EXHIBIT B

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1	UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA				
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3	* * * * * * * * * * * * * * * * * * *)	Criminal Action	
4	Plaintiff	_)	No. 20-00127	
-		,)		
5	VS.)		
6	CHANCE BARROW,)	Washington, DC June 24, 2021	
7	Defendant.)	8:42 a.m.	
8	* * * * * * * * * * * * * * *)	(MORNING SESSION)	
9	mp and			T 7 T	
10	TRANSCRIPT OF JURY TRIAL BEFORE THE HONORABLE COLLEEN KOLLAR-KOTELLY, UNITED STATES DISTRICT JUDGE				
11					
12					
13	APPEARANCES:				
	FOR THE GOVERNMENT:	ELIZABETH		·	
14			ATES A	TTORNEY'S OFFICE	
15		FOR THE 555 Fourth		ICT OF COLUMBIA et, NW	
16		Eleventh E Washington		20530	
17			1, 20		
18	FOR THE DEFENDANT:	EUGENE OHN	. ~		
19		DEFENDE	2	EDERAL PUBLIC	
20		625 Indiar Suite 550	na Ave	nue, NW	
21		Washingtor	n, DC	20004	
22	REPORTED BY:	LISA EDWAF	RDS, R	DR, CRR	
23		Official (Court	·	
		District	c of C	olumbia	
24		Room 6706		n Avenue, NW	
25		Washingtor (202) 354-		20001	

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1 THE COURT: This is the United States versus 08:42:38AM Chance Barrow, 20-CR-127. 08:42:40AM 2 3 Counsel, would you identify yourselves for the 08:42:42AM record. 08:42:45AM 4 5 MS. ALOI: Good morning. Liz Aloi and Amanda 08:42:45AM Vaughn for the United States. 08:42:50AM 6 THE COURT: Good morning. 7 08:42:51AM MR. OHM: Eugene Ohm on behalf of Mr. Barrow. 08:42:56AM 8 9 Good morning, your Honor. 08:42:58AM THE COURT: Good morning. 08:42:58AM 10 A couple things: I brought you in early because 08:42:59AM 11 it dawned on me there were a couple of instructions to go 08:43:01AM 12 08:43:04AM 13 over. I have left the instruction relating for them to 08:43:04AM 14 no longer consider the national security clearance. 08:43:11AM 15 THE COURTROOM DEPUTY: (Connecting public 08:43:19AM 16 08:43:23AM 17 telephone line.) THE COURT: We'll wait until after we start the 08:43:24AM 18 19 instructions to do that, Dorothy. I want to get moving. 08:43:34AM 20 I realize, Mr. Ohm, you had insufficient evidence 08:43:34AM 08:43:44AM 21 there. They didn't give any reason, and they're not required to. So I'm not going to have them speculate as to 08:43:47AM 22 23 why that got dropped out. The point is, it's no longer 08:43:49AM there. I want to make sure they're not looking for this or 08:43:52AM 24 08:43:56AM 25 thinking about it.

08:43:56AM 1

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The other one is the defense theory, which I had done a short one. You objected, so I did a longer one.

And the problem with what you had proposed -- and I worked from the second one -- for the defense theory, frankly, your defense theory is insufficient evidence. There isn't identification or entrapment or something that we would put something in. There isn't any particular additional evidence you're focusing on. What you're focusing on is really that the Government didn't prove their case.

It's a defense theory as an instruction. It's not argument. The way you wrote it is like it's argument. I read it, and it's an instruction. So it needs to be put in the language of an instruction.

So what I've done is started off with what you said, which was that he's not guilty -- asserts he's not guilty, and your theory that there's insufficient evidence to prove beyond a reasonable doubt each of the required elements.

The specific language is what you focused on in your version with some annotations and things in there, which is argument and not something the Court would give.

So you can take a look at it. It's either nothing or this.

