

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS  
SAN ANTONIO DIVISION

1 UNITED STATES OF AMERICA, :  
2 Plaintiff, :  
3 vs. : No. SA:15-CR-00271  
4 : San Antonio, Texas  
5 MARGARITA MONIR HOSSEINI, : September 19, 2017  
6 Defendant. :  
\*\*\*\*\*

7  
8 TRANSCRIPT OF JURY TRIAL  
9 BEFORE THE HONORABLE FRED BIERY  
10 UNITED STATES DISTRICT JUDGE

VOLUME 1

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JURY TRIAL

I N D E X

<b>WITNESS :</b>	<b>DR</b>	<b>CR</b>	<b>RDR</b>	<b>RCR</b>
ERICA GONZALEZ	4	19	22	26
FABIO S. RODRIGUEZ	28	48	50	
VANESSA RODRIGUEZ	52	88	96	
TERRY MACK	100	125	128	130
<b>MOTION</b>	<b>132</b>			
<b>WITNESS :</b>				
MARIO RUIZ	142	156	161	165
ANITA PRICE	167	197		
GERALD R. SMITH	201	227		
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## JURY TRIAL

1 (Tuesday, September 19, 2017, in open court at 8:30 a.m.)

2 THE COURT: Good morning, ladies and gentlemen.

3 We have Ms. Hailey here is substituting or assisting Mr.

4 Poage who is on a well-deserved, preplanned vacation.

5 She'll be here today, tomorrow, part of Thursday and then

6 Mr. Myers and Ms. Rangel will be here Thursday, Friday.

7 Mr. Surovic, anything outside the presence before we start?

8 MR. SUROVIC: Not from the government, Your Honor.

9 THE COURT: Mr. Barnes.

10 MR. BARNES: Not from the defense.

11 THE COURT: We have one juror, hopefully, we  
12 haven't heard from him. And Mr. Surovic, why don't you go  
13 ahead and get your witness up here and ready to go.

14 (8:31 a.m.)

15 \* \* \*

16 (8:37 a.m.)

17 MR. BARNES: Your Honor, I may have one issue. I  
18 didn't see the government strike sheet yesterday. It may be  
19 the case that the government disproportionately struck  
20 women, so I would have a Batson challenge if that's the  
21 case.

22 THE COURT: All right.

23 MR. SUROVIC: Your Honor, for the record, I would  
24 advise the Court and I've just advised Mr. Barnes that in  
25 fact this was an unusual strike situation for the

JURY TRIAL

1 government. I didn't strike anybody in the primary panel.  
2 I only struck one alternate and that was a male.

3 THE COURT: Okay. All right. Well, that's fine.

4 MR. BARNES: Thank you, Your Honor.

5 THE COURT: The record is made. Okay, which juror  
6 is it that's not here?

7 (8:37 a.m.)

8 \* \* \*

9 (Jury enters courtroom at 8:41 a.m.)

10 \* \* \*

11 COURT SECURITY OFFICER: All rise for the jury.

12 THE COURT: All right. Good morning, ladies and  
13 gentlemen. You all may be seated.

14 Ma'am, if you'll raise your right hand please.

15 These members of the jury are seeking the truth about what  
16 happened in this case. As they do that, will you promise to  
17 tell the jurors the truth, the whole truth and nothing but  
18 the truth?

19 THE WITNESS: Yes, I do.

20 THE COURT: All right. You may be seated. Mr.  
21 Surovic, if you'll introduce your next witness please.

22 MR. SUROVIC: Yes, Your Honor.

23 EXAMINATION

24 BY MR. SUROVIC:

25 Q. Ma'am, would you state your full name please?

ERICA GONZALEZ - DIRECT

1 A. Erica Gonzalez.

2 Q. And where do you currently live?

3 A. I currently live in Roma, Texas.

4 Q. And are you married?

5 A. Yes, sir, I am.

6 Q. What is your husband's name?

7 A. Fernando Gonzalez.

8 Q. Now, in the period of 2010, where did you live?

9 A. In San Antonio, Texas.

10 THE COURT: Ma'am, if you'll pull that closer to  
11 you, you won't have to lean over like that, be more  
12 comfortable. Go ahead.

13 BY MR. SUROVIC:

14 Q. Were you married to Fernando at that time?

15 A. Yes, sir.

16 Q. How are you currently employed?

17 A. I'm unemployed.

18 Q. You have children at home, is that correct?

19 A. I do. I have three children.

20 THE COURT: Excuse me, that's work.

21 MR. SUROVIC: I understand, Your Honor.

22 THE WITNESS: Full-time work.

23 BY MR. SUROVIC:

24 Q. Back in 2010, you were employed here in San Antonio, is  
25 that correct?

ERICA GONZALEZ - DIRECT

1 A. Yes, sir, I was.

2 Q. Who was your employer?

3 A. Time Warner Cable.

4 Q. What did you do for Time Warner Cable?

5 A. I was a sales representative.

6 Q. How long did you work for Time Warner?

7 A. Approximately ten years.

8 Q. Until you moved down to Roma?

9 A. That is correct.

10 Q. What does your husband do for a living?

11 A. Currently he's a truck driver. Previously he was doing  
12 landscaping, fencing, labor work.

13 Q. What was the nature of his business, what did he call  
14 his business?

15 A. Right now?

16 Q. Back in 20 --

17 A. Gonzalez Fence and Landscaping.

18 Q. Did you, in fact, sort of manage -- the business was in  
19 your name, was it not?

20 A. That is correct.

21 Q. And you sort of managed the finance side of it and your  
22 husband did the labor for the landscaping?

23 A. That is correct, he managed only the labor, I managed  
24 the finance.

25 Q. Have you ever heard of a business by the name of Rapid

ERICA GONZALEZ - DIRECT

1 Return Tax Service?

2 A. Yes, sir.

3 Q. How did you first hear about it?

4 A. I was employed previously at West Corporation and there  
5 was a co-worker that said that she was the cousin of  
6 Ms. Hosseini and she was recommending a lot of my co-workers  
7 and myself to go to her because she would have good refunds,  
8 so that's how I learned about her. I mean she was not on my  
9 side of town. That's how I learned about her.

10 Q. And did you ultimately meet Ms. Hosseini?

11 A. That is correct.

12 Q. By the way, is Ms. Hosseini here in court today?

13 A. Yes, sir.

14 Q. Could I have you point to her and describe what she's  
15 wearing for the record?

16 A. That's her with the light pink or light purplish.

17 THE COURT: Noted.

18 BY MR. SUROVIC:

19 Q. Do you recall when you first started going to  
20 Ms. Hosseini and Rapid Return Tax Service?

21 A. I don't recall exactly the date, but I believe it was  
22 back in 2008, maybe 2007, 2008.

23 Q. Okay. And during that period of time, did you always  
24 use her or did you go visit other people?

25 A. I actually visited another person, but my refund was so

ERICA GONZALEZ - DIRECT

1 low that I decided to come back to her because she was -- it  
2 was advised to me that she went to school all year round and  
3 she knew how to get every refund that was supposed to be  
4 given to us, so she'd give me a good refund, I came back to  
5 her and not use other persons anymore.

6 Q. So you went to her because you thought she was  
7 knowledgeable?

8 A. That is correct.

9 Q. Was it your concern when you went into business to try  
10 and cheat the government, cheat the IRS by taking claims  
11 that you weren't entitled to?

12 A. No, sir.

13 Q. Did you rely on her in order to tell you what you could  
14 deduct and couldn't deduct?

15 A. That is correct.

16 Q. I have placed two folders in front of you. One is a  
17 folder marked 18-1, Government Exhibit 18-1. The other one  
18 is Government Exhibit 18-3. I would ask you to take a look  
19 right now at Government's Exhibit 18-1. If you look at the  
20 top portion there, this is entitled Form 1040 United States  
21 Income Tax Return for 2010, is that correct?

22 A. Yes, sir.

23 Q. Is that one of the years that you went to visit  
24 Ms. Hosseini?

25 A. Yes, sir.



ERICA GONZALEZ - DIRECT

1 Q. The top of it indicates Fernando Gonzalez, Erica  
2 Gonzalez, it's got some Social Security numbers, an address  
3 in San Antonio. Is that information all yours and your  
4 husband's?

5 A. Yes, sir, that is correct.

6 Q. So this would be your tax return for the period for  
7 year 2010, is that correct?

8 A. Yes, sir.

9 Q. And it lists at that point two daughters?

10 A. At this point, yes, I had two daughters.

11 Q. Going to attract your attention to line 12. Line 12,  
12 business income or loss indicates that you had a loss of  
13 \$35,080. Were you aware that one of your businesses cost  
14 you \$35,080?

15 A. No, sir.

16 Q. Your total income during that period of time was about  
17 almost \$57,000, is that correct?

18 A. Yes, sir.

19 Q. So this loss would have been a significant hit on your  
20 income, more than half?

21 A. That's correct.

22 Q. Let's turn to page two of that tax return and at the  
23 bottom you can see the third party designee is Margaret  
24 Hosseini and paid preparer is Margaret Hosseini, is that  
25 correct?

ERICA GONZALEZ - DIRECT

1 A. That is correct.

2 Q. If we could go to page eight and that's a page that's  
3 entitled Schedule C. Did you find that? Up in the upper  
4 left-hand corner it will say Schedule C Form 1040. I don't  
5 know if you can see the screen over here, that's what it  
6 will look like.

7 A. I'm sorry, I cannot see the screen, it's too far.

8 Q. I was afraid of that.

9 A. But I believe profit or loss from business?

10 Q. Correct.

11 A. Okay. I'm on the correct page.

12 Q. And the top of that, landscaping, Gonzalez Fence and  
13 Landscaping, is that your husband's landscaping business?

14 A. That used to be our business, yes, sir.

15 Q. And again you were the person who managed that  
16 business, is that correct?

17 A. That is correct.

18 Q. If we turn to the next page, at the bottom in part  
19 five, it says mobile phone business use, \$1,560?

20 A. Yes, sir, I see that.

21 Q. Could you tell us how was the mobile phone used in the  
22 landscaping business?

23 A. So we have two phones, a family plan for me and my  
24 husband. One of the phones that he managed is for business  
25 and personal use. Pretty much when we did this year

ERICA GONZALEZ - DIRECT

1 preparation we had got a new phone, so they would put the  
2 amount of the up front cost of the phone itself -- like back  
3 in the days there was two-year contracts, you paid \$300 for  
4 the phones and the estimated amount, so I guess what she was  
5 doing, she was averaging --

6 Q. I'd ask you not to guess what she was doing, just tell  
7 us what you told her as far as your phones.

8 A. Okay. The amount up front for the phones and my  
9 monthly bill times 12.

10 Q. You said that you had a phone and your husband had a  
11 phone?

12 A. That is correct.

13 Q. Did you give her the amount for the entire phone  
14 package, the family plan?

15 A. Yes, I would tell her how much my monthly bill would be  
16 every month.

17 Q. And that was the total amount of both phones?

18 A. That is correct.

19 Q. And did you explain to her that both phones were being  
20 used for personal use as well as business use?

21 A. Yes, sir.

22 Q. So it was a mixed --

23 A. Mixed combination. It was not strictly business, it  
24 was for personal and business.

25 Q. And is \$1,560 sound like your annual phone bill?

ERICA GONZALEZ - DIRECT

1 A. No, sir.

2 Q. How much is your annual phone bill?

3 A. Currently?

4 Q. Well, do you remember how much it was back in 2010?

5 A. I would say about \$150 a month.

6 Q. So that would be almost 16, \$1,700?

7 A. Correct, sounds good.

8 Q. For both phones?

9 A. Sounds accurate.

10 Q. Did you use your phone very much for the business?

11 A. Sometimes, not much because again he's the one that's  
12 doing the proposal, the negotiating prices with the  
13 customer.

14 Q. Let's look, let's go back to the first page of the  
15 Schedule C and I would like to attract your attention to  
16 line nine of part two of the first page, car and truck  
17 expenses?

18 A. I see that.

19 Q. On the car and truck expenses, it has \$30,000. Do you  
20 recall spending \$30,000 on car or truck expenses for the  
21 landscaping business?

22 A. No, sir.

23 Q. If we turn back to the second page, page nine, in part  
24 four, you can see that it talks about on line 44 in part  
25 four, Of the total number of miles you drove your vehicle

ERICA GONZALEZ - DIRECT

1 during 2010, enter the number of miles you used your vehicle  
2 for business. And it says 60,000 miles. Did you or your  
3 husband drive a vehicle for the landscaping business 60,000  
4 miles during the year 2010?

5 A. No, sir, I did not.

6 Q. What was the situation with vehicles in your family?

7 A. At this point we had an older truck for the business.  
8 During that year my husband purchased another vehicle  
9 because he was actually borrowing my vehicle for personal  
10 use and he was using just that truck for business, so he  
11 purchased another used vehicle for his personal use and that  
12 one specifically for the business.

13 Q. So what type of vehicle did he use exclusively for the  
14 business?

15 A. It was like a 1995 Ford pickup truck.

16 Q. And then he purchased a --

17 A. 2001 Ford pickup truck for his personal use.

18 Q. Only the 1995 pickup truck was used, is that correct?

19 A. That is correct.

20 Q. Did you or your husband put 60,000 miles on that pickup  
21 truck during that year?

22 A. No, sir.

23 Q. Did you ever tell Ms. Hosseini that you put  
24 60,000 miles on that pickup truck?

25 A. No, sir.

ERICA GONZALEZ - DIRECT

1 Q. Did you ever tell Ms. Hosseini that you put  
2 60,000 miles on any vehicle --

3 A. No, sir.

4 Q. -- for the use of the landscaping business?

5 A. No, sir.

6 Q. Also note below that in line 47, Do you have evidence  
7 to support your deduction and the box is checked yes. You  
8 didn't drive it 60,000 miles, so do you have evidence that  
9 you drove it 60,000 miles?

10 A. No, sir, I do not have.

11 Q. What did you provide Ms. Hosseini when she prepared  
12 your tax returns?

13 A. I would provide gas fuel receipts and like oil changes  
14 and stuff like that, but she went -- she did not use that  
15 she went versus miles versus --

16 Q. Did you have a mileage log that she could use in order  
17 to come up with miles?

18 A. No, sir, I did not.

19 Q. What did she tell you as far as using the gas receipts?  
20 Because that is one way you can claim your deduction for  
21 vehicles. What did she tell you about using those?

22 A. That it would be better to go with mileage versus my  
23 receipts for oil changes and gas and repairs and stuff like  
24 that.

25 Q. Did you ever tell her anything at all about the mileage

ERICA GONZALEZ - DIRECT

1 that was put on that truck?

2 A. No, sir.

3 Q. The 1995 truck that was used for the business?

4 A. No.

5 Q. So you indicated you did not have evidence to support  
6 your deduction. Of course, since you didn't have any, there  
7 wouldn't be written evidence either, would there?

8 A. That is correct.

9 Q. Did you ever tell Ms. Hosseini that you had written  
10 evidence of 60,000 miles on this truck?

11 A. No, sir.

12 Q. Let me call your attention if you'll go to the file  
13 that's marked 18-3 and in this case I want you to go two  
14 pages from the end.

15 A. Okay, I have it.

16 Q. And it should be a handwritten sheet. Should be a  
17 handwritten sheet with numbers. Do you recognize the  
18 handwriting on this sheet?

19 A. Yes, sir, I do.

20 Q. The black handwriting, whose handwriting is that?

21 A. That's my handwriting. It would be like a sketch to  
22 kind of help me out whenever I came to sit with her and give  
23 her my expenses.

24 Q. So this is what you would present to her in order to  
25 show her what you had spent on various items?

ERICA GONZALEZ - DIRECT

1 A. Yes, sir, that is correct.

2 Q. And you provided that to her?

3 A. Yes, sir, that is correct.

4 Q. Now, the green writing that's on this, whose  
5 handwriting is that?

6 A. That would be hers.

7 Q. On this at the very bottom it says, Purchased '95 Ford  
8 pickup, December, F-150, purchase had 92,000 miles, had  
9 117 miles and then it's got a little arrow over there,  
10 25,000 miles. What do you know about that?

11 A. Yes, sir, so that would be the pickup truck that he was  
12 using for the business.

13 Q. Okay. And so I take it she asked how much mileage it  
14 had and how much mileage -- how much it had at the end of  
15 last year and how much it had at this point?

16 A. I don't recall, sir, but I guess -- well, I'm not going  
17 to assume, but yes, it sounds about 25,000 miles what we had  
18 put for the business.

19 Q. Okay. So rather than 60,000 miles you had  
20 25,000 miles?

21 A. Yes, sir.

22 Q. Now, over on the corner here it says, Had '01 Ford  
23 F-150 mileage 35,000 miles. Was any of that mileage on the  
24 '01 Ford that you just bought that year related to the  
25 landscaping business?



ERICA GONZALEZ - DIRECT

1 A. No, sir.

2 Q. That was used solely for personal business?

3 A. Once in a while he would go out and give a proposal on  
4 it, but strictly that's why the purchase of that other truck  
5 because business was for the '95 truck and not the 2001.

6 Q. So that 35,000-mile figure, that has nothing to do with  
7 the landscaping business?

8 A. That is correct.

9 Q. If I could have you go to page seven of what you're  
10 looking at right now?

11 A. From the beginning?

12 Q. From the beginning. I'm sorry. It should be a sheet  
13 that is entitled, Bank Product Information at the top.

14 A. I have it.

15 Q. And I'd ask you to look at -- there's a box in the  
16 middle of the box that's in the page and it says, Tax  
17 Preparation. Do you see that?

18 A. I do.

19 Q. Indicates how much?

20 A. \$999.

21 Q. Were you aware that you had paid \$999 for this tax  
22 return to be prepared?

23 A. Yes, sir, I was aware.

24 Q. And then underneath that, there's a circled figure,  
25 \$9,514.05. Is that the return that you actually received in

ERICA GONZALEZ - DIRECT

1 that year?

2 A. Yes, sir, that is correct.

3 Q. The refund from the IRS. So is that when you're  
4 getting back \$9,500, a thousand dollars doesn't seem that  
5 much, does it?

6 A. That is correct. With that kind of money, I mean a  
7 thousand dollars was not an issue.

8 Q. And you indicated that you had come back to  
9 Ms. Hosseini because she got you the large refunds, is that  
10 right?

11 A. That is correct.

12 Q. How much larger was this refund than the refund you got  
13 the year before from the other place?

14 A. Way much smaller. I cannot recall exactly the figure,  
15 but I believe I got a return of less than 2,000 dollars.

16 Q. So you were very happy when she prepared your return?

17 A. Oh, yes.

18 Q. If you look through the documents in 18-3, at the  
19 bottom of all the pages, one way or another there are a  
20 couple signatures, is that correct?

21 A. Yes, sir.

22 Q. There's a signature for yourself and a signature for  
23 your husband?

24 A. Yes, sir.

25 Q. Did Ms. Hosseini review all your tax documents with

ERICA GONZALEZ - CROSS

1 you?

2 A. We just went over where the signatures were and we  
3 signed, we never did go line by line.

4 Q. Did she ever explain to you exactly how your income tax  
5 had been filled out or what the various numbers meant?

6 A. No, sir.

7 Q. How long do you think it took you to get your tax  
8 prepared by Ms. Hosseini in 2010. I know it's seven years  
9 ago, but do you recall approximately how long it usually  
10 took for you to get your taxes done?

11 A. Maybe like an hour. Meaning when we were there at the  
12 office?

13 Q. Correct.

14 A. Maybe less than an hour, hour, approximate range.

15 Q. Now, you were subsequently audited by the IRS, is that  
16 correct?

17 A. Yes, sir, I was.

18 Q. That was not for 2010, that was for the subsequent  
19 years, is that right?

20 A. Yes, sir, that is correct.

21 Q. Who prepared those income tax returns for you, do you  
22 remember?

23 A. The ones that I was audited for?

24 Q. Correct.

25 A. One of the years was Rapid Refund. Actually -- no, two

ERICA GONZALEZ - CROSS

1 years was Rapid Refund and one year was another company, if  
2 I'm not mistaken.

3 Q. And as a result of the audit that was done by you as  
4 far as the returns that were prepared by Rapid Refund, did  
5 you have to pay any penalty?

6 A. Yes, sir.

7 MR. SUROVIC: No further questions, Your Honor.

8 THE COURT: Cross.

9 MR. BARNES: Thank you, Your Honor.

10 EXAMINATION

11 BY MR. BARNES:

12 Q. Your husband was there when these returns were  
13 prepared, correct?

14 A. That is correct.

15 Q. And your husband is the one who actually drove the  
16 truck in terms of using it for mileage and another business  
17 purposes, correct?

18 A. That is correct.

19 Q. And you and your husband both said under penalty of  
20 perjury before these returns were allowed to be filed that  
21 these deductions were correct, correct?

22 A. We did sign for them, we've never went line by line  
23 reading every page. Unfortunately I'm trusting her and  
24 that's why --

25 Q. So you're saying when you sign a page, you don't

ERICA GONZALEZ - CROSS

1 actually read anything on the page that you're signing under  
2 penalty of perjury, is that your testimony?

3 A. Unfortunately, I did not.

4 Q. When was the first time you heard from -- and just to  
5 be clear, you signed every single page, it wasn't just  
6 signing at the end of the return, it was every single page  
7 including the pages that listed every single deduction that  
8 he brought up?

9 A. Correct.

10 Q. And real basic just like that, it's not like minute  
11 writing, it's pretty clear writing, correct?

12 A. That is correct.

13 Q. And you're saying when you signed, when your husband  
14 signed, you didn't actually review to see whether it was  
15 accurate or not, is that your testimony?

16 A. That is correct.

17 Q. And you're aware that all this document was being  
18 signed under penalty of perjury and she required you to sign  
19 it before she would allow it to be filed?

20 A. That is correct.

21 Q. When is the first time that you heard from the IRS that  
22 there was any issue with return?

23 A. I'm thinking it was back in 2011.

24 Q. And did they send you something in the mail to say they  
25 thought that there was something wrong in your return?

ERICA GONZALEZ - CROSS

1 A. No. Some agents showed up at my place.

2 Q. And had they called you before and was that at your  
3 house?

4 A. That is correct.

5 Q. And when they showed up, did they show their badges,  
6 were they wearing their guns?

7 A. They did show the badge.

8 Q. And did they ask you before they came back to look at  
9 all of your receipts or your records to see to have those  
10 together before they interviewed you?

11 A. Is this for the audit?

12 Q. No, this is just when they came and knocked on the  
13 door, did they say, hey, we have some issues, we want you to  
14 gather your records so that we can interview you, did they  
15 give you the chance to review your records before they  
16 interviewed you?

17 A. No, sir. They just asked a couple questions.

18 Q. Did they say that you had the right to have an adviser  
19 there with you, an accountant or attorney or anything like  
20 that?

21 A. I don't recall, to be quite honest.

22 Q. And did you have your records available to you at the  
23 time that they interviewed you?

24 A. Yes, sir, I did.

25 Q. Do you know how much you spent total in gas in those

ERICA GONZALEZ - REDIRECT

1 years? Do you know what your average was each year that you  
2 were spending on gas?

3 A. I cannot give you an amount because again once she  
4 would recommend to use mileage versus gas, I mean we just  
5 put all the receipts away.

6 Q. Did the IRS explain to you that typically a mileage  
7 deduction is worth three times more than your gas deduction?

8 A. No, sir, I did not know that.

9 Q. Did the IRS tell you that cell phone use after a  
10 certain time period can, in fact, be a hundred percent  
11 business deduction?

12 A. No, sir.

13 Q. When you went through the audit process, were you  
14 penalized for returns that were filed by someone other than  
15 Margaret Hosseini?

16 A. Two of the years, yes. The third year I didn't get  
17 fined.

18 MR. BARNES: No further questions, Your Honor.

19 THE COURT: Redirect.

20 MR. SUROVIC: Yes, Your Honor, very briefly.

21 EXAMINATION

22 BY MR. SUROVIC:

23 Q. If I could have you look at Exhibit 18-3 which is the  
24 preparer's copy. This is what Ms. Hosseini had on file  
25 concerning you in 2010. Page one, I'm going to go through

## ERICA GONZALEZ - REDIRECT

1 the pages that you signed just so everybody knows what you  
2 signed off on. Page one, this is e file authorization where  
3 you're authorizing her to file electronically, is that  
4 correct?

5 A. Correct.

6 Q. She explained what that was about?

7 A. This first page, yes, she said we were giving her  
8 permission to file for us.

9 Q. And then the second page, this is consent to disclosure  
10 of tax return information, did you read this document?

11 A. No, sir, I did not read it.

12 Q. And then the third page is refund options disclosure,  
13 did you read this page?

14 A. No, sir, I did not.

15 Q. By the way, none of these pages so far really involve  
16 your income tax return, is that correct?

17 A. That's correct.

18 Q. Then the fourth page, it starts off, Our engagement to  
19 prepare your 2010 tax return will conclude with the delivery  
20 of the completed returns. Did you read that page?

21 A. No, sir.

22 Q. And that has nothing to do with your 2010 tax returns,  
23 that has to do with her business, is that correct?

24 A. That is correct.

25 Q. And then we have the next page is -- I'm not even sure



ERICA GONZALEZ - REDIRECT

1 what this is, 2011 applications, authorizations,  
2 certifications, agreements, did she read this with you and  
3 explain what this was?

4 A. No, sir.

5 Q. I note that on one side of this document, estimation of  
6 federal ERCRET net proceeds, it does indicate that the tax  
7 preparer fee was \$999, is that correct?

8 A. Correct.

9 Q. Again that's not part of your tax return, is it?

10 A. No, sir.

11 Q. And it's a very dense document?

12 A. That's correct.

13 Q. Then the next page is entitled, River City Banks 2010  
14 Refund Anticipation Loan Disclosure. You signed that  
15 document, is that correct?

16 A. That's correct.

17 Q. Did you read it?

18 A. No, sir.

19 Q. Does it have anything to do with your tax returns?

20 A. No, sir.

21 Q. And then the next page is entitled Bank Product  
22 Information, it's the one we talked about that I asked you  
23 about the tax preparation fee, is that correct?

24 A. Correct.

25 Q. This was probably the page that you were most

## ERICA GONZALEZ - RECROSS

1 interested in because it indicated how much you were going  
2 to get in refund, is that correct?

3 A. That is correct.

4 Q. Did you read this in detail other than noting what your  
5 refund was going to be?

6 A. No, sir, I just looked at the amount that was going to  
7 be coming to me.

8 Q. The circled amount?

9 A. The circled amount, yes, sir.

10 Q. Who circled that amount?

11 A. I'm not sure.

12 Q. Do you recall? You don't remember. And then we have  
13 overflow statement, the next page, and you signed that and  
14 there's another overflow statement that you signed the next  
15 page beyond that and then there is a form for paid  
16 preparer's earned income credit checklist and that goes on  
17 for three pages. Did you read the paid preparer's earned  
18 income credit checklist?

19 A. No, sir.

20 Q. You're not the paid preparer anyway, are you?

21 A. No, sir.

22 Q. You were paying her to prepare it?

23 A. That is correct. And again with having two little ones  
24 there nagging and wanting to get out of the office as soon  
25 as possible, I mean I did not look at all this pages. I

## ERICA GONZALEZ - RECROSS

1 just pretty much -- she would put an X where I needed to  
2 sign and that's where I signed.

3 Q. And then finally we get to the last two pages that are  
4 signed which is the profit and loss from a business and  
5 itemized deductions and those you signed. Again, did you go  
6 over any of the numbers on these pages?

7 A. No, sir.

8 MR. SUROVIC: No further questions, Your Honor.

9 THE COURT: Recross.

10 MR. BARNES: Yes, Your Honor.

11 EXAMINATION

12 BY MR. BARNES:

13 Q. Two questions, when the IRS was reviewing these items  
14 with you at your home, were your children there, what was  
15 the setting?

16 A. My children were in their rooms.

17 Q. And did they afford you an opportunity to do the  
18 interview at a different time when the children were not  
19 present where you could go in and talk to them?

20 A. No, I was collaborating with them because the kids were  
21 in their room, they were playing.

22 Q. If the IRS had blamed you for making these mistakes on  
23 the returns, did they tell you that you could face three  
24 years in prison for every single count?

25 A. No, sir.

ERICA GONZALEZ - RECROSS

1 Q. And you mentioned contracts. In the landscaping  
2 business, did your customers ever sign contracts?

3 A. Yes, sir, they did.

4 Q. If they told you they didn't review it before they  
5 signed it and wanted to get out of it and not be bound by  
6 it, did you let them?

7 A. They had a 30-day notice, so it wasn't like a contract.

8 Q. Let's say 60 days later they came back and said, you  
9 know, I never read that, I don't want to be bound by it,  
10 would you say okay, no problem, forget you signed?

11 A. Depending the circumstances, I mean I would be able to  
12 let them out.

13 Q. Typically did you expect that someone who signed  
14 something would honor it and meant what they signed?

15 A. Yes, sir.

16 MR. BARNES: No further questions.

17 THE COURT: Redirect.

18 MR. SUROVIC: No further questions, Your Honor.

19 THE COURT: Thank you, ma'am. You may be excused.

20 MR. SUROVIC: Your Honor, we request that she be  
21 permanently excused. She's an out-of-town witness. She has  
22 children to take care of and we'd like to let her go home.

23 THE COURT: Okay.

24 THE WITNESS: Thank you, Your Honor.

25 THE COURT: Next witness.

FABIO S. RODRIGUEZ - DIRECT

1 MR. SUROVIC: Fabio Rodriguez.

2 THE COURT: I don't think the jury was here when I  
3 introduced Ms. Hailey. Mr. Poage is on a prepaid,  
4 well-deserved vacation, so Ms. Hailey is a court reporter  
5 from one of my colleagues and will be assisting along with  
6 her other colleagues who will be here later in the week.  
7 Mr. Rodriguez, come on up.

8 MR. SUROVIC: Your Honor, if I might recover those  
9 previous files and I'll replace them with the files that Mr.  
10 Rodriguez will be looking at.

11 THE COURT: Mr. Rodriguez, follow Mr. Surovic up  
12 here. Raise your right hand please. These members of the  
13 jury are seeking the truth about what happened in this case.  
14 As they seek that truth, do you promise to tell the jurors  
15 the truth, the whole truth and nothing but the truth?

16 THE WITNESS: Yes, sir.

17 THE COURT: You may be seated. And Mr. Surovic,  
18 you may proceed.

19 MR. SUROVIC: Thank you, Your Honor.

20 BY MR. SUROVIC:

21 Q. Sir, would you state your full name for the record  
22 please?

23 A. Fabio Strozzi Rodriguez.

24 Q. Spell your last name for the court reporter?

25 A. S-T-R-O-Z-Z-I, and Rodriguez.

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1 Q. Are you married?

2 A. Yes, sir.

3 Q. What is your wife's name?

4 A. Alma Lorena.

5 Q. Alma Lorena Strozzi?

6 A. Yes, sir.

7 Q. Same spelling?

8 A. Yes, sir.

9 Q. Generally speaking, where do you currently live?

10 A. I live in Von Ormy.

11 Q. How long have you lived in Von Ormy?

12 A. About 15, 16 years, 17 years maybe.

13 Q. What type of work do you do?

14 A. I'm a veterinary technician. I went to college in  
15 Mexico and I work in a equine hospital in Castroville.

16 Q. What type of work do you do?

17 A. Horses, horse medicine.

18 Q. When you say you work on horses, what does that mean,  
19 do you wrap their legs, you give them shots, do surgery on  
20 them?

21 A. Yeah, the clinic -- I'm the lead technician for the  
22 clinic on the horse part, so treatments, bandages,  
23 anesthesia under surgery, x-rays, everything related to  
24 equine medicine.

25 Q. You indicate you're in equine medicine, do you also do

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1 cattle and things like that or do you specialize just in  
2 horses?

3 A. Well, 90 percent of the work is horses, but we do some  
4 cattle here and there.

5 Q. Were you doing that type of work back in 2009 and 2010?

6 A. Yes.

7 Q. How long have you worked as a vet tech. in Castroville?

8 A. For about 17 years, as long as I've been living here.

9 Q. Now, you indicated you worked for a particular equine  
10 hospital in Castroville?

11 A. Yes.

12 Q. Did you also do some extra jobs on the side?

13 A. Yeah, I got a second job on a ranch in Hondo.

14 Q. What's the name of that ranch?

15 A. Bar E Ranch.

16 Q. What do you do for them?

17 A. Kind of the management and stuff for the horses. They  
18 have a bunch of broodmares and when the babies come in the  
19 first part of the year, I will make sure the babies are fine  
20 and give them their shots and make sure everything is fine.

21 Q. Do you help deliver the new foals, do you help them --  
22 I don't know what type of --

23 A. If I have to.

24 Q. I don't know what type of breeding program they have.  
25 Do they have a breeding program?

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1 A. If I have to, yeah, they have some expensive animals  
2 that you got to be on top of it because they worth a lot of  
3 money.

4 Q. Were you working for that ranch in 2009, 2010?

5 A. Yes.

6 Q. Back in 2009, 2010, did you have any other side jobs  
7 that you worked on?

8 A. No.

9 Q. Did you help people off, just off the books?

10 A. Once in a while I help people, neighbor, stuff like  
11 that.

12 Q. As far as the ranch that you work for, what type of  
13 relationship do you have with them, what do they provide for  
14 you and what do you have to provide yourself in order to  
15 work with them?

16 A. Well, before I used to buy material for the ranch and  
17 then they reimburse me at the end and sometimes it was  
18 expense things, so we decide to change it and I just make a  
19 list and they provide what I need and I just go and do the  
20 work.

21 Q. Whether it was before or now, they are the ones that  
22 bear the cost, you never had to pay out of your pocket?

23 A. I used to long time ago, but we changed that because  
24 you get a lot of expenses.

25 Q. Back in 2009, 2010, did you have to pay out of your



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1 pocket?

2 A. I think at the time I used to buy syringes and needles  
3 and stuff that I needed like that.

4 Q. Did the ranch pay you later on?

5 A. Yeah, the ranch paid me.

6 Q. So there's no loss to you for doing that?

7 A. Well, sometimes it will because involved -- this kind  
8 of work involves sometimes most of the time more time and  
9 effort than what it realistically is, it's physical and  
10 night --

11 THE COURT: But you're referring to the  
12 out-of-pocket as opposed to I work more hours than I thought  
13 I would have to.

14 MR. SUROVIC: That's correct, Your Honor.

15 BY MR. SUROVIC:

16 Q. I'm talking about if you had to buy, say, a box of 50  
17 syringes to deal with the horses, you'd have the receipt,  
18 you give them the receipt, they pay you?

19 A. Yeah, they pay me back all the time.

20 Q. And you didn't treat that as income --

21 A. Yeah, part of the activity.

22 Q. Okay. Have you ever heard of a business by the name of  
23 Rapid Return Tax Service?

24 A. Rapid Return?

25 Q. Yes.

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1 A. Yes.

2 Q. How did you first hear about Rapid Return Tax Service?

3 A. The owner of the place used to come to the clinic with  
4 her horses.

5 Q. And you know approximately when that was?

6 A. Oh, long time ago, 2008, just saying a year that is a  
7 long time ago.

8 Q. What made you decide to go to her in order to get your  
9 taxes done?

10 A. Well, they're nice people and they told me they had a  
11 tax office and at the time I think all the guys from the  
12 clinic where we work in the barn we decide to go and do it  
13 with her.

14 Q. Now, you indicated the owner and you've referred to her  
15 as "her", who is that?

16 A. Ms. Margie.

17 Q. Do you know what her last name is?

18 A. Hosseini.

19 Q. And do you see her? Is she present in the court today?

20 A. Yes.

21 Q. Could I get you to point to her and describe what she's  
22 wearing?

23 A. Yeah, the pink shirt.

24 THE COURT: Noted.

25 BY MR. SUROVIC:

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1 Q. Did you have your taxes prepared by somebody else  
2 before you started going to her?

3 A. Yeah, at one time I had the accountant of the clinic  
4 doing it and then I think I went to a local office in H&R  
5 Block. That's what I remember. And then I went to her and  
6 went back to H&R Block.

7 Q. Did you notice any difference between the size of the  
8 return you got, the refund you got when you were working  
9 with her versus H&R Block?

10 A. Yeah, it was higher return when I went to her. Then I  
11 went back -- they went to interview me and I decided not to  
12 go there anymore and I talk to the people that do my taxes  
13 now.

