

DISTRICT COURT
CITY AND COUNTY OF DENVER
STATE OF COLORADO
LINDSEY-FLANIGAN COURTHOUSE
520 WEST COLFAX
DENVER, COLORADO 80204-2609

THE PEOPLE OF THE STATE OF
COLORADO,

vs.

GAVIN SEYMOUR,

Defendant.

^ COURT USE ONLY ^

Case No. 21CR20001
Courtroom No. 5A

REPORTER'S TRANSCRIPT

This matter came on for MOTIONS HEARING on
August 19, 2022, before the HONORABLE MARTIN EGELHOFF,
Judge of the District Court.

A P P E A R A N C E S

FOR THE PEOPLE:

COURTNEY LEIGH JOHNSTON
Reg. No. 39266

JOSEPH M. MORALES
Reg. No. 24706

KATHERINE HANSEN
Reg. No. 25464

FOR THE DEFENDANT:

JENIFER E. STINSON
Reg. No. 35993

MICHAEL S. JUBA
Reg. No. 39542

MICHAEL PRICE
Reg. No. 34249

Also present: Andrew Pak, Google Counsel

Claudia Booton, RPR

Official Court Reporter - Denver District Court
520 West Colfax Avenue, Room 2G
Denver, Colorado 80204

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MORNING SESSION - August 19, 2022

* * * * *

(The following proceedings commenced in open court at the hour of 9:00 a.m. with all parties present, the defendant appearing in custody:)

* * * * *

THE COURT: Calling 21CR20001, People versus Gavin Seymour. Appearances, please.

MR. MORALES: Good morning, Your Honor. Joe Morales, Courtney Johnston, and Katherine Hansen on behalf of the People.

MR. JUBA: Michael Juba, Jenifer Stinson, and Michael Price on behalf of Gavin Seymour. He appears in custody at counsel table.

THE COURT: Thank you.

We're set for hearing on a variety of motions, so we'll just begin, the first one involving testimony, correct?

MR. JUBA: Correct.

THE COURT: And presumably whatever testimony I'm going to be hearing is not information that's already in the record in some other fashion, yes?

MR. JUBA: Correct.

THE COURT: So the motion is entitled Motion to Suppress Evidence from a Keyword Warrant and Request

1 for a Veracity Hearing.

2 Counsel, you can proceed.

3 MR. JUBA: Few preliminary matters to address.
4 We would ask the Court to enter a sequestration order.
5 I believe the prosecution is asking for Special Agent
6 Sonnendecker to remain as an advisory witness. We don't
7 have any objection to that. We're also asking for our
8 witness, Mr. Chris Wells, to remain as an advisory
9 witness.

10 THE COURT: Any problems with that, Mr.
11 Morales or Ms. Johnston?

12 MR. MORALES: No, Your Honor.

13 THE COURT: All right. So the Court will
14 order a sequestration of witnesses. So any witness
15 other than those advisory witnesses identified need to
16 absent themselves from the courtroom. They may not be
17 logged in on Webex and they may not discuss their
18 testimony with any other witness.

19 What else?

20 MR. JUBA: We're asking the Court to allow Mr.
21 Seymour to have his handcuffs either taken off or
22 loosened so he can write and take notes during this
23 hearing.

24 THE COURT: That's a question of security for
25 the sheriff.

1 THE SHERIFF: No problem with that.

2 MR. JUBA: The last preliminary matter is we
3 did file a motion to admit exhibits. Your Honor, we did
4 attach several exhibits to the actual motions to
5 suppress. There's a stipulation to the admission of the
6 search warrant -- search warrants themselves and the
7 search warrant affidavits, so we would ask the Court to
8 admit those exhibits now per stipulation.

9 THE COURT: Are they marked in some fashion as
10 exhibits?

11 MR. JUBA: Your Honor, we have paper copies
12 for the Court and we are going to file the digital
13 copies after the hearing itself.

14 THE COURT: As long as they are identified as
15 exhibits so that we can keep track of them and make a
16 record of them, and as long as there's no -- as long as
17 there's no objection to receiving them, that's fine. So
18 why don't you make a record of what the exhibits are so
19 we can have a record.

20 Is there an exhibit list or anything like
21 that?

22 MR. JUBA: Your Honor, we -- the search
23 warrants and the search warrant affidavits are already
24 in the record attached to the motions themselves. We
25 can file additional attachments, but we would ask the

1 Court to just rely on those attachments that are already
2 in the record.

3 THE COURT: I can certainly rely upon the
4 contents of the file with respect to what everyone's
5 filed if that's what you're asking me to do. Is that
6 what you're asking me to do?

7 MR. JUBA: That is as it relates to the search
8 warrants and the affidavits, yes.

9 THE COURT: Okay.

10 MR. JUBA: There are nine additional exhibits
11 that we're asking the Court to also admit. Prior to the
12 hearing, we did give this -- these exhibits to
13 prosecution ahead of time. These exhibits are relating
14 to the keyword search warrant. They include police
15 reports, additional affidavits, additional reports
16 outside of the search warrants and affidavits
17 themselves, and including the search warrant returns
18 themselves.

19 THE COURT: Okay.

20 MR. JUBA: So we're asking the Court to admit
21 those exhibits prior to the start of the hearing.

22 THE COURT: All right. And so they are marked
23 and identified as exhibits, yes?

24 MR. JUBA: Correct.

25 THE COURT: So why don't you make a record of

1 what exhibits they are, what numbers or letters they
2 are.

3 And there's no objection, Mr. Morales?

4 MR. MORALES: There is an objection, Your
5 Honor.

6 THE COURT: Oh.

7 MR. MORALES: And so I want to address a few
8 of the issues. As far as the defense pleadings, they
9 have attached numerous attachments. We do not oppose
10 the attachments that include the search warrants or
11 search warrant affidavits.

12 As far as some of the other attachments in the
13 defense motions, we do object to because we believe
14 they're outside of what the scope of this hearing is
15 about and what the Court is to do.

16 As the Court knows, this Court, when reviewing
17 a search warrant, is bound by the four corners of the
18 search warrant and only the four corners of the search
19 warrant. That is established law that this Court
20 recently saw really follows completely.

21 As such, all the information of the exhibits
22 they're attempting to introduce in regards to stuff
23 outside of those search warrants are extraneous and,
24 therefore, irrelevant.

25 We don't believe that the Court should accept

1 and we'll be objecting throughout the course of the
2 hearing, not only as to their admission, but the calling
3 of witnesses.

4 I anticipate the first witness to be called
5 this morning is the custodial agent from Google. The
6 attorney for Google, Mr. Pak, is present here today and
7 would like to address the Court before she takes the
8 stand. But the People are objecting to her testimony.

9 Again, the purpose of this hearing, as the
10 Court knows, is to review the four corners of the search
11 warrant to determine whether or not there is -- the
12 three things, particularity, particularity, and probable
13 cause. Everything else is irrelevant.

14 That box is contained where the Court needs to
15 stay, and all of this stuff that the defense wants to
16 bring in except for purposes of veracity or maybe
17 whether or not there's good cause are irrelevant. And
18 we don't think that evidence should be accepted on this.

19 I understand the Court, ultimately, gets to
20 make that decision, but we're objecting to the
21 testimony. And for those reasons, a lot of what record
22 is being made here could be circumvented if the Court
23 were to decide that this evidence is irrelevant. And
24 perhaps that could be done with an offer of proof as to
25 how her testimony and the evidence would somehow help or

1 aid the Court in its proper determination of the four
2 corners of these warrants. And that's the People's
3 record.

4 THE COURT: Mr. Juba.

5 MR. JUBA: Your Honor, as it relates to
6 specifically the relevance of this information of the
7 keyword search warrant, I would just ask the Court to
8 hear from Mr. Price. That's his issue that he's going
9 to be addressing.

10 THE COURT: Okay.

11 MR. PRICE: Good morning, Your Honor. Michael
12 Price for Gavin Seymour. The issue here, this keyword
13 warrant, is a novel issue. It is the first time it is
14 being litigated in any court that I'm aware of, the
15 first hearing about it. There are many questions, I
16 believe, about how this search warrant worked, how it
17 was executed, what sort of representations were made to
18 the Court that were perhaps misleading, all of which
19 Ms. Adeli's testimony can clarify for the Court.

20 She was the person at Google who had
21 familiarity with these warrants, personal knowledge of
22 how the searches were executed. And that is something
23 that we are challenging here.

24 So with respect to the scope of the search and
25 the scope of the seizure, the warrant itself is not

1 clear about how the search is to be conducted. It's not
2 clear from the warrant that Google would be required to
3 search billions of people. It is not clear from the
4 warrant which pieces of data were supposed to be
5 returned to the government.

6 There are -- in the search warrant returns.
7 There are lines of data that show just how broad the
8 search actually was. There is a factual dispute, for
9 example, about whether the search was limited to the
10 entire state of Colorado.

11 The search warrant returns clarify that was
12 not the case. They also clarify that some of the data
13 seized and returned did not match the search terms in
14 the warrant.

15 So both as to the scope of the search and the
16 scope of the seizure, we believe this testimony and the
17 warrant returns are extremely relevant. They are the
18 best evidence of the scope of the actual search that
19 took place.

20 The four corners rule is designed for the
21 government to limit consideration of probable cause that
22 is not contained inside of the four corners of the
23 warrant. It prevents the government from making a
24 probable cause argument based on extraneous evidence.
25 That's not what we are doing here.

1 We are challenging the scope of that search,
2 the scope of the seizure, and also the veracity of that
3 warrant with respect to the representations to the Court
4 about the scope of the search and seizure.

5 THE COURT: Let's go from reverse order. Why
6 don't you tell me what either misstatements of fact or
7 misrepresentations of fact you're alleging were included
8 in the search -- in the affidavits that somehow either
9 needs to be excised as to the Court's probable cause
10 determination or somehow under the affidavit false or
11 misleading.

12 MR. PRICE: The affidavit is misleading here
13 by omission largely. There is no mention of the fact
14 that the search was going to cover everybody who ran a
15 Google search over the course of 15 days. That's
16 billions of people. We believe that had that
17 information been in the warrant affidavit, it would have
18 given Judge Zobel a little bit more pause, perhaps.

19 THE COURT: So why can't I just take that
20 offer of proof as that's what you're saying is not
21 included, and then we go from there? Why do I need
22 testimony about that?

23 MR. PRICE: I think it is complicated in this
24 case. This is not a typical search of a house or search
25 of a car. It's not clear from the warrant how the

1 search was to be conducted. It is not -- and there was
2 some significant back-and-forth between Google and law
3 enforcement over how they were going to do this search.
4 It is not contained in the warrant itself or the
5 application. There are notes of that back-and-forth in
6 the investigatory report that we're asking to admit.

7 But from a veracity point of view, we believe
8 it is complex enough to require that clarification from
9 Google. The government to this point has been
10 representing, for example, that the search was limited
11 to the entire state of Colorado.

12 That is something that Google can clarify for
13 us. That is something that can be seen directly from
14 those warrant returns, and it is the best evidence of
15 that.

16 In addition to the scope of that search, there
17 are questions about the scope of the seizure, what files
18 were returned to the government and did they match up
19 with the requirements of the warrant.

20 Here it appears that only five of the 61
21 different searches that were returned to the government
22 actually matched what was in the warrant affidavit.

23 That is not contained in the four corners of
24 the warrant. It's contained in the warrant returns and
25 as explained by Google that produced them.

1 THE COURT: So now finish your response to my
2 question. I was asking what facts you're alleging that
3 were either false or misleading. So the first thing was
4 mentioned. Is there anything else?

5 MR. PRICE: So the scope of the search, the
6 billions of people being searched here.

7 THE COURT: You mentioned that.

8 MR. PRICE: The idea that Google was going to
9 expand the scope of the search terms beyond what was in
10 the warrant to include additional search terms that
11 happened to be searched along with an address. So that
12 goes to both the scope of the search and the scope of
13 the seizure, and -- I'll leave it at that for a moment.

14 And the particularity aspect of this is also
15 at play, the -- in terms of what the government had
16 authority to get, so both particularity and overbreadth
17 as well as veracity.

18 THE COURT: Clarify for me, Counsel -- so
19 what's the legal basis of this motion? You're seeking
20 to suppress -- what are you seeking to suppress?

21 MR. PRICE: We're seeking to suppress the
22 keyword search and the returns from that keyword search
23 as well as all the fruits that derived from it.

24 THE COURT: And the legal basis is what? As I
25 understand it, the search warrant was overbroad, not

1 sufficiently particular.

2 MR. PRICE: We are making a Fourth Amendment
3 challenge to the warrant, arguing it was, yes,
4 overbroad, lacking particularity, and that it was not
5 made in good faith. There's a veracity problem here.

6 THE COURT: Well, and veracity arguably can
7 raise extrinsic issues, but I don't quite understand how
8 if you're saying -- if the search warrant is overbroad,
9 how I look at other things to say, Oh, gee, we can look
10 at other things, yeah, it was overbroad as opposed to
11 looking at the warrant itself. I don't understand that
12 part of it.

13 MR. PRICE: The warrant itself is not clear.

14 THE COURT: Well, if it's not clear, then it's
15 not clear. But you can't clarify a search warrant by
16 extrinsic evidence, can you?

17 MR. PRICE: We're trying to clarify what it
18 meant and whether -- and the People that can explain
19 what it meant are Google and Detective Sandoval.

20 THE COURT: Can I do that? Can I look at a
21 search warrant and say, Hmm, whatever that means? Let's
22 ask someone extrinsic to the warrant to tell me what
23 that means. Can I do that? Is that legal?

24 MR. PRICE: If you are making -- are you
25 making the initial determination about probable cause in

1 the warrant? I mean, yes, you're certainly free to ask
2 the government additional questions at that point.

3 Here, we are saying that the warrant left
4 things out, left very important things out about the way
5 that the search works and the way it was conducted. And
6 so we are challenging both the warrant and the execution
7 of that warrant, so not just whether there was probable
8 cause to do a search, but whether there was probable
9 cause to seize all of the data that the government
10 actually obtained. And there's --

11 THE COURT: I don't mean -- go ahead.

12 MR. PRICE: There are factual questions,
13 disputes, between Mr. Seymour and the government about
14 the nature of that search, how it worked, how broad it
15 was, and whether there was cause to seize everything
16 that they hit.

17 THE COURT: Okay. I'm just trying to
18 understand is all, Counsel, about what I'm entitled to
19 consider in terms of reviewing the search warrant. And
20 I presume the affidavit is in support of it. And when
21 you say you want to bring in witnesses to explain what
22 something means, I mean, that seems pretty novel to me.

23 I mean, if I read the words on the page and
24 someone comes in and says, Here's what this means --
25 I've never encountered that before.

1 MR. PRICE: We're saying, first of all, the
2 warrant was misleading. And so we need to have Google
3 there explaining what they actually did as opposed to
4 what's in the warrant.

5 THE COURT: Okay. I get that. So what
6 else --

7 MR. PRICE: If your question is, can you
8 consider this testimony now at this point in the
9 proceedings when we're arguing a motion to suppress, the
10 answer is, yes. The rules of evidence do not apply in
11 the same way.

12 THE COURT: It's not an evidentiary issue.
13 It's how the Court can make a determination about
14 sufficiency or the legality of a warrant. And I can't
15 go outside of the warrant. I think that's pretty clear.
16 And so if you're talking about other things, that's
17 fine. If you're talking about discussing here's what we
18 think the warrant means by calling someone else to
19 explain what the warrant means, that strikes me as being
20 beyond what I'm entitled to do. That's what I
21 understand Mr. Morales is saying. So what am I missing?

22 MR. PRICE: In terms of explanation, the
23 warrant has a whole bunch of technical terms that are
24 specific to Google in some cases that may not be
25 apparent to somebody reading it for the first time.

1 THE COURT: Okay.

2 MR. PRICE: Beyond that, we are challenging
3 the execution of the search, so not just the initial
4 probable cause determination, but the execution of that
5 search, and that certainly requires looking at the
6 information that was seized and returned to the
7 government.

8 What did they take? That's a fundamental
9 question when it comes to a challenge for an overbroad
10 seizure, and that information sort of by definition is
11 not contained in the warrant.

12 THE COURT: Okay. Thanks.

13 Mr. Morales, what I'm hearing is that they
14 want to tell me what certain technical things mean, and
15 they want a witness to explain what certain technical
16 things mean, which is certainly understandable because
17 it's all Greek to me. I don't understand hardly
18 anything about computers. Erroneous stuff.

19 And then in terms of the -- not necessarily
20 the sufficiency of the warrant, but the actual execution
21 of the warrant is what they want to talk about. So
22 what's your response to that just as to try and define
23 the scope of this particular hearing?

24 MR. MORALES: Right. Number one, the
25 defendant filed motions to suppress the search warrants

1 underneath the Fourth Amendment. And they said in their
2 motions they were challenging it for overbroad and lack
3 of particularity. They never said anything about, hey,
4 what we got down the road was too much or too little.
5 They just said in a lot of blank statements, this what
6 we're challenging. But it never got to this point.

7 So the problem with what counsel is arguing is
8 he's talking about an overbroad seizure, but, yet, we
9 responded that the seizure of what was given was what
10 was Google was told to produce.

11 I quite honestly think the Court is not giving
12 itself enough credit for what it can read through the
13 four corners of the search warrant. It's not that
14 complicated as to what Google was requested to do.

15 And, quite honestly, I think counsel is making
16 far more out of this than it really is. If the inquiry
17 is going to be of Google, What did Google actually do,
18 which we believe will be we searched the database based
19 on numbers and letters and received back deidentified,
20 anonymized information that would later have to be
21 revealed through another search warrant, then that would
22 aid the Court, we believe, because we believe this idea
23 of a billion users, which, of course, Mr. Seymour only
24 has standing for himself and not a billion users, is
25 overblown by the defense.

1 But, quite honestly, having her testify as to
2 anything beyond how they did the search and what they
3 produced, again, I want to go back to what -- and I hate
4 to repeat myself. But what this Court is to do is to
5 look at the search warrant itself and the affidavit and
6 determine particularity, was the right place searched.
7 Google databases?

8 Was the right item -- were the right files
9 searched? Who did the search of this address, and was
10 there probable cause within that to believe that a
11 reasonable probability that if we searched Google's
12 databases, we could find the people or person who
13 searched for that database?

14 That is the box that this Court must function
15 in. All of this other stuff as to how Google did the
16 search, what Google, ultimately, produced, what those
17 mean, that's not for this Court on this motion filed by
18 this defense. If they wanted that, they should have
19 filed an additional motion with those facts. That's not
20 what they filed in this case.

21 And so I, again, *Cox* and *Hebert*, the cases
22 cited by the People, stand for the proposition that you
23 are not to go outside the four corners of the warrant.
24 I know the Court doesn't like to be bound by that. The
25 Court wants to make good decisions based on all the

1 information, but that's what our law says.

2 THE COURT: I don't want to have to go beyond
3 what I have to do. I'm just trying to figure out what
4 I'm supposed to do.

5 MR. MORALES: Right. And so, again, I
6 understand they want to call a bunch of witnesses,
7 including all of these statements and stuff of that
8 nature. And we are simply standing up here as officers
9 of the court and lawyers in the state of Colorado saying
10 you can't do that. That's not permissible. No matter
11 how much you really want to do it or how big you want to
12 sit here and say a billion over a hundred times, you
13 can't do that. That's all we're arguing, Judge.

14 THE COURT: Okay.

15 It's really hard to try and sort this out kind
16 of in this vacuum. And so what we're going to do is
17 this, you can call a witness, and I'll start to hear
18 what the witness has to say. If it's going beyond what
19 I think I'm entitled to do and what I should be doing,
20 the prosecution can make a motion and I'll rule on it.

21 Was there something someone from Google wanted
22 to say about all this?

23 MR. PAK: Yes, Your Honor. Can I be heard on
24 this issue briefly?

25 THE COURT: I guess.

1 MR. PAK: I apologize. Thank you, Your Honor.
2 I just note that I have a pending pro hac vice motion
3 and I have a number for that motion. Andrew Pak on
4 behalf of Google, LLC.

5 THE COURT: And I wasn't quite clear what you
6 were asking to do. I mean, I'm not going to allow you
7 to participate in the hearing as you're not a party, so
8 I wasn't quite sure what you wanted to do.

9 MR. PAK: I just wanted to address in the
10 first instance, Your Honor, this Court's question
11 regarding standing on our motion, because I do believe
12 that we do have standing for our motion and requested
13 remedy to quash the subpoena for live testimony in this
14 case.

