



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

Alexandria Division

UNITED STATES OF AMERICA)	Criminal Case No. 1:05CR53
)	
v.)	The Hon. Gerald Bruce Lee
)	
AHMED OMAR ABU ALI,)	Hearing Date: September 19,
)	2005
)	
Defendant)	UNDER SEAL

OPPOSITION TO DEFENDANT'S MOTION TO SUPPRESS

The United States hereby responds to the Defendant's Motion to Suppress. For the reasons detailed below, the Court should deny the defendant's motion.

I. INTRODUCTION

The defendant in this case represents one of the most dangerous terrorist threats that America faces in the perilous world after September 11, 2001: an al-Qaeda operative born and raised in the United States, trained and committed to carry out deadly attacks on American soil. The evidence establishes that the defendant joined a terrorist cell in Saudi Arabia which he knew and understood to be associated with al-Qaeda, and that he received training from the cell in weapons, explosives, and document forgery. The evidence also establishes that the defendant engaged in plotting with cell members to conduct terrorist attacks inside the United States, including the assassination of the President, and that he affirmatively took steps in support of such attacks by identifying locations of nuclear power plants and researching commercial airline flights that would be candidates for a hijacking scenario similar to the attacks of September 11, 2001. That the defendant was apprehended before he could perpetrate acts of violence here does

not diminish the magnitude of his criminal conduct or the need to hold him accountable for his offenses.

Now, confronted by the prospect of losing his liberty, the defendant seeks to thwart justice by claiming that his numerous confessions to the offenses charged in the Indictment were the result of torture. The evidence, however, demonstrates unequivocally that this claim is a fabrication. As repeatedly made clear in the testimony of Saudi officials from the General Investigations Directorate (*Mabahith*), the Saudi domestic security service, the defendant was treated in a respectful and humane manner while in Saudi custody. Moreover, the testimony by *Mabahith* officials who interrogated the defendant demonstrates that he confessed to his involvement with an al-Qaeda cell in Saudi Arabia, and to plotting terrorist attacks inside the United States, as soon as he was confronted with admissions by fellow cell members regarding his ties to the cell. Further, the primary concern the defendant expressed throughout his period of detention in Saudi Arabia was his fear of being returned to the United States – a concern that is flatly inconsistent with the notion that he was tortured while in Saudi custody.

The defendant's claims also are belied by his failure on numerous occasions to tell U.S. officials about his alleged mistreatment. Nine times, a consular officer from the U.S. Embassy in Riyadh visited the defendant while he was in Saudi custody. Not once did the defendant ever claim that he had been tortured, and several times he commended his treatment.¹ Indeed, in his

¹ To the government's knowledge, the only time the defendant mentioned anything about being mistreated by Saudi authorities while he was in Saudi custody was during his interviews with FBI agents in September 2003. Even then, he made only a brief, cryptic reference to "mental torture" and told the agents they would not understand because they were not Muslims. He said nothing to the agents about being physically mistreated.

initial consular visit one month after his arrest, the defendant described his treatment by Saudi officials as “excellent,” “kind,” and “humane.”

The defendant will claim that the presence of a Saudi official during consular visits prevented him from being candid with consular officers about his alleged torture. But this argument does not withstand scrutiny. First, it is simply incredible that an American citizen purportedly undergoing torture overseas would not find some way, either verbally or by non-verbal gestures, to send a distress signal to a visiting American official whose job it is to assess his well-being. Second, the consular officers who met with the defendant routinely reported that he appeared healthy and in good spirits. Third, even after he was released in Saudi Arabia to the custody of U.S. officials and had the opportunity to speak completely candidly, the defendant said nothing about having been mistreated – including when he was examined by an American doctor and spoke to the U.S. Consul General. In sum, it is clear that the defendant has manufactured his claims of torture in an attempt to evade accountability for his crimes.

The defendant seeks to suppress “all statements intended to be used by the Government in its prosecution” Defendant’s Memorandum in Support of Motion to Dismiss at 2 (“Defendant’s Motion”). Although not all enumerated in the defendant’s motion, these statements include:

- Written admissions the defendant made in numerous individual interrogations by Saudi authorities (see Exh. 1);
- Statements made during an interrogation by Saudi authorities on June 15, 2003, that was observed indirectly by U.S. law enforcement agents (see Exh. 2);

- A written confession summarizing the defendant's previous admissions in individual interrogation sessions (see Exh. 3);
- A videotape of the defendant reading his summary confession (see Exh. 4) and a transcript of the English translation thereof (see Exh. 55); and
- A letter the defendant wrote to his parents in the presence of agents from the FBI in September 2003 while he was in Saudi custody (see Exh. 6).²

The defendant moves to suppress his incriminating statements on three grounds: (1) that they were "obtained in violation of *Miranda v. Arizona*"; (2) that they "were not made voluntarily . . . but were the product of 'gross abuse' and inherently coercive conditions, and are, therefore, inadmissible under the Due Process Clause of the Fifth Amendment"; and (3) that they "were obtained by U.S. and Saudi officials in a manner that 'shocks the conscience' and are,

² The government intends to use additional statements by the defendant in cross-examination of the defendant if he testifies at the suppression hearing or at trial. Use of such statements in cross-examination would be proper even if the Court found that particular statements by the defendant were obtained in violation of *Miranda*. See *United States v. Gullett*, 75 F.3d 941, 946 (4th Cir. 1996) (As long as they are otherwise voluntary, "statements obtained in violation of *Miranda* may be used in cross-examination to impeach the defendant who made them [T]he shield provided by *Miranda* cannot be perverted into a license to use perjury and avoid the traditional truth-telling devices of the adversary process.") (citing *Harris v. New York*, 401 U.S. 222, 225-26 (1971)).

therefore, inadmissible under the Due Process Clause of the Fifth Amendment.” Defendant’s Motion at 2.

The defendant also seeks to suppress evidence seized in two searches. First, he moves to suppress evidence seized by Saudi authorities in a June 2003 search of his residence in Medina, Saudi Arabia, on the grounds that the search violated his rights under the Fourth Amendment. *Id.* at 2-3. Second, he moves to suppress evidence seized in a June 2003 search of his residence in Falls Church, Virginia, on the grounds that this search violated his rights under the First and Fourth Amendments. *Id.* at 3.

None of the defendant’s motions is meritorious. Each of them should be denied.

II. THE DEFENDANT’S INCRIMINATING ADMISSIONS

A. **The May 12, 2003, Terrorist Attacks in Riyadh and the Defendant’s**

Subsequent Arrest and Confession

The defendant’s incriminating admissions first must be considered in the broader context of the domestic security situation in Saudi Arabia at the time of his arrest. On or about May 6, 2003, Saudi authorities discovered and seized large quantities of weapons and explosives in locations in Riyadh that apparently were intended for terrorist attacks within Saudi Arabia.³ (See Exh. 7.) On or about the same day, the Saudi Government published the names of 19 individuals

³ All factual assertions herein are based on what the government expects to establish at the hearing on the defendant’s motion to suppress. Accounts of witness testimony from depositions in Saudi Arabia are based on government counsel’s notes and records, as transcripts of the testimony had not been completed by the time of this filing. Any inconsistency between an account herein of witness testimony and the transcripts should be resolved in favor of the transcript, unless it is determined that there was a translation error during the testimony.

wanted in connection with terrorist activity, and asked Saudi citizens to report information about these individuals to the authorities. (See Exh. 7.) Among the names on the list were Ali Abd al-Rahman al-Faq'asi al-Ghamdi (also known as Abu Bakr al-Azdi) and Sultan Jubran Sultan al-Qahtani (also known as Zubayr al-Rimi).⁴

On May 12, 2003, terrorists associated with al-Qaeda perpetrated bombings in the Saudi capital of Riyadh that killed approximately 34 people, including 9 Americans. (See Exh. 8.) In the wake of the Riyadh bombings, Saudi authorities intensified efforts to identify and arrest suspected members of terrorist cells in Saudi Arabia. (See Exh. 9.) The Saudi Government's investigative efforts resulted in the discovery of an al-Qaeda cell in Medina headed by al-Faq'asi.

⁴ English transliterations of the Arabic names of these and other individuals associated with al-Qaeda operations in Saudi Arabia may differ.

On or about May 27, 2003, Saudi security forces conducted raids at various locations in Medina that resulted in the arrest of several members of the al-Faq'asi cell.⁵ (See Exh. 35.) Several of the arrested cell members subsequently told the *Mabahith* about a student at the University of Medina who belonged to the cell, known to them by the name "Reda" or "Ashraf." Following a photo identification of this individual by cell members, the *Mabahith* subsequently identified the individual as an American citizen and, on or about June 9, 2003, arrested him in Medina. His name was Ahmed Omar Abu Ali.

The defendant was held in Medina for less than 48 hours, then transported to Riyadh for interrogation. Prison medical records (see Exh. 10) indicate that the defendant was admitted to al-Hay'ir Prison in Riyadh on June 11, 2003, at approximately 11:00 p.m.

On or about June 12, 2003, the *Mabahith* began interrogating defendant. The interrogation was principally conducted by a *Mabahith* Captain (hereafter "the Captain") with extensive experience in interrogating terrorist suspects; a General with supervisory responsibility for interrogations of terrorist suspects (hereafter "the General") also participated in this first interrogation.

In the first interrogation session, the defendant initially denied any knowledge of why he had been arrested. As soon as the Captain confronted the defendant with his alias names "Reda" and "Ashraf," however, and the fact that other cell members already had been arrested, the defendant abandoned his defiance and quickly launched into a prolonged and detailed

⁵ Al-Faq'asi himself, disguised in women's clothing, escaped capture. He surrendered to Saudi authorities, however, in late June 2003. (See Exh. 36.)

confession of his involvement with the al-Faq'asi cell.