So I'll let you take a look at it in terms of doing it. But it picks up all of the things that you

1 08:45:26AM 08:45:31AM 2 3 08:45:32AM 4 08:45:36AM 5 08:45:39AM 6 08:45:43AM 7 08:45:46AM 8 08:45:49AM 9 08:45:52AM 10 08:45:55AM 08:45:56AM 11 12 08:45:58AM 13 08:46:02AM 08:46:02AM 14 08:46:05AM 15 08:46:08AM 16 08:46:12AM 17 08:46:14AM 18 19 08:46:20AM 20 08:46:23AM 21 08:46:34AM 08:46:37AM 22 23 08:46:38AM 08:46:43AM 24

08:46:48AM

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focused on specifically. Just put it in instruction language.

MR. OHM: Your Honor, it's certainly preferable to the one that the Court sent out yesterday. It's our position that the first defense -- the theory-of-the-defense instruction with facts is the most appropriate one. But we'll accept this over nothing.

THE COURT: As I said, what you wrote was more like an argument. So I'm not giving that.

The next thing --

MR. OHM: Your Honor, some judges, I know, also deal with that problem by just saying "the defense contends" in the beginning.

THE COURT: Well, I have it as "it asserts." But it still is -- the way you presented it, it still is more casual in terms of not being an instruction. It is part of the instructions, so that's why I'm giving it this way.

In terms of exhibits, there will be a signed sheet that you need to sign to indicate what's going back. I want to clarify for the record that the NCIS notes are going to be 13-A. They were not admitted. But I want to make sure on the record that that's what they are.

The email with Trevor Nelson -- the email with the Trevor Nelson chain is 13. These are defense exhibits.

They wound up as both being 13. So I'm making a distinction

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between 13 and 13-A. 13-A, which is the NCIS notes, didn't get admitted. So they're not going to get that.

There will be a sign-in sheet before the exhibits are sent back to the jury for you to look at them and make sure you agree this is what got admitted and is going back there.

electronically, if you have them set up electronically with nothing else on them in terms of their only being the things that are admitted -- so they're copies of the exhibits -- we can consider if people look at it and send it back because they've got big screens. Otherwise, they're looking at paper, which has to be passed around. So it's something you may want to consider.

We should talk to John Cramer, Dorothy, when we're finished with the instructions for him to help us as to how it can be shown. Because if somebody back there -- we've got a clean laptop. They can just show it and everybody can look at them. But it should be only the exhibits that were admitted.

My understanding is that you all just had a laptop with nothing else on it. But I could be wrong. That's usually what they do. Yes? No?

MS. ALOI: Yes.

THE COURT: I'll let you confer, both sides, with John Cramer when he comes as to what's to be sent back.

1 08:48:17AM 08:48:21AM 2 08:48:24AM 3 4 08:48:26AM 5 08:48:29AM 08:48:31AM 6 08:48:33AM 7 08:48:38AM 8 9 08:48:41AM 10 08:48:45AM 08:48:46AM 11 12 08:48:51AM 13 08:48:52AM 14 08:48:54AM 08:48:57AM 15 08:49:00AM 16 17 08:49:03AM 18 08:49:06AM 19 08:49:08AM 08:49:12AM 20 21 08:49:15AM 22 08:49:17AM 08:49:19AM 23 08:49:22AM 24

08:49:23AM 25

Obviously, you will have paper copies, but that doesn't get easily sent around for everybody to take a look at it, because they've got big screens. It's a courtroom just like this.

Ms. Aloi, did you want to say something?

MS. ALOI: No. We're all squared away.

THE COURT: So I'm assuming the same thing,

Ms. McElvein, that you've got the same thing in terms of

your exhibits that can be done electronically without too

much trouble?

MS. McELVEIN: Yes. I can certainly do that without too much trouble.

THE COURT: We'll just double-check with Mr. Cramer so nothing goes back that creates a problem at a later point. But, anyway, they've got big screens like we have here. It's exactly the same setup. And so it's just easier for all of them to take a look at documents that are at issue.

You should know that their lunches are at 12:30, because that's what the kitchen does.

As I understand it, they're doing -- what are they doing? They're bringing up sandwiches? Dorothy, what's happening with them? They're not doing any lunch?

THE COURTROOM DEPUTY: Everybody just buys their own lunch. The marshal takes them downstairs all together.

