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UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

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UNITED STATES OF AMERICA, CRIMINAL ACTION

Plaintiff Docket No: 2:13-90-NT

-versus-

BINIAM TSEGAI,

Defendant  
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Transcript of Proceedings

Pursuant to notice, the above-entitled matter came on for **Detention Hearing** held before **THE HONORABLE JOHN H. RICH III**, United States Magistrate Judge, in the United States District Court, Edward T. Gignoux Courthouse, 156 Federal Street, Portland, Maine, on the 10th day of June 2013 at 10:08 A.M. as follows:

Appearances:

For the Government: Michael J. Conley, Esquire  
Assistant United States Attorney

For the Defendant: Peter J. Cyr, Esquire

Also Present: Stacey Graf, U.S. Probation

Lori D. Dunbar, RMR, CRR  
Official Court Reporter

(Prepared from manual stenography and  
computer aided transcription)

1 (Open court. Defendant present.)

2 THE COURT: Good morning again, counsel.

3 MR. CONLEY: Good morning, Your Honor.

4 MR. CYR: Good morning, Your Honor.

5 THE COURT: Mr. Conley, please call the  
6 Government's next matter.

7 MR. CONLEY: Your Honor, we are here in the  
8 matter of United States of America versus Biniam  
9 Tsegai, bearing Criminal No. 13-CR-90-NT. The parties  
10 are before the Court this morning for the hearing on  
11 the Government's motion for detention. Defendant is  
12 present, Your Honor, accompanied by Attorney Peter Cyr.

13 THE COURT: Thank you, Mr. Conley, and good  
14 morning, Mr. Cyr.

15 MR. CYR: Good morning, Your Honor.

16 THE COURT: Counsel, let me start by  
17 confirming that you have both received a copy of the  
18 Pretrial Services report in this case. Mr. Cyr, have  
19 you received a copy of the Pretrial Services report  
20 dated June 7th, Friday, prepared by Officer Stacey  
21 Graf?

22 MR. CYR: I have, Judge.

23 THE COURT: And have you had an opportunity to  
24 review that with Mr. Tsegai?

25 MR. CYR: Yes, I have, Your Honor.

1 THE COURT: Very well. And, Mr. Conley, have  
2 you received a copy of the Pretrial Services report?

3 MR. CONLEY: I have, Your Honor.

4 THE COURT: And is there anything that the  
5 Government wishes to place upon the record with regard  
6 to the Pretrial Services report?

7 MR. CONLEY: Just only that the information  
8 contained therein, Your Honor, was obtained by  
9 Probation Officer Graf reviewing police reports from  
10 the Portland Police Department. I don't know if that  
11 was made explicit in here, but to the extent that it's  
12 not obvious we would just like the Court to be aware of  
13 that.

14 THE COURT: Very well.

15 MR. CONLEY: In terms of the basis of the  
16 knowledge.

17 THE COURT: Right, this is beginning at Page 5  
18 where the report indicates, quote, notably the  
19 defendant has had the following additional contacts  
20 with PPD?

21 MR. CONLEY: Yes, Your Honor.

22 THE COURT: And then continuing on through  
23 Page 9.

24 MR. CONLEY: Yes, Your Honor.

25 THE COURT: Very well. Thank you, the record

1 will so reflect. Mr. Cyr, anything that the defendant  
2 wishes to place upon the record with regard to the  
3 Pretrial Services report?

4 MR. CYR: Judge, I will say on Page 2,  
5 employed and unemployed history, it says during high  
6 school defendant reported he was employed at Vespucci's  
7 convenience store in Portland, Maine. That is fine.  
8 And then it goes on to say, and T.J. Maxx in South  
9 Portland, Maine. That is inaccurate. The defendant  
10 worked at Wendy's and T.J. Maxx while he was in  
11 Atlanta, Georgia, for that brief time that him and his  
12 father were in Atlanta, Georgia.

13 THE COURT: I see, all right.

14 MR. CYR: So I just wanted to make that  
15 clarification.

16 THE COURT: All right. And that was for about  
17 a six-month period in 2006; is that right?

18 MR. CYR: That's correct, Judge. And other  
19 than that, nothing further.

20 THE COURT: All right, thank you, Mr. Cyr.  
21 Then the record will reflect the defendant's comments  
22 as well with regard to the report.

23 Are counsel prepared to proceed with the detention  
24 hearing at this time?

25 MR. CONLEY: Yes, Your Honor.

1 MR. CYR: Yes, Your Honor.

2 THE COURT: All right, very well, it's the  
3 Government's burden, Mr. Conley.

4 MR. CONLEY: Your Honor, the Government rests  
5 upon the investigation conducted by the Pretrial  
6 Services Office as well as the rebuttable presumption  
7 that we invoke based upon the pending charged offense.

8 THE COURT: All right. You've invoked the  
9 rebuttable presumption under 3142 because this is a  
10 crime allegedly committed under the Controlled  
11 Substances Act punishable by more than 10 years; is  
12 that right?

13 MR. CONLEY: Yes, Your Honor.

14 THE COURT: Very well. Government rests?

15 MR. CONLEY: Yes, Your Honor.

16 THE COURT: Very well. Mr. Cyr?

17 MR. CYR: Judge, I would call as a witness  
18 Chhuk Chhay to the stand.

19 THE COURT: Very well, she can be called.

20 THE CLERK: Please raise your right hand. Do  
21 you solemnly swear that the testimony you shall give in  
22 the cause now in hearing shall be the truth, the whole  
23 truth, and nothing but the truth, so help you God?

24 THE WITNESS: I do.

25 THE CLERK: Thank you, please be seated.

1 Please state your name and spell it for the record.

2 THE WITNESS: My is Chhuk Chhay, my last name  
3 is Chhay, and I work at IDEXX. I'm Dany Chhay's mom,  
4 Minolta Chhay's mom.

5 THE COURT: And your first name is spelled  
6 C-H-H-U-K; is that correct?

7 THE WITNESS: Yes, sir.

8 THE COURT: Last name spelled C-H-A-Y (sic)?

9 THE WITNESS: Yes, Your Honor.

10 THE COURT: Very well, Mr. Cyr?

11 MR. CYR: Thank you, Judge.

12 DIRECT EXAMINATION

13 BY MR. CYR:

14 Q. Chhuk, where do you live?

15 A. I now live at 228 Sherwood Street, Portland,  
16 Maine.

17 Q. How long have you lived there?

18 A. I lived there 2008.

19 Q. So since 2008 you live there?

20 A. Yes.

21 Q. And who do you reside there with?

22 A. I live with my daughter, my son, and my husband.

23 Q. Okay. And what is your daughter's name?

24 A. My daughter's name, Dany Minolta Chhay.

25 Q. And your son's name?

1 A. Jovan Rith.

2 Q. And do you have any other children living in the  
3 house?

4 A. Yes, I do.

5 Q. Who are they?

6 A. Davi Chhay.

7 Q. Okay, how old is Davi?

8 A. She's 15.

9 Q. Okay.

10 A. She's in school right now.

11 Q. Okay. And anyone else?

12 A. And my son, other son.

13 Q. And what's his name?

14 A. Soha.

15 Q. All right. And how old is he? I mean -- yeah,  
16 how old is he?

17 A. He's 18.

18 Q. All right. So you actually have --

19 A. Four.

20 Q. -- six people living in your house?

21 A. Yes, sir.

22 Q. Okay. Six people including you and your husband.

23 A. Yes, sir.

24 Q. All right. And how old are you?

25 A. I'm 28.

1 Q. All right.

2 A. Thirty-eight, I'm sorry.

3 Q. You're 38 years old?

4 A. I'm 38 years old, yes.

5 Q. Okay. And where are you from?

6 A. I'm from Cambodia.

7 Q. Are you a U.S. citizen?

8 A. Yes, I am.

9 Q. How long have you been in the United States?

10 A. I came here since '83, 1983.

11 Q. Have you been primarily in Portland since that  
12 day?

13 A. Actually I moved to Philly, Pennsylvania, '87,  
14 1987, like around about not even a year, I moved to  
15 Massachusetts, and after that -- I don't like there so  
16 I move back to Maine.