14 Q. When you say they came to interview you, who is "they"?

15 A. The people, Officer Juan Robles from the IRS.

16 Q. This individual sitting here?

17 A. Yes, sir.

18 Q. So you went with her until the IRS approached you?

19 A. Yeah, and I decide not to go there anymore.

20 Q. I'm going to show you and if you'll look in that first  
21 folder there what's been already offered into evidence as  
22 Government Exhibit 4-1?

23 A. Uh-huh.

24 Q. And if you'll look at the first page inside the cover?

25 A. Yes, sir.

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1 Q. It will be -- go ahead and open it up.

2 A. Okay.

3 Q. At the top you'll notice it says Fabio Rodriguez, Alma  
4 Strozzi, Castroville address and some Social Security  
5 numbers?

6 A. Yes.

7 Q. And it says form 1040, U.S. Individual Tax Return 2009?

8 A. Yes.

9 Q. That's your name and your wife's name?

10 A. Yes.

11 Q. So that's your tax return for 2009?

12 A. Yes, and my kids.

13 Q. And your kids down here listed in exemptions?

14 A. Yes, sir.

15 Q. We go down to line 12?

16 A. Uh-huh.

17 Q. Line 12 on that first page says that you had a business  
18 income or loss?

19 A. Yeah.

20 Q. Of \$18,175?

21 A. Yeah.

22 Q. Do you recall losing that much money in your business?

23 MR. BARNES: Objection, Your Honor. Misstates the  
24 nature of tax loss. You can have a loss without actually  
25 losing cash.

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1 THE COURT: Sustained. Rephrase please.

2 BY MR. SUROVIC:

3 Q. It indicates that you're carrying a tax loss, a  
4 business income loss of \$18,175, is that correct?

5 A. Sounds like a lot.

6 Q. Is that what it says though?

7 A. That's what it says.

8 Q. Okay. Let's look at Schedule C which is going to be  
9 the seventh page in from that.

10 A. Seventh page?

11 Q. Uh-huh.

12 A. Uh-huh.

13 Q. You see it says in the beginning Schedule C Profit or  
14 Loss From Business?

15 A. Again I'm not on the right page.

16 Q. You may have gone one page further. Should look  
17 like --

18 A. Profit or Loss From Business?

19 Q. Yes. At the top it says, Vet Technician, Fabio  
20 Strozzi, that's you, right?

21 A. Right.

22 Q. This is for your business and that extra business would  
23 have been the ranch at that time?

24 A. The ranch, yeah.

25 Q. If you look on the next page?

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1 A. Yeah.

2 Q. It lists syringes and medications \$4,200?

3 A. Yeah.

4 Q. In part five in the bottom?

5 A. Yeah.

6 Q. Did you spend \$4,200 on syringes and medications?

7 A. That is closer to what is real. Sometimes my horses --  
8 I have horses myself and sometimes my boss at the ranch and  
9 me, we trade, and I end up with horses and probably  
10 something like that.

11 Q. But all the syringes and medications you purchased you  
12 were compensated for, right?

13 A. Yeah.

14 Q. So as far as other expense for the business, that would  
15 not have been an expense, is that right?

16 A. Yes, sir.

17 Q. It also lists a mobile phone \$1,836?

18 A. Uh-huh.

19 Q. Did you have a mobile phone?

20 A. Yes.

21 Q. Did your wife have a mobile phone?

22 A. Yes.

23 Q. What type of mobile phone plan did you have?

24 A. I had a Nextel plan that I had at the time that it was  
25 expensive for a long time and I just never made time to go

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1 and change it and it was real expensive.

2 Q. Did it cover you and your wife?

3 A. Yeah.

4 Q. As far as your phone goes, did you use that solely for  
5 the extra business with the ranch?

6 A. Yeah, and for my personal use and stuff like that.

7 Q. So you used it for your personal use as well?

8 A. Yeah.

9 Q. About how much was for personal use and how much was  
10 for business with the ranch?

11 A. Well, realistically 60 percent, 70 percent of the calls  
12 are for go and check horses and stuff like that.

13 Q. Okay. Do you recall what your annual cell phone bill  
14 was back in 2009?

15 A. I'm thinking it was like around 200-something a month.

16 Q. So about \$2,400?

17 A. Maybe, something like that, little less, little more.

18 Q. Okay. So the \$1,800 would have been more than half of  
19 your cell phone bill?

20 A. Oh, yeah.

21 Q. Your total cell phone bill?

22 A. Yes, sir.

23 Q. Did your wife did she make calls for the business?

24 A. No.

25 Q. So her phone would not have been part of that cost?

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1 A. No, sir.

2 Q. If we go back to the first page of the Schedule C.

3 A. First page, uh-huh.

4 Q. You'll see line 13 there's a depreciation of \$16,275?

5 A. Yeah.

6 Q. Do you know what that relates to?

7 A. I want to say at the time I bought a tractor and I  
8 think a welder and I think they put my truck into  
9 depreciation part of it.

10 Q. As far as your truck goes, did you use your truck one  
11 hundred percent just for working at the ranch?

12 A. Yeah, working at the ranch, working at the clinic and  
13 then from the clinic to the ranch.

14 Q. So you used it for your regular job, to get back and  
15 forth to your regular job, commuting, which is not business  
16 miles, that's commuting miles.

17 A. Okay.

18 Q. And then you used it to go to the ranch --

19 A. That's the only vehicle that I have.

20 Q. So you used it for everything?

21 A. Well, kind of, yeah.

22 Q. It wasn't one hundred percent for --

23 A. But most of the driving is for the ranch, you know,  
24 it's transporting horses and moving mares and --

25 Q. Do you know how much mileage you have on that truck?



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1 A. Oh, when I sold it I think 160,000, something like  
2 that.

3 Q. If I could get you to look at Government Exhibit 4-3,  
4 it's the next folder?

5 A. Next folder?

6 Q. The next folder.

7 A. Okay.

8 Q. And this is the preparer's copy, what Ms. Hosseini kept  
9 as far as your preparation?

10 A. Okay.

11 Q. And if you would go to page six, it will be labeled  
12 depreciation detail listing?

13 A. Okay.

14 Q. You'll see it says 2009, 2500 Chevy Four?

15 A. Yeah.

16 Q. Could you tell us what that is?

17 A. That was my truck, that was my truck at the time.

18 Q. And it cost you \$31,000?

19 A. Yup.

20 Q. You'll see the next column over, two columns over is  
21 business percentage, 100?

22 A. Yeah.

23 Q. Did you tell Ms. Hosseini that you only used that  
24 truck -- you did not use it for personal reasons, you did  
25 not use it to commute to your regular job, you only used it

FABIO S. RODRIGUEZ - DIRECT

1 for your extra business purposes?

2 A. Honestly, I don't remember that. That was the only  
3 truck that I had at the time.

4 Q. She knew that was the only truck you had at the time?

5 A. I'm assuming.

6 Q. Let's take a look at -- on that page you'll notice that  
7 your signature is on that page, is that correct?

8 A. Yes, sir.

9 Q. And your signature, in fact, if you look briefly  
10 through Exhibit 4-3, your signature is on the bottom of all  
11 the pages, is that right?

12 A. Yes, sir.

13 Q. Do you remember how that signature got there?

14 A. Well, that's my letter. I mean that's my writing.

15 Q. Do you remember how it got there? Did you sign that  
16 document?

17 A. I'm thinking.

18 Q. Well, you don't know for sure?

19 A. I mean that's my letter and my writing, so --

20 Q. Do you remember reviewing, carefully reviewing your tax  
21 return with Ms. Hosseini?

22 A. Not realistically because I'm not really a tax expert,  
23 that's why I go with somebody to do it, take care of it for  
24 me.

25 Q. So if she went through each of these pages with you,

FABIO S. RODRIGUEZ - DIRECT

1 you wouldn't have understood what she was saying anyway?

2 A. Well, maybe part of it, you know, I was trusting the  
3 service.

4 Q. If we go to page eight, two pages after the page that  
5 you're on. You'll see it says bank product information?

6 A. Page eight? Okay.

7 Q. And you'll see and there's a box in the middle of the  
8 page?

9 A. Uh-huh.

10 Q. And if you go down about mid way in the box, it talks  
11 about tax preparation and there's a figure there, do you see  
12 the figure?

13 A. Tax prepare fees?

14 Q. Yes. Well, above that, above the tax prepare fees you  
15 see there's tax preparation, e file, bank documents?

16 A. Yes, sir.

17 Q. The first line, tax preparation?

18 A. Uh-huh.

19 Q. What is that amount?

20 A. 476.

21 Q. \$476.05?

22 A. Yes, sir.

23 Q. Did you realize that that's what you were paying in  
24 order to get your taxes prepared by Ms. Hosseini?

25 A. I think they take the amount of whatever they're

FABIO S. RODRIGUEZ - DIRECT

1 charging from the return.

2 Q. If you move down, it says refund deposit in the box at  
3 the bottom, the last number in that column?

4 A. Yes, sir.

5 Q. \$11,005?

6 A. Yes.

7 Q. That would be the amount that you received as a refund,  
8 is that correct?

9 A. Yes, sir.

10 Q. So you were aware of that amount, did you pay much  
11 attention to how much you were paying Ms. Hosseini?

12 A. Not realistically.

13 Q. But you did sign off on that?

14 A. Yes, sir.

15 Q. Let me have you look at the next folder, Government  
16 Exhibit 5-1.

17 A. Okay.

18 Q. If you'll open that one up to the second page?

19 A. Yeah.

20 Q. It is entitled form 1040 U.S. Individual Tax Return  
21 2010?

22 A. Yes.

23 Q. Again is that you and your wife?

24 A. Yes.

25 Q. So this is your tax return for 2010?

FABIO S. RODRIGUEZ - DIRECT

1 A. Yes, sir.

2 Q. If we look at line 12 again business income or loss, it  
3 indicates \$21,183?

4 A. Yes.

5 Q. Now, your total income that year was \$39,439, is that  
6 correct?

7 A. Yes, sir.

8 Q. So that was say significant more than half of your  
9 income?

10 A. Yes.

11 Q. And if we look on the next page at the bottom, this was  
12 prepared for your also by Ms. Hosseini?

13 A. Yes.

14 Q. How did you -- would you describe for us when you came  
15 into Ms. Hosseini's office how your income tax would be  
16 prepared, what did you bring, for example?

17 A. I bring my -- the forms, 1099s and that's  
18 realistically.

19 Q. You didn't bring any receipts or anything like that?

20 A. No.

21 Q. Did you bring a work page or anything that you had  
22 written down estimated costs or anything like that?

23 A. No, no. I think I had a paper with a little bit of the  
24 expenses of the ranch, but that's it.

25 Q. Mileage log for your truck?

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1 A. I had a mileage because I was putting miles on the  
2 truck.

3 Q. So you were keeping track of that. Did you bring that  
4 type of stuff into her when you had your taxes prepared?

5 A. I think the second time I did. It was just a writing  
6 on a piece of paper.

7 Q. Okay. Let's take a look at the Schedule C which is  
8 going to be on page seven. Again this is the form we were  
9 looking at before on the previous year, this is for 2010.

10 A. Okay.

11 Q. And if we turn -- if we look at that page it says vet  
12 technician again, Fabio Strozzi, that's you?

13 A. Yes.

14 Q. This is for your extra business?

15 A. Yes, sir.

16 Q. And if we turn to the second page, you can see in part  
17 five again there's a mobile phone and syringes and  
18 medications?

19 A. Yeah.

20 Q. Syringes and medications?

21 A. Yeah.

22 Q. These were for the ranch again?

23 A. Yup.

24 Q. These are things that you got compensated for, right?

25 A. Yes, sir.

FABIO S. RODRIGUEZ - DIRECT

1 Q. He would pay you in order --

2 A. Pay me and sometimes I trade horses.

3 Q. And some way you got compensated?

4 A. Yes.

5 Q. So as far as the business expense, you're not actually  
6 out of pocket \$4,000?

7 A. Not realistically.

8 Q. Did you tell Ms. Hosseini that you were compensated for  
9 those items, that you got paid for them, you got money back?

10 A. I don't remember.

11 Q. Or that you sometimes got horses and things like that?

12 A. I don't remember.

13 Q. Let's take a look at the mobile phone. This time it  
14 reads \$1,728?

15 A. Yes.

16 Q. Was the same situation going on with your mobile phone  
17 in --

18 A. Same plan, just changed my plan last year.

19 Q. So you basically had the same situation as you had in  
20 2009 where you and your wife both had phones?

21 A. Yes.

22 Q. She didn't use the phone for business?

23 A. No, it was me most of it.

24 Q. And only about 70 percent of that?

25 A. Something.

## FABIO S. RODRIGUEZ - CROSS

1 Q. If we look again at the first page of the Schedule C?

2 A. Uh-huh.

3 Q. Line 13?

4 A. Okay.

5 Q. Says you had \$9,114 in depreciation, you see that?

6 A. Yeah.

7 Q. Now, would this have been for the same truck, were you  
8 driving the same truck at the time?

9 A. Same truck at the time, yes, sir.

10 Q. And now, if we go to page nine which is the form 4562,  
11 you see that?

12 A. Page nine?

13 Q. Yes. It will say depreciation amortization on the top.  
14 It should be the next to the last page on that exhibit.

15 A. Yes, right here depreciation and amortization.

16 Q. Correct. You were depreciating a welder and a winch?

17 A. Oh, they put a winch, I had a winch on the truck, yeah,  
18 and I had a welder too.

19 Q. Those are items that you bought during that year?

20 A. Yes.

21 Q. And you're also depreciating the same truck you had put  
22 into service before that, is that correct?

23 A. My truck, same truck.

24 Q. And the same situation applies, you drove it not just  
25 for the work at the ranch, but you also drove it to and from



## FABIO S. RODRIGUEZ - CROSS

1 business?

2 A. That was the only vehicle that I brought.

3 MR. SUROVIC: No further questions, Your Honor.

4 THE COURT: Cross.

5 MR. BARNES: Yes, Your Honor.

6 EXAMINATION

7 BY MR. BARNES:

8 Q. Good morning.

9 A. How are you, sir?

10 Q. Fine. My understanding is you are employed as --  
11 you're a veterinarian technician?

12 A. Yes, sir.

13 Q. Could you explain to the jury what that is?

14 A. Veterinarian technician?

15 Q. Yes, sir.

16 A. My role at the clinic is I work in the equine part of  
17 the clinic and all the treatments, x-rays, radiology,  
18 maintenance, exams, I run the anesthesia, I'm the only guy  
19 that runs anesthesia at surgery. Gas and intravenous and  
20 just horse medicine realistically.

21 Q. And you have a degree in vet medicine, is that correct?

22 A. Yes, sir, I went to college in Mexico.

23 Q. Was that the University of --

24 A. Tamaulipas, yes, sir.

25 Q. And you also did various kinds of work at the ranch as

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1 well, is that correct?

2 A. Yeah.

3 Q. And sometimes you would barter your services with  
4 friends or other people you knew to do work for them as  
5 well, is that correct?

6 A. Once in a while.

7 Q. And some of the things you do are you vaccinate cattle,  
8 is that correct?

9 A. Yeah.

10 Q. Can you explain why you would use the number of  
11 syringes you use in a year in your work?

12 A. Because of the number of animals realistically. Vet  
13 medicine -- ranchers is one thing, but we try to do  
14 everything right, so you have to use one needle every time,  
15 it takes a lot.

16 Q. And as part of the work you did, you used your truck,  
17 you used the trailer, you used a welder and a tractor, is  
18 that correct?

19 A. Yes, plus maintenance.

20 Q. Before the -- in this case, when was the first time you  
21 heard from the IRS that there was any question they had with  
22 your returns?

23 A. When Officer Juan Robles came to my house.

24 Q. So before that, they didn't send you a letter saying,  
25 hey, we think there's maybe some mistakes?

## FABIO S. RODRIGUEZ - REDIRECT

1 A. No.

2 Q. When they came to your house did they ask you to gather  
3 your records and receipts before they interviewed with you?

4 A. No.

5 Q. Did they ever show you your bank statements or credit  
6 card records?

7 A. No, sir.

8 Q. Did they ever say you could have an adviser or somebody  
9 there with you to make sure you got any tax information  
10 correct?

11 A. No, sir.

12 MR. BARNES: No further questions, Your Honor.

13 THE COURT: Redirect.

14 MR. SUROVIC: Thank you, Your Honor.

15 EXAMINATION

16 BY MR. SUROVIC:

17 Q. In addition to the ranch paying you back for supplies  
18 that you brought to work on the horses there, what do they  
19 do as far as the gasoline that you use driving around to  
20 take care of the horses?

21 A. At one point the ranch had a tank and I had --  
22 depending on how many times I had to go, because one week I  
23 have to go two, three days, the next week I have to go a  
24 whole week, it's depending. So at one point they put gas  
25 and then I paid my gas and they reimburse the money.

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1 Q. So they reimburse you not only for the supplies that  
2 you bought, but also for the gasoline that you used in order  
3 to work for them?

4 A. Sometimes.

5 Q. So everything that you did and you used as far as that  
6 extra business with the ranch, you were compensated for?

7 A. Most of it. Like I say, sometimes I trade horses with  
8 my boss --

9 Q. That's compensation, right, because you get a horse out  
10 of it?

11 A. Compensation in a way, yeah.

12 Q. And you also, we talked about the winch and the welder.  
13 You live on a small ranch yourself, is that correct?

14 A. Yeah.

15 Q. And you own horses?

16 A. Yeah.

17 Q. And you use all that equipment there as well?

18 A. I use the ranch to repair stuff and the pens, stuff  
19 like that, yeah.

20 Q. You probably use medical supplies to treat your own  
21 animals, is that correct?

22 A. Yes, sir.

23 MR. SUROVIC: No further questions.

24 THE COURT: Recross.

25 MR. BARNES: No, Your Honor.

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1 THE COURT: Thank you, sir. May be excused?

2 MR. SUROVIC: We request that he be excused.

3 MR. BARNES: No problem, Your Honor.

4 THE COURT: Thank you, sir. You may be excused.

5 MR. SUROVIC: Next, Your Honor, we call

6 Ms. Vanessa Rodriguez.

7 THE COURT: Ms. Vanessa Rodriguez.

8 MR. SUROVIC: If I might approach the witness

9 stand to recover those files and replace them.

10 THE COURT: If you'll come up here, ma'am, please.

11 And raise your right hand. These members of the jury are  
12 seeking the truth about what happened in this case. As they  
13 do so, do you promise to tell the jurors, subject to federal  
14 perjury laws, the truth, the whole truth and nothing but the  
15 truth?

16 THE WITNESS: Yes, I do.

17 THE COURT: If you'll be seated please. And

18 Mr. Surovic, you may proceed.

19 MR. SUROVIC: Thank you, Your Honor.

20 EXAMINATION

21 BY MR. SUROVIC:

22 Q. Would you state your full name please, ma'am?

23 A. Vanessa Alejandro Rodriguez.

24 Q. And are you married?

25 A. Yes.

VANESSA RODRIGUEZ - DIRECT

1 Q. What is your husband's name?

2 A. Joe Rodriguez.

3 Q. Where do you live?

4 A. Seventy-five --

5 Q. Justly speaking, what city?

6 A. San Antonio, Texas.

7 Q. How long have you lived in San Antonio?

8 A. For over 25 years.

9 Q. A long time?

10 A. Yes.

11 Q. Did you go to school here?

12 A. Yes.

13 Q. How are you employed?

14 A. I'm sorry.

15 Q. How are you employed?

16 A. I work at a telemarketing place.

17 Q. How long have you been working there?

18 A. Six years.

19 Q. What's the name of the telemarketing place?

20 A. Right now, Alorica.

21 Q. Lorica?

22 A. Alorica.

23 Q. What do you do for them, what does your job involve?

24 A. Telemarketing, people call me to fix their credit

25 cards. I do government telemarketing, like the food stamps

VANESSA RODRIGUEZ - DIRECT

1 and child support cards.

2 Q. Okay. So you answer people's questions about those  
3 items?

4 A. Uh-huh, when they haven't received their payments.

5 Q. Back in 2008, 2009, 2010 time frame, were you working  
6 at the same place? It would be almost nine, ten years ago.

7 A. I been here since 2000, 2001.

8 Q. Do you remember what job you had back in 2008, 2009,  
9 2010?

10 A. I don't remember the years. I know before working here  
11 I was working at another call center and before that I was  
12 working at a day care.

13 Q. Did you operate your own day care center?

14 A. No.

15 Q. What do you mean when you say you worked in day care?

16 A. I worked in a day care place, it was not my day care.

17 Q. You basically took care of children, is that correct?

18 A. Yes.

19 Q. And then later on as things developed, you also sort of  
20 had a side business involved in taking care of children, is  
21 that right?

22 A. I was taking care of children at my house.

23 Q. Could you describe what you did and who you took care  
24 of?

25 A. Yes, I used to take care of my friend's kids and

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1 sometimes the kids at the day care, their moms will ask me  
2 to take care of the kids for a couple of hours or during the  
3 weekend.

4 Q. How many kids are we talking about?

5 A. Four.

6 Q. What are the range of ages?

7 A. Between four years and at that time four to ten.

8 Q. And how would you take care of them?

9 A. At my house.

10 Q. What would you do for them?

11 A. Just watch them, feed them.

12 Q. About what time of the day would they come over?

13 A. Different times.

14 Q. And other than feeding them and just watching them, did  
15 you provide entertainment for them or ever take them out on  
16 field trips or anything like that?

17 A. No field trips, but my friend's kids I used to take  
18 them to Splashtown, sometimes take him to the park.

19 Q. Okay. Little things that a mom would do for a kid?

20 A. Uh-huh.

21 Q. Did you ever go to a place called Rapid Return Tax  
22 Service?

23 A. Yes.

24 Q. How did you come to hear about Rapid Return Tax  
25 Service?



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1 A. Because I was doing my taxes for a long time at H&R, I  
2 remember, yeah, H&R, so we moved to a different place. That  
3 H&R place they did a mistake on our taxes, so when we moved  
4 to a different place. We were looking for a different place  
5 to do our taxes. This place is just around the corner like  
6 from where we live now, so we found that place and we went  
7 in.

8 Q. You went there because it was convenient?

9 A. Yes.

10 Q. Did you ever meet an individual by the name of Margaret  
11 Hosseini?

12 A. Yes.

13 Q. How did you meet her?

14 A. She was the first person that help us at that time.

15 Q. When you went to the tax place?

16 A. Yes.

17 Q. Rapid Returns?

18 A. Yes.

19 Q. Is she present in the courtroom today?

20 A. I think that's her.

21 Q. You think, but you're not sure?

22 A. Her hair is different. She had curly hair, so yes,  
23 that's her.

24 Q. And when you say, "Yes, that's her", you're talking  
25 about the lady here sitting at the table?

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1 A. Yes, every time I saw her she had curly hair, so she  
2 looks a little bit different right now.

3 MR. SUROVIC: Request the record reflects she's  
4 identified the defendant, Your Honor.

5 THE COURT: Noted. Mr. Surovic and Mr. Barnes  
6 used to have curly hair too.

7 MR. SUROVIC: Judge, I've never had curly hair. I  
8 wish I had, but I didn't.

9 COURT SECURITY OFFICER: Your Honor, excuse me.  
10 One of the jurors needs to go to the bathroom.

11 THE COURT: We'll take a ten-minute recess.

12 COURT SECURITY OFFICER: All rise for the jury.

13 (9:46 a.m.)

14 \* \* \*

15 (9:59 a.m.)

16 COURT SECURITY OFFICER: All rise for the jury.

17 THE COURT: Mr. Surovic, you may proceed.

18 MR. SUROVIC: Thank you, Your Honor.

19 BY MR. SUROVIC:

20 Q. Ms. Rodriguez, could you tell us how a visit to Rapid  
21 Return Tax Service went for you? For example, what did you  
22 take with you in order to go see Ms. Hosseini?

23 A. We took the W-2s and the mortgage papers for our house.

24 Q. Anything else?

25 A. No.

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1 Q. Did you take any receipts from your childcare business  
2 or mileage or anything like that?

3 A. No.

4 Q. Just your W-2s and the mortgage?

5 A. Yes.

6 Q. Did you always see Ms. Hosseini when you went in?

7 A. Did I what?

8 Q. Did you always see Ms. Hosseini when you went in to get  
9 your taxes prepared?

10 A. Not all the time. The first two, three times we went,  
11 yes.

12 Q. And that would have been 2008, 2009 and 2010?

13 A. Yes.

14 Q. I'm going to ask you to look at the first folder there,  
15 Government Exhibit Number 6-1, first folder on the top and  
16 if you'd open that up and open up that first page there, go  
17 to the second page and you'll see at the top it's marked  
18 Form 1040 U.S. Individual Tax Return 2008 and it has Joe  
19 Rodriguez, Vanessa Rodriguez, Social Security numbers and  
20 address in San Antonio. Is this your tax return from 2008?

21 A. Yes.

22 Q. And if we go down to line 12 on that first page, it  
23 indicates business income or loss and it reflects a loss of  
24 \$9,274, is that correct?

25 A. No.

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1 Q. The number there on line 12, \$9,274, is that what it  
2 says there?

3 A. That's what it says, yes, that's what it says.

4 Q. I'm going to ask you, I'm going to go through here  
5 because I know 2008 that's almost nine years ago that you  
6 would have prepared this tax return. Just to give you an  
7 idea of what was going on in your life, if we could go to  
8 page three, flip with me there. And there should be a W-2  
9 for you from Christian World Learning Center?

10 A. Yes.

11 Q. Is that the day care center that you worked at?

12 A. Yes.

13 Q. And then the next page is a W-2 for your husband, Jose  
14 Rodriguez at Cantu Services?

15 A. Yes.

16 Q. What is Cantu Services?

17 A. It's a military mess hall where the soldiers go eat.

18 Q. And then there's also a W-2 for you again from ACS  
19 Commercial Solutions?

20 A. Yes.

21 Q. And what is ACS Commercial Solutions?

22 A. That was the call center I used to work before this.

23 Q. So looking at those, do you remember the year where you  
24 worked for both Christian World Learning Center and for the  
25 call center?

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1 A. Yes.

2 Q. Now, let's go if we would to page nine which is going  
3 to be the Schedule C in here. It's entitled Profit Or Loss  
4 From A Business. I don't know if you can see the screen at  
5 all, but that's what it's going to look like. Should be  
6 about nine pages back.

7 A. Okay.

8 Q. At the top of that it is in block A, it says,  
9 Childcare, is that correct?

10 A. Yes.

11 Q. And right above that it says name of proprietor,  
12 Vanessa Rodriguez, that would be you, right?

13 A. Yes.

14 Q. This is the childcare you were talking about where you  
15 were running it out of your home, is that correct?

16 A. Yes.

17 Q. Now, if we turn to the next page, you'll see in part  
18 five at the bottom it says cell phone, \$1,200. Did you have  
19 a cell phone that you used exclusively for your childcare  
20 business?

21 A. No.

22 Q. What type of cell phone did you have, cell phone plan  
23 did you have for you and your husband? You don't recall?

24 A. No, it would have been Sprint or AT&T.

25 Q. Okay. Was it a plan where you, you know, covered both

VANESSA RODRIGUEZ - DIRECT

1 your -- you had a phone obviously?

2 A. Yes.

3 Q. Did your husband have a phone?

4 A. Yes.

5 Q. Did anyone else in your plan have a phone?

6 A. Yes.

7 Q. Who would that be?

8 A. We've always had a family plan with my mom and my  
9 brother.

10 Q. And you paid one fee for all of them?

11 A. Yes.

12 Q. As far as the phone that you had, did you use that  
13 exclusively for the childcare business taking care of the  
14 children in your home that you were telling us about?

15 A. No.

16 Q. This \$1,200 here, do you know where that number comes  
17 from?

18 A. No.

19 Q. Was that number the cost of your entire phone plan?

20 A. No.

21 Q. Did you ever tell Ms. Hosseini that you used at least  
22 one of the phones exclusively for the childcare business?

23 A. No.

24 Q. Do you know at all where that number came from?

25 A. No.

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1 Q. Let's also look at -- I notice right underneath that,  
2 let's go two down, Internet service \$360. Did you have  
3 Internet at your house?

4 A. Yes.

5 Q. What was the Internet for?

6 A. For the family.

7 Q. For your own home?

8 A. Uh-huh, yes.

9 Q. Is \$360 what you paid for Internet for the year?

10 A. Just for the Internet itself?

11 Q. Just for the Internet.

12 A. No.

13 Q. Did you pay more or less than that?

14 A. Less than that.

15 Q. Did you use the Internet at all as part of the  
16 childcare business that you described to us?

17 A. Did I use it at all?

18 Q. Yes.

19 A. The kids used to sit down and play games with the  
20 Internet.

21 Q. Was that the primary thing that happened on the  
22 Internet?

23 A. No.

24 Q. What was the primary thing that happened on the  
25 Internet?

VANESSA RODRIGUEZ - DIRECT

1 A. It was mostly for my family, for my son to play his  
2 X-Box.

3 Q. So it was only incidentally for the kids you were  
4 taking care of?

5 A. Yes.

6 Q. There's a another entry there, field trips \$800. Do  
7 you know what that's about?

8 A. No.

9 Q. Did you ever tell Ms. Hosseini that you spent about  
10 \$800 on field trips for the children you were taking care  
11 of?

12 A. Not \$800.

13 Q. This question is important because we have \$800 listed  
14 there, but if you go back to the previous page, the front  
15 page of the Schedule C profit and loss from a business and  
16 then you'll look at line 24, there's an entry that talks  
17 about travel meals and entertainment and then there's an  
18 entry, travel, \$1,800. In relation to the childcare  
19 business, did you spend \$1,800 on travel to take care of  
20 those children?

21 A. No.

22 Q. Did you ever tell Ms. Hosseini that you spent \$1,800 on  
23 travel for the children?

24 A. No.

25 Q. Do you have any idea where that number comes from?



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1 A. No.

2 Q. Right above it if you look at line -- a little bit more  
3 above it, line 22, two lines above it, says supplies and  
4 then next to that it says \$5,680 in supplies. Did you buy  
5 \$5,680 worth of stuff to help take care of those kids?

6 A. No.

7 Q. What type of things would you buy for the kids?

8 A. Toys like from garage sales.

9 Q. What type are we talking about, balls, things like  
10 that?

11 A. Yeah, table games.

12 Q. How often did you do that?

13 A. Whenever I saw a garage sale, like maybe once a month.

14 Q. Did you buy crayons, coloring books, things like that  
15 for them?

16 A. Yes.

17 Q. How much do you think you total spent in a year in 2008  
18 for supplies to take care of those kids?

19 A. Around 200, \$300.

20 Q. Nowhere near \$5,680?

21 A. No.

22 Q. I also notice that on line eight over on part two,  
23 there is an advertising \$250, did you advertise for this  
24 childcare business?

25 A. No.

VANESSA RODRIGUEZ - DIRECT

1 Q. So did you have any expenses for advertising as far as  
2 the childcare business?

3 A. No.

4 Q. The children you were taking care of were children of  
5 friends, right?

6 A. Yes.

7 Q. You were doing it basically as a favor for your  
8 friends?

9 A. Yes.

10 Q. So you didn't need to advertise?

11 A. No.

12 Q. There is also if you'll notice directly underneath the  
13 advertising \$250, car and truck expenses, \$4,360. And if  
14 you'll flip over to the next page, the one we were looking  
15 at that had that cell phone bill on it, in part four it  
16 indicates Question 44, Of the total number of miles you  
17 drove your vehicle during 2008, enter the number of miles  
18 you used your vehicle for -- and it says, A, business, and  
19 there's 8,000 written in. Did you drive around a lot with  
20 the kids?

21 A. No.

22 Q. How often would you drive them out? You indicated, for  
23 example, that you went to Splashtown periodically, how often  
24 did you do that?

25 A. When they were in the summer, maybe once a week, once,

VANESSA RODRIGUEZ - DIRECT

1 twice a week.

2 Q. How far is Splashtown from where you live?

3 A. Around ten miles.

4 Q. Ten miles each way?

5 A. Uh-huh.

6 Q. And did you ever drive them anywhere else?

7 A. To the park, maybe to buy grocery shopping, they had to  
8 go with me, that's about it.

9 Q. Nowhere near 8,000 miles?

10 A. No.

11 Q. Did you ever tell Ms. Hosseini that you drove  
12 8,000 miles as part of the childcare business that you had?

13 A. No.

14 Q. Did you tell her that you had a written mileage log or  
15 some sort of proof that you had done?

16 A. No.

17 Q. Gone 8,000 miles?

18 A. No.

19 Q. Do you know where she came up with these numbers?

20 A. No.

21 Q. And if she checked a box indicating that you had proof,  
22 would that be incorrect?

23 A. Yes.

24 Q. And if she then further said that that proof was  
25 written, that would have been false also, is that correct?

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1 A. Yes.

2 Q. Did you ever tell her that you had written proof of any  
3 mileage at all?

4 A. No.

5 Q. I'm going to ask you if you'll go to the next folder  
6 which is the folder that's marked 6-3, Exhibit 6-3. And  
7 then this is the folder that is marked -- it says preparer  
8 copy across the front of it or the document says preparer  
9 copy. These are the records that came from Ms. Hosseini's  
10 office. If I could have you look through those very briefly  
11 for us, just look through the pages, I'm going to ask you a  
12 few questions about that in just a second.

13 (Pause.)

14 Okay, now, towards the end, this indicates that there  
15 are copies of the W-2s that were attached to your income tax  
16 return, is that correct? Very back.

17 A. Yes.

18 Q. And there's a photo of your driver's license and your  
19 husband's driver's license?

20 A. Yes.

21 Q. And there is the last page is a Rapid Return Tax  
22 Service, We work for you not the IRS. And it's got some  
23 basic information about you and your son?

24 A. Yes.

25 Q. You and your husband and your son. There are no

VANESSA RODRIGUEZ - DIRECT

1 receipts or records or anything like that, is that correct?

2 A. That is correct.

3 Q. This is what you brought Ms. Hosseini, is that correct?

4 A. Yes.

5 Q. Now, if we go back to the front, each of those pages  
6 that you looked through, they all have -- some of them have  
7 signatures, but most of them have initials, is that correct?

8 A. Yes.

9 Q. And whose initials are they?

10 A. Mine and my husband's.

11 Q. Did Ms. Hosseini review with you your income tax return  
12 after she completed it?

13 A. Not review explaining like every page. She would just  
14 tell us this page is for that, go ahead and sign here and  
15 there, the same thing with every page, just go ahead and  
16 this is for this or this is for that, but she didn't review  
17 the whole thing.

18 Q. And she just had you initial off on each page?

19 A. Initial and pass it to my husband.

20 Q. Did she answer any questions you had at the end of the  
21 process?

22 A. Just how much money we're getting back.

23 Q. Let's talk about that a little bit. If you'll go to  
24 page six which is marked as bank product information at the  
25 top of the page, should be six pages in. Did you find it?

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1 A. Yes.

2 Q. And if you'll look down a ways, there's that big box  
3 and in the middle it says, Total Projected Bank Fee, and it  
4 lists \$30.95 and then right underneath it, tax preparation.  
5 And can you tell me what the figure is next to tax  
6 preparation?

7 A. Can I tell you what, I'm sorry?

8 Q. The number that's next to the tax preparation.

9 A. \$527.05.

10 Q. That's the total preparer fees which includes e-file,  
11 just her preparation fee is \$457.05, is that correct?

12 A. Yes.

13 Q. Did you know that you were paying her that much?

14 A. Yes.

15 Q. You didn't actually have to write a check for that, did  
16 you?

17 A. No.

18 Q. How did she get paid?

19 A. She will take the money from -- she will just give us a  
20 check.

21 Q. And as far as that check goes, the refund from the IRS,  
22 that's down in that last box there, projected checks after  
23 fees, \$1,625?

24 A. Yes.

25 Q. Do you recall is that about the amount that you got as

VANESSA RODRIGUEZ - DIRECT

1 a refund from the IRS that year? Does that sound about  
2 right?

3 A. Yes.

4 Q. Okay. Let's go on to you're still running that same  
5 childcare business in 2009, is that correct?

6 A. I'm still taking care of kids, yes.

7 Q. If I could get you to look at the folder, you can go  
8 ahead and close that up and look at the folder that's marked  
9 Exhibit 7-1, it will be another one of those with the blue  
10 top on it. And if I could get you to turn to the second  
11 page there, second page there starts off, Form 1040 U.S.  
12 Individual Tax Return 2009, is that correct?

13 A. Yes.

14 Q. And again it's got your and your husband's names on it?

15 A. Yes.

16 Q. So is this your tax return for 2009?

17 A. Yes.

18 Q. And if we go down to line 12 on this page, it indicates  
19 that there's a business loss of \$11,595, is that correct?