15 THE COURT: I already ruled on that issue.

16 MR. PAK: Understood, Your Honor. And I also
17 wanted to clarify some issues with respect to what
18 Mr. Price had mentioned with respect to what he is
19 seeking in terms of testimony.

20 And we have some sensitivities here, Your
21 Honor, quite frankly, because we've been down this path
22 before with Mr. Price on a different matter where I
23 believe he took over 400 pages worth of testimony in a
24 similar circumstance, and we want to avoid a fishing
25 expedition here, Your Honor.

1 And our only point here is that all of the
2 factual disputes that Mr. Price claims exists are all
3 resolved on the record with the search warrant itself,
4 the return, and even the declaration filed by Ms. Adeli.
5 So we would renew our motion to quash the subpoena for
6 her live testimony, Your Honor.

7 THE COURT: Okay. And I appreciate that,
8 Counsel. Thank you.

9 I just don't know what in the world you folks
10 are looking to do. And certainly we're not going to
11 take 400 pages of testimony about these kinds of issues.
12 And certainly we're not going to be fishing through what
13 Google is doing here because there's a discreet
14 constitutional issue that's raised by the motion, i.e.,
15 whether it complies with the Fourth Amendment or not.

16 And so, I guess, I'm skeptical about what
17 Defense proposes to be doing here. I guess I'm willing
18 to let them tip their toe in water to see where they're
19 going here because I don't want to just cut things off
20 without really understanding it, but I'm quite
21 skeptical. And so I appreciate what you're saying. And
22 I guess what are you asking me to do besides quash the
23 warrant --

24 MR. PAK: Besides that, Your Honor, and I
25 understand -- we would like to, as a non-party, be able

1 to object as to issues that might go into
2 attorney-client privilege as well as anything having to
3 do with confidential sensitive information from Google
4 that presents a security risk.

5 As a non-party, Your Honor, I would like to be
6 able to levy that objection if counsel goes into that
7 with respect to the witness, and I wanted permission to
8 do that.

9 THE COURT: I think it probably would be
10 helpful if those kinds of issues are being raised,
11 someone that can recognize those issues be allowed to
12 bring those to my attention. So, yeah, I'll permit
13 that.

14 MR. PAK: Thank you, Your Honor.

15 THE COURT: All right. So like I say, I've
16 got some healthy skepticism about how far this is going
17 to be going. I have no doubt that if the prosecution
18 thinks we're going in the wrong direction, they're going
19 to raise objections, then we'll figure this out and this
20 may get cut out at some point in time if I find this is
21 something that is outside -- so, Counsel, proceed.

22 MR. PRICE: Thank you, Your Honor. And just
23 to clarify, we do not intend to take 400 pages of
24 testimony here or inquire about anything privileged.

25 THE COURT: Well, we'll find out.

1 MR. PRICE: Your Honor, Mr. Seymour would like
2 to call Ms. Nikki Adeli to the stand.

3 NIKKI ADELI,
4 called as a witness on behalf of the Defendant, having
5 been first duly sworn, testified as follows:

6 THE COURT: I'm going to have you speak right
7 into the microphone so we can all hear you, including
8 the reporter here.

9 Counsel, please proceed.

10 DIRECT EXAMINATION

11 BY MR. PRICE:

12 Q. Good morning.

13 A. Good morning.

14 Q. Thank you for being here. Could you please
15 state and spell your name for the record.

16 A. My name is Nikki Adeli. First name,
17 N-i-k-k-i. Last name, A-d-e-l-i.

18 Q. Thank you. Ms. Adeli, who do you work for?

19 A. Google.

20 Q. What is your role at Google?

21 A. I'm a policy specialist on the legal
22 investigations team.

23 Q. And how long have you been in that role?

24 A. September 2019.

25 Q. So what does that role entail? Can you just

1 explain a little bit for us?

2 A. Sure. Part of the role is responding to
3 domestic legal requests from U.S. law enforcement, and
4 then the other part of that is just the procedures with
5 regards to compliance.

6 Q. You're also a custodian of records for Google?

7 A. Correct.

8 Q. And part of your job, as a specialist, is to
9 assert objections to law enforcement requests when
10 appropriate, right?

11 A. In consultation with counsel.

12 Q. And so this case involves what's been called a
13 keyword search warrant -- actually three of them. Could
14 you tell us just briefly in your words what a keyword
15 search warrant is?

16 A. Sure. My understanding of what a reverse
17 search history warrant is is a request that sets forth
18 particular search parameters that are relevant to law
19 enforcement's investigation, at which point they would
20 be relevant to a Google service. In this case, it would
21 be Google Search.

22 Q. Google Maps as well?

23 A. Search is a part of Maps as well.

24 Q. So you have personal knowledge of the keyword
25 search warrants in this case?

1 A. I was not a part of the actual compliance, but
2 in preparation for this declaration, I'm aware of them.

3 Q. So you were not one of the people actually
4 responsible for responding directly?

5 A. No.

6 Q. And you did write a declaration in this case;
7 is that correct?

8 A. I did.

9 MR. PRICE: And, Your Honor, I believe we have
10 a copy of that in the record already as Exhibit 1.

11 THE COURT: It's an attachment to one of the
12 motions?

13 MR. PRICE: To the motion to suppress.

14 THE COURT: Okay.

15 Q. (By Mr. Price) All right. I want to start
16 with just a few basics. Your declaration draws a
17 distinction between users who are authenticated and
18 users who are not authenticated. Could you tell us what
19 it means to be an authenticated Google user?

20 A. I think, simply put, authenticated user is
21 someone who has signed in and a non-authenticated user
22 is someone who has not signed in.

23 Q. All right. If an authenticated user, someone
24 who has signed into their account, if they run a Google
25 Search, that search is then saved to their account?

1 A. It would be a part of their search history.

2 Q. And search history is considered a part of
3 their account contents, right?

4 A. Yes.

5 Q. So, like, just like emails or photos or
6 documents?

7 A. Search history is content.

8 Q. Contents. And Google associates the search
9 history from a logged-in authenticated user -- it
10 associates it with something called a GAIA ID; is that
11 right?

12 A. That's correct.

13 Q. What is -- GAIA is an acronym, G-A-I-A. What
14 does that stand for; do you know?

15 A. Unfortunately, off the top of my head, I
16 don't. But it is, as you correctly described,
17 associated with a Google account.

18 Q. If I said it was the Google accounts and ID
19 administration number, would that be correct?

20 A. Again, I don't know the acronym, but --

21 Q. But if you logged in and you do a search and
22 it's saved to your account and associated with this GAIA
23 ID?

24 A. I think the one caveat to that I would specify
25 is that it's up to the user if they've kept the searches

1 saved subject to any sort of settings with regards to
2 their account.

3 Q. You're getting ahead of me. So authenticated
4 users have the ability to delete their search history?

5 A. Sign-in users do have the ability to delete
6 their searches.

7 Q. Manually or automatically, right?

8 A. Yeah, any sort of settings that would -- at
9 the user's discretion.

10 Q. So now what happens if somebody is not logged
11 in?

12 MR. MORALES: Objection, relevance.

13 MR. PRICE: We're trying to clarify how
14 searches get saved and recorded. There is a distinction
15 that Google is drawing between authenticated and
16 not-authenticated users that is critical to
17 understanding Ms. Adeli's declaration and a lot of the
18 arguments we're making in this case.

19 MR. MORALES: Again, I'll repeat. We're
20 talking about the four corners of the warrant. We're
21 not talking about the terms. I object. This is not
22 relevant, and it does not go to the Court's evaluation
23 as to whether or not this Court -- these search warrants
24 are constitutionally proper underneath the standard of
25 four corners and the three conditions. We object to

1 this testimony.

2 THE COURT: I'm going to give you a little
3 latitude just to see where you're going with this
4 because I'm trying to make sure this is a fair hearing.
5 And we'll just -- for now, the objection is overruled.

6 Go ahead, Counsel.

7 MR. PRICE: Thank you, Your Honor.

8 Q. (By Mr. Price) If somebody is not logged into
9 their account, if they are not authenticated and they
10 run a Google Search, is that search saved in any way?

11 A. Could you repeat the question one more time?

12 Q. If somebody is not authenticated and runs a
13 Google Search, Google still keeps a record of that
14 search, correct?

15 A. Based on what I know with compliance of
16 reverse search history warrants, I know that in the
17 results that are presented to me, there will be a
18 non-signed-in user and there are particular types of
19 data presented in that file.

20 Q. So those searches, instead of being associated
21 with this Google accounts ID, are associated with
22 something that you call a Google browser cookie ID; is
23 that correct?

24 A. A browser cookie ID.

25 Q. Can you, please, tell us what a cookie is?

1 A. I don't think I would be able to do so.

2 Q. What about a browser cookie ID?

3 A. My knowledge of what a browser cookie ID is is
4 that it's associated with a non-signed-in user who
5 conducted a search that would be presented in the
6 results that I would be evaluating.

7 Q. So it's a unique number that gets attached to
8 that non-signed-in user search?

9 A. That non-signed-in result, yeah.

10 Q. Okay. Thank you. And if somebody is not
11 signed in, they can't then go back and delete records
12 with their search, right?

13 A. I'm not privy to the search decision-making
14 associated with non-signed-in users or not, so I don't
15 think I could accurately answer your question.

16 Q. There's no mechanism -- I can't log into my
17 account because I wasn't signed in, right?

18 A. I'm sorry.

19 Q. I can't delete it from my account because I
20 wasn't signed in, correct?

21 A. Again, I don't know what the decision -- the
22 pathways of decision-making is for a non-signed-in user.

23 Q. Thank you. Generally speaking, Google
24 requires a warrant to search account contents?

25 A. For content-level data, a search warrant is

1 required.

2 Q. And we already said that search history is
3 considered content, right?

4 A. Correct.

5 Q. So without a warrant, Google doesn't allow
6 other people to get this information, right?

7 A. Do you mind defining what other people is.

8 Q. Like members of the public can't access it?

9 A. No.

10 Q. And Google holds it in trust for their users,
11 correct, promise to keep it private, account contents?

12 A. I understand that the account contents are
13 visible to the user who creates that content and that
14 Google does store user content.

15 Q. And Google also tells you that they will keep
16 their information private -- I mean, obviously, if
17 there's a warrant, it's a different situation -- but
18 from members of the public, from other people who just
19 want to look at your account, it's considered private,
20 right?

21 A. That's my understanding.

22 Q. Okay. Thanks. So I want to talk a little bit
23 about how the keyword warrant process works generally.
24 I'm not sure that we're all familiar with it.

25 Google has a portal that law enforcement can

1 use to submit requests, submit warrants?

2 A. That's correct.

3 Q. That's the LERS portal, LERS?

4 A. Correct.

5 Q. And then someone from your team receives that
6 warrant request through the portal and reviews it,
7 right?

8 A. That's correct.

9 Q. And Google has its own requirements for
10 keyword warrants?

11 A. Could you specify what you mean?

12 Q. You have certain requirements that the
13 warrants have to meet; they have to satisfy basic
14 parameters, be narrow?

15 A. There are policies and procedures that occupy
16 the space with regards to compliance to keyword
17 warrants.

18 Q. And for a keyword warrant, you require law
19 enforcement to follow what you call a staged process,
20 right?

21 A. We implement a staged process, correct.

22 Q. And, generally speaking, that first stage,
23 Google searches for anyone who searched for the keyword
24 terms specified in the warrant?

25 A. The way the first step initiates is based on

1 the search parameters that are in the warrant. A query
2 is developed to understand whether or not there are
3 responsive results.

4 Q. Okay. And then you run that search?

5 A. I conduct that query, correct.

6 Q. And provide to law enforcement what you call a
7 deidentified list, right?

8 A. That's correct.

9 Q. Second stage, if allowed by the warrant,
10 police can get personally identifiable information from
11 users that were deemed relevant from that initial
12 search, correct?

13 A. If law enforcement returns, they return with
14 particular results that were relevant to their
15 investigation, at which point, as I set forth in my
16 declaration, GAIA IDs are de-anonymized in order to
17 satisfy that.

18 Q. And so that's Stage 2. Can we unpack a little
19 bit what happens at Stage 1? When someone like you
20 reviews the warrant, you're looking to see if it
21 complies with Google's policies, right?

22 A. In consultation with counsel, I would review
23 the warrant.

24 Q. And if it doesn't comply, if there's a problem
25 with it, then Google will object, correct?

1 A. I think that's a question that's reserved for
2 the security counsel team that I would work with, but --

3 Q. I'm sorry. You nodded, but was that a yes?

4 A. Sorry. I thought I answered your question.

5 Q. If there's a problem with the warrant from
6 Google's perspective, you will object to executing that
7 warrant and seek revisions, for example?

8 MR. PAK: Your Honor, I believe the witness
9 already testified that the answer would call for
10 discussions with security counsel, and I believe
11 Mr. Price is asking the same question again.

12 MR. PRICE: Your Honor --

13 Q. (By Mr. Price) I believe your declaration, if
14 I'm not mistaken, said that part of your job was to
15 assert objections when appropriate? That's all I'm
16 asking about.

17 A. In consultation with counsel.

18 Q. Okay. Yes. I'm not asking anything further
19 about your discussions with counsel.

20 And you said Google will sometimes work with
21 police to revise those warrants?

22 A. Could you point to where in the declaration I
23 use that language?

24 Q. In this case, there were three keyword
25 warrants, correct?

1 A. I believe there were four in all
2 but -- correct me if I'm wrong, but you're referring to
3 the first three that led to Step 1?

4 Q. Correct.

5 A. There were three that were submitted in order
6 for Step 1 production.

7 Q. And Google didn't comply with those first two?

8 A. We did not comply with them because the legal
9 processes were withdrawn.

10 Q. And did Google discuss with law enforcement
11 how to revise those warrants so they would be proper, in
12 your view?

13 A. Again, I was not privy to that compliance as a
14 whole at the time. I'm only looking at it from two
15 years later for this instance, so I would not be able to
16 tell you one way or the other.

17 Q. Okay. Thank you. Let's assume that Google
18 does comply with the warrant. The first step is for
19 someone like you to create what you call a text-based
20 query. Can you explain what that means?

21 A. Sure. What a text-based query entails is the
22 search parameters that are set forth in the legal
23 process in order to surface any results that match law
24 enforcement search parameters in their search warrant.

25 Q. You have that text-based query, and you run

1 it over a database, right?

2 A. That's correct.

3 Q. The database is what?

4 MR. PAK: Objection, Your Honor, calls for
5 confidential information. So the issue that we had
6 noted before with respect to the names of database --

7 MR. PRICE: Withdrawn.

8 MR. PAK: -- there's no need for the name
9 itself in terms of the argument Defense is making and,
10 otherwise, it does create a security concern.

11 THE COURT: I don't think I need to know that.

12 MR. PRICE: Withdrawn.

13 THE COURT: Why don't you rephrase your
14 question.

15 Q. (By Mr. Price) So Google is going to run this
16 text-based query over some database that includes
17 everybody's search history and searches that are done
18 through Google Maps, correct?

19 A. I would like to unpack your question a little
20 bit. I understand the database to hold search data.
21 Beyond that, I don't understand the build, the
22 structure, and the storage associated with that
23 database.

24 Q. Okay. In your declaration, though, you said
25 that the search covered all search history as well as

1 searches that were done through Google Maps; is that
2 still true?

3 A. Do you mind if I could have a copy of the
4 declaration to --

5 Q. Sure.

6 MR. PRICE: May I approach?

7 THE COURT: Sure.

8 Q. (By Mr. Price) Okay. So when you run this
9 query over the database, the database has information
10 about search history just done through Google Search as
11 well as searches conducted through Google Maps, correct?

12 A. That's correct.

13 Q. Okay. And that includes everybody who ran a
14 search from an authenticated Google account?

15 A. An authenticated user.

16 Q. Authenticated user, correct?

17 A. My results, if there are any, responsive to my
18 query would entail authorized users and unauthorized
19 users -- sorry, my apologies. Unauthenticated users and
20 authenticated users.

21 Q. Great. Thank you. And you or whoever is
22 running the search doesn't know ahead of time who
23 searched for what, right?

24 A. That's correct.

25 MR. PAK: Objection, Your Honor. To the

1 extent that Mr. Price is cross-examining the witness
2 that he called here at hearing, I think that's
3 inappropriate with respect to leading the witness.

4 THE COURT: You know what, to the extent
5 you're trying to educate the fact finder about what
6 you're talking about, I don't mind that so much, so I'm
7 going to overrule that. And I don't mean this to sound
8 disrespectful, I don't think I'm as smart, but I think
9 I've heard some of this before in sources like your
10 pleadings. So go ahead.

11 MR. PRICE: Thank you, Your Honor.

12 Q. (By Mr. Price) Because you don't know what's
13 going to be responsive first, Google has to search
14 everyone in that database, right, everything in that
15 database?

16 A. I understand.

17 MR. MORALES: Objection. The form of the
18 question indicates *everyone*. I think she's testified
19 they search a database. I don't think that --

20 MR. PRICE: I misspoke. I meant everything in
21 the database, but --

22 MR. MORALES: You said *everyone*.

23 MR. PRICE: I corrected myself to say
24 everything.

25 THE COURT: Please restate your question.

1 Q. (By Mr. Price) Google is searching everything
2 in that database, correct?

3 A. Again, because I don't know the entire
4 structure and format of the database itself, I only know
5 to be true that I run the query against that database.

6 Q. When you run that query, do you limit it by
7 scope geographically?

8 A. Let me ask you a question. Are you asking
9 about in the query itself?

10 Q. Correct.

11 A. No.

12 Q. So you don't limit the query by geography?

13 A. No.

14 Q. Okay. So you're not limiting it, say, to
15 everybody just in the state of Colorado when you're
16 running that query?

17 A. Is this more a general question, or is this
18 specific to this search warrant in particular?

19 Q. It's relevant to the search warrant in
20 particular, but just take Colorado as an example. When
21 you run a query, is there a way to geographically limit
22 that query to just the state of Colorado?

23 A. The parameters that are set forth in the legal
24 process are the ones that I'm utilizing in order to
25 formulate that query.

1 Q. And when you run that query, is there a place
2 for you to geographically limit the scope?

3 A. There is a time zone specificity, but beyond
4 that, no.

5 Q. Okay. I want to talk about how big that
6 search is when it happens. Google Search has more than
7 1 billion average monthly users; is that correct?

8 A. I believe the statistic we put forth in my
9 declaration mentions that there are 1 billion monthly
10 active users.

11 Q. Other statistics that you provided was that
12 Google Maps, like Google Search, also has more than a
13 billion monthly active users?

14 A. A billion monthly active users, and then the
15 other statistic was queries associated for the day.

16 Q. And each day Google Search receives billions
17 of searches?

18 A. From the statistic I provided, I think.

19 Q. And that's including from users who are not
20 authenticated, right, authenticated and
21 non-authenticated?

22 A. I don't know what the specificity of
23 authenticated or non-authenticated is in that statistic,
24 so I don't know if I can accurately answer your
25 question.

1 Q. Okay. I guess here's where I'm going. Every
2 month there's a million active Google Search users and a
3 million active Google Maps users, and then some number
4 of unauthenticated users?

5 MR. MORALES: Objection. How is this relevant
6 to what the Court has to review in the search warrant?

7 MR. PRICE: Your Honor, we're trying to
8 determine the denominator, I guess, of this search, how
9 big it really was. And this -- we're talking about at
10 least 2 billion and trying to figure out if it's a
11 little bit more than that here. We do believe that is
12 highly relevant to our argument about this being a
13 prohibited general warrant that failed to specify any
14 particular account, but search billions instead.

15 MR. MORALES: The witness has testified that
16 they put together a query of numbers and letters. They
17 submit it to a database, and the database kicks back the
18 identified numbers. We're not talking about billions of
19 people's accounts.

20 Yes, there are billions of Google users. Yes,
21 people use Google daily. That's not what the witness
22 has testified to. The witness has been very clear, she
23 put in a query -- or someone did put in a query to
24 Google's database, and the database kicks out the
25 identified anonymous numbers either of authenticated or

1 un-authenticated users.

2 THE COURT: And that's a big database.

3 MR. MORALES: And that's a big database.

4 MR. PRICE: Mr. Morales just said something I
5 was asking Ms. Adeli about, which is whether the search
6 includes billions of authenticated and non-authenticated
7 users.