By the end of the first two interrogation sessions, the defendant had provided the core facts regarding his involvement with the terrorist cell. As detailed more fully in the Captain's minutes of interrogation – which consist of the Captain's written questions and the defendant's written responses – by the time the interrogation process was completed, the defendant had confessed, among other things, to the following:

- At or around the end of Ramadan in 2002 (in early December 2002), he joined a clandestine terrorist cell in Medina headed by al-Faq'asi, which he knew and understood to be associated with al-Qaeda.
- He received training from members of the cell in weapons, explosives, and document forgery.
- He agreed to carry out a plan by al-Faq'asi to assassinate President George W. Bush in the United States, in an operation utilizing either multiple snipers or suicide bombers.
- He conducted research on flight paths for al-Faq'asi in support of a plan to hijack commercial aircraft transiting the United States and crash them into airports.
- At the request of Sultan Jubran, he researched locations of nuclear power sites in the United States, understanding that Sultan was interesting in attacking such sites.
- The defendant himself proposed several ideas for terrorist attacks inside the United States, including (1) attacks on aircraft departing the United States; (2) assassinating Members of Congress, members of the Bush Administration, and U.S. Army personnel; (3) kidnaping Members of Congress, members of the Bush Administration, and U.S.

Army personnel; (4) blowing up military aircraft at bases in the United States; and (5) blowing up U.S. naval vessels at ports in the United States in an operation similar to the attack on the U.S.S. Cole in Yemen.

- He proposed to al-Faq'asi that terrorist operatives be infiltrated into the United States from Mexico, then link up with the defendant in the United States to form a cell.
- He performed guard duty for the al-Qaeda cell at one of its safehouse locations after several cell members had been arrested.
- He provided translation services for al-Faq'asi.
- In response to an inquiry by Sultan Jubran, he told Sultan Jubran that nightclubs and sports stadiums were places in the United States where the public congregated, fully understanding that Sultan was interested in potential sites where terrorist attacks resulting in mass casualties could be conducted.

B. The Defendant's June 15, 2003, Interrogation

On or about June 9, 2003, the *Mabahith* informed the FBI's Legal Attache at the U.S. Embassy in Riyadh that it had arrested the defendant based on information provided by other members of the al-Faq'asi cell. On June 10, the Legal Attache requested immediate access to interview the defendant, as well as details of any interrogations already conducted. At the time, the defendant had not yet been transferred to Riyadh, and the *Mabahith* had not even begun its own interrogation of him. The *Mabahith* therefore deflected the FBI's request for access at that time.

On or about June 14, the *Mabahith* informed the FBI of the defendant's admitted involvement in a plot to assassinate the President. The Legal Attache promptly communicated

news of the assassination plot to FBI Headquarters in Washington, D.C. Information about the threat to the President also was communicated to the U.S. Secret Service. Upon learning of the assassination plot, FBI Headquarters directed the Legal Attache to intensify efforts to obtain direct access to the defendant to question him. The Legal Attache, in turn, pressed the *Mabahith* further for access to the defendant. The purpose of seeking access to the defendant was to obtain intelligence information about possible threats to U.S. national security — particularly a threat to the President. The purpose was not to develop a criminal case against the defendant.

Sometime on June 15, the *Mabahith* advised the Legal Attache that FBI agents could attend a *Mabahith* interview of the defendant scheduled that night.⁶ Expecting that they would have direct access to the defendant, FBI personnel prepared a typed list of 13 questions in English that they intended to pose to the defendant. (See Exh. 11.)

After FBI personnel arrived at the prison where the defendant was being detained, the *Mabahith* informed them that a *Mabahith* official would be conducting the interview, and that the FBI would not be permitted to have direct access to the defendant. Instead, the *Mabahith* advised the FBI team that it could observe the interview from behind a two-way mirror and give the *Mabahith* questions to be posed to the defendant. In addition, the General eliminated more than half of the questions proposed by the FBI, and he and the Captain reformulated the remaining questions in a manner consistent with previous questioning of the defendant.

The room in which the interrogation took place did not have a working audio connection

⁶ The FBI personnel who later observed the interview only learned of the interview on the afternoon of the day the interview took place.

to the room where the FBI personnel were located. Consequently, a cell phone in the interrogation room was used to “broadcast” the interrogation to the cell phone of a *Mabahith* official in the room where FBI personnel were located.

The General conducted the interrogation, and only he and the Captain were in the room with the defendant during the interrogation. Questions were posed to the defendant in Arabic, and he responded in Arabic. At no time did U.S. Government personnel enter the interrogation room during the conduct of the interview or pose any questions directly to the defendant.

According to the FBI’s report of the interrogation (see Exh. 2), the General posed the following questions to the defendant.

1. Were you tasked to assassinate the President of the United States?
2. When did you last arrive in Saudi Arabia?
3. Do you know of any terrorist attacks being planned against American/Saudi/Western interests?
4. Were you recruited by any terrorist organization?
5. Have you used false passports?
6. What is your father’s position at the Saudi Arabian Embassy in Washington, D.C.?

According to the FBI Language Specialist who observed and listened to the interrogation, the General interspersed his own follow-up questions among the questions requested by the FBI. For example, the General asked questions about (1) the defendant’s experience at the University of Medina, including his former roommate who had introduced the defendant to Sultan Jubran; and (2) a passage in the Koran, in order to query the defendant about his justification for his actions. The General also asked more detailed questions about the cell members who provided

the defendant with training in weapons, explosives, and document forgery.

According to the FBI's report, the defendant made the following admissions during the interrogation:⁷

1. Question

Were you tasked to assassinate the President of the United States?

Answer

No. I was not tasked by anyone to assassinate the President of the United States. *I came up with the idea on my own, but it did not get beyond the idea stage. I wanted to be the brain, the planner, just like Mohammed Atta and Khalid Sheikh Mohammad.* My idea was, (1) I would walk on the street as the President walked by, and I would get close enough to shoot him, or (2) I would use a car bomb. (Emphasis added.)

2. Question

When did you last arrive in Saudi Arabia?

Answer

I arrived in September 2002, but the first time I came was two years ago to study in Medinah. This is when I met Moneith al-Qahtani, my roommate, and we became best friends. We kept in touch after I returned to the U.S. Upon my return in September 2002, Moneith introduced me to Sultan Jebzan al-Qahtani in Medinah. I only knew Sultan by his first name, but I learned his full name from the papers, as with everyone else I met.

I talked to Sultan about my idea of killing the President of the United States and American soldiers and to carry out an operation. Sultan took an interest in me and became my friend. He introduced me to Adil [al-Faq'asi] while we sat in a car. We would drive and talk, and the plan was where he dropped me off he would pick me up at the time of his choosing. We did this on six (6) occasions. Adil and Sultan gave me training in weapons, explosives and hand grenades, although I never fired a weapon, set off explosives or threw a grenade. I was also trained in false documents by Majid

⁷ The questions and answers that follow have been re-formatted for the Court's convenience but constitute an accurate account of the FBI's report of the interview.

[Mohammad Salem al-Ghamdi]. (Emphasis added.)

We communicated via e-mail and phone.

I wanted to be in Al-Qaeda so bad, that I decided to go to Afghanistan for jihad. I applied for [a] visa to travel to Iran, but I was denied, because I am an American. (Emphasis added.)

This is the time I moved in with the group, which included “Abdullah” [Talib Abd al-Karim], “Saleh” [Mohammad Abd al-Fatah Karaam], “Wail” [Abd al-Wahab al-Gharni], “Saleh” [Khalid Abd al-Monem al-Ghamdi], and brothers Hisham and Omar [Hisham Mubarak al-Hakami and Omar Mubarak al-Hakami]. Adil gave me 5000SR [Saudi riyals] for a laptop computer, 1000SR for a cell phone and 750SR for books.

Eventually, I was given a choice, (1) to conduct an operation, or (2) to return to the U.S. and start a cell. (Emphasis added.)

3. Question

Do you know of any terrorist attacks being planned against American/Saudi/Western interests?

Answer

No, I don't know of any planned attacks, *but if we got any opportunity to shoot American soldiers, it's good. Even if you kill two of them, it would be good. Usually operations take planning, and you take your time. If it takes up to two years, it's OK, as long as it's a successful mission. (Emphasis added.)*

4. Question

Were you recruited by an terrorist organization?

Answer

I knew the individuals identified above were Al-Qaeda members, and I always wanted to be with the group. When I moved with them, I knew I was being accepted by them. *I knew they were using me, but I was using them also, as a means to fulfill my intentions. (Emphasis added.)*

5. Question

Have you used false passports?

Answer

No. I did receive training to do that, but I did not do it. I have two passports in my name, one American and one Jordanian. I did not renounce my American citizenship to get my Jordanian passport. *The Americans do not know I have two passports.*

I have only traveled to the U.S., Saudi Arabia and Jordan.

6. Question

What is your father's position at the Saudi Arabian Embassy in Washington, D.C.?

Answer

My father has worked in the Computer Department for over twenty (20) years.

After the interrogation observed by the FBI was completed, the defendant was transferred to his usual interview room in another wing of the prison, where the Captain resumed his interrogation of the defendant.

C. The Defendant's Summary Written Confession

Approximately one month after his arrest, the Captain prepared a written confession for the defendant summarizing information that the defendant had provided in his previous individual interrogations. The preparation of such summaries is standard practice at the conclusion of the interrogation process. In this case, the *Mabahith* determined that it was time to prepare a summary confession for the defendant because he no longer was providing much new information, and because *Mabahith* officials had been able to corroborate information he had provided with statements from other cell members in detention.