20 A. That's what it says, yes.

21 Q. You don't remember spending that much money on your  
22 childcare business, do you?

23 A. No.

24 Q. That would have been a significant portion of your  
25 family income?

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1 A. Yes.

2 Q. If we go to I believe it's going to be page seven.

3 That's again the Schedule C, profit or loss from a business?

4 Might be page six, excuse me.

5 A. Yes.

6 Q. Again this is name of proprietor is you and it's the  
7 childcare business, same business you had the year before,  
8 is that correct?

9 A. Yes.

10 Q. If we look down on this, let's go to the next page  
11 again, I'm going to start there. This time you in part five  
12 at the bottom you have the same three items, cell phone,  
13 field trips, Internet service. Cell phone is the same as it  
14 was last year, \$1,200, field trips went down a little bit,  
15 it's only \$600 this time. Internet service went way up,  
16 it's \$1,200. As far as your cell phone goes, you told us  
17 about how your cell phone was in 2008, did pretty much the  
18 same thing apply in 2009?

19 A. Yes.

20 Q. So once again you did not utilize your cell phone one  
21 hundred percent for the childcare business?

22 A. No.

23 Q. And do you know where Ms. Hosseini came up with the  
24 1,200-dollar figure for that?

25 A. No.



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1 Q. Did you tell her anything other than what your annual  
2 cell phone bill was or monthly cell phone bill?

3 A. No.

4 Q. As far as field trips go, did you have any special  
5 field trips in 2009 that cost \$600?

6 A. No, just the same thing, Splashtown and just maybe to  
7 the park.

8 Q. By the way, you indicated that you took the kids to  
9 Splashtown during the summer.

10 A. Yes.

11 Q. How did you get them in? Did you have to buy tickets  
12 for them?

13 A. I bought a membership.

14 Q. How much did that cost?

15 A. Around \$56 per child.

16 Q. And you bought one for each of the children?

17 A. It was three of them.

18 Q. So maximum for going to Splashtown would have been a  
19 little over \$160?

20 A. Yes.

21 Q. And did you and your family have passes to Splashtown  
22 also?

23 A. No.

24 Q. Just you and the kids?

25 A. Yes.

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1 Q. Internet service, it went from little over \$300 to  
2 \$1,200, did you increase your Internet service during that  
3 period of time?

4 A. No.

5 Q. Was the Internet service you used the same as it was in  
6 2008 with largely for your family, but the kids got to play  
7 on games while they were there?

8 A. Yes.

9 Q. So do you know -- do you pay \$1,200 for Internet  
10 service?

11 A. No.

12 Q. Let's go back to the first page of the Schedule C.  
13 Let's go ahead and start with line 22, the supplies. You  
14 spent about over \$5,000 in 2008. Here it says you spent  
15 \$2,300 in 2009. Did you spend \$2,300 on supplies to keep  
16 the kids busy in your childcare business?

17 A. No.

18 Q. Again how much did you normally spend in a year for the  
19 childcare business as far as things for the kids, supplies?

20 A. No more than \$300.

21 Q. And you picked those up largely at garage sales?

22 A. Yes.

23 Q. And coloring books, things like that I guess you get at  
24 H.E.B.?

25 A. Yes.

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1 Q. Do you know where Ms. Hosseini came up with the \$2,300  
2 in supplies?

3 A. No.

4 Q. We look down a little bit more to line 24, we looked  
5 before at travel, meals and entertainment, that time in 2008  
6 you had a lot of travel. This time deductible meals and  
7 entertainment \$350. Did you ever take the kids out to eat?

8 A. Just to McDonald's.

9 Q. How often did you do that?

10 A. Just once in a while.

11 Q. \$350, does that sound about how much you would have  
12 spent at McDonald's?

13 A. No.

14 Q. If you go over to line 13 on the other side, you'll see  
15 that there is a depreciation for \$9,978, do you know what  
16 that's for?

17 A. No.

18 Q. If we look at I believe it's going to be page eleven,  
19 there is a form 4562, it's titled Depreciation and  
20 Amortization, did you find that?

21 A. No.

22 Q. It should be five pages from the very end.

23 A. Okay.

24 Q. At the top there it indicates in line six that you're  
25 depreciating a desktop computer and a laptop that you

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1 purchased that year. Were those purchased for your  
2 childcare business?

3 A. No.

4 Q. Did you use them in the childcare business?

5 A. The kids only used it once in a while.

6 Q. Was that the primary use for them is the childcare  
7 business or something else?

8 A. No, it was for family.

9 Q. And there are some other items listed, but it doesn't  
10 indicate what the other items are. But let's go to

11 Government Exhibit 7-3, if you'll look in the 7-3 folder.

12 And this time I'm going to ask you to look at page eight.

13 It should be entitled -- it will be a page that goes

14 lengthwise, what they refer to in your printing is

15 landscape, and it's entitled Depreciation Detail Listing.

16 Did you find that?

17 A. Yes.

18 Q. This says you're depreciating a 2005 Honda Civic, a  
19 46-inch Insignia TV, a 32-inch Emerson TV, an HP desktop  
20 computer and a Compaq laptop, do you see that?

21 A. Yes.

22 Q. And did you actually own all this property?

23 A. We bought TVs, yes.

24 Q. What did you buy the TVs for?

25 A. My family.

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1 Q. Just so the family could watch TV together?

2 A. Yes.

3 Q. And what about the Honda Civic?

4 A. That was my car.

5 Q. And we've already talked about the computers. Over  
6 five columns it says business percentage and next to each of  
7 those items the Honda, the TVs and the desktop computers, it  
8 says business percentage one hundred percent. Did you use  
9 your Honda Civic solely for the childcare business?

10 A. No.

11 Q. What did you use it for?

12 A. It was my car to go back and forth to work. It was my  
13 personal car.

14 Q. And the TV set you indicated you bought for your  
15 family?

16 A. Yes.

17 Q. What percentage of their usage actually do you think  
18 was actually for the childcare business?

19 A. Maybe ten, 20 percent.

20 Q. And with the computers, about the same thing?

21 A. Yes.

22 Q. Did you ever tell Ms. Hosseini that your Honda and the  
23 TVs and the computer and the laptop, those were all one  
24 hundred percent purchased and used in the childcare  
25 business?

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1 A. No.

2 Q. Do you know where she got that idea that they were used  
3 solely for the childcare business?

4 A. No.

5 Q. I'm going to ask you now to look at page six. Page six  
6 is the page Bank Product Information?

7 A. Yes.

8 Q. And again if we go down to that one block in the middle  
9 where it says, Tax Preparation, total preparer fees and  
10 right above that it says, Tax Preparation?

11 A. Yes.

12 Q. What is the number next to tax preparation here?

13 A. 922.

14 Q. Okay, that's the total preparer fees that includes the  
15 e-file and the bank documents, right?

16 A. Yes.

17 Q. And if you deduct the e-file and bank documents, you're  
18 talking about \$822.05, right?

19 A. Yes.

20 Q. Significantly more than you paid the year before  
21 because you only paid about four -- a little over 400 the  
22 previous year, right?

23 A. Yes.

24 Q. Do you know why you had to pay twice as much this year?  
25 Did Ms. Hosseini ever tell you why your preparation fee was

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1 going up so much?

2 A. No, I do remember there was a year that they told us  
3 that we had to pay more because there was an error the year  
4 before and our check was a little bit less than what we were  
5 expecting.

6 Q. And this, your refund was going to be \$1,782, is that  
7 correct?

8 A. Yes.

9 Q. About \$200 more than your refund the year before?

10 A. Yes.

11 Q. And once again all of the pages, this time they're  
12 actually signed by you alone, is that correct?

13 A. Yes.

14 Q. Did you go through the same type of review process you  
15 went through before with Ms. Hosseini?

16 A. Yes.

17 Q. Did she explain in detail anything going on here?

18 A. No.

19 Q. How long do you think the review actually took?

20 A. As soon as she printed the papers like five minutes  
21 just she will ask us to sign this paper, this is -- she  
22 wouldn't review it, just go ahead and sign right here, go  
23 ahead and sign right there. She will just call the name on  
24 the top of the paper and I will sign it and then my husband  
25 will sign it.

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1 Q. Let's take a look at I believe it's Government Exhibit  
2 Number 8-1, it will be the next folder and it will be one of  
3 those with the blue paper on top and if you could open up to  
4 the second page that starts the tax return. This one is  
5 entitled Form 1040 U.S. Individual Income Tax Return 2010,  
6 is that correct?

7 A. Yes.

8 Q. And again this is you and your husband's tax returns  
9 for 2010, is that right?

10 A. Yes.

11 Q. If we go down to line 12 on this page, indicates that  
12 you had a 14,606-dollar loss, is that correct?

13 A. That's what it says, yes.

14 Q. And your income was \$30,926, so that's almost half of  
15 your income?

16 A. Yes.

17 Q. And if we go to I believe it's going to be page five,  
18 again that will be the Schedule C profit and loss from a  
19 business?

20 A. Yes.

21 Q. And Schedule C again at the top, your name, childcare,  
22 this is the same business we've been talking about, is that  
23 correct?

24 A. Yes.

25 Q. This time let's go to the next page, you have on part



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1 five at the bottom of the second page of the Schedule C,  
2 mobile phone business use, field trips, Internet service,  
3 and there's a new category, toys, games, books. Let's start  
4 with the mobile phone business use. Mobile phone business  
5 use, \$1,080, it was 1200, so it came down a little bit. Do  
6 you know why this number changed?

7 A. No.

8 Q. Had anything changed as far as your cell phone use?

9 A. No.

10 Q. Were you still on the family plan and not using your  
11 cell phone exclusively for the childcare business?

12 A. It was still the family plan.

13 Q. \$875 for field trips. Did you have a special field  
14 trip in 2010 that you took the kids on?

15 A. No.

16 Q. Did you spend anywhere near \$875 on field trips?

17 A. No.

18 Q. The only field trip really we're talking about is  
19 Splashtown, right?

20 A. Yes.

21 Q. Internet services dropped down to \$480. Anything  
22 change about your Internet service between then and the last  
23 two years?

24 A. Not that I recall.

25 Q. And toys, games, books, \$1,200. Did you spend \$1,200

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1 on toys, games or books for the kids during 2010?

2 A. No.

3 Q. Again had your buying for them changed much between  
4 2008, 2009 and 2010 as far as the supplies, the books and  
5 things like that, had it changed at all?

6 A. No.

7 Q. You didn't run out and buy a whole bunch of books  
8 because you thought in 2010 this would be a good thing to  
9 do?

10 A. No.

11 Q. If we go back to the first page of the Schedule C, go  
12 back one page, look at line 22 on that page, supplies in  
13 part two. We've been talking about supplies on each of  
14 these. Now, that number is \$2,980, is that correct?

15 A. That's what it says.

16 Q. That's what it says. And then of course you've got  
17 separated out and included in a different line the \$1,200  
18 for toys, games and books, so we wouldn't be counting toys,  
19 games and books as far as supplies in this line. So how  
20 much do you think you spent on supplies excluding toys,  
21 games and books in 2010 for the kids in the childcare?

22 A. Just in supplies, like maybe 50, \$60.

23 Q. Do you know where Ms. Hosseini came up with the number  
24 \$2,980?

25 A. No.

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1 Q. Again during this period and I didn't ask you about  
2 2009, I asked you about 2008. In 2009 and 2010, did you  
3 bring in anything to her to examine other than your W-2s and  
4 your mortgage?

5 A. No.

6 Q. So you wouldn't have brought receipts or anything like  
7 that that she could have totaled up and come up with these  
8 numbers?

9 A. No.

10 Q. If we go down a little bit, line 24, travel meals and  
11 entertainment, so we're back to travel this time and for  
12 travel it says \$900. Did you go anywhere -- did you spend  
13 \$900 to take the kids anywhere in part of that childcare?

14 A. No.

15 Q. And then right underneath it, deductible meals and  
16 entertainment \$1,120. Did you take the kids anywhere other  
17 than McDonald's that year?

18 A. No.

19 Q. Did you spend \$1,100 at McDonald's that year?

20 A. No.

21 Q. Do you know where Ms. Hosseini came up with the \$900  
22 for travel or \$1,120 for meals -- deductible meals and  
23 entertainment?

24 A. No.

25 Q. Did she explain to you what the rule was for deductible

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1 meals and entertainment where you could only deduct a  
2 portion of the cost of a meal because the government assumes  
3 that you're going to eat whether you're doing business or  
4 not?

5 A. No.

6 Q. She didn't explain anything about deductible meals?

7 A. No.

8 Q. Did she talk to you about meals that you were providing  
9 the kids or anything like that?

10 A. She will ask me if the kids will eat at my house,  
11 that's about it.

12 Q. Did she ask you how much you were spending for the  
13 meals for kids at your house?

14 A. No.

15 Q. We go up to the top of the other column, eight,  
16 advertising, \$350. Did you advertise in 2010? Had that  
17 changed?

18 A. No.

19 Q. And then we have underneath that, car and truck  
20 expenses, \$4,411. Did you spend \$4,411 on your car?

21 A. No.

22 Q. Did you bring in receipts from your car as far as  
23 gasoline or anything like that?

24 A. No.

25 Q. Any work that you had on your car, you know, from a

VANESSA RODRIGUEZ - DIRECT

1 shop or something?

2 A. No.

3 Q. Did you bring in a mileage log or anything like that to  
4 show her?

5 A. No.

6 Q. Thirteen, if you look at line 13, it indicates  
7 depreciation of \$3,209, do you know what that's about?

8 A. No.

9 Q. And then finally -- well, let me go to -- if you'll  
10 look at page eight and page nine again this is going to be  
11 the depreciation amortization form 4562, page eight will be  
12 the front of it. According to this, you bought -- have you  
13 found the form? It will be four pages from the ending.

14 A. Yes.

15 Q. According to this, you bought a Compaq laptop that year  
16 for \$789, do you recall that?

17 A. No, I think that one was bought the year before.

18 Q. And if we go to the second -- by the way, that Compaq  
19 laptop that's the one you talked about that you bought for  
20 the family?

21 A. Yes.

22 Q. Kids sometimes used it, maybe ten percent of the time,  
23 is that correct?

24 A. Yes.

25 Q. We go to the second page, we see depreciation for the

VANESSA RODRIGUEZ - DIRECT

1 Honda Civic again. Is that right?

2 A. Yes.

3 Q. And then in the third column, column C, you come down,  
4 business investment use percentage, hundred percent. Again  
5 that's the same Honda Civic we've been talking about in  
6 prior years, is that right?

7 A. Yes.

8 Q. Did anything change about that Honda Civic where you  
9 were only using it for the childcare business?

10 A. No.

11 Q. Did you tell her that you were only using it one  
12 hundred percent for the childcare business?

13 A. No.

14 Q. If we go to the folder that's marked Exhibit 8-3, again  
15 is the preparer file, and if you go to page six of that and  
16 if you look at there are now six items listed there, is that  
17 correct?

18 A. Yes.

19 Q. This is the same five items we talked about before plus  
20 an extra Compaq laptop that was supposedly put into service  
21 2010, 06/01, but you say you don't remember buying that  
22 laptop?

23 A. I don't remember that year. I don't remember getting  
24 that one.

25 Q. All of those items we've talked about before, did

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1 anything change in 2010 from what we talked about for all  
2 those items?

3 A. No.

4 Q. So when it says business percentage one hundred percent  
5 as to each of those items, did you use those one hundred  
6 percent for your childcare business?

7 A. No.

8 Q. In fact, most of them were used less than ten percent,  
9 is that correct?

10 A. Yes.

11 Q. If you go to page 12 of the exhibit you're looking at,  
12 it says overflow statement 1040, 2010. There's only one  
13 item on it, Schedule C, line eight advertising. Did you  
14 find it?

15 A. Yes.

16 Q. It says, Advertising, business cards or flyers, did you  
17 print out any business cards or flyers during 2010?

18 A. No.

19 Q. And I notice that there are signatures on that page, it  
20 would be your signature and your husband's, I assume?

21 A. Yes.

22 Q. Did the review of this tax form go pretty much the same  
23 way you described it before where you just sign the pages?

24 A. Yes.

25 Q. And if we could go to page five. It's a little

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1 different. This is the one that has at the top 2011  
2 applications, authorizations, certifications, agreements and  
3 it has your husband's name and your name on it?

4 A. Yes.

5 Q. Over at the side there are three boxes at the top on  
6 the right-hand side. You see the box that is entitled  
7 Estimation of Federal ERCRET Net Proceeds?

8 A. Yes.

9 Q. And it says, Total anticipated federal refund amount  
10 3,965?

11 A. Yes.

12 Q. And then there is a -- you go down a little ways three  
13 down says, Less tax preparer fees, is that correct?

14 A. Yes.

15 Q. What is the tax preparer fee that you had to pay this  
16 year?

17 A. 841.

18 Q. So you paid \$841 in order to get your taxes prepared by  
19 Ms. Hosseini?

20 A. Yes.

21 Q. Now, did you encourage Ms. Hosseini to be creative in  
22 what she was deducting for you?

23 A. No.

24 Q. What did you want when you went to Ms. Hosseini to  
25 prepare your taxes?



VANESSA RODRIGUEZ - CROSS

1 A. I wanted to get our taxes like every year. I mean like  
2 I said every year we used to go to H&R Block and we stopped  
3 going over there because they made a mistake. When we went  
4 to see her, she asked us what was my type of job and my  
5 husband's, so when I told her that I used to work at a day  
6 care, she asked me if I used to take care of kids on the  
7 side and I said yes. So she told me that if I knew that I  
8 could claim that as a business and I told her no, I didn't  
9 know. So that's when --

10 Q. She started --

11 A. -- she started claiming this as a business.

12 Q. Did you go to Ms. Hosseini so you could get your taxes  
13 accurately prepared because you assumed that she knew what  
14 she was doing?

15 A. Yes.

16 MR. SUROVIC: No further questions, Your Honor.

17 THE COURT: Cross.

18 MR. BARNES: Yes, Your Honor.

19 EXAMINATION

20 BY MR. BARNES:

21 Q. At some point, did you request that Margaret Hosseini  
22 not report your bankruptcy income -- sorry, your income from  
23 the babysitting?

24 A. No.

25 Q. Do you recall having an interview with the IRS agents

VANESSA RODRIGUEZ - CROSS

1 in this case?

2 A. After -- in the taxes, yes.

3 Q. Do you recall telling them that you told Hosseini that  
4 you did not think you should include the babysitting income  
5 from 2011?

6 A. Yes, because I said 2011 I wasn't taking care of kids  
7 anymore.

8 Q. Do you recall telling them that you did do babysitting  
9 for the first two months in 2011, but you didn't do it after  
10 that and so you didn't think that the income that you did  
11 make you should have to report on the return, is that  
12 correct?

13 A. Yes.

14 Q. And then ultimately did Margaret tell you that you had  
15 to report that on your tax returns?

16 A. She told me that it was better, that way I can get more  
17 money.

18 Q. And ultimately did you decide not to use Margaret for  
19 that year and file your own tax returns, for 2011?

20 A. I think I did file my own, yes.

21 Q. And you didn't include any babysitting income on that  
22 return, did you?

23 A. No, I didn't.

24 MR. BARNES: I have a motion on this, Your Honor.

25 THE COURT: Noted.

VANESSA RODRIGUEZ - CROSS

1 BY MR. BARNES:

2 Q. On the first two years, 2008, 2009, Margaret wasn't the  
3 tax return preparer for those years, was she?

4 A. She wasn't the tax preparer?

5 Q. Right.

6 A. I think she was the tax preparer for the first two  
7 years.

8 Q. Do you recall on the 2008 meeting with Leticia  
9 Villarreal?

10 A. Yes.

11 Q. So in 2008 Leticia was the tax return preparer, not  
12 Margaret, correct?

13 A. Well, Margaret came to help her. Leticia was the one  
14 that started doing the taxes, but Margaret came to help her.

15 Q. So Leticia was the one who actually signed the returns  
16 and did that, do you recall that?

17 A. Yes.

18 Q. And in 2009 you met with Chiara Luera, do you recall  
19 that?

20 A. I don't remember her name, but I -- there was somebody  
21 else, yes.

22 Q. Do you recall seeing Chiara Luera was the tax return  
23 preparer for that year on the return documents?

24 A. Yes.

25 Q. Can we go to 8-3, page five. At the very top, top

VANESSA RODRIGUEZ - CROSS

1 left-hand part. Do you have that in your file?

2 A. 8-3?

3 Q. Yes.

4 A. Yes.

5 Q. Do you see at the top where it has a date of birth  
6 that's been corrected for Joe Rodriguez?

7 A. Is that the first page?

8 Q. This would be 8-3 and page five, it will say on the  
9 bottom center and if you go to the top left, do you see  
10 Joe's name and date of birth and actually the date of birth  
11 has been written out and corrected, do you see that?

12 A. Yes.

13 Q. And so when you were going through and signing all of  
14 these pages, is it your testimony that you didn't read any  
15 of it even when there's been written corrections?

16 A. Yes, I didn't read the pages, no.

17 Q. Can we go to page six?

18 A. Yes.

19 Q. And can we -- and this is the one that lists all the  
20 things that were depreciated and that you were claiming one  
21 hundred percent business for each of those. Did you sign  
22 your name to that page?

23 A. Yes, I did.

24 Q. Did you tell Margaret or anybody there that you weren't  
25 reading anything that you were signing?

VANESSA RODRIGUEZ - CROSS

1 A. No, they're not asking if you're reading it, they just  
2 tell you go ahead and sign this paper, this is what you're  
3 going to get, go ahead and pass it to your husband, go ahead  
4 and sign this.

5 Q. But you didn't tell them I'm signing all this, but I'm  
6 not going to read it even though it's under penalty of  
7 perjury?

8 A. No.

9 Q. When was the first time you heard from the IRS that  
10 they had any issue with your return?

11 A. I don't remember the year, 2011 probably, 2012, I  
12 don't --

13 Q. And did they send you a document, how did they first  
14 let you know that they had an issue with your return?

15 A. I don't remember if they left a note first, but one of  
16 them went to my house.

17 Q. And did they give you their badge, how did they  
18 introduce themselves?

19 A. Yes, they gave me a card.

20 Q. And did they ask to interview you right then at the  
21 house?

22 A. Yes.

23 Q. And were there any children there in the house when  
24 they asked you to do that interview?

25 A. If there was, only my son.

VANESSA RODRIGUEZ - CROSS

1 Q. And did they give you an opportunity -- did they tell  
2 you first you need to gather all your records and receipts  
3 before we do the interview, did they give you that  
4 opportunity?

5 A. Yes, they asked me to gather whatever I had and, you  
6 know, from my W-2s and stuff like that.

7 Q. Did they tell you that if the mistakes on the returns  
8 were your mistakes, that you could go to prison for three  
9 years for every return that was inaccurate, did they warn  
10 you about that?

11 A. I don't remember that.

12 Q. Did they go through and explain -- did they explain how  
13 depreciation works?

14 A. Yes, they were sitting down with me and they were  
15 explaining to me and my husband like every paperwork that  
16 they had.

17 Q. But what did they explain as to how depreciation works?

18 A. I don't remember, I don't even know what depreciation  
19 is.

20 Q. Did they explain that you can actually have deductions  
21 for a business that you don't actually spend cash on, but  
22 that it's just the depreciation or the decline in the value  
23 of property or equipment you're using for your business, did  
24 they explain that to you?

25 A. I don't remember that.

## VANESSA RODRIGUEZ - CROSS

1 Q. Were you using your house for the babysitting business  
2 several times a week?

3 A. I was not a babysitter business, I was just taking care  
4 of my friend's kids.

5 Q. Did they pay you money for it?

6 A. Yes.

7 Q. Were you using the house for what you were getting paid  
8 money for?

9 A. Yes.

10 Q. Were you using your car for what you were getting paid  
11 for?

12 A. Yes.

13 Q. Did you set up a pool in the backyard that you were  
14 using or did you have a pool at any time in the backyard  
15 that was helpful to that?

16 A. No.

17 Q. You don't remember that. Was any of the furniture in  
18 your house used for what you were getting paid money for?  
19 Did the kids use any of the furniture?

20 A. They have to sit down, yeah.

21 Q. Did they explain to you part of the reason for  
22 depreciation is sometimes, as an example, kids are tough on  
23 furniture?

24 A. Uh-huh.

25 Q. Is it the case that if the kids were never there,

## VANESSA RODRIGUEZ - REDIRECT

1 furniture might last a little longer, is that a fair  
2 inference?

3 A. Yeah.

4 Q. And you said you were using -- at times they used the  
5 Internet, they used computers and they used TVs as well?

6 A. Yes.

7 Q. There was some discussion about food?

8 A. Yes.

9 Q. I assume you fed them?

10 A. Yes.

11 Q. And often what is -- rather than just go out, you fed  
12 them from home?

13 A. Yes.

14 Q. And did you use cups and utensils and plates and all to  
15 feed them?

16 A. Yes.

17 Q. And did it cost money to have those things, to have  
18 cups and plates and utensils?

19 A. The same things that I already had in my house, I  
20 didn't have to buy extra.

21 Q. Did the IRS explain to you you don't have to buy extra  
22 in order to take deductions when you're using things for  
23 your -- that you're receiving money in, did they explain  
24 that to you?

25 A. No.



## VANESSA RODRIGUEZ - REDIRECT

1 Q. And did you ever have to use cleaning supplies after  
2 the kids were there?

3 A. Yes.

4 Q. And did the kids ever need towels and paper towels  
5 toilet paper, use any of that when they were there?

6 A. Yes.

7 Q. And you often also took them to the park, is that  
8 correct?

9 A. Sometimes, yes.

10 Q. And sometimes you also took them to Splashtown?

11 A. Yes.

12 Q. Did you ever provide towels or anything like that, bath  
13 towels or anything like that whenever they were there?

14 A. No, they will bring their towels.

15 Q. Did the IRS explain to you that all of those are  
16 potential deductions to you?

17 A. No.

18 MR. BARNES: No further questions, Your Honor.

19 THE COURT: Redirect.

20 EXAMINATION

21 BY MR. SUROVIC:

22 Q. Ms. Rodriguez, defense counsel asked you about children  
23 using the furniture in your house?

24 A. Yes.

25 Q. And how sometimes that can get broken. Did

## VANESSA RODRIGUEZ - REDIRECT

1 Ms. Hosseini ever ask you about the value of the furniture  
2 so that it could be depreciated?

3 A. No.

4 Q. The only things that she indicated she was depreciating  
5 were the car and the TVs and the computer?

6 A. Yes.

7 Q. Or did she ever suggest to you that you could  
8 depreciate your plates and glasses?

9 A. No.

10 Q. Did she ever, in fact, do that?

11 A. No, I didn't know.

12 Q. Counsel asked you at the beginning about I believe  
13 Leticia Villarreal, one of the people that you went to for  
14 preparing your taxes. Could you tell us what happened when  
15 you would go in? For example, when Leticia Villarreal  
16 started your tax return in 2008, how did that happen, what  
17 happened?

18 A. My husband and I, we went in and the first and second  
19 time there was not a lot of people, so Ms. Hosseini she was  
20 the one helping us, but like the third, fourth time there  
21 was a lot of people and everybody was asking for her, for  
22 Ms. Hosseini to help, so everybody wanted her to help them.  
23 So when we went in that time, she told us that it was okay,  
24 that Ms. Leticia was going to help us, that she was going to  
25 make sure everything was going to be good at the end. So

## VANESSA RODRIGUEZ - REDIRECT

1 Ms. Leticia was doing the taxes, but Ms. Hosseini was coming  
2 back and forth to help her.

3 Q. And she actually sat down with you at the end of the  
4 process and went through everything with you, is that  
5 correct?

6 A. Yes.

7 Q. And she verified the numbers and things like that?

8 A. Yes.

9 Q. Now, the same thing happened in 2009, I believe with an  
10 individual by the name of Chiara Luera, L-U-E-R-A, do you  
11 remember her?

12 A. I don't remember her name.

13 Q. The same thing happened as far as after she did the  
14 basic information, Ms. Hosseini came down and --

15 A. Yes.

16 Q. And in fact, when you talk about her finishing it off,  
17 all that the individuals did in 2008, 2009, Ms. Villarreal  
18 and Ms. Luera, they got your W-2s and they put that  
19 information in and your basic information, is that correct?

20 A. Yes.

21 Q. They didn't talk to you about your childcare business  
22 or anything?

23 A. No.

24 Q. And then of course in -- if we look at the 2010 return,  
25 that one was actually prepared by Ms. Hosseini herself, is

TERRY MACK - DIRECT

1 that correct?

2 A. Yes.

3 MR. SUROVIC: No further questions, Your Honor.

4 THE COURT: Recross.

5 MR. BARNES: No, Your Honor.

6 THE COURT: Thank you, ma'am, you may be excused.

7 Next witness.

8 MR. BARNES: I have a motion, Your Honor.

9 THE COURT: We'll take it up at the lunch break.

10 MR. SUROVIC: Your Honor, our next witness will be  
11 Mr. Terry Mack.

12 THE COURT: All right, Terry Mack.

13 MR. SUROVIC: And Your Honor, if I might approach  
14 the bench to change out files.

15 THE COURT: Okay. Mr. Mack, if you'll come up  
16 here with me please, sir. Raise your right hand please.  
17 These ladies and gentlemen of the jury are seeking the truth  
18 about what happened in this case. As they do that, do you  
19 promise the jurors, subject to federal perjury laws, to tell  
20 the truth, the whole truth and nothing but the truth?

21 THE WITNESS: Yes, I do.

22 THE COURT: You may be seated. Mr. Surovic, you  
23 may proceed.

24 MR. SUROVIC: Thank you, Your Honor.

25 EXAMINATION

TERRY MACK - DIRECT

1 BY MR. SUROVIC:

2 Q. Good morning, sir, would you state your full name  
3 please for the record?

4 A. Terry Mack.

5 Q. And that's the standard spelling, T-E-R-R-Y, M-A-C-K?

6 A. Yes.

7 Q. Without going into the specifics as far as your  
8 address, what city do you live in?

9 A. Converse.

10 Q. How long have you been there?

11 A. Seventeen years.

12 Q. How long have you been in the State of Texas?

13 A. I was born here.

14 Q. Born in San Antonio?

15 A. Yes.

16 Q. So you've been here all your life?

17 A. Yes.

18 Q. Very good. Where do you currently work?

19 A. Right now I'm not working.

20 Q. I'm going to start asking you about where you worked in  
21 the past. Do you recall where you worked in 2008?

22 A. Yes, Home Depot.

23 Q. And how long did you work at Home Depot?

24 A. Twenty years.

25 Q. From -- can you say from when to when?

TERRY MACK - DIRECT

1 A. From '97 to this past August.

2 Q. And are you retired now?

3 A. No.

4 Q. What did you do for Home Depot?

5 A. Customer service rep.

6 Q. And in addition to working for Home Depot, did you  
7 have -- do you do any side jobs?

8 A. I used to.

9 Q. Did you do any side jobs?

10 A. I used to.

11 Q. What were those?

12 A. Cutting grass, lawns, tree trimming, hauling trash.

13 Q. Generally helping out yard work, things like that?

14 A. Yes.

15 Q. Did you do those same type of jobs back in 2008, 2009,  
16 2010?

17 A. I believe so.

18 Q. You ever heard of a company by the name of Rapid Return  
19 Tax Service?

20 A. Yes.

21 Q. How did you hear about Rapid Return Tax Service?

22 A. I just seen them advertising with the guys on the  
23 sidewalk and the signs.

24 Q. The guys doing different acts and stuff like that with  
25 the signs?

TERRY MACK - DIRECT

1 A. Yes.

2 Q. Did they have anybody in a costume or anything like  
3 that?

4 A. Sometimes.

5 Q. Do you live close to their business?

6 A. Yes.

7 Q. I notice you live in Converse, the business was in  
8 Converse?

9 A. Yes.

10 Q. Did you ever meet an individual by the name of Margaret  
11 Hosseini?

12 A. Only when I went inside.

13 Q. Can you tell us do you recognize her, would you  
14 recognize her?

15 A. Yes.

16 Q. Is she here in this courtroom today?

17 A. Yes.

18 Q. Could I get you to point to her and describe what she's  
19 wearing for the record?

20 A. In the pink shirt over there.

21 THE COURT: Noted.

22 BY MR. SUROVIC:

23 Q. Can you tell us why did you choose to go to Rapid  
24 Return Tax Service?

25 A. It was close.

TERRY MACK - DIRECT

1 Q. Do you always go to a tax preparer?

2 A. Yes.

3 Q. As opposed to do it yourself?

4 A. Yes.

5 Q. Why?

6 A. Because I don't know what I'm doing.

7 Q. And do you rely on the tax preparer to prepare your  
8 taxes correctly?

9 A. Yes.

10 Q. And was that why you went to Ms. Hosseini?

11 A. No, I went -- well, yes, because she was a tax preparer  
12 and it was close, it was right there.

13 Q. Could you describe what happened when you first went in  
14 to -- first of all, let me ask you when did you first start  
15 going to Rapid Return Tax Service?

16 A. It was a while. I don't know, maybe 2007 or '08, I  
17 guess, I don't recall.

18 Q. What would happen when you went into the office, first  
19 of all, what would you bring with you?

20 A. I would bring all my documents, all the tax -- the W-2s  
21 and that's pretty much it, all the W-2s. If I didn't have a  
22 W-2, I'd bring the last pay stub, but most of the time I had  
23 a W-2.

24 Q. Some people keep every receipt they get during the year  
25 in shoe boxes, were you one of those people?



TERRY MACK - DIRECT

1 A. No.

2 Q. Did you keep a list of expenses or anything like that  
3 particularly involving the lawn mowing that you were doing?

4 A. No, not really, no.

5 Q. Okay. When you went to Rapid Return Tax Service, you  
6 entered the building, who would you meet first?

7 A. The receptionist.

8 Q. And what would happen at the receptionist?

9 A. They would have me to sign in.

10 Q. And then what happened?

11 A. Then someone would call me back.

12 Q. And who did you normally go to see?

13 A. Well, the first time I went I seen Margaret.

14 Q. And what did she do for you when you were there?

15 A. She just prepared my taxes.

16 Q. What would happen when she prepared your taxes?

17 A. She would ask me for my documents and I gave her  
18 everything I had.

19 Q. Did you sit down with her in her office or something  
20 like that?

21 A. Yes.

22 Q. And what did she have with her, what did she bring to  
23 the meeting? For example, did she have a computer or  
24 anything that she was working on?

25 A. Yes.

TERRY MACK - DIRECT

1 Q. Did she keep a scratch pad or anything like that so she  
2 could take notes?

3 A. I don't recall if she had a scratch pad or not.  
4 General stuff you have at your desk.

5 Q. So you would sit down, you would give her your W-2s or  
6 pay stubs or whatever and she would take that information.  
7 What else would happen?

8 A. She would ask me questions.

9 Q. What type of question did she ask?

10 A. Did I have any receipts or anything.

11 Q. And what would you tell her in response to those?

12 A. I don't.

13 Q. If I could have you look at the first file -- or before  
14 we go into that, let me go ahead and finish how an interview  
15 would go. After you would answer the questions and finished  
16 the interview, what would happen then?

17 A. After I would -- say it again?

18 Q. After you finished talking to her and she had gotten  
19 all the information she wanted, what would happen at that  
20 point?

21 A. Are you talking about at the end?

22 Q. Correct.

23 A. Well, I would sign off on wherever it is I would need  
24 to sign off and she would let me know when the taxes are  
25 back.

TERRY MACK - DIRECT

1 Q. When she had you sign off, the documents you were  
2 signing off on, where did they come from?

3 A. I guess from her.

4 Q. She would print them off there while you were sitting  
5 there?

6 A. Yes.

7 Q. And she would have you sign them?

8 A. Right.

9 Q. Did she tell you what you were signing?

10 A. Yes, but I can't remember what they were, just that she  
11 prepared -- I guess -- she prepared the taxes and I would be  
12 charged X amount of fee and I had to sign the document to  
13 get the taxes sent off.

14 Q. Did she give you a chance to read all the documents?

15 A. Yes.

16 Q. Did you, in fact, read all the documents?

17 A. I just kind of scanned over them.

18 Q. And then you signed them?

19 A. Yes.

20 Q. Did she sit down with you at the end and show you,  
21 okay, here is your 1040 and these are the numbers I plugged  
22 in for you based on your information, explain exactly what  
23 was going on?

24 A. I don't recall.

25 Q. I'm going to ask you to -- if you look at the first

TERRY MACK - DIRECT

1 file over there, the first red file should be marked 9-1.