17 Q. Okay. When did you finally come back to Maine?

18 A. Around about in like almost '88.

19 Q. Okay. So since '88 you've been here in Maine.

20 A. Yes.

21 Q. And in Portland.

22 A. Yes.

23 Q. All right. Now, are you currently married?

24 A. No, but in my culture we do because I've been  
25 with him for a long time.



1 Q. And who are you referring to?

2 A. Referring my husband, Rith.

3 Q. Rith?

4 A. Yes, Rith.

5 Q. And Rith's last name is Sok?

6 A. Sok.

7 Q. And how long have you been together with Rith?

8 A. Since '88 when I came back.

9 Q. And the children that you've referred to --

10 A. Yes.

11 Q. -- that are living with you, are they all Rith's  
12 children as well?

13 A. Yes.

14 Q. Okay. And where do you work?

15 A. I work at IDEXX.

16 Q. How long have you worked at IDEXX?

17 A. 2008, 2008.

18 Q. All right. What do you do for IDEXX?

19 A. Veterinarian, the animal supplies, package,  
20 packaging.

21 Q. So you package veterinary supplies?

22 A. Yes.

23 Q. Where were you working before that?

24 A. I worked for Artforms.

25 Q. And what were you doing for Artforms?

1 A. Embroidery, printing T-shirts.

2 Q. How long did you work for Artforms?

3 A. Since 1998.

4 Q. All right. So about 10 years you worked for  
5 Artforms?

6 A. Yes, sir.

7 Q. And then you moved on to IDEXX.

8 A. Yes.

9 Q. So essentially you've been continually employed  
10 for that period of time.

11 A. Yes, sir.

12 Q. All right. Are you -- is -- are you aware that  
13 Biniam, if he were to be released, would need a place  
14 to stay?

15 A. Yes, I do.

16 Q. Do you have enough space for him?

17 A. Yes, I do.

18 Q. How long have you known Biniam?

19 A. Three and a half years he's been dating my  
20 daughter.

21 Q. All right.

22 A. Yes.

23 Q. Within that three and a half year period, how  
24 often do you see him?

25 A. I see him a lot, you know, in and out but, you

1 know, my daughter and I associate with him, you know,  
2 he's kind of like a good model for my kid -- my  
3 teenager one.

4 Q. Okay.

5 A. And I notice that, you know, when she's walking  
6 at, you know, wrong place, wrong time, he always tell  
7 her to go home and, you know, my daughter come up to me  
8 and tell me about that, too.

9 Q. So he's kind of looking after her?

10 A. Yeah, looking after my teenager daughter, too.

11 Q. What's her name?

12 A. Deana Chhay.

13 Q. Deana?

14 A. Yes.

15 Q. And she's the 15-year-old?

16 A. Yes.

17 Q. And where does she go to school?

18 A. Deering High School.

19 Q. She's there today?

20 A. Yes, she is.

21 Q. All right. Was there ever a time during, you  
22 know, the last three and a half years or so where  
23 Biniam actually lived with you?

24 A. Yes, in Sagamore too, like because he go off and  
25 on with his dad, too, so --

1 Q. Let me just back up a little bit. Where did you  
2 live before 228 Sherwood Street in Portland, Maine?

3 A. I live at Josslyn, 28 Josslyn Street in Sagamore.

4 Q. Okay. Where is that?

5 A. It's in Portland.

6 Q. Okay. Is that Sagamore Village?

7 A. Yes, Sagamore Village.

8 Q. Okay.

9 A. Yes.

10 Q. And how long did you live in Sagamore Village?

11 A. Wow, since I came, let's see, around about in the  
12 '90s, in the '90s, yes.

13 Q. And everybody, same household other than Jovan.

14 A. Yes, yes.

15 Q. Okay. Because Jovan is how old?

16 A. He's only two.

17 Q. He's two years old, okay.

18 A. Yes.

19 Q. And so how long did Biniam live with your family  
20 when you were living in Sagamore Village?

21 A. Well, actually he's like come in, come out, you  
22 know, because, you know, his dad's there too, so he  
23 just like going out with my daughter, taking my  
24 daughter to dinner or going out, you know, teenager  
25 stuff.

1 Q. Okay.

2 A. So --

3 Q. Do you know Biniam's father?

4 A. No, I don't.

5 Q. You've never met him?

6 A. No.

7 Q. Okay. Do you have a house phone?

8 A. Yes, I do.

9 Q. And what is that telephone number?

10 A. It's (207) 899-0218.

11 Q. And is that a land line?

12 A. Land line?

13 Q. In other words, it's not a cell phone.

14 A. Oh, no, no.

15 Q. It's your regular --

16 A. Regular home phone.

17 Q. -- home phone.

18 A. Yes, sir.

19 Q. Okay. And you also have a cell phone as well,  
20 right?

21 A. Yes, I do.

22 Q. What is that number?

23 A. I don't remember my cell phone, I don't call.

24 Q. Fair enough. But you have a cell phone that's  
25 working.

1 A. Yes.

2 Q. Okay. And if I were to tell you it's 210-4983,  
3 would that ring a bell?

4 A. I remember only 210, 210 something, something, I  
5 don't --

6 Q. Okay, you don't call your cell phone often.

7 A. I don't call my cell, only --

8 Q. Fair enough, but you -- typically when you're at  
9 home you use the house phone.

10 A. Yes, sir.

11 Q. What are your hours of work?

12 A. I work 3:00 to 11:30.

13 Q. All right. So what time do you leave -- and what  
14 days during the week do you work that shift?

15 A. Well, I work Monday through Friday and I get --  
16 when my daughter get out, of course we got a car, pick  
17 her up from school, drop her off, and take off to work.

18 Q. Okay. So when do you leave the house?

19 A. I leave around about 2:30.

20 Q. And when do you get back?

21 A. I get back 11 around about 45, 50, around about  
22 there.

23 Q. Okay, all right.

24 A. Yes.

25 Q. And do you have any criminal record that you're

1 aware of?

2 A. No, I don't.

3 Q. Have you ever been arrested?

4 A. No, I don't.

5 Q. Do you drink alcohol?

6 A. Special occasion.

7 Q. Okay. Such as?

8 A. Weddings, you know, going out for family, family  
9 reunion, yes.

10 Q. Okay. So not very often; is that fair to say?

11 A. No, no.

12 Q. Do you have any firearms in your house?

13 A. No, I don't.

14 Q. Does your husband have any firearms?

15 A. No, I don't.

16 Q. Do you know if any of your kids have any  
17 firearms?

18 A. No.

19 Q. Now, we -- you and I have talked about what it  
20 means to be a third-party custodian?

21 A. Yes, sir.

22 Q. All right. And what -- can you explain to the  
23 Court what your role would be as a third-party  
24 custodian? What would your -- what would you have to  
25 do, what would be expected of you?

1 A. Expected of me if I accept Biniam into my house;  
2 is this what you mean?

3 Q. Correct.

4 A. I know that -- I know that he's a good kid, you  
5 know, a model for my daughter, too, like I say, you  
6 know, because he shows respect to me and my husband,  
7 you know, when he's always -- he's never like make any  
8 like, you know, big, you know, like trouble into our  
9 house when like I always know him that and he's quiet  
10 and I'd be willing to help him out, you know, because  
11 he's -- I know that I could trust him, he respects me.