1 THE COURT: Oh, they go down. That's what I was 08:49:26AM 08:49:28AM 2 asking. So I can tell them correctly, just tell me, what 08:49:29AM 3 happens at lunch? 08:49:31AM 4 5 THE COURTROOM DEPUTY: The CSO will come up and 08:49:32AM get them, take them downstairs for them to get their lunch 08:49:35AM 6 7 and bring it back up. 08:49:38AM THE COURT: I wasn't sure what they were going to 08:49:40AM 8 9 do. 08:49:42AM At the end of this, we'll have a discussion as 08:49:42AM 10 well as to where counsel is going to be while we have them 08:49:49AM 11 deliberating. 12 08:49:53AM I would stay in the courthouse, at least 08:49:54AM 13 08:49:57AM 14 initially. If we're going to get notes, we tend to get them at the beginning. If you're going to be out of the 08:50:00AM 15 courthouse, we need to have a cell phone or some way to know 08:50:02AM 16 08:50:06AM 17 where you are. You can't be too far. We only call one 08:50:11AM 18 person for each side. 19 Mr. Barrow, you should stay with your lawyer so 08:50:15AM we're not trying to find you as well. 08:50:17AM 20 21 THE DEFENDANT: Yes, your Honor. 08:50:19AM THE COURT: The break is at 12:30. And they come 08:50:19AM 22 back roughly -- they'll be finished with their lunch around 08:50:22AM 23 1:30. If you're going to go someplace during that period of 08:50:26AM 24

08:50:30AM 25

time, check in with the courtroom to make sure they haven't

1 sent us -- they tend to send notes or verdicts just before 08:50:35AM lunch or right after lunch. So if we're not able to get you 08:50:40AM 2 and you're off someplace, it sort of delays the matter. 08:50:42AM 3 4 So I don't know where you're going to hang out, 08:50:46AM 5 the courthouse, or if you're going someplace else. Anyway, 08:50:48AM 6 just be prepared to let us know at the end. 08:50:53AM I think that's it. Let me just look at one other 08:50:59AM 7 thing. 08:51:02AM 8 9 There will be a CSO that will be out of the 08:51:07AM 10 courtroom. They have to communicate with us with notes. 08:51:09AM 08:51:12AM 11 They will get two copies of the verdict form. They'll send a note back when they reach a unanimous verdict 12 08:51:15AM 13 with the verdict form. They keep one; we get one. We bring 08:51:20AM them out, ask them -- the foreperson to stand. 14 08:51:25AM So we need to have the foreperson have a hand mic 08:51:29AM 15 to be able to do the verdict when we get it, Dorothy. 08:51:33AM 16 17 THE COURTROOM DEPUTY: Okay. 08:51:37AM 08:51:38AM 18 THE COURT: And then if there's a poll, we'll have 19 to hand it around to each of the jurors, assuming that's 08:51:41AM what happens. 08:51:46AM 20 21 Let me see what else there is. 08:51:47AM 08:51:49AM 22 I'm going to say all of this again so they will 23 not have missed anything. 08:51:52AM Do we have all the jurors? 08:51:53AM 24 08:52:00AM 25 THE COURTROOM DEPUTY: No.

1 THE COURT: Any other aspects of this, Dorothy, we 08:52:03AM need to go over, since it's not our usual jury room? 08:52:06AM 2 THE COURTROOM DEPUTY: No. 08:52:09AM 3 THE COURT: Now we can get the line in the 08:52:37AM 4 5 overflow courtroom set up. 08:52:42AM 08:52:43AM THE COURTROOM DEPUTY: (Connects public telephone 6 line.) 7 08:52:50AM THE COURT: You'll see we did a table of contents 08:52:51AM 8 9 so they can find things more easily in terms of the pages. 08:52:54AM MR. OHM: Your Honor, for the one about the 08:53:20AM 10 08:53:23AM 11 national security, for the revocation of national security clearance issue, is that in here? 12 08:53:27AM THE COURT: Yes. 08:53:29AM 13 08:53:30AM 14 MR. OHM: What page is it on? THE COURT: Hold on. 08:53:33AM 1.5 It's Page 21. 08:53:39AM 16 08:53:40AM 17 MR. OHM: Okay. Thank you. THE COURT: Is the phone working? 08:56:55AM 18 19 THE COURTROOM DEPUTY: Yes. 08:56:57AM THE COURT: Is the overflow courtroom working or 08:56:57AM 20 21 not? 08:57:00AM THE COURTROOM DEPUTY: Yes. It should be. 08:57:01AM 22 23 MR. OHM: Your Honor, just so the Court knows, we 09:02:21AM don't have an extra flash drive, but we're trying to get 09:02:23AM 24 somebody from the office to run one over. So we'll have 09:02:26AM 25