2 A. Yes.

3 Q. And if we open up, turn the blue page, go to the first  
4 page inside there?

5 A. Okay.

6 Q. It's entitled, Form 1040 U.S. Individual Income Tax  
7 Return 2008, is that correct?

8 A. Yes.

9 Q. And it's got your name and a Social Security number and  
10 an address in Converse, Texas, is that correct?

11 A. Yes.

12 Q. Is that correct for you?

13 A. My address, yes.

14 Q. And your Social Security number?

15 A. Yes.

16 Q. So is this your 2008 income tax return?

17 A. This is my information on the top. I can't tell you  
18 about these numbers, if these are my numbers, I can't tell  
19 you that.

20 Q. You don't know whether this is your 2008 income tax  
21 return or not?

22 A. Nothing other than I see my information on the top.

23 Q. Well, let's work through it then. You see your  
24 exemptions, Tiranie Mack?

25 A. Yes.

TERRY MACK - DIRECT

1 Q. Is that your daughter?

2 A. Yes, it is.

3 Q. Line seven, wages, salaries and tips, \$32,821, does  
4 that sound about what you made that year?

5 A. More or less, yes.

6 Q. Line 12 says business income or loss, you had a loss of  
7 \$12,214, is that right? Is that what it says?

8 A. That's what it says, yes.

9 Q. Did you have a loss as a result of your business that  
10 you know of?

11 MR. BARNES: Objection, Your Honor, to the degree  
12 he's trying to imply that you have to have a cash loss to  
13 have a tax loss.

14 THE COURT: Rephrase as a tax loss please.

15 BY MR. SUROVIC:

16 Q. Did you have a tax loss of \$12,214?

17 A. Not that I'm aware of.

18 Q. Let's look to -- let's go to the second page of that,  
19 page two. And at the bottom it indicates that third party  
20 designee, Margaret Hosseini, paid preparer's signature,  
21 Margaret Hosseini. Did she prepare your tax return in 2008?

22 A. I'm not sure if that's -- it's been a long time.

23 Q. You don't remember if she prepared your tax return that  
24 year?

25 A. She could have, I just don't remember.

TERRY MACK - DIRECT

1 Q. Let's go to the next page. It's a W-2?

2 A. Yes.

3 Q. From Home Depot?

4 A. Yes.

5 Q. For you? And they claim that they paid you \$30,636, is  
6 that your W-2?

7 A. Yes, it is.

8 Q. And the next page Advance Stores, Inc. and your name is  
9 Terry Mack?

10 A. Yes.

11 Q. And they claim they paid you \$2,985?

12 A. Yes.

13 Q. Do you remember working for Advance Stores, Inc. in  
14 2008?

15 A. Yes.

16 Q. Is that your W-2?

17 A. Yes.

18 Q. So if we add up that W-2 with your Home Depot W-2, we  
19 get to \$32,821, is that correct?

20 A. Looks like it.

21 Q. So would it be fair to say now and given that this  
22 is -- you can look at the first document, the first page,  
23 that this is your official -- the official certificate of  
24 record for the 1040 income tax return for Terry mack at that  
25 Social Security number for the period 2008, is it fair to

TERRY MACK - DIRECT

1 say that this is your 2008 income tax return?

2 A. Yes.

3 Q. Let's go to page eight of the income tax return and  
4 should be entitled Schedule C. Do you see that?

5 A. Yes.

6 Q. Says Profit Or Loss From A Business at the top?

7 A. Yes.

8 Q. And then it has name of proprietor, Terry Mack, that's  
9 you, right?

10 A. Yes.

11 Q. And then lawn service, it's called T&H Lawn Service?

12 A. Yes.

13 Q. Is that the business you ran on the side?

14 A. Yes.

15 Q. When you were working for Home Depot?

16 A. Yes.

17 Q. Is that the business that you described where you would  
18 do lawn work, mowing, tree trimming?

19 A. Yes.

20 Q. Trash removal, things like that. In the course of that  
21 business, let's look at the second page of the schedule two  
22 or Schedule C, excuse me, part five in the bottom, it says  
23 cell phone \$2,400, do you see that?

24 A. Yes.

25 Q. Could you tell us about your cell phone service in

TERRY MACK - DIRECT

1 2008, what type of plan did you have, how many phones did  
2 you have?

3 A. I don't know that, I couldn't tell you that.

4 Q. You can't remember?

5 A. I guess a family plan, I don't know, that was a long  
6 time ago.

7 Q. Do you recall having a cell phone that you used  
8 exclusively for the lawn business?

9 A. No, it wasn't exclusively for it.

10 Q. Do you recall paying \$2,400 for your cell phone that  
11 year?

12 A. My cell phone is always \$200 a month, at least \$200 a  
13 month, it's been that way.

14 Q. I asked you this, but did you use your cell phone  
15 solely for the tree business?

16 A. No.

17 Q. Did you use it for personal purposes?

18 A. I used it for whatever I needed it for.

19 Q. And in fact, if you had a family plan, I assume you had  
20 family members?

21 A. Yes.

22 Q. Who did you share -- who was in your family plan?

23 A. My family.

24 Q. Who is that?

25 A. My wife and my daughter.



TERRY MACK - DIRECT

1 Q. Do they each have phones?

2 A. Yes.

3 Q. So that \$200 a month that you spent, that would have  
4 included their phone as well?

5 A. Yes.

6 Q. Were their phones used for the tree service?

7 A. No.

8 Q. Or the lawn service.

9 A. No.

10 Q. So none of their use would have been for this purpose  
11 and not all of your use would have been for this purpose, is  
12 that correct?

13 A. Right.

14 Q. Did you ever tell Ms. Hosseini that you used the cell  
15 phones and your cell phone bill was exclusively for the tree  
16 service?

17 A. No.

18 Q. I keep saying the tree service, I'm sorry, I mean the  
19 lawn service.

20 A. Not exclusively, no.

21 Q. If we go back to the first page of the Schedule C, you  
22 have car and truck expenses in line nine in part two, sort  
23 of the middle of the page of \$8,241?

24 A. I see it.

25 Q. Do you recall, first of all, did you have a vehicle

TERRY MACK - DIRECT

1 that you used for the lawn service business?

2 A. Yes.

3 Q. Did you use it exclusively for the lawn service  
4 business?

5 A. No.

6 Q. What was that vehicle?

7 A. It was a Chevy 1500.

8 Q. Pick-up?

9 A. Yes.

10 Q. You say you did not use it exclusively for the  
11 business, how much of it was used for the business versus  
12 how much was used for whatever?

13 A. I don't know, maybe 60/40, I guess.

14 Q. 60 percent for the business, 60 percent for your other  
15 use?

16 A. 60 percent my other use.

17 Q. So you used it about 40 percent of the time for your  
18 business?

19 A. Any time I needed it.

20 Q. It was your car to do everything in?

21 A. Right.

22 Q. You didn't differentiate?

23 A. No.

24 Q. Did you keep a mileage log or anything like that when  
25 you were using the truck for your business?

TERRY MACK - DIRECT

1 A. No.

2 Q. Did you keep gasoline receipts or anything like that?

3 A. No.

4 Q. So if Ms. Hosseini indicated that you had proof to  
5 support a mileage deduction, would that have been correct,  
6 on your vehicle?

7 A. Would that be correct?

8 Q. Yes.

9 A. I had no proof.

10 Q. And since you didn't have any proof, it couldn't have  
11 been written proof, is that correct?

12 A. No.

13 Q. If we go over to Exhibit 9-3, the next folder. Now,  
14 you indicated that at the end of the interview with  
15 Ms. Hosseini, she would go over the documents with you and  
16 you would sign them?

17 A. Yes.

18 Q. This is her preparer's copy. And you'll notice that  
19 your signature is, in fact, on every page in here pretty  
20 much, is that correct?

21 A. Yes.

22 Q. Did she sit down and explain to you exactly what each  
23 document in here meant?

24 A. I don't remember.

25 Q. Did you have time to go and read all of them, make sure

TERRY MACK - DIRECT

1 that they were accurate?

2 A. No, I didn't read all of them, I just kind of scanned  
3 over them.

4 Q. Okay. And then signed?

5 A. Right.

6 Q. On page three of that document, there is a page that is  
7 entitled Refund Anticipation Loan, RAL, Truth In Lending  
8 Disclosure Form. Do you see that? Should be the third  
9 page.

10 A. Yes.

11 Q. If we go down, there's a box titled Itemization Of  
12 Amount Financed?

13 A. Yes.

14 Q. And then it says amount paid directly to you, estimate  
15 \$4,097?

16 A. Okay.

17 Q. Underneath that amount paid to tax preparer \$521.05.  
18 Do you recall paying Ms. Hosseini \$521.05 to prepare your  
19 tax return this year?

20 A. I don't.

21 Q. How did that work, did you actually have to write her a  
22 check or pay her cash or anything like that when you got  
23 your taxes prepared?

24 A. No.

25 Q. How would she get paid?

TERRY MACK - DIRECT

1 A. It would come out of the taxes, it would come out of  
2 the estimated refund, we never wrote a check for that.

3 Q. Okay. And your refund would have been \$4,781?

4 A. That's what it says here. I don't know.

5 Q. If you go back, go to page five, this might be a little  
6 clearer, says Bank Product Information at the top of the  
7 page?

8 A. Yes.

9 Q. And then you go down over on the left-hand side, you'll  
10 see in bold, Total Projected Bank Fee?

11 A. Yes.

12 Q. Underneath that, tax preparation \$451.05?

13 A. Yes.

14 Q. And then there's at the bottom of the page there's a  
15 circled amount underneath projected checks after fees of  
16 \$4,097?

17 A. Right.

18 Q. Is that what your return was that year, do you recall?

19 A. I don't recall.

20 Q. Does that sound approximately right?

21 A. I don't recall.

22 Q. You don't recall at all. Let's go on to 2009, did you  
23 go back to Ms. Hosseini in 2009?

24 A. I believe I did, yes.

25 Q. And we can go through this again if you would pick up

TERRY MACK - DIRECT

1 Government's Exhibit 10-1, the next folder, one of those  
2 with the blue cover on it. If you'll open to page one, it  
3 says form 1040 U.S. Individual Income Tax Return 2009, is  
4 that correct?

5 A. Yes.

6 Q. And then it's got your name and Social and address  
7 again. And if you look down the exemptions, it's got your  
8 daughter again and the wages, is this your income tax return  
9 for 2009?

10 A. Seems like it.

11 Q. And on line 12, business income or loss indicates  
12 \$15,142, is that correct?

13 A. I don't know, I guess.

14 Q. That's what it says here at least, right?

15 A. Right.

16 Q. Let's go ahead and go to page six which is the Schedule  
17 C again.

18 A. Okay.

19 Q. Again name of proprietor is Terry Mack, lawn service,  
20 T&H Lawn Service, is that correct?

21 A. Yes.

22 Q. So this is the Schedule C profit and loss from a  
23 business for that business T&H Lawn Service, is that  
24 correct?

25 A. Yes.

TERRY MACK - DIRECT

1 Q. And if we go to the next page, again part five, we've  
2 got that cell phone again. Did you change plans or anything  
3 as far as your cell phone for 2009?

4 A. No.

5 Q. As opposed to what we talked about?

6 A. I don't remember.

7 Q. Sorry, sir?

8 A. I don't remember.

9 Q. This says cell phone \$3,000. Do you remember what your  
10 cell phone situation was in 2009?

11 A. No.

12 Q. Do you remember whether you had a family plan like you  
13 had in 2008?

14 A. I'm sure I did.

15 Q. And was it the same situation where you had a phone,  
16 your wife had a phone, your daughter had a phone?

17 A. Yes.

18 Q. Did you use the phone that you had at least a hundred  
19 percent of the time in use of the lawn care business?

20 A. It wasn't solely for the lawn service, no.

21 Q. Just like in 2008 you used it pretty much the same?

22 A. Right.

23 Q. \$3,000, did you pay a total of \$3,000 for your entire  
24 cell phone bill that year?

25 A. I don't know.

TERRY MACK - DIRECT

1 Q. Do you know where Ms. Hosseini would have gotten that  
2 3000-dollar figure from?

3 A. No. Other than just me saying what my cell phone bill  
4 was a month.

5 Q. Did she ever ask you when you -- I assume she would ask  
6 you do you have a cell phone, is that correct?

7 A. Yes.

8 Q. Did she ever ask you how you used the cell phone,  
9 whether the cell phone is used solely for the business or  
10 anything like that?

11 A. I don't remember what she asked me about the cell  
12 phone.

13 Q. What did you tell her as far as your cell phone?

14 A. I guess I was just asked did I use the cell phone for  
15 the business, so the answer was yes. Was it solely for the  
16 business? No.

17 Q. And she would ask you what your monthly payment was or  
18 something like that?

19 A. I guess. I don't remember what she asked me. I mean  
20 that's --

21 Q. Fair enough.

22 A. Too long ago.

23 Q. It's been a few years. If we go back to the first page  
24 of the Schedule C. And let's look at line nine, part two,  
25 car and truck expenses. This time it says that you had car



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1 and truck expenses of \$9,659, you see that?

2 A. Yes.

3 Q. And then if we go back to the other page that we were  
4 just on, page two of the Schedule C, this time it says on  
5 line 44 in part four, Of the total number of miles you drove  
6 your vehicle during 2009, enter the number of miles you used  
7 your vehicle for, and it's A, business, and you have written  
8 down here, 17,562 miles, is that correct?

9 A. I don't know what that is.

10 Q. Is that the number that's in this figure 17 --

11 A. 17,562, yes, that's the number.

12 Q. When you're doing your lawn service business, are you  
13 still using the Chevy we talked about before?

14 A. Yes.

15 Q. And the same situation where you use it 40 percent for  
16 the lawn business and 60 percent for everything else?

17 A. Yes.

18 Q. That was your vehicle?

19 A. Yes.

20 Q. Did you keep a log of the mileages that you used for  
21 the lawn?

22 A. No.

23 Q. Did you, in fact, drive 17,000 miles in 2009, do you  
24 know?

25 A. I can't tell you that, I don't know.

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1 Q. But you did not have a log?

2 A. No, I didn't.

3 Q. Did you ever tell Ms. Hosseini that you had a log of  
4 the mileage you used?

5 A. I don't know if she would have asked me, I don't know.

6 Q. You don't recall even the subject even coming up?

7 A. No.

8 Q. Let's take a look at Exhibit 10-3. And this again is  
9 going to be Ms. Hosseini's preparer's copy. And if you  
10 could look through that real quickly. Once again you signed  
11 off on every page. I think in this instance you tended to  
12 sign at the top as opposed to at the bottom. Sometimes you  
13 put initials it looks like. Is that correct?

14 A. Looks that way.

15 Q. Did she review your taxes for you the same way that you  
16 described before in 2008?

17 A. As far as I know, yes.

18 Q. You don't recall anything being different?

19 A. No.

20 Q. If you could go to page eight, the bank product  
21 information page?

22 A. Okay.

23 Q. And once again if we go down to the middle of that page  
24 right below where it says Total Projected Bank Fee in bold,  
25 the next line, tax preparation \$583.05?

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1 A. Yes.

2 Q. You see that?

3 A. Yes.

4 Q. You recall paying her \$583.05 to prepare your taxes?

5 A. I don't remember.

6 Q. And then down at the bottom in this box there is  
7 projected checks after fees, refund \$4,708 and it's circled.  
8 Do you recall receiving a refund of \$4,708 that year?

9 A. No, I don't.

10 Q. Do you recall her circling what would be your refund  
11 when you came in to talk to her?

12 A. I don't.

13 Q. Do you remember her telling you what your refund would  
14 be?

15 A. I remember her telling me, but what number she told me  
16 it was, I don't remember.

17 Q. You don't remember the individual number?

18 A. No.

19 Q. At this point. That was an important number for you,  
20 though, at the time, right?

21 A. Yeah.

22 Q. And again, did you have to write a check to her at the  
23 time or was it taken out of the refund?

24 A. It was taken out.

25 Q. Just like before. Okay. Now, if you would go to the

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1 folder marked 11-1. And on the first page it's Form 1040  
2 U.S. Individual Income Tax Return 2010. And again it's all  
3 that information there that we talked about, your name, your  
4 Social, your address, is that correct?

5 A. Yes.

6 Q. So does this appear to be your income tax return for  
7 2010?

8 A. Yes, it appears to be.

9 Q. Your wages were \$35,123, sound about right?

10 A. Yeah.

11 Q. And on line 12 it says, Business Income Or Loss \$7,743,  
12 is that what it says there?

13 A. Yes, that's what it says.

14 Q. Let's go to page six now which is again the Schedule C,  
15 okay. Again name of proprietor, Terry Mack, T&H Lawn  
16 Service, is that your business?

17 A. Yes.

18 Q. So this is a profit and loss from your business. And  
19 by the way, if we look at part one, this is true of all the  
20 Schedule Cs including your 2008 and 2009 Schedule Cs. Part  
21 one is income you made off that business, is that correct?

22 A. I don't remember.

23 Q. Do you remember making about \$2,100 off your lawn  
24 business that year?

25 A. No, I don't.

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1 Q. You don't remember how much you made. Let's go into  
2 the next page, page two. And again at part five talks about  
3 mobile phone business use, \$2,500. Had anything changed  
4 between 2008, 2009, 2010 as far as your usage of the phone  
5 or the way your family plan was constructed or anything like  
6 that?

7 A. Not that I can remember, no.

8 Q. So do you know where that 2,500-dollar figure came  
9 from?

10 A. No.

11 Q. Let's go back to the first page of the Schedule C. If  
12 you go to line nine, car and truck expenses, says \$4,228, is  
13 that correct?

14 A. That's what it says.

15 Q. And then if we go back to the second page again, it  
16 indicates again line 44, part four, just like we were  
17 talking about before in 2009, this is for 2010, Of the total  
18 number of miles you drove your vehicle during 2010, enter  
19 the number of miles you used your vehicle for, A, business.  
20 8455 miles. Did you use your truck for business 8455 miles?

21 A. I couldn't tell you how many miles I used.

22 Q. You didn't keep any record, did you?

23 A. No.

24 Q. And you didn't provide any record to Ms. Hosseini?

25 A. I didn't have a record.

TERRY MACK - CROSS

1 Q. So there certainly was no proof of the deduction and it  
2 was not written, is that correct?

3 A. Right, I didn't keep a log.

4 Q. Did you tell Ms. Hosseini anything about having the log  
5 or did you ever tell her that you kept a log of your  
6 mileage?

7 A. Not that I can remember.

8 Q. And did you ever give her any figures or anything like  
9 about the mileage that you had on your vehicle?

10 A. Not that I can remember.

11 Q. Let's go to the last folder over there, 11-3. I'm  
12 going to have you go to page 12. By the way, once again  
13 these are all pages that are signed by you, is that correct?

14 A. Yes.

15 Q. If we can go to page 12. I'll tell you what, let's go  
16 to page 14. Should be entitled Bank Product Information?

17 A. Yes.

18 Q. And then in the middle of the page you see again that  
19 bold Total Projected Bank Fee?

20 A. Yes.

21 Q. And right below it, it says, Tax preparation, and then  
22 there's a figure over there?

23 A. Uh-huh.

24 Q. \$621?

25 A. Yes.

TERRY MACK - CROSS

1 Q. Do you recall paying Ms. Hosseini \$621 to prepare your  
2 taxes that year?

3 A. No.

4 Q. Do you know why it went from 500 and something to 621,  
5 why it went up?

6 A. No.

7 Q. At the bottom projected checks just like we talked  
8 about before, this one has \$2,258.05, is that correct?

9 A. Yes.

10 Q. Does that sound about like what you would have gotten  
11 as your refund that year?

12 A. I have no idea.

13 Q. You don't know whether it was that, more or less. Do  
14 you have any reason to doubt that it was that amount?

15 A. No, I mean I don't know.

16 Q. You don't know.

17 MR. SUROVIC: No further questions, Your Honor.

18 THE COURT: Cross.

19 MR. BARNES: Yes, Your Honor.

20 EXAMINATION

21 BY MR. BARNES:

22 Q. Good morning, Mr. Mack.

23 A. Good morning.

24 Q. Do you recall telling Margaret or anybody who worked  
25 there that you spent on average about \$200 a month at least

TERRY MACK - CROSS

1 on gas for your business?

2 A. I may have told Margaret that, yes.

3 Q. And back in 2008, 2009, 2010, was the gas price do you  
4 remember about 2.70, 2.75, in that range?

5 A. I have no idea.

6 Q. When is the first time that you heard from the IRS that  
7 they had any issues or questions about your returns?

8 A. When did I hear about it?

9 Q. Yes. Did they send you a notice? Did they give you a  
10 call? Did two agents show up at your door? What happened?

11 A. I believe he showed up and gave me a card or subpoena  
12 or something.

13 Q. And did they give you an -- did they interview you  
14 there at the house at that time?

15 A. No.

16 Q. Did they interview you later?

17 A. Yes.

18 Q. And do you recall telling them as well that you spent  
19 at lease \$200 a month on gas just for your business part?

20 A. I don't recall what I told them.

21 Q. If the gas price was about three dollars or less,  
22 \$2,400 a year would be about 800 gallons a year. Is my math  
23 about right?

24 A. I guess.

25 Q. And did your vehicle get about 20 miles a gallon,



TERRY MACK - REDIRECT

1 sometimes they get more, sometimes they get less?

2 A. I have no idea.

3 Q. So if it was the average 20 miles a gallon, that would  
4 be 16,000 miles a year you used for business, right?

5 A. Okay.

6 Q. That's close to what is actually put in the returns.  
7 Did the IRS ever explain that to you?

8 A. No.

9 Q. In terms of proof of what your mileage expenses would  
10 be, how did you pay for the gas, did you often use a bank  
11 card or credit card or gas card?

12 A. All the above.

13 Q. Did the IRS tell you you could use that as proof of how  
14 much you spent on gas?

15 A. No.

16 Q. Did they tell you you could use how much you spent on  
17 gas as proof of how many miles you drove?

18 A. No.

19 MR. BARNES: No further questions, Your Honor.

20 THE COURT: Redirect.

21 MR. SUROVIC: Yes, sir.

22 EXAMINATION

23 BY MR. SUROVIC:

24 Q. Mr. Mack, I'd like you to look again at Exhibit 10-1.

25 Should be the first one. This is your tax return for 2008.

TERRY MACK - RECROSS

1 And we're going to go back to page nine and ten. Nine is  
2 the beginning of the Schedule C, is that correct?

3 A. Yes.

4 Q. And if you go to the second page, part five underneath  
5 the cell phone that we talked about, there's an entry, fuel,  
6 oil, and you have reported \$798 there, is that correct?

7 A. What exhibit is this? 10-1?

8 Q. This is Exhibit 10-1, that's correct. For 2008.

9 A. This says 2009.

10 Q. I'm sorry. I have the wrong one. It should be 9-1  
11 then. Keep 10-1 handy because we're going to talk about  
12 that in just a second.

13 A. Okay.

14 Q. You see that page, the second page of the Schedule C  
15 where it talks about fuel oil, \$798?

16 A. Yes.

17 Q. The fuel and oil that you were using in your business,  
18 that you talk about you use about \$200 a month, what did  
19 that fuel and oil, what did that get used for?

20 A. The vehicle, gas for the mowers.

21 Q. So it covered all of your equipment?

22 A. Pretty much.

23 Q. Not just your truck. If we go to, let's go to 10-1  
24 now, if you would. And I believe this is going to be page  
25 six and seven. Page six is beginning of Schedule C in 2009.

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1 A. Yes.

2 Q. And if we go to the second page of that, again we have  
3 fuel, oil in part five underneath cell phone?

4 A. Yes.

5 Q. \$2,100?

6 A. Yes.

7 Q. Again that would have been all the fuel that you bought  
8 for the business, is that correct, whether it went into your  
9 truck, whether it went into your lawn mowers or whatever?

10 A. Yes.

11 Q. And so that is accounted for as a part five expense and  
12 not as a car and truck expense, is that correct?

13 A. Say it again?

14 Q. That is a part five, other expense that it's being  
15 carried at and not as a part two, line nine car and truck  
16 expense, is that correct? Because it's carried in a  
17 different area?

18 A. I guess, I don't know.

19 MR. SUROVIC: No further questions, Your Honor.

20 THE COURT: Recross.

21 EXAMINATION

22 BY MR. BARNES:

23 Q. Is the amount of gas you spent on the truck a lot more  
24 than the amount of gas you spent on the lawn mowers, on  
25 average?

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1 A. Are you asking me that?

2 Q. Yes.

3 A. Yeah, truck gas is going to be spent a lot more than  
4 lawn mower gas, yes.

5 MR. BARNES: No further questions.

6 THE COURT: Redirect.

7 MR. SUROVIC: No redirect, Your Honor.

8 THE COURT: Thank you, sir, you may be excused.

9 MR. SUROVIC: We request that he be permanently  
10 excused, Your Honor.

11 THE COURT: He may. Ladies and gentlemen, we have  
12 a legal motion to take up and also rather than start another  
13 witness and have to be interrupted -- you can be excused,  
14 sir, thank you -- you all will be in recess for 40 minutes  
15 which will be 12:20. Keep in mind your instructions and  
16 we'll continue with the next witness. Thank you.

17 COURT SECURITY OFFICER: All rise for the jury.

18 (11:38 a.m.)

19 THE COURT: You may be seated. Mr. Barnes, you  
20 had a motion concerning part of the testimony of Ms.  
21 Rodriguez.

22 MR. SUROVIC: Yes, Your Honor. What Ms. Rodriguez  
23 told the IRS agents when they interviewed her was that she  
24 didn't want to report her babysitting income for 2011, she  
25 had gone to Margaret Hosseini who said that she did have to

## M O T I O N

1 report it, so she instead filed the returns on her own. I  
2 asked for all Brady information. And clear Brady  
3 information would be if you have a witness who is falsifying  
4 tax returns and especially in the case that is really all  
5 about a credibility dispute between the taxpayer and the tax  
6 return preparer. The IRS said they had no Brady information  
7 related to that. So now she admits on the stand -- I didn't  
8 have the opportunity to see that return to be able to  
9 cross-examine her on it. Now on the stand she admits she  
10 omitted the income. That means that either, A, they never  
11 reviewed the 2011 return to see if she falsified the income  
12 even though she was hinting at that when they interviewed  
13 her or they knew about it and withheld it. Either way it's  
14 clear Brady due process information that I was deprived of  
15 for trial, so I have three different motions in that regard.  
16 The first is because I was denied Brady information during  
17 trial as to a material witness that goes to the core of the  
18 case, I move to dismiss on the grounds of Brady, Your Honor.  
19 The second is a motion for --

20 THE COURT: As to that count.

21 MR. BARNES: Yes, Your Honor, as to that count.  
22 The second, Your Honor, is a motion to compel discovery or  
23 motion for discovery because now I have reason to believe  
24 that tax returns that all of these individuals have filed  
25 either before or after they hired my client are going to

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1 show a pattern of them claiming either deductions or  
2 omitting income which would show that it was their  
3 misrepresentations to my client that brought us here rather  
4 than my client making up numbers, so I would ask that the  
5 government produce that information.

6 THE COURT: Well, number one, if that were to be  
7 done, it would take more than what we have for trial, so  
8 we'd have to declare a mistrial and start over.

9 MR. BARNES: Yes, Your Honor, that goes to my  
10 third motion, Your Honor, either a motion for mistrial or in  
11 lieu thereof a motion to continue if they can get it quickly  
12 and we can start back up.

13 THE COURT: That's not going to happen. Not the  
14 way the government moves.

15 MR. BARNES: I understand, Your Honor.

16 THE COURT: I remember when I was going through  
17 confirmation and I needed -- Colonel Surovic, what's my  
18 form, DOD something that shows -- well, my honorable  
19 discharge, but there's also a --

20 MR. SUROVIC: DD-214, Your Honor.

21 THE COURT: Yes, I needed that to show that I had  
22 been in the Army. It took months and only until my  
23 Congressman got involved, two pieces of paper. So the  
24 motion for continuance is denied. And then on the others,  
25 Mr. Surovic, respond.

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1 MR. SUROVIC: Your Honor, I'd like to read the  
2 court exactly what -- because Mr. Barnes is being a little  
3 literal in his interpretation of this paragraph.

4 V. Rodriguez tried to go to the library where  
5 there was free tax preparation offered, however, the  
6 Rodriguez income was too high to be able to use the free  
7 service.

8 THE COURT: Slow down. Ms. Hailey is good, but  
9 she's not that good.

10 MR. SUROVIC: The Rodriguez's income was too high  
11 to be able to use the free service. V. Rodriguez returned  
12 to RRTS a second time on March 6, 2012 and asked Hosseini to  
13 prepare their taxes and only include the information the  
14 Rodriguezes were providing.

15 Now, this refers to -- and I need to stop here and  
16 go back to the previous paragraph. Because when they went  
17 in -- in fact, let me rephrase completely, Your Honor, to  
18 make sure everybody understands what's going on. Let me go  
19 back to paragraph 20, two paragraphs before to explain how  
20 they came in and decided not to use Ms. Hosseini in the  
21 first place. Paragraph 20 starts, The Rodriguezes went  
22 twice to have their 2011 Form 1040 prepared and met with  
23 Hosseini both times. The first time that the Rodriguezes  
24 met with Hosseini on February 2nd, 2011, V. Rodriguez  
25 informed Hosseini that she only spent the first two months

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1 of 2011 babysitting. The neighborhood would not allow  
2 babysitting toys in the yard at their residence. V.  
3 Rodriguez informed Hosseini that because she babysat so  
4 little in 2011, she did not think she should include the  
5 babysitting business on Form 1040. Then paragraph 21 reads,  
6 Hosseini informed the Rodriguezes that by not including the  
7 babysitting business, they would owe approximately \$800. V.  
8 Rodriguez feels that Hosseini got angry when V. Rodriguez  
9 informed Hosseini she no longer wanted to include the  
10 babysitting business. Then we go to paragraph 22 which is  
11 what I was reading to the court. V. Rodriguez tried to go  
12 to the library where there was free tax preparation offered,  
13 however, the Rodriguezes income was too high to be able to  
14 use the free service. V. Rodriguez returned to RRTS a  
15 second time on March 6, 2012 and asked Hosseini to prepare  
16 their taxes and only include the information the Rodriguezes  
17 were providing. V. Rodriguez received a another deduction  
18 sheet to include expenses related to her babysitting  
19 business. Hosseini advised V. Rodriguez that they should  
20 include at least the two months of babysitting. Not the two  
21 months of babysitting income, the two months of  
22 baby-sitting. Hosseini added the babysitting and informed  
23 them that by adding the babysitting they would owe an  
24 additional \$900.

25 It doesn't imply that -- the report that Mr.



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1 Barnes talked about does not imply that she was trying to  
2 evade her obligation to pay income taxes on the money she  
3 received from babysitting. It says very clearly that she  
4 did not want to keep claiming these babysitting expenses.  
5 She did not want to include the two months worth of  
6 babysitting expenses that Ms. Hosseini wanted to include.

7 The government would submit that's because  
8 Ms. Hosseini was trying to jack up the return so that she  
9 could get more money as far as her fee and as a result of  
10 that, Ms. Rodriguez decided to go elsewhere because  
11 Ms. Hosseini wouldn't prepare the taxes the way she wanted.

12 THE COURT: All right. If one assumes that it  
13 could be interpreted both ways as the government and the  
14 defense are interpreting it, then that leads to Mr. Barnes  
15 motion about wanting to have a mistrial and get the prior  
16 and subsequent tax returns for all of these other witnesses.  
17 Response.

18 MR. SUROVIC: Your Honor, first of all, it sounds  
19 like a fishing expedition. He's not entitled to that unless  
20 he's got some sort of affirmative information that there is  
21 something there. The government doesn't have any belief  
22 that there's anything there, there's no reason for us to  
23 believe there's anything there. The court is aware there is  
24 IRS criminal and IRS civil so we have a difficulty looking  
25 in those items until and unless they're specifically

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1 officially requested and clearly Mr. Barnes was on notice  
2 and he snapped to an interpretation of this paragraph quite  
3 different from the government's interpretation, so he was on  
4 notice that there was a possibility. He never specifically  
5 requested Ms. Rodriguez's income tax return for 2011. This  
6 case has been pending for two years. And there's no record  
7 that there's been any request for this before this. I  
8 believe he has made his points with the witness probably  
9 more effectively than he could have --

10 THE COURT: Well, yes, to the extent that it is a  
11 credibility contest here, Mr. Barnes certainly has made that  
12 point and can argue that at the appropriate time. All  
13 right. Mr. Barnes, any further response?

14 MR. BARNES: Yes, Your Honor.

15 THE COURT: Reply to the response.

16 MR. BARNES: Yes, Your Honor. Two points. First  
17 we had requested -- this prosecutor I think is number three  
18 or four on the case. We requested all IRS records  
19 concerning every single testifying witness because we  
20 believe there was something there. And what came back was  
21 there's no Brady, there's no Brady, you don't have to worry,  
22 there's no Brady. It turned out there clearly was Brady.  
23 Secondly, I'm more concerned now that I hear the  
24 government's interpretation of the interviewed statement. A  
25 common defense concern is that when the government sees

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1 Brady they see it as, well, we think the defendant is really  
2 guilty, so nothing really could be Brady and it's a tendency  
3 to interpret all evidence --

4 THE COURT: Not in this district. I have never  
5 seen that.

6 MR. BARNES: Okay, Your Honor, so that's my  
7 concern here. Here she says she goes through and my client  
8 advised that if she included the babysitting business  
9 income, it would require her to pay more tax, she said that  
10 made her mad, so she left. To interpret that as only  
11 worried about deductions means that there's going to be a  
12 lot of other Brady or Giglio information.

13 THE COURT: But you all had that IRS report.

14 MR. BARNES: No, we don't. We didn't get that.  
15 They only gave us certain printouts, they didn't give us the  
16 actual -- their position has been anything before or  
17 after --

18 THE COURT: What you just read, though.

19 MR. BARNES: It was in the memorandum of  
20 interview, yes.

21 THE COURT: All right. The motion and response  
22 and reply are noted. The motions in all parts are denied.  
23 And we will start up in 30 minutes. Who is your next  
24 witness, Mr. Surovic?

25 MR. SUROVIC: I believe my next witness, Your

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1 Honor will be Mario Ruiz.

2 THE COURT: Okay. And that's only one count.

3 MR. SUROVIC: That's correct, Your Honor.

4 THE COURT: So it should be more brief than the  
5 people with three counts, so then that would leave Gerald  
6 Smith with two counts, Jane Fife with one count, Mario  
7 Dominguez with two counts, I'm thinking we might be able to  
8 get through those folks today and then that would leave --  
9 are both Escobedos going to testify?

10 MR. SUROVIC: No, Your Honor, it would be just  
11 Mr. Joe Escobedo. There is one other witness that we  
12 skipped yesterday and that was Anita Price.

13 THE COURT: If we finish most of these others  
14 today, that would leave perhaps Dominguez, Escobedo and  
15 Price. And then what's your best estimate on direct for  
16 Agent Robles? Is he more of a summary?

17 MR. SUROVIC: He's a little bit of a summary, also  
18 going to talk about other issues that came up. Some of the  
19 things defense has raised up as far as how the investigation  
20 was performed. I would estimate hour to hour and a half and  
21 I would expect that he would be cross-examined.

22 THE COURT: It's an educated guess, but we might  
23 be able to finish the government's case by noon tomorrow.

24 MR. SUROVIC: Yes, sir.

25 THE COURT: And then of course we're going to quit

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1 at two on Wednesday, Thursday, Friday. And then Mr. Barnes,  
2 you anticipate -- do you know yet whether Ms. Hosseini will  
3 testify?

4 MR. BARNES: Not yet, Your Honor.

5 THE COURT: Not yet, okay. But then separate and  
6 apart from her, you've got Mr. Bryant.

7 MR. BARNES: Yes, Your Honor. And I believe based  
8 on the testimony I've heard so far, potentially two other  
9 witnesses. I have some subpoenas out, we're getting some  
10 responses, so the most I would anticipate is four witnesses,  
11 Your Honor, which would be those two witnesses, Aaron Bryant  
12 and my client.

13 THE COURT: So the defense may be able to rest by  
14 Thursday?

15 MR. BARNES: That would be possible, Your Honor.  
16 Really sort of depend on how long the cross is.

17 THE COURT: We could possibly argue on Friday, but  
18 we'll see. So but at least it appears we're moving a little  
19 more quickly than earlier anticipated.