12 Q. Okay.

13 A. Yes.

14 Q. And do you -- would you be willing -- if the  
15 Court were to order that you be the third-party  
16 custodian and the Court would set conditions that  
17 Biniam would have to follow, would you be willing to  
18 monitor to determine whether he's following those  
19 conditions?

20 A. Yes, I -- I think -- yes.

21 Q. Okay. And if Biniam, you know, did not follow  
22 those conditions in any way, what would you do?

23 A. Well, I would report to you or whoever that has,  
24 you know, to help me out, too, because, you know, he's  
25 not, you know, following my rules because it's my house



1 and, you know, he show respect that -- under my rules,  
2 yes.

3 Q. You wouldn't have any problem reporting that to  
4 the U.S. Marshals or to the Court?

5 A. No, I don't, I would have no problem.

6 Q. If Biniam violated any of his conditions?

7 A. Yeah, I will report.

8 Q. Do you feel any sort of pressure --

9 A. No.

10 Q. -- that Biniam is putting on you to do this role  
11 as a third-party custodian?

12 A. No, no.

13 Q. Are you afraid of Biniam --

14 A. No, I don't.

15 Q. -- in any way?

16 A. No.

17 Q. Are you volunteering to be his third-party  
18 custodian of your own free act and will?

19 A. Yes.

20 Q. All right. You have a vehicle.

21 A. Yes, I do.

22 Q. All right. Does your husband have a vehicle?

23 A. We only share one, one vehicle. Mostly I take  
24 off with work and sometime -- you know, bringing him or  
25 whenever he have an appointment for a doctor, whatever.

1 Q. Right.

2 A. So we just like share.

3 Q. Okay.

4 A. Yes.

5 Q. But you have a driver's license.

6 A. Yes, I do.

7 Q. And your husband has a driver's license.

8 A. Yes.

9 Q. If the Court were to order Biniam to do substance  
10 abuse counseling or go to some outpatient program,  
11 would you be able to transport him or to help him to  
12 get there?

13 A. Yes, yes.

14 Q. Okay. Do you know whether Biniam has a license  
15 or not?

16 A. I don't think -- I don't know. I don't know if  
17 he does.

18 Q. Okay. But you certainly do and you'd be willing  
19 to help out in that respect.

20 A. Yes.

21 Q. Are you aware of the charges that have been  
22 levied against Biniam?

23 A. No.

24 Q. Are you aware that he's -- the reason why he's in  
25 this court is because the U.S. Government has charged

1 him with conspiring to traffick in crack cocaine?

2 A. No.

3 Q. Okay. I have never told you that or no one has  
4 told you that up to this point?

5 A. No.

6 Q. Okay. Given the fact that he is in fact charged  
7 and has been indicted for conspiring to traffick in  
8 crack cocaine, given that fact, does that affect your  
9 willingness to serve as a third-party custodian?

10 A. Well, what I know about him his -- I don't think  
11 he's like that. I -- I know that he's not like that,  
12 that's why I'm here to help him out.

13 Q. Okay. So --

14 A. I don't believe it.

15 Q. There's things about Biniam that you don't know;  
16 is that fair to say?

17 A. Yeah, I -- I know like the time that I seen him  
18 in my house and, you know, respect -- a lot of respect  
19 for my family.

20 Q. Right.

21 A. That's why I -- I don't believe that, you know,  
22 he's going through that crack cocaine, whatever, so  
23 I -- that's why I'm here to help him out.

24 Q. Okay. So the fact that he's been indicted --

25 A. Yeah.

1 Q. -- that doesn't necessarily impact your decision  
2 to serve as his third-party custodian.

3 A. Yes.

4 Q. All right.

5 MR. CYR: Nothing further, Judge.

6 THE COURT: Thank you. Cross-examination?

7 MR. CONLEY: Yes, Your Honor, thank you.

8 CROSS EXAMINATION

9 BY MR. CONLEY:

10 Q. Good morning.

11 A. Good morning.

12 Q. I want to try to, if I could, get a feel for how  
13 well you know Mr. Tsegai.

14 A. Okay.

15 Q. Fair to say you're not with him all the time.

16 A. Yeah.

17 Q. Right? I mean, you work full -- full workweek.

18 A. Yes.

19 Q. Monday through Friday, 3:00 to 11:00. He's not  
20 at your house all the time, right?

21 A. My -- yeah, my husband, my husband is at the  
22 house.

23 Q. I'm sorry, Mr. Tsegai is not at your house all  
24 the time.

25 A. Oh, no, no, no.

1 Q. In fact, he hasn't stayed there for -- he last  
2 visited your residence approximately one month ago and  
3 stayed for a few days.

4 A. Yes.

5 Q. Right? So there's a gap there that you're just  
6 not with him.

7 A. Yes.

8 Q. And you don't know what he's doing.

9 A. No.

10 Q. You said you were not aware of the charges. No  
11 one told you what he's charged with?

12 A. No.

13 Q. And if you were told that he's charged with a  
14 long-term drug trafficking conspiracy, which calls for  
15 a five-year mandatory minimum sentence if convicted,  
16 that doesn't cause you concern or want you to ask any  
17 more questions before you agree to take him into your  
18 house with all those children?

19 A. Yeah, well, because I, like I say, I know him,  
20 you know, he's a good kid for my daughter too, you  
21 know.

22 Q. Is there anything that he could be charged with  
23 that would make you have an issue with taking him in?

24 A. No.

25 Q. No -- no offense.

1 A. No.

2 Q. What do you know about his criminal history? Has  
3 he been convicted of any crimes; do you know?

4 A. Him?

5 Q. Yes.

6 A. No, not that I know of.

7 Q. Not that you know of? Has he had any arrests  
8 that you're aware of, has he been arrested?

9 A. No.

10 Q. Are there any police contacts that you're aware  
11 of?

12 A. No.

13 Q. Do you know whether he uses drugs?

14 A. No.

15 Q. You don't know or you know he doesn't?

16 A. I think I -- I don't know, yeah.

17 Q. The question came up about if he had to go to  
18 drug counseling, you said you'd be willing to take him.

19 A. Yes.

20 Q. Obviously if someone needs drug counseling they  
21 have a drug problem.

22 A. Uh-huh.

23 Q. Right?

24 A. Yes.

25 Q. Do you have concerns if there's a drug problem

1 and you have someone with an addiction issue in your  
2 house with those children?

3 A. Yes.

4 Q. Does that cause an issue for you?

5 A. No, I'm just going to help him out, you know, get  
6 him straight up, you know, get him help if he has --

7 Q. And with respect to the children in the house.

8 A. Yes.

9 Q. There are how many?

10 A. There's four total.

11 Q. Four children, and what are their ages?

12 A. My son 18, my daughter 15, and Jovan, and my  
13 daughter 20.

14 Q. And the 20-year-old daughter is the one that's  
15 dating the defendant.

16 A. Yes, yes, sir.

17 MR. CONLEY: No further questions, Judge,  
18 thank you.

19 THE COURT: Thank you. Redirect, Mr. Cyr?

20 MR. CYR: Judge, yes, briefly.

21 REDIRECT EXAMINATION

22 BY MR. CYR:

23 Q. When Biniam has been at your house, have you  
24 noticed that he's been intoxicated or drinking?

25 A. No.

1 Q. Have you noticed whether he's been under the  
2 influence of any other drugs?

3 A. No.

4 MR. CYR: Nothing further, Judge.

5 THE COURT: Thank you. Recross, Mr. Conley?

6 MR. CONLEY: No, Your Honor, thank you.

7 THE COURT: All right, thank you. Thank you,  
8 ma'am, you can step down. Defendant's next witness?

9 MR. CYR: Rith Sok.

10 THE CLERK: Please raise your right hand. Do  
11 you solemnly swear that the testimony you shall give in  
12 the cause now in hearing shall be the truth, the whole  
13 truth, and nothing but the truth, so help you God?

