

UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

* * * * *
UNITED STATES OF AMERICA, * CRIMINAL NO. 6:01-CR-70081-1
* SEPTEMBER 28, 2001
Plaintiff, * DETENTION HEARING
* VOLUME I OF I
vs. *
*
VINCENTE RAFAEL PIERRE, * Before:
* HONORABLE GLEN E. CONRAD
Defendant. * UNITED STATES MAGISTRATE JUDGE,
* * * * * * WESTERN DISTRICT OF VIRGINIA

APPEARANCES:

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I N D E X

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WITNESSES FOR THE
GOVERNMENT:

THOMAS GALLAGHER.....5.....15

WITNESSES FOR THE
DEFENDANT:

MIKE PRICE.....20.....22

VINCENTE PIERRE.....23.....27.....35.....38

REBUTTAL WITNESSES FOR THE
GOVERNMENT:

THOMAS GALLAGHER.....44.....45

1 (Court convened at 10:17 a.m.)

2 THE COURT: Good morning.

3 MR. WRAY: Good morning, Your Honor.

4 THE COURT: I'll ask Ms. Draper to announce the style
5 of today's first matter.

6 THE CLERK: United States versus Vincente Rafael
7 Pierre, Docket No. 01-70081.

8 THE COURT: This matter has been set for a detention
9 hearing on motion of the United States.

10 Mr. Bondurant, is there anything you would say by way of
11 an opening statement in support of the government's motion for
12 pretrial detention of this defendant?

13 MR. BONDURANT: Yes, very briefly, Judge. We'll be
14 presenting evidence both on the issues of risk of flight and
15 danger. In terms of the dangerousness argument, we would like
16 to point out that a convicted felon, under a possession
17 charge, is considered a crime of violence, and we would argue
18 that. I realize there is no Fourth Circuit law on it, but
19 there is a Second Circuit case, U.S. v. Dillard, 214 F.3d 88,
20 May 22nd, 2000. I'd also refer you to a case --

21 THE COURT: Do you have a copy of that by any chance?

22 MR. BONDURANT: Yes, I do.

23 THE COURT: Let me take a look at it.

24 MR. BONDURANT: I would also refer you to the case of
25 U.S. v. Carlisle, which is in the Second Circuit based on the

Gallagher - Direct

1 Dillard case, and that probably has a little more analysis on
2 the issue in that, but those are the two cases there.

3 THE COURT: Thank you.

4 Mr. Wray, anything you would say in support of the
5 defendant on the motion for pretrial detention?

6 MR. WRAY: Yes, Your Honor. Basically we have a case
7 here where the defendant is being held on alleged activities
8 that are more than two years old, the most recent one. The
9 NCIC report only indicates that he was, may have been, may
10 have fled from the jurisdiction. There's no indication of
11 that in the NCIC, that there is a final conviction, although
12 that may be proved.

13 Mr. Pierre has fairly significant ties to where he was
14 living, Red House. He's lived there for a number of years and
15 he has family, he has friends. He's involved in his religion
16 in that activity. There's no indication that he would flee
17 from the jurisdiction of this Court, and we will present some
18 evidence regarding what the government is going to allege
19 regarding his flight on the state charges from Colorado.

20 THE COURT: Thank you, Mr. Wray.

21 You may call your first witness.

22 MR. BONDURANT: Yes, Your Honor. The government
23 calls Agent Gallagher.

24 Also, Judge, if I could, on the issue of crime of
25 violence, U.S. v. Stratton, 2001 Westlaw 527442.

Gallagher - Direct

1 THOMAS P. GALLAGHER, GOVERNMENT'S WITNESS, SWORN

2 DIRECT EXAMINATION

3 BY MR. BONDURANT:

4 Q Okay, sir. Would you please state your name and
5 occupation.

6 A Yes, sir. Thomas P. Gallagher, special agent, U.S.
7 Treasury Department, Bureau of Alcohol, Tobacco & Firearms,
8 Roanoke, Virginia post of duty.

9 Q And, sir, are you the case agent in the case of United
10 States v. Pierre?

11 A Yes, I am.

12 Q Okay. From your investigation, sir, would you please
13 describe to Judge Conrad where this defendant resides.

14 A He resides in a location called Red House, called Muslims
15 of the Americas. It has one entry in. It has a guard. They
16 now have a guard shack there. Prior to the building of the
17 guard shack, they had a post that would go down with a stick
18 or log across the road, and it was patrolled by an individual.
19 Either a male or a female individual was either equipped with
20 a firearm or a big stick. The firearm -- if the individual
21 had the stick, the firearm was in the vehicle that was parked
22 in the front of the location. They also had walkie-talkies to
23 communicate to the rear of the compound.

24 Q Okay. And if somebody would drive by the compound, what
25 would ordinarily happen?

Gallagher - Direct

1 A Well, on surveillance, when we would go by there and make
2 two or three passes through there, we would observe vehicles
3 exit the compound and attempt to locate us and get us
4 identified.

5 Q Okay, sir. Now, are the people living in the compound,
6 have they been associated with a certain organization?

7 A Yes, sir.

8 Q And what's the name of that organization?

9 A Al-Fuqra.

10 Q What does al-Fuqra mean?

11 A Al-Fuqra, the English translation is "The Impoverished."
12 It's a violent black Muslim extremist sect that acts out
13 jihads against perceived enemies, Hindus, members of the
14 United States, people they feel have Jewish ties.

15 Q And from your investigation and doing some historical
16 research, how many crimes of violence has this group been
17 linked to?

18 A The organization is suspected in at least 17 bombings and
19 assassinations and 12 murders. They receive their orders
20 apparently from an individual by the name of Sheikh Jilani who
21 resides in Lahore, Pakistan. And individuals from the
22 organization are trained in Hancock, New York, and if they
23 pass the training in Hancock, New York, are then sent to
24 Pakistan for training in paramilitary and survivalist training
25 by Mr. Jilani.

Gallagher - Direct

1 Q And have you been in possession of a videotape in the
2 past showing this military-type training in Pakistan?

3 A Yes, I have.

4 Q Now, are members of the group in Red House, do they also
5 travel to Pakistan?

6 A Yes, there's one individual we know for a fact has
7 traveled to Pakistan.

8 Q And do you have any evidence concerning individuals from
9 the Red House group, after they get to Pakistan, going to
10 Afghanistan?

11 A Not -- we have information from an informant that one
12 individual did further his training by going to Afghanistan.

13 Q Now, was there a tape, a videotape, that was sent by
14 Sheikh Jilani from Pakistan back to the various al-Fuqra
15 compounds in the United States?

16 A Well, we know at least the one compound it went to. This
17 individual transported it to an individual who was cooperating
18 with ATF out of a gun trafficking case the al-Fuqra members
19 were involved in out of York, South Carolina, and during this
20 video Jilani claims that times are critical for believers of
21 Islam due to the government pressure by the United States and
22 the pressure to eliminate bin Laden and Hamas.

23 Q When was this videotape brought to the United States?

24 A I interviewed the individual in 1999, so it was sometime
25 within a six-month period prior to 1999.

Gallagher - Direct

1 Q Now, this defendant, what status, if any, does he hold in
2 the Red House compound?

3 A In my conversations with Bob Klackowitz, which is a
4 special investigator with the Colorado Attorney General's
5 Office, he considered Mr. Pierre to be one of the leaders of
6 the organization when he was in Colorado.