20 MR. BARNES: Yes, Your Honor.

21 THE COURT: Okay. Very well. Mr. Surovic, on an  
22 unrelated matter, I guess you know or perhaps you didn't  
23 that Mr. Banks reported to prison as ordered.

24 MR. SUROVIC: I saw that, Your Honor, I was  
25 wondering what did he sign up for.

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1 THE COURT: I guess he decided Maxwell Air Force  
2 base was better than Geo. All right, we'll start in about  
3 30 minutes.

4 (11:51 a.m.)

5 \* \* \*

6 (12:25 p.m.)

7 MR. SUROVIC: As a result of Mr. Barnes's motions  
8 at the end of our last session, I have now requested and the  
9 IRS is going to provide all of the income tax returns from  
10 2007 through 2012 for each of the remaining defendants, they  
11 should be over here this afternoon. They're not going to be  
12 official stamped fancy copies, but they'll be something that  
13 Mr. Barnes can use to question. And I've also already  
14 provided him with the same period tax returns for Mr. Ruiz,  
15 our next witness, he already had most of those. I reviewed  
16 the communications with Mr. Barnes in his office over the  
17 period of our handling this case. And Mr. Barnes is right,  
18 I was not the first attorney or the second attorney. This  
19 actually started out, to give you an idea how old it is,  
20 with Mr. McHugh, but I looked through all the e-mails and  
21 all the letters that were exchanged. There are some  
22 requests for Brady and Giglio, no specific requests for  
23 1040s and obviously the government doesn't have access to  
24 those 1040s on the civil side without a court order, as a  
25 matter of fact, so it's a little bit of a challenge for us

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1 to provide it or even to review it for Brady matter.

2 MR. BARNES: Yes, Your Honor, based on that, I  
3 believe that they can get those to me today and I'll have  
4 time to review them tonight. I would just make a request to  
5 briefly continue the trial to start tomorrow. I know based  
6 on what we reviewed over lunch --

7 THE COURT: You've got all night to review.

8 MR. BARNES: Yes, Your Honor, but the witnesses  
9 are going to be testifying now. I wanted to cross-examine  
10 them tomorrow in the chance to review tonight.

11 THE COURT: No, we're going to go. Mr. Ruiz, come  
12 on up here. The jury is going to be coming in.

13 COURT SECURITY OFFICER: All rise for the jury.

14 (12:29 p.m.)

15 THE COURT: Mr. Ruiz, if you'll raise your right  
16 hand. These members of the jury are seeking the truth about  
17 what happened in this case. As they do so, do you promise  
18 to tell the jurors, subject to federal perjury laws, the  
19 truth, the whole truth and nothing but the truth?

20 THE WITNESS: Yes, Your Honor.

21 THE COURT: All right, you may be seated.  
22 Mr. Surovic, you may proceed.

23 MR. SUROVIC: Thank you, Your Honor.

24 EXAMINATION

25 BY MR. SUROVIC:

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1 Q. Sir, would you state your full name please?

2 A. Mario Ruiz.

3 Q. Generally speaking, where do you live?

4 A. 9906 --

5 Q. Don't have to go into the exact?

6 A. San Antonio.

7 Q. And how long have you lived in San Antonio?

8 A. Forty-one years.

9 Q. All your life?

10 A. Almost.

11 Q. Where were you born?

12 A. Los Angeles, California.

13 Q. And how old are you now?

14 A. I'll be 48 tomorrow.

15 Q. So all but seven years of your life, when you were  
16 seven you moved here to San Antonio?

17 A. Yes, sir.

18 Q. Where did you go to high school?

19 A. West Campus High School.

20 Q. Where do you work currently?

21 A. My Collision Center. It's called My Collision Center.

22 Q. And what do you do for the collision center?

23 A. Well, I own it.

24 Q. You own it?

25 A. Yes, sir.



## MARIO RUIZ - DIRECT

1 Q. That is your personal business?

2 A. Yes, sir.

3 Q. What type of things do you do at your collision center?

4 A. Body and paint.

5 Q. So you fix damaged body of the vehicle?

6 A. Yes.

7 Q. Do you always work for yourself?

8 A. No, I just opened my own business three years ago.

9 Q. And prior to that, what did you do?

10 A. I've been in the same business since I was 13.

11 Q. Working for other collision centers?

12 A. Yes, sir.

13 Q. Do you recall where you worked back in 2010?

14 A. I was probably at a -- in 2010? Caliber Collision.

15 Q. I was going to say let's look at Exhibit 12-1 which is  
16 in that red folder next to you?

17 A. Okay.

18 Q. And first of all, we'll start with page one.

19 THE COURT: After the blue page.

20 BY MR. SUROVIC:

21 Q. The first page of the actual return. Top of it, Mario  
22 Ruiz, that's you?

23 A. Yes, sir.

24 Q. And are you married?

25 A. Yes, sir.

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1 Q. What's your wife's name?

2 A. Kim Denise Ruiz.

3 Q. So Kim D. Ruiz would be her on the top section there?

4 A. Yes.

5 Q. And Social Security numbers and address, is this your  
6 income tax return, your 1040 for year 2010?

7 A. Yes.

8 Q. And if we turn to page -- it would be the fourth page  
9 in, page three of the actual return, there is a W-2 for  
10 Alamo Body and Paint, do you recall that?

11 A. Yes.

12 Q. Did you work for them?

13 A. Yes.

14 Q. On the next page there is a W-2 for Caliber Body Works?

15 A. Yes.

16 Q. Of Texas. Those are the two entities you worked for in  
17 2010?

18 A. Yes.

19 Q. Did you also have a side business? I don't know that  
20 you would call it a business.

21 A. More of a ministry, we do music.

22 Q. Could you describe that?

23 A. Sure. So I'm not the one with the talent, my wife is.  
24 She does Christian music and we go out and do free events  
25 throughout the city and we travel other places, sometimes on

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1 the weekends. And that's basically it.

2 Q. What's the purpose of this? You said it was a music  
3 business?

4 A. Oh, yeah, to be a hundred percent -- I know I got to be  
5 a hundred percent honest. To reach the lost and give them  
6 hope through the gospel of Jesus Christ.

7 Q. Where do you do performances?

8 A. At churches, out in the street, we've been to  
9 correction facilities, anywhere they'll have us, anywhere we  
10 can set up speakers we'll pretty much go.

11 Q. What's involved in these performances?

12 A. My wife setting up speakers, sometimes we don't have to  
13 set up, sometimes the church will have, you know, their own  
14 sound system. That is basically it, pretty simple to set  
15 up.

16 Q. Do you only do this around San Antonio?

17 A. No, sir, we traveled to Florida, California, we've  
18 traveled many places.

19 Q. And you do this all on your own, out of your own  
20 pocket, is that correct?

21 A. That is correct. Well, hold on. Sometimes. I mean  
22 it's rare, but sometimes somebody will help us with a plane  
23 ticket. It's very few and far between, we've been doing it  
24 since 2003, so like 14 years.

25 Q. Do you do this in order to make money?

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1 A. No, there's no money in it.

2 Q. You do it as a ministry?

3 A. Absolutely.

4 Q. A lot of musicians and things like that that go various  
5 locations, they sell T-shirts, ball caps, CDs, things like  
6 that, do you do that as well?

7 A. We sell a little, but most places we go to it's more  
8 like low income, so we end up giving a lot of our product  
9 away.

10 Q. Have you ever made much money out of your music  
11 ministry?

12 A. Nowhere -- no, not even close to like what we've  
13 invested.

14 Q. Have you made enough to call it even?

15 A. Never, no.

16 Q. Let's talk a little bit about a business called Rapid  
17 Return Tax Service. Do you recall Rapid Return Tax Service?

18 A. Yes, of course, yes.

19 Q. How did you discover Rapid Return Tax Service?

20 A. I was thinking outside, I can't remember the friend who  
21 recommended me, but I think at the time I worked at --  
22 either I guess it was Alamo first, but I just can't remember  
23 who recommended me to Margaret. I just can't remember, it's  
24 been a while.

25 Q. Why did they tell you you needed to go to her as

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1 opposed to somewhere else?

2 A. She was really good at what she did.

3 Q. Had you used a tax preparation service before?

4 A. Yes.

5 Q. Who did you use before?

6 A. I would pretty much go anywhere. It was simple, I just  
7 had a W-2, little slip, show up, I had no deductions, no  
8 nothing, walked in, walked out, it was real simple, so I  
9 just went anywhere.

10 Q. How much did that normally cost you?

11 A. Probably, I don't know, it's hard to say, like, hundred  
12 bucks, it wasn't much.

13 Q. How much did you get back on your return?

14 A. Not much. It was minimum. Oh, I'm sorry, it depends.  
15 Depends how many kids you have and how much money you make,  
16 but yeah, I made a little bit more money, it wasn't very  
17 much.

18 Q. Did you ever meet an individual by the name of Margaret  
19 Hosseini?

20 A. Yes.

21 Q. How did you meet her?

22 A. At Rapid Refund.

23 Q. Is she in the courtroom?

24 A. Yes.

25 Q. Could you point to her and identify what she's wearing?

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1 A. Yeah, she's wearing pink T-shirt.

2 THE COURT: All right. Noted.

3 BY MR. SUROVIC:

4 Q. Now, you indicated you met Ms. Hosseini at Rapid Return  
5 Tax Service. What was her role there?

6 A. She was the boss. I don't know, she was the boss.

7 Q. How did you meet her?

8 A. Just walking in and I can't remember who recommended,  
9 but I asked for her, of course, and we started talking just,  
10 you know, she has a great personality, we started talking  
11 right away and kind of hit it off.

12 Q. You met her, I assume, in the office?

13 A. Oh, absolutely.

14 Q. Of Rapid Return, in Converse?

15 A. Yes.

16 Q. What did you bring -- I assume you went to Rapid Return  
17 in order to get your taxes prepared, is that correct?

18 A. That's correct, I brought my W-2.

19 Q. Is that it?

20 A. Yes.

21 Q. Any receipts or anything like that?

22 A. No, not at that time. I would just give my W-2 like I  
23 did everywhere else.

24 Q. How many years did you go to Rapid Return?

25 A. I would say at least -- at least four years, three,

MARIO RUIZ - DIRECT

1 four years.

2 Q. I'm going to ask you questions about tax year 2010?

3 A. Okay.

4 Q. And in tax year 2010 you've just seen the first page of  
5 that tax return, we looked at the W-2s, if we could go to  
6 the second page of the tax return. At the bottom of that  
7 page it indicates that your return was actually prepared by  
8 Ms. Hosseini. Did she actually prepare your returns every  
9 year?

10 A. I believe the first time we went there, yes.

11 Q. So would this have been the first time that you went  
12 there in 2010?

13 A. I believe so, yes.

14 Q. Let's go to page seven which will be the profit and  
15 loss from a business Schedule C page?

16 A. Okay.

17 Q. You see at the top of that page it has your name as the  
18 proprietor, Mario Ruiz?

19 A. Yes.

20 Q. And then the principle business is music sales and the  
21 business name is Narrow Path Records?

22 A. Yeah, at the time, yeah.

23 Q. Is that the name that you had for your music ministry?

24 A. Yes.

25 Q. The one thing I want to question you about on your

MARIO RUIZ - DIRECT

1 Schedule C is if you will go to part two, line eight for  
2 advertising?

3 A. Uh-huh.

4 Q. It says you spent \$12,129 in advertising?

5 A. We've never really advertised. So I'm trying to really  
6 think back. The only thing I can assume is the CDs we've  
7 given away, but we never really actually advertise.

8 Q. So I believe we talked about legal and professional  
9 services, block number 17 at the bottom. How much did you  
10 spend on making CDs and such?

11 A. That was 2010.

12 Q. Do you recall how many CDs you made?

13 A. We would make about -- I would say about a thousand at  
14 a time along with T-shirts, posters.

15 Q. How much did that cost?

16 A. A thousand CDs, they're about a dollar a piece,  
17 T-shirts about \$4.00 a piece. We wouldn't make very many  
18 T-shirts, yeah, I'd say about there. There's music  
19 production, stuff like that.

20 Q. So a thousand CDs at a dollar a piece is a thousand  
21 dollars. How many T-shirts did you make at \$4.00 a piece?

22 A. Maybe a hundred at a time.

23 Q. So maybe \$400 there?

24 A. Yeah.

25 Q. And then posters and things like that, how much did



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1 that cost?

2 A. Posters are cheap, a thousand posters for like 200  
3 bucks.

4 Q. And I think you mentioned when you had talked to me  
5 beforehand that you also did flyers every once in a while?

6 A. Yeah, depends on what show, you know, go to Kinko's, 20  
7 bucks, 30 bucks.

8 Q. So talking about for the whole year all your  
9 advertising maybe \$4,000 or so?

10 A. Yeah, I mean for a CD production, music production, all  
11 that, probably around there, between three and \$4,000.

12 Q. Did you ever spend anywhere near \$12,000 on  
13 advertising?

14 A. No, I mean not on advertisement, no.

15 Q. Do you know where Ms. Hosseini got the number \$12,129  
16 from you as far as advertising?

17 A. Thinking back, only thing I can assume is --

18 Q. Don't assume. Just tell us what you told her and what  
19 she told you.

20 A. Well, prior to meeting Margaret, I had never claimed  
21 anything for the ministry.

22 Q. Why not?

23 A. I didn't know I could. Like I said, I would walk in  
24 with my W-2 and walk right out. I just thought, hey, this  
25 is something we decided to do and, no, I didn't know we

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1 could do that at the time. Of course, Margaret, as usual I  
2 walk in and give people CDs, it's just a habit, you know,  
3 then we start talking and then as we talk, she was like,  
4 well, what do you do, who pays for this stuff. I said I do,  
5 I have a pretty good job and I just pay for it and we do  
6 this and that, so that's how the conversation started.  
7 That's when I found out, hey, I can claim this stuff which I  
8 didn't know before. So when I -- before meeting Margaret, I  
9 never claimed it. After I stopped doing business with  
10 Margaret, I never claimed it. It was just that one brief  
11 period, that because I had got -- I guess because of all  
12 this, it's been going on five years, six years and I got  
13 audited and I said I ain't never claiming nothing again.  
14 I'm just going to do my W-2 and walk out.

15 Q. Did they explain to you that a business has to make  
16 money over a period of time?

17 A. Not that I recall, no.

18 Q. You never made money in the music business, that wasn't  
19 the purpose of it?

20 A. Yeah, nothing to --

21 Q. And you never told Ms. Hosseini that you spent \$12,000  
22 on advertising?

23 A. No, the only thing is just -- I guess just the stuff  
24 that we gave away. I can't remember exactly how the  
25 conversation was at that time, but like I said, I didn't

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1 know I could claim any of this stuff.

2 Q. When we go down to line 17, legal and professional  
3 services of \$6,787. Do you know what that's for?

4 A. Well, I've never been in trouble before, so I can't  
5 think of anything legal. Professional, only thing I could  
6 think of is maybe the music production.

7 Q. So CDs would be in that amount, it wouldn't be in the  
8 12,000-dollar amount?

9 A. Yeah, I really don't know.

10 Q. When you cut the CD production out, how much does that  
11 leave as far as pure advertising, posters, flyers, T-shirts?

12 A. If I cut out the --

13 Q. If you cut out the CD production?

14 A. Posters, flyers and all that, I mean I don't know, like  
15 \$400, \$200, it ain't much.

16 Q. Because you don't have that much money that you can  
17 spend on things like that?

18 A. No, not the way the whole -- the way we go about doing  
19 our music ministry, we don't do the promotion. She's a  
20 guest, she comes out, they call the people out and --

21 Q. When you say "they", you're talking about the churches?

22 A. Yeah, like the pastor or youth leader, whatever,  
23 whoever is putting on the event or whatever it's for.

24 Q. When you finished doing your tax return, do you recall  
25 how much Ms. Hosseini charged you for doing the tax return?

MARIO RUIZ - CROSS

1 A. I know it was always like -- I can't recall the exact  
2 amount, but it was definitely like over \$600, around there,  
3 sometimes maybe a little bit more.

4 Q. Do you recall how much you got in the way of a return?

5 A. Yeah, I would get a really good return.

6 Q. If we look at page two of the income tax return, the  
7 refund here it indicated \$5,827?

8 A. Yeah.

9 Q. Does that sound about like what you got minus her  
10 check?

11 A. Yeah.

12 Q. That's the first time you got a large refund like that?

13 A. I think when -- before I started making decent money  
14 when all three of my kids were small, I probably got a  
15 pretty good return, but they're all grown up and married  
16 now, but that was like way early.

17 Q. What about 2009 time frame, 2008 time frame, is that  
18 significantly more than you would have gotten then?

19 A. Yeah, going there that was my best return, I  
20 recommended everybody to go there.

21 MR. SUROVIC: No further questions, Your Honor.

22 THE COURT: Cross.

23 MR. BARNES: Yes, Your Honor.

24 EXAMINATION

25 BY MR. BARNES:

## MARIO RUIZ - CROSS

1 Q. Good afternoon.

2 A. Hi.

3 Q. Did you also -- did you go to church with Margaret or  
4 you just met her separately?

5 A. The only time me and Margaret would speak was just  
6 there, we never had lunch, it was just there once a year.

7 Q. When was the first time the IRS told you they had any  
8 questions about your returns? Did they send you a letter,  
9 call you or did agents show up at your door?

10 A. I think somebody showed up at my door. I remember  
11 because I was at work, my wife called me, said, Yeah, you're  
12 in trouble. I was like, Okay, great. And then I called and  
13 they were like, Hey, you need to come down here now. So of  
14 course I told my boss, I got to leave right now, I got to  
15 go. So I went, they put me in this little room and I, you  
16 know, they asked me questions, I answered them and I went  
17 back to work that night and I actually did printed every  
18 single one of my bank statements and I was just like going  
19 crazy, like I was nervous, I was like I don't know what this  
20 is.

21 Q. Did they give you any bank statements before they did  
22 the interview?

23 A. Not that I recall, no. I remember printing my own bank  
24 statements when I went back to work and started highlighting  
25 everything.

MARIO RUIZ - CROSS

1 Q. So you went back to find all the --

2 A. Yeah.

3 Q. But before then, they didn't give you an opportunity to  
4 do that before they interviewed you in that small room?

5 A. Not that I recall, no.

6 Q. And did they say you could have an accountant or an  
7 adviser or an attorney present with you when they were doing  
8 that interview?

9 A. I just can't remember that, no, sorry.

10 Q. And did they show you the documents that you had signed  
11 with Margaret when they -- before they did the interview  
12 with you?

13 A. Back at the first time, I just can't recall. I just  
14 remember they had like -- felt like my life was on the wall.  
15 They had like -- Narrow Path Records, they had this, they  
16 had -- I was like, wow, this is serious.

17 Q. Do you recall professional group services using a group  
18 called Core Media Group for \$6,287, does that sound familiar  
19 to you?

20 A. That was -- I think that was back in -- Core Media  
21 Group? Core Media is the one that they do our CDs.

22 Q. And this was during the 2008, 2009 time period. Do you  
23 remember the amount 6,287 for their professional services or  
24 was it in that range?

25 A. No, because the most I've ever bought from Core

## MARIO RUIZ - CROSS

1 Media -- the only time I printed 5,000 CDs which was a big  
2 mistake was when we first started 2003 because I thought the  
3 music thing was different and then I learned my lesson, I  
4 started printing a thousand at a time.

5 Q. Would you only do a thousand in the year or would  
6 sometimes you do more than a thousand in the year?

7 A. No, the most we've ever printed the first time 5,000  
8 took us like four years to get rid of them, then the other  
9 times was a thousand at a time and we still have some left  
10 over back from like 2000 whatever.

11 Q. Do you remember using Mark and Ryan for photo shoot?

12 A. Yeah.

13 Q. And do you recall how much that was that you paid for  
14 them over time?

15 A. Thinking back now, you're bringing back memories. I  
16 think Mark and Ryan, Mark did the photos, Ryan did the hair  
17 and makeup and we did it in his garage, I think it was like  
18 600 bucks. I think that was the first time we used somebody  
19 professional, then it was too expensive, then I started  
20 taking the pictures after that.

21 Q. Do you remember spending money at the Miami Radio 99  
22 Jams?

23 A. We flew up there for a free concert.

24 Q. And do you know how much it cost for that whole trip?

25 A. Well, flying, you know, for two, probably like, I don't

MARIO RUIZ - CROSS

1 know, I'm thinking like at the time it was probably like,  
2 what, \$700, \$800, I'm assuming, it's hard to remember.

3 Q. Did you have hotel fees and other costs?

4 A. Yeah, we would pay for everything.

5 Q. Does 3,000 or so sound about right?

6 A. Hotel, probably stayed up there at least three days,  
7 had to be back at work. It's hard to say, but it's  
8 really -- I'm like the worst person, I just pay and think  
9 about the consequences later.

10 Q. And did the IRS explain to you that when you do  
11 promotional events that cost you money that can be taken as  
12 an advertising deduction, did they ever explain that to you?

13 A. Do whoever explain to me?

14 Q. Did the IRS ever explain to you that when it costs you  
15 money to do a promotional event, that that can be taken as  
16 advertising deduction?

17 A. I would have to say, as far as what I remember right  
18 now, I would say no.

19 Q. Do you also recall radio alert CDs being sent to  
20 various stations as well?

21 A. Yes, we'd send those all the time.

22 Q. How many did you send out over the years, 2008, 2010  
23 time frame?

24 A. I think the only time we did it was we probably sent it  
25 out to -- I mean that was by envelope, so 160 different



## MARIO RUIZ - REDIRECT

1 radio stations, maybe 200, it took us a few days.

2 Q. And do you recall using Pens Dimple Grip for your  
3 music?

4 A. I still have some of those pens, yes.

5 Q. Do you recall how much those cost over the years,  
6 2008 --

7 A. I think I only printed them one time because nobody  
8 really wanted them. I got the cheapest ones, probably 200  
9 bucks, maybe 150 bucks.

10 Q. Were these things where you put the name of the --

11 A. I had my wife's name on there.

12 Q. Did the IRS explain to you that's something you can  
13 also take as advertising deduction?

14 A. I don't think we discussed that.

15 Q. So the IRS didn't explain that. In terms of records of  
16 your expenses, did your bank statement show that a lot of  
17 these expenses had, in fact, occurred?

18 A. After I had that interview, you know, kind of freaked  
19 me out, I went back to work, like I said, I printed out my  
20 bank statements and I went crazy highlighting and I was  
21 like -- I called my wife, I said, I didn't realize how much  
22 money we spent. It was kind of ridiculous actually. And so  
23 I called right away and I said, hey, you know, left a  
24 message, just let you know I came back to work, same day you  
25 told me I could look at things, but I went straight back to

MARIO RUIZ - REDIRECT

1 work the same day and I said I got everything highlighted.  
2 Do you want it? They said no, if we need you, we'll call  
3 you at a later time.

4 Q. Did the IRS tell you at some point that because you  
5 were doing Christian music that you couldn't take the same  
6 business deductions that everyone else takes?

7 A. No, we never discussed any of that. I don't think so,  
8 no.

9 MR. BARNES: No further questions.

10 THE COURT: Redirect.

11 EXAMINATION

12 BY MR. SUROVIC:

13 Q. Mr. Ruiz, Mr. Barnes asked you some questions about a  
14 variety of different things that you spent on the Miami 99  
15 Jam I think is what he called it, a photo session, sending  
16 out some CDs to radio stations, buying pens. Do you  
17 remember what year you did that in?

18 A. I really do not. I mean --

19 Q. Was it all done in the same year or done in different  
20 years?

21 A. We've been doing this since 2003 and we're still doing  
22 it, so we've been doing this for 14 years and I've never --  
23 before I met Margaret, I never took account to it because to  
24 be honest with you I really didn't, you know, I looked at it  
25 like I don't want to say throwing away money, but you have

## MARIO RUIZ - REDIRECT

1 three kids and you're like should we be doing this still,  
2 but since we were able to pay our bills, my wife was happy  
3 and I left it alone, so I never took account. The first  
4 time I took account was when I actually went through the  
5 bank statements and that was an eye opener actually, so I  
6 was like, wow, that's a lot.

7 Q. And when was that when you looked at the bank  
8 statements?

9 A. I can't remember -- it was the first day that I was --  
10 not the first day I was contacted, but that card was left --  
11 when my wife answered the door, they said tell your husband  
12 to call right away, that was the day I went back that  
13 evening, I stayed at work late.

14 Q. Sometime in 2012?

15 A. It's hard to say what year exactly it was, but I'm  
16 probably assuming, that's about right basically. Had my  
17 business three years, somewhere else four years, it's been  
18 about five years, so probably around that time, yeah.

19 Q. So you pulled out all your bank records at that point.  
20 Had you pulled out your bank records and shown them to  
21 Ms. Hosseini?

22 A. No, sir.

23 Q. Did you indicate to her, well, you know, we had this  
24 Miami 99 Jam and I spent this much money on it?

25 A. I think what it was was more of a, like, conversation

## MARIO RUIZ - REDIRECT

1 like, well, you know what I mean, what do you think, where  
2 is it at that you spend, where do you think you spend, kind  
3 of like we're talking right now, but I think I had a few  
4 maybe flights and stuff like that, now that I'm thinking  
5 back, but yeah.

6 Q. Well, the flights would be flights to actual  
7 performances, right? That wouldn't be a situation like  
8 Miami 99 Jam where you were going to push your -- or your  
9 wife was going to sing for them?

10 A. Yeah, pretty much the only time we traveled that we  
11 could afford to travel, we couldn't really afford it, but  
12 only time we traveled, we didn't take vacations, it was all  
13 about going out and doing the music. When we went out,  
14 those were like our -- we treat them like our vacations  
15 because we couldn't do that and take a vacation, so when we  
16 go out places, you know, whether Miami or Waco, wherever we  
17 went, Dallas, you know, go for the weekend, we would -- that  
18 would be it.

19 Q. When you were expressing this to Ms. Hosseini, you  
20 didn't have the figures, so you couldn't give her exact  
21 numbers, is that correct?

22 A. Yeah, it was -- I didn't -- yeah, it was just more like  
23 kind of like we're talking now and probably some receipts  
24 also because when I got audited I didn't have really  
25 receipts, so it was really hard, took a hit.

## MARIO RUIZ - REDIRECT

1 Q. When you did the photo shoot, do you remember when the  
2 photo shoot was done?

3 A. I think it was for her album called Breakthrough. I'd  
4 have to look at the CD, but it was probably, I think it was  
5 probably about five, six years ago.

6 Q. So that would have been 2011 time frame?

7 A. Yeah, I think it was during this -- yeah, five or six  
8 years ago.

9 Q. Not in 2010?

10 A. I'd have to look at the back of the CD. Whatever the  
11 back of the CD says, we do it a year prior. It takes us  
12 like a year to do it, you know, finances and all that stuff.

13 Q. You're not a wealthy man, although you've taken on this  
14 ministry?

15 A. No, yeah. At the time I was like I'm on my way, I got  
16 a business now.

17 Q. Would it be fair to say that you tried to spread out  
18 your costs every year, you know, for the business, you knew,  
19 for example, you had 500 CDs left over, so you wouldn't  
20 necessarily buy a thousand CDs every year?

21 A. No, I would wait until -- so far we haven't -- it's not  
22 a good thing, but we haven't had to rebuy a CD and we've  
23 done seven, so we run out of that one or if we run out, we  
24 just go to the next one, I never go back and repurchase that  
25 same -- or reprint the same CD.

## MARIO RUIZ - RECROSS

1 Q. So as far as your advertising costs while you might buy  
2 some item that would kick it up in one year, you would skip  
3 buying an item the next year?

4 A. Definitely.

5 Q. What do you think on average you spent per year on  
6 advertising, that would include the bumpy pens and whatever  
7 else, anything that had your company name on them?

8 A. It's really hard to say. I mean I'd really have to go  
9 back and look at it. It's like it was like one year we did  
10 something and then no CD press, no nothing and then we would  
11 skip a year and then my wife would write songs.

12 Q. But you don't have a feeling of approximately average  
13 what it would be?

14 A. No, sir.

15 Q. Okay.

16 MR. SUROVIC: No further questions.

17 THE COURT: Recross.

18 MR. BARNES: Yes, Your Honor.

## EXAMINATION

19  
20 BY MR. BARNES:

21 Q. So you told the special agent that you had bank  
22 statements that showed how much money you had been spending,  
23 correct?

24 A. Yes, that's correct.

25 Q. And he never asked you to bring them in to take a look

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1 at them?

2 A. I recall him just saying, well, if we need you, we'll  
3 call you.

4 Q. And did he ever call you and say please bring in those  
5 bank statements so we can see all the proof that you have?

6 A. No, sir, I held on to them for a little while and I  
7 tossed them.

8 MR. BARNES: No further questions.

9 THE COURT: Redirect.

10 MR. SUROVIC: No redirect, Your Honor.

11 THE COURT: Thank you, sir, you may be excused  
12 without objection.

13 MR. SUROVIC: We request he be permanently  
14 excused.

15 THE COURT: All right. Thank you, sir, you may  
16 step down.

17 THE WITNESS: Thank you.

18 THE COURT: Next witness.

19 MR. SUROVIC: Your Honor, next witness will be  
20 Ms. Anita Price.

21 THE COURT: Anita Price.

22 MR. SUROVIC: And if I might approach the witness  
23 stand to change files.

24 THE COURT: Certainly. Ms. Price, if you'll come  
25 up here next to me. Raise your right hand. Subject to

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1 federal perjury laws and as this jury seeks the truth of  
2 what happened in this case, do you promise to tell the  
3 jurors the truth, the whole truth and nothing but the truth.

4 THE WITNESS: I do, Your Honor.

5 THE COURT: Very good. You may be seated.

6 Mr. Surovic, you may proceed.

7 MR. SUROVIC: Thank you, Your Honor.

8 EXAMINATION

9 BY MR. SUROVIC:

10 Q. Ma'am, would you state your full name please?

11 A. Anita Elisa Price.

12 Q. And what city do you live in?

13 A. San Antonio.

14 Q. How long have you been in San Antonio?

15 A. Most of my life with the exception of the first two or  
16 three years of my life.

17 Q. How are you employed?

18 A. I'm employed with the Bexar County Sheriff's Office.

19 Q. How long have you been with Bexar County Sheriff's  
20 Office?

21 A. March of next year will be 25 years.

22 Q. What do you do for them?

23 A. I'm currently assigned to a Crime Scene Unit.

24 THE COURT: You started when you were ten?

25 THE WITNESS: No, Your Honor, right out of high



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1 school.

2 THE COURT: Go ahead.

3 BY MR. SUROVIC:

4 Q. By the way, where did you go to high school?

5 A. Jefferson High School.

6 MR. SUROVIC: Just in case you want to know, Your  
7 Honor.

8 THE COURT: My mother was probably the registrar  
9 when you were there. Go ahead.

10 BY MR. SUROVIC:

11 Q. What do you do for the Bexar County Sheriff's Office?  
12 You said you were in the Evidence Unit?

13 A. Yeah, I'm a deputy sheriff, I'm currently assigned to  
14 our Crime Scene Unit.

15 Q. And what other jobs did you have while you've been  
16 working at Bexar County?

17 A. I worked at Detention Center, our Criminal Warrant  
18 Section, our Mental Health Section, Patrol, Gangs, Organized  
19 Crime and Intel, Vice, Narcotics.

20 Q. Pretty much everything there is?

21 A. Almost everything. I just haven't been a bailiff and I  
22 haven't worked our Civil Section.

23 Q. During the time that you worked as a deputy for Bexar  
24 County Sheriff's Office, did you ever have any work on the  
25 side?

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1 A. Yes.

2 Q. What type of work on the side would you do?

3 A. Part-time work, What-A-Burger working security, traffic  
4 at the AT&T Center, Rodeo, mainly security and directing  
5 traffic.

6 Q. And was that a contract situation or would you be paid  
7 cash, how did that work?

8 A. More times than not would be at the AT&T Center, they'd  
9 pay every two weeks, What-A-Burger would pay every week.

10 Some jobs are cash, they do report, but more times than not  
11 we get paid by check and then no taxes are taken out though.

12 Q. I'm going to be asking you mostly about the period 2008  
13 to 2009 and 2010, were you working at Bexar County Sheriff's  
14 Office during that period?

15 A. I was.

16 Q. And were you also working the additional security jobs?

17 A. I was.

18 Q. Did you ever come to know a business by the name of  
19 Rapid Return Tax Service?

20 A. I did.

21 Q. How did you come to know about Rapid Return Tax  
22 Service?

23 A. The gentleman that used to do my taxes for years passed  
24 away and as we usually do, whether we need a mechanic or  
25 somebody to do our taxes, we go around work saying, hey,

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1 does anybody know anybody that does taxes and I was referred  
2 by a couple of officers to Rapid Tax.

3 Q. Did you ever meet an individual by the name of -- why  
4 did they tell you you should go to Rapid Return Tax Service?

5 A. That's just who they recommended. We itemize quite a  
6 bit because of all the part-time work we do and it's not  
7 cheap but, you know, who wants to pay taxes, so you try to  
8 itemize as much as you can.

9 Q. Did you ever meet an individual by the name of Margaret  
10 Hosseini?

11 A. I did.

12 Q. How did you meet her?

13 A. It was on my first appointment with Rapid Tax. I can't  
14 remember the year, but she did my taxes the first year.

15 Q. Would you recognize her if you saw her?

16 A. I would.

17 Q. Is she in the courtroom today?

18 A. She is.

19 Q. Could I have you point to her and identify what she's  
20 wearing?

21 A. She's sitting right over here and she's wearing a  
22 purple shirt.

23 THE COURT: Noted.

24 BY MR. SUROVIC:

25 Q. Could you describe the process that you went through

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1 when you would come in to Rapid Return Tax Services in order  
2 to get your return prepared and let's start with what would  
3 you bring to the office?

4 A. Well, on the first visit I had called and made the  
5 appointment by phone and they had recommended I bring in my  
6 last two or three years of taxes from Mr. Mayfield's office  
7 and so I did that. The first visit with Rapid Tax was  
8 different than the other ones. I was a new client. I went  
9 in, brought my taxes and on the appointment I met with  
10 Margaret and we went down, you know, all my part-time jobs,  
11 my receipts, etc.

12 Q. How did you keep your receipts? Did you just put a  
13 cash register receipt or something like that in a box, bring  
14 it in or did you itemize it yourself?

15 A. I keep the receipts in a folder. At the time I would  
16 just put -- throw all my receipts in a folder and take them  
17 to Rapid Tax and let them add it up.

18 Q. And so you'd sit down with her, you talked to her about  
19 these are my expenses and this is what I do. What happened  
20 after that?

21 A. I'd leave everything and they do my taxes and I come  
22 back a week later, sometimes a few days later and sign my  
23 paperwork.

24 Q. Who did you meet with when you came back to sign your  
25 paperwork?

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1 A. The first time I believe I didn't have to come back. I  
2 think Margaret did my taxes as I sat there. It was quite a  
3 lengthy appointment. After that, I'd either meet with  
4 Margaret or another staff member and come back and usually  
5 they just have my folder there and I'd sign and leave.

6 Q. Did you notice anything about the amount of refund you  
7 got when you started going to Ms. Hosseini and Rapid Refund  
8 versus what you had gotten before from Mr. Mayfield?

9 A. Occasionally I would have to pay taxes when I was with  
10 Mr. Mayfield. The first year I went with Rapid Tax I did  
11 get a refund and I hadn't had to pay since.

12 Q. I'm going to ask you to take a look at that first  
13 folder on the top there, Government Exhibit 1-1. And the  
14 first page is a blue page, that's a certification. If you  
15 could open to the second page, top of that page it says Form  
16 1040 U.S. Individual Income Tax Return 2008, is that  
17 correct?

18 A. Yes, it is.

19 Q. And it's got Anita E. Price, Social Security number,  
20 address here in San Antonio. Is that you?

21 A. It is.

22 Q. Is this your 2008 tax return?

23 A. It is.

24 Q. Look down here at -- well, first of all, let's look at  
25 line seven, your wages, indicates your wages are \$48,690?

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1 A. I would assume that's correct.

2 Q. In 2008?

3 A. Yes, sir.

4 Q. That would be what you get W-2s for?

5 A. Yes, sir.

6 Q. And then on line 12 it talks about business income or  
7 loss, you indicate a loss of \$22,360, is that correct?

8 A. That's what it says.

9 Q. Now, 2008 is a little different because if we go down  
10 to line 21, other income, you have \$19,740, can you tell us  
11 about that?

