

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

- - -

KHADIDJA ISSA,	:	215:16-cv-03881-EGS
Plaintiff,	:	PHILADELPHIA, PA
vs.	:	
	:	
THE SCHOOL DISTRICT OF	:	
LANCASTER,	:	August 17, 2016
Defendant.	:	2:06 p.m. - 3:56 p.m.

TRANSCRIPT OF PRELIMINARY INJUNCTION HEARING  
BEFORE THE HONORABLE EDWARD G. SMITH  
UNITED STATES DISTRICT JUDGE

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PROCEEDINGS

1 DEPUTY CLERK: All rise. United States District  
2 Court is again in session. The Honorable Edward G. Smith  
3 presiding.

4 THE COURT: You may be seated thank you. The  
5 Court is called to order. All parties previously present are  
6 once again present. Mr. Rothschild, you may call your next  
7 witness, sir.

8 MR. ROTHSCHILD: Before we do that, Your Honor I  
9 just, sort of if we could go through the schedule that the  
10 parties have discussed and I'll also ask you some questions  
11 about scheduling.

12 THE COURT: Certainly.

13 MR. ROTHSCHILD: Okay. So today we're going to  
14 call the two Dunia brothers who are sitting on the benches and  
15 then we would attempt to play the Megan Brown [ph] video.

16 THE COURT: Okay.

17 MR. ROTHSCHILD: So I think that -- that's  
18 probably a full day, not as full as yesterday, but I'm sure  
19 nobody would mind that.

20 THE COURT: Very well.

21 MR. ROTHSCHILD: And then tomorrow the last two  
22 live witnesses that we'll call are Jenny Rivera former teacher  
23 at Phoenix and our expert Elaine Marshall. We also will move  
24 into evidence the deposition designations that we've given  
25 counsel and she's told me that she's not going to do counter

1 designations so though would be in the record and that would  
2 be [indiscernible] some of these [indiscernible] evidence  
3 since the witnesses have testified.

4 And then Ms. O'Donnell's told me that her first  
5 two witnesses I hope I'm not disclosing somebody they haven't  
6 heard yet, but her two clients are sitting next to her Ms.  
7 [Indiscernible] and Ms. Hisey and I'm sure that that will at  
8 least take us through Thursday, we may not be completed  
9 through Thursday and then she has a group of witnesses that  
10 would follow after that presumably on Friday.

11 My strong expectation, I know my co-counsel is  
12 that we'll not get through all the witnesses much less closing  
13 on Friday and so one question I had was what the Court's  
14 ability is to continue this hearing next week.

15 THE COURT: We would continue Monday morning,  
16 yes.

17 MR. ROTHSCHILD: Great. And the only other  
18 question I had or both counsel had was what you are  
19 contemplating for post-trial submissions on the schedule?

20 THE COURT: The schedule I don't know, because I  
21 have to coordinate that with you to take into account the  
22 urgency of the situation. I know we had discussed this back  
23 when we were trying to arrange it all and I don't have my  
24 notes with me, but I don't know if we specifically noted at  
25 that time how long counsel would've to prepare their finding

1 of facts and conclusions of law. But I know it was on a very  
2 expedited basis.

3 MR. ROTHSCHILD: I don't remember that that was  
4 in the order, yeah.

5 MS. O'DONNELL: I don't recall that we discussed  
6 it. It certainly was not reduced to writing.

7 THE COURT: Okay. So, I guess what we'll do is  
8 we will take a look at a calendar and decide what is --  
9 nothing's going to be reasonable, because it will be extremely  
10 urgent, but what is going to be doable under the circumstances  
11 to meet the needs of exigency along with the needs of having  
12 the time to properly prepare those documents.

13 MS. O'DONNELL: And our -- will we have  
14 transcripts available to us? Will we be able to get trial  
15 transcripts [indiscernible] hearing transcripts so we can  
16 prepare our findings?

17 THE COURT: Attorney Kulick.

18 ESR OPERATOR: Some have been e-mailed out  
19 already this morning.

20 MS. O'DONNELL: Right. Okay.

21 THE COURT: So I would expect, yes, that we'll  
22 probably have all the transcripts shortly after the close of  
23 the testimony.

24 ESR OPERATOR: I understand they didn't order it  
25 as a daily and I don't know who's ordered it, it has not been

1 us.

2 MR. ROTHSCHILD: My law firm ordered it and my  
3 understanding is fortunately we have a morning transcript from  
4 yesterday, I'm assuming we'll get the evening -- oh  
5 [indiscernible] actually by now, so that's a good indication  
6 of the schedule [indiscernible] delivery.

7 THE COURT: And with respect to schedule, I  
8 assume we will be able to complete the case by the end of  
9 Monday.

10 MS. O'DONNELL: I would say, yes. I mean, I  
11 have, I -- I have no desire to go into Monday, but --

12 THE COURT: Right, because Tuesday would be  
13 somewhat problematic for me to continue on Tuesday.

14 MR. ROTHSCHILD: I -- I think we be able to do  
15 that.

16 THE COURT: I should keep pushing things back  
17 and start stacking up and stacking up when it gets harder to  
18 keep --

19 MR. ROTHSCHILD: We better get to work now so  
20 that we can [indiscernible] I -- I think we'll be able to do  
21 that, but I thank you for [indiscernible].

22 THE COURT: Very well. And, sir, you may call  
23 your next witness.

24 MS. TACK-HOOPER: Your Honor, we'd like to  
25 call --

1 THE COURT: Or, ma'am, I'm sorry.

2 MS. TACK-HOOPER: We'd like to call to the  
3 stand.

4 THE COURT: And we'll swear the interpreter  
5 first.

6 DEPUTY CLERK: Would you please raise your right  
7 hand.

8 - - -

9 (PASCAL TEKTIMBU - TRANSLATOR - SWORN)

10 - - -

11 THE COURT: And sir, would you please state your  
12 full name for the record.

13 INTERPRETER: My name is Pascal Tektimbu [ph].

14 THE COURT: And what language will you be  
15 interpreting here today?

16 INTERPRETER: I'll interpreting in Swahili.

17 THE COURT: Thank you very much, sir. Now you  
18 may swear the witness.

19 DEPUTY CLERK: Please raise your right hand.

20 - - -

21 (ALEMBE DUNIA - SWORN)

22 - - -

23 INTERPRETER: He said yes.

24 THE COURT: Thank you very much, sir. And, sir,  
25 would you please state your full name, spelling your last name



1 for the record.

2 INTERPRETER: My name is Alembe Dunia.

3 THE COURT: And how is the last name spelled.

4 INTERPRETER: A-L-E-M-B-E. Last name is  
5 D-U-N-I-A.

6 THE COURT: Thank you very much, sir.  
7 Counselor, you may proceed.

8 MS. TACK-HOOPER: Thank you.

9 - - -

10 EXAMINATION

11 - - -

12 BY MS. TACK-HOOPER:

13 Q. For the record, my name is Molly Tack-Hooper for the  
14 plaintiffs. When were you born Alembe?

15 A. I was born in Tanzania.

16 Q. And what date were you born on?

17 A. November 11, 1995.

18 Q. So that would make you 20 years old; is that right?

19 A. I'll be 21 in November.

20 Q. And you have a younger brother named Anyem; is that  
21 right, who's a plaintiff in this lawsuit as well?

22 A. He said yes, I have a brother.

23 Q. You mentioned you were born in Tanzania. Where is your  
24 family from originally?

25 A. He said my father from Congo. My mother from Tanzania.

1 Q. And so why was your family in Tanzania?

2 A. He said my father was teaching in Tanzania so and then  
3 he was forced to leave the Congo because of war so we were  
4 forced to go to Tanzania.

5 Q. What was your life like in Tanzania?

6 A. He said my life and my family life was very bad because  
7 my father was running for his life. People were coming after  
8 him so we been running here and there [indiscernible] 2008.

9 Q. Were you able to go to school in Tanzania?

10 A. I didn't go to school in Tanzania because we didn't  
11 have a stable life in Tanzania.

12 Q. Were any of your siblings able to go to school in  
13 Tanzania?

14 A. He said that it was just me and my brother and the  
15 other sibling weren't born yet.

16 Q. Okay. When -- I'm sorry, why did your family leave  
17 Tanzania?

18 A. He said my father has a people coming after him from  
19 the Congo so Tanzania was close to the Congo so we left  
20 Tanzania to be a little far from the Congo.

21 Q. And where did you go next?

22 A. We went to Mozambique.

23 Q. Do you know what year your family arrived in  
24 Mozambique?

25 A. We arrive in Mozambique in September 2013 -- 2003.

1 Q. And where did you live in Mozambique?

2 A. We were living in Nampula. A town called Nampula in  
3 Mozambique.

4 Q. And what kind of -- where did your family -- what kind  
5 of structure did you live in? Were you in a house? Were you  
6 in an encampment? Where did you live?