7 Q Okay. Now, did you have an ongoing investigation in this
8 group?

9 A Yes, we did.

10 Q Okay. And because of recent events, were cases brought
11 that might not ordinarily be brought until later?

12 A We were in the process of indicting actually this month,
13 but due to certainly the circumstances that occurred, we did
14 accelerate the indictment.

15 Q Was part of your investigation involving a machine gun
16 reverse with members of al-Fuqra at Red House?

17 A Yes, yes, it was. We --

18 Q Go ahead.

19 A We had an informant who had made contacts with members of
20 al-Fuqra, including the individual right there, were involved
21 in negotiating for the transfer of several machine guns, two
22 members of al-Fuqra who indicated they wanted to purchase
23 them. One of the problems was that Al-Fuqra members,
24 including Mr. Pierre and other individuals, wanted to check
25 out the machine gun at the compound. Due to the security and

Gallagher - Direct

1 the weapons and the children in the compound, we could not let
2 the weapon go into the compound for them to try it out for
3 fear that we would lose the gun and certainly be in another
4 Waco situation in terms of trying to retrieve the firearm. So
5 we were kind of at loggerheads in terms of trying to get past
6 that point.

7 We had actually set up a negotiation with them at a
8 Lynchburg mall where they were supposed to meet, and they did
9 not show up. They said they had been delayed.

10 Q Okay. Now, you talked earlier about this defendant's
11 role in the al-Fuqra group in Colorado; is that correct?

12 A Yes, sir.

13 Q And was there actually a case against him in Colorado?

14 A Yes, there was.

15 Q Okay. During the course of the investigation in
16 Colorado, was there a search warrant done on a storage locker
17 in 1989?

18 A Yes, there was.

19 Q Okay. And is that storage locker somehow tied -- excuse
20 me. Is that storage locker related at all to this defendant?

21 A Yes, it is.

22 Q And how so?

23 A Well, when the search warrant was executed in 1989, the
24 locker itself was registered to Raymond D. Williams, which is
25 the alias of Traci Upshur's father.

Gallagher - Direct

1 Q Now, Traci Upshur is a defendant, is also a codefendant
2 in this case?

3 A That's correct.

4 Q Okay.

5 A Seized from the storage unit were numerous documents
6 bearing the names of Mr. James D. Williams, Vincente Pierre,
7 an individual by the name of Flinton and other members of the
8 organization. In addition to identifying Mr. Pierre, they
9 found surveillance and targeting packet attack plans for two
10 locations. One was on a Denver Hare Krishna temple, and one
11 was on an individual by the name of Rashid Abdel Khalifa,
12 who's an Imam of the Tucson, Arizona mosque.

13 In addition to those items, they found 30 pounds of
14 explosives, ten handguns and silencers, target practice
15 silhouettes with such headings as "FBI Antiterrorist Team" and
16 "Zionist Pig."

17 Q Okay. Now, when you talk about target practice
18 silhouettes, you mean the type of target practice where like
19 there's a human form?

20 A Yes, sir.

21 Q And they had written on the human form what?

22 A They had -- well, at least two were "FBI Antiterrorist
23 Team," "Zionist Pig." On one of the silhouettes Mr. Pierre's
24 handwriting was identified by the state of Colorado as being
25 on the target, and this target also had a number of bullet

Gallagher - Direct

1 holes in the target.

2 I talked to Investigator Klackowitz. He stated that item
3 is actually in the court, was used in the court case, so he
4 could not say which, what heading was on Mr. Pierre's and he
5 would be able to provide that at a later point if necessary
6 and get it, retrieve it from the court compound -- court
7 complex.

8 In addition to these items, there were packages on
9 military targets in the area, electrical power lines, and also
10 what Mr. Pierre was charged with, the Colorado Workers'
11 Compensation forms were also located in that.

12 Q Now, you say there was an attack plan for an Imam in
13 Tucson; is that correct?

14 A Yes, sir.

15 Q What happened to that fellow?

16 A Approximately four months later Imam Khalifa was murdered
17 at the Tucson, Arizona, mosque after he refused government
18 cooperation. After the murder, the documents that were
19 located in the storage unit were exactly the same as the
20 attack that had been carried out.

21 Q Now, as far as the homicide of the Imam in Tucson, was a
22 fellow by the name of John D. Williams eventually indicted for
23 that?

24 A Yes, he was.

25 Q And does he have any relation to the Red House al-Fuqra

Gallagher - Direct

1 compound?

2 A Yes, sir. On June 9th of 2000, James D. Williams was
3 arrested in Lynchburg, Virginia, for the murder of Imam
4 Khalifa. At the time of his arrest, Williams presented
5 identification in the name of Keith Bell. Keith Bell was one
6 of the individuals we were negotiating with for the transfer
7 of machine guns to members of al-Fuqra.

8 Q Now, was this defendant also involved with Keith Bell
9 concerning the transfer of machine guns?

10 A Yes, he was.

11 Q Okay.

12 A And Mr. Williams was driving a vehicle, Ms. Brickhouse's
13 vehicle, which is also associated with members of al-Fuqra or
14 with Mr. Pierre.

15 Q Okay, sir. Now, going back to the homicide of the Imam
16 in Tucson, was there a fellow by the name of Elhage involved?

17 A Yes, sir, there was.

18 Q And what was his involvement in that?

19 A Well, in 1998 Mr. Elhage was considered the leader of the
20 al-Qaida terrorist cell, was arrested regarding the embassy
21 bombing of Kenya and Tanzania. During Mr. Elhage's bond
22 hearing, Assistant U.S. Attorney Patrick Fitzgerald stated
23 that in addition to Elhage being involved in purchasing
24 firearms for Mahmoud Abdullah and transporting chemicals that
25 were used for the World Trade Center bomb, he assisted members

Gallagher - Direct

1 of al-Fuqra in conducting surveillance on the Islamic leader
2 Imam Khalifa shortly before Khalifa's death.

3 Q Now, do you know what dispute or concerns al-Fuqra had
4 with the Imam that was killed in Tucson?

5 A Apparently the Imam's teachings of the Koran were in
6 conflict to their beliefs.

7 Q Okay. Now, was there another search warrant issued in
8 1992 relating to the al-Fuqra group in Colorado Springs?

9 A Yes, sir. Prior to that search warrant, October '91, a
10 number of al-Fuqra members were arrested in Toronto, Canada,
11 for the attempted bombing of a Hindu temple and Hindu movie
12 theater. Based upon the evidence from that scene and
13 additional information, in October of 1992, search warrants
14 were again executed at the al-Fuqra compound in Buena Vista,
15 Colorado, and at that time a number of AK-47s and AR-15s were
16 seized from an abandoned mine shaft in the compound.
17 According to Investigator Klackowitz, one of the main leaders
18 of the organization at that time was Vincente Rafael Pierre.

19 Q This defendant?

20 A That defendant right there.

21 Q Okay. Now, he was eventually charged in Colorado; is
22 that correct?

23 A Yes, he was.

24 Q Did they have to issue a UFAP warrant for his arrest?

25 A Yes, they did.

Gallagher - Direct/Cross

1 Q And where did they locate him?

2 A He was arrested in Williamsport, Pennsylvania, at a
3 firing, target-shooting range with another member of al-Fuqra.

4 Q Okay. Now, as far as the part of the Bail Reform Act
5 concerning the strength of the case, on at least one of these
6 gun transactions do you have him on audio and videotape?

7 A Yes, we do.

8 Q And did you have him under surveillance during that
9 particular illegal transaction?

10 A Yes. We observed him during, after the transaction. We
11 followed him around town with him and his wife to several
12 locations, and eventually they went back into the Red House
13 compound at which time we had to terminate surveillance due to
14 safety issues.

