI LAW FIRM, APC

By: /s/ Michael J. Khouri  
MICHAEL J. KHOURI  
Attorney for Defendant,  
NIKISHNA POLEQUAPTEWA

DEFENDANT'S WITNESS LIST

Case 8:16-cr-00036-CJC Document 153 Filed 11/13/18 Page 7 of 27 Page ID #:2366

UNITED STATES V. POLEQUAPTEWA

DOCKET NO. SA-CR 36-CJC

DEFENDANT'S LIST OF WITNESSES

1. Robert Mooers
2. Amy Watson
3. Janeen Goodman
4. Jacob Bouie
5. William "Bill" Moon
6. John Mooers
7. Kim Secakuku
8. Yolanda Polequaptewa **11/13/18**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

I here by certify that on November 13, 18, I caused the foregoing document to be electronically filed with the Clerk of the Court through the CM/ECF system, which will send a notice of electronic filing to all parties of record.

/s/ Michael J. Khouri  
MICHAEL J. KHOURI, ESQ.  
Attorney for the Defendant  
NIKISHNA POLEQUAPTEWA

Case 8:16-cr-00036-CJC Document 153 Filed 11/13/18 Page 9 of 27 Page ID #:2368

NICOLA T. HANNA  
United States Attorney  
DENNISE D. WILLETT  
Assistant United States Attorney  
Chief, Santa Ana Branch Office  
VIBHAV MITTAL (Cal. Bar No. 257874)  
BRADLEY E. MARRETT (Cal. Bar No. 288079)  
Assistant United States Attorneys  
8000 United States Courthouse  
411 West Fourth Street  
Santa Ana, California 92701  
Telephone: (714) 338-3534/3505  
Facsimile: (714) 338-3708  
E-mail: vibhav.mittal@usdoj.gov  
bradley.marrett@usdoj.gov

Attorneys for Plaintiff  
UNITED STATES OF AMERICA

UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
v.  
  
NIKISHNA POLEQUAPTEWA,  
  
Defendant.

No. SA CR 16-36-CJC

GOVERNMENT'S SECOND AMENDED  
EXHIBIT LIST

Trial Date: November 6, 2018  
Trial Time: 8:30 a.m.

Plaintiff United States of America, by and through its counsel  
of record, the United States Attorney for the Central District of  
California, hereby submits the attached revised list of exhibits.

The government does not intend to introduce certain exhibits,  
including declarations and reports of investigation, but has them  
available to refresh its witnesses' recollection if necessary.  
Certain exhibit numbers have been intentionally left blank.

1       The government reserves the right to modify this list,  
2 including removing or adding exhibits before and throughout the  
3 trial.

4  
5 Dated: November 9, 2018

Respectfully submitted,

6           NICOLA T. HANNA  
7           United States Attorney

8           DENNISE WILLETT  
9           Assistant United States Attorney  
10          Chief, Santa Ana Branch Office

11           /s/  
12           \_\_\_\_\_  
13           VIBHAV MITTAL  
14           BRADLEY E. MARRETT  
15           Assistant United States Attorneys

16           Attorneys for Plaintiff  
17           UNITED STATES OF AMERICA  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Case 8:16-cr-00036-CJC Document 153 Filed 11/13/18 Page 11 of 27 Page ID #:2370

**United States v. Polequaptewa,**  
**Case No. SA CR 16-36-CJC, Trial Date: November 6, 2018**

**Letters, Emails, and Interview Reports**

No.	Description of Exhibit	Date Identified	Date Admitted	Witness
1.	Defendant's March 3, 2014, Termination Letter from UCI			
2.	Defendant's March 14, 2014, Email to Jaime Fullmer			
3.	Defendant's Redacted Resume	11/8/18	11/8/18	
4.	Defendant's Unredacted Resume			
5.	Defendant's April 10, 2014, NDA	11/7/18	11/7/18	
6.	Defendant's April 16, 2014, Employment Agreement	11/7/18	11/7/18	
7.	January 21, 2015, Letter to Defendant's Wife			
8.	January 21, 2015, Letter to Defendant			
9.	March 13, 2015 Proffer Letter			
10.	March 13, 2015 FD-302			

Case 8:16-cr-00036-CJC Document 153 Filed 11/13/18 Page 12 of 27 Page ID #:2371

**United States v. Polequaptewa,**  
**Case No. SA CR 16-36-CJC, Trial Date: November 6, 2018**

**Letters, Emails, and Interview Reports (continued)**

No.	Description of Exhibit	Date Identified	Date Admitted	Witness
11.	September 10, 2015 FD-302			
12.	Defendant's December 15, 2014, Email to SA Munoz			
13.	Defendant's August 20, 2014, Self-Appraisal Form	11/8/18	11/8/18	
14.	Defendant's March 31, 2014, Email with Jamie Fullmer and Jacob Bouie			

**Summary Charts Prepared by SA Todd Munoz**

No.	Description of Exhibit	Date Identified	Date Admitted	Witness
15.	Time Zone Conversions			
16.	Summary of Items Seized from Mac Pro	11/9/18	11/9/18	
17.	Summary of Last Access Conversion	11/9/18	11/9/18	

Case 8:16-cr-00036-CJC Document 153 Filed 11/13/18 Page 13 of 27 Page ID #:2372

**United States v. Polequaptewa,**  
**Case No. SA CR 16-36-CJC, Trial Date: November 6, 2018**

**Records Related to MacBook Pro**

No.	Description of Exhibit	Date Identified	Date Admitted	Witness
18.	Photos of MacBook Pro	11/7/18	11/7/18	
19.	June 19, 2012, Receipt for Purchase of MacBook Air	11/7/18	11/7/18	
20.	July 9, 2012, Receipt for Purchase of MacBook Pro	11/7/18	11/7/18	
21.	Comcast Subscriber Information for IP Address 50.205.50.98	11/7/18	11/7/18	
22.	Apple Subscriber Information for Defendant	11/7/18	11/7/18	
23.	Apple Record Showing Defendant's Initiation of Wipe Commands	11/7/18	11/7/18	
24.	Apple Record - GCRM	11/7/18	11/7/18	
25.	Apple Record - iTunes Subscriber	11/7/18	11/7/18	
26.	Apple Record - iTunes Update	11/7/18	11/7/18	
27.	Apple Record - iDMS Signons	11/7/18	11/7/18	
28.	Apple Record - My Apple ID and iForgot	11/7/18	11/7/18	
29.	Apple Record - Account Key	11/7/18	11/7/18	
30.	Mac Pro Receipts from Blue Stone	11/8/18	11/8/18	



Case 8:16-cr-00036-CJC Document 153 Filed 11/13/18 Page 14 of 27 Page ID #:2373

**United States v. Polequaptewa,**  
**Case No. SA CR 16-36-CJC, Trial Date: November 6, 2018**

**Records Related to MacBook Pro (continued)**

No.	Description of Exhibit	Date Identified	Date Admitted	Witness
31.	Firefox Log Files Showing Use of Google Account and Amy Watson's Account	11/9/18	11/9/18	
32.	Recent Items PLIST File Showing Access of Synology Server	11/9/18	11/9/18	
33.	Safari PLIST File Showing Defendant's Web Searches	11/9/18	11/9/18	
34.	Safari Services PLIST File Showing Defendant's Web Use	11/9/18	11/9/18	
35.	Email from Defendant Re: JGoodman's Synology Login Information	11/7/18	11/7/18	
36.	Email from Yacobi to Defendant Re: Email login questions	11/8/18	11/8/18	
37.	System Log File Showing Synology Server Access	11/9/18	11/9/18	
38.	SessionStore.JS File Showing Synology Server Access	11/9/18	11/9/18	
39.	Chrome Login Data-journal File			
40.	Email to Defendant Re: MailChimp List Export Complete	11/7/18	11/7/18	

Case 8:16-cr-00036-CJC Document 153 Filed 11/13/18 Page 15 of 27 Page ID #:2374

**United States v. Polequaptewa,**  
**Case No. SA CR 16-36-CJC, Trial Date: November 6, 2018**

**Records Related to MacBook Pro (continued)**

No.	Description of Exhibit	Date Identified	Date Admitted	Witness
41.	Safari Cache Showing Deletion of RMooers From WordPress	11/9/18	11/9/18	
42.	Safari Cache Showing Deletions of 11 Users from WordPress	11/9/18	11/9/18	
43.	Safari Cache Showing Deletions of 12 Users from WordPress	11/9/18	11/9/18	
44.	Safari Cache Showing Login to Bluehost	11/9/18	11/9/18	
45.	Downloaded Zip File with Website Contents	11/9/18	11/9/18	
46.	Trashed Item - Zip File	11/9/18	11/9/18	
47.	November 17, 2014, Email to Defendant from Christopher Irwin Re: Blue Stone email account	11/9/18	11/9/18	
48.	November 18, 2014, Email from Amy Watson to Defendant Re: Blue Stone email account	11/9/18	11/9/18	
49.	November 18, 2014, Email from Defendant to Amy Watson and John Mooers Re: CRM	11/9/18	11/9/18	
50.	November 18, 2014, Email from Defendant to Amy Watson and John Mooers Re: Google Apps Admin	11/8/18	11/8/18	

Case 8:16-cr-00036-CJC Document 153 Filed 11/13/18 Page 16 of 27 Page ID #:2375

**United States v. Polequaptewa,**  
**Case No. SA CR 16-36-CJC, Trial Date: November 6, 2018**

**Records Related to MacBook Pro (continued)**

No.	Description of Exhibit	Date Identified	Date Admitted	Witness
51.	November 18, 2014, Email from Defendant to Amy Watson Re: Google Apps Admin	11/9/18	11/9/18	
52.	November 14, 2014, Email from Cox Business to Defendant Re: Reset Cox "My Account" Password	11/9/18	11/9/18	
53.	Chain of Custody Records for MacBook Pro	11/9/18	11/9/18	
54.				
55.	MailChimp Record Re: Name and Address	11/7/18	11/7/18	
56.	MailChimp Record Re: Payment Details	11/7/18	11/7/18	
57.	MailChimp Log Files Showing November 2014	11/7/18	11/7/18	
58.	MailChimp Record Showing Account Activity	11/7/18	11/7/18	
59.	MailChimp Log Files Showing Exports on November 17, 2014	11/7/18	11/7/18	
60.	MailChimp Log Files Showing Deletions on November 18, 2014	11/7/18	11/7/18	

Case 8:16-cr-00036-CJC Document 153 Filed 11/13/18 Page 17 of 27 Page ID #:2376

United States v. Polequaptewa,  
Case No. SA CR 16-36-CJC, Trial Date: November 6, 2018

Records Related to Google, Verizon, and IP Addresses

No.	Description of Exhibit	Date Identified	Date Admitted	Witness
61.	Defendant's Google Logins	11/7/18	11/7/18	
62.	Verizon Records Showing Defendant's Phone's Use	11/7/18	11/7/18	
63.	Central Ops Record for IP Address 198.72.7.23			
64.	ARIN Record for IP Address 198.72.7.23	11/7/18	11/7/18	
65.	Additional ARIN Record	11/7/18	11/7/18	

Case 8:16-cr-00036-CJC Document 153 Filed 11/13/18 Page 18 of 27 Page ID #:2377

**United States v. Polequaptewa,**  
**Case No. SA CR 16-36-CJC, Trial Date: November 6, 2018**

**Blue Stone Provided Records**

No.	Description of Exhibit	Date Identified	Date Admitted	Witness
66.	Excerpt of Video Taken on November 19, 2014, of Defendant Admitting to Deleting Blue Stone's Files	11/7/18	11/7/18	
66A.	Transcript of Excerpt of Video Taken on November 19, 2014, of Defendant Admitting to Deleting Blue Stone's Files			
67.	Security Breach Report			
68.	Defendant Deleted 111 Files from Google Account	11/8/18	11/8/18	
69.	Defendant's Logins to Google Account	11/8/18	11/8/18	
70.	Defendant's Locations When Accessing Google Account			
71.	Log Showing Defendant Accessing Server from Florida	11/8/18	11/8/18	
72.	Log Showing Bill Moon Folder	11/8/18	11/8/18	
73.	Log Showing Bill Moon Folder Being Accessed from Florida	11/8/18	11/8/18	
74.	Log Showing Accesses After Defendant's Password Changed	11/8/18	11/8/18	
75.	GeoMapLookup for IP Address 198.72.7.73	11/8/18	11/8/18	

Case 8:16-cr-00036-CJC Document 153 Filed 11/13/18 Page 19 of 27 Page ID #:2378

**United States v. Polequaptewa,**  
**Case No. SA CR 16-36-CJC, Trial Date: November 6, 2018**

**Blue Stone Provided Records (continued)**

No.	Description of Exhibit	Date Identified	Date Admitted	Witness
76.	Defendant's Recycle Folder	11/8/18	11/8/18	
77.	MailChimp Bills			
78.	Mountain View Media Bills			
79.	Runner Boys Bills	11/8/18 (Page 1 only)	11/8/18 (Page 1 only)	
80.	Whole Product Marketing Bills	11/8/18 (Page 2 only)	11/8/18 (Page 2 only)	
81.	Conference-Related Bills			
82.	Locksmith Bill			
83.	Defendant's Form W-2	11/8/18	11/8/18	
84.	Personnel Expenses	11/8/18	11/8/18	
85.	EBlasts	11/8/18	11/8/18	
86.	Revenue Breakdown by Year	11/8/18	11/8/18	
87.	Items Deleted by Defendant from Google Drive	11/7/18	11/7/18	
88.	Summary Chart of Bluehost Data			

Case 8:16-cr-00036-CJC Document 153 Filed 11/13/18 Page 20 of 27 Page ID #:2379

**United States v. Polequaptewa,**  
**Case No. SA CR 16-36-CJC, Trial Date: November 6, 2018**

**Other Records**

No.	Description of Exhibit	Date Identified	Date Admitted	Witness
89.	Chain of Custody Related to MacPro	11/9/18	11/9/18	
90.	TFO Mikel's Analysis of Blue Stone's MacPro	11/7/18	11/7/18	
91.	Photos of MacPro	11/7/18	11/7/18	
92.	Photos of Synology Server	11/8/18	11/8/18	
93.	Some Items in Carved Space of MacPro Desktop	11/9/18	11/9/18	
94.	Chart Summarizing Employees that were in Florida on November 17, 2014, and November 18, 2014			
95.	Communications with Robert Mooers in November 2014	11/8/18	11/8/18	
96.	Cox Communications Records	11/7/18	11/7/18	
97.	Bluehost Records	11/7/18	11/7/18	
98.	Blue Stone's IT Infrastructure	11/8/18	11/8/18	
99.	Apple Wipe and Lost Mode Screen Captures by SA Munoz			
100.	Apple Wipe and Lost Mode Screen Captures	11/8/18	11/8/18	

Case 8:16-cr-00036-CJC Document 153 Filed 11/13/18 Page 21 of 27 Page ID #:2380

**United States v. Polequaptewa,**  
**Case No. SA CR 16-36-CJC, Trial Date: November 6, 2018**

**Defendant's Emails Regarding IT and Marketing Work**

No.	Description of Exhibit	Date Identified	Date Admitted	Witness
101.	June 13, 2014 Email Re: Updated IT Priority Plan to J. Mooers and A. Watson	11/8/18	11/8/18	
102.	June 17, 2014 Email Re: Blue Stone Strategy Group DBA:Blue Stone Capital Group to A. Watson	11/8/18	11/8/18	
103.	July 21, 2014 Email Re: Marketing Materials to J. Mooers and A. Watson	11/8/18	11/8/18	
104.	July 23, 2014 Email Re: 4-Week IT Plan to A. Watson	11/8/18	11/8/18	
105.	July 30, 2014 Email Re: MailChimp List Management to J. Fullmer, J. Mooers, and A. Watson	11/8/18	11/8/18	
106.	August 29, 2014 Email Re: Q4 Planned Marketing Activities & Budget to J. Mooers, J. Fullmer, B. Moon, and R. Mooers	11/7/18	11/7/18	
107.	October 16, 2014 Email Re: Website DNS Propagation Launch to B. Moon and A. Watson	11/7/18	11/7/18	
108.	October 23, 2014 Email Re: IT & Marketing Update Slides for Board Meeting to B. Moon	11/7/18	11/7/18	



Case 8:16-cr-00036-CJC Document 153 Filed 11/13/18 Page 22 of 27 Page ID #:2381

**United States v. Polequaptewa,**  
**Case No. SA CR 16-36-CJC, Trial Date: November 6, 2018**

**Other Records**

No.	Description of Exhibit	Date Identified	Date Admitted	Witness
109.	Chart Summarizing Defendant's Projects	11/8/18	11/8/18	
110.	Items Deleted by Defendant from Blue Stone's Google Drive	11/8/18	11/8/18	
111.	Additional Synology Logs	11/8/18	11/8/18	
112.	DMV Photos of Witnesses	11/9/18	11/9/18	
113.	Fullmer's Travel Records for November 19, 2014 Trip	11/7/18	11/7/18	
114.	MailChimp Record Re: Removing JGoodman as Admin	11/7/18	11/7/18	
115.				
116.	Chart Re: Passwords Given to Yacobi	11/8/18	11/8/18	
117.	June 26, 2014, Email Re: IT Meeting Today	11/8/18	11/8/18	
118.	November 19, 2014 Email Re: Defendant's Resignation	11/8/18	11/8/18	
119.				