7 A. He said we live in a refugee camp.

8 Q. And what was like in the refugee camp?

9 A. It was a very bad life. We went through struggles as  
10 refugees, you know, you don't really have much and it was a  
11 very difficult life.

12 Q. Were you able to go to school in Mozambique?

13 A. Yes, I went to school.

14 Q. Did you go to school in the refugee camp?

15 A. Yes, that's where I went to school.

16 Q. How many hours of schooling did you get each day in the  
17 refugee camp?

18 A. I start class at 1:00 to 6:00.

19 Q. So about five hours a day?

20 A. About five hours if it's most, six hours.

21 Q. Okay. What language were you taught in?

22 A. He said we were taught in Portuguese.

23 Q. What was school like?

24 A. The school was a little bit good, but it was difficult  
25 for us because we come from an English speaking country,

1 Tanzania and then we went to a Portuguese speaking country so  
2 it was difficult for us.

3 Q. Did you study English at all in school in Mozambique?

4 A. He said we took some English classes, but it was just  
5 basic English like if we want to know what is the spoon, they  
6 tell you what the spoon is [indiscernible] that's it.

7 Q. Okay. Did your brother Anyem go to school with you in  
8 Mozambique?

9 A. Yes, we went to school together.

10 Q. How much schooling do you complete in Mozambique?

11 A. I went to eight grade.

12 Q. And what about Anyem?

13 A. It was at some point our life we didn't have enough to  
14 pay for the school so I have to go out of school and my  
15 brother was going until ninth grade.

16 Q. Okay. Why did you leave Mozambique?

17 A. He said we were there and our family was working with  
18 the U.N. to help us [indiscernible] to America.

19 Q. And do you know what date you arrived in the United  
20 States?

21 A. Yes, I know.

22 Q. Was it around November, 2014? Does that sound right?

23 A. Yes.

24 Q. When you arrived in the United States how much English  
25 could you speak?

1 A. I didn't knew English.

2 Q. Okay. What about Anyem? Could he speak English?

3 A. He said just basic English like say hello, that's it.

4 Q. The same basic English that you learned in Mozambique?

5 A. He said yes.

6 Q. Okay. What were you plans when you came to Lancaster?

7 What did you want to do with your life in the U.S.?

8 A. When I was in Mozambique I was thinking if I  
9 [indiscernible] to America I have to attend school.

10 Q. Why was education important to you?

11 A. He said because education would open doors for me.

12 Q. Can you tell -- so did you go to school in Lancaster?

13 A. I didn't go to school in Lancaster.

14 Q. Did you try to go to school in Lancaster?

15 A. He said [indiscernible] only school in Lancaster so  
16 some of my family member went to school there accept them, but  
17 for me they say I was too old to go to school.

18 Q. So can you tell the Judge what you remember about the  
19 process of trying to enroll in school?

20 A. We have a School District and then they ask us to fill  
21 out the paperwork. So we did what they asked us to do, so and  
22 then they say they will get in touch with us, but I never hear  
23 back from them.

24 Q. So when you went to the School District to do paperwork  
25 who went with you?

1 A. I went to -- me and my family.

2 Q. Did that include your brother Anyem?

3 A. He said yes, he was in first.

4 Q. Did you have an interpreter with you?

5 A. I think we did have someone to interpret for us, but  
6 Bilal was with us.

7 Q. Does -- what language does Bilal speak?

8 A. He just speak English with us.

9 Q. Okay. How much could you understand what was happening  
10 when you were in the School District's offices trying to  
11 enroll?

12 A. He said I understand a little bit.

13 Q. Did you take a test of your English ability at any  
14 point?

15 A. I didn't take the test.

16 Q. So what was the outcome of your attempt to enroll? Did  
17 you get into school? Did you ever -- you mentioned that you  
18 were waiting to hear back, did anyone tell you what the  
19 outcome was if you were going to get to go to school or not?

20 A. He said I was waiting, waiting so and I didn't hear  
21 anything back and then Mr. Bilal come to me and tell me they  
22 told him I was too old to go to school.

23 Q. How long were you waiting to hear back?

24 A. I was waiting about six months.

25 Q. What have you been doing -- so your siblings got into

1 school; correct?

2 A. He said yes, but me.

3 Q. Everyone but you?

4 A. Everyone but him.

5 Q. What have you been doing while the rest of your family  
6 went to school?

7 A. He said I was just home looking after my mother.

8 Q. What has it been like having the rest of your family in  
9 school while you're home looking after your mother?

10 A. I didn't feel good in my mind, you know, being home and  
11 then all my family member go to school and then I was home so  
12 it was very bad and mostly it was very good.

13 Q. Do you still want to learn English?

14 A. My objective to come to America was to learn first  
15 English so I'm still, I still want to learn English.

16 Q. And if you couldn't go to school in the School District  
17 would you still want to take English classes somewhere else?

18 A. I was willing to go anywhere I can learn English. So  
19 my goal was to learn English.

20 Q. Can you afford to pay for English classes or any kind  
21 of schooling?

22 A. I couldn't afford to pay for school, because I don't  
23 have anything, any money to pay for.

24 Q. Do you still want a chance to get a high school degree  
25 so that you could go onto college some day?

1 A. I want to go to get high school diploma, but they keep  
2 telling me I was too old to go to high school.

3 Q. How many times have you been told you're too old to go  
4 to high school?

5 A. I was told once by Bilal.

6 Q. By Bilal?

7 MS. TACK-HOOPER: May I take a moment, Your  
8 Honor to --

9 THE COURT: Certainly counselor.

10 MS. TACK-HOOPER: Thank you. All right.  
11 Nothing further right now, Your Honor.

12 THE COURT: Thank you very much, counselor.  
13 Attorney O'Donnell, you may cross-examine the witness.

14 MS. O'DONNELL: Just a few.

15 - - -

16 CROSS-EXAMINATION

17 - - -

18 BY MS. O'DONNELL:

19 Q. Good afternoon Alembe?

20 A. [Indiscernible].

21 Q. Do you remember me from last week?

22 A. Yes.

23 Q. Did you go to our graduation last night?

24 A. Yes, I went, but I didn't spend much time there,  
25 because I have an appointment somewhere.



1 Q. Who graduated?

2 A. He said my brother.

3 Q. You brother who? Anyem?

4 A. My brother, Anyem.

5 Q. Who else went? From your family, I'm sorry.

6 A. He said my old brother finished school, but I think one  
7 month ago.

8 Q. Oh, okay. Okay. And was -- was Ms. Hisey there?

9 A. He said I don't know.

10 Q. You didn't see her? Okay.

11 A. He said I didn't see -- I didn't see her.

12 Q. Okay. So I want to follow up. Were you aware that  
13 there are some places in Lancaster that provide free English  
14 language instruction?

15 A. Yes. I was told that.

16 Q. Okay. And have you followed up with those -- the free  
17 instruction?

18 A. I thought that was a waste of time for me, because what  
19 I was told those free [indiscernible] classes so they don't  
20 teach English very good so I figured to be a waste of time for  
21 me.

22 Q. Oh. Was it -- was it Bilal that went to enrollment  
23 with you and told you that you were too old to enroll?

24 A. Yes, he said Bilal took me there.

25 Q. And Alembe, were you told that you were too old to

1 graduate from school?

2 A. I was told I was too old, I could not study.

3 Q. And who told you that?

4 A. He said the first person who told me was the, I think  
5 the head of the school where I was trying to get then Bilal  
6 told me that after the head of the school, the principal, I  
7 think.

8 Q. I understand. So Alembe, do you understand that if you  
9 were to enroll at the age of 20 you would not have time to  
10 earn enough credits even on an accelerated basis to graduate  
11 by the time you were 21?

12 A. I didn't know that.

13 Q. All right. Thank you.

14 MS. O'DONNELL: That's -- that's all the  
15 questions I have.

16 THE COURT: Thank you very much, counselor. And  
17 Attorney Tack-Hooper do you have any further questions?

18 MS. TACK-HOOPER: I do, Your Honor.

19 - - -

20 REDIRECT EXAMINATION

21 - - -

22 BY MS. TACK-HOOPER:

23 Q. The lawyer for the School District mentioned Ms. Hisey.  
24 Do you know who Ms. Hisey is?

25 A. I don't know that name.

1 Q. Okay. Do you know any of the names of the people who  
2 work at Phoenix?

3 A. I don't know anybody there.

4 Q. Okay. When you were in the School District offices and  
5 Bilal told you that the District had said you were too old to  
6 go to school, in those meetings was there anyone who spoke to  
7 you in Swahili?