15 Q But you actually have the illegal transaction on audio
16 and video?

17 A Yes.

18 Q Now, when this defendant was arrested last week, was he
19 carrying anything that might be considered to be a weapon?

20 A Yes. During the search, incident to arrest, we obtained
21 a box-cutter knife and a nail clipping -- nail clipper.

22 Q Okay. Now, sir, after the attack on the Pentagon, were
23 you assigned to work the crime scene at the Pentagon?

24 A Yes, I was.

25 Q And as part of your duties were you asked to look for

Gallagher - Cross

1 certain items that were related to the terrorists?

2 A Yes. We were requested to look especially for
3 box-cutters and for nail clippers.

4 MR. BONDURANT: Okay. That's all the questions I
5 have, Judge. Could I have one more question, Judge?

6 THE COURT: Yeah, you may.

7 BY MR. BONDURANT:

8 Q Sir, outside his ties to the organization al-Fuqra, are
9 you aware of any other ties the defendant has to this area?

10 A No, I do not.

11 MR. BONDURANT: Thank you.

12 THE DEFENDANT: I'll tell you, I'll tell you.

13 CROSS EXAMINATION

14 BY MR. WRAY:

15 Q Mr. Gallagher.

16 A Yes, sir.

17 Q All right. Now, any indication that Mr. Rafael has ever
18 been to -- not Mr. Rafael, Mr. Pierre has ever been to
19 Pakistan or Afghanistan?

20 A Not that I have information of.

21 Q All right. And he has lived in Red House for how long?

22 A Since approximately 1996 or 1997, I believe.

23 Q For how long, 1996?

24 A I believe it was '96.

25 Q So about five or six years?

Gallagher - Cross

1 A Yes, sir.

2 Q And he is married?

3 A Yes, sir.

4 Q Has children there?

5 A Yes, sir.

6 Q Okay. Is he employed?

7 A No, sir.

8 Q All right. When you said that he was in Colorado, when
9 did he leave Colorado?

10 A I don't know when he exactly left Colorado. I know that
11 after the warrant he apparently went and fled the
12 jurisdiction.

13 Q Fled or moved?

14 A My information was he fled.

15 Q Okay. And all the, all what you said about the machine
16 guns or the guns in the storage locker, targets and things
17 like that that were in Colorado, he was never charged with
18 that; is that correct?

19 A He was charged with some of the items that were taken
20 from the storage unit, specifically the workmen's compensation
21 issue that led to his indictment and conviction on the
22 workmen's comp.

23 Q Workmen's compensation?

24 A Yes, sir.

25 Q No violent crimes?

Gallagher - Cross

1 A Not, he was not charged with a violent crime.

2 Q He was not charged with any weapon charges in Colorado?

3 A That's correct.

4 Q No conspiracy to commit murder?

5 THE DEFENDANT: No.

6 THE WITNESS: That's correct.

7 BY MR. WRAY:

8 Q Okay. And where was Mr. Pierre in 1992?

9 A 1992, my understanding is that he was in Colorado.

10 Q Okay. And he was arrested in Williamsport; is that
11 correct?

12 A That's correct.

13 Q How long had he been there?

14 A He had been under surveillance there for approximately
15 two months with another individual that lived there.

16 Q Okay. Now, you say he was arrested. Did he turn himself
17 in?

18 A My understanding was that he was arrested.

19 Q But did he give any problems with the people?

20 A No, sir.

21 Q Okay. And was he taken before a magistrate or was he
22 taken before a court, a state court in Pennsylvania, for
23 extradition?

24 A I'm not aware of what occurred after his arrest.

25 Q All right. Okay. Now, the audio and videotape, without

Gallagher - Cross

1 going into all that involved, they concern Mr. Pierre and his
2 wife; is that correct?

3 A That's correct.

4 Q Was she with him at all times on these audiotapes when he
5 was going to the gun stores?

6 A On the first purchase.

7 Q Okay. And has she ever been convicted of a felony?

8 A No, she has not.

9 Q Based upon that, would she have a right to own and
10 purchase a firearm?

11 A Yes, she would.

12 Q All right. Now, you said the weapon he had was a
13 box-cutter and nail clippers?

14 A Yes, sir.

15 Q Do you have those with you?

16 A Yes, I do, sir.

17 Q If I may. They're just, they're standard nail clippers.

18 A Yes.

19 THE DEFENDANT: It's called a utility knife, not a
20 box-cutter.

21 BY MR. WRAY:

22 Q And those were found on Mr. Pierre's person?

23 A Yes, sir.

24 Q Okay. Did he offer any resistance or did he try to use
25 them on anybody?

Price - Direct

1 A No, he did not.

2 Q All right. This videotape from the leader, and I'm
3 sorry, Jiani?

4 A Jilani.

5 Q Jilani, I'm sorry. That was made in 1998?

6 A No. It was observed by the witness in 1998 or 1999.

7 Q Okay. And where did they observe this videotape?

8 A In an apartment in Norfolk, Virginia.

9 Q And who was there?

10 MR. BONDURANT: Your Honor, I object to any questions
11 concerning who was there.

12 BY MR. WRAY:

13 Q Okay. Well, was Mr. Pierre there?

14 THE COURT: I'll let him answer that question.

15 THE WITNESS: No, he was not.

16 BY MR. WRAY:

17 Q He was not there?

18 A No.

19 Q Do you have any evidence that Mr. Pierre ever saw this
20 videotape?

21 A Not at this time.

22 MR. WRAY: Okay. I don't have any further questions,
23 Your Honor. Thank you.

24 THE COURT: Mr. Bondurant, let me ask you a question
25 about exactly what legal contention the government is making

Price - Direct

1 here to help me know what questions we might need to ask
2 Mr. Gallagher. Are you making an argument -- I accept your
3 argument that apparently outside of the Fourth Circuit the
4 majority rule is that this particular offense does constitute
5 a crime of violence. Accepting that, are you making an
6 additional argument that there might be a rebuttable
7 presumption in favor of pretrial detention in this case?

8 MR. BONDURANT: I would like to make that argument,
9 but I believe, reading the statute, it does not apply --

10 THE COURT: I agree.

11 MR. BONDURANT: -- a rebuttable presumption.

12 THE COURT: Fair enough. Any other questions of this
13 witness?

14 MR. BONDURANT: No.

15 THE COURT: You may stand down, Mr. Gallagher. Thank
16 you.

17 You may call your next witness.

18 MR. BONDURANT: That's all the evidence we have,
19 Judge.

20 THE COURT: The government rests.

21 MR. WRAY: Your Honor, I would like to call Mike
22 Green to the stand, please, I'm sorry, Mr. Green.

23 THE COURT: Oh, Mike Price.

24 MR. WRAY: I'm sorry, my apologies, Mr. Price.

25 MIKE PRICE, DEFENDANT'S WITNESS, SWORN

Price - Direct/Cross

1 DIRECT EXAMINATION

2 BY MR. WRAY:

3 Q My apologies, Mr. Price.

4 A That's all right.

5 Q I'm having a great deal of difficulty with names this
6 morning for some reason. You are the probation and parole
7 officer assigned for the pretrial matters; is that correct?

8 A Yes, sir, it is.

9 Q And as part of that you are involved with obtaining
10 information concerning Mr. Pierre. If I call your attention
11 to your report that's dated the 21st of September, you
12 indicate that the NCIC, you checked the NCIC on Mr. Pierre; is
13 that correct?