The Captain met with the defendant and asked him to review the written confession and provide his feedback, including any disagreements he had with its contents. The defendant then

reviewed the draft confession for approximately 45 minutes to one hour. After reviewing the confession, the defendant told the Captain that he had no objections to its contents.

Consistent with standard *Mabahith* practice, the Captain then asked the defendant to copy the confession in his own handwriting. The defendant subsequently wrote out his confession without objection. (See Exh. 3 (English translation of defendant's handwritten summary confession.) At his own initiative, he even added material not included in his previous written responses concerning U.S. foreign policy.

Several days later, the *Mabahith* brought the defendant before two judges, who reviewed the defendant's handwritten confession. To verify the truthfulness of the confession, the judges asked the defendant a series of questions, such as "Is this your confession? Were you coerced into producing it? Is this confession true? Is this your handwriting?" As the judges reviewed the confession with the defendant, the defendant affixed his thumb print to each page of the confession to affirm its accuracy.

The defendant was then given a second opportunity to object to the contents of the written confession or the manner in which it was obtained. The defendant made no such objection. The court then affixed the defendant's handwritten certification to the confession and stamped an official seal on it, causing the confession to become an official record of the court.

E. The Defendant's Videotaped Confession

After a Saudi court has certified a prisoner's confession, it is standard *Mabahith* practice

to videotape the prisoner reading his confession aloud. Approximately one week after the defendant's written confession was certified in court, he read aloud his written confession in the Captain's presence while being videotaped. (See Exh. 4 (CD-ROM depicting the defendant reading his confession) and Exh. 5 (translation of audio).) During this procedure, the defendant appeared fully relaxed. He smiled, made jokes, and even made a physical gesture simulating the use of a weapon.

F. The Defendant's September 2003 Letter to His Parents

In September 2003, Saudi authorities permitted U.S. law enforcement agents to have direct access to the defendant for the first time in order to question him. Agents from the FBI and the U.S. Secret Service subsequently interviewed the defendant for four days. Their primary purpose was to obtain actionable intelligence from the defendant about possible terrorist attacks in the United States, rather than to gather information in support of a criminal prosecution. Accordingly, the agents did not give *Miranda* warnings to the defendant or cease questioning him when he requested an attorney.⁸

After the agents had completed their questioning, the defendant asked if they would bring a letter from him to his family, and the agents agreed. In the agents' presence, the defendant subsequently wrote a letter to his parents (in English) and gave it to the agents to bring back to the United States. (See Exh. 6.) The defendant's letter included the following:

⁸ The government does not seek to use in its case-in-chief any of the incriminating admissions made by the defendant during these September 2003 interviews with U.S. agents.

I have been detained here in Saudi Arabia for some charges of terrorism It seems like I will spend some years in jail, whether it be here or in the States. I know that you raised me to be a good and loving person, but *everyone makes mistakes and the best of people are the those who learn from their mistakes and correct them.*

(Emphasis added.)

G. Telephone Calls Home

Pursuant to a Court order issued under the Foreign Intelligence Surveillance Act, the FBI recorded several of the defendant's telephone calls to his parents while he was in Saudi custody. During a telephone conversation on July 31, 2004 (see Exh. 12), the defendant made a statement indicative of consciousness of guilt,⁹ as shown below:

Defendant's mother: What did [U.S. consular officer Charles Glatz] tell you?

Defendant: He came to see me last week before you did anything. He told me absolutely nothing. His trip was in vain as always. But I was very fierce with him when I talked to him.

Defendant's Mother: What did you tell him?

Defendant: How long will this go on? Either you charge me, and there should be a trial, which is the least sacred human right in the world . . . [interrupted by mother]

Defendant's Mother: But you didn't do anything wrong.

Defendant: *Even if I did and I was charged, this charge should be brought in front of a judge. Am I right or not?* (Emphasis added.)

⁹ It should be noted that, while the defendant was in custody when these conversations took place, his statements were not in response to interrogation.

III. SEARCHES CONDUCTED BY SAUDI AND U.S. LAW ENFORCEMENT AUTHORITIES

A. **Search of the Defendant's Dormitory Room at the University of Medina**

Following the defendant's arrest at the University of Medina, Saudi authorities took him to his dormitory room and, pursuant to an official *Mabahith* directive, conducted a search of the room. The defendant identified his belongings, and Saudi authorities seized them and transported them (along with the defendant) to a *Mabahith* detention facility in Riyadh. Among the items seized were the following: (1) a personal address book containing the name of Moeith al-Qahtani, the individual who introduced the defendant to Sultan Jubran; (2) a Global Positioning Satellite (GPS) device; (3) jihadist literature; (4) a Nokia cell phone containing an entry for Moeith al-Qahtani; (5) a Jordanian passport; and (6) two Motorola walkie-talkies.

B. **Seizure of the Defendant's Laptop Computer in Medina**

Sometime after the defendant's arrest, the defendant told the *Mabahith* that he had transferred the laptop computer he purchased with funds from al-Faq'asi to a Chechen student at the University of Medina. The *Mabahith* officer who arrested the defendant in Medina subsequently received an official directive to interview the Chechen student and seize the laptop computer. The officer went to the university and interviewed the Chechen student, who showed a Hewlett Packard laptop computer to the officer and told the officer that he had received the computer from the defendant. Found with the laptop computer was a printed purchase receipt for the computer in the defendant's name. The *Mabahith* officer seized the laptop computer and sent

it to Riyadh for analysis.

C. Search of the Defendant's Residence in Falls Church, Virginia

On June 16, 2003, the FBI conducted a search of the defendant's residence in Falls Church, Virginia, pursuant to a warrant issued by this Court. This search resulted in the discovery of the following items belonging to the defendant:

- An undated, two-page document praising the Taliban leader Mullah Omar and the terrorist attacks on September 11, 2001, and condemning U.S. military action in Afghanistan;
- A six-page document regarding various forms of surveillance by the government and private entities, and how to avoid such surveillance;
- An address book containing the name and address of "Moneith al-Qahtani," who introduced the defendant in late 2002 to the al-Qaeda operative Sultan Jubran, who, in turn, introduced the defendant to cell leader al-Faq'asi.
- Audio tapes in Arabic promoting violent *jihad*, the killing of Jews, and a battle by Muslims against Christians and Jews; and
- A book written by al-Qaeda second-in-command Ayman al-Zawahiri, in which al-Zawahiri characterizes democracy as a new religion that must be destroyed by war, describes anyone who supports democracy as an infidel, and condemns the Muslim Brotherhood for renouncing violent *jihad* as a means to establish an Islamic state; and
- An issue of the magazine "Handguns" bearing a subscription label in the name of "Ahmed Ali."

IV. ARGUMENT

A. The Defendant's Incriminating Admissions Were Voluntary.

The defendant's claims of mistreatment while in Saudi custody are fraudulent and utterly without merit, and the Court should soundly reject them. The evidence overwhelmingly demonstrates that the defendant was well treated while in Saudi custody, and that his incriminating admissions were voluntary.

It is well established that a statement is involuntary under the Fifth Amendment only if it is "involuntary" within the meaning of the Due Process Clause. *See Oregon v. Elstad*, 470 U.S. 298, 304 (1985); *United States v. Braxton*, 112 F.3d 777, 780 (4th Cir. 1997). For a statement to be involuntary under the Due Process Clause, it must be "extracted by . . . threats or violence" or "obtained by . . . direct or implied promises" or "the exertion of . . . improper influence." *Hutto v. Ross*, 429 U.S. 28, 30 (1976); *Braxton*, 112 F.3d at 780 (citing *Hutto*); *Accord Colorado v. Connelly*, 479 U.S. 157, 165 (U.S. 1986) (condition precedent to a finding of involuntariness is coercive government conduct).¹⁰ The crucial inquiry is whether the subject's will has been "overborne" or his "capacity for self-determination critically impaired." *United States v. Pelton*, 853 F.2d 1067, 1071-72 (4th Cir. 1987). *Accord Schneckloth v. Bustamonte*, 412 U.S. 218, 225

¹⁰ Voluntariness, moreover, is not "to be equated with the absolute absence of intimidation" *United States v. Wertz*, 625 F.2d 1128, 1134 (4th Cir. 1980). *Accord Braxton*, 112 F.3d at 780 ("The mere existence of threats, violence, implied promises, improper influence, or other coercive police activity, however, does not automatically render a confession involuntary."); *United States v. Pelton*, 853 F.2d 1067, 1072 (4th Cir. 1987) (if absolute absence of intimidation was the test for voluntariness, "virtually no statement would be voluntary").

(1973); *United States v. Cristobal*, 293 F.3d 134, 140 (4th Cir. 2002).

Courts must examine the “totality of the circumstances,” including the defendant’s individual characteristics and background, the setting in which the statement occurred, and the details of the interrogation or interview. *See Haynes v. Washington*, 373 U.S. 503, 513-14 (1963); *Braxton*, 112 F.3d at 781; *United States v. Elie*, 111 F.3d 1135, 1143-44 (4th Cir. 1997); *Pelton*, 853 F.2d at 1071; *Wertz*, 625 F.2d at 1134. Among the factors to be considered are (1) whether the officer conducting the interrogation harmed or threatened to harm the defendant if he did not answer the officer’s questions; (2) whether the officer deprived the defendant of anything; (3) whether the defendant was subjected to a lengthy period of interrogation or isolation; and (4) whether the officer tried to deceive the defendant. *See Elie*, 111 F.3d at 1143 (internal citations omitted).