8 MR. MORALES: But, again --

9 THE COURT: I mean, I can't take it for
10 granted. It's a big database. We're talking about
11 Google.

12 MR. MORALES: Yeah. So what is the purpose of
13 this hearing -- testimony? Why is it relevant to what
14 the Court has to review?

15 MR. PRICE: Your Honor, it is extremely
16 relevant that Google was required to search billions of
17 users at the government's direction in this case. There
18 was no specificity with respect to any particular user.
19 It was a dragnet search, and dragnet searches like this
20 one are unconstitutional.

21 THE COURT: Counsel, all due respect, that's
22 an argument you're making. I don't know that there's a
23 factual issue that you need to establish. I mean,
24 it's -- I think it's pretty darn clear that Google is a
25 big place, a big database, that whatever is in the

1 database includes a lot of information.

2 I don't entirely understand what facts beyond
3 that you're trying to establish.

4 MR. PRICE: The question is simply when Google
5 runs a keyword search warrant, it's fair to say that
6 includes search of billions of people.

7 MR. MORALES: And it's fair to say that the
8 reviewing magistrate with the same common knowledge that
9 the Court has of what Google does would have that same
10 information when they reviewed the warrant and approved
11 it and was issued to Google. What is the point of this
12 testimony?

13 THE COURT: I don't think I need any further
14 testimony on that particular issue. Let's move on,
15 please.

16 MR. PRICE: Okay.

17 Q. (By Mr. Price) When Google executes a keyword
18 warrant, you said in your declaration it can limit the
19 results to queries that contain only the search terms
20 listed in the warrant and no other words, correct?

21 A. I believe so, yeah.

22 Q. So to put it another way, it's possible for
23 Google to run a search in such a way that there are only
24 exact matches coming back?

25 A. Correct.

1 Q. But another way to do it is to, in your words,
2 include the specified search terms as part of a query
3 that contains other words?

4 A. Do you mind if I can take a look at the
5 declaration?

6 Q. Sure. So the other way to do it besides exact
7 matches is to include specified search terms as a part
8 of a query that contains other words?

9 A. Correct.

10 Q. So just to put that into English, that means
11 it's going to return things that are not exact matches
12 that have additional words?

13 A. That's correct.

14 Q. And to use your example, a keyword warrant for
15 the phrase 1600 Amphitheatre Parkway could include
16 searches that had additional terms, correct?

17 A. Such as the city and the state associated with
18 that address.

19 Q. Like Mountain View, California, or Google
20 headquarters?

21 A. If that was a part of the query.

22 Q. I think you gave Google headquarters as a
23 example of something extra that would be included?

24 A. It's dependent on how the user conducted the
25 search itself.

1 Q. And if somebody just searched for 1600
2 Amphitheatre Parkway, Google headquarters, and the
3 warrant said anyone who searched for 1600 Amphitheatre
4 Parkway, it would include that search for the address
5 plus the phrase *Google headquarters*?

6 A. I think the method in which your inquiry is
7 related to is with regards to the query and how, as a
8 policy specialist, I would run it. That would come at
9 the direction of counsel.

10 Q. You did say the more common way to do it is to
11 allow results that have those extra terms, correct?

12 A. Could you clarify what you mean?

13 Q. Sure. You said or more commonly, the result
14 may extend to queries that include the specified search
15 term as part of the query that contains other means.

16 A. I did say that.

17 Q. That's the more common way to do it?

18 A. It would have to be reliant on what the legal
19 process itself is specifying.

20 Q. If the warrant doesn't specify one way or the
21 other?

22 A. That would be an escalation to counsel.

23 Q. So after someone from Google runs the query,
24 results come back to someone like you in the form of a
25 CSV file?

1 A. Correct.

2 Q. Please explain what a CSV file is.

3 A. It's commonly known as something that's
4 present in Google Microsoft Excel.

5 Q. So CSV, it's like a type of spreadsheet --

6 A. Exactly.

7 Q. -- that you can open up in Excel?

8 A. CSV file can be opened up in Excel.

9 Q. And then Google will create what you call a
10 production version of that file, correct, to give back
11 to law enforcement?

12 A. When the results are presented to me in order
13 for a Step 1 production to be provided, a Step 1
14 production would be an anonymized version of the
15 results.

16 Q. And that's referred to as the production
17 version, or you refer to it as the production version?

18 A. I believe I referred to it as production copy.

19 Q. Production copy. Okay.

20 A. Because if there's a situation where there
21 would be a Stage 2, Step 1 would be a copy of the
22 initial results.

23 Q. And the distinction between that copy that
24 you're providing to law enforcement and the one that you
25 get as a result of your query is that you are

1 deidentifying those results?

2 A. I deidentify the results.

3 Q. And that production version typically, at
4 least you said, includes eight different categories of
5 information; is that --

6 A. I believe that to be true, yeah.

7 Q. So that's the date and time of the search?

8 A. Correct.

9 Q. That's the course location information
10 inferred from the IP address, right?

11 A. That's correct.

12 Q. Can we pause there and explain what that
13 means? Maybe could you explain what IP address is
14 first?

15 A. Sure. I know an IP address to just be a
16 numeric address associated with a device on a network.

17 Q. And that allows you to -- that's information
18 that Google collects, correct? When somebody runs a
19 search, you log their IP address?

20 A. I understand that to be true based on the
21 results that are presented to me.

22 Q. And the course location information derived
23 from the IP address, what is that?

24 A. I understand the course location information
25 to be inferred from the IP address associated with the

1 result.

2 Q. So it would be like a general location, like a
3 state or a large area?

4 A. In the results, it's presented as the state.

5 Q. Okay. And then in addition, you're providing
6 the query entered by the user, so that's the search term
7 that somebody typed in?

8 A. Correct.

9 Q. The result that's generated from Google? And
10 if I quite understand this correctly, that is not the
11 actual URL that would show you the search results. It's
12 just Google's way of sort of routing it?

13 A. Sorry. Which column are you speaking to?

14 Q. The result.

15 A. There is the query. Then there is the result
16 category which is what is provided to the user in
17 response to the query. I think what you might be
18 mentioning is the request column.

19 Q. You said the request column and the host
20 pretty much go together, right? The host is like
21 Google.com.

22 A. It would be the domain that was utilized by
23 the user.

24 Q. And then the result would be all the rest of
25 that web address that comes after it, after you hit go

1 on search?

2 A. That's my understanding. It's the back -- it
3 distinguishes more of the background request made.

4 Q. Those are different than the result?

5 A. I don't know enough to say how they would be
6 similar to one another. I just know it to be the result
7 category and the request category.

8 Q. Okay. And the two other things you're
9 providing are something called a truncated identifier.
10 So if a search is done by an authenticated user, you
11 have a GAIA ID and you shorten it; you truncate it,
12 right? That's the idea?

13 A. We truncate the GAIA ID.

14 Q. And if you have a user who is not
15 authenticated, you have a browser cookie ID which you
16 shorten or truncate, right?

17 A. For unauthorized user, the browser cookie ID
18 is truncated.

19 Q. Okay. And that's the method of deidentifying
20 the results for the production version?

21 A. That's what is being truncated.

22 Q. And then the last thing you're providing in
23 that production copy is something called the user agent
24 string. Can you please explain what that is because I
25 actually don't know what it is?

1 A. My technical expertise is, I think, a little
2 bit limited. But my understanding is that it's a
3 software element associated with the result, and it
4 distinguishes the operating system that was taken in
5 order for the result to be conducted.

6 Q. Okay. So it's some assessment of, like, what
7 kind of device was running that search?

8 A. I don't know about device. I know it to be an
9 operating system, but --

10 Q. And that's --

11 MR. MORALES: I object again, Your Honor. I
12 don't understand how any of this is relevant.

13 THE COURT: I don't either.

14 MR. PRICE: Your Honor, we do plan to take a
15 look at this file. But this is for the Court's benefit,
16 so you can understand what is in these data returns. It
17 is not plain to see. If you look at them, the course
18 location ID, for example, is very relevant here, because
19 as we're going to see, it's returning results outside of
20 Colorado, from Illinois, for example, from places where
21 there is no state mentioned. But I want the Court to
22 understand what this information is and how then it's
23 relevant.

24 THE COURT: The objection is sustained. It's
25 not helpful.

1 MR. PRICE: Okay.

2 Q. (By Mr. Price) So that's the end of Stage 1,
3 correct? At that point, you send the spreadsheet back
4 to law enforcement through the portal?

5 A. That's correct.

6 Q. Okay. And Stage 2 is where law enforcement
7 looks at that production copy and determines if any
8 results are relevant to their investigation?

9 MR. MORALES: Objection, relevance. We're
10 talking about the keyword search. The return is
11 irrelevant to what happens next. That's for another
12 motion to suppress the Google search warrants we get,
13 but irrelevant for this hearing.

14 MR. PRICE: Your Honor, Stage 2 is the point
15 at which information is supposed to be deidentified. In
16 this case, Google produced and law enforcement received
17 IP addresses that were full IP addresses in addition to
18 those truncated identifiers.

19 So I'm trying to establish the general
20 procedure and contrast it with what happened actually in
21 this case.

22 So Mr. Morales has been talking about how all
23 this information is anonymized or deidentified and, yet,
24 the warrant and the results in this case contained
25 identifying IP address information. Laying the

1 foundation for that.

2 MR. PAK: Your Honor, just to respond to that,
3 so far all the testimony taken today has been in line
4 with the declaration that's already submitted on paper,
5 and I believe the points he's trying to make -- that
6 Mr. Price are referring to are also set forth in that
7 declaration.

8 THE COURT: I've heard all this before. I
9 mean, I'm not that smart, so I've heard this someplace
10 before. It's something I read in all the stuff I've
11 been reading for the last week. And so to just repeat
12 it by way of testimony is unhelpful.

13 So if there's things I've not read that are
14 somehow relevant, you can go into those. But this is
15 not a good use of my time or all of our time to repeat
16 what's been previously discussed. This relates back to
17 the motion to quash which I gave -- I denied because I
18 presumed there were things that were not in the record
19 in some fashion that you might be entitled to bring out.
20 But this is -- I've heard this all before.

21 You can endeavor to address areas that are not
22 included; otherwise, please move on.

23 MR. PRICE: Thank you, Your Honor.

24 Q. (By Mr. Price) Let's talk about the three
25 warrants in this case. The information requested in the

1 first keyword warrant included any and all Google users
2 that searched for these nine variations of Truckee
3 Street?

4 MR. MORALES: Objection, relevance. That
5 search warrant withdrawn by law enforcement is not
6 relevant for the purpose of this hearing. It has been
7 stated in their pleadings. It's repetitive. It's in
8 her declaration. It's unnecessary.

9 THE COURT: Right. As I understand it, there
10 was several -- for lack of a better description -- draft
11 warrants or warrants that were sent to Google, and
12 Google said, No, we can't do this. They were sent back
13 and they were revised and they were sent back again and
14 were revised and sent back, and they did it, all of
15 which I don't understand quite how that bears upon
16 anything.

17 What's relevant is what the judge reviewed,
18 the affidavit looked at, to determine whether or not
19 there's probable cause and whether the warrant is
20 sufficient. And if your argument is, Shucks, the judge
21 should have advised on these on these other warrants,
22 okay, I can consider that, but she doesn't need to
23 testify about it.

24 MR. PRICE: I think it's more, Your Honor,
25 that the judge wasn't advised about them. It's that the

1 third warrant suffers from many of the same deficiencies
2 as the first two, so --

3 THE COURT: Well -- and the issue isn't
4 whether Google thinks the warrant was sufficient. The
5 issue is whether or not the reviewing magistrate
6 reviewed the affidavit and issued an appropriate
7 warrant. That's the issue, not whether Google thought
8 it's good or bad.

9 So to the extent you're trying to establish
10 that Google wasn't satisfied, that's not relevant.
11 That's not the issue before the Court. The objection is
12 sustained.

13 Q. (By Mr. Price) So the third keyword warrant
14 here, you created a query to search this database based
15 off of the nine terms that were contained in the search
16 warrant, correct?

17 A. There was a query created to satisfy that
18 search warrant.

19 Q. Those were the nine variations of the Truckee
20 Street address?

21 A. Because I did not formulate the query myself,
22 I'm not privy to the entire query process that the
23 policy specialist here did, but I know that there was a
24 query taken, and it was looking to satisfy the search
25 parameters set forth in the search warrant.

1 Q. So it was over that 15-day time period in
2 July?

3 A. I believe so, correct.

4 Q. And, again, there were no, to your knowledge,
5 geographic boundaries applied to the search?

6 A. Again, I only reviewed this request. Two
7 years later, in reviewing it, I don't know of any
8 additional action, if there were any taken, because I
9 was not the person who initiated the query.

10 Q. In your review of this case, was there any
11 indication that the search was somehow geographically
12 limited to the state of Colorado?

13 A. In reviewing my notes, no.

14 Q. And so when the search was conducted, it
15 searched everybody who had conducted a Google Search
16 over the course of those 15 days?

17 MR. PAK: Your Honor --

18 THE COURT: I think we've been here before.
19 They search this great big huge database of whoever put
20 information in it, right? Let's move on.

21 MR. PRICE: Without geographic boundaries.

22 THE COURT: I understand. I know what a
23 database is.

24 Q. (By Mr. Price) I want to take a look at the
25 actual warrant return in this case, if that's all right

1 with you. There were actually two CSV files produced;
2 is that correct?

3 MR. MORALES: Objection, relevance.

4 MR. PRICE: The warrant returns for the third
5 warrant, Your Honor.

6 THE COURT: Let me ask you this: And this may
7 be a question of what motion was filed -- let me see if
8 I can clarify this so I can -- and I'll use a simple
9 example.

10 So if a search warrant says I'm looking for a
11 gun and a mask and the police go in and they find
12 something besides a gun and a mask, okay, then there can
13 be a challenge to seize things that weren't described in
14 the warrant, right, which I guess could be a basis to
15 suppress things or seize that were authorized by the
16 warrant.

17 Is what we're doing now saying, Okay, the
18 warrant said you can take X and you took Z, and that
19 wasn't authorized. Is that where we're going?

20 MR. PRICE: Yes, Your Honor. I would like to
21 show the Court what was produced in this case that was
22 outside of the warrant.

23 THE COURT: And is your objection,
24 Mr. Morales, that that wasn't a basis of -- or grounds
25 for suppression in the pleadings? It strikes me that if

1 there's -- go ahead.

2 MR. MORALES: I'll let the Court ask it
3 strikes you as to what, because, Number 1, again, the
4 pleading was filed by the defense was that the search
5 warrant was unconstitutional because it was overbroad
6 and didn't have particularity.

7 They never said that what was produced was
8 beyond the scope of what was requested in the keyword
9 search warrant. They've never said that. They -- and
10 quite honestly, even if the returns do come back, the
11 evidence, I think, will be why I'm somewhat hesitant not
12 to allow it, is that it did come back as to what we
13 requested. It wasn't we asked for X, we got X, we
14 didn't get Y.

15 So, again, the pleadings were, as the Court
16 ordered us, was to make pleadings so the opposing party
17 would know how to respond. We believe we responded to
18 what their pleading said. We never understood that they
19 were going to say, well, you got back things you should
20 have never gotten back and/or you -- because you're
21 right. It's not like the conventional search where a
22 law enforcement officer goes into a house and is
23 authorized to search for a gun and a mask and then finds
24 cocaine and decides to take that and then charge the
25 person with drugs and then because that's not part of

1 the original search warrant it gets excised out.

2 That would happen in -- obviously, law
3 enforcement would not leave the cocaine there. They
4 would take the cocaine, but it would be suppressed
5 because the search warrant did not allow for it to be
6 seized.

7 THE COURT: Right.

8 MR. MORALES: Counsel has never made this
9 argument in any of its pleadings or hasn't been part of
10 the search warrant issued in this case exceeded the
11 scope of what was requested from Google and what Google
12 responded to.

13 THE COURT: Okay.

14 MR. MORALES: That's my objection as to the
15 returns. I think counsel will want to get into the
16 interpretation of those 61 searches and what they mean,
17 either authenticated or unauthenticated. That can be
18 done with the Court's pleadings and arguments, not with
19 this witness.

20 Again, the purpose of me objecting is because
21 this is adding extraneous information outside of the
22 search warrants and not helping this Court in one way at
23 all in determining probable cause. I'm trying to save
24 time with what I believe is irrelevant information.

25 MR. PRICE: Your Honor, we have challenged the

1 overbreadth of this warrant both as to the scope of the
2 search and the scope of the seizure. That is -- it was
3 a major part of our motion to suppress. It is also
4 relevant to Agent Sandoval's veracity and the good-faith
5 issue.

6 So we absolutely argued in our motion to
7 suppress the seizure as well as the search was
8 overbroad. The government did not have probable cause
9 to search billions of people and did not have probable
10 cause to seize 61 different searches and however many
11 people that may be.

12 So we are challenging both. And also the fact
13 that this information was not conveyed to the Court at
14 the time the warrant was being issued.

15 Had the Court been aware that Google was going
16 to be required to search outside of the search terms
17 provided, I think that would have raised some serious
18 questions for the issuing judge.

19 THE COURT: So make me an offer of proof.
20 What facts can this witness offer that is not somehow
21 otherwise included in what's been submitted previously?

22 MR. PRICE: I believe this witness can look at
23 the warrant return, can look at the course location data
24 provided there, establish that it reached well outside
25 of Colorado.

1 THE COURT: Why can't you do that in your
2 pleadings, or did you do that in your pleadings? Why is
3 that something that requires testimony about -- why
4 can't you just say -- why can't you just identify here's
5 what was seized that was outside the scope of the
6 warrant? Why do we need testimony about this?

7 MR. PRICE: Well, Your Honor, we didn't feel
8 like it was completely clear from the warrant return
9 itself --

10 THE COURT: That's your job to make it clear.

11 MR. PRICE: That's exactly what we're trying
12 to do.

13 THE COURT: You don't make it clear in an
14 evidentiary hearing. That's not what we do here. I
15 mean, this is not helpful to the Court in making the
16 decisions you're asking the Court to make. You're
17 making arguments, which you are well entitled to make.

18 You can point out in your arguments this kind
19 of thing. I don't understand what facts this witness is
20 offering that somehow is relevant to the issues you're
21 raising.

22 MR. PRICE: Your Honor, at the preliminary
23 hearing, the government had a witness testify that the
24 search was limited to the state of Colorado. This
25 witness, by looking at the warrant return in this case,

1 can directly rebut that testimony.

2 MR. PAK: Your Honor, the declaration
3 identifies a description based on the witness'
4 understanding of what's in the return. There is a
5 section of the declaration that talks about Google's
6 processes generally. There's a section that talks about
7 this warrant return.

8 Again, Mr. Price has not departed from the
9 declaration and has not created any factual disputes
10 with respect to that declaration. This has all been
11 covered in that declaration, including the issue of what
12 is in that return.

13 So asking Ms. Adeli to walk through the return
14 is unhelpful, especially knowing she wasn't personally
15 responsible for the return as well.

16 THE COURT: I totally agree, Counsel. This is
17 stuff I've seen. This is stuff I can read about. This
18 is stuff that she doesn't have personal knowledge about.
19 Some of this is not -- these are not issues that require
20 factual testimony and factual findings by the Court.

21 And so I think we need to move on, please.

22 MR. PRICE: Yes, Your Honor.

23 Q. (By Mr. Price) The warrant return in this case
24 included more than simply the truncated cookie ID and
25 GAIA ID, correct?

1 A. Could you repeat the first half of your
2 question.

3 Q. The warrant return in this case --

4 MR. PAK: Your Honor, I can point directly to
5 the paragraph in the declaration that describes the
6 warrant return and answers the question that Mr. Price
7 is asking right now.

8 MR. PRICE: Your Honor, I'm not asking about
9 privileged information or confidential information, and
10 the declaration does not mention Colorado or IP
11 addresses.

12 MR. MORALES: I think the objection is, this
13 adds nothing to what the Court has already reviewed.
14 That is what we're objecting to and why we started off
15 this hearing with this testimony was completely
16 unnecessary because nothing is being added to the
17 record.

18 THE COURT: I agree. I've read this. I've
19 seen this. You can argue this. You can point this out
20 in your arguments or your subsequent briefs, whatever
21 you want to do. But I don't need testimony about this.
22 The objection is sustained.