14 THE WITNESS: Yes, I do.

15 THE COURT: Thank you. Please be seated.  
16 Please state your name and spell it for the record.

17 THE WITNESS: My name is Rith Sok, my last  
18 name is S-O-K, my first name is R-I-T-H.

19 THE COURT: Thank you, Mr. Cyr.

20 DIRECT EXAMINATION

21 BY MR. CYR:

22 Q. Rith, where do you live?

23 A. I live at 228 Sherwood Street.

24 Q. Who do you live with?

25 A. I live with my kid, my wife.



1 Q. All right. And you heard your wife's testimony  
2 today?

3 A. Yes, I did.

4 Q. About you're not married as far as the United  
5 States is concerned but you're married as far as your  
6 culture is concerned.

7 A. Yes.

8 Q. Okay. And the two of you have been together for  
9 how many years?

10 A. I'm not good in that.

11 Q. Okay.

12 A. I know it's long enough.

13 Q. Since before Minolta was born?

14 A. Yeah, I think, yeah.

15 Q. So over 20 years.

16 A. Yeah.

17 Q. And all -- and the -- Minolta, the two teenagers,  
18 and Jovan, they're all your children --

19 A. Yeah.

20 Q. -- that you share with --

21 A. Yeah.

22 Q. -- Chhuk.

23 A. Yeah.

24 Q. And during that 20 or so year period the two of  
25 you have resided together --

1 A. Yeah.

2 Q. -- as a couple.

3 A. Yeah.

4 Q. Okay. And where are you from?

5 A. Cambodia.

6 Q. When did you come to the United States?

7 A. 1985.

8 Q. Okay. And what -- do you work?

9 A. No, I don't.

10 Q. Why don't you work?

11 A. Got posttraumatic syndrome and I'm collecting  
12 SSI.

13 Q. Okay, you have posttraumatic stress disorder?

14 A. Yeah, yeah, yeah.

15 Q. Okay. And you're collecting Social Security  
16 Disability Insurance?

17 A. Yeah.

18 Q. How long have you been collecting Social Security  
19 Disability Insurance?

20 A. About four or five years, four or five years. I  
21 used to work before, but after I got this problem after  
22 that I -- I don't work no more.

23 Q. I understand. Where did you work before?

24 A. Before I work at Nichols Parker.

25 Q. And what did you do for them?

1 A. Machine operator.

2 Q. Where are they located?

3 A. On -- close to Cinematic Westbrook in South  
4 Portland, between South Portland and Westbrook,  
5 Portland and South Portland.

6 Q. And it's --

7 A. Half in the border.

8 Q. I understand. And the company's called Nicole  
9 Parker?

10 A. No, Nichols, Nichols Parker.

11 Q. And what does that company do?

12 A. They do order for GM, building stuff for GM,  
13 drill or pump, everything.

14 Q. They do parts for General Motors?

15 A. Yeah, General Motors, Mercedes, Ford, all kinds  
16 of like that.

17 Q. Okay. And how long did you work for them before  
18 you left?

19 A. I worked for them for two years, I love that job  
20 but -- yeah, I worked for two years.

21 Q. And since then you have been collecting Social  
22 Security Disability.

23 A. Yeah, after I got that problem, posttraumatic  
24 symptoms and anxiety attack.

25 Q. All right. And you have been -- and so you're

1 home all day, practically.

2 A. Yes.

3 Q. All right. How long have you known Biniam?

4 A. About -- I see him when I was in Sagamore, I talk  
5 to him a little bit, usually I'm a quiet guy, just say  
6 I don't care who do what.

7 Q. Okay. But did you have an opportunity to talk to  
8 Biniam to get to know him at all?

9 A. Yes, I do, I talk to him a little bit, yeah, how  
10 are you doing, good.

11 Q. Okay.

12 A. Be good, that's it.

13 Q. Did he at any point stay at your house?

14 A. No, I don't.

15 Q. He never stayed at your house in Sagamore  
16 Village?

17 A. Yeah, yeah, he did, off and on, off and on with  
18 my daughter.

19 Q. Have you ever met Biniam's father?

20 A. No, I don't.

21 Q. Okay. And when Biniam stayed at your house did  
22 he behave himself?

23 A. Yeah, yeah, he do.

24 Q. Never any problems, never had to call the police  
25 or anything like that?

1 A. No, no, no, no, no problem.

2 Q. All right. Now, are you -- do you recall when  
3 you and I spoke about what it means to be a third-party  
4 custodian?

5 A. Yes.

6 Q. All right. And what does that -- if the Court  
7 were to order that you would be to serve as a  
8 third-party custodian, what does that mean to you?

9 A. Nothing, it's okay.

10 Q. Well, all right. If I were to tell you that a  
11 third-party custodian means that you'd have to some  
12 extent supervise Biniam and make sure that he followed  
13 the conditions that the Court set, would you be able to  
14 do that?

15 A. Yeah, sure.

16 Q. Would you be willing to do that?

17 A. Yes.

18 Q. All right. If Biniam were to violate any of  
19 those conditions, would you be willing to call the  
20 Court --

21 A. Yes.

22 Q. -- and let them know?

23 A. Yes, I do.

24 Q. Do you have any -- do you feel any pressure from  
25 Biniam to make you say that you'd be willing to be a

1 third-party custodian?

2 A. No, no.

3 Q. Do you have any fear of Biniam?

4 A. No, no, no, I don't.

5 Q. Are you worried that if you don't do this  
6 something's going to happen to you or your family?

7 A. No, no, no problem.

8 Q. Okay. What do you do when you're at home during  
9 the day typically?

10 A. What do I do, sometime I go fishing.

11 Q. Okay. Do you have a driver's license?

12 A. Yes, I do.

13 Q. If Biniam needed to go to some counseling or go  
14 to some court appearances, would you be able to help  
15 him out with giving him a ride?

16 A. Sure.

17 Q. Would you be willing to serve as a third-party  
18 custodian along with Chhuk?

19 A. Yeah.

20 Q. The two of you would be doing it together?

21 A. Yeah.

22 Q. All right. And, as far as you know, Chhuk would  
23 be at the household in the morning up until about 2:30  
24 in the afternoon?

25 A. Yeah.

1 Q. And after she leaves for work you typically stay  
2 at home?

3 A. Yeah.

4 Q. Would you be willing to stay at home to make sure  
5 that Biniam was following the conditions?

6 A. Yeah.

7 Q. You wouldn't have any problem with that?

8 A. No, no, no problem with that. If -- one more  
9 thing.

10 Q. Yes.

11 A. If I go fishing he have to go with me too, right?  
12 Sometime I take off fishing, he have to go with me.

13 Q. Let me ask you this. If the Court said that he  
14 would have to be with you, you -- then you wouldn't  
15 mind taking him along to go fishing with you.

16 A. Yeah.

17 Q. You would mind or you would not mind?

18 A. I don't mind.

19 Q. Okay. And when you go fishing, are you going out  
20 on a boat or are you just going off the pier or --

21 A. Sometime I go on the boat, sometime I just go off  
22 the pier type of fishing.

23 Q. Okay. And if the Court were to say Biniam has to  
24 stay at the house and he can't leave, would you be  
25 willing to forego your fishing to stay with Biniam?

