UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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UNITED STATES OF AMERICA,

-vs-

Case No. S3 19-cr-497-05 (NSR)
S3 19-cr-497-09 (NSR)

JURY TRIAL

MATITYAU MOSHE MALKA and
MORDECHAY MALKA,

Defendants.
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United States Courthouse
White Plains, New York

May 20, 2022
2:18 p.m.
VOLUME II

B e f o r e:

HONORABLE NELSON S. ROMÁN
United States District Judge
and a Jury

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

DAMIAN WILLIAMS
United States Attorney for the
Southern District of New York
SAMUEL ADELSBERG
JAMES LIGTENBERG
JAMIE BAGLIEBTER
DANIEL TRACER
Assistant United States Attorneys

MATITYAU MOSHE MALKA, Pro Se Defendant

JOSEPH A. VITA
HOWARD E. TANNER
Standby Attorney for Defendant, Matityau Moshe Malka

MORDECHAY MALKA, Pro Se Defendant

SUSAN C. WOLFE
EZRA SPILKE
Standby Attorneys for Defendant, Mordechay Malka

A P P E A R A N C E S: (Cont.)

ALSO PRESENT:

Ruth Kohn - Court interpreter (Yiddish)
Steven Zager - Court interpreter (Yiddish)

(In open court; jury not present)

THE COURT: All right. So in a few minutes we are going to bring out the jury. We are going to swear in the jury. I will be giving my preliminary instructions, and then we will take opening statements.

Before that happens, I want to just put something on the record. As I have mentioned before we broke for lunch, I am going to now provide each of the rulings provided in the Court's May 11, 2022, opinion dealing with the parties' motions *in limine*, which is docketed as ECF number 625. By way of reminder, the purpose of a motion *in limine* is to allow the Court to rule in advance of trial on the admissibility and relevancy of certain forecasted evidence, that is the evidence and arguments the parties have proffered in their briefings and throughout the litigation.

However, the Court's rulings on motions *in limine* constitutes preliminary determinations subject to change as the case unfolds. Simply put, depending on the evidence actually presented over the course of the trial, the Court may revise some of its rulings on the parties' motions *in limine*. But just to be extra clear, the fact that these rulings are subject to change doesn't mean that the parties can challenge every single ruling that I return regardless of the circumstances.

Moreover, if a party believes that sufficient basis has formed during the course of trial for the Court to revise

one of its rulings, that party must request a side bar outside of the presence of the jury before any ruling is to be reconsidered.

That said, the Court issued the following rulings after thoroughly reviewing each of the parties' filings relating to their motions *in limine* and considering the arguments contained therein.

First, the Court ruled that evidence of the Malkas and their co-conspirators bad acts and Federal Rule of Evidence 404(b) acts, namely evidence of Lev Tahor's practices of underage marriages for the purpose of procreation are admissible.

However, the Court also precludes the government from presenting any evidence that relates to Lev Tahor's sexual practices, such as, for example, as the government alleged in the S3 Superseding Indictment, providing new brides and grooms with tutorials before marriage instructing them on when and how to have sex with their spouses, among others.

Next, the Court ruled that statements from the Malka's co-conspirators are admissible so long the government fulfills the necessary prerequisites to present such statements.

The Court next ruled that the government may seek the admission of business records through written certifications under Federal Rules of Evidence 803(6) and 902(11), as long as the government established the relevancy of these business

records and lays the proper foundation for doing it.

Next, the Court precluded the Malkas -- I want to be clear when I refer to the Malkas, that's defendant Mordechay Malka and Matityau Moshe Malka -- from raising any arguments challenging the validity of the family court order granting the mother sole custody of the minors or the propriety of how such order was issued. This is because this is a legal, not a factual question that the family court has already ruled on, and this Court cannot review.

The Court also precluded the Malkas from arguing that the mother lacked parental rights of the minors. This is because as a matter of law: One, the family court order is valid; and two, it is undisputable that the mother is the minor's biological mother, who as a matter of law enjoys the right to physical custody of her children unless and until such right is terminated by law.

The Court also precluded the Malkas from raising any alleged misconduct from the mother and the Kasho community with how they allegedly abducted the minors to bring them to the U.S. and fraudulently procured the family court order.

However, the Court noted that the Malkas may raise such misconduct as long as they can show there is evidence in the case that they physically abused the minors relevant to some issue, rather for some issue for which it is not otherwise precluded in the written opinion.

The Court also precluded the Malkas from arguing that they were rescuing the minors because such argument is irrelevant. The statute at issue is Title 18 United States Code Section 1204 does not expressly provide for a statutory affirmative defense for rescuing the alleged kidnapped minors or for a necessity defense. Nor has the United States Supreme Court, nor the United States Court of Appeals for the Second Circuit recognized the same.

As the Court noted in its opinion, the plain statutory language of the second affirmative defense in Section 1204 provides it shall be an affirmative defense under the section that, "the defendant was fleeing an incidence or pattern of domestic violence. Nowhere does the statute provide that the alleged kidnapped minor must be the one fleeing in the incident or pattern of domestic violence." The Court further noted that the United States Court of Appeals of the Seventh Circuit appeared to have construed an explanation or reasoning that this second affirmative defense also extended to cases in which the alleged kidnapped minors were the ones fleeing the incidence or pattern of domestic violence.

However, since the Court is not bound by -- and none of the parties presented any binding legal authority concurring with the Seventh Circuit's reading of the statute, this Court agrees to enforce the plain statutory language according to its terms.

And the Court also precluded the Malkas from arguing that they and their co-conspirators were being persecuted for their religious views because they've failed to produce any evidence of discriminatory intent for effect.

The Court has also precluded the Malkas from arguing that declaring the marriage between Jacob Rosner and Minor-1, or Jane Doe as she is sometimes referred to, was predicated on religious beliefs, and that the same constitutes a defense to the charges against them.

Similarly, the Court also precluded the Malkas from raising any argument challenging the legal validity of the marriage between Jacob Rosner and Minor-1 or Jane Doe.

The Court also precluded the Malkas from arguing that the minors' consent to travel out of the country excused their offense conduct, meaning you can't argue that you had the consent of the minors to travel.

All right. Next the Court ruled that the use of the term "kidnapping," "abduction" and "victims" by the government at trial is admissible and not prejudicial.

And finally, the Court precluded the government from describing and labeling arranged marriage and Lev Tahor as forced because describing them in such a way may imply that the marriages were celebrated against someone's will under some kind of threat when there has been no evidence of the same in this case.

All right? So I just wanted to put that on the record. We are ready to proceed?

MR. MORDECHAY MALKA: Your Honor, I didn't understood two points if the Court can clarify it? I didn't understood regarding the -- specifically regarding the affirmative defense and regarding the necessity defense. So is the Court is saying the defendants -- I mean, from the Court's ruling the Court indicates that the defendants can raise the affirmative defense if we can prove was a physical or a sexual abuse for the minors as well the Court indicated in the Court's ruling. Is the Court changing that ruling? Did the Court now reconsidered it? Did the Court exclude it? I didn't -- what the Court just said now my understanding was the Court said just the defendants has to be the ones who was fleeing an incident pattern of domestic violence. In the ruling it indicate that the Court is allowing raise this issue with regard to children as well, as long as we can prove physical and sexual abuse.

Is this determined what the Court just said now? I am confused, Your Honor. The one issue the other accomplish is the regarding the necessity defense the Court did indicate in the Court's ruling that defendants, the defendants one raised a defense they can raise it only.

THE COURT: What I indicated and for purposes of the motion that you have proffered nothing to support a basis for raising the necessity defense.

MR. MORDECHAY MALKA: Your Honor, that's the fact the defendants --

THE COURT: As I indicated, the statute does not expressly provide for a statutory defense for rescuing the alleged kidnapped minors or for a necessity defense. The statute does not provide it. It's not an affirmative defense.

MR. MORDECHAY MALKA: But any statute not provide the necessity. It's a general defense. It has nothing to do with it.

THE COURT: With all due respect, I am not sure what you are arguing. You are precluded from arguing that you are rescuing the minors because such an argument is irrelevant.

The statute, 18 U.S.C. Section 1204, does not expressly provide for an affirmative defense for rescuing the alleged kidnapped minors or for a necessity defense.

MR. MORDECHAY MALKA: Your Honor, again, I am not clear. Any parent who fled from another parent with the children and attempt for a flight after an incident of domestic violence is in a sense rescuing the children from the domestic violence. So it's otherwise -- it's really not clear. Can we raise affirmative defense? Can we not raise affirmative defense? What is the difference if you call it rescue or if you call it -- I don't understand.

THE COURT: Are you asking me to give you legal advice?

MR. MORDECHAY MALKA: No. Just clarification.

THE COURT: No. I think you are asking for legal advice. I don't give legal advice.

MR. MORDECHAY MALKA: It's not legal advice.