14 A Yes, sir. After the 21st, yes, sir, I did.

15 Q Okay. After the 21st?

16 A Well, I ran Mr. Pierre's name and date of birth through
17 the NCIC, National Crime Information Computer system, and I
18 did not get a response back as far as any arrests. I
19 subsequently obtained an FBI number on Mr. Pierre and then got
20 an arrest record back.

21 Q Okay. And what was that, what was that arrest record?
22 Is it different from what was indicated in your report?

23 A No, sir, it's not. On the status report dated September
24 the 21st, it reveals Mr. Pierre's record as is reflected
25 through the computer printout.

Pierre - Direct

1 Q Did you get a disposition on that charge?

2 A No, sir, there was no disposition listed.

3 Q Was this in fact a federal or a state charge?

4 A It was a state charge in El Paso, Colorado, I believe.

5 MR. WRAY: All right. Thank you. I don't have any
6 further questions.

7 MR. BONDURANT: I would like to hand this document to
8 him, if I could.

9 CROSS EXAMINATION

10 BY MR. BONDURANT:

11 Q Sir, is that a judgment and conviction document?

12 A Yes, sir, it is.

13 Q And does it relate to Mr. Pierre, showing a conviction
14 for a felony?

15 A Yes, it does.

16 Q Okay. When you talked to the defendant, did he refuse to
17 sign certain releases or waivers for you?

18 A He declined to sign a standard release form that we use
19 to verify information, specifically information that may be
20 protected by the Freedom of Information Act.

21 Q Okay. So some of the things he told you you were not
22 able to independently confirm because he refused to give you
23 the authority to do so?

24 A That's correct.

25 MR. BONDURANT: Okay. If I could have that back,

Pierre - Direct

1 please.

2 That's all I have, Judge.

3 THE COURT: Well, as a matter of fact, he has a
4 constitutional right not to execute such a waiver, does he
5 not?

6 THE WITNESS: That's, that's absolutely correct, Your
7 Honor.

8 THE COURT: And it's not unusual for defendants to
9 decline to execute that waiver.

10 THE WITNESS: No, sir, it's not.

11 THE COURT: Any other questions of this witness?

12 MR. WRAY: No, Your Honor. Thank you.

13 THE COURT: You may stand down, Mr. Price. Thank
14 you.

15 Anything else, Mr. Wray?

16 MR. WRAY: I call Mr. Pierre to the stand.

17 VINCENTE R. PIERRE, DEFENDANT'S WITNESS, SWORN

18 DIRECT EXAMINATION

19 BY MR. WRAY:

20 Q Mr. Pierre, would you state your name for the record,
21 please.

22 A Vincente Rafael Pierre.

23 Q Mr. Pierre, you were charged in Colorado in 1989, I
24 believe?

25 A No.

Pierre - Direct

1 Q 1992, I'm sorry.

2 A I was charged in 1992 and convicted in '93.

3 Q All right. Where were you when you received notice that
4 you had been charged with these Colorado charges?

5 A I was living in Williamsport, Pennsylvania.

6 Q All right. Now, when had you left Colorado?

7 A Latter part of 1988.

8 Q Okay. And when had you arrived in Williamsport,
9 Pennsylvania?

10 A Approximately September of 1989.

11 Q Okay. Now, when you left Colorado, were you aware that
12 you had charges pending on you?

13 A No, I wasn't. I couldn't be aware because the charges
14 came about in 1992.

15 Q So no one had arrested you, no one had presented any
16 warrants to you when you left Colorado?

17 A Exactly, correct.

18 Q All right. When you were arrested in Williamsport,
19 Pennsylvania, you were working?

20 A Yes, I was.

21 Q Okay. Where were you when you were arrested?

22 A I was working with a private security company in
23 Williamsport, Pennsylvania, at the time, and I was arrested at
24 the Little League Museum, the Little League World Series in
25 Williamsport, Pennsylvania.

Pierre - Direct

1 Q Now, when I say arrested, did they come in and arrest
2 you, put you in handcuffs and take you?

3 A Yes, they did.

4 Q Okay. And what was the outcome of that initial arrest?
5 Were you freed on bond or --

6 A Well, the outcome was they was able to determine from
7 that, based on the fact that I did live in Williamsport for at
8 that point three years, approximately, or two, that I couldn't
9 have possibly fled Colorado, so they made a determination from
10 that point to release me on a PR bond. I was working at the
11 time of the arrest.

12 Q Now, who made that determination? Was that a federal
13 judge?

14 A Federal judge.

15 Q Federal judge. A federal magistrate made that
16 determination?

17 A Federal magistrate, and he -- I want to make this point.
18 He indicated to me that there was still cases possibly pending
19 in Colorado, right?

20 Q Uh-huh. All right. And how did you get back to
21 Colorado?

22 A Okay. About a week or so after being released on a PR
23 bond, the probation officer that was assigned to me came to
24 inform me that I had to go downtown to the courthouse. Upon
25 going downtown to the courthouse I went before a judge, and

Pierre - Cross

1 from that point on they arrested me for extradition back to
2 Colorado.

3 Q Okay. Was this a state judge or a magistrate, a federal
4 magistrate?

5 A No. I believe it was a state judge.

6 Q And you were extradited. Did you waive extradition?

7 A Did I waive extradition? No, I don't believe so, no.

8 Q They had a hearing and you were extradited?

9 A Yes, sir.

10 Q And how long have you lived in Red House, Virginia?

11 A Approximately six years.

12 Q You have family in Red House?

13 A Yes, sir.

14 Q And who are your family?

15 A I have a wife and seven children with me, and the oldest
16 son is not living with me, so eight total kids.

17 Q Okay. And have you ever not shown up for court?

18 A Repeat the question again.

19 Q Have you ever not shown up for court when you know you're
20 supposed to be there?

21 A Always showed up for court.

22 Q Okay. Have you ever knowingly left the jurisdiction when
23 you knew that there was an arrest warrant out for you or that
24 you had been arrested and were awaiting trial?

25 A Never.

Pierre - Cross

1 MR. WRAY: All right. Thank you, Mr. Pierre.

2 THE WITNESS: You're welcome.

3 CROSS EXAMINATION

4 BY MR. BONDURANT:

5 Q As far as your conviction in Colorado, workmen's comp
6 case, correct?

7 A Yes.

8 Q That involved approximately \$355,000; is that correct?

9 A No, no, that's not correct.

10 Q Is that what you were charged with, \$355,000?

11 A No, no, I wasn't.

12 Q How much did it involve then?

13 A How much did it involve for me?

14 Q No, no, for the whole group.

15 A No. Are you asking me for the group or are you asking
16 me?

17 Q No, for the whole crime.

18 A I cannot --

19 Q You, James Williams, James Upshur, Edward Flinton McGhee,
20 and James Childs. How much did the little workmen's comp
21 case, how much did you-all totally steal?

22 A You-all?

23 Q All of you together.

24 A I wasn't charged. I wasn't --

25 Q How much did the whole group steal together?

Pierre - Cross

1 A I'm trying to answer your question, sir.

2 Q I'm asking you the question.

3 A I'm trying to answer the question.

4 Q Okay. How much was the whole crime worth?

5 THE COURT: Well, how much was involved in the
6 offense? What did the indictment charge?

7 THE WITNESS: Well, in my, my charges it involved
8 \$7,000, not the amount that he's indicating, so I don't know
9 what he's talking about. I was charged with, I think it was a
10 Count Four felony and I had to pay \$7,000 restitution. I did
11 that while being on probation.