1 A. Yeah, it's okay.

2 Q. All right. For the period of time that he would  
3 be on the bail conditions that would be okay with you?

4 A. Yeah.

5 Q. Do you have any criminal convictions?

6 A. That is 10 year ago, 10, 20 year ago.

7 Q. What convictions would it be?

8 A. OUI, and that's all I know, that's all I can  
9 remember.

10 Q. You think it was about 10 years ago?

11 A. Yeah, about 10 years ago.

12 Q. Are you aware of ever being convicted of  
13 violating a condition of release?

14 A. No, I don't.

15 Q. Okay. What happened with respect to that OUI;  
16 what was the punishment?

17 A. I have to go through all the school and what they  
18 call a --

19 Q. Did you have to do a DEEP course?

20 A. Yeah, course I go through like that, I never say  
21 anything.

22 Q. Did you have to go to jail?

23 A. Yeah, I do.

24 Q. How long did you have to go to jail?

25 A. They put me like 20 or 15 day, and I go to work



1 for the state. I don't worry, if I want to go to jail,  
2 I can go to jail. If I don't want to go to jail I have  
3 to pay and they watch me over there and I have to  
4 state -- work for the state for 15 days, just like not  
5 in the jail, it's some watching a bunch of people over  
6 there.

7 Q. Like a work release?

8 A. Yeah, work release.

9 Q. Was that conviction here out of Portland?

10 A. Yeah.

11 Q. Okay. Other than that did you have to pay any  
12 fines?

13 A. Yeah.

14 Q. Do you remember what the fine was or not?

15 A. I have no clue.

16 Q. Okay. Other than that OUI, have you been  
17 arrested for anything else that you know of?

18 A. No, no.

19 Q. All right. And you're saying that was about  
20 10 years ago?

21 A. Yeah, 10, 10, 11 or 12 year ago.

22 Q. Okay. With respect to drinking, do you have a  
23 drinking problem?

24 A. No, no, no, I don't.

25 Q. If the Court were to say that there's not going

1 to be any alcohol at all in your residence while Biniam  
2 is -- while Biniam is living there during this pretrial  
3 detention period, would you have any problem with not  
4 having any alcohol in your house?

5 A. No, no, no, no problem, I don't drink at my  
6 house.

7 Q. If the Court were to order that the Government  
8 would be allowed to come to your house at any time to  
9 search the house for drugs and alcohol or dangerous  
10 weapons, would you be willing to allow the Government  
11 to do that?

12 A. Feel free, any time.

13 Q. Okay. Do you have any firearms at the house?

14 A. I don't like it, no, I don't.

15 Q. Okay, all right. And if in fact you found that  
16 Biniam did violate one of the conditions that the Court  
17 imposed, would you be willing to call the Court?

18 A. Yes, I do.

19 Q. And you don't feel any pressure from Biniam to  
20 just say that.

21 A. No, no, no, no.

22 Q. Okay.

23 MR. CYR: Thank you, Judge.

24 THE COURT: Thank you. Cross-examination?

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

## 1 CROSS EXAMINATION

2 BY MR. CONLEY:

3 Q. Good morning.

4 A. Good morning.

5 Q. Same set of general questions regarding your  
6 knowledge of Mr. Tsegai's history. Are you aware of  
7 any criminal convictions that he has?

8 A. No.

9 Q. No one's told you what he's been convicted of in  
10 the past?

11 A. No.

12 Q. Do you know if he's ever been arrested before?

13 A. No.

14 Q. No one's ever told you that he's been arrested?

15 A. No.

16 Q. Were you aware -- before you came in this  
17 morning, were you aware of what he's charged with?

18 A. No, I don't.

19 Q. If you were told that he was charged with a  
20 serious drug trafficking crime involving a conspiracy  
21 lasting many, many months, does that impact one way or  
22 the other your decision to welcome him back into your  
23 home?

24 A. No, no.

25 Q. To the extent that he may have or require drug

1 counseling for drug use, does that cause you any issues  
2 bringing him back into your house?

3 A. No, no.

4 Q. Is there anything that he could be charged with  
5 that would cause you concern?

6 A. No.

7 Q. You -- how often do you fish?

8 A. Almost every weekend.

9 Q. Other than that you're home.

10 A. Other than that I'm home, sometime I went fish  
11 too.

12 Q. When was the last time Mr. Tsegai was at your  
13 house?

14 A. That would be -- I have no clue, I don't  
15 remember.

16 Q. When's the last time he stayed overnight?

17 A. That would be I see him a couple months ago,  
18 that's it.

19 Q. A couple months ago?

20 A. Yeah.

21 Q. And you've never met his parents?

22 A. No, I don't.

23 Q. Do you know his parents' names?

24 A. No, I don't.

25 Q. Do you know whether Mr. Tsegai has any brothers

1 and sisters?

2 A. No, I don't.

3 MR. CONLEY: No further questions, Judge.

4 THE COURT: Thank you. Redirect, Mr. Cyr?

5 MR. CYR: No, Judge, no, thank you.

6 THE COURT: Thank you, sir, you can step down.

7 Defendant have any other witnesses to call?

8 MR. CYR: Can I just have one moment, Judge?

9 THE COURT: Certainly.

10 (Defendant conferred with counsel.)

11 MR. CYR: No other witnesses, Your Honor.

12 THE COURT: Does the defense rest?

13 MR. CYR: It does, Judge.

14 THE COURT: Defense rests. Anything further  
15 from the Government?

16 MR. CONLEY: No, Your Honor.

17 THE COURT: The Government rests finally?

18 MR. CONLEY: Government rests finally, yes.

19 THE COURT: Are counsel prepared to proceed  
20 with oral argument?

21 MR. CONLEY: Yes, Your Honor.

22 MR. CYR: Yes, Your Honor.

23 THE COURT: All right, very well. It's the  
24 Government's burden. Mr. Conley, be glad to hear from  
25 you.

1 MR. CONLEY: Thank you, Judge.

2 Your Honor, with -- starting just with respect to  
3 the third-party custodian option, there are many  
4 compliments to be afforded to the witnesses that  
5 testified here this morning. In terms of some of the  
6 witnesses the Court has typically heard from on this  
7 issue, they both appear to be decent people.

8 But I respectfully submit, one, they don't know  
9 this man. Two, there's no third-party custodian on  
10 planet earth that should be tasked with this burden.  
11 There are just some cases that are not appropriate for  
12 a third-party custodian, no matter how capable that  
13 third-party custodian was. And we respectfully submit  
14 that this is one of those cases.

15 To call this defendant's criminal history combined  
16 with his history of contact with the Portland police  
17 troubling is to grossly understate the fact of the  
18 matter.

19 THE COURT: Well, let me just ask you about  
20 that. Putting aside the contact with the police  
21 department, which, as you indicated, Officer Graf has  
22 apparently summarized from Portland Police Department  
23 records and which I'm sure she would be the first to  
24 acknowledge is a little bit unusual in a Pretrial  
25 Services report, the times when the defendant was

1 actually arrested or much less convicted are -- appear  
2 to be all misdemeanors, correct? Beginning at age 19  
3 he was fined a hundred dollars for disorderly conduct.  
4 Two years later, approximately, he was given two days  
5 in jail for criminal trespass, violating conditions of  
6 release. He was convicted for using an improper  
7 driver's license. Another two days in jail for  
8 violating conditions of release in 2008 and apparently  
9 again just a few weeks later but punishment was two  
10 days in jail. And then the reckless driving and the  
11 robbery, the dispositions are unknown. And then we  
12 have driving while his license was suspended in 2009.  
13 He was convicted but disposition unknown. And the last  
14 arrest or conviction noted, again, other than the  
15 contact with the police department, was refusing to  
16 submit to arrest or detention where he was fined a  
17 hundred dollars. Now, I know I have four or five  
18 pages, three, four, or five pages --

19 MR. CONLEY: About five pages.

20 THE COURT: -- of narrative in terms of what  
21 the Court at a minimum would see is the defendant being  
22 in the wrong place at the wrong time in terms of  
23 interaction with the police department, but his arrest  
24 record is not -- certainly not the worst the Court has  
25 seen.

