UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

ADHAM AMIN HASSOUN,

Petitioner,

v.

JEFFREY SEARLS, in his official capacity Acting Assistant Field Office Director and Administrator of the Buffalo Federal Detention Facility,

Respondent.

Case No. 1:19-cv-00370-EAW

PETITIONER'S MEMORANDUM REGARDING FED. R. EVID. 611(A)

In the event that Respondent calls Petitioner as a witness, Petitioner respectfully requests that the Court exercise its discretion under Fed. R. Evid. 611(a) and permit him to testify last. As the Supreme Court has recognized, "[i]f truth and fairness are not to be sacrificed, the judge must exert substantial control over the proceedings." *Geders v. United States*, 425 U.S. 80, 87 (1976). Accordingly, "[c]ontrol of the order and method of presentation of evidence is left to the discretion of the trial judge." *United States v. Vinson*, 606 F.2d 149, 155 (6th Cir. 1979) (citing Fed. R. Evid. 611(a)); *see also Johnson v. Mortham*, 915 F. Supp. 1574, 1581 (N.D. Fla. 1996) ("There will be no error in changing the order of presentation, so long as the court does not shift the ultimate burden of proof or persuasion to the other party."); *Geders*, 425 U.S. at 86 ("The trial judge must meet situations as they arise and to do this must have broad power to cope with the complexities and contingencies inherent in the adversary process. To this end, he may determine generally the order in which parties will adduce proof; his determination will be reviewed only for abuse of discretion.").

If Respondent calls Petitioner to the stand, Petitioner respectfully requests that the Court require him to testify only after Respondent has otherwise concluded its case. This will give Petitioner a complete view of Respondent's case and will enable him to weigh whether to invoke his privilege against self-incrimination in response to particular questions, thereby potentially putting himself at risk of an adverse inference, or whether to waive the privilege. Such an order would be consistent with due process. In civil proceedings, due process requires that the government provide a person accused of wrongdoing with advance notice of the allegations against him. *Wolff v. McDonnell*, 418 U.S. 539, 564 (1974) ("Part of the function of notice is to give the charged party a chance to marshal the facts in his defense and to clarify what the charges are, in fact."). Here, the government has reserved the right to present evidence regarding allegations not in the FBI letter, meaning that the government could call Mr. Hassoun to testify before he even knows all of the allegations against him.

Moreover, it would be more efficient to call Mr. Hassoun at the end of the government's case. *See* Fed. R. Evid. 611(a) ("The court should exercise reasonable control over the mode and order of examining witnesses and presenting evidence so as to . . . avoid wasting time."); *In re Levine*, 27 F.3d 594, 596 (D.C. Cir. 1994) ("[W]e must ensure the court's authority to make the rulings necessary to the orderly and efficient administration of justice")(citing Fed. R. Evid. 611(a)); *United States v. Colomb*, 419 F.3d 292, 297 (5th Cir. 2005)("Federal Rule of Evidence 611(a) . . . authorizes the Court to control the 'mode and order' of the presentation of admissible evidence to ensure trial time is used efficiently." *Madison v. Courtney*, No. 4:18-CV-671-O, 2019 WL 3802025, at *3 (N.D. Tex. June 5, 2019). If Mr. Hassoun is called at the outset of the government's case, he will need to testify a second time during the Petitioner's case to answer any allegations that he was not asked about in his first testimony. This would necessitate calling Mr.

Hassoun twice and needlessly waste the Court's time. If Mr. Hassoun is called at the end of the government's case, he will only need to testify once in order to provide any testimony necessary to respond to the government's case.

Respectfully submitted,

/s/ A. Nicole Hallett

Jonathan Hafetz
Brett Max Kaufman
Charlie Hogle*
American Civil Liberties Union Foundation
125 Broad Street, 18th Floor
New York, NY 10004
212-549-2500
jhafetz@aclu.org
*not admitted to WDNY

Judy Rabinovitz
Celso Perez
American Civil Liberties Union Foundation
Immigrants' Rights Project
125 Broad Street, 18th Floor
New York, NY 10004
212-549-2616
jrabinovitz@aclu.org

Victoria Roeck
Christopher Dunn
New York Civil Liberties Union Foundation
125 Broad Street, 19th Floor
New York, NY 10004
212-607-3300
cdunn@nyclu.org

Jonathan Manes
Roderick & Solange MacArthur Justice Center
160 E. Grand Ave., 6th Floor
Chicago, IL 60611
312-503-0012
jonathan.manes@law.northwestern.edu

A. Nicole Hallett
Supervising Attorney
Brian Zagrocki
Samantha Becci
Student Attorneys
Mandel Legal Aid Clinic
University of Chicago Law School
6020 S. University Avenue
Chicago, IL 60637
773-702-9611
nhallett@uchicago.edu

Erin Barry
Colton Kells
Marline Paul
Student Attorneys
University at Buffalo School of Law
507 O'Brian Hall, North Campus
Buffalo, NY 14260
716-645-2167

Counsel for Petitioner

Dated: April 3, 2020
Chicago, IL