23 MR. MORALES: Your Honor, further, Mr. Price
24 has clearly shown to this Court that he has no intention
25 of offering anything new relevant for this Court to do,

1 and I'm asking the Court at this point in time -- you
2 gave him a great big deal of leeway. We've been doing
3 this for more than 45 minutes and we have gotten
4 nowhere.

5 I'm asking the Court to now grant the motion
6 to quash and have this witness removed from the stand.
7 This is going nowhere.

8 THE COURT: Well, I'm going to go back to what
9 I said initially. Here again, I'm trying to give you
10 folks latitude to litigate your issues. I indicated as
11 a preliminary matter that I was going to let you stick
12 your toe in the water and see what information that's
13 new that's not included in the record that you want to
14 develop.

15 Thus far, there's been none. If there's a
16 matter that's not otherwise included in the record that
17 somehow is relevant to the issues before the Court, you
18 can proceed. Otherwise, let's do, I think, what would
19 be helpful, which would be to hear your folks' legal
20 arguments about all this stuff because I have a bunch of
21 questions about that.

22 I don't think this is a question of resolving
23 factual issues, quite honestly, Counsel.

24 So with that, if there's something that's not
25 included in the record that somehow is relevant to the

1 issues, you can proceed. Otherwise, let's go to an area
2 that is helpful. Okay?

3 MR. PRICE: Just a few more questions then,
4 Your Honor.

5 THE COURT: Okay.

6 Q. (By Mr. Price) Without a keyword warrant
7 would Google ever go looking for somebody who searched a
8 particular address?

9 THE COURT: Sounds like an argument that you
10 can make. I can answer the question for her. No.

11 MR. PRICE: I do believe the answer is no. It
12 goes to this idea that Mr. Morales was advancing that
13 this is all just zeros.

14 THE COURT: Well, I've got over -- I've got
15 this basic question of whether or not there's even a
16 requirement for a warrant on this kind of thing. I can
17 talk about that as we go along here.

18 MR. PRICE: Absolutely.

19 THE COURT: But that's issues of law which we
20 lawyers can talk about. I don't know that this woman
21 necessarily helps us advance the ball, not
22 disrespecting.

23 MR. PRICE: May I offer, Your Honor, it is
24 relevant, this line of questioning, especially to this
25 idea of an expectation of privacy, whether these are

1 considered Google business records, whether other people
2 would have had access to them. So I believe it does go
3 to Your Honor's point.

4 THE COURT: Well, whether Google thinks
5 there's an expectation of privacy, really, isn't
6 terribly relevant. It's whether under the law there is
7 some legally recognized expectation of privacy with
8 respect to all this stuff. So I don't think it's
9 helpful. So anything else?

10 Q. (By Mr. Price) Is search history considered a
11 Google business record?

12 MR. PAK: I think that calls for a legal
13 conclusion as to whether something is a business record
14 or not. I would at least request that Mr. Price clarify
15 what he means by *business record* in the context of that
16 question should the Court allow it. Again, we think
17 this is not what the purpose of this hearing is for,
18 especially given that Ms. Adeli was called as a
19 custodian of records witness for this hearing, Your
20 Honor.

21 THE COURT: I think you're asking for her to
22 make some sort of a legal conclusion about an issue.
23 Objection is sustained.

24 MR. PRICE: No further questions. Thank you
25 very much.

1 THE COURT: Okay.

2 Mr. Morales, your extensive cross-examination,
3 please.

4 MR. MORALES: None.

5 THE COURT: Okay.

6 Ma'am, thanks for coming down and testifying.
7 You can step on down. You can be excused.

8 I don't see any other witnesses listed from
9 the defense with respect to this particular motion. Is
10 that accurate, Mr. Price?

11 MR. PRICE: No, Your Honor. The defense would
12 like to call Detective Ernest Sandoval.

13 THE COURT: Okay.

14 And, Counsel, thank you for your presence this
15 morning.

16 MR. PAK: Thank you, Your Honor.

17 MR. MORALES: We placed Detective Sandoval on
18 call. We didn't know he would be needed. I apologize,
19 Your Honor.

20 THE COURT: Let's take about a ten-minute
21 recess. You can get him here. We can proceed. We do
22 need to stop at 11 because I've got a lawyer coming in
23 on another motion. It shouldn't take very much time
24 this morning. I need to take care of him, and we'll
25 resume when we have the afternoon to address other

1 things. Let's take a ten-minute recess so you can get
2 the witness.

3 (Recess from 10:25 a.m. to 10:41 a.m.)

4 THE COURT: We are back on the record in
5 21CR20001. Parties and counsel present.

6 We have a witness, yes?

7 MR. MORALES: Yes.

8 THE COURT: The witness can approach the
9 witness stand, please.

10 **ERNEST SANDOVAL,**
11 called as a witness on behalf of the Defendant, having
12 been first duly sworn, testified as follows:

13 THE COURT: Do your best to speak in the
14 microphone so we all can hear you.

15 Counsel, please proceed.

16 **DIRECT EXAMINATION**

17 BY MR. PRICE:

18 Q. Good afternoon, Detective.

19 A. Good afternoon.

20 Q. Would you please state and spell your name for
21 the record?

22 A. Detective Ernest Sandoval, S-a-n-d-o-v-a-l.

23 Q. And who do you work for?

24 A. Denver Police Department.

25 Q. And in terms of experience, you've

1 investigated a lot of firearms cases; is that correct?

2 A. Firearms cases, aggravated assaults.

3 Q. And you've been on the police force for about
4 14, 15 years now?

5 A. 15 years.

6 Q. You've been a detective for about six years?

7 A. About five.

8 Q. And you investigated, you said, several
9 hundred firearms cases?

10 A. Yes, at least.

11 Q. Including cases where there were several
12 shootings over a time span at different locations,
13 right?

14 A. Correct.

15 Q. But you never used a keyword warrant in any of
16 those cases, did you?

17 A. I had never used one, sir.

18 Q. Never used a keyword warrant before this case,
19 correct?

20 A. No, sir.

21 Q. Let's talk about your training a little bit.
22 When you prepared the first keyword warrant dated
23 October 1st, 2020, the Denver Police Department didn't
24 have any policies for keyword warrants in particular,
25 correct?

1 A. Correct.

2 Q. So there was no written policy for how to
3 properly secure a keyword warrant?

4 A. Correct.

5 Q. No internal memo for how to do it?

6 A. No.

7 Q. Then no established technique that had been
8 vetted by the DPD or the DA's office, correct?

9 A. No.

10 Q. Is that still the case today, two years later?

11 A. I'm not sure about that.

12 Q. You're a deputy ATF agent, correct?

13 A. I was, sir.

14 Q. At the time of this case you were?

15 A. I was, correct.

16 Q. But you're not aware of any ATF policies or
17 procedures for getting a keyword warrant, are you?

18 A. No.

19 Q. And prior to authoring this warrant, you
20 hadn't received any official training from the DPD on
21 keyword warrants, correct?

22 A. No.

23 Q. And no official training from ATF?

24 A. No.

25 Q. So it was important for you to solve this

1 case, right?

2 A. Yes.

3 Q. You issued a bunch of general warrants in this
4 case?

5 A. Yes.

6 Q. Including these three keyword search warrants,
7 right?

8 A. Correct.

9 Q. And the first one, you said, was on
10 October 1st?

11 A. Yes.

12 Q. That was before Judge Faragher?

13 A. It was.

14 Q. And Google didn't comply with that warrant,
15 did they?

16 A. They did not.

17 Q. They told you that it needed to be revised,
18 right?

19 A. Correct.

20 MR. MORALES: Objection. I'm going to object
21 to the leading nature of the questions, especially if
22 counsel is going to put in terms like *general warrants*.

23 THE COURT: Sustained.

24 MR. MORALES: I'd ask that question and answer
25 be stricken because that was a leading question that

1 went to a general warrant, which counsel knows is at
2 issue in this case and should not be using that specific
3 language.

4 MR. PRICE: That was the language used during
5 the preliminary hearing.

6 THE COURT: It's a legal determination the
7 Court makes, so please proceed.

8 MR. PRICE: May I proceed with leading
9 questions, Your Honor?

10 THE COURT: No.

11 Q. (By Mr. Price) Detective Sandoval, you
12 investigated Mr. Seymour in this case?

13 A. Yes.

14 Q. And you are here under subpoena from the
15 government?

16 A. From both the government and Defense.

17 Q. And us.

18 MR. PRICE: Your Honor, under Rule 611, I
19 would request permission to ask leading questions of the
20 detective.

21 THE COURT: Denied. You can make arguments,
22 Counsel, but he can testify, and his testimony is coming
23 from him, not from you, so that's the basis of my
24 ruling. Please proceed.

25 Q. (By Mr. Price) How did Google contact you and

1 what did they tell you about the first warrant?

2 A. The first warrant was in their Google law
3 enforcement portal. It just said that the warrant was
4 overbroad or -- I don't know the exact term. But they
5 said that they did not like the wording in our document;
6 that we had to revise it.

7 Q. And do you remember exactly what about that
8 wording they didn't like?

9 A. I believe we had pieced or put together
10 wording for a geofence which skipped a couple of steps.
11 This warrant was supposed to be a three-step warrant.
12 We were trying to obtain all the information in one
13 warrant. And they said we could not do that.

14 Q. Would it help to take a look at that first
15 warrant to -- I think you might be confusing the first
16 and the second one.

17 A. Yes, please.

18 Q. Can you tell us what information that first
19 warrant asked for?

20 A. It asked for them to identify all people with
21 providing names, date of births, IP addresses for those
22 Google accounts that would have conducted that search.

23 Q. So you said that was identifying information,
24 full name, address --

25 A. Correct.

1 Q. Account info, too?

2 A. It says *subject account*. So I believe that we
3 would be asking for account information.

4 Q. And to your recollection, was Google's problem
5 with that part of it?

6 A. Correct. They stated that, again, we're
7 skipping a step where everything has to come anonymized
8 first, and then we would look through that and determine
9 if anything was relevant to our investigation.

10 If it was, then we would have to follow up
11 with a separate search warrant seeking probable cause
12 for that next step, which, again, they didn't like the
13 wording in the first one because we were not anonymizing
14 anybody.

15 Q. Okay. So they didn't like it because it was
16 not really anonymized?

17 A. The first one, correct.

18 Q. So the second keyword warrant that was
19 October 20, 2020, I think it's Exhibit 2, if you want to
20 take a quick look.

21 Do you remember which judge that was in front
22 of?

23 A. I do not. That was through Judge Faragher as
24 well.

25 Q. And did Google comply with this warrant?

1 A. Again, they did not.

2 Q. So what happened?

3 A. Again, they did not like the language. Again,
4 even though we asked for an anonymized list, they stated
5 they first -- we asked for the anonymized list. Once we
6 got that, to provide other information for us. Again,
7 they did not like how it was worded. They said it kind
8 of came along the lines of a geofence, and that's not
9 what this was. So we had to, again, adjust that.

10 Q. Okay. And so you had some conversations with
11 Google. Can you tell us about those?

12 A. It was with their counsel, Haley Berlin. And
13 basically she just told me that the information that we
14 were seeking had to be revised in the warrant as the way
15 we were asking for it. I'm not tech savvy so I asked
16 her to speak with DA Hansen who knows a lot of that
17 information and to just let her understand what we
18 needed to do so she could then assist us.

19 Q. And what did she tell you about what you
20 needed to do?

21 A. She said she would speak with DA Hansen over
22 the phone. And then we attempted to make several
23 appointments that they could sit down and talk. We
24 finally made one, I believe, sometime in early November.

25 Q. Do you remember what specifically had to be

1 revised?

2 A. Again, we were utilizing geofence language and
3 as well as that, we were asking for information and
4 skipping a step, basically, is what she was saying. We
5 had to -- it was supposed to be a three-step,
6 three-stage process, and we were trying to get Stage 1
7 and 2 in the same warrant on the second warrant that we
8 wrote.

9 Q. Are you referring to the geofence part of it?

10 A. No, sir. I'm sorry. In the -- so she was
11 saying there's three stages, right? The first one is we
12 want any anonymized information. Second one was we'll
13 write for those accounts to determine if any of those
14 names have been in our investigation or relevant to our
15 case.

16 The third step warrant could possibly be even
17 more information from those accounts if we can determine
18 those accounts are relevant to our investigation.

19 Q. Okay. So it was a staged process?

20 A. More or less, yes.

21 Q. And I just want to clarify, the thing that was
22 objectionable in the first two was the skipping steps
23 with identifying information?

24 A. More or less.

25 Q. Did Google provide you with actual language to

1 use?

2 A. Not to my knowledge, they did not. We had
3 phone conversations, but I don't recall them actually
4 giving us any language.

5 Q. Okay. So then you authored this third keyword
6 warrant which is the Exhibit 3 in your binder. And that
7 was on November 19?

8 A. Yes.

9 Q. And can you tell us which judge that was
10 before?

11 A. Judge Zobel.

12 Q. And the affidavit that you submitted for the
13 third keyword search warrant, did it mention the first
14 keyword search warrant?

15 A. Did not.

16 Q. Did it mention the second one?

17 A. Did not.

18 Q. Did it mention why you were seeking a third
19 one?

20 A. No.

21 Q. And your affidavit didn't mention the revision
22 process that you had gone through with Google, correct?

23 A. No.

24 Q. I want to take a closer look at that third
25 warrant application. The materials that you presented

1 to Judge Zobel are in that warrant affidavit in front of
2 you, correct?

3 A. Yes.

4 Q. And when you presented Judge Zobel with this
5 application, was that the last time you interacted with
6 him over this particular warrant?

7 A. As far as what do you mean?

8 Q. Well, did he call you up and have questions?
9 Did you talk with him afterwards about what it meant?

10 A. He called me up to swear me in for the
11 warrant, and then said he would get it back to me
12 signed.

13 Q. Did he have any questions for you about it?

14 A. He did not.

15 Q. And you didn't provide that -- did you provide
16 any other information to him at that time --

17 A. No.

18 Q. -- or afterwards?

19 A. No.

20 Q. So in that affidavit that you presented to
21 Judge Zobel, did you ever explain to him that executing
22 a keyword warrant like this requires Google to search
23 billions of people?

24 A. I don't know what it took for Google to
25 conduct the search.

1 Q. You didn't know what was involved?

2 A. As far as their parameters and how they did
3 it, I do not.

4 Q. Can you explain a little bit more about that.

5 A. I don't know what Google does when they
6 conduct these searches. I don't know how they input it.
7 I don't know how they look for it. I guess, that's more
8 their company policy and how they do things and doesn't
9 come back to what I'm asking them to do.

10 Q. So did you explain that to Judge Zobel; that
11 you didn't really understand how the warrant was going
12 to work?

13 A. No.

14 Q. And, I guess, is that normal practice for you?

15 A. For me to what?

16 Q. Well, to submit a warrant you don't really
17 understand.

18 MR. MORALES: Objection --

19 THE COURT: Sustained. It's not what he said.

20 MR. PRICE: Sorry.

21 Q. (By Mr. Price) Do you -- I'll move on.

22 Did you tell Judge Zobel that the warrant
23 would require Google searching everywhere in the world?

24 A. Again, I don't know how they conduct that
25 search to get the information we request.

1 Q. Your colleague, Detective Baker, testified at
2 the preliminary hearing in this case. And he said that
3 he thought the search was limited to Colorado. Was that
4 your belief as well?

5 A. My belief was we would look at accounts that
6 may have come back to Colorado. Again, I didn't know if
7 there was any sort of parameter they can place on that.
8 Again, I don't work for Google, so I don't know that.
9 Again, we would look for things because in our
10 investigation, that's what we believed.

11 Q. So you were interested in reviewing the stuff
12 that came back to Colorado. But in terms of that scope
13 of the search, were you aware of how broad it would be?

14 A. Again, I don't know how broad they do their
15 searches for us.

16 Q. The warrant didn't say it would search
17 everybody in Colorado, right?

18 A. The warrant didn't say what? I'm sorry.

19 Q. It would search everyone in Colorado.

20 MR. MORALES: Objection, warrant speaks for
21 itself.

22 THE COURT: Sustained.

23 Q. (By Mr. Price) The affidavit describes
24 surveillance video from a neighboring house. I think
25 that was in your affidavit, right? Can you tell us what

1 that surveillance video showed?

2 A. Three individuals, possibly males, walking up
3 to a residence, appeared maybe to have been discussing
4 something. At one point they go off the camera towards
5 the backyard. Several minutes later you see those same
6 individuals -- obviously they're covered in masks --
7 sprinting away from this residence. Sometime after that
8 you can then see the fire.

9 Q. At any point in the surveillance video, does
10 it show any of the suspects holding a cell phone?

11 A. No.

12 Q. Does it show any of them using a cell phone?

13 A. Not that I can tell, no.

14 Q. Or searching Google for anything?

15 A. No.

16 Q. And in your warrant, did you say that any of
17 the suspects were seen with a phone?

18 A. I don't believe that was relevant as location
19 information can be utilized as passive data when you're
20 not even utilizing your cell phone as long as it's on
21 you. And most people in the world now continually carry
22 a cell phone.

23 Q. But this warrant wasn't seeking location
24 information; it was seeking keyword search results?

25 A. Correct.

1 Q. And there was nothing in the affidavit about
2 those suspects in the video searching Google on a phone,
3 for example?

4 A. We did state that based on the nature of our
5 investigation and how personal this seemed to be, that
6 it was relevant that they may have searched this address
7 in this densely populated area to figure out where this
8 house was.

9 Q. But you didn't know what you were looking for
10 at this point, right?

11 A. Correct.

12 Q. How many other warrants did you issue before
13 this keyword warrant?

14 A. An exact number, I'm not positive, but upwards
15 of probably 20 or 30.

16 Q. Would you say they were fairly broad warrants?

17 A. I wouldn't say broad. Maybe some of them, but
18 not all of them.

19 Q. Like what about the tower depths?

20 A. That potentially could be.

21 Q. And the geofence warrants?

22 A. Again, potentially could be, but that's
23 another process that you still have to follow up with
24 other warrants. You don't just automatically get
25 information.

1 Q. But I guess where I'm going with this is at
2 the time you got this keyword warrant, you didn't know
3 who you were looking for in particular, right?

4 A. Correct.

5 Q. And I believe Detective Baker testified at the
6 preliminary hearing you initially thought it could have
7 been somebody living in the home?

8 A. We had no idea.

9 Q. Did you maybe think it could have been someone
10 with a personal vendetta against the family?

11 A. We thought of everything under the sun this
12 could have happened or why this could have happened.

13 Q. Including maybe it being a random person?

14 A. Correct.

15 Q. Would you say you didn't know whether or why
16 somebody might have searched for the address?

17 A. Again, like I said, we knew based on the
18 personal nature that this appeared to be because of a
19 fire being set because of this house being in a fairly
20 newly built location that it wasn't going to be
21 something that someone would have known exactly where to
22 go.

23 This wasn't a King Soopers grocery store that
24 had been there for years. This wasn't a high school
25 that had been there for years. It was something that we

1 believed could have possibly been searched.

2 Q. So it was a hunch?

3 A. Correct.

4 Q. You didn't know who Gavin Seymour was before
5 the keyword search warrant, correct?

6 A. No.

7 Q. Was he a suspect in the case at that point?

8 A. No.

9 Q. And it wasn't until after the keyword warrant
10 that you ended up getting a separate warrant for his
11 Google account, right?

12 A. Yes.

13 Q. Because before then -- well, as you said, you
14 didn't know who he was?

15 A. Correct.

16 Q. And would you say you had cause to search him
17 prior to the keyword search warrant?

18 A. I don't believe so.

19 Q. Would you say you had cause, by which I mean
20 probable cause, to search his Google account prior to
21 the keyword search warrant?

22 A. I don't believe so, and we did not do that.

23 Q. Are you familiar with the Stored
24 Communications Act?

25 A. Vaguely, I guess, more or less.

1 Q. If you look at the keyword warrants, I believe
2 they rely on it like the first line as legal grounds for
3 support. You're citing 18 USC, Section 2703.

4 A. Uh-huh.

5 Q. And that's part of the Stored Communications
6 Act?

7 A. Yes.

8 Q. And the Stored Communications Act -- well, can
9 you tell us what Section 2703(c) of the Stored
10 Communications Act says?

11 A. Not without it in front of me.

12 MR. PRICE: Your Honor, may I read what
13 Section 2703 says?

14 THE COURT: Okay.

15 Q. (By Mr. Price) Section 2703(c) says, A
16 governmental entity may require a provider of electronic
17 communication service or remote computing service to
18 disclose a record or other information pertaining to a
19 subscriber or to a customer of such service.