The defendant’s motion contains no specific factual representations in support of his claim that he was mistreated while in Saudi custody. It contains only vague and unsupported allegations that the defendant was subjected to physical and psychological abuse.¹¹ The

¹¹ Defense counsel has advised the Court in correspondence that the defendant was whipped on his back. *See* Letter from Ashraf Nubani to the Hon. Gerald Bruce Lee, June 15, 2005. The defendant also has claimed in a filing that he has visible scars on his back from purported abuse while in Saudi custody. *See* Defendant’s Emergency Motion to Compel Compliance With Court’s Order and to Compel Discovery and to Present Evidence of Torture, at 6, 8. But neither counsel nor the defendant has ever provided any details of such alleged mistreatment. In a telephone conversation on June 6, 2005, between the undersigned counsel and defense counsel Ashraf Nubani, Mr. Nubani stated that while in Medina after his arrest, the defendant was whipped on his back and punched in his stomach, and that a security official pulled his ears and his beard. *See* Letter from David H. Laufman to Ashraf Nubani, June 10, 2005 (Exh.13.) Mr. Nubani also stated that after the defendant was transferred to Riyadh, the defendant was subjected to sleep deprivation and light illumination of his cell, and that he was

defendant states that “[t]wo doctors that have evaluated Mr. Abu Ali have determined that his condition is consistent with someone who has been tortured,” Defendant’s Motion at 1 but – more than two months since these doctors examined the defendant – the defendant still has not provided the government with any reports by the doctors.

compelled to have his hands over his head while in handcuffs. Mr. Nubani confirmed to the undersigned counsel that the defendant was not claiming that he had been whipped, punched, or had his ears or beard pulled after he was transferred to Riyadh. In a subsequent letter to Mr. Nubani, the undersigned counsel asked Mr. Nubani to confirm in writing what he had said during this telephone call. Mr. Nubani refused to do so.

Credible testimony by Saudi security officials reveals the defendant's claims of mistreatment to be false. The *Mabahith* General, the Captain, and the former warden of the Medina prison where the defendant was briefly housed ("the Warden") have testified that *Mabahith* policy prohibits the use of physical or psychological coercion (including sleep deprivation) against prisoners,¹² and that officers who violate this policy are subject to penalties ranging from reprimand to expulsion. In illustration of this general prohibition, the General and the Captain each recalled that the *Mabahith* issued a written notice to all *Mabahith* officers a few years ago announcing that an officer had been fired for mistreating a prisoner, as a warning to officers not to engage in such conduct. Both the General (a 30-year veteran of the *Mabahith*) and the Captain (a 10-year veteran) also testified that they had never subjected a prisoner to physical or psychological coercion, that they had never seen another *Mabahith* officer subject a prisoner to mistreatment, and that they had never authorized someone else to subject a prisoner to physical or psychological coercion.

The *Mabahith* officer who arrested the defendant in Medina testified that neither he nor,

¹² Reports to the contrary by the U.S. Department of State and various non-governmental organizations are entitled to only limited, if any, probative value for purposes of the defendant's motion to suppress. First, to the government's knowledge, none of these reports contain any information that the defendant himself was mistreated while in Saudi custody. Second, the reliability of information on which such reports are based is, at best, uncertain. For example, the Department of State Country Report on Human Rights Practices covering calendar year 2003 (published in February 2004) stated that "[t]here were reports that torture and abuse were used to obtain confessions from prisoners . . . Canadian and British prisoners that were released during the year reported that they had been tortured during their detention." These statements, however, were based primarily on press accounts of claims by Canadian and British nationals; no one from the U.S. Embassy involved in the preparation of the human rights report had any contact with the individuals claiming mistreatment to verify their claims. In addition, some of the material in the State Department report regarding the treatment of detainees in Saudi Arabia has simply become "boilerplate" language that carries over automatically from the previous year's report.

to his knowledge, anyone else, subjected the defendant to any physical mistreatment during the approximately 90 minutes between the defendant's arrest at the University of Medina and his arrival at a *Mabahith* detention center in Medina.¹³ Indeed, he stated that the defendant was not even handcuffed before his arrival at the detention center, and that, to his knowledge, the defendant was treated at all times with respect and dignity. He also testified that his orders were only to arrest and search the defendant, and that there was no questioning of the defendant by members of the arrest team.

The warden of the *Mabahith* detention center in Medina – where the defendant was held for approximately 40 hours before being flown to Riyadh – testified that he first saw and spoke to the defendant within two or three hours after he was admitted to the facility. He stated that the defendant's physical appearance was good, that the defendant did not appear physically uncomfortable in any way, and that the defendant did not appear to be favoring or protecting any part of his body. The defendant made no complaints about his arrest or his treatment between the time of his arrest and his arrival at the prison.

The defendant's conditions of confinement at the Medina detention center exceeded the

¹³ The Arresting Officer testified that he was with the defendant at all times during this period except for short drives (10 and 5 minutes, respectively) from the University of Medina building where the defendant was arrested to the defendant's dormitory building, and from the dormitory room to the detention center. He also testified that during those drives he was able to observe the defendant in the car behind him from his rear-view mirror, and did not observe any mistreatment of the defendant.

standards of most American jails. As the Warden testified, the building was constructed as a residential facility, not as a prison. Accordingly, the “cells” consist of two apartments on each floor, with each apartment containing eight rooms. Each room has air conditioning, a ceramic or marble floor, ceiling lights, and a window, and each is furnished with a mattress, pillow, blanket, and prayer rug. Prisoners are provided three meals a day and are given 30 riyals per day for food. Because the prison has no kitchen, food is brought into the prison from outside restaurants, and guards take each prisoner’s meal order. Prisoners have access to books and medical care, as well as access to bathroom facilities when needed.

The Warden testified that care was taken at the prison to monitor the prisoners’ well-being. Guards checked on the prisoners periodically, the Warden himself made daily rounds, and a camera was situated in every prisoner’s room, monitored by a sergeant in a central control room.

According to the Warden, the defendant was treated in a humane and respectful manner while he was in custody in Medina. At no time did prison officials whip or punch the defendant, or subject him to any physical force or mistreatment. Nor did prison officials subject the defendant to any form of psychological coercion.¹⁴

The Warden testified that his orders were strictly to transfer the defendant to Riyadh as

¹⁴ The Warden also testified that during the period he served as warden of the Medina prison (2000-2004), he never authorized prison officers to use physical force against a prisoner, that prisoner officers never used physical force against prisoners without his authorization, and that no prisoner was ever whipped or deprived of sleep.

soon as possible; he had no instructions to have the defendant interrogated while in Medina.

This testimony was corroborated by the Captain, who testified that Medina officials would have been obligated to forward to Riyadh documentation of any interrogation – and that the defendant’s file contained no such documentation.

The Captain testified that he first saw the defendant on the day the defendant arrived from Medina. According to the Captain, the defendant appeared healthy: the Captain observed no cuts or bruises, the defendant did not appear to be physically uncomfortable or injured in any way, and the defendant made no complaints about how he was feeling. Most notably – in light of the defendant’s claim that he was whipped on his back in Medina – the defendant did not appear to be protecting his back. Indeed, during that initial interrogation and in subsequent interrogations (as demonstrated by the Captain during his testimony), the defendant would rock back and forth in a reclining chair, a motion that would have been painful if the defendant had, as he claims, been whipped on his back.¹⁵

The Captain’s account of the beginning of the first interrogation vividly underscored the voluntariness of the defendant’s admissions and the falsity of his claims of mistreatment. Typical of prisoners at their initial interrogation, the defendant appeared tense at the beginning of his initial interrogation. After greeting the defendant, the Captain asked him, “Why were you arrested?” The defendant replied, “I don’t know. You’re the one who should know,” or words to that effect. The Captain then asked, “Who is Reda? Who is Ashraf?” (the aliases by which other

¹⁵ Similarly, the defendant often would swivel in his chair and put his feet up in the chair, as the Captain also demonstrated.

members of the al-Faq'asi cell knew the defendant). In his testimony, the Captain explained that he asked the defendant so early in the interrogation about this alias because he and other *Mabahith* officers already had interviewed the other cell members who had been arrested, and he did not want to waste time with the defendant. The defendant did not reply that he had no idea who "Reda" or "Ashraf" were; he simply smiled and inquired if al-Faq'asi and other cell members already were in custody – thereby immediately manifesting his culpability.

According to the Captain and the General (whom the Captain called into the interrogation room to help calm the defendant), the defendant expressed only one concern during the initial interrogation: his fear of being turned over to U.S. law enforcement authorities. The defendant told the Captain and General that if the *Mabahith* transferred him to U.S. custody, he would refuse to talk and would later deny anything he had told the *Mabahith*. Only after the General and the Captain reassured the defendant that he would not be turned over to the United States, and that no harm would come to him, did the defendant relax and begin to talk. And once the defendant began to talk, he poured forth so much information about his involvement with the al-Faq'asi cell that the Captain likened his loquaciousness to a "sack of water" – once it's punctured, "the water all gushes out" (or words to that effect). By the end of the first two interrogations, the defendant had provided the core facts about his involvement with the al-Faq'asi cell and his plans to conduct terrorist attacks against the United States.

The first interrogation lasted approximately 7.5 hours because the defendant was providing so much information. Water, tea, and coffee were made available to the defendant. The defendant received frequent breaks to use the restroom and to pray, and the Captain took additional breaks to smoke, as it is prohibited under *Mabahith* rules for an interrogator to smoke

in front of a prisoner who does not smoke.

During the first interrogation, the General and the Captain were dressed in the traditional *thobe*, rather than in official uniforms, and the Captain was dressed in the same manner at subsequent interrogations. The defendant, too, was wearing a *thobe*, rather than a prison uniform. Neither the General nor the Captain were in possession of any weapons at any of the defendant's interrogations.