THE COURT: You have two standby counsels. All right. You have my rulings, and you must abide by my rulings. All right.

MR. MORDECHAY MALKA: Your Honor, the defendants want to argue that --

THE COURT: Sir, we have a jury outside, and the jury is in the jury room waiting to come in. You keep going over this time and time again. I understand that you disagree with my ruling. All right.

MR. MORDECHAY MALKA: Your Honor, I am not disagreeing. The Court -- the Court is disagreeing. This is much more worse. The Court just contradict itself. The Court -- you said something here in the ruling, and now the Court said totally different thing. No one can know what I have to do now. I have to give an opening statement. You cannot simply tell me yes or no for my questions. I am not allowed to say I rescued the children from a domestic violence physical abuse? I am allowed to say the defendants --

THE COURT: No, you cannot.

MR. MORDECHAY MALKA: I cannot.

THE COURT: You cannot.

MR. MORDECHAY MALKA: I cannot say only word "rescue" or I cannot at all raise --

THE COURT: You can't say "rescue." There is no statutory defense for rescuing, and you didn't proffer any --

MR. MORDECHAY MALKA: Your Honor --

(Cross-talk)

THE COURT: You are asking me a question, and I try to answer, and you want to -- you want it answered your way. Okay.

MR. MORDECHAY MALKA: I am very proffer now I can put --

THE COURT: Sir, the time for you to proffer has already passed.

MR. MORDECHAY MALKA: The Court never asked me to proffer.

THE COURT: Be quiet. The time for you to proffer has come and passed. That was the basis for a motion *in limine*. With all due respect, I don't know what other way to say it. There are certain procedures that you have to abide by. I indicated to you at the very beginning that I was going to treat you as I would treat any other attorney; and by the way, I have told other attorneys to be quiet. I think I have said it to the government on one trial where I told them to be quiet. I have said it to defense attorneys. I have said it in a civil case. I have said it in a criminal case. So just to be clear, I am treating you just like you were an attorney because you

indicated that you were prepared to serve in that position, and you were making an intelligent decision to do so.

So you asked the question plainly. I answered it plainly.

MR. MORDECHAY MALKA: Your Honor, one second. Let me confer with counsel.

THE COURT: For what? You can confer with him as much as you want throughout the trial. We are moving forward. I have jurors in the jury room. I need to get them in. We are going to start. We are going to swear them in, and then we are going to begin with my preliminary instructions, and then we will begin with opening statements.

You are -- I want to make this clear. You are showing a pattern of delay and attempting to delay the proceedings, and you are demonstrating to the Court that you have no intentions to follow the Court's rulings -- I want to make that clear -- or that you are incapable of following the Court's ruling. All right.

I am going to bring the jury in. We will swear them in, and we will begin.

THE DEPUTY CLERK: Yes, Your Honor.

MR. MATITYAU MOSHE MALKA: Just one small thing? If -- if -- I just want to share the time after -- the opening time between me and my co-defendant so he will be able to take some of the time from my opening to --

THE COURT: Sir, what I indicated was that each defendant has half an hour. If you want to use less than half an hour, that's up to you. You are both separate defendants. Mr. Mordechay Malka has 30 minutes. You have 30 minutes.

I didn't say anything about sharing minutes. Did you hear me say that the defendants collectively have an hour to provide opening statements? I never said that. I asked each and every one of you how much time you need. You each indicated to me how much time you needed. I gave you 30 minutes each. If you want to use less than 30 minutes, that's on you. Okay? Is that clear enough?

MR. MATITYAU MOSHE MALKA: Yes, sir.

THE COURT: Is it in plain language so that you understand?

MR. MATITYAU MOSHE MALKA: Yes.

THE COURT: All right.

MR. MORDECHAY MALKA: Your Honor, just one thing for the record, and I want the record to be clear that I did, in fact, provide in my first motion *in limine* hundreds of pieces of evidence proving --

THE COURT: Sir, are you attempting to reargue the issues that we have already gone over time and time again? Is this another attempt to delay the proceedings?

MR. MORDECHAY MALKA: No, Your Honor.

THE COURT: Are you indicating to the Court that you

unable to abide by my rulings?

MR. MORDECHAY MALKA: I didn't, Your Honor.

THE COURT: Then be quiet. I indicated to you that we are going to have -- that we have jurors in the jury room; that I need to bring them out. You keep rehashing things. It's another pattern of your efforts to delay and obstruct the fair administration of justice, and I am making another record of it; that you have continually indicated to the Court that you have difficulties with my rulings; that you are unhappy with my rulings, and yet you seem to be indicating that you are not prepared to abide by my rulings.

Let's bring in the jury.

THE DEPUTY CLERK: Yes, Your Honor.

Jury entering.

(In open court; jury present)

THE COURT: Please be seated. Everybody be seated.

Good afternoon. Welcome back. I hope you had a pleasant lunch break. We are ready to begin. The first thing that we are going to do is I am going to have my courtroom deputy swear you in as jurors.

(Jury empaneled)

THE COURT: All right. Good afternoon. Ladies and gentlemen of the jury, you are now officially a jury. There is no higher function in our legal system, and in fact, other than service in the military, there is no more important public

service that you can perform. If we were not still in a pandemic, whenever enter or leave the courtroom as a jury, the parties and the audience would rise, the same as they do for me because you are every bit as important as any judge. However, because we are still taking precautions to prevent the spread of Covid-19, I have instructed the parties not to rise and to otherwise minimize movement. Please don't take any offense. They are just complying with my instructions.

Let me reintroduce you to some of the people who are here in the courtroom. As I told you last week, my name is Nelson S. Román. I am a United States District Court Judge for the Southern District of New York.

You have already met the defendants, Matityau Moshe Malka, who is representing himself and assisted by standby counsel, Joseph Vita and Howard Tanner; and Mordechay Malka, who is representing himself and assisted by Susan Wolfe and Ezra Spilke. You have also met the prosecution team: Assistant United States Attorneys Sam Adelsberg, Jamie Bagliebter, Jim Ligtenberg and Dan Tracer, and they will be assisted by paralegal specialist Shannon Becker.

My courtroom deputy is Gina Sicora, and she is the person who you will talk to most during the trial. If you have questions or difficulties, she is the person to consult. My law clerk presented today is Pablo Chapablanco. His job is to assist me in researching any legal issues that may come up

during the trial.

Today we have Darby, who is the court reporter, and you are going to see different court reporters throughout the trial. Her job or their job is to take down everything that is said at the trial so there is a record of what happened. Also here with us today are Steven Zager and Ruth Kohn, who will be assisting at standby Yiddish interpreters.

Let me just say something that's not on the document that you have. From time to time, we may use an interpreter, the Yiddish interpreter. That's just to ensure that there is no miscommunications. All right. You are not to hold that against anyone.

As I previously mentioned, the charging instrument or documents is called an indictment. Mordechay Malka is charged in three counts of the indictment, and Matityau Malka is charged in two counts of the indictment. Each count is a separate offense or crime. Each count must therefore be considered separately by you, and you must return a separate verdict on each count.

The first count charges that, from on or about December 2018 to on or about March 2021, both Mr. Malkas conspired -- that is agreed -- with each other and others, to commit international parental kidnapping, to unlawfully use a means of identification, and to enter by false pretenses the secure area of an airport.

The second and third counts charge that Mordechay Malka committed international parental kidnapping in December of 2018 or aided and abetted the same.

The fourth count charges Mr. Matityau Moshe Malka attempted to commit international parental kidnapping in March 2019 or aided and abetted the same.

The defendants, Matityau Moshe Malka and Mordechay Malka, deny all the allegations and have pled not guilty to all of the charges against them. It is the government that bears the burden of proof in any criminal case and must establish the defendants' guilt beyond a reasonable doubt. All defendants are presumed to be innocent, and they are not required to prove that they are innocent. They need not call witnesses and need not take the stand. If a defendant elects not to present any evidence at trial, the jury cannot draw any adverse or negative inference against the defendant based on that decision. This is the basic principle of our criminal justice system.

In our system of justice, judges and juries have separate roles. My job is to instruct you on the law that governs the case. I will give you some instructions now and other instructions from time to time during the trial. At the end of the trial, I will give you detailed instructions about the law you will need to apply when you deliberate.

Your job is to determine the facts based on the evidence presented at trial. You are the only finders of fact,

and your decisions on factual issues will determine the outcome of the case.

You must not take anything I say or do as indicative of what my opinion of the facts is on what your verdict should be. It is not my job to have an opinion regarding the facts. I don't have an opinion, and even if I did, it should not influence you and must not influence you in any way.

You must pay close attention to all the evidence presented. Evidence consists of testimony of witnesses, documents or other things that are admitted into evidence as exhibits, or stipulations agreed to by the attorneys and/or the parties. A stipulation is simply an agreement between the parties about facts or testimony.