8 A. He said I didn't have anybody who speak [indiscernible]  
9 just Mr. Bilal was there and they speak English.

10 Q. Did anyone write you any explanations and translate  
11 them into Swahili?

12 A. He said no, just Bilal, Bilal explained to me  
13 everything in English.

14 Q. Would you rather get some high school education or no  
15 high school education?

16 A. He said I'll be more than happy to get some than  
17 nothing.

18 Q. Your brother started at Phoenix and graduated in the  
19 time that you were out of school; right?

20 A. He said yes.

21 Q. Do you think you could have graduated in the same  
22 amount of time at Phoenix?

23 A. I didn't know that.

24 Q. You haven't turned 21 yet; right?

25 A. Yes, not yet.

1 Q. Okay. Am I right that you've had some problems with  
2 your knee, Alembe?

3 A. I was playing soccer and then I was injured.

4 Q. When was this?

5 A. [Indiscernible] long time, I don't remember the date.

6 Q. And how have your knee problems effected your ability  
7 to work or take classes in Lancaster?

8 A. That's played only in my decision to stay home because  
9 I couldn't go to school or my knee was bothering me.

10 Q. Okay.

11 MS. TACK-HOOPER: Nothing further.

12 THE COURT: Thank you very much, counselor.  
13 Attorney O'Donnell do you have any recross?

14 MS. O'DONNELL: I have nothing further, thank  
15 you.

16 THE COURT: Very well, thank you. Sir, thank  
17 you very much, you may step down.

18 INTERPRETER: I say thank you [indiscernible].

19 THE COURT: And counselor you may call your next  
20 witness.

21 MS. TACK-HOOPER: We'd like to call Anyem Dunia.

22 THE COURT: And I will note for the record that  
23 the same interpreter will continue to interpret for the  
24 current witness. You may swear the witness.

25 DEPUTY CLERK: Please raise your right hand.

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(ANYEM DUNIA - SWORN)

- - -

THE COURT: Thank you very much, sir. And, sir, would you please state your full name spelling your last name for the record?

INTERPRETER: My name is Anyem Dunia.

- - -

EXAMINATION

- - -

BY MS. TACK-HOOPER:

Q. When's your birthday Anyem?

A. September 18, 1997.

Q. So when you arrived in Lancaster in November 2014 you would have been 17; is that right?

A. I was 17.

Q. How much English would you speak when you arrived in Lancaster?

A. I just knew just basic English like saying hello, hi.

Q. So the same as your brother?

A. He said yes, the same.

Q. Okay. Did you go to school in Lancaster?

A. Yes, I went to school.

Q. And can you tell the Judge what you remember about the process of enrolling in school?

1 A. So I went to the School District with my family so we  
2 met with a lady there and then she give me -- she gave me a  
3 test so I took the test and then after that I was enrolled in  
4 school.

5 Q. When you went to that meeting who went with you?

6 A. I went with my entire family.

7 Q. Okay. Was there anyone there interpreting there for  
8 you?

9 A. No one was there to interpret for us.

10 Q. Did any caseworkers go there with you?

11 A. Mr. Bilal went with us.

12 Q. Okay. Do you know who the lady was that you met with?

13 A. I don't remember her name.

14 Q. And you mentioned that they give you a test what was --  
15 what was being tested?

16 A. He said they just give me the test I did the test so I  
17 didn't know the test was [indiscernible] I just took -- did  
18 what they asked me to do.

19 Q. Was it in English?

20 A. So I have a paper with picture on so they asked me to  
21 write next to the picture what the picture means.

22 Q. And were you in the room with your whole family when  
23 you took this or did you go somewhere else to take the test?

24 A. It was just me and the lady who gave me the test.

25 Q. Where was the rest of your family during that?

1 A. They were in the waiting room.

2 Q. Did they meet with that same lady at some point, your  
3 brothers during this meeting?

4 A. It was just me, my older brother and my brother Alembe  
5 who met with the lady.

6 Q. So you each took a turn meeting with this lady?

7 A. Each, we have a tour so my brother first, me and then  
8 my older brother.

9 Q. Do you know how you did on that test?

10 A. I didn't know.

11 Q. What happened after you took the test?

12 A. We were just asked to sit down a little bit in the  
13 waiting room then after a couple minutes they asked us to go  
14 home.

15 Q. Okay. Did -- at some point do you meet with someone  
16 named Mr. Blackman?

17 A. After the test we went home and so and then after we  
18 get home and then one day we decided to go to McCaskey so  
19 [indiscernible] Mr. Blackman, so Mr. Black informed me that  
20 I'm not going to attend school at McCaskey so he'll be sending  
21 me to Phoenix School.

22 Q. So who was at that meeting where Mr. Blackman told you  
23 that you were not going to McCaskey you were going to the  
24 Phoenix School?

25 A. I was with Mr. Bilal, just me and him.

1 Q. Just the two of you, no interpreter?

2 A. No interpreter.

3 Q. Did you speak at all at that meeting?

4 A. I didn't say anything.

5 Q. How much could you understand what was happening in the  
6 meeting?

7 A. I didn't understand.

8 Q. How did that meeting turn out?

9 A. I was told to go to Phoenix. I couldn't attend the  
10 school at McCaskey so I was disappointed and then I went back  
11 home.

12 Q. Do you know why you could not attend school at  
13 McCaskey?

14 A. I don't know why.

15 Q. Okay. Let's talk about what your school days were like  
16 at McCaskey. I want to focus on just the last semester you  
17 did there. So can you name for me the classes that you took  
18 in your last semester at Phoenix?

19 A. My first class was skills preparation.

20 Q. Okay. What did you take after skills preparation?

21 A. After that was ESL.

22 Q. And after that?

23 A. After ESL, Communication Art.

24 Q. And after Communication Arts?

25 A. After Communication Art we took lunch, after lunch it



1 was Counseling.

2 Q. And what classes were after Counseling?

3 A. It was math after Counseling.

4 Q. Anything after Math?

5 A. After Math it was Chemistry.

6 Q. How much of the content of these classes did you  
7 understand?

8 A. I was understanding, but not much.

9 Q. Do you know what it was that you were supposed to be  
10 doing in Skills Prep?

11 A. What I understood with the class was just they asked us  
12 to work on computer [indiscernible].

13 Q. What would you do on the computers?

14 A. He said we did the test called SMR Test that we did on  
15 the computers.

16 Q. So you took tests on these computers?

17 A. He said yes.

18 Q. How much time did the teacher spend instructing you as  
19 opposed you taking these tests on the computer?

20 A. So first we get in class and they explain to us what we  
21 will be doing and then he asked us to spend the rest of the  
22 time on the computer.

23 Q. So how long did the explanation take relative to the  
24 time you spent actually doing the exercise?

25 A. Well, he was taking like one hour explaining to us what

1 we would be doing and then ask us to spend time on the  
2 computers.

3 Q. So you got an hour of instruction -- so most of the  
4 class you were learning not doing stuff on the computer?

5 A. So we didn't learn much in the class, most of the time  
6 it was just using the computer and then playing game in class,  
7 but we didn't learn much in the class.

8 Q. So it was mostly work on the computer not instruction;  
9 is that right?

10 A. We were learning, but not much, just a little bit, but  
11 most of the time the computer.

12 Q. Okay. So during the time when the teacher was actually  
13 talking to you how much of the words he was saying could you  
14 understand?

15 A. I catch up some word, but not everything it was a  
16 little bit.

17 Q. All right. Let's talk about counseling. Can you  
18 explain what you were supposed to be learning in counseling?

19 A. So in the class [indiscernible] it was paper with a  
20 test on so they test us very much every day in that class.

21 Q. What were you being tested on?

22 A. I don't remember everything.

23 Q. Do you remember anything?

24 A. I don't remember.

25 Q. What about Communication Arts? Do you remember

1 anything you studied in Communication Arts?

2 A. He said I remember a little bit.

3 Q. What do you remember?

4 A. Sometimes the teachers -- different stories, but I'm  
5 not comfortable about talking about any in here so I cannot  
6 say in here.

7 Q. What -- what is uncomfortable to talk about?

8 A. Show they taught us painful stuff and some of I don't  
9 mean and I'm not comfortable about talking about that now,  
10 because it bring bad memories [indiscernible].

11 Q. Did you say pitiful stuff is that what you stuff?

12 A. Painful, like --

13 THE COURT: Painful.

14 BY MS. TACK-HOOPER:

15 Q. Oh, painful, painful stuff?

16 A. Yeah, painful, yes.

17 Q. Painful stuff and you have bad memories of  
18 Communication Arts?

19 A. He said it was too much pain and I don't remember  
20 anything.

21 Q. Was it the content of the stories that you were reading  
22 or the experience of being in class that was painful?

23 A. The stories from the book s and from the material we  
24 use and it was too much pain for me to handle, you know, so I  
25 don't -- I don't remember anymore.

1 Q. Do you know what the stories were about? You don't  
2 have to be specific about it, but just generally?

3 A. We read the story from the book from [indiscernible]  
4 James McBride.

5 Q. Just make bread.

6 MR. ROTHSCHILD: James McBride.

7 BY MS. TACK-HOOPER:

8 Q. James McBride? Okay. Okay. All right. Let's switch  
9 to English class. How many periods a day did you have ESL?

10 A. Well, one time.

11 Q. Did you feel like one period a day of ESL was enough?

12 A. I think it wasn't enough for me because I want to learn  
13 English so that wasn't enough for me.

14 Q. Who else was in your English class? Did all the  
15 students speak English at the same level?

16 A. There's some [indiscernible] in my class where they're  
17 speaking better English than me.

18 Q. And your classes other than ESL were they with other  
19 students who were learning English or were there some students  
20 who spoke English in those classes?