20 Would you agree it says *a subscriber* there?

21 A. Yes.

22 Q. It doesn't say *all subscribers*?

23 A. No.

24 Q. So when you were writing up that third keyword
25 warrant affidavit, did you inform Judge Zobel that the

1 SCA, Stored Communications Act, limits police to getting
2 records for a subscriber?

3 A. I did not.

4 Q. Did you inform Judge Zobel the Stored
5 Communications Act does not permit bulk searches?

6 A. I did not.

7 THE COURT: Counsel, I don't mean to limit
8 you, but how much longer do you have because I have a
9 second hearing I need to take care of?

10 MR. PRICE: Two minutes.

11 THE COURT: Okay. Go ahead.

12 Q. (By Mr. Price) That third keyword warrant,
13 you said earlier that you had to revise it so it would
14 be part of the staged process and Google was going to
15 produce that truncated information to you; is that
16 right?

17 A. Yes.

18 Q. What was the purpose of that truncated data;
19 do you know?

20 A. I'm not exactly sure.

21 Q. Google said something about needing to
22 deidentify?

23 A. Yes.

24 Q. This warrant, though, asked for more than the
25 truncated IDs, though, didn't it?

1 A. The third warrant?

2 Q. Uh-huh.

3 A. We asked for anonymized information and an IP
4 address as associated to that.

5 Q. And IP address as associated with it?

6 A. Yes.

7 Q. The IP addresses, can you just briefly tell us
8 why that was important to include?

9 A. Again, for looking at where we would like to
10 start our searching of who could have conducted this, it
11 may not be relevant that somebody in Europe -- with an
12 IP address in Europe would be someone we would further
13 look at.

14 So, again, it would assist us in getting rid
15 of some of these accounts knowing these IP addresses
16 didn't resolve to either the United States or somewhere
17 nearby.

18 Q. So what -- if you have an IP address, what can
19 you do with that information?

20 A. Write a search warrant to whatever company and
21 get that information.

22 Q. Like the service provider?

23 A. Correct.

24 Q. That assigns the IP address?

25 A. Correct.

1 Q. You actually determined in this case that at
2 least three of those IP addresses were associated with
3 Comcast; is that right?

4 A. I believe so. I know two for sure.

5 Q. If you flip to what's tabbed as 5 there, you
6 will see the warrant to Comcast.

7 A. 5 is the returns of IP addresses.

8 Q. My apologies. 7. That's the warrant to
9 Comcast?

10 A. No. This is a warrant to Google.

11 Q. I'm sorry. Tab 8.

12 A. Yes. That's the Comcast warrant.

13 Q. So those three IP addresses that are in the
14 Comcast warrant, those came out of the keyword warrant
15 return?

16 A. Yes.

17 Q. And you're asking Comcast to provide what
18 information about them?

19 A. The physical location of those addresses where
20 the IP address were at, subscriber information, service
21 information as far as how long they've had service with
22 Comcast.

23 Q. And Comcast complied with this warrant?

24 A. They did.

25 Q. And do you remember what Comcast stated as far

1 as return goes?

2 A. We received two returns. One that showed an
3 account in Lakewood to Tonya Bui, and the second was an
4 account, I believe, in Lakewood as well to Stephanie
5 Johnson.

6 Q. Do you know who Stephanie Johnson is?

7 A. I do now, but at the time I did not.

8 Q. Did you attempt to figure out who Stephanie
9 Johnson was?

10 A. Yes.

11 Q. Who is she?

12 A. She's Gavin Seymour's mother.

13 Q. The address is the same as Mr. Seymour's
14 address?

15 A. It is.

16 Q. In your affidavit for the third keyword
17 warrant, did you tell Judge Zobel that IP addresses
18 could be used to identify Google users?

19 A. No.

20 MR. PRICE: No further questions. Thank you.

21 THE COURT: Thank you.

22 Is there going to be cross-examination?

23 MR. MORALES: I don't believe there will be,
24 Your Honor, because I think I can make legal arguments
25 on that. But I would like to do a brief direct

1 examination if the Court would allow.

2 THE COURT: Define brief because I have Mr.
3 Tatem here in court who is chomping at the bit to do his
4 hearing.

5 MR. MORALES: It's simply to get the statement
6 in of Gavin Seymour on video so the Court can review
7 that in relation to the motion to suppress his
8 statement. I think I can do it in 4 or 5 questions.

9 THE COURT: Okay. I will be counting. I'm
10 being facetious. Go ahead.

11 DIRECT EXAMINATION

12 BY MR. MORALES:

13 Q. Detective Sandoval, did you review an
14 interview you conducted with Gavin Seymour and his
15 parents on January 27th of 2021?

16 A. I did.

17 Q. Is that here contained in what -- and it's
18 somewhat difficult because I don't know what the exhibit
19 numbers are that counsel is using. They refer to Tab 1,
20 2, and 3 and 4, so I'm going to just admit this as an
21 unidentified disc at this point in time until we can see
22 what counsel is going to do with the exhibits they've
23 been using, because they're using letters which are
24 reserved -- or numbers which are reserved for the
25 People. They should be using letters. But it doesn't

1 appear they've done that in the exhibits they've been
2 using.

3 So this record that they're making is somewhat
4 messy. But that's what I'm going to do.

5 THE COURT: So you've got that marked as
6 something, right?

7 MR. MORALES: I do. But because they keep
8 referring to numbers and tabs --

9 THE COURT: Well, I guess, I'll take ownership
10 of this. I basically said that I can look at the file
11 and refer to the attachments. And so thus far, I've not
12 admitted any exhibits.

13 MR. MORALES: So I'm going to mark this as
14 Exhibit 1. And then we can let the defense figure out.
15 And they can denote in their exhibit list what they
16 referred to during the course of the testimony.

17 THE COURT: Or they can make clear in their
18 argument what specific document they're referring to and
19 how they wish to proceed.

20 MR. MORALES: That will work.

21 THE COURT: So you're offering 1.

22 MR. MORALES: I am.

23 THE COURT: Any objection to 1 for this
24 hearing?

25 MS. STINSON: No objection.

1 THE COURT: 1 is received.

2 (Exhibit(s) 1 received into evidence.)

3 Q. (By Mr. Morales) Fair to say, Detective
4 Sandoval, that contains the entire interview you did
5 with Gavin Seymour and his parents?

6 A. Yes.

7 Q. Prior to that interview, did you do any, like,
8 introductory stuff, just talk about what you were doing,
9 that you would talk to them later about what was going
10 on?

11 A. We did.

12 MR. MORALES: Nothing further.

13 THE COURT: Okay. Any cross on any -- I guess
14 redirect on that?

15 MS. STINSON: Your Honor, I do have
16 cross-examination for this witness related to that
17 interview, not related to the foundation. But it would
18 certainly take more than 30 seconds.

19 THE COURT: As it pertains to this motion or a
20 different motion?

21 MS. STINSON: This disc is as to the motion to
22 suppress statements. So I do have cross-examination as
23 to that which is the subject of this interview. So I
24 don't know if the Court wants to take that up a little
25 bit later.

1 THE COURT: Different motion. Let's stay on
2 task. Okay? So we'll have Detective Sandoval come back
3 for that motion, yes?

4 MS. STINSON: Yes, presumably. Thank you.

5 THE COURT: Okay.

6 So as to this motion, you can step on down.
7 Okay. Thanks.

8 Folks, I'm sorry. This is a little bit
9 herky-jerky, but I do have other matters I'm responsible
10 for, including one that is scheduled for 11 o'clock. I
11 have counsel here on that motion. So let's say we take,
12 Mr. Seymour, you back.

13 I don't know how long this will take. It
14 shouldn't take too long, but let's recess this hearing
15 so I can talk to Mr. Tatem and Mr. Nathaniel.

16 (Recess from 11:10 a.m. to 11:57 a.m.)

17 THE COURT: Let's go back on the record for
18 21CR20001. The record reflects parties and counsel are
19 present. Folks, I apologize. I know this is shocking
20 to you, but I was wrong with respect to my estimate of
21 this other hearing's duration. They wanted to talk in
22 circles for 45 minutes, so I apologize for that delay.

23 Here's what I think we need to do. I think we
24 need to take our lunch recess. I have two more matters
25 I need to resolve, both of which will be in custody on

1 the Webex. The sheriff will take those first.
2 Hopefully we can get those resolved by 2 o'clock. You
3 folks can come back at 2 and you folks have from 2 to 5
4 to continue to work on these motions. So I do apologize
5 for the delays in the case.

6 I wish we had the luxury of only handling one
7 case at a time, but we don't. So that's what we're
8 doing. So see you folks back at 2. Thank you.

9 (Recess from 11:58 a.m. to 2:01 p.m.)

10 THE COURT: Back on the record in 21CR20001,
11 People versus Seymour. Defendant is present, counsel is
12 present. Let's proceed.

13 So is there any more testimony or evidence
14 with respect to this first motion we're talking about
15 from Defense?

16 MR. PRICE: No, Your Honor.

17 THE COURT: How about from the prosecution?

18 MR. MORALES: On the first motion?

19 THE COURT: Yes.

20 MR. MORALES: No, Your Honor.

21 THE COURT: All right. Then let's hear your
22 arguments.

23 Mr. Price, you can go first.

24 MR. PRICE: Good afternoon, Your Honor. I
25 believe Mr. Seymour had filed a motion with the Court

1 requesting a post-hearing briefing in lieu of argument;
2 however, if the Court has questions, I'm more than happy
3 to answer them today.

4 THE COURT: Well, how does the prosecution
5 feel about filing post-argument -- post-evidentiary
6 arguments?

7 MR. MORALES: We object. We don't believe
8 it's necessary. We prefer to go to arguing today.

9 THE COURT: Counsel, what more do you need to
10 do? I mean --

11 MR. PRICE: Your Honor, I believe this is a
12 complicated issue. We want to ensure that we have a
13 record that is accurate and reflects those complexities
14 before the Court. But if --

15 THE COURT: I'm just asking, what would you
16 like to do?

17 MR. PRICE: We would prefer to have
18 post-hearing briefing on this issue in lieu of argument.

19 THE COURT: Mr. Morales, do you have any other
20 authorities you would be submitting other than the
21 response that you filed that you can think of? I mean,
22 all these issues are simply arguments, similar in a lot
23 of respects. And so I kind of anticipate similar
24 arguments in a lot of this stuff. I'm not trying to
25 preclude anything at all. I'm just trying to figure out

1 what else we need.

2 MR. MORALES: I certainly have additional
3 arguments to some of the things that may be argued, but
4 as far as the bulk of what we responded to is what we
5 responded to. So particularly -- I could give examples,
6 but we're prepared to argue the motions and the
7 responses. I just --

8 THE COURT: Sure.

9 MR. MORALES: Let me -- I'm sorry to interrupt
10 the Court. If the testimony today had garnered anything
11 that would need additional evidence short of some very
12 sparse ones, then maybe briefing would make sense. But
13 the testimony of the first witness and even the second
14 witness is really either supplemented by the filings and
15 everything else. So there's really nothing additional
16 based on the evidentiary part of this. So I'm not
17 really sure why we would need a post briefing.

18 And, again, as I started off, the four corners
19 analysis and the decisions by this Court are really
20 contained within the exhibits themselves and the case
21 law that's been cited by both parties.

22 So I'm just unsure of how regurgitating those
23 arguments for the Court and having the Court having to
24 read those again is going to aid the Court in any way.
25 I just don't understand it.

1 THE COURT: Okay. Here's what I'm going to
2 do, Counsel. I will give you a full chance to litigate
3 your issues. I have kind of a rudimentary question I
4 want to pose to you-all. You can maybe respond to that.
5 You can make any other arguments you want.

6 I don't want to -- I didn't plan to rule from
7 the bench this afternoon. So I don't have any problem
8 if you want more time to file additional authorities or
9 arguments after this. And if either party wants to
10 respond to anything that's filed, that's fine, because I
11 honestly didn't have -- I need to study this, obviously.

12 And so I don't really have a problem with what
13 you're suggesting, Counsel. You can decide what you
14 think is appropriate.

15 Let me throw this out because I'm curious what
16 the various responses are, and I could just be totally
17 oversimplifying all this. And if I am, you folks will
18 certainly set me straight.

19 The thought that keeps going through my brain
20 is this: I mean, we go through life, and we leave
21 pieces of this behind all the time. We walk through
22 life and we leave our fingerprints. We walk through
23 life and leave our skin cells. We walk through life and
24 sometimes we leave drops of our blood or whatever. We
25 leave all kinds of things behind.

1 And there's been times when we didn't know
2 that we left those things behind. There are times when
3 we didn't know what we could do with those kinds of
4 things, right? And technology comes along and we find a
5 way to make use of that in all kinds of ways, including
6 forensics and investigation.

7 And it strikes me that what we're talking
8 about here is a different -- another way to leave a
9 piece of ourselves behind, learning we know now that in
10 this digital age and stuff, we leave all kinds of pieces
11 of ourselves out there, right?

12 And so I guess my question is this: How does
13 the use in a case like this, where there's no
14 specific -- we're using information to develop a suspect
15 as opposed to implicate a suspect. Why is this, for
16 example, different from you find a fingerprint on a
17 scene and you put the fingerprint through the FBI
18 database and they come back with information? And you
19 leave a drop of your blood and you put it in CODIS and
20 come back with this massive -- why is this any
21 different?

22 MR. PRICE: Thank you, Your Honor.

23 I think Your Honor is right to raise that
24 question because the same question that the U.S. Supreme
25 Court has been grappling with now for about a decade, do

1 the same rules that govern searches in the physical
2 world apply to searches of data and evidence in the
3 digital world?

4 At each turn along that path, the Court has
5 made the determination that, for lack of a better word,
6 digital is different. That even though Mr. Jones in the
7 GPS tracking case could be seen driving down the street
8 by anyone who happened to be there, that it was
9 different somehow when you had a GPS tracker on his car
10 that was monitoring him for 27 days straight.

11 The Supreme Court in *Riley, California v.*
12 *Riley*, which dealt with the search incident to arrest of
13 a cell phone, once again, the Supreme Court said digital
14 is different. It is something quite different to search
15 somebody's cell phone which may have information that is
16 more private than anything they might keep in their
17 house as opposed to an empty cigarette pack in their
18 pocket and, therefore, the rule is different. A warrant
19 is required there.

20 And then in *Carpenter* from 2018, the Court was
21 looking at that digital trail of breadcrumbs that we
22 leave behind as a result of cell site location
23 information that is held by a third-party company. And
24 the Court looked at the third-party doctrine which for a
25 long time had said, if it goes through a third party,

1 you don't have a privacy interest in it. But the Court
2 said, well, it's different here. You don't really have
3 a choice but to use a cell phone.

4 And the amalgamation of this data,
5 centralization of it, the ability for law enforcement to
6 search it with ease without extending the physical
7 resources that they would have had to track somebody
8 otherwise makes it a different analysis. It provides
9 the government a way of looking back in time.

10 It's a new investigative technique that the
11 Court found shifts the balance away from the framers'
12 intent when it came to the Fourth Amendment. And so the
13 Court is saying it's important to look at the privacy of
14 the data that we're talking about in each particular
15 case, GPS, cell phone data, cell site location data.

16 And here we're talking about keyword search
17 data. It's Mr. Seymour's position that that is some of
18 the most private data that exists. It's not just dots
19 on a map where you can infer where somebody might have
20 gone. It is an intimate archive of personal expression,
21 of hopes, fears, problems, questions all in one place,
22 things that you might not even ask a family member or
23 clergy or tell your wife, people are somehow willing to
24 type into that search box.

25 And as a result, you have not only something

1 with tremendous privacy implications but First Amendment
2 implications on top of that. And when you have those
3 two combined, the Fourth Amendment argument -- the
4 Supreme Court has said repeatedly the Fourth Amendment
5 has to be followed with scrupulous exactitude; that it
6 is even more important in these cases to have proper
7 probable cause and particularization of the warrant,
8 simply because the alternative is a massive centralized
9 database that allows police a one-stop shop to hit the
10 easy button and try and gen up suspects in a case.

11 It's the opposite of the way that warrants
12 usually work. It's why Ms. Adeli was referring to them
13 as reverse warrants. It flips the process on its head.
14 And in this case -- and I'm sorry, I'm getting away from
15 your privacy question. But there was no probable cause
16 to search Mr. Seymour at that point. Detective Sandoval
17 made that clear. We would say there was no probable
18 cause to search any of the other billions of people
19 either. And the fact that the search took place in this
20 way in this reverse fashion, makes it into an
21 unconstitutional general warrant, something that our
22 Fourth Amendment forbids.

23 So in this case, yes, we believe there is a
24 privacy interest in this data, and we also believe that
25 the government did not follow the Fourth Amendment

1 requirements in order to search and seize it.

2 THE COURT: Let me just follow up with a
3 couple of things, Counsel. And I certainly understand
4 there would be a different analysis between finding out
5 whether or not X number of people enter a certain query
6 without knowing who those people are. There's a
7 difference between that and saying, I'm going to look at
8 Mr. Jones' Facebook records for whatever. I think
9 there's -- those are different analysis and different
10 implications.

11 But, I mean, we all have -- most of us have
12 driver's licenses. And when we do that, we take our
13 fingerprints and they're in a big database. I bet you
14 those are searched all the time. And among those
15 searches, I bet you my fingerprints and yours are there
16 too, and they're searched. We're going through -- those
17 are records and trying to find something that matches.

18 How -- I'm not hurt by that. You're not hurt
19 by that. How is -- you asked who put in this query
20 without knowing who did it. How does that hurt anyone?

21 MR. PRICE: So I think that the -- maybe the
22 better analogy, if you want to carry your fingerprint
23 analogy forward, would be to say, imagine a company that
24 not just has a record of everyone's fingerprints, but
25 keeps track of every place you ever left your

1 fingerprints and has that data available to law
2 enforcement.

3 That's a different type of scenario than the
4 one you're envisioning. If there's a crime, of course,
5 police can go in and they can dust for fingerprints as
6 usual, but they don't have the ability to dust the
7 entire world for fingerprints and search backwards.

8 And so I think that's where the analogy breaks
9 down a little bit. The Supreme Court has warned against
10 analogizing to the physical world for this reason. The
11 analogies can be somewhat helpful but also a little bit
12 misleading.

13 And I think with the fingerprints, it would be
14 more accurate to say a record of everywhere you have
15 left your fingerprints and giving the police the power
16 to figure out where you were and what you were doing
17 retroactively without ever having to go and dust for
18 prints at anyplace.

19 THE COURT: Let me ask you one more question
20 and then I'll let you make whatever argument you want to
21 make.

22 In terms of process, which has been described
23 in detail in the pleadings and described in some
24 generality in testimony, I mean, with respect to the
25 process that, I guess, Google makes people go through,

1 it strikes me to be a difference between fingerprints
2 and blood and digital stuff is who owns the database. I
3 mean, here again, the police or law enforcement that
4 owns CODIS or some agency -- the FBI owns their database
5 and fingerprints.

6 Here we're talking about a private company
7 that owns all this information, so there's -- the police
8 just can't really go there. They need to get some
9 authorization. And Google has its process, which
10 strikes to me -- I mean, tell me why -- there seems to
11 be a lot of protections built into it, i.e., you can't
12 just go to Google and say, Here's a search term, tell me
13 everyone that's entered the search term.

14 No, they say, No, you need to do it
15 anonymously. And then you have to have another warrant
16 saying, Once we find there's been some sort of a
17 response to this query, then there has to be probable
18 cause or some judicial finding that, well, it's relevant
19 to this particular thing, and here's the probable cause
20 for it.

21 That seems to be a lot of protections built
22 in, even if there is some sort of global concern about,
23 Gee, people are finding out who's doing queries, even
24 though we don't know who they are. Can you respond to
25 that?

1 MR. PRICE: Yes, Your Honor. I'll take the
2 first thing you said about who owns this data. I
3 believe Ms. Adeli was clear that the search history is
4 considered part of the user's account data. So the user
5 owns that search history in the same way that the user
6 owns their Gmail, owns their photos stored on Google's
7 cloud, owns their documents stored on Google's cloud.
8 But there's no distinction. That is the user's data.

9 Google is holding it in trust for users.
10 There are protections built in. In that respect, they
11 have a privacy policy. They say that they're not going
12 to hand it over to anybody who cares to look at it; that
13 they're only going to respond to legal process.

