

1 UNITED STATES DISTRICT COURT  
2 EASTERN DISTRICT OF VIRGINIA  
3 ALEXANDRIA DIVISION

3 -----x  
4 MUHAMMAD NAUMAN IMAM, : Miscellaneous Case No.:  
4 et al., : 1:26-mc-25  
5 Plaintiffs, :  
5 versus : Friday, October 23, 2026  
6 : Alexandria, Virginia  
6 MARKWAYNE MULLIN, et al., :  
7 : Pages 1-16  
7 Defendants. :  
8 -----x

8  
9 The above-entitled motions hearing was heard before the  
9 Honorable Leonie M. Brinkema, United States District Judge.  
10 This proceeding commenced at 2:00 p.m.

11 A P P E A R A N C E S:

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COMPUTERIZED TRANSCRIPTION OF STENOGRAPHIC NOTES

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P R O C E E D I N G S

THE DEPUTY CLERK: Miscellaneous Case Number  
1:26-mc-25, Imam, et al. v. Mullin, et al.

Will counsel please note their appearances for the  
record.

MS. YOUNES: Yes. Jenin Younes for the plaintiffs.

THE COURT: Ms. Younes, where is your local counsel?

MS. YOUNES: He told me he would be here, and I don't  
have my phone so I can't text him. I do apologize.

THE COURT: All right. I'm going to allow you to  
proceed without his presence, but, you know, one of your  
members of your group ought to get admitted here. You're here  
enough.

MS. YOUNES: I'm working on it, Your Honor. Yes.  
I'm in the process of doing my Virginia bar application.

THE COURT: Very good.

And for the government.

MS. O'CONNOR: Good afternoon, Your Honor. Assistant  
United States Attorney Kirstin O'Connor, and with me at counsel  
table is Special Assistant U.S. Attorney Christian Cooper for  
the defendants.

THE COURT: All right. Now, we've not heard anything  
from the government, so I'm going to let you go first. And  
would you please respond to the plaintiffs' motion for return  
of electronic devices.

1 MS. O'CONNOR: Yes, Your Honor.

2 First we just wanted to put on the record, plaintiff  
3 has identified this as a related case to the *Blumenthal* matter,  
4 and we do not think that's appropriate in this case. I  
5 understand, given the expedited nature of this hearing, it  
6 wasn't realistic to fully brief that issue, but this case is  
7 really quite different, and I'll discuss that in a few moments.  
8 I just wanted to put that on the record.

9 THE COURT: All right.

10 MS. O'CONNOR: With respect to the devices at this  
11 time, all four devices have been returned to the plaintiffs.  
12 Ms. Mansoor's devices were mailed on October 17th, the day  
13 after the encounter at the airport, and she received them on  
14 the 21st. Mr. Imam's devices were mailed yesterday, the 22nd.  
15 So I believe those are most likely still in transit.

16 Would you like me to review a little bit about the  
17 allegations in the complaint at all?

18 THE COURT: Well, what I want to know, because it's  
19 part of the relief that's requested by the plaintiff --  
20 plaintiffs, were any of these devices unlocked? Were the  
21 contents in any respect observed?

22 MS. O'CONNOR: Yes, Your Honor.

23 So with respect to Ms. Mansoor's devices, that's one  
24 laptop and one cell phone, there was no attempt to access  
25 those, and those were returned directly to her.

1           With respect to Mr. Imam's devices, I can't comment  
2 on that at this point. I'm still in conversations with the  
3 client about that. So to the extent Your Honor would like more  
4 details about that, I would be happy to submit something in  
5 writing to you.

6           THE COURT: Well, I mean, as you know, the Fourth  
7 Circuit in the *Belmonte Cardozo* case has -- and that's a very  
8 recent decision, you know, has acknowledged that because of the  
9 unique nature of the border, that the government has a certain  
10 degree of authority to go ahead and seize documents and seize  
11 cell phones and other electronic devices and to search them if  
12 it's limited to a manual search.

13           Now, as I understand it in this case, the plaintiff  
14 did not provide his consent, nor did he provide his password.  
15 So if, in fact, those devices were unlocked by anything other  
16 than a manual search -- which I'm assuming they could not have  
17 done. They had to have a Court order to do that, that's what  
18 the Fourth Circuit has said. And so there's going to be a  
19 problem for the government if that happened.

20           Do you know -- I mean, you don't know at this point  
21 whether there was any actual search of either of his devices?

22           MS. O'CONNOR: So what I can say at this point is  
23 that with respect to Mr. Imam's devices, he was -- they were  
24 referred to technical assistance from DHS HQ and other CBP  
25 personnel to try to put them in a condition that they could be

1 inspected, but I can't comment at this point further on what  
2 actually happened after that stage.