Certain things are not evidence in the case, and you must not consider them as evidence. For example: One, nothing I say is evidence. Two, statements and arguments by the parties are not evidence. They are simply arguments in which they will tell you what they think the evidence proves and how they think you should analyze the evidence. You should give these statements and arguments weight only to the extent they appeal to your own common sense, and you should under no circumstances consider them as evidence.

Three, questions by the parties are not evidence. Only the answers given by the witness are evidence. For example, if a witness is asked: It was raining that day, wasn't

it? And the witness says, no, then based on that question and answer, there is no evidence in the case that it was raining that day. No matter how convinced lawyer or the *pro se* defendant sounded when asking the question. Of course, you do not have to accept a witness's answer at face value. One of the most important things you will do is assess the credibility of witnesses, which I will talk to you about in a moment.

Four, objections to questions are not evidence. The parties are obligated to make an objection when they believe some evidence being offered is improper under the rules of evidence. You should not be influenced by the objection or by the Court's ruling on it. If I sustain the objection, ignore question and the answer that may have been given. If I overruled the objection, treat the answer like any other.

Any testimony that I exclude or strike or tell you to disregard is not evidence, and you must not consider it. Also, if I instruct you that some evidence is only to be considered for a certain purpose or for a limited purpose, you must follow that instruction.

Finally, anything you may see or hear outside the courtroom is not evidence, and should be disregarded by you. You are to decide the case only on the evidence presented here in the courtroom.

In deciding the facts of the case, you will have to assess the credibility of witnesses -- that is, how truthful and

believable they are. How do you decide what to believe and what not to believe? You are going to listen to the witnesses, watch them and observe them, and then decide just as you would decide such questions every day in your life, in your ordinary life. Did they know what they were talking about? Did they appear to be honest, open and truthful? Did they have any motive to falsify, exaggerate or distort their testimony? Is there any reason to think they might be mistaken about what they are telling you? How does their testimony square with the other evidence in this case? This is how you will determine what testimony to accept and what testimony to reject.

In this case, the defendants have decided to represent themselves in this trial. They have a constitutional right to do that. Their decisions has no bearing on whether they are guilty or not guilty, and it must not affect your consideration of the case.

Because the defendants have decided to act as their own lawyers, you will hear them speak at various times during the trial. They may make an opening statement and closing argument and may ask questions of witnesses and make objections, argue legal issues to the Court. I want to remind you that when the defendant speaks in these parts of the trial, they are acting as lawyers in the case, and their words are not evidence. The only evidence in this case comes from the witnesses who testify under oath on the witness stand and from exhibits that

are admitted. The defendants may be assisted by standby counsel, and you may hear from their standby counsel during the course -- during the case as well. You are not to read anything into whether it is the defendants or their standby counsel who are making opening statements or closing statements, asking questions of witnesses, making objections, arguing legal issues to the Court.

As the trial proceeds, you may have impressions of a witness or a subject, but you must not allow these impressions to become fixed or hardened. If you did that, you might foreclose consideration of the testimony of other witnesses or other evidence that may be presented after the witness you heard. This would be unfair to one side or other. A case can only be presented step by step, witness by witness until all the evidence is before you. Experience teaches that sometimes you can hear a person give his or her version of an event which sounds pretty compelling, and yet when you hear another person's version of the same event, or even the same person who is further questioned about that event, what seemed quite compelling at first may turn out to be entirely weakened.

By the same token, if a person tells you something, and it doesn't make much of an impression, but you later get some information that supports what that person said, then what didn't seem particularly compelling when you first heard it may turn out to be considerably stronger.

So remember that there may be another side to any witness's story, and there may be more to come on any subject. What I am saying is that you must keep an open mind until the trial is over and not reach any conclusions until you have heard all the evidence.

To make sure that you decide the case only on the evidence and that you are not to be influenced in any way by anything that might occur outside the courtroom, I must give you a specific set of instructions.

First, until you retire to deliberate, you may not discuss this case with anyone, even your fellow jurors. After you have heard all of the evidence and retired to deliberate, you may begin discussing the case with your fellow jurors, but you cannot discuss this case with anyone else until you have returned a verdict, and the case is over.

Therefore, do not discuss this case with anyone while the case is going on. Refrain from being in the presence of persons who may be discussing the case. That includes even friends and family members. You may tell your friends and family that you are a juror in a case, but do not tell them anything else about the case until you have been discharged.

This is a public courtroom, and members of the public may attend provided that Covid restrictions, including distancing, are complied with. If at any time you see a friend or relative come into the courtroom, please let me know by

immediately giving a note to my courtroom deputy, Ms. Sicora.

If at any time during the course of trial any person attempts to talk to you or to communicate with you about this case, either inside or outside the courthouse, you should immediately report such an attempt to me through my deputy, Ms. Sicora. If you must report such a fact or incident, you are not to discuss it with your fellow jurors.

Parties in the case are not supposed to talk to jurors during the trial, not even to offer a friendly greeting. So if you happen to see any of the attorneys or anyone else affiliated with the government or defense outside this courtroom, they will, and should, ignore you. Please do not take offense. They will be acting properly by doing so.

I do not expect anything unusual to happen. However, if anything should happen involving any of you that is of an unusual nature, or what you think is something the Court should be told about, do not discuss it with any other juror. Simply give the clerk a note, or my courtroom deputy, to the effect that you want to speak to me about it, and I can then hear what it is and what you have to say.

Second, do not read anything in the newspapers or online about this case, and do not listen to anything you see or hear on the radio or TV. I don't know whether there is going to be any media coverage about this case, but if there is, you are not allowed to watch, hear or read it until you are discharged

from jury service.

In addition, you must not conduct any independent research about this case, the matters in the case, the individuals or corporations involved in the case.

In other words, you should not consult dictionaries, reference materials, or search the Internet websites or blogs or use any other electronic tools to obtain information about this case or to help you decide the case. Please do not try to find out information from any source outside the confines of this courtroom. You are also not to visit any locations mentioned during the trial, nor are you to Google or otherwise research any aspect of this case, including any of the underlying facts regarding the allegations that are the subject of this trial.

Third, I know that many of you use cellphones, smart phones, and the Internet, and other tools of technology. However, I must tell you that you may not use these tools to communicate electronically with anyone about this case. This includes your family and friends. You may not communicate with one another about the case on your cellphone, smart phone, BlackBerry, or iPhone, through email, text messaging or Twitter or through any blog or website, including Facebook, Instagram, Snapchat, Reddit, LinkedIn, YouTube, and if there is any other platform, it's prohibited. You may not use any similar technology or social media to communicate about this case, even if I have not specifically mentioned it here.

All right? You are also instructed not to use any of these tools to learn anything about this case, me, my staff, the defendants, the lawyers, prosecutors, or law enforcement officers involved in the case.

Although I expect that you -- that all of you will follow these instructions, I also expect that you will inform me as soon as you know or as you become aware of another juror's violation of these instructions.

Ultimately, your verdict must be based solely on the properly admitted evidence you have seen here in the courtroom. As I mentioned last week, because all jurors must base their decision on the same evidence and everything that takes place in the courtroom will be memorialized by our court reporters, jurors may not take their own notes during the trial. That means that you should not have a writing implement such as a pen or a pencil, notebook or any other note-taking tools in your hands while you are in the courtroom.

These instructions probably do not surprise you, but what may be surprising is that you may not discuss the case even amongst yourselves while the trial is ongoing. You will have the opportunity, indeed the duty, to discuss the case amongst yourselves later on, but that can only happen after all of the evidence is in, and the case is given to you to discuss and decide in the jury room.

All right. This rule is important because experience

has shown that when people express an opinion about the case or about a witness, they may become attached to that opinion and their views may harden, and it is important that you keep an open mind until you have heard all the evidence. So don't talk about the case even with each other until I tell you to do so.

This is a hard rule to follow. I was a juror once, and it was even hard for me to follow, but you have to do so because you have to keep an open mind until all of the evidence is in, and you have heard my instructions on the law.

Here is the bottom line -- the parties are entitled to have you render a verdict in the case on the basis of your independent evaluation of the evidence presented in this courtroom. Speaking to others about this case or exposing yourself to information outside the courtroom would compromise your fairness to the parties. So that's why you can't talk with, or learn anything about this case from any other source other than what's presented in the courtroom at trial.

Finally, I am going to say a few words about trial procedure.

First the parties will have the opportunity to make opening statements to you under a set time limit, and they will do that shortly. As I already told you, these statements are not evidence. Their purpose is to give you an idea of what the parties expect the evidence will show. But remember, evidence only comes from the witnesses and exhibits.

The government has the burden of proof so it will go first. The defendants have no burden of proof and do not have to do anything at this trial. So the defendants are not required to give an opening statement, but if they choose to, the defendants will go next.