Case 8:16-cr-00036-CJC Document 153 Filed 11/13/18 Page 23 of 27 Page ID #:2382

**United States v. Polequaptewa,**  
**Case No. SA CR 16-36-CJC, Trial Date: November 6, 2018**

**Additional Records Related to MacBook Pro**

No.	Description of Exhibit	Date Identified	Date Admitted	Witness
120.	User Nikishna plist	11/9/18	11/9/18	
121.	November 15-17, 2014 Account Policy Log			
122.	November 14, 2014 Account Policy Log			
123.	November 18, 2014 Account Policy Log			
124.	Login Data - Chrome	11/9/18	11/9/18	
125.	October 26, 2013 e-mail from Southwest Airlines to defendant re: Trip	11/9/18	11/9/18	
126.	July 15, 2014 e-mail from defendant to defendant re: MailChimp Send Test	11/9/18	11/9/18	
127.	November 13, 2014 e-mail from defendant to Leonard LuAnn re: Previously Developed Websites	11/9/18	11/9/18	
128.	November 14, 2014 e-mail from defendant to Amy Watson and John Mooers re: Business Cards Reorder	11/9/18	11/9/18	
129.	November 15, 2014 e-mail from defendant to Mark Palmer and John Mooers re: Password Breach	11/8/18	11/8/18	
130.	November 17, 2014 e-mail from defendant to Leonard LuAnn re: Your Call	11/9/18	11/9/18	
131.	November 18, 2014 e-mail from defendant to John Mooers, Rosa Ruvalcaba, and Robert Mooers re: Blue Stone Testimonials	11/9/18	11/9/18	
132.	Firefox Browse History	11/9/18	11/9/18	
133.	Last Accessed Files on Hard Drive	11/9/18	11/9/18	
134.	Last User Login	11/9/18	11/9/18	
135.	Remote Desktop plist			
136.	Remote Management plist	11/9/18	11/9/18	
137.	Safari History - Marriott Sign In	11/9/18	11/9/18	
138.	Safari History - Netflix	11/9/18	11/9/18	
139.	Safari History - Synology	11/9/18	11/9/18	

Case 8:16-cr-00036-CJC Document 153 Filed 11/13/18 Page 24 of 27 Page ID #:2383

**United States v. Polequaptewa,**  
**Case No. SA CR 16-36-CJC, Trial Date: November 6, 2018**

140.	Safari History - Yootheme	11/9/18	11/9/18	
141.	System Log Last Entries	11/9/18	11/9/18	

**Additional Records Provided by Cox Communications**

142.	Cox Business Online Backup Policy			
143.	Cox Business Customer Service Records	11/7/18	11/7/18	

**Additional Exhibits**

144.	Chain of Custody for UCI's MacBook Pro's Image	11/9/18	11/9/18	
145.	Remote Access Settings (Blank)			
146.	October 23, 2014 Memorandum by Bill Moon	11/7/18	11/7/18	
147.	Remote Access Settings Based on UCI's MacBook Pro	11/9/18	11/9/18	
148.	Mozy Records Related to Blue Stone Strategy Account	11/7/18	11/7/18	
149.	Letters of Recommendation			
150.				

NICOLA T. HANNA  
United States Attorney  
DENNISE D. WILLETT  
Assistant United States Attorney  
Chief, Santa Ana Branch Office  
VIBHAV MITTAL (Cal. Bar No. 257874)  
BRADLEY E. MARRETT (Cal. Bar No. 288079)  
Assistant United States Attorneys  
8000 United States Courthouse  
411 West Fourth Street  
Santa Ana, California 92701  
Telephone: (714) 338-3534/3505  
Facsimile: (714) 338-3708  
E-mail: vibhav.mittal@usdoj.gov  
bradley.marrett@usdoj.gov

Attorneys for Plaintiff  
UNITED STATES OF AMERICA

UNITED STATES DISTRICT COURT  
FOR THE CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
v.  
  
NIKISHNA POLEQUAPTEWA,  
  
Defendant.

No. SA CR 16-36-CJC

GOVERNMENT'S WITNESS LIST

Trial Date: November 6, 2018  
Trial Time: 8:30 a.m.

1 Plaintiff United States of America, by and through its counsel  
2 of record, the United States Attorney for the Central District of  
3 California, hereby submits the attached list of witnesses.

4 The government would request that this list as well as the  
5 names of any defense witnesses be read to potential jurors during  
6 voir dire.

7 The government reserves the right to modify this list,  
8 including removing or adding witnesses throughout the trial. The  
9 government intends to work with counsel on stipulations. Finally,  
10 some of these witnesses may only be for a potential rebuttal case.

11 Dated: November 9, 2018

Respectfully submitted,

12 NICOLA T. HANNA  
13 United States Attorney

14 DENNISE WILLETT  
15 Assistant United States Attorney  
Chief, Santa Ana Branch Office

16 /s/  
17 VIBHAV MITTAL  
18 BRADLEY E. MARRETT  
Assistant United States Attorneys

19 Attorneys for Plaintiff  
20 UNITED STATES OF AMERICA  
21  
22  
23  
24  
25  
26  
27  
--

Case 8:16-cr-00036-CJC Document 153 Filed 11/13/18 Page 27 of 27 Page ID #:2386

**United States v. Polequaptewa,**  
**Case No. SA CR 16-36-CJC, Trial Date: November 6, 2018**

No.	Name
1.	Jamie Fullmer 11/6/18; 11/7/18
2.	Janeen Gordon 11/7/18
3.	Mike Lee 11/8/18
4.	Beverly Mayo 11/9/18
5.	Mar-Sean Mikel 11/7/18
6.	John Mooers 11/8/18
7.	Robert Mooers 11/8/18
8.	Bill Moon 11/7/18
9.	Todd Munoz 11/9/18
10.	Kim Secakuku 11/7/18
11.	Adam Shaw 11/8/18
12.	Mark Surber 11/7/18
13.	Eldad Yacobi 11/8/18
14.	Cox Communications Custodian

**United States District Court  
Central District of California**

UNITED STATES OF AMERICA vs.

Docket No. SACR 16-00036-CJCDefendant Nikishna PolequaptewaSocial Security No. 6 4 0 6Nikishua Numkina Myron; Nikishna  
Numkina Myron; Nikishna Numkina

(Last 4 digits)

akas: Polequaptewa

**JUDGMENT AND PROBATION/COMMITMENT ORDER**

In the presence of the attorney for the government, the defendant appeared in person on this date.

MONTH	DAY	YEAR
07	08	2019

COUNSEL

Michael Khouri, Retained

(Name of Counsel)

PLEA

☐ GUILTY, and the court being satisfied that there is a factual basis for the plea.☐ NOLO  
CONTENDERE☐ NOT  
GUILTY

FINDING

The jury returned a finding/verdict of ☒ GUILTY, on the following offense(s):

Unauthorized Impairment of the Integrity and Availability of Data, Programs, Systems, and Information in violation of 18 U.S.C. § 1030(a)(5)(A), 18 U.S.C. § 1030(c)(4)(B)(i) as charged in Count 1 of the First Superseding Indictment.

**JUDGMENT  
AND PROB/  
COMM  
ORDER**

The Court asked whether there was any reason why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the Court, the Court adjudged the defendant guilty as charged and convicted and ordered that: Pursuant to the Sentencing Reform Act of 1984, it is the judgment of the Court that the defendant, Nikishna Polequaptewa, is hereby committed on the Single-Count First Superseding Indictment to the custody of the Bureau of Prisons for a term of **TWENTY-SEVEN (27) MONTHS.**

It is ordered that the defendant shall pay to the United States a special assessment of \$ 100, which is due immediately. Any unpaid balance shall be due during the period of imprisonment, at the rate of not less than \$25 per quarter, and pursuant to the Bureau of Prisons' Inmate Financial Responsibility Program.

It is further ordered that the defendant shall pay restitution in the total amount of \$53,305.03 pursuant to 18 U.S.C. § 3663A.

The amount of restitution ordered shall be paid as follows:

VictimAmount

Blue Stone Strategy Group

\$53,305.03

The Court finds from a consideration of the record that the defendant's economic circumstances allow for restitution payments pursuant to the following schedule: A partial payment of \$5,000 shall be paid immediately. Restitution shall be due during the period of imprisonment, at the rate of not less than \$25 per quarter, and pursuant to the Bureau of Prisons' Inmate Financial Responsibility Program. If any amount of the restitution remains unpaid after release from custody, nominal monthly payments of at least 10% of defendant's gross monthly income but not less than \$250, whichever is greater, shall be made during the period of supervised release and shall begin 30 days after the

USA vs. Nikishna Polequaptewa

Docket No.: SACR 18-00036-CJC

commencement of supervision. Nominal restitution payments are ordered as the Court finds that the defendant's economic circumstances do not allow for either immediate or future payment of the amount ordered.

Pursuant to 18 U.S.C. § 3612(f)(3)(A), interest on the restitution ordered is waived because the defendant does not have the ability to pay interest. Payments may be subject to penalties for default and delinquency pursuant to 18 U.S.C. § 3612(g).

Pursuant to Guideline § 5E1.2(a), all fines are waived as the Court finds that the defendant has established that he is unable to pay and is not likely to become able to pay any fine in addition to restitution.

The Court recommends that the Bureau of Prisons conduct a mental health evaluation of the defendant and provide all necessary treatment.

The Court strongly recommends that the defendant be housed in an Arizona facility to facilitate visitation with family, friends, and loved ones.

The Court strongly recommends that the Bureau of Prisons allow the defendant to participate in the *Residential Drug Abuse Program (RDAP)* or similar program to assist in treating his drug addiction.

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of **TWO (2) YEARS** under the following terms and conditions:

1. The defendant shall comply with the rules and regulations of the United States Probation & Pretrial Services Office and General Order 18-10, excluding Condition 14 in Section I of that Order, but including the conditions of probation and supervised release set forth in Section III of General Order 18-10.
2. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from custody and at least two periodic drug tests thereafter, not to exceed eight tests per month, as directed by the Probation Officer.
3. During the period of community supervision, the defendant shall pay the special assessment and restitution in accordance with this judgment's orders pertaining to such payment.
4. The defendant shall cooperate in the collection of a DNA sample from the defendant.
5. The defendant shall apply all monies received from income tax refunds, lottery winnings, inheritance, judgments and any anticipated or unexpected financial gains to the outstanding Court-ordered financial obligation.
6. The defendant shall possess and use only those computers and computer-related devices, screen user names, passwords, email accounts, and internet service providers (ISPs) that have been disclosed to the Probation Officer upon commencement of supervision. Any changes or additions are to be disclosed to the Probation Officer prior to the first use. Computers and computer-related devices include personal computers, personal data assistants (PDAs), internet appliances, electronic games, cellular telephones, and digital storage media, as well as their



USA vs. Nikishna Polequaptewa

Docket No.: SACR 18-00036-CJC

peripheral equipment, that can access, or can be modified to access, the internet, electronic bulletin boards, and other computers.

7. All computers, computer-related devices, and their peripheral equipment, used by the defendant shall be subject to search and seizure. This shall not apply to items used at the employment's site, which are maintained and monitored by the employer.
8. The defendant shall comply with the rules and regulations of the Computer Monitoring Program. The defendant shall pay the cost of the Computer Monitoring Program, in an amount not to exceed \$30 per month per device connected to the internet.
9. The defendant shall participate in mental health treatment, which may include evaluation and counseling, until discharged from the program by the treatment provider, with the approval of the Probation Officer.

The Court authorizes the Probation Officer to disclose the Presentence Report, and/or any previous mental health evaluations or reports, to the treatment provider. The treatment provider may provide information (excluding the Presentence report), to State or local social service agencies (such as the State of California, Department of Social Service), for the purpose of the client's rehabilitation.

It is further ordered that the defendant surrender himself to the institution designated by the Bureau of Prisons at or before 12 noon, on Tuesday, September 3, 2019. In the absence of such designation, the defendant shall report on or before the same date and time, to the United States Marshal located at the United States Court House, 411 West Fourth Street, Santa Ana, California 92701-4516.

On government's motion, all underlying counts dismissed.

Bond is exonerated upon surrender.

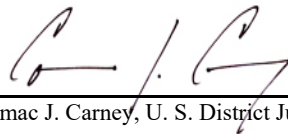
The Court advised the defendant of his right to appeal.

The Court orders the appeal filing fee waived.

In addition to the special conditions of supervision imposed above, it is hereby ordered that the Standard Conditions of Probation and Supervised Release within this judgment be imposed. The Court may change the conditions of supervision, reduce or extend the period of supervision, and at any time during the supervision period or within the maximum period permitted by law, may issue a warrant and revoke supervision for a violation occurring during the supervision period.

July 9, 2019

Date



Cormac J. Carney, U. S. District Judge

It is ordered that the Clerk deliver a copy of this Judgment and Probation/Commitment Order to the U.S. Marshal or other qualified officer.

Clerk, U.S. District Court

July 9, 2019

Filed Date

G. Garcia

By Deputy Clerk

USA vs. Nikishna Polequaptewa

Docket No.: SACR 18-00036-CJC

The defendant must comply with the standard conditions that have been adopted by this court (set forth below).

**STANDARD CONDITIONS OF PROBATION AND SUPERVISED RELEASE**

While the defendant is on probation or supervised release pursuant to this judgment:

1. The defendant must not commit another federal, state, or local crime;
2. The defendant must report to the probation office in the federal judicial district of residence within 72 hours of imposition of a sentence of probation or release from imprisonment, unless otherwise directed by the probation officer;
3. The defendant must report to the probation office as instructed by the court or probation officer;
4. The defendant must not knowingly leave the judicial district without first receiving the permission of the court or probation officer;
5. The defendant must answer truthfully the inquiries of the probation officer, unless legitimately asserting his or her Fifth Amendment right against self-incrimination as to new criminal conduct;
6. The defendant must reside at a location approved by the probation officer and must notify the probation officer at least 10 days before any anticipated change or within 72 hours of an unanticipated change in residence or persons living in defendant's residence;
7. The defendant must permit the probation officer to contact him or her at any time at home or elsewhere and must permit confiscation of any contraband prohibited by law or the terms of supervision and observed in plain view by the probation officer;
8. The defendant must work at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons and must notify the probation officer at least ten days before any change in employment or within 72 hours of an unanticipated change;
9. The defendant must not knowingly associate with any persons engaged in criminal activity and must not knowingly associate with any person convicted of a felony unless granted permission to do so by the probation officer. This condition will not apply to intimate family members, unless the court has completed an individualized review and has determined that the restriction is necessary for protection of the community or rehabilitation;
10. The defendant must refrain from excessive use of alcohol and must not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician;
11. The defendant must notify the probation officer within 72 hours of being arrested or questioned by a law enforcement officer;
12. For felony cases, the defendant must not possess a firearm, ammunition, destructive device, or any other dangerous weapon;
13. The defendant must not act or enter into any agreement with a law enforcement agency to act as an informant or source without the permission of the court;
14. As directed by the probation officer, the defendant must notify specific persons and organizations of specific risks posed by the defendant to those persons and organizations and must permit the probation officer to confirm the defendant's compliance with such requirement and to make such notifications;
15. The defendant must follow the instructions of the probation officer to implement the orders of the court, afford adequate deterrence from criminal conduct, protect the public from further crimes of the defendant; and provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.

USA vs. Nikishna Polequaptewa

Docket No.: SACR 18-00036-CJC

☒ The defendant must also comply with the following special conditions (set forth below).

**STATUTORY PROVISIONS PERTAINING TO PAYMENT AND COLLECTION OF FINANCIAL SANCTIONS**

The defendant must pay interest on a fine or restitution of more than \$2,500, unless the court waives interest or unless the fine or restitution is paid in full before the fifteenth (15th) day after the date of the judgment under 18 U.S.C. § 3612(f)(1). Payments may be subject to penalties for default and delinquency under 18 U.S.C. § 3612(g). Interest and penalties pertaining to restitution, however, are not applicable for offenses completed before April 24, 1996.

If all or any portion of a fine or restitution ordered remains unpaid after the termination of supervision, the defendant must pay the balance as directed by the United States Attorney's Office. 18 U.S.C. § 3613.

The defendant must notify the United States Attorney within thirty (30) days of any change in the defendant's mailing address or residence address until all fines, restitution, costs, and special assessments are paid in full. 18 U.S.C. § 3612(b)(1)(F).

The defendant must notify the Court (through the Probation Office) and the United States Attorney of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay a fine or restitution, as required by 18 U.S.C. § 3664(k). The Court may also accept such notification from the government or the victim, and may, on its own motion or that of a party or the victim, adjust the manner of payment of a fine or restitution under 18 U.S.C. § 3664(k). See also 18 U.S.C. § 3572(d)(3) and for probation 18 U.S.C. § 3563(a)(7).