1 MR. CONLEY: A couple points on that, Your  
2 Honor. With respect to the violating conditions of  
3 release, one can try to minimize all one wants,  
4 certainly not suggesting the Court is doing that,  
5 but --

6 THE COURT: That's all right, you can argue.

7 MR. CONLEY: One of the best indicators of  
8 whether someone will abide by conditions of release is  
9 whether they have done in the past. He hasn't. He has  
10 not one, not two, three convictions for violating  
11 conditions of release. So if one wants to look  
12 historically at whether Courts have had luck trusting  
13 this man, they haven't. So that's I guess the point  
14 one.

15 With respect to the five -- almost five pages of  
16 police involvement, responses, arrests, et cetera, I am  
17 as shocked as the next person that none of those  
18 resulted in a felony conviction. There are theories  
19 behind that that I have, one of which is often times  
20 defendants or witnesses, cooperators don't cooperate  
21 against him. That's at least noted explicitly in one  
22 of these situations. The fact that he has this many  
23 police contacts; police respond to shots fired, guess  
24 who's around; police respond to someone getting stabbed  
25 in the head, who's around; police respond to that poor



1 girl back in July of 2011 getting stabbed, they go back  
2 to the house, a standoff ensues, who's inside? This  
3 man.

4 I concede that no felony convictions have found  
5 their way to Mr. Tsegai, but that doesn't change the  
6 fact that the Court can and should, we submit, consider  
7 the incredible frequency that the Portland police find  
8 themselves dealing with Mr. Tsegai, in terms of the  
9 release issue, whether he's an appropriate candidate  
10 for release.

11 There was the one occasion where several of these  
12 he's got large amount of cash on him, he's supposedly  
13 unemployed, \$800 in cash here, \$1200 in cash there.  
14 He's charged with a drug trafficking offense.

15 His ties to the community are -- his financial  
16 ties are nonexistent. He has some family ties but he  
17 doesn't stay with his family. Where does he stay, we  
18 don't know.

19 THE COURT: When you say family, other than  
20 his father?

21 MR. CONLEY: Other than his father, that's  
22 what I'm referring to, his family. That's his one  
23 family tie. But where he has been staying? Probation  
24 interviewed him. Where has he been resting his head?  
25 We don't know.

1           When asked what his girlfriend's parents' names  
2           were, he didn't know. And, again, perfectly capable as  
3           being third-party custodians, but I respectfully submit  
4           to Your Honor they don't know this man's history, and  
5           that makes a difference. And it makes a difference on  
6           whether anyone put in charge of this individual, would  
7           that be fair to put anyone in charge of this  
8           individual. And we submit that it's simply not.

9           And then we have finally the jail calls, warning  
10          people stay off the phone, they're on the phone, stay  
11          off the phone. And we have him bragging, using flowery  
12          language about telling off the police. I mean, there's  
13          a general attitude ingrained in this man that is not  
14          conducive to respecting or complying with court orders,  
15          and the history firmly, concretely establishes that  
16          with his three prior convictions for violating  
17          conditions of release.

18          We also have his drug abuse history which,  
19          cocaine, marijuana, the nature of this crime itself,  
20          long-term drug conspiracy, mandatory minimum five-year  
21          sentence, maximum 40 years. All the factors, Your  
22          Honor, we respectfully submit point to detention. The  
23          rebuttable presumption we agree has been rebutted, but  
24          the Court still can consider that presumption in  
25          assessing whether release is appropriate. Congress

1 dictated the weight the Court should give to this  
2 offense, and we ask the Court to do so.

3 THE COURT: And the Government -- just so I'm  
4 clear, the Government is arguing the defendant should  
5 be detained under either the risk of flight prong --

6 MR. CONLEY: Both.

7 THE COURT: -- or the danger to the community.

8 MR. CONLEY: Both, yes, Your Honor.

9 THE COURT: All right. Thank you, Mr. Conley.

10 MR. CONLEY: Thank you.

11 THE COURT: I'll give you a chance for  
12 rebuttal. Mr. Cyr?

13 MR. CYR: Thank you, Judge.

14 There is a lot here that we don't know. I would  
15 suggest that the Government does have the burden here.  
16 We --

17 THE COURT: How much weight should the Court  
18 give to the -- I guess it's five pages of single-spaced  
19 narrative involving Mr. Tsegai's contacts with the  
20 police department?

21 MR. CYR: I would suggest the Court give that  
22 very little weight.

23 THE COURT: Because?

24 MR. CYR: Because when -- all an officer needs  
25 is probable cause to arrest someone for an offense.

1 And we have police contact where Mr. Tsegai is not  
2 being arrested. So I would suggest that, number one,  
3 even if we rely on the police report that forms the  
4 basis of probation's summary of what happened -- I  
5 mean, we don't really know what happened, Judge. We  
6 have summaries here as to what was going on, but there  
7 was never a tribunal who found any facts here. This is  
8 simply police reports that were looked at and then  
9 summarized here.

10 So whether in fact those facts are true, I'm not  
11 agreeing that those facts are true. I'm simply  
12 agreeing that those facts were contained in a police  
13 report and then summarized through this probation  
14 office. So even assuming that they're reliable to that  
15 extent, we know that it only takes probable cause to  
16 arrest someone. And so you have this alleged police  
17 contact that's happening and Mr. Tsegai is not getting  
18 arrested.

19 That -- it's been my experience, Judge, and I'm  
20 sure the Court's experience and the Government's  
21 experience, that when the Portland police have probable  
22 cause to arrest someone for committing a crime they're  
23 going to arrest them. On top of that, if they have  
24 someone who has as many contacts in their system as  
25 Mr. Tsegai, they're even -- they're less likely to cut

1       them a break and they're more likely to arrest him.  
2       And they don't arrest him. So I would suggest that  
3       what that shows is that there was not any probable  
4       cause to believe that he had committed a crime.

5               So for those reasons I would suggest that the  
6       Court give that police contact very little weight.  
7       Typically in these detention hearings, I mean, we have  
8       some convictions. They are all misdemeanors, the last  
9       one was from -- well, about -- over two and a half  
10      years ago, which would have been the refusing to submit  
11      to arrest. That was September 7th of 2010. So that's  
12      a little over two and a half years ago. I would note  
13      with respect to that it was a hundred dollar fine. I  
14      think the fine informs the Court as to the gravity of  
15      the offense. There can be refusing to submit to arrest  
16      where people go to county jail for significant periods  
17      of time. The prosecutor and the Court in that  
18      particular case thought that a hundred dollar fine was  
19      appropriate, and that I would suggest directly  
20      correlates to the severity of what the offense was. So  
21      he was last arrested, you know, over two and a half  
22      years ago for an offense that he received a hundred  
23      dollar fine.

24               He has no felony convictions. So he is not -- he  
25      does not sit before you, Judge, as someone who we see

1 here quite often who has significant criminal records.  
2 I would suggest that he does not have a significant  
3 criminal history. He has misdemeanor convictions that  
4 are minor, where he is receiving minor penalties,  
5 40 hours in jail or fines. And so I would suggest to  
6 the Court that, because he has a minimal criminal  
7 record, because I would ask that the Court give very  
8 little weight to the reports of the police contact for  
9 the reasons I've stated, Mr. Tsegai is a candidate for  
10 release.

11 Both Rith and Chhuk are being honest with this  
12 Court, are citizens of this country, are -- have ties  
13 here. They have known Biniam for, you know, three and  
14 a half to four years dating their daughter. They have  
15 seen him on and off throughout that time period. When  
16 he is with them he is appropriate, he is not drinking,  
17 he is not being violent.