3 And I would also just respectfully note, Your Honor,  
4 our view is that regardless of what actually happened in this  
5 case, that if there was to be a forensic search of these  
6 devices, it wouldn't be a Court order necessarily, it would  
7 just be a requirement of reasonable suspicion.

8 THE COURT: I don't think that's correct under the  
9 *Belmonte Cardozo* case, especially here where you have this  
10 plaintiff advising the authorities that he is a medical  
11 professional and that he had client -- which would be  
12 privileged -- information on that phone. There could not  
13 possibly be a proper search of that phone without Court  
14 permission, in my view.

15 We did check with our magistrate judges -- and that  
16 would have to have come from this Court. We have no record, to  
17 my knowledge, of any request having been made for a search  
18 warrant or for a Court order.

19 And I assume you, as an officer of the court, are not  
20 aware of any such thing having been requested?

21 MS. O'CONNOR: I am not aware of any such  
22 application. That is correct, yes.

23 THE COURT: All right. Well, how long is it going to  
24 take for you to know for certain as to what was actually done  
25 with those two devices?

1 MS. O'CONNOR: I can go back to CBP after this  
2 hearing today and see what information they might be able to  
3 provide in light of, you know, of course the law enforcement  
4 sensitivities that may be involved. So I will contact them  
5 about whatever Your Honor orders today.

6 I understand from the *Blumenthal* matter that what was  
7 done was a declaration submitted to sort of go through the  
8 steps of specifically what was done on the technical side. And  
9 if that is what Your Honor would prefer in this case, I'd be  
10 happy to take that back to them.

11 THE COURT: All right. Let me hear from Ms. Younes.

12 MS. YOUNES: Thank you, Your Honor.

13 THE COURT: All right. I'm sorry. I think your  
14 counsel -- Mr. Ahmad, is that you?

15 MR. AHMAD: If I may approach. I'm sorry, Your  
16 Honor. I apologize for being a couple minutes late.

17 THE COURT: Now, you know I deem someone late if  
18 you're not here by ten of the time the cases start. You've got  
19 to leave more time.

20 MR. AHMAD: Understood, Your Honor.

21 THE COURT: All right. Go ahead, Ms. Younes.

22 MS. YOUNES: So we were not informed of any devices  
23 being returned. I would have obviously let Your Honor know  
24 that. And as my opposing counsel pointed out, Imam has not  
25 received his yet. I don't believe -- so Ms. Mansoor did not

1 tell me she had received hers, but she's -- I believe she's  
2 been out of town, so perhaps it's at her house. We can sort  
3 that out later.

4 As for the -- what happened with the phones, as in  
5 the case of *Blumenthal*, I maintain that it's not enough for a  
6 supervising customs and border protection officer to just say  
7 this is what normally happens, or this is what I think  
8 happened. We need details, property logs, and we want to -- we  
9 want attestations from the people who actually handled the  
10 property to know what happened to it.

11 And I believe Your Honor is aware of the broader  
12 concerns here, so I don't want to harp on it too much, but I  
13 think these cases -- and we have another case in the District  
14 of New Jersey, and I get a lot of calls from people all the  
15 time whose cases I can't take because of our limited resources.  
16 The government is really abusing the border search exception to  
17 get access to people's electronic devices, and I think these  
18 cases illustrate that.

19 So I just -- you know, I sort of want to emphasize  
20 the degree to which I think it's improper for the government to  
21 be seizing people's electronic devices for really no apparent  
22 reason. And in this case, it looked quite punitive, especially  
23 when it came to taking Ms. Mansoor's devices simply because her  
24 husband wouldn't put his passcode in.

25 So I just sort of want to put that on the record and

1 emphasize that we really need to know what exactly happened  
2 with these phones, what the government did. So, you know,  
3 detailed property logs and the specific people whom handled the  
4 phones.

5 THE COURT: Yeah. I think, Ms. O'Connor, to save the  
6 government time and trouble in having to come back here  
7 multiple times, I think the request from plaintiffs' counsel is  
8 fair and appropriate.

9 And, again, this case is particularly problematic,  
10 and it's different, to some degree, from the *Blumenthal* case  
11 because we have here the potential invasion of patients -- and  
12 these are mental health patients, as I understand it, or  
13 addiction patients -- of their privacy rights having been  
14 violated. The government has no business, you know, having  
15 access to that kind of information.

16 And especially if, in fact -- and I -- I take the  
17 plaintiffs' pleadings at face value, that the agents were told  
18 by Mr. Mansoor that -- I'm sorry, by Mr. Imam that, you know,  
19 he was a mental health professional, and that one of the  
20 reasons he wasn't going to give them his password was because  
21 he was concerned about sensitive information being, you know,  
22 in that -- on that device. So this is a problematic case in  
23 that respect.