14 And all of that plus the fact that, frankly,
15 people who are logged in can delete their data means
16 it's their data. No company is going to allow you to
17 delete their own business records. This is something
18 that users have control over and is their property,
19 their data. It belongs to them.

20 And I think that alone is grounds to find a
21 privacy interest in this search history data. If you
22 look at the Supreme Court's decision again in *Carpenter*,
23 there's about half of the Court there saying that it is
24 absolutely critical to look at property interests in
25 data, who owns that data, is Google a bailor or bailee

1 of your data, and analyze it in that way, because if the
2 answer is, yes, then it is your data. And any
3 infringement on your property, even if it's small, is
4 still a trespass. And a trespass has long been the test
5 to determine whether there was a Fourth Amendment
6 search.

7 And so I think on either front, expectations
8 of privacy or on the property trespass theory, this
9 Court can find a Fourth Amendment interest in that data.
10 And it is important to, I think, consider both.

11 With respect to Your Honor's question about
12 the safeguards that Google has in place, they are, as we
13 are seeing in this case, applied very unevenly. Their
14 policies frequently change. Something they rejected in
15 the first warrant they accepted in the third. And I
16 think there is a temptation to view this as anonymous
17 data, but it is not, especially when you consider the
18 full IP addresses that were demanded in Step 1 by the
19 warrant and produced by Google. Those are identifiable.

20 The government can and did go to the service
21 provider and tell us who had that IP address, what's
22 their name or address. So the idea that Google is
23 handing back anonymized data in this case, I think, just
24 doesn't fit with the facts.

25 That was certainly what was presented to Judge

1 Zobel, but I think without the additional explanation
2 that would have been necessary to explain the
3 significance of asking for those IP addresses in the
4 same breath as asking for anonymized data.

5 Google, as a matter of policy, does not
6 provide IP addresses anymore, I guess, in Step 1 because
7 of this concern, because of this recognition that at the
8 end of the day, they're not anonymous.

9 And so I think there is a tendency to be
10 lulled into Google's representations or the warrant's
11 representations about this being anonymized and there
12 being all these protections. But, in fact, there was
13 really just one step here.

14 They ran a search over everybody, and they got
15 back all the results with identifying information. They
16 didn't have the Google -- the full Google ID number, but
17 that would not have mattered.

18 THE COURT: And just correct me if I'm wrong
19 on this, Counsel, once they -- once the law enforcement
20 got that information, didn't they then have to go back
21 to a judicial officer to then get another warrant to get
22 the specific information they were looking for?

23 MR. PRICE: Yes, Your Honor. So on
24 December 4th, the government got two warrants. One was
25 the Comcast warrant to identify the IP addresses. And

1 the second was another Google warrant to get the account
2 contents of the identified accounts. So that would
3 include, obviously, the name, subscriber information as
4 well as the full account contents.

5 So there were two warrants that were issued on
6 the same day. And the Comcast one was designed to
7 identify the individuals who had used that IP address,
8 so --

9 THE COURT: Going through a judicial process
10 to get this -- I mean, is that not constitutional
11 protection for, I guess, unchecked governmental conduct?
12 I mean, it strikes me that seems to be a good thing.
13 You get this information. And then after that, you need
14 to go back to a judge and say, Okay, now, here's why you
15 want to hone in. I mean --

16 MR. PRICE: Respectfully, I believe that the
17 first warrant should have been for a specific account,
18 not the second one after you've already searched
19 everybody.

20 THE COURT: It's kind of like the chicken and
21 the egg kind of thing. We don't know what we're looking
22 for, so we need to find out what we're looking for.

23 MR. PRICE: And then we'll tell what you what
24 we're looking for.

25 THE COURT: Counsel, I'm done. If you want to

1 make other arguments or such, you're more than welcome
2 to do so.

3 MR. PRICE: Thank you, Your Honor. I believe
4 we will reserve the rest of arguments for briefing if
5 that's okay.

6 THE COURT: All right.

7 The prosecution can make your arguments. I'm
8 also curious what you think.

9 MR. MORALES: I think the first question the
10 Court asked of counsel was do we have an expectation of
11 privacy when we decide to live in this digital age to do
12 what we want to do and do what they want, and the People
13 would submit no.

14 I think that there is the ability to argue
15 that there is a waiver that we choose to give up a lot
16 of our expectation of privacy in what we do when we
17 choose to engage in this, when we choose to engage in
18 certain activities. And when we do give up that and we
19 give up that expectation of privacy, we then also
20 subject ourselves to the possibility that a judicial
21 officer will review a search warrant and say with this
22 statement of probable cause, you have now foregone your
23 private information.

24 And I think that that links into what the
25 Court did in this last question of counsel which is what

1 we did in this case -- what the government did in this
2 case, is not what the defense wants you to follow.

3 Every step, every procedure the government
4 followed in obtaining this information and obtaining who
5 targeted that house on August 5th of 2020 was done with
6 judicial review, was done with judges and magistrates
7 reviewing probable cause statements and determining
8 whether or not the person's expectation of privacy could
9 be overcome by a valid warrant. That's what we expect,
10 and that's what we did in this case.

11 We weren't barging into people's houses and
12 rummaging through their stuff just because we wanted to.
13 We particularized why we were going in there. But to
14 answer the Court's first question, we do believe that
15 there is a lack of expectation of privacy in your group
16 searches. There is a third party that you're choosing
17 to give your information to.

18 And in this case, the information was given to
19 a huge database by a private company called Google. Mr.
20 Seymour decided to do that. He decided to enter into
21 that database and say, I'm going to tell you that I
22 looked for this.

23 Now, counsel used flowery words and expressive
24 content and this had to deal with the deepest, darkest
25 intimate personal issues of Mr. Seymour, and that is

1 very flowery and very headline-making, but that's not
2 the issue in this case.

3 The Court not only has to look at the
4 expectation of privacy that Mr. Seymour chose to give up
5 but also what was the intrusion of that privacy. And
6 the Court asked about that in its questioning. What did
7 we really give up? What was really intruded on Mr.
8 Seymour by the keyword search by anyone? How was his
9 privacy and privileges violated by that keyword search?
10 And the answer was, it wasn't. There was nothing there.

11 In the reality, when we look at a search and
12 we say was it a reasonable search, you look at the
13 expectation of privacy and you -- then you look at what
14 was searched. And what was searched here was a database
15 of defined anonymized information that would then come
16 back to the law enforcement and then we would decide
17 whether or not we would look at it.

18 There was no -- he didn't even know -- no one
19 in this room knew their privacy rights were violated
20 when we got this keyword search because no personal
21 information was given.

22 Counsel likes to talk about these IP
23 addresses. The reality is, any law enforcement officer
24 that would go simply on what Google provides and IP
25 addresses and then not do an independent search warrant

1 to verify that would be doing the wrong thing.

2 IP addresses could be bouncing off satellites.
3 They could be bouncing off other servers. You need to
4 then narrow them down. And the only way you do that is
5 by going to the providers. And that's what happened in
6 this case, as the Court is well aware.

7 So, again, when we talk about the
8 reasonableness of it, what was the intrusion here?
9 Counsel puts in there it was rummaging through people's
10 personal data. Wrong, just flat out wrong. No files
11 were looked at by Google. No files were looked at by
12 anybody until the subsequent search warrants.

13 All that was obtained in this search was who
14 searched for this address, who targeted this house
15 between these 15 days before five people were burned to
16 death and three others escaped with their lives. It
17 wasn't expressive.

18 As I said in my motion to strike the amicus
19 brief, this wasn't about a medical clinic, a house of
20 worship. It wasn't about religion. It wasn't about
21 politics. It was about a house that everybody knew had
22 been burned down.

23 How expressive could somebody be looking for
24 that house? You would say -- you know, expressive is
25 I'm looking for a place to go get a medical procedure

1 done and it's private to me or I want to talk about
2 where I go to do political activities or volunteering to
3 a church. Those might be expressive and First
4 Amendment, but the search of an address simply is not.

5 I also want to say that when counsel talks
6 about what this search -- they're talking about things
7 that could happen in the future and not about the facts
8 of this case. And I always want to bring us back to the
9 facts of this case and not what could be if the Court
10 grants or denies this motion.

11 So, again, there's a minimal amount of
12 information that we asked for in this. There was a
13 minimal amount of information given. None of it was
14 private. None of it was privileged, and none of it
15 could be considered in any way expressive.

16 So the next question the Court asked of is,
17 again, this database, and you talked about fingerprints
18 and talked about CODIS and you talked about all this
19 information. And, again, our supreme courts, both the
20 state and the federal, have never said that these
21 searches are not permissible. There's no foregone
22 conclusion that we can't do these. We just have to do
23 them underneath the process and procedure.

24 Even the cases cited by counsel, *Riley*,
25 *Carpenter*, *Jones* and our state *Tafoya*, have specific

1 facts as to what they're saying was wrong about those
2 warrants.

3 For instance, in *Carpenter*, they were saying
4 the historical data for 137 days of tracking
5 Mr. Carpenter was too much. You cannot do that. And
6 that makes sense, but they didn't say, Hey, you can't do
7 it ever. It's just 137 days is way too long.

8 *Jones* talked about 28 days of tracking
9 somebody on a GPS monitor. And, again, they didn't say
10 you can't do it. They're just saying you can't do it
11 without a warrant for that length of period.

12 *Riley*, that talks about a whole cell phone.
13 That talks about dumping down a whole cell phone that
14 lacks the issue in particularity you need as to why
15 you're doing that, the same thing our Supreme Court
16 decided in *Coke* when it said it can't just download
17 *Coke's* phone without identifying the victim, identifying
18 who that was part of.

19 So, again, counsel cites cases and says
20 they've decided these issues and say digital is
21 different. But, yet, bringing it back to what was done
22 in this case, what was requested, what was done in this
23 case, and what was requested was tell us who searched
24 for this address that was burned to the ground between
25 this time period and give it to us in a deidentified,

1 anonymized fashion with IP addresses that we'll do
2 subsequent search warrants for. We'll resolve them --
3 the warrant speaks for itself. We will resolve it to
4 Colorado. We'll only look at those in Colorado. So any
5 concern they were out of state was going to be monitored
6 by us. And then we'll see where we go from there.

7 We heard counsel talk about how you didn't see
8 anybody in the surveillance come with a cell phone or
9 anything like that. Remember the search warrant that
10 we've asked for was before the arson. We wanted to know
11 who searched before. So the surveillance video in
12 question by counsel belies the very fact of the warrant
13 he's objecting to.

14 Further, it talks about the searches being
15 conducted by July 22 and August 5 before the fire. It's
16 not going to be caught on surveillance. It can be done
17 with a laptop. It can be done with a cell phone,
18 desktop if you've got that.

19 So again, these arguments that you don't see
20 on a cell phone, it really is -- it doesn't deal with
21 the facts of this case.

22 So the last thing the Court asked of is a
23 process in particularity. And again, I'm only
24 responding of the Court because I think that's what you
25 want me to do.

1 THE COURT: Plus any other argument you want
2 to make.

3 MR. MORALES: Okay. And, again, dealing with
4 the process, I think that's a great question by the
5 Court, because it goes to twofold issues that we have in
6 this case. Number one, Google does have a process that
7 it follows, a process that, obviously, works in this
8 case and works to any possible argument that Detective
9 Sandoval did not believe in the accuracy and good faith
10 of the warrant he was asking for.

11 They make this argument that you should have
12 told the magistrate that there was two other previous
13 warrants that were withdrawn because Google said you
14 have to do better.

15 Well, Google and Detective Sandoval and
16 Ms. Hansen worked together to make it better, to make
17 the process work, so we followed each stage as Google
18 required it to do. That legal process is exactly what
19 Your Honor and our courts expect us to do. That's what
20 we did in this case.

21 That should give faith and that we did what
22 needed to be done but also good faith exception as to
23 why Detective Sandoval truly believed this was a good
24 warrant.

25 Going back to some of the other ones. It is

1 irrelevant whether or not two other search warrants were
2 not accepted by Google and withdrawn. It doesn't go to
3 falsehood. It's not a misleading statement, and it
4 wouldn't change the ultimate outcome of the magistrate
5 in determining there was probable cause to believe that
6 there was a fair probability that we would locate the
7 person who targeted that address that night.

8 Counsel says, Well, Detective Sandoval didn't
9 tell them there was going to be billions of people that
10 were going to be searched. Well, Number one, we submit
11 that's not accurate. But, number two, Detective
12 Sandoval testified he didn't know how Google was going
13 to do this search, what they were going to do or how
14 they were going to do it. That belies there was no good
15 faith exception in here.

16 So for all of those reasons, when you look at
17 the legal process, the legal process is actually
18 protective of Mr. Seymour.

19 And we want to reiterate, Mr. Seymour only has
20 his standing for his rights. The billion of other
21 people that are allegedly involved in this are not for
22 him. He has no standing to them.

23 And for those reasons, he needs to articulate
24 how this was so intrusive on his privacy rights, and
25 they have failed to do so.

1 If I may just have one second.

2 THE COURT: Sure.

3 MR. MORALES: I don't know if the Court wants
4 me to, but I do want to talk about how our responses
5 should be looked at not just as the response for one,
6 but maybe combined. I know they're repetitive in a lot
7 of ways as to the responses for each motion, but the
8 Court knows its review of the four corners. It knows
9 its review of what probable cause is particularly both
10 as to who was going to be searched, what was going to be
11 searched for, and whether or not there was probable
12 cause.

13 And I just want to articulate, did we identify
14 the right entity to search? Absolutely. Counsel, by
15 calling the witness, brought in the person who did the
16 search.

17 Did we particularize as to what we wanted to
18 have searched? Yes. The search warrant said, We want
19 Google to look through its vast database for people who
20 did these searches between July 22 and August 5 from
21 this time period using these terms or any combination of
22 these terms.

23 Counsel likes to talk about how there was one
24 that says *interior*. Remember, the search warrant says
25 any of these terms, not these terms exactly or no terms

1 outside of that, any of these terms. So the fact that
2 Google determined, yeah, the address is there and it has
3 interior is not violative of the scope of the search
4 warrant, it's actually following the scope of the search
5 warrant.

6 And, finally, then the Court needs to
7 determine was there reasonable probability -- not that
8 we can identify an actual person. Is there a reasonable
9 probability if we searched this database that we are
10 going to find evidence of who committed this crime. We
11 don't have to have an identified person. We don't have
12 to say we know this person did it. We are saying, like
13 we do with CODIS or a fingerprint, we want to see who
14 searched for this address.

15 And if we can identify who searched for this
16 address during these 15 days -- and there's clearly
17 probable cause as to this, we have a horrific fire at an
18 address in a densely populated neighborhood for a house
19 that is not unique in any way. It's not on a corner.
20 It's nothing that is bright and shiny about it that
21 would make it stick out in any way, nothing about it.

22 An interview and investigation is conducted
23 and there is nothing about the victims that is
24 indicative they would be targeted for any other reason.
25 There's nothing to indicate it whatsoever.

1 Three masked men -- or three masked people are
2 outside that house acting in concert, looking,
3 surveying, entering the backyard, fire, fleeing.
4 They've clearly put on the same type of uniform.
5 They've got the same mask. This is a conspiracy. This
6 is something that's been put together on a house that is
7 completely -- why?

8 And so when you take those facts and you think
9 there had to have been planning, there had to have been
10 somebody to search for this house because it makes no
11 other sense, there is probable cause to do this. More
12 than probable cause, that there's a fair and real
13 probability that if we ask Google for this minimal
14 intrusion, for this minimal information, we can possibly
15 find a number of devices, which absolutely comes down to
16 five that looked for this address.

17 And when you look at that and you look at the
18 expectation of privacy and the actual intrusion and what
19 was done in this case, this is what any victim of any
20 homicide family would want. It did not violate billions
21 of people's confidential and private information. It
22 looked for an address and who searched for it.

23 And for those reasons, we believe that this
24 search warrant stands up to constitutional challenges,
25 is particularized on all aspects. There is more than

1 enough probable cause, and we'd ask the Court to deny
2 the motion for suppression.

3 If the Court is disinclined to do that based
4 on that, we believe that the good faith exception is
5 quite there. There is nothing -- none of the four
6 requirements for finding that there was any lying to the
7 magistrate, the magistrate gave us his judicial role or
8 her judicial role, that they were misled with any
9 falsehoods or that they were so lacking in probable
10 cause that nobody could ever approve this warrant is
11 even met.

12 We don't want to hang our hat on that, but we
13 know that's where the Court could hang its hat as it did
14 in Counts' (phonetic) case and Mr. Charter's case. We
15 don't think you need to go there for this intrusion, for
16 this non-violation of his expectation of privacy, and
17 for those reasons, I'd ask the Court to deny the motion
18 to suppress. We'll supplement with anything that we see
19 in response.

20 THE COURT: Okay. Thanks.

21 We'll talk about the timing aspects of any
22 supplemental pleading you want to file a little later.
23 We'll see how far we get with the motions because I --
24 we'll just see if we need further hearings on this.

25 So the next one on the agenda apparently is

1 motion to suppress statements, yes?

2 MS. STINSON: Yes.

3 THE COURT: And just as I understand it, I
4 haven't seen any videos or anything like this, I
5 understand just reading the pleadings Mr. Seymour
6 didn't -- he invoked his right to counsel, and the issue
7 has to do with whether certain questions with respect to
8 his name and phone number and such are subject to
9 suppression. Is that the issue?

10 MS. STINSON: That's correct. The video of
11 the interview was already admitted by Detective Sandoval
12 at the end of his testimony.

13 THE COURT: Okay. So, Ms. Stinson, you can
14 proceed on that issue however you wish to do so.

15 MS. STINSON: I would like to recall Detective
16 Sandoval for cross-examination.

17 THE COURT: Well, for examination. He's not
18 adverse yet.

19 MS. STINSON: What I'm saying is that the
20 district attorney asked him direct questions to identify
21 the interview, so I have cross-examination as to --

22 THE COURT: It's fine.

23 Detective Sandoval, why don't you have a seat.
24 I swore you in earlier this morning. You're still bound
25 by that oath. You understand that, sir?

1 THE WITNESS: Yes, sir.

2 THE COURT: Great. Thanks.

3 CROSS-EXAMINATION

4 BY MS. STINSON:

5 Q. Good afternoon.

6 A. Good afternoon.

7 Q. The date of the interview, I guess attempted
8 interview that we're talking about, is January 27, 2021?

9 A. Correct.

10 Q. All right. Now, that day prior to your
11 contact with Mr. Seymour, he had already been arrested
12 at that point?

13 A. Yes.

14 Q. Okay. And so, really, kind of the chain of
15 events as to how he came to be in custody is that there,
16 ultimately, was an arrest warrant issued for Mr.
17 Seymour?

18 A. Correct.

19 Q. All right. And, in fact, DPD, specifically
20 the SWAT team, had executed the arrest warrant that
21 morning?

22 A. Yes.

23 Q. Okay. And so when you came into contact with
24 Gavin Seymour, that was actually at DPD headquarters,
25 right?

1 A. The first interaction was at his house, where
2 we just explained he was going to headquarters and we
3 would talk with him there.

4 Q. Okay. And so specifically the interview that
5 was admitted on that, that's a recording of the
6 interaction that happened at police headquarters?

7 A. Correct.

8 Q. Okay. And in that interview -- I want to talk
9 about who is present during that.

10 A. Okay.

11 Q. So you said this is at DPD headquarters. Is
12 this in an interview room or somewhere else?

13 A. Interview room.

14 Q. In that interview room, it's yourself and
15 Special Agent Sonnendecker?

16 A. Correct.

17 Q. And then Gavin Seymour was a 16-year-old
18 juvenile at that time, right?

19 A. Correct.

20 Q. So present was also his mother and father?

21 A. Correct.

22 Q. Okay. And so when you sat down to talk with
23 him, he's still in custody, right?

24 A. Yes.

25 Q. And he is, obviously, not free to leave at

1 this point?

2 A. Correct.

3 Q. Now, before you read Gavin Seymour his legal
4 rights or his *Miranda* rights, there were some
5 preliminary questions that were asked of him, correct?