1 10:23:13AM 10:23:17AM 2 3 10:23:23AM 4 10:23:24AM 5 10:23:26AM 6 10:23:31AM 7 10:23:33AM 8 10:23:33AM 9 10:23:35AM 10 10:26:18AM 01:19:30PM 11 12 01:19:30PM 01:19:43PM 13 01:19:47PM 14 01:19:51PM 15 01:19:54PM 16 01:19:54PM 17 01:19:57PM 18 19 01:20:03PM 01:20:04PM 20 01:20:10PM 21 01:20:15PM 22 01:20:18PM 23 01:20:18PM 24 01:20:21PM 25

Do they need some assistance with the electronic stuff going in there, into the other courtroom, do you think, Dorothy?

THE COURTROOM DEPUTY: I don't know, Judge. I need to find out who's the foreperson, if they know how to use the equipment. I haven't had time to do any of this yet.

THE COURT: That's fine. That's why I'm suggesting we get help.

(Thereupon a recess was taken, after which the following proceedings were had:)

THE COURT: We received a jury note. It was just shortly before they went to lunch. So I figured the easier thing to do was to come back at 1:15. Their lunch is 12:30 to 1:30 and that way everybody could get lunch, including them.

So the note reads: "As it relates to Count 1 only, please clarify what evidence refers to 'supplementary materials'?

"Is it only the USAJobs application and the documents uploaded (SF 50, résumé, et cetera) or does it include the TIGTA portion that was completed and submitted as well?"

Now, the Government has sent something back that indicates that this is a factual issue for the jury and they

1 should be making the decision. 01:20:27PM I frankly somewhat disagree. The indictment 01:20:30PM 2 3 indicates in it precisely what the supplemental materials 01:20:34PM 01:20:41PM 4 are. It's the résumé, the SF 15, which is the veterans' 5 preference and the SF 50. It did not include the TIGTA 01:20:45PM 01:20:49PM 6 portion. So I'm not sure what documents they're asking to 01:20:50PM 7 look at. If it's fairly clear-cut from the indictment what 8 01:20:51PM 9 they are, I don't see any reason not to tell them as opposed 01:20:54PM to them trying to figure out which documents are there. 01:20:57PM 10 01:21:00PM 11 Mr. Ohm? Do you agree with me or them? 01:21:03PM 12 MR. OHM: I agree with you, your Honor. 01:21:06PM 13 THE COURT: So would you agree it doesn't include 01:21:10PM 14 TIGTA? 15 MR. OHM: Yes. I think it's pretty clear that it 01:21:10PM doesn't. 01:21:12PM 16 01:21:12PM 17 THE COURT: Government? 01:21:13PM 18 MS. ALOI: Your Honor, that's fine. 19 THE COURT: That's fine? 01:21:15PM 20 MS. ALOI: Yes. 01:21:16PM 01:21:16PM 21 THE COURT: So the note that will go back will be 01:21:19PM 22 something like: In response to your jury note as to Count 1 23 regarding which documents are involved in the referenced, 01:21:24PM quote, "supplemental materials," it is the SF 50, résumé, 01:21:27PM 24 01:21:40PM 25 et cetera. I'll just put it the way they've done it and not