24 MS. O'CONNOR: May I comment briefly on that, Your  
25 Honor?

1 THE COURT: Yeah.

2 MS. O'CONNOR: Thank you.

3 I understand Your Honor's point entirely. I would  
4 just like to note that -- the policy that governs here, which  
5 is CBP Directive Number 3340-049B, does have a provision that  
6 applies to a situation where you might have privileged  
7 information implicated. It's subsection 5.2.1.2 involving a  
8 filter team and other protective measures. So I would just  
9 note that there are procedures in place that would govern a  
10 situation, you know, theoretically like this. But I take Your  
11 Honor's point that this is a particularly sensitive matter  
12 involving patient -- confidential patient information.

13 THE COURT: All right. So what I'm going to do then,  
14 I'm going to issue an order today that requires the government  
15 to provide us, by close of business this coming Monday, with a  
16 complete explanation as to exactly what happened with  
17 Mr. Imam's devices. Specifically, were they able to unlock  
18 them, and, if so, exactly how that was done. Because if it was  
19 more than a manual search, that you all have a problem with the  
20 Fourth Circuit's view of that.

21 Secondly, they need to have, under the penalty of  
22 perjury, attestations from the appropriate people, the people  
23 who have firsthand knowledge of what happened, because they had  
24 their hands on the devices, exactly what happened. In other  
25 words, if they did open them up, what, if any, information did

1 they obtain, and what have they done with it. All right.

2 And Number 3, that any information that may have been  
3 obtained must immediately be returned to the plaintiffs. I  
4 mean, unless there's a law enforcement purpose for keeping this  
5 material and you don't have the violation of the Fourth  
6 Amendment, you know, if they did look at patient records, I  
7 don't care if it's a screening group or the actual field  
8 agents, the government's got no right to that information  
9 unless it's connected to a law enforcement issue.

10 MS. O'CONNOR: Just to clarify, Your Honor, so what  
11 you're requesting on Monday is essentially declarations  
12 explaining this information, and then, from a procedural  
13 perspective, will you look at that and then order --

14 THE COURT: It depends on what you find out when you  
15 do your investigation.

16 MS. O'CONNOR: Okay.

17 THE COURT: If, in fact, you have people saying we  
18 never could get in, all right, I don't know any other way -- I  
19 mean, if they've said they've not been able to unlock the  
20 devices, I think that's going to kind of end of discussion. If  
21 they were able to unlock the devices, then they have to explain  
22 how they did that.

23 MS. O'CONNOR: I understand.

24 THE COURT: What the procedures were that they did.  
25 And then obviously if they unlocked them, they must have viewed

1 the contents. And then we have to know exactly what was  
2 viewed, what they did with it, what, if any, measures they took  
3 to ensure that privileged information was handled properly, and  
4 then I think they have to return -- or they've returned the  
5 devices. But anything that they downloaded, they don't have a  
6 right to keep any of that information whatsoever unless there's  
7 a legitimate law enforcement purpose. And if that's the case,  
8 they're going to have to explain what it is.

9 MS. O'CONNOR: Understood, Your Honor.

10 THE COURT: All right.

11 MS. O'CONNOR: And just to be clear for the record, I  
12 have been in communications about some of these steps with  
13 them, but I've not been authorized to share them with the  
14 Court. So I will get that authorization and additional details  
15 about the technical side and report that on Monday, and then I  
16 suppose we'll go from there.

17 THE COURT: Right. So by 5 p.m. Monday, we'll have  
18 some better answers as to what's happened here.

19 Now, in terms because -- we have two plaintiffs and  
20 we have two different situations. In terms of Ms. Mansoor,  
21 were her devices -- and I wasn't clear about this from the  
22 papers. Were her devices also password protected?

23 MS. YOUNES: I believe so. You know, I'm not sure  
24 that we had that in the declarations, but I'm -- yeah, I'm  
25 almost certain. I can clarify that with her if it would be

1 helpful.

2 THE COURT: I think also in her case, because she was  
3 concerned about some privacy concerns because she wears a  
4 hijab, and as I recall, one of her concerns was there were  
5 pictures of her on the phone, maybe also on the laptop, in  
6 which she was not wearing the hijab. Which would be a strong  
7 indicator that it certainly was her intent that those materials  
8 be kept private. And I think, therefore, to put her at ease,  
9 we need to know what happened with her devices as well. Were  
10 they, in fact, unlocked? Were they even opened to be reviewed?  
11 In other words, were they not password protected?