12 BY MR. BONDURANT:

13 Q Did the entire scheme with all the defendants together
14 involve about \$355,000?

15 THE WITNESS: Do I have to answer that? I mean --

16 THE COURT: If you know.

17 THE WITNESS: -- it doesn't have nothing to do with
18 me.

19 THE COURT: If you know, I want you to answer.

20 THE WITNESS: Yes, I believe it did.

21 BY MR. BONDURANT:

22 Q Okay. And, sir, you've also gone by the name of Rafael
23 Upshur; isn't that correct?

24 A No, sir.

25 Q Haven't you told people your name is Rafael Upshur?

Pierre - Cross

1 A No.

2 Q Didn't you tell the owner of the Outpost Gun Shop your
3 name was Rafael Upshur?

4 A No, I didn't.

5 Q You say you've never said that?

6 A No. I told him my name was Rafael.

7 Q Did you say your name was Rafael Upshur?

8 A No, I didn't.

9 Q Have you also gone by the name Rajab Rahim?

10 A Rajab Rahim?

11 Q R-A-J-A-B, Rahim, R-A-H-I-M.

12 A Yes, that's my Islamic name, yes.

13 Q Okay.

14 A It's not Rahib; it's Rajab.

15 Q Rajab, my apologies.

16 A Okay.

17 Q So you've also gone by that name?

18 A Yes.

19 Q But categorically deny you've never told anybody your
20 name was Rafael Upshur?

21 A Right, that's correct.

22 Q Okay. Now, the workmen's comp case involved, the
23 evidence came from, I understand, a search of a storage
24 locker; is that correct?

25 A I mean to my understanding and reading the reports and

Pierre - Cross

1 stuff.

2 Q That is correct?

3 A Yes, but I was --

4 Q And that was the same storage locker you heard Agent
5 Gallagher testify about there being target silhouettes with
6 your handwriting on it; is that correct?

7 A No, that's not correct.

8 Q Do you deny that there were target silhouettes with
9 things like "FBI agent" on it --

10 A Yes.

11 Q -- with your handwriting on it?

12 A Yes, I deny that.

13 Q Have you ever shot at a silhouette such as that before,
14 sir?

15 A No.

16 Q Whose explosives were that in the same storage locker
17 containing evidence of your workmen's comp case?

18 A I don't know anything about that.

19 Q You don't know anything about it. Have you ever been in
20 that storage locker?

21 A No, I haven't.

22 Q You categorically deny you've ever been to that storage
23 locker?

24 A Haven't been there.

25 Q The one in 1989?

Pierre - Cross

1 A Haven't been there.

2 Q What is al-Fuqra?

3 A You want me to explain it to you?

4 Q Yes, I do.

5 A Okay. It's not Fuqra; it's Fuqra, okay?

6 Q Very well.

7 A You have to have an understanding of the Arabic language.

8 Q Let me ask this question.

9 A I'm answering your question.

10 Q Okay. Let me ask this question. If your lawyer wants
11 you to answer it, that's fine. Have you ever been to
12 Pakistan?

13 A No, I haven't.

14 Q Have you ever been to Saudi Arabia?

15 A Yes. I made haj, holy pilgrimage, to Mecca in 1979.

16 This is part of my religious responsibility.

17 Q How many times have you been to Saudi Arabia?

18 A Once.

19 Q Would you go anywhere else besides Saudi Arabia once you
20 were there?

21 MR. WRAY: Your Honor, I'm going to object to this
22 line of questioning. I'm not sure what the relevance is.

23 This man is only charged with --

24 THE WITNESS: I wanted to answer the first question.

25 THE COURT: It exceeds the scope of direct. I'll

Pierre - Cross

1 sustain the objection.

2 MR. WRAY: Thank you, Your Honor.

3 THE WITNESS: As far as -- may I go back, Your Honor?

4 MR. BONDURANT: That's all the questions I have.

5 THE COURT: Well, he has no additional questions.

6 Mr. Wray might ask you some other questions if he wants to.

7 THE WITNESS: Okay. But I wanted to make myself
8 clear, you know, on certain matters.

9 THE COURT: Let me ask you, Mr. Pierre --

10 THE WITNESS: Yes, sir.

11 THE COURT: -- do you have any financial resources
12 that are available to you now that would be sufficient to
13 secure a bond in your case if one was set?

14 THE WITNESS: Yes, I can get it.

15 THE COURT: How much of a bond do you think you could
16 make?

17 THE WITNESS: All that depends on what my family
18 members and community members could do for me. I mean I'm
19 sure we could --

20 THE COURT: Well, that's what I need to know.

21 THE WITNESS: Uh-huh.

22 THE COURT: We would have to have some idea as to the
23 extent of their resources that are available to secure a bond
24 in your case. Do you have any idea what type of resources
25 they could marshal for your support?

Pierre - Cross

1 THE WITNESS: I really, I really don't. I mean it's
2 hard for me to answer that question because I don't know what
3 the bond will be or anything like that. I don't know. I
4 understand it should be reasonable, reflecting the charges.

5 THE COURT: Okay. Where is your oldest son now?

6 THE WITNESS: Where is my oldest son right now?

7 THE COURT: Uh-huh, the one who's no longer living
8 with you.

9 THE WITNESS: Right, sitting right there.

10 THE COURT: Oh, but he doesn't live with you but he's
11 still local?

12 THE WITNESS: Right.

13 THE COURT: Does he live in Roanoke or in Lynchburg
14 or --

15 THE WITNESS: He lives in Red House.

16 THE COURT: In Red House?

17 THE WITNESS: Right.

18 THE COURT: So all of your family is there in the --

19 THE WITNESS: Yes, sir.

20 THE COURT: -- in the commune?

21 THE WITNESS: Yes, sir.

22 THE COURT: Do you have brothers and sisters in this
23 country?

24 THE WITNESS: Yes, yes.

25 THE COURT: Where are your brothers and sisters?

Pierre - Redirect

1 THE WITNESS: My brothers and sisters now are living
2 in New York City, New York.

3 THE COURT: What do they do?

4 THE WITNESS: I believe my brother is a salesman and
5 my sister, she works, but I don't know exactly what type of
6 job.

7 THE COURT: Do you have a close relationship with
8 your siblings, or have you kind of lost touch?

9 THE WITNESS: Somewhat of a close relation, not that
10 close.

11 THE COURT: Okay. How about your mother and father?

12 THE WITNESS: Very close.

13 THE COURT: Where are they?

14 THE WITNESS: They're still in Brooklyn, New York.

15 THE COURT: What do they do?

16 THE WITNESS: They're retired.

17 THE COURT: What did they do when they worked?

18 THE WITNESS: My father worked for the United States
19 Postal Service.

20 THE COURT: Okay. Where did you go to school?

21 THE WITNESS: I went to school at George W. Wingate,
22 this is in Brooklyn, New York. Then I graduated from George
23 W. Wingate and did one semester in Hunter College in New York
24 City, Manhattan, New York.

25 THE COURT: Uh-huh.

Pierre - Redirect

1 Any other questions of this witness?

2 MR. WRAY: I don't have any further questions.

3 MR. BONDURANT: No, sir.

4 THE COURT: You may stand down, sir. Thank you. If
5 you have something else you want to say, you can consult with
6 Mr. Wray before you undertake to make any other statements.

7 THE WITNESS: Yeah, I did want to make another
8 statement.

9 THE COURT: All right. Consult with him first. I'll
10 let him call you back if he wants you to.

11 THE WITNESS: Okay. I want to come back.

12 (Discussion off the record between counsel and
13 defendant.)