Second, after opening statements, you will hear the testimony of the witnesses. The government's witnesses go first. Each witness will first give direct testimony, and then he or she will be cross-examined by the other side. Sometimes there is redirect testimony and occasionally recross. Again, the defendants do not have to question witnesses, but may choose to. Documents or items will be received in evidence.

Following the government's case, the defendants may, but are not required to, present witnesses and other evidence. If they do call witnesses, those witnesses will be examined and cross-examined just as the government's witnesses were. If the defendants choose to present evidence, it is possible that the government would then present certain evidence in rebuttal.

From time to time during the trial it may become necessary for me to talk with lawyers and the *pro se* defendants out of the hearing of the jury, either by having a conference at the bench when the jury is present in the courtroom -- what we call a side bar -- or by calling a recess. Please understand that while you are waiting, we are working. The purpose of a conference outside your view is to keep relevant -- is not to

keep relevant information from you, but to decide certain procedural issues or how certain evidence is to be treated under the rules of evidence and to avoid confusion and error.

Third, after all of the evidence has been received -- I am sorry -- after all of the evidence has been received, each side will have an opportunity to make closing arguments. They will review the evidence and make their arguments to you as to what conclusions they think you should or should not draw from the evidence. These arguments also are not evidence, but they may be helpful to you in reviewing the evidence during your deliberations.

After these arguments, I will give you detailed instructions as to the law that applies in this case, and you must follow those instructions. All right. These instructions to the jury are sometimes referred to as the jury charge. After the jury charge, you will go to the jury room to deliberate and discuss the evidence in order to decide the facts and render a verdict.

At the conclusion of the trial, I will tell you in detail what the government must prove beyond a reasonable doubt before you can find the defendants guilty. For now, however, I will just say that, as to each count charged, reasonable doubt means a doubt based on reason, arising out of the evidence or lack of evidence in the case. If, after a fair and impartial consideration of all the evidence, you can candidly and honestly

say that you do not have an abiding and firm belief of the defendants' guilt, then you have a reasonable doubt, and in that circumstance, it is your duty to find the defendants not guilty. Keep in mind that the burden of proof remains at all times with the prosecution and never shifts to the defendants. The government must convince you of the defendants' guilt beyond a reasonable doubt.

All right. A few housekeeping matters before we begin. Each morning you will report to the jury room at 9:00 a.m. All right. I am not sure if you were aware, but Ms. Sicora is going to request some contact information from you so that we have that in case there is a change in schedule or we have to reach out to you.

We plan -- we will plan for our trial days to begin at 9:30 a.m., so it's important that you arrive by 9:00 a.m. Due to the Covid-19 pandemic, we will need time each morning for logistics prior to trial, including ordering lunch -- we are not doing that anymore, right?

THE DEPUTY CLERK: No, we are not.

THE COURT: Okay. Now, we will take lunch breaks from approximately 12:00 p.m. to 1:00 p.m., and we will be adjourning for the day at 3:30 on Monday through Friday. All right. And on occasion, that schedule may have to change based on what's happening in the trial.

In other words, we will have trial -- we will expect

to have trial Monday through Friday. If you need a personal break before or after our lunch break, just raise your hand. But if you can wait until the lunch break or until the end of the trial, that would be helpful and grateful. Please be on time after breaks and in the morning. If you are late, you will be keeping everyone waiting.

As I mentioned before, please keep your cellphones off during the trial proceedings. Although you are permitted to turn your phones on during the meal breaks and lunch breaks, please do not take any photographs while inside the courtroom or courthouse. Also, when you move between the jury rooms, lunch rooms, and the courthouse, please bring your belongings with you. Due to the Covid-19 pandemic, jurors will be directed to multiple rooms, and we cannot guarantee the rooms will always be secured.

All right. Those are my preliminary instructions to you. All right. We will now begin with opening statements. As I said, the government bears the burden of proof. They must give an opening statement. All right. Since the defendants have no burden, they don't have to give an opening statement, but may give an opening statement if they choose to do so. All right. Let's begin.

MS. BAGLIEBTER: This is a case about a parent's worst nightmare. About a mother, Sara Helbrans, who in 2018, woke up one morning to discover that two of her children, her

14-year-old daughter and her 12-year-old son were missing. Gone. Then three agonizing weeks passed while law enforcement searched for the kids, and Sara waited in fear.

Ultimately, the kids, who were taken from New York, were found in a hotel room in Mexico. Thankfully, they were safely returned to their mother, but Sara's nightmare was not over. Just three months later, the kidnappers tried again. Again they tried to take Sara's kids from her and flee the country, but this time law enforcement was able to stop them before it was too late; and it was these two men: Mordechay Malka and Matityau Moshe Malka, along with other men from a sect or group called Lev Tahor, who agreed to take these children from their mother.

The kidnappers abducted two children from their mother, hid them in Mexico for weeks, and after they were caught, they brazenly tried to do it again.

And that's why we are here today. And ladies and gentlemen, it won't surprise you to learn that taking children from their parents to another country is a serious federal crime.

During this opening statement, I am going to talk about two things: First, what the government is going to prove; and second, how we are going to prove it.

So what will the evidence show? You will learn that Sara Helbrans and her six children used to be part of a small

and insular sect called Lev Tahor. Members of the group lived together on a compound in Guatemala. They lived an isolated life-style and practiced a very strict form of ultra-Orthodox Judaism, and Sara was not just any member of Lev Tahor. Her father founded the group, and when he died, it was her brother who took over as its leader.

You will learn that the defendants, Mordechay Malka and Matityau Malka, are also members of Lev Tahor, and that they were loyal to Lev Tahor leaders. So loyal that they were ready and able foot soldiers willing to carry out the orders of their leaders, even when that meant agreeing to kidnap children.

Now, how did this kidnapping come about? In early 2018, while Sara and her children were still living in Guatemala with Lev Tahor, the Lev Tahor leadership arranged for Sara's then 13-year-old daughter to enter into an religious marriage with an adult man. This so-called marriage was of course not legal since it was with a 13-year-old. Sara spoke up against the child marriage because she thought her daughter was too young. While girls got married young in the Lev Tahor community, 13 was younger than was common at that time.

Sara's objections were overruled by Lev Tahor leadership. Following her daughter's wedding, Sara decided to leave Lev Tahor where she had lived her whole life. She came to New York and managed to get all six of her children to New York with her.

After Sara and her children arrived, Sara got a court order granting her sole custody of all six kids. As the recipient of this court order, and also as their biological mother, Sara had the legal right to have her children with her, and no one was permitted to take them.

The Lev Tahor leaders were furious about this. They knew about the court order, but in their eyes, the children belonged in Lev Tahor. So members of Lev Tahor hatched and executed a brazen plan to kidnap Sara's daughter and one of her sons; to hide them in Mexico and bring them back under the control of the sect. And you will learn that the defendants were crucial activists in these plans.

Mordechay Malka acted as the boots-on-the-ground in the December 2018 kidnapping, and then it was Matityau Malka playing a similar role when they tried to kidnap the kids a second time.

You will learn the details of these plans. For the December 2018 kidnapping, you will learn about meetings where Mordechay Malka and other men devised the plan. You will learn how Mordechay Malka went to buy disguises for the children to wear after they were abducted, and how he rented a car for the kidnappers to use. Then you will learn that at about 3:00 in the morning on December 8th, Mordechay drove himself and Lev Tahor leaders to a house in Upstate New York where Sara and her kids were staying, and then Mordechay whisked the kids away in

the car under the cover of night.

Now, you will hear that the kids were not taken by physical force. Instead, the kidnappers went behind Sara's back and lured the children into coming with them. They snuck the children cellphones, and using those secret phones, the kidnappers convinced the children to go with them.

Once the kidnappers got the children out of the house, they brought the kids to a nearby hotel where they had them change into the disguises. Then they drove to the airport. Then the kids boarded a flight with Lev Tahor's top leader using tickets with other children's names on them so that they could trick airport security. Three domestic flights later, the children landed in Texas and then were driven across the border to Mexico.

Once they got to Mexico, the kidnapped young girl was delivered to her adult so-called husband. The group settled into a house in Mexico where they met up with other Lev Tahor members, including the other defendant in the case, Matityau Malka.

The kidnappers thought they had gotten away with it, but they were wrong. Thankfully, after a three-week mission, law enforcement found the kids at a hotel in Mexico. They were then reunited with their mother and returned to New York.

But the nightmare was not over. The kidnappers were not deterred. They were still adamant that Sara's young

daughter needed to be returned to the sect. They didn't care that she was a child, that Sara had custody, or that law enforcement had already returned the kids to their mother once.

So just three months later, members of Lev Tahor tried to have her kidnapped again, and this time it was Matityau Malka who was executing the plan. How did they do it this time? With the same tactics as in the December 2018 kidnapping. Matityau and other Lev Tahor members snuck the daughter cellphones without Sara knowing, and Lev Tahor members even gave the daughter mood-altering prescription pills. When Sara learned of the plot to take her children again, she began speaking directly to the kidnappers. The kidnappers threatened her and made clear their intentions to kidnap Sara's children.