The Captain continued to interrogate the defendant for approximately 40 more days. According to the Captain, the questioning continued for that period so the *Mabahith* could corroborate information the defendant was providing, and because the Captain needed to ask follow-up questions.¹⁶ The Captain testified that he treated the defendant with dignity and respect and that, over the course of their meetings, he and the defendant established a friendly relationship.

Except for the interrogation on June 15, 2003, all of the interrogations of the defendant occurred in a large conference room at al-Hay'ir Prison in Riyadh that normally was used by *Mabahith* officers, rather than in an interrogation room. The Captain estimated the size of the room to be approximately 8 meters by 5 meters (approximately 25 ft. by 15 ft.). The Captain and the defendant sat at rectangular conference table, with the defendant at the head of the table and the Captain to his left. The chairs around the table were comfortable leather chairs that reclined. The room was air-conditioned and had normal ceiling lighting.

¹⁶ After the interrogation session ending on July 8, 2005, the interrogations were brief and devoted mostly to such matters as reviewing photographs.

The interrogation sessions varied in length. The first three sessions averaged approximately seven hours; subsequent sessions devoted to written question-and-answer averaged approximately four hours. As the Captain testified (and as reflected in the minutes of interrogation), there were breaks of many hours,¹⁷ and sometime days,¹⁸ between interrogation sessions, and the defendant received breaks in each individual session. Consistent with standard *Mabahith* procedures, the interrogations occurred at night largely because of the heat during the day. According to the Captain, the defendant trained himself to sleep during the day and appeared to be well rested for his interrogations.¹⁹ He added that during interrogation sessions the defendant clearly understood the questions he was asked,²⁰ that his speech was coherent, that he did not appear under the influence of drugs or alcohol, and that he never asked for access to a doctor, lawyer, or U.S. consular official.

¹⁷ For example, there were 17 hours between the first and second interrogation sessions, 14.5 hours between the second and third sessions, and 18 hours between the third and fourth sessions.

¹⁸ For example, there were almost 7 days between the interrogation session ending on June 17, 2003, and the next session on June 24. Similarly, there were almost 6 days between the interrogation session ending on June 26 and the next session on July 1..

¹⁹ Indeed, the Captain testified that of all the members of the al-Faq'asi cell whom the Captain interrogated, the defendant seemed to sleep the most.

²⁰ The Captain testified that the defendant conversed fluently in Arabic, the language in which interrogations were conducted. The Captain's testimony is corroborated by the defendant's written responses in the minutes of interrogation and his summary confession – which the defendant wrote out in Arabic; by the defendant's videotaped reading in Arabic of the summary confession; and by recorded telephone conversations between the defendant and his family in Virginia while he was in Saudi custody.

The defendant was allowed to eat and drink during interrogations. An attendant regularly brought in coffee, tea, and milk, and meals from a buffet were brought in if an interrogation extended through a mealtime. On at least two occasions, the Captain brought the defendant an assortment of fruit from his own dinner at the officers' mess.

The Captain testified unequivocally that he did not apply any physical force or violence to the defendant, that he did not apply any psychological coercion against the defendant, and that he made no threats or promises to the defendant to elicit information²¹. At no time during any of his interrogations was the defendant handcuffed or restrained in any way, blindfolded, or questioned with a covering over his head.²² The Captain also testified that he never authorized anyone to use physical force or violence against the defendant, or to deprive him of sleep. The Captain further testified that to his knowledge, no other Saudi official threatened or made promises to the defendant or applied any physical or psychological coercion (including sleep deprivation) against

²¹ The Captain acknowledged that he and the General reassured the defendant at the first interrogation that he would not be turned over to U.S. authorities, but at the time they had no expectation that the defendant would be released from Saudi custody. Moreover, "[i]n applying the totality of the circumstances test, . . . courts should not focus on a single factor in determining voluntariness." *Braxton*, 112 F.3d at 785.

²² Whether the defendant was physically restrained in some manner while being transported to the conference room where he was interrogated is irrelevant. For security reasons, the U.S. Marshals Service and other U.S. law enforcement agencies routinely restrain prisoners during prisoner movements. Moreover, the law is clear that the fact that a subject has been restrained does not automatically mean that any subsequent statement is "involuntary." *Elie*, 111 F.3d at 1145-46.

the defendant.²³

²³ The Captain noted that it would have been readily apparent to him if the defendant had been mistreated in between interrogation sessions.

In sum, the circumstances of the defendant's interrogations and the facts regarding his treatment by Saudi authorities clearly establish that his copious incriminating admissions were voluntary under the Due Process Clause, that his capacity for self-determination was never impaired,²⁴ and that his will was not overborne. The defendant's individual characteristics and background buttress the conclusion that his incriminating admissions were not coerced. The defendant is a mature and highly intelligent individual. He is fluent in two languages, has traveled internationally, and has lived abroad.²⁵ *See Elie*, 111 F.3d at 1145. The reports of his meetings with U.S. consular officials – and his subsequent telephone conversations with family members regarding those meetings – also depict an individual who is self-possessed, confident, and sophisticated for his age.

B. The Defendant's Statements and Conduct Belie His Claims of Mistreatment.

In numerous instances, the defendant's statements and conduct while in Saudi custody are inconsistent with his claims of torture. Those claims also are undermined by observations of the defendant by U.S. consular officials, U.S. law enforcement officials, and both Saudi and U.S. medical personnel refute his claims of abuse.

²⁴ Indeed, on two occasions the defendant expressly refused to cooperate with the Captain, thereby manifesting his self-determination. On June 12, 2003, for example, he refused to provide the Captain the name of another. (See Exh. 1, pg. 5.) On June 25, he wrote that "I no longer want to answer any questions, because I no longer trust anybody." (See Exh. , pg. 27.)

²⁵ Copies of some of the defendant's academic records are attached hereto as Exh. 14.

1. Written Admissions During the Defendant's Interrogations

The minutes of interrogation (see Exh. 1) refute the defendant's claims that his written responses to questions were the product of physical and psychological coercion. First, the extensive detail of the defendant's written narrative is more consistent with a personal diary than a forced confession, particularly with respect to the first two days of interrogation. Second, in a few instances, the defendant interjected the phrase "I forgot to mention" before proceeding to augment his answer with additional information about his involvement with the al-Qaeda cell headed by al-Faq'asi. In the second interrogation, for example (see page 9 of Exh. 1), he wrote that "I forgot to mention that the second villa had Kalashnikovs and ammunition and perhaps a hand grenade." Later in the same interrogation, he wrote, in connection with a farmhouse used by the cell in Medina, "I forgot to mention that there were Kalashnikovs, a hand grenade or two, a handgun, ammunition and books." Similarly, he corrected himself in the first interrogation as to the date when a daily regimen he established for cell members began. (See pg. 9 of Exh. 1). Such interjections were clearly self-initiated, and are inconsistent with the notion that his statements were coerced.

At other times, his written responses were defiant or prideful in tone. For example, in response to being asked during the second interrogation "when the idea of carrying out acts against Americans inside America first crystallized in your mind," and "How was this idea polished by . . . 'Ali al-Faq'asi?", the defendant wrote:

The idea of acting against America was originally on my mind. What happened was that what was on my mind coincided with my meetings with Sultan [i.e., Sultan al-Jubran, who introduced the defendant to al-Faq'asi]. Therefore he offered me to join the organization. I then met with 'Ali al-Faq'asi, and we discussed what would be the best possible of the following options:

I take part in one operation inside America, or I arrange and plan in America for multiple operations or special operations that require certain qualified people inside America. Such people would be sent over to me, such as snipers etc., or would be martyrs that he would send into America. We decided that I would go there and prepare for operations while he would be looking for people who would carry them out. In other words, the idea did not need to be crystallized because I was thinking about that issue before I met them.

(Emphasis added.)

In another instance during the first interrogation (see pp. 8-9 of Exh. 1), the defendant despaired at being “bored” at two safehouse locations because al-Faq'asi was not there more often and his fellow al-Qaeda cell members did not appear sufficiently motivated to suit the defendant's terrorist zeal:

[F]rom the time I went to the villa up until this moment I saw 'Adil [i.e., al-Faq'asi] only twice. This caused me to be bored because nothing was happening other than talking and sleeping etc. At the farm, it was about the same; there was no specific program. 'Adil did not come at all. . . . When I went back to the farm [after the May 12, 2003, bombings in Riyadh] we agreed, based on my suggestions, to set a daily program because, as I said to the guys, we were wasting our time sleeping and engaging in idle chit-chat without any results.

(Emphasis added.)

Another indication that the defendant's will was not “overborne” during the interrogation process was his deliberate concealment of key information from the Captain until the final substantive interrogation on July 7, 2003, nearly one month after he had been arrested (see pg. 32 of Exh. 1):

Question: Explain to us with all truthfulness everything that you have concealed from our

investigators, whether in terms of the group or you. Please be accurate and provide all details.

Answer: As for Sultan, *we had a conversation about striking nuclear stations in America. He asked me to find their locations, so I searched for him*, but I did not give him anything. This idea appealed to Sultan, and he never mentioned anything but it. In this official record, I explained everything to you. It is what I remember and God knows best. (Emphasis added.)

2. Confession Observed by the FBI

As noted above, FBI agents indirectly observed and listened to a *Mabahith* interrogation on June 15, 2003. According to the agents, the defendant appeared healthy and relaxed, and there were no signs of physical abuse or sleep deprivation. The General's tone was friendly throughout the interrogation, and neither he nor the Captain, who was also present, ever raised his voice at the defendant, threatened him in any way, struck him, or made any promises to him. The defendant was not restrained in any way during the interrogation, and neither the General nor the Captain possessed any weapons.