6 A. I don't believe I asked him any questions.

7 Q. Okay. So you don't recall that you asked him
8 for his telephone number?

9 A. I believe I read his telephone number off to
10 him.

11 Q. Okay. And you asked him to confirm that that
12 was his phone number?

13 A. Correct.

14 Q. And you also asked him what his cell phone
15 carrier was?

16 A. I did, yes.

17 Q. Okay. Those were questions that were asked
18 prior to actually Mirandizing him?

19 A. Correct.

20 Q. And he, in fact, did answer those questions?

21 A. His mother answered the cellular provider. I
22 believe he nodded his head or may have answered for the
23 cell phone.

24 Q. So you, in any event, received a response from
25 him in response to your question?

1 A. Yes.

2 Q. Okay. And then afterwards, that's when you
3 Mirandized Gavin?

4 A. Correct.

5 Q. And as soon as you did read Gavin Seymour his
6 rights, he immediately invoked his right to remain
7 silent, right?

8 A. Yes.

9 Q. And him and his mother specifically said they
10 wanted to have an attorney present?

11 A. Correct.

12 Q. All right. Now, Detective Sandoval, I have a
13 couple of questions for you about the booking process.

14 A. Okay.

15 Q. Can you explain, what does *booking* mean?

16 A. Basically, when you are taken over to our
17 detention facility for juveniles, it's our juvenile
18 intake unit where they process them all first prior to
19 moving them over to a juvenile detention facility, more
20 than likely the Gilliam, but it could be elsewhere.

21 Q. Okay. And when somebody is booked in, DPD
22 generates something called a booking slip, right?

23 A. Yes.

24 Q. Can you tell the Court what the purpose of
25 that slip is?

1 A. Basically it's a slip filled out by the
2 arresting officers with information on the arrestee
3 that's provided to our juvenile intake.

4 MS. STINSON: Your Honor, if I may approach
5 the witness.

6 THE COURT: Sure.

7 Q. (By Ms. Stinson) Detective Sandoval, I have
8 just handed you what appears to be the DPD booking slip
9 for Gavin Seymour. Does that appear to be what that
10 item is?

11 A. It does.

12 Q. Okay. And when you were explaining the
13 booking process and the booking slip, does that look
14 like what you would typically see after somebody gets
15 booked in?

16 A. Yes.

17 Q. Okay. Now, it looks like that one single
18 sheet of paper includes, essentially, basic biographical
19 information. Would you agree?

20 A. Yes.

21 Q. For example, the person's name and date of
22 birth?

23 A. Yes.

24 Q. It includes height, weight, race, those types
25 of things?

1 A. Yes.

2 Q. Now, on that booking slip there actually is a
3 box for phone number; is that correct?

4 A. Correct.

5 Q. Now, this booking slip actually does not
6 contain a phone number, right?

7 A. That is correct.

8 Q. And there is no designation on this form for
9 cell phone carrier, right?

10 A. No.

11 Q. And would you agree that somebody's cell phone
12 carrier is not a biographical characteristic of that
13 person?

14 A. Yeah.

15 Q. And somebody can be booked in even if they
16 don't have a phone number, right?

17 A. That is correct.

18 Q. So it's not the case that DPD only books
19 people who have phone numbers or cell phone carriers?

20 A. They do ask; they can refuse.

21 Q. Okay. But it's not necessary to the booking
22 process that somebody provide a phone number?

23 A. Correct.

24 MS. STINSON: If I may have just one moment.

25 THE COURT: Sure.

1 MS. STINSON: Detective, I don't have any
2 further questions. Thank you.

3 Your Honor, if I may approach the witness just
4 to the grab that sheet.

5 THE COURT: Okay.

6 Cross-examination.

7 MR. MORALES: No, Your Honor.

8 THE COURT: Okay.

9 Then, sir, thanks again for testifying. Is he
10 needed for anything else in terms of testimony?

11 MS. STINSON: Not from the defense.

12 THE COURT: You can step on down and be
13 excused if you wish. Thanks.

14 Is there additional evidence you wish to offer
15 with respect to this motion, Ms. Stinson?

16 MS. STINSON: No, just argument.

17 THE COURT: Go right ahead then, please.

18 MS. STINSON: Thank you.

19 Your Honor, we filed the suppression motion
20 and my argument is a little more limited because in the
21 People's response, they conceded that any observations
22 that were made of Mr. Seymour after he invoked his
23 rights they would not be seeking to admit. So, really,
24 the only dispute in this case is whether or not the
25 police can use Gavin Seymour's cell phone number and his

1 cell phone carrier as part of this motion.

2 The district attorney has asserted in their
3 response that if something is just a standard booking
4 question that *Miranda* somehow doesn't count. And
5 specifically the case that they rely on out of Colorado
6 is the *Campos* case which is a 2021 case from the
7 Colorado Supreme Court.

8 That court does provide a booking exception,
9 but the issue in that case was whether or not a person
10 providing their name is something that is subject to
11 *Miranda*.

12 And *Campos* held that somebody's actual name
13 because it's a basic piece of identifying information
14 isn't subject to *Miranda*.

15 However, *Campos* and the Supreme Court case
16 that it relies on, *Nunez*, they specifically talk about
17 the fact that somebody's name coming in isn't
18 necessarily subject to *Miranda*. That's not a blanket
19 statement that says, Oh, as long as you characterize
20 something as a routine question it somehow isn't subject
21 to *Miranda*.

22 In fact, *Nunez* specifically says that
23 testimonial evidence that's within the scope of *Miranda*
24 encompasses all responses to questions that if they were
25 asked during trial that would place the defendant in a

1 position of self-accusation, perjury, or contempt.

2 This happens whenever a suspect is asked for a
3 response requiring him to commit to an expressed or
4 implied assertion of fact or belief. In this case,
5 because the vast majority of the evidence in this case
6 is actually digital evidence that relates to a cell
7 phone, asking him to confirm his cell phone number and
8 his carrier, that is not basic biographical information.
9 That is just the fact of his name or the date of birth.

10 Attaching him to a particular account is
11 really the crux of the evidence that they have in this
12 case. So to call that a basic booking question does not
13 mean that it doesn't violate *Miranda*. And in this case
14 there's a direct nexus between that statement and the
15 actual evidence in the case.

16 The booking slip itself doesn't even have a
17 space for cell phone carrier, much less is it a
18 requirement of somebody being booked in. And so for
19 those reasons, based on the very clear task and the case
20 cited by *Campos*, this should be excluded as a violation
21 of Gavin Seymour's *Miranda* rights.

22 THE COURT: Are you agreeing, Counsel, that
23 the response made by the mother certainly is not subject
24 to *Miranda* and would not be subject to be suppressed?

25 MS. STINSON: Well, certainly a statement made

1 by Mother is not necessarily directly attributable to
2 Mr. Seymour; however, the fact that the parents are
3 there, in Colorado we have the extra layer of protection
4 that police cannot question a juvenile without their
5 parents present.

6 So the parents were present, not as
7 independent witnesses, but they were there to
8 essentially assist their son in either asserting or
9 waiving his rights. Both Gavin and his parents, as you
10 can clearly see from the interview, they are both in
11 concert asserting his rights.

12 So because the parents were there on behalf of
13 their son and to either waive or assert his rights, I
14 would say that the statement made by his mother is
15 attributable to him because she's not being interviewed
16 as an independent witness but only in the context of
17 speaking on behalf of her son's legal interest.

18 THE COURT: Is there authority to support that
19 suggestion, that argument?

20 MS. STINSON: Your Honor, I would point the
21 Court to the authority that is cited in our motion about
22 the purpose of that additional constitutional protection
23 in Colorado, the parents being present to protect the
24 rights of their children. It's not directly on point in
25 terms of the facts of the case, but the additional

1 protection that Colorado affords to juveniles is very
2 much relevant to that issue and is cited in the motion.

3 THE COURT: What application, if any, is there
4 to the discovery doctrine with respect to this
5 information?

6 MS. STINSON: Well, if the district attorney
7 or law enforcement has some independent source of
8 getting that, then that's what they need to do. It
9 can't be on the basis of his statement.

10 THE COURT: Like a bazillion search warrants
11 with a request for information. I mean, isn't his phone
12 number something that would be discovered given all
13 that's gone on here?

14 MS. STINSON: Well, if that is the case, then
15 they can certainly introduce it in that manner. But
16 what we don't want to have happen is we go to trial and
17 it comes up, Well, Gavin, himself, confirmed that that's
18 his phone number and that's his cell phone carrier. So
19 that is the privilege against self-incrimination that we
20 are concerned about, is basically presenting to the jury
21 that he agrees that this belongs to him.

22 It is on them to prove that. If they have
23 another way to prove that, they certainly can do that.
24 But that doesn't mean the statement from Gavin can be
25 used.

1 THE COURT: Seems like a pretty
2 inconsequential issue to me.

3 Mr. Morales, your response, please.

4 MR. MORALES: Yes, Your Honor. We already
5 knew his cell phone at that time we asked this question.
6 I simply -- there's two reasons why I did not concede.
7 Number one, I do think it's routine questions so I don't
8 want to ever concede that part. Second, you picked up
9 on the other issue. His mom did respond to the carrier,
10 not Mr. Seymour.

11 Mr. Seymour was wearing, as you will see, a
12 mask. I don't even think his head nods. We certainly
13 can endorse Mom and have her come in and testify about
14 her carrier, and we'll do so.

15 But the fact that he confirmed it also would
16 go to a voluntariness argument should the Court find
17 that there was a violation of *Miranda* and then a
18 subsequent violation of his *Miranda* invocation as well
19 as an attorney. The Court could then independently
20 review the video and say, Yeah, but it was voluntary,
21 there was no promises, no pressure, no threats.

22 So even if his response was in violation of
23 *Miranda*, which is a judicially created protection to
24 prevent from police interrogations without advisement of
25 the rights, the Court could still say his response is

1 voluntary. It's not like anybody was forcing him to
2 confirm his cell phone or to confirm his carrier, and,
3 therefore, if he was to take the stand and say that
4 wasn't my cell phone and that wasn't my carrier, then it
5 would be admissible for voluntariness. And for those
6 reasons, that's why the People did not concede the
7 entirety of the motion.

8 I agree it's inconsequential based on the
9 volumes of information we have about his cell phone.

10 THE COURT: Thanks.

11 MS. STINSON: Your Honor, just briefly with
12 respect to voluntariness, the timing of this interview
13 is really, really marked. Gavin Seymour goes into the
14 room with his parents, and two minutes in, as soon as
15 he's Mirandized, he immediately asserts his rights
16 asking for both an attorney and asserting his right to
17 remain silent. This isn't something where he's engaged
18 in a conversation or he restarts the conversation.

19 He's there under arrest. He's been picked up
20 at his house by the SWAT team. He's in an interview
21 room. There's absolutely nothing about this that would
22 make 16-year-old Gavin be supplying this information.

23 THE COURT: That's not the issue. The issue
24 is voluntariness, is whether some untoward police
25 behaviors that would prompt a statement that otherwise

1 wouldn't have been made, so -- okay. Thanks.

2 MS. STINSON: Thank you.

3 THE COURT: Moving on, motion to suppress
4 evidence unlawfully obtained, geofence, Mac identifier
5 data and cell tower data, I believe, is the next issue
6 on the agenda, yes?

7 MR. JUBA: It is, Your Honor. And I will also
8 reference the joint notice we filed. And I'll try to
9 streamline my comments and tell the Court how I intend
10 to proceed. Numbers 4, 5, 6, 7, 8, and 9, these are six
11 separate motions to suppress relating to six separate
12 warrants.

13 I'm asking just to address all six in my
14 comments here. There aren't any additional witnesses
15 that we're going to call. There was, obviously,
16 extensive briefing on all six of these, so I will -- I'm
17 asking to address all six, and I'll be fairly brief in
18 my comments.

19 THE COURT: Makes sense.

20 MR. JUBA: Your Honor, on what's identified in
21 the joint notice as the third motion and the eighth
22 motion, the motion to suppress evidence unlawfully
23 obtained relating to the geofence warrant and the motion
24 to suppress on evidence unlawfully obtained, I believe,
25 of the home, we didn't have any additional argument or

1 comments aside from what's in the written pleadings.

2 I did want to add some additional comments to
3 the other four warrants. There was a warrant that was
4 essentially a cell phone dump of Gavin's cell phone when
5 he was arrested. They got the contents of the cell
6 phone.

7 There was a cell phone data record warrant
8 getting the data records of the actual cell phone
9 carrier information. There was a warrant relating to
10 what we referred to as accounts, so his Google accounts,
11 his Apple accounts, and his what we referred to as
12 social media, so his Instagram account and Facebook and
13 Snapchat accounts.

14 I wanted to focus on two separate issues here.
15 The first issue is nexus. The second issue is
16 particularity. I'll start with the warrant relating to
17 the cell phone itself. This warrant, I think, really
18 lacks that nexus. What we have here, the Court has
19 already heard and is aware of the extensive amount of
20 information. But what I want the Court to look at and
21 think about is what was known at the time that this
22 particular warrant was issued and what information they
23 were seeking.

24 They had information -- at that point, they
25 had information from the keyword search warrant that at

1 some point this address was entered in on a Google
2 search bar, and they had identifying information from
3 that warrant itself.

4 The lack of the nexus here, though, is how
5 that ties in to Gavin Seymour's cell phone. It gets
6 back to some of the information about the lack of cell
7 phone being used during the actual commission of the
8 crime itself, the lack of a cell phone being used,
9 really, at any step or any stage of this crime or that
10 had come up during the investigation at all.

11 What we have here is we have a crime being
12 committed and a suspect being identified and the
13 allegation that the suspect had a cell phone. That is
14 not sufficient when we're talking about a nexus here.

15 I want to jump a little bit and talk also
16 about the social media accounts here. The social media
17 accounts have the same problem and the same issue here.
18 We can even forget about anything related to a Google
19 account where someone is actually typing information
20 into a search bar.

21 But the warrant relating to the social media
22 is talking about an Instagram account, a Facebook
23 account and a Snapchat account. And you look again to
24 the nexus here, and you look at what information did
25 they have when this warrant was issued and how it

1 relates at all to what information Gavin Seymour had on
2 his Snapchat account or his Facebook account or his
3 Instagram account, and there's none.

4 If you add up all these warrants and you look
5 at all the warrants that were issued at the same time or
6 in the same time frame, what we have here is we have a
7 fishing expedition. At that point, they've identified a
8 suspect and they're trying to get every single piece of
9 information relating to his entire digital world, his
10 entire digital information, regardless of whether
11 there's any connection to this crime or this
12 investigation at all.

13 The Court can also look at the warrant
14 relating to the Apple account. That's in the accounts'
15 motion that we filed. That motion -- or that warrant
16 detailed information requested from a Google account,
17 and it also detailed information requested from Gavin
18 Seymour's Apple account, his iCloud account. And it's
19 the same lack of nexus here.

20 What law enforcement did here is after they
21 identified Gavin Seymour as a suspect, they just listed
22 off every single piece of information that they could
23 possibly find and that they could possibly search into
24 and then asked to search for every single thing in each
25 one.

1 So the first thing I want the Court to note
2 was really the lack of nexus here when we're talking
3 about the information sought and the information that
4 law enforcement had at the time that the warrants were
5 issued.

6 The second thing that I wanted to focus on and
7 talk about was the lack of particularity as well. And,
8 again, the Court is hearing lots of information about
9 just the volumes of digital data that was produced in
10 this case and that was seized through these warrants.

11 Our position is that the warrants themselves
12 also lacked particularity in the types of information
13 that they were requesting.

14 I'll start again with -- not again, but I'll
15 start with call detail records. The call detail records
16 warrant was requesting information over a 60-day period.
17 This is talking about substantially before and
18 substantially after the date of this offense. If the
19 Court looks to the social media and the account
20 information, I think the lack of particularity becomes
21 even more in focus.

22 When you look at social media, for instance,
23 they're looking at his Apple iCloud account -- I'm
24 sorry -- the social media, they're looking, for
25 instance, at his Instagram account. They're asking in

1 each of these instances for Instagram, Facebook,
2 Snapchat, his Apple account and everything else, they're
3 asking for every single piece of information here: ALL
4 records, all communication, all emails sent and
5 received, all forms of expressive communication,
6 basically anything that exists in these accounts, which
7 there is no connection of these accounts in the first
8 place, but they're still asking for every piece of
9 information that exists in these accounts.

10 So our position that I wanted to focus on was
11 the lack of nexus and also really the grave lack of
12 particularity as it relates to the type and the scope of
13 information that was requested in each of these
14 warrants. And I can answer any other questions if the
15 Court has any.

16 THE COURT: I'm good for now. Thank you,
17 Counsel. And I'm going to guide the prosecution a
18 little bit.

19 And you can make, obviously, other arguments
20 you're prepared to make. Here's the question that I
21 have, and it sort of ties into what Mr. Juba was just
22 arguing. And I tend to look at things too
23 simplistically, but let's say that there's a crime and
24 the police say, Gee, I betcha that there's evidence of
25 the crime in the defendant's house. We don't know what,

1 but I betcha there's something in the house that would
2 link him to the crime.

3 I think we can agree that wouldn't be
4 sufficient, that that kind of -- if that went before a
5 judge, the judge would say, No, you need to tell me what
6 you think is in the house.

7 What I discern from the arguments and kind of
8 what I'm curious about is, what's the difference between
9 that and saying he's got a cell phone, there might be
10 something in the cell phone that might relate to this
11 crime? I don't know what it is, but we want to look at
12 it all and see. That's kind of what I'm curious about.

13 MR. MORALES: Totally understand where the
14 Court is going, and I'll do the best to answer it
15 directly.

16 So I think that the probable cause statements
17 in all of the search warrants for the Google accounts
18 for the defendant as well as Apple account, Instagram,
19 Snapchat, the lay out with sufficient statement as to
20 why we believe, if we looked inside this massive amount
21 of data, that we can find evidence of what happened on
22 there because of the connections and links that we put
23 together with the three suspects in this matter.

24 Again, we know from the first keyword search
25 we come back to five identifiable people that used and

1 searched for that are in the time period we expressed.
2 We then go from there. We say -- we start identifying
3 who they are. We then do just basic police work, and we
4 find all three suspects live in Lakewood. All three
5 suspects are known associates. All three suspects are
6 on social media accounts. All three suspects are
7 friending each other, posting pictures of themselves.
8 And all of this is happening at the point in time --
9 this is in a public domain.

10 Again Mr. Seymour, Mr. Bui and ■ have all
11 decided they're going to put all this out there, and
12 everybody is going to be able to find if -- whether they
13 have a warrant or not.

14 So we know that they play football together.
15 They have brothers. They have associates. They're
16 associated with Tonya Bui. So we have all this
17 information.

18 From there, we put that in the search
19 warrants. And because counsel lumps them all together,
20 it's kind of hard to pick which part of each affidavit
21 is in, but we try to do the best we can, but the Court
22 will review it.

23 So then the Court says, Well, how do you then
24 discern and say, Well, how do you get to search for
25 evidence of the August 5th arson homicide from all of

1 that? And it goes back to Mr. Price's comments that
2 digital evidence is different. This is just different.

3 When you go into a search warrant of a cell
4 phone, it's different. You're saying with fair
5 probability and particularity that if I search this cell
6 phone data there will be evidence of communications and
7 there's going to be the likelihood or probability that
8 there will be communications about what happened on
9 August 5th, either before or after.

10 Counsel says, Well, the search warrants are
11 broad and they ask for everything all the time. That's
12 untrue. We ask from July 1st of 2020 until December of
13 2020. We don't ask for anything past that. We ask for
14 after for other reasons.

15 So again, there is a nexus to we've identified
16 they're known associates. We have three suspects
17 outside the victim's home. Three young men appear to be
18 of the same size and stature of these three young men
19 which we articulate in the search warrants. We know
20 they're known associates. We know they hang out a lot
21 and are good friends.

22 Using common sense is what we can use in
23 probable cause. Because when we do probable cause, we
24 don't always use just historical facts stated in the
25 affidavit, but we use generic references or inferences

1 we can make.

2 We make inferences that we can draw from
3 historical data that's put in there as the facts. We
4 can use common sense. Actually, the Court can use
5 common sense when it decides whether or not there is a
6 nexus. And, further, the Court can use the detective's
7 training and experience.

8 So combining all of that, it's reasonable when
9 the detective says, Based on my training and experience
10 and doing these cases in the past, associates that
11 engage in this kind of criminal behavior will
12 communicate with each other on the thing we all carry in
13 our pocket or leave on our desk, and so there is that
14 nexus.