Fortunately, Sara notified law enforcement, and this kidnapping attempt, this second effort to take the children from their mother and flee the country, was stopped before it could be completed.

That's what the evidence will show; that the defendants participated in an audacious scheme to kidnap children from their mother and bring them back to an isolated sect outside of the country. And when law enforcement caught them once, they tried to do it again.

Now, how will we prove it? We will prove our case with video and documents and recordings and physical evidence and testimony from witnesses who lived these moments firsthand.

You will see video of pieces of the kidnapping itself. You will see the kids leaving the house in Upstate New York. You will see them at a hotel where the kidnappers had them change into their disguises, and you will see them at the airport being smuggled out of the country. You will see documents showing that Sara had custody of her kids. You will see the rental car records showing that Mordechay Malka rented the getaway car, and you will see flight records showing that the children were traveling using other children's names.

And you will hear recorded calls from around the time of that second kidnapping. You will hear Lev Tahor leaders threatening Sara and clearly asserting their intention to get her daughter back to Lev Tahor.

You will also hear from multiple witnesses. You will hear from a law enforcement officer who investigated the kidnapping, an airport security officer who was tricked by the fraudulent documents, and a chemist who tested the pills that were given to the daughter, and you will hear from Sara Helbrans herself about this horrifying experience, about what it was like to have her kids abducted in the middle of the night.

You will also hear from one witness who is a former member of Lev Tahor and who actually helped carry out the kidnapping. This witness is a brother of one of the defendants and a cousin to the other. He will take you behind the scenes and tell you how this kidnapping plot unfolded.

Now I want to say a word about this witness. He was part of the kidnapping scheme, but he also came forward shortly after the kids were taken, and he assisted law enforcement in finding the children. Because of his assistance, he is not being prosecuted for the crime, but because of his unique position, he can give you an inside look into the planning and the execution of this kidnapping. And you don't have to take his word for it. His account of the kidnapping is corroborated by all of the other evidence. You will see the photographs, receipts, videos and more that demonstrate that his testimony is a reliable account of what happened.

Finally, you will see some of the defendants' own words. The defendants have filed legal documents, and they have made statements in court where they admit to their roles in the kidnapping. For example, Matityau admits to giving Sara's daughter cellphones to be used to communicate with Lev Tahor members. You will see those statements.

So that's some of what you will see and what you will hear during this trial, and all of that evidence put together will clearly show that the defendants and their co-conspirators abducted two children in the middle of the night to remove them from their mother and bring them back to the Lev Tahor community.

At the end of this trial, we are going to ask you to return a guilty verdict and to hold the defendants accountable

for their crimes. Between now and then, I am going to ask you to do three things: First, pay close attention to the evidence. Second, follow Judge Román's instructions on the law; and third, use your common sense, the same common sense that you use every day. If you do those three things, then you will reach the only verdict that's consistent with the evidence and with the law; that the defendants, Mordechay Malka and Matityau Malka, are guilty.

THE COURT: All right. Thank you, counselor.

All right. Mr. Mordechay Malka, do you intend to give an opening statement?

MR. MORDECHAY MALKA: Yes, Your Honor, please.

THE COURT: Okay. Are you going to give it from the podium? Which podium? Okay. You may do so at this time, sir.

MR. MORDECHAY MALKA: Good morning, ladies and gentlemen of the jury. My name is Mordechay Malka. I am 27 years old. I am citizen of this country. I born and raised here in New York. However, most of my life I live abroad, other countries, lastly in Guatemala where my community is.

I am husband to my wife Chaya, and she will be testifying for you in this trial. I am a father of five young children, and I -- we all would like to welcome you all to our jurors, our just judges and deciders of our life, liberty and justice, and we appreciate you for your service.

Now, before I am going to dive in deeply in this

matter before you and to give you a fair preview, myself, my family, my community, and this case of course, let me -- and of course, we are -- why we are here today, in short, to give you a fair preview, the true side to the story and my entire case.

So before that, let me please begin introducing myself, introducing my presentation a little more to you. As you already know, I am proceeding *pro se* in this case. This means that I am representing myself. And instead of counsel representation, as is more common, I am aware of that. However, I want you to know that I am not a trained lawyer. Even though I spent maybe three years studying the law, and I practiced before this Court as *pro se* for over a year now. Still, I never went to law school, nor have I any experience any ordinary lawyer have. So please note that I am not a professional. I am not an expert. I am not a simple -- I am layman like you are, and therefore, I meeting you, I find it very challengeable sometimes, and some might find it even as a risky action of my self-representation.

In addition, if it's not enough trouble to you and to me, of course, my English is not even my first language. English is my fourth language, not good in English. And this might be very challengeable for me to fairly communicate with you and to present my case. You might wonder if -- you might wonder why don't -- I don't accept counsel to proceed? Why take the risk to represent myself only.

THE COURT: All right. I am sorry. I am going to interrupt you. The purpose of an opening statement is to give an overview of what it is that you hope to either prove or to call into question the government's case, but it's not an opportunity for you to kind of give testimony to the jurors. All right. It's supposed to be like a preview of the evidence of what you anticipate the evidence is going to be or what it is that you hope to prove, or what you think the government may have challenges in their case.

The issue of whether or not the defendant has chosen to proceed *pro se* is not one for your consideration. All right. He has a legal right to do so.

The other thing that I am going to tell you is that we have an interpreter present, a Yiddish interpreter present at all times that's available to you. Each of the defendants can have the option of using an interpreter.

So you must restrict your comments to the parameters that I previously spoke to you about what an opening statement is. It's to give a preview of what the evidence is going to be or what you anticipate it's not going to be. All right. It's not for you to give testimony to the jury. All right. You have talk about what it is that you hope to prove or disprove or what challenges the government may have. All right. You may continue.

MR. MORDECHAY MALKA: Thank you, Your Honor.

What -- so -- the jurors, I will continue. The way I intend to proceed for you is in entire trial is to be very open with you guys, very honest. I will myself testify. You will see the way I proceed. I will never hide anything from you. I will try to tell you my -- you will see that the way I proceed that to be truthful, very truthful, to tell you the truth, the whole truth, and nothing but the truth.

And in fact, I have nothing else to show to you, only the truth, and I am not going to lie. No limitations, no misleadings, but entire truth. Knowing that I truly believe that if you are -- if I am honest and fully truthful, you don't need counsel, and I feel I can proceed in front of you even without the advantage of counsel. As King Solomon says, as the word -- the mirror of the word of a person is a person's face is the same as a heart to a heart. Still I will note that even though I understand you might find it a little challengeable, I want to apologize to you regarding the challenges you might face regarding my representation.

And I will try my best to ease up this hardship burden from you. And in fact, my intention is only in this case, it's my goal and all your goal to discover the truth, the real truth and achieve justice. This might seem by some a very innocent sentence, a very easy mission. But at least we have now very simple. Just close your eyes and trust everything, but the members of the service of the jury, as all of you know from your

own life experience, this is the one hardest thing to achieve on this planet, it is justice. If there is one hardest thing to achieve is justice. If there is two hardest things to achieve in this planet, we can say to discover the truth and to achieve justice.

This was always true. It was -- this is one thing any student of history knows that always this was the number one issue. So to discover the true justice is a hard work, a challengeable work. It's not easy. It's not easy. You have to focus. You have to try to understand, especially with my case with not -- with all the challenges about the language and about our personality. And of course, I truly believe, as I said, I am convinced that this is the only reason why you are here today. This is one point of the subject that all of you, all of you sharing the same goal.

And but, unfortunately, my brothers and sisters of the jury, as you are aware and discover in this trial, this was not the case for the government, for the prosecution. Those who were supposed to look and investigate and discovered absolute truth failed to fulfill their duty, and even didn't want to know the truth. They never even tried to look for the full truth. Those who were responsible to serve justice through the past, not only didn't follow it, but forgot for society and for the American people, let alone as is mentioned in the Bible justice, justice for the soul, but instead, sadly, corrupt officials put

all their efforts and power and worked and still working --

MS. BAGLIEBTER: Objection.

MR. MORDECHAY MALKA: -- to conceal the truth from you guys. Dangerous.

MS. BAGLIEBTER: Objection, Your Honor.

THE COURT: There is an objection. All right.

You can't make arguments. You can't make arguments, sir. All right. Unless you have to -- you have to go, review the evidence that you anticipate you are going to present, all right, and give a purview -- a preview of what your case is going to be about. All right.

You may also talk about the witnesses in the government's case if you choose to do so. All right. But this is not the time to make arguments, sir.

MR. MORDECHAY MALKA: Thank you, Your Honor.