14 MR. WRAY: Your Honor, Mr. Pierre would like to.

15 THE COURT: There's redirect?

16 Come forward, sir, and we'll consider that you're still
17 under oath.

18 THE WITNESS: Yes, sir.

19 REDIRECT EXAMINATION

20 BY MR. WRAY:

21 Q Mr. Pierre, you said you had something you wanted to
22 clarify?

23 A Yes. I was asked a question about fuqra, the word
24 "fuqra" and what it meant. I wanted to clarify that for the
25 Court. I already did my homework on it already. If I may

Pierre - Redirect

1 read, you know, from what I had --

2 THE COURT: Go ahead.

3 THE WITNESS: -- written down.

4 In Arabic, the word "fuqra" means poor, destitute, and
5 indigent in the first sense. The word "fuqra," plural, and
6 "fakir," singular, can be applied to many Muslims and
7 non-Muslims, for that matter, because it simply means one who
8 is destitute, fuqra or fakir, fuqra being plural, fakir being
9 single.

10 Are we to believe that most of the third-world countries
11 who are destitute and can be called "fuqra," quote-unquote, or
12 "fakir" in its first sense is a part of some phantom
13 organization that does not exist anywhere? No, of course.
14 "Fuqra" in its second sense, that is sufic, sufic, S-U-F-I-C,
15 or the spiritual terminology, means to be poor in that the
16 spiritual seeker has no love or attachment to this mortal
17 world. His only love is God almighty, be he a millionaire or
18 not, and the eternal life, this being the ultimate goal of all
19 religions. Many Muslims for the past 1500 years strove to
20 achieve this station, this closeness to God.

21 Many have also called themselves Jamaat al-Fuqra,
22 community of lovers and seekers of God, such as the Tabliki
23 Jamaat, which is a well-known organization, Muslim
24 organization that was established during the presidency of
25 John F. Kennedy, basically was an organization that was

Pierre - Recross

1 established during that time in the Indo-Pakistan area of this
2 world. They came to this country to basically propagate the
3 message of Islam. Fuqra in its first sense can be taken as a
4 state, a poor state. Fuqra in its second sense can be taken
5 as a station, a spiritual station to be attained with God.

6 There is no al-Fuqra organization. There are no legal
7 papers with the name of any such organization. There are no
8 publications named al-Fuqra. There is nothing owned under the
9 name al-Fuqra, no non-tax exempt religious organizations named
10 al-Fuqra. Why is this? Because "fuqra" is just a word,
11 Arabic word, and it means what has been explained already. Is
12 there an organization named al-Fuqra? No. This is a phantom,
13 nonexistent organization which does not exist, again. It's
14 just a figment of someone's imagination due to their ignorance
15 of the Arabic language or perhaps due to their hate or
16 prejudice of Al-Islam. It is ludicrous to bring charges
17 without evidence and with ignorance of language.

18 That's all I have to say about that.

19 THE COURT: Any other questions, Mr. Wray?

20 MR. WRAY: No, Your Honor.

21 THE WITNESS: And I would like to also --

22 THE COURT: Well --

23 THE WITNESS: I'm sorry.

24 THE COURT: -- again, respond to Mr. Wray's
25 questions. Don't offer spontaneous statements.

Pierre - Recross

1 THE WITNESS: I'm sorry, I'm sorry, I'm sorry, I'm
2 sorry.

3 MR. WRAY: I don't have any further questions, Your
4 Honor.

5 THE COURT: Any recross, Mr. Bondurant?

6 RECCROSS EXAMINATION

7 BY MR. BONDURANT:

8 Q Maybe, maybe you're not understanding or I have a bad
9 accent or whatever. When I asked you if you used the word,
10 the name Rafael Upshur, that's spelled U-P-S-H-U-R. Have you
11 ever used that name before?

12 A No, I never did.

13 Q You categorically say you've never used, never told
14 anybody at all that your name was Rafael Upshur?

15 A I never did.

16 Q Okay. Now, Stephen Paster, you know him, don't you?

17 A No, I don't.

18 Q He's a member of al-Fuqra, isn't he?

19 A I don't know him.

20 Q He's been to Red House, hasn't he?

21 A No. I never met him.

22 Q Are you categorically saying that Stephen Paster has
23 never been to the compound in Red House?

24 A If he did, I don't know him. I don't know Stephen
25 Paster.

Pierre - Recross

1 Q Are you aware that he was convicted of bombing a hotel in
2 Seattle?

3 MR. WRAY: Your Honor, I think that Mr. Pierre has
4 answered four times.

5 THE COURT: He answered the question. He said he
6 doesn't know him, so obviously he wouldn't be aware of that
7 information.

8 THE WITNESS: Right, obviously.

9 BY MR. BONDURANT:

10 Q You know John Williams, do you not?

11 A No, I don't.

12 Q John Williams, the fellow who was convicted of killing an
13 Imam in Tucson?

14 A No, I don't.

15 Q He's been to the compound in Red House, hasn't he?

16 A I never seen him. I don't know John Williams.

17 Q So you're categorically saying --

18 THE COURT: That's not responsive to the question.
19 Do you know whether this man has been to the compound?

20 THE WITNESS: Many Muslims come through there, you
21 know, many Muslims. I mean there are Muslims from Pakistan,
22 Arabic.

23 THE COURT: I understand that. Do you know if this
24 particular man has been to the compound?

25 THE WITNESS: If I don't know him, how would I know

Pierre - Recross

1 if he came through there or not?

2 THE COURT: Well, you may have heard from someone
3 else or know for a fact that he's been there.

4 THE WITNESS: No, no, never, never.

5 THE COURT: So to the best of your knowledge, such a
6 person has never been to the compound?

7 THE WITNESS: Best of my knowledge, right, correct.

8 BY MR. BONDURANT:

9 Q How about a James Williams?

10 A No.

11 Q Do you remember a fellow who was using an identification
12 by the name of Bell?

13 A No, sir, no, no.

14 Q Okay. So categorically you're saying that you don't know
15 of, never heard of, a James Williams using identification by
16 the name of Bell?

17 A That's what I'm saying.

18 Q You're categorically saying that?

19 A Yes, sir.

20 Q I need to get it out on the record here.

21 A Yes, he got it.

22 MR. WRAY: How do you spell that? May I just ask how
23 you spell Bell?

24 MR. BONDURANT: Bell, B-E-L-L.

25 MR. WRAY: Thank you.

Pierre - Recross

1 BY MR. BONDURANT:

2 Q And you're not aware that he was convicted of killing the
3 Imam in Tucson?

4 A If I don't know him, that means I'm not aware of that.

5 Q Okay. Well, I'm just asking the question, okay?

6 A Yeah. I'm with you, I'm with you.

7 Q How about James Upshur, U-P-S-H-U-R? Do you know him?

8 A James?

9 Q James Upshur.

10 A James Lincoln Upshur?

11 Q Yeah.

12 A Yes, I know him.

13 Q Has he been convicted?

14 A To my knowledge he has.

15 Q He's been convicted of a homicide too, hasn't he?

16 A I don't know about that.

17 Q What relation are you to him?

18 A That's my father-in-law.

19 Q Okay. And you don't know which homicide he was convicted
20 of?

21 A No.

22 Q Has he ever been to the compound in Red House?

23 A No.

24 Q Sir, when is the last time you had a job?

25 A I'm self-employed for the last five years. I stopped

Pierre - Recross

1 working the type of work, stopped doing the type of work I was
2 doing the early part of this year.