Payments will be applied in the following order:

1. Special assessments under 18 U.S.C. § 3013;
2. Restitution, in this sequence (under 18 U.S.C. § 3664(i), all non-federal victims must be paid before the United States is paid):
  - Non-federal victims (individual and corporate),
  - Providers of compensation to non-federal victims,
  - The United States as victim;
3. Fine;
4. Community restitution, under 18 U.S.C. § 3663(c); and
5. Other penalties and costs.

**CONDITIONS OF PROBATION AND SUPERVISED RELEASE PERTAINING TO FINANCIAL SANCTIONS**

As directed by the Probation Officer, the defendant must provide to the Probation Officer: (1) a signed release authorizing credit report inquiries; (2) federal and state income tax returns or a signed release authorizing their disclosure and (3) an accurate financial statement, with supporting documentation as to all assets, income and expenses of the defendant. In addition, the defendant must not apply for any loan or open any line of credit without prior approval of the Probation Officer.

The defendant must maintain one personal checking account. All of defendant's income, "monetary gains," or other pecuniary proceeds must be deposited into this account, which must be used for payment of all personal expenses. Records of all other bank accounts, including any business accounts, must be disclosed to the Probation Officer upon request.

The defendant must not transfer, sell, give away, or otherwise convey any asset with a fair market value in excess of \$500 without approval of the Probation Officer until all financial obligations imposed by the Court have been satisfied in full.

These conditions are in addition to any other conditions imposed by this judgment.

USA vs. Nikishna Polequaptewa

Docket No.: SACR 18-00036-CJC

**RETURN**

I have executed the within Judgment and Commitment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
Defendant noted on appeal on \_\_\_\_\_  
Defendant released on \_\_\_\_\_  
Mandate issued on \_\_\_\_\_  
Defendant's appeal determined on \_\_\_\_\_  
Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_  
the institution designated by the Bureau of Prisons, with a certified copy of the within Judgment and Commitment.

United States Marshal

\_\_\_\_\_  
Date By \_\_\_\_\_  
Deputy Marshal

**CERTIFICATE**

I hereby attest and certify this date that the foregoing document is a full, true and correct copy of the original on file in my office, and in my legal custody.

Clerk, U.S. District Court

\_\_\_\_\_  
Filed Date By \_\_\_\_\_  
Deputy Clerk

**FOR U.S. PROBATION OFFICE USE ONLY**

Upon a finding of violation of probation or supervised release, I understand that the court may (1) revoke supervision, (2) extend the term of supervision, and/or (3) modify the conditions of supervision.

These conditions have been read to me. I fully understand the conditions and have been provided a copy of them.

(Signed) \_\_\_\_\_ Date \_\_\_\_\_  
Defendant  
\_\_\_\_\_  
U. S. Probation Officer/Designated Witness Date \_\_\_\_\_

Name Michael J. Khouri  
 Address 24012 Calle De La Plata, Suite 210  
 City, State, Zip Laguna Hills, CA 92653  
 Phone (949) 336-2433  
 Fax (949) 387-0044  
 E-Mail mkhouri@khourilaw.com  
☐ FPD ☐ Appointed ☐ CJA ☐ Pro Per ☒ Retained

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

UNITED STATES OF AMERICA,     <div style="text-align: center;">PLAINTIFF(S),</div> <div style="text-align: center;">v.</div> NIKISHNA POLEQUAPTEWA   <div style="text-align: center;">DEFENDANT(S).</div>	CASE NUMBER:  <div style="text-align: center;">8:16-cr-00036-CJC</div> <hr/> <div style="text-align: center;"><b>NOTICE OF APPEAL</b></div>
---	---

NOTICE IS HEREBY GIVEN that NIKISHNA POLEQUAPTEWA hereby appeals to  
*Name of Appellant*  
 the United States Court of Appeals for the Ninth Circuit from:

**Criminal Matter**

- ☐ Conviction only [F.R.Cr.P. 32(j)(1)(A)]  
☒ Conviction and Sentence  
☐ Sentence Only (18 U.S.C. 3742)  
☐ Pursuant to F.R.Cr.P. 32(j)(2)  
☐ Interlocutory Appeals  
☒ Sentence imposed:  
     27 Months Prison; 2 years Supervised  
     Release, Restitution \$53,305.03, SA \$100.  
☐ Bail status:

**Civil Matter**

- ☐ Order (specify):  
  
☐ Judgment (specify):  
  
☐ Other (specify):

Imposed or Filed on July 9, 2019. Entered on the docket in this action on July 10, 2019.

A copy of said judgment or order is attached hereto.

7/11/19  
 Date

Michael Khouri  
 Signature  
☐ Appellant/ProSe ☒ Counsel for Appellant ☐ Deputy Clerk

**Note:** The Notice of Appeal shall contain the names of all parties to the judgment or order and the names and addresses of the attorneys for each party. Also, if not electronically filed in a criminal case, the Clerk shall be furnished a sufficient number of copies of the Notice of Appeal to permit prompt compliance with the service requirements of FRAP 3(d).

**United States District Court  
Central District of California**

UNITED STATES OF AMERICA vs.

Docket No. SACR 16-00036-CJCDefendant Nikishna PolequaptewaSocial Security No. 6 4 0 6Nikishua Numkina Myron; Nikishna  
Numkina Myron; Nikishna Numkina

(Last 4 digits)

akas: Polequaptewa

**JUDGMENT AND PROBATION/COMMITMENT ORDER**

In the presence of the attorney for the government, the defendant appeared in person on this date.

MONTH	DAY	YEAR
07	08	2019

**COUNSEL**Michael Khouri, Retained

(Name of Counsel)

**PLEA**☐ **GUILTY**, and the court being satisfied that there is a factual basis for the plea.☐ **NOLO  
CONTENDERE**☐ **NOT  
GUILTY****FINDING**The jury returned a finding/verdict of ☒ **GUILTY**, on the following offense(s):

Unauthorized Impairment of the Integrity and Availability of Data, Programs, Systems, and Information in violation of 18 U.S.C. § 1030(a)(5)(A), 18 U.S.C. § 1030(c)(4)(B)(i) as charged in Count 1 of the First Superseding Indictment.

**JUDGMENT  
AND PROB/  
COMM  
ORDER**

The Court asked whether there was any reason why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the Court, the Court adjudged the defendant guilty as charged and convicted and ordered that: Pursuant to the Sentencing Reform Act of 1984, it is the judgment of the Court that the defendant, Nikishna Polequaptewa, is hereby committed on the Single-Count First Superseding Indictment to the custody of the Bureau of Prisons for a term of **TWENTY-SEVEN (27) MONTHS**.

It is ordered that the defendant shall pay to the United States a special assessment of \$ 100, which is due immediately. Any unpaid balance shall be due during the period of imprisonment, at the rate of not less than \$25 per quarter, and pursuant to the Bureau of Prisons' Inmate Financial Responsibility Program.

It is further ordered that the defendant shall pay restitution in the total amount of \$53,305.03 pursuant to 18 U.S.C. § 3663A.

The amount of restitution ordered shall be paid as follows:

<u>Victim</u>	<u>Amount</u>
Blue Stone Strategy Group	\$53,305.03

The Court finds from a consideration of the record that the defendant's economic circumstances allow for restitution payments pursuant to the following schedule: A partial payment of \$5,000 shall be paid immediately. Restitution shall be due during the period of imprisonment, at the rate of not less than \$25 per quarter, and pursuant to the Bureau of Prisons' Inmate Financial Responsibility Program. If any amount of the restitution remains unpaid after release from custody, nominal monthly payments of at least 10% of defendant's gross monthly income but not less than \$250, whichever is greater, shall be made during the period of supervised release and shall begin 30 days after the

USA vs. Nikishna Polequaptewa

Docket No.: SACR 18-00036-CJC

commencement of supervision. Nominal restitution payments are ordered as the Court finds that the defendant's economic circumstances do not allow for either immediate or future payment of the amount ordered.

Pursuant to 18 U.S.C. § 3612(f)(3)(A), interest on the restitution ordered is waived because the defendant does not have the ability to pay interest. Payments may be subject to penalties for default and delinquency pursuant to 18 U.S.C. § 3612(g).

Pursuant to Guideline § 5E1.2(a), all fines are waived as the Court finds that the defendant has established that he is unable to pay and is not likely to become able to pay any fine in addition to restitution.

The Court recommends that the Bureau of Prisons conduct a mental health evaluation of the defendant and provide all necessary treatment.

The Court strongly recommends that the defendant be housed in an Arizona facility to facilitate visitation with family, friends, and loved ones.

The Court strongly recommends that the Bureau of Prisons allow the defendant to participate in the *Residential Drug Abuse Program (RDAP)* or similar program to assist in treating his drug addiction.

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of **TWO (2) YEARS** under the following terms and conditions:

1. The defendant shall comply with the rules and regulations of the United States Probation & Pretrial Services Office and General Order 18-10, excluding Condition 14 in Section I of that Order, but including the conditions of probation and supervised release set forth in Section III of General Order 18-10.
2. The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from custody and at least two periodic drug tests thereafter, not to exceed eight tests per month, as directed by the Probation Officer.
3. During the period of community supervision, the defendant shall pay the special assessment and restitution in accordance with this judgment's orders pertaining to such payment.
4. The defendant shall cooperate in the collection of a DNA sample from the defendant.
5. The defendant shall apply all monies received from income tax refunds, lottery winnings, inheritance, judgments and any anticipated or unexpected financial gains to the outstanding Court-ordered financial obligation.
6. The defendant shall possess and use only those computers and computer-related devices, screen user names, passwords, email accounts, and internet service providers (ISPs) that have been disclosed to the Probation Officer upon commencement of supervision. Any changes or additions are to be disclosed to the Probation Officer prior to the first use. Computers and computer-related devices include personal computers, personal data assistants (PDAs), internet appliances, electronic games, cellular telephones, and digital storage media, as well as their



USA vs. Nikishna Polequaptewa

Docket No.: SACR 18-00036-CJC

peripheral equipment, that can access, or can be modified to access, the internet, electronic bulletin boards, and other computers.

7. All computers, computer-related devices, and their peripheral equipment, used by the defendant shall be subject to search and seizure. This shall not apply to items used at the employment's site, which are maintained and monitored by the employer.
8. The defendant shall comply with the rules and regulations of the Computer Monitoring Program. The defendant shall pay the cost of the Computer Monitoring Program, in an amount not to exceed \$30 per month per device connected to the internet.
9. The defendant shall participate in mental health treatment, which may include evaluation and counseling, until discharged from the program by the treatment provider, with the approval of the Probation Officer.

The Court authorizes the Probation Officer to disclose the Presentence Report, and/or any previous mental health evaluations or reports, to the treatment provider. The treatment provider may provide information (excluding the Presentence report), to State or local social service agencies (such as the State of California, Department of Social Service), for the purpose of the client's rehabilitation.

It is further ordered that the defendant surrender himself to the institution designated by the Bureau of Prisons at or before 12 noon, on Tuesday, September 3, 2019. In the absence of such designation, the defendant shall report on or before the same date and time, to the United States Marshal located at the United States Court House, 411 West Fourth Street, Santa Ana, California 92701-4516.

On government's motion, all underlying counts dismissed.

Bond is exonerated upon surrender.

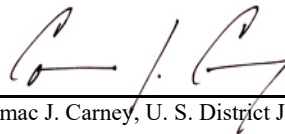
The Court advised the defendant of his right to appeal.

**The Court orders the appeal filing fee waived.**

In addition to the special conditions of supervision imposed above, it is hereby ordered that the Standard Conditions of Probation and Supervised Release within this judgment be imposed. The Court may change the conditions of supervision, reduce or extend the period of supervision, and at any time during the supervision period or within the maximum period permitted by law, may issue a warrant and revoke supervision for a violation occurring during the supervision period.

July 9, 2019

Date



Cormac J. Carney, U. S. District Judge

It is ordered that the Clerk deliver a copy of this Judgment and Probation/Commitment Order to the U.S. Marshal or other qualified officer.

Clerk, U.S. District Court

July 9, 2019

Filed Date

G. Garcia

By Deputy Clerk



USA vs. Nikishna Polequaptewa

Docket No.: SACR 18-00036-CJC

The defendant must comply with the standard conditions that have been adopted by this court (set forth below).

**STANDARD CONDITIONS OF PROBATION AND SUPERVISED RELEASE**

While the defendant is on probation or supervised release pursuant to this judgment:

1. The defendant must not commit another federal, state, or local crime;
2. The defendant must report to the probation office in the federal judicial district of residence within 72 hours of imposition of a sentence of probation or release from imprisonment, unless otherwise directed by the probation officer;
3. The defendant must report to the probation office as instructed by the court or probation officer;
4. The defendant must not knowingly leave the judicial district without first receiving the permission of the court or probation officer;
5. The defendant must answer truthfully the inquiries of the probation officer, unless legitimately asserting his or her Fifth Amendment right against self-incrimination as to new criminal conduct;
6. The defendant must reside at a location approved by the probation officer and must notify the probation officer at least 10 days before any anticipated change or within 72 hours of an unanticipated change in residence or persons living in defendant's residence;
7. The defendant must permit the probation officer to contact him or her at any time at home or elsewhere and must permit confiscation of any contraband prohibited by law or the terms of supervision and observed in plain view by the probation officer;
8. The defendant must work at a lawful occupation unless excused by the probation officer for schooling, training, or other acceptable reasons and must notify the probation officer at least ten days before any change in employment or within 72 hours of an unanticipated change;
9. The defendant must not knowingly associate with any persons engaged in criminal activity and must not knowingly associate with any person convicted of a felony unless granted permission to do so by the probation officer. This condition will not apply to intimate family members, unless the court has completed an individualized review and has determined that the restriction is necessary for protection of the community or rehabilitation;
10. The defendant must refrain from excessive use of alcohol and must not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician;
11. The defendant must notify the probation officer within 72 hours of being arrested or questioned by a law enforcement officer;
12. For felony cases, the defendant must not possess a firearm, ammunition, destructive device, or any other dangerous weapon;
13. The defendant must not act or enter into any agreement with a law enforcement agency to act as an informant or source without the permission of the court;
14. As directed by the probation officer, the defendant must notify specific persons and organizations of specific risks posed by the defendant to those persons and organizations and must permit the probation officer to confirm the defendant's compliance with such requirement and to make such notifications;
15. The defendant must follow the instructions of the probation officer to implement the orders of the court, afford adequate deterrence from criminal conduct, protect the public from further crimes of the defendant; and provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner.

USA vs. Nikishna Polequaptewa

Docket No.: SACR 18-00036-CJC

☒ The defendant must also comply with the following special conditions (set forth below).

**STATUTORY PROVISIONS PERTAINING TO PAYMENT AND COLLECTION OF FINANCIAL SANCTIONS**

The defendant must pay interest on a fine or restitution of more than \$2,500, unless the court waives interest or unless the fine or restitution is paid in full before the fifteenth (15th) day after the date of the judgment under 18 U.S.C. § 3612(f)(1). Payments may be subject to penalties for default and delinquency under 18 U.S.C. § 3612(g). Interest and penalties pertaining to restitution, however, are not applicable for offenses completed before April 24, 1996.

If all or any portion of a fine or restitution ordered remains unpaid after the termination of supervision, the defendant must pay the balance as directed by the United States Attorney's Office. 18 U.S.C. § 3613.

The defendant must notify the United States Attorney within thirty (30) days of any change in the defendant's mailing address or residence address until all fines, restitution, costs, and special assessments are paid in full. 18 U.S.C. § 3612(b)(1)(F).

The defendant must notify the Court (through the Probation Office) and the United States Attorney of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay a fine or restitution, as required by 18 U.S.C. § 3664(k). The Court may also accept such notification from the government or the victim, and may, on its own motion or that of a party or the victim, adjust the manner of payment of a fine or restitution under 18 U.S.C. § 3664(k). See also 18 U.S.C. § 3572(d)(3) and for probation 18 U.S.C. § 3563(a)(7).

Payments will be applied in the following order:

1. Special assessments under 18 U.S.C. § 3013;
2. Restitution, in this sequence (under 18 U.S.C. § 3664(i), all non-federal victims must be paid before the United States is paid):
  - Non-federal victims (individual and corporate),
  - Providers of compensation to non-federal victims,
  - The United States as victim;
3. Fine;
4. Community restitution, under 18 U.S.C. § 3663(c); and
5. Other penalties and costs.

**CONDITIONS OF PROBATION AND SUPERVISED RELEASE PERTAINING TO FINANCIAL SANCTIONS**

As directed by the Probation Officer, the defendant must provide to the Probation Officer: (1) a signed release authorizing credit report inquiries; (2) federal and state income tax returns or a signed release authorizing their disclosure and (3) an accurate financial statement, with supporting documentation as to all assets, income and expenses of the defendant. In addition, the defendant must not apply for any loan or open any line of credit without prior approval of the Probation Officer.