18 What we have here is today we've presented  
19 witnesses for the Court to consider their testimony who  
20 are saying to this Court that when Biniam is at their  
21 house he is a respectful young adult. Now, the  
22 Government is suggesting that he's just the opposite of  
23 that, but we didn't really hear from any witnesses who  
24 have made any observations about Biniam at all. I  
25 mean, we've looked at some police reports that

1 probation has relied upon, times when Biniam has not  
2 even been arrested.

3 I would suggest to the Court that Biniam is a  
4 young man, that he has been using drugs maybe beyond  
5 recreational use, but he had indicated in the pretrial  
6 report that he would drink on the weekends and he would  
7 use on the weekends. May very well be a substance  
8 abuse problem. I would suggest that a course to cure  
9 that would be for probation to do an evaluation and to  
10 have him do counseling pursuant to that evaluation.  
11 Certainly sounds like a substance abuse problem to me.  
12 I'm not a counselor, but I think an evaluation could  
13 easily be set up and the counselor could determine  
14 whether it was a substantial enough problem whereby  
15 Biniam would need to do counseling. Rith and Chhuk  
16 have both agreed that they'd be willing to take Biniam  
17 to the counseling. They both have vehicles. They can  
18 accomplish that without any problem.

19 THE COURT: Should the Court have any concerns  
20 about the children that are at the third-party  
21 custodian or the offered third-party custodians' home  
22 if there is a substance abuse problem?

23 MR. CYR: I -- I would say no, Judge, because  
24 just because one has a substance abuse problem doesn't  
25 mean that children are at risk. I mean, there's a lot

1 of people who have substance abuse problems, I mean,  
2 Biniam is not responsible for any of those children.  
3 They're not his children. So I would suggest no, I  
4 don't see there being a risk. And the basis for saying  
5 no really relies on the two people who testified today.  
6 I mean, they have been around Biniam while he's been at  
7 their home, they have not sensed any risk to their  
8 children. They have not sensed any fear about that.  
9 They are not concerned, they do not sense or feel any  
10 fear that might be coming towards something that Biniam  
11 has done to them or said to them. There's never been  
12 any police involvement with respect to anything that's  
13 gone on at that home while Biniam has been there. That  
14 would all suggest to me that Biniam behaves himself  
15 while he's with Chhuk and while he's with Rith. And he  
16 has respect for them.

17 THE COURT: And how much weight or what  
18 concern should the Court have that neither of the  
19 third-party custodians appear to know much about the  
20 defendant's background? I mean, recognizing that when  
21 you -- when they were presented with it at the hearing  
22 today neither one of them changed their willingness to  
23 be a third-party custodian.

24 MR. CYR: No, I -- and I think that on the one  
25 hand you have two individuals who are basing their



1 willingness to be third-party custodians jointly, and  
2 just so the Court is aware, I think that having them be  
3 third-party custodians jointly is really what we're  
4 looking for here. Because Rith is home for the most  
5 part, he's going to -- Biniam will have someone at that  
6 house 24/7, whether it be Chhuk who will be there, you  
7 know, from -- most of -- well, from 11:30 at night  
8 until 2:30 in the afternoon and then Rith would be  
9 there from 2:30 in the afternoon throughout the  
10 evening. So this would be essentially the possibility  
11 of 24/7 supervision of Biniam with respect to these two  
12 individuals.

13 Back to your question of how much weight does it  
14 give -- should the Court take into consideration the  
15 fact that Chhuk and Rith are not familiar with Biniam's  
16 criminal record on the one hand, and I would suggest to  
17 you that I'm not sure that -- that a lot of weight  
18 should be given to that because it's not -- typically  
19 it's not something that the boyfriend of one's daughter  
20 is going to share with his girlfriend's parents. It is  
21 clear and they testified that he's not there all the  
22 time, I mean, he has another life and he does other  
23 things. So they haven't been supervising him 24/7 up  
24 to this point. They've only been having contact with  
25 him while he's been over there to visit his girlfriend

1 and their daughter. For that reason I would suggest to  
2 the Court that it not give it that great a weight. In  
3 addition, what we're proposing is a different  
4 circumstance than what has occurred. What we're  
5 proposing is for Chhuk and Rith to essentially -- and  
6 Biniam to be living together and for him to be living  
7 with them at their residence and for them to  
8 essentially be supervising him 24/7. That's a  
9 different scenario than what was going on previously  
10 when he was just visiting from time to time and lived  
11 there for a little while a few years ago.

12 So I'm not sure that -- I would suggest that the  
13 Court needs to fashion conditions that are going to  
14 assure Biniam's appearance and to ensure that he's not  
15 a danger to the community. And I would suggest that if  
16 the third-party custodians have testified that when he  
17 is with them he's respectful and he's staying out of  
18 trouble that the Court can anticipate that if he is  
19 released to the third-party custodians then he will be  
20 respectful and will stay out of trouble.

21 THE COURT: Do you know how long, Mr. Cyr,  
22 Mr. Tsegai's father has been in Eritrea? I know he's  
23 visiting currently.

24 MR. CYR: He's currently visiting and for a  
25 few months, Judge. I think the last time he had gone

1 was in 2007 so he doesn't go often, I mean, that's  
2 almost five years, so once in five years he's gone back  
3 to his hometown to visit his family there. And he is  
4 due back on June 24th or right around there. He's  
5 going to be leaving and coming back here.

6 THE COURT: So he's been -- your understanding  
7 is he's been gone for approximately two months?

8 MR. CYR: I think so. Can I just have one  
9 moment, Judge?

10 THE COURT: Sure.

11 (Defendant conferred with counsel.)

12 MR. CYR: I think he left towards middle or  
13 end of May.

14 THE COURT: Oh, all right.

15 MR. CYR: So that's -- you know, he's not --  
16 so when I say two months that's inaccurate, I think  
17 maybe a little bit more than a month that he's gone. I  
18 believe the pretrial report does say that he does own  
19 that property and rents that property. So his father  
20 certainly has some significant financial ties, but he's  
21 not back until the 24th. In the meantime --

22 THE COURT: I'm sorry, go ahead.

23 MR. CYR: In the meantime, however, Judge, I  
24 would suggest that Biniam would be in good hands with  
25 the third-party custodians that we've proposed.

1 I would also indicate to the Court that the  
2 Government in its allegations has alleged a conspiracy  
3 that took place some time ago and that ended some time  
4 ago. The allegations are that the conspiracy ended I  
5 believe in January of 2012, so that conspiracy would  
6 have ended quite some time ago. And I would note that  
7 Biniam, as I've indicated, has not -- the last time he  
8 was arrested was almost two and a half years ago.

9 For those reasons, Judge, I would suggest that the  
10 custodians are appropriate, that the Court can appoint  
11 them as third-party custodians, have Biniam reside with  
12 them, the Court could set a curfew that would be --  
13 that would require Biniam to essentially be at the  
14 residence for the most part unless he was working,  
15 unless he was doing some counseling, or unless he was  
16 doing some schooling. Those would be the only  
17 exceptions really for him to be able to be out and  
18 about. But if those were the exceptions and if we had  
19 the third-party custodians as we've requested, I would  
20 suggest that Biniam -- that the Court would be assured  
21 that Biniam would show up when he was supposed to and  
22 that he would not be a danger to the community. Thank  
23 you, Judge.

24 THE COURT: And, Mr. Cyr, before you sit down,  
25 what about the telephone calls from the jail and the

1       apparent assault at the jail?

2                   MR. CYR: Judge, I have no information about  
3       the assault from jail, other than what's been put in  
4       the report. I can tell the Court that what goes on in  
5       the jail is -- it's unknown. I don't know what  
6       happened. What happened at the Cumberland County Jail?  
7       I have no idea. I would suggest that the Court really  
8       doesn't have any idea what happened. I mean, it could  
9       be that Biniam was trying to break up a fight and that  
10      somehow the guards just perceived it as an assault, but  
11      I haven't seen any report from the guards, I haven't  
12      heard any witnesses about any assault that took place.