Ladies and gentlemen, let's start discussing the details of my case. Let me ask you before just obviously, what is the case about? What does this meant that the government put so much drama and manipulation? Even in their opening, let alone for three years now, trying to push this case to the top, the type of our case, when in fact, the charges are among the lowest charges in federal court.

MS. BAGLIEBTER: Objection.

THE COURT: I am going to allow him to proceed.

And I am going to just indicate to you that you

proceed at your own peril. All right? Continue.

MR. MORDECHAY MALKA: Dangerous. The evidence in this trial will prove you that this is -- evidence in this trial that will provide -- you will be provided all the facts and even by the government will prove you that this is not the case of kidnapping, or similar or the same. The evidence will prove you this is not even a case of any offense against any person or society or any violation of the law, morality or social values.

This is not an ordinary case at all. This is not a case anyone of you ever dreamed of. This is not even a case one of you will believe not even happened in modern times, not in the United States and our Constitution. This is a case of innocent people, caring family members, who devoted and sacrificed themselves to provide help, to help these kids.

MS. BAGLIEBTER: Objection.

THE COURT: I am going to allow him to continue. The objection is overruled.

MR. MORDECHAY MALKA: This is a case of innocent people, caring family members, who the government are accusing them for allegedly devoting themselves to what? To provide help to help these kids, the abused hostage children for --

MS. BAGLIEBTER: Objection.

THE COURT: You are to disregard the last statement that was made with respect to the conditions of the children. All right. I am instructing the jurors to disregard that

statement, and that is pursuant to my prior rulings.

Mr. Mordechay Malka, I must warn you of my prior warnings to you. Okay? Continue, but you must abide by my rulings. Do you understand?

MR. MORDECHAY MALKA: Thank you, Your Honor.

THE COURT: Okay.

MR. MORDECHAY MALKA: The government starts the case, the story, in December 2018. We will start from the beginning. Let us -- let me start one area, just one area.

Those two children, two innocent children, they lived peacefully, happily in their home in Guatemala, in the community, the community Lev Tahor, our community where I am from. What is Lev Tahor about? What is my community about? The community of peaceful men, women and children have only one goal in their life: To practice old-fashioned Judaism. Only old-fashioned Judaism. That's the only thing they are doing. Peaceful community. Very happy community.

One day the parents -- one parent decided to leave, and since then, the nightmare start for those children. Those children were violently removed --

MS. BAGLIEBTER: Objection.

THE COURT: Mr. Malka, I am going to remind of my prior rulings. You must abide by my prior rulings. All right?

You have to disregard the last statement, the reference to a violent removal. You must strike that from your

minds.

MR. MORDECHAY MALKA: Those children were being brought here to New York, a foreign country. They never was here. They was abused here.

MS. BAGLIEBTER: Objection.

THE COURT: I am sorry?

MR. MORDECHAY MALKA: I would like to have a side bar, please. Or did the Court overruled the objection? I can continue. As the Court knows, we already discussed these principles, the principle of affirmative defense.

THE COURT: I am not going to interrupt the opening statements. I am going to have the jurors excluded from the jury room -- or from the courtroom at this time. All right.

THE DEPUTY CLERK: Yes, Your Honor.

(Jury excused)

(In open court; jury not present)

THE COURT: Mr. Mordechay Malka, I am going to ask you to take a seat at the table. All right.

I am going to read back into the record what I previously instructed you because it's apparent to me that you did not hear my instructions. All right? This is what I previously read into the record. All right.

Mr. Matityau Moshe Malka and Mr. Mordechay Malka, during our final pretrial conference, you assured me that each of you was willing to abide by the Court 's rulings on the

evidence, the rules of procedure, the courtroom protocol. I reminded you that appropriate courtroom behavior and decorum was essential to the administration of justice, and I have both the obligation and authority to manage the proceedings to ensure fair and disposition of this case. I warned you that I would not tolerate any disrespectful behavior from you or from anyone else.

As I said, the First Amendment does not give you the right to say anything you want at any time or to speak to the jury when you are not testifying, or to testify in matters that I have ruled to be inadmissible in evidence. That's what I previously told you.

All right. I had previously warned that if you failed to comply with this order or if you engaged in disorderly, disruptive and disrespectful behavior, the Court would -- that I would consider such behavior as a waiver. I want to emphasize the word because I don't think you understand what it means, but I am going to ask -- I am going to ask the Yiddish interpreter to interpret it.

Can you please interpret for me the word "waiver"? Can you say it in Yiddish to both Mr. Mordechay Malka and to Matityau Malka?

(Interpreter complies)

THE COURT: All right. Do you understood what the word "waiver" means, Mr. Mordechay Malka?

MR. MORDECHAY MALKA: Yes, Your Honor.

THE COURT: All right. And Matityau Malka, you understand what the word "waiver" means?

MR. MATITYAU MOSHE MALKA: Yes, Your Honor.

THE COURT: All right. I indicated that there would be a waiver of your right to represent yourself and possibly also a waiver of the right to be present in the courtroom. That's what I said. Yet despite that, you just argued factual -- you made factual arguments before this jury, which I told you you were precluded from doing so. The comments that you made during your opening statement are contrary to my rulings on the motion *in limine*.

What I need to know is if you intend to continue to disregard my prior rulings, and continue in this course of making comments and/or making arguments or arguing points of law and/or facts, which I have precluded?

MR. MORDECHAY MALKA: Your Honor, of course I intend to obey, and I did obey the court. Can the Court point me --

THE COURT: I don't think you understand me. What I have just said is that you have disobeyed my rulings, sir. I don't know what other way to say it. I am making an affirmative determination that you have disobeyed my prior rulings. Not only did I issue a written opinion, which I assumed that you read, which standby counsel represented to me that they obtained and provided a copy to you; but I also took the opportunity to

highlight, highlight those portions of my rulings which precluded the government from doing certain things, and also precluded the defendants from doing certain things or saying certain things or arguing -- making certain arguments at this trial.

So I want the record to be clear. You have disobeyed or conducted yourself in a manner that is contrary to my prior rulings. You have disregarded the Court's prior rulings. I am going to ask you one more time: Do you intend to continue to disobey or disregard the Court's prior rulings?

MR. MORDECHAY MALKA: Your Honor, I will obey all of your rulings. Just point me out what I did today so I know for next time.

THE COURT: I am not -- I am sorry. I am not holding your hand. I am not your mother. I am not your father. That's not what I am here for. All right. I outlined to you in very simple terms that you could not do certain things. It's apparent to me that you are reluctant to follow those instructions.

MR. MORDECHAY MALKA: Your Honor, my -- with all due respect, my whole opening statement was absolutely clearly consistent with your ruling. I didn't violate any of your rulings, Your Honor.

THE COURT: I beg to differ. I think the government will beg to differ, which is why they objected on not one, but

on several occasions.

MR. MORDECHAY MALKA: Your Honor, this is -- this is all goes to our intent. How can I explain to the jury that my intent was not to obstruct parental rights if I am not allowed to tell them what the story was? How happened to be that I --

THE COURT: I am not ready to hear your strategy, with all due respect. That's not my job. I am a neutral arbitrator of this matter. That's not my job to tell you how to strategize, what arguments to put forward. I can't do that. If I was to do that, I can almost assure you that the government would be objecting. I can't tell you how to try your case, how to defend your case. That's not my job. I can't tell you what opening remarks to make because it's not my job. But my job is make sure that proper procedures are followed. All right.

MR. MORDECHAY MALKA: Your Honor, but the Court cannot interfere in the defense, method of defense. I mean, this is --

THE COURT: Sir --

MR. MORDECHAY MALKA: That's the against the law. This is my defense is --

THE COURT: It's clear to me that you fully do not understand the Court's prior rulings, and it's clear to me that you cannot adhere to the Court's prior rulings.

MR. MORDECHAY MALKA: I never say -- I never said. I only say I will abide your rulings. I asked you for a clarification, Your Honor. I will continue to obey all of your

rulings, but just --

THE COURT: I am going to ask again. Do you understand my prior rulings, and will you be able to abide by my prior rulings?

MR. MORDECHAY MALKA: Your Honor, definitely I will, as my understanding is, Your Honor, but --

THE COURT: Okay. No, not as your understanding, as I explained them to you. I told you that you were precluded from making certain statements and oral statements. I said that. I highlighted them. It is apparent to me that you have chosen to interpret those rulings differently than that which the Court stated and which the Court outlined.

Is there anything that the government would like to say at this time?

MS. BAGLIEBTER: Just a minute, Your Honor.

(Pause)

MR. TANNER: Excuse me, Your Honor? My client just needs some water. So could we take a --

THE COURT: Hold on a second. Hold on a second.

MR. TANNER: He could just be excused to find a bottle of water?

THE COURT: Give him a second. Here. Mr. Ligtenberg, we have one. Okay.

MR. MATITYAU MOSHE MALKA: Very nice. Thank you very much. Appreciate it.

MR. TANNER: Yes.

THE DEPUTY CLERK: Sure.