3 Q And what were you self-employed doing?

4 A I sold sporting gears, Islamic apparel, things of this
5 nature.

6 Q And where did you obtain these items that you sold?

7 A Well, I had some close associates --

8 Q Where at?

9 A -- that brought, brought these items to me.

10 Q Where?

11 A From the wholesale district in New York.

12 Q In New York?

13 A Yes, sir.

14 Q And where would you set up shop to sell these items?

15 A Well, I had a license, I had a license to sell in
16 Lynchburg, Virginia.

17 Q Did you have a store?

18 A No, I didn't.

19 Q Where did you sell them?

20 A I had, like I just answered your question, I had a
21 license to sell door to door as a salesman.

22 Q You're a door-to-door clothing salesman?

23 A Yes.

24 Q You just knock on doors and say, Hey, you want to buy a
25 pair of pants?

Pierre - Recross/Gallagher - Direct

1 A Yeah.

2 Q Is that basically what you're doing?

3 A We basically had in Lynchburg, Virginia, was what they
4 called a solicitor's permit.

5 Q And you went door to door?

6 A Yes. They gave people permission to go door to door.

7 Q You're like Avon, right?

8 A Something like that.

9 Q Okay. How much money did you make doing that?

10 A Approximately \$2700 a month.

11 Q Did you file taxes?

12 A Yes, I did.

13 Q You filed taxes?

14 A Yes, sir.

15 Q Under what name did you file taxes?

16 A Under my name.

17 Q Which is?

18 A Vincente Rafael Pierre.

19 Q And your Social Security number that you filed taxes
20 under?

21 A Yes, sir.

22 Q Okay. Well, what's the Social Security number you used
23 on the tax form?

24 A The same Social Security number that I'm using that we
25 have right --

Gallagher - Direct/Cross

1 Q And what might that be; do you know?

2 A 086-50-4299.

3 MR. BONDURANT: Thank you.

4 THE WITNESS: You're welcome.

5 THE COURT: Any other questions?

6 MR. WRAY: No, Your Honor.

7 THE COURT: You may stand down, sir. Thank you.

8 MR. WRAY: We have no further evidence, Your Honor.

9 THE COURT: Any rebuttal evidence, Mr. Bondurant?

10 MR. BONDURANT: No, sir.

11 THE COURT: Perhaps we should hear from Mr. Gallagher
12 again about the use of aliases and limit his additional
13 testimony to that, that set of circumstances.

14 MR. BONDURANT: If we could have one moment, please.
15 Call Agent Gallagher, please.

16 THE COURT: Mr. Gallagher, we'll consider it that
17 you're still under oath.

18 THE WITNESS: Yes, sir.

19 THOMAS P. GALLAGHER, GOVERNMENT'S WITNESS, SWORN

20 DIRECT EXAMINATION

21 BY MR. BONDURANT:

22 Q Okay, sir. In accordance with the charges before the
23 Court today, did you interview the owner at the Outpost where
24 these firearms were purchased?

25 A Yes, I did.

Gallagher - Cross

1 Q Okay. And did you ask the owner of the Outpost what name
2 the defendant told him when he was coming in there to look at
3 guns?

4 A Yes. He told him his name was Rafael Upshur, because
5 when we were doing the investigation we didn't know Traci if
6 Traci Upshur was perhaps married to another individual. But
7 when we saw Vincente actually arrive at the scene, we knew
8 that was Vincente Rafael Pierre.

9 In addition to that, Your Honor, this is his NCIC
10 criminal record, and this is dated August 6th of 1997. One of
11 the aliases, at least that's listed by NCIC, is Rafael Upshur.

12 Q But we have direct testimony from the owner of the gun
13 shop that he used the name Rafael Upshur?

14 A Yes, sir.

15 MR. BONDURANT: Thank you.

16 CROSS EXAMINATION

17 BY MR. WRAY:

18 Q Mr. Gallagher, what is Mr. Pierre's wife's name?

19 A Traci Upshur.

20 Q Okay. Could in fact the owner have mistaken Mr. Pierre's
21 last name as Upshur when he said, "My name is Rafael"?

22 A No. He specifically asked him what his name was on our
23 request.

24 Q Were you there?

25 A No, I was not.

1 Q Okay. So you don't know; you only go by what he said?

2 A That's correct.

3 MR. WRAY: Okay. Thank you.

4 THE COURT: Did the applicant for purchase of a
5 firearm sign any documents?

6 THE WITNESS: Well, Traci Upshur signed it as Traci
7 Upshur.

8 THE COURT: He did not, this defendant did not sign a
9 document?

10 THE WITNESS: No. It was a straw purchase, Your
11 Honor.

12 THE COURT: Fair enough.

13 Any other questions of this witness?

14 MR. BONDURANT: No, sir.

15 THE COURT: You may stand down, Mr. Gallagher. Thank
16 you.

17 Any additional evidence, Mr. Bondurant?

18 MR. BONDURANT: No, sir.

19 THE COURT: Anything you would say then by way of
20 argument in support of the government's motion?

21 MR. BONDURANT: Your Honor, it appears to me that the
22 only ties he has to the area involves this group who we have
23 delineated and defined as al-Fuqra, which I believe has a very
24 violent history, a very violent past and seems to be held
25 together by violence. He's been identified as at least a

1 local leader of this group, both in the compound in Colorado
2 and then when they got chased out of Colorado in the compound
3 in Red House. So I believe, one, he has no ties to the
4 community except this group, and we believe this group is not
5 a significant enough tie considering their background and
6 their history.

7 We've also been shown that there's travel overseas by
8 members of the group. He's been overseas at least one time.
9 He reports he doesn't have a passport in his interview, but he
10 says he went to Saudi Arabia one time, so obviously he got
11 there somehow. We also believe that that's indicative of both
12 a risk and a danger and a risk of flight. I would like to
13 note that he was arrested on a UFAP warrant. I understand his
14 testimony, but the fact of the matter is there was a warrant
15 issued for unlawful flight to avoid prosecution. That's what
16 he was arrested on, so on those two bases we ask he be
17 detained.

18 THE COURT: In all fairness, though, you would agree
19 that the scenario that he has described in connection with the
20 UFAP warrant is not an unusual one in the way that these
21 matters are handled.

22 MR. BONDURANT: But I believe he's being dishonest
23 with you. One, I believe he was dishonest about using an
24 alias. He was dishonest about where he was arrested. He said
25 he was arrested in some Little League Hall of Fame when Agent

1 Gallagher testified from the arresting report that he was at a
2 shooting range with another member of al-Fuqra. So I believe
3 the Court should look upon his testimony with more than one
4 grain of salt in terms of whether he's being truthful or not.

5 THE COURT: Fair enough.

6 Mr. Wray, what do you have to say about it?

7 MR. WRAY: Your Honor, the government makes a great
8 deal about Mr. Pierre's involvement in Red House. They are a
9 group of individuals who in fact band together because of
10 their religion, and for whatever reason they are, that is not
11 in fact illegal, probably no more so than individuals who live
12 in gated communities who hire private security guards to
13 investigate suspicious characters, not that Mr. Gallagher is
14 suspicious, at least not sitting here. I don't know what was
15 going on when he went by Red House.

16 Mr. Pierre has been there for six years. He has ties
17 with his family. He has seven children there. He has another
18 son who is not actually living with him but living in that
19 area. All this other about what al-Fuqra is involved with is
20 very remote compared with Mr. Pierre. Maybe he was involved
21 as a leader at Red House. Does that in fact mean that he is
22 involved with anything more radical members of the community
23 would have or even that these people have done anything
24 untoward?