12 A. Is that from Las Vegas? I don't know if that was the  
13 year I went to Las Vegas.

14 Q. This would be the year you went to Las Vegas. If  
15 you'll turn to page five and we'll come back to this, this  
16 is your Schedule A?

17 A. Yes, sir.

18 Q. If you go down to the bottom, other miscellaneous  
19 deductions, block 28?

20 A. Yes.

21 Q. It talks about gambling losses, hopefully that will  
22 help you remember, this was Las Vegas?

23 A. Yes, sir.

24 Q. \$1,740 in winnings. When you go back to the first  
25 page, other income, you made -- excuse me, \$19,740?

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1 A. Yes.

2 Q. Could you tell us how that happened?

3 A. I had a really nice trip to Las Vegas. I hit one  
4 jackpot while my friends were at a bar and I was sick from a  
5 buffet and decided to stay in my room and then got tired of  
6 being there, went downstairs, put 15 bucks in a five-dollar  
7 slot and hit a jackpot. Couldn't get a hold of anybody to  
8 celebrate with me because they were all at the bar, but  
9 there I was in my house shoes and my sweats celebrating by  
10 myself. I believe that jackpot was 7400, 7500. I turned  
11 around, they tried to give me all cash, I said absolutely  
12 not, I want a cashier's check, just give me \$500 cash  
13 because I knew I would spend it all and I used that and I  
14 parleyed it into doing nothing for the next 20 hours but  
15 playing slot machines and winning 1500 here, 2500 there and  
16 I actually accumulated that many winnings in I think it was  
17 like 24 hours of constant slot machine playing.

18 Q. And you received what they refer to as a W-2G for  
19 those, is that correct?

20 A. Yes, sir.

21 Q. And if you look towards the back of that Government  
22 Exhibit 1-1, you'll see that those are there, you were at  
23 Treasurer Island, Las Vegas Sands -- excuse me, doing  
24 business as Venetian, excuse me. And another one from the  
25 Venetian, and The Mirage, and Treasurer Island again.

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1 A. Just kept going back and forth across the street. I  
2 took a shower I think once and I kept walking back and  
3 forth.

4 Q. Do you gamble a lot?

5 A. I don't, I don't. They say it only happens once in a  
6 lifetime and I've been back a couple more times and it does  
7 just happen once in a lifetime.

8 Q. How many times did you go to Las Vegas in 2008, do you  
9 recall?

10 A. Just the one time, I think.

11 Q. Did you go anywhere else to gamble in 2008?

12 A. I might have been out of town in El Paso for a work  
13 trip. I'd have to look. There was one year and it might  
14 have been this year that we were there for a conference and  
15 there's an Indian reservation that has a casino there, so I  
16 went and I actually hit a jackpot there, but I don't know if  
17 that was this year.

18 Q. There's not a --

19 A. Okay, it's another year.

20 Q. There's not a W-2G from them?

21 A. Might have been the next year after that.

22 Q. You indicated that when you hit the first jackpot, you  
23 had them give you a cashier's check and only \$500 in cash.  
24 Are you one of those people that only carries a certain  
25 amount of money so you don't lose everything?



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1 A. Yes.

2 Q. And that's what you did in this instance?

3 A. I didn't want to give it back to them.

4 Q. So what happened to the bulk of that \$19,740?

5 A. I came back -- well, I bought dinner the rest of the  
6 time we were there, I was with a group of friends of nine or  
7 ten of us, so I bought everything the three days after  
8 because I had won like the first day so we were there three  
9 days, so I paid for everything and most of it I got in  
10 cashier's checks or I'd say if I won 1500, I would say let  
11 me have a thousand cashier check and let me have 500. Most  
12 of it, I brought most of it back and paid bills off, gave my  
13 mom some money and paid credit card debt.

14 Q. Do you remember how much you gave your mom?

15 A. I might have given her a thousand, 2000. After I had  
16 paid off my cards, I left myself with a few hundred bucks  
17 and gave her the rest.

18 Q. So you didn't lose the full amount, you didn't stick it  
19 all back in the machines, did you?

20 A. No.

21 Q. By the way, what were you doing in Las Vegas? Did you  
22 go there just to gamble and have fun?

23 A. Yeah, with a bunch of co-workers. Every now and then  
24 we got to get away.

25 Q. Other folks from Bexar County Sheriff's Office?

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1 A. That's correct.

2 Q. Keep wanting to say BCSO -- sorry about that. Turn to  
3 page two of the return. At the bottom of the page you'll  
4 see third party designee Margaret Hosseini paid preparer, so  
5 she's the one that actually prepared this return for you, is  
6 that correct?

7 A. Yes.

8 Q. Does that help you put into your mind when this return  
9 was done?

10 A. Yes.

11 Q. So this would have been the time, your first time?

12 A. This would have been I believe my first year with her.

13 Q. Let's go back to the schedule one that we were talking  
14 about, it's on page five. I say schedule one, Schedule A.  
15 It's Schedule A, itemized deductions?

16 A. Uh-huh.

17 Q. And let's go back down to line 28, it indicates that  
18 you had gambling losses which exactly match your winnings,  
19 \$19,740?

20 A. Yes.

21 Q. Did you lose \$19,740 in gambling that year?

22 A. I didn't.

23 Q. Did you ever tell Ms. Hosseini that you lost \$19,740  
24 that year?

25 A. No.

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1 Q. Did you tell her that you gambled away everything that  
2 you had won?

3 A. I didn't.

4 Q. Did you even discuss with Ms. Hosseini what to do about  
5 your gambling winnings?

6 A. No, she was excited for me when I came in with all  
7 those forms from Las Vegas that I had won all that money.

8 Q. Did she ever ask you about what are your gambling  
9 losses assuming that you must have lost something?

10 A. No, we didn't discuss anything. I lost some money, I  
11 just didn't lose that.

12 Q. Okay. There's another folder up there and I'd like you  
13 to take a look at it's Exhibit 1-3?

14 A. Okay.

15 Q. Can you tell me what that is, Exhibit 1-3?

16 A. It says it's part of my 2008 tax return.

17 Q. This is your copy that you kept, is that right?

18 A. Yes.

19 Q. You are one of those people that does what they're  
20 supposed to do and that is to keep copies of your tax  
21 returns for a certain period of time, is that right?

22 A. I save everything.

23 Q. So this is what Ms. Hosseini would have given to you at  
24 the conclusion of your meeting with her, is that right?

25 A. Yes.

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1 Q. If you would turn to the last page of that exhibit, you  
2 see the last page?

3 A. Yes.

4 Q. Is it something that's marked Law Enforcement  
5 Deductions?

6 A. That's correct.

7 Q. Did she give you this form?

8 A. Yeah, it was given to me just as a go-by, what I used  
9 for work, what's deductible, you know, and to keep track  
10 during the year, the tax year on what I spent on what.

11 Q. It goes through uniforms, boots, duty gear,  
12 miscellaneous items, things like that, right?

13 A. That's correct.

14 Q. Did you use this form in the future?

15 A. Yes.

16 Q. Did you just write down, for example, shoe laces, let's  
17 see, I bought six pair and that would be six dollars or  
18 something like that or did you just sort of note that you  
19 would keep your receipts for that item?

20 A. I would keep receipts for it and when I was nearing my  
21 appointment I would look at my receipts and add up so my  
22 appointment wasn't that long, I'd start adding up my own  
23 receipts for the stuff that I bought and then put it on the  
24 sheet and I made a bunch of copies of the sheets.

25 Q. So you'd run your own totals as you got ready to go in

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1 and do your taxes?

2 A. I would.

3 Q. Okay. Let's go to the next year, 2009, you went back  
4 to Ms. Hosseini in 2009?

5 A. I did.

6 Q. If I could have you look at Exhibit 2-1. And if you  
7 take a look at the second page in there, at the top it says  
8 Form 1040 U.S. Individual Income Tax Return 2009?

9 A. Yes.

10 Q. And it's got your name, Social, address, is this your  
11 2009 federal income tax return?

12 A. It is.

13 Q. And if we could flip over to the next page, page two at  
14 the bottom, is that indicated third party designee Margaret  
15 Hosseini and then paid preparer's signature, Margaret  
16 Hosseini?

17 A. Yes.

18 Q. Did she help you prepare this return on 2009 as well?

19 A. She probably did, I can't remember back to 2009 who  
20 exactly was preparing.

21 Q. Okay. You have no reason to doubt, though, that she  
22 was the one that put this together?

23 A. No, no.

24 Q. If we go back to the first page on line 12, it talks  
25 about -- first of all, let's go to line seven, your wages,

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1 salaries and tips are \$51,177?

2 A. Yes, sir.

3 Q. Does that sound right? And line 12, business income or  
4 loss, you have a 19,116-dollar loss?

5 A. Yes.

6 Q. And then I note also other income \$2,700. Was that  
7 another win, was that when you went to the reservation in El  
8 Paso?

9 A. Yes, it was.

10 Q. Actually I've got a W-2, 1099 for Las Vegas Sands?

11 A. Then it was Las Vegas.

12 Q. So you went to Las Vegas the next year?

13 A. I usually went once a year for several years. That was  
14 our get away, it was the cheapest thing to do sort of.

15 Q. Let's talk about your business income or loss.

16 If you will go to I believe it's page six of your  
17 return, yes, you see the Schedule C profit or loss from a  
18 business?

19 A. Yes.

20 Q. And at the top of that form it has your name, security  
21 and the business name is Anita Price?

22 A. Yes.

23 Q. Is this your off-hour security work?

24 A. Yes.

25 Q. And in that same form, if we look down, let's see, you

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1 have \$7,496 as a car and truck expense?

2 A. What line?

3 Q. See that on part two, line nine.

4 A. Yes, I see it, \$7,496, yes.

5 Q. How did you use your vehicle as far as security  
6 business?

7 A. My personal vehicle, to go to and from and to block  
8 traffic off if I was directing traffic.

9 Q. Did you drive around a lot?

10 A. No.

11 Q. Did you keep a mileage log?

12 A. No, because I don't drive it ever hardly.

13 Q. Did you keep gas returns as far as when you would fill  
14 up for gas in order to do the security work?

15 A. I would keep gas receipts.

16 Q. And then below that you have depreciation of \$4,959, is  
17 that correct?

18 A. Yes.

19 Q. If we go to the next page of the Schedule C, you're  
20 deducting uniforms, boots, uniform maintenance and then  
21 there's a mobile phone use, mobile phone business use of  
22 \$1,800. Did you have a mobile phone back then?

23 A. Yes.

24 Q. By the way, are you married?

25 A. Not anymore.

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1 Q. Were you married in 2008?

2 A. I might have been. I'm sorry, I don't remember when I  
3 got married or when I got divorced.

4 Q. Your filing status is single?

5 A. If it says Price, I was divorced, yes, I was divorced.

6 Q. Did you have a special mobile phone that you used  
7 solely for your security work?

8 A. Yes.

9 Q. You had it set aside separate for that?

10 A. I carry it around all the time, that's the number I  
11 gave out for jobs.

12 Q. So you did use it solely for security work?

13 A. I'm not going to sit here and say a hundred percent  
14 that phone didn't ring for another reason, I mean, yeah.

15 Q. Fair enough. Let's take a look at page nine and  
16 page -- page nine. This should be the depreciation  
17 amortization form 4562?

18 A. Yes.

19 Q. And this relates to the depreciation in block 13 that  
20 we talked about, the \$4,959 earlier. Did you have something  
21 that you were depreciating then?

22 A. As far as my vehicle?

23 Q. Yes. Was it your vehicle?

24 A. Yes.

25 Q. What type of vehicle did you have?



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1 A. It's a 2008 Chevy Tahoe.

2 Q. And if we turn the page there, it talks about a 2008  
3 Chevy. Do you have more than one vehicle or did you have  
4 more than one vehicle at that time, I should say?

5 A. I have my personal vehicle and I have a take-home  
6 county-issued vehicle because I'm on call every day, every  
7 hour.

8 Q. So when you're working for the county when you're doing  
9 Bexar County work, they have a vehicle that you use?

10 A. Yes.

11 Q. So you have no expenses for that because they provide a  
12 vehicle, they provide the gas?

13 A. That's correct.

14 Q. The maintenance. With your personal vehicle, that  
15 would be what you use to do your security job, is that  
16 right?

17 A. Yes, sir.

18 Q. But is it also -- do you use it for personal reasons?

19 A. Very rarely. I have used it, but my mom lives with me,  
20 I park that vehicle inside my gate. She has a small little  
21 Toyota that I probably drive more than anything else, but to  
22 say that it was a hundred percent since 2008 wouldn't be  
23 true.

24 Q. If we look at the tax form, the second page of the form  
25 4562, it says in block 26, 2008 Chevy, day, place and

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1 service 2008, 01/01, business percentage use, one hundred  
2 percent?

3 A. Yes, sir.

4 Q. Would that be accurate?

5 A. No.

6 Q. Did you ever tell Ms. Hosseini that you use that Chevy  
7 only for your security work?

8 A. I told her that I used it solely for my security work.

9 Q. You did tell her that you use it solely for?

10 A. That of course every now and then I'm going to drive it  
11 if my mom is at church. I'm not going to sit there and wait  
12 for her to come back to go to H.E.B., but more times than  
13 not it was used for work, but not a hundred percent of the  
14 time.

15 Q. Okay. If we look at the next exhibit is 2-3 over  
16 there, should be?

17 A. Yes, sir.

18 Q. This is the preparer's copy that was taken during the  
19 search of Ms. Hosseini's business.

20 A. Okay, hold on.

21 Okay.

22 Q. And first of all, if you could look through it real  
23 quick, I notice there's a scrawl on the bottom of it. Is  
24 that your signature on each of the pages?

25 A. It is.

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1 Q. And if we could go to page ten, it's entitled  
2 Depreciation Detail Listing?

3 A. Yes, sir.

4 Q. That's a 2008 Chevy Tahoe, that's the vehicle you use?

5 A. Yes, sir.

6 Q. And again it says business percentage a hundred  
7 percent. You told her you used it solely for your business?

8 A. I told her I used it mostly for my business.

9 Q. Not a hundred percent for your business?

10 A. Not a hundred percent.

11 Q. If we go to the next page, you'll see the document is  
12 labeled Bank Product Information?

13 A. Yes, sir.

14 Q. If we look down about midway down the page, right  
15 underneath where it says in bold print, Total Projected Bank  
16 Fee, you'll see a line that says, Tax Preparation?

17 A. Yes, sir.

18 Q. Could you tell me how much did you pay for Ms. Hosseini  
19 to do your taxes?

20 A. It says \$538.05.

21 Q. Were you aware of that at the time that you had your  
22 taxes prepared in 2009?

23 A. Yeah, because it was about the same the first year I  
24 went to see her.

25 Q. And then if you look to the bottom, the last printed

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1 figure in that column under projected checks after fees  
2 indicates that your refund was about \$3,719. Does that  
3 sound right to you?

4 A. Yes, sir.

5 Q. You got about \$3,719 as a result of your tax return  
6 being filed?

7 A. Yes, sir.

8 Q. I'd ask you to go to the last two or three pages of  
9 this exhibit of the preparer's file, okay. Let's start with  
10 the third page from the end.

11 A. Yes, sir.

12 Q. And it is a series of -- you're talking about how you  
13 would total up your bills and things like that?

14 A. Yes.

15 Q. Is this what we're talking about here?

16 A. That is actually something that I authored, that would  
17 be my sheet that I added up to save time at the appointment.

18 Q. So you would include things like mileage per year,  
19 5300 miles, amount of gas you spent on -- you even have sun  
20 block and bug spray \$120, this was a list of all of your  
21 expenses, is that correct?

22 A. Yes.

23 Q. Did you bring in the supporting documents for this or  
24 did you just provide Ms. Hosseini with these numbers?

25 A. No, I brought in all the receipts for everything and I

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1 had it in like a big fat folder.

2 Q. Okay. And did you provide her any information about  
3 any other expenditures beyond what you've got written down  
4 here?

5 A. No.

6 Q. And I believe there is also a Government Exhibit 2-4  
7 there. Just want to have you take a look at that. Again  
8 that would be your personal copy that was given to you at  
9 the end of the session?

10 A. It appears, yes.

11 Q. Now, and that copy is essentially the same as the  
12 preparer's copy?

13 A. You would think, yeah.

14 Q. Again you signed all the pages in the preparer's copy,  
15 you put your signature on each and every page, is that  
16 correct?

17 A. Yes.

18 Q. This would be 2-3 we're talking about now. Did  
19 Ms. Hosseini spend much time explaining to you what was on  
20 each page, what your deductions were, why she was taking  
21 them or anything like that?

22 A. No, I'd leave everything. I'd leave my worksheet, I'd  
23 leave my receipts, they'd call me to come back, I'd come in,  
24 I usually didn't meet with her. It was somebody at the  
25 front that would have a stack of folders, I'd go in there

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1 and they'd say sign, sign, sign and I'd walk in, I'd sign,  
2 sign, sign and I'd leave.

3 Q. Did you read any of the paperwork as you were going  
4 through?

5 A. I didn't.

6 Q. You just signed it?

7 A. Just signed it.

8 Q. Do you understand that by submitting your income tax  
9 return, you're swearing under penalty of perjury that these  
10 are accurate?

11 A. Yes.

12 Q. Why didn't you read everything?

13 A. Because I don't know anything about doing my own taxes  
14 and that's why I pay somebody to do it and I trusted them.

15 Q. Did you have any intent when you went in to talk to  
16 Ms. Hosseini to mislead the government as far as what your  
17 earnings were or your expenses?

18 A. No.

19 Q. And as far as you knew at the time, had you misled  
20 them?

21 A. No.

22 Q. But again you didn't read your income tax return?

23 A. I did not. I never reviewed any of them.

24 Q. Let's go to 2010 and that's going to be Exhibit 3-1.

25 And if I could have you open that up and look at the first

ANITA PRICE - DIRECT

1 page again, it starts off Form 1040 U.S. Individual Income  
2 Tax Return 2010 and again it's got your name, Social,  
3 address, is that right?

4 A. Yes.

5 Q. So this is your income tax return for 2010?

6 A. It appears to be.

7 Q. Your wages, salary, \$51,327?

8 A. Yes, sir.

9 Q. Business income or loss this time \$22,158?

10 A. Yes, sir.

11 Q. And when we look over at page two, on the bottom it  
12 says third party designee, Margaret Hosseini, and your  
13 preparer's printed name, Margaret Hosseini. So she prepared  
14 this tax return for you as well?

15 A. She may have.

16 Q. You don't remember exactly who?

17 A. Not from 2010, no.

18 Q. I want to talk to you a little bit about your Schedule  
19 C again and that's going to be page four in here. Schedule  
20 C profit or loss from a business?

21 A. Yes, sir.

22 Q. Again it's name of proprietor is Anita Price, Security  
23 Anita price is the name of the business, this is your  
24 security business, your off-duty stuff that you described,  
25 is that right?

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1 A. Yes.

2 Q. Pretty much the same type of thing every year of '08,  
3 '09, '10?

4 A. Yes, sir.

5 Q. If we look in part two, line nine, car and truck  
6 expenses?

7 A. Yes.

8 Q. \$8,074?

9 A. Yes, sir.

10 Q. Did you spend \$8,074 on your vehicle?

11 A. I don't believe so, but I'd have to look at my  
12 worksheet because I know one year I had some work done, I  
13 had to buy tires, but I don't think I spent that much on my  
14 car in one year.

15 Q. If we flip over to the next page, it talks about  
16 mileage 6600-miles, also talks about you having written  
17 evidence to support the 6600 miles that you drove as part of  
18 your security business. Did you, in fact, drive 6600 miles?

19 A. No, not in a year.

20 Q. Did you have paperwork to support that as far as a  
21 mileage log or something like that?

22 A. I would have either had -- after a while I did start  
23 doing mileage instead of gas or I do both and I turn both  
24 in, but without looking at my worksheet -- but would I have  
25 driven 6,000 miles for part-times in a year? No, because I



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1 live by Woodlawn Lake and I'm pretty centralized to  
2 everywhere.

3 Q. If we go to Exhibit 3-3 which is the preparer's copy  
4 and if you'll go to the last two pages --

5 A. Yes.

6 Q. -- this is a form that looks very similar to the one we  
7 talked about for the previous year. You prepared this, this  
8 is your itemized deductions, is that right?

9 A. For 3-3 the last two pages are a W-2 -- or 1099.

10 MR. SUROVIC: My copy that I have apparently is  
11 not correct. Can you find the expense sheet?

12 THE COURT: You want to show the witness a hard  
13 copy?

14 MR. SUROVIC: The witness has a hard copy up  
15 there, Your Honor, if I could approach her, I could find it  
16 for her.

17 THE COURT: Sure.

18 (Pause.)

19 MR. SUROVIC: Sorry about that.

20 BY MR. SUROVIC:

21 Q. This is the itemized deduction page that you would  
22 prepare by yourself based on your receipts in order to speed  
23 the process?

24 A. Yes.

25 Q. And if you flip the page, it talks about vehicle

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1 mileage 6600 miles, is that correct?

2 A. Yes.

3 Q. So that's where the 6600-mile figure comes from?

4 A. Right.

5 Q. Do you know -- what did you calculate as far as your  
6 vehicle mileage, where did you get that from?

7 A. I would just look at the previous year, look at my  
8 mileage and see what I drove that year. I didn't like get  
9 in my car and go, okay, this is where my mileage is starting  
10 on the way to AT&T Center and then when I got there and when  
11 I get back. I didn't do that.

12 Q. Now, this is -- you're still talking about the Chevy  
13 Tahoe?

14 A. Yes.

15 Q. And you did use that mostly for your security business,  
16 otherwise you'd use your mom's car?

17 A. Yes.

18 Q. If you could go to -- there will be a page -- in mine  
19 at least it is towards the front of it, it is page number  
20 four of the preparer's copy saying Depreciation Detail  
21 Listing, do you see that?

22 A. Yes, sir.

23 Q. The Chevy Tahoe, it's the same Chevy Tahoe you were  
24 driving before and it says business percentage, one hundred  
25 percent?

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1 A. Yes.

2 Q. Did you tell Ms. Hosseini that you drove this a hundred  
3 percent for the business?

4 A. No.

5 Q. Just mostly for the business?

6 A. Mostly, yeah.

7 Q. Now, why this is important is if we can go back to 3-1,  
8 you have on the Schedule C which is page four of Exhibit  
9 3-1?

10 A. I have two packets in Exhibit 3-1.

11 Q. That is because you filed a 1040X, right?

12 A. Yes, I think that's the year that I had to do like an  
13 amendment.

14 Q. Correct, so I'm talking about your original file.

15 A. Got it. Okay.

16 Q. And if you go to page four, Schedule C, the profit or  
17 loss from the business?

18 A. Yes.

19 Q. You have car and truck expenses, but you also have  
20 depreciation for that truck?

21 A. Yes.

22 Q. The truck is the same truck that you had the car and  
23 truck expenses on, correct?

24 A. I'm sorry?

25 Q. The truck that you're depreciating, the Chevy Tahoe is

ANITA PRICE - DIRECT

1 the same Chevy Tahoe that you drove to have car and truck  
2 expenses in the thing above where you put 6600 miles?

3 A. That's correct, the same vehicle.

4 Q. Did Ms. Hosseini ever explain to you that you can't  
5 take depreciation and expenses, that you have to do one or  
6 the other?

7 A. No, the first time my vehicle started getting  
8 depreciated as part of my taxes was when I went to Rapid  
9 Tax. Mr. Mayfield never did that.

10 Q. She never explained to you that you can do one or the  
11 other, but you can't do both?

12 A. No, she just said that it hadn't been being done and  
13 that it was a good deduction.

14 Q. By the way, there is another exhibit up there, 3-4. Do  
15 you see 3-4?

16 A. Yes, sir.

17 Q. That is again your personal copy that pretty much  
18 matches the preparer's copy?

19 A. Yes, sir. I believe so. Yes, sir.

20 Q. If you would look at -- let's go back to the Exhibit  
21 3-3, the preparer's copy?

22 A. Yes, sir.

23 Q. And go to page eight which should be labeled Bank  
24 Product Information?

25 A. Yes, sir.

## ANITA PRICE - CROSS

1 Q. It says underneath there Tax Preparation Fee. Could  
2 you tell me how much you paid Ms. Hosseini for preparing  
3 your taxes?

4 A. \$532.

5 Q. At the bottom it indicates you received \$4,416.05 as a  
6 return, refund?

7 A. Sounds about right, yes, sir.

8 Q. Let's go back to 3-1 and let's talk a little bit about  
9 your 1040X. Look at the 1040X form?

10 A. Got it.

11 Q. Why did you have to file the 1040X?

12 A. I believe I got a late 1099 that year.

13 Q. That's the only reason why you had to file?

14 A. Yeah, I called in and said, Hey, there was a job I  
15 worked that was like a one-time deal I think and I got the  
16 1099 in late, so I called them and said I got a 1099. They  
17 said bring it in.

18 Q. And that didn't change any of your other entries as far  
19 as claiming the car expenses or the depreciation or the fact  
20 that it was declared as being a hundred percent and used for  
21 the security business, did it?

22 A. No, I don't think so.

23 MR. SUROVIC: No further questions, Your Honor.

24 THE COURT: Cross.

25 MR. BARNES: Yes, Your Honor.

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EXAMINATION

BY MR. BARNES:

Q. Good afternoon.

A. Hi.

Q. Now, you're mentioning gambling losses. How often -- well, when did you first start gambling at all?

A. I would say my first trip to Vegas was in my twenties, I couldn't be for sure when.

Q. So was that around like '04, '05?

A. Well, I'm 44, so it would have been in the mid '90s, mid to late '90s.

Q. Would you say on most of those trips you lost money?

A. Oh, yeah.

Q. And do you recall in 2008 if there's gambling records from the Vegas casinos showing you there in both September and December --

A. That's quite possible, yeah.

Q. And you mentioned that this was many years ago, do you remember discussing gambling losses that you had over time with Margaret when you were talking about you went on a good run recently?

A. Oh, yeah, we'd talk about it because she said she had been to Vegas several times and had good fortune there and bad fortune so during the appointment, yeah, we'd talk about wins and losses in Las Vegas.

## ANITA PRICE - CROSS

1 Q. And on the client copy of the Schedule A that you kept  
2 and the other ones that you signed, do you recall that had  
3 the listing of gambling losses 19,740 for 2008?

4 A. Is that here? Can I look at it?

5 Q. Yes, you can. It is Government Exhibit 1-3. And it  
6 will be page three.

7 A. Give me a second. 1-3, page three.

8 Q. It will be towards the bottom.

9 A. Is it up on the screen, sir? Is it the one that has a  
10 165 at the top right?

11 Q. The top right -- well, the bottom middle will be page  
12 three might be easier.

13 A. Page two -- okay, I think I'm on page three.

14 Q. And it's at the bottom. Do you see where it says  
15 gambling losses?

16 A. Yes.

17 Q. May be misspelled. Does it say 19,740?

18 A. Yes.

19 Q. And do you recall Margaret explaining that the way the  
20 law works, even if you have a hundred thousand in gambling  
21 losses, you're only allowed to take up to the amount you  
22 win?

23 A. We might have had that discussion. To sit here and say  
24 we did or didn't, I'd be lying if I could recall every  
25 single discussion with everybody.

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1 Q. In all of these returns, you went through and signed  
2 each page of the returns, not just the end of the return?

3 A. Yes, almost every year.

4 Q. And you're a CSI investigator?

5 A. I am.

6 Q. And did you ever tell Margaret that you weren't  
7 reviewing the returns or documents that you were signing?

8 A. No, I was called in, I'd sign and leave.

9 MR. BARNES: No further questions, Your Honor.

10 THE COURT: Redirect.

11 MR. SUROVIC: No redirect, Your Honor.

12 THE COURT: I have one question that is completely  
13 irrelevant to this case and one that is. As a CSI  
14 investigator, we know, but so these jurors know, is there  
15 anything remotely similar between what you do and the TV  
16 shows?

17 THE WITNESS: Well, it's disgusting, it smells,  
18 it's not pleasant. If I'm there it's your worst day and we  
19 don't solve things in like 60 minutes with commercial  
20 interruption and I don't wear heels. I wear boots and  
21 they're slip proof and gross proof.

22 THE COURT: The other question which is relevant  
23 here and it's been asked with some of the others, but maybe  
24 the lawyers just forgot to ask, but the fees that you paid  
25 to Ms. Hosseini for tax preparation, how do those amounts



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1 compare to the fees that you had paid the gentleman who was  
2 deceased and so forth?

3 THE WITNESS: Mr. Mayfield I would -- it was  
4 probably about a hundred-dollar difference. He charged  
5 three or \$400 a year to do my taxes and I just got used to  
6 that thinking it was the itemization, so I would say about a  
7 hundred-dollar difference, give or take.

8 THE COURT: All right, very well. Thank you,  
9 ma'am. You may be excused permanently unless --

10 MR. SUROVIC: Request to be excused permanently.

11 THE COURT: Ladies and gentlemen, we'll take a  
12 15-minute recess before the next witness. Thank you.

13 COURT SECURITY OFFICER: All rise for the jury.

14 (1:45 p.m.)

15 \* \* \*

16 (2:02 p.m.)

17 COURT SECURITY OFFICER: All rise for the jury.

18 THE COURT: Sir, if you'll remain standing while  
19 everyone else can be seated. Sir, raise your right hand.  
20 These members of the jury are seeking the truth about what  
21 happened in this case. As they do that and subject to  
22 federal perjury laws, do you promise to tell the jurors the  
23 truth, the whole truth and nothing but the truth?

24 THE WITNESS: Yes.

25 THE COURT: All right. You may be seated. Mr.

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1 Surovic, you may introduce your next witness.

2 MR. SUROVIC: Thank you, Your Honor.

3 EXAMINATION

4 BY MR. SUROVIC:

5 Q. Mr. Smith, would you state your full name for the jury  
6 please?

7 A. Gerald Rodney Smith.

8 Q. And what city do you live in?

9 A. City of Converse.

10 Q. How long have you been in Converse?

11 A. About 20 years now.

12 Q. How long have you lived in Bexar County?

13 A. Same.

14 Q. About 20 years?

15 A. Yes.

16 Q. Where do you work?

17 A. U.S. Post Office.

18 Q. How long have you been with the Postal Service?

19 A. Twenty years also.

20 Q. So you started working for the Post Office when you  
21 moved to Converse?

22 A. Not exactly the whole -- not exactly the 20 -- it's  
23 just coming up on 20 years at the Post Office. I started  
24 Randolph Air Force Base and then over to H.E.B. and then the  
25 Post Office.

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1 Q. So you worked in military and retired from the  
2 military?

3 A. Retired military.

4 Q. Air Force?

5 A. Army.

6 Q. Army. But you said you were at Randolph?

7 A. I was working at the PX -- not at the PX, but at the  
8 service station and not Randolph, at Fort Sam, I'm sorry.

9 Q. So you retired from the Army, you went to work for the  
10 AAFES?

11 A. AAFES, correct.

12 Q. At Fort Sam and then you went to work for H.E.B.?

13 A. Worked for H.E.B., yes.

14 Q. And then you went to work for the Postal Service?

15 A. Postal Service, correct.

16 Q. You've been working for a long time?

17 A. Yes, sir.

18 Q. Well, my hat is off to you. In addition to working for  
19 the Postal Service and I'm talking about the periods 2008  
20 and 2009 now, although you may still be doing it, did you  
21 have any side businesses that you did as well?

22 A. I had a side business called Prepaid Legal.

23 Q. Can you tell us a little bit about that, what Prepaid  
24 Legal is?

25 A. Prepaid Legal was just a deal where people that needed

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1 a lawyer or something like, if anything should come about,  
2 you can always call a lawyer to -- call a lawyer to assist  
3 with like tickets, any other thing out of the ordinary and  
4 you always have a lawyer that you can call on at any time 24  
5 hours a day or something like that if you need it.

6 Q. Now, there are different companies that provide that  
7 type of service. The one you worked for is called Legal  
8 Shield?

9 A. That's the name of it now. My understanding it's  
10 changed to Legal Shield. It used to be Prepaid Legal, but  
11 it's called Legal Shield now.

12 Q. And what exactly was your involvement in this as a side  
13 business, what did you do?

14 A. Mainly because I was working at the Post Office also, I  
15 wasn't really totally totally committed as some of the other  
16 people that I know that normally got involved with it  
17 because one of my neighbors introduced it to me and I said  
18 it was kind of nice to do, so she and I used to go out  
19 sometime and do things, but my main thing was when I got  
20 involved in it I mainly wanted to do the identity theft and  
21 that's what I was mainly really pushing, not really pushing  
22 the legal side of it. I was more pushing the identity theft  
23 part of it because I had always said more people could use  
24 identity theft than they could on the Legal Shield.

25 Q. You would go and you would talk to potential clients, I

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1 guess?

2 A. Yes, we would go out and talk to people or if we saw  
3 people that might be interested in something like that, we  
4 just approach them and tell them you might be interested,  
5 you may not, but if you choose to, this is one of our cards,  
6 you can give us a call or something like that.

7 Q. I don't know in the course of your careers if you've  
8 ever done anything like door to door salesmanship or  
9 anything like that, have you?

10 A. Not door to door. Not door to door. Went two or three  
11 apartment complexes and they had a little room and we set up  
12 a video and stuff like that and introduced it.

13 Q. You're talking about what you did for Legal Shield?

14 A. Yes.

15 Q. So every once in a while maybe you'd go to an apartment  
16 complex and put on a presentation?

17 A. Yes.

18 Q. Was most of it you try to sell it to your friends?

19 A. Yes, friends and family if they was interested.

20 Q. How much time do you think you spent in the course of a  
21 month on actually going out and talking to clients for Legal  
22 Shield?

23 A. Myself, not much because my job was mostly -- I was  
24 mostly with my job.

25 Q. And in the course of working with Legal Shield, you

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1 didn't really sign up that many clients, did you?

2 A. Say again?

3 Q. You didn't sign up that many clients, did you?

4 A. The total amount of clients I signed up I think was  
5 three.

6 Q. How many years did you work for Legal Shield or for the  
7 Prepaid Legal Services?

8 A. Since 2005 and I'm still active in it now, but again I  
9 don't go out and do anything, just keep everything active, I  
10 haven't did anything with it for a while now, so I guess say  
11 around 2013 or '14, I haven't did too much.

12 Q. So you've been involved in it for 12 years and out of  
13 that you picked up three?

14 A. Only three people.

15 Q. And that's how you get paid is from picking up clients?

16 A. Yes, and I think the three that I did get that was  
17 involved with it worked at the Post Office with me also.

18 Q. And one of those backed out, did they not, you signed  
19 them up and then they changed their mind?

20 A. Yes, one backed out. And as a matter of fact, I think  
21 the rest of them canceled, I think they all canceled now.

22 Q. So you don't have any active clients right now?

23 A. No.

24 Q. You ever heard of a business by the name of Rapid  
25 Return Tax Service?

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1 A. Yes.

2 Q. How did you find out about Rapid Return Tax Service?

3 A. One of our friends mentioned it to us about it and we  
4 just went there.

5 Q. Why did you choose Rapid Return Tax Service as opposed  
6 to someplace else?

7 A. It was highly recommended by one of our best friends,  
8 so we choose to go there since then.

9 Q. Did you -- when you went to Rapid Return Tax Service,  
10 did you get an opportunity to meet an individual by the name  
11 of Margaret Hosseini?

12 A. Yes.

13 Q. Would you recognize Ms. Hosseini if you saw her again?

14 A. Yes.

15 Q. Is she here in the courtroom today?

16 A. Yes.

17 Q. Could I get you to point to her and tell us something  
18 that she's wearing?

19 A. She has purple, I assume it's purple.

20 THE COURT: Noted.

21 MR. SUROVIC: Thank you, Your Honor.

22 BY MR. SUROVIC:

23 Q. How did you first meet Ms. Hosseini?

24 A. How did we -- how did I first meet her?

25 Q. Yes.

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1 A. Very warm and welcoming. She welcomed us into her  
2 place and just went over -- very warm with us and we kind of  
3 like warmed up to her and everything, so she was kind of  
4 pleasant and -- wasn't kind of pleasant, she was pleasant,  
5 very nice.

6 Q. You met her at the business?

7 A. Yes.

8 Q. Rapid Return?

9 A. Yes.

10 Q. Had you ever socialized with her or do anything with  
11 her outside Rapid Return?

12 A. No.

13 Q. So your only contact was inside the business?

14 A. Yes.

15 Q. What happened with her when you went inside the  
16 business?

17 A. It was full, full house.

18 Q. Would you check in with somebody when you walked  
19 through the door?

20 A. Yes, we -- someone took our names down and then we also  
21 had a appointment with her.

22 Q. So you would make an appointment, specifically talk to  
23 her?

24 A. Yes.

25 Q. And when you came to the office, what did you bring



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1 with you?