The defendant must maintain one personal checking account. All of defendant's income, "monetary gains," or other pecuniary proceeds must be deposited into this account, which must be used for payment of all personal expenses. Records of all other bank accounts, including any business accounts, must be disclosed to the Probation Officer upon request.

The defendant must not transfer, sell, give away, or otherwise convey any asset with a fair market value in excess of \$500 without approval of the Probation Officer until all financial obligations imposed by the Court have been satisfied in full.

These conditions are in addition to any other conditions imposed by this judgment.

USA vs. Nikishna Polequaptewa

Docket No.: SACR 18-00036-CJC

**RETURN**

I have executed the within Judgment and Commitment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
Defendant noted on appeal on \_\_\_\_\_  
Defendant released on \_\_\_\_\_  
Mandate issued on \_\_\_\_\_  
Defendant's appeal determined on \_\_\_\_\_  
Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_  
the institution designated by the Bureau of Prisons, with a certified copy of the within Judgment and Commitment.

United States Marshal

\_\_\_\_\_  
Date By \_\_\_\_\_  
Deputy Marshal

**CERTIFICATE**

I hereby attest and certify this date that the foregoing document is a full, true and correct copy of the original on file in my office, and in my legal custody.

Clerk, U.S. District Court

\_\_\_\_\_  
Filed Date By \_\_\_\_\_  
Deputy Clerk

**FOR U.S. PROBATION OFFICE USE ONLY**

Upon a finding of violation of probation or supervised release, I understand that the court may (1) revoke supervision, (2) extend the term of supervision, and/or (3) modify the conditions of supervision.

These conditions have been read to me. I fully understand the conditions and have been provided a copy of them.

(Signed) \_\_\_\_\_ Date \_\_\_\_\_  
Defendant  
\_\_\_\_\_  
U. S. Probation Officer/Designated Witness Date \_\_\_\_\_

SOUTHERN, APPEAL, CLOSED

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA (Southern Division – Santa Ana)  
CRIMINAL DOCKET FOR CASE #: 8:16-cr-00036-CJC-1**

Case title: USA v. Polequaptewa

Date Filed: 03/24/2016

Date Terminated: 07/09/2019

Assigned to: Judge Cormac J. Carney

Appeals court case number: 19-50231 9th  
Circuit

**Defendant (1)**

**Nikishna Polequaptewa**  
*TERMINATED: 07/09/2019*

represented by **James H Locklin**  
Federal Public Defenders Office  
321 East 2nd Street  
Los Angeles, CA 90012-4206  
213-894-2929  
Fax: 213-894-0081  
Email: [james\\_locklin@fd.org](mailto:james_locklin@fd.org)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**  
*Designation: Public Defender or  
Community Defender Appointment*

**Michael John Khouri**  
Khouri Law Firm APC  
2222 Martin Suite 215  
Irvine, CA 92612  
949-336-2433  
Fax: 949-387-0044  
Email: [mkhouri@khourilaw.com](mailto:mkhouri@khourilaw.com)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**  
*Designation: Retained*

**Behzad Vahidi**  
Khouri Law Firm APC  
2222 Martin Suite 215  
Irvine, CA 92612  
949-336-2433  
Fax: 949-387-0044  
Email: [bvahidi@khourilaw.com](mailto:bvahidi@khourilaw.com)  
**ATTORNEY TO BE NOTICED**  
*Designation: Retained*

**Brianna Fuller Mircheff**  
Federal Public Defenders Office  
321 East 2nd Street  
Los Angeles, CA 90012-4202  
213-894-4784  
Fax: 213-894-0081  
Email: [brianna\\_mircheff@fd.org](mailto:brianna_mircheff@fd.org)  
**TERMINATED: 10/25/2019**  
*Designation: Public Defender or  
Community Defender Appointment*

**Caitlin E Dukes**  
Kouri Law Firm APC  
24012 Calle de la Plata Suite 210  
Laguna Hills, CA 92653

**Polequaptewa ER 1298**

949-336-2433  
Fax: 949-387-0044  
Email: [cdukes@khourilaw.com](mailto:cdukes@khourilaw.com)  
**ATTORNEY TO BE NOTICED**  
*Designation: Retained*

**Pending Counts**

18:1030(a)(5)(A)(c)(4)(B)(i)(c)(4)(A)(i)(I):  
Unauthorized Impairment of the Integrity  
and Availability of Data, Programs,  
Systems, and Information  
(1s)

**Disposition**

Defendant is committed to the custody of  
the Bureau of Prisons for a term of 27  
MONTHS. Supervised release for 2  
YEARS. Special assessment 100. All fines  
waived. Restitution 53,305.03.

**Highest Offense Level (Opening)**

Felony

**Terminated Counts**

18:1030(a)(5)(A)(c)(4)(B)(i)(c)(4)(A)(i)(I):  
Unauthorized Impairment of a Protected  
Computer  
(1)

**Disposition**

Dismissed on the Government's Motion.

**Highest Offense Level (Terminated)**

Felony

**Complaints**

None

**Disposition**

---

**Plaintiff**

USA

represented by **Bradley Edward Marrett**  
AUSA – Office of US Attorney  
General Crimes Section  
411 West Fourth Street  
Santa Ana, CA 92701  
714-338-3505  
Fax: 714-338-3708  
Email: [bradley.marrett@usdoj.gov](mailto:bradley.marrett@usdoj.gov)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**  
*Designation: Assistant US Attorney*

**Vibhav Mittal**  
AUSA – Office of US Attorney  
Santa Ana Division  
411 West Fourth Street Suite 8000  
Santa Ana, CA 92701  
714-338-3534  
Fax: 714-338-3708  
Email: [vibhav.mittal@usdoj.gov](mailto:vibhav.mittal@usdoj.gov)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**  
*Designation: Assistant US Attorney*

**Joshua M Robbins**  
Greenberg Gross LLP  
650 Town Center Drive Suite 1700  
Costa Mesa, CA 92626

949-383-2840  
 Fax: 949-383-2801  
 Email: [jrobbins@ggtriallaw.com](mailto:jrobbins@ggtriallaw.com)  
 TERMINATED: 05/13/2016  
 Designation: Assistant US Attorney

Date Filed	#	Docket Text
03/23/2016	<u>6</u>	EX PARTE APPLICATION to Seal Case. Filed by Plaintiff USA as to Defendant Nikishna Polequaptewa. (dg) (Entered: 03/31/2016)
03/23/2016	<u>7</u>	ORDER by Magistrate Judge Jay C. Gandhi: granting <u>6</u> EX PARTE APPLICATION to Seal Case as to Nikishna Polequaptewa (1) (dg) (Entered: 03/31/2016)
03/24/2016	<u>1</u>	INDICTMENT filed as to Nikishna Polequaptewa (1) count(s) 1. Offense occurred in Orange. (dg) Modified on 2/14/2020 (mhe). (Entered: 03/31/2016)
03/24/2016	<u>2</u>	CASE SUMMARY filed by AUSA Joshua M. Robbins as to Defendant Nikishna Polequaptewa; defendants Year of Birth: 1968 (dg) (Entered: 03/31/2016)
03/24/2016	<u>4</u>	MEMORANDUM filed by Plaintiff USA as to Defendant Nikishna Polequaptewa. This criminal action, being filed on 3/24/16, was not pending in the U. S. Attorneys Office before the date on which Judge Andre Birotte Jr and Judge Michael W. Fitzgerald began receiving criminal matters. (dg) (Entered: 03/31/2016)
03/24/2016	<u>5</u>	MEMORANDUM filed by Plaintiff USA as to Defendant Nikishna Polequaptewa Re Magistrate Judge Jacqueline Chooljian, Magistrate Judge Patrick J. Walsh, Magistrate Judge Sheri Pym, Magistrate Judge Michael Wilner, Magistrate Judge Jean Rosenbluth, Magistrate Judge Alka Sagar, Magistrate Judge Douglas McCormick, and Magistrate Judge Rozella Oliver (dg) (Entered: 03/31/2016)
05/06/2016	<u>8</u>	REPORT COMMENCING CRIMINAL ACTION as to Defendant Nikishna Polequaptewa; defendants Year of Birth: 1982; date of arrest: 5/6/2016 (mt) (Entered: 05/06/2016)
05/06/2016	<u>9</u>	MINUTES OF POST-INDICTMENT ARRAIGNMENT: held before Magistrate Judge Jay C. Gandhi as to Defendant Nikishna Polequaptewa (1) Count 1. Defendant arraigned, states true name: As charged. Attorney: Michael John Khouri for Nikishna Polequaptewa, Retained, present. Defendant's first appearance. Court orders bail set for Nikishna Polequaptewa (1) \$25,000.00 See attached copy of the bond. Defendant entered not guilty plea to all counts as charged. Case assigned to Judge Cormac J. Carney. Jury Trial set for 6/28/2016 08:30 AM before Judge Cormac J. Carney. Pretrial Conference set for 6/20/2016 09:00 AM before Judge Cormac J. Carney. Defendant and counsel are ordered to appear. Counsel are referred to the assigned judge's trial/discovery order located on the Court's website, Judges' Procedures and Schedules. Trial estimate: 5 days. Release order issued 36816. Court Smart: CS 5/6/16. (mt) (Entered: 05/06/2016)
05/06/2016	<u>10</u>	STATEMENT OF CONSTITUTIONAL RIGHTS filed by Defendant Nikishna Polequaptewa (mt) (Entered: 05/06/2016)
05/06/2016	<u>11</u>	DESIGNATION AND APPEARANCE OF COUNSEL; filed by Michael John Khouri appearing for Nikishna Polequaptewa (mt) (Entered: 05/06/2016)
05/06/2016	<u>12</u>	ARREST WARRANT RETURNED Executed on 5/6/2016 as to Defendant Nikishna Polequaptewa. (mt) (Entered: 05/06/2016)
05/06/2016	<u>13</u>	BOND AND CONDITIONS OF RELEASE filed as to Defendant Nikishna Polequaptewa conditions of release: \$25,000 Appearance Bond approved by Magistrate Judge Jay C. Gandhi. (mt) (Entered: 05/06/2016)
05/06/2016	<u>14</u>	REDACTED - AFFIDAVIT OF SURETIES (No Justification - Pursuant to Local Criminal Rule 46-5.2.8) in the amount of \$25,000 by surety: Yolanda Polequaptewa for Bond and Conditions (CR-1) <u>13</u> . Filed by Defendant Nikishna Polequaptewa (mt) (Entered: 05/06/2016)
05/06/2016	<u>15</u>	UNREDACTED AFFIDAVIT OF SURETY (NO JUSTIFICATION) filed by Defendant Nikishna Polequaptewa re: Redacted Affidavit of Surety (No

		Justification)(CR-4) <u>14</u> (mt) (Entered: 05/06/2016)
05/13/2016	<u>16</u>	NOTICE OF APPEARANCE OR REASSIGNMENT of AUSA Vibhav Mittal on behalf of Plaintiff USA. Filed by Plaintiff USA. (Attorney Vibhav Mittal added to party USA(pty:pla))(Mittal, Vibhav) (Entered: 05/13/2016)
05/17/2016	<u>17</u>	STIPULATION to Continue Trial from 6/28/16 to 12/6/16 , STIPULATION re: excludable delay from 6/28/16 to 12/6/16 filed by Plaintiff USA as to Defendant Nikishna Polequaptewa (Attachments: # <u>1</u> Proposed Order)(Mittal, Vibhav) (Entered: 05/17/2016)
05/18/2016	<u>18</u>	ORDER by Judge Cormac J. Carney as to Defendant Nikishna Polequaptewa: Continuing Trial Date and Findings Regarding Excludable Time Periods Pursuant to Speedy Trial Act. Jury Trial continued to 12/6/2016 08:30 AM before Judge Cormac J. Carney. Pretrial Conference continued to 11/21/2016 11:00 AM before Judge Cormac J. Carney. The time period of June 28, 2016, to December 6, 2016 is excludable. (mt) (Entered: 05/18/2016)
05/24/2016	<u>19</u>	COMPACT DISC Order for date of proceedings 5/6/2016 to 5/6/2016 as to Defendant Nikishna Polequaptewa Court will contact Leo Martinez at leo.martinez@usdoj.gov with any questions regarding this order. Transcript portion requested: Other: Initial Appearance – 5/6/2016. U.S. Government attorney. No fee required.(Mittal, Vibhav) (Entered: 05/24/2016)
05/25/2016	<u>20</u>	TRANSCRIPT ORDER as to Defendant Nikishna Polequaptewa DCN number: R11023 for Court Smart (CS). Order for: Criminal Non Appeal. Category: Ordinary. Transcript preparation will not begin until payment has been satisfied with the court recorder.(Mittal, Vibhav) (Entered: 05/25/2016)
06/17/2016	<u>21</u>	STIPULATION for Order Re: Discovery filed by Plaintiff USA as to Defendant Nikishna Polequaptewa (Attachments: # <u>1</u> Proposed Order)(Mittal, Vibhav) (Entered: 06/17/2016)
06/17/2016	<u>22</u>	STIPULATION for Order Re: Discovery filed by Plaintiff USA as to Defendant Nikishna Polequaptewa (Attachments: # <u>1</u> Proposed Order)(Mittal, Vibhav) (Entered: 06/17/2016)
06/17/2016	<u>23</u>	NOTICE of Errata filed by Plaintiff USA as to Defendant Nikishna Polequaptewa RE: Stipulation for Order <u>21</u> . (Mittal, Vibhav) (Entered: 06/17/2016)
06/20/2016	<u>24</u>	STIPULATED PROTECTIVE ORDER by Judge Cormac J. Carney. (mba) (Entered: 06/21/2016)
06/28/2016	<u>25</u>	TRANSCRIPT filed as to Defendant Nikishna Polequaptewa for proceedings held on 5/6/2016. Court Reporter/Electronic Court Recorder: BABYKIN COURTHOUSE SERVICES, phone number (626) 963-0566. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Electronic Court Recorder before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Notice of Intent to Redact due within 7 days of this date. Redaction Request due 7/19/2016. Redacted Transcript Deadline set for 7/29/2016. Release of Transcript Restriction set for 9/26/2016.(at) (Entered: 07/01/2016)
06/28/2016	<u>26</u>	NOTICE OF FILING TRANSCRIPT filed as to Defendant Nikishna Polequaptewa for proceedings 5/6/2016; 2:07 p.m. re Transcript <u>25</u> THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY.(at) TEXT ONLY ENTRY (Entered: 07/01/2016)
08/11/2016	<u>27</u>	STIPULATION to Continue Trial from 12-6-16 to 6-27-17 , STIPULATION re: excludable delay from 12-6-16 to 6-27-17 filed by Plaintiff USA as to Defendant Nikishna Polequaptewa (Attachments: # <u>1</u> Proposed Order)(Mittal, Vibhav) (Entered: 08/11/2016)
08/15/2016	<u>28</u>	ORDER by Judge Cormac J. Carney as to Defendant Nikishna Polequaptewa: Continuing Trial Date and Findings Regarding Excludable Time Periods Pursuant to Speedy Trial Act. Jury Trial continued to 6/27/2017 08:30 AM before Judge Cormac J. Carney. Pretrial Conference continued to 6/19/2017 09:00 AM before Judge Cormac J. Carney. The time period of December 6, 2016, to June 27, 2017 is excludable. (mt) (Entered: 08/15/2016)