21 A. He said yes.

22 Q. Yes, it was a mix of students, English speakers and  
23 English learners?

24 A. It were all better, those who speak better English and  
25 those who doesn't speak English.

1 Q. Can you estimate what percentage of the students in  
2 your classes spoke English pretty well?

3 A. It maybe -- maybe two students.

4 Q. I'm sorry.

5 A. He said maybe two students.

6 Q. Two students were learning English in each of your  
7 classes?

8 A. He said yes, two.

9 Q. Okay. So it sounds like you didn't understand a lot of  
10 what was happening in your classes. Do you feel like your  
11 teachers had enough time to teach you the subjects you were  
12 learning?

13 A. I think that they didn't have enough time, you know,  
14 they didn't have enough time to teach us what you want to  
15 learn, you know.

16 Q. How is the pace of the classes, by which I mean how  
17 quickly or slowly did your teachers go through the material  
18 they were teaching you?

19 A. Sometimes they go slow, sometimes they go fast and most  
20 of the time it was very fast, you know, couldn't keep up with  
21 them, you know.

22 Q. Does anyone else at Phoenix speak Swahili or did anyone  
23 else at Phoenix speak Swahili while you were there?

24 A. I was just myself who speak Swahili.

25 Q. How well can you communicate with your classmates?

1 A. I -- I [indiscernible] a couple times like 10 minutes  
2 or less than 10 minutes and then when I start it was stopped,  
3 you know.

4 Q. Are you talking about each day you would spend 10  
5 minutes trying to talk to classmates or one time you spent 10  
6 minutes trying to talk to your classmates?

7 A. He said every day, almost 20 at least I tried to say  
8 something every day, just in my -- in my quest to learn  
9 English or start to speak with my colleague, you know.

10 Q. How well could you communicate with your teachers and  
11 the staff at Phoenix?

12 A. He said maybe 10 or 15 minutes.

13 Q. You'd spend 10 or 15 minutes are they trying to  
14 communicate with staff and teachers and that what you're  
15 saying?

16 A. He said yes.

17 Q. How hard was it to communicate with your teachers when  
18 you needed to tell them something or they needed to tell you  
19 something?

20 A. It was very hard to communicate with them, very hard.

21 Q. How often did your teachers call an interpreter on the  
22 phone to help understand you or communicate with you?

23 A. I'm not aware of that because they never call anybody  
24 to interpret for me.

25 Q. Did they ever use a computer or an iPad to translate

1 something for you into Swahili?

2 A. I remember once, twice, I think when I was taking  
3 Social Study classes so they did that twice, I think when I  
4 was in that class.

5 Q. Do you know what grade that was in?

6 A. Ninth grade, ninth.

7 Q. Ninth grade. Did they translate just a word for you on  
8 those occasions or the whole lesson plan? How much did they  
9 translate?

10 A. [Indiscernible] so if they want me to do something, I  
11 just say what they want so then I read the words.

12 Q. So a few words, maybe?

13 A. Yes.

14 Q. How often did your teachers show you pictures to help  
15 you understand something they were saying?

16 A. They never showed me any picture.

17 Q. How often did your teachers use hand gestures or act  
18 something out to try to convey something to you?

19 A. Well they just teach like [indiscernible] teaching, you  
20 know, they didn't use much hand gesture, you know.

21 Q. Not many hand gestures?

22 A. No.

23 Q. How often did the School District or Phoenix send you  
24 mail that was translated into Swahili?

25 A. They never send me letter translated in Swahili.

1 Q. What about other schools in the district? Did your  
2 family get any mail in Swahili from the school?

3 A. And my other sibling goes to McCaskey they receive  
4 letter translated in Swahili from McCaskey.

5 Q. Can your mother read English at whether?

6 A. Just a little bit, she doesn't know much.

7 Q. Okay. Did you ever take any standardized tests at  
8 Phoenix like the Keystone Exams?

9 A. He said I did.

10 Q. What language was that test in?

11 A. It was in English.

12 Q. Did you ever an interpreter either in person, on the  
13 phone, on a computer to help you understand the test?

14 A. I didn't have an interpreter.

15 Q. That was did not have an interpreter?

16 A. I did not have an interpreter.

17 Q. Okay. Generally when you took tests at Phoenix what  
18 language were they in?

19 A. It was every time in English.

20 Q. Did you ever had an interpreter help you understand a  
21 test you were taking?

22 A. They never get me an interpreter.

23 Q. Okay. When you were at Phoenix were you aware of any  
24 after school activities that you could stay and participate  
25 in?



1 A. I wasn't aware of that.

2 Q. Would you have wanted to participate in activities  
3 after school?

4 A. He said yes, I would be interested.

5 Q. Is there something in particular you would have wanted  
6 to do, a sport you wanted to play or something?

7 A. Yeah, I wanted to play soccer.

8 Q. You like soccer?

9 A. He said [indiscernible] I love soccer.

10 Q. So you played before you came to the U.S.?

11 A. Yes, I was playing soccer before I come.

12 Q. Are you good at soccer?

13 A. [Indiscernible].

14 Q. Did any coaches from Phoenix or McCaskey ever come tell  
15 you that you could play soccer somewhere?

16 A. She said no one.

17 Q. Are you aware of any classes after school at Phoenix,  
18 where you could stay and get extra help?

19 A. I wasn't aware of that.

20 Q. Were you aware of any teachers who would stay late to  
21 give you extra help?

22 A. I didn't know any teacher who was doing that.

23 Q. Could you take books home with you at the end of the  
24 day to continue studying at home?

25 A. No.

1 Q. Could you take your class work or tests home to review  
2 them at home in the evenings?

3 A. No.

4 Q. Did anyone ever offer to photocopy a book or a class  
5 assignment so you could take it home with you?

6 A. No.

7 Q. Did you ever have a homework assignment you were  
8 supposed to take home and do at home?

9 A. No.

10 Q. Would it have been helpful to be able to bring home  
11 books or schoolwork so you could continue studying at home?

12 A. He said yes, it would be very good help for you.

13 Q. Okay. Anyem, do you know what grade you were in this  
14 past spring semester at Phoenix?

15 A. I don't know because the classes were mixed and people  
16 from tenth grade, ninth grade, eighth grade [indiscernible] so  
17 I didn't know what grade I was in.

18 Q. Had you ever seen your school records showing when you  
19 advanced from grade to grade?

20 A. He said I never saw them.

21 Q. Okay. I'd like you to look at 50 in that binder, the  
22 page that at the bottom says LSD87.

23 MS. TACK-HOOPER: Your Honor, may I --

24 THE COURT: This is day two binder?

25 MS. TACK-HOOPER: Day two binder. May I

1 approach, Your Honor?

2 THE COURT: Certainly counselor.

3 MS. TACK-HOOPER: Oh, I'm sorry, actually, let's  
4 start with 115, same tab, the page bates numbered one?

5 THE COURT: So it's at the bottom right.

6 MS. TACK-HOOPER: And I have extra copies if  
7 anybody needs them. I just have it in the binder. So Anyem,  
8 it looks like this.

9 BY MS. TACK-HOOPER:

10 Q. Okay. So this is the student transcript for Anyem  
11 Dunia and there's a graduation date above the line it says  
12 6-2-2016. Did you know that Phoenix had graduated you at the  
13 beginning of June?

14 A. I knew, but I didn't know if I will be finishing in  
15 June.

16 Q. Did you continue going to school after June 2nd?

17 A. I was going to school, I continue to go to after that.

18 Q. And where did you go to school? Where did you go to  
19 summer school?

20 A. I went to same school, Phoenix, yeah.

21 Q. Were all the students in this summer school program  
22 Phoenix students or were there kids there from other schools?

23 A. The summer classes were just for refugees so it was  
24 just us refugees.

25 Q. Were all the class from your ESL class there?

1 A. They were there, yes.

2 Q. Everybody?

3 A. Yes, everybody was there.

4 Q. When did that summer program start and finish?

5 A. I forget when the class start, but I knew it ended in  
6 July, I think.

7 Q. Ended in July?

8 A. July 18th.

9 Q. Okay. So this transcript there's a box at the bottom  
10 that says you are ranked sixth out of 170 kids at Phoenix did  
11 you know that?

12 A. I didn't knew that.

13 Q. It also says that during the 2014/2015 school year you  
14 were in grade 9 and in the 2015/2016 school year you were in  
15 grade 12; did you know that?