THE COURT: All right.

MS. BAGLIEBTER: Your Honor?

THE COURT: Yes.

MS. BAGLIEBTER: If I may?

THE COURT: Yes, you may.

MS. BAGLIEBTER: We share the Court's concerns about the defendants' willingness to abide by the Court's order. It is precisely why we raised this issue this morning was that so the Court could be clear as it was before openings started of what could not be discussed. And as I mentioned this morning, our concern, our primary concern is about information that the Court has precluded getting to the jury because you can't unring that bell, and the jury has now heard more than once about abuse that Your Honor said should not be before the jury.

And so, at a minimum, when the defendant has finished his opening statement, we will be asking for a limiting instruction to the jury before they leave today making clear that that was an improper comment that they were precluded from making and that jury should not consider in any way those references. And, you know, a limiting instruction feels a little bit like the best we can do right now, but we litigated these exact issues in motions *in limine* to avoid precisely this situation that we are in right now, and we had a lengthy

discussion about this this morning to avoid precisely the situation we are in right now. And yet, the defendant did exactly what the Court said he cannot do, and the Court said that in its May 11th opinion, and as the Court has pointed out, reiterated that with precise clarity today, and yet, it's clear that the defendant is saying he interprets the order differently, and therefore, he is going to say what he thinks the order allows him to do. But Your Honor has made clear that that's a misinterpretation of your opinion, and of course, it's your opinion here that controls.

MR. MORDECHAY MALKA: Your Honor, the Court -- you can ask the reporter to read back the Court -- the entire transcript today the Court never says one time even there is ten times again and again repeatedly the Court never said that I cannot talk about the abuse of children, never. Not the defense --

THE COURT: I take it that you weren't paying attention.

MR. MORDECHAY MALKA: I am asking you, Your Honor. Did you said I am not allowed to say anything about abuse? Was that my intent? To show my intent was not to obstruct, but to stop this abuse of the children? That's only my intent was. I mean, is there any way I cannot allowed to say it? You never said it. You never said it, right? Not in your rulings. Not only today. Okay. So I know the words I was talking about. You never said it.

And actually, Your Honor, in the last trial also they did were allowed to argue it. And no one --

THE COURT: You're conflating issues of motive and intent, sir.

MR. MORDECHAY MALKA: What's that?

THE COURT: You're conflating issues of motive and intent.

MR. MORDECHAY MALKA: All right. So can the Court explain what is intent --

THE COURT: I am not your legal advisor, sir.

MR. MORDECHAY MALKA: All right. The Court --

THE COURT: You need to stop interrupting me.

MR. MORDECHAY MALKA: Sorry, Your Honor.

THE COURT: I am just going to say that you talk too much. You are your worst -- worst enemy. You are your own worst enemy, sir. I don't know what other way to say it.

MS. BAGLIEBTER: Your Honor, to assist the defendant, the relevant pages of your motion *in limine* are pages 37 to 41 at subsection four that discusses the distinction between the issues of motive and intent and makes very clear that -- and I think this has been clear throughout our pretrial proceedings -- this trial is very different from the October 21, 2021, trial. That trial included a question as to what the dominant motive was in removing the children. That question is not at issue in this trial.

THE COURT: All right.

MR. MORDECHAY MALKA: Your Honor, Your Honor, I will quote from your opinion. You said --

THE COURT: No, you won't.

MR. MORDECHAY MALKA: What?

THE COURT: No, you won't.

MR. MORDECHAY MALKA: All right.

THE COURT: I am going to go over the rulings that I made so that it's clear to you. I am going to ask you once again to pay attention. Don't write. Don't do anything. If you don't understand a word that's said, you need to let me know. Do you want the Yiddish interpreter next to you, sir?

MR. MORDECHAY MALKA: No, Your Honor.

THE COURT: All right. I don't want you to come back later on and argue that you don't understand what I said or that it wasn't said clearly enough or in plain English enough.

All right. First, the Court ruled that evidence of the Malkas and their co-conspirators' prior bad acts under Federal Rules of Evidence 404(b), evidence of Lev Tahor's practices of arranged marriages for the purpose of procreation are admissible.

However, the Court also precluded the government from presenting any evidence that relates to Lev Tahor's sexual practices, such as, for example, as the government relates in the S3 Superseding Indictment, providing a tutorial before

marriage instructing them on when and how to have sex with their spouses, among others.

Next, the Court ruled that statements from the Malkas' co-conspirators are admissible as long as the government fulfills the necessary prerequisites to present such statements.

Are you following this, sir?

MR. MORDECHAY MALKA: Yes, Your Honor.

THE COURT: Is there anything that I have said so far that you don't understand?

MR. MORDECHAY MALKA: The last thing, I'm not sure.

THE COURT: You are not sure? Okay. So in that case, I am going to have the Yiddish interpreter sit next to you. So that you can't later say that you didn't understand what I have said, and I am going to ask the Yiddish interpreter to simultaneously interpret what I said. Who can assist me?

I want to the record that reflect that previously you indicated that you didn't need the Yiddish interpreter and that you fully understood what I said.

MR. MORDECHAY MALKA: The Court knows it's not about the English. It's about --

THE COURT: Don't assume what I know or don't know, sir. Do you want me to start at the beginning?

MR. MORDECHAY MALKA: No. Just the last sentence, please.

THE COURT: The Court ruled that statements from

Malkas' co-conspirators are admissible as long as the government fulfills the necessary prerequisites to present such statements.

The Court ask that the government seek the admission of business records through written certifications under Federal Rules of Evidence 803(6) and 902(11), as long as the government establishes the relevance of those business records and lays the proper foundation for them.

You need to pay attention now, sir. The Court precluded the Malkas from raising any argument challenging the validity of the family court order granting the mother sole custody over the minors or the propriety of how such order was issued. This is because this is a legal, not a factual question that the family law court has already ruled on, and which this Court cannot review.

Understood so far?

MR. MORDECHAY MALKA: Yes.

THE COURT: The Court also precluded the Malkas from arguing that the mother lacked parental rights over the minors. This is because as a matter of law, one, that the family court order is valid, and two, it is indisputable that the mother is the biological mother. The biological mother enjoys the right to physical custody of her children unless and until such right is terminated by law.

The Court also precluded the Malkas from making any alleged misconduct from the mother and the Kasho community or

how they allegedly abducted the minors to bring the United States -- and to bring them to the United States and fraudulently procure the family court order.

The Court noted that the Malkas may only raise such misconduct so long as they can show there is evidence indicating that they were physically abused; that they physically abused the minors or some issue which is not otherwise precluded in the written opinion.

The Court also precluded the Malkas from arguing that they were rescuing the minors because such argument is irrelevant.

All right. I also precluded the Malkas from arguing that they and their co-conspirators were being persecuted for their religious views because they failed to produce any evidence of discriminatory intent or effect.

I also precluded the Malkas from arguing that because the marriage between Jacob Rosner and Minor-1 is predicated on religious beliefs that the same constitutes a defense to the charges against them.

I also precluded the Malkas from raising any argument challenging the legal validity of the marriage between Jacob Rosner and Minor-1.

I precluded you from organizing that the minors consented to travel out of the country excused your offense conduct.

I allowed the use of the terms "kidnapping" and "abduction" and "victims" by the government at trial.

Now I want you to turn to page 39 of my decision so that it's clear. But here, while the Malkas claim that the minors were frequently treated with verbal, physical and sexual assaults, they provide no evidence whatsoever to substantiate their claims.

MR. MORDECHAY MALKA: Your Honor, I don't follow. Which page is it?

THE COURT: 39.

MR. MORDECHAY MALKA: This is not --

THE COURT: Hence, insofar as second affirmative defense is somehow applicable to the Malkas -- who were not themselves fleeing an incidence or pattern of domestic violence, but who instead claim to have been aiding the minors to do so -- absent any evidence supporting their claims of abuse, they cannot assert that defense or argue it to the jury, which is what you did, sir.

MR. MORDECHAY MALKA: Mine are different page numbers. That's why I can't follow.

THE COURT: I just read it into the record. Were you paying attention?

MR. MORDECHAY MALKA: My --

THE COURT: Were you paying attention?

MR. MORDECHAY MALKA: Yes. I following -- I didn't

follow.

THE COURT: I just read it into the record. Were you paying attention?

MR. MORDECHAY MALKA: Your Honor, I am trying to find it in the papers, and I didn't have --

THE COURT: You don't have to. All you have to do is listen. Now, Mr. Zager, from what I understand, who is a Yiddish interpreter, just interpreted it for you, did he not?

MR. MORDECHAY MALKA: Yes, he did. But I understand what you say even without him.

THE COURT: I am sorry?

MR. MORDECHAY MALKA: I understand English even without him, Your Honor. I understand English. I listen to you directly, not to him because English is easier for me now to understand.

THE COURT: Okay. So you, in essence, have violated my prior ruling.