02/17/2017	<u>29</u>	STIPULATION to Continue Trial from 6-27-17 to 1-23-18 , STIPULATION re: excludable delay from 6-27-17 to 1-23-18 filed by Plaintiff USA as to Defendant Nikishna Polequaptewa (Attachments: # <u>1</u> Proposed Order)(Mittal, Vibhav) (Entered: 02/17/2017)
02/21/2017	<u>30</u>	ORDER by Judge Cormac J. Carney as to Defendant Nikishna Polequaptewa: Continuing Trial Date and Findings Regarding Excludable Time Periods Pursuant to Speedy Trial Act. Jury Trial continued to 1/23/2018 08:30 AM before Judge Cormac J. Carney. Pretrial Conference continued to 1/8/2018 09:00 AM before Judge Cormac J. Carney. The time period of June 27, 2017, to January 23, 2018 is excludable. (mt) (Entered: 02/22/2017)
11/16/2017	<u>31</u>	STIPULATION to Continue Trial from 1-23-18 to 6-19-18 , STIPULATION re: excludable delay from 1-23-18 to 6-19-18 filed by Plaintiff USA as to Defendant Nikishna Polequaptewa (Attachments: # <u>1</u> Proposed Order)(Mittal, Vibhav) (Entered: 11/16/2017)
11/16/2017	<u>32</u>	ORDER by Judge Cormac J. Carney as to Defendant Nikishna Polequaptewa: Continuing Trial Date and Findings Regarding Excludable Time Periods Pursuant to Speedy Trial Act. Jury Trial continued to 6/19/2018 08:30 AM before Judge Cormac J. Carney. Pretrial Conference continued to 6/11/2018 09:00 AM before Judge Cormac J. Carney. The time period of January 23, 2018, to June 19, 2018 is excludable. (mt) (Entered: 11/17/2017)
02/02/2018	<u>33</u>	NOTICE OF MOTION AND MOTION to Suppress Defendant's Laptop and any Evidence Seized from the Laptop Filed by Defendant Nikishna Polequaptewa. Motion set for hearing on 3/26/2018 at 09:00 AM before Judge Cormac J. Carney. (Attachments: # <u>1</u> Declaration ISO Motion to Suppress, # <u>2</u> Proposed Order) (Khouri, Michael) (Entered: 02/02/2018)
02/07/2018	<u>34</u>	STIPULATION to Continue Hearing on Motion to Suppress from 3/26/18 to 5/7/18 filed by Plaintiff USA as to Defendant Nikishna Polequaptewa (Attachments: # <u>1</u> Proposed Order)(Mittal, Vibhav) (Entered: 02/07/2018)
02/07/2018	<u>35</u>	ORDER CONTINUING HEARING DATE AND ADJUSTING BRIEFING SCHEDULE by Judge Cormac J. Carney. FOR GOOD CAUSE SHOWN: 1. The hearing in this matter on defendants motion to suppress is continued from March 26, 2018, to May 21, 2018, at 11:00 a.m. 2. The governments opposition brief is due on April 16, 2018, and any reply brief is due on April 23, 2018. 3. Defendant shall appear in Courtroom 9B of the Federal Courthouse, 411 West Fourth Street, Santa Ana, California 92701 on May 21, 2018, at 11:00 a.m. (es) (Entered: 02/08/2018)
04/16/2018	<u>36</u>	OPPOSITION to NOTICE OF MOTION AND MOTION to Suppress Defendant's Laptop and any Evidence Seized from the Laptop <u>33</u> filed by Plaintiff USA as to Defendant NIKISHNA POLEQUAPTEWA. (Attachments: # <u>1</u> Exhibit 1 – Professor Johnson's Consent Form, # <u>2</u> Exhibit 2 – Bluestone's Loss Estimate, # <u>3</u> Exhibit 3 – Portion of Bluestone's 11/20/14 Complaint, # <u>4</u> Declaration Nidavone Niravanh, # <u>5</u> Declaration Elizabeth Trammell, # <u>6</u> Declaration Deputy Laughten Hall)(Mittal, Vibhav) (Entered: 04/16/2018)
04/23/2018	<u>37</u>	REPLY NOTICE OF MOTION AND MOTION to Suppress Defendant's Laptop and any Evidence Seized from the Laptop <u>33</u> filed by Defendant Nikishna Polequaptewa. (Khouri, Michael) (Entered: 04/23/2018)
04/27/2018	<u>38</u>	EX PARTE APPLICATION for Order for PRECLUDING THE NEED FOR THE APPEARANCE OF THE GOVERNMENTS DECLARANTS Filed by Plaintiff USA as to Defendant Nikishna Polequaptewa. (Attachments: # <u>1</u> Proposed Order) (Mittal, Vibhav) (Entered: 04/27/2018)
05/04/2018	<u>39</u>	ORDER by Judge Cormac J. Carney as to Nikishna Polequaptewa (1): Denying MOTION to Suppress Evidence <u>33</u> . (mt) (Entered: 05/04/2018)
05/31/2018	<u>40</u>	NOTICE OF APPEARANCE OR REASSIGNMENT of AUSA Bradley Edward Marrett on behalf of Plaintiff USA. Filed by Plaintiff USA. (Attorney Bradley Edward Marrett added to party USA(pty:pla))(Marrett, Bradley) (Entered: 05/31/2018)
06/01/2018	<u>41</u>	PROPOSED JURY VERDICT filed by Plaintiff USA as to Defendant Nikishna Polequaptewa (Mittal, Vibhav) (Entered: 06/01/2018)



06/01/2018	<u>42</u>	JOINT PROPOSED STATEMENT OF THE CASE filed by Plaintiff USA as to Defendant Nikishna Polequaptewa (Mittal, Vibhav) (Entered: 06/01/2018)
06/04/2018	<u>43</u>	NOTICE OF MOTION AND MOTION in Limine to Admit Evidence <i>and Exclude Irrelevant Evidence and Argument</i> Filed by Plaintiff USA as to Defendant Nikishna Polequaptewa Motion set for hearing on 6/11/2018 at 09:00 AM before Judge Cormac J. Carney. (Attachments: # <u>1</u> Exhibit 1, # <u>2</u> Exhibit 2, # <u>3</u> Exhibit 3, # <u>4</u> Exhibit 4, # <u>5</u> Exhibit 5)(Marrett, Bradley) (Entered: 06/04/2018)
06/04/2018	<u>44</u>	EXHIBIT LIST filed by Defendant Nikishna Polequaptewa (Khoury, Michael) (Entered: 06/04/2018)
06/04/2018	<u>45</u>	WITNESS LIST filed by Defendant Nikishna Polequaptewa (Khoury, Michael) (Entered: 06/04/2018)
06/04/2018	<u>46</u>	PROPOSED JURY INSTRUCTIONS (Disputed set) filed by Plaintiff USA as to Defendant Nikishna Polequaptewa (Mittal, Vibhav) (Entered: 06/04/2018)
06/04/2018	<u>47</u>	PROPOSED JURY INSTRUCTIONS (Joint set) filed by Plaintiff USA as to Defendant Nikishna Polequaptewa (Mittal, Vibhav) (Entered: 06/04/2018)
06/04/2018	<u>48</u>	WITNESS LIST filed by Plaintiff USA as to Defendant Nikishna Polequaptewa (Mittal, Vibhav) (Entered: 06/04/2018)
06/04/2018	<u>49</u>	PROPOSED VOIR DIRE QUESTIONS filed by Plaintiff USA as to Defendant Nikishna Polequaptewa (Mittal, Vibhav) (Entered: 06/04/2018)
06/04/2018	<u>50</u>	EXHIBIT LIST filed by Plaintiff USA as to Defendant Nikishna Polequaptewa (Mittal, Vibhav) (Entered: 06/04/2018)
06/07/2018	<u>51</u>	NOTICE of Manual Filing of Government's Ex Parte Application, Proposed Order filed by Plaintiff USA as to Defendant Nikishna Polequaptewa (Mittal, Vibhav) (Entered: 06/07/2018)
06/08/2018	<u>52</u>	PROPOSED JURY INSTRUCTIONS AT THE BEGINNING OF TRIAL (twdb) (Entered: 06/08/2018)
06/08/2018	<u>53</u>	PROPOSED JURY INSTRUCTIONS (twdb) (Entered: 06/08/2018)
06/08/2018	<u>54</u>	PROPOSED VERDICT FORM (twdb) (Entered: 06/08/2018)
06/08/2018	<u>55</u>	NOTICE OF MOTION AND MOTION in Limine to Exclude Evidence of: (1) MacBook Pro Laptop, and (2) Defendant's Termination from UCI Filed by Defendant Nikishna Polequaptewa Motion set for hearing on 6/19/2018 at 08:30 AM before Judge Cormac J. Carney.(Khoury, Michael) (Entered: 06/08/2018)
06/08/2018	<u>56</u>	NOTICE OF MOTION AND MOTION in Limine to Exclude All Expert Testimony and or Reports Filed by Defendant Nikishna Polequaptewa Motion set for hearing on 6/19/2018 at 08:30 AM before Judge Cormac J. Carney.(Khoury, Michael) (Entered: 06/08/2018)
06/08/2018	<u>57</u>	PROPOSED VOIR DIRE QUESTIONS filed by Defendant Nikishna Polequaptewa (Khoury, Michael) (Entered: 06/08/2018)
06/08/2018	<u>59</u>	SEALED DOCUMENT GOVERNMENT'S EX PARTE APPLICATION (es) (Entered: 06/11/2018)
06/08/2018	<u>60</u>	SEALED DOCUMENT ORDER (es) (Entered: 06/11/2018)
06/09/2018	<u>58</u>	OPPOSITION to MOTION in Limine to Exclude All Expert Testimony and or Reports <u>56</u> , MOTION in Limine to Exclude Evidence of: (1) MacBook Pro Laptop, and (2) Defendant's Termination from UCI <u>55</u> filed by Plaintiff USA as to Defendant NIKISHNA POLEQUAPTEWA. (Attachments: # <u>1</u> Declaration Vibhav Mittal)(Mittal, Vibhav) (Entered: 06/09/2018)
06/11/2018	<u>61</u>	MINUTES OF Pretrial Conference held before Judge Cormac J. Carney as to Defendant Nikishna Polequaptewa: The Court rules on the motions in limine as follows: Government's Motion in Limine to Admit Evidence and Exclude Irrelevant Evidence and Argument <u>43</u> : GRANTED IN SUBSTANTIAL PART. Defendant's Motion in Limine to Exclude Evidence of: (1) MacBook Pro Laptop, and (2)

		Defendant's Termination from UCI <u>55</u> : GRANTED IN LIMITED PART. Defendant's Motion in Limine to Exclude All Expert Testimony and or Reports <u>56</u> : DENIED. The parties shall meet and confer and file joint witness list no later than June 14, 2018. Court Reporter: Debbie Hino-Spaan. (mt) (Entered: 06/11/2018)
06/14/2018	<u>62</u>	TRIAL MEMORANDUM filed by Plaintiff USA as to Defendant Nikishna Polequaptewa (Marrett, Bradley) (Entered: 06/14/2018)
06/14/2018	<u>63</u>	WITNESS LIST filed by Plaintiff USA as to Defendant Nikishna Polequaptewa (Mittal, Vibhav) (Entered: 06/14/2018)
06/15/2018	<u>64</u>	EXHIBIT LIST filed by Plaintiff USA as to Defendant Nikishna Polequaptewa (Mittal, Vibhav) (Entered: 06/15/2018)
06/18/2018	<u>65</u>	EXHIBIT LIST filed by Defendant Nikishna Polequaptewa (Khouri, Michael) (Entered: 06/18/2018)
06/19/2018	<u>66</u>	WITNESS LIST filed by Plaintiff USA as to Defendant Nikishna Polequaptewa (Marrett, Bradley) (Entered: 06/19/2018)
06/19/2018	<u>68</u>	MINUTES OF JURY TRIAL – BEGUN (Jury Impanelment) – 1st Day held before Judge Cormac J. Carney: Jury selection begun as to Defendant Nikishna Polequaptewa (1) on Count 1. Jury impaneled and sworn. Opening statements made. Witnesses called, sworn and testified. Exhibits identified and admitted. Jury Trial continued to 6/20/2018 08:30 AM before Judge Cormac J. Carney. Indictment read. Court Reporter: Debbie Hino-Spaan; Miriam Baird. (mt) (Entered: 06/20/2018)
06/20/2018	<u>67</u>	STIPULATION RE: ADMISSIBILITY OF EVIDENCE filed by Plaintiff USA as to Defendant Nikishna Polequaptewa (Mittal, Vibhav) (Entered: 06/20/2018)
06/20/2018	<u>70</u>	MINUTES OF Jury Trial – 2nd Day held before Judge Cormac J. Carney as to Defendant Nikishna Polequaptewa: Witnesses called, sworn and testified. Exhibits identified and admitted. Jury Trial continued to 6/21/2018 08:30 AM before Judge Cormac J. Carney. Juror #1 excused at the end of the day and to be replaced by alternate juror #1. Court Reporter: Debbie Hino-Spaan. (mt) (Entered: 06/21/2018)
06/21/2018	<u>69</u>	NOTICE OF MOTION AND MOTION in Limine to Admit Defendant's Proffer Statements Filed by Plaintiff USA as to Defendant Nikishna Polequaptewa (Attachments: # <u>1</u> Exhibit)(Marrett, Bradley) (Entered: 06/21/2018)
06/21/2018	<u>71</u>	OPPOSITION to MOTION in Limine to Admit Defendant's Proffer Statements <u>69</u> filed by Defendant Nikishna Polequaptewa. (Attachments: # <u>1</u> Declaration)(Khouri, Michael) (Entered: 06/21/2018)
06/21/2018	<u>72</u>	MINUTES OF Jury Trial – 3rd Day held before Judge Cormac J. Carney as to Defendant Nikishna Polequaptewa: Witnesses called, sworn and testified. Exhibits identified and admitted. Motion for mistrial by Defendant is denied. Jury Trial continued to 6/22/2018 08:30 AM before Judge Cormac J. Carney. The Court addresses Government's Motion in Limine <u>69</u> . Separate order to issue. Court Reporter: Debbie Hino-Spaan; Miriam Baird. (mt) (Entered: 06/22/2018)
06/22/2018	<u>73</u>	MINUTES OF Jury Trial – 4th Day held before Judge Cormac J. Carney as to Defendant Nikishna Polequaptewa: Opening statements made by Defendant. Witnesses called, sworn and testified. Exhibits identified and admitted. Government rests. Motion for judgment of acquittal (FRCrP 29) submitted. Clerk reviewed admitted exhibits with counsel to be submitted to the Jury for deliberation/findings. Jury Trial continued to 6/26/2018 at 8:30 AM before Judge Cormac J. Carney. Court Reporter: Debbie Hino-Spaan. (hr) (Entered: 06/22/2018)
06/22/2018	<u>74</u>	PROPOSED VERDICT FORM (es) (Entered: 06/22/2018)
06/22/2018	<u>75</u>	PROPOSED JURY INSTRUCTIONS (es) (Entered: 06/22/2018)
06/25/2018	<u>76</u>	ORDER DIRECTING THE GOVERNMENT TO LODGE TRANSCRIPTS by Judge Cormac J. Carney as to Defendant Nikishna Polequaptewa: Government is hereby DIRECTED to lodge the transcripts on the docket by June 29, 2018. (mt) (Entered: 06/25/2018)

06/25/2018	<u>77</u>	STIPULATION REGARDING UNDISPUTED FACTS filed by Plaintiff USA as to Defendant Nikishna Polequaptewa (Marrett, Bradley) (Entered: 06/25/2018)
06/26/2018	<u>78</u>	Jury Instructions (Given) by Judge Cormac J. Carney as to Defendant Nikishna Polequaptewa (mt) (Entered: 06/26/2018)
06/26/2018	<u>79</u>	CONFIRMATION OF EXHIBIT REVIEW AND AUTHORIZATION TO SUBMIT EXHIBITS TO JURY as to Defendant Nikishna Polequaptewa (mt) (Entered: 06/26/2018)
06/26/2018	<u>82</u>	MINUTES OF Jury Trial – 5th Day held before Judge Cormac J. Carney as to Defendant Nikishna Polequaptewa. Witnesses called, sworn and testified. Defendant(s) rest. Motion for mistrial by Defendant is denied. Closing arguments made. Court instructs jury. Bailiff sworn. Alternates excused. Jury retires to deliberate. Clerk reviewed admitted exhibits with counsel to be submitted to the Jury for deliberation; The Court and counsel confer regarding Jury Notes #1, #2, and #3. The jury is unable to reach a unanimous verdict and the Court declares a mistrial. Status Conference set for 8/13/2018 03:00 PM before Judge Cormac J. Carney. The Court takes an oral waiver from defendant regarding his right to a speedy trial. Defendant to remain on bond under the same terms and conditions. Court Reporter: Debbie Hino-Spaan. (mt) (Entered: 06/27/2018)
06/26/2018	<u>83</u>	Redacted Jury Note (Number: 1) as to Nikishna Polequaptewa (mt) (Entered: 06/27/2018)
06/26/2018	<u>84</u>	Response to Jury Note (Number: 1) as to Nikishna Polequaptewa (mt) (Entered: 06/27/2018)
06/26/2018	<u>85</u>	Redacted Jury Note (Number: 2) as to Nikishna Polequaptewa (mt) (Entered: 06/27/2018)
06/26/2018	<u>86</u>	Response to Jury Note (Number: 2) as to Nikishna Polequaptewa (mt) (Entered: 06/27/2018)
06/26/2018	<u>87</u>	Redacted Jury Note (Number: 3) as to Nikishna Polequaptewa (mt) (Entered: 06/27/2018)
06/26/2018	<u>88</u>	LIST OF EXHIBITS AND WITNESSES at trial as to Nikishna Polequaptewa. (mt) (Entered: 06/27/2018)
06/26/2018	<u>89</u>	UNREDACTED JURY NOTE NUMBER 1, Re: Redacted Jury Note (Number: 1) <u>83</u> as to Nikishna Polequaptewa (mt) (Entered: 06/27/2018)
06/26/2018	<u>90</u>	UNREDACTED JURY NOTE NUMBER 2, Re: Redacted Jury Note (Number: 2) <u>85</u> as to Nikishna Polequaptewa (mt) (Entered: 06/27/2018)
06/26/2018	<u>91</u>	UNREDACTED JURY NOTE NUMBER 3, Re: Redacted Jury Note (Number: 3) <u>87</u> as to Nikishna Polequaptewa (mt) (Entered: 06/27/2018)
06/27/2018	<u>80</u>	TRANSCRIPT ORDER as to Defendant Nikishna Polequaptewa DCN number: R18CACA1181 for Court Reporter. Order for: Criminal Non Appeal.(Mittal, Vibhav) (Entered: 06/27/2018)
06/27/2018	<u>81</u>	TRANSCRIPT ORDER as to Defendant Nikishna Polequaptewa DCN number: R18A1190 for Court Reporter. Order for: Criminal Non Appeal.(Mittal, Vibhav) (Entered: 06/27/2018)
06/27/2018	<u>92</u>	TRANSCRIPT filed as to Defendant Nikishna Polequaptewa for proceedings held on 6/19/18 day 1 VOL II. Court Reporter/Electronic Court Recorder: Miriam V. Baird, phone number mvb11893@aol.com. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Electronic Court Recorder before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Notice of Intent to Redact due within 7 days of this date. Redaction Request due 7/18/2018. Redacted Transcript Deadline set for 7/30/2018. Release of Transcript Restriction set for 9/25/2018.(Baird, Miriam) (Entered: 06/27/2018)
06/27/2018	<u>93</u>	TRANSCRIPT filed as to Defendant Nikishna Polequaptewa for proceedings held on 6/21/18 day 3 VOL II. Court Reporter/Electronic Court Recorder: Miriam V. Baird, phone number mvb11893@aol.com. Transcript may be viewed at the court public