According to the FBI agents, the defendant was alert, smiled, laughed, and at times appeared smug. One agent recalls that the defendant even joked with the General conducting the interrogation. Before the conclusion of the interrogation, the defendant asked the General not to share any of the information he was providing with U.S. authorities. These facts are particularly salient because this interrogation occurred only six days after the defendant's arrest, and after the point at which he claims he was physically abused.

3. The Defendant's Videotaped Reading of His Confession

The video of the defendant reading his summary written confession, which took place on or around July 24, 2003, is particularly revealing. In it, he appears healthy and at ease, smiling

and laughing on several occasions. After reads the passage in the confession where he describes al-Faq'asi's efforts to teach him methods of concealment, he departs from the text of the confession, laughs, and ad-libs, "which was useless. At another juncture when he is describing weapons training he received from the al-Qaeda cell, he smilingly simulated racking an assault rifle to ready it for firing.

4. Visits by U.S. Consular Officials

The defendant's appearance and conduct during meetings with consular officials from the U.S. Embassy in Riyadh strongly contradict his claims of torture. The first consular visit occurred on July 8, 2003. By that time, according to the defendant's claims, he had been systematically subjected to physical and psychological abuse. The consular officer's report, however, directly refutes such claims.

First, the defendant refused to sign a privacy waiver that would have enabled the embassy to convey information about his status and condition to members of his family and other individuals who could have assisted him. As the consular officer reported (see Exh. 15),

Abu Ali told conoff [consular officer] that he does not/not waive his right to privacy for any party including his parents. Conoff asked him three times regarding his parents and immediate family but each time Abu Ali said that he did not want any information passed to them or any other party.

As for the defendant's claims of torture, the consular officer reported:

Abu Ali did not/not allege any physical or psychological mistreatment and said that he was being well-treated. Conoff observed Abu Ali to be in good health and spirits Abu Ali reported to conoff that he is being treated well in detention; he used the words "excellent," "kind," and "humane" to describe his treatment. He said that he has daily access to a doctor if he has a medical matter. To date, he reported that he has not had reason to meet with the doctor. He said that he is housed in a room without bars, with a cot and mattress and toilet, washbasin, and shower. He said that lights remain on all the time in the room. He said that has not been subject to sleep deprivation, and his

interviews with investigators have not, in his opinion, been excessively long.

To conoff, Abu Ali appeared relaxed and in good humor, occasionally making humorous remarks. He appeared to conoff to be in good health. Conoff observed no injuries or bruises on his face, hands, arms, and lower legs, exposed from the long robe he was wearing. He sat and walked in a fit manner without any hesitation, limp, or sign of trauma.

Consistent with the fear he repeatedly expressed to the Captain about being returned to the United States – demonstrating the falsity of his torture claims – the defendant also raised this subject in his first consular visit:

Abu Ali asked conoff whether Saudi authorities could return him to the U.S. and conoff explained rendition to him, noting that there is no Saudi-U.S. extradition treaty or MLAT [Mutual Legal Assistance Treaty]. He also asked if the information conoff collected could be shared with law enforcement agencies.

The second consular visit occurred on August 12, 2003. (See Exh.16.) Again contradicting the defendant's later claims of torture, the consular officer reported that "Abu Ali was in good health and spirits. There was nothing in his physical appearance, demeanor, or speech to indicate mistreatment or abuse. Abu Ali told conoff that the Saudi authorities continue to treat him well and he made no allegations of mistreatment." As for the reasons for his incarceration, the defendant both "professed to be ignorant of any charges against him" and claimed that "it is all a misunderstanding."

The third consular visit occurred on September 6, 2003. (See Exh. 17.) Again, the consular officer found "nothing in [the defendant's] physical appearance, demeanor, or speech to indicate mistreatment or abuse." The consular officer added that "Abu Ali told conoff that the

Saudi authorities continue to treat him well and he made no allegations of mistreatment.” The defendant also told the consular officer that “he continues to be housed with other prisoners,” and that “he continues to enjoy social and intellectual interaction with the other inmates.”

The fourth consular visit occurred on October 5, 2003. (See Exh. 18.) This was the first consular visit following direct interviews of the defendant by U.S. law enforcement agents since his arrest, and the defendant was particularly agitated about the possibility of being turned over to U.S. authorities. The consular officer reported as follows:

Abu Ali was emphatic explaining to conoff that his desire is to be tried and sentenced under Saudi law. He said that he does not/not want to be transported to the U.S. and designated an “enemy combatant,” nor does he want to be prosecuted in Saudi Arabia and then prosecuted again in the U.S. He commented to conoff several times that he feels that his actions have been “politicized” and are not being considered as simple criminal offenses.

The next consular visit occurred on November 4, 2003. (See Exh. 19.) This time, according to the consular officer’s report,

Abu Ali asked conoff about renunciation of his American citizenship, advising that he also is a Jordanian citizen. Conoff outlined the process, noting that . . . the act of renunciation is usually done at the embassy or consulate and that the loss of nationality must be reviewed and approved by the Department. Conoff further advised Abu Ali that he should seek U.S. legal counsel concerning renunciation through his parents.

Although the report adds that the defendant characterized his questions about renunciation as “an informal inquiry, nothing more,” the fact that he raised the idea of renouncing his American citizenship at all – instead of doing everything he could to get home to his family – underscores the falsity of his torture claims.

The sixth consular visit took place on February 17, 2004. (See Exh.20.) During that visit, the defendant told the consular officer that he had been moved from a private cell to a cellblock with other inmates, and that he was getting daily physical exercise, including playing indoor soccer. According to the consular officer's report, "Abu Ali said that while he is glad to be out of isolation, he does not regret his period in isolation. He told conoff that he found the experience to be spiritually rewarding."

On May 10, 2004, the next scheduled consular visit, the defendant refused to meet with a consular officer. (See Exh. 21.) According to the consular officer's report, the *Mabahith* official supervising the visit told the consular officer that "he could not use physical force to bring Abu Ali to the reception building to meet with conoff." The *Mabahith* official also said "he understood that if Abu Ali were deported from Saudi Arabia, he would not want to return to the U.S. but has been talking of traveling to Sweden."

The next consular visit occurred on July 25, 2004. (See Exh. 22.) According to the consular officer's report, the defendant advised that his physical condition remained good, that he was getting exercise daily, and that he was telephoning his family in Falls Church, Virginia, approximately every two weeks. The defendant also "commented pointedly that he has never had a problem with his physical conditions; the issue is his continued detention without charges."

The next consular visit occurred on August 31, 2004. (See Exh. 23.) The consular officer reported that "Abu Ali was relaxed and non-belligerent and appeared to be in good health. He appeared to be well informed on current events and declined an offer to bring him newspapers and magazines saying that he received daily newspapers and that, in fact, *prison*

officials met all his needs.” (Emphasis added.)

5. Recorded Telephone Conversations

Saudi authorities recorded the defendant’s telephone calls to his family in Falls Church, Virginia, while the defendant was in Saudi custody. In his first call home on July 31, 2003 (see Exh. 24), the defendant made the following statements to his parents in response to their questions about his well-being:

- “I am doing well, well. How are you guys?”²⁶
- “I am fine, everything is fine. Don’t you worry about me, everything is fine, thanks to God the Lord of the universe.”
- “I am perfect and everything is perfect.”
- “Thank God, my health is great.”
- “I am cooperating and things are going fine.”
- “Just don’t worry and put your minds at ease. . . . Everything is going well.”
- “I am in safe hands, thank God. I am in the Kingdom of the two [holies] and things are okay, thanks to God.”
- My health is good, don’t worry. Nothing has happened, thank God.”
- “Not only am I fine, I am happy, I swear that I am happy, thanks to God.”

The defendant also makes it clear to his parents that he is no hurry to return to the United States. When his parents tell him, “We are waiting for you. We are eagerly waiting for you,” the defendant responds:

²⁶ According to the translator, the defendant sounded very cheerful when he made this statement.

Don't rush anything. Don't rush God's fate. Things take time, and everything is fine, thank God. I am telling you the good news that I am doing fine. . . . Just don't' rush things. These things require patience, tolerance, and time. You know how different the system here is and things take time.

Later in the same conversation, his father asks, "So, when are you coming back?"

Laughing, the defendant replied:

When am I coming back? Leave these things to God and consider me on vacation on an African safari [laughing]. I will return, God willing. Put your mind at rest Things are fine. . . . Just don't rush things because they take time

Even if allowances were made for a son trying to ease his parent's worries, the defendant's statements are completely inconsistent with those of an individual who purportedly has been brutalized and is desperate to return home.

Subsequent telephone calls home, recorded pursuant to a court order under the Foreign Intelligence Surveillance Act, also rebut the notion that the defendant has been mistreated by Saudi authorities, as reflected in the following excerpts:

July 31, 2004 (Exh. 25)

Mother: Are they treating you OK?

Defendant: Yes.

* * * * *

Mother: Do you get enough sleep?

Defendant: Yes, yes. Don't worry about these trivial worldly issues.

August 28, 2004 (Exh. 26)

Father: How is your hand?²⁷

Defendant: My hand is like iron

Father: I always dream of your hand.

Mother: We also dream of your fingers and fingernails. God protect every inch of you.

Defendant: You will find me different when you see me. I have gained some weight these days.

Mother: Thanks to God. How are they treating you?

Defendant: Thanks to God. I want to know about you and what is happening to each of you.

September 11, 2004 (Exh. 27)

Mother: Everyone asks about you and prays for you. Just don't worry about how long it will take. God gave us the patience to wait for a year and three months, so we ask him to give patience for what to come.

Defendant: No, don't take me wrong. I am being patient and I am happy.