01:21:45PM 1 the TIGTA portion. Do we need to say anything else? 01:21:52PM 2 3 MS. ALOI: Not from the Government's perspective. 01:21:57PM THE COURT: Does that work? 01:21:59PM 4 01:22:00PM 5 MR. OHM: I'm sorry. Did the Court say it was 01:22:01PM 6 going to delineate the materials? THE COURT: I'm sorry? 01:22:03PM 7 MR. OHM: Did the Court say it was going to 01:22:04PM 8 9 delineate the materials? 01:22:05PM 10 THE COURT: I'm just going to follow their 01:22:06PM language. So to which documents are included in the 01:22:08PM 11 referenced supplemental materials, it is the SF 50, résumé, 01:22:12PM 12 01:22:18PM 13 et cetera. So I've used it the way they've described it and 01:22:18PM 14 01:22:21PM 15 not -- it does not include the TIGTA portion that was 01:22:24PM 16 completed and submitted as well. So I'm just using their 01:22:28PM 17 language. 01:22:28PM 18 MR. OHM: That's fine. I guess part of me says, is "et cetera" only the SF 15? 19 01:22:32PM 01:22:35PM 20 THE COURT: As far as I know, it's only the SF 15, according to the indictment. That's what I went back and 01:22:38PM 21 looked at. 01:22:40PM 22 23 01:22:40PM MR. OHM: Right. THE COURT: Was the veterans' preference put in? 01:22:40PM 24 01:22:45PM 25 I can't remember. Was that part of it? I know there was

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some discussion, but I don't know --
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                           MR. OHM: I believe we put the whole application
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                packet in.
                           MS. ALOI: It was not in the Government's
01:22:51PM
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                exhibits, but Mr. Ohm supplemented it.
01:22:53PM
                           THE COURT: Did it include that as well?
01:22:56PM
          6
                           MR. OHM: Yes.
01:22:58PM
                           THE COURT: So it should be the SF 50, résumé and
01:22:59PM
          8
        9
                SF 15?
01:23:01PM
                           MR. OHM: Yes.
        10
01:23:03PM
                           THE COURT: We might as well have them look at the
01:23:05PM
        11
        12
                right thing.
01:23:07PM
                           So it's not the TIGTA portion completed and
01:23:08PM 13
                submitted as well, using their language.
01:23:10PM 14
                           We're going to type it quickly and then print it
01:23:38PM 15
                out if we can. If we can't, we'll just go back to chambers
01:23:42PM 16
01:23:48PM 17
                and do it.
01:29:44PM 18
                           THE COURTROOM DEPUTY: (Tenders document to
                counsel.)
01:29:47PM 19
                           THE COURT: So that's the printed copy that's
01:29:47PM 20
01:29:49PM 21
                going to go back. I'll sign it. Just so you have it for
                the record.
01:29:55PM 22
       23
                           So it uses their language in terms of doing it.
01:29:56PM
                Is that all right?
01:29:58PM 24
01:29:58PM 25
                           MR. OHM: Yes, your Honor.
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1 THE COURT: Government? 01:29:59PM MS. ALOI: Yes. This is fine. 01:29:59PM 2 THE COURT: Okay. What I would suggest is you not 01:30:01PM 3 go too far away just in case we get another note back 01:30:11PM 4 5 afterwards. Or if you're going to stay in the courthouse 01:30:15PM but don't want to sit here forever, just let us know where 01:30:25PM 6 you'll be. There are tables out in the atrium if you want 7 01:30:28PM to sit there. 8 01:30:37PM 9 MS. ALOI: Yes, your Honor. 01:30:41PM MS. VAUGHN: Thank you, your Honor. 01:30:41PM 10 01:30:42PM 11 (Thereupon a recess was taken, after which the following proceedings were had:) 12 02:13:18PM THE COURT: I told you we'd get another note. 02:13:18PM 13 Let me read this one into the record: 02:13:22PM 14 15 "For Count 1, as part of 'job application,' are we 02:13:26PM to consider Questions 1 through 17 from Pages 1 to 3 of 02:13:35PM 16 Government's Exhibit No. 3?" 17 02:13:40PM 02:13:43PM 18 I have looked at Government's Exhibit No. 3, which 19 is the application. We can either say something like 02:13:53PM 20 "Nothing's excluded" or that they should consider the whole 02:14:01PM 21 document. I wouldn't get anything more specific than that, 02:14:03PM 02:14:06PM 22 unless we excluded something. 23 02:14:12PM MS. ALOI: Your Honor, Mr. Ohm and I don't agree on much, but I think we agree the answer to this question is 02:14:14PM 24 02:14:17PM 25 yes.

02:14:18PM 1 MR. OHM: That's true.