		terminal or purchased through the Court Reporter/Electronic Court Recorder before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Notice of Intent to Redact due within 7 days of this date. Redaction Request due 7/18/2018. Redacted Transcript Deadline set for 7/30/2018. Release of Transcript Restriction set for 9/25/2018.(Baird, Miriam) (Entered: 06/27/2018)
06/27/2018	<u>94</u>	NOTICE OF FILING TRANSCRIPT filed as to Defendant Nikishna Polequaptewa for proceedings 6/19/18 day 1 VOL II; 6/21/18 day 3 VOL II re Transcript <u>93</u> , <u>92</u> THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY. (Baird, Miriam) TEXT ONLY ENTRY (Entered: 06/27/2018)
06/27/2018	<u>95</u>	STIPULATION to Continue Status Conference from 6-26-18 to 8-13-18 , STIPULATION re: excludable delay from 6-26-18 to 8-13-18 filed by Plaintiff USA as to Defendant Nikishna Polequaptewa (Attachments: # <u>1</u> Proposed Order)(Mittal, Vibhav) (Entered: 06/27/2018)
06/28/2018	<u>96</u>	TRANSCRIPT Jury Trial, Day 2, filed as to Defendant Nikishna Polequaptewa for proceedings held on 6/20/2018 at 8:28 am. *****Transcript may be viewed at the court public terminal or purchased through Court Reporter DEBBIE HINO-SPAAN at: WEBSITE www.debbiehinospaan.com; E-mail, dhinospaan@yahoo.com before the deadline for Release of Transcript restriction. After that date, it may be obtained from the Court Reporter or through PACER. Additional formats of the transcript (ASCII, Condensed, and Word Indexing/Concordance) are also available to be purchased at any time through the Court Reporter. Notice of Intent to Redact due within 7 days of this date.** Redaction Request due 7/19/2018. Redacted Transcript Deadline set for 7/30/2018. Release of Transcript Restriction set for 9/26/2018.(dhs) (Entered: 06/28/2018)
06/28/2018	<u>97</u>	TRANSCRIPT Jury Trial, Day 3, Vol. I, filed as to Defendant Nikishna Polequaptewa for proceedings held on 6/21/2018 at 9:33 am. *****Transcript may be viewed at the court public terminal or purchased through Court Reporter DEBBIE HINO-SPAAN at: WEBSITE www.debbiehinospaan.com; E-mail, dhinospaan@yahoo.com before the deadline for Release of Transcript restriction. After that date, it may be obtained from the Court Reporter or through PACER. Additional formats of the transcript (ASCII, Condensed, and Word Indexing/Concordance) are also available to be purchased at any time through the Court Reporter. Notice of Intent to Redact due within 7 days of this date.** Redaction Request due 7/19/2018. Redacted Transcript Deadline set for 7/30/2018. Release of Transcript Restriction set for 9/26/2018.(dhs) (Entered: 06/28/2018)
06/28/2018	<u>98</u>	TRANSCRIPT Jury Trial, Day 4, filed as to Defendant Nikishna Polequaptewa for proceedings held on 6/22/2018 at 8:29 am. *****Transcript may be viewed at the court public terminal or purchased through Court Reporter DEBBIE HINO-SPAAN at: WEBSITE www.debbiehinospaan.com; E-mail, dhinospaan@yahoo.com before the deadline for Release of Transcript restriction. After that date, it may be obtained from the Court Reporter or through PACER. Additional formats of the transcript (ASCII, Condensed, and Word Indexing/Concordance) are also available to be purchased at any time through the Court Reporter. Notice of Intent to Redact due within 7 days of this date.** Redaction Request due 7/19/2018. Redacted Transcript Deadline set for 7/30/2018. Release of Transcript Restriction set for 9/26/2018.(dhs) (Entered: 06/28/2018)
06/28/2018	<u>99</u>	NOTICE OF FILING TRANSCRIPT filed as to Defendant Nikishna Polequaptewa for proceedings 6/20/2018 at 8:28 a.m.; 6/21/2018 at 9:33 a.m.; 6/22/2018 at 8:29 a.m. re Transcript <u>98</u> , <u>96</u> , <u>97</u> THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY. (dhs) TEXT ONLY ENTRY (Entered: 06/28/2018)
06/29/2018	<u>100</u>	ORDER TO CONTINUE TRIAL DATE AND FINDINGS REGARDING EXCLUDABLE TIME PERIODS PURSUANT TO SPEEDY TRIAL ACT by Judge Cormac J. Carney as to Defendant Nikishna Polequaptewa. Status Conference continued to 8/13/2018 at 03:00 PM before Judge Cormac J. Carney. (twdb) (Entered: 06/29/2018)
07/30/2018	<u>101</u>	STIPULATION to Continue Trial from 8-13-18 to 11-6-18 , STIPULATION re: excludable delay from 8-13-18 to 11-6-18 filed by Plaintiff USA as to Defendant Nikishna Polequaptewa (Attachments: # <u>1</u> Proposed Order)(Mittal, Vibhav) (Entered: 07/30/2018)



07/31/2018	<u>102</u>	ORDER TO CONTINUE Trial Date and Findings Regarding Excludable Time Periods Pursuant to Speedy Trial Act by Judge Cormac J. Carney as to Defendant Nikishna Polequaptewa.( Jury Trial set for 11/6/2018 08:30 AM before Judge Cormac J. Carney., Pretrial Conference set for 10/22/2018 09:00 AM before Judge Cormac J. Carney.) The 8/13/18, status conference is taken off calendar. (twdb) (Entered: 07/31/2018)
08/15/2018	<u>103</u>	TRANSCRIPT ORDER as to Defendant Nikishna Polequaptewa DCN number: R18A1317 for Court Reporter. Order for: Criminal Non Appeal.(Mittal, Vibhav) (Entered: 08/15/2018)
08/29/2018	<u>104</u>	TRANSCRIPT Jury Trial, Day 5, filed as to Defendant Nikishna Polequaptewa for proceedings held on 6/26/2018 at 8:33 a.m. ****Transcript may be viewed at the court public terminal or purchased through Court Reporter DEBBIE HINO-SPAAN at: WEBSITE www.debbiehinospaan.com; E-mail, dhinospaan@yahoo.com before the deadline for Release of Transcript restriction. After that date, it may be obtained from the Court Reporter or through PACER. Additional formats of the transcript (ASCII, Condensed, and Word Indexing/Concordance) are also available to be purchased at any time through the Court Reporter. Notice of Intent to Redact due within 7 days of this date.** Redaction Request due 9/19/2018. Redacted Transcript Deadline set for 10/1/2018. Release of Transcript Restriction set for 11/27/2018.(dhs) (Entered: 08/29/2018)
08/29/2018	105	NOTICE OF FILING TRANSCRIPT filed as to Defendant Nikishna Polequaptewa for proceedings 6/26/2018 at 8:33 a.m. re Transcript <u>104</u> THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY. (dhs) TEXT ONLY ENTRY (Entered: 08/29/2018)
08/29/2018	<u>106</u>	FIRST SUPERSEDING INDICTMENT Filed as to Nikishna Polequaptewa (1) count(s) 1s. (dg) (Entered: 08/30/2018)
08/29/2018	<u>107</u>	CASE SUMMARY filed by AUSA Vibhav Mittal as to Defendant Nikishna Polequaptewa; defendants Year of Birth: 1968 (dg) (Entered: 08/30/2018)
08/29/2018	<u>108</u>	MEMORANDUM filed by Plaintiff USA as to Defendant Nikishna Polequaptewa. This criminal action, being filed on 8/29/18, was not pending in the U. S. Attorneys Office before the date on which Judge Andre Birotte Jr and Michael Fitzgerald began receiving criminal matters. (dg) (Entered: 08/30/2018)
08/29/2018	<u>109</u>	MEMORANDUM filed by Plaintiff USA as to Defendant Nikishna Polequaptewa Re Magistrate Judges Jacqueline Chooljian, Patrick J. Walsh, Sheri Pym, Michael Wilner, Jean Rosenbluth, Alka Sagar, Douglas McCormick, Rozella Oliver, Gail Standish, Steve Kim, John Early and Shashi H. Kewalramani. (dg) (Entered: 08/30/2018)
08/29/2018	<u>110</u>	NOTICE DIRECTING DEFENDANT TO APPEAR for Arraignment on Indictment/Information. Defendant Nikishna Polequaptewa directed to appear on 9/17/18 at 10:00 AM before the Duty Magistrate Judge. (dg) (Entered: 08/30/2018)
09/17/2018	<u>111</u>	STATEMENT OF CONSTITUTIONAL RIGHTS filed by Defendant Nikishna Polequaptewa (twdb) (Entered: 09/17/2018)
09/17/2018	<u>112</u>	MINUTES OF POST-INDICTMENT ARRAIGNMENT: held before Magistrate Judge Karen E. Scott as to Defendant Nikishna Polequaptewa (1) Count 1,1s. Defendant arraigned. Defendant entered not guilty plea to all counts as charged. Attorney: Michael Khouri, Retained present. Case assigned to Judge Cormac J. Carney. Jury Trial set for 11/6/2018 08:30 AM before Judge Cormac J. Carney. Pretrial Conference set for 10/22/2018 09:00 AM before Judge Cormac J. Carney. Defendant and counsel are ordered to appear. Court Smart: CS 9/17/18. (dg) (Entered: 09/19/2018)
09/24/2018	113	TEXT ONLY ENTRY: NOTICE TO PARTIES by District Cormac J. Carney. Effective October 9, 2018, Judge Cormac J. Carney will be located in the First Street U.S. Courthouse, Courtroom 7C, on the 7th floor, located at 350 W. 1st Street, Los Angeles, California 90012. All Court appearances shall be made in Courtroom 7C of the First Street U.S. Courthouse unless otherwise ordered by the Court. All required mandatory chambers copies shall be delivered and placed in the drop box located outside the Clerk's Office on the 4th floor of the First Street Courthouse. Judge Carney's Courtroom Deputy Clerk, Melissa H. Kunig, may be reached at (714)

		<p>338–2849.</p> <p>The location for filing civil and/or criminal documents in paper format exempted from electronic filing is at Edward R. Roybal Federal Building and U.S. Courthouse, 255 East Temple Street, Room 180, Los Angeles, California 90012. Documents under this exemption may also be filed in the Santa Ana or Riverside courthouses.</p> <p>Please refer to Judge Carney's Procedures &amp; Schedules Page on the Court's website <b>**UPDATED AS OF SEPTEMBER 24, 2018**</b> for updated procedures regarding mandatory chambers copies. THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY. (rrey) TEXT ONLY ENTRY (Entered: 09/24/2018)</p>
09/24/2018	<u>114</u>	NOTICE OF MOTION AND MOTION in Limine to Exclude Improper Closing Arguments and Related Evidence , MOTION in Limine to Admit Victim's Settlement Offer Filed by Plaintiff USA as to Defendant Nikishna Polequaptewa (Attachments: # <u>1</u> Exhibit 1 – Defense Closing Argument)(Mittal, Vibhav) (Entered: 09/24/2018)
10/09/2018	<u>115</u>	OPPOSITION to MOTION in Limine to Exclude Improper Closing Arguments and Related Evidence MOTION in Limine to Admit Victim's Settlement Offer <u>114</u> filed by Defendant Nikishna Polequaptewa. (Khoury, Michael) (Entered: 10/09/2018)
10/10/2018	<u>116</u>	PROPOSED JURY INSTRUCTIONS (Joint – Annotated set) filed by Plaintiff USA as to Defendant Nikishna Polequaptewa (Mittal, Vibhav) (Entered: 10/10/2018)
10/10/2018	<u>117</u>	PROPOSED JURY INSTRUCTIONS (Disputed – Annotated set) filed by Plaintiff USA as to Defendant Nikishna Polequaptewa (Mittal, Vibhav) (Entered: 10/10/2018)
10/10/2018	<u>118</u>	PROPOSED JURY VERDICT filed by Plaintiff USA as to Defendant Nikishna Polequaptewa (Mittal, Vibhav) (Entered: 10/10/2018)
10/10/2018	<u>119</u>	STATEMENT filed by Plaintiff USA as to Defendant Nikishna Polequaptewa (Mittal, Vibhav) (Entered: 10/10/2018)
10/10/2018	<u>120</u>	NOTICE OF MOTION AND MOTION to Dismiss Case Filed by Defendant Nikishna Polequaptewa. Motion set for hearing on 10/22/2018 at 11:00 AM before Judge Cormac J. Carney. (Khoury, Michael) (Entered: 10/10/2018)
10/15/2018	<u>121</u>	WITNESS LIST filed by Plaintiff USA as to Defendant Nikishna Polequaptewa (Marrett, Bradley) (Entered: 10/15/2018)
10/15/2018	<u>122</u>	EXHIBIT LIST filed by Plaintiff USA as to Defendant Nikishna Polequaptewa (Marrett, Bradley) (Entered: 10/15/2018)
10/15/2018	<u>123</u>	PROPOSED VOIR DIRE QUESTIONS filed by Plaintiff USA as to Defendant Nikishna Polequaptewa (Marrett, Bradley) (Entered: 10/15/2018)
10/17/2018	<u>124</u>	EXHIBIT LIST filed by Plaintiff USA as to Defendant Nikishna Polequaptewa (Marrett, Bradley) (Entered: 10/17/2018)
10/18/2018	<u>125</u>	OPPOSITION to NOTICE OF MOTION AND MOTION to Dismiss Case <u>120</u> filed by Plaintiff USA as to Defendant Nikishna Polequaptewa. (Mittal, Vibhav) (Entered: 10/18/2018)
10/18/2018	<u>126</u>	PROPOSED VOIR DIRE QUESTIONS filed by Defendant Nikishna Polequaptewa (Khoury, Michael) (Entered: 10/18/2018)
10/18/2018	<u>127</u>	EXHIBIT LIST filed by Defendant Nikishna Polequaptewa (Khoury, Michael) (Entered: 10/18/2018)
10/22/2018	<u>128</u>	MINUTES OF PRETRIAL CONFERENCE; GOVERNMENT'S MOTION IN LIMINE TO (1) PRECLUDE IMPROPER ARGUMENTS; AND (2) ADMIT REBUTTAL EVIDENCE OF BLUE STONE'S STRATEGY GROUP'S CIVIL SETTLEMENT OFFER <u>114</u> ; DEFENDANT'S MOTION TO DISMISS CASE <u>120</u> held before Judge Cormac J. Carney as to Defendant Nikishna Polequaptewa. The Court and counsel discuss proposed jury instructions and various trial related matters as stated on the record. The Court further orders that defense counsel shall not be engaged in any other trials that will interfere with this matter. Court Reporter: Debbie Hino-Spaan. (iv) (Entered: 10/22/2018)