September 25, 2004 (Exh. 28)

Father: Are your finger nails long?

Mother: Have they grown back?

Defendant: What are you talking about? My nails are normal.

* * * * *

Father: Does a physician come to visit you?

Defendant: He does sometimes, but I haven't had a reason for him.

Father: That's OK. He needs to give you a "check up."

²⁷ Here, the defendant's father is attempting to make a veiled inquiry based on news media reports of alleged torture of the defendant.

Defendant: I haven't gotten sick ever since I left you.

November 6, 2004 (Exh. 29)

Defendant: Everything here is perfect, thanks to God. Let me tell you something, I am doing fine with all the material aspect[s] of life, so don't you worry about me. I am even better from the religious aspect. This Ramadan is the best one I have had in my life. The only thing I am missing is seeing and being with you.

* * * * *

Defendant: You see, I am very happy in prison and I am benefiting a lot.

* * * * *

Father: How is your health?

Defendant: I am very healthy. . . . Don't think the situation is as you imagine; it is much better than you think. Everything is available, thanks to God.

6. Medical Examinations of Defendant by Saudi Doctors

Doctors in Saudi Arabia conducted medical examinations of the defendant on several occasions while he was in custody there. At no time did the defendant ever claim any injuries from mistreatment, and the doctors found no evidence of any abuse.

On or about June 11, 2003, a thorough "intake" examination was conducted when the defendant was admitted to al-Hay'ir Prison in Riyadh following his arrival from Medina. According to the report of this examination (see Exh. 10), the examining physician found the defendant's physical and psychological condition to be normal.²⁸ Moreover, when the defendant was asked, "What are the injuries, bruises or wounds you currently have?," he replied, "None." The defendant attested to the truth of the information he provided the physician and signed the

²⁸ The physician did report, however, that the defendant had acne on his back and face, as

report.

On February 15, 2005, the defendant received a medical examination from a team of doctors. (See Exh. 30.) According to the doctors' report, the defendant did not report any problems other than "popping" in his knees, "which he has had for a long time." Neurological and musculoskeletal examinations both showed "normal findings," and a skin examination "was within normal limits."

well as an "abnormality in [his] digestive system" and allergic rhinitis.

The defendant will likely claim that doctors in Saudi Arabia “covered up” or ignored his injuries from torture. Such claims, however, are belied by the obvious professionalism of the doctors’ reports.²⁹ Moreover, the records show that Saudi authorities were attentive to any medical problems the defendant was experiencing. The report of an examination conducted on July 4, 2004, for example, included the following:

Medical examination of inmate . . . shows that he has been suffering from pain in both knees for a long time. This causes friction in the knee joint. The necessary X-rays were taken, and they showed a gap between two long bones in the knee joint. Therefore, *we recommend that he be examined by an orthopedic specialist in the hospital.* (Emphasis added.)

7. Medical Examination After Transfer to U.S. Custody in Saudi Arabia

²⁹ The defendant appears to have received excellent medical care while in Saudi custody. In addition to the above-described medical services, the defendant received quality dental care as well as a special diet.

On February 21, 2005, an American doctor accompanying a team of FBI agents conducted a medical examination of the defendant in Saudi Arabia after he had been transferred to U.S. custody and was aboard a U.S. Government aircraft. The purpose of the examination was to assess and document the defendant's physical condition. As indicated in the report of the examination (see Exh. 31), the doctor asked the defendant if he had suffered any harm or injury, and the defendant replied that he had not been injured or harmed while in Saudi custody.³⁰ The doctor found that the defendant was well-nourished, that his spine was not tender, that he had normal muscle tone and a full-range of motion, and that he was alert. The doctor noticed acne on the defendant's back and a few faint marks, but the defendant did not mention these marks to the doctor, the doctor concluded they were insignificant, and the doctor saw nothing to suggest that the defendant had been subject to torture. The defendant had numerous opportunities during the examination to speak candidly about any possible abuse while he was in Saudi custody,³¹ but said nothing about any mistreatment.

8. Conversation with U.S. Consular Official After Transfer to U.S. Custody

After the doctor concluded his examination of the defendant on the airplane, the U.S. Consul General spoke with the defendant. The Consul General knew at the time that the defendant's family had claimed he had been tortured, and the Consul General asked the defendant if he had been abused since the last visit by a consular official. According to the Consul General's report (see Exh. 32), the defendant "answered in the negative but added he had

³⁰ The defendant did tell the doctor about pain in his right shoulder, but informed the doctor that he had a history pain in that shoulder.

³¹ No Saudi officials were on the plane.

long wanted to be able to speak to a consular officer privately because he had previously been unable to speak freely about conditions of his confinement because of the presence of Saudi security officials during consular visits.” As in his preceding medical examination by the American doctor, the defendant made no claims of any mistreatment by Saudi officials.

9. Initial Medical Examination at Alexandria Detention Center

On or about February 21, 2005, the defendant received a standard medical examination at the Alexandria Detention Center following his admission there. (See Exh.33.) The defendant said nothing to the examining nurse about his mistreatment or injuries incurred in Saudi Arabia, and in response to the question, “Do you have any medical problems we should know about?,” he responded no. The defendant also signed the completed medical report under the words, “I acknowledge that I have answered all questions truthfully”

The nurse also interviewed the defendant to assess whether he presented a risk of suicide. Contrary to the defendant’s claim that he suffers from depression as a result of his alleged mistreatment in Saudi Arabia, the nurse found that the defendant showed no signs of depression, and that he did not display any mental health problems.

On or about February 23, 2005, the defendant received another physical examination at the Alexandria Detention Center. According to the medical report (see Exh. 34), the nurse examined the defendant’s skin and found “no scars . . . on [the defendant’s] back”

C. Miranda Is Inapplicable to the Defendant’s Incriminating Admissions.

It is well established that statements obtained by foreign police in the absence of a *Miranda* warning are admissible if made voluntarily. See *United States v. Yousef*, 327 F.3d 56, 145 (2d Cir. 2003) (citations omitted); *United States v. Bagaric*, 706 F.2d 42, 69 (2d Cir. 1983),

overruled on other grounds, *Nat'l Org. for Women v. Scheidler*, 510 U.S. 249, 259-60 (1994); *Kilday v. United States*, 481 F.2d 655, 656 (5th Cir. 1973); *United States v. Welch*, 455 F.2d 211, 213 (2d Cir. 1972); *United States v. Lopez-Imitola*, 2004 WL 2534153, *2 (S.D.N.Y. 2004); *United States v. Bin Laden*, 132 F. Supp. 2d 168, 182 n.9 (S.D.N.Y. 2001). The reason for not excluding statements obtained by foreign police on a *per se* basis is that

Miranda was intended as a deterrent to unlawful police interrogations. When the interrogation is by the authorities of a foreign jurisdiction, the exclusionary rule has little or no effect upon the conduct of foreign police. Therefore, so long as the trustworthiness of the confession satisfies legal standards, the fact that the defendant was not given Miranda warnings before questioning by foreign police will not, by itself, render his confession inadmissible.

United States v. Martindale, 790 F.2d 1129, 1132 (4th Cir. 1986) (quoting *United States v. Chavarria*, 443 F.2d 904, 904 (9th Cir. 1971) (per curiam)). Accord *Welch*, 455 F.2d at 213 (“since the *Miranda* requirements were primarily designed to prevent United States police officers from relying upon improper interrogation techniques, . . . the requirements have little, if any deterrent effect upon foreign police officers”).

The courts have articulated two exceptions to this general rule of admissibility. The first exception is the “joint venture” doctrine, “under which statements elicited during overseas interrogation by foreign police in the absence of *Miranda* warnings must be suppressed whenever United States law enforcement agents *actively participate* in questioning conducted by foreign authorities.” *Yousef*, 327 F.3d at 145 (emphasis added). Accord *United States v. Heller*, 625 F.2d 594, 599 (5th Cir. 1980); *United States v. Emery*, 591 F.2d 1266, 1268 (9th Cir. 1978); *United States v. Trenary*, 473 F.2d 680, 681-82 (9th Cir. 1973). The second exception is that statements obtained in circumstances that “shock the judicial conscience” must be suppressed.

See Yousef, 327 F.3d at 146.

The joint venture doctrine does not apply to the defendant's admissions regarding his ties to an al-Qaeda cell in Saudi Arabia and his plans to conduct terrorist attacks within the United States. First, the evidence is clear that Saudi authorities arrested the defendant on their own initiative, and that U.S. officials had no involvement in the arrest. *See United States v. Mundt*, 508 F.2d 904, 906-07 (10th Cir. 1974) (affirming district court denial of motion to suppress on grounds, *inter alia*, that DEA agent assigned to U.S. embassy "did not actually participate in the [defendant's] arrest," though the agent "indeed played a substantial part in the events which led up to the arrest"); *cf. United States v. Emery*, 591 F.2d 1266, 1268 (9th Cir. 1978) (joint venture between DEA agents and Mexican police because DEA agents "substantially participated" in defendant's arrest). As the General and Captain both testified, the *Mabahith* identified and arrested the defendant based on statements made by fellow members of the al-Faq'asi cell who previously had been arrested and interrogated. Second, the U.S. Government had no involvement in the Saudi Government's decision to hold the defendant for interrogation. Third, U.S. officials had no involvement in any Saudi questioning of the defendant regarding his involvement with the al-Faq'asi cell during the defendant's first three interrogations – when he confessed to most of the details concerning his involvement with the call – or after the June 15, 2003, interrogation that FBI officials indirectly observed.