02:14:19PM

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THE COURT: Okay. Then we'll send it back short and sweet.

MS. ALOI: Your Honor, it might be worth also pointing the jury to the wire fraud instruction that you gave. I fear there might be some confusion because of the box that was cut and pasted from the indictment into the instruction, maybe inadvertently suggesting they need to find something about every particular document listed instead of the requirement as set forth in your instructions, that they simply need to find that the wire moved interstate. It seems like the way in which the box was cut and pasted from the indictment may be generating some confusion.

THE COURT: Well, what we could do is just simply suggest that they should read the full instruction on wire fraud or something like that. I don't know.

MR. OHM: Your Honor, as I was telling Mr. Barrow, I think it's entirely speculative. We have no idea what they're thinking or what they're doing. We do know, though, they know how to ask a question.

THE COURT: Right.

MR. OHM: So I would just say that the appropriate answer right now is "yes," and they'll ask if they need more.

02:16:12PM 1 THE COURT: I think they're just making sure that they're looking at the right documents. 02:16:59PM 2 02:18:40PM 3 So the note would say, "Dear Jurors: In response 02:18:45PM 4 to the juror note from your foreperson regarding the 'job 02:18:48PM 5 application, 'the answer is Yes, "capitalized, "as to your 02:18:53PM 6 question, 'Are we to consider Questions 1 through 17 from Pages 1 to 3 of Government's Exhibit 3?'" 02:18:57PM 7 Is that acceptable? So it picks up with their 02:19:00PM 8 9 language. 02:19:03PM 10 MR. OHM: Yes, your Honor. 02:19:03PM 02:19:05PM 11 MS. ALOI: Could we take a look? Are we drafting something? Could we take a look at it? Ms. Vaughn is 02:19:07PM 12 13 coming. 02:19:11PM THE COURT: Look at what? 02:19:11PM 14 15 MS. ALOI: Are you putting it on paper as you did 02:19:12PM 02:19:14PM 16 the last time? THE COURT: Yes. I'm typing it out, signing it 02:19:15PM 17 02:19:17PM 18 and it goes back. I'll show it to you. It's the same format as we did with the last note. 19 02:19:21PM 02:19:23PM 20 MS. ALOI: Okay. 02:19:24PM 21 THE COURT: I just wanted to type it out. (Thereupon, Ms. Vaughn entered the courtroom and 22 23 the following proceedings were had:) 02:19:34PM THE COURT: We'll send it to Dorothy and we'll 02:19:34PM 24 25 02:19:36PM print it out in the courtroom like we did last time and

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02:19:38PM
          1
                you'll get a copy of it. I just didn't want to print it if
                you had a different issue about it.
02:19:44PM
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          3
                           THE LAW CLERK: Dorothy, I just sent it to you.
02:20:57PM
                           THE COURT: If you could print it out like we did
02:20:59PM
          4
          5
                last time.
02:21:01PM
02:21:35PM
          6
                           THE COURTROOM DEPUTY: (Tenders document to
          7
                counsel.)
02:21:38PM
                           THE COURT: Look it over and see if that's okay.
          8
02:21:38PM
         9
                Then we'll send the answer back.
02:21:40PM
        10
                           MR. OHM: That's okay from our perspective.
02:21:42PM
                           MS. ALOI: That's fine. Thank you.
02:21:47PM
        11
                           THE COURT: All right. I wouldn't go too far.
02:21:49PM
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                           (Thereupon a recess was taken, after which the
02:22:00PM
         14
                following proceedings were had:)
         15
                           (Morning session concluded.)
         16
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1	<u>CERTIFICATE</u>			
2				
3	I, LISA EDWARDS, RDR, CRR, do hereby			
4	certify that the foregoing constitutes a true and accurate			
5	transcript of my stenographic notes, and is a full, true,			
6	and complete transcript of the proceedings produced to the			
7	best of my ability.			
8				
9				
10	Dated this 24th day of June, 2021.			
11				
12	/s/ Lisa Edwards, RDR, CRR Official Court Reporter United States District Court for the District of Columbia			
13				
14	333 Constitution Avenue, NW, Room 6706 Washington, DC 20001			
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