10/22/2018	<u>129</u>	ORDER DENYING DEFENDANT'S MOTION TO DISMISS THE FIRST SUPERSEDING INDICTMENT <u>120</u> by Judge Cormac J. Carney. Defendant's motion to dismiss the indictment is DENIED. (iv) (Entered: 10/22/2018)
10/22/2018	<u>130</u>	ORDER DENYING IN SUBSTANTIAL PART AND GRANTING IN LIMITED PART THE GOVERNMENT'S MOTION IN LIMINE <u>114</u> by Judge Cormac J. Carney. The Government's motion in limine is DENIED IN SUBSTANTIAL PART and GRANTED IN LIMITED PART. (iv) (Entered: 10/22/2018)
10/22/2018	<u>131</u>	STATEMENT OF THE CASE by Judge Cormac J. Carney. (iv) (Entered: 10/22/2018)
10/22/2018	<u>132</u>	JURY INSTRUCTIONS AT THE BEGINNING OF TRIAL by Judge Cormac J. Carney as to Defendant Nikishna Polequaptewa. (iv) (Entered: 10/22/2018)
10/22/2018	<u>133</u>	[DRAFT] JURY INSTRUCTIONS by Judge Cormac J. Carney as to Defendant Nikishna Polequaptewa. (iv) (Entered: 10/22/2018)
10/22/2018	<u>134</u>	[DRAFT] VERDICT FORM by Judge Cormac J. Carney as to Defendant Nikishna Polequaptewa. (iv) (Entered: 10/22/2018)
10/30/2018	<u>135</u>	NOTICE OF MOTION AND MOTION in Limine to Exclude IMPROPER TESTIMONY OF DEFENDANTS WIFE Filed by Plaintiff USA as to Defendant Nikishna Polequaptewa(Mittal, Vibhav) (Entered: 10/30/2018)
11/02/2018	<u>136</u>	TRIAL MEMORANDUM filed by Plaintiff USA as to Defendant Nikishna Polequaptewa (Marrett, Bradley) (Entered: 11/02/2018)
11/02/2018	<u>137</u>	EXHIBIT LIST filed by Plaintiff USA as to Defendant Nikishna Polequaptewa (Mittal, Vibhav) (Entered: 11/02/2018)
11/02/2018	<u>138</u>	NOTICE OF MOTION AND MOTION in Limine to Admit CERTIFIED BUSINESS RECORDS Filed by Plaintiff USA as to Defendant Nikishna Polequaptewa (Attachments: # <u>1</u> Exhibit A – UCI, # <u>2</u> Exhibit B – Comcast, # <u>3</u> Exhibit C – Apple, # <u>4</u> Exhibit D – MailChimp, # <u>5</u> Exhibit E – Google, # <u>6</u> Exhibit F – Verizon, # <u>7</u> Exhibit G – ARIN, # <u>8</u> Exhibit H – Cox 1, # <u>9</u> Exhibit I – Cox 2, # <u>10</u> Exhibit J – Bluehost, # <u>11</u> Exhibit K – Carbonite)(Mittal, Vibhav) (Entered: 11/02/2018)
11/06/2018	<u>139</u>	MINUTES OF JURY TRIAL – BEGUN (Jury Impanelment) – 1st Day held before Judge Cormac J. Carney: Jury selection begun as to Defendant Nikishna Polequaptewa (1). Jury impaneled and sworn. Opening statements made. Witnesses called, sworn and testified. Government's Motion in Limine to Exclude Improper Testimony of Defendant's Wife <u>135</u> is DENIED and Government's Motion in Limine to Admit Certified Business Records <u>138</u> is GRANTED. Case continued to 11/7/2018 at 8:30 a.m. before Judge Cormac J. Carney. Court Reporter: Debbie Hino-Spaan; Marea Woolrich. (iv) (Entered: 11/07/2018)
11/07/2018	<u>140</u>	MINUTES OF Jury Trial – 2nd Day held before Judge Cormac J. Carney as to Defendant Nikishna Polequaptewa: Witnesses called, sworn and testified. Exhibits identified and admitted. Motion for mistrial by Defendant is denied. Case continued to 11/8/2018 at 8:00 AM before Judge Cormac J. Carney. Court Reporter: Debbie Hino-Spaan; Marea Woolrich. (iv) (Entered: 11/08/2018)
11/08/2018	<u>141</u>	MINUTES OF Jury Trial – 3rd Day held before Judge Cormac J. Carney as to Defendant Nikishna Polequaptewa: Witnesses called, sworn and testified. Exhibits identified and admitted. Motion for mistrial by Defendant is denied. The Court individually polls the jury regarding certain exhibits as stated on the record; Juror # 7 is excused for the reasons stated on the record. Pursuant to the parties stipulation, Alternate Juror #2 replaces Juror #7. Case continued to 11/9/2018 at 8:00 AM before Judge Cormac J. Carney. Court Reporter: Debbie Hino-Spaan; Marea Woolrich. (iv) (Entered: 11/09/2018)
11/09/2018	<u>142</u>	MINUTES OF Jury Trial – 4th Day held before Judge Cormac J. Carney as to Defendant Nikishna Polequaptewa: Witnesses called, sworn and testified. Exhibits identified and admitted. Motion for judgment of acquittal is denied. Case continued to 11/13/2018 at 8:00 AM before Judge Cormac J. Carney. Court Reporter: Debbie Hino-Spaan; Marea Woolrich. (iv) (Entered: 11/09/2018)

11/09/2018	<u>145</u>	CONFIRMATION OF EXHIBIT REVIEW AND AUTHORIZATION TO SUBMIT EXHIBITS TO JURY. (iv) (Entered: 11/14/2018)
11/13/2018	<u>143</u>	JURY INSTRUCTIONS by Judge Cormac J. Carney. (iv) (Entered: 11/13/2018)
11/13/2018	<u>144</u>	MINUTES OF Jury Trial – 5th Day held before Judge Cormac J. Carney as to Defendant Nikishna Polequaptewa. Opening statements made. Witnesses called, sworn and testified. Closing arguments made. Jury polled. Verdict reached. Jury finds: Nikishna Polequaptewa (1) Guilty on all counts. Defendant referred to Probation Office for Investigation and Report. Sentencing set for 2/25/2019 at 11:00 AM. Defendant remains on bond pending sentencing under same terms and conditions. The Court and counsel confer regarding Jury Note #1. Court Reporter: Debbie Hino-Spaan. (iv) (Entered: 11/14/2018)
11/13/2018	<u>146</u>	REDACTED JURY NOTE 1 as to Nikishna Polequaptewa. (iv) (Entered: 11/14/2018)
11/13/2018	<u>147</u>	<b>SEALED</b> UNREDACTED JURY NOTE 1 re: Jury Note <u>146</u> . (iv) (Entered: 11/14/2018)
11/13/2018	<u>148</u>	RESPONSE TO JUROR NOTE 1. (iv) (Entered: 11/14/2018)
11/13/2018	<u>149</u>	REDACTED JURY NOTE 2 as to Nikishna Polequaptewa. (iv) (Entered: 11/14/2018)
11/13/2018	<u>150</u>	<b>SEALED</b> UNREDACTED JURY NOTE 2 re: Jury Note <u>149</u> . (iv) (Entered: 11/14/2018)
11/13/2018	<u>151</u>	REDACTED VERDICT FORM. (iv) (Entered: 11/14/2018)
11/13/2018	<u>152</u>	<b>SEALED</b> UNREDACTED VERDICT FORM re: Verdict Form <u>151</u> . (iv) (Entered: 11/14/2018)
11/13/2018	<u>153</u>	LIST OF EXHIBITS AND WITNESSES at trial as to Nikishna Polequaptewa. (iv) (Entered: 11/14/2018)
11/20/2018	<u>154</u>	MINUTES OF (IN CHAMBERS) ORDER REGARDING TRIAL EXHIBIT by Judge Cormac J. Carney as to Defendant Nikishna Polequaptewa: Pursuant to the discussion between the Court and the parties during trial on November 8, 2018, the Court shall make Governments Trial Exhibit 1 a part of the record by filing it under seal on the docket concurrently with this order. (es) (Entered: 11/20/2018)
11/20/2018	<u>155</u>	<b>SEALED DOCUMENT</b> filed. (yl) (Entered: 11/26/2018)
11/30/2018	<u>156</u>	STIPULATION to Continue Sentencing from 2–25–19 to 3–25–19 filed by Plaintiff USA as to Defendant Nikishna Polequaptewa (Attachments: # <u>1</u> Proposed Order)(Mittal, Vibhav) (Entered: 11/30/2018)
12/06/2018	<u>157</u>	ORDER CONTINUING SENTENCING <u>156</u> by Judge Cormac J. Carney. The sentencing in this matter is continued from February 25, 2019, to March 25, 2019, at 10:00 a.m. (iv) (Entered: 12/06/2018)
12/21/2018	<u>158</u>	TRANSCRIPT ORDER as to Defendant Nikishna Polequaptewa DCN number: R19A0259 for Court Reporter. Order for: Criminal Non Appeal.(Mittal, Vibhav) (Entered: 12/21/2018)
01/25/2019	<u>159</u>	TRANSCRIPT, Day 5, Vol. I, filed as to Defendant Nikishna Polequaptewa for proceedings held on 11/13/2018 at 8:40 a.m. ****Transcript may be viewed at the court public terminal or purchased through Court Reporter DEBBIE HINO-SPAAN at: WEBSITE www.debbiehinospaan.com; E-mail, dhinospaan@yahoo.com before the deadline for Release of Transcript restriction. After that date, it may be obtained from the Court Reporter or through PACER. Additional formats of the transcript (ASCII, Condensed, and Word Indexing/Concordance) are also available to be purchased at any time through the Court Reporter. Notice of Intent to Redact due within 7 days of this date.** Redaction Request due 2/15/2019. Redacted Transcript Deadline set for 2/25/2019. Release of Transcript Restriction set for 4/25/2019.(dhs) (Entered: 01/25/2019)
01/25/2019	160	NOTICE OF FILING TRANSCRIPT filed as to Defendant Nikishna Polequaptewa for proceedings 11/13/2018 at 8:40 a.m. re Transcript <u>159</u> THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY. (dhs) TEXT ONLY ENTRY (Entered: 01/25/2019)



03/07/2019	<u>163</u>	MINUTES (IN CHAMBERS) ORDER CONTINUING SENTENCING by Judge Cormac J. Carney: as to Defendant Nikishna Polequaptewa. The Court, on its own motion, hereby CONTINUES the sentencing for the above-captioned defendant set for Monday, March 25, 2019 to Monday, May 13, 2019 at 3:00 p.m. (iv) (Entered: 03/07/2019)
04/29/2019	<u>164</u>	SENTENCING MEMORANDUM filed by Plaintiff USA as to Defendant Nikishna Polequaptewa (Attachments: # <u>1</u> Exhibit Victim Impact Statement)(Mittal, Vibhav) (Entered: 04/29/2019)
05/02/2019	<u>165</u>	SENTENCING MEMORANDUM filed by Defendant Nikishna Polequaptewa (Khoury, Michael) (Entered: 05/02/2019)
05/06/2019	<u>166</u>	MINUTES (IN CHAMBERS) ORDER RE CONSIDERATION OF UPWARD DEPARTURE OR VARIANCE by Judge Cormac J. Carney: as to Defendant Nikishna Polequaptewa. The parties are ordered to submit by noon on Friday, May 10, 2019, a supplemental brief on the issue of loss, and specifically whether an upward departure or variance is warranted. (iv) (Entered: 05/06/2019)
05/06/2019	<u>167</u>	NOTICE OF APPEARANCE of attorney Caitlin E. Dukes, (Retained), appearing on behalf of Defendant Nikishna Polequaptewa, filed by Defendant Nikishna Polequaptewa. (Dukes, Caitlin) (Entered: 05/06/2019)
05/06/2019	<u>168</u>	EX PARTE APPLICATION to Continue Sentencing Hearing from May 13 to July 1. Filed by Defendant Nikishna Polequaptewa. (Attachments: # <u>1</u> Proposed Order) (Khoury, Michael) (Entered: 05/06/2019)
05/06/2019	<u>169</u>	RESPONSE IN OPPOSITION to Sentencing Memorandum <u>165</u> , filed by Plaintiff USA as to Defendant Nikishna Polequaptewa (Mittal, Vibhav) (Entered: 05/06/2019)
05/07/2019	<u>170</u>	OPPOSITION to EX PARTE APPLICATION to Continue Sentencing Hearing from May 13 to July 1. <u>168</u> filed by Plaintiff USA as to Defendant Nikishna Polequaptewa. (Attachments: # <u>1</u> Declaration AUSA V. Mittal)(Mittal, Vibhav) (Entered: 05/07/2019)
05/08/2019	<u>171</u>	MINUTES (IN CHAMBERS) ORDER DENYING WITHOUT PREJUDICE DEFENDANT'S EX PARTE APPLICATION FOR CONTINUANCE <u>168</u> by Judge Cormac J. Carney. Defendant's ex parte application for an order continuing the May 13, 2019 sentencing hearing is DENIED WITHOUT PREJUDICE. (iv) (Entered: 05/08/2019)
05/08/2019	<u>174</u>	EX PARTE APPLICATION to Continue Sentencing Hearing from May 13, 2019 to July 1, 2019. Filed by Defendant Nikishna Polequaptewa. (Attachments: # <u>1</u> Declaration, # <u>2</u> Proposed Order) (Khoury, Michael) (Entered: 05/08/2019)
05/09/2019	<u>175</u>	OPPOSITION to EX PARTE APPLICATION to Continue Sentencing Hearing from May 13, 2019 to July 1, 2019. <u>174</u> filed by Plaintiff USA as to Defendant Nikishna Polequaptewa. (Attachments: # <u>1</u> Declaration of B. Marrett)(Marrett, Bradley) (Entered: 05/09/2019)
05/09/2019	<u>176</u>	Notice of Appearance or Withdrawal of Counsel: for attorney Behzad Vahidi counsel for Defendant Nikishna Polequaptewa. Filed by defendant Nikishna Polequaptewa. (Vahidi, Behzad) (Entered: 05/09/2019)
05/09/2019	<u>177</u>	MINUTES (IN CHAMBERS) ORDER GRANTING DEFENDANT'S EX PARTE APPLICATION FOR CONTINUANCE <u>174</u> by Judge Cormac J. Carney. With reluctance and disappointment, the Court GRANTS Defendant's ex parte application for an order continuing the May 13, 2019 sentencing hearing. The parties shall meet and confer to schedule a new hearing date that is convenient for the victims as soon as reasonably practicable. (iv) (Entered: 05/09/2019)
05/10/2019	<u>178</u>	BRIEF Filedby Defendant Nikishna Polequaptewa <i>Supplemental Brief on Variance RE: Sentencing Memorandum <u>165</u></i> . (Dukes, Caitlin) (Entered: 05/10/2019)
05/16/2019	<u>179</u>	MINUTES OF (IN CHAMBERS) ORDER RESETTING SENTENCING by Judge Cormac J. Carney as to Defendant Nikishna Polequaptewa. The Court hereby RESETS the sentencing for the above-captioned defendant to Monday, July 8, 2019 at 3:00 p.m. (lom) (Entered: 05/16/2019)

06/26/2019	<u>180</u>	MINUTES (IN CHAMBERS) ORDER RE VICTIM'S HOURLY RATES CALCULATION by Judge Cormac J. Carney: as to Defendant Nikishna Polequaptewa. The Government is hereby ORDERED to confer with the victim and submit by noon on Wednesday, July 3, 2019, the information used to support, and an explanation of how, the hourly rates for the eight employees were calculated. (iv) (Entered: 06/26/2019)
06/27/2019	<u>181</u>	TRANSCRIPT ORDER as to Defendant Nikishna Polequaptewa DCN number: R19A1237 for Court Reporter. Order for: Criminal Non Appeal.(Mittal, Vibhav) (Entered: 06/27/2019)
06/27/2019	<u>183</u>	TRANSCRIPT ORDER as to Defendant Nikishna Polequaptewa DCN number: R19A1236 for Court Reporter. Order for: Criminal Non Appeal.(Mittal, Vibhav) (Entered: 06/27/2019)
06/30/2019	<u>184</u>	TRANSCRIPT filed as to Defendant Nikishna Polequaptewa for proceedings held on 11/08/2018 at 1:08 p.m. Court Reporter: Marea Woolrich, phone number mareawoolrich@aol.com. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Electronic Court Recorder before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Notice of Intent to Redact due within 7 days of this date. Redaction Request due 7/22/2019. Redacted Transcript Deadline set for 7/31/2019. Release of Transcript Restriction set for 9/30/2019.(mwo) (Entered: 06/30/2019)
06/30/2019	185	NOTICE OF FILING TRANSCRIPT filed as to Defendant Nikishna Polequaptewa for TRIAL DAY 3, VOLUME II 11/08/2018 at 1:08 p.m. re Transcript <u>184</u> THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY. (mwo) TEXT ONLY ENTRY (Entered: 06/30/2019)
06/30/2019	<u>186</u>	TRANSCRIPT Jury Trial Day 3, Vol. I, filed as to Defendant Nikishna Polequaptewa for proceedings held on 11/8/2018 at 8:11 a.m. *****Transcript may be viewed at the court public terminal or purchased through Court Reporter DEBBIE HINO-SPAAN at: WEBSITE www.debbiehinospaan.com; E-mail, dhinospaan@yahoo.com before the deadline for Release of Transcript restriction. After that date, it may be obtained from the Court Reporter or through PACER. Additional formats of the transcript (ASCII, Condensed, and Word Indexing/Concordance) are also available to be purchased at any time through the Court Reporter. Notice of Intent to Redact due within 7 days of this date.** Redaction Request due 7/22/2019. Redacted Transcript Deadline set for 7/31/2019. Release of Transcript Restriction set for 9/30/2019.(dhs) (Entered: 06/30/2019)
06/30/2019	187	NOTICE OF FILING TRANSCRIPT filed as to Defendant Nikishna Polequaptewa for proceedings 11/8/2018 at 8:11 a.m. re Transcript <u>186</u> THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY. (dhs) TEXT ONLY ENTRY (Entered: 06/30/2019)
07/01/2019	<u>188</u>	GOVERNMENTS EXPLANATION OF HOURLY RATES USED IN GOVERNMENT EXHIBIT 84 filed by Plaintiff USA as to Defendant Nikishna Polequaptewa (Attachments: # <u>1</u> Declaration John Mooers, # <u>2</u> Exhibit Govt Exhibit 84)(Mittal, Vibhav) (Entered: 07/01/2019)
07/08/2019	<u>189</u>	MINUTES OF SENTENCING Hearing held before Judge Cormac J. Carney as to Defendant Nikishna Polequaptewa. Defendant is hereby committed on the Single-Count First Superseding Indictment to the custody of the Bureau of Prisons for a term of TWENTY-SEVEN (27) MONTHS. Supervised release for 2 YEARS. Special assessment \$100. All fines waived. Restitution \$53,305.03. On government's motion, all underlying counts dismissed. Bond exonerated upon surrender. Defendant to surrender not later than 9/3/2019. Defendant advised of right of appeal. Refer to Separate Judgment. Court Reporter: Debbie Hino-Spaan. (iv) (Entered: 07/10/2019)
07/09/2019	<u>190</u>	JUDGMENT AND COMMITMENT by Judge Cormac J. Carney as to Defendant Nikishna Polequaptewa (1). Defendant is hereby committed on the Single-Count First Superseding Indictment to the custody of the Bureau of Prisons for a term of TWENTY-SEVEN (27) MONTHS. Supervised release for 2 YEARS. Special assessment \$100. All fines waived. Restitution \$53,305.03. On government's motion, all underlying counts dismissed. Bond exonerated upon surrender. Defendant to surrender not later than 9/3/2019. Defendant advised of right of appeal. (iv) (Entered: 07/09/2019)