The defendant's argument that the joint venture doctrine is implicated as a result of cooperation in this case between the Saudi and U.S. Governments – or general counterterrorism cooperation between the two governments – is without merit. *See Chavarria*, 443 F.2d at 904 (upholding confession obtained by Mexican police to transportation of a stolen car in foreign

commerce, where California Highway Patrol had informed Mexican authorities that car had been stolen); *Bagaric*, 706 F.2d at 69 (allegation of close cooperation between U.S. and Canadian officials was insufficient to upset finding that Canadian detective conducted search “on his own country’s authority and in connection with an ongoing Canadian investigation”); *Mundt*, 508 F.2d at 906-07 (upholding trial court’s finding that joint venture did not exist where DEA officer had coordinated with Peruvian officers in operation and had played a “substantial part” in events leading up to the defendant’s arrest). The only relevant inquiry is whether the specific circumstances surrounding a particular statement, interrogation, or other law enforcement action rise to the level of a joint venture.

The circumstances surrounding the June 15, 2003, interrogation also do not constitute a “joint venture,” even though the *Mabahith* posed questions to the defendant on the FBI’s behalf during that interrogation. See *Bagaric*, 706 F.2d at 69; *Welch*, 455 F.2d at 213. First, at all times Saudi officials were in exclusive control of all facets of the June 15 interrogation. See *United States v. Mundt*, 508 F.2d 904, 906-07 (10th Cir. 1974) (affirming district court’s denial of suppression motion on grounds, *inter alia*, that, while DEA agent had helped to plan operation resulting in defendant’s arrest in Peru, a Peruvian police official “was in ultimate control”). *Mabahith* officials determined the time and place of the interrogation, set the ground rules, and conducted the questioning. In fact, as discussed above, the General and the Captain eliminated more than half of the questions the FBI wanted them to ask the defendant. Second, U.S. officials did not “actively participate” in the interrogation. See *Yousef*, 327 F.3d at 145. As the Captain testified, at no time during the June 15 interrogation were U.S. officials permitted in the room with the defendant or allowed to speak to him. See *United States v. Hensel*, 509 F. Supp. 1364,

1375 (D. Me. 1981) (*Miranda* warnings during foreign interrogation not required because, *inter alia*, “no American agent was present or in any way participated in the questioning of [the] defendant by Canadian officers”); *cf. United States v. Emery*, 591 F.2d 1266, 1268 (9th Cir. 1978) (joint venture between DEA agents and Mexican police because DEA agents “substantially participated” in defendant’s arrest).

Moreover, under the law of the Fourth Circuit, the defendant’s admissions during the June 15, 2003, interrogation are admissible even if *Mabahith* officials, *arguendo*, acted as agents of the FBI in posing a few questions to the defendant. In *United States v. Martindale*, 790 F.2d 1129 (4th Cir. 1986), the court of appeals considered the admissibility of statements made by an American during interrogation in Great Britain by officers at Scotland Yard. The court ruled that “[t]here was no requirement on the part of the British officers of compliance with the rule either in *Miranda v. United States* . . . or in *Massiah v. United States* . . . and any admissions made by the defendant in the interviews by the British officers were admissible absent proof of duress or of a wilfull attempt of American authorities to evade the strictures of *Miranda* or *Massiah* by employing the foreign authorities.” *Martindale*, 790 F.2d at 1131-32 (emphasis added) (citing *Bagaric*, 706 F.2d at 69).

Here, there is no evidence of any attempt by the FBI to circumvent *Miranda*. The posing of questions to the defendant by the *Mabahith* at the June 15, 2003, interrogation was not a subterfuge by the FBI to avoid compliance with *Miranda*. To the contrary, the FBI sought direct access to the defendant to question him about the threat to the President and other potential terrorist operations. Only after Saudi authorities rejected this request did FBI agents agree to have questions posed to the defendant on their behalf, as they observed and listened from an

adjacent room. In addition, the FBI essentially wanted only to hear the defendant repeat the admissions he already had made to the *Mabahith* about the threat to the President and other terrorist threats – not to develop new information. *See United States v. Molina-Chacon*, 627 F. Supp. 1253, 1262 (E.D.N.Y. 1986) (“Nothing in the record indicates that the DEA had requested [Bermuda] Inspector Williams to interview Molina-Chacon to develop further information.”). More misconduct and, as one court has observed, “[t]he question in a case involving statements or confessions obtained by foreign police officials is whether imposing the *Miranda* requirements will deter unlawful interrogation by foreign officials.” *Molina-Chacon*, 627 F. Supp. at 1262 (citations omitted). There is no evidence, however, that Saudi officials acted unlawfully, or even improperly, in arranging for the FBI to observe the *Mabahith* interrogation of the defendant on June 15. Thus, as a policy matter, the exclusionary rule is inapplicable to the defendant’s admissions during the June 15 interrogation, and suppression on *Miranda* grounds “would serve no legitimate purpose.” *Id.*

C. The Fruits of the Searches Conducted in Saudi Arabia and Virginia Are Not Subject to the Exclusionary Rule.

1. The Search of the Defendant’s Dormitory Room in Medina

It is well established that the exclusionary rule does not apply to foreign searches conducted pursuant to foreign law by foreign law enforcement officials. *See United States v. Janis*, 428 U.S. 433 n.31 (1976); *United States v. Barona*, 56 F.3d 1087, 1091 (9th Cir. 1995); *United States v. Mount*, 757 F.2d 1315, 1317-18 (D.C. Cir. 1985); *United States v. Hensel*, 699 F.2d 18, 25 (1st Cir. 1983); *Stowe v. Devoy*, 588 F.2d 336, 341 (2d Cir. 1978); *see also United States v. Verdugo-Urguidez*, 494 U.S. 259, 266 (1990) (purpose of exclusionary rule is to

“protect the people of the United States against arbitrary action by their own Government”). The courts have recognized two exceptions to this general rule: (1) if U.S. law enforcement agents were involved in the search to such an extent that the foreign officials could be considered agents of the United States; and (2) if the circumstances of the search “shock the judicial conscience.” *Stowe*, 588 F.2d at 341-42; *see also Barona*, 56 F.3d at 1091.

The circumstances of the *Mabahith*’s search of the defendant’s dormitory room following his arrest clearly do not warrant the application of the exclusionary rule. There is no evidence that U.S. officials were involved in any way with that search. Indeed, the search was carried out on or about June 9, 2003, before U.S. officials even knew the defendant had been arrested. Nor is there any evidence of misconduct by *Mabahith* officials conducting the search. As the Arresting Officer testified, the search was executed pursuant to a properly issued directive by a senior *Mabahith* official.

2. The Seizure of the Defendant’s Laptop Computer

The *Mabahith*’s seizure of the defendant’s laptop computer also passes constitutional scrutiny. The record establishes that the *Mabahith* seized the computer based on admissions by the defendant that he purchased the computer with funds from al-Faq’asi, and later gave the computer to another student at the University at Medina. There is no evidence that U.S. officials were involved in any way in the interrogations resulting in these admissions, and the defendant’s claims that his statements during interrogation were coerced are not credible. Nor is there any

evidence of any misconduct by the *Mabahith* in connection with the seizure of the computer.³²

3. The FBI's Search of the Defendant's Residence in Falls Church, Virginia

As discussed above, the FBI's June 16, 2003, search of the defendant's residence in Falls Church, Virginia, was carried out pursuant to a warrant issued by this Court. The defendant argues that "the search was authorized pursuant to information obtained from the unlawful interrogation of Ahmed Abu Ali in Saudi Arabia," and, without citing any authority, maintains that the search violated the defendant's rights under the First and Fourth Amendments of the U.S. Constitution. Defendant's Motion at 3.

³² Even if the Court determined that the defendant's statements during the interrogation process were somehow elicited in violation of *Miranda*, the laptop computer should not be suppressed. See *United States v. Sterling*, 283 F.3d 216, 218-19 (4th Cir. 2002) ("fruit of poisonous tree" doctrine does not require suppression of physical or derivative evidence as a result of defendant's unwarned statements); *Elie*, 111 F.3d at 1141-42 ("derivative evidence obtained as a result of an unwarned statement that was voluntary under the Fifth Amendment is never 'fruit of the poisonous tree'").

The Court should reject the defendant's claims. The timing of the search may have been precipitated by the FBI's receipt of information that the defendant had been arrested by Saudi authorities on terrorism charges and had confessed to a plot to assassinate the President. The probable cause for the search, however, related only to the defendant's relationship with Ali al-Timimi, a Muslim cleric in Northern Virginia then under investigation,³³ and to the defendant's association with individuals tied to al-Timimi who had been engaging in paintball in Northern Virginia to simulate military tactics and prepare for violent *jihad*.³⁴ Moreover, for the reasons cited above, the admissions by the defendant in Saudi Arabia that may have precipitated the timing of the search in Falls Church were voluntary.

V. CONCLUSION

For the reasons stated above, the Court should deny the defendant's motion to suppress

³³ Following a jury trial in the Eastern District of Virginia, al-Timimi was convicted on April 26, 2005, of soliciting others to wage war against United States, counseling others to engage in a conspiracy to levy war against the United States, attempting to aid the Taliban, counseling others to aid the Taliban, counseling others to violate the Neutrality Act, and counseling others to use firearms and explosives in furtherance of crimes of violence.

³⁴ The government does not understand the defendant's claim that the search of his Falls Church residence violated his First Amendment rights, as he did not explain the basis for this claim in his motion. We therefore reserve argument on this issue pending clarification by the defendant.

and submit the issue of the voluntariness of the defendant's confessions to a jury.

Respectfully submitted,

Paul J. McNulty
United States Attorney

By:

David H. Laufman
Stephen M. Campbell
Assistant United States Attorneys

Jerry R. DeMaio
Trial Attorney
Department of Justice