12 MS. O'CONNOR: My understanding -- I have been  
13 authorized to share that there was no attempt to access  
14 anything on her devices, but if it would, you know --

15 THE COURT: Then why were they seized?

16 MS. O'CONNOR: That, I am not clear on, Your Honor.  
17 Again, it's -- I can't share too much about this situation at  
18 this moment, but I understand Your Honor is concerned. And if  
19 it would be helpful to put that information in the declaration  
20 about Ms. Mansoor's devices, we can do that.

21 THE COURT: Yes. We need that on the record as well.  
22 Was there anything else, Ms. Younes, that you think  
23 we need to get at least at this preliminary stage?

24 MS. YOUNES: No. I think that covers it. But we  
25 would like, you know, sort of evidence of what happened with

1 Ms. Mansoor's devices as well. So to the extent possible --

2 THE COURT: Right. So if we get an affidavit under  
3 the penalty of perjury that there was no effort made to unlock  
4 them, nobody looked at anything, I would think that's enough on  
5 that case.

6 MS. YOUNES: Yeah. I mean, I guess in an ideal  
7 world, we would also get some sort of property logs or  
8 something that showed -- you know, could corroborate that. If  
9 those don't exist, then obviously I can't ask for them. But if  
10 they do exist, then we would want those, too.

11 THE COURT: All right. Now, Ms. O'Connor has  
12 represented that those devices were returned a couple of days  
13 ago.

14 You have proof that they were received, Ms. O'Connor?

15 MS. O'CONNOR: I have been informed that they were  
16 received on October 21st. I don't have a delivery receipt at  
17 the moment at hand, but that is my understanding.

18 THE COURT: That's two days ago. You need to check  
19 with your client to see if --

20 MS. YOUNES: I did this morning, and I was told they  
21 hadn't received anything. But they did take a sort of  
22 substitute vacation to Florida since they couldn't get into  
23 Turkey. So it's possible they were delivered to her house in  
24 Virginia. But I did ask if they received any word.

25 THE COURT: All right. You should check this

1 afternoon so by Monday you know for certain.

2 MS. YOUNES: Yeah.

3 THE COURT: But the physical devices were just  
4 recently returned to Mr. Imam; right? When were they mailed  
5 out to him?

6 MS. O'CONNOR: Yesterday. They were mailed  
7 yesterday.

8 THE COURT: So he would not have them yet.  
9 Were they sent certified mail?

10 MS. O'CONNOR: That, I don't know. I would assume  
11 so, but I do not know.

12 THE COURT: All right. That's fine. Certainly by  
13 Monday he should have them. So, Ms. Younes, you need to check  
14 with your client; all right?

15 MS. YOUNES: Yes.

16 THE COURT: Do you know offhand -- and I'm not enough  
17 of a techy person to know this -- is there a way that your  
18 clients can tell whether their devices have been accessed?

19 MS. YOUNES: From what I understand, there is a  
20 method that can -- it's quite expensive, so I don't know the  
21 degree to which they're willing to invest in finding out what  
22 happened, but I'll let them know. Yeah. I think  
23 Mr. Blumenthal might be looking into doing something like that.

24 THE COURT: All right. That's fine. All right.

25 Is there anything further we need to address on this

1 case then?

2 MS. O'CONNOR: No, Your Honor.

3 THE COURT: All right. Now, depending upon what  
4 shows up on Monday, if we need to have a follow-up hearing, I  
5 can hear you all next Friday at 10:00. Will that work on your  
6 calendars?

7 MS. O'CONNOR: Mr. Cooper and I will both be at the  
8 Fourth Circuit next Friday, but we can find someone else to  
9 fill in if needed.

10 THE COURT: All right. That's fine.

11 Ms. Younes, are you available?

12 MS. YOUNES: Yes, that works for me.

13 THE COURT: And again, it may not be necessary  
14 depending upon -- you know, the government will file whatever  
15 it files on Monday, and then it's going to be up to you all  
16 whether you want a further hearing or whether you're satisfied  
17 on what you get. All right.

18 And I strongly recommend some communication. You  
19 don't have to do this all, you know, in court. If you can work  
20 this thing out to the satisfaction of the plaintiffs informally  
21 over the course of the week, that's fine. But I'm going to  
22 hold the 10:00 slot open next Friday in case you can't resolve  
23 things. But, Ms. Younes, your job would then be, obviously  
24 before that time, file a motion explaining what the situation  
25 is; all right?

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MS. YOUNES: Yes, Your Honor. Thank you so much.

THE COURT: Very good. We'll recess court for the day.

(Proceedings adjourned at 2:18 p.m.)

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I certify that the foregoing is a true and accurate transcription of my stenographic notes.

Stephanie Austin

Stephanie M. Austin, RPR, CRR