2 A. Some paperwork that she had us to fill out, a  
3 checklist, a checklist that we filled out and all the other  
4 paperwork that we needed to do our taxes and year before  
5 taxes and everything.

6 Q. And you'd just give it all to her. Would you stay  
7 there while she prepared your taxes or would you leave?

8 A. No, we didn't stay there while she prepared it. She  
9 said once she do it then she'll come back and just make sure  
10 that we went over and if she needed anything else she said  
11 she would call us.

12 Q. Did she ever have to call you?

13 A. No.

14 Q. When she was preparing your taxes, when you went back,  
15 I assume you went back, is that correct?

16 A. Yes.

17 Q. What happened when you went back?

18 A. When we went back and if it was already filled out or  
19 already done, just go through the paperwork and once you go  
20 through it, then she explain whatever we had to do and then  
21 sign it and then she'll just tell us how much we had to pay  
22 and it will either be taken out of what we receive if we  
23 received anything back.

24 Q. She would get paid out of whatever you received back?

25 A. Yes.

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1 Q. Who did you go to for taxes before you went to  
2 Ms. Hosseini?

3 A. It was one of the guys that worked -- once with one of  
4 my co-workers that worked at the Post Office and then from  
5 there we did one on Base, I think it was on Base.

6 Q. Why didn't you like going to those people?

7 A. The one guy that we was doing on Base, I mean the one  
8 guy we was doing at my job, my wife, she's kind of like  
9 particular about who she give her information to and I was  
10 too since we Prepaid Legal, but we knew Ms. Marie was a  
11 reputable person, that's why we went.

12 Q. Did you notice any difference between how much you got  
13 in your return from before when you were going to those  
14 other people versus how much she got you?

15 A. Yes, we was able to start getting money back.

16 Q. Do you remember how much you paid those people that you  
17 were going to before this?

18 A. The one guy on my job I paid him at least \$75 or  
19 something like, 75, I'm pretty sure.

20 Q. What about when you went on Post?

21 A. On Post it's free.

22 Q. Why didn't you want to use the free service?

23 A. Like I said, it was highly recommended by one of our  
24 best friends and so that's what we decided to go.

25 Q. I would ask you to take a look at that folder that's

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1 marked 16-1, Government Exhibit 16-1. Take a look at that  
2 document there, you can turn to that first blue page and  
3 take a look at the page that starts off Form 1040 U.S.  
4 Individual Income Tax Return 2008, do you see that?

5 A. Yes, sir.

6 Q. Do you see the top part, it says Gerald R. Smith, Helen  
7 Smith, it's got some Social Security numbers there and  
8 address and in Converse?

9 A. Yes.

10 Q. Is that your information there?

11 A. Yes, sir.

12 Q. So this would be your income tax return for 2008, is  
13 that correct?

14 A. Correct.

15 Q. Now, we go down here to line 12, it says business  
16 income or loss you have a 5,981-dollar loss, is that  
17 correct?

18 A. Not that I know of. I've never seen I lost that much.

19 Q. To your knowledge you didn't lose that amount of money?

20 A. No.

21 Q. But this is what's written down in your income tax  
22 return, is that correct?

23 A. Yes, that's what's here.

24 Q. If we turn over to page two at the bottom, it indicates  
25 that the third party designee on your income tax return is

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1 Margaret Hosseini. That means that the IRS can talk to her  
2 about her return, they have your permission to talk to her  
3 and at the very bottom, preparer's signature, Margaret  
4 Hosseini. So Margaret Hosseini was the one that prepared  
5 your tax return in 2008?

6 A. Yes.

7 Q. Did she do it every time you went to --

8 A. We always requested for her, that's who we requested.

9 Q. And was she always the one that sat down with you?

10 A. One time she wasn't there, we gave our information to  
11 one of the reception and they said they would give it to  
12 her.

13 Q. So to your knowledge, she did it every time?

14 A. Our knowledge, yes.

15 Q. If we could flip to your -- the Schedule C which is  
16 going to be page ten of that document. It's entitled  
17 Schedule C and in the middle of the page it says profit or  
18 loss from a business, should be about ten pages back.

19 A. Okay.

20 Q. I don't know if you can see the screen, but that's what  
21 it will look like. Did you find it?

22 A. Yes, sir.

23 Q. At the top of that it says, Gerald R. Smith, that's  
24 you, right?

25 A. Yes.

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1 Q. Name of proprietor. Principle business is sales and  
2 then in block C it says, Prepaid legal help and identity  
3 theft, is that correct?

4 A. Yes.

5 Q. So this would be describing -- this would be a profit  
6 or loss from business, the business we're talking about is  
7 your Prepaid Legal Service that you described earlier, is  
8 that right?

9 A. Yes.

10 Q. We go down the page -- first of all, let's flip that  
11 page, go to the second page there and down at the bottom of  
12 that page, part five, it's got four items listed, web page,  
13 dues, paper and cell phone. I want to ask you a little  
14 about cell phone. Says here that you had business expenses  
15 related to the Prepaid Legal Services of \$2,028?

16 A. Say that again?

17 Q. You had cell phone -- it says in part five that you had  
18 cell phone and business expenses related to the Prepaid  
19 Legal of \$2,028?

20 A. I just used my cell phone for it, but I didn't  
21 charge -- not for the business, I just use my cell phone for  
22 my regular cell phone.

23 Q. So that's the cell phone you use when you're at work at  
24 the Post Office, personal business?

25 A. Just my personal cell phone.

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1 Q. How much do you think you used that cell phone for the  
2 Prepaid Legal business versus personal use or use for the  
3 Post Office or whatever?

4 A. No more than I would use it every day.

5 Q. You'd make a call for the Prepaid Legal every day?

6 A. No, not every day, no. It wouldn't be no every day,  
7 no.

8 Q. Maybe one call a week, something like that?

9 A. Probably once or twice.

10 Q. Do you remember how much your cell phone bill was for  
11 the year?

12 A. Not for the year. I pay I think it's still about the  
13 same, I pay about \$181 a month.

14 Q. Okay. Now, are you the only one in your family that  
15 has a cell phone?

16 A. No, my wife also both on the same bill.

17 Q. So you have a family plan with you and her?

18 A. Yes.

19 Q. Does she make phone calls for the Prepaid Legal  
20 business?

21 A. No, she has nothing to do with the Prepaid Legal.

22 Q. So at most you'd spend I think you said about 150, \$160  
23 a month for your phone?

24 A. About that much, yes, 180.

25 Q. So both phones wouldn't cost you much more than \$2,028,

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1 is that correct?

2 A. No.

3 Q. And you didn't use your phone solely for the business?

4 A. Not solely for the business, no.

5 Q. And of course your wife had nothing to do with the  
6 business?

7 A. Nothing at all.

8 Q. If you go back to the first page of Schedule C --

9 THE COURT: Hold on, I want to know is there a web  
10 page? If you'll ask.

11 MR. SUROVIC: Certainly.

12 BY MR. SUROVIC:

13 Q. Is there an indication there is a web page for \$239?

14 A. I have a web page also. I have a web page.

15 Q. For the legal services business?

16 A. Yes, for legal services which I still have today also.

17 THE COURT: All right, go ahead.

18 BY MR. SUROVIC:

19 Q. Let's talk about those other two entries, dues of \$431,  
20 what is that?

21 A. How much I pay.

22 Q. You have to pay them in order to be an agent for them?

23 A. I pay a monthly fee.

24 Q. What is the monthly fee?

25 A. About \$33 a month.

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1 Q. And you also when you're doing the business you have  
2 handouts and things like that that you periodically buy,  
3 right?

4 A. Yes, flyers and stuff like that.

5 Q. You indicated there was a magazine?

6 A. Magazine, a Prepaid magazine that we have that I buy  
7 and stuff like that.

8 Q. And that would be where you get the paper that costs  
9 \$50 that's --

10 A. Yeah, if we have to print off anything, if I print off  
11 papers that I type up or something like that.

12 Q. Let's take a look at the first page, Schedule C, line  
13 nine, you have car and truck expenses of \$2,023. Do you  
14 have a car that you use solely for the Prepaid Legal  
15 business?

16 A. Not that I totally use for Prepaid Legal. My car was  
17 for back and forth to work and if I used it, that's what I  
18 would use to go out to see people, whatever.

19 Q. So you had one car that you used for everything?

20 A. For everything.

21 Q. And part of the use was for Prepaid Legal and part of  
22 the use was for other --

23 A. If I went out and did something, that's what I would go  
24 in my regular car.

25 Q. So if you went out, you and your wife went out to



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1 dinner, you'd be driving that same car?

2 A. Right. But if I was with my wife, I wouldn't be doing  
3 nothing with Prepaid Legal.

4 Q. If you flip back to the second page of the Schedule C  
5 where we're talking about the cell phone, in part four, it  
6 says on line 44, Of the total number of miles you drove your  
7 vehicle during 2008, enter the number of miles you used your  
8 vehicle for business. And this is for the Prepaid Legal  
9 business, it says 3712 miles. Did you drive your vehicle  
10 3712 miles for Prepaid Legal business?

11 A. No, I didn't.

12 Q. You didn't have that many customers to service, did  
13 you?

14 A. No.

15 Q. It also talks down in line 47, Do you have evidence to  
16 support the deduction for the mileage and it's checked yes.  
17 Did you have evidence to support mileage that you used that  
18 vehicle for the Prepaid Legal business?

19 A. Not these miles, not miles like this, no.

20 Q. Did you keep a mileage log or anything like that?

21 A. Just around if I went -- like if I went to, like, say  
22 if I went to an apartment complex, I'd take from my house to  
23 the apartment complex or something like that, but nowhere  
24 near --

25 Q. That many miles. So you do not have evidence to

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1 support the deduction and it would not be in writing?

2 A. The miles at the time that I had mileage jotted down,  
3 nothing like this.

4 Q. And so you never told Ms. Hosseini that you drove  
5 3712 miles?

6 A. No, I never told her I drove 3000-some miles.

7 Q. We can look at the next exhibit, Exhibit 16-3 in the  
8 folders. This is the copy that Ms. Hosseini kept at her  
9 office that was seized when they did the search of her  
10 office and I would ask you at the back of that, hopefully  
11 it's in the right place in this copy, it should be about  
12 four pages from the last page. It's Gerald-Helen Smith 2008  
13 Tax Deductible Expenses. Do you see a page like that?

14 A. Yes.

15 Q. Where did this page come from?

16 A. This is one of the pages that she gave us to put down  
17 our expenses and stuff, but this is one that me and my wife  
18 filled out.

19 Q. So you would have created this and given it to her?

20 A. She gave us a page to fill out, but yes, this page  
21 right here was prepared by us.

22 Q. Okay. And looking down here it's got your Prepaid  
23 Legal, the only thing it has for Prepaid Legal is your  
24 license fee, your web page, dues, and some business cards  
25 and some paper that you purchased, is that correct?

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1 A. Yes.

2 Q. Doesn't list anything as far as mileage or anything  
3 like that?

4 A. No.

5 Q. And then the rest of the items on this are for  
6 different things, your charitable deductions, medical  
7 expenses and some miscellaneous stuff as far as car repair,  
8 mileage to and from work, I assume that is mileage to and  
9 from your postal job?

10 A. Yes.

11 Q. Things like that, is that correct?

12 A. Yes.

13 Q. Do you remember how much Ms. Hosseini charged you to do  
14 your taxes?

15 A. Not right offhand.

16 Q. I would ask you to go to page seven of the Exhibit  
17 16-3, the one you're looking at right now. It says at the  
18 top of that page, Refund Transfer Fee Disclosure Form. Do  
19 you see that? And then there is a box in the middle of the  
20 page, says Authorized deductions, amount paid to tax  
21 preparer \$604.05, see that?

22 A. Yes.

23 Q. Okay. Do you recall paying \$604.05 to Ms. Hosseini?

24 A. I don't remember, but if it's there, yes.

25 Q. And that would have come out of your deduction. You

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1 got a check of \$1,137 as your refund from the IRS, is that  
2 right? Amount paid directly to you?

3 A. How much you say?

4 Q. \$1,137, does that sound right as far as the refund  
5 check you got?

6 A. Yes.

7 Q. \$604.05, that's a lot more than \$75?

8 A. Right.

9 Q. And it's a lot more than free that you did at the Base,  
10 is that right?

11 A. Yes.

12 Q. But by the same token the refund you got was bigger  
13 than either of those you got, right?

14 A. Correct.

15 Q. Okay. Let's go to tax year 2009, that's going to be  
16 Exhibit 17-1 in front of you, should be the next folder. Go  
17 ahead and open that up, look at the top, says at the top  
18 Form 1040 U.S. Individual Income Tax Return 2009 and it's  
19 got Gerald R. Smith and Helen Smith. Did I ask you if  
20 you -- I did ask you if you were married and Helen Smith is  
21 your wife, right?

22 A. Correct.

23 Q. Is this your tax return for 2009?

24 A. Yes.

25 Q. Now, if we go down to line 12 on this, business income

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1 or loss, now your loss is \$17,025 according to the 1040  
2 here, is that right?

3 A. That's what I see here.

4 Q. Do you recall even spending that much on your business?

5 A. No.

6 MR. BARNES: Objection, Your Honor, it's the same  
7 tax loss.

8 THE COURT: Jury is instructed that when counsel  
9 refers to the loss, they intend tax loss.

10 BY MR. SUROVIC:

11 Q. Let's take a look at the Schedule C that's attached to  
12 this form. That's going to be about page nine, nine pages  
13 in on this. It's going to be the Schedule C profit or loss  
14 from a business. Did you find it?

15 A. Yes.

16 Q. Okay. Again if we look at the top, it's got your name,  
17 Prepaid Legal help and identity theft is the name of the  
18 business, that's what we've been talking about, right?

19 A. Correct.

20 Q. Now, if you could turn the page. Look again, there are  
21 four items listed in part five in the bottom of the page.  
22 And the last one of course is mobile phone business use and  
23 it says \$1,548. Did you have a mobile phone during 2009  
24 that you used exclusively for the Prepaid Legal business?

25 A. It was the same phone I had.

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1 Q. Same situation?

2 A. Yes.

3 Q. Wife had one on the plan, the whole bit. So you never  
4 indicated to Ms. Hosseini, did you, that the entire phone  
5 cell bill was for the --

6 A. The Prepaid, not the entire phone bill, no.

7 Q. Now, looking up, if you'll look up at part four right  
8 there on that page. We read line 44 before where you had a  
9 number of miles there, 8,000 miles, but 44 here you have  
10 business 60 miles. Is that more -- is that closer to what  
11 you actually drive?

12 A. That's closer to what I would normally do.

13 MR. SUROVIC: Your Honor, I see the court is  
14 straining to try to see -- I can provide you a binder with  
15 these.

16 THE COURT: Oh, I have the binder, I can look at  
17 it if I need to, but I can see it.

18 BY MR. SUROVIC:

19 Q. Let's go back to the first page of the Schedule C, the  
20 page before, and you'll see in line 13 it talks about  
21 depreciation and there's an amount listed in line 13,  
22 \$11,715. Do you know what that depreciation is for?

23 A. No, sir.

24 Q. If we go to page 12 which is the page that starts form  
25 4562 Depreciation Amortization. Did you find that?

GERALD R. SMITH - DIRECT

1 A. Which one is it?

2 Q. It's form 4562 and it's titled Depreciation and  
3 Amortization. It should be about three pages back from the  
4 Schedule C, three pages behind the Schedule C.

5 A. Three pages behind?

6 MR. SUROVIC: Yeah. If I could approach the  
7 witness, Your Honor, I could find it for him.

8 THE COURT: Sure.

9 BY MR. SUROVIC:

10 Q. There it is right there. Now, Schedule C talked about  
11 11,715-dollar depreciation and you'll see at the bottom of  
12 the page that you're looking at now the Depreciation  
13 Amortization, that is the amount that's in box number 22, is  
14 that correct?

15 A. Yes.

16 Q. Okay. Then if we flip that page, this is the second  
17 page of that form and if you look at box number 26, it lists  
18 a 2009 Chevy. Do you own a 2009 Chevy?

19 A. Yes.

20 Q. What is that?

21 A. A car that I bought for my wife.

22 Q. It's your wife's car?

23 A. It's our car.

24 Q. Well, that's true. Share and share alike. So is this  
25 the car that you normally drive around in?

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1 A. No.

2 Q. This is your wife's car?

3 A. My wife's car.

4 Q. You indicated that your wife was in no way involved in  
5 the Prepaid Legal business service, is that correct?

6 A. No.

7 Q. So if this indicated that this was a business  
8 investment and was used a hundred percent for the business,  
9 would that be an accurate statement?

10 A. No.

11 Q. Okay. Did you ever tell Ms. Hosseini that -- this is a  
12 Chevy Cobalt, by the way, is it not? I don't know.

13 A. 2009 Chevy Cobalt, yeah.

14 Q. Did you ever tell Ms. Hosseini that you used that Chevy  
15 Cobalt one hundred percent in the business?

16 A. No, not the Chevy Cobalt.

17 Q. If we look at the next Exhibit 17-3, it's a little  
18 easier to see if we turn to page four. 17-3 again is the  
19 preparer's copy. This is Ms. Hosseini's copy that was  
20 seized from her office. Page four is a sheet entitled  
21 Depreciation Detail Listing, it runs sideways?

22 A. Yes.

23 Q. And you see on that there are two items that are being  
24 depreciated on this, a laptop computer and it says actually  
25 here a 2009 Chevy Cobalt and both of them are used one



GERALD R. SMITH - DIRECT

1 hundred percent for the business. Did you buy a computer  
2 that year?

3 A. I had a laptop, yes.

4 Q. Was it used one hundred percent for the Prepaid Legal  
5 business?

6 A. The laptop was.

7 Q. But the Chevy Cobalt was not?

8 A. Not the Chevy Cobalt.

9 Q. Because that was driven by your wife. Now, I notice  
10 here that right below that there's your signature, right,  
11 Gerald R. Smith?

12 A. Yes.

13 Q. At the end of the tax preparation, you would get asked  
14 to sign a collection of documents, is that right?

15 A. Correct.

16 Q. What was that process like?

17 A. Just like she would explain to what was going on and  
18 then we would sign it.

19 Q. Did she do that for every page?

20 A. Well, I assume if my name is on it, she probably done  
21 it, but I don't remember this page.

22 Q. Do you remember her explaining to you that she was  
23 declaring that you use the laptop and the Cobalt one hundred  
24 percent in your business?

25 A. No.

GERALD R. SMITH - DIRECT

1 Q. Now, again we go towards the end of the document, it's  
2 about 21 pages back, eight or nine pages from the very end,  
3 it's Helen Smith, says 2008 tax deductible expenses. These  
4 are your worksheets that you prepared and took into her, is  
5 that right? If I could approach the witness, Your Honor,  
6 and help him --

7 A. Yes.

8 Q. Oh, you found them?

9 A. Yes.

10 Q. These are the things that you prepared, right?

11 A. Yes.

12 Q. So this is a list of all your Prepaid Legal expenses  
13 again. And then it's pretty much the same as what you've  
14 explained before, charity, your various mileage to and from  
15 your regular work with the Post Office, things like that, is  
16 that correct?

17 A. Yes.

18 Q. You also have an alarm system listed, support for your  
19 mother, things like that, Tricare Dental. Did you deduct  
20 those items?

21 A. You said alarm system?

22 Q. Right, if you look on the short page says intruder  
23 alarm system, \$298? It should be the page right before the  
24 big page.

25 A. We had an alarm system for our house.

GERALD R. SMITH - DIRECT

1 Q. You didn't know whether that was deductible or not, did  
2 you?

3 A. I didn't.

4 Q. You just brought in everything you could possibly think  
5 of that she might be interested in?

6 A. That we paid, yeah.

7 Q. Do you remember how much you paid Ms. Hosseini to  
8 prepare your tax return in 2009?

9 A. No, I don't. I don't remember.

10 Q. If you'll go to page six from the front of that  
11 exhibit, did you find it, says Bank Product Information at  
12 the top?

13 A. Yes.

14 Q. Okay. It says here if you look in the middle of the  
15 page in that box underneath Total Projected Bank Fee in bold  
16 letters, right underneath that there's a line that says Tax  
17 Preparation?

18 A. Yes.

19 Q. How much does this indicate you paid her?

20 A. Total prepare fees \$713.05.

21 Q. And that includes the e-file fee and the bank documents  
22 fee, but the direct tax preparation fee would be \$613.05, is  
23 that right?

24 A. Correct.

25 Q. And at the bottom of it and there's a circle around it

GERALD R. SMITH - CROSS

1 down there at the bottom of that it indicates your refund  
2 was going to be \$1,046?

3 A. Correct.

4 Q. Now, that was less than the refund you got the year  
5 before?

6 A. Correct.

7 Q. But you ended up paying more in your tax preparation  
8 fee, do you know why?

9 A. No, I don't.

10 Q. Did you know that you were paying \$613 to Ms. Hosseini  
11 for preparing your taxes?

12 A. Whatever was charged it would come out of what we get  
13 back.

14 Q. You weren't worried about it because you were getting  
15 the return?

16 A. Correct.

17 Q. And again \$613 is a lot more than \$75 and a lot more  
18 than free.

19 MR. SUROVIC: I'll pass the witness, Your Honor.

20 THE COURT: Cross.

21 MR. BARNES: Thank you, Your Honor.

22 EXAMINATION

23 BY MR. BARNES:

24 Q. Do you recall an amended return being filed concerning  
25 your military retirement income, do you remember that

GERALD R. SMITH - CROSS

1 Margaret filing that on your behalf?

2 A. Yes.

3 Q. And was that because actually for years your military  
4 retirement income was being incorrectly included in taxable  
5 income when it wasn't supposed to be?

6 A. It wasn't -- I'm not for sure what you're saying.

7 Q. Let me read what was on the return that you signed.  
8 Military retirement income has changed to exclude \$17,621  
9 from taxable income because actually you were entitled to  
10 that money not being taxed under the tax law, do you  
11 remember that?

12 A. Probably remember it if I see it.

13 Q. Okay. Do you remember that in general happening?

14 A. Yes.

15 Q. And that was part of what entitled you to a refund?

16 A. If you say that. Like I say, I have to see it.

17 Q. Can we pull up page four of 17-3?

18 A. Which one are you on?

19 Q. It's 17-3.

20 THE COURT: And the fourth page?

21 MR. BARNES: Yes, Your Honor.

22 THE COURT: I think that's it, that looks like it.

23 THE WITNESS: Okay.

24 BY MR. BARNES:

25 Q. Was this the depreciation sheet that you signed?

GERALD R. SMITH - CROSS

1 A. Yes.

2 Q. And does that say for both of those items one hundred  
3 percent of business was marked on there on that that you  
4 signed?

5 A. Now I see it, a hundred percent.

6 Q. And on all of these returns did you sign all of the  
7 pages of all the returns, is that your signature?

8 A. Yes, my signature.

9 Q. You mentioned for Prepaid Legal -- did you put any  
10 signs on the car to help advertise for Prepaid Legal?

11 A. Yes, I had a couple signs on there.

12 Q. So every time you were driving around you were  
13 advertising?

14 A. They wasn't on my car all the time.

15 Q. All the time. And did the IRS -- let me ask, when is  
16 the first time you heard about any sort of issues with these  
17 returns from the IRS? Did they send you a letter, a notice  
18 or did just two people show up at your door?

19 A. No, I got audited.

20 Q. You got audited. And when you went through that  
21 process, did they ever explain that you can take advertising  
22 deductions or mileage deductions when you're advertising the  
23 business on your car?

24 A. No, they didn't explain that I could. I got audited  
25 and they wanted to see the returns what I was filing.

## GERALD R. SMITH - CROSS

1 Q. So those are things that they never took the time to  
2 explain to you, is that correct?

3 A. No one explained it to me, no.

4 MR. BARNES: Thank you, Your Honor.

5 THE COURT: Redirect.

6 EXAMINATION

7 BY MR. SUROVIC:

8 Q. Mr. Smith, I think you just answered this question, but  
9 I want to make sure I understood you correctly. When Mr.  
10 Barnes asked you whether the IRS had ever explained to you  
11 that you could deduct for driving around having a sign  
12 attached to your car, you indicated nobody ever explained it  
13 to you, is that correct?

14 A. Correct.

15 Q. Ms. Hosseini never explained it to you?

16 A. No, she didn't explain that.

17 MR. SUROVIC: No further questions.

18 THE COURT: Recross.

19 MR. BARNES: Yes, Your Honor, briefly.

20 EXAMINATION

21 BY MR. BARNES:

22 Q. Could we pull up 16-3, page 20. Mr. Smith, can you  
23 take a look at 16-3, it's page 20.

24 THE COURT: That's the list you all made of your  
25 deductions like up there on the screen. There you go.

JANE FIFE - DIRECT

1 BY MR. BARNES:

2 Q. Is this the tax deductible expenses list that you  
3 prepared as a spreadsheet and presented to Margaret?

4 A. Yes.

5 Q. And on there is there an item under miscellaneous for  
6 mileage to work for you and your wife? Do you see that?

7 A. Yes.

8 Q. And did that have 4800 miles for you and 6200 miles for  
9 your wife?

10 A. Correct.

11 MR. BARNES: No further questions, Your Honor.

12 THE COURT: Redirect.

13 MR. SUROVIC: No redirect, Your Honor.

14 THE COURT: Thank you, sir. You may be excused.

15 Next witness.

16 MR. SUROVIC: Your Honor, our next witness will be  
17 Ms. Jane Fife.

18 THE COURT: Thank you, Mr. Smith.

19 MR. SUROVIC: We'd ask that he be allowed to  
20 return to his business.

21 THE COURT: You're excused.

22 MR. SUROVIC: Sir, you can step out and go home.

23 THE COURT: After Ms. Fife will be whom?

24 MR. SUROVIC: I believe that is Mr. Dominguez.

25 THE COURT: Certainly we can finish Ms. Fife.



JANE FIFE - DIRECT

1 We'll see where we are. I don't like breaking up the  
2 witness, but we'll see. Ms. Fife come on up here.

3 And if you will raise your right hand please.  
4 These members of the jury are seeking the truth about what  
5 happened in this case. As they do that, and subject to  
6 federal perjury law, will you tell the jurors the truth, the  
7 whole truth and nothing but the truth?

8 THE WITNESS: I will.

9 THE COURT: You may be seated. Mr. Surovic, you  
10 may proceed.

11 MR. SUROVIC: Thank you, Your Honor.

12 EXAMINATION

13 BY MR. SUROVIC:

14 Q. Would you state your full name for the record, ma'am?

15 A. Jane Frances Fife.

16 Q. And your last name is spelled F-I-F-E?

17 A. Yes, it is.

18 Q. And what city do you live in?

19 A. The City of San Antonio.

20 Q. How long have you lived in San Antonio or in the Bexar  
21 County area?

22 A. Seventeen years.

23 Q. And were you living there in 2010?

24 A. Yes, I was.

25 Q. How are you employed?

JANE FIFE - DIRECT

1 A. Right now I am unemployed, just recently, so I could no  
2 longer work because of my disability. I have polio, so it  
3 just was recent that I decided that I could no longer work  
4 and that was in July.

5 Q. Prior to July, what did you do for a living?

6 A. I was a payroll supervisor, assistant payroll  
7 supervisor for San Antonio Shoe Company.

8 Q. How long did you work for San Antonio Shoe?

9 A. Over four years.

10 Q. Back in 2010 do you remember who you were employed by?

11 A. 2010 may have been Allied Barton Security Services.

12 Q. And how long did you work for Allied Barton Security  
13 Services?

14 A. Five years.

15 Q. What did you do for Allied Barton Security Services?

16 A. I was the administrative assistant to the district  
17 manager so we were in charge of contracts and payroll hours  
18 for our security officers.

19 Q. So you've always been sort of involved in the  
20 bookkeeping personnel management side of the business?

21 A. Yes.

22 Q. Did you have any side jobs that you worked while you  
23 were working at Allied Barton?

24 A. Yes, I did. I assisted a realtor, so I was  
25 basically -- couldn't talk any real estate, but what I could

JANE FIFE - DIRECT

1 do is open doors and show houses.

2 Q. The realtor that you worked for was who?

3 A. Peter Balajadia.

4 Q. And you have a son with Peter Balajadia named Jaime?

5 A. I have a daughter. Her name is Jamie.

6 Q. I'm sorry if I read a little further. So you have a  
7 close relationship with him?

8 A. Yes, we do.

9 Q. If I could have -- oh, let me ask you this. Have you  
10 ever heard of a business by the name of Rapid Return Tax  
11 Services?

12 A. I think you see that name periodically especially  
13 during tax time, I see people standing outside with  
14 cardboards with the names on them.

15 Q. Did you ever take your taxes to be done at Rapid Return  
16 Tax Service?

17 A. Yes, I believe we did. We might have -- we did use it  
18 a couple of times and I think with this individual place we  
19 might have used it twice.

20 Q. Prior to going there, who did you go to?

21 A. I couldn't remember the name. I was introduced to  
22 another -- a small company and I liked the way they did  
23 their business, but they went out of business so we had to  
24 find somebody else.

25 Q. About how much did you pay those individuals, those

JANE FIFE - DIRECT

1 people to do your taxes?

2 A. Rapid Refund is kind of pricy so you can pay anywhere I  
3 think between five to \$700.

4 Q. What about the company that you had before you went to  
5 Rapid Refund, how much did they charge?

6 A. I don't remember because we at one point we might have  
7 used H&R Block at Wal-Mart.

8 Q. Did they charge you more or less than Ms. Hosseini? Or  
9 Rapid Return, I should say.

10 A. H&R Block I think was probably less, but the Rapid  
11 Refunds are always a little higher.

12 Q. Why did you go to Rapid Return Tax Service?

13 A. I think at that point we probably either were running  
14 out of time or we just, you know, the word "Rapid" so we  
15 kind of wanted our money as quick as we can get it.

16 Q. You work with numbers and figures all the time, you  
17 work in the accounting side of the house?

18 A. Yes.

19 Q. Why didn't you prepare your taxes yourself?

20 A. Because I did not want to make any types of mistake  
21 especially when we had the real estate part of it to add on.  
22 If I were doing my own individual tax return, I think I  
23 could handle it and, you know, use the instructions and fill  
24 it out completely, but I did not want to get anything wrong  
25 or do something that I shouldn't do and so, therefore, I

JANE FIFE - DIRECT

1 wanted somebody else to take a look at that.

2 Q. So you went to a tax professional because you wanted to  
3 make sure it was done right?

4 A. That's correct.

5 Q. Do you recall approximately when you started going to  
6 Rapid Return Tax Service, what year?

7 A. No.

8 Q. Not off the top of your head?

9 A. Not off the top of my head.

10 Q. Did you meet an individual there by the name of  
11 Margaret Hosseini?

12 A. I'm not very good with names, but I do remember -- I  
13 know where it's at, I know where the location is at because  
14 it's close to home and that's another thing that I selected,  
15 I wanted something close to the house so if I had to run  
16 there after work, it will be close to my home. I do  
17 remember there was an office that we went to and there were  
18 several agents there who were salespeople there to help us,  
19 to assist us and I do remember that the person we spoke to  
20 had memorabilia of Twilight and that's the only thing that  
21 really sticks in my head, but as far as the name goes, I  
22 apologize, I'm not really good with names.

23 Q. Do you remember what she looked like?

24 A. Yes, I do.

25 Q. Is that person in the court today?

JANE FIFE - DIRECT

1 A. Yes, she is.

2 Q. Can I have you point to her and describe something that  
3 she's wearing?

4 A. She's wearing the purple blouse.

5 THE COURT: Noted.

6 MR. SUROVIC: Thank you, Your Honor.

7 BY MR. SUROVIC:

8 Q. I'm going to ask you about the tax return that was  
9 prepared for you in 2010, so if you'd look, there's two  
10 folders on your table. The first one is going to be folder  
11 that's marked Government Exhibit 19-1.

12 A. Okay.

13 Q. I ask you to go ahead and open that up and turn the top  
14 page so you're looking at the actual tax return itself. And  
15 if we look at the top, it says, first of all, Form 1040 U.S.  
16 Individual Income Tax Return 2010, is that correct?

17 A. That's correct, it does.

18 Q. And then it says Jane Fife and a Social Security number  
19 and address here in San Antonio. Is this your tax return  
20 for 2010?

21 A. Yes, it appears to be.

22 Q. And it indicates for your income on line seven,  
23 \$40,400. Does that sound about right for what you were  
24 making in 2010?

25 A. Yes.

JANE FIFE - DIRECT

1 Q. And then if we go to line 12, talks about business  
2 income or loss 26,130-dollar loss. Am I reading that  
3 correctly?

4 A. You're reading that number correctly.

5 Q. Now, is the side real estate business where you helped,  
6 is that the only side business that you had?

7 A. Yes.

8 Q. Let's go to the Schedule C which is -- should be on  
9 page seven. It's going to be titled Schedule C Profit Or  
10 Loss From A Business. You found on it?

11 A. Yes.

12 Q. At the top of that page, name of proprietor, Jane Fife.  
13 That would be you, right?

14 A. Uh-huh.

15 Q. And if you go down to item C, business name, Fife  
16 Realty Group, is that what you called the realty business  
17 that you were involved in?

18 A. Yes.

19 Q. Now is that your business, it's got your last name?

20 A. You know, we just used the name. It was really Peter,  
21 he was the realtor. I was at one point at realtor, but my  
22 license went inactive.

23 Q. I note, by the way, at the beginning of it we talked  
24 about your name Jane Fife is on the cover, but Peter's name  
25 is not on the cover. Did you file separately?

JANE FIFE - DIRECT

1 A. Yes, we filed separately. We are not married, so we  
2 always filed separately.

3 Q. So as far as the Fife Realty Group business, he was the  
4 realtor, did he claim all the deductions for the realty  
5 company?

6 A. We did everything 50/50, since I was helping him and he  
7 is the father of my daughter, we had split it 50/50.

8 Q. So you took half the deductions and he took half the  
9 deductions?

10 A. Yes.

11 Q. Look here. Let's turn the page on the Schedule C and  
12 at the bottom of that next page, part five, it talks about  
13 mobile phone business use?

14 A. Yes.

15 Q. \$3,600. Did you have a mobile phone specially  
16 dedicated to the realty business?

17 A. We had three phones. There was three of us in the  
18 family and it was split -- Jamie obviously would not have  
19 been any type of business at all and it would just be me and  
20 Peter who would split that. Our bill was approximately --  
21 that looks like for the -- well, two or \$300 times 12 for  
22 the year.

23 Q. So if we say 300, that would be \$3,600?

24 A. Yeah, and that looks like that's the whole amount which  
25 would not be accurate.



JANE FIFE - DIRECT

1 Q. How much do you think you actually used the mobile  
2 phones for the realty business?

3 A. Peter was doing the real estate full-time, but me,  
4 myself, I was not full-time. It was because I had my  
5 full-time job, it was just part-time.

6 Q. So as a percentage that would be his phone we'll say is  
7 a hundred percent for the business, so --

8 A. Yes.

9 Q. -- that's 33 percent of the phone bill would be for the  
10 business. What percentage do you think you used your phone  
11 for the business?

12 A. At least half or less.

13 Q. Okay.

14 A. Because the other half would be my personal use.

15 Q. So less than 50 percent of the phone bill went to the  
16 business?

17 A. Yes.

18 Q. But the whole phone bill is claimed here?

19 A. Yes, it is.

20 Q. Let's go back to the first page again. Part two, line  
21 nine, car and truck expenses. You have \$27,386 in car and  
22 truck expenses?

23 A. I don't know what that would be, to be honest with you.

24 Q. Well, that's --

25 A. At that point we had in 2010 Peter reminded me we only

JANE FIFE - DIRECT

1 had one vehicle.

2 Q. So you and your husband both used the vehicle?

3 A. We did. We would commute together, he dropped me off  
4 at my daytime job and while he did his full-time job as a  
5 realtor.

6 Q. If you flip the page, in part four, line 44 talks  
7 about, Of the total number of miles you drove your vehicle  
8 during 2010, enter the number of miles you used your vehicle  
9 for, A, business, 54,772 miles.

10 Was the one vehicle you had was that driven  
11 54,772 miles just for the real estate business?

12 A. No, that would be impossible, because I had my  
13 full-time job for one, so he was -- you wouldn't count that,  
14 you wouldn't count my mileage and I approximately -- I was  
15 working about 12 to 17 miles one way, so you'd have to take  
16 that off.