25 He has been out of country one time when he went to Saudi

1 Arabia as part of his religious obligation. As the Court is
2 probably aware, that is a religious obligation of all Muslims
3 to once in a lifetime go to Mecca. This was back in 1979. He
4 denies anything else.

5 The evidence that he gave the name of Rafael Upshur to
6 the owner of the Outpost I think is fairly tenuous.
7 Ms. Upshur, Traci Upshur, signed the documents as the buyer of
8 the firearm. He gave his name as Rafael. Maybe it was an
9 assumption that he was Rafael Upshur. I don't know. The
10 owner of that Outpost is not here.

11 As far as fleeing from anything, it's fairly clear to the
12 Court that --

13 THE COURT: Well, that doesn't explain, though, the
14 use of the same alias as reflected on the FBI rap sheet years
15 before, so I don't think that explanation quite carries the
16 weight it needs to carry, Mr. Wray.

17 MR. WRAY: Yes, sir. We would submit that based upon
18 the charges we have here of attempting to possess a firearm
19 after being a convicted felon that he would be entitled to a
20 bond. I said a reasonable bond. I think in this case a
21 reasonable bond would be 10 to \$20,000.

22 THE COURT: But there's no indication he could make
23 such a bond.

24 MR. WRAY: Yes, sir, but I think he's entitled to a
25 bond based upon this. I think anything, anything -- the rest

1 of what the government's argument is is sheer speculation. I
2 mean he's not charged with anything other than this, and I
3 would ask the Court to consider the distance in time. The
4 last instance they have anything on him doing anything other
5 than these charges is March of 1999. That's more than two
6 years ago.

7 THE COURT: Anything else you would say about it,
8 Mr. Bondurant?

9 MR. BONDURANT: Well, as far as the distance in time,
10 as Agent Gallagher testified, there was an ongoing machine gun
11 transaction investigation that was ongoing, so, you know,
12 distance in time I don't believe is any argument at all.

13 THE COURT: Well, Mr. Pierre, at this time it becomes
14 necessary for the Court to make findings of fact and
15 conclusions of law in your case, and I'm prepared to do so at
16 this time. I've given you the chance to speak. Now it's my
17 turn to speak and I'm going to take advantage of that
18 opportunity and tell you what the Court feels needs to be
19 found by way of this motion for detention that the government
20 has made in your case.

21 First of all, in terms of the argument Mr. Wray has made,
22 I disagree with some of the things he's said. I think that
23 there is more than mere speculation to support these charges.
24 In fact, I'm prepared to find in just a moment that the weight
25 of the evidence in your case is fairly strong in favor of the

1 government.

2 I also disagree that there's something to be made in this
3 particular case about the amount of time that's passed since
4 the offense in comparison to the time that you were arrested.
5 I think Mr. Gallagher adequately explained that circumstance,
6 and I don't think that it prejudices the government's motion,
7 given the set of circumstances that he outlined, that it took
8 so long to get this prosecution underway.

9 I do agree with some of the things that Mr. Wray has
10 said, and the first is that although you are oftentimes known
11 by the company you keep, I don't think that for today's
12 purposes we can hold against you your association with the
13 Muslim group that's been characterized by Mr. Bondurant and
14 defined by you in your testimony. It doesn't seem that
15 there's any indication that you, yourself, participated in
16 violent acts other than, and I'm prepared to find in just a
17 moment that the purchase of firearms as alleged by the
18 government does constitute a crime of violence, but in terms
19 of the violence perpetrated by this group that you are
20 allegedly associated with, there's nothing that implicates you
21 in any of that, so it can't be held against you here.

22 Likewise, I think that taking your testimony as true, and
23 I accept it as true, about the circumstances of your prior
24 arrest, I don't think that the Court can legitimately find
25 that you fled to avoid prosecution in the past. The

1 circumstances that you outlined are fairly commonplace in the
2 use of UFAP warrants, and I don't believe there's anything to
3 indicate or prove that you left the state of Colorado knowing
4 that you were under threat of prosecution or wanted for
5 commission of any criminal act.

6 Now, these things having been said, there are some
7 factors that I have to hold against you today, and there are
8 factors that are required to be considered in terms of the
9 Bail Reform Act, and that's the particular piece of
10 legislation under which the government's motion for detention
11 in your case has been brought. And the first is that the
12 seriousness of the charges and the seriousness of the
13 penalties associated with the crime that you are alleged to
14 have committed are such as to encourage dangerous or reckless
15 acts, including possible flight.

16 Two, this is a crime of violence, and I believe
17 Mr. Bondurant has correctly represented the state of the law,
18 albeit outside of this circuit, to the effect that this
19 particular firearms offense is characterized as a crime of
20 violence for purposes of application of the Bail Reform Act.

21 Three, I find that in your case there are limited
22 permanent employment ties to the area. Obviously you have
23 family ties, obviously you have residential ties, but I don't
24 believe that you have employment ties, and this is one of the
25 criteria to be considered in determining whether there are

1 adequate conditions of release that can be established for
2 you.

3 I also find that you have used aliases in the past, and
4 this is always a very suspect circumstance when considering
5 conditions of release for someone. The fact that a person has
6 used multiple names gives rise to a suspicion that that person
7 might try to avoid arrest or avoid obligations to the
8 government if released, and that's been proven time and time
9 again.

10 Finally, and most importantly, you have the burden to
11 show that there are conditions of release that can be
12 established for you. The government carries the burden of
13 persuasion to demonstrate that you present a risk of flight
14 and that you present a potential risk of danger to the
15 community, and they have to carry that burden by clear and
16 convincing evidence. But you have the burden to demonstrate
17 that there are resources available to you, that there are sums
18 of money, that there are property, that there are other types
19 of security that could be offered to the Court to guarantee
20 your appearance, and you have not done so today. And so
21 considering these five reasons that I have enumerated, the
22 Court is constrained to grant the government's motion.

23 Now, this doesn't mean that you can't remedy some of
24 these inadequacies that I have just listed, but as of today
25 you have not done so and the Court must grant the government's

1 motion that you be detained without bond, and I'll cite as
2 reasons in support of the order those five matters that I have
3 just stated.

4 Now, you can always come back and ask for reconsideration
5 of the order after 24 hours have expired, and I would be happy
6 to hear you. I'm sure some other judge of the Court would be
7 happy to hear you. As it stands today, the government's
8 motion will be granted.

9 Is there anything else that needs to be done in this
10 matter at this time, Mr. Bondurant?

11 MR. BONDURANT: No, sir.

12 THE COURT: Anything else on your part, Mr. Wray?

13 MR. WRAY: No, Your Honor.

14 THE COURT: If not, we'll ask the marshal to declare
15 court in recess until return of Court.

16 (Court recessed at 11:20 a.m.)

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REPORTER'S CERTIFICATE

I, Aaron H. LaDuke, hereby certify that I am a duly appointed Official Court Reporter for the United States District Court for the Western District of Virginia.

I hereby certify that I was present in the United States District Court for the Western District of Virginia, Roanoke Division, Roanoke, Virginia, on the 28th day of September 2001, and in the regular course of my duties reported the proceedings held in the case of United States of America v. Vincente Rafael Pierre, Criminal Action 6:01-CR-70081-1.

I hereby further certify that the foregoing is a true and accurate transcription of the proceedings as held in the above-styled case on the above-stated date in the United States District Court for the Western District of Virginia, Roanoke Division thereof.

Aaron H. LaDuke, Official Court Reporter

Given under my hand this the 27th day of October 2001.