13                  I will suggest to the Court that the phone calls  
14      where Biniam said that he did not want to speak to the  
15      authorities, I think every defendant has a Fifth  
16      Amendment right not to talk and not to provide a  
17      statement, and I don't think that that can be used  
18      against him. So even if he calls up someone and says,  
19      you know, look, I decided not to talk to them or I'm  
20      not talking to them, I don't think that that's  
21      necessarily some -- a strike against him. He has an  
22      absolute right to remain silent, and he has no  
23      obligation whatsoever to speak to the Government or any  
24      of the Government's agents. And the fact that he's  
25      telling that to someone he knows is not -- I would

1 suggest not a strike against him. Thank you, Judge.

2 THE COURT: Thank you, Mr. Cyr.

3 Rebuttal, Mr. Conley?

4 MR. CONLEY: Judge, we're certainly not asking  
5 the Court to hold it against anyone that they chose not  
6 to speak to authorities. That's their constitutional  
7 right. When they're on a recorded jail line bragging  
8 to people who they earlier said, change your phones,  
9 everything, my nigger, change your phones, they're  
10 later on telling those people, I told the police to get  
11 the fuck out of here, nigger, it's a reflection of this  
12 man's attitude. It's not an assessment that he's  
13 asserting his right to remain silent. It's a  
14 reflection of this man's general hostility toward law  
15 enforcement.

16 With respect to having someone with potential  
17 substance abuse problems under the same roof as  
18 children, that's a risk. We respectfully disagree with  
19 defense counsel's assessment of that. That's a risk  
20 with children in that house.

21 The assurance that there will always be someone  
22 around, again, it's akin to having an electronic  
23 monitoring device. That someone will tell us when to  
24 start looking. That's not helpful to us. We know what  
25 this man -- the level this man views court-ordered

1 conditions of release. He hasn't abided by them in the  
2 past, and so to know when he's gone, and he -- he will  
3 be gone, he's -- looking at this criminal history,  
4 never has he faced what he's facing now. He's looking  
5 at decades in prison, decades. And --

6 THE COURT: Well, he has a maximum --

7 MR. CONLEY: He's facing a maximum -- yes,  
8 Judge.

9 THE COURT: -- of 40 years.

10 MR. CONLEY: He's facing a maximum potential  
11 of 40 years. He has not faced that before. The one --

12 THE COURT: Realistically, what would his --  
13 where would his sentence come out?

14 MR. CONLEY: There are a lot of factors to be  
15 considered. It's a drug case so drug quantity will  
16 drive that. I will tell you, Your Honor, there's grand  
17 jury testimony that we're not presenting on the  
18 specifics of this conspiracy because I don't want him  
19 knowing who the cooperators are. The fact is he's been  
20 indicted and there's a good chance that drug quantity  
21 will be not around the five-year mark, let's put it  
22 that way.

23 With respect to the -- minimizing the \$100 fine, I  
24 mean, that -- it could be that that's the assessment of  
25 the prosecutor that that was an appropriate

1 disposition. The fact is he has convictions for  
2 violating court orders, repeated convictions for  
3 violating court orders. And that again to us is the  
4 ultimate question, will he abide by them. He hasn't in  
5 the past and never has he faced what he's facing now in  
6 the past. Thank you.

7 THE COURT: All right, thank you, Mr. Conley.  
8 Anything further, Mr. Cyr?

9 MR. CYR: No, Judge.

10 THE COURT: All right, very well. Thank you,  
11 counsel. I appreciate your presentation this morning  
12 and both the efficiency with which the evidence was  
13 presented and your arguments on both sides. The Court  
14 is prepared to rule on the Government's motion for  
15 detention at this time.

16 Counsel, as you know, the standard for deciding a  
17 motion for detention is whether or not the Government  
18 has met its burden of proof. It is the Government's  
19 burden to establish one of two things, either, one, by  
20 a preponderance of the evidence that, if released, the  
21 defendant poses a substantial risk of flight and that  
22 there are no conditions that can be imposed to  
23 reasonably assure his appearance as required; or,  
24 alternatively, whether the Government has proved by  
25 clear and convincing evidence that the defendant, if



1 released, would be a danger to other persons or the  
2 community. And, again, that second prong must be  
3 proven by a higher clear and convincing evidence  
4 standard.

5 With regard to the risk of nonappearance, the  
6 Court does credit the assessment of the United States  
7 Probation Office. First, the defendant is facing a  
8 significant penalty in this case should he be convicted  
9 of the offense with which he has been charged. The  
10 penalty is far greater than any that he has faced to  
11 date, namely, up to 40 years in prison and no less than  
12 five years in prison. I do find that that penalty is a  
13 factor that cuts in favor of heightening the risk of  
14 flight.

15 I also agree with the probation office that the  
16 defendant's residential history, including his father,  
17 who is presently temporarily absent from their home, is  
18 vague, as the probation office indicates. And the  
19 defendant's employment history is also a factor cutting  
20 in favor of flight. The defendant is unemployed and  
21 has no financial ties to the area. The defendant does  
22 have ties to his home country of Eritrea. He does have  
23 a passport which the Court can, of course, condition be  
24 turned in, but the Court provides some weight to the  
25 fact that the defendant has traveled to Eritrea to

1 visit his family as recently as last year.

2 In the Court's view, given the severity of the  
3 punishment that the defendant faces, the lack of  
4 financial ties to Portland, and the less than fully  
5 grounded residential history of the defendant and his  
6 continuing ties overseas, the Court finds those factors  
7 sufficient for the Government to meet its burden by a  
8 preponderance of the evidence.

9 With regard to the danger prong, while the  
10 Government's burden is higher in -- with regard to that  
11 prong, the Court again agrees with the United States  
12 Probation Office. Since the defendant's incarceration,  
13 the telephone calls made by the defendant instructing  
14 others to change their telephone numbers, not to say  
15 anything on recorded lines, the incident involving an  
16 alleged assault at the prison, give the Court serious  
17 pause. In addition, the defendant's drug history is a  
18 concern.

19 And last, but perhaps most importantly, the  
20 defendant's criminal history, although not consisting  
21 of any felonies, is replete with incidents -- with  
22 instances, rather, where the defendant has not complied  
23 with conditions of release. Whatever conditions this  
24 Court might impose obviously have as a fundamental  
25 prerequisite that they be followed. The defendant,

1 having not shown a willingness or an ability to follow  
2 earlier conditions, gives the Court no confidence that  
3 such conditions would be abided by in this instance.  
4 So, even under the higher clear and convincing evidence  
5 standard, the Court finds that the Government readily  
6 meets its burden with regard to danger.

7 I'll go ahead and enter an order of detention  
8 detaining the defendant between now and trial. I'll  
9 follow up with a written order. Anything else,  
10 Mr. Conley?

11 MR. CONLEY: Nothing further, Your Honor.

12 THE COURT: Anything else, Mr. Cyr?

13 MR. CYR: No, Judge.

14 THE COURT: Very well, we'll be in recess.

15 (Time noted: 11:17 A.M.)

16 **C E R T I F I C A T I O N**

17 I, Lori D. Dunbar, Registered Merit Reporter, Certified  
18 Realtime Reporter, and Official Court Reporter for the  
19 United States District Court, District of Maine,  
20 certify that the foregoing is a correct transcript from  
21 the record of proceedings in the above-entitled matter.  
22 Dated: July 31, 2013

23 /s/ Lori D. Dunbar

24 Official Court Reporter

25