16 A. I didn't knew that because I didn't have anything to  
17 show me that I was [indiscernible].

18 Q. So you don't know when you did 10th and 11th grade  
19 exactly?

20 A. Mm-hmm.

21 Q. Okay. Now, I want to go to the page bate stamped LSD87  
22 in the same tab, the entry withdrawal list. So this document  
23 says at the -- on the second to bottom line that you started  
24 at Phoenix Academy as a new entry, student was previously  
25 enrolled in an out of state school on February 9, 2015. Does

1 that sound like the date when you started at Phoenix?

2 A. He said yes, [indiscernible] school.

3 Q. Okay. And according to this document ninth grade  
4 finished on June 4, 2015 and then in August 2015 you started a  
5 new school year as a 10th grader. Did you know that you were  
6 a 10th grader in the fall of 2015?

7 A. I did not know.

8 Q. Okay. And it says that 10th grade finished on January  
9 14, 2016 and on January 19, 2016 you started, you changed  
10 grade level to become an 11th grader. Did you know when that  
11 happened?

12 A. I didn't know any of that.

13 Q. This says that 11th grade finished on May 23rd of this  
14 year and on May 24th you started 12 grade; did you know that?

15 A. I didn't know because [indiscernible].

16 Q. Okay. And this says that 12th grade went from May 24,  
17 2016 to June 2, 2016, did you know that you did 12th grade in  
18 one week?

19 A. No, I didn't know that.

20 Q. Did anyone ever suggest to you that while you were  
21 earning all of these credits you had gotten enough that you  
22 could transfer to McCaskey?

23 A. Nobody told me that.

24 Q. Okay. What did you want to do with your life Anyem?

25 A. I would love to study [indiscernible] biology, I like

1 biology so I'd like all -- I want to be a biologist. So  
2 that's what I want to do with my life.

3 THE COURT: As a biologist.

4 INTERPRETER: Yeah, biologist, yes.

5 BY MS. TACK-HOOPER:

6 Q. Now that you've graduated from Phoenix did you feel  
7 prepared to pursue a career as a biologist?

8 A. He said I don't think so -- they prepared me to go to  
9 biology school here.

10 Q. Did you take any college prep classes at Phoenix?

11 A. He said no. I didn't take any -- any [indiscernible].

12 Q. Did anyone at Phoenix advise you about how to apply to  
13 college?

14 A. Nobody told me that. No other person.

15 Q. We talked a little bit before about how your English  
16 was when you came to the country, how is your English now?

17 A. Now it's a little better than when I first come to  
18 America, but I still have more to do.

19 Q. Okay. Let's take a look at one of your English  
20 assignments from the day before you graduated. It's in the  
21 same tab, it's the document bated stamped LSD132. Do you  
22 recognize this?

23 A. I remember this [indiscernible].

24 Q. Let's see. Do you remember doing this picnic exercise  
25 several times at Phoenix?

1 A. Yes, I remember.

2 Q. And did you write this one yourself?

3 A. I wrote this myself, yes.

4 Q. Okay. Next I want to look at the same exercise back  
5 when you were in ninths grade. This one is bate stamped  
6 LSD147. One, oh, I'm sorry, one four, I don't know what I  
7 said before, but it's 147, let me --

8 MS. TACK-HOOPER: May I approach, Your Honor?

9 THE COURT: Certainly counselor.

10 BY MS. TACK-HOOPER:

11 Q. Yeah, that's the one. So the one on the right there,  
12 this one stamped 147 you'd only been in school for about three  
13 months when you wrote this. Is that about how much English  
14 you could speak before you started at Phoenix?

15 A. Yes.

16 Q. Okay. Next I want to look at page 118 in the same tab.  
17 It should be your access scores for the test you took on  
18 February 5, 2015. Have you got that one page 118?

19 A. Yes.

20 Q. Okay. This says that you had a writing proficiency  
21 level of 3.6 compared to a listening proficiency level of 1.7,  
22 reading proficiency level of 2.5, comprehension proficiency  
23 level of 1.9, is that what you remember that it was -- you  
24 were better at writing English than listening, reading it,  
25 understanding it when you got here?

1 A. He said maybe, but I'm not sure about this.

2 Q. You can ignore the numbers. Is it -- when you got here  
3 was it easier for you to write in English than it was to speak  
4 or understand it?

5 A. Writing, reading or it was -- everything was the same,  
6 you know, I didn't knew much about the [indiscernible] and I  
7 didn't knew much of what the -- reading [indiscernible].

8 Q. What about today, are you better at writing than  
9 understanding or speaking English?

10 A. Today I write better and read better.

11 Q. How much do you think your English improved while you  
12 were at Phoenix?

13 A. It's improved a little bit, just a little bit.

14 Q. Okay.

15 THE COURT: And counselor can we go back I have  
16 just one question, before. Did he indicate that he can speak  
17 English better than writing English or he can write English  
18 better than speaking English?

19 INTERPRETER: He can read better.

20 THE COURT: He can read better?

21 INTERPRETER: Yeah.

22 THE COURT: What about writing? So he can also  
23 write better than speaking?

24 INTERPRETER: He said I can write also a little  
25 bit.



1 THE COURT: Write, okay. Thank you, I'm sorry  
2 for that interruption counselor, you may proceed.

3 MS. TACK-HOOPER: No, okay.

4 BY MS. TACK-HOOPER:

5 Q. Anyem, I want to talk a little bit about your  
6 classmates at Phoenix. How did you get along with your  
7 classmates at Phoenix?

8 A. I talked to them, but not much.

9 Q. Were you every bullied at Phoenix?

10 A. Yes, sometimes I was bullied, they bully me and then  
11 they make me mad. Sometimes [indiscernible].

12 Q. What did they do to make you mad?

13 A. He said they talk bad about me and they use the N-Word,  
14 they say I'm from somewhere else.

15 Q. Who is the "they" when you're talking about -- who are  
16 these kids who are bullying you?

17 A. I know just [indiscernible] classmates like I don't  
18 know what's they are from, but they are my classmates.

19 Q. Was it the same group of kids who would -- who would  
20 bully you every time or was it different groups of kids?

21 A. It was sometimes the same kids, sometimes different  
22 kids. It was -- it wasn't just the same group  
23 [indiscernible].

24 Q. How long did this bullying last?

25 A. Until [indiscernible] every day, but sometimes I was so

1 sick and tired of that so I started not paying attention to  
2 that.

3 Q. You started not paying attention to school or to the --  
4 to the bullies?

5 A. Well, my profession there was a to study even though --  
6 even though the school wasn't good, but my goal was to study  
7 so I did the best I can to [indiscernible] and then focus on  
8 my studies.

9 Q. Did the bullying make it harder to focus on your  
10 studies?

11 A. It was tough, you know, sometimes it cross your mind,  
12 but it was very tough.

13 Q. Did you ever see another student at Phoenix disrupt a  
14 class?

15 A. He said no, I never witnessed that. I never witnessed  
16 that, but most of the time they're bullying happened at like  
17 lunchtime.

18 Q. Did you ever see a teacher get into an argument with a  
19 student during class?

20 A. I saw sometimes a teacher kick kid out of the classroom  
21 because of disrupting behavior.

22 Q. And so how often did your teachers have to kick a kid  
23 out of the classroom for disrupting behavior?

24 A. Every time, I don't know how many time, but every time  
25 they [indiscernible] to other kids so they send -- ask them to

1 [indiscernible] classroom.

2 Q. Was the -- I'm trying to get a sense of whether this  
3 was every day, every week, once a year, how often?

4 A. It was very much like every day.

5 Q. And how did the staff react when a kid was being  
6 disruptive in class?

7 A. They didn't say much, so they didn't say nothing.

8 Q. Did you ever tell any staff at Phoenix that you were  
9 being bullied?

10 A. I talk -- I talk to a couple of my teachers, about  
11 this, the bullying.

12 Q. What about the principal, did you ever talk to a  
13 principal about this?

14 A. He said maybe once or twice I talk to the principal.

15 Q. Is that Ms. Hisey?

16 A. Yes.

17 Q. So how many of these conversations did you have with  
18 Ms. Hisey or a teacher about how you were being bullied?

19 A. I don't remember how many times I talked to them, but  
20 every time it happened I called, go see them, talk to my  
21 teachers and the principal.

22 Q. So you spoke up every time there was a problem?

23 A. Sometimes they bully me, but I ignore, but when they  
24 hurt me very bad, hurt my feeling very bad then I go to see  
25 the teachers tell them what it is --

1 Q. Do you remember anything that a teacher or staff at  
2 Phoenix said to you in response after you told them about the  
3 bullying?

4 A. They just told me to talk to them [indiscernible] make  
5 sure it doesn't happen again that the only thing they were  
6 telling me.