15 Now, going back to the Court's analysis in
16 saying, I think there's something illegal in that house
17 and I want to go look inside that house and find it,
18 well, that's not what we have here. Because what we
19 have here, we actually have information that indicates
20 these individuals were talking, are friends, are
21 associates, and the cell phone data does produce them.
22 So for those reasons, we believe that there is a nexus
23 for these search warrants to be conducted.

24 Counsel then says, Well, they're too broad or
25 they encompass too much. Each one of these search

1 warrants said, Yes, we're going to ask for this data,
2 but we're going to tell you, whoever provides it to us
3 and we're telling the Court that we're going to bring it
4 back to Denver police headquarters, and we're only going
5 to look for any evidence that's related to the arson
6 homicide investigation of August 5th.

7 Each one of these warrants says that in
8 particularity after what they asked for what they're
9 getting. So we do that.

10 And the reason we do that is because Google is
11 not going to go through and do the searches for us.
12 They're not going to go through and pick out everything.
13 It's one of those things that we have to rely on. We
14 have to rely on it.

15 And, quite honestly, if the Court then said,
16 well, you charged Mr. Seymour with possession of drugs
17 on this particular day because he took photographs of
18 it, but that's not what we were investigating of the
19 arson homicide, then the Court would exclude it just
20 like it excludes the cocaine from a search for a house
21 with the guns and a mask. And that's what we do in this
22 case.

23 Google is not going to do it for us. We have
24 to do it, and then the Court and counsel have to come in
25 and say, Judge, we need to exclude this piece of

1 evidence because it wasn't particularly related to the
2 arson homicide investigation and, therefore, it goes
3 beyond the scope of the warrant. Counsel hasn't done
4 that.

5 They're just saying you can't use anything.
6 But that's also not true. Because what we searched for
7 in these accounts is not only whether or not there's
8 photographs, emails, texts, videos, things related to
9 the particular crime, but we also look at things that
10 will -- can we identify this as something that actually
11 Gavin Seymour used. These are the attributions that we
12 have to have in this warrant, to identify that he is the
13 actual person on it, because anybody can say, I didn't
14 do that search or I didn't have that phone.

15 But if you start layering that this is what
16 Gavin Seymour does, if he talks to his girlfriend, if he
17 calls his mom, that he talks to his dad. If he does all
18 those things, then we build up the attribution that we
19 can then authenticate that it was Gavin Seymour to do
20 it. So we use the information to find evidence of the
21 crime directly.

22 We then use it to identify to the person who
23 is using it and the attributions that he was using it
24 around the time the search was going on. If he's having
25 communications with Kevin Bui during that time, even if

1 it's unrelated to the thing, it connects them together
2 in the conspiracy to commit this arson homicide.

3 And for all those reasons it's not overbroad,
4 and there is a nexus for determinant. We don't have to
5 find all evidence of criminal activity in a search.

6 Certain things in a search will be non-criminal at all.

7 You search a house, and you're there to look
8 at a -- for guns and a mask, you're also going to have
9 the warrant, we want to know who lives in that house, so
10 we're going to get mail. We're going to get bills.
11 We're going to get diaries. We're going to get certain
12 information.

13 We might not look at the diary or we might not
14 look at the information, but we're going to attribute it
15 to somebody else. That's exactly what we do with a cell
16 phone search warrant or a Google account or any of this
17 information. We're doing it to develop who belongs to
18 this phone, because these phones can be passed around.
19 They can be used by somebody else. But we can identify
20 it to Gavin Seymour.

21 I hope that answers the Court's questions as
22 best as I can at this point. But that's kind of why we
23 don't believe that these warrants are overbroad; that
24 there is no nexus, and why we believe that they should
25 stand up to judicial scrutiny as to probable cause

1 underneath particularity.

2 And, again, I don't mean to be disrespectful
3 to counsel, but I don't think they understand
4 particularity as the way I think it's defined by our
5 law. Particularity is, was the right carrier -- was the
6 right house searched? Yes. Was it particularized as to
7 what evidence we wanted from it? Yes.

8 We wanted evidence that would identify either
9 the defendant or identify evidence from this crime. And
10 then the Court has to decide whether or not there's
11 probable cause or reasonable probability that we would
12 find the items located in that search.

13 If the Court was to then find that some of the
14 search exceeded that because Google gave us too much,
15 the Court can certainly sever that. But it's not proper
16 to just throw it all out. It's not throwing the baby
17 out with the bath water as we're taught by our evidence
18 instructors.

19 You can actually sever parts and parcels of it
20 that are there that are identified by the defendant that
21 go beyond the scope. Again, none of that has been done
22 in this instance. If I may just have a second.

23 THE COURT: Uh-huh.

24 MR. MORALES: I have nothing further, Your
25 Honor.

1 THE COURT: Mr. Juba, anything else you want
2 to talk about or rebut or --

3 MR. JUBA: Just briefly, Your Honor. I think
4 that the particularity requirement is crucial in this
5 analysis, and it's not just you identify the right
6 house. That's not what that is about.

7 Particularity requirement is to prevent the
8 use of general warrants authorizing wide-ranging
9 rummaging searches in violation of the constitution's
10 prohibition against unreasonable searches and seizures,
11 and that's exactly what happened here.

12 And what the prosecution is saying is, Well,
13 in order to identify whose account this iCloud account
14 is or whose Snapchat account this is, we're going to
15 have to have every single message ever sent from that
16 account, regardless of whether it's in that time period
17 or not, every single email, every single Snap, every
18 single message to and from regardless of who the parties
19 are. And then we're going to have to read through those
20 and then somehow make a determination on who owns that
21 account. That's preposterous.

22 That's exactly what the particularity
23 requirement is talking about. A general rummaging,
24 getting all the records, regardless of what they're
25 looking for here. If they're looking -- if I understand

1 the argument, they need to get every email and every
2 message that's been sent on this account just to be able
3 to identify who owns the account. That's not
4 particular.

5 And I think it's an argument that they're
6 making after the fact because of the broadness of the
7 warrant in the first place. So I would just stand by my
8 previous comments. Thank you.

9 THE COURT: All right.

10 So what else do we need to do today, if
11 anything, other than set deadlines and schedules and
12 such?

13 MR. JUBA: Your Honor, I'll make the following
14 additional requests. The EFF did file an amicus brief
15 in this case that did file a motion -- permission to
16 file that brief as well. The defense did also file a
17 motion to allow them to file that brief.

18 We are asking the Court to accept that and
19 consider that in its consideration of the keyword search
20 warrant.

21 THE COURT: Okay.

22 Mr. Morales, I think you filed an objection,
23 didn't you?

24 MR. MORALES: I did, Your Honor. And, again,
25 I stand by my objection that -- and I would reinforce

1 again how I started today's hearing. This Court is to
2 avoid any extraneous issues when determining a four
3 corners review of the warrant and whether or not there's
4 particularity -- particularity and probable cause.

5 And, therefore, the brief that was filed talks
6 about policy issues, talks about how the impact of this
7 decision could have on everything else. And, quite
8 honestly, that's what I think we even today, as we sit
9 here, know that our judiciary is not supposed to do.
10 We've seen this across our country, we see that
11 sometimes it feels like we're getting courts that are
12 politicalized by policy issues.

13 Policy issues are best decided by -- maybe not
14 best, but should be decided by legislatures in the
15 executive branch and not by judicial officers who are
16 sworn to follow precedent and the law.

17 I would suggest that if the Court was inclined
18 to accept something from EFF as persuasive and take it
19 into consideration, the People probably could find a
20 victim's right act group that could say, We really think
21 that the Fourth Amendment should be allowed to be
22 violated when our loved ones have been murdered and we
23 can uncover who did it by doing a very small intrinsic
24 search of everybody's Google search.

25 I'm assuming the defense would object to that

1 kind of policy and argument as well, and I have nothing
2 further.

3 THE COURT: It strikes me there's two discreet
4 issues, A, whether the Court will allow these folks to
5 file the brief; and, B, how the Court, if at all,
6 considers or uses information contained in the brief.
7 Both seem to be discreet things. And you folks will
8 most certainly be able to discern what I do and don't
9 rely upon and whether that's proper or improper, so I
10 will accept the brief, and how I consider it, if at all,
11 is a wholly different matter.

12 What else?

13 MR. JUBA: Your Honor, the only other issue
14 was we did file also yesterday the motions that briefing
15 schedule and motion to vacate jury trial. Your Honor,
16 we would request until September 16th to file written
17 briefing regarding the keyword search warrant issue.

18 We would request a return date for the Court's
19 ruling on that issue. We are, as a part of that
20 request, also asking to vacate the jury trial with the
21 waiver of speedy trial and a tolling of speedy trial
22 until the return date for the Court's order.

23 THE COURT: Mr. Morales.

24 MR. MORALES: I'm sorry. Ms. Hansen was in my
25 ear at the point in time, so I just want to make sure

1 I'm clear as to what I'm answering to.

2 THE COURT: There's been a motion filed to
3 continue the trial to allow additional briefing to be
4 had and to move the trial date to some date in the
5 future. That's my shorthand for what's being requested
6 here.

7 MR. MORALES: I believe counsel asked for an
8 opportunity to be able to supplement or do a
9 supplementary briefing by September 16th; is that
10 correct?

11 THE COURT: That's what he said, yes.

12 MR. MORALES: And I think the Court is already
13 inclined to say that, but I also think counsel said they
14 wanted to limit it to the keyword Google search. I
15 would ask we be allowed to respond to any additional
16 arguments. The Court did ask me some particular
17 questions about nexus and so --

18 THE COURT: You can always respond, sure.

19 MR. MORALES: So we don't have a problem with
20 the September 16th date if the Court is inclined to
21 grant the motion to continue the jury trial. Obviously,
22 this issue is going to impact how we proceed because if
23 the Court grants the motion to suppress, then we have
24 certain issues as to that. If it doesn't grant it,
25 we're in a posture of trying to get ready for trial in

1 less than a month and a half.

2 So we don't have an objection to vacating the
3 jury trial and continuing with a waiver and a tolling, I
4 believe, until we can get all of these issues resolved
5 if the Court is inclined to do that.

6 THE COURT: Do you see my face contorting
7 uncontrollably about moving the jury trial?

8 MR. MORALES: I didn't see anything about
9 contorting or anything else, Your Honor. I'm trying to
10 divert my eyes away from how the Court is looking at
11 this point in time.

12 I understand that setting a trial with the
13 jury start of October 21st or 28 going into two weeks
14 messes with the Court's schedule. But, clearly, this
15 issue is the one that's going to be determinative of
16 what the trial looks like. But, again, we leave it to
17 the discretion.

18 As far as briefing response, we would like to
19 be able to then respond to any responses by the defense
20 the following Friday, September 23rd. We don't -- any
21 type of -- or September 30th to respond to the defense
22 motions so that we can then respond to their arguments
23 like we would in open court.

24 So I guess that kind of puts it in your court
25 whether or not you're willing to agree to what Defense

1 is requesting.

2 THE COURT: Well, my issue is I'm leaving in
3 January. I'm trying to get these cases done before I
4 leave. We set Mr. Bui's trial for December.

5 This case has kind of been on the fast track.
6 I was kind of surprised, actually, when Mr.
7 Seymour -- that there was more timing built in before
8 speedy trial began to run to take care of some of these
9 things or at least afford time to do these. So in any
10 event, we've been on the fast track on all this.

11 And I guess I kind of figured if I -- I
12 probably shouldn't say much more, although, the thought
13 runs through my brain much of what I do is -- I kind of
14 feel inconsequential; if I suppress evidence, you folks
15 will take it up to the Supreme Court and they'll say
16 those are issues. And if I don't, you will appeal, and,
17 ultimately, the Court of Appeals and Supreme Court will
18 decide *de novo* anyway.

19 Having said that -- I guess, the other thing I
20 should add by way of full disclosure is I endeavor to
21 read all this -- it's pretty -- some of this is -- a lot
22 of it is repetitive, but I have not read the
23 attachments. I haven't dived into the search warrants
24 or the affidavits or any of that, which I've got to do,
25 obviously, which I'm certainly committed to do in

1 advance of trial. And if trial is October 31st and you
2 need rulings of these kinds of things, certainly I would
3 get that done. However, we need to get done. There's
4 always the benefit of having us under the gun so we
5 actually get things done more timely.

6 Hypothetically, if I were to reset the jury
7 trial, when would we be doing that, do you think? Let's
8 say we have a supplemental briefing on September 16th
9 and then a response a couple of weeks after that and
10 then you get a ruling, when would we realistically be
11 able to do this trial, would you think? Any thoughts
12 about that?

13 MR. JUBA: Your Honor, if the Court is setting
14 a return date for the ruling in October, speedy trial is
15 tolled and waived until then, I would imagine it would
16 be after the first of the year.

17 THE COURT: Uh-huh. Like, how close to the
18 first of year, do you think? Do you think we could do
19 it -- do you think we could do it -- am I hearing
20 correctly that both sides think it's a good idea to get
21 the jury trial reset?

22 MR. JUBA: That's our request, Your Honor.

23 THE COURT: Is that what I'm hearing from you
24 as well, Mr. Morales?

25 MR. MORALES: I don't think it's a good idea.

1 I think it's an idea that may be necessary for the Court
2 to make a ruling on this and allowing supplemental
3 briefing. We want Your Honor to hear this. This is,
4 obviously, a case the Court has heard both the probable
5 cause and reverse transfer hearing on, is now the
6 motions -- is going to resolve the motions. So it's
7 ideally we do this before Your Honor chooses to retire.
8 I think --

9 THE COURT: I'm not retiring. I'm just going
10 to civil. Maybe it's the same thing. Who knows.

11 MR. MORALES: I didn't understand what was
12 happening in January.

13 THE COURT: I'm being transferred pursuant to
14 normal periodic rotations back to a civil division.
15 You're still stuck with me for a while.

16 MR. MORALES: Not to be so bold as I've had
17 other judicial officers who got transferred to civil
18 that stayed on cases of this magnitude, but I'm not
19 asking Your Honor to do that.

20 THE COURT: Okay.

21 MR. MORALES: Again, I think this is a
22 decision the Court needs to make, whether or not it can
23 adequately rule in time for us to be prepared to go to
24 trial October 28th.

25 THE COURT: Okay.

1 MR. MORALES: And I know Mr. Bui's case was
2 set for December 9th start.

3 THE COURT: Something like that. Okay. All
4 right. I hear what you're saying, Mr. Morales.

5 I hear what you're saying, Mr. Juba.

6 Let me just -- I'll just tell you what we've
7 got. I mean, and I -- if there's people saying we've
8 got to go to trial, I strenuously object to this, this
9 is terrible, I would maybe think differently. Just so
10 everyone knows, I mean, not next week but the week after
11 we start a two-week first-degree murder trial. Then
12 there's the judicial conference, and then there's a
13 week-long sex assault on a child trial followed the next
14 week by another two-week first-degree murder trial,
15 which then brings us up to October 17th. And there's,
16 of course, multiple sex assault trials after that.

17 So certainly to the extent that there's things
18 you folks want me to look at, I'm willing to do so. I
19 think it probably makes some sense. And I certainly can
20 look at whether or not we can get this case set in
21 January in the fashion where I'm still here, although I
22 winced that I saw I've got a first-degree murder trial
23 January 9th which is about a million years old, which
24 will probably take at least a week, but we can look into
25 that.

1 That being said, Mr. Seymour, do you
2 understand if you ask for a continuance, that would
3 involve two things: It would involve a waiver of your
4 right to a speedy trial, which would afford the State
5 six months from the date of the waiver upon which to
6 resolve your case and would also probably involve a
7 tolling, in other words, there would be certain times
8 that would be excluded from that calculation. So speedy
9 trial probably wouldn't start until X date, a month or
10 whatever down the road. Do you understand all that,
11 sir?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: Are you willing to do that?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: Are you doing that voluntarily?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: All right. With the waiver of
18 speedy trial, I'm going to vacate the -- Mr. Seymour's
19 trial set for October 31st. That would be a heck of a
20 good week then to -- as a deadline to get all the stuff
21 resolved, i.e., we could come back on that date. And if
22 I haven't issued written orders, I would be able to do
23 oral orders on some of this.

24 How do you feel about that? Then we can get
25 the trial reset January, February, something like that.

1 Thoughts?

2 MR. JUBA: Which that would work, yes.

3 THE COURT: Mr. Morales, what do you think
4 about that?

5 MR. MORALES: Yes, that works.

6 THE COURT: Okay. So then we'll see any
7 supplemental briefing with respect to this keyword
8 search will be filed on or before September 16th, yes?

9 MR. JUBA: That's our request, Your Honor.
10 We're asking for a concurrent briefing. We're asking
11 for a single deadline for the defense and the
12 prosecution to file any supplemental argument on
13 September 16th.

14 THE COURT: Okay. And then if there is
15 responses, two weeks after that?

16 MR. MORALES: That's fine.

17 MR. JUBA: Yes.

18 THE COURT: All right. And then let's do
19 this. Why don't we plan to then reassemble on
20 October 31st for a ruling on all this if you don't have
21 a written order before then so there's a time certain
22 where you actually have a ruling if it's not in writing.
23 How do you feel about that?

24 MR. JUBA: We can accept that, Your Honor.

25 THE COURT: Since you were going to be here

1 anyway?

2 MR. JUBA: Correct.

3 THE COURT: How do you feel about that, Mr.
4 Morales?

5 MR. MORALES: Feel great about it.

6 THE COURT: And then I'll make inquiries to
7 see whether or not there's a potential we can
8 either -- so what you folks should probably plan on
9 doing is looking at your schedules for January 17th,
10 January 23rd, January 30th, see what that looks like and
11 see if we can, perhaps, be in a position to get the
12 trial reset then. That would be a relatively, in the
13 grand scheme of things, short delay in this case, at
14 least in terms of getting the trial down, and we can --
15 how do you feel about that?

16 MR. MORALES: We'll make sure we keep those
17 dates open.

18 THE COURT: Okay. They're open for me
19 already, and I can inquire with respect to the civil
20 matters whether there's a potential to hang onto this,
21 and might be a good reason to do so. We good?

22 MR. MORALES: Yes, Your Honor.

23 MS. STINSON: What time on the 31st?

24 THE COURT: 8:30.

25 MR. MORALES: Last thing I'm going to ask

1 request of the defense is that they file an exhibit list
2 with the exhibits that were identified by each one of
3 the witnesses. As we saw, there was certain tabs that
4 were -- it may take a day to get a preliminary
5 transcript from the court reporter and then file the
6 actual exhibits so that we know what the record is
7 reflective of just in case we -- this becomes a issue on
8 a Rule 21 or an appellate issue down the road, we need
9 to have a clear record of that.

10 The People introduced one exhibit which I gave
11 to the court reporter, but we really need to have a
12 clear record as to what exhibits were shown to witnesses
13 and at what point in time.

14 Perhaps they could confer with us before they
15 file those so that our notes also correspond with what
16 happened in this courtroom today.

17 THE COURT: That might be helpful for me to
18 figure all this out in terms of linking things up.

19 MR. JUBA: Your Honor, we're fine doing that.
20 Everything is in the record as prior attachments. I
21 think what would make sense is we can file -- we can
22 confer with counsel and file a notice regarding exactly
23 what was referred to in the testimony and in the
24 argument and where it is in the record or we can just
25 file additional attachments which would be the same

1 things that are already in the record, whichever the
2 Court would prefer, but we can certainly confer and
3 clarify that.

4 THE COURT: Terrific. Great. Anything else?

5 MR. JUBA: No, thank you.

6 MR. MORALES: Nothing.

7 THE COURT: Great.

8 Thanks, folks. This is interesting, and I
9 think we all have our marching orders. Just so we're
10 clear, we've got a speedy trial and that's tolled until
11 October 31st, yes?

12 MR. JUBA: Correct.

13 THE COURT: Great. Thank you.

14 (Proceedings concluded at 3:35 p.m.)
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DISTRICT COURT
COUNTY OF DENVER
STATE OF COLORADO

Case No. 21CR20001

REPORTER'S CERTIFICATE

I, Claudia Booton, Registered Professional Reporter and Official Court Reporter of the District Court, County of Denver, State of Colorado, do hereby certify that I reported the foregoing proceedings in stenographic shorthand at the time and place aforementioned; that, thereafter, I reduced said shorthand notes to transcription form, and that the foregoing transcript is an accurate transcription of said shorthand notes and the proceedings had, to the best of my knowledge and belief.

Dated this 29th of August, 2022, in Denver County, Colorado.

s/Claudia Booton
Claudia Booton
Registered Professional Reporter