MR. MORDECHAY MALKA: Can the Court please make sure I can have a copy of your ruling? I am trying to get another copy.

THE COURT: I am sorry. You know, with all due respect, I have given you copies. And your standby counsel has given you copies. I have seen -- I have seen standby counsel hand you a copy.

MR. MORDECHAY MALKA: But I don't have the correct

page numbers. That's why I am not able to follow.

THE COURT: But I have read it into the record. This is not the first time I read it into the record.

MR. MORDECHAY MALKA: Okay.

THE COURT: With all due respect, the decision is written in simple language. You just indicated you understood what I just said, so I am not quite sure why you choose to violate my prior rulings.

I am going to warn you one more time. If you continue in this path, if you continue to violate my prior rulings, I will have no choice but to revoke your *pro se* status. Be forewarned.

MR. MORDECHAY MALKA: Your Honor, I think I just got the copy. I read it. I read it.

THE COURT: Sir.

MR. MORDECHAY MALKA: Yes.

THE COURT: Be forewarned. Did you hear my warning?

MR. MORDECHAY MALKA: Yes, I did, Your Honor.

THE COURT: Okay.

MR. MORDECHAY MALKA: But, Your Honor, it says here clearly that if they -- if we have evidence, just absent evidence.

THE COURT: Sir.

MR. MORDECHAY MALKA: We do have evidence. Evidence will indicate it.

THE COURT: All right. I precluded you subject to you presenting such evidence. Nothing has been presented. I precluded you from arguing that because at the time your motions were presented, you had no such evidence. All right.

MR. MORDECHAY MALKA: Your Honor, so we have the evidence for this.

THE COURT: Okay. You should consult with your *pro se* counsel -- your standby counsel. I don't know what more to tell you except I have made rulings. You are obligated to abide by them. You are demonstrating a pattern of not being able to follow my instructions and/or prior rulings. So you are being warned not once, but twice again.

MR. MORDECHAY MALKA: Your Honor, I want to refer with standby counsel, please.

THE COURT: You should be conferring with standby counsel. You have been conferring with standby counsel.

Okay. I want to put on the record that Mr. Mordechay Malka's disruptive behavior and inability to follow the Court's instructions has caused tremendous delay in this proceeding. It is now five after 4:00. All right. I have another hearing that I am scheduled to begin. All right. I am going to -- I am going to adjourn this trial until Monday morning.

MR. MORDECHAY MALKA: Your Honor, I just finished to consult with counsel.

THE COURT: I am listening. I am all ears.

MS. BAGLIEBTER: Thank you. Before -- I understand the time sensitivity given that you have a 4 o'clock hearing, but before we adjourn for the weekend, we do think that the jury needs to here a limiting instruction that they are not -- that the statements with respect to abuse of the children -- right, alleged abuse, that the statements made by the *pro se* defendant about alleged abuse of the children are not to be considered, you know, were the results of a sustained objection and are not to be considered by the jury at all. And they are not to question why the statements were made at all. It's very hard to imagine that the jury isn't thinking now exactly what your order precluded them not to think, but I think they do need a limiting instruction making clear that they shouldn't be considering the allegations of abuse that were made; that it's not proper for them to consider it at all, and they should -- it should be as if they never heard it.

MR. MORDECHAY MALKA: Your Honor, is it even regarding intent because in the government's motion *in limine* they said that for intent?

THE COURT: I don't understand what you are saying. All right. I don't think you are paying attention to what the government attorney just said. They are asking for a curative instruction because of your failure to abide by the Court's ruling. That's what they are asking for. Do you understand that?

MR. MORDECHAY MALKA: Yes. I understand what you said, Your Honor.

THE COURT: Okay.

MR. MORDECHAY MALKA: I don't agree, but I understand. Yes.

THE COURT: Like I said, you have a standing objection to just about everything I do or say.

Let's bring in the jury. I am going to -- we are going to -- I am going to give a curative instruction.

THE DEPUTY CLERK: Jury is entering.

(In open court; jury present)

THE COURT: Remain seated, everyone. It cuts down on movement in the courtroom. We are still dealing with the Covid-19 pandemic. We are trying to minimize when in the courtroom. I appreciate everyone attempting to be respectful of the jurors.

All right. Welcome back, ladies and gentlemen of the jury. I apologize for the interruption, but I needed to address certain matters.

During the course of one of the defendants' opening statements, he made references to alleged abuse of the children. With respect to that comment, you are not to consider that comment. You are to strike it from your minds. That was an improper remark that was made to the jury and should not enter into your deliberations at all at this time. All right?

Given the hour, we are going to have to recess for the day. All right. I think we are going to have some nice weather, so hopefully you will be treated to some sunshine this weekend. Needless to say, I could use a little bit of sunshine in my life.

We are going to recess. We will continue on Monday morning. We will go back to the opening statements, all right, and then we will begin with the presentation of evidence.

Admonitions that I gave you before apply. Do not discuss this case among yourselves, nor with anyone else. If someone attempts to do so, you must report that to me as soon as you can or to my courtroom deputy. All right. Should that happen, you are not to discuss that fact with any of your fellow jurors. You are forbidden from looking at any media attention that this case may be given or any related case. You can't use the Internet to do any independent research.

What else? If you see anyone related to this case outside of the courtroom, you are not to talk to them, not even to pass the time of day. Again, they are prohibited from speaking to you. They are not being rude. They are merely following my instructions.

All right. I am going to continually ask you to be patient with us. We are trying to get through this as efficiently and as quickly as possible. All right.

Gina, did I miss anything?

THE DEPUTY CLERK: No, Your Honor.

THE COURT: All right. All right. We will excuse the jurors. Enjoy the weekend. Yes. Did I say you have to be in the courtroom at 9:00?

No? Someone said no. Someone said yes. Try to be here at 9:00, please. Believe it or not, everyone is here in the courtroom at 9:00. It may not seem that way, but they are. But there is just -- you know, there is usually something that needs to be argued, and I also have other cases. And so then sometimes I am pulled from the courtroom to address those things, and it's not that we are ignoring you, and we do value your time, and we are trying to minimize the amount of time that you spend in the courthouse in general. All right. And we appreciate it. So just bear with us. All right?

Let's excuse the jury.

(In open court; jury not present)

THE COURT: All right. Anything further from the government?

MS. BAGLIEBTER: No, Your Honor.

THE COURT: Anything further, Mr. Mordechay Malka? And don't ask me to explain the law to you. All right? Don't ask me. It's not what I am here for. I am not your lawyer. All right. That's why you have standby counsel for, so you can ask them for their legal opinion and advice, which I strongly advise you to do.

As a matter of fact, this is what I would advise you to do as a practical matter. Show them your opening statement, and let -- get some guidance from them.

Mr. Matityau Malka, just a suggestion, you don't have to do this. What do I know? I am only the judge. Give a copy of your -- show a copy of your opening statement to your standby counsel to make sure that you are in compliance with my rulings.

If you display a pattern of not being able to follow my rulings and/or the court protocols that are in place -- all right, I don't know, I think I have said it before -- it will be an indication to the Court that you are unable to abide by them, all right, and that perhaps the Court may have to consider revoking your *pro se* status. All right.

There being nothing further --

MR. MORDECHAY MALKA: Your Honor, I would like to -- I want to put on the record, Your Honor, the Court has continued to show extreme bias and prejudice against the defendants.

THE COURT: I know. You have said that before. You have said that before. It's not the first time. I have tried to be, I think, overly accommodating and respectful of you, but you must abide by my rulings, sir. I don't know what other way to say it. I am treating you as an attorney because that's what you asked for. You have to read my decisions, and you must abide by them. I don't know what other way to say it. All right.

Just so that the record is clear, there were objections by the government. I only interrupted you once when you made a comment, which I thought you were testifying as opposed to indicating what the evidence was going to show or not show. I indicated that you cannot testify, and the government objected to your comment, and I ruled on that objection. All right.

We are in recess for today. I will see you.

MR. MATITYAU MOSHE MALKA: Your Honor, just a short thing. I want to ask with respect to the Court if it's possible at least to make sure the marshals, and especially with the jail, that we will get there very fast because now it's already after 4:00. Yesterday it took us over three hours and to come into the Sabbath and --

THE COURT: You brought up to the Court's attention. I sympathize with you. I will say it again. I do not run the marshals unit. I have no control over them. I cannot tell them when they pick you up, how they will pick you up, when they leave the courthouse, and nor can I tell them how fast to drive. I have no control over them. All right.

I will see everybody on Monday.

(Pause)

THE COURT: This is for standby counsel. As I have done in the past, in the event that I revoke the *pro se* status of the defendants, I remind you again that the expectation is

that you are going to be asked to continue the representation of the defendants at whatever stage of the proceedings we are in. All right? Thank you.

(Adjourned to May 23, 2022 at 9:30 a.m.)