7 Q. Did anything ever change with your classmate as a  
8 result of one of these conversations with staff or teachers?

9 A. He said it didn't change much.

10 Q. Did it change at all?

11 A. It didn't change it.

12 Q. I'm sorry, so it did not change at all?

13 A. He said it changed a little bit.

14 Q. A little better?

15 A. Yeah.

16 Q. But you were still bullied the whole time you were at  
17 Phoenix?

18 A. He said most of the time, yeah.

19 Q. Okay.

20 MS. TACK-HOOPER: May I just take a moment, Your  
21 Honor.

22 THE COURT: Certainly counselor.

23 MS. TACK-HOOPER: That's all I have, Your Honor.

24 THE COURT: Thank you very much, counselor.

25 Attorney O'Donnell you may cross-examine the witness.

1 MS. O'DONNELL: Thank you.

2 - - -

3 CROSS-EXAMINATION

4 - - -

5 BY MS. O'Donnell:

6 Q. Good afternoon, Anyem.

7 A. Good afternoon.

8 Q. How was your graduation last evening?

9 A. It was very good.

10 Q. Who attended with you?

11 A. I, my mother and my brother.

12 Q. Okay. Did you see Ms. Hisey there?

13 A. [Indiscernible] I saw -- I saw it [indiscernible].

14 Q. Did you speak to her?

15 A. Yeah, we just talk, talk a little bit.

16 Q. Just talked a little bit? Okay. Let's talk a little  
17 bit about your life outside of school. You have friends?

18 A. Yes, I have friends.

19 Q. And where do they live?

20 A. So they live around my neighborhood.

21 Q. Okay. Are they about your age?

22 A. Same age.

23 Q. And what are their names?

24 A. I just know the name of one -- one of them.

25 Q. You only know one of their names?

1 A. Yeah.

2 Q. Are they boys or girls?

3 A. Boys.

4 Q. Do you have any friends that are girls? Is that funny?

5 You must have a girlfriend. Do you have a girlfriend? No

6 girlfriends? What do you do with your friends during the

7 evenings and on weekends?

8 A. Most of the time we spend time playing soccer.

9 Q. Playing soccer? Where do you play soccer?

10 A. We can to the park. Sometimes we go to the park in our

11 neighborhood there's a couple park there we go to the park and

12 then play soccer there.

13 Q. Okay. How many kids do you play soccer with?

14 A. May be five or six kids. May be five or six kids and

15 then some kids who want to join us they can join us whenever

16 they want.

17 Q. And do they all speak Swahili?

18 A. Some speak Swahili and then some English.

19 Q. Anybody speak Portuguese that you play soccer with?

20 A. No one speak Portuguese.

21 Q. So it's just English and Swahili?

22 A. Yes.

23 Q. And then what else do you do besides play soccer?

24 A. I just stay home. I sit home, because I don't have

25 anything to do, so I just sit home.

1 Q. Okay. You don't have anything to do? Do you have a  
2 bicycle?

3 A. Is no good anymore. Bicycle is not good anymore.

4 Q. Okay. Do you have -- how -- how -- what are your  
5 methods of transportation? How do you get around?

6 A. I am walk.

7 Q. You just walk?

8 A. Yeah.

9 Q. Did you apply for your driver's license yet?

10 A. Not yet.

11 Q. Why not?

12 A. Because I don't know where to start. I don't know the  
13 process of how to start that process.

14 Q. Okay. Would that be something that you could go back  
15 to the folks at Phoenix Academy and ask them for some help?

16 A. Any help I can get, you know, it's good help.

17 Q. Would you feel comfortable calling Ms. Hisey here or  
18 one of your teachers at Phoenix Academy and say, hey, I'd like  
19 to learn how to drive can you help me out?

20 A. If I want to learn I'll do it and I might call, but I'm  
21 not sure.

22 Q. Okay. I think Ms. Hisey would be very happy if you'd  
23 call her again and ask her with some help with whatever you  
24 needed; okay? Do you have good relationships with your  
25 teachers at Phoenix Academy?

1 A. He said yes, the good relationship just between the  
2 student and the teacher.

3 Q. Okay. And did you enjoy your after school summer  
4 program?

5 A. Yeah, I did enjoy that [indiscernible].

6 Q. And you played soccer during the summer program didn't  
7 you?

8 A. Yeah, we played, but we didn't have much time to play  
9 so they give us a little bit of time to play just a little  
10 bit, yeah.

11 Q. Okay. Now, during the time that you spent at Phoenix  
12 Academy you did get copies of your grades; right? You were  
13 able to read your grades?

14 A. I was receiving the grade [indiscernible] yeah.

15 Q. And you understood what your report card was; right?

16 A. I -- I understand it [indiscernible].

17 Q. All right. You would understand it certainly if you  
18 didn't pass the class; right?

19 A. Yes.

20 Q. You'd know if you flunked a class; right? Somebody  
21 would tell you.

22 A. He said yes.

23 Q. Okay. So you said you got one class of English  
24 language instruction?

25 A. Yes.



1 Q. And did you also get English language instruction when  
2 you took Communication Arts?

3 A. But I was finishing it, yes [indiscernible] and then  
4 after [indiscernible] class and then we went to communication  
5 class.

6 Q. Okay. But did you also get English language  
7 instruction in your Communication Arts class?

8 A. Yes, we took some English.

9 Q. Okay. You didn't talk about this earlier, but you know  
10 that there's some security at the Phoenix Academy; right?

11 A. Yes, I know.

12 Q. Now, you remember the last time we talked I was asking  
13 you questions about your education at Phoenix Academy about a  
14 week ago; remember that?

15 A. Yes, I am that.

16 Q. Okay. At that time you told me that you didn't have  
17 any problems and you didn't mind the pat downs and the  
18 security. Has that changed since last week?

19 A. I didn't change anything.

20 Q. And last week you told me that you liked your teachers  
21 is that -- do you still feel like you like your teachers now?

22 A. I like them, the teacher, but they helped me a little  
23 bit, not much, but they used to help me.

24 Q. Okay. And last week you told me that you thought you  
25 were getting a good education. Has anything changed from last

1 week?

2 A. So what I meant last week I was somewhat happy, but I  
3 wasn't fully happy, because I felt like I wasn't getting what  
4 I was supposed to get like education-wise, you know. I didn't  
5 get enough education there to prepare me to do what I want to  
6 do.

7 Q. So on page 7 on line 20 of your deposition under oath  
8 you said -- my question was and do you feel like Congo getting  
9 a good education there and your answer was I think I'm getting  
10 a good education. Was that not true?

11 MS. TACK-HOOPER: Objection, Your Honor.  
12 There's no impeachment here. He just explained what he meant  
13 by that was he really [indiscernible] consistent.

14 THE COURT: It's cross-examination. I think the  
15 witness is doing pretty well. I'm going to overrule the  
16 objection.

17 INTERPRETER: So what I meant by saying I get a  
18 good education there was that sometimes I ask a teacher for  
19 help, come to help you, but the material wasn't there  
20 [indiscernible].

21 BY MS. O'DONNELL:

22 Q. Anyem, do you feel like you needed to stay longer  
23 before you graduated?

24 A. I'd love to continue, but not there.

25 Q. But not that?

1 A. Not that school.

2 Q. Okay. Do you -- do you remember telling me that you  
3 plan to go to college?

4 A. Yes, I remember.

5 Q. Okay. And did you feel out any applications while you  
6 were at Phoenix Academy? Did anybody help you fill out  
7 applications for college?

8 A. Nobody helped me.

9 Q. In Skills Preparation or Counseling perhaps?

10 A. So I don't remember.

11 Q. Okay.

12 A. [Indiscernible].

13 Q. That's fine. Do you remember telling Ms. Hisey that  
14 you thought you were ready to graduate?

15 A. I don't remember me telling him that, but I heard him  
16 telling me I'm ready to graduate, but it didn't come from me,  
17 so I don't -- he -- I never -- I never tell anyone.

18 Q. Ms. Hisey, your principal, do you remember telling her  
19 that you were ready to graduate?

20 A. He said I don't remember telling her that.

21 Q. All right. Thank you, Anyem?

22 THE COURT: Thank you very much, counselor.

23 Attorney Tack-Hooper do you have any further redirect?

24 MS. TACK-HOOPER: I'm sorry, just one moment,  
25 Your Honor.

1 THE COURT: Oh, certainly counselor, it's fine.

2 MS. TACK-HOOPER: Thank you. All right. Thank  
3 you, Your Honor.

4 THE COURT: Certainly counselor.

5 - - -

6 REDIRECT EXAMINATION

7 - - -

8 BY MS. TACK-HOOPER:

9 Q. Anyem, the lawyer for the School District asked you  
10 about getting ESL instruction during Communication Arts class;  
11 do you remember that?

12 A. He said yes.

13 Q. How often, oh, how often did you get help with the  
14 English language during Communication Arts class?

15 A. A little bit, it didn't help much, but just a little  
16 bit.

17 Q. Was this every day?

18 A. It wasn't every day.

19 Q. Not every day?

20 A. Not every day, yeah.

21 Q. And you were asked about the pat downs at Phoenix?

22 A. Yes.

23 Q. How many times have you been patted down at Phoenix?

24 A. Every morning when you come to school.

25 Q. Every day?

1 A. Every day, yes.

2 Q. The whole time you were at Phoenix; right?

3 A. He said yes.

4 Q. Okay. So by the time you graduated how do you feel  
5 about the pat downs?

6 A. For me I feel it was good, because I know if the  
7 bullying, you know, some kid they hit you it is good to  
8 prevent someone a way to you to come in for something bad that  
9 you have, so I feel safe.