17 Q. 54,000 miles would be driving around the world twice.  
18 Peter didn't put in that many miles driving around selling  
19 real estate, did he?

20 A. I don't think so.

21 Q. And he would have taken half of this deduction, right?

22 A. If anything, you would at least have half of that.

23 Q. So we're really talking about 110,000 miles almost?

24 A. And that sounds impossible.

25 Q. Now, a lot of realtors when they do that because they

JANE FIFE - DIRECT

1 can deduct their mileage they keep a mileage log. Did Peter  
2 keep a mileage log?

3 A. At one point we did. I remember we had a spreadsheet,  
4 but in all honesty we no longer have that laptop and I tried  
5 to search for it in files on the new laptop and we have  
6 nothing.

7 Q. So you might have had a mileage log, but it wouldn't  
8 have reflected 54,772 miles?

9 A. I don't think it would have.

10 Q. Or 110,000 miles?

11 A. No, because it seems a little high.

12 Q. So evidence to support your deduction, there would be  
13 nothing to support a 54,000-mile deduction?

14 A. That's correct.

15 Q. And that would not be in writing, would it?

16 A. No.

17 Q. Did you ever tell Ms. Hosseini or did Peter ever tell  
18 Ms. Hosseini that you had 110,000 miles or even  
19 54,000 miles?

20 A. If we said it, I do not remember and I don't think we  
21 would have.

22 Q. That sounds a little unreasonable, would you agree?

23 A. Yes.

24 Q. Can I ask you, when you would come in to do your taxes  
25 with Ms. Hosseini -- and by the way, I guess we need to

JANE FIFE - DIRECT

1 establish this. If we could go back to the third page of  
2 the exhibit which would be the second page of the tax  
3 return?

4 A. Okay.

5 Q. Exhibit 19-1. On the bottom of that it says, Third  
6 party designee, do you want to allow another person to  
7 discuss this return with the IRS and you indicated that they  
8 should talk to Margaret Hosseini. And then at the very  
9 bottom it says, Paid preparer use only, type/print  
10 preparer's name and it says Margaret Hosseini. Would she  
11 have been the one that prepared your taxes?

12 A. Yes.

13 Q. Now, if we go to 17-3 -- excuse me, 19-3. Sorry. This  
14 is the preparer's copy of your tax return for 2010, this was  
15 information that was taken from Ms. Hosseini's office by the  
16 IRS when they did a search warrant there. You have seen  
17 this before because it has your signature on it, is that  
18 right?

19 A. Yes.

20 Q. When you went in to talk to Ms. Hosseini, what would  
21 you normally bring in to get your taxes prepared?

22 A. I think there was a couple of visits, but I know that  
23 if she would have -- if she needed anything, we would have  
24 had it at that time. I don't remember -- I remember coming  
25 in and just talking to her. That's really all I remember is

JANE FIFE - DIRECT

1 coming in. I don't know if I brought anything, I don't know  
2 if I gave her a copy of a spreadsheet.

3 Q. Could I get you to look through that exhibit and see if  
4 you can find anything that you brought her indicating what  
5 your expenses were or anything like that?

6 A. Okay.

7 (Pause.)

8 Just my W-2 and that's it.

9 Q. And there is a 1099 from Fife Realty to you for  
10 \$12,387?

11 A. Uh-huh, yes.

12 Q. And of course, there's a copy of your driver's license?

13 A. Yes.

14 Q. And that's all there is in the file?

15 A. That's it.

16 Q. Each of the pages has either your signature or your  
17 initials on it in one way or another. Did you review this  
18 with Ms. Hosseini?

19 A. I know that we sat down and we talked about what we did  
20 and the figures, I guess, that she would enter, you know,  
21 when you give to charity or for those cell phones. You're  
22 going through it and she's filling it out on the computer  
23 and basically this one is just our copy, so we kind of  
24 skimmed through it because we had already talked about it  
25 when we initially were filling out the information on her

JANE FIFE - DIRECT

1 computer or she was filling it out while we were speaking,  
2 so the only thing that we wanted to do at this point is we  
3 weren't so concerned about what was inside, what this was  
4 made up of. It was really -- for us it was the bottom line,  
5 how much --

6 Q. What was the bottom line?

7 A. How much our return would be.

8 Q. So when you signed off on a page, for example, the  
9 bottom of the Schedule C where it talks about the mobile  
10 phone business use, you didn't carefully look at that to  
11 determine if it was, you know, correctly reflected, the  
12 business use on that cell phone, did you?

13 A. No, I didn't carefully look at it, no.

14 Q. And in fact you didn't carefully look at any of the  
15 pages because like you said, you were interested in the  
16 bottom line?

17 A. Yes.

18 Q. Let's talk a little bit about the bottom line. If  
19 you'll go to the third page of that, there's a page that's  
20 entitled Bank Product Information?

21 A. Okay.

22 Q. And if you'll look, there's a box in the middle of the  
23 page and right in the middle it says, Total Projected Bank  
24 Fee in bold letters?

25 A. I'm sorry, what page is that?

JANE FIFE - CROSS

1 Q. Page three. Should be page three.

2 A. Okay, yes.

3 Q. Bold letters, Total Projected Bank Fee. See that,  
4 about the middle of the page?

5 A. Total projected bank fees, \$30.

6 Q. And then right below that there's a line and then right  
7 below that it says tax preparation?

8 A. \$762.

9 Q. Is that what you paid Ms. Hosseini?

10 A. Yes.

11 Q. And then if you look down at the bottom, the last  
12 figure in that column is the refund deposit, \$6,347.05?

13 A. Yes.

14 Q. Is that what your return was?

15 A. Yes. I wouldn't question it.

16 Q. Does that sound about right?

17 A. Yes.

18 Q. And that was your bottom line, right?

19 A. Yes, whatever she tells us is our return, we wouldn't  
20 have questioned how much it was.

21 MR. SUROVIC: No further questions, Your Honor.

22 THE COURT: Cross.

23 MR. BARNES: Yes, Your Honor.

24 EXAMINATION

25 BY MR. BARNES:

JANE FIFE - CROSS

1 Q. Good afternoon.

2 A. Good afternoon.

3 Q. In the realty business, do you and your husband drive  
4 around a lot, is that pretty common?

5 A. Sometimes, yes, it is.

6 Q. And did you ever participate in things like helping  
7 opening houses or anything like that?

8 A. Yes.

9 Q. And was that a rare occurrence or regular occurrence?

10 A. It all depends. Real estate just fluctuates, so there  
11 are times when you are so busy and there are down times.

12 Q. And can we look at Government Exhibit 19-3, page 11.

13 A. Okay.

14 Q. Do you see part four and part five?

15 A. Yes.

16 Q. And do you see your signature there?

17 A. I do.

18 Q. And is your signature right underneath mobile phone  
19 business use, 3600?

20 A. It is.

21 Q. And right above that is it business mileage 54,000 is  
22 not very far above where your signature is?

23 A. Yes, it is.

24 Q. Did you ever tell Margaret that you weren't reviewing  
25 these paperworks when you were signing it?



MARIO DOMINGUEZ - DIRECT

1 A. Well, when you are -- when we were there I know that a  
2 lot of conversations are going across and it was very fast,  
3 very rapid and a lot of joking around, if you would, about  
4 other things, not the tax return itself, but just other  
5 conversations were going on and basically I do recall that,  
6 okay, this is everything that we've talked about, now we  
7 just have to sign for it.

8 Q. Did you tell her, I'm not going to review this one, I'm  
9 signing it?

10 A. No.

11 MR. BARNES: Thank you. No further questions.

12 THE COURT: Redirect.

13 MR. SUROVIC: No redirect, Your Honor.

14 THE COURT: Thank you, ma'am. You may be excused.

15 Next witness.

16 MR. SUROVIC: Your Honor, that would be Mr. Mario  
17 Dominguez. And if I might approach the witness stand to  
18 trade out files. We request that she be excused  
19 permanently.

20 THE COURT: That's fine.

21 MR. SUROVIC: Thank you.

22 THE COURT: We'll go for about 30 to 40 minutes, I  
23 don't think we can finish Mr. Dominguez. But if we do, we  
24 do, but if not, rather than take a break now, we'll just  
25 quit a little bit earlier.

MARIO DOMINGUEZ - DIRECT

1 MR. SUROVIC: We'll do our best to try and  
2 complete Mr. Dominguez.

3 THE COURT: Mr. Dominguez, if you'll come up here  
4 with me, sir. So if you've got other witnesses waiting,  
5 Mr. Surovic, you can tell them we'll start up again  
6 tomorrow.

7 MR. SUROVIC: We calculated that he would be our  
8 last one, Your Honor.

9 THE COURT: Raise your right hand please, sir.  
10 Subject to federal perjury laws and as this jury seeks the  
11 truth in what happened in this particular case, do you  
12 promise to tell the jurors the truth, the whole truth and  
13 nothing but the truth?

14 THE WITNESS: Yes, Your Honor.

15 THE COURT: All right. You may be seated.

16 EXAMINATION

17 BY MR. SUROVIC:

18 Q. Would you state your full name?

19 A. Mario Lorenzo Dominguez.

20 Q. Spell your last name.

21 A. D-O-M-I-N-G-U-E-Z.

22 Q. And what city do you live in?

23 A. San Antonio, Texas.

24 Q. How long have you lived in San Antonio?

25 A. All my life, 51 years.

MARIO DOMINGUEZ - DIRECT

1 Q. Where did you go to high school?

2 A. South San, West Campus.

3 Q. How are you currently employed?

4 A. I am retired, sir.

5 Q. What are you retired from?

6 A. Detective with Bexar County Sheriff's Office.

7 Q. You walked away from law enforcement completely when  
8 you retired?

9 A. It was hard, but I did, yes, sir.

10 Q. How long did you work for Bexar County Sheriff's  
11 Office?

12 A. Twenty-eight years.

13 Q. What type of jobs did you have while you were working?

14 A. I was narcotics detective and I retired as a homicide  
15 detective.

16 Q. So you pretty much had the opportunity to work just  
17 about everywhere inside Bexar County Sheriff's Office?

18 A. Yes, sir.

19 Q. Were you working there back in 2008 and in 2009?

20 A. Yes, sir.

21 Q. As a deputy?

22 A. Yes, sir.

23 Q. A lot of deputies work side jobs?

24 A. Correct.

25 Q. Did you also work side jobs?

MARIO DOMINGUEZ - DIRECT

1 A. Yes, sir.

2 Q. What type of jobs did you do?

3 A. I did security for Drury Hotel, I did some traffic lane  
4 closures, security downtown, Fiesta.

5 Q. Just a way to make a little extra money on the side?

6 A. Correct, yes, sir.

7 Q. Let me ask you, did you ever run into a business by the  
8 name of Rapid Return Tax Service?

9 A. Yes, sir, I did.

10 Q. How did you find out about Rapid Return Tax Service?

11 A. At the time I was working Narcotics Division and  
12 several other individuals were using that tax office,  
13 probably ten, 12 individuals and they told me about it, went  
14 over there with one of the individuals.

15 Q. Why was Rapid Return Tax Service popular with the Bexar  
16 County Sheriff's Office?

17 A. The officers were getting big returns and they used all  
18 of your equipment and deductions, so yeah, big returns was a  
19 big factor.

20 Q. And of course you wanted a big return?

21 A. Yes, sir, yes, sir, I was paying at the time.

22 Q. Who was preparing your taxes before you went to Rapid  
23 Return Taxes?

24 A. I was going to an individual in Castroville, Texas. He  
25 had passed away, so I was looking for another tax person.

MARIO DOMINGUEZ - DIRECT

1 Q. You indicated you had been paying prior to this?

2 A. Yes, sir, I think I paid couple hundred dollars or  
3 sometimes got back three to 500, very little.

4 Q. It was always around the margins?

5 A. Yes, sir.

6 Q. How much did you pay the individual in Castroville to  
7 do your taxes?

8 A. I think like 150, maybe 200 at the most. I'm not  
9 really sure on that, I'm kind of guesstimating.

10 Q. Do you recall when you first went to Rapid Return Tax  
11 Service?

12 A. I think it was '06, '07, somewhere around that area.

13 Q. Do you remember when you went to Rapid Return Tax  
14 Service whether you met an individual by the name of  
15 Margaret Hosseini?

16 A. Yes, sir, I had gone there with Detective Easter, Greg  
17 Easter at the time who took me over there.

18 Q. Did he introduce you to her?

19 A. Yes, sir.

20 Q. What was your role with Rapid Return Tax Service?

21 A. At the time it was a small place, so she was actually  
22 the tax preparer.

23 Q. And do you remember what she looked like?

24 A. Yes, sir.

25 Q. Is she presently in the courtroom today?

MARIO DOMINGUEZ - DIRECT

1 A. Yes, sir, she's sitting in the purple.

2 Q. Point to her and tell us something she's wearing?

3 A. The purple, looks like purple shirt.

4 THE COURT: Noted.

5 MR. SUROVIC: Thank you, Your Honor.

6 BY MR. SUROVIC:

7 Q. When you would go to Rapid Return Tax Service to get  
8 your taxes prepared, first of all, what would you take to  
9 Rapid Return to get your taxes prepared, what type of  
10 paperwork would you take over?

11 A. My W-2 forms and also they had given me a sheet to fill  
12 out which was all your deductions.

13 Q. When you say "they" you mean Ms. Hosseini or somebody  
14 at Rapid Return?

15 A. Yes. And we had to put down everything that we spent  
16 throughout the year.

17 Q. Like what?

18 A. It would be mileage or gas receipts, how much you spent  
19 in gas, how much you spent on uniforms, weapons, anything to  
20 do with security part-time job.

21 Q. And this was sort of tailored to the law enforcement  
22 side?

23 A. Yes, sir, it said law enforcement deductions.

24 Q. You fill out that form and you take in your W-2s -- did  
25 you get 1099s?

MARIO DOMINGUEZ - DIRECT

1 A. Yes, sir, I do.

2 Q. So you take in those as well?

3 A. Yes, sir.

4 Q. Did you take in anything else?

5 A. No, sir.

6 Q. Would you take in the receipts or anything like that  
7 that you had that supported --

8 A. Actually she told me -- the first time I don't think I  
9 did, but the second time she told me to use one credit card  
10 and kind of print out everything that you use on a credit  
11 card through a bank statement which I did and I marked  
12 everything that was used.

13 Q. Did you bring that in to her as well?

14 A. Yes, sir, I think a second or third time.

15 Q. And what would happen once you got in? You brought in  
16 your stuff, you did what, you checked in at the front desk?

17 A. Yes, sir, and she would call us over and I will give  
18 her the 1099s or whatever, the tax statements and then I'll  
19 give her the sheet that we had filled out and then she would  
20 ask me questions after that.

21 Q. Did you always go to see Ms. Hosseini?

22 A. I think it was like the first couple of years, first --  
23 I believe it was three or four years I did and after that  
24 she got to be a really big business, so she had a bunch of  
25 people working for her, so the fourth or fifth time I saw a

MARIO DOMINGUEZ - DIRECT

1 female.

2 Q. When you worked with the female, did she do the entire  
3 tax thing or did Ms. Hosseini ever show up to finalize  
4 anything?

5 A. She did most of it and she would go in the back room of  
6 her office and then she would come out and tell her make  
7 some adjustments to it.

8 Q. Ms. Hosseini would come out and make adjustments?

9 A. Yes.

10 Q. Was Ms. Hosseini the one that usually talked to you  
11 about your law enforcement side business?

12 A. Yes, sir.

13 Q. Did the person who started your tax information do much  
14 more than just take information off your 1099?

15 A. Yeah, because everything was already in the computer,  
16 so she basically did everything on the computer and asked me  
17 were there any changes, so I'd give her whatever change I  
18 had.

19 Q. And then Ms. Hosseini took it from there?

20 A. Yes, sir.

21 Q. I would like to show you if you look there's some red  
22 folders up on the corner there, I want you to look at the  
23 first folder which is marked Exhibit 20-1. It's Government  
24 Exhibit 20-1 and if you go ahead and open that up and the  
25 first page, go ahead and turn over the blue page, that's the



MARIO DOMINGUEZ - DIRECT

1 certification. It says it starts off Form 1040 U.S.

2 Individual Income Tax Return 2008?

3 A. Yes, sir.

4 Q. It's got some personal information. By the way, are  
5 you married?

6 A. No, sir, divorced.

7 Q. In 2008 were you married?

8 A. Yes, sir, correct.

9 Q. What was your wife's name?

10 A. Adelita Dominguez.

11 Q. So this form has Mario Dominguez and Adelita Dominguez,  
12 some Social Security numbers, address here in San Antonio.  
13 Is this your 2008 tax return?

14 A. Yes, sir, looks to be.

15 Q. And if we move down the page, I want to call your  
16 attention to line 12, business income or loss, indicates  
17 that you had a 16,182-dollar loss, is that what this reads?

18 A. Yes, sir.

19 Q. Let's go to the Schedule C which should be seven pages  
20 back -- excuse me, let's stop. On page two at the bottom,  
21 it indicates that the preparer's signature, Angela Urrabazo?

22 A. Yes, sir.

23 Q. The third party designee for the IRS is Margaret  
24 Hosseini. Would this be one of those situations where  
25 Ms. Urrabazo started the return and then Ms. Hosseini

MARIO DOMINGUEZ - DIRECT

1 finished it?

2 A. Yes, sir.

3 Q. Took care of any of the details?

4 A. Yes, sir.

5 Q. Now let's go to page seven. Page seven is labeled  
6 Schedule C Profit Or loss From A Business, is that correct?

7 A. Yes, sir.

8 Q. And at the top of the page, name of proprietor, Mario  
9 Dominguez, that's you?

10 A. Yes, sir, correct.

11 Q. And it indicates that you work as a security officer  
12 and the business name is Mario Dominguez, is that correct?

13 A. Yes.

14 Q. So this is the off-duty security work that you would  
15 do?

16 A. Correct.

17 Q. Turn to page two of the Schedule C, you'll see mobile  
18 phone business use \$2,760. Did you have a mobile phone that  
19 you used exclusively for your security business?

20 A. I had three different phones. One was provided by DEA,  
21 one was provided by Bexar County Sheriff's and the third I  
22 use for business, personal phone.

23 Q. It was your personal phone?

24 A. Yes, sir.

25 Q. Would you use it for personal calls and things like

MARIO DOMINGUEZ - DIRECT

1 that?

2 A. Yes, sir, both.

3 Q. So it was mixed use?

4 A. Yes, sir.

5 Q. How much of that mobile phone do you think you used  
6 solely for the use of the security business, what  
7 percentage?

8 A. Probably little over half.

9 Q. Do you remember what your monthly mobile phone bill  
10 was?

11 A. I'm going to guess around 200 maybe, maybe 150,  
12 somewhere around there.

13 Q. You said you had three phones, one provided by DEA?

14 A. Yes, sir.

15 Q. When you were doing your narcotics work. One provided  
16 by Bexar County?

17 A. Yes, sir.

18 Q. And you had a personal phone, correct?

19 A. Right.

20 Q. During this period of time during 2008, did your wife  
21 have a phone?

22 A. Yes, sir.

23 Q. Was that all part of your phone plan?

24 A. Yes, sir.

25 Q. Okay. And when you say that it costs you around \$200

MARIO DOMINGUEZ - DIRECT

1 or so for a month for your phone, does that include your  
2 phone and your wife's phone?

3 A. Yes, sir.

4 Q. Does your wife do any security work?

5 A. No, sir.

6 Q. Did she call people for your security work?

7 A. No, sir.

8 Q. So when we're talking about this \$200 a month for your  
9 phone bill, maybe a little bit more, we're talking about  
10 your phone and her phone, is that right?

11 A. Correct.

12 Q. And your phone was used maybe 50 percent of the time?

13 A. Yes, sir.

14 Q. Her phone was never used for it?

15 A. Correct.

16 Q. Did you ever tell Ms. Hosseini that your entire phone  
17 bill was due to your security work?

18 A. No.

19 Q. Did she ever ask you?

20 A. No, she just asked for figures.

21 Q. She just asked you what's your phone bill?

22 A. Exactly.

23 Q. Did she ever ask you any details of how you used your  
24 cell phone or anything like that?

25 A. No, sir.

MARIO DOMINGUEZ - DIRECT

1 Q. Or what your phone bill covered?

2 A. No, sir.

3 Q. Let's see. Let's go back to the first page of the  
4 Schedule C and if you'll look at line nine in part two, sort  
5 of the middle of the page talks about car and truck expenses  
6 and it says \$13,080. Do you know did you spend \$13,080 on  
7 your vehicle?

8 MR. BARNES: Objection, Your Honor, it's  
9 misleading about the nature --

10 THE COURT: Jury is instructed that includes  
11 depreciation mileage, gasoline bills, tax loss as opposed to  
12 actual out-of-pocket, but the question --

13 MR. SUROVIC: Your Honor, this one doesn't. This  
14 does not include depreciation. This is merely expenses for  
15 car and truck.

16 THE COURT: Okay.

17 MR. SUROVIC: Now, that would include fuel and  
18 things like that.

19 THE COURT: All right. Jury is still instructed.

20 BY MR. SUROVIC:

21 Q. Did you spend \$13,000 on your vehicle?

22 A. No, sir.

23 Q. What type of vehicle did you use for the security  
24 stuff?

25 A. Every year I had a different vehicle. I think I had a

MARIO DOMINGUEZ - DIRECT

1 Harley Davidson and a Challenger, but I'm not sure on this  
2 year.

3 Q. Did you keep a mileage log or anything like that when  
4 you were doing this?

5 A. I kept the gas receipts with that one credit card that  
6 I used and then mileage, yes, I believe I did.

7 Q. So you kept a mileage log as well?

8 A. I believe so.

9 Q. If you will go to it is the page beyond the Schedule C,  
10 you'll have Schedule C then you'll have the page we just  
11 talked about with the phone bill on it?

12 A. Yes, sir.

13 Q. And then there's a page right after that?

14 A. After the phone bill page?

15 Q. Correct. And you see it says, Type, business vehicle,  
16 and then 2008/01/01, 24,000, see where it says that?

17 A. Correct.

18 Q. Did you drive 24,000 miles?

19 A. No.

20 Q. Related to your security work?

21 A. I don't believe so, no.

22 Q. And would you have had written proof that you had  
23 driven 24,000 miles?

24 A. If I would have, yeah, I would have, but I don't recall  
25 that.

MARIO DOMINGUEZ - DIRECT

1 Q. You don't recall that many miles?

2 A. No, sir.

3 Q. If we go further back in the filing and this is a long  
4 way back, might be easier to go from the back forward, six  
5 pages from the very back of that filing. By the way, this  
6 might be a good time to point out you had to amend your  
7 income tax return that year, is that right?

8 A. Correct.

9 Q. And shortly after the page we just talked about. Do  
10 you remember what you amended your tax return for?

11 A. No, sir, I really don't.

12 Q. I'll go back to that in a second. Here on this page  
13 did you find the page that says Federal Supporting  
14 Statements Schedule C, line 43, vehicle info? This is the  
15 one that's like six pages from the back.

16 A. We're still on the 2001?

17 Q. Yes.

18 A. Six pages back I got profit and loss.

19 MR. SUROVIC: Your Honor, if I could approach?

20 THE COURT: Yes.

21 BY MR. SUROVIC:

22 Q. These pages that were in -- it's part of the exhibit,  
23 but they're broken in two parts because it's the 1040 and  
24 1040X, is that right?

25 A. Correct.

MARIO DOMINGUEZ - DIRECT

1 Q. So you're now looking at a page that's actually in the  
2 1040X, is that correct?

3 A. Yes, sir.

4 Q. Now, this page again it's Federal Supporting Statements  
5 and if you look at it, it talks about 0101 07, zero business  
6 miles, not even sure why that's there and then 0101 2008  
7 24,000 business miles. Did you ever tell Ms. Hosseini that  
8 you had driven 24,000 miles in relation to the security  
9 business?

10 A. No, sir, I don't remember that.

11 Q. Or that you had evidence that you had driven  
12 24,000 miles?

13 A. No, sir.

14 Q. If you go to the first part of that document that we're  
15 just looking at?

16 A. Okay.

17 Q. Just that one section, the 1040X?

18 A. Okay.

19 Q. Turn to the very front after the blue page, this is  
20 your 1040X for the calendar year 2008, is that correct?

21 A. Yes, sir.

22 Q. Now, if you'll turn to the second page, at the bottom  
23 there's an explanation of why you're making the changes to  
24 your tax return. Could you tell us what it says there?

25 A. It says, Received 1099 miscellaneous not included on



MARIO DOMINGUEZ - DIRECT

1 original return filed income from 1099 miscellaneous was  
2 included on Section C amending return to the add 1099  
3 miscellaneous to Schedule C and readjust income originally  
4 reported from 8,000 to 4860.

5 Q. So you just added income, that's all that happened?

6 A. Correct.

7 Q. So that's the only change you made to the return, you  
8 didn't make the change as far as the phone bill or the  
9 mileage or anything like that?

10 A. No, sir.

11 Q. Let's take a look at Government Exhibit 20-3. Should  
12 be the next folder?

13 A. Yes, sir.

14 Q. This is the preparer's copy, this was taken from  
15 Ms. Hosseini's office when the IRS did a search. You're  
16 familiar with house searches are conducted, right?

17 A. Yes, sir.

18 Q. So this would be collected as evidence. You indicated  
19 that you did a worksheet and I would ask you I believe that  
20 your worksheet is going to be at page 18, but if you could  
21 look through that and 18 I think it's the third page from  
22 the end, but if you could look through that document and let  
23 me know if you could identify the worksheet that you did?

24 A. Yes, sir.

25 Q. Is it page 18?

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1 A. Yes, sir, third one from the back.

2 Q. And this talks about your uniform alterations, duty  
3 gear, you spent \$350 on weapons and ammo that year,  
4 flashlight, dues. You have to pay dues to various  
5 associations in order to be a deputy, is that correct, law  
6 enforcement officer?

7 A. Yes, sir.

8 Q. Mileage, in the second column towards the bottom,  
9 there's no indication there of any mileage?

10 A. No, sir.

11 Q. Does that indicate to you that you didn't provide her  
12 with any mileage for your deputy duty, your off-duty work I  
13 should say?

14 A. That's correct, sir, usually means we went to receipts.

15 Q. Now, I'd ask you to look through the file, do you see  
16 any receipts or anything like that concerning -- you  
17 indicated that you had credit card -- you had run everything  
18 on a credit card, do you see a copy of that in here?

19 A. No, sir.

20 Q. So it was not kept by Ms. Hosseini?

21 A. No, sir.

22 Q. If we look -- as you're going through, you look at it  
23 and you'll notice that on every page either you signed or  
24 you initialed, is that correct?

25 A. Yes, sir, that's correct.

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1 Q. Now, how did you do the review of your tax form? What  
2 would happen after you gave her all the information, you sat  
3 down with her, discussed things and then what happened next?

4 A. Basically she would tell me how much I'm going to get  
5 back and she would take the amount that I owe her out of  
6 that amount.

7 Q. Did she do that right there while you were there or did  
8 she make you leave and come back?

9 A. No, we left and I came back and signed and I guess it  
10 was after she had prepared it, I believe, I'm not exactly  
11 sure, but I think I came.

12 Q. Did it vary sometimes?

13 A. Yes.

14 Q. Sometimes she would make you come back?

15 A. Once we became regulars, then everything would come  
16 through e-mail.

17 Q. You wouldn't even show up and talk to her?

18 A. Correct.

19 Q. At some point, though, you had to go into the office  
20 and sign these obviously, these are your signatures?

21 A. Yes, sir.

22 Q. When you did that, how was the review conducted?

23 A. I don't remember. As far as review, what exactly?

24 Q. For example, when you sign off on all these pages, and  
25 it's a fairly hefty number of pages, how would you sign it?

MARIO DOMINGUEZ - DIRECT

1 A. She just told me which one to sign and I would just  
2 sign.

3 Q. Did you read through everything and did she explain  
4 what the different numbers were?

5 A. No, sir, it took about a minute, I just initialed  
6 everything.

7 Q. Did you understand at that point that you were  
8 essentially signing your tax return?

9 A. Yes, sir, I did, I just trusted her.

10 Q. Did she tell you make sure you carefully verify any of  
11 these numbers because I don't want any mistakes?

12 A. No, we always talked about something else.

13 Q. What were you really concerned about at this point?

14 A. My amount that I didn't have to pay or get back, dollar  
15 amount.

16 Q. What your refund was going to be, right?

17 A. Exactly.

18 Q. If I could get you to turn to page six, it's a document  
19 titled Bank Product Information, do you see that?

20 A. Yes, sir.

21 Q. In the middle of that page there's a box and if you'll  
22 look down, you see in bold typing Total Projected Bank Fee,  
23 \$30.95?

24 A. Yes, sir.

25 Q. Right underneath it, it says Tax Preparation. How much

## JURY TRIAL

1 did you pay Ms. Hosseini in order to prepare your taxes?

2 A. I think I was on the wrong page here.

3 Q. It says at the top Bank Product Information.

4 A. Yes, sir.

5 Q. And then you see the bold Total Projected Bank Fee?

6 A. I've got Tax Preparation 477.05.

7 Q. Right, Tax Preparation 477.05. Did you realize you  
8 paid her \$477.05 to prepare your taxes?

9 A. No, sir.

10 Q. The bottom, though, this was of interest to you, did  
11 you realize you were getting a refund of \$3,741?

12 A. Yes, sir, I knew that much.

13 Q. Is that close to what you remember get in 2008?

14 A. Yes, sir, probably right.

15 Q. 3,741-dollar refund, that's a lot more than you got in  
16 the past, is that correct?

17 A. Yes, sir, a lot more.

18 Q. But by the same token, \$477 is a lot more than you had  
19 to pay in the past?

20 A. Yes, sir.

21 Q. Let's go now to Government Exhibit Number 21-1, the  
22 next folder.

23 THE COURT: I object. Let's not. All right.

24 Mr. Dominguez, can you be here at 8:30 tomorrow?

25 THE WITNESS: Yes, sir.

JURY TRIAL

1 THE COURT: Ladies and gentlemen, we will continue  
2 with the direct testimony of Mr. Dominguez, but then -- and  
3 that's going to take another 30, 40 minutes and then of  
4 course the defense would take some time to cross-examine, so  
5 rather than have to break and in order to keep it separate,  
6 you've heard about 2008 and now tomorrow morning you'll hear  
7 about 2009 and then the cross-examination. Mr. Rojas tells  
8 me the doors will be open for anybody who wants to get here  
9 that early at 7:45. We won't start until 8:30. Keep in  
10 mind your instructions, don't talk about the case. You can  
11 think about it, but don't talk about it. Be back ready to  
12 go at 8:30 tomorrow morning. Thank you. Oh, sorry, excuse  
13 me. Tomorrow, as you recall, we're going to quit at two and  
14 so we'll probably take a break around 10:15, 10:30. If you  
15 want to bring lunch or snacks, whatever, it will be in that  
16 time frame and then we'll quit at two if you want to go eat  
17 lunch after that, but that will be the schedule for  
18 tomorrow. Thank you very much. We're in recess.

19 COURT SECURITY OFFICER: All rise.

20 (3:36 p.m.)

21 \* \* \*

22 (3:37 p.m.)

23 THE COURT: Mr. Surovic, before we started with  
24 Mr. Dominguez, you had indicated -- I said something about  
25 letting other people go for today, you had indicated that he

## JURY TRIAL

1 was the last witness. Last witness for today or for the  
2 case?

3 MR. SUROVIC: Last witness for today, Your Honor.  
4 We also have Mr. Joe Escobedo and he has four years of tax  
5 returns to go through and then I have Agent Robles.

6 THE COURT: Okay.

7 MR. SUROVIC: We're almost there.

8 THE COURT: I just want to make sure that  
9 everybody understood that -- I misunderstood perhaps  
10 optimistically hopeful that you were going to drop the four  
11 counts with the Escobedos, but I was not correct.

12 MR. SUROVIC: No such luck, Your Honor.

13 THE COURT: Mr. Barnes I tried.

14 MR. BARNES: Thank you.

15 THE COURT: Anything else, Mr. Surovic, outside  
16 the presence before we recess for the day?

17 MR. SUROVIC: Your Honor, I asked and I announced  
18 this when we -- right when we came back from lunch, I asked  
19 the IRS agents to frantically pull together every return  
20 they could for the witnesses. They have now provided those  
21 returns and I am providing them to Mr. Barnes. To my  
22 knowledge, there is nothing exculpatory in those returns,  
23 but he's more than welcome to look at them.

24 THE COURT: All right, very well. Anything else  
25 for the defense?

JURY TRIAL

1 MR. BARNES: No, Your Honor.

2 THE COURT: Very well. Thank you. You all may be  
3 excused. I need to talk to Ms. Fernandez.

4 \* \* \*

5 (3:38 p.m.)  
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JURY TRIAL

\* \* \* \* \*

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF TEXAS

I certify that the foregoing is a correct transcript  
from the record of proceedings in the above-entitled matter.  
I further certify that the transcript fees and format comply  
with those prescribed by the Court and the Judicial  
Conference of the United States.

Date signed: September 28, 2017

/s/ Angela M. Hailey

-----  
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**COURT SECURITY**  
**OFFICER: [9]** 4/9  
 58/8 58/11 58/15  
 132/16 143/12  
 201/12 201/16  
 270/18  
**MR. BARNES: [52]**  
 3/9 3/16 4/3 20/8  
 23/17 27/9 28/15  
 36/22 49/4 51/11  
 52/24 53/2 89/17  
 90/23 97/17 100/4  
 100/7 109/10  
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**THE COURT: [148]**  
 3/1 3/8 3/10 3/21  
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<b>THE COURT: . . . [11]</b>	<b>\$11,595 [1]</b>	71/19	<b>\$2,980 [2]</b>	82/14
261/18 263/19	<b>\$11,715 [1]</b>	222/22	82/24	
269/22 269/25	<b>\$12,000 [2]</b>	153/12	<b>\$2,985 [1]</b>	110/11
270/22 271/5 271/7	154/21		<b>\$200 [10]</b>	79/9
271/12 271/14	<b>\$12,129 [2]</b>	152/4	112/12 112/12	
271/23 272/1	153/15		113/3 127/25	
<b>THE WITNESS: [17]</b>	<b>\$12,214 [2]</b>	109/7	128/19 130/18	
4/18 5/21 28/23	109/16		155/15 259/25	
29/15 53/15 100/20	<b>\$12,387 [1]</b>	245/10	260/8	
143/19 167/16	<b>\$120 [1]</b>	188/20	<b>\$21,183 [1]</b>	45/3
168/3 168/24	<b>\$13,000 [1]</b>	261/21	<b>\$22,158 [1]</b>	191/9
200/16 201/2	<b>\$13,080 [2]</b>	261/6	<b>\$22,360 [1]</b>	174/7
201/23 229/22	261/6		<b>\$239 [1]</b>	215/13
233/7 250/13	<b>\$15,142 [1]</b>	118/12	<b>\$250 [2]</b>	65/23
269/24	<b>\$150 [1]</b>	12/5	66/13	
<b>\$</b>	<b>\$16,275 [1]</b>	40/4	<b>\$27,386 [1]</b>	241/21
	<b>\$160 [2]</b>	73/19	<b>\$298 [1]</b>	226/23
	214/22		<b>\$3,000 [3]</b>	119/9
<b>\$1,046 [1]</b>	<b>\$17,025 [1]</b>	221/1	119/23 119/23	
<b>\$1,080 [1]</b>	<b>\$17,621 [1]</b>	229/8	<b>\$3,209 [1]</b>	85/7
<b>\$1,100 [1]</b>	<b>\$18,175 [2]</b>	36/20	<b>\$3,600 [2]</b>	240/15
<b>\$1,120 [2]</b>	37/4		240/23	
83/22	<b>\$181 [1]</b>	214/13	<b>\$3,719 [2]</b>	188/2
<b>\$1,137 [2]</b>	<b>\$19,740 [6]</b>	174/10	188/5	
220/1	174/25 177/4		<b>\$3,741 [1]</b>	269/11
220/4	178/19 178/21		<b>\$30 [1]</b>	247/5
<b>\$1,200 [9]</b>	178/23		<b>\$30,000 [2]</b>	12/19
62/16 72/14 72/16	<b>\$2,023 [1]</b>	216/13	12/20	
74/2 74/9 81/25	<b>\$2,028 [3]</b>	213/15	<b>\$30,636 [1]</b>	110/5
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