		07/10/2019)
07/12/2019	<u>192</u>	NOTICE OF APPEAL to Appellate Court filed by Defendant Nikishna Polequaptewa re Judgment and Commitment,, <u>190</u> , Jury Trial – Verdict rendered (CR),, <u>144</u> , Sentencing,, <u>189</u> . Filing fee NOT PAID. (Attachments: # <u>1</u> Supplement Judgment waiving filing fee)(Khoury, Michael) (Entered: 07/12/2019)
07/12/2019	<u>193</u>	NOTIFICATION by Circuit Court of Appellate Docket Number 19–50231 as to Defendant Nikishna Polequaptewa, 9th Circuit regarding Notice of Appeal to USCA – Final Judgment, <u>192</u> . (mat) (Entered: 07/15/2019)
09/18/2019	<u>194</u>	ORDER of USCA filed as to Defendant Nikishna Polequaptewa, CCA #19–50231. Appellant's submission of a completed Form CJA 23 is construed as a motion to proceed in forma pauperis. So construed, the motion is granted. The motion of appellants retained counsel, Michael John Khouri, Esq., to withdraw as counsel of record and for appointment of new counsel is granted. Counsel will be appointed by separate order. The (9TH CCA) Clerk shall electronically serve this order on the appointing authority for the Central District of California, who will locate appointed counsel. [See document for all details.] (mat) (Entered: 09/20/2019)
10/09/2019	<u>195</u>	TRANSCRIPT ORDER re: Court of Appeals case number 19–50231, as to Defendant Nikishna Polequaptewa for Court Reporter. Order for: Criminal Appeal. (Attachments: # <u>1</u> SF 1034 Public Voucher)(Mircheff, Brianna) (Entered: 10/09/2019)
10/09/2019	<u>196</u>	TRANSCRIPT ORDER re: Court of Appeals case number 19–50231, as to Defendant Nikishna Polequaptewa for Court Reporter. Order for: Criminal Appeal. (Attachments: # <u>1</u> SF 1034 Public Voucher)(Mircheff, Brianna) (Entered: 10/09/2019)
10/25/2019	<u>197</u>	NOTICE OF APPEARANCE OR REASSIGNMENT of Deputy Public Defender James H Locklin on behalf of Defendant Nikishna Polequaptewa. Filed by Defendant Nikishna Polequaptewa. (Locklin, James) (Entered: 10/25/2019)
11/01/2019	<u>198</u>	TRANSCRIPT ORDER re: Court of Appeals case number 19–50231, as to Defendant Nikishna Polequaptewa for Court Reporter. Order for: Criminal Appeal. (Attachments: # <u>1</u> Voucher)(Locklin, James) (Entered: 11/01/2019)
11/01/2019	<u>199</u>	DESIGNATION OF RECORD ON APPEAL filed by Defendant Nikishna Polequaptewa re Notice of Appeal to USCA – Final Judgment, <u>192</u> (Locklin, James) (Entered: 11/01/2019)
11/25/2019	<u>200</u>	ORDER of USCA filed as to Defendant Nikishna Polequaptewa, CCA #19–50231. The motions from Court Reporters Debbie Hino–Spaan and Marea Woolrich for extensions of time to file the transcripts are granted. The transcripts to be prepared by Court Reporters Debbie Hino–Spaan and Marea Woolrich are due January 31, 2020. This order waives the mandatory fee reduction provided that the transcripts are filed within the time allowed in this order. Copies of this order will be provided to Court Reporters Debbie Hino–Spaan and Marea Woolrich at the district court. (mat) (Entered: 11/26/2019)
01/02/2020	<u>201</u>	NOTICE OF DISCREPANCY AND ORDER: by Judge Cormac J. Carney ORDERING Letter submitted by Defendant Nikishna Polequaptewa, (yl) (Entered: 01/02/2020)
01/31/2020	<u>202</u>	TRANSCRIPT filed as to Defendant Nikishna Polequaptewa for TRIAL DAY 1, VOLUME 2 held on 11/6/2018 at 1:03 p.m. Court Reporter: Marea Woolrich, e–mail: mareawoolrich@aol.com. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Electronic Court Recorder before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Notice of Intent to Redact due within 7 days of this date. Redaction Request due 2/21/2020. Redacted Transcript Deadline set for 3/2/2020. Release of Transcript Restriction set for 4/30/2020.(mwo) (Entered: 01/31/2020)
01/31/2020	<u>203</u>	TRANSCRIPT filed as to Defendant Nikishna Polequaptewa for TRIAL DAY 2 – VOLUME 2 held on 11/7/2018 at 1:00 p.m. Court Reporter: Marea Woolrich, e–mail: mareawoolrich@aol.com. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Electronic Court Recorder before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Notice of Intent to Redact due within 7 days of this date. Redaction Request

		due 2/21/2020. Redacted Transcript Deadline set for 3/2/2020. Release of Transcript Restriction set for 4/30/2020.(mwo) (Entered: 01/31/2020)
01/31/2020	<u>204</u>	TRANSCRIPT filed as to Defendant Nikishna Polequaptewa for TRIAL DAY 4 – VOLUME 1 held on 11/9/2018 at 8:01 a.m. Court Reporter: Marea Woolrich, e-mail: mareawoolrich@aol.com. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Electronic Court Recorder before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Notice of Intent to Redact due within 7 days of this date. Redaction Request due 2/21/2020. Redacted Transcript Deadline set for 3/2/2020. Release of Transcript Restriction set for 4/30/2020.(mwo) (Entered: 01/31/2020)
01/31/2020	205	NOTICE OF FILING TRANSCRIPT filed as to Defendant Nikishna Polequaptewa for proceedings 11/6/2018 Vol. 2, 11/7/2018 Vol. 2, and 11/9/2018 Vol. 1 re Transcript <u>203</u> , <u>202</u> , <u>204</u> THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY. (mwo) TEXT ONLY ENTRY (Entered: 01/31/2020)
01/31/2020	<u>206</u>	TRANSCRIPT filed as to Defendant Nikishna Polequaptewa for proceedings held on 6/11/2018 at 9:04 a.m. *****Transcript may be viewed at the court public terminal or purchased through Court Reporter DEBBIE HINO–SPAAN at: WEBSITE www.debbiehinospaan.com; E-mail, dhinospaan@yahoo.com before the deadline for Release of Transcript restriction. After that date, it may be obtained from the Court Reporter or through PACER. Additional formats of the transcript (ASCII, Condensed, and Word Indexing/Concordance) are also available to be purchased at any time through the Court Reporter. Notice of Intent to Redact due within 7 days of this date.** Redaction Request due 2/21/2020. Redacted Transcript Deadline set for 3/2/2020. Release of Transcript Restriction set for 4/30/2020.(dhs) (Entered: 01/31/2020)
01/31/2020	<u>207</u>	TRANSCRIPT filed as to Defendant Nikishna Polequaptewa for proceedings held on 10/22/2018 at 9:08 a.m. *****Transcript may be viewed at the court public terminal or purchased through Court Reporter DEBBIE HINO–SPAAN at: WEBSITE www.debbiehinospaan.com; E-mail, dhinospaan@yahoo.com before the deadline for Release of Transcript restriction. After that date, it may be obtained from the Court Reporter or through PACER. Additional formats of the transcript (ASCII, Condensed, and Word Indexing/Concordance) are also available to be purchased at any time through the Court Reporter. Notice of Intent to Redact due within 7 days of this date.** Redaction Request due 2/21/2020. Redacted Transcript Deadline set for 3/2/2020. Release of Transcript Restriction set for 4/30/2020.(dhs) (Entered: 01/31/2020)
01/31/2020	<u>208</u>	TRANSCRIPT Day 1, Vol. I, filed as to Defendant Nikishna Polequaptewa for proceedings held on 11/6/2018 at 9:07 a.m. *****Transcript may be viewed at the court public terminal or purchased through Court Reporter DEBBIE HINO–SPAAN at: WEBSITE www.debbiehinospaan.com; E-mail, dhinospaan@yahoo.com before the deadline for Release of Transcript restriction. After that date, it may be obtained from the Court Reporter or through PACER. Additional formats of the transcript (ASCII, Condensed, and Word Indexing/Concordance) are also available to be purchased at any time through the Court Reporter. Notice of Intent to Redact due within 7 days of this date.** Redaction Request due 2/21/2020. Redacted Transcript Deadline set for 3/2/2020. Release of Transcript Restriction set for 4/30/2020.(dhs) (Entered: 01/31/2020)
01/31/2020	<u>209</u>	TRANSCRIPT Day 2, Vol. I, filed as to Defendant Nikishna Polequaptewa for proceedings held on 11/7/2018 at 8:52 a.m. *****Transcript may be viewed at the court public terminal or purchased through Court Reporter DEBBIE HINO–SPAAN at: WEBSITE www.debbiehinospaan.com; E-mail, dhinospaan@yahoo.com before the deadline for Release of Transcript restriction. After that date, it may be obtained from the Court Reporter or through PACER. Additional formats of the transcript (ASCII, Condensed, and Word Indexing/Concordance) are also available to be purchased at any time through the Court Reporter. Notice of Intent to Redact due within 7 days of this date.** Redaction Request due 2/21/2020. Redacted Transcript Deadline set for 3/2/2020. Release of Transcript Restriction set for 4/30/2020.(dhs) (Entered: 01/31/2020)



01/31/2020	<u>210</u>	TRANSCRIPT Day 4, Vol. II, filed as to Defendant Nikishna Polequaptewa for proceedings held on 11/9/2018 at 1:02 p.m. *****Transcript may be viewed at the court public terminal or purchased through Court Reporter DEBBIE HINO-SPAAN at: WEBSITE www.debbiehinospaan.com; E-mail, dhinospaan@yahoo.com before the deadline for Release of Transcript restriction. After that date, it may be obtained from the Court Reporter or through PACER. Additional formats of the transcript (ASCII, Condensed, and Word Indexing/Concordance) are also available to be purchased at any time through the Court Reporter. Notice of Intent to Redact due within 7 days of this date.** Redaction Request due 2/21/2020. Redacted Transcript Deadline set for 3/2/2020. Release of Transcript Restriction set for 4/30/2020.(dhs) (Entered: 01/31/2020)
01/31/2020	<u>211</u>	TRANSCRIPT filed as to Defendant Nikishna Polequaptewa for proceedings held on 7/8/2019 at 2:59 p.m. *****Transcript may be viewed at the court public terminal or purchased through Court Reporter DEBBIE HINO-SPAAN at: WEBSITE www.debbiehinospaan.com; E-mail, dhinospaan@yahoo.com before the deadline for Release of Transcript restriction. After that date, it may be obtained from the Court Reporter or through PACER. Additional formats of the transcript (ASCII, Condensed, and Word Indexing/Concordance) are also available to be purchased at any time through the Court Reporter. Notice of Intent to Redact due within 7 days of this date.** Redaction Request due 2/21/2020. Redacted Transcript Deadline set for 3/2/2020. Release of Transcript Restriction set for 4/30/2020.(dhs) (Entered: 01/31/2020)
01/31/2020	212	NOTICE OF FILING TRANSCRIPT filed as to Defendant Nikishna Polequaptewa for proceedings 6/11/2018 at 9:04 a.m.; 10/22/2018 at 9:08 a.m.; 11/6/2018 at 9:07 a.m.; 11/7/2018 at 8:52 a.m.; 11/9/2018 at 1:02 p.m.; 7/8/2019 at 2:59 p.m. re Transcript <u>206</u> , <u>210</u> , <u>211</u> , <u>208</u> , <u>207</u> , <u>209</u> THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY. (dhs) TEXT ONLY ENTRY (Entered: 01/31/2020)
02/07/2020	<u>213</u>	TRANSCRIPT Jury Trial, Day 1, Vol. I, filed as to Defendant Nikishna Polequaptewa for proceedings held on 6/19/2018 at 8:50 a.m. *****Transcript may be viewed at the court public terminal or purchased through Court Reporter DEBBIE HINO-SPAAN at: WEBSITE www.debbiehinospaan.com; E-mail, dhinospaan@yahoo.com before the deadline for Release of Transcript restriction. After that date, it may be obtained from the Court Reporter or through PACER. Additional formats of the transcript (ASCII, Condensed, and Word Indexing/Concordance) are also available to be purchased at any time through the Court Reporter. Notice of Intent to Redact due within 7 days of this date.** Redaction Request due 2/28/2020. Redacted Transcript Deadline set for 3/9/2020. Release of Transcript Restriction set for 5/7/2020.(dhs) (Entered: 02/07/2020)
02/07/2020	<u>214</u>	TRANSCRIPT Jury Trial, Day 5, Vol. II, filed as to Defendant Nikishna Polequaptewa for proceedings held on 11/13/2018 at 1:02 p.m. *****Transcript may be viewed at the court public terminal or purchased through Court Reporter DEBBIE HINO-SPAAN at: WEBSITE www.debbiehinospaan.com; E-mail, dhinospaan@yahoo.com before the deadline for Release of Transcript restriction. After that date, it may be obtained from the Court Reporter or through PACER. Additional formats of the transcript (ASCII, Condensed, and Word Indexing/Concordance) are also available to be purchased at any time through the Court Reporter. Notice of Intent to Redact due within 7 days of this date.** Redaction Request due 2/28/2020. Redacted Transcript Deadline set for 3/9/2020. Release of Transcript Restriction set for 5/7/2020.(dhs) (Entered: 02/07/2020)
02/07/2020	215	NOTICE OF FILING TRANSCRIPT filed as to Defendant Nikishna Polequaptewa for proceedings 6/19/2018 at 8:50 a.m.; 11/13/2018 at 1:02 p.m. re Transcript <u>213</u> , <u>214</u> THERE IS NO PDF DOCUMENT ASSOCIATED WITH THIS ENTRY. (dhs) TEXT ONLY ENTRY (Entered: 02/07/2020)
06/09/2020	<u>217</u>	NOTICE OF DISCREPANCY AND ORDER: by Judge Cormac J. Carney ORDERING Letter to Judge submitted by Defendant Nikishna Polequaptewa, received on 2/24/2020 is not to be filed but instead rejected. Denial based on: Local Rule 83-2.5 No letters to the judge. (iv) (Entered: 06/10/2020)
06/09/2020	<u>218</u>	NOTICE OF CLERICAL ERROR, as to Defendant Nikishna Polequaptewa: Due to clerical error Re: Notice of Document Discrepancies and Order - Rejecting <u>217</u> . Due to a Clerk's Office error, the letter was not processed and a Notice of Document

		Discrepancies was not issued in a timely manner. The document was received on 2/24/2020, but was not processed until 6/9/2020. (iv) (Entered: 06/10/2020)
06/09/2020	<u>219</u>	PROBATION FORM 12 as to Defendant Nikishna Polequaptewa, ORDER OF THE COURT by Judge Cormac J. Carney: as a special condition of supervision, Nikishna Polequaptewa,shall submit your person, property, house, residence, vehicle, papers, or office to a search conducted by a probation officer. (iv) (Entered: 06/10/2020)
06/11/2020	<u>220</u>	NOTICE OF DISCREPANCY AND ORDER: by Judge Cormac J. Carney ORDERING Letter to Judge submitted by Defendant Nikishna Polequaptewa, received on 4/27/2020 is not to be filed but instead rejected. Denial based on: Local Rule 83-2.5 No letters to the judge. (iv) (Entered: 06/11/2020)