10 Q. Okay.

11 MS. TACK-HOOPER: Nothing further, Your Honor.

12 THE COURT: Thank you very much, counselor.

13 Attorney O'Donnell, do you have any further questions?

14 MS. O'DONNELL: No thank you, Your Honor.

15 THE COURT: Thank you. And I have just a few  
16 questions. Sir, I just wanted to clarify, were you born in  
17 the congo.

18 INTERPRETER: I was born in Tanzania.

19 THE COURT: Was he born in Tanzania? And your  
20 father was being persecuted?

21 INTERPRETER: My father running from a civil war  
22 from the [indiscernible].

23 THE COURT: He had how many family members were  
24 there?

25 INTERPRETER: There were four of us.

1 THE COURT: Four? And was that your mother,  
2 your father and your brother and you?

3 INTERPRETER: It was four kids and the father  
4 and mother.

5 THE COURT: And how did you get to Mozambique?

6 INTERPRETER: I don't know because I was a very  
7 young kid. I was a baby [indiscernible].

8 THE COURT: That was back in 2003?

9 INTERPRETER: Yeah, my father he fear for his  
10 life and for the safety of the family so Tanzania was close to  
11 the Congo so people crossing the border sometimes to come to  
12 Tanzania to go after him so he decide to move us from Tanzania  
13 to Mozambique.

14 THE COURT: And you were in a refugee camp in  
15 Mozambique?

16 INTERPRETER: Yes.

17 THE COURT: And you did have some schooling  
18 there, but it was all in Portuguese?

19 INTERPRETER: Yes.

20 THE COURT: How did you learn to speak Swahili?

21 INTERPRETER: Swahili is the first language I  
22 learn before I left Tanzania.

23 THE COURT: And that's the language your family  
24 would speak?

25 INTERPRETER: He said yes.

1 THE COURT: While you were in Mozambique did you  
2 learn any Portuguese?

3 INTERPRETER: I have to learn Portuguese in  
4 Mozambique because the school was in Portuguese so I have to  
5 learn Portuguese in Mozambique, yes.

6 THE COURT: And do you think you learned it  
7 pretty well?

8 INTERPRETER: I have friends in Portuguese so I  
9 can [indiscernible].

10 THE COURT: What about English? Did you learn  
11 any English when you were in Mozambique?

12 INTERPRETER: He said just basic English -- just  
13 basic English like say hello, hi.

14 THE COURT: Okay. So when you arrived in the  
15 United States in November of 2014 you basically spoke no  
16 English?

17 INTERPRETER: I just knew how to say hi, yeah.

18 THE COURT: Okay. Did you have any training in  
19 mathematics?

20 INTERPRETER: He said math, I took some math in  
21 school in Mozambique.

22 THE COURT: Can you add and subtract?

23 INTERPRETER: Yes, I can do that.

24 THE COURT: And not to put you on the spot, but  
25 what is 10 times 10?

1 INTERPRETER: He said 100.

2 THE COURT: And you are speaking through the  
3 interpreter here, but can you understand a lot of what counsel  
4 have been saying and what I am saying?

5 INTERPRETER: I understand a little bit, you  
6 know.

7 THE COURT: I want to hand you the bates number  
8 122 of the document of your school records. If you can just  
9 take this. Did you write that?

10 INTERPRETER: Yes, I wrote this.

11 THE COURT: And that is your handwriting?

12 INTERPRETER: He said yes.

13 THE COURT: That is beautiful handwriting. Can  
14 you read that out loud in English?

15 INTERPRETER: He said yes, I can read that.

16 THE COURT: Would you do that for us? Read it  
17 out loud?

18 THE WITNESS: What is a hero? A hero is person  
19 who must like or is in your life. And hero helps to make you  
20 strong or happy. A hero want you to good future. It is  
21 important to have a hero to -- to advance you when you need  
22 sometime. I like to be a hero because I like to help people.  
23 My mother is hero because she works hard and she is strong.  
24 My mother goes to work every day. Her only day off is on  
25 Sunday. My mother's name is Nani, I mean, oh, yeah. My



1 mother give me -- gives me good advice. She loves me very  
2 much.

3 There are men heroes in the world for example.  
4 They are [indiscernible] in the community. They fight with  
5 screaming of people in our community.

6 THE COURT: Okay. Now, you started school on  
7 February 9, 2015; correct? But I know you may not know that.

8 INTERPRETER: He said yes, I know that.

9 THE COURT: And by October you were able to  
10 write that?

11 INTERPRETER: He said I remember this, yeah.

12 THE COURT: Okay. So obviously, you are very  
13 bright, very smart.

14 INTERPRETER: I was hero based on that.

15 THE COURT: Who is -- who is smarter you or your  
16 brother?

17 INTERPRETER: I don't know how to  
18 [indiscernible] that.

19 THE COURT: Right. You've got to be careful  
20 because you don't know what's going to happen at home. But in  
21 less than one year you went from speaking no English at all to  
22 being able to at least write that clear basic English.

23 INTERPRETER: [Indiscernible].

24 THE COURT: Were you disappointed when your  
25 brother wasn't allowed to go to school with you?

1 INTERPRETER: Yeah, I was very, very upset. I  
2 didn't feel good about that.

3 THE COURT: And did you know about McCaskey?

4 INTERPRETER: Yes, I knew that McCaskey was a  
5 good school.

6 THE COURT: Now, at Phoenix you were able to  
7 complete your entire high school career with no elementary  
8 school, no middle school, very little training. You were able  
9 to complete your entire high school career from February 9,  
10 2015 to June of 2016 which I think is about 16 months; is that  
11 correct?

12 INTERPRETER: I think the demands  
13 [indiscernible] --

14 THE COURT: Okay.

15 INTERPRETER: -- spend there, but I know I just  
16 went there, yeah.

17 THE COURT: And you finished number 6 out of 107  
18 students. Did you know that?

19 INTERPRETER: He said I didn't knew that.

20 THE COURT: And, sir, how old are you right now?

21 INTERPRETER: I'm 18.

22 THE COURT: So if you stayed in school until 21,  
23 if you were able to learn this much in the short period of  
24 time I've been in school would you want to stay in school and  
25 continue to learn until turn 21?

1 INTERPRETER: It would be good for me to learn  
2 more to stay in school and learn as much as I can.

3 THE COURT: And did you go to school every day  
4 you were supposed to?

5 INTERPRETER: Yeah, every time I'm scheduled to  
6 be at school I was showing up at school unless there is a bad  
7 weather or something happened or I was sick, but I was there  
8 every day.

9 THE COURT: And how did you get to school, sir?

10 INTERPRETER: I was walking, walking from home  
11 to school.

12 THE COURT: You would walk? How long would that  
13 walk take?

14 INTERPRETER: He said maybe 50 minutes.

15 THE COURT: 50 or 15?

16 INTERPRETER: 45 minutes.

17 THE COURT: Around 45 minutes?

18 INTERPRETER: Yeah.

19 THE COURT: And were you well behaved in school?

20 INTERPRETER: I was very, very good student. I  
21 was very good.

22 THE COURT: And do you think you could have  
23 learned even more if you were at McCaskey.

24 INTERPRETER: I think McCaskey would be better  
25 for me because the school is big and they have more teachers

1 and they don't go fast like at the Phoenix, so McCaskey they  
2 go slow they make sure [indiscernible] the material before  
3 they move on, but that wasn't the case at Phoenix, yeah.

4 THE COURT: Sir, is there anything that you  
5 would like to tell me?

6 INTERPRETER: Yeah, I think changes need help in  
7 Phoenix School, because we don't have homework to do at home,  
8 so when you get home or when you don't have any homework  
9 sometimes you just watch TV and sleep and I want to make sure  
10 changes happen so people who would come after me, refugees  
11 come after me they can be in better shape than me. So and I  
12 don't want the school to focus on helping us to get the  
13 degrees, but they need to help us learning instead of going  
14 fast and to graduate to get the diploma and then they cannot  
15 do nothing with the diploma.

16 THE COURT: Thank you very much, sir. And  
17 Attorney Tack-Hooper, do you have any questions in light of  
18 the Court's questions?

19 MS. TACK-HOOPER: No. No, Your Honor.

20 THE COURT: Attorney O'Donnell, do you have any  
21 questions in light of the Court's questions?

22 MS. O'DONNELL: I do actually.

23 THE COURT: Certainly, you may proceed.

24 - - -

25 RE-CROSS-EXAMINATION

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BY MS. O'DONNELL:

Q. Anyem, if the judge decides to put you back in school you might have to give up the diploma you just got last night, maybe. Would you be willing to do that?

A. He said what need in my continuing education is to move on and go to college, you know, I don't want to go back to high school. I just want to go to college.

Q. Thank you.

THE COURT: And counsel I'm a little confused by that question. Does he have -- has he earned enough credits to graduate or not?

MS. O'DONNELL: He has. He has a diploma.

THE COURT: So how would if he served another year of getting additional credits how could he possibly forfeit his diploma?

MS. O'DONNELL: He can't, because the Pennsylvania school code will not allow enrollment when a person has a diploma. That's 13 3rd [indiscernible] pardon me, 1324PS13-1301.

THE COURT: Right. So I understand what you're getting at now, so if he surrendered his diploma now, but stay in high school he would get his diploma at the end of that time in high school.

MS. O'DONNELL: He would. He would just not get

1 it for four years.

2 THE COURT: But he couldn't go onto college  
3 right now without that diploma.

4 MS. O'DONNELL: Correct.

5 THE COURT: Okay. I understand. Any other  
6 questions for the witness? Any other questions?

7 MS. TACK-HOOPER: Yes, Your Honor, just one  
8 clarification.

9 - - -

10 RE-REDIRECT EXAMINATION

11 - - -

12 BY MS. TACK-HOOPER:

13 Q. So the judge asked if you would be interested in  
14 getting more schooling and I just want to clarify would you be  
15 interested in going to McCaskey and continuing your schooling  
16 at McCaskey?

17 A. Going to McCaskey so this starting all over again or  
18 what?

19 Q. I honestly don't know how this would work exactly, but  
20 you've done a little over a year of high school at Phoenix, so  
21 could you imagine yourself doing more school at McCaskey?

22 A. I want to know if it's still high school or.

23 Q. Yeah, that's a fair question. Would you be interesting  
24 in continuing free education somewhere as opposed to a college  
25 you have to pay for?

1 A. It would be good to enter a school where I cannot pay  
2 for, because I don't have any means to pay for school, so if I  
3 get the free education that would be good.

4 Q. Okay.

5 MS. TACK-HOOPER: Nothing else, Your Honor.

6 THE COURT: Thank you, counselor. Attorney  
7 O'Donnell.

8 MS. O'DONNELL: Just one follow-up.

9 THE COURT: Certainly.

10 BY MS. O'DONNELL:

11 Q. Anyem, would you start again at McCaskey if that meant  
12 you'd had to start all over?

13 A. He'd to know what you mean by that and what grade  
14 [indiscernible].

15 Q. If you -- if you -- if you go to McCaskey you start all  
16 over and go --

17 THE COURT: Well, let me just stop you for a  
18 moment, counselor.

19 MS. O'DONNELL: -- for four years.

20 THE COURT: I thought we were talking about  
21 McCaskey being a -- or Phoenix School being a bridge to  
22 McCaskey. Why would he ever have to redo what he's already  
23 done at Phoenix if he bridged over to McCaskey to get a  
24 further education?

25 MS. O'DONNELL: Because the Phoenix program is

1 accelerated. So what you heard on direct is 9th grade was a  
2 half semester.

3 THE COURT: Okay.

4 MS. O'DONNELL: 10th grade and a half semester.  
5 11th grade is a half semester and 12 grade is a half semester  
6 and here's why, because the classes are block classes and  
7 they're 80 minutes long, so the classes at McCaskey are like  
8 40 minutes long. These classes are twice as long so that the  
9 kids can finish faster than they normally would on a regular  
10 pace. So he finished from February of '15 through whatever it  
11 was June of '16 in the time it would've taken him at McCaskey  
12 four years.

13 THE COURT: So he was taught in that short  
14 period of time all the information and all the education that  
15 a person who starts as a freshman at McCaskey would learn over  
16 four years?

17 MS. O'DONNELL: Not all because with the  
18 accelerated program; right, PDE only requires the core  
19 curriculum plus some electives and his electives were Art,  
20 Gym, Counseling.

21 THE COURT: Right.

22 MS. O'DONNELL: Those types of things, so he has  
23 finished in that period of time the equivalent of four years  
24 at McCaskey. So if you put him back into McCaskey he starts  
25 all over again from square one ninth grade and goes through



1 four years until he gets his high school diploma again.

2 THE COURT: Well, he couldn't do that and that  
3 would make no sense, because he would age out. In other words  
4 there is -- there are courses at McCaskey that he has not had  
5 at Phoenix. There is more education available in the  
6 Lancaster School System that he could be taught before he  
7 reaches 21. I would never suggest that he should go back and  
8 start with classes he has already done. In fact I'm not  
9 suggesting anything, I'm just trying to understand how you can  
10 learn in 16 months what it takes somebody who can speak fluent  
11 English having gone to middle school, elementary school,  
12 kindergarten, goes into 9th grade and this young man comes  
13 from Mozambique can't speak other than hello in English in 16  
14 months he's got a high school diploma, but he needs an  
15 interpreter when he's testifying in Federal Court. So it's a  
16 little hard to understand, and that's why I'm anxious to hear  
17 the rest of the testimony et cetera, but I don't want to give  
18 the impression that I would suggest to him and I don't think  
19 you attend to suggest it either that everything he has done in  
20 this relatively short period of time would be for naught if he  
21 were to bridge over to McCaskey.

22 MS. O'DONNELL: Bridging over to McCaskey is  
23 limited to the circumstance where the best example I could  
24 give you and not -- this is not the best example, but the best  
25 example would be a child whose education is interrupted in 9th

1 grade, let's just say he's sick, he can't go to school. He  
2 doesn't return until 10th grade. Now, he can't return back to  
3 the same school, because he's missed 9th grade. He could  
4 finish in half a semester at Phoenix, because he's only taken  
5 the core curriculum that's required by PDE in order to earn  
6 the credit to get back into 10th grade as of January the next  
7 year.

8 THE COURT: Okay. I think I understand.

9 MS. O'DONNELL: That's how they accelerate. So  
10 -- so when for example these kids come in who are 17 or 18 and  
11 their peers, their similarly aged peers at McCaskey have  
12 already left through graduation these folks and come in and  
13 finish up quickly so they can jump in on the college bandwagon  
14 as well, but again, it's up to them to -- to make those  
15 decisions. Okay. So the bridge doesn't -- the bridge could  
16 happen with a refugee student probably after the first year  
17 after he's finished the 9th and 10 th grade then it would make  
18 sense to bridge over to McCaskey, but not once he's finished,  
19 because he's got the diploma.

20 THE COURT: Okay.

21 MS. O'DONNELL: All right.

22 THE COURT: And I might have interrupted your  
23 question. Do you have another question for the witness?

24 MS. O'DONNELL: Oh, I don't, thank you very  
25 much.

1 THE COURT: Very well. Can this witness be  
2 excused?

3 MS. TACK-HOOPER: Yes, Your Honor.

4 THE COURT: Very well. Sir, thank you very  
5 much, you've been on the stand a long time I appreciate it.  
6 You may step down, sir. And counsel I think I have ruined our  
7 schedule this afternoon and I apologize for that. You did  
8 still want to get a videotape on, how long is that videotape.

9 UNIDENTIFIED SPEAKER: Forty-five.

10 MR. ROTHSCHILD: So --

11 MS. O'DONNELL: How about if we just stipulate?  
12 You could just -- do you want to just stipulate so that we  
13 could just give the video to the judge and you can watch it at  
14 your leisure?

15 THE COURT: I have no objection to that and I  
16 know my deputy clerk has no objection to that.

17 MR. ROTHSCHILD: Your Honor, can we agree to  
18 recess for the evening. If we conclude that we'd like to --  
19 the video needs to be played in court we'll let you know that  
20 tomorrow?

21 THE COURT: Certainly.

22 MR. ROTHSCHILD: And otherwise we'll do it the  
23 way counsel suggested.

24 THE COURT: Very well. And we'll take care of  
25 the deposition designations at a later time?

1 MR. ROTHSCHILD: Yeah, sir, I think counsel  
2 stipulated which is not counter designating so we can -- I  
3 don't think we have them ready to present today, but we will  
4 tomorrow.

5 THE COURT: And I would again suggest to counsel  
6 that you discuss to see if there's any meeting of the minds or  
7 if you're at complete loggerheads with respect to resolving  
8 some or all of the issues by agreement and consent.

9 But thank you very much for another very well  
10 presented case and we'll re -- now, tomorrow we do have to  
11 convene just a few minutes later, so it will probably be  
12 around 9:40. So everyone plan to be in position to start at  
13 9:40 tomorrow morning. Have a good night.

14 MULTIPLE SPEAKERS: Thank you, Your Honor.

15 DEPUTY CLERK: All rise.

16 - - -

17 (Whereupon, the proceeding was concluded  
18 at 4:18 p.m.)

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C E R T I F I C A T E

I do hereby certify that the aforesaid hearing was transcribed by me from an audio recording to the best of my ability; and that I am neither of counsel nor kin to any party in said action, nor interested in the outcome thereof.

WITNESS my hand and official seal this \_\_\_\_ day of \_\_\_\_, 2016.

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Janine Thomas  
Notary Public

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